

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R.3200
OFFERED BY MR. GEORGE MILLER OF
CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE; TABLE OF DIVISIONS, TITLES,**
2 **AND SUBTITLES.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
4 “America’s Affordable Health Choices Act of 2009”.

5 (b) **TABLE OF DIVISIONS, TITLES, AND SUB-**
6 **TITLES.**—This Act is divided into divisions, titles, and
7 subtitles as follows:

- DIVISION A—AFFORDABLE HEALTH CARE CHOICES
- TITLE I—PROTECTIONS AND STANDARDS FOR QUALIFIED HEALTH BENEFITS PLANS
 - Subtitle A—General Standards
 - Subtitle B—Standards Guaranteeing Access to Affordable Coverage
 - Subtitle C—Standards Guaranteeing Access to Essential Benefits
 - Subtitle D—Additional Consumer Protections
 - Subtitle E—Governance
 - Subtitle F—Relation to Other Requirements; Miscellaneous
 - Subtitle G—Early Investments
- TITLE II—HEALTH INSURANCE EXCHANGE AND RELATED PROVISIONS
 - Subtitle A—Health Insurance Exchange

Subtitle B—Public Health Insurance Option

Subtitle C—Individual Affordability Credits

TITLE III—SHARED RESPONSIBILITY

Subtitle A—Individual Responsibility

Subtitle B—Employer Responsibility

TITLE IV—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

Subtitle A—Shared Responsibility

Subtitle B—Credit for Small Business Employee Health Coverage Expenses

Subtitle C—Disclosures to Carry Out Health Insurance Exchange Subsidies

Subtitle D—Other Revenue Provisions

DIVISION B—MEDICARE AND MEDICAID IMPROVEMENTS

TITLE I—IMPROVING HEALTH CARE VALUE

Subtitle A—Provisions Related to Medicare Part A

Subtitle B—Provisions Related to Part B

Subtitle C—Provisions Related to Medicare Parts A and B

Subtitle D—Medicare Advantage Reforms

Subtitle E—Improvements to Medicare Part D

Subtitle F—Medicare Rural Access Protections

TITLE II—MEDICARE BENEFICIARY IMPROVEMENTS

Subtitle A—Improving and Simplifying Financial Assistance for Low Income Medicare Beneficiaries

Subtitle B—Reducing Health Disparities

Subtitle C—Miscellaneous Improvements

TITLE III—PROMOTING PRIMARY CARE, MENTAL HEALTH SERVICES, AND COORDINATED CARE

TITLE IV—QUALITY

Subtitle A—Comparative Effectiveness Research

Subtitle B—Nursing Home Transparency

Subtitle C—Quality Measurements

Subtitle D—Physician Payments Sunshine Provision

Subtitle E—Public Reporting on Health Care-Associated Infections

TITLE V—MEDICARE GRADUATE MEDICAL EDUCATION

TITLE VI—PROGRAM INTEGRITY

Subtitle A—Increased Funding to Fight Waste, Fraud, and Abuse

Subtitle B—Enhanced Penalties for Fraud and Abuse

Subtitle C—Enhanced Program and Provider Protections

Subtitle D—Access to Information Needed to Prevent Fraud, Waste, and Abuse

TITLE VII—MEDICAID AND CHIP

Subtitle A—Medicaid and Health Reform

Subtitle B—Prevention

Subtitle C—Access

Subtitle D—Coverage

Subtitle E—Financing

Subtitle F—Waste, Fraud, and Abuse

Subtitle G—Puerto Rico and the Territories

Subtitle H—Miscellaneous

TITLE VIII—REVENUE-RELATED PROVISIONS

TITLE IX—MISCELLANEOUS PROVISIONS

DIVISION C—PUBLIC HEALTH AND WORKFORCE DEVELOPMENT

TITLE I—COMMUNITY HEALTH CENTERS

TITLE II—WORKFORCE

Subtitle A—Primary Care Workforce

Subtitle B—Nursing Workforce

Subtitle C—Public Health Workforce

Subtitle D—Adapting Workforce to Evolving Health System Needs

TITLE III—PREVENTION AND WELLNESS

TITLE IV—QUALITY AND SURVEILLANCE

TITLE V—OTHER PROVISIONS

Subtitle A—Drug Discount for Rural and Other Hospitals

Subtitle B—School-Based Health Clinics

Subtitle C—National Medical Device Registry

Subtitle D—Grants for Comprehensive Programs to Provide Education to Nurses and Create a Pipeline to Nursing

Subtitle E—Standards for Accessibility to Medical Equipment for Individuals With Disabilities.

Subtitle F—Other Grant Programs

Subtitle G—States Failing to Adhere to Certain Employment Obligations

1 **DIVISION A—AFFORDABLE**
2 **HEALTH CARE CHOICES**

3 **SEC. 100. PURPOSE; TABLE OF CONTENTS OF DIVISION;**
4 **GENERAL DEFINITIONS.**

5 (a) PURPOSE.—

6 (1) IN GENERAL.—The purpose of this division
7 is to provide affordable, quality health care for all
8 Americans and reduce the growth in health care
9 spending.

10 (2) BUILDING ON CURRENT SYSTEM.—This di-
11 vision achieves this purpose by building on what
12 works in today’s health care system, while repairing
13 the aspects that are broken.

14 (3) INSURANCE REFORMS.—This division—

15 (A) enacts strong insurance market re-
16 forms;

17 (B) creates a new Health Insurance Ex-
18 change, with a public health insurance option
19 alongside private plans;

20 (C) includes sliding scale affordability
21 credits; and

1 (D) initiates shared responsibility among
 2 workers, employers, and the government;
 3 so that all Americans have coverage of essential
 4 health benefits.

5 (4) HEALTH DELIVERY REFORM.—This division
 6 institutes health delivery system reforms both to in-
 7 crease quality and to reduce growth in health spend-
 8 ing so that health care becomes more affordable for
 9 businesses, families, and government.

10 (b) TABLE OF CONTENTS OF DIVISION.—The table
 11 of contents of this division is as follows:

Sec. 100. Purpose; table of contents of division; general definitions.

TITLE I—PROTECTIONS AND STANDARDS FOR QUALIFIED
 HEALTH BENEFITS PLANS

Subtitle A—General Standards

Sec. 101. Requirements reforming health insurance marketplace.

Sec. 102. Protecting the choice to keep current coverage.

Subtitle B—Standards Guaranteeing Access to Affordable Coverage

Sec. 111. Prohibiting pre-existing condition exclusions.

Sec. 112. Guaranteed issue and renewal for insured plans.

Sec. 113. Insurance rating rules.

Sec. 114. Nondiscrimination in benefits; parity in mental health and substance
 abuse disorder benefits.

Sec. 115. Ensuring adequacy of provider networks.

Sec. 116. Ensuring value and lower premiums.

Sec. 117. Consistency of costs and coverage under qualified health benefits
 plans during plan year.

Subtitle C—Standards Guaranteeing Access to Essential Benefits

Sec. 121. Coverage of essential benefits package.

Sec. 122. Essential benefits package defined.

Sec. 123. Health Benefits Advisory Committee.

Sec. 124. Process for adoption of recommendations; adoption of benefit stand-
 ards.

Subtitle D—Additional Consumer Protections

Sec. 131. Requiring fair marketing practices by health insurers.

- Sec. 132. Requiring fair grievance and appeals mechanisms.
- Sec. 133. Requiring information transparency and plan disclosure.
- Sec. 134. Application to qualified health benefits plans not offered through the Health Insurance Exchange.
- Sec. 135. Timely payment of claims.
- Sec. 136. Standardized rules for coordination and subrogation of benefits.
- Sec. 137. Application of administrative simplification.
- Sec. 138. Records relative to prescription information.

Subtitle E—Governance

- Sec. 141. Health Choices Administration; Health Choices Commissioner.
- Sec. 142. Duties and authority of Commissioner.
- Sec. 143. Consultation and coordination.
- Sec. 144. Health Insurance Ombudsman.

Subtitle F—Relation to Other Requirements; Miscellaneous

- Sec. 151. Relation to other requirements.
- Sec. 152. Prohibiting discrimination in health care.
- Sec. 153. Whistleblower protection.
- Sec. 154. Construction regarding collective bargaining.
- Sec. 155. Severability.

Subtitle G—Early Investments

- Sec. 161. Ensuring value and lower premiums.
- Sec. 162. Ending health insurance rescission abuse.
- Sec. 163. Administrative simplification.
- Sec. 164. Reinsurance program for retirees.
- Sec. 165. Prohibition against post-retirement reductions of retiree health benefits by group health plans.

TITLE II—HEALTH INSURANCE EXCHANGE AND RELATED PROVISIONS

Subtitle A—Health Insurance Exchange

- Sec. 201. Establishment of Health Insurance Exchange; outline of duties; definitions.
- Sec. 202. Exchange-eligible individuals and employers.
- Sec. 203. Benefits package levels.
- Sec. 204. Contracts for the offering of Exchange-participating health benefits plans.
- Sec. 205. Outreach and enrollment of Exchange-eligible individuals and employers in Exchange-participating health benefits plan.
- Sec. 206. Other functions.
- Sec. 207. Health Insurance Exchange Trust Fund.
- Sec. 208. Optional operation of State-based health insurance exchanges.
- Sec. 209. Participation of small employer benefit associations.

Subtitle B—Public Health Insurance Option

- Sec. 221. Establishment and administration of a public health insurance option as an Exchange-qualified health benefits plan.
- Sec. 222. Premiums and financing.
- Sec. 223. Payment rates for items and services.
- Sec. 224. Modernized payment initiatives and delivery system reform.

- Sec. 225. Provider participation.
- Sec. 226. Application of fraud and abuse provisions.

Subtitle C—Individual Affordability Credits

- Sec. 241. Availability through Health Insurance Exchange.
- Sec. 242. Affordable credit eligible individual.
- Sec. 243. Affordable premium credit.
- Sec. 244. Affordability cost-sharing credit.
- Sec. 245. Income determinations.
- Sec. 246. No Federal payment for undocumented aliens.

TITLE III—SHARED RESPONSIBILITY

Subtitle A—Individual Responsibility

- Sec. 301. Individual responsibility.

Subtitle B—Employer Responsibility

PART 1—HEALTH COVERAGE PARTICIPATION REQUIREMENTS

- Sec. 311. Health coverage participation requirements.
- Sec. 312. Employer responsibility to contribute towards employee and dependent coverage.
- Sec. 313. Employer contributions in lieu of coverage.
- Sec. 314. Authority related to improper steering.

PART 2—SATISFACTION OF HEALTH COVERAGE PARTICIPATION REQUIREMENTS

- Sec. 321. Satisfaction of health coverage participation requirements under the Employee Retirement Income Security Act of 1974.
- Sec. 322. Satisfaction of health coverage participation requirements under the Internal Revenue Code of 1986.
- Sec. 323. Satisfaction of health coverage participation requirements under the Public Health Service Act.
- Sec. 324. Additional rules relating to health coverage participation requirements.

TITLE IV—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

Subtitle A—Shared Responsibility

PART 1—INDIVIDUAL RESPONSIBILITY

- Sec. 401. Tax on individuals without acceptable health care coverage.

PART 2—EMPLOYER RESPONSIBILITY

- Sec. 411. Election to satisfy health coverage participation requirements.
- Sec. 412. Responsibilities of nonelecting employers.

Subtitle B—Credit for Small Business Employee Health Coverage Expenses

- Sec. 421. Credit for small business employee health coverage expenses.

Subtitle C—Disclosures to Carry Out Health Insurance Exchange Subsidies

- Sec. 431. Disclosures to carry out health insurance exchange subsidies.

Subtitle D—Other Revenue Provisions

PART 1—GENERAL PROVISIONS

Sec. 441. Surcharge on high income individuals.

Sec. 442. Delay in application of worldwide allocation of interest.

PART 2—PREVENTION OF TAX AVOIDANCE

Sec. 451. Limitation on treaty benefits for certain deductible payments.

Sec. 452. Codification of economic substance doctrine.

Sec. 453. Penalties for underpayments.

1 (c) GENERAL DEFINITIONS.—Except as otherwise
2 provided, in this division:

3 (1) ACCEPTABLE COVERAGE.—The term “ac-
4 ceptable coverage” has the meaning given such term
5 in section 202(d)(2).

6 (2) BASIC PLAN.—The term “basic plan” has
7 the meaning given such term in section 203(c).

8 (3) COMMISSIONER.—The term “Commis-
9 sioner” means the Health Choices Commissioner es-
10 tablished under section 141.

11 (4) COST-SHARING.—The term “cost-sharing”
12 includes deductibles, coinsurance, copayments, and
13 similar charges but does not include premiums or
14 any network payment differential for covered serv-
15 ices or spending for non-covered services.

16 (5) DEPENDENT.—The term “dependent” has
17 the meaning given such term by the Commissioner
18 and includes a spouse.

19 (6) EMPLOYMENT-BASED HEALTH PLAN.—The
20 term “employment-based health plan”—

1 (A) means a group health plan (as defined
2 in section 733(a)(1) of the Employee Retirement
3 Income Security Act of 1974); and

4 (B) includes such a plan that is the fol-
5 lowing:

6 (i) FEDERAL, STATE, AND TRIBAL
7 GOVERNMENTAL PLANS.—A governmental
8 plan (as defined in section 3(32) of the
9 Employee Retirement Income Security Act
10 of 1974), including a health benefits plan
11 offered under chapter 89 of title 5, United
12 States Code.

13 (ii) CHURCH PLANS.—A church plan
14 (as defined in section 3(33) of the Em-
15 ployee Retirement Income Security Act of
16 1974).

17 (7) ENHANCED PLAN.—The term “enhanced
18 plan” has the meaning given such term in section
19 203(c).

20 (8) ESSENTIAL BENEFITS PACKAGE.—The term
21 “essential benefits package” is defined in section
22 122(a).

23 (9) FAMILY.—The term “family” means an in-
24 dividual and includes the individual’s dependents.

1 (10) FEDERAL POVERTY LEVEL; FPL.—The
2 terms “Federal poverty level” and “FPL” have the
3 meaning given the term “poverty line” in section
4 673(2) of the Community Services Block Grant Act
5 (42 U.S.C. 9902(2)), including any revision required
6 by such section.

7 (11) HEALTH BENEFITS PLAN.—The terms
8 “health benefits plan” means health insurance cov-
9 erage and an employment-based health plan and in-
10 cludes the public health insurance option.

11 (12) HEALTH INSURANCE COVERAGE; HEALTH
12 INSURANCE ISSUER.—The terms “health insurance
13 coverage” and “health insurance issuer” have the
14 meanings given such terms in section 2791 of the
15 Public Health Service Act.

16 (13) HEALTH INSURANCE EXCHANGE.—The
17 term “Health Insurance Exchange” means the
18 Health Insurance Exchange established under sec-
19 tion 201.

20 (14) MEDICAID.—The term “Medicaid” means
21 a State plan under title XIX of the Social Security
22 Act (whether or not the plan is operating under a
23 waiver under section 1115 of such Act).

1 (15) MEDICARE.—The term “Medicare” means
2 the health insurance programs under title XVIII of
3 the Social Security Act.

4 (16) PLAN SPONSOR.—The term “plan spon-
5 sor” has the meaning given such term in section
6 3(16)(B) of the Employee Retirement Income Secu-
7 rity Act of 1974.

8 (17) PLAN YEAR.—The term “plan year”
9 means—

10 (A) with respect to an employment-based
11 health plan, a plan year as specified under such
12 plan; or

13 (B) with respect to a health benefits plan
14 other than an employment-based health plan, a
15 12-month period as specified by the Commis-
16 sioner.

17 (18) PREMIUM PLAN; PREMIUM-PLUS PLAN.—
18 The terms “premium plan” and “premium-plus
19 plan” have the meanings given such terms in section
20 203(c).

21 (19) QHBP OFFERING ENTITY.—The terms
22 “QHBP offering entity” means, with respect to a
23 health benefits plan that is—

24 (A) a group health plan (as defined, sub-
25 ject to subsection (d), in section 733(a)(1) of

1 the Employee Retirement Income Security Act
2 of 1974), the plan sponsor in relation to such
3 group health plan, except that, in the case of a
4 plan maintained jointly by 1 or more employers
5 and 1 or more employee organizations and with
6 respect to which an employer is the primary
7 source of financing, such term means such em-
8 ployer;

9 (B) health insurance coverage, the health
10 insurance issuer offering the coverage;

11 (C) the public health insurance option, the
12 Secretary of Health and Human Services;

13 (D) a non-Federal governmental plan (as
14 defined in section 2791(d) of the Public Health
15 Service Act), the State or political subdivision
16 of a State (or agency or instrumentality of such
17 State or subdivision) which establishes or main-
18 tains such plan; or

19 (E) a Federal governmental plan (as de-
20 fined in section 2791(d) of the Public Health
21 Service Act), the appropriate Federal official.

22 (20) QUALIFIED HEALTH BENEFITS PLAN.—
23 The term “qualified health benefits plan” means a
24 health benefits plan that meets the requirements for

1 such a plan under title I and includes the public
2 health insurance option.

3 (21) PUBLIC HEALTH INSURANCE OPTION.—

4 The term “public health insurance option” means
5 the public health insurance option as provided under
6 subtitle B of title II.

7 (22) SERVICE AREA; PREMIUM RATING AREA.—

8 The terms “service area” and “premium rating
9 area” mean with respect to health insurance cov-
10 erage—

11 (A) offered other than through the Health
12 Insurance Exchange, such an area as estab-
13 lished by the QHBP offering entity of such cov-
14 erage in accordance with applicable State law;
15 and

16 (B) offered through the Health Insurance
17 Exchange, such an area as established by such
18 entity in accordance with applicable State law
19 and applicable rules of the Commissioner for
20 Exchange-participating health benefits plans.

21 (23) STATE.—The term “State” means the 50
22 States and the District of Columbia.

23 (24) STATE MEDICAID AGENCY.—The term
24 “State Medicaid agency” means, with respect to a
25 Medicaid plan, the single State agency responsible

1 for administering such plan under title XIX of the
2 Social Security Act.

3 (25) Y1, Y2, ETC.—The terms “Y1” , “Y2”,
4 “Y3”, “Y4”, “Y5”, and similar subsequently num-
5 bered terms, mean 2013 and subsequent years, re-
6 spectively.

7 (26) EMPLOYEE PREMIUM.—The term “em-
8 ployee premium” does not include a collectively bar-
9 gained premium in the case of a group health plan
10 (as defined in section 733(a)(1) of the Employee Re-
11 tirement Income Security Act of 1974) that is a
12 multiemployer plan (as defined in section 3(37) of
13 such Act).

14 **TITLE I—PROTECTIONS AND**
15 **STANDARDS FOR QUALIFIED**
16 **HEALTH BENEFITS PLANS**
17 **Subtitle A—General Standards**

18 **SEC. 101. REQUIREMENTS REFORMING HEALTH INSUR-**
19 **ANCE MARKETPLACE.**

20 (a) PURPOSE.—The purpose of this title is to estab-
21 lish standards to ensure that new health insurance cov-
22 erage and employment-based health plans that are offered
23 meet standards guaranteeing access to affordable cov-
24 erage, essential benefits, and other consumer protections.

1 (b) REQUIREMENTS FOR QUALIFIED HEALTH BENE-
2 FITS PLANS.—On or after the first day of Y1, a health
3 benefits plan shall not be a qualified health benefits plan
4 under this division unless the plan meets the applicable
5 requirements of the following subtitles for the type of plan
6 and plan year involved:

7 (1) Subtitle B (relating to affordable coverage).

8 (2) Subtitle C (relating to essential benefits).

9 (3) Subtitle D (relating to consumer protec-
10 tion).

11 (c) TERMINOLOGY.—In this division:

12 (1) ENROLLMENT IN EMPLOYMENT-BASED
13 HEALTH PLANS.—An individual shall be treated as
14 being “enrolled” in an employment-based health
15 plan if the individual is a participant or beneficiary
16 (as such terms are defined in section 3(7) and 3(8),
17 respectively, of the Employee Retirement Income Se-
18 curity Act of 1974) in such plan.

19 (2) INDIVIDUAL AND GROUP HEALTH INSUR-
20 ANCE COVERAGE.—The terms “individual health in-
21 surance coverage” and “group health insurance cov-
22 erage” mean health insurance coverage offered in
23 the individual market or large or small group mar-
24 ket, respectively, as defined in section 2791 of the
25 Public Health Service Act.

1 **SEC. 102. PROTECTING THE CHOICE TO KEEP CURRENT**
2 **COVERAGE.**

3 (a) GRANDFATHERED HEALTH INSURANCE COV-
4 ERAGE DEFINED.—Subject to the succeeding provisions of
5 this section, for purposes of establishing acceptable cov-
6 erage under this division, the term “grandfathered health
7 insurance coverage” means individual health insurance
8 coverage that is offered and in force and effect before the
9 first day of Y1 if the following conditions are met:

10 (1) LIMITATION ON NEW ENROLLMENT.—

11 (A) IN GENERAL.—Except as provided in
12 this paragraph, the individual health insurance
13 issuer offering such coverage does not enroll
14 any individual in such coverage if the first ef-
15 fective date of coverage is on or after the first
16 day of Y1.

17 (B) DEPENDENT COVERAGE PER-
18 MITTED.—Subparagraph (A) shall not affect
19 the subsequent enrollment of a dependent of an
20 individual who is covered as of such first day.

21 (2) LIMITATION ON CHANGES IN TERMS OR
22 CONDITIONS.—Subject to paragraph (3) and except
23 as required by law, the issuer does not change any
24 of its terms or conditions, including benefits and
25 cost-sharing, from those in effect as of the day be-
26 fore the first day of Y1.

1 (3) RESTRICTIONS ON PREMIUM INCREASES.—

2 The issuer cannot vary the percentage increase in
3 the premium for a risk group of enrollees in specific
4 grandfathered health insurance coverage without
5 changing the premium for all enrollees in the same
6 risk group at the same rate, as specified by the
7 Commissioner.

8 (b) GRACE PERIOD FOR CURRENT EMPLOYMENT-
9 BASED HEALTH PLANS.—

10 (1) GRACE PERIOD.—

11 (A) IN GENERAL.—The Commissioner
12 shall establish a grace period whereby, for plan
13 years beginning after the end of the 5-year pe-
14 riod beginning with Y1, an employment-based
15 health plan in operation as of the day before
16 the first day of Y1 must meet the same require-
17 ments as apply to a qualified health benefits
18 plan under section 101, including the essential
19 benefit package requirement under section 121.

20 (B) EXCEPTION FOR LIMITED BENEFITS
21 PLANS.—Subparagraph (A) shall not apply to
22 an employment-based health plan in which the
23 coverage consists only of one or more of the fol-
24 lowing:

1 (i) Any coverage described in section
2 3001(a)(1)(B)(ii)(IV) of division B of the
3 American Recovery and Reinvestment Act
4 of 2009 (PL 111–5).

5 (ii) Excepted benefits (as defined in
6 section 733(c) of the Employee Retirement
7 Income Security Act of 1974), including
8 coverage under a specified disease or ill-
9 ness policy described in paragraph (3)(A)
10 of such section.

11 (iii) Such other limited benefits as the
12 Commissioner may specify.

13 In no case shall an employment-based health
14 plan in which the coverage consists only of one
15 or more of the coverage or benefits described in
16 clauses (i) through (iii) be treated as acceptable
17 coverage under this division

18 (2) TRANSITIONAL TREATMENT AS ACCEPT-
19 ABLE COVERAGE.—During the grace period specified
20 in paragraph (1)(A), an employment-based health
21 plan that is described in such paragraph shall be
22 treated as acceptable coverage under this division.

23 (c) LIMITATION ON INDIVIDUAL HEALTH INSURANCE
24 COVERAGE.—

1 (1) IN GENERAL.—Individual health insurance
2 coverage that is not grandfathered health insurance
3 coverage under subsection (a) may only be offered
4 on or after the first day of Y1 as an Exchange-participating health benefits plan.

5 (2) SEPARATE, EXCEPTED COVERAGE PERMITTED.—Excepted benefits (as defined in section
6 2791(e) of the Public Health Service Act) are not
7 included within the definition of health insurance
8 coverage. Nothing in paragraph (1) shall prevent the
9 offering, other than through the Health Insurance
10 Exchange, of excepted benefits so long as it is offered and priced separately from health insurance
11 coverage.

12 **Subtitle B—Standards Guaranteeing Access to Affordable Coverage**

13 **SEC. 111. PROHIBITING PRE-EXISTING CONDITION EXCLUSIONS.**

14 A qualified health benefits plan may not impose any
15 pre-existing condition exclusion (as defined in section
16 2701(b)(1)(A) of the Public Health Service Act) or otherwise impose any limit or condition on the coverage under
17 the plan with respect to an individual or dependent based
18 on any health status-related factors (as defined in section
19

1 2791(d)(9) of the Public Health Service Act) in relation
2 to the individual or dependent.

3 **SEC. 112. GUARANTEED ISSUE AND RENEWAL FOR IN-**
4 **SURED PLANS.**

5 The requirements of sections 2711 (other than sub-
6 sections (c) and (e)) and 2712 (other than paragraphs (3),
7 and (6) of subsection (b) and subsection (e)) of the Public
8 Health Service Act, relating to guaranteed availability and
9 renewability of health insurance coverage, shall apply to
10 individuals and employers in all individual and group
11 health insurance coverage, whether offered to individuals
12 or employers through the Health Insurance Exchange,
13 through any employment-based health plan, or otherwise,
14 in the same manner as such sections apply to employers
15 and health insurance coverage offered in the small group
16 market, except that such section 2712(b)(1) shall apply
17 only if, before nonrenewal or discontinuation of coverage,
18 the issuer has provided the enrollee with notice of non-
19 payment of premiums and there is a grace period during
20 which the enrollees has an opportunity to correct such
21 nonpayment. Rescissions of such coverage shall be prohib-
22 ited except in cases of fraud as defined in sections
23 2712(b)(2) of such Act.

1 **SEC. 113. INSURANCE RATING RULES.**

2 (a) IN GENERAL.—The premium rate charged for an
3 insured qualified health benefits plan may not vary except
4 as follows:

5 (1) LIMITED AGE VARIATION PERMITTED.—By
6 age (within such age categories as the Commissioner
7 shall specify) so long as the ratio of the highest such
8 premium to the lowest such premium does not ex-
9 ceed the ratio of 2 to 1.

10 (2) BY AREA.—By premium rating area (as
11 permitted by State insurance regulators or, in the
12 case of Exchange-participating health benefits plans,
13 as specified by the Commissioner in consultation
14 with such regulators).

15 (3) BY FAMILY ENROLLMENT.—By family en-
16 rollment (such as variations within categories and
17 compositions of families) so long as the ratio of the
18 premium for family enrollment (or enrollments) to
19 the premium for individual enrollment is uniform, as
20 specified under State law and consistent with rules
21 of the Commissioner.

22 (b) STUDY AND REPORTS.—

23 (1) STUDY.—The Commissioner, in coordina-
24 tion with the Secretary of Health and Human Serv-
25 ices and the Secretary of Labor, shall conduct a
26 study of the large group insured and self-insured

1 employer health care markets. Such study shall ex-
2 amine the following:

3 (A) The types of employers by key charac-
4 teristics, including size, that purchase insured
5 products versus those that self-insure.

6 (B) The similarities and differences be-
7 tween typical insured and self-insured health
8 plans.

9 (C) The financial solvency and capital re-
10 serve levels of employers that self-insure by em-
11 ployer size.

12 (D) The risk of self-insured employers not
13 being able to pay obligations or otherwise be-
14 coming financially insolvent.

15 (E) The extent to which rating rules are
16 likely to cause adverse selection in the large
17 group market or to encourage small and mid
18 size employers to self-insure

19 (2) REPORTS.—Not later than 18 months after
20 the date of the enactment of this Act, the Commis-
21 sioner shall submit to Congress and the applicable
22 agencies a report on the study conducted under
23 paragraph (1). Such report shall include any rec-
24 ommendations the Commissioner deems appropriate
25 to ensure that the law does not provide incentives

1 for small and mid-size employers to self-insure or
2 create adverse selection in the risk pools of large
3 group insurers and self-insured employers. Not later
4 than 18 months after the first day of Y1, the Com-
5 missioner shall submit to Congress and the applica-
6 ble agencies an updated report on such study, in-
7 cluding updates on such recommendations.

8 **SEC. 114. NONDISCRIMINATION IN BENEFITS; PARITY IN**
9 **MENTAL HEALTH AND SUBSTANCE ABUSE**
10 **DISORDER BENEFITS.**

11 (a) NONDISCRIMINATION IN BENEFITS.—A qualified
12 health benefits plan shall comply with standards estab-
13 lished by the Commissioner to prohibit discrimination in
14 health benefits or benefit structures for qualifying health
15 benefits plans, building from sections 702 of Employee
16 Retirement Income Security Act of 1974, 2702 of the
17 Public Health Service Act, and section 9802 of the Inter-
18 nal Revenue Code of 1986.

19 (b) PARITY IN MENTAL HEALTH AND SUBSTANCE
20 ABUSE DISORDER BENEFITS.—To the extent such provi-
21 sions are not superceded by or inconsistent with subtitle
22 C, the provisions of section 2705 (other than subsections
23 (a)(1), (a)(2), and (c)) of section 2705 of the Public
24 Health Service Act shall apply to a qualified health bene-
25 fits plan, regardless of whether it is offered in the indi-

1 vidual or group market, in the same manner as such provi-
2 sions apply to health insurance coverage offered in the
3 large group market.

4 **SEC. 115. ENSURING ADEQUACY OF PROVIDER NETWORKS.**

5 (a) IN GENERAL.—A qualified health benefits plan
6 that uses a provider network for items and services shall
7 meet such standards respecting provider networks as the
8 Commissioner may establish to assure the adequacy of
9 such networks in ensuring enrollee access to such items
10 and services and transparency in the cost-sharing differen-
11 tials between in-network coverage and out-of-network cov-
12 erage.

13 (b) INTERNET ACCESS TO INFORMATION.—A quali-
14 fied health benefits plan that uses a provider network shall
15 provide a current listing of all providers in its network
16 on its website and such data shall be available on the
17 Health Insurance Exchange website as a ‘click through’
18 from the basic information on that plan. The Commis-
19 sioner shall also establish an on-line system whereby an
20 individual may select by name any medical provider (as
21 defined by the Commissioner) and be informed of the plan
22 or plans with which that provider is contracting.

23 (c) PROVIDER NETWORK DEFINED.—In this division,
24 the term “provider network” means the providers with re-

1 spect to which covered benefits, treatments, and services
2 are available under a health benefits plan.

3 **SEC. 116. ENSURING VALUE AND LOWER PREMIUMS.**

4 The QHBP offering entity shall provide that for any
5 plan year in which a qualified health benefits plan that
6 the entity offers has a medical loss ratio (expressed as a
7 percentage) that is less than a percentage (not less than
8 85 percent) specified by the Commissioner, the QHBP of-
9 fering entity offering such plan shall provide for rebates
10 to enrollees of payment sufficient to meet such loss ratio.
11 The Commissioner shall establish a uniform definition of
12 medical loss ratio and methodology for determining how
13 to calculate the medical loss ratio. Such methodology shall
14 be designed to take into account the special circumstances
15 of smaller and newer plans.

16 **SEC. 117. CONSISTENCY OF COSTS AND COVERAGE UNDER**
17 **QUALIFIED HEALTH BENEFITS PLANS DUR-**
18 **ING PLAN YEAR.**

19 In the case of health insurance coverage offered
20 under a qualified health benefits plan, the coverage and
21 cost of coverage may not be changed during the course
22 of a plan year except to increase coverage to the enrollee
23 or to lower costs to the enrollee.

1 **Subtitle C—Standards Guaranteing Access to Essential Benefits**
2 **teeing Access to Essential Bene-**
3 **fits**

4 **SEC. 121. COVERAGE OF ESSENTIAL BENEFITS PACKAGE.**

5 (a) IN GENERAL.—A qualified health benefits plan
6 shall provide coverage that at least meets the benefit
7 standards adopted under section 124 for the essential ben-
8 efits package described in section 122 for the plan year
9 involved.

10 (b) CHOICE OF COVERAGE.—

11 (1) NON-EXCHANGE-PARTICIPATING HEALTH
12 BENEFITS PLANS.—In the case of a qualified health
13 benefits plan that is not an Exchange-participating
14 health benefits plan, such plan may offer such cov-
15 erage in addition to the essential benefits package as
16 the QHBP offering entity may specify.

17 (2) EXCHANGE-PARTICIPATING HEALTH BENE-
18 FITS PLANS.—In the case of an Exchange-partici-
19 pating health benefits plan, such plan is required
20 under section 203 to provide specified levels of bene-
21 fits and, in the case of a plan offering a premium-
22 plus level of benefits, provide additional benefits.

23 (3) CONTINUATION OF OFFERING OF SEPARATE
24 EXCEPTED BENEFITS COVERAGE.—Nothing in this
25 division shall be construed as affecting the offering

1 of health benefits in the form of excepted benefits
2 (described in section 102(b)(1)(B)(ii)) if such bene-
3 fits are offered under a separate policy, contract, or
4 certificate of insurance.

5 (c) NO RESTRICTIONS ON COVERAGE UNRELATED
6 TO CLINICAL APPROPRIATENESS.—A qualified health ben-
7 efits plan may not impose any restriction (other than cost-
8 sharing) unrelated to clinical appropriateness on the cov-
9 erage of the health care items and services.

10 **SEC. 122. ESSENTIAL BENEFITS PACKAGE DEFINED.**

11 (a) IN GENERAL.—In this division, the term “essen-
12 tial benefits package” means health benefits coverage,
13 consistent with standards adopted under section 124 to
14 ensure the provision of quality health care and financial
15 security, that—

16 (1) provides payment for the items and services
17 described in subsection (b) in accordance with gen-
18 erally accepted standards of medical or other appro-
19 priate clinical or professional practice;

20 (2) limits cost-sharing for such covered health
21 care items and services in accordance with such ben-
22 efit standards, consistent with subsection (c);

23 (3) does not impose any annual or lifetime limit
24 on the coverage of covered health care items and
25 services;

1 (4) complies with section 115(a) (relating to
2 network adequacy); and

3 (5) is equivalent, as certified by Office of the
4 Actuary of the Centers for Medicare & Medicaid
5 Services, to the average prevailing employer-spon-
6 sored coverage.

7 (b) MINIMUM SERVICES TO BE COVERED.—The
8 items and services described in this subsection are the fol-
9 lowing:

10 (1) Hospitalization.

11 (2) Outpatient hospital and outpatient clinic
12 services, including emergency department services.

13 (3) Professional services of physicians and other
14 health professionals.

15 (4) Such services, equipment, and supplies inci-
16 dent to the services of a physician's or a health pro-
17 fessional's delivery of care in institutional settings,
18 physician offices, patients' homes or place of resi-
19 dence, or other settings, as appropriate.

20 (5) Prescription drugs.

21 (6) Rehabilitative and habilitative services.

22 (7) Mental health and substance use disorder
23 services.

24 (8) Preventive services, including those services
25 recommended with a grade of A or B by the Task

1 Force on Clinical Preventive Services and those vac-
2 cines recommended for use by the Director of the
3 Centers for Disease Control and Prevention.

4 (9) Maternity care.

5 (10) Well baby and well child care and oral
6 health, vision, and hearing services, equipment, and
7 supplies at least for children under 21 years of age.

8 (11) Durable medical equipment, prosthetics,
9 orthotics and related supplies.

10 (c) REQUIREMENTS RELATING TO COST-SHARING
11 AND MINIMUM ACTUARIAL VALUE.—

12 (1) NO COST-SHARING FOR PREVENTIVE SERV-
13 ICES.—There shall be no cost-sharing under the es-
14 sential benefits package for preventive items and
15 services (as specified under the benefit standards),
16 including well baby and well child care.

17 (2) ANNUAL LIMITATION.—

18 (A) ANNUAL LIMITATION.—The cost-shar-
19 ing incurred under the essential benefits pack-
20 age with respect to an individual (or family) for
21 a year does not exceed the applicable level spec-
22 ified in subparagraph (B).

23 (B) APPLICABLE LEVEL.—The applicable
24 level specified in this subparagraph for Y1 is
25 \$5,000 for an individual and \$10,000 for a

1 family. Such levels shall be increased (rounded
2 to the nearest \$100) for each subsequent year
3 by the annual percentage increase in the Con-
4 sumer Price Index (United States city average)
5 applicable to such year.

6 (C) USE OF COPAYMENTS.—In establishing
7 cost-sharing levels for basic, enhanced, and pre-
8 mium plans under this subsection, the Sec-
9 retary shall, to the maximum extent possible,
10 use only copayments and not coinsurance.

11 (3) MINIMUM ACTUARIAL VALUE.—

12 (A) IN GENERAL.—The cost-sharing under
13 the essential benefits package shall be designed
14 to provide a level of coverage that is designed
15 to provide benefits that are actuarially equiva-
16 lent to approximately 70 percent of the full ac-
17 tuarial value of the benefits provided under the
18 reference benefits package described in sub-
19 paragraph (B).

20 (B) REFERENCE BENEFITS PACKAGE DE-
21 SCRIBED.—The reference benefits package de-
22 scribed in this subparagraph is the essential
23 benefits package if there were no cost-sharing
24 imposed.

1 **SEC. 123. HEALTH BENEFITS ADVISORY COMMITTEE.**

2 (a) ESTABLISHMENT.—

3 (1) IN GENERAL.—There is established a pri-
4 vate-public advisory committee which shall be a
5 panel of medical and other experts to be known as
6 the Health Benefits Advisory Committee to rec-
7 ommend covered benefits and essential, enhanced,
8 and premium plans.

9 (2) CHAIR.—The Surgeon General shall be a
10 member and the chair of the Health Benefits Advi-
11 sory Committee.

12 (3) MEMBERSHIP.—The Health Benefits Advi-
13 sory Committee shall be composed of the following
14 members, in addition to the Surgeon General:

15 (A) 9 members who are not Federal em-
16 ployees or officers and who are appointed by
17 the President.

18 (B) 9 members who are not Federal em-
19 ployees or officers and who are appointed by
20 the Comptroller General of the United States in
21 a manner similar to the manner in which the
22 Comptroller General appoints members to the
23 Medicare Payment Advisory Commission under
24 section 1805(e) of the Social Security Act.

1 (C) Such even number of members (not to
2 exceed 8) who are Federal employees and offi-
3 cers, as the President may appoint.

4 The membership of the Committee shall include one
5 or more experts in scientific evidence and clinical
6 practice of integrative health care services. Such ini-
7 tial appointments shall be made not later than 60
8 days after the date of the enactment of this Act.

9 (4) TERMS.—Each member of the Health Bene-
10 fits Advisory Committee shall serve a 3-year term on
11 the Committee, except that the terms of the initial
12 members shall be adjusted in order to provide for a
13 staggered term of appointment for all such mem-
14 bers.

15 (5) PARTICIPATION.—The membership of the
16 Health Benefits Advisory Committee shall at least
17 reflect providers, consumer representatives, employ-
18 ers, labor, health insurance issuers, experts in health
19 care financing and delivery, experts in racial and
20 ethnic disparities, experts in care for those with dis-
21 abilities, representatives of relevant governmental
22 agencies. and at least one practicing physician or
23 other health professional and an expert on children's
24 health and shall represent a balance among various
25 sectors of the health care system so that no single

1 sector unduly influences the recommendations of
2 such Committee.

3 (b) DUTIES.—

4 (1) RECOMMENDATIONS ON BENEFIT STAND-
5 ARDS.—The Health Benefits Advisory Committee
6 shall recommend to the Secretary of Health and
7 Human Services (in this subtitle referred to as the
8 “Secretary”) benefit standards (as defined in para-
9 graph (4)), and periodic updates to such standards.
10 In developing such recommendations, the Committee
11 shall—

12 (A) take into account innovation in health
13 care,

14 (B) consider how such standards could re-
15 duce health disparities,

16 (C) take into account integrative health
17 care services, and

18 (D) take into account typical multiem-
19 ployer plan benefit structures and the impact of
20 the essential benefit package on such plans.

21 (2) DEADLINE.—The Health Benefits Advisory
22 Committee shall recommend initial benefit standards
23 to the Secretary not later than 1 year after the date
24 of the enactment of this Act.

1 (3) PUBLIC INPUT.—The Health Benefits Advi-
2 sory Committee shall allow for public input as a part
3 of developing recommendations under this sub-
4 section.

5 (4) BENEFIT STANDARDS DEFINED.—In this
6 subtitle, the term “benefit standards” means stand-
7 ards respecting—

8 (A) the essential benefits package de-
9 scribed in section 122, including categories of
10 covered treatments, items and services within
11 benefit classes, and cost-sharing; and

12 (B) the cost-sharing levels for enhanced
13 plans and premium plans (as provided under
14 section 203(c)) consistent with paragraph (5).

15 (5) LEVELS OF COST-SHARING FOR ENHANCED
16 AND PREMIUM PLANS.—

17 (A) ENHANCED PLAN.—The level of cost-
18 sharing for enhanced plans shall be designed so
19 that such plans have benefits that are actuari-
20 ally equivalent to approximately 85 percent of
21 the actuarial value of the benefits provided
22 under the reference benefits package described
23 in section 122(c)(3)(B).

24 (B) PREMIUM PLAN.—The level of cost-
25 sharing for premium plans shall be designed so

1 that such plans have benefits that are actuari-
2 ally equivalent to approximately 95 percent of
3 the actuarial value of the benefits provided
4 under the reference benefits package described
5 in section 122(c)(3)(B).

6 (6) RECOMMENDATIONS OF INTEGRATIVE
7 HEALTH CARE SERVICES TASK FORCE.—

8 (A) INCLUSION IN COMMITTEE'S REC-
9 COMMENDATIONS.—The Health Benefits Advi-
10 sory Committee shall include in its rec-
11 ommendations under paragraph (1) the rec-
12 ommendations made by the Integrative Health
13 Care Services Task Force established under
14 subparagraph (B).

15 (B) ESTABLISHMENT OF TASK FORCE.—
16 The Health Benefits Advisory Committee shall
17 establish an Integrative Health Care Services
18 Task Force. Such Task Force shall consist of
19 5 experts with expertise in research in, and
20 practice of, integrative health care. Such ex-
21 perts shall be appointed by the Committee from
22 among experts nominated by the Secretary, in
23 consultation with the National Center for Com-
24 plementary and Alternative Medicine at the Na-
25 tional Institutes of Health. The duty of the

1 Task Force shall be to make recommendations
2 to the Committee on evidence-based, clinically
3 effective, and safe integrative care services.

4 (c) OPERATIONS.—

5 (1) PER DIEM PAY.—Each member of the
6 Health Benefits Advisory Committee shall receive
7 travel expenses, including per diem in accordance
8 with applicable provisions under subchapter I of
9 chapter 57 of title 5, United States Code, and shall
10 otherwise serve without additional pay.

11 (2) MEMBERS NOT TREATED AS FEDERAL EM-
12 PLOYEES.—Members of the Health Benefits Advi-
13 sory Committee shall not be considered employees of
14 the Federal government solely by reason of any serv-
15 ice on the Committee.

16 (3) APPLICATION OF FACA.—The Federal Advi-
17 sory Committee Act (5 U.S.C. App.), other than sec-
18 tion 14, shall apply to the Health Benefits Advisory
19 Committee.

20 (d) PUBLICATION.—The Secretary shall provide for
21 publication in the Federal Register and the posting on the
22 Internet website of the Department of Health and Human
23 Services of all recommendations made by the Health Ben-
24 efits Advisory Committee under this section.

1 **SEC. 124. PROCESS FOR ADOPTION OF RECOMMENDA-**
2 **TIONS; ADOPTION OF BENEFIT STANDARDS.**

3 (a) PROCESS FOR ADOPTION OF RECOMMENDA-
4 TIONS.—

5 (1) REVIEW OF RECOMMENDED STANDARDS.—

6 Not later than 45 days after the date of receipt of
7 benefit standards recommended under section 123
8 (including such standards as modified under para-
9 graph (2)(B)), the Secretary shall review such
10 standards and shall determine whether to propose
11 adoption of such standards as a package.

12 (2) DETERMINATION TO ADOPT STANDARDS.—

13 If the Secretary determines—

14 (A) to propose adoption of benefit stand-
15 ards so recommended as a package, the Sec-
16 retary shall, by regulation under section 553 of
17 title 5, United States Code, propose adoption
18 such standards; or

19 (B) not to propose adoption of such stand-
20 ards as a package, the Secretary shall notify
21 the Health Benefits Advisory Committee in
22 writing of such determination and the reasons
23 for not proposing the adoption of such rec-
24 ommendation and provide the Committee with a
25 further opportunity to modify its previous rec-

1 ommendations and submit new recommenda-
2 tions to the Secretary on a timely basis.

3 (3) CONTINGENCY.—If, because of the applica-
4 tion of paragraph (2)(B), the Secretary would other-
5 wise be unable to propose initial adoption of such
6 recommended standards by the deadline specified in
7 subsection (b)(1), the Secretary shall, by regulation
8 under section 553 of title 5, United States Code,
9 propose adoption of initial benefit standards by such
10 deadline.

11 (4) PUBLICATION.—The Secretary shall provide
12 for publication in the Federal Register of all deter-
13 minations made by the Secretary under this sub-
14 section.

15 (b) ADOPTION OF STANDARDS.—

16 (1) INITIAL STANDARDS.—Not later than 18
17 months after the date of the enactment of this Act,
18 the Secretary shall, through the rulemaking process
19 consistent with subsection (a), adopt an initial set of
20 benefit standards.

21 (2) PERIODIC UPDATING STANDARDS.—Under
22 subsection (a), the Secretary shall provide for the
23 periodic updating of the benefit standards previously
24 adopted under this section.

1 (3) REQUIREMENT.—The Secretary may not
2 adopt any benefit standards for an essential benefits
3 package or for level of cost-sharing that are incon-
4 sistent with the requirements for such a package or
5 level under sections 122 and 123(b)(5).

6 **Subtitle D—Additional Consumer**
7 **Protections**

8 **SEC. 131. REQUIRING FAIR MARKETING PRACTICES BY**
9 **HEALTH INSURERS.**

10 The Commissioner shall establish uniform marketing
11 standards that all insured QHBP offering entities shall
12 meet.

13 **SEC. 132. REQUIRING FAIR GRIEVANCE AND APPEALS**
14 **MECHANISMS.**

15 (a) IN GENERAL.—A QHBP offering entity shall pro-
16 vide for timely grievance and appeals mechanisms that the
17 Commissioner shall establish.

18 (b) INTERNAL CLAIMS AND APPEALS PROCESS.—
19 Under a qualified health benefits plan the QHBP offering
20 entity shall provide an internal claims and appeals process
21 that initially incorporates the claims and appeals proce-
22 dures (including urgent claims) set forth at section
23 2560.503–1 of title 29, Code of Federal Regulations, as
24 published on November 21, 2000 (65 Fed. Reg. 70246)

1 and shall update such process in accordance with any
2 standards that the Commissioner may establish.

3 (c) EXTERNAL REVIEW PROCESS.—

4 (1) IN GENERAL.—The Commissioner shall es-
5 tablish an external review process (including proce-
6 dures for expedited reviews of urgent claims) that
7 provides for an impartial, independent, and de novo
8 review of denied claims under this division.

9 (2) REQUIRING FAIR GRIEVANCE AND APPEALS
10 MECHANISMS.—A determination made, with respect
11 to a qualified health benefits plan offered by a
12 QHBP offering entity, under the external review
13 process established under this subsection shall be
14 binding on the plan and the entity.

15 (d) CONSTRUCTION.—Nothing in this section shall be
16 construed as affecting the availability of judicial review
17 under State law for adverse decisions under subsection (b)
18 or (c), subject to section 151.

19 **SEC. 133. REQUIRING INFORMATION TRANSPARENCY AND**
20 **PLAN DISCLOSURE.**

21 (a) ACCURATE AND TIMELY DISCLOSURE.—

22 (1) IN GENERAL.—A qualified health benefits
23 plan shall comply with standards established by the
24 Commissioner for the accurate and timely disclosure
25 of plan documents, plan terms and conditions,

1 claims payment policies and practices, periodic fi-
2 nancial disclosure, data on enrollment, data on
3 disenrollment, data on the number of claims denials,
4 data on rating practices, information on cost-sharing
5 and payments with respect to any out-of-network
6 coverage, and other information as determined ap-
7 propriate by the Commissioner. The Commissioner
8 shall require that such disclosure be provided in
9 plain language.

10 (2) PLAIN LANGUAGE.—In this subsection, the
11 term “plain language” means language that the in-
12 tended audience, including individuals with limited
13 English proficiency, can readily understand and use
14 because that language is clean, concise, well-orga-
15 nized, and follows other best practices of plain lan-
16 guage writing.

17 (3) GUIDANCE.—The Commissioner shall de-
18 velop and issue guidance on best practices of plain
19 language writing.

20 (b) CONTRACTING REIMBURSEMENT.—A qualified
21 health benefits plan shall comply with standards estab-
22 lished by the Commissioner to ensure transparency to each
23 health care provider relating to reimbursement arrange-
24 ments between such plan and such provider.

1 (c) ADVANCE NOTICE OF PLAN CHANGES.—A
2 change in a qualified health benefits plan shall not be
3 made without such reasonable and timely advance notice
4 to enrollees of such change.

5 (d) IDENTIFICATION OF PROVIDERS TRAINED AND
6 ACCREDITED IN INTEGRATIVE MEDICINE.—A qualified
7 health benefit plan shall include in the disclosure required
8 under subsection (a) identification to enrollees of any pro-
9 viders of services under the plan that are trained and ac-
10 credited in integrative health medicine.

11 **SEC. 134. APPLICATION TO QUALIFIED HEALTH BENEFITS**
12 **PLANS NOT OFFERED THROUGH THE**
13 **HEALTH INSURANCE EXCHANGE.**

14 The requirements of the previous provisions of this
15 subtitle shall apply to qualified health benefits plans that
16 are not being offered through the Health Insurance Ex-
17 change only to the extent specified by the Commissioner.

18 **SEC. 135. TIMELY PAYMENT OF CLAIMS.**

19 A QHBP offering entity shall comply with the re-
20 quirements of section 1857(f) of the Social Security Act
21 with respect to a qualified health benefits plan it offers
22 in the same manner an Medicare Advantage organization
23 is required to comply with such requirements with respect
24 to a Medicare Advantage plan it offers under part C of
25 Medicare.

1 **SEC. 136. STANDARDIZED RULES FOR COORDINATION AND**
2 **SUBROGATION OF BENEFITS.**

3 The Commissioner shall establish standards for the
4 coordination and subrogation of benefits and reimburse-
5 ment of payments in cases involving individuals and mul-
6 tiple plan coverage.

7 **SEC. 137. APPLICATION OF ADMINISTRATIVE SIMPLIFICA-**
8 **TION.**

9 A QHBP offering entity is required to comply with
10 standards for electronic financial and administrative
11 transactions under section 1173A of the Social Security
12 Act, added by section 163(a).

13 **SEC. 138. RECORDS RELATIVE TO PRESCRIPTION INFORMA-**
14 **TION.**

15 (a) IN GENERAL.—A qualified health benefits plan
16 shall ensure that its records relative to prescription infor-
17 mation containing patient identifiable and prescriber-iden-
18 tifiable data are maintained in accordance with this sec-
19 tion.”

20 (b) REQUIREMENTS.—

21 (1) IN GENERAL.—Records described in sub-
22 section (a) may not be licensed, transferred, used, or
23 sold by any pharmacy benefits manager, insurance
24 company, electronic transmission intermediary, re-
25 tail, mail order, or Internet pharmacy or other simi-

1 lar entity, for any commercial purpose, except for
2 the limited purposes of—

3 (A) pharmacy reimbursement;

4 (B) formulary compliance;

5 (C) care management;

6 (D) utilization review by a health care pro-
7 vider, the patient's insurance provider or the
8 agent of either;

9 (E) health care research; or

10 (F) as otherwise provided by law.

11 (2) COMMERCIAL PURPOSE.—For purposes of
12 paragraph (1), the term “commercial purpose” in-
13 cludes, but is not limited to, advertising, marketing,
14 promotion, or any activity that could be used to in-
15 fluence sales or market share of a pharmaceutical
16 product, influence or evaluate the prescribing behav-
17 ior of an individual health care professional, or
18 evaluate the effectiveness of a professional pharma-
19 ceutical detailing sales force.

20 (c) CONSTRUCTION.—

21 (1) PERMITTED PRACTICES.—Nothing in this
22 section shall prohibit—

23 (A) the dispensing of prescription medica-
24 tions to a patient or to the patient's authorized
25 representative;

1 (B) the transmission of prescription infor-
2 mation between an authorized prescriber and a
3 licensed pharmacy;

4 (C) the transfer of prescription informa-
5 tion between licensed pharmacies;

6 (D) the transfer of prescription records
7 that may occur in the event a pharmacy owner-
8 ship is changed or transferred;

9 (E) care management educational commu-
10 nications provided to a patient about the pa-
11 tient's health condition, adherence to a pre-
12 scribed course of therapy, or other information
13 about the drug being dispensed, treatment op-
14 tions, or clinical trials.

15 (2) DE-IDENTIFIED DATA.—Nothing in this
16 section shall prohibit the collection, use, transfer, or
17 sale of patient and prescriber de-identified data by
18 zip code, geographic region, or medical specialty for
19 commercial purposes.

20 **Subtitle E—Governance**

21 **SEC. 141. HEALTH CHOICES ADMINISTRATION; HEALTH** 22 **CHOICES COMMISSIONER.**

23 (a) IN GENERAL.—There is hereby established, as an
24 independent agency in the executive branch of the Govern-

1 ment, a Health Choices Administration (in this division
2 referred to as the “Administration”).

3 (b) COMMISSIONER.—

4 (1) IN GENERAL.—The Administration shall be
5 headed by a Health Choices Commissioner (in this
6 division referred to as the “Commissioner”) who
7 shall be appointed by the President, by and with the
8 advice and consent of the Senate.

9 (2) COMPENSATION; ETC.—The provisions of
10 paragraphs (2), (5) and (7) of subsection (a) (relat-
11 ing to compensation, terms, general powers, rule-
12 making, and delegation) of section 702 of the Social
13 Security Act (42 U.S.C. 902) shall apply to the
14 Commissioner and the Administration in the same
15 manner as such provisions apply to the Commis-
16 sioner of Social Security and the Social Security Ad-
17 ministration.

18 **SEC. 142. DUTIES AND AUTHORITY OF COMMISSIONER.**

19 (a) DUTIES.—The Commissioner is responsible for
20 carrying out the following functions under this division:

21 (1) QUALIFIED PLAN STANDARDS.—The estab-
22 lishment of qualified health benefits plan standards
23 under this title, including the enforcement of such
24 standards in coordination with State insurance regu-

1 lators and the Secretaries of Labor and the Treas-
2 ury.

3 (2) HEALTH INSURANCE EXCHANGE.—The es-
4 tablishment and operation of a Health Insurance
5 Exchange under subtitle A of title II.

6 (3) INDIVIDUAL AFFORDABILITY CREDITS.—
7 The administration of individual affordability credits
8 under subtitle C of title II, including determination
9 of eligibility for such credits.

10 (4) ADDITIONAL FUNCTIONS.—Such additional
11 functions as may be specified in this division.

12 (b) PROMOTING ACCOUNTABILITY.—

13 (1) IN GENERAL.—The Commissioner shall un-
14 dertake activities in accordance with this subtitle to
15 promote accountability of QHBP offering entities in
16 meeting Federal health insurance requirements, re-
17 gardless of whether such accountability is with re-
18 spect to qualified health benefits plans offered
19 through the Health Insurance Exchange or outside
20 of such Exchange.

21 (2) COMPLIANCE EXAMINATION AND AUDITS.—

22 (A) IN GENERAL.—The commissioner
23 shall, in coordination with States, conduct au-
24 dits of qualified health benefits plan compliance
25 with Federal requirements. Such audits may

1 include random compliance audits and targeted
2 audits in response to complaints or other sus-
3 pected non-compliance.

4 (B) RECOUPMENT OF COSTS IN CONNEC-
5 TION WITH EXAMINATION AND AUDITS.—The
6 Commissioner is authorized to recoup from
7 qualified health benefits plans reimbursement
8 for the costs of such examinations and audit of
9 such QHBP offering entities.

10 (c) DATA COLLECTION.—The Commissioner shall
11 collect data for purposes of carrying out the Commis-
12 sioner's duties, including for purposes of promoting qual-
13 ity and value, protecting consumers, and addressing dis-
14 parities in health and health care and may share such data
15 with the Secretary of Health and Human Services.

16 (d) SANCTIONS AUTHORITY.—

17 (1) IN GENERAL.—In the case that the Com-
18 missioner determines that a QHBP offering entity
19 violates a requirement of this title, the Commis-
20 sioner may, in coordination with State insurance
21 regulators and the Secretary of Labor, provide, in
22 addition to any other remedies authorized by law,
23 for any of the remedies described in paragraph (2).

1 (2) REMEDIES.—The remedies described in this
2 paragraph, with respect to a qualified health benefits
3 plan offered by a QHBP offering entity, are—

4 (A) civil money penalties of not more than
5 the amount that would be applicable under
6 similar circumstances for similar violations
7 under section 1857(g) of the Social Security
8 Act;

9 (B) suspension of enrollment of individuals
10 under such plan after the date the Commis-
11 sioner notifies the entity of a determination
12 under paragraph (1) and until the Commis-
13 sioner is satisfied that the basis for such deter-
14 mination has been corrected and is not likely to
15 recur;

16 (C) in the case of an Exchange-partici-
17 pating health benefits plan, suspension of pay-
18 ment to the entity under the Health Insurance
19 Exchange for individuals enrolled in such plan
20 after the date the Commissioner notifies the en-
21 tity of a determination under paragraph (1)
22 and until the Secretary is satisfied that the
23 basis for such determination has been corrected
24 and is not likely to recur; or

1 (D) working with State insurance regu-
2 lators to terminate plans for repeated failure by
3 the offering entity to meet the requirements of
4 this title.

5 (e) STANDARD DEFINITIONS OF INSURANCE AND
6 MEDICAL TERMS.—The Commissioner shall provide for
7 the development of standards for the definitions of terms
8 used in health insurance coverage, including insurance-re-
9 lated terms.

10 (f) EFFICIENCY IN ADMINISTRATION.—The Commis-
11 sioner shall issue regulations for the effective and efficient
12 administration of the Health Insurance Exchange and af-
13 fordability credits under subtitle C, including, with respect
14 to the determination of eligibility for affordability credits,
15 the use of personnel who are employed in accordance with
16 the requirements of title 5, United States Code, to carry
17 out the duties of the Commissioner or, in the case of sec-
18 tions 208 and 241(b)(2), the use of State personnel who
19 are employed in accordance with standards prescribed by
20 the Office of Personnel Management pursuant to section
21 208 of the Intergovernmental Personnel Act of 1970 (42
22 U.S.C. 4728).

1 **SEC. 143. CONSULTATION AND COORDINATION.**

2 (a) CONSULTATION.—In carrying out the Commis-
3 sioner’s duties under this division, the Commissioner, as
4 appropriate, shall consult with at least with the following:

5 (1) The National Association of Insurance
6 Commissioners, State attorneys general, and State
7 insurance regulators, including concerning the
8 standards for insured qualified health benefits plans
9 under this title and enforcement of such standards.

10 (2) Appropriate State agencies, specifically con-
11 cerning the administration of individual affordability
12 credits under subtitle C of title II and the offering
13 of Exchange-participating health benefits plans, to
14 Medicaid eligible individuals under subtitle A of such
15 title.

16 (3) Other appropriate Federal agencies.

17 (4) Indian tribes and tribal organizations.

18 (5) The National Association of Insurance
19 Commissioners for purposes of using model guide-
20 lines established by such association for purposes of
21 subtitles B and D.

22 (b) COORDINATION.—

23 (1) IN GENERAL.—In carrying out the func-
24 tions of the Commissioner, including with respect to
25 the enforcement of the provisions of this division,
26 the Commissioner shall work in coordination with

1 existing Federal and State entities to the maximum
2 extent feasible consistent with this division and in a
3 manner that prevents conflicts of interest in duties
4 and ensures effective enforcement.

5 (2) UNIFORM STANDARDS.—The Commissioner,
6 in coordination with such entities, shall seek to
7 achieve uniform standards that adequately protect
8 consumers in a manner that does not unreasonably
9 affect employers and insurers.

10 **SEC. 144. HEALTH INSURANCE OMBUDSMAN.**

11 (a) IN GENERAL.—The Commissioner shall appoint
12 within the Health Choices Administration a Qualified
13 Health Benefits Plan Ombudsman who shall have exper-
14 tise and experience in the fields of health care and edu-
15 cation of (and assistance to) individuals.

16 (b) DUTIES.—The Qualified Health Benefits Plan
17 Ombudsman shall, in a linguistically appropriate man-
18 ner—

19 (1) receive complaints, grievances, and requests
20 for information submitted by individuals;

21 (2) provide assistance with respect to com-
22 plaints, grievances, and requests referred to in para-
23 graph (1), including—

1 (A) helping individuals determine the rel-
2 evant information needed to seek an appeal of
3 a decision or determination;

4 (B) assistance to such individuals with any
5 problems arising from disenrollment from such
6 a plan;

7 (C) assistance to such individuals in choos-
8 ing a qualified health benefits plan in which to
9 enroll; and

10 (D) assistance to such individuals in pre-
11 senting information under subtitle C (relating
12 to affordability credits); and

13 (3) submit annual reports to Congress and the
14 Commissioner that describe the activities of the Om-
15 budsman and that include such recommendations for
16 improvement in the administration of this division as
17 the Ombudsman determines appropriate. The Om-
18 budsman shall not serve as an advocate for any in-
19 creases in payments or new coverage of services, but
20 may identify issues and problems in payment or cov-
21 erage policies.

1 **Subtitle F—Relation to Other**
2 **Requirements; Miscellaneous**

3 **SEC. 151. RELATION TO OTHER REQUIREMENTS.**

4 (a) COVERAGE NOT OFFERED THROUGH EX-
5 CHANGE.—

6 (1) IN GENERAL.—In the case of health insur-
7 ance coverage not offered through the Health Insur-
8 ance Exchange (whether or not offered in connection
9 with an employment-based health plan), and in the
10 case of employment-based health plans, the require-
11 ments of this title do not supercede any require-
12 ments applicable under titles XXII and XXVII of
13 the Public Health Service Act, parts 6 and 7 of sub-
14 title B of title I of the Employee Retirement Income
15 Security Act of 1974, or State law, except insofar as
16 such requirements prevent the application of a re-
17 quirement of this division, as determined by the
18 Commissioner.

19 (2) CONSTRUCTION.—Nothing in paragraph (1)
20 shall be construed as affecting the application of sec-
21 tion 514 of the Employee Retirement Income Secu-
22 rity Act of 1974.

23 (b) COVERAGE OFFERED THROUGH EXCHANGE.—

1 (1) IN GENERAL.—In the case of health insur-
2 ance coverage offered through the Health Insurance
3 Exchange—

4 (A) the requirements of this title do not
5 supercede any requirements (including require-
6 ments relating to genetic information non-
7 discrimination and mental health) applicable
8 under title XXVII of the Public Health Service
9 Act or under State law, except insofar as such
10 requirements prevent the application of a re-
11 quirement of this division, as determined by the
12 Commissioner; and

13 (B) individual rights and remedies under
14 State laws shall apply.

15 (2) CONSTRUCTION.—In the case of coverage
16 described in paragraph (1), nothing in such para-
17 graph shall be construed as preventing the applica-
18 tion of rights and remedies under State laws with
19 respect to any requirement referred to in paragraph
20 (1)(A).

21 **SEC. 152. PROHIBITING DISCRIMINATION IN HEALTH CARE.**

22 (a) IN GENERAL.—Except as otherwise explicitly per-
23 mitted by this Act and by subsequent regulations con-
24 sistent with this Act, all health care and related services
25 (including insurance coverage and public health activities)

1 covered by this Act shall be provided without regard to
2 personal characteristics extraneous to the provision of
3 high quality health care or related services.

4 (b) IMPLEMENTATION.—To implement the require-
5 ment set forth in subsection (a), the Secretary of Health
6 and Human Services shall, not later than 18 months after
7 the date of the enactment of this Act, promulgate such
8 regulations as are necessary or appropriate to insure that
9 all health care and related services (including insurance
10 coverage and public health activities) covered by this Act
11 are provided (whether directly or through contractual, li-
12 censing, or other arrangements) without regard to per-
13 sonal characteristics extraneous to the provision of high
14 quality health care or related services.

15 **SEC. 153. WHISTLEBLOWER PROTECTION.**

16 (a) RETALIATION PROHIBITED.—No employer may
17 discharge any employee or otherwise discriminate against
18 any employee with respect to his compensation, terms,
19 conditions, or other privileges of employment because the
20 employee (or any person acting pursuant to a request of
21 the employee)—

22 (1) provided, caused to be provided, or is about
23 to provide or cause to be provided to the employer,
24 the Federal Government, or the attorney general of
25 a State information relating to any violation of, or

1 any act or omission the employee reasonably believes
2 to be a violation of any provision of this Act or any
3 order, rule, or regulation promulgated under this
4 Act;

5 (2) testified or is about to testify in a pro-
6 ceeding concerning such violation;

7 (3) assisted or participated or is about to assist
8 or participate in such a proceeding; or

9 (4) objected to, or refused to participate in, any
10 activity, policy, practice, or assigned task that the
11 employee (or other such person) reasonably believed
12 to be in violation of any provision of this Act or any
13 order, rule, or regulation promulgated under this
14 Act.

15 (b) ENFORCEMENT ACTION.—An employee covered
16 by this section who alleges discrimination by an employer
17 in violation of subsection (a) may bring an action governed
18 by the rules, procedures, legal burdens of proof, and rem-
19 edies set forth in section 40(b) of the Consumer Product
20 Safety Act (15 U.S.C. 2087(b)).

21 (c) EMPLOYER DEFINED.—As used in this section,
22 the term “employer” means any person (including one or
23 more individuals, partnerships, associations, corporations,
24 trusts, professional membership organization including a
25 certification, disciplinary, or other professional body, unin-

1 corporated organizations, nongovernmental organizations,
2 or trustees) engaged in profit or nonprofit business or in-
3 dustry whose activities are governed by this Act, and any
4 agent, contractor, subcontractor, grantee, or consultant of
5 such person.

6 (d) **RULE OF CONSTRUCTION.**—The rule of construc-
7 tion set forth in section 20109(h) of title 49, United
8 States Code, shall also apply to this section.

9 **SEC. 154. CONSTRUCTION REGARDING COLLECTIVE BAR-**
10 **GAINING.**

11 Nothing in this division shall be construed to alter
12 or supercede any statutory or other obligation to engage
13 in collective bargaining over the terms and conditions of
14 employment related to health care.

15 **SEC. 155. SEVERABILITY.**

16 If any provision of this Act, or any application of such
17 provision to any person or circumstance, is held to be un-
18 constitutional, the remainder of the provisions of this Act
19 and the application of the provision to any other person
20 or circumstance shall not be affected.

21 **Subtitle G—Early Investments**

22 **SEC. 161. ENSURING VALUE AND LOWER PREMIUMS.**

23 (a) **GROUP HEALTH INSURANCE COVERAGE.**—Title
24 XXVII of the Public Health Service Act is amended by
25 inserting after section 2713 the following new section:

1 **“SEC. 2714. ENSURING VALUE AND LOWER PREMIUMS.**

2 “(a) IN GENERAL.—Each health insurance issuer
3 that offers health insurance coverage in the small or large
4 group market shall provide that for any plan year in which
5 the coverage has a medical loss ratio below a level specified
6 by the Secretary, the issuer shall provide in a manner
7 specified by the Secretary for rebates to enrollees of pay-
8 ment sufficient to meet such loss ratio. Such methodology
9 shall be set at the highest level medical loss ratio possible
10 that is designed to ensure adequate participation by
11 issuers, competition in the health insurance market, and
12 value for consumers so that their premiums are used for
13 services.

14 “(b) UNIFORM DEFINITIONS.—The Secretary shall
15 establish a uniform definition of medical loss ratio and
16 methodology for determining how to calculate the medical
17 loss ratio. Such methodology shall be designed to take into
18 account the special circumstances of smaller plans, dif-
19 ferent types of plans, and newer plans.”.

20 (b) INDIVIDUAL HEALTH INSURANCE COVERAGE.—
21 Such title is further amended by inserting after section
22 2753 the following new section:

23 **“SEC. 2754. ENSURING VALUE AND LOWER PREMIUMS.**

24 “The provisions of section 2714 shall apply to health
25 insurance coverage offered in the individual market in the

1 same manner as such provisions apply to health insurance
2 coverage offered in the small or large group market.”.

3 (c) IMMEDIATE IMPLEMENTATION.—The amend-
4 ments made by this section shall apply in the group and
5 individual market for plan years beginning on or after
6 January 1, 2011.

7 **SEC. 162. ENDING HEALTH INSURANCE RESCISSION ABUSE.**

8 (a) CLARIFICATION REGARDING APPLICATION OF
9 GUARANTEED RENEWABILITY OF INDIVIDUAL HEALTH
10 INSURANCE COVERAGE.—Section 2742 of the Public
11 Health Service Act (42 U.S.C. 300gg–42) is amended—

12 (1) in its heading, by inserting “**AND CON-**
13 **TINUATION IN FORCE, INCLUDING PROHIBI-**
14 **TION OF RESCISSION,”** after “**GUARANTEED RE-**
15 **NEWABILITY”**; and

16 (2) in subsection (a), by inserting “, including
17 without rescission,” after “continue in force”.

18 (b) SECRETARIAL GUIDANCE REGARDING RESCIS-
19 SIONS.—Section 2742 of such Act (42 U.S.C. 300gg–42)
20 is amended by adding at the end the following:

21 “(f) RESCISSION.—A health insurance issuer may re-
22 scind health insurance coverage only upon clear and con-
23 vincing evidence of fraud described in subsection (b)(2).
24 The Secretary, no later than July 1, 2010, shall issue

1 guidance implementing this requirement, including proce-
2 dures for independent, external third party review.”.

3 (c) OPPORTUNITY FOR INDEPENDENT, EXTERNAL
4 THIRD PARTY REVIEW IN CERTAIN CASES.—Subpart 1
5 of part B of title XXVII of such Act (42 U.S.C. 300gg–
6 41 et seq.) is amended by adding at the end the following:

7 **“SEC. 2746. OPPORTUNITY FOR INDEPENDENT, EXTERNAL**
8 **THIRD PARTY REVIEW IN CASES OF RESCIS-**
9 **SION.**

10 “(a) NOTICE AND REVIEW RIGHT.—If a health in-
11 surance issuer determines to rescind health insurance cov-
12 erage for an individual in the individual market, before
13 such rescission may take effect the issuer shall provide the
14 individual with notice of such proposed rescission and an
15 opportunity for a review of such determination by an inde-
16 pendent, external third party under procedures specified
17 by the Secretary under section 2742(f).

18 “(b) INDEPENDENT DETERMINATION.—If the indi-
19 vidual requests such review by an independent, external
20 third party of a rescission of health insurance coverage,
21 the coverage shall remain in effect until such third party
22 determines that the coverage may be rescinded under the
23 guidance issued by the Secretary under section 2742(f).”.

24 (d) EFFECTIVE DATE.—The amendments made by
25 this section shall apply on and after October 1, 2010, with

1 respect to health insurance coverage issued before, on, or
2 after such date.

3 **SEC. 163. ADMINISTRATIVE SIMPLIFICATION.**

4 (a) STANDARDIZING ELECTRONIC ADMINISTRATIVE
5 TRANSACTIONS.—

6 (1) IN GENERAL.—Part C of title XI of the So-
7 cial Security Act (42 U.S.C. 1320d et seq.) is
8 amended by inserting after section 1173 the fol-
9 lowing new section:

10 **“SEC. 1173A. STANDARDIZE ELECTRONIC ADMINISTRATIVE**
11 **TRANSACTIONS.**

12 “(a) STANDARDS FOR FINANCIAL AND ADMINISTRA-
13 TIVE TRANSACTIONS.—

14 “(1) IN GENERAL.—The Secretary shall adopt
15 and regularly update standards consistent with the
16 goals described in paragraph (2).

17 “(2) GOALS FOR FINANCIAL AND ADMINISTRA-
18 TIVE TRANSACTIONS.—The goals for standards
19 under paragraph (1) are that such standards shall—

20 “(A) be unique with no conflicting or re-
21 dundant standards;

22 “(B) be authoritative, permitting no addi-
23 tions or constraints for electronic transactions,
24 including companion guides;

1 “(C) be comprehensive, efficient and ro-
2 bust, requiring minimal augmentation by paper
3 transactions or clarification by further commu-
4 nications;

5 “(D) enable the real-time (or near real-
6 time) determination of an individual’s financial
7 responsibility at the point of service and, to the
8 extent possible, prior to service, including
9 whether the individual is eligible for a specific
10 service with a specific physician at a specific fa-
11 cility, which may include utilization of a ma-
12 chine-readable health plan beneficiary identi-
13 fication card;

14 “(E) enable, where feasible, near real-time
15 adjudication of claims;

16 “(F) provide for timely acknowledgment,
17 response, and status reporting applicable to any
18 electronic transaction deemed appropriate by
19 the Secretary;

20 “(G) describe all data elements (such as
21 reason and remark codes) in unambiguous
22 terms, not permit optional fields, require that
23 data elements be either required or conditioned
24 upon set values in other fields, and prohibit ad-
25 ditional conditions; and

1 “(H) harmonize all common data elements
2 across administrative and clinical transaction
3 standards.

4 “(3) TIME FOR ADOPTION.—Not later than 2
5 years after the date of implementation of the X12
6 Version 5010 transaction standards implemented
7 under this part, the Secretary shall adopt standards
8 under this section.

9 “(4) REQUIREMENTS FOR SPECIFIC STAND-
10 ARDS.—The standards under this section shall be
11 developed, adopted and enforced so as to—

12 “(A) clarify, refine, complete, and expand,
13 as needed, the standards required under section
14 1173;

15 “(B) require paper versions of standard-
16 ized transactions to comply with the same
17 standards as to data content such that a fully
18 compliant, equivalent electronic transaction can
19 be populated from the data from a paper
20 version;

21 “(C) enable electronic funds transfers, in
22 order to allow automated reconciliation with the
23 related health care payment and remittance ad-
24 vice;

1 “(D) require timely and transparent claim
2 and denial management processes, including
3 tracking, adjudication, and appeal processing ;

4 “(E) require the use of a standard elec-
5 tronic transaction with which health care pro-
6 viders may quickly and efficiently enroll with a
7 health plan to conduct the other electronic
8 transactions provided for in this part; and

9 “(F) provide for other requirements relat-
10 ing to administrative simplification as identified
11 by the Secretary, in consultation with stake-
12 holders.

13 “(5) BUILDING ON EXISTING STANDARDS.—In
14 developing the standards under this section, the Sec-
15 retary shall build upon existing and planned stand-
16 ards.

17 “(6) IMPLEMENTATION AND ENFORCEMENT.—
18 Not later than 6 months after the date of the enact-
19 ment of this section, the Secretary shall submit to
20 the appropriate committees of Congress a plan for
21 the implementation and enforcement, by not later
22 than 5 years after such date of enactment, of the
23 standards under this section. Such plan shall in-
24 clude—

1 “(A) a process and timeframe with mile-
2 stones for developing the complete set of stand-
3 ards;

4 “(B) an expedited upgrade program for
5 continually developing and approving additions
6 and modifications to the standards as often as
7 annually to improve their quality and extend
8 their functionality to meet evolving require-
9 ments in health care;

10 “(C) programs to provide incentives for,
11 and ease the burden of, implementation for cer-
12 tain health care providers, with special consid-
13 eration given to such providers serving rural or
14 underserved areas and ensure coordination with
15 standards, implementation specifications, and
16 certification criteria being adopted under the
17 HITECH Act;

18 “(D) programs to provide incentives for,
19 and ease the burden of, health care providers
20 who volunteer to participate in the process of
21 setting standards for electronic transactions;

22 “(E) an estimate of total funds needed to
23 ensure timely completion of the implementation
24 plan; and

1 “(F) an enforcement process that includes
2 timely investigation of complaints, random au-
3 dits to ensure compliance, civil monetary and
4 programmatic penalties for non-compliance con-
5 sistent with existing laws and regulations, and
6 a fair and reasonable appeals process building
7 off of enforcement provisions under this part.

8 “(b) LIMITATIONS ON USE OF DATA.—Nothing in
9 this section shall be construed to permit the use of infor-
10 mation collected under this section in a manner that would
11 adversely affect any individual.

12 “(c) PROTECTION OF DATA.—The Secretary shall en-
13 sure (through the promulgation of regulations or other-
14 wise) that all data collected pursuant to subsection (a)
15 are—

16 “(1) used and disclosed in a manner that meets
17 the HIPAA privacy and security law (as defined in
18 section 3009(a)(2) of the Public Health Service
19 Act), including any privacy or security standard
20 adopted under section 3004 of such Act; and

21 “(2) protected from all inappropriate internal
22 use by any entity that collects, stores, or receives the
23 data, including use of such data in determinations of
24 eligibility (or continued eligibility) in health plans,

1 and from other inappropriate uses, as defined by the
2 Secretary.”.

3 (2) DEFINITIONS.—Section 1171 of such Act
4 (42 U.S.C. 1320d) is amended—

5 (A) in paragraph (7), by striking “with
6 reference to” and all that follows and inserting
7 “with reference to a transaction or data ele-
8 ment of health information in section 1173
9 means implementation specifications, certifi-
10 cation criteria, operating rules, messaging for-
11 mats, codes, and code sets adopted or estab-
12 lished by the Secretary for the electronic ex-
13 change and use of information”; and

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

16 “(9) OPERATING RULES.—The term ‘operating
17 rules’ means business rules for using and processing
18 transactions. Operating rules should address the fol-
19 lowing:

20 “(A) Requirements for data content using
21 available and established national standards.

22 “(B) Infrastructure requirements that es-
23 tablish best practices for streamlining data flow
24 to yield timely execution of transactions.

1 “(C) Policies defining the transaction re-
2 lated rights and responsibilities for entities that
3 are transmitting or receiving data.”.

4 (3) CONFORMING AMENDMENT.—Section
5 1179(a) of such Act (42 U.S.C. 1320d–8(a)) is
6 amended, in the matter before paragraph (1)—

7 (A) by inserting “on behalf of an indi-
8 vidual” after “1978”;

9 (B) by inserting “on behalf of an indi-
10 vidual” after “for a financial institution” and

11 (b) STANDARDS FOR CLAIMS ATTACHMENTS AND
12 COORDINATION OF BENEFITS .—

13 (1) STANDARD FOR HEALTH CLAIMS ATTACH-
14 MENTS.—Not later than 1 year after the date of the
15 enactment of this Act, the Secretary of Health and
16 Human Services shall promulgate a final rule to es-
17 tablish a standard for health claims attachment
18 transaction described in section 1173(a)(2)(B) of the
19 Social Security Act (42 U.S.C. 1320d-2(a)(2)(B))
20 and coordination of benefits.

21 (2) REVISION IN PROCESSING PAYMENT TRANS-
22 ACTIONS BY FINANCIAL INSTITUTIONS.—

23 (A) IN GENERAL.—Section 1179 of the So-
24 cial Security Act (42 U.S.C. 1320d–8) is
25 amended, in the matter before paragraph (1)—

1 (i) by striking “or is engaged” and in-
2 serting “and is engaged”; and

3 (ii) by inserting “(other than as a
4 business associate for a covered entity)”
5 after “for a financial institution”.

6 (B) EFFECTIVE DATE.—The amendments
7 made by paragraph (1) shall apply to trans-
8 actions occurring on or after such date (not
9 later than 6 months after the date of the enact-
10 ment of this Act) as the Secretary of Health
11 and Human Services shall specify.

12 **SEC. 164. REINSURANCE PROGRAM FOR RETIREES.**

13 (a) ESTABLISHMENT.—

14 (1) IN GENERAL.—Not later than 90 days after
15 the date of the enactment of this Act, the Secretary
16 of Health and Human Services shall establish a tem-
17 porary reinsurance program (in this section referred
18 to as the “reinsurance program”) to provide reim-
19 bursement to assist participating employment-based
20 plans with the cost of providing health benefits to
21 retirees and to eligible spouses, surviving spouses
22 and dependents of such retirees.

23 (2) DEFINITIONS.—For purposes of this sec-
24 tion:

1 (A) The term “eligible employment-based
2 plan” means a group health benefits plan
3 that—

4 (i) is maintained by one or more em-
5 ployers, former employers or employee as-
6 sociations, or a voluntary employees’ bene-
7 ficiary association, or a committee or board
8 of individuals appointed to administer such
9 plan, and

10 (ii) provides health benefits to retir-
11 ees.

12 (B) The term “health benefits” means
13 medical, surgical, hospital, prescription drug,
14 and such other benefits as shall be determined
15 by the Secretary, whether self-funded or deliv-
16 ered through the purchase of insurance or oth-
17 erwise.

18 (C) The term “participating employment-
19 based plan” means an eligible employment-
20 based plan that is participating in the reinsur-
21 ance program.

22 (D) The term “retiree” means, with re-
23 spect to a participating employment-benefit
24 plan, an individual who—

25 (i) is 55 years of age or older;

1 (ii) is not eligible for coverage under
2 title XVIII of the Social Security Act; and

3 (iii) is not an active employee of an
4 employer maintaining the plan or of any
5 employer that makes or has made substan-
6 tial contributions to fund such plan.

7 (E) The term “Secretary” means Sec-
8 retary of Health and Human Services.

9 (b) PARTICIPATION.—To be eligible to participate in
10 the reinsurance program, an eligible employment-based
11 plan shall submit to the Secretary an application for par-
12 ticipation in the program, at such time, in such manner,
13 and containing such information as the Secretary shall re-
14 quire.

15 (c) PAYMENT.—

16 (1) SUBMISSION OF CLAIMS.—

17 (A) IN GENERAL.—Under the reinsurance
18 program, a participating employment-based
19 plan shall submit claims for reimbursement to
20 the Secretary which shall contain documenta-
21 tion of the actual costs of the items and serv-
22 ices for which each claim is being submitted.

23 (B) BASIS FOR CLAIMS.—Each claim sub-
24 mitted under subparagraph (A) shall be based
25 on the actual amount expended by the partici-

1 participating employment-based plan involved within
2 the plan year for the appropriate employment
3 based health benefits provided to a retiree or to
4 the spouse, surviving spouse, or dependent of a
5 retiree. In determining the amount of any claim
6 for purposes of this subsection, the partici-
7 pating employment-based plan shall take into
8 account any negotiated price concessions (such
9 as discounts, direct or indirect subsidies, re-
10 bates, and direct or indirect remunerations) ob-
11 tained by such plan with respect to such health
12 benefits. For purposes of calculating the
13 amount of any claim, the costs paid by the re-
14 tiree or by the spouse, surviving spouse, or de-
15 pendent of the retiree in the form of
16 deductibles, co-payments, and co-insurance shall
17 be included along with the amounts paid by the
18 participating employment-based plan.

19 (2) PROGRAM PAYMENTS AND LIMIT.—If the
20 Secretary determines that a participating employ-
21 ment-based plan has submitted a valid claim under
22 paragraph (1), the Secretary shall reimburse such
23 plan for 80 percent of that portion of the costs at-
24 tributable to such claim that exceeds \$15,000, but is
25 less than \$90,000. Such amounts shall be adjusted

1 each year based on the percentage increase in the
2 medical care component of the Consumer Price
3 Index (rounded to the nearest multiple of \$1,000)
4 for the year involved.

5 (3) USE OF PAYMENTS.—Amounts paid to a
6 participating employment-based plan under this sub-
7 section shall be used to lower the costs borne di-
8 rectly by the participants and beneficiaries for health
9 benefits provided under such plan in the form of
10 premiums, co-payments, deductibles, co-insurance, or
11 other out-of-pocket costs. Such payments shall not
12 be used to reduce the costs of an employer maintain-
13 ing the participating employment-based plan. The
14 Secretary shall develop a mechanism to monitor the
15 appropriate use of such payments by such plans.

16 (4) APPEALS AND PROGRAM PROTECTIONS.—
17 The Secretary shall establish—

18 (A) an appeals process to permit partici-
19 pating employment-based plans to appeal a de-
20 termination of the Secretary with respect to
21 claims submitted under this section; and

22 (B) procedures to protect against fraud,
23 waste, and abuse under the program.

24 (5) AUDITS.—The Secretary shall conduct an-
25 nual audits of claims data submitted by partici-

1 pating employment-based plans under this section to
2 ensure that they are in compliance with the require-
3 ments of this section.

4 (d) RETIREE RESERVE TRUST FUND.—

5 (1) ESTABLISHMENT.—

6 (A) IN GENERAL.—There is established in
7 the Treasury of the United States a trust fund
8 to be known as the “Retiree Reserve Trust
9 Fund” (referred to in this section as the “Trust
10 Fund”), that shall consist of such amounts as
11 may be appropriated or credited to the Trust
12 Fund as provided for in this subsection to en-
13 able the Secretary to carry out the reinsurance
14 program. Such amounts shall remain available
15 until expended.

16 (B) FUNDING.—There are hereby appro-
17 priated to the Trust Fund, out of any moneys
18 in the Treasury not otherwise appropriated, an
19 amount requested by the Secretary as necessary
20 to carry out this section, except that the total
21 of all such amounts requested shall not exceed
22 \$10,000,000,000.

23 (C) APPROPRIATIONS FROM THE TRUST
24 FUND.—

1 (i) IN GENERAL.—Amounts in the
2 Trust Fund are appropriated to provide
3 funding to carry out the reinsurance pro-
4 gram and shall be used to carry out such
5 program.

6 (ii) BUDGETARY IMPLICATIONS.—
7 Amounts appropriated under clause (i),
8 and outlays flowing from such appropria-
9 tions, shall not be taken into account for
10 purposes of any budget enforcement proce-
11 dures including allocations under section
12 302(a) and (b) of the Balanced Budget
13 and Emergency Deficit Control Act and
14 budget resolutions for fiscal years during
15 which appropriations are made from the
16 Trust Fund.

17 (iii) LIMITATION TO AVAILABLE
18 FUNDS.—The Secretary has the authority
19 to stop taking applications for participa-
20 tion in the program or take such other
21 steps in reducing expenditures under the
22 reinsurance program in order to ensure
23 that expenditures under the reinsurance
24 program do not exceed the funds available
25 under this subsection.

1 **SEC. 165. PROHIBITION AGAINST POST-RETIREMENT RE-**
2 **DUCTIONS OF RETIREE HEALTH BENEFITS**
3 **BY GROUP HEALTH PLANS.**

4 (a) IN GENERAL.—Part 7 of subtitle B of title I of
5 the Employee Retirement Income Security Act of 1974 is
6 amended by inserting after section 714 the following new
7 section:

8 **“SEC. 715. PROTECTION AGAINST POST-RETIREMENT RE-**
9 **DUCTION OF RETIREE HEALTH BENEFITS.**

10 “(a) IN GENERAL.—Every group health plan shall
11 contain a provision which expressly bars the plan, or any
12 fiduciary of the plan, from reducing the benefits provided
13 under the plan to a retired participant, or beneficiary of
14 such participant, if such reduction affects the benefits pro-
15 vided to the participant or beneficiary as of the date the
16 participant retired for purposes of the plan and such re-
17 duction occurs after the participant’s retirement unless
18 such reduction is also made with respect to active partici-
19 pants.

20 “(b) NO REDUCTION.—Notwithstanding that a group
21 health plan described in subsection (b) may contain a pro-
22 vision reserving the general power to amend or terminate
23 the plan or a provision specifically authorizing the plan
24 to make post-retirement reductions in retiree health bene-
25 fits, it shall be prohibited for any group health plan,
26 whether through amendment or otherwise, to reduce the

1 benefits provided to a retired participant or his or her ben-
2 eficiary under the terms of the plan if such reduction of
3 benefits occurs after the date the participant retired for
4 purposes of the plan and reduces benefits that were pro-
5 vided to the participant, or his or her beneficiary, as of
6 the date the participant retired unless such reduction is
7 also made with respect to active participants.”.

8 (b) CONFORMING AMENDMENT.—The table of con-
9 tents in section 1 of such Act is amended by inserting
10 after the item relating to section 714 the following new
11 item:

“Sec. 715. Protection against post-retirement reduction of retiree health bene-
fits”.

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

15 **TITLE II—HEALTH INSURANCE**
16 **EXCHANGE AND RELATED**
17 **PROVISIONS**

18 **Subtitle A—Health Insurance**
19 **Exchange**

20 **SEC. 201. ESTABLISHMENT OF HEALTH INSURANCE EX-**
21 **CHANGE; OUTLINE OF DUTIES; DEFINITIONS.**

22 (a) ESTABLISHMENT.—There is established within
23 the Health Choices Administration and under the direc-
24 tion of the Commissioner a Health Insurance Exchange

1 in order to facilitate access of individuals and employers,
2 through a transparent process, to a variety of choices of
3 affordable, quality health insurance coverage, including a
4 public health insurance option.

5 (b) **OUTLINE OF DUTIES OF COMMISSIONER.**—In ac-
6 cordance with this subtitle and in coordination with appro-
7 priate Federal and State officials as provided under sec-
8 tion 143(b), the Commissioner shall—

9 (1) under section 204 establish standards for,
10 accept bids from, and negotiate and enter into con-
11 tracts with, QHBP offering entities for the offering
12 of health benefits plans through the Health Insur-
13 ance Exchange, with different levels of benefits re-
14 quired under section 203, and including with respect
15 to oversight and enforcement;

16 (2) under section 205 facilitate outreach and
17 enrollment in such plans of Exchange-eligible indi-
18 viduals and employers described in section 202; and

19 (3) conduct such activities related to the Health
20 Insurance Exchange as required, including establish-
21 ment of a risk pooling mechanism under section 206
22 and consumer protections under subtitle D of title I.

23 (c) **EXCHANGE-PARTICIPATING HEALTH BENEFITS**
24 **PLAN DEFINED.**—In this division, the term “Exchange-
25 participating health benefits plan” means a qualified

1 health benefits plan that is offered through the Health In-
2 surance Exchange.

3 **SEC. 202. EXCHANGE-ELIGIBLE INDIVIDUALS AND EMPLOY-**
4 **ERS.**

5 (a) ACCESS TO COVERAGE.—In accordance with this
6 section, all individuals are eligible to obtain coverage
7 through enrollment in an Exchange-participating health
8 benefits plan offered through the Health Insurance Ex-
9 change unless such individuals are enrolled in another
10 qualified health benefits plan or other acceptable coverage.

11 (b) DEFINITIONS.—In this division:

12 (1) EXCHANGE-ELIGIBLE INDIVIDUAL.—The
13 term “Exchange-eligible individual” means an indi-
14 vidual who is eligible under this section to be en-
15 rolled through the Health Insurance Exchange in an
16 Exchange-participating health benefits plan and,
17 with respect to family coverage, includes dependents
18 of such individual.

19 (2) EXCHANGE-ELIGIBLE EMPLOYER.—The
20 term “Exchange-eligible employer” means an em-
21 ployer that is eligible under this section to enroll
22 through the Health Insurance Exchange employees
23 of the employer (and their dependents) in Exchange-
24 eligible health benefits plans.

1 (3) EMPLOYMENT-RELATED DEFINITIONS.—

2 The terms “employer”, “employee”, “full-time em-
3 ployee”, and “part-time employee” have the mean-
4 ings given such terms by the Commissioner for pur-
5 poses of this division.

6 (c) TRANSITION.—Individuals and employers shall
7 only be eligible to enroll or participate in the Health Insur-
8 ance Exchange in accordance with the following transition
9 schedule:

10 (1) FIRST YEAR.—In Y1 (as defined in section
11 100(c))—

12 (A) individuals described in subsection
13 (d)(1), including individuals described in para-
14 graphs (3), (4), and (5) of subsection (d); and

15 (B) smallest employers described in sub-
16 section (e)(1).

17 (2) SECOND YEAR.—In Y2—

18 (A) individuals and employers described in
19 paragraph (1); and

20 (B) smaller employers described in sub-
21 section (e)(2).

22 (3) THIRD AND SUBSEQUENT YEARS.—In Y3
23 and subsequent years—

24 (A) individuals and employers described in
25 paragraph (2); and

1 (B) larger employers as permitted by the
2 Commissioner under subsection (e)(3).

3 (d) INDIVIDUALS.—

4 (1) INDIVIDUAL DESCRIBED.—Subject to the
5 succeeding provisions of this subsection, an indi-
6 vidual described in this paragraph is an individual
7 who—

8 (A) is not enrolled in coverage described in
9 subparagraphs (C) through (F) of paragraph
10 (2); and

11 (B) is not enrolled in coverage as a full-
12 time employee (or as a dependent of such an
13 employee) under a group health plan if the cov-
14 erage and an employer contribution under the
15 plan meet the requirements of section 312.

16 For purposes of subparagraph (B), in the case of an
17 individual who is self-employed, who has at least 1
18 employee, and who meets the requirements of section
19 312, such individual shall be deemed a full-time em-
20 ployee described in such subparagraph.

21 (2) ACCEPTABLE COVERAGE.—For purposes of
22 this division, the term “acceptable coverage” means
23 any of the following:

1 (A) QUALIFIED HEALTH BENEFITS PLAN
2 COVERAGE.—Coverage under a qualified health
3 benefits plan.

4 (B) GRANDFATHERED HEALTH INSURANCE
5 COVERAGE; COVERAGE UNDER CURRENT GROUP
6 HEALTH PLAN.—Coverage under a grand-
7 fathered health insurance coverage (as defined
8 in subsection (a) of section 102) or under a
9 current group health plan (described in sub-
10 section (b) of such section).

11 (C) MEDICARE.—Coverage under part A of
12 title XVIII of the Social Security Act.

13 (D) MEDICAID.—Coverage for medical as-
14 sistance under title XIX of the Social Security
15 Act, excluding such coverage that is only avail-
16 able because of the application of subsection
17 (u), (z), or (aa) of section 1902 of such Act

18 (E) MEMBERS OF THE ARMED FORCES
19 AND DEPENDENTS (INCLUDING TRICARE).—
20 Coverage under chapter 55 of title 10, United
21 States Code, including similar coverage fur-
22 nished under section 1781 of title 38 of such
23 Code.

24 (F) VA.—Coverage under the veteran's
25 health care program under chapter 17 of title

1 38, United States Code, but only if the cov-
2 erage for the individual involved is determined
3 by the Commissioner in coordination with the
4 Secretary of Treasury to be not less than a level
5 specified by the Commissioner and Secretary of
6 Veteran's Affairs, in coordination with the Sec-
7 retary of Treasury, based on the individual's
8 priority for services as provided under section
9 1705(a) of such title.

10 (G) OTHER COVERAGE.—Such other health
11 benefits coverage, such as a State health bene-
12 fits risk pool, as the Commissioner, in coordina-
13 tion with the Secretary of the Treasury, recog-
14 nizes for purposes of this paragraph.

15 The Commissioner shall make determinations under
16 this paragraph in coordination with the Secretary of
17 the Treasury.

18 (3) TREATMENT OF CERTAIN NON-TRADI-
19 TIONAL MEDICAID ELIGIBLE INDIVIDUALS.—An indi-
20 vidual who is a non-traditional Medicaid eligible in-
21 dividual (as defined in section 205(e)(4)(C)) in a
22 State may be an Exchange-eligible individual if the
23 individual was enrolled in a qualified health benefits
24 plan, grandfathered health insurance coverage, or
25 current group health plan during the 6 months be-

1 fore the individual became a non-traditional Med-
2 icaid eligible individual. During the period in which
3 such an individual has chosen to enroll in an Ex-
4 change-participating health benefits plan, the indi-
5 vidual is not also eligible for medical assistance
6 under Medicaid.

7 (4) CONTINUING ELIGIBILITY PERMITTED.—

8 (A) IN GENERAL.—Except as provided in
9 subparagraph (B), once an individual qualifies
10 as an Exchange-eligible individual under this
11 subsection (including as an employee or depend-
12 ent of an employee of an Exchange-eligible em-
13 ployer) and enrolls under an Exchange-partici-
14 pating health benefits plan through the Health
15 Insurance Exchange, the individual shall con-
16 tinue to be treated as an Exchange-eligible indi-
17 vidual until the individual is no longer enrolled
18 with an Exchange-participating health benefits
19 plan.

20 (B) EXCEPTIONS.—

21 (i) IN GENERAL.—Subparagraph (A)
22 shall not apply to an individual once the
23 individual becomes eligible for coverage—

24 (I) under part A of the Medicare
25 program;

1 (II) under the Medicaid program
2 as a Medicaid eligible individual, ex-
3 cept as permitted under paragraph
4 (3) or clause (ii); or

5 (III) in such other circumstances
6 as the Commissioner may provide.

7 (ii) TRANSITION PERIOD.—In the case
8 described in clause (i)(II), the Commis-
9 sioner shall permit the individual to con-
10 tinue treatment under subparagraph (A)
11 until such limited time as the Commis-
12 sioner determines it is administratively fea-
13 sible, consistent with minimizing disruption
14 in the individual's access to health care.

15 (5) ADVERSELY AFFECTED RETIREE HEALTH
16 BENEFITS GROUP PARTICIPANTS AND BENE-
17 FICIARIES.—

18 (A) IN GENERAL.—Beginning in Y1, an in-
19 dividual who is a participant or beneficiary in
20 an adversely affected retiree health benefits
21 group who does not have coverage described in
22 paragraph (2)(C) is an Exchange eligible indi-
23 vidual, whether or not such an individual has
24 other acceptable coverage.

1 (B) ADVERSELY AFFECTED RETIREE
2 HEALTH BENEFIT GROUP DEFINED.—In this
3 paragraph, the term “adversely affected retiree
4 health benefits group” means the retired par-
5 ticipants and their beneficiaries of a group
6 health plan that cancelled or substantially re-
7 duced the amount, type, level, or form of health
8 benefit or option provided prior January 1,
9 2008.

10 (e) EMPLOYERS.—

11 (1) SMALLEST EMPLOYER.—Subject to para-
12 graph (4), smallest employers described in this para-
13 graph are employers with 10 or fewer employees.

14 (2) SMALLER EMPLOYERS.—Subject to para-
15 graph (4), smaller employers described in this para-
16 graph are employers that are not smallest employers
17 described in paragraph (1) and have 20 or fewer em-
18 ployees.

19 (3) LARGER EMPLOYERS.—

20 (A) IN GENERAL.—Beginning with Y3, the
21 Commissioner may permit employers not de-
22 scribed in paragraph (1) or (2) to be Exchange-
23 eligible employers.

24 (B) PHASE-IN.—In applying subparagraph
25 (A), the Commissioner may phase-in the appli-

1 cation of such subparagraph based on the num-
2 ber of full-time employees of an employer and
3 such other considerations as the Commissioner
4 deems appropriate.

5 (4) CONTINUING ELIGIBILITY.—Once an em-
6 ployer is permitted to be an Exchange-eligible em-
7 ployer under this subsection and enrolls employees
8 through the Health Insurance Exchange, the em-
9 ployer shall continue to be treated as an Exchange-
10 eligible employer for each subsequent plan year re-
11 gardless of the number of employees involved unless
12 and until the employer meets the requirement of sec-
13 tion 311(a) through paragraph (1) of such section
14 by offering a group health plan and not through of-
15 fering Exchange-participating health benefits plan.

16 (5) EMPLOYER PARTICIPATION AND CONTRIBU-
17 TIONS.—

18 (A) SATISFACTION OF EMPLOYER RESPON-
19 SIBILITY.—For any year in which an employer
20 is an Exchange-eligible employer, such employer
21 may meet the requirements of section 312 with
22 respect to employees of such employer by offer-
23 ing such employees the option of enrolling with
24 Exchange-participating health benefits plans
25 through the Health Insurance Exchange con-

1 sistent with the provisions of subtitle B of title
2 III.

3 (B) EMPLOYEE CHOICE.—Any employee
4 offered Exchange-participating health benefits
5 plans by the employer of such employee under
6 subparagraph (A) may choose coverage under
7 any such plan. That choice includes, with re-
8 spect to family coverage, coverage of the de-
9 pendents of such employee.

10 (6) AFFILIATED GROUPS.—Any employer which
11 is part of a group of employers who are treated as
12 a single employer under subsection (b), (c), (m), or
13 (o) of section 414 of the Internal Revenue Code of
14 1986 shall be treated, for purposes of this subtitle,
15 as a single employer.

16 (7) OTHER COUNTING RULES.—The Commis-
17 sioner shall establish rules relating to how employees
18 are counted for purposes of carrying out this sub-
19 section.

20 (8) TREATMENT OF MULTIEMPLOYER PLANS.—
21 The plan sponsor of a group health plan (as defined
22 in section 733(a) of the Employee Retirement In-
23 come Security Act of 1974) that is multiemployer
24 plan (as defined in section 3(37) of such Act) may
25 obtain health insurance coverage with respect to par-

1 participants in the plan through the Exchange to the
2 same extent as an employer not described in para-
3 graph (1) or (2) is permitted by the Commissioner
4 to obtain health insurance coverage through the Ex-
5 change as an Exchange-eligible employer

6 (f) SPECIAL SITUATION AUTHORITY.—The Commis-
7 sioner shall have the authority to establish such rules as
8 may be necessary to deal with special situations with re-
9 gard to uninsured individuals and employers participating
10 as Exchange-eligible individuals and employers, such as
11 transition periods for individuals and employers who gain,
12 or lose, Exchange-eligible participation status, and to es-
13 tablish grace periods for premium payment.

14 (g) SURVEYS OF INDIVIDUALS AND EMPLOYERS.—
15 The Commissioner shall provide for periodic surveys of
16 Exchange-eligible individuals and employers concerning
17 satisfaction of such individuals and employers with the
18 Health Insurance Exchange and Exchange-participating
19 health benefits plans.

20 (h) EXCHANGE ACCESS STUDY.—

21 (1) IN GENERAL.—The Commissioner shall con-
22 duct a study of access to the Health Insurance Ex-
23 change for individuals and for employers, including
24 individuals and employers who are not eligible and
25 enrolled in Exchange-participating health benefits

1 plans. The goal of the study is to determine if there
2 are significant groups and types of individuals and
3 employers who are not Exchange eligible individuals
4 or employers, but who would have improved benefits
5 and affordability if made eligible for coverage in the
6 Exchange.

7 (2) ITEMS INCLUDED IN STUDY.—Such study
8 also shall examine—

9 (A) the terms, conditions, and affordability
10 of group health coverage offered by employers
11 and QHBP offering entities outside of the Ex-
12 change compared to Exchange-participating
13 health benefits plans; and

14 (B) the affordability-test standard for ac-
15 cess of certain employed individuals to coverage
16 in the Health Insurance Exchange.

17 (3) REPORT.—Not later than January 1 of Y3,
18 in Y6, and thereafter, the Commissioner shall sub-
19 mit to Congress on the study conducted under this
20 subsection and shall include in such report rec-
21 ommendations regarding changes in standards for
22 Exchange eligibility for for individuals and employ-
23 ers.

1 **SEC. 203. BENEFITS PACKAGE LEVELS.**

2 (a) IN GENERAL.—The Commissioner shall specify
3 the benefits to be made available under Exchange-partici-
4 pating health benefits plans during each plan year, con-
5 sistent with subtitle C of title I and this section.

6 (b) LIMITATION ON HEALTH BENEFITS PLANS OF-
7 FERED BY OFFERING ENTITIES.—The Commissioner may
8 not enter into a contract with a QHBP offering entity
9 under section 204(c) for the offering of an Exchange-par-
10 ticipating health benefits plan in a service area unless the
11 following requirements are met:

12 (1) REQUIRED OFFERING OF BASIC PLAN.—The
13 entity offers only one basic plan for such service
14 area.

15 (2) OPTIONAL OFFERING OF ENHANCED
16 PLAN.—If and only if the entity offers a basic plan
17 for such service area, the entity may offer one en-
18 hanced plan for such area.

19 (3) OPTIONAL OFFERING OF PREMIUM PLAN.—
20 If and only if the entity offers an enhanced plan for
21 such service area, the entity may offer one premium
22 plan for such area.

23 (4) OPTIONAL OFFERING OF PREMIUM-PLUS
24 PLANS.—If and only if the entity offers a premium
25 plan for such service area, the entity may offer one
26 or more premium-plus plans for such area.

1 All such plans may be offered under a single contract with
2 the Commissioner.

3 (c) SPECIFICATION OF BENEFIT LEVELS FOR
4 PLANS.—

5 (1) IN GENERAL.—The Commissioner shall es-
6 tablish the following standards consistent with this
7 subsection and title I:

8 (A) BASIC, ENHANCED, AND PREMIUM
9 PLANS.—Standards for 3 levels of Exchange-
10 participating health benefits plans: basic, en-
11 hanced, and premium (in this division referred
12 to as a “basic plan”, “enhanced plan”, and
13 “premium plan”, respectively).

14 (B) PREMIUM-PLUS PLAN BENEFITS.—
15 Standards for additional benefits that may be
16 offered, consistent with this subsection and sub-
17 title C of title I, under a premium plan (such
18 a plan with additional benefits referred to in
19 this division as a “premium-plus plan”) .

20 (2) BASIC PLAN.—

21 (A) IN GENERAL.—A basic plan shall offer
22 the essential benefits package required under
23 title I for a qualified health benefits plan.

24 (B) TIERED COST-SHARING FOR AFFORD-
25 ABLE CREDIT ELIGIBLE INDIVIDUALS.—In the

1 case of an affordable credit eligible individual
2 (as defined in section 242(a)(1)) enrolled in an
3 Exchange-participating health benefits plan, the
4 benefits under a basic plan are modified to pro-
5 vide for the reduced cost-sharing for the income
6 tier applicable to the individual under section
7 244(c).

8 (3) ENHANCED PLAN.—A enhanced plan shall
9 offer, in addition to the level of benefits under the
10 basic plan, a lower level of cost-sharing as provided
11 under title I consistent with section 123(b)(5)(A).

12 (4) PREMIUM PLAN.—A premium plan shall
13 offer, in addition to the level of benefits under the
14 basic plan, a lower level of cost-sharing as provided
15 under title I consistent with section 123(b)(5)(B).

16 (5) PREMIUM-PLUS PLAN.—A premium-plus
17 plan is a premium plan that also provides additional
18 benefits, such as adult oral health and vision care,
19 approved by the Commissioner. The portion of the
20 premium that is attributable to such additional ben-
21 efits shall be separately specified.

22 (6) RANGE OF PERMISSIBLE VARIATION IN
23 COST-SHARING.—The Commissioner shall establish a
24 permissible range of variation of cost-sharing for
25 each basic, enhanced, and premium plan, except with

1 (A) establish standards necessary to imple-
2 ment the requirements of this title and title I
3 for—

4 (i) QHBP offering entities for the of-
5 fering of an Exchange-participating health
6 benefits plan; and

7 (ii) for Exchange-participating health
8 benefits plans; and

9 (B) certify QHBP offering entities and
10 qualified health benefits plans as meeting such
11 standards and requirements of this title and
12 title I for purposes of this subtitle.

13 (2) SOLICITING AND NEGOTIATING BIDS; CON-
14 TRACTS.—The Commissioner shall—

15 (A) solicit bids from QHBP offering enti-
16 ties for the offering of Exchange-participating
17 health benefits plans;

18 (B) based upon a review of such bids, ne-
19 gotiate with such entities for the offering of
20 such plans; and

21 (C) enter into contracts with such entities
22 for the offering of such plans through the
23 Health Insurance Exchange under terms (con-
24 sistent with this title) negotiated between the
25 Commissioner and such entities.

1 (3) FAR NOT APPLICABLE.—The provisions of
2 the Federal Acquisition Regulation shall not apply to
3 contracts between the Commissioner and QHBP of-
4 fering entities for the offering of Exchange-partici-
5 pating health benefits plans under this title.

6 (b) STANDARDS FOR QHBP OFFERING ENTITIES TO
7 OFFER EXCHANGE-PARTICIPATING HEALTH BENEFITS
8 PLANS.—The standards established under subsection
9 (a)(1)(A) shall require that, in order for a QHBP offering
10 entity to offer an Exchange-participating health benefits
11 plan, the entity must meet the following requirements:

12 (1) LICENSED.—The entity shall be licensed to
13 offer health insurance coverage under State law for
14 each State in which it is offering such coverage.

15 (2) DATA REPORTING.—The entity shall pro-
16 vide for the reporting of such information as the
17 Commissioner may specify, including information
18 necessary to administer the risk pooling mechanism
19 described in section 206(b) and information to ad-
20 dress disparities in health and health care.

21 (3) IMPLEMENTING AFFORDABILITY CRED-
22 ITS.—The entity shall provide for implementation of
23 the affordability credits provided for enrollees under
24 subtitle C, including the reduction in cost-sharing
25 under section 244(c).

1 (4) ENROLLMENT.—The entity shall accept all
2 enrollments under this subtitle, subject to such ex-
3 ceptions (such as capacity limitations) in accordance
4 with the requirements under title I for a qualified
5 health benefits plan. The entity shall notify the
6 Commissioner if the entity projects or anticipates
7 reaching such a capacity limitation that would result
8 in a limitation in enrollment.

9 (5) RISK POOLING PARTICIPATION.—The entity
10 shall participate in such risk pooling mechanism as
11 the Commissioner establishes under section 206(b).

12 (6) ESSENTIAL COMMUNITY PROVIDERS.—With
13 respect to the basic plan offered by the entity, the
14 entity shall contract for outpatient services with cov-
15 ered entities (as defined in section 340B(a)(4) of the
16 Public Health Service Act, as in effect as of July 1,
17 2009). The Commissioner shall specify the extent to
18 which and manner in which the previous sentence
19 shall apply in the case of a basic plan with respect
20 to which the Commissioner determines provides sub-
21 stantially all benefits through a health maintenance
22 organization, as defined in section 2791(b)(3) of the
23 Public Health Service Act.

24 (7) CULTURALLY AND LINGUISTICALLY APPRO-
25 PRIATE SERVICES AND COMMUNICATIONS.—The en-

1 tity shall provide for culturally and linguistically ap-
2 propriate communication and health services.

3 (8) ADDITIONAL REQUIREMENTS.—The entity
4 shall comply with other applicable requirements of
5 this title, as specified by the Commissioner, which
6 shall include standards regarding billing and collec-
7 tion practices for premiums and related grace peri-
8 ods and which may include standards to ensure that
9 the entity does not use coercive practices to force
10 providers not to contract with other entities offering
11 coverage through the Health Insurance Exchange.

12 (c) CONTRACTS.—

13 (1) BID APPLICATION.—To be eligible to enter
14 into a contract under this section, a QHBP offering
15 entity shall submit to the Commissioner a bid at
16 such time, in such manner, and containing such in-
17 formation as the Commissioner may require.

18 (2) TERM.—Each contract with a QHBP offer-
19 ing entity under this section shall be for a term of
20 not less than one year, but may be made automati-
21 cally renewable from term to term in the absence of
22 notice of termination by either party.

23 (3) ENFORCEMENT OF NETWORK ADEQUACY.—
24 In the case of a health benefits plan of a QHBP of-
25 fering entity that uses a provider network, the con-

1 tract under this section with the entity shall provide
2 that if—

3 (A) the Commissioner determines that
4 such provider network does not meet such
5 standards as the Commissioner shall establish
6 under section 115; and

7 (B) an individual enrolled in such plan re-
8 ceives an item or service from a provider that
9 is not within such network;

10 then any cost-sharing for such item or service shall
11 be equal to the amount of such cost-sharing that
12 would be imposed if such item or service was fur-
13 nished by a provider within such network.

14 (4) OVERSIGHT AND ENFORCEMENT RESPON-
15 SIBILITIES.—The Commissioner shall establish proc-
16 esses, in coordination with State insurance regu-
17 lators, to oversee, monitor, and enforce applicable re-
18 quirements of this title with respect to QHBP offer-
19 ing entities offering Exchange-participating health
20 benefits plans and such plans, including the mar-
21 keting of such plans. Such processes shall include
22 the following:

23 (A) GRIEVANCE AND COMPLAINT MECHA-
24 NISMS.—The Commissioner shall establish, in
25 coordination with State insurance regulators, a

1 process under which Exchange-eligible individ-
2 uals and employers may file complaints con-
3 cerning violations of such standards.

4 (B) ENFORCEMENT.—In carrying out au-
5 thorities under this division relating to the
6 Health Insurance Exchange, the Commissioner
7 may impose one or more of the intermediate
8 sanctions described in section 142(c).

9 (C) TERMINATION.—

10 (i) IN GENERAL.—The Commissioner
11 may terminate a contract with a QHBP of-
12 fering entity under this section for the of-
13 fering of an Exchange-participating health
14 benefits plan if such entity fails to comply
15 with the applicable requirements of this
16 title. Any determination by the Commis-
17 sioner to terminate a contract shall be
18 made in accordance with formal investiga-
19 tion and compliance procedures established
20 by the Commissioner under which—

21 (I) the Commissioner provides
22 the entity with the reasonable oppor-
23 tunity to develop and implement a
24 corrective action plan to correct the

1 deficiencies that were the basis of the
2 Commissioner's determination; and

3 (II) the Commissioner provides
4 the entity with reasonable notice and
5 opportunity for hearing (including the
6 right to appeal an initial decision) be-
7 fore terminating the contract.

8 (ii) EXCEPTION FOR IMMINENT AND
9 SERIOUS RISK TO HEALTH.—Clause (i)
10 shall not apply if the Commissioner deter-
11 mines that a delay in termination, result-
12 ing from compliance with the procedures
13 specified in such clause prior to termi-
14 nation, would pose an imminent and seri-
15 ous risk to the health of individuals en-
16 rolled under the qualified health benefits
17 plan of the QHBP offering entity.

18 (D) CONSTRUCTION.—Nothing in this sub-
19 section shall be construed as preventing the ap-
20 plication of other sanctions under subtitle E of
21 title I with respect to an entity for a violation
22 of such a requirement.

1 **SEC. 205. OUTREACH AND ENROLLMENT OF EXCHANGE-EL-**
2 **IGIBLE INDIVIDUALS AND EMPLOYERS IN EX-**
3 **CHANGE-PARTICIPATING HEALTH BENEFITS**
4 **PLAN.**

5 (a) IN GENERAL.—

6 (1) OUTREACH.—The Commissioner shall con-
7 duct outreach activities consistent with subsection
8 (c), including through use of appropriate entities as
9 described in paragraph (4) of such subsection, to in-
10 form and educate individuals and employers about
11 the Health Insurance Exchange and Exchange-par-
12 ticipating health benefits plan options. Such out-
13 reach shall include outreach specific to vulnerable
14 populations, such as children, individuals with dis-
15 abilities, individuals with mental illness, and individ-
16 uals with other cognitive impairments.

17 (2) ELIGIBILITY.—The Commissioner shall
18 make timely determinations of whether individuals
19 and employers are Exchange-eligible individuals and
20 employers (as defined in section 202).

21 (3) ENROLLMENT.—The Commissioner shall es-
22 tablish and carry out an enrollment process for Ex-
23 change-eligible individuals and employers, including
24 at community locations, in accordance with sub-
25 section (b).

26 (b) ENROLLMENT PROCESS.—

1 (1) IN GENERAL.—The Commissioner shall es-
2 tablish a process consistent with this title for enroll-
3 ments in Exchange-participating health benefits
4 plans. Such process shall provide for enrollment
5 through means such as the mail, by telephone, elec-
6 tronically, and in person.

7 (2) ENROLLMENT PERIODS.—

8 (A) OPEN ENROLLMENT PERIOD.—The
9 Commissioner shall establish an annual open
10 enrollment period during which an Exchange-el-
11 igible individual or employer may elect to enroll
12 in an Exchange-participating health benefits
13 plan for the following plan year and an enroll-
14 ment period for affordability credits under sub-
15 title C. Such periods shall be during September
16 through November of each year, or such other
17 time that would maximize timeliness of income
18 verification for purposes of such subtitle. The
19 open enrollment period shall not be less than 30
20 days.

21 (B) SPECIAL ENROLLMENT.—The Com-
22 missioner shall also provide for special enroll-
23 ment periods to take into account special cir-
24 cumstances of individuals and employers, such
25 as an individual who—

- 1 (i) loses acceptable coverage;
- 2 (ii) experiences a change in marital or
3 other dependent status;
- 4 (iii) moves outside the service area of
5 the Exchange-participating health benefits
6 plan in which the individual is enrolled; or
- 7 (iv) experiences a significant change
8 in income.

9 (C) ENROLLMENT INFORMATION.—The
10 Commissioner shall provide for the broad dis-
11 semination of information to prospective enroll-
12 ees on the enrollment process, including before
13 each open enrollment period. In carrying out
14 the previous sentence, the Commissioner may
15 work with other appropriate entities to facilitate
16 such provision of information.

17 (3) AUTOMATIC ENROLLMENT FOR NON-MED-
18 ICAID ELIGIBLE INDIVIDUALS.—

19 (A) IN GENERAL.—The Commissioner
20 shall provide for a process under which individ-
21 uals who are Exchange-eligible individuals de-
22 scribed in subparagraph (B) are automatically
23 enrolled under an appropriate Exchange-partici-
24 pating health benefits plan. Such process may
25 involve a random assignment or some other

1 form of assignment that takes into account the
2 health care providers used by the individual in-
3 volved or such other relevant factors as the
4 Commissioner may specify.

5 (B) SUBSIDIZED INDIVIDUALS DE-
6 SCRIBED.—An individual described in this sub-
7 paragraph is an Exchange-eligible individual
8 who is either of the following:

9 (i) AFFORDABILITY CREDIT ELIGIBLE
10 INDIVIDUALS.—The individual—

11 (I) has applied for, and been de-
12 termined eligible for, affordability
13 credits under subtitle C;

14 (II) has not opted out from re-
15 ceiving such affordability credit; and

16 (III) does not otherwise enroll in
17 another Exchange-participating health
18 benefits plan.

19 (ii) INDIVIDUALS ENROLLED IN A
20 TERMINATED PLAN.—The individual is en-
21 rolled in an Exchange-participating health
22 benefits plan that is terminated (during or
23 at the end of a plan year) and who does
24 not otherwise enroll in another Exchange-
25 participating health benefits plan.

1 (4) DIRECT PAYMENT OF PREMIUMS TO
2 PLANS.—Under the enrollment process, individuals
3 enrolled in an Exchange-participating health benefits
4 plan shall pay such plans directly, and not through
5 the Commissioner or the Health Insurance Ex-
6 change.

7 (c) COVERAGE INFORMATION AND ASSISTANCE.—

8 (1) COVERAGE INFORMATION.—The Commis-
9 sioner shall provide for the broad dissemination of
10 information on Exchange-participating health bene-
11 fits plans offered under this title. Such information
12 shall be provided in a comparative manner, and shall
13 include information on benefits, premiums, cost-
14 sharing, quality, provider networks, and consumer
15 satisfaction.

16 (2) CONSUMER ASSISTANCE WITH CHOICE.—To
17 provide assistance to Exchange-eligible individuals
18 and employers, the Commissioner shall—

19 (A) provide for the operation of a toll-free
20 telephone hotline to respond to requests for as-
21 sistance and maintain an Internet website
22 through which individuals may obtain informa-
23 tion on coverage under Exchange-participating
24 health benefits plans and file complaints;

1 (B) develop and disseminate information to
2 Exchange-eligible enrollees on their rights and
3 responsibilities;

4 (C) assist Exchange-eligible individuals in
5 selecting Exchange-participating health benefits
6 plans and obtaining benefits through such
7 plans; and

8 (D) ensure that the Internet website de-
9 scribed in subparagraph (A) and the informa-
10 tion described in subparagraph (B) is developed
11 using plain language (as defined in section
12 133(a)(2)).

13 (3) USE OF OTHER ENTITIES.—In carrying out
14 this subsection, the Commissioner may work with
15 other appropriate entities to facilitate the dissemina-
16 tion of information under this subsection and to pro-
17 vide assistance as described in paragraph (2).

18 (d) SPECIAL DUTIES RELATED TO MEDICAID AND
19 CHIP.—

20 (1) COVERAGE FOR CERTAIN NEWBORNS.—

21 (A) IN GENERAL.—In the case of a child
22 born in the United States who at the time of
23 birth is not otherwise covered under acceptable
24 coverage, for the period of time beginning on
25 the date of birth and ending on the date the

1 child otherwise is covered under acceptable cov-
2 erage (or, if earlier, the end of the month in
3 which the 60-day period, beginning on the date
4 of birth, ends), the child shall be deemed—

5 (i) to be a non-traditional Medicaid el-
6 igible individual (as defined in subsection
7 (e)(5)) for purposes of this division and
8 Medicaid; and

9 (ii) to have elected to enroll in Med-
10 icaid through the application of paragraph
11 (3).

12 (B) EXTENDED TREATMENT AS TRADI-
13 TIONAL MEDICAID ELIGIBLE INDIVIDUAL.—In
14 the case of a child described in subparagraph
15 (A) who at the end of the period referred to in
16 such subparagraph is not otherwise covered
17 under acceptable coverage, the child shall be
18 deemed (until such time as the child obtains
19 such coverage or the State otherwise makes a
20 determination of the child's eligibility for med-
21 ical assistance under its Medicaid plan pursuant
22 to section 1943(c)(1) of the Social Security
23 Act) to be a traditional Medicaid eligible indi-
24 vidual described in section 1902(l)(1)(B) of
25 such Act.

1 (2) CHIP TRANSITION.—A child who, as of the
2 day before the first day of Y1, is eligible for child
3 health assistance under title XXI of the Social Secu-
4 rity Act (including a child receiving coverage under
5 an arrangement described in section 2101(a)(2) of
6 such Act) is deemed as of such first day to be an
7 Exchange-eligible individual unless the individual is
8 a traditional Medicaid eligible individual as of such
9 day.

10 (3) AUTOMATIC ENROLLMENT OF MEDICAID EL-
11 IGIBLE INDIVIDUALS INTO MEDICAID.—The Com-
12 missioner shall provide for a process under which an
13 individual who is described in section 202(d)(3) and
14 has not elected to enroll in an Exchange-partici-
15 pating health benefits plan is automatically enrolled
16 under Medicaid.

17 (4) NOTIFICATIONS.—The Commissioner shall
18 notify each State in Y1 and for purposes of section
19 1902(gg)(1) of the Social Security Act (as added by
20 section 1703(a)) whether the Health Insurance Ex-
21 change can support enrollment of children described
22 in paragraph (2) in such State in such year.

23 (e) MEDICAID COVERAGE FOR MEDICAID ELIGIBLE
24 INDIVIDUALS.—

25 (1) IN GENERAL.—

1 (A) CHOICE FOR LIMITED EXCHANGE-ELI-
2 GIBLE INDIVIDUALS.—As part of the enrollment
3 process under subsection (b), the Commissioner
4 shall provide the option, in the case of an Ex-
5 change-eligible individual described in section
6 202(d)(3), for the individual to elect to enroll
7 under Medicaid instead of under an Exchange-
8 participating health benefits plan. Such an indi-
9 vidual may change such election during an en-
10 rollment period under subsection (b)(2).

11 (B) MEDICAID ENROLLMENT OBLIGA-
12 TION.—An Exchange eligible individual may
13 apply, in the manner described in section
14 241(b)(1), for a determination of whether the
15 individual is a Medicaid-eligible individual. If
16 the individual is determined to be so eligible,
17 the Commissioner, through the Medicaid memo-
18 randum of understanding, shall provide for the
19 enrollment of the individual under the State
20 Medicaid plan in accordance with the Medicaid
21 memorandum of understanding under para-
22 graph (4). In the case of such an enrollment,
23 the State shall provide for the same periodic re-
24 determination of eligibility under Medicaid as
25 would otherwise apply if the individual had di-

1 rectly applied for medical assistance to the
2 State Medicaid agency.

3 (2) NON-TRADITIONAL MEDICAID ELIGIBLE IN-
4 DIVIDUALS.—In the case of a non-traditional Med-
5 icaid eligible individual described in section
6 202(d)(3) who elects to enroll under Medicaid under
7 paragraph (1)(A), the Commissioner shall provide
8 for the enrollment of the individual under the State
9 Medicaid plan in accordance with the Medicaid
10 memorandum of understanding under paragraph
11 (4).

12 (3) COORDINATED ENROLLMENT WITH STATE
13 THROUGH MEMORANDUM OF UNDERSTANDING.—
14 The Commissioner, in consultation with the Sec-
15 retary of Health and Human Services, shall enter
16 into a memorandum of understanding with each
17 State (each in this division referred to as a “Med-
18 icaid memorandum of understanding”) with respect
19 to coordinating enrollment of individuals in Ex-
20 change-participating health benefits plans and under
21 the State’s Medicaid program consistent with this
22 section and to otherwise coordinate the implementa-
23 tion of the provisions of this division with respect to
24 the Medicaid program. Such memorandum shall per-
25 mit the exchange of information consistent with the

1 limitations described in section 1902(a)(7) of the So-
2 cial Security Act. Nothing in this section shall be
3 construed as permitting such memorandum to mod-
4 ify or vitiate any requirement of a State Medicaid
5 plan.

6 (4) MEDICAID ELIGIBLE INDIVIDUALS.—For
7 purposes of this division:

8 (A) MEDICAID ELIGIBLE INDIVIDUAL.—
9 The term “Medicaid eligible individual” means
10 an individual who is eligible for medical assist-
11 ance under Medicaid.

12 (B) TRADITIONAL MEDICAID ELIGIBLE IN-
13 DIVIDUAL.—The term “traditional Medicaid eli-
14 gible individual” means a Medicaid eligible indi-
15 vidual other than an individual who is—

16 (i) a Medicaid eligible individual by
17 reason of the application of subclause
18 (VIII) of section 1902(a)(10)(A)(i) of the
19 Social Security Act; or

20 (ii) a childless adult not described in
21 section 1902(a)(10)(A) or (C) of such Act
22 (as in effect as of the day before the date
23 of the enactment of this Act).

24 (C) NON-TRADITIONAL MEDICAID ELIGI-
25 BLE INDIVIDUAL.—The term “non-traditional

1 Medicaid eligible individual” means a Medicaid
2 eligible individual who is not a traditional Med-
3 icaid eligible individual.

4 (f) EFFECTIVE CULTURALLY AND LINGUISTICALLY
5 APPROPRIATE COMMUNICATION.—In carrying out this
6 section, the Commissioner shall establish effective methods
7 for communicating in plain language and a culturally and
8 linguistically appropriate manner.

9 **SEC. 206. OTHER FUNCTIONS.**

10 (a) COORDINATION OF AFFORDABILITY CREDITS.—
11 The Commissioner shall coordinate the distribution of af-
12 fordability premium and cost-sharing credits under sub-
13 title C to QHBP offering entities offering Exchange-par-
14 ticipating health benefits plans.

15 (b) COORDINATION OF RISK POOLING.—The Com-
16 missioner shall establish a mechanism whereby there is an
17 adjustment made of the premium amounts payable among
18 QHBP offering entities offering Exchange-participating
19 health benefits plans of premiums collected for such plans
20 that takes into account (in a manner specified by the Com-
21 missioner) the differences in the risk characteristics of in-
22 dividuals and employers enrolled under the different Ex-
23 change-participating health benefits plans offered by such
24 entities so as to minimize the impact of adverse selection
25 of enrollees among the plans offered by such entities.

1 (c) SPECIAL INSPECTOR GENERAL FOR THE HEALTH
2 INSURANCE EXCHANGE.—

3 (1) ESTABLISHMENT; APPOINTMENT.—There is
4 hereby established the Office of the Special Inspec-
5 tor General for the Health Insurance Exchange, to
6 be headed by a Special Inspector General for the
7 Health Insurance Exchange (in this subsection re-
8 ferred to as the “Special Inspector General”) to be
9 appointed by the President, by and with the advice
10 and consent of the Senate. The nomination of an in-
11 dividual as Special Inspector General shall be made
12 as soon as practicable after the establishment of the
13 program under this subtitle.

14 (2) DUTIES.—The Special Inspector General
15 shall—

16 (A) conduct, supervise, and coordinate au-
17 dits, evaluations and investigations of the
18 Health Insurance Exchange to protect the in-
19 tegrity of the Health Insurance Exchange, as
20 well as the health and welfare of participants in
21 the Exchange;

22 (B) report both to the Commissioner and
23 to the Congress regarding program and man-
24 agement problems and recommendations to cor-
25 rect them;

1 (C) have other duties (described in para-
2 graphs (2) and (3) of section 121 of division A
3 of Public Law 110–343) in relation to the du-
4 ties described in the previous subparagraphs;
5 and

6 (D) have the authorities provided in sec-
7 tion 6 of the Inspector General Act of 1978 in
8 carrying out duties under this paragraph.

9 (3) APPLICATION OF OTHER SPECIAL INSPEC-
10 TOR GENERAL PROVISIONS.—The provisions of sub-
11 sections (b) (other than paragraphs (1) and (3)), (d)
12 (other than paragraph (1)), and (e) of section 121
13 of division A of the Emergency Economic Stabiliza-
14 tion Act of 2009 (Public Law 110–343) shall apply
15 to the Special Inspector General under this sub-
16 section in the same manner as such provisions apply
17 to the Special Inspector General under such section.

18 (4) REPORTS.—Not later than one year after
19 the confirmation of the Special Inspector General,
20 and annually thereafter, the Special Inspector Gen-
21 eral shall submit to the appropriate committees of
22 Congress a report summarizing the activities of the
23 Special Inspector General during the one year period
24 ending on the date such report is submitted.

1 (5) TERMINATION.—The Office of the Special
2 Inspector General shall terminate five years after
3 the date of the enactment of this Act.

4 **SEC. 207. HEALTH INSURANCE EXCHANGE TRUST FUND.**

5 (a) ESTABLISHMENT OF HEALTH INSURANCE EX-
6 CHANGE TRUST FUND.—There is created within the
7 Treasury of the United States a trust fund to be known
8 as the “Health Insurance Exchange Trust Fund” (in this
9 section referred to as the “Trust Fund”), consisting of
10 such amounts as may be appropriated or credited to the
11 Trust Fund under this section or any other provision of
12 law.

13 (b) PAYMENTS FROM TRUST FUND.—The Commis-
14 sioner shall pay from time to time from the Trust Fund
15 such amounts as the Commissioner determines are nec-
16 essary to make payments to operate the Health Insurance
17 Exchange, including payments under subtitle C (relating
18 to affordability credits).

19 (c) TRANSFERS TO TRUST FUND.—

20 (1) DEDICATED PAYMENTS.—There is hereby
21 appropriated to the Trust Fund amounts equivalent
22 to the following:

23 (A) TAXES ON INDIVIDUALS NOT OBTAIN-
24 ING ACCEPTABLE COVERAGE.—The amounts re-
25 ceived in the Treasury under section 59B of the

1 Internal Revenue Code of 1986 (relating to re-
2 quirement of health insurance coverage for indi-
3 viduals).

4 (B) EMPLOYMENT TAXES ON EMPLOYERS
5 NOT PROVIDING ACCEPTABLE COVERAGE.—The
6 amounts received in the Treasury under section
7 3111(c) of the Internal Revenue Code of 1986
8 (relating to employers electing to not provide
9 health benefits).

10 (C) EXCISE TAX ON FAILURES TO MEET
11 CERTAIN HEALTH COVERAGE REQUIRE-
12 MENTS.—The amounts received in the Treasury
13 under section 4980H(b) (relating to excise tax
14 with respect to failure to meet health coverage
15 participation requirements).

16 (2) APPROPRIATIONS TO COVER GOVERNMENT
17 CONTRIBUTIONS.—There are hereby appropriated,
18 out of any moneys in the Treasury not otherwise ap-
19 propriated, to the Trust Fund, an amount equivalent
20 to the amount of payments made from the Trust
21 Fund under subsection (b) plus such amounts as are
22 necessary reduced by the amounts deposited under
23 paragraph (1).

24 (d) APPLICATION OF CERTAIN RULES.—Rules simi-
25 lar to the rules of subchapter B of chapter 98 of the Inter-

1 nal Revenue Code of 1986 shall apply with respect to the
2 Trust Fund.

3 **SEC. 208. OPTIONAL OPERATION OF STATE-BASED HEALTH**
4 **INSURANCE EXCHANGES.**

5 (a) IN GENERAL.—If—

6 (1) a State (or group of States, subject to the
7 approval of the Commissioner) applies to the Com-
8 missioner for approval of a State-based Health In-
9 surance Exchange to operate in the State (or group
10 of States); and

11 (2) the Commissioner approves such State-
12 based Health Insurance Exchange,

13 then, subject to subsections (c) and (d), the State-based
14 Health Insurance Exchange shall operate, instead of the
15 Health Insurance Exchange, with respect to such State
16 (or group of States). The Commissioner shall approve a
17 State-based Health Insurance Exchange if it meets the re-
18 quirements for approval under subsection (b).

19 (b) REQUIREMENTS FOR APPROVAL.—The Commis-
20 sioner may not approve a State-based Health Insurance
21 Exchange under this section unless the following require-
22 ments are met:

23 (1) The State-based Health Insurance Ex-
24 change must demonstrate the capacity to and pro-
25 vide assurances satisfactory to the Commissioner

1 that the State-based Health Insurance Exchange will
2 carry out the functions specified for the Health In-
3 surance Exchange in the State (or States) involved,
4 including—

5 (A) negotiating and contracting with
6 QHBP offering entities for the offering of Ex-
7 change-participating health benefits plan, which
8 satisfy the standards and requirements of this
9 title and title I;

10 (B) enrolling Exchange-eligible individuals
11 and employers in such State in such plans;

12 (C) the establishment of sufficient local of-
13 fices to meet the needs of Exchange-eligible in-
14 dividuals and employers;

15 (D) administering affordability credits
16 under subtitle B using the same methodologies
17 (and at least the same income verification
18 methods) as would otherwise apply under such
19 subtitle and at a cost to the Federal Govern-
20 ment which does exceed the cost to the Federal
21 Government if this section did not apply; and

22 (E) enforcement activities consistent with
23 federal requirements.

1 (2) There is no more than one Health Insur-
2 ance Exchange operating with respect to any one
3 State.

4 (3) The State provides assurances satisfactory
5 to the Commissioner that approval of such an Ex-
6 change will not result in any net increase in expendi-
7 tures to the Federal Government.

8 (4) The State provides for reporting of such in-
9 formation as the Commissioner determines and as-
10 surances satisfactory to the Commissioner that it
11 will vigorously enforce violations of applicable re-
12 quirements.

13 (5) Such other requirements as the Commis-
14 sioner may specify.

15 (c) CEASING OPERATION.—

16 (1) IN GENERAL.—A State-based Health Insur-
17 ance Exchange may, at the option of each State in-
18 volved, and only after providing timely and reason-
19 able notice to the Commissioner, cease operation as
20 such an Exchange, in which case the Health Insur-
21 ance Exchange shall operate, instead of such State-
22 based Health Insurance Exchange, with respect to
23 such State (or States).

24 (2) TERMINATION; HEALTH INSURANCE EX-
25 CHANGE RESUMPTION OF FUNCTIONS.—The Com-

1 missioner may terminate the approval (for some or
2 all functions) of a State-based Health Insurance Ex-
3 change under this section if the Commissioner deter-
4 mines that such Exchange no longer meets the re-
5 quirements of subsection (b) or is no longer capable
6 of carrying out such functions in accordance with
7 the requirements of this subtitle. In lieu of termi-
8 nating such approval, the Commissioner may tempo-
9 rarily assume some or all functions of the State-
10 based Health Insurance Exchange until such time as
11 the Commissioner determines the State-based
12 Health Insurance Exchange meets such require-
13 ments of subsection (b) and is capable of carrying
14 out such functions in accordance with the require-
15 ments of this subtitle.

16 (3) EFFECTIVENESS.—The ceasing or termi-
17 nation of a State-based Health Insurance Exchange
18 under this subsection shall be effective in such time
19 and manner as the Commissioner shall specify.

20 (d) RETENTION OF AUTHORITY.—

21 (1) AUTHORITY RETAINED.—Enforcement au-
22 thorities of the Commissioner shall be retained by
23 the Commissioner.

1 provide consumer information, outreach, and assistance in
2 the enrollment of small employers (and their employees)
3 who are members of such an association under Exchange
4 participating health benefits plans.

5 (b) SMALL EMPLOYER BENEFIT ASSOCIATION DE-
6 FINED.—In this section, the term “small employer benefit
7 association” means a not-for-profit agricultural or other
8 cooperative that—

9 (1) consists solely of its members and is oper-
10 ated for the primary purpose of providing affordable
11 employee benefits to its members;

12 (2) only has as members [small] employers in
13 the same industry or line of business;

14 (3) has no member that has more than a 5 per-
15 cent voting interest in the cooperative; and

16 (4) is governed by a board of directors elected
17 by its members.

18 **Subtitle B—Public Health**

19 **Insurance Option**

20 **SEC. 221. ESTABLISHMENT AND ADMINISTRATION OF A**
21 **PUBLIC HEALTH INSURANCE OPTION AS AN**
22 **EXCHANGE-QUALIFIED HEALTH BENEFITS**
23 **PLAN.**

24 (a) ESTABLISHMENT.—For years beginning with Y1,
25 the Secretary of Health and Human Services (in this sub-

1 title referred to as the “Secretary”) shall provide for the
2 offering of an Exchange-participating health benefits plan
3 (in this division referred to as the “public health insurance
4 option”) that ensures choice, competition, and stability of
5 affordable, high quality coverage throughout the United
6 States in accordance with this subtitle. In designing the
7 option, the Secretary’s primary responsibility is to create
8 a low-cost plan without compromising quality or access to
9 care.

10 (b) OFFERING AS AN EXCHANGE-PARTICIPATING
11 HEALTH BENEFITS PLAN.—

12 (1) EXCLUSIVE TO THE EXCHANGE.—The pub-
13 lic health insurance option shall only be made avail-
14 able through the Health Insurance Exchange.

15 (2) ENSURING A LEVEL PLAYING FIELD.—Con-
16 sistent with this subtitle, the public health insurance
17 option shall comply with requirements that are ap-
18 plicable under this title to an Exchange-participating
19 health benefits plan, including requirements related
20 to benefits, benefit levels, provider networks, notices,
21 consumer protections, and cost sharing.

22 (3) PROVISION OF BENEFIT LEVELS.—The pub-
23 lic health insurance option—

24 (A) shall offer basic, enhanced, and pre-
25 mium plans; and

1 (B) may offer premium-plus plans.

2 (c) ADMINISTRATIVE CONTRACTING.—The Secretary
3 may enter into contracts for the purpose of performing
4 administrative functions (including functions described in
5 subsection (a)(4) of section 1874A of the Social Security
6 Act) with respect to the public health insurance option in
7 the same manner as the Secretary may enter into con-
8 tracts under subsection (a)(1) of such section. The Sec-
9 retary has the same authority with respect to the public
10 health insurance option as the Secretary has under sub-
11 sections (a)(1) and (b) of section 1874A of the Social Se-
12 curity Act with respect to title XVIII of such Act. Con-
13 tracts under this subsection shall not involve the transfer
14 of insurance risk to such entity.

