

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3200
OFFERED BY MR. WAXMAN 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—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

22 (D) initiates shared responsibility among
23 workers, employers, and the government;

1 so that all Americans have coverage of essential
2 health benefits.

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

8 (b) TABLE OF CONTENTS OF DIVISION.—The table
9 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.

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.

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.

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.

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”—

21 (A) means a group health plan (as defined
22 in section 733(a)(1) of the Employee Retire-
23 ment Income Security Act of 1974); and

1 (B) includes such a plan that is the fol-
2 lowing:

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

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

14 (7) ENHANCED PLAN.—The term “enhanced
15 plan” has the meaning given such term in section
16 203(c).

17 (8) ESSENTIAL BENEFITS PACKAGE.—The term
18 “essential benefits package” is defined in section
19 122(a).

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

22 (10) FEDERAL POVERTY LEVEL; FPL.—The
23 terms “Federal poverty level” and “FPL” have the
24 meaning given the term “poverty line” in section
25 673(2) of the Community Services Block Grant Act

1 (42 U.S.C. 9902(2)), including any revision required
2 by such section.

3 (11) HEALTH BENEFITS PLAN.—The terms
4 “health benefits plan” means health insurance cov-
5 erage and an employment-based health plan and in-
6 cludes the public health insurance option.

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

12 (13) HEALTH INSURANCE EXCHANGE.—The
13 term “Health Insurance Exchange” means the
14 Health Insurance Exchange established under sec-
15 tion 201.

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

20 (15) MEDICARE.—The term “Medicare” means
21 the health insurance programs under title XVIII of
22 the Social Security Act.

23 (16) PLAN SPONSOR.—The term “plan spon-
24 sor” has the meaning given such term in section

1 3(16)(B) of the Employee Retirement Income Secu-
2 rity Act of 1974.

3 (17) PLAN YEAR.—The term “plan year”
4 means—

5 (A) with respect to an employment-based
6 health plan, a plan year as specified under such
7 plan; or

8 (B) with respect to a health benefits plan
9 other than an employment-based health plan, a
10 12-month period as specified by the Commis-
11 sioner.

12 (18) PREMIUM PLAN; PREMIUM-PLUS PLAN.—
13 The terms “premium plan” and “premium-plus
14 plan” have the meanings given such terms in section
15 203(c).

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

19 (A) a group health plan (as defined, sub-
20 ject to subsection (d), in section 733(a)(1) of
21 the Employee Retirement Income Security Act
22 of 1974), the plan sponsor in relation to such
23 group health plan, except that, in the case of a
24 plan maintained jointly by 1 or more employers
25 and 1 or more employee organizations and with

1 respect to which an employer is the primary
2 source of financing, such term means such em-
3 ployer;

4 (B) health insurance coverage, the health
5 insurance issuer offering the coverage;

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

8 (D) a non-Federal governmental plan (as
9 defined in section 2791(d) of the Public Health
10 Service Act), the State or political subdivision
11 of a State (or agency or instrumentality of such
12 State or subdivision) which establishes or main-
13 tains such plan; or

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

17 (20) QUALIFIED HEALTH BENEFITS PLAN.—
18 The term “qualified health benefits plan” means a
19 health benefits plan that meets the requirements for
20 such a plan under title I and includes the public
21 health insurance option.

22 (21) PUBLIC HEALTH INSURANCE OPTION.—
23 The term “public health insurance option” means
24 the public health insurance option as provided under
25 subtitle B of title II.

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

2 The terms “service area” and “premium rating
3 area” mean with respect to health insurance cov-
4 erage—

5 (A) offered other than through the Health
6 Insurance Exchange, such an area as estab-
7 lished by the QHBP offering entity of such cov-
8 erage in accordance with applicable State law;
9 and

10 (B) offered through the Health Insurance
11 Exchange, such an area as established by such
12 entity in accordance with applicable State law
13 and applicable rules of the Commissioner for
14 Exchange-participating health benefits plans.

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

17 (24) STATE MEDICAID AGENCY.—The term
18 “State Medicaid agency” means, with respect to a
19 Medicaid plan, the single State agency responsible
20 for administering such plan under title XIX of the
21 Social Security Act.

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

1 **TITLE I—PROTECTIONS AND**
2 **STANDARDS FOR QUALIFIED**
3 **HEALTH BENEFITS PLANS**

4 **Subtitle A—General Standards**

5 **SEC. 101. REQUIREMENTS REFORMING HEALTH INSUR-**
6 **ANCE MARKETPLACE.**

7 (a) **PURPOSE.**—The purpose of this title is to estab-
8 lish standards to ensure that new health insurance cov-
9 erage and employment-based health plans that are offered
10 meet standards guaranteeing access to affordable cov-
11 erage, essential benefits, and other consumer protections.

12 (b) **REQUIREMENTS FOR QUALIFIED HEALTH BENE-**
13 **FITS PLANS.**—On or after the first day of Y1, a health
14 benefits plan shall not be a qualified health benefits plan
15 under this division unless the plan meets the applicable
16 requirements of the following subtitles for the type of plan
17 and plan year involved:

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

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

20 (3) Subtitle D (relating to consumer protec-
21 tion).

22 (c) **TERMINOLOGY.**—In this division:

23 (1) **ENROLLMENT IN EMPLOYMENT-BASED**
24 **HEALTH PLANS.**—An individual shall be treated as
25 being “enrolled” in an employment-based health

1 plan if the individual is a participant or beneficiary
2 (as such terms are defined in section 3(7) and 3(8),
3 respectively, of the Employee Retirement Income Se-
4 curity Act of 1974) in such plan.

5 (2) INDIVIDUAL AND GROUP HEALTH INSUR-
6 ANCE COVERAGE.—The terms “individual health in-
7 surance coverage” and “group health insurance cov-
8 erage” mean health insurance coverage offered in
9 the individual market or large or small group mar-
10 ket, respectively, as defined in section 2791 of the
11 Public Health Service Act.

12 **SEC. 102. PROTECTING THE CHOICE TO KEEP CURRENT**
13 **COVERAGE.**

14 (a) GRANDFATHERED HEALTH INSURANCE COV-
15 ERAGE DEFINED.—Subject to the succeeding provisions of
16 this section, for purposes of establishing acceptable cov-
17 erage under this division, the term “grandfathered health
18 insurance coverage” means individual health insurance
19 coverage that is offered and in force and effect before the
20 first day of Y1 if the following conditions are met:

21 (1) LIMITATION ON NEW ENROLLMENT.—

22 (A) IN GENERAL.—Except as provided in
23 this paragraph, the individual health insurance
24 issuer offering such coverage does not enroll
25 any individual in such coverage if the first ef-

1 fective date of coverage is on or after the first
2 day of Y1.

3 (B) DEPENDENT COVERAGE PER-
4 MITTED.—Subparagraph (A) shall not affect
5 the subsequent enrollment of a dependent of an
6 individual who is covered as of such first day.

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

13 (3) RESTRICTIONS ON PREMIUM INCREASES.—
14 The issuer cannot vary the percentage increase in
15 the premium for a risk group of enrollees in specific
16 grandfathered health insurance coverage without
17 changing the premium for all enrollees in the same
18 risk group at the same rate, as specified by the
19 Commissioner.

20 (b) GRACE PERIOD FOR CURRENT EMPLOYMENT-
21 BASED HEALTH PLANS.—

22 (1) GRACE PERIOD.—

23 (A) IN GENERAL.—The Commissioner
24 shall establish a grace period whereby, for plan
25 years beginning after the end of the 5-year pe-

1 riod beginning with Y1, an employment-based
2 health plan in operation as of the day before
3 the first day of Y1 must meet the same require-
4 ments as apply to a qualified health benefits
5 plan under section 101, including the essential
6 benefit package requirement under section 121.

7 (B) EXCEPTION FOR LIMITED BENEFITS
8 PLANS.—Subparagraph (A) shall not apply to
9 an employment-based health plan in which the
10 coverage consists only of one or more of the fol-
11 lowing:

12 (i) Any coverage described in section
13 3001(a)(1)(B)(ii)(IV) of division B of the
14 American Recovery and Reinvestment Act
15 of 2009 (PL 111–5).

16 (ii) Excepted benefits (as defined in
17 section 733(c) of the Employee Retirement
18 Income Security Act of 1974), including
19 coverage under a specified disease or ill-
20 ness policy described in paragraph (3)(A)
21 of such section.

22 (iii) Such other limited benefits as the
23 Commissioner may specify.

24 In no case shall an employment-based health
25 plan in which the coverage consists only of one

1 or more of the coverage or benefits described in
2 clauses (i) through (iii) be treated as acceptable
3 coverage under this division

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

9 (c) LIMITATION ON INDIVIDUAL HEALTH INSURANCE
10 COVERAGE.—

11 (1) IN GENERAL.—Individual health insurance
12 coverage that is not grandfathered health insurance
13 coverage under subsection (a) may only be offered
14 on or after the first day of Y1 as an Exchange-par-
15 ticipating health benefits plan.

16 (2) SEPARATE, EXCEPTED COVERAGE PER-
17 MITTED.—Excepted benefits (as defined in section
18 2791(c) of the Public Health Service Act) are not
19 included within the definition of health insurance
20 coverage. Nothing in paragraph (1) shall prevent the
21 offering, other than through the Health Insurance
22 Exchange, of excepted benefits so long as it is of-
23 fered and priced separately from health insurance
24 coverage.

1 **Subtitle B—Standards Guaranteing Access to Affordable Cov-**
2 **erage**
3

4 **SEC. 111. PROHIBITING PRE-EXISTING CONDITION EXCLU-**
5 **SIONS.**

6 A qualified health benefits plan may not impose any
7 pre-existing condition exclusion (as defined in section
8 2701(b)(1)(A) of the Public Health Service Act) or other-
9 wise impose any limit or condition on the coverage under
10 the plan with respect to an individual or dependent based
11 on any health status-related factors (as defined in section
12 2791(d)(9) of the Public Health Service Act) in relation
13 to the individual or dependent.

14 **SEC. 112. GUARANTEED ISSUE AND RENEWAL FOR IN-**
15 **SURED PLANS.**

16 The requirements of sections 2711 (other than sub-
17 sections (c) and (e)) and 2712 (other than paragraphs (3),
18 and (6) of subsection (b) and subsection (e)) of the Public
19 Health Service Act, relating to guaranteed availability and
20 renewability of health insurance coverage, shall apply to
21 individuals and employers in all individual and group
22 health insurance coverage, whether offered to individuals
23 or employers through the Health Insurance Exchange,
24 through any employment-based health plan, or otherwise,
25 in the same manner as such sections apply to employers

1 and health insurance coverage offered in the small group
2 market, except that such section 2712(b)(1) shall apply
3 only if, before nonrenewal or discontinuation of coverage,
4 the issuer has provided the enrollee with notice of non-
5 payment of premiums and there is a grace period during
6 which the enrollees has an opportunity to correct such
7 nonpayment. Rescissions of such coverage shall be prohib-
8 ited except in cases of fraud as defined in sections
9 2712(b)(2) of such Act.

10 **SEC. 113. INSURANCE RATING RULES.**

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

14 (1) LIMITED AGE VARIATION PERMITTED.—By
15 age (within such age categories as the Commissioner
16 shall specify) so long as the ratio of the highest such
17 premium to the lowest such premium does not ex-
18 ceed the ratio of 2 to 1.

19 (2) BY AREA.—By premium rating area (as
20 permitted by State insurance regulators or, in the
21 case of Exchange-participating health benefits plans,
22 as specified by the Commissioner in consultation
23 with such regulators).

24 (3) BY FAMILY ENROLLMENT.—By family en-
25 rollment (such as variations within categories and

1 compositions of families) so long as the ratio of the
2 premium for family enrollment (or enrollments) to
3 the premium for individual enrollment is uniform, as
4 specified under State law and consistent with rules
5 of the Commissioner.

6 (b) STUDY AND REPORTS.—

7 (1) STUDY.—The Commissioner, in coordina-
8 tion with the Secretary of Health and Human Serv-
9 ices and the Secretary of Labor, shall conduct a
10 study of the large group insured and self-insured
11 employer health care markets. Such study shall ex-
12 amine the following:

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

16 (B) The similarities and differences be-
17 tween typical insured and self-insured health
18 plans.

19 (C) The financial solvency and capital re-
20 serve levels of employers that self-insure by em-
21 ployer size.

22 (D) The risk of self-insured employers not
23 being able to pay obligations or otherwise be-
24 coming financially insolvent.

1 (E) The extent to which rating rules are
2 likely to cause adverse selection in the large
3 group market or to encourage small and mid
4 size employers to self-insure

5 (2) REPORTS.—Not later than 18 months after
6 the date of the enactment of this Act, the Commis-
7 sioner shall submit to Congress and the applicable
8 agencies a report on the study conducted under
9 paragraph (1). Such report shall include any rec-
10 ommendations the Commissioner deems appropriate
11 to ensure that the law does not provide incentives
12 for small and mid-size employers to self-insure or
13 create adverse selection in the risk pools of large
14 group insurers and self-insured employers. Not later
15 than 18 months after the first day of Y1, the Com-
16 missioner shall submit to Congress and the applica-
17 ble agencies an updated report on such study, in-
18 cluding updates on such recommendations.

19 **SEC. 114. NONDISCRIMINATION IN BENEFITS; PARITY IN**
20 **MENTAL HEALTH AND SUBSTANCE ABUSE**
21 **DISORDER BENEFITS.**

22 (a) NONDISCRIMINATION IN BENEFITS.—A qualified
23 health benefits plan shall comply with standards estab-
24 lished by the Commissioner to prohibit discrimination in
25 health benefits or benefit structures for qualifying health

1 benefits plans, building from sections 702 of Employee
2 Retirement Income Security Act of 1974, 2702 of the
3 Public Health Service Act, and section 9802 of the Inter-
4 nal Revenue Code of 1986.

5 (b) PARITY IN MENTAL HEALTH AND SUBSTANCE
6 ABUSE DISORDER BENEFITS.—To the extent such provi-
7 sions are not superceded by or inconsistent with subtitle
8 C, the provisions of section 2705 (other than subsections
9 (a)(1), (a)(2), and (c)) of section 2705 of the Public
10 Health Service Act shall apply to a qualified health bene-
11 fits plan, regardless of whether it is offered in the indi-
12 vidual or group market, in the same manner as such provi-
13 sions apply to health insurance coverage offered in the
14 large group market.

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

16 (a) IN GENERAL.—A qualified health benefits plan
17 that uses a provider network for items and services shall
18 meet such standards respecting provider networks as the
19 Commissioner may establish to assure the adequacy of
20 such networks in ensuring enrollee access to such items
21 and services and transparency in the cost-sharing differen-
22 tials between in-network coverage and out-of-network cov-
23 erage.

24 (b) PROVIDER NETWORK DEFINED.—In this divi-
25 sion, the term “provider network” means the providers

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

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

4 (a) IN GENERAL.—A qualified health benefits plan
5 shall meet a medical loss ratio as defined by the Commis-
6 sioner. For any plan year in which the qualified health
7 benefits plan does not meet such medical loss ratio, QHBP
8 offering entity shall provide in a manner specified by the
9 Commissioner for rebates to enrollees of payment suffi-
10 cient to meet such loss ratio.

11 (b) BUILDING ON INTERIM RULES.—In imple-
12 menting subsection (a), the Commissioner shall build on
13 the definition and methodology developed by the Secretary
14 of Health and Human Services under the amendments
15 made by section 161 for determining how to calculate the
16 medical loss ratio. Such methodology shall be set at the
17 highest level medical loss ratio possible that is designed
18 to ensure adequate participation by QHBP offering enti-
19 ties, competition in the health insurance market in and
20 out of the Health Insurance Exchange, and value for con-
21 sumers so that their premiums are used for services.

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

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

15 (2) ANNUAL LIMITATION.—

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

21 (B) APPLICABLE LEVEL.—The applicable
22 level specified in this subparagraph for Y1 is
23 \$5,000 for an individual and \$10,000 for a
24 family. Such levels shall be increased (rounded
25 to the nearest \$100) for each subsequent year

1 by the annual percentage increase in the Con-
2 sumer Price Index (United States city average)
3 applicable to such year.

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

9 (3) MINIMUM ACTUARIAL VALUE.—

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

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

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

24 (a) ESTABLISHMENT.—

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

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

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

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

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

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

1 Such initial appointments shall be made not later
2 than 60 days after the date of the enactment of this
3 Act.

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

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

23 (b) DUTIES.—

24 (1) RECOMMENDATIONS ON BENEFIT STAND-
25 ARDS.—The Health Benefits Advisory Committee

1 shall recommend to the Secretary of Health and
2 Human Services (in this subtitle referred to as the
3 “Secretary”) benefit standards (as defined in para-
4 graph (4)), and periodic updates to such standards.
5 In developing such recommendations, the Committee
6 shall take into account innovation in health care and
7 consider how such standards could reduce health dis-
8 parities.

9 (2) DEADLINE.—The Health Benefits Advisory
10 Committee shall recommend initial benefit standards
11 to the Secretary not later than 1 year after the date
12 of the enactment of this Act.

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

17 (4) BENEFIT STANDARDS DEFINED.—In this
18 subtitle, the term “benefit standards” means stand-
19 ards respecting—

20 (A) the essential benefits package de-
21 scribed in section 122, including categories of
22 covered treatments, items and services within
23 benefit classes, and cost-sharing; and

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

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

6 (A) ENHANCED PLAN.—The level of cost-
7 sharing for enhanced plans shall be designed so
8 that such plans have benefits that are actuari-
9 ally equivalent to approximately 85 percent of
10 the actuarial value of the benefits provided
11 under the reference benefits package described
12 in section 122(c)(3)(B).

13 (B) PREMIUM PLAN.—The level of cost-
14 sharing for premium plans shall be designed so
15 that such plans have benefits that are actuari-
16 ally equivalent to approximately 95 percent of
17 the actuarial value of the benefits provided
18 under the reference benefits package described
19 in section 122(c)(3)(B).

20 (c) OPERATIONS.—

21 (1) PER DIEM PAY.—Each member of the
22 Health Benefits Advisory Committee shall receive
23 travel expenses, including per diem in accordance
24 with applicable provisions under subchapter I of

1 chapter 57 of title 5, United States Code, and shall
2 otherwise serve without additional pay.

3 (2) MEMBERS NOT TREATED AS FEDERAL EM-
4 PLOYEES.—Members of the Health Benefits Advi-
5 sory Committee shall not be considered employees of
6 the Federal government solely by reason of any serv-
7 ice on the Committee.

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

12 (d) PUBLICATION.—The Secretary shall provide for
13 publication in the Federal Register and the posting on the
14 Internet website of the Department of Health and Human
15 Services of all recommendations made by the Health Ben-
16 efits Advisory Committee under this section.

17 **SEC. 124. PROCESS FOR ADOPTION OF RECOMMENDA-**
18 **TIONS; ADOPTION OF BENEFIT STANDARDS.**

19 (a) PROCESS FOR ADOPTION OF RECOMMENDA-
20 TIONS.—

21 (1) REVIEW OF RECOMMENDED STANDARDS.—
22 Not later than 45 days after the date of receipt of
23 benefit standards recommended under section 123
24 (including such standards as modified under para-
25 graph (2)(B)), the Secretary shall review such

1 standards and shall determine whether to propose
2 adoption of such standards as a package.

3 (2) DETERMINATION TO ADOPT STANDARDS.—

4 If the Secretary determines—

5 (A) to propose adoption of benefit stand-
6 ards so recommended as a package, the Sec-
7 retary shall, by regulation under section 553 of
8 title 5, United States Code, propose adoption
9 such standards; or

10 (B) not to propose adoption of such stand-
11 ards as a package, the Secretary shall notify
12 the Health Benefits Advisory Committee in
13 writing of such determination and the reasons
14 for not proposing the adoption of such rec-
15 ommendation and provide the Committee with a
16 further opportunity to modify its previous rec-
17 ommendations and submit new recommenda-
18 tions to the Secretary on a timely basis.

19 (3) CONTINGENCY.—If, because of the applica-
20 tion of paragraph (2)(B), the Secretary would other-
21 wise be unable to propose initial adoption of such
22 recommended standards by the deadline specified in
23 subsection (b)(1), the Secretary shall, by regulation
24 under section 553 of title 5, United States Code,

1 propose adoption of initial benefit standards by such
2 deadline.

3 (4) PUBLICATION.—The Secretary shall provide
4 for publication in the Federal Register of all deter-
5 minations made by the Secretary under this sub-
6 section.

7 (b) ADOPTION OF STANDARDS.—

8 (1) INITIAL STANDARDS.—Not later than 18
9 months after the date of the enactment of this Act,
10 the Secretary shall, through the rulemaking process
11 consistent with subsection (a), adopt an initial set of
12 benefit standards.

13 (2) PERIODIC UPDATING STANDARDS.—Under
14 subsection (a), the Secretary shall provide for the
15 periodic updating of the benefit standards previously
16 adopted under this section.

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

1 **Subtitle D—Additional Consumer**
2 **Protections**

3 **SEC. 131. REQUIRING FAIR MARKETING PRACTICES BY**
4 **HEALTH INSURERS.**

5 The Commissioner shall establish uniform marketing
6 standards that all insured QHBP offering entities shall
7 meet.

8 **SEC. 132. REQUIRING FAIR GRIEVANCE AND APPEALS**
9 **MECHANISMS.**

10 (a) **IN GENERAL.**—A QHBP offering entity shall pro-
11 vide for timely grievance and appeals mechanisms that the
12 Commissioner shall establish.

13 (b) **INTERNAL CLAIMS AND APPEALS PROCESS.**—
14 Under a qualified health benefits plan the QHBP offering
15 entity shall provide an internal claims and appeals process
16 that initially incorporates the claims and appeals proce-
17 dures (including urgent claims) set forth at section
18 2560.503–1 of title 29, Code of Federal Regulations, as
19 published on November 21, 2000 (65 Fed. Reg. 70246)
20 and shall update such process in accordance with any
21 standards that the Commissioner may establish.

22 (c) **EXTERNAL REVIEW PROCESS.**—

23 (1) **IN GENERAL.**—The Commissioner shall es-
24 tablish an external review process (including proce-
25 dures for expedited reviews of urgent claims) that

1 provides for an impartial, independent, and de novo
2 review of denied claims under this division.

3 (2) **REQUIRING FAIR GRIEVANCE AND APPEALS**
4 **MECHANISMS.**—A determination made, with respect
5 to a qualified health benefits plan offered by a
6 QHBP offering entity, under the external review
7 process established under this subsection shall be
8 binding on the plan and the entity.

9 (d) **CONSTRUCTION.**—Nothing in this section shall be
10 construed as affecting the availability of judicial review
11 under State law for adverse decisions under subsection (b)
12 or (c), subject to section 151.

13 **SEC. 133. REQUIRING INFORMATION TRANSPARENCY AND**
14 **PLAN DISCLOSURE.**

15 (a) **ACCURATE AND TIMELY DISCLOSURE.**—

16 (1) **IN GENERAL.**—A qualified health benefits
17 plan shall comply with standards established by the
18 Commissioner for the accurate and timely disclosure
19 of plan documents, plan terms and conditions,
20 claims payment policies and practices, periodic fi-
21 nancial disclosure, data on enrollment, data on
22 disenrollment, data on the number of claims denials,
23 data on rating practices, information on cost-sharing
24 and payments with respect to any out-of-network
25 coverage, and other information as determined ap-

1 appropriate by the Commissioner. The Commissioner
2 shall require that such disclosure be provided in
3 plain language.

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

11 (3) GUIDANCE.—The Commissioner shall de-
12 velop and issue guidance on best practices of plain
13 language writing.

14 (b) CONTRACTING REIMBURSEMENT.—A qualified
15 health benefits plan shall comply with standards estab-
16 lished by the Commissioner to ensure transparency to each
17 health care provider relating to reimbursement arrange-
18 ments between such plan and such provider.

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

1 **SEC. 134. APPLICATION TO QUALIFIED HEALTH BENEFITS**
2 **PLANS NOT OFFERED THROUGH THE**
3 **HEALTH INSURANCE EXCHANGE.**

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

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

9 A QHBP offering entity shall comply with the re-
10 quirements of section 1857(f) of the Social Security Act
11 with respect to a qualified health benefits plan it offers
12 in the same manner an Medicare Advantage organization
13 is required to comply with such requirements with respect
14 to a Medicare Advantage plan it offers under part C of
15 Medicare.

16 **SEC. 136. STANDARDIZED RULES FOR COORDINATION AND**
17 **SUBROGATION OF BENEFITS.**

18 The Commissioner shall establish standards for the
19 coordination and subrogation of benefits and reimburse-
20 ment of payments in cases involving individuals and mul-
21 tiple plan coverage.

22 **SEC. 137. APPLICATION OF ADMINISTRATIVE SIMPLIFICA-**
23 **TION.**

24 A QHBP offering entity is required to comply with
25 standards for electronic financial and administrative

1 transactions under section 1173A of the Social Security
2 Act, added by section 163(a).

3 **Subtitle E—Governance**

4 **SEC. 141. HEALTH CHOICES ADMINISTRATION; HEALTH**
5 **CHOICES COMMISSIONER.**

6 (a) IN GENERAL.—There is hereby established, as an
7 independent agency in the executive branch of the Govern-
8 ment, a Health Choices Administration (in this division
9 referred to as the “Administration”).

10 (b) COMMISSIONER.—

11 (1) IN GENERAL.—The Administration shall be
12 headed by a Health Choices Commissioner (in this
13 division referred to as the “Commissioner”) who
14 shall be appointed by the President, by and with the
15 advice and consent of the Senate.

16 (2) COMPENSATION; ETC.—The provisions of
17 paragraphs (2), (5) and (7) of subsection (a) (relat-
18 ing to compensation, terms, general powers, rule-
19 making, and delegation) of section 702 of the Social
20 Security Act (42 U.S.C. 902) shall apply to the
21 Commissioner and the Administration in the same
22 manner as such provisions apply to the Commis-
23 sioner of Social Security and the Social Security Ad-
24 ministration.

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

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

4 (1) QUALIFIED PLAN STANDARDS.—The estab-
5 lishment of qualified health benefits plan standards
6 under this title, including the enforcement of such
7 standards in coordination with State insurance regu-
8 lators and the Secretaries of Labor and the Treas-
9 ury.

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

13 (3) INDIVIDUAL AFFORDABILITY CREDITS.—
14 The administration of individual affordability credits
15 under subtitle C of title II, including determination
16 of eligibility for such credits.

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

19 (b) PROMOTING ACCOUNTABILITY.—

20 (1) IN GENERAL.—The Commissioner shall un-
21 dertake activities in accordance with this subtitle to
22 promote accountability of QHBP offering entities in
23 meeting Federal health insurance requirements, re-
24 gardless of whether such accountability is with re-
25 spect to qualified health benefits plans offered

1 through the Health Insurance Exchange or outside
2 of such Exchange.

3 (2) COMPLIANCE EXAMINATION AND AUDITS.—

4 (A) IN GENERAL.—The commissioner
5 shall, in coordination with States, conduct au-
6 dits of qualified health benefits plan compliance
7 with Federal requirements. Such audits may
8 include random compliance audits and targeted
9 audits in response to complaints or other sus-
10 pected non-compliance.

11 (B) RECOUPMENT OF COSTS IN CONNEX-
12 TION WITH EXAMINATION AND AUDITS.—The
13 Commissioner is authorized to recoup from
14 qualified health benefits plans reimbursement
15 for the costs of such examinations and audit of
16 such QHBP offering entities.

17 (c) DATA COLLECTION.—The Commissioner shall
18 collect data for purposes of carrying out the Commis-
19 sioner's duties, including for purposes of promoting qual-
20 ity and value, protecting consumers, and addressing dis-
21 parities in health and health care and may share such data
22 with the Secretary of Health and Human Services.

23 (d) SANCTIONS AUTHORITY.—

24 (1) IN GENERAL.—In the case that the Com-
25 missioner determines that a QHBP offering entity

1 violates a requirement of this title, the Commis-
2 sioner may, in coordination with State insurance
3 regulators and the Secretary of Labor, provide, in
4 addition to any other remedies authorized by law,
5 for any of the remedies described in paragraph (2).

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

9 (A) civil money penalties of not more than
10 the amount that would be applicable under
11 similar circumstances for similar violations
12 under section 1857(g) of the Social Security
13 Act;

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

21 (C) in the case of an Exchange-partici-
22 pating health benefits plan, suspension of pay-
23 ment to the entity under the Health Insurance
24 Exchange for individuals enrolled in such plan
25 after the date the Commissioner notifies the en-

1 tity of a determination under paragraph (1)
2 and until the Secretary is satisfied that the
3 basis for such determination has been corrected
4 and is not likely to recur; or

5 (D) working with State insurance regu-
6 lators to terminate plans for repeated failure by
7 the offering entity to meet the requirements of
8 this title.

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

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

1 208 of the Intergovernmental Personnel Act of 1970 (42
2 U.S.C. 4728).

3 **SEC. 143. CONSULTATION AND COORDINATION.**

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

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

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

18 (3) Other appropriate Federal agencies.

19 (4) Indian tribes and tribal organizations.

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

24 (b) COORDINATION.—

1 (1) IN GENERAL.—In carrying out the func-
2 tions of the Commissioner, including with respect to
3 the enforcement of the provisions of this division,
4 the Commissioner shall work in coordination with
5 existing Federal and State entities to the maximum
6 extent feasible consistent with this division and in a
7 manner that prevents conflicts of interest in duties
8 and ensures effective enforcement.

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

14 **SEC. 144. HEALTH INSURANCE OMBUDSMAN.**

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

20 (b) DUTIES.—The Qualified Health Benefits Plan
21 Ombudsman shall, in a linguistically appropriate man-
22 ner—

23 (1) receive complaints, grievances, and requests
24 for information submitted by individuals;

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

4 (A) helping individuals determine the rel-
5 evant information needed to seek an appeal of
6 a decision or determination;

7 (B) assistance to such individuals with any
8 problems arising from disenrollment from such
9 a plan;

10 (C) assistance to such individuals in choos-
11 ing a qualified health benefits plan in which to
12 enroll; and

13 (D) assistance to such individuals in pre-
14 senting information under subtitle C (relating
15 to affordability credits); and

16 (3) submit annual reports to Congress and the
17 Commissioner that describe the activities of the Om-
18 budsman and that include such recommendations for
19 improvement in the administration of this division as
20 the Ombudsman determines appropriate. The Om-
21 budsman shall not serve as an advocate for any in-
22 creases in payments or new coverage of services, but
23 may identify issues and problems in payment or cov-
24 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 incorporated 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 **TITLE II—HEALTH INSURANCE**
2 **EXCHANGE AND RELATED**
3 **PROVISIONS**

4 **Subtitle A—Health Insurance**
5 **Exchange**

6 **SEC. 201. ESTABLISHMENT OF HEALTH INSURANCE EX-**
7 **CHANGE; OUTLINE OF DUTIES; DEFINITIONS.**

8 (a) ESTABLISHMENT.—There is established within
9 the Health Choices Administration and under the direc-
10 tion of the Commissioner a Health Insurance Exchange
11 in order to facilitate access of individuals and employers,
12 through a transparent process, to a variety of choices of
13 affordable, quality health insurance coverage, including a
14 public health insurance option.

15 (b) OUTLINE OF DUTIES OF COMMISSIONER.—In ac-
16 cordance with this subtitle and in coordination with appro-
17 priate Federal and State officials as provided under sec-
18 tion 143(b), the Commissioner shall—

19 (1) under section 204 establish standards for,
20 accept bids from, and negotiate and enter into con-
21 tracts with, QHBP offering entities for the offering
22 of health benefits plans through the Health Insur-
23 ance Exchange, with different levels of benefits re-
24 quired under section 203, and including with respect
25 to oversight and enforcement;

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

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

8 (c) **EXCHANGE-PARTICIPATING HEALTH BENEFITS**
9 **PLAN DEFINED.**—In this division, the term “Exchange-
10 participating health benefits plan” means a qualified
11 health benefits plan that is offered through the Health In-
12 surance Exchange.

13 **SEC. 202. EXCHANGE-ELIGIBLE INDIVIDUALS AND EMPLOY-**
14 **ERS.**

15 (a) **ACCESS TO COVERAGE.**—In accordance with this
16 section, all individuals are eligible to obtain coverage
17 through enrollment in an Exchange-participating health
18 benefits plan offered through the Health Insurance Ex-
19 change unless such individuals are enrolled in another
20 qualified health benefits plan or other acceptable coverage.

21 (b) **DEFINITIONS.**—In this division:

22 (1) **EXCHANGE-ELIGIBLE INDIVIDUAL.**—The
23 term “Exchange-eligible individual” means an indi-
24 vidual who is eligible under this section to be en-
25 rolled through the Health Insurance Exchange in an

1 Exchange-participating health benefits plan and,
2 with respect to family coverage, includes dependents
3 of such individual.

4 (2) EXCHANGE-ELIGIBLE EMPLOYER.—The
5 term “Exchange-eligible employer” means an em-
6 ployer that is eligible under this section to enroll
7 through the Health Insurance Exchange employees
8 of the employer (and their dependents) in Exchange-
9 eligible health benefits plans.

10 (3) EMPLOYMENT-RELATED DEFINITIONS.—
11 The terms “employer”, “employee”, “full-time em-
12 ployee”, and “part-time employee” have the mean-
13 ings given such terms by the Commissioner for pur-
14 poses of this division.

15 (c) TRANSITION.—Individuals and employers shall
16 only be eligible to enroll or participate in the Health Insur-
17 ance Exchange in accordance with the following transition
18 schedule:

19 (1) FIRST YEAR.—In Y1 (as defined in section
20 100(c))—

21 (A) individuals described in subsection
22 (d)(1), including individuals described in para-
23 graphs (3) and (4) of subsection (d); and

24 (B) smallest employers described in sub-
25 section (e)(1).

1 (2) SECOND YEAR.—In Y2—

2 (A) individuals and employers described in
3 paragraph (1); and

4 (B) smaller employers described in sub-
5 section (e)(2).

6 (3) THIRD AND SUBSEQUENT YEARS.—In Y3
7 and subsequent years—

8 (A) individuals and employers described in
9 paragraph (2); and

10 (B) larger employers as permitted by the
11 Commissioner under subsection (e)(3).

12 (d) INDIVIDUALS.—

13 (1) INDIVIDUAL DESCRIBED.—Subject to the
14 succeeding provisions of this subsection, an indi-
15 vidual described in this paragraph is an individual
16 who—

17 (A) is not enrolled in coverage described in
18 subparagraphs (C) through (F) of paragraph
19 (2); and

20 (B) is not enrolled in coverage as a full-
21 time employee (or as a dependent of such an
22 employee) under a group health plan if the cov-
23 erage and an employer contribution under the
24 plan meet the requirements of section 312.

1 For purposes of subparagraph (B), in the case of an
2 individual who is self-employed, who has at least 1
3 employee, and who meets the requirements of section
4 312, such individual shall be deemed a full-time em-
5 ployee described in such subparagraph.

6 (2) ACCEPTABLE COVERAGE.—For purposes of
7 this division, the term “acceptable coverage” means
8 any of the following:

9 (A) QUALIFIED HEALTH BENEFITS PLAN
10 COVERAGE.—Coverage under a qualified health
11 benefits plan.

12 (B) GRANDFATHERED HEALTH INSURANCE
13 COVERAGE; COVERAGE UNDER CURRENT GROUP
14 HEALTH PLAN.—Coverage under a grand-
15 fathered health insurance coverage (as defined
16 in subsection (a) of section 102) or under a
17 current group health plan (described in sub-
18 section (b) of such section).

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

21 (D) MEDICAID.—Coverage for medical as-
22 sistance under title XIX of the Social Security
23 Act, excluding such coverage that is only avail-
24 able because of the application of subsection
25 (u), (z), or (aa) of section 1902 of such Act

1 (E) MEMBERS OF THE ARMED FORCES
2 AND DEPENDENTS (INCLUDING TRICARE).—
3 Coverage under chapter 55 of title 10, United
4 States Code, including similar coverage fur-
5 nished under section 1781 of title 38 of such
6 Code.

7 (F) VA.—Coverage under the veteran’s
8 health care program under chapter 17 of title
9 38, United States Code, but only if the cov-
10 erage for the individual involved is determined
11 by the Commissioner in coordination with the
12 Secretary of Treasury to be not less than a level
13 specified by the Commissioner and Secretary of
14 Veteran’s Affairs, in coordination with the Sec-
15 retary of Treasury, based on the individual’s
16 priority for services as provided under section
17 1705(a) of such title.

18 (G) OTHER COVERAGE.—Such other health
19 benefits coverage, such as a State health bene-
20 fits risk pool, as the Commissioner, in coordina-
21 tion with the Secretary of the Treasury, recog-
22 nizes for purposes of this paragraph.

23 The Commissioner shall make determinations under
24 this paragraph in coordination with the Secretary of
25 the Treasury.

1 (3) TREATMENT OF CERTAIN NON-TRADI-
2 TIONAL MEDICAID ELIGIBLE INDIVIDUALS.—An indi-
3 vidual who is a non-traditional Medicaid eligible in-
4 dividual (as defined in section 205(e)(4)(C)) in a
5 State may be an Exchange-eligible individual if the
6 individual was enrolled in a qualified health benefits
7 plan, grandfathered health insurance coverage, or
8 current group health plan during the 6 months be-
9 fore the individual became a non-traditional Med-
10 icaid eligible individual. During the period in which
11 such an individual has chosen to enroll in an Ex-
12 change-participating health benefits plan, the indi-
13 vidual is not also eligible for medical assistance
14 under Medicaid.

15 (4) CONTINUING ELIGIBILITY PERMITTED.—

16 (A) IN GENERAL.—Except as provided in
17 subparagraph (B), once an individual qualifies
18 as an Exchange-eligible individual under this
19 subsection (including as an employee or depend-
20 ent of an employee of an Exchange-eligible em-
21 ployer) and enrolls under an Exchange-partici-
22 pating health benefits plan through the Health
23 Insurance Exchange, the individual shall con-
24 tinue to be treated as an Exchange-eligible indi-
25 vidual until the individual is no longer enrolled

1 with an Exchange-participating health benefits
2 plan.

3 (B) EXCEPTIONS.—

4 (i) IN GENERAL.—Subparagraph (A)
5 shall not apply to an individual once the
6 individual becomes eligible for coverage—

7 (I) under part A of the Medicare
8 program;

9 (II) under the Medicaid program
10 as a Medicaid eligible individual, ex-
11 cept as permitted under paragraph
12 (3) or clause (ii); or

13 (III) in such other circumstances
14 as the Commissioner may provide.

15 (ii) TRANSITION PERIOD.—In the case
16 described in clause (i)(II), the Commis-
17 sioner shall permit the individual to con-
18 tinue treatment under subparagraph (A)
19 until such limited time as the Commis-
20 sioner determines it is administratively fea-
21 sible, consistent with minimizing disruption
22 in the individual's access to health care.

23 (e) EMPLOYERS.—

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

4 (2) SMALLER EMPLOYERS.—Subject to para-
5 graph (4), smaller employers described in this para-
6 graph are employers that are not smallest employers
7 described in paragraph (1) and have 20 or fewer em-
8 ployees.

9 (3) LARGER EMPLOYERS.—

10 (A) IN GENERAL.—Beginning with Y3, the
11 Commissioner may permit employers not de-
12 scribed in paragraph (1) or (2) to be Exchange-
13 eligible employers.

14 (B) PHASE-IN.—In applying subparagraph
15 (A), the Commissioner may phase-in the appli-
16 cation of such subparagraph based on the num-
17 ber of full-time employees of an employer and
18 such other considerations as the Commissioner
19 deems appropriate.

20 (4) CONTINUING ELIGIBILITY.—Once an em-
21 ployer is permitted to be an Exchange-eligible em-
22 ployer under this subsection and enrolls employees
23 through the Health Insurance Exchange, the em-
24 ployer shall continue to be treated as an Exchange-
25 eligible employer for each subsequent plan year re-

1 regardless of the number of employees involved unless
2 and until the employer meets the requirement of sec-
3 tion 311(a) through paragraph (1) of such section
4 by offering a group health plan and not through of-
5 fering Exchange-participating health benefits plan.

6 (5) EMPLOYER PARTICIPATION AND CONTRIBU-
7 TIONS.—

8 (A) SATISFACTION OF EMPLOYER RESPON-
9 SIBILITY.—For any year in which an employer
10 is an Exchange-eligible employer, such employer
11 may meet the requirements of section 312 with
12 respect to employees of such employer by offer-
13 ing such employees the option of enrolling with
14 Exchange-participating health benefits plans
15 through the Health Insurance Exchange con-
16 sistent with the provisions of subtitle B of title
17 III.

18 (B) EMPLOYEE CHOICE.—Any employee
19 offered Exchange-participating health benefits
20 plans by the employer of such employee under
21 subparagraph (A) may choose coverage under
22 any such plan. That choice includes, with re-
23 spect to family coverage, coverage of the de-
24 pendants of such employee.

1 (6) AFFILIATED GROUPS.—Any employer which
2 is part of a group of employers who are treated as
3 a single employer under subsection (b), (c), (m), or
4 (o) of section 414 of the Internal Revenue Code of
5 1986 shall be treated, for purposes of this subtitle,
6 as a single employer.

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

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

19 (g) SURVEYS OF INDIVIDUALS AND EMPLOYERS.—
20 The Commissioner shall provide for periodic surveys of
21 Exchange-eligible individuals and employers concerning
22 satisfaction of such individuals and employers with the
23 Health Insurance Exchange and Exchange-participating
24 health benefits plans.

25 (h) EXCHANGE ACCESS STUDY.—

1 (1) IN GENERAL.—The Commissioner shall con-
2 duct a study of access to the Health Insurance Ex-
3 change for individuals and for employers, including
4 individuals and employers who are not eligible and
5 enrolled in Exchange-participating health benefits
6 plans. The goal of the study is to determine if there
7 are significant groups and types of individuals and
8 employers who are not Exchange eligible individuals
9 or employers, but who would have improved benefits
10 and affordability if made eligible for coverage in the
11 Exchange.

12 (2) ITEMS INCLUDED IN STUDY.—Such study
13 also shall examine—

14 (A) the terms, conditions, and affordability
15 of group health coverage offered by employers
16 and QHBP offering entities outside of the Ex-
17 change compared to Exchange-participating
18 health benefits plans; and

19 (B) the affordability-test standard for ac-
20 cess of certain employed individuals to coverage
21 in the Health Insurance Exchange.

22 (3) REPORT.—Not later than January 1 of Y3,
23 in Y6, and thereafter, the Commissioner shall sub-
24 mit to Congress on the study conducted under this
25 subsection and shall include in such report rec-

1 ommendations regarding changes in standards for
2 Exchange eligibility for for individuals and employ-
3 ers.

4 **SEC. 203. BENEFITS PACKAGE LEVELS.**

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

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

15 (1) REQUIRED OFFERING OF BASIC PLAN.—The
16 entity offers only one basic plan for such service
17 area.

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

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

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

5 All such plans may be offered under a single contract with
6 the Commissioner.

7 (c) SPECIFICATION OF BENEFIT LEVELS FOR
8 PLANS.—

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

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

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

24 (2) BASIC PLAN.—

1 (A) IN GENERAL.—A basic plan shall offer
2 the essential benefits package required under
3 title I for a qualified health benefits plan.

4 (B) TIERED COST-SHARING FOR AFFORD-
5 ABLE CREDIT ELIGIBLE INDIVIDUALS.—In the
6 case of an affordable credit eligible individual
7 (as defined in section 242(a)(1)) enrolled in an
8 Exchange-participating health benefits plan, the
9 benefits under a basic plan are modified to pro-
10 vide for the reduced cost-sharing for the income
11 tier applicable to the individual under section
12 244(c).

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

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

21 (5) PREMIUM-PLUS PLAN.—A premium-plus
22 plan is a premium plan that also provides additional
23 benefits, such as adult oral health and vision care,
24 approved by the Commissioner. The portion of the

1 premium that is attributable to such additional ben-
2 efits shall be separately specified.

3 (6) RANGE OF PERMISSIBLE VARIATION IN
4 COST-SHARING.—The Commissioner shall establish a
5 permissible range of variation of cost-sharing for
6 each basic, enhanced, and premium plan, except with
7 respect to any benefit for which there is no cost-
8 sharing permitted under the essential benefits pack-
9 age. Such variation shall permit a variation of not
10 more than plus (or minus) 10 percent in cost-shar-
11 ing with respect to each benefit category specified
12 under section 122.

13 (d) TREATMENT OF STATE BENEFIT MANDATES.—
14 Insofar as a State requires a health insurance issuer offer-
15 ing health insurance coverage to include benefits beyond
16 the essential benefits package, such requirement shall con-
17 tinue to apply to an Exchange-participating health bene-
18 fits plan, if the State has entered into an arrangement
19 satisfactory to the Commissioner to reimburse the Com-
20 missioner for the amount of any net increase in afford-
21 ability premium credits under subtitle C as a result of an
22 increase in premium in basic plans as a result of applica-
23 tion of such requirement.

1 **SEC. 204. CONTRACTS FOR THE OFFERING OF EXCHANGE-**
2 **PARTICIPATING HEALTH BENEFITS PLANS.**

3 (a) CONTRACTING DUTIES.—In carrying out section
4 201(b)(1) and consistent with this subtitle:

5 (1) OFFERING ENTITY AND PLAN STAND-
6 ARDS.—The Commissioner shall—

7 (A) establish standards necessary to imple-
8 ment the requirements of this title and title I
9 for—

10 (i) QHBP offering entities for the of-
11 fering of an Exchange-participating health
12 benefits plan; and

13 (ii) for Exchange-participating health
14 benefits plans; and

15 (B) certify QHBP offering entities and
16 qualified health benefits plans as meeting such
17 standards and requirements of this title and
18 title I for purposes of this subtitle.

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

21 (A) solicit bids from QHBP offering enti-
22 ties for the offering of Exchange-participating
23 health benefits plans;

24 (B) based upon a review of such bids, ne-
25 gotiate with such entities for the offering of
26 such plans; and

1 (C) enter into contracts with such entities
2 for the offering of such plans through the
3 Health Insurance Exchange under terms (con-
4 sistent with this title) negotiated between the
5 Commissioner and such entities.

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

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

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

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

1 (3) IMPLEMENTING AFFORDABILITY CRED-
2 ITS.—The entity shall provide for implementation of
3 the affordability credits provided for enrollees under
4 subtitle C, including the reduction in cost-sharing
5 under section 244(c).

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

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

17 (6) ESSENTIAL COMMUNITY PROVIDERS.—With
18 respect to the basic plan offered by the entity, the
19 entity shall contract for outpatient services with cov-
20 ered entities (as defined in section 340B(a)(4) of the
21 Public Health Service Act, as in effect as of July 1,
22 2009). The Commissioner shall specify the extent to
23 which and manner in which the previous sentence
24 shall apply in the case of a basic plan with respect
25 to which the Commissioner determines provides sub-

1 stantially all benefits through a health maintenance
2 organization, as defined in section 2791(b)(3) of the
3 Public Health Service Act.

4 (7) CULTURALLY AND LINGUISTICALLY APPRO-
5 PRIATE SERVICES AND COMMUNICATIONS.—The en-
6 tity shall provide for culturally and linguistically ap-
7 propriate communication and health services.

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

17 (c) CONTRACTS.—

18 (1) BID APPLICATION.—To be eligible to enter
19 into a contract under this section, a QHBP offering
20 entity shall submit to the Commissioner a bid at
21 such time, in such manner, and containing such in-
22 formation as the Commissioner may require.

23 (2) TERM.—Each contract with a QHBP offer-
24 ing entity under this section shall be for a term of
25 not less than one year, but may be made automati-

1 cally renewable from term to term in the absence of
2 notice of termination by either party.

3 (3) ENFORCEMENT OF NETWORK ADEQUACY.—

4 In the case of a health benefits plan of a QHBP of-
5 fering entity that uses a provider network, the con-
6 tract under this section with the entity shall provide
7 that if—

8 (A) the Commissioner determines that
9 such provider network does not meet such
10 standards as the Commissioner shall establish
11 under section 115; and

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

15 then any cost-sharing for such item or service shall
16 be equal to the amount of such cost-sharing that
17 would be imposed if such item or service was fur-
18 nished by a provider within such network.

19 (4) OVERSIGHT AND ENFORCEMENT RESPON-
20 SIBILITIES.—The Commissioner shall establish proc-
21 esses, in coordination with State insurance regu-
22 lators, to oversee, monitor, and enforce applicable re-
23 quirements of this title with respect to QHBP offer-
24 ing entities offering Exchange-participating health
25 benefits plans and such plans, including the mar-

1 keting of such plans. Such processes shall include
2 the following:

3 (A) GRIEVANCE AND COMPLAINT MECHA-
4 NISMS.—The Commissioner shall establish, in
5 coordination with State insurance regulators, a
6 process under which Exchange-eligible individ-
7 uals and employers may file complaints con-
8 cerning violations of such standards.

9 (B) ENFORCEMENT.—In carrying out au-
10 thorities under this division relating to the
11 Health Insurance Exchange, the Commissioner
12 may impose one or more of the intermediate
13 sanctions described in section 142(c).

14 (C) TERMINATION.—

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

1 (I) the Commissioner provides
2 the entity with the reasonable oppor-
3 tunity to develop and implement a
4 corrective action plan to correct the
5 deficiencies that were the basis of the
6 Commissioner's determination; and

7 (II) the Commissioner provides
8 the entity with reasonable notice and
9 opportunity for hearing (including the
10 right to appeal an initial decision) be-
11 fore terminating the contract.

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

22 (D) CONSTRUCTION.—Nothing in this sub-
23 section shall be construed as preventing the ap-
24 plication of other sanctions under subtitle E of

1 title I with respect to an entity for a violation
2 of such a requirement.

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

7 (a) IN GENERAL.—

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

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

23 (3) ENROLLMENT.—The Commissioner shall es-
24 tablish and carry out an enrollment process for Ex-
25 change-eligible individuals and employers, including

1 at community locations, in accordance with sub-
2 section (b).

3 (b) ENROLLMENT PROCESS.—

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

10 (2) ENROLLMENT PERIODS.—

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

24 (B) SPECIAL ENROLLMENT.—The Com-
25 missioner shall also provide for special enroll-

1 ment periods to take into account special cir-
2 cumstances of individuals and employers, such
3 as an individual who—

4 (i) loses acceptable coverage;

5 (ii) experiences a change in marital or
6 other dependent status;

7 (iii) moves outside the service area of
8 the Exchange-participating health benefits
9 plan in which the individual is enrolled; or

10 (iv) experiences a significant change
11 in income.

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

20 (3) AUTOMATIC ENROLLMENT FOR NON-MED-
21 ICAID ELIGIBLE INDIVIDUALS.—

22 (A) IN GENERAL.—The Commissioner
23 shall provide for a process under which individ-
24 uals who are Exchange-eligible individuals de-
25 scribed in subparagraph (B) are automatically

1 enrolled under an appropriate Exchange-partici-
2 pating health benefits plan. Such process may
3 involve a random assignment or some other
4 form of assignment that takes into account the
5 health care providers used by the individual in-
6 volved or such other relevant factors as the
7 Commissioner may specify.

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

12 (i) AFFORDABILITY CREDIT ELIGIBLE
13 INDIVIDUALS.—The individual—

14 (I) has applied for, and been de-
15 termined eligible for, affordability
16 credits under subtitle C;

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

19 (III) does not otherwise enroll in
20 another Exchange-participating health
21 benefits plan.

22 (ii) INDIVIDUALS ENROLLED IN A
23 TERMINATED PLAN.—The individual is en-
24 rolled in an Exchange-participating health
25 benefits plan that is terminated (during or

1 at the end of a plan year) and who does
2 not otherwise enroll in another Exchange-
3 participating health benefits plan.

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

10 (c) COVERAGE INFORMATION AND ASSISTANCE.—

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

19 (2) CONSUMER ASSISTANCE WITH CHOICE.—To
20 provide assistance to Exchange-eligible individuals
21 and employers, the Commissioner shall—

22 (A) provide for the operation of a toll-free
23 telephone hotline to respond to requests for as-
24 sistance and maintain an Internet website
25 through which individuals may obtain informa-

1 tion on coverage under Exchange-participating
2 health benefits plans and file complaints;

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

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

10 (D) ensure that the Internet website de-
11 scribed in subparagraph (A) and the informa-
12 tion described in subparagraph (B) is developed
13 using plain language (as defined in section
14 133(a)(2)).

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

20 (d) SPECIAL DUTIES RELATED TO MEDICAID AND
21 CHIP.—

22 (1) COVERAGE FOR CERTAIN NEWBORNS.—

23 (A) IN GENERAL.—In the case of a child
24 born in the United States who at the time of
25 birth is not otherwise covered under acceptable

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

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

11 (ii) to have elected to enroll in Med-
12 icaid through the application of paragraph
13 (3).

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

1 vidual described in section 1902(l)(1)(B) of
2 such Act.

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

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

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

1 (e) MEDICAID COVERAGE FOR MEDICAID ELIGIBLE
2 INDIVIDUALS.—

3 (1) IN GENERAL.—

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

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

1 the State shall provide for the same periodic re-
2 determination of eligibility under Medicaid as
3 would otherwise apply if the individual had di-
4 rectly applied for medical assistance to the
5 State Medicaid agency.

6 (2) NON-TRADITIONAL MEDICAID ELIGIBLE IN-
7 DIVIDUALS.—In the case of a non-traditional Med-
8 icaid eligible individual described in section
9 202(d)(3) who elects to enroll under Medicaid under
10 paragraph (1)(A), the Commissioner shall provide
11 for the enrollment of the individual under the State
12 Medicaid plan in accordance with the Medicaid
13 memorandum of understanding under paragraph
14 (4).

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

1 tion of the provisions of this division with respect to
2 the Medicaid program. Such memorandum shall per-
3 mit the exchange of information consistent with the
4 limitations described in section 1902(a)(7) of the So-
5 cial Security Act. Nothing in this section shall be
6 construed as permitting such memorandum to mod-
7 ify or vitiate any requirement of a State Medicaid
8 plan.

9 (4) MEDICAID ELIGIBLE INDIVIDUALS.—For
10 purposes of this division:

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

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

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

23 (ii) a childless adult not described in
24 section 1902(a)(10)(A) or (C) of such Act

1 (as in effect as of the day before the date
2 of the enactment of this Act).

3 (C) NON-TRADITIONAL MEDICAID ELIGI-
4 BLE INDIVIDUAL.—The term “non-traditional
5 Medicaid eligible individual” means a Medicaid
6 eligible individual who is not a traditional Med-
7 icaid eligible individual.

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

13 **SEC. 206. OTHER FUNCTIONS.**

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

19 (b) COORDINATION OF RISK POOLING.—The Com-
20 missioner shall establish a mechanism whereby there is an
21 adjustment made of the premium amounts payable among
22 QHBP offering entities offering Exchange-participating
23 health benefits plans of premiums collected for such plans
24 that takes into account (in a manner specified by the Com-
25 missioner) the differences in the risk characteristics of in-

1 individuals and employers enrolled under the different Ex-
2 change-participating health benefits plans offered by such
3 entities so as to minimize the impact of adverse selection
4 of enrollees among the plans offered by such entities.

5 (c) SPECIAL INSPECTOR GENERAL FOR THE HEALTH
6 INSURANCE EXCHANGE.—

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

18 (2) DUTIES.—The Special Inspector General
19 shall—

20 (A) conduct, supervise, and coordinate au-
21 dits, evaluations and investigations of the
22 Health Insurance Exchange to protect the in-
23 tegrity of the Health Insurance Exchange, as
24 well as the health and welfare of participants in
25 the Exchange;

1 (B) report both to the Commissioner and
2 to the Congress regarding program and man-
3 agement problems and recommendations to cor-
4 rect them;

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

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

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

22 (4) REPORTS.—Not later than one year after
23 the confirmation of the Special Inspector General,
24 and annually thereafter, the Special Inspector Gen-
25 eral shall submit to the appropriate committees of

1 Congress a report summarizing the activities of the
2 Special Inspector General during the one year period
3 ending on the date such report is submitted.

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

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

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

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

22 (c) TRANSFERS TO TRUST FUND.—

23 (1) DEDICATED PAYMENTS.—There is hereby
24 appropriated to the Trust Fund amounts equivalent
25 to the following:

1 (A) TAXES ON INDIVIDUALS NOT OBTAIN-
2 ING ACCEPTABLE COVERAGE.—The amounts re-
3 ceived in the Treasury under section 59B of the
4 Internal Revenue Code of 1986 (relating to re-
5 quirement of health insurance coverage for indi-
6 viduals).

7 (B) EMPLOYMENT TAXES ON EMPLOYERS
8 NOT PROVIDING ACCEPTABLE COVERAGE.—The
9 amounts received in the Treasury under section
10 3111(c) of the Internal Revenue Code of 1986
11 (relating to employers electing to not provide
12 health benefits).

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

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

1 necessary reduced by the amounts deposited under
2 paragraph (1).

3 (d) APPLICATION OF CERTAIN RULES.—Rules simi-
4 lar to the rules of subchapter B of chapter 98 of the Inter-
5 nal Revenue Code of 1986 shall apply with respect to the
6 Trust Fund.

7 **SEC. 208. OPTIONAL OPERATION OF STATE-BASED HEALTH**
8 **INSURANCE EXCHANGES.**

9 (a) IN GENERAL.—If—

10 (1) a State (or group of States, subject to the
11 approval of the Commissioner) applies to the Com-
12 missioner for approval of a State-based Health In-
13 surance Exchange to operate in the State (or group
14 of States); and

15 (2) the Commissioner approves such State-
16 based Health Insurance Exchange,

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

23 (b) REQUIREMENTS FOR APPROVAL.—The Commis-
24 sioner may not approve a State-based Health Insurance

1 Exchange under this section unless the following require-
2 ments are met:

3 (1) The State-based Health Insurance Ex-
4 change must demonstrate the capacity to and pro-
5 vide assurances satisfactory to the Commissioner
6 that the State-based Health Insurance Exchange will
7 carry out the functions specified for the Health In-
8 surance Exchange in the State (or States) involved,
9 including—

10 (A) negotiating and contracting with
11 QHBP offering entities for the offering of Ex-
12 change-participating health benefits plan, which
13 satisfy the standards and requirements of this
14 title and title I;

15 (B) enrolling Exchange-eligible individuals
16 and employers in such State in such plans;

17 (C) the establishment of sufficient local of-
18 fices to meet the needs of Exchange-eligible in-
19 dividuals and employers;

20 (D) administering affordability credits
21 under subtitle B using the same methodologies
22 (and at least the same income verification
23 methods) as would otherwise apply under such
24 subtitle and at a cost to the Federal Govern-

1 ment which does exceed the cost to the Federal
2 Government if this section did not apply; and

3 (E) enforcement activities consistent with
4 federal requirements.

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

8 (3) The State provides assurances satisfactory
9 to the Commissioner that approval of such an Ex-
10 change will not result in any net increase in expendi-
11 tures to the Federal Government.

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

17 (5) Such other requirements as the Commis-
18 sioner may specify.

19 (c) CEASING OPERATION.—

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

1 based Health Insurance Exchange, with respect to
2 such State (or States).

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

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

24 (d) RETENTION OF AUTHORITY.—

1 (1) AUTHORITY RETAINED.—Enforcement au-
2 thorities of the Commissioner shall be retained by
3 the Commissioner.

4 (2) DISCRETION TO RETAIN ADDITIONAL AU-
5 THORITY.—The Commissioner may specify functions
6 of the Health Insurance Exchange that—

7 (A) may not be performed by a State-
8 based Health Insurance Exchange under this
9 section; or

10 (B) may be performed by the Commis-
11 sioner and by such a State-based Health Insur-
12 ance Exchange.

13 (e) REFERENCES.—In the case of a State-based
14 Health Insurance Exchange, except as the Commissioner
15 may otherwise specify under subsection (d), any references
16 in this subtitle to the Health Insurance Exchange or to
17 the Commissioner in the area in which the State-based
18 Health Insurance Exchange operates shall be deemed a
19 reference to the State-based Health Insurance Exchange
20 and the head of such Exchange, respectively.

21 (f) FUNDING.—In the case of a State-based Health
22 Insurance Exchange, there shall be assistance provided for
23 the operation of such Exchange in the form of a matching
24 grant with a State share of expenditures required.

1 **Subtitle B—Public Health**
2 **Insurance Option**

3 **SEC. 221. ESTABLISHMENT AND ADMINISTRATION OF A**
4 **PUBLIC HEALTH INSURANCE OPTION AS AN**
5 **EXCHANGE-QUALIFIED HEALTH BENEFITS**
6 **PLAN.**

7 (a) **ESTABLISHMENT.**—For years beginning with Y1,
8 the Secretary of Health and Human Services (in this sub-
9 title referred to as the “Secretary”) shall provide for the
10 offering of an Exchange-participating health benefits plan
11 (in this division referred to as the “public health insurance
12 option”) that ensures choice, competition, and stability of
13 affordable, high quality coverage throughout the United
14 States in accordance with this subtitle. In designing the
15 option, the Secretary’s primary responsibility is to create
16 a low-cost plan without compromising quality or access to
17 care.

18 (b) **OFFERING AS AN EXCHANGE-PARTICIPATING**
19 **HEALTH BENEFITS PLAN.**—

20 (1) **EXCLUSIVE TO THE EXCHANGE.**—The pub-
21 lic health insurance option shall only be made avail-
22 able through the Health Insurance Exchange.

23 (2) **ENSURING A LEVEL PLAYING FIELD.**—Con-
24 sistent with this subtitle, the public health insurance
25 option shall comply with requirements that are ap-

1 plicable under this title to an Exchange-participating
2 health benefits plan, including requirements related
3 to benefits, benefit levels, provider networks, notices,
4 consumer protections, and cost sharing.

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

7 (A) shall offer basic, enhanced, and pre-
8 mium plans; and

9 (B) may offer premium-plus plans.

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

23 (d) OMBUDSMAN.—The Secretary shall establish an
24 office of the ombudsman for the public health insurance
25 option which shall have duties with respect to the public

1 health insurance option similar to the duties of the Medi-
2 care Beneficiary Ombudsman under section 1808(c)(2) of
3 the Social Security Act.

