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110TH CONGRESS
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# H. R. 3162

To amend titles XVIII, XIX, and XXI of the Social Security Act to extend and improve the children's health insurance program, to improve beneficiary protections under the Medicare, Medicaid, and the CHIP program, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2007

Mr. DINGELL (for himself, Mr. RANGEL, Mr. STARK, and Mr. PALLONE) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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

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# A BILL

To amend titles XVIII, XIX, and XXI of the Social Security Act to extend and improve the children's health insurance program, to improve beneficiary protections under the Medicare, Medicaid, and the CHIP program, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

(a) SHORT TITLE.—This Act may be cited as the "Children's Health and Medicare Protection Act of 2007".

1 (b) TABLE OF CONTENTS.—The table of contents of
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CHILDREN'S HEALTH INSURANCE PROGRAM

Sec. 100. Purpose.

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Sec. 101. Establishment of new base CHIP allotments.
Sec. 102. 2-year initial availability of CHIP allotments.
Sec. 103. Redistribution of unused allotments to address State funding shortfalls.
Sec. 104. Extension of option for qualifying States.

Subtitle B—Improving Enrollment and Retention of Eligible Children

Sec. 111. CHIP performance bonus payment to offset additional enrollment costs resulting from enrollment and retention efforts.
Sec. 112. State option to rely on findings from an express lane agency to conduct simplified eligibility determinations.
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Sec. 142. Model of Interstate coordinated enrollment and coverage process.
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Subtitle F—Quality and Program Integrity

Sec. 151. Pediatric health quality measurement program.
Sec. 152. Application of certain managed care quality safeguards to CHIP.
Sec. 153. Updated Federal evaluation of CHIP.

Sec. 154. Access to records for IG and GAO audits and evaluations.
Sec. 155. References to title XXI.
Sec. 156. Reliance on law; exception for State legislation.

TITLE II—MEDICARE BENEFICIARY IMPROVEMENTS

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Sec. 201. Coverage and waiver of cost-sharing for preventive services.
Sec. 202. Waiver of deductible for colorectal cancer screening tests regardless of coding, subsequent diagnosis, or ancillary tissue removal.
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Sec. 212. Making QI program permanent and expanding eligibility.
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Sec. 214. Eliminating application of estate recovery.
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Sec. 217. Cost-sharing protections for low-income subsidy-eligible individuals.
Sec. 218. Intelligent assignment in enrollment.

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Sec. 222. Permitting mid-year changes in enrollment for formulary changes adversely impact an enrollee.
Sec. 223. Removal of exclusion of benzodiazepines from required coverage under the Medicare prescription drug program.
Sec. 224. Permitting updating drug compendia under part D using part B update process.
Sec. 225. Codification of special protections for six protected drug classifications.
Sec. 226. Elimination of Medicare part D late enrollment penalties paid by low-income subsidy-eligible individuals.
Sec. 227. Special enrollment period for subsidy eligible individuals.

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Sec. 231. Medicare data on race, ethnicity, and primary language.
Sec. 232. Ensuring effective communication in Medicare.
Sec. 233. Demonstration to promote access for Medicare beneficiaries with limited English proficiency by providing reimbursement for culturally and linguistically appropriate services.
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Sec. 237. Definitions.

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Sec. 610. Adjustment for Medicare mental health services.
Sec. 611. Extension of brachytherapy special rule.
Sec. 612. Payment for part B drugs.

Subtitle B—Extension of Medicare Rural Access Protections

Sec. 621. 2-year extension of floor on medicare work geographic adjustment.
Sec. 622. 2-year extension of special treatment of certain physician pathology services under Medicare.
Sec. 623. 2-year extension of medicare reasonable costs payments for certain clinical diagnostic laboratory tests furnished to hospital patients in certain rural areas.
Sec. 624. 2-year extension of Medicare incentive payment program for physician scarcity areas .
Sec. 625. 2-year extension of medicare increase payments for ground ambulance services in rural areas.
Sec. 626. Extending hold harmless for small rural hospitals under the HOPD prospective payment system.

Subtitle C—End Stage Renal Disease Program

Sec. 631. Chronic kidney disease demonstration projects.
Sec. 632. Medicare coverage of kidney disease patient education services.
Sec. 633. Required training for patient care dialysis technicians.
Sec. 634. MedPAC report on treatment modalities for patients with kidney failure.
Sec. 635. Adjustment for erythropoietin stimulating agents (ESAs).
Sec. 636. Site neutral composite rate.
Sec. 637. Development of ESRD bundling system and quality incentive payments.
Sec. 638. MedPAC report on ESRD bundling system.
Sec. 639. OIG study and report on erythropoietin.

Subtitle D—Miscellaneous

Sec. 651. Limitation on exception to the prohibition on certain physician referrals for hospitals.

TITLE VII—PROVISIONS RELATING TO MEDICARE PARTS A AND B

Sec. 701. Home health payment update for 2008.
Sec. 702. 2-year extension of temporary Medicare payment increase for home health services furnished in a rural area.
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Sec. 805. County medicaid health insuring organizations .

Subtitle B—Payments

Sec. 811. Payments for Puerto Rico and territories.
Sec. 812. Medicaid drug rebate.
Sec. 813. Adjustment in computation of Medicaid FMAP to disregard an extraordinary employer pension contribution.
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# TITLE I—CHILDREN'S HEALTH INSURANCE PROGRAM

**SEC. 100. PURPOSE.**

It is the purpose of this title to provide dependable and stable funding for children's health insurance under titles XXI and XIX of the Social Security Act in order to enroll all six million uninsured children who are eligible, but not enrolled, for coverage today through such titles.

## Subtitle A—Funding

**SEC. 101. ESTABLISHMENT OF NEW BASE CHIP ALLOTMENTS.**

Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended—

(1) in subsection (a)—

(A) in paragraph (9), by striking ''and'' at the end;

(B) in paragraph (10), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following new paragraph:

''(11) for fiscal year 2008 and each succeeding fiscal year, the sum of the State allotments provided under subsection (i) for such fiscal year.''; and

(2) in subsections (b)(1) and (c)(1), by striking "subsection (d)" and inserting "subsections (d) and (i)"; and

(3) by adding at the end the following new subsection:

"(i) ALLOTMENTS FOR STATES AND TERRITORIES BEGINNING WITH FISCAL YEAR 2008.—

"(1) GENERAL ALLOTMENT COMPUTATION.—Subject to the succeeding provisions of this subsection, the Secretary shall compute a State allotment for each State for each fiscal year as follows:

"(A) FOR FISCAL YEAR 2008.—For fiscal year 2008, the allotment of a State is equal to the greater of—

"(i) the State projection (in its submission on forms CMS–21B and CMS–37 for May 2007) of Federal payments to the State under this title for such fiscal year, except that, in the case of a State that has enacted legislation to modify its State child health plan during 2007, the State may substitute its projection in its submission on forms CMS–21B and CMS–37 for August 2007, instead of such forms for May 2007; or

"(ii) the allotment of the State under this section for fiscal year 2007 multiplied by the allotment increase factor under paragraph (2) for fiscal year 2008.

"(B) INFLATION UPDATE FOR FISCAL YEAR 2009 AND EACH SECOND SUCCEEDING FISCAL YEAR.—For fiscal year 2009 and each second succeeding fiscal year, the allotment of a State is equal to the amount of the State allotment under this paragraph for the previous fiscal year multiplied by the allotment increase factor under paragraph (2) for the fiscal year involved.

"(C) REBASING IN FISCAL YEAR 2010 AND EACH SECOND SUCCEEDING FISCAL YEAR.—For fiscal year 2010 and each second succeeding fiscal year, the allotment of a State is equal to the Federal payments to the State that are attributable to (and countable towards) the total amount of allotments available under this section to the State (including allotments made available under paragraph (3) as well as amounts redistributed to the State) in the previous fiscal year multiplied by the allotment in-

crease factor under paragraph (2) for the fiscal year involved.

"(D) SPECIAL RULES FOR TERRITORIES.—Notwithstanding the previous subparagraphs, the allotment for a State that is not one of the 50 States or the District of Columbia for fiscal year 2008 and for a succeeding fiscal year is equal to the Federal payments provided to the State under this title for the previous fiscal year multiplied by the allotment increase factor under paragraph (2) for the fiscal year involved (but determined by applying under paragraph (2)(B) as if the reference to 'in the State' were a reference to 'in the United States').

"(2) ALLOTMENT INCREASE FACTOR.—The allotment increase factor under this paragraph for a fiscal year is equal to the product of the following:

"(A) PER CAPITA HEALTH CARE GROWTH FACTOR.—1 plus the percentage increase in the projected per capita amount of National Health Expenditures from the calendar year in which the previous fiscal year ends to the calendar year in which the fiscal year involved ends, as most recently published by the Secretary before the beginning of the fiscal year.

"(B) CHILD POPULATION GROWTH FACTOR.—1 plus the percentage increase (if any) in the population of children under 19 years of age in the State from July 1 in the previous fiscal year to July 1 in the fiscal year involved, as determined by the Secretary based on the most recent published estimates of the Bureau of the Census before the beginning of the fiscal year involved, plus 1 percentage point

"(3) PERFORMANCE-BASED SHORTFALL ADJUSTMENT.—

"(A) IN GENERAL.—If a State's expenditures under this title in a fiscal year (beginning with fiscal year 2008) exceed the total amount of allotments available under this section to the State in the fiscal year (determined without regard to any redistribution it receives under subsection (f) that is available for expenditure during such fiscal year, but including any carryover from a previous fiscal year) and if the average monthly unduplicated number of children enrolled under the State plan under this title (including children receiving health care coverage through funds under this title pursuant to a waiver under section 1115) during such fiscal

year exceeds its target average number of such enrollees (as determined under subparagraph (B)) for that fiscal year, the allotment under this section for the State for the subsequent fiscal year (or, pursuant to subparagraph (F), for the fiscal year involved) shall be increased by the product of—

"(i) the amount by which such average monthly caseload exceeds such target number of enrollees; and

"(ii) the projected per capita expenditures under the State child health plan (as determined under subparagraph (C) for the original fiscal year involved), multiplied by the enhanced FMAP (as defined in section 2105(b)) for the State and fiscal year involved

"(B) TARGET AVERAGE NUMBER OF CHILD ENROLLEES.—In this subsection, the target average number of child enrollees for a State—

"(i) for fiscal year 2008 is equal to the monthly average unduplicated number of children enrolled in the State child health plan under this title (including such children receiving health care coverage

through funds under this title pursuant to a waiver under section 1115) during fiscal year 2007 increased by the population growth for children in that State for the year ending on June 30, 2006 (as estimated by the Bureau of the Census) plus 1 percentage point; or

"(ii) for a subsequent fiscal year is equal to the target average number of child enrollees for the State for the previous fiscal year increased by the population growth for children in that State for the year ending on June 30 before the beginning of the fiscal year (as estimated by the Bureau of the Census) plus 1 percentage point.

"(C) PROJECTED PER CAPITA EXPENDITURES.—For purposes of subparagraph (A)(ii), the projected per capita expenditures under a State child health plan—

"(i) for fiscal year 2008 is equal to the average per capita expenditures (including both State and Federal financial participation) under such plan for the targeted low-income children counted in the

average monthly caseload for purposes of this paragraph during fiscal year 2007, increased by the annual percentage increase in the per capita amount of National Health Expenditures (as estimated by the Secretary) for 2008; or

"(ii) for a subsequent fiscal year is equal to the projected per capita expenditures under such plan for the previous fiscal year (as determined under clause (i) or this clause) increased by the annual percentage increase in the per capita amount of National Health Expenditures (as estimated by the Secretary) for the year in which such subsequent fiscal year ends.

"(D) AVAILABILITY.—Notwithstanding subsection (e), an increase in allotment under this paragraph shall only be available for expenditure during the fiscal year in which it is provided.

"(E) NO REDISTRIBUTION OF PERFORMANCE-BASED SHORTFALL ADJUSTMENT.—In no case shall any increase in allotment under this paragraph for a State be subject to redistribution to other States.

"(F) INTERIM ALLOTMENT ADJUSTMENT.—The Secretary shall develop a process to administer the performance-based shortfall adjustment in a manner so it is applied to (and before the end of) the fiscal year (rather than the subsequent fiscal year) involved for a State that the Secretary estimates will be in shortfall and will exceed its enrollment target for that fiscal year.

"(G) PERIODIC AUDITING.—The Comptroller General of the United States shall periodically audit the accuracy of data used in the computation of allotment adjustments under this paragraph. Based on such audits, the Comptroller General shall make such recommendations to the Congress and the Secretary as the Comptroller General deems appropriate.

"(4) CONTINUED REPORTING.—For purposes of paragraph (3) and subsection (f), the State shall submit to the Secretary the State's projected Federal expenditures, even if the amount of such expenditures exceeds the total amount of allotments available to the State in such fiscal year.".

**SEC. 102. 2-YEAR INITIAL AVAILABILITY OF CHIP ALLOTMENTS.**

Section 2104(e) of the Social Security Act (42 U.S.C. 1397dd(e)) is amended to read as follows:

"(e) AVAILABILITY OF AMOUNTS ALLOTTED.—

"(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (i)(3)(D), amounts allotted to a State pursuant to this section—

"(A) for each of fiscal years 1998 through 2007, shall remain available for expenditure by the State through the end of the second succeeding fiscal year; and

"(B) for fiscal year 2008 and each fiscal year thereafter, shall remain available for expenditure by the State through the end of the succeeding fiscal year.

"(2) AVAILABILITY OF AMOUNTS REDISTRIBUTED.—Amounts redistributed to a State under subsection (f) shall be available for expenditure by the State through the end of the fiscal year in which they are redistributed, except that funds so redistributed to a State that are not expended by the end of such fiscal year shall remain available after the end of such fiscal year and shall be available in the following fiscal year for subsequent redistribution under such subsection.".

**SEC. 103. REDISTRIBUTION OF UNUSED ALLOTMENTS TO ADDRESS STATE FUNDING SHORTFALLS.**

Section 2104(f) of the Social Security Act (42 U.S.C. 1397dd(f)) is amended—

(1) by striking ''The Secretary'' and inserting the following:

''(1) IN GENERAL.—The Secretary'';

(2) by striking ''States that have fully expended the amount of their allotments under this section.'' and inserting ''States that the Secretary determines with respect to the fiscal year for which unused allotments are available for redistribution under this subsection, are shortfall States described in paragraph (2) for such fiscal year, but not to exceed the amount of the shortfall described in paragraph (2)(A) for each such State (as may be adjusted under paragraph (2)(C)). The amount of allotments not expended or redistributed under the previous sentence shall remain available for redistribution in the succeeding fiscal year.''; and

(3) by adding at the end the following new paragraph:

''(2) SHORTFALL STATES DESCRIBED.—

''(A) IN GENERAL.—For purposes of paragraph (1), with respect to a fiscal year, a shortfall State described in this subparagraph is a

State with a State child health plan approved under this title for which the Secretary estimates on the basis of the most recent data available to the Secretary, that the projected expenditures under such plan for the State for the fiscal year will exceed the sum of—

"(i) the amount of the State's allotments for any preceding fiscal years that remains available for expenditure and that will not be expended by the end of the immediately preceding fiscal year;

"(ii) the amount (if any) of the performance based adjustment under subsection (i)(3)(A); and

"(iii) the amount of the State's allotment for the fiscal year.

"(B) PRORATION RULE.—If the amounts available for redistribution under paragraph (1) for a fiscal year are less than the total amounts of the estimated shortfalls determined for the year under subparagraph (A), the amount to be redistributed under such paragraph for each shortfall State shall be reduced proportionally.

"(C) RETROSPECTIVE ADJUSTMENT.—The Secretary may adjust the estimates and deter-

minations made under paragraph (1) and this paragraph with respect to a fiscal year as necessary on the basis of the amounts reported by States not later than November 30 of the succeeding fiscal year, as approved by the Secretary.''.

**SEC. 104. EXTENSION OF OPTION FOR QUALIFYING STATES.**

Section 2105(g)(1)(A) of the Social Security Act (42 U.S.C. 1397ee(g)(1)(A)) is amended by inserting after ''or 2007'' the following: ''or 30 percent of any allotment under section 2104 for any subsequent fiscal year''.

# Subtitle B—Improving Enrollment and Retention of Eligible Children

**SEC. 111. CHIP PERFORMANCE BONUS PAYMENT TO OFFSET ADDITIONAL ENROLLMENT COSTS RESULTING FROM ENROLLMENT AND RETENTION EFFORTS.**

Section 2105(a) of the Social Security Act (42 U.S.C. 1397ee(a)) is amended by adding at the end the following new paragraphs:

''(3) PERFORMANCE BONUS PAYMENT TO OFFSET ADDITIONAL MEDICAID AND CHIP CHILD ENROLLMENT COSTS RESULTING FROM ENROLLMENT AND RETENTION EFFORTS.—

"(A) IN GENERAL.—In addition to the payments made under paragraph (1), for each fiscal year (beginning with fiscal year 2008) the Secretary shall pay to each State that meets the condition under paragraph (4) for the fiscal year, an amount equal to the amount described in subparagraph (B) for the State and fiscal year. The payment under this paragraph shall be made, to a State for a fiscal year, as a single payment not later than the last day of the first calendar quarter of the following fiscal year.

"(B) AMOUNT.—The amount described in this subparagraph for a State for a fiscal year is equal to the sum of the following amounts:

"(i) FOR ABOVE BASELINE MEDICAID CHILD ENROLLMENT COSTS.—

"(I) FIRST TIER ABOVE BASELINE MEDICAID ENROLLEES.—An amount equal to the number of first tier above baseline child enrollees (as determined under subparagraph (C)(i)) under title XIX for the State and fiscal year multiplied by 35 percent of the projected per capita State Medicaid expenditures (as determined

1 under subparagraph (D)(i)) for the
2 State and fiscal year under title XIX.
3 ''(II) SECOND TIER ABOVE BASE-
4 LINE MEDICAID ENROLLEES.—An
5 amount equal to the number of second
6 tier above baseline child enrollees (as
7 determined under subparagraph
8 (C)(ii)) under title XIX for the State
9 and fiscal year multiplied by 90 per-
10 cent of the projected per capita State
11 Medicaid expenditures (as determined
12 under subparagraph (D)(i)) for the
13 State and fiscal year under title XIX.
14 ''(ii) FOR ABOVE BASELINE CHIP EN-
15 ROLLMENT COSTS.—
16 ''(I) FIRST TIER ABOVE BASE-
17 LINE CHIP ENROLLEES.—An amount
18 equal to the number of first tier above
19 baseline child enrollees under this title
20 (as determined under subparagraph
21 (C)(i)) for the State and fiscal year
22 multiplied by 5 percent of the pro-
23 jected per capita State CHIP expendi-
24 tures (as determined under subpara-

graph (D)(ii)) for the State and fiscal year under this title.

"(II) SECOND TIER ABOVE BASELINE CHIP ENROLLEES.—An amount equal to the number of second tier above baseline child enrollees under this title (as determined under subparagraph (C)(ii)) for the State and fiscal year multiplied by 75 percent of the projected per capita State CHIP expenditures (as determined under subparagraph (D)(ii)) for the State and fiscal year under this title.

"(C) NUMBER OF FIRST AND SECOND TIER ABOVE BASELINE CHILD ENROLLEES; BASELINE NUMBER OF CHILD ENROLLEES.—For purposes of this paragraph:

"(i) FIRST TIER ABOVE BASELINE CHILD ENROLLEES.—The number of first tier above baseline child enrollees for a State for a fiscal year under this title or title XIX is equal to the number (if any, as determined by the Secretary) by which—

"(I) the monthly average unduplicated number of qualifying children (as defined in subparagraph (E)) enrolled during the fiscal year under the State child health plan under this title or under the State plan under title XIX, respectively; exceeds

"(II) the baseline number of enrollees described in clause (iii) for the State and fiscal year under this title or title XIX, respectively;

but not to exceed 3 percent (in the case of title XIX) or 7.5 percent (in the case of this title) of the baseline number of enrollees described in subclause (II).

"(ii) SECOND TIER ABOVE BASELINE CHILD ENROLLEES.—The number of second tier above baseline child enrollees for a State for a fiscal year under this title or title XIX is equal to the number (if any, as determined by the Secretary) by which—

"(I) the monthly average unduplicated number of qualifying

children (as defined in subparagraph (E)) enrolled during the fiscal year under this title or under title XIX, respectively, as described in clause (i)(I); exceeds

"(II) the sum of the baseline number of child enrollees described in clause (iii) for the State and fiscal year under this title or title XIX, respectively, as described in clause (i)(II), and the maximum number of first tier above baseline child enrollees for the State and fiscal year under this title or title XIX, respectively, as determined under clause (i).

"(iii) BASELINE NUMBER OF CHILD ENROLLEES.—The baseline number of child enrollees for a State under this title or title XIX—

"(I) for fiscal year 2008 is equal to the monthly average unduplicated number of qualifying children enrolled in the State child health plan under this title or in the State plan under title XIX, respectively, during fiscal

year 2007 increased by the population growth for children in that State for the year ending on June 30, 2006 (as estimated by the Bureau of the Census) plus 1 percentage point; or

"(II) for a subsequent fiscal year is equal to the baseline number of child enrollees for the State for the previous fiscal year under this title or title XIX, respectively, increased by the population growth for children in that State for the year ending on June 30 before the beginning of the fiscal year (as estimated by the Bureau of the Census) plus 1 percentage point.

"(D) PROJECTED PER CAPITA STATE EXPENDITURES.—For purposes of subparagraph (B)—

"(i) PROJECTED PER CAPITA STATE MEDICAID EXPENDITURES.—The projected per capita State Medicaid expenditures for a State and fiscal year under title XIX is equal to the average per capita expenditures (including both State and Federal fi-

nancial participation) for children under the State plan under such title, including under waivers but not including such children eligible for assistance by virtue of the receipt of benefits under title XVI, for the most recent fiscal year for which actual data are available (as determined by the Secretary), increased (for each subsequent fiscal year up to and including the fiscal year involved) by the annual percentage increase in per capita amount of National Health Expenditures (as estimated by the Secretary) for the calendar year in which the respective subsequent fiscal year ends and multiplied by a State matching percentage equal to 100 percent minus the Federal medical assistance percentage (as defined in section 1905(b)) for the fiscal year involved.

"(ii) PROJECTED PER CAPITA STATE CHIP EXPENDITURES.—The projected per capita State CHIP expenditures for a State and fiscal year under this title is equal to the average per capita expenditures (including both State and Federal fi-

1 nancial participation) for children under
2 the State child health plan under this title,
3 including under waivers, for the most re-
4 cent fiscal year for which actual data are
5 available (as determined by the Secretary),
6 increased (for each subsequent fiscal year
7 up to and including the fiscal year in-
8 volved) by the annual percentage increase
9 in per capita amount of National Health
10 Expenditures (as estimated by the Sec-
11 retary) for the calendar year in which the
12 respective subsequent fiscal year ends and
13 multiplied by a State matching percentage
14 equal to 100 percent minus the enhanced
15 FMAP (as defined in section 2105(b)) for
16 the fiscal year involved.
17 ''(E) QUALIFYING CHILDREN DEFINED.—
18 For purposes of this subsection, the term
19 'qualifying children' means, with respect to this
20 title or title XIX, children who meet the eligi-
21 bility criteria (including income, categorical eli-
22 gibility, age, and immigration status criteria) in
23 effect as of July 1, 2007, for enrollment under
24 this title or title XIX, respectively, taking into
25 account crtieria applied as of such date under

this title or title XIX, respectively, pursuant to a waiver under section 1115.

"(4) ENROLLMENT AND RETENTION PROVISIONS FOR CHILDREN.— For purposes of paragraph (3)(A), a State meets the condition of this paragraph for a fiscal year if it is implementing at least 4 of the following enrollment and retention provisions (treating each subparagraph as a separate enrollment and retention provision) throughout the entire fiscal year:

"(A) CONTINUOUS ELIGIBILITY.—The State has elected the option of continuous eligibility for a full 12 months for all children described in section 1902(e)(12) under title XIX under 19 years of age, as well as applying such policy under its State child health plan under this title.

"(B) LIBERALIZATION OF ASSET REQUIREMENTS.—The State meets the requirement specified in either of the following clauses:

"(i) ELIMINATION OF ASSET TEST.—The State does not apply any asset or resource test for eligibility for children under title XIX or this title.

"(ii) ADMINISTRATIVE VERIFICATION OF ASSETS.—The State—

"(I) permits a parent or caretaker relative who is applying on behalf of a child for medical assistance under title XIX or child health assistance under this title to declare and certify by signature under penalty of perjury information relating to family assets for purposes of determining and redetermining financial eligibility; and

"(II) takes steps to verify assets through means other than by requiring documentation from parents and applicants except in individual cases of discrepancies or where otherwise justified.

"(C) ELIMINATION OF IN-PERSON INTERVIEW REQUIREMENT.—The State does not require an application of a child for medical assistance under title XIX (or for child health assistance under this title), including an application for renewal of such assistance, to be made in person nor does the State require a face-to-

face interview, unless there are discrepancies or individual circumstances justifying an in-person application or face-to-face interview.

"(D) USE OF JOINT APPLICATION FOR MEDICAID AND CHIP.—The application form and supplemental forms (if any) and information verification process is the same for purposes of establishing and renewing eligibility for children for medical assistance under title XIX and child health assistance under this title.

"(E) AUTOMATIC RENEWAL (USE OF ADMINISTRATIVE RENEWAL).—

"(i) IN GENERAL.—The State provides, in the case of renewal of a child's eligibility for medical assistance under title XIX or child health assistance under this title, a pre-printed form completed by the State based on the information available to the State and notice to the parent or caretaker relative of the child that eligibility of the child will be renewed and continued based on such information unless the State is provided other information. Nothing in this clause shall be construed as preventing a State from verifying, through electronic

and other means, the information so provided.

"(ii) SATISFACTION THROUGH DEMONSTRATED USE OF EX PARTE PROCESS.—A State shall be treated as satisfying the requirement of clause (i) if renewal of eligibility of children under title XIX or this title is determined without any requirement for an in-person interview, unless sufficient information is not in the State's possession and cannot be acquired from other sources (including other State agencies) without the participation of the applicant or the applicant's parent or caretaker relative.

"(F) PRESUMPTIVE ELIGIBILITY FOR CHILDREN.—The State is implementing section 1920A under title XIX as well as, pursuant to section 2107(e)(1), under this title .

"(G) EXPRESS LANE.—The State is implementing the option described in section 1902(e)(13) under title XIX as well as, pursuant to section 2107(e)(1), under this title.".

**SEC. 112. STATE OPTION TO RELY ON FINDINGS FROM AN EXPRESS LANE AGENCY TO CONDUCT SIMPLIFIED ELIGIBILITY DETERMINATIONS.**

(a) MEDICAID.—Section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)) is amended by adding at the end the following:

"(13) EXPRESS LANE OPTION.—

"(A) IN GENERAL.—

"(i) OPTION TO USE A FINDING FROM AN EXPRESS LANE AGENCY.—At the option of the State, the State plan may provide that in determining eligibility under this title for a child (as defined in subparagraph (F)), the State may rely on a finding made within a reasonable period (as determined by the State) from an Express Lane agency (as defined in subparagraph (E)) when it determines whether a child satisfies one or more components of eligibility for medical assistance under this title. The State may rely on a finding from an Express Lane agency notwithstanding sections 1902(a)(46)(B), 1903(x), and 1137(d) and any differences in budget unit, disregard, deeming or other methodology, if the following requirements are met:

"(I) PROHIBITION ON DETERMINING CHILDREN INELIGIBLE FOR COVERAGE.—If a finding from an Express Lane agency would result in a determination that a child does not satisfy an eligibility requirement for medical assistance under this title and for child health assistance under title XXI, the State shall determine eligibility for assistance using its regular procedures.

"(II) NOTICE REQUIREMENT.—For any child who is found eligible for medical assistance under the State plan under this title or child health assistance under title XXI and who is subject to premiums based on an Express Lane agency's finding of such child's income level, the State shall provide notice that the child may qualify for lower premium payments if evaluated by the State using its regular policies and of the procedures for requesting such an evaluation.

"(III) COMPLIANCE WITH SCREEN AND ENROLL REQUIREMENT.—The State shall satisfy the requirements under (A) and (B) of section 2102(b)(3) (relating to

1 screen and enroll) before enrolling a child
2 in child health assistance under title XXI.
3 At its option, the State may fulfill such re-
4 quirements in accordance with either op-
5 tion provided under subparagraph (C) of
6 this paragraph.
7 ''(ii) OPTION TO APPLY TO RENEWALS AND
8 REDETERMINATIONS.—The State may apply the
9 provisions of this paragraph when conducting
10 initial determinations of eligibility, redetermina-
11 tions of eligibility, or both, as described in the
12 State plan.
13 ''(B) RULES OF CONSTRUCTION.—Nothing in
14 this paragraph shall be construed—
15 ''(i) to limit or prohibit a State from tak-
16 ing any actions otherwise permitted under this
17 title or title XXI in determining eligibility for
18 or enrolling children into medical assistance
19 under this title or child health assistance under
20 title XXI; or
21 ''(ii) to modify the limitations in section
22 1902(a)(5) concerning the agencies that may
23 make a determination of eligibility for medical
24 assistance under this title.

"(C) OPTIONS FOR SATISFYING THE SCREEN AND ENROLL REQUIREMENT.—

"(i) IN GENERAL.—With respect to a child whose eligibility for medical assistance under this title or for child health assistance under title XXI has been evaluated by a State agency using an income finding from an Express Lane agency, a State may carry out its duties under subparagraphs (A) and (B) of section 2102(b)(3) (relating to screen and enroll) in accordance with either clause (ii) or clause (iii).

"(ii) ESTABLISHING A SCREENING THRESHOLD.—

"(I) IN GENERAL.—Under this clause, the State establishes a screening threshold set as a percentage of the Federal poverty level that exceeds the highest income threshold applicable under this title to the child by a minimum of 30 percentage points or, at State option, a higher number of percentage points that reflects the value (as determined by the State and described in the State plan) of any differences between income methodologies used by the program administered by the Express Lane

1 agency and the methodologies used by the
2 State in determining eligibility for medical
3 assistance under this title.

4 "(II) CHILDREN WITH INCOME NOT
5 ABOVE THRESHOLD.—If the income of a
6 child does not exceed the screening thresh-
7 old, the child is deemed to satisfy the in-
8 come eligibility criteria for medical assist-
9 ance under this title regardless of whether
10 such child would otherwise satisfy such cri-
11 teria.

12 "(III) CHILDREN WITH INCOME
13 ABOVE THRESHOLD.—If the income of a
14 child exceeds the screening threshold, the
15 child shall be considered to have an income
16 above the Medicaid applicable income level
17 described in section 2110(b)(4) and to sat-
18 isfy the requirement under section
19 2110(b)(1)(C) (relating to the requirement
20 that CHIP matching funds be used only
21 for children not eligible for Medicaid). If
22 such a child is enrolled in child health as-
23 sistance under title XXI, the State shall
24 provide the parent, guardian, or custodial
25 relative with the following:

"(aa) Notice that the child may be eligible to receive medical assistance under the State plan under this title if evaluated for such assistance under the State's regular procedures and notice of the process through which a parent, guardian, or custodial relative can request that the State evaluate the child's eligibility for medical assistance under this title using such regular procedures.

"(bb) A description of differences between the medical assistance provided under this title and child health assistance under title XXI, including differences in cost-sharing requirements and covered benefits.

"(iii) TEMPORARY ENROLLMENT IN CHIP PENDING SCREEN AND ENROLL.—

"(I) IN GENERAL.—Under this clause, a State enrolls a child in child health assistance under title XXI for a temporary period if the child appears eligible for such assistance based on an income finding by an Express Lane agency.

"(II) DETERMINATION OF ELIGIBILITY.—During such temporary enrollment period, the State shall determine the child's eligibility for child health assistance under title XXI or for medical assistance under this title in accordance with this clause.

"(III) PROMPT FOLLOW UP.—In making such a determination, the State shall take prompt action to determine whether the child should be enrolled in medical assistance under this title or child health assistance under title XXI pursuant to subparagraphs (A) and (B) of section 2102(b)(3) (relating to screen and enroll).

"(IV) REQUIREMENT FOR SIMPLIFIED DETERMINATION.—In making such a determination, the State shall use procedures that, to the maximum feasible extent, reduce the burden imposed on the individual of such determination. Such procedures may not require the child's parent, guardian, or custodial relative to provide or verify information that already has been provided to the State agency by an Ex-

press Lane agency or another source of information unless the State agency has reason to believe the information is erroneous.

"(V) AVAILABILITY OF CHIP MATCHING FUNDS DURING TEMPORARY ENROLLMENT PERIOD.—Medical assistance for items and services that are provided to a child enrolled in title XXI during a temporary enrollment period under this clause shall be treated as child health assistance under such title.

"(D) OPTION FOR AUTOMATIC ENROLLMENT.—

"(i) IN GENERAL.—At its option, a State may initiate an evaluation of an individual's eligibility for medical assistance under this title without an application and determine the individual's eligibility for such assistance using findings from one or more Express Lane agencies and information from sources other than a child, if the requirements of clauses (ii) and (iii) are met.

"(ii) INDIVIDUAL CHOICE REQUIREMENT.—The requirement of this clause is that the child is enrolled in medical assistance under this title or child health assistance under title

XXI only if the child (or a parent, caretaker relative, or guardian on the behalf of the child) has affirmatively assented to such enrollment.

"(iii) INFORMATION REQUIREMENT.—The requirement of this clause is that the State informs the parent, guardian, or custodial relative of the child of the services that will be covered, appropriate methods for using such services, premium or other cost sharing charges (if any) that apply, medical support obligations (under section 1912(a)) created by enrollment (if applicable), and the actions the parent, guardian, or relative must take to maintain enrollment and renew coverage.

"(E) EXPRESS LANE AGENCY DEFINED.—In this paragraph, the term 'express lane agency' means an agency that meets the following requirements:

"(i) The agency determines eligibility for assistance under the Food Stamp Act of 1977, the Richard B. Russell National School Lunch Act, the Child Nutrition Act of 1966, or the Child Care and Development Block Grant Act of 1990.

"(ii) The agency notifies the child (or a parent, caretaker relative, or guardian on the behalf of the child)—

"(I) of the information which shall be disclosed;

"(II) that the information will be used by the State solely for purposes of determining eligibility for and for providing medical assistance under this title or child health assistance under title XXI; and

"(III) that the child, or parent, caretaker relative, or guardian, may elect to not have the information disclosed for such purposes.

"(iii) The agency and the State agency are subject to an interagency agreement limiting the disclosure and use of such information to such purposes.

"(iv) The agency is determined by the State agency to be capable of making the determinations described in this paragraph and is identified in the State plan under this title or title XXI.

For purposes of this subparagraph, the term 'State agency' refers to the agency determining eligibility

for medical assistance under this title or child health assistance under title XXI.

"(F) CHILD DEFINED.—For purposes of this paragraph, the term 'child' means an individual under 19 years of age, or, at the option of a State, such higher age, not to exceed 21 years of age, as the State may elect.".

(b) CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)) is amended by redesignating subparagraph (B) and succeeding subparagraphs as subparagraph (C) and succeeding subparagraphs and by inserting after subparagraph (A) the following new subparagraph:

"(B) Section 1902(e)(13) (relating to the State option to rely on findings from an Express Lane agency to help evaluate a child's eligibility for medical assistance).".

(c) ELECTRONIC TRANSMISSION OF INFORMATION.—Section 1902 of such Act (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

"(dd) ELECTRONIC TRANSMISSION OF INFORMATION.—If the State agency determining eligibility for medical assistance under this title or child health assistance under title XXI verifies an element of eligibility based on information from an Express Lane Agency (as defined in subsection (e)(13)(F)), or from another public agency,

then the applicant's signature under penalty of perjury shall not be required as to such element. Any signature requirement for an application for medical assistance may be satisfied through an electronic signature, as defined in section 1710(1) of the Government Paperwork Elimination Act (44 U.S.C. 3504 note). The requirements of subparagraphs (A) and (B) of section 1137(d)(2) may be met through evidence in digital or electronic form.''.

(d) AUTHORIZATION OF INFORMATION DISCLOSURE.—

(1) IN GENERAL.—Title XIX of the Social Security Act is amended—

(A) by redesignating section 1939 as section 1940; and

(B) by inserting after section 1938 the following new section:

**''SEC. 1939. AUTHORIZATION TO RECEIVE PERTINENT INFORMATION.**

''(a) IN GENERAL.—Notwithstanding any other provision of law, a Federal or State agency or private entity in possession of the sources of data potentially pertinent to eligibility determinations under this title (including eligibility files maintained by Express Lane agencies described in section 1902(e)(13)(F), information described in paragraph (2) or (3) of section 1137(a), vital records

information about births in any State, and information described in sections 453(i) and 1902(a)(25)(I)) is authorized to convey such data or information to the State agency administering the State plan under this title, to the extent such conveyance meets the requirements of subsection (b).

"(b) REQUIREMENTS FOR CONVEYANCE.—Data or information may be conveyed pursuant to subsection (a) only if the following requirements are met:

"(1) The individual whose circumstances are described in the data or information (or such individual's parent, guardian, caretaker relative, or authorized representative) has either provided advance consent to disclosure or has not objected to disclosure after receiving advance notice of disclosure and a reasonable opportunity to object.

"(2) Such data or information are used solely for the purposes of—

"(A) identifying individuals who are eligible or potentially eligible for medical assistance under this title and enrolling or attempting to enroll such individuals in the State plan; and

"(B) verifying the eligibility of individuals for medical assistance under the State plan.

"(3) An interagency or other agreement, consistent with standards developed by the Secretary—

"(A) prevents the unauthorized use, disclosure, or modification of such data and otherwise meets applicable Federal requirements safeguarding privacy and data security; and

"(B) requires the State agency administering the State plan to use the data and information obtained under this section to seek to enroll individuals in the plan.

"(c) CRIMINAL PENALTY.—A private entity described in the subsection (a) that publishes, discloses, or makes known in any manner, or to any extent not authorized by Federal law, any information obtained under this section shall be fined not more than $1,000 or imprisoned not more than 1 year, or both, for each such unauthorized publication or disclosure.

"(d) RULE OF CONSTRUCTION.—The limitations and requirements that apply to disclosure pursuant to this section shall not be construed to prohibit the conveyance or disclosure of data or information otherwise permitted under Federal law (without regard to this section).".

(2) CONFORMING AMENDMENT TO TITLE XXI.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)), as amended by subsection (b), is

amended by adding at the end the following new subparagraph:

"(F) Section 1939 (relating to authorization to receive data potentially pertinent to eligibility determinations).".

(3) CONFORMING AMENDMENT TO PROVIDE ACCESS TO DATA ABOUT ENROLLMENT IN INSURANCE FOR PURPOSES OF EVALUATING APPLICATIONS AND FOR CHIP.—Section 1902(a)(25)(I)(i) of such Act (42 U.S.C. 1396a(a)(25)(I)(i)) is amended—

(A) by inserting "(and, at State option, individuals who are potentially eligible or who apply)" after "with respect to individuals who are eligible"; and

(B) by inserting "under this title (and, at State option, child health assistance under title XXI)" after "the State plan".

(e) EFFECTIVE DATE.—The amendments made by this section are effective on January 1, 2008.

**SEC. 113. APPLICATION OF MEDICAID OUTREACH PROCEDURES TO ALL CHILDREN AND PREGNANT WOMEN.**

(a) IN GENERAL.—Section 1902(a)(55) of the Social Security Act (42 U.S.C. 1396a(a)(55)) is amended—

(1) in the matter before subparagraph (A), by striking ''individuals for medical assistance under subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX)'' and inserting ''children and pregnant women for medical assistance under any provision of this title''; and

(2) in subparagraph (B), by inserting before the semicolon at the end the following: '', which need not be the same application form for all such individuals''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on January 1, 2008.

**SEC. 114. ENCOURAGING CULTURALLY APPROPRIATE ENROLLMENT AND RETENTION PRACTICES.**

(a) USE OF MEDICAID FUNDS.—Section 1903(a)(2) of the Social Security Act (42 U.S.C. 1396b(a)(2)) is amended by adding at the end the following new subparagraph:

''(E) an amount equal to 75 percent of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to translation or interpretation services in connection with the enrollment and retention under

this title of children of families for whom English is not the primary language; plus''.

(b) USE OF COMMUNITY HEALTH WORKERS FOR OUTREACH ACTIVITIES.—

(1) IN GENERAL.—Section 2102(c)(1) of such Act (42 U.S.C. 1397bb(c)(1)) is amended by inserting ''(through community health workers and others)'' after ''Outreach''.

(2) IN FEDERAL EVALUATION.—Section 2108(c)(3)(B) of such Act (42 U.S.C. 1397hh(c)(3)(B)) is amended by inserting ''(such as through community health workers and others)'' after ''including practices''.

# Subtitle C—Coverage

**SEC. 121. ENSURING CHILD-CENTERED COVERAGE.**

(a) ADDITIONAL REQUIRED SERVICES.—

(1) CHILD-CENTERED COVERAGE.—Section 2103 of the Social Security Act (42 U.S.C. 1397cc) is amended——

(A) in subsection (a)—

(i) in the matter before paragraph (1), by striking ''subsection (c)(5)'' and inserting ''paragraphs (5) and (6) of subsection (c)''; and

(ii) in paragraph (1), by inserting ''at least'' after ''that is''; and

(B) in subsection (c)—

(i) by redesignating paragraph (5) as paragraph (6); and

(ii) by inserting after paragraph (4), the following:

''(5) DENTAL, FQHC, AND RHC SERVICES.—The child health assistance provided to a targeted low-income child (whether through benchmark coverage or benchmark-equivalent coverage or otherwise) shall include coverage of the following:

''(A) Dental services necessary to prevent disease and promote oral health, restore oral structures to health and function, and treat emergency conditions.

''(B) Federally-qualified health center services (as defined in section 1905(l)(2)) and rural health clinic services (as defined in section 1905(l)(1)).

Nothing in this section shall be construed as preventing a State child health plan from providing such services as part of benchmark coverage or in addition to the benefits provided through benchmark coverage.''.

(2) REQUIRED PAYMENT FOR FQHC AND RHC SERVICES.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)), as amended by sections 112(b) and 112(d)(2), is amended by inserting after subparagraph (B) the following new subparagraph (and redesignating the succeeding subparagraphs accordingly):

"(C) Section 1902(bb) (relating to payment for services provided by Federally-qualified health centers and rural health clinics).".

(3) MENTAL HEALTH PARITY.—Section 2103(a)(2)(C) of such Act (42 U.S.C. 1397aa(a)(2)(C)) is amended by inserting "(or 100 percent in the case of the category of services described in subparagraph (B) of such subsection)" after "75 percent".

(4) EFFECTIVE DATE.—The amendments made by this subsection and subsection (d) shall apply to health benefits coverage provided on or after October 1, 2008.

(b) CLARIFICATION OF REQUIREMENT TO PROVIDE EPSDT SERVICES FOR ALL CHILDREN IN BENCHMARK BENEFIT PACKAGES UNDER MEDICAID .—

(1) IN GENERAL.—Section 1937(a)(1) of the Social Security Act (42 U.S.C. 1396u–7(a)(1)) is amended—

(A) in subparagraph (A)—

(i) in the matter before clause (i), by striking ''Notwithstanding any other provision of this title'' and inserting ''Subject to subparagraph (E)''; and

(ii) by striking ''enrollment in coverage that provides'' and all that follows and inserting ''benchmark coverage described in subsection (b)(1) or benchmark equivalent coverage described in subsection (b)(2).'';

(B) by striking subparagraph (C) and inserting the following new subparagraph:

''(C) STATE OPTION TO PROVIDE ADDITIONAL BENEFITS.—A State, at its option, may provide such additional benefits to benchmark coverage described in subsection (b)(1) or benchmark equivalent coverage described in subsection (b)(2) as the State may specify.''; and

(C) by adding at the end the following new subparagraph:

"(E) REQUIRING COVERAGE OF EPSDT SERVICES.—Nothing in this paragraph shall be construed as affecting a child's entitlement to care and services described in subsections (a)(4)(B) and (r) of section 1905 and provided in accordance with section 1902(a)(43) whether provided through benchmark coverage, benchmark equivalent coverage, or otherwise.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the amendment made by section 6044(a) of the Deficit Reduction Act of 2005.

(c) CLARIFICATION OF COVERAGE OF SERVICES IN SCHOOL-BASED HEALTH CENTERS INCLUDED AS CHILD HEALTH ASSISTANCE.—

(1) IN GENERAL.—Section 2110(a)(5) of such Act (42 U.S.C. 1397jj(a)(5)) is amended by inserting after "health center services" the following: "and school-based health center servicesservices for which coverage is otherwise provided under this title when furnished by a school-based health center that is authorized to furnish such services under State law".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to child health assist-

ance furnished on or after the date of the enactment of this Act.

(d) ASSURING ACCESS TO CARE.—

(1) STATE CHILD HEALTH PLAN REQUIREMENT.—Section 2102(a)(7)(B) of such Act (42 U.S.C. 1397bb(c)(2)) is amended by inserting ''and services described in section 2103(c)(5)'' after ''emergency services''.

(2) REFERENCE TO EFFECTIVE DATE.—For the effective date for the amendments made by this subsection, see subsection (a)(5).

**SEC. 122. IMPROVING BENCHMARK COVERAGE OPTIONS.**

(a) LIMITATION ON SECRETARY-APPROVED COVERAGE.—

(1) UNDER CHIP.—Section 2103(a)(4) of the Social Security Act (42 U.S.C. 1397cc(a)(4)) is amended by inserting before the period at the end the following: ''if the health benefits coverage is at least equivalent to the benefits coverage in a benchmark benefit package described in subsection (b)''.

(2) UNDER MEDICAID.—Section 1937(b)(1)(D) of the Social Security Act (42 U.S.C. 1396u–7(b)(1)(D)) is amended by inserting before the period at the end the following: ''if the health benefits coverage is at least equivalent to the benefits cov-

erage in benchmark coverage described in subparagraph (A), (B), or (C)''.

(b) REQUIREMENT FOR MOST POPULAR FAMILY COVERAGE FOR STATE EMPLOYEE COVERAGE BENCHMARK.—

(1) CHIP.—Section 2103(b)(2) of such Act (42 U.S.C. 1397(b)(2)) is amended by inserting ''and that has been selected most frequently by employees seeking dependent coverage, among such plans that provide such dependent coverage, in either of the previous 2 plan years'' before the period at the end.

(2) MEDICAID.—Section 1937(b)(1)(B) of such Act is amended by inserting ''and that has been selected most frequently, by employees seeking dependent coverage, among such plans that provide such dependent coverage, in either of the previous 2 plan years'' before the period at the end.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to health benefits coverage provided on or after October 1, 2008.

**SEC. 123. PREMIUM GRACE PERIOD.**

(a) IN GENERAL.—Section 2103(e)(3) of the Social Security Act (42 U.S.C. 1397cc(e)(3)) is amended by adding at the end the following new subparagraph:

"(C) PREMIUM GRACE PERIOD.—The State child health plan—

"(i) shall afford individuals enrolled under the plan a grace period of at least 30 days from the beginning of a new coverage period to make premium payments before the individual's coverage under the plan may be terminated; and

"(ii) shall provide to such an individual, not later than 7 days after the first day of such grace period, notice—

"(I) that failure to make a premium payment within the grace period will result in termination of coverage under the State child health plan; and

"(II) of the individual's right to challenge the proposed termination pursuant to the applicable Federal regulations.

For purposes of clause (i), the term 'new coverage period' means the month immediately following the last month for which the premium has been paid.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to new coverage periods beginning on or after January 1, 2009.

# Subtitle D—Populations

## SEC. 131. OPTIONAL COVERAGE OF OLDER CHILDREN UNDER MEDICAID AND CHIP.

(a) MEDICAID.—

(1) IN GENERAL.—Section 1902(l)(1)(D) of the Social Security Act (42 U.S.C. 1396a(l)(1)(D)) is amended by striking ''but have not attained 19 years of age'' and inserting ''but is under 19 years of age (or, at the option of a State and subject to section 131(d) of the Children's Health and Medicare Protection Act of 2007, under such higher age, not to exceed 25 years of age, as the State may elect)''.

(2) CONFORMING AMENDMENTS.—

(A) Section 1902(e)(3)(A) of such Act (42 U.S.C. 1396a(e)(3)(A)) is amended by striking ''18 years of age or younger'' and inserting ''under 19 years of age (or under such higher age as the State has elected under subsection (l)(1)(D))'' after ''18 years of age''.

(B) Section 1902(e)(12) of such Act (42 U.S.C. 1396a(e)(12)) is amended by inserting ''or such higher age as the State has elected

under subsection (l)(1)(D)'' after ''19 years of age''.

(C) Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended, in clause (i), by inserting ''or under such higher age as the State has elected under subsection (l)(1)(D)'' after ''as the State may choose''.

(D) Section 1920A(b)(1) of such Act (42 U.S.C. 1396r–1a(b)(1)) is amended by inserting ''or under such higher age as the State has elected under section 1902(l)(1)(D)'' after ''19 years of age''.

(E) Section 1928(h)(1) of such Act (42 U.S.C. 1396s(h)(1)) is amended by striking ''18 years of age or younger'' and inserting ''under 19 years of age or under such higher age as the State has elected under section 1902(l)(1)(D)''.

(F) Section 1932(a)(2)(A) of such Act (42 U.S.C. 1396u–2(a)(2)(A)) is amended by inserting ''(or under such higher age as the State has elected under section 1902(l)(1)(D))'' after ''19 years of age''.

(b) TITLE XXI.—Section 2110(c)(1) of such Act (42 U.S.C. 1397jj(c)(1)) is amended by inserting ''(or, at the option of the State and subject to section 131(d) of the

1 Children's Health and Medicare Protection Act of 2007,
2 under such higher age as the State has elected under sec-
3 tion 1902(l)(1)(D))''.

4 (c) EFFECTIVE DATE.—Subject to subsection (d),
5 the amendments made by this section take effect on Janu-
6 ary 1, 2010.

7 (d) TRANSITION.—In carrying out the amendments
8 made by subsections (a) and (b)—

9 (1) for 2010, a State election under section
10 1902(l)(1)(D) shall only apply with respect to title
11 XXI of such Act and the age elected may not exceed
12 21 years of age;

13 (2) for 2011, a State election under section
14 1902(l)(1)(D) may apply under titles XIX and XXI
15 of such Act and the age elected may not exceed 23
16 years of age;

17 (3) for 2012, a State election under section
18 1902(l)(1)(D) may apply under titles XIX and XXI
19 of such Act and the age elected may not exceed 24
20 years of age; and

21 (4) for 2013 and each subsequent year, a State
22 election under section 1902(l)(1)(D) may apply
23 under titles XIX and XXI of such Act and the age
24 elected may not exceed 25 years of age.

**SEC. 132. OPTIONAL COVERAGE OF LEGAL IMMIGRANTS UNDER THE MEDICAID PROGRAM AND CHIP.**

(a) MEDICAID PROGRAM.—Section 1903(v) of the Social Security Act (42 U.S.C. 1396b(v)) is amended—

(1) in paragraph (1), by striking ''paragraph (2)'' and inserting ''paragraphs (2) and (4)''; and

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

''(4)(A) A State may elect (in a plan amendment under this title) to provide medical assistance under this title, notwithstanding sections 401(a), 402(b), 403, and 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, for aliens who are lawfully residing in the United States (including battered aliens described in section 431(c) of such Act) and who are otherwise eligible for such assistance, within either or both of the following eligibility categories:

''(i) PREGNANT WOMEN.—Women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy).

''(ii) CHILDREN.—Individuals under age 19 (or such higher age as the State has elected under section 1902(l)(1)(D)), including optional targeted low-income children described in section 1905(u)(2)(B).

''(B) In the case of a State that has elected to provide medical assistance to a category of aliens under subpara-

graph (A), no debt shall accrue under an affidavit of support against any sponsor of such an alien on the basis of provision of medical assistance to such category and the cost of such assistance shall not be considered as an unreimbursed cost.''.

(b) CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)), as amended by section 112(b), 112(d)(2),and 121(a)(2), is amended by redesignating subparagraphs (E) through (G) as subparagraphs (G) through (I), respectively, and by inserting after subparagraph (D) the following new subparagraphs:

''(E) Section 1903(v)(4)(A) (relating to optional coverage of certain categories of lawfully residing immigrants), insofar as it relates to the category of pregnant women described in clause (i) of such section, but only if the State has elected to apply such section with respect to such women under title XIX and the State has elected the option under section 2111 to provide assistance for pregnant women under this title.

''(F) Section 1903(v)(4)(A) (relating to optional coverage of categories of lawfully residing immigrants), insofar as it relates to the category of children described in clause (ii) of such section, but only if the State has elected to

apply such section with respect to such children under title XIX.''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the date of the enactment of this Act.

**SEC. 133. STATE OPTION TO EXPAND OR ADD COVERAGE OF CERTAIN PREGNANT WOMEN UNDER CHIP.**

(a) CHIP.—

(1) COVERAGE.—Title XXI (42 U.S.C. 1397aa et seq.) of the Social Security Act is amended by adding at the end the following new section:

**''SEC. 2111. OPTIONAL COVERAGE OF TARGETED LOW-INCOME PREGNANT WOMEN.**

''(a) OPTIONAL COVERAGE.—Notwithstanding any other provision of this title, a State may provide for coverage, through an amendment to its State child health plan under section 2102, of assistance for pregnant women for targeted low-income pregnant women in accordance with this section, but only if—

''(1) the State has established an income eligibility level—

''(A) for pregnant women, under any of clauses (i)(III), (i)(IV), or (ii)(IX) of section 1902(a)(10)(A), that is at least 185 percent (or

such higher percent as the State has in effect for pregnant women under this title) of the poverty line applicable to a family of the size involved, but in no case a percent lower than the percent in effect under any such clause as of July 1, 2007; and

"(B) for children under 19 years of age under this title (or title XIX) that is at least 200 percent of the poverty line applicable to a family of the size involved; and

"(2) the State does not impose, with respect to the enrollment under the State child health plan of targeted low-income children during the quarter, any enrollment cap or other numerical limitation on enrollment, any waiting list, any procedures designed to delay the consideration of applications for enrollment, or similar limitation with respect to enrollment.