15 (d) OMBUDSMAN.—The Secretary shall establish an
16 office of the ombudsman for the public health insurance
17 option which shall have duties with respect to the public
18 health insurance option similar to the duties of the Medi-
19 care Beneficiary Ombudsman under section 1808(c)(2) of
20 the Social Security Act.

21 (e) DATA COLLECTION.—The Secretary shall collect
22 such data as may be required to establish premiums and
23 payment rates for the public health insurance option and
24 for other purposes under this subtitle, including to im-

1 prove quality and to reduce racial, ethnic, and other dis-
2 parities in health and health care.

3 (f) TREATMENT OF PUBLIC HEALTH INSURANCE OP-
4 TION.—With respect to the public health insurance option,
5 the Secretary shall be treated as a QHBP offering entity
6 offering an Exchange-participating health benefits plan.

7 (g) ACCESS TO FEDERAL COURTS.—The provisions
8 of Medicare (and related provisions of title II of the Social
9 Security Act) relating to access of Medicare beneficiaries
10 to Federal courts for the enforcement of rights under
11 Medicare, including with respect to amounts in con-
12 troversy, shall apply to the public health insurance option
13 and individuals enrolled under such option under this title
14 in the same manner as such provisions apply to Medicare
15 and Medicare beneficiaries.

16 **SEC. 222. PREMIUMS AND FINANCING.**

17 (a) ESTABLISHMENT OF PREMIUMS.—

18 (1) IN GENERAL.—The Secretary shall establish
19 geographically-adjusted premium rates for the public
20 health insurance option in a manner—

21 (A) that complies with the premium rules
22 established by the Commissioner under section
23 113 for Exchange-participating health benefit
24 plans; and

1 (B) at a level sufficient to fully finance the
2 costs of—

3 (i) health benefits provided by the
4 public health insurance option; and

5 (ii) administrative costs related to op-
6 erating the public health insurance option.

7 (2) CONTINGENCY MARGIN.—In establishing
8 premium rates under paragraph (1), the Secretary
9 shall include an appropriate amount for a contin-
10 gency margin.

11 (b) ACCOUNT.—

12 (1) ESTABLISHMENT.—There is established in
13 the Treasury of the United States an Account for
14 the receipts and disbursements attributable to the
15 operation of the public health insurance option, in-
16 cluding the start-up funding under paragraph (2).
17 Section 1854(g) of the Social Security Act shall
18 apply to receipts described in the previous sentence
19 in the same manner as such section applies to pay-
20 ments or premiums described in such section.

21 (2) START-UP FUNDING.—

22 (A) IN GENERAL.—In order to provide for
23 the establishment of the public health insurance
24 option there is hereby appropriated to the Sec-
25 retary, out of any funds in the Treasury not

1 otherwise appropriated, \$2,000,000,000. In
2 order to provide for initial claims reserves be-
3 fore the collection of premiums, there is hereby
4 appropriated to the Secretary, out of any funds
5 in the Treasury not otherwise appropriated,
6 such sums as necessary to cover 90 days worth
7 of claims reserves based on projected enroll-
8 ment.

9 (B) AMORTIZATION OF START-UP FUND-
10 ING.—The Secretary shall provide for the re-
11 payment of the startup funding provided under
12 subparagraph (A) to the Treasury in an amor-
13 tized manner over the 10-year period beginning
14 with Y1.

15 (C) LIMITATION ON FUNDING.—Nothing in
16 this section shall be construed as authorizing
17 any additional appropriations to the Account,
18 other than such amounts as are otherwise pro-
19 vided with respect to other Exchange-partici-
20 pating health benefits plans.

21 **SEC. 223. PAYMENT RATES FOR ITEMS AND SERVICES.**

22 (a) RATES ESTABLISHED BY SECRETARY.—

23 (1) IN GENERAL.—The Secretary shall establish
24 payment rates for the public health insurance option
25 for services and health care providers consistent with

1 this section and may change such payment rates in
2 accordance with section 224.

3 (2) INITIAL PAYMENT RULES.—

4 (A) IN GENERAL.—Except as provided in
5 subparagraph (B) and subsection (b)(1), during
6 Y1, Y2, and Y3, the Secretary shall base the
7 payment rates under this section for services
8 and providers described in paragraph (1) on the
9 payment rates for similar services and providers
10 under parts A and B of Medicare.

11 (B) EXCEPTIONS.—

12 (i) PRACTITIONERS' SERVICES.—Pay-
13 ment rates for practitioners' services other-
14 wise established under the fee schedule
15 under section 1848 of the Social Security
16 Act shall be applied without regard to the
17 provisions under subsection (f) of such sec-
18 tion and the update under subsection
19 (d)(4) under such section for a year as ap-
20 plied under this paragraph shall be not less
21 than 1 percent.

22 (ii) ADJUSTMENTS.—The Secretary
23 may determine the extent to which Medi-
24 care adjustments applicable to base pay-

1 ment rates under parts A and B of Medi-
2 care shall apply under this subtitle.

3 (3) FOR NEW SERVICES.—The Secretary shall
4 modify payment rates described in paragraph (2) in
5 order to accommodate payments for services, such as
6 well-child visits, that are not otherwise covered
7 under Medicare.

8 (4) PRESCRIPTION DRUGS.—Payment rates
9 under this section for prescription drugs that are not
10 paid for under part A or part B of Medicare shall
11 be at rates negotiated by the Secretary.

12 (b) INCENTIVES FOR PARTICIPATING PROVIDERS.—

13 (1) INITIAL INCENTIVE PERIOD.—

14 (A) IN GENERAL.—The Secretary shall
15 provide, in the case of services described in sub-
16 paragraph (B) furnished during Y1, Y2, and
17 Y3, for payment rates that are 5 percent great-
18 er than the rates established under subsection
19 (a).

20 (B) SERVICES DESCRIBED.—The services
21 described in this subparagraph are items and
22 professional services, under the public health in-
23 surance option by a physician or other health
24 care practitioner who participates in both Medi-
25 care and the public health insurance option.

1 (C) SPECIAL RULES.—A pediatrician and
2 any other health care practitioner who is a type
3 of practitioner that does not typically partici-
4 pate in Medicare (as determined by the Sec-
5 retary) shall also be eligible for the increased
6 payment rates under subparagraph (A).

7 (2) SUBSEQUENT PERIODS.— Beginning with
8 Y4 and for subsequent years, the Secretary shall
9 continue to use an administrative process to set such
10 rates in order to promote payment accuracy, to en-
11 sure adequate beneficiary access to providers, and to
12 promote affordability and the efficient delivery of
13 medical care consistent with section 221(a). Such
14 rates shall not be set at levels expected to increase
15 overall medical costs under the option beyond what
16 would be expected if the process under subsection
17 (a)(2) and paragraph (1) of this subsection were
18 continued.

19 (3) ESTABLISHMENT OF A PROVIDER NET-
20 WORK.—Health care providers participating under
21 Medicare are participating providers in the public
22 health insurance option unless they opt out in a
23 process established by the Secretary.

24 (c) ADMINISTRATIVE PROCESS FOR SETTING
25 RATES.—Chapter 5 of title 5, United States Code shall

1 apply to the process for the initial establishment of pay-
2 ment rates under this section but not to the specific meth-
3 odology for establishing such rates or the calculation of
4 such rates.

5 (d) CONSTRUCTION.—Nothing in this subtitle shall
6 be construed as limiting the Secretary’s authority to cor-
7 rect for payments that are excessive or deficient, taking
8 into account the provisions of section 221(a) and the
9 amounts paid for similar health care providers and serv-
10 ices under other Exchange-participating health benefits
11 plans.

12 (e) CONSTRUCTION.—Nothing in this subtitle shall be
13 construed as affecting the authority of the Secretary to
14 establish payment rates, including payments to provide for
15 the more efficient delivery of services, such as the initia-
16 tives provided for under section 224.

17 (f) LIMITATIONS ON REVIEW.—There shall be no ad-
18 ministrative or judicial review of a payment rate or meth-
19 odology established under this section or under section
20 224.

21 **SEC. 224. MODERNIZED PAYMENT INITIATIVES AND DELIV-**
22 **ERY SYSTEM REFORM.**

23 (a) IN GENERAL.—For plan years beginning with Y1,
24 the Secretary may utilize innovative payment mechanisms
25 and policies to determine payments for items and services

1 under the public health insurance option. The payment
2 mechanisms and policies under this section may include
3 patient-centered medical home and other care manage-
4 ment payments, accountable care organizations, value-
5 based purchasing, bundling of services, differential pay-
6 ment rates, performance or utilization based payments,
7 partial capitation, and direct contracting with providers.

8 (b) REQUIREMENTS FOR INNOVATIVE PAYMENTS.—
9 The Secretary shall design and implement the payment
10 mechanisms and policies under this section in a manner
11 that—

12 (1) seeks to—

13 (A) improve health outcomes;

14 (B) reduce health disparities (including ra-
15 cial, ethnic, and other disparities);

16 (C) provide efficient and affordable care;

17 (D) address geographic variation in the
18 provision of health services; or

19 (E) prevent or manage chronic illness; and

20 (2) promotes care that is integrated, patient-
21 centered, quality, and efficient.

22 (c) ENCOURAGING THE USE OF HIGH VALUE SERV-
23 ICES.—To the extent allowed by the benefit standards ap-
24 plied to all Exchange-participating health benefits plans,
25 the public health insurance option may modify cost shar-

1 ing and payment rates to encourage the use of services
2 that promote health and value.

3 (d) **NON-UNIFORMITY PERMITTED.**—Nothing in this
4 subtitle shall prevent the Secretary from varying payments
5 based on different payment structure models (such as ac-
6 countable care organizations and medical homes) under
7 the public health insurance option for different geographic
8 areas.

9 **SEC. 225. PROVIDER PARTICIPATION.**

10 (a) **IN GENERAL.**—The Secretary shall establish con-
11 ditions of participation for health care providers under the
12 public health insurance option.

13 (b) **LICENSURE OR CERTIFICATION.**—The Secretary
14 shall not allow a health care provider to participate in the
15 public health insurance option unless such provider is ap-
16 propriately licensed, certified, or otherwise permitted to
17 practice under State law.

18 (c) **PAYMENT TERMS FOR PROVIDERS.**—

19 (1) **PHYSICIANS.**—The Secretary shall provide
20 for the annual participation of physicians under the
21 public health insurance option, for which payment
22 may be made for services furnished during the year,
23 in one of 2 classes:

24 (A) **PREFERRED PHYSICIANS.**—Those phy-
25 sicians who agree to accept the payment rate

1 established under section 223 (without regard
2 to cost-sharing) as the payment in full.

3 (B) PARTICIPATING, NON-PREFERRED
4 PHYSICIANS.—Those physicians who agree not
5 to impose charges (in relation to the payment
6 rate described in section 223 for such physi-
7 cians) that exceed the ratio permitted under
8 section 1848(g)(2)(C) of the Social Security
9 Act.

10 (2) OTHER PROVIDERS.—The Secretary shall
11 provide for the participation (on an annual or other
12 basis specified by the Secretary) of health care pro-
13 viders (other than physicians) under the public
14 health insurance option under which payment shall
15 only be available if the provider agrees to accept the
16 payment rate established under section 223 (without
17 regard to cost-sharing) as the payment in full.

18 (d) EXCLUSION OF CERTAIN PROVIDERS.—The Sec-
19 retary shall exclude from participation under the public
20 health insurance option a health care provider that is ex-
21 cluded from participation in a Federal health care pro-
22 gram (as defined in section 1128B(f) of the Social Secu-
23 rity Act).

1 **SEC. 226. APPLICATION OF FRAUD AND ABUSE PROVI-**
2 **SIONS.**

3 Provisions of law (other than criminal law provisions)
4 identified by the Secretary by regulation, in consultation
5 with the Inspector General of the Department of Health
6 and Human Services, that impose sanctions with respect
7 to waste, fraud, and abuse under Medicare, such as the
8 False Claims Act (31 U.S.C. 3729 et seq.), shall also
9 apply to the public health insurance option.

10 **Subtitle C—Individual**
11 **Affordability Credits**

12 **SEC. 241. AVAILABILITY THROUGH HEALTH INSURANCE EX-**
13 **CHANGE.**

14 (a) IN GENERAL.—Subject to the succeeding provi-
15 sions of this subtitle, in the case of an affordable credit
16 eligible individual enrolled in an Exchange-participating
17 health benefits plan—

18 (1) the individual shall be eligible for, in accord-
19 ance with this subtitle, affordability credits con-
20 sisting of—

21 (A) an affordability premium credit under
22 section 243 to be applied against the premium
23 for the Exchange-participating health benefits
24 plan in which the individual is enrolled; and

25 (B) an affordability cost-sharing credit
26 under section 244 to be applied as a reduction

1 of the cost-sharing otherwise applicable to such
2 plan; and

3 (2) the Commissioner shall pay the QHBP of-
4 fering entity that offers such plan from the Health
5 Insurance Exchange Trust Fund the aggregate
6 amount of affordability credits for all affordable
7 credit eligible individuals enrolled in such plan.

8 (b) APPLICATION.—

9 (1) IN GENERAL.—An Exchange eligible indi-
10 vidual may apply to the Commissioner through the
11 Health Insurance Exchange or through another enti-
12 ty under an arrangement made with the Commis-
13 sioner, in a form and manner specified by the Com-
14 missioner. The Commissioner through the Health
15 Insurance Exchange or through another public enti-
16 ty under an arrangement made with the Commis-
17 sioner shall make a determination as to eligibility of
18 an individual for affordability credits under this sub-
19 title. The Commissioner shall establish a process
20 whereby, on the basis of information otherwise avail-
21 able, individuals may be deemed to be affordable
22 credit eligible individuals. In carrying this subtitle,
23 the Commissioner shall establish effective methods
24 that ensure that individuals with limited English
25 proficiency are able to apply for affordability credits.

1 (2) USE OF STATE MEDICAID AGENCIES.—If
2 the Commissioner determines that a State Medicaid
3 agency has the capacity to make a determination of
4 eligibility for affordability credits under this subtitle
5 and under the same standards as used by the Com-
6 missioner, under the Medicaid memorandum of un-
7 derstanding (as defined in section 205(c)(4))—

8 (A) the State Medicaid agency is author-
9 ized to conduct such determinations for any Ex-
10 change-eligible individual who requests such a
11 determination; and

12 (B) the Commissioner shall reimburse the
13 State Medicaid agency for the costs of con-
14 ducting such determinations.

15 (3) MEDICAID SCREEN AND ENROLL OBLIGA-
16 TION.—In the case of an application made under
17 paragraph (1), there shall be a determination of
18 whether the individual is a Medicaid-eligible indi-
19 vidual. If the individual is determined to be so eligi-
20 ble, the Commissioner, through the Medicaid memo-
21 randum of understanding, shall provide for the en-
22 rollment of the individual under the State Medicaid
23 plan in accordance with the Medicaid memorandum
24 of understanding. In the case of such an enrollment,
25 the State shall provide for the same periodic redeter-

1 mination of eligibility under Medicaid as would oth-
2 erwise apply if the individual had directly applied for
3 medical assistance to the State Medicaid agency.

4 (c) USE OF AFFORDABILITY CREDITS.—

5 (1) IN GENERAL.—In Y1 and Y2 an affordable
6 credit eligible individual may use an affordability
7 credit only with respect to a basic plan.

8 (2) FLEXIBILITY IN PLAN ENROLLMENT AU-
9 THORIZED.—Beginning with Y3, the Commissioner
10 shall establish a process to allow an affordability
11 credit to be used for enrollees in enhanced or pre-
12 mium plans. In the case of an affordable credit eligi-
13 ble individual who enrolls in an enhanced or pre-
14 mium plan, the individual shall be responsible for
15 any difference between the premium for such plan
16 and the affordable credit amount otherwise applica-
17 ble if the individual had enrolled in a basic plan.

18 (d) ACCESS TO DATA.—In carrying out this subtitle,
19 the Commissioner shall request from the Secretary of the
20 Treasury consistent with section 6103 of the Internal Rev-
21 enue Code of 1986 such information as may be required
22 to carry out this subtitle.

23 (e) NO CASH REBATES.—In no case shall an afford-
24 able credit eligible individual receive any cash payment as
25 a result of the application of this subtitle.

1 **SEC. 242. AFFORDABLE CREDIT ELIGIBLE INDIVIDUAL.**

2 (a) DEFINITION.—

3 (1) IN GENERAL.—For purposes of this divi-
4 sion, the term “affordable credit eligible individual”
5 means, subject to subsection (b), an individual who
6 is lawfully present in a State in the United States
7 (other than as a nonimmigrant described in a sub-
8 paragraph (excluding subparagraphs (K), (T), (U),
9 and (V)) of section 101(a)(15) of the Immigration
10 and Nationality Act)—

11 (A) who is enrolled under an Exchange-
12 participating health benefits plan and is not en-
13 rolled under such plan as an employee (or de-
14 pendent of an employee) through an employer
15 qualified health benefits plan that meets the re-
16 quirements of section 312;

17 (B) with family income below 400 percent
18 of the Federal poverty level for a family of the
19 size involved; and

20 (C) who is not a Medicaid eligible indi-
21 vidual, other than an individual described in
22 section 202(d)(3) or an individual during a
23 transition period under section 202(d)(4)(B)(ii).

24 (2) TREATMENT OF FAMILY.—Except as the
25 Commissioner may otherwise provide, members of
26 the same family who are affordable credit eligible in-

1 dividuals shall be treated as a single affordable cred-
2 it individual eligible for the applicable credit for such
3 a family under this subtitle.

4 (b) LIMITATIONS ON EMPLOYEE AND DEPENDENT
5 DISQUALIFICATION.—

6 (1) IN GENERAL.—Subject to paragraph (2),
7 the term “affordable credit eligible individual” does
8 not include a full-time employee of an employer if
9 the employer offers the employee coverage (for the
10 employee and dependents) as a full-time employee
11 under a group health plan if the coverage and em-
12 ployer contribution under the plan meet the require-
13 ments of section 312.

14 (2) EXCEPTIONS.—

15 (A) FOR CERTAIN FAMILY CIR-
16 CUMSTANCES.—The Commissioner shall estab-
17 lish such exceptions and special rules in the
18 case described in paragraph (1) as may be ap-
19 propriate in the case of a divorced or separated
20 individual or such a dependent of an employee
21 who would otherwise be an affordable credit eli-
22 gible individual.

23 (B) FOR UNAFFORDABLE EMPLOYER COV-
24 ERAGE.—For years beginning with Y2, in the
25 case of full-time employees for which the cost of

1 the employee premium (plus, to the extent spec-
2 ified by the Commissioner, out-of-pocket cost-
3 sharing for such year or the preceding year) for
4 coverage under a group health plan would ex-
5 ceed 11 percent of current family income (de-
6 termined by the Commissioner on the basis of
7 verifiable documentation and without regard to
8 section 245), paragraph (1) shall not apply.

9 (c) INCOME DEFINED.—

10 (1) IN GENERAL.—In this title, the term “in-
11 come” means modified adjusted gross income (as de-
12 fined in section 59B of the Internal Revenue Code
13 of 1986).

14 (2) STUDY OF INCOME DISREGARDS.—The
15 Commissioner shall conduct a study that examines
16 the application of income disregards for purposes of
17 this subtitle. Not later than the first day of Y2, the
18 Commissioner shall submit to Congress a report on
19 such study and shall include such recommendations
20 as the Commissioner determines appropriate.

21 (d) CLARIFICATION OF TREATMENT OF AFFORD-
22 ABILITY CREDITS.—Affordabilty credits under this sub-
23 title shall not be treated, for purposes of title IV of the
24 Personal Responsibility and Work Opportunity Reconcili-

1 ation Act of 1996, to be a benefit provided under section
2 403 of such title.

3 **SEC. 243. AFFORDABLE PREMIUM CREDIT.**

4 (a) IN GENERAL.—The affordability premium credit
5 under this section for an affordable credit eligible indi-
6 vidual enrolled in an Exchange-participating health bene-
7 fits plan is in an amount equal to the amount (if any)
8 by which the premium for the plan (or, if less, the ref-
9 erence premium amount specified in subsection (c)), ex-
10 ceeds the affordable premium amount specified in sub-
11 section (b) for the individual.

12 (b) AFFORDABLE PREMIUM AMOUNT.—

13 (1) IN GENERAL.—The affordable premium
14 amount specified in this subsection for an individual
15 for monthly premium in a plan year shall be equal
16 to $\frac{1}{12}$ of the product of—

17 (A) the premium percentage limit specified
18 in paragraph (2) for the individual based upon
19 the individual's family income for the plan year;
20 and

21 (B) the individual's family income for such
22 plan year.

23 (2) PREMIUM PERCENTAGE LIMITS BASED ON
24 TABLE.—The Commissioner shall establish premium
25 percentage limits so that for individuals whose fam-

1 ily income is within an income tier specified in the
 2 table in subsection (d) such percentage limits shall
 3 increase, on a sliding scale in a linear manner, from
 4 the initial premium percentage to the final premium
 5 percentage specified in such table for such income
 6 tier.

7 (c) REFERENCE PREMIUM AMOUNT.—The reference
 8 premium amount specified in this subsection for a plan
 9 year for an individual in a premium rating area is equal
 10 to the average premium for the 3 basic plans in the area
 11 for the plan year with the lowest premium levels. In com-
 12 puting such amount the Commissioner may exclude plans
 13 with extremely limited enrollments.

14 (d) TABLE OF PREMIUM PERCENTAGE LIMITS AND
 15 ACTUARIAL VALUE PERCENTAGES BASED ON INCOME
 16 TIER.—

17 (1) IN GENERAL.—For purposes of this sub-
 18 title, the table specified in this subsection is as fol-
 19 lows:

In the case of family in- come (expressed as a percent of FPL) within the following income tier:	The initial pre- mium percent- age is—	The final pre- mium percent- age is—	The actuarial value percent- age is—
133% through 150%	1.5%	3%	97%
150% through 200%	3%	5%	93%
200% through 250%	5%	7%	85%
250% through 300%	7%	9%	78%
300% through 350%	9%	10%	72%
350% through 400%	10%	11%	70%

1 (2) SPECIAL RULES.—For purposes of applying
2 the table under paragraph (1)—

3 (A) FOR LOWEST LEVEL OF INCOME.—In
4 the case of an individual with income that does
5 not exceed 133 percent of FPL, the individual
6 shall be considered to have income that is 133%
7 of FPL.

8 (B) APPLICATION OF HIGHER ACTUARIAL
9 VALUE PERCENTAGE AT TIER TRANSITION
10 POINTS.—If two actuarial value percentages
11 may be determined with respect to an indi-
12 vidual, the actuarial value percentage shall be
13 the higher of such percentages.

14 **SEC. 244. AFFORDABILITY COST-SHARING CREDIT.**

15 (a) IN GENERAL.—The affordability cost-sharing
16 credit under this section for an affordable credit eligible
17 individual enrolled in an Exchange-participating health
18 benefits plan is in the form of the cost-sharing reduction
19 described in subsection (b) provided under this section for
20 the income tier in which the individual is classified based
21 on the individual's family income.

22 (b) COST-SHARING REDUCTIONS.—The Commis-
23 sioner shall specify a reduction in cost-sharing amounts
24 and the annual limitation on cost-sharing specified in sec-
25 tion 122(c)(2)(B) under a basic plan for each income tier

1 specified in the table under section 243(d), with respect
2 to a year, in a manner so that, as estimated by the Com-
3 missioner, the actuarial value of the coverage with such
4 reduced cost-sharing amounts (and the reduced annual
5 cost-sharing limit) is equal to the actuarial value percent-
6 age (specified in the table under section 243(d) for the
7 income tier involved) of the full actuarial value if there
8 were no cost-sharing imposed under the plan.

9 (c) DETERMINATION AND PAYMENT OF COST-SHAR-
10 ING AFFORDABILITY CREDIT.—In the case of an afford-
11 able credit eligible individual in a tier enrolled in an Ex-
12 change-participating health benefits plan offered by a
13 QHBP offering entity, the Commissioner shall provide for
14 payment to the offering entity of an amount equivalent
15 to the increased actuarial value of the benefits under the
16 plan provided under section 203(c)(2)(B) resulting from
17 the reduction in cost-sharing described in subsection (b).

18 **SEC. 245. INCOME DETERMINATIONS.**

19 (a) IN GENERAL.—In applying this subtitle for an
20 affordability credit for an individual for a plan year, the
21 individual's income shall be the income (as defined in sec-
22 tion 242(c)) for the individual for the most recent taxable
23 year (as determined in accordance with rules of the Com-
24 missioner). The Federal poverty level applied shall be such
25 level in effect as of the date of the application.

1 (b) PROGRAM INTEGRITY; INCOME VERIFICATION
2 PROCEDURES.—

3 (1) PROGRAM INTEGRITY.—The Commissioner
4 shall take such steps as may be appropriate to en-
5 sure the accuracy of determinations and redeter-
6 minations under this subtitle.

7 (2) INCOME VERIFICATION.—

8 (A) IN GENERAL.—Upon an initial applica-
9 tion of an individual for an affordability credit
10 under this subtitle (or in applying section
11 242(b)) or upon an application for a change in
12 the affordability credit based upon a significant
13 change in family income described in subpara-
14 graph (A)—

15 (i) the Commissioner shall request
16 from the Secretary of the Treasury the dis-
17 closure to the Commissioner of such infor-
18 mation as may be permitted to verify the
19 information contained in such application;
20 and

21 (ii) the Commissioner shall use the in-
22 formation so disclosed to verify such infor-
23 mation.

24 (B) ALTERNATIVE PROCEDURES.—The
25 Commissioner shall establish procedures for the

1 verification of income for purposes of this sub-
2 title if no income tax return is available for the
3 most recent completed tax year.

4 (c) SPECIAL RULES.—

5 (1) CHANGES IN INCOME AS A PERCENT OF
6 FPL.—In the case that an individual's income (ex-
7 pressed as a percentage of the Federal poverty level
8 for a family of the size involved) for a plan year is
9 expected (in a manner specified by the Commis-
10 sioner) to be significantly different from the income
11 (as so expressed) used under subsection (a), the
12 Commissioner shall establish rules requiring an indi-
13 vidual to report, consistent with the mechanism es-
14 tablished under paragraph (2), significant changes
15 in such income (including a significant change in
16 family composition) to the Commissioner and requir-
17 ing the substitution of such income for the income
18 otherwise applicable.

19 (2) REPORTING OF SIGNIFICANT CHANGES IN
20 INCOME.—The Commissioner shall establish rules
21 under which an individual determined to be an af-
22 fordable credit eligible individual would be required
23 to inform the Commissioner when there is a signifi-
24 cant change in the family income of the individual
25 (expressed as a percentage of the FPL for a family

1 of the size involved) and of the information regard-
2 ing such change. Such mechanism shall provide for
3 guidelines that specify the circumstances that qual-
4 ify as a significant change, the verifiable information
5 required to document such a change, and the process
6 for submission of such information. If the Commis-
7 sioner receives new information from an individual
8 regarding the family income of the individual, the
9 Commissioner shall provide for a redetermination of
10 the individual's eligibility to be an affordable credit
11 eligible individual.

12 (3) TRANSITION FOR CHIP.—In the case of a
13 child described in section 202(d)(2), the Commis-
14 sioner shall establish rules under which the family
15 income of the child is deemed to be no greater than
16 the family income of the child as most recently de-
17 termined before Y1 by the State under title XXI of
18 the Social Security Act.

19 (4) STUDY OF GEOGRAPHIC VARIATION IN AP-
20 PPLICATION OF FPL.—The Commissioner shall exam-
21 ine the feasibility and implication of adjusting the
22 application of the Federal poverty level under this
23 subtitle for different geographic areas so as to re-
24 flect the variations in cost-of-living among different
25 areas within the United States. If the Commissioner

1 determines that an adjustment is feasible, the study
2 should include a methodology to make such an ad-
3 justment. Not later than the first day of Y2, the
4 Commissioner shall submit to Congress a report on
5 such study and shall include such recommendations
6 as the Commissioner determines appropriate.

7 (d) PENALTIES FOR MISREPRESENTATION.—In the
8 case of an individual intentionally misrepresents family in-
9 come or the individual fails (without regard to intent) to
10 disclose to the Commissioner a significant change in fam-
11 ily income under subsection (c) in a manner that results
12 in the individual becoming an affordable credit eligible in-
13 dividual when the individual is not or in the amount of
14 the affordability credit exceeding the correct amount—

15 (1) the individual is liable for repayment of the
16 amount of the improper affordability credit; ;and

17 (2) in the case of such an intentional misrepre-
18 sentation or other egregious circumstances specified
19 by the Commissioner, the Commissioner may impose
20 an additional penalty.

21 **SEC. 246. NO FEDERAL PAYMENT FOR UNDOCUMENTED**
22 **ALIENS.**

23 Nothing in this subtitle shall allow Federal payments
24 for affordability credits on behalf of individuals who are
25 not lawfully present in the United States.

1 **TITLE III—SHARED**
2 **RESPONSIBILITY**
3 **Subtitle A—Individual**
4 **Responsibility**

5 **SEC. 301. INDIVIDUAL RESPONSIBILITY.**

6 For an individual's responsibility to obtain acceptable
7 coverage, see section 59B of the Internal Revenue Code
8 of 1986 (as added by section 401 of this Act).

9 **Subtitle B—Employer**
10 **Responsibility**

11 **PART 1—HEALTH COVERAGE PARTICIPATION**
12 **REQUIREMENTS**

13 **SEC. 311. HEALTH COVERAGE PARTICIPATION REQUIRE-**
14 **MENTS.**

15 An employer meets the requirements of this section
16 if such employer does all of the following:

17 (1) **OFFER OF COVERAGE.**—The employer of-
18 fers each employee individual and family coverage
19 under a qualified health benefits plan (or under a
20 current employment-based health plan (within the
21 meaning of section 102(b))) in accordance with sec-
22 tion 312.

23 (2) **CONTRIBUTION TOWARDS COVERAGE.**—If
24 an employee accepts such offer of coverage, the em-

1 ployer makes timely contributions towards such cov-
2 erage in accordance with section 312.

3 (3) CONTRIBUTION IN LIEU OF COVERAGE.—
4 Beginning with Y2, if an employee declines such
5 offer but otherwise obtains coverage in an Exchange-
6 participating health benefits plan (other than by rea-
7 son of being covered by family coverage as a spouse
8 or dependent of the primary insured), the employer
9 shall make a timely contribution to the Health In-
10 insurance Exchange with respect to each such em-
11 ployee in accordance with section 313.

12 **SEC. 312. EMPLOYER RESPONSIBILITY TO CONTRIBUTE TO-**
13 **WARDS EMPLOYEE AND DEPENDENT COV-**
14 **ERAGE.**

15 (a) IN GENERAL.—An employer meets the require-
16 ments of this section with respect to an employee if the
17 following requirements are met:

18 (1) OFFERING OF COVERAGE.—The employer
19 offers the coverage described in section 311(1) either
20 through an Exchange-participating health benefits
21 plan or other than through such a plan.

22 (2) EMPLOYER REQUIRED CONTRIBUTION.—
23 The employer timely pays to the issuer of such cov-
24 erage an amount not less than the employer required

1 contribution specified in subsection (b) for such cov-
2 erage.

3 (3) PROVISION OF INFORMATION.—The em-
4 ployer provides the Health Choices Commissioner,
5 the Secretary of Labor, the Secretary of Health and
6 Human Services, and the Secretary of the Treasury,
7 as applicable, with such information as the Commis-
8 sioner may require to ascertain compliance with the
9 requirements of this section.

10 (4) AUTOENROLLMENT OF EMPLOYEES.—The
11 employer provides for autoenrollment of the em-
12 ployee in accordance with subsection (c).

13 (b) REDUCTION OF EMPLOYEE PREMIUMS THROUGH
14 MINIMUM EMPLOYER CONTRIBUTION.—

15 (1) FULL-TIME EMPLOYEES.—The minimum
16 employer contribution described in this subsection
17 for coverage of a full-time employee (and, if any, the
18 employee's spouse and qualifying children (as de-
19 fined in section 152(c) of the Internal Revenue Code
20 of 1986) under a qualified health benefits plan (or
21 current employment-based health plan) is equal to—

22 (A) in case of individual coverage, not less
23 than 72.5 percent of the applicable premium
24 (as defined in section 4980B(f)(4) of such
25 Code, subject to paragraph (2)) of the lowest

1 cost plan offered by the employer that is a
2 qualified health benefits plan (or is such cur-
3 rent employment-based health plan); and

4 (B) in the case of family coverage which
5 includes coverage of such spouse and children,
6 not less 65 percent of such applicable premium
7 of such lowest cost plan.

8 (2) APPLICABLE PREMIUM FOR EXCHANGE COV-
9 ERAGE.—In this subtitle, the amount of the applica-
10 ble premium of the lowest cost plan with respect to
11 coverage of an employee under an Exchange-partici-
12 pating health benefits plan is the reference premium
13 amount under section 243(c) for individual coverage
14 (or, if elected, family coverage) for the premium rat-
15 ing area in which the individual or family resides.

16 (3) MINIMUM EMPLOYER CONTRIBUTION FOR
17 EMPLOYEES OTHER THAN FULL-TIME EMPLOY-
18 EES.—In the case of coverage for an employee who
19 is not a full-time employee, the amount of the min-
20 imum employer contribution under this subsection
21 shall be a proportion (as determined in accordance
22 with rules of the Health Choices Commissioner, the
23 Secretary of Labor, the Secretary of Health and
24 Human Services, and the Secretary of the Treasury,
25 as applicable) of the minimum employer contribution

1 under this subsection with respect to a full-time em-
2 ployee that reflects the proportion of—

3 (A) the average weekly hours of employ-
4 ment of the employee by the employer, to

5 (B) the minimum weekly hours specified
6 by the Commissioner for an employee to be a
7 full-time employee.

8 (4) SALARY REDUCTIONS NOT TREATED AS EM-
9 PLOYER CONTRIBUTIONS.—For purposes of this sec-
10 tion, any contribution on behalf of an employee with
11 respect to which there is a corresponding reduction
12 in the compensation of the employee shall not be
13 treated as an amount paid by the employer.

14 (c) AUTOMATIC ENROLLMENT FOR EMPLOYER SPON-
15 SORED HEALTH BENEFITS.—

16 (1) IN GENERAL.—The requirement of this sub-
17 section with respect to an employer and an employee
18 is that the employer automatically enroll suchs em-
19 ployee into the employment-based health benefits
20 plan for individual coverage under the plan option
21 with the lowest applicable employee premium.

22 (2) OPT-OUT.—In no case may an employer
23 automatically enroll an employee in a plan under
24 paragraph (1) if such employee makes an affirmative
25 election to opt out of such plan or to elect coverage

1 under an employment-based health benefits plan of-
2 fered by such employer. An employer shall provide
3 an employee with a 30-day period to make such an
4 affirmative election before the employer may auto-
5 matically enroll the employee in such a plan.

6 (3) NOTICE REQUIREMENTS.—

7 (A) IN GENERAL.—Each employer de-
8 scribed in paragraph (1) who automatically en-
9 rolls an employee into a plan as described in
10 such paragraph shall provide the employees,
11 within a reasonable period before the beginning
12 of each plan year (or, in the case of new em-
13 ployees, within a reasonable period before the
14 end of the enrollment period for such a new em-
15 ployee), written notice of the employees' rights
16 and obligations relating to the automatic enroll-
17 ment requirement under such paragraph. Such
18 notice must be comprehensive and understood
19 by the average employee to whom the automatic
20 enrollment requirement applies.

21 (B) INCLUSION OF SPECIFIC INFORMA-
22 TION.—The written notice under subparagraph
23 (A) must explain an employee's right to opt out
24 of being automatically enrolled in a plan and in
25 the case that more than one level of benefits or

1 employee premium level is offered by the em-
2 ployer involved, the notice must explain which
3 level of benefits and employee premium level the
4 employee will be automatically enrolled in the
5 absence of an affirmative election by the em-
6 ployee.

7 **SEC. 313. EMPLOYER CONTRIBUTIONS IN LIEU OF COV-**
8 **ERAGE.**

9 (a) IN GENERAL.—A contribution is made in accord-
10 ance with this section with respect to an employee if such
11 contribution is equal to an amount equal to 8 percent of
12 the average wages paid by the employer during the period
13 of enrollment (determined by taking into account all em-
14 ployees of the employer and in such manner as the Com-
15 missioner provides, including rules providing for the ap-
16 propriate aggregation of related employers). Any such con-
17 tribution—

18 (1) shall be paid to the Health Choices Com-
19 missioner for deposit into the Health Insurance Ex-
20 change Trust Fund, and

21 (2) shall not be applied against the premium of
22 the employee under the Exchange-participating
23 health benefits plan in which the employee is en-
24 rolled.

25 (b) SPECIAL RULES FOR SMALL EMPLOYERS.—

1 (1) IN GENERAL.—In the case of any employer
 2 who is a small employer for any calendar year, sub-
 3 section (a) shall be applied by substituting the appli-
 4 cable percentage determined in accordance with the
 5 following table for “8 percent”:

If the annual payroll of such employer for the preceding calendar year:	The applicable percentage is:
Does not exceed \$250,000	0 percent
Exceeds \$250,000, but does not exceed \$300,000	2 percent
Exceeds \$300,000, but does not exceed \$350,000	4 percent
Exceeds \$350,000, but does not exceed \$400,000	6 percent

6 (2) SMALL EMPLOYER.—For purposes of this
 7 subsection, the term “small employer” means any
 8 employer for any calendar year if the annual payroll
 9 of such employer for the preceding calendar year
 10 does not exceed \$400,000.

11 (3) ANNUAL PAYROLL.—For purposes of this
 12 paragraph, the term “annual payroll” means, with
 13 respect to any employer for any calendar year, the
 14 aggregate wages paid by the employer during such
 15 calendar year.

16 (4) AGGREGATION RULES.—Related employers
 17 and predecessors shall be treated as a single em-
 18 ployer for purposes of this subsection.

19 **SEC. 314. AUTHORITY RELATED TO IMPROPER STEERING.**

20 The Health Choices Commissioner (in coordination
 21 with the Secretary of Labor, the Secretary of Health and
 22 Human Services, and the Secretary of the Treasury) shall

1 have authority to set standards for determining whether
2 employers or insurers are undertaking any actions to af-
3 fect the risk pool within the Health Insurance Exchange
4 by inducing individuals to decline coverage under a quali-
5 fied health benefits plan (or current employment-based
6 health plan (within the meaning of section 102(b)) offered
7 by the employer and instead to enroll in an Exchange-par-
8 ticipating health benefits plan. An employer violating such
9 standards shall be treated as not meeting the require-
10 ments of this section.

11 **PART 2—SATISFACTION OF HEALTH COVERAGE**

12 **PARTICIPATION REQUIREMENTS**

13 **SEC. 321. SATISFACTION OF HEALTH COVERAGE PARTICI-**

14 **PATION REQUIREMENTS UNDER THE EM-**

15 **PLOYEE RETIREMENT INCOME SECURITY**

16 **ACT OF 1974.**

17 (a) IN GENERAL.—Subtitle B of title I of the Em-
18 ployee Retirement Income Security Act of 1974 is amend-
19 ed by adding at the end the following new part:

1 **“PART 8—NATIONAL HEALTH COVERAGE**

2 **PARTICIPATION REQUIREMENTS**

3 **“SEC. 801. ELECTION OF EMPLOYER TO BE SUBJECT TO NA-**
4 **TIONAL HEALTH COVERAGE PARTICIPATION**
5 **REQUIREMENTS.**

6 “(a) IN GENERAL.—An employer may make an elec-
7 tion with the Secretary to be subject to the health coverage
8 participation requirements.

9 “(b) TIME AND MANNER.—An election under sub-
10 section (a) may be made at such time and in such form
11 and manner as the Secretary may prescribe.

12 **“SEC. 802. TREATMENT OF COVERAGE RESULTING FROM**
13 **ELECTION.**

14 “(a) IN GENERAL.—If an employer makes an election
15 to the Secretary under section 801—

16 “(1) such election shall be treated as the estab-
17 lishment and maintenance of a group health plan (as
18 defined in section 733(a)) for purposes of this title,
19 subject to section 151 of the America’s Affordable
20 Health Choices Act of 2009, and

21 “(2) the health coverage participation require-
22 ments shall be deemed to be included as terms and
23 conditions of such plan.

24 “(b) PERIODIC INVESTIGATIONS TO DISCOVER NON-
25 COMPLIANCE.—The Secretary shall regularly audit a rep-
26 resentative sampling of employers and group health plans

1 and conduct investigations and other activities under sec-
2 tion 504 with respect to such sampling of plans so as to
3 discover noncompliance with the health coverage participa-
4 tion requirements in connection with such plans. The Sec-
5 retary shall communicate findings of noncompliance made
6 by the Secretary under this subsection to the Secretary
7 of the Treasury and the Health Choices Commissioner.
8 The Secretary shall take such timely enforcement action
9 as appropriate to achieve compliance.

10 “(c) RECORDKEEPING.—To facilitate the audits de-
11 scribed in subsection (b), the Secretary shall promulgate
12 recordkeeping requirements for employers to account for
13 both employees of the employer and individuals whom the
14 employer has not treated as employees of the employer but
15 with whom the employer, in the course of the trade or
16 business in which the employer is engaged, has engaged
17 for the performance of labor or services.

18 **“SEC. 803. HEALTH COVERAGE PARTICIPATION REQUIRE-**
19 **MENTS.**

20 “For purposes of this part, the term ‘health coverage
21 participation requirements’ means the requirements of
22 part 1 of subtitle B of title III of division A of America’s
23 Affordable Health Choices Act of 2009 (as in effect on
24 the date of the enactment of such Act).

1 **“SEC. 804. RULES FOR APPLYING REQUIREMENTS.**

2 “(a) **AFFILIATED GROUPS.**—In the case of any em-
3 ployer which is part of a group of employers who are treat-
4 ed as a single employer under subsection (b), (c), (m), or
5 (o) of section 414 of the Internal Revenue Code of 1986,
6 the election under section 801 shall be made by such em-
7 ployer as the Secretary may provide. Any such election,
8 once made, shall apply to all members of such group.

9 “(b) **SEPARATE ELECTIONS.**—Under regulations pre-
10 scribed by the Secretary, separate elections may be made
11 under section 801 with respect to—

12 “(1) separate lines of business, and

13 “(2) full-time employees and employees who are
14 not full-time employees.

15 **“SEC. 805. TERMINATION OF ELECTION IN CASES OF SUB-**
16 **STANTIAL NONCOMPLIANCE.**

17 “The Secretary may terminate the election of any em-
18 ployer under section 801 if the Secretary (in coordination
19 with the Health Choices Commissioner) determines that
20 such employer is in substantial noncompliance with the
21 health coverage participation requirements and shall refer
22 any such determination to the Secretary of the Treasury
23 as appropriate.

24 **“SEC. 806. REGULATIONS.**

25 “The Secretary may promulgate such regulations as
26 may be necessary or appropriate to carry out the provi-

1 sions of this part, in accordance with section 324(a) of
2 the America's Affordable Health Choices Act of 2009. The
3 Secretary may promulgate any interim final rules as the
4 Secretary determines are appropriate to carry out this
5 part.”.

6 (b) ENFORCEMENT OF HEALTH COVERAGE PARTICI-
7 PATION REQUIREMENTS.—Section 502 of such Act (29
8 U.S.C. 1132) is amended—

9 (1) in subsection (a)(6), by striking “para-
10 graph” and all that follows through “subsection (c)”
11 and inserting “paragraph (2), (4), (5), (6), (7), (8),
12 (9), (10), or (11) of subsection (c)”;

13 (2) in subsection (c), by redesignating the sec-
14 ond paragraph (10) as paragraph (12) and by in-
15 serting after the first paragraph (10) the following
16 new paragraph:

17 “(11) HEALTH COVERAGE PARTICIPATION RE-
18 QUIREMENTS.—

19 “(A) CIVIL PENALTIES.—In the case of
20 any employer who fails (during any period with
21 respect to which an election under section
22 801(a) is in effect) to satisfy the health cov-
23 erage participation requirements with respect to
24 any employee, the Secretary may assess a civil
25 penalty against the employer of \$100 for each

1 day in the period beginning on the date such
2 failure first occurs and ending on the date such
3 failure is corrected.

4 “(B) HEALTH COVERAGE PARTICIPATION
5 REQUIREMENTS.—For purposes of this para-
6 graph, the term ‘health coverage participation
7 requirements’ has the meaning provided in sec-
8 tion 803.

9 “(C) LIMITATIONS ON AMOUNT OF PEN-
10 ALTY.—

11 “(i) PENALTY NOT TO APPLY WHERE
12 FAILURE NOT DISCOVERED EXERCISING
13 REASONABLE DILIGENCE.—No penalty
14 shall be assessed under subparagraph (A)
15 with respect to any failure during any pe-
16 riod for which it is established to the satis-
17 faction of the Secretary that the employer
18 did not know, or exercising reasonable dili-
19 gence would not have known, that such
20 failure existed.

21 “(ii) PENALTY NOT TO APPLY TO
22 FAILURES CORRECTED WITHIN 30 DAYS.—
23 No penalty shall be assessed under sub-
24 paragraph (A) with respect to any failure
25 if—

1 “(I) such failure was due to rea-
2 sonable cause and not to willful ne-
3 glect, and

4 “(II) such failure is corrected
5 during the 30-day period beginning on
6 the 1st date that the employer knew,
7 or exercising reasonable diligence
8 would have known, that such failure
9 existed.

10 “(iii) OVERALL LIMITATION FOR UN-
11 INTENTIONAL FAILURES.—In the case of
12 failures which are due to reasonable cause
13 and not to willful neglect, the penalty as-
14 sessed under subparagraph (A) for failures
15 during any 1-year period shall not exceed
16 the amount equal to the lesser of—

17 “(I) 10 percent of the aggregate
18 amount paid or incurred by the em-
19 ployer (or predecessor employer) dur-
20 ing the preceding 1-year period for
21 group health plans, or

22 “(II) \$500,000.

23 “(D) ADVANCE NOTIFICATION OF FAILURE
24 PRIOR TO ASSESSMENT.—Before a reasonable
25 time prior to the assessment of any penalty

1 under this paragraph with respect to any failure
2 by an employer, the Secretary shall inform the
3 employer in writing of such failure and shall
4 provide the employer information regarding ef-
5 forts and procedures which may be undertaken
6 by the employer to correct such failure.

7 “(E) COORDINATION WITH EXCISE TAX.—
8 Under regulations prescribed in accordance
9 with section 324 of the America’s Affordable
10 Health Choices Act of 2009, the Secretary and
11 the Secretary of the Treasury shall coordinate
12 the assessment of penalties under this section
13 in connection with failures to satisfy health cov-
14 erage participation requirements with the impo-
15 sition of excise taxes on such failures under sec-
16 tion 4980H(b) of the Internal Revenue Code of
17 1986 so as to avoid duplication of penalties
18 with respect to such failures.

19 “(F) DEPOSIT OF PENALTY COLLECTED.—
20 Any amount of penalty collected under this
21 paragraph shall be deposited as miscellaneous
22 receipts in the Treasury of the United States.”.

23 (c) CLERICAL AMENDMENTS.—The table of contents
24 in section 1 of such Act is amended by inserting after the
25 item relating to section 734 the following new items:

“PART 8—NATIONAL HEALTH COVERAGE PARTICIPATION REQUIREMENTS

1 **SEC. 323. SATISFACTION OF HEALTH COVERAGE PARTICI-**
2 **PATION REQUIREMENTS UNDER THE PUBLIC**
3 **HEALTH SERVICE ACT.**

4 (a) IN GENERAL.—Part C of title XXVII of the Pub-
5 lic Health Service Act is amended by adding at the end
6 the following new section:

7 **“SEC. 2793. NATIONAL HEALTH COVERAGE PARTICIPATION**
8 **REQUIREMENTS.**

9 “(a) ELECTION OF EMPLOYER TO BE SUBJECT TO
10 NATIONAL HEALTH COVERAGE PARTICIPATION REQUIRE-
11 MENTS.—

12 “(1) IN GENERAL.—An employer may make an
13 election with the Secretary to be subject to the
14 health coverage participation requirements.

15 “(2) TIME AND MANNER.—An election under
16 paragraph (1) may be made at such time and in
17 such form and manner as the Secretary may pre-
18 scribe.

19 “(b) TREATMENT OF COVERAGE RESULTING FROM
20 ELECTION.—

21 “(1) IN GENERAL.—If an employer makes an
22 election to the Secretary under subsection (a)—

23 “(A) such election shall be treated as the
24 establishment and maintenance of a group
25 health plan for purposes of this title, subject to

1 section 151 of the America's Affordable Health
2 Choices Act of 2009, and

3 “(B) the health coverage participation re-
4 quirements shall be deemed to be included as
5 terms and conditions of such plan.

6 “(2) PERIODIC INVESTIGATIONS TO DETERMINE
7 COMPLIANCE WITH HEALTH COVERAGE PARTICIPA-
8 TION REQUIREMENTS.—The Secretary shall regu-
9 larly audit a representative sampling of employers
10 and conduct investigations and other activities with
11 respect to such sampling of employers so as to dis-
12 cover noncompliance with the health coverage par-
13 ticipation requirements in connection with such em-
14 ployers (during any period with respect to which an
15 election under subsection (a) is in effect). The Sec-
16 retary shall communicate findings of noncompliance
17 made by the Secretary under this subsection to the
18 Secretary of the Treasury and the Health Choices
19 Commissioner. The Secretary shall take such timely
20 enforcement action as appropriate to achieve compli-
21 ance.

22 “(c) HEALTH COVERAGE PARTICIPATION REQUIRE-
23 MENTS.—For purposes of this section, the term ‘health
24 coverage participation requirements’ means the require-
25 ments of part 1 of subtitle B of title III of division A

1 of the America's Affordable Health Choices Act of 2009
2 (as in effect on the date of the enactment of this section).

3 “(d) SEPARATE ELECTIONS.—Under regulations pre-
4 scribed by the Secretary, separate elections may be made
5 under subsection (a) with respect to full-time employees
6 and employees who are not full-time employees.

7 “(e) TERMINATION OF ELECTION IN CASES OF SUB-
8 STANTIAL NONCOMPLIANCE.—The Secretary may termi-
9 nate the election of any employer under subsection (a) if
10 the Secretary (in coordination with the Health Choices
11 Commissioner) determines that such employer is in sub-
12 stantial noncompliance with the health coverage participa-
13 tion requirements and shall refer any such determination
14 to the Secretary of the Treasury as appropriate.

15 “(f) ENFORCEMENT OF HEALTH COVERAGE PAR-
16 TICIPATION REQUIREMENTS.—

17 “(1) CIVIL PENALTIES.—In the case of any em-
18 ployer who fails (during any period with respect to
19 which the election under subsection (a) is in effect)
20 to satisfy the health coverage participation require-
21 ments with respect to any employee, the Secretary
22 may assess a civil penalty against the employer of
23 \$100 for each day in the period beginning on the
24 date such failure first occurs and ending on the date
25 such failure is corrected.

1 “(2) LIMITATIONS ON AMOUNT OF PENALTY.—

2 “(A) PENALTY NOT TO APPLY WHERE
3 FAILURE NOT DISCOVERED EXERCISING REA-
4 SONABLE DILIGENCE.—No penalty shall be as-
5 sessed under paragraph (1) with respect to any
6 failure during any period for which it is estab-
7 lished to the satisfaction of the Secretary that
8 the employer did not know, or exercising rea-
9 sonable diligence would not have known, that
10 such failure existed.

11 “(B) PENALTY NOT TO APPLY TO FAIL-
12 URES CORRECTED WITHIN 30 DAYS.—No pen-
13 alty shall be assessed under paragraph (1) with
14 respect to any failure if—

15 “(i) such failure was due to reason-
16 able cause and not to willful neglect, and

17 “(ii) such failure is corrected during
18 the 30-day period beginning on the 1st
19 date that the employer knew, or exercising
20 reasonable diligence would have known,
21 that such failure existed.

22 “(C) OVERALL LIMITATION FOR UNINTEN-
23 TIONAL FAILURES.—In the case of failures
24 which are due to reasonable cause and not to
25 willful neglect, the penalty assessed under para-

1 graph (1) for failures during any 1-year period
2 shall not exceed the amount equal to the lesser
3 of—

4 “(i) 10 percent of the aggregate
5 amount paid or incurred by the employer
6 (or predecessor employer) during the pre-
7 ceding taxable year for group health plans,
8 or

9 “(ii) \$500,000.

10 “(3) ADVANCE NOTIFICATION OF FAILURE
11 PRIOR TO ASSESSMENT.—Before a reasonable time
12 prior to the assessment of any penalty under para-
13 graph (1) with respect to any failure by an em-
14 ployer, the Secretary shall inform the employer in
15 writing of such failure and shall provide the em-
16 ployer information regarding efforts and procedures
17 which may be undertaken by the employer to correct
18 such failure.

19 “(4) ACTIONS TO ENFORCE ASSESSMENTS.—
20 The Secretary may bring a civil action in any Dis-
21 trict Court of the United States to collect any civil
22 penalty under this subsection.

23 “(5) COORDINATION WITH EXCISE TAX.—
24 Under regulations prescribed in accordance with sec-
25 tion 324 of the America’s Affordable Health Choices

1 Act of 2009, the Secretary and the Secretary of the
2 Treasury shall coordinate the assessment of pen-
3 alties under paragraph (1) in connection with fail-
4 ures to satisfy health coverage participation require-
5 ments with the imposition of excise taxes on such
6 failures under section 4980H(b) of the Internal Rev-
7 enue Code of 1986 so as to avoid duplication of pen-
8 alties with respect to such failures.

9 “(6) DEPOSIT OF PENALTY COLLECTED.—Any
10 amount of penalty collected under this subsection
11 shall be deposited as miscellaneous receipts in the
12 Treasury of the United States.

13 “(g) REGULATIONS.—The Secretary may promulgate
14 such regulations as may be necessary or appropriate to
15 carry out the provisions of this section, in accordance with
16 section 324(a) of the America’s Affordable Health Choices
17 Act of 2009. The Secretary may promulgate any interim
18 final rules as the Secretary determines are appropriate to
19 carry out this section.”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 subsection (a) shall apply to periods beginning after De-
22 cember 31, 2012.

1 **SEC. 324. ADDITIONAL RULES RELATING TO HEALTH COV-**
2 **ERAGE PARTICIPATION REQUIREMENTS.**

3 (a) ASSURING COORDINATION.—The officers con-
4 sisting of the Secretary of Labor, the Secretary of the
5 Treasury, the Secretary of Health and Human Services,
6 and the Health Choices Commissioner shall ensure,
7 through the execution of an interagency memorandum of
8 understanding among such officers, that—

9 (1) regulations, rulings, and interpretations
10 issued by such officers relating to the same matter
11 over which two or more of such officers have respon-
12 sibility under subpart B of part 6 of subtitle B of
13 title I of the Employee Retirement Income Security
14 Act of 1974, section 4980H of the Internal Revenue
15 Code of 1986, and section 2793 of the Public Health
16 Service Act are administered so as to have the same
17 effect at all times; and

18 (2) coordination of policies relating to enforcing
19 the same requirements through such officers in
20 order to have a coordinated enforcement strategy
21 that avoids duplication of enforcement efforts and
22 assigns priorities in enforcement.

23 (b) MULTIEMPLOYER PLANS.—In the case of a group
24 health plan that is a multiemployer plan (as defined in
25 section 3(37) of the Employee Retirement Income Secu-
26 rity Act of 1974), the regulations prescribed in accordance

1 with subsection (a) by the officers referred to in subsection
2 (a) shall provide for the application of the health coverage
3 participation requirements to the plan sponsor and con-
4 tributing sponsors of such plan.

5 **TITLE IV—AMENDMENTS TO IN-**
6 **TERNAL REVENUE CODE OF**
7 **1986**

8 **Subtitle A—Shared Responsibility**

9 **PART 1—INDIVIDUAL RESPONSIBILITY**

10 **SEC. 401. TAX ON INDIVIDUALS WITHOUT ACCEPTABLE**
11 **HEALTH CARE COVERAGE.**

12 (a) IN GENERAL.—Subchapter A of chapter 1 of the
13 Internal Revenue Code of 1986 is amended by adding at
14 the end the following new part:

15 **“PART VIII—HEALTH CARE RELATED TAXES**

“SUBPART A. TAX ON INDIVIDUALS WITHOUT ACCEPTABLE HEALTH CARE
COVERAGE.

16 **“Subpart A—Tax on Individuals Without Acceptable**
17 **Health Care Coverage**

“Sec. 59B. Tax on individuals without acceptable health care coverage.

18 **“SEC. 59B. TAX ON INDIVIDUALS WITHOUT ACCEPTABLE**
19 **HEALTH CARE COVERAGE.**

20 “(a) TAX IMPOSED.—In the case of any individual
21 who does not meet the requirements of subsection (d) at
22 any time during the taxable year, there is hereby imposed
23 a tax equal to 2.5 percent of the excess of—

1 “(1) the taxpayer’s modified adjusted gross in-
2 come for the taxable year, over

3 “(2) the amount of gross income specified in
4 section 6012(a)(1) with respect to the taxpayer.

5 “(b) LIMITATIONS.—

6 “(1) TAX LIMITED TO AVERAGE PREMIUM.—

7 “(A) IN GENERAL.—The tax imposed
8 under subsection (a) with respect to any tax-
9 payer for any taxable year shall not exceed the
10 applicable national average premium for such
11 taxable year.

12 “(B) APPLICABLE NATIONAL AVERAGE
13 PREMIUM.—

14 “(i) IN GENERAL.—For purposes of
15 subparagraph (A), the ‘applicable national
16 average premium’ means, with respect to
17 any taxable year, the average premium (as
18 determined by the Secretary, in coordina-
19 tion with the Health Choices Commis-
20 sioner) for self-only coverage under a basic
21 plan which is offered in a Health Insur-
22 ance Exchange for the calendar year in
23 which such taxable year begins.

24 “(ii) FAILURE TO PROVIDE COVERAGE
25 FOR MORE THAN ONE INDIVIDUAL.—In the

1 case of any taxpayer who fails to meet the
2 requirements of subsection (e) with respect
3 to more than one individual during the tax-
4 able year, clause (i) shall be applied by
5 substituting ‘family coverage’ for ‘self-only
6 coverage’.

7 “(2) PRORATION FOR PART YEAR FAILURES.—
8 The tax imposed under subsection (a) with respect
9 to any taxpayer for any taxable year shall not exceed
10 the amount which bears the same ratio to the
11 amount of tax so imposed (determined without re-
12 gard to this paragraph and after application of para-
13 graph (1)) as—

14 “(A) the aggregate periods during such
15 taxable year for which such individual failed to
16 meet the requirements of subsection (d), bears
17 to

18 “(B) the entire taxable year.

19 “(c) EXCEPTIONS.—

20 “(1) DEPENDENTS.—Subsection (a) shall not
21 apply to any individual for any taxable year if a de-
22 duction is allowable under section 151 with respect
23 to such individual to another taxpayer for any tax-
24 able year beginning in the same calendar year as
25 such taxable year.

1 “(2) NONRESIDENT ALIENS.—Subsection (a)
2 shall not apply to any individual who is a non-
3 resident alien.

4 “(3) INDIVIDUALS RESIDING OUTSIDE UNITED
5 STATES.—Any qualified individual (as defined in
6 section 911(d)) (and any qualifying child residing
7 with such individual) shall be treated for purposes of
8 this section as covered by acceptable coverage during
9 the period described in subparagraph (A) or (B) of
10 section 911(d)(1), whichever is applicable.

11 “(4) INDIVIDUALS RESIDING IN POSSESSIONS
12 OF THE UNITED STATES.—Any individual who is a
13 bona fide resident of any possession of the United
14 States (as determined under section 937(a)) for any
15 taxable year (and any qualifying child residing with
16 such individual) shall be treated for purposes of this
17 section as covered by acceptable coverage during
18 such taxable year.

19 “(5) RELIGIOUS CONSCIENCE EXEMPTION.—
20 “(A) IN GENERAL.—Subsection (a) shall
21 not apply to any individual (and any qualifying
22 child residing with such individual) for any pe-
23 riod if such individual has in effect an exemp-
24 tion which certifies that such individual is a
25 member of a recognized religious sect or divi-

1 sion thereof described in section 1402(g)(1) and
2 an adherent of established tenets or teachings
3 of such sect or division as described in such sec-
4 tion.

5 “(B) EXEMPTION.—An application for the
6 exemption described in subparagraph (A) shall
7 be filed with the Secretary at such time and in
8 such form and manner as the Secretary may
9 prescribe. Any such exemption granted by the
10 Secretary shall be effective for such period as
11 the Secretary determines appropriate.

12 “(d) ACCEPTABLE COVERAGE REQUIREMENT.—

13 “(1) IN GENERAL.—The requirements of this
14 subsection are met with respect to any individual for
15 any period if such individual (and each qualifying
16 child of such individual) is covered by acceptable
17 coverage at all times during such period.

18 “(2) ACCEPTABLE COVERAGE.—For purposes
19 of this section, the term ‘acceptable coverage’ means
20 any of the following:

21 “(A) QUALIFIED HEALTH BENEFITS PLAN
22 COVERAGE.—Coverage under a qualified health
23 benefits plan (as defined in section 100(c) of
24 the America’s Affordable Health Choices Act of
25 2009).

1 “(B) GRANDFATHERED HEALTH INSUR-
2 ANCE COVERAGE; COVERAGE UNDER GRAND-
3 FATHERED EMPLOYMENT-BASED HEALTH
4 PLAN.—Coverage under a grandfathered health
5 insurance coverage (as defined in subsection (a)
6 of section 102 of the America’s Affordable
7 Health Choices Act of 2009) or under a current
8 employment-based health plan (within the
9 meaning of subsection (b) of such section).

10 “(C) MEDICARE.—Coverage under part A
11 of title XVIII of the Social Security Act.

12 “(D) MEDICAID.—Coverage for medical as-
13 sistance under title XIX of the Social Security
14 Act.

15 “(E) MEMBERS OF THE ARMED FORCES
16 AND DEPENDENTS (INCLUDING TRICARE).—
17 Coverage under chapter 55 of title 10, United
18 States Code, including similar coverage fur-
19 nished under section 1781 of title 38 of such
20 Code.

21 “(F) VA.—Coverage under the veteran’s
22 health care program under chapter 17 of title
23 38, United States Code, but only if the cov-
24 erage for the individual involved is determined
25 by the Secretary in coordination with the

1 Health Choices Commissioner to be not less
2 than the level specified by the Secretary of the
3 Treasury, in coordination with the Secretary of
4 Veteran’s Affairs and the Health Choices Com-
5 missioner, based on the individual’s priority for
6 services as provided under section 1705(a) of
7 such title.

8 “(G) OTHER COVERAGE.—Such other
9 health benefits coverage as the Secretary, in co-
10 ordination with the Health Choices Commis-
11 sioner, recognizes for purposes of this sub-
12 section.

13 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—

14 “(1) QUALIFYING CHILD.—For purposes of this
15 section, the term ‘qualifying child’ has the meaning
16 given such term by section 152(c).

17 “(2) BASIC PLAN.—For purposes of this sec-
18 tion, the term ‘basic plan’ has the meaning given
19 such term under section 100(c) of the America’s Af-
20 fordable Health Choices Act of 2009.

21 “(3) HEALTH INSURANCE EXCHANGE.—For
22 purposes of this section, the term ‘Health Insurance
23 Exchange’ has the meaning given such term under
24 section 100(c) of the America’s Affordable Health
25 Choices Act of 2009, including any State-based

1 health insurance exchange approved for operation
2 under section 208 of such Act.

3 “(4) FAMILY COVERAGE.—For purposes of this
4 section, the term ‘family coverage’ means any cov-
5 erage other than self-only coverage.

6 “(5) MODIFIED ADJUSTED GROSS INCOME.—
7 For purposes of this section, the term ‘modified ad-
8 justed gross income’ means adjusted gross income—

9 “(A) determined without regard to section
10 911, and

11 “(B) increased by the amount of interest
12 received or accrued by the taxpayer during the
13 taxable year which is exempt from tax.

14 “(6) NOT TREATED AS TAX IMPOSED BY THIS
15 CHAPTER FOR CERTAIN PURPOSES.—The tax im-
16 posed under this section shall not be treated as tax
17 imposed by this chapter for purposes of determining
18 the amount of any credit under this chapter or for
19 purposes of section 55.

20 “(f) REGULATIONS.—The Secretary shall prescribe
21 such regulations or other guidance as may be necessary
22 or appropriate to carry out the purposes of this section,
23 including regulations or other guidance (developed in co-
24 ordination with the Health Choices Commissioner) which
25 provide—

1 “(1) exemption from the tax imposed under
2 subsection (a) in cases of de minimis lapses of ac-
3 ceptable coverage, and

4 “(2) a process for applying for a waiver of the
5 application of subsection (a) in cases of hardship.”.

6 (b) INFORMATION REPORTING.—

7 (1) IN GENERAL.—Subpart B of part III of
8 subchapter A of chapter 61 of such Code is amended
9 by inserting after section 6050W the following new
10 section:

11 **“SEC. 6050X. RETURNS RELATING TO HEALTH INSURANCE**
12 **COVERAGE.**

13 “(a) REQUIREMENT OF REPORTING.—Every person
14 who provides acceptable coverage (as defined in section
15 59B(d)) to any individual during any calendar year shall,
16 at such time as the Secretary may prescribe, make the
17 return described in subsection (b) with respect to such in-
18 dividual.

19 “(b) FORM AND MANNER OF RETURNS.—A return
20 is described in this subsection if such return—

21 “(1) is in such form as the Secretary may pre-
22 scribe, and

23 “(2) contains—

1 “(A) the name, address, and TIN of the
2 primary insured and the name of each other in-
3 dividual obtaining coverage under the policy,

4 “(B) the period for which each such indi-
5 vidual was provided with the coverage referred
6 to in subsection (a), and

7 “(C) such other information as the Sec-
8 retary may require.

9 “(c) STATEMENTS TO BE FURNISHED TO INDIVID-
10 UALS WITH RESPECT TO WHOM INFORMATION IS RE-
11 QUIRED.—Every person required to make a return under
12 subsection (a) shall furnish to each primary insured whose
13 name is required to be set forth in such return a written
14 statement showing—

15 “(1) the name and address of the person re-
16 quired to make such return and the phone number
17 of the information contact for such person, and

18 “(2) the information required to be shown on
19 the return with respect to such individual.

20 The written statement required under the preceding sen-
21 tence shall be furnished on or before January 31 of the
22 year following the calendar year for which the return
23 under subsection (a) is required to be made.

24 “(d) COVERAGE PROVIDED BY GOVERNMENTAL
25 UNITS.—In the case of coverage provided by any govern-

1 mental unit or any agency or instrumentality thereof, the
2 officer or employee who enters into the agreement to pro-
3 vide such coverage (or the person appropriately designated
4 for purposes of this section) shall make the returns and
5 statements required by this section.”.

6 (2) PENALTY FOR FAILURE TO FILE.—

7 (A) RETURN.—Subparagraph (B) of sec-
8 tion 6724(d)(1) of such Code is amended by
9 striking “or” at the end of clause (xxii), by
10 striking “and” at the end of clause (xxiii) and
11 inserting “or”, and by adding at the end the
12 following new clause:

13 “(xxiv) section 6050X (relating to re-
14 turns relating to health insurance cov-
15 erage), and”.

16 (B) STATEMENT.—Paragraph (2) of sec-
17 tion 6724(d) of such Code is amended by strik-
18 ing “or” at the end of subparagraph (EE), by
19 striking the period at the end of subparagraph
20 (FF) and inserting “, or”, and by inserting
21 after subparagraph (FF) the following new sub-
22 paragraph:

23 “(GG) section 6050X (relating to returns
24 relating to health insurance coverage).”.

1 (c) RETURN REQUIREMENT.—Subsection (a) of sec-
2 tion 6012 of such Code is amended by inserting after
3 paragraph (9) the following new paragraph:

4 “(10) Every individual to whom section 59B(a)
5 applies and who fails to meet the requirements of
6 section 59B(d) with respect to such individual or
7 any qualifying child (as defined in section 152(c)) of
8 such individual.”.

9 (d) CLERICAL AMENDMENTS.—

10 (1) The table of parts for subchapter A of chap-
11 ter 1 of the Internal Revenue Code of 1986 is
12 amended by adding at the end the following new
13 item:

“PART VIII. HEALTH CARE RELATED TAXES.”.

14 (2) The table of sections for subpart B of part
15 III of subchapter A of chapter 61 is amended by
16 adding at the end the following new item:

“Sec. 6050X. Returns relating to health insurance coverage.”.

17 (e) SECTION 15 NOT TO APPLY.—The amendment
18 made by subsection (a) shall not be treated as a change
19 in a rate of tax for purposes of section 15 of the Internal
20 Revenue Code of 1986.

21 (f) EFFECTIVE DATE.—

22 (1) IN GENERAL.—The amendments made by
23 this section shall apply to taxable years beginning
24 after December 31, 2012.

1 (2) RETURNS.—The amendments made by sub-
2 section (b) shall apply to calendar years beginning
3 after December 31, 2012.

4 **PART 2—EMPLOYER RESPONSIBILITY**

5 **SEC. 411. ELECTION TO SATISFY HEALTH COVERAGE PAR-**
6 **TICIPATION REQUIREMENTS.**

7 (a) IN GENERAL.—Chapter 43 of the Internal Rev-
8 enue Code of 1986 is amended by adding at the end the
9 following new section:

10 **“SEC. 4980H. ELECTION WITH RESPECT TO HEALTH COV-**
11 **ERAGE PARTICIPATION REQUIREMENTS.**

12 “(a) ELECTION OF EMPLOYER RESPONSIBILITY TO
13 PROVIDE HEALTH COVERAGE.—

14 “(1) IN GENERAL.—Subsection (b) shall apply
15 to any employer with respect to whom an election
16 under paragraph (2) is in effect.

17 “(2) TIME AND MANNER.—An employer may
18 make an election under this paragraph at such time
19 and in such form and manner as the Secretary may
20 prescribe.

21 “(3) AFFILIATED GROUPS.—In the case of any
22 employer which is part of a group of employers who
23 are treated as a single employer under subsection
24 (b), (c), (m), or (o) of section 414, the election
25 under paragraph (2) shall be made by such person

1 as the Secretary may provide. Any such election,
2 once made, shall apply to all members of such
3 group.

4 “(4) SEPARATE ELECTIONS.—Under regula-
5 tions prescribed by the Secretary, separate elections
6 may be made under paragraph (2) with respect to—

7 “(A) separate lines of business, and

8 “(B) full-time employees and employees
9 who are not full-time employees.

10 “(5) TERMINATION OF ELECTION IN CASES OF
11 SUBSTANTIAL NONCOMPLIANCE.—The Secretary
12 may terminate the election of any employer under
13 paragraph (2) if the Secretary (in coordination with
14 the Health Choices Commissioner) determines that
15 such employer is in substantial noncompliance with
16 the health coverage participation requirements.

17 “(b) EXCISE TAX WITH RESPECT TO FAILURE TO
18 MEET HEALTH COVERAGE PARTICIPATION REQUIRE-
19 MENTS.—

20 “(1) IN GENERAL.—In the case of any employer
21 who fails (during any period with respect to which
22 the election under subsection (a) is in effect) to sat-
23 isfy the health coverage participation requirements
24 with respect to any employee to whom such election
25 applies, there is hereby imposed on each such failure

1 with respect to each such employee a tax of \$100 for
2 each day in the period beginning on the date such
3 failure first occurs and ending on the date such fail-
4 ure is corrected.

5 “(2) LIMITATIONS ON AMOUNT OF TAX.—

6 “(A) TAX NOT TO APPLY WHERE FAILURE
7 NOT DISCOVERED EXERCISING REASONABLE
8 DILIGENCE.—No tax shall be imposed by para-
9 graph (1) on any failure during any period for
10 which it is established to the satisfaction of the
11 Secretary that the employer neither knew, nor
12 exercising reasonable diligence would have
13 known, that such failure existed.

14 “(B) TAX NOT TO APPLY TO FAILURES
15 CORRECTED WITHIN 30 DAYS.—No tax shall be
16 imposed by paragraph (1) on any failure if—

17 “(i) such failure was due to reason-
18 able cause and not to willful neglect, and

19 “(ii) such failure is corrected during
20 the 30-day period beginning on the 1st
21 date that the employer knew, or exercising
22 reasonable diligence would have known,
23 that such failure existed.

24 “(C) OVERALL LIMITATION FOR UNINTEN-
25 TIONAL FAILURES.—In the case of failures

1 which are due to reasonable cause and not to
2 willful neglect, the tax imposed by subsection
3 (a) for failures during the taxable year of the
4 employer shall not exceed the amount equal to
5 the lesser of—

6 “(i) 10 percent of the aggregate
7 amount paid or incurred by the employer
8 (or predecessor employer) during the pre-
9 ceding taxable year for employment-based
10 health plans, or

11 “(ii) \$500,000.

12 “(D) COORDINATION WITH OTHER EN-
13 FORCEMENT PROVISIONS.—The tax imposed
14 under paragraph (1) with respect to any failure
15 shall be reduced (but not below zero) by the
16 amount of any civil penalty collected under sec-
17 tion 502(e)(11) of the Employee Retirement In-
18 come Security Act of 1974 or section 2793(g)
19 of the Public Health Service Act with respect to
20 such failure.

21 “(e) HEALTH COVERAGE PARTICIPATION REQUIRE-
22 MENTS.—For purposes of this section, the term ‘health
23 coverage participation requirements’ means the require-
24 ments of part I of subtitle B of title III of the America’s

1 Affordable Health Choices Act of 2009 (as in effect on
2 the date of the enactment of this section).”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for chapter 43 of such Code is amended by adding at the
5 end the following new item:

“Sec. 4980H. Election to satisfy health coverage participation requirements.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to periods beginning after Decem-
8 ber 31, 2012.

9 **SEC. 412. RESPONSIBILITIES OF NONELECTING EMPLOY-**
10 **ERS.**

11 (a) IN GENERAL.—Section 3111 of the Internal Rev-
12 enue Code of 1986 is amended by redesignating subsection
13 (c) as subsection (d) and by inserting after subsection (b)
14 the following new subsection:

15 “(c) EMPLOYERS ELECTING TO NOT PROVIDE
16 HEALTH BENEFITS.—

17 “(1) IN GENERAL.—In addition to other taxes,
18 there is hereby imposed on every nonelecting em-
19 ployer an excise tax, with respect to having individ-
20 uals in his employ, equal to 8 percent of the wages
21 (as defined in section 3121(a)) paid by him with re-
22 spect to employment (as defined in section 3121(b)).

23 “(2) SPECIAL RULES FOR SMALL EMPLOY-
24 ERS.—

1 “(A) IN GENERAL.—In the case of any em-
 2 ployer who is small employer for any calendar
 3 year, paragraph (1) shall be applied by sub-
 4 stituting the applicable percentage determined
 5 in accordance with the following table for ‘8
 6 percent’:

“If the annual payroll of such employer for the preceding calendar year:	The applicable percentage is:
Does not exceed \$250,000	0 percent
Exceeds \$250,000, but does not exceed \$300,000	2 percent
Exceeds \$300,000, but does not exceed \$350,000	4 percent
Exceeds \$350,000, but does not exceed \$400,000	6 percent

7 “(B) SMALL EMPLOYER.—For purposes of
 8 this paragraph, the term ‘small employer’
 9 means any employer for any calendar year if
 10 the annual payroll of such employer for the pre-
 11 ceding calendar year does not exceed \$400,000.

12 “(C) ANNUAL PAYROLL.—For purposes of
 13 this paragraph, the term ‘annual payroll’
 14 means, with respect to any employer for any
 15 calendar year, the aggregate wages (as defined
 16 in section 3121(a)) paid by him with respect to
 17 employment (as defined in section 3121(b))
 18 during such calendar year.

19 “(3) NONELECTING EMPLOYER.—For purposes
 20 of paragraph (1), the term ‘nonelecting employer’
 21 means any employer for any period with respect to

1 which such employer does not have an election under
2 section 4980H(a) in effect.

3 “(4) SPECIAL RULE FOR SEPARATE ELEC-
4 TIONS.—In the case of an employer who makes a
5 separate election described in section 4980H(a)(4)
6 for any period, paragraph (1) shall be applied for
7 such period by taking into account only the wages
8 paid to employees who are not subject to such elec-
9 tion.

10 “(5) AGGREGATION; PREDECESSORS.—For pur-
11 poses of this subsection—

12 “(A) all persons treated as a single em-
13 ployer under subsection (b), (c), (m), or (o) of
14 section 414 shall be treated as 1 employer, and

15 “(B) any reference to any person shall be
16 treated as including a reference to any prede-
17 cessor of such person.”.

18 (b) DEFINITIONS.—Section 3121 of such Code is
19 amended by adding at the end the following new sub-
20 section:

21 “(aa) SPECIAL RULES FOR TAX ON EMPLOYERS
22 ELECTING NOT TO PROVIDE HEALTH BENEFITS.—For
23 purposes of section 3111(c)—

24 “(1) Paragraphs (1), (5), and (19) of sub-
25 section (b) shall not apply.

1 “(2) Paragraph (7) of subsection (b) shall apply
2 by treating all services as not covered by the retire-
3 ment systems referred to in subparagraphs (C) and
4 (F) thereof.

5 “(3) Subsection (e) shall not apply and the
6 term ‘State’ shall include the District of Columbia.”.

7 (c) CONFORMING AMENDMENT.—Subsection (d) of
8 section 3111 of such Code, as redesignated by this section,
9 is amended by striking “this section” and inserting “sub-
10 sections (a) and (b)”.

11 (d) APPLICATION TO RAILROADS.—

12 (1) IN GENERAL.—Section 3221 of such Code
13 is amended by redesignating subsection (c) as sub-
14 section (d) and by inserting after subsection (b) the
15 following new subsection:

16 “(c) EMPLOYERS ELECTING TO NOT PROVIDE
17 HEALTH BENEFITS.—

18 “(1) IN GENERAL.—In addition to other taxes,
19 there is hereby imposed on every nonelecting em-
20 ployer an excise tax, with respect to having individ-
21 uals in his employ, equal to 8 percent of the com-
22 pensation paid during any calendar year by such em-
23 ployer for services rendered to such employer.

1 “(2) EXCEPTION FOR SMALL EMPLOYERS.—
2 Rules similar to the rules of section 3111(c)(2) shall
3 apply for purposes of this subsection.

4 “(3) NONELECTING EMPLOYER.—For purposes
5 of paragraph (1), the term ‘nonelecting employer’
6 means any employer for any period with respect to
7 which such employer does not have an election under
8 section 4980H(a) in effect.

9 “(4) SPECIAL RULE FOR SEPARATE ELEC-
10 TIONS.—In the case of an employer who makes a
11 separate election described in section 4980H(a)(4)
12 for any period, subsection (a) shall be applied for
13 such period by taking into account only the wages
14 paid to employees who are not subject to such elec-
15 tion.”.

16 (2) DEFINITIONS.—Subsection (e) of section
17 3231 of such Code is amended by adding at the end
18 the following new paragraph:

19 “(13) SPECIAL RULES FOR TAX ON EMPLOYERS
20 ELECTING NOT TO PROVIDE HEALTH BENEFITS.—
21 For purposes of section 3221(c)—

22 “(A) Paragraph (1) shall be applied with-
23 out regard to the third sentence thereof.

24 “(B) Paragraph (2) shall not apply.”.

1 (3) CONFORMING AMENDMENT.—Subsection (d)
2 of section 3221 of such Code, as redesignated by
3 this section, is amended by striking “subsections (a)
4 and (b), see section 3231(e)(2)” and inserting “this
5 section, see paragraphs (2) and (13)(B) of section
6 3231(e)”.

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to periods beginning after Decem-
9 ber 31, 2012.

10 **Subtitle B—Credit for Small Busi-**
11 **ness Employee Health Coverage**
12 **Expenses**

13 **SEC. 421. CREDIT FOR SMALL BUSINESS EMPLOYEE**
14 **HEALTH COVERAGE EXPENSES.**

15 (a) IN GENERAL.—Subpart D of part IV of sub-
16 chapter A of chapter 1 of the Internal Revenue Code of
17 1986 (relating to business-related credits) is amended by
18 adding at the end the following new section:

19 **“SEC. 45R. SMALL BUSINESS EMPLOYEE HEALTH COV-**
20 **ERAGE CREDIT.**

21 “(a) IN GENERAL.—For purposes of section 38, in
22 the case of a qualified small employer, the small business
23 employee health coverage credit determined under this sec-
24 tion for the taxable year is an amount equal to the applica-

1 ble percentage of the qualified employee health coverage
2 expenses of such employer for such taxable year.

3 “(b) APPLICABLE PERCENTAGE.—

4 “(1) IN GENERAL.—For purposes of this sec-
5 tion, the applicable percentage is 50 percent.

6 “(2) PHASEOUT BASED ON AVERAGE COM-
7 PENSATION OF EMPLOYEES.—In the case of an em-
8 ployer whose average annual employee compensation
9 for the taxable year exceeds \$20,000, the percentage
10 specified in paragraph (1) shall be reduced by a
11 number of percentage points which bears the same
12 ratio to 50 as such excess bears to \$20,000.

13 “(c) LIMITATIONS.—

14 “(1) PHASEOUT BASED ON EMPLOYER SIZE.—

15 In the case of an employer who employs more than
16 10 qualified employees during the taxable year, the
17 credit determined under subsection (a) shall be re-
18 duced by an amount which bears the same ratio to
19 the amount of such credit (determined without re-
20 gard to this paragraph and after the application of
21 the other provisions of this section) as—

22 “(A) the excess of—

23 “(i) the number of qualified employees
24 employed by the employer during the tax-
25 able year, over

1 “(ii) 10, bears to

2 “(B) 15.

3 “(2) CREDIT NOT ALLOWED WITH RESPECT TO
4 CERTAIN HIGHLY COMPENSATED EMPLOYEES.—No
5 credit shall be allowed under subsection (a) with re-
6 spect to qualified employee health coverage expenses
7 paid or incurred with respect to any employee for
8 any taxable year if the aggregate compensation paid
9 by the employer to such employee during such tax-
10 able year exceeds \$80,000.

11 “(d) QUALIFIED EMPLOYEE HEALTH COVERAGE EX-
12 PENSES.—For purposes of this section—

13 “(1) IN GENERAL.—The term ‘qualified em-
14 ployee health coverage expenses’ means, with respect
15 to any employer for any taxable year, the aggregate
16 amount paid or incurred by such employer during
17 such taxable year for coverage of any qualified em-
18 ployee of the employer (including any family cov-
19 erage which covers such employee) under qualified
20 health coverage.

21 “(2) QUALIFIED HEALTH COVERAGE.—The
22 term ‘qualified health coverage’ means acceptable
23 coverage (as defined in section 59B(d)) which—

24 “(A) is provided pursuant to an election
25 under section 4980H(a), and

1 “(B) satisfies the requirements referred to
2 in section 4980H(c).

3 “(e) OTHER DEFINITIONS.—For purposes of this
4 section—

5 “(1) QUALIFIED SMALL EMPLOYER.—For pur-
6 poses of this section, the term ‘qualified small em-
7 ployer’ means any employer for any taxable year
8 if—

9 “(A) the number of qualified employees
10 employed by such employer during the taxable
11 year does not exceed 25, and

12 “(B) the average annual employee com-
13 pensation of such employer for such taxable
14 year does not exceed the sum of the dollar
15 amounts in effect under subsection (b)(2).

16 “(2) QUALIFIED EMPLOYEE.—The term ‘quali-
17 fied employee’ means any employee of an employer
18 for any taxable year of the employer if such em-
19 ployee received at least \$5,000 of compensation from
20 such employer during such taxable year.

21 “(3) AVERAGE ANNUAL EMPLOYEE COMPENSA-
22 TION.—The term ‘average annual employee com-
23 pensation’ means, with respect to any employer for
24 any taxable year, the average amount of compensa-

1 tion paid by such employer to qualified employees of
2 such employer during such taxable year.

3 “(4) COMPENSATION.—The term ‘compensa-
4 tion’ has the meaning given such term in section
5 408(p)(6)(A).

6 “(5) FAMILY COVERAGE.—The term ‘family
7 coverage’ means any coverage other than self-only
8 coverage.

9 “(f) SPECIAL RULES.—For purposes of this sec-
10 tion—

11 “(1) SPECIAL RULE FOR PARTNERSHIPS AND
12 SELF-EMPLOYED.—In the case of a partnership (or
13 a trade or business carried on by an individual)
14 which has one or more qualified employees (deter-
15 mined without regard to this paragraph) with re-
16 spect to whom the election under 4980H(a) applies,
17 each partner (or, in the case of a trade or business
18 carried on by an individual, such individual) shall be
19 treated as an employee.

20 “(2) AGGREGATION RULE.—All persons treated
21 as a single employer under subsection (b), (c), (m),
22 or (o) of section 414 shall be treated as 1 employer.

23 “(3) DENIAL OF DOUBLE BENEFIT.—Any de-
24 duction otherwise allowable with respect to amounts
25 paid or incurred for health insurance coverage to

1 which subsection (a) applies shall be reduced by the
2 amount of the credit determined under this section.

3 “(4) INFLATION ADJUSTMENT.—In the case of
4 any taxable year beginning after 2013, each of the
5 dollar amounts in subsections (b)(2), (c)(2), and
6 (e)(2) shall be increased by an amount equal to—

7 “(A) such dollar amount, multiplied by

8 “(B) the cost of living adjustment deter-
9 mined under section 1(f)(3) for the calendar
10 year in which the taxable year begins deter-
11 mined by substituting ‘calendar year 2012’ for
12 ‘calendar year 1992’ in subparagraph (B)
13 thereof.

14 If any increase determined under this paragraph is
15 not a multiple of \$50, such increase shall be rounded
16 to the next lowest multiple of \$50.”.

17 (b) CREDIT TO BE PART OF GENERAL BUSINESS
18 CREDIT.—Subsection (b) of section 38 of such Code (re-
19 lating to general business credit) is amended by striking
20 “plus” at the end of paragraph (34), by striking the period
21 at the end of paragraph (35) and inserting “, plus” , and
22 by adding at the end the following new paragraph:

23 “(36) in the case of a qualified small employer
24 (as defined in section 45R(e)), the small business

1 employee health coverage credit determined under
2 section 45R(a).”.

3 (c) CLERICAL AMENDMENT.—The table of sections
4 for subpart D of part IV of subchapter A of chapter 1
5 of such Code is amended by inserting after the item relat-
6 ing to section 45Q the following new item:

“Sec. 45R. Small business employee health coverage credit.”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 2012.

10 **Subtitle C—Disclosures to Carry**
11 **Out Health Insurance Exchange**
12 **Subsidies**

13 **SEC. 431. DISCLOSURES TO CARRY OUT HEALTH INSUR-**
14 **ANCE EXCHANGE SUBSIDIES.**

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

18 “(21) DISCLOSURE OF RETURN INFORMATION
19 TO CARRY OUT HEALTH INSURANCE EXCHANGE SUB-
20 SIDIES.—

21 “(A) IN GENERAL.—The Secretary, upon
22 written request from the Health Choices Com-
23 missioner or the head of a State-based health
24 insurance exchange approved for operation
25 under section 208 of the America’s Affordable

1 Health Choices Act of 2009, shall disclose to of-
2 ficers and employees of the Health Choices Ad-
3 ministration or such State-based health insur-
4 ance exchange, as the case may be, return in-
5 formation of any taxpayer whose income is rel-
6 evant in determining any affordability credit de-
7 scribed in subtitle C of title II of the America's
8 Affordable Health Choices Act of 2009. Such
9 return information shall be limited to—

10 “(i) taxpayer identity information
11 with respect to such taxpayer,

12 “(ii) the filing status of such tax-
13 payer,

14 “(iii) the modified adjusted gross in-
15 come of such taxpayer (as defined in sec-
16 tion 59B(e)(5)),

17 “(iv) the number of dependents of the
18 taxpayer,

19 “(v) such other information as is pre-
20 scribed by the Secretary by regulation as
21 might indicate whether the taxpayer is eli-
22 gible for such affordability credits (and the
23 amount thereof), and

24 “(vi) the taxable year with respect to
25 which the preceding information relates or,

1 if applicable, the fact that such informa-
2 tion is not available.

3 “(B) RESTRICTION ON USE OF DISCLOSED
4 INFORMATION.—Return information disclosed
5 under subparagraph (A) may be used by offi-
6 cers and employees of the Health Choices Ad-
7 ministration or such State-based health insur-
8 ance exchange, as the case may be, only for the
9 purposes of, and to the extent necessary in, es-
10 tablishing and verifying the appropriate amount
11 of any affordability credit described in subtitle
12 C of title II of the America’s Affordable Health
13 Choices Act of 2009 and providing for the re-
14 payment of any such credit which was in excess
15 of such appropriate amount.”.

16 (b) PROCEDURES AND RECORDKEEPING RELATED
17 TO DISCLOSURES.—Paragraph (4) of section 6103(p) of
18 such Code is amended—

19 (1) by inserting “, or any entity described in
20 subsection (l)(21),” after “or (20)” in the matter
21 preceding subparagraph (A),

22 (2) by inserting “or any entity described in sub-
23 section (l)(21),” after “or (o)(1)(A)” in subpara-
24 graph (F)(ii), and

1 (3) by inserting “or any entity described in sub-
2 section (1)(21),” after “or (20)” both places it ap-
3 pears in the matter after subparagraph (F).

4 (c) UNAUTHORIZED DISCLOSURE OR INSPECTION.—
5 Paragraph (2) of section 7213(a) of such Code is amended
6 by striking “or (20)” and inserting “(20), or (21)”.

7 **Subtitle D—Other Revenue** 8 **Provisions**

9 **PART 1—GENERAL PROVISIONS**

10 **SEC. 441. SURCHARGE ON HIGH INCOME INDIVIDUALS.**

11 (a) IN GENERAL.—Part VIII of subchapter A of
12 chapter 1 of the Internal Revenue Code of 1986, as added
13 by this title, is amended by adding at the end the following
14 new subpart:

15 **“Subpart B—Surcharge on High Income Individuals**

 “Sec. 59C. Surcharge on high income individuals.

16 **“SEC. 59C. SURCHARGE ON HIGH INCOME INDIVIDUALS.**

17 “(a) GENERAL RULE.—In the case of a taxpayer
18 other than a corporation, there is hereby imposed (in addi-
19 tion to any other tax imposed by this subtitle) a tax equal
20 to—

21 “(1) 1 percent of so much of the modified ad-
22 justed gross income of the taxpayer as exceeds
23 \$350,000 but does not exceed \$500,000,

1 “(2) 1.5 percent of so much of the modified ad-
2 justed gross income of the taxpayer as exceeds
3 \$500,000 but does not exceed \$1,000,000, and

4 “(3) 5.4 percent of so much of the modified ad-
5 justed gross income of the taxpayer as exceeds
6 \$1,000,000.

7 “(b) TAXPAYERS NOT MAKING A JOINT RETURN.—
8 In the case of any taxpayer other than a taxpayer making
9 a joint return under section 6013 or a surviving spouse
10 (as defined in section 2(a)), subsection (a) shall be applied
11 by substituting for each of the dollar amounts therein
12 (after any increase determined under subsection (e)) a dol-
13 lar amount equal to—

14 “(1) 50 percent of the dollar amount so in ef-
15 fect in the case of a married individual filing a sepa-
16 rate return, and

17 “(2) 80 percent of the dollar amount so in ef-
18 fect in any other case.

19 “(c) ADJUSTMENTS BASED ON FEDERAL HEALTH
20 REFORM SAVINGS.—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), in the case of any taxable year beginning
23 after December 31, 2012, subsection (a) shall be ap-
24 plied—

1 “(A) by substituting ‘2 percent’ for ‘1 per-
2 cent’, and

3 “(B) by substituting ‘3 percent’ for ‘1.5
4 percent’.

5 “(2) ADJUSTMENTS BASED ON EXCESS FED-
6 ERAL HEALTH REFORM SAVINGS.—

7 “(A) EXCEPTION IF FEDERAL HEALTH RE-
8 FORM SAVINGS SIGNIFICANTLY EXCEEDS BASE
9 AMOUNT.—If the excess Federal health reform
10 savings is more than \$150,000,000,000 but not
11 more than \$175,000,000,000, paragraph (1)
12 shall not apply.

13 “(B) FURTHER ADJUSTMENT FOR ADDI-
14 TIONAL FEDERAL HEALTH REFORM SAVINGS.—
15 If the excess Federal health reform savings is
16 more than \$175,000,000,000, paragraphs (1)
17 and (2) of subsection (a) (and paragraph (1) of
18 this subsection) shall not apply to any taxable
19 year beginning after December 31, 2012.

20 “(C) EXCESS FEDERAL HEALTH REFORM
21 SAVINGS.—For purposes of this subsection, the
22 term ‘excess Federal health reform savings’
23 means the excess of—

24 “(i) the Federal health reform sav-
25 ings, over

1 “(ii) \$525,000,000,000.

2 “(D) FEDERAL HEALTH REFORM SAV-
3 INGS.—The term ‘Federal health reform sav-
4 ings’ means the sum of the amounts described
5 in subparagraphs (A) and (B) of paragraph (3).

6 “(3) DETERMINATION OF FEDERAL HEALTH
7 REFORM SAVINGS.—Not later than December 1,
8 2012, the Director of the Office of Management and
9 Budget shall—

10 “(A) determine, on the basis of the study
11 conducted under paragraph (4), the aggregate
12 reductions in Federal expenditures which have
13 been achieved as a result of the provisions of,
14 and amendments made by, division B of the
15 America’s Affordable Health Choices Act of
16 2009 during the period beginning on October 1,
17 2009, and ending with the latest date with re-
18 spect to which the Director has sufficient data
19 to make such determination, and

20 “(B) estimate, on the basis of such study
21 and the determination under subparagraph (A),
22 the aggregate reductions in Federal expendi-
23 tures which will be achieved as a result of such
24 provisions and amendments during so much of
25 the period beginning with fiscal year 2010 and

1 ending with fiscal year 2019 as is not taken
2 into account under subparagraph (A).

3 “(4) STUDY OF FEDERAL HEALTH REFORM
4 SAVINGS.—The Director of the Office of Manage-
5 ment and Budget shall conduct a study of the reduc-
6 tions in Federal expenditures during fiscal years
7 2010 through 2019 which are attributable to the
8 provisions of, and amendments made by, division B
9 of the America’s Affordable Health Choices Act of
10 2009. The Director shall complete such study not
11 later than December 1, 2012.

12 “(5) REDUCTIONS IN FEDERAL EXPENDITURES
13 DETERMINED WITHOUT REGARD TO PROGRAM IN-
14 VESTMENTS.—For purposes of paragraphs (3) and
15 (4), reductions in Federal expenditures shall be de-
16 termined without regard to section 1121 of the
17 America’s Affordable Health Choices Act of 2009
18 and other program investments under division B
19 thereof.

20 “(d) MODIFIED ADJUSTED GROSS INCOME.—For
21 purposes of this section, the term ‘modified adjusted gross
22 income’ means adjusted gross income reduced by any de-
23 duction allowed for investment interest (as defined in sec-
24 tion 163(d)). In the case of an estate or trust, adjusted

1 gross income shall be determined as provided in section
2 67(e).

3 “(e) INFLATION ADJUSTMENTS.—

4 “(1) IN GENERAL.—In the case of taxable years
5 beginning after 2011, the dollar amounts in sub-
6 section (a) shall be increased by an amount equal
7 to—

8 “(A) such dollar amount, multiplied by

9 “(B) the cost-of-living adjustment deter-
10 mined under section 1(f)(3) for the calendar
11 year in which the taxable year begins, by sub-
12 stituting ‘calendar year 2010’ for ‘calendar year
13 1992’ in subparagraph (B) thereof.

14 “(2) ROUNDING.—If any amount as adjusted
15 under paragraph (1) is not a multiple of \$5,000,
16 such amount shall be rounded to the next lowest
17 multiple of \$5,000.

18 “(f) SPECIAL RULES.—

19 “(1) NONRESIDENT ALIEN.—In the case of a
20 nonresident alien individual, only amounts taken
21 into account in connection with the tax imposed
22 under section 871(b) shall be taken into account
23 under this section.

24 “(2) CITIZENS AND RESIDENTS LIVING
25 ABROAD.—The dollar amounts in effect under sub-

1 section (a) (after the application of subsections (b)
2 and (e)) shall be decreased by the excess of—

3 “(A) the amounts excluded from the tax-
4 payer’s gross income under section 911, over

5 “(B) the amounts of any deductions or ex-
6 clusions disallowed under section 911(d)(6)
7 with respect to the amounts described in sub-
8 paragraph (A).

9 “(3) CHARITABLE TRUSTS.—Subsection (a)
10 shall not apply to a trust all the unexpired interests
11 in which are devoted to one or more of the purposes
12 described in section 170(c)(2)(B).

13 “(4) NOT TREATED AS TAX IMPOSED BY THIS
14 CHAPTER FOR CERTAIN PURPOSES.—The tax im-
15 posed under this section shall not be treated as tax
16 imposed by this chapter for purposes of determining
17 the amount of any credit under this chapter or for
18 purposes of section 55.”.

19 (b) CLERICAL AMENDMENT.—The table of subparts
20 for part VIII of subchapter A of chapter 1 of such Code,
21 as added by this title, is amended by inserting after the
22 item relating to subpart A the following new item:

“SUBPART B. SURCHARGE ON HIGH INCOME INDIVIDUALS.”.

23 (c) SECTION 15 NOT TO APPLY.—The amendment
24 made by subsection (a) shall not be treated as a change

1 in a rate of tax for purposes of section 15 of the Internal
2 Revenue Code of 1986.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2010.

6 **SEC. 442. DELAY IN APPLICATION OF WORLDWIDE ALLOCA-**
7 **TION OF INTEREST.**

8 (a) IN GENERAL.—Paragraphs (5)(D) and (6) of sec-
9 tion 864(f) of the Internal Revenue Code of 1986 are each
10 amended by striking “December 31, 2010” and inserting
11 “December 31, 2019”.

12 (b) TRANSITION.—Subsection (f) of section 864 of
13 such Code is amended by striking paragraph (7).

14 **PART 2—PREVENTION OF TAX AVOIDANCE**

15 **SEC. 451. LIMITATION ON TREATY BENEFITS FOR CERTAIN**
16 **DEDUCTIBLE PAYMENTS.**

17 (a) IN GENERAL.—Section 894 of the Internal Rev-
18 enue Code of 1986 (relating to income affected by treaty)
19 is amended by adding at the end the following new sub-
20 section:

21 “(d) LIMITATION ON TREATY BENEFITS FOR CER-
22 TAIN DEDUCTIBLE PAYMENTS.—

23 “(1) IN GENERAL.—In the case of any deduct-
24 ible related-party payment, any withholding tax im-
25 posed under chapter 3 (and any tax imposed under

1 subpart A or B of this part) with respect to such
2 payment may not be reduced under any treaty of the
3 United States unless any such withholding tax would
4 be reduced under a treaty of the United States if
5 such payment were made directly to the foreign par-
6 ent corporation.

7 “(2) DEDUCTIBLE RELATED-PARTY PAY-
8 MENT.—For purposes of this subsection, the term
9 ‘deductible related-party payment’ means any pay-
10 ment made, directly or indirectly, by any person to
11 any other person if the payment is allowable as a de-
12 duction under this chapter and both persons are
13 members of the same foreign controlled group of en-
14 tities.

15 “(3) FOREIGN CONTROLLED GROUP OF ENTI-
16 TIES.—For purposes of this subsection—

17 “(A) IN GENERAL.—The term ‘foreign
18 controlled group of entities’ means a controlled
19 group of entities the common parent of which
20 is a foreign corporation.

21 “(B) CONTROLLED GROUP OF ENTITIES.—
22 The term ‘controlled group of entities’ means a
23 controlled group of corporations as defined in
24 section 1563(a)(1), except that—

1 “(i) ‘more than 50 percent’ shall be
2 substituted for ‘at least 80 percent’ each
3 place it appears therein, and

4 “(ii) the determination shall be made
5 without regard to subsections (a)(4) and
6 (b)(2) of section 1563.

7 A partnership or any other entity (other than a
8 corporation) shall be treated as a member of a
9 controlled group of entities if such entity is con-
10 trolled (within the meaning of section
11 954(d)(3)) by members of such group (includ-
12 ing any entity treated as a member of such
13 group by reason of this sentence).

14 “(4) FOREIGN PARENT CORPORATION.—For
15 purposes of this subsection, the term ‘foreign parent
16 corporation’ means, with respect to any deductible
17 related-party payment, the common parent of the
18 foreign controlled group of entities referred to in
19 paragraph (3)(A).

20 “(5) REGULATIONS.—The Secretary may pre-
21 scribe such regulations or other guidance as are nec-
22 essary or appropriate to carry out the purposes of
23 this subsection, including regulations or other guid-
24 ance which provide for—

1 “(A) the treatment of two or more persons
2 as members of a foreign controlled group of en-
3 tities if such persons would be the common par-
4 ent of such group if treated as one corporation,
5 and

6 “(B) the treatment of any member of a
7 foreign controlled group of entities as the com-
8 mon parent of such group if such treatment is
9 appropriate taking into account the economic
10 relationships among such entities.”.

11 (b) **EFFECTIVE DATE.**—The amendment made by
12 this section shall apply to payments made after the date
13 of the enactment of this Act.

14 **SEC. 452. CODIFICATION OF ECONOMIC SUBSTANCE DOC-**
15 **TRINE.**

16 (a) **IN GENERAL.**—Section 7701 of the Internal Rev-
17 enue Code of 1986 is amended by redesignating subsection
18 (o) as subsection (p) and by inserting after subsection (n)
19 the following new subsection:

20 “(o) **CLARIFICATION OF ECONOMIC SUBSTANCE**
21 **DOCTRINE.**—

22 “(1) **APPLICATION OF DOCTRINE.**—In the case
23 of any transaction to which the economic substance
24 doctrine is relevant, such transaction shall be treated
25 as having economic substance only if—

1 “(A) the transaction changes in a mean-
2 ingful way (apart from Federal income tax ef-
3 fects) the taxpayer’s economic position, and

4 “(B) the taxpayer has a substantial pur-
5 pose (apart from Federal income tax effects)
6 for entering into such transaction.

7 “(2) SPECIAL RULE WHERE TAXPAYER RELIES
8 ON PROFIT POTENTIAL.—

9 “(A) IN GENERAL.—The potential for
10 profit of a transaction shall be taken into ac-
11 count in determining whether the requirements
12 of subparagraphs (A) and (B) of paragraph (1)
13 are met with respect to the transaction only if
14 the present value of the reasonably expected
15 pre-tax profit from the transaction is substan-
16 tial in relation to the present value of the ex-
17 pected net tax benefits that would be allowed if
18 the transaction were respected.

19 “(B) TREATMENT OF FEES AND FOREIGN
20 TAXES.—Fees and other transaction expenses
21 and foreign taxes shall be taken into account as
22 expenses in determining pre-tax profit under
23 subparagraph (A).

24 “(3) STATE AND LOCAL TAX BENEFITS.—For
25 purposes of paragraph (1), any State or local income

1 tax effect which is related to a Federal income tax
2 effect shall be treated in the same manner as a Fed-
3 eral income tax effect.

4 “(4) FINANCIAL ACCOUNTING BENEFITS.—For
5 purposes of paragraph (1)(B), achieving a financial
6 accounting benefit shall not be taken into account as
7 a purpose for entering into a transaction if the ori-
8 gin of such financial accounting benefit is a reduc-
9 tion of Federal income tax.

10 “(5) DEFINITIONS AND SPECIAL RULES.—For
11 purposes of this subsection—

12 “(A) ECONOMIC SUBSTANCE DOCTRINE.—
13 The term ‘economic substance doctrine’ means
14 the common law doctrine under which tax bene-
15 fits under subtitle A with respect to a trans-
16 action are not allowable if the transaction does
17 not have economic substance or lacks a business
18 purpose.

19 “(B) EXCEPTION FOR PERSONAL TRANS-
20 ACTIONS OF INDIVIDUALS.—In the case of an
21 individual, paragraph (1) shall apply only to
22 transactions entered into in connection with a
23 trade or business or an activity engaged in for
24 the production of income.

1 “(C) OTHER COMMON LAW DOCTRINES
2 NOT AFFECTED.—Except as specifically pro-
3 vided in this subsection, the provisions of this
4 subsection shall not be construed as altering or
5 supplanting any other rule of law, and the re-
6 quirements of this subsection shall be construed
7 as being in addition to any such other rule of
8 law.

9 “(D) DETERMINATION OF APPLICATION OF
10 DOCTRINE NOT AFFECTED.—The determination
11 of whether the economic substance doctrine is
12 relevant to a transaction (or series of trans-
13 actions) shall be made in the same manner as
14 if this subsection had never been enacted.

15 “(6) REGULATIONS.—The Secretary shall pre-
16 scribe such regulations as may be necessary or ap-
17 propriate to carry out the purposes of this sub-
18 section.”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to transactions entered into after
21 the date of the enactment of this Act.

22 **SEC. 453. PENALTIES FOR UNDERPAYMENTS.**

23 (a) PENALTY FOR UNDERPAYMENTS ATTRIBUTABLE
24 TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE.—

1 (1) IN GENERAL.—Subsection (b) of section
2 6662 of the Internal Revenue Code of 1986 is
3 amended by inserting after paragraph (5) the fol-
4 lowing new paragraph:

5 “(6) Any disallowance of claimed tax benefits
6 by reason of a transaction lacking economic sub-
7 stance (within the meaning of section 7701(o)) or
8 failing to meet the requirements of any similar rule
9 of law.”.

10 (2) INCREASED PENALTY FOR NONDISCLOSED
11 TRANSACTIONS.—Section 6662 of such Code is
12 amended by adding at the end the following new
13 subsection:

14 “(i) INCREASE IN PENALTY IN CASE OF NONDIS-
15 CLOSED NONECONOMIC SUBSTANCE TRANSACTIONS.—

16 “(1) IN GENERAL.—In the case of any portion
17 of an underpayment which is attributable to one or
18 more nondisclosed noneconomic substance trans-
19 actions, subsection (a) shall be applied with respect
20 to such portion by substituting ‘40 percent’ for ‘20
21 percent’.

22 “(2) NONDISCLOSED NONECONOMIC SUB-
23 STANCE TRANSACTIONS.—For purposes of this sub-
24 section, the term ‘nondisclosed noneconomic sub-
25 stance transaction’ means any portion of a trans-

1 action described in subsection (b)(6) with respect to
2 which the relevant facts affecting the tax treatment
3 are not adequately disclosed in the return nor in a
4 statement attached to the return.

5 “(3) SPECIAL RULE FOR AMENDED RE-
6 TURNS.—Except as provided in regulations, in no
7 event shall any amendment or supplement to a re-
8 turn of tax be taken into account for purposes of
9 this subsection if the amendment or supplement is
10 filed after the earlier of the date the taxpayer is first
11 contacted by the Secretary regarding the examina-
12 tion of the return or such other date as is specified
13 by the Secretary.”.

14 (3) CONFORMING AMENDMENT.—Subparagraph
15 (B) of section 6662A(e)(2) of such Code is amend-
16 ed—

17 (A) by striking “section 6662(h)” and in-
18 serting “subsections (h) or (i) of section 6662”,
19 and

20 (B) by striking “GROSS VALUATION
21 MISSTATEMENT PENALTY” in the heading and
22 inserting “CERTAIN INCREASED UNDER-
23 PAYMENT PENALTIES”.

24 (b) REASONABLE CAUSE EXCEPTION NOT APPLICA-
25 BLE TO NONECONOMIC SUBSTANCE TRANSACTIONS, TAX

1 SHELTERS, AND CERTAIN LARGE OR PUBLICLY TRADED
2 PERSONS.—Subsection (c) of section 6664 of such Code
3 is amended—

4 (1) by redesignating paragraphs (2) and (3) as
5 paragraphs (3) and (4), respectively,

6 (2) by striking “paragraph (2)” in paragraph
7 (4), as so redesignated, and inserting “paragraph
8 (3)”, and

9 (3) by inserting after paragraph (1) the fol-
10 lowing new paragraph:

11 “(2) EXCEPTION.—Paragraph (1) shall not
12 apply to—

13 “(A) to any portion of an underpayment
14 which is attributable to one or more tax shelters
15 (as defined in section 6662(d)(2)(C)) or trans-
16 actions described in section 6662(b)(6), and

17 “(B) to any taxpayer if such taxpayer is a
18 specified person (as defined in section
19 6662(d)(2)(D)(ii)).”.

20 (c) APPLICATION OF PENALTY FOR ERRONEOUS
21 CLAIM FOR REFUND OR CREDIT TO NONECONOMIC SUB-
22 STANCE TRANSACTIONS.—Section 6676 of such Code is
23 amended by redesignating subsection (c) as subsection (d)
24 and inserting after subsection (b) the following new sub-
25 section:

1 “(c) NONECONOMIC SUBSTANCE TRANSACTIONS
2 TREATED AS LACKING REASONABLE BASIS.—For pur-
3 poses of this section, any excessive amount which is attrib-
4 utable to any transaction described in section 6662(b)(6)
5 shall not be treated as having a reasonable basis.”.

6 (d) SPECIAL UNDERSTATEMENT REDUCTION RULE
7 FOR CERTAIN LARGE OR PUBLICLY TRADED PERSONS.—

8 (1) IN GENERAL.—Paragraph (2) of section
9 6662(d) of such Code is amended by adding at the
10 end the following new subparagraph:

11 “(D) SPECIAL REDUCTION RULE FOR CER-
12 TAIN LARGE OR PUBLICLY TRADED PERSONS.—

13 “(i) IN GENERAL.—In the case of any
14 specified person—

15 “(I) subparagraph (B) shall not
16 apply, and

17 “(II) the amount of the under-
18 statement under subparagraph (A)
19 shall be reduced by that portion of the
20 understatement which is attributable
21 to any item with respect to which the
22 taxpayer has a reasonable belief that
23 the tax treatment of such item by the
24 taxpayer is more likely than not the
25 proper tax treatment of such item.

1 “(ii) SPECIFIED PERSON.—For pur-
2 poses of this subparagraph, the term ‘spec-
3 ified person’ means—

4 “(I) any person required to file
5 periodic or other reports under section
6 13 of the Securities Exchange Act of
7 1934, and

8 “(II) any corporation with gross
9 receipts in excess of \$100,000,000 for
10 the taxable year involved.

11 All persons treated as a single employer
12 under section 52(a) shall be treated as one
13 person for purposes of subclause (II).”.

14 (2) CONFORMING AMENDMENT.—Subparagraph
15 (C) of section 6662(d)(2) of such Code is amended
16 by striking “Subparagraph (B)” and inserting “Sub-
17 paragraphs (B) and (D)(i)(II)”.

18 (e) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to transactions entered into after
20 the date of the enactment of this Act.

21 **DIVISION B—MEDICARE AND** 22 **MEDICAID IMPROVEMENTS**

23 **SEC. 1001. TABLE OF CONTENTS OF DIVISION.**

24 The table of contents for this division is as follows:

DIVISION B—MEDICARE AND MEDICAID IMPROVEMENTS

Sec. 1001. Table of contents of division.

TITLE I—IMPROVING HEALTH CARE VALUE

Subtitle A—Provisions Related to Medicare Part A

PART 1—MARKET BASKET UPDATES

- Sec. 1101. Skilled nursing facility payment update.
- Sec. 1102. Inpatient rehabilitation facility payment update.
- Sec. 1103. Incorporating productivity improvements into market basket updates that do not already incorporate such improvements.

PART 2—OTHER MEDICARE PART A PROVISIONS

- Sec. 1111. Payments to skilled nursing facilities.
- Sec. 1112. Medicare DSH report and payment adjustments in response to coverage expansion.

Subtitle B—Provisions Related to Part B

PART 1—PHYSICIANS' SERVICES

- Sec. 1121. Sustainable growth rate reform.
- Sec. 1122. Misvalued codes under the physician fee schedule.
- Sec. 1123. Payments for efficient areas.
- Sec. 1124. Modifications to the Physician Quality Reporting Initiative (PQRI).
- Sec. 1125. Adjustment to Medicare payment localities.

PART 2—MARKET BASKET UPDATES

- Sec. 1131. Incorporating productivity improvements into market basket updates that do not already incorporate such improvements.

PART 3—OTHER PROVISIONS

- Sec. 1141. Rental and purchase of power-driven wheelchairs.
- Sec. 1142. Extension of payment rule for brachytherapy.
- Sec. 1143. Home infusion therapy report to congress.
- Sec. 1144. Require ambulatory surgical centers (ASCs) to submit cost data and other data.
- Sec. 1145. Treatment of certain cancer hospitals.
- Sec. 1146. Medicare Improvement Fund.
- Sec. 1147. Payment for imaging services.
- Sec. 1148. Durable medical equipment program improvements.
- Sec. 1149. MedPAC study and report on bone mass measurement.

Subtitle C—Provisions Related to Medicare Parts A and B

- Sec. 1151. Reducing potentially preventable hospital readmissions.
- Sec. 1152. Post acute care services payment reform plan and bundling pilot program.
- Sec. 1153. Home health payment update for 2010.
- Sec. 1154. Payment adjustments for home health care.
- Sec. 1155. Incorporating productivity improvements into market basket update for home health services.
- Sec. 1156. Limitation on Medicare exceptions to the prohibition on certain physician referrals made to hospitals.
- Sec. 1157. Institute of Medicine study of geographic adjustment factors under Medicare.

Sec. 1158. Revision of Medicare payment systems to address geographic inequities.

Subtitle D—Medicare Advantage Reforms

PART 1—PAYMENT AND ADMINISTRATION

- Sec. 1161. Phase-in of payment based on fee-for-service costs.
- Sec. 1162. Quality bonus payments.
- Sec. 1163. Extension of Secretarial coding intensity adjustment authority.
- Sec. 1164. Simplification of annual beneficiary election periods.
- Sec. 1165. Extension of reasonable cost contracts.
- Sec. 1166. Limitation of waiver authority for employer group plans.
- Sec. 1167. Improving risk adjustment for payments.
- Sec. 1168. Elimination of MA Regional Plan Stabilization Fund.

PART 2—BENEFICIARY PROTECTIONS AND ANTI-FRAUD

- Sec. 1171. Limitation on cost-sharing for individual health services.
- Sec. 1172. Continuous open enrollment for enrollees in plans with enrollment suspension.
- Sec. 1173. Information for beneficiaries on MA plan administrative costs.
- Sec. 1174. Strengthening audit authority.
- Sec. 1175. Authority to deny plan bids.

PART 3—TREATMENT OF SPECIAL NEEDS PLANS

- Sec. 1176. Limitation on enrollment outside open enrollment period of individuals into chronic care specialized MA plans for special needs individuals.
- Sec. 1177. Extension of authority of special needs plans to restrict enrollment.

Subtitle E—Improvements to Medicare Part D

- Sec. 1181. Elimination of coverage gap.
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- Sec. 1183. Repeal of provision relating to submission of claims by pharmacies located in or contracting with long-term care facilities.
- Sec. 1184. 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.
- Sec. 1185. Permitting mid-year changes in enrollment for formulary changes that adversely impact an enrollee.

Subtitle F—Medicare Rural Access Protections

- Sec. 1191. Telehealth expansion and enhancements.
- Sec. 1192. Extension of outpatient hold harmless provision.
- Sec. 1193. Extension of section 508 hospital reclassifications.
- Sec. 1194. Extension of geographic floor for work.
- Sec. 1195. Extension of payment for technical component of certain physician pathology services.
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TITLE II—MEDICARE BENEFICIARY IMPROVEMENTS

Subtitle A—Improving and Simplifying Financial Assistance for Low Income Medicare Beneficiaries

- Sec. 1201. Improving assets tests for Medicare Savings Program and low-income subsidy program.
- Sec. 1202. Elimination of part D cost-sharing for certain non-institutionalized full-benefit dual eligible individuals.
- Sec. 1203. Eliminating barriers to enrollment.
- Sec. 1204. Enhanced oversight relating to reimbursements for retroactive low income subsidy enrollment.
- Sec. 1205. Intelligent assignment in enrollment.
- Sec. 1206. Special enrollment period and automatic enrollment process for certain subsidy eligible individuals.
- Sec. 1207. Application of MA premiums prior to rebate in calculation of low income subsidy benchmark.

Subtitle B—Reducing Health Disparities

- Sec. 1221. Ensuring effective communication in Medicare.
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Subtitle C—Miscellaneous Improvements

- Sec. 1231. Extension of therapy caps exceptions process.
- Sec. 1232. Extended months of coverage of immunosuppressive drugs for kidney transplant patients and other renal dialysis provisions.
- Sec. 1233. Advance care planning consultation.
- Sec. 1234. Part B special enrollment period and waiver of limited enrollment penalty for TRICARE beneficiaries.
- Sec. 1235. Exception for use of more recent tax year in case of gains from sale of primary residence in computing part B income-related premium.
- Sec. 1236. Demonstration program on use of patient decisions aids.

TITLE III—PROMOTING PRIMARY CARE, MENTAL HEALTH SERVICES, AND COORDINATED CARE

- Sec. 1301. Accountable Care Organization pilot program.
- Sec. 1302. Medical home pilot program.
- Sec. 1303. Payment incentive for selected primary care services.
- Sec. 1304. Increased reimbursement rate for certified nurse-midwives.
- Sec. 1305. Coverage and waiver of cost-sharing for preventive services.
- Sec. 1306. Waiver of deductible for colorectal cancer screening tests regardless of coding, subsequent diagnosis, or ancillary tissue removal.
- Sec. 1307. Excluding clinical social worker services from coverage under the medicare skilled nursing facility prospective payment system and consolidated payment.
- Sec. 1308. Coverage of marriage and family therapist services and mental health counselor services.
- Sec. 1309. Extension of physician fee schedule mental health add-on.
- Sec. 1310. Expanding access to vaccines.

TITLE IV—QUALITY

Subtitle A—Comparative Effectiveness Research

Sec. 1401. Comparative effectiveness research.

Subtitle B—Nursing Home Transparency

PART 1—IMPROVING TRANSPARENCY OF INFORMATION ON SKILLED
NURSING FACILITIES AND NURSING FACILITIES

Sec. 1411. Required disclosure of ownership and additional disclosable parties information.

Sec. 1412. Accountability requirements.

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Sec. 1422. National independent monitor pilot program.

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Subtitle C—Quality Measurements

Sec. 1441. Establishment of national priorities for quality improvement.

Sec. 1442. Development of new quality measures; GAO evaluation of data collection process for quality measurement.

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Subtitle E—Public Reporting on Health Care-Associated Infections

Sec. 1461. Requirement for public reporting by hospitals and ambulatory surgical centers on health care-associated infections.

TITLE V—MEDICARE GRADUATE MEDICAL EDUCATION

Sec. 1501. Distribution of unused residency positions.

Sec. 1502. Increasing training in nonprovider settings.

Sec. 1503. Rules for counting resident time for didactic and scholarly activities and other activities.

Sec. 1504. Preservation of resident cap positions from closed hospitals.

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TITLE VI—PROGRAM INTEGRITY

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Sec. 1601. Increased funding and flexibility to fight fraud and abuse.

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- Sec. 1611. Enhanced penalties for false statements on provider or supplier enrollment applications.
- Sec. 1612. Enhanced penalties for submission of false statements material to a false claim.
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- Sec. 1614. Enhanced hospice program safeguards.
- Sec. 1615. Enhanced penalties for individuals excluded from program participation.
- Sec. 1616. Enhanced penalties for provision of false information by Medicare Advantage and part D plans.
- Sec. 1617. Enhanced penalties for Medicare Advantage and part D marketing violations.
- Sec. 1618. Enhanced penalties for obstruction of program audits.
- Sec. 1619. Exclusion of certain individuals and entities from participation in Medicare and State health care programs.

Subtitle C—Enhanced Program and Provider Protections

- Sec. 1631. Enhanced CMS program protection authority.
- Sec. 1632. Enhanced Medicare, Medicaid, and CHIP program disclosure requirements relating to previous affiliations.
- Sec. 1633. Required inclusion of payment modifier for certain evaluation and management services.
- Sec. 1634. Evaluations and reports required under Medicare Integrity Program.
- Sec. 1635. Require providers and suppliers to adopt programs to reduce waste, fraud, and abuse.
- Sec. 1636. Maximum period for submission of Medicare claims reduced to not more than 12 months.
- Sec. 1637. Physicians who order durable medical equipment or home health services required to be Medicare enrolled physicians or eligible professionals.
- Sec. 1638. Requirement for physicians to provide documentation on referrals to programs at high risk of waste and abuse.
- Sec. 1639. Face to face encounter with patient required before physicians may certify eligibility for home health services or durable medical equipment under Medicare.
- Sec. 1640. Extension of testimonial subpoena authority to program exclusion investigations.
- Sec. 1641. Required repayments of Medicare and Medicaid overpayments.
- Sec. 1642. Expanded application of hardship waivers for OIG exclusions to beneficiaries of any Federal health care program.
- Sec. 1643. Access to certain information on renal dialysis facilities.
- Sec. 1644. Billing agents, clearinghouses, or other alternate payees required to register under Medicare.
- Sec. 1645. Conforming civil monetary penalties to False Claims Act amendments.

Subtitle D—Access to Information Needed to Prevent Fraud, Waste, and Abuse

- Sec. 1651. Access to Information Necessary to Identify Fraud, Waste, and Abuse.
- Sec. 1652. Elimination of duplication between the Healthcare Integrity and Protection Data Bank and the National Practitioner Data Bank.
- Sec. 1653. Compliance with HIPAA privacy and security standards.

TITLE VII—MEDICAID AND CHIP

Subtitle A—Medicaid and Health Reform

- Sec. 1701. Eligibility for individuals with income below 133-¹/₃ percent of the Federal poverty level.
- Sec. 1702. Requirements and special rules for certain Medicaid eligible individuals.
- Sec. 1703. CHIP and Medicaid maintenance of effort.
- Sec. 1704. Reduction in Medicaid DSH.
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Subtitle B—Prevention

- Sec. 1711. Required coverage of preventive services.
- Sec. 1712. Tobacco cessation.
- Sec. 1713. Optional coverage of nurse home visitation services.
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Subtitle C—Access

- Sec. 1721. Payments to primary care practitioners.
- Sec. 1722. Medical home pilot program.
- Sec. 1723. Translation or interpretation services.
- Sec. 1724. Optional coverage for freestanding birth center services.
- Sec. 1725. Inclusion of public health clinics under the vaccines for children program.

Subtitle D—Coverage

- Sec. 1731. Optional medicaid coverage of low-income HIV-infected individuals.
- Sec. 1732. Extending transitional Medicaid Assistance (TMA).
- Sec. 1733. Requirement of 12-month continuous coverage under certain CHIP programs.

Subtitle E—Financing

- Sec. 1741. Payments to pharmacists.
- Sec. 1742. Prescription drug rebates.
- Sec. 1743. Extension of prescription drug discounts to enrollees of medicaid managed care organizations.
- Sec. 1744. Payments for graduate medical education.

Subtitle F—Waste, Fraud, and Abuse

- Sec. 1751. Health-care acquired conditions.
- Sec. 1752. Evaluations and reports required under Medicaid Integrity Program.

- Sec. 1753. Require providers and suppliers to adopt programs to reduce waste, fraud, and abuse.
- Sec. 1754. Overpayments.
- Sec. 1755. Managed Care Organizations.
- Sec. 1756. Termination of provider participation under Medicaid and CHIP if terminated under Medicare or other State plan or child health plan.
- Sec. 1757. Medicaid and CHIP exclusion from participation relating to certain ownership, control, and management affiliations.
- Sec. 1758. Requirement to report expanded set of data elements under MMIS to detect fraud and abuse.
- Sec. 1759. Billing agents, clearinghouses, or other alternate payees required to register under Medicaid.
- Sec. 1760. Denial of payments for litigation-related misconduct.

Subtitle G—Puerto Rico and the Territories

- Sec. 1771. Puerto Rico and territories.

Subtitle H—Miscellaneous

- Sec. 1781. Technical corrections.
- Sec. 1782. Extension of QI program.

TITLE VIII—REVENUE-RELATED PROVISIONS

- Sec. 1801. Disclosures to facilitate identification of individuals likely to be ineligible for the low-income assistance under the Medicare prescription drug program to assist Social Security Administration's outreach to eligible individuals.
- Sec. 1802. Comparative Effectiveness Research Trust Fund; financing for Trust Fund.

TITLE IX—MISCELLANEOUS PROVISIONS

- Sec. 1901. Repeal of trigger provision.
- Sec. 1902. Repeal of comparative cost adjustment (CCA) program.
- Sec. 1903. Extension of gainsharing demonstration.
- Sec. 1904. Grants to States for quality home visitation programs for families with young children and families expecting children.
- Sec. 1905. Improved coordination and protection for dual eligibles.

1 **TITLE I—IMPROVING HEALTH**
2 **CARE VALUE**
3 **Subtitle A—Provisions Related to**
4 **Medicare Part A**

5 **PART 1—MARKET BASKET UPDATES**

6 **SEC. 1101. SKILLED NURSING FACILITY PAYMENT UPDATE.**

7 (a) IN GENERAL.—Section 1888(e)(4)(E)(ii) of the
8 Social Security Act (42 U.S.C. 1395yy(e)(4)(E)(ii)) is
9 amended—

10 (1) in subclause (III), by striking “and” at the
11 end;

12 (2) by redesignating subclause (IV) as sub-
13 clause (VI); and

14 (3) by inserting after subclause (III) the fol-
15 lowing new subclauses:

16 “(IV) for each of fiscal years
17 2004 through 2009, the rate com-
18 puted for the previous fiscal year in-
19 creased by the skilled nursing facility
20 market basket percentage change for
21 the fiscal year involved;

22 “(V) for fiscal year 2010, the
23 rate computed for the previous fiscal
24 year; and”.

1 (b) DELAYED EFFECTIVE DATE.—Section
2 1888(e)(4)(E)(ii)(V) of the Social Security Act, as in-
3 serted by subsection (a)(3), shall not apply to payment
4 for days before January 1, 2010.

5 **SEC. 1102. INPATIENT REHABILITATION FACILITY PAY-**
6 **MENT UPDATE.**

7 (a) IN GENERAL.—Section 1886(j)(3)(C) of the So-
8 cial Security Act (42 U.S.C. 1395ww(j)(3)(C)) is amended
9 by striking “and 2009” and inserting “through 2010”.

10 (b) DELAYED EFFECTIVE DATE.—The amendment
11 made by subsection (a) shall not apply to payment units
12 occurring before January 1, 2010.

13 **SEC. 1103. INCORPORATING PRODUCTIVITY IMPROVE-**
14 **MENTS INTO MARKET BASKET UPDATES**
15 **THAT DO NOT ALREADY INCORPORATE SUCH**
16 **IMPROVEMENTS.**

17 (a) INPATIENT ACUTE HOSPITALS.—Section
18 1886(b)(3)(B) of the Social Security Act (42 U.S.C.
19 1395ww(b)(3)(B)) is amended—

20 (1) in clause (iii)—

21 (A) by striking “(iii) For purposes of this
22 subparagraph,” and inserting “(iii)(I) For pur-
23 poses of this subparagraph, subject to the pro-
24 ductivity adjustment described in subclause
25 (II),”; and

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

3 “(II) The productivity adjustment described in this
4 subclause, with respect to an increase or change for a fis-
5 cal year or year or cost reporting period, or other annual
6 period, is a productivity offset equal to the percentage
7 change in the 10-year moving average of annual economy-
8 wide private nonfarm business multi-factor productivity
9 (as recently published before the promulgation of such in-
10 crease for the year or period involved). Except as other-
11 wise provided, any reference to the increase described in
12 this clause shall be a reference to the percentage increase
13 described in subclause (I) minus the percentage change
14 under this subclause.”;

15 (2) in the first sentence of clause (viii)(I), by
16 inserting “(but not below zero)” after “shall be re-
17 duced”; and

18 (3) in the first sentence of clause (ix)(I)—

19 (A) by inserting “(determined without re-
20 gard to clause (iii)(II)” after “clause (i)” the
21 second time it appears; and

22 (B) by inserting “(but not below zero)”
23 after “reduced”.

24 (b) SKILLED NURSING FACILITIES.—Section
25 1888(e)(5)(B) of such Act (42 U.S.C. 1395yy(e)(5))(B)

1 is amended by inserting “subject to the productivity ad-
2 justment described in section 1886(b)(3)(B)(iii)(II)” after
3 “as calculated by the Secretary”.

4 (c) LONG TERM CARE HOSPITALS.—Section
5 1886(m) of the Social Security Act (42 U.S.C.
6 1395ww(m)) is amended by adding at the end the fol-
7 lowing new paragraph:

8 “(3) PRODUCTIVITY ADJUSTMENT.—In imple-
9 menting the system described in paragraph (1) for
10 discharges occurring during the rate year ending in
11 2010 or any subsequent rate year for a hospital, to
12 the extent that an annual percentage increase factor
13 applies to a base rate for such discharges for the
14 hospital, such factor shall be subject to the produc-
15 tivity adjustment described in section
16 1886(b)(3)(B)(iii)(II).”.

17 (d) INPATIENT REHABILITATION FACILITIES.—The
18 second sentence of section 1886(j)(3)(C) of the Social Se-
19 curity Act (42 U.S.C. 1395ww(j)(3)(C)) is amended by in-
20 serting “(subject to the productivity adjustment described
21 in section 1886(b)(3)(B)(iii)(II))” after “appropriate per-
22 centage increase”.

23 (e) PSYCHIATRIC HOSPITALS.—Section 1886 of the
24 Social Security Act (42 U.S.C. 1395ww) is amended by
25 adding at the end the following new subsection:

1 “(o) PROSPECTIVE PAYMENT FOR PSYCHIATRIC
2 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 psy-
8 chiatric hospitals (as described in clause (i) of sub-
9 section (d)(1)(B) and psychiatric units (as described
10 in the matter following clause (v) of such sub-
11 section), see section 124 of the Medicare, Medicaid,
12 and SCHIP Balanced Budget Refinement Act of
13 1999.

14 “(2) PRODUCTIVITY ADJUSTMENT.—In imple-
15 menting the system described in paragraph (1) for
16 discharges occurring during the rate year ending in
17 2011 or any subsequent rate year for a psychiatric
18 hospital or unit described in such paragraph, to the
19 extent that an annual percentage increase factor ap-
20 plies to a base rate for such discharges for the hos-
21 pital or unit, respectively, such factor shall be sub-
22 ject to the productivity adjustment described in sec-
23 tion 1886(b)(3)(B)(iii)(II).”.

24 (f) HOSPICE CARE.—Subclause (VII) of section
25 1814(i)(1)(C)(ii) of the Social Security Act (42 U.S.C.

1 1395f(i)(1)(C)(ii) is amended by inserting after “the
2 market basket percentage increase” the following: “(which
3 is subject to the productivity adjustment described in sec-
4 tion 1886(b)(3)(B)(iii)(II))”.

5 (g) EFFECTIVE DATE.—The amendments made by
6 subsections (a), (b), (d), and (f) shall apply to annual in-
7 creases effected for fiscal years beginning with fiscal year
8 2010.

9 **PART 2—OTHER MEDICARE PART A PROVISIONS**

10 **SEC. 1111. PAYMENTS TO SKILLED NURSING FACILITIES.**

11 (a) CHANGE IN RECALIBRATION FACTOR.—

12 (1) ANALYSIS.—The Secretary of Health and
13 Human Services shall conduct, using calendar year
14 2006 claims data, an initial analysis comparing total
15 payments under title XVIII of the Social Security
16 Act for skilled nursing facility services under the
17 RUG–53 and under the RUG–44 classification sys-
18 tems.

19 (2) ADJUSTMENT IN RECALIBRATION FAC-
20 TOR.—Based on the initial analysis under paragraph
21 (1), the Secretary shall adjust the case mix indexes
22 under section 1888(e)(4)(G)(i) of the Social Security
23 Act (42 U.S.C. 1395yy(e)(4)(G)(i)) for fiscal year
24 2010 by the appropriate recalibration factor as pro-
25 posed in the proposed rule for Medicare skilled nurs-

1 ing facilities issued by such Secretary on May 12,
2 2009 (74 Federal Register 22214 et seq.).

3 (b) CHANGE IN PAYMENT FOR NONTHERAPY ANCIL-
4 LARY (NTA) SERVICES AND THERAPY SERVICES.—

5 (1) CHANGES UNDER CURRENT SNF CLASSI-
6 FICATION SYSTEM.—

7 (A) IN GENERAL.—Subject to subpara-
8 graph (B), the Secretary of Health and Human
9 Services shall, under the system for payment of
10 skilled nursing facility services under section
11 1888(e) of the Social Security Act (42 U.S.C.
12 1395yy(e)), increase payment by 10 percent for
13 non-therapy ancillary services (as specified by
14 the Secretary in the notice issued on November
15 27, 1998 (63 Federal Register 65561 et seq.))
16 and shall decrease payment for the therapy case
17 mix component of such rates by 5.5 percent.

18 (B) EFFECTIVE DATE.—The changes in
19 payment described in subparagraph (A) shall
20 apply for days on or after January 1, 2010,
21 and until the Secretary implements an alter-
22 native case mix classification system for pay-
23 ment of skilled nursing facility services under
24 section 1888(e) of the Social Security Act (42
25 U.S.C. 1395yy(e)).

1 (C) IMPLEMENTATION.—Notwithstanding
2 any other provision of law, the Secretary may
3 implement by program instruction or otherwise
4 the provisions of this paragraph.

5 (2) CHANGES UNDER A FUTURE SNF CASE MIX
6 CLASSIFICATION SYSTEM.—

7 (A) ANALYSIS.—

8 (i) IN GENERAL.—The Secretary of
9 Health and Human Services shall analyze
10 payments for non-therapy ancillary services
11 under a future skilled nursing facility clas-
12 sification system to ensure the accuracy of
13 payment for non-therapy ancillary services.
14 Such analysis shall consider use of appro-
15 priate indicators which may include age,
16 physical and mental status, ability to per-
17 form activities of daily living, prior nursing
18 home stay, broad RUG category, and a
19 proxy for length of stay.

20 (ii) APPLICATION.—Such analysis
21 shall be conducted in a manner such that
22 the future skilled nursing facility classifica-
23 tion system is implemented to apply to
24 services furnished during a fiscal year be-
25 ginning with fiscal year 2011.

1 (B) CONSULTATION.—In conducting the
2 analysis under subparagraph (A), the Secretary
3 shall consult with interested parties, including
4 the Medicare Payment Advisory Commission
5 and other interested stakeholders, to identify
6 appropriate predictors of nontherapy ancillary
7 costs.

8 (C) RULEMAKING.—The Secretary shall
9 include the result of the analysis under sub-
10 paragraph (A) in the fiscal year 2011 rule-
11 making cycle for purposes of implementation
12 beginning for such fiscal year.

13 (D) IMPLEMENTATION.—Subject to sub-
14 paragraph (E) and consistent with subpara-
15 graph (A)(ii), the Secretary shall implement
16 changes to payments for non-therapy ancillary
17 services (which may include a separate rate
18 component for non-therapy ancillary services
19 and may include use of a model that predicts
20 payment amounts applicable for non-therapy
21 ancillary services) under such future skilled
22 nursing facility services classification system as
23 the Secretary determines appropriate based on
24 the analysis conducted pursuant to subpara-
25 graph (A).

1 (E) BUDGET NEUTRALITY.—The Secretary
2 shall implement changes described in subpara-
3 graph (D) in a manner such that the estimated
4 expenditures under such future skilled nursing
5 facility services classification system for a fiscal
6 year beginning with fiscal year 2011 with such
7 changes would be equal to the estimated ex-
8 penditures that would otherwise occur under
9 title XVIII of the Social Security Act under
10 such future skilled nursing facility services clas-
11 sification system for such year without such
12 changes.

13 (c) OUTLIER POLICY FOR NTA AND THERAPY.—Sec-
14 tion 1888(e) of the Social Security Act (42 U.S.C.
15 1395yy(e)) is amended by adding at the end the following
16 new paragraph:

17 “(13) OUTLIERS FOR NTA AND THERAPY.—

18 “(A) IN GENERAL.—With respect to
19 outliers because of unusual variations in the
20 type or amount of medically necessary care, be-
21 ginning with October 1, 2010, the Secretary—

22 “(i) shall provide for an addition or
23 adjustment to the payment amount other-
24 wise made under this section with respect

1 to non-therapy ancillary services in the
2 case of such outliers; and

3 “(ii) may provide for such an addition
4 or adjustment to the payment amount oth-
5 erwise made under this section with re-
6 spect to therapy services in the case of
7 such outliers.

8 “(B) OUTLIERS BASED ON AGGREGATE
9 COSTS.—Outlier adjustments or additional pay-
10 ments described in subparagraph (A) shall be
11 based on aggregate costs during a stay in a
12 skilled nursing facility and not on the number
13 of days in such stay.

14 “(C) BUDGET NEUTRALITY.— The Sec-
15 retary shall reduce estimated payments that
16 would otherwise be made under the prospective
17 payment system under this subsection with re-
18 spect to a fiscal year by 2 percent. The total
19 amount of the additional payments or payment
20 adjustments for outliers made under this para-
21 graph with respect to a fiscal year may not ex-
22 ceed 2 percent of the total payments projected
23 or estimated to be made based on the prospec-
24 tive payment system under this subsection for
25 the fiscal year.”.

1 (d) CONFORMING AMENDMENTS.—Section
2 1888(e)(8) of such Act (42 U.S.C. 1395yy(e)(8)) is
3 amended—

4 (1) in subparagraph (A), by inserting “and ad-
5 justment under section 1111(b) of the America’s Af-
6 fordable Health Choices Act of 2009;

7 (2) in subparagraph (B), by striking “and”;

8 (3) in subparagraph (C), by striking the period
9 and inserting “; and”; and

10 (4) by adding at the end the following new sub-
11 paragraph:

12 “(D) the establishment of outliers under
13 paragraph (13).”.

14 **SEC. 1112. MEDICARE DSH REPORT AND PAYMENT ADJUST-**
15 **MENTS IN RESPONSE TO COVERAGE EXPAN-**
16 **SION.**

17 (a) DSH REPORT.—

18 (1) IN GENERAL.—Not later than January 1,
19 2016, the Secretary of Health and Human Services
20 shall submit to Congress a report on Medicare DSH
21 taking into account the impact of the health care re-
22 forms carried out under division A in reducing the
23 number of uninsured individuals. The report shall
24 include recommendations relating to the following:

1 (A) The appropriate amount, targeting,
2 and distribution of Medicare DSH to com-
3 pensate for higher Medicare costs associated
4 with serving low-income beneficiaries (taking
5 into account variations in the empirical jus-
6 tification for Medicare DSH attributable to hos-
7 pital characteristics, including bed size), con-
8 sistent with the original intent of Medicare
9 DSH.