4 (e) DATA COLLECTION.—The Secretary shall collect
5 such data as may be required to establish premiums and
6 payment rates for the public health insurance option and
7 for other purposes under this subtitle, including to im-
8 prove quality and to reduce racial, ethnic, and other dis-
9 parities in health and health care.

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

14 (g) ACCESS TO FEDERAL COURTS.—The provisions
15 of Medicare (and related provisions of title II of the Social
16 Security Act) relating to access of Medicare beneficiaries
17 to Federal courts for the enforcement of rights under
18 Medicare, including with respect to amounts in con-
19 troversy, shall apply to the public health insurance option
20 and individuals enrolled under such option under this title
21 in the same manner as such provisions apply to Medicare
22 and Medicare beneficiaries.

23 **SEC. 222. PREMIUMS AND FINANCING.**

24 (a) ESTABLISHMENT OF PREMIUMS.—

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

4 (A) that complies with the premium rules
5 established by the Commissioner under section
6 113 for Exchange-participating health benefit
7 plans; and

8 (B) at a level sufficient to fully finance the
9 costs of—

10 (i) health benefits provided by the
11 public health insurance option; and

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

14 (2) CONTINGENCY MARGIN.—In establishing
15 premium rates under paragraph (1), the Secretary
16 shall include an appropriate amount for a contin-
17 gency margin.

18 (b) ACCOUNT.—

19 (1) ESTABLISHMENT.—There is established in
20 the Treasury of the United States an Account for
21 the receipts and disbursements attributable to the
22 operation of the public health insurance option, in-
23 cluding the start-up funding under paragraph (2).
24 Section 1854(g) of the Social Security Act shall
25 apply to receipts described in the previous sentence

1 in the same manner as such section applies to pay-
2 ments or premiums described in such section.

3 (2) START-UP FUNDING.—

4 (A) IN GENERAL.—In order to provide for
5 the establishment of the public health insurance
6 option there is hereby appropriated to the Sec-
7 retary, out of any funds in the Treasury not
8 otherwise appropriated, \$2,000,000,000. In
9 order to provide for initial claims reserves be-
10 fore the collection of premiums, there is hereby
11 appropriated to the Secretary, out of any funds
12 in the Treasury not otherwise appropriated,
13 such sums as necessary to cover 90 days worth
14 of claims reserves based on projected enroll-
15 ment.

16 (B) AMORTIZATION OF START-UP FUND-
17 ING.—The Secretary shall provide for the re-
18 payment of the startup funding provided under
19 subparagraph (A) to the Treasury in an amor-
20 tized manner over the 10-year period beginning
21 with Y1.

22 (C) LIMITATION ON FUNDING.—Nothing in
23 this section shall be construed as authorizing
24 any additional appropriations to the Account,
25 other than such amounts as are otherwise pro-

1 vided with respect to other Exchange-partici-
2 pating health benefits plans.

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

4 (a) RATES ESTABLISHED BY SECRETARY.—

5 (1) IN GENERAL.—The Secretary shall establish
6 payment rates for the public health insurance option
7 for services and health care providers consistent with
8 this section and may change such payment rates in
9 accordance with section 224.

10 (2) INITIAL PAYMENT RULES.—

11 (A) IN GENERAL.—Except as provided in
12 subparagraph (B) and subsection (b)(1), during
13 Y1, Y2, and Y3, the Secretary shall base the
14 payment rates under this section for services
15 and providers described in paragraph (1) on the
16 payment rates for similar services and providers
17 under parts A and B of Medicare.

18 (B) EXCEPTIONS.—

19 (i) PRACTITIONERS' SERVICES.—Pay-
20 ment rates for practitioners' services other-
21 wise established under the fee schedule
22 under section 1848 of the Social Security
23 Act shall be applied without regard to the
24 provisions under subsection (f) of such sec-
25 tion and the update under subsection

1 (d)(4) under such section for a year as ap-
2 plied under this paragraph shall be not less
3 than 1 percent.

4 (ii) ADJUSTMENTS.—The Secretary
5 may determine the extent to which Medi-
6 care adjustments applicable to base pay-
7 ment rates under parts A and B of Medi-
8 care shall apply under this subtitle.

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

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

18 (b) INCENTIVES FOR PARTICIPATING PROVIDERS.—

19 (1) INITIAL INCENTIVE PERIOD.—

20 (A) IN GENERAL.—The Secretary shall
21 provide, in the case of services described in sub-
22 paragraph (B) furnished during Y1, Y2, and
23 Y3, for payment rates that are 5 percent great-
24 er than the rates established under subsection
25 (a).

1 (B) SERVICES DESCRIBED.—The services
2 described in this subparagraph are items and
3 professional services, under the public health in-
4 surance option by a physician or other health
5 care practitioner who participates in both Medi-
6 care and the public health insurance option.

7 (C) SPECIAL RULES.—A pediatrician and
8 any other health care practitioner who is a type
9 of practitioner that does not typically partici-
10 pate in Medicare (as determined by the Sec-
11 retary) shall also be eligible for the increased
12 payment rates under subparagraph (A).

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

1 (3) ESTABLISHMENT OF A PROVIDER NET-
2 WORK.—Health care providers participating under
3 Medicare are participating providers in the public
4 health insurance option unless they opt out in a
5 process established by the Secretary.

6 (c) ADMINISTRATIVE PROCESS FOR SETTING
7 RATES.—Chapter 5 of title 5, United States Code shall
8 apply to the process for the initial establishment of pay-
9 ment rates under this section but not to the specific meth-
10 odology for establishing such rates or the calculation of
11 such rates.

12 (d) CONSTRUCTION.—Nothing in this subtitle shall
13 be construed as limiting the Secretary’s authority to cor-
14 rect for payments that are excessive or deficient, taking
15 into account the provisions of section 221(a) and the
16 amounts paid for similar health care providers and serv-
17 ices under other Exchange-participating health benefits
18 plans.

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

24 (f) LIMITATIONS ON REVIEW.—There shall be no ad-
25 ministrative or judicial review of a payment rate or meth-

1 odology established under this section or under section
2 224.

3 **SEC. 224. MODERNIZED PAYMENT INITIATIVES AND DELIV-**
4 **ERY SYSTEM REFORM.**

5 (a) IN GENERAL.—For plan years beginning with Y1,
6 the Secretary may utilize innovative payment mechanisms
7 and policies to determine payments for items and services
8 under the public health insurance option. The payment
9 mechanisms and policies under this section may include
10 patient-centered medical home and other care manage-
11 ment payments, accountable care organizations, value-
12 based purchasing, bundling of services, differential pay-
13 ment rates, performance or utilization based payments,
14 partial capitation, and direct contracting with providers.

15 (b) REQUIREMENTS FOR INNOVATIVE PAYMENTS.—
16 The Secretary shall design and implement the payment
17 mechanisms and policies under this section in a manner
18 that—

19 (1) seeks to—

20 (A) improve health outcomes;

21 (B) reduce health disparities (including ra-
22 cial, ethnic, and other disparities);

23 (C) provide efficient and affordable care;

24 (D) address geographic variation in the
25 provision of health services; or

1 (E) prevent or manage chronic illness; and

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

4 (c) ENCOURAGING THE USE OF HIGH VALUE SERV-
5 ICES.—To the extent allowed by the benefit standards ap-
6 plied to all Exchange-participating health benefits plans,
7 the public health insurance option may modify cost shar-
8 ing and payment rates to encourage the use of services
9 that promote health and value.

10 (d) PROMOTION OF DELIVERY SYSTEM REFORM.—
11 The Secretary shall monitor and evaluate the progress of
12 payment and delivery system reforms under this section
13 and under Medicare and shall seek to implement such re-
14 forms subject to the following:

15 (1) To the extent that the Secretary finds a
16 payment and delivery system reform successful in
17 improving quality and reducing costs, the Secretary
18 shall implement such reform on as large a geo-
19 graphic scale as practical and economical.

20 (2) The Secretary may delay the implementa-
21 tion of such a reform in geographic areas in which
22 such implementation would place the public health
23 insurance option at a competitive disadvantage.

24 (3) The Secretary may prioritize implementa-
25 tion of such a reform in high cost geographic areas

1 or otherwise in order to reduce total program costs
2 or to promote high value care.

3 (e) 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 or certified under State law.

17 (c) PAYMENT TERMS FOR PROVIDERS.—

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

23 (A) PREFERRED PHYSICIANS.—Those phy-
24 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.—Beginning in Y2, in the case of full-
25 time employees for which the cost of the em-

1 ployee premium for coverage under a group
2 health plan would exceed 11 percent of current
3 family income (determined by the Commissioner
4 on the basis of verifiable documentation and
5 without regard to section 245), paragraph (1)
6 shall not apply.

7 (c) INCOME DEFINED.—

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

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

19 (d) CLARIFICATION OF TREATMENT OF AFFORD-
20 ABILITY CREDITS.—Affordabilty credits under this sub-
21 title shall not be treated, for purposes of title IV of the
22 Personal Responsibility and Work Opportunity Reconcili-
23 ation Act of 1996, to be a benefit provided under section
24 403 of such title.

1 **SEC. 243. AFFORDABLE PREMIUM CREDIT.**

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

10 (b) AFFORDABLE PREMIUM AMOUNT.—

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

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

19 (B) the individual's family income for such
20 plan year.

21 (2) PREMIUM PERCENTAGE LIMITS BASED ON
22 TABLE.—The Commissioner shall establish premium
23 percentage limits so that for individuals whose fam-
24 ily income is within an income tier specified in the
25 table in subsection (d) such percentage limits shall
26 increase, on a sliding scale in a linear manner, from

1 the initial premium percentage to the final premium
 2 percentage specified in such table for such income
 3 tier.

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

11 (d) TABLE OF PREMIUM PERCENTAGE LIMITS AND
 12 ACTUARIAL VALUE PERCENTAGES BASED ON INCOME
 13 TIER.—

14 (1) IN GENERAL.—For purposes of this sub-
 15 title, the table specified in this subsection is as fol-
 16 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%

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

19 (A) FOR LOWEST LEVEL OF INCOME.—In
 20 the case of an individual with income that does

1 not exceed 133 percent of FPL, the individual
2 shall be considered to have income that is 133%
3 of FPL.

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

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

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

18 (b) COST-SHARING REDUCTIONS.—The Commis-
19 sioner shall specify a reduction in cost-sharing amounts
20 and the annual limitation on cost-sharing specified in sec-
21 tion 122(c)(2)(B) under a basic plan for each income tier
22 specified in the table under section 243(d), with respect
23 to a year, in a manner so that, as estimated by the Com-
24 missioner, the actuarial value of the coverage with such
25 reduced cost-sharing amounts (and the reduced annual

1 cost-sharing limit) is equal to the actuarial value percent-
2 age (specified in the table under section 243(d) for the
3 income tier involved) of the full actuarial value if there
4 were no cost-sharing imposed under the plan.

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

14 **SEC. 245. INCOME DETERMINATIONS.**

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

22 (b) PROGRAM INTEGRITY; INCOME VERIFICATION
23 PROCEDURES.—

24 (1) PROGRAM INTEGRITY.—The Commissioner
25 shall take such steps as may be appropriate to en-

1 sure the accuracy of determinations and redeter-
2 minations under this subtitle.

3 (2) INCOME VERIFICATION.—

4 (A) IN GENERAL.—Upon an initial applica-
5 tion of an individual for an affordability credit
6 under this subtitle (or in applying section
7 242(b)) or upon an application for a change in
8 the affordability credit based upon a significant
9 change in family income described in subpara-
10 graph (A)—

11 (i) the Commissioner shall request
12 from the Secretary of the Treasury the dis-
13 closure to the Commissioner of such infor-
14 mation as may be permitted to verify the
15 information contained in such application;
16 and

17 (ii) the Commissioner shall use the in-
18 formation so disclosed to verify such infor-
19 mation.

20 (B) ALTERNATIVE PROCEDURES.—The
21 Commissioner shall establish procedures for the
22 verification of income for purposes of this sub-
23 title if no income tax return is available for the
24 most recent completed tax year.

25 (c) SPECIAL RULES.—

1 (1) CHANGES IN INCOME AS A PERCENT OF
2 FPL.—In the case that an individual's income (ex-
3 pressed as a percentage of the Federal poverty level
4 for a family of the size involved) for a plan year is
5 expected (in a manner specified by the Commis-
6 sioner) to be significantly different from the income
7 (as so expressed) used under subsection (a), the
8 Commissioner shall establish rules requiring an indi-
9 vidual to report, consistent with the mechanism es-
10 tablished under paragraph (2), significant changes
11 in such income (including a significant change in
12 family composition) to the Commissioner and requir-
13 ing the substitution of such income for the income
14 otherwise applicable.

15 (2) REPORTING OF SIGNIFICANT CHANGES IN
16 INCOME.—The Commissioner shall establish rules
17 under which an individual determined to be an af-
18 fordable credit eligible individual would be required
19 to inform the Commissioner when there is a signifi-
20 cant change in the family income of the individual
21 (expressed as a percentage of the FPL for a family
22 of the size involved) and of the information regard-
23 ing such change. Such mechanism shall provide for
24 guidelines that specify the circumstances that qual-
25 ify as a significant change, the verifiable information

1 required to document such a change, and the process
2 for submission of such information. If the Commis-
3 sioner receives new information from an individual
4 regarding the family income of the individual, the
5 Commissioner shall provide for a redetermination of
6 the individual's eligibility to be an affordable credit
7 eligible individual.

8 (3) TRANSITION FOR CHIP.—In the case of a
9 child described in section 202(d)(2), the Commis-
10 sioner shall establish rules under which the family
11 income of the child is deemed to be no greater than
12 the family income of the child as most recently de-
13 termined before Y1 by the State under title XXI of
14 the Social Security Act.

15 (4) STUDY OF GEOGRAPHIC VARIATION IN AP-
16 PPLICATION OF FPL.—

17 (A) IN GENERAL.—The Commissioner
18 shall examine the feasibility and implication of
19 adjusting the application of the Federal poverty
20 level under this subtitle for different geographic
21 areas so as to reflect the variations in cost-of-
22 living among different areas within the United
23 States. If the Commissioner determines that an
24 adjustment is feasible, the study should include
25 a methodology to make such an adjustment.

1 Not later than the first day of Y2, the Commis-
2 sioner shall submit to Congress a report on
3 such study and shall include such recommenda-
4 tions as the Commissioner determines appro-
5 priate.

6 (B) INCLUSION OF TERRITORIES.—

7 (i) IN GENERAL.—The Commissioner
8 shall ensure that the study under subpara-
9 graph (A) covers the territories of the
10 United States and that special attention is
11 paid to the disparity that exists among
12 poverty levels and the cost of living in such
13 territories and to the impact of such dis-
14 parity on efforts to expand health coverage
15 and ensure health care.

16 (ii) TERRITORIES DEFINED.— In this
17 subparagraph, the term “territories of the
18 United States” includes the Common-
19 wealth of Puerto Rico, the United States
20 Virgin Islands, Guam, the Northern Mar-
21 iana Islands, and any other territory or
22 possession of the United States.

23 (d) PENALTIES FOR MISREPRESENTATION.—In the
24 case of an individual intentionally misrepresents family in-
25 come or the individual fails (without regard to intent) to

1 disclose to the Commissioner a significant change in fam-
2 ily income under subsection (c) in a manner that results
3 in the individual becoming an affordable credit eligible in-
4 dividual when the individual is not or in the amount of
5 the affordability credit exceeding the correct amount—

6 (1) the individual is liable for repayment of the
7 amount of the improper affordability credit; ;and

8 (2) in the case of such an intentional misrepre-
9 sentation or other egregious circumstances specified
10 by the Commissioner, the Commissioner may impose
11 an additional penalty.

12 **SEC. 246. NO FEDERAL PAYMENT FOR UNDOCUMENTED**
13 **ALIENS.**

14 Nothing in this subtitle shall allow Federal payments
15 for affordability credits on behalf of individuals who are
16 not lawfully present in the United States.

17 **TITLE III—SHARED**
18 **RESPONSIBILITY**
19 **Subtitle A—Individual**
20 **Responsibility**

21 **SEC. 301. INDIVIDUAL RESPONSIBILITY.**

22 For an individual's responsibility to obtain acceptable
23 coverage, see section 59B of the Internal Revenue Code
24 of 1986 (as added by section 401 of this Act).

1 **Subtitle B—Employer**
2 **Responsibility**
3 **PART 1—HEALTH COVERAGE PARTICIPATION**
4 **REQUIREMENTS**

5 **SEC. 311. HEALTH COVERAGE PARTICIPATION REQUIRE-**
6 **MENTS.**

7 An employer meets the requirements of this section
8 if such employer does all of the following:

9 (1) OFFER OF COVERAGE.—The employer of-
10 fers each employee individual and family coverage
11 under a qualified health benefits plan (or under a
12 current employment-based health plan (within the
13 meaning of section 102(b))) in accordance with sec-
14 tion 312.

15 (2) CONTRIBUTION TOWARDS COVERAGE.—If
16 an employee accepts such offer of coverage, the em-
17 ployer makes timely contributions towards such cov-
18 erage in accordance with section 312.

19 (3) CONTRIBUTION IN LIEU OF COVERAGE.—
20 Beginning with Y2, if an employee declines such
21 offer but otherwise obtains coverage in an Exchange-
22 participating health benefits plan (other than by rea-
23 son of being covered by family coverage as a spouse
24 or dependent of the primary insured), the employer
25 shall make a timely contribution to the Health In-

1 surance Exchange with respect to each such em-
2 ployee in accordance with section 313.

3 **SEC. 312. EMPLOYER RESPONSIBILITY TO CONTRIBUTE TO-**
4 **WARDS EMPLOYEE AND DEPENDENT COV-**
5 **ERAGE.**

6 (a) IN GENERAL.—An employer meets the require-
7 ments of this section with respect to an employee if the
8 following requirements are met:

9 (1) OFFERING OF COVERAGE.—The employer
10 offers the coverage described in section 311(1) either
11 through an Exchange-participating health benefits
12 plan or other than through such a plan.

13 (2) EMPLOYER REQUIRED CONTRIBUTION.—
14 The employer timely pays to the issuer of such cov-
15 erage an amount not less than the employer required
16 contribution specified in subsection (b) for such cov-
17 erage.

18 (3) PROVISION OF INFORMATION.—The em-
19 ployer provides the Health Choices Commissioner,
20 the Secretary of Labor, the Secretary of Health and
21 Human Services, and the Secretary of the Treasury,
22 as applicable, with such information as the Commis-
23 sioner may require to ascertain compliance with the
24 requirements of this section.

1 (4) AUTOENROLLMENT OF EMPLOYEES.—The
2 employer provides for autoenrollment of the em-
3 ployee in accordance with subsection (c).

4 (b) REDUCTION OF EMPLOYEE PREMIUMS THROUGH
5 MINIMUM EMPLOYER CONTRIBUTION.—

6 (1) FULL-TIME EMPLOYEES.—The minimum
7 employer contribution described in this subsection
8 for coverage of a full-time employee (and, if any, the
9 employee's spouse and qualifying children (as de-
10 fined in section 152(c) of the Internal Revenue Code
11 of 1986) under a qualified health benefits plan (or
12 current employment-based health plan) is equal to—

13 (A) in case of individual coverage, not less
14 than 72.5 percent of the applicable premium
15 (as defined in section 4980B(f)(4) of such
16 Code, subject to paragraph (2)) of the lowest
17 cost plan offered by the employer that is a
18 qualified health benefits plan (or is such cur-
19 rent employment-based health plan); and

20 (B) in the case of family coverage which
21 includes coverage of such spouse and children,
22 not less 65 percent of such applicable premium
23 of such lowest cost plan.

24 (2) APPLICABLE PREMIUM FOR EXCHANGE COV-
25 ERAGE.—In this subtitle, the amount of the applica-

1 ble premium of the lowest cost plan with respect to
2 coverage of an employee under an Exchange-partici-
3 pating health benefits plan is the reference premium
4 amount under section 243(c) for individual coverage
5 (or, if elected, family coverage) for the premium rat-
6 ing area in which the individual or family resides.

7 (3) MINIMUM EMPLOYER CONTRIBUTION FOR
8 EMPLOYEES OTHER THAN FULL-TIME EMPLOY-
9 EES.—In the case of coverage for an employee who
10 is not a full-time employee, the amount of the min-
11 imum employer contribution under this subsection
12 shall be a proportion (as determined in accordance
13 with rules of the Health Choices Commissioner, the
14 Secretary of Labor, the Secretary of Health and
15 Human Services, and the Secretary of the Treasury,
16 as applicable) of the minimum employer contribution
17 under this subsection with respect to a full-time em-
18 ployee that reflects the proportion of—

19 (A) the average weekly hours of employ-
20 ment of the employee by the employer, to

21 (B) the minimum weekly hours specified
22 by the Commissioner for an employee to be a
23 full-time employee.

24 (4) SALARY REDUCTIONS NOT TREATED AS EM-
25 PLOYER CONTRIBUTIONS.—For purposes of this sec-

1 tion, any contribution on behalf of an employee with
2 respect to which there is a corresponding reduction
3 in the compensation of the employee shall not be
4 treated as an amount paid by the employer.

5 (c) AUTOMATIC ENROLLMENT FOR EMPLOYER SPON-
6 SORED HEALTH BENEFITS.—

7 (1) IN GENERAL.—The requirement of this sub-
8 section with respect to an employer and an employee
9 is that the employer automatically enroll suchs em-
10 ployee into the employment-based health benefits
11 plan for individual coverage under the plan option
12 with the lowest applicable employee premium.

13 (2) OPT-OUT.—In no case may an employer
14 automatically enroll an employee in a plan under
15 paragraph (1) if such employee makes an affirmative
16 election to opt out of such plan or to elect coverage
17 under an employment-based health benefits plan of-
18 fered by such employer. An employer shall provide
19 an employee with a 30-day period to make such an
20 affirmative election before the employer may auto-
21 matically enroll the employee in such a plan.

22 (3) NOTICE REQUIREMENTS.—

23 (A) IN GENERAL.—Each employer de-
24 scribed in paragraph (1) who automatically en-
25 rolls an employee into a plan as described in

1 such paragraph shall provide the employees,
2 within a reasonable period before the beginning
3 of each plan year (or, in the case of new em-
4 ployees, within a reasonable period before the
5 end of the enrollment period for such a new em-
6 ployee), written notice of the employees' rights
7 and obligations relating to the automatic enroll-
8 ment requirement under such paragraph. Such
9 notice must be comprehensive and understood
10 by the average employee to whom the automatic
11 enrollment requirement applies.

12 (B) INCLUSION OF SPECIFIC INFORMA-
13 TION.—The written notice under subparagraph
14 (A) must explain an employee's right to opt out
15 of being automatically enrolled in a plan and in
16 the case that more than one level of benefits or
17 employee premium level is offered by the em-
18 ployer involved, the notice must explain which
19 level of benefits and employee premium level the
20 employee will be automatically enrolled in the
21 absence of an affirmative election by the em-
22 ployee.

1 **SEC. 313. EMPLOYER CONTRIBUTIONS IN LIEU OF COV-**
2 **ERAGE.**

3 (a) IN GENERAL.—A contribution is made in accord-
4 ance with this section with respect to an employee if such
5 contribution is equal to an amount equal to 8 percent of
6 the average wages paid by the employer during the period
7 of enrollment (determined by taking into account all em-
8 ployees of the employer and in such manner as the Com-
9 missioner provides, including rules providing for the ap-
10 propriate aggregation of related employers). Any such con-
11 tribution—

12 (1) shall be paid to the Health Choices Com-
13 missioner for deposit into the Health Insurance Ex-
14 change Trust Fund, and

15 (2) shall not be applied against the premium of
16 the employee under the Exchange-participating
17 health benefits plan in which the employee is en-
18 rolled.

19 (b) SPECIAL RULES FOR SMALL EMPLOYERS.—

20 (1) IN GENERAL.—In the case of any employer
21 who is a small employer for any calendar year, sub-
22 section (a) shall be applied by substituting the appli-
23 cable percentage determined in accordance with the
24 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

1 (2) **SMALL EMPLOYER.**—For purposes of this
2 subsection, the term “small employer” means any
3 employer for any calendar year if the annual payroll
4 of such employer for the preceding calendar year
5 does not exceed \$400,000.

6 (3) **ANNUAL PAYROLL.**—For purposes of this
7 paragraph, the term “annual payroll” means, with
8 respect to any employer for any calendar year, the
9 aggregate wages paid by the employer during such
10 calendar year.

11 (4) **AGGREGATION RULES.**—Related employers
12 and predecessors shall be treated as a single em-
13 ployer for purposes of this subsection.

14 **SEC. 314. AUTHORITY RELATED TO IMPROPER STEERING.**

15 The Health Choices Commissioner (in coordination
16 with the Secretary of Labor, the Secretary of Health and
17 Human Services, and the Secretary of the Treasury) shall
18 have authority to set standards for determining whether
19 employers or insurers are undertaking any actions to af-
20 fect the risk pool within the Health Insurance Exchange
21 by inducing individuals to decline coverage under a quali-
22 fied health benefits plan (or current employment-based
23 health plan (within the meaning of section 102(b)) offered
24 by the employer and instead to enroll in an Exchange-par-

1 participating health benefits plan. An employer violating such
2 standards shall be treated as not meeting the require-
3 ments of this section.

4 **PART 2—SATISFACTION OF HEALTH COVERAGE**

5 **PARTICIPATION REQUIREMENTS**

6 **SEC. 321. SATISFACTION OF HEALTH COVERAGE PARTICI-**

7 **PATION REQUIREMENTS UNDER THE EM-**

8 **PLOYEE RETIREMENT INCOME SECURITY**

9 **ACT OF 1974.**

10 (a) IN GENERAL.—Subtitle B of title I of the Em-
11 ployee Retirement Income Security Act of 1974 is amend-
12 ed by adding at the end the following new part:

13 **“PART 8—NATIONAL HEALTH COVERAGE**

14 **PARTICIPATION REQUIREMENTS**

15 **“SEC. 801. ELECTION OF EMPLOYER TO BE SUBJECT TO NA-**

16 **TIONAL HEALTH COVERAGE PARTICIPATION**

17 **REQUIREMENTS.**

18 “(a) IN GENERAL.—An employer may make an elec-
19 tion with the Secretary to be subject to the health coverage
20 participation requirements.

21 “(b) TIME AND MANNER.—An election under sub-
22 section (a) may be made at such time and in such form
23 and manner as the Secretary may prescribe.

1 **“SEC. 802. TREATMENT OF COVERAGE RESULTING FROM**
2 **ELECTION.**

3 “(a) IN GENERAL.—If an employer makes an election
4 to the Secretary under section 801—

5 “(1) such election shall be treated as the estab-
6 lishment and maintenance of a group health plan (as
7 defined in section 733(a)) for purposes of this title,
8 subject to section 151 of the America’s Affordable
9 Health Choices Act of 2009, and

10 “(2) the health coverage participation require-
11 ments shall be deemed to be included as terms and
12 conditions of such plan.

13 “(b) PERIODIC INVESTIGATIONS TO DISCOVER NON-
14 COMPLIANCE.—The Secretary shall regularly audit a rep-
15 resentative sampling of employers and group health plans
16 and conduct investigations and other activities under sec-
17 tion 504 with respect to such sampling of plans so as to
18 discover noncompliance with the health coverage participa-
19 tion requirements in connection with such plans. The Sec-
20 retary shall communicate findings of noncompliance made
21 by the Secretary under this subsection to the Secretary
22 of the Treasury and the Health Choices Commissioner.
23 The Secretary shall take such timely enforcement action
24 as appropriate to achieve compliance.

1 **“SEC. 803. HEALTH COVERAGE PARTICIPATION REQUIRE-**
2 **MENTS.**

3 “For purposes of this part, the term ‘health coverage
4 participation requirements’ means the requirements of
5 part 1 of subtitle B of title III of division A of America’s
6 Affordable Health Choices Act of 2009 (as in effect on
7 the date of the enactment of such Act).

8 **“SEC. 804. RULES FOR APPLYING REQUIREMENTS.**

9 “(a) **AFFILIATED GROUPS.**—In the case of any em-
10 ployer which is part of a group of employers who are treat-
11 ed as a single employer under subsection (b), (c), (m), or
12 (o) of section 414 of the Internal Revenue Code of 1986,
13 the election under section 801 shall be made by such em-
14 ployer as the Secretary may provide. Any such election,
15 once made, shall apply to all members of such group.

16 “(b) **SEPARATE ELECTIONS.**—Under regulations pre-
17 scribed by the Secretary, separate elections may be made
18 under section 801 with respect to—

19 “(1) separate lines of business, and

20 “(2) full-time employees and employees who are
21 not full-time employees.

22 **“SEC. 805. TERMINATION OF ELECTION IN CASES OF SUB-**
23 **STANTIAL NONCOMPLIANCE.**

24 “The Secretary may terminate the election of any em-
25 ployer under section 801 if the Secretary (in coordination
26 with the Health Choices Commissioner) determines that

1 such employer is in substantial noncompliance with the
2 health coverage participation requirements and shall refer
3 any such determination to the Secretary of the Treasury
4 as appropriate.

5 **“SEC. 806. REGULATIONS.**

6 “The Secretary may promulgate such regulations as
7 may be necessary or appropriate to carry out the provi-
8 sions of this part, in accordance with section 324(a) of
9 the America’s Affordable Health Choices Act of 2009. The
10 Secretary may promulgate any interim final rules as the
11 Secretary determines are appropriate to carry out this
12 part.”.

13 (b) ENFORCEMENT OF HEALTH COVERAGE PARTICI-
14 PATION REQUIREMENTS.—Section 502 of such Act (29
15 U.S.C. 1132) is amended—

16 (1) in subsection (a)(6), by striking “para-
17 graph” and all that follows through “subsection (c)”
18 and inserting “paragraph (2), (4), (5), (6), (7), (8),
19 (9), (10), or (11) of subsection (c)”; and

20 (2) in subsection (c), by redesignating the sec-
21 ond paragraph (10) as paragraph (12) and by in-
22 sserting after the first paragraph (10) the following
23 new paragraph:

24 “(11) HEALTH COVERAGE PARTICIPATION RE-
25 QUIREMENTS.—

1 “(A) CIVIL PENALTIES.—In the case of
2 any employer who fails (during any period with
3 respect to which an election under section
4 801(a) is in effect) to satisfy the health cov-
5 erage participation requirements with respect to
6 any employee, the Secretary may assess a civil
7 penalty against the employer of \$100 for each
8 day in the period beginning on the date such
9 failure first occurs and ending on the date such
10 failure is corrected.

11 “(B) HEALTH COVERAGE PARTICIPATION
12 REQUIREMENTS.—For purposes of this para-
13 graph, the term ‘health coverage participation
14 requirements’ has the meaning provided in sec-
15 tion 803.

16 “(C) LIMITATIONS ON AMOUNT OF PEN-
17 ALTY.—

18 “(i) PENALTY NOT TO APPLY WHERE
19 FAILURE NOT DISCOVERED EXERCISING
20 REASONABLE DILIGENCE.—No penalty
21 shall be assessed under subparagraph (A)
22 with respect to any failure during any pe-
23 riod for which it is established to the satis-
24 faction of the Secretary that the employer
25 did not know, or exercising reasonable dili-

1 gence would not have known, that such
2 failure existed.

3 “(ii) PENALTY NOT TO APPLY TO
4 FAILURES CORRECTED WITHIN 30 DAYS.—
5 No penalty shall be assessed under sub-
6 paragraph (A) with respect to any failure
7 if—

8 “(I) such failure was due to rea-
9 sonable cause and not to willful ne-
10 glect, and

11 “(II) such failure is corrected
12 during the 30-day period beginning on
13 the 1st date that the employer knew,
14 or exercising reasonable diligence
15 would have known, that such failure
16 existed.

17 “(iii) OVERALL LIMITATION FOR UN-
18 INTENTIONAL FAILURES.—In the case of
19 failures which are due to reasonable cause
20 and not to willful neglect, the penalty as-
21 sessed under subparagraph (A) for failures
22 during any 1-year period shall not exceed
23 the amount equal to the lesser of—

24 “(I) 10 percent of the aggregate
25 amount paid or incurred by the em-

1 ployer (or predecessor employer) dur-
2 ing the preceding 1-year period for
3 group health plans, or

4 “(II) \$500,000.

5 “(D) ADVANCE NOTIFICATION OF FAILURE
6 PRIOR TO ASSESSMENT.—Before a reasonable
7 time prior to the assessment of any penalty
8 under this paragraph with respect to any failure
9 by an employer, the Secretary shall inform the
10 employer in writing of such failure and shall
11 provide the employer information regarding ef-
12 forts and procedures which may be undertaken
13 by the employer to correct such failure.

14 “(E) COORDINATION WITH EXCISE TAX.—
15 Under regulations prescribed in accordance
16 with section 324 of the America’s Affordable
17 Health Choices Act of 2009, the Secretary and
18 the Secretary of the Treasury shall coordinate
19 the assessment of penalties under this section
20 in connection with failures to satisfy health cov-
21 erage participation requirements with the impo-
22 sition of excise taxes on such failures under sec-
23 tion 4980H(b) of the Internal Revenue Code of
24 1986 so as to avoid duplication of penalties
25 with respect to such failures.

1 “(F) DEPOSIT OF PENALTY COLLECTED.—
2 Any amount of penalty collected under this
3 paragraph shall be deposited as miscellaneous
4 receipts in the Treasury of the United States.”.

5 (c) CLERICAL AMENDMENTS.—The table of contents
6 in section 1 of such Act is amended by inserting after the
7 item relating to section 734 the following new items:

 “PART 8—NATIONAL HEALTH COVERAGE PARTICIPATION REQUIREMENTS

 “Sec. 801. Election of employer to be subject to national health coverage par-
 ticipation requirements.

 “Sec. 802. Treatment of coverage resulting from election.

 “Sec. 803. Health coverage participation requirements.

 “Sec. 804. Rules for applying requirements.

 “Sec. 805. Termination of election in cases of substantial noncompliance.

 “Sec. 806. Regulations.”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to periods beginning after Decem-
10 ber 31, 2012.

11 **SEC. 322. SATISFACTION OF HEALTH COVERAGE PARTICI-**
12 **PATION REQUIREMENTS UNDER THE INTER-**
13 **NAL REVENUE CODE OF 1986.**

14 (a) FAILURE TO ELECT, OR SUBSTANTIALLY COM-
15 PLY WITH, HEALTH COVERAGE PARTICIPATION RE-
16 QUIREMENTS.—For employment tax on employers who fail
17 to elect, or substantially comply with, the health coverage
18 participation requirements described in part 1, see section
19 3111(c) of the Internal Revenue Code of 1986 (as added
20 by section 412 of this Act).

1 (b) OTHER FAILURES.—For excise tax on other fail-
2 ures of electing employers to comply with such require-
3 ments, see section 4980H of the Internal Revenue Code
4 of 1986 (as added by section 411 of this Act).

5 **SEC. 323. SATISFACTION OF HEALTH COVERAGE PARTICI-**
6 **PATION REQUIREMENTS UNDER THE PUBLIC**
7 **HEALTH SERVICE ACT.**

8 (a) IN GENERAL.—Part C of title XXVII of the Pub-
9 lic Health Service Act is amended by adding at the end
10 the following new section:

11 **“SEC. 2793. NATIONAL HEALTH COVERAGE PARTICIPATION**
12 **REQUIREMENTS.**

13 “(a) ELECTION OF EMPLOYER TO BE SUBJECT TO
14 NATIONAL HEALTH COVERAGE PARTICIPATION REQUIRE-
15 MENTS.—

16 “(1) IN GENERAL.—An employer may make an
17 election with the Secretary to be subject to the
18 health coverage participation requirements.

19 “(2) TIME AND MANNER.—An election under
20 paragraph (1) may be made at such time and in
21 such form and manner as the Secretary may pre-
22 scribe.

23 “(b) TREATMENT OF COVERAGE RESULTING FROM
24 ELECTION.—

1 “(1) IN GENERAL.—If an employer makes an
2 election to the Secretary under subsection (a)—

3 “(A) such election shall be treated as the
4 establishment and maintenance of a group
5 health plan for purposes of this title, subject to
6 section 151 of the America’s Affordable Health
7 Choices Act of 2009, and

8 “(B) the health coverage participation re-
9 quirements shall be deemed to be included as
10 terms and conditions of such plan.

11 “(2) PERIODIC INVESTIGATIONS TO DETERMINE
12 COMPLIANCE WITH HEALTH COVERAGE PARTICIPA-
13 TION REQUIREMENTS.—The Secretary shall regu-
14 larly audit a representative sampling of employers
15 and conduct investigations and other activities with
16 respect to such sampling of employers so as to dis-
17 cover noncompliance with the health coverage par-
18 ticipation requirements in connection with such em-
19 ployers (during any period with respect to which an
20 election under subsection (a) is in effect). The Sec-
21 retary shall communicate findings of noncompliance
22 made by the Secretary under this subsection to the
23 Secretary of the Treasury and the Health Choices
24 Commissioner. The Secretary shall take such timely

1 enforcement action as appropriate to achieve compli-
2 ance.

3 “(c) HEALTH COVERAGE PARTICIPATION REQUIRE-
4 MENTS.—For purposes of this section, the term ‘health
5 coverage participation requirements’ means the require-
6 ments of part 1 of subtitle B of title III of division A
7 of the America’s Affordable Health Choices Act of 2009
8 (as in effect on the date of the enactment of this section).

9 “(d) SEPARATE ELECTIONS.—Under regulations pre-
10 scribed by the Secretary, separate elections may be made
11 under subsection (a) with respect to full-time employees
12 and employees who are not full-time employees.

13 “(e) TERMINATION OF ELECTION IN CASES OF SUB-
14 STANTIAL NONCOMPLIANCE.—The Secretary may termi-
15 nate the election of any employer under subsection (a) if
16 the Secretary (in coordination with the Health Choices
17 Commissioner) determines that such employer is in sub-
18 stantial noncompliance with the health coverage participa-
19 tion requirements and shall refer any such determination
20 to the Secretary of the Treasury as appropriate.

21 “(f) ENFORCEMENT OF HEALTH COVERAGE PAR-
22 TICIPATION REQUIREMENTS.—

23 “(1) CIVIL PENALTIES.—In the case of any em-
24 ployer who fails (during any period with respect to
25 which the election under subsection (a) is in effect)

1 to satisfy the health coverage participation require-
2 ments with respect to any employee, the Secretary
3 may assess a civil penalty against the employer of
4 \$100 for each day in the period beginning on the
5 date such failure first occurs and ending on the date
6 such failure is corrected.

7 “(2) LIMITATIONS ON AMOUNT OF PENALTY.—

8 “(A) PENALTY NOT TO APPLY WHERE
9 FAILURE NOT DISCOVERED EXERCISING REA-
10 SONABLE DILIGENCE.—No penalty shall be as-
11 sessed under paragraph (1) with respect to any
12 failure during any period for which it is estab-
13 lished to the satisfaction of the Secretary that
14 the employer did not know, or exercising rea-
15 sonable diligence would not have known, that
16 such failure existed.

17 “(B) PENALTY NOT TO APPLY TO FAIL-
18 URES CORRECTED WITHIN 30 DAYS.—No pen-
19 alty shall be assessed under paragraph (1) with
20 respect to any failure if—

21 “(i) such failure was due to reason-
22 able cause and not to willful neglect, and

23 “(ii) such failure is corrected during
24 the 30-day period beginning on the 1st
25 date that the employer knew, or exercising

1 reasonable diligence would have known,
2 that such failure existed.

3 “(C) OVERALL LIMITATION FOR UNINTEN-
4 TIONAL FAILURES.—In the case of failures
5 which are due to reasonable cause and not to
6 willful neglect, the penalty assessed under para-
7 graph (1) for failures during any 1-year period
8 shall not exceed the amount equal to the lesser
9 of—

10 “(i) 10 percent of the aggregate
11 amount paid or incurred by the employer
12 (or predecessor employer) during the pre-
13 ceding taxable year for group health plans,
14 or

15 “(ii) \$500,000.

16 “(3) ADVANCE NOTIFICATION OF FAILURE
17 PRIOR TO ASSESSMENT.—Before a reasonable time
18 prior to the assessment of any penalty under para-
19 graph (1) with respect to any failure by an em-
20 ployer, the Secretary shall inform the employer in
21 writing of such failure and shall provide the em-
22 ployer information regarding efforts and procedures
23 which may be undertaken by the employer to correct
24 such failure.

1 “(4) ACTIONS TO ENFORCE ASSESSMENTS.—

2 The Secretary may bring a civil action in any Dis-
3 trict Court of the United States to collect any civil
4 penalty under this subsection.

5 “(5) COORDINATION WITH EXCISE TAX.—

6 Under regulations prescribed in accordance with sec-
7 tion 324 of the America’s Affordable Health Choices
8 Act of 2009, the Secretary and the Secretary of the
9 Treasury shall coordinate the assessment of pen-
10 alties under paragraph (1) in connection with fail-
11 ures to satisfy health coverage participation require-
12 ments with the imposition of excise taxes on such
13 failures under section 4980H(b) of the Internal Rev-
14 enue Code of 1986 so as to avoid duplication of pen-
15 alties with respect to such failures.

16 “(6) DEPOSIT OF PENALTY COLLECTED.—Any
17 amount of penalty collected under this subsection
18 shall be deposited as miscellaneous receipts in the
19 Treasury of the United States.

20 “(g) REGULATIONS.—The Secretary may promulgate
21 such regulations as may be necessary or appropriate to
22 carry out the provisions of this section, in accordance with
23 section 324(a) of the America’s Affordable Health Choices
24 Act of 2009. The Secretary may promulgate any interim

1 final rules as the Secretary determines are appropriate to
2 carry out this section.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 subsection (a) shall apply to periods beginning after De-
5 cember 31, 2012.

6 **SEC. 324. ADDITIONAL RULES RELATING TO HEALTH COV-
7 ERAGE PARTICIPATION REQUIREMENTS.**

8 (a) ASSURING COORDINATION.—The officers con-
9 sisting of the Secretary of Labor, the Secretary of the
10 Treasury, the Secretary of Health and Human Services,
11 and the Health Choices Commissioner shall ensure,
12 through the execution of an interagency memorandum of
13 understanding among such officers, that—

14 (1) regulations, rulings, and interpretations
15 issued by such officers relating to the same matter
16 over which two or more of such officers have respon-
17 sibility under subpart B of part 6 of subtitle B of
18 title I of the Employee Retirement Income Security
19 Act of 1974, section 4980H of the Internal Revenue
20 Code of 1986, and section 2793 of the Public Health
21 Service Act are administered so as to have the same
22 effect at all times; and

23 (2) coordination of policies relating to enforcing
24 the same requirements through such officers in
25 order to have a coordinated enforcement strategy

1 that avoids duplication of enforcement efforts and
2 assigns priorities in enforcement.

3 (b) **MULTIEMPLOYER PLANS.**—In the case of a group
4 health plan that is a multiemployer plan (as defined in
5 section 3(37) of the Employee Retirement Income Secu-
6 rity Act of 1974), the regulations prescribed in accordance
7 with subsection (a) by the officers referred to in subsection
8 (a) shall provide for the application of the health coverage
9 participation requirements to the plan sponsor and con-
10 tributing sponsors of such plan.

11 **TITLE IV—AMENDMENTS TO IN-**
12 **TERNAL REVENUE CODE OF**
13 **1986**

14 **Subtitle A—Shared Responsibility**

15 **PART 1—INDIVIDUAL RESPONSIBILITY**

16 **SEC. 401. TAX ON INDIVIDUALS WITHOUT ACCEPTABLE**
17 **HEALTH CARE COVERAGE.**

18 (a) **IN GENERAL.**—Subchapter A of chapter 1 of the
19 Internal Revenue Code of 1986 is amended by adding at
20 the end the following new part:

21 **“PART VIII—HEALTH CARE RELATED TAXES**

“SUBPART A. TAX ON INDIVIDUALS WITHOUT ACCEPTABLE HEALTH CARE
COVERAGE.

22 **“Subpart A—Tax on Individuals Without Acceptable**
23 **Health Care Coverage**

“Sec. 59B. Tax on individuals without acceptable health care coverage.

1 **“SEC. 59B. TAX ON INDIVIDUALS WITHOUT ACCEPTABLE**
2 **HEALTH CARE COVERAGE.**

3 “(a) TAX IMPOSED.—In the case of any individual
4 who does not meet the requirements of subsection (d) at
5 any time during the taxable year, there is hereby imposed
6 a tax equal to 2.5 percent of the excess of—

7 “(1) the taxpayer’s modified adjusted gross in-
8 come for the taxable year, over

9 “(2) the amount of gross income specified in
10 section 6012(a)(1) with respect to the taxpayer.

11 “(b) LIMITATIONS.—

12 “(1) TAX LIMITED TO AVERAGE PREMIUM.—

13 “(A) IN GENERAL.—The tax imposed
14 under subsection (a) with respect to any tax-
15 payer for any taxable year shall not exceed the
16 applicable national average premium for such
17 taxable year.

18 “(B) APPLICABLE NATIONAL AVERAGE
19 PREMIUM.—

20 “(i) IN GENERAL.—For purposes of
21 subparagraph (A), the ‘applicable national
22 average premium’ means, with respect to
23 any taxable year, the average premium (as
24 determined by the Secretary, in coordina-
25 tion with the Health Choices Commis-
26 sioner) for self-only coverage under a basic

1 plan which is offered in a Health Insur-
2 ance Exchange for the calendar year in
3 which such taxable year begins.

4 “(ii) FAILURE TO PROVIDE COVERAGE
5 FOR MORE THAN ONE INDIVIDUAL.—In the
6 case of any taxpayer who fails to meet the
7 requirements of subsection (e) with respect
8 to more than one individual during the tax-
9 able year, clause (i) shall be applied by
10 substituting ‘family coverage’ for ‘self-only
11 coverage’.

12 “(2) PRORATION FOR PART YEAR FAILURES.—
13 The tax imposed under subsection (a) with respect
14 to any taxpayer for any taxable year shall not exceed
15 the amount which bears the same ratio to the
16 amount of tax so imposed (determined without re-
17 gard to this paragraph and after application of para-
18 graph (1)) as—

19 “(A) the aggregate periods during such
20 taxable year for which such individual failed to
21 meet the requirements of subsection (d), bears
22 to

23 “(B) the entire taxable year.

24 “(c) EXCEPTIONS.—

1 “(1) DEPENDENTS.—Subsection (a) shall not
2 apply to any individual for any taxable year if a de-
3 duction is allowable under section 151 with respect
4 to such individual to another taxpayer for any tax-
5 able year beginning in the same calendar year as
6 such taxable year.

7 “(2) NONRESIDENT ALIENS.—Subsection (a)
8 shall not apply to any individual who is a non-
9 resident alien.

10 “(3) INDIVIDUALS RESIDING OUTSIDE UNITED
11 STATES.—Any qualified individual (as defined in
12 section 911(d)) (and any qualifying child residing
13 with such individual) shall be treated for purposes of
14 this section as covered by acceptable coverage during
15 the period described in subparagraph (A) or (B) of
16 section 911(d)(1), whichever is applicable.

17 “(4) INDIVIDUALS RESIDING IN POSSESSIONS
18 OF THE UNITED STATES.—Any individual who is a
19 bona fide resident of any possession of the United
20 States (as determined under section 937(a)) for any
21 taxable year (and any qualifying child residing with
22 such individual) shall be treated for purposes of this
23 section as covered by acceptable coverage during
24 such taxable year.

25 “(5) RELIGIOUS CONSCIENCE EXEMPTION.—

1 “(A) IN GENERAL.—Subsection (a) shall
2 not apply to any individual (and any qualifying
3 child residing with such individual) for any pe-
4 riod if such individual has in effect an exemp-
5 tion which certifies that such individual is a
6 member of a recognized religious sect or divi-
7 sion thereof described in section 1402(g)(1) and
8 an adherent of established tenets or teachings
9 of such sect or division as described in such sec-
10 tion.

11 “(B) EXEMPTION.—An application for the
12 exemption described in subparagraph (A) shall
13 be filed with the Secretary at such time and in
14 such form and manner as the Secretary may
15 prescribe. Any such exemption granted by the
16 Secretary shall be effective for such period as
17 the Secretary determines appropriate.

18 “(d) ACCEPTABLE COVERAGE REQUIREMENT.—

19 “(1) IN GENERAL.—The requirements of this
20 subsection are met with respect to any individual for
21 any period if such individual (and each qualifying
22 child of such individual) is covered by acceptable
23 coverage at all times during such period.

1 “(2) ACCEPTABLE COVERAGE.—For purposes
2 of this section, the term ‘acceptable coverage’ means
3 any of the following:

4 “(A) QUALIFIED HEALTH BENEFITS PLAN
5 COVERAGE.—Coverage under a qualified health
6 benefits plan (as defined in section 100(c) of
7 the America’s Affordable Health Choices Act of
8 2009).

9 “(B) GRANDFATHERED HEALTH INSUR-
10 ANCE COVERAGE; COVERAGE UNDER GRAND-
11 FATHERED EMPLOYMENT-BASED HEALTH
12 PLAN.—Coverage under a grandfathered health
13 insurance coverage (as defined in subsection (a)
14 of section 102 of the America’s Affordable
15 Health Choices Act of 2009) or under a current
16 employment-based health plan (within the
17 meaning of subsection (b) of such section).

18 “(C) MEDICARE.—Coverage under part A
19 of title XVIII of the Social Security Act.

20 “(D) MEDICAID.—Coverage for medical as-
21 sistance under title XIX of the Social Security
22 Act.

23 “(E) MEMBERS OF THE ARMED FORCES
24 AND DEPENDENTS (INCLUDING TRICARE).—
25 Coverage under chapter 55 of title 10, United

1 States Code, including similar coverage fur-
2 nished under section 1781 of title 38 of such
3 Code.

4 “(F) VA.—Coverage under the veteran’s
5 health care program under chapter 17 of title
6 38, United States Code, but only if the cov-
7 erage for the individual involved is determined
8 by the Secretary in coordination with the
9 Health Choices Commissioner to be not less
10 than the level specified by the Secretary of the
11 Treasury, in coordination with the Secretary of
12 Veteran’s Affairs and the Health Choices Com-
13 missioner, based on the individual’s priority for
14 services as provided under section 1705(a) of
15 such title.

16 “(G) OTHER COVERAGE.—Such other
17 health benefits coverage as the Secretary, in co-
18 ordination with the Health Choices Commis-
19 sioner, recognizes for purposes of this sub-
20 section.

21 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—

22 “(1) QUALIFYING CHILD.—For purposes of this
23 section, the term ‘qualifying child’ has the meaning
24 given such term by section 152(c).

1 “(2) BASIC PLAN.—For purposes of this sec-
2 tion, the term ‘basic plan’ has the meaning given
3 such term under section 100(c) of the America’s Af-
4 fordable Health Choices Act of 2009.

5 “(3) HEALTH INSURANCE EXCHANGE.—For
6 purposes of this section, the term ‘Health Insurance
7 Exchange’ has the meaning given such term under
8 section 100(c) of the America’s Affordable Health
9 Choices Act of 2009, including any State-based
10 health insurance exchange approved for operation
11 under section 208 of such Act.

12 “(4) FAMILY COVERAGE.—For purposes of this
13 section, the term ‘family coverage’ means any cov-
14 erage other than self-only coverage.

15 “(5) MODIFIED ADJUSTED GROSS INCOME.—
16 For purposes of this section, the term ‘modified ad-
17 justed gross income’ means adjusted gross income—

18 “(A) determined without regard to section
19 911, and

20 “(B) increased by the amount of interest
21 received or accrued by the taxpayer during the
22 taxable year which is exempt from tax.

23 “(6) NOT TREATED AS TAX IMPOSED BY THIS
24 CHAPTER FOR CERTAIN PURPOSES.—The tax im-
25 posed under this section shall not be treated as tax

1 imposed by this chapter for purposes of determining
2 the amount of any credit under this chapter or for
3 purposes of section 55.

4 “(f) REGULATIONS.—The Secretary shall prescribe
5 such regulations or other guidance as may be necessary
6 or appropriate to carry out the purposes of this section,
7 including regulations or other guidance (developed in co-
8 ordination with the Health Choices Commissioner) which
9 provide—

10 “(1) exemption from the tax imposed under
11 subsection (a) in cases of de minimis lapses of ac-
12 ceptable coverage, and

13 “(2) a process for applying for a waiver of the
14 application of subsection (a) in cases of hardship.”.

15 (b) INFORMATION REPORTING.—

16 (1) IN GENERAL.—Subpart B of part III of
17 subchapter A of chapter 61 of such Code is amended
18 by inserting after section 6050W the following new
19 section:

20 **“SEC. 6050X. RETURNS RELATING TO HEALTH INSURANCE**
21 **COVERAGE.**

22 “(a) REQUIREMENT OF REPORTING.—Every person
23 who provides acceptable coverage (as defined in section
24 59B(d)) to any individual during any calendar year shall,
25 at such time as the Secretary may prescribe, make the

1 return described in subsection (b) with respect to such in-
2 dividual.

3 “(b) FORM AND MANNER OF RETURNS.—A return
4 is described in this subsection if such return—

5 “(1) is in such form as the Secretary may pre-
6 scribe, and

7 “(2) contains—

8 “(A) the name, address, and TIN of the
9 primary insured and the name of each other in-
10 dividual obtaining coverage under the policy,

11 “(B) the period for which each such indi-
12 vidual was provided with the coverage referred
13 to in subsection (a), and

14 “(C) such other information as the Sec-
15 retary may require.

16 “(c) STATEMENTS TO BE FURNISHED TO INDIVID-
17 UALS WITH RESPECT TO WHOM INFORMATION IS RE-
18 QUIRED.—Every person required to make a return under
19 subsection (a) shall furnish to each primary insured whose
20 name is required to be set forth in such return a written
21 statement showing—

22 “(1) the name and address of the person re-
23 quired to make such return and the phone number
24 of the information contact for such person, and

1 “(2) the information required to be shown on
2 the return with respect to such individual.

3 The written statement required under the preceding sen-
4 tence shall be furnished on or before January 31 of the
5 year following the calendar year for which the return
6 under subsection (a) is required to be made.

7 “(d) COVERAGE PROVIDED BY GOVERNMENTAL
8 UNITS.—In the case of coverage provided by any govern-
9 mental unit or any agency or instrumentality thereof, the
10 officer or employee who enters into the agreement to pro-
11 vide such coverage (or the person appropriately designated
12 for purposes of this section) shall make the returns and
13 statements required by this section.”.

14 (2) PENALTY FOR FAILURE TO FILE.—

15 (A) RETURN.—Subparagraph (B) of sec-
16 tion 6724(d)(1) of such Code is amended by
17 striking “or” at the end of clause (xxii), by
18 striking “and” at the end of clause (xxiii) and
19 inserting “or”, and by adding at the end the
20 following new clause:

21 “(xxiv) section 6050X (relating to re-
22 turns relating to health insurance cov-
23 erage), and”.

24 (B) STATEMENT.—Paragraph (2) of sec-
25 tion 6724(d) of such Code is amended by strik-

1 ing “or” at the end of subparagraph (EE), by
2 striking the period at the end of subparagraph
3 (FF) and inserting “, or”, and by inserting
4 after subparagraph (FF) the following new sub-
5 paragraph:

6 “(GG) section 6050X (relating to returns
7 relating to health insurance coverage).”.

8 (c) RETURN REQUIREMENT.—Subsection (a) of sec-
9 tion 6012 of such Code is amended by inserting after
10 paragraph (9) the following new paragraph:

11 “(10) Every individual to whom section 59B(a)
12 applies and who fails to meet the requirements of
13 section 59B(d) with respect to such individual or
14 any qualifying child (as defined in section 152(c)) of
15 such individual.”.

16 (d) CLERICAL AMENDMENTS.—

17 (1) The table of parts for subchapter A of chap-
18 ter 1 of the Internal Revenue Code of 1986 is
19 amended by adding at the end the following new
20 item:

 “PART VIII. HEALTH CARE RELATED TAXES.”.

21 (2) The table of sections for subpart B of part
22 III of subchapter A of chapter 61 is amended by
23 adding at the end the following new item:

 “Sec. 6050X. Returns relating to health insurance coverage.”.

1 (e) SECTION 15 NOT TO APPLY.—The amendment
2 made by subsection (a) shall not be treated as a change
3 in a rate of tax for purposes of section 15 of the Internal
4 Revenue Code of 1986.

5 (f) EFFECTIVE DATE.—

6 (1) IN GENERAL.—The amendments made by
7 this section shall apply to taxable years beginning
8 after December 31, 2012.

9 (2) RETURNS.—The amendments made by sub-
10 section (b) shall apply to calendar years beginning
11 after December 31, 2012.

12 **PART 2—EMPLOYER RESPONSIBILITY**

13 **SEC. 411. ELECTION TO SATISFY HEALTH COVERAGE PAR-**
14 **TICIPATION REQUIREMENTS.**

15 (a) IN GENERAL.—Chapter 43 of the Internal Rev-
16 enue Code of 1986 is amended by adding at the end the
17 following new section:

18 **“SEC. 4980H. ELECTION WITH RESPECT TO HEALTH COV-**
19 **ERAGE PARTICIPATION REQUIREMENTS.**

20 **“(a) ELECTION OF EMPLOYER RESPONSIBILITY TO**
21 **PROVIDE HEALTH COVERAGE.—**

22 **“(1) IN GENERAL.—**Subsection (b) shall apply
23 to any employer with respect to whom an election
24 under paragraph (2) is in effect.

1 “(2) TIME AND MANNER.—An employer may
2 make an election under this paragraph at such time
3 and in such form and manner as the Secretary may
4 prescribe.

5 “(3) AFFILIATED GROUPS.—In the case of any
6 employer which is part of a group of employers who
7 are treated as a single employer under subsection
8 (b), (c), (m), or (o) of section 414, the election
9 under paragraph (2) shall be made by such person
10 as the Secretary may provide. Any such election,
11 once made, shall apply to all members of such
12 group.

13 “(4) SEPARATE ELECTIONS.—Under regula-
14 tions prescribed by the Secretary, separate elections
15 may be made under paragraph (2) with respect to—

16 “(A) separate lines of business, and

17 “(B) full-time employees and employees
18 who are not full-time employees.

19 “(5) TERMINATION OF ELECTION IN CASES OF
20 SUBSTANTIAL NONCOMPLIANCE.—The Secretary
21 may terminate the election of any employer under
22 paragraph (2) if the Secretary (in coordination with
23 the Health Choices Commissioner) determines that
24 such employer is in substantial noncompliance with
25 the health coverage participation requirements.

1 “(b) EXCISE TAX WITH RESPECT TO FAILURE TO
2 MEET HEALTH COVERAGE PARTICIPATION REQUIRE-
3 MENTS.—

4 “(1) IN GENERAL.—In the case of any employer
5 who fails (during any period with respect to which
6 the election under subsection (a) is in effect) to sat-
7 isfy the health coverage participation requirements
8 with respect to any employee to whom such election
9 applies, there is hereby imposed on each such failure
10 with respect to each such employee a tax of \$100 for
11 each day in the period beginning on the date such
12 failure first occurs and ending on the date such fail-
13 ure is corrected.

14 “(2) LIMITATIONS ON AMOUNT OF TAX.—

15 “(A) TAX NOT TO APPLY WHERE FAILURE
16 NOT DISCOVERED EXERCISING REASONABLE
17 DILIGENCE.—No tax shall be imposed by para-
18 graph (1) on any failure during any period for
19 which it is established to the satisfaction of the
20 Secretary that the employer neither knew, nor
21 exercising reasonable diligence would have
22 known, that such failure existed.

23 “(B) TAX NOT TO APPLY TO FAILURES
24 CORRECTED WITHIN 30 DAYS.—No tax shall be
25 imposed by paragraph (1) on any failure if—

1 “(i) such failure was due to reason-
2 able cause and not to willful neglect, and

3 “(ii) such failure is corrected during
4 the 30-day period beginning on the 1st
5 date that the employer knew, or exercising
6 reasonable diligence would have known,
7 that such failure existed.

8 “(C) OVERALL LIMITATION FOR UNINTEN-
9 TIONAL FAILURES.—In the case of failures
10 which are due to reasonable cause and not to
11 willful neglect, the tax imposed by subsection
12 (a) for failures during the taxable year of the
13 employer shall not exceed the amount equal to
14 the lesser of—

15 “(i) 10 percent of the aggregate
16 amount paid or incurred by the employer
17 (or predecessor employer) during the pre-
18 ceding taxable year for employment-based
19 health plans, or

20 “(ii) \$500,000.

21 “(D) COORDINATION WITH OTHER EN-
22 FORCEMENT PROVISIONS.—The tax imposed
23 under paragraph (1) with respect to any failure
24 shall be reduced (but not below zero) by the
25 amount of any civil penalty collected under sec-

1 “(1) IN GENERAL.—In addition to other taxes,
 2 there is hereby imposed on every nonelecting em-
 3 ployer an excise tax, with respect to having individ-
 4 uals in his employ, equal to 8 percent of the wages
 5 (as defined in section 3121(a)) paid by him with re-
 6 spect to employment (as defined in section 3121(b)).

7 “(2) SPECIAL RULES FOR SMALL EMPLOY-
 8 ERS.—

9 “(A) IN GENERAL.—In the case of any em-
 10 ployer who is small employer for any calendar
 11 year, paragraph (1) shall be applied by sub-
 12 stituting the applicable percentage determined
 13 in accordance with the following table for ‘8
 14 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

15 “(B) SMALL EMPLOYER.—For purposes of
 16 this paragraph, the term ‘small employer’
 17 means any employer for any calendar year if
 18 the annual payroll of such employer for the pre-
 19 ceding calendar year does not exceed \$400,000.

20 “(C) ANNUAL PAYROLL.—For purposes of
 21 this paragraph, the term ‘annual payroll’
 22 means, with respect to any employer for any

1 calendar year, the aggregate wages (as defined
2 in section 3121(a)) paid by him with respect to
3 employment (as defined in section 3121(b))
4 during such calendar year.

5 “(3) NONELECTING EMPLOYER.—For purposes
6 of paragraph (1), the term ‘nonelecting employer’
7 means any employer for any period with respect to
8 which such employer does not have an election under
9 section 4980H(a) in effect.