"(b) DEFINITIONS.—For purposes of this title:

"(1) ASSISTANCE FOR PREGNANT WOMEN.—The term 'assistance for pregnant women' has the meaning given the term child health assistance in section 2110(a) as if any reference to targeted low-income children were a reference to targeted low-income pregnant women.

"(2) TARGETED LOW-INCOME PREGNANT WOMAN.—The term 'targeted low-income pregnant woman' means a woman—

"(A) during pregnancy and through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends;

"(B) whose family income exceeds 185 percent (or, if higher, the percent applied under subsection (a)(1)(A)) of the poverty level applicable to a family of the size involved, but does not exceed the income eligibility level established under the State child health plan under this title for a targeted low-income child; and

"(C) who satisfies the requirements of paragraphs (1)(A), (1)(C), (2), and (3) of section 2110(b), applied as if any reference to a child was a reference to a pregnant woman.

"(c) REFERENCES TO TERMS AND SPECIAL RULES.—In the case of, and with respect to, a State providing for coverage of assistance for pregnant women to targeted low-income pregnant women under subsection (a), the following special rules apply:

"(1) Any reference in this title (other than in subsection (b)) to a targeted low-income child is

1 deemed to include a reference to a targeted low-in-
2 come pregnant woman.

3 ''(2) Any reference in this title to child health
4 assistance (other than with respect to the provision
5 of early and periodic screening, diagnostic, and
6 treatment services) with respect to such women is
7 deemed a reference to assistance for pregnant
8 women.

9 ''(3) Any such reference (other than in section
10 2105(d)) to a child is deemed a reference to a
11 woman during pregnancy and the period described
12 in subsection (b)(2)(A).

13 ''(4) In applying section 2102(b)(3)(B), any
14 reference to children found through screening to be
15 eligible for medical assistance under the State med-
16 icaid plan under title XIX is deemed a reference to
17 pregnant women.

18 ''(5) There shall be no exclusion of benefits for
19 services described in subsection (b)(1) based on any
20 preexisting condition and no waiting period (includ-
21 ing any waiting period imposed to carry out section
22 2102(b)(3)(C)) shall apply.

23 ''(6) In applying section 2103(e)(3)(B) in the
24 case of a pregnant woman provided coverage under
25 this section, the limitation on total annual aggregate

1 cost-sharing shall be applied to such pregnant
2 woman.
3 "(7) In applying section 2104(i)—
4 "(A) in the case of a State which did not
5 provide for coverage for pregnant women under
6 this title (under a waiver or otherwise) during
7 fiscal year 2007, the allotment amount other-
8 wise computed for the first fiscal year in which
9 the State elects to provide coverage under this
10 section shall be increased by an amount (deter-
11 mined by the Secretary) equal to the enhanced
12 FMAP of the expenditures under this title for
13 such coverage, based upon projected enrollment
14 and per capita costs of such enrollment; and
15 "(B) in the case of a State which provided
16 for coverage of pregnant women under this title
17 for the previous fiscal year—
18 "(i) in applying paragraph (2)(B) of
19 such section, there shall also be taken into
20 account (in an appropriate proportion) the
21 percentage increase in births in the State
22 for the relevant period; and
23 "(ii) in applying paragraph (3), preg-
24 nant women (and per capita expenditures
25 for such women) shall be accounted for

1 separately from children, but shall be in-
2 cluded in the total amount of any allot-
3 ment adjustment under such paragraph.

4 "(d) AUTOMATIC ENROLLMENT FOR CHILDREN
5 BORN TO WOMEN RECEIVING ASSISTANCE FOR PREG-
6 NANT WOMEN.—If a child is born to a targeted low-in-
7 come pregnant woman who was receiving assistance for
8 pregnant women under this section on the date of the
9 child's birth, the child shall be deemed to have applied for
10 child health assistance under the State child health plan
11 and to have been found eligible for such assistance under
12 such plan or to have applied for medical assistance under
13 title XIX and to have been found eligible for such assist-
14 ance under such title on the date of such birth, based on
15 the mother's reported income as of the time of her enroll-
16 ment under this section and applicable income eligibility
17 levels under this title and title XIX, and to remain eligible
18 for such assistance until the child attains 1 year of age.
19 During the period in which a child is deemed under the
20 preceding sentence to be eligible for child health or med-
21 ical assistance, the assistance for pregnant women or med-
22 ical assistance eligibility identification number of the
23 mother shall also serve as the identification number of the
24 child, and all claims shall be submitted and paid under

such number (unless the State issues a separate identification number for the child before such period expires).''.

(2) ADDITIONAL AMENDMENT.—Section 2107(e)(1)(H) of such Act (42 U.S.C. 1397gg(e)(1)(H)), as redesignated by section 133(b), is amended to read as follows:

''(H) Sections 1920 and 1920A (relating to presumptive eligibility for pregnant women and children).''.

(b) AMENDMENTS TO MEDICAID.—

(1) ELIGIBILITY OF A NEWBORN.—Section 1902(e)(4) of the Social Security Act (42 U.S.C. 1396a(e)(4)) is amended in the first sentence by striking ''so long as the child is a member of the woman's household and the woman remains (or would remain if pregnant) eligible for such assistance''.

(2) APPLICATION OF QUALIFIED ENTITIES TO PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN UNDER MEDICAID.—Section 1920(b) of the Social Security Act (42 U.S.C. 1396r–1(b)) is amended by adding after paragraph (2) the following flush sentence:

''The term 'qualified provider' also includes a qualified entity, as defined in section 1920A(b)(3).''.

**SEC. 134. LIMITATION ON WAIVER AUTHORITY TO COVER ADULTS.**

Section 2102 of the Social Security Act (42 U.S.C. 1397bb) is amended by adding at the end the following new subsection:

"(d) LIMITATION ON COVERAGE OF ADULTS.—Notwithstanding any other provision of this title, the Secretary may not, through the exercise of any waiver authority on or after January 1, 2008, provide for Federal financial participation to a State under this title for health care services for individuals who are not targeted low-income children or pregnant women unless the Secretary determines that no eligible targeted low-income child in the State would be denied coverage under this title for health care services because of such eligibility. In making such determination, the Secretary must receive assurances that—

"(1) there is no waiting list under this title in the State for targeted low-income children to receive child health assistance under this title; and

"(2) the State has in place an outreach program to reach all targeted low-income children in families with incomes less than 200 percent of the poverty line.".

# Subtitle E—Access

**SEC. 141. CHILDREN'S ACCESS, PAYMENT, AND EQUALITY COMMISSION.**

Title XIX of the Social Security Act is amended by inserting before section 1901 the following new section:

"CHILDREN'S ACCESS, PAYMENT, AND EQUALITY COMMISSION

"SEC. 1900. (a) ESTABLISHMENT.—There is hereby established as an agency of Congress the Children's Access, Payment, and Equality Commission (in this section referred to as the 'Commission').

"(b) DUTIES.—

"(1) REVIEW OF PAYMENT POLICIES AND ANNUAL REPORTS.—The Commission shall—

"(A) review Federal and State payment policies of the Medicaid program established under this title (in this section referred to as 'Medicaid') and the State Children's Health Insurance Program established under title XXI (in this section referred to as 'CHIP'), including topics described in paragraph (2);

"(B) review access to, and affordability of, coverage and services for enrollees under Medicaid and CHIP;

1 "(C) make recommendations to Congress
2 concerning such policies;
3 "(D) by not later than March 1 of each
4 year, submit to Congress a report containing
5 the results of such reviews and its recommenda-
6 tions concerning such policies; and
7 "(E) by not later than June 1 of each
8 year, submit to Congress a report containing an
9 examination of issues affecting Medicaid and
10 CHIP, including the implications of changes in
11 health care delivery in the United States and in
12 the market for health care services on such pro-
13 grams.
14 "(2) SPECIFIC TOPICS TO BE REVIEWED.—Spe-
15 cifically, the Commission shall review the following:
16 "(A) The factors affecting expenditures for
17 services in different sectors (such as physician,
18 hospital and other sectors), payment methodolo-
19 gies, and their relationship to access and qual-
20 ity of care for Medicaid and CHIP beneficiaries.
21 "(B) The impact of Federal and State
22 Medicaid and CHIP payment policies on access
23 to services (including dental services) for chil-
24 dren (including children with disabilities) and
25 other Medicaid and CHIP populations.

1 "(C) The impact of Federal and State
2 Medicaid and CHIP policies on reducing health
3 disparities, including geographic disparities and
4 disparities among minority populations.
5 "(D) The overall financial stability of the
6 health care safety net, including Federally-
7 qualified health centers, rural health centers,
8 school-based clinics, disproportionate share hos-
9 pitals, public hospitals, providers and grantees
10 under section 2612(a)(5) of the Public Health
11 Service Act (popularly known as the Ryan
12 White CARE Act), and other providers that
13 have a patient base which includes a dispropor-
14 tionate number of uninsured or low-income in-
15 dividuals and the impact of CHIP and Medicaid
16 policies on such stability.
17 "(E) The relation (if any) between pay-
18 ment rates for providers and improvement in
19 care for children as measured under the chil-
20 dren's health quality measurement program es-
21 tablished under section 151 of the Children's
22 Health and Medicare Protection Act of 2007.
23 "(F) The affordability, cost effectiveness,
24 and accessibility of services needed by special

populations under Medicaid and CHIP as compared with private-sector coverage.

"(G) The extent to which the operation of Medicaid and CHIP ensures access, comparable to access under employer-sponsored or other private health insurance coverage (or in the case of federally-qualified health center services (as defined in section 1905(l)(2)) and rural health clinic services (as defined in section 1905(l)(1)), access comparable to the access to such services under title XIX), for targeted low-income children.

"(H) The effect of demonstrations under section 1115, benchmark coverage under section 1937, and other coverage under section 1938, on access to care, affordability of coverage, provider ability to achieve children's health quality performance measures, and access to safety net services.

"(3) COMMENTS ON CERTAIN SECRETARIAL REPORTS.—If the Secretary submits to Congress (or a committee of Congress) a report that is required by law and that relates to payment policies under Medicaid or CHIP, the Secretary shall transmit a copy of the report to the Commission. The Commission

shall review the report and, not later than 6 months after the date of submittal of the Secretary's report to Congress, shall submit to the appropriate committees of Congress written comments on such report. Such comments may include such recommendations as the Commission deems appropriate.

"(4) AGENDA AND ADDITIONAL REVIEWS.—The Commission shall consult periodically with the Chairmen and Ranking Minority Members of the appropriate committees of Congress regarding the Commission's agenda and progress towards achieving the agenda. The Commission may conduct additional reviews, and submit additional reports to the appropriate committees of Congress, from time to time on such topics relating to the program under this title or title XXI as may be requested by such Chairmen and Members and as the Commission deems appropriate.

"(5) AVAILABILITY OF REPORTS.—The Commission shall transmit to the Secretary a copy of each report submitted under this subsection and shall make such reports available to the public.

"(6) APPROPRIATE COMMITTEE OF CONGRESS.—For purposes of this section, the term 'appropriate committees of Congress' means the Com-

1 mittees on Energy and Commerce of the House of
2 Representatives and the Committee on Finance of
3 the Senate.

4 "(7) VOTING AND REPORTING REQUIRE-
5 MENTS.—With respect to each recommendation con-
6 tained in a report submitted under paragraph (1),
7 each member of the Commission shall vote on the
8 recommendation, and the Commission shall include,
9 by member, the results of that vote in the report
10 containing the recommendation.

11 "(8) EXAMINATION OF BUDGET CON-
12 SEQUENCES.—Before making any recommendations,
13 the Commission shall examine the budget con-
14 sequences of such recommendations, directly or
15 through consultation with appropriate expert enti-
16 ties.

17 "(c) APPLICATION OF PROVISIONS.—The following
18 provisions of section 1805 shall apply to the Commission
19 in the same manner as they apply to the Medicare Pay-
20 ment Advisory Commission:

21 "(1) Subsection (c) (relating to membership),
22 except that the membership of the Commission shall
23 also include representatives of children, pregnant
24 women, individuals with disabilities, seniors, low-in-

1 come families, and other groups of CHIP and Med-
2 icaid beneficiaries.
3 ''(2) Subsection (d) (relating to staff and con-
4 sultants).
5 ''(3) Subsection (e) (relating to powers).
6 ''(d) AUTHORIZATION OF APPROPRIATIONS.—
7 ''(1) REQUEST FOR APPROPRIATIONS.—The
8 Commission shall submit requests for appropriations
9 in the same manner as the Comptroller General sub-
10 mits requests for appropriations, but amounts ap-
11 propriated for the Commission shall be separate
12 from amounts appropriated for the Comptroller Gen-
13 eral.
14 ''(2) AUTHORIZATION.—There are authorized to
15 be appropriated such sums as may be necessary to
16 carry out the provisions of this section.''.

17 **SEC. 142. MODEL OF INTERSTATE COORDINATED ENROLL-**
18 **MENT AND COVERAGE PROCESS.**

19 (a) IN GENERAL.—In order to assure continuity of
20 coverage of low-income children under the Medicaid pro-
21 gram and the State Children's Health Insurance Program
22 (CHIP), not later than 18 months after the date of the
23 enactment of this Act, the Comptroller General of the
24 United States, in consultation with State Medicaid and
25 CHIP directors and organizations representing program

beneficiaries, shall develop a model process for the coordination of the enrollment, retention, and coverage under such programs of children who, because of migration of families, emergency evacuations, educational needs, or otherwise, frequently change their State of residency or otherwise are temporarily located outside of the State of their residency.

(b) REPORT TO CONGRESS.—After development of such model process, the Comptroller General shall submit to Congress a report describing additional steps or authority needed to make further improvements to coordinate the enrollment, retention, and coverage under CHIP and Medicaid of children described in subsection (a).

**SEC. 143. MEDICAID CITIZENSHIP DOCUMENTATION REQUIREMENTS.**

(a) STATE OPTION TO REQUIRE CHILDREN TO PRESENT SATISFACTORY DOCUMENTARY EVIDENCE OF PROOF OF CITIZENSHIP OR NATIONALITY FOR PURPOSES OF ELIGIBILITY FOR MEDICAID; REQUIREMENT FOR AUDITING.—

(1) IN GENERAL.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(A) in subsection (a)(46)—

(i) by inserting ''(A)'' after ''(46)''; and

(B) by adding at the end the following new sbparagraphs:

''(B) at the option of the State, require that, with respect to a child under 21 years of age (other than an individual described in section 1903(x)(2)) who declares to be a citizen or national of the United States for purposes of establishing initial eligibility for medical assistance under this title (or, at State option, for purposes of renewing or redetermining such eligibility to the extent that such satisfactory documentary evidence of citizenship or nationality has not yet been presented), there is presented satisfactory documentary evidence of citizenship or nationality of the individual (using criteria determined by the State, which shall be no more restrictive than the documentation specified in section 1903(x)(3)); and

''(C) comply with the auditing requirements of section 1903(x)(4);''; and

(C) in subsection (b)(3), by inserting ''or any citizenship documentation requirement for a child under 21 years of age that is more restrictive than what a State may provide under section 1903(x)'' before the period at the end.

1 (2) AUDITING REQUIREMENT.—Section 1903(x)
2 of such Act (as amended by section 405(c)(1)(A) of
3 division B of the Tax Relief and Health Care Act of
4 2006 (Public Law 109–432)) is amended by adding
5 at the end the following new paragraph:
6 ''(4)(A) Regardless of whether a State has chosen to
7 take the option specified in section 1902(a)(46)(B), each
8 State shall audit a statistically-based sample of cases of
9 children under 21 years of age in order to demonstrate
10 to the satisfaction of the Secretary that the percentage
11 of Federal Medicaid funds being spent for non-emergency
12 benefits for aliens described in subsection (v)(1) who are
13 under 21 years of age does not exceed 3 percent of total
14 expenditures for medical assistance under the plan for
15 items and services for individuals under 21 years of age
16 for the period for which the sample is taken. In conducting
17 such audits, a State may rely on case reviews regularly
18 conducted pursuant to their Medicaid Quality Control or
19 Payment Error Rate Measurement (PERM) eligibility re-
20 views under subsection (u).
21 ''(B) In conducting audits under subparagraph (A),
22 payments for non-emergency benefits shall be treated as
23 erroneous if the audit could not confirm the citizenship
24 of the individual based either on documentation in the case

file or on documentation obtained independently during the audit.

"(C) If the erroneous error rate described in subparagraph (A)—

"(i) exceeds 3 percent, the State shall—

"(I) remit to the Secretary the Federal share of improper expenditures in excess of the 3 percent level described in such subparagraph;

"(II) shall develop a corrective action plan; and

"(III) shall conduct another audit the following fiscal year, after the corrective action plan is implemented; or

"(ii) does not exceed 3 percent, the State is not required to conduct another audit under subparagraph (A) until the third fiscal year succeeding the fiscal year for which the audit was conducted.";

(3) ELIMINATION OF DENIAL OF PAYMENTS FOR CHILDREN.—Section 1903(i)(22) of such Act (42 U.S.C. 1396b(i)(22)) is amended by inserting "(other than a child under the age of 21)" after "for an individual".

(b) CLARIFICATION OF RULES FOR CHILDREN BORN IN THE UNITED STATES TO MOTHERS ELIGIBLE FOR

1 MEDICAID.—Section 1903(x)(2) of such Act (42 U.S.C.
2 1396b(x)(2)) is amended—
3 (1) in subparagraph (C), by striking ''or'' at
4 the end;
5 (2) by redesignating subparagraph (D) as sub-
6 paragraph (E); and
7 (3) by inserting after subparagraph (C) the fol-
8 lowing new subparagraph:
9 ''(D) pursuant to the application of section
10 1902(e)(4) (and, in the case of an individual who is
11 eligible for medical assistance on such basis, the in-
12 dividual shall be deemed to have provided satisfac-
13 tory documentary evidence of citizenship or nation-
14 ality and shall not be required to provide further
15 documentary evidence on any date that occurs dur-
16 ing or after the period in which the individual is eli-
17 gible for medical assistance on such basis; or''.
18 (c) DOCUMENTATION FOR NATIVE AMERICANS .—
19 Section 1903(x)(3)(B) of such Act is amended—
20 (1) by redesignating clause (v) as clause (vi);
21 and
22 (2) by inserting after clause (iv) the following
23 new clause:
24 ''(v) For an individual who is a member of,
25 or enrolled in or affiliated with, a federally-rec-

ognized Indian tribe, a document issued by such tribe evidencing such membership, enrollment, or affiliation with the tribe (such as a tribal enrollment card or certificate of degree of Indian blood), and, only with respect to those federally-recognized Indian tribes located within States having an international border whose membership includes individuals who are not citizens of the United States, such other forms of documentation (including tribal documentation, if appropriate) as the Secretary, after consulting with such tribes, determines to be satisfactory documentary evidence of citizenship or nationality for purposes of satisfying the requirement of this subparagraph.''.

(d) REASONABLE OPPORTUNITY.—Section 1903(x) of such Act, as amended by subsection (a)(2), is further amended by adding at the end the following new paragraph:

''(5) In the case of an individual declaring to be a citizen or national of the United States with respect to whom a State requires the presentation of satisfactory documentary evidence of citizenship or nationality under section 1902(a)(46)(B), the individual shall be provided at least the reasonable opportunity to present satisfactory

1 documentary evidence of citizenship or nationality under
2 this subsection as is provided under clauses (i) and (ii)
3 of section 1137(d)(4)(A) to an individual for the submittal
4 to the State of evidence indicating a satisfactory immigra-
5 tion status and shall not be denied medical assistance on
6 the basis of failure to provide such documentation until
7 the individual has had such an opportunity.''.

8 (e) EFFECTIVE DATE.—

9 (1) RETROACTIVE APPLICATION.—The amend-
10 ments made by this section shall take effect as if in-
11 cluded in the enactment of the Deficit Reduction Act
12 of 2005 (Public Law 109–171; 120 Stat. 4).

13 (2) RESTORATION OF ELIGIBILITY.—In the
14 case of an individual who, during the period that
15 began on July 1, 2006, and ends on the date of the
16 enactment of this Act, was determined to be ineli-
17 gible for medical assistance under a State Medicaid
18 program solely as a result of the application of sub-
19 sections (i)(22) and (x) of section 1903 of the Social
20 Security Act (as in effect during such period), but
21 who would have been determined eligible for such as-
22 sistance if such subsections, as amended by this sec-
23 tion, had applied to the individual, a State may
24 deem the individual to be eligible for such assistance
25 as of the date that the individual was determined to

be ineligible for such medical assistance on such basis.

**SEC. 144. ACCESS TO DENTAL CARE FOR CHILDREN.**

(a) DENTAL EDUCATION FOR PARENTS OF NEWBORNS.—The Secretary of Health and Human Services shall develop and implement, through entities that fund or provide perinatal care services to targeted low-income children under a State child health plan under title XXI of the Social Security Act, a program to deliver oral health educational materials that inform new parents about risks for, and prevention of, early childhood caries and the need for a dental visit within their newborn's first year of life.

(b) PROVISION OF DENTAL SERVICES THROUGH FQHCS.—

(1) MEDICAID.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(A) by striking ''and'' at the end of paragraph (69);

(B) by striking the period at the end of paragraph (70) and inserting ''; and''; and

(C) by inserting after paragraph (70) the following new paragraph:

''(71) provide that the State will not prevent a Federally-qualified health center from entering into

contractual relationships with private practice dental providers in the provision of Federally-qualified health center services.''.

(2) CHIP.—Section 2107(e)(1) of such Act is amended—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E); and

(B) by inserting after subparagraph (A) the following new subparagraph:

''(B) Section 1902(a)(71) (relating to limiting FQHC contracting for provision of dental services).''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on January 1, 2008.

(c) REPORTING INFORMATION ON DENTAL HEALTH.——

(1) MEDICAID.—Section 1902(a)(43)(D)(iii) of such Act (42 U.S.C. 1396a(a)(43)(D)(iii)) is amended by inserting ''and other information relating to the provision of dental services to such children described in section 2108(e)'' after ''receiving dental services,''.

1 (2) CHIP.—Section 2108 of such Act (42
2 U.S.C. 1397hh) is amended by adding at the end
3 the following new subsection:
4 "(e) INFORMATION ON DENTAL CARE FOR CHIL-
5 DREN.—
6 "(1) IN GENERAL.—Each annual report under
7 subsection (a) shall include the following information
8 with respect to care and services described in section
9 1905(r)(3) provided to targeted low-income children
10 enrolled in the State child health plan under this
11 title at any time during the year involved:
12 "(A) The number of enrolled children by
13 age grouping used for reporting purposes under
14 section 1902(a)(43).
15 "(B) For children within each such age
16 grouping, information of the type contained in
17 questions 12(a)–(c) of CMS Form 416 (that
18 consists of the number of enrolled targeted low
19 income children who receive any, preventive, or
20 restorative dental care under the State plan).
21 "(C) For the age grouping that includes
22 children 8 years of age, the number of such
23 children who have received a protective sealant
24 on at least one permanent molar tooth.

"(2) INCLUSION OF INFORMATION ON ENROLLEES IN MANAGED CARE PLANS.—The information under paragraph (1) shall include information on children who are enrolled in managed care plans and other private health plans and contracts with such plans under this title shall provide for the reporting of such information by such plans to the State.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall be effective for annual reports submitted for years beginning after date of enactment.

(d) GAO STUDY AND REPORT.—

(1) STUDY.—The Comptroller General of the United States shall provide for a study that examines—

(A) access to dental services by children in underserved areas; and

(B) the feasibility and appropriateness of using qualified mid-level dental health providers, in coordination with dentists, to improve access for children to oral health services and public health overall.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller

General shall submit to Congress a report on the study conducted under paragraph (1).

**SEC. 145. PROHIBITING INITIATION OF NEW HEALTH OPPORTUNITY ACCOUNT DEMONSTRATION PROGRAMS.**

After the date of the enactment of this Act, the Secretary of Health and Human Services may not approve any new demonstration programs under section 1938 of the Social Security Act (42 U.S.C. 1396u–8).

# Subtitle F—Quality and Program Integrity

**SEC. 151. PEDIATRIC HEALTH QUALITY MEASUREMENT PROGRAM.**

(a) QUALITY MEASUREMENT OF CHILDREN'S HEALTH.—

(1) ESTABLISHMENT OF PROGRAM TO DEVELOP QUALITY MEASURES FOR CHILDREN'S HEALTH.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish a child health care quality measurement program (in this subsection referred to as the ''children's health quality measurement program'') to develop and implement—

(A) pediatric quality measures on children's health care that may be used by public

1 and private health care purchasers (and a sys-
2 tem for reporting such measures); and
3 (B) measures of overall program perform-
4 ance that may be used by public and private
5 health care purchasers.
6 The Secretary shall publish, not later than Sep-
7 tember 30, 2009, the recommended measures under
8 the program for application under the amendments
9 made by subsection (b) for years beginning with
10 2010.
11 (2) MEASURES.—
12 (A) SCOPE.—The measures developed
13 under the children's health quality measure-
14 ment program shall—
15 (i) provide comprehensive information
16 with respect to the provision and outcomes
17 of health care for young children, school
18 age children, and older children.
19 (ii) be designed to identify disparities
20 by pediatric characteristics (including, at a
21 minimum, those specified in subparagraph
22 (C)) in child health and the provision of
23 health care;
24 (iii) be designed to ensure that the
25 data required for such measures is col-

1 lected and reported in a standard format
2 that permits comparison at a State, plan,
3 and provider level, and between insured
4 and uninsured children;
5 (iv) take into account existing meas-
6 ures of child health quality and be periodi-
7 cally updated;
8 (v) include measures of clinical health
9 care quality which meet the requirements
10 for pediatric quality measures in para-
11 graph (1);
12 (vi) improve and augment existing
13 measures of clinical health care quality for
14 children's health care and develop new and
15 emerging measures; and
16 (vii) increase the portfolio of evidence-
17 based pediatric quality measures available
18 to public and private purchasers, providers,
19 and consumers.
20 (B) SPECIFIC MEASURES.—Such measures
21 shall include measures relating to at least the
22 following aspects of health care for children:
23 (i) The proportion of insured (and un-
24 insured) children who receive age-appro-
25 priate preventive health and dental care

(including age appropriate immunizations) at each stage of child health development.

(ii) The proportion of insured (and uninsured) children who receive dental care for restoration of teeth, relief of pain and infection, and maintenance of dental health.

(iii) The effectiveness of early health care interventions for children whose assessments indicate the presence or risk of physical or mental conditions that could adversely affect growth and development.

(iv) The effectiveness of treatment to ameliorate the effects of diagnosed physical and mental health conditions, including chronic conditions.

(v) The proportion of children under age 21 who are continuously insured for a period of 12 months or longer.

(vi) The effectiveness of health care for children with disabilities.

In carrying out clause (vi), the Secretary shall develop quality measures and best practices relating to cystic fibrosis.

(C) REPORTING METHODOLOGY FOR ANALYSIS BY PEDIATRIC CHARACTERISTICS.—The children's health quality measurement program shall describe with specificity such measures and the process by which such measures will be reported in a manner that permits analysis based on each of the following pediatric characteristics:

(i) Age.

(ii) Gender.

(iii) Race.

(iv) Ethnicity.

(v) Primary language of the child's parents (or caretaker relative).

(vi) Disability or chronic condition (including cystic fibrosis).

(vii) Geographic location.

(viii) Coverage status under public and private health insurance programs.

(D) PEDIATRIC QUALITY MEASURE.—In this subsection, the term ''pediatric quality measure'' means a measurement of clinical care that assesses one or more aspects of pediatric health care quality (in various settings) including the structure of the clinical care system, the

1 process and outcome of care, or patient experi-
2 ence in such care.
3 (3) CONSULTATION IN DEVELOPING QUALITY
4 MEASURES FOR CHILDREN'S HEALTH SERVICES.—In
5 developing and implementing the children's health
6 quality measurement program, the Secretary shall
7 consult with—
8 (A) States;
9 (B) pediatric hospitals, pediatricians, and
10 other primary and specialized pediatric health
11 care professionals (including members of the al-
12 lied health professions) who specialize in the
13 care and treatment of children, particularly
14 children with special physical, mental, and de-
15 velopmental health care needs;
16 (C) dental professionals;
17 (D) health care providers that furnish pri-
18 mary health care to children and families who
19 live in urban and rural medically underserved
20 communities or who are members of distinct
21 population sub-groups at heightened risk for
22 poor health outcomes;
23 (E) national organizations representing
24 children, including children with disabilities and
25 children with chronic conditions;

(F) national organizations and individuals with expertise in pediatric health quality performance measurement; and

(G) voluntary consensus standards setting organizations and other organizations involved in the advancement of evidence based measures of health care.

(4) USE OF GRANTS AND CONTRACTS.—In carrying out the children's health quality measurement program, the Secretary may award grants and contracts to develop, test, validate, update, and disseminate quality measures under the program.

(5) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to States to establish for the reporting of quality measures under titles XIX and XXI of the Social Security Act in accordance with the children's health quality measurement program.

(b) DISSEMINATION OF INFORMATION ON THE QUALITY OF PROGRAM PERFORMANCE.—Not later than January 1, 2009, and annually thereafter, the Secretary shall collect, analyze, and make publicly available on a public website of the Department of Health and Human Services in an online format—

(1) a complete list of all measures in use by States as of such date and used to measure the quality of medical and dental health services furnished to children enrolled under title XIX of XXI of the Social Security Act by participating providers, managed care entities, and plan issuers; and

(2) information on health care quality for children contained in external quality review reports required under section 1932(c)(2) of such Act (42 U.S.C. 1396u–2) or produced by States that administer separate plans under title XXI of such Act.

(c) REPORTS TO CONGRESS ON PROGRAM PERFORMANCE.—Not later than January 1, 2010, and every 2 years thereafter, the Secretary shall report to Congress on—

(1) the quality of health care for children enrolled under title XIX and XXI of the Social Security Act under the children's health quality measurement program; and

(2) patterns of health care utilization with respect to the measures specified in subsection (a)(2)(B) among children by the pediatric characteristics listed in subsection (a)(2)(C).

**SEC. 152. APPLICATION OF CERTAIN MANAGED CARE QUALITY SAFEGUARDS TO CHIP.**

(a) IN GENERAL.—Section 2103(f) of Social Security Act (42 U.S.C. 1397bb(f)) is amended by adding at the end the following new paragraph:

"(3) COMPLIANCE WITH MANAGED CARE REQUIREMENTS.—The State child health plan shall provide for the application of subsections (a)(4), (a)(5), (b), (c), (d), and (e) of section 1932 (relating to requirements for managed care) to coverage, State agencies, enrollment brokers, managed care entities, and managed care organizations under this title in the same manner as such subsections apply to coverage and such entities and organizations under title XIX.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contract years for health plans beginning on or after July 1, 2008.

**SEC. 153. UPDATED FEDERAL EVALUATION OF CHIP.**

Section 2108(c) of the Social Security Act (42 U.S.C. 1397hh(c)) is amended by striking paragraph (5) and inserting the following:

"(5) SUBSEQUENT EVALUATION USING UPDATED INFORMATION.—

"(A) IN GENERAL.—The Secretary, directly or through contracts or interagency

agreements, shall conduct an independent subsequent evaluation of 10 States with approved child health plans.

"(B) SELECTION OF STATES AND MATTERS INCLUDED.—Paragraphs (2) and (3) shall apply to such subsequent evaluation in the same manner as such provisions apply to the evaluation conducted under paragraph (1).

"(C) SUBMISSION TO CONGRESS.—Not later than December 31, 2010, the Secretary shall submit to Congress the results of the evaluation conducted under this paragraph.

"(D) FUNDING.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for fiscal year 2009 for the purpose of conducting the evaluation authorized under this paragraph. Amounts appropriated under this subparagraph shall remain available for expenditure through fiscal year 2011.".

**SEC. 154. ACCESS TO RECORDS FOR IG AND GAO AUDITS AND EVALUATIONS.**

Section 2108(d) of the Social Security Act (42 U.S.C. 1397hh(d)) is amended to read as follows:

"(d) ACCESS TO RECORDS FOR IG AND GAO AUDITS AND EVALUATIONS.—For the purpose of evaluating and auditing the program established under this title, the Secretary, the Office of Inspector General, and the Comptroller General shall have access to any books, accounts, records, correspondence, and other documents that are related to the expenditure of Federal funds under this title and that are in the possession, custody, or control of States receiving Federal funds under this title or political subdivisions thereof, or any grantee or contractor of such States or political subdivisions.".

**SEC. 155. REFERENCES TO TITLE XXI.**

Section 704 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (Appendix F, 113 Stat. 1501A–321), as enacted into law by section 1000(a)(6) of Public Law 106–113) is repealed.

**SEC. 156. RELIANCE ON LAW; EXCEPTION FOR STATE LEGISLATION.**

(a) RELIANCE ON LAW.— With respect to amendments made by this title or title VIII that become effective as of a date—

(1) such amendments are effective as of such date whether or not regulations implementing such amendments have been issued; and

(2) Federal financial participation for medical assistance or child health assistance furnished under title XIX or XXI, respectively, of the Social Security Act on or after such date by a State in good faith reliance on such amendments before the date of promulgation of final regulations, if any, to carry out such amendments (or before the date of guidance, if any, regarding the implementation of such amendments) shall not be denied on the basis of the State's failure to comply with such regulations or guidance.

(b) EXCEPTION FOR STATE LEGISLATION.—In the case of a State plan under title XIX or State child health plan under XXI of the Social Security Act, which the Secretary of Health and Human Services determines requires State legislation in order for respective plan to meet one or more additional requirements imposed by amendments made by this title or title VIII, the respective State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such an additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-

year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

# TITLE II—MEDICARE BENEFICIARY IMPROVEMENTS

## Subtitle A—Improvements in Benefits

### SEC. 201. COVERAGE AND WAIVER OF COST-SHARING FOR PREVENTIVE SERVICES.

(a) PREVENTIVE SERVICES DEFINED; COVERAGE OF ADDITIONAL PREVENTIVE SERVICES.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(1) in subsection (s)(2)—

(A) in subparagraph (Z), by striking ''and'' after the semicolon at the end;

(B) in subparagraph (AA), by adding ''and'' after the semicolon at the end; and

(C) by adding at the end the following new subparagraph:

''(BB) additional preventive services (described in subsection (ccc)(1)(M));''; and

(2) by adding at the end the following new subsection:

"Preventive Services

"(ccc)(1) The term 'preventive services' means the following:

"(A) Prostate cancer screening tests (as defined in subsection (oo)).

"(B) Colorectal cancer screening tests (as defined in subsection (pp)).

"(C) Diabetes outpatient self-management training services (as defined in subsection (qq)).

"(D) Screening for glaucoma for certain individuals (as described in subsection (s)(2)(U)).

"(E) Medical nutrition therapy services for certain individuals (as described in subsection (s)(2)(V)).

"(F) An initial preventive physical examination (as defined in subsection (ww)).

"(G) Cardiovascular screening blood tests (as defined in subsection (xx)(1)).

"(H) Diabetes screening tests (as defined in subsection described in subsection (s)(2)(Y)).

"(I) Ultrasound screening for abdominal aortic aneurysm for certain individuals (as described in described in subsection (s)(2)(AA)).

1 "(J) Pneumococcal and influenza vaccine
2 and their administration (as described in sub-
3 section (s)(10)(A)).
4 "(K) Hepatitis B vaccine and its adminis-
5 tration for certain individuals (as described in
6 subsection (s)(10)(B)).
7 "(L) Screening mammography (as defined
8 in subsection (jj)).
9 "(M) Screening pap smear and screening
10 pelvic exam (as described in subsection (s)(14)).
11 "(N) Bone mass measurement (as defined
12 in subsection (rr)).
13 "(O) Additional preventive services (as de-
14 termined under paragraph (2)).
15 "(2)(A) The term `additional preventive serv-
16 ices' means items and services, including mental
17 health services, not described in subparagraphs (A)
18 through (N) of paragraph (1) that the Secretary de-
19 termines to be reasonable and necessary for the pre-
20 vention or early detection of an illness or disability.
21 "(B) In making determinations under subpara-
22 graph (1), the Secretary shall—
23 "(C) take into account evidence-based rec-
24 ommendations by the United States Preventive

1 Services Task Force and other appropriate or-
2 ganizations; and
3 "(D) use the process for making national
4 coverage determinations (as defined in section
5 1869(f)(1)(B)) under this title.".
6 (b) PAYMENT AND ELIMINATION OF COST-SHAR-
7 ING.—
8 (1) IN GENERAL.—Section 1833(a)(1) of the
9 Social Security Act (42 U.S.C. 1395l(a)(1)) is
10 amended—
11 (A) in clause (T), by striking "80 percent"
12 and inserting "100 percent"; and
13 (B) by striking "and" before "(V)"; and
14 (C) by inserting before the semicolon at
15 the end the following: ", and (W) with respect
16 to additional preventive services (as defined in
17 section 1861(ccc)(2)) and other preventive serv-
18 ices for which a payment rate is not otherwise
19 established under this section, the amount paid
20 shall be 100 percent of the lesser of the actual
21 charge for the services or the amount deter-
22 mined under a fee schedule established by the
23 Secretary for purposes of this clause".
24 (2) ELIMINATION OF COINSURANCE IN OUT-
25 PATIENT HOSPITAL SETTINGS.—

(A) EXCLUSION FROM OPD FEE SCHEDULE.—Section 1833(t)(1)(B)(iv) of the Social Security Act (42 U.S.C. 1395l(t)(1)(B)(iv)) is amended by striking ''screening mammography (as defined in section 1861(jj)) and diagnostic mammography'' and inserting ''diagnostic mammography and preventive services (as defined in section 1861(ccc)(1))''.

(B) CONFORMING AMENDMENTS.—Section 1833(a)(2) of the Social Security Act (42 U.S.C. 1395l(a)(2)) is amended—

(i) in subparagraph (F), by striking ''and'' after the semicolon at the end;

(ii) in subparagraph (G)(ii), by adding ''and''at the end; and

(iii) by adding at the end the following new subparagraph:

''(H) with respect to additional preventive services (as defined in section 1861(ccc)(2)) furnished by an outpatient department of a hospital, the amount determined under paragraph (1)(W);''.

(3) WAIVER OF APPLICATION OF DEDUCTIBLE FOR ALL PREVENTIVE SERVICES.—The first sen-

tence of section 1833(b) of the Social Security Act (42 U.S.C. 1395l(b)) is amended —

(A) in clause (1), by striking "items and services described in section 1861(s)(10)(A)" and inserting "preventive services (as defined in section 1861(ccc)(1))";

(B) by inserting "and" before "(4)"; and

(C) by striking clauses (5) through (8).

(c) INCLUSION AS PART OF INITIAL PREVENTIVE PHYSICAL EXAMINATION.—Section 1861(ww)(2) of the Social Security Act (42 U.S.C. 1395x(ww)(2)) is amended by adding at the end the following new subparagraph:

"(M) Additional preventive services (as defined in subsection (ccc)(2)).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2008.

**SEC. 202. WAIVER OF DEDUCTIBLE FOR COLORECTAL CANCER SCREENING TESTS REGARDLESS OF CODING, SUBSEQUENT DIAGNOSIS, OR ANCILLARY TISSUE REMOVAL.**

(a) IN GENERAL.—Section 1833(b)(8) of the Social Security Act (42 U.S.C. 1395l(b)(8)) is amended by inserting ", regardless of the code applied, of the establishment of a diagnosis as a result of the test, or of the re-

moval of tissue or other matter or other procedure that is performed in connection with and as a result of the screening test'' after ''1861(pp)(1))''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items and services furnished on or after January 1, 2008.

**SEC. 203. PARITY FOR MENTAL HEALTH COINSURANCE.**

Section 1833(c) of the Social Security Act (42 U.S.C. 1395l(c)) is amended—

(1) in the first sentence, by striking ''62–1/2 percent'' and inserting ''the incurred expense percentage (as specified in the last sentence)''; and

(2) by adding at the end the following: ''For purposes of this subsection, the 'incurred expense percentage' is equal to 62–1/2 percent increased, for each year beginning with 2008, by 6–1/4 percentage points, but not to exceed 100 percent.''.

# Subtitle B—Improving, Clarifying, and Simplifying Financial Assistance for Low Income Medicare Beneficiaries

**SEC. 211. IMPROVING ASSETS TESTS FOR MEDICARE SAVINGS PROGRAM AND LOW-INCOME SUBSIDY PROGRAM.**

(a) APPLICATION OF HIGHEST LEVEL PERMITTED UNDER LIS.—

(1) TO FULL-PREMIUM SUBSIDY ELIGIBLE INDIVIDUALS.—Section 1860D–14(a) of the Social Security Act (42 U.S.C. 1395w–114(a)) is amended—

(A) in paragraph (1), in the matter before subparagraph (A), by inserting ''(or, beginning with 2009, paragraph (3)(E))'' after ''paragraph (3)(D)''; and

(B) in paragraph (3)(A)(iii), by striking ''(D) or''.

(2) ANNUAL INCREASE IN LIS RESOURCE TEST.—Section 1860D–14(a)(3)(E)(i) of such Act (42 U.S.C. 1395w–114(a)(3)(E)(i)) is amended—

(A) by striking ''and'' at the end of subclause (I);

(B) in subclause (II), by inserting ''(before 2009)'' after ''subsequent year'';

(C) by striking the period at the end of subclause (II) and inserting a semicolon; and

(D) by inserting after subclause (II) the following new subclauses:

"(III) for 2009, $17,000 (or $34,000 in the case of the combined value of the individual's assets or resources and the assets or resources of the individual's spouse); and

"(IV) for a subsequent year, the dollar amounts specified in this subclause (or subclause (III)) for the previous year increased by $1,000 (or $2,000 in the case of the combined value referred to in subclause (III))."

(3) APPLICATION OF LIS TEST UNDER MEDICARE SAVINGS PROGRAM.—Section 1905(p)(1)(C) of such Act (42 U.S.C. 1396d(p)(1)(C)) is amended by inserting before the period at the end the following: "or, effective beginning with January 1, 2009, whose resources (as so determined) do not exceed the maximum resource level applied for the year under section 1860D–14(a)(3)(E) applicable to an individual or to the individual and the individual's spouse (as the case may be)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to eligibility determinations for income-related subsidies and medicare cost-sharing furnished for periods beginning on or after January 1, 2009.

**SEC. 212. MAKING QI PROGRAM PERMANENT AND EXPANDING ELIGIBILITY.**

(a) MAKING PROGRAM PERMANENT.—

(1) IN GENERAL.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396b(a)(10)(E)(iv)) is amended—

(A) by striking ''sections 1933 and'' and by inserting ''section''; and

(B) by striking ''(but only with'' and all that follows through ''September 2007)''.

(2) ELIMINATION OF FUNDING LIMITATION.—

(A) IN GENERAL.—Section 1933 of such Act (42 U.S.C. 1396u–3) is amended—

(i) in subsection (a), by striking ''who are selected to receive such assistance under subsection (b)''

(ii) by striking subsections (b), (c), (e), and (g);

(iii) in subsection (d), by striking ''furnished in a State'' and all that follows and inserting ''the Federal medical assist-

ance percentage shall be equal to 100 percent.''; and

(iv) by redesignating subsections (d) and (f) as subsections (b) and (c), respectively.

(B) CONFORMING AMENDMENT.—Section 1905(b) of such Act (42 U.S.C. 1396d(b)) is amended by striking ''1933(d)'' and inserting ''1933(b)''.

(C) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect on October 1, 2007.

(b) INCREASE IN ELIGIBILITY TO 150 PERCENT OF THE FEDERAL POVERTY LEVEL.—Section 1902(a)(10)(E)(iv) of such Act is further amended by inserting ''(or, effective January 1, 2008, 150 percent)'' after ''135 percent''.

**SEC. 213. ELIMINATING BARRIERS TO ENROLLMENT.**

(a) ADMINISTRATIVE VERIFICATION OF INCOME AND RESOURCES UNDER THE LOW-INCOME SUBSIDY PROGRAM.—Section 1860D–14(a)(3) of the Social Security Act (42 U.S.C. 1395w–114(a)(3)) is amended by adding at the end the following new subparagraph:

''(G) SELF-CERTIFICATION OF INCOME AND RESOURCES.—For purposes of applying

this section, an individual shall be permitted to qualify on the basis of self-certification of income and resources without the need to provide additional documentation.''.

(b) AUTOMATIC REENROLLMENT WITHOUT NEED TO REAPPLY UNDER LOW-INCOME SUBSIDY PROGRAM.—Section 1860D–14(a)(3) of such Act (42 U.S.C. 1395w–114(a)(3)), as amended by subsection (a), is further amended by adding at the end the following new subparagraph:

''(H) AUTOMATIC REENROLLMENT.—For purposes of applying this section, in the case of an individual who has been determined to be a subsidy eligible individual (and within a particular class of such individuals, such as a full-subsidy eligible individual or a partial subsidy eligible individual), the individual shall be deemed to continue to be so determined without the need for any annual or periodic application unless and until the individual notifies a Federal or State official responsible for such determinations that the individual's eligibility conditions have changed so that the individual is no longer a subsidy eligible individual (or is no longer within such class of such individuals).''.

(c) ENCOURAGING APPLICATION OF PROCEDURES UNDER MEDICARE SAVINGS PROGRAM.—Section 1905(p) of such Act (42 U.S.C. 1396d(p)) is amended by adding at the end the following new paragraph:

"(7) The Secretary shall take all reasonable steps to encourage States to provide for administrative verification of income and automatic reenrollment (as provided under clauses (iii) and (iv) of section 1860D–14(a)(3)(C) in the case of the low-income subsidy program).".

(d) SSA ASSISTANCE WITH MEDICARE SAVINGS PROGRAM AND LOW-INCOME SUBSIDY PROGRAM APPLICATIONS.—Section 1144 of such Act (42 U.S.C. 1320b–14) is amended by adding at the end the following new subsection:

"(c) ASSISTANCE WITH MEDICARE SAVINGS PROGRAM AND LOW-INCOME SUBSIDY PROGRAM APPLICATIONS.—

"(1) DISTRIBUTION OF APPLICATIONS TO APPLICANTS FOR MEDICARE.—In the case of each individual applying for hospital insurance benefits under section 226 or 226A, the Commissioner shall provide the following:

"(A) Information describing the low-income subsidy program under section 1860D–14

and the medicare savings program under title XIX.

"(B) An application for enrollment under such low-income subsidy program as well as an application form (developed under section 1905(p)(5)) for medical assistance for medicare cost-sharing under title XIX.

"(C) Information on how the individual may obtain assistance in completing such applications, including information on how the individual may contact the State health insurance assistance program (SHIP) for the State in which the individual is located.

The Commissioner shall make such application forms available at local offices of the Social Security Administration.

"(2) TRAINING PERSONNEL IN ASSISTING IN COMPLETING APPLICATIONS.—The Commissioner shall provide training to those employees of the Social Security Administration who are involved in receiving applications for benefits described in paragraph (1) in assisting applicants in completing a medicare savings program application described in paragraph (1). Such employees who are so trained shall provide such assistance upon request.

"(3) TRANSMITTAL OF COMPLETED APPLICATION.—If such an employee assists in completing such an application, the employee, with the consent of the applicant, shall transmit the completed application to the appropriate State medicaid agency for processing.

"(4) COORDINATION WITH OUTREACH.—The Commissioner shall coordinate outreach activities under this subsection with outreach activities conducted by States in connection with the low-income subsidy program and the medicare savings program.".

(e) MEDICAID AGENCY CONSIDERATION OF APPLICATIONS.—Section 1935(a) of such Act (42 U.S.C. 1396u–5(a)) is amended by adding at the end the following new paragraph:

"(4) CONSIDERATION OF MSP APPLICATIONS.—The State shall accept medicare savings program applications transmitted under section 1144(c)(3) and act on such applications in the same manner and deadlines as if they had been submitted directly by the applicant.".

(f) TRANSLATION OF MODEL FORM.—Section 1905(p)(5)(A) of the Social Security Act (42 U.S.C. 1396d(p)(5)(A)) is amended by adding at the end the fol-

lowing: ''The Secretary shall provide for the translation of such application form into at least the 10 languages (other than English) that are most often used by individuals applying for hospital insurance benefits under section 226 or 226A and shall make the translated forms available to the States and to the Commissioner of Social Security.''.

(g) DISCLOSURE OF TAX RETURN INFORMATION FOR PURPOSES OF PROVIDING LOW-INCOME SUBSIDIES UNDER MEDICARE.—

(1) IN GENERAL.—Subsection (l) of section 6103 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(21) DISCLOSURE OF RETURN INFORMATION FOR PURPOSES OF PROVIDING LOW-INCOME SUBSIDIES UNDER MEDICARE.—

''(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE TO SOCIAL SECURITY ADMINISTRATION.—The Secretary, upon written request from the Commissioner of Social Security, shall disclose to the officers and employees of the Social Security Administration with respect to any individual identified by the Commissioner as potentially eligible (based on

information other than return information) for low-income subsidies under section 1860D–14 of the Social Security Act—

"(i) whether the adjusted gross income for the applicable year is less than 135 percent of the poverty line (as specified by the Commissioner in such request),

"(ii) whether such adjusted gross income is between 135 percent and 150 percent of the poverty line (as so specified),

"(iii) whether any designated distributions (as defined in section 3405(e)(1)) were reported with respect to such individual under section 6047(d) for the applicable year, and the amount (if any) of the distributions so reported,

"(iv) whether the return was a joint return for the applicable year, and

"(v) the applicable year.

"(B) APPLICABLE YEAR.—

"(i) IN GENERAL.—For the purposes of this paragraph, the term 'applicable year' means the most recent taxable year for which information is available in the Internal Revenue Service's taxpayer data

information systems, or, if there is no return filed for the individual for such year, the prior taxable year.

"(ii) NO RETURN.—If no return is filed for such individual for both taxable years referred to in clause (i), the Secretary shall disclose the fact that there is no return filed for such individual for the applicable year in lieu of the information described in subparagraph (A).

"(C) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Return information disclosed under this paragraph may be used only for the purpose of improving the efforts of the Social Security Administration to contact and assist eligible individuals for, and administering, low-income subsidies under section 1860D–14 of the Social Security Act.

"(D) TERMINATION.—No disclosure shall be made under this paragraph after the 2-year period beginning on the date of the enactment of this paragraph.".

(2) PROCEDURES AND RECORDKEEPING RELATED TO DISCLOSURES.—Paragraph (4) of section 6103(p) of such Code is amended by striking "or

(17)'' each place it appears and inserting ''(17), or (21)''.

(3) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of the Treasury, after consultation with the Commissioner of Social Security, shall submit a written report to Congress regarding the use of disclosures made under section 6103(l)(21) of the Internal Revenue Code of 1986, as added by this subsection, in identifying individuals eligible for the low-income subsidies under section 1860D–14 of the Social Security Act.

(4) EFFECTIVE DATE.—The amendment made by this subsection shall apply to disclosures made after the date of the enactment of this Act.

(h) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall take effect on January 1, 2009.

**SEC. 214. ELIMINATING APPLICATION OF ESTATE RECOVERY.**

(a) IN GENERAL.—Section 1917(b)(1)(B)(ii) of the Social Security Act (42 U.S.C. 1396p(b)(1)(B)(ii)) is amended by inserting ''(but not including medical assistance for medicare cost-sharing or for benefits described in section 1902(a)(10)(E))'' before the period at the end.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as of January 1, 2008.

**SEC. 215. ELIMINATION OF PART D COST-SHARING FOR CERTAIN NON-INSTITUTIONALIZED FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS.**

(a) IN GENERAL.—Section 1860D–14(a)(1)(D)(i) of the Social Security Act (42 U.S.C. 1395w–114(a)(1)(D)(i)) is amended—

(1) in the heading, by striking "INSTITUTIONALIZED INDIVIDUALS.—In" and inserting "ELIMINATION OF COST-SHARING FOR CERTAIN FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS.—

"(I) INSTITUTIONALIZED INDIVIDUALS.—In"; and

(2) by adding at the end the following new subclause:

"(II) CERTAIN OTHER INDIVIDUALS.—In the case of an individual who is a full-benefit dual eligible individual and with respect to whom there has been a determination that but for the provision of home and community based care (whether under section 1915 or under a waiver under section 1115) the individual would require the

level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan under title XIX, the elimination of any beneficiary co-insurance described in section 1860D–2(b)(2) (for all amounts through the total amount of expenditures at which benefits are available under section 1860D–2(b)(4)).''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to drugs dispensed on or after January 1, 2009.

**SEC. 216. EXEMPTIONS FROM INCOME AND RESOURCES FOR DETERMINATION OF ELIGIBILITY FOR LOW-INCOME SUBSIDY.**

(a) IN GENERAL.—Section 1860D–14(a)(3) of the Social Security Act (42 U.S.C. 1395w–114(a)(3)), as amended by subsections (a) and (b) of section 213, is further amended—

(1) in subparagraph (C)(i), by inserting ''and except that support and maintenance furnished in kind shall not be counted as income'' after ''section 1902(r)(2)'';

(2) in subparagraph (D), in the matter before clause (i), by inserting "subject to the additional exclusions provided under subparagraph (G)" before ")";

(3) in subparagraph (E)(i), in the matter before subclause (I), by inserting "subject to the additional exclusions provided under subparagraph (G)" before ")"; and

(4) by adding at the end the following new subparagraph:

"(I) ADDITIONAL EXCLUSIONS.—In determining the resources of an individual (and the eligible spouse of the individual, if any) under section 1613 for purposes of subparagraphs (D) and (E) the following additional exclusions shall apply:

"(i) LIFE INSURANCE POLICY.—No part of the value of any life insurance policy shall be taken into account.