10 (B) The appropriate amount, targeting,
11 and distribution of Medicare DSH to hospitals
12 given their continued uncompensated care costs,
13 to the extent such costs remain.

14 (2) COORDINATION WITH MEDICAID DSH RE-
15 PORT.—The Secretary shall coordinate the report
16 under this subsection with the report on Medicaid
17 DSH under section 1704(a).

18 (b) PAYMENT ADJUSTMENTS IN RESPONSE TO COV-
19 ERAGE EXPANSION.—

20 (1) IN GENERAL.—If there is a significant de-
21 crease in the national rate of uninsurance as a result
22 of this Act (as determined under paragraph (2)(A)),
23 then the Secretary of Health and Human Services
24 shall, beginning in fiscal year 2017, implement the
25 following adjustments to Medicare DSH:

1 (A) The amount of Medicare DSH shall be
2 adjusted based on the recommendations of the
3 report under subsection (a)(1)(A) and shall
4 take into account variations in the empirical
5 justification for Medicare DSH attributable to
6 hospital characteristics, including bed size.

7 (B) Subject to paragraph (3), increase
8 Medicare DSH for a hospital by an additional
9 amount that is based on the amount of uncom-
10 pensated care provided by the hospital based on
11 criteria for uncompensated care as determined
12 by the Secretary, which shall exclude bad debt.

13 (2) SIGNIFICANT DECREASE IN NATIONAL RATE
14 OF UNINSURANCE AS A RESULT OF THIS ACT.—For
15 purposes of this subsection—

16 (A) IN GENERAL.—There is a “significant
17 decrease in the national rate of uninsurance as
18 a result of this Act” if there is a decrease in
19 the national rate of uninsurance (as defined in
20 subparagraph (B)) from 2012 to 2014 that ex-
21 ceeds 8 percentage points.

22 (B) NATIONAL RATE OF UNINSURANCE
23 DEFINED.—The term “national rate of
24 uninsurance” means, for a year, such rate for
25 the under-65 population for the year as deter-

1 mined and published by the Bureau of the Cen-
2 sus in its Current Population Survey in or
3 about September of the succeeding year.

4 (3) UNCOMPENSATED CARE INCREASE.—

5 (A) COMPUTATION OF DSH SAVINGS.—For
6 each fiscal year (beginning with fiscal year
7 2017), the Secretary shall estimate the aggre-
8 gate reduction in Medicare DSH that will result
9 from the adjustment under paragraph (1)(A).

10 (B) STRUCTURE OF PAYMENT IN-
11 CREASE.—The Secretary shall compute the in-
12 crease in Medicare DSH under paragraph
13 (1)(B) for a fiscal year in accordance with a
14 formula established by the Secretary that pro-
15 vides that—

16 (i) the aggregate amount of such in-
17 crease for the fiscal year does not exceed
18 50 percent of the aggregate reduction in
19 Medicare DSH estimated by the Secretary
20 for such fiscal year; and

21 (ii) hospitals with higher levels of un-
22 compensated care receive a greater in-
23 crease.

24 (c) MEDICARE DSH.—In this section, the term
25 “Medicare DSH” means adjustments in payments under

1 section 1886(d)(5)(F) of the Social Security Act (42
2 U.S.C. 1395ww(d)(5)(F)) for inpatient hospital services
3 furnished by disproportionate share hospitals.

4 **Subtitle B—Provisions Related to** 5 **Part B**

6 **PART 1—PHYSICIANS’ SERVICES**

7 **SEC. 1121. SUSTAINABLE GROWTH RATE REFORM.**

8 (a) TRANSITIONAL UPDATE FOR 2010.—Section
9 1848(d) of the Social Security Act (42 U.S.C. 1395w–
10 4(d)) is amended by adding at the end the following new
11 paragraph:

12 “(10) UPDATE FOR 2010.—The update to the
13 single conversion factor established in paragraph
14 (1)(C) for 2010 shall be the percentage increase in
15 the MEI (as defined in section 1842(i)(3)) for that
16 year.”

17 (b) REBASING SGR USING 2009; LIMITATION ON
18 CUMULATIVE ADJUSTMENT PERIOD.—Section 1848(d)(4)
19 of such Act (42 U.S.C. 1395w–4(d)(4)) is amended—

20 (1) in subparagraph (B), by striking “subpara-
21 graph (D)” and inserting “subparagraphs (D) and
22 (G)”; and

23 (2) by adding at the end the following new sub-
24 paragraph:

1 “(G) REBASING USING 2009 FOR FUTURE
2 UPDATE ADJUSTMENTS.—In determining the
3 update adjustment factor under subparagraph
4 (B) for 2011 and subsequent years—

5 “(i) the allowed expenditures for 2009
6 shall be equal to the amount of the actual
7 expenditures for physicians’ services during
8 2009; and

9 “(ii) the reference in subparagraph
10 (B)(ii)(I) to ‘April 1, 1996’ shall be treat-
11 ed as a reference to ‘January 1, 2009 (or,
12 if later, the first day of the fifth year be-
13 fore the year involved)’.”.

14 (c) LIMITATION ON PHYSICIANS’ SERVICES IN-
15 CLUDED IN TARGET GROWTH RATE COMPUTATION TO
16 SERVICES COVERED UNDER PHYSICIAN FEE SCHED-
17 ULE.—Effective for services furnished on or after January
18 1, 2009, section 1848(f)(4)(A) of such Act is amended
19 striking “(such as clinical” and all that follows through
20 “in a physician’s office” and inserting “for which payment
21 under this part is made under the fee schedule under this
22 section, for services for practitioners described in section
23 1842(b)(18)(C) on a basis related to such fee schedule,
24 or for services described in section 1861(p) (other than

1 such services when furnished in the facility of a provider
2 of services)”.
3

4 (d) ESTABLISHMENT OF SEPARATE TARGET
5 GROWTH RATES FOR CATEGORIES OF SERVICES.—

6 (1) ESTABLISHMENT OF SERVICE CAT-
7 EGORIES.—Subsection (j) of section 1848 of the So-
8 cial Security Act (42 U.S.C. 1395w-4) is amended
9 by adding at the end the following new paragraph:

10 “(5) SERVICE CATEGORIES.—For services fur-
11 nished on or after January 1, 2009, each of the fol-
12 lowing categories of physicians’ services (as defined
13 in paragraph (3)) shall be treated as a separate
14 ‘service category’:

15 “(A) Evaluation and management services
16 that are procedure codes (for services covered
17 under this title) for—

18 “(i) services in the category des-
19 ignated Evaluation and Management in the
20 Health Care Common Procedure Coding
21 System (established by the Secretary under
22 subsection (c)(5) as of December 31, 2009,
23 and as subsequently modified by the Sec-
retary); and

1 “(ii) preventive services (as defined in
2 section 1861(iii)) for which payment is
3 made under this section.

4 “(B) All other services not described in
5 subparagraph (A).

6 Service categories established under this paragraph
7 shall apply without regard to the specialty of the
8 physician furnishing the service.”.

9 (2) ESTABLISHMENT OF SEPARATE CONVER-
10 SION FACTORS FOR EACH SERVICE CATEGORY.—
11 Subsection (d)(1) of section 1848 of the Social Secu-
12 rity Act (42 U.S.C. 1395w-4) is amended—

13 (A) in subparagraph (A)—

14 (i) by designating the sentence begin-
15 ning “The conversion factor” as clause (i)
16 with the heading “APPLICATION OF SIN-
17 GLE CONVERSION FACTOR.—” and with
18 appropriate indentation;

19 (ii) by striking “The conversion fac-
20 tor” and inserting “Subject to clause (ii),
21 the conversion factor”; and

22 (iii) by adding at the end the fol-
23 lowing new clause:

1 “(ii) APPLICATION OF MULTIPLE CON-
2 VERSION FACTORS BEGINNING WITH
3 2011.—

4 “(I) IN GENERAL.—In applying
5 clause (i) for years beginning with
6 2011, separate conversion factors
7 shall be established for each service
8 category of physicians’ services (as de-
9 fined in subsection (j)(5)) and any
10 reference in this section to a conver-
11 sion factor for such years shall be
12 deemed to be a reference to the con-
13 version factor for each of such cat-
14 egories.

15 “(II) INITIAL CONVERSION FAC-
16 TORS.—Such factors for 2011 shall be
17 based upon the single conversion fac-
18 tor for the previous year multiplied by
19 the update established under para-
20 graph (11) for such category for
21 2011.

22 “(III) UPDATING OF CONVER-
23 SION FACTORS.—Such factor for a
24 service category for a subsequent year
25 shall be based upon the conversion

1 factor for such category for the pre-
2 vious year and adjusted by the update
3 established for such category under
4 paragraph (11) for the year in-
5 volved.”; and

6 (B) in subparagraph (D), by striking
7 “other physicians’ services” and inserting “for
8 physicians’ services described in the service cat-
9 egory described in subsection (j)(5)(B)”.

10 (3) ESTABLISHING UPDATES FOR CONVERSION
11 FACTORS FOR SERVICE CATEGORIES.—Section
12 1848(d) of the Social Security Act (42 U.S.C.
13 1395w-4(d)), as amended by subsection (a), is
14 amended—

15 (A) in paragraph (4)(C)(iii), by striking
16 “The allowed” and inserting “Subject to para-
17 graph (11)(B), the allowed”; and

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

20 “(11) UPDATES FOR SERVICE CATEGORIES BE-
21 GINNING WITH 2011.—

22 “(A) IN GENERAL.—In applying paragraph
23 (4) for a year beginning with 2011, the fol-
24 lowing rules apply:

1 “(i) APPLICATION OF SEPARATE UP-
2 DATE ADJUSTMENTS FOR EACH SERVICE
3 CATEGORY.—Pursuant to paragraph
4 (1)(A)(ii)(I), the update shall be made to
5 the conversion factor for each service cat-
6 egory (as defined in subsection (j)(5))
7 based upon an update adjustment factor
8 for the respective category and year and
9 the update adjustment factor shall be com-
10 puted, for a year, separately for each serv-
11 ice category.

12 “(ii) COMPUTATION OF ALLOWED AND
13 ACTUAL EXPENDITURES BASED ON SERV-
14 ICE CATEGORIES.—In computing the prior
15 year adjustment component and the cumu-
16 lative adjustment component under clauses
17 (i) and (ii) of paragraph (4)(B), the fol-
18 lowing rules apply:

19 “(I) APPLICATION BASED ON
20 SERVICE CATEGORIES.—The allowed
21 expenditures and actual expenditures
22 shall be the allowed and actual ex-
23 penditures for the service category, as
24 determined under subparagraph (B).

1 “(II) APPLICATION OF CATEGORY
2 SPECIFIC TARGET GROWTH RATE.—
3 The growth rate applied under clause
4 (ii)(II) of such paragraph shall be the
5 target growth rate for the service cat-
6 egory involved under subsection (f)(5).

7 “(B) DETERMINATION OF ALLOWED EX-
8 PENDITURES.—In applying paragraph (4) for a
9 year beginning with 2010, notwithstanding sub-
10 paragraph (C)(iii) of such paragraph, the al-
11 lowed expenditures for a service category for a
12 year is an amount computed by the Secretary
13 as follows:

14 “(i) FOR 2010.—For 2010:

15 “(I) TOTAL 2009 ACTUAL EX-
16 PENDITURES FOR ALL SERVICES IN-
17 CLUDED IN SGR COMPUTATION FOR
18 EACH SERVICE CATEGORY.—Compute
19 total actual expenditures for physi-
20 cians’ services (as defined in sub-
21 section (f)(4)(A)) for 2009 for each
22 service category.

23 “(II) INCREASE BY GROWTH
24 RATE TO OBTAIN 2010 ALLOWED EX-
25 PENDITURES FOR SERVICE CAT-

1 EGORY.—Compute allowed expendi-
2 tures for the service category for 2010
3 by increasing the allowed expenditures
4 for the service category for 2009 com-
5 puted under subclause (I) by the tar-
6 get growth rate for such service cat-
7 egory under subsection (f) for 2010.

8 “(ii) FOR SUBSEQUENT YEARS.—For
9 a subsequent year, take the amount of al-
10 lowed expenditures for such category for
11 the preceding year (under clause (i) or this
12 clause) and increase it by the target
13 growth rate determined under subsection
14 (f) for such category and year.”.

15 (4) APPLICATION OF SEPARATE TARGET
16 GROWTH RATES FOR EACH CATEGORY.—

17 (A) IN GENERAL.—Section 1848(f) of the
18 Social Security Act (42 U.S.C. 1395w-4(f)) is
19 amended by adding at the end the following
20 new paragraph:

21 “(5) APPLICATION OF SEPARATE TARGET
22 GROWTH RATES FOR EACH SERVICE CATEGORY BE-
23 GINNING WITH 2010.—The target growth rate for a
24 year beginning with 2010 shall be computed and ap-
25 plied separately under this subsection for each serv-

1 ice category (as defined in subsection (j)(5)) and
2 shall be computed using the same method for com-
3 puting the target growth rate except that the factor
4 described in paragraph (2)(C) for—

5 “(A) the service category described in sub-
6 section (j)(5)(A) shall be increased by 0.02; and

7 “(B) the service category described in sub-
8 section (j)(5)(B) shall be increased by 0.01.”.

9 (B) USE OF TARGET GROWTH RATES.—

10 Section 1848 of such Act is further amended—

11 (i) in subsection (d)—

12 (I) in paragraph (1)(E)(ii), by in-
13 sserting “or target” after “sustain-
14 able”; and

15 (II) in paragraph (4)(B)(ii)(II),
16 by inserting “or target” after “sus-
17 tainable”; and

18 (ii) in the heading of subsection (f),
19 by inserting “AND TARGET GROWTH
20 RATE” after “SUSTAINABLE GROWTH
21 RATE”;

22 (iii) in subsection (f)(1)—

23 (I) by striking “and” at the end
24 of subparagraph (A);

1 (II) in subparagraph (B), by in-
2 serting “before 2010” after “each
3 succeeding year” and by striking the
4 period at the end and inserting “;
5 and”; and

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

8 “(C) November 1 of each succeeding year
9 the target growth rate for such succeeding year
10 and each of the 2 preceding years.”; and

11 (iv) in subsection (f)(2), in the matter
12 before subparagraph (A), by inserting after
13 “beginning with 2000” the following: “and
14 ending with 2009”.

15 (e) APPLICATION TO ACCOUNTABLE CARE ORGANI-
16 ZATION PILOT PROGRAM.—In applying the target growth
17 rate under subsections (d) and (f) of section 1848 of the
18 Social Security Act to services furnished by a practitioner
19 to beneficiaries who are attributable to an accountable
20 care organization under the pilot program provided under
21 section 1866D of such Act, the Secretary of Health and
22 Human Services shall develop, not later than January 1,
23 2012, for application beginning with 2012, a method
24 that—

1 (1) allows each such organization to have its
2 own expenditure targets and updates for such practi-
3 tioners, with respect to beneficiaries who are attrib-
4 utable to that organization, that are consistent with
5 the methodologies described in such subsection (f);
6 and

7 (2) provides that the target growth rate appli-
8 cable to other physicians shall not apply to such
9 physicians to the extent that the physicians' services
10 are furnished through the accountable care organiza-
11 tion.

12 In applying paragraph (1), the Secretary of Health and
13 Human Services may apply the difference in the update
14 under such paragraph on a claim-by-claim or lump sum
15 basis and such a payment shall be taken into account
16 under the pilot program.

17 **SEC. 1122. MISVALUED CODES UNDER THE PHYSICIAN FEE**
18 **SCHEDULE.**

19 (a) IN GENERAL.—Section 1848(c)(2) of the Social
20 Security Act (42 U.S.C. 1395w-4(c)(2)) is amended by
21 adding at the end the following new subparagraphs:

22 “(K) POTENTIALLY MISVALUED CODES.—

23 “(i) IN GENERAL.—The Secretary
24 shall—

1 “(I) periodically identify services
2 as being potentially misvalued using
3 criteria specified in clause (ii); and

4 “(II) review and make appro-
5 priate adjustments to the relative val-
6 ues established under this paragraph
7 for services identified as being poten-
8 tially misvalued under subclause (I).

9 “(ii) IDENTIFICATION OF POTEN-
10 TIALY MISVALUED CODES.—For purposes
11 of identifying potentially misvalued services
12 pursuant to clause (i)(I), the Secretary
13 shall examine (as the Secretary determines
14 to be appropriate) codes (and families of
15 codes as appropriate) for which there has
16 been the fastest growth; codes (and fami-
17 lies of codes as appropriate) that have ex-
18 perienced substantial changes in practice
19 expenses; codes for new technologies or
20 services within an appropriate period (such
21 as three years) after the relative values are
22 initially established for such codes; mul-
23 tiple codes that are frequently billed in
24 conjunction with furnishing a single serv-
25 ice; codes with low relative values, particu-

1 larly those that are often billed multiple
2 times for a single treatment; codes which
3 have not been subject to review since the
4 implementation of the RBRVS (the so-
5 called ‘Harvard-valued codes’); and such
6 other codes determined to be appropriate
7 by the Secretary.

8 “(iii) REVIEW AND ADJUSTMENTS.—

9 “(I) The Secretary may use ex-
10 isting processes to receive rec-
11 ommendations on the review and ap-
12 propriate adjustment of potentially
13 misvalued services described clause
14 (i)(II).

15 “(II) The Secretary may conduct
16 surveys, other data collection activi-
17 ties, studies, or other analyses as the
18 Secretary determines to be appro-
19 priate to facilitate the review and ap-
20 propriate adjustment described in
21 clause (i)(II).

22 “(III) The Secretary may use
23 analytic contractors to identify and
24 analyze services identified under
25 clause (i)(I), conduct surveys or col-

1 lect data, and make recommendations
2 on the review and appropriate adjust-
3 ment of services described in clause
4 (i)(II).

5 “(IV) The Secretary may coordi-
6 nate the review and appropriate ad-
7 justment described in clause (i)(II)
8 with the periodic review described in
9 subparagraph (B).

10 “(V) As part of the review and
11 adjustment described in clause (i)(II),
12 including with respect to codes with
13 low relative values described in clause
14 (ii), the Secretary may make appro-
15 priate coding revisions (including
16 using existing processes for consider-
17 ation of coding changes) which may
18 include consolidation of individual
19 services into bundled codes for pay-
20 ment under the fee schedule under
21 subsection (b).

22 “(VI) The provisions of subpara-
23 graph (B)(ii)(II) shall apply to adjust-
24 ments to relative value units made
25 pursuant to this subparagraph in the

1 same manner as such provisions apply
2 to adjustments under subparagraph
3 (B)(ii)(II).

4 “(L) VALIDATING RELATIVE VALUE
5 UNITS.—

6 “(i) IN GENERAL.—The Secretary
7 shall establish a process to validate relative
8 value units under the fee schedule under
9 subsection (b).

10 “(ii) COMPONENTS AND ELEMENTS
11 OF WORK.—The process described in
12 clause (i) may include validation of work
13 elements (such as time, mental effort and
14 professional judgment, technical skill and
15 physical effort, and stress due to risk) in-
16 volved with furnishing a service and may
17 include validation of the pre, post, and
18 intra-service components of work.

19 “(iii) SCOPE OF CODES.—The valida-
20 tion of work relative value units shall in-
21 clude a sampling of codes for services that
22 is the same as the codes listed under sub-
23 paragraph (K)(ii)

24 “(iv) METHODS.—The Secretary may
25 conduct the validation under this subpara-

1 graph using methods described in sub-
2 clauses (I) through (V) of subparagraph
3 (K)(iii) as the Secretary determines to be
4 appropriate.

5 “(v) ADJUSTMENTS.—The Secretary
6 shall make appropriate adjustments to the
7 work relative value units under the fee
8 schedule under subsection (b). The provi-
9 sions of subparagraph (B)(ii)(II) shall
10 apply to adjustments to relative value units
11 made pursuant to this subparagraph in the
12 same manner as such provisions apply to
13 adjustments under subparagraph
14 (B)(ii)(II).”.

15 (b) IMPLEMENTATION.—

16 (1) FUNDING.—For purposes of carrying out
17 the provisions of subparagraphs (K) and (L) of
18 1848(c)(2) of the Social Security Act, as added by
19 subsection (a), in addition to funds otherwise avail-
20 able, out of any funds in the Treasury not otherwise
21 appropriated, there are appropriated to the Sec-
22 retary of Health and Human Services for the Center
23 for Medicare & Medicaid Services Program Manage-
24 ment Account \$20,000,000 for fiscal year 2010 and
25 each subsequent fiscal year. Amounts appropriated

1 under this paragraph for a fiscal year shall be avail-
2 able until expended.

3 (2) ADMINISTRATION.—

4 (A) Chapter 35 of title 44, United States
5 Code and the provisions of the Federal Advisory
6 Committee Act (5 U.S.C. App.) shall not apply
7 to this section or the amendment made by this
8 section.

9 (B) Notwithstanding any other provision of
10 law, the Secretary may implement subpara-
11 graphs (K) and (L) of 1848(c)(2) of the Social
12 Security Act, as added by subsection (a), by
13 program instruction or otherwise.

14 (C) Section 4505(d) of the Balanced
15 Budget Act of 1997 is repealed.

16 (D) Except for provisions related to con-
17 fidentiality of information, the provisions of the
18 Federal Acquisition Regulation shall not apply
19 to this section or the amendment made by this
20 section.

21 (3) FOCUSING CMS RESOURCES ON POTEN-
22 Tially OVERVALUED CODES.—Section 1868(a) of
23 the Social Security Act (42 1395ee(a)) is repealed.

1 **SEC. 1123. PAYMENTS FOR EFFICIENT AREAS.**

2 Section 1833 of the Social Security Act (42 U.S.C.
3 1395l) is amended by adding at the end the following new
4 subsection:

5 “(x) INCENTIVE PAYMENTS FOR EFFICIENT
6 AREAS.—

7 “(1) IN GENERAL.—In the case of services fur-
8 nished under the physician fee schedule under sec-
9 tion 1848 on or after January 1, 2011, and before
10 January 1, 2013, by a supplier that is paid under
11 such fee schedule in an efficient area (as identified
12 under paragraph (2)), in addition to the amount of
13 payment that would otherwise be made for such
14 services under this part, there also shall be paid (on
15 a monthly or quarterly basis) an amount equal to 5
16 percent of the payment amount for the services
17 under this part.

18 “(2) IDENTIFICATION OF EFFICIENT AREAS.—

19 “(A) IN GENERAL.—Based upon available
20 data, the Secretary shall identify those counties
21 or equivalent areas in the United States in the
22 lowest fifth percentile of utilization based on
23 per capita spending under this part and part A
24 for services provided in the most recent year for
25 which data are available as of the date of the
26 enactment of this subsection, as standardized to

1 eliminate the effect of geographic adjustments
2 in payment rates.

3 “(B) IDENTIFICATION OF COUNTIES
4 WHERE SERVICE IS FURNISHED.—For pur-
5 poses of paying the additional amount specified
6 in paragraph (1), if the Secretary uses the 5-
7 digit postal ZIP Code where the service is fur-
8 nished, the dominant county of the postal ZIP
9 Code (as determined by the United States Post-
10 al Service, or otherwise) shall be used to deter-
11 mine whether the postal ZIP Code is in a coun-
12 ty described in subparagraph (A).

13 “(C) LIMITATION ON REVIEW.—There
14 shall be no administrative or judicial review
15 under section 1869, 1878, or otherwise, respect-
16 ing—

17 “(i) the identification of a county or
18 other area under subparagraph (A); or

19 “(ii) the assignment of a postal ZIP
20 Code to a county or other area under sub-
21 paragraph (B).

22 “(D) PUBLICATION OF LIST OF COUNTIES;
23 POSTING ON WEBSITE.—With respect to a year
24 for which a county or area is identified under
25 this paragraph, the Secretary shall identify

1 such counties or areas as part of the proposed
2 and final rule to implement the physician fee
3 schedule under section 1848 for the applicable
4 year. The Secretary shall post the list of coun-
5 ties identified under this paragraph on the
6 Internet website of the Centers for Medicare &
7 Medicaid Services.”.

8 **SEC. 1124. MODIFICATIONS TO THE PHYSICIAN QUALITY**
9 **REPORTING INITIATIVE (PQRI).**

10 (a) **FEEDBACK.**—Section 1848(m)(5) of the Social
11 Security Act (42 U.S.C. 1395w–4(m)(5)) is amended by
12 adding at the end the following new subparagraph:

13 “(H) **FEEDBACK.**—The Secretary shall
14 provide timely feedback to eligible professionals
15 on the performance of the eligible professional
16 with respect to satisfactorily submitting data on
17 quality measures under this subsection.”.

18 (b) **APPEALS.**—Such section is further amended—

19 (1) in subparagraph (E), by striking “There
20 shall be” and inserting “Subject to subparagraph
21 (I), there shall be”; and

22 (2) by adding at the end the following new sub-
23 paragraph:

24 “(I) **INFORMAL APPEALS PROCESS.**—Not-
25 withstanding subparagraph (E), by not later

1 than January 1, 2011, the Secretary shall es-
2 tablish and have in place an informal process
3 for eligible professionals to appeal the deter-
4 mination that an eligible professional did not
5 satisfactorily submit data on quality measures
6 under this subsection.”.

7 (c) INTEGRATION OF PHYSICIAN QUALITY REPORT-
8 ING AND EHR REPORTING.—Section 1848(m) of such
9 Act is amended by adding at the end the following new
10 paragraph:

11 “(7) INTEGRATION OF PHYSICIAN QUALITY RE-
12 PORTING AND EHR REPORTING.—Not later than
13 January 1, 2012, the Secretary shall develop a plan
14 to integrate clinical reporting on quality measures
15 under this subsection with reporting requirements
16 under subsection (o) relating to the meaningful use
17 of electronic health records. Such integration shall
18 consist of the following:

19 “(A) The development of measures, the re-
20 porting of which would both demonstrate—

21 “(i) meaningful use of an electronic
22 health record for purposes of subsection
23 (o); and

24 “(ii) clinical quality of care furnished
25 to an individual.

1 “(B) The collection of health data to iden-
2 tify deficiencies in the quality and coordination
3 of care for individuals eligible for benefits under
4 this part.

5 “(C) Such other activities as specified by
6 the Secretary.”.

7 (d) EXTENSION OF INCENTIVE PAYMENTS.—Section
8 1848(m)(1) of such Act (42 U.S.C. 1395w-4(m)(1)) is
9 amended—

10 (1) in subparagraph (A), by striking “2010”
11 and inserting “2012”; and

12 (2) in subparagraph (B)(ii), by striking “2009
13 and 2010” and inserting “for each of the years 2009
14 through 2012”.

15 **SEC. 1125. ADJUSTMENT TO MEDICARE PAYMENT LOCAL-**
16 **ITIES.**

17 (a) IN GENERAL.—Section 1848(e) of the Social Se-
18 curity Act (42 U.S.C.1395w-4(e)) is amended by adding
19 at the end the following new paragraph:

20 “(6) TRANSITION TO USE OF MSAS AS FEE
21 SCHEDULE AREAS IN CALIFORNIA.—

22 “(A) IN GENERAL.—

23 “(i) REVISION.—Subject to clause (ii)
24 and notwithstanding the previous provi-
25 sions of this subsection, for services fur-

1 nished on or after January 1, 2011, the
2 Secretary shall revise the fee schedule
3 areas used for payment under this section
4 applicable to the State of California using
5 the Metropolitan Statistical Area (MSA)
6 iterative Geographic Adjustment Factor
7 methodology as follows:

8 “(I) The Secretary shall con-
9 figure the physician fee schedule areas
10 using the Core-Based Statistical
11 Areas-Metropolitan Statistical Areas
12 (each in this paragraph referred to as
13 an ‘MSA’), as defined by the Director
14 of the Office of Management and
15 Budget, as the basis for the fee sched-
16 ule areas. The Secretary shall employ
17 an iterative process to transition fee
18 schedule areas. First, the Secretary
19 shall list all MSAs within the State by
20 Geographic Adjustment Factor de-
21 scribed in paragraph (2) (in this para-
22 graph referred to as a ‘GAF’) in de-
23 scending order. In the first iteration,
24 the Secretary shall compare the GAF
25 of the highest cost MSA in the State

1 to the weighted-average GAF of the
2 group of remaining MSAs in the
3 State. If the ratio of the GAF of the
4 highest cost MSA to the weighted-av-
5 erage GAF of the rest of State is 1.05
6 or greater then the highest cost MSA
7 becomes a separate fee schedule area.

8 “(II) In the next iteration, the
9 Secretary shall compare the MSA of
10 the second-highest GAF to the weight-
11 ed-average GAF of the group of re-
12 maining MSAs. If the ratio of the sec-
13 ond-highest MSA’s GAF to the
14 weighted-average of the remaining
15 lower cost MSAs is 1.05 or greater,
16 the second-highest MSA becomes a
17 separate fee schedule area. The
18 iterative process continues until the
19 ratio of the GAF of the highest-cost
20 remaining MSA to the weighted-aver-
21 age of the remaining lower-cost MSAs
22 is less than 1.05, and the remaining
23 group of lower cost MSAs form a sin-
24 gle fee schedule area, If two MSAs

1 have identical GAFs, they shall be
2 combined in the iterative comparison.

3 “(ii) TRANSITION.—For services fur-
4 nished on or after January 1, 2011, and
5 before January 1, 2016, in the State of
6 California, after calculating the work, prac-
7 tice expense, and malpractice geographic
8 indices described in clauses (i), (ii), and
9 (iii) of paragraph (1)(A) that would other-
10 wise apply through application of this
11 paragraph, the Secretary shall increase any
12 such index to the county-based fee sched-
13 ule area value on December 31, 2009, if
14 such index would otherwise be less than
15 the value on January 1, 2010.

16 “(B) SUBSEQUENT REVISIONS.—

17 “(i) PERIODIC REVIEW AND ADJUST-
18 MENTS IN FEE SCHEDULE AREAS.—Subse-
19 quent to the process outlined in paragraph
20 (1)(C), not less often than every three
21 years, the Secretary shall review and up-
22 date the California Rest-of-State fee sched-
23 ule area using MSAs as defined by the Di-
24 rector of the Office of Management and

1 Budget and the iterative methodology de-
2 scribed in subparagraph (A)(i).

3 “(ii) LINK WITH GEOGRAPHIC INDEX
4 DATA REVISION.—The revision described in
5 clause (i) shall be made effective concu-
6 rently with the application of the periodic
7 review of the adjustment factors required
8 under paragraph (1)(C) for California for
9 2012 and subsequent periods. Upon re-
10 quest, the Secretary shall make available
11 to the public any county-level or MSA de-
12 rived data used to calculate the geographic
13 practice cost index.

14 “(C) REFERENCES TO FEE SCHEDULE
15 AREAS.—Effective for services furnished on or
16 after January 1, 2010, for the State of Cali-
17 fornia, any reference in this section to a fee
18 schedule area shall be deemed a reference to an
19 MSA in the State.”.

20 (b) CONFORMING AMENDMENT TO DEFINITION OF
21 FEE SCHEDULE AREA.—Section 1848(j)(2) of the Social
22 Security Act (42 U.S.C. 1395w(j)(2)) is amended by strik-
23 ing “The term” and inserting “Except as provided in sub-
24 section (e)(6)(C), the term”.

1 **PART 2—MARKET BASKET UPDATES**
2 **SEC. 1131. INCORPORATING PRODUCTIVITY IMPROVE-**
3 **MENTS INTO MARKET BASKET UPDATES**
4 **THAT DO NOT ALREADY INCORPORATE SUCH**
5 **IMPROVEMENTS.**

6 (a) **OUTPATIENT HOSPITALS.—**

7 (1) **IN GENERAL.—**The first sentence of section
8 1833(t)(3)(C)(iv) of the Social Security Act (42
9 U.S.C. 1395l(t)(3)(C)(iv)) is amended—

10 (A) by inserting “(which is subject to the
11 productivity adjustment described in subclause
12 (II) of such section)” after
13 “1886(b)(3)(B)(iii)”; and

14 (B) by inserting “(but not below 0)” after
15 “reduced”.

16 (2) **EFFECTIVE DATE.—**The amendments made
17 by paragraph (1) shall apply to increase factors for
18 services furnished in years beginning with 2010.

19 (b) **AMBULANCE SERVICES.—**Section 1834(l)(3)(B)
20 of such Act (42 U.S.C. 1395m(l)(3)(B)) is amended by
21 inserting before the period at the end the following: “and,
22 in the case of years beginning with 2010, subject to the
23 productivity adjustment described in section
24 1886(b)(3)(B)(iii)(II)”.

1 (c) AMBULATORY SURGICAL CENTER SERVICES.—
2 Section 1833(i)(2)(D) of such Act (42 U.S.C.
3 1395l(i)(2)(D)) is amended—

4 (1) by redesignating clause (v) as clause (vi);
5 and

6 (2) by inserting after clause (iv) the following
7 new clause:

8 “(v) In implementing the system described in clause
9 (i), for services furnished during 2010 or any subsequent
10 year, to the extent that an annual percentage change fac-
11 tor applies, such factor shall be subject to the productivity
12 adjustment described in section 1886(b)(3)(B)(iii)(II).”.

13 (d) LABORATORY SERVICES.—Section
14 1833(h)(2)(A) of such Act (42 U.S.C. 1395l(h)(2)(A)) is
15 amended—

16 (1) in clause (i), by striking “for each of years
17 2009 through 2013” and inserting “for 2009”; and

18 (2) clause (ii)—

19 (A) by striking “and” at the end of sub-
20 clause (III);

21 (B) by striking the period at the end of
22 subclause (IV) and inserting “; and”; and

23 (C) by adding at the end the following new
24 subclause:

1 “(V) the annual adjustment in the fee schedules
2 determined under clause (i) for years beginning with
3 2010 shall be subject to the productivity adjustment
4 described in section 1886(b)(3)(B)(iii)(II).”.

5 (e) CERTAIN DURABLE MEDICAL EQUIPMENT.—Sec-
6 tion 1834(a)(14) of such Act (42 U.S.C. 1395m(a)(14))
7 is amended—

8 (1) in subparagraph (K), by inserting before
9 the semicolon at the end the following: “, subject to
10 the productivity adjustment described in section
11 1886(b)(3)(B)(iii)(II)”;

12 (2) in subparagraph (L)(i), by inserting after
13 “June 2013,” the following: “subject to the produc-
14 tivity adjustment described in section
15 1886(b)(3)(B)(iii)(II),”;

16 (3) in subparagraph (L)(ii), by inserting after
17 “June 2013” the following: “, subject to the produc-
18 tivity adjustment described in section
19 1886(b)(3)(B)(iii)(II)”;

20 (4) in subparagraph (M), by inserting before
21 the period at the end the following: “, subject to the
22 productivity adjustment described in section
23 1886(b)(3)(B)(iii)(II)”.

1 **PART 3—OTHER PROVISIONS**

2 **SEC. 1141. RENTAL AND PURCHASE OF POWER-DRIVEN**
3 **WHEELCHAIRS.**

4 (a) **IN GENERAL.**—Section 1834(a)(7)(A)(iii) of the
5 Social Security Act (42 U.S.C. 1395m(a)(7)(A)(iii)) is
6 amended—

7 (1) in the heading, by inserting “CERTAIN COM-
8 PLEX REHABILITATIVE” after “OPTION FOR”; and

9 (2) by striking “power-driven wheelchair” and
10 inserting “complex rehabilitative power-driven wheel-
11 chair recognized by the Secretary as classified within
12 group 3 or higher”.

13 (b) **EFFECTIVE DATE.**—The amendments made by
14 subsection (a) shall take effect on January 1, 2011, and
15 shall apply to power-driven wheelchairs furnished on or
16 after such date. Such amendments shall not apply to con-
17 tracts entered into under section 1847 of the Social Secu-
18 rity Act (42 U.S.C. 1395w-3) pursuant to a bid submitted
19 under such section before October 1, 2010, under sub-
20 section (a)(1)(B)(i)(I) of such section.

21 **SEC. 1142. EXTENSION OF PAYMENT RULE FOR**
22 **BRACHYTHERAPY.**

23 Section 1833(t)(16)(C) of the Social Security Act (42
24 U.S.C. 1395l(t)(16)(C)), as amended by section 142 of the
25 Medicare Improvements for Patients and Providers Act of
26 2008 (Public Law 110-275), is amended by striking, the

1 first place it appears, “January 1, 2010” and inserting
2 “January 1, 2012”.

3 **SEC. 1143. HOME INFUSION THERAPY REPORT TO CON-**
4 **GRESS.**

5 Not later than 12 months after the date of enactment
6 of this Act, the Medicare Payment Advisory Commission
7 shall submit to Congress a report on the following:

8 (1) The scope of coverage for home infusion
9 therapy in the fee-for-service Medicare program
10 under title XVIII of the Social Security Act, Medi-
11 care Advantage under part C of such title, the vet-
12 eran’s health care program under chapter 17 of title
13 38, United States Code, and among private payers,
14 including an analysis of the scope of services pro-
15 vided by home infusion therapy providers to their
16 patients in such programs.

17 (2) The benefits and costs of providing such
18 coverage under the Medicare program, including a
19 calculation of the potential savings achieved through
20 avoided or shortened hospital and nursing home
21 stays as a result of Medicare coverage of home infu-
22 sion therapy.

23 (3) An assessment of sources of data on the
24 costs of home infusion therapy that might be used

1 to construct payment mechanisms in the Medicare
2 program.

3 (4) Recommendations, if any, on the structure
4 of a payment system under the Medicare program
5 for home infusion therapy, including an analysis of
6 the payment methodologies used under Medicare Ad-
7 vantage plans and private health plans for the provi-
8 sion of home infusion therapy and their applicability
9 to the Medicare program.

10 **SEC. 1144. REQUIRE AMBULATORY SURGICAL CENTERS**
11 **(ASCS) TO SUBMIT COST DATA AND OTHER**
12 **DATA.**

13 (a) COST REPORTING.—

14 (1) IN GENERAL.—Section 1833(i) of the Social
15 Security Act (42 U.S.C. 1395l(i)) is amended by
16 adding at the end the following new paragraph:

17 “(8) The Secretary shall require, as a condition of
18 the agreement described in section 1832(a)(2)(F)(i), the
19 submission of such cost report as the Secretary may speci-
20 fy, taking into account the requirements for such reports
21 under section 1815 in the case of a hospital.”.

22 (2) DEVELOPMENT OF COST REPORT.—Not
23 later than 3 years after the date of the enactment
24 of this Act, the Secretary of Health and Human
25 Services shall develop a cost report form for use

1 under section 1833(i)(8) of the Social Security Act,
2 as added by paragraph (1).

3 (3) AUDIT REQUIREMENT.—The Secretary shall
4 provide for periodic auditing of cost reports sub-
5 mitted under section 1833(i)(8) of the Social Secu-
6 rity Act, as added by paragraph (1).

7 (4) EFFECTIVE DATE.—The amendment made
8 by paragraph (1) shall apply to agreements applica-
9 ble to cost reporting periods beginning 18 months
10 after the date the Secretary develops the cost report
11 form under paragraph (2).

12 (b) ADDITIONAL DATA ON QUALITY.—

13 (1) IN GENERAL.—Section 1833(i)(7) of such
14 Act (42 U.S.C. 1395l(i)(7)) is amended—

15 (A) in subparagraph (B), by inserting
16 “subject to subparagraph (C),” after “may oth-
17 erwise provide,”; and

18 (B) by adding at the end the following new
19 subparagraph:

20 “(C) Under subparagraph (B) the Secretary shall re-
21 quire the reporting of such additional data relating to
22 quality of services furnished in an ambulatory surgical fa-
23 cility, including data on health care associated infections,
24 as the Secretary may specify.”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall to reporting for years begin-
3 ning with 2012.

4 **SEC. 1145. TREATMENT OF CERTAIN CANCER HOSPITALS.**

5 Section 1833(t) of the Social Security Act (42 U.S.C.
6 1395l(t)) is amended by adding at the end the following
7 new paragraph:

8 “(18) AUTHORIZATION OF ADJUSTMENT FOR
9 CANCER HOSPITALS.—

10 “(A) STUDY.—The Secretary shall conduct
11 a study to determine if, under the system under
12 this subsection, costs incurred by hospitals de-
13 scribed in section 1886(d)(1)(B)(v) with respect
14 to ambulatory payment classification groups ex-
15 ceed those costs incurred by other hospitals fur-
16 nishing services under this subsection (as deter-
17 mined appropriate by the Secretary).

18 “(B) AUTHORIZATION OF ADJUSTMENT.—
19 Insofar as the Secretary determines under sub-
20 paragraph (A) that costs incurred by hospitals
21 described in section 1886(d)(1)(B)(v) exceed
22 those costs incurred by other hospitals fur-
23 nishing services under this subsection, the Sec-
24 retary shall provide for an appropriate adjust-
25 ment under paragraph (2)(E) to reflect those

1 higher costs effective for services furnished on
2 or after January 1, 2011.”.

3 **SEC. 1146. MEDICARE IMPROVEMENT FUND.**

4 Section 1898(b)(1)(A) of the Social Security Act (42
5 U.S.C. 1395iii(b)(1)(A)) is amended to read as follows:

6 “(A) the period beginning with fiscal year
7 2011 and ending with fiscal year 2019,
8 \$8,000,000,000; and”.

9 **SEC. 1147. PAYMENT FOR IMAGING SERVICES.**

10 (a) **ADJUSTMENT IN PRACTICE EXPENSE TO RE-**
11 **FLECT HIGHER PRESUMED UTILIZATION.**—Section 1848
12 of the Social Security Act (42 U.S.C. 1395w) is amend-
13 ed—

14 (1) in subsection (b)(4)—

15 (A) in subparagraph (B), by striking “sub-
16 paragraph (A)” and inserting “this paragraph”;
17 and

18 (B) by adding at the end the following new
19 subparagraph:

20 “(C) **ADJUSTMENT IN PRACTICE EXPENSE**
21 **TO REFLECT HIGHER PRESUMED UTILIZA-**
22 **TION.**—In computing the number of practice
23 expense relative value units under subsection
24 (c)(2)(C)(ii) with respect to advanced diagnostic
25 imaging services (as defined in section

1 1834(e)(1)(B)) , the Secretary shall adjust such
2 number of units so it reflects a 75 percent
3 (rather than 50 percent) presumed rate of utili-
4 zation of imaging equipment.”; and

5 (2) in subsection (c)(2)(B)(v)(II), by inserting
6 “AND OTHER PROVISIONS” after “OPD PAYMENT
7 CAP”.

8 (b) ADJUSTMENT IN TECHNICAL COMPONENT “DIS-
9 COUNT” ON SINGLE-SESSION IMAGING TO CONSECUTIVE
10 BODY PARTS.—Section 1848(b)(4) of such Act is further
11 amended by adding at the end the following new subpara-
12 graph:

13 “(D) ADJUSTMENT IN TECHNICAL COMPO-
14 NENT DISCOUNT ON SINGLE-SESSION IMAGING
15 INVOLVING CONSECUTIVE BODY PARTS.—The
16 Secretary shall increase the reduction in ex-
17 penditures attributable to the multiple proce-
18 dure payment reduction applicable to the tech-
19 nical component for imaging under the final
20 rule published by the Secretary in the Federal
21 Register on November 21, 2005 (part 405 of
22 title 42, Code of Federal Regulations) from 25
23 percent to 50 percent.”.

24 (c) EFFECTIVE DATE.—Except as otherwise pro-
25 vided, this section, and the amendments made by this sec-

1 tion, shall apply to services furnished on or after January
2 1, 2011.

3 **SEC. 1148. DURABLE MEDICAL EQUIPMENT PROGRAM IM-**
4 **PROVEMENTS.**

5 (a) WAIVER OF SURETY BOND REQUIREMENT.—Sec-
6 tion 1834(a)(16) of the Social Security Act (42 U.S.C.
7 1395m(a)(16)) is amended by adding at the end the fol-
8 lowing: “The requirement for a surety bond described in
9 subparagraph (B) shall not apply in the case of a phar-
10 macy (i) that has been enrolled under section 1866(j) as
11 a supplier of durable medical equipment, prosthetics,
12 orthotics, and supplies and has been issued (which may
13 include renewal of) a provider number (as described in the
14 first sentence of this paragraph) for at least 5 years, and
15 (ii) for which a final adverse action (as defined in section
16 424.57(a) of title 42, Code of Federal Regulations) has
17 never been imposed.”.

18 (b) ENSURING SUPPLY OF OXYGEN EQUIPMENT .—

19 (1) IN GENERAL.—Section 1834(a)(5)(F) of the
20 Social Security Act (42 U.S.C. 1395m(a)(5)(F)) is
21 amended—

22 (A) in clause (ii), by striking “After the”
23 and inserting “Except as provided in clause
24 (iii), after the”; and

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

3 “(iii) CONTINUATION OF SUPPLY.—In
4 the case of a supplier furnishing such
5 equipment to an individual under this sub-
6 section as of the 27th month of the 36
7 months described in clause (i), the supplier
8 furnishing such equipment as of such
9 month shall continue to furnish such
10 equipment to such individual (either di-
11 rectly or through arrangements with other
12 suppliers of such equipment) during any
13 subsequent period of medical need for the
14 remainder of the reasonable useful lifetime
15 of the equipment, as determined by the
16 Secretary, regardless of the location of the
17 individual, unless another supplier has ac-
18 cepted responsibility for continuing to fur-
19 nish such equipment during the remainder
20 of such period.”.

21 (2) EFFECTIVE DATE.—The amendments made
22 by paragraph (1) shall take effect as of the date of
23 the enactment of this Act and shall apply to the fur-
24 nishing of equipment to individuals for whom the
25 27th month of a continuous period of use of oxygen

1 equipment described in section 1834(a)(5)(F) of the
2 Social Security Act occurs on or after July 1, 2010.

3 (c) TREATMENT OF CURRENT ACCREDITATION AP-
4 PPLICATIONS.—Section 1834(a)(20)(F) of such Act (42
5 U.S.C. 1395m(a)(20)(F)) is amended—

6 (1) in clause (i)—

7 (A) by striking “clause (ii)” and inserting
8 “clauses (ii) and (iii)”; and

9 (B) by striking “and” at the end;

10 (2) by striking the period at the end of clause
11 (ii)(II) and by inserting “; and”; and

12 (3) by adding at the end the following:

13 “(iii) the requirement for accredita-
14 tion described in clause (i) shall not apply
15 for purposes of supplying diabetic testing
16 supplies, canes, and crutches in the case of
17 a pharmacy that is enrolled under section
18 1866(j) as a supplier of durable medical
19 equipment, prosthetics, orthotics, and sup-
20 plies.

21 Any supplier that has submitted an application
22 for accreditation before August 1, 2009, shall
23 be deemed as meeting applicable standards and
24 accreditation requirement under this subpara-
25 graph until such time as the independent ac-

1 creditation organization takes action on the
2 supplier's application.”.

3 (d) **RESTORING 36-MONTH OXYGEN RENTAL PE-**
4 **RIOD IN CASE OF SUPPLIER BANKRUPTCY FOR CERTAIN**
5 **INDIVIDUALS.**—Section 1834(a)(5)(F) of such Act (42
6 U.S.C. 1395m(a)(5)(F)) is amended by adding at the end
7 the following new clause:

8 “(iii) **EXCEPTION FOR BANK-**
9 **RUPTCY.**—If a supplier of oxygen to an in-
10 dividual is declared bankrupt and its assets
11 are liquidated and at the time of such dec-
12 laration and liquidation more than 24
13 months of rental payments have been
14 made, the individual may begin under this
15 subparagraph a new 36-month rental pe-
16 riod with another supplier of oxygen.”.

17 **SEC. 1149. MEDPAC STUDY AND REPORT ON BONE MASS**
18 **MEASUREMENT.**

19 (a) **IN GENERAL.**—The Medicare Payment Advisory
20 Commission shall conduct a study regarding bone mass
21 measurement, including computed tomography, dual-en-
22 ergy x-ray absorptriometry, and vertebral fracture assess-
23 ment. The study shall focus on the following:

24 (1) An assessment of the adequacy of Medicare
25 payment rates for such services, taking into account

1 costs of acquiring the necessary equipment, profes-
2 sional work time, and practice expense costs.

3 (2) The impact of Medicare payment changes
4 since 2006 on beneficiary access to bone mass meas-
5 urement benefits in general and in rural and minor-
6 ity communities specifically.

7 (3) A review of the clinically appropriate and
8 recommended use among Medicare beneficiaries and
9 how usage rates among such beneficiaries compares
10 to such recommendations.

11 (4) In conjunction with the findings under (3),
12 recommendations, if necessary, regarding methods
13 for reaching appropriate use of bone mass measure-
14 ment studies among Medicare beneficiaries.

15 (b) REPORT.—The Commission shall submit a report
16 to the Congress, not later than 9 months after the date
17 of the enactment of this Act, containing a description of
18 the results of the study conducted under subsection (a)
19 and the conclusions and recommendations, if any, regard-
20 ing each of the issues described in paragraphs (1), (2) (3)
21 and (4) of such subsection.

1 **Subtitle C—Provisions Related to**
2 **Medicare Parts A and B**

3 **SEC. 1151. REDUCING POTENTIALLY PREVENTABLE HOS-**
4 **PITAL READMISSIONS.**

5 (a) HOSPITALS.—

6 (1) IN GENERAL.—Section 1886 of the Social
7 Security Act (42 U.S.C. 1395ww), as amended by
8 section 1103(a), is amended by adding at the end
9 the following new subsection:

10 “(p) ADJUSTMENT TO HOSPITAL PAYMENTS FOR
11 EXCESS READMISSIONS.—

12 “(1) IN GENERAL.—With respect to payment
13 for discharges from an applicable hospital (as de-
14 fined in paragraph (5)(C)) occurring during a fiscal
15 year beginning on or after October 1, 2011, in order
16 to account for excess readmissions in the hospital,
17 the Secretary shall reduce the payments that would
18 otherwise be made to such hospital under subsection
19 (d) (or section 1814(b)(3), as the case may be) for
20 such a discharge by an amount equal to the product
21 of—

22 “(A) the base operating DRG payment
23 amount (as defined in paragraph (2)) for the
24 discharge; and

1 “(B) the adjustment factor (described in
2 paragraph (3)(A)) for the hospital for the fiscal
3 year.

4 “(2) BASE OPERATING DRG PAYMENT
5 AMOUNT.—

6 “(A) IN GENERAL.—Except as provided in
7 subparagraph (B), for purposes of this sub-
8 section, the term ‘base operating DRG payment
9 amount’ means, with respect to a hospital for a
10 fiscal year, the payment amount that would
11 otherwise be made under subsection (d) for a
12 discharge if this subsection did not apply, re-
13 duced by any portion of such amount that is at-
14 tributable to payments under subparagraphs
15 (B) and (F) of paragraph (5).

16 “(B) ADJUSTMENTS.—For purposes of
17 subparagraph (A), in the case of a hospital that
18 is paid under section 1814(b)(3), the term ‘base
19 operating DRG payment amount’ means the
20 payment amount under such section.

21 “(3) ADJUSTMENT FACTOR.—

22 “(A) IN GENERAL.—For purposes of para-
23 graph (1), the adjustment factor under this
24 paragraph for an applicable hospital for a fiscal
25 year is equal to the greater of—

1 “(i) the ratio described in subpara-
2 graph (B) for the hospital for the applica-
3 ble period (as defined in paragraph (5)(D))
4 for such fiscal year; or

5 “(ii) the floor adjustment factor speci-
6 fied in subparagraph (C).

7 “(B) RATIO.—The ratio described in this
8 subparagraph for a hospital for an applicable
9 period is equal to 1 minus the ratio of—

10 “(i) the aggregate payments for ex-
11 cess readmissions (as defined in paragraph
12 (4)(A)) with respect to an applicable hos-
13 pital for the applicable period; and

14 “(ii) the aggregate payments for all
15 discharges (as defined in paragraph
16 (4)(B)) with respect to such applicable
17 hospital for such applicable period.

18 “(C) FLOOR ADJUSTMENT FACTOR.—For
19 purposes of subparagraph (A), the floor adjust-
20 ment factor specified in this subparagraph
21 for—

22 “(i) fiscal year 2012 is 0.99;

23 “(ii) fiscal year 2013 is 0.98;

24 “(iii) fiscal year 2014 is 0.97; or

25 “(iv) a subsequent fiscal year is 0.95.

1 “(4) AGGREGATE PAYMENTS, EXCESS READMIS-
2 SION RATIO DEFINED.—For purposes of this sub-
3 section:

4 “(A) AGGREGATE PAYMENTS FOR EXCESS
5 READMISSIONS.—The term ‘aggregate payments
6 for excess readmissions’ means, for a hospital
7 for a fiscal year, the sum, for applicable condi-
8 tions (as defined in paragraph (5)(A)), of the
9 product, for each applicable condition, of—

10 “(i) the base operating DRG payment
11 amount for such hospital for such fiscal
12 year for such condition;

13 “(ii) the number of admissions for
14 such condition for such hospital for such
15 fiscal year; and

16 “(iii) the excess readmissions ratio (as
17 defined in subparagraph (C)) for such hos-
18 pital for the applicable period for such fis-
19 cal year minus 1.

20 “(B) AGGREGATE PAYMENTS FOR ALL DIS-
21 CHARGES.—The term ‘aggregate payments for
22 all discharges’ means, for a hospital for a fiscal
23 year, the sum of the base operating DRG pay-
24 ment amounts for all discharges for all condi-
25 tions from such hospital for such fiscal year.

1 “(C) EXCESS READMISSION RATIO.—

2 “(i) IN GENERAL.—Subject to clauses
3 (ii) and (iii), the term ‘excess readmissions
4 ratio’ means, with respect to an applicable
5 condition for a hospital for an applicable
6 period, the ratio (but not less than 1.0)
7 of—

8 “(I) the risk adjusted readmis-
9 sions based on actual readmissions, as
10 determined consistent with a readmis-
11 sion measure methodology that has
12 been endorsed under paragraph
13 (5)(A)(ii)(I), for an applicable hospital
14 for such condition with respect to the
15 applicable period; to

16 “(II) the risk adjusted expected
17 readmissions (as determined con-
18 sistent with such a methodology) for
19 such hospital for such condition with
20 respect to such applicable period.

21 “(ii) EXCLUSION OF CERTAIN RE-
22 ADMISSIONS.—For purposes of clause (i),
23 with respect to a hospital, excess readmis-
24 sions shall not include readmissions for an
25 applicable condition for which there are

1 fewer than a minimum number (as deter-
2 mined by the Secretary) of discharges for
3 such applicable condition for the applicable
4 period and such hospital.

5 “(iii) ADJUSTMENT.—In order to pro-
6 mote a reduction over time in the overall
7 rate of readmissions for applicable condi-
8 tions, the Secretary may provide, beginning
9 with discharges for fiscal year 2014, for
10 the determination of the excess readmis-
11 sions ratio under subparagraph (C) to be
12 based on a ranking of hospitals by read-
13 mission ratios (from lower to higher read-
14 mission ratios) normalized to a benchmark
15 that is lower than the 50th percentile.

16 “(5) DEFINITIONS.—For purposes of this sub-
17 section:

18 “(A) APPLICABLE CONDITION.—The term
19 ‘applicable condition’ means, subject to sub-
20 paragraph (B), a condition or procedure se-
21 lected by the Secretary among conditions and
22 procedures for which—

23 “(i) readmissions (as defined in sub-
24 paragraph (E)) that represent conditions
25 or procedures that are high volume or high

1 expenditures under this title (or other cri-
2 teria specified by the Secretary); and

3 “(ii) measures of such readmissions—

4 “(I) have been endorsed by the
5 entity with a contract under section
6 1890(a); and

7 “(II) such endorsed measures
8 have appropriate exclusions for re-
9 admissions that are unrelated to the
10 prior discharge (such as a planned re-
11 admission or transfer to another ap-
12 plicable hospital).

13 “(B) EXPANSION OF APPLICABLE CONDI-
14 TIONS.—Beginning with fiscal year 2013, the
15 Secretary shall expand the applicable conditions
16 beyond the 3 conditions for which measures
17 have been endorsed as described in subpara-
18 graph (A)(ii)(I) as of the date of the enactment
19 of this subsection to the additional 4 conditions
20 that have been so identified by the Medicare
21 Payment Advisory Commission in its report to
22 Congress in June 2007 and to other conditions
23 and procedures which may include an all-condi-
24 tion measure of readmissions, as determined
25 appropriate by the Secretary. In expanding

1 such applicable conditions, the Secretary shall
2 seek the endorsement described in subpara-
3 graph (A)(ii)(I) but may apply such measures
4 without such an endorsement.

5 “(C) APPLICABLE HOSPITAL.—The term
6 ‘applicable hospital’ means a subsection (d) hos-
7 pital or a hospital that is paid under section
8 1814(b)(3).

9 “(D) APPLICABLE PERIOD.—The term ‘ap-
10 plicable period’ means, with respect to a fiscal
11 year, such period as the Secretary shall specify
12 for purposes of determining excess readmis-
13 sions.

14 “(E) READMISSION.—The term ‘readmis-
15 sion’ means, in the case of an individual who is
16 discharged from an applicable hospital, the ad-
17 mission of the individual to the same or another
18 applicable hospital within a time period speci-
19 fied by the Secretary from the date of such dis-
20 charge. Insofar as the discharge relates to an
21 applicable condition for which there is an en-
22 dorsed measure described in subparagraph
23 (A)(ii)(I), such time period (such as 30 days)
24 shall be consistent with the time period speci-
25 fied for such measure.

1 “(6) LIMITATIONS ON REVIEW.—There shall be
2 no administrative or judicial review under section
3 1869, section 1878, or otherwise of—

4 “(A) the determination of base operating
5 DRG payment amounts;

6 “(B) the methodology for determining the
7 adjustment factor under paragraph (3), includ-
8 ing excess readmissions ratio under paragraph
9 (4)(C), aggregate payments for excess readmis-
10 sions under paragraph (4)(A), and aggregate
11 payments for all discharges under paragraph
12 (4)(B), and applicable periods and applicable
13 conditions under paragraph (5);

14 “(C) the measures of readmissions as de-
15 scribed in paragraph (5)(A)(ii); and

16 “(D) the determination of a targeted hos-
17 pital under paragraph (8)(B)(i), the increase in
18 payment under paragraph (8)(B)(ii), the aggre-
19 gate cap under paragraph (8)(C)(i), the hos-
20 pital-specific limit under paragraph (8)(C)(ii),
21 and the form of payment made by the Secretary
22 under paragraph (8)(D).

23 “(7) MONITORING INAPPROPRIATE CHANGES IN
24 ADMISSIONS PRACTICES.—The Secretary shall mon-
25 itor the activities of applicable hospitals to determine

1 if such hospitals have taken steps to avoid patients
2 at risk in order to reduce the likelihood of increasing
3 readmissions for applicable conditions. If the Sec-
4 retary determines that such a hospital has taken
5 such a step, after notice to the hospital and oppor-
6 tunity for the hospital to undertake action to allevi-
7 ate such steps, the Secretary may impose an appro-
8 priate sanction.

9 “(8) ASSISTANCE TO CERTAIN HOSPITALS.—

10 “(A) IN GENERAL.—For purposes of pro-
11 viding funds to applicable hospitals to take
12 steps described in subparagraph (E) to address
13 factors that may impact readmissions of indi-
14 viduals who are discharged from such a hos-
15 pital, for fiscal years beginning on or after Oc-
16 tober 1, 2011, the Secretary shall make a pay-
17 ment adjustment for a hospital described in
18 subparagraph (B), with respect to each such
19 fiscal year, by a percent estimated by the Sec-
20 retary to be consistent with subparagraph (C).

21 “(B) TARGETED HOSPITALS.—Subpara-
22 graph (A) shall apply to an applicable hospital
23 that—

24 “(i) received (or, in the case of an
25 1814(b)(3) hospital, otherwise would have

1 been eligible to receive) \$10,000,000 or
2 more in disproportionate share payments
3 using the latest available data as estimated
4 by the Secretary; and

5 “(ii) provides assurances satisfactory
6 to the Secretary that the increase in pay-
7 ment under this paragraph shall be used
8 for purposes described in subparagraph
9 (E).

10 “(C) CAPS.—

11 “(i) AGGREGATE CAP.—The aggregate
12 amount of the payment adjustment under
13 this paragraph for a fiscal year shall not
14 exceed 5 percent of the estimated dif-
15 ference in the spending that would occur
16 for such fiscal year with and without appli-
17 cation of the adjustment factor described
18 in paragraph (3) and applied pursuant to
19 paragraph (1).

20 “(ii) HOSPITAL-SPECIFIC LIMIT.—The
21 aggregate amount of the payment adjust-
22 ment for a hospital under this paragraph
23 shall not exceed the estimated difference in
24 spending that would occur for such fiscal
25 year for such hospital with and without ap-

1 plication of the adjustment factor de-
2 scribed in paragraph (3) and applied pur-
3 suant to paragraph (1).

4 “(D) FORM OF PAYMENT.—The Secretary
5 may make the additional payments under this
6 paragraph on a lump sum basis, a periodic
7 basis, a claim by claim basis, or otherwise.

8 “(E) USE OF ADDITIONAL PAYMENT.—
9 Funding under this paragraph shall be used by
10 targeted hospitals for transitional care activities
11 designed to address the patient noncompliance
12 issues that result in higher than normal read-
13 mission rates, such as one or more of the fol-
14 lowing:

15 “(i) Providing care coordination serv-
16 ices to assist in transitions from the tar-
17 geted hospital to other settings.

18 “(ii) Hiring translators and inter-
19 preters.

20 “(iii) Increasing services offered by
21 discharge planners.

22 “(iv) Ensuring that individuals receive
23 a summary of care and medication orders
24 upon discharge.

1 “(v) Developing a quality improve-
2 ment plan to assess and remedy prevent-
3 able readmission rates.

4 “(vi) Assigning discharged individuals
5 to a medical home.

6 “(vii) Doing other activities as deter-
7 mined appropriate by the Secretary.

8 “(F) GAO REPORT ON USE OF FUNDS.—
9 Not later than 3 years after the date on which
10 funds are first made available under this para-
11 graph, the Comptroller General of the United
12 States shall submit to Congress a report on the
13 use of such funds.

14 “(G) DISPROPORTIONATE SHARE HOS-
15 PITAL PAYMENT.—In this paragraph, the term
16 ‘disproportionate share hospital payment’
17 means an additional payment amount under
18 subsection (d)(5)(F).”.

19 (b) APPLICATION TO CRITICAL ACCESS HOS-
20 PITALS.—Section 1814(l) of the Social Security Act (42
21 U.S.C. 1395f(l)) is amended—

22 (1) in paragraph (5)—

23 (A) by striking “and” at the end of sub-
24 paragraph (C);

1 (B) by striking the period at the end of
2 subparagraph (D) and inserting “; and”;

3 (C) by inserting at the end the following
4 new subparagraph:

5 “(E) The methodology for determining the ad-
6 justment factor under paragraph (5), including the
7 determination of aggregate payments for actual and
8 expected readmissions, applicable periods, applicable
9 conditions and measures of readmissions.”; and

10 (D) by redesignating such paragraph as
11 paragraph (6); and

12 (2) by inserting after paragraph (4) the fol-
13 lowing new paragraph:

14 “(5) The adjustment factor described in section
15 1886(p)(3) shall apply to payments with respect to a crit-
16 ical access hospital with respect to a cost reporting period
17 beginning in fiscal year 2012 and each subsequent fiscal
18 year (after application of paragraph (4) of this subsection)
19 in a manner similar to the manner in which such section
20 applies with respect to a fiscal year to an applicable hos-
21 pital as described in section 1886(p)(2).”.

22 (c) POST ACUTE CARE PROVIDERS.—

23 (1) INTERIM POLICY.—

24 (A) IN GENERAL.—With respect to a read-
25 mission to an applicable hospital or a critical

1 access hospital (as described in section 1814(l)
2 of the Social Security Act) from a post acute
3 care provider (as defined in paragraph (3)) and
4 such a readmission is not governed by section
5 412.531 of title 42, Code of Federal Regula-
6 tions, if the claim submitted by such a post-
7 acute care provider under title XVIII of the So-
8 cial Security Act indicates that the individual
9 was readmitted to a hospital from such a post-
10 acute care provider or admitted from home and
11 under the care of a home health agency within
12 30 days of an initial discharge from an applica-
13 ble hospital or critical access hospital, the pay-
14 ment under such title on such claim shall be the
15 applicable percent specified in subparagraph
16 (B) of the payment that would otherwise be
17 made under the respective payment system
18 under such title for such post-acute care pro-
19 vider if this subsection did not apply.

20 (B) APPLICABLE PERCENT DEFINED.—For
21 purposes of subparagraph (A), the applicable
22 percent is—

23 (i) for fiscal or rate year 2012 is
24 0.996;

1 (ii) for fiscal or rate year 2013 is
2 0.993; and

3 (iii) for fiscal or rate year 2014 is
4 0.99.

5 (C) EFFECTIVE DATE.—Subparagraph (1)
6 shall apply to discharges or services furnished
7 (as the case may be with respect to the applica-
8 ble post acute care provider) on or after the
9 first day of the fiscal year or rate year, begin-
10 ning on or after October 1, 2011, with respect
11 to the applicable post acute care provider.

12 (2) DEVELOPMENT AND APPLICATION OF PER-
13 FORMANCE MEASURES.—

14 (A) IN GENERAL.—The Secretary of
15 Health and Human Services shall develop ap-
16 propriate measures of readmission rates for
17 post acute care providers. The Secretary shall
18 seek endorsement of such measures by the enti-
19 ty with a contract under section 1890(a) of the
20 Social Security Act but may adopt and apply
21 such measures under this paragraph without
22 such an endorsement. The Secretary shall ex-
23 pand such measures in a manner similar to the
24 manner in which applicable conditions are ex-
25 panded under paragraph (5)(B) of section

1 1886(p) of the Social Security Act, as added by
2 subsection (a).

3 (B) IMPLEMENTATION.—The Secretary
4 shall apply, on or after October 1, 2014, with
5 respect to post acute care providers, policies
6 similar to the policies applied with respect to
7 applicable hospitals and critical access hospitals
8 under the amendments made by subsection (a).
9 The provisions of paragraph (1) shall apply
10 with respect to any period on or after October
11 1, 2014, and before such application date de-
12 scribed in the previous sentence in the same
13 manner as such provisions apply with respect to
14 fiscal or rate year 2014.

15 (C) MONITORING AND PENALTIES.—The
16 provisions of paragraph (7) of such section
17 1886(p) shall apply to providers under this
18 paragraph in the same manner as they apply to
19 hospitals under such section.

20 (3) DEFINITIONS.—For purposes of this sub-
21 section:

22 (A) POST ACUTE CARE PROVIDER.—The
23 term “post acute care provider” means—

1 (i) a skilled nursing facility (as de-
2 fined in section 1819(a) of the Social Secu-
3 rity Act);

4 (ii) an inpatient rehabilitation facility
5 (described in section 1886(h)(1)(A) of such
6 Act);

7 (iii) a home health agency (as defined
8 in section 1861(o) of such Act); and

9 (iv) a long term care hospital (as de-
10 fined in section 1861(ccc) of such Act).

11 (B) OTHER TERMS.—The terms “applica-
12 ble condition”, “applicable hospital”, and “re-
13 admission” have the meanings given such terms
14 in section 1886(p)(5) of the Social Security
15 Act, as added by subsection (a)(1).

16 (d) PHYSICIANS.—

17 (1) STUDY.—The Secretary of Health and
18 Human Services shall conduct a study to determine
19 how the readmissions policy described in the pre-
20 vious subsections could be applied to physicians.

21 (2) CONSIDERATIONS.—In conducting the
22 study, the Secretary shall consider approaches such
23 as—

24 (A) creating a new code (or codes) and
25 payment amount (or amounts) under the fee

1 schedule in section 1848 of the Social Security
2 Act (in a budget neutral manner) for services
3 furnished by an appropriate physician who sees
4 an individual within the first week after dis-
5 charge from a hospital or critical access hos-
6 pital;

7 (B) developing measures of rates of read-
8 mission for individuals treated by physicians;

9 (C) applying a payment reduction for phy-
10 sicians who treat the patient during the initial
11 admission that results in a readmission; and

12 (D) methods for attributing payments or
13 payment reductions to the appropriate physi-
14 cian or physicians.

15 (3) REPORT.—The Secretary shall issue a pub-
16 lic report on such study not later than the date that
17 is one year after the date of the enactment of this
18 Act.

19 (e) FUNDING.—For purposes of carrying out the pro-
20 visions of this section, in addition to funds otherwise avail-
21 able, out of any funds in the Treasury not otherwise ap-
22 propriated, there are appropriated to the Secretary of
23 Health and Human Services for the Center for Medicare
24 & Medicaid Services Program Management Account
25 \$25,000,000 for each fiscal year beginning with 2010.

1 Amounts appropriated under this subsection for a fiscal
2 year shall be available until expended.

3 **SEC. 1152. POST ACUTE CARE SERVICES PAYMENT REFORM**
4 **PLAN AND BUNDLING PILOT PROGRAM.**

5 (a) PLAN.—

6 (1) IN GENERAL.—The Secretary of Health and
7 Human Services (in this section referred to as the
8 “Secretary”) shall develop a detailed plan to reform
9 payment for post acute care (PAC) services under
10 the Medicare program under title XVIII of the So-
11 cial Security Act (in this section referred to as the
12 “Medicare program”). The goals of such payment
13 reform are to—

14 (A) improve the coordination, quality, and
15 efficiency of such services; and

16 (B) improve outcomes for individuals such
17 as reducing the need for readmission to hos-
18 pitals from providers of such services.

19 (2) BUNDLING POST ACUTE SERVICES.—The
20 plan described in paragraph (1) shall include de-
21 tailed specifications for a bundled payment for post
22 acute services (in this section referred to as the
23 “post acute care bundle”), and may include other
24 approaches determined appropriate by the Secretary.

1 (3) POST ACUTE SERVICES.—For purposes of
2 this section, the term “post acute services” means
3 services for which payment may be made under the
4 Medicare program that are furnished by skilled
5 nursing facilities, inpatient rehabilitation facilities,
6 long term care hospitals, hospital based outpatient
7 rehabilitation facilities and home health agencies to
8 an individual after discharge of such individual from
9 a hospital, and such other services determined ap-
10 propriate by the Secretary.

11 (b) DETAILS.—The plan described in subsection
12 (a)(1) shall include consideration of the following issues:

13 (1) The nature of payments under a post acute
14 care bundle, including the type of provider or entity
15 to whom payment should be made, the scope of ac-
16 tivities and services included in the bundle, whether
17 payment for physicians’ services should be included
18 in the bundle, and the period covered by the bundle.

19 (2) Whether the payment should be consoli-
20 dated with the payment under the inpatient prospec-
21 tive system under section 1886 of the Social Secu-
22 rity Act (in this section referred to as MS–DRGs)
23 or a separate payment should be established for such
24 bundle, and if a separate payment is established,

1 whether it should be made only upon use of post
2 acute care services or for every discharge.

3 (3) Whether the bundle should be applied
4 across all categories of providers of inpatient serv-
5 ices (including critical access hospitals) and post
6 acute care services or whether it should be limited
7 to certain categories of providers, services, or dis-
8 charges, such as high volume or high cost MS-
9 DRGs.

10 (4) The extent to which payment rates could be
11 established to achieve offsets for efficiencies that
12 could be expected to be achieved with a bundle pay-
13 ment, whether such rates should be established on a
14 national basis or for different geographic areas,
15 should vary according to discharge, case mix,
16 outliers, and geographic differences in wages or
17 other appropriate adjustments, and how to update
18 such rates.

19 (5) The nature of protections needed for indi-
20 viduals under a system of bundled payments to en-
21 sure that individuals receive quality care, are fur-
22 nished the level and amount of services needed as
23 determined by an appropriate assessment instru-
24 ment, are offered choice of provider, and the extent
25 to which transitional care services would improve

1 quality of care for individuals and the functioning of
2 a bundled post-acute system.

3 (6) The nature of relationships that may be re-
4 quired between hospitals and providers of post acute
5 care services to facilitate bundled payments, includ-
6 ing the application of gainsharing, anti-referral,
7 anti-kickback, and anti-trust laws.

8 (7) Quality measures that would be appropriate
9 for reporting by hospitals and post acute providers
10 (such as measures that assess changes in functional
11 status and quality measures appropriate for each
12 type of post acute services provider including how
13 the reporting of such quality measures could be co-
14 ordinated with other reporting of such quality meas-
15 ures by such providers otherwise required).

16 (8) How cost-sharing for a post acute care bun-
17 dle should be treated relative to current rules for
18 cost-sharing for inpatient hospital, home health,
19 skilled nursing facility, and other services.

20 (9) How other programmatic issues should be
21 treated in a post acute care bundle, including rules
22 specific to various types of post-acute providers such
23 as the post-acute transfer policy, three-day hospital
24 stay to qualify for services furnished by skilled nurs-
25 ing facilities, and the coordination of payments and

1 care under the Medicare program and the Medicaid
2 program.

3 (10) Such other issues as the Secretary deems
4 appropriate.

5 (c) CONSULTATIONS AND ANALYSIS.—

6 (1) CONSULTATION WITH STAKEHOLDERS.—In
7 developing the plan under subsection (a)(1), the Sec-
8 retary shall consult with relevant stakeholders and
9 shall consider experience with such research studies
10 and demonstrations that the Secretary determines
11 appropriate.

12 (2) ANALYSIS AND DATA COLLECTION.—In de-
13 veloping such plan, the Secretary shall—

14 (A) analyze the issues described in sub-
15 section (b) and other issues that the Secretary
16 determines appropriate;

17 (B) analyze the impacts (including geo-
18 graphic impacts) of post acute service reform
19 approaches, including bundling of such services
20 on individuals, hospitals, post acute care pro-
21 viders, and physicians;

22 (C) use existing data (such as data sub-
23 mitted on claims) and collect such data as the
24 Secretary determines are appropriate to develop
25 such plan required in this section; and

1 (D) if patient functional status measures
2 are appropriate for the analysis, to the extent
3 practical, build upon the CARE tool being de-
4 veloped pursuant to section 5008 of the Deficit
5 Reduction Act of 2005.

6 (d) ADMINISTRATION.—

7 (1) FUNDING.—For purposes of carrying out
8 the provisions of this section, in addition to funds
9 otherwise available, out of any funds in the Treasury
10 not otherwise appropriated, there are appropriated
11 to the Secretary for the Center for Medicare & Med-
12 icaid Services Program Management Account
13 \$15,000,000 for each of the fiscal years 2010
14 through 2012. Amounts appropriated under this
15 paragraph for a fiscal year shall be available until
16 expended.

17 (2) EXPEDITED DATA COLLECTION.—Chapter
18 35 of title 44, United States Code shall not apply to
19 this section.

20 (e) PUBLIC REPORTS.—

21 (1) INTERIM REPORTS.—The Secretary shall
22 issue interim public reports on a periodic basis on
23 the plan described in subsection (a)(1), the issues
24 described in subsection (b), and impact analyses as
25 the Secretary determines appropriate.

1 (2) FINAL REPORT.—Not later than the date
2 that is 3 years after the date of the enactment of
3 this Act, the Secretary shall issue a final public re-
4 port on such plan, including analysis of issues de-
5 scribed in subsection (b) and impact analyses.

6 (f) CONVERSION OF ACUTE CARE EPISODE DEM-
7 ONSTRATION TO PILOT PROGRAM AND EXPANSION TO IN-
8 CLUDE POST ACUTE SERVICES.—

9 (1) IN GENERAL.—Part E of title XVIII of the
10 Social Security Act is amended by inserting after
11 section 1866C the following new section:

12 **“SEC. 1866D. CONVERSION OF ACUTE CARE EPISODE DEM-**
13 **ONSTRATION TO PILOT PROGRAM AND EX-**
14 **PANSION TO INCLUDE POST ACUTE SERV-**
15 **ICES.**

16 “(a) IN GENERAL.—By not later than January 1,
17 2011, the Secretary shall, for the purpose of promoting
18 the use of bundled payments to promote efficient and high
19 quality delivery of care—

20 “(1) convert the acute care episode demonstra-
21 tion program conducted under section 1866C to a
22 pilot program; and

23 “(2) subject to subsection (c), expand such pro-
24 gram as so converted to include post acute services
25 and such other services the Secretary determines to

1 be appropriate, which may include transitional serv-
2 ices.

3 “(b) SCOPE.—The pilot program under subsection
4 (a) may include additional geographic areas and additional
5 conditions which account for significant program spend-
6 ing, as defined by the Secretary. Nothing in this sub-
7 section shall be construed as limiting the number of hos-
8 pital and physician groups or the number of hospital and
9 post-acute provider groups that may participate in the
10 pilot program.

11 “(c) LIMITATION.—The Secretary shall only expand
12 the pilot program under subsection (a)(2) if the Secretary
13 finds that—

14 “(1) the demonstration program under section
15 1866C and pilot program under this section main-
16 tain or increase the quality of care received by indi-
17 viduals enrolled under this title; and

18 “(2) such demonstration program and pilot pro-
19 gram reduce program expenditures and, based on
20 the certification under subsection (d), that the ex-
21 pansion of such pilot program would result in esti-
22 mated spending that would be less than what spend-
23 ing would otherwise be in the absence of this section.

24 “(d) CERTIFICATION.—For purposes of subsection
25 (c), the Chief Actuary of the Centers for Medicare & Med-

1 icaid Services shall certify whether expansion of the pilot
2 program under this section would result in estimated
3 spending that would be less than what spending would
4 otherwise be in the absence of this section.

5 “(e) VOLUNTARY PARTICIPATION.—Nothing in this
6 paragraph shall be construed as requiring the participa-
7 tion of an entity in the pilot program under this section.”.

8 (2) CONFORMING AMENDMENT.—Section
9 1866C(b) of the Social Security Act (42 U.S.C.
10 1395cc–3(b)) is amended by striking “The Sec-
11 retary” and inserting “Subject to section 1866D, the
12 Secretary”.

13 **SEC. 1153. HOME HEALTH PAYMENT UPDATE FOR 2010.**

14 Section 1895(b)(3)(B)(ii) of the Social Security Act
15 (42 U.S.C. 1395fff(b)(3)(B)(ii)) is amended—

16 (1) in subclause (IV), by striking “and”;

17 (2) by redesignating subclause (V) as subclause
18 (VII); and

19 (3) by inserting after subclause (IV) the fol-
20 lowing new subclauses:

21 “(V) 2007, 2008, and 2009, sub-
22 ject to clause (v), the home health
23 market basket percentage increase;

24 “(VI) 2010, subject to clause (v),
25 0 percent; and”.

1 **SEC. 1154. PAYMENT ADJUSTMENTS FOR HOME HEALTH**
2 **CARE.**

3 (a) ACCELERATION OF ADJUSTMENT FOR CASE MIX
4 CHANGES.—Section 1895(b)(3)(B) of the Social Security
5 Act (42 U.S.C. 1395fff(b)(3)(B)) is amended—

6 (1) in clause (iv), by striking “Insofar as” and
7 inserting “Subject to clause (vi), insofar as”; and

8 (2) by adding at the end the following new
9 clause:

10 “(vi) SPECIAL RULE FOR CASE MIX
11 CHANGES FOR 2011.—

12 “(I) IN GENERAL.—With respect
13 to the case mix adjustments estab-
14 lished in section 484.220(a) of title
15 42, Code of Federal Regulations, the
16 Secretary shall apply, in 2010, the ad-
17 justment established in paragraph (3)
18 of such section for 2011, in addition
19 to applying the adjustment established
20 in paragraph (2) for 2010.

21 “(II) CONSTRUCTION.—Nothing
22 in this clause shall be construed as
23 limiting the amount of adjustment for
24 case mix for 2010 or 2011 if more re-
25 cent data indicate an appropriate ad-
26 justment that is greater than the

1 amount established in the section de-
2 scribed in subclause (I).”.

3 (b) REBASING HOME HEALTH PROSPECTIVE PAY-
4 MENT AMOUNT.—Section 1895(b)(3)(A) of the Social Se-
5 curity Act (42 U.S.C. 1395fff(b)(3)(A)) is amended—

6 (1) in clause (i)—

7 (A) in subclause (III), by inserting “and
8 before 2011” after “after the period described
9 in subclause (II)”; and

10 (B) by inserting after subclause (III) the
11 following new subclauses:

12 “(IV) Subject to clause (iii)(I),
13 for 2011, such amount (or amounts)
14 shall be adjusted by a uniform per-
15 centage determined to be appropriate
16 by the Secretary based on analysis of
17 factors such as changes in the average
18 number and types of visits in an epi-
19 sode, the change in intensity of visits
20 in an episode, growth in cost per epi-
21 sode, and other factors that the Sec-
22 retary considers to be relevant.

23 “(V) Subject to clause (iii)(II),
24 for a year after 2011, such a amount
25 (or amounts) shall be equal to the

1 amount (or amounts) determined
2 under this clause for the previous
3 year, updated under subparagraph
4 (B).”; and

5 (2) by adding at the end the following new
6 clause:

7 “(iii) SPECIAL RULE IN CASE OF IN-
8 ABILITY TO EFFECT TIMELY REBASING.—

9 “(I) APPLICATION OF PROXY
10 AMOUNT FOR 2011.—If the Secretary
11 is not able to compute the amount (or
12 amounts) under clause (i)(IV) so as to
13 permit, on a timely basis, the applica-
14 tion of such clause for 2011, the Sec-
15 retary shall substitute for such
16 amount (or amounts) 95 percent of
17 the amount (or amounts) that would
18 otherwise be specified under clause
19 (i)(III) if it applied for 2011.

20 “(II) ADJUSTMENT FOR SUBSE-
21 QUENT YEARS BASED ON DATA.—If
22 the Secretary applies subclause (I),
23 the Secretary before July 1, 2011,
24 shall compare the amount (or
25 amounts) applied under such sub-

1 clause with the amount (or amounts)
2 that should have been applied under
3 clause (i)(IV). The Secretary shall de-
4 crease or increase the prospective pay-
5 ment amount (or amounts) under
6 clause (i)(V) for 2012 (or, at the Sec-
7 retary's discretion, over a period of
8 several years beginning with 2012) by
9 the amount (if any) by which the
10 amount (or amounts) applied under
11 subclause (I) is greater or less, re-
12 spectively, than the amount (or
13 amounts) that should have been ap-
14 plied under clause (i)(IV).”.

15 **SEC. 1155. INCORPORATING PRODUCTIVITY IMPROVE-**
16 **MENTS INTO MARKET BASKET UPDATE FOR**
17 **HOME HEALTH SERVICES.**

18 (a) IN GENERAL.—Section 1895(b)(3)(B) of the So-
19 cial Security Act (42 U.S.C. 1395fff(b)(3)(B)) is amend-
20 ed—

21 (1) in clause (iii), by inserting “(including being
22 subject to the productivity adjustment described in
23 section 1886(b)(3)(B)(iii)(II))” after “in the same
24 manner”; and

1 (2) in clause (v)(I), by inserting “(but not
2 below 0)” after “reduced”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall apply to home health market basket
5 percentage increases for years beginning with 2010.

6 **SEC. 1156. LIMITATION ON MEDICARE EXCEPTIONS TO THE**
7 **PROHIBITION ON CERTAIN PHYSICIAN RE-**
8 **FERRALS MADE TO HOSPITALS.**

9 (a) **IN GENERAL.**—Section 1877 of the Social Secu-
10 rity Act (42 U.S.C. 1395nn) is amended—

11 (1) in subsection (d)(2)—

12 (A) in subparagraph (A), by striking
13 “and” at the end;

14 (B) in subparagraph (B), by striking the
15 period at the end and inserting “; and”; and

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

18 “(C) in the case where the entity is a hos-
19 pital, the hospital meets the requirements of
20 paragraph (3)(D).”;

21 (2) in subsection (d)(3)—

22 (A) in subparagraph (B), by striking
23 “and” at the end;

24 (B) in subparagraph (C), by striking the
25 period at the end and inserting “; and”; and

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

3 “(D) the hospital meets the requirements
4 described in subsection (i)(1).”;

5 (3) by amending subsection (f) to read as fol-
6 lows:

7 “(f) REPORTING AND DISCLOSURE REQUIRE-
8 MENTS.—

9 “(1) IN GENERAL.—Each entity providing cov-
10 ered items or services for which payment may be
11 made under this title shall provide the Secretary
12 with the information concerning the entity’s owner-
13 ship, investment, and compensation arrangements,
14 including—

15 “(A) the covered items and services pro-
16 vided by the entity, and

17 “(B) the names and unique physician iden-
18 tification numbers of all physicians with an
19 ownership or investment interest (as described
20 in subsection (a)(2)(A)), or with a compensa-
21 tion arrangement (as described in subsection
22 (a)(2)(B)), in the entity, or whose immediate
23 relatives have such an ownership or investment
24 interest or who have such a compensation rela-
25 tionship with the entity.

1 Such information shall be provided in such form,
2 manner, and at such times as the Secretary shall
3 specify. The requirement of this subsection shall not
4 apply to designated health services provided outside
5 the United States or to entities which the Secretary
6 determines provide services for which payment may
7 be made under this title very infrequently.

8 “(2) REQUIREMENTS FOR HOSPITALS WITH
9 PHYSICIAN OWNERSHIP OR INVESTMENT.—In the
10 case of a hospital that meets the requirements de-
11 scribed in subsection (i)(1), the hospital shall—

12 “(A) submit to the Secretary an initial re-
13 port, and periodic updates at a frequency deter-
14 mined by the Secretary, containing a detailed
15 description of the identity of each physician
16 owner and physician investor and any other
17 owners or investors of the hospital;

18 “(B) require that any referring physician
19 owner or investor discloses to the individual
20 being referred, by a time that permits the indi-
21 vidual to make a meaningful decision regarding
22 the receipt of services, as determined by the
23 Secretary, the ownership or investment interest,
24 as applicable, of such referring physician in the
25 hospital; and

1 “(C) disclose the fact that the hospital is
2 partially or wholly owned by one or more physi-
3 cians or has one or more physician investors—

4 “(i) on any public website for the hos-
5 pital; and

6 “(ii) in any public advertising for the
7 hospital.

8 The information to be reported or disclosed under
9 this paragraph shall be provided in such form, man-
10 ner, and at such times as the Secretary shall specify.

11 The requirements of this paragraph shall not apply
12 to designated health services furnished outside the
13 United States or to entities which the Secretary de-
14 termines provide services for which payment may be
15 made under this title very infrequently.

16 “(3) PUBLICATION OF INFORMATION.—The
17 Secretary shall publish, and periodically update, the
18 information submitted by hospitals under paragraph
19 (2)(A) on the public Internet website of the Centers
20 for Medicare & Medicaid Services.”;

21 (4) by amending subsection (g)(5) to read as
22 follows:

23 “(5) FAILURE TO REPORT OR DISCLOSE INFOR-
24 MATION.—

1 “(A) REPORTING.—Any person who is re-
2 quired, but fails, to meet a reporting require-
3 ment of paragraphs (1) and (2)(A) of sub-
4 section (f) is subject to a civil money penalty of
5 not more than \$10,000 for each day for which
6 reporting is required to have been made.

7 “(B) DISCLOSURE.—Any physician who is
8 required, but fails, to meet a disclosure require-
9 ment of subsection (f)(2)(B) or a hospital that
10 is required, but fails, to meet a disclosure re-
11 quirement of subsection (f)(2)(C) is subject to
12 a civil money penalty of not more than \$10,000
13 for each case in which disclosure is required to
14 have been made.

15 “(C) APPLICATION.—The provisions of
16 section 1128A (other than the first sentence of
17 subsection (a) and other than subsection (b))
18 shall apply to a civil money penalty under sub-
19 paragraphs (A) and (B) in the same manner as
20 such provisions apply to a penalty or proceeding
21 under section 1128A(a).”; and

22 (5) by adding at the end the following new sub-
23 section:

1 “(i) REQUIREMENTS TO QUALIFY FOR RURAL PRO-
2 VIDER AND HOSPITAL OWNERSHIP EXCEPTIONS TO
3 SELF-REFERRAL PROHIBITION.—

4 “(1) REQUIREMENTS DESCRIBED.—For pur-
5 poses of subsection (d)(3)(D), the requirements de-
6 scribed in this paragraph are as follows:

7 “(A) PROVIDER AGREEMENT.—The hos-
8 pital had—

9 “(i) physician ownership or invest-
10 ment on January 1, 2009; and

11 “(ii) a provider agreement under sec-
12 tion 1866 in effect on such date.

13 “(B) PROHIBITION ON PHYSICIAN OWNER-
14 SHIP OR INVESTMENT.—The percentage of the
15 total value of the ownership or investment in-
16 terests held in the hospital, or in an entity
17 whose assets include the hospital, by physician
18 owners or investors in the aggregate does not
19 exceed such percentage as of the date of enact-
20 ment of this subsection.

21 “(C) PROHIBITION ON EXPANSION OF FA-
22 CILITY CAPACITY.—Except as provided in para-
23 graph (2), the number of operating rooms, pro-
24 cedure rooms, or beds of the hospital at any
25 time on or after the date of the enactment of

1 this subsection are no greater than the number
2 of operating rooms, procedure rooms, or beds,
3 respectively, as of such date.

4 “(D) ENSURING BONA FIDE OWNERSHIP
5 AND INVESTMENT.—

6 “(i) Any ownership or investment in-
7 terests that the hospital offers to a physi-
8 cian are not offered on more favorable
9 terms than the terms offered to a person
10 who is not in a position to refer patients
11 or otherwise generate business for the hos-
12 pital.

13 “(ii) The hospital (or any investors in
14 the hospital) does not directly or indirectly
15 provide loans or financing for any physi-
16 cian owner or investor in the hospital.

17 “(iii) The hospital (or any investors in
18 the hospital) does not directly or indirectly
19 guarantee a loan, make a payment toward
20 a loan, or otherwise subsidize a loan, for
21 any physician owner or investor or group
22 of physician owners or investors that is re-
23 lated to acquiring any ownership or invest-
24 ment interest in the hospital.

1 “(iv) Ownership or investment returns
2 are distributed to each owner or investor in
3 the hospital in an amount that is directly
4 proportional to the ownership or invest-
5 ment interest of such owner or investor in
6 the hospital.

7 “(v) The investment interest of the
8 owner or investor is directly proportional
9 to the owner’s or investor’s capital con-
10 tributions made at the time the ownership
11 or investment interest is obtained.

12 “(vi) Physician owners and investors
13 do not receive, directly or indirectly, any
14 guaranteed receipt of or right to purchase
15 other business interests related to the hos-
16 pital, including the purchase or lease of
17 any property under the control of other
18 owners or investors in the hospital or lo-
19 cated near the premises of the hospital.

20 “(vii) The hospital does not offer a
21 physician owner or investor the oppor-
22 tunity to purchase or lease any property
23 under the control of the hospital or any
24 other owner or investor in the hospital on
25 more favorable terms than the terms of-

1 ferred to a person that is not a physician
2 owner or investor.

3 “(viii) The hospital does not condition
4 any physician ownership or investment in-
5 terests either directly or indirectly on the
6 physician owner or investor making or in-
7 fluencing referrals to the hospital or other-
8 wise generating business for the hospital.

9 “(E) PATIENT SAFETY.—In the case of a
10 hospital that does not offer emergency services,
11 the hospital has the capacity to—

12 “(i) provide assessment and initial
13 treatment for medical emergencies; and

14 “(ii) if the hospital lacks additional
15 capabilities required to treat the emergency
16 involved, refer and transfer the patient
17 with the medical emergency to a hospital
18 with the required capability.

19 “(F) LIMITATION ON APPLICATION TO
20 CERTAIN CONVERTED FACILITIES.—The hos-
21 pital was not converted from an ambulatory
22 surgical center to a hospital on or after the date
23 of enactment of this subsection.

24 “(2) EXCEPTION TO PROHIBITION ON EXPAN-
25 SION OF FACILITY CAPACITY.—

1 “(A) PROCESS.—

2 “(i) ESTABLISHMENT.—The Secretary
3 shall establish and implement a process
4 under which a hospital may apply for an
5 exception from the requirement under
6 paragraph (1)(C).

7 “(ii) OPPORTUNITY FOR COMMUNITY
8 INPUT.—The process under clause (i) shall
9 provide persons and entities in the commu-
10 nity in which the hospital applying for an
11 exception is located with the opportunity to
12 provide input with respect to the applica-
13 tion.

14 “(iii) TIMING FOR IMPLEMENTA-
15 TION.—The Secretary shall implement the
16 process under clause (i) on the date that is
17 one month after the promulgation of regu-
18 lations described in clause (iv).

19 “(iv) REGULATIONS.—Not later than
20 the first day of the month beginning 18
21 months after the date of the enactment of
22 this subsection, the Secretary shall promul-
23 gate regulations to carry out the process
24 under clause (i). The Secretary may issue

1 such regulations as interim final regula-
2 tions.

3 “(B) FREQUENCY.—The process described
4 in subparagraph (A) shall permit a hospital to
5 apply for an exception up to once every 2 years.

6 “(C) PERMITTED INCREASE.—

7 “(i) IN GENERAL.—Subject to clause
8 (ii) and subparagraph (D), a hospital
9 granted an exception under the process de-
10 scribed in subparagraph (A) may increase
11 the number of operating rooms, procedure
12 rooms, or beds of the hospital above the
13 baseline number of operating rooms, proce-
14 dure rooms, or beds, respectively, of the
15 hospital (or, if the hospital has been grant-
16 ed a previous exception under this para-
17 graph, above the number of operating
18 rooms, procedure rooms, or beds, respec-
19 tively, of the hospital after the application
20 of the most recent increase under such an
21 exception).

22 “(ii) 100 PERCENT INCREASE LIMITA-
23 TION.—The Secretary shall not permit an
24 increase in the number of operating rooms,
25 procedure rooms, or beds of a hospital

1 under clause (i) to the extent such increase
2 would result in the number of operating
3 rooms, procedure rooms, or beds of the
4 hospital exceeding 200 percent of the base-
5 line number of operating rooms, procedure
6 rooms, or beds of the hospital.

7 “(iii) BASELINE NUMBER OF OPER-
8 ATING ROOMS, PROCEDURE ROOMS, OR
9 BEDS.—In this paragraph, the term ‘base-
10 line number of operating rooms, procedure
11 rooms, or beds’ means the number of oper-
12 ating rooms, procedure rooms, or beds of a
13 hospital as of the date of enactment of this
14 subsection.

15 “(D) INCREASE LIMITED TO FACILITIES
16 ON THE MAIN CAMPUS OF THE HOSPITAL.—
17 Any increase in the number of operating rooms,
18 procedure rooms, or beds of a hospital pursuant
19 to this paragraph may only occur in facilities on
20 the main campus of the hospital.

21 “(E) CONDITIONS FOR APPROVAL OF AN
22 INCREASE IN FACILITY CAPACITY.—The Sec-
23 retary may grant an exception under the proc-
24 ess described in subparagraph (A) only to a
25 hospital—

1 “(i) that is located in a county in
2 which the percentage increase in the popu-
3 lation during the most recent 5-year period
4 for which data are available is estimated to
5 be at least 150 percent of the percentage
6 increase in the population growth of the
7 State in which the hospital is located dur-
8 ing that period, as estimated by Bureau of
9 the Census and available to the Secretary;

10 “(ii) whose annual percent of total in-
11 patient admissions that represent inpatient
12 admissions under the program under title
13 XIX is estimated to be equal to or greater
14 than the average percent with respect to
15 such admissions for all hospitals located in
16 the county in which the hospital is located;

17 “(iii) that does not discriminate
18 against beneficiaries of Federal health care
19 programs and does not permit physicians
20 practicing at the hospital to discriminate
21 against such beneficiaries;

22 “(iv) that is located in a State in
23 which the average bed capacity in the
24 State is estimated to be less than the na-
25 tional average bed capacity;

1 “(v) that has an average bed occu-
2 pancy rate that is estimated to be greater
3 than the average bed occupancy rate in the
4 State in which the hospital is located; and

5 “(vi) that meets other conditions as
6 determined by the Secretary.

7 “(F) PROCEDURE ROOMS.—In this sub-
8 section, the term ‘procedure rooms’ includes
9 rooms in which catheterizations, angiographies,
10 angiograms, and endoscopies are furnished, but
11 such term shall not include emergency rooms or
12 departments (except for rooms in which cath-
13 eterizations, angiographies, angiograms, and
14 endoscopies are furnished).

15 “(G) PUBLICATION OF FINAL DECI-
16 SIONS.—Not later than 120 days after receiving
17 a complete application under this paragraph,
18 the Secretary shall publish on the public Inter-
19 net website of the Centers for Medicare & Med-
20 icaid Services the final decision with respect to
21 such application.

22 “(H) LIMITATION ON REVIEW.—There
23 shall be no administrative or judicial review
24 under section 1869, section 1878, or otherwise
25 of the exception process under this paragraph,

1 including the establishment of such process,
2 and any determination made under such pro-
3 cess.

4 “(3) PHYSICIAN OWNER OR INVESTOR DE-
5 FINED.—For purposes of this subsection and sub-
6 section (f)(2), the term ‘physician owner or investor’
7 means a physician (or an immediate family member
8 of such physician) with a direct or an indirect own-
9 ership or investment interest in the hospital.

10 “(4) PATIENT SAFETY REQUIREMENT.—In the
11 case of a hospital to which the requirements of para-
12 graph (1) apply, insofar as the hospital admits a pa-
13 tient and does not have any physician available on
14 the premises 24 hours per day, 7 days per week, be-
15 fore admitting the patient—

16 “(A) the hospital shall disclose such fact to
17 the patient; and

18 “(B) following such disclosure, the hospital
19 shall receive from the patient a signed acknowl-
20 edgment that the patient understands such fact.

21 “(5) CLARIFICATION.—Nothing in this sub-
22 section shall be construed as preventing the Sec-
23 retary from terminating a hospital’s provider agree-
24 ment if the hospital is not in compliance with regu-
25 lations pursuant to section 1866.”.

1 (b) VERIFYING COMPLIANCE.—The Secretary of
2 Health and Human Services shall establish policies and
3 procedures to verify compliance with the requirements de-
4 scribed in subsections (i)(1) and (i)(4) of section 1877 of
5 the Social Security Act, as added by subsection (a)(5).
6 The Secretary may use unannounced site reviews of hos-
7 pitals and audits to verify compliance with such require-
8 ments.

9 (c) IMPLEMENTATION.—

10 (1) FUNDING.—For purposes of carrying out
11 the amendments made by subsection (a) and the
12 provisions of subsection (b), in addition to funds
13 otherwise available, out of any funds in the Treasury
14 not otherwise appropriated there are appropriated to
15 the Secretary of Health and Human Services for the
16 Centers for Medicare & Medicaid Services Program
17 Management Account \$5,000,000 for each fiscal
18 year beginning with fiscal year 2010. Amounts ap-
19 propriated under this paragraph for a fiscal year
20 shall be available until expended.

21 (2) ADMINISTRATION.—Chapter 35 of title 44,
22 United States Code, shall not apply to the amend-
23 ments made by subsection (a) and the provisions of
24 subsection (b).

1 **SEC. 1157. INSTITUTE OF MEDICINE STUDY OF GEO-**
2 **GRAPHIC ADJUSTMENT FACTORS UNDER**
3 **MEDICARE.**

4 (a) IN GENERAL.—The Secretary of Health and
5 Human Services shall enter into a contract with the Insti-
6 tute of Medicine of the National Academy of Science to
7 conduct a comprehensive empirical study, and provide rec-
8 ommendations as appropriate, on the accuracy of the geo-
9 graphic adjustment factors established under sections
10 1848(e) and 1886(d)(3)(E) of the Social Security Act (42
11 U.S.C. 1395w–4(e), 11395ww(d)(3)).

12 (b) MATTERS INCLUDED.—Such study shall include
13 an evaluation and assessment of the following with respect
14 to such adjustment factors:

15 (1) Empirical validity of the adjustment factors.

16 (2) Methodology used to determine the adjust-
17 ment factors.

18 (3) Measures used for the adjustment factors,
19 taking into account—

20 (A) timeliness of data and frequency of re-
21 visions to such data;

22 (B) sources of data and the degree to
23 which such data are representative of costs; and

24 (C) operational costs of providers who par-
25 ticipate in Medicare.

1 (c) EVALUATION.—Such study shall, within the con-
2 text of the United States health care marketplace, evalu-
3 ate and consider the following:

4 (1) The effect of the adjustment factors on the
5 level and distribution of the health care workforce
6 and resources, including—

7 (A) recruitment and retention that takes
8 into account workforce mobility between urban
9 and rural areas;

10 (B) ability of hospitals and other facilities
11 to maintain an adequate and skilled workforce;
12 and

13 (C) patient access to providers and needed
14 medical technologies.

15 (2) The effect of the adjustment factors on pop-
16 ulation health and quality of care.

17 (3) The effect of the adjustment factors on the
18 ability of providers to furnish efficient, high value
19 care.

20 (d) REPORT.—The contract under subsection (a)
21 shall provide for the Institute of Medicine to submit, not
22 later than one year after the date of the enactment of this
23 Act, to the Secretary and the Congress a report containing
24 results and recommendations of the study conducted
25 under this section.

1 (e) FUNDING.—There are authorized to be appro-
2 priated to carry out this section such sums as may be nec-
3 essary.

4 **SEC. 1158. REVISION OF MEDICARE PAYMENT SYSTEMS TO**
5 **ADDRESS GEOGRAPHIC INEQUITIES.**

6 (a) IN GENERAL.—The Secretary of Health and
7 Human Services, taking into account the recommenda-
8 tions made in the report under section 1157(d), shall in-
9 clude in the proposed rules published to implement
10 changes to payment systems for physicians and hospitals
11 under sections 1848(e) and 1886(d)(3)(E), respectively, of
12 the Social Security Act, proposals to revise geographic ad-
13 justment factors for such payment systems for services
14 furnished under the Medicare program. Such proposed
15 rules shall be published in the rulemaking period imme-
16 diately following submission of the report under section
17 1157(d).

18 (b) PAYMENT ADJUSTMENTS.—

19 (1) FUNDING FOR IMPROVEMENTS.—In making
20 any changes to the geographic adjustment factors in
21 accordance with subsection (a), the Secretary shall
22 use funds made available for such purposes under
23 subsection (c).

24 (2) ENSURING FAIRNESS.—In carrying out this
25 subsection, the Secretary shall not change payment

1 rates to be less than they would have been had this
2 section not been enacted.

3 (c) FUNDING.—Amounts in the Medicare Improve-
4 ment Fund under section 1898 of the Social Security Act
5 (42 U.S.C. 1395iii), as amended by section 1146, shall
6 be available to the Secretary to make changes to the geo-
7 graphic adjustments factors established under sections
8 1848(e) and 1886(d)(3)(E) of the Social Security Act. For
9 such purpose, such funds shall be available for expenditure
10 for services furnished before January 1, 2014, and shall
11 not exceed the total amounts available under such Fund
12 for such period. No more than one-half of such amounts
13 shall be available for expenditure for services furnished in
14 any one payment year.

15 **Subtitle D—Medicare Advantage** 16 **Reforms**

17 **PART 1—PAYMENT AND ADMINISTRATION**

18 **SEC. 1161. PHASE-IN OF PAYMENT BASED ON FEE-FOR-** 19 **SERVICE COSTS.**

20 Section 1853 of the Social Security Act (42 U.S.C.
21 1395w-23) is amended—

22 (1) in subsection (j)(1)(A)—

23 (A) by striking “beginning with 2007” and
24 inserting “for 2007, 2008, 2009, and 2010”;
25 and

1 (B) by inserting after “(k)(1)” the fol-
2 lowing: “, or, beginning with 2011, $\frac{1}{12}$ of the
3 blended benchmark amount determined under
4 subsection (n)(1)”;

5 (2) by adding at the end the following new sub-
6 section:

7 “(n) DETERMINATION OF BLENDED BENCHMARK
8 AMOUNT.—

9 “(1) IN GENERAL.—For purposes of subsection
10 (j), subject to paragraphs (3) and (4), the term
11 ‘blended benchmark amount’ means for an area—

12 “(A) for 2011 the sum of—

13 “(i) $\frac{2}{3}$ of the applicable amount (as
14 defined in subsection (k)) for the area and
15 year; and

16 “(ii) $\frac{1}{3}$ of the amount specified in
17 paragraph (2) for the area and year;

18 “(B) for 2012 the sum of—

19 “(i) $\frac{1}{3}$ of the applicable amount for
20 the area and year; and

21 “(ii) $\frac{2}{3}$ of the amount specified in
22 paragraph (2) for the area and year; and

23 “(C) for a subsequent year the amount
24 specified in paragraph (2) for the area and
25 year.

1 “(2) SPECIFIED AMOUNT.—The amount speci-
2 fied in this paragraph for an area and year is the
3 amount specified in subsection (c)(1)(D)(i) for the
4 area and year adjusted (in a manner specified by the
5 Secretary) to take into account the phase-out in the
6 indirect costs of medical education from capitation
7 rates described in subsection (k)(4).

8 “(3) FEE-FOR-SERVICE PAYMENT FLOOR.—In
9 no case shall the blended benchmark amount for an
10 area and year be less than the amount specified in
11 paragraph (2).

12 “(4) EXCEPTION FOR PACE PLANS.—This sub-
13 section shall not apply to payments to a PACE pro-
14 gram under section 1894.”.

15 **SEC. 1162. QUALITY BONUS PAYMENTS.**

16 (a) IN GENERAL.—Section 1853 of the Social Secu-
17 rity Act (42 U.S.C. 1395w-23), as amended by section
18 1161, is amended—

19 (1) in subsection (j), by inserting “subject to
20 subsection (o),” after “For purposes of this part”;
21 and

22 (2) by adding at the end the following new sub-
23 section:

24 “(o) QUALITY BASED PAYMENT ADJUSTMENT.—

1 “(1) HIGH QUALITY PLAN ADJUSTMENT.—For
2 years beginning with 2011, in the case of a Medicare
3 Advantage plan that is identified (under paragraph
4 (3)(E)(ii)) as a high quality MA plan with respect
5 to the year, the blended benchmark amount under
6 subsection (n)(1) shall be increased—

7 “(A) for 2011, by 1.0 percent;

8 “(B) for 2012, by 2.0 percent; and

9 “(C) for a subsequent year, by 3.0 percent.

10 “(2) IMPROVED QUALITY PLAN ADJUSTMENT.—

11 For years beginning with 2011, in the case of a
12 Medicare Advantage plan that is identified (under
13 paragraph (3)(E)(iii)) as an improved quality MA
14 plan with respect to the year, blended benchmark
15 amount under subsection (n)(1) shall be increased—

16 “(A) for 2011, by 0.33 percent;

17 “(B) for 2012, by 0.66 percent; and

18 “(C) for a subsequent year, by 1.0 percent.

19 “(3) DETERMINATIONS OF QUALITY.—

20 “(A) QUALITY PERFORMANCE.—The Sec-
21 retary shall provide for the computation of a
22 quality performance score for each Medicare
23 Advantage plan to be applied for each year be-
24 ginning with 2010.

25 “(B) COMPUTATION OF SCORE.—

1 “(i) FOR YEARS BEFORE 2014.—For
2 years before 2014, the quality performance
3 score for a Medicare Advantage plan shall
4 be computed based on a blend (as des-
5 ignated by the Secretary) of the plan’s per-
6 formance on—

7 “(I) HEDIS effectiveness of care
8 quality measures;

9 “(II) CAHPS quality measures;
10 and

11 “(III) such other measures of
12 clinical quality as the Secretary may
13 specify.

14 Such measures shall be risk-adjusted as
15 the Secretary deems appropriate.

16 “(ii) ESTABLISHMENT OF OUTCOME-
17 BASED MEASURES.—By not later than for
18 2013 the Secretary shall implement report-
19 ing requirements for quality under this
20 section on measures selected under clause
21 (iii) that reflect the outcomes of care expe-
22 rienced by individuals enrolled in Medicare
23 Advantage plans (in addition to measures
24 described in clause (i)). Such measures
25 may include—

1 “(I) measures of rates of admis-
2 sion and readmission to a hospital;

3 “(II) measures of prevention
4 quality, such as those established by
5 the Agency for Healthcare Research
6 and Quality (that include hospital ad-
7 mission rates for specified conditions);

8 “(III) measures of patient mor-
9 tality and morbidity following surgery;

10 “(IV) measures of health func-
11 tioning (such as limitations on activi-
12 ties of daily living) and survival for
13 patients with chronic diseases;

14 “(V) measures of patient safety;
15 and

16 “(VI) other measure of outcomes
17 and patient quality of life as deter-
18 mined by the Secretary.

19 Such measures shall be risk-adjusted as
20 the Secretary deems appropriate. In deter-
21 mining the quality measures to be used
22 under this clause, the Secretary shall take
23 into consideration the recommendations of
24 the Medicare Payment Advisory Commis-
25 sion in its report to Congress under section

1 168 of the Medicare Improvements for Pa-
2 tients and Providers Act of 2008 (Public
3 Law 110–275) and shall provide pref-
4 erence to measures collected on and com-
5 parable to measures used in measuring
6 quality under parts A and B.

7 “(iii) RULES FOR SELECTION OF
8 MEASURES.—The Secretary shall select
9 measures for purposes of clause (ii) con-
10 sistent with the following:

11 “(I) The Secretary shall provide
12 preference to clinical quality measures
13 that have been endorsed by the entity
14 with a contract with the Secretary
15 under section 1890(a).

16 “(II) Prior to any measure being
17 selected under this clause, the Sec-
18 retary shall publish in the Federal
19 Register such measure and provide for
20 a period of public comment on such
21 measure.

22 “(iv) TRANSITIONAL USE OF
23 BLEND.—For payments for 2014 and
24 2015, the Secretary may compute the qual-
25 ity performance score for a Medicare Ad-

1 vantage plan based on a blend of the meas-
2 ures specified in clause (i) and the meas-
3 ures described in clause (ii) and selected
4 under clause (iii).

5 “(v) USE OF QUALITY OUTCOMES
6 MEASURES.—For payments beginning with
7 2016, the preponderance of measures used
8 under this paragraph shall be quality out-
9 comes measures described in clause (ii)
10 and selected under clause (iii).

11 “(C) DATA USED IN COMPUTING SCORE.—
12 Such score for application for—

13 “(i) payments in 2011 shall be based
14 on quality performance data for plans for
15 2009; and

16 “(ii) payments in 2012 and a subse-
17 quent year shall be based on quality per-
18 formance data for plans for the second
19 preceding year.

20 “(D) REPORTING OF DATA.—Each Medi-
21 care Advantage organization shall provide for
22 the reporting to the Secretary of quality per-
23 formance data described in subparagraph (B)
24 (in order to determine a quality performance

1 score under this paragraph) in such time and
2 manner as the Secretary shall specify.

3 “(E) RANKING OF PLANS.—

4 “(i) INITIAL RANKING.—Based on the
5 quality performance score described in sub-
6 paragraph (B) achieved with respect to a
7 year, the Secretary shall rank plan per-
8 formance—

9 “(I) from highest to lowest based
10 on absolute scores; and

11 “(II) from highest to lowest
12 based on percentage improvement in
13 the score for the plan from the pre-
14 vious year.

15 A plan which does not report quality per-
16 formance data under subparagraph (D)
17 shall be counted, for purposes of such
18 ranking, as having the lowest plan per-
19 formance and lowest percentage improve-
20 ment.

21 “(ii) IDENTIFICATION OF HIGH QUAL-
22 ITY PLANS IN TOP QUINTILE BASED ON
23 PROJECTED ENROLLMENT.—The Secretary
24 shall, based on the scores for each plan
25 under clause (i)(I) and the Secretary’s pro-

1 jected enrollment for each plan and subject
2 to clause (iv), identify those Medicare Ad-
3 vantage plans with the highest score that,
4 based upon projected enrollment, are pro-
5 jected to include in the aggregate 20 per-
6 cent of the total projected enrollment for
7 the year. For purposes of this subsection,
8 a plan so identified shall be referred to in
9 this subsection as a ‘high quality MA
10 plan’.

11 “(iii) IDENTIFICATION OF IMPROVED
12 QUALITY PLANS IN TOP QUINTILE BASED
13 ON PROJECTED ENROLLMENT.—The Sec-
14 retary shall, based on the percentage im-
15 provement score for each plan under clause
16 (i)(II) and the Secretary’s projected enroll-
17 ment for each plan and subject to clause
18 (iv), identify those Medicare Advantage
19 plans with the greatest percentage im-
20 provement score that, based upon projected
21 enrollment, are projected to include in the
22 aggregate 20 percent of the total projected
23 enrollment for the year. For purposes of
24 this subsection, a plan so identified that is
25 not a high quality plan for the year shall

1 be referred to in this subsection as an ‘im-
2 proved quality MA plan’.

3 “(iv) AUTHORITY TO DISQUALIFY
4 CERTAIN PLANS.—In applying clauses (ii)
5 and (iii), the Secretary may determine not
6 to identify a Medicare Advantage plan if
7 the Secretary has identified deficiencies in
8 the plan’s compliance with rules for such
9 plans under this part.

10 “(F) NOTIFICATION.—The Secretary, in
11 the annual announcement required under sub-
12 section (b)(1)(B) in 2011 and each succeeding
13 year, shall notify the Medicare Advantage orga-
14 nization that is offering a high quality plan or
15 an improved quality plan of such identification
16 for the year and the quality performance pay-
17 ment adjustment for such plan for the year.
18 The Secretary shall provide for publication on
19 the website for the Medicare program of the in-
20 formation described in the previous sentence.”.

21 **SEC. 1163. EXTENSION OF SECRETARIAL CODING INTEN-**
22 **SITY ADJUSTMENT AUTHORITY.**

23 Section 1853(a)(1)(C)(ii) of the Social Security Act
24 (42 U.S.C. 1395w–23(a)(1)(C)(ii) is amended—

1 (1) in the matter before subclause (I), by strik-
2 ing “through 2010” and inserting “and each subse-
3 quent year”; and

4 (2) in subclause (II)—

5 (A) by inserting “periodically” before “con-
6 duct an analysis”;

7 (B) by inserting “on a timely basis” after
8 “are incorporated”; and

9 (C) by striking “only for 2008, 2009, and
10 2010” and inserting “for 2008 and subsequent
11 years”.

12 **SEC. 1164. SIMPLIFICATION OF ANNUAL BENEFICIARY**
13 **ELECTION PERIODS.**

14 (a) 2 WEEK PROCESSING PERIOD FOR ANNUAL EN-
15 ROLLMENT PERIOD (AEP).—Paragraph (3)(B) of section
16 1851(e) of the Social Security Act (42 U.S.C. 1395w-
17 21(e)) is amended—

18 (1) by striking “and” at the end of clause (iii);

19 (2) in clause (iv)—

20 (A) by striking “and succeeding years”
21 and inserting “, 2008, 2009, and 2010”; and

22 (B) by striking the period at the end and
23 inserting “; and”; and

24 (3) by adding at the end the following new
25 clause:

1 “(v) with respect to 2011 and suc-
2 ceeding years, the period beginning on No-
3 vember 1 and ending on December 15 of
4 the year before such year.”.

5 (b) **ELIMINATION OF 3-MONTH ADDITIONAL OPEN**
6 **ENROLLMENT PERIOD (OEP).**—Effective for plan years
7 beginning with 2011, paragraph (2) of such section is
8 amended by striking subparagraph (C).

9 **SEC. 1165. EXTENSION OF REASONABLE COST CONTRACTS.**

10 Section 1876(h)(5)(C) of the Social Security Act (42
11 U.S.C. 1395mm(h)(5)(C)) is amended—

12 (1) in clause (ii), by striking “January 1,
13 2010” and inserting “January 1, 2012”; and

14 (2) in clause (iii), by striking “the service area
15 for the year” and inserting “the portion of the
16 plan’s service area for the year that is within the
17 service area of a reasonable cost reimbursement con-
18 tract”.

19 **SEC. 1166. LIMITATION OF WAIVER AUTHORITY FOR EM-**
20 **PLOYER GROUP PLANS.**

21 (a) **IN GENERAL.**—The first sentence of paragraph
22 (2) of section 1857(i) of the Social Security Act (42
23 U.S.C. 1395w–27(i)) is amended by inserting before the
24 period at the end the following: “, but only if 90 percent
25 of the Medicare Advantage eligible individuals enrolled

1 under such plan reside in a county in which the MA orga-
2 nization offers an MA local plan”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall apply for plan years beginning on or
5 after January 1, 2011, and shall not apply to plans which
6 were in effect as of December 31, 2010.

7 **SEC. 1167. IMPROVING RISK ADJUSTMENT FOR PAYMENTS.**

8 (a) **REPORT TO CONGRESS.**—Not later than 1 year
9 after the date of the enactment of this Act, the Secretary
10 of Health and Human Services shall submit to Congress
11 a report that evaluates the adequacy of the risk adjust-
12 ment system under section 1853(a)(1)(C) of the Social Se-
13 curity Act (42 U.S.C. 1395–23(a)(1)(C)) in predicting
14 costs for beneficiaries with chronic or co-morbid condi-
15 tions, beneficiaries dually-eligible for Medicare and Med-
16 icaid, and non-Medicaid eligible low-income beneficiaries;
17 and the need and feasibility of including further grada-
18 tions of diseases or conditions and multiple years of bene-
19 ficiary data.

20 (b) **IMPROVEMENTS TO RISK ADJUSTMENT.**—Not
21 later than January 1, 2012, the Secretary shall implement
22 necessary improvements to the risk adjustment system
23 under section 1853(a)(1)(C) of the Social Security Act (42
24 U.S.C. 1395–23(a)(1)(C)), taking into account the evalua-
25 tion under subsection (a).

1 **SEC. 1168. ELIMINATION OF MA REGIONAL PLAN STA-**
2 **BILIZATION FUND.**

3 (a) IN GENERAL.—Section 1858 of the Social Secu-
4 rity Act (42 U.S.C. 1395w–27a) is amended by striking
5 subsection (e).

6 (b) TRANSITION.—Any amount contained in the MA
7 Regional Plan Stabilization Fund as of the date of the
8 enactment of this Act shall be transferred to the Federal
9 Supplementary Medical Insurance Trust Fund.

10 **PART 2—BENEFICIARY PROTECTIONS AND ANTI-**
11 **FRAUD**

12 **SEC. 1171. LIMITATION ON COST-SHARING FOR INDIVIDUAL**
13 **HEALTH SERVICES.**

14 (a) IN GENERAL.—Section 1852(a)(1) of the Social
15 Security Act (42 U.S.C. 1395w–22(a)(1)) is amended—

16 (1) in subparagraph (A), by inserting before the
17 period at the end the following: “with cost-sharing
18 that is no greater (and may be less) than the cost-
19 sharing that would otherwise be imposed under such
20 program option”;

21 (2) in subparagraph (B)(i), by striking “or an
22 actuarially equivalent level of cost-sharing as deter-
23 mined in this part”; and

24 (3) by amending clause (ii) of subparagraph
25 (B) to read as follows:

1 “(ii) PERMITTING USE OF FLAT CO-
2 PAYMENT OR PER DIEM RATE.—Nothing in
3 clause (i) shall be construed as prohibiting
4 a Medicare Advantage plan from using a
5 flat copayment or per diem rate, in lieu of
6 the cost-sharing that would be imposed
7 under part A or B, so long as the amount
8 of the cost-sharing imposed does not ex-
9 ceed the amount of the cost-sharing that
10 would be imposed under the respective part
11 if the individual were not enrolled in a plan
12 under this part.”.

13 (b) LIMITATION FOR DUAL ELIGIBLES AND QUALI-
14 FIED MEDICARE BENEFICIARIES.—Section 1852(a) of
15 such Act is amended by adding at the end the following
16 new paragraph:

17 “(7) LIMITATION ON COST-SHARING FOR DUAL
18 ELIGIBLES AND QUALIFIED MEDICARE BENE-
19 FICIARIES.—In the case of a individual who is a full-
20 benefit dual eligible individual (as defined in section
21 1935(c)(6)) or a qualified medicare beneficiary (as
22 defined in section 1905(p)(1)) who is enrolled in a
23 Medicare Advantage plan, the plan may not impose
24 cost-sharing that exceeds the amount of cost-sharing
25 that would be permitted with respect to the indi-

1 vidual under this title and title XIX if the individual
2 were not enrolled with such plan.”.

3 (c) EFFECTIVE DATES.—

4 (1) The amendments made by subsection (a)
5 shall apply to plan years beginning on or after Janu-
6 ary 1, 2011.

7 (2) The amendments made by subsection (b)
8 shall apply to plan years beginning on or after Janu-
9 ary 1, 2011.

10 **SEC. 1172. CONTINUOUS OPEN ENROLLMENT FOR ENROLL-**
11 **EES IN PLANS WITH ENROLLMENT SUSPEN-**
12 **SION.**

13 Section 1851(e)(4) of the Social Security Act (42
14 U.S.C. 1395w(e)(4)) is amended—

15 (1) in subparagraph (C), by striking at the end
16 “or”;

17 (2) in subparagraph (D)—

18 (A) by inserting “, taking into account the
19 health or well-being of the individual” before
20 the period; and

21 (B) by redesignating such subparagraph as
22 subparagraph (E); and

23 (3) by inserting after subparagraph (C) the fol-
24 lowing new subparagraph:

1 “(D)) the individual is enrolled in an MA
2 plan and enrollment in the plan is suspended
3 under paragraph (2)(B) or (3)(C) of section
4 1857(g) because of a failure of the plan to meet
5 applicable requirements; or”.

6 **SEC. 1173. INFORMATION FOR BENEFICIARIES ON MA PLAN**
7 **ADMINISTRATIVE COSTS.**

8 (a) DISCLOSURE OF MEDICAL LOSS RATIOS AND
9 OTHER EXPENSE DATA.—Section 1851 of the Social Se-
10 curity Act (42 U.S.C. 1395w–21), as previously amended
11 by this subtitle, is amended by adding at the end the fol-
12 lowing new subsection:

13 “(p) PUBLICATION OF MEDICAL LOSS RATIOS AND
14 OTHER COST-RELATED INFORMATION.—

15 “(1) IN GENERAL.—The Secretary shall pub-
16 lish, not later than November 1 of each year (begin-
17 ning with 2011), for each MA plan contract, the
18 medical loss ratio of the plan in the previous year.

19 “(2) SUBMISSION OF DATA.—

20 “(A) IN GENERAL.—Each MA organization
21 shall submit to the Secretary, in a form and
22 manner specified by the Secretary, data nec-
23 essary for the Secretary to publish the medical
24 loss ratio on a timely basis.

1 “(B) DATA FOR 2010 AND 2011.—The data
2 submitted under subparagraph (A) for 2010
3 and for 2011 shall be consistent in content with
4 the data reported as part of the MA plan bid
5 in June 2009 for 2010.

6 “(C) USE OF STANDARDIZED ELEMENTS
7 AND DEFINITIONS.—The data to be submitted
8 under subparagraph (A) relating to medical loss
9 ratio for a year, beginning with 2012, shall be
10 submitted based on the standardized elements
11 and definitions developed under paragraph (3).

12 “(3) DEVELOPMENT OF DATA REPORTING
13 STANDARDS.—

14 “(A) IN GENERAL.—The Secretary shall
15 develop and implement standardized data ele-
16 ments and definitions for reporting under this
17 subsection, for contract years beginning with
18 2012, of data necessary for the calculation of
19 the medical loss ratio for MA plans. Not later
20 than December 31, 2010, the Secretary shall
21 publish a report describing the elements and
22 definitions so developed.

23 “(B) CONSULTATION.—The Secretary
24 shall consult with the Health Choices Commis-
25 sioner, representatives of MA organizations, ex-

1 perts on health plan accounting systems, and
2 representatives of the National Association of
3 Insurance Commissioners, in the development
4 of such data elements and definitions.

5 “(4) MEDICAL LOSS RATIO TO BE DEFINED.—
6 For purposes of this part, the term ‘medical loss
7 ratio’ has the meaning given such term by the Sec-
8 retary, taking into account the meaning given such
9 term by the Health Choices Commissioner under
10 section 116 of the America’s Affordable Health
11 Choices Act of 2009.”.

12 (b) MINIMUM MEDICAL LOSS RATIO.—Section
13 1857(e) of the Social Security Act (42 U.S.C. 1395w-
14 27(e)) is amended by adding at the end the following new
15 paragraph:

16 “(4) REQUIREMENT FOR MINIMUM MEDICAL
17 LOSS RATIO.—If the Secretary determines for a con-
18 tract year (beginning with 2014) that an MA plan
19 has failed to have a medical loss ratio (as defined in
20 section 1851(p)(4)) of at least .85—

21 “(A) the Secretary shall require the Medi-
22 care Advantage organization offering the plan
23 to give enrollees a rebate (in the second suc-
24 ceeding contract year) of premiums under this
25 part (or part B or part D, if applicable) by

1 such amount as would provide for a benefits
2 ratio of at least .85;

3 “(B) for 3 consecutive contract years, the
4 Secretary shall not permit the enrollment of
5 new enrollees under the plan for coverage dur-
6 ing the second succeeding contract year; and

7 “(C) the Secretary shall terminate the plan
8 contract if the plan fails to have such a medical
9 loss ratio for 5 consecutive contract years.”.

10 **SEC. 1174. STRENGTHENING AUDIT AUTHORITY.**

11 (a) **FOR PART C PAYMENTS RISK ADJUSTMENT.**—
12 Section 1857(d)(1) of the Social Security Act (42 U.S.C.
13 1395w–27(d)(1)) is amended by inserting after “section
14 1858(c)” the following: “, and data submitted with re-
15 spect to risk adjustment under section 1853(a)(3)”.

16 (b) **ENFORCEMENT OF AUDITS AND DEFICI-
17 CIENCIES.**—

18 (1) **IN GENERAL.**—Section 1857(e) of such Act,
19 as amended by section 1173, is amended by adding
20 at the end the following new paragraph:

21 “(5) **ENFORCEMENT OF AUDITS AND DEFICI-
22 CIENCIES.**—

23 “(A) **INFORMATION IN CONTRACT.**—The
24 Secretary shall require that each contract with
25 an MA organization under this section shall in-

1 clude terms that inform the organization of the
2 provisions in subsection (d).

3 “(B) ENFORCEMENT AUTHORITY.—The
4 Secretary is authorized, in connection with con-
5 ducting audits and other activities under sub-
6 section (d), to take such actions, including pur-
7 suit of financial recoveries, necessary to address
8 deficiencies identified in such audits or other
9 activities.”.

10 (2) APPLICATION UNDER PART D.—For provi-
11 sion applying the amendment made by paragraph
12 (1) to prescription drug plans under part D, see sec-
13 tion 1860D–12(b)(3)(D) of the Social Security Act.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect on the date of the enactment
16 of this Act and shall apply to audits and activities con-
17 ducted for contract years beginning on or after January
18 1, 2011.

19 **SEC. 1175. AUTHORITY TO DENY PLAN BIDS.**

20 (a) IN GENERAL.—Section 1854(a)(5) of the Social
21 Security Act (42 U.S.C. 1395w–24(a)(5)) is amended by
22 adding at the end the following new subparagraph:

23 “(C) REJECTION OF BIDS.—Nothing in
24 this section shall be construed as requiring the

1 Secretary to accept any or every bid by an MA
2 organization under this subsection.”.

3 (b) APPLICATION UNDER PART D.—Section 1860D–
4 11(d) of such Act (42 U.S.C. 1395w–111(d)) is amended
5 by adding at the end the following new paragraph:

6 “(3) REJECTION OF BIDS.—Paragraph (5)(C)
7 of section 1854(a) shall apply with respect to bids
8 under this section in the same manner as it applies
9 to bids by an MA organization under such section.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to bids for contract years begin-
12 ning on or after January 1, 2011.

13 **PART 3—TREATMENT OF SPECIAL NEEDS PLANS**
14 **SEC. 1176. LIMITATION ON ENROLLMENT OUTSIDE OPEN**
15 **ENROLLMENT PERIOD OF INDIVIDUALS INTO**
16 **CHRONIC CARE SPECIALIZED MA PLANS FOR**
17 **SPECIAL NEEDS INDIVIDUALS.**

18 Section 1859(f)(4) of the Social Security Act (42
19 U.S.C. 1395w–28(f)(4)) is amended by adding at the end
20 the following new subparagraph:

21 “(C) The plan does not enroll an individual
22 on or after January 1, 2011, other than during
23 an annual, coordinated open enrollment period
24 or when at the time of the diagnosis of the dis-
25 ease or condition that qualifies the individual as

1 an individual described in subsection
2 (b)(6)(B)(iii).”.

3 **SEC. 1177. EXTENSION OF AUTHORITY OF SPECIAL NEEDS**
4 **PLANS TO RESTRICT ENROLLMENT.**

5 (a) IN GENERAL.—Section 1859(f)(1) of the Social
6 Security Act (42 U.S.C. 1395w–28(f)(1)) is amended by
7 striking “January 1, 2011” and inserting “January 1,
8 2013 (or January 1, 2016, in the case of a plan described
9 in section 1177(b)(1) of the America’s Affordable Health
10 Choices Act of 2009)”.

11 (b) GRANDFATHERING OF CERTAIN PLANS.—

12 (1) PLANS DESCRIBED.—For purposes of sec-
13 tion 1859(f)(1) of the Social Security Act (42
14 U.S.C. 1395w–28(f)(1)), a plan described in this
15 paragraph is a plan that had a contract with a State
16 that had a State program to operate an integrated
17 Medicaid-Medicare program that had been approved
18 by the Centers for Medicare & Medicaid Services as
19 of January 1, 2004.

20 (2) ANALYSIS; REPORT.—The Secretary of
21 Health and Human Services shall provide, through
22 a contract with an independent health services eval-
23 uation organization, for an analysis of the plans de-
24 scribed in paragraph (1) with regard to the impact
25 of such plans on cost, quality of care, patient satis-

1 faction, and other subjects as specified by the Sec-
2 retary. Not later than December 31, 2011, the Sec-
3 retary shall submit to Congress a report on such
4 analysis and shall include in such report such rec-
5 ommendations with regard to the treatment of such
6 plans as the Secretary deems appropriate.

7 **Subtitle E—Improvements to**
8 **Medicare Part D**

9 **SEC. 1181. ELIMINATION OF COVERAGE GAP.**

10 (a) IN GENERAL.—Section 1860D–2(b) of such Act
11 (42 U.S.C. 1395w–102(b)) is amended—

12 (1) in paragraph (3)(A), by striking “paragraph
13 (4)” and inserting “paragraphs (4) and (7)”;

14 (2) in paragraph (4)(B)(i), by inserting “sub-
15 ject to paragraph (7)” after “purposes of this part”;

16 and

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

19 “(7) PHASED-IN ELIMINATION OF COVERAGE
20 GAP.—

21 “(A) IN GENERAL.—For each year begin-
22 ning with 2011, the Secretary shall consistent
23 with this paragraph progressively increase the
24 initial coverage limit (described in subsection
25 (b)(3)) and decrease the annual out-of-pocket

1 threshold from the amounts otherwise computed
2 until there is a continuation of coverage from
3 the initial coverage limit for expenditures in-
4 curred through the total amount of expendi-
5 tures at which benefits are available under
6 paragraph (4).

7 “(B) INCREASE IN INITIAL COVERAGE
8 LIMIT.—For a year beginning with 2011, the
9 initial coverage limit otherwise computed with-
10 out regard to this paragraph shall be increased
11 by $\frac{1}{2}$ of the cumulative phase-in percentage (as
12 defined in subparagraph (D)(ii) for the year)
13 times the out-of-pocket gap amount (as defined
14 in subparagraph (E)) for the year.

15 “(C) DECREASE IN ANNUAL OUT-OF-POCK-
16 ET THRESHOLD.—For a year beginning with
17 2011, the annual out-of-pocket threshold other-
18 wise computed without regard to this paragraph
19 shall be decreased by $\frac{1}{2}$ of the cumulative
20 phase-in percentage of the out-of-pocket gap
21 amount for the year multiplied by 1.75.

22 “(D) PHASE-IN.—For purposes of this
23 paragraph:

1 “(i) ANNUAL PHASE-IN PERCENT-
2 AGE.—The term ‘annual phase-in percent-
3 age’ means—

4 “(I) for 2011, 13 percent;

5 “(II) for 2012, 2013, 2014, and
6 2015, 5 percent;

7 “(III) for 2016 through 2018,
8 7.5 percent; and

9 “(IV) for 2019 and each subse-
10 quent year, 10 percent.

11 “(ii) CUMULATIVE PHASE-IN PER-
12 CENTAGE.—The term ‘cumulative phase-in
13 percentage’ means for a year the sum of
14 the annual phase-in percentage for the
15 year and the annual phase-in percentages
16 for each previous year beginning with
17 2011, but in no case more than 100 per-
18 cent.

19 “(E) OUT-OF-POCKET GAP AMOUNT.—For
20 purposes of this paragraph, the term ‘out-of-
21 pocket gap amount’ means for a year the
22 amount by which—

23 “(i) the annual out-of-pocket thresh-
24 old specified in paragraph (4)(B) for the

1 year (as determined as if this paragraph
2 did not apply), exceeds

3 “(ii) the sum of—

4 “(I) the annual deductible under
5 paragraph (1) for the year; and

6 “(II) $\frac{1}{4}$ of the amount by which
7 the initial coverage limit under para-
8 graph (3) for the year (as determined
9 as if this paragraph did not apply) ex-
10 ceeds such annual deductible.”.

11 (b) REQUIRING DRUG MANUFACTURERS TO PROVIDE
12 DRUG REBATES FOR FULL-BENEFIT DUAL ELIGIBLES.—

13 (1) IN GENERAL.—Section 1860D–2 of the So-
14 cial Security Act (42 U.S.C. 1396r–8) is amended—

15 (A) in subsection (e)(1), in the matter be-
16 fore subparagraph (A), by inserting “and sub-
17 section (f)” after “this subsection”; and

18 (B) by adding at the end the following new
19 subsection:

20 “(f) PRESCRIPTION DRUG REBATE AGREEMENT FOR
21 FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS.—

22 “(1) IN GENERAL.—In this part, the term ‘cov-
23 ered part D drug’ does not include any drug or bio-
24 logic that is manufactured by a manufacturer that

1 has not entered into and have in effect a rebate
2 agreement described in paragraph (2).

3 “(2) REBATE AGREEMENT.—A rebate agree-
4 ment under this subsection shall require the manu-
5 facturer to provide to the Secretary a rebate for
6 each rebate period (as defined in paragraph (6)(B))
7 ending after December 31, 2010, in the amount
8 specified in paragraph (3) for any covered part D
9 drug of the manufacturer dispensed after December
10 31, 2010, to any full-benefit dual eligible individual
11 (as defined in paragraph (6)(A)) for which payment
12 was made by a PDP sponsor under part D or a MA
13 organization under part C for such period. Such re-
14 bate shall be paid by the manufacturer to the Sec-
15 retary not later than 30 days after the date of re-
16 ceipt of the information described in section 1860D-
17 12(b)(7), including as such section is applied under
18 section 1857(f)(3).

19 “(3) REBATE FOR FULL-BENEFIT DUAL ELIGI-
20 BLE MEDICARE DRUG PLAN ENROLLEES.—

21 “(A) IN GENERAL.—The amount of the re-
22 bate specified under this paragraph for a manu-
23 facturer for a rebate period, with respect to
24 each dosage form and strength of any covered
25 part D drug provided by such manufacturer

1 and dispensed to a full-benefit dual eligible indi-
2 vidual, shall be equal to the product of—

3 “(i) the total number of units of such
4 dosage form and strength of the drug so
5 provided and dispensed for which payment
6 was made by a PDP sponsor under part D
7 or a MA organization under part C for the
8 rebate period (as reported under section
9 1860D–12(b)(7), including as such section
10 is applied under section 1857(f)(3)); and

11 “(ii) the amount (if any) by which—

12 “(I) the Medicaid rebate amount
13 (as defined in subparagraph (B)) for
14 such form, strength, and period, ex-
15 ceeds

16 “(II) the average Medicare drug
17 program full-benefit dual eligible re-
18 bate amount (as defined in subpara-
19 graph (C)) for such form, strength,
20 and period.

21 “(B) MEDICAID REBATE AMOUNT.—For
22 purposes of this paragraph, the term ‘Medicaid
23 rebate amount’ means, with respect to each
24 dosage form and strength of a covered part D

1 drug provided by the manufacturer for a rebate
2 period—

3 “(i) in the case of a single source
4 drug or an innovator multiple source drug,
5 the amount specified in paragraph
6 (1)(A)(ii) of section 1927(b) plus the
7 amount, if any, specified in paragraph
8 (2)(A)(ii) of such section, for such form,
9 strength, and period; or

10 “(ii) in the case of any other covered
11 outpatient drug, the amount specified in
12 paragraph (3)(A)(i) of such section for
13 such form, strength, and period.

14 “(C) AVERAGE MEDICARE DRUG PROGRAM
15 FULL-BENEFIT DUAL ELIGIBLE REBATE
16 AMOUNT.—For purposes of this subsection, the
17 term ‘average Medicare drug program full-ben-
18 efit dual eligible rebate amount’ means, with re-
19 spect to each dosage form and strength of a
20 covered part D drug provided by a manufac-
21 turer for a rebate period, the sum, for all PDP
22 sponsors under part D and MA organizations
23 administering a MA–PD plan under part C,
24 of—

1 “(i) the product, for each such spon-
2 sor or organization, of—

3 “(I) the sum of all rebates, dis-
4 counts, or other price concessions (not
5 taking into account any rebate pro-
6 vided under paragraph (2) for such
7 dosage form and strength of the drug
8 dispensed, calculated on a per-unit
9 basis, but only to the extent that any
10 such rebate, discount, or other price
11 concession applies equally to drugs
12 dispensed to full-benefit dual eligible
13 Medicare drug plan enrollees and
14 drugs dispensed to PDP and MA-PD
15 enrollees who are not full-benefit dual
16 eligible individuals; and

17 “(II) the number of the units of
18 such dosage and strength of the drug
19 dispensed during the rebate period to
20 full-benefit dual eligible individuals
21 enrolled in the prescription drug plans
22 administered by the PDP sponsor or
23 the MA-PD plans administered by the
24 MA-PD organization; divided by

1 “(ii) the total number of units of such
2 dosage and strength of the drug dispensed
3 during the rebate period to full-benefit
4 dual eligible individuals enrolled in all pre-
5 scription drug plans administered by PDP
6 sponsors and all MA–PD plans adminis-
7 tered by MA–PD organizations.

8 “(4) LENGTH OF AGREEMENT.—The provisions
9 of paragraph (4) of section 1927(b) (other than
10 clauses (iv) and (v) of subparagraph (B)) shall apply
11 to rebate agreements under this subsection in the
12 same manner as such paragraph applies to a rebate
13 agreement under such section.