10 “(4) SPECIAL RULE FOR SEPARATE ELEC-
11 TIONS.—In the case of an employer who makes a
12 separate election described in section 4980H(a)(4)
13 for any period, paragraph (1) shall be applied for
14 such period by taking into account only the wages
15 paid to employees who are not subject to such elec-
16 tion.

17 “(5) AGGREGATION; PREDECESSORS.—For pur-
18 poses of this subsection—

19 “(A) all persons treated as a single em-
20 ployer under subsection (b), (c), (m), or (o) of
21 section 414 shall be treated as 1 employer, and

22 “(B) any reference to any person shall be
23 treated as including a reference to any prede-
24 cessor of such person.”.

1 (b) DEFINITIONS.—Section 3121 of such Code is
2 amended by adding at the end the following new sub-
3 section:

4 “(aa) SPECIAL RULES FOR TAX ON EMPLOYERS
5 ELECTING NOT TO PROVIDE HEALTH BENEFITS.—For
6 purposes of section 3111(c)—

7 “(1) Paragraphs (1), (5), and (19) of sub-
8 section (b) shall not apply.

9 “(2) Paragraph (7) of subsection (b) shall apply
10 by treating all services as not covered by the retire-
11 ment systems referred to in subparagraphs (C) and
12 (F) thereof.

13 “(3) Subsection (e) shall not apply and the
14 term ‘State’ shall include the District of Columbia.”.

15 (c) CONFORMING AMENDMENT.—Subsection (d) of
16 section 3111 of such Code, as redesignated by this section,
17 is amended by striking “this section” and inserting “sub-
18 sections (a) and (b)”.

19 (d) APPLICATION TO RAILROADS.—

20 (1) IN GENERAL.—Section 3221 of such Code
21 is amended by redesignating subsection (c) as sub-
22 section (d) and by inserting after subsection (b) the
23 following new subsection:

24 “(c) EMPLOYERS ELECTING TO NOT PROVIDE
25 HEALTH BENEFITS.—

1 “(1) IN GENERAL.—In addition to other taxes,
2 there is hereby imposed on every nonelecting em-
3 ployer an excise tax, with respect to having individ-
4 uals in his employ, equal to 8 percent of the com-
5 pensation paid during any calendar year by such em-
6 ployer for services rendered to such employer.

7 “(2) EXCEPTION FOR SMALL EMPLOYERS.—
8 Rules similar to the rules of section 3111(c)(2) shall
9 apply for purposes of this subsection.

10 “(3) NONELECTING EMPLOYER.—For purposes
11 of paragraph (1), the term ‘nonelecting employer’
12 means any employer for any period with respect to
13 which such employer does not have an election under
14 section 4980H(a) in effect.

15 “(4) SPECIAL RULE FOR SEPARATE ELEC-
16 TIONS.—In the case of an employer who makes a
17 separate election described in section 4980H(a)(4)
18 for any period, subsection (a) shall be applied for
19 such period by taking into account only the wages
20 paid to employees who are not subject to such elec-
21 tion.”.

22 (2) DEFINITIONS.—Subsection (e) of section
23 3231 of such Code is amended by adding at the end
24 the following new paragraph:

1 “(13) SPECIAL RULES FOR TAX ON EMPLOYERS
2 ELECTING NOT TO PROVIDE HEALTH BENEFITS.—
3 For purposes of section 3221(c)—

4 “(A) Paragraph (1) shall be applied with-
5 out regard to the third sentence thereof.

6 “(B) Paragraph (2) shall not apply.”.

7 (3) CONFORMING AMENDMENT.—Subsection (d)
8 of section 3221 of such Code, as redesignated by
9 this section, is amended by striking “subsections (a)
10 and (b), see section 3231(e)(2)” and inserting “this
11 section, see paragraphs (2) and (13)(B) of section
12 3231(e)”.

13 (e) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to periods beginning after Decem-
15 ber 31, 2012.

16 **Subtitle B—Credit for Small Busi-**
17 **ness Employee Health Coverage**
18 **Expenses**

19 **SEC. 421. CREDIT FOR SMALL BUSINESS EMPLOYEE**
20 **HEALTH COVERAGE EXPENSES.**

21 (a) IN GENERAL.—Subpart D of part IV of sub-
22 chapter A of chapter 1 of the Internal Revenue Code of
23 1986 (relating to business-related credits) is amended by
24 adding at the end the following new section:

1 **“SEC. 45R. SMALL BUSINESS EMPLOYEE HEALTH COV-**
2 **ERAGE CREDIT.**

3 “(a) IN GENERAL.—For purposes of section 38, in
4 the case of a qualified small employer, the small business
5 employee health coverage credit determined under this sec-
6 tion for the taxable year is an amount equal to the applica-
7 ble percentage of the qualified employee health coverage
8 expenses of such employer for such taxable year.

9 “(b) APPLICABLE PERCENTAGE.—

10 “(1) IN GENERAL.—For purposes of this sec-
11 tion, the applicable percentage is 50 percent.

12 “(2) PHASEOUT BASED ON AVERAGE COM-
13 PENSATION OF EMPLOYEES.—In the case of an em-
14 ployer whose average annual employee compensation
15 for the taxable year exceeds \$20,000, the percentage
16 specified in paragraph (1) shall be reduced by a
17 number of percentage points which bears the same
18 ratio to 50 as such excess bears to \$20,000.

19 “(c) LIMITATIONS.—

20 “(1) PHASEOUT BASED ON EMPLOYER SIZE.—

21 In the case of an employer who employs more than
22 10 qualified employees during the taxable year, the
23 credit determined under subsection (a) shall be re-
24 duced by an amount which bears the same ratio to
25 the amount of such credit (determined without re-

1 gard to this paragraph and after the application of
2 the other provisions of this section) as—

3 “(A) the excess of—

4 “(i) the number of qualified employees
5 employed by the employer during the tax-
6 able year, over

7 “(ii) 10, bears to

8 “(B) 15.

9 “(2) CREDIT NOT ALLOWED WITH RESPECT TO
10 CERTAIN HIGHLY COMPENSATED EMPLOYEES.—No
11 credit shall be allowed under subsection (a) with re-
12 spect to qualified employee health coverage expenses
13 paid or incurred with respect to any employee for
14 any taxable year if the aggregate compensation paid
15 by the employer to such employee during such tax-
16 able year exceeds \$80,000.

17 “(d) QUALIFIED EMPLOYEE HEALTH COVERAGE EX-
18 PENSES.—For purposes of this section—

19 “(1) IN GENERAL.—The term ‘qualified em-
20 ployee health coverage expenses’ means, with respect
21 to any employer for any taxable year, the aggregate
22 amount paid or incurred by such employer during
23 such taxable year for coverage of any qualified em-
24 ployee of the employer (including any family cov-

1 erage which covers such employee) under qualified
2 health coverage.

3 “(2) QUALIFIED HEALTH COVERAGE.—The
4 term ‘qualified health coverage’ means acceptable
5 coverage (as defined in section 59B(d)) which—

6 “(A) is provided pursuant to an election
7 under section 4980H(a), and

8 “(B) satisfies the requirements referred to
9 in section 4980H(c).

10 “(e) OTHER DEFINITIONS.—For purposes of this
11 section—

12 “(1) QUALIFIED SMALL EMPLOYER.—For pur-
13 poses of this section, the term ‘qualified small em-
14 ployer’ means any employer for any taxable year
15 if—

16 “(A) the number of qualified employees
17 employed by such employer during the taxable
18 year does not exceed 25, and

19 “(B) the average annual employee com-
20 pensation of such employer for such taxable
21 year does not exceed the sum of the dollar
22 amounts in effect under subsection (b)(2).

23 “(2) QUALIFIED EMPLOYEE.—The term ‘quali-
24 fied employee’ means any employee of an employer
25 for any taxable year of the employer if such em-

1 ployee received at least \$5,000 of compensation from
2 such employer during such taxable year.

3 “(3) AVERAGE ANNUAL EMPLOYEE COMPENSA-
4 TION.—The term ‘average annual employee com-
5 pensation’ means, with respect to any employer for
6 any taxable year, the average amount of compensa-
7 tion paid by such employer to qualified employees of
8 such employer during such taxable year.

9 “(4) COMPENSATION.—The term ‘compensa-
10 tion’ has the meaning given such term in section
11 408(p)(6)(A).

12 “(5) FAMILY COVERAGE.—The term ‘family
13 coverage’ means any coverage other than self-only
14 coverage.

15 “(f) SPECIAL RULES.—For purposes of this sec-
16 tion—

17 “(1) SPECIAL RULE FOR PARTNERSHIPS AND
18 SELF-EMPLOYED.—In the case of a partnership (or
19 a trade or business carried on by an individual)
20 which has one or more qualified employees (deter-
21 mined without regard to this paragraph) with re-
22 spect to whom the election under 4980H(a) applies,
23 each partner (or, in the case of a trade or business
24 carried on by an individual, such individual) shall be
25 treated as an employee.

1 “(2) AGGREGATION RULE.—All persons treated
2 as a single employer under subsection (b), (c), (m),
3 or (o) of section 414 shall be treated as 1 employer.

4 “(3) DENIAL OF DOUBLE BENEFIT.—Any de-
5 duction otherwise allowable with respect to amounts
6 paid or incurred for health insurance coverage to
7 which subsection (a) applies shall be reduced by the
8 amount of the credit determined under this section.

9 “(4) INFLATION ADJUSTMENT.—In the case of
10 any taxable year beginning after 2013, each of the
11 dollar amounts in subsections (b)(2), (c)(2), and
12 (e)(2) shall be increased by an amount equal to—

13 “(A) such dollar amount, multiplied by

14 “(B) the cost of living adjustment deter-
15 mined under section 1(f)(3) for the calendar
16 year in which the taxable year begins deter-
17 mined by substituting ‘calendar year 2012’ for
18 ‘calendar year 1992’ in subparagraph (B)
19 thereof.

20 If any increase determined under this paragraph is
21 not a multiple of \$50, such increase shall be rounded
22 to the next lowest multiple of \$50.”.

23 (b) CREDIT TO BE PART OF GENERAL BUSINESS
24 CREDIT.—Subsection (b) of section 38 of such Code (re-
25 lating to general business credit) is amended by striking

1 “plus” at the end of paragraph (34), by striking the period
2 at the end of paragraph (35) and inserting “, plus” , and
3 by adding at the end the following new paragraph:

4 “(36) in the case of a qualified small employer
5 (as defined in section 45R(e)), the small business
6 employee health coverage credit determined under
7 section 45R(a).”.

8 (c) CLERICAL AMENDMENT.—The table of sections
9 for subpart D of part IV of subchapter A of chapter 1
10 of such Code is amended by inserting after the item relat-
11 ing to section 45Q the following new item:

“Sec. 45R. Small business employee health coverage credit.”.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2012.

15 **Subtitle C—Disclosures to Carry**
16 **Out Health Insurance Exchange**
17 **Subsidies**

18 **SEC. 431. DISCLOSURES TO CARRY OUT HEALTH INSUR-**
19 **ANCE EXCHANGE SUBSIDIES.**

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

23 “(21) DISCLOSURE OF RETURN INFORMATION
24 TO CARRY OUT HEALTH INSURANCE EXCHANGE SUB-
25 SIDIES.—

1 “(A) IN GENERAL.—The Secretary, upon
2 written request from the Health Choices Com-
3 missioner or the head of a State-based health
4 insurance exchange approved for operation
5 under section 208 of the America’s Affordable
6 Health Choices Act of 2009, shall disclose to of-
7 ficers and employees of the Health Choices Ad-
8 ministration or such State-based health insur-
9 ance exchange, as the case may be, return in-
10 formation of any taxpayer whose income is rel-
11 evant in determining any affordability credit de-
12 scribed in subtitle C of title II of the America’s
13 Affordable Health Choices Act of 2009. Such
14 return information shall be limited to—

15 “(i) taxpayer identity information
16 with respect to such taxpayer,

17 “(ii) the filing status of such tax-
18 payer,

19 “(iii) the modified adjusted gross in-
20 come of such taxpayer (as defined in sec-
21 tion 59B(e)(5)),

22 “(iv) the number of dependents of the
23 taxpayer,

24 “(v) such other information as is pre-
25 scribed by the Secretary by regulation as

1 might indicate whether the taxpayer is eli-
2 gible for such affordability credits (and the
3 amount thereof), and

4 “(vi) the taxable year with respect to
5 which the preceding information relates or,
6 if applicable, the fact that such informa-
7 tion is not available.

8 “(B) RESTRICTION ON USE OF DISCLOSED
9 INFORMATION.—Return information disclosed
10 under subparagraph (A) may be used by offi-
11 cers and employees of the Health Choices Ad-
12 ministration or such State-based health insur-
13 ance exchange, as the case may be, only for the
14 purposes of, and to the extent necessary in, es-
15 tablishing and verifying the appropriate amount
16 of any affordability credit described in subtitle
17 C of title II of the America’s Affordable Health
18 Choices Act of 2009 and providing for the re-
19 payment of any such credit which was in excess
20 of such appropriate amount.”.

21 (b) PROCEDURES AND RECORDKEEPING RELATED
22 TO DISCLOSURES.—Paragraph (4) of section 6103(p) of
23 such Code is amended—

1 (1) by inserting “, or any entity described in
2 subsection (l)(21),” after “or (20)” in the matter
3 preceding subparagraph (A),

4 (2) by inserting “or any entity described in sub-
5 section (l)(21),” after “or (o)(1)(A)” in subpara-
6 graph (F)(ii), and

7 (3) by inserting “or any entity described in sub-
8 section (l)(21),” after “or (20)” both places it ap-
9 pears in the matter after subparagraph (F).

10 (c) **UNAUTHORIZED DISCLOSURE OR INSPECTION.**—

11 Paragraph (2) of section 7213(a) of such Code is amended
12 by striking “or (20)” and inserting “(20), or (21)”.

13 **Subtitle D—Other Revenue** 14 **Provisions**

15 **PART 1—GENERAL PROVISIONS**

16 **SEC. 441. SURCHARGE ON HIGH INCOME INDIVIDUALS.**

17 (a) **IN GENERAL.**—Part VIII of subchapter A of
18 chapter 1 of the Internal Revenue Code of 1986, as added
19 by this title, is amended by adding at the end the following
20 new subpart:

21 **“Subpart B—Surcharge on High Income Individuals**

“Sec. 59C. Surcharge on high income individuals.

22 **“SEC. 59C. SURCHARGE ON HIGH INCOME INDIVIDUALS.**

23 “(a) **GENERAL RULE.**—In the case of a taxpayer
24 other than a corporation, there is hereby imposed (in addi-

1 tion to any other tax imposed by this subtitle) a tax equal
2 to—

3 “(1) 1 percent of so much of the modified ad-
4 justed gross income of the taxpayer as exceeds
5 \$350,000 but does not exceed \$500,000,

6 “(2) 1.5 percent of so much of the modified ad-
7 justed gross income of the taxpayer as exceeds
8 \$500,000 but does not exceed \$1,000,000, and

9 “(3) 5.4 percent of so much of the modified ad-
10 justed gross income of the taxpayer as exceeds
11 \$1,000,000.

12 “(b) TAXPAYERS NOT MAKING A JOINT RETURN.—
13 In the case of any taxpayer other than a taxpayer making
14 a joint return under section 6013 or a surviving spouse
15 (as defined in section 2(a)), subsection (a) shall be applied
16 by substituting for each of the dollar amounts therein
17 (after any increase determined under subsection (e)) a dol-
18 lar amount equal to—

19 “(1) 50 percent of the dollar amount so in ef-
20 fect in the case of a married individual filing a sepa-
21 rate return, and

22 “(2) 80 percent of the dollar amount so in ef-
23 fect in any other case.

24 “(c) ADJUSTMENTS BASED ON FEDERAL HEALTH
25 REFORM SAVINGS.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), in the case of any taxable year beginning
3 after December 31, 2012, subsection (a) shall be ap-
4 plied—

5 “(A) by substituting ‘2 percent’ for ‘1 per-
6 cent’, and

7 “(B) by substituting ‘3 percent’ for ‘1.5
8 percent’.

9 “(2) ADJUSTMENTS BASED ON EXCESS FED-
10 ERAL HEALTH REFORM SAVINGS.—

11 “(A) EXCEPTION IF FEDERAL HEALTH RE-
12 FORM SAVINGS SIGNIFICANTLY EXCEEDS BASE
13 AMOUNT.—If the excess Federal health reform
14 savings is more than \$150,000,000,000 but not
15 more than \$175,000,000,000, paragraph (1)
16 shall not apply.

17 “(B) FURTHER ADJUSTMENT FOR ADDI-
18 TIONAL FEDERAL HEALTH REFORM SAVINGS.—
19 If the excess Federal health reform savings is
20 more than \$175,000,000,000, paragraphs (1)
21 and (2) of subsection (a) (and paragraph (1) of
22 this subsection) shall not apply to any taxable
23 year beginning after December 31, 2012.

24 “(C) EXCESS FEDERAL HEALTH REFORM
25 SAVINGS.—For purposes of this subsection, the

1 term ‘excess Federal health reform savings’
2 means the excess of—

3 “(i) the Federal health reform sav-
4 ings, over

5 “(ii) \$525,000,000,000.

6 “(D) FEDERAL HEALTH REFORM SAV-
7 INGS.—The term ‘Federal health reform sav-
8 ings’ means the sum of the amounts described
9 in subparagraphs (A) and (B) of paragraph (3).

10 “(3) DETERMINATION OF FEDERAL HEALTH
11 REFORM SAVINGS.—Not later than December 1,
12 2012, the Director of the Office of Management and
13 Budget shall—

14 “(A) determine, on the basis of the study
15 conducted under paragraph (4), the aggregate
16 reductions in Federal expenditures which have
17 been achieved as a result of the provisions of,
18 and amendments made by, division B of the
19 America’s Affordable Health Choices Act of
20 2009 during the period beginning on October 1,
21 2009, and ending with the latest date with re-
22 spect to which the Director has sufficient data
23 to make such determination, and

24 “(B) estimate, on the basis of such study
25 and the determination under subparagraph (A),

1 the aggregate reductions in Federal expendi-
2 tures which will be achieved as a result of such
3 provisions and amendments during so much of
4 the period beginning with fiscal year 2010 and
5 ending with fiscal year 2019 as is not taken
6 into account under subparagraph (A).

7 “(4) STUDY OF FEDERAL HEALTH REFORM
8 SAVINGS.—The Director of the Office of Manage-
9 ment and Budget shall conduct a study of the reduc-
10 tions in Federal expenditures during fiscal years
11 2010 through 2019 which are attributable to the
12 provisions of, and amendments made by, division B
13 of the America’s Affordable Health Choices Act of
14 2009. The Director shall complete such study not
15 later than December 1, 2012.

16 “(5) REDUCTIONS IN FEDERAL EXPENDITURES
17 DETERMINED WITHOUT REGARD TO PROGRAM IN-
18 VESTMENTS.—For purposes of paragraphs (3) and
19 (4), reductions in Federal expenditures shall be de-
20 termined without regard to section 1121 of the
21 America’s Affordable Health Choices Act of 2009
22 and other program investments under division B
23 thereof.

24 “(d) MODIFIED ADJUSTED GROSS INCOME.—For
25 purposes of this section, the term ‘modified adjusted gross

1 income' means adjusted gross income reduced by any de-
2 duction allowed for investment interest (as defined in sec-
3 tion 163(d)). In the case of an estate or trust, adjusted
4 gross income shall be determined as provided in section
5 67(e).

6 “(e) INFLATION ADJUSTMENTS.—

7 “(1) IN GENERAL.—In the case of taxable years
8 beginning after 2011, the dollar amounts in sub-
9 section (a) shall be increased by an amount equal
10 to—

11 “(A) such dollar amount, multiplied by

12 “(B) the cost-of-living adjustment deter-
13 mined under section 1(f)(3) for the calendar
14 year in which the taxable year begins, by sub-
15 stituting ‘calendar year 2010’ for ‘calendar year
16 1992’ in subparagraph (B) thereof.

17 “(2) ROUNDING.—If any amount as adjusted
18 under paragraph (1) is not a multiple of \$5,000,
19 such amount shall be rounded to the next lowest
20 multiple of \$5,000.

21 “(f) SPECIAL RULES.—

22 “(1) NONRESIDENT ALIEN.—In the case of a
23 nonresident alien individual, only amounts taken
24 into account in connection with the tax imposed

1 under section 871(b) shall be taken into account
2 under this section.

3 “(2) CITIZENS AND RESIDENTS LIVING
4 ABROAD.—The dollar amounts in effect under sub-
5 section (a) (after the application of subsections (b)
6 and (e)) shall be decreased by the excess of—

7 “(A) the amounts excluded from the tax-
8 payer’s gross income under section 911, over

9 “(B) the amounts of any deductions or ex-
10 clusions disallowed under section 911(d)(6)
11 with respect to the amounts described in sub-
12 paragraph (A).

13 “(3) CHARITABLE TRUSTS.—Subsection (a)
14 shall not apply to a trust all the unexpired interests
15 in which are devoted to one or more of the purposes
16 described in section 170(c)(2)(B).

17 “(4) NOT TREATED AS TAX IMPOSED BY THIS
18 CHAPTER FOR CERTAIN PURPOSES.—The tax im-
19 posed under this section shall not be treated as tax
20 imposed by this chapter for purposes of determining
21 the amount of any credit under this chapter or for
22 purposes of section 55.”.

23 (b) CLERICAL AMENDMENT.—The table of subparts
24 for part VIII of subchapter A of chapter 1 of such Code,

1 as added by this title, is amended by inserting after the
2 item relating to subpart A the following new item:

“SUBPART B. SURCHARGE ON HIGH INCOME INDIVIDUALS.”.

3 (c) SECTION 15 NOT TO APPLY.—The amendment
4 made by subsection (a) shall not be treated as a change
5 in a rate of tax for purposes of section 15 of the Internal
6 Revenue Code of 1986.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 2010.

10 **SEC. 442. DELAY IN APPLICATION OF WORLDWIDE ALLOCA-**
11 **TION OF INTEREST.**

12 (a) IN GENERAL.—Paragraphs (5)(D) and (6) of sec-
13 tion 864(f) of the Internal Revenue Code of 1986 are each
14 amended by striking “December 31, 2010” and inserting
15 “December 31, 2019”.

16 (b) TRANSITION.—Subsection (f) of section 864 of
17 such Code is amended by striking paragraph (7).

18 **PART 2—PREVENTION OF TAX AVOIDANCE**

19 **SEC. 451. LIMITATION ON TREATY BENEFITS FOR CERTAIN**
20 **DEDUCTIBLE PAYMENTS.**

21 (a) IN GENERAL.—Section 894 of the Internal Rev-
22 enue Code of 1986 (relating to income affected by treaty)
23 is amended by adding at the end the following new sub-
24 section:

1 “(d) LIMITATION ON TREATY BENEFITS FOR CER-
2 TAIN DEDUCTIBLE PAYMENTS.—

3 “(1) IN GENERAL.—In the case of any deduct-
4 ible related-party payment, any withholding tax im-
5 posed under chapter 3 (and any tax imposed under
6 subpart A or B of this part) with respect to such
7 payment may not be reduced under any treaty of the
8 United States unless any such withholding tax would
9 be reduced under a treaty of the United States if
10 such payment were made directly to the foreign par-
11 ent corporation.

12 “(2) DEDUCTIBLE RELATED-PARTY PAY-
13 MENT.—For purposes of this subsection, the term
14 ‘deductible related-party payment’ means any pay-
15 ment made, directly or indirectly, by any person to
16 any other person if the payment is allowable as a de-
17 duction under this chapter and both persons are
18 members of the same foreign controlled group of en-
19 tities.

20 “(3) FOREIGN CONTROLLED GROUP OF ENTI-
21 TIES.—For purposes of this subsection—

22 “(A) IN GENERAL.—The term ‘foreign
23 controlled group of entities’ means a controlled
24 group of entities the common parent of which
25 is a foreign corporation.

1 “(B) CONTROLLED GROUP OF ENTITIES.—

2 The term ‘controlled group of entities’ means a
3 controlled group of corporations as defined in
4 section 1563(a)(1), except that—

5 “(i) ‘more than 50 percent’ shall be
6 substituted for ‘at least 80 percent’ each
7 place it appears therein, and

8 “(ii) the determination shall be made
9 without regard to subsections (a)(4) and
10 (b)(2) of section 1563.

11 A partnership or any other entity (other than a
12 corporation) shall be treated as a member of a
13 controlled group of entities if such entity is con-
14 trolled (within the meaning of section
15 954(d)(3)) by members of such group (includ-
16 ing any entity treated as a member of such
17 group by reason of this sentence).

18 “(4) FOREIGN PARENT CORPORATION.—For
19 purposes of this subsection, the term ‘foreign parent
20 corporation’ means, with respect to any deductible
21 related-party payment, the common parent of the
22 foreign controlled group of entities referred to in
23 paragraph (3)(A).

24 “(5) REGULATIONS.—The Secretary may pre-
25 scribe such regulations or other guidance as are nec-

1 essary or appropriate to carry out the purposes of
2 this subsection, including regulations or other guid-
3 ance which provide for—

4 “(A) the treatment of two or more persons
5 as members of a foreign controlled group of en-
6 tities if such persons would be the common par-
7 ent of such group if treated as one corporation,
8 and

9 “(B) the treatment of any member of a
10 foreign controlled group of entities as the com-
11 mon parent of such group if such treatment is
12 appropriate taking into account the economic
13 relationships among such entities.”.

14 (b) **EFFECTIVE DATE.**—The amendment made by
15 this section shall apply to payments made after the date
16 of the enactment of this Act.

17 **SEC. 452. CODIFICATION OF ECONOMIC SUBSTANCE DOC-**
18 **TRINE.**

19 (a) **IN GENERAL.**—Section 7701 of the Internal Rev-
20 enue Code of 1986 is amended by redesignating subsection
21 (o) as subsection (p) and by inserting after subsection (n)
22 the following new subsection:

23 “(o) **CLARIFICATION OF ECONOMIC SUBSTANCE**
24 **DOCTRINE.**—

1 “(1) APPLICATION OF DOCTRINE.—In the case
2 of any transaction to which the economic substance
3 doctrine is relevant, such transaction shall be treated
4 as having economic substance only if—

5 “(A) the transaction changes in a mean-
6 ingful way (apart from Federal income tax ef-
7 fects) the taxpayer’s economic position, and

8 “(B) the taxpayer has a substantial pur-
9 pose (apart from Federal income tax effects)
10 for entering into such transaction.

11 “(2) SPECIAL RULE WHERE TAXPAYER RELIES
12 ON PROFIT POTENTIAL.—

13 “(A) IN GENERAL.—The potential for
14 profit of a transaction shall be taken into ac-
15 count in determining whether the requirements
16 of subparagraphs (A) and (B) of paragraph (1)
17 are met with respect to the transaction only if
18 the present value of the reasonably expected
19 pre-tax profit from the transaction is substan-
20 tial in relation to the present value of the ex-
21 pected net tax benefits that would be allowed if
22 the transaction were respected.

23 “(B) TREATMENT OF FEES AND FOREIGN
24 TAXES.—Fees and other transaction expenses
25 and foreign taxes shall be taken into account as

1 expenses in determining pre-tax profit under
2 subparagraph (A).

3 “(3) STATE AND LOCAL TAX BENEFITS.—For
4 purposes of paragraph (1), any State or local income
5 tax effect which is related to a Federal income tax
6 effect shall be treated in the same manner as a Fed-
7 eral income tax effect.

8 “(4) FINANCIAL ACCOUNTING BENEFITS.—For
9 purposes of paragraph (1)(B), achieving a financial
10 accounting benefit shall not be taken into account as
11 a purpose for entering into a transaction if the ori-
12 gin of such financial accounting benefit is a reduc-
13 tion of Federal income tax.

14 “(5) DEFINITIONS AND SPECIAL RULES.—For
15 purposes of this subsection—

16 “(A) ECONOMIC SUBSTANCE DOCTRINE.—
17 The term ‘economic substance doctrine’ means
18 the common law doctrine under which tax bene-
19 fits under subtitle A with respect to a trans-
20 action are not allowable if the transaction does
21 not have economic substance or lacks a business
22 purpose.

23 “(B) EXCEPTION FOR PERSONAL TRANS-
24 ACTIONS OF INDIVIDUALS.—In the case of an
25 individual, paragraph (1) shall apply only to

1 transactions entered into in connection with a
2 trade or business or an activity engaged in for
3 the production of income.

4 “(C) OTHER COMMON LAW DOCTRINES
5 NOT AFFECTED.—Except as specifically pro-
6 vided in this subsection, the provisions of this
7 subsection shall not be construed as altering or
8 supplanting any other rule of law, and the re-
9 quirements of this subsection shall be construed
10 as being in addition to any such other rule of
11 law.

12 “(D) DETERMINATION OF APPLICATION OF
13 DOCTRINE NOT AFFECTED.—The determination
14 of whether the economic substance doctrine is
15 relevant to a transaction (or series of trans-
16 actions) shall be made in the same manner as
17 if this subsection had never been enacted.

18 “(6) REGULATIONS.—The Secretary shall pre-
19 scribe such regulations as may be necessary or ap-
20 propriate to carry out the purposes of this sub-
21 section.”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to transactions entered into after
24 the date of the enactment of this Act.

1 **SEC. 453. PENALTIES FOR UNDERPAYMENTS.**

2 (a) PENALTY FOR UNDERPAYMENTS ATTRIBUTABLE
3 TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE.—

4 (1) IN GENERAL.—Subsection (b) of section
5 6662 of the Internal Revenue Code of 1986 is
6 amended by inserting after paragraph (5) the fol-
7 lowing new paragraph:

8 “(6) Any disallowance of claimed tax benefits
9 by reason of a transaction lacking economic sub-
10 stance (within the meaning of section 7701(o)) or
11 failing to meet the requirements of any similar rule
12 of law.”.

13 (2) INCREASED PENALTY FOR NONDISCLOSED
14 TRANSACTIONS.—Section 6662 of such Code is
15 amended by adding at the end the following new
16 subsection:

17 “(i) INCREASE IN PENALTY IN CASE OF NONDIS-
18 CLOSED NONECONOMIC SUBSTANCE TRANSACTIONS.—

19 “(1) IN GENERAL.—In the case of any portion
20 of an underpayment which is attributable to one or
21 more nondisclosed noneconomic substance trans-
22 actions, subsection (a) shall be applied with respect
23 to such portion by substituting ‘40 percent’ for ‘20
24 percent’.

25 “(2) NONDISCLOSED NONECONOMIC SUB-
26 STANCE TRANSACTIONS.—For purposes of this sub-

1 section, the term ‘nondisclosed noneconomic sub-
2 stance transaction’ means any portion of a trans-
3 action described in subsection (b)(6) with respect to
4 which the relevant facts affecting the tax treatment
5 are not adequately disclosed in the return nor in a
6 statement attached to the return.

7 “(3) SPECIAL RULE FOR AMENDED RE-
8 TURNS.—Except as provided in regulations, in no
9 event shall any amendment or supplement to a re-
10 turn of tax be taken into account for purposes of
11 this subsection if the amendment or supplement is
12 filed after the earlier of the date the taxpayer is first
13 contacted by the Secretary regarding the examina-
14 tion of the return or such other date as is specified
15 by the Secretary.”.

16 (3) CONFORMING AMENDMENT.—Subparagraph
17 (B) of section 6662A(e)(2) of such Code is amend-
18 ed—

19 (A) by striking “section 6662(h)” and in-
20 serting “subsections (h) or (i) of section 6662”,
21 and

22 (B) by striking “GROSS VALUATION
23 MISSTATEMENT PENALTY” in the heading and
24 inserting “CERTAIN INCREASED UNDER-
25 PAYMENT PENALTIES”.

1 (b) REASONABLE CAUSE EXCEPTION NOT APPLICA-
2 BLE TO NONECONOMIC SUBSTANCE TRANSACTIONS, TAX
3 SHELTERS, AND CERTAIN LARGE OR PUBLICLY TRADED
4 PERSONS.—Subsection (c) of section 6664 of such Code
5 is amended—

6 (1) by redesignating paragraphs (2) and (3) as
7 paragraphs (3) and (4), respectively,

8 (2) by striking “paragraph (2)” in paragraph
9 (4), as so redesignated, and inserting “paragraph
10 (3)”, and

11 (3) by inserting after paragraph (1) the fol-
12 lowing new paragraph:

13 “(2) EXCEPTION.—Paragraph (1) shall not
14 apply to—

15 “(A) to any portion of an underpayment
16 which is attributable to one or more tax shelters
17 (as defined in section 6662(d)(2)(C)) or trans-
18 actions described in section 6662(b)(6), and

19 “(B) to any taxpayer if such taxpayer is a
20 specified person (as defined in section
21 6662(d)(2)(D)(ii)).”.

22 (c) APPLICATION OF PENALTY FOR ERRONEOUS
23 CLAIM FOR REFUND OR CREDIT TO NONECONOMIC SUB-
24 STANCE TRANSACTIONS.—Section 6676 of such Code is
25 amended by redesignating subsection (c) as subsection (d)

1 and inserting after subsection (b) the following new sub-
2 section:

3 “(c) NONECONOMIC SUBSTANCE TRANSACTIONS
4 TREATED AS LACKING REASONABLE BASIS.—For pur-
5 poses of this section, any excessive amount which is attrib-
6 utable to any transaction described in section 6662(b)(6)
7 shall not be treated as having a reasonable basis.”.

8 (d) SPECIAL UNDERSTATEMENT REDUCTION RULE
9 FOR CERTAIN LARGE OR PUBLICLY TRADED PERSONS.—

10 (1) IN GENERAL.—Paragraph (2) of section
11 6662(d) of such Code is amended by adding at the
12 end the following new subparagraph:

13 “(D) SPECIAL REDUCTION RULE FOR CER-
14 TAIN LARGE OR PUBLICLY TRADED PERSONS.—

15 “(i) IN GENERAL.—In the case of any
16 specified person—

17 “(I) subparagraph (B) shall not
18 apply, and

19 “(II) the amount of the under-
20 statement under subparagraph (A)
21 shall be reduced by that portion of the
22 understatement which is attributable
23 to any item with respect to which the
24 taxpayer has a reasonable belief that
25 the tax treatment of such item by the

1 taxpayer is more likely than not the
2 proper tax treatment of such item.

3 “(ii) SPECIFIED PERSON.—For pur-
4 poses of this subparagraph, the term ‘spec-
5 ified person’ means—

6 “(I) any person required to file
7 periodic or other reports under section
8 13 of the Securities Exchange Act of
9 1934, and

10 “(II) any corporation with gross
11 receipts in excess of \$100,000,000 for
12 the taxable year involved.

13 All persons treated as a single employer
14 under section 52(a) shall be treated as one
15 person for purposes of subelause (II).”.

16 (2) CONFORMING AMENDMENT.—Subparagraph
17 (C) of section 6662(d)(2) of such Code is amended
18 by striking “Subparagraph (B)” and inserting “Sub-
19 paragraphs (B) and (D)(i)(II)”.

20 (e) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to transactions entered into after
22 the date of the enactment of this Act.

1 **DIVISION B—MEDICARE AND**
 2 **MEDICAID IMPROVEMENTS**

3 **SEC. 1001. TABLE OF CONTENTS OF DIVISION.**

4 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.
 Sec. 1126. Resource-based feedback program for physicians in Medicare.

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.
- Sec. 1182. Discounts for certain part D drugs in original coverage gap.
- 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.
- Sec. 1196. Extension of ambulance add-ons.

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.
- Sec. 1222. Demonstration to promote access for Medicare beneficiaries with limited English proficiency by providing reimbursement for culturally and linguistically appropriate services.
- Sec. 1223. IOM report on impact of language access services.
- Sec. 1224. Definitions.

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.
- Sec. 1413. Nursing home compare Medicare website.
- Sec. 1414. Reporting of expenditures.
- Sec. 1415. Standardized complaint form.
- Sec. 1416. Ensuring staffing accountability.

PART 2—TARGETING ENFORCEMENT

- Sec. 1421. Civil money penalties.
- Sec. 1422. National independent monitor pilot program.
- Sec. 1423. Notification of facility closure.

PART 3—IMPROVING STAFF TRAINING

- Sec. 1431. Dementia and abuse prevention training.
- Sec. 1432. Study and report on training required for certified nurse aides and supervisory staff.

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.
- Sec. 1443. Multi-stakeholder pre-rulemaking input into selection of quality measures.
- Sec. 1444. Application of quality measures.
- Sec. 1445. Consensus-based entity funding.

Subtitle D—Physician Payments Sunshine Provision

- Sec. 1451. Reports on financial relationships between manufacturers and distributors of covered drugs, devices, biologicals, or medical supplies under Medicare, Medicaid, or CHIP and physicians and other health care entities and between physicians and other health care entities.

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.
Sec. 1505. Improving accountability for approved medical residency training.

TITLE VI—PROGRAM INTEGRITY

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

- Sec. 1601. Increased funding and flexibility to fight fraud and abuse.

Subtitle B—Enhanced Penalties for Fraud and Abuse

- 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.
Sec. 1613. Enhanced penalties for delaying inspections.
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 eligibility.
- Sec. 1704. Reduction in Medicaid DSH.
- Sec. 1705. Expanded outstationing.

Subtitle B—Prevention

- Sec. 1711. Required coverage of preventive services.
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- 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 serting “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 **SEC. 1126. RESOURCE-BASED FEEDBACK PROGRAM FOR**
2 **PHYSICIANS IN MEDICARE.**

3 (a) IN GENERAL.—The Secretary of Health and
4 Human Services (in this section referred to as the “Sec-
5 retary”) shall provide for the measurement and confiden-
6 tial communication of reports (each in this section referred
7 to as a “feedback report”) to physicians and other practi-
8 tioners regarding the utilization of services under the
9 Medicare program under title XVIII of the Social Security
10 Act. Such reports shall be based upon claims data and
11 shall include quality data reported under section
12 1848(m)(5) of such Act (42 U.S.C. 1395w-4(m)(5)) and
13 such other information as the Secretary determines appro-
14 priate.

15 (b) TIMELINE FOR FEEDBACK PROGRAM.—

16 (1) ANALYSIS TOOL.—Not later than December
17 31, 2010, the Secretary shall initially develop an epi-
18 sode grouper or other initial resource analysis tool
19 described in subsection (c)(4).

20 (2) EVALUATION.—During 2011 the Secretary
21 shall conduct the evaluation specified in subsection
22 (e)(1).

23 (3) EXPANSION.—The Secretary shall expand
24 the program as specified in subsection (e)(2).

25 (c) FEEDBACK REPORTS.—

1 (1) COMPARISON OF RESOURCE USE PAT-
2 TERNS.—Feedback reports shall include information
3 allowing the comparison of a physician’s resource
4 use pattern to such pattern for peers. Such reports
5 may include resource use data on—

- 6 (A) a per capita basis;
7 (B) a per episode basis; or
8 (C) both.

9 (2) PEER COMPARISON.—Reports under this
10 section shall include information regarding nation-
11 wide groups of similarly situated physicians (taking
12 into consideration specialty, practice setting, and
13 such other criteria as the Secretary finds appro-
14 priate) and comparing the pattern of services of
15 each physician in the group to the group average
16 pattern of services.

17 (3) DETAILED INFORMATION.—The Secretary
18 shall include in feedback reports details about the
19 services, procedures, and relevant clinical informa-
20 tion to identify factors that may account for signifi-
21 cant variation of a physician from national norms,
22 such as high rates of elective surgeries, diagnostic
23 services, or other utilization attributable to the judg-
24 ment of the physician.

1 (4) DEVELOPMENT OF EPISODE GROUPE.—

2 The Secretary shall, in consultation with physicians
3 and others as the Secretary determines to be appro-
4 priate, develop an episode grouper or other resource
5 analysis tool that could be used to measure physi-
6 cian resource use. The Secretary may update such
7 grouper from time to time as appropriate.

8 (d) FEEDBACK PROGRAM.—The Secretary shall en-
9 gage in efforts to disseminate feedback reports. In dis-
10 seminating such reports, the Secretary shall seek to
11 establish their validity and credibility to physicians and
12 shall experiment with communications methods such as
13 the following:

14 (1) Direct meetings between contracted physi-
15 cians, facilitated by the Secretary, to discuss the
16 contents of feedback reports, including any reasons
17 for divergence from national averages.

18 (2) Contracts with local, non-profit entities en-
19 gaged in quality improvement efforts at the commu-
20 nity level. Such entities shall use the feedback re-
21 ports, or such equivalent tool as specified by the
22 Secretary. Any exchange of data under this para-
23 graph shall be protected by appropriate privacy safe-
24 guards.

1 (3) Mailings or other methods of communica-
2 tion that facilitate large-scale dissemination.

3 (4) Other methods specified by the Secretary.

4 (e) EVALUATION AND EXPANSION.—

5 (1) EVALUATION.—The Secretary shall evaluate
6 the methods specified in subsection (d) with regard
7 to their efficacy in changing practice patterns to im-
8 prove quality and decrease costs.

9 (2) EXPANSION.—Taking into account the cost
10 of each method, the Secretary shall develop a plan
11 to disseminate such reports in a significant manner
12 in the regions and cities of the country with the
13 highest utilization of services under Medicare. The
14 Secretary shall disseminate, to the extent prac-
15 ticable, feedback reports in a manner consistent with
16 the following:

17 (A) During 2011, at least 1,000 reports.

18 (B) During 2012, at least 10,000 reports.

19 (C) During 2013, at least 25,000 reports.

20 (D) During 2014 and subsequent years,
21 reports to the physicians with utilization within
22 the highest 5 percent of physicians, subject to
23 the authority to focus under subsection (f).

1 (3) OPT OUT.—The Secretary shall establish a
2 process by which a physician may opt not to receive
3 feedback reports under this section.

4 (f) AUTHORITY TO FOCUS PROGRAM APPLICA-
5 TION.—The secretary may focus the application of the
6 program under this section and dissemination of feedback
7 reports on physicians, as appropriate, such as on physi-
8 cians who—

9 (1) practice in geographic areas that account
10 for unusually high rates of spending per capita;

11 (2) treat conditions that have a high cost or
12 volume under Medicare;

13 (3) use a high amount of resources compared to
14 other physicians; or

15 (4) treat at least a minimum number of Medi-
16 care beneficiaries.

17 (g) INCLUSION OF CERTAIN PRACTITIONERS.—For
18 purposes of this section, the term “physician” includes a
19 practitioner who furnishes services for which payment is
20 made under Medicare and for which such payment would
21 be made if furnished by a physician.

22 (h) ADMINISTRATION.—

23 (1) Chapter 35 of title 44, United States Code
24 shall not apply to this section.

1 (2) Notwithstanding any other provision of law,
2 the Secretary may implement the provisions of this
3 section by program instruction or otherwise.

4 **PART 2—MARKET BASKET UPDATES**

5 **SEC. 1131. INCORPORATING PRODUCTIVITY IMPROVE-**
6 **MENTS INTO MARKET BASKET UPDATES**
7 **THAT DO NOT ALREADY INCORPORATE SUCH**
8 **IMPROVEMENTS.**

9 (a) **OUTPATIENT HOSPITALS.—**

10 (1) **IN GENERAL.—**The first sentence of section
11 1833(t)(3)(C)(iv) of the Social Security Act (42
12 U.S.C. 1395l(t)(3)(C)(iv)) is amended—

13 (A) by inserting “(which is subject to the
14 productivity adjustment described in subclause
15 (II) of such section)” after
16 “1886(b)(3)(B)(iii)”; and

17 (B) by inserting “(but not below 0)” after
18 “reduced”.

19 (2) **EFFECTIVE DATE.—**The amendments made
20 by paragraph (1) shall apply to increase factors for
21 services furnished in years beginning with 2010.

22 (b) **AMBULANCE SERVICES.—**Section 1834(l)(3)(B)
23 of such Act (42 U.S.C. 1395m(l)(3)(B)) is amended by
24 inserting before the period at the end the following: “and,
25 in the case of years beginning with 2010, subject to the

1 productivity adjustment described in section
2 1886(b)(3)(B)(iii)(II)”.

3 (c) AMBULATORY SURGICAL CENTER SERVICES.—

4 Section 1833(i)(2)(D) of such Act (42 U.S.C.
5 1395l(i)(2)(D)) is amended—

6 (1) by redesignating clause (v) as clause (vi);

7 and

8 (2) by inserting after clause (iv) the following
9 new clause:

10 “(v) In implementing the system described in clause
11 (i), for services furnished during 2010 or any subsequent
12 year, to the extent that an annual percentage change fac-
13 tor applies, such factor shall be subject to the productivity
14 adjustment described in section 1886(b)(3)(B)(iii)(II).”.

15 (d) LABORATORY SERVICES.—Section
16 1833(h)(2)(A) of such Act (42 U.S.C. 1395l(h)(2)(A)) is
17 amended—

18 (1) in clause (i), by striking “for each of years
19 2009 through 2013” and inserting “for 2009”; and

20 (2) clause (ii)—

21 (A) by striking “and” at the end of sub-
22 clause (III);

23 (B) by striking the period at the end of
24 subclause (IV) and inserting “; and”; and

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

3 “(V) the annual adjustment in the fee schedules
4 determined under clause (i) for years beginning with
5 2010 shall be subject to the productivity adjustment
6 described in section 1886(b)(3)(B)(iii)(II).”.

7 (e) CERTAIN DURABLE MEDICAL EQUIPMENT.—Sec-
8 tion 1834(a)(14) of such Act (42 U.S.C. 1395m(a)(14))
9 is amended—

10 (1) in subparagraph (K), by inserting before
11 the semicolon at the end the following: “, subject to
12 the productivity adjustment described in section
13 1886(b)(3)(B)(iii)(II)”;

14 (2) in subparagraph (L)(i), by inserting after
15 “June 2013,” the following: “subject to the produc-
16 tivity adjustment described in section
17 1886(b)(3)(B)(iii)(II),”;

18 (3) in subparagraph (L)(ii), by inserting after
19 “June 2013” the following: “, subject to the produc-
20 tivity adjustment described in section
21 1886(b)(3)(B)(iii)(II)”;

22 (4) in subparagraph (M), by inserting before
23 the period at the end the following: “, subject to the
24 productivity adjustment described in section
25 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) or
23 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 Secretary shall set specific goals
4 for the number of acute and post-acute bundling test sites
5 under the pilot program to ensure that the pilot program
6 is of sufficient size and scope to—

7 “(1) test the approaches under the pilot pro-
8 gram in a variety of settings, including urban, rural,
9 and underserved areas;

10 “(2) include geographic areas and additional
11 conditions that account for significant program
12 spending, as defined by the Secretary; and

13 “(3) subject to subsection (d), disseminate the
14 pilot program rapidly on a national basis.

15 To the extent that the Secretary finds inpatient and post-
16 acute care bundling to be successful in improving quality
17 and reducing costs, the Secretary shall implement such
18 mechanisms and reforms under the pilot program on as
19 large a geographic scale as practical and economical, con-
20 sistent with subsection (e).

21 “(c) LIMITATION.—The Secretary shall only expand
22 the pilot program under subsection (a)(2) if the Secretary
23 finds that—

24 “(1) the demonstration program under section
25 1866C and pilot program under this section main-

1 tain or increase the quality of care received by indi-
2 viduals enrolled under this title; and

3 “(2) such demonstration program and pilot pro-
4 gram reduce program expenditures and, based on
5 the certification under subsection (d), that the ex-
6 pansion of such pilot program would result in esti-
7 mated spending that would be less than what spend-
8 ing would otherwise be in the absence of this section.

9 “(d) CERTIFICATION.—For purposes of subsection
10 (c), the Chief Actuary of the Centers for Medicare & Med-
11 icaid Services shall certify whether expansion of the pilot
12 program under this section would result in estimated
13 spending that would be less than what spending would
14 otherwise be in the absence of this section.

15 “(e) VOLUNTARY PARTICIPATION.—Nothing in this
16 paragraph shall be construed as requiring the participa-
17 tion of an entity in the pilot program under this section.”.

18 (2) CONFORMING AMENDMENT.—Section
19 1866C(b) of the Social Security Act (42 U.S.C.
20 1395cc–3(b)) is amended by striking “The Sec-
21 retary” and inserting “Subject to section 1866D, the
22 Secretary”.

23 **SEC. 1153. HOME HEALTH PAYMENT UPDATE FOR 2010.**

24 Section 1895(b)(3)(B)(ii) of the Social Security Act
25 (42 U.S.C. 1395fff(b)(3)(B)(ii)) is amended—

- 1 (1) in subclause (IV), by striking “and”;
- 2 (2) by redesignating subclause (V) as subclause
- 3 (VII); and
- 4 (3) by inserting after subclause (IV) the fol-
- 5 lowing new subclauses:
- 6 “(V) 2007, 2008, and 2009, sub-
- 7 ject to clause (v), the home health
- 8 market basket percentage increase;
- 9 “(VI) 2010, subject to clause (v),
- 10 0 percent; and”.

11 **SEC. 1154. PAYMENT ADJUSTMENTS FOR HOME HEALTH**

12 **CARE.**

13 (a) ACCELERATION OF ADJUSTMENT FOR CASE MIX

14 CHANGES.—Section 1895(b)(3)(B) of the Social Security

15 Act (42 U.S.C. 1395fff(b)(3)(B)) is amended—

16 (1) in clause (iv), by striking “Insofar as” and

17 inserting “Subject to clause (vi), insofar as”; and

18 (2) by adding at the end the following new

19 clause:

20 “(vi) SPECIAL RULE FOR CASE MIX

21 CHANGES FOR 2011.—

22 “(I) IN GENERAL.—With respect

23 to the case mix adjustments estab-

24 lished in section 484.220(a) of title

25 42, Code of Federal Regulations, the

1 Secretary shall apply, in 2010, the ad-
2 justment established in paragraph (3)
3 of such section for 2011, in addition
4 to applying the adjustment established
5 in paragraph (2) for 2010.

6 “(II) CONSTRUCTION.—Nothing
7 in this clause shall be construed as
8 limiting the amount of adjustment for
9 case mix for 2010 or 2011 if more re-
10 cent data indicate an appropriate ad-
11 justment that is greater than the
12 amount established in the section de-
13 scribed in subclause (I).”.

14 (b) REBASING HOME HEALTH PROSPECTIVE PAY-
15 MENT AMOUNT.—Section 1895(b)(3)(A) of the Social Se-
16 curity Act (42 U.S.C. 1395fff(b)(3)(A)) is amended—

17 (1) in clause (i)—

18 (A) in subclause (III), by inserting “and
19 before 2011” after “after the period described
20 in subclause (II)”; and

21 (B) by inserting after subclause (III) the
22 following new subclauses:

23 “(IV) Subject to clause (iii)(I),
24 for 2011, such amount (or amounts)
25 shall be adjusted by a uniform per-

1 centage determined to be appropriate
2 by the Secretary based on analysis of
3 factors such as changes in the average
4 number and types of visits in an epi-
5 sode, the change in intensity of visits
6 in an episode, growth in cost per epi-
7 sode, and other factors that the Sec-
8 retary considers to be relevant.

9 “(V) Subject to clause (iii)(II),
10 for a year after 2011, such a amount
11 (or amounts) shall be equal to the
12 amount (or amounts) determined
13 under this clause for the previous
14 year, updated under subparagraph
15 (B).”; and

16 (2) by adding at the end the following new
17 clause:

18 “(iii) SPECIAL RULE IN CASE OF IN-
19 ABILITY TO EFFECT TIMELY REBASING.—

20 “(I) APPLICATION OF PROXY
21 AMOUNT FOR 2011.—If the Secretary
22 is not able to compute the amount (or
23 amounts) under clause (i)(IV) so as to
24 permit, on a timely basis, the applica-
25 tion of such clause for 2011, the Sec-

1 retary shall substitute for such
2 amount (or amounts) 95 percent of
3 the amount (or amounts) that would
4 otherwise be specified under clause
5 (i)(III) if it applied for 2011.

6 “(II) ADJUSTMENT FOR SUBSE-
7 QUENT YEARS BASED ON DATA.—If
8 the Secretary applies subclause (I),
9 the Secretary before July 1, 2011,
10 shall compare the amount (or
11 amounts) applied under such sub-
12 clause with the amount (or amounts)
13 that should have been applied under
14 clause (i)(IV). The Secretary shall de-
15 crease or increase the prospective pay-
16 ment amount (or amounts) under
17 clause (i)(V) for 2012 (or, at the Sec-
18 retary’s discretion, over a period of
19 several years beginning with 2012) by
20 the amount (if any) by which the
21 amount (or amounts) applied under
22 subclause (I) is greater or less, re-
23 spectively, than the amount (or
24 amounts) that should have been ap-
25 plied under clause (i)(IV).”.

1 **SEC. 1155. INCORPORATING PRODUCTIVITY IMPROVE-**
2 **MENTS INTO MARKET BASKET UPDATE FOR**
3 **HOME HEALTH SERVICES.**

4 (a) IN GENERAL.—Section 1895(b)(3)(B) of the So-
5 cial Security Act (42 U.S.C. 1395fff(b)(3)(B)) is amend-
6 ed—

7 (1) in clause (iii), by inserting “(including being
8 subject to the productivity adjustment described in
9 section 1886(b)(3)(B)(iii)(II))” after “in the same
10 manner”; and

11 (2) in clause (v)(I), by inserting “(but not
12 below 0)” after “reduced”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall apply to home health market basket
15 percentage increases for years beginning with 2010.

16 **SEC. 1156. LIMITATION ON MEDICARE EXCEPTIONS TO THE**
17 **PROHIBITION ON CERTAIN PHYSICIAN RE-**
18 **FERRALS MADE TO HOSPITALS.**

19 (a) IN GENERAL.—Section 1877 of the Social Secu-
20 rity Act (42 U.S.C. 1395nn) is amended—

21 (1) in subsection (d)(2)—

22 (A) in subparagraph (A), by striking
23 “and” at the end;

24 (B) in subparagraph (B), 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 “(C) in the case where the entity is a hos-
4 pital, the hospital meets the requirements of
5 paragraph (3)(D).”;

6 (2) in subsection (d)(3)—

7 (A) in subparagraph (B), by striking
8 “and” at the end;

9 (B) in subparagraph (C), by striking the
10 period at the end and inserting “; and”; and

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

13 “(D) the hospital meets the requirements
14 described in subsection (i)(1).”;

15 (3) by amending subsection (f) to read as fol-
16 lows:

17 “(f) REPORTING AND DISCLOSURE REQUIRE-
18 MENTS.—

19 “(1) IN GENERAL.—Each entity providing cov-
20 ered items or services for which payment may be
21 made under this title shall provide the Secretary
22 with the information concerning the entity’s owner-
23 ship, investment, and compensation arrangements,
24 including—

1 “(A) the covered items and services pro-
2 vided by the entity, and

3 “(B) the names and unique physician iden-
4 tification numbers of all physicians with an
5 ownership or investment interest (as described
6 in subsection (a)(2)(A)), or with a compensa-
7 tion arrangement (as described in subsection
8 (a)(2)(B)), in the entity, or whose immediate
9 relatives have such an ownership or investment
10 interest or who have such a compensation rela-
11 tionship with the entity.

12 Such information shall be provided in such form,
13 manner, and at such times as the Secretary shall
14 specify. The requirement of this subsection shall not
15 apply to designated health services provided outside
16 the United States or to entities which the Secretary
17 determines provide services for which payment may
18 be made under this title very infrequently.

19 “(2) REQUIREMENTS FOR HOSPITALS WITH
20 PHYSICIAN OWNERSHIP OR INVESTMENT.—In the
21 case of a hospital that meets the requirements de-
22 scribed in subsection (i)(1), the hospital shall—

23 “(A) submit to the Secretary an initial re-
24 port, and periodic updates at a frequency deter-
25 mined by the Secretary, containing a detailed

1 description of the identity of each physician
2 owner and physician investor and any other
3 owners or investors of the hospital;

4 “(B) require that any referring physician
5 owner or investor discloses to the individual
6 being referred, by a time that permits the indi-
7 vidual to make a meaningful decision regarding
8 the receipt of services, as determined by the
9 Secretary, the ownership or investment interest,
10 as applicable, of such referring physician in the
11 hospital; and

12 “(C) disclose the fact that the hospital is
13 partially or wholly owned by one or more physi-
14 cians or has one or more physician investors—

15 “(i) on any public website for the hos-
16 pital; and

17 “(ii) in any public advertising for the
18 hospital.

19 The information to be reported or disclosed under
20 this paragraph shall be provided in such form, man-
21 ner, and at such times as the Secretary shall specify.

22 The requirements of this paragraph shall not apply
23 to designated health services furnished outside the
24 United States or to entities which the Secretary de-

1 termines provide services for which payment may be
2 made under this title very infrequently.

3 “(3) PUBLICATION OF INFORMATION.—The
4 Secretary shall publish, and periodically update, the
5 information submitted by hospitals under paragraph
6 (2)(A) on the public Internet website of the Centers
7 for Medicare & Medicaid Services.”;

8 (4) by amending subsection (g)(5) to read as
9 follows:

10 “(5) FAILURE TO REPORT OR DISCLOSE INFOR-
11 MATION.—

12 “(A) REPORTING.—Any person who is re-
13 quired, but fails, to meet a reporting require-
14 ment of paragraphs (1) and (2)(A) of sub-
15 section (f) is subject to a civil money penalty of
16 not more than \$10,000 for each day for which
17 reporting is required to have been made.

18 “(B) DISCLOSURE.—Any physician who is
19 required, but fails, to meet a disclosure require-
20 ment of subsection (f)(2)(B) or a hospital that
21 is required, but fails, to meet a disclosure re-
22 quirement of subsection (f)(2)(C) is subject to
23 a civil money penalty of not more than \$10,000
24 for each case in which disclosure is required to
25 have been made.

1 “(C) APPLICATION.—The provisions of
2 section 1128A (other than the first sentence of
3 subsection (a) and other than subsection (b))
4 shall apply to a civil money penalty under sub-
5 paragraphs (A) and (B) in the same manner as
6 such provisions apply to a penalty or proceeding
7 under section 1128A(a).”; and

8 (5) by adding at the end the following new sub-
9 section:

10 “(i) REQUIREMENTS TO QUALIFY FOR RURAL PRO-
11 VIDER AND HOSPITAL OWNERSHIP EXCEPTIONS TO
12 SELF-REFERRAL PROHIBITION.—

13 “(1) REQUIREMENTS DESCRIBED.—For pur-
14 poses of subsection (d)(3)(D), the requirements de-
15 scribed in this paragraph are as follows:

16 “(A) PROVIDER AGREEMENT.—The hos-
17 pital had—

18 “(i) physician ownership or invest-
19 ment on January 1, 2009; and

20 “(ii) a provider agreement under sec-
21 tion 1866 in effect on such date.

22 “(B) PROHIBITION ON PHYSICIAN OWNER-
23 SHIP OR INVESTMENT.—The percentage of the
24 total value of the ownership or investment in-
25 terests held in the hospital, or in an entity

1 whose assets include the hospital, by physician
2 owners or investors in the aggregate does not
3 exceed such percentage as of the date of enact-
4 ment of this subsection.

5 “(C) PROHIBITION ON EXPANSION OF FA-
6 CILITY CAPACITY.—Except as provided in para-
7 graph (2), the number of operating rooms, pro-
8 cedure rooms, or beds of the hospital at any
9 time on or after the date of the enactment of
10 this subsection are no greater than the number
11 of operating rooms, procedure rooms, or beds,
12 respectively, as of such date.

13 “(D) ENSURING BONA FIDE OWNERSHIP
14 AND INVESTMENT.—

15 “(i) Any ownership or investment in-
16 terests that the hospital offers to a physi-
17 cian are not offered on more favorable
18 terms than the terms offered to a person
19 who is not in a position to refer patients
20 or otherwise generate business for the hos-
21 pital.

22 “(ii) The hospital (or any investors in
23 the hospital) does not directly or indirectly
24 provide loans or financing for any physi-
25 cian owner or investor in the hospital.

1 “(iii) The hospital (or any investors in
2 the hospital) does not directly or indirectly
3 guarantee a loan, make a payment toward
4 a loan, or otherwise subsidize a loan, for
5 any physician owner or investor or group
6 of physician owners or investors that is re-
7 lated to acquiring any ownership or invest-
8 ment interest in the hospital.

9 “(iv) Ownership or investment returns
10 are distributed to each owner or investor in
11 the hospital in an amount that is directly
12 proportional to the ownership or invest-
13 ment interest of such owner or investor in
14 the hospital.

15 “(v) The investment interest of the
16 owner or investor is directly proportional
17 to the owner’s or investor’s capital con-
18 tributions made at the time the ownership
19 or investment interest is obtained.

20 “(vi) Physician owners and investors
21 do not receive, directly or indirectly, any
22 guaranteed receipt of or right to purchase
23 other business interests related to the hos-
24 pital, including the purchase or lease of
25 any property under the control of other

1 owners or investors in the hospital or lo-
2 cated near the premises of the hospital.

3 “(vii) The hospital does not offer a
4 physician owner or investor the oppor-
5 tunity to purchase or lease any property
6 under the control of the hospital or any
7 other owner or investor in the hospital on
8 more favorable terms than the terms of-
9 fered to a person that is not a physician
10 owner or investor.

11 “(viii) The hospital does not condition
12 any physician ownership or investment in-
13 terests either directly or indirectly on the
14 physician owner or investor making or in-
15 fluencing referrals to the hospital or other-
16 wise generating business for the hospital.

17 “(E) PATIENT SAFETY.—In the case of a
18 hospital that does not offer emergency services,
19 the hospital has the capacity to—

20 “(i) provide assessment and initial
21 treatment for medical emergencies; and

22 “(ii) if the hospital lacks additional
23 capabilities required to treat the emergency
24 involved, refer and transfer the patient

1 with the medical emergency to a hospital
2 with the required capability.

3 “(F) LIMITATION ON APPLICATION TO
4 CERTAIN CONVERTED FACILITIES.—The hos-
5 pital was not converted from an ambulatory
6 surgical center to a hospital on or after the date
7 of enactment of this subsection.