"(ii) PENSION OR RETIREMENT PLAN.—No balance in any pension or retirement plan shall be taken into account.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2009, and shall

apply to determinations of eligibility for months beginning with January 2009.

**SEC. 217. COST-SHARING PROTECTIONS FOR LOW-INCOME SUBSIDY-ELIGIBLE INDIVIDUALS.**

(a) IN GENERAL.—Section 1860D–14(a) of the Social Security Act (42 U.S.C. 1395w–114(a)) is amended—

(1) in paragraph (1)(D), by adding at the end the following new clause:

"(iv) OVERALL LIMITATION ON COST-SHARING.—In the case of all such individuals, a limitation on aggregate cost-sharing under this part for a year not to exceed 2.5 percent of income."; and

(2) in paragraph (2), by adding at the end the following new subparagraph:

"(F) OVERALL LIMITATION ON COST-SHARING.—A limitation on aggregate cost-sharing under this part for a year not to exceed 2.5 percent of income.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply as of January 1, 2009.

**SEC. 218. INTELLIGENT ASSIGNMENT IN ENROLLMENT.**

(a) IN GENERAL.—Section 1860D–1(b)(1) of the Social Security Act (42 U.S.C. 1395w–101(b)(1) is amended—

(1) in the second sentence of subparagraph (C), by inserting ", subject to subparagraph (D)," before "on a random basis"; and

(2) by adding at the end the following new subparagraph:".

"(D) INTELLIGENT ASSIGNMENT.—In the case of any auto-enrollment under subparagraph (C), no part D eligible individual described in such subparagraph shall be enrolled in a prescription drug plan which does not meet the following requirements:

"(i) FORMULARY.—The plan has a formulary that covers at least—

"(I) 95 percent of the 100 most commonly prescribed non-duplicative generic covered part D drugs for the population of individuals entitled to benefits under part A or enrolled under part B; and

"(II) 95 percent of the 100 most commonly prescribed non-duplicative brand name covered part D drugs for such population.

"(ii) PHARMACY NETWORK.—The plan has a network of pharmacies that

1 substantially exceeds the minimum require-
2 ments for prescription drug plans in the
3 State and that provides access in areas
4 where lower income individuals reside.
5 "(iii) QUALITY.—
6 "(I) IN GENERAL.—Subject to
7 subclause (I), the plan has an above
8 average score on quality ratings of the
9 Secretary of prescription drug plans
10 under this part.
11 "(II) EXCEPTION.—Subclause (I)
12 shall not apply to a plan that is a new
13 plan (as defined by the Secretary),
14 with respect to the plan year involved.
15 "(iv) LOW COST.—The total cost
16 under this title of providing prescription
17 drug coverage under the plan consistent
18 with the previous clauses of this subpara-
19 graph is among the lowest 25th percentile
20 of prescription drug plans under this part
21 in the State.
22 In the case that no plan meets the requirements
23 under clauses (i) through (iv), the Secretary
24 shall implement this subparagraph to the great-
25 est extent possible with the goal of protecting

beneficiary access to drugs without increasing the cost relative to the enrollment process under subparagraph (C) as in existence before the date of the enactment of this subparagraph.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect for enrollments effected on or after November 15, 2009.

# Subtitle C—Part D Beneficiary Improvements

**SEC. 221. INCLUDING COSTS INCURRED BY AIDS DRUG ASSISTANCE PROGRAMS AND INDIAN HEALTH SERVICE IN PROVIDING PRESCRIPTION DRUGS TOWARD THE ANNUAL OUT OF POCKET THRESHOLD UNDER PART D.**

(a) IN GENERAL.—Section 1860D–2(b)(4)(C) of the Social Security Act (42 U.S.C. 1395w–102(b)(4)(C)) is amended—

(1) in clause (i), by striking ''and'' at the end;

(2) in clause (ii)—

(A) by striking ''such costs shall be treated as incurred only if'' and inserting ''subject to clause (iii), such costs shall be treated as incurred only if'';

(B) by striking ", under section 1860D–14, or under a State Pharmaceutical Assistance Program"; and

(C) by striking the period at the end and inserting "; and"; and

(3) by inserting after clause (ii) the following new clause:

"(iii) such costs shall be treated as incurred and shall not be considered to be reimbursed under clause (ii) if such costs are borne or paid—

"(I) under section 1860D–14;

"(II) under a State Pharmaceutical Assistance Program;

"(III) by the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization (as defined in section 4 of the Indian Health Care Improvement Act); or

"(IV) under an AIDS Drug Assistance Program under part B of title XXVI of the Public Health Service Act.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to costs incurred on or after January 1, 2009.

**SEC. 222. PERMITTING MID-YEAR CHANGES IN ENROLLMENT FOR FORMULARY CHANGES ADVERSELY IMPACT AN ENROLLEE.**

(a) IN GENERAL.—Section 1860D–1(b)(3) of the Social Security Act (42 U.S.C. 1395w–101(b)(3)) is amended by adding at the end the following new subparagraph:

"(F) CHANGE IN FORMULARY RESULTING IN INCREASE IN COST-SHARING.—

"(i) IN GENERAL.—Except as provided in clause (ii), in the case of an individual enrolled in a prescription drug plan (or MA–PD plan) who has been prescribed a covered part D drug while so enrolled, if the formulary of the plan is materially changed (other than at the end of a contract year) so to reduce the coverage (or increase the cost-sharing) of the drug under the plan.

"(ii) EXCEPTION.—Clause (i) shall not apply in the case that a drug is removed from the formulary of a plan because of a recall or withdrawal of the drug

issued by the Food and Drug Administration.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contract years beginning on or after January 1, 2009.

**SEC. 223. REMOVAL OF EXCLUSION OF BENZODIAZEPINES FROM REQUIRED COVERAGE UNDER THE MEDICARE PRESCRIPTION DRUG PROGRAM.**

(a) IN GENERAL.—Section 1860D–2(e)(2)(A) of the Social Security Act (42 U.S.C. 1395w–102(e)(2)(A)) is amended—

(1) by striking ''subparagraph (E)'' and inserting ''subparagraphs (E) and (J)''; and

(2) by inserting ''and benzodiazepines, respectively'' after ''smoking cessation agents''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to prescriptions dispensed on or after January 1, 2009.

**SEC. 224. PERMITTING UPDATING DRUG COMPENDIA UNDER PART D USING PART B UPDATE PROCESS.**

Section 1860D–4(b)(3)(C) of the Social Security Act (42 U.S.C. 1395w–104(b)(3)(C)) is amended by adding at the end the following new clause:

"(iv) UPDATING DRUG COMPENDIA USING PART B PROCESS.—The Secretary may apply under this subparagraph the same process for updating drug compendia that is used for purposes of section 1861(t)(2)(B)(ii).".

**SEC. 225. CODIFICATION OF SPECIAL PROTECTIONS FOR SIX PROTECTED DRUG CLASSIFICATIONS.**

(a) IN GENERAL.—Section 1860D–4(b)(3) of the Social Security Act (42 U.S.C. 1395w–104(b)(3)) is amended—

(1) in subparagraph (C)(i), by inserting ", except as provided in subparagraph (G)," after "although"; and

(2) by inserting after subparagraph (F) the following new subparagraph:

"(G) REQUIRED INCLUSION OF DRUGS IN CERTAIN THERAPEUTIC CLASSES.—

"(i) IN GENERAL.—The formulary must include all or substantially all covered part D drugs in each of the following therapeutic classes of covered part D drugs:

"(I) Anticonvulsants.

"(II) Antineoplastics.

1 ''(III) Antiretrovirals.
2 ''(IV) Antidepressants.
3 ''(V) Antipsychotics.
4 ''(VI) Immunosuppresessants.
5 ''(ii) USE OF UTILIZATION MANAGE-
6 MENT TOOLS.—A PDP sponsor of a pre-
7 scription drug plan may use prior author-
8 ization or step therapy for the initiation of
9 medications within one of the classifica-
10 tions specified in clause (i) but only when
11 approved by the Secretary, except that
12 such prior authorization or step therapy
13 may not be used in the case of
14 antiretrovirals and in the case of individ-
15 uals who already are stabilized on a drug
16 treatment regimen.''.
17 (b) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall apply for plan years beginning on or
19 after January 1, 2009.

20 **SEC. 226. ELIMINATION OF MEDICARE PART D LATE EN-**
21 **ROLLMENT PENALTIES PAID BY LOW-INCOME**
22 **SUBSIDY-ELIGIBLE INDIVIDUALS.**

23 (a) INDIVIDUALS WITH INCOME BELOW 135 PER-
24 CENT OF POVERTY LINE.—Paragraph (1)(A)(ii) of sec-

tion 1860D–14(a) of the Social Security Act (42 U.S.C. 1395w–114(a)) is amended to read as follows:

"(ii) 100 percent of any late enrollment penalties imposed under section 1860D–13(b) for such individual.".

(b) INDIVIDUALS WITH INCOME BETWEEN 135 AND 150 PERCENT OF POVERTY LINE.—Paragraph (2)(A) of such section is amended—

(1) by inserting "equal to (i) an amount" after "premium subsidy";

(2) by striking "paragraph (1)(A)" and inserting "clause (i) of paragraph (1)(A)"; and

(3) by adding at the end before the period the following: ", plus (ii) 100 percent of the amount described in clause (ii) of such paragraph for such individual".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to subsidies for months beginning with January 2008.

**SEC. 227. SPECIAL ENROLLMENT PERIOD FOR SUBSIDY ELIGIBLE INDIVIDUALS.**

(a) IN GENERAL.—Section 1860D–1(b)(3) of the Social Security Act (42 U.S.C. 1395w–101(b)(3)), as amended by section 222(a), is further amended by adding at the end the following new subparagraph:

"(G) ELIGIBILITY FOR LOW-INCOME SUBSIDY.—

"(i) IN GENERAL.—In the case of an applicable subsidy eligible individual (as defined in clause (ii)), the special enrollment period described in clause (iii).

"(ii) APPLICABLE SUBSIDY ELIGIBLE INDIVIDUAL DEFINED.—For purposes of this subparagraph, the term 'applicable subsidy eligible individual' means a part D eligible individual who is determined under subparagraph (B) of section 1860D–14(a)(3) to be a subsidy eligible individual (as defined in subparagraph (A) of such section), and includes such an individual who was enrolled in a prescription drug plan or an MA–PD plan on the date of such determination.

"(iii) SPECIAL ENROLLMENT PERIOD DESCRIBED.—The special enrollment period described in this clause, with respect to an applicable subsidy eligible individual, is the 90-day period beginning on the date the individual receives notification that such individual has been determined under

1 section 1860D–14(a)(3)(B) to be a subsidy
2 eligible individual (as so defined).''.
3 (b) AUTOMATIC ENROLLMENT PROCESS FOR CER-
4 TAIN SUBSIDY ELIGIBLE INDIVIDUALS.—Section 1860D–
5 1(b)(1) of the Social Security Act (42 U.S.C. 1395w–
6 101(b)(1)), as amended by section 218(a)(2), is further
7 amended by adding at the end the following new subpara-
8 graph:
9 ''(E) SPECIAL RULE FOR SUBSIDY ELIGI-
10 BLE INDIVIDUALS.—The process established
11 under subparagraph (A) shall include, in the
12 case of an applicable subsidy eligible individual
13 (as defined in clause (ii) of paragraph (3)(F))
14 who fails to enroll in a prescription drug plan
15 or an MA–PD plan during the special enroll-
16 ment period described in clause (iii) of such
17 paragraph applicable to such individual, a proc-
18 ess for the facilitated enrollment of the indi-
19 vidual in the prescription drug plan or MA–PD
20 plan that is most appropriate for such indi-
21 vidual (as determined by the Secretary). Noth-
22 ing in the previous sentence shall prevent an in-
23 dividual described in such sentence from declin-
24 ing enrollment in a plan determined appropriate

by the Secretary (or in the program under this part) or from changing such enrollment.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to subsidy determinations made for months beginning with January 2008.

# Subtitle D—Reducing Health Disparities

**SEC. 231. MEDICARE DATA ON RACE, ETHNICITY, AND PRIMARY LANGUAGE.**

(a) REQUIREMENTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this subtitle referred to as the ''Secretary'') shall—

(A) collect data on the race, ethnicity, and primary language of each applicant for and recipient of benefits under title XVIII of the Social Security Act—

(i) using, at a minimum, the categories for race and ethnicity described in the 1997 Office of Management and Budget Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity;

(ii) using the standards developed under subsection (e) for the collection of language data;

(iii) where practicable, collecting data for additional population groups if such groups can be aggregated into the minimum race and ethnicity categories; and

(iv) where practicable, through self-reporting;

(B) with respect to the collection of the data described in subparagraph (A) for applicants and recipients who are minors or otherwise legally incapacitated, require that—

(i) such data be collected from the parent or legal guardian of such an applicant or recipient; and

(ii) the preferred language of the parent or legal guardian of such an applicant or recipient be collected;

(C) systematically analyze at least annually such data using the smallest appropriate units of analysis feasible to detect racial and ethnic disparities in health and health care and when appropriate, for men and women separately;

(D) report the results of analysis annually to the Director of the Office for Civil Rights, the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate, and the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives; and

(E) ensure that the provision of assistance to an applicant or recipient of assistance is not denied or otherwise adversely affected because of the failure of the applicant or recipient to provide race, ethnicity, and primary language data.

(2) RULES OF CONSTRUCTION.—Nothing in this subsection shall be construed—

(A) to permit the use of information collected under this subsection in a manner that would adversely affect any individual providing any such information; and

(B) to require health care providers to collect data.

(b) PROTECTION OF DATA.—The Secretary shall ensure (through the promulgation of regulations or otherwise) that all data collected pursuant to subsection (a) is protected—

(1) under the same privacy protections as the Secretary applies to other health data under the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033) relating to the privacy of individually identifiable health information and other protections; and

(2) from all inappropriate internal use by any entity that collects, stores, or receives the data, including use of such data in determinations of eligibility (or continued eligibility) in health plans, and from other inappropriate uses, as defined by the Secretary.

(c) COLLECTION PLAN.—In carrying out the duties specified in subsection (a), the Secretary shall develop and implement a plan to improve the collection, analysis, and reporting of racial, ethnic, and primary language data within the programs administered under title XVIII of the Social Security Act, and, in consultation with the National Committee on Vital Health Statistics, the Office of Minority Health, and other appropriate public and private entities, shall make recommendations on how to—

(1) implement subsection (a) while minimizing the cost and administrative burdens of data collection and reporting;

(2) expand awareness that data collection, analysis, and reporting by race, ethnicity, and primary language is legal and necessary to assure equity and non-discrimination in the quality of health care services;

(3) ensure that future patient record systems have data code sets for racial, ethnic, and primary language identifiers and that such identifiers can be retrieved from clinical records, including records transmitted electronically;

(4) improve health and health care data collection and analysis for more population groups if such groups can be aggregated into the minimum race and ethnicity categories;

(5) provide researchers with greater access to racial, ethnic, and primary language data, subject to privacy and confidentiality regulations; and

(6) safeguard and prevent the misuse of data collected under subsection (a).

(d) COMPLIANCE WITH STANDARDS.—Data collected under subsection (a) shall be obtained, maintained, and presented (including for reporting purposes and at a minimum) in accordance with the 1997 Office of Management and Budget Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity.

1 (e) LANGUAGE COLLECTION STANDARDS.—Not later
2 than 1 year after the date of enactment of this Act, the
3 Director of the Office of Minority Health, in consultation
4 with the Office for Civil Rights of the Department of
5 Health and Human Services, shall develop and dissemi-
6 nate Standards for the Classification of Federal Data on
7 Preferred Written and Spoken Language.

8 (f) TECHNICAL ASSISTANCE FOR THE COLLECTION
9 AND REPORTING OF DATA.—

10 (1) IN GENERAL.—The Secretary may, either
11 directly or through grant or contract, provide tech-
12 nical assistance to enable a health care provider or
13 plan operating under the Medicare program to com-
14 ply with the requirements of this section.

15 (2) TYPES OF ASSISTANCE.—Assistance pro-
16 vided under this subsection may include assistance
17 to—

18 (A) enhance or upgrade computer tech-
19 nology that will facilitate racial, ethnic, and pri-
20 mary language data collection and analysis;

21 (B) improve methods for health data col-
22 lection and analysis including additional popu-
23 lation groups beyond the Office of Management
24 and Budget categories if such groups can be

1 aggregated into the minimum race and ethnicity
2 categories;
3 (C) develop mechanisms for submitting col-
4 lected data subject to existing privacy and con-
5 fidentiality regulations; and
6 (D) develop educational programs to raise
7 awareness that data collection and reporting by
8 race, ethnicity, and preferred language are legal
9 and essential for eliminating health and health
10 care disparities.
11 (g) ANALYSIS OF RACIAL AND ETHNIC DATA.—The
12 Secretary, acting through the Director of the Agency for
13 Health Care Research and Quality and in coordination
14 with the Administrator of the Centers for Medicare &
15 Medicaid Services, shall—
16 (1) identify appropriate quality assurance mech-
17 anisms to monitor for health disparities under the
18 Medicare program;
19 (2) specify the clinical, diagnostic, or thera-
20 peutic measures which should be monitored;
21 (3) develop new quality measures relating to ra-
22 cial and ethnic disparities in health and health care;
23 (4) identify the level at which data analysis
24 should be conducted; and

1 (5) share data with external organizations for
2 research and quality improvement purposes, in com-
3 pliance with applicable Federal privacy laws.
4 (h) REPORT.—Not later than 2 years after the date
5 of enactment of this Act, and biennially thereafter, the
6 Secretary shall submit to the appropriate committees of
7 Congress a report on the effectiveness of data collection,
8 analysis, and reporting on race, ethnicity, and primary
9 language under the programs administered through title
10 XVIII of the Social Security Act. The report shall evaluate
11 the progress made with respect to the plan under sub-
12 section (c) or subsequent revisions thereto.
13 (i) AUTHORIZATION OF APPROPRIATIONS.—There is
14 authorized to be appropriated to carry out this section,
15 such sums as may be necessary for each of fiscal years
16 2008 through 2012.

17 **SEC. 232. ENSURING EFFECTIVE COMMUNICATION IN MEDI-**
18 **CARE.**

19 (a) ENSURING EFFECTIVE COMMUNICATION BY THE
20 CENTERS FOR MEDICARE & MEDICAID SERVICES.—
21 (1) STUDY ON MEDICARE PAYMENTS FOR LAN-
22 GUAGE SERVICES.—The Secretary of Health and
23 Human Services shall conduct a study that examines
24 ways that Medicare should develop payment systems

1 for language services using the results of the dem-
2 onstration program conducted under section 233.
3 (2) ANALYSES.— The study shall include an
4 analysis of each of the following:
5 (A) How to develop and structure appro-
6 priate payment systems for language services
7 for all Medicare service providers.
8 (B) The feasibility of adopting a payment
9 methodology for on-site interpreters, including
10 interpreters who work as independent contrac-
11 tors and interpreters who work for agencies
12 that provide on-site interpretation, pursuant to
13 which such interpreters could directly bill Medi-
14 care for services provided in support of physi-
15 cian office services for an LEP Medicare pa-
16 tient.
17 (C) The feasibility of Medicare contracting
18 directly with agencies that provide off-site inter-
19 pretation including telephonic and video inter-
20 pretation pursuant to which such contractors
21 could directly bill Medicare for the services pro-
22 vided in support of physician office services for
23 an LEP Medicare patient.
24 (D) The feasibility of modifying the exist-
25 ing Medicare resource-based relative value scale

(RBRVS) by using adjustments (such as multipliers or add-ons) when a patient is LEP.

(E) How each of options described in a previous paragraph would be funded and how such funding would affect physician payments, a physician's practice, and beneficiary cost-sharing.

(3) VARIATION IN PAYMENT SYSTEM DESCRIBED.—The payment systems described in subsection (b) may allow variations based upon types of service providers, available delivery methods, and costs for providing language services including such factors as—

(A) the type of language services provided (such as provision of health care or health care related services directly in a non-English language by a bilingual provider or use of an interpreter);

(B) type of interpretation services provided (such as in-person, telephonic, video interpretation);

(C) the methods and costs of providing language services (including the costs of providing language services with internal staff or

through contract with external independent contractors and/or agencies);

(D) providing services for languages not frequently encountered in the United States; and

(E) providing services in rural areas.

(4) REPORT.—The Secretary shall submit a report on the study conducted under subsection (a) to appropriate committees of Congress not later than 1 year after the expiration of the demonstration program conducted under section 3.

(b) HEALTH PLANS.—Section 1857(g)(1) of the Social Security Act (42 U.S.C. 1395w–27(g)(1)) is amended—

(1) by striking ''or'' at the end of subparagraph (F);

(2) by adding ''and'' at the end of subparagraph (G); and

(3) by inserting after subparagraph (G) the following new subparagraph:

''(H) fails substantially to provide language services to limited English proficient beneficiaries enrolled in the plan that are required under law;''.

**SEC. 233. DEMONSTRATION TO PROMOTE ACCESS FOR MEDICARE BENEFICIARIES WITH LIMITED ENGLISH PROFICIENCY BY PROVIDING REIMBURSEMENT FOR CULTURALLY AND LINGUISTICALLY APPROPRIATE SERVICES.**

(a) IN GENERAL.—Within one year after the date of the enactment of this Act the Secretary, acting through the Centers for Medicare & Medicaid Services, shall award 24 3-year demonstration grants to eligible Medicare service providers to improve effective communication between such providers and Medicare beneficiaries who are limited English proficient. The Secretary shall not authorize a grant larger than $500,000 over three years for any grantee.

(b) ELIGIBILITY; PRIORITY.—

(1) ELIGIBILITY.—To be eligible to receive a grant under subsection (1) an entity shall—

(A) be—

(i) a provider of services under part A of title XVIII of the Social Security Act;

(ii) a service provider under part B of such title;

(iii) a part C organization offering a Medicare part C plan under part C of such title; or

(iv) a PDP sponsor of a prescription drug plan under part D of such title; and

(B) prepare and submit to the Secretary an application, at such time, in such manner, and accompanied by such additional information as the Secretary may require.

(2) PRIORITY.—

(A) DISTRIBUTION.—To the extent feasible, in awarding grants under this section, the Secretary shall award—

(i) 6 grants to providers of services described in paragraph (1)(A)(i);

(ii) 6 grants to service providers described in paragraph (1)(A)(ii);

(iii) 6 grants to organizations described in paragraph (1)(A)(iii); and

(iv) 6 grants to sponsors described in paragraph (1)(A)(iv).

(B) FOR COMMUNITY ORGANIZATIONS.—The Secretary shall give priority to applicants that have developed partnerships with community organizations or with agencies with experience in language access.

(C) VARIATION IN GRANTEES.—The Secretary shall also ensure that the grantees under

this section represent, among other factors, variations in—

(i) different types of service providers and organizations under parts A through D of title XVIII of the Social Security Act;

(ii) languages needed and their frequency of use;

(iii) urban and rural settings;

(iv) at least two geographic regions; and

(v) at least two large metropolitan statistical areas with diverse populations.

(c) USE OF FUNDS.—

(1) IN GENERAL.—A grantee shall use grant funds received under this section to pay for the provision of competent language services to Medicare beneficiaries who are limited English proficient. Competent interpreter services may be provided through on-site interpretation, telephonic interpretation, or video interpretation or direct provision of health care or health care related services by a bilingual health care provider. A grantee may use bilingual providers, staff, or contract interpreters. A grantee may use grant funds to pay for competent translation services. A grantee may use up to 10

1 percent of the grant funds to pay for administrative
2 costs associated with the provision of competent lan-
3 guage services and for reporting required under sub-
4 section (E).

5 (2) ORGANIZATIONS.—Grantees that are part C
6 organizations or PDP sponsors must ensure that
7 their network providers receive at least 50 percent of
8 the grant funds to pay for the provision of com-
9 petent language services to Medicare beneficiaries
10 who are limited English proficient, including physi-
11 cians and pharmacies.

12 (3) DETERMINATION OF PAYMENTS FOR LAN-
13 GUAGE SERVICES.—Payments to grantees shall be
14 calculated based on the estimated numbers of LEP
15 Medicare beneficiaries in a grantee's service area
16 utilizing—

17 (A) data on the numbers of limited
18 English proficient individuals who speak
19 English less than ''very well'' from the most re-
20 cently available data from the Bureau of the
21 Census or other State-based study the Sec-
22 retary determines likely to yield accurate data
23 regarding the number of LEP individuals
24 served by the grantee; or

(B) the grantee's own data if the grantee routinely collects data on Medicare beneficiaries' primary language in a manner determined by the Secretary to yield accurate data and such data shows greater numbers of LEP individuals than the data listed in subparagraph (A).

(4) LIMITATIONS.—

(A) REPORTING.—Payments shall only be provided under this section to grantees that report their costs of providing language services as required under subsection (e). If a grantee fails to provide the reports under such section for the first year of a grant, the Secretary may terminate the grant and solicit applications from new grantees to participate in the subsequent two years of the demonstration program.

(B) TYPE OF SERVICES.—

(i) IN GENERAL.—Subject to clause (ii), payments shall be provided under this section only to grantees that utilize competent bilingual staff or competent interpreter or translation services which—

(I) if the grantee operates in a State that has statewide health care

1 interpreter standards, meet the State
2 standards currently in effect; or
3 (II) if the grantee operates in a
4 State that does not have statewide
5 health care interpreter standards, uti-
6 lizes competent interpreters who fol-
7 low the National Council on Inter-
8 preting in Health Care's Code of Eth-
9 ics and Standards of Practice.
10 (ii) EXEMPTIONS.—The requirements
11 of clause (i) shall not apply—
12 (I) in the case of a Medicare ben-
13 eficiary who is limited English pro-
14 ficient (who has been informed in the
15 beneficiary's primary language of the
16 availability of free interpreter and
17 translation services) and who requests
18 the use of family, friends, or other
19 persons untrained in interpretation or
20 translation and the grantee documents
21 the request in the beneficiary's record;
22 and
23 (II) in the case of a medical
24 emergency where the delay directly as-
25 sociated with obtaining a competent

1 interpreter or translation services
2 would jeopardize the health of the pa-
3 tient.
4 Nothing in clause (ii)(II) shall be con-
5 strued to exempt an emergency rooms or
6 similar entities that regularly provide
7 health care services in medical emergencies
8 from having in place systems to provide
9 competent interpreter and translation serv-
10 ices without undue delay.
11 (d) ASSURANCES.—Grantees under this section
12 shall—
13 (1) ensure that appropriate clinical and support
14 staff receive ongoing education and training in lin-
15 guistically appropriate service delivery; ensure the
16 linguistic competence of bilingual providers;
17 (2) offer and provide appropriate language serv-
18 ices at no additional charge to each patient with lim-
19 ited English proficiency at all points of contact, in
20 a timely manner during all hours of operation;
21 (3) notify Medicare beneficiaries of their right
22 to receive language services in their primary lan-
23 guage;

(4) post signage in the languages of the commonly encountered group or groups present in the service area of the organization; and

(5) ensure that—

(A) primary language data are collected for recipients of language services; and

(B) consistent with the privacy protections provided under the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note), if the recipient of language services is a minor or is incapacitated, the primary language of the parent or legal guardian is collected and utilized.

(e) REPORTING REQUIREMENTS.—Grantees under this section shall provide the Secretary with reports at the conclusion of the each year of a grant under this section. each report shall include at least the following information:

(1) The number of Medicare beneficiaries to whom language services are provided.

(2) The languages of those Medicare beneficiaries.

(3) The types of language services provided (such as provision of services directly in non-English

1 language by a bilingual health care provider or use
2 of an interpreter).
3 (4) Type of interpretation (such as in-person,
4 telephonic, or video interpretation).
5 (5) The methods of providing language services
6 (such as staff or contract with external independent
7 contractors or agencies).
8 (6) The length of time for each interpretation
9 encounter.
10 (7) The costs of providing language services
11 (which may be actual or estimated, as determined by
12 the Secretary).
13 (f) NO COST SHARING.—LEP Beneficiaries shall not
14 have to pay cost-sharing or co-pays for language services
15 provided through this demonstration program.
16 (g) EVALUATION AND REPORT.—The Secretary shall
17 conduct an evaluation of the demonstration program
18 under this section and shall submit to the appropriate
19 committees of Congress a report not later than 1 year
20 after the completion of the program. The report shall in-
21 clude the following:
22 (1) An analysis of the patient outcomes and
23 costs of furnishing care to the LEP Medicare bene-
24 ficiaries participating in the project as compared to

1 such outcomes and costs for limited English pro-
2 ficient Medicare beneficiaries not participating.
3 (2) The effect of delivering culturally and lin-
4 guistically appropriate services on beneficiary access
5 to care, utilization of services, efficiency and cost-ef-
6 fectiveness of health care delivery, patient satisfac-
7 tion, and select health outcomes.
8 (3) Recommendations regarding the extension
9 of such project to the entire Medicare program.
10 (h) GENERAL PROVISIONS.—Nothing in this section
11 shall be construed to limit otherwise existing obligations
12 of recipients of Federal financial assistance under title VI
13 of the Civil Rights Act of 1964 (42 U.S.C. 2000(d) et
14 seq.) or any other statute.
15 (i) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to carry out this section
17 $10,000,000 for each fiscal year of the demonstration.

18 **SEC. 234. DEMONSTRATION TO IMPROVE CARE TO PRE-**
19 **VIOUSLY UNINSURED.**

20 (a) ESTABLISHMENT.—Within one year after the
21 date of enactment of this Act, the Secretary shall establish
22 a demonstration project to determine the greatest needs
23 and most effective methods of outreach to medicare bene-
24 ficiaries who were previously uninsured.

1 (b) SCOPE.—The demonstration shall be in no fewer
2 than 10 sites, and shall include state health insurance as-
3 sistance programs, community health centers, community-
4 based organizations, community health workers, and other
5 service providers under parts A, B, and C of title XVIII
6 of the Social Security Act. Grantees that are plans oper-
7 ating under part C shall document that enrollees who were
8 previously uninsured receive the ''Welcome to Medicare''
9 physical exam.

10 (c) DURATION.—The Secretary shall conduct the
11 demonstration project for a period of 2 years.

12 (d) REPORT AND EVALUATION.—The Secretary shall
13 conduct an evaluation of the demonstration and not later
14 than 1 year after the completion of the project shall sub-
15 mit to Congress a report including the following:

16 (1) An analysis of the effectiveness of outreach
17 activities targeting beneficiaries who were previously
18 uninsured, such as revising outreach and enrollment
19 materials (including the potential for use of video in-
20 formation), providing one-on-one counseling, working
21 with community health workers, and amending the
22 Medicare and You handbook.

23 (2) The effect of such outreach on beneficiary
24 access to care, utilization of services, efficiency and

1 cost-effectiveness of health care delivery, patient sat-
2 isfaction, and select health outcomes.

3 **SEC. 235. OFFICE OF THE INSPECTOR GENERAL REPORT**
4 **ON COMPLIANCE WITH AND ENFORCEMENT**
5 **OF NATIONAL STANDARDS ON CULTURALLY**
6 **AND LINGUISTICALLY APPROPRIATE SERV-**
7 **ICES (CLAS) IN MEDICARE.**

8 (a) REPORT.—Not later than two years after the date
9 of the enactment of this Act, the Inspector General of the
10 Department of Health and Human Services shall prepare
11 and publish a report on—

12 (1) the extent to which Medicare providers and
13 plans are complying with the Office for Civil Rights'
14 Guidance to Federal Financial Assistance Recipients
15 Regarding Title VI Prohibition Against National Or-
16 igin Discrimination Affecting Limited English Pro-
17 ficient Persons and the Office of Minority Health's
18 Culturally and Linguistically Appropriate Services
19 Standards in health care; and

20 (2) a description of the costs associated with or
21 savings related to the provision of language services.
22 Such report shall include recommendations on improving
23 compliance with CLAS Standards and recommendations
24 on improving enforcement of CLAS Standards.

(b) IMPLEMENTATION.—Not later than one year after the date of publication of the report under subsection (a), the Department of Health and Human Services shall implement changes responsive to any deficiencies identified in the report.

**SEC. 236. IOM REPORT ON IMPACT OF LANGUAGE ACCESS SERVICES.**

(a) IN GENERAL.—The Secretary of Health and Human Services shall seek to enter into an arrangement with the Institute of under which the Institute will prepare and publish, not later than 3 years after the date of the enactment of this Act, a report on the impact of language access services on the health and health care of limited English proficient populations.

(b) CONTENTS.—Such report shall include—

(1) recommendations on the development and implementation of policies and practices by health care organizations and providers for limited English proficient patient populations;

(2) a description of the effect of providing language access services on quality of health care and access to care and reduced medical error; and

(3) a description of the costs associated with or savings related to provision of language access services.

**SEC. 237. DEFINITIONS.**

In this subtitle:

(1) BILINGUAL.—The term ''bilingual'' with respect to an individual means a person who has sufficient degree of proficiency in two languages and can ensure effective communication can occur in both languages.

(2) COMPETENT INTERPRETER SERVICES.—The term ''competent interpreter services'' means a trans-language rendition of a spoken message in which the interpreter comprehends the source language and can speak comprehensively in the target language to convey the meaning intended in the source language. The interpreter knows health and health-related terminology and provides accurate interpretations by choosing equivalent expressions that convey the best matching and meaning to the source language and captures, to the greatest possible extent, all nuances intended in the source message.

(3) COMPETENT TRANSLATION SERVICES.—The term ''competent translation services'' means a trans-language rendition of a written document in which the translator comprehends the source language and can write comprehensively in the target language to convey the meaning intended in the source language. The translator knows health and

1 health-related terminology and provides accurate
2 translations by choosing equivalent expressions that
3 convey the best matching and meaning to the source
4 language and captures, to the greatest possible ex-
5 tent, all nuances intended in the source document.
6 (4) EFFECTIVE COMMUNICATION.—The term
7 ''effective communication'' means an exchange of in-
8 formation between the provider of health care or
9 health care-related services and the limited English
10 proficient recipient of such services that enables lim-
11 ited English proficient individuals to access, under-
12 stand, and benefit from health care or health care-
13 related services.
14 (5) INTERPRETING/INTERPRETATION.—The
15 terms ''interpreting'' and ''interpretation'' mean the
16 transmission of a spoken message from one language
17 into another, faithfully, accurately, and objectively.
18 (6) HEALTH CARE SERVICES.—The term
19 ''health care services'' means services that address
20 physical as well as mental health conditions in all
21 care settings.
22 (7) HEALTH CARE-RELATED SERVICES.—The
23 term ''health care-related services'' means human or
24 social services programs or activities that provide ac-
25 cess, referrals or links to health care.

1 (8) LANGUAGE ACCESS.—The term ''language
2 access'' means the provision of language services to
3 an LEP individual designed to enhance that individ-
4 ual's access to, understanding of or benefit from
5 health care or health care-related services.
6 (9) LANGUAGE SERVICES.—The term ''lan-
7 guage services'' means provision of health care serv-
8 ices directly in a non-English language, interpreta-
9 tion, translation, and non-English signage.
10 (10) LIMITED ENGLISH PROFICIENT.—The
11 term ''limited English proficient'' or ''LEP'' with re-
12 spect to an individual means an individual who
13 speaks a primary language other than English and
14 who cannot speak, read, write or understand the
15 English language at a level that permits the indi-
16 vidual to effectively communicate with clinical or
17 nonclinical staff at an entity providing health care or
18 health care related services.
19 (11) MEDICARE PROGRAM.—The term ''Medi-
20 care program'' means the programs under parts A
21 through D of title XVIII of the Social Security Act.
22 (12) SERVICE PROVIDER.—The term ''service
23 provider'' includes all suppliers, providers of services,
24 or entities under contract to provide coverage, items

or services under any part of title XVIII of the Social Security Act.

# TITLE III—PHYSICIANS' SERVICE PAYMENT REFORM

## SEC. 301. ESTABLISHMENT OF SEPARATE TARGET GROWTH RATES FOR SERVICE CATEGORIES.

(a) ESTABLISHMENT OF SERVICE CATEGORIES.—Subsection (j) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended by adding at the end the following new paragraph:

"(5) SERVICE CATEGORIES.—For services furnished on or after January 1, 2008, each of the following categories of physicians' services shall be treated as a separate 'service category':

"(A) Evaluation and management services for primary care (including new and established patient office visits delivered by physicians who the Secretary determines provide accessible, continuous, coordinated, and comprehensive care for Medicare beneficiaries, emergency department visits, and home visits), and for preventive services (including screening mammography, colorectal cancer screening, and other services as defined by the Secretary, limited to

1 the recommendations of the United States Pre-
2 ventive Services Task Force).
3 "(B) Evaluation and management services
4 not described in subparagraph (A).
5 "(C) Imaging services (as defined in sub-
6 section (b)(4)(B)) and diagnostic tests (other
7 than clinical diagnostic laboratory tests) not de-
8 scribed in subparagraph (A).
9 "(D) Procedures that are subject (under
10 regulations promulgated to carry out this sec-
11 tion) to a 10-day or 90-day global period (in
12 this paragraph referred to as 'major proce-
13 dures'), except that the Secretary may reclas-
14 sify as minor procedures under subparagraph
15 (F) any procedures that would otherwise be in-
16 cluded in this category if the Secretary deter-
17 mines that such procedures are not major pro-
18 cedures.
19 "(E) Anesthesia services that are paid on
20 the basis of the separate conversion factor for
21 anesthesia services determined under subsection
22 (d)(1)(D).
23 "(F) Minor procedures and any other phy-
24 sicians' services that are not described in a pre-
25 ceding subparagraph.".

(b) ESTABLISHMENT OF SEPARATE CONVERSION FACTORS FOR EACH SERVICE CATEGORY.—Subsection (d)(1) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended—

(1) in subparagraph (A)—

(A) by designating the sentence beginning ''The conversion factor'' as clause (i) with the heading ''APPLICATION OF SINGLE CONVERSION FACTOR'' and with appropriate indentation;

(B) by striking ''The conversion factor'' and inserting ''Subject to clause (ii), the conversion factor''; and

(C) by adding at the end the following new clause:

''(ii) APPLICATION OF MULTIPLE CONVERSION FACTORS BEGINNING WITH 2008.—

''(I) IN GENERAL.—In applying clause (i) for years beginning with 2008, separate conversion factors shall be established for each service category of physicians' services (as defined in subsection (j)(5)) and any reference in this section to a conversion factor for such years shall be

1 deemed to be a reference to the con-
2 version factor for each of such cat-
3 egories.

4 "(II) INITIAL CONVERSION FAC-
5 TORS; SPECIAL RULE FOR ANES-
6 THESIA SERVICES.— Such factors for
7 2008 shall be based upon the single
8 conversion factor for 2007 multiplied
9 by the update established under para-
10 graph (8) for such category for 2008.
11 In the case of the service category de-
12 scribed in subsection (j)(5)(F) (relat-
13 ing to anesthesia services), the conver-
14 sion factor for 2008 shall be based on
15 the separate conversion factor speci-
16 fied in subparagraph (D) for 2007
17 multiplied by the update established
18 under paragraph (8) for such category
19 for 2008.

20 "(III) UPDATING OF CONVER-
21 SION FACTORS.— Such factor for a
22 service category for a subsequent year
23 shall be based upon the conversion
24 factor for such category for the pre-
25 vious year and adjusted by the update

established for such category under paragraph (8) for the year involved.''; and

(2) in subparagraph (D), by inserting ''(before 2008)'' after ''for a year''.

(c) ESTABLISHING UPDATES FOR CONVERSION FACTORS FOR SERVICE CATEGORIES.—Section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)) is amended—

(1) in paragraph (4)(B), by striking ''and (6)'' and inserting '', (6), and (8)'';

(2) in paragraph (4)(C)(iii), by striking ''The allowed'' and inserting ''Subject to paragraph (8)(B), the allowed'';

(3) in paragraph (4)(D), by striking ''The update'' and inserting ''Subject to paragraph (8)(E), the update''; and

(4) by adding at the end the following new paragraphs:

''(8) UPDATES FOR SERVICE CATEGORIES BEGINNING WITH 2008.—

''(A) IN GENERAL.—In applying paragraph (4) for a year beginning with 2008, the following rules apply:

''(i) APPLICATION OF SEPARATE UPDATE ADJUSTMENTS FOR EACH SERVICE

CATEGORY.—Pursuant to paragraph (1)(A)(ii)(I), the update shall be made to the conversion factor for each service category (as defined in subsection (j)(5)) based upon an update adjustment factor for the respective category and year and the update adjustment factor shall be computed, for a year, separately for each service category.

"(ii) COMPUTATION OF ALLOWED AND ACTUAL EXPENDITURES BASED ON SERVICE CATEGORIES.—In computing the prior year adjustment component and the cumulative adjustment component under clauses (i) and (ii) of paragraph (4)(B), the following rules apply:

"(I) APPLICATION BASED ON SERVICE CATEGORIES.—The allowed expenditures and actual expenditures shall be the allowed and actual expenditures for the service category, as determined under subparagraph (B).

"(II) LIMITATION TO PHYSICIAN FEE-SCHEDULE SERVICES.—Actual expenditures shall only take into ac-

count expenditures for services furnished under the physician fee schedule.

"(III) APPLICATION OF CATEGORY SPECIFIC TARGET GROWTH RATE.—The growth rate applied under clause (ii)(II) of such paragraph shall be the target growth rate for the service category involved under subsection (f)(5).

"(IV) ALLOCATION OF CUMULATIVE OVERHANG.—There shall be substituted for the difference described in subparagraph (B)(ii)(I) of such paragraph the amount described in subparagraph (C)(i) for the service category involved.

"(B) DETERMINATION OF ALLOWED EXPENDITURES.—In applying paragraph (4) for a year beginning with 2008, notwithstanding subparagraph (C)(iii) of such paragraph, the allowed expenditures for a service category for a year is an amount computed by the Secretary as follows:

"(i) FOR 2008.—For 2008:

"(I) TOTAL 2007 ALLOWED EXPENDITURES.—Compute the total allowed expenditures for services furnished under the physician fee schedule under such paragraph for 2007.

"(II) INCREASE BY GROWTH RATE.—Increase the total under subclause (I) by the target growth rate for such category under subsection (f) for 2008.

"(III) ALLOCATION TO SERVICE CATEGORY.—Multiply the increased total under subclause (II) by the overhang allocation factor for the service category (as defined in subparagraph (C)(iii)).

"(ii) FOR SUBSEQUENT YEARS.—For a subsequent year, take the amount of allowed expenditures for such category for the preceding year (under clause (i) or this clause) and increase it by the target growth rate determined under subsection (f) for such category and year.

"(C) COMPUTATION AND APPLICATION OF CUMULATIVE OVERHANG AMONG CATEGORIES.—

"(i) IN GENERAL.—For purposes of applying paragraph (4)(B)(ii)(II) under clause (ii)(IV), the amount described in this clause for a year (beginning with 2008) is the sum of the following:

"(I) PRE-2008 CUMULATIVE OVERHANG.—The amount of the pre-2008 cumulative excess spending (as defined in clause (ii)) multiplied by the overhang allocation factor for the service category (under clause (iii)).

"(II) POST-2007 CUMULATIVE AMOUNTS.—For a year beginning with 2009, the difference (which may be positive or negative) between the amount of the allowed expenditures for physicians' services (as determined under paragraph (4)(C)) in the service category from January 1, 2008, through the end of the prior year and the amount of the actual expenditures

for such services in such category during that period.

"(ii) PRE-2008 CUMULATIVE EXCESS SPENDING DEFINED.—For purposes of clause (i)(I), the term 'pre-2008 cumulative excess spending' means the difference described in paragraph (4)(B)(ii)(I) as determined for the year 2008, taking into account expenditures through December 31, 2007. Such difference takes into account expenditures included in subsection (f)(4)(A).

"(iii) OVERHANG ALLOCATION FACTOR.—For purposes of this paragraph, the term 'overhang allocation factor' means, for a service category, the proportion, as determined by the Secretary of total actual expenditures under this part for items and services in such category during 2007 to the total of such actual expenditures for all the service categories. In calculating such proportion, the Secretary shall only take into account services furnished under the physician fee schedule.

"(D) FLOOR FOR UPDATES FOR 2008 AND 2009.—The update to the conversion factors for each service category for each of 2008 and 2009 shall be not less than 0.5 percent.

"(E) CHANGE IN RESTRICTION ON UPDATE ADJUSTMENT FACTOR FOR 2010 AND 2011.—The update adjustment factor determined under subparagraph (4)(B), as modified by this paragraph, for a service category for a year (beginning with 2010 and ending with 2011) may be less than –0.07, but may not be less than –0.14.".

(d) APPLICATION OF SEPARATE TARGET GROWTH RATES FOR EACH CATEGORY.—

(1) IN GENERAL.—Section 1848(f) of the Social Security Act (42 U.S.C. 1395w–4(f)) is amended by adding at the end the following new paragraph:

"(5) APPLICATION OF SEPARATE TARGET GROWTH RATES FOR EACH SERVICE CATEGORY BEGINNING WITH 2008.—The target growth rate for a year beginning with 2008 shall be computed and applied separately under this subsection for each service category (as defined in subsection (j)(5)) and shall be computed using the same method for com-

1 puting the sustainable growth rate except for the fol-
2 lowing:
3 "(A) The reference in paragraphs (2)(A)
4 and (2)(D) to 'all physicians' services' is
5 deemed a reference to the physicians' services
6 included in such category but shall not take
7 into account items and services included in phy-
8 sicians' services through the operation of para-
9 graph (4)(A).
10 "(B) The factor described in paragraph
11 (2)(C) for the service category described in sub-
12 section (j)(5)(A) shall be increased by 0.03.
13 "(C) A national coverage determination (as
14 defined in section 1869(f)(1)(B)) shall be treat-
15 ed as a change in regulation described in para-
16 graph (2)(D).".
17 (2) USE OF TARGET GROWTH RATES.—Section
18 1848 of such Act is further amended—
19 (A) in subsection (d)—
20 (i) in paragraph (1)(E)(ii), by insert-
21 ing "or target" after "sustainable"; and
22 (ii) in paragraph (4)(B)(ii)(II), by in-
23 serting "or target" after "sustainable";
24 and
25 (B) in subsection (f)—

(i) in the heading by inserting "; TARGET GROWTH RATE" after "SUSTAINABLE GROWTH RATE"

(ii) in paragraph (1)—

(I) by striking "and" at the end of subparagraph (A);

(II) in subparagraph (B), by inserting "before 2008" after "each succeeding year" and by striking the period at the end and inserting "; and"; and

(III) by adding at the end the following new subparagraph:

"(C) November 1 of each succeeding year the target growth rate for such succeeding year and each of the 2 preceding years."; and

(iii) in paragraph (2), in the matter before subparagraph (A), by inserting after "beginning with 2000" the following: "and ending with 2007" .

(e) REPORTS ON EXPENDITURES FOR PART B DRUGS AND CLINICAL DIAGNOSTIC LABORATORY TESTS.—

(1) REPORTING REQUIREMENT.—The Secretary of Health and Human Services shall include infor-

mation in the annual physician fee schedule proposed rule on the change in the annual rate of growth of actual expenditures for clinical diagnostic laboratory tests or drugs, biologicals, and radiopharmaceuticals for which payment is made under part B of title XVIII of the Social Security Act.

(2) RECOMMENDATIONS.—The report submitted under paragraph (1) shall include an analysis of the reasons for such excess expenditures and recommendations for addressing them in the future.

**SEC. 302. IMPROVING ACCURACY OF RELATIVE VALUES UNDER THE MEDICARE PHYSICIAN FEE SCHEDULE.**

(a) USE OF EXPERT PANEL TO IDENTIFY MISVALUED PHYSICIANS' SERVICES.—Section 1848(c) of the Social Security Act (42 U.S.C. 1395w(c)) is amended by adding at the end the following new paragraph:

"(7) USE OF EXPERT PANEL TO IDENTIFY MISVALUED PHYSICIANS' SERVICES.—

"(A) IN GENERAL.—The Secretary shall establish an expert panel (in this paragraph referred to as the 'expert panel')—

"(i) to identify, through data analysis, physicians' services for which the relative value under this subsection is potentially

1 misvalued, particularly those services for
2 which such relative value may be over-
3 valued;
4 "(ii) to assess whether those
5 misvalued services warrant review using
6 existing processes (referred to in para-
7 graph (2)(J)(ii)) for the consideration of
8 coding changes; and
9 "(iii) to advise the Secretary con-
10 cerning the exercise of authority under
11 clauses (ii)(III) and (vi) of paragraph
12 (2)(B).
13 "(B) COMPOSITION OF PANEL.—The ex-
14 pert panel shall be appointed by the Secretary
15 and composed of—
16 "(i) members with expertise in med-
17 ical economics and technology diffusion;
18 "(ii) members with clinical expertise;
19 "(iii) physicians, particularly physi-
20 cians (such as a physician employed by the
21 Veterans Administration or a physician
22 who has a full time faculty appointment at
23 a medical school) who are not directly af-
24 fected by changes in the physician fee
25 schedule under this section;

1 "(iv) carrier medical directors; and
2 "(v) representatives of private payor
3 health plans.
4 "(C) APPOINTMENT CONSIDERATIONS.—In
5 appointing members to the expert panel, the
6 Secretary shall assure racial and ethnic diver-
7 sity on the panel and may consider appointing
8 a liaison from organizations with experience in
9 the consideration of coding changes to the
10 panel.".
11 (b) EXAMINATION OF SERVICES WITH SUBSTANTIAL
12 CHANGES.—Such section is further amended by adding at
13 the end the following new paragraph:
14 "(8) EXAMINATION OF SERVICES WITH SUB-
15 STANTIAL CHANGES.—The Secretary, in consultation
16 with the expert panel under paragraph (7), shall—
17 "(A) conduct a five-year review of physi-
18 cians' services in conjunction with the RUC 5-
19 year review, particularly for services that have
20 experienced substantial changes in length of
21 stay, site of service, volume, practice expense,
22 or other factors that may indicate changes in
23 physician work;
24 "(B) identify new services to determine if
25 they are likely to experience a reduction in rel-

ative value over time and forward a list of the services so identified for such five-year review; and

"(C) for physicians' services that are otherwise unreviewed under the process the Secretary has established, periodically review a sample of relative value units within different types of services to assess the accuracy of the relative values contained in the Medicare physician fee schedule.".

(c) AUTHORITY TO REDUCE WORK COMPONENT FOR SERVICES WITH ACCELERATED VOLUME GROWTH.—

(1) IN GENERAL.—Paragraph (2)(B) of such section is amended—

(A) in clause (v), by adding at the end the following new subclause:

"(III) REDUCTIONS IN WORK VALUE UNITS FOR SERVICES WITH ACCELERATED VOLUME GROWTH.—Effective January 1, 2009, reduced expenditures attributable to clause (vi).''; and

(B) by adding at the end the following new clauses:

1 "(vi) AUTHORIZING REDUCTION IN
2 WORK VALUE UNITS FOR SERVICES WITH
3 ACCELERATED VOLUME GROWTH.—The
4 Secretary may provide (without using ex-
5 isting processes the Secretary has estab-
6 lished for review of relative value) for a re-
7 duction in the work value units for a par-
8 ticular physician's service if the annual
9 rate of growth in the expenditures for such
10 service for which payment is made under
11 this part for individuals for 2006 or a sub-
12 sequent year exceeds the average annual
13 rate of growth in expenditures of all physi-
14 cians' services for which payment is made
15 under this part by more than 10 percent-
16 age points for such year.
17 "(vii) CONSULTATION WITH EXPERT
18 PANEL AND BASED ON CLINICAL EVI-
19 DENCE.—The Secretary shall exercise au-
20 thority under clauses (ii)(III) and (vi) in
21 consultation with the expert panel estab-
22 lished under paragraph (7) and shall take
23 into account clinical evidence supporting or
24 refuting the merits of such accelerated
25 growth".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to payment for services furnished on or after January 1, 2009.

(d) ADJUSTMENT AUTHORITY FOR EFFICIENCY GAINS FOR NEW PROCEDURES.—Paragraph (2)(B)(ii) of such section is amended by adding at the end the following new subclause:

"(III) ADJUSTMENT AUTHORITY FOR EFFICIENCY GAINS FOR NEW PROCEDURES.—In carrying out subclauses (I) and (II), the Secretary may apply a methodology, based on supporting evidence, under which there is imposed a reduction over a period of years in specified relative value units in the case of a new (or newer) procedure to take into account inherent efficiencies that are typically or likely to be gained during the period of initial increased application of the procedure.".

**SEC. 303. PHYSICIAN FEEDBACK MECHANISM ON PRACTICE PATTERNS.**

By not later than July 1, 2008, the Secretary of Health and Human Services shall develop and implement a mechanism to measure resource use on a per capita and an episode basis in order to provide confidential feedback to physicians in the Medicare program on how their practice patterns compare to physicians generally, both in the same locality as well as nationally. Such feedback shall not be subject to disclosure under section 552 of title 5, United States Code).

**SEC. 304. PAYMENTS FOR EFFICIENT PHYSICIANS.**

Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(v) INCENTIVE PAYMENTS FOR EFFICIENT PHYSICIANS.—

"(1) IN GENERAL.—In the case of physicians' services furnished on or after January 1, 2009, and before January 1, 2011, by a participating physician in an efficient area (as identified under paragraph (2)), in addition to the amount of payment that would otherwise be made for such services under this part, there also shall be paid an amount equal to 5 percent of the payment amount for the services under this part.