14 “(5) OTHER TERMS AND CONDITIONS.—The
15 Secretary shall establish other terms and conditions
16 of the rebate agreement under this subsection, in-
17 cluding terms and conditions related to compliance,
18 that are consistent with this subsection.

19 “(6) DEFINITIONS.—In this subsection and sec-
20 tion 1860D–12(b)(7):

21 “(A) FULL-BENEFIT DUAL ELIGIBLE INDI-
22 VIDUAL.—The term ‘full-benefit dual eligible in-
23 dividual’ has the meaning given such term in
24 section 1935(c)(6).

1 “(B) REBATE PERIOD.—The term ‘rebate
2 period’ has the meaning given such term in sec-
3 tion 1927(k)(8).”.

4 (2) REPORTING REQUIREMENT FOR THE DE-
5 TERMINATION AND PAYMENT OF REBATES BY MANU-
6 FACTURES RELATED TO REBATE FOR FULL-BENEFIT
7 DUAL ELIGIBLE MEDICARE DRUG PLAN ENROLL-
8 EES.—

9 (A) REQUIREMENTS FOR PDP SPON-
10 SORS.—Section 1860D–12(b) of the Social Se-
11 curity Act (42 U.S.C. 1395w–112(b)) is amend-
12 ed by adding at the end the following new para-
13 graph:

14 “(7) REPORTING REQUIREMENT FOR THE DE-
15 TERMINATION AND PAYMENT OF REBATES BY MANU-
16 FACTURERS RELATED TO REBATE FOR FULL-BEN-
17 EFIT DUAL ELIGIBLE MEDICARE DRUG PLAN EN-
18 ROLLEES.—

19 “(A) IN GENERAL.—For purposes of the
20 rebate under section 1860D–2(f) for contract
21 years beginning on or after January 1, 2011,
22 each contract entered into with a PDP sponsor
23 under this part with respect to a prescription
24 drug plan shall require that the sponsor comply
25 with subparagraphs (B) and (C).

1 “(B) REPORT FORM AND CONTENTS.—Not
2 later than 60 days after the end of each rebate
3 period (as defined in section 1860D–2(f)(6)(B))
4 within such a contract year to which such sec-
5 tion applies, a PDP sponsor of a prescription
6 drug plan under this part shall report to each
7 manufacturer—

8 “(i) information (by National Drug
9 Code number) on the total number of units
10 of each dosage, form, and strength of each
11 drug of such manufacturer dispensed to
12 full-benefit dual eligible Medicare drug
13 plan enrollees under any prescription drug
14 plan operated by the PDP sponsor during
15 the rebate period;

16 “(ii) information on the price dis-
17 counts, price concessions, and rebates for
18 such drugs for such form, strength, and
19 period;

20 “(iii) information on the extent to
21 which such price discounts, price conces-
22 sions, and rebates apply equally to full-
23 benefit dual eligible Medicare drug plan
24 enrollees and PDP enrollees who are not

1 full-benefit dual eligible Medicare drug
2 plan enrollees; and

3 “(iv) any additional information that
4 the Secretary determines is necessary to
5 enable the Secretary to calculate the aver-
6 age Medicare drug program full-benefit
7 dual eligible rebate amount (as defined in
8 paragraph (3)(C) of such section), and to
9 determine the amount of the rebate re-
10 quired under this section, for such form,
11 strength, and period.

12 Such report shall be in a form consistent with
13 a standard reporting format established by the
14 Secretary.

15 “(C) SUBMISSION TO SECRETARY.—Each
16 PDP sponsor shall promptly transmit a copy of
17 the information reported under subparagraph
18 (B) to the Secretary for the purpose of audit
19 oversight and evaluation.

20 “(D) CONFIDENTIALITY OF INFORMA-
21 TION.—The provisions of subparagraph (D) of
22 section 1927(b)(3), relating to confidentiality of
23 information, shall apply to information reported
24 by PDP sponsors under this paragraph in the
25 same manner that such provisions apply to in-

1 formation disclosed by manufacturers or whole-
2 salers under such section, except—

3 “(i) that any reference to ‘this sec-
4 tion’ in clause (i) of such subparagraph
5 shall be treated as being a reference to this
6 section;

7 “(ii) the reference to the Director of
8 the Congressional Budget Office in clause
9 (iii) of such subparagraph shall be treated
10 as including a reference to the Medicare
11 Payment Advisory Commission; and

12 “(iii) clause (iv) of such subparagraph
13 shall not apply.

14 “(E) OVERSIGHT.—Information reported
15 under this paragraph may be used by the In-
16 specter General of the Department of Health
17 and Human Services for the statutorily author-
18 ized purposes of audit, investigation, and eval-
19 uations.

20 “(F) PENALTIES FOR FAILURE TO PRO-
21 VIDE TIMELY INFORMATION AND PROVISION OF
22 FALSE INFORMATION.—In the case of a PDP
23 sponsor—

24 “(i) that fails to provide information
25 required under subparagraph (B) on a

1 timely basis, the sponsor is subject to a
2 civil money penalty in the amount of
3 \$10,000 for each day in which such infor-
4 mation has not been provided; or

5 “(ii) that knowingly (as defined in
6 section 1128A(i)) provides false informa-
7 tion under such subparagraph, the sponsor
8 is subject to a civil money penalty in an
9 amount not to exceed \$100,000 for each
10 item of false information.

11 Such civil money penalties are in addition to
12 other penalties as may be prescribed by law.
13 The provisions of section 1128A (other than
14 subsections (a) and (b)) shall apply to a civil
15 money penalty under this subparagraph in the
16 same manner as such provisions apply to a pen-
17 alty or proceeding under section 1128A(a).”.

18 (B) APPLICATION TO MA ORGANIZA-
19 TIONS.—Section 1857(f)(3) of the Social Secu-
20 rity Act (42 U.S.C. 1395w-27(f)(3)) is amend-
21 ed by adding at the end the following:

22 “(D) REPORTING REQUIREMENT RELATED
23 TO REBATE FOR FULL-BENEFIT DUAL ELIGIBLE
24 MEDICARE DRUG PLAN ENROLLEES.—Section
25 1860D-12(b)(7).”.

1 “(g) REQUIREMENT FOR MANUFACTURER DISCOUNT
2 AGREEMENT FOR CERTAIN QUALIFYING DRUGS.—

3 “(1) IN GENERAL.—In this part, the term ‘cov-
4 ered part D drug’ does not include any drug or bio-
5 logic that is manufactured by a manufacturer that
6 has not entered into and have in effect for all quali-
7 fying drugs (as defined in paragraph (5)(A)) a dis-
8 count agreement described in paragraph (2).

9 “(2) DISCOUNT AGREEMENT.—

10 “(A) PERIODIC DISCOUNTS.—A discount
11 agreement under this paragraph shall require
12 the manufacturer involved to provide, to each
13 PDP sponsor with respect to a prescription
14 drug plan or each MA organization with respect
15 to each MA–PD plan, a discount in an amount
16 specified in paragraph (3) for qualifying drugs
17 (as defined in paragraph (5)(A)) of the manu-
18 facturer dispensed to a qualifying enrollee after
19 December 31, 2010, insofar as the individual is
20 in the original gap in coverage (as defined in
21 paragraph (5)(E)).

22 “(B) DISCOUNT AGREEMENT.—Insofar as
23 not inconsistent with this subsection, the Sec-
24 retary shall establish terms and conditions of
25 such agreement, including terms and conditions

1 relating to compliance, similar to the terms and
2 conditions for rebate agreements under para-
3 graphs (2), (3), and (4) of section 1927(b), ex-
4 cept that—

5 “(i) discounts shall be applied under
6 this subsection to prescription drug plans
7 and MA–PD plans instead of State plans
8 under title XIX;

9 “(ii) PDP sponsors and MA organiza-
10 tions shall be responsible, instead of
11 States, for provision of necessary utiliza-
12 tion information to drug manufacturers;
13 and

14 “(iii) sponsors and MA organizations
15 shall be responsible for reporting informa-
16 tion on drug-component negotiated price,
17 instead of other manufacturer prices.

18 “(C) COUNTING DISCOUNT TOWARD TRUE
19 OUT-OF-POCKET COSTS.—Under the discount
20 agreement, in applying subsection (b)(4), with
21 regard to subparagraph (C)(i) of such sub-
22 section, if a qualified enrollee purchases the
23 qualified drug insofar as the enrollee is in an
24 actual gap of coverage (as defined in paragraph
25 (5)(D)), the amount of the discount under the

1 agreement shall be treated and counted as costs
2 incurred by the plan enrollee.

3 “(3) DISCOUNT AMOUNT.—The amount of the
4 discount specified in this paragraph for a discount
5 period for a plan is equal to 50 percent of the
6 amount of the drug-component negotiated price (as
7 defined in paragraph (5)(C)) for qualifying drugs for
8 the period involved.

9 “(4) ADDITIONAL TERMS.—In the case of a dis-
10 count provided under this subsection with respect to
11 a prescription drug plan offered by a PDP sponsor
12 or an MA–PD plan offered by an MA organization,
13 if a qualified enrollee purchases the qualified drug—

14 “(A) insofar as the enrollee is in an actual
15 gap of coverage (as defined in paragraph
16 (5)(D)), the sponsor or plan shall provide the
17 discount to the enrollee at the time the enrollee
18 pays for the drug; and

19 “(B) insofar as the enrollee is in the por-
20 tion of the original gap in coverage (as defined
21 in paragraph (5)(E)) that is not in the actual
22 gap in coverage, the discount shall not be ap-
23 plied against the negotiated price (as defined in
24 subsection (d)(1)(B)) for the purpose of calcu-
25 lating the beneficiary payment.

1 “(5) DEFINITIONS.—In this subsection:

2 “(A) QUALIFYING DRUG.—The term
3 ‘qualifying drug’ means, with respect to a pre-
4 scription drug plan or MA–PD plan, a drug or
5 biological product that—

6 “(i)(I) is a drug produced or distrib-
7 uted under an original new drug applica-
8 tion approved by the Food and Drug Ad-
9 ministration, including a drug product
10 marketed by any cross-licensed producers
11 or distributors operating under the new
12 drug application;

13 “(II) is a drug that was originally
14 marketed under an original new drug ap-
15 plication approved by the Food and Drug
16 Administration; or

17 “(III) is a biological product as ap-
18 proved under Section 351(a) of the Public
19 Health Services Act;

20 “(ii) is covered under the formulary of
21 the plan; and

22 “(iii) is dispensed to an individual
23 who is in the original gap in coverage.

24 “(B) QUALIFYING ENROLLEE.—The term
25 ‘qualifying enrollee’ means an individual en-

1 rolled in a prescription drug plan or MA–PD
2 plan other than such an individual who is a
3 subsidy-eligible individual (as defined in section
4 1860D–14(a)(3)).

5 “(C) DRUG-COMPONENT NEGOTIATED
6 PRICE.—The term ‘drug-component negotiated
7 price’ means, with respect to a qualifying drug,
8 the negotiated price (as defined in subsection
9 (d)(1)(B)), as determined without regard to any
10 dispensing fee, of the drug under the prescrip-
11 tion drug plan or MA–PD plan involved.

12 “(D) ACTUAL GAP IN COVERAGE.—The
13 term ‘actual gap in coverage’ means the gap in
14 prescription drug coverage that occurs between
15 the initial coverage limit (as modified under
16 subparagraph (B) of subsection (b)(7)) and the
17 annual out-of-pocket threshold (as modified
18 under subparagraph (C) of such subsection).

19 “(E) ORIGINAL GAP IN COVERAGE.—The
20 term ‘original in gap coverage’ means the gap
21 in prescription drug coverage that would occur
22 between the initial coverage limit (described in
23 subsection (b)(3)) and the out-of-pocket thresh-
24 old (as defined in subsection (b)(4))(B) if sub-
25 section (b)(7) did not apply.”.

1 **SEC. 1183. REPEAL OF PROVISION RELATING TO SUBMIS-**
2 **SION OF CLAIMS BY PHARMACIES LOCATED**
3 **IN OR CONTRACTING WITH LONG-TERM CARE**
4 **FACILITIES.**

5 (a) PART D SUBMISSION.—Section 1860D–12(b) of
6 the Social Security Act (42 U.S.C. 1395w–112(b)), as
7 amended by section 172(a)(1) of Public Law 110–275, is
8 amended by striking paragraph (5) and redesignating
9 paragraph (6) and paragraph (7), as added by section
10 1181(b)(2), as paragraph (5) and paragraph (6), respec-
11 tively.

12 (b) SUBMISSION TO MA–PD PLANS.—Section
13 1857(f)(3) of the Social Security Act (42 U.S.C. 1395w-
14 27(f)(3)), as added by section 171(b) of Public Law 110–
15 275 and amended by section 172(a)(2) of such Public
16 Law, is amended by striking subparagraph (B) and redес-
17 ignating subparagraph (C) as subparagraph (B).

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply for contract years beginning with
20 2010.

1 **SEC. 1184. INCLUDING COSTS INCURRED BY AIDS DRUG AS-**
2 **SISTANCE PROGRAMS AND INDIAN HEALTH**
3 **SERVICE IN PROVIDING PRESCRIPTION**
4 **DRUGS TOWARD THE ANNUAL OUT-OF-POCK-**
5 **ET THRESHOLD UNDER PART D.**

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

9 (1) in clause (i), by striking “and” at the end;

10 (2) in clause (ii)—

11 (A) by striking “such costs shall be treated
12 as incurred only if” and inserting “subject to
13 clause (iii), such costs shall be treated as in-
14 curred only if”;

15 (B) by striking “, under section 1860D–
16 14, or under a State Pharmaceutical Assistance
17 Program”; and

18 (C) by striking the period at the end and
19 inserting “; and”; and

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

22 “(iii) such costs shall be treated as in-
23 curred and shall not be considered to be
24 reimbursed under clause (ii) if such costs
25 are borne or paid—

26 “(I) under section 1860D–14;

1 “(II) under a State Pharma-
2 ceutical Assistance Program;

3 “(III) by the Indian Health Serv-
4 ice, an Indian tribe or tribal organiza-
5 tion, or an urban Indian organization
6 (as defined in section 4 of the Indian
7 Health Care Improvement Act); or

8 “(IV) under an AIDS Drug As-
9 sistance Program under part B of
10 title XXVI of the Public Health Serv-
11 ice Act.”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 subsection (a) shall apply to costs incurred on or after
14 January 1, 2011.

15 **SEC. 1185. PERMITTING MID-YEAR CHANGES IN ENROLL-**
16 **MENT FOR FORMULARY CHANGES THAT AD-**
17 **VERSELY IMPACT AN ENROLLEE.**

18 (a) IN GENERAL.—Section 1860D–1(b)(3) of the So-
19 cial Security Act (42 U.S.C. 1395w–101(b)(3)) is amend-
20 ed by adding at the end the following new subparagraph:

21 “(F) CHANGE IN FORMULARY RESULTING
22 IN INCREASE IN COST-SHARING.—

23 “(i) IN GENERAL.—Except as pro-
24 vided in clause (ii), in the case of an indi-
25 vidual enrolled in a prescription drug plan

1 (or MA–PD plan) who has been prescribed
2 and is using a covered part D drug while
3 so enrolled, if the formulary of the plan is
4 materially changed (other than at the end
5 of a contract year) so to reduce the cov-
6 erage (or increase the cost-sharing) of the
7 drug under the plan.

8 “(ii) EXCEPTION.—Clause (i) shall
9 not apply in the case that a drug is re-
10 moved from the formulary of a plan be-
11 cause of a recall or withdrawal of the drug
12 issued by the Food and Drug Administra-
13 tion, because the drug is replaced with a
14 generic drug that is a therapeutic equiva-
15 lent, or because of utilization management
16 applied to—

17 “(I) a drug whose labeling in-
18 cludes a boxed warning required by
19 the Food and Drug Administration
20 under section 210.57(c)(1) of title 21,
21 Code of Federal Regulations (or a
22 successor regulation); or

23 “(II) a drug required under sub-
24 section (c)(2) of section 505–1 of the
25 Federal Food, Drug, and Cosmetic

1 Act to have a Risk Evaluation and
2 Management Strategy that includes
3 elements under subsection (f) of such
4 section.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall apply to contract years beginning on
7 or after January 1, 2011.

8 **Subtitle F—Medicare Rural Access**
9 **Protections**

10 **SEC. 1191. TELEHEALTH EXPANSION AND ENHANCEMENTS.**

11 .

12 (a) ADDITIONAL TELEHEALTH SITE.—

13 (1) IN GENERAL.—Paragraph (4)(C)(ii) of sec-
14 tion 1834(m) of the Social Security Act (42 U.S.C.
15 1395m(m)) is amended by adding at the end the fol-
16 lowing new subclause:

17 “(IX) A renal dialysis facility.”

18 (2) EFFECTIVE DATE.—The amendment made
19 by paragraph (1) shall apply to services furnished on
20 or after January 1, 2011.

21 (b) TELEHEALTH ADVISORY COMMITTEE.—

22 (1) ESTABLISHMENT.—Section 1868 of the So-
23 cial Security Act (42 U.S.C. 1395ee) is amended—

1 (A) in the heading, by adding at the end
2 the following: “TELEHEALTH ADVISORY COM-
3 MITTEE”; and

4 (B) by adding at the end the following new
5 subsection:

6 “(c) TELEHEALTH ADVISORY COMMITTEE.—

7 “(1) IN GENERAL.—The Secretary shall appoint
8 a Telehealth Advisory Committee (in this subsection
9 referred to as the ‘Advisory Committee’) to make
10 recommendations to the Secretary on policies of the
11 Centers for Medicare & Medicaid Services regarding
12 telehealth services as established under section
13 1834(m), including the appropriate addition or dele-
14 tion of services (and HCPCS codes) to those speci-
15 fied in paragraphs (4)(F)(i) and (4)(F)(ii) of such
16 section and for authorized payment under paragraph
17 (1) of such section.

18 “(2) MEMBERSHIP; TERMS.—

19 “(A) MEMBERSHIP.—

20 “(i) IN GENERAL.—The Advisory
21 Committee shall be composed of 9 mem-
22 bers, to be appointed by the Secretary, of
23 whom—

24 “(I) 5 shall be practicing physi-
25 cians;

1 “(II) 2 shall be practicing non-
2 physician health care practitioners;
3 and

4 “(III) 2 shall be administrators
5 of telehealth programs.

6 “(ii) REQUIREMENTS FOR APPOINT-
7 ING MEMBERS.—In appointing members of
8 the Advisory Committee, the Secretary
9 shall—

10 “(I) ensure that each member
11 has prior experience with the practice
12 of telemedicine or telehealth;

13 “(II) give preference to individ-
14 uals who are currently providing tele-
15 medicine or telehealth services or who
16 are involved in telemedicine or tele-
17 health programs;

18 “(III) ensure that the member-
19 ship of the Advisory Committee rep-
20 resents a balance of specialties and
21 geographic regions; and

22 “(IV) take into account the rec-
23 ommendations of stakeholders.

1 “(B) TERMS.—The members of the Advi-
2 sory Committee shall serve for such term as the
3 Secretary may specify.

4 “(C) CONFLICTS OF INTEREST.—An advi-
5 sory committee member may not participate
6 with respect to a particular matter considered
7 in an advisory committee meeting if such mem-
8 ber (or an immediate family member of such
9 member) has a financial interest that could be
10 affected by the advice given to the Secretary
11 with respect to such matter.

12 “(3) MEETINGS.—The Advisory Committee
13 shall meet twice each calendar year and at such
14 other times as the Secretary may provide.

15 “(4) PERMANENT COMMITTEE.—Section 14 of
16 the Federal Advisory Committee Act (5 U.S.C.
17 App.) shall not apply to the Advisory Committee.”

18 “(2) FOLLOWING RECOMMENDATIONS.—Section
19 1834(m)(4)(F) of such Act (42 U.S.C.
20 1395m(m)(4)(F)) is amended by adding at the end
21 the following new clause:

22 “(iii) RECOMMENDATIONS OF THE
23 TELEHEALTH ADVISORY COMMITTEE.—In
24 making determinations under clauses (i)
25 and (ii), the Secretary shall take into ac-

1 count the recommendations of the Tele-
2 health Advisory Committee (established
3 under section 1868(c)) when adding or de-
4 leting services (and HCPCS codes) and in
5 establishing policies of the Centers for
6 Medicare & Medicaid Services regarding
7 the delivery of telehealth services. If the
8 Secretary does not implement such a rec-
9 ommendation, the Secretary shall publish
10 in the Federal Register a statement re-
11 garding the reason such recommendation
12 was not implemented.”

13 (3) WAIVER OF ADMINISTRATIVE LIMITA-
14 TION.—The Secretary of Health and Human Serv-
15 ices shall establish the Telehealth Advisory Com-
16 mittee under the amendment made by paragraph (1)
17 notwithstanding any limitation that may apply to
18 the number of advisory committees that may be es-
19 tablished (within the Department of Health and
20 Human Services or otherwise).

21 **SEC. 1192. EXTENSION OF OUTPATIENT HOLD HARMLESS**
22 **PROVISION.**

23 Section 1833(t)(7)(D)(i) of the Social Security Act
24 (42 U.S.C. 1395l(t)(7)(D)(i)) is amended—

25 (1) in subclause (II)—

1 (A) in the first sentence, by striking
2 “2010” and inserting “2012”; and

3 (B) in the second sentence, by striking “or
4 2009” and inserting “, 2009, 2010, or 2011”;
5 and

6 (2) in subclause (III), by striking “January 1,
7 2010” and inserting “January 1, 2012”.

8 **SEC. 1193. EXTENSION OF SECTION 508 HOSPITAL RECLAS-**
9 **SIFICATIONS.**

10 Subsection (a) of section 106 of division B of the Tax
11 Relief and Health Care Act of 2006 (42 U.S.C. 1395
12 note), as amended by section 117 of the Medicare, Med-
13 icaid, and SCHIP Extension Act of 2007 (Public Law
14 110–173) and section 124 of the Medicare Improvements
15 for Patients and Providers Act of 2008 (Public Law 110–
16 275), is amended by striking “September 30, 2009” and
17 inserting “September 30, 2011”.

18 **SEC. 1194. EXTENSION OF GEOGRAPHIC FLOOR FOR WORK.**

19 Section 1848(e)(1)(E) of the Social Security Act (42
20 U.S.C. 1395w–4(e)(1)(E)) is amended by striking “before
21 January 1, 2010” and inserting “before January 1,
22 2012”.

1 **SEC. 1195. EXTENSION OF PAYMENT FOR TECHNICAL COM-**
2 **PONENT OF CERTAIN PHYSICIAN PATHOL-**
3 **OGY SERVICES.**

4 Section 542(c) of the Medicare, Medicaid, and
5 SCHIP Benefits Improvement and Protection Act of 2000
6 (as enacted into law by section 1(a)(6) of Public Law 106–
7 554), as amended by section 732 of the Medicare Prescrip-
8 tion Drug, Improvement, and Modernization Act of 2003
9 (42 U.S.C. 1395w–4 note), section 104 of division B of
10 the Tax Relief and Health Care Act of 2006 (42 U.S.C.
11 1395w–4 note), section 104 of the Medicare, Medicaid,
12 and SCHIP Extension Act of 2007 (Public Law 110–
13 173), and section 136 of the Medicare Improvements for
14 Patients and Providers Act of 1008 (Public Law 110–
15 275), is amended by striking “and 2009” and inserting
16 “2009, 2010, and 2011”.

17 **SEC. 1196. EXTENSION OF AMBULANCE ADD-ONS.**

18 (a) IN GENERAL.—Section 1834(l)(13) of the Social
19 Security Act (42 U.S.C. 1395m(l)(13)) is amended—

20 (1) in subparagraph (A)—

21 (A) in the matter preceding clause (i), by
22 striking “before January 1, 2010” and insert-
23 ing “before January 1, 2012”; and

24 (B) in each of clauses (i) and (ii), by strik-
25 ing “before January 1, 2010” and inserting
26 “before January 1, 2012”.

1 (b) AIR AMBULANCE IMPROVEMENTS.—Section
2 146(b)(1) of the Medicare Improvements for Patients and
3 Providers Act of 2008 (Public Law 110–275) is amended
4 by striking “ending on December 31, 2009” and inserting
5 “ending on December 31, 2011”.

6 **TITLE II—MEDICARE**
7 **BENEFICIARY IMPROVEMENTS**
8 **Subtitle A—Improving and Simpli-**
9 **fyng Financial Assistance for**
10 **Low Income Medicare Bene-**
11 **ficiaries**

12 **SEC. 1201. IMPROVING ASSETS TESTS FOR MEDICARE SAV-**
13 **INGS PROGRAM AND LOW-INCOME SUBSIDY**
14 **PROGRAM.**

15 (a) APPLICATION OF HIGHEST LEVEL PERMITTED
16 UNDER LIS TO ALL SUBSIDY ELIGIBLE INDIVIDUALS.—

17 (1) IN GENERAL.—Section 1860D–14(a)(1) of
18 the Social Security Act (42 U.S.C. 1395w–
19 114(a)(1)) is amended in the matter before subpara-
20 graph (A), by inserting “(or, beginning with 2012,
21 paragraph (3)(E))” after “paragraph (3)(D)”.

22 (2) ANNUAL INCREASE IN LIS RESOURCE
23 TEST.—Section 1860D–14(a)(3)(E)(i) of such Act
24 (42 U.S.C. 1395w–114(a)(3)(E)(i)) is amended—

1 (A) by striking “and” at the end of sub-
2 clause (I);

3 (B) in subclause (II), by inserting “(before
4 2012)” after “subsequent year”;

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

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

9 “(III) for 2012, \$17,000 (or
10 \$34,000 in the case of the combined
11 value of the individual’s assets or re-
12 sources and the assets or resources of
13 the individual’s spouse); and

14 “(IV) for a subsequent year, the
15 dollar amounts specified in this sub-
16 clause (or subclause (III)) for the pre-
17 vious year increased by the annual
18 percentage increase in the consumer
19 price index (all items; U.S. city aver-
20 age) as of September of such previous
21 year.”; and

22 (E) in the last sentence, by inserting “or
23 (IV)” after “subclause (II)”.

1 (3) APPLICATION OF LIS TEST UNDER MEDI-
2 CARE SAVINGS PROGRAM.—Section 1905(p)(1)(C) of
3 such Act (42 U.S.C. 1396d(p)(1)(C)) is amended—

4 (A) by striking “effective beginning with
5 January 1, 2010” and inserting “effective for
6 the period beginning with January 1, 2010, and
7 ending with December 31, 2011”; and

8 (B) by inserting before the period at the
9 end the following: “or, effective beginning with
10 January 1, 2012, whose resources (as so deter-
11 mined) do not exceed the maximum resource
12 level applied for the year under subparagraph
13 (E) of section 1860D–14(a)(3) (determined
14 without regard to the life insurance policy ex-
15 clusion provided under subparagraph (G) of
16 such section) applicable to an individual or to
17 the individual and the individual’s spouse (as
18 the case may be)”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 subsection (a) shall apply to eligibility determinations for
21 income-related subsidies and medicare cost-sharing fur-
22 nished for periods beginning on or after January 1, 2012.

1 **SEC. 1202. ELIMINATION OF PART D COST-SHARING FOR**
2 **CERTAIN NON-INSTITUTIONALIZED FULL-**
3 **BENEFIT DUAL ELIGIBLE INDIVIDUALS.**

4 (a) IN GENERAL.—Section 1860D–14(a)(1)(D)(i) of
5 the Social Security Act (42 U.S.C. 1395w–
6 114(a)(1)(D)(i)) is amended—

7 (1) by striking “INSTITUTIONALIZED INDIVID-
8 UALS.—In” and inserting “ELIMINATION OF COST-
9 SHARING FOR CERTAIN FULL-BENEFIT DUAL ELIGI-
10 BLE INDIVIDUALS.—

11 “(I) INSTITUTIONALIZED INDI-
12 VIDUALS.—In”; and

13 (2) by adding at the end the following new sub-
14 clause:

15 “(II) CERTAIN OTHER INDIVID-
16 UALS.—In the case of an individual
17 who is a full-benefit dual eligible indi-
18 vidual and with respect to whom there
19 has been a determination that but for
20 the provision of home and community
21 based care (whether under section
22 1915, 1932, or under a waiver under
23 section 1115) the individual would re-
24 quire the level of care provided in a
25 hospital or a nursing facility or inter-
26 mediate care facility for the mentally

1 retarded the cost of which could be re-
2 imbursed under the State plan under
3 title XIX, the elimination of any bene-
4 ficiary coinsurance described in sec-
5 tion 1860D–2(b)(2) (for all amounts
6 through the total amount of expendi-
7 tures at which benefits are available
8 under section 1860D–2(b)(4)).”.

9 (b) **EFFECTIVE DATE.**—The amendments made by
10 subsection (a) shall apply to drugs dispensed on or after
11 January 1, 2011.

12 **SEC. 1203. ELIMINATING BARRIERS TO ENROLLMENT.**

13 (a) **ADMINISTRATIVE VERIFICATION OF INCOME AND**
14 **RESOURCES UNDER THE LOW-INCOME SUBSIDY PRO-**
15 **GRAM.**—

16 (1) **IN GENERAL.**—Clause (iii) of section
17 1860D–14(a)(3)(E) of the Social Security Act (42
18 U.S.C. 1395w–114(a)(3)(E)) is amended to read as
19 follows:

20 “(iii) **CERTIFICATION OF INCOME AND**
21 **RESOURCES.**—For purposes of applying
22 this section—

23 “(I) an individual shall be per-
24 mitted to apply on the basis of self-

1 certification of income and resources;
2 and

3 “(II) matters attested to in the
4 application shall be subject to appro-
5 priate methods of verification without
6 the need of the individual to provide
7 additional documentation, except in
8 extraordinary situations as determined
9 by the Commissioner.”.

10 (2) EFFECTIVE DATE.—The amendment made
11 by paragraph (1) shall apply beginning January 1,
12 2010.

13 (b) DISCLOSURES TO FACILITATE IDENTIFICATION
14 OF INDIVIDUALS LIKELY TO BE INELIGIBLE FOR THE
15 LOW-INCOME ASSISTANCE UNDER THE MEDICARE PRE-
16 SCRIPTIION DRUG PROGRAM TO ASSIST SOCIAL SECURITY
17 ADMINISTRATION’S OUTREACH TO ELIGIBLE INDIVID-
18 UALS.—For provision authorizing disclosure of return in-
19 formation to facilitate identification of individuals likely
20 to be ineligible for low-income subsidies under Medicare
21 prescription drug program, see section 1801.

1 **SEC. 1204. ENHANCED OVERSIGHT RELATING TO REIM-**
2 **BURSEMENTS FOR RETROACTIVE LOW IN-**
3 **COME SUBSIDY ENROLLMENT.**

4 (a) IN GENERAL.—In the case of a retroactive LIS
5 enrollment beneficiary who is enrolled under a prescription
6 drug plan under part D of title XVIII of the Social Secu-
7 rity Act (or an MA–PD plan under part C of such title),
8 the beneficiary (or any eligible third party) is entitled to
9 reimbursement by the plan for covered drug costs incurred
10 by the beneficiary during the retroactive coverage period
11 of the beneficiary in accordance with subsection (b) and
12 in the case of such a beneficiary described in subsection
13 (c)(4)(A)(i), such reimbursement shall be made automati-
14 cally by the plan upon receipt of appropriate notice the
15 beneficiary is eligible for assistance described in such sub-
16 section (c)(4)(A)(i) without further information required
17 to be filed with the plan by the beneficiary.

18 (b) ADMINISTRATIVE REQUIREMENTS RELATING TO
19 REIMBURSEMENTS.—

20 (1) LINE-ITEM DESCRIPTION.—Each reimburse-
21 ment made by a prescription drug plan or MA–PD
22 plan under subsection (a) shall include a line-item
23 description of the items for which the reimbursement
24 is made.

25 (2) TIMING OF REIMBURSEMENTS.—A prescrip-
26 tion drug plan or MA–PD plan must make a reim-

1 bursement under subsection (a) to a retroactive LIS
2 enrollment beneficiary, with respect to a claim, not
3 later than 45 days after—

4 (A) in the case of a beneficiary described
5 in subsection (c)(4)(A)(i), the date on which the
6 plan receives notice from the Secretary that the
7 beneficiary is eligible for assistance described in
8 such subsection; or

9 (B) in the case of a beneficiary described
10 in subsection (c)(4)(A)(ii), the date on which
11 the beneficiary files the claim with the plan.

12 (3) REPORTING REQUIREMENT.—For each
13 month beginning with January 2011, each prescrip-
14 tion drug plan and each MA–PD plan shall report
15 to the Secretary the following:

16 (A) The number of claims the plan has re-
17 adjudicated during the month due to a bene-
18 ficiary becoming retroactively eligible for sub-
19 sidies available under section 1860D–14 of the
20 Social Security Act.

21 (B) The total value of the readjudicated
22 claim amount for the month.

23 (C) The Medicare Health Insurance Claims
24 Number of beneficiaries for whom claims were
25 readjudicated.

1 (D) For the claims described in subpara-
2 graphs (A) and (B), an attestation to the Ad-
3 ministrators of the Centers for Medicare & Med-
4 icaid Services of the total amount of reimburse-
5 ment the plan has provided to beneficiaries for
6 premiums and cost-sharing that the beneficiary
7 overpaid for which the plan received payment
8 from the Centers for Medicare & Medicaid Serv-
9 ices.

10 (c) DEFINITIONS.—For purposes of this section:

11 (1) COVERED DRUG COSTS.—The term “cov-
12 ered drug costs” means, with respect to a retroactive
13 LIS enrollment beneficiary enrolled under a pre-
14 scription drug plan under part D of title XVIII of
15 the Social Security Act (or an MA-PD plan under
16 part C of such title), the amount by which—

17 (A) the costs incurred by such beneficiary
18 during the retroactive coverage period of the
19 beneficiary for covered part D drugs, premiums,
20 and cost-sharing under such title; exceeds

21 (B) such costs that would have been in-
22 curred by such beneficiary during such period if
23 the beneficiary had been both enrolled in the
24 plan and recognized by such plan as qualified
25 during such period for the low income subsidy

1 under section 1860D–14 of the Social Security
2 Act to which the individual is entitled.

3 (2) ELIGIBLE THIRD PARTY.—The term “eligi-
4 ble third party” means, with respect to a retroactive
5 LIS enrollment beneficiary, an organization or other
6 third party that is owed payment on behalf of such
7 beneficiary for covered drug costs incurred by such
8 beneficiary during the retroactive coverage period of
9 such beneficiary.

10 (3) RETROACTIVE COVERAGE PERIOD.—The
11 term “retroactive coverage period” means—

12 (A) with respect to a retroactive LIS en-
13 rollment beneficiary described in paragraph
14 (4)(A)(i), the period—

15 (i) beginning on the effective date of
16 the assistance described in such paragraph
17 for which the individual is eligible; and

18 (ii) ending on the date the plan effec-
19 tuates the status of such individual as so
20 eligible; and

21 (B) with respect to a retroactive LIS en-
22 rollment beneficiary described in paragraph
23 (4)(A)(ii), the period—

24 (i) beginning on the date the indi-
25 vidual is both entitled to benefits under

1 part A, or enrolled under part B, of title
2 XVIII of the Social Security Act and eligi-
3 ble for medical assistance under a State
4 plan under title XIX of such Act; and

5 (ii) ending on the date the plan effec-
6 tuates the status of such individual as a
7 full-benefit dual eligible individual (as de-
8 fined in section 1935(c)(6) of such Act).

9 (4) RETROACTIVE LIS ENROLLMENT BENE-
10 FICIARY.—

11 (A) IN GENERAL.—The term “retroactive
12 LIS enrollment beneficiary” means an indi-
13 vidual who—

14 (i) is enrolled in a prescription drug
15 plan under part D of title XVIII of the So-
16 cial Security Act (or an MA–PD plan
17 under part C of such title) and subse-
18 quently becomes eligible as a full-benefit
19 dual eligible individual (as defined in sec-
20 tion 1935(c)(6) of such Act), an individual
21 receiving a low-income subsidy under sec-
22 tion 1860D–14 of such Act, an individual
23 receiving assistance under the Medicare
24 Savings Program implemented under
25 clauses (i), (iii), and (iv) of section

1 1902(a)(10)(E) of such Act, or an indi-
2 vidual receiving assistance under the sup-
3 plemental security income program under
4 section 1611 of such Act; or

5 (ii) subject to subparagraph (B)(i), is
6 a full-benefit dual eligible individual (as
7 defined in section 1935(c)(6) of such Act)
8 who is automatically enrolled in such a
9 plan under section 1860D-1(b)(1)(C) of
10 such Act.

11 (B) EXCEPTION FOR BENEFICIARIES EN-
12 ROLLED IN RFP PLAN.—

13 (i) IN GENERAL.—In no case shall an
14 individual described in subparagraph
15 (A)(ii) include an individual who is en-
16 rolled, pursuant to a RFP contract de-
17 scribed in clause (ii), in a prescription
18 drug plan offered by the sponsor of such
19 plan awarded such contract.

20 (ii) RFP CONTRACT DESCRIBED.—
21 The RFP contract described in this section
22 is a contract entered into between the Sec-
23 retary and a sponsor of a prescription drug
24 plan pursuant to the Centers for Medicare
25 & Medicaid Services' request for proposals

1 issued on February 17, 2009, relating to
2 Medicare part D retroactive coverage for
3 certain low income beneficiaries, or a simi-
4 lar subsequent request for proposals.

5 **SEC. 1205. INTELLIGENT ASSIGNMENT IN ENROLLMENT.**

6 (a) IN GENERAL.—Section 1860D–1(b)(1)(C) of the
7 Social Security Act (42 U.S.C. 1395w–101(b)(1)(C)) is
8 amended by adding after “PDP region” the following: “or
9 through use of an intelligent assignment process that is
10 designed to maximize the access of such individual to nec-
11 essary prescription drugs while minimizing costs to such
12 individual and to the program under this part to the great-
13 est extent possible. In the case the Secretary enrolls such
14 individuals through use of an intelligent assignment proc-
15 ess, such process shall take into account the extent to
16 which prescription drugs necessary for the individual are
17 covered in the case of a PDP sponsor of a prescription
18 drug plan that uses a formulary, the use of prior author-
19 ization or other restrictions on access to coverage of such
20 prescription drugs by such a sponsor, and the overall qual-
21 ity of a prescription drug plan as measured by quality rat-
22 ings established by the Secretary.”

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall take effect for contract years begin-
25 ning with 2012.

1 **SEC. 1206. SPECIAL ENROLLMENT PERIOD AND AUTOMATIC**
2 **ENROLLMENT PROCESS FOR CERTAIN SUB-**
3 **SIDY ELIGIBLE INDIVIDUALS.**

4 (a) SPECIAL ENROLLMENT PERIOD.—Section
5 1860D–1(b)(3)(D) of the Social Security Act (42 U.S.C.
6 1395w–101(b)(3)(D)) is amended to read as follows:

7 “(D) SUBSIDY ELIGIBLE INDIVIDUALS.—
8 In the case of an individual (as determined by
9 the Secretary) who is determined under sub-
10 paragraph (B) of section 1860D–14(a)(3) to be
11 a subsidy eligible individual.”.

12 (b) AUTOMATIC ENROLLMENT.—Section 1860D–
13 1(b)(1) of the Social Security Act (42 U.S.C. 1395w–
14 101(b)(1)) is amended by adding at the end the following
15 new subparagraph:

16 “(D) SPECIAL RULE FOR SUBSIDY ELIGI-
17 BLE INDIVIDUALS.—The process established
18 under subparagraph (A) shall include, in the
19 case of an individual described in section
20 1860D–1(b)(3)(D) who fails to enroll in a pre-
21 scription drug plan or an MA–PD plan during
22 the special enrollment established under such
23 section applicable to such individual, the appli-
24 cation of the assignment process described in
25 subparagraph (C) to such individual in the
26 same manner as such assignment process ap-

1 plies to a part D eligible individual described in
2 such subparagraph (C). Nothing in the previous
3 sentence shall prevent an individual described in
4 such sentence from declining enrollment in a
5 plan determined appropriate by the Secretary
6 (or in the program under this part) or from
7 changing such enrollment.”.

8 (c) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply to subsidy determinations made
10 for months beginning with January 2011.

11 **SEC. 1207. APPLICATION OF MA PREMIUMS PRIOR TO RE-**
12 **BATE IN CALCULATION OF LOW INCOME SUB-**
13 **SIDY BENCHMARK.**

14 (a) **IN GENERAL.**—Section 1860D–14(b)(2)(B)(iii)
15 of the Social Security Act (42 U.S.C. 1395w–
16 114(b)(2)(B)(iii)) is amended by inserting before the pe-
17 riod the following: “before the application of the monthly
18 rebate computed under section 1854(b)(1)(C)(i) for that
19 plan and year involved”.

20 (b) **EFFECTIVE DATE.**—The amendment made by
21 subsection (a) shall apply to subsidy determinations made
22 for months beginning with January 2011.

1 **Subtitle B—Reducing Health**
2 **Disparities**

3 **SEC. 1221. ENSURING EFFECTIVE COMMUNICATION IN**
4 **MEDICARE.**

5 (a) ENSURING EFFECTIVE COMMUNICATION BY THE
6 CENTERS FOR MEDICARE & MEDICAID SERVICES.—

7 (1) STUDY ON MEDICARE PAYMENTS FOR LAN-
8 GUAGE SERVICES.—The Secretary of Health and
9 Human Services shall conduct a study that examines
10 the extent to which Medicare service providers uti-
11 lize, offer, or make available language services for
12 beneficiaries who are limited English proficient and
13 ways that Medicare should develop payment systems
14 for language services.

15 (2) ANALYSES.—The study shall include an
16 analysis of each of the following:

17 (A) How to develop and structure appro-
18 priate payment systems for language services
19 for all Medicare service providers.

20 (B) The feasibility of adopting a payment
21 methodology for on-site interpreters, including
22 interpreters who work as independent contrac-
23 tors and interpreters who work for agencies
24 that provide on-site interpretation, pursuant to
25 which such interpreters could directly bill Medi-

1 care for services provided in support of physi-
2 cian office services for an LEP Medicare pa-
3 tient.

4 (C) The feasibility of Medicare contracting
5 directly with agencies that provide off-site inter-
6 pretation including telephonic and video inter-
7 pretation pursuant to which such contractors
8 could directly bill Medicare for the services pro-
9 vided in support of physician office services for
10 an LEP Medicare patient.

11 (D) The feasibility of modifying the exist-
12 ing Medicare resource-based relative value scale
13 (RBRVS) by using adjustments (such as multi-
14 pliers or add-ons) when a patient is LEP.

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

20 (F) The extent to which providers under
21 parts A and B of title XVIII of the Social Secu-
22 rity Act, MA organizations offering Medicare
23 Advantage plans under part C of such title and
24 PDP sponsors of a prescription drug plan
25 under part D of such title utilize, offer, or make

1 available language services for beneficiaries with
2 limited English proficiency.

3 (G) The nature and type of language serv-
4 ices provided by States under title XIX of the
5 Social Security Act and the extent to which
6 such services could be utilized by beneficiaries
7 and providers under title XVIII of such Act.

8 (3) VARIATION IN PAYMENT SYSTEM DE-
9 SCRIBED.—The payment systems described in para-
10 graph (2)(A) may allow variations based upon types
11 of service providers, available delivery methods, and
12 costs for providing language services including such
13 factors as—

14 (A) the type of language services provided
15 (such as provision of health care or health care
16 related services directly in a non-English lan-
17 guage by a bilingual provider or use of an inter-
18 preter);

19 (B) type of interpretation services provided
20 (such as in-person, telephonic, video interpreta-
21 tion);

22 (C) the methods and costs of providing
23 language services (including the costs of pro-
24 viding language services with internal staff or

1 through contract with external independent con-
2 tractors or agencies, or both);

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

6 (E) providing services in rural areas.

7 (4) REPORT.—The Secretary shall submit a re-
8 port on the study conducted under subsection (a) to
9 appropriate committees of Congress not later than
10 12 months after the date of the enactment of this
11 Act.

12 (5) EXEMPTION FROM PAPERWORK REDUCTION
13 ACT.—Chapter 35 of title 44, United States Code
14 (commonly known as the “Paperwork Reduction
15 Act”), shall not apply for purposes of carrying out
16 this subsection.

17 (6) AUTHORIZATION OF APPROPRIATIONS.—
18 There is authorized to be appropriated to carry out
19 this subsection such sums as are necessary.

20 (b) HEALTH PLANS.—Section 1857(g)(1) of the So-
21 cial Security Act (42 U.S.C. 1395w-27(g)(1)) is amend-
22 ed—

23 (1) by striking “or” at the end of subparagraph
24 (F);

1 (2) by adding “or” at the end of subparagraph
2 (G); and

3 (3) by inserting after subparagraph (G) the fol-
4 lowing new subparagraph:

5 “(H) fails substantially to provide lan-
6 guage services to limited English proficient
7 beneficiaries enrolled in the plan that are re-
8 quired under law;”.

9 **SEC. 1222. DEMONSTRATION TO PROMOTE ACCESS FOR**
10 **MEDICARE BENEFICIARIES WITH LIMITED**
11 **ENGLISH PROFICIENCY BY PROVIDING REIM-**
12 **BURSEMENT FOR CULTURALLY AND LINGUIS-**
13 **TICALLY APPROPRIATE SERVICES.**

14 (a) IN GENERAL.—Not later than 6 months after the
15 date of the completion of the study described in section
16 1221(a), the Secretary, acting through the Centers for
17 Medicare & Medicaid Services, shall carry out a dem-
18 onstration program under which the Secretary shall award
19 not fewer than 24 3-year grants to eligible Medicare serv-
20 ice providers (as described in subsection (b)(1)) to improve
21 effective communication between such providers and Medi-
22 care beneficiaries who are living in communities where ra-
23 cial and ethnic minorities, including populations that face
24 language barriers, are underserved with respect to such
25 services. In designing and carrying out the demonstration

1 the Secretary shall take into consideration the results of
2 the study conducted under section 1221(a) and adjust, as
3 appropriate, the distribution of grants so as to better tar-
4 get Medicare beneficiaries who are in the greatest need
5 of language services. The Secretary shall not authorize a
6 grant larger than \$500,000 over three years for any grant-
7 ee.

8 (b) ELIGIBILITY; PRIORITY.—

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

11 (A) be—

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

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

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

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

21 (B) prepare and submit to the Secretary
22 an application, at such time, in such manner,
23 and accompanied by such additional informa-
24 tion as the Secretary may require.

25 (2) PRIORITY.—

1 (A) DISTRIBUTION.—To the extent fea-
2 sible, in awarding grants under this section, the
3 Secretary shall award—

4 (i) at least 6 grants to providers of
5 services described in paragraph (1)(A)(i);

6 (ii) at least 6 grants to service pro-
7 viders described in paragraph (1)(A)(ii);

8 (iii) at least 6 grants to organizations
9 described in paragraph (1)(A)(iii); and

10 (iv) at least 6 grants to sponsors de-
11 scribed in paragraph (1)(A)(iv).

12 (B) FOR COMMUNITY ORGANIZATIONS.—
13 The Secretary shall give priority to applicants
14 that have developed partnerships with commu-
15 nity organizations or with agencies with experi-
16 ence in language access.

17 (C) VARIATION IN GRANTEES.—The Sec-
18 retary shall also ensure that the grantees under
19 this section represent, among other factors,
20 variations in—

21 (i) different types of language services
22 provided and of service providers and orga-
23 nizations under parts A through D of title
24 XVIII of the Social Security Act;

- 1 (ii) languages needed and their fre-
2 quency of use;
3 (iii) urban and rural settings;
4 (iv) at least two geographic regions,
5 as defined by the Secretary; and
6 (v) at least two large metropolitan
7 statistical areas with diverse populations.

8 (c) USE OF FUNDS.—

9 (1) IN GENERAL.—A grantee shall use grant
10 funds received under this section to pay for the pro-
11 vision of competent language services to Medicare
12 beneficiaries who are limited English proficient.
13 Competent interpreter services may be provided
14 through on-site interpretation, telephonic interpreta-
15 tion, or video interpretation or direct provision of
16 health care or health care related services by a bilin-
17 gual health care provider. A grantee may use bilin-
18 gual providers, staff, or contract interpreters. A
19 grantee may use grant funds to pay for competent
20 translation services. A grantee may use up to 10
21 percent of the grant funds to pay for administrative
22 costs associated with the provision of competent lan-
23 guage services and for reporting required under sub-
24 section (e).

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

8 (3) DETERMINATION OF PAYMENTS FOR LAN-
9 GUAGE SERVICES.—Payments to grantees shall be
10 calculated based on the estimated numbers of lim-
11 ited English proficient Medicare beneficiaries in a
12 grantee’s service area utilizing—

13 (A) data on the numbers of limited
14 English proficient individuals who speak
15 English less than “very well” from the most re-
16 cently available data from the Bureau of the
17 Census or other State-based study the Sec-
18 retary determines likely to yield accurate data
19 regarding the number of such individuals served
20 by the grantee; or

21 (B) the grantee’s own data if the grantee
22 routinely collects data on Medicare bene-
23 ficiaries’ primary language in a manner deter-
24 mined by the Secretary to yield accurate data
25 and such data shows greater numbers of limited

1 English proficient individuals than the data list-
2 ed in subparagraph (A).

3 (4) LIMITATIONS.—

4 (A) REPORTING.—Payments shall only be
5 provided under this section to grantees that re-
6 port their costs of providing language services
7 as required under subsection (e) and may be
8 modified annually at the discretion of the Sec-
9 retary. If a grantee fails to provide the reports
10 under such section for the first year of a grant,
11 the Secretary may terminate the grant and so-
12 licit applications from new grantees to partici-
13 pate in the subsequent two years of the dem-
14 onstration program.

15 (B) TYPE OF SERVICES.—

16 (i) IN GENERAL.—Subject to clause
17 (ii), payments shall be provided under this
18 section only to grantees that utilize com-
19 petent bilingual staff or competent inter-
20 preter or translation services which—

21 (I) if the grantee operates in a
22 State that has statewide health care
23 interpreter standards, meet the State
24 standards currently in effect; or

1 (II) if the grantee operates in a
2 State that does not have statewide
3 health care interpreter standards, uti-
4 lizes competent interpreters who fol-
5 low the National Council on Inter-
6 preting in Health Care’s Code of Eth-
7 ics and Standards of Practice.

8 (ii) EXEMPTIONS.—The requirements
9 of clause (i) shall not apply—

10 (I) in the case of a Medicare ben-
11 efiiciary who is limited English pro-
12 ficient (who has been informed in the
13 beneficiary’s primary language of the
14 availability of free interpreter and
15 translation services) and who requests
16 the use of family, friends, or other
17 persons untrained in interpretation or
18 translation and the grantee documents
19 the request in the beneficiary’s record;
20 and

21 (II) in the case of a medical
22 emergency where the delay directly as-
23 sociated with obtaining a competent
24 interpreter or translation services

1 would jeopardize the health of the pa-
2 tient.

3 Nothing in clause (ii)(II) shall be con-
4 strued to exempt emergency rooms or simi-
5 lar entities that regularly provide health
6 care services in medical emergencies from
7 having in place systems to provide com-
8 petent interpreter and translation services
9 without undue delay.

10 (d) ASSURANCES.—Grantees under this section
11 shall—

12 (1) ensure that appropriate clinical and support
13 staff receive ongoing education and training in lin-
14 guistically appropriate service delivery;

15 (2) ensure the linguistic competence of bilingual
16 providers;

17 (3) 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 (4) notify Medicare beneficiaries of their right
22 to receive language services in their primary lan-
23 guage;

1 (5) post signage in the languages of the com-
2 monly encountered group or groups present in the
3 service area of the organization; and

4 (6) ensure that—

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

7 (B) consistent with the privacy protections
8 provided under the regulations promulgated
9 pursuant to section 264(c) of the Health Insur-
10 ance Portability and Accountability Act of 1996
11 (42 U.S.C. 1320d–2 note), if the recipient of
12 language services is a minor or is incapacitated,
13 the primary language of the parent or legal
14 guardian is collected and utilized.

15 (e) REPORTING REQUIREMENTS.—Grantees under
16 this section shall provide the Secretary with reports at the
17 conclusion of the each year of a grant under this section.
18 Each report shall include at least the following informa-
19 tion:

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

22 (2) The languages of those Medicare bene-
23 ficiaries.

24 (3) The types of language services provided
25 (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.—Limited English proficient
14 Medicare beneficiaries shall not have to pay cost-sharing
15 or co-pays for language services provided through this
16 demonstration program.

17 (g) EVALUATION AND REPORT.—The Secretary shall
18 conduct an evaluation of the demonstration program
19 under this section and shall submit to the appropriate
20 committees of Congress a report not later than 1 year
21 after the completion of the program. The report shall in-
22 clude the following:

23 (1) An analysis of the patient outcomes and
24 costs of furnishing care to the limited English pro-
25 ficient Medicare beneficiaries participating in the

1 project as compared to such outcomes and costs for
2 limited English proficient Medicare beneficiaries not
3 participating.

4 (2) The effect of delivering culturally and lin-
5 guistically appropriate services on beneficiary access
6 to care, utilization of services, efficiency and cost-ef-
7 fectiveness of health care delivery, patient satisfac-
8 tion, and select health outcomes.

9 (3) Recommendations, if any, regarding the ex-
10 tension of such project to the entire Medicare pro-
11 gram.

12 (h) GENERAL PROVISIONS.—Nothing in this section
13 shall be construed to limit otherwise existing obligations
14 of recipients of Federal financial assistance under title VI
15 of the Civil Rights Act of 1964 (42 U.S.C. 2000(d) et
16 seq.) or any other statute.

17 (i) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to carry out this section
19 \$16,000,000 for each fiscal year of the demonstration pro-
20 gram.

21 **SEC. 1223. IOM REPORT ON IMPACT OF LANGUAGE ACCESS**
22 **SERVICES.**

23 (a) IN GENERAL.—The Secretary of Health and
24 Human Services shall enter into an arrangement with the
25 Institute of Medicine under which the Institute will pre-

1 pare and publish, not later than 3 years after the date
2 of the enactment of this Act, a report on the impact of
3 language access services on the health and health care of
4 limited English proficient populations.

5 (b) CONTENTS.—Such report shall include—

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

10 (2) a description of the effect of providing lan-
11 guage access services on quality of health care and
12 access to care and reduced medical error; and

13 (3) a description of the costs associated with or
14 savings related to provision of language access serv-
15 ices.

16 **SEC. 1224. DEFINITIONS.**

17 In this subtitle:

18 (1) BILINGUAL.—The term “bilingual” with re-
19 spect to an individual means a person who has suffi-
20 cient degree of proficiency in two languages and can
21 ensure effective communication can occur in both
22 languages.

23 (2) COMPETENT INTERPRETER SERVICES.—The
24 term “competent interpreter services” means a
25 trans-language rendition of a spoken message in

1 which the interpreter comprehends the source lan-
2 guage and can speak comprehensively in the target
3 language to convey the meaning intended in the
4 source language. The interpreter knows health and
5 health-related terminology and provides accurate in-
6 terpretations by choosing equivalent expressions that
7 convey the best matching and meaning to the source
8 language and captures, to the greatest possible ex-
9 tent, all nuances intended in the source message.

10 (3) COMPETENT TRANSLATION SERVICES.—The
11 term “competent translation services” means a
12 trans-language rendition of a written document in
13 which the translator comprehends the source lan-
14 guage and can write comprehensively in the target
15 language to convey the meaning intended in the
16 source language. The translator knows health and
17 health-related terminology and provides accurate
18 translations by choosing equivalent expressions that
19 convey the best matching and meaning to the source
20 language and captures, to the greatest possible ex-
21 tent, all nuances intended in the source document.

22 (4) EFFECTIVE COMMUNICATION.—The term
23 “effective communication” means an exchange of in-
24 formation between the provider of health care or
25 health care-related services and the limited English

1 proficient recipient of such services that enables lim-
2 ited English proficient individuals to access, under-
3 stand, and benefit from health care or health care-
4 related services.

5 (5) INTERPRETING/INTERPRETATION.—The
6 terms “interpreting” and “interpretation” mean the
7 transmission of a spoken message from one language
8 into another, faithfully, accurately, and objectively.

9 (6) HEALTH CARE SERVICES.—The term
10 “health care services” means services that address
11 physical as well as mental health conditions in all
12 care settings.

13 (7) HEALTH CARE-RELATED SERVICES.—The
14 term “health care-related services” means human or
15 social services programs or activities that provide ac-
16 cess, referrals or links to health care.

17 (8) LANGUAGE ACCESS.—The term “language
18 access” means the provision of language services to
19 an LEP individual designed to enhance that individ-
20 ual’s access to, understanding of or benefit from
21 health care or health care-related services.

22 (9) LANGUAGE SERVICES.—The term “lan-
23 guage services” means provision of health care serv-
24 ices directly in a non-English language, interpreta-
25 tion, translation, and non-English signage.

1 (10) LIMITED ENGLISH PROFICIENT.—The
2 term “limited English proficient” or “LEP” with re-
3 spect to an individual means an individual who
4 speaks a primary language other than English and
5 who cannot speak, read, write or understand the
6 English language at a level that permits the indi-
7 vidual to effectively communicate with clinical or
8 nonclinical staff at an entity providing health care or
9 health care related services.

10 (11) MEDICARE BENEFICIARY.—The term
11 “Medicare beneficiary” means an individual entitled
12 to benefits under part A of title XVIII of the Social
13 Security Act or enrolled under part B of such title.

14 (12) MEDICARE PROGRAM.—The term “Medi-
15 care program” means the programs under parts A
16 through D of title XVIII of the Social Security Act.

17 (13) SERVICE PROVIDER.—The term “service
18 provider” includes all suppliers, providers of services,
19 or entities under contract to provide coverage, items
20 or services under any part of title XVIII of the So-
21 cial Security Act.

1 **Subtitle C—Miscellaneous**
2 **Improvements**

3 **SEC. 1231. EXTENSION OF THERAPY CAPS EXCEPTIONS**
4 **PROCESS.**

5 Section 1833(g)(5) of the Social Security Act (42
6 U.S.C. 1395l(g)(5)), as amended by section 141 of the
7 Medicare Improvements for Patients and Providers Act of
8 2008 (Public Law 110–275), is amended by striking “De-
9 cember 31, 2009” and inserting “December 31, 2011”.

10 **SEC. 1232. EXTENDED MONTHS OF COVERAGE OF IMMUNO-**
11 **SUPPRESSIVE DRUGS FOR KIDNEY TRANS-**
12 **PLANT PATIENTS AND OTHER RENAL DIALY-**
13 **SIS PROVISIONS.**

14 (a) PROVISION OF APPROPRIATE COVERAGE OF IM-
15 MUNOSUPPRESSIVE DRUGS UNDER THE MEDICARE PRO-
16 GRAM FOR KIDNEY TRANSPLANT RECIPIENTS.—

17 (1) CONTINUED ENTITLEMENT TO IMMUNO-
18 SUPPRESSIVE DRUGS.—

19 (A) KIDNEY TRANSPLANT RECIPIENTS.—

20 Section 226A(b)(2) of the Social Security Act
21 (42 U.S.C. 426–1(b)(2)) is amended by insert-
22 ing “(except for coverage of immunosuppressive
23 drugs under section 1861(s)(2)(J))” before “,
24 with the thirty-sixth month”.

1 (B) APPLICATION.—Section 1836 of such
2 Act (42 U.S.C. 1395o) is amended—

3 (i) by striking “Every individual who”
4 and inserting “(a) IN GENERAL.—Every in-
5 dividual who”; and

6 (ii) by adding at the end the following
7 new subsection:

8 “(b) SPECIAL RULES APPLICABLE TO INDIVIDUALS
9 ONLY ELIGIBLE FOR COVERAGE OF IMMUNOSUPPRESSIVE
10 DRUGS.—

11 “(1) IN GENERAL.—In the case of an individual
12 whose eligibility for benefits under this title has
13 ended on or after January 1, 2012, except for the
14 coverage of immunosuppressive drugs by reason of
15 section 226A(b)(2), the following rules shall apply:

16 “(A) The individual shall be deemed to be
17 enrolled under this part for purposes of receiv-
18 ing coverage of such drugs.

19 “(B) The individual shall be responsible
20 for providing for payment of the portion of the
21 premium under section 1839 which is not cov-
22 ered under the Medicare savings program (as
23 defined in section 1144(c)(7)) in order to re-
24 ceive such coverage.

1 “(C) The provision of such drugs shall be
2 subject to the application of—

3 “(i) the deductible under section
4 1833(b); and

5 “(ii) the coinsurance amount applica-
6 ble for such drugs (as determined under
7 this part).

8 “(D) If the individual is an inpatient of a
9 hospital or other entity, the individual is enti-
10 tled to receive coverage of such drugs under
11 this part.

12 “(2) ESTABLISHMENT OF PROCEDURES IN
13 ORDER TO IMPLEMENT COVERAGE.—The Secretary
14 shall establish procedures for—

15 “(A) identifying individuals that are enti-
16 tled to coverage of immunosuppressive drugs by
17 reason of section 226A(b)(2); and

18 “(B) distinguishing such individuals from
19 individuals that are enrolled under this part for
20 the complete package of benefits under this
21 part.”.

22 (C) TECHNICAL AMENDMENT TO CORRECT
23 DUPLICATE SUBSECTION DESIGNATION.—Sub-
24 section (d) of section 226A of such Act (42
25 U.S.C. 426–1), as added by section

1 201(a)(3)(D)(ii) of the Social Security Inde-
2 pendence and Program Improvements Act of
3 1994 (Public Law 103–296; 108 Stat. 1497), is
4 redesignated as subsection (d).

5 (2) EXTENSION OF SECONDARY PAYER RE-
6 QUIREMENTS FOR ESRD BENEFICIARIES.—Section
7 1862(b)(1)(C) of such Act (42 U.S.C.
8 1395y(b)(1)(C)) is amended by adding at the end
9 the following new sentence: “With regard to im-
10 munosuppressive drugs furnished on or after the
11 date of the enactment of the America’s Affordable
12 Health Choices Act of 2009, this subparagraph shall
13 be applied without regard to any time limitation.”.

14 (b) MEDICARE COVERAGE FOR ESRD PATIENTS.—
15 Section 1881 of such Act is further amended—

16 (1) in subsection (b)(14)(B)(iii), by inserting “,
17 including oral drugs that are not the oral equivalent
18 of an intravenous drug (such as oral phosphate bind-
19 ers and calcimimetics),” after “other drugs and
20 biologicals”;

21 (2) in subsection (b)(14)(E)(ii)—

22 (A) in the first sentence—

23 (i) by striking “a one-time election to
24 be excluded from the phase-in” and insert-
25 ing “an election, with respect to 2011,

1 2012, or 2013, to be excluded from the
2 phase-in (or the remainder of the phase-
3 in)”; and

4 (ii) by adding at the end the fol-
5 lowing: “for such year and for each subse-
6 quent year during the phase-in described
7 in clause (i)”; and

8 (B) in the second sentence—

9 (i) by striking “January 1, 2011” and
10 inserting “the first date of such year”; and

11 (ii) by inserting “and at a time” after
12 “form and manner”; and

13 (3) in subsection (h)(4)(E), by striking “lesser”
14 and inserting “greater”.

15 **SEC. 1233. ADVANCE CARE PLANNING CONSULTATION.**

16 (a) MEDICARE.—

17 (1) IN GENERAL.—Section 1861 of the Social
18 Security Act (42 U.S.C. 1395x) is amended—

19 (A) in subsection (s)(2)—

20 (i) by striking “and” at the end of
21 subparagraph (DD);

22 (ii) by adding “and” at the end of
23 subparagraph (EE); and

24 (iii) by adding at the end the fol-
25 lowing new subparagraph:

1 “(FF) advance care planning consultation (as
2 defined in subsection (hhh)(1));” and

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

5 “Advance Care Planning Consultation

6 “(hhh)(1) Subject to paragraphs (3) and (4), the
7 term ‘advance care planning consultation’ means a con-
8 sultation between the individual and a practitioner de-
9 scribed in paragraph (2) regarding advance care planning,
10 if, subject to paragraph (3), the individual involved has
11 not had such a consultation within the last 5 years. Such
12 consultation shall include the following:

13 “(A) An explanation by the practitioner of ad-
14 vance care planning, including key questions and
15 considerations, important steps, and suggested peo-
16 ple to talk to.

17 “(B) An explanation by the practitioner of ad-
18 vance directives, including living wills and durable
19 powers of attorney, and their uses.

20 “(C) An explanation by the practitioner of the
21 role and responsibilities of a health care proxy.

22 “(D) The provision by the practitioner of a list
23 of national and State-specific resources to assist con-
24 sumers and their families with advance care plan-
25 ning, including the national toll-free hotline, the ad-

1 vance care planning clearinghouses, and State legal
2 service organizations (including those funded
3 through the Older Americans Act of 1965).

4 “(E) An explanation by the practitioner of the
5 continuum of end-of-life services and supports avail-
6 able, including palliative care and hospice, and bene-
7 fits for such services and supports that are available
8 under this title.

9 “(F)(i) Subject to clause (ii), an explanation of
10 orders regarding life sustaining treatment or similar
11 orders, which shall include—

12 “(I) the reasons why the development of
13 such an order is beneficial to the individual and
14 the individual’s family and the reasons why
15 such an order should be updated periodically as
16 the health of the individual changes;

17 “(II) the information needed for an indi-
18 vidual or legal surrogate to make informed deci-
19 sions regarding the completion of such an
20 order; and

21 “(III) the identification of resources that
22 an individual may use to determine the require-
23 ments of the State in which such individual re-
24 sides so that the treatment wishes of that indi-
25 vidual will be carried out if the individual is un-

1 able to communicate those wishes, including re-
2 quirements regarding the designation of a sur-
3 rogate decisionmaker (also known as a health
4 care proxy).

5 “(ii) The Secretary shall limit the requirement
6 for explanations under clause (i) to consultations
7 furnished in a State—

8 “(I) in which all legal barriers have been
9 addressed for enabling orders for life sustaining
10 treatment to constitute a set of medical orders
11 respected across all care settings; and

12 “(II) that has in effect a program for or-
13 ders for life sustaining treatment described in
14 clause (iii).

15 “(iii) A program for orders for life sustaining
16 treatment for a States described in this clause is a
17 program that—

18 “(I) ensures such orders are standardized
19 and uniquely identifiable throughout the State;

20 “(II) distributes or makes accessible such
21 orders to physicians and other health profes-
22 sionals that (acting within the scope of the pro-
23 fessional’s authority under State law) may sign
24 orders for life sustaining treatment;

1 “(III) provides training for health care
2 professionals across the continuum of care
3 about the goals and use of orders for life sus-
4 taining treatment; and

5 “(IV) is guided by a coalition of stake-
6 holders includes representatives from emergency
7 medical services, emergency department physi-
8 cians or nurses, state long-term care associa-
9 tion, state medical association, state surveyors,
10 agency responsible for senior services, state de-
11 partment of health, state hospital association,
12 home health association, state bar association,
13 and state hospice association.

14 “(2) A practitioner described in this paragraph is—

15 “(A) a physician (as defined in subsection
16 (r)(1)); and

17 “(B) a nurse practitioner or physician’s assist-
18 ant who has the authority under State law to sign
19 orders for life sustaining treatments.

20 “(3)(A) An initial preventive physical examination
21 under subsection (WW), including any related discussion
22 during such examination, shall not be considered an ad-
23 vance care planning consultation for purposes of applying
24 the 5-year limitation under paragraph (1).

1 “(B) An advance care planning consultation with re-
2 spect to an individual may be conducted more frequently
3 than provided under paragraph (1) if there is a significant
4 change in the health condition of the individual, including
5 diagnosis of a chronic, progressive, life-limiting disease, a
6 life-threatening or terminal diagnosis or life-threatening
7 injury, or upon admission to a skilled nursing facility, a
8 long-term care facility (as defined by the Secretary), or
9 a hospice program.

10 “(4) A consultation under this subsection may in-
11 clude the formulation of an order regarding life sustaining
12 treatment or a similar order.

13 “(5)(A) For purposes of this section, the term ‘order
14 regarding life sustaining treatment’ means, with respect
15 to an individual, an actionable medical order relating to
16 the treatment of that individual that—

17 “(i) is signed and dated by a physician (as de-
18 fined in subsection (r)(1)) or another health care
19 professional (as specified by the Secretary and who
20 is acting within the scope of the professional’s au-
21 thority under State law in signing such an order, in-
22 cluding a nurse practitioner or physician assistant)
23 and is in a form that permits it to stay with the in-
24 dividual and be followed by health care professionals
25 and providers across the continuum of care;

1 “(ii) effectively communicates the individual’s
2 preferences regarding life sustaining treatment, in-
3 cluding an indication of the treatment and care de-
4 sired by the individual;

5 “(iii) is uniquely identifiable and standardized
6 within a given locality, region, or State (as identified
7 by the Secretary); and

8 “(iv) may incorporate any advance directive (as
9 defined in section 1866(f)(3)) if executed by the in-
10 dividual.

11 “(B) The level of treatment indicated under subpara-
12 graph (A)(ii) may range from an indication for full treat-
13 ment to an indication to limit some or all or specified
14 interventions. Such indicated levels of treatment may in-
15 clude indications respecting, among other items—

16 “(i) the intensity of medical intervention if the
17 patient is pulse less, apneic, or has serious cardiac
18 or pulmonary problems;

19 “(ii) the individual’s desire regarding transfer
20 to a hospital or remaining at the current care set-
21 ting;

22 “(iii) the use of antibiotics; and

23 “(iv) the use of artificially administered nutri-
24 tion and hydration.”.

1 (2) PAYMENT.—Section 1848(j)(3) of such Act
2 (42 U.S.C. 1395w-4(j)(3)) is amended by inserting
3 “(2)(FF),” after “(2)(EE),”.

4 (3) FREQUENCY LIMITATION.—Section 1862(a)
5 of such Act (42 U.S.C. 1395y(a)) is amended—

6 (A) in paragraph (1)—

7 (i) in subparagraph (N), by striking
8 “and” at the end;

9 (ii) in subparagraph (O) by striking
10 the semicolon at the end and inserting “,
11 and”; and

12 (iii) by adding at the end the fol-
13 lowing new subparagraph:

14 “(P) in the case of advance care planning
15 consultations (as defined in section
16 1861(hhh)(1)), which are performed more fre-
17 quently than is covered under such section;”;
18 and

19 (B) in paragraph (7), by striking “or (K)”
20 and inserting “(K), or (P)”.

21 (4) EFFECTIVE DATE.—The amendments made
22 by this subsection shall apply to consultations fur-
23 nished on or after January 1, 2011.

24 (b) EXPANSION OF PHYSICIAN QUALITY REPORTING
25 INITIATIVE FOR END OF LIFE CARE.—

1 (1) PHYSICIAN’S QUALITY REPORTING INITIA-
2 TIVE.—Section 1848(k)(2) of the Social Security Act
3 (42 U.S.C. 1395w–4(k)(2)) is amended by adding at
4 the end the following new paragraphs:

5 “(3) PHYSICIAN’S QUALITY REPORTING INITIA-
6 TIVE.—

7 “(A) IN GENERAL.—For purposes of re-
8 porting data on quality measures for covered
9 professional services furnished during 2011 and
10 any subsequent year, to the extent that meas-
11 ures are available, the Secretary shall include
12 quality measures on end of life care and ad-
13 vanced care planning that have been adopted or
14 endorsed by a consensus-based organization, if
15 appropriate. Such measures shall measure both
16 the creation of and adherence to orders for life-
17 sustaining treatment.

18 “(B) PROPOSED SET OF MEASURES.— The
19 Secretary shall publish in the Federal Register
20 proposed quality measures on end of life care
21 and advanced care planning that the Secretary
22 determines are described in subparagraph (A)
23 and would be appropriate for eligible profes-
24 sionals to use to submit data to the Secretary.
25 The Secretary shall provide for a period of pub-

1 lic comment on such set of measures before fi-
2 nalizing such proposed measures.”.

3 (c) INCLUSION OF INFORMATION IN MEDICARE &
4 YOU HANDBOOK.—

5 (1) MEDICARE & YOU HANDBOOK.—

6 (A) IN GENERAL.—Not later than 1 year
7 after the date of the enactment of this Act, the
8 Secretary of Health and Human Services shall
9 update the online version of the Medicare &
10 You Handbook to include the following:

11 (i) An explanation of advance care
12 planning and advance directives, includ-
13 ing—

14 (I) living wills;

15 (II) durable power of attorney;

16 (III) orders of life-sustaining
17 treatment; and

18 (IV) health care proxies.

19 (ii) A description of Federal and State
20 resources available to assist individuals
21 and their families with advance care plan-
22 ning and advance directives, including—

23 (I) available State legal service
24 organizations to assist individuals
25 with advance care planning, including

1 those organizations that receive fund-
2 ing pursuant to the Older Americans
3 Act of 1965 (42 U.S.C. 93001 et
4 seq.);

5 (II) website links or addresses for
6 State-specific advance directive forms;
7 and

8 (III) any additional information,
9 as determined by the Secretary.

10 (B) UPDATE OF PAPER AND SUBSEQUENT
11 VERSIONS.—The Secretary shall include the in-
12 formation described in subparagraph (A) in all
13 paper and electronic versions of the Medicare &
14 You Handbook that are published on or after
15 the date that is 1 year after the date of the en-
16 actment of this Act.

17 **SEC. 1234. PART B SPECIAL ENROLLMENT PERIOD AND**
18 **WAIVER OF LIMITED ENROLLMENT PENALTY**
19 **FOR TRICARE BENEFICIARIES.**

20 (a) PART B SPECIAL ENROLLMENT PERIOD.—

21 (1) IN GENERAL.—Section 1837 of the Social
22 Security Act (42 U.S.C. 1395p) is amended by add-
23 ing at the end the following new subsection:

24 “(l)(1) In the case of any individual who is a covered
25 beneficiary (as defined in section 1072(5) of title 10,

1 United States Code) at the time the individual is entitled
2 to hospital insurance benefits under part A under section
3 226(b) or section 226A and who is eligible to enroll but
4 who has elected not to enroll (or to be deemed enrolled)
5 during the individual's initial enrollment period, there
6 shall be a special enrollment period described in paragraph
7 (2).

8 “(2) The special enrollment period described in this
9 paragraph, with respect to an individual, is the 12-month
10 period beginning on the day after the last day of the initial
11 enrollment period of the individual or, if later, the 12-
12 month period beginning with the month the individual is
13 notified of enrollment under this section.

14 “(3) In the case of an individual who enrolls during
15 the special enrollment period provided under paragraph
16 (1), the coverage period under this part shall begin on the
17 first day of the month in which the individual enrolls or,
18 at the option of the individual, on the first day of the sec-
19 ond month following the last month of the individual's ini-
20 tial enrollment period.

21 “(4) The Secretary of Defense shall establish a meth-
22 od for identifying individuals described in paragraph (1)
23 and providing notice to them of their eligibility for enroll-
24 ment during the special enrollment period described in
25 paragraph (2).”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall apply to elections made on or
3 after the date of the enactment of this Act.

4 (b) WAIVER OF INCREASE OF PREMIUM.—

5 (1) IN GENERAL.—Section 1839(b) of the So-
6 cial Security Act (42 U.S.C. 1395r(b)) is amended
7 by striking “section 1837(i)(4)” and inserting “sub-
8 section (i)(4) or (l) of section 1837”.

9 (2) EFFECTIVE DATE.—

10 (A) IN GENERAL.—The amendment made
11 by paragraph (1) shall apply with respect to
12 elections made on or after the date of the en-
13 actment of this Act.

14 (B) REBATES FOR CERTAIN DISABLED
15 AND ESRD BENEFICIARIES.—

16 (i) IN GENERAL.—With respect to
17 premiums for months on or after January
18 2005 and before the month of the enact-
19 ment of this Act, no increase in the pre-
20 mium shall be effected for a month in the
21 case of any individual who is a covered
22 beneficiary (as defined in section 1072(5)
23 of title 10, United States Code) at the time
24 the individual is entitled to hospital insur-
25 ance benefits under part A of title XVIII

1 of the Social Security Act under section
2 226(b) or 226A of such Act, and who is el-
3 igible to enroll, but who has elected not to
4 enroll (or to be deemed enrolled), during
5 the individual's initial enrollment period,
6 and who enrolls under this part within the
7 12-month period that begins on the first
8 day of the month after the month of notifi-
9 cation of entitlement under this part.

10 (ii) CONSULTATION WITH DEPART-
11 MENT OF DEFENSE.—The Secretary of
12 Health and Human Services shall consult
13 with the Secretary of Defense in identi-
14 fying individuals described in this para-
15 graph.

16 (iii) REBATES.—The Secretary of
17 Health and Human Services shall establish
18 a method for providing rebates of premium
19 increases paid for months on or after Jan-
20 uary 1, 2005, and before the month of the
21 enactment of this Act for which a penalty
22 was applied and collected.

1 **SEC. 1235. EXCEPTION FOR USE OF MORE RECENT TAX**
2 **YEAR IN CASE OF GAINS FROM SALE OF PRI-**
3 **MARY RESIDENCE IN COMPUTING PART B IN-**
4 **COME-RELATED PREMIUM.**

5 (a) IN GENERAL.—Section 1839(i)(4)(C)(ii)(II) of
6 the Social Security Act (42 U.S.C. 1395r(i)(4)(C)(ii)(II))
7 is amended by inserting “sale of primary residence,” after
8 “divorce of such individual,”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall apply to premiums and payments for
11 years beginning with 2011.

12 **SEC. 1236. DEMONSTRATION PROGRAM ON USE OF PA-**
13 **TIENT DECISIONS AIDS.**

14 (a) IN GENERAL.—The Secretary of Health and
15 Human Services shall establish a shared decision making
16 demonstration program (in this subsection referred to as
17 the “program”) under the Medicare program using pa-
18 tient decision aids to meet the objective of improving the
19 understanding by Medicare beneficiaries of their medical
20 treatment options, as compared to comparable Medicare
21 beneficiaries who do not participate in a shared decision
22 making process using patient decision aids.

23 (b) SITES.—

24 (1) ENROLLMENT.—The Secretary shall enroll
25 in the program not more than 30 eligible providers
26 who have experience in implementing, and have in-

1 vested in the necessary infrastructure to implement,
2 shared decision making using patient decision aids.

3 (2) APPLICATION.—An eligible provider seeking
4 to participate in the program shall submit to the
5 Secretary an application at such time and containing
6 such information as the Secretary may require.

7 (3) PREFERENCE.—In enrolling eligible pro-
8 viders in the program, the Secretary shall give pref-
9 erence to eligible providers that—

10 (A) have documented experience in using
11 patient decision aids for the conditions identi-
12 fied by the Secretary and in using shared deci-
13 sion making;

14 (B) have the necessary information tech-
15 nology infrastructure to collect the information
16 required by the Secretary for reporting pur-
17 poses; and

18 (C) are trained in how to use patient deci-
19 sion aids and shared decision making.

20 (e) FOLLOW-UP COUNSELING VISIT.—

21 (1) IN GENERAL.—An eligible provider partici-
22 pating in the program shall routinely schedule Medi-
23 care beneficiaries for a counseling visit after the
24 viewing of such a patient decision aid to answer any
25 questions the beneficiary may have with respect to

1 the medical care of the condition involved and to as-
2 sist the beneficiary in thinking through how their
3 preferences and concerns relate to their medical
4 care.

5 (2) PAYMENT FOR FOLLOW-UP COUNSELING
6 VISIT.—The Secretary shall establish procedures for
7 making payments for such counseling visits provided
8 to Medicare beneficiaries under the program. Such
9 procedures shall provide for the establishment—

10 (A) of a code (or codes) to represent such
11 services; and

12 (B) of a single payment amount for such
13 service that includes the professional time of
14 the health care provider and a portion of the
15 reasonable costs of the infrastructure of the eli-
16 gible provider such as would be made under the
17 applicable payment systems to that provider for
18 similar covered services.

19 (d) COSTS OF AIDS.—An eligible provider partici-
20 pating in the program shall be responsible for the costs
21 of selecting, purchasing, and incorporating such patient
22 decision aids into the provider's practice, and reporting
23 data on quality and outcome measures under the program.

24 (e) FUNDING.—The Secretary shall provide for the
25 transfer from the Federal Supplementary Medical Insur-

1 ance Trust Fund established under section 1841 of the
2 Social Security Act (42 U.S.C. 1395t) of such funds as
3 are necessary for the costs of carrying out the program.

4 (f) WAIVER AUTHORITY.—The Secretary may waive
5 such requirements of titles XI and XVIII of the Social
6 Security Act (42 U.S.C. 1301 et seq. and 1395 et seq.)
7 as may be necessary for the purpose of carrying out the
8 program.

9 (g) REPORT.—Not later than 12 months after the
10 date of completion of the program, the Secretary shall sub-
11 mit to Congress a report on such program, together with
12 recommendations for such legislation and administrative
13 action as the Secretary determines to be appropriate. The
14 final report shall include an evaluation of the impact of
15 the use of the program on health quality, utilization of
16 health care services, and on improving the quality of life
17 of such beneficiaries.

18 (h) DEFINITIONS.—In this section:

19 (1) ELIGIBLE PROVIDER.—The term “eligible
20 provider” means the following:

21 (A) A primary care practice.

22 (B) A specialty practice.

23 (C) A multispecialty group practice.

24 (D) A hospital.

25 (E) A rural health clinic.

1 (F) A Federally qualified health center (as
2 defined in section 1861(aa)(4) of the Social Se-
3 curity Act (42 U.S.C. 1395x(aa)(4)).

4 (G) An integrated delivery system.

5 (H) A State cooperative entity that in-
6 cludes the State government and at least one
7 other health care provider which is set up for
8 the purpose of testing shared decision making
9 and patient decision aids.

10 (2) PATIENT DECISION AID.—The term “pa-
11 tient decision aid” means an educational tool (such
12 as the Internet, a video, or a pamphlet) that helps
13 patients (or, if appropriate, the family caregiver of
14 the patient) understand and communicate their be-
15 liefs and preferences related to their treatment op-
16 tions, and to decide with their health care provider
17 what treatments are best for them based on their
18 treatment options, scientific evidence, circumstances,
19 beliefs, and preferences.

20 (3) SHARED DECISION MAKING.—The term
21 “shared decision making” means a collaborative
22 process between patient and clinician that engages
23 the patient in decision making, provides patients
24 with information about trade-offs among treatment

1 options, and facilitates the incorporation of patient
2 preferences and values into the medical plan.

3 **TITLE III—PROMOTING PRI-**
4 **MARY CARE, MENTAL**
5 **HEALTH SERVICES, AND CO-**
6 **ORDINATED CARE**

7 **SEC. 1301. ACCOUNTABLE CARE ORGANIZATION PILOT**
8 **PROGRAM.**

9 Title XVIII of the Social Security Act is amended by
10 inserting after section 1866C the following new section:

11 “ACCOUNTABLE CARE ORGANIZATION PILOT PROGRAM

12 “SEC. 1866D. (a) IN GENERAL.—The Secretary shall
13 conduct a pilot program (in this section referred to as the
14 ‘pilot program’) to test different payment incentive mod-
15 els, including (to the extent practicable) the specific pay-
16 ment incentive models described in subsection (c), de-
17 signed to reduce the growth of expenditures and improve
18 health outcomes in the provision of items and services
19 under this title to applicable beneficiaries (as defined in
20 subsection (d)) by qualifying accountable care organiza-
21 tions (as defined in subsection (b)(1)) in order to—

22 “(1) promote accountability for a patient popu-
23 lation and coordinate items and services under parts
24 A and B;

1 “(2) encourage investment in infrastructure and
2 redesigned care processes for high quality and effi-
3 cient service delivery; and

4 “(3) reward physician practices and other phy-
5 sician organizational models for the provision of high
6 quality and efficient health care services.

7 “(b) QUALIFYING ACCOUNTABLE CARE ORGANIZA-
8 TIONS (ACOs).—

9 “(1) QUALIFYING ACO DEFINED.—In this sec-
10 tion:

11 “(A) IN GENERAL.—The terms ‘qualifying
12 accountable care organization’ and ‘qualifying
13 ACO’ mean a group of physicians or other phy-
14 sician organizational model (as defined in sub-
15 paragraph (D)) that—

16 “(i) is organized at least in part for
17 the purpose of providing physicians’ serv-
18 ices; and

19 “(ii) meets such criteria as the Sec-
20 retary determines to be appropriate to par-
21 ticipate in the pilot program, including the
22 criteria specified in paragraph (2).

23 “(B) INCLUSION OF OTHER PROVIDERS.—
24 Nothing in this subsection shall be construed as
25 preventing a qualifying ACO from including a

1 hospital or any other provider of services or
2 supplier furnishing items or services for which
3 payment may be made under this title that is
4 affiliated with the ACO under an arrangement
5 structured so that such provider or supplier
6 participates in the pilot program and shares in
7 any incentive payments under the pilot pro-
8 gram.

9 “(C) PHYSICIAN.—The term ‘physician’ in-
10 cludes, except as the Secretary may otherwise
11 provide, any individual who furnishes services
12 for which payment may be made as physicians’
13 services.

14 “(D) OTHER PHYSICIAN ORGANIZATIONAL
15 MODEL.—The term ‘other physician organiza-
16 tion model’ means, with respect to a qualifying
17 ACO any model of organization under which
18 physicians enter into agreements with other
19 providers for the purposes of participation in
20 the pilot program in order to provide high qual-
21 ity and efficient health care services and share
22 in any incentive payments under such program

23 “(E) OTHER SERVICES.—Nothing in this
24 paragraph shall be construed as preventing a
25 qualifying ACO from furnishing items or serv-

1 ices, for which payment may not be made under
2 this title, for purposes of achieving performance
3 goals under the pilot program.

4 “(2) QUALIFYING CRITERIA.—The following are
5 criteria described in this paragraph for an organized
6 group of physicians to be a qualifying ACO:

7 “(A) The group has a legal structure that
8 would allow the group to receive and distribute
9 incentive payments under this section.

10 “(B) The group includes a sufficient num-
11 ber of primary care physicians for the applica-
12 ble beneficiaries for whose care the group is ac-
13 countable (as determined by the Secretary).

14 “(C) The group reports on quality meas-
15 ures in such form, manner, and frequency as
16 specified by the Secretary (which may be for
17 the group, for providers of services and sup-
18 pliers, or both).

19 “(D) The group reports to the Secretary
20 (in a form, manner and frequency as specified
21 by the Secretary) such data as the Secretary
22 determines appropriate to monitor and evaluate
23 the pilot program.

1 “(E) The group provides notice to applica-
2 ble beneficiaries regarding the pilot program (as
3 determined appropriate by the Secretary).

4 “(F) The group contributes to a best prac-
5 tices network or website, that shall be main-
6 tained by the Secretary for the purpose of shar-
7 ing strategies on quality improvement, care co-
8 ordination, and efficiency that the groups be-
9 lieve are effective.

10 “(G) The group utilizes patient-centered
11 processes of care, including those that empha-
12 size patient and caregiver involvement in plan-
13 ning and monitoring of ongoing care manage-
14 ment plan.

15 “(H) The group meets other criteria deter-
16 mined to be appropriate by the Secretary.

17 “(c) SPECIFIC PAYMENT INCENTIVE MODELS.—The
18 specific payment incentive models described in this sub-
19 section are the following:

20 “(1) PERFORMANCE TARGET MODEL.—Under
21 the performance target model under this paragraph
22 (in this paragraph referred to as the ‘performance
23 target model’):

24 “(A) IN GENERAL.—A qualifying ACO
25 qualifies to receive an incentive payment if ex-

1 penditures for applicable beneficiaries are less
2 than a target spending level or a target rate of
3 growth. The incentive payment shall be made
4 only if savings are greater than would result
5 from normal variation in expenditures for items
6 and services covered under parts A and B.

7 “(B) COMPUTATION OF PERFORMANCE
8 TARGET.—

9 “(i) IN GENERAL.—The Secretary
10 shall establish a performance target for
11 each qualifying ACO comprised of a base
12 amount (described in clause (ii)) increased
13 to the current year by an adjustment fac-
14 tor (described in clause (iii)). Such a tar-
15 get may be established on a per capita
16 basis, as the Secretary determines to be
17 appropriate.

18 “(ii) BASE AMOUNT.—For purposes of
19 clause (i), the base amount in this sub-
20 paragraph is equal to the average total
21 payments (or allowed charges) under parts
22 A and B (and may include part D, if the
23 Secretary determines appropriate) for ap-
24 plicable beneficiaries for whom the quali-
25 fying ACO furnishes items and services in

1 a base period determined by the Secretary.
2 Such base amount may be determined on
3 a per capita basis.

4 “(iii) ADJUSTMENT FACTOR.—For
5 purposes of clause (i), the adjustment fac-
6 tor in this clause may equal an annual per
7 capita amount that reflects changes in ex-
8 penditures from the period of the base
9 amount to the current year that would rep-
10 resent an appropriate performance target
11 for applicable beneficiaries (as determined
12 by the Secretary). Such adjustment factor
13 may be determined as an amount or rate,
14 may be determined on a national, regional,
15 local, or organization-specific basis, and
16 may be determined on a per capita basis.
17 Such adjustment factor also may be ad-
18 justed for risk as determined appropriate
19 by the Secretary.

20 “(iv) REBASING.—Under this model
21 the Secretary shall periodically rebase the
22 base expenditure amount described in
23 clause (ii).

24 “(C) MEETING TARGET.—

1 “(i) IN GENERAL.—Subject to clause
2 (ii), a qualifying ACO that meet or exceeds
3 annual quality and performance targets for
4 a year shall receive an incentive payment
5 for such year equal to a portion (as deter-
6 mined appropriate by the Secretary) of the
7 amount by which payments under this title
8 for such year relative are estimated to be
9 below the performance target for such
10 year, as determined by the Secretary. The
11 Secretary may establish a cap on incentive
12 payments for a year for a qualifying ACO.

13 “(ii) LIMITATION.— The Secretary
14 shall limit incentive payments to each
15 qualifying ACO under this paragraph as
16 necessary to ensure that the aggregate ex-
17 penditures with respect to applicable bene-
18 ficiaries for such ACOs under this title (in-
19 clusive of incentive payments described in
20 this subparagraph) do not exceed the
21 amount that the Secretary estimates would
22 be expended for such ACO for such bene-
23 ficiaries if the pilot program under this
24 section were not implemented.

1 “(D) REPORTING AND OTHER REQUIRE-
2 MENTS.—In carrying out such model, the Sec-
3 retary may (as the Secretary determines to be
4 appropriate) incorporate reporting require-
5 ments, incentive payments, and penalties re-
6 lated to the physician quality reporting initia-
7 tive (PQRI), electronic prescribing, electronic
8 health records, and other similar initiatives
9 under section 1848, and may use alternative
10 criteria than would otherwise apply under such
11 section for determining whether to make such
12 payments. The incentive payments described in
13 this subparagraph shall not be included in the
14 limit described in subparagraph (C)(ii) or in the
15 performance target model described in this
16 paragraph.

17 “(2) PARTIAL CAPITATION MODEL.—

18 “(A) IN GENERAL.—Subject to subpara-
19 graph (B), a partial capitation model described
20 in this paragraph (in this paragraph referred to
21 as a ‘partial capitation model’) is a model in
22 which a qualifying ACO would be at financial
23 risk for some, but not all, of the items and serv-
24 ices covered under parts A and B, such as at
25 risk for some or all physicians’ services or all

1 items and services under part B. The Secretary
2 may limit a partial capitation model to ACOs
3 that are highly integrated systems of care and
4 to ACOs capable of bearing risk, as determined
5 to be appropriate by the Secretary.

6 “(B) NO ADDITIONAL PROGRAM EXPENDI-
7 TURES.—Payments to a qualifying ACO for ap-
8 plicable beneficiaries for a year under the par-
9 tial capitation model shall be established in a
10 manner that does not result in spending more
11 for such ACO for such beneficiaries than would
12 otherwise be expended for such ACO for such
13 beneficiaries for such year if the pilot program
14 were not implemented, as estimated by the Sec-
15 retary.

16 “(3) OTHER PAYMENT MODELS.—

17 “(A) IN GENERAL.—Subject to subpara-
18 graph (B), the Secretary may develop other
19 payment models that meet the goals of this
20 pilot program to improve quality and efficiency.

21 “(B) NO ADDITIONAL PROGRAM EXPENDI-
22 TURES.—Subparagraph (B) of paragraph (2)
23 shall apply to a payment model under subpara-
24 graph (A) in a similar manner as such subpara-

1 graph (B) applies to the payment model under
2 paragraph (2).

3 “(d) APPLICABLE BENEFICIARIES.—

4 “(1) IN GENERAL.—In this section, the term
5 ‘applicable beneficiary’ means, with respect to a
6 qualifying ACO, an individual who—

7 “(A) is enrolled under part B and entitled
8 to benefits under part A;

9 “(B) is not enrolled in a Medicare Advan-
10 tage plan under part C or a PACE program
11 under section 1894; and

12 “(C) meets such other criteria as the Sec-
13 retary determines appropriate, which may in-
14 clude criteria relating to frequency of contact
15 with physicians in the ACO

16 “(2) FOLLOWING APPLICABLE BENE-
17 FICIARIES.—The Secretary may monitor data on ex-
18 penditures and quality of services under this title
19 after an applicable beneficiary discontinues receiving
20 services under this title through a qualifying ACO.

21 “(e) IMPLEMENTATION.—

22 “(1) STARTING DATE.—The pilot program shall
23 begin no later than January 1, 2012. An agreement
24 with a qualifying ACO under the pilot program may
25 cover a multi-year period of between 3 and 5 years.

1 “(2) WAIVER.—The Secretary may waive such
2 provisions of this title (including section 1877) and
3 title XI in the manner the Secretary determines nec-
4 essary in order implement the pilot program.

5 “(3) PERFORMANCE RESULTS REPORTS.—The
6 Secretary shall report performance results to quali-
7 fying ACOs under the pilot program at least annu-
8 ally.

9 “(4) LIMITATIONS ON REVIEW.—There shall be
10 no administrative or judicial review under section
11 1869, section 1878, or otherwise of—

12 “(A) the elements, parameters, scope, and
13 duration of the pilot program;

14 “(B) the selection of qualifying ACOs for
15 the pilot program;

16 “(C) the establishment of targets, meas-
17 urement of performance, determinations with
18 respect to whether savings have been achieved
19 and the amount of savings;

20 “(D) determinations regarding whether, to
21 whom, and in what amounts incentive payments
22 are paid; and

23 “(E) decisions about the extension of the
24 program under subsection (g), expansion of the

1 program under subsection (h) or extensions
2 under subsection (i).

3 “(5) ADMINISTRATION.—Chapter 35 of title 44,
4 United States Code shall not apply to this section.

5 “(f) EVALUATION; MONITORING.—

6 “(1) IN GENERAL.—The Secretary shall evalu-
7 ate the payment incentive model for each qualifying
8 ACO under the pilot program to assess impacts on
9 beneficiaries, providers of services, suppliers and the
10 program under this title. The Secretary shall make
11 such evaluation publicly available within 60 days of
12 the date of completion of such report.

13 “(2) MONITORING.—The Inspector General of
14 the Department of Health and Human Services shall
15 provide for monitoring of the operation of ACOs
16 under the pilot program with regard to violations of
17 section 1877 (popularly known as the ‘Stark law’).

18 “(g) EXTENSION OF PILOT AGREEMENT WITH SUC-
19 CESSFUL ORGANIZATIONS.—

20 “(1) REPORTS TO CONGRESS.—Not later than
21 2 years after the date the first agreement is entered
22 into under this section, and biennially thereafter for
23 six years, the Secretary shall submit to Congress
24 and make publicly available a report on the use of
25 authorities under the pilot program. Each report

1 shall address the impact of the use of those authori-
2 ties on expenditures, access, and quality under this
3 title.

4 “(2) EXTENSION.—Subject to the report pro-
5 vided under paragraph (1), with respect to a quali-
6 fying ACO, the Secretary may extend the duration
7 of the agreement for such ACO under the pilot pro-
8 gram as the Secretary determines appropriate if—

9 “(A) the ACO receives incentive payments
10 with respect to any of the first 4 years of the
11 pilot agreement and is consistently meeting
12 quality standards or

13 “(B) the ACO is consistently exceeding
14 quality standards and is not increasing spend-
15 ing under the program.

16 “(3) TERMINATION.—The Secretary may termi-
17 nate an agreement with a qualifying ACO under the
18 pilot program if such ACO did not receive incentive
19 payments or consistently failed to meet quality
20 standards in any of the first 3 years under the pro-
21 gram.

22 “(h) EXPANSION TO ADDITIONAL ACOs.—

23 “(1) TESTING AND REFINEMENT OF PAYMENT
24 INCENTIVE MODELS.—Subject to the evaluation de-
25 scribed in subsection (f), the Secretary may enter

1 into agreements under the pilot program with addi-
2 tional qualifying ACOs to further test and refine
3 payment incentive models with respect to qualifying
4 ACOs.

5 “(2) EXPANDING USE OF SUCCESSFUL MODELS
6 TO PROGRAM IMPLEMENTATION.—

7 “(A) IN GENERAL.—Subject to subpara-
8 graph (B), the Secretary may issue regulations
9 to implement, on a permanent basis, 1 or more
10 models if, and to the extent that, such models
11 are beneficial to the program under this title, as
12 determined by the Secretary.

13 “(B) CERTIFICATION.—The Chief Actuary
14 of the Centers for Medicare & Medicaid Serv-
15 ices shall certify that 1 or more of such models
16 described in subparagraph (A) would result in
17 estimated spending that would be less than
18 what spending would otherwise be estimated to
19 be in the absence of such expansion.

20 “(i) TREATMENT OF PHYSICIAN GROUP PRACTICE
21 DEMONSTRATION.—

22 “(1) EXTENSION.—The Secretary may enter in
23 to an agreement with a qualifying ACO under the
24 demonstration under section 1866A, subject to re-
25 basing and other modifications deemed appropriate

1 by the Secretary, until the pilot program under this
2 section is operational.

3 “(2) TRANSITION.—For purposes of extension
4 of an agreement with a qualifying ACO under sub-
5 section (g)(2), the Secretary shall treat receipt of an
6 incentive payment for a year by an organization
7 under the physician group practice demonstration
8 pursuant to section 1866A as a year for which an
9 incentive payment is made under such subsection, as
10 long as such practice group practice organization
11 meets the criteria under subsection (b)(2).

12 “(j) ADDITIONAL PROVISIONS.—

13 “(1) AUTHORITY FOR SEPARATE INCENTIVE
14 ARRANGEMENTS.—The Secretary may create sepa-
15 rate incentive arrangements (including using mul-
16 tiple years of data, varying thresholds, varying
17 shared savings amounts, and varying shared savings
18 limits) for different categories of qualifying ACOs to
19 reflect natural variations in data availability, vari-
20 ation in average annual attributable expenditures,
21 program integrity, and other matters the Secretary
22 deems appropriate.

23 “(2) ENCOURAGEMENT OF PARTICIPATION OF
24 SMALLER ORGANIZATIONS.—In order to encourage
25 the participation of smaller accountable care organi-

1 zations under the pilot program, the Secretary may
2 limit a qualifying ACO's exposure to high cost pa-
3 tients under the program.

4 “(3) INVOLVEMENT IN PRIVATE PAYER AR-
5 RANGEMENTS.—Nothing in this section shall be con-
6 strued as preventing qualifying ACOs participating
7 in the pilot program from negotiating similar con-
8 tracts with private payers.

9 “(4) ANTIDISCRIMINATION LIMITATION.—The
10 Secretary shall not enter into an agreement with an
11 entity to provide health care items or services under
12 the pilot program, or with an entity to administer
13 the program, unless such entity guarantees that it
14 will not deny, limit, or condition the coverage or pro-
15 vision of benefits under the program, for individuals
16 eligible to be enrolled under such program, based on
17 any health status-related factor described in section
18 2702(a)(1) of the Public Health Service Act.

19 “(5) CONSTRUCTION.—Nothing in this section
20 shall be construed to compel or require an organiza-
21 tion to use an organization-specific target growth
22 rate for an accountable care organization under this
23 section for purposes of section 1848.

24 “(6) FUNDING.—For purposes of administering
25 and carrying out the pilot program, other than for

1 payments for items and services furnished under this
2 title and incentive payments under subsection (c)(1),
3 in addition to funds otherwise appropriated, there
4 are appropriated to the Secretary for the Center for
5 Medicare & Medicaid Services Program Management
6 Account \$25,000,000 for each of fiscal years 2010
7 through 2014 and \$20,000,000 for fiscal year 2015.
8 Amounts appropriated under this paragraph for a
9 fiscal year shall be available until expended.”.

10 **SEC. 1302. MEDICAL HOME PILOT PROGRAM.**

11 (a) IN GENERAL.—Title XVIII of the Social Security
12 Act is amended by inserting after section 1866D, as in-
13 serted by section 1301, the following new section:

14 “MEDICAL HOME PILOT PROGRAM

15 “SEC. 1866E. (a) ESTABLISHMENT AND MEDICAL
16 HOME MODELS.—

17 “(1) ESTABLISHMENT OF PILOT PROGRAM.—

18 The Secretary shall establish a medical home pilot
19 program (in this section referred to as the ‘pilot pro-
20 gram’) for the purpose of evaluating the feasibility
21 and advisability of reimbursing qualified patient-cen-
22 tered medical homes for furnishing medical home
23 services (as defined under subsection (b)(1)) to high
24 need beneficiaries (as defined in subsection
25 (d)(1)(C)) and to targeted high need beneficiaries
26 (as defined in subsection (c)(1)(C)).

1 “(2) SCOPE.—Subject to subsection (g), the
2 pilot program shall include urban, rural, and under-
3 served areas.

4 “(3) MODELS OF MEDICAL HOMES IN THE
5 PILOT PROGRAM.—The pilot program shall evaluate
6 each of the following medical home models:

7 “(A) INDEPENDENT PATIENT-CENTERED
8 MEDICAL HOME MODEL.—Independent patient-
9 centered medical home model under subsection
10 (c).

11 “(B) COMMUNITY-BASED MEDICAL HOME
12 MODEL.—Community-based medical home
13 model under subsection (d).

14 “(4) PARTICIPATION OF NURSE PRACTITIONERS
15 AND PHYSICIAN ASSISTANTS.—

16 “(A) Nothing in this section shall be con-
17 strued as preventing a nurse practitioner from
18 leading a patient centered medical home so long
19 as—

20 “(i) all the requirements of this sec-
21 tion are met; and

22 “(ii) the nurse practitioner is acting
23 consistently with State law.

24 “(B) Nothing in this section shall be con-
25 strued as preventing a physician assistant from

1 participating in a patient centered medical
2 home so long as—

3 “(i) all the requirements of this sec-
4 tion are met; and

5 “(ii) the physician assistant is acting
6 consistently with State law.

7 “(b) DEFINITIONS.—For purposes of this section:

8 “(1) PATIENT-CENTERED MEDICAL HOME
9 SERVICES.—The term ‘patient-centered medical
10 home services’ means services that—

11 “(A) provide beneficiaries with direct and
12 ongoing access to a primary care or principal
13 care by a physician or nurse practitioner who
14 accepts responsibility for providing first contact,
15 continuous and comprehensive care to such ben-
16 eficiary;

17 “(B) coordinate the care provided to a ben-
18 eficiary by a team of individuals at the practice
19 level across office, institutional and home set-
20 tings led by a primary care or principal care
21 physician or nurse practitioner, as needed and
22 appropriate;

23 “(C) provide for all the patient’s health
24 care needs or take responsibility for appro-

1 priately arranging care with other qualified pro-
2 viders for all stages of life;

3 “(D) provide continuous access to care and
4 communication with participating beneficiaries;

5 “(E) provide support for patient self-man-
6 agement, proactive and regular patient moni-
7 toring, support for family caregivers, use pa-
8 tient-centered processes, and coordination with
9 community resources;

10 “(F) integrate readily accessible, clinically
11 useful information on participating patients
12 that enables the practice to treat such patients
13 comprehensively and systematically; and

14 “(G) implement evidence-based guidelines
15 and apply such guidelines to the identified
16 needs of beneficiaries over time and with the in-
17 tensity needed by such beneficiaries.

18 “(2) PRIMARY CARE.—The term ‘primary care’
19 means health care that is provided by a physician or
20 nurse practitioner who practices in the field of fam-
21 ily medicine, general internal medicine, geriatric
22 medicine, or pediatric medicine.

23 “(3) PRINCIPAL CARE.—The term ‘principal
24 care’ means integrated, accessible health care that is
25 provided by a physician who is a medical sub-

1 specialist that addresses the majority of the personal
2 health care needs of patients with chronic conditions
3 requiring the subspecialist's expertise, and for whom
4 the subspecialist assumes care management.

5 “(c) INDEPENDENT PATIENT-CENTERED MEDICAL
6 HOME MODEL.—

7 “(1) IN GENERAL.—

8 “(A) PAYMENT AUTHORITY.—Under the
9 independent patient-centered medical home
10 model under this subsection, the Secretary shall
11 make payments for medical home services fur-
12 nished by an independent patient-centered med-
13 ical home (as defined in subparagraph (B))
14 pursuant to paragraph (3)(B) for a targeted
15 high need beneficiaries (as defined in subpara-
16 graph (C)).

17 “(B) INDEPENDENT PATIENT-CENTERED
18 MEDICAL HOME DEFINED.—In this section, the
19 term ‘independent patient-centered medical
20 home’ means a physician-directed or nurse-
21 practitioner-directed practice that is qualified
22 under paragraph (2) as—

23 “(i) providing beneficiaries with pa-
24 tient-centered medical home services; and

1 “(ii) meets such other requirements as
2 the Secretary may specify.

3 “(C) TARGETED HIGH NEED BENEFICIARY
4 DEFINED.—For purposes of this subsection, the
5 term ‘targeted high need beneficiary’ means a
6 high need beneficiary who, based on a risk score
7 as specified by the Secretary, is generally within
8 the upper 50th percentile of Medicare bene-
9 ficiaries.

10 “(D) BENEFICIARY ELECTION TO PARTICI-
11 PATE.—The Secretary shall determine an ap-
12 propriate method of ensuring that beneficiaries
13 have agreed to participate in the pilot program.

14 “(E) IMPLEMENTATION.—The pilot pro-
15 gram under this subsection shall begin no later
16 than 6 months after the date of the enactment
17 of this section.

18 “(2) STANDARD SETTING AND QUALIFICATION
19 PROCESS FOR PATIENT-CENTERED MEDICAL
20 HOMES.—The Secretary shall review alternative
21 models for standard setting and qualification, and
22 shall establish a process—

23 “(A) to establish standards to enable med-
24 ical practices to qualify as patient-centered
25 medical homes; and

1 “(B) to initially provide for the review and
2 certification of medical practices as meeting
3 such standards.

4 “(3) PAYMENT.—

5 “(A) ESTABLISHMENT OF METHOD-
6 OLOGY.—The Secretary shall establish a meth-
7 odology for the payment for medical home serv-
8 ices furnished by independent patient-centered
9 medical homes. Under such methodology, the
10 Secretary shall adjust payments to medical
11 homes based on beneficiary risk scores to en-
12 sure that higher payments are made for higher
13 risk beneficiaries.

14 “(B) PER BENEFICIARY PER MONTH PAY-
15 MENTS.—Under such payment methodology, the
16 Secretary shall pay independent patient-cen-
17 tered medical homes a monthly fee for each tar-
18 geted high need beneficiary who consents to re-
19 ceive medical home services through such med-
20 ical home.

21 “(C) PROSPECTIVE PAYMENT.—The fee
22 under subparagraph (B) shall be paid on a pro-
23 spective basis.

1 “(D) AMOUNT OF PAYMENT.—In deter-
2 mining the amount of such fee, the Secretary
3 shall consider the following:

4 “(i) The clinical work and practice ex-
5 penses involved in providing the medical
6 home services provided by the independent
7 patient-centered medical home (such as
8 providing increased access, care coordina-
9 tion, population disease management, and
10 teaching self-care skills for managing
11 chronic illnesses) for which payment is not
12 made under this title as of the date of the
13 enactment of this section.

14 “(ii) Allow for differential payments
15 based on capabilities of the independent
16 patient-centered medical home.

17 “(iii) Use appropriate risk-adjustment
18 in determining the amount of the per bene-
19 ficiary per month payment under this
20 paragraph in a manner that ensures that
21 higher payments are made for higher risk
22 beneficiaries.

23 “(4) ENCOURAGING PARTICIPATION OF VARI-
24 ETY OF PRACTICES.—The pilot program under this
25 subsection shall be designed to include the participa-

1 tion of physicians in practices with fewer than 10
2 full-time equivalent physicians, as well as physicians
3 in larger practices, particularly in underserved and
4 rural areas, as well as federally qualified community
5 health centers, and rural health centers.

6 “(5) NO DUPLICATION IN PILOT PARTICIPA-
7 TION.—A physician in a group practice that partici-
8 pates in the accountable care organization pilot pro-
9 gram under section 1866D shall not be eligible to
10 participate in the pilot program under this sub-
11 section, unless the pilot program under this section
12 has been implemented on a permanent basis under
13 subsection (e)(3).

14 “(d) COMMUNITY-BASED MEDICAL HOME MODEL.—

15 “(1) IN GENERAL.—

16 “(A) AUTHORITY FOR PAYMENTS.—Under
17 the community-based medical home model
18 under this subsection (in this section referred to
19 as the ‘CBMH model’), the Secretary shall
20 make payments for the furnishing of medical
21 home services by a community-based medical
22 home (as defined in subparagraph (B)) pursu-
23 ant to paragraph (5)(B) for high need bene-
24 ficiaries.

1 “(B) COMMUNITY-BASED MEDICAL HOME
2 DEFINED.—In this section, the term ‘commu-
3 nity-based medical home’ means a nonprofit
4 community-based or State-based organization
5 that is certified under paragraph (2) as meeting
6 the following requirements:

7 “(i) The organization provides bene-
8 ficiaries with medical home services.

9 “(ii) The organization provides med-
10 ical home services under the supervision of
11 and in close collaboration with the primary
12 care or principal care physician or nurse
13 practitioner designated by the beneficiary
14 as his or her community-based medical
15 home provider.

16 “(iii) The organization employs com-
17 munity health workers, including nurses or
18 other non-physician practitioners, lay
19 health workers, or other persons as deter-
20 mined appropriate by the Secretary, that
21 assist the primary or principal care physi-
22 cian or nurse practitioner in chronic care
23 management activities such as teaching
24 self-care skills for managing chronic ill-
25 nesses, transitional care services, care plan

1 setting, medication therapy management
2 services for patients with multiple chronic
3 diseases, or help beneficiaries access the
4 health care and community-based resources
5 in their local geographic area.

6 “(iv) The organization meets such
7 other requirements as the Secretary may
8 specify.

9 “(C) HIGH NEED BENEFICIARY.—In this
10 section, the term ‘high need beneficiary’ means
11 an individual who requires regular medical
12 monitoring, advising, or treatment.

13 “(2) QUALIFICATION PROCESS FOR COMMU-
14 NITY-BASED MEDICAL HOMES.—The Secretary shall
15 establish a process—

16 “(A) for the initial qualification of commu-
17 nity-based or State-based organizations as com-
18 munity-based medical homes; and

19 “(B) to provide for the review and quali-
20 fication of such community-based and State-
21 based organizations pursuant to criteria estab-
22 lished by the Secretary.

23 “(3) DURATION.—The pilot program for com-
24 munity-based medical homes under this subsection
25 shall start no later than 2 years after the date of the

1 enactment of this section. Each demonstration site
2 under the pilot program shall operate for a period
3 of up to 5 years after the initial implementation
4 phase, without regard to the receipt of a initial im-
5 plementation funding under subsection (i).

6 “(4) PREFERENCE.—In selecting sites for the
7 CBMH model, the Secretary may give preference
8 to—

9 “(A) applications from geographic areas
10 that propose to coordinate health care services
11 for chronically ill beneficiaries across a variety
12 of health care settings, such as primary care
13 physician practices with fewer than 10 physi-
14 cians, specialty physicians, nurse practitioner
15 practices, Federally qualified health centers,
16 rural health clinics, and other settings;

17 “(B) applications that include other payors
18 that furnish medical home services for chron-
19 ically ill patients covered by such payors; and

20 “(C) applications from States that propose
21 to use the medical home model to coordinate
22 health care services for individuals enrolled
23 under this title, individuals enrolled under title
24 XIX, and full-benefit dual eligible individuals

1 (as defined in section 1935(e)(6)) with chronic
2 diseases across a variety of health care settings.

3 “(5) PAYMENTS.—

4 “(A) ESTABLISHMENT OF METHODOLOGY.—The Secretary shall establish a meth-
5 ology for the payment for medical home serv-
6 ices furnished under the CBMH model.

8 “(B) PER BENEFICIARY PER MONTH PAY-
9 MENTS.—Under such payment methodology, the
10 Secretary shall make two separate monthly pay-
11 ments for each high need beneficiary who con-
12 sents to receive medical home services through
13 such medical home, as follows:

14 “(i) PAYMENT TO COMMUNITY-BASED
15 ORGANIZATION.—One monthly payment to
16 a community-based or State-based organi-
17 zation.

18 “(ii) PAYMENT TO PRIMARY OR PRIN-
19 CIPAL CARE PRACTICE.—One monthly pay-
20 ment to the primary or principal care prac-
21 tice for such beneficiary.

22 “(C) PROSPECTIVE PAYMENT.—The pay-
23 ments under subparagraph (B) shall be paid on
24 a prospective basis.

1 “(D) AMOUNT OF PAYMENT.—In deter-
2 mining the amount of such payment, the Sec-
3 retary shall consider the following:

4 “(i) The clinical work and practice ex-
5 penses involved in providing the medical
6 home services provided by the community-
7 based medical home (such as providing in-
8 creased access, care coordination, care plan
9 setting, population disease management,
10 and teaching self-care skills for managing
11 chronic illnesses) for which payment is not
12 made under this title as of the date of the
13 enactment of this section.

14 “(ii) Use appropriate risk-adjustment
15 in determining the amount of the per bene-
16 ficiary per month payment under this
17 paragraph.

18 “(6) INITIAL IMPLEMENTATION FUNDING.—
19 The Secretary may make available initial implemen-
20 tation funding to a community based or State-based
21 organization or a State that is participating in the
22 pilot program under this subsection. Such organiza-
23 tion shall provide the Secretary with a detailed im-
24 plementation plan that includes how such funds will
25 be used.

1 “(e) EXPANSION OF PROGRAM.—

2 “(1) EVALUATION OF COST AND QUALITY.—

3 The Secretary shall evaluate the pilot program to
4 determine—

5 “(A) the extent to which medical homes re-
6 sult in—

7 “(i) improvement in the quality and
8 coordination of health care services, par-
9 ticularly with regard to the care of complex
10 patients;

11 “(ii) improvement in reducing health
12 disparities;

13 “(iii) reductions in preventable hos-
14 pitalizations;

15 “(iv) prevention of readmissions;

16 “(v) reductions in emergency room
17 visits;

18 “(vi) improvement in health outcomes,
19 including patient functional status where
20 applicable;

21 “(vii) improvement in patient satisfac-
22 tion;

23 “(viii) improved efficiency of care such
24 as reducing duplicative diagnostic tests and
25 laboratory tests; and

1 “(ix) reductions in health care ex-
2 penditures; and

3 “(B) the feasibility and advisability of re-
4 imbursing medical homes for medical home
5 services under this title on a permanent basis.

6 “(2) REPORT.—Not later than 60 days after
7 the date of completion of the evaluation under para-
8 graph (1), the Secretary shall submit to Congress
9 and make available to the public a report on the
10 findings of the evaluation under paragraph (1).

11 “(3) EXPANSION OF PROGRAM.—

12 “(A) IN GENERAL.—Subject to the results
13 of the evaluation under paragraph (1) and sub-
14 paragraph (B), the Secretary may issue regula-
15 tions to implement, on a permanent basis, one
16 or more models, if, and to the extent that such
17 model or models, are beneficial to the program
18 under this title, including that such implemen-
19 tation will improve quality of care, as deter-
20 mined by the Secretary.

21 “(B) CERTIFICATION REQUIREMENT.—The
22 Secretary may not issue such regulations unless
23 the Chief Actuary of the Centers for Medicare
24 & Medicaid Services certifies that the expansion
25 of the components of the pilot program de-

1 scribed in subparagraph (A) would result in es-
2 timated spending under this title that would be
3 no more than the level of spending that the
4 Secretary estimates would otherwise be spent
5 under this title in the absence of such expan-
6 sion.

7 “(f) ADMINISTRATIVE PROVISIONS.—

8 “(1) NO DUPLICATION IN PAYMENTS.—During
9 any month, the Secretary may not make payments
10 under this section under more than one model or
11 through more than one medical home under any
12 model for the furnishing of medical home services to
13 an individual.

14 “(2) NO EFFECT ON PAYMENT FOR EVALUA-
15 TION AND MANAGEMENT SERVICES.—Payments
16 made under this section are in addition to, and have
17 no effect on the amount of, payment for evaluation
18 and management services made under this title

19 “(3) ADMINISTRATION.—Chapter 35 of title 44,
20 United States Code shall not apply to this section.

21 “(g) FUNDING.—

22 “(1) OPERATIONAL COSTS.—For purposes of
23 administering and carrying out the pilot program
24 (including the design, implementation, technical as-
25 sistance for and evaluation of such program), in ad-

1 dition to funds otherwise available, there shall be
2 transferred from the Federal Supplementary Medical
3 Insurance Trust Fund under section 1841 to the
4 Secretary for the Centers for Medicare & Medicaid
5 Services Program Management Account \$6,000,000
6 for each of fiscal years 2010 through 2014.
7 Amounts appropriated under this paragraph for a
8 fiscal year shall be available until expended.

9 “(2) PATIENT-CENTERED MEDICAL HOME
10 SERVICES.—In addition to funds otherwise available,
11 there shall be available to the Secretary for the Cen-
12 ters for Medicare & Medicaid Services, from the
13 Federal Supplementary Medical Insurance Trust
14 Fund under section 1841—

15 “(A) \$200,000,000 for each of fiscal years
16 2010 through 2014 for payments for medical
17 home services under subsection (c)(3); and

18 “(B) \$125,000,000 for each of fiscal years
19 2012 through 2016, for payments under sub-
20 section (d)(5).

21 Amounts available under this paragraph for a fiscal
22 year shall be available until expended.

23 “(3) INITIAL IMPLEMENTATION.—In addition
24 to funds otherwise available, there shall be available
25 to the Secretary for the Centers for Medicare &

1 Medicaid Services, from the Federal Supplementary
2 Medical Insurance Trust Fund under section 1841,
3 \$2,500,000 for each of fiscal years 2010 through
4 2012, under subsection (d)(6). Amounts available
5 under this paragraph for a fiscal year shall be avail-
6 able until expended.

7 “(h) TREATMENT OF TRHCA MEDICARE MEDICAL
8 HOME DEMONSTRATION FUNDING.—

9 “(1) In addition to funds otherwise available for
10 payment of medical home services under subsection
11 (c)(3), there shall also be available the amount pro-
12 vided in subsection (g) of section 204 of division B
13 of the Tax Relief and Health Care Act of 2006 (42
14 U.S.C. 1395b–1 note).

15 “(2) Notwithstanding section 1302(c) of the
16 America’s Affordable Health Choices Act of 2009, in
17 addition to funds provided in paragraph (1) and
18 subsection (g)(2)(A), the funding for medical home
19 services that would otherwise have been available if
20 such section 204 medical home demonstration had
21 been implemented (without regard to subsection (g)
22 of such section) shall be available to the independent
23 patient-centered medical home model described in
24 subsection (c).”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to services furnished on or after
3 the date of the enactment of this Act.

4 (c) CONFORMING REPEAL.—Section 204 of division
5 B of the Tax Relief and Health Care Act of 2006 (42
6 U.S.C. 1395b–1 note), as amended by section 133(a)(2)
7 of the Medicare Improvements for Patients and Providers
8 Act of 2008 (Public Law 110–275), is repealed.

9 **SEC. 1303. PAYMENT INCENTIVE FOR SELECTED PRIMARY**
10 **CARE SERVICES.**

11 (a) IN GENERAL.—Section 1833 of the Social Secu-
12 rity Act is amended by inserting after subsection (o) the
13 following new subsection:

14 “(p) PRIMARY CARE PAYMENT INCENTIVES.—

15 “(1) IN GENERAL.—In the case of primary care
16 services (as defined in paragraph (2)) furnished on
17 or after January 1, 2011, by a primary care practi-
18 tioner (as defined in paragraph (3)) for which
19 amounts are payable under section 1848, in addition
20 to the amount otherwise paid under this part there
21 shall also be paid to the practitioner (or to an em-
22 ployer or facility in the cases described in clause (A)
23 of section 1842(b)(6)) (on a monthly or quarterly
24 basis) from the Federal Supplementary Medical In-
25 surance Trust Fund an amount equal 5 percent (or

1 10 percent if the practitioner predominately fur-
2 nishes such services in an area that is designated
3 (under section 332(a)(1)(A) of the Public Health
4 Service Act) as a primary care health professional
5 shortage area.

6 “(2) PRIMARY CARE SERVICES DEFINED.—In
7 this subsection, the term ‘primary care services’—

8 “(A) means services which are evaluation
9 and management services as defined in section
10 1848(j)(5)(A); and

11 “(B) includes services furnished by another
12 health care professional that would be described
13 in subparagraph (A) if furnished by a physi-
14 cian.

15 “(3) PRIMARY CARE PRACTITIONER DE-
16 FINED.—In this subsection, the term ‘primary care
17 practitioner’—

18 “(A) means a physician or other health
19 care practitioner (including a nurse practi-
20 tioner) who—

21 “(i) specializes in family medicine,
22 general internal medicine, general pediatri-
23 cs, geriatrics, or obstetrics and gynec-
24 ology; and

1 “(ii) has allowed charges for primary
2 care services that account for at least 50
3 percent of the physician’s or practitioner’s
4 total allowed charges under section 1848,
5 as determined by the Secretary for the
6 most recent period for which data are
7 available; and

8 “(B) includes a physician assistant who is
9 under the supervision of a practitioner de-
10 scribed in subparagraph (A).

11 “(4) LIMITATION ON REVIEW.—There shall be
12 no administrative or judicial review under section
13 1869, section 1878, or otherwise, respecting—

14 “(A) any determination or designation
15 under this subsection;

16 “(B) the identification of services as pri-
17 mary care services under this subsection; and

18 “(C) the identification of a practitioner as
19 a primary care practitioner under this sub-
20 section.

21 “(5) COORDINATION WITH OTHER PAY-
22 MENTS.—

23 “(A) WITH OTHER PRIMARY CARE INCEN-
24 TIVES.—The provisions of this subsection shall
25 not be taken into account in applying sub-

1 sections (m) and (u) and any payment under
2 such subsections shall not be taken into account
3 in computing payments under this subsection.

4 “(B) WITH QUALITY INCENTIVES.—Pay-
5 ments under this subsection shall not be taken
6 into account in determining the amounts that
7 would otherwise be paid under this part for
8 purposes of section 1834(g)(2)(B).”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) Section 1833 of such Act (42 U.S.C.
11 1395l(m)) is amended by redesignating paragraph
12 (4) as paragraph (5) and by inserting after para-
13 graph (3) the following new paragraph:

14 “(4) The provisions of this subsection shall not be
15 taken into account in applying subsections (m) or (u) and
16 any payment under such subsections shall not be taken
17 into account in computing payments under this sub-
18 section.”.

19 (2) Section 1848(m)(5)(B) of such Act (42
20 U.S.C. 1395w-4(m)(5)(B)) is amended by inserting
21 “, (p),” after “(m)”.

22 (3) Section 1848(o)(1)(B)(iv) of such Act (42
23 U.S.C. 1395w-4(o)(1)(B)(iv)) is amended by insert-
24 ing “primary care” before “health professional
25 shortage area”.

1 **SEC. 1304. INCREASED REIMBURSEMENT RATE FOR CER-**
2 **TIFIED NURSE-MIDWIVES.**

3 (a) IN GENERAL.—Section 1833(a)(1)(K) of the So-
4 cial Security Act (42 U.S.C.1395l(a)(1)(K)) is amended
5 by striking “(but in no event” and all that follows through
6 “performed by a physician”).

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall apply to services furnished on or after
9 January 1, 2011.

10 **SEC. 1305. COVERAGE AND WAIVER OF COST-SHARING FOR**
11 **PREVENTIVE SERVICES.**

12 (a) MEDICARE COVERED PREVENTIVE SERVICES DE-
13 FINED.—Section 1861 of the Social Security Act (42
14 U.S.C. 1395x), as amended by section 1235(a)(2), is
15 amended by adding at the end the following new sub-
16 section:

17 “Medicare Covered Preventive Services

18 “(iii)(1) Subject to the succeeding provisions of this
19 subsection, the term ‘Medicare covered preventive services’
20 means the following:

21 “(A) Prostate cancer screening tests (as defined
22 in subsection (oo)).

23 “(B) Colorectal cancer screening tests (as de-
24 fined in subsection (pp) and when applicable as de-
25 scribed in section 1305).

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

3 “(D) Screening for glaucoma for certain indi-
4 viduals (as described in subsection (s)(2)(U)).

5 “(E) Medical nutrition therapy services for cer-
6 tain individuals (as described in subsection
7 (s)(2)(V)).

8 “(F) An initial preventive physical examination
9 (as defined in subsection (ww)).

10 “(G) Cardiovascular screening blood tests (as
11 defined in subsection (xx)(1)).

12 “(H) Diabetes screening tests (as defined in
13 subsection (yy)).

14 “(I) Ultrasound screening for abdominal aortic
15 aneurysm for certain individuals (as described in de-
16 scribed in subsection (s)(2)(AA)).

17 “(J) Pneumococcal and influenza vaccines and
18 their administration (as described in subsection
19 (s)(10)(A)) and hepatitis B vaccine and its adminis-
20 tration for certain individuals (as described in sub-
21 section (s)(10)(B)).

22 “(K) Screening mammography (as defined in
23 subsection (jj)).

24 “(L) Screening pap smear and screening pelvic
25 exam (as defined in subsection (nn)).

1 “(M) Bone mass measurement (as defined in
2 subsection (rr)).

3 “(N) Kidney disease education services (as de-
4 fined in subsection (ggg)).

5 “(O) Additional preventive services (as defined
6 in subsection (ddd)).

7 “(2) With respect to specific Medicare covered pre-
8 ventive services, the limitations and conditions described
9 in the provisions referenced in paragraph (1) with respect
10 to such services shall apply.”.

11 (b) PAYMENT AND ELIMINATION OF COST-SHAR-
12 ING.—

13 (1) IN GENERAL.—

14 (A) IN GENERAL.—Section 1833(a) of the
15 Social Security Act (42 U.S.C. 1395l(a)) is
16 amended by adding after and below paragraph
17 (9) the following:

18 “With respect to Medicare covered preventive services, in
19 any case in which the payment rate otherwise provided
20 under this part is computed as a percent of less than 100
21 percent of an actual charge, fee schedule rate, or other
22 rate, such percentage shall be increased to 100 percent.”.

23 (B) APPLICATION TO SIGMOIDOSCOPIES
24 AND COLONOSCOPIES.—Section 1834(d) of such
25 Act (42 U.S.C. 1395m(d)) is amended—

1 (i) in paragraph (2)(C), by amending
2 clause (ii) to read as follows:

3 “(ii) NO COINSURANCE.—In the case
4 of a beneficiary who receives services de-
5 scribed in clause (i), there shall be no coin-
6 surance applied.”; and

7 (ii) in paragraph (3)(C), by amending
8 clause (ii) to read as follows:

9 “(ii) NO COINSURANCE.—In the case
10 of a beneficiary who receives services de-
11 scribed in clause (i), there shall be no coin-
12 surance applied.”.

13 (2) ELIMINATION OF COINSURANCE IN OUT-
14 PATIENT HOSPITAL SETTINGS.—

15 (A) EXCLUSION FROM OPD FEE SCHED-
16 ULE.—Section 1833(t)(1)(B)(iv) of the Social
17 Security Act (42 U.S.C. 1395l(t)(1)(B)(iv)) is
18 amended by striking “screening mammography
19 (as defined in section 1861(jj)) and diagnostic
20 mammography” and inserting “diagnostic
21 mammograms and Medicare covered preventive
22 services (as defined in section 1861(iii)(1))”.

23 (B) CONFORMING AMENDMENTS.—Section
24 1833(a)(2) of the Social Security Act (42
25 U.S.C. 1395l(a)(2)) is amended—

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

3 (ii) in subparagraph (G)(ii), by adding
4 “and” at the end; and

5 (iii) by adding at the end the fol-
6 lowing new subparagraph:

7 “(H) with respect to additional preventive
8 services (as defined in section 1861(ddd)) fur-
9 nished by an outpatient department of a hos-
10 pital, the amount determined under paragraph
11 (1)(W);”.

12 (3) WAIVER OF APPLICATION OF DEDUCTIBLE
13 FOR ALL PREVENTIVE SERVICES.—The first sen-
14 tence of section 1833(b) of the Social Security Act
15 (42 U.S.C. 1395l(b)) is amended—

16 (A) in clause (1), by striking “items and
17 services described in section 1861(s)(10)(A)”
18 and inserting “Medicare covered preventive
19 services (as defined in section 1861(iii))”;

20 (B) by inserting “and” before “(4)”; and

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

22 (4) APPLICATION TO PROVIDERS OF SERV-
23 ICES.—Section 1866(a)(2)(A)(ii) of such Act (42
24 U.S.C. 1395cc(a)(2)(A)(ii)) is amended by inserting

1 “other than for Medicare covered preventive services
2 and” after “for such items and services (“.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to services furnished on or after
5 January 1, 2011.

6 **SEC. 1306. WAIVER OF DEDUCTIBLE FOR COLORECTAL**
7 **CANCER SCREENING TESTS REGARDLESS OF**
8 **CODING, SUBSEQUENT DIAGNOSIS, OR ANCIL-**
9 **LARY TISSUE REMOVAL.**

10 (a) IN GENERAL.—Section 1833(b) of the Social Se-
11 curity Act (42 U.S.C. 1395l(b)), as amended by section
12 1305(b)(3), is amended by adding at the end the following
13 new sentence: “Clause (1) of the first sentence of this sub-
14 section shall apply with respect to a colorectal cancer
15 screening test regardless of the code that is billed for the
16 establishment of a diagnosis as a result of the test, or for
17 the removal of tissue or other matter or other procedure
18 that is furnished in connection with, as a result of, and
19 in the same clinical encounter as, the screening test.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall apply to items and services furnished
22 on or after January 1, 2011.

1 **SEC. 1307. EXCLUDING CLINICAL SOCIAL WORKER SERV-**
2 **ICES FROM COVERAGE UNDER THE MEDI-**
3 **CARE SKILLED NURSING FACILITY PROSPEC-**
4 **TIVE PAYMENT SYSTEM AND CONSOLIDATED**
5 **PAYMENT.**

6 (a) IN GENERAL.—Section 1888(e)(2)(A)(ii) of the
7 Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(ii)) is
8 amended by inserting “clinical social worker services,”
9 after “qualified psychologist services.”

10 (b) CONFORMING AMENDMENT.—Section
11 1861(hh)(2) of the Social Security Act (42 U.S.C.
12 1395x(hh)(2)) is amended by striking “and other than
13 services furnished to an inpatient of a skilled nursing facil-
14 ity which the facility is required to provide as a require-
15 ment for participation”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to items and services furnished on
18 or after July 1, 2010.

19 **SEC. 1308. COVERAGE OF MARRIAGE AND FAMILY THERA-**
20 **PIST SERVICES AND MENTAL HEALTH COUN-**
21 **SELOR SERVICES.**

22 (a) COVERAGE OF MARRIAGE AND FAMILY THERA-
23 PIST SERVICES.—

24 (1) COVERAGE OF SERVICES.—Section
25 1861(s)(2) of the Social Security Act (42 U.S.C.

1 1395x(s)(2)), as amended by section 1235, is
2 amended—

3 (A) in subparagraph (EE), by striking
4 “and” at the end;

5 (B) in subparagraph (FF), by adding
6 “and” at the end; and

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

9 “(GG) marriage and family therapist serv-
10 ices (as defined in subsection (jjj));”.

11 (2) DEFINITION.—Section 1861 of the Social
12 Security Act (42 U.S.C. 1395x), as amended by sec-
13 tions 1235 and 1305, is amended by adding at the
14 end the following new subsection:

15 “Marriage and Family Therapist Services
16 “(jjj)(1) The term ‘marriage and family therapist
17 services’ means services performed by a marriage and
18 family therapist (as defined in paragraph (2)) for the diag-
19 nosis and treatment of mental illnesses, which the mar-
20 riage and family therapist is legally authorized to perform
21 under State law (or the State regulatory mechanism pro-
22 vided by State law) of the State in which such services
23 are performed, as would otherwise be covered if furnished
24 by a physician or as incident to a physician’s professional
25 service, but only if no facility or other provider charges

1 or is paid any amounts with respect to the furnishing of
2 such services.

3 “(2) The term ‘marriage and family therapist’ means
4 an individual who—

5 “(A) possesses a master’s or doctoral degree
6 which qualifies for licensure or certification as a
7 marriage and family therapist pursuant to State
8 law;

9 “(B) after obtaining such degree has performed
10 at least 2 years of clinical supervised experience in
11 marriage and family therapy; and

12 “(C) is licensed or certified as a marriage and
13 family therapist in the State in which marriage and
14 family therapist services are performed.”.

15 (3) PROVISION FOR PAYMENT UNDER PART
16 B.—Section 1832(a)(2)(B) of the Social Security
17 Act (42 U.S.C. 1395k(a)(2)(B)) is amended by add-
18 ing at the end the following new clause:

19 “(v) marriage and family therapist
20 services;”.

21 (4) AMOUNT OF PAYMENT.—

22 (A) IN GENERAL.—Section 1833(a)(1) of
23 the Social Security Act (42 U.S.C. 1395l(a)(1))
24 is amended—

- 1 (i) by striking “and” before “(W)”;
- 2 and
- 3 (ii) by inserting before the semicolon
- 4 at the end the following: “, and (X) with
- 5 respect to marriage and family therapist
- 6 services under section 1861(s)(2)(GG), the
- 7 amounts paid shall be 80 percent of the
- 8 lesser of the actual charge for the services
- 9 or 75 percent of the amount determined
- 10 for payment of a psychologist under clause
- 11 (L)”.

12 (B) DEVELOPMENT OF CRITERIA WITH RE-

13 SPECT TO CONSULTATION WITH A HEALTH

14 CARE PROFESSIONAL.—The Secretary of Health

15 and Human Services shall, taking into consider-

16 ation concerns for patient confidentiality, de-

17 velop criteria with respect to payment for mar-

18 riage and family therapist services for which

19 payment may be made directly to the marriage

20 and family therapist under part B of title

21 XVIII of the Social Security Act (42 U.S.C.

22 1395j et seq.) under which such a therapist

23 must agree to consult with a patient’s attending

24 or primary care physician or nurse practitioner

25 in accordance with such criteria.

1 (5) EXCLUSION OF MARRIAGE AND FAMILY
2 THERAPIST SERVICES FROM SKILLED NURSING FA-
3 CILITY PROSPECTIVE PAYMENT SYSTEM.—Section
4 1888(e)(2)(A)(ii) of the Social Security Act (42
5 U.S.C. 1395yy(e)(2)(A)(ii)), as amended by section
6 1307(a), is amended by inserting “marriage and
7 family therapist services (as defined in subsection
8 (jjj)(1)),” after “clinical social worker services,”.

9 (6) COVERAGE OF MARRIAGE AND FAMILY
10 THERAPIST SERVICES PROVIDED IN RURAL HEALTH
11 CLINICS AND FEDERALLY QUALIFIED HEALTH CEN-
12 TERS.—Section 1861(aa)(1)(B) of the Social Secu-
13 rity Act (42 U.S.C. 1395x(aa)(1)(B)) is amended by
14 striking “or by a clinical social worker (as defined
15 in subsection (hh)(1)),” and inserting “, by a clinical
16 social worker (as defined in subsection (hh)(1)), or
17 by a marriage and family therapist (as defined in
18 subsection (jjj)(2)),”.

19 (7) INCLUSION OF MARRIAGE AND FAMILY
20 THERAPISTS AS PRACTITIONERS FOR ASSIGNMENT
21 OF CLAIMS.—Section 1842(b)(18)(C) of the Social
22 Security Act (42 U.S.C. 1395u(b)(18)(C)) is amend-
23 ed by adding at the end the following new clause:

24 “(vii) A marriage and family therapist (as de-
25 fined in section 1861(jjj)(2)).”.

1 (b) COVERAGE OF MENTAL HEALTH COUNSELOR
2 SERVICES.—

3 (1) COVERAGE OF SERVICES.—Section
4 1861(s)(2) of the Social Security Act (42 U.S.C.
5 1395x(s)(2)), as previously amended, is further
6 amended—

7 (A) in subparagraph (FF), by striking
8 “and” at the end;

9 (B) in subparagraph (GG), by inserting
10 “and” at the end; and

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

13 “(HH) mental health counselor services (as de-
14 fined in subsection (kkk)(1));”.

15 (2) DEFINITION.—Section 1861 of the Social
16 Security Act (42 U.S.C. 1395x), as previously
17 amended, is amended by adding at the end the fol-
18 lowing new subsection:

19 “Mental Health Counselor Services

20 “(kkk)(1) The term ‘mental health counselor services’
21 means services performed by a mental health counselor (as
22 defined in paragraph (2)) for the diagnosis and treatment
23 of mental illnesses which the mental health counselor is
24 legally authorized to perform under State law (or the
25 State regulatory mechanism provided by the State law) of

1 the State in which such services are performed, as would
2 otherwise be covered if furnished by a physician or as inci-
3 dent to a physician's professional service, but only if no
4 facility or other provider charges or is paid any amounts
5 with respect to the furnishing of such services.

6 “(2) The term ‘mental health counselor’ means an
7 individual who—

8 “(A) possesses a master's or doctor's degree
9 which qualifies the individual for licensure or certifi-
10 cation for the practice of mental health counseling in
11 the State in which the services are performed;

12 “(B) after obtaining such a degree has per-
13 formed at least 2 years of supervised mental health
14 counselor practice; and

15 “(C) is licensed or certified as a mental health
16 counselor or professional counselor by the State in
17 which the services are performed.”.

18 (3) PROVISION FOR PAYMENT UNDER PART
19 B.—Section 1832(a)(2)(B) of the Social Security
20 Act (42 U.S.C. 1395k(a)(2)(B)), as amended by
21 subsection (a)(3), is further amended—

22 (A) by striking “and” at the end of clause
23 (iv);

24 (B) by adding “and” at the end of clause
25 (v); and

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

3 “(vi) mental health counselor serv-
4 ices;”.