8 “(2) EXCEPTION TO PROHIBITION ON EXPAN-
9 SION OF FACILITY CAPACITY.—

10 “(A) PROCESS.—

11 “(i) ESTABLISHMENT.—The Secretary
12 shall establish and implement a process
13 under which a hospital may apply for an
14 exception from the requirement under
15 paragraph (1)(C).

16 “(ii) OPPORTUNITY FOR COMMUNITY
17 INPUT.—The process under clause (i) shall
18 provide persons and entities in the commu-
19 nity in which the hospital applying for an
20 exception is located with the opportunity to
21 provide input with respect to the applica-
22 tion.

23 “(iii) TIMING FOR IMPLEMENTA-
24 TION.—The Secretary shall implement the
25 process under clause (i) on the date that is

1 one month after the promulgation of regu-
2 lations described in clause (iv).

3 “(iv) REGULATIONS.—Not later than
4 the first day of the month beginning 18
5 months after the date of the enactment of
6 this subsection, the Secretary shall promul-
7 gate regulations to carry out the process
8 under clause (i). The Secretary may issue
9 such regulations as interim final regula-
10 tions.

11 “(B) FREQUENCY.—The process described
12 in subparagraph (A) shall permit a hospital to
13 apply for an exception up to once every 2 years.

14 “(C) PERMITTED INCREASE.—

15 “(i) IN GENERAL.—Subject to clause
16 (ii) and subparagraph (D), a hospital
17 granted an exception under the process de-
18 scribed in subparagraph (A) may increase
19 the number of operating rooms, procedure
20 rooms, or beds of the hospital above the
21 baseline number of operating rooms, proce-
22 dure rooms, or beds, respectively, of the
23 hospital (or, if the hospital has been grant-
24 ed a previous exception under this para-
25 graph, above the number of operating

1 rooms, procedure rooms, or beds, respec-
2 tively, of the hospital after the application
3 of the most recent increase under such an
4 exception).

5 “(ii) 100 PERCENT INCREASE LIMITA-
6 TION.—The Secretary shall not permit an
7 increase in the number of operating rooms,
8 procedure rooms, or beds of a hospital
9 under clause (i) to the extent such increase
10 would result in the number of operating
11 rooms, procedure rooms, or beds of the
12 hospital exceeding 200 percent of the base-
13 line number of operating rooms, procedure
14 rooms, or beds of the hospital.

15 “(iii) BASELINE NUMBER OF OPER-
16 ATING ROOMS, PROCEDURE ROOMS, OR
17 BEDS.—In this paragraph, the term ‘base-
18 line number of operating rooms, procedure
19 rooms, or beds’ means the number of oper-
20 ating rooms, procedure rooms, or beds of a
21 hospital as of the date of enactment of this
22 subsection.

23 “(D) INCREASE LIMITED TO FACILITIES
24 ON THE MAIN CAMPUS OF THE HOSPITAL.—
25 Any increase in the number of operating rooms,

1 procedure rooms, or beds of a hospital pursuant
2 to this paragraph may only occur in facilities on
3 the main campus of the hospital.

4 “(E) CONDITIONS FOR APPROVAL OF AN
5 INCREASE IN FACILITY CAPACITY.—The Sec-
6 retary may grant an exception under the proc-
7 ess described in subparagraph (A) only to a
8 hospital—

9 “(i) that is located in a county in
10 which the percentage increase in the popu-
11 lation during the most recent 5-year period
12 for which data are available is estimated to
13 be at least 150 percent of the percentage
14 increase in the population growth of the
15 State in which the hospital is located dur-
16 ing that period, as estimated by Bureau of
17 the Census and available to the Secretary;

18 “(ii) whose annual percent of total in-
19 patient admissions that represent inpatient
20 admissions under the program under title
21 XIX is estimated to be equal to or greater
22 than the average percent with respect to
23 such admissions for all hospitals located in
24 the county in which the hospital is located;

1 “(iii) that does not discriminate
2 against beneficiaries of Federal health care
3 programs and does not permit physicians
4 practicing at the hospital to discriminate
5 against such beneficiaries;

6 “(iv) that is located in a State in
7 which the average bed capacity in the
8 State is estimated to be less than the na-
9 tional average bed capacity;

10 “(v) that has an average bed occu-
11 pancy rate that is estimated to be greater
12 than the average bed occupancy rate in the
13 State in which the hospital is located; and

14 “(vi) that meets other conditions as
15 determined by the Secretary.

16 “(F) PROCEDURE ROOMS.—In this sub-
17 section, the term ‘procedure rooms’ includes
18 rooms in which catheterizations, angiographies,
19 angiograms, and endoscopies are furnished, but
20 such term shall not include emergency rooms or
21 departments (except for rooms in which cath-
22 eterizations, angiographies, angiograms, and
23 endoscopies are furnished).

24 “(G) PUBLICATION OF FINAL DECI-
25 SIONS.—Not later than 120 days after receiving

1 a complete application under this paragraph,
2 the Secretary shall publish on the public Inter-
3 net website of the Centers for Medicare & Med-
4 icaid Services the final decision with respect to
5 such application.

6 “(H) LIMITATION ON REVIEW.—There
7 shall be no administrative or judicial review
8 under section 1869, section 1878, or otherwise
9 of the exception process under this paragraph,
10 including the establishment of such process,
11 and any determination made under such pro-
12 cess.

13 “(3) PHYSICIAN OWNER OR INVESTOR DE-
14 FINED.—For purposes of this subsection and sub-
15 section (f)(2), the term ‘physician owner or investor’
16 means a physician (or an immediate family member
17 of such physician) with a direct or an indirect own-
18 ership or investment interest in the hospital.

19 “(4) PATIENT SAFETY REQUIREMENT.—In the
20 case of a hospital to which the requirements of para-
21 graph (1) apply, insofar as the hospital admits a pa-
22 tient and does not have any physician available on
23 the premises 24 hours per day, 7 days per week, be-
24 fore admitting the patient—

1 “(A) the hospital shall disclose such fact to
2 the patient; and

3 “(B) following such disclosure, the hospital
4 shall receive from the patient a signed acknowl-
5 edgment that the patient understands such fact.

6 “(5) CLARIFICATION.—Nothing in this sub-
7 section shall be construed as preventing the Sec-
8 retary from terminating a hospital’s provider agree-
9 ment if the hospital is not in compliance with regu-
10 lations pursuant to section 1866.”.

11 (b) VERIFYING COMPLIANCE.—The Secretary of
12 Health and Human Services shall establish policies and
13 procedures to verify compliance with the requirements de-
14 scribed in subsections (i)(1) and (i)(4) of section 1877 of
15 the Social Security Act, as added by subsection (a)(5).
16 The Secretary may use unannounced site reviews of hos-
17 pitals and audits to verify compliance with such require-
18 ments.

19 (c) IMPLEMENTATION.—

20 (1) FUNDING.—For purposes of carrying out
21 the amendments made by subsection (a) and the
22 provisions of subsection (b), in addition to funds
23 otherwise available, out of any funds in the Treasury
24 not otherwise appropriated there are appropriated to
25 the Secretary of Health and Human Services for the

1 Centers for Medicare & Medicaid Services Program
2 Management Account \$5,000,000 for each fiscal
3 year beginning with fiscal year 2010. Amounts ap-
4 propriated under this paragraph for a fiscal year
5 shall be available until expended.

6 (2) ADMINISTRATION.—Chapter 35 of title 44,
7 United States Code, shall not apply to the amend-
8 ments made by subsection (a) and the provisions of
9 subsection (b).

10 **SEC. 1157. INSTITUTE OF MEDICINE STUDY OF GEO-**
11 **GRAPHIC ADJUSTMENT FACTORS UNDER**
12 **MEDICARE.**

13 (a) IN GENERAL.—The Secretary of Health and
14 Human Services shall enter into a contract with the Insti-
15 tute of Medicine of the National Academy of Science to
16 conduct a comprehensive empirical study, and provide rec-
17 ommendations as appropriate, on the accuracy of the geo-
18 graphic adjustment factors established under sections
19 1848(e) and 1886(d)(3)(E) of the Social Security Act (42
20 U.S.C. 1395w–4(e), 11395ww(d)(3)).

21 (b) MATTERS INCLUDED.—Such study shall include
22 an evaluation and assessment of the following with respect
23 to such adjustment factors:

24 (1) Empirical validity of the adjustment factors.

1 (2) Methodology used to determine the adjust-
2 ment factors.

3 (3) Measures used for the adjustment factors,
4 taking into account—

5 (A) timeliness of data and frequency of re-
6 visions to such data;

7 (B) sources of data and the degree to
8 which such data are representative of costs; and

9 (C) operational costs of providers who par-
10 ticipate in Medicare.

11 (c) EVALUATION.—Such study shall, within the con-
12 text of the United States health care marketplace, evalu-
13 ate and consider the following:

14 (1) The effect of the adjustment factors on the
15 level and distribution of the health care workforce
16 and resources, including—

17 (A) recruitment and retention that takes
18 into account workforce mobility between urban
19 and rural areas;

20 (B) ability of hospitals and other facilities
21 to maintain an adequate and skilled workforce;
22 and

23 (C) patient access to providers and needed
24 medical technologies.

1 tions 1848 and 1886(d) of such Act, respectively, pro-
2 posals (as the Secretary determines to be appropriate) to
3 revise the geographic adjustment factors used in such sys-
4 tems. Such proposals shall be contained in the next rule-
5 making cycle following the submission to the Secretary of
6 the report under section 1157(d).

7 (b) PAYMENT ADJUSTMENTS.—

8 (1) FUNDING FOR IMPROVEMENTS.—The Sec-
9 retary shall use funds as provided under subsection
10 (c) in making changes to the geographic adjustment
11 factors pursuant to subsection (a). In making such
12 changes to such geographic adjustment factors, the
13 Secretary shall ensure that the estimated increased
14 expenditures resulting from such changes does not
15 exceed the amounts provided under subsection (c).

16 (2) ENSURING FAIRNESS.—In carrying out this
17 subsection, the Secretary shall not reduce the geo-
18 graphic adjustment below the factor that applied for
19 such payment system in the payment year before
20 such changes.

21 (c) FUNDING.—Amounts in the Medicare Improve-
22 ment Fund under section 1898, as amended by section
23 1146, shall be available to the Secretary to make changes
24 to the geographic adjustments factors as described in sub-
25 sections (a) and (b) with respect to services furnished be-

1 fore January 1, 2014. No more than one-half of such
2 amounts shall be available with respect to services fur-
3 nished in any one payment year.

4 **Subtitle D—Medicare Advantage** 5 **Reforms**

6 **PART 1—PAYMENT AND ADMINISTRATION**

7 **SEC. 1161. PHASE-IN OF PAYMENT BASED ON FEE-FOR-** 8 **SERVICE COSTS.**

9 Section 1853 of the Social Security Act (42 U.S.C.
10 1395w-23) is amended—

11 (1) in subsection (j)(1)(A)—

12 (A) by striking “beginning with 2007” and
13 inserting “for 2007, 2008, 2009, and 2010”;
14 and

15 (B) by inserting after “(k)(1)” the fol-
16 lowing: “, or, beginning with 2011, $\frac{1}{12}$ of the
17 blended benchmark amount determined under
18 subsection (n)(1)”;

19 (2) by adding at the end the following new sub-
20 section:

21 “(n) DETERMINATION OF BLENDED BENCHMARK
22 AMOUNT.—

23 “(1) IN GENERAL.—For purposes of subsection
24 (j), subject to paragraphs (3) and (4), the term
25 ‘blended benchmark amount’ means for an area—

1 “(A) for 2011 the sum of—

2 “(i) $\frac{2}{3}$ of the applicable amount (as
3 defined in subsection (k)) for the area and
4 year; and

5 “(ii) $\frac{1}{3}$ of the amount specified in
6 paragraph (2) for the area and year;

7 “(B) for 2012 the sum of—

8 “(i) $\frac{1}{3}$ of the applicable amount for
9 the area and year; and

10 “(ii) $\frac{2}{3}$ of the amount specified in
11 paragraph (2) for the area and year; and

12 “(C) for a subsequent year the amount
13 specified in paragraph (2) for the area and
14 year.

15 “(2) SPECIFIED AMOUNT.—The amount speci-
16 fied in this paragraph for an area and year is the
17 amount specified in subsection (c)(1)(D)(i) for the
18 area and year adjusted (in a manner specified by the
19 Secretary) to take into account the phase-out in the
20 indirect costs of medical education from capitation
21 rates described in subsection (k)(4).

22 “(3) FEE-FOR-SERVICE PAYMENT FLOOR.—In
23 no case shall the blended benchmark amount for an
24 area and year be less than the amount specified in
25 paragraph (2).

1 “(4) EXCEPTION FOR PACE PLANS.—This sub-
2 section shall not apply to payments to a PACE pro-
3 gram under section 1894.”.

4 **SEC. 1162. QUALITY BONUS PAYMENTS.**

5 (a) IN GENERAL.—Section 1853 of the Social Secu-
6 rity Act (42 U.S.C. 1395w-23), as amended by section
7 1161, is amended—

8 (1) in subsection (j), by inserting “subject to
9 subsection (o),” after “For purposes of this part”;
10 and

11 (2) by adding at the end the following new sub-
12 section:

13 “(o) QUALITY BASED PAYMENT ADJUSTMENT.—

14 “(1) HIGH QUALITY PLAN ADJUSTMENT.—For
15 years beginning with 2011, in the case of a Medicare
16 Advantage plan that is identified (under paragraph
17 (3)(E)(ii)) as a high quality MA plan with respect
18 to the year, the blended benchmark amount under
19 subsection (n)(1) shall be increased—

20 “(A) for 2011, by 1.0 percent;

21 “(B) for 2012, by 2.0 percent; and

22 “(C) for a subsequent year, by 3.0 percent.

23 “(2) IMPROVED QUALITY PLAN ADJUSTMENT.—

24 For years beginning with 2011, in the case of a
25 Medicare Advantage plan that is identified (under

1 paragraph (3)(E)(iii)) as an improved quality MA
2 plan with respect to the year, blended benchmark
3 amount under subsection (n)(1) shall be increased—

4 “(A) for 2011, by 0.33 percent;

5 “(B) for 2012, by 0.66 percent; and

6 “(C) for a subsequent year, by 1.0 percent.

7 “(3) DETERMINATIONS OF QUALITY.—

8 “(A) QUALITY PERFORMANCE.—The Sec-
9 retary shall provide for the computation of a
10 quality performance score for each Medicare
11 Advantage plan to be applied for each year be-
12 ginning with 2010.

13 “(B) COMPUTATION OF SCORE.—

14 “(i) FOR YEARS BEFORE 2014.—For
15 years before 2014, the quality performance
16 score for a Medicare Advantage plan shall
17 be computed based on a blend (as des-
18 ignated by the Secretary) of the plan’s per-
19 formance on—

20 “(I) HEDIS effectiveness of care
21 quality measures;

22 “(II) CAHPS quality measures;
23 and

1 “(III) such other measures of
2 clinical quality as the Secretary may
3 specify.

4 Such measures shall be risk-adjusted as
5 the Secretary deems appropriate.

6 “(ii) ESTABLISHMENT OF OUTCOME-
7 BASED MEASURES.—By not later than for
8 2013 the Secretary shall implement report-
9 ing requirements for quality under this
10 section on measures selected under clause
11 (iii) that reflect the outcomes of care expe-
12 rienced by individuals enrolled in Medicare
13 Advantage plans (in addition to measures
14 described in clause (i)). Such measures
15 may include—

16 “(I) measures of rates of admis-
17 sion and readmission to a hospital;

18 “(II) measures of prevention
19 quality, such as those established by
20 the Agency for Healthcare Research
21 and Quality (that include hospital ad-
22 mission rates for specified conditions);

23 “(III) measures of patient mor-
24 tality and morbidity following surgery;

1 “(IV) measures of health func-
2 tioning (such as limitations on activi-
3 ties of daily living) and survival for
4 patients with chronic diseases;

5 “(V) measures of patient safety;
6 and

7 “(VI) other measure of outcomes
8 and patient quality of life as deter-
9 mined by the Secretary.

10 Such measures shall be risk-adjusted as
11 the Secretary deems appropriate. In deter-
12 mining the quality measures to be used
13 under this clause, the Secretary shall take
14 into consideration the recommendations of
15 the Medicare Payment Advisory Commis-
16 sion in its report to Congress under section
17 168 of the Medicare Improvements for Pa-
18 tients and Providers Act of 2008 (Public
19 Law 110–275) and shall provide pref-
20 erence to measures collected on and com-
21 parable to measures used in measuring
22 quality under parts A and B.

23 “(iii) RULES FOR SELECTION OF
24 MEASURES.—The Secretary shall select

1 measures for purposes of clause (ii) con-
2 sistent with the following:

3 “(I) The Secretary shall provide
4 preference to clinical quality measures
5 that have been endorsed by the entity
6 with a contract with the Secretary
7 under section 1890(a).

8 “(II) Prior to any measure being
9 selected under this clause, the Sec-
10 retary shall publish in the Federal
11 Register such measure and provide for
12 a period of public comment on such
13 measure.

14 “(iv) TRANSITIONAL USE OF
15 BLEND.—For payments for 2014 and
16 2015, the Secretary may compute the qual-
17 ity performance score for a Medicare Ad-
18 vantage plan based on a blend of the meas-
19 ures specified in clause (i) and the meas-
20 ures described in clause (ii) and selected
21 under clause (iii).

22 “(v) USE OF QUALITY OUTCOMES
23 MEASURES.—For payments beginning with
24 2016, the preponderance of measures used
25 under this paragraph shall be quality out-

1 comes measures described in clause (ii)
2 and selected under clause (iii).

3 “(C) DATA USED IN COMPUTING SCORE.—

4 Such score for application for—

5 “(i) payments in 2011 shall be based
6 on quality performance data for plans for
7 2009; and

8 “(ii) payments in 2012 and a subse-
9 quent year shall be based on quality per-
10 formance data for plans for the second
11 preceding year.

12 “(D) REPORTING OF DATA.—Each Medi-
13 care Advantage organization shall provide for
14 the reporting to the Secretary of quality per-
15 formance data described in subparagraph (B)
16 (in order to determine a quality performance
17 score under this paragraph) in such time and
18 manner as the Secretary shall specify.

19 “(E) RANKING OF PLANS.—

20 “(i) INITIAL RANKING.—Based on the
21 quality performance score described in sub-
22 paragraph (B) achieved with respect to a
23 year, the Secretary shall rank plan per-
24 formance—

1 “(I) from highest to lowest based
2 on absolute scores; and

3 “(II) from highest to lowest
4 based on percentage improvement in
5 the score for the plan from the pre-
6 vious year.

7 A plan which does not report quality per-
8 formance data under subparagraph (D)
9 shall be counted, for purposes of such
10 ranking, as having the lowest plan per-
11 formance and lowest percentage improve-
12 ment.

13 “(ii) IDENTIFICATION OF HIGH QUAL-
14 ITY PLANS IN TOP QUINTILE BASED ON
15 PROJECTED ENROLLMENT.—The Secretary
16 shall, based on the scores for each plan
17 under clause (i)(I) and the Secretary’s pro-
18 jected enrollment for each plan and subject
19 to clause (iv), identify those Medicare Ad-
20 vantage plans with the highest score that,
21 based upon projected enrollment, are pro-
22 jected to include in the aggregate 20 per-
23 cent of the total projected enrollment for
24 the year. For purposes of this subsection,
25 a plan so identified shall be referred to in

1 this subsection as a ‘high quality MA
2 plan’.

3 “(iii) IDENTIFICATION OF IMPROVED
4 QUALITY PLANS IN TOP QUINTILE BASED
5 ON PROJECTED ENROLLMENT.—The Sec-
6 retary shall, based on the percentage im-
7 provement score for each plan under clause
8 (i)(II) and the Secretary’s projected enroll-
9 ment for each plan and subject to clause
10 (iv), identify those Medicare Advantage
11 plans with the greatest percentage im-
12 provement score that, based upon projected
13 enrollment, are projected to include in the
14 aggregate 20 percent of the total projected
15 enrollment for the year. For purposes of
16 this subsection, a plan so identified that is
17 not a high quality plan for the year shall
18 be referred to in this subsection as an ‘im-
19 proved quality MA plan’.

20 “(iv) AUTHORITY TO DISQUALIFY
21 CERTAIN PLANS.—In applying clauses (ii)
22 and (iii), the Secretary may determine not
23 to identify a Medicare Advantage plan if
24 the Secretary has identified deficiencies in

1 the plan’s compliance with rules for such
2 plans under this part.

3 “(F) NOTIFICATION.—The Secretary, in
4 the annual announcement required under sub-
5 section (b)(1)(B) in 2011 and each succeeding
6 year, shall notify the Medicare Advantage orga-
7 nization that is offering a high quality plan or
8 an improved quality plan of such identification
9 for the year and the quality performance pay-
10 ment adjustment for such plan for the year.
11 The Secretary shall provide for publication on
12 the website for the Medicare program of the in-
13 formation described in the previous sentence.”.

14 **SEC. 1163. EXTENSION OF SECRETARIAL CODING INTEN-**
15 **SITY ADJUSTMENT AUTHORITY.**

16 Section 1853(a)(1)(C)(ii) of the Social Security Act
17 (42 U.S.C. 1395w-23(a)(1)(C)(ii) is amended—

18 (1) in the matter before subclause (I), by strik-
19 ing “through 2010” and inserting “and each subse-
20 quent year”; and

21 (2) in subclause (II)—

22 (A) by inserting “periodically” before “con-
23 duct an analysis”;

24 (B) by inserting “on a timely basis” after
25 “are incorporated”; and

1 (C) by striking “only for 2008, 2009, and
2 2010” and inserting “for 2008 and subsequent
3 years”.

4 **SEC. 1164. SIMPLIFICATION OF ANNUAL BENEFICIARY**
5 **ELECTION PERIODS.**

6 (a) 2 WEEK PROCESSING PERIOD FOR ANNUAL EN-
7 ROLLMENT PERIOD (AEP).—Paragraph (3)(B) of section
8 1851(e) of the Social Security Act (42 U.S.C. 1395w-
9 21(e)) is amended—

10 (1) by striking “and” at the end of clause (iii);

11 (2) in clause (iv)—

12 (A) by striking “and succeeding years”
13 and inserting “, 2008, 2009, and 2010”; and

14 (B) by striking the period at the end and
15 inserting “; and”; and

16 (3) by adding at the end the following new
17 clause:

18 “(v) with respect to 2011 and suc-
19 ceeding years, the period beginning on No-
20 vember 1 and ending on December 15 of
21 the year before such year.”.

22 (b) ELIMINATION OF 3-MONTH ADDITIONAL OPEN
23 ENROLLMENT PERIOD (OEP).—Effective for plan years
24 beginning with 2011, paragraph (2) of such section is
25 amended by striking subparagraph (C).

1 **SEC. 1165. EXTENSION OF REASONABLE COST CONTRACTS.**

2 Section 1876(h)(5)(C) of the Social Security Act (42
3 U.S.C. 1395mm(h)(5)(C)) is amended—

4 (1) in clause (ii), by striking “January 1,
5 2010” and inserting “January 1, 2012”; and

6 (2) in clause (iii), by striking “the service area
7 for the year” and inserting “the portion of the
8 plan’s service area for the year that is within the
9 service area of a reasonable cost reimbursement con-
10 tract”.

11 **SEC. 1166. LIMITATION OF WAIVER AUTHORITY FOR EM-
12 PLOYER GROUP PLANS.**

13 (a) IN GENERAL.—The first sentence of paragraph
14 (2) of section 1857(i) of the Social Security Act (42
15 U.S.C. 1395w–27(i)) is amended by inserting before the
16 period at the end the following: “, but only if 90 percent
17 of the Medicare Advantage eligible individuals enrolled
18 under such plan reside in a county in which the MA orga-
19 nization offers an MA local plan”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall apply for plan years beginning on or
22 after January 1, 2011, and shall not apply to plans which
23 were in effect as of December 31, 2010.

24 **SEC. 1167. IMPROVING RISK ADJUSTMENT FOR PAYMENTS.**

25 (a) REPORT TO CONGRESS.—Not later than 1 year
26 after the date of the enactment of this Act, the Secretary

1 of Health and Human Services shall submit to Congress
2 a report that evaluates the adequacy of the risk adjust-
3 ment system under section 1853(a)(1)(C) of the Social Se-
4 curity Act (42 U.S.C. 1395-23(a)(1)(C)) in predicting
5 costs for beneficiaries with chronic or co-morbid condi-
6 tions, beneficiaries dually-eligible for Medicare and Med-
7 icaid, and non-Medicaid eligible low-income beneficiaries;
8 and the need and feasibility of including further gradua-
9 tions of diseases or conditions and multiple years of bene-
10 ficiary data.

11 (b) IMPROVEMENTS TO RISK ADJUSTMENT.—Not
12 later than January 1, 2012, the Secretary shall implement
13 necessary improvements to the risk adjustment system
14 under section 1853(a)(1)(C) of the Social Security Act (42
15 U.S.C. 1395–23(a)(1)(C)), taking into account the evalua-
16 tion under subsection (a).

17 **SEC. 1168. ELIMINATION OF MA REGIONAL PLAN STA-**
18 **BILIZATION FUND.**

19 (a) IN GENERAL.—Section 1858 of the Social Secu-
20 rity Act (42 U.S.C. 1395w–27a) is amended by striking
21 subsection (e).

22 (b) TRANSITION.—Any amount contained in the MA
23 Regional Plan Stabilization Fund as of the date of the
24 enactment of this Act shall be transferred to the Federal
25 Supplementary Medical Insurance Trust Fund.

1 **PART 2—BENEFICIARY PROTECTIONS AND ANTI-**
2 **FRAUD**

3 **SEC. 1171. LIMITATION ON COST-SHARING FOR INDIVIDUAL**
4 **HEALTH SERVICES.**

5 (a) IN GENERAL.—Section 1852(a)(1) of the Social
6 Security Act (42 U.S.C. 1395w–22(a)(1)) is amended—

7 (1) in subparagraph (A), by inserting before the
8 period at the end the following: “with cost-sharing
9 that is no greater (and may be less) than the cost-
10 sharing that would otherwise be imposed under such
11 program option”;

12 (2) in subparagraph (B)(i), by striking “or an
13 actuarially equivalent level of cost-sharing as deter-
14 mined in this part”; and

15 (3) by amending clause (ii) of subparagraph
16 (B) to read as follows:

17 “(ii) PERMITTING USE OF FLAT CO-
18 PAYMENT OR PER DIEM RATE.—Nothing in
19 clause (i) shall be construed as prohibiting
20 a Medicare Advantage plan from using a
21 flat copayment or per diem rate, in lieu of
22 the cost-sharing that would be imposed
23 under part A or B, so long as the amount
24 of the cost-sharing imposed does not ex-
25 ceed the amount of the cost-sharing that
26 would be imposed under the respective part

1 if the individual were not enrolled in a plan
2 under this part.”.

3 (b) LIMITATION FOR DUAL ELIGIBLES AND QUALI-
4 FIED MEDICARE BENEFICIARIES.—Section 1852(a) of
5 such Act is amended by adding at the end the following
6 new paragraph:

7 “(7) LIMITATION ON COST-SHARING FOR DUAL
8 ELIGIBLES AND QUALIFIED MEDICARE BENE-
9 FICIARIES.—In the case of a individual who is a full-
10 benefit dual eligible individual (as defined in section
11 1935(e)(6)) or a qualified medicare beneficiary (as
12 defined in section 1905(p)(1)) who is enrolled in a
13 Medicare Advantage plan, the plan may not impose
14 cost-sharing that exceeds the amount of cost-sharing
15 that would be permitted with respect to the indi-
16 vidual under this title and title XIX if the individual
17 were not enrolled with such plan.”.

18 (c) EFFECTIVE DATES.—

19 (1) The amendments made by subsection (a)
20 shall apply to plan years beginning on or after Janu-
21 ary 1, 2011.

22 (2) The amendments made by subsection (b)
23 shall apply to plan years beginning on or after Janu-
24 ary 1, 2011.

1 **SEC. 1172. CONTINUOUS OPEN ENROLLMENT FOR ENROLL-**
2 **EES IN PLANS WITH ENROLLMENT SUSPEN-**
3 **SION.**

4 Section 1851(e)(4) of the Social Security Act (42
5 U.S.C. 1395w(e)(4)) is amended—

6 (1) in subparagraph (C), by striking at the end
7 “or”;

8 (2) in subparagraph (D)—

9 (A) by inserting “, taking into account the
10 health or well-being of the individual” before
11 the period; and

12 (B) by redesignating such subparagraph as
13 subparagraph (E); and

14 (3) by inserting after subparagraph (C) the fol-
15 lowing new subparagraph:

16 “(D) the individual is enrolled in an MA
17 plan and enrollment in the plan is suspended
18 under paragraph (2)(B) or (3)(C) of section
19 1857(g) because of a failure of the plan to meet
20 applicable requirements; or”.

21 **SEC. 1173. INFORMATION FOR BENEFICIARIES ON MA PLAN**
22 **ADMINISTRATIVE COSTS.**

23 (a) **DISCLOSURE OF MEDICAL LOSS RATIOS AND**
24 **OTHER EXPENSE DATA.**—Section 1851 of the Social Se-
25 curity Act (42 U.S.C. 1395w–21), as previously amended

1 by this subtitle, is amended by adding at the end the fol-
2 lowing new subsection:

3 “(p) PUBLICATION OF MEDICAL LOSS RATIOS AND
4 OTHER COST-RELATED INFORMATION.—

5 “(1) IN GENERAL.—The Secretary shall pub-
6 lish, not later than November 1 of each year (begin-
7 ning with 2011), for each MA plan contract, the
8 medical loss ratio of the plan in the previous year.

9 “(2) SUBMISSION OF DATA.—

10 “(A) IN GENERAL.—Each MA organization
11 shall submit to the Secretary, in a form and
12 manner specified by the Secretary, data nec-
13 essary for the Secretary to publish the medical
14 loss ratio on a timely basis.

15 “(B) DATA FOR 2010 AND 2011.—The data
16 submitted under subparagraph (A) for 2010
17 and for 2011 shall be consistent in content with
18 the data reported as part of the MA plan bid
19 in June 2009 for 2010.

20 “(C) USE OF STANDARDIZED ELEMENTS
21 AND DEFINITIONS.—The data to be submitted
22 under subparagraph (A) relating to medical loss
23 ratio for a year, beginning with 2012, shall be
24 submitted based on the standardized elements
25 and definitions developed under paragraph (3).

1 “(3) DEVELOPMENT OF DATA REPORTING
2 STANDARDS.—

3 “(A) IN GENERAL.—The Secretary shall
4 develop and implement standardized data ele-
5 ments and definitions for reporting under this
6 subsection, for contract years beginning with
7 2012, of data necessary for the calculation of
8 the medical loss ratio for MA plans. Not later
9 than December 31, 2010, the Secretary shall
10 publish a report describing the elements and
11 definitions so developed.

12 “(B) CONSULTATION.—The Secretary
13 shall consult with the Health Choices Commis-
14 sioner, representatives of MA organizations, ex-
15 perts on health plan accounting systems, and
16 representatives of the National Association of
17 Insurance Commissioners, in the development
18 of such data elements and definitions.

19 “(4) MEDICAL LOSS RATIO TO BE DEFINED.—
20 For purposes of this part, the term ‘medical loss
21 ratio’ has the meaning given such term by the Sec-
22 retary, taking into account the meaning given such
23 term by the Health Choices Commissioner under
24 section 116 of the America’s Affordable Health
25 Choices Act of 2009.”.

1 (b) MINIMUM MEDICAL LOSS RATIO.—Section
2 1857(e) of the Social Security Act (42 U.S.C. 1395w–
3 27(e)) is amended by adding at the end the following new
4 paragraph:

5 “(4) REQUIREMENT FOR MINIMUM MEDICAL
6 LOSS RATIO.—If the Secretary determines for a con-
7 tract year (beginning with 2014) that an MA plan
8 has failed to have a medical loss ratio (as defined in
9 section 1851(p)(4)) of at least .85—

10 “(A) the Secretary shall require the Medi-
11 care Advantage organization offering the plan
12 to give enrollees a rebate (in the second suc-
13 ceeding contract year) of premiums under this
14 part (or part B or part D, if applicable) by
15 such amount as would provide for a benefits
16 ratio of at least .85;

17 “(B) for 3 consecutive contract years, the
18 Secretary shall not permit the enrollment of
19 new enrollees under the plan for coverage dur-
20 ing the second succeeding contract year; and

21 “(C) the Secretary shall terminate the plan
22 contract if the plan fails to have such a medical
23 loss ratio for 5 consecutive contract years.”.

1 **SEC. 1174. STRENGTHENING AUDIT AUTHORITY.**

2 (a) FOR PART C PAYMENTS RISK ADJUSTMENT.—

3 Section 1857(d)(1) of the Social Security Act (42 U.S.C.
4 1395w–27(d)(1)) is amended by inserting after “section
5 1858(c)” the following: “, and data submitted with re-
6 spect to risk adjustment under section 1853(a)(3)”.

7 (b) ENFORCEMENT OF AUDITS AND DEFICIENCIES.—

9 (1) IN GENERAL.—Section 1857(e) of such Act,
10 as amended by section 1173, is amended by adding
11 at the end the following new paragraph:

12 “(5) ENFORCEMENT OF AUDITS AND DEFICIENCIES.—
13

14 “(A) INFORMATION IN CONTRACT.—The
15 Secretary shall require that each contract with
16 an MA organization under this section shall in-
17 clude terms that inform the organization of the
18 provisions in subsection (d).

19 “(B) ENFORCEMENT AUTHORITY.—The
20 Secretary is authorized, in connection with con-
21 ducting audits and other activities under sub-
22 section (d), to take such actions, including pur-
23 suit of financial recoveries, necessary to address
24 deficiencies identified in such audits or other
25 activities.”.

1 (2) APPLICATION UNDER PART D.—For provi-
2 sion applying the amendment made by paragraph
3 (1) to prescription drug plans under part D, see sec-
4 tion 1860D–12(b)(3)(D) of the Social Security Act.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect on the date of the enactment
7 of this Act and shall apply to audits and activities con-
8 ducted for contract years beginning on or after January
9 1, 2011.

10 **SEC. 1175. AUTHORITY TO DENY PLAN BIDS.**

11 (a) IN GENERAL.—Section 1854(a)(5) of the Social
12 Security Act (42 U.S.C. 1395w–24(a)(5)) is amended by
13 adding at the end the following new subparagraph:

14 “(C) REJECTION OF BIDS.—Nothing in
15 this section shall be construed as requiring the
16 Secretary to accept any or every bid by an MA
17 organization under this subsection.”.

18 (b) APPLICATION UNDER PART D.—Section 1860D–
19 11(d) of such Act (42 U.S.C. 1395w–111(d)) is amended
20 by adding at the end the following new paragraph:

21 “(3) REJECTION OF BIDS.—Paragraph (5)(C)
22 of section 1854(a) shall apply with respect to bids
23 under this section in the same manner as it applies
24 to bids by an MA organization under such section.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to bids for contract years begin-
3 ning on or after January 1, 2011.

4 **PART 3—TREATMENT OF SPECIAL NEEDS PLANS**

5 **SEC. 1176. LIMITATION ON ENROLLMENT OUTSIDE OPEN**
6 **ENROLLMENT PERIOD OF INDIVIDUALS INTO**
7 **CHRONIC CARE SPECIALIZED MA PLANS FOR**
8 **SPECIAL NEEDS INDIVIDUALS.**

9 Section 1859(f)(4) of the Social Security Act (42
10 U.S.C. 1395w–28(f)(4)) is amended by adding at the end
11 the following new subparagraph:

12 “(C) The plan does not enroll an individual
13 on or after January 1, 2011, other than during
14 an annual, coordinated open enrollment period
15 or when at the time of the diagnosis of the dis-
16 ease or condition that qualifies the individual as
17 an individual described in subsection
18 (b)(6)(B)(iii).”.

19 **SEC. 1177. EXTENSION OF AUTHORITY OF SPECIAL NEEDS**
20 **PLANS TO RESTRICT ENROLLMENT.**

21 (a) IN GENERAL.—Section 1859(f)(1) of the Social
22 Security Act (42 U.S.C. 1395w–28(f)(1)) is amended by
23 striking “January 1, 2011” and inserting “January 1,
24 2013 (or January 1, 2016, in the case of a plan described

1 in section 1177(b)(1) of the America's Affordable Health
2 Choices Act of 2009)".

3 (b) GRANDFATHERING OF CERTAIN PLANS.—

4 (1) PLANS DESCRIBED.—For purposes of sec-
5 tion 1859(f)(1) of the Social Security Act (42
6 U.S.C. 1395w-28(f)(1)), a plan described in this
7 paragraph is a plan that had a contract with a State
8 that had a State program to operate an integrated
9 Medicaid-Medicare program that had been approved
10 by the Centers for Medicare & Medicaid Services as
11 of January 1, 2004.

12 (2) ANALYSIS; REPORT.—The Secretary of
13 Health and Human Services shall provide, through
14 a contract with an independent health services eval-
15 uation organization, for an analysis of the plans de-
16 scribed in paragraph (1) with regard to the impact
17 of such plans on cost, quality of care, patient satis-
18 faction, and other subjects as specified by the Sec-
19 retary. Not later than December 31, 2011, the Sec-
20 retary shall submit to Congress a report on such
21 analysis and shall include in such report such rec-
22 ommendations with regard to the treatment of such
23 plans as the Secretary deems appropriate.

1 **Subtitle E—Improvements to**
2 **Medicare Part D**

3 **SEC. 1181. ELIMINATION OF COVERAGE GAP.**

4 (a) IN GENERAL.—Section 1860D–2(b) of such Act
5 (42 U.S.C. 1395w–102(b)) is amended—

6 (1) in paragraph (3)(A), by striking “paragraph
7 (4)” and inserting “paragraphs (4) and (7)”;

8 (2) in paragraph (4)(B)(i), by inserting “sub-
9 ject to paragraph (7)” after “purposes of this part”;
10 and

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

13 “(7) PHASED-IN ELIMINATION OF COVERAGE
14 GAP.—

15 “(A) IN GENERAL.—For each year begin-
16 ning with 2011, the Secretary shall consistent
17 with this paragraph progressively increase the
18 initial coverage limit (described in subsection
19 (b)(3)) and decrease the annual out-of-pocket
20 threshold from the amounts otherwise computed
21 until there is a continuation of coverage from
22 the initial coverage limit for expenditures in-
23 curred through the total amount of expendi-
24 tures at which benefits are available under
25 paragraph (4).

1 “(B) INCREASE IN INITIAL COVERAGE
2 LIMIT.—For a year beginning with 2011, the
3 initial coverage limit otherwise computed with-
4 out regard to this paragraph shall be increased
5 by $\frac{1}{2}$ of the cumulative phase-in percentage (as
6 defined in subparagraph (D)(ii) for the year)
7 times the out-of-pocket gap amount (as defined
8 in subparagraph (E)) for the year.

9 “(C) DECREASE IN ANNUAL OUT-OF-POCK-
10 ET THRESHOLD.—For a year beginning with
11 2011, the annual out-of-pocket threshold other-
12 wise computed without regard to this paragraph
13 shall be decreased by $\frac{1}{2}$ of the cumulative
14 phase-in percentage of the out-of-pocket gap
15 amount for the year multiplied by 1.75.

16 “(D) PHASE-IN.—For purposes of this
17 paragraph:

18 “(i) ANNUAL PHASE-IN PERCENT-
19 AGE.—The term ‘annual phase-in percent-
20 age’ means—

21 “(I) for 2011, 13 percent;

22 “(II) for 2012, 2013, 2014, and
23 2015, 5 percent;

24 “(III) for 2016 through 2018,
25 7.5 percent; and

1 “(IV) for 2019 and each subse-
2 quent year, 10 percent.

3 “(ii) CUMULATIVE PHASE-IN PER-
4 CENTAGE.—The term ‘cumulative phase-in
5 percentage’ means for a year the sum of
6 the annual phase-in percentage for the
7 year and the annual phase-in percentages
8 for each previous year beginning with
9 2011, but in no case more than 100 per-
10 cent.

11 “(E) OUT-OF-POCKET GAP AMOUNT.—For
12 purposes of this paragraph, the term ‘out-of-
13 pocket gap amount’ means for a year the
14 amount by which—

15 “(i) the annual out-of-pocket thresh-
16 old specified in paragraph (4)(B) for the
17 year (as determined as if this paragraph
18 did not apply), exceeds

19 “(ii) the sum of—

20 “(I) the annual deductible under
21 paragraph (1) for the year; and

22 “(II) $\frac{1}{4}$ of the amount by which
23 the initial coverage limit under para-
24 graph (3) for the year (as determined

1 as if this paragraph did not apply) ex-
2 ceeds such annual deductible.”.

3 (b) REQUIRING DRUG MANUFACTURERS TO PROVIDE
4 DRUG REBATES FOR FULL-BENEFIT DUAL ELIGIBLES.—

5 (1) IN GENERAL.—Section 1860D–2 of the So-
6 cial Security Act (42 U.S.C. 1396r–8) is amended—

7 (A) in subsection (e)(1), in the matter be-
8 fore subparagraph (A), by inserting “and sub-
9 section (f)” after “this subsection”; and

10 (B) by adding at the end the following new
11 subsection:

12 “(f) PRESCRIPTION DRUG REBATE AGREEMENT FOR
13 FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS.—

14 “(1) IN GENERAL.—In this part, the term ‘cov-
15 ered part D drug’ does not include any drug or bio-
16 logic that is manufactured by a manufacturer that
17 has not entered into and have in effect a rebate
18 agreement described in paragraph (2).

19 “(2) REBATE AGREEMENT.—A rebate agree-
20 ment under this subsection shall require the manu-
21 facturer to provide to the Secretary a rebate for
22 each rebate period (as defined in paragraph (6)(B))
23 ending after December 31, 2010, in the amount
24 specified in paragraph (3) for any covered part D
25 drug of the manufacturer dispensed after December

1 31, 2010, to any full-benefit dual eligible individual
2 (as defined in paragraph (6)(A)) for which payment
3 was made by a PDP sponsor under part D or a MA
4 organization under part C for such period. Such re-
5 bate shall be paid by the manufacturer to the Sec-
6 retary not later than 30 days after the date of re-
7 ceipt of the information described in section 1860D-
8 12(b)(7), including as such section is applied under
9 section 1857(f)(3).

10 “(3) REBATE FOR FULL-BENEFIT DUAL ELIGI-
11 BLE MEDICARE DRUG PLAN ENROLLEES.—

12 “(A) IN GENERAL.—The amount of the re-
13 bate specified under this paragraph for a manu-
14 facturer for a rebate period, with respect to
15 each dosage form and strength of any covered
16 part D drug provided by such manufacturer
17 and dispensed to a full-benefit dual eligible indi-
18 vidual, shall be equal to the product of—

19 “(i) the total number of units of such
20 dosage form and strength of the drug so
21 provided and dispensed for which payment
22 was made by a PDP sponsor under part D
23 or a MA organization under part C for the
24 rebate period (as reported under section

1 1860D–12(b)(7), including as such section
2 is applied under section 1857(f)(3)); and

3 “(ii) the amount (if any) by which—

4 “(I) the Medicaid rebate amount
5 (as defined in subparagraph (B)) for
6 such form, strength, and period, ex-
7 ceeds

8 “(II) the average Medicare drug
9 program full-benefit dual eligible re-
10 bate amount (as defined in subpara-
11 graph (C)) for such form, strength,
12 and period.

13 “(B) MEDICAID REBATE AMOUNT.—For
14 purposes of this paragraph, the term ‘Medicaid
15 rebate amount’ means, with respect to each
16 dosage form and strength of a covered part D
17 drug provided by the manufacturer for a rebate
18 period—

19 “(i) in the case of a single source
20 drug or an innovator multiple source drug,
21 the amount specified in paragraph
22 (1)(A)(ii) of section 1927(b) plus the
23 amount, if any, specified in paragraph
24 (2)(A)(ii) of such section, for such form,
25 strength, and period; or

1 “(ii) in the case of any other covered
2 outpatient drug, the amount specified in
3 paragraph (3)(A)(i) of such section for
4 such form, strength, and period.

5 “(C) AVERAGE MEDICARE DRUG PROGRAM
6 FULL-BENEFIT DUAL ELIGIBLE REBATE
7 AMOUNT.—For purposes of this subsection, the
8 term ‘average Medicare drug program full-ben-
9 efit dual eligible rebate amount’ means, with re-
10 spect to each dosage form and strength of a
11 covered part D drug provided by a manufac-
12 turer for a rebate period, the sum, for all PDP
13 sponsors under part D and MA organizations
14 administering a MA–PD plan under part C,
15 of—

16 “(i) the product, for each such spon-
17 sor or organization, of—

18 “(I) the sum of all rebates, dis-
19 counts, or other price concessions (not
20 taking into account any rebate pro-
21 vided under paragraph (2) for such
22 dosage form and strength of the drug
23 dispensed, calculated on a per-unit
24 basis, but only to the extent that any
25 such rebate, discount, or other price

1 concession applies equally to drugs
2 dispensed to full-benefit dual eligible
3 Medicare drug plan enrollees and
4 drugs dispensed to PDP and MA–PD
5 enrollees who are not full-benefit dual
6 eligible individuals; and

7 “(II) the number of the units of
8 such dosage and strength of the drug
9 dispensed during the rebate period to
10 full-benefit dual eligible individuals
11 enrolled in the prescription drug plans
12 administered by the PDP sponsor or
13 the MA–PD plans administered by the
14 MA–PD organization; divided by

15 “(ii) the total number of units of such
16 dosage and strength of the drug dispensed
17 during the rebate period to full-benefit
18 dual eligible individuals enrolled in all pre-
19 scription drug plans administered by PDP
20 sponsors and all MA–PD plans adminis-
21 tered by MA–PD organizations.

22 “(4) LENGTH OF AGREEMENT.—The provisions
23 of paragraph (4) of section 1927(b) (other than
24 clauses (iv) and (v) of subparagraph (B)) shall apply
25 to rebate agreements under this subsection in the

1 same manner as such paragraph applies to a rebate
2 agreement under such section.

3 “(5) OTHER TERMS AND CONDITIONS.—The
4 Secretary shall establish other terms and conditions
5 of the rebate agreement under this subsection, in-
6 cluding terms and conditions related to compliance,
7 that are consistent with this subsection.

8 “(6) DEFINITIONS.—In this subsection and sec-
9 tion 1860D–12(b)(7):

10 “(A) FULL-BENEFIT DUAL ELIGIBLE INDI-
11 VIDUAL.—The term ‘full-benefit dual eligible in-
12 dividual’ has the meaning given such term in
13 section 1935(e)(6).

14 “(B) REBATE PERIOD.—The term ‘rebate
15 period’ has the meaning given such term in sec-
16 tion 1927(k)(8).”.

17 (2) REPORTING REQUIREMENT FOR THE DE-
18 TERMINATION AND PAYMENT OF REBATES BY MANU-
19 FACTURES RELATED TO REBATE FOR FULL-BENEFIT
20 DUAL ELIGIBLE MEDICARE DRUG PLAN ENROLL-
21 EES.—

22 (A) REQUIREMENTS FOR PDP SPON-
23 SORS.—Section 1860D–12(b) of the Social Se-
24 curity Act (42 U.S.C. 1395w–112(b)) is amend-

1 ed by adding at the end the following new para-
2 graph:

3 “(7) REPORTING REQUIREMENT FOR THE DE-
4 TERMINATION AND PAYMENT OF REBATES BY MANU-
5 FACTURERS RELATED TO REBATE FOR FULL-BEN-
6 EFIT DUAL ELIGIBLE MEDICARE DRUG PLAN EN-
7 ROLLEES.—

8 “(A) IN GENERAL.—For purposes of the
9 rebate under section 1860D–2(f) for contract
10 years beginning on or after January 1, 2011,
11 each contract entered into with a PDP sponsor
12 under this part with respect to a prescription
13 drug plan shall require that the sponsor comply
14 with subparagraphs (B) and (C).

15 “(B) REPORT FORM AND CONTENTS.—Not
16 later than 60 days after the end of each rebate
17 period (as defined in section 1860D–2(f)(6)(B))
18 within such a contract year to which such sec-
19 tion applies, a PDP sponsor of a prescription
20 drug plan under this part shall report to each
21 manufacturer—

22 “(i) information (by National Drug
23 Code number) on the total number of units
24 of each dosage, form, and strength of each
25 drug of such manufacturer dispensed to

1 full-benefit dual eligible Medicare drug
2 plan enrollees under any prescription drug
3 plan operated by the PDP sponsor during
4 the rebate period;

5 “(ii) information on the price dis-
6 counts, price concessions, and rebates for
7 such drugs for such form, strength, and
8 period;

9 “(iii) information on the extent to
10 which such price discounts, price conces-
11 sions, and rebates apply equally to full-
12 benefit dual eligible Medicare drug plan
13 enrollees and PDP enrollees who are not
14 full-benefit dual eligible Medicare drug
15 plan enrollees; and

16 “(iv) any additional information that
17 the Secretary determines is necessary to
18 enable the Secretary to calculate the aver-
19 age Medicare drug program full-benefit
20 dual eligible rebate amount (as defined in
21 paragraph (3)(C) of such section), and to
22 determine the amount of the rebate re-
23 quired under this section, for such form,
24 strength, and period.

1 Such report shall be in a form consistent with
2 a standard reporting format established by the
3 Secretary.

4 “(C) SUBMISSION TO SECRETARY.—Each
5 PDP sponsor shall promptly transmit a copy of
6 the information reported under subparagraph
7 (B) to the Secretary for the purpose of audit
8 oversight and evaluation.

9 “(D) CONFIDENTIALITY OF INFORMA-
10 TION.—The provisions of subparagraph (D) of
11 section 1927(b)(3), relating to confidentiality of
12 information, shall apply to information reported
13 by PDP sponsors under this paragraph in the
14 same manner that such provisions apply to in-
15 formation disclosed by manufacturers or whole-
16 salers under such section, except—

17 “(i) that any reference to ‘this sec-
18 tion’ in clause (i) of such subparagraph
19 shall be treated as being a reference to this
20 section;

21 “(ii) the reference to the Director of
22 the Congressional Budget Office in clause
23 (iii) of such subparagraph shall be treated
24 as including a reference to the Medicare
25 Payment Advisory Commission; and

1 “(iii) clause (iv) of such subparagraph
2 shall not apply.

3 “(E) OVERSIGHT.—Information reported
4 under this paragraph may be used by the In-
5 specter General of the Department of Health
6 and Human Services for the statutorily author-
7 ized purposes of audit, investigation, and eval-
8 uations.

9 “(F) PENALTIES FOR FAILURE TO PRO-
10 VIDE TIMELY INFORMATION AND PROVISION OF
11 FALSE INFORMATION.—In the case of a PDP
12 sponsor—

13 “(i) that fails to provide information
14 required under subparagraph (B) on a
15 timely basis, the sponsor is subject to a
16 civil money penalty in the amount of
17 \$10,000 for each day in which such infor-
18 mation has not been provided; or

19 “(ii) that knowingly (as defined in
20 section 1128A(i)) provides false informa-
21 tion under such subparagraph, the sponsor
22 is subject to a civil money penalty in an
23 amount not to exceed \$100,000 for each
24 item of false information.

1 Such civil money penalties are in addition to
2 other penalties as may be prescribed by law.
3 The provisions of section 1128A (other than
4 subsections (a) and (b)) shall apply to a civil
5 money penalty under this subparagraph in the
6 same manner as such provisions apply to a pen-
7 alty or proceeding under section 1128A(a).”.

8 (B) APPLICATION TO MA ORGANIZA-
9 TIONS.—Section 1857(f)(3) of the Social Secu-
10 rity Act (42 U.S.C. 1395w–27(f)(3)) is amend-
11 ed by adding at the end the following:

12 “(D) REPORTING REQUIREMENT RELATED
13 TO REBATE FOR FULL-BENEFIT DUAL ELIGIBLE
14 MEDICARE DRUG PLAN ENROLLEES.—Section
15 1860D–12(b)(7).”.

16 (3) DEPOSIT OF REBATES INTO MEDICARE PRE-
17 SCRIPTION DRUG ACCOUNT.—Section 1860D–16(c)
18 of such Act (42 U.S.C. 1395w–116(c)) is amended
19 by adding at the end the following new paragraph:

20 “(6) REBATE FOR FULL-BENEFIT DUAL ELIGI-
21 BLE MEDICARE DRUG PLAN ENROLLEES.—Amounts
22 paid under a rebate agreement under section
23 1860D–2(f) shall be deposited into the Account and
24 shall be used to pay for all or part of the gradual

1 elimination of the coverage gap under section
2 1860D–2(b)(7).”.

3 **SEC. 1182. DISCOUNTS FOR CERTAIN PART D DRUGS IN**
4 **ORIGINAL COVERAGE GAP.**

5 Section 1860D–2 of the Social Security Act (42
6 U.S.C. 1395w–102), as amended by section 1181(a), is
7 amended—

8 (1) in subsection (b)(4)(C)(ii), by inserting
9 “subject to subsection (g)(2)(C),” after “(ii)”;

10 (2) in subsection (e)(1), in the matter before
11 subparagraph (A), by striking “subsection (f)” and
12 inserting “subsections (f) and (g)” after “this sub-
13 section”; and

14 (3) by adding at the end the following new sub-
15 section:

16 “(g) REQUIREMENT FOR MANUFACTURER DISCOUNT
17 AGREEMENT FOR CERTAIN QUALIFYING DRUGS.—

18 “(1) IN GENERAL.—In this part, the term ‘cov-
19 ered part D drug’ does not include any drug or bio-
20 logic that is manufactured by a manufacturer that
21 has not entered into and have in effect for all quali-
22 fying drugs (as defined in paragraph (5)(A)) a dis-
23 count agreement described in paragraph (2).

24 “(2) DISCOUNT AGREEMENT.—

1 “(A) PERIODIC DISCOUNTS.—A discount
2 agreement under this paragraph shall require
3 the manufacturer involved to provide, to each
4 PDP sponsor with respect to a prescription
5 drug plan or each MA organization with respect
6 to each MA-PD plan, a discount in an amount
7 specified in paragraph (3) for qualifying drugs
8 (as defined in paragraph (5)(A)) of the manu-
9 facturer dispensed to a qualifying enrollee after
10 December 31, 2010, insofar as the individual is
11 in the original gap in coverage (as defined in
12 paragraph (5)(E)).

13 “(B) DISCOUNT AGREEMENT.—Insofar as
14 not inconsistent with this subsection, the Sec-
15 retary shall establish terms and conditions of
16 such agreement, including terms and conditions
17 relating to compliance, similar to the terms and
18 conditions for rebate agreements under para-
19 graphs (2), (3), and (4) of section 1927(b), ex-
20 cept that—

21 “(i) discounts shall be applied under
22 this subsection to prescription drug plans
23 and MA-PD plans instead of State plans
24 under title XIX;

1 “(ii) PDP sponsors and MA organiza-
2 tions shall be responsible, instead of
3 States, for provision of necessary utiliza-
4 tion information to drug manufacturers;
5 and

6 “(iii) sponsors and MA organizations
7 shall be responsible for reporting informa-
8 tion on drug-component negotiated price,
9 instead of other manufacturer prices.

10 “(C) COUNTING DISCOUNT TOWARD TRUE
11 OUT-OF-POCKET COSTS.—Under the discount
12 agreement, in applying subsection (b)(4), with
13 regard to subparagraph (C)(i) of such sub-
14 section, if a qualified enrollee purchases the
15 qualified drug insofar as the enrollee is in an
16 actual gap of coverage (as defined in paragraph
17 (5)(D)), the amount of the discount under the
18 agreement shall be treated and counted as costs
19 incurred by the plan enrollee.

20 “(3) DISCOUNT AMOUNT.—The amount of the
21 discount specified in this paragraph for a discount
22 period for a plan is equal to 50 percent of the
23 amount of the drug-component negotiated price (as
24 defined in paragraph (5)(C)) for qualifying drugs for
25 the period involved.

1 “(4) ADDITIONAL TERMS.—In the case of a dis-
2 count provided under this subsection with respect to
3 a prescription drug plan offered by a PDP sponsor
4 or an MA-PD plan offered by an MA organization,
5 if a qualified enrollee purchases the qualified drug—

6 “(A) insofar as the enrollee is in an actual
7 gap of coverage (as defined in paragraph
8 (5)(D)), the sponsor or plan shall provide the
9 discount to the enrollee at the time the enrollee
10 pays for the drug; and

11 “(B) insofar as the enrollee is in the por-
12 tion of the original gap in coverage (as defined
13 in paragraph (5)(E)) that is not in the actual
14 gap in coverage, the discount shall not be ap-
15 plied against the negotiated price (as defined in
16 subsection (d)(1)(B)) for the purpose of calcu-
17 lating the beneficiary payment.

18 “(5) DEFINITIONS.—In this subsection:

19 “(A) QUALIFYING DRUG.—The term
20 ‘qualifying drug’ means, with respect to a pre-
21 scription drug plan or MA-PD plan, a drug or
22 biological product that—

23 “(i)(I) is a drug produced or distrib-
24 uted under an original new drug applica-
25 tion approved by the Food and Drug Ad-

1 ministration, including a drug product
2 marketed by any cross-licensed producers
3 or distributors operating under the new
4 drug application;

5 “(II) is a drug that was originally
6 marketed under an original new drug ap-
7 plication approved by the Food and Drug
8 Administration; or

9 “(III) is a biological product as ap-
10 proved under Section 351(a) of the Public
11 Health Services Act;

12 “(ii) is covered under the formulary of
13 the plan; and

14 “(iii) is dispensed to an individual
15 who is in the original gap in coverage.

16 “(B) QUALIFYING ENROLLEE.—The term
17 ‘qualifying enrollee’ means an individual en-
18 rolled in a prescription drug plan or MA-PD
19 plan other than such an individual who is a
20 subsidy-eligible individual (as defined in section
21 1860D–14(a)(3)).

22 “(C) DRUG-COMPONENT NEGOTIATED
23 PRICE.—The term ‘drug-component negotiated
24 price’ means, with respect to a qualifying drug,
25 the negotiated price (as defined in subsection

1 (d)(1)(B)), as determined without regard to any
2 dispensing fee, of the drug under the prescrip-
3 tion drug plan or MA-PD plan involved.

4 “(D) ACTUAL GAP IN COVERAGE.—The
5 term ‘actual gap in coverage’ means the gap in
6 prescription drug coverage that occurs between
7 the initial coverage limit (as modified under
8 subparagraph (B) of subsection (b)(7)) and the
9 annual out-of-pocket threshold (as modified
10 under subparagraph (C) of such subsection).

11 “(E) ORIGINAL GAP IN COVERAGE.—The
12 term ‘original in gap coverage’ means the gap
13 in prescription drug coverage that would occur
14 between the initial coverage limit (described in
15 subsection (b)(3)) and the out-of-pocket thresh-
16 old (as defined in subsection (b)(4))(B) if sub-
17 section (b)(7) did not apply.”.

18 **SEC. 1183. REPEAL OF PROVISION RELATING TO SUBMIS-**
19 **SION OF CLAIMS BY PHARMACIES LOCATED**
20 **IN OR CONTRACTING WITH LONG-TERM CARE**
21 **FACILITIES.**

22 (a) PART D SUBMISSION.—Section 1860D–12(b) of
23 the Social Security Act (42 U.S.C. 1395w–112(b)), as
24 amended by section 172(a)(1) of Public Law 110-275, is
25 amended by striking paragraph (5) and redesignating

1 paragraph (6) and paragraph (7), as added by section
2 1181(b)(2), as paragraph (5) and paragraph (6), respec-
3 tively.

4 (b) SUBMISSION TO MA-PD PLANS.—Section
5 1857(f)(3) of the Social Security Act (42 U.S.C. 1395w-
6 27(f)(3)), as added by section 171(b) of Public Law 110-
7 275 and amended by section 172(a)(2) of such Public
8 Law, is amended by striking subparagraph (B) and redес-
9 ignating subparagraph (C) as subparagraph (B).

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply for contract years beginning with
12 2010.

13 **SEC. 1184. INCLUDING COSTS INCURRED BY AIDS DRUG AS-**
14 **SISTANCE PROGRAMS AND INDIAN HEALTH**
15 **SERVICE IN PROVIDING PRESCRIPTION**
16 **DRUGS TOWARD THE ANNUAL OUT-OF-POCK-**
17 **ET THRESHOLD UNDER PART D.**

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

21 (1) in clause (i), by striking “and” at the end;

22 (2) in clause (ii)—

23 (A) by striking “such costs shall be treated
24 as incurred only if” and inserting “subject to

1 clause (iii), such costs shall be treated as in-
2 curred only if”;

3 (B) by striking “, under section 1860D-
4 14, or under a State Pharmaceutical Assistance
5 Program”; and

6 (C) by striking the period at the end and
7 inserting “; and”; and

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

10 “(iii) such costs shall be treated as in-
11 curred and shall not be considered to be
12 reimbursed under clause (ii) if such costs
13 are borne or paid—

14 “(I) under section 1860D-14;

15 “(II) under a State Pharma-
16 ceutical Assistance Program;

17 “(III) by the Indian Health Serv-
18 ice, an Indian tribe or tribal organiza-
19 tion, or an urban Indian organization
20 (as defined in section 4 of the Indian
21 Health Care Improvement Act); or

22 “(IV) under an AIDS Drug As-
23 sistance Program under part B of
24 title XXVI of the Public Health Serv-
25 ice Act.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall apply to costs incurred on or after
3 January 1, 2011.

4 **SEC. 1185. PERMITTING MID-YEAR CHANGES IN ENROLL-**
5 **MENT FOR FORMULARY CHANGES THAT AD-**
6 **VERSELY IMPACT AN ENROLLEE.**

7 (a) IN GENERAL.—Section 1860D–1(b)(3) of the So-
8 cial Security Act (42 U.S.C. 1395w–101(b)(3)) is amend-
9 ed by adding at the end the following new subparagraph:

10 “(F) CHANGE IN FORMULARY RESULTING
11 IN INCREASE IN COST-SHARING.—

12 “(i) IN GENERAL.—Except as pro-
13 vided in clause (ii), in the case of an indi-
14 vidual enrolled in a prescription drug plan
15 (or MA–PD plan) who has been prescribed
16 and is using a covered part D drug while
17 so enrolled, if the formulary of the plan is
18 materially changed (other than at the end
19 of a contract year) so to reduce the cov-
20 erage (or increase the cost-sharing) of the
21 drug under the plan.