1 "(2) IDENTIFICATION OF EFFICIENT AREAS.—
2 "(A) IN GENERAL.—Based upon available
3 data, the Secretary shall identify those counties
4 or equivalent areas in the United States in the
5 lowest fifth percentile of utilization based on
6 per capita spending for services provided in
7 2007 under this part and part A.
8 "(B) IDENTIFICATION OF COUNTIES
9 WHERE SERVICE IS FURNISHED..—For pur-
10 poses of paying the additional amount specified
11 in paragraph (1), if the Secretary uses the 5-
12 digit postal ZIP Code where the service is fur-
13 nished, the dominant county of the postal ZIP
14 Code (as determined by the United States Post-
15 al Service, or otherwise) shall be used to deter-
16 mine whether the postal ZIP Code is in a coun-
17 ty described in subparagraph (A).
18 "(C) JUDICIAL REVIEW.— There shall be
19 no administrative or judicial review under sec-
20 tion 1869, 1878, or otherwise, respecting—
21 "(i) the identification of a county or
22 other area under subparagraph (A); or
23 "(ii) the assignment of a postal ZIP
24 Code to a county or other area under sub-
25 paragraph (B).

"(D) PUBLICATION OF LIST OF COUNTIES; POSTING ON WEBSITE.—With respect to a year for which a county or area is identified under this paragraph, the Secretary shall identify such counties or areas as part of the proposed and final rule to implement the physician fee schedule under section 1848 for the applicable year. The Secretary shall post the list of counties identified under this paragraph on the Internet website of the Centers for Medicare & Medicaid Services.".

**SEC. 305. RECOMMENDATIONS ON REFINING THE PHYSICIAN FEE SCHEDULE.**

(a) RECOMMENDATIONS ON CONSOLIDATED CODING FOR SERVICES COMMONLY PERFORMED TOGETHER.—Not later than December 31, 2008, the Comptroller General of the United States shall—

(1) complete an analysis of codes paid under the Medicare physician fee schedule to determine whether the codes for procedures that are commonly furnished together should be combined; and

(2) submit to Congress a report on such analysis and include in the report recommendations on whether an adjustment should be made to the relative value units for such combined code.

(b) RECOMMENDATIONS ON INCREASED USE OF BUNDLED PAYMENTS.—Not later than December 31, 2008, the Comptroller General of the United States shall—

(1) complete an analysis of those procedures under the Medicare physician fee schedule for which no global payment methodology is applied but for which a ''bundled'' payment methodology would be appropriate; and

(2) submit to Congress a report on such analysis and include in the report recommendations on increasing the use of ''bundled'' payment methodology under such schedule.

(c) MEDICARE PHYSICIAN FEE SCHEDULE.—In this section, the term ''Medicare physician fee schedule'' means the fee schedule established under section 1848 of the Social Security Act (42 U.S.C. 1395w–4).

**SEC. 306. IMPROVED AND EXPANDED MEDICAL HOME DEMONSTRATION PROJECT.**

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish under title XVIII of the Social Security Act an expanded medical home demonstration project (in this section referred to as the ''expanded project'') under this section. The expanded project super-

1 sedes the project that was initiated under section 204 of
2 the Medicare Improvement and Extension Act of 2006 (di-
3 vision B of Public Law 109–432). The purpose of the ex-
4 panded project is—

5 (1) to guide the redesign of the health care de-
6 livery system to provide accessible, continuous, com-
7 prehensive, and coordinated, care to Medicare bene-
8 ficiaries; and

9 (2) to provide care management fees to per-
10 sonal physicians delivering continuous and com-
11 prehensive care in qualified medical homes.

12 (b) NATURE AND SCOPE OF PROJECT.—

13 (1) DURATION; SCOPE.—The expanded project
14 shall operate during a period of three years, begin-
15 ning not later than October 1, 2009, and shall in-
16 clude a nationally representative sample of physi-
17 cians serving urban, rural, and underserved areas
18 throughout the United States.

19 (2) ENCOURAGING PARTICIPATION OF SMALL
20 PHYSICIAN PRACTICES.—

21 (A) IN GENERAL.—The expanded project
22 shall be designed to include the participation of
23 physicians in practices with fewer than four
24 full-time equivalent physicians, as well as physi-

1 cians in larger practices particularly in rural
2 and underserved areas.
3 (B) TECHNICAL ASSISTANCE.— In order to
4 facilitate the participation under the expanded
5 project of physicians in such practices, the Sec-
6 retary shall make available additional technical
7 assistance to such practices during the first
8 year of the expanded project.
9 (3) SELECTION OF HOMES TO PARTICIPATE.—
10 The Secretary shall select up to 500 medical homes
11 to participate in the expanded project and shall give
12 priority to—
13 (A) the selection of up to 100 HIT-en-
14 hanced medical homes; and
15 (B) the selection of other medical homes
16 that serve communities whose populations are
17 at higher risk for health disparities,
18 (4) BENEFICIARY PARTICIPATION.—The Sec-
19 retary shall establish a process for any Medicare
20 beneficiary who is served by a medical home partici-
21 pating in the expanded project to elect to participate
22 in the project. Each beneficiary who elects to so par-
23 ticipate shall be eligible—

1 (A) for enhanced medical home services
2 under the project with no cost sharing for the
3 additional services; and
4 (B) for a reduction of up to 50 percent in
5 the coinsurance for services furnished under the
6 physician fee schedule under section 1848 of
7 the Social Security Act by the medical home.
8 The Secretary shall develop standard recruitment
9 materials and election processes for Medicare bene-
10 ficiaries who are electing to participate in the ex-
11 panded project.
12 (c) STANDARDS FOR MEDICAL HOMES, HIT-EN-
13 HANCED MEDICAL HOMES.—
14 (1) STANDARD SETTING AND CERTIFICATION
15 PROCESS.—The Secretary shall establish a process
16 for selection of a qualified standard setting and cer-
17 tification organization—
18 (A) to establish standards, consistent with
19 this section, for medical practices to qualify as
20 medical homes or as HIT-enhanced medical
21 homes; and
22 (B) to provide for the review and certifi-
23 cation of medical practices as meeting such
24 standards.

1 (2) BASIC STANDARDS FOR MEDICAL HOMES.—
2 For purposes of this subsection, the term ''medical
3 home'' means a physician-directed practice that has
4 been certified, under paragraph (1), as meeting the
5 following standards:
6 (A) ACCESS AND COMMUNICATION WITH
7 PATIENTS.—The practice applies standards for
8 access to care and communication with partici-
9 pating beneficiaries.
10 (B) MANAGING PATIENT INFORMATION
11 AND USING INFORMATION IN MANAGEMENT TO
12 SUPPORT PATIENT CARE.—The practice has
13 readily accessible, clinically useful information
14 on participating beneficiaries that enables the
15 practice to treat such beneficiaries comprehen-
16 sively and systematically.
17 (C) MANAGING AND COORDINATING CARE
18 ACCORDING TO INDIVIDUAL NEEDS.—The prac-
19 tice maintains continuous relationships with
20 participating beneficiaries by implementing evi-
21 dence-based guidelines and applying them to
22 the identified needs of individual beneficiaries
23 over time and with the intensity needed by such
24 beneficiaries.

1 (D) PROVIDING ONGOING ASSISTANCE AND
2 ENCOURAGEMENT IN PATIENT SELF-MANAGE-
3 MENT.—The practice—
4 (i) collaborates with participating
5 beneficiaries to pursue their goals for opti-
6 mal achievable health; and
7 (ii) assesses patient-specific barriers
8 to communication and conducts activities
9 to support patient self-management.
10 (E) RESOURCES TO MANAGE CARE.—The
11 practice has in place the resources and proc-
12 esses necessary to achieve improvements in the
13 management and coordination of care for par-
14 ticipating beneficiaries.
15 (F) MONITORING PERFORMANCE.—The
16 practice monitors its clinical process and per-
17 formance (including outcome measures) in
18 meeting the applicable standards under this
19 subsection and provides information in a form
20 and manner specified by the Secretary with re-
21 spect to such process and performance.
22 (3) ADDITIONAL STANDARDS FOR HIT-EN-
23 HANCED MEDICAL HOME.—For purposes of this sub-
24 section, the term ''HIT-enhanced medical home''
25 means a medical home that has been certified, under

1 paragraph (1), as using a health information tech-
2 nology system that includes at least the following
3 elements:
4 (A) ELECTRONIC HEALTH RECORD
5 (EHR).—The system uses, for participating
6 beneficiaries, an electronic health record that
7 meets the following standards:
8 (i) IN GENERAL.—The record—
9 (I) has the capability of inter-
10 operability with secure data acquisi-
11 tion from health information tech-
12 nology systems of other health care
13 providers in the area served by the
14 home; or
15 (II) the capability to securely ac-
16 quire clinical data delivered by such
17 other health care providers to a secure
18 common data source.
19 (ii) The record protects the privacy
20 and security of health information.
21 (iii) The record has the capability to
22 acquire, manage, and display all the types
23 of clinical information commonly relevant
24 to services furnished by the home, such as
25 complete medical records, radiographic

1 image retrieval, and clinical laboratory in-
2 formation.
3 (iv) The record is integrated with de-
4 cision support capacities that facilitate the
5 use of evidence-based medicine and clinical
6 decision support tools to guide decision-
7 making at the point-of-care based on pa-
8 tient-specific factors.
9 (B) E-PRESCRIBING.—The system sup-
10 ports e-prescribing and computerized physician
11 order entry.
12 (C) OUTCOME MEASUREMENT.—The sys-
13 tem supports the secure, confidential provision
14 of clinical process and outcome measures ap-
15 proved by the National Quality Forum to the
16 Secretary for use in confidential manner for
17 provider feedback and peer review and for out-
18 comes and clinical effectiveness research.
19 (D) PATIENT EDUCATION CAPABILITY.—
20 The system actively facilitates participating
21 beneficiaries engaging in the management of
22 their own health through education and support
23 systems and tools for shared decision-making.
24 (E) SUPPORT OF BASIC STANDARDS.—
25 The elements of such system, such as the elec-

1 tronic health record, email communications, pa-
2 tient registries, and clinical-decision support
3 tools, are integrated in a manner to better
4 achieve the basic standards specified in para-
5 graph (2) for a medical home.
6 (4) USE OF DATA.—The Secretary shall use the
7 data submitted under paragraph (1)(F) in a con-
8 fidential manner for feedback and peer review for
9 medical homes and for outcomes and clinical effec-
10 tiveness research. After the first two years of the ex-
11 panded project, these data may be used for adjust-
12 ment in the monthly medical home care management
13 fee under subsection (d)(2)(E).
14 (d) MONTHLY MEDICAL HOME CARE MANAGEMENT
15 FEE.—
16 (1) IN GENERAL.—Under the expanded project,
17 the Secretary shall provide for payment to the per-
18 sonal physician of each participating beneficiary of a
19 monthly medical home care management fee.
20 (2) AMOUNT OF PAYMENT.— In determining
21 the amount of such fee, the Secretary shall consider
22 the following:
23 (A) OPERATING EXPENSES.—The addi-
24 tional practice expenses for the delivery of serv-
25 ices through a medical home, taking into ac-

1 count the additional expenses for an HIT-en-
2 hanced medical home. Such expenses include
3 costs associated with—
4 (i) structural expenses, such as equip-
5 ment, maintenance, and training costs;
6 (ii) enhanced access and communica-
7 tion functions;
8 (iii) population management and reg-
9 istry functions;
10 (iv) patient medical data and referral
11 tracking functions;
12 (v) provision of evidence-based care;
13 (vi) implementation and maintenance
14 of health information technology;
15 (vii) reporting on performance and
16 improvement conditions; and
17 (viii) patient education and patient
18 decision support, including print and elec-
19 tronic patient education materials.
20 (B) ADDED VALUE SERVICES.—The value
21 of additional physician work, such as aug-
22 mented care plan oversight, expanded e-mail
23 and telephonic consultations, extended patient
24 medical data review (including data stored and
25 transmitted electronically), and physician super-

1 vision of enhanced self management education,
2 and expanded follow-up accomplished by non-
3 physician personnel, in a medical home that is
4 not adequately taken into account in the estab-
5 lishment of the physician fee schedule under
6 section 1848 of the Social Security Act.

7 (C) RISK ADJUSTMENT.—The development
8 of an appropriate risk adjustment mechanism
9 to account for the varying costs of medical
10 homes based upon characteristics of partici-
11 pating beneficiaries.

12 (D) HIT ADJUSTMENT.—Variation of the
13 fee based on the extensiveness of use of the
14 health information technology in the medical
15 home.

16 (E) PERFORMANCE-BASED.—After the
17 first two years of the expanded project, an ad-
18 justment of the fee based on performance of the
19 home in achieving quality or outcomes stand-
20 ards.

21 (3) PERSONAL PHYSICIAN DEFINED.—For pur-
22 poses of this subsection, the term ''personal physi-
23 cian'' means, with respect to a participating Medi-
24 care beneficiary, a physician (as defined in section
25 1861(r)(1) of the Social Security Act (42 U.S.C.

1395x(r)(1)) who provides accessible, continuous, coordinated, and comprehensive care for the beneficiary as part of a medical practice that is a qualified medical home. Such a physician may be a specialist for a beneficiary requiring ongoing care for a chronic condition or multiple chronic conditions (such as severe asthma, complex diabetes, cardiovascular disease, rheumatologic disorder) or for a beneficiary with a prolonged illness.

(e) FUNDING.—

(1) USE OF CURRENT PROJECT FUNDING.—Funds otherwise applied to the demonstration under section 204 of the Medicare Improvement and Extension Act of 2006 (division B of Public Law 109–432) shall be available to carry out the expanded project

(2) ADDITIONAL FUNDING FROM SMI TRUST FUND.—

(A) IN GENERAL.—In addition to the funds provided under paragraph (1), there shall be available, from the Federal Supplementary Medical Insurance Trust Fund (under section 1841 of the Social Security Act), the amount of $500,000,000 to carry out the expanded project, including payments to of monthly med-

ical home care management fees under subsection (d), reductions in coinsurance for participating beneficiaries under subsection (b)(4)(B), and funds for the design, implementation, and evaluation of the expanded project.

(B) MONITORING EXPENDITURES; EARLY TERMINATION.—The Secretary shall monitor the expenditures under the expanded project and may terminate the project early in order that expenditures not exceed the amount of funding provided for the project under subparagraph (A).

(f) EVALUATIONS AND REPORTS.—.

(1) ANNUAL INTERIM EVALUATIONS AND REPORTS.—For each year of the expanded project, the Secretary shall provide for an evaluation of the project and shall submit to Congress, by a date specified by the Secretary, a report on the project and on the evaluation of the project for each such year.

(2) FINAL EVALUATION AND REPORT.—The Secretary shall provide for an evaluation of the expanded project and shall submit to Congress, not later than 18 months after the date of completion of the project, a report on the project and on the evaluation of the project.

**SEC. 307. REPEAL OF PHYSICIAN ASSISTANCE AND QUALITY INITIATIVE FUND.**

Subsection (l) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is repealed.

**SEC. 308. ADJUSTMENT TO MEDICARE PAYMENT LOCALITIES.**

Section 1848(e) of the Social Security Act (42 U.S.C.1395w–4(e)) is amended by adding at the end the following new paragraph:

"(6) FEE SCHEDULE GEOGRAPHIC AREAS.—

"(A) IN GENERAL.—

"(i) REVISION.—Subject to clause (ii), for services furnished on or after January 1, 2009, the Secretary shall revise the fee schedule areas used for payment under this section applicable to the State of California using the county-based geographic adjustment factor as specified in option 3 (table 9) in the proposed rule for the 2008 physician fee schedule published at 72 Fed. Reg. 38,122 (July 12, 2007).

"(ii) TRANSITION.—For services furnished during the period beginning January 1, 2009, and ending December 31, 2010, after calculating the work, practice expense, and malpractice geographic indi-

ces described in clauses (i), (ii), and (iii) of paragraph (1)(A) that would otherwise apply, the Secretary shall increase any such geographic index for any county in California that is lower than the geographic index used for payment for services under this section as of December 31, 2008, in such county to such geographic index level.

"(iii) NON-APPLICATION OF PERIODIC REVISION.—If a periodic review of geographic indices, as required under paragraph (1)(B), results in a reduction in a work, practice expense and malpractice geographic index for any county in California that is below the geographic index level established pursuant to clause (ii) during a portion of the period described in such clause, the work, practice expense, or malpractice index established in such clause shall be applied to payment for services furnished in such county during such portion of such period.

"(B) SUBSEQUENT REVISIONS.—

"(i) TIMING.—Not later than January 1, 2014, the Secretary shall review and make revisions to fee schedule areas in all States for which more than one fee schedule area is used for payment of services under this section. The Secretary may revise fee schedule areas in States in which a single fee schedule area is used for payment for services under this section using the same methodology applied in the previous sentence.

"(ii) LINK WITH GEOGRAPHIC INDEX DATA REVISION.—The revision described in clause (i) shall be made effective concurrently with the application of the periodic review of geographic adjustment factors required under paragraph (1)(C) for 2014.".

**SEC. 309. PAYMENT FOR IMAGING SERVICES.**

(a) PAYMENT UNDER PART B OF THE MEDICARE PROGRAM FOR DIAGNOSTIC IMAGING SERVICES FURNISHED IN FACILITIES CONDITIONED ON ACCREDITATION OF FACILITIES.—

(1) SPECIAL PAYMENT RULE.—

(A) IN GENERAL.—Section 1848(b)(4) of the Social Security Act (42 U.S.C. 1395w-4(b)(4)) is amended—

(i) in the heading, by striking ''RULE'' and inserting ''RULES'';

(ii) in subparagraph (A), by striking ''IN GENERAL'' and inserting ''LIMITATION''; and

(iii) by adding at the end the following new subparagraph:

''(C) PAYMENT ONLY FOR SERVICES PROVIDED IN ACCREDITED FACILITIES.—

''(i) IN GENERAL.—In the case of imaging services that are diagnostic imaging services described in clause (ii), the payment amount for the technical component and the professional component of the services established for a year under the fee schedule described in paragraph (1) shall each be zero, unless the services are furnished at a diagnostic imaging services facility that meets the certificate requirement described in section 354(b)(1) of the Public Health Service Act, as applied under subsection (m). The previous sen-

1 tence shall not apply with respect to the
2 professional component of a diagnostic im-
3 aging service that is furnished by a physi-
4 cian or that is an ultrasound furnished by
5 nurse practitioner or or nurse-midwife.
6 ''(ii) DIAGNOSTIC IMAGING SERV-
7 ICES.—For purposes of clause (i) and sub-
8 section (m), the term 'diagnostic imaging
9 services' means all imaging modalities, in-
10 cluding diagnostic magnetic resonance im-
11 aging ('MRI'), computed tomography
12 ('CT'), positron emission tomography
13 ('PET'), nuclear medicine procedures, x-
14 rays, sonograms, ultrasounds, echocardio-
15 grams, and such emerging diagnostic im-
16 aging technologies as specified by the Sec-
17 retary. Such term does not include image
18 guided procedures.''.
19 (B) EFFECTIVE DATE.—
20 (i) IN GENERAL.—Subject to clause
21 (ii), the amendments made by subpara-
22 graph (A) shall apply to diagnostic imag-
23 ing services furnished on or after January
24 1, 2010.

(ii) EXTENSION FOR ULTRASOUND SERVICES.—The amendments made by subparagraph (A) shall apply to diagnostic imaging services that are ultrasound services on or after January 1, 2012.

(2) CERTIFICATION OF FACILITIES THAT FURNISH DIAGNOSTIC IMAGING SERVICES.—Section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended by adding at the end the following new subsection:

"(m) CERTIFICATION OF FACILITIES THAT FURNISH DIAGNOSTIC IMAGING SERVICES.—

"(1) IN GENERAL.—For purposes of subsection (b)(4)(C)(i), except as provided under paragraphs (2) through (8), the provisions of section 354 of the Public Health Service Act (as in effect as of June 1, 2007), relating to the certification of mammography facilities, shall apply, with respect to the provision of diagnostic imaging services (as defined in subsection (b)(4)(C)(ii)) and to a diagnostic imaging services facility defined in paragraph (8) (and to the process of accrediting such facilities) in the same manner that such provisions apply, with respect to the provision of mammograms and to a facility de-

fined in subsection (a)(3) of such section (and to the process of accrediting such mammography facilities).

"(2) TERMINOLOGY AND REFERENCES.—For purposes of applying section 354 of the Public Health Service Act under paragraph (1)—

"(A) any reference to 'mammography', or 'breast imaging' is deemed a reference to 'diagnostic imaging services (as defined in section 1848(b)(4)(C)(ii) of the Social Security Act)';

"(B) any reference to a mammogram or film is deemed a reference to an image, as defined in paragraph (8);

"(C) any reference to 'mammography facility' or to a 'facility' under such section 354 is deemed a reference to a diagnostic imaging services facility, as defined in paragraph (8);

"(D) any reference to radiological equipment used to image the breast is deemed a reference to medical imaging equipment used to provide diagnostic imaging services;

"(E) any reference to radiological procedures or radiological is deemed a reference to medical imaging services, as defined in paragraph (8) or medical imaging, respectively;

"(F) any reference to an inspection (as defined in subsection (a)(4) of such section) or inspector is deemed a reference to an audit (as defined in paragraph (8)) or auditor, respectively;

"(G) any reference to a medical physicist (as described in subsection (f)(1)(E) of such section) is deemed to include a reference to a magnetic resonance scientist or the appropriate qualified expert as determined by the accrediting body;

"(H) in applying subsection (d)(1)(A)(i) of such section, the reference to 'type of each x-ray machine, image receptor, and processor' is deemed a reference to 'type of imaging equipment';

"(I) in applying subsection (d)(1)(B) of such section, the reference that 'the person or agent submits to the Secretary' is deemed a reference that 'the person or agent submits to the Secretary, through the appropriate accreditation body';

"(J) in applying subsection (d)(1)(B)(i) of such section, the reference to standards established by the Secretary is deemed a reference to

standards established by an accreditation body and approved by the Secretary;

"(K) in applying subsection (e) of such section, relating to an accreditation body—

"(i) in paragraph (1)(A), the reference to 'may' is deemed a reference to 'shall';

"(ii) in paragraph (1)(B)(i)(II), the reference to 'a random sample of clinical images from such facilities' is deemed a reference to 'a statistically significant random sample of clinical images from a statistically significant random sample of facilities';

"(iii) in paragraph (3)(A) of such section—

"(I) the reference to 'paragraph (1)(B)' in such subsection is deemed to be a reference to 'paragraph (1)(B) and subsection (f)'; and

"(II) the reference to the 'Secretary' is deemed a reference to 'an accreditation body, with the approval of the Secretary'; and

"(iv) in paragraph (6)(B), the reference to the Committee on Labor and Human Resources of the Senate is deemed to be the Committee on Finance of the Senate and the reference to the Committee on Energy and Commerce of the House of Representatives is deemed to include a reference to the Committee on Ways and Means of the House of Representatives;

"(L) in applying subsection (f), relating to quality standards—

"(i) each reference to standards established by the Secretary is deemed a reference to standards established by an accreditation body involved and approved by the Secretary under subsection (d)(1)(B)(i) of such section

"(ii) in paragraph (1)(A), the reference to 'radiation dose' is deemed a reference to 'radiation dose, as appropriate';

"(iii) in paragraph (1)(B), the reference to 'radiological standards' is deemed a reference to 'medical imaging standards, as appropriate';

"(iv) in paragraphs (1)(D)(ii) and (1)(E)(iii), the reference to 'the Secretary' is deemed a reference to 'an accreditation body with the approval of the Secretary';

"(v) in each of subclauses (III) and (IV) of paragraph (1)(G)(ii), each reference to 'patient' is deemed a reference to 'patient, if requested by the patient'; and

"(M) in applying subsection (g), relating to inspections—

"(i) each reference to the 'Secretary or State or local agency acting on behalf of the Secretary' is deemed to include a reference to an accreditation body involved;

"(ii) in the first sentence of paragraph (1)(F), the reference to 'annual inspections required under this paragraph' is deemed a reference to 'the audits carried out in facilities at least every three years from the date of initial accreditation under this paragraph'; and

"(iii) in the second sentence of paragraph (1)(F), the reference to 'inspections carried out under this paragraph' is deemed a reference to 'audits conducted

under this paragraph during the previous year'.

"(3) DATES AND PERIODS.—For purposes of paragraph (1), in applying section 354 of the Public Health Service Act, the following applies:

"(A) IN GENERAL.—Except as provided in subparagraph (B)—

"(i) any reference to 'October 1, 1994' shall be deemed a reference to 'January 1, 2010';

"(ii) the reference to 'the date of the enactment of this section' in each of subsections (e)(1)(D) and (f)(1)(E)(iii) is deemed to be a reference to 'the date of the enactment of the Children's Health and Medicare Protection Act of 2007';

"(iii) the reference to 'annually' in subsection (g)(1)(E) is deemed a reference to 'every three years';

"(iv) the reference to 'October 1, 1996' in subsection (l) is deemed to be a reference to 'January 1, 2011';

"(v) the reference to 'October 1, 1999' in subsection (n)(3)(H) is deemed to be a reference to 'January 1, 2012'; and

1 "(vi) the reference to 'October 1,
2 1993' in the matter following paragraph
3 (3)(J) of subsection (n) is deemed to be a
4 reference 'January 1, 2010'.
5 "(B) ULTRASOUND SERVICES.—With re-
6 spect to diagnostic imaging services that are
7 ultrasounds—
8 "(i) any reference to 'October 1,
9 1994' shall be deemed a reference to 'Jan-
10 uary 1, 2012';
11 "(ii) the reference to 'the date of the
12 enactment of this section' in subsection
13 (f)(1)(E)(iii) is deemed to be a reference to
14 '7 years after the date of the enactment of
15 the Children's Health and Medicare Pro-
16 tection Act of 2007';
17 "(iii) the reference to 'October 1,
18 1996' in subsection (l) is deemed to be a
19 reference to 'January 1, 2013';
20 "(4) PROVISIONS NOT APPLICABLE.—For pur-
21 poses of paragraph (1), in applying section 354 of
22 the Public Health Service Act, the following provi-
23 sion shall not apply:
24 "(A) Subsections (e) and (f) of such sec-
25 tion, in so far as the respective subsection im-

1 poses any requirement for a physician to be cer-
2 tified, accredited, or otherwise meet require-
3 ments, with respect to the provision of any di-
4 agnostic imaging services, as a condition of pay-
5 ment under subsection (b)(4)(C)(i), with re-
6 spect to the professional or technical compo-
7 nent, for such service.

8 ''(B) Subsection (e)(1)(B)(iv) of such sec-
9 tion, insofar as it applies to a facility with re-
10 spect to the provision of ultrasounds.

11 ''(C) Subsection (e)(1)(B)(v).

12 ''(D) Subsection (f)(1)(H) of such section,
13 relating to standards for special techniques for
14 mammograms of patients with breast implants.

15 ''(E) Subsection (g)(6) of such section, re-
16 lating to an inspection demonstration program.

17 ''(F) Subsection (n)(3)(G) of such section,
18 relating to the national advisory committee.

19 ''(G) Subsection (p) of such section, relat-
20 ing to breast cancer screening surveillance re-
21 search grants.

22 ''(H) Paragraphs (1)(B) and (2) of sub-
23 section (r) of such section, related to funding.

"(5) ACCREDITATION BODIES.—For purposes of paragraph (1), in applying section 354(e)(1) of the Public Health Service, the following shall apply:

"(A) APPROVAL OF TWO ACCREDITATION BODIES FOR EACH TREATMENT MODALITY.—In the case that there is more than one accreditation body for a treatment modality that qualifies for approval under this subsection, the Secretary shall approve at least two accreditation bodies for such treatment modality.

"(B) ADDITIONAL ACCREDITATION BODY STANDARDS.—In addition to the standards described in subparagraph (B) of such section for accreditation bodies, the Secretary shall establish standards that require—

"(i) the timely integration of new technology by accreditation bodies for purposes of accrediting facilities under this subsection; and

"(ii) the accreditation body involved to evaluate the annual medical physicist survey (or annual medical survey of another appropriate qualified expert chosen by the accreditation body) of a facility upon on-site review of such facility.

1 "(6) ADDITIONAL QUALITY STANDARDS.—For
2 purposes of paragraph (1), in applying subsection
3 (f)(1) of section 354 of the Public Health Service—
4 "(A) the quality standards under such sub-
5 section shall, with respect to a facility include—
6 "(i) standards for qualifications of
7 medical personnel who are not physicians
8 and who perform diagnostic imaging serv-
9 ices at the facility that require such per-
10 sonnel to ensure that individuals, prior to
11 performing medical imaging, demonstrate
12 compliance with the standards established
13 under subsection (a) through successful
14 completion of certification by a nationally
15 recognized professional organization, licen-
16 sure, completion of an examination, perti-
17 nent coursework or degree program,
18 verified pertinent experience, or through
19 other ways determined appropriate by an
20 accreditation body (with the approval of
21 the Secretary, or through some combina-
22 tion thereof);
23 "(ii) standards requiring the facility
24 to maintain records of the credentials of

1 physicians and other medical personnel de-
2 scribed in clause (i);
3 ''(iii) standards for qualifications and
4 responsibilities of medical directors and
5 other personnel with supervising roles at
6 the facility;
7 ''(iv) standards that require the facil-
8 ity has procedures to ensure the safety of
9 patients of the facility; and
10 ''(v) standards for the establishment
11 of a quality control program at the facility
12 to be implemented as described in subpara-
13 graph (E) of such subsection;
14 ''(B) the quality standards described in
15 subparagraph (B) of such subsection shall be
16 deemed to include standards that require the
17 establishment and maintenance of a quality as-
18 surance and quality control program at each fa-
19 cility that is adequate and appropriate to en-
20 sure the reliability, clarity, and accuracy of the
21 technical quality of diagnostic images produced
22 at such facilities; and
23 ''(C) the quality standard described in sub-
24 paragraph (C) of such subsection, relating to a
25 requirement for personnel who perform speci-

fied services, shall include in such requirement that such personnel must meet continuing medical education standards as specified by an accreditation body (with the approval of the Secretary) and update such standards at least once every three years.

"(7) ADDITIONAL REQUIREMENTS.—Notwithstanding any provision of section 354 of the Public Health Service Act, the following shall apply to the accreditation process under this subsection for purposes of subsection (b)(4)(C)(i):

"(A) Any diagnostic imaging services facility accredited before January 1, 2010 (or January 1, 2012 in the case of ultrasounds), by an accrediting body approved by the Secretary shall be deemed a facility accredited by an approved accreditation body for purposes of such subsection as of such date if the facility submits to the Secretary proof of such accreditation by transmittal of the certificate of accreditation, including by electronic means.

"(B) The Secretary may require the accreditation under this subsection of an emerging technology used in the provision of a diagnostic imaging service as a condition of pay-

1 ment under subsection (b)(4)(C)(i) for such
2 service at such time as the Secretary deter-
3 mines there is sufficient empirical and scientific
4 information to properly carry out the accredita-
5 tion process for such technology.
6 ''(8) DEFINITIONS.—For purposes of this sub-
7 section:
8 ''(A) AUDIT.—The term 'audit' means an
9 onsite evaluation, with respect to a diagnostic
10 imaging services facility, by the Secretary, State
11 or local agency on behalf of the Secretary, or
12 accreditation body approved under this sub-
13 section that includes the following:
14 ''(i) Equipment verification.
15 ''(ii) Evaluation of policies and proce-
16 dures for compliance with accreditation re-
17 quirements.
18 ''(iii) Evaluation of personnel quali-
19 fications and credentialing.
20 ''(iv) Evaluation of the technical qual-
21 ity of images.
22 ''(v) Evaluation of patient reports.
23 ''(vi) Evaluation of peer-review mech-
24 anisms and other quality assurance activi-
25 ties.

"(vii) Evaluation of quality control procedures, results, and follow-up actions.

"(viii) Evaluation of medical physicists (or other appropriate professionals chosen by the accreditation body) and magnetic resonance scientist surveys.

"(ix) Evaluation of consumer complaint mechanisms.

"(x) Provision of recommendations for improvement based on findings with respect to clauses (i) through (ix).

"(B) DIAGNOSTIC IMAGING SERVICES FACILITY.—The term 'diagnostic imaging services facility' has the meaning given the term 'facility' in section 354(a)(3) of the Public Health Service Act (42 U.S.C. 263b(a)(3)) subject to the reference changes specified in paragraph (2), but does not include any facility that does not furnish diagnostic imaging services for which payment may be made under this section.

"(C) IMAGE.—The term 'image' means the portrayal of internal structures of the human body for the purpose of detecting and determining the presence or extent of disease or injury and may be produced through various

1 techniques or modalities, including radiant en-
2 ergy or ionizing radiation and ultrasound and
3 magnetic resonance. Such term does not include
4 image guided procedures.

5 ''(D) MEDICAL IMAGING SERVICE.—The
6 term 'medical imaging service' means a service
7 that involves the science of an image. Such
8 term does not include image guided proce-
9 dures.''.

10 (b) ADJUSTMENT IN PRACTICE EXPENSE TO RE-
11 FLECT HIGHER PRESUMED UTILIZATION.—Section 1848
12 of the Social Security Act (42 U.S.C. 1395w(b)(4)) is
13 amended—

14 (1) in subsection (b)(4)—

15 (A) in the heading, by striking ''RULE''
16 and inserting ''RULES'';

17 (B) in subparagraph (B), by striking ''sub-
18 paragraph (A)'' and inserting ''this paragraph'';
19 and

20 (C) by adding at the end the following new
21 subparagraph:

22 ''(C) ADJUSTMENT IN PRACTICE EXPENSE
23 TO REFLECT HIGHER PRESUMED UTILIZA-
24 TION.—In computing the number of practice
25 expense relative value units under subsection

(c)(2)(C)(ii) with respect to imaging services described in subparagraph (B), the Secretary shall adjust such number of units so it reflects a 75 percent (rather than 50 percent) presumed rate of utilization of imaging equipment.''; and

(2) in subsection (c)(2)(B)(v)(II), by inserting ''AND OTHER PROVISIONS'' after ''OPD PAYMENT CAP''

(c) ADJUSTMENT IN TECHNICAL COMPONENT ''DISCOUNT'' ON SINGLE-SESSION IMAGING TO CONSECUTIVE BODY PARTS.—Section 1848(b)(4) of such Act is further amended by adding at the end the following new subparagraph:

''(D) ADJUSTMENT IN TECHNICAL COMPONENT DISCOUNT ON SINGLE-SESSION IMAGING INVOLVING CONSECUTIVE BODY PARTS.—The Secretary shall increase the reduction in expenditures attributable to the multiple procedure payment reduction applicable to the technical component for imaging under the final rule published by the Secretary in the Federal Register on November 21, 2005 (42 C.F.R. 405, et al.) from 25 percent to 50 percent.''.

(d) ADJUSTMENT IN ASSUMED INTEREST RATE FOR CAPITAL PURCHASES.—Section 1848(b)(4) of such Act is

further amended by adding at the end the following new subparagraph:

"(E) ADJUSTMENT IN ASSUMED INTEREST RATE FOR CAPITAL PURCHASES.—In computing the practice expense component for imaging services under this section, the Secretary shall change the interest rate assumption for capital purchases of imaging devices to reflect the prevailing rate in the market, but in no case higher than 11 percent.".

(e) DISALLOWANCE OF GLOBAL BILLING.—Effective for claims filed for imaging services (as defined in subsection (b)(4)(B) of section 1848 of the Social Security Act) furnished on or after the first day of the first month that begins more than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall not accept (or pay) a claim under such section unless the claim is made separately for each component of such services.

(f) EFFECTIVE DATE.—Except as otherwise provided, this section, and the amendments made by this section, shall apply to services furnished on or after January 1, 2008.

**SEC. 310. REPEAL OF PHYSICIANS ADVISORY COUNCIL.**

Section 1868(a) of the Social Security Act (42 U.S.C. 1395ee(a)), relating to the Practicing Physicians Advisory Council, is repealed.

# TITLE IV—MEDICARE ADVANTAGE REFORMS

## Subtitle A—Payment Reform

**SEC. 401. EQUALIZING PAYMENTS BETWEEN MEDICARE ADVANTAGE PLANS AND FEE-FOR-SERVICE MEDICARE.**

(a) PHASE IN OF PAYMENT BASED ON FEE-FOR-SERVICE COSTS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended—

(1) in subsection (j)(1)(A)—

(A) by striking ''beginning with 2007'' and inserting ''for 2007 and 2008''; and

(B) by inserting after ''(k)(1)'' the following: '', or, beginning with 2009, 1/12 of the blended benchmark amount determined under subsection (l)(1)''; and

(2) by adding at the end the following new subsection:

''(l) DETERMINATION OF BLENDED BENCHMARK AMOUNT.—

"(1) IN GENERAL.—For purposes of subsection (j), subject to paragraphs (2) and (3), the term 'blended benchmark amount' means for an area—

"(A) for 2009 the sum of—

"(i) ⅔ of the applicable amount (as defined in subsection (k)(1)) for the area and year; and

"(ii) ⅓ of the amount specified in subsection (c)(1)(D)(i) for the area and year;

"(B) for 2010 the sum of—

"(i) ⅓ of the applicable amount for the area and year; and

"(ii) ⅔ of the amount specified in subsection (c)(1)(D)(i) for the area and year; and

"(C) for a subsequent year the amount specified in subsection (c)(1)(D)(i) for the area and year.

"(2) FEE-FOR-SERVICE PAYMENT FLOOR.—In no case shall the blended benchmark amount for an area and year be less than the amount specified in subsection (c)(1)(D)(i) for the area and year.

"(3) EXCEPTION FOR PACE PLANS.—This subsection shall not apply to payments to a PACE program under section 1894.".

(b) PHASE IN OF PAYMENT BASED ON IME COSTS.—

(1) IN GENERAL.—Section 1853(c)(1)(D)(i) of such Act (42 U.S.C. 1395w–23(c)(1)(D)(i)) is amended by inserting "and costs attributable to payments under section 1886(d)(5)(B)" after "1886(h)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to the capitation rate for years beginning with 2009.

(c) LIMITATION ON PLAN ENROLLMENT IN CASES OF EXCESS BIDS FOR 2009 AND 2010.—

(1) IN GENERAL.—In the case of a Medicare Part C organization that offers a Medicare Part C plan in the 50 States or the District of Columbia for which—

(A) bid amount described in paragraph (2) for a Medicare Part C plan for 2009 or 2010, exceeds

(B) the percent specified in paragraph (4) of the fee-for-service amount described in paragraph (3),

1 the Medicare Part C plan may not enroll any new
2 enrollees in the plan during the annual, coordinated
3 election period (under section 1851(e)(3)(B) of such
4 Act (42 U.S.C. 1395w–21(e)(3)(B)) for the year or
5 during the year (if the enrollment becomes effective
6 during the year).

7 (2) BID AMOUNT FOR PART A AND B SERV-
8 ICES.—

9 (A) IN GENERAL.—Except as provided in
10 subparagraph (B), the bid amount described in
11 this paragraph is the unadjusted Medicare Part
12 C statutory non-drug monthly bid amount (as
13 defined in section 1854(b)(2)(E) of the Social
14 Security Act (42 U.S.C. 1395w–24(b)(2)(E)).

15 (B) TREATMENT OF MSA PLANS.—In the
16 case of an MSA plan (as defined in section
17 1859(b)(3) of the Social Security Act, 42
18 U.S.C. 1935w–28(b)(3)), the bid amount de-
19 scribed in this paragraph is the amount de-
20 scribed in section 1854(a)(3)(A) of such Act
21 (42 U.S.C. 1395w–24(a)(3)(A)).

22 (3) FEE-FOR-SERVICE AMOUNT DESCRIBED.—

23 (A) IN GENERAL.—Subject to subpara-
24 graph (B), the fee-for-service amount described
25 in this paragraph for an Medicare Part C local

area is the amount described in section 1853(c)(1)(D)(i) of the Social Security Act (42 U.S.C. 1395w–23) for such area.

(B) TREATMENT OF MULTI-COUNTY PLANS.—In the case of an MA plan the service area for which covers more than one Medicare Part C local area, the fee-for-service amount described in this paragraph is the amount described in section 1853(c)(1)(D)(i) of the Social Security Act for each such area served, weighted for each such area by the proportion of the enrollment of the plan that resides in the county (as determined based on amounts posted by the Administrator of the Centers for Medicare & Medicaid Services in the April bid notice for the year involved).

(4) PERCENTAGE PHASE DOWN.—For purposes of paragraph (1), the percentage specified in this paragraph—

(A) for 2009 is 106 percent; and

(B) for 2010 is 103 percent.

(5) EXEMPTION OF AGE-INS.—For purposes of paragraph (1), the term ''new enrollee'' with respect to a Medicare Part C plan offered by a Medicare Part C organization, does not include an individual

who was enrolled in a plan offered by the organization in the month immediately before the month in which the individual was eligible to enroll in such a Medicare Part C plan offered by the organization.

(d) ANNUAL REBASING OF FEE-FOR-SERVICE RATES.—Section 1853(c)(1)(D)(ii) of the Social Security Act (42 U.S.C. 1395w–23(c)(1)(D)(ii)) is amended—

(1) by inserting ''(before 2009)'' after ''for subsequent years''; and

(2) by inserting before the period at the end the following: ''and for each year beginning with 2009''.

(e) REPEAL OF PPO STABILIZATION FUND.—Section 1858 of the Social Security Act (42 U.S.C. 1395) is amended—

(1) by striking subsection (e); and

(2) in subsection (f)(1), by striking ''subject to subsection (e),''.

# Subtitle B—Beneficiary Protections

## SEC. 411. NAIC DEVELOPMENT OF MARKETING, ADVERTISING, AND RELATED PROTECTIONS.

(a) IN GENERAL.—Section 1852 of the Social Security Act (42 U.S.C. 1395w–22) is amended by adding at the end the following new subsection:

''(m) APPLICATION OF MODEL MARKETING AND ENROLLMENT STANDARDS.—

1 "(1) IN GENERAL.—The National Association
2 of Insurance Commissioners (in this subsection re-
3 ferred to as the 'NAIC') is requested to develop, and
4 to submit to the Secretary of Health and Human
5 Services not later than 12 months after the date of
6 the enactment of this Act, model regulations (in this
7 section referred to as 'model regulations') regarding
8 Medicare plan marketing, enrollment, broker and
9 agent training and certification, agent and broker
10 commissions, and market conduct by plans, agents
11 and brokers for implementation (under paragraph
12 (7)) under this part and part D, including for en-
13 forcement by States under section 1856(b)(3).
14 "(2) MARKETING GUIDELINES.—
15 "(A) IN GENERAL.—The model regulations
16 shall address the sales and advertising tech-
17 niques used by Medicare private plans, agents
18 and brokers in selling plans, including defining
19 and prohibiting cold calls, unsolicited door-to-
20 door sales, cross-selling, and co-branding.
21 "(B) SPECIAL CONSIDERATIONS.—The
22 model regulations shall specifically address the
23 marketing—

1 "(i) of plans to full benefit dual-eligi-
2 ble individuals and qualified medicare
3 beneficiaries;
4 "(ii) of plans to populations with lim-
5 ited English proficiency;
6 "(iii) of plans to beneficiaries in sen-
7 ior living facilities; and
8 "(iv) of plans at educational events.
9 "(3) ENROLLMENT GUIDELINES.—
10 "(A) IN GENERAL.—The model regulations
11 shall address the disclosures Medicare private
12 plans, agents, and brokers must make when en-
13 rolling beneficiaries, and a process—
14 "(i) for affirmative beneficiary sign
15 off before enrollment in a plan; and
16 "(ii) in the case of Medicare Part C
17 plans, for plans to conduct a beneficiary
18 call-back to confirm beneficiary sign off
19 and enrollment.
20 "(B) SPECIFIC CONSIDERATIONS.—The
21 model regulations shall specially address bene-
22 ficiary understanding of the Medicare plan
23 through required disclosure (or beneficiary
24 verification) of each of the following:

1 "(i) The type of Medicare private plan
2 involved.
3 "(ii) Attributes of the plan, including
4 premiums, cost sharing, formularies (if ap-
5 plicable), benefits, and provider access lim-
6 itations in the plan.
7 "(iii) Comparative quality of the plan.
8 "(iv) The fact that plan attributes
9 may change annually.
10 "(4) APPOINTMENT, CERTIFICATION AND
11 TRAINING OF AGENTS AND BROKERS.—The model
12 regulations shall establish procedures and require-
13 ments for appointment, certification (and periodic
14 recertification), and training of agents and brokers
15 that market or sell Medicare private plans consistent
16 with existing State appointment and certification
17 procedures and with this paragraph.
18 "(5) AGENT AND BROKER COMMISSIONS.—
19 "(A) IN GENERAL.—The model regulations
20 shall establish standards for fair and appro-
21 priate commissions for agents and brokers con-
22 sistent with this paragraph.
23 "(B) LIMITATION ON TYPES OF COMMIS-
24 SION.—The model regulations shall specifically
25 prohibit the following:

1 "(i) Differential commissions—
2 "(I) for Medicare Part C plans
3 based on the type of Medicare private
4 plan; or
5 "(II) prescription drug plans
6 under part D based on the type of
7 prescription drug plan.
8 "(ii) Commissions in the first year
9 that are more than 200 percent of subse-
10 quent year commissions.
11 "(iii) The payment of extra bonuses
12 or incentives (such as trips, gifts, and
13 other non-commission cash payments).
14 "(C) AGENT DISCLOSURE.—In developing
15 the model regulations, the NAIC shall consider
16 requiring agents and brokers to disclose com-
17 missions to a beneficiary upon request of the
18 beneficiary before enrollment.
19 "(D) PREVENTION OF FRAUD.—The model
20 regulations shall consider the opportunity for
21 fraud and abuse and beneficiary steering in set-
22 ting standards under this paragraph and shall
23 provide for the ability of State commissioners to
24 investigate commission structures.
25 "(6) MARKET CONDUCT.—

1 "(A) IN GENERAL.—The model regulations
2 shall establish standards for the market con-
3 duct of organizations offering Medicare private
4 plans, and of agents and brokers selling such
5 plans, and for State review of plan market con-
6 duct.
7 "(B) MATTERS TO BE INCLUDED.—Such
8 standards shall include standards for—
9 "(i) timely payment of claims;
10 "(ii) beneficiary complaint reporting
11 and disclosure; and
12 "(iii) State reporting of market con-
13 duct violations and sanctions.
14 "(7) IMPLEMENTATION.—
15 "(A) PUBLICATION OF NAIC MODEL REGU-
16 LATIONS.—If the model regulations are sub-
17 mitted on a timely basis under paragraph (1)—
18 "(i) the Secretary shall publish them
19 in the Federal Register upon receipt and
20 request public comment on the issue of
21 whether such regulations are consistent
22 with the requirements established in this
23 subsection for such regulations;
24 "(ii) not later than 6 months after the
25 date of such publication, the Secretary

shall determine whether such regulations are so consistent with such requirements and shall publish notice of such determination in the Federal Register; and

"(iii) if the Secretary makes the determination under clause (ii) that such regulations are consistent with such requirements, in the notice published under clause (ii) the Secretary shall publish notice of adoption of such model regulations as constituting the marketing and enrollment standards adopted under this subsection to be applied under this title; and

"(iv) if the Secretary makes the determination under such clause that such regulations are not consistent with such requirements, the procedures of clauses (ii) and (iii) of subparagraph (B) shall apply (in relation to the notice published under clause (ii)), in the same manner as such clauses would apply in the case of publication of a notice under subparagraph (B)(i).

"(B) NO MODEL REGULATIONS.—If the model regulations are not submitted on a timely basis under paragraph (1)—

"(i) the Secretary shall publish notice of such fact in the Federal Register;

"(ii) not later than 6 months after the date of publication of such notice, the Secretary shall propose regulations that provide for marketing and enrollment standards that incorporate the requirements of this subsection for the model regulations and request public comments on such proposed regulations; and

"(iii) not later than 6 months after the date of publication of such proposed regulations, the Secretary shall publish final regulations that shall constitute the marketing and enrollment standards adopted under this subsection to be applied under this title.

"(C) REFERENCES TO MARKETING AND ENROLLMENT STANDARDS.—In this title, a reference to marketing and enrollment standards adopted under this subsection is deemed a reference to the regulations constituting such standards adopted under subparagraph (A) or (B), as the case may be.

1 "(D) EFFECTIVE DATE OF STANDARDS.—
2 In order to provide for the orderly and timely
3 implementation of marketing and enrollment
4 standards adopted under this subsection, the
5 Secretary, in consultation with the NAIC, shall
6 specify (by program instruction or otherwise)
7 effective dates with respect to all components of
8 such standards consistent with the following:
9 "(i) In the case of components that
10 relate predominantly to operations in rela-
11 tion to Medicare private plans, the effective
12 date shall be for plan years beginning on
13 or after such date (not later than 1 year
14 after the date of promulgation of the
15 standards) as the Secretary specifies.
16 "(ii) In the case of other components,
17 the effective date shall be such date, not
18 later than 1 year after the date of promul-
19 gation of the standards, as the Secretary
20 specifies.
21 "(E) CONSULTATION.— In promulgating
22 marketing and enrollment standards under this
23 paragraph, the NAIC or Secretary shall consult
24 with a working group composed of representa-
25 tives of issuers of Medicare private plans, con-

1 sumer groups, medicare beneficiaries, State
2 Health Insurance Assistance Programs, and
3 other qualified individuals. Such representatives
4 shall be selected in a manner so as to assure
5 balanced representation among the interested
6 groups.
7 "(8) ENFORCEMENT.—
8 "(A) IN GENERAL.—Any Medicare private
9 plan that violates marketing and enrollment
10 standards is subject to sanctions under section
11 1857(g).
12 "(B) STATE RESPONSIBILITIES.—Nothing
13 in this subsection or section 1857(g) shall pro-
14 hibit States from imposing sanctions against
15 Medicare private plans, agents, or brokers for
16 violations of the marketing and enrollment
17 standards adopted under section 1852(m).
18 States shall have the sole authority to regulate
19 agents and brokers.
20 "(9) MEDICARE PRIVATE PLAN DEFINED.—In
21 this subsection, the term 'Medicare private plan'
22 means a Medicare Part C plan and a prescription
23 drug plan under part D.".
24 (b) EXPANSION OF EXCEPTION TO PREEMPTION OF
25 STATE ROLE.—

1 (1) IN GENERAL.—Section 1856(b)(3) of the
2 Social Security Act (42 U.S.C. 1395w–26(b)(3)) is
3 amended by striking ''(other than State licensing
4 laws or State laws relating to plan solvency)'' and
5 inserting ''(other than State laws relating to licens-
6 ing or plan solvency and State laws or regulations
7 adopting the marketing and enrollment standards
8 adopted under section 1852(m)).''.
9 (2) EFFECTIVE DATE.—The amendment made
10 by paragraph (1) shall apply to plans offered on or
11 after July 1, 2008.
12 (c) APPLICATION TO PRESCRIPTION DRUG PLANS.—
13 (1) IN GENERAL.—Section 1860D–1 of such
14 Act is amended by adding at the end the following
15 new subsection:
16 ''(d) APPLICATION OF MARKETING AND ENROLL-
17 MENT STANDARDS.—The marketing and enrollment
18 standards adopted under section 1852(m) shall apply to
19 prescription drug plans (and sponsors of such plans) in
20 the same manner as they apply to Medicare Part C plans
21 and organizations offering such plans.''.
22 (2) REFERENCE TO CURRENT LAW PROVI-
23 SIONS.—The amendment made by subsection (a)
24 and (b) apply, pursuant to section 1860D–
25 1(b)(1)(B)(ii) of the Social Security Act (42 U.S.C.

1395w–101(b)(1)(B)(ii)), to prescription drug plans under part D of title XVIII of such Act.

(d) CONTRACT REQUIREMENT TO MEET MARKETING AND ADVERTISING STANDARDS.—

(1) IN GENERAL.—Section 1857(d) of the Social Security Act (42 U.S.C. 1395w–27(d)), as amended by subsection (b)(1), is further amended by adding at the end the following new paragraph:

"(7) MARKETING AND ADVERTISING STANDARDS.—The contract shall require the organization to meet all standards adopted under section 1852(m) (including those enforced by the State involved pursuant to section 1856(b)(3)) relating to marketing and advertising conduct".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contracts for plan years beginning on or after January 1, 2011.

(e) APPLICATION OF SANCTIONS.—

(1) APPLICATION TO VIOLATION OF MARKETING AND ENROLLMENT STANDARDS.—Section 1857(g) of such Act (42 U.S.C. 1395w–27(g)) is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by adding "or" at the end of subparagraph (G); and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) violates marketing and enrollment standards adopted under section 1852(m);".

(2) ENHANCED CIVIL MONEY SANCTIONS.—Such section is further amended—

(A) in paragraph (2)(A), by striking "$25,000", "$100,000", and "$15,000" and inserting "$50,000", "$200,000", and "$30,000", respectively; and

(B) in subparagraphs (A), (B), and (D) of paragraph (3), by striking "$25,000", "$10,000", and "$100,000", respectively, and inserting "$50,000", "$20,000", and "$200,000", respectively.

(3) EFFECTIVE DATE.—The amendments made by paragraph (2) shall apply to violations occurring on or after the date of the enactment of this Act.