5 (4) AMOUNT OF PAYMENT.—

6 (A) IN GENERAL.—Section 1833(a)(1) of
7 the Social Security Act (42 U.S.C.
8 1395l(a)(1)), as amended by subsection (a), is
9 further amended—

10 (i) by striking “and” before “(X)”;

11 and

12 (ii) by inserting before the semicolon
13 at the end the following: “, and (Y), with
14 respect to mental health counselor services
15 under section 1861(s)(2)(HH), the
16 amounts paid shall be 80 percent of the
17 lesser of the actual charge for the services
18 or 75 percent of the amount determined
19 for payment of a psychologist under clause
20 (L)”.

21 (B) DEVELOPMENT OF CRITERIA WITH RE-
22 SPECT TO CONSULTATION WITH A PHYSICIAN.—
23 The Secretary of Health and Human Services
24 shall, taking into consideration concerns for pa-
25 tient confidentiality, develop criteria with re-

1 spect to payment for mental health counselor
2 services for which payment may be made di-
3 rectly to the mental health counselor under part
4 B of title XVIII of the Social Security Act (42
5 U.S.C. 1395j et seq.) under which such a coun-
6 selor must agree to consult with a patient’s at-
7 tending or primary care physician in accordance
8 with such criteria.

9 (5) EXCLUSION OF MENTAL HEALTH COUN-
10 SELOR SERVICES FROM SKILLED NURSING FACILITY
11 PROSPECTIVE PAYMENT SYSTEM.—Section
12 1888(e)(2)(A)(ii) of the Social Security Act (42
13 U.S.C. 1395yy(e)(2)(A)(ii)), as amended by section
14 1307(a) and subsection (a), is amended by inserting
15 “mental health counselor services (as defined in sec-
16 tion 1861(kkk)(1)),” after “marriage and family
17 therapist services (as defined in subsection
18 (jjj)(1)),”.

19 (6) COVERAGE OF MENTAL HEALTH COUN-
20 SELOR SERVICES PROVIDED IN RURAL HEALTH
21 CLINICS AND FEDERALLY QUALIFIED HEALTH CEN-
22 TERS.—Section 1861(aa)(1)(B) of the Social Secu-
23 rity Act (42 U.S.C. 1395x(aa)(1)(B)), as amended
24 by subsection (a), is amended by striking “or by a
25 marriage and family therapist (as defined in sub-

1 section (jjj)(2)),” and inserting “by a marriage and
2 family therapist (as defined in subsection (jjj)(2)),
3 or a mental health counselor (as defined in sub-
4 section (kkk)(2)),”.

5 (7) INCLUSION OF MENTAL HEALTH COUN-
6 SELORS AS PRACTITIONERS FOR ASSIGNMENT OF
7 CLAIMS.—Section 1842(b)(18)(C) of the Social Se-
8 curity Act (42 U.S.C. 1395u(b)(18)(C)), as amended
9 by subsection (a)(7), is amended by adding at the
10 end the following new clause:

11 “(viii) A mental health counselor (as defined in
12 section 1861(kkk)(2)).”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to items and services furnished on
15 or after January 1, 2011.

16 **SEC. 1309. EXTENSION OF PHYSICIAN FEE SCHEDULE MEN-**
17 **TAL HEALTH ADD-ON.**

18 Section 138(a)(1) of the Medicare Improvements for
19 Patients and Providers Act of 2008 (Public Law 110–275)
20 is amended by striking “December 31, 2009” and insert-
21 ing “December 31, 2011”.

22 **SEC. 1310. EXPANDING ACCESS TO VACCINES.**

23 (a) IN GENERAL.—Paragraph (10) of section
24 1861(s) of the Social Security Act (42 U.S.C. 1395w(s))
25 is amended to read as follows:

1 “(10) federally recommended vaccines (as de-
2 fined in subsection (III)) and their respective admin-
3 istration;”.

4 (b) **FEDERALLY RECOMMENDED VACCINES DE-**
5 **FINED.**—Section 1861 of such Act is further amended by
6 adding at the end the following new subsection:

7 “Federally Recommended Vaccines

8 “(III) The term ‘federally recommended vaccine’
9 means an approved vaccine recommended by the Advisory
10 Committee on Immunization Practices (an advisory com-
11 mittee established by the Secretary, acting through the Di-
12 rector of the Centers for Disease Control and Preven-
13 tion).”.

14 (c) **CONFORMING AMENDMENTS.**—

15 (1) Section 1833 of such Act (42 U.S.C. 1395l)
16 is amended, in each of subsections (a)(1)(B),
17 (a)(2)(G), (a)(3)(A), and (b)(1) (as amended by sec-
18 tion 1305(b)), by striking “1861(s)(10)(A)” or
19 “1861(s)(10)(B)” and inserting “1861(s)(10)” each
20 place it appears.

21 (2) Section 1842(o)(1)(A)(iv) of such Act (42
22 U.S.C. 1395u(o)(1)(A)(iv)) is amended—

23 (A) by striking “subparagraph (A) or (B)
24 of”; and

1 (B) by inserting before the period the fol-
2 lowing: “and before January 1, 2011, and influ-
3 enza vaccines furnished on or after January 1,
4 2011”.

5 (3) Section 1847A(c)(6) of such Act (42 U.S.C.
6 1395w-3a(c)(6)) is amended by striking subpara-
7 graph (G) and inserting the following:

8 “(G) IMPLEMENTATION.—Chapter 35 of
9 title 44, United States Code shall not apply to
10 manufacturer provision of information pursuant
11 to section 1927(b)(3)(A)(iii) for purposes of im-
12 plementation of this section.”.

13 (4) Section 1860D-2(e)(1)(B) of such Act (42
14 U.S.C. 1395w-102(e)(1)(B)) is amended by striking
15 “such term includes a vaccine” and all that follows
16 through “its administration) and”.

17 (5) Section 1861(ww)(2)(A) of such Act (42
18 U.S.C. 1395x(ww)(2)(A)) is amended by striking
19 “Pneumococcal, influenza, and hepatitis B and ad-
20 ministration” and inserting “Federally recommended
21 vaccines (as defined in subsection (lll)) and their re-
22 spective administration”.

23 (6) Section 1861(iii)(1) of such Act, as added
24 by section 1305(a), is amended by amending sub-
25 paragraph (J) to read as follows:

1 “(J) Federally recommended vaccines (as de-
2 fined in subsection (III)) and their respective admin-
3 istration.”.

4 (7) Section 1927(b)(3)(A)(iii) of such Act (42
5 U.S.C. 1396r-8(b)(3)(A)(iii)) is amended, in the
6 matter following subclause (III), by inserting
7 “(A)(iv) (including influenza vaccines furnished on
8 or after January 1, 2011),” after “described in sub-
9 paragraph.”

10 (d) EFFECTIVE DATES.—The amendments made
11 by—

12 (1) this section (other than by subsection
13 (c)(7)) shall apply to vaccines administered on or
14 after January 1, 2011; and

15 (2) by subsection (c)(7) shall apply to calendar
16 quarters beginning on or after January 1, 2010.

17 **TITLE IV—QUALITY**

18 **Subtitle A—Comparative**

19 **Effectiveness Research**

20 **SEC. 1401. COMPARATIVE EFFECTIVENESS RESEARCH.**

21 (a) IN GENERAL.—title XI of the Social Security Act
22 is amended by adding at the end the following new part:

1 “PART D—COMPARATIVE EFFECTIVENESS RESEARCH

2 “COMPARATIVE EFFECTIVENESS RESEARCH

3 “SEC. 1181. (a) CENTER FOR COMPARATIVE EFFEC-
4 TIVENESS RESEARCH ESTABLISHED.—

5 “(1) IN GENERAL.—The Secretary shall estab-
6 lish within the Agency for Healthcare Research and
7 Quality a Center for Comparative Effectiveness Re-
8 search (in this section referred to as the ‘Center’) to
9 conduct, support, and synthesize research (including
10 research conducted or supported under section 1013
11 of the Medicare Prescription Drug, Improvement,
12 and Modernization Act of 2003) with respect to the
13 outcomes, effectiveness, and appropriateness of
14 health care services and procedures in order to iden-
15 tify the manner in which diseases, disorders, and
16 other health conditions can most effectively and ap-
17 propriately be prevented, diagnosed, treated, and
18 managed clinically.

19 “(2) DUTIES.—The Center shall—

20 “(A) conduct, support, and synthesize re-
21 search relevant to the comparative effectiveness
22 of the full spectrum of health care items, serv-
23 ices and systems, including pharmaceuticals,
24 medical devices, medical and surgical proce-
25 dures, and other medical interventions;

1 “(B) conduct and support systematic re-
2 views of clinical research, including original re-
3 search conducted subsequent to the date of the
4 enactment of this section;

5 “(C) continuously develop rigorous sci-
6 entific methodologies for conducting compara-
7 tive effectiveness studies, and use such meth-
8 odologies appropriately;

9 “(D) submit to the Comparative Effective-
10 ness Research Commission, the Secretary, and
11 Congress appropriate relevant reports described
12 in subsection (d)(2); and

13 “(E) encourage, as appropriate, the devel-
14 opment and use of clinical registries and the de-
15 velopment of clinical effectiveness research data
16 networks from electronic health records, post
17 marketing drug and medical device surveillance
18 efforts, and other forms of electronic health
19 data.

20 “(3) POWERS.—

21 “(A) OBTAINING OFFICIAL DATA.—The
22 Center may secure directly from any depart-
23 ment or agency of the United States informa-
24 tion necessary to enable it to carry out this sec-
25 tion. Upon request of the Center, the head of

1 that department or agency shall furnish that in-
2 formation to the Center on an agreed upon
3 schedule.

4 “(B) DATA COLLECTION.—In order to
5 carry out its functions, the Center shall—

6 “(i) utilize existing information, both
7 published and unpublished, where possible,
8 collected and assessed either by its own
9 staff or under other arrangements made in
10 accordance with this section,

11 “(ii) carry out, or award grants or
12 contracts for, original research and experi-
13 mentation, where existing information is
14 inadequate, and

15 “(iii) adopt procedures allowing any
16 interested party to submit information for
17 the use by the Center and Commission
18 under subsection (b) in making reports
19 and recommendations.

20 “(C) ACCESS OF GAO TO INFORMATION.—
21 The Comptroller General shall have unrestricted
22 access to all deliberations, records, and non-
23 proprietary data of the Center and Commission
24 under subsection (b), immediately upon request.

1 “(D) PERIODIC AUDIT.—The Center and
2 Commission under subsection (b) shall be sub-
3 ject to periodic audit by the Comptroller Gen-
4 eral.

5 “(b) OVERSIGHT BY COMPARATIVE EFFECTIVENESS
6 RESEARCH COMMISSION.—

7 “(1) IN GENERAL.—The Secretary shall estab-
8 lish an independent Comparative Effectiveness Re-
9 search Commission (in this section referred to as the
10 ‘Commission’) to oversee and evaluate the activities
11 carried out by the Center under subsection (a), sub-
12 ject to the authority of the Secretary, to ensure such
13 activities result in highly credible research and infor-
14 mation resulting from such research.

15 “(2) DUTIES.—The Commission shall—

16 “(A) determine national priorities for re-
17 search described in subsection (a) and in mak-
18 ing such determinations consult with a broad
19 array of public and private stakeholders, includ-
20 ing patients and health care providers and pay-
21 ers;

22 “(B) monitor the appropriateness of use of
23 the CERTF described in subsection (g) with re-
24 spect to the timely production of comparative

1 effectiveness research determined to be a na-
2 tional priority under subparagraph (A);

3 “(C) identify highly credible research
4 methods and standards of evidence for such re-
5 search to be considered by the Center;

6 “(D) review the methodologies developed
7 by the center under subsection (a)(2)(C);

8 “(E) not later than one year after the date
9 of the enactment of this section, enter into an
10 arrangement under which the Institute of Medi-
11 cine of the National Academy of Sciences shall
12 conduct an evaluation and report on standards
13 of evidence for such research;

14 “(F) support forums to increase stake-
15 holder awareness and permit stakeholder feed-
16 back on the efforts of the Center to advance
17 methods and standards that promote highly
18 credible research;

19 “(G) make recommendations for policies
20 that would allow for public access of data pro-
21 duced under this section, in accordance with ap-
22 propriate privacy and proprietary practices,
23 while ensuring that the information produced
24 through such data is timely and credible;

1 “(H) appoint a clinical perspective advisory
2 panel for each research priority determined
3 under subparagraph (A), which shall consult
4 with patients and advise the Center on research
5 questions, methods, and evidence gaps in terms
6 of clinical outcomes for the specific research in-
7 quiry to be examined with respect to such pri-
8 ority to ensure that the information produced
9 from such research is clinically relevant to deci-
10 sions made by clinicians and patients at the
11 point of care;

12 “(I) make recommendations for the pri-
13 ority for periodic reviews of previous compara-
14 tive effectiveness research and studies con-
15 ducted by the Center under subsection (a);

16 “(J) routinely review processes of the Cen-
17 ter with respect to such research to confirm
18 that the information produced by such research
19 is objective, credible, consistent with standards
20 of evidence established under this section, and
21 developed through a transparent process that
22 includes consultations with appropriate stake-
23 holders; and

24 “(K) make recommendations to the center
25 for the broad dissemination of the findings of

1 research conducted and supported under this
2 section that enables clinicians, patients, con-
3 sumers, and payers to make more informed
4 health care decisions that improve quality and
5 value.

6 “(3) COMPOSITION OF COMMISSION.—

7 “(A) IN GENERAL.—The members of the
8 Commission shall consist of—

9 “(i) the Director of the Agency for
10 Healthcare Research and Quality;

11 “(ii) the Chief Medical Officer of the
12 Centers for Medicare & Medicaid Services;
13 and

14 “(iii) 15 additional members who shall
15 represent broad constituencies of stake-
16 holders including clinicians, patients, re-
17 searchers, third-party payers, consumers of
18 Federal and State beneficiary programs.

19 Of such members, at least 9 shall be practicing
20 physicians, health care practitioners, con-
21 sumers, or patients.

22 “(B) QUALIFICATIONS.—

23 “(i) DIVERSE REPRESENTATION OF
24 PERSPECTIVES.—The members of the
25 Commission shall represent a broad range

1 of perspectives and shall collectively have
2 experience in the following areas:

3 “(I) Epidemiology.

4 “(II) Health services research.

5 “(III) Bioethics.

6 “(IV) Decision sciences.

7 “(V) Health disparities.

8 “(VI) Economics.

9 “(ii) DIVERSE REPRESENTATION OF
10 HEALTH CARE COMMUNITY.—At least one
11 member shall represent each of the fol-
12 lowing health care communities:

13 “(I) Patients.

14 “(II) Health care consumers.

15 “(III) Practicing Physicians, in-
16 cluding surgeons.

17 “(IV) Other health care practi-
18 tioners engaged in clinical care.

19 “(V) Employers.

20 “(VI) Public payers.

21 “(VII) Insurance plans.

22 “(VIII) Clinical researchers who
23 conduct research on behalf of pharma-
24 ceutical or device manufacturers.

1 “(C) LIMITATION.—No more than 3 of the
2 Members of the Commission may be representa-
3 tives of pharmaceutical or device manufacturers
4 and such representatives shall be clinical re-
5 searchers described under subparagraph
6 (B)(ii)(VIII).

7 “(4) APPOINTMENT.—

8 “(A) IN GENERAL.—The Secretary shall
9 appoint the members of the Commission.

10 “(B) CONSULTATION.—In considering can-
11 didates for appointment to the Commission, the
12 Secretary may consult with the Government Ac-
13 countability Office and the Institute of Medicine
14 of the National Academy of Sciences.

15 “(5) CHAIRMAN; VICE CHAIRMAN.—The Sec-
16 retary shall designate a member of the Commission,
17 at the time of appointment of the member, as Chair-
18 man and a member as Vice Chairman for that term
19 of appointment, except that in the case of vacancy
20 of the Chairmanship or Vice Chairmanship, the Sec-
21 retary may designate another member for the re-
22 mainder of that member’s term. The Chairman shall
23 serve as an ex officio member of the National Advi-
24 sory Council of the Agency for Health Care Re-

1 search and Quality under section 931(c)(3)(B) of
2 the Public Health Service Act.

3 “(6) TERMS.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), each member of the Com-
6 mission shall be appointed for a term of 4
7 years.

8 “(B) TERMS OF INITIAL APPOINTEES.—Of
9 the members first appointed—

10 “(i) 8 shall be appointed for a term of
11 4 years; and

12 “(ii) 7 shall be appointed for a term
13 of 3 years.

14 “(7) COORDINATION.—To enhance effectiveness
15 and coordination, the Secretary is encouraged, to the
16 greatest extent possible, to seek coordination be-
17 tween the Commission and the National Advisory
18 Council of the Agency for Healthcare Research and
19 Quality.

20 “(8) CONFLICTS OF INTEREST.—

21 “(A) IN GENERAL.—In appointing the
22 members of the Commission or a clinical per-
23 spective advisory panel described in paragraph
24 (2)(H), the Secretary or the Commission, re-
25 spectively, shall take into consideration any fi-

1 nancial interest (as defined in subparagraph
2 (D)), consistent with this paragraph, and de-
3 velop a plan for managing any identified con-
4 flicts.

5 “(B) EVALUATION AND CRITERIA.—When
6 considering an appointment to the Commission
7 or a clinical perspective advisory panel de-
8 scribed paragraph (2)(H) the Secretary or the
9 Commission shall review the expertise of the in-
10 dividual and the financial disclosure report filed
11 by the individual pursuant to the Ethics in Gov-
12 ernment Act of 1978 for each individual under
13 consideration for the appointment, so as to re-
14 duce the likelihood that an appointed individual
15 will later require a written determination as re-
16 ferred to in section 208(b)(1) of title 18, United
17 States Code, a written certification as referred
18 to in section 208(b)(3) of title 18, United
19 States Code, or a waiver as referred to in sub-
20 paragraph (D)(iii) for service on the Commis-
21 sion at a meeting of the Commission.

22 “(C) DISCLOSURES; PROHIBITIONS ON
23 PARTICIPATION; WAIVERS.—

24 “(i) DISCLOSURE OF FINANCIAL IN-
25 TEREST.—Prior to a meeting of the Com-

1 mission or a clinical perspective advisory
2 panel described in paragraph (2)(H) re-
3 garding a ‘particular matter’ (as that term
4 is used in section 208 of title 18, United
5 States Code), each member of the Commis-
6 sion or the clinical perspective advisory
7 panel who is a full-time Government em-
8 ployee or special Government employee
9 shall disclose to the Secretary financial in-
10 terests in accordance with subsection (b) of
11 such section 208.

12 “(ii) PROHIBITIONS ON PARTICIPA-
13 TION.—Except as provided under clause
14 (iii), a member of the Commission or a
15 clinical perspective advisory panel de-
16 scribed in paragraph (2)(H) may not par-
17 ticipate with respect to a particular matter
18 considered in meeting of the Commission
19 or the clinical perspective advisory panel if
20 such member (or an immediate family
21 member of such member) has a financial
22 interest that could be affected by the ad-
23 vice given to the Secretary with respect to
24 such matter, excluding interests exempted
25 in regulations issued by the Director of the

1 Office of Government Ethics as too remote
2 or inconsequential to affect the integrity of
3 the services of the Government officers or
4 employees to which such regulations apply.

5 “(iii) WAIVER.—If the Secretary de-
6 termines it necessary to afford the Com-
7 mission or a clinical perspective advisory
8 panel described in paragraph 2(H) essen-
9 tial expertise, the Secretary may grant a
10 waiver of the prohibition in clause (ii) to
11 permit a member described in such sub-
12 paragraph to—

13 “(I) participate as a non-voting
14 member with respect to a particular
15 matter considered in a Commission or
16 a clinical perspective advisory panel
17 meeting; or

18 “(II) participate as a voting
19 member with respect to a particular
20 matter considered in a Commission or
21 a clinical perspective advisory panel
22 meeting.

23 “(iv) LIMITATION ON WAIVERS AND
24 OTHER EXCEPTIONS.—

1 “(I) DETERMINATION OF ALLOW-
2 ABLE EXCEPTIONS FOR THE COMMIS-
3 SION.—The number of waivers grant-
4 ed to members of the Commission
5 cannot exceed one-half of the total
6 number of members for the Commis-
7 sion.

8 “(II) PROHIBITION ON VOTING
9 STATUS ON CLINICAL PERSPECTIVE
10 ADVISORY PANELS.—No voting mem-
11 ber of any clinical perspective advisory
12 panel shall be in receipt of a waiver.
13 No more than two nonvoting members
14 of any clinical perspective advisory
15 panel shall receive a waiver.

16 “(D) FINANCIAL INTEREST DEFINED.—
17 For purposes of this paragraph, the term ‘fi-
18 nancial interest’ means a financial interest
19 under section 208(a) of title 18, United States
20 Code.

21 “(9) COMPENSATION.—While serving on the
22 business of the Commission (including travel time),
23 a member of the Commission shall be entitled to
24 compensation at the per diem equivalent of the rate
25 provided for level IV of the Executive Schedule

1 under section 5315 of title 5, United States Code;
2 and while so serving away from home and the mem-
3 ber's regular place of business, a member may be al-
4 lowed travel expenses, as authorized by the Director
5 of the Commission.

6 “(10) AVAILABILITY OF REPORTS.—The Com-
7 mission shall transmit to the Secretary a copy of
8 each report submitted under this subsection and
9 shall make such reports available to the public.

10 “(11) DIRECTOR AND STAFF; EXPERTS AND
11 CONSULTANTS.—Subject to such review as the Sec-
12 retary deems necessary to assure the efficient ad-
13 ministration of the Commission, the Commission
14 may—

15 “(A) appoint an Executive Director (sub-
16 ject to the approval of the Secretary) and such
17 other personnel as Federal employees under
18 section 2105 of title 5, United States Code, as
19 may be necessary to carry out its duties (with-
20 out regard to the provisions of title 5, United
21 States Code, governing appointments in the
22 competitive service);

23 “(B) seek such assistance and support as
24 may be required in the performance of its du-

1 ties from appropriate Federal departments and
2 agencies;

3 “(C) enter into contracts or make other ar-
4 rangements, as may be necessary for the con-
5 duct of the work of the Commission (without
6 regard to section 3709 of the Revised Statutes
7 (41 U.S.C. 5));

8 “(D) make advance, progress, and other
9 payments which relate to the work of the Com-
10 mission;

11 “(E) provide transportation and subsist-
12 ence for persons serving without compensation;
13 and

14 “(F) prescribe such rules and regulations
15 as it deems necessary with respect to the inter-
16 nal organization and operation of the Commis-
17 sion.

18 “(c) RESEARCH REQUIREMENTS.—Any research con-
19 ducted, supported, or synthesized under this section shall
20 meet the following requirements:

21 “(1) ENSURING TRANSPARENCY, CREDIBILITY,
22 AND ACCESS.—

23 “(A) The establishment of the agenda and
24 conduct of the research shall be insulated from
25 inappropriate political or stakeholder influence.

1 “(B) Methods of conducting such research
2 shall be scientifically based.

3 “(C) All aspects of the prioritization of re-
4 search, conduct of the research, and develop-
5 ment of conclusions based on the research shall
6 be transparent to all stakeholders.

7 “(D) The process and methods for con-
8 ducting such research shall be publicly docu-
9 mented and available to all stakeholders.

10 “(E) Throughout the process of such re-
11 search, the Center shall provide opportunities
12 for all stakeholders involved to review and pro-
13 vide public comment on the methods and find-
14 ings of such research.

15 “(2) USE OF CLINICAL PERSPECTIVE ADVISORY
16 PANELS.—The research shall meet a national re-
17 search priority determined under subsection
18 (b)(2)(A) and shall consider advice given to the Cen-
19 ter by the clinical perspective advisory panel for the
20 national research priority.

21 “(3) STAKEHOLDER INPUT.—

22 “(A) IN GENERAL.—The Commission shall
23 consult with patients, health care providers,
24 health care consumer representatives, and other
25 appropriate stakeholders with an interest in the

1 research through a transparent process rec-
2 ommended by the Commission.

3 “(B) SPECIFIC AREAS OF CONSULTA-
4 TION.—Consultation shall include where
5 deemed appropriate by the Commission—

6 “(i) recommending research priorities
7 and questions;

8 “(ii) recommending research meth-
9 odologies; and

10 “(iii) advising on and assisting with
11 efforts to disseminate research findings.

12 “(C) OMBUDSMAN.—The Secretary shall
13 designate a patient ombudsman. The ombuds-
14 man shall—

15 “(i) serve as an available point of con-
16 tact for any patients with an interest in
17 proposed comparative effectiveness studies
18 by the Center; and

19 “(ii) ensure that any comments from
20 patients regarding proposed comparative
21 effectiveness studies are reviewed by the
22 Commission.

23 “(4) TAKING INTO ACCOUNT POTENTIAL DIF-
24 FERENCES.—Research shall—

1 “(A) be designed, as appropriate, to take
2 into account the potential for differences in the
3 effectiveness of health care items and services
4 used with various subpopulations such as racial
5 and ethnic minorities, women, different age
6 groups (including children, adolescents, adults,
7 and seniors), and individuals with different
8 comorbidities; and—

9 “(B) seek, as feasible and appropriate, to
10 include members of such subpopulations as sub-
11 jects in the research.

12 “(d) PUBLIC ACCESS TO COMPARATIVE EFFECTIVE-
13 NESS INFORMATION.—

14 “(1) IN GENERAL.—Not later than 90 days
15 after receipt by the Center or Commission, as appli-
16 cable, of a relevant report described in paragraph
17 (2) made by the Center, Commission, or clinical per-
18 spective advisory panel under this section, appro-
19 priate information contained in such report shall be
20 posted on the official public Internet site of the Cen-
21 ter and of the Commission, as applicable.

22 “(2) RELEVANT REPORTS DESCRIBED.—For
23 purposes of this section, a relevant report is each of
24 the following submitted by the Center or a grantee
25 or contractor of the Center:

1 “(A) Any interim or progress reports as
2 deemed appropriate by the Secretary.

3 “(B) Stakeholder comments.

4 “(C) A final report.

5 “(e) DISSEMINATION AND INCORPORATION OF COM-
6 PARATIVE EFFECTIVENESS INFORMATION.—

7 “(1) DISSEMINATION.—The Center shall pro-
8 vide for the dissemination of appropriate findings
9 produced by research supported, conducted, or syn-
10 thesized under this section to health care providers,
11 patients, vendors of health information technology
12 focused on clinical decision support, appropriate pro-
13 fessional associations, and Federal and private
14 health plans, and other relevant stakeholders. In dis-
15 seminating such findings the Center shall—

16 “(A) convey findings of research so that
17 they are comprehensible and useful to patients
18 and providers in making health care decisions;

19 “(B) discuss findings and other consider-
20 ations specific to certain sub-populations, risk
21 factors, and comorbidities as appropriate;

22 “(C) include considerations such as limita-
23 tions of research and what further research
24 may be needed, as appropriate;

1 “(D) not include any data that the dis-
2 semination of which would violate the privacy of
3 research participants or violate any confiden-
4 tiality agreements made with respect to the use
5 of data under this section; and

6 “(E) assist the users of health information
7 technology focused on clinical decision support
8 to promote the timely incorporation of such
9 findings into clinical practices and promote the
10 ease of use of such incorporation.

11 “(2) DISSEMINATION PROTOCOLS AND STRATE-
12 GIES.—The Center shall develop protocols and strat-
13 egies for the appropriate dissemination of research
14 findings in order to ensure effective communication
15 of findings and the use and incorporation of such
16 findings into relevant activities for the purpose of in-
17 forming higher quality and more effective and effi-
18 cient decisions regarding medical items and services.
19 In developing and adopting such protocols and strat-
20 egies, the Center shall consult with stakeholders con-
21 cerning the types of dissemination that will be most
22 useful to the end users of information and may pro-
23 vide for the utilization of multiple formats for con-
24 veying findings to different audiences, including dis-

1 semination to individuals with limited English pro-
2 ficiency.

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 Commission shall sub-
8 mit to Congress an annual report on the activities
9 of the Center and the Commission, as well as the re-
10 search, conducted under this section. Each such re-
11 port shall include a discussion of the Center’s com-
12 pliance with subsection (c)(B)(4), including any rea-
13 sons for lack of compliance with such subsection.

14 “(2) RECOMMENDATION FOR FAIR SHARE PER
15 CAPITA AMOUNT FOR ALL-PAYER FINANCING.—Be-
16 ginning not later than December 31, 2011, the Sec-
17 retary shall submit to Congress an annual rec-
18 ommendation for a fair share per capita amount de-
19 scribed in subsection (c)(1) of section 9511 of the
20 Internal Revenue Code of 1986 for purposes of
21 funding the CERTF under such section.

22 “(3) ANALYSIS AND REVIEW.—Not later than
23 December 31, 2013, the Secretary, in consultation
24 with the Commission, shall submit to Congress a re-
25 port on all activities conducted or supported under

1 this section as of such date. Such report shall in-
2 clude an evaluation of the overall costs of such ac-
3 tivities and an analysis of the backlog of any re-
4 search proposals approved by the Commission but
5 not funded.

6 “(g) FUNDING OF COMPARATIVE EFFECTIVENESS
7 RESEARCH.—For fiscal year 2010 and each subsequent
8 fiscal year, amounts in the Comparative Effectiveness Re-
9 search Trust Fund (referred to in this section as the
10 ‘CERTF’) under section 9511 of the Internal Revenue
11 Code of 1986 shall be available, without the need for fur-
12 ther appropriations and without fiscal year limitation, to
13 the Secretary to carry out this section.

14 “(h) CONSTRUCTION.—Nothing in this section shall
15 be construed to permit the Commission or the Center to
16 mandate coverage, reimbursement, or other policies for
17 any public or private payer.”.

18 (b) COMPARATIVE EFFECTIVENESS RESEARCH
19 TRUST FUND; FINANCING FOR THE TRUST FUND.—For
20 provision establishing a Comparative Effectiveness Re-
21 search Trust Fund and financing such Trust Fund, see
22 section 1802.

1 **Subtitle B—Nursing Home**
2 **Transparency**
3 **PART 1—IMPROVING TRANSPARENCY OF INFOR-**
4 **MATION ON SKILLED NURSING FACILITIES**
5 **AND NURSING FACILITIES**

6 **SEC. 1411. REQUIRED DISCLOSURE OF OWNERSHIP AND**
7 **ADDITIONAL DISCLOSABLE PARTIES INFOR-**
8 **MATION.**

9 (a) IN GENERAL.—Section 1124 of the Social Secu-
10 rity Act (42 U.S.C. 1320a–3) is amended by adding at
11 the end the following new subsection:

12 “(c) REQUIRED DISCLOSURE OF OWNERSHIP AND
13 ADDITIONAL DISCLOSABLE PARTIES INFORMATION.—

14 “(1) DISCLOSURE.—A facility (as defined in
15 paragraph (7)(B)) shall have the information de-
16 scribed in paragraph (3) available—

17 “(A) during the period beginning on the
18 date of the enactment of this subsection and
19 ending on the date such information is made
20 available to the public under section 1411(b) of
21 the America’s Affordable Health Choices Act of
22 2009, for submission to the Secretary, the In-
23 spector General of the Department of Health
24 and Human Services, the State in which the fa-
25 cility is located, and the State long-term care

1 ombudsman in the case where the Secretary,
2 the Inspector General, the State, or the State
3 long-term care ombudsman requests such infor-
4 mation; and

5 “(B) beginning on the effective date of the
6 final regulations promulgated under paragraph
7 (4)(A), for reporting such information in ac-
8 cordance with such final regulations.

9 Nothing in subparagraph (A) shall be construed as
10 authorizing a facility to dispose of or delete informa-
11 tion described in such subparagraph after the effec-
12 tive date of the final regulations promulgated under
13 paragraph (4)(A).

14 “(2) PUBLIC AVAILABILITY OF INFORMATION.—
15 During the period described in paragraph (1)(A), a
16 facility shall—

17 “(A) make the information described in
18 paragraph (3) available to the public upon re-
19 quest and update such information as may be
20 necessary to reflect changes in such informa-
21 tion; and

22 “(B) post a notice of the availability of
23 such information in the lobby of the facility in
24 a prominent manner.

25 “(3) INFORMATION DESCRIBED.—

1 “(A) IN GENERAL.—The following infor-
2 mation is described in this paragraph:

3 “(i) The information described in sub-
4 sections (a) and (b), subject to subpara-
5 graph (C).

6 “(ii) The identity of and information
7 on—

8 “(I) each member of the gov-
9 erning body of the facility, including
10 the name, title, and period of service
11 of each such member;

12 “(II) each person or entity who is
13 an officer, director, member, partner,
14 trustee, or managing employee of the
15 facility, including the name, title, and
16 date of start of service of each such
17 person or entity; and

18 “(III) each person or entity who
19 is an additional disclosable party of
20 the facility.

21 “(iii) The organizational structure of
22 each person and entity described in sub-
23 clauses (II) and (III) of clause (ii) and a
24 description of the relationship of each such

1 person or entity to the facility and to one
2 another.

3 “(B) SPECIAL RULE WHERE INFORMATION
4 IS ALREADY REPORTED OR SUBMITTED.—To
5 the extent that information reported by a facil-
6 ity to the Internal Revenue Service on Form
7 990, information submitted by a facility to the
8 Securities and Exchange Commission, or infor-
9 mation otherwise submitted to the Secretary or
10 any other Federal agency contains the informa-
11 tion described in clauses (i), (ii), or (iii) of sub-
12 paragraph (A), the Secretary may allow, to the
13 extent practicable, such Form or such informa-
14 tion to meet the requirements of paragraph (1)
15 and to be submitted in a manner specified by
16 the Secretary.

17 “(C) SPECIAL RULE.—In applying sub-
18 paragraph (A)(i)—

19 “(i) with respect to subsections (a)
20 and (b), ‘ownership or control interest’
21 shall include direct or indirect interests, in-
22 cluding such interests in intermediate enti-
23 ties; and

24 “(ii) subsection (a)(3)(A)(ii) shall in-
25 clude the owner of a whole or part interest

1 in any mortgage, deed of trust, note, or
2 other obligation secured, in whole or in
3 part, by the entity or any of the property
4 or assets thereof, if the interest is equal to
5 or exceeds 5 percent of the total property
6 or assets of the entirety.

7 “(4) REPORTING.—

8 “(A) IN GENERAL.—Not later than the
9 date that is 2 years after the date of the enact-
10 ment of this subsection, the Secretary shall pro-
11 mulgate regulations requiring, effective on the
12 date that is 90 days after the date on which
13 such final regulations are published in the Fed-
14 eral Register, a facility to report the informa-
15 tion described in paragraph (3) to the Secretary
16 in a standardized format, and such other regu-
17 lations as are necessary to carry out this sub-
18 section. Such final regulations shall ensure that
19 the facility certifies, as a condition of participa-
20 tion and payment under the program under
21 title XVIII or XIX, that the information re-
22 ported by the facility in accordance with such
23 final regulations is accurate and current.

24 “(B) GUIDANCE.—The Secretary shall pro-
25 vide guidance and technical assistance to States

1 on how to adopt the standardized format under
2 subparagraph (A).

3 “(5) NO EFFECT ON EXISTING REPORTING RE-
4 QUIREMENTS.—Nothing in this subsection shall re-
5 duce, diminish, or alter any reporting requirement
6 for a facility that is in effect as of the date of the
7 enactment of this subsection.

8 “(6) DEFINITIONS.—In this subsection:

9 “(A) ADDITIONAL DISCLOSABLE PARTY.—
10 The term ‘additional disclosable party’ means,
11 with respect to a facility, any person or entity
12 who—

13 “(i) exercises operational, financial, or
14 managerial control over the facility or a
15 part thereof, or provides policies or proce-
16 dures for any of the operations of the facil-
17 ity, or provides financial or cash manage-
18 ment services to the facility;

19 “(ii) leases or subleases real property
20 to the facility, or owns a whole or part in-
21 terest equal to or exceeding 5 percent of
22 the total value of such real property;

23 “(iii) lends funds or provides a finan-
24 cial guarantee to the facility in an amount
25 which is equal to or exceeds \$50,000; or

1 “(iv) provides management or admin-
2 istrative services, clinical consulting serv-
3 ices, or accounting or financial services to
4 the facility.

5 “(B) FACILITY.—The term ‘facility’ means
6 a disclosing entity which is—

7 “(i) a skilled nursing facility (as de-
8 fined in section 1819(a)); or

9 “(ii) a nursing facility (as defined in
10 section 1919(a)).

11 “(C) MANAGING EMPLOYEE.—The term
12 ‘managing employee’ means, with respect to a
13 facility, an individual (including a general man-
14 ager, business manager, administrator, director,
15 or consultant) who directly or indirectly man-
16 ages, advises, or supervises any element of the
17 practices, finances, or operations of the facility.

18 “(D) ORGANIZATIONAL STRUCTURE.—The
19 term ‘organizational structure’ means, in the
20 case of—

21 “(i) a corporation, the officers, direc-
22 tors, and shareholders of the corporation
23 who have an ownership interest in the cor-
24 poration which is equal to or exceeds 5
25 percent;

1 “(ii) a limited liability company, the
2 members and managers of the limited li-
3 ability company (including, as applicable,
4 what percentage each member and man-
5 ager has of the ownership interest in the
6 limited liability company);

7 “(iii) a general partnership, the part-
8 ners of the general partnership;

9 “(iv) a limited partnership, the gen-
10 eral partners and any limited partners of
11 the limited partnership who have an own-
12 ership interest in the limited partnership
13 which is equal to or exceeds 10 percent;

14 “(v) a trust, the trustees of the trust;

15 “(vi) an individual, contact informa-
16 tion for the individual; and

17 “(vii) any other person or entity, such
18 information as the Secretary determines
19 appropriate.”.

20 (b) PUBLIC AVAILABILITY OF INFORMATION.—

21 (1) IN GENERAL.—Not later than the date that
22 is 1 year after the date on which the final regula-
23 tions promulgated under section 1124(c)(4)(A) of
24 the Social Security Act, as added by subsection (a),
25 are published in the Federal Register, the informa-

1 tion reported in accordance with such final regula-
2 tions shall be made available to the public in accord-
3 ance with procedures established by the Secretary.

4 (2) DEFINITIONS.—In this subsection:

5 (A) NURSING FACILITY.—The term “nurs-
6 ing facility” has the meaning given such term
7 in section 1919(a) of the Social Security Act
8 (42 U.S.C. 1396r(a)).

9 (B) SECRETARY.—The term “Secretary”
10 means the Secretary of Health and Human
11 Services.

12 (C) SKILLED NURSING FACILITY.—The
13 term “skilled nursing facility” has the meaning
14 given such term in section 1819(a) of the Social
15 Security Act (42 U.S.C. 1395i–3(a)).

16 (c) CONFORMING AMENDMENTS.—

17 (1) SKILLED NURSING FACILITIES.—Section
18 1819(d)(1) of the Social Security Act (42 U.S.C.
19 1395i–3(d)(1)) is amended by striking subparagraph
20 (B) and redesignating subparagraph (C) as subpara-
21 graph (B).

22 (2) NURSING FACILITIES.—Section 1919(d)(1)
23 of the Social Security Act (42 U.S.C. 1396r(d)(1))
24 is amended by striking subparagraph (B) and redesi-
25 gnating subparagraph (C) as subparagraph (B).

1 **SEC. 1412. ACCOUNTABILITY REQUIREMENTS.**

2 (a) EFFECTIVE COMPLIANCE AND ETHICS PRO-
3 GRAMS.—

4 (1) SKILLED NURSING FACILITIES.—Section
5 1819(d)(1) of the Social Security Act (42 U.S.C.
6 1395i–3(d)(1)), as amended by section 1411(c)(1),
7 is amended by adding at the end the following new
8 subparagraph:

9 “(C) COMPLIANCE AND ETHICS PRO-
10 GRAMS.—

11 “(i) REQUIREMENT.—On or after the
12 date that is 36 months after the date of
13 the enactment of this subparagraph, a
14 skilled nursing facility shall, with respect
15 to the entity that operates the facility (in
16 this subparagraph referred to as the ‘oper-
17 ating organization’ or ‘organization’), have
18 in operation a compliance and ethics pro-
19 gram that is effective in preventing and de-
20 tecting criminal, civil, and administrative
21 violations under this Act and in promoting
22 quality of care consistent with regulations
23 developed under clause (ii).

24 “(ii) DEVELOPMENT OF REGULA-
25 TIONS.—

1 “(I) IN GENERAL.—Not later
2 than the date that is 2 years after
3 such date of the enactment, the Sec-
4 retary, in consultation with the In-
5 spector General of the Department of
6 Health and Human Services, shall
7 promulgate regulations for an effec-
8 tive compliance and ethics program
9 for operating organizations, which
10 may include a model compliance pro-
11 gram.

12 “(II) DESIGN OF REGULA-
13 TIONS.—Such regulations with respect
14 to specific elements or formality of a
15 program may vary with the size of the
16 organization, such that larger organi-
17 zations should have a more formal
18 and rigorous program and include es-
19 tablished written policies defining the
20 standards and procedures to be fol-
21 lowed by its employees. Such require-
22 ments shall specifically apply to the
23 corporate level management of multi-
24 unit nursing home chains.

1 “(III) EVALUATION.—Not later
2 than 3 years after the date of promul-
3 gation of regulations under this
4 clause, the Secretary shall complete
5 an evaluation of the compliance and
6 ethics programs required to be estab-
7 lished under this subparagraph. Such
8 evaluation shall determine if such pro-
9 grams led to changes in deficiency ci-
10 tations, changes in quality perform-
11 ance, or changes in other metrics of
12 resident quality of care. The Secretary
13 shall submit to Congress a report on
14 such evaluation and shall include in
15 such report such recommendations re-
16 garding changes in the requirements
17 for such programs as the Secretary
18 determines appropriate.

19 “(iii) REQUIREMENTS FOR COMPLI-
20 ANCE AND ETHICS PROGRAMS.—In this
21 subparagraph, the term ‘compliance and
22 ethics program’ means, with respect to a
23 skilled nursing facility, a program of the
24 operating organization that—

1 “(I) has been reasonably de-
2 signed, implemented, and enforced so
3 that it generally will be effective in
4 preventing and detecting criminal,
5 civil, and administrative violations
6 under this Act and in promoting qual-
7 ity of care; and

8 “(II) includes at least the re-
9 quired components specified in clause
10 (iv).

11 “(iv) REQUIRED COMPONENTS OF
12 PROGRAM.—The required components of a
13 compliance and ethics program of an orga-
14 nization are the following:

15 “(I) The organization must have
16 established compliance standards and
17 procedures to be followed by its em-
18 ployees, contractors, and other agents
19 that are reasonably capable of reduc-
20 ing the prospect of criminal, civil, and
21 administrative violations under this
22 Act.

23 “(II) Specific individuals within
24 high-level personnel of the organiza-
25 tion must have been assigned overall

1 responsibility to oversee compliance
2 with such standards and procedures
3 and have sufficient resources and au-
4 thority to assure such compliance.

5 “(III) The organization must
6 have used due care not to delegate
7 substantial discretionary authority to
8 individuals whom the organization
9 knew, or should have known through
10 the exercise of due diligence, had a
11 propensity to engage in criminal, civil,
12 and administrative violations under
13 this Act.

14 “(IV) The organization must
15 have taken steps to communicate ef-
16 fectively its standards and procedures
17 to all employees and other agents,
18 such as by requiring participation in
19 training programs or by disseminating
20 publications that explain in a practical
21 manner what is required.

22 “(V) The organization must have
23 taken reasonable steps to achieve com-
24 pliance with its standards, such as by
25 utilizing monitoring and auditing sys-

1 tems reasonably designed to detect
2 criminal, civil, and administrative vio-
3 lations under this Act by its employ-
4 ees and other agents and by having in
5 place and publicizing a reporting sys-
6 tem whereby employees and other
7 agents could report violations by oth-
8 ers within the organization without
9 fear of retribution.

10 “(VI) The standards must have
11 been consistently enforced through ap-
12 propriate disciplinary mechanisms, in-
13 cluding, as appropriate, discipline of
14 individuals responsible for the failure
15 to detect an offense.

16 “(VII) After an offense has been
17 detected, the organization must have
18 taken all reasonable steps to respond
19 appropriately to the offense and to
20 prevent further similar offenses, in-
21 cluding repayment of any funds to
22 which it was not entitled and any nec-
23 essary modification to its program to
24 prevent and detect criminal, civil, and

1 administrative violations under this
2 Act.

3 “(VIII) The organization must
4 periodically undertake reassessment of
5 its compliance program to identify
6 changes necessary to reflect changes
7 within the organization and its facili-
8 ties.

9 “(v) COORDINATION.—The provisions
10 of this subparagraph shall apply with re-
11 spect to a skilled nursing facility in lieu of
12 section 1874(d).”.

13 (2) NURSING FACILITIES.—Section 1919(d)(1)
14 of the Social Security Act (42 U.S.C. 1396r(d)(1)),
15 as amended by section 1411(c)(2), is amended by
16 adding at the end the following new subparagraph:

17 “(C) COMPLIANCE AND ETHICS PRO-
18 GRAM.—

19 “(i) REQUIREMENT.—On or after the
20 date that is 36 months after the date of
21 the enactment of this subparagraph, a
22 nursing facility shall, with respect to the
23 entity that operates the facility (in this
24 subparagraph referred to as the ‘operating
25 organization’ or ‘organization’), have in op-

1 eration a compliance and ethics program
2 that is effective in preventing and detect-
3 ing criminal, civil, and administrative viola-
4 tions under this Act and in promoting
5 quality of care consistent with regulations
6 developed under clause (ii).

7 “(ii) DEVELOPMENT OF REGULA-
8 TIONS.—

9 “(I) IN GENERAL.—Not later
10 than the date that is 2 years after
11 such date of the enactment, the Sec-
12 retary, in consultation with the In-
13 spector General of the Department of
14 Health and Human Services, shall de-
15 velop regulations for an effective com-
16 pliance and ethics program for oper-
17 ating organizations, which may in-
18 clude a model compliance program.

19 “(II) DESIGN OF REGULA-
20 TIONS.—Such regulations with respect
21 to specific elements or formality of a
22 program may vary with the size of the
23 organization, such that larger organi-
24 zations should have a more formal
25 and rigorous program and include es-

1 established written policies defining the
2 standards and procedures to be fol-
3 lowed by its employees. Such require-
4 ments may specifically apply to the
5 corporate level management of multi-
6 unit nursing home chains.

7 “(III) EVALUATION.—Not later
8 than 3 years after the date of promul-
9 gation of regulations under this clause
10 the Secretary shall complete an eval-
11 uation of the compliance and ethics
12 programs required to be established
13 under this subparagraph. Such eval-
14 uation shall determine if such pro-
15 grams led to changes in deficiency ci-
16 tations, changes in quality perform-
17 ance, or changes in other metrics of
18 resident quality of care. The Secretary
19 shall submit to Congress a report on
20 such evaluation and shall include in
21 such report such recommendations re-
22 garding changes in the requirements
23 for such programs as the Secretary
24 determines appropriate.

1 “(iii) REQUIREMENTS FOR COMPLI-
2 ANCE AND ETHICS PROGRAMS.—In this
3 subparagraph, the term ‘compliance and
4 ethics program’ means, with respect to a
5 nursing facility, a program of the oper-
6 ating organization that—

7 “(I) has been reasonably de-
8 signed, implemented, and enforced so
9 that it generally will be effective in
10 preventing and detecting criminal,
11 civil, and administrative violations
12 under this Act and in promoting qual-
13 ity of care; and

14 “(II) includes at least the re-
15 quired components specified in clause
16 (iv).

17 “(iv) REQUIRED COMPONENTS OF
18 PROGRAM.—The required components of a
19 compliance and ethics program of an orga-
20 nization are the following:

21 “(I) The organization must have
22 established compliance standards and
23 procedures to be followed by its em-
24 ployees and other agents that are rea-
25 sonably capable of reducing the pros-

1 pect of criminal, civil, and administra-
2 tive violations under this Act.

3 “(II) Specific individuals within
4 high-level personnel of the organiza-
5 tion must have been assigned overall
6 responsibility to oversee compliance
7 with such standards and procedures
8 and has sufficient resources and au-
9 thority to assure such compliance.

10 “(III) The organization must
11 have used due care not to delegate
12 substantial discretionary authority to
13 individuals whom the organization
14 knew, or should have known through
15 the exercise of due diligence, had a
16 propensity to engage in criminal, civil,
17 and administrative violations under
18 this Act.

19 “(IV) The organization must
20 have taken steps to communicate ef-
21 fectively its standards and procedures
22 to all employees and other agents,
23 such as by requiring participation in
24 training programs or by disseminating

1 publications that explain in a practical
2 manner what is required.

3 “(V) The organization must have
4 taken reasonable steps to achieve com-
5 pliance with its standards, such as by
6 utilizing monitoring and auditing sys-
7 tems reasonably designed to detect
8 criminal, civil, and administrative vio-
9 lations under this Act by its employ-
10 ees and other agents and by having in
11 place and publicizing a reporting sys-
12 tem whereby employees and other
13 agents could report violations by oth-
14 ers within the organization without
15 fear of retribution.

16 “(VI) The standards must have
17 been consistently enforced through ap-
18 propriate disciplinary mechanisms, in-
19 cluding, as appropriate, discipline of
20 individuals responsible for the failure
21 to detect an offense.

22 “(VII) After an offense has been
23 detected, the organization must have
24 taken all reasonable steps to respond
25 appropriately to the offense and to

1 prevent further similar offenses, in-
2 cluding repayment of any funds to
3 which it was not entitled and any nec-
4 essary modification to its program to
5 prevent and detect criminal, civil, and
6 administrative violations under this
7 Act.

8 “(VIII) The organization must
9 periodically undertake reassessment of
10 its compliance program to identify
11 changes necessary to reflect changes
12 within the organization and its facili-
13 ties.

14 “(v) COORDINATION.—The provisions
15 of this subparagraph shall apply with re-
16 spect to a nursing facility in lieu of section
17 1902(a)(77).”.

18 (b) QUALITY ASSURANCE AND PERFORMANCE IM-
19 PROVEMENT PROGRAM.—

20 (1) SKILLED NURSING FACILITIES.—Section
21 1819(b)(1)(B) of the Social Security Act (42 U.S.C.
22 1396r(b)(1)(B)) is amended—

23 (A) by striking “ASSURANCE” and insert-
24 ing “ASSURANCE AND QUALITY ASSURANCE
25 AND PERFORMANCE IMPROVEMENT PROGRAM”;

1 (B) by designating the matter beginning
2 with “A nursing facility” as a clause (i) with
3 the heading “IN GENERAL.—” and the appro-
4 priate indentation; and

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

7 “(ii) QUALITY ASSURANCE AND PER-
8 FORMANCE IMPROVEMENT PROGRAM.—

9 “(I) IN GENERAL.—Not later
10 than December 31, 2011, the Sec-
11 retary shall establish and implement a
12 quality assurance and performance
13 improvement program (in this clause
14 referred to as the ‘QAPI program’)
15 for skilled nursing facilities, including
16 multi-unit chains of such facilities.
17 Under the QAPI program, the Sec-
18 retary shall establish standards relat-
19 ing to such facilities and provide tech-
20 nical assistance to such facilities on
21 the development of best practices in
22 order to meet such standards. Not
23 later than 1 year after the date on
24 which the regulations are promulgated
25 under subclause (II), a skilled nursing

1 facility must submit to the Secretary
2 a plan for the facility to meet such
3 standards and implement such best
4 practices, including how to coordinate
5 the implementation of such plan with
6 quality assessment and assurance ac-
7 tivities conducted under clause (i).

8 “(II) REGULATIONS.—The Sec-
9 retary shall promulgate regulations to
10 carry out this clause.”.

11 (2) NURSING FACILITIES.—Section
12 1919(b)(1)(B) of the Social Security Act (42 U.S.C.
13 1396r(b)(1)(B)) is amended—

14 (A) by striking “ASSURANCE” and insert-
15 ing “ASSURANCE AND QUALITY ASSURANCE
16 AND PERFORMANCE IMPROVEMENT PROGRAM”;

17 (B) by designating the matter beginning
18 with “A nursing facility” as a clause (i) with
19 the heading “IN GENERAL.—” and the appro-
20 priate indentation; and

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

23 “(ii) QUALITY ASSURANCE AND PER-
24 FORMANCE IMPROVEMENT PROGRAM.—

1 “(I) IN GENERAL.—Not later
2 than December 31, 2011, the Sec-
3 retary shall establish and implement a
4 quality assurance and performance
5 improvement program (in this clause
6 referred to as the ‘QAPI program’)
7 for nursing facilities, including multi-
8 unit chains of such facilities. Under
9 the QAPI program, the Secretary
10 shall establish standards relating to
11 such facilities and provide technical
12 assistance to such facilities on the de-
13 velopment of best practices in order to
14 meet such standards. Not later than 1
15 year after the date on which the regu-
16 lations are promulgated under sub-
17 clause (II), a nursing facility must
18 submit to the Secretary a plan for the
19 facility to meet such standards and
20 implement such best practices, includ-
21 ing how to coordinate the implementa-
22 tion of such plan with quality assess-
23 ment and assurance activities con-
24 ducted under clause (i).

1 “(II) REGULATIONS.—The Sec-
2 retary shall promulgate regulations to
3 carry out this clause.”.

4 (3) PROPOSAL TO REVISE QUALITY ASSURANCE
5 AND PERFORMANCE IMPROVEMENT PROGRAMS.—
6 The Secretary shall include in the proposed rule
7 published under section 1888(e) of the Social Secu-
8 rity Act (42 U.S.C. 1395yy(e)(5)(A)) for the subse-
9 quent fiscal year to the extent otherwise authorized
10 under section 1819(b)(1)(B) or 1819(d)(1)(C) of the
11 Social Security Act or other statutory or regulatory
12 authority, one or more proposals for skilled nursing
13 facilities to modify and strengthen quality assurance
14 and performance improvement programs in such fa-
15 cilities. At the time of publication of such proposed
16 rule and to the extent otherwise authorized under
17 section 1919(b)(1)(B) or 1919(d)(1)(C) of such Act
18 or other regulatory authority.

19 (4) FACILITY PLAN.—Not later than 1 year
20 after the date on which the regulations are promul-
21 gated under subclause (II) of clause (ii) of sections
22 1819(b)(1)(B) and 1919(b)(1)(B) of the Social Se-
23 curity Act, as added by paragraphs (1) and (2), a
24 skilled nursing facility and a nursing facility must
25 submit to the Secretary a plan for the facility to

1 meet the standards under such regulations and im-
2 plement such best practices, including how to coordi-
3 nate the implementation of such plan with quality
4 assessment and assurance activities conducted under
5 clause (i) of such sections.

6 (c) GAO STUDY ON NURSING FACILITY UNDER-
7 CAPITALIZATION.—

8 (1) IN GENERAL.—The Comptroller General of
9 the United States shall conduct a study that exam-
10 ines the following:

11 (A) The extent to which corporations that
12 own or operate large numbers of nursing facili-
13 ties, taking into account ownership type (includ-
14 ing private equity and control interests), are
15 undercapitalizing such facilities.

16 (B) The effects of such undercapitalization
17 on quality of care, including staffing and food
18 costs, at such facilities.

19 (C) Options to address such undercapital-
20 ization, such as requirements relating to surety
21 bonds, liability insurance, or minimum capital-
22 ization.

23 (2) REPORT.—Not later than 18 months after
24 the date of the enactment of this Act, the Comp-

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

3 (3) NURSING FACILITY.—In this subsection, the
4 term “nursing facility” includes a skilled nursing fa-
5 cility.

6 **SEC. 1413. NURSING HOME COMPARE MEDICARE WEBSITE.**

7 (a) SKILLED NURSING FACILITIES.—

8 (1) IN GENERAL.—Section 1819 of the Social
9 Security Act (42 U.S.C. 1395i–3) is amended—

10 (A) by redesignating subsection (i) as sub-
11 section (j); and

12 (B) by inserting after subsection (h) the
13 following new subsection:

14 “(i) NURSING HOME COMPARE WEBSITE.—

15 “(1) INCLUSION OF ADDITIONAL INFORMA-
16 TION.—

17 “(A) IN GENERAL.—The Secretary shall
18 ensure that the Department of Health and
19 Human Services includes, as part of the infor-
20 mation provided for comparison of nursing
21 homes on the official Internet website of the
22 Federal Government for Medicare beneficiaries
23 (commonly referred to as the ‘Nursing Home
24 Compare’ Medicare website) (or a successor
25 website), the following information in a manner

1 that is prominent, easily accessible, readily un-
2 derstandable to consumers of long-term care
3 services, and searchable:

4 “(i) Information that is reported to
5 the Secretary under section 1124(c)(4).

6 “(ii) Information on the ‘Special
7 Focus Facility program’ (or a successor
8 program) established by the Centers for
9 Medicare and Medicaid Services, according
10 to procedures established by the Secretary.
11 Such procedures shall provide for the in-
12 clusion of information with respect to, and
13 the names and locations of, those facilities
14 that, since the previous quarter—

15 “(I) were newly enrolled in the
16 program;

17 “(II) are enrolled in the program
18 and have failed to significantly im-
19 prove;

20 “(III) are enrolled in the pro-
21 gram and have significantly improved;

22 “(IV) have graduated from the
23 program; and

24 “(V) have closed voluntarily or
25 no longer participate under this title.

1 “(iii) Staffing data for each facility
2 (including resident census data and data
3 on the hours of care provided per resident
4 per day) based on data submitted under
5 subsection (b)(8)(C), including information
6 on staffing turnover and tenure, in a for-
7 mat that is clearly understandable to con-
8 sumers of long-term care services and al-
9 lows such consumers to compare dif-
10 ferences in staffing between facilities and
11 State and national averages for the facili-
12 ties. Such format shall include—

13 “(I) concise explanations of how
14 to interpret the data (such as a plain
15 English explanation of data reflecting
16 ‘nursing home staff hours per resident
17 day’);

18 “(II) differences in types of staff
19 (such as training associated with dif-
20 ferent categories of staff);

21 “(III) the relationship between
22 nurse staffing levels and quality of
23 care; and

1 “(IV) an explanation that appro-
2 priate staffing levels vary based on
3 patient case mix.

4 “(iv) Links to State Internet websites
5 with information regarding State survey
6 and certification programs, links to Form
7 2567 State inspection reports (or a suc-
8 cessor form) on such websites, information
9 to guide consumers in how to interpret and
10 understand such reports, and the facility
11 plan of correction or other response to
12 such report.

13 “(v) The standardized complaint form
14 developed under subsection (f)(8), includ-
15 ing explanatory material on what com-
16 plaint forms are, how they are used, and
17 how to file a complaint with the State sur-
18 vey and certification program and the
19 State long-term care ombudsman program.

20 “(vi) Summary information on the
21 number, type, severity, and outcome of
22 substantiated complaints.

23 “(vii) The number of adjudicated in-
24 stances of criminal violations by employees
25 of a a nursing facility—

1 “(I) that were committed inside
2 the facility;

3 “(II) with respect to such in-
4 stances of violations or crimes com-
5 mitted inside of the facility that were
6 the violations or crimes of abuse, ne-
7 glect, and exploitation, criminal sexual
8 abuse, or other violations or crimes
9 that resulted in serious bodily injury;
10 and

11 “(III) the number of civil mone-
12 tary penalties levied against the facil-
13 ity, employees, contractors, and other
14 agents.

15 “(B) DEADLINE FOR PROVISION OF INFOR-
16 MATION.—

17 “(i) IN GENERAL.—Except as pro-
18 vided in clause (ii), the Secretary shall en-
19 sure that the information described in sub-
20 paragraph (A) is included on such website
21 (or a successor website) not later than 1
22 year after the date of the enactment of this
23 subsection.

24 “(ii) EXCEPTION.—The Secretary
25 shall ensure that the information described

1 in subparagraph (A)(i) and (A)(iii) is in-
2 cluded on such website (or a successor
3 website) not later than the date on which
4 the requirements under section 1124(e)(4)
5 and subsection (b)(8)(C)(ii) are imple-
6 mented.

7 “(2) REVIEW AND MODIFICATION OF
8 WEBSITE.—

9 “(A) IN GENERAL.—The Secretary shall
10 establish a process—

11 “(i) to review the accuracy, clarity of
12 presentation, timeliness, and comprehen-
13 siveness of information reported on such
14 website as of the day before the date of the
15 enactment of this subsection; and

16 “(ii) not later than 1 year after the
17 date of the enactment of this subsection, to
18 modify or revamp such website in accord-
19 ance with the review conducted under
20 clause (i).

21 “(B) CONSULTATION.—In conducting the
22 review under subparagraph (A)(i), the Sec-
23 retary shall consult with—

24 “(i) State long-term care ombudsman
25 programs;

1 “(ii) consumer advocacy groups;
2 “(iii) provider stakeholder groups; and
3 “(iv) any other representatives of pro-
4 grams or groups the Secretary determines
5 appropriate.”.

6 (2) TIMELINESS OF SUBMISSION OF SURVEY
7 AND CERTIFICATION INFORMATION.—

8 (A) IN GENERAL.—Section 1819(g)(5) of
9 the Social Security Act (42 U.S.C. 1395i-
10 3(g)(5)) is amended by adding at the end the
11 following new subparagraph:

12 “(E) SUBMISSION OF SURVEY AND CER-
13 TIFICATION INFORMATION TO THE SEC-
14 RETARY.—In order to improve the timeliness of
15 information made available to the public under
16 subparagraph (A) and provided on the Nursing
17 Home Compare Medicare website under sub-
18 section (i), each State shall submit information
19 respecting any survey or certification made re-
20 specting a skilled nursing facility (including any
21 enforcement actions taken by the State) to the
22 Secretary not later than the date on which the
23 State sends such information to the facility.
24 The Secretary shall use the information sub-
25 mitted under the preceding sentence to update

1 the information provided on the Nursing Home
2 Compare Medicare website as expeditiously as
3 practicable but not less frequently than quar-
4 terly.”.

5 (B) EFFECTIVE DATE.—The amendment
6 made by this paragraph shall take effect 1 year
7 after the date of the enactment of this Act.

8 (3) SPECIAL FOCUS FACILITY PROGRAM.—Sec-
9 tion 1819(f) of such Act is amended by adding at
10 the end the following new paragraph:

11 “(8) SPECIAL FOCUS FACILITY PROGRAM.—

12 “(A) IN GENERAL.—The Secretary shall
13 conduct a special focus facility program for en-
14 forcement of requirements for skilled nursing
15 facilities that the Secretary has identified as
16 having substantially failed to meet applicable
17 requirement of this Act.

18 “(B) PERIODIC SURVEYS.—Under such
19 program the Secretary shall conduct surveys of
20 each facility in the program not less than once
21 every 6 months.”.

22 (b) NURSING FACILITIES.—

23 (1) IN GENERAL.—Section 1919 of the Social
24 Security Act (42 U.S.C. 1396r) is amended—

1 (A) by redesignating subsection (i) as sub-
2 section (j); and

3 (B) by inserting after subsection (h) the
4 following new subsection:

5 “(i) NURSING HOME COMPARE WEBSITE.—

6 “(1) INCLUSION OF ADDITIONAL INFORMA-
7 TION.—

8 “(A) IN GENERAL.—The Secretary shall
9 ensure that the Department of Health and
10 Human Services includes, as part of the infor-
11 mation provided for comparison of nursing
12 homes on the official Internet website of the
13 Federal Government for Medicare beneficiaries
14 (commonly referred to as the ‘Nursing Home
15 Compare’ Medicare website) (or a successor
16 website), the following information in a manner
17 that is prominent, easily accessible, readily un-
18 derstandable to consumers of long-term care
19 services, and searchable:

20 “(i) Staffing data for each facility (in-
21 cluding resident census data and data on
22 the hours of care provided per resident per
23 day) based on data submitted under sub-
24 section (b)(8)(C)(ii), including information
25 on staffing turnover and tenure, in a for-

1 mat that is clearly understandable to con-
2 sumers of long-term care services and al-
3 lows such consumers to compare dif-
4 ferences in staffing between facilities and
5 State and national averages for the facili-
6 ties. Such format shall include—

7 “(I) concise explanations of how
8 to interpret the data (such as plain
9 English explanation of data reflecting
10 ‘nursing home staff hours per resident
11 day’);

12 “(II) differences in types of staff
13 (such as training associated with dif-
14 ferent categories of staff);

15 “(III) the relationship between
16 nurse staffing levels and quality of
17 care; and

18 “(IV) an explanation that appro-
19 priate staffing levels vary based on
20 patient case mix.

21 “(ii) Links to State Internet websites
22 with information regarding State survey
23 and certification programs, links to Form
24 2567 State inspection reports (or a suc-
25 cessor form) on such websites, information

1 to guide consumers in how to interpret and
2 understand such reports, and the facility
3 plan of correction or other response to
4 such report.

5 “(iii) The standardized complaint
6 form developed under subsection (f)(10),
7 including explanatory material on what
8 complaint forms are, how they are used,
9 and how to file a complaint with the State
10 survey and certification program and the
11 State long-term care ombudsman program.

12 “(iv) Summary information on the
13 number, type, severity, and outcome of
14 substantiated complaints.

15 “(v) The number of adjudicated in-
16 stances of criminal violations by employees
17 of a nursing facility—

18 “(I) that were committed inside
19 of the facility; and

20 “(II) with respect to such in-
21 stances of violations or crimes com-
22 mitted outside of the facility, that
23 were the violations or crimes that re-
24 sulted in the serious bodily injury of
25 an elder.

1 “(B) DEADLINE FOR PROVISION OF INFOR-
2 MATION.—

3 “(i) IN GENERAL.—Except as pro-
4 vided in clause (ii), the Secretary shall en-
5 sure that the information described in sub-
6 paragraph (A) is included on such website
7 (or a successor website) not later than 1
8 year after the date of the enactment of this
9 subsection.

10 “(ii) EXCEPTION.—The Secretary
11 shall ensure that the information described
12 in subparagraph (A)(i) and (A)(iii) is in-
13 cluded on such website (or a successor
14 website) not later than the date on which
15 the requirements under section 1124(c)(4)
16 and subsection (b)(8)(C)(ii) are imple-
17 mented.

18 “(2) REVIEW AND MODIFICATION OF
19 WEBSITE.—

20 “(A) IN GENERAL.—The Secretary shall
21 establish a process—

22 “(i) to review the accuracy, clarity of
23 presentation, timeliness, and comprehen-
24 siveness of information reported on such

1 website as of the day before the date of the
2 enactment of this subsection; and

3 “(ii) not later than 1 year after the
4 date of the enactment of this subsection, to
5 modify or revamp such website in accord-
6 ance with the review conducted under
7 clause (i).

8 “(B) CONSULTATION.—In conducting the
9 review under subparagraph (A)(i), the Sec-
10 retary shall consult with—

11 “(i) State long-term care ombudsman
12 programs;

13 “(ii) consumer advocacy groups;

14 “(iii) provider stakeholder groups;

15 “(iv) skilled nursing facility employees
16 and their representatives; and

17 “(v) any other representatives of pro-
18 grams or groups the Secretary determines
19 appropriate.”.

20 (2) TIMELINESS OF SUBMISSION OF SURVEY
21 AND CERTIFICATION INFORMATION.—

22 (A) IN GENERAL.—Section 1919(g)(5) of
23 the Social Security Act (42 U.S.C. 1396r(g)(5))
24 is amended by adding at the end the following
25 new subparagraph:

1 “(E) SUBMISSION OF SURVEY AND CER-
2 TIFICATION INFORMATION TO THE SEC-
3 RETARY.—In order to improve the timeliness of
4 information made available to the public under
5 subparagraph (A) and provided on the Nursing
6 Home Compare Medicare website under sub-
7 section (i), each State shall submit information
8 respecting any survey or certification made re-
9 specting a nursing facility (including any en-
10 forcement actions taken by the State) to the
11 Secretary not later than the date on which the
12 State sends such information to the facility.
13 The Secretary shall use the information sub-
14 mitted under the preceding sentence to update
15 the information provided on the Nursing Home
16 Compare Medicare website as expeditiously as
17 practicable but not less frequently than quar-
18 terly.”.

19 (B) EFFECTIVE DATE.—The amendment
20 made by this paragraph shall take effect 1 year
21 after the date of the enactment of this Act.

22 (3) SPECIAL FOCUS FACILITY PROGRAM.—Sec-
23 tion 1919(f) of such Act is amended by adding at
24 the end of the following new paragraph:

25 “(10) SPECIAL FOCUS FACILITY PROGRAM.—

1 “(A) IN GENERAL.—The Secretary shall
2 conduct a special focus facility program for en-
3 forcement of requirements for nursing facilities
4 that the Secretary has identified as having sub-
5 stantially failed to meet applicable requirements
6 of this Act.

7 “(B) PERIODIC SURVEYS.—Under such
8 program the Secretary shall conduct surveys of
9 each facility in the program not less often than
10 once every 6 months.”.

11 (c) AVAILABILITY OF REPORTS ON SURVEYS, CER-
12 TIFICATIONS, AND COMPLAINT INVESTIGATIONS.—

13 (1) SKILLED NURSING FACILITIES.—Section
14 1819(d)(1) of the Social Security Act (42 U.S.C.
15 1395i–3(d)(1)), as amended by sections 1411 and
16 1412, is amended by adding at the end the following
17 new subparagraph:

18 “(D) AVAILABILITY OF SURVEY, CERTIFI-
19 CATION, AND COMPLAINT INVESTIGATION RE-
20 PORTS.—A skilled nursing facility must—

21 “(i) have reports with respect to any
22 surveys, certifications, and complaint in-
23 vestigations made respecting the facility
24 during the 3 preceding years available for
25 any individual to review upon request; and

1 “(ii) post notice of the availability of
2 such reports in areas of the facility that
3 are prominent and accessible to the public.
4 The facility shall not make available under
5 clause (i) identifying information about com-
6 plainants or residents.”.

7 (2) NURSING FACILITIES.—Section 1919(d)(1)
8 of the Social Security Act (42 U.S.C. 1396r(d)(1)),
9 as amended by sections 1411 and 1412, is amended
10 by adding at the end the following new subpara-
11 graph:

12 “(D) AVAILABILITY OF SURVEY, CERTIFI-
13 CATION, AND COMPLAINT INVESTIGATION RE-
14 PORTS.—A nursing facility must—

15 “(i) have reports with respect to any
16 surveys, certifications, and complaint in-
17 vestigations made respecting the facility
18 during the 3 preceding years available for
19 any individual to review upon request; and

20 “(ii) post notice of the availability of
21 such reports in areas of the facility that
22 are prominent and accessible to the public.
23 The facility shall not make available under
24 clause (i) identifying information about com-
25 plainants or residents.”.

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall take effect 1 year after the
3 date of the enactment of this Act.

4 (d) GUIDANCE TO STATES ON FORM 2567 STATE IN-
5 SPECTION REPORTS AND COMPLAINT INVESTIGATION RE-
6 PORTS.—

7 (1) GUIDANCE.—The Secretary of Health and
8 Human Services (in this subtitle referred to as the
9 “Secretary”) shall provide guidance to States on
10 how States can establish electronic links to Form
11 2567 State inspection reports (or a successor form),
12 complaint investigation reports, and a facility’s plan
13 of correction or other response to such Form 2567
14 State inspection reports (or a successor form) on the
15 Internet website of the State that provides informa-
16 tion on skilled nursing facilities and nursing facili-
17 ties and the Secretary shall, if possible, include such
18 information on Nursing Home Compare.

19 (2) REQUIREMENT.—Section 1902(a)(9) of the
20 Social Security Act (42 U.S.C. 1396a(a)(9)) is
21 amended—

22 (A) by striking “and” at the end of sub-
23 paragraph (B);

24 (B) by striking the semicolon at the end of
25 subparagraph (C) and inserting “, and”; and

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

3 “(D) that the State maintain a consumer-
4 oriented website providing useful information to
5 consumers regarding all skilled nursing facili-
6 ties and all nursing facilities in the State, in-
7 cluding for each facility, Form 2567 State in-
8 spection reports (or a successor form), com-
9 plaint investigation reports, the facility’s plan of
10 correction, and such other information that the
11 State or the Secretary considers useful in as-
12 sisting the public to assess the quality of long
13 term care options and the quality of care pro-
14 vided by individual facilities;”.

15 (3) DEFINITIONS.—In this subsection:

16 (A) NURSING FACILITY.—The term “nurs-
17 ing facility” has the meaning given such term
18 in section 1919(a) of the Social Security Act
19 (42 U.S.C. 1396r(a)).

20 (B) SECRETARY.—The term “Secretary”
21 means the Secretary of Health and Human
22 Services.

23 (C) SKILLED NURSING FACILITY.—The
24 term “skilled nursing facility” has the meaning

1 given such term in section 1819(a) of the Social
2 Security Act (42 U.S.C. 1395i-3(a)).

3 **SEC. 1414. REPORTING OF EXPENDITURES.**

4 Section 1888 of the Social Security Act (42 U.S.C.
5 1395yy) is amended by adding at the end the following
6 new subsection:

7 “(f) REPORTING OF DIRECT CARE EXPENDI-
8 TURES.—

9 “(1) IN GENERAL.—For cost reports submitted
10 under this title for cost reporting periods beginning
11 on or after the date that is 3 years after the date
12 of the enactment of this subsection, skilled nursing
13 facilities shall separately report expenditures for
14 wages and benefits for direct care staff (breaking
15 out (at a minimum) registered nurses, licensed pro-
16 fessional nurses, certified nurse assistants, and other
17 medical and therapy staff).

18 “(2) MODIFICATION OF FORM.—The Secretary,
19 in consultation with private sector accountants expe-
20 rienced with skilled nursing facility cost reports,
21 shall redesign such reports to meet the requirement
22 of paragraph (1) not later than 1 year after the date
23 of the enactment of this subsection.

24 “(3) CATEGORIZATION BY FUNCTIONAL AC-
25 COUNTS.—Not later than 30 months after the date

1 of the enactment of this subsection, the Secretary,
2 working in consultation with the Medicare Payment
3 Advisory Commission, the Inspector General of the
4 Department of Health and Human Services, and
5 other expert parties the Secretary determines appro-
6 priate, shall take the expenditures listed on cost re-
7 ports, as modified under paragraph (1), submitted
8 by skilled nursing facilities and categorize such ex-
9 penditures, regardless of any source of payment for
10 such expenditures, for each skilled nursing facility
11 into the following functional accounts on an annual
12 basis:

13 “(A) Spending on direct care services (in-
14 cluding nursing, therapy, and medical services).

15 “(B) Spending on indirect care (including
16 housekeeping and dietary services).

17 “(C) Capital assets (including building and
18 land costs).

19 “(D) Administrative services costs.

20 “(4) AVAILABILITY OF INFORMATION SUB-
21 MITTED.—The Secretary shall establish procedures
22 to make information on expenditures submitted
23 under this subsection readily available to interested
24 parties upon request, subject to such requirements

1 as the Secretary may specify under the procedures
2 established under this paragraph.”.

3 **SEC. 1415. STANDARDIZED COMPLAINT FORM.**

4 (a) SKILLED NURSING FACILITIES.—

5 (1) DEVELOPMENT BY THE SECRETARY.—Sec-
6 tion 1819(f) of the Social Security Act (42 U.S.C.
7 1395i–3(f)), as amended by section 1413(a)(3), is
8 amended by adding at the end the following new
9 paragraph:

10 “(9) STANDARDIZED COMPLAINT FORM.—The
11 Secretary shall develop a standardized complaint
12 form for use by a resident (or a person acting on the
13 resident’s behalf) in filing a complaint with a State
14 survey and certification agency and a State long-
15 term care ombudsman program with respect to a
16 skilled nursing facility.”.

17 (2) STATE REQUIREMENTS.—Section 1819(e)
18 of the Social Security Act (42 U.S.C. 1395i–3(e)) is
19 amended by adding at the end the following new
20 paragraph:

21 “(6) COMPLAINT PROCESSES AND WHISTLE-
22 BLOWER PROTECTION.—

23 “(A) COMPLAINT FORMS.—The State must
24 make the standardized complaint form devel-

1 oped under subsection (f)(9) available upon re-
2 quest to—

3 “(i) a resident of a skilled nursing fa-
4 cility;

5 “(ii) any person acting on the resi-
6 dent’s behalf; and

7 “(iii) any person who works at a
8 skilled nursing facility or is a representa-
9 tive of such a worker.

10 “(B) COMPLAINT RESOLUTION PROCESS.—

11 The State must establish a complaint resolution
12 process in order to ensure that a resident, the
13 legal representative of a resident of a skilled
14 nursing facility, or other responsible party is
15 not retaliated against if the resident, legal rep-
16 resentative, or responsible party has com-
17 plained, in good faith, about the quality of care
18 or other issues relating to the skilled nursing
19 facility, that the legal representative of a resi-
20 dent of a skilled nursing facility or other re-
21 sponsible party is not denied access to such
22 resident or otherwise retaliated against if such
23 representative party has complained, in good
24 faith, about the quality of care provided by the
25 facility or other issues relating to the facility,

1 and that a person who works at a skilled nurs-
2 ing facility is not retaliated against if the work-
3 er has complained, in good faith, about quality
4 of care or services or an issue relating to the
5 quality of care or services provided at the facil-
6 ity, whether the resident, legal representative,
7 other responsible party, or worker used the
8 form developed under subsection (f)(9) or some
9 other method for submitting the complaint.
10 Such complaint resolution process shall in-
11 clude—

12 “(i) procedures to assure accurate
13 tracking of complaints received, including
14 notification to the complainant that a com-
15 plaint has been received;

16 “(ii) procedures to determine the like-
17 ly severity of a complaint and for the in-
18 vestigation of the complaint;

19 “(iii) deadlines for responding to a
20 complaint and for notifying the complain-
21 ant of the outcome of the investigation;
22 and

23 “(iv) procedures to ensure that the
24 identity of the complainant will be kept
25 confidential.

1 “(C) WHISTLEBLOWER PROTECTION.—

2 “(i) PROHIBITION AGAINST RETALIA-
3 TION.—No person who works at a skilled
4 nursing facility may be penalized, discrimi-
5 nated, or retaliated against with respect to
6 any aspect of employment, including dis-
7 charge, promotion, compensation, terms,
8 conditions, or privileges of employment, or
9 have a contract for services terminated, be-
10 cause the person (or anyone acting at the
11 person’s request) complained, in good
12 faith, about the quality of care or services
13 provided by a nursing facility or about
14 other issues relating to quality of care or
15 services, whether using the form developed
16 under subsection (f)(9) or some other
17 method for submitting the complaint.

18 “(ii) RETALIATORY REPORTING.—A
19 skilled nursing facility may not file a com-
20 plaint or a report against a person who
21 works (or has worked at the facility with
22 the appropriate State professional discipli-
23 nary agency because the person (or anyone
24 acting at the person’s request) complained
25 in good faith, as described in clause (i).

1 “(iii) COMMENCEMENT OF ACTION.—

2 Any person who believes the person has
3 been penalized, discriminated , or retali-
4 ated against or had a contract for services
5 terminated in violation of clause (i) or
6 against whom a complaint has been filed in
7 violation of clause (ii) may bring an action
8 at law or equity in the appropriate district
9 court of the United States, which shall
10 have jurisdiction over such action without
11 regard to the amount in controversy or the
12 citizenship of the parties, and which shall
13 have jurisdiction to grant complete relief,
14 including, but not limited to, injunctive re-
15 lief (such as reinstatement, compensatory
16 damages (which may include reimburse-
17 ment of lost wages, compensation, and
18 benefits), costs of litigation (including rea-
19 sonable attorney and expert witness fees),
20 exemplary damages where appropriate, and
21 such other relief as the court deems just
22 and proper.

23 “(iv) RIGHTS NOT WAIVABLE.—The
24 rights protected by this paragraph may not
25 be diminished by contract or other agree-

1 ment, and nothing in this paragraph shall
2 be construed to diminish any greater or
3 additional protection provided by Federal
4 or State law or by contract or other agree-
5 ment.

6 “(v) REQUIREMENT TO POST NOTICE
7 OF EMPLOYEE RIGHTS.—Each skilled
8 nursing facility shall post conspicuously in
9 an appropriate location a sign (in a form
10 specified by the Secretary) specifying the
11 rights of persons under this paragraph and
12 including a statement that an employee
13 may file a complaint with the Secretary
14 against a skilled nursing facility that vio-
15 lates the provisions of this paragraph and
16 information with respect to the manner of
17 filing such a complaint.

18 “(D) RULE OF CONSTRUCTION.—Nothing
19 in this paragraph shall be construed as pre-
20 venting a resident of a skilled nursing facility
21 (or a person acting on the resident’s behalf)
22 from submitting a complaint in a manner or
23 format other than by using the standardized
24 complaint form developed under subsection
25 (f)(9) (including submitting a complaint orally).

1 “(E) GOOD FAITH DEFINED.—For pur-
2 poses of this paragraph, an individual shall be
3 deemed to be acting in good faith with respect
4 to the filing of a complaint if the individual rea-
5 sonably believes—

6 “(i) the information reported or dis-
7 closed in the complaint is true; and

8 “(ii) the violation of this title has oc-
9 curred or may occur in relation to such in-
10 formation.”.

11 (b) NURSING FACILITIES.—

12 (1) DEVELOPMENT BY THE SECRETARY.—Sec-
13 tion 1919(f) of the Social Security Act (42 U.S.C.
14 1395i-3(f)), as amended by section 1413(b), is
15 amended by adding at the end the following new
16 paragraph:

17 “(11) STANDARDIZED COMPLAINT FORM.—The
18 Secretary shall develop a standardized complaint
19 form for use by a resident (or a person acting on the
20 resident’s behalf) in filing a complaint with a State
21 survey and certification agency and a State long-
22 term care ombudsman program with respect to a
23 nursing facility.”.

24 (2) STATE REQUIREMENTS.—Section 1919(e)
25 of the Social Security Act (42 U.S.C. 1395i-3(e)) is

1 amended by adding at the end the following new
2 paragraph:

3 “(8) COMPLAINT PROCESSES AND WHISTLE-
4 BLOWER PROTECTION.—

5 “(A) COMPLAINT FORMS.—The State must
6 make the standardized complaint form devel-
7 oped under subsection (f)(11) available upon re-
8 quest to—

9 “(i) a resident of a nursing facility;

10 “(ii) any person acting on the resi-
11 dent’s behalf; and

12 “(iii) any person who works at a nurs-
13 ing facility or a representative of such a
14 worker.

15 “(B) COMPLAINT RESOLUTION PROCESS.—

16 The State must establish a complaint resolution
17 process in order to ensure that a resident, the
18 legal representative of a resident of a nursing
19 facility, or other responsible party is not retali-
20 ated against if the resident, legal representa-
21 tive, or responsible party has complained, in
22 good faith, about the quality of care or other
23 issues relating to the nursing facility, that the
24 legal representative of a resident of a nursing
25 facility or other responsible party is not denied

1 access to such resident or otherwise retaliated
2 against if such representative party has com-
3 plained, in good faith, about the quality of care
4 provided by the facility or other issues relating
5 to the facility, and that a person who works at
6 a nursing facility is not retaliated against if the
7 worker has complained, in good faith, about
8 quality of care or services or an issue relating
9 to the quality of care or services provided at the
10 facility, whether the resident, legal representa-
11 tive, other responsible party, or worker used the
12 form developed under subsection (f)(11) or
13 some other method for submitting the com-
14 plaint. Such complaint resolution process shall
15 include—

16 “(i) procedures to assure accurate
17 tracking of complaints received, including
18 notification to the complainant that a com-
19 plaint has been received;

20 “(ii) procedures to determine the like-
21 ly severity of a complaint and for the in-
22 vestigation of the complaint;

23 “(iii) deadlines for responding to a
24 complaint and for notifying the complain-

1 ant of the outcome of the investigation;
2 and

3 “(iv) procedures to ensure that the
4 identity of the complainant will be kept
5 confidential.

6 “(C) WHISTLEBLOWER PROTECTION.—

7 “(i) PROHIBITION AGAINST RETALIA-
8 TION.—No person who works at a nursing
9 facility may be penalized, discriminated, or
10 retaliated against with respect to any as-
11 pect of employment, including discharge,
12 promotion, compensation, terms, condi-
13 tions, or privileges of employment, or have
14 a contract for services terminated, because
15 the person (or anyone acting at the per-
16 son’s request) complained, in good faith,
17 about the quality of care or services pro-
18 vided by a nursing facility or about other
19 issues relating to quality of care or serv-
20 ices, whether using the form developed
21 under subsection (f)(11) or some other
22 method for submitting the complaint.

23 “(ii) RETALIATORY REPORTING.—A
24 nursing facility may not file a complaint or
25 a report against a person who works (or

1 has worked at the facility with the appro-
2 priate State professional disciplinary agen-
3 cy because the person (or anyone acting at
4 the person's request) complained in good
5 faith, as described in clause (i).

6 “(iii) COMMENCEMENT OF ACTION.—
7 Any person who believes the person has
8 been penalized, discriminated, or retaliated
9 against or had a contract for services ter-
10 minated in violation of clause (i) or against
11 whom a complaint has been filed in viola-
12 tion of clause (ii) may bring an action at
13 law or equity in the appropriate district
14 court of the United States, which shall
15 have jurisdiction over such action without
16 regard to the amount in controversy or the
17 citizenship of the parties, and which shall
18 have jurisdiction to grant complete relief,
19 including, but not limited to, injunctive re-
20 lief (such as reinstatement, compensatory
21 damages (which may include reimburse-
22 ment of lost wages, compensation, and
23 benefits), costs of litigation (including rea-
24 sonable attorney and expert witness fees),
25 exemplary damages where appropriate, and

1 such other relief as the court deems just
2 and proper.

3 “(iv) RIGHTS NOT WAIVABLE.—The
4 rights protected by this paragraph may not
5 be diminished by contract or other agree-
6 ment, and nothing in this paragraph shall
7 be construed to diminish any greater or
8 additional protection provided by Federal
9 or State law or by contract or other agree-
10 ment.

11 “(v) REQUIREMENT TO POST NOTICE
12 OF EMPLOYEE RIGHTS.—Each nursing fa-
13 cility shall post conspicuously in an appro-
14 priate location a sign (in a form specified
15 by the Secretary) specifying the rights of
16 persons under this paragraph and includ-
17 ing a statement that an employee may file
18 a complaint with the Secretary against a
19 nursing facility that violates the provisions
20 of this paragraph and information with re-
21 spect to the manner of filing such a com-
22 plaint.

23 “(D) RULE OF CONSTRUCTION.—Nothing
24 in this paragraph shall be construed as pre-
25 venting a resident of a nursing facility (or a

1 person acting on the resident’s behalf) from
2 submitting a complaint in a manner or format
3 other than by using the standardized complaint
4 form developed under subsection (f)(11) (in-
5 cluding submitting a complaint orally).

6 “(E) GOOD FAITH DEFINED.—For pur-
7 poses of this paragraph, an individual shall be
8 deemed to be acting in good faith with respect
9 to the filing of a complaint if the individual rea-
10 sonably believes—

11 “(i) the information reported or dis-
12 closed in the complaint is true; and

13 “(ii) the violation of this title has oc-
14 curred or may occur in relation to such in-
15 formation.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect 1 year after the date of the
18 enactment of this Act.

19 **SEC. 1416. ENSURING STAFFING ACCOUNTABILITY.**

20 (a) SKILLED NURSING FACILITIES.—Section
21 1819(b)(8) of the Social Security Act (42 U.S.C. 1395i-
22 3(b)(8)) is amended by adding at the end the following
23 new subparagraph:

24 “(C) SUBMISSION OF STAFFING INFORMA-
25 TION BASED ON PAYROLL DATA IN A UNIFORM

1 FORMAT.—Beginning not later than 2 years
2 after the date of the enactment of this subpara-
3 graph, and after consulting with State long-
4 term care ombudsman programs, consumer ad-
5 vocacy groups, provider stakeholder groups, em-
6 ployees and their representatives, and other
7 parties the Secretary deems appropriate, the
8 Secretary shall require a skilled nursing facility
9 to electronically submit to the Secretary direct
10 care staffing information (including information
11 with respect to agency and contract staff) based
12 on payroll and other verifiable and auditable
13 data in a uniform format (according to speci-
14 fications established by the Secretary in con-
15 sultation with such programs, groups, and par-
16 ties). Such specifications shall require that the
17 information submitted under the preceding sen-
18 tence—

19 “(i) specify the category of work a
20 certified employee performs (such as
21 whether the employee is a registered nurse,
22 licensed practical nurse, licensed vocational
23 nurse, certified nursing assistant, thera-
24 pist, or other medical personnel);

1 “(ii) include resident census data and
2 information on resident case mix;

3 “(iii) include a regular reporting
4 schedule; and

5 “(iv) include information on employee
6 turnover and tenure and on the hours of
7 care provided by each category of certified
8 employees referenced in clause (i) per resi-
9 dent per day.

10 Nothing in this subparagraph shall be con-
11 strued as preventing the Secretary from requir-
12 ing submission of such information with respect
13 to specific categories, such as nursing staff, be-
14 fore other categories of certified employees. In-
15 formation under this subparagraph with respect
16 to agency and contract staff shall be kept sepa-
17 rate from information on employee staffing.”.

18 (b) NURSING FACILITIES.—Section 1919(b)(8) of the
19 Social Security Act (42 U.S.C. 1396r(b)(8)) is amended
20 by adding at the end the following new subparagraph:

21 “(C) SUBMISSION OF STAFFING INFORMA-
22 TION BASED ON PAYROLL DATA IN A UNIFORM
23 FORMAT.—Beginning not later than 2 years
24 after the date of the enactment of this subpara-
25 graph, and after consulting with State long-

1 term care ombudsman programs, consumer ad-
2 vocacy groups, provider stakeholder groups, em-
3 ployees and their representatives, and other
4 parties the Secretary deems appropriate, the
5 Secretary shall require a nursing facility to elec-
6 tronically submit to the Secretary direct care
7 staffing information (including information with
8 respect to agency and contract staff) based on
9 payroll and other verifiable and auditable data
10 in a uniform format (according to specifications
11 established by the Secretary in consultation
12 with such programs, groups, and parties). Such
13 specifications shall require that the information
14 submitted under the preceding sentence—

15 “(i) specify the category of work a
16 certified employee performs (such as
17 whether the employee is a registered nurse,
18 licensed practical nurse, licensed vocational
19 nurse, certified nursing assistant, thera-
20 pist, or other medical personnel);

21 “(ii) include resident census data and
22 information on resident case mix;

23 “(iii) include a regular reporting
24 schedule; and

1 “(iv) include information on employee
2 turnover and tenure and on the hours of
3 care provided by each category of certified
4 employees referenced in clause (i) per resi-
5 dent per day.

6 Nothing in this subparagraph shall be con-
7 strued as preventing the Secretary from requir-
8 ing submission of such information with respect
9 to specific categories, such as nursing staff, be-
10 fore other categories of certified employees. In-
11 formation under this subparagraph with respect
12 to agency and contract staff shall be kept sepa-
13 rate from information on employee staffing.”.

14 **PART 2—TARGETING ENFORCEMENT**

15 **SEC. 1421. CIVIL MONEY PENALTIES.**

16 (a) SKILLED NURSING FACILITIES.—

17 (1) IN GENERAL.—Section 1819(h)(2)(B)(ii) of
18 the Social Security Act (42 U.S.C. 1395i-
19 3(h)(2)(B)(ii)) is amended to read as follows:

20 “(ii) AUTHORITY WITH RESPECT TO
21 CIVIL MONEY PENALTIES.—

22 “(I) AMOUNT.—The Secretary
23 may impose a civil money penalty in
24 the applicable per instance or per day
25 amount (as defined in subclause (II)

1 and (III)) for each day or instance,
2 respectively, of noncompliance (as de-
3 termined appropriate by the Sec-
4 retary).

5 “(II) APPLICABLE PER INSTANCE
6 AMOUNT.—In this clause, the term
7 ‘applicable per instance amount’
8 means—

9 “(aa) in the case where the
10 deficiency is found to be a direct
11 proximate cause of death of a
12 resident of the facility, an
13 amount not to exceed \$100,000.

14 “(bb) in each case of a defi-
15 ciency where the facility is cited
16 for actual harm or immediate
17 jeopardy, an amount not less
18 than \$3,050 and not more than
19 \$25,000; and

20 “(cc) in each case of any
21 other deficiency, an amount not
22 less than \$250 and not to exceed
23 \$3050.

1 “(III) APPLICABLE PER DAY
2 AMOUNT.—In this clause, the term
3 ‘applicable per day amount’ means—

4 “(aa) in each case of a defi-
5 ciency where the facility is cited
6 for actual harm or immediate
7 jeopardy, an amount not less
8 than \$3,050 and not more than
9 \$25,000 and

10 “(bb) in each case of any
11 other deficiency, an amount not
12 less than \$250 and not to exceed
13 \$3,050.

14 “(IV) REDUCTION OF CIVIL
15 MONEY PENALTIES IN CERTAIN CIR-
16 CUMSTANCES.—Subject to subclauses
17 (V) and (VI), in the case where a fa-
18 cility self-reports and promptly cor-
19 rects a deficiency for which a penalty
20 was imposed under this clause not
21 later than 10 calendar days after the
22 date of such imposition, the Secretary
23 may reduce the amount of the penalty
24 imposed by not more than 50 percent.

1 “(V) PROHIBITION ON REDUC-
2 TION FOR CERTAIN DEFICIENCIES.—

3 “(aa) REPEAT DEFICI-
4 CIENCIES.—The Secretary may
5 not reduce under subclause (IV)
6 the amount of a penalty if the
7 deficiency is a repeat deficiency.

8 “(bb) CERTAIN OTHER DE-
9 FICIENCIES.—The Secretary may
10 not reduce under subclause (IV)
11 the amount of a penalty if the
12 penalty is imposed for a defi-
13 ciency described in subclause
14 (II)(aa) or (III)(aa) and the ac-
15 tual harm or widespread harm
16 immediately jeopardizes the
17 health or safety of a resident or
18 residents of the facility, or if the
19 penalty is imposed for a defi-
20 ciency described in subclause
21 (II)(bb).

22 “(VI) LIMITATION ON AGGRE-
23 GATE REDUCTIONS.—The aggregate
24 reduction in a penalty under sub-
25 clause (IV) may not exceed 35 percent

1 on the basis of self-reporting, on the
2 basis of a waiver or an appeal (as pro-
3 vided for under regulations under sec-
4 tion 488.436 of title 42, Code of Fed-
5 eral Regulations), or on the basis of
6 both.

7 “(VII) COLLECTION OF CIVIL
8 MONEY PENALTIES.—In the case of a
9 civil money penalty imposed under
10 this clause, the Secretary—

11 “(aa) subject to item (cc),
12 shall, not later than 30 days
13 after the date of imposition of
14 the penalty, provide the oppor-
15 tunity for the facility to partici-
16 pate in an independent informal
17 dispute resolution process which
18 generates a written record prior
19 to the collection of such penalty,
20 but such opportunity shall not af-
21 fect the responsibility of the
22 State survey agency for making
23 final recommendations for such
24 penalties;

1 “(bb) in the case where the
2 penalty is imposed for each day
3 of noncompliance, shall not im-
4 pose a penalty for any day during
5 the period beginning on the ini-
6 tial day of the imposition of the
7 penalty and ending on the day on
8 which the informal dispute reso-
9 lution process under item (aa) is
10 completed;

11 “(cc) may provide for the
12 collection of such civil money
13 penalty and the placement of
14 such amounts collected in an es-
15 crow account under the direction
16 of the Secretary on the earlier of
17 the date on which the informal
18 dispute resolution process under
19 item (aa) is completed or the
20 date that is 90 days after the
21 date of the imposition of the pen-
22 alty;

23 “(dd) may provide that such
24 amounts collected are kept in

1 such account pending the resolu-
2 tion of any subsequent appeals;

3 “(ee) in the case where the
4 facility successfully appeals the
5 penalty, may provide for the re-
6 turn of such amounts collected
7 (plus interest) to the facility; and

8 “(ff) in the case where all
9 such appeals are unsuccessful,
10 may provide that some portion of
11 such amounts collected may be
12 used to support activities that
13 benefit residents, including as-
14 sistance to support and protect
15 residents of a facility that closes
16 (voluntarily or involuntarily) or is
17 decertified (including offsetting
18 costs of relocating residents to
19 home and community-based set-
20 tings or another facility), projects
21 that support resident and family
22 councils and other consumer in-
23 volvement in assuring quality
24 care in facilities, and facility im-
25 provement initiatives approved by

1 the Secretary (including joint
2 training of facility staff and sur-
3 veyors, technical assistance for
4 facilities under quality assurance
5 programs, the appointment of
6 temporary management, and
7 other activities approved by the
8 Secretary).

9 “(VIII) PROCEDURE.—The pro-
10 visions of section 1128A (other than
11 subsections (a) and (b) and except to
12 the extent that such provisions require
13 a hearing prior to the imposition of a
14 civil money penalty) shall apply to a
15 civil money penalty under this clause
16 in the same manner as such provi-
17 sions apply to a penalty or proceeding
18 under section 1128A(a).”.

19 (2) CONFORMING AMENDMENT.—The second
20 sentence of section 1819(h)(5) of the Social Security
21 Act (42 U.S.C. 1395i–3(h)(5)) is amended by insert-
22 ing “(ii),” after “(i),”.

23 (b) NURSING FACILITIES.—

24 (1) PENALTIES IMPOSED BY THE STATE.—

1 (A) IN GENERAL.—Section 1919(h)(2) of
2 the Social Security Act (42 U.S.C. 1396r(h)(2))
3 is amended—

4 (i) in subparagraph (A)(ii), by strik-
5 ing the first sentence and inserting the fol-
6 lowing: “A civil money penalty in accord-
7 ance with subparagraph (G).”; and

8 (ii) by adding at the end the following
9 new subparagraph:

10 “(G) CIVIL MONEY PENALTIES.—

11 “(i) IN GENERAL.—The State may
12 impose a civil money penalty under sub-
13 paragraph (A)(ii) in the applicable per in-
14 stance or per day amount (as defined in
15 subclause (II) and (III)) for each day or
16 instance, respectively, of noncompliance (as
17 determined appropriate by the Secretary).

18 “(ii) APPLICABLE PER INSTANCE
19 AMOUNT.—In this subparagraph, the term
20 ‘applicable per instance amount’ means—

21 “(I) in the case where the defi-
22 ciency is found to be a direct proximi-
23 mate cause of death of a resident of
24 the facility, an amount not to exceed
25 \$100,000.

1 “(II) in each case of a deficiency
2 where the facility is cited for actual
3 harm or immediate jeopardy, an
4 amount not less than \$3,050 and not
5 more than \$25,000; and

6 “(III) in each case of any other
7 deficiency, an amount not less than
8 \$250 and not to exceed \$3050.

9 “(iii) APPLICABLE PER DAY
10 AMOUNT.—In this subparagraph, the term
11 ‘applicable per day amount’ means—

12 “(I) in each case of a deficiency
13 where the facility is cited for actual
14 harm or immediate jeopardy, an
15 amount not less than \$3,050 and not
16 more than \$25,000 and

17 “(II) in each case of any other
18 deficiency, an amount not less than
19 \$250 and not to exceed \$3,050.

20 “(iv) REDUCTION OF CIVIL MONEY
21 PENALTIES IN CERTAIN CIR-
22 CUMSTANCES.—Subject to clauses (v) and
23 (vi), in the case where a facility self-re-
24 ports and promptly corrects a deficiency
25 for which a penalty was imposed under

1 subparagraph (A)(ii) not later than 10 cal-
2 endar days after the date of such imposi-
3 tion, the State may reduce the amount of
4 the penalty imposed by not more than 50
5 percent.

6 “(v) PROHIBITION ON REDUCTION
7 FOR CERTAIN DEFICIENCIES.—

8 “(I) REPEAT DEFICIENCIES.—
9 The State may not reduce under
10 clause (iv) the amount of a penalty if
11 the State had reduced a penalty im-
12 posed on the facility in the preceding
13 year under such clause with respect to
14 a repeat deficiency.

15 “(II) CERTAIN OTHER DEFICI-
16 CIENCIES.—The State may not reduce
17 under clause (iv) the amount of a pen-
18 alty if the penalty is imposed for a de-
19 ficiency described in clause (ii)(II) or
20 (iii)(I) and the actual harm or wide-
21 spread harm that immediately jeop-
22 ardizes the health or safety of a resi-
23 dent or residents of the facility, or if
24 the penalty is imposed for a deficiency
25 described in clause (ii)(I).

1 “(III) LIMITATION ON AGGRE-
2 GATE REDUCTIONS.—The aggregate
3 reduction in a penalty under clause
4 (iv) may not exceed 35 percent on the
5 basis of self-reporting, on the basis of
6 a waiver or an appeal (as provided for
7 under regulations under section
8 488.436 of title 42, Code of Federal
9 Regulations), or on the basis of both.

10 “(iv) COLLECTION OF CIVIL MONEY
11 PENALTIES.—In the case of a civil money
12 penalty imposed under subparagraph
13 (A)(ii), the State—

14 “(I) subject to subclause (III),
15 shall, not later than 30 days after the
16 date of imposition of the penalty, pro-
17 vide the opportunity for the facility to
18 participate in an independent informal
19 dispute resolution process which gen-
20 erates a written record prior to the
21 collection of such penalty, but such
22 opportunity shall not affect the re-
23 sponsibility of the State survey agency
24 for making final recommendations for
25 such penalties;

1 “(II) in the case where the pen-
2 alty is imposed for each day of non-
3 compliance, shall not impose a penalty
4 for any day during the period begin-
5 ning on the initial day of the imposi-
6 tion of the penalty and ending on the
7 day on which the informal dispute res-
8 olution process under subclause (I) is
9 completed;

10 “(III) may provide for the collec-
11 tion of such civil money penalty and
12 the placement of such amounts col-
13 lected in an escrow account under the
14 direction of the State on the earlier of
15 the date on which the informal dis-
16 pute resolution process under sub-
17 clause (I) is completed or the date
18 that is 90 days after the date of the
19 imposition of the penalty;

20 “(IV) may provide that such
21 amounts collected are kept in such ac-
22 count pending the resolution of any
23 subsequent appeals;

24 “(V) in the case where the facil-
25 ity successfully appeals the penalty,

1 may provide for the return of such
2 amounts collected (plus interest) to
3 the facility; and

4 “(VI) in the case where all such
5 appeals are unsuccessful, may provide
6 that such funds collected shall be used
7 for the purposes described in the sec-
8 ond sentence of subparagraph
9 (A)(ii).”.

10 (B) CONFORMING AMENDMENT.—The sec-
11 ond sentence of section 1919(h)(2)(A)(ii) of the
12 Social Security Act (42 U.S.C.
13 1396r(h)(2)(A)(ii)) is amended by inserting be-
14 fore the period at the end the following: “, and
15 some portion of such funds may be used to sup-
16 port activities that benefit residents, including
17 assistance to support and protect residents of a
18 facility that closes (voluntarily or involuntarily)
19 or is decertified (including offsetting costs of re-
20 locating residents to home and community-
21 based settings or another facility), projects that
22 support resident and family councils and other
23 consumer involvement in assuring quality care
24 in facilities, and facility improvement initiatives
25 approved by the Secretary (including joint

1 training of facility staff and surveyors, pro-
2 viding technical assistance to facilities under
3 quality assurance programs, the appointment of
4 temporary management, and other activities ap-
5 proved by the Secretary”.

6 (2) PENALTIES IMPOSED BY THE SEC-
7 RETARY.—

8 (A) IN GENERAL.—Section
9 1919(h)(3)(C)(ii) of the Social Security Act (42
10 U.S.C. 1396r(h)(3)(C)) is amended to read as
11 follows:

12 “(ii) AUTHORITY WITH RESPECT TO
13 CIVIL MONEY PENALTIES.—

14 “(I) AMOUNT.—Subject to sub-
15 clause (II), the Secretary may impose
16 a civil money penalty in an amount
17 not to exceed \$10,000 for each day or
18 each instance of noncompliance (as
19 determined appropriate by the Sec-
20 retary).

21 “(II) REDUCTION OF CIVIL
22 MONEY PENALTIES IN CERTAIN CIR-
23 CUMSTANCES.—Subject to subclause
24 (III), in the case where a facility self-
25 reports and promptly corrects a defi-

1 ciency for which a penalty was im-
2 posed under this clause not later than
3 10 calendar days after the date of
4 such imposition, the Secretary may
5 reduce the amount of the penalty im-
6 posed by not more than 50 percent.

7 “(III) PROHIBITION ON REDUC-
8 TION FOR REPEAT DEFICIENCIES.—
9 The Secretary may not reduce the
10 amount of a penalty under subclause
11 (II) if the Secretary had reduced a
12 penalty imposed on the facility in the
13 preceding year under such subclause
14 with respect to a repeat deficiency.

15 “(IV) COLLECTION OF CIVIL
16 MONEY PENALTIES.—In the case of a
17 civil money penalty imposed under
18 this clause, the Secretary—

19 “(aa) subject to item (bb),
20 shall, not later than 30 days
21 after the date of imposition of
22 the penalty, provide the oppor-
23 tunity for the facility to partici-
24 pate in an independent informal
25 dispute resolution process which

1 generates a written record prior
2 to the collection of such penalty;
3 “(bb) in the case where the
4 penalty is imposed for each day
5 of noncompliance, shall not im-
6 pose a penalty for any day during
7 the period beginning on the ini-
8 tial day of the imposition of the
9 penalty and ending on the day on
10 which the informal dispute reso-
11 lution process under item (aa) is
12 completed;
13 “(cc) may provide for the
14 collection of such civil money
15 penalty and the placement of
16 such amounts collected in an es-
17 crow account under the direction
18 of the Secretary on the earlier of
19 the date on which the informal
20 dispute resolution process under
21 item (aa) is completed or the
22 date that is 90 days after the
23 date of the imposition of the pen-
24 alty;

1 “(dd) may provide that such
2 amounts collected are kept in
3 such account pending the resolu-
4 tion of any subsequent appeals;

5 “(ee) in the case where the
6 facility successfully appeals the
7 penalty, may provide for the re-
8 turn of such amounts collected
9 (plus interest) to the facility; and

10 “(ff) in the case where all
11 such appeals are unsuccessful,
12 may provide that some portion of
13 such amounts collected may be
14 used to support activities that
15 benefit residents, including as-
16 sistance to support and protect
17 residents of a facility that closes
18 (voluntarily or involuntarily) or is
19 decertified (including offsetting
20 costs of relocating residents to
21 home and community-based set-
22 tings or another facility), projects
23 that support resident and family
24 councils and other consumer in-
25 volvement in assuring quality

1 care in facilities, and facility im-
2 provement initiatives approved by
3 the Secretary (including joint
4 training of facility staff and sur-
5 veyors, technical assistance for
6 facilities under quality assurance
7 programs, the appointment of
8 temporary management, and
9 other activities approved by the
10 Secretary).

11 “(V) PROCEDURE.—The provi-
12 sions of section 1128A (other than
13 subsections (a) and (b) and except to
14 the extent that such provisions require
15 a hearing prior to the imposition of a
16 civil money penalty) shall apply to a
17 civil money penalty under this clause
18 in the same manner as such provi-
19 sions apply to a penalty or proceeding
20 under section 1128A(a).”.

21 (B) CONFORMING AMENDMENT.—Section
22 1919(h)(8) of the Social Security Act (42
23 U.S.C. 1396r(h)(5)(8)) is amended by inserting
24 “and in paragraph (3)(C)(ii)” after “paragraph
25 (2)(A)”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect 1 year after the date of the
3 enactment of this Act.

4 **SEC. 1422. NATIONAL INDEPENDENT MONITOR PILOT PRO-**
5 **GRAM.**

6 (a) ESTABLISHMENT.—

7 (1) IN GENERAL.—The Secretary, in consulta-
8 tion with the Inspector General of the Department
9 of Health and Human Services, shall establish a
10 pilot program (in this section referred to as the
11 “pilot program”) to develop, test, and implement use
12 of an independent monitor to oversee interstate and
13 large intrastate chains of skilled nursing facilities
14 and nursing facilities.

15 (2) SELECTION.—The Secretary shall select
16 chains of skilled nursing facilities and nursing facili-
17 ties described in paragraph (1) to participate in the
18 pilot program from among those chains that submit
19 an application to the Secretary at such time, in such
20 manner, and containing such information as the Sec-
21 retary may require.

22 (3) DURATION.—The Secretary shall conduct
23 the pilot program for a two-year period.

1 (4) IMPLEMENTATION.—The Secretary shall
2 implement the pilot program not later than one year
3 after the date of the enactment of this Act.

4 (b) REQUIREMENTS.—The Secretary shall evaluate
5 chains selected to participate in the pilot program based
6 on criteria selected by the Secretary, including where evi-
7 dence suggests that one or more facilities of the chain are
8 experiencing serious safety and quality of care problems.
9 Such criteria may include the evaluation of a chain that
10 includes one or more facilities participating in the “Special
11 Focus Facility” program (or a successor program) or one
12 or more facilities with a record of repeated serious safety
13 and quality of care deficiencies.

14 (c) RESPONSIBILITIES OF THE INDEPENDENT MON-
15 ITOR.—An independent monitor that enters into a con-
16 tract with the Secretary to participate in the conduct of
17 such program shall—

18 (1) conduct periodic reviews and prepare root-
19 cause quality and deficiency analyses of a chain to
20 assess if facilities of the chain are in compliance
21 with State and Federal laws and regulations applica-
22 ble to the facilities;

23 (2) undertake sustained oversight of the chain,
24 whether publicly or privately held, to involve the
25 owners of the chain and the principal business part-

1 ners of such owners in facilitating compliance by fa-
2 cilities of the chain with State and Federal laws and
3 regulations applicable to the facilities;

4 (3) analyze the management structure, distribu-
5 tion of expenditures, and nurse staffing levels of fa-
6 cilities of the chain in relation to resident census,
7 staff turnover rates, and tenure;

8 (4) report findings and recommendations with
9 respect to such reviews, analyses, and oversight to
10 the chain and facilities of the chain, to the Secretary
11 and to relevant States; and

12 (5) publish the results of such reviews, anal-
13 yses, and oversight.

14 (d) IMPLEMENTATION OF RECOMMENDATIONS.—

15 (1) RECEIPT OF FINDING BY CHAIN.—Not later
16 than 10 days after receipt of a finding of an inde-
17 pendent monitor under subsection (c)(4), a chain
18 participating in the pilot program shall submit to
19 the independent monitor a report—

20 (A) outlining corrective actions the chain
21 will take to implement the recommendations in
22 such report; or

23 (B) indicating that the chain will not im-
24 plement such recommendations and why it will
25 not do so.

1 (2) RECEIPT OF REPORT BY INDEPENDENT
2 MONITOR.—Not later than 10 days after the date of
3 receipt of a report submitted by a chain under para-
4 graph (1), an independent monitor shall finalize its
5 recommendations and submit a report to the chain
6 and facilities of the chain, the Secretary, and the
7 State (or States) involved, as appropriate, containing
8 such final recommendations.

9 (e) COST OF APPOINTMENT.—A chain shall be re-
10 sponsible for a portion of the costs associated with the
11 appointment of independent monitors under the pilot pro-
12 gram. The chain shall pay such portion to the Secretary
13 (in an amount and in accordance with procedures estab-
14 lished by the Secretary).

15 (f) WAIVER AUTHORITY.—The Secretary may waive
16 such requirements of titles XVIII and XIX of the Social
17 Security Act (42 U.S.C. 1395 et seq.; 1396 et seq.) as
18 may be necessary for the purpose of carrying out the pilot
19 program.

20 (g) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated such sums as may be
22 necessary to carry out this section.

23 (h) DEFINITIONS.—In this section:

24 (1) FACILITY.—The term “facility” means a
25 skilled nursing facility or a nursing facility.

1 (2) NURSING FACILITY.—The term “nursing
2 facility” has the meaning given such term in section
3 1919(a) of the Social Security Act (42 U.S.C.
4 1396r(a)).

5 (3) SECRETARY.—The term “Secretary” means
6 the Secretary of Health and Human Services, acting
7 through the Assistant Secretary for Planning and
8 Evaluation.

9 (4) SKILLED NURSING FACILITY.—The term
10 “skilled nursing facility” has the meaning given such
11 term in section 1819(a) of the Social Security Act
12 (42 U.S.C. 1395(a)).

13 (i) EVALUATION AND REPORT.—

14 (1) EVALUATION.—The Inspector General of
15 the Department of Health and Human Services shall
16 evaluate the pilot program. Such evaluation shall—

17 (A) determine whether the independent
18 monitor program should be established on a
19 permanent basis; and

20 (B) if the Inspector General determines
21 that the independent monitor program should
22 be established on a permanent basis, rec-
23 ommend appropriate procedures and mecha-
24 nisms for such establishment.

1 (2) REPORT.—Not later than 180 days after
2 the completion of the pilot program, the Inspector
3 General shall submit to Congress and the Secretary
4 a report containing the results of the evaluation con-
5 ducted under paragraph (1), together with rec-
6 ommendations for such legislation and administra-
7 tive action as the Inspector General determines ap-
8 propriate.

9 **SEC. 1423. NOTIFICATION OF FACILITY CLOSURE.**

10 (a) SKILLED NURSING FACILITIES.—

11 (1) IN GENERAL.—Section 1819(c) of the So-
12 cial Security Act (42 U.S.C. 1395i–3(c)) is amended
13 by adding at the end the following new paragraph:

14 “(7) NOTIFICATION OF FACILITY CLOSURE.—

15 “(A) IN GENERAL.—Any individual who is
16 the administrator of a skilled nursing facility
17 must—

18 “(i) submit to the Secretary, the State
19 long-term care ombudsman, residents of
20 the facility, and the legal representatives of
21 such residents or other responsible parties,
22 written notification of an impending clo-
23 sure—

1 “(I) subject to subclause (II), not
2 later than the date that is 60 days
3 prior to the date of such closure; and

4 “(II) in the case of a facility
5 where the Secretary terminates the fa-
6 cility’s participation under this title,
7 not later than the date that the Sec-
8 retary determines appropriate;

9 “(ii) ensure that the facility does not
10 admit any new residents on or after the
11 date on which such written notification is
12 submitted; and

13 “(iii) include in the notice a plan for
14 the transfer and adequate relocation of the
15 residents of the facility by a specified date
16 prior to closure that has been approved by
17 the State, including assurances that the
18 residents will be transferred to the most
19 appropriate facility or other setting in
20 terms of quality, services, and location,
21 taking into consideration the needs and
22 best interests of each resident.

23 “(B) RELOCATION.—

24 “(i) IN GENERAL.—The State shall
25 ensure that, before a facility closes, all

1 residents of the facility have been success-
2 fully relocated to another facility or an al-
3 ternative home and community-based set-
4 ting.

5 “(ii) CONTINUATION OF PAYMENTS
6 UNTIL RESIDENTS RELOCATED.—The Sec-
7 retary may, as the Secretary determines
8 appropriate, continue to make payments
9 under this title with respect to residents of
10 a facility that has submitted a notification
11 under subparagraph (A) during the period
12 beginning on the date such notification is
13 submitted and ending on the date on which
14 the resident is successfully relocated.”.

15 (2) CONFORMING AMENDMENTS.—Section
16 1819(h)(4) of the Social Security Act (42 U.S.C.
17 1395i–3(h)(4)) is amended—

18 (A) in the first sentence, by striking “the
19 Secretary shall terminate” and inserting “the
20 Secretary, subject to subsection (c)(7), shall
21 terminate”; and

22 (B) in the second sentence, by striking
23 “subsection (c)(2)” and inserting “paragraphs
24 (2) and (7) of subsection (c)”.

25 (b) NURSING FACILITIES.—

1 (1) IN GENERAL.—Section 1919(c) of the So-
2 cial Security Act (42 U.S.C. 1396r(c)) is amended
3 by adding at the end the following new paragraph:

4 “(9) NOTIFICATION OF FACILITY CLOSURE.—

5 “(A) IN GENERAL.—Any individual who is
6 an administrator of a nursing facility must—

7 “(i) submit to the Secretary, the State
8 long-term care ombudsman, residents of
9 the facility, and the legal representatives of
10 such residents or other responsible parties,
11 written notification of an impending clo-
12 sure—

13 “(I) subject to subclause (II), not
14 later than the date that is 60 days
15 prior to the date of such closure; and

16 “(II) in the case of a facility
17 where the Secretary terminates the fa-
18 cility’s participation under this title,
19 not later than the date that the Sec-
20 retary determines appropriate;

21 “(ii) ensure that the facility does not
22 admit any new residents on or after the
23 date on which such written notification is
24 submitted; and

1 “(iii) include in the notice a plan for
2 the transfer and adequate relocation of the
3 residents of the facility by a specified date
4 prior to closure that has been approved by
5 the State, including assurances that the
6 residents will be transferred to the most
7 appropriate facility or other setting in
8 terms of quality, services, and location,
9 taking into consideration the needs and
10 best interests of each resident.

11 “(B) RELOCATION.—

12 “(i) IN GENERAL.—The State shall
13 ensure that, before a facility closes, all
14 residents of the facility have been success-
15 fully relocated to another facility or an al-
16 ternative home and community-based set-
17 ting.

18 “(ii) CONTINUATION OF PAYMENTS
19 UNTIL RESIDENTS RELOCATED.—The Sec-
20 retary may, as the Secretary determines
21 appropriate, continue to make payments
22 under this title with respect to residents of
23 a facility that has submitted a notification
24 under subparagraph (A) during the period
25 beginning on the date such notification is

1 submitted and ending on the date on which
2 the resident is successfully relocated.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect 1 year after the date of the
5 enactment of this Act.

6 **PART 3—IMPROVING STAFF TRAINING**

7 **SEC. 1431. DEMENTIA AND ABUSE PREVENTION TRAINING.**

8 (a) SKILLED NURSING FACILITIES.—Section
9 1819(f)(2)(A)(i)(I) of the Social Security Act (42 U.S.C.
10 1395i–3(f)(2)(A)(i)(I)) is amended by inserting “(includ-
11 ing, in the case of initial training and, if the Secretary
12 determines appropriate, in the case of ongoing training,
13 dementia management training and resident abuse preven-
14 tion training)” after “curriculum”.

15 (b) NURSING FACILITIES.—Section
16 1919(f)(2)(A)(i)(I) of the Social Security Act (42 U.S.C.
17 1396r(f)(2)(A)(i)(I)) is amended by inserting “(including,
18 in the case of initial training and, if the Secretary deter-
19 mines appropriate, in the case of ongoing training, demen-
20 tia management training and resident abuse prevention
21 training)” after “curriculum”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect 1 year after the date of the
24 enactment of this Act.

1 **SEC. 1432. STUDY AND REPORT ON TRAINING REQUIRED**
2 **FOR CERTIFIED NURSE AIDES AND SUPER-**
3 **VISORY STAFF.**

4 (a) STUDY.—

5 (1) IN GENERAL.—The Secretary shall conduct
6 a study on the content of training for certified nurse
7 aides and supervisory staff of skilled nursing facili-
8 ties and nursing facilities. The study shall include an
9 analysis of the following:

10 (A) Whether the number of initial training
11 hours for certified nurse aides required under
12 sections 1819(f)(2)(A)(i)(II) and
13 1919(f)(2)(A)(i)(II) of the Social Security Act
14 (42 U.S.C. 1395i-3(f)(2)(A)(i)(II);
15 1396r(f)(2)(A)(i)(II)) should be increased from
16 75 and, if so, what the required number of ini-
17 tial training hours should be, including any rec-
18 ommendations for the content of such training
19 (including training related to dementia).

20 (B) Whether requirements for ongoing
21 training under such sections
22 1819(f)(2)(A)(i)(II) and 1919(f)(2)(A)(i)(II)
23 should be increased from 12 hours per year, in-
24 cluding any recommendations for the content of
25 such training.

1 (2) CONSULTATION.—In conducting the anal-
2 ysis under paragraph (1)(A), the Secretary shall
3 consult with States that, as of the date of the enact-
4 ment of this Act, require more than 75 hours of
5 training for certified nurse aides.

6 (3) DEFINITIONS.—In this section:

7 (A) NURSING FACILITY.—The term “nurs-
8 ing facility” has the meaning given such term
9 in section 1919(a) of the Social Security Act
10 (42 U.S.C. 1396r(a)).

11 (B) SECRETARY.—The term “Secretary”
12 means the Secretary of Health and Human
13 Services, acting through the Assistant Secretary
14 for Planning and Evaluation.

15 (C) SKILLED NURSING FACILITY.—The
16 term “skilled nursing facility” has the meaning
17 given such term in section 1819(a) of the Social
18 Security Act (42 U.S.C. 1395(a)).

19 (b) REPORT.—Not later than 2 years after the date
20 of the enactment of this Act, the Secretary shall submit
21 to Congress a report containing the results of the study
22 conducted under subsection (a), together with rec-
23 ommendations for such legislation and administrative ac-
24 tion as the Secretary determines appropriate.

1 **Subtitle C—Quality Measurements**

2 **SEC. 1441. ESTABLISHMENT OF NATIONAL PRIORITIES FOR** 3 **QUALITY IMPROVEMENT.**

4 Title XI of the Social Security Act, as amended by
5 section 1401(a), is further amended by adding at the end
6 the following new part:

7 “PART E—QUALITY IMPROVEMENT

8 “ESTABLISHMENT OF NATIONAL PRIORITIES FOR
9 PERFORMANCE IMPROVEMENT

10 “SEC. 1191. (a) ESTABLISHMENT OF NATIONAL PRI-
11 ORITIES BY THE SECRETARY.—The Secretary shall estab-
12 lish and periodically update, not less frequently than tri-
13 ennially, national priorities for performance improvement.

14 “(b) RECOMMENDATIONS FOR NATIONAL PRIOR-
15 ITIES.—In establishing and updating national priorities
16 under subsection (a), the Secretary shall solicit and con-
17 sider recommendations from multiple outside stake-
18 holders.

19 “(c) CONSIDERATIONS IN SETTING NATIONAL PRI-
20 ORITIES.—With respect to such priorities, the Secretary
21 shall ensure that priority is given to areas in the delivery
22 of health care services in the United States that—

23 “(1) contribute to a large burden of disease, in-
24 cluding those that address the health care provided

1 to patients with prevalent, high-cost chronic dis-
2 eases;

3 “(2) have the greatest potential to decrease
4 morbidity and mortality in this country, including
5 those that are designed to eliminate harm to pa-
6 tients;

7 “(3) have the greatest potential for improving
8 the performance, affordability, and patient-
9 centeredness of health care, including those due to
10 variations in care;

11 “(4) address health disparities across groups
12 and areas; and

13 “(5) have the potential for rapid improvement
14 due to existing evidence, standards of care or other
15 reasons.

16 “(d) DEFINITIONS.—In this part:

17 “(1) CONSENSUS-BASED ENTITY.—The term
18 ‘consensus-based entity’ means an entity with a con-
19 tract with the Secretary under section 1890.

20 “(2) QUALITY MEASURE.—The term ‘quality
21 measure’ means a national consensus standard for
22 measuring the performance and improvement of pop-
23 ulation health, or of institutional providers of serv-
24 ices, physicians, and other health care practitioners
25 in the delivery of health care services.

1 “(e) FUNDING.—

2 “(1) IN GENERAL.—The Secretary shall provide
3 for the transfer, from the Federal Hospital Insur-
4 ance Trust Fund under section 1817 and the Fed-
5 eral Supplementary Medical Insurance Trust Fund
6 under section 1841 (in such proportion as the Sec-
7 retary determines appropriate), of \$2,000,000, for
8 the activities under this section for each of the fiscal
9 years 2010 through 2014.

10 “(2) AUTHORIZATION OF APPROPRIATIONS.—
11 For purposes of carrying out the provisions of this
12 section, in addition to funds otherwise available, out
13 of any funds in the Treasury not otherwise appro-
14 priated, there are appropriated to the Secretary of
15 Health and Human Services \$2,000,000 for each of
16 the fiscal years 2010 through 2014.”.

17 **SEC. 1442. DEVELOPMENT OF NEW QUALITY MEASURES;**

18 **GAO EVALUATION OF DATA COLLECTION**

19 **PROCESS FOR QUALITY MEASUREMENT.**

20 Part E of title XI of the Social Security Act, as added
21 by section 1441, is amended by adding at the end the fol-
22 lowing new sections:

23 **“SEC. 1192. DEVELOPMENT OF NEW QUALITY MEASURES.**

24 **“(a) AGREEMENTS WITH QUALIFIED ENTITIES.—**

1 “(1) IN GENERAL.—The Secretary shall enter
2 into agreements with qualified entities to develop
3 quality measures for the delivery of health care serv-
4 ices in the United States.

5 “(2) FORM OF AGREEMENTS.—The Secretary
6 may carry out paragraph (1) by contract, grant, or
7 otherwise.

8 “(3) RECOMMENDATIONS OF CONSENSUS-
9 BASED ENTITY.—In carrying out this section, the
10 Secretary shall—

11 “(A) seek public input; and

12 “(B) take into consideration recommenda-
13 tions of the consensus-based entity with a con-
14 tract with the Secretary under section 1890(a).

15 “(b) DETERMINATION OF AREAS WHERE QUALITY
16 MEASURES ARE REQUIRED.—Consistent with the na-
17 tional priorities established under this part and with the
18 programs administered by the Centers for Medicare &
19 Medicaid Services and in consultation with other relevant
20 Federal agencies, the Secretary shall determine areas in
21 which quality measures for assessing health care services
22 in the United States are needed.

23 “(c) DEVELOPMENT OF QUALITY MEASURES.—

24 “(1) PATIENT-CENTERED AND POPULATION-
25 BASED MEASURES.—Quality measures developed

1 under agreements under subsection (a) shall be de-
2 signed—

3 “(A) to assess outcomes and functional
4 status of patients;

5 “(B) to assess the continuity and coordina-
6 tion of care and care transitions for patients
7 across providers and health care settings, in-
8 cluding end of life care;

9 “(C) to assess patient experience and pa-
10 tient engagement;

11 “(D) to assess the safety, effectiveness,
12 and timeliness of care;

13 “(E) to assess health disparities including
14 those associated with individual race, ethnicity,
15 age, gender, place of residence or language;

16 “(F) to assess the efficiency and resource
17 use in the provision of care;

18 “(G) to the extent feasible, to be collected
19 as part of health information technologies sup-
20 porting better delivery of health care services;

21 “(H) to be available free of charge to users
22 for the use of such measures; and

23 “(I) to assess delivery of health care serv-
24 ices to individuals regardless of age.

1 “(2) AVAILABILITY OF MEASURES.—The Sec-
2 retary shall make quality measures developed under
3 this section available to the public.

4 “(3) TESTING OF PROPOSED MEASURES.—The
5 Secretary may use amounts made available under
6 subsection (f) to fund the testing of proposed quality
7 measures by qualified entities. Testing funded under
8 this paragraph shall include testing of the feasibility
9 and usability of proposed measures.

10 “(4) UPDATING OF ENDORSED MEASURES.—
11 The Secretary may use amounts made available
12 under subsection (f) to fund the updating (and test-
13 ing, if applicable) by consensus-based entities of
14 quality measures that have been previously endorsed
15 by such an entity as new evidence is developed, in
16 a manner consistent with section 1890(b)(3).

17 “(d) QUALIFIED ENTITIES.—Before entering into
18 agreements with a qualified entity, the Secretary shall en-
19 sure that the entity is a public, nonprofit or academic in-
20 stitution with technical expertise in the area of health
21 quality measurement.

22 “(e) APPLICATION FOR GRANT.—A grant may be
23 made under this section only if an application for the
24 grant is submitted to the Secretary and the application
25 is in such form, is made in such manner, and contains

1 such agreements, assurances, and information as the Sec-
2 retary determines to be necessary to carry out this section.

3 “(f) FUNDING.—

4 “(1) IN GENERAL.—The Secretary shall provide
5 for the transfer, from the Federal Hospital Insur-
6 ance Trust Fund under section 1817 and the Fed-
7 eral Supplementary Medical Insurance Trust Fund
8 under section 1841 (in such proportion as the Sec-
9 retary determines appropriate), of \$25,000,000, to
10 the Secretary for purposes of carrying out this sec-
11 tion for each of the fiscal years 2010 through 2014.

12 “(2) AUTHORIZATION OF APPROPRIATIONS.—
13 For purposes of carrying out the provisions of this
14 section, in addition to funds otherwise available, out
15 of any funds in the Treasury not otherwise appro-
16 priated, there are appropriated to the Secretary of
17 Health and Human Services \$25,000,000 for each
18 of the fiscal years 2010 through 2014.

19 **“SEC. 1193. GAO EVALUATION OF DATA COLLECTION PROC-**
20 **CESS FOR QUALITY MEASUREMENT.**

21 “(a) GAO EVALUATIONS.—The Comptroller General
22 of the United States shall conduct periodic evaluations of
23 the implementation of the data collection processes for
24 quality measures used by the Secretary.

1 “(b) CONSIDERATIONS.—In carrying out the evalua-
2 tion under subsection (a), the Comptroller General shall
3 determine—

4 “(1) whether the system for the collection of
5 data for quality measures provides for validation of
6 data as relevant and scientifically credible;

7 “(2) whether data collection efforts under the
8 system use the most efficient and cost-effective
9 means in a manner that minimizes administrative
10 burden on persons required to collect data and that
11 adequately protects the privacy of patients’ personal
12 health information and provides data security;

13 “(3) whether standards under the system pro-
14 vide for an appropriate opportunity for physicians
15 and other clinicians and institutional providers of
16 services to review and correct findings; and

17 “(4) the extent to which quality measures are
18 consistent with section 1192(c)(1) or result in direct
19 or indirect costs to users of such measures.

20 “(c) REPORT.—The Comptroller General shall sub-
21 mit reports to Congress and to the Secretary containing
22 a description of the findings and conclusions of the results
23 of each such evaluation.”.

1 **SEC. 1443. MULTI-STAKEHOLDER PRE-RULEMAKING INPUT**
2 **INTO SELECTION OF QUALITY MEASURES.**

3 Section 1808 of the Social Security Act (42 U.S.C.
4 1395b–9) is amended by adding at the end the following
5 new subsection:

6 “(d) MULTI-STAKEHOLDER PRE-RULEMAKING
7 INPUT INTO SELECTION OF QUALITY MEASURES.—

8 “(1) LIST OF MEASURES.—Not later than De-
9 cember 1 before each year (beginning with 2011),
10 the Secretary shall make public a list of measures
11 being considered for selection for quality measure-
12 ment by the Secretary in rulemaking with respect to
13 payment systems under this title beginning in the
14 payment year beginning in such year and for pay-
15 ment systems beginning in the calendar year fol-
16 lowing such year, as the case may be.

17 “(2) CONSULTATION ON SELECTION OF EN-
18 DORSED QUALITY MEASURES.—A consensus-based
19 entity that has entered into a contract under section
20 1890 shall, as part of such contract, convene multi-
21 stakeholder groups to provide recommendations on
22 the selection of individual or composite quality meas-
23 ures, for use in reporting performance information
24 to the public or for use in public health care pro-
25 grams.

1 “(3) MULTI-STAKEHOLDER INPUT.—Not later
2 than February 1 of each year (beginning with
3 2011), the consensus-based entity described in para-
4 graph (2) shall transmit to the Secretary the rec-
5 ommendations of multi-stakeholder groups provided
6 under paragraph (2). Such recommendations shall
7 be included in the transmissions the consensus-based
8 entity makes to the Secretary under the contract
9 provided for under section 1890.

10 “(4) REQUIREMENT FOR TRANSPARENCY IN
11 PROCESS.—

12 “(A) IN GENERAL.—In convening multi-
13 stakeholder groups under paragraph (2) with
14 respect to the selection of quality measures, the
15 consensus-based entity described in such para-
16 graph shall provide for an open and transparent
17 process for the activities conducted pursuant to
18 such convening.

19 “(B) SELECTION OF ORGANIZATIONS PAR-
20 TICIPATING IN MULTI-STAKEHOLDER
21 GROUPS.—The process under paragraph (2)
22 shall ensure that the selection of representatives
23 of multi-stakeholder groups includes provision
24 for public nominations for, and the opportunity
25 for public comment on, such selection.

1 “(5) USE OF INPUT.—The respective proposed
2 rule shall contain a summary of the recommenda-
3 tions made by the multi-stakeholder groups under
4 paragraph (2), as well as other comments received
5 regarding the proposed measures, and the extent to
6 which such proposed rule follows such recommenda-
7 tions and the rationale for not following such rec-
8 ommendations.

9 “(6) MULTI-STAKEHOLDER GROUPS.—For pur-
10 poses of this subsection, the term ‘multi-stakeholder
11 groups’ means, with respect to a quality measure, a
12 voluntary collaborative of organizations representing
13 persons interested in or affected by the use of such
14 quality measure, such as the following:

15 “(A) Hospitals and other institutional pro-
16 viders.

17 “(B) Physicians.

18 “(C) Health care quality alliances.

19 “(D) Nurses and other health care practi-
20 tioners.

21 “(E) Health plans.

22 “(F) Patient advocates and consumer
23 groups.

24 “(G) Employers.

1 “(H) Public and private purchasers of
2 health care items and services.

3 “(I) Labor organizations.

4 “(J) Relevant departments or agencies of
5 the United States.

6 “(K) Biopharmaceutical companies and
7 manufacturers of medical devices.

8 “(L) Licensing, credentialing, and accred-
9 iting bodies.

10 “(7) FUNDING.—

11 “(A) IN GENERAL.—The Secretary shall
12 provide for the transfer, from the Federal Hos-
13 pital Insurance Trust Fund under section 1817
14 and the Federal Supplementary Medical Insur-
15 ance Trust Fund under section 1841 (in such
16 proportion as the Secretary determines appro-
17 priate), of \$1,000,000, to the Secretary for pur-
18 poses of carrying out this subsection for each of
19 the fiscal years 2010 through 2014.

20 “(B) AUTHORIZATION OF APPROPRIA-
21 TIONS.—For purposes of carrying out the provi-
22 sions of this subsection, in addition to funds
23 otherwise available, out of any funds in the
24 Treasury not otherwise appropriated, there are
25 appropriated to the Secretary of Health and

1 Human Services \$1,000,000 for each of the fis-
2 cal years 2010 through 2014.”.

3 **SEC. 1444. APPLICATION OF QUALITY MEASURES.**

4 (a) INPATIENT HOSPITAL SERVICES.—Section
5 1886(b)(3)(B) of such Act (42 U.S.C. 1395ww(b)(3)(B))
6 is amended by adding at the end the following new clause:

7 “(x)(I) Subject to subclause (II), for purposes of re-
8 porting data on quality measures for inpatient hospital
9 services furnished during fiscal year 2012 and each subse-
10 quent fiscal year, the quality measures specified under
11 clause (viii) shall be measures selected by the Secretary
12 from measures that have been endorsed by the entity with
13 a contract with the Secretary under section 1890(a).

14 “(II) In the case of a specified area or medical topic
15 determined appropriate by the Secretary for which a fea-
16 sible and practical quality measure has not been endorsed
17 by the entity with a contract under section 1890(a), the
18 Secretary may specify a measure that is not so endorsed
19 as long as due consideration is given to measures that
20 have been endorsed or adopted by a consensus organiza-
21 tion identified by the Secretary. The Secretary shall sub-
22 mit such a non-endorsed measure to the entity for consid-
23 eration for endorsement. If the entity considers but does
24 not endorse such a measure and if the Secretary does not
25 phase-out use of such measure, the Secretary shall include

1 the rationale for continued use of such a measure in rule-
2 making.”.

3 (b) OUTPATIENT HOSPITAL SERVICES.—Section
4 1833(t)(17) of such Act (42 U.S.C. 1395l(t)(17)) is
5 amended by adding at the end the following new subpara-
6 graph:

7 “(F) USE OF ENDORSED QUALITY MEAS-
8 URES.—The provisions of clause (x) of section
9 1886(b)(3)(C) shall apply to quality measures
10 for covered OPD services under this paragraph
11 in the same manner as such provisions apply to
12 quality measures for inpatient hospital serv-
13 ices.”.

14 (c) PHYSICIANS’ SERVICES.—Section
15 1848(k)(2)(C)(ii) of such Act (42 U.S.C. 1395w-
16 4(k)(2)(C)(ii)) is amended by adding at the end the fol-
17 lowing: “The Secretary shall submit such a non-endorsed
18 measure to the entity for consideration for endorsement.
19 If the entity considers but does not endorse such a meas-
20 ure and if the Secretary does not phase-out use of such
21 measure, the Secretary shall include the rationale for con-
22 tinued use of such a measure in rulemaking.”.

23 (d) RENAL DIALYSIS SERVICES.—Section
24 1881(h)(2)(B)(ii) of such Act (42 U.S.C.
25 1395rr(h)(2)(B)(ii)) is amended by adding at the end the

1 following: “The Secretary shall submit such a non-en-
2 dorsed measure to the entity for consideration for endorse-
3 ment. If the entity considers but does not endorse such
4 a measure and if the Secretary does not phase-out use
5 of such measure, the Secretary shall include the rationale
6 for continued use of such a measure in rulemaking.”.

7 (e) ENDORSEMENT OF STANDARDS.—Section
8 1890(b)(2) of the Social Security Act (42 U.S.C.
9 1395aaa(b)(2)) is amended by adding after and below sub-
10 paragraph (B) the following:

11 “If the entity does not endorse a measure, such en-
12 tity shall explain the reasons and provide sugges-
13 tions about changes to such measure that might
14 make it a potentially endorsable measure.’”.

15 (f) EFFECTIVE DATE.—Except as otherwise pro-
16 vided, the amendments made by this section shall apply
17 to quality measures applied for payment years beginning
18 with 2012 or fiscal year 2012, as the case may be.

19 **SEC. 1445. CONSENSUS-BASED ENTITY FUNDING.**

20 Section 1890(d) of the Social Security Act (42 U.S.C.
21 1395aaa(d)) is amended by striking “for each of fiscal
22 years 2009 through 2012” and inserting “for fiscal year
23 2009, and \$12,000,000 for each of the fiscal years 2010
24 through 2012.”