22 “(ii) EXCEPTION.—Clause (i) shall
23 not apply in the case that a drug is re-
24 moved from the formulary of a plan be-
25 cause of a recall or withdrawal of the drug

1 issued by the Food and Drug Administra-
2 tion, because the drug is replaced with a
3 generic drug that is a therapeutic equiva-
4 lent, or because of utilization management
5 applied to—

6 “(I) a drug whose labeling in-
7 cludes a boxed warning required by
8 the Food and Drug Administration
9 under section 210.57(c)(1) of title 21,
10 Code of Federal Regulations (or a
11 successor regulation); or

12 “(II) a drug required under sub-
13 section (c)(2) of section 505–1 of the
14 Federal Food, Drug, and Cosmetic
15 Act to have a Risk Evaluation and
16 Management Strategy that includes
17 elements under subsection (f) of such
18 section.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall apply to contract years beginning on
21 or after January 1, 2011.

1 **Subtitle F—Medicare Rural Access**
2 **Protections**

3 **SEC. 1191. TELEHEALTH EXPANSION AND ENHANCEMENTS.**

4 .

5 (a) **ADDITIONAL TELEHEALTH SITE.**—

6 (1) **IN GENERAL.**—Paragraph (4)(C)(ii) of sec-
7 tion 1834(m) of the Social Security Act (42 U.S.C.
8 1395m(m)) is amended by adding at the end the fol-
9 lowing new subclause:

10 “(IX) A renal dialysis facility.”

11 (2) **EFFECTIVE DATE.**—The amendment made
12 by paragraph (1) shall apply to services furnished on
13 or after January 1, 2011.

14 (b) **TELEHEALTH ADVISORY COMMITTEE.**—

15 (1) **ESTABLISHMENT.**—Section 1868 of the So-
16 cial Security Act (42 U.S.C. 1395ee) is amended—

17 (A) in the heading, by adding at the end
18 the following: “TELEHEALTH ADVISORY COM-
19 MITTEE”; and

20 (B) by adding at the end the following new
21 subsection:

22 “(c) **TELEHEALTH ADVISORY COMMITTEE.**—

23 “(1) **IN GENERAL.**—The Secretary shall appoint
24 a Telehealth Advisory Committee (in this subsection
25 referred to as the ‘Advisory Committee’) to make

1 recommendations to the Secretary on policies of the
2 Centers for Medicare & Medicaid Services regarding
3 telehealth services as established under section
4 1834(m), including the appropriate addition or dele-
5 tion of services (and HCPCS codes) to those speci-
6 fied in paragraphs (4)(F)(i) and (4)(F)(ii) of such
7 section and for authorized payment under paragraph
8 (1) of such section.

9 “(2) MEMBERSHIP; TERMS.—

10 “(A) MEMBERSHIP.—

11 “(i) IN GENERAL.—The Advisory
12 Committee shall be composed of 9 mem-
13 bers, to be appointed by the Secretary, of
14 whom—

15 “(I) 5 shall be practicing physi-
16 cians;

17 “(II) 2 shall be practicing non-
18 physician health care practitioners;
19 and

20 “(III) 2 shall be administrators
21 of telehealth programs.

22 “(ii) REQUIREMENTS FOR APPOINT-
23 ING MEMBERS.—In appointing members of
24 the Advisory Committee, the Secretary
25 shall—

1 “(I) ensure that each member
2 has prior experience with the practice
3 of telemedicine or telehealth;

4 “(II) give preference to individ-
5 uals who are currently providing tele-
6 medicine or telehealth services or who
7 are involved in telemedicine or tele-
8 health programs;

9 “(III) ensure that the member-
10 ship of the Advisory Committee rep-
11 resents a balance of specialties and
12 geographic regions; and

13 “(IV) take into account the rec-
14 ommendations of stakeholders.

15 “(B) TERMS.—The members of the Advi-
16 sory Committee shall serve for such term as the
17 Secretary may specify.

18 “(C) CONFLICTS OF INTEREST.—An advi-
19 sory committee member may not participate
20 with respect to a particular matter considered
21 in an advisory committee meeting if such mem-
22 ber (or an immediate family member of such
23 member) has a financial interest that could be
24 affected by the advice given to the Secretary
25 with respect to such matter.

1 “(3) MEETINGS.—The Advisory Committee
2 shall meet twice each calendar year and at such
3 other times as the Secretary may provide.

4 “(4) PERMANENT COMMITTEE.—Section 14 of
5 the Federal Advisory Committee Act (5 U.S.C.
6 App.) shall not apply to the Advisory Committee.”

7 (2) FOLLOWING RECOMMENDATIONS.—Section
8 1834(m)(4)(F) of such Act (42 U.S.C.
9 1395m(m)(4)(F)) is amended by adding at the end
10 the following new clause:

11 “(iii) RECOMMENDATIONS OF THE
12 TELEHEALTH ADVISORY COMMITTEE.—In
13 making determinations under clauses (i)
14 and (ii), the Secretary shall take into ac-
15 count the recommendations of the Tele-
16 health Advisory Committee (established
17 under section 1868(c)) when adding or de-
18 leting services (and HCPCS codes) and in
19 establishing policies of the Centers for
20 Medicare & Medicaid Services regarding
21 the delivery of telehealth services. If the
22 Secretary does not implement such a rec-
23 ommendation, the Secretary shall publish
24 in the Federal Register a statement re-

1 **SEC. 1193. EXTENSION OF SECTION 508 HOSPITAL RECLAS-**
2 **SIFICATIONS.**

3 Subsection (a) of section 106 of division B of the Tax
4 Relief and Health Care Act of 2006 (42 U.S.C. 1395
5 note), as amended by section 117 of the Medicare, Med-
6 icaid, and SCHIP Extension Act of 2007 (Public Law
7 110–173) and section 124 of the Medicare Improvements
8 for Patients and Providers Act of 2008 (Public Law 110–
9 275), is amended by striking “September 30, 2009” and
10 inserting “September 30, 2011”.

11 **SEC. 1194. EXTENSION OF GEOGRAPHIC FLOOR FOR WORK.**

12 Section 1848(e)(1)(E) of the Social Security Act (42
13 U.S.C. 1395w–4(e)(1)(E)) is amended by striking “before
14 January 1, 2010” and inserting “before January 1,
15 2012”.

16 **SEC. 1195. EXTENSION OF PAYMENT FOR TECHNICAL COM-**
17 **PONENT OF CERTAIN PHYSICIAN PATHOL-**
18 **OGY SERVICES.**

19 Section 542(c) of the Medicare, Medicaid, and
20 SCHIP Benefits Improvement and Protection Act of 2000
21 (as enacted into law by section 1(a)(6) of Public Law 106–
22 554), as amended by section 732 of the Medicare Prescrip-
23 tion Drug, Improvement, and Modernization Act of 2003
24 (42 U.S.C. 1395w–4 note), section 104 of division B of
25 the Tax Relief and Health Care Act of 2006 (42 U.S.C.
26 1395w–4 note), section 104 of the Medicare, Medicaid,

1 and SCHIP Extension Act of 2007 (Public Law 110–
2 173), and section 136 of the Medicare Improvements for
3 Patients and Providers Act of 2008 (Public Law 110–
4 275), is amended by striking “and 2009” and inserting
5 “2009, 2010, and 2011”.

6 **SEC. 1196. EXTENSION OF AMBULANCE ADD-ONS.**

7 (a) IN GENERAL.—Section 1834(l)(13) of the Social
8 Security Act (42 U.S.C. 1395m(l)(13)) is amended—

9 (1) in subparagraph (A)—

10 (A) in the matter preceding clause (i), by
11 striking “before January 1, 2010” and insert-
12 ing “before January 1, 2012”; and

13 (B) in each of clauses (i) and (ii), by strik-
14 ing “before January 1, 2010” and inserting
15 “before January 1, 2012”.

16 (b) AIR AMBULANCE IMPROVEMENTS.—Section
17 146(b)(1) of the Medicare Improvements for Patients and
18 Providers Act of 2008 (Public Law 110–275) is amended
19 by striking “ending on December 31, 2009” and inserting
20 “ending on December 31, 2011”.

1 **TITLE II—MEDICARE**
2 **BENEFICIARY IMPROVEMENTS**
3 **Subtitle A—Improving and Simpli-**
4 **fyng Financial Assistance for**
5 **Low Income Medicare Bene-**
6 **ficiaries**

7 **SEC. 1201. IMPROVING ASSETS TESTS FOR MEDICARE SAV-**
8 **INGS PROGRAM AND LOW-INCOME SUBSIDY**
9 **PROGRAM.**

10 (a) APPLICATION OF HIGHEST LEVEL PERMITTED
11 UNDER LIS TO ALL SUBSIDY ELIGIBLE INDIVIDUALS.—

12 (1) IN GENERAL.—Section 1860D–14(a)(1) of
13 the Social Security Act (42 U.S.C. 1395w–
14 114(a)(1)) is amended in the matter before subpara-
15 graph (A), by inserting “(or, beginning with 2012,
16 paragraph (3)(E))” after “paragraph (3)(D)”.

17 (2) ANNUAL INCREASE IN LIS RESOURCE
18 TEST.—Section 1860D–14(a)(3)(E)(i) of such Act
19 (42 U.S.C. 1395w–114(a)(3)(E)(i)) is amended—

20 (A) by striking “and” at the end of sub-
21 clause (I);

22 (B) in subclause (II), by inserting “(before
23 2012)” after “subsequent year”;

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

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

3 “(III) for 2012, \$17,000 (or
4 \$34,000 in the case of the combined
5 value of the individual’s assets or re-
6 sources and the assets or resources of
7 the individual’s spouse); and

8 “(IV) for a subsequent year, the
9 dollar amounts specified in this sub-
10 clause (or subclause (III)) for the pre-
11 vious year increased by the annual
12 percentage increase in the consumer
13 price index (all items; U.S. city aver-
14 age) as of September of such previous
15 year.”; and

16 (E) in the last sentence, by inserting “or
17 (IV)” after “subclause (II)”.

18 (3) APPLICATION OF LIS TEST UNDER MEDI-
19 CARE SAVINGS PROGRAM.—Section 1905(p)(1)(C) of
20 such Act (42 U.S.C. 1396d(p)(1)(C)) is amended—

21 (A) by striking “effective beginning with
22 January 1, 2010” and inserting “effective for
23 the period beginning with January 1, 2010, and
24 ending with December 31, 2011”; and

1 (B) by inserting before the period at the
2 end the following: “or, effective beginning with
3 January 1, 2012, whose resources (as so deter-
4 mined) do not exceed the maximum resource
5 level applied for the year under subparagraph
6 (E) of section 1860D-14(a)(3) (determined
7 without regard to the life insurance policy ex-
8 clusion provided under subparagraph (G) of
9 such section) applicable to an individual or to
10 the individual and the individual’s spouse (as
11 the case may be)”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 subsection (a) shall apply to eligibility determinations for
14 income-related subsidies and medicare cost-sharing fur-
15 nished for periods beginning on or after January 1, 2012.

16 **SEC. 1202. ELIMINATION OF PART D COST-SHARING FOR**
17 **CERTAIN NON-INSTITUTIONALIZED FULL-**
18 **BENEFIT DUAL ELIGIBLE INDIVIDUALS.**

19 (a) IN GENERAL.—Section 1860D–14(a)(1)(D)(i) of
20 the Social Security Act (42 U.S.C. 1395w–
21 114(a)(1)(D)(i)) is amended—

22 (1) by striking “INSTITUTIONALIZED INDIVID-
23 UALS.—In” and inserting “ELIMINATION OF COST-
24 SHARING FOR CERTAIN FULL-BENEFIT DUAL ELIGI-
25 BLE INDIVIDUALS.—

1 “(I) INSTITUTIONALIZED INDI-
2 VIDUALS.—In”; and

3 (2) by adding at the end the following new sub-
4 clause:

5 “(II) CERTAIN OTHER INDIVID-
6 UALS.—In the case of an individual
7 who is a full-benefit dual eligible indi-
8 vidual and with respect to whom there
9 has been a determination that but for
10 the provision of home and community
11 based care (whether under section
12 1915, 1932, or under a waiver under
13 section 1115) the individual would re-
14 quire the level of care provided in a
15 hospital or a nursing facility or inter-
16 mediate care facility for the mentally
17 retarded the cost of which could be re-
18 imbursed under the State plan under
19 title XIX, the elimination of any bene-
20 ficiary coinsurance described in sec-
21 tion 1860D–2(b)(2) (for all amounts
22 through the total amount of expendi-
23 tures at which benefits are available
24 under section 1860D–2(b)(4)).”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall apply to drugs dispensed on or after
3 January 1, 2011.

4 **SEC. 1203. ELIMINATING BARRIERS TO ENROLLMENT.**

5 (a) ADMINISTRATIVE VERIFICATION OF INCOME AND
6 RESOURCES UNDER THE LOW-INCOME SUBSIDY PRO-
7 GRAM.—

8 (1) IN GENERAL.—Clause (iii) of section
9 1860D–14(a)(3)(E) of the Social Security Act (42
10 U.S.C. 1395w–114(a)(3)(E)) is amended to read as
11 follows:

12 “(iii) CERTIFICATION OF INCOME AND
13 RESOURCES.—For purposes of applying
14 this section—

15 “(I) an individual shall be per-
16 mitted to apply on the basis of self-
17 certification of income and resources;
18 and

19 “(II) matters attested to in the
20 application shall be subject to appro-
21 priate methods of verification without
22 the need of the individual to provide
23 additional documentation, except in
24 extraordinary situations as determined
25 by the Commissioner.”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall apply beginning January 1,
3 2010.

4 (b) DISCLOSURES TO FACILITATE IDENTIFICATION
5 OF INDIVIDUALS LIKELY TO BE INELIGIBLE FOR THE
6 LOW-INCOME ASSISTANCE UNDER THE MEDICARE PRE-
7 SCRIPTON DRUG PROGRAM TO ASSIST SOCIAL SECURITY
8 ADMINISTRATION'S OUTREACH TO ELIGIBLE INDIVID-
9 UALS.—For provision authorizing disclosure of return in-
10 formation to facilitate identification of individuals likely
11 to be ineligible for low-income subsidies under Medicare
12 prescription drug program, see section 1801.

13 **SEC. 1204. ENHANCED OVERSIGHT RELATING TO REIM-**
14 **BURSEMENTS FOR RETROACTIVE LOW IN-**
15 **COME SUBSIDY ENROLLMENT.**

16 (a) IN GENERAL.—In the case of a retroactive LIS
17 enrollment beneficiary who is enrolled under a prescription
18 drug plan under part D of title XVIII of the Social Secu-
19 rity Act (or an MA-PD plan under part C of such title),
20 the beneficiary (or any eligible third party) is entitled to
21 reimbursement by the plan for covered drug costs incurred
22 by the beneficiary during the retroactive coverage period
23 of the beneficiary in accordance with subsection (b) and
24 in the case of such a beneficiary described in subsection
25 (c)(4)(A)(i), such reimbursement shall be made automati-

1 cally by the plan upon receipt of appropriate notice the
2 beneficiary is eligible for assistance described in such sub-
3 section (c)(4)(A)(i) without further information required
4 to be filed with the plan by the beneficiary.

5 (b) ADMINISTRATIVE REQUIREMENTS RELATING TO
6 REIMBURSEMENTS.—

7 (1) LINE-ITEM DESCRIPTION.—Each reimburse-
8 ment made by a prescription drug plan or MA-PD
9 plan under subsection (a) shall include a line-item
10 description of the items for which the reimbursement
11 is made.

12 (2) TIMING OF REIMBURSEMENTS.—A prescrip-
13 tion drug plan or MA-PD plan must make a reim-
14 bursement under subsection (a) to a retroactive LIS
15 enrollment beneficiary, with respect to a claim, not
16 later than 45 days after—

17 (A) in the case of a beneficiary described
18 in subsection (c)(4)(A)(i), the date on which the
19 plan receives notice from the Secretary that the
20 beneficiary is eligible for assistance described in
21 such subsection; or

22 (B) in the case of a beneficiary described
23 in subsection (c)(4)(A)(ii), the date on which
24 the beneficiary files the claim with the plan.

1 (3) REPORTING REQUIREMENT.—For each
2 month beginning with January 2011, each prescrip-
3 tion drug plan and each MA-PD plan shall report to
4 the Secretary the following:

5 (A) The number of claims the plan has re-
6 adjudicated during the month due to a bene-
7 ficiary becoming retroactively eligible for sub-
8 sidies available under section 1860D-14 of the
9 Social Security Act.

10 (B) The total value of the readjudicated
11 claim amount for the month.

12 (C) The Medicare Health Insurance Claims
13 Number of beneficiaries for whom claims were
14 readjudicated.

15 (D) For the claims described in subpara-
16 graphs (A) and (B), an attestation to the Ad-
17 ministrator of the Centers for Medicare & Med-
18 icaid Services of the total amount of reimburse-
19 ment the plan has provided to beneficiaries for
20 premiums and cost-sharing that the beneficiary
21 overpaid for which the plan received payment
22 from the Centers for Medicare & Medicaid Serv-
23 ices.

24 (e) DEFINITIONS.—For purposes of this section:

1 (1) COVERED DRUG COSTS.—The term “cov-
2 ered drug costs” means, with respect to a retroactive
3 LIS enrollment beneficiary enrolled under a pre-
4 scription drug plan under part D of title XVIII of
5 the Social Security Act (or an MA-PD plan under
6 part C of such title), the amount by which—

7 (A) the costs incurred by such beneficiary
8 during the retroactive coverage period of the
9 beneficiary for covered part D drugs, premiums,
10 and cost-sharing under such title; exceeds

11 (B) such costs that would have been in-
12 curred by such beneficiary during such period if
13 the beneficiary had been both enrolled in the
14 plan and recognized by such plan as qualified
15 during such period for the low income subsidy
16 under section 1860D-14 of the Social Security
17 Act to which the individual is entitled.

18 (2) ELIGIBLE THIRD PARTY.—The term “eligi-
19 ble third party” means, with respect to a retroactive
20 LIS enrollment beneficiary, an organization or other
21 third party that is owed payment on behalf of such
22 beneficiary for covered drug costs incurred by such
23 beneficiary during the retroactive coverage period of
24 such beneficiary.

1 (3) RETROACTIVE COVERAGE PERIOD.—The
2 term “retroactive coverage period” means—

3 (A) with respect to a retroactive LIS en-
4 rollment beneficiary described in paragraph
5 (4)(A)(i), the period—

6 (i) beginning on the effective date of
7 the assistance described in such paragraph
8 for which the individual is eligible; and

9 (ii) ending on the date the plan effec-
10 tuates the status of such individual as so
11 eligible; and

12 (B) with respect to a retroactive LIS en-
13 rollment beneficiary described in paragraph
14 (4)(A)(ii), the period—

15 (i) beginning on the date the indi-
16 vidual is both entitled to benefits under
17 part A, or enrolled under part B, of title
18 XVIII of the Social Security Act and eligi-
19 ble for medical assistance under a State
20 plan under title XIX of such Act; and

21 (ii) ending on the date the plan effec-
22 tuates the status of such individual as a
23 full-benefit dual eligible individual (as de-
24 fined in section 1935(c)(6) of such Act).

1 (4) RETROACTIVE LIS ENROLLMENT BENE-
2 FICIARY.—

3 (A) IN GENERAL.—The term “retroactive
4 LIS enrollment beneficiary” means an indi-
5 vidual who—

6 (i) is enrolled in a prescription drug
7 plan under part D of title XVIII of the So-
8 cial Security Act (or an MA-PD plan
9 under part C of such title) and subse-
10 quently becomes eligible as a full-benefit
11 dual eligible individual (as defined in sec-
12 tion 1935(c)(6) of such Act), an individual
13 receiving a low-income subsidy under sec-
14 tion 1860D-14 of such Act, an individual
15 receiving assistance under the Medicare
16 Savings Program implemented under
17 clauses (i), (iii), and (iv) of section
18 1902(a)(10)(E) of such Act, or an indi-
19 vidual receiving assistance under the sup-
20 plemental security income program under
21 section 1611 of such Act; or

22 (ii) subject to subparagraph (B)(i), is
23 a full-benefit dual eligible individual (as
24 defined in section 1935(c)(6) of such Act)
25 who is automatically enrolled in such a

1 plan under section 1860D-1(b)(1)(C) of
2 such Act.

3 (B) EXCEPTION FOR BENEFICIARIES EN-
4 ROLLED IN RFP PLAN.—

5 (i) IN GENERAL.—In no case shall an
6 individual described in subparagraph
7 (A)(ii) include an individual who is en-
8 rolled, pursuant to a RFP contract de-
9 scribed in clause (ii), in a prescription
10 drug plan offered by the sponsor of such
11 plan awarded such contract.

12 (ii) RFP CONTRACT DESCRIBED.—
13 The RFP contract described in this section
14 is a contract entered into between the Sec-
15 retary and a sponsor of a prescription drug
16 plan pursuant to the Centers for Medicare
17 & Medicaid Services' request for proposals
18 issued on February 17, 2009, relating to
19 Medicare part D retroactive coverage for
20 certain low income beneficiaries, or a simi-
21 lar subsequent request for proposals.

22 **SEC. 1205. INTELLIGENT ASSIGNMENT IN ENROLLMENT.**

23 (a) IN GENERAL.—Section 1860D-1(b)(1)(C) of the
24 Social Security Act (42 U.S.C. 1395w-101(b)(1)(C)) is
25 amended by adding after “PDP region” the following: “or

1 through use of an intelligent assignment process that is
2 designed to maximize the access of such individual to nec-
3 essary prescription drugs while minimizing costs to such
4 individual and to the program under this part to the great-
5 est extent possible. In the case the Secretary enrolls such
6 individuals through use of an intelligent assignment proc-
7 ess, such process shall take into account the extent to
8 which prescription drugs necessary for the individual are
9 covered in the case of a PDP sponsor of a prescription
10 drug plan that uses a formulary, the use of prior author-
11 ization or other restrictions on access to coverage of such
12 prescription drugs by such a sponsor, and the overall qual-
13 ity of a prescription drug plan as measured by quality rat-
14 ings established by the Secretary.”

15 (b) EFFECTIVE DATE.—The amendment made by
16 subsection (a) shall take effect for contract years begin-
17 ning with 2012.

18 **SEC. 1206. SPECIAL ENROLLMENT PERIOD AND AUTOMATIC**
19 **ENROLLMENT PROCESS FOR CERTAIN SUB-**
20 **SIDY ELIGIBLE INDIVIDUALS.**

21 (a) SPECIAL ENROLLMENT PERIOD.—Section
22 1860D–1(b)(3)(D) of the Social Security Act (42 U.S.C.
23 1395w–101(b)(3)(D)) is amended to read as follows:

24 “(D) SUBSIDY ELIGIBLE INDIVIDUALS.—

25 In the case of an individual (as determined by

1 the Secretary) who is determined under sub-
2 paragraph (B) of section 1860D-14(a)(3) to be
3 a subsidy eligible individual.”.

4 (b) AUTOMATIC ENROLLMENT.—Section 1860D-
5 1(b)(1) of the Social Security Act (42 U.S.C. 1395w-
6 101(b)(1)) is amended by adding at the end the following
7 new subparagraph:

8 “(D) SPECIAL RULE FOR SUBSIDY ELIGI-
9 BLE INDIVIDUALS.—The process established
10 under subparagraph (A) shall include, in the
11 case of an individual described in section
12 1860D-1(b)(3)(D) who fails to enroll in a pre-
13 scription drug plan or an MA–PD plan during
14 the special enrollment established under such
15 section applicable to such individual, the appli-
16 cation of the assignment process described in
17 subparagraph (C) to such individual in the
18 same manner as such assignment process ap-
19 plies to a part D eligible individual described in
20 such subparagraph (C). Nothing in the previous
21 sentence shall prevent an individual described in
22 such sentence from declining enrollment in a
23 plan determined appropriate by the Secretary
24 (or in the program under this part) or from
25 changing such enrollment.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to subsidy determinations made
3 for months beginning with January 2011.

4 **SEC. 1207. APPLICATION OF MA PREMIUMS PRIOR TO RE-**
5 **BATE IN CALCULATION OF LOW INCOME SUB-**
6 **SIDY BENCHMARK.**

7 (a) IN GENERAL.—Section 1860D–14(b)(2)(B)(iii)
8 of the Social Security Act (42 U.S.C. 1395w–
9 114(b)(2)(B)(iii)) is amended by inserting before the pe-
10 riod the following: “before the application of the monthly
11 rebate computed under section 1854(b)(1)(C)(i) for that
12 plan and year involved”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall apply to subsidy determinations made
15 for months beginning with January 2011.

16 **Subtitle B—Reducing Health**
17 **Disparities**

18 **SEC. 1221. ENSURING EFFECTIVE COMMUNICATION IN**
19 **MEDICARE.**

20 (a) ENSURING EFFECTIVE COMMUNICATION BY THE
21 CENTERS FOR MEDICARE & MEDICAID SERVICES.—

22 (1) STUDY ON MEDICARE PAYMENTS FOR LAN-
23 GUAGE SERVICES.—The Secretary of Health and
24 Human Services shall conduct a study that examines
25 the extent to which Medicare service providers uti-

1 lize, offer, or make available language services for
2 beneficiaries who are limited English proficient and
3 ways that Medicare should develop payment systems
4 for language services.

5 (2) ANALYSES.—The study shall include an
6 analysis of each of the following:

7 (A) How to develop and structure appro-
8 priate payment systems for language services
9 for all Medicare service providers.

10 (B) The feasibility of adopting a payment
11 methodology for on-site interpreters, including
12 interpreters who work as independent contrac-
13 tors and interpreters who work for agencies
14 that provide on-site interpretation, pursuant to
15 which such interpreters could directly bill Medi-
16 care for services provided in support of physi-
17 cian office services for an LEP Medicare pa-
18 tient.

19 (C) The feasibility of Medicare contracting
20 directly with agencies that provide off-site inter-
21 pretation including telephonic and video inter-
22 pretation pursuant to which such contractors
23 could directly bill Medicare for the services pro-
24 vided in support of physician office services for
25 an LEP Medicare patient.

1 (D) The feasibility of modifying the exist-
2 ing Medicare resource-based relative value scale
3 (RBRVS) by using adjustments (such as multi-
4 pliers or add-ons) when a patient is LEP.

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

10 (F) The extent to which providers under
11 parts A and B of title XVIII of the Social Secu-
12 rity Act, MA organizations offering Medicare
13 Advantage plans under part C of such title and
14 PDP sponsors of a prescription drug plan
15 under part D of such title utilize, offer, or make
16 available language services for beneficiaries with
17 limited English proficiency.

18 (G) The nature and type of language serv-
19 ices provided by States under title XIX of the
20 Social Security Act and the extent to which
21 such services could be utilized by beneficiaries
22 and providers under title XVIII of such Act.

23 (3) VARIATION IN PAYMENT SYSTEM DE-
24 SCRIBED.—The payment systems described in para-
25 graph (2)(A) may allow variations based upon types

1 of service providers, available delivery methods, and
2 costs for providing language services including such
3 factors as—

4 (A) the type of language services provided
5 (such as provision of health care or health care
6 related services directly in a non-English lan-
7 guage by a bilingual provider or use of an inter-
8 preter);

9 (B) type of interpretation services provided
10 (such as in-person, telephonic, video interpreta-
11 tion);

12 (C) the methods and costs of providing
13 language services (including the costs of pro-
14 viding language services with internal staff or
15 through contract with external independent con-
16 tractors or agencies, or both);

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

20 (E) providing services in rural areas.

21 (4) REPORT.—The Secretary shall submit a re-
22 port on the study conducted under subsection (a) to
23 appropriate committees of Congress not later than
24 12 months after the date of the enactment of this
25 Act.

1 (5) EXEMPTION FROM PAPERWORK REDUCTION
2 ACT.—Chapter 35 of title 44, United States Code
3 (commonly known as the “Paperwork Reduction
4 Act”), shall not apply for purposes of carrying out
5 this subsection.

6 (6) AUTHORIZATION OF APPROPRIATIONS.—
7 There is authorized to be appropriated to carry out
8 this subsection such sums as are necessary.

9 (b) HEALTH PLANS.—Section 1857(g)(1) of the So-
10 cial Security Act (42 U.S.C. 1395w–27(g)(1)) is amend-
11 ed—

12 (1) by striking “or” at the end of subparagraph
13 (F);

14 (2) by adding “or” at the end of subparagraph
15 (G); and

16 (3) by inserting after subparagraph (G) the fol-
17 lowing new subparagraph:

18 “(H) fails substantially to provide lan-
19 guage services to limited English proficient
20 beneficiaries enrolled in the plan that are re-
21 quired under law;”.

1 **SEC. 1222. DEMONSTRATION TO PROMOTE ACCESS FOR**
2 **MEDICARE BENEFICIARIES WITH LIMITED**
3 **ENGLISH PROFICIENCY BY PROVIDING REIM-**
4 **BURSEMENT FOR CULTURALLY AND LINGUIS-**
5 **TICALLY APPROPRIATE SERVICES.**

6 (a) IN GENERAL.—Not later than 6 months after the
7 date of the completion of the study described in section
8 1221(a), the Secretary, acting through the Centers for
9 Medicare & Medicaid Services, shall carry out a dem-
10 onstration program under which the Secretary shall award
11 not fewer than 24 3-year grants to eligible Medicare serv-
12 ice providers (as described in subsection (b)(1)) to improve
13 effective communication between such providers and Medi-
14 care beneficiaries who are living in communities where ra-
15 cial and ethnic minorities, including populations that face
16 language barriers, are underserved with respect to such
17 services. In designing and carrying out the demonstration
18 the Secretary shall take into consideration the results of
19 the study conducted under section 1221(a) and adjust, as
20 appropriate, the distribution of grants so as to better tar-
21 get Medicare beneficiaries who are in the greatest need
22 of language services. The Secretary shall not authorize a
23 grant larger than \$500,000 over three years for any grant-
24 ee.

25 (b) ELIGIBILITY; PRIORITY.—

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

3 (A) be—

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

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

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

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

13 (B) prepare and submit to the Secretary
14 an application, at such time, in such manner,
15 and accompanied by such additional informa-
16 tion as the Secretary may require.

17 (2) PRIORITY.—

18 (A) DISTRIBUTION.—To the extent fea-
19 sible, in awarding grants under this section, the
20 Secretary shall award—

21 (i) at least 6 grants to providers of
22 services described in paragraph (1)(A)(i);

23 (ii) at least 6 grants to service pro-
24 viders described in paragraph (1)(A)(ii);

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

3 (iv) at least 6 grants to sponsors de-
4 scribed in paragraph (1)(A)(iv).

5 (B) FOR COMMUNITY ORGANIZATIONS.—

6 The Secretary shall give priority to applicants
7 that have developed partnerships with commu-
8 nity organizations or with agencies with experi-
9 ence in language access.

10 (C) VARIATION IN GRANTEES.—The Sec-
11 retary shall also ensure that the grantees under
12 this section represent, among other factors,
13 variations in—

14 (i) different types of language services
15 provided and of service providers and orga-
16 nizations under parts A through D of title
17 XVIII of the Social Security Act;

18 (ii) languages needed and their fre-
19 quency of use;

20 (iii) urban and rural settings;

21 (iv) at least two geographic regions,
22 as defined by the Secretary; and

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

25 (c) USE OF FUNDS.—

1 (1) IN GENERAL.—A grantee shall use grant
2 funds received under this section to pay for the pro-
3 vision of competent language services to Medicare
4 beneficiaries who are limited English proficient.
5 Competent interpreter services may be provided
6 through on-site interpretation, telephonic interpreta-
7 tion, or video interpretation or direct provision of
8 health care or health care related services by a bilin-
9 gual health care provider. A grantee may use bilin-
10 gual providers, staff, or contract interpreters. A
11 grantee may use grant funds to pay for competent
12 translation services. A grantee may use up to 10
13 percent of the grant funds to pay for administrative
14 costs associated with the provision of competent lan-
15 guage services and for reporting required under sub-
16 section (e).

17 (2) ORGANIZATIONS.—Grantees that are part C
18 organizations or PDP sponsors must ensure that
19 their network providers receive at least 50 percent of
20 the grant funds to pay for the provision of com-
21 petent language services to Medicare beneficiaries
22 who are limited English proficient, including physi-
23 cians and pharmacies.

24 (3) DETERMINATION OF PAYMENTS FOR LAN-
25 GUAGE SERVICES.—Payments to grantees shall be

1 calculated based on the estimated numbers of lim-
2 ited English proficient Medicare beneficiaries in a
3 grantee's service area utilizing—

4 (A) data on the numbers of limited
5 English proficient individuals who speak
6 English less than “very well” from the most re-
7 cently available data from the Bureau of the
8 Census or other State-based study the Sec-
9 retary determines likely to yield accurate data
10 regarding the number of such individuals served
11 by the grantee; or

12 (B) the grantee's own data if the grantee
13 routinely collects data on Medicare bene-
14 ficiaries' primary language in a manner deter-
15 mined by the Secretary to yield accurate data
16 and such data shows greater numbers of limited
17 English proficient individuals than the data list-
18 ed in subparagraph (A).

19 (4) LIMITATIONS.—

20 (A) REPORTING.—Payments shall only be
21 provided under this section to grantees that re-
22 port their costs of providing language services
23 as required under subsection (e) and may be
24 modified annually at the discretion of the Sec-
25 retary. If a grantee fails to provide the reports

1 under such section for the first year of a grant,
2 the Secretary may terminate the grant and so-
3 licit applications from new grantees to partici-
4 pate in the subsequent two years of the dem-
5 onstration program.

6 (B) TYPE OF SERVICES.—

7 (i) IN GENERAL.—Subject to clause
8 (ii), payments shall be provided under this
9 section only to grantees that utilize com-
10 petent bilingual staff or competent inter-
11 preter or translation services which—

12 (I) if the grantee operates in a
13 State that has statewide health care
14 interpreter standards, meet the State
15 standards currently in effect; or

16 (II) if the grantee operates in a
17 State that does not have statewide
18 health care interpreter standards, uti-
19 lizes competent interpreters who fol-
20 low the National Council on Inter-
21 preting in Health Care's Code of Eth-
22 ics and Standards of Practice.

23 (ii) EXEMPTIONS.—The requirements
24 of clause (i) shall not apply—

1 (I) in the case of a Medicare ben-
2 eficiary who is limited English pro-
3 ficient (who has been informed in the
4 beneficiary's primary language of the
5 availability of free interpreter and
6 translation services) and who requests
7 the use of family, friends, or other
8 persons untrained in interpretation or
9 translation and the grantee documents
10 the request in the beneficiary's record;
11 and

12 (II) in the case of a medical
13 emergency where the delay directly as-
14 sociated with obtaining a competent
15 interpreter or translation services
16 would jeopardize the health of the pa-
17 tient.

18 Nothing in clause (ii)(II) shall be con-
19 strued to exempt emergency rooms or simi-
20 lar entities that regularly provide health
21 care services in medical emergencies from
22 having in place systems to provide com-
23 petent interpreter and translation services
24 without undue delay.

1 (d) ASSURANCES.—Grantees under this section
2 shall—

3 (1) ensure that appropriate clinical and support
4 staff receive ongoing education and training in lin-
5 guistically appropriate service delivery;

6 (2) ensure the linguistic competence of bilingual
7 providers;

8 (3) offer and provide appropriate language serv-
9 ices at no additional charge to each patient with lim-
10 ited English proficiency at all points of contact, in
11 a timely manner during all hours of operation;

12 (4) notify Medicare beneficiaries of their right
13 to receive language services in their primary lan-
14 guage;

15 (5) post signage in the languages of the com-
16 monly encountered group or groups present in the
17 service area of the organization; and

18 (6) ensure that—

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

21 (B) consistent with the privacy protections
22 provided under the regulations promulgated
23 pursuant to section 264(c) of the Health Insur-
24 ance Portability and Accountability Act of 1996
25 (42 U.S.C. 1320d–2 note), if the recipient of

1 language services is a minor or is incapacitated,
2 the primary language of the parent or legal
3 guardian is collected and utilized.

4 (e) REPORTING REQUIREMENTS.—Grantees under
5 this section shall provide the Secretary with reports at the
6 conclusion of the each year of a grant under this section.
7 Each report shall include at least the following informa-
8 tion:

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

11 (2) The languages of those Medicare bene-
12 ficiaries.

13 (3) The types of language services provided
14 (such as provision of services directly in non-English
15 language by a bilingual health care provider or use
16 of an interpreter).

17 (4) Type of interpretation (such as in-person,
18 telephonic, or video interpretation).

19 (5) The methods of providing language services
20 (such as staff or contract with external independent
21 contractors or agencies).

22 (6) The length of time for each interpretation
23 encounter.

1 (7) The costs of providing language services
2 (which may be actual or estimated, as determined by
3 the Secretary).

4 (f) NO COST SHARING.—Limited English proficient
5 Medicare beneficiaries shall not have to pay cost-sharing
6 or co-pays for language services provided through this
7 demonstration program.

8 (g) EVALUATION AND REPORT.—The Secretary shall
9 conduct an evaluation of the demonstration program
10 under this section and shall submit to the appropriate
11 committees of Congress a report not later than 1 year
12 after the completion of the program. The report shall in-
13 clude the following:

14 (1) An analysis of the patient outcomes and
15 costs of furnishing care to the limited English pro-
16 ficient Medicare beneficiaries participating in the
17 project as compared to such outcomes and costs for
18 limited English proficient Medicare beneficiaries not
19 participating.

20 (2) The effect of delivering culturally and lin-
21 guistically appropriate services on beneficiary access
22 to care, utilization of services, efficiency and cost-ef-
23 fectiveness of health care delivery, patient satisfac-
24 tion, and select health outcomes.

1 care organizations and providers for limited English
2 proficient patient populations;

3 (2) a description of the effect of providing lan-
4 guage access services on quality of health care and
5 access to care and reduced medical error; and

6 (3) a description of the costs associated with or
7 savings related to provision of language access serv-
8 ices.

9 **SEC. 1224. DEFINITIONS.**

10 In this subtitle:

11 (1) BILINGUAL.—The term “bilingual” with re-
12 spect to an individual means a person who has suffi-
13 cient degree of proficiency in two languages and can
14 ensure effective communication can occur in both
15 languages.

16 (2) COMPETENT INTERPRETER SERVICES.—The
17 term “competent interpreter services” means a
18 trans-language rendition of a spoken message in
19 which the interpreter comprehends the source lan-
20 guage and can speak comprehensively in the target
21 language to convey the meaning intended in the
22 source language. The interpreter knows health and
23 health-related terminology and provides accurate in-
24 terpretations by choosing equivalent expressions that
25 convey the best matching and meaning to the source

1 language and captures, to the greatest possible ex-
2 tent, all nuances intended in the source message.

3 (3) COMPETENT TRANSLATION SERVICES.—The
4 term “competent translation services” means a
5 trans-language rendition of a written document in
6 which the translator comprehends the source lan-
7 guage and can write comprehensively in the target
8 language to convey the meaning intended in the
9 source language. The translator knows health and
10 health-related terminology and provides accurate
11 translations by choosing equivalent expressions that
12 convey the best matching and meaning to the source
13 language and captures, to the greatest possible ex-
14 tent, all nuances intended in the source document.

15 (4) EFFECTIVE COMMUNICATION.—The term
16 “effective communication” means an exchange of in-
17 formation between the provider of health care or
18 health care-related services and the limited English
19 proficient recipient of such services that enables lim-
20 ited English proficient individuals to access, under-
21 stand, and benefit from health care or health care-
22 related services.

23 (5) INTERPRETING/INTERPRETATION.—The
24 terms “interpreting” and “interpretation” mean the

1 transmission of a spoken message from one language
2 into another, faithfully, accurately, and objectively.

3 (6) HEALTH CARE SERVICES.—The term
4 “health care services” means services that address
5 physical as well as mental health conditions in all
6 care settings.

7 (7) HEALTH CARE-RELATED SERVICES.—The
8 term “health care-related services” means human or
9 social services programs or activities that provide ac-
10 cess, referrals or links to health care.

11 (8) LANGUAGE ACCESS.—The term “language
12 access” means the provision of language services to
13 an LEP individual designed to enhance that individ-
14 ual’s access to, understanding of or benefit from
15 health care or health care-related services.

16 (9) LANGUAGE SERVICES.—The term “lan-
17 guage services” means provision of health care serv-
18 ices directly in a non-English language, interpreta-
19 tion, translation, and non-English signage.

20 (10) LIMITED ENGLISH PROFICIENT.—The
21 term “limited English proficient” or “LEP” with re-
22 spect to an individual means an individual who
23 speaks a primary language other than English and
24 who cannot speak, read, write or understand the
25 English language at a level that permits the indi-

1 vidual to effectively communicate with clinical or
2 nonclinical staff at an entity providing health care or
3 health care related services.

4 (11) **MEDICARE BENEFICIARY.**—The term
5 “Medicare beneficiary” means an individual entitled
6 to benefits under part A of title XVIII of the Social
7 Security Act or enrolled under part B of such title.

8 (12) **MEDICARE PROGRAM.**—The term “Medi-
9 care program” means the programs under parts A
10 through D of title XVIII of the Social Security Act.

11 (13) **SERVICE PROVIDER.**—The term “service
12 provider” includes all suppliers, providers of services,
13 or entities under contract to provide coverage, items
14 or services under any part of title XVIII of the So-
15 cial Security Act.

16 **Subtitle C—Miscellaneous** 17 **Improvements**

18 **SEC. 1231. EXTENSION OF THERAPY CAPS EXCEPTIONS** 19 **PROCESS.**

20 Section 1833(g)(5) of the Social Security Act (42
21 U.S.C. 1395l(g)(5)), as amended by section 141 of the
22 Medicare Improvements for Patients and Providers Act of
23 2008 (Public Law 110–275), is amended by striking “De-
24 cember 31, 2009” and inserting “December 31, 2011”.

1 **SEC. 1232. EXTENDED MONTHS OF COVERAGE OF IMMUNO-**
2 **SUPPRESSIVE DRUGS FOR KIDNEY TRANS-**
3 **PLANT PATIENTS AND OTHER RENAL DIALY-**
4 **SIS PROVISIONS.**

5 (a) PROVISION OF APPROPRIATE COVERAGE OF IM-
6 MUNOSUPPRESSIVE DRUGS UNDER THE MEDICARE PRO-
7 GRAM FOR KIDNEY TRANSPLANT RECIPIENTS.—

8 (1) CONTINUED ENTITLEMENT TO IMMUNO-
9 SUPPRESSIVE DRUGS.—

10 (A) KIDNEY TRANSPLANT RECIPIENTS.—

11 Section 226A(b)(2) of the Social Security Act
12 (42 U.S.C. 426–1(b)(2)) is amended by insert-
13 ing “(except for coverage of immunosuppressive
14 drugs under section 1861(s)(2)(J))” before “,
15 with the thirty-sixth month”.

16 (B) APPLICATION.—Section 1836 of such
17 Act (42 U.S.C. 1395o) is amended—

18 (i) by striking “Every individual who”
19 and inserting “(a) IN GENERAL.—Every in-
20 dividual who”; and

21 (ii) by adding at the end the following
22 new subsection:

23 “(b) SPECIAL RULES APPLICABLE TO INDIVIDUALS
24 ONLY ELIGIBLE FOR COVERAGE OF IMMUNOSUPPRESSIVE
25 DRUGS.—

1 “(1) IN GENERAL.—In the case of an individual
2 whose eligibility for benefits under this title has
3 ended on or after January 1, 2012, except for the
4 coverage of immunosuppressive drugs by reason of
5 section 226A(b)(2), the following rules shall apply:

6 “(A) The individual shall be deemed to be
7 enrolled under this part for purposes of receiv-
8 ing coverage of such drugs.

9 “(B) The individual shall be responsible
10 for providing for payment of the portion of the
11 premium under section 1839 which is not cov-
12 ered under the Medicare savings program (as
13 defined in section 1144(c)(7)) in order to re-
14 ceive such coverage.

15 “(C) The provision of such drugs shall be
16 subject to the application of—

17 “(i) the deductible under section
18 1833(b); and

19 “(ii) the coinsurance amount applica-
20 ble for such drugs (as determined under
21 this part).

22 “(D) If the individual is an inpatient of a
23 hospital or other entity, the individual is enti-
24 tled to receive coverage of such drugs under
25 this part.

1 “(2) ESTABLISHMENT OF PROCEDURES IN
2 ORDER TO IMPLEMENT COVERAGE.—The Secretary
3 shall establish procedures for—

4 “(A) identifying individuals that are enti-
5 tled to coverage of immunosuppressive drugs by
6 reason of section 226A(b)(2); and

7 “(B) distinguishing such individuals from
8 individuals that are enrolled under this part for
9 the complete package of benefits under this
10 part.”.

11 (C) TECHNICAL AMENDMENT TO CORRECT
12 DUPLICATE SUBSECTION DESIGNATION.—Sub-
13 section (d) of section 226A of such Act (42
14 U.S.C. 426–1), as added by section
15 201(a)(3)(D)(ii) of the Social Security Inde-
16 pendence and Program Improvements Act of
17 1994 (Public Law 103–296; 108 Stat. 1497), is
18 redesignated as subsection (d).

19 (2) EXTENSION OF SECONDARY PAYER RE-
20 QUIREMENTS FOR ESRD BENEFICIARIES.—Section
21 1862(b)(1)(C) of such Act (42 U.S.C.
22 1395y(b)(1)(C)) is amended by adding at the end
23 the following new sentence: “With regard to im-
24 munosuppressive drugs furnished on or after the
25 date of the enactment of the America’s Affordable

1 Health Choices Act of 2009, this subparagraph shall
2 be applied without regard to any time limitation.”.

3 (b) MEDICARE COVERAGE FOR ESRD PATIENTS.—

4 Section 1881 of such Act is further amended—

5 (1) in subsection (b)(14)(B)(iii), by inserting “,
6 including oral drugs that are not the oral equivalent
7 of an intravenous drug (such as oral phosphate bind-
8 ers and calcimimetics),” after “other drugs and
9 biologicals”;

10 (2) in subsection (b)(14)(E)(ii)—

11 (A) in the first sentence—

12 (i) by striking “a one-time election to
13 be excluded from the phase-in” and insert-
14 ing “an election, with respect to 2011,
15 2012, or 2013, to be excluded from the
16 phase-in (or the remainder of the phase-
17 in)”;

18 (ii) by adding at the end the fol-
19 lowing: “for such year and for each subse-
20 quent year during the phase-in described
21 in clause (i)”;

22 (B) in the second sentence—

23 (i) by striking “January 1, 2011” and
24 inserting “the first date of such year”; and

1 (ii) by inserting “and at a time” after
2 “form and manner”; and
3 (3) in subsection (h)(4)(E), by striking “lesser”
4 and inserting “greater”.

5 **SEC. 1233. ADVANCE CARE PLANNING CONSULTATION.**

6 (a) **MEDICARE.**—

7 (1) **IN GENERAL.**—Section 1861 of the Social
8 Security Act (42 U.S.C. 1395x) is amended—

9 (A) in subsection (s)(2)—

10 (i) by striking “and” at the end of
11 subparagraph (DD);

12 (ii) by adding “and” at the end of
13 subparagraph (EE); and

14 (iii) by adding at the end the fol-
15 lowing new subparagraph:

16 “(FF) advance care planning consultation (as
17 defined in subsection (hhh)(1));” and

18 (B) by adding at the end the following new
19 subsection:

20 “Advance Care Planning Consultation

21 “(hhh)(1) Subject to paragraphs (3) and (4), the
22 term ‘advance care planning consultation’ means a con-
23 sultation between the individual and a practitioner de-
24 scribed in paragraph (2) regarding advance care planning,
25 if, subject to paragraph (3), the individual involved has

1 not had such a consultation within the last 5 years. Such
2 consultation shall include the following:

3 “(A) An explanation by the practitioner of ad-
4 vance care planning, including key questions and
5 considerations, important steps, and suggested peo-
6 ple to talk to.

7 “(B) An explanation by the practitioner of ad-
8 vance directives, including living wills and durable
9 powers of attorney, and their uses.

10 “(C) An explanation by the practitioner of the
11 role and responsibilities of a health care proxy.

12 “(D) The provision by the practitioner of a list
13 of national and State-specific resources to assist con-
14 sumers and their families with advance care plan-
15 ning, including the national toll-free hotline, the ad-
16 vance care planning clearinghouses, and State legal
17 service organizations (including those funded
18 through the Older Americans Act of 1965).

19 “(E) An explanation by the practitioner of the
20 continuum of end-of-life services and supports avail-
21 able, including palliative care and hospice, and bene-
22 fits for such services and supports that are available
23 under this title.

1 “(F)(i) Subject to clause (ii), an explanation of
2 orders regarding life sustaining treatment or similar
3 orders, which shall include—

4 “(I) the reasons why the development of
5 such an order is beneficial to the individual and
6 the individual’s family and the reasons why
7 such an order should be updated periodically as
8 the health of the individual changes;

9 “(II) the information needed for an indi-
10 vidual or legal surrogate to make informed deci-
11 sions regarding the completion of such an
12 order; and

13 “(III) the identification of resources that
14 an individual may use to determine the require-
15 ments of the State in which such individual re-
16 sides so that the treatment wishes of that indi-
17 vidual will be carried out if the individual is un-
18 able to communicate those wishes, including re-
19 quirements regarding the designation of a sur-
20 rogate decisionmaker (also known as a health
21 care proxy).

22 “(ii) The Secretary shall limit the requirement
23 for explanations under clause (i) to consultations
24 furnished in a State—

1 “(I) in which all legal barriers have been
2 addressed for enabling orders for life sustaining
3 treatment to constitute a set of medical orders
4 respected across all care settings; and

5 “(II) that has in effect a program for or-
6 ders for life sustaining treatment described in
7 clause (iii).

8 “(iii) A program for orders for life sustaining
9 treatment for a States described in this clause is a
10 program that—

11 “(I) ensures such orders are standardized
12 and uniquely identifiable throughout the State;

13 “(II) distributes or makes accessible such
14 orders to physicians and other health profes-
15 sionals that (acting within the scope of the pro-
16 fessional’s authority under State law) may sign
17 orders for life sustaining treatment;

18 “(III) provides training for health care
19 professionals across the continuum of care
20 about the goals and use of orders for life sus-
21 taining treatment; and

22 “(IV) is guided by a coalition of stake-
23 holders includes representatives from emergency
24 medical services, emergency department physi-
25 cians or nurses, state long-term care associa-

1 tion, state medical association, state surveyors,
2 agency responsible for senior services, state de-
3 partment of health, state hospital association,
4 home health association, state bar association,
5 and state hospice association.

6 “(2) A practitioner described in this paragraph is—

7 “(A) a physician (as defined in subsection
8 (r)(1)); and

9 “(B) a nurse practitioner or physician assistant
10 who has the authority under State law to sign orders
11 for life sustaining treatments.

12 “(3)(A) An initial preventive physical examination
13 under subsection (WW), including any related discussion
14 during such examination, shall not be considered an ad-
15 vance care planning consultation for purposes of applying
16 the 5-year limitation under paragraph (1).

17 “(B) An advance care planning consultation with re-
18 spect to an individual may be conducted more frequently
19 than provided under paragraph (1) if there is a significant
20 change in the health condition of the individual, including
21 diagnosis of a chronic, progressive, life-limiting disease, a
22 life-threatening or terminal diagnosis or life-threatening
23 injury, or upon admission to a skilled nursing facility, a
24 long-term care facility (as defined by the Secretary), or
25 a hospice program.

1 “(4) A consultation under this subsection may in-
2 clude the formulation of an order regarding life sustaining
3 treatment or a similar order.

4 “(5)(A) For purposes of this section, the term ‘order
5 regarding life sustaining treatment’ means, with respect
6 to an individual, an actionable medical order relating to
7 the treatment of that individual that—

8 “(i) is signed and dated by a physician (as de-
9 fined in subsection (r)(1)) or another health care
10 professional (as specified by the Secretary and who
11 is acting within the scope of the professional’s au-
12 thority under State law in signing such an order, in-
13 cluding a nurse practitioner or physician assistant)
14 and is in a form that permits it to stay with the in-
15 dividual and be followed by health care professionals
16 and providers across the continuum of care;

17 “(ii) effectively communicates the individual’s
18 preferences regarding life sustaining treatment, in-
19 cluding an indication of the treatment and care de-
20 sired by the individual;

21 “(iii) is uniquely identifiable and standardized
22 within a given locality, region, or State (as identified
23 by the Secretary); and

1 “(iv) may incorporate any advance directive (as
2 defined in section 1866(f)(3)) if executed by the in-
3 dividual.

4 “(B) The level of treatment indicated under subpara-
5 graph (A)(ii) may range from an indication for full treat-
6 ment to an indication to limit some or all or specified
7 interventions. Such indicated levels of treatment may in-
8 clude indications respecting, among other items—

9 “(i) the intensity of medical intervention if the
10 patient is pulse less, apneic, or has serious cardiac
11 or pulmonary problems;

12 “(ii) the individual’s desire regarding transfer
13 to a hospital or remaining at the current care set-
14 ting;

15 “(iii) the use of antibiotics; and

16 “(iv) the use of artificially administered nutri-
17 tion and hydration.”.

18 (2) PAYMENT.—Section 1848(j)(3) of such Act
19 (42 U.S.C. 1395w-4(j)(3)) is amended by inserting
20 “(2)(FF),” after “(2)(EE),”.

21 (3) FREQUENCY LIMITATION.—Section 1862(a)
22 of such Act (42 U.S.C. 1395y(a)) is amended—

23 (A) in paragraph (1)—

24 (i) in subparagraph (N), by striking

25 “and” at the end;

1 (ii) in subparagraph (O) by striking
2 the semicolon at the end and inserting “,
3 and”; and

4 (iii) by adding at the end the fol-
5 lowing new subparagraph:

6 “(P) in the case of advance care planning
7 consultations (as defined in section
8 1861(hhh)(1)), which are performed more fre-
9 quently than is covered under such section;”;
10 and

11 (B) in paragraph (7), by striking “or (K)”
12 and inserting “(K), or (P)”.

13 (4) EFFECTIVE DATE.—The amendments made
14 by this subsection shall apply to consultations fur-
15 nished on or after January 1, 2011.

16 (b) EXPANSION OF PHYSICIAN QUALITY REPORTING
17 INITIATIVE FOR END OF LIFE CARE.—

18 (1) PHYSICIAN’S QUALITY REPORTING INITIA-
19 TIVE.—Section 1848(k)(2) of the Social Security Act
20 (42 U.S.C. 1395w–4(k)(2)) is amended by adding at
21 the end the following new paragraphs:

22 “(3) PHYSICIAN’S QUALITY REPORTING INITIA-
23 TIVE.—

24 “(A) IN GENERAL.—For purposes of re-
25 porting data on quality measures for covered

1 professional services furnished during 2011 and
2 any subsequent year, to the extent that meas-
3 ures are available, the Secretary shall include
4 quality measures on end of life care and ad-
5 vanced care planning that have been adopted or
6 endorsed by a consensus-based organization, if
7 appropriate. Such measures shall measure both
8 the creation of and adherence to orders for life-
9 sustaining treatment.

10 “(B) PROPOSED SET OF MEASURES.— The
11 Secretary shall publish in the Federal Register
12 proposed quality measures on end of life care
13 and advanced care planning that the Secretary
14 determines are described in subparagraph (A)
15 and would be appropriate for eligible profes-
16 sionals to use to submit data to the Secretary.
17 The Secretary shall provide for a period of pub-
18 lic comment on such set of measures before fi-
19 nalizing such proposed measures.”.

20 (c) INCLUSION OF INFORMATION IN MEDICARE &
21 YOU HANDBOOK.—

22 (1) MEDICARE & YOU HANDBOOK.—

23 (A) IN GENERAL.—Not later than 1 year
24 after the date of the enactment of this Act, the
25 Secretary of Health and Human Services shall

1 update the online version of the Medicare &
2 You Handbook to include the following:

3 (i) An explanation of advance care
4 planning and advance directives, includ-
5 ing—

6 (I) living wills;

7 (II) durable power of attorney;

8 (III) orders of life-sustaining
9 treatment; and

10 (IV) health care proxies.

11 (ii) A description of Federal and State
12 resources available to assist individuals
13 and their families with advance care plan-
14 ning and advance directives, including—

15 (I) available State legal service
16 organizations to assist individuals
17 with advance care planning, including
18 those organizations that receive fund-
19 ing pursuant to the Older Americans
20 Act of 1965 (42 U.S.C. 93001 et
21 seq.);

22 (II) website links or addresses for
23 State-specific advance directive forms;
24 and

1 (III) any additional information,
2 as determined by the Secretary.

3 (B) UPDATE OF PAPER AND SUBSEQUENT
4 VERSIONS.—The Secretary shall include the in-
5 formation described in subparagraph (A) in all
6 paper and electronic versions of the Medicare &
7 You Handbook that are published on or after
8 the date that is 1 year after the date of the en-
9 actment of this Act.

10 **SEC. 1234. PART B SPECIAL ENROLLMENT PERIOD AND**
11 **WAIVER OF LIMITED ENROLLMENT PENALTY**
12 **FOR TRICARE BENEFICIARIES.**

13 (a) PART B SPECIAL ENROLLMENT PERIOD.—

14 (1) IN GENERAL.—Section 1837 of the Social
15 Security Act (42 U.S.C. 1395p) is amended by add-
16 ing at the end the following new subsection:

17 “(1)(1) In the case of any individual who is a covered
18 beneficiary (as defined in section 1072(5) of title 10,
19 United States Code) at the time the individual is entitled
20 to hospital insurance benefits under part A under section
21 226(b) or section 226A and who is eligible to enroll but
22 who has elected not to enroll (or to be deemed enrolled)
23 during the individual’s initial enrollment period, there
24 shall be a special enrollment period described in paragraph
25 (2).

1 “(2) The special enrollment period described in this
2 paragraph, with respect to an individual, is the 12-month
3 period beginning on the day after the last day of the initial
4 enrollment period of the individual or, if later, the 12-
5 month period beginning with the month the individual is
6 notified of enrollment under this section.

7 “(3) In the case of an individual who enrolls during
8 the special enrollment period provided under paragraph
9 (1), the coverage period under this part shall begin on the
10 first day of the month in which the individual enrolls or,
11 at the option of the individual, on the first day of the sec-
12 ond month following the last month of the individual’s ini-
13 tial enrollment period.

14 “(4) The Secretary of Defense shall establish a meth-
15 od for identifying individuals described in paragraph (1)
16 and providing notice to them of their eligibility for enroll-
17 ment during the special enrollment period described in
18 paragraph (2).”.

19 (2) EFFECTIVE DATE.—The amendment made
20 by paragraph (1) shall apply to elections made on or
21 after the date of the enactment of this Act.

22 (b) WAIVER OF INCREASE OF PREMIUM.—

23 (1) IN GENERAL.—Section 1839(b) of the So-
24 cial Security Act (42 U.S.C. 1395r(b)) is amended

1 by striking “section 1837(i)(4)” and inserting “sub-
2 section (i)(4) or (l) of section 1837”.

3 (2) EFFECTIVE DATE.—

4 (A) IN GENERAL.—The amendment made
5 by paragraph (1) shall apply with respect to
6 elections made on or after the date of the en-
7 actment of this Act.

8 (B) REBATES FOR CERTAIN DISABLED
9 AND ESRD BENEFICIARIES.—

10 (i) IN GENERAL.—With respect to
11 premiums for months on or after January
12 2005 and before the month of the enact-
13 ment of this Act, no increase in the pre-
14 mium shall be effected for a month in the
15 case of any individual who is a covered
16 beneficiary (as defined in section 1072(5)
17 of title 10, United States Code) at the time
18 the individual is entitled to hospital insur-
19 ance benefits under part A of title XVIII
20 of the Social Security Act under section
21 226(b) or 226A of such Act, and who is el-
22 igible to enroll, but who has elected not to
23 enroll (or to be deemed enrolled), during
24 the individual’s initial enrollment period,
25 and who enrolls under this part within the

1 12-month period that begins on the first
2 day of the month after the month of notifi-
3 cation of entitlement under this part.

4 (ii) CONSULTATION WITH DEPART-
5 MENT OF DEFENSE.—The Secretary of
6 Health and Human Services shall consult
7 with the Secretary of Defense in identi-
8 fying individuals described in this para-
9 graph.

10 (iii) REBATES.—The Secretary of
11 Health and Human Services shall establish
12 a method for providing rebates of premium
13 increases paid for months on or after Jan-
14 uary 1, 2005, and before the month of the
15 enactment of this Act for which a penalty
16 was applied and collected.

17 **SEC. 1235. EXCEPTION FOR USE OF MORE RECENT TAX**
18 **YEAR IN CASE OF GAINS FROM SALE OF PRI-**
19 **MARY RESIDENCE IN COMPUTING PART B IN-**
20 **COME-RELATED PREMIUM.**

21 (a) IN GENERAL.—Section 1839(i)(4)(C)(ii)(II) of
22 the Social Security Act (42 U.S.C. 1395r(i)(4)(C)(ii)(II))
23 is amended by inserting “sale of primary residence,” after
24 “divorce of such individual,”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to premiums and payments for
3 years beginning with 2011.

4 **SEC. 1236. DEMONSTRATION PROGRAM ON USE OF PA-**
5 **TIENT DECISIONS AIDS.**

6 (a) IN GENERAL.—The Secretary of Health and
7 Human Services shall establish a shared decision making
8 demonstration program (in this subsection referred to as
9 the “program”) under the Medicare program using pa-
10 tient decision aids to meet the objective of improving the
11 understanding by Medicare beneficiaries of their medical
12 treatment options, as compared to comparable Medicare
13 beneficiaries who do not participate in a shared decision
14 making process using patient decision aids.

15 (b) SITES.—

16 (1) ENROLLMENT.—The Secretary shall enroll
17 in the program not more than 30 eligible providers
18 who have experience in implementing, and have in-
19 vested in the necessary infrastructure to implement,
20 shared decision making using patient decision aids.