(f) DISCLOSURE OF MARKET AND ADVERTISING CONTRACT VIOLATIONS AND IMPOSED SANCTIONS.—Section 1857 of such Act is amended by adding at the end the following new subsection

"(j) DISCLOSURE OF MARKET AND ADVERTISING CONTRACT VIOLATIONS AND IMPOSED SANCTIONS.—For years beginning with 2009, the Secretary shall post on its

1 public website for the Medicare program an annual report
2 that—
3 "(1) lists each MA organization for which the
4 Secretary made during the year a determination
5 under subsection (c)(2) the basis of which is de-
6 scribed in paragraph (1)(E); and
7 "(2) that describes any applicable sanctions
8 under subsection (g) applied to such organization
9 pursuant to such determination.".
10 (g) STANDARD DEFINITIONS OF BENEFITS AND
11 FORMATS FOR USE IN MARKETING MATERIALS.—Section
12 1851(h) of such Act (42 U.S.C. 1395w–21(h)) is amended
13 by adding at the end the following new paragraph:
14 "(6) STANDARD DEFINITIONS OF BENEFITS
15 AND FORMATS FOR USE IN MARKETING MATE-
16 RIALS.—
17 "(A) IN GENERAL.—Not later than Janu-
18 ary 1, 2010, the Secretary, in consultation with
19 the National Association of Insurance Commis-
20 sioners and a working group of the type de-
21 scribed in section 1852(m)(7)(E), shall develop
22 standard descriptions and definitions for bene-
23 fits under this title for use in marketing mate-
24 rial distributed by Medicare Part C organiza-

tions and formats for including such descriptions in such marketing material.

"(B) REQUIRED USE OF STANDARD DEFINITIONS.— For plan years beginning on or after January 1, 2011, the Secretary shall disapprove the distribution of marketing material under paragraph (1)(B) if such marketing material does not use, without modification, the applicable descriptions and formats specified under subparagraph (A).".

(h) SUPPORT FOR STATE HEALTH INSURANCE ASSISTANCE PROGRAMS (SHIPS).—Section 1857(e)(2) of the Social Security Act (42 U.S.C. 1395w–27(e)(2)) is amended—

(1) in subparagraph (B), by adding at the end the following: "Of the amounts so collected, no less than $55,000,000 for fiscal year 2009, $65,000,000 for fiscal year 2010, $75,000,000 for fiscal year 2011, and $85,000,000 for fiscal year 2012 shall be used to support Medicare Part C and Part D counseling and assistance provided by State Health Insurance Assistance Programs.";

(2) in subparagraph (C)—

(A) by striking "and" after "$100,000,000"; and

(B) by striking ''an amount equal to $200,000,000'' and inserting ''and ending with fiscal year 2008 an amount equal to $200,000,000, for fiscal year 2009 an amount equal to $255,000,000, for fiscal year 2010 an amount equal to $265,000,000, for fiscal year 2011 an amount equal to $275,000,000, and for fiscal year 2012 an amount equal to $285,000,000''; and

(3) in subparagraph (D)(ii)—

(A) by striking ''and'' at the end of subclause (IV);

(B) in subclause (V), by striking the period at the end and inserting ''before fiscal year 2009; and''; and

(C) by adding at the end the following new subclauses:

''(VI) for fiscal year 2009 and each succeeding fiscal year the applicable portion (as so defined) of the amount specified in subparagraph (C) for that fiscal year.''.

**SEC. 412. LIMITATION ON OUT-OF-POCKET COSTS FOR INDIVIDUAL HEALTH SERVICES.**

(a) IN GENERAL.—Section 1852(a)(1) of the Social Security Act (42 U.S.C. 1395w–22(a)(1)) is amended—

(1) in subparagraph (A), by inserting before the period at the end the following: ''with cost-sharing that is no greater (and may be less) than the cost-sharing that would otherwise be imposed under such program option'';

(2) in subparagraph (B)(i), by striking '' or an actuarially equivalent level of cost-sharing as determined in this part''; and

(3) by amending clause (ii) of subparagraph (B) to read as follows:

''(ii) PERMITTING USE OF FLAT CO-PAYMENT OR PER DIEM RATE.—Nothing in clause (i) shall be construed as prohibiting a Medicare part C plan from using a flat copayment or per diem rate, in lieu of the cost-sharing that would be imposed under part A or B, so long as the amount of the cost-sharing imposed does not exceed the amount of the cost-sharing that would be imposed under the respective part if the individual were not enrolled in a plan under this part.''.

(b) LIMITATION FOR DUAL ELIGIBLES AND QUALIFIED MEDICARE BENEFICIARIES.—Section 1852(a) of

1 such Act is amended by adding at the end the following
2 new paragraph:

3 "(7) LIMITATION ON COST-SHARING FOR DUAL
4 ELIGIBLES AND QUALIFIED MEDICARE BENE-
5 FICIARIES.—In the case of a individual who is a full-
6 benefit dual eligible individual (as defined in section
7 1935(c)(6)) or a qualified medicare beneficiary (as
8 defined in section 1905(p)(1)) who is enrolled in a
9 Medicare Part C plan, the plan may not impose
10 cost-sharing that exceeds the amount of cost-sharing
11 that would be permitted with respect to the indi-
12 vidual under this title and title XIX if the individual
13 were not enrolled with such plan.".

14 (c) EFFECTIVE DATES.—

15 (1) The amendments made by subsection (a)
16 shall apply to plan years beginning on or after Janu-
17 ary 1, 2009.

18 (2) The amendments made by subsection (b)
19 shall apply to plan years beginning on or after Janu-
20 ary 1, 2008.

21 **SEC. 413. MA PLAN ENROLLMENT MODIFICATIONS.**

22 (a) IMPROVED PLAN ENROLLMENT,
23 DISENROLLMENT, AND CHANGE OF ENROLLMENT.—

24 (1) CONTINUOUS OPEN ENROLLMENT FOR
25 FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS AND

1 QUALIFIED MEDICARE BENEFICIARIES (QMB).—Sec-
2 tion 1851(e)(2)(D) of the Social Security Act (42
3 U.S.C. 1395w–21(e)(2)(D)) is amended—
4 (A) in the heading, by inserting ;'', FULL-
5 BENEFIT DUAL ELIGIBLE INDIVIDUALS, AND
6 QUALIFIED MEDICARE BENEFICIARIES'' after
7 ''INSTITUTIONALIZED INDIVIDUALS''; and
8 (B) in the matter before clause (i), by in-
9 serting '', a full-benefit dual eligible individual
10 (as defined in section 1935(c)(6)), or a quali-
11 fied medicare beneficiary (as defined in section
12 1905(p)(1))'' after ''institutionalized (as defined
13 by the Secretary)''; and
14 (C) in clause (i), by inserting ''or
15 disenroll'' after ''enroll''.
16 (2) SPECIAL ELECTION PERIODS FOR ADDI-
17 TIONAL CATEGORIES OF INDIVIDUALS.—Section
18 1851(e)(4) of such Act (42 U.S.C. 1395w(e)(4)) is
19 amended—
20 (A) in subparagraph (C), by striking at the
21 end ''or'';
22 (B) in subparagraph (D), by inserting '',
23 taking into account the health or well-being of
24 the individual'' before the period and redesig-

1 nating such subparagraph as subparagraph (G);
2 and
3 (C) by inserting after subparagraph (C)
4 the following new subparagraphs:
5 ''(D) the individual is described in section
6 1902(a)(10)(E)(iii) (relating to specified low-in-
7 come medicare beneficiaries); or
8 ''(E) the individual is enrolled in an MA
9 plan and enrollment in the plan is suspended
10 under paragraph (2)(B) or (3)(C) of section
11 1857(g) because of a failure of the plan to meet
12 applicable requirements.''.
13 (3) ELIMINATION OF CONTINUOUS OPEN EN-
14 ROLLMENT OF ORIGINAL FEE-FOR-SERVICE ENROLL-
15 EES IN MEDICARE ADVANTAGE NON-PRESCRIPTION
16 DRUG PLANS.—Subparagraph (E) of section
17 1851(e)(2) of the Social Security Act, as added by
18 section 206 of division B of the Tax Relief and
19 Health Care Act of 2006 (Public Law 109–432), is
20 repealed.
21 (4) EFFECTIVE DATE.—The amendments made
22 by this subsection shall take effect on the date of the
23 enactment of this Act.
24 (b) ACCESS TO MEDIGAP COVERAGE FOR INDIVID-
25 UALS WHO LEAVE MA PLANS.—

1 (1) IN GENERAL.—Section 1882(s)(3) of the
2 Social Security Act (42 U.S.C. 1395ss(s)(3)) is
3 amended—
4 (A) in each of clauses (v)(III) and (vi) sub-
5 paragraph (B), by striking ''12 months'' and
6 inserting ''24 months''; and
7 (B) in each of subclauses (I) and (II) of
8 subparagraph (F)(i), by striking ''12 months''
9 and inserting ''24 months''.
10 (2) EFFECTIVE DATE.—The amendments made
11 by paragraph (1) shall apply to terminations of en-
12 rollments in MA plans occurring on or after the date
13 of the enactment of this Act.
14 (c) IMPROVED ENROLLMENT POLICIES.—
15 (1) NO AUTO-ENROLLMENT OF MEDICAID
16 BENEFICIARIES.—
17 (A) IN GENERAL.—Section 1851(e) of such
18 Act (42 U.S.C. 1395w–21(e)) is amended by
19 adding at the end the following new paragraph:
20 ''(7) NO AUTO-ENROLLMENT OF MEDICAID
21 BENEFICIARIES.—In no case may the Secretary pro-
22 vide for the enrollment in a MA plan of a Medicare
23 Advantage eligible individual who is eligible to re-
24 ceive medical assistance under title XIX as a full-
25 benefit dual eligible individual or a qualified medi-

care beneficiary, without the affirmative application of such individual (or authorized representative of the individual) to be enrolled in such plan.''.

(B) NO APPLICATION TO PRESCRIPTION DRUG PLANS.—Section 1860D–1(b)(1)(B)(iii) of such Act (42 U.S.C. 1395w–101(b)(1)(B)(iii)) is amended—

(i) by striking ''paragraph (2) and'' and by inserting ''paragraph (2),''; and

(ii) by inserting '', and paragraph (7),'' after ''paragraph (4)''.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to enrollments that are effective on or after the date of the enactment of this Act.

**SEC. 414. INFORMATION FOR BENEFICIARIES ON MA PLAN ADMINISTRATIVE COSTS.**

(a) DISCLOSURE OF MEDICAL LOSS RATIOS AND OTHER EXPENSE DATA.—Section 1851 of the Social Security Act (42 U.S.C. 1395w–21) is amended by adding at the end the following new subsection:

''(j) PUBLICATION OF MEDICAL LOSS RATIOS AND OTHER COST-RELATED INFORMATION.—

''(1) IN GENERAL.—The Secretary shall publish, not later than October 1 of each year (begin-

1 ning with 2009), for each Medicare Part C plan con-
2 tract, the following:
3 "(A) The medical loss ratio of the plan in
4 the previous year.
5 "(B) The per enrollee payment under this
6 part to the plan, as adjusted to reflect a risk
7 score (based on factors described in section
8 1853(a)(1)(C)(i)) of 1.0.
9 "(C) The average risk score (as so based).
10 "(2) SUBMISSION OF DATA.—
11 "(A) IN GENERAL.—Each Medicare Part C
12 organization shall submit to the Secretary, in a
13 form and manner specified by the Secretary,
14 data necessary for the Secretary to publish the
15 information described in paragraph (1) on a
16 timely basis, including the information de-
17 scribed in paragraph (3).
18 "(B) DATA FOR 2008 AND 2009.—The data
19 submitted under subparagraph (A) for 2008
20 and for 2009 shall be consistent in content with
21 the data reported as part of the Medicare Part
22 C plan bid in June 2007 for 2008.
23 "(C) MEDICAL LOSS RATIO DATA.—The
24 data to be submitted under subparagraph (A)
25 relating to medical loss ratio for a year—

1 "(i) shall be submitted not later than
2 June 1 of the following year; and
3 "(ii) beginning with 2010, shall be
4 submitted based on the standardized ele-
5 ments and definitions developed under
6 paragraph (4).
7 "(D) AUDITED DATA.—Data submitted
8 under this paragraph shall be data that has
9 been audited by an independent third party
10 auditor.
11 "(3) MLR INFORMATION.—The information de-
12 scribed in this paragraph with respect to a Medicare
13 Part C plan for a year is as follows:
14 "(A) The costs for the plan in the previous
15 year for each of the following:
16 "(i) Total medical expenses, sepa-
17 rately indicated for benefits for the original
18 medicare fee-for-service program option
19 and for supplemental benefits.
20 "(ii) Non-medical expenses, shown
21 separately for each of the following cat-
22 egories of expenses:
23 "(I) Marketing and sales.
24 "(II) Direct administration.
25 "(III) Indirect administration.

1 "(IV) Net cost of private reinsur-
2 ance.
3 "(B) Gain or loss margin.
4 "(C) Total revenue requirement, computed
5 as the total of medical and nonmedical expenses
6 and gain or loss margin, multiplied by the gain
7 or loss margin.
8 "(D) Percent of revenue ratio, computed
9 as the total revenue requirement expressed as a
10 percentage of revenue.
11 "(4) DEVELOPMENT OF DATA REPORTING
12 STANDARDS.—
13 "(A) IN GENERAL.—The Secretary shall
14 develop and implement standardized data ele-
15 ments and definitions for reporting under this
16 subsection, for contract years beginning with
17 2010, of data necessary for the calculation of
18 the medical loss ratio for Medicare Part C
19 plans. Not later than December 31, 2008, the
20 Secretary shall publish a report describing the
21 elements and definitions so developed.
22 "(B) CONSULTATION.—The Secretary
23 shall consult with representatives of Medicare
24 Part C organizations, experts on health plan ac-
25 counting systems, and representatives of the

National Association of Insurance Commissioners, in the development of such data elements and definitions

"(5) MEDICAL LOSS RATIO DEFINED.—For purposes of this part, the term 'medical loss ratio' means, with respect to an MA plan for a year, the ratio of—

"(A) the aggregate benefits (excluding nonmedical expenses described in paragraph (3)(A)(ii)) paid under the plan for the year, to

"(B) the aggregate amount of premiums (including basic and supplemental beneficiary premiums) and payments made under sections 1853 and 1860D–15) collected for the plan and year.

Such ratio shall be computed without regard to whether the benefits or premiums are for required or supplemental benefits under the plan.".

(b) AUDIT OF ADMINISTRATIVE COSTS AND COMPLIANCE WITH THE FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—Section 1857(d)(2)(B) of such Act (42 U.S.C. 1395w–27(d)(2)(B)) is amended—

(A) by striking "or (ii)" and inserting "(ii)"; and

1 (B) by inserting before the period at the
2 end the following: ‘‘, or (iii) to compliance with
3 the requirements of subsection (e)(4) and the
4 extent to which administrative costs comply
5 with the applicable requirements for such costs
6 under the Federal Acquisition Regulation’’.
7 (2) EFFECTIVE DATE.—The amendments made
8 by this subsection shall apply for contract years be-
9 ginning after the date of the enactment of this Act.
10 (c) MINIMUM MEDICAL LOSS RATIO.—Section
11 1857(e) of the Social Security Act (42 U.S.C. 1395w–
12 27(e)) is amended by adding at the end the following new
13 paragraph:
14 ‘‘(4) REQUIREMENT FOR MINIMUM MEDICAL
15 LOSS RATIO.—If the Secretary determines for a con-
16 tract year (beginning with 2010) that an MA plan
17 has failed to have a medical loss ratio (as defined in
18 section 1851(j)(4)) of at least .85—
19 ‘‘(A) for that contract year, the Secretary
20 shall reduce the blended benchmark amount
21 under subsection (l) for the second succeeding
22 contract year by the numer of percentage points
23 by which such loss ratio was less than 85 per-
24 cent;

"(B) for 3 consecutive contract years, the Secretary shall not permit the enrollment of new enrollees under the plan for coverage during the second succeeding contract year; and

"(C) the Secretary shall terminate the plan contract if the plan fails to have such a medical loss ratio for 5 consecutive contract years.".

(d) INFORMATION ON MEDICARE PART C PLAN ENROLLMENT AND SERVICES.—Section 1851 of such Act, as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(k) PUBLICATION OF ENROLLMENT AND OTHER INFORMATION.—

"(1) MONTHLY PUBLICATION OF PLAN-SPECIFIC ENROLLMENT DATA.—The Secretary shall publish (on the public website of the Centers for Medicare & Medicaid Services or otherwise) not later than 30 days after the end of each month (beginning with January 2008) on the actual enrollment in each Medicare Part C plan by contract and by county.

"(2) AVAILABILITY OF OTHER INFORMATION.—The Secretary shall make publicly available data and other information in a format that may be readily used for analysis of the Medicare Part C program under this part and will contribute to the under-

1 standing of the organization and operation of such
2 program.''.
3 (e) MEDPAC REPORT ON VARYING MINIMUM MED-
4 ICAL LOSS RATIOS.—
5 (1) STUDY.—The Medicare Payment Advisory
6 Commission shall conduct a study of the need and
7 feasibility ofproviding for different minimum medical
8 loss ratios for different types of Medicare Part C
9 plans, including coordinated care plans, group model
10 plans, coordinated care independent practice associa-
11 tion plans, preferred provider organization plans,
12 and private fee-for-services plans.
13 (2) REPORT.—Not later than 1 year after the
14 date of the enactment of this Act, submit to Con-
15 gress a report on the study conducted under para-
16 graph (1).

17 **Subtitle C—Quality and Other**
18 **Provisions**

19 **SEC. 421. REQUIRING ALL MA PLANS TO MEET EQUAL**
20 **STANDARDS.**

21 (a) COLLECTION AND REPORTING OF INFORMA-
22 TION.—
23 (1) IN GENERAL.—Section 1852(e)(1) of the
24 Social Security Act (42 U.S.C. 1395w–112(e)(1)) is

1 amended by striking "(other than an MA private
2 fee-for-service plan or an MSA plan)".
3 (2) REPORTING FOR PRIVATE FEE-FOR-SERV-
4 ICES AND MSA PLANS.—Section 1852(e)(3) of such
5 Act is amended by adding at the end the following
6 new subparagraph:
7 "(C) DATA COLLECTION REQUIREMENTS
8 BY PRIVATE FEE-FOR-SERVICE PLANS AND MSA
9 PLANS.—
10 "(i) USING MEASURES FOR PPOS FOR
11 CONTRACT YEAR 2009.—For contract year
12 2009, the Medicare Part C organization of-
13 fering a private fee-for-service plan or an
14 MSA plan shall submit to the Secretary for
15 such plan the same information on the
16 same performance measures for which such
17 information is required to be submitted for
18 Medicare Part C plans that are preferred
19 provider organization plans for that year.
20 "(ii) APPLICATION OF SAME MEAS-
21 URES AS COORDINATED CARE PLANS BE-
22 GINNING IN CONTRACT YEAR 2010.—For a
23 contract year beginning with 2010, a Medi-
24 care Part C organization offering a private
25 fee-for-service plan or an MSA plan shall

submit to the Secretary for such plan the same information on the same performance measures for which such information is required to be submitted for such contract year Medicare Part C plans described in section 1851(a)(2)(A)(i) for contract year such contract year.''.

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contract years beginning on or after January 1, 2009.

(b) EMPLOYER PLANS.—

(1) IN GENERAL.—The first sentence of paragraph (2) of section 1857(i) of such Act (42 U.S.C. 1395w–27(i)) is amended by inserting before the period at the end the following: '', but only if 90 percent of the Medicare part C eligible individuals enrolled under such plan reside in a county in which the Medicare Part C organization offers a Medicare Part C local plan''.

(2) LIMITATION ON APPLICATION OF WAIVER AUTHORITY.—Paragraphs (1) and (2) of such section are each amended by inserting ''that were in effect before the date of the enactment of the Children's Health and Medicare Protection Act of 2007'' after ''waive or modify requirements''.

(3) EFFECTIVE DATES.—The amendment made by paragraph (1) shall apply for plan years beginning on or after January 1, 2009, and the amendments made by paragraph (2) shall take effect on the date of the enactment of this Act.

**SEC. 422. DEVELOPMENT OF NEW QUALITY REPORTING MEASURES ON RACIAL DISPARITIES.**

(a) NEW QUALITY REPORTING MEASURES.—

(1) IN GENERAL.—Section 1852(e)(3) of the Social Security Act (42 U.S.C. 1395w–22(e)(3)), as amended by section 421(a)(2), is amended—

(A) in subparagraph (B)—

(i) in clause (i), by striking ''The Secretary'' and inserting ''Subject to subparagraph (D), the Secretary''; and

(ii) in clause (ii), by inserting ''and subparagraph (C)'' after ''clause (iii)''; and

(B) by adding at the end the following new subparagraph:

''(D) ADDITIONAL QUALITY REPORTING MEASURES.—

''(i) IN GENERAL.—The Secretary shall develop by October 1, 2009, quality measures for Medicare Part C plans that measure disparities in the amount and

quality of health services provided to racial and ethnic minorities.

"(ii) DATA TO MEASURE RACIAL AND ETHNIC DISPARITIES IN THE AMOUNT AND QUALITY OF CARE PROVIDED TO ENROLLEES.—The Secretary shall provide for Medicare Part C organizations to submit data under this paragraph, including data similar to those submitted for other quality measures, that permits analysis of disparities among racial and ethnic minorities in health services, quality of care, and health status among Medicare Part C plan enrollees for use in submitting the reports under paragraph (5).".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to reporting of quality measures for plan years beginning on or after January 1, 2010.

(b) BIENNIAL REPORT ON RACIAL AND ETHNIC MINORITIES.—Section 1852(e) of such Act (42 U.S.C. 1395w–22(e)) is amended by adding at the end the following new paragraph:

"(5) REPORT TO CONGRESS.—

1 "(A) IN GENERAL.—Not later than 2 years
2 after the date of the enactment of this para-
3 graph, and biennially thereafter, the Secretary
4 shall submit to Congress a report regarding
5 how quality assurance programs conducted
6 under this subsection measure and report on
7 disparities in the amount and quality of health
8 care services furnished to racial and ethnic mi-
9 norities.
10 "(B) CONTENTS OF REPORT.—Each such
11 report shall include the following:
12 "(i) A description of the means by
13 which such programs focus on such racial
14 and ethnic minorities.
15 "(ii) An evaluation of the impact of
16 such programs on eliminating health dis-
17 parities and on improving health outcomes,
18 continuity and coordination of care, man-
19 agement of chronic conditions, and con-
20 sumer satisfaction.
21 "(iii) Recommendations on ways to re-
22 duce clinical outcome disparities among ra-
23 cial and ethnic minorities.
24 "(iv) Data for each MA plan from
25 HEDIS and other source reporting the dis-

parities in the amount and quality of health services furnished to racial and ethnic minorities.''.

**SEC. 423. STRENGTHENING AUDIT AUTHORITY.**

(a) FOR PART C PAYMENTS RISK ADJUSTMENT.—Section 1857(d)(1) of the Social Security Act (42 U.S.C. 1395w–27(d)(1)) is amended by inserting after ''section 1858(c))'' the following: '', and data submitted with respect to risk adjustment under section 1853(a)(3).''.

(b) ENFORCEMENT OF AUDITS AND DEFICIENCIES.—

(1) IN GENERAL.—Section 1857(e) of such Act is amended by adding at the end the following new paragraph:

''(4) ENFORCEMENT OF AUDITS AND DEFICIENCIES.—

''(A) INFORMATION IN CONTRACT.—The Secretary shall require that each contract with a Medicare Part C organization under this section shall include terms that inform the organization of the provisions in subsection (d).

''(B) ENFORCEMENT AUTHORITY.—The Secretary is authorized, in connection with conducting audits and other activities under subsection (d), to take such actions, including pur-

suit of financial recoveries, necessary to address deficiencies identified in such audits or other activities.''.

(2) APPLICATION UNDER PART D.—For provision applying the amendment made by paragraph (1) to prescription drug plans under part D, see section 1860D–12(b)(3)(D) of the Social Security Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect the date of the enactment of this Act and shall apply to audits and activities conducted for contract years beginning on or after January 1, 2009.

**SEC. 424. IMPROVING RISK ADJUSTMENT FOR MA PAYMENTS.**

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report that evaluates the adequacy of the Medicare Advantage risk adjustment system under section 1853(a)(1)(C) of the Social Security Act (42 U.S.C. 1395–23(a)(1)(C)).

(b) PARTICULARS.—The report under subsection (a) shall include an evaluation of at least the following:

(1) The need and feasibility of improving the adequacy of the risk adjustment system in predicting

costs for beneficiaries with co-morbid conditions and associated cognitive impairments.

(2) The need and feasibility of including further gradations of diseases and conditions (such as the degree of severity of congestive heart failure).

(3) The feasibility of measuring difference in coding over time between Medicare part C plans and the medicare traditional fee-for-service program and, to the extent this difference exists, the options for addressing it.

(4) The feasibility and value of including part D and other drug utilization data in the risk adjustment model.

**SEC. 425. ELIMINATING SPECIAL TREATMENT OF PRIVATE FEE-FOR-SERVICE PLANS.**

(a) ELIMINATION OF EXTRA BILLING PROVISION.—Section 1852(k)(2) of the Social Security Act (42 U.S.C. 1395w–22(k)(2)) is amended—

(1) in subparagraph (A)(i), by striking ''115 percent'' and inserting ''100 percent''; and

(2) in subparagraph (C)(i), by striking '' (including any liability for balance billing consistent with this subsection)''.

(b) REVIEW OF BID INFORMATION.—Section 1854(a)(6)(B) of such Act (42 U.S.C. 1395w–24(a)(6)(B)) is amended—

(1) in clause (i), by striking ''clauses (iii) and (iv)'' and inserting ''clause (iii)''; and

(2) by striking clause (iv).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contract years beginning with 2009.

**SEC. 426. RENAMING OF MEDICARE ADVANTAGE PROGRAM.**

(a) IN GENERAL.—The program under part C of title XVIII of the Social Security Act is henceforth to be known as the ''Medicare Part C program''.

(b) CHANGE IN REFERENCES.—

(1) AMENDING SOCIAL SECURITY ACT.—The Social Security Act is amended by striking ''Medicare Advantage'', ''MA'', and ''Medicare+Choice'' and inserting ''Medicare Part C'' each place it appears, with the appropriate, respective typographic formatting, including typeface and capitalization.

(2) ADDITIONAL REFERENCES.—Notwithstanding section 201(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173), any reference to the program under part C of title XVIII of the Social Secu-

rity Act shall be deemed a reference to the ''Medicare Part C'' program and, with respect to such part, any reference to ''Medicare+Choice''. ''Medicare Advantage'', or ''MA'' is deemed a reference to the program under such part.

# Subtitle D—Extension of Authorities

**SEC. 431. EXTENSION AND REVISION OF AUTHORITY FOR SPECIAL NEEDS PLANS (SNPS).**

(a) EXTENDING RESTRICTION ON ENROLLMENT AUTHORITY FOR SNPS FOR 3 YEARS.—Subsection (f) of section 1859 of the Social Security Act (42 U.S.C. 1395w–28) is amended by striking ''2009'' and inserting ''2012''.

(b) STRUCTURE OF AUTHORITY FOR SNPS.—

(1) IN GENERAL.—Such section is further amended—

(A) in subsection (b)(6)(A), by striking all that follows ''means'' and inserting the following: ''an MA plan—

''(i) that serves special needs individuals (as defined in subparagraph (B));

''(ii) as of January 1, 2009, either—

''(I) at least 90 percent of the enrollees in which are described in subparagraph (B)(i), as determined

under regulations in effect as of July 1, 2007; or

"(II) at least 90 percent of the enrollees in which are described in subparagraph (B)(ii) and are full-benefit dual eligible individuals (as defined in section 1935(c)(6)) or qualified medicare beneficiaries (as defined in section 1905(p)(1)); and

"(iii) as of January 1, 2009, meets the applicable requirements of paragraph (2) or (3) of subsection (f), as the case may be.";

(B) in subsection (b)(6)(B)(iii), by inserting "only for contract years beginning before January 1, 2009," after "(iii)";

(C) in subsection (f)—

(i) by amending the heading to read as follows: "REQUIREMENTS FOR ENROLLMENT IN PART C PLANS FOR SPECIAL NEEDS BENEFICIARIES";

(ii) by designating the sentence beginning "In the case of" as paragraph (1) with the heading "REQUIREMENTS FOR

1 ENROLLMENT'' and with appropriate in-
2 dentation; and
3 (iii) by adding at the end the fol-
4 lowing new paragraphs:
5 ''(2) ADDITIONAL REQUIREMENTS FOR INSTI-
6 TUTIONAL SNPS.—In the case of a specialized MA
7 plan for special needs individuals described in sub-
8 section (b)(6)(A)(ii)(I), the applicable requirements
9 of this subsection are as follows:
10 ''(A) The plan has an agreement with the
11 State that includes provisions regarding co-
12 operation on the coordination of care for such
13 individuals. Such agreement shall include a de-
14 scription of the manner that the State Medicaid
15 program under title XIX will pay for the costs
16 of services for individuals eligible under such
17 title for medical assistance for acute care and
18 long-term care services.
19 ''(B) The plan has a contract with long-
20 term care facilities and other providers in the
21 area sufficient to provide care for enrollees de-
22 scribed in subsection (b)(6)(B)(i).
23 ''(C) The plan reports to the Secretary in-
24 formation on additional quality measures speci-

1 fied by the Secretary under section
2 1852(e)(3)(D)(iv)(I) for such plans.
3 "(3) ADDITIONAL REQUIREMENTS FOR DUAL
4 SNPS.—In the case of a specialized MA plan for spe-
5 cial needs individuals described in subsection
6 (b)(6)(A)(ii)(II), the applicable requirements of this
7 subsection are as follows:
8 "(A) The plan has an agreement with the
9 State Medicaid agency that—
10 "(i) includes provisions regarding co-
11 operation on the coordination of the fi-
12 nancing of care for such individuals;
13 "(ii) includes a description of the
14 manner that the State Medicaid program
15 under title XIX will pay for the costs of
16 cost-sharing and supplemental services for
17 individuals enrolled in the plan eligible
18 under such title for medical assistance for
19 acute and long-term care services; and
20 "(iii) effective January 1, 2011, pro-
21 vides for capitation payments to cover
22 costs of supplemental benefits for individ-
23 uals described in subsection
24 (b)(6)(A)(ii)(II).

"(B) The out-of-pocket costs for services under parts A and B that are charged to enrollees may not exceed the out-of-pocket costs for same services permitted for such individuals under title XIX.

"(C) The plan reports to the Secretary information on additional quality measures specified by the Secretary under section 1852(e)(3)(D)(iv)(II) for such plans.".

(2) QUALITY STANDARDS AND QUALITY REPORTING.—Section 1852(e)(3) of such Act (42 U.S.C. 1395w–22(e)(3) is amended—

(A) in subparagraph (A)(i), by adding at the end the following: "In the case of a specialized Medicare Part C plan for special needs individuals described in paragraph (2) or (3) of section 1859(f), the organization shall provide for the reporting on quality measures developed for the plan under subparagraph (D)(iii)."; and

(B) in subparagraph (D), as added by section 422(a)(1), by adding at the end the following new clause:

"(iii) SPECIFICATION OF ADDITIONAL QUALITY MEASUREMENTS FOR SPECIALIZED PART C PLANS.—For implementation

1 for plan years beginning not later than
2 January 1, 2010, the Secretary shall de-
3 velop new quality measures appropriate to
4 meeting the needs of—
5 ''(I) beneficiaries enrolled in spe-
6 cialized Medicare Part C plans for
7 special needs individuals (described in
8 section 1859(b)(6)(A)(ii)(I)) that
9 serve predominantly individuals who
10 are dual-eligible individuals eligible for
11 medical assistance under title XIX by
12 measuring the special needs for care
13 of individuals who are both Medicare
14 and Medicaid beneficiaries; and
15 ''(II) beneficiaries enrolled in
16 specialized Medicare Part C plans for
17 special needs individuals (described in
18 section 1859(b)(6)(A)(ii)(II)) that
19 serve predominantly institutionalized
20 individuals by measuring the special
21 needs for care of individuals who are
22 a resident in long-term care institu-
23 tion.''.
24 (3) EFFECTIVE DATE; GRANDFATHER.—The
25 amendments made by paragraph (1) shall take effect

for enrollments occurring on or after January 1, 2009, and shall not apply—

(A) to plans with a contract with a State Medicaid agency to operate an integrated Medicaid-Medicare program, that had been approved by Centers for Medicare & Medicaid Services on January 1, 2004; and

(B) to plans that are operational as of the date of the enactment of this Act as approved Medicare demonstration projects and that provide services predominantly to individuals with end-stage renal disease.

(4) TRANSITION FOR NON-QUALIFYING SNPS.—

(A) RESTRICTIONS IN 2008 FOR CHRONIC CARE SNPS.—In the case of a specialized MA plan for special needs individuals (as defined in section 1859(b)(6)(A) of the Social Security Act (42 U.S.C. 1395w–28(b)(6)(A)) that, as of December 31, 2007, is not described in either subclause (I) or subclause (II) of clause (ii) of such section, as amended by paragraph (1), then as of January 1, 2008—

(i) the plan may not be offered unless it was offered before such date;

(ii) no new members may be enrolled with the plan; and

(iii) there may be no expansion of the service area of such plan.

(B) TRANSITION OF ENROLLEES.—The Secretary of Health and Human Services shall provide for an orderly transition of those specialized MA plans for special needs individuals (as defined in section 1859(b)(6)(A) of the Social Security Act (42 U.S.C. 1395w–28(b)(6)(A)), as of the date of the enactment of this Act), and their enrollees, that no longer qualify as such plans under such section, as amended by this subsection.

**SEC. 432. EXTENSION AND REVISION OF AUTHORITY FOR MEDICARE REASONABLE COST CONTRACTS.**

(a) EXTENSION FOR 3 YEARS OF PERIOD REASONABLE COST PLANS CAN REMAIN IN THE MARKET.—Section 1876(h)(5)(C)(ii) of the Social Security Act (42 U.S.C. 1395mm(h)(5)(C)(ii)) is amended, in the matter preceding subclause (I), by striking ''January 1, 2008'' and inserting ''January 1, 2011''.

(b) APPLICATION OF CERTAIN MEDICARE ADVANTAGE REQUIREMENTS TO COST CONTRACTS EXTENDED OR RENEWED AFTER ENACTMENT.—Section 1876(h) of

1 such Act (42 U.S.C. 1395mm(h)), as amended by sub-
2 section (a), is amended—
3 (1) by redesignating paragraph (5) as para-
4 graph (6); and
5 (2) by inserting after paragraph (4) the fol-
6 lowing new paragraph:
7 ''(5)(A) Any reasonable cost reimbursement
8 contract with an eligible organization under this sub-
9 section that is extended or renewed on or after the
10 date of enactment of the Children's Health and
11 Medicare Protection Act of 2007 shall provide that
12 the provisions of the Medicare Part C program de-
13 scribed in subparagraph (B) shall apply to such or-
14 ganization and such contract in a substantially simi-
15 lar manner as such provisions apply to Medicare
16 Part C organizations and Medicare Part C plans
17 under part C.
18 ''(B) The provisions described in this sub-
19 paragraph are as follows:
20 ''(i) Section 1851(h) (relating to the
21 approval of marketing material and appli-
22 cation forms).
23 ''(ii) Section 1852(e) (relating to the
24 requirement of having an ongoing quality
25 improvement program and treatment of ac-

creditation in the same manner as such provisions apply to Medicare Part C local plans that are preferred provider organization plans).

"(iii) Section 1852(f) (relating to grievance mechanisms).

"(iv) Section 1852(g) (relating to coverage determinations, reconsiderations, and appeals).

"(v) Section 1852(j)(4) (relating to limitations on physician incentive plans).

"(vi) Section 1854(c) (relating to the requirement of uniform premiums among individuals enrolled in the plan).

"(vii) Section 1854(g) (relating to restrictions on imposition of premium taxes with respect to payments to organizations).

"(viii) Section 1856(b)(3) (relating to relation to State laws).

"(ix) The provisions of part C relating to timelines for contract renewal and beneficiary notification.".

# TITLE V—PROVISIONS RELATING TO MEDICARE PART A

**SEC. 501. INPATIENT HOSPITAL PAYMENT UPDATES.**

(a) FOR ACUTE HOSPITALS.—Clause (i) of section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

(1) in subclause (XIX), by striking ''and'';

(2) by redesignating subclause (XX) as subclause (XXII); and

(3) by inserting after subclause (XIX) the following new subclauses:

''(XX) for fiscal year 2007, subject to clause (viii), the market basket percentage increase for hospitals in all areas,

''(XXI) for fiscal year 2008, subject to clause (viii), the market basket percentage increase minus 0.25 percentage point for hospitals in all areas, and''.

(b) FOR OTHER HOSPITALS.—Clause (ii) of such section is amended—

(1) in subclause (VII) by striking ''and'';

(2) by redesignating subclause (VIII) as subclause (X); and

(3) by inserting after subclause (VII) the following new subclauses:

"(VIII) fiscal years 2003 through 2007, is the market basket percentage increase,

"(IX) fiscal year 2008, is the market basket percentage increase minus 0.25 percentage point, and".

(c) DELAYED EFFECTIVE DATE.—

(1) ACUTE CARE HOSPITALS.—The amendments made by subsection (a) shall not apply to discharges occurring before January 1, 2008.

(2) OTHER HOSPITALS.—The amendments made by subsection (b) shall be applied, only with respect to cost reporting periods beginning during fiscal year 2008 and not with respect to the computation for any succeeding cost reporting period, by substituting "0.1875 percentage point" for "0.25 percentage point".

**SEC. 502. PAYMENT FOR INPATIENT REHABILITATION FACILITY (IRF) SERVICES.**

(a) PAYMENT UPDATE.—

(1) IN GENERAL.—Section 1886(j)(3)(C) of the Social Security Act (42 U.S.C. 1395ww(j)(3)(C)) is

1 amended by adding at the end the following: ''The
2 increase factor to be applied under this subpara-
3 graph for fiscal year 2008 shall be 1 percent.''
4 (2) DELAYED EFFECTIVE DATE.—The amend-
5 ment made by paragraph (1) shall not apply to pay-
6 ment units occurring before January 1, 2008.
7 (b) INPATIENT REHABILITATION FACILITY CLASSI-
8 FICATION CRITERIA.—
9 (1) IN GENERAL.—Section 5005 of the Deficit
10 Reduction Act of 2005 (Public Law 109–171) is
11 amended—
12 (A) in subsection (a), by striking ''apply
13 the applicable percent specified in subsection
14 (b)'' and inserting ''require a compliance rate
15 that is no greater than the 60 percent compli-
16 ance rate that became effective for cost report-
17 ing periods beginning on or after July 1,
18 2006,''; and
19 (B) by amending subsection (b) to read as
20 follows:
21 ''(b) CONTINUED USE OF COMORBIDITIES.—For por-
22 tions of cost reporting periods occurring on or after the
23 date of the enactment of the Children's Health and Medi-
24 care Protection Act of 2007, the Secretary shall include
25 patients with comorbidities as described in section

412.23(b)(2)(i) of title 42, Code of Federal Regulations (as in effect as of January 1, 2007), in the inpatient population that counts towards the percent specified in subsection (a).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1)(A) shall apply to portions of cost reporting periods beginning on or after the date of the enactment of this Act.

(c) PAYMENT FOR CERTAIN MEDICAL CONDITIONS TREATED IN INPATIENT REHABILITATION FACILITIES.—

(1) IN GENERAL.—Section 1886(j) of the Social Security Act (42 U.S.C. 1395ww(j)) is amended—

(A) by redesignating paragraph (7) as paragraph (8);

(B) by inserting after paragraph (6) the following new paragraph:

''(7) SPECIAL PAYMENT RULE FOR CERTAIN MEDICAL CONDITIONS.—

''(A) IN GENERAL.—Subject to subparagraph (H), in the case of discharges occurring on or after October 1, 2008, in lieu of the standardized payment amount (as determined pursuant to the preceding provisions of this subsection) that would otherwise be applicable under this subsection, the Secretary shall sub-

1 stitute, for payment units with respect to an
2 applicable medical condition (as defined in sub-
3 paragraph (G)(i)) that is treated in an inpa-
4 tient rehabilitation facility, the modified stand-
5 ardized payment amount determined under sub-
6 paragraph (B).

7 "(B) MODIFIED STANDARDIZED PAYMENT
8 AMOUNT.—The modified standardized payment
9 amount for an applicable medical condition
10 shall be based on the amount determined under
11 subparagraph (C) for such condition, as ad-
12 justed under subparagraphs (D), (E), and (F).

13 "(C) AMOUNT DETERMINED.—

14 "(i) IN GENERAL.—The amount de-
15 termined under this subparagraph for an
16 applicable medical condition shall be based
17 on the sum of the following:

18 "(I) An amount equal to the av-
19 erage per stay skilled nursing facility
20 payment rate for the applicable med-
21 ical condition (as determined under
22 clause (ii)).

23 "(II) An amount equal to 25 per-
24 cent of the difference between the
25 overhead costs (as defined in subpara-

graph (G)(ii)) component of the average inpatient rehabilitation facility per stay payment amount for the applicable medical condition (as determined under the preceding paragraphs of this subsection) and the overhead costs component of the average per stay skilled nursing facility payment rate for such condition (as determined under clause (ii)).

"(III) An amount equal to 33 percent of the difference between the patient care costs (as defined in subparagraph (G)(iii)) component of the average inpatient rehabilitation facility per stay payment amount for the applicable medical condition (as determined under the preceding paragraphs of this subsection) and the patient care costs component of the average per stay skilled nursing facility payment rate for such condition (as determined under clause (ii)).

"(ii) DETERMINATION OF AVERAGE PER STAY SKILLED NURSING FACILITY

PAYMENT RATE.—For purposes of clause (i), the Secretary shall convert skilled nursing facility payment rates for applicable medical conditions, as determined under section 1888(e), to average per stay skilled nursing facility payment rates for each such condition.

"(D) ADJUSTMENTS.—The Secretary shall adjust the amount determined under subparagraph (C) for an applicable medical condition using the adjustments to the prospective payment rates for inpatient rehabilitation facilities described in paragraphs (2), (3), (4), and (6).

"(E) UPDATE FOR INFLATION.—Except in the case of a fiscal year for which the Secretary rebases the amounts determined under subparagraph (C) for applicable medical conditions pursuant to subparagraph (F), the Secretary shall annually update the amounts determined under subparagraph (C) for each applicable medical condition by the increase factor for inpatient rehabilitation facilities (as described in paragraph (3)(C)).

"(F) REBASING.—The Secretary shall periodically (but in no case less than once every

1 5 years) rebase the amounts determined under
2 subparagraph (C) for applicable medical condi-
3 tions using the methodology described in such
4 subparagraph and the most recent and complete
5 cost report and claims data available.
6 "(G) DEFINITIONS.—In this paragraph:
7 "(i) APPLICABLE MEDICAL CONDI-
8 TION.—The term 'applicable medical condi-
9 tion' means—
10 "(I) unilateral knee replacement;
11 "(II) unilateral hip replacement;
12 and
13 "(III) unilateral hip fracture.
14 "(ii) OVERHEAD COSTS.—The term
15 'overhead costs' means those Medicare-al-
16 lowable costs that are contained in the
17 General Service cost centers of the Medi-
18 care cost reports for inpatient rehabilita-
19 tion facilities and for skilled nursing facili-
20 ties, respectively, as determined by the
21 Secretary.
22 "(iii) PATIENT CARE COSTS.—The
23 term 'patient care costs' means total Medi-
24 care-allowable costs minus overhead costs.

"(H) SUNSET.—The provisions of this paragraph shall cease to apply as of the date the Secretary implements an integrated, site-neutral payment methodology under this title for post-acute care."; and

(C) in paragraph (8), as redesignated by paragraph (1)—

(i) in subparagraph (C), by striking "and" at the end;

(ii) in subparagraph (D), by striking the period at the end and inserting ", and"; and

(iii) by adding at the end the following new subparagraph:

"(E) modified standardized payment amounts under paragraph (7).".

(2) SPECIAL RULE FOR DISCHARGES OCCURRING IN THE SECOND HALF OF FISCAL YEAR 2008.—

(A) IN GENERAL.—In the case of discharges from an inpatient rehabilitation facility occurring during the period beginning on April 1, 2008, and ending on September 30, 2008, for applicable medical conditions (as defined in paragraph (7)(G)(i) of section 1886(j) of the Social Security Act (42 U.S.C. 1395ww(j)), as

inserted by paragraph (1)(B), in lieu of the standardized payment amount determined pursuant to such section, the standardized payment amount shall be $9,507 for unilateral knee replacement, $10,398 for unilateral hip replacement, and $10,958 for unilateral hip fracture. Such amounts are the amounts that are estimated would be determined under paragraph (7)(C) of such section 1886(j) for such conditions if such paragraph applied for such period. Such standardized payment amounts shall be multiplied by the relative weights for each case-mix group and tier, as published in the final rule of the Secretary of Health and Human Services for inpatient rehabilitation facility services prospective payment for fiscal year 2008, to obtain the applicable payment amounts for each such condition for each case-mix group and tier.

(B) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement this subsection by program instruction or otherwise. Paragraph (8)(E) of such section 1886(j) of the Social Security Act, as added by para-

graph (1)(C), shall apply for purposes of this subsection in the same manner as such paragraph applies for purposes of paragraph (7) of such section 1886(j).

(d) RECOMMENDATIONS FOR CLASSIFYING INPATIENT REHABILITATION HOSPITALS AND UNITS.—

(1) REPORT TO CONGRESS.—Not later than 12 months after the date of the enactment of this Act, the Secretary of Health and Human Services, in consultation with physicians (including geriatricians and physiatrists), administrators of inpatient rehabilitation, acute care hospitals, skilled nursing facilities, and other settings providing rehabilitation services, Medicare beneficiaries, trade organizations representing inpatient rehabilitation hospitals and units and skilled nursing facilities, and the Medicare Payment Advisory Commission, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that includes—

(A) an examination of Medicare beneficiaries' access to medically necessary rehabilitation services;

(B) alternatives or refinements to the 75 percent rule policy for determining exclusion

criteria for inpatient rehabilitation hospital and unit designation under the Medicare program, including determining clinical appropriateness of inpatient rehabilitation hospital and unit admissions and alternative criteria which would consider a patient's functional status, diagnosis, co-morbidities, and other relevant factors; and

(C) an examination that identifies any condition for which individuals are commonly admitted to inpatient rehabilitation hospitals that is not included as a condition described in section 412.23(b)(2)(iii) of title 42, Code of Federal Regulations, to determine the appropriate setting of care, and any variation in patient outcomes and costs, across settings of care, for treatment of such conditions.

For the purposes of this subsection, the term ''75 percent rule'' means the requirement of section 412.23(b)(2) of title 42, Code of Federal Regulations, that 75 percent of the patients of a rehabilitation hospital or converted rehabilitation unit are in 1 or more of 13 listed treatment categories.

(2) CONSIDERATIONS.—In developing the report described in paragraph (1), the Secretary shall include the following:

(A) The potential effect of the 75 percent rule on access to rehabilitation care by Medicare beneficiaries for the treatment of a condition, whether or not such condition is described in section 412.23(b)(2)(iii) of title 42, Code of Federal Regulations.

(B) An analysis of the effectiveness of rehabilitation care for the treatment of conditions, whether or not such conditions are described in section 412.23(b)(2)(iii) of title 42, Code of Federal Regulations, available to Medicare beneficiaries in various health care settings, taking into account variation in patient outcomes and costs across different settings of care, and which may include whether the Medicare program and Medicare beneficiaries may incur higher costs of care for the entire episode of illness due to readmissions, extended lengths of stay, and other factors.

**SEC. 503. LONG-TERM CARE HOSPITALS.**

(a) LONG-TERM CARE HOSPITAL PAYMENT UPDATE.—

(1) IN GENERAL.—Section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by adding at the end the following new subsection:

1 "(m) PROSPECTIVE PAYMENT FOR LONG-TERM
2 CARE HOSPITALS.—
3 "(1) REFERENCE TO ESTABLISHMENT AND IM-
4 PLEMENTATION OF SYSTEM.—For provisions related
5 to the establishment and implementation of a pro-
6 spective payment system for payments under this
7 title for inpatient hospital services furnished by a
8 long-term care hospital described in subsection
9 (d)(1)(B)(iv), see section 123 of the Medicare, Med-
10 icaid, and SCHIP Balanced Budget Refinement Act
11 of 1999 and section 307(b) of Medicare, Medicaid,
12 and SCHIP Benefits Improvement and Protection
13 Act of 2000.
14 "(2) UPDATE FOR RATE YEAR 2008.—In imple-
15 menting the system described in paragraph (1) for
16 discharges occurring during the rate year ending in
17 2008 for a hospital, the base rate for such dis-
18 charges for the hospital shall be the same as the
19 base rate for discharges for the hospital occurring
20 during the previous rate year.".
21 (2) DELAYED EFFECTIVE DATE.—Subsection
22 (m)(2) of section 1886 of the Social Security Act, as
23 added by paragraph (1), shall not apply to dis-
24 charges occurring on or after July 1, 2007, and be-
25 fore January 1, 2008.

1 (b) PAYMENT FOR LONG-TERM CARE HOSPITAL
2 SERVICES; PATIENT AND FACILITY CRITERIA.—
3 (1) DEFINITION OF LONG-TERM CARE HOS-
4 PITAL.—
5 (A) DEFINITION.—Section 1861 of the So-
6 cial Security Act (42 U.S.C. 1395x) is amended
7 by adding at the end the following new sub-
8 section:
9 ''Long-Term Care Hospital
10 ''(ccc) The term 'long-term care hospital' means an
11 institution which—
12 ''(1) is primarily engaged in providing inpatient
13 services, by or under the supervision of a physician,
14 to Medicare beneficiaries whose medically complex
15 conditions require a long hospital stay and programs
16 of care provided by a long-term care hospital;
17 ''(2) has an average inpatient length of stay (as
18 determined by the Secretary) for Medicare bene-
19 ficiaries of greater than 25 days, or as otherwise de-
20 fined in section 1886(d)(1)(B)(iv);
21 ''(3) satisfies the requirements of subsection
22 (e);
23 ''(4) meets the following facility criteria:
24 ''(A) the institution has a patient review
25 process, documented in the patient medical

1 record, that screens patients prior to admission
2 for appropriateness of admission to a long-term
3 care hospital, validates within 48 hours of ad-
4 mission that patients meet admission criteria
5 for long-term care hospitals, regularly evaluates
6 patients throughout their stay for continuation
7 of care in a long-term care hospital, and as-
8 sesses the available discharge options when pa-
9 tients no longer meet such continued stay cri-
10 teria;

11 "(B) the institution has active physician
12 involvement with patients during their treat-
13 ment through an organized medical staff, physi-
14 cian-directed treatment with physician on-site
15 availability on a daily basis to review patient
16 progress, and consulting physicians on call and
17 capable of being at the patient's side within a
18 moderate period of time, as determined by the
19 Secretary;

20 "(C) the institution has interdisciplinary
21 team treatment for patients, requiring inter-
22 disciplinary teams of health care professionals,
23 including physicians, to prepare and carry out
24 an individualized treatment plan for each pa-
25 tient; and

1 "(5) meets patient criteria relating to patient
2 mix and severity appropriate to the medically com-
3 plex cases that long-term care hospitals are designed
4 to treat, as measured under section 1886(m).".
5 (B) NEW PATIENT CRITERIA FOR LONG-
6 TERM CARE HOSPITAL PROSPECTIVE PAY-
7 MENT.—Section 1886 of such Act (42 U.S.C.
8 1395ww), as amended by subsection (a), is fur-
9 ther amended by adding at the end the fol-
10 lowing new subsection:
11 "(n) PATIENT CRITERIA FOR PROSPECTIVE PAY-
12 MENT TO LONG-TERM CARE HOSPITALS.—
13 "(1) IN GENERAL.—To be eligible for prospec-
14 tive payment under this section as a long-term care
15 hospital, a long-term care hospital must admit not
16 less than a majority of patients who have a high
17 level of severity, as defined by the Secretary, and
18 who are assigned to one or more of the following
19 major diagnostic categories:
20 "(A) Circulatory diagnoses.
21 "(B) Digestive, endocrine, and metabolic
22 diagnoses.
23 "(C) Infection disease diagnoses.
24 "(D) Neurological diagnoses.
25 "(E) Renal diagnoses.

1 "(F) Respiratory diagnoses.

2 "(G) Skin diagnoses.

3 "(H) Other major diagnostic categories as
4 selected by the Secretary.

5 "(2) MAJOR DIAGNOSTIC CATEGORY DE-
6 FINED.—In paragraph (1), the term 'major diag-
7 nostic category' means the medical categories formed
8 by dividing all possible principle diagnosis into mu-
9 tually exclusive diagnosis areas which are referred to
10 in 67 Federal Register 49985 (August 1, 2002).".

11 (C) ESTABLISHMENT OF REHABILITATION
12 UNITS WITHIN CERTAIN LONG-TERM CARE HOS-
13 PITALS.—If the Secretary of Health and
14 Human Services does not include rehabilitation
15 services within a major diagnostic category
16 under section 1886(n)(2) of the Social Security
17 Act, as added by subparagraph (B), the Sec-
18 retary shall approve for purposes of title XVIII
19 of such Act distinct part inpatient rehabilitation
20 hospital units in long-term care hospitals con-
21 sistent with the following:

22 (i) A hospital that, on or before Octo-
23 ber 1, 2004, was classified by the Sec-
24 retary as a long-term care hospital, as de-
25 scribed in section 1886(d)(1)(B)(iv)(I) of

1 such Act (42 U.S.C.
2 1395ww(d)(1)(V)(iv)(I)), and was accred-
3 ited by the Commission on Accreditation of
4 Rehabilitation Facilities, may establish a
5 hospital rehabilitation unit that is a dis-
6 tinct part of the long-term care hospital, if
7 the distinct part meets the requirements
8 (including conditions of participation) that
9 would otherwise apply to a distinct-part re-
10 habilitation unit if the distinct part were
11 established by a subsection (d) hospital in
12 accordance with the matter following
13 clause (v) of section 1886(d)(1)(B) of such
14 Act, including any regulations adopted by
15 the Secretary in accordance with this sec-
16 tion, except that the one-year waiting pe-
17 riod described in section 412.30(c) of title
18 42, Code of Federal Regulations, applica-
19 ble to the conversion of hospital beds into
20 a distinct-part rehabilitation unit shall not
21 apply to such units.
22 (ii) Services provided in inpatient re-
23 habilitation units established under clause
24 (i) shall not be reimbursed as long-term
25 care hospital services under section 1886

of such Act and shall be subject to payment policies established by the Secretary to reimburse services provided by inpatient hospital rehabilitation units.