1 **Subtitle D—Physician Payments**
2 **Sunshine Provision**

3 **SEC. 1451. REPORTS ON FINANCIAL RELATIONSHIPS BE-**
4 **TWEEN MANUFACTURERS AND DISTRIBUTORS OF COVERED DRUGS, DEVICES,**
5 **BIOLOGICALS, OR MEDICAL SUPPLIES**
6 **UNDER MEDICARE, MEDICAID, OR CHIP AND**
7 **PHYSICIANS AND OTHER HEALTH CARE ENTITIES AND BETWEEN PHYSICIANS AND OTHER**
8 **HEALTH CARE ENTITIES.**

9 **HEALTH CARE ENTITIES.**
10 **HEALTH CARE ENTITIES.**
11 (a) IN GENERAL.—Part A of title XI of the Social
12 Security Act (42 U.S.C. 1301 et seq.), as amended by sec-
13 tion 1631(a), is further amended by inserting after section
14 1128G the following new section:

15 **“SEC. 1128H. FINANCIAL REPORTS ON PHYSICIANS’ FINAN-**
16 **CIAL RELATIONSHIPS WITH MANUFACTUR-**
17 **ERS AND DISTRIBUTORS OF COVERED**
18 **DRUGS, DEVICES, BIOLOGICALS, OR MEDICAL**
19 **SUPPLIES UNDER MEDICARE, MEDICAID, OR**
20 **CHIP AND WITH ENTITIES THAT BILL FOR**
21 **SERVICES UNDER MEDICARE.**

22 “(a) REPORTING OF PAYMENTS OR OTHER TRANS-
23 FERS OF VALUE.—

24 “(1) IN GENERAL.—Except as provided in this
25 subsection, not later than March 31, 2011 and an-

1 nually thereafter, each applicable manufacturer or
2 distributor that provides a payment or other transfer
3 of value to a covered recipient, or to an entity or in-
4 dividual at the request of or designated on behalf of
5 a covered recipient, shall submit to the Secretary, in
6 such electronic form as the Secretary shall require,
7 the following information with respect to the pre-
8 ceding calendar year:

9 “(A) With respect to the covered recipient,
10 the recipient’s name, business address, physi-
11 cian specialty, and national provider identifier.

12 “(B) With respect to the payment or other
13 transfer of value, other than a drug sample—

14 “(i) its value and date;

15 “(ii) the name of the related drug, de-
16 vice, or supply, if available; and

17 “(iii) a description of its form, indi-
18 cated (as appropriate for all that apply)

19 as—

20 “(I) cash or a cash equivalent;

21 “(II) in-kind items or services;

22 “(III) stock, a stock option, or
23 any other ownership interest, divi-
24 dend, profit, or other return on invest-
25 ment; or

1 “(IV) any other form (as defined
2 by the Secretary).

3 “(C) With respect to a drug sample, the
4 name, number, date, and dosage units of the
5 sample.

6 “(2) AGGREGATE REPORTING.—Information
7 submitted by an applicable manufacturer or dis-
8 tributor under paragraph (1) shall include the ag-
9 gregate amount of all payments or other transfers of
10 value provided by the manufacturer or distributor to
11 covered recipients (and to entities or individuals at
12 the request of or designated on behalf of a covered
13 recipient) during the year involved, including all pay-
14 ments and transfers of value regardless of whether
15 such payments or transfer of value were individually
16 disclosed.

17 “(3) SPECIAL RULE FOR CERTAIN PAYMENTS
18 OR OTHER TRANSFERS OF VALUE.—In the case
19 where an applicable manufacturer or distributor pro-
20 vides a payment or other transfer of value to an en-
21 tity or individual at the request of or designated on
22 behalf of a covered recipient, the manufacturer or
23 distributor shall disclose that payment or other
24 transfer of value under the name of the covered re-
25 cipient.

1 “(4) DELAYED REPORTING FOR PAYMENTS
2 MADE PURSUANT TO PRODUCT DEVELOPMENT
3 AGREEMENTS.—In the case of a payment or other
4 transfer of value made to a covered recipient by an
5 applicable manufacturer or distributor pursuant to a
6 product development agreement for services fur-
7 nished in connection with the development of a new
8 drug, device, biological, or medical supply, the appli-
9 cable manufacturer or distributor may report the
10 value and recipient of such payment or other trans-
11 fer of value in the first reporting period under this
12 subsection in the next reporting deadline after the
13 earlier of the following:

14 “(A) The date of the approval or clearance
15 of the covered drug, device, biological, or med-
16 ical supply by the Food and Drug Administra-
17 tion.

18 “(B) Two calendar years after the date
19 such payment or other transfer of value was
20 made.

21 “(5) DELAYED REPORTING FOR PAYMENTS
22 MADE PURSUANT TO CLINICAL INVESTIGATIONS.—In
23 the case of a payment or other transfer of value
24 made to a covered recipient by an applicable manu-
25 facturer or distributor in connection with a clinical

1 investigation regarding a new drug, device, biologi-
2 cal, or medical supply, the applicable manufacturer
3 or distributor may report as required under this sec-
4 tion in the next reporting period under this sub-
5 section after the earlier of the following:

6 “(A) The date that the clinical investiga-
7 tion is registered on the website maintained by
8 the National Institutes of Health pursuant to
9 section 671 of the Food and Drug Administra-
10 tion Amendments Act of 2007.

11 “(B) Two calendar years after the date
12 such payment or other transfer of value was
13 made.

14 “(6) CONFIDENTIALITY.—Information de-
15 scribed in paragraph (4) or (5) shall be considered
16 confidential and shall not be subject to disclosure
17 under section 552 of title 5, United States Code, or
18 any other similar Federal, State, or local law, until
19 or after the date on which the information is made
20 available to the public under such paragraph.

21 “(b) REPORTING OF OWNERSHIP INTEREST BY PHY-
22 SICIANS IN HOSPITALS AND OTHER ENTITIES THAT BILL
23 MEDICARE.—Not later than March 31 of each year (be-
24 ginning with 2011), each hospital or other health care en-
25 tity (not including a Medicare Advantage organization)

1 that bills the Secretary under part A or part B of title
2 XVIII for services shall report on the ownership shares
3 (other than ownership shares described in section 1877(c))
4 of each physician who, directly or indirectly, owns an in-
5 terest in the entity. In this subsection, the term ‘physician’
6 includes a physician’s immediate family members (as de-
7 fined for purposes of section 1877(a)).

8 “(c) PUBLIC AVAILABILITY.—

9 “(1) IN GENERAL.—The Secretary shall estab-
10 lish procedures to ensure that, not later than Sep-
11 tember 30, 2011, and on June 30 of each year be-
12 ginning thereafter, the information submitted under
13 subsections (a) and (b), other than information re-
14 gard drug samples, with respect to the preceding
15 calendar year is made available through an Internet
16 website that—

17 “(A) is searchable and is in a format that
18 is clear and understandable;

19 “(B) contains information that is pre-
20 sented by the name of the applicable manufac-
21 turer or distributor, the name of the covered re-
22 cipient, the business address of the covered re-
23 cipient, the specialty (if applicable) of the cov-
24 ered recipient, the value of the payment or
25 other transfer of value, the date on which the

1 payment or other transfer of value was provided
2 to the covered recipient, the form of the pay-
3 ment or other transfer of value, indicated (as
4 appropriate) under subsection (a)(1)(B)(ii), the
5 nature of the payment or other transfer of
6 value, indicated (as appropriate) under sub-
7 section (a)(1)(B)(iii), and the name of the cov-
8 ered drug, device, biological, or medical supply,
9 as applicable;

10 “(C) contains information that is able to
11 be easily aggregated and downloaded;

12 “(D) contains a description of any enforce-
13 ment actions taken to carry out this section, in-
14 cluding any penalties imposed under subsection
15 (d), during the preceding year;

16 “(E) contains background information on
17 industry-physician relationships;

18 “(F) in the case of information submitted
19 with respect to a payment or other transfer of
20 value described in subsection (a)(5), lists such
21 information separately from the other informa-
22 tion submitted under subsection (a) and des-
23 ignates such separately listed information as
24 funding for clinical research;

1 “(G) contains any other information the
2 Secretary determines would be helpful to the
3 average consumer; and

4 “(H) provides the covered recipient an op-
5 portunity to submit corrections to the informa-
6 tion made available to the public with respect to
7 the covered recipient.

8 “(2) ACCURACY OF REPORTING.—The accuracy
9 of the information that is submitted under sub-
10 sections (a) and (b) and made available under para-
11 graph (1) shall be the responsibility of the applicable
12 manufacturer or distributor of a covered drug, de-
13 vice, biological, or medical supply reporting under
14 subsection (a) or hospital or other health care entity
15 reporting physician ownership under subsection (b).
16 The Secretary shall establish procedures to ensure
17 that the covered recipient is provided with an oppor-
18 tunity to submit corrections to the manufacturer,
19 distributor, hospital, or other entity reporting under
20 subsection (a) or (b) with regard to information
21 made public with respect to the covered recipient
22 and, under such procedures, the corrections shall be
23 transmitted to the Secretary.

24 “(3) SPECIAL RULE FOR DRUG SAMPLES.—In-
25 formation relating to drug samples provided under

1 subsection (a) shall not be made available to the
2 public by the Secretary but may be made available
3 outside the Department of Health and Human Serv-
4 ices by the Secretary for research or legitimate busi-
5 ness purposes pursuant to data use agreements.

6 “(4) SPECIAL RULE FOR NATIONAL PROVIDER
7 IDENTIFIERS.—Information relating to national pro-
8 vider identifiers provided under subsection (a) shall
9 not be made available to the public by the Secretary
10 but may be made available outside the Department
11 of Health and Human Services by the Secretary for
12 research or legitimate business purposes pursuant to
13 data use agreements.

14 “(d) PENALTIES FOR NONCOMPLIANCE.—

15 “(1) FAILURE TO REPORT.—

16 “(A) IN GENERAL.—Subject to subpara-
17 graph (B), except as provided in paragraph (2),
18 any applicable manufacturer or distributor that
19 fails to submit information required under sub-
20 section (a) in a timely manner in accordance
21 with regulations promulgated to carry out such
22 subsection, and any hospital or other entity that
23 fails to submit information required under sub-
24 section (b) in a timely manner in accordance
25 with regulations promulgated to carry out such

1 subsection shall be subject to a civil money pen-
2 alty of not less than \$1,000, but not more than
3 \$10,000, for each payment or other transfer of
4 value or ownership or investment interest not
5 reported as required under such subsection.
6 Such penalty shall be imposed and collected in
7 the same manner as civil money penalties under
8 subsection (a) of section 1128A are imposed
9 and collected under that section.

10 “(B) LIMITATION.—The total amount of
11 civil money penalties imposed under subpara-
12 graph (A) with respect to each annual submis-
13 sion of information under subsection (a) by an
14 applicable manufacturer or distributor or other
15 entity shall not exceed \$150,000.

16 “(2) KNOWING FAILURE TO REPORT.—

17 “(A) IN GENERAL.—Subject to subpara-
18 graph (B), any applicable manufacturer or dis-
19 tributor that knowingly fails to submit informa-
20 tion required under subsection (a) in a timely
21 manner in accordance with regulations promul-
22 gated to carry out such subsection and any hos-
23 pital or other entity that fails to submit infor-
24 mation required under subsection (b) in a time-
25 ly manner in accordance with regulations pro-

1 mulgated to carry out such subsection, shall be
2 subject to a civil money penalty of not less than
3 \$10,000, but not more than \$100,000, for each
4 payment or other transfer of value or ownership
5 or investment interest not reported as required
6 under such subsection. Such penalty shall be
7 imposed and collected in the same manner as
8 civil money penalties under subsection (a) of
9 section 1128A are imposed and collected under
10 that section.

11 “(B) LIMITATION.—The total amount of
12 civil money penalties imposed under subpara-
13 graph (A) with respect to each annual submis-
14 sion of information under subsection (a) or (b)
15 by an applicable manufacturer, distributor, or
16 entity shall not exceed \$1,000,000, or, if great-
17 er, 0.1 percentage of the total annual revenues
18 of the manufacturer, distributor, or entity.

19 “(3) USE OF FUNDS.—Funds collected by the
20 Secretary as a result of the imposition of a civil
21 money penalty under this subsection shall be used to
22 carry out this section.

23 “(4) ENFORCEMENT THROUGH STATE ATTOR-
24 NEYS GENERAL.—The attorney general of a State,
25 after providing notice to the Secretary of an intent

1 to proceed under this paragraph in a specific case
2 and providing the Secretary with an opportunity to
3 bring an action under this subsection and the Sec-
4 retary declining such opportunity, may proceed
5 under this subsection against a manufacturer or dis-
6 tributor in the State.

7 “(e) ANNUAL REPORT TO CONGRESS.—Not later
8 than April 1 of each year beginning with 2011, the Sec-
9 retary shall submit to Congress a report that includes the
10 following:

11 “(1) The information submitted under this sec-
12 tion during the preceding year, aggregated for each
13 applicable manufacturer or distributor of a covered
14 drug, device, biological, or medical supply that sub-
15 mitted such information during such year.

16 “(2) A description of any enforcement actions
17 taken to carry out this section, including any pen-
18 alties imposed under subsection (d), during the pre-
19 ceding year.

20 “(f) DEFINITIONS.—In this section:

21 “(1) APPLICABLE MANUFACTURER; APPLICA-
22 BLE DISTRIBUTOR.—The term ‘applicable manufac-
23 turer’ means a manufacturer of a covered drug, de-
24 vice, biological, or medical supply, and the term ‘ap-

1 plicable distributor’ means a distributor of a covered
2 drug, device, or medical supply.

3 “(2) CLINICAL INVESTIGATION.—The term
4 ‘clinical investigation’ means any experiment involv-
5 ing one or more human subjects, or materials de-
6 rived from human subjects, in which a drug or de-
7 vice is administered, dispensed, or used.

8 “(3) COVERED DRUG, DEVICE, BIOLOGICAL, OR
9 MEDICAL SUPPLY.—The term ‘covered’ means, with
10 respect to a drug, device, biological, or medical sup-
11 ply, such a drug, device, biological, or medical supply
12 for which payment is available under title XVIII or
13 a State plan under title XIX or XXI (or a waiver
14 of such a plan).

15 “(4) COVERED RECIPIENT.—The term ‘covered
16 recipient’ means the following:

17 “(A) A physician.

18 “(B) A physician group practice.

19 “(C) Any other prescriber of a covered
20 drug, device, biological, or medical supply.

21 “(D) A pharmacy or pharmacist.

22 “(E) A health insurance issuer, group
23 health plan, or other entity offering a health
24 benefits plan, including any employee of such
25 an issuer, plan, or entity.

1 “(F) A pharmacy benefit manager, includ-
2 ing any employee of such a manager.

3 “(G) A hospital.

4 “(H) A medical school.

5 “(I) A sponsor of a continuing medical
6 education program.

7 “(J) A patient advocacy or disease specific
8 group.

9 “(K) A organization of health care profes-
10 sionals.

11 “(L) A biomedical researcher.

12 “(M) A group purchasing organization.

13 “(5) DISTRIBUTOR OF A COVERED DRUG, DE-
14 VICE, OR MEDICAL SUPPLY.—The term ‘distributor
15 of a covered drug, device, or medical supply’ means
16 any entity which is engaged in the marketing or dis-
17 tribution of a covered drug, device, or medical sup-
18 ply (or any subsidiary of or entity affiliated with
19 such entity), but does not include a wholesale phar-
20 maceutical distributor.

21 “(6) EMPLOYEE.—The term ‘employee’ has the
22 meaning given such term in section 1877(h)(2).

23 “(7) KNOWINGLY.—The term ‘knowingly’ has
24 the meaning given such term in section 3729(b) of
25 title 31, United States Code.

1 “(8) MANUFACTURER OF A COVERED DRUG,
2 DEVICE, BIOLOGICAL, OR MEDICAL SUPPLY.—The
3 term ‘manufacturer of a covered drug, device, bio-
4 logical, or medical supply’ means any entity which is
5 engaged in the production, preparation, propagation,
6 compounding, conversion, processing, marketing, or
7 distribution of a covered drug, device, biological, or
8 medical supply (or any subsidiary of or entity affili-
9 ated with such entity).

10 “(9) PAYMENT OR OTHER TRANSFER OF
11 VALUE.—

12 “(A) IN GENERAL.—The term ‘payment or
13 other transfer of value’ means a transfer of
14 anything of value for or of any of the following:

15 “(i) Gift, food, or entertainment.

16 “(ii) Travel or trip.

17 “(iii) Honoraria.

18 “(iv) Research funding or grant.

19 “(v) Education or conference funding.

20 “(vi) Consulting fees.

21 “(vii) Ownership or investment inter-
22 est and royalties or license fee.

23 “(B) INCLUSIONS.—Subject to subpara-
24 graph (C), the term ‘payment or other transfer
25 of value’ includes any compensation, gift, hono-

1 rarium, speaking fee, consulting fee, travel,
2 services, dividend, profit distribution, stock or
3 stock option grant, or any ownership or invest-
4 ment interest held by a physician in a manufac-
5 turer (excluding a dividend or other profit dis-
6 tribution from, or ownership or investment in-
7 terest in, a publicly traded security or mutual
8 fund (as described in section 1877(e))).

9 “(C) EXCLUSIONS.—The term ‘payment or
10 other transfer of value’ does not include the fol-
11 lowing:

12 “(i) Any payment or other transfer of
13 value provided by an applicable manufac-
14 turer or distributor to a covered recipient
15 where the amount transferred to, requested
16 by, or designated on behalf of the covered
17 recipient does not exceed \$5.

18 “(ii) The loan of a covered device for
19 a short-term trial period, not to exceed 90
20 days, to permit evaluation of the covered
21 device by the covered recipient.

22 “(iii) Items or services provided under
23 a contractual warranty, including the re-
24 placement of a covered device, where the
25 terms of the warranty are set forth in the

1 purchase or lease agreement for the cov-
2 ered device.

3 “(iv) A transfer of anything of value
4 to a covered recipient when the covered re-
5 cipient is a patient and not acting in the
6 professional capacity of a covered recipient.

7 “(v) In-kind items used for the provi-
8 sion of charity care.

9 “(vi) A dividend or other profit dis-
10 tribution from, or ownership or investment
11 interest in, a publicly traded security and
12 mutual fund (as described in section
13 1877(c)).

14 “(vii) Compensation paid by a manu-
15 facturer or distributor of a covered drug,
16 device, biological, or medical supply to a
17 covered recipient who is directly employed
18 by and works solely for such manufacturer
19 or distributor.

20 “(viii) Any discount or cash rebate.

21 “(10) PHYSICIAN.—The term ‘physician’ has
22 the meaning given that term in section 1861(r). For
23 purposes of this section, such term does not include
24 a physician who is an employee of the applicable

1 manufacturer that is required to submit information
2 under subsection (a).

3 “(g) ANNUAL REPORTS TO STATES.—Not later than
4 April 1 of each year beginning with 2011, the Secretary
5 shall submit to States a report that includes a summary
6 of the information submitted under subsections (a) and
7 (d) during the preceding year with respect to covered re-
8 cipients or other hospitals and entities in the State.

9 “(h) RELATION TO STATE LAWS.—

10 “(1) IN GENERAL.—Effective on January 1,
11 2011, subject to paragraph (2), the provisions of
12 this section shall preempt any law or regulation of
13 a State or of a political subdivision of a State that
14 requires an applicable manufacturer and applicable
15 distributor (as such terms are defined in subsection
16 (f)) to disclose or report, in any format, the type of
17 information (described in subsection (a)) regarding a
18 payment or other transfer of value provided by the
19 manufacturer to a covered recipient (as so defined).

20 “(2) NO PREEMPTION OF ADDITIONAL RE-
21 QUIREMENTS.—Paragraph (1) shall not preempt any
22 law or regulation of a State or of a political subdivi-
23 sion of a State that requires any of the following:

1 “(A) The disclosure or reporting of infor-
2 mation not of the type required to be disclosed
3 or reported under this section.

4 “(B) The disclosure or reporting, in any
5 format, of the type of information required to
6 be disclosed or reported under this section to a
7 Federal, State, or local governmental agency for
8 public health surveillance, investigation, or
9 other public health purposes or health oversight
10 purposes.

11 “(C) The discovery or admissibility of in-
12 formation described in this section in a crimi-
13 nal, civil, or administrative proceeding.”.

14 (b) AVAILABILITY OF INFORMATION FROM THE DIS-
15 CLOSURE OF FINANCIAL RELATIONSHIP REPORT
16 (DFRR).—The Secretary of Health and Human Services
17 shall submit to Congress a report on the full results of
18 the Disclosure of Physician Financial Relationships sur-
19 veys required pursuant to section 5006 of the Deficit Re-
20 duction Act of 2005. Such report shall be submitted to
21 Congress not later than the date that is 6 months after
22 the date such surveys are collected and shall be made pub-
23 licly available on an Internet website of the Department
24 of Health and Human Services.

1 **Subtitle E—Public Reporting on**
2 **Health Care-Associated Infections**

3 **SEC. 1461. REQUIREMENT FOR PUBLIC REPORTING BY**
4 **HOSPITALS AND AMBULATORY SURGICAL**
5 **CENTERS ON HEALTH CARE-ASSOCIATED IN-**
6 **FECTIONS.**

7 (a) IN GENERAL.—Title XI of the Social Security Act
8 is amended by inserting after section 1138 the following
9 section:

10 **“SEC. 1138A. REQUIREMENT FOR PUBLIC REPORTING BY**
11 **HOSPITALS AND AMBULATORY SURGICAL**
12 **CENTERS ON HEALTH CARE-ASSOCIATED IN-**
13 **FECTIONS.**

14 “(a) REPORTING REQUIREMENT.—

15 “(1) IN GENERAL.—The Secretary shall provide
16 that a hospital (as defined in subsection (g)) or am-
17 bulatory surgical center meeting the requirements of
18 titles XVIII or XIX may participate in the programs
19 established under such titles (pursuant to the appli-
20 cable provisions of law, including sections
21 1866(a)(1) and 1832(a)(1)(F)(i)) only if, in accord-
22 ance with this section, the hospital or center reports
23 such information on health care-associated infections
24 that develop in the hospital or center (and such de-

1 mographic information associated with such infec-
2 tions) as the Secretary specifies.

3 “(2) REPORTING PROTOCOLS.— Such informa-
4 tion shall be reported in accordance with reporting
5 protocols established by the Secretary through the
6 Director of the Centers for Disease Control and Pre-
7 vention (in this section referred to as the ‘CDC’)
8 and to the National Healthcare Safety Network of
9 the CDC or under such another reporting system of
10 such Centers as determined appropriate by the Sec-
11 retary in consultation with such Director.

12 “(3) COORDINATION WITH HIT.—The Sec-
13 retary, through the Director of the CDC and the Of-
14 fice of the National Coordinator for Health Informa-
15 tion Technology, shall ensure that the transmission
16 of information under this subsection is coordinated
17 with systems established under the HITECH Act,
18 where appropriate.

19 “(4) PROCEDURES TO ENSURE THE VALIDITY
20 OF INFORMATION.—The Secretary shall establish
21 procedures regarding the validity of the information
22 submitted under this subsection in order to ensure
23 that such information is appropriately compared
24 across hospitals and centers. Such procedures shall

1 address failures to report as well as errors in report-
2 ing.

3 “(5) IMPLEMENTATION.—Not later than 1 year
4 after the date of enactment of this section, the Sec-
5 retary, through the Director of CDC, shall promul-
6 gate regulations to carry out this section.

7 “(b) PUBLIC POSTING OF INFORMATION.—The Sec-
8 retary shall promptly post, on the official public Internet
9 site of the Department of Health and Human Services,
10 the information reported under subsection (a). Such infor-
11 mation shall be set forth in a manner that allows for the
12 comparison of information on health care-associated infec-
13 tions—

14 “(1) among hospitals and ambulatory surgical
15 centers; and

16 “(2) by demographic information.

17 “(c) ANNUAL REPORT TO CONGRESS.—On an annual
18 basis the Secretary shall submit to the Congress a report
19 that summarizes each of the following:

20 “(1) The number and types of health care-asso-
21 ciated infections reported under subsection (a) in
22 hospitals and ambulatory surgical centers during
23 such year.

1 “(2) Factors that contribute to the occurrence
2 of such infections, including health care worker im-
3 munization rates.

4 “(3) Based on the most recent information
5 available to the Secretary on the composition of the
6 professional staff of hospitals and ambulatory sur-
7 gical centers, the number of certified infection con-
8 trol professionals on the staff of hospitals and ambu-
9 latory surgical centers.

10 “(4) The total increases or decreases in health
11 care costs that resulted from increases or decreases
12 in the rates of occurrence of each such type of infec-
13 tion during such year.

14 “(5) Recommendations, in coordination with the
15 Center for Quality Improvement established under
16 section 931 of the Public Health Service Act, for
17 best practices to eliminate the rates of occurrence of
18 each such type of infection in hospitals and ambula-
19 tory surgical centers.

20 “(d) NON-PREEMPTION OF STATE LAWS.—Nothing
21 in this section shall be construed as preempting or other-
22 wise affecting any provision of State law relating to the
23 disclosure of information on health care-associated infec-
24 tions or patient safety procedures for a hospital or ambu-
25 latory surgical center.

1 “(e) HEALTH CARE-ASSOCIATED INFECTION.—For
2 purposes of this section:

3 “(1) IN GENERAL.—The term ‘health care-asso-
4 ciated infection’ means an infection that develops in
5 a patient who has received care in any institutional
6 setting where health care is delivered and is related
7 to receiving health care.

8 “(2) RELATED TO RECEIVING HEALTH CARE.—
9 The term ‘related to receiving health care’, with re-
10 spect to an infection, means that the infection was
11 not incubating or present at the time health care
12 was provided.

13 “(f) APPLICATION TO CRITICAL ACCESS HOS-
14 PITALS.—For purposes of this section, the term ‘hospital’
15 includes a critical access hospital, as defined in section
16 1861(mm)(1).”.

17 (b) EFFECTIVE DATE.—With respect to section
18 1138A of the Social Security Act (as inserted by sub-
19 section (a) of this section), the requirement under such
20 section that hospitals and ambulatory surgical centers
21 submit reports takes effect on such date (not later than
22 2 years after the date of the enactment of this Act) as
23 the Secretary of Health and Human Services shall specify.
24 In order to meet such deadline, the Secretary may imple-
25 ment such section through guidance or other instructions.

1 (c) GAO REPORT.—Not later than 18 months after
2 the date of the enactment of this Act, the Comptroller
3 General of the United States shall submit to Congress a
4 report on the program established under section 1138A
5 of the Social Security Act, as inserted by subsection (a).
6 Such report shall include an analysis of the appropriate-
7 ness of the types of information required for submission,
8 compliance with reporting requirements, the success of the
9 validity procedures established, and any conflict or overlap
10 between the reporting required under such section and any
11 other reporting systems mandated by either the States or
12 the Federal Government.

13 (d) REPORT ON ADDITIONAL DATA.—Not later than
14 18 months after the date of the enactment of this Act,
15 the Secretary of Health and Human Services shall submit
16 to the Congress a report on the appropriateness of expand-
17 ing the requirements under such section to include addi-
18 tional information (such as health care worker immuniza-
19 tion rates), in order to improve health care quality and
20 patient safety.

1 **TITLE V—MEDICARE GRADUATE**
2 **MEDICAL EDUCATION**

3 **SEC. 1501. DISTRIBUTION OF UNUSED RESIDENCY POSI-**
4 **TIONS.**

5 (a) IN GENERAL.—Section 1886(h) of the Social Se-
6 curity Act (42 U.S.C. 1395ww(h)) is amended—

7 (1) in paragraph (4)(F)(i), by striking “para-
8 graph (7)” and inserting “paragraphs (7) and (8)”;

9 (2) in paragraph (4)(H)(i), by striking “para-
10 graph (7)” and inserting “paragraphs (7) and (8)”;

11 (3) in paragraph (7)(E), by inserting “and
12 paragraph (8)” after “this paragraph”; and

13 (4) by adding at the end the following new
14 paragraph:

15 “(8) ADDITIONAL REDISTRIBUTION OF UNUSED
16 RESIDENCY POSITIONS.—

17 “(A) REDUCTIONS IN LIMIT BASED ON UN-
18 USED POSITIONS.—

19 “(i) PROGRAMS SUBJECT TO REDUC-
20 TION.—If a hospital’s reference resident
21 level (specified in clause (ii)) is less than
22 the otherwise applicable resident limit (as
23 defined in subparagraph (C)(ii)), effective
24 for portions of cost reporting periods oc-
25 ccurring on or after July 1, 2011, the oth-

1 otherwise applicable resident limit shall be re-
2 duced by 90 percent of the difference be-
3 tween such otherwise applicable resident
4 limit and such reference resident level.

5 “(ii) REFERENCE RESIDENT LEVEL.—

6 “(I) IN GENERAL.—Except as
7 otherwise provided in a subsequent
8 subclause, the reference resident level
9 specified in this clause for a hospital
10 is the highest resident level for any of
11 the 3 most recent cost reporting peri-
12 ods (ending before the date of the en-
13 actment of this paragraph) of the hos-
14 pital for which a cost report has been
15 settled (or, if not, submitted (subject
16 to audit)), as determined by the Sec-
17 retary.

18 “(II) USE OF MOST RECENT AC-
19 COUNTING PERIOD TO RECOGNIZE EX-
20 PANSION OF EXISTING PROGRAMS.—If
21 a hospital submits a timely request to
22 increase its resident level due to an
23 expansion, or planned expansion, of
24 an existing residency training pro-
25 gram that is not reflected on the most

1 recent settled or submitted cost re-
2 port, after audit and subject to the
3 discretion of the Secretary, subject to
4 subclause (IV), the reference resident
5 level for such hospital is the resident
6 level that includes the additional resi-
7 dents attributable to such expansion
8 or establishment, as determined by
9 the Secretary. The Secretary is au-
10 thorized to determine an alternative
11 reference resident level for a hospital
12 that submitted to the Secretary a
13 timely request, before the start of the
14 2009–2010 academic year, for an in-
15 crease in its reference resident level
16 due to a planned expansion.

17 “(III) SPECIAL PROVIDER
18 AGREEMENT.—In the case of a hos-
19 pital described in paragraph
20 (4)(H)(v), the reference resident level
21 specified in this clause is the limita-
22 tion applicable under subclause (I) of
23 such paragraph.

24 “(IV) PREVIOUS REDISTRIBU-
25 TION.—The reference resident level

1 specified in this clause for a hospital
2 shall be increased to the extent re-
3 quired to take into account an in-
4 crease in resident positions made
5 available to the hospital under para-
6 graph (7)(B) that are not otherwise
7 taken into account under a previous
8 subclause.

9 “(iii) AFFILIATION.—The provisions
10 of clause (i) shall be applied to hospitals
11 which are members of the same affiliated
12 group (as defined by the Secretary under
13 paragraph (4)(H)(ii)) and to the extent the
14 hospitals can demonstrate that they are
15 filling any additional resident slots allo-
16 cated to other hospitals through an affili-
17 ation agreement, the Secretary shall adjust
18 the determination of available slots accord-
19 ingly, or which the Secretary otherwise has
20 permitted the resident positions (under
21 section 402 of the Social Security Amend-
22 ments of 1967) to be aggregated for pur-
23 poses of applying the resident position lim-
24 itations under this subsection.

25 “(B) REDISTRIBUTION.—

1 “(i) IN GENERAL.—The Secretary
2 shall increase the otherwise applicable resi-
3 dent limit for each qualifying hospital that
4 submits an application under this subpara-
5 graph by such number as the Secretary
6 may approve for portions of cost reporting
7 periods occurring on or after July 1, 2011.
8 The estimated aggregate number of in-
9 creases in the otherwise applicable resident
10 limit under this subparagraph may not ex-
11 ceed the Secretary’s estimate of the aggre-
12 gate reduction in such limits attributable
13 to subparagraph (A).

14 “(ii) REQUIREMENTS FOR QUALI-
15 FYING HOSPITALS.—A hospital is not a
16 qualifying hospital for purposes of this
17 paragraph unless the following require-
18 ments are met:

19 “(I) MAINTENANCE OF PRIMARY
20 CARE RESIDENT LEVEL.—The hos-
21 pital maintains the number of primary
22 care residents at a level that is not
23 less than the base level of primary
24 care residents increased by the num-
25 ber of additional primary care resi-

1 dent positions provided to the hospital
2 under this subparagraph. For pur-
3 poses of this subparagraph, the ‘base
4 level of primary care residents’ for a
5 hospital is the level of such residents
6 as of a base period (specified by the
7 Secretary), determined without regard
8 to whether such positions were in ex-
9 cess of the otherwise applicable resi-
10 dent limit for such period but taking
11 into account the application of sub-
12 clauses (II) and (III) of subparagraph
13 (A)(ii).

14 “(II) DEDICATED ASSIGNMENT
15 OF ADDITIONAL RESIDENT POSITIONS
16 TO PRIMARY CARE.—The hospital as-
17 signs all such additional resident posi-
18 tions for primary care residents.

19 “(III) ACCREDITATION.—The
20 hospital’s residency programs in pri-
21 mary care are fully accredited or, in
22 the case of a residency training pro-
23 gram not in operation as of the base
24 year, the hospital is actively applying
25 for such accreditation for the program

1 for such additional resident positions
2 (as determined by the Secretary).

3 “(iii) CONSIDERATIONS IN REDIS-
4 TRIBUTION.—In determining for which
5 qualifying hospitals the increase in the oth-
6 erwise applicable resident limit is provided
7 under this subparagraph, the Secretary
8 shall take into account the demonstrated
9 likelihood of the hospital filling the posi-
10 tions within the first 3 cost reporting peri-
11 ods beginning on or after July 1, 2011,
12 made available under this subparagraph,
13 as determined by the Secretary.

14 “(iv) PRIORITY FOR CERTAIN HOS-
15 PITALS.—In determining for which quali-
16 fying hospitals the increase in the other-
17 wise applicable resident limit is provided
18 under this subparagraph, the Secretary
19 shall distribute the increase to qualifying
20 hospitals based on the following criteria:

21 “(I) The Secretary shall give
22 preference to hospitals that had a re-
23 duction in resident training positions
24 under subparagraph (A).

1 “(II) The Secretary shall give
2 preference to hospitals with 3-year
3 primary care residency training pro-
4 grams, such as family practice and
5 general internal medicine.

6 “(III) The Secretary shall give
7 preference to hospitals insofar as they
8 have in effect formal arrangements
9 (as determined by the Secretary) that
10 place greater emphasis upon training
11 in Federally qualified health centers,
12 rural health clinics, and other nonpro-
13 vider settings, and to hospitals that
14 receive additional payments under
15 subsection (d)(5)(F) and emphasize
16 training in an outpatient department.

17 “(IV) The Secretary shall give
18 preference to hospitals with a number
19 of positions (as of July 1, 2009) in
20 excess of the otherwise applicable resi-
21 dent limit for such period.

22 “(V) The Secretary shall give
23 preference to hospitals that place
24 greater emphasis upon training in a
25 health professional shortage area (des-

1 ignated under section 332 of the Pub-
2 lic Health Service Act) or a health
3 professional needs area (designated
4 under section 2211 of such Act).

5 “(VI) The Secretary shall give
6 preference to hospitals in States that
7 have low resident-to-population ratios
8 (including a greater preference for
9 those States with lower resident-to-
10 population ratios).

11 “(v) LIMITATION.—In no case shall
12 more than 20 full-time equivalent addi-
13 tional residency positions be made available
14 under this subparagraph with respect to
15 any hospital.

16 “(vi) APPLICATION OF PER RESIDENT
17 AMOUNTS FOR PRIMARY CARE.—With re-
18 spect to additional residency positions in a
19 hospital attributable to the increase pro-
20 vided under this subparagraph, the ap-
21 proved FTE resident amounts are deemed
22 to be equal to the hospital per resident
23 amounts for primary care and nonprimary
24 care computed under paragraph (2)(D) for
25 that hospital.

1 “(vi) DISTRIBUTION.—The Secretary
2 shall distribute the increase in resident
3 training positions to qualifying hospitals
4 under this subparagraph not later than
5 July 1, 2011.

6 “(C) RESIDENT LEVEL AND LIMIT DE-
7 FINED.—In this paragraph:

8 “(i) The term ‘resident level’ has the
9 meaning given such term in paragraph
10 (7)(C)(i).

11 “(ii) The term ‘otherwise applicable
12 resident limit’ means, with respect to a
13 hospital, the limit otherwise applicable
14 under subparagraphs (F)(i) and (H) of
15 paragraph (4) on the resident level for the
16 hospital determined without regard to this
17 paragraph but taking into account para-
18 graph (7)(A).

19 “(D) MAINTENANCE OF PRIMARY CARE
20 RESIDENT LEVEL.—In carrying out this para-
21 graph, the Secretary shall require hospitals that
22 receive additional resident positions under sub-
23 paragraph (B)—

24 “(i) to maintain records, and periodi-
25 cally report to the Secretary, on the num-

1 ber of primary care residents in its resi-
2 dency training programs; and

3 “(ii) as a condition of payment for a
4 cost reporting period under this subsection
5 for such positions, to maintain the level of
6 such positions at not less than the sum
7 of—

8 “(I) the base level of primary
9 care resident positions (as determined
10 under subparagraph (B)(ii)(I)) before
11 receiving such additional positions;
12 and

13 “(II) the number of such addi-
14 tional positions.”.

15 (b) IME.—

16 (1) IN GENERAL.—Section 1886(d)(5)(B)(v) of
17 the Social Security Act (42 U.S.C.
18 1395ww(d)(5)(B)(v)), in the second sentence, is
19 amended—

20 (A) by striking “subsection (h)(7)” and in-
21 serting “subsections (h)(7) and (h)(8)”; and

22 (B) by striking “it applies” and inserting
23 “they apply”.

24 (2) CONFORMING PROVISION.—Section
25 1886(d)(5)(B) of the Social Security Act (42 U.S.C.

1 1395ww(d)(5)(B)) is amended by adding at the end
2 the following clause:

3 “(x) For discharges occurring on or after July 1,
4 2011, insofar as an additional payment amount under this
5 subparagraph is attributable to resident positions distrib-
6 uted to a hospital under subsection (h)(8)(B), the indirect
7 teaching adjustment factor shall be computed in the same
8 manner as provided under clause (ii) with respect to such
9 resident positions.”.

10 (c) CONFORMING AMENDMENT.—Section 422(b)(2)
11 of the Medicare Prescription Drug, Improvement, and
12 Modernization Act of 2003 (Public Law 108–173) is
13 amended by striking “section 1886(h)(7)” and all that fol-
14 lows and inserting “paragraphs (7) and (8) of subsection
15 (h) of section 1886 of the Social Security Act”.

16 **SEC. 1502. INCREASING TRAINING IN NONPROVIDER SET-**
17 **TINGS.**

18 (a) DIRECT GME.—Section 1886(h)(4)(E) of the So-
19 cial Security Act (42 U.S.C. 1395ww(h)) is amended—

20 (1) by designating the first sentence as a clause
21 (i) with the heading “IN GENERAL” and appropriate
22 indentation;

23 (2) by striking “shall be counted and that all
24 the time” and inserting “shall be counted and
25 that—

1 “(I) effective for cost reporting
2 periods beginning before July 1, 2009,
3 all the time”;

4 (3) in subclause (I), as inserted by paragraph
5 (1), by striking the period at the end and inserting
6 “; and”; and

7 (A) by inserting after subclause (I), as so
8 inserted, the following:

9 “(II) effective for cost reporting
10 periods beginning on or after July 1,
11 2009, all the time so spent by a resi-
12 dent shall be counted towards the de-
13 termination of full-time equivalency,
14 without regard to the setting in which
15 the activities are performed, if the
16 hospital incurs the costs of the sti-
17 pends and fringe benefits of the resi-
18 dent during the time the resident
19 spends in that setting.

20 Any hospital claiming under this subpara-
21 graph for time spent in a nonprovider set-
22 ting shall maintain and make available to
23 the Secretary records regarding the
24 amount of such time and such amount in
25 comparison with amounts of such time in

1 such base year as the Secretary shall speci-
2 fy.”.

3 (b) IME.—Section 1886(d)(5)(B)(iv) of the Social
4 Security Act (42 U.S.C. 1395ww(d)(5)(B)(iv)) is amend-
5 ed—

6 (1) by striking “(iv) Effective for discharges oc-
7 ccurring on or after October 1, 1997” and inserting
8 “(iv)(I) Effective for discharges occurring on or
9 after October 1, 1997, and before July 1, 2009”;
10 and

11 (2) by inserting after subclause (I), as inserted
12 by paragraph (1), the following new subclause:

13 “(II) Effective for discharges occurring on or
14 after July 1, 2009, all the time spent by an intern
15 or resident in patient care activities at an entity in
16 a nonprovider setting shall be counted towards the
17 determination of full-time equivalency if the hospital
18 incurs the costs of the stipends and fringe benefits
19 of the intern or resident during the time the intern
20 or resident spends in that setting.”.

21 (c) OIG STUDY ON IMPACT ON TRAINING.—The In-
22 spector General of the Department of Health and Human
23 Services shall analyze the data collected by the Secretary
24 of Health and Human Services from the records made
25 available to the Secretary under section 1886(h)(4)(E) of

1 the Social Security Act, as amended by subsection (a), in
2 order to assess the extent to which there is an increase
3 in time spent by medical residents in training in nonpro-
4 vider settings as a result of the amendments made by this
5 section. Not later than 4 years after the date of the enact-
6 ment of this Act, the Inspector General shall submit a re-
7 port to Congress on such analysis and assessment.

8 (d) DEMONSTRATION PROJECT FOR APPROVED
9 TEACHING HEALTH CENTERS.—

10 (1) IN GENERAL.—The Secretary of Health and
11 Human Services shall conduct a demonstration
12 project under which an approved teaching health
13 center (as defined in paragraph (3)) would be eligi-
14 ble for payment under subsections (h) and (k) of
15 section 1886 of the Social Security Act (42 U.S.C.
16 1395ww) of amounts for its own direct costs of
17 graduate medical education activities for primary
18 care residents, as well as for the direct costs of grad-
19 uate medical education activities of its contracting
20 hospital for such residents, in a manner similar to
21 the manner in which such payments would be made
22 to a hospital if the hospital were to operate such a
23 program.

24 (2) CONDITIONS.—Under the demonstration
25 project—

1 (A) an approved teaching health center
2 shall contract with an accredited teaching hos-
3 pital to carry out the inpatient responsibilities
4 of the primary care residency program of the
5 hospital involved and is responsible for payment
6 to the hospital for the hospital's costs of the
7 salary and fringe benefits for residents in the
8 program;

9 (B) the number of primary care residents
10 of the center shall not count against the con-
11 tracting hospital's resident limit; and

12 (C) the contracting hospital shall agree not
13 to diminish the number of residents in its pri-
14 mary care residency training program.

15 (3) APPROVED TEACHING HEALTH CENTER DE-
16 FINED.—In this subsection, the term “approved
17 teaching health center” means a nonprovider setting,
18 such as a Federally qualified health center or rural
19 health clinic (as defined in section 1861(aa) of the
20 Social Security Act), that develops and operates an
21 accredited primary care residency program for which
22 funding would be available if it were operated by a
23 hospital.

1 **SEC. 1503. RULES FOR COUNTING RESIDENT TIME FOR DI-**
2 **DACTIC AND SCHOLARLY ACTIVITIES AND**
3 **OTHER ACTIVITIES.**

4 (a) DIRECT GME.—Section 1886(h) of the Social Se-
5 curity Act (42 U.S.C. 1395ww(h)) is amended—

6 (1) in paragraph (4)(E), as amended by section
7 1502(a)—

8 (A) in clause (i), by striking “Such rules”
9 and inserting “Subject to clause (ii), such
10 rules”; and

11 (B) by adding at the end the following new
12 clause:

13 “(ii) TREATMENT OF CERTAIN NON-
14 PROVIDER AND DIDACTIC ACTIVITIES.—
15 Such rules shall provide that all time spent
16 by an intern or resident in an approved
17 medical residency training program in a
18 nonprovider setting that is primarily en-
19 gaged in furnishing patient care (as de-
20 fined in paragraph (5)(K)) in nonpatient
21 care activities, such as didactic conferences
22 and seminars, but not including research
23 not associated with the treatment or diag-
24 nosis of a particular patient, as such time
25 and activities are defined by the Secretary,

1 shall be counted toward the determination
2 of full-time equivalency.”;

3 (2) in paragraph (4), by adding at the end the
4 following new subparagraph:

5 “(I) In determining the hospital’s number
6 of full-time equivalent residents for purposes of
7 this subsection, all the time that is spent by an
8 intern or resident in an approved medical resi-
9 dency training program on vacation, sick leave,
10 or other approved leave, as such time is defined
11 by the Secretary, and that does not prolong the
12 total time the resident is participating in the
13 approved program beyond the normal duration
14 of the program shall be counted toward the de-
15 termination of full-time equivalency.”; and

16 (3) in paragraph (5), by adding at the end the
17 following new subparagraph:

18 “(K) NONPROVIDER SETTING THAT IS PRI-
19 MARILY ENGAGED IN FURNISHING PATIENT
20 CARE.—The term ‘nonprovider setting that is
21 primarily engaged in furnishing patient care’
22 means a nonprovider setting in which the pri-
23 mary activity is the care and treatment of pa-
24 tients, as defined by the Secretary.”.

1 (b) IME DETERMINATIONS.—Section 1886(d)(5)(B)
2 of such Act (42 U.S.C. 1395ww(d)(5)(B)), as amended by
3 section 1501(b), is amended by adding at the end the fol-
4 lowing new clause:

5 “(xi)(I) The provisions of subparagraph (I) of sub-
6 section (h)(4) shall apply under this subparagraph in the
7 same manner as they apply under such subsection.

8 “(II) In determining the hospital’s number of full-
9 time equivalent residents for purposes of this subpara-
10 graph, all the time spent by an intern or resident in an
11 approved medical residency training program in non-
12 patient care activities, such as didactic conferences and
13 seminars, as such time and activities are defined by the
14 Secretary, that occurs in the hospital shall be counted to-
15 ward the determination of full-time equivalency if the hos-
16 pital—

17 “(aa) is recognized as a subsection (d) hospital;

18 “(bb) is recognized as a subsection (d) Puerto
19 Rico hospital;

20 “(cc) is reimbursed under a reimbursement sys-
21 tem authorized under section 1814(b)(3); or

22 “(dd) is a provider-based hospital outpatient de-
23 partment.

24 “(III) In determining the hospital’s number of full-
25 time equivalent residents for purposes of this subpara-

1 graph, all the time spent by an intern or resident in an
2 approved medical residency training program in research
3 activities that are not associated with the treatment or di-
4 agnosis of a particular patient, as such time and activities
5 are defined by the Secretary, shall not be counted toward
6 the determination of full-time equivalency.”.

7 (c) EFFECTIVE DATES; APPLICATION.—

8 (1) IN GENERAL.—Except as otherwise pro-
9 vided, the Secretary of Health and Human Services
10 shall implement the amendments made by this sec-
11 tion in a manner so as to apply to cost reporting pe-
12 riods beginning on or after January 1, 1983.

13 (2) DIRECT GME.—Section 1886(h)(4)(E)(ii) of
14 the Social Security Act, as added by subsection
15 (a)(1)(B), shall apply to cost reporting periods be-
16 ginning on or after July 1, 2008.

17 (3) IME.—Section 1886(d)(5)(B)(x)(III) of the
18 Social Security Act, as added by subsection (b), shall
19 apply to cost reporting periods beginning on or after
20 October 1, 2001. Such section, as so added, shall
21 not give rise to any inference on how the law in ef-
22 fect prior to such date should be interpreted.

23 (4) APPLICATION.—The amendments made by
24 this section shall not be applied in a manner that re-
25 quires reopening of any settled hospital cost reports

1 as to which there is not a jurisdictionally proper ap-
2 peal pending as of the date of the enactment of this
3 Act on the issue of payment for indirect costs of
4 medical education under section 1886(d)(5)(B) of
5 the Social Security Act or for direct graduate med-
6 ical education costs under section 1886(h) of such
7 Act.

8 **SEC. 1504. PRESERVATION OF RESIDENT CAP POSITIONS**
9 **FROM CLOSED HOSPITALS.**

10 (a) DIRECT GME.—Section 1886(h)(4)(H) of the So-
11 cial Security Act (42 U.S.C. Section 1395ww(h)(4)(H))
12 is amended by adding at the end the following new clause:

13 “(vi) REDISTRIBUTION OF RESIDENCY
14 SLOTS AFTER A HOSPITAL CLOSES.—

15 “(I) IN GENERAL.—The Sec-
16 retary shall, by regulation, establish a
17 process consistent with subclauses (II)
18 and (III) under which, in the case
19 where a hospital (other than a hos-
20 pital described in clause (v)) with an
21 approved medical residency program
22 in a State closes on or after the date
23 that is 2 years before the date of the
24 enactment of this clause, the Sec-
25 retary shall increase the otherwise ap-

1 applicable resident limit under this para-
2 graph for other hospitals in the State
3 in accordance with this clause.

4 “(II) PROCESS FOR HOSPITALS
5 IN CERTAIN AREAS.—In determining
6 for which hospitals the increase in the
7 otherwise applicable resident limit de-
8 scribed in subclause (I) is provided,
9 the Secretary shall establish a process
10 to provide for such increase to one or
11 more hospitals located in the State.
12 Such process shall take into consider-
13 ation the recommendations submitted
14 to the Secretary by the senior health
15 official (as designated by the chief ex-
16 ecutive officer of such State) if such
17 recommendations are submitted not
18 later than 180 days after the date of
19 the hospital closure involved (or, in
20 the case of a hospital that closed after
21 the date that is 2 years before the
22 date of the enactment of this clause,
23 180 days after such date of enact-
24 ment).

1 “(III) LIMITATION.—The esti-
2 mated aggregate number of increases
3 in the otherwise applicable resident
4 limits for hospitals under this clause
5 shall be equal to the estimated num-
6 ber of resident positions in the ap-
7 proved medical residency programs
8 that closed on or after the date de-
9 scribed in subclause (I).”.

10 (b) NO EFFECT ON TEMPORARY FTE CAP ADJUST-
11 MENTS.—The amendments made by this section shall not
12 effect any temporary adjustment to a hospital’s FTE cap
13 under section 413.79(h) of title 42, Code of Federal Regu-
14 lations (as in effect on the date of enactment of this Act)
15 and shall not affect the application of section
16 1886(h)(4)(H)(v) of the Social Security Act.

17 (c) CONFORMING AMENDMENTS.—

18 (1) Section 422(b)(2) of the Medicare Prescrip-
19 tion Drug, Improvement, and Modernization Act of
20 2003 (Public Law 108–173), as amended by section
21 1501(c), is amended by striking “(7) and” and in-
22 serting “(4)(H)(vi), (7), and”.

23 (2) Section 1886(h)(7)(E) of the Social Secu-
24 rity Act (42 U.S.C. 1395ww(h)(7)(E)) is amended

1 by inserting “or under paragraph (4)(H)(vi)” after
2 “under this paragraph”.

3 **SEC. 1505. IMPROVING ACCOUNTABILITY FOR APPROVED**
4 **MEDICAL RESIDENCY TRAINING.**

5 (a) SPECIFICATION OF GOALS FOR APPROVED MED-
6 ICAL RESIDENCY TRAINING PROGRAMS.—Section
7 1886(h)(1) of the Social Security Act (42 U.S.C.
8 1395ww(h)(1)) is amended—

9 (1) by designating the matter beginning with
10 “Notwithstanding” as a subparagraph (A) with the
11 heading “IN GENERAL.—” and with appropriate in-
12 dentation; and

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

15 “(B) GOALS AND ACCOUNTABILITY FOR
16 APPROVED MEDICAL RESIDENCY TRAINING PRO-
17 GRAMS.—The goals of medical residency train-
18 ing programs are to foster a physician work-
19 force so that physicians are trained to be able
20 to do the following:

21 “(i) Work effectively in various health
22 care delivery settings, such as nonprovider
23 settings.

1 “(ii) Coordinate patient care within
2 and across settings relevant to their spe-
3 cialties.

4 “(iii) Understand the relevant cost
5 and value of various diagnostic and treat-
6 ment options.

7 “(iv) Work in inter-professional teams
8 and multi-disciplinary team-based models
9 in provider and nonprovider settings to en-
10 hance safety and improve quality of patient
11 care.

12 “(v) Be knowledgeable in methods of
13 identifying systematic errors in health care
14 delivery and in implementing systematic
15 solutions in case of such errors, including
16 experience and participation in continuous
17 quality improvement projects to improve
18 health outcomes of the population the phy-
19 sicians serve.

20 “(vi) Be meaningful EHR users (as
21 determined under section 1848(o)(2)) in
22 the delivery of care and in improving the
23 quality of the health of the community and
24 the individuals that the hospital serves.”

1 (b) GAO STUDY ON EVALUATION OF TRAINING PRO-
2 GRAMS.—

3 (1) IN GENERAL.—The Comptroller General of
4 the United States shall conduct a study to evaluate
5 the extent to which medical residency training pro-
6 grams—

7 (A) are meeting the goals described in sec-
8 tion 1886(h)(1)(B) of the Social Security Act,
9 as added by subsection (a), in a range of resi-
10 dency programs, including primary care and
11 other specialties; and

12 (B) have the appropriate faculty expertise
13 to teach the topics required to achieve such
14 goals.

15 (2) REPORT.—Not later than 18 months after
16 the date of the enactment of this Act, the Comp-
17 troller General shall submit to Congress a report on
18 such study and shall include in such report rec-
19 ommendations as to how medical residency training
20 programs could be further encouraged to meet such
21 goals through means such as—

22 (A) development of curriculum require-
23 ments; and

24 (B) assessment of the accreditation proc-
25 esses of the Accreditation Council for Graduate

1 Medical Education and the American Osteo-
2 pathic Association and effectiveness of those
3 processes in accrediting medical residency pro-
4 grams that meet the goals referred to in para-
5 graph (1)(A).

6 **TITLE VI—PROGRAM INTEGRITY**
7 **Subtitle A—Increased Funding to**
8 **Fight Waste, Fraud, and Abuse**

9 **SEC. 1601. INCREASED FUNDING AND FLEXIBILITY TO**
10 **FIGHT FRAUD AND ABUSE.**

11 (a) IN GENERAL.—Section 1817(k) of the Social Se-
12 curity Act (42 U.S.C. 1395i(k)) is amended—

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

15 “(7) ADDITIONAL FUNDING.—In addition to the
16 funds otherwise appropriated to the Account from
17 the Trust Fund under paragraphs (3) and (4) and
18 for purposes described in paragraphs (3)(C) and
19 (4)(A), there are hereby appropriated an additional
20 \$100,000,000 to such Account from such Trust
21 Fund for each fiscal year beginning with 2011. The
22 funds appropriated under this paragraph shall be al-
23 located in the same proportion as the total funding
24 appropriated with respect to paragraphs (3)(A) and
25 (4)(A) was allocated with respect to fiscal year

1 2010, and shall be available without further appro-
2 priation until expended.”.

3 (2) in paragraph (4)(A)—

4 (A) by inserting “for activities described in
5 paragraph (3)(C) and” after “necessary”; and

6 (B) by inserting “until expended” after
7 “appropriation”.

8 (b) FLEXIBILITY IN PURSUING FRAUD AND
9 ABUSE.—Section 1893(a) of the Social Security Act (42
10 U.S.C. 1395ddd(a)) is amended by inserting “, or other-
11 wise,” after “entities”.

12 **Subtitle B—Enhanced Penalties for** 13 **Fraud and Abuse**

14 **SEC. 1611. ENHANCED PENALTIES FOR FALSE STATEMENTS** 15 **ON PROVIDER OR SUPPLIER ENROLLMENT** 16 **APPLICATIONS.**

17 (a) IN GENERAL.—Section 1128A(a) of the Social
18 Security Act (42 U.S.C. 1320a–7a(a)) is amended—

19 (1) in paragraph (1)(D), by striking all that fol-
20 lows “in which the person was excluded” and insert-
21 ing “under Federal law from the Federal health care
22 program under which the claim was made, or”;

23 (2) by striking “or” at the end of paragraph
24 (6);

1 (3) in paragraph (7), by inserting at the end
2 “or”;

3 (4) by inserting after paragraph (7) the fol-
4 lowing new paragraph:

5 “(8) knowingly makes or causes to be made any
6 false statement, omission, or misrepresentation of a
7 material fact in any application, agreement, bid, or
8 contract to participate or enroll as a provider of
9 services or supplier under a Federal health care pro-
10 gram, including managed care organizations under
11 title XIX, Medicare Advantage organizations under
12 part C of title XVIII, prescription drug plan spon-
13 sors under part D of title XVIII, and entities that
14 apply to participate as providers of services or sup-
15 pliers in such managed care organizations and such
16 plans;”;

17 (5) in the matter following paragraph (8), as
18 inserted by paragraph (4), by striking “or in cases
19 under paragraph (7), \$ 50,000 for each such act)”
20 and inserting “in cases under paragraph (7),
21 \$50,000 for each such act, or in cases under para-
22 graph (8), \$50,000 for each false statement, omis-
23 sion, or misrepresentation of a material fact)”;

24 (6) in the second sentence, by striking “for a
25 lawful purpose)” and inserting “for a lawful pur-

1 pose, or in cases under paragraph (8), an assess-
2 ment of not more than 3 times the amount claimed
3 as the result of the false statement, omission, or
4 misrepresentation of material fact claimed by a pro-
5 vider of services or supplier whose application to
6 participate contained such false statement, omission,
7 or misrepresentation)”.

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 subsection (a) shall apply to acts committed on or after
10 January 1, 2010.

11 **SEC. 1612. ENHANCED PENALTIES FOR SUBMISSION OF**
12 **FALSE STATEMENTS MATERIAL TO A FALSE**
13 **CLAIM.**

14 (a) **IN GENERAL.**—Section 1128A(a) of the Social
15 Security Act (42 U.S.C. 1320a–7a(a)), as amended by sec-
16 tion 1611, is further amended—

17 (1) in paragraph (7), by striking “or” at the
18 end;

19 (2) in paragraph (8), by inserting “or” at the
20 end; and

21 (3) by inserting after paragraph (8), the fol-
22 lowing new paragraph:

23 “(9) knowingly makes, uses, or causes to be
24 made or used, a false record or statement material
25 to a false or fraudulent claim for payment for items

1 and services furnished under a Federal health care
2 program;” and

3 (4) in the matter following paragraph (9), as
4 inserted by paragraph (3)—

5 (A) by striking “or in cases under para-
6 graph (8)” and inserting “in cases under para-
7 graph (8)”; and

8 (B) by striking “a material fact)” and in-
9 serting “a material fact, in cases under para-
10 graph (9), \$50,000 for each false record or
11 statement)”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 subsection (a) shall apply to acts committed on or after
14 January 1, 2010.

15 **SEC. 1613. ENHANCED PENALTIES FOR DELAYING INSPEC-**
16 **TIONS.**

17 (a) IN GENERAL.—Section 1128A(a) of the Social
18 Security Act (42 U.S.C. 1320a–7a(a)), as amended by sec-
19 tions 1611 and 1612, is further amended—

20 (1) in paragraph (8), by striking “or” at the
21 end;

22 (2) in paragraph (9), by inserting “or” at the
23 end;

24 (3) by inserting after paragraph (9) the fol-
25 lowing new paragraph:

1 “(10) fails to grant timely access, upon reason-
2 able request (as defined by the Secretary in regula-
3 tions), to the Inspector General of the Department
4 of Health and Human Services, for the purpose of
5 audits, investigations, evaluations, or other statutory
6 functions of the Inspector General of the Depart-
7 ment of Health and Human Services;” and

8 (4) in the matter following paragraph (10), as
9 inserted by paragraph (3)—

10 (A) by striking “or” after “\$50,000 for
11 each such act,”; and

12 (B) by inserting “, or in cases under para-
13 graph (10), \$15,000 for each day of the failure
14 described in such paragraph” after “false
15 record or statement”.

16 (b) ENSURING TIMELY INSPECTIONS RELATING TO
17 CONTRACTS WITH MA ORGANIZATIONS.—Section
18 1857(d)(2) of such Act (42 U.S.C. 1395w-27(d)(2)) is
19 amended—

20 (1) in subparagraph (A), by inserting “timely”
21 before “inspect”; and

22 (2) in subparagraph (B), by inserting “timely”
23 before “audit and inspect”.

1 (c) **EFFECTIVE DATE.**—The amendments made by
2 subsection (a) shall apply to violations committed on or
3 after January 1, 2010.

4 **SEC. 1614. ENHANCED HOSPICE PROGRAM SAFEGUARDS.**

5 (a) **MEDICARE.**—Part A of title XVIII of the Social
6 Security Act is amended by inserting after section 1819
7 the following new section:

8 **“SEC. 1819A. ASSURING QUALITY OF CARE IN HOSPICE**
9 **CARE.**

10 “(a) **IN GENERAL.**—If the Secretary determines on
11 the basis of a survey or otherwise, that a hospice program
12 that is certified for participation under this title has dem-
13 onstrated a substandard quality of care and failed to meet
14 such other requirements as the Secretary may find nec-
15 essary in the interest of the health and safety of the indi-
16 viduals who are provided care and services by the agency
17 or organization involved and determines—

18 “(1) that the deficiencies involved immediately
19 jeopardize the health and safety of the individuals to
20 whom the program furnishes items and services, the
21 Secretary shall take immediate action to remove the
22 jeopardy and correct the deficiencies through the
23 remedy specified in subsection (b)(2)(A)(iii) or ter-
24minate the certification of the program, and may

1 provide, in addition, for 1 or more of the other rem-
2 edies described in subsection (b)(2)(A); or

3 “(2) that the deficiencies involved do not imme-
4 diately jeopardize the health and safety of the indi-
5 viduals to whom the program furnishes items and
6 services, the Secretary may—

7 “(A) impose intermediate sanctions devel-
8 oped pursuant to subsection (b), in lieu of ter-
9 minating the certification of the program; and

10 “(B) if, after such a period of intermediate
11 sanctions, the program is still not in compliance
12 with such requirements, the Secretary shall ter-
13 minate the certification of the program.

14 If the Secretary determines that a hospice program
15 that is certified for participation under this title is
16 in compliance with such requirements but, as of a
17 previous period, was not in compliance with such re-
18 quirements, the Secretary may provide for a civil
19 money penalty under subsection (b)(2)(A)(i) for the
20 days in which it finds that the program was not in
21 compliance with such requirements.

22 “(b) INTERMEDIATE SANCTIONS.—

23 “(1) DEVELOPMENT AND IMPLEMENTATION.—

24 The Secretary shall develop and implement, by not
25 later than July 1, 2012—

1 “(A) a range of intermediate sanctions to
2 apply to hospice programs under the conditions
3 described in subsection (a), and

4 “(B) appropriate procedures for appealing
5 determinations relating to the imposition of
6 such sanctions.

7 “(2) SPECIFIED SANCTIONS.—

8 “(A) IN GENERAL.—The intermediate
9 sanctions developed under paragraph (1) may
10 include—

11 “(i) civil money penalties in an
12 amount not to exceed \$10,000 for each day
13 of noncompliance or, in the case of a per
14 instance penalty applied by the Secretary,
15 not to exceed \$25,000,

16 “(ii) denial of all or part of the pay-
17 ments to which a hospice program would
18 otherwise be entitled under this title with
19 respect to items and services furnished by
20 a hospice program on or after the date on
21 which the Secretary determines that inter-
22 mediate sanctions should be imposed pur-
23 suant to subsection (a)(2),

24 “(iii) the appointment of temporary
25 management to oversee the operation of

1 the hospice program and to protect and as-
2 sure the health and safety of the individ-
3 uals under the care of the program while
4 improvements are made,

5 “(iv) corrective action plans, and

6 “(v) in-service training for staff.

7 The provisions of section 1128A (other than
8 subsections (a) and (b)) shall apply to a civil
9 money penalty under clause (i) in the same
10 manner as such provisions apply to a penalty or
11 proceeding under section 1128A(a). The tem-
12 porary management under clause (iii) shall not
13 be terminated until the Secretary has deter-
14 mined that the program has the management
15 capability to ensure continued compliance with
16 all requirements referred to in that clause.

17 “(B) CLARIFICATION.—The sanctions
18 specified in subparagraph (A) are in addition to
19 sanctions otherwise available under State or
20 Federal law and shall not be construed as lim-
21 iting other remedies, including any remedy
22 available to an individual at common law.

23 “(C) COMMENCEMENT OF PAYMENT.—A
24 denial of payment under subparagraph (A)(ii)
25 shall terminate when the Secretary determines

1 that the hospice program no longer dem-
2 onstrates a substandard quality of care and
3 meets such other requirements as the Secretary
4 may find necessary in the interest of the health
5 and safety of the individuals who are provided
6 care and services by the agency or organization
7 involved.

8 “(3) SECRETARIAL AUTHORITY.—The Secretary
9 shall develop and implement, by not later than July
10 1, 2011, specific procedures with respect to the con-
11 ditions under which each of the intermediate sanc-
12 tions developed under paragraph (1) is to be applied,
13 including the amount of any fines and the severity
14 of each of these sanctions. Such procedures shall be
15 designed so as to minimize the time between identi-
16 fication of deficiencies and imposition of these sanc-
17 tions and shall provide for the imposition of incre-
18 mentally more severe fines for repeated or uncor-
19 rected deficiencies.”.

20 (b) APPLICATION TO MEDICAID.—Section 1905(o) of
21 the Social Security Act (42 U.S.C. 1396d(o)) is amended
22 by adding at the end the following new paragraph:

23 “(4) The provisions of section 1819A shall apply to
24 a hospice program providing hospice care under this title

1 in the same manner as such provisions apply to a hospice
2 program providing hospice care under title XVIII.”.

3 (c) APPLICATION TO CHIP.—Title XXI of the Social
4 Security Act is amended by adding at the end the fol-
5 lowing new section:

6 **“SEC. 2114. ASSURING QUALITY OF CARE IN HOSPICE CARE.**

7 “The provisions of section 1819A shall apply to a
8 hospice program providing hospice care under this title in
9 the same manner such provisions apply to a hospice pro-
10 gram providing hospice care under title XVIII.”.

11 **SEC. 1615. ENHANCED PENALTIES FOR INDIVIDUALS EX-**
12 **CLUDED FROM PROGRAM PARTICIPATION.**

13 (a) IN GENERAL.—Section 1128A(a) of the Social
14 Security Act (42 U.S.C. 1320a–7a(a)), as amended by the
15 previous sections, is further amended—

16 (1) by striking “or” at the end of paragraph
17 (9);

18 (2) by inserting “or” at the end of paragraph
19 (10);

20 (3) by inserting after paragraph (10) the fol-
21 lowing new paragraph:

22 “(11) orders or prescribes an item or service,
23 including without limitation home health care, diag-
24 nostic and clinical lab tests, prescription drugs, du-
25 rable medical equipment, ambulance services, phys-

1 ical or occupational therapy, or any other item or
2 service, during a period when the person has been
3 excluded from participation in a Federal health care
4 program, and the person knows or should know that
5 a claim for such item or service will be presented to
6 such a program;” and

7 (4) in the matter following paragraph (11), as
8 inserted by paragraph (2), by striking “\$15,000 for
9 each day of the failure described in such paragraph”
10 and inserting “\$15,000 for each day of the failure
11 described in such paragraph, or in cases under para-
12 graph (11), \$50,000 for each order or prescription
13 for an item or service by an excluded individual”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 subsection (a) shall apply to violations committed on or
16 after January 1, 2010.

17 **SEC. 1616. ENHANCED PENALTIES FOR PROVISION OF**
18 **FALSE INFORMATION BY MEDICARE ADVAN-**
19 **TAGE AND PART D PLANS.**

20 (a) IN GENERAL.—Section 1857(g)(2)(A) of the So-
21 cial Security Act (42 U.S.C. 1395w—27(g)(2)(A)) is
22 amended by inserting “except with respect to a determina-
23 tion under subparagraph (E), an assessment of not more
24 than 3 times the amount claimed by such plan or plan

1 sponsor based upon the misrepresentation or falsified in-
2 formation involved,” after “for each such determination,”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall apply to violations committed on or
5 after January 1, 2010.

6 **SEC. 1617. ENHANCED PENALTIES FOR MEDICARE ADVAN-**
7 **TAGE AND PART D MARKETING VIOLATIONS.**

8 (a) **IN GENERAL.**—Section 1857(g)(1) of the Social
9 Security Act (42 U.S.C. 1395w—27(g)(1)), as amended
10 by section 1221(b), is amended—

11 (1) in subparagraph (G), by striking “or” at
12 the end;

13 (2) by inserting after subparagraph (H) the fol-
14 lowing new subparagraphs:

15 “(I) except as provided under subpara-
16 graph (C) or (D) of section 1860D–1(b)(1), en-
17 rolls an individual in any plan under this part
18 without the prior consent of the individual or
19 the designee of the individual;

20 “(J) transfers an individual enrolled under
21 this part from one plan to another without the
22 prior consent of the individual or the designee
23 of the individual or solely for the purpose of
24 earning a commission;

1 (1) in the heading, by inserting “OR AUDIT”
2 after “INVESTIGATION”; and

3 (2) by striking “investigation into” and all that
4 follows through the period and inserting “investiga-
5 tion or audit related to—”

6 “(i) any offense described in para-
7 graph (1) or in subsection (a); or

8 “(ii) the use of funds received, directly
9 or indirectly, from any Federal health care
10 program (as defined in section
11 1128B(f)).”

12 (b) EFFECTIVE DATE.—The amendments made by
13 subsection (a) shall apply to violations committed on or
14 after January 1, 2010.

15 **SEC. 1619. EXCLUSION OF CERTAIN INDIVIDUALS AND EN-**
16 **TITIES FROM PARTICIPATION IN MEDICARE**
17 **AND STATE HEALTH CARE PROGRAMS.**

18 (a) IN GENERAL.—Section 1128(c) of the Social Se-
19 curity Act, as previously amended by this division, is fur-
20 ther amended—

21 (1) in the heading, by striking “AND PERIOD”
22 and inserting “, PERIOD, AND EFFECT”; and

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

1 “(4)(A) For purposes of this Act, subject to
2 subparagraph (C), the effect of exclusion is that no
3 payment may be made by any Federal health care
4 program (as defined in section 1128B(f)) with re-
5 spect to any item or service furnished—

6 “(i) by an excluded individual or entity; or

7 “(ii) at the medical direction or on the pre-
8 scription of a physician or other authorized in-
9 dividual when the person submitting a claim for
10 such item or service knew or had reason to
11 know of the exclusion of such individual.

12 “(B) For purposes of this section and sections
13 1128A and 1128B, subject to subparagraph (C), an
14 item or service has been furnished by an individual
15 or entity if the individual or entity directly or indi-
16 rectly provided, ordered, manufactured, distributed,
17 prescribed, or otherwise supplied the item or service
18 regardless of how the item or service was paid for
19 by a Federal health care program or to whom such
20 payment was made.

21 “(C)(i) Payment may be made under a Federal
22 health care program for emergency items or services
23 (not including items or services furnished in an
24 emergency room of a hospital) furnished by an ex-
25 cluded individual or entity, or at the medical direc-

1 tion or on the prescription of an excluded physician
2 or other authorized individual during the period of
3 such individual's exclusion.

4 “(ii) In the case that an individual eligible for
5 benefits under title XVIII or XIX submits a claim
6 for payment for items or services furnished by an ex-
7 cluded individual or entity, and such individual eligi-
8 ble for such benefits did not know or have reason to
9 know that such excluded individual or entity was so
10 excluded, then, notwithstanding such exclusion, pay-
11 ment shall be made for such items or services. In
12 such case the Secretary shall notify such individual
13 eligible for such benefits of the exclusion of the indi-
14 vidual or entity furnishing the items or services.
15 Payment shall not be made for items or services fur-
16 nished by an excluded individual or entity to an indi-
17 vidual eligible for such benefits after a reasonable
18 time (as determined by the Secretary in regulations)
19 after the Secretary has notified the individual eligi-
20 ble for such benefits of the exclusion of the indi-
21 vidual or entity furnishing the items or services.

22 “(iii) In the case that a claim for payment for
23 items or services furnished by an excluded individual
24 or entity is submitted by an individual or entity
25 other than an individual eligible for benefits under

1 title XVIII or XIX or the excluded individual or en-
2 tity, and the Secretary determines that the indi-
3 vidual or entity that submitted the claim took rea-
4 sonable steps to learn of the exclusion and reason-
5 ably relied upon inaccurate or misleading informa-
6 tion from the relevant Federal health care program
7 or its contractor, the Secretary may waive repay-
8 ment of the amount paid in violation of the exclusion
9 to the individual or entity that submitted the claim
10 for the items or services furnished by the excluded
11 individual or entity. If a Federal health care pro-
12 gram contractor provided inaccurate or misleading
13 information that resulted in the waiver of an over-
14 payment under this clause, the Secretary shall take
15 appropriate action to recover the improperly paid
16 amount from the contractor.”.

17 **Subtitle C—Enhanced Program**
18 **and Provider Protections**

19 **SEC. 1631. ENHANCED CMS PROGRAM PROTECTION AU-**
20 **THORITY.**

21 (a) IN GENERAL.—Title XI of the Social Security Act
22 (42 U.S.C. 1301 et seq.) is amended by inserting after
23 section 1128F the following new section:

1 **“SEC. 1128G. ENHANCED PROGRAM AND PROVIDER PRO-**
2 **TECTIONS IN THE MEDICARE, MEDICAID, AND**
3 **CHIP PROGRAMS.**

4 “(a) CERTAIN AUTHORIZED SCREENING, ENHANCED
5 OVERSIGHT PERIODS, AND ENROLLMENT MORATORIA.—

6 “(1) IN GENERAL.—For periods beginning after
7 January 1, 2011, in the case that the Secretary de-
8 termines there is a significant risk of fraudulent ac-
9 tivity (as determined by the Secretary based on rel-
10 evant complaints, reports, referrals by law enforce-
11 ment or other sources, data analysis, trending infor-
12 mation, or claims submissions by providers of serv-
13 ices and suppliers) with respect to a category of pro-
14 vider of services or supplier of items or services, in-
15 cluding a category within a geographic area, under
16 title XVIII, XIX, or XXI, the Secretary may impose
17 any of the following requirements with respect to a
18 provider of services or a supplier (whether such pro-
19 vider or supplier is initially enrolling in the program
20 or is renewing such enrollment):

21 “(A) Screening under paragraph (2).

22 “(B) Enhanced oversight periods under
23 paragraph (3).

24 “(C) Enrollment moratoria under para-
25 graph (4).

1 In applying this subsection for purposes of title XIX
2 and XXI the Secretary may require a State to carry
3 out the provisions of this subsection as a require-
4 ment of the State plan under title XIX or the child
5 health plan under title XXI. Actions taken and de-
6 terminations made under this subsection shall not be
7 subject to review by a judicial tribunal.

8 “(2) SCREENING.—For purposes of paragraph
9 (1), the Secretary shall establish procedures under
10 which screening is conducted with respect to pro-
11 viders of services and suppliers described in such
12 paragraph. Such screening may include—

13 “(A) licensing board checks;

14 “(B) screening against the list of individ-
15 uals and entities excluded from the program
16 under title XVIII, XIX, or XXI;

17 “(C) the excluded provider list system;

18 “(D) background checks; and

19 “(E) unannounced pre-enrollment or other
20 site visits.

21 “(3) ENHANCED OVERSIGHT PERIOD.—For
22 purposes of paragraph (1), the Secretary shall estab-
23 lish procedures to provide for a period of not less
24 than 30 days and not more than 365 days during
25 which providers of services and suppliers described

1 in such paragraph, as the Secretary determines ap-
2 propriate, would be subject to enhanced oversight,
3 such as required or unannounced (or required and
4 unannounced) site visits or inspections, prepayment
5 review, enhanced review of claims, and such other
6 actions as specified by the Secretary, under the pro-
7 grams under titles XVIII, XIX, and XXI. Under
8 such procedures, the Secretary may extend such pe-
9 riod for more than 365 days if the Secretary deter-
10 mines that after the initial period such additional
11 period of oversight is necessary.

12 “(4) MORATORIUM ON ENROLLMENT OF PRO-
13 VIDERS AND SUPPLIERS.—For purposes of para-
14 graph (1), the Secretary, based upon a finding of a
15 risk of serious ongoing fraud within a program
16 under title XVIII, XIX, or XXI, may impose a mor-
17 atorium on the enrollment of providers of services
18 and suppliers within a category of providers of serv-
19 ices and suppliers (including a category within a spe-
20 cific geographic area) under such title. Such a mora-
21 torium may only be imposed if the Secretary makes
22 a determination that the moratorium would not ad-
23 versely impact access of individuals to care under
24 such program.

1 “(5) CLARIFICATION.—Nothing in this sub-
2 section shall be interpreted to preclude or limit the
3 ability of a State to engage in provider screening or
4 enhanced provider oversight activities beyond those
5 required by the Secretary.”.

6 (b) CONFORMING AMENDMENTS.—

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

10 (A) in paragraph (23), by inserting before
11 the semicolon at the end the following: “or by
12 a person to whom or entity to which a morato-
13 rium under section 1128G(a)(4) is applied dur-
14 ing the period of such moratorium”;

15 (B) in paragraph (72); by striking at the
16 end “and”;

17 (C) in paragraph (73), by striking the pe-
18 riod at the end and inserting “and”; and

19 (D) by adding after paragraph (73) the
20 following new paragraph:

21 “(74) provide that the State will enforce any
22 determination made by the Secretary under sub-
23 section (a) of section 1128G (relating to a signifi-
24 cant risk of fraudulent activity with respect to a cat-
25 egory of provider or supplier described in such sub-

1 section (a) through use of the appropriate proce-
2 dures described in such subsection (a)), and that the
3 State will carry out any activities as required by the
4 Secretary for purposes of such subsection (a).”.

5 (2) CHIP.—Section 2102 of such Act (42
6 U.S.C. 1397bb) is amended by adding at the end the
7 following new subsection:

8 “(d) PROGRAM INTEGRITY.—A State child health
9 plan shall include a description of the procedures to be
10 used by the State—

11 “(1) to enforce any determination made by the
12 Secretary under subsection (a) of section 1128G (re-
13 lating to a significant risk of fraudulent activity with
14 respect to a category of provider or supplier de-
15 scribed in such subsection through use of the appro-
16 priate procedures described in such subsection); and

17 “(2) to carry out any activities as required by
18 the Secretary for purposes of such subsection.”.

19 (3) MEDICARE.—Section 1866(j) of such Act
20 (42 U.S.C. 1395cc(j)) is amended by adding at the
21 end the following new paragraph:

22 “(3) PROGRAM INTEGRITY.—The provisions of
23 section 1128G(a) apply to enrollments and renewals
24 of enrollments of providers of services and suppliers
25 under this title.”.

1 **SEC. 1632. ENHANCED MEDICARE, MEDICAID, AND CHIP**
2 **PROGRAM DISCLOSURE REQUIREMENTS RE-**
3 **LATING TO PREVIOUS AFFILIATIONS.**

4 (a) IN GENERAL.—Section 1128G of the Social Secu-
5 rity Act, as inserted by section 1631, is amended by add-
6 ing at the end the following new subsection:

7 “(b) ENHANCED PROGRAM DISCLOSURE REQUIRE-
8 MENTS.—

9 “(1) DISCLOSURE.—A provider of services or
10 supplier who submits on or after July 1, 2011, an
11 application for enrollment and renewing enrollment
12 in a program under title XVIII, XIX, or XXI shall
13 disclose (in a form and manner determined by the
14 Secretary) any current affiliation or affiliation with-
15 in the previous 10-year period with a provider of
16 services or supplier that has uncollected debt or with
17 a person or entity that has been suspended or ex-
18 cluded under such program, subject to a payment
19 suspension, or has had its billing privileges revoked.

20 “(2) ENHANCED SAFEGUARDS.—If the Sec-
21 retary determines that such previous affiliation of
22 such provider or supplier poses a risk of fraud,
23 waste, or abuse, the Secretary may apply such en-
24 hanced safeguards as the Secretary determines nec-
25 essary to reduce such risk associated with such pro-
26 vider or supplier enrolling or participating in the

1 program under title XVIII, XIX, or XXI. Such safe-
2 guards may include enhanced oversight, such as en-
3 hanced screening of claims, required or unannounced
4 (or required and unannounced) site visits or inspec-
5 tions, additional information reporting requirements,
6 and conditioning such enrollment on the provision of
7 a surety bond.

8 “(3) AUTHORITY TO DENY PARTICIPATION.—If
9 the Secretary determines that there has been at
10 least one such affiliation and that such affiliation or
11 affiliations, as applicable, of such provider or sup-
12 plier poses a serious risk of fraud, waste, or abuse,
13 the Secretary may deny the application of such pro-
14 vider or supplier.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) MEDICAID.—Paragraph (74) of section
17 1902(a) of such Act (42 U.S.C. 1396a(a)), as added
18 by section 1631(b)(1), is amended—

19 (A) by inserting “or subsection (b) of such
20 section (relating to disclosure requirements)”
21 before “, and that the State”; and

22 (B) by inserting before the period the fol-
23 lowing: “and apply any enhanced safeguards,
24 with respect to a provider or supplier described

1 in such subsection (b), as the Secretary deter-
2 mines necessary under such subsection (b)”.

3 (2) CHIP.—Subsection (d) of section 2102 of
4 such Act (42 U.S.C. 1397bb), as added by section
5 1631(b)(2), is amended—

6 (A) in paragraph (1), by striking at the
7 end “and”;

8 (B) in paragraph (2) by striking the period
9 at the end and inserting “; and’ ” and

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

12 “(3) to enforce any determination made by the
13 Secretary under subsection (b) of section 1128G (re-
14 lating to disclosure requirements) and to apply any
15 enhanced safeguards, with respect to a provider or
16 supplier described in such subsection, as the Sec-
17 retary determines necessary under such subsection.”.

18 **SEC. 1633. REQUIRED INCLUSION OF PAYMENT MODIFIER**
19 **FOR CERTAIN EVALUATION AND MANAGE-**
20 **MENT SERVICES.**

21 Section 1848 of the Social Security Act (42 U.S.C.
22 1395w-4), as amended by section 4101 of the HITECH
23 Act (Public Law 111-5), is amended by adding at the end
24 the following new subsection:

1 “(p) PAYMENT MODIFIER FOR CERTAIN EVALUA-
2 TION AND MANAGEMENT SERVICES.—The Secretary shall
3 establish a payment modifier under the fee schedule under
4 this section for evaluation and management services (as
5 specified in section 1842(b)(16)(B)(ii)) that result in the
6 ordering of additional services (such as lab tests), the pre-
7 scription of drugs, the furnishing or ordering of durable
8 medical equipment in order to enable better monitoring
9 of claims for payment for such additional services under
10 this title, or the ordering, furnishing, or prescribing of
11 other items and services determined by the Secretary to
12 pose a high risk of waste, fraud, and abuse. The Secretary
13 may require providers of services or suppliers to report
14 such modifier in claims submitted for payment.”.

15 **SEC. 1634. EVALUATIONS AND REPORTS REQUIRED UNDER**
16 **MEDICARE INTEGRITY PROGRAM.**

17 (a) IN GENERAL.—Section 1893(c) of the Social Se-
18 curity Act (42 U.S.C. 1395ddd(c)) is amended—

19 (1) in paragraph (3), by striking at the end
20 “and”;

21 (2) by redesignating paragraph (4) as para-
22 graph (5); and

23 (3) by inserting after paragraph (3) the fol-
24 lowing new paragraph:

1 “(4) for the contract year beginning in 2011
2 and each subsequent contract year, the entity pro-
3 vides assurances to the satisfaction of the Secretary
4 that the entity will conduct periodic evaluations of
5 the effectiveness of the activities carried out by such
6 entity under the Program and will submit to the
7 Secretary an annual report on such activities; and”.

8 (b) REFERENCE TO MEDICAID INTEGRITY PRO-
9 GRAM.—For a similar provision with respect to the Med-
10 icaid Integrity Program, see section 1752.

11 **SEC. 1635. REQUIRE PROVIDERS AND SUPPLIERS TO**
12 **ADOPT PROGRAMS TO REDUCE WASTE,**
13 **FRAUD, AND ABUSE.**

14 (a) IN GENERAL.—Section 1874 of the Social Secu-
15 rity Act (42 U.S.C. 42 U.S.C. 1395kk) is amended by
16 adding at the end the following new subsection:

17 “(d) COMPLIANCE PROGRAMS FOR PROVIDERS OF
18 SERVICES AND SUPPLIERS.—

19 “(1) IN GENERAL.—The Secretary may
20 disenroll a provider of services or a supplier (other
21 than a physician or a skilled nursing facility) under
22 this title (or may impose any civil monetary penalty
23 or other intermediate sanction under paragraph (4))
24 if such provider of services or supplier fails to, sub-
25 ject to paragraph (5), establish a compliance pro-

1 gram that contains the core elements established
2 under paragraph (2).

3 “(2) ESTABLISHMENT OF CORE ELEMENTS.—

4 The Secretary, in consultation with the Inspector
5 General of the Department of Health and Human
6 Services, shall establish core elements for a compli-
7 ance program under paragraph (1). Such elements
8 may include written policies, procedures, and stand-
9 ards of conduct, a designated compliance officer and
10 a compliance committee; effective training and edu-
11 cation pertaining to fraud, waste, and abuse for the
12 organization’s employees and contractors; a con-
13 fidential or anonymous mechanism, such as a hot-
14 line, to receive compliance questions and reports of
15 fraud, waste, or abuse; disciplinary guidelines for en-
16 forcement of standards; internal monitoring and au-
17 diting procedures, including monitoring and auditing
18 of contractors; procedures for ensuring prompt re-
19 sponses to detected offenses and development of cor-
20 rective action initiatives, including responses to po-
21 tential offenses; and procedures to return all identi-
22 fied overpayments to the programs under this title,
23 title XIX, and title XXI.

24 “(3) TIMELINE FOR IMPLEMENTATION.—The
25 Secretary shall determine a timeline for the estab-

1 lishment of the core elements under paragraph (2)
2 and the date on which a provider of services and
3 suppliers (other than physicians) shall be required to
4 have established such a program for purposes of this
5 subsection.

6 “(4) CMS ENFORCEMENT AUTHORITY.—The
7 Administrator for the Centers of Medicare & Med-
8 icaid Services shall have the authority to determine
9 whether a provider of services or supplier described
10 in subparagraph (3) has met the requirement of this
11 subsection and to impose a civil monetary penalty
12 not to exceed \$50,000 for each violation. The Sec-
13 retary may also impose other intermediate sanctions,
14 including corrective action plans and additional mon-
15 itoring in the case of a violation of this subsection.

16 “(5) PILOT PROGRAM.—The Secretary may
17 conduct a pilot program on the application of this
18 subsection with respect to a category of providers of
19 services or suppliers (other than physicians) that the
20 Secretary determines to be a category which is at
21 high risk for waste, fraud, and abuse before imple-
22 menting the requirements of this subsection to all
23 providers of services and suppliers described in para-
24 graph (3).”.

1 (b) REFERENCE TO SIMILAR MEDICAID PROVI-
2 SION.—For a similar provision with respect to the Med-
3 icaid program under title XIX of the Social Security Act,
4 see section 1753.

5 **SEC. 1636. MAXIMUM PERIOD FOR SUBMISSION OF MEDI-**
6 **CARE CLAIMS REDUCED TO NOT MORE THAN**
7 **12 MONTHS.**

8 (a) PURPOSE.—In general, the 36-month period cur-
9 rently allowed for claims filing under parts A, B, C, and,
10 D of title XVIII of the Social Security Act presents oppor-
11 tunities for fraud schemes in which processing patterns
12 of the Centers for Medicare & Medicaid Services can be
13 observed and exploited. Narrowing the window for claims
14 processing will not overburden providers and will reduce
15 fraud and abuse.

16 (b) REDUCING MAXIMUM PERIOD FOR SUBMIS-
17 SION.—

18 (1) PART A.—Section 1814(a) of the Social Se-
19 curity Act (42 U.S.C. 1395f(a)) is amended—

20 (A) in paragraph (1), by striking “period
21 of 3 calendar years” and all that follows and in-
22 serting “period of 1 calendar year from which
23 such services are furnished; and”; and

24 (B) by adding at the end the following new
25 sentence: “In applying paragraph (1), the Sec-

1 retary may specify exceptions to the 1 calendar
2 year period specified in such paragraph.”.

3 (2) PART B.—Section 1835(a) of such Act (42
4 U.S.C. 1395n(a)) is amended—

5 (A) in paragraph (1), by strikeing “period
6 of 3 calendar years” and all that follows and in-
7 serting “period of 1 calendar year from which
8 such services are furnished; and”; and

9 (B) by adding at the end the following new
10 sentence: “In applying paragraph (1), the Sec-
11 retary may specify exceptions to the 1 calendar
12 year period specified in such paragraph.”.

13 (3) PARTS C AND D.—Section 1857(d) of such
14 Act is amended by adding at the end the following
15 new paragraph:

16 “(7) PERIOD FOR SUBMISSION OF CLAIMS.—
17 The contract shall require an MA organization or
18 PDP sponsor to require any provider of services
19 under contract with, in partnership with, or affili-
20 ated with such organization or sponsor to ensure
21 that, with respect to items and services furnished by
22 such provider to an enrollee of such organization,
23 written request, signed by such enrollee, except in
24 cases in which the Secretary finds it impracticable
25 for the enrollee to do so, is filed for payment for

1 such items and services in such form, in such man-
2 ner, and by such person or persons as the Secretary
3 may by regulation prescribe, no later than the close
4 of the 1 calendar year period after such items and
5 services are furnished. In applying the previous sen-
6 tence, the Secretary may specify exceptions to the 1
7 calendar year period specified.”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 subsection (b) shall be effective for items and services fur-
10 nished on or after January 1, 2011.

11 **SEC. 1637. PHYSICIANS WHO ORDER DURABLE MEDICAL**
12 **EQUIPMENT OR HOME HEALTH SERVICES RE-**
13 **QUIRED TO BE MEDICARE ENROLLED PHYSI-**
14 **CANS OR ELIGIBLE PROFESSIONALS.**

15 (a) DME.—Section 1834(a)(11)(B) of the Social Se-
16 curity Act (42 U.S.C. 1395m(a)(11)(B)) is amended by
17 striking “physician” and inserting “physician enrolled
18 under section 1866(j) or an eligible professional under sec-
19 tion 1848(k)(3)(B)”.

20 (b) HOME HEALTH SERVICES.—

21 (1) PART A.—Section 1814(a)(2) of such Act
22 (42 U.S.C. 1395(a)(2)) is amended in the matter
23 preceding subparagraph (A) by inserting “in the
24 case of services described in subparagraph (C), a
25 physician enrolled under section 1866(j) or an eligi-

1 ble professional under section 1848(k)(3)(B),” be-
2 fore “or, in the case of services”.

3 (2) PART B.—Section 1835(a)(2) of such Act
4 (42 U.S.C. 1395n(a)(2)) is amended in the matter
5 preceding subparagraph (A) by inserting “, or in the
6 case of services described in subparagraph (A), a
7 physician enrolled under section 1866(j) or an eligi-
8 ble professional under section 1848(k)(3)(B),” after
9 “a physician”.

10 (c) DISCRETION TO EXPAND APPLICATION.—The
11 Secretary may extend the requirement applied by the
12 amendments made by subsections (a) and (b) to durable
13 medical equipment and home health services (relating to
14 requiring certifications and written orders to be made by
15 enrolled physicians and health professions) to other cat-
16 egories of items or services under this title, including cov-
17 ered part D drugs as defined in section 1860D–2(e), if
18 the Secretary determines that such application would help
19 to reduce the risk of waste, fraud, and abuse with respect
20 to such other categories under title XVIII of the Social
21 Security Act.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to written orders and certifications
24 made on or after July 1, 2010.

1 **SEC. 1638. REQUIREMENT FOR PHYSICIANS TO PROVIDE**
2 **DOCUMENTATION ON REFERRALS TO PRO-**
3 **GRAMS AT HIGH RISK OF WASTE AND ABUSE.**

4 (a) PHYSICIANS AND OTHER SUPPLIERS.—Section
5 1842(h) of the Social Security Act, as amended by section
6 1635, is further amended by adding at the end the fol-
7 lowing new paragraph

8 “(10) The Secretary may disenroll, for a period of
9 not more than one year for each act, a physician or sup-
10 plier under section 1866(j) if such physician or supplier
11 fails to maintain and, upon request of the Secretary, pro-
12 vide access to documentation relating to written orders or
13 requests for payment for durable medical equipment, cer-
14 tifications for home health services, or referrals for other
15 items or services written or ordered by such physician or
16 supplier under this title, as specified by the Secretary.”.

17 (b) PROVIDERS OF SERVICES.—Section 1866(a)(1)
18 of such Act (42 U.S.C. 1395cc), as amended by section
19 1635, is further amended—

20 (1) in subparagraph (V), by striking at the end
21 “and”;

22 (2) in subparagraph (W), by striking the period
23 at the end and adding “; and”; and

24 (3) by adding at the end the following new sub-
25 paragraph:

1 (A) by striking “and such services” and in-
2 serting “such services”; and

3 (B) by inserting after “care of a physi-
4 cian” the following: “, and, in the case of a cer-
5 tification or recertification made by a physician
6 after January 1, 2010, prior to making such
7 certification the physician must document that
8 the physician has had a face-to-face encounter
9 (including through use of telehealth and other
10 than with respect to encounters that are inci-
11 dent to services involved) with the individual
12 during the 6-month period preceding such cer-
13 tification, or other reasonable timeframe as de-
14 termined by the Secretary”.

15 (2) PART B.—Section 1835(a)(2)(A) of the So-
16 cial Security Act is amended—

17 (A) by striking “and” before “(iii)”; and

18 (B) by inserting after “care of a physi-
19 cian” the following: “, and (iv) in the case of
20 a certification or recertification after January
21 1, 2010, prior to making such certification the
22 physician must document that the physician has
23 had a face-to-face encounter (including through
24 use of telehealth and other than with respect to
25 encounters that are incident to services in-

1 volved) with the individual during the 6-month
2 period preceding such certification or recertifi-
3 cation, or other reasonable timeframe as deter-
4 mined by the Secretary”.

5 (b) **CONDITION OF PAYMENT FOR DURABLE MED-**
6 **ICAL EQUIPMENT.**—Section 1834(a)(11)(B) of the Social
7 Security Act (42 U.S.C. 1395m(a)(11)(B)) is amended by
8 adding at the end the following: “and shall require that
9 such an order be written pursuant to the physician docu-
10 menting that the physician has had a face-to-face encoun-
11 ter (including through use of telehealth and other than
12 with respect to encounters that are incident to services in-
13 volved) with the individual involved during the 6-month
14 period preceding such written order, or other reasonable
15 timeframe as determined by the Secretary”.

16 (c) **APPLICATION TO OTHER AREAS UNDER MEDI-**
17 **CARE.**—The Secretary may apply the face-to-face encoun-
18 ter requirement described in the amendments made by
19 subsections (a) and (b) to other items and services for
20 which payment is provided under title XVIII of the Social
21 Security Act based upon a finding that such an decision
22 would reduce the risk of waste, fraud, or abuse.

23 (d) **APPLICATION TO MEDICAID AND CHIP.**—The re-
24 quirements pursuant to the amendments made by sub-
25 sections (a) and (b) shall apply in the case of physicians

1 making certifications for home health services under title
2 XIX or XXI of the Social Security Act, in the same man-
3 ner and to the same extent as such requirements apply
4 in the case of physicians making such certifications under
5 title XVIII of such Act.

6 **SEC. 1640. EXTENSION OF TESTIMONIAL SUBPOENA AU-**
7 **THORITY TO PROGRAM EXCLUSION INVES-**
8 **TIGATIONS.**

9 (a) IN GENERAL.—Section 1128(f) of the Social Se-
10 curity Act (42 U.S.C. 1320a-7(f)) is amended by adding
11 at the end the following new paragraph:

12 “(4) The provisions of subsections (d) and (e) of sec-
13 tion 205 shall apply with respect to this section to the
14 same extent as they are applicable with respect to title
15 II. The Secretary may delegate the authority granted by
16 section 205(d) (as made applicable to this section) to the
17 Inspector General of the Department of Health and
18 Human Services or the Administrator of the Centers for
19 Medicare & Medicaid Services for purposes of any inves-
20 tigation under this section.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall apply to investigations beginning on
23 or after January 1, 2010.

1 **SEC. 1641. REQUIRED REPAYMENTS OF MEDICARE AND**
2 **MEDICAID OVERPAYMENTS.**

3 Section 1128G of the Social Security Act, as inserted
4 by section 1631 and amended by section 1632, is further
5 amended by adding at the end the following new sub-
6 section:

7 “(c) **REPORTS ON AND REPAYMENT OF OVERPAY-**
8 **MENTS IDENTIFIED THROUGH INTERNAL AUDITS AND**
9 **REVIEWS.—**

10 “(1) **REPORTING AND RETURNING OVERPAY-**
11 **MENTS.—**If a person knows of an overpayment, the
12 person must—

13 “(A) report and return the overpayment to
14 the Secretary, the State, an intermediary, a
15 carrier, or a contractor, as appropriate, at the
16 correct address, and

17 “(B) notify the Secretary, the State, inter-
18 mediary, carrier, or contractor to whom the
19 overpayment was returned in writing of the rea-
20 son for the overpayment.

21 “(2) **TIMING.—**An overpayment must be re-
22 ported and returned under paragraph (1)(A) by not
23 later than the date that is 60 days after the date the
24 person knows of the overpayment.

25 Any known overpayment retained later than the ap-
26 plicable date specified in this paragraph creates an

1 obligation as defined in section 3729(b)(3) of title
2 31 of the United States Code.

3 “(3) CLARIFICATION.—Repayment of any over-
4 payments (or refunding by withholding of future
5 payments) by a provider of services or supplier does
6 not otherwise limit the provider or supplier’s poten-
7 tial liability for administrative obligations such as
8 applicable interests, fines, and specialties or civil or
9 criminal sanctions involving the same claim if it is
10 determined later that the reason for the overpay-
11 ment was related to fraud by the provider or sup-
12 plier or the employees or agents of such provider or
13 supplier.

14 “(4) DEFINITIONS.—In this subsection:

15 “(A) KNOWS.—The term ‘knows’ has the
16 meaning given the terms ‘knowing’ and ‘know-
17 ingly’ in section 3729(b) of title 31 of the
18 United States Code.

19 “(B) OVERPAYMENT.—The term “overpay-
20 ment” means any finally determined funds that
21 a person receives or retains under title XVIII,
22 XIX, or XXI to which the person, after applica-
23 ble reconciliation, is not entitled under such
24 title.

1 “(C) PERSON.—The term ‘person’ means a
2 provider of services, supplier, Medicaid man-
3 aged care organization (as defined in section
4 1903(m)(1)(A)), Medicare Advantage organiza-
5 tion (as defined in section 1859(a)(1)), or PDP
6 sponsor (as defined in section 1860D-
7 41(a)(13)), but excluding a beneficiary.”.

8 **SEC. 1642. EXPANDED APPLICATION OF HARDSHIP WAIV-**
9 **ERS FOR OIG EXCLUSIONS TO BENE-**
10 **FICIARIES OF ANY FEDERAL HEALTH CARE**
11 **PROGRAM.**

12 Section 1128(c)(3)(B) of the Social Security Act (42
13 U.S.C. 1320a-7(c)(3)(B)) is amended by striking “indi-
14 viduals entitled to benefits under part A of title XVIII
15 or enrolled under part B of such title, or both” and insert-
16 ing “beneficiaries (as defined in section 1128A(i)(5)) of
17 that program”.

18 **SEC. 1643. ACCESS TO CERTAIN INFORMATION ON RENAL**
19 **DIALYSIS FACILITIES.**

20 Section 1881(b) of the Social Security Act (42 U.S.C.
21 1395rr(b)) is amended by adding at the end the following
22 new paragraph:

23 “(15) For purposes of evaluating or auditing pay-
24 ments made to renal dialysis facilities for items and serv-
25 ices under this section under paragraph (1), each such

1 renal dialysis facility, upon the request of the Secretary,
2 shall provide to the Secretary access to information relat-
3 ing to any ownership or compensation arrangement be-
4 tween such facility and the medical director of such facility
5 or between such facility and any physician.”.

6 **SEC. 1644. BILLING AGENTS, CLEARINGHOUSES, OR OTHER**
7 **ALTERNATE PAYEES REQUIRED TO REG-**
8 **ISTER UNDER MEDICARE.**

9 (a) **MEDICARE.**—Section 1866(j)(1) of the Social Se-
10 curity Act (42 U.S.C. 1395cc(j)(1)) is amended by adding
11 at the end the following new subparagraph:

12 “(D) **BILLING AGENTS AND CLEARING-**
13 **HOUSES REQUIRED TO BE REGISTER UNDER**
14 **MEDICARE.**—Any agent, clearinghouse, or other
15 alternate payee that submits claims on behalf of
16 a health care provider must be registered with
17 the Secretary in a form and manner specified
18 by the Secretary.”.

19 (b) **MEDICAID.**—For a similar provision with respect
20 to the Medicaid program under title XIX of the Social Se-
21 curity Act, see section 1759.

22 (c) **EFFECTIVE DATE.**—The amendment made by
23 subsection (a) shall apply to claims submitted on or after
24 January 1, 2012.

1 **SEC. 1645. CONFORMING CIVIL MONETARY PENALTIES TO**
2 **FALSE CLAIMS ACT AMENDMENTS.**

3 Section 1128A of the Social Security Act, as amended
4 by sections 1611, 1612, 1613, and 1615, is further
5 amended—

6 (1) in subsection (a)—

7 (A) in paragraph (1), by striking “to an
8 officer, employee, or agent of the United States,
9 or of any department or agency thereof, or of
10 any State agency (as defined in subsection
11 (i)(1))”;

12 (B) in paragraph (4)—

13 (i) by striking “participating in a pro-
14 gram under title XVIII or a State health
15 care program” and inserting “participating
16 in a Federal health care program (as de-
17 fined in section 1128B(f))”; and

18 (ii) in subparagraph (A), by striking
19 “title XVIII or a State health care pro-
20 gram” and inserting “a Federal health
21 care program (as defined in section
22 1128B(f))”;

23 (C) by striking “or” at the end of para-
24 graph (10);

25 (D) by inserting after paragraph (11) the
26 following new paragraphs:

1 “(12) conspires to commit a violation of this
2 section; or

3 “(13) knowingly makes, uses, or causes to be
4 made or used, a false record or statement material
5 to an obligation to pay or transmit money or prop-
6 erty to a Federal health care program, or knowingly
7 conceals or knowingly and improperly avoids or de-
8 creases an obligation to pay or transmit money or
9 property to a Federal health care program;” and

10 (E) in the matter following paragraph
11 (13), as inserted by subparagraph (D), by strik-
12 ing “or in cases under paragraph (11), \$50,000
13 for each such violation” and inserting “in cases
14 under paragraph (11), \$50,000 for each such
15 violation, in cases under paragraph (12),
16 \$50,000 for any violation described in this sec-
17 tion committed in furtherance of the conspiracy
18 involved; or in cases under paragraph (13),
19 \$50,000 for each false record or statement, or
20 concealment, avoidance, or decrease”; and

21 (F) in the second sentence, by striking
22 “such false statement or misrepresentation)”
23 and inserting “such false statement or mis-
24 representation, in cases under paragraph (12),
25 an assessment of not more than 3 times the

1 total amount that would otherwise apply for
2 any violation described in this section com-
3 mitted in furtherance of the conspiracy in-
4 volved, or in cases under paragraph (13), an as-
5 sessment of not more than 3 times the total
6 amount of the obligation to which the false
7 record or statement was material or that was
8 avoided or decreased)”.
9

10 (2) in subsection (c)(1), by striking “six years”
11 and inserting “10 years”; and

12 (3) in subsection (i)—

13 (A) by amending paragraph (2) to read as
14 follows:

15 “(2) The term “claim” means any application,
16 request, or demand, whether under contract, or oth-
17 erwise, for money or property for items and services
18 under a Federal health care program (as defined in
19 section 1128B(f)), whether or not the United States
20 or a State agency has title to the money or property,
21 that—

22 “(A) is presented or caused to be pre-
23 sented to an officer, employee, or agent of the
24 United States, or of any department or agency
25 thereof, or of any State agency (as defined in
subsection (i)(1)); or

1 “(B) is made to a contractor, grantee, or
2 other recipient if the money or property is to be
3 spent or used on the Federal health care pro-
4 gram’s behalf or to advance a Federal health
5 care program interest, and if the Federal health
6 care program—

7 “(i) provides or has provided any por-
8 tion of the money or property requested or
9 demanded; or

10 “(ii) will reimburse such contractor,
11 grantee, or other recipient for any portion
12 of the money or property which is re-
13 quested or demanded.”;

14 (B) by amending paragraph (3) to read as
15 follows:

16 “(3) The term ‘item or service’ means, without
17 limitation, any medical, social, management, admin-
18 istrative, or other item or service used in connection
19 with or directly or indirectly related to a Federal
20 health care program.”;

21 (C) in paragraph (6)—

22 (i) in subparagraph (C), by striking at
23 the end “or”;

1 (ii) in the first subparagraph (D), by
2 striking at the end the period and inserting
3 “; or”; and

4 (iii) by redesignating the second sub-
5 paragraph (D) as a subparagraph (E);

6 (D) by amending paragraph (7) to read as
7 follows:

8 “(7) The terms ‘knowing’, ‘knowingly’, and
9 ‘should know’ mean that a person, with respect to
10 information—

11 “(A) has actual knowledge of the informa-
12 tion;

13 “(B) acts in deliberate ignorance of the
14 truth or falsity of the information; or

15 “(C) acts in reckless disregard of the truth
16 or falsity of the information;

17 and require no proof of specific intent to defraud.”;

18 and

19 (E) by adding at the end the following new
20 paragraphs:

21 “(8) The term ‘obligation’ means an established
22 duty, whether or not fixed, arising from an express
23 or implied contractual, grantor-grantee, or licensor-
24 licensee relationship, from a fee-based or similar re-

1 relationship, from statute or regulation, or from the
2 retention of any overpayment.

3 “(9) The term ‘material’ means having a nat-
4 ural tendency to influence, or be capable of influ-
5 encing, the payment or receipt of money or prop-
6 erty.”.

7 **Subtitle D—Access to Information**
8 **Needed to Prevent Fraud,**
9 **Waste, and Abuse**

10 **SEC. 1651. ACCESS TO INFORMATION NECESSARY TO IDEN-**
11 **TIFY FRAUD, WASTE, AND ABUSE.**

12 Section 1128G of the Social Security Act, as added
13 by section 1631 and amended by sections 1632 and 1641,
14 is further amended by adding at the end the following new
15 subsection;

16 “(d) ACCESS TO INFORMATION NECESSARY TO IDEN-
17 TIFY FRAUD, WASTE, AND ABUSE.—For purposes of law
18 enforcement activity, and to the extent consistent with ap-
19 plicable disclosure, privacy, and security laws, including
20 the Health Insurance Portability and Accountability Act
21 of 1996 and the Privacy Act of 1974, and subject to any
22 information systems security requirements enacted by law
23 or otherwise required by the Secretary, the Attorney Gen-
24 eral shall have access, facilitation by the Inspector General
25 of the Department of Health and Human Services, to

1 claims and payment data relating to titles XVIII and XIX,
2 in consultation with the Centers for Medicare & Medicaid
3 Services or the owner of such data.”.

4 **SEC. 1652. ELIMINATION OF DUPLICATION BETWEEN THE**
5 **HEALTHCARE INTEGRITY AND PROTECTION**
6 **DATA BANK AND THE NATIONAL PRACTI-**
7 **TIONER DATA BANK.**

8 (a) IN GENERAL.—To eliminate duplication between
9 the Healthcare Integrity and Protection Data Bank
10 (HIPDB) established under section 1128E of the Social
11 Security Act and the National Practitioner Data Bank
12 (NPBD) established under the Health Care Quality Im-
13 provement Act of 1986, section 1128E of the Social Secu-
14 rity Act (42 U.S.C. 1320a-7e) is amended—

15 (1) in subsection (a), by striking “Not later
16 than” and inserting “Subject to subsection (h), not
17 later than”;

18 (2) in the first sentence of subsection (d)(2), by
19 striking “(other than with respect to requests by
20 Federal agencies)”; and

21 (3) by adding at the end the following new sub-
22 section:

23 “(h) SUNSET OF THE HEALTHCARE INTEGRITY AND
24 PROTECTION DATA BANK; TRANSITION PROCESS.—Ef-
25 fective upon the enactment of this subsection, the Sec-

1 retary shall implement a process to eliminate duplication
2 between the Healthcare Integrity and Protection Data
3 Bank (in this subsection referred to as the ‘HIPDB’ es-
4 tablished pursuant to subsection (a) and the National
5 Practitioner Data Bank (in this subsection referred to as
6 the ‘NPDB’) as implemented under the Health Care Qual-
7 ity Improvement Act of 1986 and section 1921 of this Act,
8 including systems testing necessary to ensure that infor-
9 mation formerly collected in the HIPDB will be accessible
10 through the NPDB, and other activities necessary to
11 eliminate duplication between the two data banks. Upon
12 the completion of such process, notwithstanding any other
13 provision of law, the Secretary shall cease the operation
14 of the HIPDB and shall collect information required to
15 be reported under the preceding provisions of this section
16 in the NPDB. Except as otherwise provided in this sub-
17 section, the provisions of subsections (a) through (g) shall
18 continue to apply with respect to the reporting of (or fail-
19 ure to report), access to, and other treatment of the infor-
20 mation specified in this section..”.

21 (b) ELIMINATION OF THE RESPONSIBILITY OF THE
22 HHS OFFICE OF THE INSPECTOR GENERAL.—Section
23 1128C(a)(1) of the Social Security Act (42 U.S.C. 1320a-
24 7c(a)(1)) is amended—

1 (1) in subparagraph (C), by adding at the end
2 “and”;

3 (2) in subparagraph (D), by striking at the end
4 “, and” and inserting a period; and

5 (3) by striking subparagraph (E).

6 (c) SPECIAL PROVISION FOR ACCESS TO THE NA-
7 TIONAL PRACTITIONER DATA BANK BY THE DEPART-
8 MENT OF VETERANS AFFAIRS.—

9 (1) IN GENERAL.—Notwithstanding any other
10 provision of law, during the one year period that be-
11 gins on the effective date specified in subsection
12 (e)(1), the information described in paragraph (2)
13 shall be available from the National Practitioner
14 Data Bank (described in section 1921 of the Social
15 Security Act) to the Secretary of Veterans Affairs
16 without charge.

17 (2) INFORMATION DESCRIBED.—For purposes
18 of paragraph (1), the information described in this
19 paragraph is the information that would, but for the
20 amendments made by this section, have been avail-
21 able to the Secretary of Veterans Affairs from the
22 Healthcare Integrity and Protection Data Bank.

23 (d) FUNDING.—Notwithstanding any provisions of
24 this Act, sections 1128E(d)(2) and 1817(k)(3) of the So-
25 cial Security Act, or any other provision of law, there shall

1 be available for carrying out the transition process under
2 section 1128E(h) of the Social Security Act over the pe-
3 riod required to complete such process, and for operation
4 of the National Practitioner Data Bank until such process
5 is completed, without fiscal year limitation—

6 (1) any fees collected pursuant to section
7 1128E(d)(2) of such Act; and

8 (2) such additional amounts as necessary, from
9 appropriations available to the Secretary and to the
10 Office of the Inspector General of the Department of
11 Health and Human Services under clauses (i) and
12 (ii), respectively, of section 1817(k)(3)(A) of such
13 Act, for costs of such activities during the first 12
14 months following the date of the enactment of this
15 Act.

16 (e) EFFECTIVE DATE.—The amendments made—

17 (1) by subsection (a)(2) shall take effect on the
18 first day after the Secretary of Health and Human
19 Services certifies that the process implemented pur-
20 suant to section 1128E(h) of the Social Security Act
21 (as added by subsection (a)(3)) is complete; and

22 (2) by subsection (b) shall take effect on the
23 earlier of the date specified in paragraph (1) or the
24 first day of the second succeeding fiscal year after
25 the fiscal year during which this Act is enacted.

1 **SEC. 1653. COMPLIANCE WITH HIPAA PRIVACY AND SECUR-**
2 **RITY STANDARDS.**

3 The provisions of sections 262(a) and 264 of the
4 Health Insurance Portability and Accountability Act of
5 1996 (and standards promulgated pursuant to such sec-
6 tions) and the Privacy Act of 1974 shall apply with respect
7 to the provisions of this subtitle and amendments made
8 by this subtitle.

9 **TITLE VII—MEDICAID AND CHIP**
10 **Subtitle A—Medicaid and Health**
11 **Reform**

12 **SEC. 1701. ELIGIBILITY FOR INDIVIDUALS WITH INCOME**
13 **BELOW 133- $\frac{1}{3}$ PERCENT OF THE FEDERAL**
14 **POVERTY LEVEL.**

15 (a) ELIGIBILITY FOR NON-TRADITIONAL INDIVID-
16 UALS WITH INCOME BELOW 133 PERCENT OF THE FED-
17 ERAL POVERTY LEVEL.—

18 (1) IN GENERAL.—Section 1902(a)(10)(A)(i) of
19 the Social Security Act (42 U.S.C.
20 1396b(a)(10)(A)(i) is amended—

21 (A) by striking “or” at the end of sub-
22 clause (VI);

23 (B) by adding “or” at the end of subclause
24 (VII); and

25 (C) by adding at the end the following new
26 subclause:

1 “(VIII) who are under 65 years
2 of age, who are not described in a pre-
3 vious subclause of this clause, and
4 who are in families whose income (de-
5 termined using methodologies and
6 procedures specified by the Secretary
7 in consultation with the Health
8 Choices Commissioner) does not ex-
9 ceed 133 $\frac{1}{3}$ percent of the income
10 official poverty line (as defined by the
11 Office of Management and Budget,
12 and revised annually in accordance
13 with section 673(2) of the Omnibus
14 Budget Reconciliation Act of 1981)
15 applicable to a family of the size in-
16 volved;”.

17 (2) 100% FMAP FOR NON-TRADITIONAL MED-
18 ICAID ELIGIBLE INDIVIDUALS.—Section 1905 of
19 such Act (42 U.S.C. 1396d) is amended—

20 (A) in the third sentence of subsection (b)
21 by inserting before the period at the end the
22 following: “and with respect to amounts de-
23 scribed in subsection (y)”;

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

1 “(y) ADDITIONAL EXPENDITURES SUBJECT TO
2 100% FMAP.—For purposes of section 1905(b), the
3 amounts described in this subsection are the following:

4 “(1) Amounts expended for medical assistance
5 for individuals described in subclause (VIII) of sec-
6 tion 1902(a)(10)(A)(i).”.

7 (3) CONSTRUCTION.—Nothing in this sub-
8 section shall be construed as not providing for cov-
9 erage under subclause (VIII) of section
10 1902(a)(10)(A)(i) of the Social Security Act, as
11 added by paragraph (1) of, and an increased FMAP
12 under the amendment made by paragraph (2) for,
13 an individual who has been provided medical assist-
14 ance under title XIX of the Act under a demonstra-
15 tion waiver approved under section 1115 of such Act
16 or with State funds.

17 (4) CONFORMING AMENDMENT.—Section
18 1903(f)(4) of the Social Security Act (42 U.S.C.
19 1396b(f)(4)) is amended by inserting
20 “1902(a)(10)(A)(i)(VIII),” after
21 “1902(a)(10)(A)(i)(VII),”.

22 (b) ELIGIBILITY FOR TRADITIONAL MEDICAID ELI-
23 GIBLE INDIVIDUALS WITH INCOME NOT EXCEEDING 133-
24 $\frac{1}{3}$ PERCENT OF THE FEDERAL POVERTY LEVEL .—

1 (1) IN GENERAL.—Section 1902(a)(10)(A)(i) of
2 the Social Security Act (42 U.S.C.
3 1396b(a)(10)(A)(i)), as amended by subsection (a),
4 is amended—

5 (A) by striking “or” at the end of sub-
6 clause (VII);

7 (B) by adding “or” at the end of subclause
8 (VIII); and

9 (C) by adding at the end the following new
10 subclause:

11 “(IX) who are under 65 years of
12 age, who would be eligible for medical
13 assistance under the State plan under
14 one of subclauses (I) through (VII)
15 (based on the income standards,
16 methodologies, and procedures in ef-
17 fect as of June 16, 2009) but for in-
18 come and who are in families whose
19 income does not exceed 133 $\frac{1}{3}$ percent
20 of the income official poverty line (as
21 defined by the Office of Management
22 and Budget, and revised annually in
23 accordance with section 673(2) of the
24 Omnibus Budget Reconciliation Act of

1 1981) applicable to a family of the
2 size involved;”.

3 (2) 100% FMAP FOR CERTAIN TRADITIONAL
4 MEDICAID ELIGIBLE INDIVIDUALS.—Section 1905(y)
5 of such Act (42 U.S.C. 1396d(b)), as added by sub-
6 section (a)(2)(B), is amended by inserting “or (IX)”
7 after “(VIII)”.

8 (3) CONSTRUCTION.—Nothing in this sub-
9 section shall be construed as not providing for cov-
10 erage under subclause (IX) of section
11 1902(a)(10)(A)(i) of the Social Security Act, as
12 added by paragraph (1) of, and an increased FMAP
13 under the amendment made by paragraph (2) for,
14 an individual who has been provided medical assist-
15 ance under title XIX of the Act under a demonstra-
16 tion waiver approved under section 1115 of such Act
17 or with State funds.

18 (4) CONFORMING AMENDMENT.—Section
19 1903(f)(4) of the Social Security Act (42 U.S.C.
20 1396b(f)(4)), as amended by subsection (a)(4), is
21 amended by inserting “1902(a)(10)(A)(i)(IX),” after
22 “1902(a)(10)(A)(i)(VIII),”.

23 (c) 100% MATCHING RATE FOR TEMPORARY COV-
24 ERAGE OF CERTAIN NEWBORNS.—Section 1905(y) of
25 such Act, as added by subsection (a)(2)(B), is amended—

1 (1) in paragraph (1), by inserting before the pe-
2 riod at the end the following: “, and who is not pro-
3 vided medical assistance under section 1943(b)(2) of
4 this title or section 205(d)(1)(B) of the America’s
5 Affordable Health Choices Act of 2009”; and

6 (2) by adding at the end the following:

7 “(2) Amounts expended for medical assistance
8 for children described in section 203(d)(1)(A) of the
9 America’s Affordable Health Choices Act of 2009
10 during the time period specified in such section.”.

11 (d) NETWORK ADEQUACY.—Section 1932(a)(2) of
12 the Social Security Act (42 U.S.C. 1396u–2(a)(2)) is
13 amended by adding at the end the following new subpara-
14 graph:

15 “(D) ENROLLMENT OF NON-TRADITIONAL
16 MEDICAID ELIGIBLES.—A State may not re-
17 quire under paragraph (1) the enrollment in a
18 managed care entity of an individual described
19 in section 1902(a)(10)(A)(i)(VIII) unless the
20 State demonstrates, to the satisfaction of the
21 Secretary, that the entity, through its provider
22 network and other arrangements, has the ca-
23 pacity to meet the health, mental health, and
24 substance abuse needs of such individuals.”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the first day of Y1, and
3 shall apply with respect to items and services furnished
4 on or after such date.

5 **SEC. 1702. REQUIREMENTS AND SPECIAL RULES FOR CER-**
6 **TAIN MEDICAID ELIGIBLE INDIVIDUALS.**

7 (a) IN GENERAL.—Title XIX of the Social Security
8 Act is amended by adding at the end the following new
9 section:

10 “ REQUIREMENTS AND SPECIAL RULES FOR CERTAIN
11 MEDICAID ELIGIBLE INDIVIDUALS

12 “SEC. 1943. (a) COORDINATION WITH NHI EX-
13 CHANGE THROUGH MEMORANDUM OF UNDER-
14 STANDING.—

15 “(1) IN GENERAL.—The State shall enter into
16 a Medicaid memorandum of understanding described
17 in section 204(e)(4) of the America’s Affordable
18 Health Choices Act of 2009 with the Health Choices
19 Commissioner, acting in consultation with the Sec-
20 retary, with respect to coordinating the implementa-
21 tion of the provisions of division A of such Act with
22 the State plan under this title in order to ensure the
23 enrollment of Medicaid eligible individuals in accept-
24 able coverage. Nothing in this section shall be con-
25 strued as permitting such memorandum to modify or

1 vitiate any requirement of a State plan under this
2 title.

3 “(2) ENROLLMENT OF EXCHANGE-REFERRED
4 INDIVIDUALS.—

5 “(A) NON-TRADITIONAL INDIVIDUALS.—

6 Pursuant to such memorandum the State shall
7 accept without further determination the enroll-
8 ment under this title of an individual deter-
9 mined by the Commissioner to be a non-tradi-
10 tional Medicaid eligible individual. The State
11 shall not do any redeterminations of eligibility
12 for such individuals unless the periodicity of
13 such redeterminations is consistent with the pe-
14 riodicity for redeterminations by the Commis-
15 sioner of eligibility for affordability credits
16 under subtitle C of title II of division A of the
17 America’s Affordable Health Choices Act of
18 2009, as specified under such memorandum.

19 “(B) TRADITIONAL INDIVIDUALS.—

20 “(i) REGULAR ENROLLMENT OP-
21 TION.—Pursuant to such memorandum,
22 insofar as the memorandum has selected
23 the option described in section
24 205(e)(3)(A) of the America’s Affordable
25 Health Choices Act of 2009, the State

1 shall accept without further determination
2 the enrollment under this title of an indi-
3 vidual determined by the Commissioner to
4 be a traditional Medicaid eligible indi-
5 vidual. The State may do redeterminations
6 of eligibility of such individual consistent
7 with such section and the memorandum.

8 “(ii) PRESUMPTIVE ELIGIBILITY OP-
9 TION.—Pursuant to such memorandum,
10 insofar as the memorandum has selected
11 the option described in section
12 205(e)(3)(B) of the America’s Affordable
13 Health Choices Act of 2009, the State
14 shall provide for making medical assistance
15 available during the presumptive eligibility
16 period and shall, upon application of the
17 individual for medical assistance under this
18 title, promptly make a determination (and
19 subsequent redeterminations) of eligibility
20 in the same manner as if the individual
21 had applied directly to the State for such
22 assistance except that the State shall use
23 the income-related information used by the
24 Commissioner and provided to the State
25 under the memorandum in making the pre-

1 sumptive eligibility determination to the
2 maximum extent feasible.

3 “(3) DETERMINATIONS OF ELIGIBILITY FOR
4 AFFORDABILITY CREDITS.—If the Commissioner de-
5 termines that a State Medicaid agency has the ca-
6 pacity to make determinations of eligibility for af-
7 fordability credits under subtitle C of title II of divi-
8 sion A of the America’s Affordable Health Choices
9 Act of 2009, under such memorandum—

10 “(A) the State Medicaid agency shall con-
11 duct such determinations for any Exchange-eli-
12 gible individual who requests such a determina-
13 tion;

14 “(B) in the case that a State Medicaid
15 agency determines that an Exchange-eligible in-
16 dividual is not eligible for affordability credits,
17 the agency shall forward the information on the
18 basis of which such determination was made to
19 the Commissioner; and

20 “(C) the Commissioner shall reimburse the
21 State Medicaid agency for the costs of con-
22 ducting such determinations.

23 “(b) TREATMENT OF CERTAIN NEWBORNS.—

24 “(1) IN GENERAL.—In the case of a child who
25 is deemed under section 205(d)(1) of the America’s

1 Affordable Health Choices Act of 2009 to be a non-
2 traditional Medicaid eligible individual and enrolled
3 under this title pursuant to such section, the State
4 shall provide for a determination, by not later than
5 the end of the period referred to in subparagraph
6 (A) of such section, of the child's eligibility for med-
7 ical assistance under this title.

8 “(2) EXTENDED TREATMENT AS TRADITIONAL
9 MEDICAID ELIGIBLE INDIVIDUAL.—In accordance
10 with subparagraph (B) of section 205(d)(1) of the
11 America's Affordable Health Choices Act of 2009, in
12 the case of a child described in subparagraph (A) of
13 such section who at the end of the period referred
14 to in such subparagraph is not otherwise covered
15 under acceptable coverage, the child shall be deemed
16 (until such time as the child obtains such coverage
17 or the State otherwise makes a determination of the
18 child's eligibility for medical assistance under its
19 plan under this title pursuant to paragraph (1)) to
20 be a traditional Medicaid eligible individual de-
21 scribed in section 1902(l)(1)(B).

22 “(c) DEFINITIONS.—In this section:

23 “(1) MEDICAID ELIGIBLE INDIVIDUALS.—In
24 this section, the terms ‘Medicaid eligible individual’,
25 ‘traditional Medicaid eligible individual’, and ‘non-

1 traditional Medicaid eligible individual’ have the
2 meanings given such terms in section 205(e)(5) of
3 the America’s Affordable Health Choices Act of
4 2009.

5 “(2) MEMORANDUM.—The term ‘memorandum’
6 means a Medicaid memorandum of understanding
7 under section 205(e)(4) of the America’s Affordable
8 Health Choices Act of 2009.

9 “(3) Y1.—The term ‘Y1’ has the meaning given
10 such term in section 100(c) of the America’s Afford-
11 able Health Choices Act of 2009.”.

12 (b) CONFORMING AMENDMENTS TO ERROR RATE.—

13 (1) Section 1903(u)(1)(D) of the Social Secu-
14 rity Act (42 U.S.C. 1396b(u)(1)(D)) is amended by
15 adding at the end the following new clause:

16 “(vi) In determining the amount of erroneous excess
17 payments, there shall not be included any erroneous pay-
18 ments made that are attributable to an error in an eligi-
19 bility determination under subtitle C of title II of division
20 A of the America’s Affordable Health Choices Act of
21 2009.”.

22 (2) Section 2105(c)(11) of such Act (42 U.S.C.
23 1397ee(c)(11)) is amended by adding at the end the
24 following new sentence: “Clause (vi) of section
25 1903(u)(1)(D) shall apply with respect to the appli-

1 cation of such requirements under this title and title
2 XIX.”.

3 **SEC. 1703. CHIP AND MEDICAID MAINTENANCE OF EFFORT.**

4 (a) CHIP MAINTENANCE OF EFFORT.—Section
5 1902 of the Social Security Act (42 U.S.C. 1396a) is
6 amended—

7 (1) in subsection (a), as amended by section
8 1631(b)(1)(D)—

9 (A) by striking “and” at the end of para-
10 graph (72);

11 (B) by striking the period at the end of
12 paragraph (73) and inserting “; and”; and

13 (C) by inserting after paragraph (74) the
14 following new paragraph:

15 “(75) provide for maintenance of effort under
16 the State child health plan under title XXI in ac-
17 cordance with subsection (gg).”; and

18 (2) by adding at the end the following new sub-
19 section:

20 “(gg) CHIP MAINTENANCE OF EFFORT REQUIRE-
21 MENT.—

22 “(1) IN GENERAL.—Subject to paragraph (2),
23 as a condition of its State plan under this title under
24 subsection (a)(75) and receipt of any Federal finan-
25 cial assistance under section 1903(a) for calendar

1 quarters beginning after the date of the enactment
2 of this subsection and before CHIP MOE termi-
3 nation date specified in paragraph (3), a State shall
4 not have in effect eligibility standards, methodolo-
5 gies, or procedures under its State child health plan
6 under title XXI (including any waiver under such
7 title or under section 1115 that is permitted to con-
8 tinue effect) that are more restrictive than the eligi-
9 bility standards, methodologies, or procedures, re-
10 spectively, under such plan (or waiver) as in effect
11 on June 16, 2009.

12 “(2) LIMITATION.—Paragraph (1) shall not be
13 construed as preventing a State from imposing a
14 limitation described in section 2110(b)(5)(C)(i)(II)
15 for a fiscal year in order to limit expenditures under
16 its State child health plan under title XXI to those
17 for which Federal financial participation is available
18 under section 2105 for the fiscal year.

19 “(3) CHIP MOE TERMINATION DATE.—In para-
20 graph (1), the ‘CHIP MOE termination date’ for a
21 State is the date that is the first day of Y1 (as de-
22 fined in section 100(c) of the America’s Affordable
23 Health Choices Act of 2009) or, if later, the first
24 day after such date that both of the following deter-
25 minations have been made:

1 “(A) The Health Choices Commissioner
2 has determined that the Health Insurance Ex-
3 change has the capacity to support the partici-
4 pation of CHIP enrollees who are Exchange-eli-
5 gible individuals (as defined in section 202(b) of
6 the America’s Affordable Health Choices Act of
7 2009),

8 “(B) The Secretary has determined that
9 such Exchange, the State, and employers have
10 procedures in effect to ensure the timely transi-
11 tion without interruption of coverage of CHIP
12 enrollees from assistance under title XXI to ac-
13 ceptable coverage (as defined for purposes of
14 such Act).

15 In this paragraph, the term ‘CHIP enrollee’ means
16 a targeted low-income child or (if the State has
17 elected the option under section 2112, a targeted
18 low-income pregnant woman) who is or otherwise
19 would be (but for acceptable coverage) eligible for
20 child health assistance or pregnancy-related assist-
21 ance, respectively, under the State child health plan
22 referred to in paragraph (1).”.

23 (b) MEDICAID MAINTENANCE OF EFFORT; SIMPLI-
24 FYING AND COORDINATING ELIGIBILITY RULES BE-
25 TWEEN EXCHANGE AND MEDICAID.—

1 (1) IN GENERAL.—Section 1903 of such Act
2 (42 U.S.C. 1396b) is amended by adding at the end
3 the following new subsection:

4 “(aa) MAINTENANCE OF MEDICAID EFFORT; SIMPLI-
5 FYING AND COORDINATING ELIGIBILITY RULES BE-
6 TWEEN HEALTH INSURANCE EXCHANGE AND MED-
7 ICAID.—

8 “(1) MAINTENANCE OF EFFORT.—A State is
9 not eligible for payment under subsection (a) for a
10 calendar quarter beginning after the date of the en-
11 actment of this subsection if eligibility standards,
12 methodologies, or procedures under its plan under
13 this title (including any waiver under this title or
14 under section 1115 that is permitted to continue ef-
15 fect) that are more restrictive than the eligibility
16 standards, methodologies, or procedures, respec-
17 tively, under such plan (or waiver) as in effect on
18 June 16, 2009. The Secretary shall extend such a
19 waiver (including the availability of Federal financial
20 participation under such waiver) for such period as
21 may be required for a State to meet the requirement
22 of the previous sentence.

23 “(2) REMOVAL OF ASSET TEST FOR CERTAIN
24 ELIGIBILITY CATEGORIES.—

1 “(A) IN GENERAL.—A State is not eligible
2 for payment under subsection (a) for a calendar
3 quarter beginning on or after the first day of
4 Y1 (as defined in section 100(c) of the Amer-
5 ica’s Affordable Health Choices Act of 2009), if
6 the State applies any asset or resource test in
7 determining (or redetermining) eligibility of any
8 individual on or after such first day under any
9 of the following:

10 “(i) Subclause (I), (III), (IV), or (VI)
11 of section 1902(a)(10)(A)(i).

12 “(ii) Subclause (II), (IX), (XIV) or
13 (XVII) of section 1902(a)(10)(A)(ii).

14 “(iii) Section 1931(b).

15 “(B) OVERRIDING CONTRARY PROVISIONS;
16 REFERENCES.—The provisions of this title that
17 prevent the waiver of an asset or resource test
18 described in subparagraph (A) are hereby
19 waived.

20 “(C) REFERENCES.—Any reference to a
21 provision described in a provision in subpara-
22 graph (A) shall be deemed to be a reference to
23 such provision as modified through the applica-
24 tion of subparagraphs (A) and (B).”.

1 (2) CONFORMING AMENDMENTS.—(A) Section
2 1902(a)(10)(A) of such Act (42 U.S.C.
3 1396a(a)(10)(A)) is amended, in the matter before
4 clause (i), by inserting “subject to section
5 1903(aa)(2),” after “(A)”.

6 (B) Section 1931(b)(2) of such Act (42 U.S.C.
7 1396u–1(b)(1)) is amended by inserting “subject to
8 section 1903(aa)(2)” after “and (3)”.

9 (c) STANDARDS FOR BENCHMARK PACKAGES.—Sec-
10 tion 1937(b) of such Act (42 U.S.C. 1396u–7(b)) is
11 amended—

12 (1) in paragraph (1), by inserting “subject to
13 paragraph (5)”;

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

16 “(5) MINIMUM STANDARDS.—Effective January
17 1, 2013, any benchmark benefit package (or bench-
18 mark equivalent coverage under paragraph (2))
19 must meet the minimum benefits and cost-sharing
20 standards of a basic plan offered through the Health
21 Insurance Exchange.”.

22 **SEC. 1704. REDUCTION IN MEDICAID DSH.**

23 (a) REPORT.—

24 (1) IN GENERAL.—Not later than January 1,
25 2016, the Secretary of Health and Human Services

1 (in this title referred to as the “Secretary”) shall
2 submit to Congress a report concerning the extent to
3 which, based upon the impact of the health care re-
4 forms carried out under division A in reducing the
5 number of uninsured individuals, there is a contin-
6 ued role for Medicaid DSH. In preparing the report,
7 the Secretary shall consult with community-based
8 health care networks serving low-income bene-
9 ficiaries.

10 (2) MATTERS TO BE INCLUDED.—The report
11 shall include the following:

12 (A) RECOMMENDATIONS.—Recommendations
13 regarding—

14 (i) the appropriate targeting of Med-
15 icaid DSH within States; and

16 (ii) the distribution of Medicaid DSH
17 among the States.

18 (B) SPECIFICATION OF DSH HEALTH RE-
19 FORM METHODOLOGY.—The DSH Health Re-
20 form methodology described in paragraph (2) of
21 subsection (b) for purposes of implementing the
22 requirements of such subsection.

23 (3) COORDINATION WITH MEDICARE DSH RE-
24 PORT.—The Secretary shall coordinate the report

1 under this subsection with the report on Medicare
2 DSH under section 1112.

3 (4) MEDICAID DSH.—In this section, the term
4 “Medicaid DSH” means adjustments in payments
5 under section 1923 of the Social Security Act for in-
6 patient hospital services furnished by dispropor-
7 tionate share hospitals.

8 (b) MEDICAID DSH REDUCTIONS.—

9 (1) IN GENERAL.—The Secretary shall reduce
10 Medicaid DSH so as to reduce total Federal pay-
11 ments to all States for such purpose by
12 \$1,500,000,000 in fiscal year 2017, \$2,500,000,000
13 in fiscal year 2018, and \$6,000,000,000 in fiscal
14 year 2019.

15 (2) DSH HEALTH REFORM METHODOLOGY.—
16 The Secretary shall carry out paragraph (1) through
17 use of a DSH Health Reform methodology issued by
18 the Secretary that imposes the largest percentage re-
19 ductions on the States that—

20 (A) have the lowest percentages of unin-
21 sured individuals (determined on the basis of
22 audited hospital cost reports) during the most
23 recent year for which such data are available;
24 or

1 (B) do not target their DSH payments
2 on—

3 (i) hospitals with high volumes of
4 Medicaid inpatients (as defined in section
5 1923(b)(1)(A) of the Social Security Act
6 (42 U.S.C. 1396r-4(b)(1)(A)); and

7 (ii) hospitals that have high levels of
8 uncompensated care (excluding bad debt).

9 (3) DSH ALLOTMENT PUBLICATIONS.—

10 (A) IN GENERAL.—Not later than the pub-
11 lication deadline specified in subparagraph (B),
12 the Secretary shall publish in the Federal Reg-
13 ister a notice specifying the DSH allotment to
14 each State under 1923(f) of the Social Security
15 Act for the respective fiscal year specified in
16 such subparagraph, consistent with the applica-
17 tion of the DSH Health Reform methodology
18 described in paragraph (2).

19 (B) PUBLICATAION DEADLINE.—The pub-
20 lication deadline specified in this subparagraph
21 is—

22 (i) January 1, 2016, with respect to
23 DSH allotments described in subparagraph
24 (A) for fiscal year 2017;

1 (ii) January 1, 2017, with respect to
2 DSH allotments described in subparagraph
3 (A) for fiscal year 2018; and

4 (iii) January 1, 2018, with respect to
5 DSH allotments described in subparagraph
6 (A) for fiscal year 2019.

7 (c) CONFORMING AMENDMENTS.—

8 (1) Section 1923(f) of the Social Security Act
9 (42 U.S.C. 1396r-4(f)) is amended—

10 (A) by redesignating paragraph (7) as
11 paragraph (8); and

12 (B) by inserting after paragraph (6) the
13 following new paragraph:

14 “(7) SPECIAL RULE FOR FISCAL YEARS 2017,
15 2018, AND 2019.—

16 “(A) FISCAL YEAR 2017.—Notwithstanding
17 paragraph (2), the total DSH allotments for all
18 States for—

19 “(i) fiscal year 2017, shall be the total
20 DSH allotments that would otherwise be
21 determined under this subsection for such
22 fiscal year decreased by \$1,500,000,000;

23 “(ii) fiscal year 2018, shall be the
24 total DSH allotments that would otherwise
25 be determined under this subsection for

1 such fiscal year decreased by
2 \$2,500,000,000; and

3 “(iii) fiscal year 2019, shall be the
4 total DSH allotments that would otherwise
5 be determined under this subsection for
6 such fiscal year decreased by
7 \$6,000,000,000.”.

8 (2) Section 1923(b)(4) of such Act (42 U.S.C.
9 1396r-4(b)(4)) is amended by adding before the pe-
10 riod the following: “or to affect the authority of the
11 Secretary to issue and implement the DSH Health
12 Reform methodology under section 1704(b)(2) of the
13 America’s Health Choices Act of 2009”.

14 (d) DISPROPORTIONATE SHARE HOSPITALS (DSH)
15 AND ESSENTIAL ACCESS HOSPITAL (EAH) NON-DIS-
16 CRIMINATION.—

17 (1) IN GENERAL.—Section 1923(d) of the So-
18 cial Security Act (42 U.S.C. 1396r-4) is amended by
19 adding at the end the following new paragraph:

20 “(4) No hospital may be defined or deemed as
21 a disproportionate share hospital, or as an essential
22 access hospital (for purposes of subsection
23 (f)(6)(A)(iv), under a State plan under this title or
24 subsection (b) of this section (including any waiver
25 under section 1115) unless the hospital—

1 “(A) provides services to beneficiaries
2 under this title without discrimination on the
3 ground of race, color, national origin, creed,
4 source of payment, status as a beneficiary
5 under this title, or any other ground unrelated
6 to such beneficiary’s need for the services or the
7 availability of the needed services in the hos-
8 pital; and

9 “(B) makes arrangements for, and accepts,
10 reimbursement under this title for services pro-
11 vided to eligible beneficiaries under this title.”.

12 (2) EFFECTIVE DATE.—The amendment made
13 by subsection (a) shall be apply to expenditures
14 made on or after July 1, 2010.

15 **SEC. 1705. EXPANDED OUTSTATIONING.**

16 (a) IN GENERAL.—Section 1902(a)(55) of the Social
17 Security Act (42 U.S.C. 1396a(a)(55)) is amended by
18 striking “under subsection (a)(10)(A)(i)(IV),
19 (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or
20 (a)(10)(A)(ii)(IX)” and inserting “(including receipt and
21 processing of applications of individuals for affordability
22 credits under subtitle C of title II of division A of the
23 America’s Affordable Health Choices Act of 2009 pursu-
24 ant to a Medicaid memorandum of understanding under
25 section 1943(a)(1))”.