21 (2) APPLICATION.—An eligible provider seeking
22 to participate in the program shall submit to the
23 Secretary an application at such time and containing
24 such information as the Secretary may require.

1 (3) PREFERENCE.—In enrolling eligible pro-
2 viders in the program, the Secretary shall give pref-
3 erence to eligible providers that—

4 (A) have documented experience in using
5 patient decision aids for the conditions identi-
6 fied by the Secretary and in using shared deci-
7 sion making;

8 (B) have the necessary information tech-
9 nology infrastructure to collect the information
10 required by the Secretary for reporting pur-
11 poses; and

12 (C) are trained in how to use patient deci-
13 sion aids and shared decision making.

14 (c) FOLLOW-UP COUNSELING VISIT.—

15 (1) IN GENERAL.—An eligible provider partici-
16 pating in the program shall routinely schedule Medi-
17 care beneficiaries for a counseling visit after the
18 viewing of such a patient decision aid to answer any
19 questions the beneficiary may have with respect to
20 the medical care of the condition involved and to as-
21 sist the beneficiary in thinking through how their
22 preferences and concerns relate to their medical
23 care.

24 (2) PAYMENT FOR FOLLOW-UP COUNSELING
25 VISIT.—The Secretary shall establish procedures for

1 making payments for such counseling visits provided
2 to Medicare beneficiaries under the program. Such
3 procedures shall provide for the establishment—

4 (A) of a code (or codes) to represent such
5 services; and

6 (B) of a single payment amount for such
7 service that includes the professional time of
8 the health care provider and a portion of the
9 reasonable costs of the infrastructure of the eli-
10 gible provider such as would be made under the
11 applicable payment systems to that provider for
12 similar covered services.

13 (d) COSTS OF AIDS.—An eligible provider partici-
14 pating in the program shall be responsible for the costs
15 of selecting, purchasing, and incorporating such patient
16 decision aids into the provider's practice, and reporting
17 data on quality and outcome measures under the program.

18 (e) FUNDING.—The Secretary shall provide for the
19 transfer from the Federal Supplementary Medical Insur-
20 ance Trust Fund established under section 1841 of the
21 Social Security Act (42 U.S.C. 1395t) of such funds as
22 are necessary for the costs of carrying out the program.

23 (f) WAIVER AUTHORITY.—The Secretary may waive
24 such requirements of titles XI and XVIII of the Social
25 Security Act (42 U.S.C. 1301 et seq. and 1395 et seq.)

1 as may be necessary for the purpose of carrying out the
2 program.

3 (g) REPORT.—Not later than 12 months after the
4 date of completion of the program, the Secretary shall sub-
5 mit to Congress a report on such program, together with
6 recommendations for such legislation and administrative
7 action as the Secretary determines to be appropriate. The
8 final report shall include an evaluation of the impact of
9 the use of the program on health quality, utilization of
10 health care services, and on improving the quality of life
11 of such beneficiaries.

12 (h) DEFINITIONS.—In this section:

13 (1) ELIGIBLE PROVIDER.—The term “eligible
14 provider” means the following:

15 (A) A primary care practice.

16 (B) A specialty practice.

17 (C) A multispecialty group practice.

18 (D) A hospital.

19 (E) A rural health clinic.

20 (F) A Federally qualified health center (as
21 defined in section 1861(aa)(4) of the Social Se-
22 curity Act (42 U.S.C. 1395x(aa)(4)).

23 (G) An integrated delivery system.

24 (H) A State cooperative entity that in-
25 cludes the State government and at least one

1 other health care provider which is set up for
2 the purpose of testing shared decision making
3 and patient decision aids.

4 (2) PATIENT DECISION AID.—The term “pa-
5 tient decision aid” means an educational tool (such
6 as the Internet, a video, or a pamphlet) that helps
7 patients (or, if appropriate, the family caregiver of
8 the patient) understand and communicate their be-
9 liefs and preferences related to their treatment op-
10 tions, and to decide with their health care provider
11 what treatments are best for them based on their
12 treatment options, scientific evidence, circumstances,
13 beliefs, and preferences.

14 (3) SHARED DECISION MAKING.—The term
15 “shared decision making” means a collaborative
16 process between patient and clinician that engages
17 the patient in decision making, provides patients
18 with information about trade-offs among treatment
19 options, and facilitates the incorporation of patient
20 preferences and values into the medical plan.

1 **TITLE III—PROMOTING PRI-**
2 **MARY CARE, MENTAL**
3 **HEALTH SERVICES, AND CO-**
4 **ORDINATED CARE**

5 **SEC. 1301. ACCOUNTABLE CARE ORGANIZATION PILOT**
6 **PROGRAM.**

7 Title XVIII of the Social Security Act is amended by
8 inserting after section 1866C the following new section:

9 “ACCOUNTABLE CARE ORGANIZATION PILOT PROGRAM

10 “SEC. 1866D. (a) ESTABLISHMENT.—

11 “(1) IN GENERAL.—The Secretary shall con-
12 duct a pilot program (in this section referred to as
13 the ‘pilot program’) to test different payment incen-
14 tive models, including (to the extent practicable) the
15 specific payment incentive models described in sub-
16 section (c), designed to reduce the growth of expend-
17 itures and improve health outcomes in the provision
18 of items and services under this title to applicable
19 beneficiaries (as defined in subsection (d)) by quali-
20 fying accountable care organizations (as defined in
21 subsection (b)(1)) in order to—

22 “(A) promote accountability for a patient
23 population and coordinate items and services
24 under parts A and B;

1 “(B) encourage investment in infrastruc-
2 ture and redesigned care processes for high
3 quality and efficient service delivery; and

4 “(C) reward physician practices and other
5 physician organizational models for the provi-
6 sion of high quality and efficient health care
7 services.

8 “(2) SCOPE.—The Secretary shall set specific
9 goals for the number of accountable care organiza-
10 tions, participating practitioners, and patients served
11 in the initial tests under the pilot program to ensure
12 that the pilot program is of sufficient size and scope
13 to—

14 “(A) test the approach involved in a vari-
15 ety of settings, including urban, rural, and un-
16 derserved areas; and

17 “(B) subject to subsection (f)(1), dissemi-
18 nate such approach rapidly on a national basis.

19 To the extent that the Secretary finds a qualifying
20 accountable care organization model to be successful
21 in improving quality and reducing costs, the Sec-
22 retary shall implement such mechanisms and re-
23 forms on as large a geographic scale as practical and
24 economical.

1 “(b) QUALIFYING ACCOUNTABLE CARE ORGANIZA-
2 TIONS (ACOs).—

3 “(1) QUALIFYING ACO DEFINED.—In this sec-
4 tion:

5 “(A) IN GENERAL.—The terms ‘qualifying
6 accountable care organization’ and ‘qualifying
7 ACO’ mean a group of physicians or other phy-
8 sician organizational model (as defined in sub-
9 paragraph (D)) that—

10 “(i) is organized at least in part for
11 the purpose of providing physicians’ serv-
12 ices; and

13 “(ii) meets such criteria as the Sec-
14 retary determines to be appropriate to par-
15 ticipate in the pilot program, including the
16 criteria specified in paragraph (2).

17 “(B) INCLUSION OF OTHER PROVIDERS.—
18 Nothing in this subsection shall be construed as
19 preventing a qualifying ACO from including a
20 hospital or any other provider of services or
21 supplier furnishing items or services for which
22 payment may be made under this title that is
23 affiliated with the ACO under an arrangement
24 structured so that such provider or supplier
25 participates in the pilot program and shares in

1 any incentive payments under the pilot pro-
2 gram.

3 “(C) PHYSICIAN.—The term ‘physician’ in-
4 cludes, except as the Secretary may otherwise
5 provide, any individual who furnishes services
6 for which payment may be made as physicians’
7 services.

8 “(D) OTHER PHYSICIAN ORGANIZATIONAL
9 MODEL.—The term ‘other physician organiza-
10 tion model’ means, with respect to a qualifying
11 ACO any model of organization under which
12 physicians enter into agreements with other
13 providers for the purposes of participation in
14 the pilot program in order to provide high qual-
15 ity and efficient health care services and share
16 in any incentive payments under such program

17 “(E) OTHER SERVICES.—Nothing in this
18 paragraph shall be construed as preventing a
19 qualifying ACO from furnishing items or serv-
20 ices, for which payment may not be made under
21 this title, for purposes of achieving performance
22 goals under the pilot program.

23 “(2) QUALIFYING CRITERIA.—The following are
24 criteria described in this paragraph for an organized
25 group of physicians to be a qualifying ACO:

1 “(A) The group has a legal structure that
2 would allow the group to receive and distribute
3 incentive payments under this section.

4 “(B) The group includes a sufficient num-
5 ber of primary care physicians for the applica-
6 ble beneficiaries for whose care the group is ac-
7 countable (as determined by the Secretary).

8 “(C) The group reports on quality meas-
9 ures in such form, manner, and frequency as
10 specified by the Secretary (which may be for
11 the group, for providers of services and sup-
12 pliers, or both).

13 “(D) The group reports to the Secretary
14 (in a form, manner and frequency as specified
15 by the Secretary) such data as the Secretary
16 determines appropriate to monitor and evaluate
17 the pilot program.

18 “(E) The group provides notice to applica-
19 ble beneficiaries regarding the pilot program (as
20 determined appropriate by the Secretary).

21 “(F) The group contributes to a best prac-
22 tices network or website, that shall be main-
23 tained by the Secretary for the purpose of shar-
24 ing strategies on quality improvement, care co-

1 ordination, and efficiency that the groups be-
2 lieve are effective.

3 “(G) The group utilizes patient-centered
4 processes of care, including those that empha-
5 size patient and caregiver involvement in plan-
6 ning and monitoring of ongoing care manage-
7 ment plan.

8 “(H) The group meets other criteria deter-
9 mined to be appropriate by the Secretary.

10 “(c) SPECIFIC PAYMENT INCENTIVE MODELS.—The
11 specific payment incentive models described in this sub-
12 section are the following:

13 “(1) PERFORMANCE TARGET MODEL.—Under
14 the performance target model under this paragraph
15 (in this paragraph referred to as the ‘performance
16 target model’):

17 “(A) IN GENERAL.—A qualifying ACO
18 qualifies to receive an incentive payment if ex-
19 penditures for applicable beneficiaries are less
20 than a target spending level or a target rate of
21 growth. The incentive payment shall be made
22 only if savings are greater than would result
23 from normal variation in expenditures for items
24 and services covered under parts A and B.

1 “(B) COMPUTATION OF PERFORMANCE
2 TARGET.—

3 “(i) IN GENERAL.—The Secretary
4 shall establish a performance target for
5 each qualifying ACO comprised of a base
6 amount (described in clause (ii)) increased
7 to the current year by an adjustment fac-
8 tor (described in clause (iii)). Such a tar-
9 get may be established on a per capita
10 basis, as the Secretary determines to be
11 appropriate.

12 “(ii) BASE AMOUNT.—For purposes of
13 clause (i), the base amount in this sub-
14 paragraph is equal to the average total
15 payments (or allowed charges) under parts
16 A and B (and may include part D, if the
17 Secretary determines appropriate) for ap-
18 plicable beneficiaries for whom the quali-
19 fying ACO furnishes items and services in
20 a base period determined by the Secretary.
21 Such base amount may be determined on
22 a per capita basis.

23 “(iii) ADJUSTMENT FACTOR.—For
24 purposes of clause (i), the adjustment fac-
25 tor in this clause may equal an annual per

1 capita amount that reflects changes in ex-
2 penditures from the period of the base
3 amount to the current year that would rep-
4 resent an appropriate performance target
5 for applicable beneficiaries (as determined
6 by the Secretary). Such adjustment factor
7 may be determined as an amount or rate,
8 may be determined on a national, regional,
9 local, or organization-specific basis, and
10 may be determined on a per capita basis.
11 Such adjustment factor also may be ad-
12 justed for risk as determined appropriate
13 by the Secretary.

14 “(iv) REBASING.—Under this model
15 the Secretary shall periodically rebase the
16 base expenditure amount described in
17 clause (ii).

18 “(C) MEETING TARGET.—

19 “(i) IN GENERAL.—Subject to clause
20 (ii), a qualifying ACO that meet or exceeds
21 annual quality and performance targets for
22 a year shall receive an incentive payment
23 for such year equal to a portion (as deter-
24 mined appropriate by the Secretary) of the
25 amount by which payments under this title

1 for such year relative are estimated to be
2 below the performance target for such
3 year, as determined by the Secretary. The
4 Secretary may establish a cap on incentive
5 payments for a year for a qualifying ACO.

6 “(ii) LIMITATION.— The Secretary
7 shall limit incentive payments to each
8 qualifying ACO under this paragraph as
9 necessary to ensure that the aggregate ex-
10 penditures with respect to applicable bene-
11 ficiaries for such ACOs under this title (in-
12 clusive of incentive payments described in
13 this subparagraph) do not exceed the
14 amount that the Secretary estimates would
15 be expended for such ACO for such bene-
16 ficiaries if the pilot program under this
17 section were not implemented.

18 “(D) REPORTING AND OTHER REQUIRE-
19 MENTS.—In carrying out such model, the Sec-
20 retary may (as the Secretary determines to be
21 appropriate) incorporate reporting require-
22 ments, incentive payments, and penalties re-
23 lated to the physician quality reporting initia-
24 tive (PQRI), electronic prescribing, electronic
25 health records, and other similar initiatives

1 under section 1848, and may use alternative
2 criteria than would otherwise apply under such
3 section for determining whether to make such
4 payments. The incentive payments described in
5 this subparagraph shall not be included in the
6 limit described in subparagraph (C)(ii) or in the
7 performance target model described in this
8 paragraph.

9 “(2) PARTIAL CAPITATION MODEL.—

10 “(A) IN GENERAL.—Subject to subpara-
11 graph (B), a partial capitation model described
12 in this paragraph (in this paragraph referred to
13 as a ‘partial capitation model’) is a model in
14 which a qualifying ACO would be at financial
15 risk for some, but not all, of the items and serv-
16 ices covered under parts A and B, such as at
17 risk for some or all physicians’ services or all
18 items and services under part B. The Secretary
19 may limit a partial capitation model to ACOs
20 that are highly integrated systems of care and
21 to ACOs capable of bearing risk, as determined
22 to be appropriate by the Secretary.

23 “(B) NO ADDITIONAL PROGRAM EXPENDI-
24 TURES.—Payments to a qualifying ACO for ap-
25 plicable beneficiaries for a year under the par-

1 tial capitation model shall be established in a
2 manner that does not result in spending more
3 for such ACO for such beneficiaries than would
4 otherwise be expended for such ACO for such
5 beneficiaries for such year if the pilot program
6 were not implemented, as estimated by the Sec-
7 retary.

8 “(3) OTHER PAYMENT MODELS.—

9 “(A) IN GENERAL.—Subject to subpara-
10 graph (B), the Secretary may develop other
11 payment models that meet the goals of this
12 pilot program to improve quality and efficiency.

13 “(B) NO ADDITIONAL PROGRAM EXPENDI-
14 TURES.—Subparagraph (B) of paragraph (2)
15 shall apply to a payment model under subpara-
16 graph (A) in a similar manner as such subpara-
17 graph (B) applies to the payment model under
18 paragraph (2).

19 “(d) APPLICABLE BENEFICIARIES.—

20 “(1) IN GENERAL.—In this section, the term
21 ‘applicable beneficiary’ means, with respect to a
22 qualifying ACO, an individual who—

23 “(A) is enrolled under part B and entitled
24 to benefits under part A;

1 “(B) is not enrolled in a Medicare Advan-
2 tage plan under part C or a PACE program
3 under section 1894; and

4 “(C) meets such other criteria as the Sec-
5 retary determines appropriate, which may in-
6 clude criteria relating to frequency of contact
7 with physicians in the ACO

8 “(2) FOLLOWING APPLICABLE BENE-
9 FICIARIES.—The Secretary may monitor data on ex-
10 penditures and quality of services under this title
11 after an applicable beneficiary discontinues receiving
12 services under this title through a qualifying ACO.

13 “(e) IMPLEMENTATION.—

14 “(1) STARTING DATE.—The pilot program shall
15 begin no later than January 1, 2012. An agreement
16 with a qualifying ACO under the pilot program may
17 cover a multi-year period of between 3 and 5 years.

18 “(2) WAIVER.—The Secretary may waive such
19 provisions of this title (including section 1877) and
20 title XI in the manner the Secretary determines nec-
21 essary in order implement the pilot program.

22 “(3) PERFORMANCE RESULTS REPORTS.—The
23 Secretary shall report performance results to quali-
24 fying ACOs under the pilot program at least annu-
25 ally.

1 “(4) LIMITATIONS ON REVIEW.—There shall be
2 no administrative or judicial review under section
3 1869, section 1878, or otherwise of—

4 “(A) the elements, parameters, scope, and
5 duration of the pilot program;

6 “(B) the selection of qualifying ACOs for
7 the pilot program;

8 “(C) the establishment of targets, meas-
9 urement of performance, determinations with
10 respect to whether savings have been achieved
11 and the amount of savings;

12 “(D) determinations regarding whether, to
13 whom, and in what amounts incentive payments
14 are paid; and

15 “(E) decisions about the extension of the
16 program under subsection (g), expansion of the
17 program under subsection (h) or extensions
18 under subsection (i).

19 “(5) ADMINISTRATION.—Chapter 35 of title 44,
20 United States Code shall not apply to this section.

21 “(f) EVALUATION; MONITORING.—

22 “(1) IN GENERAL.—The Secretary shall evalu-
23 ate the payment incentive model for each qualifying
24 ACO under the pilot program to assess impacts on
25 beneficiaries, providers of services, suppliers and the

1 program under this title. The Secretary shall make
2 such evaluation publicly available within 60 days of
3 the date of completion of such report.

4 “(2) MONITORING.—The Inspector General of
5 the Department of Health and Human Services shall
6 provide for monitoring of the operation of ACOs
7 under the pilot program with regard to violations of
8 section 1877 (popularly known as the ‘Stark law’).

9 “(g) EXTENSION OF PILOT AGREEMENT WITH SUC-
10 CESSFUL ORGANIZATIONS.—

11 “(1) REPORTS TO CONGRESS.—Not later than
12 2 years after the date the first agreement is entered
13 into under this section, and biennially thereafter for
14 six years, the Secretary shall submit to Congress
15 and make publicly available a report on the use of
16 authorities under the pilot program. Each report
17 shall address the impact of the use of those authori-
18 ties on expenditures, access, and quality under this
19 title.

20 “(2) EXTENSION.—Subject to the report pro-
21 vided under paragraph (1), with respect to a quali-
22 fying ACO, the Secretary may extend the duration
23 of the agreement for such ACO under the pilot pro-
24 gram as the Secretary determines appropriate if—

1 “(A) the ACO receives incentive payments
2 with respect to any of the first 4 years of the
3 pilot agreement and is consistently meeting
4 quality standards or

5 “(B) the ACO is consistently exceeding
6 quality standards and is not increasing spend-
7 ing under the program.

8 “(3) TERMINATION.—The Secretary may termi-
9 nate an agreement with a qualifying ACO under the
10 pilot program if such ACO did not receive incentive
11 payments or consistently failed to meet quality
12 standards in any of the first 3 years under the pro-
13 gram.

14 “(h) EXPANSION TO ADDITIONAL ACOs.—

15 “(1) TESTING AND REFINEMENT OF PAYMENT
16 INCENTIVE MODELS.—Subject to the evaluation de-
17 scribed in subsection (f), the Secretary may enter
18 into agreements under the pilot program with addi-
19 tional qualifying ACOs to further test and refine
20 payment incentive models with respect to qualifying
21 ACOs.

22 “(2) EXPANDING USE OF SUCCESSFUL MODELS
23 TO PROGRAM IMPLEMENTATION.—

24 “(A) IN GENERAL.—Subject to subpara-
25 graph (B), the Secretary may issue regulations

1 to implement, on a permanent basis, 1 or more
2 models if, and to the extent that, such models
3 are beneficial to the program under this title, as
4 determined by the Secretary.

5 “(B) CERTIFICATION.—The Chief Actuary
6 of the Centers for Medicare & Medicaid Serv-
7 ices shall certify that 1 or more of such models
8 described in subparagraph (A) would result in
9 estimated spending that would be less than
10 what spending would otherwise be estimated to
11 be in the absence of such expansion.

12 “(i) TREATMENT OF PHYSICIAN GROUP PRACTICE
13 DEMONSTRATION.—

14 “(1) EXTENSION.—The Secretary may enter in
15 to an agreement with a qualifying ACO under the
16 demonstration under section 1866A, subject to re-
17 basing and other modifications deemed appropriate
18 by the Secretary, until the pilot program under this
19 section is operational.

20 “(2) TRANSITION.—For purposes of extension
21 of an agreement with a qualifying ACO under sub-
22 section (g)(2), the Secretary shall treat receipt of an
23 incentive payment for a year by an organization
24 under the physician group practice demonstration
25 pursuant to section 1866A as a year for which an

1 incentive payment is made under such subsection, as
2 long as such practice group practice organization
3 meets the criteria under subsection (b)(2).

4 “(j) ADDITIONAL PROVISIONS.—

5 “(1) AUTHORITY FOR SEPARATE INCENTIVE
6 ARRANGEMENTS.—The Secretary may create sepa-
7 rate incentive arrangements (including using mul-
8 tiple years of data, varying thresholds, varying
9 shared savings amounts, and varying shared savings
10 limits) for different categories of qualifying ACOs to
11 reflect natural variations in data availability, vari-
12 ation in average annual attributable expenditures,
13 program integrity, and other matters the Secretary
14 deems appropriate.

15 “(2) ENCOURAGEMENT OF PARTICIPATION OF
16 SMALLER ORGANIZATIONS.—In order to encourage
17 the participation of smaller accountable care organi-
18 zations under the pilot program, the Secretary may
19 limit a qualifying ACO’s exposure to high cost pa-
20 tients under the program.

21 “(3) INVOLVEMENT IN PRIVATE PAYER AR-
22 RANGEMENTS.—Nothing in this section shall be con-
23 strued as preventing qualifying ACOs participating
24 in the pilot program from negotiating similar con-
25 tracts with private payers.

1 “(4) ANTIDISCRIMINATION LIMITATION.—The
2 Secretary shall not enter into an agreement with an
3 entity to provide health care items or services under
4 the pilot program, or with an entity to administer
5 the program, unless such entity guarantees that it
6 will not deny, limit, or condition the coverage or pro-
7 vision of benefits under the program, for individuals
8 eligible to be enrolled under such program, based on
9 any health status-related factor described in section
10 2702(a)(1) of the Public Health Service Act.

11 “(5) CONSTRUCTION.—Nothing in this section
12 shall be construed to compel or require an organiza-
13 tion to use an organization-specific target growth
14 rate for an accountable care organization under this
15 section for purposes of section 1848.

16 “(6) FUNDING.—For purposes of administering
17 and carrying out the pilot program, other than for
18 payments for items and services furnished under this
19 title and incentive payments under subsection (c)(1),
20 in addition to funds otherwise appropriated, there
21 are appropriated to the Secretary for the Center for
22 Medicare & Medicaid Services Program Management
23 Account \$25,000,000 for each of fiscal years 2010
24 through 2014 and \$20,000,000 for fiscal year 2015.

1 Amounts appropriated under this paragraph for a
2 fiscal year shall be available until expended.”.

3 **SEC. 1302. MEDICAL HOME PILOT PROGRAM.**

4 (a) IN GENERAL.—Title XVIII of the Social Security
5 Act is amended by inserting after section 1866D, as in-
6 serted by section 1301, the following new section:

7 “MEDICAL HOME PILOT PROGRAM

8 “SEC. 1866E. (a) ESTABLISHMENT AND MEDICAL
9 HOME MODELS.—

10 “(1) ESTABLISHMENT OF PILOT PROGRAM.—

11 The Secretary shall establish a medical home pilot
12 program (in this section referred to as the ‘pilot pro-
13 gram’) for the purpose of evaluating the feasibility
14 and advisability of reimbursing qualified patient-cen-
15 tered medical homes for furnishing medical home
16 services (as defined under subsection (b)(1)) to high
17 need beneficiaries (as defined in subsection
18 (d)(1)(C)) and to targeted high need beneficiaries
19 (as defined in subsection (c)(1)(C)).

20 “(2) SCOPE.—Subject to subsection (g), the
21 Secretary shall set specific goals for the number of
22 practices and communities, and the number of pa-
23 tients served, under the pilot program in the initial
24 tests to ensure that the pilot program is of sufficient
25 size and scope to—

1 “(A) test the approach involved in a vari-
2 ety of settings, including urban, rural, and un-
3 derserved areas; and

4 “(B) subject to subsection (e)(1), dissemi-
5 nate such approach rapidly on a national basis.

6 To the extent that the Secretary finds a medical
7 home model to be successful in improving quality
8 and reducing costs, the Secretary shall implement
9 such mechanisms and reforms on as large a geo-
10 graphic scale as practical and economical.

11 “(3) MODELS OF MEDICAL HOMES IN THE
12 PILOT PROGRAM.—The pilot program shall evaluate
13 each of the following medical home models:

14 “(A) INDEPENDENT PATIENT-CENTERED
15 MEDICAL HOME MODEL.—Independent patient-
16 centered medical home model under subsection
17 (e).

18 “(B) COMMUNITY-BASED MEDICAL HOME
19 MODEL.—Community-based medical home
20 model under subsection (d).

21 “(4) PARTICIPATION OF NURSE PRACTITIONERS
22 AND PHYSICIAN ASSISTANTS.—

23 “(A) Nothing in this section shall be con-
24 strued as preventing a nurse practitioner from

1 leading a patient centered medical home so long
2 as—

3 “(i) all the requirements of this sec-
4 tion are met; and

5 “(ii) the nurse practitioner is acting
6 consistently with State law.

7 “(B) Nothing in this section shall be con-
8 strued as preventing a physician assistant from
9 participating in a patient centered medical
10 home so long as—

11 “(i) all the requirements of this sec-
12 tion are met; and

13 “(ii) the physician assistant is acting
14 consistently with State law.

15 “(b) DEFINITIONS.—For purposes of this section:

16 “(1) PATIENT-CENTERED MEDICAL HOME
17 SERVICES.—The term ‘patient-centered medical
18 home services’ means services that—

19 “(A) provide beneficiaries with direct and
20 ongoing access to a primary care or principal
21 care by a physician or nurse practitioner who
22 accepts responsibility for providing first contact,
23 continuous and comprehensive care to such ben-
24 eficiary;

1 “(B) coordinate the care provided to a ben-
2 eficiary by a team of individuals at the practice
3 level across office, institutional and home set-
4 tings led by a primary care or principal care
5 physician or nurse practitioner, as needed and
6 appropriate;

7 “(C) provide for all the patient’s health
8 care needs or take responsibility for appro-
9 priately arranging care with other qualified pro-
10 viders for all stages of life;

11 “(D) provide continuous access to care and
12 communication with participating beneficiaries;

13 “(E) provide support for patient self-man-
14 agement, proactive and regular patient moni-
15 toring, support for family caregivers, use pa-
16 tient-centered processes, and coordination with
17 community resources;

18 “(F) integrate readily accessible, clinically
19 useful information on participating patients
20 that enables the practice to treat such patients
21 comprehensively and systematically; and

22 “(G) implement evidence-based guidelines
23 and apply such guidelines to the identified
24 needs of beneficiaries over time and with the in-
25 tensity needed by such beneficiaries.

1 “(2) PRIMARY CARE.—The term ‘primary care’
2 means health care that is provided by a physician,
3 nurse practitioner, or physician assistant who prac-
4 tices in the field of family medicine, general internal
5 medicine, geriatric medicine, or pediatric medicine.

6 “(3) PRINCIPAL CARE.—The term ‘principal
7 care’ means integrated, accessible health care that is
8 provided by a physician who is a medical sub-
9 specialist that addresses the majority of the personal
10 health care needs of patients with chronic conditions
11 requiring the subspecialist’s expertise, and for whom
12 the subspecialist assumes care management.

13 “(c) INDEPENDENT PATIENT-CENTERED MEDICAL
14 HOME MODEL.—

15 “(1) IN GENERAL.—

16 “(A) PAYMENT AUTHORITY.—Under the
17 independent patient-centered medical home
18 model under this subsection, the Secretary shall
19 make payments for medical home services fur-
20 nished by an independent patient-centered med-
21 ical home (as defined in subparagraph (B))
22 pursuant to paragraph (3)(B) for a targeted
23 high need beneficiaries (as defined in subpara-
24 graph (C)).

1 “(B) INDEPENDENT PATIENT-CENTERED
2 MEDICAL HOME DEFINED.—In this section, the
3 term ‘independent patient-centered medical
4 home’ means a physician-directed or nurse-
5 practitioner-directed practice that is qualified
6 under paragraph (2) as—

7 “(i) providing beneficiaries with pa-
8 tient-centered medical home services; and

9 “(ii) meets such other requirements as
10 the Secretary may specify.

11 “(C) TARGETED HIGH NEED BENEFICIARY
12 DEFINED.—For purposes of this subsection, the
13 term ‘targeted high need beneficiary’ means a
14 high need beneficiary who, based on a risk score
15 as specified by the Secretary, is generally within
16 the upper 50th percentile of Medicare bene-
17 ficiaries.

18 “(D) BENEFICIARY ELECTION TO PARTICI-
19 PATE.—The Secretary shall determine an ap-
20 propriate method of ensuring that beneficiaries
21 have agreed to participate in the pilot program.

22 “(E) IMPLEMENTATION.—The pilot pro-
23 gram under this subsection shall begin no later
24 than 6 months after the date of the enactment
25 of this section.

1 “(2) STANDARD SETTING AND QUALIFICATION
2 PROCESS FOR PATIENT-CENTERED MEDICAL
3 HOMES.—The Secretary shall review alternative
4 models for standard setting and qualification, and
5 shall establish a process—

6 “(A) to establish standards to enable med-
7 ical practices to qualify as patient-centered
8 medical homes; and

9 “(B) to initially provide for the review and
10 certification of medical practices as meeting
11 such standards.

12 “(3) PAYMENT.—

13 “(A) ESTABLISHMENT OF METHOD-
14 ODOLOGY.—The Secretary shall establish a meth-
15 odology for the payment for medical home serv-
16 ices furnished by independent patient-centered
17 medical homes. Under such methodology, the
18 Secretary shall adjust payments to medical
19 homes based on beneficiary risk scores to en-
20 sure that higher payments are made for higher
21 risk beneficiaries.

22 “(B) PER BENEFICIARY PER MONTH PAY-
23 MENTS.—Under such payment methodology, the
24 Secretary shall pay independent patient-cen-
25 tered medical homes a monthly fee for each tar-

1 geted high need beneficiary who consents to re-
2 ceive medical home services through such med-
3 ical home.

4 “(C) PROSPECTIVE PAYMENT.—The fee
5 under subparagraph (B) shall be paid on a pro-
6 spective basis.

7 “(D) AMOUNT OF PAYMENT.—In deter-
8 mining the amount of such fee, the Secretary
9 shall consider the following:

10 “(i) The clinical work and practice ex-
11 penses involved in providing the medical
12 home services provided by the independent
13 patient-centered medical home (such as
14 providing increased access, care coordina-
15 tion, population disease management, and
16 teaching self-care skills for managing
17 chronic illnesses) for which payment is not
18 made under this title as of the date of the
19 enactment of this section.

20 “(ii) Allow for differential payments
21 based on capabilities of the independent
22 patient-centered medical home.

23 “(iii) Use appropriate risk-adjustment
24 in determining the amount of the per bene-
25 ficiary per month payment under this

1 paragraph in a manner that ensures that
2 higher payments are made for higher risk
3 beneficiaries.

4 “(4) ENCOURAGING PARTICIPATION OF VARI-
5 ETY OF PRACTICES.—The pilot program under this
6 subsection shall be designed to include the participa-
7 tion of physicians in practices with fewer than 10
8 full-time equivalent physicians, as well as physicians
9 in larger practices, particularly in underserved and
10 rural areas, as well as federally qualified community
11 health centers, and rural health centers.

12 “(5) NO DUPLICATION IN PILOT PARTICIPA-
13 TION.—A physician in a group practice that partici-
14 pates in the accountable care organization pilot pro-
15 gram under section 1866D shall not be eligible to
16 participate in the pilot program under this sub-
17 section, unless the pilot program under this section
18 has been implemented on a permanent basis under
19 subsection (e)(3).

20 “(d) COMMUNITY-BASED MEDICAL HOME MODEL.—

21 “(1) IN GENERAL.—

22 “(A) AUTHORITY FOR PAYMENTS.—Under
23 the community-based medical home model
24 under this subsection (in this section referred to
25 as the ‘CBMH model’), the Secretary shall

1 make payments for the furnishing of medical
2 home services by a community-based medical
3 home (as defined in subparagraph (B)) pursu-
4 ant to paragraph (5)(B) for high need bene-
5 ficiaries.

6 “(B) COMMUNITY-BASED MEDICAL HOME
7 DEFINED.—In this section, the term ‘commu-
8 nity-based medical home’ means a nonprofit
9 community-based or State-based organization
10 that is certified under paragraph (2) as meeting
11 the following requirements:

12 “(i) The organization provides bene-
13 ficiaries with medical home services.

14 “(ii) The organization provides med-
15 ical home services under the supervision of
16 and in close collaboration with the primary
17 care or principal care physician, nurse
18 practitioner, or physician assistant des-
19 ignated by the beneficiary as his or her
20 community-based medical home provider.

21 “(iii) The organization employs com-
22 munity health workers, including nurses or
23 other non-physician practitioners, lay
24 health workers, or other persons as deter-
25 mined appropriate by the Secretary, that

1 assist the primary or principal care physi-
2 cian, nurse practitioner, or physician as-
3 sistant in chronic care management activi-
4 ties such as teaching self-care skills for
5 managing chronic illnesses, transitional
6 care services, care plan setting, medication
7 therapy management services for patients
8 with multiple chronic diseases, or help
9 beneficiaries access the health care and
10 community-based resources in their local
11 geographic area.

12 “(iv) The organization meets such
13 other requirements as the Secretary may
14 specify.

15 “(C) HIGH NEED BENEFICIARY.—In this
16 section, the term ‘high need beneficiary’ means
17 an individual who requires regular medical
18 monitoring, advising, or treatment.

19 “(2) QUALIFICATION PROCESS FOR COMMU-
20 NITY-BASED MEDICAL HOMES.—The Secretary shall
21 establish a process—

22 “(A) for the initial qualification of commu-
23 nity-based or State-based organizations as com-
24 munity-based medical homes; and

1 “(B) to provide for the review and quali-
2 fication of such community-based and State-
3 based organizations pursuant to criteria estab-
4 lished by the Secretary.

5 “(3) DURATION.—The pilot program for com-
6 munity-based medical homes under this subsection
7 shall start no later than 2 years after the date of the
8 enactment of this section. Each demonstration site
9 under the pilot program shall operate for a period
10 of up to 5 years after the initial implementation
11 phase, without regard to the receipt of a initial im-
12 plementation funding under subsection (i).

13 “(4) PREFERENCE.—In selecting sites for the
14 CBMH model, the Secretary may give preference
15 to—

16 “(A) applications from geographic areas
17 that propose to coordinate health care services
18 for chronically ill beneficiaries across a variety
19 of health care settings, such as primary care
20 physician practices with fewer than 10 physi-
21 cians, specialty physicians, nurse practitioner
22 practices, Federally qualified health centers,
23 rural health clinics, and other settings;

1 “(B) applications that include other payors
2 that furnish medical home services for chron-
3 ically ill patients covered by such payors; and

4 “(C) applications from States that propose
5 to use the medical home model to coordinate
6 health care services for individuals enrolled
7 under this title, individuals enrolled under title
8 XIX, and full-benefit dual eligible individuals
9 (as defined in section 1935(c)(6)) with chronic
10 diseases across a variety of health care settings.

11 “(5) PAYMENTS.—

12 “(A) ESTABLISHMENT OF METHOD-
13 ODOLOGY.—The Secretary shall establish a meth-
14 odology for the payment for medical home serv-
15 ices furnished under the CBMH model.

16 “(B) PER BENEFICIARY PER MONTH PAY-
17 MENTS.—Under such payment methodology, the
18 Secretary shall make two separate monthly pay-
19 ments for each high need beneficiary who con-
20 sents to receive medical home services through
21 such medical home, as follows:

22 “(i) PAYMENT TO COMMUNITY-BASED
23 ORGANIZATION.—One monthly payment to
24 a community-based or State-based organi-
25 zation.

1 “(ii) PAYMENT TO PRIMARY OR PRIN-
2 CIPAL CARE PRACTICE.—One monthly pay-
3 ment to the primary or principal care prac-
4 tice for such beneficiary.

5 “(C) PROSPECTIVE PAYMENT.—The pay-
6 ments under subparagraph (B) shall be paid on
7 a prospective basis.

8 “(D) AMOUNT OF PAYMENT.—In deter-
9 mining the amount of such payment, the Sec-
10 retary shall consider the following:

11 “(i) The clinical work and practice ex-
12 penses involved in providing the medical
13 home services provided by the community-
14 based medical home (such as providing in-
15 creased access, care coordination, care plan
16 setting, population disease management,
17 and teaching self-care skills for managing
18 chronic illnesses) for which payment is not
19 made under this title as of the date of the
20 enactment of this section.

21 “(ii) Use appropriate risk-adjustment
22 in determining the amount of the per bene-
23 ficiary per month payment under this
24 paragraph.

1 “(6) INITIAL IMPLEMENTATION FUNDING.—

2 The Secretary may make available initial implemen-
3 tation funding to a community based or State-based
4 organization or a State that is participating in the
5 pilot program under this subsection. Such organiza-
6 tion shall provide the Secretary with a detailed im-
7 plementation plan that includes how such funds will
8 be used.

9 “(e) EXPANSION OF PROGRAM.—

10 “(1) EVALUATION OF COST AND QUALITY.—

11 The Secretary shall evaluate the pilot program to
12 determine—

13 “(A) the extent to which medical homes re-
14 sult in—

15 “(i) improvement in the quality and
16 coordination of health care services, par-
17 ticularly with regard to the care of complex
18 patients;

19 “(ii) improvement in reducing health
20 disparities;

21 “(iii) reductions in preventable hos-
22 pitalizations;

23 “(iv) prevention of readmissions;

24 “(v) reductions in emergency room
25 visits;

1 “(vi) improvement in health outcomes,
2 including patient functional status where
3 applicable;

4 “(vii) improvement in patient satisfac-
5 tion;

6 “(viii) improved efficiency of care such
7 as reducing duplicative diagnostic tests and
8 laboratory tests; and

9 “(ix) reductions in health care ex-
10 penditures; and

11 “(B) the feasibility and advisability of re-
12 imbursing medical homes for medical home
13 services under this title on a permanent basis.

14 “(2) REPORT.—Not later than 60 days after
15 the date of completion of the evaluation under para-
16 graph (1), the Secretary shall submit to Congress
17 and make available to the public a report on the
18 findings of the evaluation under paragraph (1).

19 “(3) EXPANSION OF PROGRAM.—

20 “(A) IN GENERAL.—Subject to the results
21 of the evaluation under paragraph (1) and sub-
22 paragraph (B), the Secretary may issue regula-
23 tions to implement, on a permanent basis, one
24 or more models, if, and to the extent that such
25 model or models, are beneficial to the program

1 under this title, including that such implemen-
2 tation will improve quality of care, as deter-
3 mined by the Secretary.

4 “(B) CERTIFICATION REQUIREMENT.—The
5 Secretary may not issue such regulations unless
6 the Chief Actuary of the Centers for Medicare
7 & Medicaid Services certifies that the expansion
8 of the components of the pilot program de-
9 scribed in subparagraph (A) would result in es-
10 timated spending under this title that would be
11 no more than the level of spending that the
12 Secretary estimates would otherwise be spent
13 under this title in the absence of such expan-
14 sion.

15 “(f) ADMINISTRATIVE PROVISIONS.—

16 “(1) NO DUPLICATION IN PAYMENTS.—During
17 any month, the Secretary may not make payments
18 under this section under more than one model or
19 through more than one medical home under any
20 model for the furnishing of medical home services to
21 an individual.

22 “(2) NO EFFECT ON PAYMENT FOR EVALUA-
23 TION AND MANAGEMENT SERVICES.—Payments
24 made under this section are in addition to, and have

1 no effect on the amount of, payment for evaluation
2 and management services made under this title

3 “(3) ADMINISTRATION.—Chapter 35 of title 44,
4 United States Code shall not apply to this section.

5 “(g) FUNDING.—

6 “(1) OPERATIONAL COSTS.—For purposes of
7 administering and carrying out the pilot program
8 (including the design, implementation, technical as-
9 sistance for and evaluation of such program), in ad-
10 dition to funds otherwise available, there shall be
11 transferred from the Federal Supplementary Medical
12 Insurance Trust Fund under section 1841 to the
13 Secretary for the Centers for Medicare & Medicaid
14 Services Program Management Account \$6,000,000
15 for each of fiscal years 2010 through 2014.
16 Amounts appropriated under this paragraph for a
17 fiscal year shall be available until expended.

18 “(2) PATIENT-CENTERED MEDICAL HOME
19 SERVICES.—In addition to funds otherwise available,
20 there shall be available to the Secretary for the Cen-
21 ters for Medicare & Medicaid Services, from the
22 Federal Supplementary Medical Insurance Trust
23 Fund under section 1841—

1 “(A) \$200,000,000 for each of fiscal years
2 2010 through 2014 for payments for medical
3 home services under subsection (c)(3); and

4 “(B) \$125,000,000 for each of fiscal years
5 2012 through 2016, for payments under sub-
6 section (d)(5).

7 Amounts available under this paragraph for a fiscal
8 year shall be available until expended.

9 “(3) INITIAL IMPLEMENTATION.—In addition
10 to funds otherwise available, there shall be available
11 to the Secretary for the Centers for Medicare &
12 Medicaid Services, from the Federal Supplementary
13 Medical Insurance Trust Fund under section 1841,
14 \$2,500,000 for each of fiscal years 2010 through
15 2012, under subsection (d)(6). Amounts available
16 under this paragraph for a fiscal year shall be avail-
17 able until expended.

18 “(h) TREATMENT OF TRHCA MEDICARE MEDICAL
19 HOME DEMONSTRATION FUNDING.—

20 “(1) In addition to funds otherwise available for
21 payment of medical home services under subsection
22 (c)(3), there shall also be available the amount pro-
23 vided in subsection (g) of section 204 of division B
24 of the Tax Relief and Health Care Act of 2006 (42
25 U.S.C. 1395b–1 note).

1 “(1) IN GENERAL.—In the case of primary care
2 services (as defined in paragraph (2)) furnished on
3 or after January 1, 2011, by a primary care practi-
4 tioner (as defined in paragraph (3)) for which
5 amounts are payable under section 1848, in addition
6 to the amount otherwise paid under this part there
7 shall also be paid to the practitioner (or to an em-
8 ployer or facility in the cases described in clause (A)
9 of section 1842(b)(6)) (on a monthly or quarterly
10 basis) from the Federal Supplementary Medical In-
11 surance Trust Fund an amount equal 5 percent (or
12 10 percent if the practitioner predominately fur-
13 nishes such services in an area that is designated
14 (under section 332(a)(1)(A) of the Public Health
15 Service Act) as a primary care health professional
16 shortage area.

17 “(2) PRIMARY CARE SERVICES DEFINED.—In
18 this subsection, the term ‘primary care services’—

19 “(A) means services which are evaluation
20 and management services as defined in section
21 1848(j)(5)(A); and

22 “(B) includes services furnished by another
23 health care professional that would be described
24 in subparagraph (A) if furnished by a physi-
25 cian.

1 “(3) PRIMARY CARE PRACTITIONER DE-
2 FINED.—In this subsection, the term ‘primary care
3 practitioner’—

4 “(A) means a physician or other health
5 care practitioner (including a nurse practi-
6 tioner) who—

7 “(i) specializes in family medicine,
8 general internal medicine, general pedi-
9 atries, geriatrics, or obstetrics and gynecology;
10 and

11 “(ii) has allowed charges for primary
12 care services that account for at least 50
13 percent of the physician’s or practitioner’s
14 total allowed charges under section 1848,
15 as determined by the Secretary for the
16 most recent period for which data are
17 available; and

18 “(B) includes a physician assistant who is
19 under the supervision of a physician described
20 in subparagraph (A).

21 “(4) LIMITATION ON REVIEW.—There shall be
22 no administrative or judicial review under section
23 1869, section 1878, or otherwise, respecting—

24 “(A) any determination or designation
25 under this subsection;

1 “(B) the identification of services as pri-
2 mary care services under this subsection; and

3 “(C) the identification of a practitioner as
4 a primary care practitioner under this sub-
5 section.

6 “(5) COORDINATION WITH OTHER PAY-
7 MENTS.—

8 “(A) WITH OTHER PRIMARY CARE INCEN-
9 TIVES.—The provisions of this subsection shall
10 not be taken into account in applying sub-
11 sections (m) and (u) and any payment under
12 such subsections shall not be taken into account
13 in computing payments under this subsection.

14 “(B) WITH QUALITY INCENTIVES.—Pay-
15 ments under this subsection shall not be taken
16 into account in determining the amounts that
17 would otherwise be paid under this part for
18 purposes of section 1834(g)(2)(B).”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 1833 of such Act (42 U.S.C.
21 1395l(m)) is amended by redesignating paragraph
22 (4) as paragraph (5) and by inserting after para-
23 graph (3) the following new paragraph:

24 “(4) The provisions of this subsection shall not be
25 taken into account in applying subsections (m) or (u) and

1 any payment under such subsections shall not be taken
2 into account in computing payments under this sub-
3 section.”.

4 (2) Section 1848(m)(5)(B) of such Act (42
5 U.S.C. 1395w-4(m)(5)(B)) is amended by inserting
6 “, (p),” after “(m)”.

7 (3) Section 1848(o)(1)(B)(iv) of such Act (42
8 U.S.C. 1395w-4(o)(1)(B)(iv)) is amended by insert-
9 ing “primary care” before “health professional
10 shortage area”.

11 **SEC. 1304. INCREASED REIMBURSEMENT RATE FOR CER-**
12 **TIFIED NURSE-MIDWIVES.**

13 (a) IN GENERAL.—Section 1833(a)(1)(K) of the So-
14 cial Security Act (42 U.S.C.1395l(a)(1)(K)) is amended
15 by striking “(but in no event” and all that follows through
16 “performed by a physician)”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall apply to services furnished on or after
19 January 1, 2011.

20 **SEC. 1305. COVERAGE AND WAIVER OF COST-SHARING FOR**
21 **PREVENTIVE SERVICES.**

22 (a) MEDICARE COVERED PREVENTIVE SERVICES DE-
23 FINED.—Section 1861 of the Social Security Act (42
24 U.S.C. 1395x), as amended by section 1235(a)(2), is

1 amended by adding at the end the following new sub-
2 section:

3 “Medicare Covered Preventive Services

4 “(iii)(1) Subject to the succeeding provisions of this
5 subsection, the term ‘Medicare covered preventive services’
6 means the following:

7 “(A) Prostate cancer screening tests (as defined
8 in subsection (oo)).

9 “(B) Colorectal cancer screening tests (as de-
10 fined in subsection (pp) and when applicable as de-
11 scribed in section 1305).

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

14 “(D) Screening for glaucoma for certain indi-
15 viduals (as described in subsection (s)(2)(U)).

16 “(E) Medical nutrition therapy services for cer-
17 tain individuals (as described in subsection
18 (s)(2)(V)).

19 “(F) An initial preventive physical examination
20 (as defined in subsection (ww)).

21 “(G) Cardiovascular screening blood tests (as
22 defined in subsection (xx)(1)).

23 “(H) Diabetes screening tests (as defined in
24 subsection (yy)).

1 “(I) Ultrasound screening for abdominal aortic
2 aneurysm for certain individuals (as described in de-
3 scribed in subsection (s)(2)(AA)).

4 “(J) Pneumococcal and influenza vaccines and
5 their administration (as described in subsection
6 (s)(10)(A)) and hepatitis B vaccine and its adminis-
7 tration for certain individuals (as described in sub-
8 section (s)(10)(B)).

9 “(K) Screening mammography (as defined in
10 subsection (jj)).

11 “(L) Screening pap smear and screening pelvic
12 exam (as defined in subsection (nn)).

13 “(M) Bone mass measurement (as defined in
14 subsection (rr)).

15 “(N) Kidney disease education services (as de-
16 fined in subsection (ggg)).

17 “(O) Additional preventive services (as defined
18 in subsection (ddd)).

19 “(2) With respect to specific Medicare covered pre-
20 ventive services, the limitations and conditions described
21 in the provisions referenced in paragraph (1) with respect
22 to such services shall apply.”.

23 (b) PAYMENT AND ELIMINATION OF COST-SHAR-
24 ING.—

25 (1) IN GENERAL.—

1 (A) IN GENERAL.—Section 1833(a) of the
2 Social Security Act (42 U.S.C. 1395l(a)) is
3 amended by adding after and below paragraph
4 (9) the following:

5 “With respect to Medicare covered preventive services, in
6 any case in which the payment rate otherwise provided
7 under this part is computed as a percent of less than 100
8 percent of an actual charge, fee schedule rate, or other
9 rate, such percentage shall be increased to 100 percent.”.

10 (B) APPLICATION TO SIGMOIDOSCOPIES
11 AND COLONOSCOPIES.—Section 1834(d) of such
12 Act (42 U.S.C. 1395m(d)) is amended—

13 (i) in paragraph (2)(C), by amending
14 clause (ii) to read as follows:

15 “(ii) NO COINSURANCE.—In the case
16 of a beneficiary who receives services de-
17 scribed in clause (i), there shall be no coin-
18 surance applied.”; and

19 (ii) in paragraph (3)(C), by amending
20 clause (ii) to read as follows:

21 “(ii) NO COINSURANCE.—In the case
22 of a beneficiary who receives services de-
23 scribed in clause (i), there shall be no coin-
24 surance applied.”.

1 (2) ELIMINATION OF COINSURANCE IN OUT-
2 PATIENT HOSPITAL SETTINGS.—

3 (A) EXCLUSION FROM OPD FEE SCHED-
4 ULE.—Section 1833(t)(1)(B)(iv) of the Social
5 Security Act (42 U.S.C. 1395l(t)(1)(B)(iv)) is
6 amended by striking “screening mammography
7 (as defined in section 1861(jj)) and diagnostic
8 mammography” and inserting “diagnostic
9 mammograms and Medicare covered preventive
10 services (as defined in section 1861(iii)(1))”.

11 (B) CONFORMING AMENDMENTS.—Section
12 1833(a)(2) of the Social Security Act (42
13 U.S.C. 1395l(a)(2)) is amended—

14 (i) in subparagraph (F), by striking
15 “and” after the semicolon at the end;

16 (ii) in subparagraph (G)(ii), by adding
17 “and” at the end; and

18 (iii) by adding at the end the fol-
19 lowing new subparagraph:

20 “(H) with respect to additional preventive
21 services (as defined in section 1861(ddd)) fur-
22 nished by an outpatient department of a hos-
23 pital, the amount determined under paragraph
24 (1)(W);”.

1 (3) WAIVER OF APPLICATION OF DEDUCTIBLE
2 FOR ALL PREVENTIVE SERVICES.—The first sen-
3 tence of section 1833(b) of the Social Security Act
4 (42 U.S.C. 1395l(b)) is amended—

5 (A) in clause (1), by striking “items and
6 services described in section 1861(s)(10)(A)”
7 and inserting “Medicare covered preventive
8 services (as defined in section 1861(iii))”;

9 (B) by inserting “and” before “(4)”; and

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

11 (4) APPLICATION TO PROVIDERS OF SERV-
12 ICES.—Section 1866(a)(2)(A)(ii) of such Act (42
13 U.S.C. 1395cc(a)(2)(A)(ii)) is amended by inserting
14 “other than for Medicare covered preventive services
15 and” after “for such items and services (”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to services furnished on or after
18 January 1, 2011.

19 **SEC. 1306. WAIVER OF DEDUCTIBLE FOR COLORECTAL**
20 **CANCER SCREENING TESTS REGARDLESS OF**
21 **CODING, SUBSEQUENT DIAGNOSIS, OR ANCIL-**
22 **LARY TISSUE REMOVAL.**

23 (a) IN GENERAL.—Section 1833(b) of the Social Se-
24 curity Act (42 U.S.C. 1395l(b)), as amended by section
25 1305(b)(3), is amended by adding at the end the following

1 new sentence: “Clause (1) of the first sentence of this sub-
2 section shall apply with respect to a colorectal cancer
3 screening test regardless of the code that is billed for the
4 establishment of a diagnosis as a result of the test, or for
5 the removal of tissue or other matter or other procedure
6 that is furnished in connection with, as a result of, and
7 in the same clinical encounter as, the screening test.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall apply to items and services furnished
10 on or after January 1, 2011.

11 **SEC. 1307. EXCLUDING CLINICAL SOCIAL WORKER SERV-**
12 **ICES FROM COVERAGE UNDER THE MEDI-**
13 **CARE SKILLED NURSING FACILITY PROSPEC-**
14 **TIVE PAYMENT SYSTEM AND CONSOLIDATED**
15 **PAYMENT.**

16 (a) IN GENERAL.—Section 1888(e)(2)(A)(ii) of the
17 Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(ii)) is
18 amended by inserting “clinical social worker services,”
19 after “qualified psychologist services,”.

20 (b) CONFORMING AMENDMENT.—Section
21 1861(hh)(2) of the Social Security Act (42 U.S.C.
22 1395x(hh)(2)) is amended by striking “and other than
23 services furnished to an inpatient of a skilled nursing facil-
24 ity which the facility is required to provide as a require-
25 ment for participation”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to items and services furnished on
3 or after July 1, 2010.

4 **SEC. 1308. COVERAGE OF MARRIAGE AND FAMILY THERA-**
5 **PIST SERVICES AND MENTAL HEALTH COUN-**
6 **SELOR SERVICES.**

7 (a) COVERAGE OF MARRIAGE AND FAMILY THERA-
8 PIST SERVICES.—

9 (1) COVERAGE OF SERVICES.—Section
10 1861(s)(2) of the Social Security Act (42 U.S.C.
11 1395x(s)(2)), as amended by section 1235, is
12 amended—

13 (A) in subparagraph (EE), by striking
14 “and” at the end;

15 (B) in subparagraph (FF), by adding
16 “and” at the end; and

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

19 “(GG) marriage and family therapist serv-
20 ices (as defined in subsection (jjj));”.

21 (2) DEFINITION.—Section 1861 of the Social
22 Security Act (42 U.S.C. 1395x), as amended by sec-
23 tions 1235 and 1305, is amended by adding at the
24 end the following new subsection:

1 “Marriage and Family Therapist Services

2 “(jjj)(1) The term ‘marriage and family therapist
3 services’ means services performed by a marriage and
4 family therapist (as defined in paragraph (2)) for the diag-
5 nosis and treatment of mental illnesses, which the mar-
6 riage and family therapist is legally authorized to perform
7 under State law (or the State regulatory mechanism pro-
8 vided by State law) of the State in which such services
9 are performed, as would otherwise be covered if furnished
10 by a physician or as incident to a physician’s professional
11 service, but only if no facility or other provider charges
12 or is paid any amounts with respect to the furnishing of
13 such services.

14 “(2) The term ‘marriage and family therapist’ means
15 an individual who—

16 “(A) possesses a master’s or doctoral degree
17 which qualifies for licensure or certification as a
18 marriage and family therapist pursuant to State
19 law;

20 “(B) after obtaining such degree has performed
21 at least 2 years of clinical supervised experience in
22 marriage and family therapy; and

23 “(C) is licensed or certified as a marriage and
24 family therapist in the State in which marriage and
25 family therapist services are performed.”.

1 (3) PROVISION FOR PAYMENT UNDER PART
2 B.—Section 1832(a)(2)(B) of the Social Security
3 Act (42 U.S.C. 1395k(a)(2)(B)) is amended by add-
4 ing at the end the following new clause:

5 “(v) marriage and family therapist
6 services;”.

7 (4) AMOUNT OF PAYMENT.—

8 (A) IN GENERAL.—Section 1833(a)(1) of
9 the Social Security Act (42 U.S.C. 1395l(a)(1))
10 is amended—

11 (i) by striking “and” before “(W)”;

12 and

13 (ii) by inserting before the semicolon
14 at the end the following: “, and (X) with
15 respect to marriage and family therapist
16 services under section 1861(s)(2)(GG), the
17 amounts paid shall be 80 percent of the
18 lesser of the actual charge for the services
19 or 75 percent of the amount determined
20 for payment of a psychologist under clause
21 (L)”.

22 (B) DEVELOPMENT OF CRITERIA WITH RE-
23 SPECT TO CONSULTATION WITH A HEALTH
24 CARE PROFESSIONAL.—The Secretary of Health
25 and Human Services shall, taking into consider-

1 ation concerns for patient confidentiality, de-
2 velop criteria with respect to payment for mar-
3 riage and family therapist services for which
4 payment may be made directly to the marriage
5 and family therapist under part B of title
6 XVIII of the Social Security Act (42 U.S.C.
7 1395j et seq.) under which such a therapist
8 must agree to consult with a patient’s attending
9 or primary care physician or nurse practitioner
10 in accordance with such criteria.

11 (5) EXCLUSION OF MARRIAGE AND FAMILY
12 THERAPIST SERVICES FROM SKILLED NURSING FA-
13 CILITY PROSPECTIVE PAYMENT SYSTEM.—Section
14 1888(e)(2)(A)(ii) of the Social Security Act (42
15 U.S.C. 1395yy(e)(2)(A)(ii)), as amended by section
16 1307(a), is amended by inserting “marriage and
17 family therapist services (as defined in subsection
18 (jjj)(1)),” after “clinical social worker services,”.

19 (6) COVERAGE OF MARRIAGE AND FAMILY
20 THERAPIST 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)) is amended by
24 striking “or by a clinical social worker (as defined
25 in subsection (hh)(1)),” and inserting “, by a clinical

1 social worker (as defined in subsection (hh)(1)), or
2 by a marriage and family therapist (as defined in
3 subsection (jjj)(2)),”.

4 (7) INCLUSION OF MARRIAGE AND FAMILY
5 THERAPISTS AS PRACTITIONERS FOR ASSIGNMENT
6 OF CLAIMS.—Section 1842(b)(18)(C) of the Social
7 Security Act (42 U.S.C. 1395u(b)(18)(C)) is amend-
8 ed by adding at the end the following new clause:

9 “(vii) A marriage and family therapist (as de-
10 fined in section 1861(jjj)(2)).”.

11 (b) COVERAGE OF MENTAL HEALTH COUNSELOR
12 SERVICES.—

13 (1) COVERAGE OF SERVICES.—Section
14 1861(s)(2) of the Social Security Act (42 U.S.C.
15 1395x(s)(2)), as previously amended, is further
16 amended—

17 (A) in subparagraph (FF), by striking
18 “and” at the end;

19 (B) in subparagraph (GG), by inserting
20 “and” at the end; and

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

23 “(HH) mental health counselor services (as de-
24 fined in subsection (kkk)(1));”.

1 (2) DEFINITION.—Section 1861 of the Social
2 Security Act (42 U.S.C. 1395x), as previously
3 amended, is amended by adding at the end the fol-
4 lowing new subsection:

5 “Mental Health Counselor Services

6 “(kkk)(1) The term ‘mental health counselor services’
7 means services performed by a mental health counselor (as
8 defined in paragraph (2)) for the diagnosis and treatment
9 of mental illnesses which the mental health counselor is
10 legally authorized to perform under State law (or the
11 State regulatory mechanism provided by the State law) of
12 the State in which such services are performed, as would
13 otherwise be covered if furnished by a physician or as inci-
14 dent to a physician’s professional service, but only if no
15 facility or other provider charges or is paid any amounts
16 with respect to the furnishing of such services.

17 “(2) The term ‘mental health counselor’ means an
18 individual who—

19 “(A) possesses a master’s or doctor’s degree
20 which qualifies the individual for licensure or certifi-
21 cation for the practice of mental health counseling in
22 the State in which the services are performed;

23 “(B) after obtaining such a degree has per-
24 formed at least 2 years of supervised mental health
25 counselor practice; and

1 “(C) is licensed or certified as a mental health
2 counselor or professional counselor by the State in
3 which the services are performed.”.

4 (3) PROVISION FOR PAYMENT UNDER PART
5 B.—Section 1832(a)(2)(B) of the Social Security
6 Act (42 U.S.C. 1395k(a)(2)(B)), as amended by
7 subsection (a)(3), is further amended—

8 (A) by striking “and” at the end of clause
9 (iv);

10 (B) by adding “and” at the end of clause
11 (v); and

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

14 “(vi) mental health counselor serv-
15 ices;”.

16 (4) AMOUNT OF PAYMENT.—

17 (A) IN GENERAL.—Section 1833(a)(1) of
18 the Social Security Act (42 U.S.C.
19 1395l(a)(1)), as amended by subsection (a), is
20 further amended—

21 (i) by striking “and” before “(X)”;
22 and

23 (ii) by inserting before the semicolon
24 at the end the following: “, and (Y), with
25 respect to mental health counselor services

1 under section 1861(s)(2)(HH), the
2 amounts paid shall be 80 percent of the
3 lesser of the actual charge for the services
4 or 75 percent of the amount determined
5 for payment of a psychologist under clause
6 (L)”.

7 (B) DEVELOPMENT OF CRITERIA WITH RE-
8 SPECT TO CONSULTATION WITH A PHYSICIAN.—
9 The Secretary of Health and Human Services
10 shall, taking into consideration concerns for pa-
11 tient confidentiality, develop criteria with re-
12 spect to payment for mental health counselor
13 services for which payment may be made di-
14 rectly to the mental health counselor under part
15 B of title XVIII of the Social Security Act (42
16 U.S.C. 1395j et seq.) under which such a coun-
17 selor must agree to consult with a patient’s at-
18 tending or primary care physician in accordance
19 with such criteria.