(D) EFFECTIVE DATE.—The amendments made by subparagraphs (A) and (B), and the provisions of subparagraph (C), shall apply to discharges occurring on or after January 1, 2008.

(2) IMPLEMENTATION OF FACILITY AND PATIENT CRITERIA.—

(A) REPORT.—No later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall submit to the appropriate committees of Congress a report containing recommendations regarding the promulgation of the national long-term care hospital facility and patient criteria for application under paragraphs (4) and (5) of section 1861(ccc) and section 1886(n) of the Social Security Act, as added by subparagraphs (A) and (B), respectively, of paragraph (1). In the report, the Secretary shall consider recommendations contained in a report to Con-

1 gress by the Medicare Payment Advisory Com-
2 mission in June 2004 for long-term care hos-
3 pital-specific facility and patient criteria to en-
4 sure that patients admitted to long-term care
5 hospitals are medically complex and appropriate
6 to receive long-term care hospital services.
7 (B) IMPLEMENTATION.—No later than 1
8 year after the date of submittal of the report
9 under subparagraph (A), the Secretary shall,
10 after rulemaking, implement the national long-
11 term care hospital facility and patient criteria
12 referred to in such subparagraph. Such long-
13 term care hospital facility and patient criteria
14 shall be used to screen patients in determining
15 the medical necessity and appropriateness of a
16 Medicare beneficiary's admission to, continued
17 stay at, and discharge from, long-term care hos-
18 pitals under the Medicare program and shall
19 take into account the medical judgment of the
20 patient's physician, as provided for under sec-
21 tions 1814(a)(3) and 1835(a)(2)(B) of the So-
22 cial Security Act (42 U.S.C. 1395f(a)(3),
23 1395n(a)(2)(B)).
24 (3) EXPANDED REVIEW OF MEDICAL NECES-
25 SITY.—

(A) IN GENERAL.—The Secretary of Health and Human Services shall provide, under contracts with one or more appropriate fiscal intermediaries or medicare administrative contractors under section 1874A(a)(4)(G) of the Social Security Act (42 U.S.C. 1395kk(a)(4)(G)), for reviews of the medical necessity of admissions to long-term care hospitals (described in section 1886(d)(1)(B)(iv) of such Act) and continued stay at such hospitals, of individuals entitled to, or enrolled for, benefits under part A of title XVIII of such Act on a hospital-specific basis consistent with this paragraph. Such reviews shall be made for discharges occurring on or after October 1, 2007.

(B) REVIEW METHODOLOGY.—The medical necessity reviews under paragraph (A) shall be conducted for each such long-term care hospital on an annual basis in accordance with rules (including a sample methodology) specified by the Secretary. Such sample methodology shall—

(i) provide for a statistically valid and representative sample of admissions of such individuals sufficient to provide re-

1 sults at a 95 percent confidence interval;
2 and
3 (ii) guarantee that at least 75 percent
4 of overpayments received by long-term care
5 hospitals for medically unnecessary admis-
6 sions and continued stays of individuals in
7 long-term care hospitals will be identified
8 and recovered and that related days of care
9 will not be counted toward the length of
10 stay requirement contained in section
11 1886(d)(1)(B)(iv) of the Social Security
12 Act (42 U.S.C. 1395ww(d)(1)(B)(iv)).
13 (C) CONTINUATION OF REVIEWS.—Under
14 contracts under this paragraph, the Secretary
15 shall establish a denial rate with respect to such
16 reviews that, if exceeded, could require further
17 review of the medical necessity of admissions
18 and continued stay in the hospital involved.
19 (D) TERMINATION OF REQUIRED RE-
20 VIEWS.—
21 (i) IN GENERAL.—Subject to clause
22 (iii), the previous provisions of this sub-
23 section shall cease to apply as of the date
24 specified in clause (ii).

(ii) DATE SPECIFIED.—The date specified in this clause is the later of January 1, 2013, or the date of implementation of national long-term care hospital facility and patient criteria under section paragraph (2)(B).

(iii) CONTINUATION.—As of the date specified in clause (ii), the Secretary shall determine whether to continue to guarantee, through continued medical review and sampling under this paragraph, recovery of at least 75 percent of overpayments received by long-term care hospitals due to medically unnecessary admissions and continued stays.

(4) LIMITED, QUALIFIED MORATORIUM OF LONG-TERM CARE HOSPITALS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall impose a temporary moratorium on the certification of new long-term care hospitals (and satellite facilities), and new long-term care hospital and satellite facility beds, for purposes of the Medicare program under title XVIII of the Social Security Act. The moratorium shall terminate at the end

of the 4-year period beginning on the date of the enactment of this Act.

(B) EXCEPTIONS.—

(i) IN GENERAL.—The moratorium under subparagraph (A) shall not apply as follows:

(I) To a long-term care hospital, satellite facility, or additional beds under development as of the date of the enactment of this Act.

(II) To a new long-term care hospital in an area in which there is not a long-term care hospital, if the Secretary determines it to be in the best interest to provide access to long-term care hospital services to Medicare beneficiaries residing in such area. There shall be a presumption in favor of the moratorium, which may be rebutted by evidence the Secretary deems sufficient to show the need for long-term care hospital services in that area.

(III) To an existing long-term care hospital that requests to increase

its number of long-term care hospital beds, if the Secretary determines there is a need at the long-term care hospital for additional beds to accommodate—

(aa) infectious disease issues for isolation of patients;

(bb) bedside dialysis services;

(cc) single-sex accommodation issues;

(dd) behavioral issues;

(ee) any requirements of State or local law; or

(ff) other clinical issues the Secretary determines warrant additional beds, in the best interest of Medicare beneficiaries.

(IV) To an existing long-term care hospital that requests an increase in beds because of the closure of a long-term care hospital or significant decrease in the number of long-term care hospital beds, in a State where

there is only one other long-term care hospital.

There shall be no administrative or judicial review from a decision of the Secretary under this subparagraph.

(ii) ''UNDER DEVELOPMENT'' DEFINED.—For purposes of clause (i)(I), a long-term care hospital or satellite facility is considered to be ''under development'' as of a date if any of the following have occurred on or before such date:

(I) The hospital or a related party has a binding written agreement with an outside, unrelated party for the construction, reconstruction, lease, rental, or financing of the long-term care hospital.

(II) Actual construction, renovation or demolition for the long-term care hospital has begun.

(III) A certificate of need has been approved in a State where one is required or other necessary approvals from appropriate State agencies have

been received for the operation of the hospital.

(IV) The hospital documents that it is within a 6-month long-term care hospital demonstration period required by section 412.23(e)(1)–(3) of title 42, Code of Federal Regulations, to demonstrate that it has a greater than 25 day average length of stay.

(V) There is other evidence presented that the Secretary determines would indicate that the hospital or satellite is under development.

(5) NO APPLICATION OF 25 PERCENT PATIENT THRESHOLD PAYMENT ADJUSTMENT TO FREESTANDING AND GRANDFATHERED LTCHS.—The Secretary shall not apply, during the 5-year period beginning on the date of the enactment of this Act, section 412.536 of title 42, Code of Federal Regulations, or any similar provision, to freestanding long-term care hospitals and the Secretary shall not apply such section or section 412.534 of title 42, Code of Federal Regulations, or any similar provisions, to a long-term care hospital identified by section 4417(a) of the Balanced Budget Act of 1997 (Public Law

105–33). A long-term care hospital identified by such section 4417(a) shall be deemed to be a free-standing long-term care hospital for the purpose of this section. Section 412.536 of title 42, Code of Federal Regulations, shall be void and of no effect.

(6) PAYMENT FOR HOSPITALS-WITHIN-HOSPITALS.—

(A) IN GENERAL.—Payments to an applicable long-term care hospital or satellite facility which is located in a rural area or which is co-located with an urban single or MSA dominant hospital under paragraphs (d)(1), (e)(1), and (e)(4) of section 412.534 of title 42, Code of Federal Regulations, shall not be subject to any payment adjustment under such section if no more than 75 percent of the hospital's Medicare discharges (other than discharges described in paragraphs (d)(2) or (e)(3) of such section) are admitted from a co-located hospital.

(B) CO-LOCATED LONG-TERM CARE HOSPITALS AND SATELLITE FACILITIES.—

(i) IN GENERAL.—Payment to an applicable long-term care hospital or satellite facility which is co-located with another hospital shall not be subject to any pay-

1 ment adjustment under section 412.534 of
2 title 42, Code of Federal Regulations, if no
3 more than 50 percent of the hospital's
4 Medicare discharges (other than discharges
5 described in section 412.534(c)(3) of such
6 title) are admitted from a co-located hos-
7 pital.

8 (ii) APPLICABLE LONG-TERM CARE
9 HOSPITAL OR SATELLITE FACILITY DE-
10 FINED.—In this paragraph, the term ''ap-
11 plicable long-term care hospital or satellite
12 facility'' means a hospital or satellite facil-
13 ity that is subject to the transition rules
14 under section 412.534(g) of title 42, Code
15 of Federal Regulations.

16 (C) EFFECTIVE DATE.—Subparagraphs
17 (A) and (B) shall apply to discharges occurring
18 on or after October 1, 2007, and before October
19 1, 2012.

20 (7) NO APPLICATION OF VERY SHORT-STAY
21 OUTLIER POLICY.—The Secretary shall not apply,
22 during the 5-year period beginning on the date of
23 the enactment of this Act, the amendments finalized
24 on May 11, 2007 (72 Federal Register 26904) made
25 to the short-stay outlier payment provision for long-

term care hospitals contained in section 412.529(c)(3)(i) of title 42, Code of Federal Regulations, or any similar provision.

(8) NO APPLICATION OF ONE TIME ADJUSTMENT TO STANDARD AMOUNT.—The Secretary shall not, during the 5-year period beginning on the date of the enactment of this Act, make the one-time prospective adjustment to long-term care hospital prospective payment rates provided for in section 412.523(d)(3) of title 42, Code of Federal Regulations, or any similar provision.

(c) SEPARATE CLASSIFICATION FOR CERTAIN LONG-STAY CANCER HOSPITALS.—

(1) IN GENERAL.—Subsection (d)(1)(B) of section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended—

(A) in clause (iv)—

(i) in subclause (I), by striking ''(iv)(I)'' and inserting ''(iv)'' and by striking ''or'' at the end; and

(ii) in subclause (II)—

(I) by striking '', or'' at the end and inserting a semicolon; and

(II) by redesignating such subclause as clause (vi) and by moving it to immediately follow clause (v); and

(B) in clause (v), by striking the semicolon at the end and inserting ", or".

(2) CONFORMING PAYMENT REFERENCES.—Subsection (b) of such section is amended—

(A) in paragraph (2)(E)(ii), by adding at the end the following new subclause:

"(III) Hospitals described in clause (vi) of such subsection.";

(B) in paragraph (3)(F)(iii), by adding at the end the following new subclause:

"(VI) Hospitals described in clause (vi) of such subsection.";

(C) in paragraphs (3)(G)(ii), (3)(H)(i), and (3)(H)(ii)(I), by inserting "or (vi)" after "clause (iv)" each place it appears;

(D) in paragraph (3)(H)(iv), by adding at the end the following new subclause:

"(IV) Hospitals described in clause (vi) of such subsection.";

(E) in paragraph (3)(J), by striking "subsection (d)(1)(B)(iv)" and inserting "clause (iv) or (vi) of subsection (d)(1)(B)"; and

(F) in paragraph (7)(B), by adding at the end the following new clause:

"(iv) Hospitals described in clause (vi) of such subsection.".

(3) ADDITIONAL CONFORMING AMENDMENTS.—The second sentence of subsection (d)(1)(B) of such section is amended—

(A) by inserting "(as in effect as of such date)" after "clause (iv)"; and

(B) by inserting "(or, in the case of a hospital classified under clause (iv)(II), as so in effect, shall be classified under clause (vi) on and after the effective date of such clause)" after "so classified".

(4) TRANSITION RULE.—In the case of a hospital that is classified under clause (iv)(II) of section 1886(d)(1)(B) of the Social Security Act immediately before the date of the enactment of this Act and which is classified under clause (vi) of such section after such date of enactment, payments under section 1886 of such Act for cost reporting periods beginning after the date of the enactment of this Act shall be based upon payment rates in effect for the cost reporting period for such hospital beginning during fiscal year 2001, increased for each suc-

ceeding cost reporting period (beginning before the date of the enactment of this Act) by the applicable percentage increase under section 1886(b)(3)(B)(ii) of such Act.

(5) CLARIFICATION OF TREATMENT OF SATELLITE FACILITIES AND REMOTE LOCATIONS.—A long-stay cancer hospital described in section 1886(d)(1)(B)(vi) of the Social Security Act, as designated under paragraph (1), shall include satellites or remote site locations for such hospital established before or after the date of the enactment of this Act if the provider-based requirements under section 413.65 of title 42, Code of Federal Regulations, applicable certification requirements under title XVIII of the Social Security, and such other applicable State licensure and certificate of need requirements are met with respect to such satellites or remote site locations.

**SEC. 504. INCREASING THE DSH ADJUSTMENT CAP.**

Section 1886(d)(5)(F)(xiv) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)(xiv)) is amended—

(1) subclause (II), by striking ''12 percent'' and inserting ''the percent specified in subclause (III)''; and

(2) by adding at the end the following new subclause:

"(III) The percent specified in this subclause is, in the case of discharges occurring—

"(a) before October 1, 2007, 12 percent;

"(b) during fiscal year 2008, 16 percent;

"(c) during fiscal year 2009, 18 percent; and

"(d) on or after October 1, 2009, 12 percent.".

**SEC. 505. PPS-EXEMPT CANCER HOSPITALS.**

(a) AUTHORIZING REBASING FOR PPS-EXEMPT CANCER HOSPITALS.—Section 1886(b)(3)(F) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(F)) is amended by adding at the end the following new clause:

"(iv) In the case of a hospital (or unit described in the matter following clause (v) of subsection (d)(1)(B)) that received payment under this subsection for inpatient hospital services furnished during cost reporting periods beginning before October 1, 1999, that is within a class of hospital described in clause (iii) (other than subclause (IV), relating to long-term care hospitals, and that requests the Secretary (in

a form and manner specified by the Secretary) to effect a rebasing under this clause for the hospital, the Secretary may compute the target amount for the hospital's 12-month cost reporting period beginning during fiscal year 2008 as an amount equal to the average described in clause (ii) but determined as if any reference in such clause to 'the date of the enactment of this subparagraph' were a reference to 'the date of the enactment of this clause'.''.

(b) MEDPAC REPORT ON PPS-EXEMPT CANCER HOSPITALS.—Not later than March 1, 2009, the Medicare Payment Advisory Commission (established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6)) shall submit to the Secretary and Congress a report evaluating the following:

(1) Measures of payment adequacy and Medicare margins for PPS-exempt cancer hospitals, as established under section 1886(d)(1)(B)(v) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(v)).

(2) To the extent a PPS-exempt cancer hospital was previously affiliated with another hospital, the

margins of the PPS-exempt hospital and the other hospital as separate entities and the margins of such hospitals that existed when the hospitals were previously affiliated.

(3) Payment adequacy for cancer discharges under the Medicare inpatient hospital prospective payment system.

**SEC. 506. SKILLED NURSING FACILITY PAYMENT UPDATE.**

(a) IN GENERAL.—Section 1888(e)(4)(E)(ii) of the Social Security Act (42 U.S.C. 1395yy(e)(4)(E)(ii)) is amended—

(1) in subclause (III), by striking ''and'';

(2) by redesignating subsection (IV) as subclause (VI); and

(3) by inserting after subclause (III) the following new subclauses:

''(IV) for each of fiscal years 2004, 2005, 2006, and 2007, the rate computed for the previous fiscal year increased by the skilled nursing facility market basket percentage change for the fiscal year involved;

''(V) for fiscal year 2008, the rate computed for the previous fiscal year; and''.

(b) DELAYED EFFECTIVE DATE.—Section 1888(e)(4)(E)(ii)(V) of the Social Security Act, as inserted by subsection (a)(3), shall not apply to payment for days before January 1, 2008.

**SEC. 507. REVOCATION OF UNIQUE DEEMING AUTHORITY OF THE JOINT COMMISSION FOR THE ACCREDITATION OF HEALTHCARE ORGANIZATIONS.**

(a) REVOCATION.—Section 1865 of the Social Security Act (42 U.S.C. 1395bb) is amended—

(1) by striking subsection (a); and

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (a), (b), (c), and (d), respectively.

(b) CONFORMING AMENDMENTS.—(1) Such section is further amended—

(A) in subsection (a)(1), as so redesignated, by striking ''In addition, if'' and inserting ''If'';

(B) in subsection (b), as so redesignated—

(i) by striking ''released to him by the Joint Commission on Accreditation of Hospitals,'' and inserting ''released to the Secretary by''; and

(ii) by striking the comma after ''Association'';

(C) in subsection (c), as so redesignated, by striking ''pursuant to subsection (a) or (b)(1)'' and inserting ''pursuant to subsection (a)(1)''; and

(D) in subsection (d), as so redesignated, by striking ''pursuant to subsection (a) or (b)(1)'' and inserting ''pursuant to subsection (a)(1)''.

(2) Section 1861(e) of such Act (42 U.S.C. 1395x(e)) is amended in the fourth sentence by striking ''and (ii) is accredited by the Joint Commission on Accreditation of Hospitals, or is accredited by or approved by a program of the country in which such institution is located if the Secretary finds the accreditation or comparable approval standards of such program to be essentially equivalent to those of the Joint Commission on Accreditation of Hospitals'' and inserting ''and (ii) is accredited by a national accreditation body recognized by the Secretary under section 1865(a), or is accredited by or approved by a program of the country in which such institution is located if the Secretary finds the accreditation or comparable approval standards of such program to

be essentially equivalent to those of such a national accreditation body.''.

(3) Section 1864(c) of such Act (42 U.S.C. 1395aa(c)) is amended by striking ''pursuant to subsection (a) or (b)(1) of section 1865'' and inserting ''pursuant to section 1865(a)(1)''.

(4) Section 1875(b) of such Act (42 U.S.C. 1395ll(b)) is amended by striking ''the Joint Commission on Accreditation of Hospitals,'' and inserting ''national accreditation bodies under section 1865(a)''.

(5) Section 1834(a)(20)(B) of such Act (42 U.S.C. 1395m(a)(20)(B)) is amended by striking ''section 1865(b)'' and inserting ''section 1865(a)''.

(6) Section 1852(e)(4)(C) of such Act (42 U.S.C. 1395w-22(e)(4)(C)) is amended by striking ''section 1865(b)(2)'' and inserting ''section 1865(a)(2)''.

(c) AUTHORITY TO RECOGNIZE JCAHO AS A NATIONAL ACCREDITATION BODY.—The Secretary of Health and Human Services may recognize the Joint Commission on Accreditation of Healthcare Organizations as a national accreditation body under section 1865 of the Social Security Act (42 U.S.C. 1395bb), as amended by this sec-

tion, upon such terms and conditions, and upon submission of such information, as the Secretary may require.

(d) EFFECTIVE DATE; TRANSITION RULE.—(1) Subject to paragraph (2), the amendments made by this section shall apply with respect to accreditations of hospitals granted on or after the date that is 18 months after the date of the enactment of this Act.

(2) For purposes of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), the amendments made by this section shall not effect the accreditation of a hospital by the Joint Commission on Accreditation of Healthcare Organizations, or under accreditation or comparable approval standards found to be essentially equivalent to accreditation or approval standards of the Joint Commission on Accreditation of Healthcare Organizations, for the period of time applicable under such accreditation.

# TITLE VI—OTHER PROVISIONS RELATING TO MEDICARE PART B

## Subtitle A—Payment and Coverage Improvements

### SEC. 601. PAYMENT FOR THERAPY SERVICES.

(a) EXTENSION OF EXCEPTIONS PROCESS FOR MEDICARE THERAPY CAPS.—Section 1833(g)(5) of the Social Security Act (42 U.S.C. 1395l(g)(5)), as amended

1 by section 201 of the Medicare Improvements and Exten-
2 sion Act of 2006 (division B of Public Law 109–432), is
3 amended by striking ''2007'' and inserting ''2009''.
4 (b) STUDY AND REPORT.—
5 (1) STUDY.—The Secretary of Health and
6 Human Services, in consultation with appropriate
7 stakeholders, shall conduct a study on refined and
8 alternative payment systems to the Medicare pay-
9 ment cap under section 1833(g) of the Social Secu-
10 rity Act (42 U.S.C. 1395l(g)) for physical therapy
11 services and speech-language pathology services, de-
12 scribed in paragraph (1) of such section and occupa-
13 tional therapy services described in paragraph (3) of
14 such section. Such study shall consider, with respect
15 to payment amounts under Medicare, the following:
16 (A) The creation of multiple payment caps
17 for such services to better reflect costs associ-
18 ated with specific health conditions.
19 (B) The development of a prospective pay-
20 ment system, including an episode-based system
21 of payments, for such services.
22 (C) The data needed for the development
23 of a system of multiple payment caps (or an al-
24 ternative payment methodology) for such serv-
25 ices and the availability of such data.

(2) REPORT.—Not later than January 1, 2009, the Secretary shall submit to Congress a report on the study conducted under paragraph (1).

**SEC. 602. MEDICARE SEPARATE DEFINITION OF OUTPATIENT SPEECH-LANGUAGE PATHOLOGY SERVICES.**

(a) IN GENERAL.—Section 1861(ll) of the Social Security Act (42 U.S.C. 1395x(ll)) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) by inserting after paragraph (1) the following new paragraph:

''(2) The term 'outpatient speech-language pathology services' has the meaning given the term 'outpatient physical therapy services' in subsection (p), except that in applying such subsection—

''(A) 'speech-language pathology' shall be substituted for 'physical therapy' each place it appears; and

''(B) 'speech-language pathologist' shall be substituted for 'physical therapist' each place it appears.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1832(a)(2)(C) of the Social Security Act (42 U.S.C. 1395k(a)(2)(C)) is amended—

(A) by striking ''and outpatient'' and inserting '', outpatient''; and

(B) by inserting before the period at the end the following: '', and outpatient speech-language pathology services (other than services to which the second sentence of section 1861(p) applies through the application of section 1861(ll)(2))''.

(2) Subparagraphs (A) and (B) of section 1833(a)(8) of such Act (42 U.S.C. 1395l(a)(8)) are each amended by striking ''(which includes outpatient speech-language pathology services)'' and inserting '', outpatient speech-language pathology services,''.

(3) Section 1833(g)(1) of such Act (42 U.S.C. 1395l(g)(1)) is amended—

(A) by inserting ''and speech-language pathology services of the type described in such section through the application of section 1861(ll)(2)'' after ''1861(p)''; and

(B) by inserting ''and speech-language pathology services'' after ''and physical therapy services''.

(4) The second sentence of section 1835(a) of such Act (42 U.S.C. 1395n(a)) is amended—

(A) by striking ''section 1861(g)'' and inserting ''subsection (g) or (ll)(2) of section 1861'' each place it appears; and

(B) by inserting ''or outpatient speech-language pathology services, respectively'' after ''occupational therapy services''.

(5) Section 1861(p) of such Act (42 U.S.C. 1395x(p)) is amended by striking the fourth sentence.

(6) Section 1861(s)(2)(D) of such Act (42 U.S.C. 1395x(s)(2)(D)) is amended by inserting '', outpatient speech-language pathology services,'' after ''physical therapy services''.

(7) Section 1862(a)(20) of such Act (42 U.S.C. 1395y(a)(20)) is amended—

(A) by striking ''outpatient occupational therapy services or outpatient physical therapy services'' and inserting ''outpatient physical therapy services, outpatient speech-language pathology services, or outpatient occupational therapy services''; and

(B) by striking ''section 1861(g)'' and inserting ''subsection (g) or (ll)(2) of section 1861''.

(8) Section 1866(e)(1) of such Act (42 U.S.C. 1395cc(e)(1)) is amended—

(A) by striking ''section 1861(g)'' and inserting ''subsection (g) or (ll)(2) of section 1861'' the first two places it appears;

(B) by striking ''defined) or'' and inserting ''defined),''; and

(C) by inserting before the semicolon at the end the following: '', or (through the operation of section 1861(ll)(2)) with respect to the furnishing of outpatient speech-language pathology''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2008.

(d) CONSTRUCTION.—Nothing in this section shall be construed to affect existing regulations and policies of the Centers for Medicare & Medicaid Services that require physician oversight of care as a condition of payment for speech-language pathology services under part B of the medicare program.

**SEC. 603. INCREASED REIMBURSEMENT RATE FOR CERTIFIED NURSE-MIDWIVES.**

(a) IN GENERAL.—Section 1833(a)(1)(K) of the Social Security Act (42 U.S.C.1395l(a)(1)(K)) is amended

by striking ''(but in no event'' and all that follows through ''performed by a physician)''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after April 1, 2008.

**SEC. 604. ADJUSTMENT IN OUTPATIENT HOSPITAL FEE SCHEDULE INCREASE FACTOR.**

The first sentence of section 1833(t)(3)(C)(iv) of the Social Security Act (42 U.S.C. 1395l(t)(3)(C)(iv)) is amended by inserting before the period at the end the following: ''and reduced by 0.25 percentage point for such factor for such services furnished in 2008''.

**SEC. 605. EXCEPTION TO 60-DAY LIMIT ON MEDICARE SUBSTITUTE BILLING ARRANGEMENTS IN CASE OF PHYSICIANS ORDERED TO ACTIVE DUTY IN THE ARMED FORCES.**

(a) IN GENERAL.—Section 1842(b)(6)(D)(iii) of the Social Security Act (42 U.S.C. 1395u(b)(6)(D)(iii)) is amended by inserting after ''of more than 60 days'' the following: ''or are provided over a longer continuous period during all of which the first physician has been called or ordered to active duty as a member of a reserve component of the Armed Forces''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after the date of the enactment of this section.

**SEC. 606. EXCLUDING CLINICAL SOCIAL WORKER SERVICES FROM COVERAGE UNDER THE MEDICARE SKILLED NURSING FACILITY PROSPECTIVE PAYMENT SYSTEM AND CONSOLIDATED PAYMENT.**

(a) IN GENERAL.—Section 1888(e)(2)(A)(ii) of the Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(ii)) is amended by inserting ''clinical social worker services,'' after ''qualified psychologist services,''..

(b) CONFORMING AMENDMENT.—Section 1861(hh)(2) of the Social Security Act (42 U.S.C. 1395x(hh)(2)) is amended by striking ''and other than services furnished to an inpatient of a skilled nursing facility which the facility is required to provide as a requirement for participation''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1, 2008.

**SEC. 607. COVERAGE OF MARRIAGE AND FAMILY THERAPIST SERVICES AND MENTAL HEALTH COUNSELOR SERVICES.**

(a) COVERAGE OF MARRIAGE AND FAMILY THERAPIST SERVICES.—

(1) COVERAGE OF SERVICES.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(A) in subparagraph (Z), by striking ''and'' at the end;

(B) in subparagraph (AA), by adding ''and'' at the end; and

(C) by adding at the end the following new subparagraph:

''(BB) marriage and family therapist services (as defined in subsection (ccc));''.

(2) DEFINITION.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

''(ccc) MARRIAGE AND FAMILY THERAPIST SERVICES.—(1) The term 'marriage and family therapist services' means services performed by a marriage and family therapist (as defined in paragraph (2)) for the diagnosis and treatment of mental illnesses, which the marriage and family therapist is legally authorized to perform under State law (or the State regulatory mechanism provided by

State law) of the State in which such services are performed, provided such services are covered under this title, as would otherwise be covered if furnished by a physician or as incident to a physician's professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services.

"(2) The term 'marriage and family therapist' means an individual who—

"(A) possesses a master's or doctoral degree which qualifies for licensure or certification as a marriage and family therapist pursuant to State law;

"(B) after obtaining such degree has performed at least 2 years of clinical supervised experience in marriage and family therapy; and

"(C) is licensed or certified as a marriage and family therapist in the State in which marriage and family therapist services are performed.".

(3) PROVISION FOR PAYMENT UNDER PART B.—Section 1832(a)(2)(B) of the Social Security Act (42 U.S.C. 1395k(a)(2)(B)) is amended by adding at the end the following new clause:

"(v) marriage and family therapist services;".

(4) AMOUNT OF PAYMENT.—

(A) IN GENERAL.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395*l*(a)(1)) is amended—

(i) by striking ''and'' before ''(V)''; and

(ii) by inserting before the semicolon at the end the following: '', and (W) with respect to marriage and family therapist services under section 1861(s)(2)(BB), the amounts paid shall be 80 percent of the lesser of (i) the actual charge for the services or (ii) 75 percent of the amount determined for payment of a psychologist under subparagraph (L)''.

(B) DEVELOPMENT OF CRITERIA WITH RESPECT TO CONSULTATION WITH A PHYSICIAN.—The Secretary of Health and Human Services shall, taking into consideration concerns for patient confidentiality, develop criteria with respect to payment for marriage and family therapist services for which payment may be made directly to the marriage and family therapist under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.) under which such a therapist must agree to consult with a

patient's attending or primary care physician in accordance with such criteria.

(5) EXCLUSION OF MARRIAGE AND FAMILY THERAPIST SERVICES FROM SKILLED NURSING FACILITY PROSPECTIVE PAYMENT SYSTEM.—Section 1888(e)(2)(A)(ii) of the Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(ii)), is amended by inserting ''marriage and family therapist services (as defined in subsection (ccc)(1)),'' after ''qualified psychologist services,''.

(6) COVERAGE OF MARRIAGE AND FAMILY THERAPIST SERVICES PROVIDED IN RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS.—Section 1861(aa)(1)(B) of the Social Security Act (42 U.S.C. 1395x(aa)(1)(B)) is amended by striking ''or by a clinical social worker (as defined in subsection (hh)(1)),'' and inserting '', by a clinical social worker (as defined in subsection (hh)(1)), or by a marriage and family therapist (as defined in subsection (ccc)(2)),''.

(7) INCLUSION OF MARRIAGE AND FAMILY THERAPISTS AS PRACTITIONERS FOR ASSIGNMENT OF CLAIMS.—Section 1842(b)(18)(C) of the Social Security Act (42 U.S.C. 1395u(b)(18)(C)) is amended by adding at the end the following new clause:

1 "(vii) A marriage and family therapist (as de-
2 fined in section 1861(ccc)(2)).".
3 (b) COVERAGE OF MENTAL HEALTH COUNSELOR
4 SERVICES.—
5 (1) COVERAGE OF SERVICES.—Section
6 1861(s)(2) of the Social Security Act (42 U.S.C.
7 1395x(s)(2)), as amended in subsection (a)(1), is
8 further amended—
9 (A) in subparagraph (AA), by striking
10 "and" at the end;
11 (B) in subparagraph (BB), by inserting
12 "and" at the end; and
13 (C) by adding at the end the following new
14 subparagraph:
15 "(CC) mental health counselor services (as
16 defined in subsection (ddd)(2));".
17 (2) DEFINITION.—Section 1861 of the Social
18 Security Act (42 U.S.C. 1395x), as amended by sub-
19 section (a)(2), is further amended by adding at the
20 end the following new subsection:
21 "(ddd) MENTAL HEALTH COUNSELOR; MENTAL
22 HEALTH COUNSELOR SERVICES.—(1) The term 'mental
23 health counselor' means an individual who—
24 "(A) possesses a master's or doctor's degree
25 which qualifies the individual for licensure or certifi-

1 cation for the practice of mental health counseling in
2 the State in which the services are performed;
3 ''(B) after obtaining such a degree has per-
4 formed at least 2 years of supervised mental health
5 counselor practice; and
6 ''(C) is licensed or certified as a mental health
7 counselor or professional counselor by the State in
8 which the services are performed.
9 ''(2) The term 'mental health counselor services'
10 means services performed by a mental health counselor (as
11 defined in paragraph (1)) for the diagnosis and treatment
12 of mental illnesses which the mental health counselor is
13 legally authorized to perform under State law (or the
14 State regulatory mechanism provided by the State law) of
15 the State in which such services are performed, provided
16 such services are covered under this title, as would other-
17 wise be covered if furnished by a physician or as incident
18 to a physician's professional service, but only if no facility
19 or other provider charges or is paid any amounts with re-
20 spect to the furnishing of such services.''.
21 (3) PROVISION FOR PAYMENT UNDER PART
22 B.—Section 1832(a)(2)(B) of the Social Security
23 Act (42 U.S.C. 1395k(a)(2)(B)), as amended by
24 subsection (a)(3), is further amended by adding at
25 the end the following new clause:

"(vi) mental health counselor services;".

(4) AMOUNT OF PAYMENT.—

(A) IN GENERAL.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395*l*(a)(1)), as amended by subsection (a)(4), is further amended—

(i) by striking "and" before "(W)"; and

(ii) by inserting before the semicolon at the end the following: ", and (X) with respect to mental health counselor services under section 1861(s)(2)(CC), the amounts paid shall be 80 percent of the lesser of (i) the actual charge for the services or (ii) 75 percent of the amount determined for payment of a psychologist under subparagraph (L)".

(B) DEVELOPMENT OF CRITERIA WITH RESPECT TO CONSULTATION WITH A PHYSICIAN.—The Secretary of Health and Human Services shall, taking into consideration concerns for patient confidentiality, develop criteria with respect to payment for mental health counselor services for which payment may be made di-

rectly to the mental health counselor under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.) under which such a counselor must agree to consult with a patient's attending or primary care physician in accordance with such criteria.

(5) EXCLUSION OF MENTAL HEALTH COUNSELOR SERVICES FROM SKILLED NURSING FACILITY PROSPECTIVE PAYMENT SYSTEM.—Section 1888(e)(2)(A)(ii) of the Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(ii)), as amended by subsection (a)(5), is amended by inserting ''mental health counselor services (as defined in section 1861(ddd)(2)),'' after ''marriage and family therapist services (as defined in subsection (ccc)(1)),''.

(6) COVERAGE OF MENTAL HEALTH COUNSELOR SERVICES PROVIDED IN RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS.—Section 1861(aa)(1)(B) of the Social Security Act (42 U.S.C. 1395x(aa)(1)(B)), as amended by subsection (a)(6), is amended by striking ''or by a marriage and family therapist (as defined in subsection (ccc)(2)),'' and inserting ''by a marriage and family therapist (as defined in subsection (ccc)(2)),

or a mental health counselor (as defined in subsection (ddd)(1)),''.

(7) INCLUSION OF MENTAL HEALTH COUNSELORS AS PRACTITIONERS FOR ASSIGNMENT OF CLAIMS.—Section 1842(b)(18)(C) of the Social Security Act (42 U.S.C. 1395u(b)(18)(C)), as amended by subsection (a)(7), is amended by adding at the end the following new clause:

''(viii) A mental health counselor (as defined in section 1861(fff)(1)).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1, 2008.

**SEC. 608. RENTAL AND PURCHASE OF POWER-DRIVEN WHEELCHAIRS.**

(a) IN GENERAL.—Section 1834(a)(7) of the Social Security Act (42 U.S.C. 1395m(a)(7)) is amended—

(1) in subparagraph (A)—

(A) clause (i)(I), by striking ''Except as provided in clause (iii), payment'' and inserting ''Payment'';

(B) by striking clause (iii); and

(C) in clause (iv)—

(i) by redesignating such clause as clause (iii); and

(ii) by striking "or in the case of a power-driven wheelchair for which a purchase agreement has been entered into under clause (iii)"; and

(2) in subparagraph (C)(ii)(II), by striking "or (A)(iii)".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (1), the amendments made by subsection (a) shall take effect on January 1, 2008, and shall apply to power-driven wheelchairs furnished on or after such date.

(2) APPLICATION TO COMPETITIVE ACQUISITION.—The amendments made by subsection (a) shall not apply to contracts entered into under section 1847 of the Social Security Act (42 U.S.C. 1395w–3) pursuant to a bid submitted under such section before July 21, 2007.

**SEC. 609. RENTAL AND PURCHASE OF OXYGEN EQUIPMENT.**

(a) IN GENERAL.—Section 1834(a)(5)(F) of the Social Security Act (42 U.S.C. 1395m(a)(5)(F)) is amended—

(1) in clause (i)—

(A) by striking "Payment" and inserting "Subject to clause (iii), payment"; and

(B) by striking "36 months" and inserting "13 months";

(2) in clause (ii)(I), by striking "36th continuous month" and inserting "13th continuous month"; and

(3) by adding at the end the following new clause:

"(iii) SPECIAL RULE FOR OXYGEN GENERATING PORTABLE EQUIPMENT.—In the case of oxygen generating portable equipment referred to in the final rule published in the Federal Register on November 9, 2006 (71 Fed. Reg. 65897–65899), in applying clauses (i) and (ii)(I) each reference to '13 months' is deemed a reference to '36 months'.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (3), the amendments made by subsection (a) shall apply to oxygen equipment furnished on or after January 1, 2008.

(2) TRANSITION.—In the case of an individual receiving oxygen equipment on December 31, 2007, for which payment is made under section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), the

13-month period described in paragraph (5)(F)(i) of such section, as amended by subsection (a), shall begin on January 1, 2008, but in no case shall the rental period for such equipment exceed 36 months.

(3) APPLICATION TO COMPETITIVE ACQUISITION.—The amendments made by subsection (a) shall not apply to contracts entered into under section 1847 of the Social Security Act (42 U.S.C. 1395w–3) pursuant to a bid submitted under such section before July 21, 2007.

(c) STUDY AND REPORT.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study to examine the service component and the equipment component of the provision of oxygen to Medicare beneficiaries. The study shall assess—

(A) the type of services provided and variation across suppliers in providing such services;

(B) whether the services are medically necessary or affect patient outcomes;

(C) whether the Medicare program pays appropriately for equipment in connection with the provision of oxygen;

(D) whether such program pays appropriately for necessary services;

(E) whether such payment in connection with the provision of oxygen should be divided between equipment and services, and if so, how; and

(F) how such payment rate compares to a competitively bid rate.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the study conducted under paragraph (1).

**SEC. 610. ADJUSTMENT FOR MEDICARE MENTAL HEALTH SERVICES.**

(a) IN GENERAL.—For purposes of payment for services furnished under the physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) during the applicable period, the Secretary of Health and Human Services shall increase the amount otherwise payable for applicable services by 5 percent.

(b) DEFINITIONS.—For purposes of subsection (a):

(1) APPLICABLE PERIOD.—The term ''applicable period'' means the period beginning on January 1, 2008, and ending on December 31 of the year be-

fore the effective date of the first review after January 1, 2008, of work relative value units conducted under section 1848(c)(2)(B)(i) of the Social Security Act.

(2) APPLICABLE SERVICES.—The term ''applicable services'' means procedure codes for services—

(A) in the categories of psychiatric therapeutic procedures furnished in office or other outpatient facility settings, or inpatient hospital, partial hospital or residential care facility settings; and

(B) which cover insight oriented, behavior modifying, or supportive psychotherapy and interactive psychotherapy services in the Healthcare Common Procedure Coding System established by the Secretary of Health and Human Services under section 1848(c)(5) of such Act.

(c) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement this section by program instruction or otherwise.

**SEC. 611. EXTENSION OF BRACHYTHERAPY SPECIAL RULE.**

Section 1833(t)(16)(C) of the Social Security Act (42 U.S.C. 1395l(t)(16)(C)) is amended by striking ''2008'' and inserting ''2009''.

**SEC. 612. PAYMENT FOR PART B DRUGS.**

(a) APPLICATION OF CONSISTENT VOLUME WEIGHTING IN COMPUTATION OF ASP.—In order to assure that payments for drugs and biologicals under section 1847A of the Social Security Act (42 U.S.C. 1395w–3a) are correct and consistent with law, the Secretary of Health and Human Services shall, for payment for drugs and biologicals furnished on or after July 1, 2008, compute the volume-weighted average sales price using equation #2 (specified in appendix A of the report of the Inspector General of the Department of Health and Human Services on ''Calculation of Volume-Weighted Average Sales Price for Medicare Part B Prescription Drugs'' (February 2006; OEI–03–05–00310)) used by the Office of Inspector General to calculate a volume-weighted ASP.

(b) IMPROVEMENTS IN THE COMPETITIVE ACQUISITION PROGRAM (CAP).—

(1) CONTINUOUS OPEN ENROLLMENT; AUTOMATIC REENROLLMENT WITHOUT NEED FOR REAPPLICATION.—Subsection (a)(1)(A) of section 1847B of the Social Security Act (42 U.S.C. 1395w–3b) is amended—

(A) in clause (ii), by striking ''annually'' and inserting ''on an ongoing basis'';

(B) in clause (iii), by striking ''an annual selection'' and inserting ''a selection (which may be changed on an annual basis)'' ; and

(C) by adding at the end the following: ''An election and selection described in clauses (ii) and (iii) shall continue to be effective without the need for any periodic reelection or reapplication or selection.''.

(2) PERMITTING VENDER TO DELIVER DRUGS TO SITE OF ADMINISTRATION.—Subsection (b)(4)(E) of such section is amended—

(A) by striking ''or'' at the end of clause (I);

(B) by striking the period at the end of clause (ii) and inserting ''; or''; and

(C) by adding at the end the following new clause:

''(iii) prevent a contractor from delivering drugs and biologicals to the site in which the drugs or biologicals will be administered.''.

(3) PHYSICIAN OUTREACH AND EDUCATION.—Subsection (a)(1) of such section is amended by adding at the end the following new subparagraph:

"(E) PHYSICIAN OUTREACH AND EDUCATION.—The Secretary shall conduct a program of outreach to education physicians concerning the program and the ongoing opportunity of physicians to elect to obtain drugs and biologicals under the program.".

(4) REBIDDING OF CONTRACTS.—The Secretary of Health and Human Services shall provide for the rebidding of contracts under section 1847B(c) of the Social Security Act (42 U.S.C. 1395w–3b(c)) only for periods on or after the expiration of the contract in effect under such section as of the date of the enactment of this Act.

(c) TREATMENT OF CERTAIN DRUGS.—Section 1847A(b) of the Social Security Act (42 U.S.C. 1395w–3a(b)) is amended—

(1) in paragraph (1), by inserting "paragraph (6) and" after "Subject to"; and

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

"(6) SPECIAL RULE.—.In applying subsection (c)(6)(C)(ii), beginning with January 1, 2008, the

average sales price for drugs or biologicals described in section 1842(o)(1)(G) is the lower of the average sales price calculated including drugs or biologicals to which such subsection applies and the average sales price that would have been calculated if such subsection were not applied.''.

(d) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall apply to drugs furnished on or after January 1, 2008.

# Subtitle B—Extension of Medicare Rural Access Protections

### SEC. 621. 2-YEAR EXTENSION OF FLOOR ON MEDICARE WORK GEOGRAPHIC ADJUSTMENT.

Section 1848(e)(1)(E) of such Act (42 U.S.C. 1395w–4(e)(1)(E)) is amended by striking ''2008'' and inserting ''2010''.

### SEC. 622. 2-YEAR EXTENSION OF SPECIAL TREATMENT OF CERTAIN PHYSICIAN PATHOLOGY SERVICES UNDER MEDICARE.

Section 542(c) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as amended by section 732 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and section 104 of the Medicare Improvements and Extension Act of 2006 (division B of Public Law 109–

432), is amended by striking ''and 2007'' and inserting ''2007, 2008, and 2009''.

**SEC. 623. 2-YEAR EXTENSION OF MEDICARE REASONABLE COSTS PAYMENTS FOR CERTAIN CLINICAL DIAGNOSTIC LABORATORY TESTS FURNISHED TO HOSPITAL PATIENTS IN CERTAIN RURAL AREAS.**

Section 416(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2282; 42 U.S.C. 1395l–4(b)), as amended by section 105 of the Medicare Improvement and Extension Act of 2006 (division B of Public Law 109–432), is amended by striking ''3-year'' and inserting ''5-year''.

**SEC. 624. 2-YEAR EXTENSION OF MEDICARE INCENTIVE PAYMENT PROGRAM FOR PHYSICIAN SCARCITY AREAS .**

(a) IN GENERAL.—Section 1833(u)(1) of the Social Security Act (42 U.S.C. 1395l(u)(1)) is amended by striking ''2008'' and inserting ''2010''.

(b) TRANSITION.—With respect to physicians' services furnished during 2008 and 2009, for purposes of subsection (a), the Secretary of Health and Human Services shall use the primary care scarcity areas and the specialty care scarcity areas (as identified in section 1833(u)(4))

that the Secretary was using under such subsection with respect to physicians' services furnished on December 31, 2007.

**SEC. 625. 2-YEAR EXTENSION OF MEDICARE INCREASE PAYMENTS FOR GROUND AMBULANCE SERVICES IN RURAL AREAS.**

Section 1834(l)(13) of the Social Security Act (42 U.S.C. 1395m(l)(13)) is amended—

(1) in subparagraph (A)—

(A) in the matter before clause (i), by striking ''furnished on or after July 1, 2004, and before January 1, 2007,'';

(B) in clause (i), by inserting ''for services furnished on or after July 1, 2004, and before January 1, 2007, and on or after January 1, 2008, and before January 1, 2010,'' after ''in such paragraph,''; and

(C) in clause (ii), by inserting ''for services furnished on or after July 1, 2004, and before January 1, 2007,'' after ''in clause (i),''; and

(2) in subparagraph (B)—

(A) in the heading, by striking ''AFTER 2006'' and inserting ''FOR SUBSEQUENT PERIODS'';

(B) by inserting ''clauses (i) and (ii) of'' before ''subparagraph (A)''; and

(C) by striking ''in such subparagraph'' and inserting ''in the respective clause''.

**SEC. 626. EXTENDING HOLD HARMLESS FOR SMALL RURAL HOSPITALS UNDER THE HOPD PROSPECTIVE PAYMENT SYSTEM.**

Section 1833(t)(7)(D)(i)(II) of the Social Security Act (42 U.S.C. 1395l(t)(7)(D)(I)(II)) is amended—

(1) by striking ''January 1, 2009'' and inserting ''January 1, 2010'';

(2) by striking ''2007, or 2008,''; and

(3) by striking ''90 percent, and 85 percent, respectively,'' and inserting '', and with respect to such services furnished after 2006 the applicable percentage shall be 90 percent.''.

# Subtitle C—End Stage Renal Disease Program

**SEC. 631. CHRONIC KIDNEY DISEASE DEMONSTRATION PROJECTS.**

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary''), acting through the Director of the National Institutes of Health, shall establish demonstration projects to—

(1) increase public and medical community awareness (particularly of those who treat patients with diabetes and hypertension) about the factors that lead to chronic kidney disease, how to prevent it, how to diagnose it, and how to treat it;

(2) increase screening and use of prevention techniques for chronic kidney disease for Medicare beneficiaries and the general public (particularly among patients with diabetes and hypertension, where prevention techniques are well established and early detection makes prevention possible); and

(3) enhance surveillance systems and expand research to better assess the prevalence and incidence of chronic kidney disease, (building on work done by Centers for Disease Control and Prevention).

(b) SCOPE AND DURATION.—

(1) SCOPE.—The Secretary shall select at least 3 States in which to conduct demonstration projects under this section. In selecting the States under this paragraph, the Secretary shall take into account the size of the population of individuals with end-stage renal disease who are enrolled in part B of title XVIII of the Social Security Act and ensure the participation of individuals who reside in rural and urban areas.

(2) DURATION.—The demonstration projects under this section shall be conducted for a period that is not longer than 5 years and shall begin on January 1, 2009.

(c) EVALUATION AND REPORT.—

(1) EVALUATION.—The Secretary shall conduct an evaluation of the demonstration projects conducted under this section.

(2) REPORT.—Not later than 12 months after the date on which the demonstration projects under this section are completed, the Secretary shall submit to Congress a report on the evaluation conducted under paragraph (1) together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

**SEC. 632. MEDICARE COVERAGE OF KIDNEY DISEASE PATIENT EDUCATION SERVICES.**

(a) COVERAGE OF KIDNEY DISEASE EDUCATION SERVICES.—

(1) COVERAGE.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(A) in subparagraph (Z), by striking ''and'' after the semicolon at the end;

(B) in subparagraph (AA), by adding "and" after the semicolon at the end; and

(C) by adding at the end the following new subparagraph:

"(BB) kidney disease education services (as defined in subsection (ccc));".

(2) SERVICES DESCRIBED.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

"Kidney Disease Education Services

"(ccc)(1) The term 'kidney disease education services' means educational services that are—

"(A) furnished to an individual with stage IV chronic kidney disease who, according to accepted clinical guidelines identified by the Secretary, will require dialysis or a kidney transplant;

"(B) furnished, upon the referral of the physician managing the individual's kidney condition, by a qualified person (as defined in paragraph (2)); and

"(C) designed—

"(i) to provide comprehensive information (consistent with the standards developed under paragraph (3)) regarding—

1 "(I) the management of comorbidities,
2 including for purposes of delaying the need
3 for dialysis;
4 "(II) the prevention of uremic com-
5 plications; and
6 "(III) each option for renal replace-
7 ment therapy (including hemodialysis and
8 peritoneal dialysis at home and in-center
9 as well as vascular access options and
10 transplantation);
11 "(ii) to ensure that the individual has the
12 opportunity to actively participate in the choice
13 of therapy; and
14 "(iii) to be tailored to meet the needs of
15 the individual involved.
16 "(2) The term 'qualified person' means a physician,
17 physician assistant, nurse practitioner, or clinical nurse
18 specialist who furnishes services for which payment may
19 be made under the fee schedule established under section
20 1848. Such term does not include a renal dialysis facility.
21 "(3) The Secretary shall set standards for the con-
22 tent of such information to be provided under paragraph
23 (1)(C)(i) after consulting with physicians, other health
24 professionals, health educators, professional organizations,
25 accrediting organizations, kidney patient organizations, di-

alysis facilities, transplant centers, network organizations described in section 1881(c)(2), and other knowledgeable persons. To the extent possible the Secretary shall consult with a person or entity described in the previous sentence, other than a dialysis facility, that has not received industry funding from a drug or biological manufacturer or dialysis facility.

''(4) In promulgating regulations to carry out this subsection, the Secretary shall ensure that each individual who is eligible for benefits for kidney disease education services under this title receives such services in a timely manner to maximize the benefit of those services.

''(5) The Secretary shall monitor the implementation of this subsection to ensure that individuals who are eligible for benefits for kidney disease education services receive such services in the manner described in paragraph (4).

''(6) No individual shall be eligible to be provided more than 6 sessions of kidney disease education services under this title.''.

(3) PAYMENT UNDER THE PHYSICIAN FEE SCHEDULE.—Section 1848(j)(3) of the Social Security Act (42 U.S.C. 1395w–4(j)(3)) is amended by inserting ''(2)(BB),'' after ''(2)(AA),''.

(4) LIMITATION ON NUMBER OF SESSIONS.—Section 1862(a)(1) of the Social Security Act (42 U.S.C. 1395y(a)(1)) is amended—

(A) in subparagraph (M), by striking ''and'' at the end;

(B) in subparagraph (N), by striking the semicolon at the end and inserting '', and''; and

(C) by adding at the end the following new subparagraph:

''(O) in the case of kidney disease education services (as defined in section 1861(ccc)), which are furnished in excess of the number of sessions covered under such section;''.

(5) GAO REPORT.—Not later than September 1, 2010, the Comptroller General of the United States shall submit to Congress a report on the following:

(A) The number of Medicare beneficiaries who are eligible to receive benefits for kidney disease education services (as defined in section 1861(ccc) of the Social Security Act, as added by paragraph (2)) under title XVIII of such Act and who receive such services.

(B) The extent to which there is a sufficient amount of physicians, physician assistants, nurse practitioners, and clinical nurse specialists to furnish kidney disease education services (as so defined) under such title and whether or not renal dialysis facilities (and appropriate employees of such facilities) should be included as an entity eligible under such section to furnish such services.

(C) Recommendations, if appropriate, for renal dialysis facilities (and appropriate employees of such facilities) to structure kidney disease education services (as so defined) in a manner that is objective and unbiased and that provides a range of options and alternative locations for renal replacement therapy and management of co-morbidities that may delay the need for dialysis.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2009.

1 **SEC. 633. REQUIRED TRAINING FOR PATIENT CARE DIALY-**
2 **SIS TECHNICIANS.**

3 Section 1881 of the Social Security Act (42 U.S.C.
4 1395rr) is amended by adding the following new sub-
5 section:

6 ''(h)(1) Except as provided in paragraph (2), a pro-
7 vider of services or a renal dialysis facility may not use,
8 for more than 12 months during 2009, or for any period
9 beginning on January 1, 2010, any individual as a patient
10 care dialysis technician unless the individual—

11 ''(A) has completed a training program in the
12 care and treatment of an individual with chronic
13 kidney failure who is undergoing dialysis treatment;
14 and

15 ''(B) has been certified by a nationally recog-
16 nized certification entity for dialysis technicians.

17 ''(2)(A) A provider of services or a renal dialysis facil-
18 ity may permit an individual enrolled in a training pro-
19 gram described in paragraph (1)(A) to serve as a patient
20 care dialysis technician while they are so enrolled.

21 ''(B) The requirements described in subparagraphs
22 (A), (B), and (C) of paragraph (1) do not apply to an
23 individual who has performed dialysis-related services for
24 at least 5 years.

25 ''(3) For purposes of paragraph (1), if, since the most
26 recent completion by an individual of a training program

1 described in paragraph (1)(A), there has been a period
2 of 24 consecutive months during which the individual has
3 not furnished dialysis-related services for monetary com-
4 pensation, such individual shall be required to complete
5 a new training program or become recertified as described
6 in paragraph (1)(B).