1 (b) EFFECTIVE DATE.—

2 (1) Except as provided in paragraph (2), the
3 amendment made by subsection (a) shall apply to
4 services furnished on or after July 1, 2010, without
5 regard to whether or not final regulations to carry
6 out such amendment have been promulgated by such
7 date.

8 (2) In the case of a State plan for medical as-
9 sistance under title XIX of the Social Security Act
10 which the Secretary of Health and Human Services
11 determines requires State legislation (other than leg-
12 islation appropriating funds) in order for the plan to
13 meet the additional requirement imposed by the
14 amendment made by this section, the State plan
15 shall not be regarded as failing to comply with the
16 requirements of such title solely on the basis of its
17 failure to meet this additional requirement before
18 the first day of the first calendar quarter beginning
19 after the close of the first regular session of the
20 State legislature that begins after the date of the en-
21 actment of this Act. For purposes of the previous
22 sentence, in the case of a State that has a 2-year
23 legislative session, each year of such session shall be
24 deemed to be a separate regular session of the State
25 legislature.

1 **Subtitle B—Prevention**

2 **SEC. 1711. REQUIRED COVERAGE OF PREVENTIVE SERV-**
3 **ICES.**

4 (a) **COVERAGE.**—Section 1905 of the Social Security
5 Act (42 U.S.C. 1396d), as amended by section
6 1701(a)(2)(B), is amended—

7 (1) in subsection (a)(4)—

8 (A) by striking “and” before “(C)”; and

9 (B) by inserting before the semicolon at
10 the end the following: “and (D) preventive serv-
11 ices described in subsection (z)”; and

12 (2) by adding at the end the following new sub-
13 section:

14 “(z) **PREVENTIVE SERVICES.**—The preventive serv-
15 ices described in this subsection are services not otherwise
16 described in subsection (a) or (r) that the Secretary deter-
17 mines are—

18 “(1)(A) recommended with a grade of A or B
19 by the Task Force for Clinical Preventive Services;
20 or

21 “(B) vaccines recommended for use as appro-
22 priate by the Director of the Centers for Disease
23 Control and Prevention; and

24 “(2) appropriate for individuals entitled to med-
25 ical assistance under this title.”.

1 (b) CONFORMING AMENDMENT.—Section 1928 of
2 such Act (42 U.S.C. 1396s) is amended—

3 (1) in subsection (c)(2)(B)(i), by striking “the
4 advisory committee referred to in subsection (e)”
5 and inserting “the Director of the Centers for Dis-
6 ease Control and Prevention” ;

7 (2) in subsection (e), by striking “Advisory
8 Committee” and all that follows and inserting “Di-
9 rector of the Centers for Disease Control and Pre-
10 vention.”; and

11 (3) by striking subsection (g).

12 (c) EFFECTIVE DATE.—

13 (1) Except as provided in paragraph (2), the
14 amendments made by this section shall apply to
15 services furnished on or after July 1, 2010, without
16 regard to whether or not final regulations to carry
17 out such amendments have been promulgated by
18 such date.

19 (2) In the case of a State plan for medical as-
20 sistance under title XIX of the Social Security Act
21 which the Secretary of Health and Human Services
22 determines requires State legislation (other than leg-
23 islation appropriating funds) in order for the plan to
24 meet the additional requirements imposed by the
25 amendments made by this section, the State plan

1 shall not be regarded as failing to comply with the
2 requirements of such title solely on the basis of its
3 failure to meet these additional requirements before
4 the first day of the first calendar quarter beginning
5 after the close of the first regular session of the
6 State legislature that begins after the date of the en-
7 actment of this Act. For purposes of the previous
8 sentence, in the case of a State that has a 2-year
9 legislative session, each year of such session shall be
10 deemed to be a separate regular session of the State
11 legislature.

12 **SEC. 1712. TOBACCO CESSATION.**

13 (a) DROPPING TOBACCO CESSATION EXCLUSION
14 FROM COVERED OUTPATIENT DRUGS.—Section
15 1927(d)(2) of the Social Security Act (42 U.S.C. 1396r-
16 8(d)(2)) is amended—

17 (1) by striking subparagraph (E);

18 (2) in subparagraph (G), by inserting before the
19 period at the end the following: “, except agents ap-
20 proved by the Food and Drug Administration for
21 purposes of promoting, and when used to promote,
22 tobacco cessation”; and

23 (3) by redesignating subparagraphs (F)
24 through (K) as subparagraphs (E) through (J), re-
25 spectively.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to drugs and services furnished
3 on or after January 1, 2010.

4 **SEC. 1713. OPTIONAL COVERAGE OF NURSE HOME VISITA-**
5 **TION SERVICES.**

6 (a) IN GENERAL.—Section 1905 of the Social Secu-
7 rity Act (42 U.S.C. 1396d), as amended by sections
8 1701(a)(2) and 1711(a), is amended—

9 (1) in subsection (a)—

10 (A) in paragraph (27), by striking “and”
11 at the end;

12 (B) by redesignating paragraph (28) as
13 paragraph (29); and

14 (C) by inserting after paragraph (27) the
15 following new paragraph:

16 “(28) nurse home visitation services (as defined
17 in subsection (aa)); and”;

18 (2) by adding at the end the following new sub-
19 section:

20 “(aa) The term ‘nurse home visitation services’
21 means home visits by trained nurses to families with a
22 first-time pregnant woman, or a child (under 2 years of
23 age), who is eligible for medical assistance under this title,
24 but only, to the extent determined by the Secretary based

1 upon evidence, that such services are effective in one or
2 more of the following:

3 “(1) Improving maternal or child health and
4 pregnancy outcomes or increasing birth intervals be-
5 tween pregnancies.

6 “(2) Reducing the incidence of child abuse, ne-
7 glect, and injury, improving family stability (includ-
8 ing reduction in the incidence of intimate partner vi-
9 olence), or reducing maternal and child involvement
10 in the criminal justice system.

11 “(3) Increasing economic self-sufficiency, em-
12 ployment advancement, school-readiness, and edu-
13 cational achievement, or reducing dependence on
14 public assistance.”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to services furnished on or after
17 January 1, 2010.

18 (c) CONSTRUCTION.—Nothing in the amendments
19 made by this section shall be construed as affecting the
20 ability of a State under title XIX or XXI of the Social
21 Security Act to provide nurse home visitation services as
22 part of another class of items and services falling within
23 the definition of medical assistance or child health assist-
24 ance under the respective title, or as an administrative ex-
25 penditure for which payment is made under section

1 1903(a) or 2105(a) of such Act, respectively, on or after
2 the date of the enactment of this Act.

3 **SEC. 1714. STATE ELIGIBILITY OPTION FOR FAMILY PLAN-**
4 **NING SERVICES.**

5 (a) COVERAGE AS OPTIONAL CATEGORICALLY
6 NEEDY GROUP.—

7 (1) IN GENERAL.—Section 1902(a)(10)(A)(ii)
8 of the Social Security Act (42 U.S.C.
9 1396a(a)(10)(A)(ii)) is amended—

10 (A) in subclause (XVIII), by striking “or”
11 at the end;

12 (B) in subclause (XIX), by adding “or” at
13 the end; and

14 (C) by adding at the end the following new
15 subclause:

16 “(XX) who are described in subsection (hh) (re-
17 lating to individuals who meet certain income stand-
18 ards);”.

19 (2) GROUP DESCRIBED.—Section 1902 of such
20 Act (42 U.S.C. 1396a), as amended by section 1703,
21 is amended by adding at the end the following new
22 subsection:

23 “(hh)(1) Individuals described in this subsection are
24 individuals—

1 “(A) whose income does not exceed an in-
2 come eligibility level established by the State
3 that does not exceed the highest income eligi-
4 bility level established under the State plan
5 under this title (or under its State child health
6 plan under title XXI) for pregnant women; and

7 “(B) who are not pregnant.

8 “(2) At the option of a State, individuals de-
9 scribed in this subsection may include individuals
10 who, had individuals applied on or before January 1,
11 2007, would have been made eligible pursuant to the
12 standards and processes imposed by that State for
13 benefits described in clause (XV) of the matter fol-
14 lowing subparagraph (G) of section subsection
15 (a)(10) pursuant to a waiver granted under section
16 1115.

17 “(3) At the option of a State, for purposes of
18 subsection (a)(17)(B), in determining eligibility for
19 services under this subsection, the State may con-
20 sider only the income of the applicant or recipient.”.

21 (3) LIMITATION ON BENEFITS.—Section
22 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10))
23 is amended in the matter following subparagraph
24 (G)—

1 (A) by striking “and (XIV)” and inserting
2 “(XIV)”; and

3 (B) by inserting “, and (XV) the medical
4 assistance made available to an individual de-
5 scribed in subsection (hh) shall be limited to
6 family planning services and supplies described
7 in section 1905(a)(4)(C) including medical di-
8 agnosis and treatment services that are pro-
9 vided pursuant to a family planning service in
10 a family planning setting” after “cervical can-
11 cer”.

12 (4) CONFORMING AMENDMENTS.—Section
13 1905(a) of such Act (42 U.S.C. 1396d(a)), as
14 amended by section 1731(c), is amended in the mat-
15 ter preceding paragraph (1)—

16 (A) in clause (xiii), by striking “or” at the
17 end;

18 (B) in clause (xiv), by adding “or” at the
19 end; and

20 (C) by inserting after clause (xiv) the fol-
21 lowing:

22 “(xv) individuals described in section
23 1902(hh),”.

24 (b) PRESUMPTIVE ELIGIBILITY.—

1 “(B) ends with (and includes) the earlier
2 of—

3 “(i) the day on which a determination
4 is made with respect to the eligibility of
5 such individual for services under the State
6 plan; or

7 “(ii) in the case of such an individual
8 who does not file an application by the last
9 day of the month following the month dur-
10 ing which the entity makes the determina-
11 tion referred to in subparagraph (A), such
12 last day.

13 “(2) QUALIFIED ENTITY.—

14 “(A) IN GENERAL.—Subject to subpara-
15 graph (B), the term ‘qualified entity’ means
16 any entity that—

17 “(i) is eligible for payments under a
18 State plan approved under this title; and

19 “(ii) is determined by the State agen-
20 cy to be capable of making determinations
21 of the type described in paragraph (1)(A).

22 “(B) RULE OF CONSTRUCTION.—Nothing
23 in this paragraph shall be construed as pre-
24 venting a State from limiting the classes of en-

1 tities that may become qualified entities in
2 order to prevent fraud and abuse.

3 “(c) ADMINISTRATION.—

4 “(1) IN GENERAL.—The State agency shall pro-
5 vide qualified entities with—

6 “(A) such forms as are necessary for an
7 application to be made by an individual de-
8 scribed in subsection (a) for medical assistance
9 under the State plan; and

10 “(B) information on how to assist such in-
11 dividuals in completing and filing such forms.

12 “(2) NOTIFICATION REQUIREMENTS.—A quali-
13 fied entity that determines under subsection
14 (b)(1)(A) that an individual described in subsection
15 (a) is presumptively eligible for medical assistance
16 under a State plan shall—

17 “(A) notify the State agency of the deter-
18 mination within 5 working days after the date
19 on which determination is made; and

20 “(B) inform such individual at the time
21 the determination is made that an application
22 for medical assistance is required to be made by
23 not later than the last day of the month fol-
24 lowing the month during which the determina-
25 tion is made.

1 “(3) APPLICATION FOR MEDICAL ASSIST-
2 ANCE.—In the case of an individual described in
3 subsection (a) who is determined by a qualified enti-
4 ty to be presumptively eligible for medical assistance
5 under a State plan, the individual shall apply for
6 medical assistance by not later than the last day of
7 the month following the month during which the de-
8 termination is made.

9 “(d) PAYMENT.—Notwithstanding any other provi-
10 sion of law, medical assistance that—

11 “(1) is furnished to an individual described in
12 subsection (a)—

13 “(A) during a presumptive eligibility pe-
14 riod;

15 “(B) by a entity that is eligible for pay-
16 ments under the State plan; and

17 “(2) is included in the care and services covered
18 by the State plan,

19 shall be treated as medical assistance provided by such
20 plan for purposes of clause (4) of the first sentence of
21 section 1905(b).”.

22 (2) CONFORMING AMENDMENTS.—

23 (A) Section 1902(a)(47) of the Social Se-
24 curity Act (42 U.S.C. 1396a(a)(47)) is amend-
25 ed by inserting before the semicolon at the end

1 the following: “and provide for making medical
2 assistance available to individuals described in
3 subsection (a) of section 1920C during a pre-
4 sumptive eligibility period in accordance with
5 such section”.

6 (B) Section 1903(u)(1)(D)(v) of such Act
7 (42 U.S.C. 1396b(u)(1)(D)(v)) is amended—

8 (i) by striking “or for” and inserting
9 “for”; and

10 (ii) by inserting before the period the
11 following: “, or for medical assistance pro-
12 vided to an individual described in sub-
13 section (a) of section 1920C during a pre-
14 sumptive eligibility period under such sec-
15 tion”.

16 (c) CLARIFICATION OF COVERAGE OF FAMILY PLAN-
17 NING SERVICES AND SUPPLIES.—Section 1937(b) of the
18 Social Security Act (42 U.S.C. 1396u–7(b)) is amended
19 by adding at the end the following:

20 “(5) COVERAGE OF FAMILY PLANNING SERV-
21 ICES AND SUPPLIES.—Notwithstanding the previous
22 provisions of this section, a State may not provide
23 for medical assistance through enrollment of an indi-
24 vidual with benchmark coverage or benchmark-equiv-
25 alent coverage under this section unless such cov-

1 erage includes for any individual described in section
2 1905(a)(4)(C), medical assistance for family plan-
3 ning services and supplies in accordance with such
4 section.”.

5 (d) **EFFECTIVE DATE.**—The amendments made by
6 this section take effect on the date of the enactment of
7 this Act and shall apply to items and services furnished
8 on or after such date.

9 **Subtitle C—Access**

10 **SEC. 1721. PAYMENTS TO PRIMARY CARE PRACTITIONERS.**

11 (a) **IN GENERAL.**—

12 (1) **FEE-FOR-SERVICE PAYMENTS.**—Section
13 1902(a)(13) of the Social Security Act (42 U.S.C.
14 1396b(a)(13)) is amended—

15 (A) by striking “and” at the end of sub-
16 paragraph (A);

17 (B) by adding “and” at the end of sub-
18 paragraph (B); and

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

21 “(C) payment for primary care services (as
22 defined in section 1848(j)(5)(A), but applied
23 without regard to clause (ii) thereof) furnished
24 by physicians (or for services furnished by other
25 health care professionals that would be primary

1 care services under such section if furnished by
2 a physician) at a rate not less than 80 percent
3 of the payment rate applicable to such services
4 and physicians or professionals (as the case
5 may be) under part B of title XVIII for services
6 furnished in 2010, 90 percent of such rate for
7 services and physicians (or professionals) fur-
8 nished in 2011, and 100 percent of such pay-
9 ment rate for services and physicians (or pro-
10 fessionals) furnished in 2012 or a subsequent
11 year;”.

12 (2) UNDER MEDICAID MANAGED CARE
13 PLANS.—Section 1923(f) of such Act (42 U.S.C.
14 1396u–2(f)) is amended—

15 (A) in the heading, by adding at the end
16 the following: “; ADEQUACY OF PAYMENT FOR
17 PRIMARY CARE SERVICES”; and

18 (B) by inserting before the period at the
19 end the following: “and, in the case of primary
20 care services described in section
21 1902(a)(13)(C), consistent with the minimum
22 payment rates specified in such section (regard-
23 less of the manner in which such payments are
24 made, including in the form of capitation or
25 partial capitation)”.

1 (b) INCREASE IN PAYMENT USING 100% FMAP.—
2 Section 1905(y), as added by section 1701(a)(2)(B) and
3 as amended by section 1701(c)(2), is amended by adding
4 at the end the following:

5 “(3)(A) The portion of the amounts expended
6 for medical assistance for services described in sec-
7 tion 1902(a)(13)(C) furnished on or after January
8 1, 2010, that is attributable to the amount by which
9 the minimum payment rate required under such sec-
10 tion (or, by application, section 1932(f)) exceeds the
11 payment rate applicable to such services under the
12 State plan as of June 16, 2009.

13 “(B) Subparagraphs (A) shall not be construed
14 as preventing the payment of Federal financial par-
15 ticipation based on the Federal medical assistance
16 percentage for amounts in excess of those specified
17 under such subparagraphs.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to services furnished on or after
20 January 1, 2010.

21 **SEC. 1722. MEDICAL HOME PILOT PROGRAM.**

22 (a) IN GENERAL.—The Secretary of Health and
23 Human Services shall establish under this section a med-
24 ical home pilot program under which a State may apply
25 to the Secretary for approval of a medical home pilot

1 project described in subsection (b) (in this section referred
2 to as a “pilot project”) for the application of the medical
3 home concept under title XIX of the Social Security Act.
4 The pilot program shall operate for a period of up to 5
5 years.

6 (b) PILOT PROJECT DESCRIBED.—

7 (1) IN GENERAL.—A pilot project is a project
8 that applies one or more of the medical home models
9 described in section 1866E(a)(3) of the Social Secu-
10 rity Act (as inserted by section 1302(a)) or such
11 other model as the Secretary may approve, to high
12 need beneficiaries (including medically fragile chil-
13 dren and high-risk pregnant women) who are eligible
14 for medical assistance under title XIX of the Social
15 Security Act. The Secretary shall provide for appro-
16 priate coordination of the pilot program under this
17 section with the medical home pilot program under
18 section 1866E of such Act.

19 (2) LIMITATION.—A pilot project shall be for a
20 duration of not more than 5 years.

21 (c) ADDITIONAL INCENTIVES.—In the case of a pilot
22 project, the Secretary may—

23 (1) waive the requirements of section
24 1902(a)(1) of the Social Security Act (relating to

1 statewideness) and section 1902(a)(10)(B) of such
2 Act (relating to comparability); and

3 (2) increase to up to 90 percent (for the first
4 2 years of the pilot program) or 75 percent (for the
5 next 3 years) the matching percentage for adminis-
6 trative expenditures (such as those for community
7 care workers).

8 (d) **MEDICALLY FRAGILE CHILDREN.**—In the case of
9 a model involving medically fragile children, the model
10 shall ensure that the patient-centered medical home serv-
11 ices received by each child, in addition to fulfilling the re-
12 quirements under 1866E(b)(1) of the Social Security Act,
13 provide for continuous involvement and education of the
14 parent or caregiver and for assistance to the child in ob-
15 taining necessary transitional care if a child’s enrollment
16 ceases for any reason.

17 (e) **EVALUATION; REPORT.**—

18 (1) **EVALUATION.**—The Secretary, using the
19 criteria described in section 1866E(g)(1) of the So-
20 cial Security Act (as inserted by section 1123), shall
21 conduct an evaluation of the pilot program under
22 this section.

23 (2) **REPORT.**—Not later than 60 days after the
24 date of completion of the evaluation under para-
25 graph (1), the Secretary shall submit to Congress

1 and make available to the public a report on the
2 findings of the evaluation under such paragraph.

3 (f) FUNDING.—The additional Federal financial par-
4 ticipation resulting from the implementation of the pilot
5 program under this section may not exceed in the aggre-
6 gate \$1,235,000,000 over the 5-year period of the pro-
7 gram.

8 **SEC. 1723. TRANSLATION OR INTERPRETATION SERVICES.**

9 (a) IN GENERAL.—Section 1903(a)(2)(E) of the So-
10 cial Security Act (42 U.S.C. 1396b(a)(2)), as added by
11 section 201(b)(2)(A) of the Children’s Health Insurance
12 Program Reauthorization Act of 2009 (Public Law 111–
13 3), is amended by inserting “and other individuals” after
14 “children of families”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 subsection (a) shall apply to payment for translation or
17 interpretation services furnished on or after January 1,
18 2010.

19 **SEC. 1724. OPTIONAL COVERAGE FOR FREESTANDING**
20 **BIRTH CENTER SERVICES.**

21 (a) IN GENERAL.—Section 1905 of the Social Secu-
22 rity Act (42 U.S.C. 1396d), as amended by section
23 1713(a), is amended—

24 (1) in subsection (a)—

1 (A) by redesignating paragraph (29) as
2 paragraph (30);

3 (B) in paragraph (28), by striking at the
4 end “and”; and

5 (C) by inserting after paragraph (28) the
6 following new paragraph:

7 “(29) freestanding birth center services (as de-
8 fined in subsection (l)(3)(A)) and other ambulatory
9 services that are offered by a freestanding birth cen-
10 ter (as defined in subsection (l)(3)(B)) and that are
11 otherwise included in the plan; and”;

12 (2) in subsection (l), by adding at the end the
13 following new paragraph:

14 “(3)(A) The term ‘freestanding birth center services’
15 means services furnished to an individual at a freestanding
16 birth center (as defined in subparagraph (B)), including
17 by a licensed birth attendant (as defined in subparagraph
18 (C)) at such center.

19 “(B) The term ‘freestanding birth center’ means a
20 health facility—

21 “(i) that is not a hospital; and

22 “(ii) where childbirth is planned to occur away
23 from the pregnant woman’s residence.

24 “(C) The term ‘licensed birth attendant’ means an
25 individual who is licensed or registered by the State in-

1 volved to provide health care at childbirth and who pro-
2 vides such care within the scope of practice under which
3 the individual is legally authorized to perform such care
4 under State law (or the State regulatory mechanism pro-
5 vided by State law), regardless of whether the individual
6 is under the supervision of, or associated with, a physician
7 or other health care provider. Nothing in this subpara-
8 graph shall be construed as changing State law require-
9 ments applicable to a licensed birth attendant.”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to items and services furnished on
12 or after the date of the enactment of this Act.

13 **SEC. 1725. INCLUSION OF PUBLIC HEALTH CLINICS UNDER**
14 **THE VACCINES FOR CHILDREN PROGRAM.**

15 Section 1928(b)(2)(A)(iii)(I) of the Social Security
16 Act (42 U.S.C. 1396s(b)(2)(A)(iii)(I)) is amended—

17 (1) by striking “or a rural health clinic” and in-
18 serting “, a rural health clinic”; and

19 (2) by inserting “or a public health clinic,”
20 after “1905(l)(1),”.

1 **Subtitle D—Coverage**

2 **SEC. 1731. OPTIONAL MEDICAID COVERAGE OF LOW-IN-**
3 **COME HIV-INFECTED INDIVIDUALS.**

4 (a) IN GENERAL.— Section 1902 of the Social Secu-
5 rity Act (42 U.S.C. 1396a), as amended by section
6 1714(a)(1), is amended—

7 (1) in subsection (a)(10)(A)(ii)—

8 (A) by striking “or” at the end of sub-
9 clause (XIX);

10 (B) by adding “or” at the end of subclause
11 (XX); and

12 (C) by adding at the end the following:

13 “(XXI) who are described in subsection (ii) (re-
14 lating to HIV-infected individuals);”; and

15 (2) by adding at the end, as amended by sec-
16 tions 1703 and 1714(a), the following:

17 “(ii) individuals described in this subsection are indi-
18 viduals not described in subsection (a)(10)(A)(i)—

19 “(1) who have HIV infection;

20 “(2) whose income (as determined under the
21 State plan under this title with respect to disabled
22 individuals) does not exceed the maximum amount
23 of income a disabled individual described in sub-
24 section (a)(10)(A)(i) may have and obtain medical
25 assistance under the plan; and

1 “(3) whose resources (as determined under the
2 State plan under this title with respect to disabled
3 individuals) do not exceed the maximum amount of
4 resources a disabled individual described in sub-
5 section (a)(10)(A)(i) may have and obtain medical
6 assistance under the plan.”.

7 (b) ENHANCED MATCH.—The first sentence of sec-
8 tion 1905(b) of such Act (42 U.S.C. 1396d(b)) is amended
9 by striking “section 1902(a)(10)(A)(ii)(XVIII)” and in-
10 serting “subclause (XVIII) or (XX) of section
11 1902(a)(10)(A)(ii)”.

12 (c) CONFORMING AMENDMENTS.—Section 1905(a) of
13 such Act (42 U.S.C. 1396d(a)) is amended, in the matter
14 preceding paragraph (1)—

15 (1) by striking “or” at the end of clause (xii);

16 (2) by adding “or” at the end of clause (xiii);

17 and

18 (3) by inserting after clause (xiii) the following:

19 “(xiv) individuals described in section
20 1902(ii),”.

21 (d) EXEMPTION FROM FUNDING LIMITATION FOR
22 TERRITORIES.—Section 1108(g) of the Social Security
23 Act (42 U.S.C. 1308(g)) is amended by adding at the end
24 the following:

1 **SEC. 1733. REQUIREMENT OF 12-MONTH CONTINUOUS COV-**
2 **ERAGE UNDER CERTAIN CHIP PROGRAMS.**

3 (a) IN GENERAL.—Section 2102(b) of the Social Se-
4 curity Act (42 U.S.C. 1397bb(b)) is amended by adding
5 at the end the following new paragraph:

6 “(6) REQUIREMENT FOR 12-MONTH CONTIN-
7 UOUS ELIGIBILITY.—In the case of a State child
8 health plan that provides child health assistance
9 under this title through a means other than de-
10 scribed in section 2101(a)(2), the plan shall provide
11 for implementation under this title of the 12-month
12 continuous eligibility option described in section
13 1902(e)(12) for targeted low-income children whose
14 family income is below 200 percent of the poverty
15 line.”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 subsection (a) shall apply to determinations (and redeter-
18 minations) of eligibility made on or after January 1, 2010.

19 **Subtitle E—Financing**

20 **SEC. 1741. PAYMENTS TO PHARMACISTS.**

21 (a) PHARMACY REIMBURSEMENT LIMITS.—

22 (1) IN GENERAL.—Section 1927(e) of the So-
23 cial Security Act (42 U.S.C. 1396r–8(e)) is amend-
24 ed—

25 (A) by striking paragraph (5) and insert-
26 ing the following:

1 “(5) USE OF AMP IN UPPER PAYMENT LIM-
2 ITS.—The Secretary shall calculate the Federal
3 upper reimbursement limit established under para-
4 graph (4) as 130 percent of the weighted average
5 (determined on the basis of manufacturer utiliza-
6 tion) of monthly average manufacturer prices.”

7 (2) DEFINITION OF AMP.—Section
8 1927(k)(1)(B) of such Act (42 U.S.C. 1396r-
9 8(k)(1)(B)) is amended—

10 (B) in the heading, by striking “EX-
11 TENDED TO WHOLESALERS” and inserting
12 “AND OTHER PAYMENTS”; and

13 (C) by striking “regard to” and all that
14 follows through the period and inserting the fol-
15 lowing: “regard to—

16 “(i) customary prompt pay discounts
17 extended to wholesalers;

18 “(ii) bona fide service fees paid by
19 manufacturers;

20 “(iii) reimbursement by manufactur-
21 ers for recalled, damaged, expired, or oth-
22 erwise unsalable returned goods, including
23 reimbursement for the cost of the goods
24 and any reimbursement of costs associated

1 with return goods handling and processing,
2 reverse logistics, and drug destruction;

3 “(iv) sales directly to, or rebates, dis-
4 counts, or other price concessions provided
5 to, pharmacy benefit managers, managed
6 care organizations, health maintenance or-
7 ganizations, insurers, mail order phar-
8 macies that are not open to all members of
9 the public, or long term care providers,
10 provided that these rebates, discounts, or
11 price concessions are not passed through to
12 retail pharmacies;

13 “(v) sales directly to, or rebates, dis-
14 counts, or other price concessions provided
15 to, hospitals, clinics, and physicians, unless
16 the drug is an inhalation, infusion, or
17 injectable drug, or unless the Secretary de-
18 termines, as allowed for in Agency admin-
19 istrative procedures, that it is necessary to
20 include such sales, rebates, discounts, and
21 price concessions in order to obtain an ac-
22 curate AMP for the drug. Such a deter-
23 mination shall not be subject to judicial re-
24 view; or

1 “(vi) rebates, discounts, and other
2 price concessions required to be provided
3 under agreements under subsections (f)
4 and (g) of section 1860D–2(f).”.

5 (3) MANUFACTURER REPORTING REQUIRE-
6 MENTS.—Section 1927(b)(3) of such Act (42 U.S.C.
7 1396r–8(b)(3)) is amended—

8 (A) in subparagraph (A), by adding at the
9 end the following new clause:

10 “(iv) not later than 30 days after the
11 last day of each month of a rebate period
12 under the agreement, on the manufactur-
13 er’s total number of units that are used to
14 calculate the monthly average manufac-
15 turer price for each covered outpatient
16 drug.”

17 (4) AUTHORITY TO PROMULGATE REGULA-
18 TION.—The Secretary of Health and Human Serv-
19 ices may promulgate regulations to clarify the re-
20 quirements for upper payment limits and for the de-
21 termination of the average manufacturer price in an
22 expedited manner. Such regulations may become ef-
23 fective on an interim final basis, pending oppor-
24 tunity for public comment.

1 (5) PHARMACY REIMBURSEMENTS THROUGH
2 DECEMBER 31, 2010.—The specific upper limit under
3 section 447.332 of title 42, Code of Federal Regula-
4 tions (as in effect on December 31, 2006) applicable
5 to payments made by a State for multiple source
6 drugs under a State Medicaid plan shall continue to
7 apply through December 31, 2010, for purposes of
8 the availability of Federal financial participation for
9 such payments.

10 (b) DISCLOSURE OF PRICE INFORMATION TO THE
11 PUBLIC.—Section 1927(b)(3) of such Act (42 U.S.C.
12 1396r-8(b)(3)) is amended—

13 (1) in subparagraph (A)—

14 (A) in clause (i), in the matter preceding
15 subclause (I), by inserting “month of a” after
16 “each”; and

17 (B) in the last sentence, by striking “and
18 shall,” and all that follows through the period;
19 and

20 (2) in subparagraph (D)(v), by inserting
21 “weighted” before “average manufacturer prices”.

22 **SEC. 1742. PRESCRIPTION DRUG REBATES.**

23 (a) ADDITIONAL REBATE FOR NEW FORMULATIONS
24 OF EXISTING DRUGS.—

1 (1) IN GENERAL.—Section 1927(c)(2) of the
2 Social Security Act (42 U.S.C. 1396r–8(c)(2)) is
3 amended by adding at the end the following new
4 subparagraph:

5 “(C) TREATMENT OF NEW FORMULA-
6 TIONS.—In the case of a drug that is a line ex-
7 tension of a single source drug or an innovator
8 multiple source drug that is an oral solid dos-
9 age form, the rebate obligation with respect to
10 such drug under this section shall be the
11 amount computed under this section for such
12 new drug or, if greater, the product of—

13 “(i) the average manufacturer price of
14 the line extension of a single source drug
15 or an innovator multiple source drug that
16 is an oral solid dosage form;

17 “(ii) the highest additional rebate
18 (calculated as a percentage of average
19 manufacturer price) under this section for
20 any strength of the original single source
21 drug or innovator multiple source drug;
22 and

23 “(iii) the total number of units of
24 each dosage form and strength of the line
25 extension product paid for under the State

1 plan in the rebate period (as reported by
2 the State).

3 In this subparagraph, the term ‘line extension’
4 means, with respect to a drug, an extended re-
5 lease formulation of the drug.”.

6 (2) EFFECTIVE DATE.—The amendment made
7 by paragraph (1) shall apply to drugs dispensed
8 after December 31, 2009.

9 (b) INCREASE MINIMUM REBATE PERCENTAGE FOR
10 SINGLE SOURCE DRUGS.—Section 1927(c)(1)(B)(i) of the
11 Social Security Act (42 U.S.C. 1396r–8(c)(1)(B)(i)) is
12 amended—

13 (1) in subclause (IV), by striking “and” at the
14 end;

15 (2) in subclause (V)—

16 (A) by inserting “and before January 1,
17 2010” after “December 31, 1995,”; and

18 (B) by striking the period at the end and
19 inserting “; and”; and

20 (3) by adding at the end the following new sub-
21 clause:

22 “(VI) after December 31, 2009,
23 is 22.1 percent.”.

1 **SEC. 1743. EXTENSION OF PRESCRIPTION DRUG DIS-**
2 **COUNTS TO ENROLLEES OF MEDICAID MAN-**
3 **AGED CARE ORGANIZATIONS.**

4 (a) IN GENERAL.—Section 1903(m)(2)(A) of the So-
5 cial Security Act (42 U.S.C. 1396b(m)(2)(A)) is amend-
6 ed—

7 (1) in clause (xi), by striking “and” at the end;

8 (2) in clause (xii), by striking the period at the
9 end and inserting “; and”; and

10 (3) by adding at the end the following:

11 “(xiii) such contract provides that the entity
12 shall report to the State such information, on such
13 timely and periodic basis as specified by the Sec-
14 retary, as the State may require in order to include,
15 in the information submitted by the State to a man-
16 ufacturer under section 1927(b)(2)(A), information
17 on covered outpatient drugs dispensed to individuals
18 eligible for medical assistance who are enrolled with
19 the entity and for which the entity is responsible for
20 coverage of such drugs under this subsection.”.

21 (b) CONFORMING AMENDMENTS.—Section 1927 of
22 such Act (42 U.S.C. 1396r-8) is amended—

23 (1) in the first sentence of subsection (b)(1)(A),
24 by inserting before the period at the end the fol-
25 lowing: “, including such drugs dispensed to individ-
26 uals enrolled with a medicaid managed care organi-

1 zation if the organization is responsible for coverage
2 of such drugs”;

3 (2) in subsection (b)(2), by adding at the end
4 the following new subparagraph:

5 “(C) REPORTING ON MMCO DRUGS.—On a
6 quarterly basis, each State shall report to the
7 Secretary the total amount of rebates in dollars
8 received from pharmacy manufacturers for
9 drugs provided to individuals enrolled with
10 Medicaid managed care organizations that con-
11 tract under section 1903(m).”; and

12 (3) in subsection (j)—

13 (A) in the heading by striking “EXEMP-
14 TION” and inserting “SPECIAL RULES”; and

15 (B) in paragraph (1), by striking “not”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section take effect on July 1, 2010, and shall apply
18 to drugs dispensed on or after such date, without regard
19 to whether or not final regulations to carry out such
20 amendments have been promulgated by such date.

21 **SEC. 1744. PAYMENTS FOR GRADUATE MEDICAL EDU-**
22 **CATION.**

23 (a) IN GENERAL.—Section 1905 of the Social Secu-
24 rity Act (42 U.S.C. 1396d), as amended by sections

1 1701(a)(2), 1711(a), and 1713(a), is amended by adding
2 at the end the following new subsection:

3 “(bb) PAYMENT FOR GRADUATE MEDICAL EDU-
4 CATION.—

5 “(1) IN GENERAL.—The term ‘medical assist-
6 ance’ includes payment for costs of graduate medical
7 education consistent with this subsection, whether
8 provided in or outside of a hospital.

9 “(2) SUBMISSION OF INFORMATION.—For pur-
10 poses of paragraph (1) and section
11 1902(a)(13)(A)(v), payment for such costs is not
12 consistent with this subsection unless—

13 “(A) the State submits to the Secretary, in
14 a timely manner and on an annual basis speci-
15 fied by the Secretary, information on total pay-
16 ments for graduate medical education and how
17 such payments are being used for graduate
18 medical education, including—

19 “(i) the institutions and programs eli-
20 gible for receiving the funding;

21 “(ii) the manner in which such pay-
22 ments are calculated;

23 “(iii) the types and fields of education
24 being supported;

1 “(iv) the workforce or other goals to
2 which the funding is being applied;

3 “(v) State progress in meeting such
4 goals; and

5 “(vi) such other information as the
6 Secretary determines will assist in carrying
7 out paragraphs (3) and (4); and

8 “(B) such expenditures are made con-
9 sistent with such goals and requirements as are
10 established under paragraph (4).

11 “(3) REVIEW OF INFORMATION.—The Secretary
12 shall make the information submitted under para-
13 graph (2) available to the Advisory Committee on
14 Health Workforce Evaluation and Assessment (es-
15 tablished under section 2261 of the Public Health
16 Service Act). The Secretary and the Advisory Com-
17 mittee shall independently review the information
18 submitted under paragraph (2), taking into account
19 State and local workforce needs.

20 “(4) SPECIFICATION OF GOALS AND REQUIRE-
21 MENTS.—The Secretary shall specify by rule, ini-
22 tially published by not later than December 31,
23 2011—

24 “(A) program goals for the use of funds
25 described in paragraph (1), taking into account

1 recommendations of the such Advisory Com-
2 mittee and the goals for approved medical resi-
3 dency training programs described in section
4 1886(h)(1)(B); and

5 “(B) requirements for use of such funds
6 consistent with such goals.

7 Such rule may be effective on an interim basis pend-
8 ing revision after an opportunity for public com-
9 ment.”.

10 (b) CONFORMING AMENDMENT.—Section
11 1902(a)(13)(A) of such Act (42 U.S.C. 1396a(a)(13)(A))
12 is amended—

13 (1) by striking “and” at the end of clause (iii);

14 (2) by striking “; and” and inserting “, and”;

15 and

16 (3) by adding at the end the following new
17 clause:

18 “(v) in the case of hospitals and at
19 the option of a State, such rates may in-
20 clude, to the extent consistent with section
21 1905(bb), payment for graduate medical
22 education; and”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on the date of the enactment
25 of this Act. Nothing in this section shall be construed as

1 affecting payments made before such date under a State
2 plan under title XIX of the Social Security Act for grad-
3 uate medical education.

4 **Subtitle F—Waste, Fraud, and**
5 **Abuse**

6 **SEC. 1751. HEALTH-CARE ACQUIRED CONDITIONS.**

7 (a) MEDICAID NON-PAYMENT FOR CERTAIN HEALTH
8 CARE-ACQUIRED CONDITIONS.—Section 1903(i) of the
9 Social Security Act (42 U.S.C. 1396b(i)) is amended—

10 (1) by striking “or” at the end of paragraph
11 (23);

12 (2) by striking the period at the end of para-
13 graph (24) and inserting “; or”; and

14 (3) by inserting after paragraph (24) the fol-
15 lowing new paragraph:

16 “(25) with respect to amounts expended for
17 services related to the presence of a condition that
18 could be identified by a secondary diagnostic code
19 described in section 1886(d)(4)(D)(iv) and for any
20 health care acquired condition determined as a non-
21 covered service under title XVIII.”.

22 (b) APPLICATION TO CHIP.—Section 2107(e)(1)(G)
23 of such Act (42 U.S.C. 1397gg(e)(1)(G)) is amended by
24 striking “and (17)” and inserting “(17), and (25)”.

1 (c) PERMISSION TO INCLUDE ADDITIONAL HEALTH
2 CARE-ACQUIRED CONDITIONS.—Nothing in this section
3 shall prevent a State from including additional health
4 care-acquired conditions for non-payment in its Medicaid
5 program under title XIX of the Social Security Act.

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to discharges occurring on or after
8 January 1, 2010.

9 **SEC. 1752. EVALUATIONS AND REPORTS REQUIRED UNDER**
10 **MEDICAID INTEGRITY PROGRAM.**

11 Section 1936(c)(2)) of the Social Security Act (42
12 U.S.C. 1396u–7(c)(2)) is amended—

13 (1) by redesignating subparagraph (D) as sub-
14 paragraph (E); and

15 (2) by inserting after subparagraph (C) the fol-
16 lowing new subparagraph:

17 “(D) For the contract year beginning in
18 2011 and each subsequent contract year, the
19 entity provides assurances to the satisfaction of
20 the Secretary that the entity will conduct peri-
21 odic evaluations of the effectiveness of the ac-
22 tivities carried out by such entity under the
23 Program and will submit to the Secretary an
24 annual report on such activities.”.

1 **SEC. 1753. REQUIRE PROVIDERS AND SUPPLIERS TO**
2 **ADOPT PROGRAMS TO REDUCE WASTE,**
3 **FRAUD, AND ABUSE.**

4 Section 1902(a) of such Act (42 U.S.C. 42 U.S.C.
5 1396a(a)), as amended by sections 1631(b)(1) and 1703,
6 is further amended—

7 (1) in paragraph (74), by striking at the end
8 “and”;

9 (2) in paragraph (75), by striking at the end
10 the period and inserting “; and”; and

11 (3) by inserting after paragraph (75) the fol-
12 lowing new paragraph:

13 “(76) provide that any provider or supplier
14 (other than a physician or nursing facility) providing
15 services under such plan shall, subject to paragraph
16 (5) of section 1874(d), establish a compliance pro-
17 gram described in paragraph (1) of such section in
18 accordance with such section.”.

19 **SEC. 1754. OVERPAYMENTS.**

20 (a) **IN GENERAL.**—Section 1903(d)(2)(C) of the So-
21 cial Security Act (42 U.S.C. 1396b(d)(2)(C)) is amended
22 by inserting “(or 1 year in the case of overpayments due
23 to fraud)” after “60 days”.

24 (b) **EFFECTIVE DATE.**—In the case overpayments
25 discovered on or after the date of the enactment of this
26 Act.

1 **SEC. 1755. MANAGED CARE ORGANIZATIONS.**

2 (a) MINIMUM MEDICAL LOSS RATIO.—

3 (1) MEDICAID.—Section 1903(m)(2)(A) of the
4 Social Security Act (42 U.S.C. 1396b(m)(2)(A)), as
5 amended by section 1743(a)(3), is amended—

6 (A) by striking “and” at the end of clause
7 (xii);

8 (B) by striking the period at the end of
9 clause (xiii) and inserting “; and”; and

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

12 “(xiv) such contract has a medical loss ratio, as
13 determined in accordance with a methodology speci-
14 fied by the Secretary that is a percentage (not less
15 than 85 percent) as specified by the Secretary.”.

16 (2) CHIP.—Section 2107(e)(1) of such Act (42
17 U.S.C. 1397gg(e)(1)) is amended—

18 (A) by redesignating subparagraphs (H)
19 through (L) as subparagraphs (I) through (M);
20 and

21 (B) by inserting after subparagraph (G)
22 the following new subparagraph:

23 “(H) Section 1903(m)(2)(A)(xiv) (relating
24 to application of minimum loss ratios), with re-
25 spect to comparable contracts under this title.”.

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to contracts entered
3 into or renewed on or after July 1, 2010.

4 (b) PATIENT ENCOUNTER DATA.—

5 (1) IN GENERAL.—Section 1903(m)(2)(A)(xi)
6 of the Social Security Act (42 U.S.C.
7 1396b(m)(2)(A)(xi)) is amended by inserting “and
8 for the provision of such data to the State at a fre-
9 quency and level of detail to be specified by the Sec-
10 retary” after “patients”.

11 (2) EFFECTIVE DATE.—The amendment made
12 by paragraph (1) shall apply with respect to contract
13 years beginning on or after January 1, 2010.

14 **SEC. 1756. TERMINATION OF PROVIDER PARTICIPATION**
15 **UNDER MEDICAID AND CHIP IF TERMINATED**
16 **UNDER MEDICARE OR OTHER STATE PLAN**
17 **OR CHILD HEALTH PLAN.**

18 (a) STATE PLAN REQUIREMENT.—Section
19 1902(a)(39) of the Social Security Act (42 U.S.C. 42
20 U.S.C. 1396a(a)) is amended by inserting after “1128A,”
21 the following: “terminate the participation of any indi-
22 vidual or entity in such program if (subject to such excep-
23 tions are are permitted with respect to exclusion under
24 sections 1128(b)(3)(C) and 1128(d)(3)(B)) participation
25 of such individual or entity is terminated under title

1 XVIII, any other State plan under this title, or any child
2 health plan under title XXI,”.

3 (b) APPLICATION TO CHIP.—Section 2107(e)(1)(A)
4 of such Act (42 U.S.C. 1397gg(e)(1)(A)) is amended by
5 inserting before the period at the end the following: “and
6 section 1902(a)(39) (relating to exclusion and termination
7 of participation)”.

8 (c) EFFECTIVE DATE.—

9 (1) Except as provided in paragraph (2), the
10 amendments made by this section shall apply to
11 services furnished on or after JJanuary 1, 2011,
12 without regard to whether or not final regulations to
13 carry out such amendments have been promulgated
14 by such date.

15 (2) In the case of a State plan for medical as-
16 sistance under title XIX of the Social Security Act
17 or a child health plan under title XXI of such Act
18 which the Secretary of Health and Human Services
19 determines requires State legislation (other than leg-
20 islation appropriating funds) in order for the plan to
21 meet the additional requirement imposed by the
22 amendments made by this section, the State plan or
23 child health plan shall not be regarded as failing to
24 comply with the requirements of such title solely on
25 the basis of its failure to meet this additional re-

1 requirement before the first day of the first calendar
2 quarter beginning after the close of the first regular
3 session of the State legislature that begins after the
4 date of the enactment of this Act. For purposes of
5 the previous sentence, in the case of a State that has
6 a 2-year legislative session, each year of such session
7 shall be deemed to be a separate regular session of
8 the State legislature.

9 **SEC. 1757. MEDICAID AND CHIP EXCLUSION FROM PARTICI-**
10 **PATION RELATING TO CERTAIN OWNERSHIP,**
11 **CONTROL, AND MANAGEMENT AFFILIATIONS.**

12 (a) STATE PLAN REQUIREMENT.—Section 1902(a)
13 of the Social Security Act (42 U.S.C. 1396a(a)), as
14 amended by sections 1631(b)(1), 1703, and 1753, is fur-
15 ther amended—

16 (1) in paragraph (75), by striking at the end
17 “and”;

18 (2) in paragraph (76), by striking at the end
19 the period and inserting “; and”; and

20 (3) by inserting after paragraph (76) the fol-
21 lowing new paragraph:

22 “(77) provide that the State agency described
23 in paragraph (9) exclude, with respect to a period,
24 any individual or entity from participation in the
25 program under the State plan if such individual or

1 entity owns, controls, or manages an entity that (or
2 if such entity is owned, controlled, or managed by an
3 individual or entity that)—

4 “(A) has unpaid overpayments under this
5 title during such period determined by the Sec-
6 retary or the State agency to be delinquent;

7 “(B) is suspended or excluded from par-
8 ticipation under or whose participation is termi-
9 nated under this title during such period; or

10 “(C) is affiliated with an individual or enti-
11 ty that has been suspended or excluded from
12 participation under this title or whose participa-
13 tion is terminated under this title during such
14 period.”.

15 (b) CHILD HEALTH PLAN REQUIREMENT.—Section
16 2107(e)(1)(A) of such Act (42 U.S.C. 1397gg(e)(1)(A)),
17 as amended by section 1756(b), is amended by striking
18 “section 1902(a)(39)” and inserting “sections
19 1902(a)(39) and 1902(a)(77)”.

20 (c) EFFECTIVE DATE.—

21 (1) Except as provided in paragraph (2), the
22 amendments made by this section shall apply to
23 services furnished on or after January 1, 2011,
24 without regard to whether or not final regulations to

1 carry out such amendments have been promulgated
2 by such date.

3 (2) In the case of a State plan for medical as-
4 sistance under title XIX of the Social Security Act
5 or a child health plan under title XXI of such Act
6 which the Secretary of Health and Human Services
7 determines requires State legislation (other than leg-
8 islation appropriating funds) in order for the plan to
9 meet the additional requirement imposed by the
10 amendments made by this section, the State plan or
11 child health plan shall not be regarded as failing to
12 comply with the requirements of such title solely on
13 the basis of its failure to meet this additional re-
14 quirement before the first day of the first calendar
15 quarter beginning after the close of the first regular
16 session of the State legislature that begins after the
17 date of the enactment of this Act. For purposes of
18 the previous sentence, in the case of a State that has
19 a 2-year legislative session, each year of such session
20 shall be deemed to be a separate regular session of
21 the State legislature.

1 **SEC. 1758. REQUIREMENT TO REPORT EXPANDED SET OF**
2 **DATA ELEMENTS UNDER MMIS TO DETECT**
3 **FRAUD AND ABUSE.**

4 Section 1903(r)(1)(F) of the Social Security Act (42
5 U.S.C. 1396b(r)(1)(F)) is amended by inserting after
6 “necessary” the following: “and including, for data sub-
7 mitted to the Secretary on or after July 1, 2010, data
8 elements from the automated data system that the Sec-
9 retary determines to be necessary for detection of waste,
10 fraud, and abuse”.

11 **SEC. 1759. BILLING AGENTS, CLEARINGHOUSES, OR OTHER**
12 **ALTERNATE PAYEES REQUIRED TO REG-**
13 **ISTER UNDER MEDICAID.**

14 (a) IN GENERAL.—Section 1902(a) of the Social Se-
15 curity Act (42 U.S.C. 42 U.S.C. 1396a(a)), as amended
16 by sections 1631(b), 1703, 1753, and 1757, is further
17 amended—

18 (1) in paragraph (76); by striking at the end
19 “and”;

20 (2) in paragraph (77), by striking the period at
21 the end and inserting “and”; and

22 (3) by inserting after paragraph (77) the fol-
23 lowing new paragraph:

24 “(78) provide that any agent, clearinghouse, or
25 other alternate payee that submits claims on behalf
26 of a health care provider must register with the

1 State and the Secretary in a form and manner speci-
2 fied by the Secretary under section 1866(j)(1)(D).”.

3 (b) DENIAL OF PAYMENT.—Section 1903(i) of such
4 Act (42 U.S.C. 1396b(i)), as amended by section 1753,
5 is amended—

6 (1) by striking “or” at the end of paragraph
7 (24);

8 (2) by striking the period at the end of para-
9 graph (25) and inserting “; or”; and

10 (3) by inserting after paragraph (25) the fol-
11 lowing new paragraph:

12 “(26) with respect to any amount paid to a bill-
13 ing agent, clearinghouse, or other alternate payee
14 that is not registered with the State and the Sec-
15 retary as required under section 1902(a)(78).”.

16 (c) EFFECTIVE DATE.—

17 (1) Except as provided in paragraph (2), the
18 amendments made by this section shall apply to
19 claims submitted on or after January 1, 2012, with-
20 out regard to whether or not final regulations to
21 carry out such amendments have been promulgated
22 by such date.

23 (2) In the case of a State plan for medical as-
24 sistance under title XIX of the Social Security Act
25 which the Secretary of Health and Human Services

1 determines requires State legislation (other than leg-
2 islation appropriating funds) in order for the plan to
3 meet the additional requirement imposed by the
4 amendments made by this section, the State plan or
5 child health plan shall not be regarded as failing to
6 comply with the requirements of such title solely on
7 the basis of its failure to meet this additional re-
8 quirement before the first day of the first calendar
9 quarter beginning after the close of the first regular
10 session of the State legislature that begins after the
11 date of the enactment of this Act. For purposes of
12 the previous sentence, in the case of a State that has
13 a 2-year legislative session, each year of such session
14 shall be deemed to be a separate regular session of
15 the State legislature.

16 **SEC. 1760. DENIAL OF PAYMENTS FOR LITIGATION-RE-**
17 **LATED MISCONDUCT.**

18 (a) IN GENERAL.—Section 1903(i) of the Social Se-
19 curity Act (42 U.S.C. 1396b(i)), as previously amended
20 is amended—

- 21 (1) by striking “or” at the end of paragraph
22 (25);
- 23 (2) by striking the period at the end of para-
24 graph (26) and inserting a semicolon; and

1 (3) by inserting after paragraph (26) the fol-
2 lowing new paragraphs:

3 “(27) with respect to any amount expended—

4 “(A) on litigation in which a court imposes
5 sanctions on the State, its employees, or its
6 counsel for litigation-related misconduct; or

7 “(B) to reimburse (or otherwise com-
8 pensate) a managed care entity for payment of
9 legal expenses associated with any action in
10 which a court imposes sanctions on the man-
11 aged care entity for litigation-related mis-
12 conduct.”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 subsection (a) shall apply to amounts expended on or after
15 January 1, 2010.

16 **Subtitle G—Puerto Rico and the** 17 **Territories**

18 **SEC. 1771. PUERTO RICO AND TERRITORIES.**

19 (a) INCREASE IN CAP.—

20 (1) IN GENERAL.—Section 1108(g) of the So-
21 cial Security Act (42 U.S.C. 1308(g)) is amended—

22 (A) in paragraph (4) by striking “and (3)”
23 and by inserting “(3), (6), and (7)”; and

1 (B) by inserting after paragraph (5), as
2 added by section 1731(d), the following new
3 paragraph:

4 “(6) FISCAL YEARS 2011 THROUGH 2019.—The
5 amounts otherwise determined under this subsection
6 for Puerto Rico, the Virgin Islands, Guam, the
7 Northern Mariana Islands, and American Samoa for
8 fiscal year 2011 and each succeeding fiscal year
9 through fiscal year 2019 shall be increased by the
10 percentage specified under section 1771(c) of the
11 America’s Affordable Health Choices Act of 2009
12 for purposes of this paragraph of the amounts other-
13 wise determined under this section (without regard
14 to this paragraph).

15 “(7) FISCAL YEAR 2020 AND SUBSEQUENT FIS-
16 CAL YEARS.—The amounts otherwise determined
17 under this subsection for Puerto Rico, the Virgin Is-
18 lands, Guam, the Northern Mariana Islands, and
19 American Samoa for fiscal year 2020 and each suc-
20 ceeding fiscal year shall be the amount provided in
21 paragraph (6) or this paragraph for the preceding
22 fiscal year for the respective territory increased by
23 the percentage increase referred to in paragraph
24 (1)(B), rounded to the nearest \$10,000 (or
25 \$100,000 in the case of Puerto Rico).”.

1 (2) COORDINATION WITH ARRA.—Section
2 5001(d) of the American Recovery and Reinvestment
3 Act of 2009 shall not apply during any period for
4 which section 1108(g)(6) of the Social Security Act,
5 as added by paragraph (1), applies.

6 (b) INCREASE IN FMAP.—

7 (1) IN GENERAL.—Section 1905(b)(2) of the
8 Social Security Act (42 U.S.C. 1396d(b)(2)) is
9 amended by striking “50 per centum” and inserting
10 “for fiscal years 2011 through 2019, the percentage
11 specified under section 1771(e) of the America’s Af-
12 fordable Health Choices Act of 2009 for purposes of
13 this clause for such fiscal year and for subsequent
14 fiscal years the percentage so specified for fiscal
15 year 2019”.

16 (2) EFFECTIVE DATE.—The amendment made
17 by subsection (a) shall apply to items and services
18 furnished on or after October 1, 2010.

19 (c) SPECIFICATION OF PERCENTAGES.—The Sec-
20 retary of Health and Human Services shall specify, before
21 January 1, 2011, the percentages to be applied under sec-
22 tion 1108(g)(6) of the Social Security Act, as added by
23 subsection (a)(1), and under section 1905(b)(2) of such
24 Act, as amended by subsection (b)(1), in a manner so that
25 for the period beginning with 2011 and ending with 2019

1 the total estimated additional Federal expenditures result-
2 ing from the application of such percentages will be equal
3 to \$10,350,000,000.

4 **Subtitle H—Miscellaneous**

5 **SEC. 1781. TECHNICAL CORRECTIONS.**

6 (a) TECHNICAL CORRECTION TO SECTION 1144 OF
7 THE SOCIAL SECURITY ACT.—The first sentence of sec-
8 tion 1144(c)(3) of the Social Security Act (42 U.S.C.
9 1320b—14(c)(3)) is amended—

10 (1) by striking “transmittal”; and

11 (2) by inserting before the period the following:
12 “as specified in section 1935(a)(4)”.

13 (b) CLARIFYING AMENDMENT TO SECTION 1935 OF
14 THE SOCIAL SECURITY ACT.—Section 1935(a)(4) of the
15 Social Security Act (42 U.S.C. 1396u—5(a)(4)), as
16 amended by section 113(b) of Public Law 110–275, is
17 amended—

18 (1) by striking the second sentence;

19 (2) by redesignating the first sentence as a sub-
20 paragraph (A) with appropriate indentation and
21 with the following heading: “IN GENERAL”;

22 (3) by adding at the end the following subpara-
23 graphs:

24 “(B) FURNISHING MEDICAL ASSISTANCE
25 WITH REASONABLE PROMPTNESS.—For the

1 purpose of a State’s obligation under section
2 1902(a)(8) to furnish medical assistance with
3 reasonable promptness, the date of the elec-
4 tronic transmission of low-income subsidy pro-
5 gram data, as described in section 1144(c),
6 from the Commissioner of Social Security to the
7 State Medicaid Agency, shall constitute the date
8 of filing of such application for benefits under
9 the Medicare Savings Program.

10 “(C) DETERMINING AVAILABILITY OF
11 MEDICAL ASSISTANCE.—For the purpose of de-
12 termining when medical assistance will be made
13 available, the State shall consider the date of
14 the individual’s application for the low income
15 subsidy program to constitute the date of filing
16 for benefits under the Medicare Savings Pro-
17 gram.”.

18 (c) EFFECTIVE DATE RELATING TO MEDICAID
19 AGENCY CONSIDERATION OF LOW-INCOME SUBSIDY AP-
20 PLICATION AND DATA TRANSMITTAL.—The amendments
21 made by subsections (a) and (b) shall be effective as if
22 included in the enactment of section 113(b) of Public Law
23 110–275.

24 (d) TECHNICAL CORRECTION TO SECTION 605 OF
25 CHIPRA.—Section 605 of the Children’s Health Insur-

1 ance Program Reauthorization Act of 2009 (Public Law
2 111–3) is amended by striking “legal residents” and in-
3 serting “lawfully residing in the United States”.

4 (e) TECHNICAL CORRECTION TO SECTION 1905 OF
5 THE SOCIAL SECURITY ACT.—Section 1905(a) of the So-
6 cial Security Act (42 U.S.C. 1396d(a)) is amended by in-
7 serting “or the care and services themselves, or both” be-
8 fore “(if provided in or after”.

9 (f) CLARIFYING AMENDMENT TO SECTION 1115 OF
10 THE SOCIAL SECURITY ACT.—Section 1115(a) of the So-
11 cial Security Act (42 U.S.C. 1315(a)) is amended by add-
12 ing at the end the following: “If an experimental, pilot,
13 or demonstration project that relates to title XIX is ap-
14 proved pursuant to any part of this subsection, such
15 project shall be treated as part of the State plan, all med-
16 ical assistance provided on behalf of any individuals af-
17 fected by such project shall be medical assistance provided
18 under the State plan, and all provisions of this Act not
19 explicitly waived in approving such project shall remain
20 fully applicable to all individuals receiving benefits under
21 the State plan.”.

22 **SEC. 1782. EXTENSION OF QI PROGRAM.**

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

1 (1) by striking “sections 1933 and” and by in-
2 serting “section”; and

3 (2) by striking “December 2010” and inserting
4 “December 2012”.

5 (b) ELIMINATION OF FUNDING LIMITATION.—

6 (1) IN GENERAL.—Section 1933 of such Act
7 (42 U.S.C. 1396u–3) is amended—

8 (A) in subsection (a), by striking “who are
9 selected to receive such assistance under sub-
10 section (b)”;

11 (B) by striking subsections (b), (c), (e),
12 and (g);

13 (C) in subsection (d), by striking “fur-
14 nished in a State” and all that follows and in-
15 serting “the Federal medical assistance percent-
16 age shall be equal to 100 percent.”; and

17 (D) by redesignating subsections (d) and
18 (f) as subsections (b) and (e), respectively.

19 (2) CONFORMING AMENDMENT.—Section
20 1905(b) of such Act (42 U.S.C. 1396d(b)) is amend-
21 ed by striking “1933(d)” and inserting “1933(b)”.

22 (3) EFFECTIVE DATE.—The amendments made
23 by paragraph (1) shall take effect on January 1,
24 2011.

1 **TITLE VIII—REVENUE-RELATED**
2 **PROVISIONS**

3 **SEC. 1801. DISCLOSURES TO FACILITATE IDENTIFICATION**
4 **OF INDIVIDUALS LIKELY TO BE INELIGIBLE**
5 **FOR THE LOW-INCOME ASSISTANCE UNDER**
6 **THE MEDICARE PRESCRIPTION DRUG PRO-**
7 **GRAM TO ASSIST SOCIAL SECURITY ADMINIS-**
8 **TRATION’S OUTREACH TO ELIGIBLE INDIVID-**
9 **UALS.**

10 (a) IN GENERAL.—Paragraph (19) of section 6103(l)
11 of the Internal Revenue Code of 1986 is amended to read
12 as follows:

13 “(19) DISCLOSURES TO FACILITATE IDENTI-
14 FICATION OF INDIVIDUALS LIKELY TO BE INELI-
15 GIBLE FOR LOW-INCOME SUBSIDIES UNDER MEDI-
16 CARE PRESCRIPTION DRUG PROGRAM TO ASSIST SO-
17 CIAL SECURITY ADMINISTRATION’S OUTREACH TO
18 ELIGIBLE INDIVIDUALS.—

19 “(A) IN GENERAL.—Upon written request
20 from the Commissioner of Social Security, the
21 following return information (including such in-
22 formation disclosed to the Social Security Ad-
23 ministration under paragraph (1) or (5)) shall
24 be disclosed to officers and employees of the So-
25 cial Security Administration, with respect to

1 any taxpayer identified by the Commissioner of
2 Social Security—

3 “(i) return information for the appli-
4 cable year from returns with respect to
5 wages (as defined in section 3121(a) or
6 3401(a)) and payments of retirement in-
7 come (as described in paragraph (1) of this
8 subsection),

9 “(ii) unearned income information
10 and income information of the taxpayer
11 from partnerships, trusts, estates, and sub-
12 chapter S corporations for the applicable
13 year,

14 “(iii) if the individual filed an income
15 tax return for the applicable year, the fil-
16 ing status, number of dependents, income
17 from farming, and income from self-em-
18 ployment, on such return,

19 “(iv) if the individual is a married in-
20 dividual filing a separate return for the ap-
21 plicable year, the social security number (if
22 reasonably available) of the spouse on such
23 return,

24 “(v) if the individual files a joint re-
25 turn for the applicable year, the social se-

1 curity number, unearned income informa-
2 tion, and income information from partner-
3 ships, trusts, estates, and subchapter S
4 corporations of the individual's spouse on
5 such return, and

6 “(vi) such other return information
7 relating to the individual (or the individ-
8 ual's spouse in the case of a joint return)
9 as is prescribed by the Secretary by regula-
10 tion as might indicate that the individual
11 is likely to be ineligible for a low-income
12 prescription drug subsidy under section
13 1860D-14 of the Social Security Act.

14 “(B) APPLICABLE YEAR.—For the pur-
15 poses of this paragraph, the term ‘applicable
16 year’ means the most recent taxable year for
17 which information is available in the Internal
18 Revenue Service's taxpayer information records.

19 “(C) RESTRICTION ON INDIVIDUALS FOR
20 WHOM DISCLOSURE MAY BE REQUESTED.—The
21 Commissioner of Social Security shall request
22 information under this paragraph only with re-
23 spect to—

24 “(i) individuals the Social Security
25 Administration has identified, using all

1 other reasonably available information, as
2 likely to be eligible for a low-income pre-
3 scription drug subsidy under section
4 1860D–14 of the Social Security Act and
5 who have not applied for such subsidy, and

6 “(ii) any individual the Social Security
7 Administration has identified as a spouse
8 of an individual described in clause (i).

9 “(D) RESTRICTION ON USE OF DISCLOSED
10 INFORMATION.—Return information disclosed
11 under this paragraph may be used only by offi-
12 cers and employees of the Social Security Ad-
13 ministration solely for purposes of identifying
14 individuals likely to be ineligible for a low-in-
15 come prescription drug subsidy under section
16 1860D–14 of the Social Security Act for use in
17 outreach efforts under section 1144 of the So-
18 cial Security Act.”.

19 (b) SAFEGUARDS.—Paragraph (4) of section 6103(p)
20 of such Code is amended—

21 (1) by striking “(l)(19)” each place it appears,

22 and

23 (2) by striking “or (17)” each place it appears

24 and inserting “(17), or (19)”.

1 (c) CONFORMING AMENDMENT.—Paragraph (3) of
2 section 6103(a) of such Code is amended by striking
3 “(19),”.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to disclosures made after the date
6 which is 12 months after the date of the enactment of
7 this Act.

8 **SEC. 1802. COMPARATIVE EFFECTIVENESS RESEARCH**
9 **TRUST FUND; FINANCING FOR TRUST FUND.**

10 (a) ESTABLISHMENT OF TRUST FUND.—

11 (1) IN GENERAL.—Subchapter A of chapter 98
12 of the Internal Revenue Code of 1986 (relating to
13 trust fund code) is amended by adding at the end
14 the following new section:

15 **“SEC. 9511. HEALTH CARE COMPARATIVE EFFECTIVENESS**
16 **RESEARCH TRUST FUND.**

17 “(a) CREATION OF TRUST FUND.—There is estab-
18 lished in the Treasury of the United States a trust fund
19 to be known as the ‘Health Care Comparative Effective-
20 ness Research Trust Fund’ (hereinafter in this section re-
21 ferred to as the ‘CERTF’), consisting of such amounts
22 as may be appropriated or credited to such Trust Fund
23 as provided in this section and section 9602(b).

24 “(b) TRANSFERS TO FUND.—There are hereby ap-
25 propriated to the Trust Fund the following:

1 “(1) For fiscal year 2010, \$90,000,000.

2 “(2) For fiscal year 2011, \$100,000,000.

3 “(3) For fiscal year 2012, \$110,000,000.

4 “(4) For each fiscal year beginning with fiscal
5 year 2013—

6 “(A) an amount equivalent to the net reve-
7 nues received in the Treasury from the fees im-
8 posed under subchapter B of chapter 34 (relat-
9 ing to fees on health insurance and self-insured
10 plans) for such fiscal year; and

11 “(B) subject to subsection (c)(2), amounts
12 determined by the Secretary of Health and
13 Human Services to be equivalent to the fair
14 share per capita amount computed under sub-
15 section (c)(1) for the fiscal year multiplied by
16 the average number of individuals entitled to
17 benefits under part A, or enrolled under part B,
18 of title XVIII of the Social Security Act during
19 such fiscal year.

20 The amounts appropriated under paragraphs (1), (2), (3),
21 and (4)(B) shall be transferred from the Federal Hospital
22 Insurance Trust Fund and from the Federal Supple-
23 mentary Medical Insurance Trust Fund (established
24 under section 1841 of such Act), and from the Medicare
25 Prescription Drug Account within such Trust Fund, in

1 proportion (as estimated by the Secretary) to the total ex-
2 penditures during such fiscal year that are made under
3 title XVIII of such Act from the respective trust fund or
4 account.

5 “(c) FAIR SHARE PER CAPITA AMOUNT.—

6 “(1) COMPUTATION.—

7 “(A) IN GENERAL.—Subject to subpara-
8 graph (B), the fair share per capita amount
9 under this paragraph for a fiscal year (begin-
10 ning with fiscal year 2013) is an amount com-
11 puted by the Secretary of Health and Human
12 Services for such fiscal year that, when applied
13 under this section and subchapter B of chapter
14 34 of the Internal Revenue Code of 1986, will
15 result in revenues to the CERTF of
16 \$375,000,000 for the fiscal year.

17 “(B) ALTERNATIVE COMPUTATION.—

18 “(i) IN GENERAL.—If the Secretary is
19 unable to compute the fair share per capita
20 amount under subparagraph (A) for a fis-
21 cal year, the fair share per capita amount
22 under this paragraph for the fiscal year
23 shall be the default amount determined
24 under clause (ii) for the fiscal year.

1 “(ii) DEFAULT AMOUNT.—The default
2 amount under this clause for—

3 “(I) fiscal year 2013 is equal to
4 \$2; or

5 “(II) a subsequent year is equal
6 to the default amount under this
7 clause for the preceding fiscal year in-
8 creased by the annual percentage in-
9 crease in the medical care component
10 of the consumer price index (United
11 States city average) for the 12-month
12 period ending with April of the pre-
13 ceding fiscal year.

14 Any amount determined under subclause
15 (II) shall be rounded to the nearest penny.

16 “(2) LIMITATION ON MEDICARE FUNDING.—In
17 no case shall the amount transferred under sub-
18 section (b)(4)(B) for any fiscal year exceed
19 \$90,000,000.

20 “(d) EXPENDITURES FROM FUND.—

21 “(1) IN GENERAL.—Subject to paragraph (2),
22 amounts in the CERTF are available, without the
23 need for further appropriations and without fiscal
24 year limitation, to the Secretary of Health and

1 Human Services for carrying out section 1181 of the
2 Social Security Act.

3 “(2) ALLOCATION FOR COMMISSION.—Not less
4 than the following amounts in the CERTF for a fis-
5 cal year shall be available to carry out the activities
6 of the Comparative Effectiveness Research Commis-
7 sion established under section 1181(b) of the Social
8 Security Act for such fiscal year:

9 “(A) For fiscal year 2010, \$7,000,000.

10 “(B) For fiscal year 2011, \$9,000,000.

11 “(C) For each fiscal year beginning with
12 2012, \$10,000,000.

13 Nothing in this paragraph shall be construed as pre-
14 venting additional amounts in the CERTF from
15 being made available to the Comparative Effective-
16 ness Research Commission for such activities.

17 “(e) NET REVENUES.—For purposes of this section,
18 the term ‘net revenues’ means the amount estimated by
19 the Secretary based on the excess of—

20 “(1) the fees received in the Treasury under
21 subchapter B of chapter 34, over

22 “(2) the decrease in the tax imposed by chapter
23 1 resulting from the fees imposed by such sub-
24 chapter.”.

1 (2) CLERICAL AMENDMENT.—The table of sec-
2 tions for such subchapter A is amended by adding
3 at the end thereof the following new item:

“Sec. 9511. Health Care Comparative Effectiveness Research Trust Fund.”.

4 (b) FINANCING FOR FUND FROM FEES ON INSURED
5 AND SELF-INSURED HEALTH PLANS.—

6 (1) GENERAL RULE.—Chapter 34 of the Inter-
7 nal Revenue Code of 1986 is amended by adding at
8 the end the following new subchapter:

9 **“Subchapter B—Insured and Self-Insured**
10 **Health Plans**

“Sec. 4375. Health insurance.

“Sec. 4376. Self-insured health plans.

“Sec. 4377. Definitions and special rules.

11 **“SEC. 4375. HEALTH INSURANCE.**

12 “(a) IMPOSITION OF FEE.—There is hereby imposed
13 on each specified health insurance policy for each policy
14 year a fee equal to the fair share per capita amount deter-
15 mined under section 9511(c)(1) multiplied by the average
16 number of lives covered under the policy.

17 “(b) LIABILITY FOR FEE.—The fee imposed by sub-
18 section (a) shall be paid by the issuer of the policy.

19 “(c) SPECIFIED HEALTH INSURANCE POLICY.—For
20 purposes of this section:

21 “(1) IN GENERAL.—Except as otherwise pro-
22 vided in this section, the term ‘specified health in-
23 surance policy’ means any accident or health insur-

1 ance policy issued with respect to individuals resid-
2 ing in the United States.

3 “(2) EXEMPTION FOR CERTAIN POLICIES.—The
4 term ‘specified health insurance policy’ does not in-
5 clude any insurance if substantially all of its cov-
6 erage is of excepted benefits described in section
7 9832(e).

8 “(3) TREATMENT OF PREPAID HEALTH COV-
9 ERAGE ARRANGEMENTS.—

10 “(A) IN GENERAL.—In the case of any ar-
11 rangement described in subparagraph (B)—

12 “(i) such arrangement shall be treated
13 as a specified health insurance policy, and

14 “(ii) the person referred to in such
15 subparagraph shall be treated as the
16 issuer.

17 “(B) DESCRIPTION OF ARRANGEMENTS.—

18 An arrangement is described in this subpara-
19 graph if under such arrangement fixed pay-
20 ments or premiums are received as consider-
21 ation for any person’s agreement to provide or
22 arrange for the provision of accident or health
23 coverage to residents of the United States, re-
24 gardless of how such coverage is provided or ar-
25 ranged to be provided.

1 **“SEC. 4376. SELF-INSURED HEALTH PLANS.**

2 “(a) IMPOSITION OF FEE.—In the case of any appli-
3 cable self-insured health plan for each plan year, there is
4 hereby imposed a fee equal to the fair share per capita
5 amount determined under section 9511(c)(1) multiplied by
6 the average number of lives covered under the plan.

7 “(b) LIABILITY FOR FEE.—

8 “(1) IN GENERAL.—The fee imposed by sub-
9 section (a) shall be paid by the plan sponsor.

10 “(2) PLAN SPONSOR.—For purposes of para-
11 graph (1) the term ‘plan sponsor’ means—

12 “(A) the employer in the case of a plan es-
13 tablished or maintained by a single employer,

14 “(B) the employee organization in the case
15 of a plan established or maintained by an em-
16 ployee organization,

17 “(C) in the case of—

18 “(i) a plan established or maintained
19 by 2 or more employers or jointly by 1 or
20 more employers and 1 or more employee
21 organizations,

22 “(ii) a multiple employer welfare ar-
23 rangement, or

24 “(iii) a voluntary employees’ bene-
25 ficiary association described in section
26 501(c)(9),

1 the association, committee, joint board of trust-
2 ees, or other similar group of representatives of
3 the parties who establish or maintain the plan,
4 or

5 “(D) the cooperative or association de-
6 scribed in subsection (c)(2)(F) in the case of a
7 plan established or maintained by such a coop-
8 erative or association.

9 “(c) APPLICABLE SELF-INSURED HEALTH PLAN.—
10 For purposes of this section, the term ‘applicable self-in-
11 sured health plan’ means any plan for providing accident
12 or health coverage if—

13 “(1) any portion of such coverage is provided
14 other than through an insurance policy, and

15 “(2) such plan is established or maintained—

16 “(A) by one or more employers for the
17 benefit of their employees or former employees,

18 “(B) by one or more employee organiza-
19 tions for the benefit of their members or former
20 members,

21 “(C) jointly by 1 or more employers and 1
22 or more employee organizations for the benefit
23 of employees or former employees,

24 “(D) by a voluntary employees’ beneficiary
25 association described in section 501(c)(9),

1 “(E) by any organization described in sec-
2 tion 501(c)(6), or

3 “(F) in the case of a plan not described in
4 the preceding subparagraphs, by a multiple em-
5 ployer welfare arrangement (as defined in sec-
6 tion 3(40) of Employee Retirement Income Se-
7 curity Act of 1974), a rural electric cooperative
8 (as defined in section 3(40)(B)(iv) of such Act),
9 or a rural telephone cooperative association (as
10 defined in section 3(40)(B)(v) of such Act).

11 **“SEC. 4377. DEFINITIONS AND SPECIAL RULES.**

12 “(a) DEFINITIONS.—For purposes of this sub-
13 chapter—

14 “(1) ACCIDENT AND HEALTH COVERAGE.—The
15 term ‘accident and health coverage’ means any cov-
16 erage which, if provided by an insurance policy,
17 would cause such policy to be a specified health in-
18 surance policy (as defined in section 4375(c)).

19 “(2) INSURANCE POLICY.—The term ‘insurance
20 policy’ means any policy or other instrument where-
21 by a contract of insurance is issued, renewed, or ex-
22 tended.

23 “(3) UNITED STATES.—The term ‘United
24 States’ includes any possession of the United States.

25 “(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

1 the spouses and dependents thereof) by reason
2 of such individuals being—

3 “(i) members of the Armed Forces of
4 the United States, or

5 “(ii) veterans, and

6 “(D) any program established by Federal
7 law for providing medical care (other than
8 through insurance policies) to members of In-
9 dian tribes (as defined in section 4(d) of the In-
10 dian Health Care Improvement Act).

11 “(c) TREATMENT AS TAX.—For purposes of subtitle
12 F, the fees imposed by this subchapter shall be treated
13 as if they were taxes.

14 “(d) NO COVER OVER TO POSSESSIONS.—Notwith-
15 standing any other provision of law, no amount collected
16 under this subchapter shall be covered over to any posses-
17 sion of the United States.”

18 (2) CLERICAL AMENDMENTS.—

19 (A) Chapter 34 of such Code is amended
20 by striking the chapter heading and inserting
21 the following:

22 **“CHAPTER 34—TAXES ON CERTAIN**
23 **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 (B) The table of chapters for subtitle D of
4 such Code is amended by striking the item re-
5 lating to chapter 34 and inserting the following
6 new item:

 “CHAPTER 34—TAXES ON CERTAIN INSURANCE POLICIES”.

7 (3) EFFECTIVE DATE.—The amendments made
8 by this subsection shall apply with respect to policies
9 and plans for portions of policy or plan years begin-
10 ning on or after October 1, 2012.

11 **TITLE IX—MISCELLANEOUS**
12 **PROVISIONS**

13 **SEC. 1901. REPEAL OF TRIGGER PROVISION.**

14 Subtitle A of title VIII of the Medicare Prescription
15 Drug, Improvement, and Modernization Act of 2003 (Pub-
16 lic Law 108–173) is repealed and the provisions of law
17 amended by such subtitle are restored as if such subtitle
18 had never been enacted.

19 **SEC. 1902. REPEAL OF COMPARATIVE COST ADJUSTMENT**
20 **(CCA) PROGRAM.**

21 Section 1860C–1 of the Social Security Act (42
22 U.S.C. 1395w–29), as added by section 241(a) of the
23 Medicare Prescription Drug, Improvement, and Mod-
24 ernization Act of 2003 (Public Law 108–173), is repealed.

1 **SEC. 1903. EXTENSION OF GAINSHARING DEMONSTRATION.**

2 (a) IN GENERAL.—Subsection (d)(3) of section 5007
3 of the Deficit Reduction Act of 2005 (Public Law 109–
4 171) is amended by inserting “(or September 30, 2011,
5 in the case of a demonstration project in operation as of
6 October 1, 2008)” after “December 31, 2009”.

7 (b) FUNDING.—

8 (1) IN GENERAL.—Subsection (f)(1) of such
9 section is amended by inserting “and for fiscal year
10 2010, \$1,600,000,” after “\$6,000,000,”.

11 (2) AVAILABILITY.—Subsection (f)(2) of such
12 section is amended by striking “2010” and inserting
13 “2014 or until expended”.

14 (c) REPORTS.—

15 (1) QUALITY IMPROVEMENT AND SAVINGS.—
16 Subsection (e)(3) of such section is amended by
17 striking “December 1, 2008” and inserting “March
18 31, 2011”.

19 (2) FINAL REPORT.—Subsection (e)(4) of such
20 section is amended by striking “May 1, 2010” and
21 inserting “March 31, 2013”.

1 **SEC. 1904. GRANTS TO STATES FOR QUALITY HOME VISITA-**
2 **TION PROGRAMS FOR FAMILIES WITH YOUNG**
3 **CHILDREN AND FAMILIES EXPECTING CHIL-**
4 **DREN.**

5 Part B of title IV of the Social Security Act (42
6 U.S.C. 621–629i) is amended by adding at the end the
7 following:

8 **“Subpart 3—Support for Quality Home Visitation**
9 **Programs**

10 **“SEC. 440. HOME VISITATION PROGRAMS FOR FAMILIES**
11 **WITH YOUNG CHILDREN AND FAMILIES EX-**
12 **PECTING CHILDREN.**

13 “(a) PURPOSE.—The purpose of this section is to im-
14 prove the well-being, health, and development of children
15 by enabling the establishment and expansion of high qual-
16 ity programs providing voluntary home visitation for fami-
17 lies with young children and families expecting children.

18 “(b) GRANT APPLICATION.—A State that desires to
19 receive a grant under this section shall submit to the Sec-
20 retary for approval, at such time and in such manner as
21 the Secretary may require, an application for the grant
22 that includes the following:

23 “(1) DESCRIPTION OF HOME VISITATION PRO-
24 GRAMS.—A description of the high quality programs
25 of home visitation for families with young children
26 and families expecting children that will be sup-

1 ported by a grant made to the State under this sec-
2 tion, the outcomes the programs are intended to
3 achieve, and the evidence supporting the effective-
4 ness of the programs.

5 “(2) RESULTS OF NEEDS ASSESSMENT.—The
6 results of a statewide needs assessment that de-
7 scribes—

8 “(A) the number, quality, and capacity of
9 home visitation programs for families with
10 young children and families expecting children
11 in the State;

12 “(B) the number and types of families who
13 are receiving services under the programs;

14 “(C) the sources and amount of funding
15 provided to the programs;

16 “(D) the gaps in home visitation in the
17 State, including identification of communities
18 that are in high need of the services; and

19 “(E) training and technical assistance ac-
20 tivities designed to achieve or support the goals
21 of the programs.

22 “(3) ASSURANCES.—Assurances from the State
23 that—

24 “(A) in supporting home visitation pro-
25 grams using funds provided under this section,

1 the State shall identify and prioritize serving
2 communities that are in high need of such serv-
3 ices, especially communities with a high propor-
4 tion of low-income families or a high incidence
5 of child maltreatment;

6 “(B) the State will reserve 5 percent of the
7 grant funds for training and technical assist-
8 ance to the home visitation programs using
9 such funds;

10 “(C) in supporting home visitation pro-
11 grams using funds provided under this section,
12 the State will promote coordination and collabo-
13 ration with other home visitation programs (in-
14 cluding programs funded under title XIX) and
15 with other child and family services, health
16 services, income supports, and other related as-
17 sistance;

18 “(D) home visitation programs supported
19 using such funds will, when appropriate, pro-
20 vide referrals to other programs serving chil-
21 dren and families; and

22 “(E) the State will comply with subsection
23 (i), and cooperate with any evaluation con-
24 ducted under subsection (j).

1 “(4) OTHER INFORMATION.—Such other infor-
2 mation as the Secretary may require.

3 “(c) ALLOTMENTS.—

4 “(1) INDIAN TRIBES.—From the amount re-
5 served under subsection (l)(2) for a fiscal year, the
6 Secretary shall allot to each Indian tribe that meets
7 the requirement of subsection (d), if applicable, for
8 the fiscal year the amount that bears the same ratio
9 to the amount so reserved as the number of children
10 in the Indian tribe whose families have income that
11 does not exceed 200 percent of the poverty line bears
12 to the total number of children in such Indian tribes
13 whose families have income that does not exceed 200
14 percent of the poverty line.

15 “(2) STATES AND TERRITORIES.—From the
16 amount appropriated under subsection (m) for a fis-
17 cal year that remains after making the reservations
18 required by subsection (l), the Secretary shall allot
19 to each State that is not an Indian tribe and that
20 meets the requirement of subsection (d), if applica-
21 ble, for the fiscal year the amount that bears the
22 same ratio to the remainder of the amount so appro-
23 priated as the number of children in the State whose
24 families have income that does not exceed 200 per-
25 cent of the poverty line bears to the total number of

1 children in such States whose families have income
2 that does not exceed 200 percent of the poverty line.

3 “(3) REALLOTMENTS.—The amount of any al-
4 lotment to a State under a paragraph of this sub-
5 section for any fiscal year that the State certifies to
6 the Secretary will not be expended by the State pur-
7 suant to this section shall be available for reallocot-
8 ment using the allotment methodology specified in
9 that paragraph. Any amount so reallocated to a State
10 is deemed part of the allotment of the State under
11 this subsection.

12 “(d) MAINTENANCE OF EFFORT.—Beginning with
13 fiscal year 2011, a State meets the requirement of this
14 subsection for a fiscal year if the Secretary finds that the
15 aggregate expenditures by the State from State and local
16 sources for programs of home visitation for families with
17 young children and families expecting children for the then
18 preceding fiscal year was not less than 100 percent of such
19 aggregate expenditures for the then 2nd preceding fiscal
20 year.

21 “(e) PAYMENT OF GRANT.—

22 “(1) IN GENERAL.—The Secretary shall make a
23 grant to each State that meets the requirements of
24 subsections (b) and (d), if applicable, for a fiscal
25 year for which funds are appropriated under sub-

1 section (m), in an amount equal to the reimbursable
2 percentage of the eligible expenditures of the State
3 for the fiscal year, but not more than the amount
4 allotted to the State under subsection (c) for the fis-
5 cal year.

6 “(2) REIMBURSABLE PERCENTAGE DEFINED.—

7 In paragraph (1), the term ‘reimbursable percent-
8 age’ means, with respect to a fiscal year—

9 “(A) 85 percent, in the case of fiscal year
10 2010;

11 “(B) 80 percent, in the case of fiscal year
12 2011; or

13 “(C) 75 percent, in the case of fiscal year
14 2012 and any succeeding fiscal year.

15 “(f) ELIGIBLE EXPENDITURES.—

16 “(1) IN GENERAL.—In this section, the term
17 ‘eligible expenditures’—

18 “(A) means expenditures to provide vol-
19 untary home visitation for as many families
20 with young children (under the age of school
21 entry) and families expecting children as prac-
22 ticable, through the implementation or expan-
23 sion of high quality home visitation programs
24 that—

1 “(i) adhere to clear evidence-based
2 models of home visitation that have dem-
3 onstrated positive effects on important pro-
4 gram-determined child and parenting out-
5 comes, such as reducing abuse and neglect
6 and improving child health and develop-
7 ment;

8 “(ii) employ well-trained and com-
9 petent staff, maintain high quality super-
10 vision, provide for ongoing training and
11 professional development, and show strong
12 organizational capacity to implement such
13 a program;

14 “(iii) establish appropriate linkages
15 and referrals to other community resources
16 and supports;

17 “(iv) monitor fidelity of program im-
18 plementation to ensure that services are
19 delivered according to the specified model;
20 and

21 “(v) provide parents with—

22 “(I) knowledge of age-appro-
23 priate child development in cognitive,
24 language, social, emotional, and motor
25 domains (including knowledge of sec-

1 ond language acquisition, in the case
2 of English language learners);

3 “(II) knowledge of realistic ex-
4 pectations of age-appropriate child be-
5 haviors;

6 “(III) knowledge of health and
7 wellness issues for children and par-
8 ents;

9 “(IV) modeling, consulting, and
10 coaching on parenting practices;

11 “(V) skills to interact with their
12 child to enhance age-appropriate de-
13 velopment;

14 “(VI) skills to recognize and seek
15 help for issues related to health, devel-
16 opmental delays, and social, emo-
17 tional, and behavioral skills; and

18 “(VII) activities designed to help
19 parents become full partners in the
20 education of their children;

21 “(B) includes expenditures for training,
22 technical assistance, and evaluations related to
23 the programs; and

24 “(C) does not include any expenditure with
25 respect to which a State has submitted a claim

1 for payment under any other provision of Fed-
2 eral law.

3 “(2) PRIORITY FUNDING FOR PROGRAMS WITH
4 STRONGEST EVIDENCE.—

5 “(A) IN GENERAL.—The expenditures, de-
6 scribed in paragraph (1), of a State for a fiscal
7 year that are attributable to the cost of pro-
8 grams that do not adhere to a model of home
9 visitation with the strongest evidence of effec-
10 tiveness shall not be considered eligible expendi-
11 tures for the fiscal year to the extent that the
12 total of the expenditures exceeds the applicable
13 percentage for the fiscal year of the allotment
14 of the State under subsection (c) for the fiscal
15 year.

16 “(B) APPLICABLE PERCENTAGE DE-
17 FINED.—In subparagraph (A), the term ‘appli-
18 cable percentage’ means, with respect to a fiscal
19 year—

20 “(i) 60 percent for fiscal year 2010;

21 “(ii) 55 percent for fiscal year 2011;

22 “(iii) 50 percent for fiscal year 2012;

23 “(iv) 45 percent for fiscal year 2013;

24 or

25 “(v) 40 percent for fiscal year 2014.

1 “(g) NO USE OF OTHER FEDERAL FUNDS FOR
2 STATE MATCH.—A State to which a grant is made under
3 this section may not expend any Federal funds to meet
4 the State share of the cost of an eligible expenditure for
5 which the State receives a payment under this section.

6 “(h) WAIVER AUTHORITY.—

7 “(1) IN GENERAL.—The Secretary may waive
8 or modify the application of any provision of this
9 section, other than subsection (b) or (f), to an In-
10 dian tribe if the failure to do so would impose an
11 undue burden on the Indian tribe.

12 “(2) SPECIAL RULE.—An Indian tribe is
13 deemed to meet the requirement of subsection (d)
14 for purposes of subsections (e) and (e) if—

15 “(A) the Secretary waives the requirement;

16 or

17 “(B) the Secretary modifies the require-
18 ment, and the Indian tribe meets the modified
19 requirement.

20 “(i) STATE REPORTS.—Each State to which a grant
21 is made under this section shall submit to the Secretary
22 an annual report on the progress made by the State in
23 addressing the purposes of this section. Each such report
24 shall include a description of—

1 “(1) the services delivered by the programs that
2 received funds from the grant;

3 “(2) the characteristics of each such program,
4 including information on the service model used by
5 the program and the performance of the program;

6 “(3) the characteristics of the providers of serv-
7 ices through the program, including staff qualifica-
8 tions, work experience, and demographic characteris-
9 tics;

10 “(4) the characteristics of the recipients of serv-
11 ices provided through the program, including the
12 number of the recipients, the demographic charac-
13 teristics of the recipients, and family retention;

14 “(5) the annual cost of implementing the pro-
15 gram, including the cost per family served under the
16 program;

17 “(6) the outcomes experienced by recipients of
18 services through the program;

19 “(7) the training and technical assistance pro-
20 vided to aid implementation of the program, and
21 how the training and technical assistance contrib-
22 uted to the outcomes achieved through the program;

23 “(8) the indicators and methods used to mon-
24 itor whether the program is being implemented as
25 designed; and

1 “(9) other information as determined necessary
2 by the Secretary.

3 “(j) EVALUATION.—

4 “(1) IN GENERAL.—The Secretary shall, by
5 grant or contract, provide for the conduct of an
6 independent evaluation of the effectiveness of home
7 visitation programs receiving funds provided under
8 this section, which shall examine the following:

9 “(A) The effect of home visitation pro-
10 grams on child and parent outcomes, including
11 child maltreatment, child health and develop-
12 ment, school readiness, and links to community
13 services.

14 “(B) The effectiveness of home visitation
15 programs on different populations, including
16 the extent to which the ability of programs to
17 improve outcomes varies across programs and
18 populations.

19 “(2) REPORTS TO THE CONGRESS.—

20 “(A) INTERIM REPORT.—Within 3 years
21 after the date of the enactment of this section,
22 the Secretary shall submit to the Congress an
23 interim report on the evaluation conducted pur-
24 suant to paragraph (1).

1 “(B) FINAL REPORT.—Within 5 years
2 after the date of the enactment of this section,
3 the Secretary shall submit to the Congress a
4 final report on the evaluation conducted pursu-
5 ant to paragraph (1).

6 “(k) ANNUAL REPORTS TO THE CONGRESS.—The
7 Secretary shall submit annually to the Congress a report
8 on the activities carried out using funds made available
9 under this section, which shall include a description of the
10 following:

11 “(1) The high need communities targeted by
12 States for programs carried out under this section.

13 “(2) The service delivery models used in the
14 programs receiving funds provided under this sec-
15 tion.

16 “(3) The characteristics of the programs, in-
17 cluding—

18 “(A) the qualifications and demographic
19 characteristics of program staff; and

20 “(B) recipient characteristics including the
21 number of families served, the demographic
22 characteristics of the families served, and fam-
23 ily retention and duration of services.

24 “(4) The outcomes reported by the programs.

1 “(5) The research-based instruction, materials,
2 and activities being used in the activities funded
3 under the grant.

4 “(6) The training and technical activities, in-
5 cluding on-going professional development, provided
6 to the programs.

7 “(7) The annual costs of implementing the pro-
8 grams, including the cost per family served under
9 the programs.

10 “(8) The indicators and methods used by States
11 to monitor whether the programs are being im-
12 plemented as designed.

13 “(1) RESERVATIONS OF FUNDS.—From the amounts
14 appropriated for a fiscal year under subsection (m), the
15 Secretary shall reserve—

16 “(1) an amount equal to 5 percent of the
17 amounts to pay the cost of the evaluation provided
18 for in subsection (j), and the provision to States of
19 training and technical assistance, including the dis-
20 semination of best practices in early childhood home
21 visitation; and

22 “(2) after making the reservation required by
23 paragraph (1), an amount equal to 3 percent of the
24 amount so appropriated, to pay for grants to Indian
25 tribes under this section.

1 “(1) review Medicare and Medicaid policies re-
2 lated to enrollment, benefits, service delivery, pay-
3 ment, and grievance and appeals processes under
4 parts A and B of title XVIII, under the Medicare
5 Advantage program under part C of such title, and
6 under title XIX;

7 “(2) identify areas of such policies where better
8 coordination and protection could improve care and
9 costs; and

10 “(3) issue guidance to States regarding improv-
11 ing such coordination and protection.

12 “(b) ELEMENTS.—The improved coordination and
13 protection under this section shall include efforts—

14 “(1) to simplify access of dual eligibles to bene-
15 fits and services under Medicare and Medicaid;

16 “(2) to improve care continuity for dual eligi-
17 bles and ensure safe and effective care transitions;

18 “(3) to harmonize regulatory conflicts between
19 Medicare and Medicaid rules with regard to dual eli-
20 gibles; and

21 “(4) to improve total cost and quality perform-
22 ance under Medicare and Medicaid for dual eligibles.

23 “(c) RESPONSIBILITIES.—In carrying out this sec-
24 tion, the Secretary shall provide for the following:

1 “(1) An examination of Medicare and Medicaid
2 payment systems to develop strategies to foster more
3 integrated and higher quality care.

4 “(2) Development of methods to facilitate ac-
5 cess to post-acute and community-based services and
6 to identify actions that could lead to better coordina-
7 tion of community-based care.

8 “(3) A study of enrollment of dual eligibles in
9 the Medicare Savings Program (as defined in section
10 1144(e)(7)), under Medicaid, and in the low-income
11 subsidy program under section 1860D–14 to identify
12 methods to more efficiently and effectively reach and
13 enroll dual eligibles.

14 “(4) An assessment of communication strate-
15 gies for dual eligibles to determine whether addi-
16 tional informational materials or outreach is needed,
17 including an assessment of the Medicare website, 1–
18 800–MEDICARE, and the Medicare handbook.

19 “(5) Research and evaluation of areas where
20 service utilization, quality, and access to cost sharing
21 protection could be improved and an assessment of
22 factors related to enrollee satisfaction with services
23 and care delivery.

24 “(6) Collection (and making available to the
25 public) of data and a database that describe the eli-

1 gibility, benefit and cost-sharing assistance available
2 to dual eligibles by State.

3 “(7) Monitoring total combined Medicare and
4 Medicaid program costs in serving dual eligibles and
5 making recommendations for optimizing total quality
6 and cost performance across both programs.

7 “(8) Coordination of activities relating to Medi-
8 care Advantage plans under 1859(b)(6)(B)(ii) and
9 Medicaid.

10 “(d) PERIODIC REPORTS.—Not later than 1 year
11 after the date of the enactment of this section and every
12 3 years thereafter the Secretary shall submit to Congress
13 a report on progress in activities conducted under this sec-
14 tion.

15 “(e) DEFINITIONS.—In this section:

16 “(1) DUAL ELIGIBLE.—The term ‘dual eligible’
17 means an individual who is dually eligible for bene-
18 fits under title XVIII, and medical assistance under
19 title XIX, including such individuals who are eligible
20 for benefits under the Medicare Savings Program
21 (as defined in section 1144(c)(7)).

22 “(2) MEDICARE; MEDICAID.—The terms ‘Medi-
23 care’ and ‘Medicaid’ mean the programs under titles
24 XVIII and XIX, respectively.”.

1 **DIVISION C—PUBLIC HEALTH**
2 **AND WORKFORCE DEVELOP-**
3 **MENT**

4 **SEC. 2001. TABLE OF CONTENTS; REFERENCES.**

5 (a) TABLE OF CONTENTS.—The table of contents of
6 this division is as follows:

Sec. 2001. Table of contents; references.
Sec. 2002. Public Health Investment Fund.

TITLE I—COMMUNITY HEALTH CENTERS

Sec. 2101. Increased funding.

TITLE II—WORKFORCE

Subtitle A—Primary Care Workforce

PART 1—NATIONAL HEALTH SERVICE CORPS

Sec. 2201. National Health Service Corps.
Sec. 2202. Authorizations of appropriations.

PART 2—PROMOTION OF PRIMARY CARE AND DENTISTRY

Sec. 2211. Frontline health providers.
Sec. 2212. Primary care student loan funds.
Sec. 2213. Training in family medicine, general internal medicine, general pedi-
atrics, geriatrics, and physician assistantship.
Sec. 2214. Training of medical residents in community-based settings.
Sec. 2215. Training for general, pediatric, and public health dentists and dental
hygienists.
Sec. 2216. Authorization of appropriations.

Subtitle B—Nursing Workforce

Sec. 2221. Amendments to Public Health Service Act.

Subtitle C—Public Health Workforce

Sec. 2231. Public Health Workforce Corps.
Sec. 2232. Enhancing the public health workforce.
Sec. 2233. Public health training centers.
Sec. 2234. Preventive medicine and public health training grant program.
Sec. 2235. Authorization of appropriations.

Subtitle D—Adapting Workforce to Evolving Health System Needs

PART 1—HEALTH PROFESSIONS TRAINING FOR DIVERSITY

- Sec. 2241. Scholarships for disadvantaged students, loan repayments and fellowships regarding faculty positions, and educational assistance in the health professions regarding individuals from disadvantaged backgrounds.
- Sec. 2242. Nursing workforce diversity grants.
- Sec. 2243. Coordination of diversity and cultural competency programs.

PART 2—INTERDISCIPLINARY TRAINING PROGRAMS

- Sec. 2251. Cultural and linguistic competency training for health care professionals.
- Sec. 2252. Innovations in interdisciplinary care training.

PART 3—ADVISORY COMMITTEE ON HEALTH WORKFORCE EVALUATION AND ASSESSMENT

- Sec. 2261. Health workforce evaluation and assessment.

PART 4—HEALTH WORKFORCE ASSESSMENT

- Sec. 2271. Health workforce assessment.

PART 5—AUTHORIZATION OF APPROPRIATIONS

- Sec. 2281. Authorization of appropriations.

TITLE III—PREVENTION AND WELLNESS

- Sec. 2301. Prevention and Wellness.

TITLE IV—QUALITY AND SURVEILLANCE

- Sec. 2401. Implementation of best practices in the delivery of health care.
- Sec. 2402. Assistant Secretary for Health Information.
- Sec. 2403. Authorization of appropriations.

TITLE V—OTHER PROVISIONS

Subtitle A—Drug Discount for Rural and Other Hospitals

- Sec. 2501. Expanded participation in 340B program.
- Sec. 2502. Extension of discounts to inpatient drugs.
- Sec. 2503. Effective date.

Subtitle B—School-Based Health Clinics

- Sec. 2511. School-based health clinics.

Subtitle C—National Medical Device Registry

- Sec. 2521. National medical device registry.

Subtitle D—Grants for Comprehensive Programs to Provide Education to Nurses and Create a Pipeline to Nursing

- Sec. 2531. Establishment of grant program.

Subtitle E—Standards for Accessibility to Medical Equipment for Individuals With Disabilities.

- Sec. 2541. Access for individuals with disabilities.

Subtitle F—Other Grant Programs

Sec. 2551. Reducing student-to-school nurse ratios.

Sec. 2552. Wellness program grants.

Subtitle G—States Failing to Adhere to Certain Employment Obligations

Sec. 2561. Limitation on Federal funds.

1 (b) REFERENCES.—Except as otherwise specified,
2 whenever in this division an amendment is expressed in
3 terms of an amendment to a section or other provision,
4 the reference shall be considered to be made to a section
5 or other provision of the Public Health Service Act (42
6 U.S.C. 201 et seq.).

7 **SEC. 2002. PUBLIC HEALTH INVESTMENT FUND.**

8 (a) ESTABLISHMENT OF FUNDS.—

9 (1) IN GENERAL.—There is established a fund
10 to be known as the “Public Health Investment
11 Fund” (referred to in this section as the “Fund”).

12 (2) FUNDING.—

13 (A) There shall be deposited into the
14 Fund—

15 (i) for fiscal year 2010,
16 \$4,600,000,000;

17 (ii) for fiscal year 2011,
18 \$5,600,000,000;

19 (iii) for fiscal year 2012,
20 \$6,900,000,000;

21 (iv) for fiscal year 2013,
22 \$7,800,000,000;

1 (v) for fiscal year 2014,
2 \$9,000,000,000;
3 (vi) for fiscal year 2015,
4 \$9,400,000,000;
5 (vii) for fiscal year 2016,
6 \$10,100,000,000;
7 (viii) for fiscal year 2017,
8 \$10,800,000,000;
9 (ix) for fiscal year 2018,
10 \$11,800,000,000; and
11 (x) for fiscal year 2019,
12 \$12,700,000,000.

13 (B) Amounts deposited into the Fund shall
14 be derived from general revenues of the Treas-
15 ury.

16 (b) AUTHORIZATION OF APPROPRIATIONS FROM THE
17 FUND.—

18 (1) NEW FUNDING.—

19 (A) IN GENERAL.—Amounts in the Fund
20 are authorized to be appropriated by the Com-
21 mittees on Appropriations of the House of Rep-
22 resentatives and the Senate for carrying out ac-
23 tivities under designated public health provi-
24 sions.

1 (B) DESIGNATED PROVISIONS.—For pur-
2 poses of this paragraph, the term “designated
3 public health provisions” means the provisions
4 for which amounts are authorized to be appro-
5 priated under section 330(s), 338(c), 338H–1,
6 799C, 872, or 3111 of the Public Health Serv-
7 ice Act, as added by this division.

8 (2) BASELINE FUNDING.—

9 (A) IN GENERAL.—Amounts in the Fund
10 are authorized to be appropriated (as described
11 in paragraph (1)) for a fiscal year only if (ex-
12 cluding any amounts in or appropriated from
13 the Fund)—

14 (i) the amounts specified in subpara-
15 graph (B) for the fiscal year involved are
16 equal to or greater than the amounts spec-
17 ified in subparagraph (B) for fiscal year
18 2008; and

19 (ii) the amounts appropriated, out of
20 the general fund of the Treasury, to the
21 Prevention and Wellness Trust under sec-
22 tion 3111 of the Public Health Service
23 Act, as added by this division, for the fis-
24 cal year involved are equal to or greater
25 than the funds—

1 (I) appropriated under the head-
2 ing “Prevention and Wellness Fund”
3 in title VIII of division A of the Amer-
4 ican Recovery and Reinvestment Act
5 of 2009 (Public Law 111–5); and

6 (II) allocated by the second pro-
7 viso under such heading for evidence-
8 based clinical and community-based
9 prevention and wellness strategies.

10 (B) AMOUNTS SPECIFIED.—The amounts
11 specified in this subparagraph, with respect to
12 a fiscal year, are the amounts appropriated for
13 the following:

14 (i) Community health centers (includ-
15 ing funds appropriated under the authority
16 of section 330 of the Public Health Service
17 Act (42 U.S.C. 254b)).

18 (ii) The National Health Service
19 Corps Program (including funds appro-
20 priated under the authority of section 338
21 of such Act (42 U.S.C. 254k)).

22 (iii) The National Health Service
23 Corps Scholarship and Loan Repayment
24 Programs (including funds appropriated

1 under the authority of section 338H of
2 such Act (42 U.S.C. 254q)).

3 (iv) Primary care loan funds (includ-
4 ing funds appropriated for schools of medi-
5 cine or osteopathic medicine under the au-
6 thority of section 735(f) of such Act (42
7 U.S.C. 292y(f))).

8 (v) Primary care education programs
9 (including funds appropriated under the
10 authority of sections 736, 740, 741, and
11 747 of such Act (42 U.S.C. 293, 293d,
12 and 293k)).

13 (vi) Sections 761 and 770 of such Act
14 (42 U.S.C. 294n and 295e).

15 (vii) Nursing workforce development
16 (including funds appropriated under the
17 authority of title VIII of such Act (42
18 U.S.C. 296 et seq.)).

19 (viii) The National Center for Health
20 Statistics (including funds appropriated
21 under the authority of sections 304, 306,
22 307, and 308 of such Act (42 U.S.C.
23 242b, 242k, 242l, and 242m)).

24 (ix) The Agency for Healthcare Re-
25 search and Quality (including funds appro-

1 priated under the authority of title IX of
2 such Act (42 U.S.C. 299 et seq.)).

3 (3) BUDGETARY IMPLICATIONS.—Amounts ap-
4 propriated under this section, and outlays flowing
5 from such appropriations, shall not be taken into ac-
6 count for purposes of any budget enforcement proce-
7 dures including allocations under section 302(a) and
8 (b) of the Balanced Budget and Emergency Deficit
9 Control Act and budget resolutions for fiscal years
10 during which appropriations are made from the
11 Fund.

12 **TITLE I—COMMUNITY HEALTH** 13 **CENTERS**

14 **SEC. 2101. INCREASED FUNDING.**

15 Section 330 of the Public Health Service Act (42
16 U.S.C. 254b) is amended—

17 (1) in subsection (r)(1)—

18 (A) in subparagraph (D), by striking
19 “and” at the end;

20 (B) in subparagraph (E), by striking the
21 period at the end and inserting “; and”; and

22 (C) by inserting at the end the following:

23 “(F) Such sums as may be necessary for
24 each of fiscal years 2013 and 2019.”; and

1 (2) by inserting after subsection (r) the fol-
2 lowing:

3 “(s) ADDITIONAL FUNDING.—For the purpose of
4 carrying out this section, in addition to any other amounts
5 authorized to be appropriated for such purpose, there are
6 authorized to be appropriated, out of any monies in the
7 Public Health Investment Fund, the following:

8 “(1) For fiscal year 2010, \$1,000,000,000.

9 “(2) For fiscal year 2011, \$1,500,000,000.

10 “(3) For fiscal year 2012, \$2,500,000,000.

11 “(4) For fiscal year 2013, \$3,000,000,000.

12 “(5) For fiscal year 2014, \$4,000,000,000.

13 “(6) For fiscal year 2015, \$4,400,000,000.

14 “(7) For fiscal year 2016, \$4,800,000,000.

15 “(8) For fiscal year 2017, \$5,300,000,000.

16 “(9) For fiscal year 2018, \$5,900,000,000.

17 “(10) For fiscal year 2019, \$6,400,000,000.”.

18 **TITLE II—WORKFORCE**

19 **Subtitle A—Primary Care**

20 **Workforce**

21 **PART 1—NATIONAL HEALTH SERVICE CORPS**

22 **SEC. 2201. NATIONAL HEALTH SERVICE CORPS.**

23 (a) FULFILLMENT OF OBLIGATED SERVICE RE-
24 QUIREMENT THROUGH HALF-TIME SERVICE.—

1 (1) WAIVERS.—Subsection (i) of section 331
2 (42 U.S.C. 254d) is amended—

3 (A) in paragraph (1), by striking “In car-
4 rying out subpart III” and all that follows
5 through the period and inserting “In carrying
6 out subpart III, the Secretary may, in accord-
7 ance with this subsection, issue waivers to indi-
8 viduals who have entered into a contract for ob-
9 ligated service under the Scholarship Program
10 or the Loan Repayment Program under which
11 the individuals are authorized to satisfy the re-
12 quirement of obligated service through pro-
13 viding clinical practice that is half-time.”;

14 (B) in paragraph (2)—

15 (i) in subparagraphs (A)(ii) and (B),
16 by striking “less than full time” each place
17 it appears and inserting “half time”;

18 (ii) in subparagraphs (C) and (F), by
19 striking “less than full-time service” each
20 place it appears and inserting “half-time
21 service”; and

22 (iii) by amending subparagraphs (D)
23 and (E) to read as follows:

1 “(D) the entity and the Corps member agree in
2 writing that the Corps member will perform half-
3 time clinical practice;

4 “(E) the Corps member agrees in writing to
5 fulfill all of the service obligations under section
6 338C through half-time clinical practice and ei-
7 ther—

8 “(i) double the period of obligated service;
9 or

10 “(ii) in the case of contracts entered into
11 under section 338B, accept a minimum service
12 obligation of 2 years with an award amount
13 equal to 50 percent of the amount that would
14 otherwise be payable for full-time service; and”;
15 and

16 (C) in paragraph (3), by striking “In eval-
17 uating a demonstration project described in
18 paragraph (1)” and inserting “In evaluating
19 waivers issued under paragraph (1)”.

20 (2) DEFINITIONS.—Subsection (j) of section
21 331 (42 U.S.C. 254d) is amended by adding at the
22 end the following:

23 “(5) The terms ‘full time’ and ‘full-time’ mean
24 a minimum of 40 hours per week in a clinical prac-
25 tice, for a minimum of 45 weeks per year.

1 “(6) The terms ‘half time’ and ‘half-time’ mean
2 a minimum of 20 hours per week (not to exceed 39
3 hours per week) in a clinical practice, for a min-
4 imum of 45 weeks per year.”.

5 (b) REAPPOINTMENT TO NATIONAL ADVISORY COUN-
6 CIL.—Section 337(b)(1) (42 U.S.C. 254j(b)(1)) is amend-
7 ed by striking “Members may not be reappointed to the
8 Council.”.

9 (c) LOAN REPAYMENT AMOUNT.—Section
10 338B(g)(2)(A) is amended (42 U.S.C. 254l-1(g)(2)(A))
11 by striking “\$35,000” and inserting “\$50,000, plus, be-
12 ginning with fiscal year 2012, an amount determined by
13 the Secretary on an annual basis to reflect inflation,”.

14 (d) TREATMENT OF TEACHING AS OBLIGATED SERV-
15 ICE.—Subsection (a) of section 338C (42 U.S.C. 254m)
16 is amended by adding at the end the following: “The Sec-
17 retary may treat teaching as clinical practice for up to
18 20 percent of such period of obligated service.”.

19 **SEC. 2202. AUTHORIZATIONS OF APPROPRIATIONS.**

20 (a) NATIONAL HEALTH SERVICE CORPS PRO-
21 GRAM.—Section 338 (42 U.S.C. 254k) is amended—

22 (1) in subsection (a), by striking “2012” and
23 inserting “2019”; and

24 (2) by adding at the end the following:

1 “(c) For the purpose of carrying out this subpart,
2 in addition to any other amounts authorized to be appro-
3 priated for such purpose, there are authorized to be appro-
4 priated, out of any monies in the Public Health Invest-
5 ment Fund, the following:

6 “(1) \$63,000,000 for fiscal year 2010.

7 “(2) \$66,000,000 for fiscal year 2011.

8 “(3) \$70,000,000 for fiscal year 2012.

9 “(4) \$73,000,000 for fiscal year 2013.

10 “(5) \$77,000,000 for fiscal year 2014.

11 “(6) \$81,000,000 for fiscal year 2015.

12 “(7) \$85,000,000 for fiscal year 2016.

13 “(8) \$89,000,000 for fiscal year 2017.

14 “(9) \$94,000,000 for fiscal year 2018.

15 “(10) \$98,000,000 for fiscal year 2019.”.

16 (b) SCHOLARSHIP AND LOAN REPAYMENT PRO-
17 GRAMS.—Subpart III of part D of title III of the Public
18 Health Service Act (42 U.S.C. 254l et seq.) is amended—

19 (1) in section 338H(a)—

20 (A) in paragraph (4), by striking “and” at
21 the end;

22 (B) in paragraph (5), by striking the pe-
23 riod at the end and inserting “; and”; and

24 (C) by adding at the end the following:

1 **“Subpart XI—Health Professional Needs Areas**

2 **“SEC. 340H. IN GENERAL.**

3 “(a) PROGRAM.—The Secretary, acting through the
4 Administrator of the Health Resources and Services Ad-
5 ministration, shall establish a program, to be known as
6 the Frontline Health Providers Loan Repayment Pro-
7 gram, to address unmet health care needs in health profes-
8 sional needs areas through loan repayments under section
9 340I.

10 “(b) DESIGNATION OF HEALTH PROFESSIONAL
11 NEEDS AREAS.—

12 “(1) IN GENERAL.—In this subpart, the term
13 ‘health professional needs area’ means an area, pop-
14 ulation, or facility that is designated by the Sec-
15 retary in accordance with paragraph (2).

16 “(2) DESIGNATION.—To be designated by the
17 Secretary as a health professional needs area under
18 this subpart:

19 “(A) In the case of an area, the area must
20 be a rational area for the delivery of health
21 services.

22 “(B) The area, population, or facility must
23 have, in one or more health disciplines, special-
24 ties, or subspecialties for the population served,
25 as determined by the Secretary—

1 “(i) insufficient capacity of health
2 professionals; or

3 “(ii) high needs for health services.

4 “(C) With respect to the delivery of pri-
5 mary health services, the area, population, or
6 facility must not include a health professional
7 shortage area (as designated under section
8 332), except that the area, population, or facil-
9 ity may include such a health professional
10 shortage area to which no member of the Na-
11 tional Health Service Corps is currently as-
12 signed.

13 “(c) ELIGIBILITY.—To be eligible to participate in
14 the Program, an individual shall—

15 “(1) hold a degree in a course of study or pro-
16 gram (approved by the Secretary) from a school de-
17 fined in section 799B(1)(A) (other than a school of
18 public health);

19 “(2) hold a degree in a course of study or pro-
20 gram (approved by the Secretary) from a school or
21 program defined in subparagraph (C), (D), or
22 (E)(4) of section 799B(1), as designated by the Sec-
23 retary;

24 “(3) be enrolled as a full-time student—

1 “(A) in a school or program defined in
2 subparagraph (C), (D), or (E)(4) of section
3 799B(1), as designated by the Secretary, or a
4 school described in paragraph (1); and

5 “(B) in the final year of a course of study
6 or program, offered by such school or program
7 and approved by the Secretary, leading to a de-
8 gree in a discipline referred to in subparagraph
9 (A) (other than a graduate degree in public
10 health), (C), (D), or (E)(4) of section 799B(1);

11 “(4) be a practitioner described in section
12 1842(b)(18)(C) or 1848(k)(3)(B)(iii) or (iv) of the
13 Social Security Act; or

14 “(5) be a practitioner in the field of respiratory
15 therapy, medical technology, or radiologic tech-
16 nology.

17 “(d) DEFINITION.—In this subpart, the term ‘pri-
18 mary health services’ has the meaning given to such term
19 in section 331(a)(3)(D).

20 **“SEC. 340I. LOAN REPAYMENTS.**

21 “(a) LOAN REPAYMENTS.—The Secretary, acting
22 through the Administrator of the Health Resources and
23 Services Administration, shall enter into contracts with in-
24 dividuals under which—

25 “(1) the individual agrees—

1 “(A) to serve as a full-time primary health
2 services provider or as a full-time or part-time
3 provider of other health services for a period of
4 time equal to 2 years or such longer period as
5 the individual may agree to;

6 “(B) to serve in a health professional
7 needs area in a health discipline, specialty, or a
8 subspecialty for which the area, population, or
9 facility is designated as a health professional
10 needs area under section 340H; and

11 “(C) in the case of an individual described
12 in subsection 340H(c)(3) who is in the final
13 year of study and who has accepted employ-
14 ment as primary health services provider or
15 provider of other health services in accordance
16 with subparagraphs (A) and (B), to complete
17 the education or training and maintain an ac-
18 ceptable level of academic standing (as deter-
19 mined by the educational institution offering
20 the course of study or training); and

21 “(2) the Secretary agrees to pay, for each year
22 of such service, an amount on the principal and in-
23 terest of the undergraduate or graduate educational
24 loans (or both) of the individual that is not more
25 than 50 percent of the average award made under

1 the National Health Service Corps Loan Repayment
2 Program under subpart III in that year.

3 “(b) PRACTICE SETTING.—A contract entered into
4 under this section shall allow the individual receiving the
5 loan repayment to satisfy the service requirement de-
6 scribed in subsection (a)(1) through employment in a solo
7 or group practice, a clinic, an accredited public or private
8 nonprofit hospital, or any other health care entity, as
9 deemed appropriate by the Secretary.

10 “(c) APPLICATION OF CERTAIN PROVISIONS.—The
11 provisions of subpart III of part D shall, except as incon-
12 sistent with this section, apply to the loan repayment pro-
13 gram under this subpart in the same manner and to the
14 same extent as such provisions apply to the National
15 Health Service Corps Loan Repayment Program estab-
16 lished under section 338B.

17 “(d) INSUFFICIENT NUMBER OF APPLICANTS.—If
18 there are an insufficient number of applicants for loan re-
19 payments under this section to obligate all appropriated
20 funds, the Secretary shall transfer the unobligated funds
21 to the National Health Service Corps for the purpose of—

22 “(1) recruitment of sufficient applicants for the
23 National Health Service Corps for the following
24 year; or

1 “(2) making additional loan repayments under
2 section 338B if there is an excess number of quali-
3 fied applicants for loan repayments under such sec-
4 tion.

5 **“SEC. 340J. REPORT.**

6 “The Secretary shall submit to the Congress an an-
7 nual report on the program carried out under this subpart.

8 **“SEC. 340K. ALLOCATION.**

9 “Of the amount of funds obligated under this subpart
10 each fiscal year for loan repayments—

11 “(1) 90 percent shall be for physicians and
12 other health professionals providing primary health
13 services; and

14 “(2) 10 percent shall be for health professionals
15 not described in paragraph (1).”.

16 **SEC. 2212. PRIMARY CARE STUDENT LOAN FUNDS.**

17 (a) LOAN PROVISIONS.—Section 722 (42 U.S.C.
18 292r) is amended by striking subsection (e) and inserting
19 the following:

20 “(e) RATE OF INTEREST.—Such loans shall bear in-
21 terest, on the unpaid balance of the loan, computed only
22 for periods for which the loan is repayable, at the rate
23 of 2 percentage points less than the applicable rate of in-
24 terest described in section 427A(l)(1) of the Higher Edu-
25 cation Act of 1965 per year.”.

1 (b) MEDICAL SCHOOLS AND PRIMARY HEALTH
2 CARE.—Subsection (a) of section 723 (42 U.S.C. 292s)
3 is amended—

4 (1) in paragraph (1), by striking subparagraph
5 (B) and inserting the following:

6 “(B) to practice in such care for 10 years
7 (including residency training in primary health
8 care) or through the date on which the loan is
9 repaid in full, whichever occurs first.”; and

10 (2) by striking paragraph (3) and inserting the
11 following:

12 “(3) NONCOMPLIANCE BY STUDENT.—If an in-
13 dividual fails to comply with an agreement entered
14 into pursuant to paragraph (1), such agreement
15 shall provide that the total interest to be paid on the
16 loan, over the course of the loan period, shall equal
17 the total amount of interest that would have been in-
18 curred by the individual if, from the outset of the
19 loan, the loan was repayable at the rate of interest
20 described in section 427A(l)(1) of the Higher Edu-
21 cation Act of 1965 per year instead of the rate of
22 interest described in section 722(e).”.

23 (c) STUDENT LOAN GUIDELINES.—

24 (1) IN GENERAL.—Section 735 (42 U.S.C.
25 292y) is amended—

1 (A) by redesignating subsection (f) as sub-
2 section (g); and

3 (B) by inserting after subsection (e) the
4 following:

5 “(f) DETERMINATION OF FINANCIAL NEED.—The
6 Secretary—

7 “(1) may require, or authorize a school or other
8 entity to require, the submission of financial infor-
9 mation to determine the financial resources available
10 to any individual seeking assistance under this sub-
11 part; and

12 “(2) shall take into account the extent to which
13 such individual is financially independent in deter-
14 mining whether to require or authorize the submis-
15 sion of such information regarding such individual’s
16 family members.”.

17 (2) REVISED GUIDELINES.—The Secretary of
18 Health and Human Services shall—

19 (A) strike the second sentence of section
20 57.206(b) of title 42, Code of Federal Regula-
21 tions; and

22 (B) make such other revisions to guidelines
23 and regulations in effect as of the date of the
24 enactment of this Act as may be necessary for

1 consistency with the amendments made by
2 paragraph (1).

3 **SEC. 2213. TRAINING IN FAMILY MEDICINE, GENERAL IN-**
4 **TERNAL MEDICINE, GENERAL PEDIATRICS,**
5 **GERIATRICS, AND PHYSICIAN**
6 **ASSISTANTSHIP.**

7 Section 747 (42 U.S.C. 293k) is amended—

8 (1) by amending the section heading to read as
9 follows: “**PRIMARY CARE TRAINING AND EN-**
10 **HANCEMENT**”;

11 (2) by redesignating subsection (e) as sub-
12 section (f); and

13 (3) by striking subsections (a) through (d) and
14 inserting the following:

15 “(a) PROGRAM.—The Secretary shall establish a pri-
16 mary care training and capacity building program con-
17 sisting of awarding grants and contracts under sub-
18 sections (b) and (c).

19 “(b) SUPPORT AND DEVELOPMENT OF PRIMARY
20 CARE TRAINING PROGRAMS.—

21 “(1) IN GENERAL.—The Secretary shall make
22 grants to, or enter into contracts with, eligible enti-
23 ties—

24 “(A) to plan, develop, operate, or partici-
25 pate in an accredited professional training pro-

1 gram, including an accredited residency or in-
2 ternship program, in the field of family medi-
3 cine, general internal medicine, general pedi-
4 atrics, or geriatrics for medical students, interns,
5 residents, or practicing physicians;

6 “(B) to provide financial assistance in the
7 form of traineeships and fellowships to medical
8 students, interns, residents, or practicing physi-
9 cians, who are participants in any such pro-
10 gram, and who plan to specialize or work in
11 family medicine, general internal medicine, gen-
12 eral pediatrics, or geriatrics;

13 “(C) to plan, develop, operate, or partici-
14 pate in an accredited program for the training
15 of physicians who plan to teach in family medi-
16 cine, general internal medicine, general pedi-
17 atrics, or geriatrics training programs including
18 in community-based settings;

19 “(D) to provide financial assistance in the
20 form of traineeships and fellowships to prac-
21 ticing physicians who are participants in any
22 such programs and who plan to teach in a fam-
23 ily medicine, general internal medicine, general
24 pediatrics, or geriatrics training program; and

1 “(E) to plan, develop, operate, or partici-
2 pate in an accredited program for physician as-
3 sistant education, and for the training of indi-
4 viduals who plan to teach in programs to pro-
5 vide such training.

6 “(2) ELIGIBILITY.—To be eligible for a grant
7 or contract under paragraph (1), an entity shall
8 be—

9 “(A) an accredited school of medicine or
10 osteopathic medicine, public or nonprofit private
11 hospital, or physician assistant training pro-
12 gram;

13 “(B) a public or private nonprofit entity;
14 or

15 “(C) a consortium of 2 or more entities de-
16 scribed in subparagraphs (A) and (B).

17 “(c) CAPACITY BUILDING IN PRIMARY CARE.—

18 “(1) IN GENERAL.—The Secretary shall make
19 grants to or enter into contracts with eligible entities
20 to establish, maintain, or improve—

21 “(A) academic administrative units (in-
22 cluding departments, divisions, or other appro-
23 priate units) in the specialties of family medi-
24 cine, general internal medicine, general pediatri-
25 cs, or geriatrics; or

1 “(B) programs that improve clinical teach-
2 ing in such specialties.

3 “(2) ELIGIBILITY.—To be eligible for a grant
4 or contract under paragraph (1), an entity shall be
5 an accredited school of medicine or osteopathic med-
6 icine.

7 “(d) PREFERENCE.—In awarding grants or contracts
8 under this section, the Secretary shall give preference to
9 entities that have a demonstrated record of the following:

10 “(1) Training the greatest percentage, or sig-
11 nificantly improving the percentage, of health care
12 professionals who provide primary care.

13 “(2) Training individuals who are from under-
14 represented minority groups or disadvantaged back-
15 grounds.

16 “(3) A high rate of placing graduates in prac-
17 tice settings having the principal focus of serving in
18 underserved areas or populations experiencing health
19 disparities (including serving patients eligible for
20 medical assistance under title XIX of the Social Se-
21 curity Act or for child health assistance under title
22 XXI of such Act or those with special health care
23 needs).

1 “(4) Supporting teaching programs that ad-
2 dress the health care needs of vulnerable popu-
3 lations.

4 “(e) REPORT.—The Secretary shall submit to the
5 Congress an annual report on the program carried out
6 under this section.

7 “(f) DEFINITION.—In this section, the term ‘health
8 disparities’ has the meaning given the term in section
9 3171.”.

10 **SEC. 2214. TRAINING OF MEDICAL RESIDENTS IN COMMU-**
11 **NITY-BASED SETTINGS.**

12 Title VII (42 U.S.C. 292 et seq.) is amended—

13 (1) by redesignating section 748 as 749A; and

14 (2) by inserting after section 747 the following:

15 **“SEC. 748. TRAINING OF MEDICAL RESIDENTS IN COMMU-**
16 **NITY-BASED SETTINGS.**

17 “(a) PROGRAM.—The Secretary shall establish a pro-
18 gram for the training of medical residents in community-
19 based settings consisting of awarding grants or contracts
20 under this section.

21 “(b) DEVELOPMENT AND OPERATION OF COMMU-
22 NITY-BASED PROGRAMS.—The Secretary shall make
23 grants to, or enter into contracts with, eligible entities—

24 “(1) to plan and develop a new primary care
25 residency training program, which may include—

1 “(A) planning and developing curricula;

2 “(B) recruiting and training residents and
3 faculty; and

4 “(C) other activities designated to result in
5 accreditation of such a program; or

6 “(2) to operate or participate in an established
7 primary care residency training program, which may
8 include—

9 “(A) planning and developing curricula;

10 “(B) recruitment and training of residents;

11 and

12 “(C) retention of faculty.

13 “(c) ELIGIBLE ENTITY.—To be eligible to receive a
14 grant or contract under subsection (b), an entity shall—

15 “(1) be designated as a recipient of payment
16 for the direct costs of medical education under sec-
17 tion 1886(k) of the Social Security Act;

18 “(2) be designated as an approved teaching
19 health center under section 1502(d) of the America’s
20 Affordable Health Choices Act of 2009 and con-
21 tinuing to participate in the demonstration project
22 under such section; or

23 “(3) be an applicant for designation described
24 in paragraph (1) or (2) and have demonstrated to
25 the Secretary appropriate involvement of an accred-

1 ited teaching hospital to carry out the inpatient re-
2 sponsibilities associated with a primary care resi-
3 dency training program.

4 “(d) PREFERENCES.—In awarding grants and con-
5 tracts under paragraph (1) or (2) of subsection (b), the
6 Secretary shall give preference to entities that—

7 “(1) support teaching programs that address
8 the health care needs of vulnerable populations; or

9 “(2) are a Federally qualified health center (as
10 defined in section 1861(aa)(4) of the Social Security
11 Act) or a rural health clinic (as defined in section
12 1861(aa)(2) of such Act).

13 “(e) ADDITIONAL PREFERENCES FOR ESTABLISHED
14 PROGRAMS.—In awarding grants and contracts under
15 subsection (b)(2), the Secretary shall give preference to
16 entities that have a demonstrated record of training—

17 “(1) a high or significantly improved percentage
18 of health care professionals who provide primary
19 care;

20 “(2) individuals who are from underrepresented
21 minority groups or disadvantaged backgrounds; or

22 “(3) individuals who practice in settings having
23 the principal focus of serving underserved areas or
24 populations experiencing health disparities (including
25 serving patients eligible for medical assistance under

1 title XIX of the Social Security Act or for child
2 health assistance under title XXI of such Act or
3 those with special health care needs).

4 “(f) PERIOD OF AWARDS.—

5 “(1) IN GENERAL.—The period of a grant or
6 contract under this section—

7 “(A) shall not exceed 2 years for awards
8 under subsection (b)(1); and

9 “(B) shall not exceed 5 years for awards
10 under subsection (b)(2).

11 “(2) SPECIAL RULES.—

12 “(A) An award of a grant or contract
13 under subsection (b)(1) shall not be renewed.

14 “(B) The period of a grant or contract
15 awarded to an entity under subsection (b)(2)
16 shall not overlap with the period of any grant
17 or contract awarded to the same entity under
18 subsection (b)(1).

19 “(g) REPORT.—The Secretary shall submit to the
20 Congress an annual report on the program carried out
21 under this section.

22 “(h) DEFINITIONS.—In this section:

23 “(1) PRIMARY CARE RESIDENCY TRAINING PRO-
24 GRAM.—The term ‘primary care residency training
25 program’ means an approved medical residency

1 training program described in section 1886(h)(5)(A)
2 of the Social Security Act that is—

3 “(A) in the case of entities seeking awards
4 under subsection (b)(1), actively applying to be
5 accredited by the Accreditation Council for
6 Graduate Medical Education; or

7 “(B) in the case of entities seeking awards
8 under subsection (b)(2), so accredited.

9 “(2) HEALTH DISPARITIES.—The term ‘health
10 disparities’ has the meaning given the term in sec-
11 tion 3171.”.

12 **SEC. 2215. TRAINING FOR GENERAL, PEDIATRIC, AND PUB-**
13 **LIC HEALTH DENTISTS AND DENTAL HYGIEN-**
14 **ISTS.**

15 Title VII (42 U.S.C. 292 et seq.) is amended—

16 (1) in section 791(a)(1), by striking “747 and
17 750” and inserting “747, 749, and 750”; and

18 (2) by inserting after section 748, as added, the
19 following:

20 **“SEC. 749. TRAINING FOR GENERAL, PEDIATRIC, AND PUB-**
21 **LIC HEALTH DENTISTS AND DENTAL HYGIEN-**
22 **ISTS.**

23 “(a) PROGRAM.—The Secretary shall establish a den-
24 tal medicine training program consisting of awarding
25 grants and contracts under this section.

1 “(b) SUPPORT AND DEVELOPMENT OF DENTAL
2 TRAINING PROGRAMS.—The Secretary shall make grants
3 to, or enter into contracts with, eligible entities—

4 “(1) to plan, develop, operate, or participate in
5 an accredited professional training program for oral
6 health professionals;

7 “(2) to provide financial assistance to oral
8 health professionals who are in need thereof, who
9 are participants in any such program, and who plan
10 to work in general, pediatric, or public health den-
11 tistry, or dental hygiene;

12 “(3) to plan, develop, operate, or participate in
13 a program for the training of oral health profes-
14 sionals who plan to teach in general, pediatric, or
15 public health dentistry, or dental hygiene;

16 “(4) to provide financial assistance in the form
17 of traineeships and fellowships to oral health profes-
18 sionals who plan to teach in general, pediatric, or
19 public health dentistry or dental hygiene;

20 “(5) to establish, maintain, or improve—

21 “(A) academic administrative units (in-
22 cluding departments, divisions, or other appro-
23 priate units) in the specialties of general, pedi-
24 atric, or public health dentistry; or

1 “(B) programs that improve clinical teach-
2 ing in such specialties.

3 “(6) to plan, develop, operate, or participate in
4 predoctoral and postdoctoral training in general, pe-
5 diatric, or public health dentistry programs, or train-
6 ing for dental hygienists;

7 “(7) to plan, develop, operate, or participate in
8 a loan repayment program for full-time faculty in a
9 program of general, pediatric, or public health den-
10 tistry; and

11 “(8) to provide technical assistance to pediatric
12 dental training programs in developing and imple-
13 menting instruction regarding the oral health status,
14 dental care needs, and risk-based clinical disease
15 management of all pediatric populations with an em-
16 phasis on underserved children.

17 “(c) ELIGIBILITY.—To be eligible for a grant or con-
18 tract under subsection (a), an entity shall be—

19 “(1) an accredited school of dentistry, training
20 program in dental hygiene, or public or nonprofit
21 private hospital;

22 “(2) a training program in dental hygiene at an
23 accredited institution of higher education;

24 “(3) a public or private nonprofit entity; or

25 “(4) a consortium of—

1 “(A) 2 or more of the entities described in
2 paragraphs (1) through (3); and

3 “(B) an accredited school of public health.

4 “(d) PREFERENCE.—In awarding grants or contracts
5 under this section, the Secretary shall give preference to
6 entities that have a demonstrated record of the following:

7 “(1) Training the greatest percentage, or sig-
8 nificantly improving the percentage, of oral health
9 professionals who practice general, pediatric, or pub-
10 lic health dentistry.

11 “(2) Training individuals who are from under-
12 represented minority groups or disadvantaged back-
13 grounds.

14 “(3) A high rate of placing graduates in prac-
15 tice settings having the principal focus of serving in
16 underserved areas or populations experiencing health
17 disparities (including serving patients eligible for
18 medical assistance under title XIX of the Social Se-
19 curity Act or for child health assistance under title
20 XXI of such Act or those with special health care
21 needs).

22 “(4) Supporting teaching programs that ad-
23 dress the dental needs of vulnerable populations.

24 “(5) Providing instruction regarding the oral
25 health status, dental care needs, and risk-based clin-

1 ical disease management of all pediatric populations
2 with an emphasis on underserved children.

3 “(e) REPORT.—The Secretary shall submit to the
4 Congress an annual report on the program carried out
5 under this section.

6 “(f) DEFINITION.—In this section:

7 “(1) The term ‘health disparities’ has the
8 meaning given the term in section 3171.

9 “(2) The term ‘oral health professional’ means
10 an individual training or practicing—

11 “(A) in general dentistry, pediatric den-
12 tistry, public health dentistry, or dental hy-
13 giene; or

14 “(B) another dental medicine specialty, as
15 deemed appropriate by the Secretary.”.

16 **SEC. 2216. AUTHORIZATION OF APPROPRIATIONS.**

17 (a) IN GENERAL.—Part F of title VII (42 U.S.C.
18 295j et seq.) is amended by adding at the end the fol-
19 lowing:

20 **“SEC. 799C. FUNDING THROUGH PUBLIC HEALTH INVEST-
21 MENT FUND.**

22 “(a) PROMOTION OF PRIMARY CARE AND DEN-
23 TISTRY.—For the purpose of carrying out subpart XI of
24 part D of title III and sections 723, 747, 748, and 749,
25 in addition to any other amounts authorized to be appro-

1 priated for such purpose, there is authorized to be appro-
2 priated, out of any monies in the Public Health Invest-
3 ment Fund, the following:

4 “(1) \$240,000,000 for fiscal year 2010.

5 “(2) \$253,000,000 for fiscal year 2011.

6 “(3) \$265,000,000 for fiscal year 2012.

7 “(4) \$278,000,000 for fiscal year 2013.

8 “(5) \$292,000,000 for fiscal year 2014.

9 “(6) \$307,000,000 for fiscal year 2015.

10 “(7) \$322,000,000 for fiscal year 2016.

11 “(8) \$338,000,000 for fiscal year 2017.

12 “(9) \$355,000,000 for fiscal year 2018.

13 “(10) \$373,000,000 for fiscal year 2019.”.

14 (b) EXISTING AUTHORIZATIONS OF APPROPRIA-
15 TIONS.—

16 (1) SECTION 735.—Paragraph (1) of section
17 735(g), as so redesignated, is amended by inserting
18 “and such sums as may be necessary for subsequent
19 years through fiscal year 2019” before the period at
20 the end.

21 (2) SECTION 747.—Subsection (f), as so redesi-
22 gnated, of section 747 (42 U.S.C. 293k) is amended
23 by striking “2002” and inserting “2019”.

1 **Subtitle B—Nursing Workforce**

2 **SEC. 2221. AMENDMENTS TO PUBLIC HEALTH SERVICE ACT.**

3 (a) DEFINITIONS.—Section 801 (42 U.S.C. 296 et
4 seq.) is amended—

5 (1) in paragraph (1), by inserting “nurse-man-
6 aged health centers” after “nursing centers,”; and

7 (2) by adding at the end the following:

8 “(16) NURSE-MANAGED HEALTH CENTER.—

9 The term ‘nurse-managed health center’ means a
10 nurse-practice arrangement, managed by advanced
11 practice nurses, that provides primary care or
12 wellness services to underserved or vulnerable popu-
13 lations and is associated with an accredited school of
14 nursing, Federally qualified health center, or inde-
15 pendent nonprofit health or social services agency.”.

16 (a) GRANTS FOR HEALTH PROFESSIONS EDU-
17 cATION.—Title VIII (42 U.S.C. 296 et seq.) is amended
18 by striking section 807.

19 (b) ADVANCED EDUCATION NURSING GRANTS.—Sec-
20 tion 811(f) (42 U.S.C. 296j(f)) is amended—

21 (1) by striking paragraph (2);

22 (2) by redesignating paragraph (3) as para-
23 graph (2); and

24 (3) in paragraph (2), as so redesignated, by
25 striking “that agrees” and all that follows through

1 the end and inserting: “that agrees to expend the
2 award—

3 “(A) to train advanced education nurses
4 who will practice in health professional shortage
5 areas designated under section 332; or

6 “(B) to increase diversity among advanced
7 education nurses.”.

8 (c) NURSE EDUCATION, PRACTICE, AND RETENTION
9 GRANTS.—Section 831 (42 U.S.C. 296p) is amended—

10 (1) in subsection (b), by amending paragraph
11 (3) to read as follows:

12 “(3) providing coordinated care, quality care,
13 and other skills needed to practice nursing;” and

14 (2) by striking subsection (e) and redesignating
15 subsections (f) through (h) as subsections (e)
16 through (g), respectively.

17 (d) STUDENT LOANS.—Subsection (a) of section 836
18 (42 U.S.C. 297b) is amended—

19 (1) by striking “\$2,500” and inserting
20 “\$3,300”;

21 (2) by striking “\$4,000” and inserting
22 “\$5,200”;

23 (3) by striking “\$13,000” and inserting
24 “\$17,000”; and

1 (4) by adding at the end the following: “Begin-
2 ning with fiscal year 2012, the dollar amounts speci-
3 fied in this subsection shall be adjusted by an
4 amount determined by the Secretary on an annual
5 basis to reflect inflation.”.

6 (e) LOAN REPAYMENT.—Section 846 (42 U.S.C.
7 297n) is amended—

8 (1) in subsection (a), by amending paragraph
9 (3) to read as follows:

10 “(3) who enters into an agreement with the
11 Secretary to serve for a period of not less than 2
12 years—

13 “(A) as a nurse at a health care facility
14 with a critical shortage of nurses; or

15 “(B) as a faculty member at an accredited
16 school of nursing;” and

17 (2) in subsection (g)(1), by striking “to provide
18 health services” each place it appears and inserting
19 “to provide health services or serve as a faculty
20 member”.

21 (f) NURSE FACULTY LOAN PROGRAM.—Paragraph
22 (2) of section 846A(c) (42 U.S.C. 297n–1(c)) is amended
23 by striking “\$30,000” and all that follows through the
24 semicolon and inserting “\$35,000, plus, beginning with

1 fiscal year 2012, an amount determined by the Secretary
2 on an annual basis to reflect inflation;”.

3 (g) PUBLIC SERVICE ANNOUNCEMENTS.—Title VIII
4 (42 U.S.C. 296 et seq.) is amended by striking part H.