20 (5) EXCLUSION OF MENTAL HEALTH COUN-
21 SELOR SERVICES FROM SKILLED NURSING FACILITY
22 PROSPECTIVE PAYMENT SYSTEM.—Section
23 1888(e)(2)(A)(ii) of the Social Security Act (42
24 U.S.C. 1395yy(e)(2)(A)(ii)), as amended by section
25 1307(a) and subsection (a), is amended by inserting

1 “mental health counselor services (as defined in sec-
2 tion 1861(kkk)(1)),” after “marriage and family
3 therapist services (as defined in subsection
4 (jjj)(1)),”.

5 (6) COVERAGE OF MENTAL HEALTH COUN-
6 SELOR SERVICES PROVIDED IN RURAL HEALTH
7 CLINICS AND FEDERALLY QUALIFIED HEALTH CEN-
8 TERS.—Section 1861(aa)(1)(B) of the Social Secu-
9 rity Act (42 U.S.C. 1395x(aa)(1)(B)), as amended
10 by subsection (a), is amended by striking “or by a
11 marriage and family therapist (as defined in sub-
12 section (jjj)(2)),” and inserting “by a marriage and
13 family therapist (as defined in subsection (jjj)(2)),
14 or a mental health counselor (as defined in sub-
15 section (kkk)(2)),”.

16 (7) INCLUSION OF MENTAL HEALTH COUN-
17 SELORS AS PRACTITIONERS FOR ASSIGNMENT OF
18 CLAIMS.—Section 1842(b)(18)(C) of the Social Se-
19 curity Act (42 U.S.C. 1395u(b)(18)(C)), as amended
20 by subsection (a)(7), is amended by adding at the
21 end the following new clause:

22 “(viii) A mental health counselor (as defined in
23 section 1861(kkk)(2)).”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to items and services furnished on
3 or after January 1, 2011.

4 **SEC. 1309. EXTENSION OF PHYSICIAN FEE SCHEDULE MEN-**
5 **TAL HEALTH ADD-ON.**

6 Section 138(a)(1) of the Medicare Improvements for
7 Patients and Providers Act of 2008 (Public Law 110–275)
8 is amended by striking “December 31, 2009” and insert-
9 ing “December 31, 2011”.

10 **SEC. 1310. EXPANDING ACCESS TO VACCINES.**

11 (a) IN GENERAL.—Paragraph (10) of section
12 1861(s) of the Social Security Act (42 U.S.C. 1395w(s))
13 is amended to read as follows:

14 “(10) federally recommended vaccines (as de-
15 fined in subsection (lll)) and their respective admin-
16 istration;”.

17 (b) FEDERALLY RECOMMENDED VACCINES DE-
18 FINED.—Section 1861 of such Act is further amended by
19 adding at the end the following new subsection:

20 “Federally Recommended Vaccines

21 “(lll) The term ‘federally recommended vaccine’
22 means an approved vaccine recommended by the Advisory
23 Committee on Immunization Practices (an advisory com-
24 mittee established by the Secretary, acting through the Di-

1 rector of the Centers for Disease Control and Preven-
2 tion).”.

3 (c) CONFORMING AMENDMENTS.—

4 (1) Section 1833 of such Act (42 U.S.C. 1395l)
5 is amended, in each of subsections (a)(1)(B),
6 (a)(2)(G), (a)(3)(A), and (b)(1) (as amended by sec-
7 tion 1305(b)), by striking “1861(s)(10)(A)” or
8 “1861(s)(10)(B)” and inserting “1861(s)(10)” each
9 place it appears.

10 (2) Section 1842(o)(1)(A)(iv) of such Act (42
11 U.S.C. 1395u(o)(1)(A)(iv)) is amended—

12 (A) by striking “subparagraph (A) or (B)
13 of”; and

14 (B) by inserting before the period the fol-
15 lowing: “and before January 1, 2011, and influ-
16 enza vaccines furnished on or after January 1,
17 2011”.

18 (3) Section 1847A(c)(6) of such Act (42 U.S.C.
19 1395w-3a(c)(6)) is amended by striking subpara-
20 graph (G) and inserting the following:

21 “(G) IMPLEMENTATION.—Chapter 35 of
22 title 44, United States Code shall not apply to
23 manufacturer provision of information pursuant
24 to section 1927(b)(3)(A)(iii) for purposes of im-
25 plementation of this section.”.

1 (4) Section 1860D–2(e)(1)(B) of such Act (42
2 U.S.C. 1395w–102(e)(1)(B)) is amended by striking
3 “such term includes a vaccine” and all that follows
4 through “its administration) and”.

5 (5) Section 1861(ww)(2)(A) of such Act (42
6 U.S.C. 1395x(ww)(2)(A)) is amended by striking
7 “Pneumococcal, influenza, and hepatitis B and ad-
8 ministration” and inserting “Federally recommended
9 vaccines (as defined in subsection (lll)) and their re-
10 spective administration”.

11 (6) Section 1861(iii)(1) of such Act, as added
12 by section 1305(a), is amended by amending sub-
13 paragraph (J) to read as follows:

14 “(J) Federally recommended vaccines (as de-
15 fined in subsection (lll)) and their respective admin-
16 istration.”.

17 (7) Section 1927(b)(3)(A)(iii) of such Act (42
18 U.S.C. 1396r–8(b)(3)(A)(iii)) is amended, in the
19 matter following subclause (III), by inserting
20 “(A)(iv) (including influenza vaccines furnished on
21 or after January 1, 2011),” after “described in sub-
22 paragraph.”

23 (d) EFFECTIVE DATES.—The amendments made
24 by—

1 (1) this section (other than by subsection
2 (c)(7)) shall apply to vaccines administered on or
3 after January 1, 2011; and

4 (2) by subsection (c)(7) shall apply to calendar
5 quarters beginning on or after January 1, 2010.

6 **TITLE IV—QUALITY**

7 **Subtitle A—Comparative**

8 **Effectiveness Research**

9 **SEC. 1401. COMPARATIVE EFFECTIVENESS RESEARCH.**

10 (a) IN GENERAL.—title XI of the Social Security Act
11 is amended by adding at the end the following new part:

12 “PART D—COMPARATIVE EFFECTIVENESS RESEARCH

13 “COMPARATIVE EFFECTIVENESS RESEARCH

14 “SEC. 1181. (a) CENTER FOR COMPARATIVE EFFEC-
15 TIVENESS RESEARCH ESTABLISHED.—

16 “(1) IN GENERAL.—The Secretary shall estab-
17 lish within the Agency for Healthcare Research and
18 Quality a Center for Comparative Effectiveness Re-
19 search (in this section referred to as the ‘Center’) to
20 conduct, support, and synthesize research (including
21 research conducted or supported under section 1013
22 of the Medicare Prescription Drug, Improvement,
23 and Modernization Act of 2003) with respect to the
24 outcomes, effectiveness, and appropriateness of
25 health care services and procedures in order to iden-

1 tify the manner in which diseases, disorders, and
2 other health conditions can most effectively and ap-
3 propriately be prevented, diagnosed, treated, and
4 managed clinically.

5 “(2) DUTIES.—The Center shall—

6 “(A) conduct, support, and synthesize re-
7 search relevant to the comparative effectiveness
8 of the full spectrum of health care items, serv-
9 ices and systems, including pharmaceuticals,
10 medical devices, medical and surgical proce-
11 dures, and other medical interventions;

12 “(B) conduct and support systematic re-
13 views of clinical research, including original re-
14 search conducted subsequent to the date of the
15 enactment of this section;

16 “(C) continuously develop rigorous sci-
17 entific methodologies for conducting compara-
18 tive effectiveness studies, and use such meth-
19 odologies appropriately;

20 “(D) submit to the Comparative Effective-
21 ness Research Commission, the Secretary, and
22 Congress appropriate relevant reports described
23 in subsection (d)(2); and

24 “(E) encourage, as appropriate, the devel-
25 opment and use of clinical registries and the de-

1 velopment of clinical effectiveness research data
2 networks from electronic health records, post
3 marketing drug and medical device surveillance
4 efforts, and other forms of electronic health
5 data.

6 “(3) POWERS.—

7 “(A) OBTAINING OFFICIAL DATA.—The
8 Center may secure directly from any depart-
9 ment or agency of the United States informa-
10 tion necessary to enable it to carry out this sec-
11 tion. Upon request of the Center, the head of
12 that department or agency shall furnish that in-
13 formation to the Center on an agreed upon
14 schedule.

15 “(B) DATA COLLECTION.—In order to
16 carry out its functions, the Center shall—

17 “(i) utilize existing information, both
18 published and unpublished, where possible,
19 collected and assessed either by its own
20 staff or under other arrangements made in
21 accordance with this section,

22 “(ii) carry out, or award grants or
23 contracts for, original research and experi-
24 mentation, where existing information is
25 inadequate, and

1 “(iii) adopt procedures allowing any
2 interested party to submit information for
3 the use by the Center and Commission
4 under subsection (b) in making reports
5 and recommendations.

6 “(C) ACCESS OF GAO TO INFORMATION.—
7 The Comptroller General shall have unrestricted
8 access to all deliberations, records, and non-
9 proprietary data of the Center and Commission
10 under subsection (b), immediately upon request.

11 “(D) PERIODIC AUDIT.—The Center and
12 Commission under subsection (b) shall be sub-
13 ject to periodic audit by the Comptroller Gen-
14 eral.

15 “(b) OVERSIGHT BY COMPARATIVE EFFECTIVENESS
16 RESEARCH COMMISSION.—

17 “(1) IN GENERAL.—The Secretary shall estab-
18 lish an independent Comparative Effectiveness Re-
19 search Commission (in this section referred to as the
20 ‘Commission’) to oversee and evaluate the activities
21 carried out by the Center under subsection (a), sub-
22 ject to the authority of the Secretary, to ensure such
23 activities result in highly credible research and infor-
24 mation resulting from such research.

25 “(2) DUTIES.—The Commission shall—

1 “(A) determine national priorities for re-
2 search described in subsection (a) and in mak-
3 ing such determinations consult with a broad
4 array of public and private stakeholders, includ-
5 ing patients and health care providers and pay-
6 ers;

7 “(B) monitor the appropriateness of use of
8 the CERTF described in subsection (g) with re-
9 spect to the timely production of comparative
10 effectiveness research determined to be a na-
11 tional priority under subparagraph (A);

12 “(C) identify highly credible research
13 methods and standards of evidence for such re-
14 search to be considered by the Center;

15 “(D) review the methodologies developed
16 by the center under subsection (a)(2)(C);

17 “(E) not later than one year after the date
18 of the enactment of this section, enter into an
19 arrangement under which the Institute of Medi-
20 cine of the National Academy of Sciences shall
21 conduct an evaluation and report on standards
22 of evidence for such research;

23 “(F) support forums to increase stake-
24 holder awareness and permit stakeholder feed-
25 back on the efforts of the Center to advance

1 methods and standards that promote highly
2 credible research;

3 “(G) make recommendations for policies
4 that would allow for public access of data pro-
5 duced under this section, in accordance with ap-
6 propriate privacy and proprietary practices,
7 while ensuring that the information produced
8 through such data is timely and credible;

9 “(H) appoint a clinical perspective advisory
10 panel for each research priority determined
11 under subparagraph (A), which shall consult
12 with patients and advise the Center on research
13 questions, methods, and evidence gaps in terms
14 of clinical outcomes for the specific research in-
15 quiry to be examined with respect to such pri-
16 ority to ensure that the information produced
17 from such research is clinically relevant to deci-
18 sions made by clinicians and patients at the
19 point of care;

20 “(I) make recommendations for the pri-
21 ority for periodic reviews of previous compara-
22 tive effectiveness research and studies con-
23 ducted by the Center under subsection (a);

24 “(J) routinely review processes of the Cen-
25 ter with respect to such research to confirm

1 that the information produced by such research
2 is objective, credible, consistent with standards
3 of evidence established under this section, and
4 developed through a transparent process that
5 includes consultations with appropriate stake-
6 holders; and

7 “(K) make recommendations to the center
8 for the broad dissemination of the findings of
9 research conducted and supported under this
10 section that enables clinicians, patients, con-
11 sumers, and payers to make more informed
12 health care decisions that improve quality and
13 value.

14 “(3) COMPOSITION OF COMMISSION.—

15 “(A) IN GENERAL.—The members of the
16 Commission shall consist of—

17 “(i) the Director of the Agency for
18 Healthcare Research and Quality;

19 “(ii) the Chief Medical Officer of the
20 Centers for Medicare & Medicaid Services;
21 and

22 “(iii) 15 additional members who shall
23 represent broad constituencies of stake-
24 holders including clinicians, patients, re-

1 searchers, third-party payers, consumers of
2 Federal and State beneficiary programs.

3 Of such members, at least 9 shall be practicing
4 physicians, health care practitioners, con-
5 sumers, or patients.

6 “(B) QUALIFICATIONS.—

7 “(i) DIVERSE REPRESENTATION OF
8 PERSPECTIVES.—The members of the
9 Commission shall represent a broad range
10 of perspectives and shall collectively have
11 experience in the following areas:

12 “(I) Epidemiology.

13 “(II) Health services research.

14 “(III) Bioethics.

15 “(IV) Decision sciences.

16 “(V) Health disparities.

17 “(VI) Economics.

18 “(ii) DIVERSE REPRESENTATION OF
19 HEALTH CARE COMMUNITY.—At least one
20 member shall represent each of the fol-
21 lowing health care communities:

22 “(I) Patients.

23 “(II) Health care consumers.

24 “(III) Practicing Physicians, in-
25 cluding surgeons.

1 “(IV) Other health care practi-
2 tioners engaged in clinical care.

3 “(V) Employers.

4 “(VI) Public payers.

5 “(VII) Insurance plans.

6 “(VIII) Clinical researchers who
7 conduct research on behalf of pharma-
8 ceutical or device manufacturers.

9 “(C) LIMITATION.—No more than 3 of the
10 Members of the Commission may be representa-
11 tives of pharmaceutical or device manufacturers
12 and such representatives shall be clinical re-
13 searchers described under subparagraph
14 (B)(ii)(VIII).

15 “(4) APPOINTMENT.—

16 “(A) IN GENERAL.—The Secretary shall
17 appoint the members of the Commission.

18 “(B) CONSULTATION.—In considering can-
19 didates for appointment to the Commission, the
20 Secretary may consult with the Government Ac-
21 countability Office and the Institute of Medicine
22 of the National Academy of Sciences.

23 “(5) CHAIRMAN; VICE CHAIRMAN.—The Sec-
24 retary shall designate a member of the Commission,
25 at the time of appointment of the member, as Chair-

1 man and a member as Vice Chairman for that term
2 of appointment, except that in the case of vacancy
3 of the Chairmanship or Vice Chairmanship, the Sec-
4 retary may designate another member for the re-
5 mainder of that member's term. The Chairman shall
6 serve as an ex officio member of the National Advi-
7 sory Council of the Agency for Health Care Re-
8 search and Quality under section 931(c)(3)(B) of
9 the Public Health Service Act.

10 “(6) TERMS.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), each member of the Com-
13 mission shall be appointed for a term of 4
14 years.

15 “(B) TERMS OF INITIAL APPOINTEES.—Of
16 the members first appointed—

17 “(i) 8 shall be appointed for a term of
18 4 years; and

19 “(ii) 7 shall be appointed for a term
20 of 3 years.

21 “(7) COORDINATION.—To enhance effectiveness
22 and coordination, the Secretary is encouraged, to the
23 greatest extent possible, to seek coordination be-
24 tween the Commission and the National Advisory

1 Council of the Agency for Healthcare Research and
2 Quality.

3 “(8) CONFLICTS OF INTEREST.—

4 “(A) IN GENERAL.—In appointing the
5 members of the Commission or a clinical per-
6 spective advisory panel described in paragraph
7 (2)(H), the Secretary or the Commission, re-
8 spectively, shall take into consideration any fi-
9 nancial interest (as defined in subparagraph
10 (D)), consistent with this paragraph, and de-
11 velop a plan for managing any identified con-
12 flicts.

13 “(B) EVALUATION AND CRITERIA.—When
14 considering an appointment to the Commission
15 or a clinical perspective advisory panel de-
16 scribed paragraph (2)(H) the Secretary or the
17 Commission shall review the expertise of the in-
18 dividual and the financial disclosure report filed
19 by the individual pursuant to the Ethics in Gov-
20 ernment Act of 1978 for each individual under
21 consideration for the appointment, so as to re-
22 duce the likelihood that an appointed individual
23 will later require a written determination as re-
24 ferred to in section 208(b)(1) of title 18, United
25 States Code, a written certification as referred

1 to in section 208(b)(3) of title 18, United
2 States Code, or a waiver as referred to in sub-
3 paragraph (D)(iii) for service on the Commis-
4 sion at a meeting of the Commission.

5 “(C) DISCLOSURES; PROHIBITIONS ON
6 PARTICIPATION; WAIVERS.—

7 “(i) DISCLOSURE OF FINANCIAL IN-
8 TEREST.—Prior to a meeting of the Com-
9 mission or a clinical perspective advisory
10 panel described in paragraph (2)(H) re-
11 garding a ‘particular matter’ (as that term
12 is used in section 208 of title 18, United
13 States Code), each member of the Commis-
14 sion or the clinical perspective advisory
15 panel who is a full-time Government em-
16 ployee or special Government employee
17 shall disclose to the Secretary financial in-
18 terests in accordance with subsection (b) of
19 such section 208.

20 “(ii) PROHIBITIONS ON PARTICIPA-
21 TION.—Except as provided under clause
22 (iii), a member of the Commission or a
23 clinical perspective advisory panel de-
24 scribed in paragraph (2)(H) may not par-
25 ticipate with respect to a particular matter

1 considered in meeting of the Commission
2 or the clinical perspective advisory panel if
3 such member (or an immediate family
4 member of such member) has a financial
5 interest that could be affected by the ad-
6 vice given to the Secretary with respect to
7 such matter, excluding interests exempted
8 in regulations issued by the Director of the
9 Office of Government Ethics as too remote
10 or inconsequential to affect the integrity of
11 the services of the Government officers or
12 employees to which such regulations apply.

13 “(iii) WAIVER.—If the Secretary de-
14 termines it necessary to afford the Com-
15 mission or a clinical perspective advisory
16 panel described in paragraph 2(H) essen-
17 tial expertise, the Secretary may grant a
18 waiver of the prohibition in clause (ii) to
19 permit a member described in such sub-
20 paragraph to—

21 “(I) participate as a non-voting
22 member with respect to a particular
23 matter considered in a Commission or
24 a clinical perspective advisory panel
25 meeting; or

1 “(II) participate as a voting
2 member with respect to a particular
3 matter considered in a Commission or
4 a clinical perspective advisory panel
5 meeting.

6 “(iv) LIMITATION ON WAIVERS AND
7 OTHER EXCEPTIONS.—

8 “(I) DETERMINATION OF ALLOW-
9 ABLE EXCEPTIONS FOR THE COMMIS-
10 SION.—The number of waivers grant-
11 ed to members of the Commission
12 cannot exceed one-half of the total
13 number of members for the Commis-
14 sion.

15 “(II) PROHIBITION ON VOTING
16 STATUS ON CLINICAL PERSPECTIVE
17 ADVISORY PANELS.—No voting mem-
18 ber of any clinical perspective advisory
19 panel shall be in receipt of a waiver.
20 No more than two nonvoting members
21 of any clinical perspective advisory
22 panel shall receive a waiver.

23 “(D) FINANCIAL INTEREST DEFINED.—
24 For purposes of this paragraph, the term ‘fi-
25 nancial interest’ means a financial interest

1 under section 208(a) of title 18, United States
2 Code.

3 “(9) COMPENSATION.—While serving on the
4 business of the Commission (including travel time),
5 a member of the Commission shall be entitled to
6 compensation at the per diem equivalent of the rate
7 provided for level IV of the Executive Schedule
8 under section 5315 of title 5, United States Code;
9 and while so serving away from home and the mem-
10 ber’s regular place of business, a member may be al-
11 lowed travel expenses, as authorized by the Director
12 of the Commission.

13 “(10) AVAILABILITY OF REPORTS.—The Com-
14 mission shall transmit to the Secretary a copy of
15 each report submitted under this subsection and
16 shall make such reports available to the public.

17 “(11) DIRECTOR AND STAFF; EXPERTS AND
18 CONSULTANTS.—Subject to such review as the Sec-
19 retary deems necessary to assure the efficient ad-
20 ministration of the Commission, the Commission
21 may—

22 “(A) appoint an Executive Director (sub-
23 ject to the approval of the Secretary) and such
24 other personnel as Federal employees under
25 section 2105 of title 5, United States Code, as

1 may be necessary to carry out its duties (with-
2 out regard to the provisions of title 5, United
3 States Code, governing appointments in the
4 competitive service);

5 “(B) seek such assistance and support as
6 may be required in the performance of its du-
7 ties from appropriate Federal departments and
8 agencies;

9 “(C) enter into contracts or make other ar-
10 rangements, as may be necessary for the con-
11 duct of the work of the Commission (without
12 regard to section 3709 of the Revised Statutes
13 (41 U.S.C. 5));

14 “(D) make advance, progress, and other
15 payments which relate to the work of the Com-
16 mission;

17 “(E) provide transportation and subsist-
18 ence for persons serving without compensation;
19 and

20 “(F) prescribe such rules and regulations
21 as it deems necessary with respect to the inter-
22 nal organization and operation of the Commis-
23 sion.

1 “(c) RESEARCH REQUIREMENTS.—Any research con-
2 ducted, supported, or synthesized under this section shall
3 meet the following requirements:

4 “(1) ENSURING TRANSPARENCY, CREDIBILITY,
5 AND ACCESS.—

6 “(A) The establishment of the agenda and
7 conduct of the research shall be insulated from
8 inappropriate political or stakeholder influence.

9 “(B) Methods of conducting such research
10 shall be scientifically based.

11 “(C) All aspects of the prioritization of re-
12 search, conduct of the research, and develop-
13 ment of conclusions based on the research shall
14 be transparent to all stakeholders.

15 “(D) The process and methods for con-
16 ducting such research shall be publicly docu-
17 mented and available to all stakeholders.

18 “(E) Throughout the process of such re-
19 search, the Center shall provide opportunities
20 for all stakeholders involved to review and pro-
21 vide public comment on the methods and find-
22 ings of such research.

23 “(2) USE OF CLINICAL PERSPECTIVE ADVISORY
24 PANELS.—The research shall meet a national re-
25 search priority determined under subsection

1 (b)(2)(A) and shall consider advice given to the Cen-
2 ter by the clinical perspective advisory panel for the
3 national research priority.

4 “(3) STAKEHOLDER INPUT.—

5 “(A) IN GENERAL.—The Commission shall
6 consult with patients, health care providers,
7 health care consumer representatives, and other
8 appropriate stakeholders with an interest in the
9 research through a transparent process rec-
10 ommended by the Commission.

11 “(B) SPECIFIC AREAS OF CONSULTA-
12 TION.—Consultation shall include where
13 deemed appropriate by the Commission—

14 “(i) recommending research priorities
15 and questions;

16 “(ii) recommending research meth-
17 odologies; and

18 “(iii) advising on and assisting with
19 efforts to disseminate research findings.

20 “(C) OMBUDSMAN.—The Secretary shall
21 designate a patient ombudsman. The ombuds-
22 man shall—

23 “(i) serve as an available point of con-
24 tact for any patients with an interest in

1 proposed comparative effectiveness studies
2 by the Center; and

3 “(ii) ensure that any comments from
4 patients regarding proposed comparative
5 effectiveness studies are reviewed by the
6 Commission.

7 “(4) TAKING INTO ACCOUNT POTENTIAL DIF-
8 FERENCES.—Research shall—

9 “(A) be designed, as appropriate, to take
10 into account the potential for differences in the
11 effectiveness of health care items and services
12 used with various subpopulations such as racial
13 and ethnic minorities, women, different age
14 groups (including children, adolescents, adults,
15 and seniors), and individuals with different
16 comorbidities; and—

17 “(B) seek, as feasible and appropriate, to
18 include members of such subpopulations as sub-
19 jects in the research.

20 “(d) PUBLIC ACCESS TO COMPARATIVE EFFECTIVE-
21 NESS INFORMATION.—

22 “(1) IN GENERAL.—Not later than 90 days
23 after receipt by the Center or Commission, as appli-
24 cable, of a relevant report described in paragraph
25 (2) made by the Center, Commission, or clinical per-

1 spective advisory panel under this section, appro-
2 priate information contained in such report shall be
3 posted on the official public Internet site of the Cen-
4 ter and of the Commission, as applicable.

5 “(2) RELEVANT REPORTS DESCRIBED.—For
6 purposes of this section, a relevant report is each of
7 the following submitted by the Center or a grantee
8 or contractor of the Center:

9 “(A) Any interim or progress reports as
10 deemed appropriate by the Secretary.

11 “(B) Stakeholder comments.

12 “(C) A final report.

13 “(e) DISSEMINATION AND INCORPORATION OF COM-
14 PARATIVE EFFECTIVENESS INFORMATION.—

15 “(1) DISSEMINATION.—The Center shall pro-
16 vide for the dissemination of appropriate findings
17 produced by research supported, conducted, or syn-
18 thesized under this section to health care providers,
19 patients, vendors of health information technology
20 focused on clinical decision support, appropriate pro-
21 fessional associations, and Federal and private
22 health plans, and other relevant stakeholders. In dis-
23 seminating such findings the Center shall—

1 “(A) convey findings of research so that
2 they are comprehensible and useful to patients
3 and providers in making health care decisions;

4 “(B) discuss findings and other consider-
5 ations specific to certain sub-populations, risk
6 factors, and comorbidities as appropriate;

7 “(C) include considerations such as limita-
8 tions of research and what further research
9 may be needed, as appropriate;

10 “(D) not include any data that the dis-
11 semination of which would violate the privacy of
12 research participants or violate any confiden-
13 tiality agreements made with respect to the use
14 of data under this section; and

15 “(E) assist the users of health information
16 technology focused on clinical decision support
17 to promote the timely incorporation of such
18 findings into clinical practices and promote the
19 ease of use of such incorporation.

20 “(2) DISSEMINATION PROTOCOLS AND STRATE-
21 GIES.—The Center shall develop protocols and strat-
22 egies for the appropriate dissemination of research
23 findings in order to ensure effective communication
24 of findings and the use and incorporation of such
25 findings into relevant activities for the purpose of in-

1 forming higher quality and more effective and effi-
2 cient decisions regarding medical items and services.
3 In developing and adopting such protocols and strat-
4 egies, the Center shall consult with stakeholders con-
5 cerning the types of dissemination that will be most
6 useful to the end users of information and may pro-
7 vide for the utilization of multiple formats for con-
8 veying findings to different audiences, including dis-
9 semination to individuals with limited English pro-
10 ficiency.

11 “(f) REPORTS TO CONGRESS.—

12 “(1) ANNUAL REPORTS.—Beginning not later
13 than one year after the date of the enactment of this
14 section, the Director of the Agency of Healthcare
15 Research and Quality and the Commission shall sub-
16 mit to Congress an annual report on the activities
17 of the Center and the Commission, as well as the re-
18 search, conducted under this section. Each such re-
19 port shall include a discussion of the Center’s com-
20 pliance with subsection (c)(B)(4), including any rea-
21 sons for lack of compliance with such subsection.

22 “(2) RECOMMENDATION FOR FAIR SHARE PER
23 CAPITA AMOUNT FOR ALL-PAYER FINANCING.—Be-
24 ginning not later than December 31, 2011, the Sec-
25 retary shall submit to Congress an annual rec-

1 ommendation for a fair share per capita amount de-
2 scribed in subsection (c)(1) of section 9511 of the
3 Internal Revenue Code of 1986 for purposes of
4 funding the CERTF under such section.

5 “(3) ANALYSIS AND REVIEW.—Not later than
6 December 31, 2013, the Secretary, in consultation
7 with the Commission, shall submit to Congress a re-
8 port on all activities conducted or supported under
9 this section as of such date. Such report shall in-
10 clude an evaluation of the overall costs of such ac-
11 tivities and an analysis of the backlog of any re-
12 search proposals approved by the Commission but
13 not funded.

14 “(g) FUNDING OF COMPARATIVE EFFECTIVENESS
15 RESEARCH.—For fiscal year 2010 and each subsequent
16 fiscal year, amounts in the Comparative Effectiveness Re-
17 search Trust Fund (referred to in this section as the
18 ‘CERTF’) under section 9511 of the Internal Revenue
19 Code of 1986 shall be available, without the need for fur-
20 ther appropriations and without fiscal year limitation, to
21 the Secretary to carry out this section.

22 “(h) CONSTRUCTION.—Nothing in this section shall
23 be construed to permit the Commission or the Center to
24 mandate coverage, reimbursement, or other policies for
25 any public or private payer.”.

1 (b) COMPARATIVE EFFECTIVENESS RESEARCH
2 TRUST FUND; FINANCING FOR THE TRUST FUND.—For
3 provision establishing a Comparative Effectiveness Re-
4 search Trust Fund and financing such Trust Fund, see
5 section 1802.

6 **Subtitle B—Nursing Home**
7 **Transparency**

8 **PART 1—IMPROVING TRANSPARENCY OF INFOR-**
9 **MATION ON SKILLED NURSING FACILITIES**
10 **AND NURSING FACILITIES**

11 **SEC. 1411. REQUIRED DISCLOSURE OF OWNERSHIP AND**
12 **ADDITIONAL DISCLOSABLE PARTIES INFOR-**
13 **MATION.**

14 (a) IN GENERAL.—Section 1124 of the Social Secu-
15 rity Act (42 U.S.C. 1320a–3) is amended by adding at
16 the end the following new subsection:

17 “(c) REQUIRED DISCLOSURE OF OWNERSHIP AND
18 ADDITIONAL DISCLOSABLE PARTIES INFORMATION.—

19 “(1) DISCLOSURE.—A facility (as defined in
20 paragraph (7)(B)) shall have the information de-
21 scribed in paragraph (3) available—

22 “(A) during the period beginning on the
23 date of the enactment of this subsection and
24 ending on the date such information is made
25 available to the public under section 1411(b) of

1 the America's Affordable Health Choices Act of
2 2009, for submission to the Secretary, the In-
3 spector General of the Department of Health
4 and Human Services, the State in which the fa-
5 cility is located, and the State long-term care
6 ombudsman in the case where the Secretary,
7 the Inspector General, the State, or the State
8 long-term care ombudsman requests such infor-
9 mation; and

10 “(B) beginning on the effective date of the
11 final regulations promulgated under paragraph
12 (4)(A), for reporting such information in ac-
13 cordance with such final regulations.

14 Nothing in subparagraph (A) shall be construed as
15 authorizing a facility to dispose of or delete informa-
16 tion described in such subparagraph after the effec-
17 tive date of the final regulations promulgated under
18 paragraph (4)(A).

19 “(2) PUBLIC AVAILABILITY OF INFORMATION.—
20 During the period described in paragraph (1)(A), a
21 facility shall—

22 “(A) make the information described in
23 paragraph (3) available to the public upon re-
24 quest and update such information as may be

1 necessary to reflect changes in such informa-
2 tion; and

3 “(B) post a notice of the availability of
4 such information in the lobby of the facility in
5 a prominent manner.

6 “(3) INFORMATION DESCRIBED.—

7 “(A) IN GENERAL.—The following infor-
8 mation is described in this paragraph:

9 “(i) The information described in sub-
10 sections (a) and (b), subject to subpara-
11 graph (C).

12 “(ii) The identity of and information
13 on—

14 “(I) each member of the gov-
15 erning body of the facility, including
16 the name, title, and period of service
17 of each such member;

18 “(II) each person or entity who is
19 an officer, director, member, partner,
20 trustee, or managing employee of the
21 facility, including the name, title, and
22 date of start of service of each such
23 person or entity; and

1 “(III) each person or entity who
2 is an additional disclosable party of
3 the facility.

4 “(iii) The organizational structure of
5 each person and entity described in sub-
6 clauses (II) and (III) of clause (ii) and a
7 description of the relationship of each such
8 person or entity to the facility and to one
9 another.

10 “(B) SPECIAL RULE WHERE INFORMATION
11 IS ALREADY REPORTED OR SUBMITTED.—To
12 the extent that information reported by a facil-
13 ity to the Internal Revenue Service on Form
14 990, information submitted by a facility to the
15 Securities and Exchange Commission, or infor-
16 mation otherwise submitted to the Secretary or
17 any other Federal agency contains the informa-
18 tion described in clauses (i), (ii), or (iii) of sub-
19 paragraph (A), the Secretary may allow, to the
20 extent practicable, such Form or such informa-
21 tion to meet the requirements of paragraph (1)
22 and to be submitted in a manner specified by
23 the Secretary.

24 “(C) SPECIAL RULE.—In applying sub-
25 paragraph (A)(i)—

1 “(i) with respect to subsections (a)
2 and (b), ‘ownership or control interest’
3 shall include direct or indirect interests, in-
4 cluding such interests in intermediate enti-
5 ties; and

6 “(ii) subsection (a)(3)(A)(ii) shall in-
7 clude the owner of a whole or part interest
8 in any mortgage, deed of trust, note, or
9 other obligation secured, in whole or in
10 part, by the entity or any of the property
11 or assets thereof, if the interest is equal to
12 or exceeds 5 percent of the total property
13 or assets of the entirety.

14 “(4) REPORTING.—

15 “(A) IN GENERAL.—Not later than the
16 date that is 2 years after the date of the enact-
17 ment of this subsection, the Secretary shall pro-
18 mulgate regulations requiring, effective on the
19 date that is 90 days after the date on which
20 such final regulations are published in the Fed-
21 eral Register, a facility to report the informa-
22 tion described in paragraph (3) to the Secretary
23 in a standardized format, and such other regu-
24 lations as are necessary to carry out this sub-
25 section. Such final regulations shall ensure that

1 the facility certifies, as a condition of participa-
2 tion and payment under the program under
3 title XVIII or XIX, that the information re-
4 ported by the facility in accordance with such
5 final regulations is accurate and current.

6 “(B) GUIDANCE.—The Secretary shall pro-
7 vide guidance and technical assistance to States
8 on how to adopt the standardized format under
9 subparagraph (A).

10 “(5) NO EFFECT ON EXISTING REPORTING RE-
11 QUIREMENTS.—Nothing in this subsection shall re-
12 duce, diminish, or alter any reporting requirement
13 for a facility that is in effect as of the date of the
14 enactment of this subsection.

15 “(6) DEFINITIONS.—In this subsection:

16 “(A) ADDITIONAL DISCLOSABLE PARTY.—
17 The term ‘additional disclosable party’ means,
18 with respect to a facility, any person or entity
19 who—

20 “(i) exercises operational, financial, or
21 managerial control over the facility or a
22 part thereof, or provides policies or proce-
23 dures for any of the operations of the facil-
24 ity, or provides financial or cash manage-
25 ment services to the facility;

1 “(ii) leases or subleases real property
2 to the facility, or owns a whole or part in-
3 terest equal to or exceeding 5 percent of
4 the total value of such real property;

5 “(iii) lends funds or provides a finan-
6 cial guarantee to the facility in an amount
7 which is equal to or exceeds \$50,000; or

8 “(iv) provides management or admin-
9 istrative services, clinical consulting serv-
10 ices, or accounting or financial services to
11 the facility.

12 “(B) FACILITY.—The term ‘facility’ means
13 a disclosing entity which is—

14 “(i) a skilled nursing facility (as de-
15 fined in section 1819(a)); or

16 “(ii) a nursing facility (as defined in
17 section 1919(a)).

18 “(C) MANAGING EMPLOYEE.—The term
19 ‘managing employee’ means, with respect to a
20 facility, an individual (including a general man-
21 ager, business manager, administrator, director,
22 or consultant) who directly or indirectly man-
23 ages, advises, or supervises any element of the
24 practices, finances, or operations of the facility.

1 “(D) ORGANIZATIONAL STRUCTURE.—The
2 term ‘organizational structure’ means, in the
3 case of—

4 “(i) a corporation, the officers, direc-
5 tors, and shareholders of the corporation
6 who have an ownership interest in the cor-
7 poration which is equal to or exceeds 5
8 percent;

9 “(ii) a limited liability company, the
10 members and managers of the limited li-
11 ability company (including, as applicable,
12 what percentage each member and man-
13 ager has of the ownership interest in the
14 limited liability company);

15 “(iii) a general partnership, the part-
16 ners of the general partnership;

17 “(iv) a limited partnership, the gen-
18 eral partners and any limited partners of
19 the limited partnership who have an own-
20 ership interest in the limited partnership
21 which is equal to or exceeds 10 percent;

22 “(v) a trust, the trustees of the trust;

23 “(vi) an individual, contact informa-
24 tion for the individual; and

1 “(vii) any other person or entity, such
2 information as the Secretary determines
3 appropriate.”.

4 (b) PUBLIC AVAILABILITY OF INFORMATION.—

5 (1) IN GENERAL.—Not later than the date that
6 is 1 year after the date on which the final regula-
7 tions promulgated under section 1124(c)(4)(A) of
8 the Social Security Act, as added by subsection (a),
9 are published in the Federal Register, the informa-
10 tion reported in accordance with such final regula-
11 tions shall be made available to the public in accord-
12 ance with procedures established by the Secretary.

13 (2) DEFINITIONS.—In this subsection:

14 (A) NURSING FACILITY.—The term “nurs-
15 ing facility” has the meaning given such term
16 in section 1919(a) of the Social Security Act
17 (42 U.S.C. 1396r(a)).

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

21 (C) SKILLED NURSING FACILITY.—The
22 term “skilled nursing facility” has the meaning
23 given such term in section 1819(a) of the Social
24 Security Act (42 U.S.C. 1395i-3(a)).

25 (c) CONFORMING AMENDMENTS.—

1 (1) SKILLED NURSING FACILITIES.—Section
2 1819(d)(1) of the Social Security Act (42 U.S.C.
3 1395i–3(d)(1)) is amended by striking subparagraph
4 (B) and redesignating subparagraph (C) as subpara-
5 graph (B).

6 (2) NURSING FACILITIES.—Section 1919(d)(1)
7 of the Social Security Act (42 U.S.C. 1396r(d)(1))
8 is amended by striking subparagraph (B) and redesi-
9 gnating subparagraph (C) as subparagraph (B).

10 **SEC. 1412. ACCOUNTABILITY REQUIREMENTS.**

11 (a) EFFECTIVE COMPLIANCE AND ETHICS PRO-
12 GRAMS.—

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 section 1411(c)(1),
16 is amended by adding at the end the following new
17 subparagraph:

18 “(C) COMPLIANCE AND ETHICS PRO-
19 GRAMS.—

20 “(i) REQUIREMENT.—On or after the
21 date that is 36 months after the date of
22 the enactment of this subparagraph, a
23 skilled nursing facility shall, with respect
24 to the entity that operates the facility (in
25 this subparagraph referred to as the ‘oper-

1 ating organization’ or ‘organization’), have
2 in operation a compliance and ethics pro-
3 gram that is effective in preventing and de-
4 tecting criminal, civil, and administrative
5 violations under this Act and in promoting
6 quality of care consistent with regulations
7 developed under clause (ii).

8 “(ii) DEVELOPMENT OF REGULA-
9 TIONS.—

10 “(I) IN GENERAL.—Not later
11 than the date that is 2 years after
12 such date of the enactment, the Sec-
13 retary, in consultation with the In-
14 spector General of the Department of
15 Health and Human Services, shall
16 promulgate regulations for an effec-
17 tive compliance and ethics program
18 for operating organizations, which
19 may include a model compliance pro-
20 gram.

21 “(II) DESIGN OF REGULA-
22 TIONS.—Such regulations with respect
23 to specific elements or formality of a
24 program may vary with the size of the
25 organization, such that larger organi-

1 zations should have a more formal
2 and rigorous program and include es-
3 tablished written policies defining the
4 standards and procedures to be fol-
5 lowed by its employees. Such require-
6 ments shall specifically apply to the
7 corporate level management of multi-
8 unit nursing home chains.

9 “(III) EVALUATION.—Not later
10 than 3 years after the date of promul-
11 gation of regulations under this
12 clause, the Secretary shall complete
13 an evaluation of the compliance and
14 ethics programs required to be estab-
15 lished under this subparagraph. Such
16 evaluation shall determine if such pro-
17 grams led to changes in deficiency ci-
18 tations, changes in quality perform-
19 ance, or changes in other metrics of
20 resident quality of care. The Secretary
21 shall submit to Congress a report on
22 such evaluation and shall include in
23 such report such recommendations re-
24 garding changes in the requirements

1 for such programs as the Secretary
2 determines appropriate.

3 “(iii) REQUIREMENTS FOR COMPLI-
4 ANCE AND ETHICS PROGRAMS.—In this
5 subparagraph, the term ‘compliance and
6 ethics program’ means, with respect to a
7 skilled nursing facility, a program of the
8 operating organization that—

9 “(I) has been reasonably de-
10 signed, implemented, and enforced so
11 that it generally will be effective in
12 preventing and detecting criminal,
13 civil, and administrative violations
14 under this Act and in promoting qual-
15 ity of care; and

16 “(II) includes at least the re-
17 quired components specified in clause
18 (iv).

19 “(iv) REQUIRED COMPONENTS OF
20 PROGRAM.—The required components of a
21 compliance and ethics program of an orga-
22 nization are the following:

23 “(I) The organization must have
24 established compliance standards and
25 procedures to be followed by its em-

1 ployees, contractors, and other agents
2 that are reasonably capable of reduc-
3 ing the prospect of criminal, civil, and
4 administrative violations under this
5 Act.

6 “(II) Specific individuals within
7 high-level personnel of the organiza-
8 tion must have been assigned overall
9 responsibility to oversee compliance
10 with such standards and procedures
11 and have sufficient resources and au-
12 thority to assure such compliance.

13 “(III) The organization must
14 have used due care not to delegate
15 substantial discretionary authority to
16 individuals whom the organization
17 knew, or should have known through
18 the exercise of due diligence, had a
19 propensity to engage in criminal, civil,
20 and administrative violations under
21 this Act.

22 “(IV) The organization must
23 have taken steps to communicate ef-
24 fectively its standards and procedures
25 to all employees and other agents,

1 such as by requiring participation in
2 training programs or by disseminating
3 publications that explain in a practical
4 manner what is required.

5 “(V) The organization must have
6 taken reasonable steps to achieve com-
7 pliance with its standards, such as by
8 utilizing monitoring and auditing sys-
9 tems reasonably designed to detect
10 criminal, civil, and administrative vio-
11 lations under this Act by its employ-
12 ees and other agents and by having in
13 place and publicizing a reporting sys-
14 tem whereby employees and other
15 agents could report violations by oth-
16 ers within the organization without
17 fear of retribution.

18 “(VI) The standards must have
19 been consistently enforced through ap-
20 propriate disciplinary mechanisms, in-
21 cluding, as appropriate, discipline of
22 individuals responsible for the failure
23 to detect an offense.

24 “(VII) After an offense has been
25 detected, the organization must have

1 taken all reasonable steps to respond
2 appropriately to the offense and to
3 prevent further similar offenses, in-
4 cluding repayment of any funds to
5 which it was not entitled and any nec-
6 essary modification to its program to
7 prevent and detect criminal, civil, and
8 administrative violations under this
9 Act.

10 “(VIII) The organization must
11 periodically undertake reassessment of
12 its compliance program to identify
13 changes necessary to reflect changes
14 within the organization and its facili-
15 ties.

16 “(v) COORDINATION.—The provisions
17 of this subparagraph shall apply with re-
18 spect to a skilled nursing facility in lieu of
19 section 1874(d).”.

20 (2) NURSING FACILITIES.—Section 1919(d)(1)
21 of the Social Security Act (42 U.S.C. 1396r(d)(1)),
22 as amended by section 1411(c)(2), is amended by
23 adding at the end the following new subparagraph:

24 “(C) COMPLIANCE AND ETHICS PRO-
25 GRAM.—

1 “(i) REQUIREMENT.—On or after the
2 date that is 36 months after the date of
3 the enactment of this subparagraph, a
4 nursing facility shall, with respect to the
5 entity that operates the facility (in this
6 subparagraph referred to as the ‘operating
7 organization’ or ‘organization’), have in op-
8 eration a compliance and ethics program
9 that is effective in preventing and detect-
10 ing criminal, civil, and administrative viola-
11 tions under this Act and in promoting
12 quality of care consistent with regulations
13 developed under clause (ii).

14 “(ii) DEVELOPMENT OF REGULA-
15 TIONS.—

16 “(I) IN GENERAL.—Not later
17 than the date that is 2 years after
18 such date of the enactment, the Sec-
19 retary, in consultation with the In-
20 spector General of the Department of
21 Health and Human Services, shall de-
22 velop regulations for an effective com-
23 pliance and ethics program for oper-
24 ating organizations, which may in-
25 clude a model compliance program.

1 “(II) DESIGN OF REGULA-
2 TIONS.—Such regulations with respect
3 to specific elements or formality of a
4 program may vary with the size of the
5 organization, such that larger organi-
6 zations should have a more formal
7 and rigorous program and include es-
8 tablished written policies defining the
9 standards and procedures to be fol-
10 lowed by its employees. Such require-
11 ments may specifically apply to the
12 corporate level management of multi-
13 unit nursing home chains.

14 “(III) EVALUATION.—Not later
15 than 3 years after the date of promul-
16 gation of regulations under this clause
17 the Secretary shall complete an eval-
18 uation of the compliance and ethics
19 programs required to be established
20 under this subparagraph. Such eval-
21 uation shall determine if such pro-
22 grams led to changes in deficiency ci-
23 tations, changes in quality perform-
24 ance, or changes in other metrics of
25 resident quality of care. The Secretary

1 shall submit to Congress a report on
2 such evaluation and shall include in
3 such report such recommendations re-
4 garding changes in the requirements
5 for such programs as the Secretary
6 determines appropriate.

7 “(iii) REQUIREMENTS FOR COMPLI-
8 ANCE AND ETHICS PROGRAMS.—In this
9 subparagraph, the term ‘compliance and
10 ethics program’ means, with respect to a
11 nursing facility, a program of the oper-
12 ating organization that—

13 “(I) has been reasonably de-
14 signed, implemented, and enforced so
15 that it generally will be effective in
16 preventing and detecting criminal,
17 civil, and administrative violations
18 under this Act and in promoting qual-
19 ity of care; and

20 “(II) includes at least the re-
21 quired components specified in clause
22 (iv).

23 “(iv) REQUIRED COMPONENTS OF
24 PROGRAM.—The required components of a

1 compliance and ethics program of an orga-
2 nization are the following:

3 “(I) The organization must have
4 established compliance standards and
5 procedures to be followed by its em-
6 ployees and other agents that are rea-
7 sonably capable of reducing the pros-
8 pect of criminal, civil, and administra-
9 tive violations under this Act.

10 “(II) Specific individuals within
11 high-level personnel of the organiza-
12 tion must have been assigned overall
13 responsibility to oversee compliance
14 with such standards and procedures
15 and has sufficient resources and au-
16 thority to assure such compliance.

17 “(III) The organization must
18 have used due care not to delegate
19 substantial discretionary authority to
20 individuals whom the organization
21 knew, or should have known through
22 the exercise of due diligence, had a
23 propensity to engage in criminal, civil,
24 and administrative violations under
25 this Act.

1 “(IV) The organization must
2 have taken steps to communicate ef-
3 fectively its standards and procedures
4 to all employees and other agents,
5 such as by requiring participation in
6 training programs or by disseminating
7 publications that explain in a practical
8 manner what is required.

9 “(V) The organization must have
10 taken reasonable steps to achieve com-
11 pliance with its standards, such as by
12 utilizing monitoring and auditing sys-
13 tems reasonably designed to detect
14 criminal, civil, and administrative vio-
15 lations under this Act by its employ-
16 ees and other agents and by having in
17 place and publicizing a reporting sys-
18 tem whereby employees and other
19 agents could report violations by oth-
20 ers within the organization without
21 fear of retribution.

22 “(VI) The standards must have
23 been consistently enforced through ap-
24 propriate disciplinary mechanisms, in-
25 cluding, as appropriate, discipline of

1 individuals responsible for the failure
2 to detect an offense.

3 “(VII) After an offense has been
4 detected, the organization must have
5 taken all reasonable steps to respond
6 appropriately to the offense and to
7 prevent further similar offenses, in-
8 cluding repayment of any funds to
9 which it was not entitled and any nec-
10 essary modification to its program to
11 prevent and detect criminal, civil, and
12 administrative violations under this
13 Act.

14 “(VIII) The organization must
15 periodically undertake reassessment of
16 its compliance program to identify
17 changes necessary to reflect changes
18 within the organization and its facili-
19 ties.

20 “(v) COORDINATION.—The provisions
21 of this subparagraph shall apply with re-
22 spect to a nursing facility in lieu of section
23 1902(a)(77).”.

24 (b) QUALITY ASSURANCE AND PERFORMANCE IM-
25 PROVEMENT PROGRAM.—

1 (1) SKILLED NURSING FACILITIES.—Section
2 1819(b)(1)(B) of the Social Security Act (42 U.S.C.
3 1396r(b)(1)(B)) is amended—

4 (A) by striking “ASSURANCE” and insert-
5 ing “ASSURANCE AND QUALITY ASSURANCE
6 AND PERFORMANCE IMPROVEMENT PROGRAM”;

7 (B) by designating the matter beginning
8 with “A nursing facility” as a clause (i) with
9 the heading “IN GENERAL.—” and the appro-
10 priate indentation; and

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

13 “(ii) QUALITY ASSURANCE AND PER-
14 FORMANCE IMPROVEMENT PROGRAM.—

15 “(I) IN GENERAL.—Not later
16 than December 31, 2011, the Sec-
17 retary shall establish and implement a
18 quality assurance and performance
19 improvement program (in this clause
20 referred to as the ‘QAPI program’)
21 for skilled nursing facilities, including
22 multi-unit chains of such facilities.
23 Under the QAPI program, the Sec-
24 retary shall establish standards relat-
25 ing to such facilities and provide tech-

1 nical assistance to such facilities on
2 the development of best practices in
3 order to meet such standards. Not
4 later than 1 year after the date on
5 which the regulations are promulgated
6 under subclause (II), a skilled nursing
7 facility must submit to the Secretary
8 a plan for the facility to meet such
9 standards and implement such best
10 practices, including how to coordinate
11 the implementation of such plan with
12 quality assessment and assurance ac-
13 tivities conducted under clause (i).

14 “(II) REGULATIONS.—The Sec-
15 retary shall promulgate regulations to
16 carry out this clause.”.

17 (2) NURSING FACILITIES.—Section
18 1919(b)(1)(B) of the Social Security Act (42 U.S.C.
19 1396r(b)(1)(B)) is amended—

20 (A) by striking “ASSURANCE” and insert-
21 ing “ASSURANCE AND QUALITY ASSURANCE
22 AND PERFORMANCE IMPROVEMENT PROGRAM”;

23 (B) by designating the matter beginning
24 with “A nursing facility” as a clause (i) with

1 the heading “IN GENERAL.—” and the appro-
2 priate indentation; and

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

5 “(ii) QUALITY ASSURANCE AND PER-
6 FORMANCE IMPROVEMENT PROGRAM.—

7 “(I) IN GENERAL.—Not later
8 than December 31, 2011, the Sec-
9 retary shall establish and implement a
10 quality assurance and performance
11 improvement program (in this clause
12 referred to as the ‘QAPI program’)
13 for nursing facilities, including multi-
14 unit chains of such facilities. Under
15 the QAPI program, the Secretary
16 shall establish standards relating to
17 such facilities and provide technical
18 assistance to such facilities on the de-
19 velopment of best practices in order to
20 meet such standards. Not later than 1
21 year after the date on which the regu-
22 lations are promulgated under sub-
23 clause (II), a nursing facility must
24 submit to the Secretary a plan for the
25 facility to meet such standards and

1 implement such best practices, includ-
2 ing how to coordinate the implementa-
3 tion of such plan with quality assess-
4 ment and assurance activities con-
5 ducted under clause (i).

6 “(II) REGULATIONS.—The Sec-
7 retary shall promulgate regulations to
8 carry out this clause.”.

9 (3) PROPOSAL TO REVISE QUALITY ASSURANCE
10 AND PERFORMANCE IMPROVEMENT PROGRAMS.—
11 The Secretary shall include in the proposed rule
12 published under section 1888(e) of the Social Secu-
13 rity Act (42 U.S.C. 1395yy(e)(5)(A)) for the subse-
14 quent fiscal year to the extent otherwise authorized
15 under section 1819(b)(1)(B) or 1819(d)(1)(C) of the
16 Social Security Act or other statutory or regulatory
17 authority, one or more proposals for skilled nursing
18 facilities to modify and strengthen quality assurance
19 and performance improvement programs in such fa-
20 cilities. At the time of publication of such proposed
21 rule and to the extent otherwise authorized under
22 section 1919(b)(1)(B) or 1919(d)(1)(C) of such Act
23 or other regulatory authority.

24 (4) FACILITY PLAN.—Not later than 1 year
25 after the date on which the regulations are promul-

1 gated under subclause (II) of clause (ii) of sections
2 1819(b)(1)(B) and 1919(b)(1)(B) of the Social Se-
3 curity Act, as added by paragraphs (1) and (2), a
4 skilled nursing facility and a nursing facility must
5 submit to the Secretary a plan for the facility to
6 meet the standards under such regulations and im-
7 plement such best practices, including how to coordi-
8 nate the implementation of such plan with quality
9 assessment and assurance activities conducted under
10 clause (i) of such sections.

11 (c) GAO STUDY ON NURSING FACILITY UNDER-
12 CAPITALIZATION.—

13 (1) IN GENERAL.—The Comptroller General of
14 the United States shall conduct a study that exam-
15 ines the following:

16 (A) The extent to which corporations that
17 own or operate large numbers of nursing facili-
18 ties, taking into account ownership type (includ-
19 ing private equity and control interests), are
20 undercapitalizing such facilities.

21 (B) The effects of such undercapitalization
22 on quality of care, including staffing and food
23 costs, at such facilities.

24 (C) Options to address such undercapital-
25 ization, such as requirements relating to surety

1 bonds, liability insurance, or minimum capital-
2 ization.

3 (2) REPORT.—Not later than 18 months after
4 the date of the enactment of this Act, the Comp-
5 troller General shall submit to Congress a report on
6 the study conducted under paragraph (1).

7 (3) NURSING FACILITY.—In this subsection, the
8 term “nursing facility” includes a skilled nursing fa-
9 cility.

10 **SEC. 1413. NURSING HOME COMPARE MEDICARE WEBSITE.**

11 (a) SKILLED NURSING FACILITIES.—

12 (1) IN GENERAL.—Section 1819 of the Social
13 Security Act (42 U.S.C. 1395i–3) is amended—

14 (A) by redesignating subsection (i) as sub-
15 section (j); and

16 (B) by inserting after subsection (h) the
17 following new subsection:

18 “(i) NURSING HOME COMPARE WEBSITE.—

19 “(1) INCLUSION OF ADDITIONAL INFORMA-
20 TION.—

21 “(A) IN GENERAL.—The Secretary shall
22 ensure that the Department of Health and
23 Human Services includes, as part of the infor-
24 mation provided for comparison of nursing
25 homes on the official Internet website of the

1 Federal Government for Medicare beneficiaries
2 (commonly referred to as the ‘Nursing Home
3 Compare’ Medicare website) (or a successor
4 website), the following information in a manner
5 that is prominent, easily accessible, readily un-
6 derstandable to consumers of long-term care
7 services, and searchable:

8 “(i) Information that is reported to
9 the Secretary under section 1124(c)(4).

10 “(ii) Information on the ‘Special
11 Focus Facility program’ (or a successor
12 program) established by the Centers for
13 Medicare and Medicaid Services, according
14 to procedures established by the Secretary.
15 Such procedures shall provide for the in-
16 clusion of information with respect to, and
17 the names and locations of, those facilities
18 that, since the previous quarter—

19 “(I) were newly enrolled in the
20 program;

21 “(II) are enrolled in the program
22 and have failed to significantly im-
23 prove;

24 “(III) are enrolled in the pro-
25 gram and have significantly improved;

1 “(IV) have graduated from the
2 program; and

3 “(V) have closed voluntarily or
4 no longer participate under this title.

5 “(iii) Staffing data for each facility
6 (including resident census data and data
7 on the hours of care provided per resident
8 per day) based on data submitted under
9 subsection (b)(8)(C), including information
10 on staffing turnover and tenure, in a for-
11 mat that is clearly understandable to con-
12 sumers of long-term care services and al-
13 lows such consumers to compare dif-
14 ferences in staffing between facilities and
15 State and national averages for the facili-
16 ties. Such format shall include—

17 “(I) concise explanations of how
18 to interpret the data (such as a plain
19 English explanation of data reflecting
20 ‘nursing home staff hours per resident
21 day’);

22 “(II) differences in types of staff
23 (such as training associated with dif-
24 ferent categories of staff);

1 “(III) the relationship between
2 nurse staffing levels and quality of
3 care; and

4 “(IV) an explanation that appro-
5 priate staffing levels vary based on
6 patient case mix.

7 “(iv) Links to State Internet websites
8 with information regarding State survey
9 and certification programs, links to Form
10 2567 State inspection reports (or a suc-
11 cessor form) on such websites, information
12 to guide consumers in how to interpret and
13 understand such reports, and the facility
14 plan of correction or other response to
15 such report.

16 “(v) The standardized complaint form
17 developed under subsection (f)(8), includ-
18 ing explanatory material on what com-
19 plaint forms are, how they are used, and
20 how to file a complaint with the State sur-
21 vey and certification program and the
22 State long-term care ombudsman program.

23 “(vi) Summary information on the
24 number, type, severity, and outcome of
25 substantiated complaints.

1 “(vii) The number of adjudicated in-
2 stances of criminal violations by employees
3 of a a nursing facility—

4 “(I) that were committed inside
5 the facility;

6 “(II) with respect to such in-
7 stances of violations or crimes com-
8 mitted inside of the facility that were
9 the violations or crimes of abuse, ne-
10 glect, and exploitation, criminal sexual
11 abuse, or other violations or crimes
12 that resulted in serious bodily injury;
13 and

14 “(III) the number of civil mone-
15 tary penalties levied against the facil-
16 ity, employees, contractors, and other
17 agents.

18 “(B) DEADLINE FOR PROVISION OF INFOR-
19 MATION.—

20 “(i) IN GENERAL.—Except as pro-
21 vided in clause (ii), the Secretary shall en-
22 sure that the information described in sub-
23 paragraph (A) is included on such website
24 (or a successor website) not later than 1

1 year after the date of the enactment of this
2 subsection.

3 “(ii) EXCEPTION.—The Secretary
4 shall ensure that the information described
5 in subparagraph (A)(i) and (A)(iii) is in-
6 cluded on such website (or a successor
7 website) not later than the date on which
8 the requirements under section 1124(c)(4)
9 and subsection (b)(8)(C)(ii) are imple-
10 mented.

11 “(2) REVIEW AND MODIFICATION OF
12 WEBSITE.—

13 “(A) IN GENERAL.—The Secretary shall
14 establish a process—

15 “(i) to review the accuracy, clarity of
16 presentation, timeliness, and comprehen-
17 siveness of information reported on such
18 website as of the day before the date of the
19 enactment of this subsection; and

20 “(ii) not later than 1 year after the
21 date of the enactment of this subsection, to
22 modify or revamp such website in accord-
23 ance with the review conducted under
24 clause (i).

1 “(B) CONSULTATION.—In conducting the
2 review under subparagraph (A)(i), the Sec-
3 retary shall consult with—

4 “(i) State long-term care ombudsman
5 programs;

6 “(ii) consumer advocacy groups;

7 “(iii) provider stakeholder groups; and

8 “(iv) any other representatives of pro-
9 grams or groups the Secretary determines
10 appropriate.”.

11 (2) TIMELINESS OF SUBMISSION OF SURVEY
12 AND CERTIFICATION INFORMATION.—

13 (A) IN GENERAL.—Section 1819(g)(5) of
14 the Social Security Act (42 U.S.C. 1395i-
15 3(g)(5)) is amended by adding at the end the
16 following new subparagraph:

17 “(E) SUBMISSION OF SURVEY AND CER-
18 TIFICATION INFORMATION TO THE SEC-
19 RETARY.—In order to improve the timeliness of
20 information made available to the public under
21 subparagraph (A) and provided on the Nursing
22 Home Compare Medicare website under sub-
23 section (i), each State shall submit information
24 respecting any survey or certification made re-
25 specting a skilled nursing facility (including any

1 enforcement actions taken by the State) to the
2 Secretary not later than the date on which the
3 State sends such information to the facility.
4 The Secretary shall use the information sub-
5 mitted under the preceding sentence to update
6 the information provided on the Nursing Home
7 Compare Medicare website as expeditiously as
8 practicable but not less frequently than quar-
9 terly.”.

10 (B) EFFECTIVE DATE.—The amendment
11 made by this paragraph shall take effect 1 year
12 after the date of the enactment of this Act.

13 (3) SPECIAL FOCUS FACILITY PROGRAM.—Sec-
14 tion 1819(f) of such Act is amended by adding at
15 the end the following new paragraph:

16 “(8) SPECIAL FOCUS FACILITY PROGRAM.—

17 “(A) IN GENERAL.—The Secretary shall
18 conduct a special focus facility program for en-
19 forcement of requirements for skilled nursing
20 facilities that the Secretary has identified as
21 having substantially failed to meet applicable
22 requirement of this Act.

23 “(B) PERIODIC SURVEYS.—Under such
24 program the Secretary shall conduct surveys of

1 each facility in the program not less than once
2 every 6 months.”.

3 (b) NURSING FACILITIES.—

4 (1) IN GENERAL.—Section 1919 of the Social
5 Security Act (42 U.S.C. 1396r) is amended—

6 (A) by redesignating subsection (i) as sub-
7 section (j); and

8 (B) by inserting after subsection (h) the
9 following new subsection:

10 “(i) NURSING HOME COMPARE WEBSITE.—

11 “(1) INCLUSION OF ADDITIONAL INFORMA-
12 TION.—

13 “(A) IN GENERAL.—The Secretary shall
14 ensure that the Department of Health and
15 Human Services includes, as part of the infor-
16 mation provided for comparison of nursing
17 homes on the official Internet website of the
18 Federal Government for Medicare beneficiaries
19 (commonly referred to as the ‘Nursing Home
20 Compare’ Medicare website) (or a successor
21 website), the following information in a manner
22 that is prominent, easily accessible, readily un-
23 derstandable to consumers of long-term care
24 services, and searchable:

1 “(i) Staffing data for each facility (in-
2 cluding resident census data and data on
3 the hours of care provided per resident per
4 day) based on data submitted under sub-
5 section (b)(8)(C)(ii), 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 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 “(ii) 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 “(iii) The standardized complaint
14 form developed under subsection (f)(10),
15 including explanatory material on what
16 complaint forms are, how they are used,
17 and how to file a complaint with the State
18 survey and certification program and the
19 State long-term care ombudsman program.