7 ''(4) A provider of services or a renal dialysis facility
8 shall provide such regular performance review and regular
9 in-service education as assures that individuals serving as
10 patient care dialysis technicians for the provider or facility
11 are competent to perform dialysis-related services.''.

12 **SEC. 634. MEDPAC REPORT ON TREATMENT MODALITIES**
13 **FOR PATIENTS WITH KIDNEY FAILURE.**

14 (a) EVALUATION.—

15 (1) IN GENERAL.—Not later than March 1,
16 2009, the Medicare Payment Advisory Commission
17 (established under section 1805 of the Social Secu-
18 rity Act) shall submit to the Secretary and Congress
19 a report evaluating the barriers that exist to increas-
20 ing the number of individuals with end-stage renal
21 disease who elect to receive home dialysis services
22 under the Medicare program under title XVIII of
23 the Social Security Act (42 U.S.C. 1395 et seq.).

24 (2) REPORT DETAILS.—The report shall include
25 the following:

(A) A review of Medicare home dialysis demonstration projects initiated before the date of the enactment of this Act, and the results of such demonstration projects and recommendations for future Medicare home dialysis demonstration projects or Medicare program changes that will test models that can improve Medicare beneficiary access to home dialysis.

(B) A comparison of current Medicare home dialysis costs and payments with current in-center and hospital dialysis costs and payments.

(C) An analysis of the adequacy of Medicare reimbursement for patient training for home dialysis (including hemodialysis and peritoneal dialysis) and recommendations for ensuring appropriate payment for such home dialysis training.

(D) A catalogue and evaluation of the incentives and disincentives in the current reimbursement system that influence whether patients receive home dialysis services or other treatment modalities.

(E) An evaluation of patient education services and how such services impact the treatment choices made by patients.

(F) Recommendations for implementing incentives to encourage patients to elect to receive home dialysis services or other treatment modalities under the Medicare program

(3) SCOPE OF REVIEW.—In preparing the report under paragraph (1), the Medicare Payment Advisory Commission shall consider a variety of perspectives, including the perspectives of physicians, other health care professionals, hospitals, dialysis facilities, health plans, purchasers, and patients.

**SEC. 635. ADJUSTMENT FOR ERYTHROPOIETIN STIMULATING AGENTS (ESAS).**

(a) IN GENERAL.—Subsection (b)(13) of section 1881 of the Social Security Act (42 U.S.C. 1395rr) is amended—

(1) in subparagraph (A)(iii), by striking ''For such drugs'' and inserting ''Subject to subparagraph (C), for such drugs''; and

(2) by adding at the end the following new subparagraph:

''(C)(i) The payment amounts under this title for erythropoietin furnished during 2008 or 2009 to an indi-

1 vidual with end stage renal disease by a large dialysis fa-
2 cility (as defined in subparagraph (D)) (whether to indi-
3 viduals in the facility or at home), in an amount equal
4 to $8.75 per thousand units (rounded to the nearest 100
5 units) or, if less, 102 percent of the average sales price
6 (as determined under section 1847A) for such drug or bio-
7 logical.

8 ''(ii) The payment amounts under this title for
9 darbepoetin alfa furnished during 2008 or 2009 to an in-
10 dividual with end stage renal disease by a large dialysis
11 facility (as defined in clause (iii)) (whether to individuals
12 in the facility or at home), in an amount equal to $2.92
13 per microgram or, if less, 102 percent of the average sales
14 price (as determined under section 1847A) for such drug
15 or biological.

16 ''(iii) For purposes of this subparagraph, the term
17 'large dialysis facility' means a provider of services or
18 renal dialysis facility that is owned or managed by a cor-
19 porate entity that, as of July 24, 2007, owns or manages
20 300 or more such providers or facilities, and includes a
21 successor to such a corporate entity''.

22 (b) NO IMPACT ON DRUG ADD-ON PAYMENT.—
23 Nothing in the amendments made by subsection (a) shall
24 be construed to affect the amount of any payment adjust-

ment made under section 1881(b)(12)(B)(ii) of the Social Security Act (42 U.S.C. 1395rr(b)(12)(B)(ii)).

**SEC. 636. SITE NEUTRAL COMPOSITE RATE.**

Subsection (b)(12)(A) of section 1881 of the Social Security Act (42 U.S.C. 1395rr) is amended by adding at the end the following new sentence: ''Under such system the payment rate for dialysis services furnished on or after January 1, 2008, by providers of such services for hospital-based facilities shall be the same as the payment rate (computed without regard to this sentence) for such services furnished by renal dialysis facilities that are not hospital-based, except that in applying the geographic index under subparagraph (D) to hospital-based facilities, the labor share shall be based on the labor share otherwise applied for such facilities.''.

**SEC. 637. DEVELOPMENT OF ESRD BUNDLING SYSTEM AND QUALITY INCENTIVE PAYMENTS.**

(a) DEVELOPMENT OF ESRD BUNDLING SYSTEM.—Subsection (b) of section 1881 of the Social Security Act (42 U.S.C. 1395rr) is further amended—

(1) in paragraph (12)(A), by striking ''In lieu of payment'' and inserting ''Subject to paragraph (14), in lieu of payment'';

(2) in the second sentence of paragraph (12)(F)—

(A) by inserting ''or paragraph (14)'' after ''this paragraph''; and

(B) by inserting ''or under the system under paragraph (14)'' after ''subparagraph (B)'';

(3) in paragraph (12)(H)—

(A) by inserting ''or paragraph (14)'' after ''under this paragraph'' the first place it appears; and

(B) by inserting before the period at the end the following: ''or, under paragraph (14), the identification of renal dialysis services included in the bundled payment, the adjustment for outliers, the identification of facilities to which the phase-in may apply, and the determination of payment amounts under subparagraph (A) under such paragraph, and the application of paragraph (13)(C)(iii))'';

(4) in paragraph (13)—

(A) in subparagraph (A), by striking ''The payment amounts'' and inserting ''subject to paragraph (14), the payment amounts''; and

(B) in subparagraph (B)—

(i) in clause (i), by striking ''(i)'' after ''(B)'' and by inserting '', subject to para-

graph (14)'' before the period at the end; and

(ii) by striking clause (ii); and

(5) by adding at the end the following new paragraph:

''(14)(A) Subject to subparagraph (E), for services furnished on or after January 1, 2010, the Secretary shall implement a payment system under which a single payment is made under this title for renal dialysis services (as defined in subparagraph (B)) in lieu of any other payment (including a payment adjustment under paragraph (12)(B)(ii)) for such services and items furnished pursuant to paragraph (4). In implementing the system the Secretary shall ensure that the estimated total amount of payments under this title for 2010 for renal dialysis services shall equal 96 percent of the estimated amount of payments for such services, including payments under paragraph (12)(B)(ii), that would have been made if such system had not been implemented.

''(B) For purposes of this paragraph, the term 'renal dialysis services' includes—

''(i) items and services included in the composite rate for renal dialysis services as of December 31, 2009;

1 "(ii) erythropoietin stimulating agents fur-
2 nished to individuals with end stage renal dis-
3 ease;
4 "(iii) other drugs and biologicals and diag-
5 nostic laboratory tests, that the Secretary iden-
6 tifies as commonly used in the treatment of
7 such patients and for which payment was (be-
8 fore the application of this paragraph) made
9 separately under this title, and any oral equiva-
10 lent form of such drugs and biologicals or of
11 drugs and biologicals described in clause (ii);
12 and
13 "(iv) home dialysis training for which pay-
14 ment was (before the application of this para-
15 graph) made separately under this section.
16 Such term does not include vaccines.
17 "(C) The system under this paragraph may provide
18 for payment on the basis of services furnished during a
19 week or month or such other appropriate unit of payment
20 as the Secretary specifies.
21 "(D) Such system—
22 "(i) shall include a payment adjustment based
23 on case mix that may take into account patient
24 weight, body mass index, comorbidities, length of

1 time on dialysis, age, race, ethnicity, and other ap-
2 propriate factors;
3 ''(ii) shall include a payment adjustment for
4 high cost outliers due to unusual variations in the
5 type or amount of medically necessary care, includ-
6 ing variations in the amount of erythropoietin stimu-
7 lating agents necessary for anemia management; and
8 ''(iii) may include such other payment adjust-
9 ments as the Secretary determines appropriate, such
10 as a payment adjustment—
11 ''(I) by a geographic index, such as the
12 index referred to in paragraph (12)(D), as the
13 Secretary determines to be appropriate;
14 ''(II) for pediatric providers of services and
15 renal dialysis facilities;
16 ''(III) for low volume providers of services
17 and renal dialysis facilities;
18 ''(IV) for providers of services or renal di-
19 alysis facilities located in rural areas; and
20 ''(V) for providers of services or renal di-
21 alysis facilities that are not large dialysis facili-
22 ties.
23 ''(E) The Secretary may provide for a phase-in of the
24 payment system described in subparagraph (A) for serv-
25 ices furnished by a provider of services or renal dialysis

1 facility described in any of subclauses (II) through (V) of
2 subparagraph (D)(iii), but such payment system shall be
3 fully implemented for services furnished in the case of any
4 such provider or facility on or after January 1, 2013.

5 ''(F) The Secretary shall apply the annual increase
6 that would otherwise apply under subparagraph (F) of
7 paragraph (12) to payment amounts established under
8 such paragraph (if this paragraph did not apply) in an
9 appropriate manner under this paragraph.''.

10 (6) PROHIBITION OF UNBUNDLING.—Section
11 1862(a) of such Act (42 U.S.C. 1395y(a)) is amend-
12 ed—

13 (A) by striking ''or'' at the end of para-
14 graph (21);

15 (B) by striking the period at the end of
16 paragraph (22) and inserting ''; or''; and

17 (C) by inserting after paragraph (22) the
18 following new paragraph:

19 ''(23) where such expenses are for renal dialysis
20 services (as defined in subparagraph (B) of section
21 1881(b)(14)) for which payment is made under such
22 section (other than under subparagraph (E) of such
23 section) unless such payment is made under such
24 section to a provider of services or a renal dialysis
25 facility for such services.''.

1 (b) QUALITY INCENTIVE PAYMENTS.—Section 1881
2 of such Act is amended by adding at the end the following
3 new subsection:
4 "(i) QUALITY INCENTIVE PAYMENTS IN THE END-
5 STAGE RENAL DISEASE PROGRAM.—
6 "(1) QUALITY INCENTIVE PAYMENTS FOR
7 SERVICES FURNISHED IN 2008, 2009, AND 2010.—
8 "(A) IN GENERAL.—With respect to renal
9 dialysis services furnished during a performance
10 period (as defined in subparagraph (B)) by a
11 provider of services or renal dialysis facility that
12 the Secretary determines meets the applicable
13 performance standard for the period under sub-
14 paragraph (C) and reports on measures for
15 2009 and 2010 under subparagraph (D) for
16 such services, in addition to the amount other-
17 wise paid under this section, subject to sub-
18 paragraph (G), there also shall be paid to the
19 provider or facility an amount equal to the ap-
20 plicable percentage (specified in subparagraph
21 (E) for the period) of the Secretary's estimate
22 (based on claims submitted not later than two
23 months after the end of the performance pe-
24 riod) of the amount specified in subparagraph
25 (F) for such period.

1 "(B) PERFORMANCE PERIOD.—In this
2 paragraph, the term 'performance period'
3 means each of the following:
4 "(i) The period beginning on July 1,
5 2008, and ending on December 31, 2008.
6 "(ii) 2009.
7 "(iii) 2010.
8 "(C) PERFORMANCE STANDARD.—
9 "(i) 2008.—For the performance pe-
10 riod occurring in 2008, the applicable per-
11 formance standards for a provider or facil-
12 ity under this subparagraph are—
13 "(I) 92 percent or more of indi-
14 viduals with end stage renal disease
15 receiving erythopoetin stimulating
16 agents who have an average hemato-
17 crit of 33.0 percent or more; and
18 "(II) less than a percentage,
19 specified by the Secretary, of individ-
20 uals with end stage renal disease re-
21 ceiving erythopoetin stimulating
22 agents who have an average hemato-
23 crit of 39.0 percent or more.
24 "(ii) 2009 AND 2010.—For the 2009
25 and 2010 performance periods, the appli-

1 cable performance standard for a provider
2 or facility under this subparagraph is suc-
3 cessful performance (relative to national
4 average) on—
5 "(I) such measures of anemia
6 management as the Secretary shall
7 specify, including measures of hemo-
8 globin levels or hematocrit levels for
9 erythropoietin stimulating agents that
10 are consistent with the labeling for
11 dosage of erythropoietin stimulating
12 agents approved by the Food and
13 Drug Administration for treatment of
14 anemia in patients with end stage
15 renal disease, taking into account
16 variations in hemoglobin ranges or
17 hematocrit levels of patients; and
18 "(II) such other measures, relat-
19 ing to subjects described in subpara-
20 graph (D)(i), as the Secretary may
21 specify.
22 "(D) REPORTING PERFORMANCE MEAS-
23 URES.—The performance measures under this
24 subparagraph to be reported shall include—

1 "(i) such measures as the Secretary
2 specifies, before the beginning of the per-
3 formance period involved and taking into
4 account measures endorsed by the Na-
5 tional Quality Forum, including, to the ex-
6 tent feasible measures on—
7 "(I) iron management;
8 "(II) dialysis adequacy; and
9 "(III) vascular access, including
10 for maximizing the placement of arte-
11 rial venous fistula; and
12 "(ii) to the extent feasible, such meas-
13 ure (or measures) of patient satisfaction as
14 the Secretary shall specify.
15 The provider or facility submitting information
16 on such measures shall attest to the complete-
17 ness and accuracy of such information.
18 "(E) APPLICABLE PERCENTAGE.—The ap-
19 plicable percentage specified in this subpara-
20 graph for—
21 "(i) the performance period occurring
22 in 2008, is 1.0 percent;
23 "(ii) the 2009 performance period, is
24 2.0 percent; and

"(iii) the 2010 performance period, is 2.0 percent.

In the case of any performance period which is less than an entire year, the applicable percentage specified in this subparagraph shall be multiplied by the ratio of the number of months in the year to the number of months in such performance period. In the case of 2010, the applicable percentage specified in this subparagraph shall be multiplied by the Secretary's estimate of the ratio of the aggregate payment amount described in subparagraph (F)(i) that would apply in 2010 if paragraph (14) did not apply, to the aggregate payment base under subparagraph (F)(ii) for 2010.

"(F) PAYMENT BASE.—The payment base described in this subparagraph for a provider or facility is—

"(i) for performance periods before 2010, the payment amount determined under paragraph (12) for services furnished by the provider or facility during the performance period, including the drug payment adjustment described in subparagraph (B)(ii) of such paragraph; and

"(ii) for the 2010 performance period is the amount determined under paragraph (14) for services furnished by the provider or facility during the period.

"(G) LIMITATION ON FUNDING.—

"(i) IN GENERAL.—If the Secretary determines that the total payments under this paragraph for a performance period is projected to exceed the dollar amount specified in clause (ii) for such period, the Secretary shall reduce, in a pro rata manner, the amount of such payments for each provider or facility for such period to eliminate any such projected excess for the period.

"(ii) DOLLAR AMOUNT.—The dollar amount specified in this clause—

"(I) for the performance period occurring in 2008, is $50,000,000;

"(II) for the 2009 performance period is $100,000,000; and

"(III) for the 2010 performance period is $150,000,000.

"(H) FORM OF PAYMENT.—The payment under this paragraph shall be in the form of a single consolidated payment.

"(2) QUALITY INCENTIVE PAYMENTS FOR FACILITIES AND PROVIDERS FOR 2011.—

"(A) INCREASED PAYMENT.—For 2011, in the case of a provider or facility that, for the performance period (as defined in subparagraph (B))—

"(i) meets (or exceeds) the performance standard for anemia management specified in paragraph (1)(C)(ii)(I);

"(ii) has substantially improved performance or exceeds a performance standard (as determined under subparagraph (E)); and

"(iii) reports measures specified in paragraph (1)(D),

with respect to renal dialysis services furnished by the provider or facility during the quality bonus payment period (as specified in subparagraph (C)) the payment amount otherwise made to such provider or facility under subsection (b)(14) shall be increased, subject to subparagraph (F), by the applicable percentage speci-

fied in subparagraph (D). Payment amounts under paragraph (1) shall not be counted for purposes of applying the previous sentence.

"(B) PERFORMANCE PERIOD.—In this paragraph, the term 'performance period' means a multi-month period specified by the Secretary .

"(C) QUALITY BONUS PAYMENT PERIOD.—In this paragraph, the term 'quality bonus payment period' means, with respect to a performance period, a multi-month period beginning on January 1, 2011, specified by the Secretary that begins at least 3 months (but not more than 9 months) after the end of the performance period.

"(D) APPLICABLE PERCENTAGE.—The applicable percentage specified in this subparagraph is a percentage, not to exceed the 2.0 percent, specified by the Secretary consistent with subparagraph (F). Such percentage may vary based on the level of performance and improvement. The applicable percentage specified in this subparagraph shall be multiplied by the ratio applied under the third sentence of paragraph (1)(E) for 2010.

"(E) PERFORMANCE STANDARD.—Based on performance of a provider of services or a renal dialysis facility on performance measures described in paragraph (1)(D) for a performance period, the Secretary shall determine a composite score for such period.

"(F) LIMITATION ON FUNDING.—If the Secretary determines that the total amount to be paid under this paragraph for a quality bonus payment period is projected to exceed $200,000,000, the Secretary shall reduce, in a uniform manner, the applicable percentage otherwise applied under subparagraph (D) for services furnished during the period to eliminate any such projected excess.

"(3) APPLICATION.—

"(A) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary may implement by program instruction or otherwise this subsection.

"(B) LIMITATIONS ON REVIEW.—

"(i) IN GENERAL.—There shall be no administrative or judicial review under section 1869 or 1878 or otherwise of—

"(I) the determination of performance measures and standards under this subsection;

"(II) the determination of successful reporting, including a determination of composite scores; and

"(III) the determination of the quality incentive payments made under this subsection.

"(ii) TREATMENT OF DETERMINATIONS.—A determination under this subparagraph shall not be treated as a determination for purposes of section 1869.

"(4) TECHNICAL ASSISTANCE.—The Secretary shall identify or establish an appropriately skilled group or organization, such as the ESRD Networks, to provide technical assistance to consistently low-performing facilities or providers that are in the bottom quintile.

"(5) PUBLIC REPORTING.—

"(A) ANNUAL NOTICE.—The Secretary shall provide an annual written notification to each individual who is receiving renal dialysis services from a provider of services or renal dialysis facility that—

"(i) informs such individual of the composite scores described in subparagraph (A) and other relevant quality measures with respect to providers of services or renal dialysis facilities in the local area;

"(ii) compares such scores and measures to the average local and national scores and measures; and

"(iii) provides information on how to access additional information on quality of such services furnished and options for alternative providers and facilities.

"(B) CERTIFICATES.—The Secretary shall provide certificates to facilities and providers who provide services to individuals with end-stage renal disease under this title to display in patient areas. The certificate shall indicate the composite score obtained by the facility or provider under the quality initiative.

"(C) WEB-BASED QUALITY LIST.—The Secretary shall establish a web-based list of facilities and providers who furnish renal dialysis services under this section that indicates their composite score of each provider and facility.

1 "(6) RECOMMENDATIONS FOR REPORTING AND
2 QUALITY INCENTIVE INTITIATIVE FOR PHYSI-
3 CIANS.—The Secretary shall develop recommenda-
4 tions for applying quality incentive payments under
5 this subsection to physicians who receive the month-
6 ly capitated payment under this title. Such rec-
7 ommendations shall include the following:
8 "(A) Recommendations to include pediatric
9 specific measures for physicians with at least
10 50 percent of their patients with end stage
11 renal disease being individuals under 18 years
12 of age.
13 "(B) Recommendations on how to struc-
14 ture quality incentive payments for physicians
15 who demonstrate improvements in quality or
16 who attain quality standards, as specified by
17 the Secretary.
18 "(7) REPORTS.—
19 "(A) INITIAL REPORT.—Not later than
20 January 1, 2013, the Secretary shall submit to
21 Congress a report on the implementation of the
22 bundled payment system under subsection
23 (b)(14) and the quality initiative under this
24 subsection. Such report shall include the fol-
25 lowing information:

"(i) A comparison of the aggregate payments under subsection (b)(14) for items and services to the cost of such items and services.

"(ii) The changes in utilization rates for erythropoietin stimulating agents.

"(iii) The mode of administering such agents, including information on the proportion of such individuals receiving such agents intravenously as compared to subcutaneously.

"(iv) The frequency of dialysis.

"(v) Other differences in practice patterns, such as the adoption of new technology, different modes of practice, and variations in use of drugs other than drugs described in clause (iii).

"(vi) The performance of facilities and providers under paragraph (2).

"(vii) Other recommendations for legislative and administrative actions determined appropriate by the Secretary.

"(B) SUBSEQUENT REPORT.—Not later than January 1, 2015, the Secretary shall submit to Congress a report that contains the in-

formation described in each of clauses (ii) through (vii) of subparagraph (A) and a comparison of the results of the payment system under subsection (b)(14) for renal dialysis services furnished during the 2-year period beginning on January 1, 2013, and the results of such payment system for such services furnished during the previous two-year period.''.

**SEC. 638. MEDPAC REPORT ON ESRD BUNDLING SYSTEM.**

Not later than March 1, 2012, the Medicare Payment Advisory Commission (established under section 1805 of the Social Security Act) shall submit to Congress a report on the implementation of the payment system under section 1881(b)(14) of the Social Security Act (as added by section 7) for renal dialysis services and related services (defined in subparagraph (B) of such section). Such report shall include, with respect to such payment system for such services, an analysis of each of the following:

(1) An analysis of the overall adequacy of payment under such system for all such services.

(2) An analysis that compares the adequacy of payment under such system for services furnished by—

(A) a provider of services or renal dialysis facility that is described in section 1881(b)(13)(C)(iv) of the Social Security Act;

(B) a provider of services or renal dialysis facility not described in such section;

(C) a hospital-based facility;

(D) a freestanding renal dialysis facility;

(E) a renal dialysis facility located in an urban area; and

(F) a renal dialysis facility located in a rural area.

(3) An analysis of the financial status of providers of such services and renal dialysis facilities, including access to capital, return on equity, and return on capital.

(4) An analysis of the adequacy of payment under such method and the adequacy of the quality improvement payments under section 1881(i) of the Social Security Act in ensuring that payments for such services under the Medicare program are consistent with costs for such services.

(5) Recommendations, if appropriate, for modifications to such payment system.

**SEC. 639. OIG STUDY AND REPORT ON ERYTHROPOIETIN.**

(a) STUDY.—The Inspector General of the Department of Health and Human Services shall conduct a study on the following:

(1) The dosing guidelines, standards, protocols, and alogorithms for erythropoietin stimulating agents recommended or used by providers of services and renal dialysis facilities that are described in section 1881(b)(13)(C)(iv) of the Social Security Act and providers and facilities that are not described in such section.

(2) The extent to which such guidelines, standards, protocols, and algorithms are consistent with the labeling of the Food and Drug Administration for such agents.

(3) The extent to which physicians sign standing orders for such agents that are consistent with such guidelines, standards, protocols, and algorithms recommended or used by the provider or facility involved.

(4) The extent to which the prescribing decisions of physicians, with respect to such agents, are independent of—

(A) such relevant guidelines, standards, protocols, and algorithms; or

(B) recommendations of an anemia management nurse or other appropriate employee of the provider or facility involved.

(5) The role of medical directors of providers of services and renal dialysis facilities and the financial relationships between such providers and facilities and the physicians hired as medical directors of such providers and facilities, respectively.

(b) REPORT.—Not later than January 1, 2009, the Inspector General of the Department of Health and Human Services shall submit to Congress a report on the study conducted under subsection (a), together with such recommendations as the Inspector General determines appropriate.

# Subtitle D—Miscellaneous

**SEC. 651. LIMITATION ON EXCEPTION TO THE PROHIBITION ON CERTAIN PHYSICIAN REFERRALS FOR HOSPITALS.**

(a) IN GENERAL.—Section 1877 of the Social Security Act (42 U.S.C. 1395) is amended—

(1) in subsection (d)(2)—

(A) in subparagraph (A), by striking ''and'' at the end;

(B) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following new subparagraph:

"(C) if the entity is a hospital, the hospital meets the requirements of paragraph (3)(D).";

(2) in subsection (d)(3)—

(A) in subparagraph (B), by striking "and" at the end;

(B) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following new subparagraph:

"(D) the hospital meets the requirements described in subsection (i)(1) not later than 18 months after the date of the enactment of this subparagraph."; and

(3) by adding at the end the following new subsection:

"(i) REQUIREMENTS FOR HOSPITALS TO QUALIFY FOR HOSPITAL EXCEPTION TO OWNERSHIP OR INVESTMENT PROHIBITION.—

"(1) REQUIREMENTS DESCRIBED.—For purposes of paragraphs subsection (d)(3)(D), the requirements described in this paragraph for a hospital are as follows:

"(A) PROVIDER AGREEMENT.—The hospital had a provider agreement under section 1866 in effect on July 24, 2007.

"(B) PROHIBITION OF EXPANSION OF FACILITY CAPACITY.—The number of operating rooms and beds of the hospital at any time on or after the date of the enactment of this subsection are no greater than the number of operating rooms and beds as of such date.

"(C) PREVENTING CONFLICTS OF INTEREST.—

"(i) The hospital submits to the Secretary an annual report containing a detailed description of—

"(I) the identity of each physician owner and any other owners of the hospital; and

"(II) the nature and extent of all ownership interests in the hospital.

"(ii) The hospital has procedures in place to require that any referring physician owner discloses to the patient being referred, by a time that permits the patient to make a meaningful decision re-

1 garding the receipt of care ,as determined
2 by the Secretary—
3 "(I) the ownership interest of
4 such referring physician in the hos-
5 pital; and
6 "(II) if applicable, any such own-
7 ership interest of the treating physi-
8 cian.
9 "(iii) The hospital does not condition
10 any physician ownership interests either di-
11 rectly or indirectly on the physician owner
12 making or influencing referrals to the hos-
13 pital or otherwise generating business for
14 the hospital.
15 "(D) ENSURING BONA FIDE INVEST-
16 MENT.—
17 "(i) Physician owners in the aggregate
18 do not own more than 40 percent of the
19 total value of the investment interests held
20 in the hospital or in an entity whose assets
21 include the hospital.
22 "(ii) The investment interest of any
23 individual physician owner does not exceed
24 2 percent of the total value of the invest-

1 ment interests held in the hospital or in an
2 entity whose assets include the hospital.
3 ''(iii) Any ownership or investment in-
4 terests that the hospital offers to a physi-
5 cian owner are not offered on more favor-
6 able terms than the terms offered to a per-
7 son who is not a physician owner.
8 ''(iv) The hospital does not directly or
9 indirectly provide loans or financing for
10 any physician owner investments in the
11 hospital.
12 ''(v) The hospital does not directly or
13 indirectly guarantee a loan, make a pay-
14 ment toward a loan, or otherwise subsidize
15 a loan, for any individual physician owner
16 or group of physician owners that is re-
17 lated to acquiring any ownership interest
18 in the hospital.
19 ''(vi) Investment returns are distrib-
20 uted to investors in the hospital in an
21 amount that is directly proportional to the
22 investment of capital by the physician
23 owner in the hospital.
24 ''(vii) Physician owners do not receive,
25 directly or indirectly, any guaranteed re-

ceipt of or right to purchase other business interests related to the hospital, including the purchase or lease of any property under the control of other investors in the hospital or located near the premises of the hospital.

"(viii) The hospital does not offer a physician owner the opportunity to purchase or lease any property under the control of the hospital or any other investor in the hospital on more favorable terms than the terms offered to an individual who is not a physician owner.

"(E) PATIENT SAFETY.—

"(i) Insofar as the hospital admits a patient and does not have any physician available on the premises to provide services during all hours in which the hospital is providing services to such patient, before admitting the patient—

"(I) the hospital discloses such fact to a patient; and

"(II) following such disclosure, the hospital receives from the patient

1 a signed acknowledgment that the pa-
2 tient understands such fact.
3 ''(ii) The hospital has the capacity
4 to—
5 ''(I) provide assessment and ini-
6 tial treatment for patients; and
7 ''(II) refer and transfer patients
8 to hospitals with the capability to
9 treat the needs of the patient in-
10 volved.
11 ''(2) PUBLICATION OF INFORMATION RE-
12 PORTED.—The Secretary shall publish, and update
13 on an annual basis, the information submitted by
14 hospitals under paragraph (1)(A)(i) on the public
15 Internet website of the Centers for Medicare & Med-
16 icaid Services.
17 ''(3) COLLECTION OF OWNERSHIP AND INVEST-
18 MENT INFORMATION.—For purposes of clauses (i)
19 and (ii) of paragraph (1)(D), the Secretary shall col-
20 lect physician ownership and investment information
21 for each hospital as it existed on the date of the en-
22 actment of this subsection.
23 ''(4) PHYSICIAN OWNER DEFINED.—For pur-
24 poses of this subsection, the term 'physician owner'
25 means a physician (or an immediate family member

of such physician) with a direct or an indirect ownership interest in the hospital.''.

(b) ENFORCEMENT.—

(1) ENSURING COMPLIANCE.—The Secretary of Health and Human Services shall establish policies and procedures to ensure compliance with the requirements described in such section 1877(i)(1) of the Social Security Act, as added by subsection (a)(3), beginning on the date such requirements first apply. Such policies and procedures may include unannounced site reviews of hospitals.

(2) AUDITS.—Beginning not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct audits to determine if hospitals violate the requirements referred to in paragraph (1).

# TITLE VII—PROVISIONS RELATING TO MEDICARE PARTS A AND B

**SEC. 701. HOME HEALTH PAYMENT UPDATE FOR 2008.**

Section 1895(b)(3)(B)(ii) of the Social Security Act (42 U.S.C. 1395fff(b)(3)(B)(ii)) is amended—

(1) in subclause (IV) at the end, by striking ''and'';

(2) by redesignating subclause (V) as subclause (VII); and

(3) by inserting after subclause (IV) the following new subclauses:

"(V) 2007, subject to clause (v), the home health market basket percentage increase;

"(VI) 2008, subject to clause (v), 0 percent; and".

**SEC. 702. 2-YEAR EXTENSION OF TEMPORARY MEDICARE PAYMENT INCREASE FOR HOME HEALTH SERVICES FURNISHED IN A RURAL AREA.**

Section 421 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2283; 42 U.S.C. 1395fff note), as amended by section 5201(b) of the Deficit Reduction Act of 2005, is amended—

(1) in the heading, by striking "**ONE-YEAR**" and inserting "**TEMPORARY**"; and

(2) in subsection (a), by striking "and episodes and visits beginning on or after January 1, 2006, and before January 1, 2007" and inserting "episodes and visits beginning on or after January 1, 2006, and before January 1, 2007, and episodes and

visits beginning on or after January 1, 2008, and before January 1, 2010''.

**SEC. 703. EXTENSION OF MEDICARE SECONDARY PAYER FOR BENEFICIARIES WITH END STAGE RENAL DISEASE FOR LARGE GROUP PLANS.**

(a) IN GENERAL.—Section 1862(b)(1)(C) of the Social Security Act (42 U.S.C. 1395y(b)(1)(C)) is amended—

(1) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and indenting accordingly;

(2) by amending the text preceding subclause (I), as so redesignated, to read as follows:

''(C) INDIVIDUALS WITH END STAGE RENAL DISEASE.—

''(i) IN GENERAL.—A group health plan (as defined in subparagraph (A)(v))—'';

(3) in the matter following subclause (II), as so redesignated—

(A) by striking ''clause (i)'' and inserting ''subclause (I)'';

(B) by striking ''clause (ii)'' and inserting ''subclause (II)''; and

(C) by striking ''clauses (i) and (ii)'' and inserting ''subclauses (I) and (II)''; and

(D) in the last sentence, by striking ''Effective for items'' and inserting ''Subject to clause (ii), effective for items''; and

(4) by adding at the end the following new clause:

''(ii) SPECIAL RULE FOR LARGE GROUP PLANS.—In applying clause (i) to a large group health plan (as defined in subparagraph (B)(iii)). with respect to periods beginning on or after the date that is 30 months prior to January 1, 2008, subclauses (I) and (II) of such clause shall be applied by substituting '42-month' for '12-month' each place it appears.''.

**SEC. 704. PLAN FOR MEDICARE PAYMENT ADJUSTMENTS FOR NEVER EVENTS.**

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall develop a plan (in this section referred to as the ''never events plan'') to implement, beginning in fiscal year 2010, a policy to reduce or eliminate payments under title XVIII of the Social Security Act for never events.

1 (b) NEVER EVENT DEFINED.—For purposes of this
2 section, the term ''never event'' means an event involving
3 the delivery of (or failure to deliver) physicians' services,
4 inpatient or outpatient hospital services, or facility serv-
5 ices furnished in an ambulatory surgical facility in which
6 there is an error in medical care that is clearly identifiable,
7 usually preventable, and serious in consequences to pa-
8 tients, and that indicates a deficiency in the safety and
9 process controls of the services furnished with respect to
10 the physician, hospital, or ambulatory surgical center in-
11 volved.

12 (c) PLAN DETAILS.—

13 (1) DEFINING NEVER EVENTS.—With respect
14 to criteria for identifying never events under the
15 never events plan, the Secretary should consider
16 whether the event meets the following characteris-
17 tics:

18 (A) CLEARLY IDENTIFIABLE.—The event
19 is clearly identifiable and measurable and fea-
20 sible to include in a reporting system for never
21 events.

22 (B) USUALLY PREVENTABLE.—The event
23 is usually preventable taking into consideration
24 that, because of the complexity of medical care,
25 certain medical events are not always avoidable.

1 (C) SERIOUS.—The event is serious and
2 could result in death or loss of a body part, dis-
3 ability, or more than transient loss of a body
4 function.
5 (D) DEFICIENCY IN SAFETY AND PROCESS
6 CONTROLS.—The event is indicative of a prob-
7 lem in safety systems and process controls used
8 by the physician, hospital, or ambulatory sur-
9 gical center involved and is indicative of the re-
10 liability of the quality of services provided by
11 the physician, hospital, or ambulatory surgical
12 center, respectively.
13 (2) IDENTIFICATION AND PAYMENT ISSUES.—
14 With respect to policies under the never events plan
15 for identifying and reducing (or eliminating) pay-
16 ment for never events, the Secretary shall consider—
17 (A) mechanisms used by hospitals and
18 physicians in reporting and coding of services
19 that would reliably identify never events; and
20 (B) modifications in billing and payment
21 mechanisms that would enable the Secretary to
22 efficiently and accurately reduce or eliminate
23 payments for never events.
24 (3) PRIORITIES.—Under the never events plan
25 the Secretary shall identify priorities regarding the

1 services to focus on and, among those, the never
2 events for which payments should be reduced or
3 eliminated.

4 (4) CONSULTATION.—In developing the never
5 events plan, the Secretary shall consult with affected
6 parties that are relevant to payment reductions in
7 response to never events.

8 (d) CONGRESSIONAL REPORT.—By not later than
9 June 1, 2008, the Secretary shall submit a report to Con-
10 gress on the never events plan developed under this sub-
11 section and shall include in the report recommendations
12 on specific methods for implementation of the plan on a
13 timely basis.

14 **SEC. 705. TREATMENT OF MEDICARE HOSPITAL RECLASSI-**
15 **FICATIONS.**

16 (a) EXTENDING CERTAIN MEDICARE HOSPITAL
17 WAGE INDEX RECLASSIFICATIONS THROUGH FISCAL
18 YEAR 2009.—

19 (1) IN GENERAL.—Section 106(a) of the Medi-
20 care Improvements and Extension Act of 2006 (divi-
21 sion B of public Law 109–432) is amended by strik-
22 ing ''September 30, 2007'' and inserting ''September
23 30, 2009''.

24 (2) SPECIAL EXCEPTION RECLASSIFICATIONS.—
25 The Secretary of Health and Human Services shall

extend for discharges occurring through September 30, 2009, the special exception reclassification made under the authority of section 1886(d)(5)(I)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(I)(i)) and contained in the final rule promulgated by the Secretary in the Federal Register on August 11, 2004 (69 Fed. Reg. 49105, 49107).

(b) DISREGARDING SECTION 508 HOSPITAL RECLASSIFICATIONS FOR PURPOSES OF GROUP RECLASSIFICATIONS.—Section 508 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173, 42 U.S.C. 1395ww note) is amended by adding at the end the following new subsection:

''(g) DISREGARDING HOSPITAL RECLASSIFICATIONS FOR PURPOSES OF GROUP RECLASSIFICATIONS.—For purposes of the reclassification of a group of hospitals in a geographic area under section 1886(d), a hospital reclassified under this section (including any such reclassification which is extended under section 106(a) of the Medicare Improvements and Extension Act of 2006) shall not be taken into account and shall not prevent the other hospitals in such area from establishing such a group for such purpose.''.

# TITLE VIII—MEDICAID

## Subtitle A—Protecting Existing Coverage

**SEC. 801. MODERNIZING TRANSITIONAL MEDICAID.**

(a) TWO-YEAR EXTENSION.—

(1) IN GENERAL.—Sections 1902(e)(1)(B) and 1925(f) of the Social Security Act (42 U.S.C. 1396a(e)(1)(B), 1396r–6(f)) are each amended by striking ''September 30, 2003'' and inserting ''September 30, 2009''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on October 1, 2007.

(b) STATE OPTION OF INITIAL 12-MONTH ELIGIBILITY.—Section 1925 of the Social Security Act (42 U.S.C. 1396r–6) is amended—

(1) in subsection (a)(1), by inserting ''but subject to paragraph (5)'' after ''Notwithstanding any other provision of this title'';

(2) by adding at the end of subsection (a) the following:

''(5) OPTION OF 12-MONTH INITIAL ELIGIBILITY PERIOD.—A State may elect to treat any reference in this subsection to a 6-month period (or 6 months) as a reference to a 12-month period (or 12 months).

In the case of such an election, subsection (b) shall not apply.''; and

(3) in subsection (b)(1), by inserting ''but subject to subsection (a)(5)'' after ''Notwithstanding any other provision of this title''.

(c) REMOVAL OF REQUIREMENT FOR PREVIOUS RECEIPT OF MEDICAL ASSISTANCE.—Section 1925(a)(1) of such Act (42 U.S.C. 1396r–6(a)(1)), as amended by subsection (b)(1), is further amended—

(1) by inserting ''subparagraph (B) and'' before ''paragraph (5)'';

(2) by redesignating the matter after ''REQUIREMENT.—'' as a subparagraph (A) with the heading ''IN GENERAL.—'' and with the same indentation as subparagraph (B) (as added by paragraph (3)); and

(3) by adding at the end the following:

''(B) STATE OPTION TO WAIVE REQUIREMENT FOR 3 MONTHS BEFORE RECEIPT OF MEDICAL ASSISTANCE.—A State may, at its option, elect also to apply subparagraph (A) in the case of a family that was receiving such aid for fewer than three months or that had applied for and was eligible for such aid for fewer than

1 3 months during the 6 immediately preceding
2 months described in such subparagraph.''.
3 (d) CMS REPORT ON ENROLLMENT AND PARTICIPA-
4 TION RATES UNDER TMA.—Section 1925 of such Act (42
5 U.S.C. 1396r–6), as amended by this section, is further
6 amended by adding at the end the following new sub-
7 section:
8 ''(g) COLLECTION AND REPORTING OF PARTICIPA-
9 TION INFORMATION.—
10 ''(1) COLLECTION OF INFORMATION FROM
11 STATES.—Each State shall collect and submit to the
12 Secretary (and make publicly available), in a format
13 specified by the Secretary, information on average
14 monthly enrollment and average monthly participa-
15 tion rates for adults and children under this section
16 and of the number and percentage of children who
17 become ineligible for medical assistance under this
18 section whose medical assistance is continued under
19 another eligibility category or who are enrolled under
20 the State's child health plan under title XXI. Such
21 information shall be submitted at the same time and
22 frequency in which other enrollment information
23 under this title is submitted to the Secretary.
24 ''(2) ANNUAL REPORTS TO CONGRESS.—Using
25 the information submitted under paragraph (1), the

Secretary shall submit to Congress annual reports concerning enrollment and participation rates described in such paragraph.''.

(e) EFFECTIVE DATE.—The amendments made by subsections (b) through (d) shall take effect on the date of the enactment of this Act.

**SEC. 802. FAMILY PLANNING SERVICES.**

(a) COVERAGE AS OPTIONAL CATEGORICALLY NEEDY GROUP.—

(1) IN GENERAL.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(A) in subclause (XVIII), by striking ''or'' at the end;

(B) in subclause (XIX), by adding ''or'' at the end; and

(C) by adding at the end the following new subclause:

''(XX) who are described in subsection (ee) (relating to individuals who meet certain income standards);''.

(2) GROUP DESCRIBED.—Section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by section 112(c), is amended by adding at the end the following new subsection:

1 "(ee)(1) Individuals described in this subsection are
2 individuals
3 "(A) whose income does not exceed an in-
4 come eligibility level established by the State
5 that does not exceed the highest income eligi-
6 bility level established under the State plan
7 under this title (or under its State child health
8 plan under title XXI) for pregnant women; and
9 "(B) who are not pregnant.
10 "(2) At the option of a State, individuals de-
11 scribed in this subsection may include individuals
12 who are determined to meet the eligibility require-
13 ments referred to in paragraph (1) under the terms,
14 conditions, and procedures applicable to making eli-
15 gibility determinations for medical assistance under
16 this title under a waiver to provide the benefits de-
17 scribed in clause (XV) of the matter following sub-
18 paragraph (G) of section 1902(a)(10) granted to the
19 State under section 1115 as of January 1, 2007.".
20 (3) LIMITATION ON BENEFITS.—Section
21 1902(a)(10) of the Social Security Act (42 U.S.C.
22 1396a(a)(10)) is amended in the matter following
23 subparagraph (G)—
24 (A) by striking "and (XIV)" and inserting
25 "(XIV)"; and

(B) by inserting ", and (XV) the medical assistance made available to an individual described in subsection (ee) shall be limited to family planning services and supplies described in section 1905(a)(4)(C) including medical diagnosis or treatment services that are provided pursuant to a family planning service in a family planning setting provided during the period in which such an individual is eligible;" after "cervical cancer".

(4) CONFORMING AMENDMENTS.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended in the matter preceding paragraph (1)—

(A) in clause (xii), by striking "or" at the end;

(B) in clause (xii), by adding "or" at the end; and

(C) by inserting after clause (xiii) the following:

"(xiv) individuals described in section 1902(ee),".

(b) PRESUMPTIVE ELIGIBILITY.—

1 (1) IN GENERAL.—Title XIX of the Social Se-
2 curity Act (42 U.S.C. 1396 et seq.) is amended by
3 inserting after section 1920B the following:
4 ''PRESUMPTIVE ELIGIBILITY FOR FAMILY PLANNING
5 SERVICES
6 ''SEC. 1920C. (a) STATE OPTION.— State plan ap-
7 proved under section 1902 may provide for making med-
8 ical assistance available to an individual described in sec-
9 tion 1902(ee) (relating to individuals who meet certain in-
10 come eligibility standard) during a presumptive eligibility
11 period. In the case of an individual described in section
12 1902(ee), such medical assistance shall be limited to fam-
13 ily planning services and supplies described in
14 1905(a)(4)(C) and, at the State's option, medical diag-
15 nosis or treatment services that are provided in conjunc-
16 tion with a family planning service in a family planning
17 setting provided during the period in which such an indi-
18 vidual is eligible.
19 ''(b) DEFINITIONS.—For purposes of this section:
20 ''(1) PRESUMPTIVE ELIGIBILITY PERIOD.—The
21 term 'presumptive eligibility period' means, with re-
22 spect to an individual described in subsection (a),
23 the period that—
24 ''(A) begins with the date on which a
25 qualified entity determines, on the basis of pre-

1 liminary information, that the individual is de-
2 scribed in section 1902(ee); and
3 "(B) ends with (and includes) the earlier
4 of—
5 "(i) the day on which a determination
6 is made with respect to the eligibility of
7 such individual for services under the State
8 plan; or
9 "(ii) in the case of such an individual
10 who does not file an application by the last
11 day of the month following the month dur-
12 ing which the entity makes the determina-
13 tion referred to in subparagraph (A), such
14 last day.
15 "(2) QUALIFIED ENTITY.—
16 "(A) IN GENERAL.—Subject to subpara-
17 graph (B), the term 'qualified entity' means
18 any entity that—
19 "(i) is eligible for payments under a
20 State plan approved under this title; and
21 "(ii) is determined by the State agen-
22 cy to be capable of making determinations
23 of the type described in paragraph (1)(A).
24 "(B) RULE OF CONSTRUCTION.—Nothing
25 in this paragraph shall be construed as pre-

venting a State from limiting the classes of entities that may become qualified entities in order to prevent fraud and abuse.

"(c) ADMINISTRATION.—

"(1) IN GENERAL.—The State agency shall provide qualified entities with—

"(A) such forms as are necessary for an application to be made by an individual described in subsection (a) for medical assistance under the State plan; and

"(B) information on how to assist such individuals in completing and filing such forms.

"(2) NOTIFICATION REQUIREMENTS.—A qualified entity that determines under subsection (b)(1)(A) that an individual described in subsection (a) is presumptively eligible for medical assistance under a State plan shall—

"(A) notify the State agency of the determination within 5 working days after the date on which determination is made; and

"(B) inform such individual at the time the determination is made that an application for medical assistance is required to be made by not later than the last day of the month fol-

lowing the month during which the determination is made.

"(3) APPLICATION FOR MEDICAL ASSISTANCE.—In the case of an individual described in subsection (a) who is determined by a qualified entity to be presumptively eligible for medical assistance under a State plan, the individual shall apply for medical assistance by not later than the last day of the month following the month during which the determination is made.

"(d) PAYMENT.—Notwithstanding any other provision of this title, medical assistance that—

"(1) is furnished to an individual described in subsection (a)—

"(A) during a presumptive eligibility period;

"(B) by a entity that is eligible for payments under the State plan; and

"(2) is included in the care and services covered by the State plan, shall be treated as medical assistance provided by such plan for purposes of clause (4) of the first sentence of section 1905(b).".

(2) CONFORMING AMENDMENTS.—

(A) Section 1902(a)(47) of the Social Security Act (42 U.S.C. 1396a(a)(47)) is amend-

ed by inserting before the semicolon at the end the following: ''and provide for making medical assistance available to individuals described in subsection (a) of section 1920C during a presumptive eligibility period in accordance with such section.''.

(B) Section 1903(u)(1)(D)(v) of such Act (42 U.S.C. 1396b(u)(1)(D)(v)) is amended—

(i) by striking ''or for'' and inserting '', for''; and

(ii) by inserting before the period the following: '', or for medical assistance provided to an individual described in subsection (a) of section 1920C during a presumptive eligibility period under such section''.

(e) CLARIFICATION OF COVERAGE OF FAMILY PLANNING SERVICES AND SUPPLIES.—Section 1937(b) of the Social Security Act (42 U.S.C. 1396u–7(b)) is amended by adding at the end the following:

''(5) COVERAGE OF FAMILY PLANNING SERVICES AND SUPPLIES.—Notwithstanding the previous provisions of this section, a State may not provide for medical assistance through enrollment of an individual with benchmark coverage or benchmark-equiv-

alent coverage under this section unless such coverage includes for any individual described in section 1905(a)(4)(C), medical assistance for family planning services and supplies in accordance with such section.''.

(f) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2007.

**SEC. 803. AUTHORITY TO CONTINUE PROVIDING ADULT DAY HEALTH SERVICES APPROVED UNDER A STATE MEDICAID PLAN.**

(a) IN GENERAL.—During the period described in subsection (b), the Secretary of Health and Human Services shall not—

(1) withhold, suspend, disallow, or otherwise deny Federal financial participation under section 1903(a) of the Social Security Act (42 U.S.C. 1396b(a)) for the provision of adult day health care services, day activity and health services, or adult medical day care services, as defined under a State Medicaid plan approved during or before 1994, during such period if such services are provided consistent with such definition and the requirements of such plan; or

1 (2) withdraw Federal approval of any such
2 State plan or part thereof regarding the provision of
3 such services (by regulation or otherwise).
4 (b) PERIOD DESCRIBED.—The period described in
5 this subsection is the period that begins on November 3,
6 2005, and ends on March 1, 2009.

7 **SEC. 804. STATE OPTION TO PROTECT COMMUNITY**
8 **SPOUSES OF INDIVIDUALS WITH DISABIL-**
9 **ITIES.**

10 Section 1924(h)(1)(A) of the Social Security Act (42
11 U.S.C. 1396r–5(h)(1)(A)) is amended by striking ''is de-
12 scribed in section 1902(a)(10)(A)(ii)(VI)'' and inserting
13 ''is being provided medical assistance for home and com-
14 munity-based services under subsection (c), (d), (e), (i),
15 or (j) of section 1915 or pursuant to section 1115''.

16 **SEC. 805. COUNTY MEDICAID HEALTH INSURING ORGANI-**
17 **ZATIONS .**

18 (a) IN GENERAL.—Section 9517(c)(3) of the Consoli-
19 dated Omnibus Budget Reconciliation Act of 1985 (42
20 U.S.C. 1396b note), as added by section 4734 of the Om-
21 nibus Budget Reconciliation Act of 1990 and as amended
22 by section 704 of the Medicare, Medicaid, and SCHIP
23 Benefits Improvement and Protection Act of 2000, is
24 amended—

(1) in subparagraph (A), by inserting ", in the case of any health insuring organization described in such subparagraph that is operated by a public entity established by Ventura County, and in the case of any health insuring organization described in such subparagraph that is operated by a public entity established by Merced County" after "described in subparagraph (B)"; and

(2) in subparagraph (C), by striking "14 percent" and inserting "16 percent".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

# Subtitle B—Payments

**SEC. 811. PAYMENTS FOR PUERTO RICO AND TERRITORIES.**

(a) PAYMENT CEILING.—Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)) is amended—

(1) in paragraph (2), by striking "paragraph (3)" and inserting "paragraphs (3) and (4)"; and

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

"(4) FISCAL YEARS 2009 THROUGH 2012 FOR CERTAIN INSULAR AREAS.—The amounts otherwise determined under this subsection for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Is-

lands, and American Samoa for fiscal years 2009 through 2012 shall be increased by the following amounts:

"(A) PUERTO RICO.—For Puerto Rico, $250,000,000 for fiscal year 2009, $350,000,000 for fiscal year 2010, $500,000,000 for fiscal year 2011, and $600,000,000 for fiscal year 2012.

"(B) VIRGIN ISLANDS.—For the Virgin Islands, $5,000,000 for each of fiscal years 2009 through 2012.

"(C) GUAM.—For Guam, $5,000,000 for each of fiscal years 2009 through 2012.

"(D) NORTHERN MARIANA ISLANDS.—For the Northern Mariana Islands, $4,000,000 for each of fiscal years 2009 through 2012.

"(E) AMERICAN SAMOA.—For American Samoa, $4,000,000 for each of fiscal years 2009 through 2012.

Such amounts shall not be taken into account in applying paragraph (2) for fiscal years 2009 through 2012 but shall be taken into account in applying such paragraph for fiscal year 2013 and subsequent fiscal years.".

(b) REMOVAL OF FEDERAL MATCHING PAYMENTS FOR IMPROVING DATA REPORTING SYSTEMS FROM THE OVERALL LIMIT ON PAYMENTS TO TERRITORIES UNDER TITLE XIX.—Such section is further amended by adding at the end the following new paragraph:

"(5) EXCLUSION OF CERTAIN EXPENDITURES FROM PAYMENT LIMITS.— With respect to fiscal year 2008 and each fiscal year thereafter, if Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa qualify for a payment under subparagraph (A)(i) or (B) of section 1903(a)(3) for a calendar quarter of such fiscal year with respect to expenditures for improvements in data reporting systems described in such subparagraph, the limitation on expenditures under title XIX for such commonwealth or territory otherwise determined under subsection (f) and this subsection for such fiscal year shall be determined without regard to payment for such expenditures.".

**SEC. 812. MEDICAID DRUG REBATE.**

(a) BRAND.—Paragraph (1)(B)(i) of section 1927(c) of the Social Security Act (42 U.S.C. 1396r–8(c)) is amended—

(1) by striking "and" at the end of subclause (IV);

(2) in subclause (V)—

(A) by inserting ''and before January 1, 2008,'' after ''December 31, 1995''; and

(B) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new subclause:

''(VI) after December 31, 2007, is 20.1 percent.''.

(b) PBMs TO BEST PRICE DEFINITION.—

(1) IN GENERAL.—Section 1927(c)(1)(C)(ii)(I) of the Social Security Act (42 U.S.C. 1396r-8(c)(1)(C)(ii)(I)) is amended—

(A) by striking ''and'' before ''rebates''; and

(B) by inserting before the semicolon at the end the following: '', and rebates, discounts, and other price concessions to pharmaceutical benefit managers (PBMs)''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to calendar quarters beginning on or after January 1, 2008.

**SEC. 813. ADJUSTMENT IN COMPUTATION OF MEDICAID FMAP TO DISREGARD AN EXTRAORDINARY EMPLOYER PENSION CONTRIBUTION.**

(a) IN GENERAL.—Only for purposes of computing the Federal medical assistance percentage under section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) for a State for a fiscal year (beginning with fiscal year 2006), any significantly disproportionate employer pension contribution described in subsection (b) shall be disregarded in computing the per capita income of such State, but shall not be disregarded in computing the per capita income for the continental United States (and Alaska) and Hawaii.

(b) SIGNIFICANTLY DISPROPORTIONATE EMPLOYER PENSION CONTRIBUTION.—For purposes of subsection (a), a significantly disproportionate employer pension contribution described in this subsection with respect to a State for a fiscal year is an employer contribution towards pensions that is allocated to such State for a period if the aggregate amount so allocated exceeds 25 percent of the total increase in personal income in that State for the period involved.