5 (h) TECHNICAL AND CONFORMING AMENDMENTS.—
6 Title VIII (42 U.S.C. 296 et seq.) is amended—

7 (1) by redesignating section 810 (relating to
8 prohibition against discrimination by schools on the
9 basis of sex) as section 809 and moving such section
10 so that it follows section 808;

11 (2) in sections 835, 836, 838, 840, and 842, by
12 striking the term “this subpart” each place it ap-
13 pears and inserting “this part”;

14 (3) in section 836(h), by striking the last sen-
15 tence;

16 (4) in section 836, by redesignating subsection
17 (l) as subsection (k);

18 (5) in section 839, by striking “839” and all
19 that follows through “(a)” and inserting “839. (a)”;

20 (6) in section 835(b), by striking “841” each
21 place it appears and inserting “871”;

22 (7) by redesignating section 841 as section 871,
23 moving part F to the end of the title, and redesi-
24 gnating such part as part H;

25 (8) in part G—

1 (A) by redesignating section 845 as section
2 851; and

3 (B) by redesignating part G as part F; and
4 (9) in part I—

5 (A) by redesignating section 855 as section
6 861; and

7 (B) by redesignating part I as part G.

8 (i) FUNDING.—

9 (1) IN GENERAL.—Part H, as redesignated, of
10 title VIII is amended by adding at the end the fol-
11 lowing:

12 **“SEC. 872. FUNDING THROUGH PUBLIC HEALTH INVEST-**
13 **MENT FUND.**

14 “For the purpose of carrying out this title, in addi-
15 tion to any other amounts authorized to be appropriated
16 for such purpose, there are authorized to be appropriated,
17 out of any monies in the Public Health Investment Fund,
18 the following:

19 “(1) \$115,000,000 for fiscal year 2010.

20 “(2) \$122,000,000 for fiscal year 2011.

21 “(3) \$127,000,000 for fiscal year 2012.

22 “(4) \$134,000,000 for fiscal year 2013.

23 “(5) \$140,000,000 for fiscal year 2014.

24 “(6) \$147,000,000 for fiscal year 2015.

25 “(7) \$154,000,000 for fiscal year 2016.

1 “(8) \$162,000,000 for fiscal year 2017.

2 “(9) \$170,000,000 for fiscal year 2018.

3 “(10) \$179,000,000 for fiscal year 2019.”.

4 (2) EXISTING AUTHORIZATIONS OF APPROPRIA-
5 TIONS.—

6 (A) SECTIONS 831, 846, 846A, AND 861.—

7 Sections 831(g) (as so redesignated), 846(i)(1)
8 (42 U.S.C. 297n(i)(1)), 846A(f) (42 U.S.C.
9 297n–1(f)), and 861(e) (as so redesignated) are
10 amended by striking “2007” each place it ap-
11 pears and inserting “2019”.

12 (B) SECTION 871.—Section 871, as so re-
13 designated, is amended to read as follows:

14 **“SEC. 871. FUNDING.**

15 “For the purpose of carrying out parts B, C, and D
16 (subject to section 845(g)), there are authorized to be ap-
17 propriated such sums as may be necessary for each fiscal
18 year through fiscal year 2019.”.

19 **Subtitle C—Public Health** 20 **Workforce**

21 **SEC. 2231. PUBLIC HEALTH WORKFORCE CORPS.**

22 Part D of title III (42 U.S.C. 254b et seq.), as
23 amended by section 2211, is amended by adding at the
24 end the following:

1 **“Subpart XII—Public Health Workforce**

2 **“SEC. 340L. PUBLIC HEALTH WORKFORCE CORPS.**

3 “(a) ESTABLISHMENT.—There is established, within
4 the Service, the Public Health Workforce Corps (in this
5 subpart referred to as the ‘Corps’), for the purpose of en-
6 suring an adequate supply of public health professionals
7 throughout the Nation. The Corps shall consist of—

8 “(1) such officers of the Regular and Reserve
9 Corps of the Service as the Secretary may designate;
10 and

11 “(2) such civilian employees of the United
12 States as the Secretary may appoint.

13 “(b) ADMINISTRATION.—Except as provided in sub-
14 section (c), the Secretary shall carry out this subpart act-
15 ing through the Administrator of the Health Resources
16 and Services Administration.

17 “(c) PLACEMENT AND ASSIGNMENT.—The Secretary,
18 acting through the Director of the Centers for Disease
19 Control and Prevention, shall develop a methodology for
20 placing and assigning Corps participants as public health
21 professionals. Such methodology may allow for placing and
22 assigning such participants in State, local, and tribal
23 health departments and Federally qualified health centers
24 (as defined in section 1861(aa)(4) of the Social Security
25 Act).

1 “(d) APPLICATION OF CERTAIN PROVISIONS.—The
2 provisions of subpart II shall, except as inconsistent with
3 this subpart, apply to the Public Health Workforce Corps
4 in the same manner and to the same extent as such provi-
5 sions apply to the National Health Service Corps estab-
6 lished under section 331.

7 “(e) REPORT.—The Secretary shall submit to the
8 Congress an annual report on the programs carried out
9 under this subpart.

10 **“SEC. 340M. PUBLIC HEALTH WORKFORCE SCHOLARSHIP**
11 **PROGRAM.**

12 “(a) ESTABLISHMENT.—The Secretary shall estab-
13 lish the Public Health Workforce Scholarship Program
14 (referred to in this section as the ‘Program’) for the pur-
15 pose described in section 340L(a).

16 “(b) ELIGIBILITY.—To be eligible to participate in
17 the Program, an individual shall—

18 “(1)(A) be accepted for enrollment, or be en-
19 rolled, as a full-time or part-time student in a course
20 of study or program (approved by the Secretary) at
21 an accredited graduate school or program of public
22 health; or

23 “(B) have demonstrated expertise in public
24 health and be accepted for enrollment, or be en-
25 rolled, as a full-time or part-time student in a course

1 of study or program (approved by the Secretary)
2 at—

3 “(i) an accredited graduate school or pro-
4 gram of nursing; health administration, man-
5 agement, or policy; preventive medicine; labora-
6 tory science; veterinary medicine; or dental
7 medicine; or

8 “(ii) another accredited graduate school or
9 program, as deemed appropriate by Secretary;

10 “(2) be eligible for, or hold, an appointment as
11 a commissioned officer in the Regular or Reserve
12 Corps of the Service or be eligible for selection for
13 civilian service in the Corps; and

14 “(3) sign and submit to the Secretary a written
15 contract (described in subsection (c)) to serve full-
16 time as a public health professional, upon the com-
17 pletion of the course of study or program involved,
18 for the period of obligated service described in sub-
19 section (c)(2)(E).

20 “(c) CONTRACT.—The written contract between the
21 Secretary and an individual under subsection (b)(3) shall
22 contain—

23 “(1) an agreement on the part of the Secretary
24 that the Secretary will—

1 “(A) provide the individual with a scholar-
2 ship for a period of years (not to exceed 4 aca-
3 demic years) during which the individual shall
4 pursue an approved course of study or program
5 to prepare the individual to serve in the public
6 health workforce; and

7 “(B) accept (subject to the availability of
8 appropriated funds) the individual into the
9 Corps;

10 “(2) an agreement on the part of the individual
11 that the individual will—

12 “(A) accept provision of such scholarship
13 to the individual;

14 “(B) maintain full-time or part-time enroll-
15 ment in the approved course of study or pro-
16 gram described in subsection (b)(1) until the in-
17 dividual completes that course of study or pro-
18 gram;

19 “(C) while enrolled in the approved course
20 of study or program, maintain an acceptable
21 level of academic standing (as determined by
22 the educational institution offering such course
23 of study or program);

24 “(D) if applicable, complete a residency or
25 internship; and

1 “(E) serve full-time as a public health pro-
2 fessional for a period of time equal to the great-
3 er of—

4 “(i) 1 year for each academic year for
5 which the individual was provided a schol-
6 arship under the Program; or

7 “(ii) 2 years; and

8 “(3) an agreement by both parties as to the na-
9 ture and extent of the scholarship assistance, which
10 may include—

11 “(A) payment of reasonable educational ex-
12 penses of the individual, including tuition, fees,
13 books, equipment, and laboratory expenses; and

14 “(B) payment of a stipend of not more
15 than \$1,269 (plus, beginning with fiscal year
16 2011, an amount determined by the Secretary
17 on an annual basis to reflect inflation) per
18 month for each month of the academic year in-
19 volved, with the dollar amount of such a stipend
20 determined by the Secretary taking into consid-
21 eration whether the individual is enrolled full-
22 time or part-time.

23 “(d) APPLICATION OF CERTAIN PROVISIONS.—The
24 provisions of subpart III shall, except as inconsistent with
25 this subpart, apply to the scholarship program under this

1 section in the same manner and to the same extent as
2 such provisions apply to the National Health Service
3 Corps Scholarship Program established under section
4 338A.

5 **“SEC. 340N. PUBLIC HEALTH WORKFORCE LOAN REPAY-**
6 **MENT PROGRAM.**

7 “(a) ESTABLISHMENT.—The Secretary shall estab-
8 lish the Public Health Workforce Loan Repayment Pro-
9 gram (referred to in this section as the ‘Program’) for the
10 purpose described in section 340L(a).

11 “(b) ELIGIBILITY.—To be eligible to participate in
12 the Program, an individual shall—

13 “(1)(A) have a graduate degree from an accred-
14 ited school or program of public health;

15 “(B) have demonstrated expertise in public
16 health and have a graduate degree in a course of
17 study or program (approved by the Secretary)
18 from—

19 “(i) an accredited school or program of
20 nursing; health administration, management, or
21 policy; preventive medicine; laboratory science;
22 veterinary medicine; or dental medicine; or

23 “(ii) another accredited school or program
24 approved by the Secretary; or

1 “(C) be enrolled as a full-time or part-time stu-
2 dent in the final year of a course of study or pro-
3 gram (approved by the Secretary) offered by a
4 school or program described in subparagraph (A) or
5 (B), leading to a graduate degree;

6 “(2) be eligible for, or hold, an appointment as
7 a commissioned officer in the Regular or Reserve
8 Corps of the Service or be eligible for selection for
9 civilian service in the Corps;

10 “(3) if applicable, complete a residency or in-
11 ternship; and

12 “(4) sign and submit to the Secretary a written
13 contract (described in subsection (c)) to serve full-
14 time as a public health professional for the period of
15 obligated service described in subsection (c)(2).

16 “(c) CONTRACT.—The written contract between the
17 Secretary and an individual under subsection (b)(4) shall
18 contain—

19 “(1) an agreement by the Secretary to repay on
20 behalf of the individual loans incurred by the indi-
21 vidual in the pursuit of the relevant public health
22 workforce educational degree in accordance with the
23 terms of the contract;

24 “(2) an agreement by the individual to serve
25 full-time as a public health professional for a period

1 of time equal to 2 years or such longer period as the
2 individual may agree to; and

3 “(3) in the case of an individual described in
4 subsection (b)(1)(C) who is in the final year of study
5 and who has accepted employment as a public health
6 professional, in accordance with subsection 340L(e),
7 an agreement on the part of the individual to com-
8 plete the education or training, maintain an accept-
9 able level of academic standing (as determined by
10 the educational institution offering the course of
11 study or training), and serve the period of obligated
12 service described in paragraph (2).

13 “(d) PAYMENTS.—

14 “(1) IN GENERAL.—A loan repayment provided
15 for an individual under a written contract under the
16 Program shall consist of payment, in accordance
17 with paragraph (2), on behalf of the individual of
18 the principal, interest, and related expenses on gov-
19 ernment and commercial loans received by the indi-
20 vidual regarding the undergraduate or graduate edu-
21 cation of the individual (or both), which loans were
22 made for reasonable educational expenses, including
23 tuition, fees, books, equipment, and laboratory ex-
24 penses, incurred by the individual.

25 “(2) PAYMENTS FOR YEARS SERVED.—

1 “(A) IN GENERAL.—For each year of obli-
2 gated service that an individual contracts to
3 serve under subsection (c), the Secretary may
4 pay up to \$35,000 (plus, beginning with fiscal
5 year 2012, an amount determined by the Sec-
6 retary on an annual basis to reflect inflation)
7 on behalf of the individual for loans described
8 in paragraph (1).

9 “(B) REPAYMENT SCHEDULE.—Any ar-
10 rangement made by the Secretary for the mak-
11 ing of loan repayments in accordance with this
12 subsection shall provide that any repayments
13 for a year of obligated service shall be made no
14 later than the end of the fiscal year in which
15 the individual completes such year of service.

16 “(e) APPLICATION OF CERTAIN PROVISIONS.—The
17 provisions of subpart III shall, except as inconsistent with
18 this subpart, apply to the loan repayment program under
19 this section in the same manner and to the same extent
20 as such provisions apply to the National Health Service
21 Corps Loan Repayment Program established under sec-
22 tion 338B.”.

23 **SEC. 2232. ENHANCING THE PUBLIC HEALTH WORKFORCE.**

24 Section 765 (42 U.S.C. 295) is amended to read as
25 follows:

1 **“SEC. 765. ENHANCING THE PUBLIC HEALTH WORKFORCE.**

2 “(a) PROGRAM.—The Secretary, acting through the
3 Administrator of the Health Resources and Services Ad-
4 ministration and in consultation with the Director of the
5 Centers for Disease Control and Prevention, shall estab-
6 lish a public health workforce training and enhancement
7 program consisting of awarding grants and contracts
8 under subsection (b).

9 “(b) GRANTS AND CONTRACTS.—The Secretary shall
10 award grants and contracts to eligible entities—

11 “(1) to plan, develop, operate, or participate in,
12 an accredited professional training program in the
13 field of public health (including such a program in
14 nursing; health administration, management, or pol-
15 icy; preventive medicine; laboratory science; veteri-
16 nary medicine; or dental medicine) for members of
17 the public health workforce including mid-career
18 professionals;

19 “(2) to provide financial assistance in the form
20 of traineeships and fellowships to students who are
21 participants in any such program and who plan to
22 specialize or work in the field of public health;

23 “(3) to plan, develop, operate, or participate in
24 a program for the training of public health profes-
25 sionals who plan to teach in any program described
26 in paragraph (1); and

1 “(4) to provide financial assistance in the form
2 of traineeships and fellowships to public health pro-
3 fessionals who are participants in any program de-
4 scribed in paragraph (1) and who plan to teach in
5 the field of public health, including nursing; health
6 administration, management, or policy; preventive
7 medicine; laboratory science; veterinary medicine; or
8 dental medicine.

9 “(c) ELIGIBILITY.—To be eligible for a grant or con-
10 tract under subsection (a), an entity shall be—

11 “(1) an accredited health professions school, in-
12 cluding an accredited graduate school or program of
13 public health; nursing; health administration, man-
14 agement, or policy; preventive medicine; laboratory
15 science; veterinary medicine; or dental medicine;

16 “(2) a State, local, or tribal health department;

17 “(3) a public or private nonprofit entity; or

18 “(4) a consortium of 2 or more entities de-
19 scribed in paragraphs (1) through (3).

20 “(d) PREFERENCE.—In awarding grants or contracts
21 under this section, the Secretary shall give preference to
22 entities that have a demonstrated record of the following:

23 “(1) Training the greatest percentage, or sig-
24 nificantly improving the percentage, of public health
25 professionals who serve in underserved communities.

1 “(2) Training individuals who are from under-
2 represented minority groups or disadvantaged back-
3 grounds.

4 “(3) Training individuals in public health spe-
5 cialties experiencing a significant shortage of public
6 health professionals (as determined by the Sec-
7 retary).

8 “(4) Training the greatest percentage, or sig-
9 nificantly improving the percentage, of public health
10 professionals serving in the Federal Government or
11 a State, local, or tribal government.

12 “(e) REPORT.—The Secretary shall submit to the
13 Congress an annual report on the program carried out
14 under this section.”.

15 **SEC. 2233. PUBLIC HEALTH TRAINING CENTERS.**

16 Section 766 (42 U.S.C. 295a) is amended—

17 (1) in subsection (b)(1), by striking “in further-
18 ance of the goals established by the Secretary for
19 the year 2000” and inserting “in furtherance of the
20 goals established by the Secretary in the national
21 prevention and wellness strategy under section
22 3121”; and

23 (2) by adding at the end the following:

1 “(d) REPORT.—The Secretary shall submit to the
2 Congress an annual report on the program carried out
3 under this section.”.

4 **SEC. 2234. PREVENTIVE MEDICINE AND PUBLIC HEALTH**
5 **TRAINING GRANT PROGRAM.**

6 Section 768 (42 U.S.C. 295c) is amended to read as
7 follows:

8 **“SEC. 768. PREVENTIVE MEDICINE AND PUBLIC HEALTH**
9 **TRAINING GRANT PROGRAM.**

10 “(a) GRANTS.—The Secretary, acting through the
11 Administrator of the Health Resources and Services Ad-
12 ministration and in consultation with the Director of the
13 Centers for Disease Control and Prevention, shall award
14 grants to, or enter into contracts with, eligible entities to
15 provide training to graduate medical residents in preven-
16 tive medicine specialties.

17 “(b) ELIGIBILITY.—To be eligible for a grant or con-
18 tract under subsection (a), an entity shall be—

19 “(1) an accredited school of public health or
20 school of medicine or osteopathic medicine;

21 “(2) an accredited public or private hospital;

22 “(3) a State, local, or tribal health department;

23 or

24 “(4) a consortium of 2 or more entities de-
25 scribed in paragraphs (1) through (3).

1 “(c) USE OF FUNDS.—Amounts received under a
2 grant or contract under this section shall be used to—

3 “(1) plan, develop (including the development of
4 curricula), operate, or participate in an accredited
5 residency or internship program in preventive medi-
6 cine or public health;

7 “(2) defray the costs of practicum experiences,
8 as required in such a program; and

9 “(3) establish, maintain, or improve—

10 “(A) academic administrative units (in-
11 cluding departments, divisions, or other appro-
12 priate units) in preventive medicine and public
13 health; or

14 “(B) programs that improve clinical teach-
15 ing in preventive medicine and public health.

16 “(d) REPORT.—The Secretary shall submit to the
17 Congress an annual report on the program carried out
18 under this section.”.

19 **SEC. 2235. AUTHORIZATION OF APPROPRIATIONS.**

20 (a) IN GENERAL.—Section 799C, as added by section
21 2216 of this Act, is amended by adding at the end the
22 following:

23 “(b) PUBLIC HEALTH WORKFORCE.—For the pur-
24 pose of carrying out subpart XII of part D of title III
25 and sections 765, 766, and 768, in addition to any other

1 amounts authorized to be appropriated for such purpose,
2 there are authorized to be appropriated, out of any monies
3 in the Public Health Investment Fund, the following:

4 “(1) \$51,000,000 for fiscal year 2010.

5 “(2) \$54,000,000 for fiscal year 2011.

6 “(3) \$57,000,000 for fiscal year 2012.

7 “(4) \$59,000,000 for fiscal year 2013.

8 “(5) \$62,000,000 for fiscal year 2014.

9 “(6) \$65,000,000 for fiscal year 2015.

10 “(7) \$68,000,000 for fiscal year 2016.

11 “(8) \$72,000,000 for fiscal year 2017.

12 “(9) \$75,000,000 for fiscal year 2018.

13 “(10) \$79,000,000 for fiscal year 2019.”.

14 (b) EXISTING AUTHORIZATION OF APPROPRIA-
15 TIONS.—Subpart (a) of section 770 (42 U.S.C. 295e) is
16 amended by striking “2002” and inserting “2019”.

1 **Subtitle D—Adapting Workforce to**
2 **Evolving Health System Needs**

3 **PART 1—HEALTH PROFESSIONS TRAINING FOR**
4 **DIVERSITY**

5 **SEC. 2241. SCHOLARSHIPS FOR DISADVANTAGED STU-**
6 **DENTS, LOAN REPAYMENTS AND FELLOW-**
7 **SHIPS REGARDING FACULTY POSITIONS, AND**
8 **EDUCATIONAL ASSISTANCE IN THE HEALTH**
9 **PROFESSIONS REGARDING INDIVIDUALS**
10 **FROM DISADVANTAGED BACKGROUNDS.**

11 Paragraph (1) of section 738(a) (42 U.S.C. 293b(a))
12 is amended by striking “not more than \$20,000” and all
13 that follows through the end of the paragraph and insert-
14 ing: “not more than \$35,000 (plus, beginning with fiscal
15 year 2012, an amount determined by the Secretary on an
16 annual basis to reflect inflation) of the principal and inter-
17 est of the educational loans of such individuals.”.

18 **SEC. 2242. NURSING WORKFORCE DIVERSITY GRANTS.**

19 Subsection (b) of section 821 (42 U.S.C. 296m) is
20 amended—

21 (1) in the heading, by striking “GUIDANCE”
22 and inserting “CONSULTATION”; and

23 (2) by striking “shall take into consideration”
24 and all that follows through “consult with nursing

1 (3) by striking subsection (a) and inserting the
2 following:

3 “(a) PROGRAM.—The Secretary shall establish a cul-
4 tural and linguistic competency training program for
5 health care professionals, including nurse professionals,
6 consisting of awarding grants and contracts under sub-
7 section (b).

8 “(b) CULTURAL AND LINGUISTIC COMPETENCY
9 TRAINING.—The Secretary shall award grants and con-
10 tracts to eligible entities—

11 “(1) to test, develop, and evaluate models of
12 cultural and linguistic competency training (includ-
13 ing continuing education) for health professionals;
14 and

15 “(2) to implement cultural and linguistic com-
16 petency training programs for health professionals
17 developed under paragraph (1) or otherwise.

18 “(c) ELIGIBILITY.—To be eligible for a grant or con-
19 tract under subsection (b), an entity shall be—

20 “(1) an accredited health professions school or
21 program;

22 “(2) an academic health center;

23 “(3) a public or private nonprofit entity; or

24 “(4) a consortium of 2 or more entities de-
25 scribed in paragraphs (1) through (3).

1 “(d) PREFERENCE.—In awarding grants and con-
2 tracts under this section, the Secretary shall give pref-
3 erence to entities that have a demonstrated record of the
4 following:

5 “(1) Addressing, or partnering with an entity
6 with experience addressing, the cultural and lin-
7 guistic competency needs of the population to be
8 served through the grant or contract.

9 “(2) Addressing health disparities.

10 “(3) Placing health professionals in regions ex-
11 perience significant changes in the cultural and
12 linguistic demographics of populations, including
13 communities along the United States-Mexico border.

14 “(4) Carrying out activities described in sub-
15 section (b) with respect to more than one health pro-
16 fession discipline, specialty, or subspecialty.

17 “(e) CONSULTATION.—The Secretary shall carry out
18 this section in consultation with the heads of appropriate
19 health agencies and offices in the Department of Health
20 and Human Services, including the Office of Minority
21 Health.

22 “(f) DEFINITION.—In this section, the term ‘health
23 disparities’ has the meaning given to the term in section
24 3171.

1 “(g) REPORT.—The Secretary shall submit to the
2 Congress an annual report on the program carried out
3 under this section.”.

4 **SEC. 2252. INNOVATIONS IN INTERDISCIPLINARY CARE**
5 **TRAINING.**

6 Part D of title VII (42 U.S.C. 294 et seq.) is amend-
7 ed by adding at the end the following:

8 **“SEC. 759. INNOVATIONS IN INTERDISCIPLINARY CARE**
9 **TRAINING.**

10 “(a) PROGRAM.—The Secretary shall establish an in-
11 novations in interdisciplinary care training program con-
12 sisting of awarding grants and contracts under subsection
13 (b).

14 “(b) TRAINING PROGRAMS.—The Secretary shall
15 award grants to, or enter into contracts with, eligible enti-
16 ties—

17 “(1) to test, develop, and evaluate health pro-
18 fessional training programs (including continuing
19 education) designed to promote—

20 “(A) the delivery of health services through
21 interdisciplinary and team-based models, which
22 may include patient-centered medical home
23 models, medication therapy management mod-
24 els, and models integrating physical, mental, or
25 oral health services; and

1 “(B) coordination of the delivery of health
2 care within and across settings, including health
3 care institutions, community-based settings,
4 and the patient’s home; and

5 “(2) to implement such training programs de-
6 veloped under paragraph (1) or otherwise.

7 “(c) ELIGIBILITY.—To be eligible for a grant or con-
8 tract under subsection (b), an entity shall be—

9 “(1) an accredited health professions school or
10 program;

11 “(2) an academic health center;

12 “(3) a public or private nonprofit entity (includ-
13 ing an area health education center or a geriatric
14 education center); or

15 “(4) a consortium of 2 or more entities de-
16 scribed in paragraphs (1) through (3).

17 “(d) PREFERENCES.—In awarding grants and con-
18 tracts under this section, the Secretary shall give pref-
19 erence to entities that have a demonstrated record of the
20 following:

21 “(1) Training the greatest percentage, or sig-
22 nificantly increasing the percentage, of health pro-
23 fessionals who serve in underserved communities.

24 “(2) Broad interdisciplinary team-based collabo-
25 rations.

1 “(3) Addressing health disparities.

2 “(e) REPORT.—The Secretary shall submit to the
3 Congress an annual report on the program carried out
4 under this section.

5 “(f) DEFINITIONS.—In this section:

6 “(1) The term ‘health disparities’ has the
7 meaning given the term in section 3171.

8 “(2) The term ‘interdisciplinary’ means collabo-
9 ration across health professions and specialties,
10 which may include public health, nursing, allied
11 health, and appropriate medical specialties.”.

12 **PART 3—ADVISORY COMMITTEE ON HEALTH**

13 **WORKFORCE EVALUATION AND ASSESSMENT**

14 **SEC. 2261. HEALTH WORKFORCE EVALUATION AND ASSESS-**
15 **MENT.**

16 Subpart 1 of part E of title VII (42 U.S.C. 294n
17 et seq.) is amended by adding at the end the following:

18 **“SEC. 764. HEALTH WORKFORCE EVALUATION AND ASSESS-**
19 **MENT.**

20 “(a) ADVISORY COMMITTEE.—The Secretary, acting
21 through the Assistant Secretary for Health, shall establish
22 a permanent advisory committee to be known as the Advi-
23 sory Committee on Health Workforce Evaluation and As-
24 sessment (referred to in this section as the ‘Advisory Com-
25 mittee’).

1 “(b) RESPONSIBILITIES.—The Advisory Committee
2 shall—

3 “(1) not later than 1 year after the date of the
4 establishment of the Advisory Committee, submit
5 recommendations to the Secretary on—

6 “(A) classifications of the health workforce
7 to ensure consistency of data collection on the
8 health workforce; and

9 “(B) based on such classifications, stand-
10 dardized methodologies and procedures to enu-
11 merate the health workforce;

12 “(2) not later than 2 years after the date of the
13 establishment of the Advisory Committee, submit
14 recommendations to the Secretary on—

15 “(A) the supply, diversity, and geographic
16 distribution of the health workforce;

17 “(B) the retention of the health workforce
18 to ensure quality and adequacy of such work-
19 force; and

20 “(C) policies to carry out the recommenda-
21 tions made pursuant to subparagraphs (A) and
22 (B); and

23 “(3) not later than 4 years after the date of the
24 establishment of the Advisory Committee, and every

1 2 years thereafter, submit updated recommendations
2 to the Secretary under paragraphs (1) and (2).

3 “(c) **ROLE OF AGENCY.**—The Secretary shall provide
4 ongoing administrative, research, and technical support
5 for the operations of the Advisory Committee, including
6 coordinating and supporting the dissemination of the rec-
7 ommendations of the Advisory Committee.

8 “(d) **MEMBERSHIP.**—

9 “(1) **NUMBER; APPOINTMENT.**—The Secretary
10 shall appoint 15 members to serve on the Advisory
11 Committee.

12 “(2) **TERMS.**—

13 “(A) **IN GENERAL.**—The Secretary shall
14 appoint members of the Advisory Committee for
15 a term of 3 years and may reappoint such
16 members, but the Secretary may not appoint
17 any member to serve more than a total of 6
18 years.

19 “(B) **STAGGERED TERMS.**—Notwith-
20 standing subparagraph (A), of the members
21 first appointed to the Advisory Committee
22 under paragraph (1)—

23 “(i) 5 shall be appointed for a term of
24 1 year;

1 “(ii) 5 shall be appointed for a term
2 of 2 years; and

3 “(iii) 5 shall be appointed for a term
4 of 3 years.

5 “(3) QUALIFICATIONS.—Members of the Advi-
6 sory Committee shall be appointed from among indi-
7 viduals who possess expertise in at least one of the
8 following areas:

9 “(A) Conducting and interpreting health
10 workforce market analysis, including health
11 care labor workforce analysis.

12 “(B) Conducting and interpreting health
13 finance and economics research.

14 “(C) Delivering and administering health
15 care services.

16 “(D) Delivering and administering health
17 workforce education and training.

18 “(4) REPRESENTATION.—In appointing mem-
19 bers of the Advisory Committee, the Secretary
20 shall—

21 “(A) include no less than one representa-
22 tive of each of—

23 “(i) health professionals within the
24 health workforce;

1 “(ii) health care patients and con-
2 sumers;

3 “(iii) employers;

4 “(iv) labor unions; and

5 “(v) third-party health payors; and

6 “(B) ensure that—

7 “(i) all areas of expertise described in
8 paragraph (3) are represented;

9 “(ii) the members of the Advisory
10 Committee include members who, collec-
11 tively, have significant experience working
12 with—

13 “(I) populations in urban and
14 federally designated rural and non-
15 metropolitan areas; and

16 “(II) populations who are under-
17 represented in the health professions,
18 including underrepresented minority
19 groups; and

20 “(iii) individuals who are directly in-
21 volved in health professions education or
22 practice do not constitute a majority of the
23 members of the Advisory Committee.

24 “(5) DISCLOSURE AND CONFLICTS OF INTER-
25 EST.—Members of the Advisory Committee shall not

1 be considered employees of the Federal Government
2 by reason of service on the Advisory Committee, ex-
3 cept members of the Advisory Committee shall be
4 considered to be special Government employees with-
5 in the meaning of section 107 of the Ethics in Gov-
6 ernment Act of 1978 (5 U.S.C. App.) and section
7 208 of title 18, United States Code, for the purposes
8 of disclosure and management of conflicts of interest
9 under those sections.

10 “(6) NO PAY; RECEIPT OF TRAVEL EX-
11 PENSES.—Members of the Advisory Committee shall
12 not receive any pay for service on the Committee,
13 but may receive travel expenses, including a per
14 diem, in accordance with applicable provisions of
15 subchapter I of chapter 57 of title 5, United States
16 Code.

17 “(e) CONSULTATION.—In carrying out this section,
18 the Secretary shall consult with the Secretary of Edu-
19 cation and the Secretary of Labor.

20 “(f) COLLABORATION.—The Advisory Committee
21 shall collaborate with the advisory bodies at the Health
22 Resources and Services Administration, the National Ad-
23 visory Council (as authorized in section 337), the Advisory
24 Committee on Training in Primary Care Medicine and
25 Dentistry (as authorized in section 749A), the Advisory

1 Committee on Interdisciplinary, Community-Based Link-
2 ages (as authorized in section 756), the Advisory Council
3 on Graduate Medical Education (as authorized in section
4 762), and the National Advisory Council on Nurse Edu-
5 cation and Practice (as authorized in section 851).

6 “(g) FACA.—The Federal Advisory Committee Act
7 (5 U.S.C. App.) except for section 14 of such Act shall
8 apply to the Advisory Committee under this section only
9 to the extent that the provisions of such Act do not conflict
10 with the requirements of this section.

11 “(h) REPORT.—The Secretary shall submit to the
12 Congress an annual report on the activities of the Advisory
13 Committee.

14 “(i) DEFINITION.—In this section, the term ‘health
15 workforce’ includes all health care providers with direct
16 patient care and support responsibilities, including physi-
17 cians, nurses, physician assistants, pharmacists, oral
18 health professionals (as defined in section 749(f)), allied
19 health professionals, mental and behavioral professionals,
20 and public health professionals (including veterinarians
21 engaged in public health practice).”.

22 **PART 4—HEALTH WORKFORCE ASSESSMENT**

23 **SEC. 2271. HEALTH WORKFORCE ASSESSMENT.**

24 (a) IN GENERAL.—Section 761 (42 U.S.C. 294n) is
25 amended—

1 (1) by redesignating subsection (c) as sub-
2 section (e); and

3 (2) by striking subsections (a) and (b) and in-
4 serting the following:

5 “(a) IN GENERAL.—The Secretary shall, based upon
6 the classifications and standardized methodologies and
7 procedures developed by the Advisory Committee on
8 Health Workforce Evaluation and Assessment under sec-
9 tion 764(b)—

10 “(1) collect data on the health workforce (as
11 defined in section 764(i)), disaggregated by field,
12 discipline, and specialty, with respect to—

13 “(A) the supply (including retention) of
14 health professionals relative to the demand for
15 such professionals;

16 “(B) the diversity of health professionals
17 (including with respect to race, ethnic back-
18 ground, and gender); and

19 “(C) the geographic distribution of health
20 professionals; and

21 “(2) collect such data on individuals partici-
22 pating in the programs authorized by subtitles A, B,
23 and C and part 1 of subtitle D of title II of division
24 C of the America’s Affordable Health Choices Act of
25 2009.

1 “(b) GRANTS AND CONTRACTS FOR HEALTH WORK-
2 FORCE ANALYSIS.—

3 “(1) IN GENERAL.—The Secretary may award
4 grants or contracts to eligible entities to carry out
5 subsection (a).

6 “(2) ELIGIBILITY.—To be eligible for a grant
7 or contract under this subsection, an entity shall
8 be—

9 “(A) an accredited health professions
10 school or program;

11 “(B) an academic health center;

12 “(C) a State, local, or tribal government;

13 “(D) a public or private entity; or

14 “(E) a consortium of 2 or more entities de-
15 scribed in subparagraphs (A) through (D).

16 “(c) COLLABORATION AND DATA SHARING.—The
17 Secretary shall collaborate with Federal departments and
18 agencies, health professions organizations (including
19 health professions education organizations), and profes-
20 sional medical societies for the purpose of carrying out
21 subsection (a).

22 “(d) REPORT.—The Secretary shall submit to the
23 Congress an annual report on the data collected under
24 subsection (a).”.

1 (b) PERIOD BEFORE COMPLETION OF NATIONAL
2 STRATEGY.—Pending completion of the classifications and
3 standardized methodologies and procedures developed by
4 the Advisory Committee on Health Workforce Evaluation
5 and Assessment under section 764(b) of the Public Health
6 Service Act, as added by section 2261, the Secretary of
7 Health and Human Services, acting through the Adminis-
8 trator of the Health Resources and Services Administra-
9 tion and in consultation with such Advisory Committee,
10 may make a judgment about the classifications, meth-
11 odologies, and procedures to be used for collection of data
12 under section 761(a) of the Public Health Service Act, as
13 amended by this section.

14 **PART 5—AUTHORIZATION OF APPROPRIATIONS**

15 **SEC. 2281. AUTHORIZATION OF APPROPRIATIONS.**

16 (a) IN GENERAL.—Section 799C, as added by section
17 2216 of this Act, is amended by adding at the end the
18 following:

19 “(c) HEALTH PROFESSIONS TRAINING FOR DIVER-
20 SITY.—For the purpose of carrying out sections 736, 737,
21 738, 739, and 739A, in addition to any other amounts
22 authorized to be appropriated for such purpose, there are
23 authorized to be appropriated, out of any monies in the
24 Public Health Investment Fund, the following:

25 “(1) \$90,000,000 for fiscal year 2010.

- 1 “(2) \$97,000,000 for fiscal year 2011.
- 2 “(3) \$100,000,000 for fiscal year 2012.
- 3 “(4) \$104,000,000 for fiscal year 2013.
- 4 “(5) \$110,000,000 for fiscal year 2014.
- 5 “(6) \$116,000,000 for fiscal year 2015.
- 6 “(7) \$121,000,000 for fiscal year 2016.
- 7 “(8) \$127,000,000 for fiscal year 2017.
- 8 “(9) \$133,000,000 for fiscal year 2018.
- 9 “(10) \$140,000,000 for fiscal year 2019.

10 “(d) INTERDISCIPLINARY TRAINING PROGRAMS, AD-
11 VISORY COMMITTEE ON HEALTH WORKFORCE EVALUA-
12 TION AND ASSESSMENT, AND HEALTH WORKFORCE AS-
13 SESSMENT.—For the purpose of carrying out sections
14 741, 759, 761, and 764, in addition to any other amounts
15 authorized to be appropriated for such purpose, there are
16 authorized to be appropriated, out of any monies in the
17 Public Health Investment Fund, the following:

- 18 “(1) \$91,000,000 for fiscal year 2010.
- 19 “(2) \$97,000,000 for fiscal year 2011.
- 20 “(3) \$101,000,000 for fiscal year 2012.
- 21 “(4) \$105,000,000 for fiscal year 2013.
- 22 “(5) \$111,000,000 for fiscal year 2014.
- 23 “(6) \$117,000,000 for fiscal year 2015.
- 24 “(7) \$122,000,000 for fiscal year 2016.
- 25 “(8) \$129,000,000 for fiscal year 2017.

1 “(9) \$135,000,000 for fiscal year 2018.

2 “(10) \$141,000,000 for fiscal year 2019.”.

3 (b) EXISTING AUTHORIZATIONS OF APPROPRIA-
4 TIONS.—

5 (1) SECTION 736.—Paragraph (1) of section
6 736(h) (42 U.S.C. 293(h)) is amended by striking
7 “2002” and inserting “2019”.

8 (2) SECTIONS 737, 738, AND 739.—Subsections
9 (a), (b), and (c) of section 740 are amended by
10 striking “2002” each place it appears and inserting
11 “2019”.

12 (3) SECTION 741.—Subsection (h), as so reded-
13 esignated, of section 741 is amended—

14 (A) by striking “and” after “fiscal year
15 2003,”; and

16 (B) by inserting “, and such sums as may
17 be necessary for subsequent fiscal years
18 through the end of fiscal year 2019” before the
19 period at the end.

20 (4) SECTION 761.—Subsection (e)(1), as so re-
21 designated, of section 761 is amended by striking
22 “2002” and inserting “2019”.

1 **TITLE III—PREVENTION AND**
2 **WELLNESS**

3 **SEC. 2301. PREVENTION AND WELLNESS.**

4 (a) IN GENERAL.—The Public Health Service Act
5 (42 U.S.C. 201 et seq.) is amended by adding at the end
6 the following:

7 **“TITLE XXXI—PREVENTION AND**
8 **WELLNESS**

9 **“Subtitle A—Prevention and**
10 **Wellness Trust**

11 **“SEC. 3111. PREVENTION AND WELLNESS TRUST.**

12 “(a) DEPOSITS INTO TRUST.—There is established
13 a Prevention and Wellness Trust. There are authorized
14 to be appropriated to the Trust—

15 “(1) amounts described in section
16 2002(b)(2)(ii) of the America’s Affordable Health
17 Choices Act of 2009 for each fiscal year; and

18 “(2) in addition, out of any monies in the Pub-
19 lic Health Investment Fund—

20 “(A) for fiscal year 2010, \$2,400,000,000;

21 “(B) for fiscal year 2011, \$2,800,000,000;

22 “(C) for fiscal year 2012, \$3,100,000,000;

23 “(D) for fiscal year 2013, \$3,400,000,000;

24 “(E) for fiscal year 2014, \$3,500,000,000;

25 “(F) for fiscal year 2015, \$3,600,000,000;

1 “(G) for fiscal year 2016, \$3,700,000,000;

2 “(H) for fiscal year 2017, \$3,900,000,000;

3 “(I) for fiscal year 2018, \$4,300,000,000;

4 and

5 “(J) for fiscal year 2019, \$4,600,000,000.

6 “(b) AVAILABILITY OF FUNDS.—Amounts in the Pre-
7 vention and Wellness Trust shall be available, as provided
8 in advance in appropriation Acts, for carrying out this
9 title.

10 “(c) ALLOCATION.—Of the amounts authorized to be
11 appropriated in subsection (a)(2), there are authorized to
12 be appropriated—

13 “(1) for carrying out subtitle C (Prevention
14 Task Forces), \$35,000,000 for each of fiscal years
15 2010 through 2019;

16 “(2) for carrying out subtitle D (Prevention
17 and Wellness Research)—

18 “(A) for fiscal year 2010, \$100,000,000;

19 “(B) for fiscal year 2011, \$150,000,000;

20 “(C) for fiscal year 2012, \$200,000,000;

21 “(D) for fiscal year 2013, \$250,000,000;

22 “(E) for fiscal year 2014, \$300,000,000;

23 “(F) for fiscal year 2015, \$315,000,000;

24 “(G) for fiscal year 2016, \$331,000,000;

25 “(H) for fiscal year 2017, \$347,000,000;

1 “(I) for fiscal year 2018, \$364,000,000;

2 and

3 “(J) for fiscal year 2019, \$383,000,000.

4 “(3) for carrying out subtitle E (Delivery of
5 Community Preventive and Wellness Services)—

6 “(A) for fiscal year 2010, \$1,100,000,000;

7 “(B) for fiscal year 2011, \$1,300,000,000;

8 “(C) for fiscal year 2012, \$1,400,000,000;

9 “(D) for fiscal year 2013, \$1,600,000,000;

10 “(E) for fiscal year 2014, \$1,700,000,000;

11 “(F) for fiscal year 2015, \$1,800,000,000;

12 “(G) for fiscal year 2016, \$1,900,000,000;

13 “(H) for fiscal year 2017, \$2,000,000,000;

14 “(I) for fiscal year 2018, \$2,100,000,000;

15 and

16 “(J) for fiscal year 2019, \$2,300,000,000.

17 “(4) for carrying out section 3161 (Core Public
18 Health Infrastructure and Activities for State and
19 Local Health Departments)—

20 “(A) for fiscal year 2010, \$800,000,000;

21 “(B) for fiscal year 2011, \$1,000,000,000;

22 “(C) for fiscal year 2012, \$1,100,000,000;

23 “(D) for fiscal year 2013, \$1,200,000,000;

24 “(E) for fiscal year 2014, \$1,300,000,000;

25 “(F) for fiscal year 2015, \$1,400,000,000;

1 “(G) for fiscal year 2016, \$1,500,000,000;

2 “(H) for fiscal year 2017, \$1,600,000,000;

3 “(I) for fiscal year 2018, \$1,800,000,000;

4 and

5 “(J) for fiscal year 2019, \$1,900,000,000;

6 and

7 “(5) for carrying out section 3162 (Core Public
8 Health Infrastructure and Activities for CDC),
9 \$400,000,000 for each of fiscal years 2010 through
10 2019.

11 **“Subtitle B—National Prevention**
12 **and Wellness Strategy**

13 **“SEC. 3121. NATIONAL PREVENTION AND WELLNESS STRAT-**
14 **EGY.**

15 “(a) IN GENERAL.—The Secretary shall submit to
16 the Congress within one year after the date of the enact-
17 ment of this section, and at least every 2 years thereafter,
18 a national strategy that is designed to improve the Na-
19 tion’s health through evidence-based clinical and commu-
20 nity prevention and wellness activities (in this section re-
21 ferred to as ‘prevention and wellness activities’), including
22 core public health infrastructure improvement activities.

23 “(b) CONTENTS.—The strategy under subsection (a)
24 shall include each of the following:

1 “(1) Identification of specific national goals and
2 objectives in prevention and wellness activities that
3 take into account appropriate public health measures
4 and standards, including departmental measures and
5 standards (including Healthy People and National
6 Public Health Performance Standards).

7 “(2) Establishment of national priorities for
8 prevention and wellness, taking into account unmet
9 prevention and wellness needs.

10 “(3) Establishment of national priorities for re-
11 search on prevention and wellness, taking into ac-
12 count unanswered research questions on prevention
13 and wellness.

14 “(4) Identification of health disparities in pre-
15 vention and wellness.

16 “(5) A plan for addressing and implementing
17 paragraphs (1) through (4).

18 “(c) CONSULTATION.—In developing or revising the
19 strategy under subsection (a), the Secretary shall consult
20 with the following:

21 “(1) The heads of appropriate health agencies
22 and offices in the Department, including the Office
23 of the Surgeon General of the Public Health Service,
24 the Office of Minority Health, and the Office on
25 Women’s Health.

1 publishing, and disseminating evidence-based rec-
2 ommendations on the use of such services;

3 “(3) as appropriate, take into account health
4 disparities in developing, updating, publishing, and
5 disseminating evidence-based recommendations on
6 the use of such services;

7 “(4) identify gaps in clinical preventive services
8 research and evaluation and recommend priority
9 areas for such research and evaluation;

10 “(5) as appropriate, consult with the clinical
11 prevention stakeholders board in accordance with
12 subsection (f);

13 “(6) as appropriate, consult with the Task
14 Force on Community Preventive Services established
15 under section 3132; and

16 “(7) as appropriate, in carrying out this sec-
17 tion, consider the national strategy under section
18 3121.

19 “(c) **ROLE OF AGENCY.**—The Secretary shall provide
20 ongoing administrative, research, and technical support
21 for the operations of the Task Force, including coordi-
22 nating and supporting the dissemination of the rec-
23 ommendations of the Task Force.

24 “(d) **MEMBERSHIP.**—

1 “(1) NUMBER; APPOINTMENT.—The Task
2 Force shall be composed of 30 members, appointed
3 by the Secretary.

4 “(2) TERMS.—

5 “(A) IN GENERAL.—The Secretary shall
6 appoint members of the Task Force for a term
7 of 6 years and may reappoint such members,
8 but the Secretary may not appoint any member
9 to serve more than a total of 12 years.

10 “(B) STAGGERED TERMS.—Notwith-
11 standing subparagraph (A), of the members
12 first appointed to serve on the Task Force after
13 the enactment of this title—

14 “(i) 10 shall be appointed for a term
15 of 2 years;

16 “(ii) 10 shall be appointed for a term
17 of 4 years; and

18 “(iii) 10 shall be appointed for a term
19 of 6 years.

20 “(3) QUALIFICATIONS.—Members of the Task
21 Force shall be appointed from among individuals
22 who possess expertise in at least one of the following
23 areas:

24 “(A) Health promotion and disease preven-
25 tion.

1 “(B) Evaluation of research and system-
2 atic evidence reviews.

3 “(C) Application of systematic evidence re-
4 views to clinical decisionmaking or health pol-
5 icy.

6 “(D) Clinical primary care in child and ad-
7 olescent health.

8 “(E) Clinical primary care in adult health,
9 including women’s health.

10 “(F) Clinical primary care in geriatrics.

11 “(G) Clinical counseling and behavioral
12 services for primary care patients.

13 “(4) REPRESENTATION.—In appointing mem-
14 bers of the Task Force, the Secretary shall ensure
15 that—

16 “(A) all areas of expertise described in
17 paragraph (3) are represented; and

18 “(B) the members of the Task Force in-
19 clude practitioners who, collectively, have sig-
20 nificant experience treating racially and eth-
21 nically diverse populations.

22 “(e) SUBGROUPS.—As appropriate to maximize effi-
23 ciency, the Task Force may delegate authority for con-
24 ducting reviews and making recommendations to sub-

1 groups consisting of Task Force members, subject to final
2 approval by the Task Force.

3 “(f) CLINICAL PREVENTION STAKEHOLDERS
4 BOARD.—

5 “(1) IN GENERAL.—The Task Force shall con-
6 vene a clinical prevention stakeholders board com-
7 posed of representatives of appropriate public and
8 private entities with an interest in clinical preventive
9 services to advise the Task Force on developing, up-
10 dating, publishing, and disseminating evidence-based
11 recommendations on the use of clinical preventive
12 services.

13 “(2) MEMBERSHIP.—The members of the clin-
14 ical prevention stakeholders board shall include rep-
15 resentatives of the following:

16 “(A) Health care consumers and patient
17 groups.

18 “(B) Providers of clinical preventive serv-
19 ices, including community-based providers.

20 “(C) Federal departments and agencies,
21 including—

22 “(i) appropriate health agencies and
23 offices in the Department, including the
24 Office of the Surgeon General of the Pub-
25 lic Health Service, the Office of Minority

1 Health, and the Office on Women's
2 Health; and

3 “(ii) as appropriate, other Federal de-
4 partments and agencies whose programs
5 have a significant impact upon health (as
6 determined by the Secretary).

7 “(D) Private health care payors.

8 “(3) RESPONSIBILITIES.—In accordance with
9 subsection (b)(5), the clinical prevention stake-
10 holders board shall—

11 “(A) recommend clinical preventive serv-
12 ices for review by the Task Force;

13 “(B) suggest scientific evidence for consid-
14 eration by the Task Force related to reviews
15 undertaken by the Task Force;

16 “(C) provide feedback regarding draft rec-
17 ommendations by the Task Force; and

18 “(D) assist with efforts regarding dissemi-
19 nation of recommendations by the Director of
20 the Agency for Healthcare Research and Qual-
21 ity.

22 “(g) DISCLOSURE AND CONFLICTS OF INTEREST.—
23 Members of the Task Force or the clinical prevention
24 stakeholders board shall not be considered employees of
25 the Federal Government by reason of service on the Task

1 Force, except members of the Task Force shall be consid-
2 ered to be special Government employees within the mean-
3 ing of section 107 of the Ethics in Government Act of
4 1978 (5 U.S.C. App.) and section 208 of title 18, United
5 States Code, for the purposes of disclosure and manage-
6 ment of conflicts of interest under those sections.

7 “(h) NO PAY; RECEIPT OF TRAVEL EXPENSES.—
8 Members of the Task Force or the clinical prevention
9 stakeholders board shall not receive any pay for service
10 on the Task Force, but may receive travel expenses, in-
11 cluding a per diem, in accordance with applicable provi-
12 sions of subchapter I of chapter 57 of title 5, United
13 States Code.

14 “(i) APPLICATION OF FACA.—The Federal Advisory
15 Committee Act (5 U.S.C. App.) except for section 14 of
16 such Act shall apply to the Task Force to the extent that
17 the provisions of such Act do not conflict with the provi-
18 sions of this title.

19 “(j) REPORT.—The Secretary shall submit to the
20 Congress an annual report on the Task Force, including
21 with respect to gaps identified and recommendations made
22 under subsection (b)(4).

1 **“SEC. 3132. TASK FORCE ON COMMUNITY PREVENTIVE**
2 **SERVICES.**

3 “(a) IN GENERAL.—The Secretary, acting through
4 the Director of the Centers for Disease Control and Pre-
5 vention, shall establish a permanent task force to be
6 known as the Task Force on Community Preventive Serv-
7 ices (in this section referred to as the ‘Task Force’).

8 “(b) RESPONSIBILITIES.—The Task Force shall—

9 “(1) identify community preventive services for
10 review;

11 “(2) review the scientific evidence related to the
12 benefits, effectiveness, appropriateness, and costs of
13 community preventive services identified under para-
14 graph (1) for the purpose of developing, updating,
15 publishing, and disseminating evidence-based rec-
16 ommendations on the use of such services;

17 “(3) as appropriate, take into account health
18 disparities in developing, updating, publishing, and
19 disseminating evidence-based recommendations on
20 the use of such services;

21 “(4) identify gaps in community preventive
22 services research and evaluation and recommend pri-
23 ority areas for such research and evaluation;

24 “(5) as appropriate, consult with the commu-
25 nity prevention stakeholders board in accordance
26 with subsection (f);

1 “(6) as appropriate, consult with the Task
2 Force on Clinical Preventive Services established
3 under section 3131; and

4 “(7) as appropriate, in carrying out this sec-
5 tion, consider the national strategy under section
6 3121.

7 “(c) ROLE OF AGENCY.—The Secretary shall provide
8 ongoing administrative, research, and technical support
9 for the operations of the Task Force, including coordi-
10 nating and supporting the dissemination of the rec-
11 ommendations of the Task Force.

12 “(d) MEMBERSHIP.—

13 “(1) NUMBER; APPOINTMENT.—The Task
14 Force shall be composed of 30 members, appointed
15 by the Secretary.

16 “(2) TERMS.—

17 “(A) IN GENERAL.—The Secretary shall
18 appoint members of the Task Force for a term
19 of 6 years and may reappoint such members,
20 but the Secretary may not appoint any member
21 to serve more than a total of 12 years.

22 “(B) STAGGERED TERMS.—Notwith-
23 standing subparagraph (A), of the members
24 first appointed to serve on the Task Force after
25 the enactment of this section—

1 “(i) 10 shall be appointed for a term
2 of 2 years;

3 “(ii) 10 shall be appointed for a term
4 of 4 years; and

5 “(iii) 10 shall be appointed for a term
6 of 6 years.

7 “(3) QUALIFICATIONS.—Members of the Task
8 Force shall be appointed from among individuals
9 who possess expertise in at least one of the following
10 areas:

11 “(A) Public health.

12 “(B) Evaluation of research and system-
13 atic evidence reviews.

14 “(C) Disciplines relevant to community
15 preventive services, including health promotion;
16 disease prevention; chronic disease; worksite
17 health; qualitative and quantitative analysis;
18 and health economics, policy, law, and statis-
19 tics.

20 “(4) REPRESENTATION.—In appointing mem-
21 bers of the Task Force, the Secretary—

22 “(A) shall ensure that all areas of exper-
23 tise described in paragraph (3) are represented;

24 “(B) shall ensure that such members in-
25 clude sufficient representatives of each of—

1 “(i) State health officers;

2 “(ii) local health officers;

3 “(iii) health care practitioners; and

4 “(iv) public health practitioners; and

5 “(C) shall appoint individuals who, collec-
6 tively, have significant experience working with
7 racially and ethnically diverse populations.

8 “(e) SUBGROUPS.—As appropriate to maximize effi-
9 ciency, the Task Force may delegate authority for con-
10 ducting reviews and making recommendations to sub-
11 groups consisting of Task Force members, subject to final
12 approval by the Task Force.

13 “(f) COMMUNITY PREVENTION STAKEHOLDERS
14 BOARD.—

15 “(1) IN GENERAL.—The Task Force shall con-
16 vene a community prevention stakeholders board
17 composed of representatives of appropriate public
18 and private entities with an interest in community
19 preventive services to advise the Task Force on de-
20 veloping, updating, publishing, and disseminating
21 evidence-based recommendations on the use of com-
22 munity preventive services.

23 “(2) MEMBERSHIP.—The members of the com-
24 munity prevention stakeholders board shall include
25 representatives of the following:

1 “(A) Health care consumers and patient
2 groups.

3 “(B) Providers of community preventive
4 services, including community-based providers.

5 “(C) Federal departments and agencies,
6 including—

7 “(i) appropriate health agencies and
8 offices in the Department, including the
9 Office of the Surgeon General of the Pub-
10 lic Health Service, the Office of Minority
11 Health, and the Office on Women’s
12 Health; and

13 “(ii) as appropriate, other Federal de-
14 partments and agencies whose programs
15 have a significant impact upon health (as
16 determined by the Secretary).

17 “(D) Private health care payors.

18 “(3) RESPONSIBILITIES.—In accordance with
19 subsection (b)(5), the community prevention stake-
20 holders board shall—

21 “(A) recommend community preventive
22 services for review by the Task Force;

23 “(B) suggest scientific evidence for consid-
24 eration by the Task Force related to reviews
25 undertaken by the Task Force;

1 “(C) provide feedback regarding draft rec-
2 ommendations by the Task Force; and

3 “(D) assist with efforts regarding dissemi-
4 nation of recommendations by the Director of
5 the Centers for Disease Control and Prevention.

6 “(g) DISCLOSURE AND CONFLICTS OF INTEREST.—
7 Members of the Task Force or the community prevention
8 stakeholders board shall not be considered employees of
9 the Federal Government by reason of service on the Task
10 Force, except members of the Task Force shall be consid-
11 ered to be special Government employees within the mean-
12 ing of section 107 of the Ethics in Government Act of
13 1978 (5 U.S.C. App.) and section 208 of title 18, United
14 States Code, for the purposes of disclosure and manage-
15 ment of conflicts of interest under those sections.

16 “(h) NO PAY; RECEIPT OF TRAVEL EXPENSES.—
17 Members of the Task Force or the community prevention
18 stakeholders board shall not receive any pay for service
19 on the Task Force, but may receive travel expenses, in-
20 cluding a per diem, in accordance with applicable provi-
21 sions of subchapter I of chapter 57 of title 5, United
22 States Code.

23 “(i) APPLICATION OF FACA.—The Federal Advisory
24 Committee Act (5 U.S.C. App.) except for section 14 of
25 such Act shall apply to the Task Force to the extent that

1 the provisions of such Act do not conflict with the provi-
2 sions of this title.

3 “(j) REPORT.—The Secretary shall submit to the
4 Congress an annual report on the Task Force, including
5 with respect to gaps identified and recommendations made
6 under subsection (b)(4).

7 **“Subtitle D—Prevention and** 8 **Wellness Research**

9 **“SEC. 3141. PREVENTION AND WELLNESS RESEARCH ACTIV-** 10 **ITY COORDINATION.**

11 “In conducting or supporting research on prevention
12 and wellness, the Director of the Centers for Disease Con-
13 trol and Prevention, the Director of the National Insti-
14 tutes of Health, and the heads of other agencies within
15 the Department of Health and Human Services con-
16 ducting or supporting such research, shall take into con-
17 sideration the national strategy under section 3121 and
18 the recommendations of the Task Force on Clinical Pre-
19 ventive Services under section 3131 and the Task Force
20 on Community Preventive Services under section 3132.

21 **“SEC. 3142. COMMUNITY PREVENTION AND WELLNESS RE-** 22 **SEARCH GRANTS.**

23 “(a) IN GENERAL.—The Secretary, acting through
24 the Director of the Centers for Disease Control and Pre-
25 vention, shall conduct, or award grants to eligible entities

1 to conduct, research in priority areas identified by the Sec-
2 retary in the national strategy under section 3121 or by
3 the Task Force on Community Preventive Services as re-
4 quired by section 3132.

5 “(b) ELIGIBILITY.—To be eligible for a grant under
6 this section, an entity shall be—

7 “(1) a State, local, or tribal department of
8 health;

9 “(2) a public or private nonprofit entity; or

10 “(3) a consortium of 2 or more entities de-
11 scribed in paragraphs (1) and (2).

12 “(c) REPORT.—The Secretary shall submit to the
13 Congress an annual report on the program of research
14 under this section.

15 **“Subtitle E—Delivery of Commu-**
16 **nity Prevention and Wellness**
17 **Services**

18 **“SEC. 3151. COMMUNITY PREVENTION AND WELLNESS**
19 **SERVICES GRANTS.**

20 “(a) IN GENERAL.—The Secretary, acting through
21 the Director of the Centers for Disease Control and Pre-
22 vention, shall establish a program for the delivery of com-
23 munity preventive and wellness services consisting of
24 awarding grants to eligible entities—

1 “(1) to provide evidence-based, community pre-
2 ventive and wellness services in priority areas identi-
3 fied by the Secretary in the national strategy under
4 section 3121; or

5 “(2) to plan such services.

6 “(b) ELIGIBILITY.—

7 “(1) DEFINITION.—To be eligible for a grant
8 under this section, an entity shall be—

9 “(A) a State, local, or tribal department of
10 health;

11 “(B) a public or private entity; or

12 “(C) a consortium of—

13 “(i) 2 or more entities described in
14 subparagraph (A) or (B); and

15 “(ii) a community partnership rep-
16 resenting a Health Empowerment Zone.

17 “(2) HEALTH EMPOWERMENT ZONE.—In this
18 subsection, the term ‘Health Empowerment Zone’
19 means an area—

20 “(A) in which multiple community preven-
21 tive and wellness services are implemented in
22 order to address one or more health disparities,
23 including those identified by the Secretary in
24 the national strategy under section 3121; and

1 “(B) which is represented by a community
2 partnership that demonstrates community sup-
3 port and coordination with State, local, or tribal
4 health departments and includes—

5 “(i) a broad cross section of stake-
6 holders;

7 “(ii) residents of the community; and

8 “(iii) representatives of entities that
9 have a history of working within and serv-
10 ing the community.

11 “(c) PREFERENCES.—In awarding grants under this
12 section, the Secretary shall give preference to entities
13 that—

14 “(1) will address one or more goals or objec-
15 tives identified by the Secretary in the national
16 strategy under section 3121;

17 “(2) will address significant health disparities,
18 including those identified by the Secretary in the na-
19 tional strategy under section 3121;

20 “(3) will address unmet community prevention
21 needs and avoids duplication of effort;

22 “(4) have been demonstrated to be effective in
23 communities comparable to the proposed target com-
24 munity;

1 “(5) will contribute to the evidence base for
2 community preventive and wellness services;

3 “(6) demonstrate that the community preven-
4 tive services to be funded will be sustainable; and

5 “(7) demonstrate coordination or collaboration
6 across governmental and nongovernmental partners.

7 “(d) HEALTH DISPARITIES.—Of the funds awarded
8 under this section for a fiscal year, the Secretary shall
9 award not less than 50 percent for planning or imple-
10 menting community preventive and wellness services
11 whose primary purpose is to achieve a measurable reduc-
12 tion in one or more health disparities, including those
13 identified by the Secretary in the national strategy under
14 section 3121.

15 “(e) EMPHASIS ON RECOMMENDED SERVICES.—For
16 fiscal year 2013 and subsequent fiscal years, the Secretary
17 shall award grants under this section only for planning
18 or implementing services recommended by the Task Force
19 on Community Preventive Services under section 3122 or
20 deemed effective based on a review of comparable rigor
21 (as determined by the Director of the Centers for Disease
22 Control and Prevention).

23 “(f) PROHIBITED USES OF FUNDS.—An entity that
24 receives a grant under this section may not use funds pro-
25 vided through the grant—

1 “(1) to build or acquire real property or for
2 construction; or

3 “(2) for services or planning to the extent that
4 payment has been made, or can reasonably be ex-
5 pected to be made—

6 “(A) under any insurance policy;

7 “(B) under any Federal or State health
8 benefits program (including titles XIX and XXI
9 of the Social Security Act); or

10 “(C) by an entity which provides health
11 services on a prepaid basis.

12 “(g) REPORT.—The Secretary shall submit to the
13 Congress an annual report on the program of grants
14 awarded under this section.

15 “(h) DEFINITIONS.—In this section, the term ‘evi-
16 dence-based’ means that methodologically sound research
17 has demonstrated a beneficial health effect, in the judg-
18 ment of the Director of the Centers for Disease Control
19 and Prevention.

1 **“Subtitle F—Core Public Health**
2 **Infrastructure**

3 **“SEC. 3161. CORE PUBLIC HEALTH INFRASTRUCTURE FOR**
4 **STATE, LOCAL, AND TRIBAL HEALTH DEPART-**
5 **MENTS.**

6 “(a) PROGRAM.—The Secretary, acting through the
7 Director of the Centers for Disease Control and Preven-
8 tion shall establish a core public health infrastructure pro-
9 gram consisting of awarding grants under subsection (b).

10 “(b) GRANTS.—

11 “(1) AWARD.—For the purpose of addressing
12 core public health infrastructure needs, the Sec-
13 retary—

14 “(A) shall award a grant to each State
15 health department; and

16 “(B) may award grants on a competitive
17 basis to State, local, or tribal health depart-
18 ments.

19 “(2) ALLOCATION.—Of the total amount of
20 funds awarded as grants under this subsection for a
21 fiscal year—

22 “(A) not less than 50 percent shall be for
23 grants to State health departments under para-
24 graph (1)(A); and

1 “(B) not less than 30 percent shall be for
2 grants to State, local, or tribal health depart-
3 ments under paragraph (1)(B).

4 “(c) USE OF FUNDS.—The Secretary may award a
5 grant to an entity under subsection (b)(1) only if the enti-
6 ty agrees to use the grant to address core public health
7 infrastructure needs, including those identified in the ac-
8 creditation process under subsection (g).

9 “(d) FORMULA GRANTS TO STATE HEALTH DEPART-
10 MENTS.—In making grants under subsection (b)(1)(A),
11 the Secretary shall award funds to each State health de-
12 partment in accordance with—

13 “(1) a formula based on population size; burden
14 of preventable disease and disability; and core public
15 health infrastructure gaps, including those identified
16 in the accreditation process under subsection (g);
17 and

18 “(2) application requirements established by the
19 Secretary, including a requirement that the State
20 submit a plan that demonstrates to the satisfaction
21 of the Secretary that the State’s health department
22 will—

23 “(A) address its highest priority core pub-
24 lic health infrastructure needs; and

1 “(B) as appropriate, allocate funds to local
2 health departments within the State.

3 “(e) COMPETITIVE GRANTS TO STATE, LOCAL, AND
4 TRIBAL HEALTH DEPARTMENTS.—In making grants
5 under subsection (b)(1)(B), the Secretary shall give pri-
6 ority to applicants demonstrating core public health infra-
7 structure needs identified in the accreditation process
8 under subsection (g).

9 “(f) MAINTENANCE OF EFFORT.—The Secretary
10 may award a grant to an entity under subsection (b) only
11 if the entity demonstrates to the satisfaction of the Sec-
12 retary that—

13 “(1) funds received through the grant will be
14 expended only to supplement, and not supplant, non-
15 Federal and Federal funds otherwise available to the
16 entity for the purpose of addressing core public
17 health infrastructure needs; and

18 “(2) with respect to activities for which the
19 grant is awarded, the entity will maintain expendi-
20 tures of non-Federal amounts for such activities at
21 a level not less than the level of such expenditures
22 maintained by the entity for the fiscal year pre-
23 ceding the fiscal year for which the entity receives
24 the grant.

1 “(g) ESTABLISHMENT OF A PUBLIC HEALTH AC-
2 CREDITATION PROGRAM.—

3 “(1) IN GENERAL.—The Secretary, acting
4 through the Director of the Centers for Disease
5 Control and Prevention, shall—

6 “(A) develop, and periodically review and
7 update, standards for voluntary accreditation of
8 State, local, or tribal health departments and
9 public health laboratories for the purpose of ad-
10 vancing the quality and performance of such de-
11 partments and laboratories; and

12 “(B) implement a program to accredit
13 such health departments and laboratories in ac-
14 cordance with such standards.

15 “(2) COOPERATIVE AGREEMENT.—The Sec-
16 retary may enter into a cooperative agreement with
17 a private nonprofit entity to carry out paragraph
18 (1).

19 “(h) REPORT.—The Secretary shall submit to the
20 Congress an annual report on progress being made to ac-
21 credit entities under subsection (g), including—

22 “(1) a strategy, including goals and objectives,
23 for accrediting entities under subsection (g) and
24 achieving the purpose described in subsection (g)(1);
25 and

1 “(2) The terms ‘Department’ and ‘depart-
2 mental’ refer to the Department of Health and
3 Human Services.

4 “(3) The term ‘health disparities’ includes
5 health and health care disparities and means popu-
6 lation-specific differences in the presence of disease,
7 health outcomes, or access to health care. For pur-
8 poses of the preceding sentence, a population may be
9 delineated by race, ethnicity, geographic setting, or
10 other population or subpopulation determined appro-
11 priate by the Secretary.

12 “(4) The term ‘tribal’ refers to an Indian tribe,
13 a Tribal organization, or an Urban Indian organiza-
14 tion, as such terms are defined in section 4 of the
15 Indian Health Care Improvement Act.”.

16 (b) TRANSITION PROVISIONS APPLICABLE TO TASK
17 FORCES.—

18 (1) FUNCTIONS, PERSONNEL, ASSETS, LIABIL-
19 ITIES, AND ADMINISTRATIVE ACTIONS.—All func-
20 tions, personnel, assets, and liabilities of, and ad-
21 ministrative actions applicable to, the Preventive
22 Services Task Force convened under section 915(a)
23 of the Public Health Service Act and the Task Force
24 on Community Preventive Services (as such section
25 and Task Forces were in existence on the day before

1 the date of the enactment of this Act) shall be trans-
2 ferred to the Task Force on Clinical Preventive
3 Services and the Task Force on Community Preven-
4 tive Services, respectively, established under sections
5 3121 and 3122 of the Public Health Service Act, as
6 added by subsection (a).

7 (2) RECOMMENDATIONS.—All recommendations
8 of the Preventive Services Task Force and the Task
9 Force on Community Preventive Services, as in ex-
10 istence on the day before the date of the enactment
11 of this Act, shall be considered to be recommenda-
12 tions of the Task Force on Clinical Preventive Serv-
13 ices and the Task Force on Community Preventive
14 Services, respectively, established under sections
15 3121 and 3122 of the Public Health Service Act, as
16 added by subsection (a).

17 (3) MEMBERS ALREADY SERVING.—

18 (A) INITIAL MEMBERS.—The Secretary of
19 Health and Human Services may select those
20 individuals already serving on the Preventive
21 Services Task Force and the Task Force on
22 Community Preventive Services, as in existence
23 on the day before the date of the enactment of
24 this Act, to be among the first members ap-
25 pointed to the Task Force on Clinical Preven-

1 tive Services and the Task Force on Commu-
2 nity Preventive Services, respectively, under sec-
3 tions 3121 and 3122 of the Public Health Serv-
4 ice Act, as added by subsection (a).

5 (B) CALCULATION OF TOTAL SERVICE.—In
6 calculating the total years of service of a mem-
7 ber of a task force for purposes of section
8 3131(d)(2)(A) or 3132(d)(2)(A) of the Public
9 Health Service Act, as added by subsection (a),
10 the Secretary of Health and Human Services
11 shall not include any period of service by the
12 member on the Preventive Services Task Force
13 or the Task Force on Community Preventive
14 Services, respectively, as in existence on the day
15 before the date of the enactment of this Act.

16 (c) PERIOD BEFORE COMPLETION OF NATIONAL
17 STRATEGY.—Pending completion of the national strategy
18 under section 3121 of the Public Health Service Act, as
19 added by subsection (a), the Secretary of Health and
20 Human Services, acting through the relevant agency head,
21 may make a judgment about how the strategy will address
22 an issue and rely on such judgment in carrying out any
23 provision of subtitle C, D, E, or F of title XXXI of such
24 Act, as added by subsection (a), that requires the Sec-
25 retary—

1 (1) to take into consideration such strategy;

2 (2) to conduct or support research or provide
3 services in priority areas identified in such strategy;

4 or

5 (3) to take any other action in reliance on such
6 strategy.

7 (d) CONFORMING AMENDMENTS.—

8 (1) Paragraph (61) of section 3(b) of the In-
9 dian Health Care Improvement Act (25 U.S.C.
10 1602) is amended by striking “United States Pre-
11 ventive Services Task Force” and inserting “Task
12 Force on Clinical Preventive Services”.

13 (2) Section 126 of the Medicare, Medicaid, and
14 SCHIP Benefits Improvement and Protection Act of
15 2000 (Appendix F of Public Law 106–554) is
16 amended by striking “United States Preventive
17 Services Task Force” each place it appears and in-
18 serting “Task Force on Clinical Preventive Serv-
19 ices”.

20 (3) Paragraph (7) of section 317D of the Pub-
21 lic Health Service Act (42 U.S.C. 247b–5) is amend-
22 ed by striking “United States Preventive Services
23 Task Force” each place it appears and inserting
24 “Task Force on Clinical Preventive Services”.

1 (4) Section 915 of the Public Health Service
2 Act (42 U.S.C. 299b-4) is amended by striking sub-
3 section (a).

4 (5) Subsections (s)(2)(AA)(iii)(II), (xx)(1), and
5 (ddd)(1)(B) of section 1861 of the Social Security
6 Act (42 U.S.C. 1395x) are amended by striking
7 “United States Preventive Services Task Force”
8 each place it appears and inserting “Task Force on
9 Clinical Preventive Services”.

10 **TITLE IV—QUALITY AND**
11 **SURVEILLANCE**

12 **SEC. 2401. IMPLEMENTATION OF BEST PRACTICES IN THE**
13 **DELIVERY OF HEALTH CARE.**

14 (a) IN GENERAL.—Title IX of the Public Health
15 Service Act (42 U.S.C. 299 et seq.) is amended—

16 (1) by redesignating part D as part E;

17 (2) by redesignating sections 931 through 938
18 as sections 941 through 948, respectively;

19 (3) in section 938(1), by striking “931” and in-
20 serting “941”; and

21 (4) by inserting after part C the following:

1 **“PART D—IMPLEMENTATION OF BEST**
2 **PRACTICES IN THE DELIVERY OF HEALTH CARE**
3 **“SEC. 931. CENTER FOR QUALITY IMPROVEMENT.**

4 “(a) IN GENERAL.—There is established the Center
5 for Quality Improvement (referred to in this part as the
6 ‘Center’), to be headed by the Director.

7 “(b) PRIORITIZATION.—

8 “(1) IN GENERAL.—The Director shall
9 prioritize areas for the identification, development,
10 evaluation, and implementation of best practices (in-
11 cluding innovative methodologies and strategies) for
12 quality improvement activities in the delivery of
13 health care services (in this section referred to as
14 ‘best practices’).

15 “(2) CONSIDERATIONS.—In prioritizing areas
16 under paragraph (1), the Director shall consider—

17 “(A) the priorities established under sec-
18 tion 1191 of the Social Security Act; and

19 “(B) the key health indicators identified by
20 the Assistant Secretary for Health Information
21 under section 1709.

22 “(c) OTHER RESPONSIBILITIES.—The Director, act-
23 ing directly or by awarding a grant or contract to an eligi-
24 ble entity, shall—

25 “(1) identify existing best practices under sub-
26 section (e);

1 “(2) develop new best practices under sub-
2 section (f);

3 “(3) evaluate best practices under subsection
4 (g);

5 “(4) implement best practices under subsection
6 (h);

7 “(5) ensure that best practices are identified,
8 developed, evaluated, and implemented under this
9 section consistent with standards adopted by the
10 Secretary under section 3004 for health information
11 technology used in the collection and reporting of
12 quality information (including for purposes of the
13 demonstration of meaningful use of certified elec-
14 tronic health record (EHR) technology by physicians
15 and hospitals under the Medicare program (under
16 sections 1848(o)(2) and 1886(n)(3), respectively, of
17 the Social Security Act)); and

18 “(6) provide for dissemination of information
19 and reporting under subsections (i) and (j).

20 “(d) ELIGIBILITY.—To be eligible for a grant or con-
21 tract under subsection (c), an entity shall—

22 “(1) be a nonprofit entity;

23 “(2) agree to work with a variety of institu-
24 tional health care providers, physicians, nurses, and
25 other health care practitioners; and

1 “(3) if the entity is not the organization holding
2 a contract under section 1153 of the Social Security
3 Act for the area to be served, agree to cooperate
4 with and avoid duplication of the activities of such
5 organization.

6 “(e) IDENTIFYING EXISTING BEST PRACTICES.—The
7 Secretary shall identify best practices that are—

8 “(1) currently utilized by health care providers
9 (including hospitals, physician and other clinician
10 practices, community cooperatives, and other health
11 care entities) that deliver consistently high-quality,
12 efficient health care services; and

13 “(2) easily adapted for use by other health care
14 providers and for use across a variety of health care
15 settings.

16 “(f) DEVELOPING NEW BEST PRACTICES.—The Sec-
17 retary shall develop best practices that are—

18 “(1) based on a review of existing scientific evi-
19 dence;

20 “(2) sufficiently detailed for implementation
21 and incorporation into the workflow of health care
22 providers; and

23 “(3) designed to be easily adapted for use by
24 health care providers across a variety of health care
25 settings.

1 “(g) EVALUATION OF BEST PRACTICES.—The Direc-
2 tor shall evaluate best practices identified or developed
3 under this section. Such evaluation—

4 “(1) shall include determinations of which best
5 practices—

6 “(A) most reliably and effectively achieve
7 significant progress in improving the quality of
8 patient care; and

9 “(B) are easily adapted for use by health
10 care providers across a variety of health care
11 settings;

12 “(2) shall include regular review, updating, and
13 improvement of such best practices; and

14 “(3) may include in-depth case studies or em-
15 pirical assessments of health care providers (includ-
16 ing hospitals, physician and other clinician practices,
17 community cooperatives, and other health care enti-
18 ties) and simulations of such best practices for de-
19 terminations under paragraph (1).

20 “(h) IMPLEMENTATION OF BEST PRACTICES.—

21 “(1) IN GENERAL.—The Director shall enter
22 into voluntary arrangements with health care pro-
23 viders (including hospitals and other health facilities
24 and health practitioners) in a State or region to im-

1 plement best practices identified or developed under
2 this section. Such implementation—

3 “(A) may include forming collaborative
4 multi-institutional teams; and

5 “(B) shall include an evaluation of the best
6 practices being implemented, including the
7 measurement of patient outcomes before, dur-
8 ing, and after implementation of such best
9 practices.

10 “(2) PREFERENCES.—In carrying out this sub-
11 section, the Director shall give priority to health
12 care providers implementing best practices that—

13 “(A) have the greatest impact on patient
14 outcomes and satisfaction;

15 “(B) are the most easily adapted for use
16 by health care providers across a variety of
17 health care settings;

18 “(C) promote coordination of health care
19 practitioners across the continuum of care; and

20 “(D) engage patients and their families in
21 improving patient care and outcomes.

22 “(i) PUBLIC DISSEMINATION OF INFORMATION.—
23 The Director shall provide for the public dissemination of
24 information with respect to best practices and activities
25 under this section. Such information shall be made avail-

1 able in appropriate formats and languages to reflect the
2 varying needs of consumers and diverse levels of health
3 literacy.

4 “(j) REPORT.—

5 “(1) IN GENERAL.—The Director shall submit
6 an annual report to the Congress and the Secretary
7 on activities under this section.

8 “(2) CONTENT.—Each report under paragraph
9 (1) shall include—

10 “(A) information on activities conducted
11 pursuant to grants and contracts awarded;

12 “(B) summary data on patient outcomes
13 before, during, and after implementation of best
14 practices; and

15 “(C) recommendations on the adaptability
16 of best practices for use by health providers.”.

17 (b) INITIAL QUALITY IMPROVEMENT ACTIVITIES AND
18 INITIATIVES TO BE IMPLEMENTED.—Until the Director
19 of the Agency for Healthcare Research and Quality has
20 established initial priorities under section 931(b) of the
21 Public Health Service Act, as added by subsection (a), the
22 Director shall, for purposes of such section, prioritize the
23 following:

1 **“SEC. 1709. ASSISTANT SECRETARY FOR HEALTH INFORMA-**
2 **TION.**

3 “(a) IN GENERAL.—There is established within the
4 Department an Assistant Secretary for Health Informa-
5 tion (in this section referred to as the ‘Assistant Sec-
6 retary’), to be appointed by the Secretary.

7 “(b) RESPONSIBILITIES.—The Assistant Secretary
8 shall—

9 “(1) ensure the collection, collation, reporting,
10 and publishing of information (including full and
11 complete statistics) on key health indicators regard-
12 ing the Nation’s health and the performance of the
13 Nation’s health care;

14 “(2) facilitate and coordinate the collection, col-
15 lation, reporting, and publishing of information re-
16 garding the Nation’s health and the performance of
17 the Nation’s health care (other than information de-
18 scribed in paragraph (1));

19 “(3)(A) develop standards for the collection of
20 data regarding the Nation’s health and the perform-
21 ance of the Nation’s health care; and

22 “(B) in carrying out subparagraph (A)—

23 “(i) ensure appropriate specificity and
24 standardization for data collection at the na-
25 tional, regional, State, and local levels;

1 “(ii) include standards, as appropriate, for
2 the collection of accurate data on health and
3 health care by race, ethnicity, primary lan-
4 guage, sex, sexual orientation, gender identity,
5 disability, socioeconomic status, rural, urban, or
6 other geographic setting, and any other popu-
7 lation or subpopulation determined appropriate
8 by the Secretary;

9 “(iii) ensure, with respect to data on race
10 and ethnicity, consistency with the 1997 Office
11 of Management and Budget Standards for
12 Maintaining, Collecting and Presenting Federal
13 Data on Race and Ethnicity (or any successor
14 standards); and

15 “(iv) in consultation with the Director of
16 the Office of Minority Health, and the Director
17 of the Office of Civil Rights, of the Department,
18 develop standards for the collection of data on
19 health and health care with respect to data on
20 primary language;

21 “(4) provide support to Federal departments
22 and agencies whose programs have a significant im-
23 pact upon health (as determined by the Secretary)
24 for the collection and collation of information de-
25 scribed in paragraphs (1) and (2);

1 “(5) ensure the sharing of information de-
2 scribed in paragraphs (1) and (2) among the agen-
3 cies of the Department;

4 “(6) facilitate the sharing of information de-
5 scribed in paragraphs (1) and (2) by Federal depart-
6 ments and agencies whose programs have a signifi-
7 cant impact upon health (as determined by the Sec-
8 retary);

9 “(7) identify gaps in information described in
10 paragraphs (1) and (2) and the appropriate agency
11 or entity to address such gaps;

12 “(8) facilitate and coordinate identification and
13 monitoring by the agencies of the Department of
14 health disparities to inform program and policy ef-
15 forts to reduce such disparities, including facilitating
16 and funding analyses conducted in cooperation with
17 the Social Security Administration, the Bureau of
18 the Census, and other appropriate agencies and enti-
19 ties;

20 “(9) consistent with privacy, proprietary, and
21 other appropriate safeguards, facilitate public acces-
22 sibility of datasets (such as de-identified Medicare
23 datasets or publicly available data on key health in-
24 dicators) by means of the Internet; and

1 “(10) award grants or contracts for the collec-
2 tion and collation of information described in para-
3 graphs (1) and (2) (including through statewide sur-
4 veys that provide standardized information).

5 “(c) KEY HEALTH INDICATORS.—

6 “(1) IN GENERAL.—In carrying out subsection
7 (b)(1), the Assistant Secretary shall—

8 “(A) identify, and reassess at least once
9 every 3 years, key health indicators described in
10 such subsection;

11 “(B) publish statistics on such key health
12 indicators for the public—

13 “(i) not less than annually; and

14 “(ii) on a supplemental basis when-
15 ever warranted by—

16 “(I) the rate of change for a key
17 health indicator; or

18 “(II) the need to inform policy
19 regarding the Nation’s health and the
20 performance of the Nation’s health
21 care; and

22 “(C) ensure consistency with the national
23 strategy developed by the Secretary under sec-
24 tion 3121 and consideration of the indicators

1 specified in the reports under sections 308,
2 903(a)(6), and 913(b)(2).

3 “(2) RELEASE OF KEY HEALTH INDICATORS.—

4 The regulations, rules, processes, and procedures of
5 the Office of Management and Budget governing the
6 review, release, and dissemination of key health indi-
7 cators shall be the same as the regulations, rules,
8 processes, and procedures of the Office of Manage-
9 ment and Budget governing the review, release, and
10 dissemination of Principal Federal Economic Indica-
11 tors (or equivalent statistical data) by the Bureau of
12 Labor Statistics.

13 “(d) COORDINATION.—In carrying out this section,
14 the Assistant Secretary shall coordinate with—

15 “(1) public and private entities that collect and
16 disseminate information on health and health care,
17 including foundations; and

18 “(2) the head of the Office of the National Co-
19 ordinator for Health Information Technology to en-
20 sure optimal use of health information technology.

21 “(e) REQUEST FOR INFORMATION FROM OTHER DE-
22 PARTMENTS AND AGENCIES.—Consistent with applicable
23 law, the Assistant Secretary may secure directly from any
24 Federal department or agency information necessary to
25 enable the Assistant Secretary to carry out this section.

1 “(f) REPORT.—

2 “(1) SUBMISSION.—The Assistant Secretary
3 shall submit to the Secretary and the Congress an
4 annual report containing—

5 “(A) a description of national, regional, or
6 State changes in health or health care, as re-
7 flected by the key health indicators identified
8 under subsection (c)(1);

9 “(B) a description of gaps in the collection,
10 collation, reporting, and publishing of informa-
11 tion regarding the Nation’s health and the per-
12 formance of the Nation’s health care;

13 “(C) recommendations for addressing such
14 gaps and identification of the appropriate agen-
15 cy within the Department or other entity to ad-
16 dress such gaps;

17 “(D) a description of analyses of health
18 disparities, including the results of completed
19 analyses, the status of ongoing longitudinal
20 studies, and proposed or planned research; and

21 “(E) a plan for actions to be taken by the
22 Assistant Secretary to address gaps described
23 in subparagraph (B).

24 “(2) CONSIDERATION.—In preparing a report
25 under paragraph (1), the Assistant Secretary shall

1 take into consideration the findings and conclusions
2 in the reports under sections 308, 903(a)(6), and
3 913(b)(2).

4 “(g) PROPRIETARY AND PRIVACY PROTECTIONS.—
5 Nothing in this section shall be construed to affect appli-
6 cable proprietary or privacy protections.

7 “(h) CONSULTATION.—In carrying out this section,
8 the Assistant Secretary shall consult with—

9 “(1) the heads of appropriate health agencies
10 and offices in the Department, including the Office
11 of the Surgeon General of the Public Health Service,
12 the Office of Minority Health, and the Office on
13 Women’s Health; and

14 “(2) as appropriate, the heads of other Federal
15 departments and agencies whose programs have a
16 significant impact upon health (as determined by the
17 Secretary).

18 “(i) DEFINITION.—In this section:

19 “(1) The terms ‘agency’ and ‘agencies’ include
20 an epidemiology center established under section 214
21 of the Indian Health Care Improvement Act.

22 “(2) The term ‘Department’ means the Depart-
23 ment of Health and Human Services.

24 “(3) The term ‘health disparities’ has the
25 meaning given to such term in section 3171.”.

1 (b) OTHER COORDINATION RESPONSIBILITIES.—
2 Title III (42 U.S.C. 241 et seq.) is amended—

3 (1) in paragraphs (1) and (2) of section 304(c)
4 (42 U.S.C. 242b(c)), by inserting “, acting through
5 the Assistant Secretary for Health Information,”
6 after “The Secretary” each place it appears; and
7 (2) in section 306(j) (42 U.S.C. 242k(j)), by in-
8 serting “, acting through the Assistant Secretary for
9 Health Information,” after “of this section, the Sec-
10 retary”.

11 **SEC. 2403. AUTHORIZATION OF APPROPRIATIONS.**

12 Section 799C, as added and amended, is further
13 amended by adding at the end the following:

14 “(e) QUALITY AND SURVEILLANCE.—For the pur-
15 pose of carrying out part D of title IX and section 1709,
16 in addition to any other amounts authorized to be appro-
17 priated for such purpose, there is authorized to be appro-
18 priated, out of any monies in the Public Health Invest-
19 ment Fund, \$300,000,000 for each of fiscal years 2010
20 through 2014 and \$330,000,000 for each of fiscal years
21 2015 through 2019.”.

1 **TITLE V—OTHER PROVISIONS**
2 **Subtitle A—Drug Discount for**
3 **Rural and Other Hospitals**

4 **SEC. 2501. EXPANDED PARTICIPATION IN 340B PROGRAM.**

5 (a) EXPANSION OF COVERED ENTITIES RECEIVING
6 DISCOUNTED PRICES.—Section 340B(a)(4) (42 U.S.C.
7 256b(a)(4)) is amended by adding at the end the fol-
8 lowing:

9 “(M) A children’s hospital excluded from
10 the Medicare prospective payment system pur-
11 suant to section 1886(d)(1)(B)(iii) of the Social
12 Security Act which would meet the require-
13 ments of subparagraph (L), including the dis-
14 proportionate share adjustment percentage re-
15 quirement under subparagraph (L)(ii), if the
16 hospital were a subsection (d) hospital as de-
17 fined in section 1886(d)(1)(B) of the Social Se-
18 curity Act.

19 “(N) An entity that is a critical access hos-
20 pital (as determined under section 1820(e)(2)
21 of the Social Security Act).

22 “(O) An entity receiving funds under title
23 V of the Social Security Act (relating to mater-
24 nal and child health) for the provision of health
25 services.

1 “(P) An entity receiving funds under sub-
2 part I of part B of title XIX of the Public
3 Health Service Act (relating to comprehensive
4 mental health services) for the provision of com-
5 munity mental health services.

6 “(Q) An entity receiving funds under sub-
7 part II of such part B (relating to the preven-
8 tion and treatment of substance abuse) for the
9 provision of treatment services for substance
10 abuse.

11 “(R) An entity that is a Medicare-depend-
12 ent, small rural hospital (as defined in section
13 1886(d)(5)(G)(iv) of the Social Security Act).

14 “(S) An entity that is a sole community
15 hospital (as defined in section
16 1886(d)(5)(D)(iii) of the Social Security Act).

17 “(T) An entity that is classified as a rural
18 referral center under section 1886(d)(5)(C) of
19 the Social Security Act.”.

20 (b) PROHIBITION ON GROUP PURCHASING ARRANGE-
21 MENTS.—Section 340B(a) (42 U.S.C. 256b(a)) is amend-
22 ed—

23 (1) in paragraph (4)(L)—

24 (A) by adding “and” at the end of clause

25 (i);

1 (B) by striking “; and” at the end of
2 clause (ii) and inserting a period; and

3 (C) by striking clause (iii);

4 (2) in paragraph (5), by redesignating subpara-
5 graphs (C) and (D) as subparagraphs (D) and (E),
6 respectively, and by inserting after subparagraph
7 (B) the following:

8 “(C) PROHIBITING USE OF GROUP PUR-
9 CHASING ARRANGEMENTS.—

10 “(i) A hospital described in subpara-
11 graph (L), (M), (N), (R), (S), or (T) of
12 paragraph (4) shall not obtain covered out-
13 patient drugs through a group purchasing
14 organization or other group purchasing ar-
15 rangement, except as permitted or pro-
16 vided pursuant to clause (ii).

17 “(ii) The Secretary shall establish rea-
18 sonable exceptions to the requirement of
19 clause (i)—

20 “(I) with respect to a covered
21 outpatient drug that is unavailable to
22 be purchased through the program
23 under this section due to a drug
24 shortage problem, manufacturer non-

1 compliance, or any other reason be-
2 yond the hospital's control;

3 “(II) to facilitate generic substi-
4 tution when a generic covered out-
5 patient drug is available at a lower
6 price; and

7 “(III) to reduce in other ways
8 the administrative burdens of man-
9 aging both inventories of drugs ob-
10 tained under this section and not
11 under this section, if such exception
12 does not create a duplicate discount
13 problem in violation of subparagraph
14 (A) or a diversion problem in violation
15 of subparagraph (B).”.

16 **SEC. 2502. EXTENSION OF DISCOUNTS TO INPATIENT**
17 **DRUGS.**

18 (a) IN GENERAL.—Section 340B (42 U.S.C. 256b)
19 is amended—

20 (1) in subsection (b)—

21 (A) by striking “In this section, the terms”
22 and inserting the following: “In this section:

23 “(1) IN GENERAL.—The terms”; and

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

1 “(2) COVERED DRUG.—The term ‘covered
2 drug’—

3 “(A) means a covered outpatient drug (as
4 defined in section 1927(k)(2) of the Social Se-
5 curity Act); and

6 “(B) includes, notwithstanding the section
7 1927(k)(3)(A) of such Act, a drug used in con-
8 nection with an inpatient or outpatient service
9 provided by a hospital described in subpara-
10 graph (L), (M), (N), (R), (S), or (T) of sub-
11 section (a)(4) that is enrolled to participate in
12 the drug discount program under this section.”;
13 and

14 (2) in paragraphs (5), (7), and (9) of sub-
15 section (a), by striking “outpatient” each place it
16 appears.

17 (b) MEDICAID CREDITS ON INPATIENT DRUGS.—
18 Subsection (c) of section 340B (42 U.S.C. 256b(c)) is
19 amended to read as follows:

20 “(c) MEDICAID CREDITS ON INPATIENT DRUGS.—

21 “(1) IN GENERAL.—For the cost reporting pe-
22 riod covered by the most recently filed Medicare cost
23 report under title XVIII of the Social Security Act,
24 a hospital described in subparagraph (L), (M), (N),
25 (R), (S), or (T) of subsection (a)(4) and enrolled to

1 participate in the drug discount program under this
2 section shall provide to each State under its plan
3 under title XIX of such Act—

4 “(A) a credit on the estimated annual
5 costs to such hospital of single source and inno-
6 vator multiple source drugs provided to Med-
7 icaid beneficiaries for inpatient use; and

8 “(B) a credit on the estimated annual
9 costs to such hospital of noninnovator multiple
10 source drugs provided to Medicaid beneficiaries
11 for inpatient use.

12 “(2) AMOUNT OF CREDITS.—

13 “(A) SINGLE SOURCE AND INNOVATOR
14 MULTIPLE SOURCE DRUGS.—For purposes of
15 paragraph (1)(A)—

16 “(i) the credit under such paragraph
17 shall be equal to the product of—

18 “(I) the annual value of single
19 source and innovator multiple source
20 drugs purchased under this section by
21 the hospital based on the drugs’ aver-
22 age manufacturer price;

23 “(II) the estimated percentage of
24 the hospital’s drug purchases attrib-

1 utable to Medicaid beneficiaries for in-
2 patient use; and

3 “**(III)** the minimum rebate per-
4 centage described in section
5 1927(e)(1)(B) of the Social Security
6 Act;

7 “(ii) the reference in clause (i)(I) to
8 the annual value of single source and inno-
9 vator multiple source drugs purchased
10 under this section by the hospital based on
11 the drugs’ average manufacturer price
12 shall be equal to the sum of—

13 “(I) the annual quantity of each
14 single source and innovator multiple
15 source drug purchased during the cost
16 reporting period, multiplied by

17 “(II) the average manufacturer
18 price for that drug;

19 “(iii) the reference in clause (i)(II) to
20 the estimated percentage of the hospital’s
21 drug purchases attributable to Medicaid
22 beneficiaries for inpatient use; shall be
23 equal to—

24 “(I) the Medicaid inpatient drug
25 charges as reported on the hospital’s

1 most recently filed Medicare cost re-
2 port, divided by

3 “(II) total drug charges reported
4 on the cost report; and

5 “(iv) the terms ‘single source drug’
6 and ‘innovator multiple source drug’ have
7 the meanings given such terms in section
8 1927(k)(7) of the Social Security Act.

9 “(B) NONINNOVATOR MULTIPLE SOURCE
10 DRUGS.—For purposes of paragraph (1)(B)—

11 “(i) the credit under such paragraph
12 shall be equal to the product of—

13 “(I) the annual value of noninno-
14 vator multiple source drugs purchased
15 under this section by the hospital
16 based on the drugs’ average manufac-
17 turer price;

18 “(II) the estimated percentage of
19 the hospital’s drug purchases attrib-
20 utable to Medicaid beneficiaries for in-
21 patient use; and

22 “(III) the applicable percentage
23 as defined in section 1927(e)(3)(B) of
24 the Social Security Act;

1 “(ii) the reference in clause (i)(I) to
2 the annual value of noninnovator multiple
3 source drugs purchased under this section
4 by the hospital based on the drugs’ average
5 manufacturer price shall be equal to the
6 sum of—

7 “(I) the annual quantity of each
8 noninnovator multiple source drug
9 purchased during the cost reporting
10 period, multiplied by

11 “(II) the average manufacturer
12 price for that drug;

13 “(iii) the reference in clause (i)(II) to
14 the estimated percentage of the hospital’s
15 drug purchases attributable to Medicaid
16 beneficiaries for inpatient use shall be
17 equal to—

18 “(I) the Medicaid inpatient drug
19 charges as reported on the hospital’s
20 most recently filed Medicare cost re-
21 port, divided by

22 “(II) total drug charges reported
23 on the cost report; and

24 “(iv) the term ‘noninnovator multiple
25 source drug’ has the meaning given such

1 term in section 1927(k)(7) of the Social
2 Security Act.

3 “(3) CALCULATION OF CREDITS.—

4 “(A) IN GENERAL.—Each State calculates
5 credits under paragraph (1) and informs hos-
6 pitals of amount under section 1927(a)(5)(D)
7 of the Social Security Act.

8 “(B) HOSPITAL PROVISION OF INFORMA-
9 TION.—Not later than 30 days after the date of
10 the filing of the hospital’s most recently filed
11 Medicare cost report, the hospital shall provide
12 the State with the information described in
13 paragraphs (2)(A)(ii) and (2)(B)(ii). With re-
14 spect to each drug purchased during the cost
15 reporting period, the hospital shall provide the
16 dosage form, strength, package size, date of
17 purchase and the number of units purchased.

18 “(4) PAYMENT DEADLINE.—The credits pro-
19 vided by a hospital under paragraph (1) shall be
20 paid within 60 days after receiving the information
21 specified in paragraph (3)(A).

22 “(5) OPT OUT.—A hospital shall not be re-
23 quired to provide the Medicaid credit required under
24 paragraph (1) if it can demonstrate to the State
25 that it will lose reimbursement under the State plan

1 resulting from the extension of discounts to inpa-
2 tient drugs under subsection (b)(2) and that the loss
3 of reimbursement will exceed the amount of the
4 credit otherwise owed by the hospital.

5 “(6) OFFSET AGAINST MEDICAL ASSISTANCE.—
6 Amounts received by a State under this subsection
7 in any quarter shall be considered to be a reduction
8 in the amount expended under the State plan in the
9 quarter for medical assistance for purposes of sec-
10 tion 1903(a)(1) of the Social Security Act.”.

11 (c) CONFORMING AMENDMENTS.—Section 1927 of
12 the Social Security Act (42 U.S.C. 1396r–8) is amended—

13 (1) in subsection (a)(5)(A), by striking “covered
14 outpatient drugs” and inserting “covered drugs (as
15 defined in section 340B(b)(2) of the Public Health
16 Service Act)”;

17 (2) in subsection (a)(5), by striking subpara-
18 graph (D) and inserting the following:

19 “(D) STATE RESPONSIBILITY FOR CALCULATING HOSPITAL CREDITS.—The State shall
20 calculate the credits owed by the hospital under
21 paragraph (1) of section 340B(c) of the Public
22 Health Service Act and provide the hospital
23 with both the amounts and an explanation of
24 how it calculated the credits. In performing the
25

1 calculations specified in paragraphs (2)(A)(ii)
2 and (2)(B)(ii) of such section, the State shall
3 use the average manufacturer price applicable
4 to the calendar quarter in which the drug was
5 purchased by the hospital.”; and

6 (3) in subsection (k)(1)—

7 (A) in subparagraph (A), by striking “sub-
8 paragraph (B)” and inserting “subparagraphs
9 (B) and (D)”;

10 (B) by adding at the end the following:

11 “(D) CALCULATION FOR COVERED
12 DRUGS.—With respect to a covered drug (as de-
13 fined in section 340B(b)(2) of the Public
14 Health Service Act), the average manufacturer
15 price shall be determined in accordance with
16 subparagraph (A) except that, in the event a
17 covered drug is not distributed to the retail
18 pharmacy class of trade, it shall mean the aver-
19 age price paid to the manufacturer for the drug
20 in the United States by wholesalers for drugs
21 distributed to the acute care class of trade,
22 after deducting customary prompt pay dis-
23 counts.”.

1 **SEC. 2503. EFFECTIVE DATE.**

2 (a) IN GENERAL.—The amendments made by this
3 subtitle shall take effect on July 1, 2010, and shall apply
4 to drugs dispensed on or after such date.

5 (b) EFFECTIVENESS.—The amendments made by
6 this subtitle shall be effective, and shall be taken into ac-
7 count in determining whether a manufacturer is deemed
8 to meet the requirements of section 340B(a) of the Public
9 Health Service Act (42 U.S.C. 256b(a)) and of section
10 1927(a)(5) of the Social Security Act (42 U.S.C. 1396r-
11 8(a)(5)), notwithstanding any other provision of law.

12 **Subtitle B—School-Based Health**
13 **Clinics**

14 **SEC. 2511. SCHOOL-BASED HEALTH CLINICS.**

15 (a) IN GENERAL.—Part Q of title III (42 U.S.C.
16 280h et seq.) is amended by adding at the end the fol-
17 lowing:

18 **“SEC. 399Z-1. SCHOOL-BASED HEALTH CLINICS.**

19 “(a) PROGRAM.—The Secretary shall establish a
20 school-based health clinic program consisting of awarding
21 grants to eligible entities to support the operation of
22 school-based health clinics (referred to in this section as
23 ‘SBHCs’).

24 “(b) ELIGIBILITY.—To be eligible for a grant under
25 this section, an entity shall—

1 “(1) be an SBHC (as defined in subsection
2 (1)(4)); and

3 “(2) submit an application at such time, in
4 such manner, and containing such information as
5 the Secretary may require, including at a min-
6 imum—

7 “(A) evidence that the applicant meets all
8 criteria necessary to be designated as an
9 SBHC;

10 “(B) evidence of local need for the services
11 to be provided by the SBHC;

12 “(C) an assurance that—

13 “(i) SBHC services will be provided in
14 accordance with Federal, State, and local
15 laws governing—

16 “(I) obtaining parental or guard-
17 ian consent; and

18 “(II) patient privacy and student
19 records, including section 264 of the
20 Health Insurance Portability and Ac-
21 countability Act of 1996 and section
22 444 of the General Education Provi-
23 sions Act;

24 “(ii) the SBHC has established and
25 maintains collaborative relationships with

1 other health care providers in the
2 catchment area of the SBHC;

3 “(iii) the SBHC will provide on-site
4 access during the academic day when
5 school is in session and has an established
6 network of support and access to services
7 with backup health providers when the
8 school or SBHC is closed;

9 “(iv) the SBHC will be integrated into
10 the school environment and will coordinate
11 health services with appropriate school per-
12 sonnel and other community providers co-
13 located at the school; and

14 “(v) the SBHC sponsoring facility as-
15 sumes all responsibility for the SBHC ad-
16 ministration, operations, and oversight;
17 and

18 “(D) such other information as the Sec-
19 retary may require.

20 “(c) USE OF FUNDS.—Funds awarded under a grant
21 under this section may be used for—

22 “(1) providing training related to the provision
23 of comprehensive primary health services and addi-
24 tional health services;

1 “(2) the management and operation of SBHC
2 programs; and

3 “(3) the payment of salaries for health profes-
4 sionals and other appropriate SBHC personnel.

5 “(d) CONSIDERATION OF NEED.—In determining the
6 amount of a grant under this section, the Secretary shall
7 take into consideration—

8 “(1) the financial need of the SBHC;

9 “(2) State, local, or other sources of funding
10 provided to the SBHC; and

11 “(3) other factors as determined appropriate by
12 the Secretary.

13 “(e) PREFERENCES.—In awarding grants under this
14 section, the Secretary shall give preference to SBHCs that
15 have a demonstrated record of service to the following:

16 “(1) A high percentage of medically under-
17 served children and adolescents.

18 “(2) Communities or populations in which chil-
19 dren and adolescents have difficulty accessing health
20 and mental health services.

21 “(3) Communities with high percentages of chil-
22 dren and adolescents who are uninsured, under-
23 insured, or eligible for medical assistance under Fed-
24 eral or State health benefits programs (including ti-
25 tles XIX and XXI of the Social Security Act).

1 “(f) MATCHING REQUIREMENT.—The Secretary may
2 award a grant to an SBHC only if the SBHC agrees to
3 provide, from non-Federal sources, an amount equal to 20
4 percent of the amount of the grant (which may be pro-
5 vided in cash or in kind) to carry out the activities sup-
6 ported by the grant.

7 “(g) SUPPLEMENT, NOT SUPPLANT.—The Secretary
8 may award a grant to an SBHC under this section only
9 if the SBHC demonstrates to the satisfaction of the Sec-
10 retary that funds received through the grant will be ex-
11 pended only to supplement, and not supplant, non-Federal
12 and Federal funds otherwise available to the SBHC for
13 operation of the SBHC (including each activity described
14 in paragraph (1) or (2) of subsection (c)).

15 “(h) PAYOR OF LAST RESORT.—The Secretary may
16 award a grant to an SBHC under this section only if the
17 SBHC demonstrates to the satisfaction of the Secretary
18 that funds received through the grant will not be expended
19 for any activity to the extent that payment has been made,
20 or can reasonably be expected to be made—

21 “(1) under any insurance policy;

22 “(2) under any Federal or State health benefits
23 program (including titles XIX and XXI of the Social
24 Security Act); or

1 “(3) by an entity which provides health services
2 on a prepaid basis.

3 “(i) REGULATIONS REGARDING REIMBURSEMENT
4 FOR HEALTH SERVICES.—The Secretary shall issue regu-
5 lations regarding the reimbursement for health services
6 provided by SBHCs to individuals eligible to receive such
7 services through the program under this section, including
8 reimbursement under any insurance policy or any Federal
9 or State health benefits program (including titles XIX and
10 XXI of the Social Security Act).

11 “(j) TECHNICAL ASSISTANCE.—The Secretary shall
12 provide (either directly or by grant or contract) technical
13 and other assistance to SBHCs to assist such SBHCs to
14 meet the requirements of this section. Such assistance
15 may include fiscal and program management assistance,
16 training in fiscal and program management, operational
17 and administrative support, and the provision of informa-
18 tion to the SBHCs of the variety of resources available
19 under this title and how those resources can be best used
20 to meet the health needs of the communities served by
21 the SBHCs.

22 “(k) EVALUATION; REPORT.—The Secretary shall—
23 “(1) develop and implement a plan for evalu-
24 ating SBHCs and monitoring quality performances
25 under the awards made under this section; and

1 “(2) submit to the Congress on an annual basis
2 a report on the program under this section.

3 “(1) DEFINITIONS.—In this section:

4 “(1) COMPREHENSIVE PRIMARY HEALTH SERV-
5 ICES.—The term ‘comprehensive primary health
6 services’ means the core services offered by SBHCs,
7 which shall include the following:

8 “(A) PHYSICAL.—Comprehensive health
9 assessments, diagnosis, and treatment of minor,
10 acute, and chronic medical conditions and refer-
11 rals to, and follow-up for, specialty care.

12 “(B) MENTAL HEALTH.—Mental health
13 assessments, crisis intervention, counseling,
14 treatment, and referral to a continuum of serv-
15 ices including emergency psychiatric care, com-
16 munity support programs, inpatient care, and
17 outpatient programs.

18 “(C) OPTIONAL SERVICES.—Additional
19 services, which may include oral health, social,
20 and age-appropriate health education services,
21 including nutritional counseling.

22 “(2) MEDICALLY UNDERSERVED CHILDREN
23 AND ADOLESCENTS.—The term ‘medically under-
24 served children and adolescents’ means a population
25 of children and adolescents who are residents of an

1 area designated by the Secretary as an area with a
2 shortage of personal health services and health in-
3 frastructure for such children and adolescents.

4 “(3) SCHOOL-BASED HEALTH CLINIC.—The
5 term ‘school-based health clinic’ means a health clin-
6 ic that—

7 “(A) is located in, or is adjacent to, a
8 school facility of a local educational agency;

9 “(B) is organized through school, commu-
10 nity, and health provider relationships;

11 “(C) is administered by a sponsoring facil-
12 ity; and

13 “(D) provides, at a minimum, comprehen-
14 sive primary health services during school hours
15 to children and adolescents by health profes-
16 sionals in accordance with State and local laws
17 and regulations, established standards, and
18 community practice.

19 “(4) SPONSORING FACILITY.—The term ‘spon-
20 soring facility’ is—

21 “(A) a hospital;

22 “(B) a public health department;

23 “(C) a community health center;

24 “(D) a nonprofit health care agency;

25 “(E) a local educational agency; or

1 “(F) a program administered by the In-
2 dian Health Service or the Bureau of Indian
3 Affairs or operated by an Indian tribe or a trib-
4 al organization under the Indian Self-Deter-
5 mination and Education Assistance Act, a Na-
6 tive Hawaiian entity, or an urban Indian pro-
7 gram under title V of the Indian Health Care
8 Improvement Act.

9 “(m) AUTHORIZATION OF APPROPRIATIONS.—For
10 purposes of carrying out this section, there are authorized
11 to be appropriated \$50,000,000 for fiscal year 2010 and
12 such sums as may be necessary for each of the fiscal years
13 2011 through 2014.”.

14 (b) EFFECTIVE DATE.—The Secretary of Health and
15 Human Services shall begin awarding grants under section
16 399Z–1 of the Public Health Service Act, as added by sub-
17 section (b), not later than July 1, 2010, without regard
18 to whether or not final regulations have been issued under
19 section 399Z–1(h) of such Act

20 **Subtitle C—National Medical**
21 **Device Registry**

22 **SEC. 2521. NATIONAL MEDICAL DEVICE REGISTRY.**

23 (a) REGISTRY.—

1 (1) IN GENERAL.—Section 519 of the Federal
2 Food, Drug, and Cosmetic Act (21 U.S.C. 360i) is
3 amended—

4 (A) by redesignating subsection (g) as sub-
5 section (h); and

6 (B) by inserting after subsection (f) the
7 following:

8 “National Medical Device Registry

9 “(g)(1) The Secretary shall establish a national med-
10 ical device registry (in this subsection referred to as the
11 ‘registry’) to facilitate analysis of postmarket safety and
12 outcomes data on each device that—

13 “(A) is or has been used in or on a patient; and

14 “(B) is—

15 “(i) a class III device; or

16 “(ii) a class II device that is implantable,
17 life-supporting, or life-sustaining.

18 “(2) In developing the registry, the Secretary shall,
19 in consultation with the Commissioner of Food and Drugs,
20 the Administrator of the Centers for Medicare & Medicaid
21 Services, the head of the Office of the National Coordi-
22 nator for Health Information Technology, and the Sec-
23 retary of Veterans Affairs, determine the best methods
24 for—

1 “(A) including in the registry, in a manner con-
2 sistent with subsection (f), appropriate information
3 to identify each device described in paragraph (1) by
4 type, model, and serial number or other unique iden-
5 tifier;

6 “(B) validating methods for analyzing patient
7 safety and outcomes data from multiple sources and
8 for linking such data with the information included
9 in the registry as described in subparagraph (A), in-
10 cluding, to the extent feasible, use of—

11 “(i) data provided to the Secretary under
12 other provisions of this chapter; and

13 “(ii) information from public and private
14 sources identified under paragraph (3);

15 “(C) integrating the activities described in this
16 subsection with—

17 “(i) activities under paragraph (3) of sec-
18 tion 505(k) (relating to active postmarket risk
19 identification);

20 “(ii) activities under paragraph (4) of sec-
21 tion 505(k) (relating to advanced analysis of
22 drug safety data); and

23 “(iii) other postmarket device surveillance
24 activities of the Secretary authorized by this
25 chapter; and

1 “(D) providing public access to the data and
2 analysis collected or developed through the registry
3 in a manner and form that protects patient privacy
4 and proprietary information and is comprehensive,
5 useful, and not misleading to patients, physicians,
6 and scientists.

7 “(3)(A) To facilitate analyses of postmarket safety
8 and patient outcomes for devices described in paragraph
9 (1), the Secretary shall, in collaboration with public, aca-
10 demic, and private entities, develop methods to—

11 “(i) obtain access to disparate sources of
12 patient safety and outcomes data, including—

13 “(I) Federal health-related electronic
14 data (such as data from the Medicare pro-
15 gram under title XVIII of the Social Secu-
16 rity Act or from the health systems of the
17 Department of Veterans Affairs);

18 “(II) private sector health-related
19 electronic data (such as pharmaceutical
20 purchase data and health insurance claims
21 data); and

22 “(III) other data as the Secretary
23 deems necessary to permit postmarket as-
24 sessment of device safety and effectiveness;
25 and

1 “(ii) link data obtained under clause (i)
2 with information in the registry.

3 “(B) In this paragraph, the term ‘data’ refers to in-
4 formation respecting a device described in paragraph (1),
5 including claims data, patient survey data, standardized
6 analytic files that allow for the pooling and analysis of
7 data from disparate data environments, electronic health
8 records, and any other data deemed appropriate by the
9 Secretary.

10 “(4) Not later than 36 months after the date of the
11 enactment of this subsection, the Secretary shall promul-
12 gate regulations for establishment and operation of the
13 registry under paragraph (1). Such regulations—

14 “(A)(i) in the case of devices that are described
15 in paragraph (1) and sold on or after the date of the
16 enactment of this subsection, shall require manufac-
17 turers of such devices to submit information to the
18 registry, including, for each such device, the type,
19 model, and serial number or, if required under sub-
20 section (f), other unique device identifier; and

21 “(ii) in the case of devices that are described in
22 paragraph (1) and sold before such date, may re-
23 quire manufacturers of such devices to submit such
24 information to the registry, if deemed necessary by
25 the Secretary to protect the public health;

1 “(B) shall establish procedures—

2 “(i) to permit linkage of information sub-
3 mitted pursuant to subparagraph (A) with pa-
4 tient safety and outcomes data obtained under
5 paragraph (3); and

6 “(ii) to permit analyses of linked data;

7 “(C) may require device manufacturers to sub-
8 mit such other information as is necessary to facili-
9 tate postmarket assessments of device safety and ef-
10 fectiveness and notification of device risks;

11 “(D) shall establish requirements for regular
12 and timely reports to the Secretary, which shall be
13 included in the registry, concerning adverse event
14 trends, adverse event patterns, incidence and preva-
15 lence of adverse events, and other information the
16 Secretary determines appropriate, which may include
17 data on comparative safety and outcomes trends;
18 and

19 “(E) shall establish procedures to permit public
20 access to the information in the registry in a manner
21 and form that protects patient privacy and propri-
22 etary information and is comprehensive, useful, and
23 not misleading to patients, physicians, and sci-
24 entists.

1 “(5) To carry out this subsection, there are author-
2 ized to be appropriated such sums as may be necessary
3 for fiscal years 2010 and 2011.”.

4 (2) EFFECTIVE DATE.—The Secretary of
5 Health and Human Services shall establish and
6 begin implementation of the registry under section
7 519(g) of the Federal Food, Drug, and Cosmetic
8 Act, as added by paragraph (1), by not later than
9 the date that is 36 months after the date of the en-
10 actment of this Act, without regard to whether or
11 not final regulations to establish and operate the
12 registry have been promulgated by such date.

13 (3) CONFORMING AMENDMENT.—Section
14 303(f)(1)(B)(ii) of the Federal Food, Drug, and
15 Cosmetic Act (21 U.S.C. 333(f)(1)(B)(ii)) is amend-
16 ed by striking “519(g)” and inserting “519(h)”.

17 (b) ELECTRONIC EXCHANGE AND USE IN CERTIFIED
18 ELECTRONIC HEALTH RECORDS OF UNIQUE DEVICE
19 IDENTIFIERS.—

20 (1) RECOMMENDATIONS.—The HIT Policy
21 Committee established under section 3002 of the
22 Public Health Service Act (42 U.S.C. 300jj–12)
23 shall recommend to the head of the Office of the Na-
24 tional Coordinator for Health Information Tech-
25 nology standards, implementation specifications, and

1 certification criteria for the electronic exchange and
2 use in certified electronic health records of a unique
3 device identifier for each device described in section
4 519(g)(1) of the Federal Food, Drug, and Cosmetic
5 Act, as added by subsection (a).

6 (2) STANDARDS, IMPLEMENTATION CRITERIA,
7 AND CERTIFICATION CRITERIA.—The Secretary of
8 the Health Human Services, acting through the
9 head of the Office of the National Coordinator for
10 Health Information Technology, shall adopt stand-
11 ards, implementation specifications, and certification
12 criteria for the electronic exchange and use in cer-
13 tified electronic health records of a unique device
14 identifier for each device described in paragraph (1),
15 if such an identifier is required by section 519(f) of
16 the Federal Food, Drug, and Cosmetic Act (21
17 U.S.C. 360i(f)) for the device.

18 **Subtitle D—Grants for Comprehen-**
19 **sive Programs to Provide Edu-**
20 **cation to Nurses and Create a**
21 **Pipeline to Nursing**

22 **SEC. 2531. ESTABLISHMENT OF GRANT PROGRAM.**

23 (a) PURPOSES.—It is the purpose of this section to
24 authorize grants to—

1 (1) address the projected shortage of nurses by
2 funding comprehensive programs to create a career
3 ladder to nursing (including Certified Nurse Assist-
4 ants, Licensed Practical Nurses, Licensed Vocational
5 Nurses, and Registered Nurses) for incumbent ancil-
6 lary health care workers;

7 (2) increase the capacity for educating nurses
8 by increasing both nurse faculty and clinical oppor-
9 tunities through collaborative programs between
10 staff nurse organizations, health care providers, and
11 accredited schools of nursing; and

12 (3) provide training programs through edu-
13 cation and training organizations jointly adminis-
14 tered by health care providers and health care labor
15 organizations or other organizations representing
16 staff nurses and frontline health care workers, work-
17 ing in collaboration with accredited schools of nurs-
18 ing and academic institutions.

19 (b) GRANTS.—Not later than 6 months after the date
20 of the enactment of this Act, the Secretary of Labor (re-
21 ferred to in this section as the “Secretary”) shall establish
22 a partnership grant program to award grants to eligible
23 entities to carry out comprehensive programs to provide
24 education to nurses and create a pipeline to nursing for
25 incumbent ancillary health care workers who wish to ad-

1 vance their careers, and to otherwise carry out the pur-
2 poses of this section.

3 (c) ELIGIBILITY.—To be eligible for a grant under
4 this section, an entity shall be—

5 (1) a health care entity that is jointly adminis-
6 tered by a health care employer and a labor union
7 representing the health care employees of the em-
8 ployer and that carries out activities using labor
9 management training funds as provided for under
10 section 302(c)(6) of the Labor Management Rela-
11 tions Act, 1947 (29 U.S.C. 186(c)(6));

12 (2) an entity that operates a training program
13 that is jointly administered by—

14 (A) one or more health care providers or
15 facilities, or a trade association of health care
16 providers; and

17 (B) one or more organizations which rep-
18 resent the interests of direct care health care
19 workers or staff nurses and in which the direct
20 care health care workers or staff nurses have
21 direct input as to the leadership of the organi-
22 zation;

23 (3) a State training partnership program that
24 consists of nonprofit organizations that include equal
25 participation from industry, including public or pri-

1 vate employers, and labor organizations including
2 joint labor-management training programs, and
3 which may include representatives from local govern-
4 ments, worker investment agency one-stop career
5 centers, community-based organizations, community
6 colleges, and accredited schools of nursing; or

7 (4) a school of nursing (as defined in section
8 801 of the Public Health Service Act (42 U.S.C.
9 296)).

10 (d) ADDITIONAL REQUIREMENTS FOR HEALTH CARE
11 EMPLOYER DESCRIBED IN SUBSECTION (c).—To be eligi-
12 ble for a grant under this section, a health care employer
13 described in subsection (c) shall demonstrate that it—

14 (1) has an established program within their fa-
15 cility to encourage the retention of existing nurses;

16 (2) provides wages and benefits to its nurses
17 that are competitive for its market or that have been
18 collectively bargained with a labor organization; and

19 (3) supports programs funded under this sec-
20 tion through 1 or more of the following:

21 (A) The provision of paid leave time and
22 continued health coverage to incumbent health
23 care workers to allow their participation in
24 nursing career ladder programs, including cer-
25 tified nurse assistants, licensed practical nurses,

1 licensed vocational nurses, and registered
2 nurses.

3 (B) Contributions to a joint labor-manage-
4 ment training fund which administers the pro-
5 gram involved.

6 (C) The provision of paid release time, in-
7 centive compensation, or continued health cov-
8 erage to staff nurses who desire to work full- or
9 part-time in a faculty position.

10 (D) The provision of paid release time for
11 staff nurses to enable them to obtain a bachelor
12 of science in nursing degree, other advanced
13 nursing degrees, specialty training, or certifi-
14 cation program.

15 (E) The payment of tuition assistance
16 which is managed by a joint labor-management
17 training fund or other jointly administered pro-
18 gram.

19 (e) OTHER REQUIREMENTS.—

20 (1) MATCHING REQUIREMENT.—

21 (A) IN GENERAL.—The Secretary may not
22 make a grant under this section unless the ap-
23 plicant involved agrees, with respect to the costs
24 to be incurred by the applicant in carrying out
25 the program under the grant, to make available

1 non-Federal contributions (in cash or in kind
2 under subparagraph (B)) toward such costs in
3 an amount equal to not less than \$1 for each
4 \$1 of Federal funds provided in the grant. Such
5 contributions may be made directly or through
6 donations from public or private entities, or
7 may be provided through the cash equivalent of
8 paid release time provided to incumbent worker
9 students.

10 (B) DETERMINATION OF AMOUNT OF NON-
11 FEDERAL CONTRIBUTION.—Non-Federal con-
12 tributions required in subparagraph (A) may be
13 in cash or in kind (including paid release time),
14 fairly evaluated, including equipment or services
15 (and excluding indirect or overhead costs).
16 Amounts provided by the Federal Government,
17 or services assisted or subsidized to any signifi-
18 cant extent by the Federal Government, may
19 not be included in determining the amount of
20 such non-Federal contributions.

21 (2) REQUIRED COLLABORATION.—Entities car-
22 rying out or overseeing programs carried out with
23 assistance provided under this section shall dem-
24 onstrate collaboration with accredited schools of
25 nursing which may include community colleges and

1 other academic institutions providing associate,
2 bachelor's, or advanced nursing degree programs or
3 specialty training or certification programs.

4 (f) USE OF FUNDS.—Amounts awarded to an entity
5 under a grant under this section shall be used for the fol-
6 lowing:

7 (1) To carry out programs that provide edu-
8 cation and training to establish nursing career lad-
9 ders to educate incumbent health care workers to be-
10 come nurses (including certified nurse assistants, li-
11 censed practical nurses, licensed vocational nurses,
12 and registered nurses). Such programs shall include
13 one or more of the following:

14 (A) Preparing incumbent workers to return
15 to the classroom through English -as-a-second
16 language education, GED education, pre-college
17 counseling, college preparation classes, and sup-
18 port with entry level college classes that are a
19 prerequisite to nursing.

20 (B) Providing tuition assistance with pref-
21 erence for dedicated cohort classes in commu-
22 nity colleges, universities, accredited schools of
23 nursing with supportive services including tu-
24 toring and counseling.

1 (C) Providing assistance in preparing for
2 and meeting all nursing licensure tests and re-
3 quirements.

4 (D) Carrying out orientation and
5 mentorship programs that assist newly grad-
6 uated nurses in adjusting to working at the
7 bedside to ensure their retention
8 postgraduation, and ongoing programs to sup-
9 port nurse retention.

10 (E) Providing stipends for release time and
11 continued health care coverage to enable incum-
12 bent health care workers to participate in these
13 programs.

14 (2) To carry out programs that assist nurses in
15 obtaining advanced degrees and completing specialty
16 training or certification programs and to establish
17 incentives for nurses to assume nurse faculty posi-
18 tions on a part-time or full-time basis. Such pro-
19 grams shall include one or more of the following:

20 (A) Increasing the pool of nurses with ad-
21 vanced degrees who are interested in teaching
22 by funding programs that enable incumbent
23 nurses to return to school.

24 (B) Establishing incentives for advanced
25 degree bedside nurses who wish to teach in

1 nursing programs so they can obtain a leave
2 from their bedside position to assume a full- or
3 part-time position as adjunct or full-time fac-
4 ulty without the loss of salary or benefits.

5 (C) Collaboration with accredited schools
6 of nursing which may include community col-
7 leges and other academic institutions providing
8 associate, bachelor's, or advanced nursing de-
9 gree programs, or specialty training or certifi-
10 cation programs, for nurses to carry out innova-
11 tive nursing programs which meet the needs of
12 bedside nursing and health care providers.

13 (g) PREFERENCE.—In awarding grants under this
14 section the Secretary shall give preference to programs
15 that—

16 (1) provide for improving nurse retention;

17 (2) provide for improving the diversity of the
18 new nurse graduates to reflect changes in the demo-
19 graphics of the patient population;

20 (3) provide for improving the quality of nursing
21 education to improve patient care and safety;

22 (4) have demonstrated success in upgrading in-
23 cumbent health care workers to become nurses or
24 which have established effective programs or pilots
25 to increase nurse faculty; or

1 (5) are modeled after or affiliated with such
2 programs described in paragraph (4).

3 (h) EVALUATION.—

4 (1) PROGRAM EVALUATIONS.—An entity that
5 receives a grant under this section shall annually
6 evaluate, and submit to the Secretary a report on,
7 the activities carried out under the grant and the
8 outcomes of such activities. Such outcomes may in-
9 clude—

10 (A) an increased number of incumbent
11 workers entering an accredited school of nurs-
12 ing and in the pipeline for nursing programs;

13 (B) an increasing number of graduating
14 nurses and improved nurse graduation and li-
15 censure rates;

16 (C) improved nurse retention;

17 (D) an increase in the number of staff
18 nurses at the health care facility involved;

19 (E) an increase in the number of nurses
20 with advanced degrees in nursing;

21 (F) an increase in the number of nurse
22 faculty;

23 (G) improved measures of patient quality
24 (which may include staffing ratios of nurses,

1 patient satisfaction rates, patient safety meas-
2 ures); and

3 (H) an increase in the diversity of new
4 nurse graduates relative to the patient popu-
5 lation.

6 (2) GENERAL REPORT.—Not later than 2 years
7 after the date of the enactment of this Act, and an-
8 nually thereafter, the Secretary of Labor shall, using
9 data and information from the reports received
10 under paragraph (1), submit to the Congress a re-
11 port concerning the overall effectiveness of the grant
12 program carried out under this section.

13 (i) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to carry out this section
15 such sums as may be necessary.

16 **Subtitle E—Standards for Accessi-**
17 **bility to Medical Equipment for**
18 **Individuals With Disabilities.**

19 **SEC. 2541. ACCESS FOR INDIVIDUALS WITH DISABILITIES.**

20 Title V of the Rehabilitation Act of 1973 (29 U.S.C.
21 791 et seq.) is amended by adding at the end of the fol-
22 lowing:

1 **“SEC. 510. STANDARDS FOR ACCESSIBILITY OF MEDICAL**
2 **DIAGNOSTIC EQUIPMENT.**

3 “(a) STANDARDS.—Not later than 9 months after the
4 date of enactment of the America’s Affordable Health
5 Choices Act of 2009, the Architectural and Transportation
6 Barriers Compliance Board shall issue guidelines setting
7 forth the minimum technical criteria for medical diag-
8 nostic equipment used in (or in conjunction with) physi-
9 cian’s offices, clinics, emergency rooms, hospitals, and
10 other medical settings. The guidelines shall ensure that
11 such equipment is accessible to, and usable by, individuals
12 with disabilities, including provisions to ensure inde-
13 pendent entry to, use of, and exit from the equipment by
14 such individuals to the maximum extent possible.

15 “(b) MEDICAL DIAGNOSTIC EQUIPMENT COV-
16 ERED.—The guidelines issued under subsection (a) for
17 medical diagnostic equipment shall apply to equipment
18 that includes examination tables, examination chairs (in-
19 cluding chairs used for eye examinations or procedures,
20 and dental examinations or procedures), weight scales,
21 mammography equipment, x-ray machines, and other
22 equipment commonly used for diagnostic or examination
23 purposes by health professionals.

24 “(c) INTERIM STANDARDS.—Until the date on which
25 final regulations are issued under subsection (d), pur-
26 chases of examination tables, weight scales, and mammog-

1 raphy equipment and used in (or in conjunction with)
2 medical settings described in subsection (a), shall adhere
3 to the following interim accessibility requirements:

4 “(1) Examination tables shall be height-adjust-
5 able between a range of at least 18 inches to 37
6 inches.

7 “(2) Weight scales shall be capable of weighing
8 individuals who remain seated in a wheelchair or
9 other personal mobility aid.

10 “(3) Mammography machines and equipment
11 shall be capable of being used by individuals in a
12 standing, seated, or recumbent position, including
13 individuals who remain seated in a wheelchair or
14 other personal mobility aid.

15 “(d) REGULATIONS.—Not later than 6 months after
16 the date of the issuance of the guidelines under subsection
17 (a), each appropriate Federal agency authorized to pro-
18 mulgate regulations under this Act or under the Ameri-
19 cans with Disabilities Act shall—

20 “(1) prescribe regulations in an accessible for-
21 mat as necessary to carry out the provisions of such
22 Act and section 504 of this Act that include accessi-
23 bility standards that are consistent with the guide-
24 lines issued under subsection (a); and

1 “(2) ensure that health care providers and
2 health care plans covered by the America’s Afford-
3 able Health Choices Act of 2009 meet the require-
4 ments of the Americans with Disabilities Act and
5 section 504, including provisions ensuring that indi-
6 viduals with disabilities receive equal access to all
7 aspects of the health care delivery system.

8 “(e) REVIEW AND AMEND.—The Architectural and
9 Transportation Barriers Compliance Board shall periodi-
10 cally review and, as appropriate, amend the guidelines as
11 prescribed under subsection (a). Not later than 6 months
12 after the date of the issuance of such revised guidelines,
13 revised regulations consistent with such guidelines shall be
14 promulgated in an accessible format by the appropriate
15 Federal agencies described in subsection (d).”.

16 **Subtitle F—Other Grant Programs**

17 **SEC. 2551. REDUCING STUDENT-TO-SCHOOL NURSE RATIOS.**

18 (a) DEMONSTRATION GRANTS.—

19 (1) IN GENERAL.—The Secretary of Education,
20 in consultation with the Secretary of Health and
21 Human Services and the Director of the Centers for
22 Disease Control and Prevention, may make dem-
23 onstration grants to eligible local education agencies
24 for the purpose of reducing the student-to-school

1 nurse ratio in public elementary and secondary
2 schools.

3 (2) SPECIAL CONSIDERATION.—In awarding
4 grants under this section, the Secretary of Edu-
5 cation shall give special consideration to applications
6 submitted by high-need local educational agencies
7 that demonstrate the greatest need for new or addi-
8 tional nursing services among children in the public
9 elementary and secondary schools served by the
10 agency, in part by providing information on current
11 ratios of students to school nurses.

12 (3) MATCHING FUNDS.—The Secretary of Edu-
13 cation may require recipients of grants under this
14 subsection to provide matching funds from non-Fed-
15 eral sources, and shall permit the recipients to
16 match funds in whole or in part with in-kind con-
17 tributions.

18 (b) REPORT.—Not later than 24 months after the
19 date on which assistance is first made available to local
20 educational agencies under this section, the Secretary of
21 Education shall submit to the Congress a report on the
22 results of the demonstration grant program carried out
23 under this section, including an evaluation of the effective-
24 ness of the program in improving the student-to-school
25 nurse ratios described in subsection (a) and an evaluation

1 of the impact of any resulting enhanced health of students
2 on learning.

3 (c) DEFINITIONS.—For purposes of this section:

4 (1) The terms “elementary school”, “local edu-
5 cational agency”, and “secondary school” have the
6 meanings given to those terms in section 9101 of the
7 Elementary and Secondary Education Act of 1965
8 (20 U.S.C. 7801).

9 (2) The term “eligible local educational agency”
10 means a local educational agency in which the stu-
11 dent-to-school nurse ratio in the public elementary
12 and secondary schools served by the agency is 750
13 or more students to every school nurse.

14 (3) The term “high-need local educational agen-
15 cy” means a local educational agency—

16 (A) that serves not fewer than 10,000 chil-
17 dren from families with incomes below the pov-
18 erty line; or

19 (B) for which not less than 20 percent of
20 the children served by the agency are from fam-
21 ilies with incomes below the poverty line.

22 (4) The term “nurse” means a licensed nurse,
23 as defined under State law.

24 (d) AUTHORIZATION OF APPROPRIATIONS.—To carry
25 out this section, there are authorized to be appropriated

1 such sums as may be necessary for each of the fiscal years
2 2010 through 2014.

3 **SEC. 2552. WELLNESS PROGRAM GRANTS.**

4 (a) ALLOWANCE OF GRANT.—

5 (1) IN GENERAL.—For purposes of this section,
6 the Secretary of Labor shall award wellness grants
7 as determined under this section. Wellness program
8 grants shall be awarded to qualified employers for
9 any plan year in an amount equal to 50 percent of
10 the costs paid or incurred by the employer in con-
11 nection with a qualified wellness program during the
12 plan year. For purposes of the preceding sentence,
13 in the case of any qualified wellness program offered
14 as part of an employment-based health plan, only
15 costs attributable to the qualified wellness program
16 and not to the health plan, or health insurance cov-
17 erage offered in connection with such a plan, may be
18 taken into account.

19 (2) LIMITATION.—The amount of the grant al-
20 lowed under paragraph (1) for any plan year shall
21 not exceed the sum of—

22 (A) the product of \$200 and the number
23 of employees of the employer not in excess of
24 200 employees; plus

1 (B) the product of \$100 and the number
2 of employees of the employer in excess of 200
3 employees.

4 The wellness grants awarded to an employer under
5 this section shall be for up to 3 years and shall not
6 exceed \$50,000.

7 (b) QUALIFIED WELLNESS PROGRAM.—For purposes
8 of this section:

9 (1) QUALIFIED WELLNESS PROGRAM.—The
10 term “qualified wellness program” means a program
11 that —

12 (A) includes any 3 wellness components de-
13 scribed in subsection (c); and

14 (B) is be certified by the Secretary of
15 Labor, in coordination with the Health Choices
16 Commissioner and the Director of the Center
17 for Disease Control and Prevention, as a quali-
18 fied wellness program under this section.

19 (2) PROGRAMS MUST BE CONSISTENT WITH RE-
20 SEARCH AND BEST PRACTICES.—

21 (A) IN GENERAL.—The Secretary of Labor
22 shall not certify a program as a qualified
23 wellness program unless the program—

24 (i) is newly established or in existence
25 on the date of enactment of this Act but

1 not yet meeting the requirements of this
2 section;

3 (ii) is consistent with evidenced-based
4 researched and best practices, as identified
5 by persons with expertise in employer
6 health promotion and wellness programs;

7 (iii) includes multiple, evidenced-based
8 strategies which are based on the existing
9 and emerging research and careful sci-
10 entific reviews, including the Guide to
11 Community Preventative Services, the
12 Guide to Clinical Preventative Services,
13 and the National Registry for Effective
14 Programs, and

15 (iv) includes strategies which focus on
16 prevention and support for employee popu-
17 lations at risk of poor health outcomes.

18 (B) PERIODIC UPDATING AND REVIEW.—

19 The Secretary of Labor, in consultation with
20 other appropriate agencies shall establish proce-
21 dures for periodic review, evaluation, and up-
22 date of the programs under this subsection.

23 (3) HEALTH LITERACY/ACCESSIBILITY.—The
24 Secretary of Labor shall, as part of the certification
25 process: —

1 (A) ensure that employers make the pro-
2 grams culturally competent. physically and pro-
3 grammatically accessible (including for individ-
4 uals with disabilities), and appropriate to the
5 health literacy needs of the employees covered
6 by the programs;

7 (B) require a health literacy component to
8 provide special assistance and materials to em-
9 ployees with low literacy skills, limited English
10 and from under-served populations; and

11 (C) require the Secretary of Labor, in con-
12 sultation with Secretary of Health and Human
13 Services, to compile and disseminate to em-
14 ployer health plans info on model health literacy
15 curricula, instructional programs, and effective
16 intervention strategies.

17 (c) WELLNESS PROGRAM COMPONENTS.—For pur-
18 poses of this section, the wellness program components de-
19 scribed in this subsection are the following:

20 (1) HEALTH AWARENESS COMPONENT.—A
21 health awareness component which provides for the
22 following:

23 (A) HEALTH EDUCATION.—The dissemina-
24 tion of health information which addresses the
25 specific needs and health risks of employees.

1 (B) HEALTH SCREENINGS.—The oppor-
2 tunity for periodic screenings for health prob-
3 lems and referrals for appropriate follow up
4 measures.

5 (2) EMPLOYEE ENGAGEMENT COMPONENT.—
6 An employee engagement component which provides
7 for the active engagement of employees in worksite
8 wellness programs through worksite assessments and
9 program planning, onsite delivery, evaluation, and
10 improvement efforts.

11 (3) BEHAVIORAL CHANGE COMPONENT.—A be-
12 havioral change component which provides for alter-
13 ing employee lifestyles to encourage healthy living
14 through counseling, seminars, on-line programs, or
15 self-help materials which provide technical assistance
16 and problem solving skills. such component may in-
17 clude programs relating to—

18 (A) tobacco use;

19 (B) obesity;

20 (C) stress management;

21 (D) physical fitness;

22 (E) nutrition;

23 (F) substance abuse;

24 (G) depression; and

1 (H) mental health promotion (including
2 anxiety).

3 (4) SUPPORTIVE ENVIRONMENT COMPONENT.—

4 A supportive environment component which includes
5 the following:

6 (A) ON-SITE POLICIES.—Policies and serv-
7 ices at the worksite which promote a healthy
8 lifestyle, including policies relating to—

9 (i) tobacco use at the worksite;

10 (ii) the nutrition of food available at
11 the worksite through cafeterias and vend-
12 ing options;

13 (iii) minimizing stress and promoting
14 positive mental health in the workplace;
15 and

16 (iv) the encouragement of physical ac-
17 tivity before, during, and after work hours.

18 (d) PARTICIPATION REQUIREMENT.—No grant shall
19 be allowed under subsection (a) unless the Secretary of
20 Labor in consultation with other appropriate agencies, cer-
21 tifies, as a part of any certification described in subsection
22 (b), that each wellness program component of the qualified
23 wellness program—

24 (1) shall be available to all employees of the
25 employer;

1 (2) shall not mandate participation by employ-
2 ees; and

3 (3) shall not require participation by individual
4 employees as a condition to obtain a premium dis-
5 count, rebate, deductible reduction, or other finan-
6 cial reward.

7 (e) **PRIVACY PROTECTIONS.**—Any employee health
8 information collected through participation in an employer
9 wellness program shall be confidential and available only
10 to appropriately trained health professions as defined by
11 the Secretary of Labor. Employers or employees of the
12 employer sponsoring a wellness program shall have no ac-
13 cess to employee health data. All entities offering em-
14 ployer-sponsored wellness programs shall be considered
15 “business associates” pursuant to the American Reinvest-
16 ment and Recovery Act and must comply with privacy pro-
17 tections restricting the release of personal medical infor-
18 mation.

19 (f) **DEFINITIONS AND SPECIAL RULES.**—For pur-
20 poses of this section:

21 (1) **QUALIFIED EMPLOYER.**—The term “quali-
22 fied employer” means an employer that offers a
23 qualified health benefits plan to every employee (in-
24 cluding each employee required to be offered cov-
25 erage under a qualified health benefits plan under

1 subtitle B of title III of division A), and meets the
2 health coverage participation requirements as de-
3 fined in section 312.

4 (2) CERTAIN COSTS NOT INCLUDED.—Costs
5 paid or incurred by an employer for food or health
6 insurance shall not be taken into account under sub-
7 section (a).

8 (g) OUTREACH.—

9 (1) IN GENERAL.—The Secretary of the Labor,
10 in conjunction with other appropriate agencies and
11 members of the business community, shall institute
12 an outreach program to inform businesses about the
13 availability of the wellness program grant as well as
14 to educate businesses on how to develop programs
15 according to recognized and promising practices and
16 on how to measure the success of implemented pro-
17 grams.

18 (h) EFFECTIVE DATE.—This section shall take effect
19 on January 1, 2013.

20 (i) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated such sums as are nec-
22 essary to carry out this section.

1 **Subtitle G—States Failing to Ad-**
2 **here to Certain Employment Ob-**
3 **ligations**

4 **SEC. 2561. LIMITATION ON FEDERAL FUNDS.**

5 A State is eligible for Federal funds under the provi-
6 sions of the Public Health Service Act (42 U.S.C. 201 et
7 seq.) only if the State—

8 (1) agrees to be subject in its capacity as an
9 employer to each obligation under division A of this
10 Act and the amendments made by such division ap-
11 plicable to persons in their capacity as an employer;
12 and

13 (2) assures that all political subdivisions in the
14 State will do the same.