**SEC. 814. MORATORIUM ON CERTAIN PAYMENT RESTRICTIONS.**

Notwithstanding any other provision of law, the Secretary of Health and Human Services shall not, prior to

the date that is 1 year after the date of enactment of this Act, take any action (through promulgation of regulation, issuance of regulatory guidance, use of federal payment audit procedures, or other administrative action, policy, or practice, including a Medical Assistance Manual transmittal or letter to State Medicaid directors) to restrict coverage or payment under title XIX of the Social Security Act for rehabilitation services, or school-based administration, transportation, or medical services if such restrictions are more restrictive in any aspect than those applied to such coverage or payment as of July 1, 2007.

**SEC. 815. TENNESSEE DSH.**

The DSH allotments for Tennessee for each fiscal year beginning with fiscal year 2008 under subsection (f)(3) of section 1923 of the Social Security Act (42 U.S.C. 13961396r–4) are deemed to be $30,000,000. The Secretary of Health and Human Services may impose a limitation on the total amount of payments made to hospitals under the TennCare Section 1115 waiver only to the extent that such limitation is necessary to ensure that a hospital does not receive payment in excess of the amounts described in subsection (f) of such section or as necessary to ensure that the waiver remains budget neutral.

1 **SEC. 816. CLARIFICATION TREATMENT OF REGIONAL MED-**
2 **ICAL CENTER.**

3 (a) IN GENERAL.—Nothing in section 1903(w) of the
4 Social Security Act (42 U.S.C. 1396b(w)) shall be con-
5 strued by the Secretary of Health and Human Services
6 as prohibiting a State's use of funds as the non-Federal
7 share of expenditures under title XIX of such Act where
8 such funds are transferred from or certified by a publicly-
9 owned regional medical center located in another State
10 and described in subsection (b), so long as the Secretary
11 determines that such use of funds is proper and in the
12 interest of the program under title XIX.

13 (b) CENTER DESCRIBED.—A center described in this
14 subsection is a publicly-owned regional medical center
15 that—

16 (1) provides level 1 trauma and burn care serv-
17 ices;

18 (2) provides level 3 neonatal care services;

19 (3) is obligated to serve all patients, regardless
20 of ability to pay;

21 (4) is located within a Standard Metropolitan
22 Statistical Area (SMSA) that includes at least 3
23 States;

24 (5) provides services as a tertiary care provider
25 for patients residing within a 125-mile radius; and

(6) meets the criteria for a disproportionate share hospital under section 1923 of such Act (42 U.S.C. 1396r–4) in at least one State other than the State in which the center is located.

# Subtitle C—Miscellaneous

**SEC. 821. DEMONSTRATION PROJECT FOR EMPLOYER BUY-IN.**

Title XXI of the Social Security Act, as amended by section 115(a)(1), is further amended by adding at the end the following new section:

**"SEC. 2112. DEMONSTRATION PROJECT FOR EMPLOYER BUY-IN.**

"(a) AUTHORITY.—

"(1) IN GENERAL.—The Secretary shall establish a demonstration project under which up to 10 States (each referred to in this section as a 'participating State') that meets the conditions of paragraph (2) may provide, under its State child health plan (notwithstanding section 2102(b)(3)(C)) for a period of 5 years, for child health assistance in relation to family coverage described in subsection (d) for children who would be targeted low-income children but for coverage as beneficiaries under a group health plan as the children of participants by virtue

of a qualifying employer's contribution under subsection (b)(2). :

"(2) CONDITIONS.—The conditions described in this paragraph for a State are as follows:

"(A) NO WAITING LISTS.—The State does not impose any waiting list, enrollment cap, or similar limitation on enrollment of targeted low-income children under the State child health plan.

"(B) ELIGIBILITY OF ALL CHILDREN UNDER 200 PERCENT OF POVERTY LINE.—The State is applying an income eligibility level under section 2110(b)(1)(B)(ii)(I) that is at least 200 percent of the poverty line.

"(3) QUALIFYING EMPLOYER DEFINED.—In this section, the term 'qualifying employer' means an employer that has a majority of its workforce composed of full-time workers with family incomes reasonably estimated by the employer (based on wage information available to the employer) at or below 200 percent of the poverty line. In applying the previous sentence, two part-time workers shall be treated as a single full-time worker.

"(b) FUNDING.—A demonstration project under this section in a participating State shall be funded, with re-

1 spect to assistance provided to children described in sub-
2 section (a)(1), consistent with the following:

3 "(1) LIMITED FAMILY CONTRIBUTION.—The
4 family involved shall be responsible for providing
5 payment towards the premium for such assistance of
6 such amount as the State may specify, except that
7 the limitations on cost-sharing (including premiums)
8 under paragraphs (2) and (3) of section 2103(e)
9 shall apply to all cost-sharing of such family under
10 this section.

11 "(2) MINIMUM EMPLOYER CONTRIBUTION.—
12 The qualifying employer involved shall be responsible
13 for providing payment to the State child health plan
14 in the State of at least 50 percent of the portion of
15 the cost (as determined by the State) of the family
16 coverage in which the employer is enrolling the fam-
17 ily that exceeds the amount of the family contribu-
18 tion under paragraph (1) applied towards such cov-
19 erage.

20 "(3) LIMITATION ON FEDERAL FINANCIAL PAR-
21 TICIPATION.—In no case shall the Federal financial
22 participation under section 2105 with respect to a
23 demonstration project under this section be made for
24 any portion of the costs of family coverage described
25 in subsection (d) (including the costs of administra-

tion of such coverage) that are not attributable to children described in subsection (a)(1).

"(c) UNIFORM ELIGIBILITY RULES.—In providing assistance under a demonstration project under this section—

"(1) a State shall establish uniform rules of eligibility for families to participate; and

"(2) a State shall not permit a qualifying employer to select, within those families that meet such eligibility rules, which families may participate.

"(d) TERMS AND CONDITIONS.—The family coverage offered to families of qualifying employers under a demonstration project under this section in a State shall be the same as the coverage and benefits provided under the State child health plan in the State for targeted low-income children with the highest family income level permitted.".

**SEC. 822. DIABETES GRANTS.**

Section 2104 of the Social Security Act (42 U.C.C 1397dd), as amended by section 101, is further amended—

(1) in subsection (a)(11), by inserting before the period at the end the following: "plus for fiscal year 2009 the total of the amount specified in subsection (j)"; and

(2) by adding at the end the following new subsection:

"(j) FUNDING FOR DIABETES GRANTS.—From the amounts appropriated under subsection (a)(11), for fiscal year 2009 from the amounts—

"(1) $150,000,000 is hereby transferred and made available in such fiscal year for grants under section 330B of the Public Health Service Act; and

"(2) $150,000,000 is hereby transferred and made available in such fiscal year for grants under section 330C of such Act.".

**SEC. 823. TECHNICAL CORRECTION.**

(a) CORRECTION OF REFERENCE TO CHILDREN IN FOSTER CARE RECEIVING CHILD WELFARE SERVICES.—Section 1937(a)(2)(B)(viii) of the Social Security Act (42 U.S.C. 1396u–7(a)(2)(B) is amended by striking "aid or assistance is made available under part B of title IV to children in foster care" and inserting "child welfare services are made available under part B of title IV on the basis of being a child in foster care".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendment made by section 6044(a) of the Deficit Reduction Act of 2005.

# TITLE IX—MISCELLANEOUS

**SEC. 901. MEDICARE PAYMENT ADVISORY COMMISSION STATUS.**

Section 1805(a) of the Social Security Act (42 U.S.C. 1395b–6(a)) is amended by inserting ''as an agency of Congress'' after ''established''.

**SEC. 902. REPEAL OF TRIGGER PROVISION.**

Subtitle A of title VIII of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173) is repealed and the provisions of law amended by such subtitle are restored as if such subtitle had never been enacted.

**SEC. 903. REPEAL OF COMPARATIVE COST ADJUSTMENT (CCA) PROGRAM.**

Section 1860C–1 of the Social Security Act (42 U.S.C. 1395w–29), as added by section 241(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173), is repealed.

**SEC. 904. COMPARATIVE EFFECTIVENESS RESEARCH.**

(a) IN GENERAL.—Part A of title XVIII of the Social Security Act is amended by adding at the end the following new section:

''COMPARATIVE EFFECTIVENESS RESEARCH

''SEC. 1822. (a) CENTER FOR COMPARATIVE EFFECTIVENESS RESEARCH ESTABLISHED.—

1 "(1) IN GENERAL.—The Secretary shall estab-
2 lish within the Agency of Healthcare Research and
3 Quality a Center for Comparative Effectiveness Re-
4 search (in this section referred to as the 'Center') to
5 conduct, support, and synthesize research (including
6 research conducted or supported under section 1013
7 of the Medicare Prescription Drug, Improvement,
8 and Modernization Act of 2003) with respect to the
9 outcomes, effectiveness, and appropriateness of
10 health care services and procedures in order to iden-
11 tify the manner in which diseases, disorders, and
12 other health conditions can most effectively and ap-
13 propriately be prevented, diagnosed, treated, and
14 managed clinically.
15 "(2) DUTIES.—The Center shall—
16 "(A) conduct, support, and synthesize re-
17 search relevant to the comparative clinical effec-
18 tiveness of the full spectrum of health care
19 treatments, including pharmaceuticals, medical
20 devices, medical and surgical procedures, and
21 other medical interventions;
22 "(B) conduct and support systematic re-
23 views of clinical research, including original re-
24 search conducted subsequent to the date of the
25 enactment of this section;

"(C) use methodologies such as randomized controlled clinical trials as well as other various types of clinical research, such as observational studies;

"(D) submit to the Comparative Effectiveness Research Commission, the Secretary, and Congress appropriate relevant reports described in subsection (d)(2);

"(E) encourage, as appropriate, the development and use of clinical registries and the development of clinical effectiveness research data networks from electronic health records, post marketing drug and medical device surveillance efforts, and other forms of electronic health data; and

"(F) not later than 180 days after the date of the enactment of this section, develop methodological standards to be used when conducting studies of comparative clinical effectiveness and value (and procedures for use of such standards) in order to help ensure accurate and effective comparisons and update such standards at least biennially.

"(b) OVERSIGHT BY COMPARATIVE EFFECTIVENESS RESEARCH COMMISSION.—

1 "(1) IN GENERAL.—The Secretary shall estab-
2 lish an independent Comparative Effectiveness Re-
3 search Commission (in this section referred to as the
4 'Commission') to oversee and evaluate the activities
5 carried out by the Center under subsection (a) to en-
6 sure such activities result in highly credible research
7 and information resulting from such research.
8 "(2) DUTIES.—The Commission shall—
9 "(A) determine national priorities for re-
10 search described in subsection (a) and in mak-
11 ing such determinations consult with patients
12 and health care providers and payers;
13 "(B) monitor the appropriateness of use of
14 the CERTF described in subsection (f) with re-
15 spect to the timely production of comparative
16 effectiveness research determined to be a na-
17 tional priority under subparagraph (A);
18 "(C) identify highly credible research
19 methods and standards of evidence for such re-
20 search to be considered by the Center;
21 "(D) review and approve the methodo-
22 logical standards (and updates to such stand-
23 ards) developed by the Center under subsection
24 (a)(2)(F);

"(E) enter into an arrangement under which the Institute of Medicine of the National Academy of Sciences shall conduct an evaluation and report on standards of evidence for such research;

"(F) support forums to increase stakeholder awareness and permit stakeholder feedback on the efforts of the Agency of Healthcare Research and Quality to advance methods and standards that promote highly credible research;

"(G) make recommendations for public data access policies of the Center that would allow for access of such data by the public while ensuring the information produced from research involved is timely and credible;

"(H) appoint a clinical perspective advisory panel for each research priority determined under subparagraph (A), which shall frame the specific research inquiry to be examined with respect to such priority to ensure that the information produced from such research is clinically relevant to decisions made by clinicians and patients at the point of care;

"(I) make recommendations for the priority for periodic reviews of previous comparative effectiveness research and studies conducted by the Center under subsection (a);

"(J) routinely review processes of the Center with respect to such research to confirm that the information produced by such research is objective, credible, consistent with standards of evidence established under this section, and developed through a transparent process that includes consultations with appropriate stakeholders;

"(K) at least annually, provide guidance or recommendations to health care providers and consumers for the use of information on the comparative effectiveness of health care services by consumers, providers (as defined for purposes of regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996) and public and private purchasers;

"(L) make recommendations for a strategy to disseminate the findings of research conducted and supported under this section that enables clinicians to improve performance, con-

1 sumers to make more informed health care de-
2 cisions, and payers to set medical policies that
3 improve quality and value;
4 "(M) provide for the public disclosure of
5 relevant reports described in subsection (d)(2);
6 and
7 "(N) submit to Congress an annual report
8 on the progress of the Center in achieving na-
9 tional priorities determined under subparagraph
10 (A) for the provision of credible comparative ef-
11 fectiveness information produced from such re-
12 search to all interested parties.
13 "(3) COMPOSITION OF COMMISSION.—
14 "(A) IN GENERAL.—The members of the
15 Commission shall consist of—
16 "(i) the Director of the Agency for
17 Healthcare Research and Quality;
18 "(ii) the Chief Medical Officer of the
19 Centers for Medicare & Medicaid Services;
20 and
21 "(iii) up to 15 additional members
22 who shall represent broad constituencies of
23 stakeholders including clinicians, patients,
24 researchers, third-party payers, consumers

of Federal and State beneficiary programs.

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"(B) QUALIFICATIONS.—

"(i) DIVERSE REPRESENTATION OF PERSPECTIVES.—The members of the Commission shall represent a broad range of perspectives and shall collectively have experience in the following areas:

"(I) Epidemiology.

"(II) Health services research.

"(III) Bioethics.

"(IV) Decision sciences.

"(V) Economics.

"(ii) DIVERSE REPRESENTATION OF HEALTH CARE COMMUNITY.—At least one member shall represent each of the following health care communities:

"(I) Consumers.

"(II) Practicing physicians, including surgeons.

"(III) Employers.

"(IV) Public payers.

"(V) Insurance plans.

"(VI) Clinical researchers who conduct research on behalf of pharmaceutical or device manufacturers.

"(4) APPOINTMENT.—The Comptroller General of the United States, in consultation with the chairs of the committees of jurisdiction of the House of Representatives and the Senate, shall appoint the members of the Commission.

"(5) CHAIRMAN; VICE CHAIRMAN.—The Comptroller General of the United States shall designate a member of the Commission, at the time of appointment of the member, as Chairman and a member as Vice Chairman for that term of appointment, except that in the case of vacancy of the Chairmanship or Vice Chairmanship, the Comptroller General may designate another member for the remainder of that member's term.

"(6) TERMS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), each member of the Commission shall be appointed for a term of 4 years.

"(B) TERMS OF INITIAL APPOINTEES.—Of the members first appointed—

"(i) 10 shall be appointed for a term of 4 years; and

"(ii) 9 shall be appointed for a term of 3 years.

"(7) COORDINATION.—To enhance effectiveness and coordination, the Comptroller General is encouraged, to the greatest extent possible, to seek coordination between the Commission and the National Advisory Council of the Agency for Healthcare Research and Quality.

"(8) CONFLICTS OF INTEREST.—In appointing the members of the Commission or a clinical perspective advisory panel described in paragraph (2)(G), the Comptroller General of the United States or the Commission, respectively, shall take into consideration any financial conflicts of interest.

"(9) COMPENSATION.—While serving on the business of the Commission (including traveltime), a member of the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code; and while so serving away from home and the member's regular place of business, a member may be allowed

travel expenses, as authorized by the Director of the Commission.

"(10) AVAILABILITY OF REPORTS.—The Commission shall transmit to the Secretary a copy of each report submitted under this subsection and shall make such reports available to the public.

"(11) DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.—Subject to such review as the Secretary, in consultation with the Comptroller General deems necessary to assure the efficient administration of the Commission, the Commission may—

"(A) employ and fix the compensation of an Executive Director (subject to the approval of the Secretary, in consultation with the Comptroller General) and such other personnel as may be necessary to carry out its duties (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service);

"(B) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

"(C) enter into contracts or make other arrangements, as may be necessary for the con-

duct of the work of the Commission (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5));

"(D) make advance, progress, and other payments which relate to the work of the Commission;

"(E) provide transportation and subsistence for persons serving without compensation; and

"(F) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of the Commission.

"(12) POWERS.—

"(A) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Executive Director, the head of that department or agency shall furnish that information to the Commission on an agreed upon schedule.

"(B) DATA COLLECTION.—In order to carry out its functions, the Commission shall—

"(i) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this section,

"(ii) carry out, or award grants or contracts for, original research and experimentation, where existing information is inadequate, and

"(iii) adopt procedures allowing any interested party to submit information for the Commission's use in making reports and recommendations.

"(C) ACCESS OF GAO TO INFORMATION.—The Comptroller General shall have unrestricted access to all deliberations, records, and nonproprietary data of the Commission, immediately upon request.

"(D) PERIODIC AUDIT.—The Commission shall be subject to periodic audit by the Comptroller General.

"(c) RESEARCH REQUIREMENTS.—Any research conducted, supported, or synthesized under this section shall meet the following requirements:

"(1) ENSURING TRANSPARENCY, CREDIBILITY, AND ACCESS.—

"(A) The establishment of the agenda and conduct of the research shall be insulated from inappropriate political or stakeholder influence.

"(B) Methods of conducting such research shall be scientifically based.

"(C) All aspects of the prioritization of research, conduct of the research, and development of conclusions based on the research shall be transparent to all stakeholders.

"(D) The process and methods for conducting such research shall be publicly documented and available to all stakeholders.

"(E) Throughout the process of such research, the Center shall provide opportunities for all stakeholders involved to review and provide comment on the methods and findings of such research.

"(2) USE OF CLINICAL PERSPECTIVE ADVISORY PANELS.—The research shall meet a national research priority determined under subsection (b)(2)(A) and shall examine the specific research inquiry framed by the clinical perspective advisory panel for the national research priority.

1 "(3) STAKEHOLDER INPUT.—The priorities of
2 the research, the research, and the dissemination of
3 the research shall involve the consultation of pa-
4 tients, health care providers, and health care con-
5 sumer representatives through transparent mecha-
6 nisms recommended by the Commission.
7 "(d) PUBLIC ACCESS TO COMPARATIVE EFFECTIVE-
8 NESS INFORMATION.—
9 "(1) IN GENERAL.—Not later than 90 days
10 after receipt by the Center or Commission, as appli-
11 cable, of a relevant report described in paragraph
12 (2) made by the Center, Commission, or clinical per-
13 spective advisory panel under this section, appro-
14 priate information contained in such report shall be
15 posted on the official public Internet site of the Cen-
16 ter and of the Commission, as applicable.
17 "(2) RELEVANT REPORTS DESCRIBED.—For
18 purposes of this section, a relevant report is each of
19 the following submitted by a grantee or contractor
20 of the Center:
21 "(A) An interim progress report.
22 "(B) A draft final comparative effective-
23 ness review.

1 "(C) A final progress report on new re-
2 search submitted for publication by a peer re-
3 view journal.
4 "(D) Stakeholder comments.
5 "(E) A final report.
6 "(3) ACCESS BY CONGRESS AND THE COMMIS-
7 SION TO THE CENTER'S INFORMATION.—Congress
8 and the Commission shall each have unrestricted ac-
9 cess to all deliberations, records, and nonproprietary
10 data of the Center, immediately upon request.
11 "(e) DISSEMINATION AND INCORPORATION OF COM-
12 PARATIVE EFFECTIVENESS INFORMATION.—
13 "(1) DISSEMINATION.—The Center shall pro-
14 vide for the dissemination of appropriate findings
15 produced by research supported, conducted, or syn-
16 thesized under this section to health care providers,
17 patients, vendors of health information technology
18 focused on clinical decision support, appropriate pro-
19 fessional associations, and Federal and private
20 health plans.
21 "(2) INCORPORATION.—The Center shall assist
22 users of health information technology focused on
23 clinical decision support to promote the timely incor-
24 poration of the findings described in paragraph (1)

1 into clinical practices and to promote the ease of use
2 of such incorporation.
3 "(f) REPORTS TO CONGRESS.—
4 "(1) ANNUAL REPORTS.—Beginning not later
5 than one year after the date of the enactment of this
6 section, the Director of the Agency of Healthcare
7 Research and Quality and the Center for Compara-
8 tive Effectiveness Research shall submit to Congress
9 an annual report on the activities of the Center and
10 the Commission, as well as the research, conducted
11 under this section.
12 "(2) RECOMMENDATION FOR FAIR SHARE PER
13 CAPITA AMOUNT FOR ALL-PAYER FINANCING.—Be-
14 ginning not later than December 31, 2009, the Sec-
15 retary shall submit to Congress an annual rec-
16 ommendation for a fair share per capita amount de-
17 scribed in subsection (c)(1) of section 9511 of the
18 Internal Revenue Code of 1986 for purposes of
19 funding the CERTF under such section.
20 "(3) ANALYSIS AND REVIEW.—Not later than
21 December 31, 2011, the Secretary, in consultation
22 with the Commission, shall submit to Congress a re-
23 port on all activities conducted or supported under
24 this section as of such date. Such report shall in-
25 clude an evaluation of the return on investment re-

1 sulting from such activities, the overall costs of such
2 activities, and an analysis of the backlog of any re-
3 search proposals approved by the Commission but
4 not funded. Such report shall also address whether
5 Congress should expand the responsibilities of the
6 Center and of the Commission to include studies of
7 the effectiveness of various aspects of the health care
8 delivery system, including health plans and delivery
9 models, such as health plan features, benefit designs
10 and performance, and the ways in which health serv-
11 ices are organized, managed, and delivered.

12 ''(g) COORDINATING COUNCIL FOR HEALTH SERV-
13 ICES RESEARCH.—

14 ''(1) ESTABLISHMENT.—The Secretary shall es-
15 tablish a permanent council (in this section referred
16 to as the 'Council') for the purpose of—

17 ''(A) assisting the offices and agencies of
18 the Department of Health and Human Services,
19 the Department of Veterans Affairs, the De-
20 partment of Defense, and any other Federal de-
21 partment or agency to coordinate the conduct
22 or support of health services research; and

23 ''(B) advising the President and Congress
24 on—

"(i) the national health services research agenda;

"(ii) strategies with respect to infrastructure needs of health services research; and

"(iii) appropriate organizational expenditures in health services research by relevant Federal departments and agencies.

"(2) MEMBERSHIP.—

"(A) NUMBER AND APPOINTMENT.—The Council shall be composed of 20 members. One member shall be the Director of the Agency for Healthcare Research and Quality. The Director shall appoint the other members not later than 30 days after the enactment of this Act.

"(B) TERMS.—

"(i) IN GENERAL.—Except as provided in clause (ii), each member of the Council shall be appointed for a term of 4 years.

"(ii) TERMS OF INITIAL APPOINTEES.—Of the members first appointed—

1 "(I) 8 shall be appointed for a
2 term of 4 years; and
3 "(II) 7 shall be appointed for a
4 term of 3 years.
5 "(iii) VACANCIES.—Any vacancies
6 shall not affect the power and duties of the
7 Council and shall be filled in the same
8 manner as the original appointment.
9 "(C) QUALIFICATIONS.—
10 "(i) IN GENERAL.—The members of
11 the Council shall include one senior official
12 from each of the following agencies:
13 "(I) The Veterans Health Ad-
14 ministration.
15 "(II) The Department of Defense
16 Military Health Care System.
17 "(III) The Centers for Disease
18 Control and Prevention.
19 "(IV) The National Center for
20 Health Statistics.
21 "(V) The National Institutes of
22 Health.
23 "(VI) The Center for Medicare &
24 Medicaid Services.

1 "(VII) The Federal Employees
2 Health Benefits Program.
3 "(ii) NATIONAL, PHILANTHROPIC
4 FOUNDATIONS.—The members of the
5 Council shall include 4 senior leaders from
6 major national, philanthropic foundations
7 that fund and use health services research.
8 "(iii) STAKEHOLDERS.—The remain-
9 ing members of the Council shall be rep-
10 resentatives of other stakeholders in health
11 services research, including private pur-
12 chasers, health plans, hospitals and other
13 health facilities, and health consumer
14 groups.
15 "(3) ANNUAL REPORT.—The Council shall sub-
16 mit to Congress an annual report on the progress of
17 the implementation of the national health services
18 research agenda.
19 "(h) FUNDING OF COMPARATIVE EFFECTIVENESS
20 RESEARCH.—For fiscal year 2009 and each subsequent
21 fiscal year, amounts in the Comparative Effectiveness Re-
22 search Trust Fund (referred to in this section as the
23 'CERTF') under section 9511 of the Internal Revenue
24 Code of 1986 shall be available to the Secretary to carry
25 out this section.".

(b) COMPARATIVE EFFECTIVENESS RESEARCH TRUST FUND; FINANCING FOR TRUST FUND.—

(1) ESTABLISHMENT OF TRUST FUND.—

(A) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end the following new section:

**"SEC. 9511. HEALTH CARE COMPARATIVE EFFECTIVENESS RESEARCH TRUST FUND.**

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Health Care Comparative Effectiveness Research Trust Fund' (hereinafter in this section referred to as the 'CERTF'), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section and section 9602(b).

"(b) TRANSFERS TO FUND.—There are hereby appropriated to the Trust Fund the following:

"(1) For fiscal year 2008, $90,000,000.

"(2) For fiscal year 2009, $100,000,000.

"(3) For fiscal year 2010, $110,000,000.

"(4) For each fiscal year beginning with fiscal year 2011—

"(A) an amount equivalent to the net revenues received in the Treasury from the fees im-

1 posed under subchapter B of chapter 34 (relat-
2 ing to fees on health insurance and self-insured
3 plans) for such fiscal year; and
4 "(B) subject to subsection (c)(2), amounts
5 determined by the Secretary of Health and
6 Human Services to be equivalent to the fair
7 share per capita amount computed under sub-
8 section (c)(1) for the fiscal year multiplied by
9 the average number of individuals entitled to
10 benefits under part A, or enrolled under part B,
11 of title XVIII of the Social Security Act during
12 such fiscal year.
13 The amounts appropriated under paragraphs (1), (2), (3),
14 and (4)(B) shall be transferred from the Federal Hospital
15 Insurance Trust Fund and from the Federal Supple-
16 mentary Medical Insurance Trust Fund (established
17 under section 1841 of such Act), and from the Medicare
18 Prescription Drug Account within such Trust Fund, in
19 proportion (as estimated by the Secretary) to the total ex-
20 penditures during such fiscal year that are made under
21 title XVIII of such Act from the respective trust fund or
22 account.
23 "(c) FAIR SHARE PER CAPITA AMOUNT.—
24 "(1) COMPUTATION.—

"(A) IN GENERAL.—Subject to subparagraph (B), the fair share per capita amount under this paragraph for a fiscal year (beginning with fiscal year 2011) is an amount computed by the Secretary of Health and Human Services for such fiscal year that, when applied under this section and subchapter B of chapter 34 of the Internal Revenue Code of 1986, will result in revenues to the CERTF of $375,000,000 for the fiscal year.

"(B) ALTERNATIVE COMPUTATION.—

"(i) IN GENERAL.—If the Secretary is unable to compute the fair share per capita amount under subparagraph (A) for a fiscal year, the fair share per capita amount under this paragraph for the fiscal year shall be the default amount determined under clause (ii) for the fiscal year.

"(ii) DEFAULT AMOUNT.—The default amount under this clause for—

"(I) fiscal year 2011 is equal to $2; or

"(II) a subsequent year is equal to the default amount under this clause for the preceeding fiscal year

increased by the annual percentage increase in the medical care component of the consumer price index (United States city average) for the 12-month period ending with April of the preceding fiscal year.

Any amount determined under subclause (II) shall be rounded to the nearest penny.

"(2) LIMITATION ON MEDICARE FUNDING.—In no case shall the amount transferred under subsection (b)(4)(B) for any fiscal year exceed $90,000,000.

"(d) EXPENDITURES FROM FUND.—

"(1) IN GENERAL.—Subject to paragraph (2), amounts in the CERTF are available to the Secretary of Health and Human Services for carrying out section 1822 of the Social Security Act.

"(2) ALLOCATION FOR COMMISSION.—The following amounts in the CERTF for a fiscal year shall be available to carry out the activities of the Comparative Effectiveness Research Commission established under section 1822(b) of the Social Security Act for such fiscal year:

"(A) For fiscal year 2008, $7,000,000.

"(B) For fiscal year 2009, $9,000,000.

1 "(C) For each fiscal year beginning with
2 2010, $10,000,000.
3 Nothing in this paragraph shall be construed as pre-
4 venting additional amounts in the CERTF from
5 being made available to the Comparative Effective-
6 ness Research Commission for such activities.
7 "(e) NET REVENUES.—For purposes of this section,
8 the term 'net revenues' means the amount estimated by
9 the Secretary based on the excess of—
10 "(1) the fees received in the Treasury under
11 subchapter B of chapter 34, over
12 "(2) the decrease in the tax imposed by chapter
13 1 resulting from the fees imposed by such sub-
14 chapter.".
15 (B) CLERICAL AMENDMENT.—The table of
16 sections for such subchapter A is amended by
17 adding at the end thereof the following new
18 item:

"Sec. 9511. Health Care Comparative Effectiveness Research Trust Fund.".

19 (2) FINANCING FOR FUND FROM FEES ON IN-
20 SURED AND SELF-INSURED HEALTH PLANS.—
21 (A) GENERAL RULE.—Chapter 34 of the
22 Internal Revenue Code of 1986 is amended by
23 adding at the end the following new subchapter:

## "Subchapter B—Insured and Self-Insured Health Plans

"Sec. 4375. Health insurance.
"Sec. 4376. Self-insured health plans.
"Sec. 4377. Definitions and special rules.

### "SEC. 4375. HEALTH INSURANCE.

"(a) IMPOSITION OF FEE.—There is hereby imposed on each specified health insurance policy for each policy year a fee equal to the fair share per capita amount determined under section 9511(c)(1) multiplied by the average number of lives covered under the policy.

"(b) LIABILITY FOR FEE.—The fee imposed by subsection (a) shall be paid by the issuer of the policy.

"(c) SPECIFIED HEALTH INSURANCE POLICY.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this section, the term 'specified health insurance policy' means any accident or health insurance policy issued with respect to individuals residing in the United States.

"(2) EXEMPTION OF CERTAIN POLICIES.—The term 'specified health insurance policy' does not include any insurance policy if substantially all of the coverage provided under such policy relates to—

"(A) liabilities incurred under workers' compensation laws,

"(B) tort liabilities,

1 "(C) liabilities relating to ownership or use
2 of property,
3 "(D) credit insurance,
4 "(E) medicare supplemental coverage, or
5 "(F) such other similar liabilities as the
6 Secretary may specify by regulations.
7 "(3) TREATMENT OF PREPAID HEALTH COV-
8 ERAGE ARRANGEMENTS.—
9 "(A) IN GENERAL.—In the case of any ar-
10 rangement described in subparagraph (B)—
11 "(i) such arrangement shall be treated
12 as a specified health insurance policy, and
13 "(ii) the person referred to in such
14 subparagraph shall be treated as the
15 issuer.
16 "(B) DESCRIPTION OF ARRANGEMENTS.—
17 An arrangement is described in this subpara-
18 graph if under such arrangement fixed pay-
19 ments or premiums are received as consider-
20 ation for any person's agreement to provide or
21 arrange for the provision of accident or health
22 coverage to residents of the United States, re-
23 gardless of how such coverage is provided or ar-
24 ranged to be provided.

**"SEC. 4376. SELF-INSURED HEALTH PLANS.**

"(a) IMPOSITION OF FEE.—In the case of any applicable self-insured health plan for each plan year, there is hereby imposed a fee equal to the fair share per capita amount determined under section 9511(c)(1) multiplied by the average number of lives covered under the plan.

"(b) LIABILITY FOR FEE.—

"(1) IN GENERAL.—The fee imposed by subsection (a) shall be paid by the plan sponsor.

"(2) PLAN SPONSOR.—For purposes of paragraph (1) the term 'plan sponsor' means—

"(A) the employer in the case of a plan established or maintained by a single employer,

"(B) the employee organization in the case of a plan established or maintained by an employee organization,

"(C) in the case of—

"(i) a plan established or maintained by 2 or more employers or jointly by 1 or more employers and 1 or more employee organizations,

"(ii) a multiple employer welfare arrangement, or

"(iii) a voluntary employees' beneficiary association described in section 501(c)(9),

the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, or

"(D) the cooperative or association described in subsection (c)(2)(F) in the case of a plan established or maintained by such a cooperative or association.

"(c) APPLICABLE SELF-INSURED HEALTH PLAN.—For purposes of this section, the term 'applicable self-insured health plan' means any plan for providing accident or health coverage if—

"(1) any portion of such coverage is provided other than through an insurance policy, and

"(2) such plan is established or maintained—

"(A) by one or more employers for the benefit of their employees or former employees,

"(B) by one or more employee organizations for the benefit of their members or former members,

"(C) jointly by 1 or more employers and 1 or more employee organizations for the benefit of employees or former employees,

"(D) by a voluntary employees' beneficiary association described in section 501(c)(9),

"(E) by any organization described in section 501(c)(6), or

"(F) in the case of a plan not described in the preceding subparagraphs, by a multiple employer welfare arrangement (as defined in section 3(40) of Employee Retirement Income Security Act of 1974), a rural electric cooperative (as defined in section 3(40)(B)(iv) of such Act), or a rural telephone cooperative association (as defined in section 3(40)(B)(v) of such Act).

**"SEC. 4377. DEFINITIONS AND SPECIAL RULES.**

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) ACCIDENT AND HEALTH COVERAGE.—The term 'accident and health coverage' means any coverage which, if provided by an insurance policy, would cause such policy to be a specified health insurance policy (as defined in section 4375(c)).

"(2) INSURANCE POLICY.—The term 'insurance policy' means any policy or other instrument whereby a contract of insurance is issued, renewed, or extended.

"(3) UNITED STATES.—The term 'United States' includes any possession of the United States.

"(b) TREATMENT OF GOVERNMENTAL ENTITIES.—

1 "(1) IN GENERAL.—For purposes of this sub-
2 chapter—
3 "(A) the term 'person' includes any gov-
4 ernmental entity, and
5 "(B) notwithstanding any other law or rule
6 of law, governmental entities shall not be ex-
7 empt from the fees imposed by this subchapter
8 except as provided in paragraph (2).
9 "(2) TREATMENT OF EXEMPT GOVERNMENTAL
10 PROGRAMS.—In the case of an exempt governmental
11 program, no fee shall be imposed under section 4375
12 or section 4376 on any covered life under such pro-
13 gram.
14 "(3) EXEMPT GOVERNMENTAL PROGRAM DE-
15 FINED.—For purposes of this subchapter, the term
16 'exempt governmental program' means—
17 "(A) any insurance program established
18 under title XVIII of the Social Security Act,
19 "(B) the medical assistance program es-
20 tablished by title XIX or XXI of the Social Se-
21 curity Act,
22 "(C) any program established by Federal
23 law for providing medical care (other than
24 through insurance policies) to individuals (or

the spouses and dependents thereof) by reason of such individuals being—

"(i) members of the Armed Forces of the United States, or

"(ii) veterans, and

"(D) any program established by Federal law for providing medical care (other than through insurance policies) to members of Indian tribes (as defined in section 4(d) of the Indian Health Care Improvement Act).

"(c) TREATMENT AS TAX.—For purposes of subtitle F, the fees imposed by this subchapter shall be treated as if they were taxes.

"(d) NO COVER OVER TO POSSESSIONS.—Notwithstanding any other provision of law, no amount collected under this subchapter shall be covered over to any possession of the United States."

(B) CLERICAL AMENDMENT.—Chapter 34 of such Code is amended by striking the chapter heading and inserting the following:

## "CHAPTER 34—TAXES ON CERTAIN INSURANCE POLICIES

"SUBCHAPTER A. POLICIES ISSUED BY FOREIGN INSURERS

"SUBCHAPTER B. INSURED AND SELF-INSURED HEALTH PLANS

1 **"Subchapter A—Policies Issued By Foreign**
2 **Insurers".**

3 (C) EFFECTIVE DATE.—The amendments
4 made by this subsection shall apply with respect
5 to policies and plans for portions of policy or
6 plan years beginning on or after October 1,
7 2010.

8 **SEC. 905. IMPLEMENTATION OF HEALTH INFORMATION**
9 **TECHNOLOGY (IT) UNDER MEDICARE.**

10 (a) IN GENERAL.—Not later than January 1, 2010,
11 the Secretary of Health and Human Services shall submit
12 to Congress a report that includes—

13 (1) a plan to develop and implement a health
14 information technology (health IT) system for all
15 health care providers under the Medicare program
16 that meets the specifications described in subsection
17 (b); and

18 (2) an analysis of the impact, feasibility, and
19 costs associated with the use of health information
20 technology in medically underserved communities.

21 (b) PLAN SPECIFICATION.—The specifications de-
22 scribed in this subsection, with respect to a health infor-
23 mation technology system described in subsection (a), are
24 the following:

(1) The system protects the privacy and security of individually identifiable health information.

(2) The system maintains and provides permitted access to health information in an electronic format (such as through computerized patient records or a clinical data repository).

(3) The system utilizes interface software that allows for interoperability.

(4) The system includes clinical decision support.

(5) The system incorporates e-prescribing and computerized physician order entry.

(6) The system incorporates patient tracking and reminders.

(7) The system utilizes technology that is open source (if available) or technology that has been developed by the government.

The report shall include an analysis of the financial and administrative resources necessary to develop such system and recommendations regarding the level of subsidies needed for all such health care providers to adopt the system.

1 **SEC. 906. DEVELOPMENT, REPORTING, AND USE OF**
2 **HEALTH CARE MEASURES.**

3 (a) IN GENERAL.—Part E of title XVIII of the Social
4 Security Act (42 U.S.C. 1395x et seq.) is amended by in-
5 serting after section 1889 the following:

6 ''DEVELOPMENT, REPORTING, AND USE OF HEALTH CARE
7 MEASURES

8 ''SEC. 1890. (a) FOSTERING DEVELOPMENT OF
9 HEALTH CARE MEASURES.—The Secretary shall des-
10 ignate, and have in effect an arrangement with, a single
11 organization (such as the National Quality Forum) that
12 meets the requirements described in subsection (c), under
13 which such organization provides the Secretary with ad-
14 vice on, and recommendations with respect to, the key ele-
15 ments and priorities of a national system for establishing
16 health care measures. The arrangement shall be effective
17 beginning no sooner than January 1, 2008, and no later
18 than September 30, 2008.

19 ''(b) DUTIES.—The duties of the organization des-
20 ignated under subsection (a) (in this title referred to as
21 the 'designated organization') shall, in accordance with
22 subsection (d), include—

23 ''(1) establishing and managing an integrated
24 national strategy and process for setting priorities
25 and goals in establishing health care measures;

1 "(2) coordinating the development and speci-
2 fications of such measures;
3 "(3) establishing standards for the development
4 and testing of such measures;
5 "(4) endorsing national consensus health care
6 measures; and
7 "(5) advancing the use of electronic health
8 records for automating the collection, aggregation,
9 and transmission of measurement information.
10 "(c) REQUIREMENTS DESCRIBED.—For purposes of
11 subsection (a), the requirements described in this sub-
12 section, with respect to an organization, are the following:
13 "(1) PRIVATE NONPROFIT.—The organization
14 is a private nonprofit entity governed by a board and
15 an individual designated as president and chief exec-
16 utive officer.
17 "(2) BOARD MEMBERSHIP.—The members of
18 the board of the organization include representatives
19 of—
20 "(A) health care providers or groups rep-
21 resenting such providers;
22 "(B) health plans or groups representing
23 health plans;
24 "(C) groups representing health care con-
25 sumers;

1 "(D) health care purchasers and employers
2 or groups representing such purchasers or em-
3 ployers; and
4 "(E) health care practitioners or groups
5 representing practitioners.
6 "(3) OTHER MEMBERSHIP REQUIREMENTS.—
7 The membership of the organization is representa-
8 tive of individuals with experience with—
9 "(A) urban health care issues;
10 "(B) safety net health care issues;
11 "(C) rural and frontier health care issues;
12 and
13 "(D) health care quality and safety issues.
14 "(4) OPEN AND TRANSPARENT.—With respect
15 to matters related to the arrangement described in
16 subsection (a), the organization conducts its busi-
17 ness in an open and transparent manner and pro-
18 vides the opportunity for public comment.
19 "(5) VOLUNTARY CONSENSUS STANDARDS SET-
20 TING ORGANIZATION.—The organization operates as
21 a voluntary consensus standards setting organization
22 as defined for purposes of section 12(d) of the Na-
23 tional Technology Transfer and Advancement Act of
24 1995 (Public Law 104–113) and Office of Manage-

1 ment and Budget Revised Circular A–119 (published
2 in the Federal Register on February 10, 1998).
3 "(6) EXPERIENCE.—The organization has at
4 least 7 years experience in establishing national con-
5 sensus standards.
6 "(d) REQUIREMENTS FOR EFFECTIVENESS MEAS-
7 URES.—In carrying out its duties under subsection (b),
8 the designated organization shall ensure the following:
9 "(1) MEASURES.—The designated organization
10 shall ensure that the measures established or en-
11 dorsed under subsection (b) are evidence-based, reli-
12 able, and valid; and include—
13 "(A) measures of clinical processes and
14 outcomes, patient experience, efficiency, and eq-
15 uity;
16 "(B) measures to assess effectiveness,
17 timeliness, patient self-management, patient
18 centeredness, and safety; and
19 "(C) measures of under use and over use.
20 "(2) PRIORITIES.—
21 "(A) IN GENERAL.—The designated orga-
22 nization shall ensure that priority is given to es-
23 tablishing and endorsing—

1 "(i) measures with the greatest poten-
2 tial impact for improving the effectiveness
3 and efficiency of health care;
4 "(ii) measures that may be rapidly
5 implemented by group health plans, health
6 insurance issuers, physicians, hospitals,
7 nursing homes, long-term care providers,
8 and other providers;
9 "(iii) measures which may inform
10 health care decisions made by consumers
11 and patients; and
12 "(iv) measures that apply to multiple
13 services furnished by different providers
14 during an episode of care.
15 "(B) ANNUAL REPORT ON PRIORITIES;
16 SECRETARIAL PUBLICATION AND COMMENT.—
17 "(i) ANNUAL REPORT.—The des-
18 ignated organization shall issue and submit
19 to the Secretary a report by March 31 of
20 each year (beginning with 2009) on the or-
21 ganization's recommendations for priorities
22 and goals in establishing and endorsing
23 health care measures under this section
24 over the next five years.

1 "(ii) SECRETARIAL REVIEW AND COM-
2 MENT.—After receipt of the report under
3 clause (i) for a year, the Secretary shall
4 publish the report in the Federal Register,
5 including any comments of the Secretary
6 on the priorities and goals set forth in the
7 report.
8 "(3) RISK ADJUSTMENT.—The designated orga-
9 nization, in consultation with health care measure
10 developers and other stakeholders, shall establish
11 procedures to assure that health care measures es-
12 tablished and endorsed under this section account
13 for differences in patient health status, patient char-
14 acteristics, and geographic location, as appropriate.
15 "(4) MAINTENANCE.—The designated organiza-
16 tion, in consultation with owners and developers of
17 health care measures, shall require the owners or de-
18 velopers of such measures to update and enhance
19 such measures, including the development of more
20 accurate and precise specifications, and retire exist-
21 ing outdated measures. Such updating shall occur
22 not more often than once during each 12-month pe-
23 riod, except in the case of emergent circumstances
24 requiring a more immediate update to a measure.

1 "(e) USE OF HEALTH CARE MEASURES; REPORT-
2 ING.—
3 "(1) USE OF MEASURES.—For purposes of ac-
4 tivities authorized or required under this title, the
5 Secretary shall select from health care measures—
6 "(A) recommended by multi-stakeholder
7 groups; and
8 "(B) endorsed by the designated organiza-
9 tion under subsection (b)(4).
10 "(2) REPORTING.—The Secretary shall imple-
11 ment procedures, consistent with generally accepted
12 standards, to enable the Department of Health and
13 Human Services to accept the electronic submission
14 of data for purposes of—
15 "(A) effectiveness measurement using the
16 health care measures developed pursuant to this
17 section; and
18 "(B) reporting to the Secretary measures
19 used to make value-based payments under this
20 title.
21 "(f) CONTRACTS.—The Secretary, acting through the
22 Agency for Healthcare Research and Quality, may con-
23 tract with organizations to support the development and
24 testing of health care measures meeting the standards es-
25 tablished by the designated organization.

1 "(g) DISSEMINATION OF INFORMATION.—In order to
2 make comparative effectiveness information available to
3 health care consumers, health professionals, public health
4 officials, oversight organizations, researchers, and other
5 appropriate individuals and entities, the Secretary shall
6 work with multi-stakeholder groups to provide for the dis-
7 semination of effectiveness information developed pursu-
8 ant to this title.

9 "(h) FUNDING.—For purposes of carrying out sub-
10 sections (a), (b), (c), and (d), including for expenses in-
11 curred for the arrangement under subsection (a) with the
12 designated organization, there is payable from the Federal
13 Hospital Insurance Trust Fund (established under section
14 1817) and the Federal Supplementary Medical Insurance
15 Trust Fund (established under section 1841)—

16 "(1) for fiscal year 2008, $15,000,000, multi-
17 plied by the ratio of the total number of months in
18 the year to the number of months (and portions of
19 months) of such year during which the arrangement
20 under subsection (a) is effective; and

21 "(2) for each of the fiscal years, 2009 through
22 2012, $15,000,000.".

23 **SEC. 907. IMPROVEMENTS TO THE MEDIGAP PROGRAM.**

24 (a) IMPLEMENTATION OF NAIC RECOMMENDA-
25 TIONS.—The Secretary of Health and Human Services

shall provide, under subsections (p)(1)(E) of section 1882 of the Social Security Act (42 U.S.C. 1395s), for implementation of the changes in the NAIC model law and regulations recommended by the National Association of Insurance Commissioners in its Model #651 (''Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act'') on March 11, 2007, as modified to reflect the changes made under this Act. In carrying out the previous sentence, the benefit packages classified as ''K'' and ''L'' shall be eliminated and such NAIC recommendations shall be treated as having been adopted by such Association as of January 1, 2008.

(b) REQUIRED OFFERING OF A RANGE OF POLICIES.—

(1) IN GENERAL.—Subsection (o) of such section is amended by adding at the end the following new paragraph:

''(4) In addition to the requirement of paragraph (2), the issuer of the policy must make available to the individual at least medicare supplemental policies with benefit packages classified as 'C' or 'F'.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to medicare supplemental policies issued on or after January 1, 2008.

(c) REMOVAL OF NEW BENEFIT PACKAGES.—Such section is further amended—

(1) in subsection (o)(1), by striking ''(p), (v), and (w)'' and inserting ''(p) and (v)'';

(2) in subsection (v)(3)(A)(i), by striking ''or a benefit package described in subparagraph (A) or (B) of subsection (w)(2)''; and

(3) in subsection (w)—

(A) by striking ''POLICIES'' and all that follows through ''The Secretary'' and inserting ''POLICIES.—The Secretary'';

(B) by striking the second sentence; and

(C) by striking paragraph (2) .

# TITLE X—REVENUES

## SEC. 1001. INCREASE IN RATE OF EXCISE TAXES ON TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES.

(a) SMALL CIGARETTES.—Paragraph (1) of section 5701(b) of the Internal Revenue Code of 1986 is amended by striking ''$19.50 per thousand ($17 per thousand on cigarettes removed during 2000 or 2001)'' and inserting ''$42 per thousand''.

(b) LARGE CIGARETTES.—Paragraph (2) of section 5701(b) of such Code is amended by striking ''$40.95 per thousand ($35.70 per thousand on cigarettes removed during 2000 or 2001)'' and inserting ''$88.20 per thousand''.

(c) SMALL CIGARS.—Paragraph (1) of section 5701(a) of such Code is amended by striking ''$1.828 cents per thousand ($1.594 cents per thousand on cigars removed during 2000 or 2001)'' and inserting ''$42 per thousand''.

(d) LARGE CIGARS.—Paragraph (2) of section 5701(a) of such Code is amended—

(1) by striking ''20.719 percent (18.063 percent on cigars removed during 2000 or 2001)'' and inserting ''44.63 percent'', and

(2) by striking ''$48.75 per thousand ($42.50 per thousand on cigars removed during 2000 or 2001)'' and inserting ''$1 per cigar''.

(e) CIGARETTE PAPERS.—Subsection (c) of section 5701 of such Code is amended by striking ''1.22 cents (1.06 cents on cigarette papers removed during 2000 or 2001)'' and inserting ''2.63 cents''.

(f) CIGARETTE TUBES.—Subsection (d) of section 5701 of such Code is amended by striking ''2.44 cents

(2.13 cents on cigarette tubes removed during 2000 or 2001)'' and inserting ''5.26 cents''.

(g) SNUFF.—Paragraph (1) of section 5701(e) of such Code is amended by striking ''58.5 cents (51 cents on snuff removed during 2000 or 2001)'' and inserting ''$1.26''.

(h) CHEWING TOBACCO.—Paragraph (2) of section 5701(e) of such Code is amended by striking ''19.5 cents (17 cents on chewing tobacco removed during 2000 or 2001)'' and inserting ''42 cents''.

(i) PIPE TOBACCO.—Subsection (f) of section 5701 of such Code is amended by striking ''$1.0969 cents (95.67 cents on pipe tobacco removed during 2000 or 2001)'' and inserting ''$2.36''.

(j) ROLL-YOUR-OWN TOBACCO.—

(1) IN GENERAL.—Subsection (g) of section 5701 of such Code is amended by striking ''$1.0969 cents (95.67 cents on roll-your-own tobacco removed during 2000 or 2001)'' and inserting ''$7.4667''.

(2) INCLUSION OF CIGAR TOBACCO.—Subsection (o) of section 5702 of such Code is amended by inserting ''or cigars, or for use as wrappers for making cigars'' before the period at the end.

(k) EFFECTIVE DATE.—The amendments made by this section shall apply to articles removed after December 31, 2007.

(l) FLOOR STOCKS TAXES.—

(1) IMPOSITION OF TAX.—On cigarettes manufactured in or imported into the United States which are removed before January 1, 2008, and held on such date for sale by any person, there is hereby imposed a tax in an amount equal to the excess of—

(A) the tax which would be imposed under section 5701 of the Internal Revenue Code of 1986 on the article if the article had been removed on such date, over

(B) the prior tax (if any) imposed under section 5701 of such Code on such article.

(2) AUTHORITY TO EXEMPT CIGARETTES HELD IN VENDING MACHINES.—To the extent provided in regulations prescribed by the Secretary, no tax shall be imposed by paragraph (1) on cigarettes held for retail sale on January 1, 2008, by any person in any vending machine. If the Secretary provides such a benefit with respect to any person, the Secretary may reduce the $500 amount in paragraph (3) with respect to such person.

(3) CREDIT AGAINST TAX.—Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to $500. Such credit shall not exceed the amount of taxes imposed by paragraph (1) for which such person is liable.

(4) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding cigarettes on January 1, 2008, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before April 14, 2008.

(5) ARTICLES IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) and any other provision of law, any article which is located in a foreign trade zone on January 1, 2008, shall be subject to the tax imposed by paragraph (1) if—

(A) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act, or

(B) such article is held on such date under the supervision of a customs officer pursuant to the 2d proviso of such section 3(a).

(6) DEFINITIONS.—For purposes of this subsection—

(A) IN GENERAL.—Terms used in this subsection which are also used in section 5702 of the Internal Revenue Code of 1986 shall have the respective meanings such terms have in such section.

(B) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury or the Secretary's delegate.

(7) CONTROLLED GROUPS.—Rules similar to the rules of section 5061(e)(3) of such Code shall apply for purposes of this subsection.

(8) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with

the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 5701. The Secretary may treat any person who bore the ultimate burden of the tax imposed by paragraph (1) as the person to whom a credit or refund under such provisions may be allowed or made.

**SEC. 1002. EXEMPTION FOR EMERGENCY MEDICAL SERVICES TRANSPORTATION.**

(a) IN GENERAL.—Subsection (l) of section 4041 of the Internal Revenue Code of 1986 is amended to read as follows:

"(l) EXEMPTION FOR CERTAIN USES.—

"(1) CERTAIN AIRCRAFT.—No tax shall be imposed under this section on any liquid sold for use in, or used in, a helicopter or a fixed-wing aircraft for purposes of providing transportation with respect to which the requirements of subsection (f) or (g) of section 4261 are met.

"(2) EMERGENCY MEDICAL SERVICES.—No tax shall be imposed under this section on any liquid sold for use in, or used in, any ambulance for purposes of providing transportation for emergency medical services. The preceding sentence shall not apply to any liquid used after December 31, 2009.".

(b) FUELS NOT USED FOR TAXABLE PURPOSES.—Section 6427 of such Code is amended by inserting after subsection (e) the following new subsection:

"(f) USE TO PROVIDE EMERGENCY MEDICAL SERVICES.—Except as provided in subsection (k), if any fuel on which tax was imposed by section 4081 or 4041 is used in an ambulance for a purpose described in section 4041(l)(2), the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of the tax imposed on such fuel. The preceding sentence shall not apply to any liquid used after December 31, 2009.".

(c) TIME FOR FILING CLAIMS; PERIOD COVERED.—Paragraphs (1) and (2)(A) of section 6427(i) of such Code are each amended by inserting "(f)," after "(d),".

(d) CONFORMING AMENDMENT.—Section 6427(d) of such Code is amended by striking "4041(l)" and inserting "4041(l)(1)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel used in transportation provided in quarters beginning after the date of the enactment of this Act.

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