20 “(iv) Summary information on the
21 number, type, severity, and outcome of
22 substantiated complaints.

23 “(v) The number of adjudicated in-
24 stances of criminal violations by employees
25 of a nursing facility—

1 “(I) that were committed inside
2 of the facility; and

3 “(II) with respect to such in-
4 stances of violations or crimes com-
5 mitted outside of the facility, that
6 were the violations or crimes that re-
7 sulted in the serious bodily injury of
8 an elder.

9 “(B) DEADLINE FOR PROVISION OF INFOR-
10 MATION.—

11 “(i) IN GENERAL.—Except as pro-
12 vided in clause (ii), the Secretary shall en-
13 sure that the information described in sub-
14 paragraph (A) is included on such website
15 (or a successor website) not later than 1
16 year after the date of the enactment of this
17 subsection.

18 “(ii) EXCEPTION.—The Secretary
19 shall ensure that the information described
20 in subparagraph (A)(i) and (A)(iii) is in-
21 cluded on such website (or a successor
22 website) not later than the date on which
23 the requirements under section 1124(c)(4)
24 and subsection (b)(8)(C)(ii) are imple-
25 mented.

1 “(2) REVIEW AND MODIFICATION OF
2 WEBSITE.—

3 “(A) IN GENERAL.—The Secretary shall
4 establish a process—

5 “(i) to review the accuracy, clarity of
6 presentation, timeliness, and comprehen-
7 siveness of information reported on such
8 website as of the day before the date of the
9 enactment of this subsection; and

10 “(ii) not later than 1 year after the
11 date of the enactment of this subsection, to
12 modify or revamp such website in accord-
13 ance with the review conducted under
14 clause (i).

15 “(B) CONSULTATION.—In conducting the
16 review under subparagraph (A)(i), the Sec-
17 retary shall consult with—

18 “(i) State long-term care ombudsman
19 programs;

20 “(ii) consumer advocacy groups;

21 “(iii) provider stakeholder groups;

22 “(iv) skilled nursing facility employees
23 and their representatives; and

1 “(v) any other representatives of pro-
2 grams or groups the Secretary determines
3 appropriate.”.

4 (2) TIMELINESS OF SUBMISSION OF SURVEY
5 AND CERTIFICATION INFORMATION.—

6 (A) IN GENERAL.—Section 1919(g)(5) of
7 the Social Security Act (42 U.S.C. 1396r(g)(5))
8 is amended by adding at the end the following
9 new subparagraph:

10 “(E) SUBMISSION OF SURVEY AND CER-
11 TIFICATION INFORMATION TO THE SEC-
12 RETARY.—In order to improve the timeliness of
13 information made available to the public under
14 subparagraph (A) and provided on the Nursing
15 Home Compare Medicare website under sub-
16 section (i), each State shall submit information
17 respecting any survey or certification made re-
18 specting a nursing facility (including any en-
19 forcement actions taken by the State) to the
20 Secretary not later than the date on which the
21 State sends such information to the facility.
22 The Secretary shall use the information sub-
23 mitted under the preceding sentence to update
24 the information provided on the Nursing Home
25 Compare Medicare website as expeditiously as

1 practicable but not less frequently than quar-
2 terly.”.

3 (B) EFFECTIVE DATE.—The amendment
4 made by this paragraph shall take effect 1 year
5 after the date of the enactment of this Act.

6 (3) SPECIAL FOCUS FACILITY PROGRAM.—Sec-
7 tion 1919(f) of such Act is amended by adding at
8 the end of the following new paragraph:

9 “(10) SPECIAL FOCUS FACILITY PROGRAM.—

10 “(A) IN GENERAL.—The Secretary shall
11 conduct a special focus facility program for en-
12 forcement of requirements for nursing facilities
13 that the Secretary has identified as having sub-
14 stantially failed to meet applicable requirements
15 of this Act.

16 “(B) PERIODIC SURVEYS.—Under such
17 program the Secretary shall conduct surveys of
18 each facility in the program not less often than
19 once every 6 months.”.

20 (c) AVAILABILITY OF REPORTS ON SURVEYS, CER-
21 TIFICATIONS, AND COMPLAINT INVESTIGATIONS.—

22 (1) SKILLED NURSING FACILITIES.—Section
23 1819(d)(1) of the Social Security Act (42 U.S.C.
24 1395i-3(d)(1)), as amended by sections 1411 and

1 1412, is amended by adding at the end the following
2 new subparagraph:

3 “(D) AVAILABILITY OF SURVEY, CERTIFI-
4 CATION, AND COMPLAINT INVESTIGATION RE-
5 PORTS.—A skilled nursing facility must—

6 “(i) have reports with respect to any
7 surveys, certifications, and complaint in-
8 vestigations made respecting the facility
9 during the 3 preceding years available for
10 any individual to review upon request; and

11 “(ii) post notice of the availability of
12 such reports in areas of the facility that
13 are prominent and accessible to the public.

14 The facility shall not make available under
15 clause (i) identifying information about com-
16 plainants or residents.”.

17 (2) NURSING FACILITIES.—Section 1919(d)(1)
18 of the Social Security Act (42 U.S.C. 1396r(d)(1)),
19 as amended by sections 1411 and 1412, is amended
20 by adding at the end the following new subpara-
21 graph:

22 “(D) AVAILABILITY OF SURVEY, CERTIFI-
23 CATION, AND COMPLAINT INVESTIGATION RE-
24 PORTS.—A nursing facility must—

1 “(i) have reports with respect to any
2 surveys, certifications, and complaint in-
3 vestigations made respecting the facility
4 during the 3 preceding years available for
5 any individual to review upon request; and

6 “(ii) post notice of the availability of
7 such reports in areas of the facility that
8 are prominent and accessible to the public.

9 The facility shall not make available under
10 clause (i) identifying information about com-
11 plainants or residents.”.

12 (3) EFFECTIVE DATE.—The amendments made
13 by this subsection shall take effect 1 year after the
14 date of the enactment of this Act.

15 (d) GUIDANCE TO STATES ON FORM 2567 STATE IN-
16 SPECTION REPORTS AND COMPLAINT INVESTIGATION RE-
17 PORTS.—

18 (1) GUIDANCE.—The Secretary of Health and
19 Human Services (in this subtitle referred to as the
20 “Secretary”) shall provide guidance to States on
21 how States can establish electronic links to Form
22 2567 State inspection reports (or a successor form),
23 complaint investigation reports, and a facility’s plan
24 of correction or other response to such Form 2567
25 State inspection reports (or a successor form) on the

1 Internet website of the State that provides informa-
2 tion on skilled nursing facilities and nursing facili-
3 ties and the Secretary shall, if possible, include such
4 information on Nursing Home Compare.

5 (2) REQUIREMENT.—Section 1902(a)(9) of the
6 Social Security Act (42 U.S.C. 1396a(a)(9)) is
7 amended—

8 (A) by striking “and” at the end of sub-
9 paragraph (B);

10 (B) by striking the semicolon at the end of
11 subparagraph (C) and inserting “, and”; and

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

14 “(D) that the State maintain a consumer-
15 oriented website providing useful information to
16 consumers regarding all skilled nursing facili-
17 ties and all nursing facilities in the State, in-
18 cluding for each facility, Form 2567 State in-
19 spection reports (or a successor form), com-
20 plaint investigation reports, the facility’s plan of
21 correction, and such other information that the
22 State or the Secretary considers useful in as-
23 sisting the public to assess the quality of long
24 term care options and the quality of care pro-
25 vided by individual facilities;”.

1 (3) DEFINITIONS.—In this subsection:

2 (A) NURSING FACILITY.—The term “nurs-
3 ing facility” has the meaning given such term
4 in section 1919(a) of the Social Security Act
5 (42 U.S.C. 1396r(a)).

6 (B) SECRETARY.—The term “Secretary”
7 means the Secretary of Health and Human
8 Services.

9 (C) SKILLED NURSING FACILITY.—The
10 term “skilled nursing facility” has the meaning
11 given such term in section 1819(a) of the Social
12 Security Act (42 U.S.C. 1395i–3(a)).

13 **SEC. 1414. REPORTING OF EXPENDITURES.**

14 Section 1888 of the Social Security Act (42 U.S.C.
15 1395yy) is amended by adding at the end the following
16 new subsection:

17 “(f) REPORTING OF DIRECT CARE EXPENDI-
18 TURES.—

19 “(1) IN GENERAL.—For cost reports submitted
20 under this title for cost reporting periods beginning
21 on or after the date that is 3 years after the date
22 of the enactment of this subsection, skilled nursing
23 facilities shall separately report expenditures for
24 wages and benefits for direct care staff (breaking
25 out (at a minimum) registered nurses, licensed pro-

1 professional nurses, certified nurse assistants, and other
2 medical and therapy staff).

3 “(2) MODIFICATION OF FORM.—The Secretary,
4 in consultation with private sector accountants expe-
5 rienced with skilled nursing facility cost reports,
6 shall redesign such reports to meet the requirement
7 of paragraph (1) not later than 1 year after the date
8 of the enactment of this subsection.

9 “(3) CATEGORIZATION BY FUNCTIONAL AC-
10 COUNTS.—Not later than 30 months after the date
11 of the enactment of this subsection, the Secretary,
12 working in consultation with the Medicare Payment
13 Advisory Commission, the Inspector General of the
14 Department of Health and Human Services, and
15 other expert parties the Secretary determines appro-
16 priate, shall take the expenditures listed on cost re-
17 ports, as modified under paragraph (1), submitted
18 by skilled nursing facilities and categorize such ex-
19 penditures, regardless of any source of payment for
20 such expenditures, for each skilled nursing facility
21 into the following functional accounts on an annual
22 basis:

23 “(A) Spending on direct care services (in-
24 cluding nursing, therapy, and medical services).

1 “(B) Spending on indirect care (including
2 housekeeping and dietary services).

3 “(C) Capital assets (including building and
4 land costs).

5 “(D) Administrative services costs.

6 “(4) AVAILABILITY OF INFORMATION SUB-
7 MITTED.—The Secretary shall establish procedures
8 to make information on expenditures submitted
9 under this subsection readily available to interested
10 parties upon request, subject to such requirements
11 as the Secretary may specify under the procedures
12 established under this paragraph.”.

13 **SEC. 1415. STANDARDIZED COMPLAINT FORM.**

14 (a) SKILLED NURSING FACILITIES.—

15 (1) DEVELOPMENT BY THE SECRETARY.—Sec-
16 tion 1819(f) of the Social Security Act (42 U.S.C.
17 1395i–3(f)), as amended by section 1413(a)(3), is
18 amended by adding at the end the following new
19 paragraph:

20 “(9) STANDARDIZED COMPLAINT FORM.—The
21 Secretary shall develop a standardized complaint
22 form for use by a resident (or a person acting on the
23 resident’s behalf) in filing a complaint with a State
24 survey and certification agency and a State long-

1 term care ombudsman program with respect to a
2 skilled nursing facility.”.

3 (2) STATE REQUIREMENTS.—Section 1819(e)
4 of the Social Security Act (42 U.S.C. 1395i–3(e)) is
5 amended by adding at the end the following new
6 paragraph:

7 “(6) COMPLAINT PROCESSES AND WHISTLE-
8 BLOWER PROTECTION.—

9 “(A) COMPLAINT FORMS.—The State must
10 make the standardized complaint form devel-
11 oped under subsection (f)(9) available upon re-
12 quest to—

13 “(i) a resident of a skilled nursing fa-
14 cility;

15 “(ii) any person acting on the resi-
16 dent’s behalf; and

17 “(iii) any person who works at a
18 skilled nursing facility or is a representa-
19 tive of such a worker.

20 “(B) COMPLAINT RESOLUTION PROCESS.—
21 The State must establish a complaint resolution
22 process in order to ensure that a resident, the
23 legal representative of a resident of a skilled
24 nursing facility, or other responsible party is
25 not retaliated against if the resident, legal rep-

1 representative, or responsible party has com-
2 plained, in good faith, about the quality of care
3 or other issues relating to the skilled nursing
4 facility, that the legal representative of a resi-
5 dent of a skilled nursing facility or other re-
6 sponsible party is not denied access to such
7 resident or otherwise retaliated against if such
8 representative party has complained, in good
9 faith, about the quality of care provided by the
10 facility or other issues relating to the facility,
11 and that a person who works at a skilled nurs-
12 ing facility is not retaliated against if the work-
13 er has complained, in good faith, about quality
14 of care or services or an issue relating to the
15 quality of care or services provided at the facil-
16 ity, whether the resident, legal representative,
17 other responsible party, or worker used the
18 form developed under subsection (f)(9) or some
19 other method for submitting the complaint.
20 Such complaint resolution process shall in-
21 clude—

22 “(i) procedures to assure accurate
23 tracking of complaints received, including
24 notification to the complainant that a com-
25 plaint has been received;

1 “(ii) procedures to determine the like-
2 ly severity of a complaint and for the in-
3 vestigation of the complaint;

4 “(iii) deadlines for responding to a
5 complaint and for notifying the complain-
6 ant of the outcome of the investigation;
7 and

8 “(iv) procedures to ensure that the
9 identity of the complainant will be kept
10 confidential.

11 “(C) WHISTLEBLOWER PROTECTION.—

12 “(i) PROHIBITION AGAINST RETALIA-
13 TION.—No person who works at a skilled
14 nursing facility may be penalized, discrimi-
15 nated, or retaliated against with respect to
16 any aspect of employment, including dis-
17 charge, promotion, compensation, terms,
18 conditions, or privileges of employment, or
19 have a contract for services terminated, be-
20 cause the person (or anyone acting at the
21 person’s request) complained, in good
22 faith, about the quality of care or services
23 provided by a nursing facility or about
24 other issues relating to quality of care or
25 services, whether using the form developed

1 under subsection (f)(9) or some other
2 method for submitting the complaint.

3 “(ii) RETALIATORY REPORTING.—A
4 skilled nursing facility may not file a com-
5 plaint or a report against a person who
6 works (or has worked at the facility with
7 the appropriate State professional discipli-
8 nary agency because the person (or anyone
9 acting at the person’s request) complained
10 in good faith, as described in clause (i).

11 “(iii) COMMENCEMENT OF ACTION.—
12 Any person who believes the person has
13 been penalized, discriminated , or retali-
14 ated against or had a contract for services
15 terminated in violation of clause (i) or
16 against whom a complaint has been filed in
17 violation of clause (ii) may bring an action
18 at law or equity in the appropriate district
19 court of the United States, which shall
20 have jurisdiction over such action without
21 regard to the amount in controversy or the
22 citizenship of the parties, and which shall
23 have jurisdiction to grant complete relief,
24 including, but not limited to, injunctive re-
25 lief (such as reinstatement, compensatory

1 damages (which may include reimburse-
2 ment of lost wages, compensation, and
3 benefits), costs of litigation (including rea-
4 sonable attorney and expert witness fees),
5 exemplary damages where appropriate, and
6 such other relief as the court deems just
7 and proper.

8 “(iv) RIGHTS NOT WAIVABLE.—The
9 rights protected by this paragraph may not
10 be diminished by contract or other agree-
11 ment, and nothing in this paragraph shall
12 be construed to diminish any greater or
13 additional protection provided by Federal
14 or State law or by contract or other agree-
15 ment.

16 “(v) REQUIREMENT TO POST NOTICE
17 OF EMPLOYEE RIGHTS.—Each skilled
18 nursing facility shall post conspicuously in
19 an appropriate location a sign (in a form
20 specified by the Secretary) specifying the
21 rights of persons under this paragraph and
22 including a statement that an employee
23 may file a complaint with the Secretary
24 against a skilled nursing facility that vio-
25 lates the provisions of this paragraph and

1 information with respect to the manner of
2 filing such a complaint.

3 “(D) RULE OF CONSTRUCTION.—Nothing
4 in this paragraph shall be construed as pre-
5 venting a resident of a skilled nursing facility
6 (or a person acting on the resident’s behalf)
7 from submitting a complaint in a manner or
8 format other than by using the standardized
9 complaint form developed under subsection
10 (f)(9) (including submitting a complaint orally).

11 “(E) GOOD FAITH DEFINED.—For pur-
12 poses of this paragraph, an individual shall be
13 deemed to be acting in good faith with respect
14 to the filing of a complaint if the individual rea-
15 sonably believes—

16 “(i) the information reported or dis-
17 closed in the complaint is true; and

18 “(ii) the violation of this title has oc-
19 curred or may occur in relation to such in-
20 formation.”.

21 (b) NURSING FACILITIES.—

22 (1) DEVELOPMENT BY THE SECRETARY.—Sec-
23 tion 1919(f) of the Social Security Act (42 U.S.C.
24 1395i–3(f)), as amended by section 1413(b), is

1 amended by adding at the end the following new
2 paragraph:

3 “(11) STANDARDIZED COMPLAINT FORM.—The
4 Secretary shall develop a standardized complaint
5 form for use by a resident (or a person acting on the
6 resident’s behalf) in filing a complaint with a State
7 survey and certification agency and a State long-
8 term care ombudsman program with respect to a
9 nursing facility.”.

10 (2) STATE REQUIREMENTS.—Section 1919(e)
11 of the Social Security Act (42 U.S.C. 1395i–3(e)) is
12 amended by adding at the end the following new
13 paragraph:

14 “(8) COMPLAINT PROCESSES AND WHISTLE-
15 BLOWER PROTECTION.—

16 “(A) COMPLAINT FORMS.—The State must
17 make the standardized complaint form devel-
18 oped under subsection (f)(11) available upon re-
19 quest to—

20 “(i) a resident of a nursing facility;

21 “(ii) any person acting on the resi-
22 dent’s behalf; and

23 “(iii) any person who works at a nurs-
24 ing facility or a representative of such a
25 worker.

1 “(B) COMPLAINT RESOLUTION PROCESS.—
2 The State must establish a complaint resolution
3 process in order to ensure that a resident, the
4 legal representative of a resident of a nursing
5 facility, or other responsible party is not retali-
6 ated against if the resident, legal representa-
7 tive, or responsible party has complained, in
8 good faith, about the quality of care or other
9 issues relating to the nursing facility, that the
10 legal representative of a resident of a nursing
11 facility or other responsible party is not denied
12 access to such resident or otherwise retaliated
13 against if such representative party has com-
14 plained, in good faith, about the quality of care
15 provided by the facility or other issues relating
16 to the facility, and that a person who works at
17 a nursing facility is not retaliated against if the
18 worker has complained, in good faith, about
19 quality of care or services or an issue relating
20 to the quality of care or services provided at the
21 facility, whether the resident, legal representa-
22 tive, other responsible party, or worker used the
23 form developed under subsection (f)(11) or
24 some other method for submitting the com-

1 plaint. Such complaint resolution process shall
2 include—

3 “(i) procedures to assure accurate
4 tracking of complaints received, including
5 notification to the complainant that a com-
6 plaint has been received;

7 “(ii) procedures to determine the like-
8 ly severity of a complaint and for the in-
9 vestigation of the complaint;

10 “(iii) deadlines for responding to a
11 complaint and for notifying the complain-
12 ant of the outcome of the investigation;
13 and

14 “(iv) procedures to ensure that the
15 identity of the complainant will be kept
16 confidential.

17 “(C) WHISTLEBLOWER PROTECTION.—

18 “(i) PROHIBITION AGAINST RETALIA-
19 TION.—No person who works at a nursing
20 facility may be penalized, discriminated, or
21 retaliated against with respect to any as-
22 pect of employment, including discharge,
23 promotion, compensation, terms, condi-
24 tions, or privileges of employment, or have
25 a contract for services terminated, because

1 the person (or anyone acting at the per-
2 son's request) complained, in good faith,
3 about the quality of care or services pro-
4 vided by a nursing facility or about other
5 issues relating to quality of care or serv-
6 ices, whether using the form developed
7 under subsection (f)(11) or some other
8 method for submitting the complaint.

9 “(ii) RETALIATORY REPORTING.—A
10 nursing facility may not file a complaint or
11 a report against a person who works (or
12 has worked at the facility with the appro-
13 priate State professional disciplinary agen-
14 cy because the person (or anyone acting at
15 the person's request) complained in good
16 faith, as described in clause (i).

17 “(iii) COMMENCEMENT OF ACTION.—
18 Any person who believes the person has
19 been penalized, discriminated, or retaliated
20 against or had a contract for services ter-
21 minated in violation of clause (i) or against
22 whom a complaint has been filed in viola-
23 tion of clause (ii) may bring an action at
24 law or equity in the appropriate district
25 court of the United States, which shall

1 have jurisdiction over such action without
2 regard to the amount in controversy or the
3 citizenship of the parties, and which shall
4 have jurisdiction to grant complete relief,
5 including, but not limited to, injunctive re-
6 lief (such as reinstatement, compensatory
7 damages (which may include reimburse-
8 ment of lost wages, compensation, and
9 benefits), costs of litigation (including rea-
10 sonable attorney and expert witness fees),
11 exemplary damages where appropriate, and
12 such other relief as the court deems just
13 and proper.

14 “(iv) RIGHTS NOT WAIVABLE.—The
15 rights protected by this paragraph may not
16 be diminished by contract or other agree-
17 ment, and nothing in this paragraph shall
18 be construed to diminish any greater or
19 additional protection provided by Federal
20 or State law or by contract or other agree-
21 ment.

22 “(v) REQUIREMENT TO POST NOTICE
23 OF EMPLOYEE RIGHTS.—Each nursing fa-
24 cility shall post conspicuously in an appro-
25 priate location a sign (in a form specified

1 by the Secretary) specifying the rights of
2 persons under this paragraph and includ-
3 ing a statement that an employee may file
4 a complaint with the Secretary against a
5 nursing facility that violates the provisions
6 of this paragraph and information with re-
7 spect to the manner of filing such a com-
8 plaint.

9 “(D) RULE OF CONSTRUCTION.—Nothing
10 in this paragraph shall be construed as pre-
11 venting a resident of a nursing facility (or a
12 person acting on the resident’s behalf) from
13 submitting a complaint in a manner or format
14 other than by using the standardized complaint
15 form developed under subsection (f)(11) (in-
16 cluding submitting a complaint orally).

17 “(E) GOOD FAITH DEFINED.—For pur-
18 poses of this paragraph, an individual shall be
19 deemed to be acting in good faith with respect
20 to the filing of a complaint if the individual rea-
21 sonably believes—

22 “(i) the information reported or dis-
23 closed in the complaint is true; and

1 “(ii) the violation of this title has oc-
2 curred or may occur in relation to such in-
3 formation.”.

4 (c) **EFFECTIVE DATE.**—The amendments made by
5 this section shall take effect 1 year after the date of the
6 enactment of this Act.

7 **SEC. 1416. ENSURING STAFFING ACCOUNTABILITY.**

8 (a) **SKILLED NURSING FACILITIES.**—Section
9 1819(b)(8) of the Social Security Act (42 U.S.C. 1395i-
10 3(b)(8)) is amended by adding at the end the following
11 new subparagraph:

12 “(C) **SUBMISSION OF STAFFING INFORMA-**
13 **TION BASED ON PAYROLL DATA IN A UNIFORM**
14 **FORMAT.**—Beginning not later than 2 years
15 after the date of the enactment of this subpara-
16 graph, and after consulting with State long-
17 term care ombudsman programs, consumer ad-
18 vocacy groups, provider stakeholder groups, em-
19 ployees and their representatives, and other
20 parties the Secretary deems appropriate, the
21 Secretary shall require a skilled nursing facility
22 to electronically submit to the Secretary direct
23 care staffing information (including information
24 with respect to agency and contract staff) based
25 on payroll and other verifiable and auditable

1 data in a uniform format (according to speci-
2 fications established by the Secretary in con-
3 sultation with such programs, groups, and par-
4 ties). Such specifications shall require that the
5 information submitted under the preceding sen-
6 tence—

7 “(i) specify the category of work a
8 certified employee performs (such as
9 whether the employee is a registered nurse,
10 licensed practical nurse, licensed vocational
11 nurse, certified nursing assistant, thera-
12 pist, or other medical personnel);

13 “(ii) include resident census data and
14 information on resident case mix;

15 “(iii) include a regular reporting
16 schedule; and

17 “(iv) include information on employee
18 turnover and tenure and on the hours of
19 care provided by each category of certified
20 employees referenced in clause (i) per resi-
21 dent per day.

22 Nothing in this subparagraph shall be con-
23 strued as preventing the Secretary from requir-
24 ing submission of such information with respect
25 to specific categories, such as nursing staff, be-

1 fore other categories of certified employees. In-
2 formation under this subparagraph with respect
3 to agency and contract staff shall be kept sepa-
4 rate from information on employee staffing.”.

5 (b) NURSING FACILITIES.—Section 1919(b)(8) of the
6 Social Security Act (42 U.S.C. 1396r(b)(8)) is amended
7 by adding at the end the following new subparagraph:

8 “(C) SUBMISSION OF STAFFING INFORMA-
9 TION BASED ON PAYROLL DATA IN A UNIFORM
10 FORMAT.—Beginning not later than 2 years
11 after the date of the enactment of this subpara-
12 graph, and after consulting with State long-
13 term care ombudsman programs, consumer ad-
14 vocacy groups, provider stakeholder groups, em-
15 ployees and their representatives, and other
16 parties the Secretary deems appropriate, the
17 Secretary shall require a nursing facility to elec-
18 tronically submit to the Secretary direct care
19 staffing information (including information with
20 respect to agency and contract staff) based on
21 payroll and other verifiable and auditable data
22 in a uniform format (according to specifications
23 established by the Secretary in consultation
24 with such programs, groups, and parties). Such

1 specifications shall require that the information
2 submitted under the preceding sentence—

3 “(i) specify the category of work a
4 certified employee performs (such as
5 whether the employee is a registered nurse,
6 licensed practical nurse, licensed vocational
7 nurse, certified nursing assistant, thera-
8 pist, or other medical personnel);

9 “(ii) include resident census data and
10 information on resident case mix;

11 “(iii) include a regular reporting
12 schedule; and

13 “(iv) include information on employee
14 turnover and tenure and on the hours of
15 care provided by each category of certified
16 employees referenced in clause (i) per resi-
17 dent per day.

18 Nothing in this subparagraph shall be con-
19 strued as preventing the Secretary from requir-
20 ing submission of such information with respect
21 to specific categories, such as nursing staff, be-
22 fore other categories of certified employees. In-
23 formation under this subparagraph with respect
24 to agency and contract staff shall be kept sepa-
25 rate from information on employee staffing.”.

1 **PART 2—TARGETING ENFORCEMENT**

2 **SEC. 1421. CIVIL MONEY PENALTIES.**

3 (a) SKILLED NURSING FACILITIES.—

4 (1) IN GENERAL.—Section 1819(h)(2)(B)(ii) of
5 the Social Security Act (42 U.S.C. 1395i–
6 3(h)(2)(B)(ii)) is amended to read as follows:

7 “(ii) AUTHORITY WITH RESPECT TO
8 CIVIL MONEY PENALTIES.—

9 “(I) AMOUNT.—The Secretary
10 may impose a civil money penalty in
11 the applicable per instance or per day
12 amount (as defined in subclause (II)
13 and (III)) for each day or instance,
14 respectively, of noncompliance (as de-
15 termined appropriate by the Sec-
16 retary).

17 “(II) APPLICABLE PER INSTANCE
18 AMOUNT.—In this clause, the term
19 ‘applicable per instance amount’
20 means—

21 “(aa) in the case where the
22 deficiency is found to be a direct
23 proximate cause of death of a
24 resident of the facility, an
25 amount not to exceed \$100,000.

1 “(bb) in each case of a defi-
2 ciency where the facility is cited
3 for actual harm or immediate
4 jeopardy, an amount not less
5 than \$3,050 and not more than
6 \$25,000; and

7 “(cc) in each case of any
8 other deficiency, an amount not
9 less than \$250 and not to exceed
10 \$3050.

11 “(III) APPLICABLE PER DAY
12 AMOUNT.—In this clause, the term
13 ‘applicable per day amount’ means—

14 “(aa) 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 “(bb) in each case of any
21 other deficiency, an amount not
22 less than \$250 and not to exceed
23 \$3,050.

24 “(IV) REDUCTION OF CIVIL
25 MONEY PENALTIES IN CERTAIN CIR-

1 CUMSTANCES.—Subject to subclauses
2 (V) and (VI), in the case where a fa-
3 cility self-reports and promptly cor-
4 rects a deficiency for which a penalty
5 was imposed under this clause not
6 later than 10 calendar days after the
7 date of such imposition, the Secretary
8 may reduce the amount of the penalty
9 imposed by not more than 50 percent.

10 “(V) PROHIBITION ON REDUC-
11 TION FOR CERTAIN DEFICIENCIES.—

12 “(aa) REPEAT DEFICI-
13 ENCIENCIES.—The Secretary may
14 not reduce under subclause (IV)
15 the amount of a penalty if the
16 deficiency is a repeat deficiency.

17 “(bb) CERTAIN OTHER DE-
18 FICIENCIES.—The Secretary may
19 not reduce under subclause (IV)
20 the amount of a penalty if the
21 penalty is imposed for a defi-
22 ciency described in subclause
23 (II)(aa) or (III)(aa) and the ac-
24 tual harm or widespread harm
25 immediately jeopardizes the

1 health or safety of a resident or
2 residents of the facility, or if the
3 penalty is imposed for a defi-
4 ciency described in subclause
5 (II)(bb).

6 “(VI) LIMITATION ON AGGRE-
7 GATE REDUCTIONS.—The aggregate
8 reduction in a penalty under sub-
9 clause (IV) may not exceed 35 percent
10 on the basis of self-reporting, on the
11 basis of a waiver or an appeal (as pro-
12 vided for under regulations under sec-
13 tion 488.436 of title 42, Code of Fed-
14 eral Regulations), or on the basis of
15 both.

16 “(VII) COLLECTION OF CIVIL
17 MONEY PENALTIES.—In the case of a
18 civil money penalty imposed under
19 this clause, the Secretary—

20 “(aa) subject to item (cc),
21 shall, not later than 30 days
22 after the date of imposition of
23 the penalty, provide the oppor-
24 tunity for the facility to partici-
25 pate in an independent informal

1 dispute resolution process which
2 generates a written record prior
3 to the collection of such penalty,
4 but such opportunity shall not af-
5 fect the responsibility of the
6 State survey agency for making
7 final recommendations for such
8 penalties;

9 “(bb) in the case where the
10 penalty is imposed for each day
11 of noncompliance, shall not im-
12 pose a penalty for any day during
13 the period beginning on the ini-
14 tial day of the imposition of the
15 penalty and ending on the day on
16 which the informal dispute reso-
17 lution process under item (aa) is
18 completed;

19 “(cc) may provide for the
20 collection of such civil money
21 penalty and the placement of
22 such amounts collected in an es-
23 crow account under the direction
24 of the Secretary on the earlier of
25 the date on which the informal

1 dispute resolution process under
2 item (aa) is completed or the
3 date that is 90 days after the
4 date of the imposition of the pen-
5 alty;

6 “(dd) may provide that such
7 amounts collected are kept in
8 such account pending the resolu-
9 tion of any subsequent appeals;

10 “(ee) in the case where the
11 facility successfully appeals the
12 penalty, may provide for the re-
13 turn of such amounts collected
14 (plus interest) to the facility; and

15 “(ff) in the case where all
16 such appeals are unsuccessful,
17 may provide that some portion of
18 such amounts collected may be
19 used to support activities that
20 benefit residents, including as-
21 sistance to support and protect
22 residents of a facility that closes
23 (voluntarily or involuntarily) or is
24 decertified (including offsetting
25 costs of relocating residents to

1 home and community-based set-
2 tings or another facility), projects
3 that support resident and family
4 councils and other consumer in-
5 volvement in assuring quality
6 care in facilities, and facility im-
7 provement initiatives approved by
8 the Secretary (including joint
9 training of facility staff and sur-
10 veyors, technical assistance for
11 facilities under quality assurance
12 programs, the appointment of
13 temporary management, and
14 other activities approved by the
15 Secretary).

16 “(VIII) PROCEDURE.—The pro-
17 visions of section 1128A (other than
18 subsections (a) and (b) and except to
19 the extent that such provisions require
20 a hearing prior to the imposition of a
21 civil money penalty) shall apply to a
22 civil money penalty under this clause
23 in the same manner as such provi-
24 sions apply to a penalty or proceeding
25 under section 1128A(a).”.

1 (2) CONFORMING AMENDMENT.—The second
2 sentence of section 1819(h)(5) of the Social Security
3 Act (42 U.S.C. 1395i–3(h)(5)) is amended by insert-
4 ing “(ii),” after “(i),”.

5 (b) NURSING FACILITIES.—

6 (1) PENALTIES IMPOSED BY THE STATE.—

7 (A) IN GENERAL.—Section 1919(h)(2) of
8 the Social Security Act (42 U.S.C. 1396r(h)(2))
9 is amended—

10 (i) in subparagraph (A)(ii), by strik-
11 ing the first sentence and inserting the fol-
12 lowing: “A civil money penalty in accord-
13 ance with subparagraph (G).”; and

14 (ii) by adding at the end the following
15 new subparagraph:

16 “(G) CIVIL MONEY PENALTIES.—

17 “(i) IN GENERAL.—The State may
18 impose a civil money penalty under sub-
19 paragraph (A)(ii) in the applicable per in-
20 stance or per day amount (as defined in
21 subclause (II) and (III)) for each day or
22 instance, respectively, of noncompliance (as
23 determined appropriate by the Secretary).

1 “(ii) APPLICABLE PER INSTANCE
2 AMOUNT.—In this subparagraph, the term
3 ‘applicable per instance amount’ means—

4 “(I) in the case where the defi-
5 ciency is found to be a direct proxi-
6 mate cause of death of a resident of
7 the facility, an amount not to exceed
8 \$100,000.

9 “(II) in each case of a deficiency
10 where the facility is cited for actual
11 harm or immediate jeopardy, an
12 amount not less than \$3,050 and not
13 more than \$25,000; and

14 “(III) in each case of any other
15 deficiency, an amount not less than
16 \$250 and not to exceed \$3050.

17 “(iii) APPLICABLE PER DAY
18 AMOUNT.—In this subparagraph, the term
19 ‘applicable per day amount’ means—

20 “(I) in each case of a deficiency
21 where the facility is cited for actual
22 harm or immediate jeopardy, an
23 amount not less than \$3,050 and not
24 more than \$25,000 and

1 “(II) in each case of any other
2 deficiency, an amount not less than
3 \$250 and not to exceed \$3,050.

4 “(iv) REDUCTION OF CIVIL MONEY
5 PENALTIES IN CERTAIN CIR-
6 CUMSTANCES.—Subject to clauses (v) and
7 (vi), in the case where a facility self-re-
8 ports and promptly corrects a deficiency
9 for which a penalty was imposed under
10 subparagraph (A)(ii) not later than 10 cal-
11 endar days after the date of such imposi-
12 tion, the State may reduce the amount of
13 the penalty imposed by not more than 50
14 percent.

15 “(v) PROHIBITION ON REDUCTION
16 FOR CERTAIN DEFICIENCIES.—

17 “(I) REPEAT DEFICIENCIES.—
18 The State may not reduce under
19 clause (iv) the amount of a penalty if
20 the State had reduced a penalty im-
21 posed on the facility in the preceding
22 year under such clause with respect to
23 a repeat deficiency.

24 “(II) CERTAIN OTHER DEFICI-
25 ENCIES.—The State may not reduce

1 under clause (iv) the amount of a pen-
2 alty if the penalty is imposed for a de-
3 ficiency described in clause (ii)(II) or
4 (iii)(I) and the actual harm or wide-
5 spread harm that immediately jeop-
6 ardizes the health or safety of a resi-
7 dent or residents of the facility, or if
8 the penalty is imposed for a deficiency
9 described in clause (ii)(I).

10 “(III) LIMITATION ON AGGRE-
11 GATE REDUCTIONS.—The aggregate
12 reduction in a penalty under clause
13 (iv) may not exceed 35 percent on the
14 basis of self-reporting, on the basis of
15 a waiver or an appeal (as provided for
16 under regulations under section
17 488.436 of title 42, Code of Federal
18 Regulations), or on the basis of both.

19 “(iv) COLLECTION OF CIVIL MONEY
20 PENALTIES.—In the case of a civil money
21 penalty imposed under subparagraph
22 (A)(ii), the State—

23 “(I) subject to subclause (III),
24 shall, not later than 30 days after the
25 date of imposition of the penalty, pro-

1 vide the opportunity for the facility to
2 participate in an independent informal
3 dispute resolution process which gen-
4 erates a written record prior to the
5 collection of such penalty, but such
6 opportunity shall not affect the re-
7 sponsibility of the State survey agency
8 for making final recommendations for
9 such penalties;

10 “(II) in the case where the pen-
11 alty is imposed for each day of non-
12 compliance, shall not impose a penalty
13 for any day during the period begin-
14 ning on the initial day of the imposi-
15 tion of the penalty and ending on the
16 day on which the informal dispute res-
17 olution process under subclause (I) is
18 completed;

19 “(III) may provide for the collec-
20 tion of such civil money penalty and
21 the placement of such amounts col-
22 lected in an escrow account under the
23 direction of the State on the earlier of
24 the date on which the informal dis-
25 pute resolution process under sub-

1 clause (I) is completed or the date
2 that is 90 days after the date of the
3 imposition of the penalty;

4 “(IV) may provide that such
5 amounts collected are kept in such ac-
6 count pending the resolution of any
7 subsequent appeals;

8 “(V) in the case where the facil-
9 ity successfully appeals the penalty,
10 may provide for the return of such
11 amounts collected (plus interest) to
12 the facility; and

13 “(VI) in the case where all such
14 appeals are unsuccessful, may provide
15 that such funds collected shall be used
16 for the purposes described in the sec-
17 ond sentence of subparagraph
18 (A)(ii).”.

19 (B) CONFORMING AMENDMENT.—The sec-
20 ond sentence of section 1919(h)(2)(A)(ii) of the
21 Social Security Act (42 U.S.C.
22 1396r(h)(2)(A)(ii)) is amended by inserting be-
23 fore the period at the end the following: “, and
24 some portion of such funds may be used to sup-
25 port activities that benefit residents, including

1 assistance to support and protect residents of a
2 facility that closes (voluntarily or involuntarily)
3 or is decertified (including offsetting costs of re-
4 locating residents to home and community-
5 based settings or another facility), projects that
6 support resident and family councils and other
7 consumer involvement in assuring quality care
8 in facilities, and facility improvement initiatives
9 approved by the Secretary (including joint
10 training of facility staff and surveyors, pro-
11 viding technical assistance to facilities under
12 quality assurance programs, the appointment of
13 temporary management, and other activities ap-
14 proved by the Secretary”.

15 (2) PENALTIES IMPOSED BY THE SEC-
16 RETARY.—

17 (A) IN GENERAL.—Section
18 1919(h)(3)(C)(ii) of the Social Security Act (42
19 U.S.C. 1396r(h)(3)(C)) is amended to read as
20 follows:

21 “(ii) AUTHORITY WITH RESPECT TO
22 CIVIL MONEY PENALTIES.—

23 “(I) AMOUNT.—Subject to sub-
24 clause (II), the Secretary may impose
25 a civil money penalty in an amount

1 not to exceed \$10,000 for each day or
2 each instance of noncompliance (as
3 determined appropriate by the Sec-
4 retary).

5 “(II) REDUCTION OF CIVIL
6 MONEY PENALTIES IN CERTAIN CIR-
7 CUMSTANCES.—Subject to subclause
8 (III), in the case where a facility self-
9 reports and promptly corrects a defi-
10 ciency for which a penalty was im-
11 posed under this clause not later than
12 10 calendar days after the date of
13 such imposition, the Secretary may
14 reduce the amount of the penalty im-
15 posed by not more than 50 percent.

16 “(III) PROHIBITION ON REDUC-
17 TION FOR REPEAT DEFICIENCIES.—
18 The Secretary may not reduce the
19 amount of a penalty under subclause
20 (II) if the Secretary had reduced a
21 penalty imposed on the facility in the
22 preceding year under such subclause
23 with respect to a repeat deficiency.

24 “(IV) COLLECTION OF CIVIL
25 MONEY PENALTIES.—In the case of a

1 civil money penalty imposed under
2 this clause, the Secretary—

3 “(aa) subject to item (bb),
4 shall, not later than 30 days
5 after the date of imposition of
6 the penalty, provide the oppor-
7 tunity for the facility to partici-
8 pate in an independent informal
9 dispute resolution process which
10 generates a written record prior
11 to the collection of such penalty;

12 “(bb) in the case where the
13 penalty is imposed for each day
14 of noncompliance, shall not im-
15 pose a penalty for any day during
16 the period beginning on the ini-
17 tial day of the imposition of the
18 penalty and ending on the day on
19 which the informal dispute reso-
20 lution process under item (aa) is
21 completed;

22 “(cc) may provide for the
23 collection of such civil money
24 penalty and the placement of
25 such amounts collected in an es-

1 crow account under the direction
2 of the Secretary on the earlier of
3 the date on which the informal
4 dispute resolution process under
5 item (aa) is completed or the
6 date that is 90 days after the
7 date of the imposition of the pen-
8 alty;

9 “(dd) may provide that such
10 amounts collected are kept in
11 such account pending the resolu-
12 tion of any subsequent appeals;

13 “(ee) in the case where the
14 facility successfully appeals the
15 penalty, may provide for the re-
16 turn of such amounts collected
17 (plus interest) to the facility; and

18 “(ff) in the case where all
19 such appeals are unsuccessful,
20 may provide that some portion of
21 such amounts collected may be
22 used to support activities that
23 benefit residents, including as-
24 sistance to support and protect
25 residents of a facility that closes

1 (voluntarily or involuntarily) or is
2 decertified (including offsetting
3 costs of relocating residents to
4 home and community-based set-
5 tings or another facility), projects
6 that support resident and family
7 councils and other consumer in-
8 volvement in assuring quality
9 care in facilities, and facility im-
10 provement initiatives approved by
11 the Secretary (including joint
12 training of facility staff and sur-
13 veyors, technical assistance for
14 facilities under quality assurance
15 programs, the appointment of
16 temporary management, and
17 other activities approved by the
18 Secretary).

19 “(V) PROCEDURE.—The provi-
20 sions of section 1128A (other than
21 subsections (a) and (b) and except to
22 the extent that such provisions require
23 a hearing prior to the imposition of a
24 civil money penalty) shall apply to a
25 civil money penalty under this clause

1 in the same manner as such provi-
2 sions apply to a penalty or proceeding
3 under section 1128A(a).”.

4 (B) CONFORMING AMENDMENT.—Section
5 1919(h)(8) of the Social Security Act (42
6 U.S.C. 1396r(h)(5)(8)) is amended by inserting
7 “and in paragraph (3)(C)(ii)” after “paragraph
8 (2)(A)”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect 1 year after the date of the
11 enactment of this Act.

12 **SEC. 1422. NATIONAL INDEPENDENT MONITOR PILOT PRO-**
13 **GRAM.**

14 (a) ESTABLISHMENT.—

15 (1) IN GENERAL.—The Secretary, in consulta-
16 tion with the Inspector General of the Department
17 of Health and Human Services, shall establish a
18 pilot program (in this section referred to as the
19 “pilot program”) to develop, test, and implement use
20 of an independent monitor to oversee interstate and
21 large intrastate chains of skilled nursing facilities
22 and nursing facilities.

23 (2) SELECTION.—The Secretary shall select
24 chains of skilled nursing facilities and nursing facili-
25 ties described in paragraph (1) to participate in the

1 pilot program from among those chains that submit
2 an application to the Secretary at such time, in such
3 manner, and containing such information as the Sec-
4 retary may require.

5 (3) DURATION.—The Secretary shall conduct
6 the pilot program for a two-year period.

7 (4) IMPLEMENTATION.—The Secretary shall
8 implement the pilot program not later than one year
9 after the date of the enactment of this Act.

10 (b) REQUIREMENTS.—The Secretary shall evaluate
11 chains selected to participate in the pilot program based
12 on criteria selected by the Secretary, including where evi-
13 dence suggests that one or more facilities of the chain are
14 experiencing serious safety and quality of care problems.
15 Such criteria may include the evaluation of a chain that
16 includes one or more facilities participating in the “Special
17 Focus Facility” program (or a successor program) or one
18 or more facilities with a record of repeated serious safety
19 and quality of care deficiencies.

20 (c) RESPONSIBILITIES OF THE INDEPENDENT MON-
21 ITOR.—An independent monitor that enters into a con-
22 tract with the Secretary to participate in the conduct of
23 such program shall—

24 (1) conduct periodic reviews and prepare root-
25 cause quality and deficiency analyses of a chain to

1 assess if facilities of the chain are in compliance
2 with State and Federal laws and regulations applica-
3 ble to the facilities;

4 (2) undertake sustained oversight of the chain,
5 whether publicly or privately held, to involve the
6 owners of the chain and the principal business part-
7 ners of such owners in facilitating compliance by fa-
8 cilities of the chain with State and Federal laws and
9 regulations applicable to the facilities;

10 (3) analyze the management structure, distribu-
11 tion of expenditures, and nurse staffing levels of fa-
12 cilities of the chain in relation to resident census,
13 staff turnover rates, and tenure;

14 (4) report findings and recommendations with
15 respect to such reviews, analyses, and oversight to
16 the chain and facilities of the chain, to the Secretary
17 and to relevant States; and

18 (5) publish the results of such reviews, anal-
19 yses, and oversight.

20 (d) IMPLEMENTATION OF RECOMMENDATIONS.—

21 (1) RECEIPT OF FINDING BY CHAIN.—Not later
22 than 10 days after receipt of a finding of an inde-
23 pendent monitor under subsection (c)(4), a chain
24 participating in the pilot program shall submit to
25 the independent monitor a report—

1 (A) outlining corrective actions the chain
2 will take to implement the recommendations in
3 such report; or

4 (B) indicating that the chain will not im-
5 plement such recommendations and why it will
6 not do so.

7 (2) RECEIPT OF REPORT BY INDEPENDENT
8 MONITOR.—Not later than 10 days after the date of
9 receipt of a report submitted by a chain under para-
10 graph (1), an independent monitor shall finalize its
11 recommendations and submit a report to the chain
12 and facilities of the chain, the Secretary, and the
13 State (or States) involved, as appropriate, containing
14 such final recommendations.

15 (e) COST OF APPOINTMENT.—A chain shall be re-
16 sponsible for a portion of the costs associated with the
17 appointment of independent monitors under the pilot pro-
18 gram. The chain shall pay such portion to the Secretary
19 (in an amount and in accordance with procedures estab-
20 lished by the Secretary).

21 (f) WAIVER AUTHORITY.—The Secretary may waive
22 such requirements of titles XVIII and XIX of the Social
23 Security Act (42 U.S.C. 1395 et seq.; 1396 et seq.) as
24 may be necessary for the purpose of carrying out the pilot
25 program.

1 (g) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to carry out this section.

4 (h) DEFINITIONS.—In this section:

5 (1) FACILITY.—The term “facility” means a
6 skilled nursing facility or a nursing facility.

7 (2) NURSING FACILITY.—The term “nursing
8 facility” has the meaning given such term in section
9 1919(a) of the Social Security Act (42 U.S.C.
10 1396r(a)).

11 (3) SECRETARY.—The term “Secretary” means
12 the Secretary of Health and Human Services, acting
13 through the Assistant Secretary for Planning and
14 Evaluation.

15 (4) SKILLED NURSING FACILITY.—The term
16 “skilled nursing facility” has the meaning given such
17 term in section 1819(a) of the Social Security Act
18 (42 U.S.C. 1395(a)).

19 (i) EVALUATION AND REPORT.—

20 (1) EVALUATION.—The Inspector General of
21 the Department of Health and Human Services shall
22 evaluate the pilot program. Such evaluation shall—

23 (A) determine whether the independent
24 monitor program should be established on a
25 permanent basis; and

1 (B) if the Inspector General determines
2 that the independent monitor program should
3 be established on a permanent basis, rec-
4 ommend appropriate procedures and mecha-
5 nisms for such establishment.

6 (2) REPORT.—Not later than 180 days after
7 the completion of the pilot program, the Inspector
8 General shall submit to Congress and the Secretary
9 a report containing the results of the evaluation con-
10 ducted under paragraph (1), together with rec-
11 ommendations for such legislation and administra-
12 tive action as the Inspector General determines ap-
13 propriate.

14 **SEC. 1423. NOTIFICATION OF FACILITY CLOSURE.**

15 (a) SKILLED NURSING FACILITIES.—

16 (1) IN GENERAL.—Section 1819(c) of the So-
17 cial Security Act (42 U.S.C. 1395i–3(c)) is amended
18 by adding at the end the following new paragraph:

19 “(7) NOTIFICATION OF FACILITY CLOSURE.—

20 “(A) IN GENERAL.—Any individual who is
21 the administrator of a skilled nursing facility
22 must—

23 “(i) submit to the Secretary, the State
24 long-term care ombudsman, residents of
25 the facility, and the legal representatives of

1 such residents or other responsible parties,
2 written notification of an impending clo-
3 sure—

4 “(I) subject to subclause (II), not
5 later than the date that is 60 days
6 prior to the date of such closure; and

7 “(II) in the case of a facility
8 where the Secretary terminates the fa-
9 cility’s participation under this title,
10 not later than the date that the Sec-
11 retary determines appropriate;

12 “(ii) ensure that the facility does not
13 admit any new residents on or after the
14 date on which such written notification is
15 submitted; and

16 “(iii) include in the notice a plan for
17 the transfer and adequate relocation of the
18 residents of the facility by a specified date
19 prior to closure that has been approved by
20 the State, including assurances that the
21 residents will be transferred to the most
22 appropriate facility or other setting in
23 terms of quality, services, and location,
24 taking into consideration the needs and
25 best interests of each resident.

1 “(B) RELOCATION.—

2 “(i) IN GENERAL.—The State shall
3 ensure that, before a facility closes, all
4 residents of the facility have been success-
5 fully relocated to another facility or an al-
6 ternative home and community-based set-
7 ting.

8 “(ii) CONTINUATION OF PAYMENTS
9 UNTIL RESIDENTS RELOCATED.—The Sec-
10 retary may, as the Secretary determines
11 appropriate, continue to make payments
12 under this title with respect to residents of
13 a facility that has submitted a notification
14 under subparagraph (A) during the period
15 beginning on the date such notification is
16 submitted and ending on the date on which
17 the resident is successfully relocated.”.

18 (2) CONFORMING AMENDMENTS.—Section
19 1819(h)(4) of the Social Security Act (42 U.S.C.
20 1395i–3(h)(4)) is amended—

21 (A) in the first sentence, by striking “the
22 Secretary shall terminate” and inserting “the
23 Secretary, subject to subsection (c)(7), shall
24 terminate”; and

1 (B) in the second sentence, by striking
2 “subsection (c)(2)” and inserting “paragraphs
3 (2) and (7) of subsection (c)”.

4 (b) NURSING FACILITIES.—

5 (1) IN GENERAL.—Section 1919(c) of the So-
6 cial Security Act (42 U.S.C. 1396r(c)) is amended
7 by adding at the end the following new paragraph:

8 “(9) NOTIFICATION OF FACILITY CLOSURE.—

9 “(A) IN GENERAL.—Any individual who is
10 an administrator of a nursing facility must—

11 “(i) submit to the Secretary, the State
12 long-term care ombudsman, residents of
13 the facility, and the legal representatives of
14 such residents or other responsible parties,
15 written notification of an impending clo-
16 sure—

17 “(I) subject to subclause (II), not
18 later than the date that is 60 days
19 prior to the date of such closure; and

20 “(II) in the case of a facility
21 where the Secretary terminates the fa-
22 cility’s participation under this title,
23 not later than the date that the Sec-
24 retary determines appropriate;

1 “(ii) ensure that the facility does not
2 admit any new residents on or after the
3 date on which such written notification is
4 submitted; and

5 “(iii) include in the notice a plan for
6 the transfer and adequate relocation of the
7 residents of the facility by a specified date
8 prior to closure that has been approved by
9 the State, including assurances that the
10 residents will be transferred to the most
11 appropriate facility or other setting in
12 terms of quality, services, and location,
13 taking into consideration the needs and
14 best interests of each resident.

15 “(B) RELOCATION.—

16 “(i) IN GENERAL.—The State shall
17 ensure that, before a facility closes, all
18 residents of the facility have been success-
19 fully relocated to another facility or an al-
20 ternative home and community-based set-
21 ting.

22 “(ii) CONTINUATION OF PAYMENTS
23 UNTIL RESIDENTS RELOCATED.—The Sec-
24 retary may, as the Secretary determines
25 appropriate, continue to make payments

1 under this title with respect to residents of
2 a facility that has submitted a notification
3 under subparagraph (A) during the period
4 beginning on the date such notification is
5 submitted and ending on the date on which
6 the resident is successfully relocated.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect 1 year after the date of the
9 enactment of this Act.

10 **PART 3—IMPROVING STAFF TRAINING**

11 **SEC. 1431. DEMENTIA AND ABUSE PREVENTION TRAINING.**

12 (a) SKILLED NURSING FACILITIES.—Section
13 1819(f)(2)(A)(i)(I) of the Social Security Act (42 U.S.C.
14 1395i–3(f)(2)(A)(i)(I)) is amended by inserting “(includ-
15 ing, in the case of initial training and, if the Secretary
16 determines appropriate, in the case of ongoing training,
17 dementia management training and resident abuse preven-
18 tion training)” after “curriculum”.

19 (b) NURSING FACILITIES.—Section
20 1919(f)(2)(A)(i)(I) of the Social Security Act (42 U.S.C.
21 1396r(f)(2)(A)(i)(I)) is amended by inserting “(including,
22 in the case of initial training and, if the Secretary deter-
23 mines appropriate, in the case of ongoing training, demen-
24 tia management training and resident abuse prevention
25 training)” after “curriculum”.

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. 1432. STUDY AND REPORT ON TRAINING REQUIRED**
5 **FOR CERTIFIED NURSE AIDES AND SUPER-**
6 **VISORY STAFF.**

7 (a) STUDY.—

8 (1) IN GENERAL.—The Secretary shall conduct
9 a study on the content of training for certified nurse
10 aides and supervisory staff of skilled nursing facili-
11 ties and nursing facilities. The study shall include an
12 analysis of the following:

13 (A) Whether the number of initial training
14 hours for certified nurse aides required under
15 sections 1819(f)(2)(A)(i)(II) and
16 1919(f)(2)(A)(i)(II) of the Social Security Act
17 (42 U.S.C. 1395i–3(f)(2)(A)(i)(II);
18 1396r(f)(2)(A)(i)(II)) should be increased from
19 75 and, if so, what the required number of ini-
20 tial training hours should be, including any rec-
21 ommendations for the content of such training
22 (including training related to dementia).

23 (B) Whether requirements for ongoing
24 training under such sections
25 1819(f)(2)(A)(i)(II) and 1919(f)(2)(A)(i)(II)

1 should be increased from 12 hours per year, in-
2 cluding any recommendations for the content of
3 such training.

4 (2) CONSULTATION.—In conducting the anal-
5 ysis under paragraph (1)(A), the Secretary shall
6 consult with States that, as of the date of the enact-
7 ment of this Act, require more than 75 hours of
8 training for certified nurse aides.

9 (3) DEFINITIONS.—In this section:

10 (A) NURSING FACILITY.—The term “nurs-
11 ing facility” has the meaning given such term
12 in section 1919(a) of the Social Security Act
13 (42 U.S.C. 1396r(a)).

14 (B) SECRETARY.—The term “Secretary”
15 means the Secretary of Health and Human
16 Services, acting through the Assistant Secretary
17 for Planning and Evaluation.

18 (C) SKILLED NURSING FACILITY.—The
19 term “skilled nursing facility” has the meaning
20 given such term in section 1819(a) of the Social
21 Security Act (42 U.S.C. 1395(a)).

22 (b) REPORT.—Not later than 2 years after the date
23 of the enactment of this Act, the Secretary shall submit
24 to Congress a report containing the results of the study
25 conducted under subsection (a), together with rec-

1 ommendations for such legislation and administrative ac-
2 tion as the Secretary determines appropriate.

3 **Subtitle C—Quality Measurements**

4 **SEC. 1441. ESTABLISHMENT OF NATIONAL PRIORITIES FOR** 5 **QUALITY IMPROVEMENT.**

6 Title XI of the Social Security Act, as amended by
7 section 1401(a), is further amended by adding at the end
8 the following new part:

9 “PART E—QUALITY IMPROVEMENT

10 “ESTABLISHMENT OF NATIONAL PRIORITIES FOR
11 PERFORMANCE IMPROVEMENT

12 “SEC. 1191. (a) ESTABLISHMENT OF NATIONAL PRI-
13 ORITIES BY THE SECRETARY.—The Secretary shall estab-
14 lish and periodically update, not less frequently than tri-
15 ennially, national priorities for performance improvement.

16 “(b) RECOMMENDATIONS FOR NATIONAL PRIOR-
17 ITIES.—In establishing and updating national priorities
18 under subsection (a), the Secretary shall solicit and con-
19 sider recommendations from multiple outside stake-
20 holders.

21 “(c) CONSIDERATIONS IN SETTING NATIONAL PRI-
22 ORITIES.—With respect to such priorities, the Secretary
23 shall ensure that priority is given to areas in the delivery
24 of health care services in the United States that—

1 “(1) contribute to a large burden of disease, in-
2 cluding those that address the health care provided
3 to patients with prevalent, high-cost chronic dis-
4 eases;

5 “(2) have the greatest potential to decrease
6 morbidity and mortality in this country, including
7 those that are designed to eliminate harm to pa-
8 tients;

9 “(3) have the greatest potential for improving
10 the performance, affordability, and patient-
11 centeredness of health care, including those due to
12 variations in care;

13 “(4) address health disparities across groups
14 and areas; and

15 “(5) have the potential for rapid improvement
16 due to existing evidence, standards of care or other
17 reasons.

18 “(d) DEFINITIONS.—In this part:

19 “(1) CONSENSUS-BASED ENTITY.—The term
20 ‘consensus-based entity’ means an entity with a con-
21 tract with the Secretary under section 1890.

22 “(2) QUALITY MEASURE.—The term ‘quality
23 measure’ means a national consensus standard for
24 measuring the performance and improvement of pop-
25 ulation health, or of institutional providers of serv-

1 ices, physicians, and other health care practitioners
2 in the delivery of health care services.

3 “(e) 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 \$2,000,000, for
10 the activities under this section for each of the fiscal
11 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 \$2,000,000 for each of
18 the fiscal years 2010 through 2014.”.

19 **SEC. 1442. DEVELOPMENT OF NEW QUALITY MEASURES;**
20 **GAO EVALUATION OF DATA COLLECTION**
21 **PROCESS FOR QUALITY MEASUREMENT.**

22 Part E of title XI of the Social Security Act, as added
23 by section 1441, is amended by adding at the end the fol-
24 lowing new sections:

1 **“SEC. 1192. DEVELOPMENT OF NEW QUALITY MEASURES.**

2 “(a) AGREEMENTS WITH QUALIFIED ENTITIES.—

3 “(1) IN GENERAL.—The Secretary shall enter
4 into agreements with qualified entities to develop
5 quality measures for the delivery of health care serv-
6 ices in the United States.

7 “(2) FORM OF AGREEMENTS.—The Secretary
8 may carry out paragraph (1) by contract, grant, or
9 otherwise.

10 “(3) RECOMMENDATIONS OF CONSENSUS-
11 BASED ENTITY.—In carrying out this section, the
12 Secretary shall—

13 “(A) seek public input; and

14 “(B) take into consideration recommenda-
15 tions of the consensus-based entity with a con-
16 tract with the Secretary under section 1890(a).

17 “(b) DETERMINATION OF AREAS WHERE QUALITY
18 MEASURES ARE REQUIRED.—Consistent with the na-
19 tional priorities established under this part and with the
20 programs administered by the Centers for Medicare &
21 Medicaid Services and in consultation with other relevant
22 Federal agencies, the Secretary shall determine areas in
23 which quality measures for assessing health care services
24 in the United States are needed.

25 “(c) DEVELOPMENT OF QUALITY MEASURES.—

1 “(1) PATIENT-CENTERED AND POPULATION-
2 BASED MEASURES.—Quality measures developed
3 under agreements under subsection (a) shall be de-
4 signed—

5 “(A) to assess outcomes and functional
6 status of patients;

7 “(B) to assess the continuity and coordina-
8 tion of care and care transitions for patients
9 across providers and health care settings, in-
10 cluding end of life care;

11 “(C) to assess patient experience and pa-
12 tient engagement;

13 “(D) to assess the safety, effectiveness,
14 and timeliness of care;

15 “(E) to assess health disparities including
16 those associated with individual race, ethnicity,
17 age, gender, place of residence or language;

18 “(F) to assess the efficiency and resource
19 use in the provision of care;

20 “(G) to the extent feasible, to be collected
21 as part of health information technologies sup-
22 porting better delivery of health care services;

23 “(H) to be available free of charge to users
24 for the use of such measures; and

1 “(I) to assess delivery of health care serv-
2 ices to individuals regardless of age.

3 “(2) AVAILABILITY OF MEASURES.—The Sec-
4 retary shall make quality measures developed under
5 this section available to the public.

6 “(3) TESTING OF PROPOSED MEASURES.—The
7 Secretary may use amounts made available under
8 subsection (f) to fund the testing of proposed quality
9 measures by qualified entities. Testing funded under
10 this paragraph shall include testing of the feasibility
11 and usability of proposed measures.

12 “(4) UPDATING OF ENDORSED MEASURES.—
13 The Secretary may use amounts made available
14 under subsection (f) to fund the updating (and test-
15 ing, if applicable) by consensus-based entities of
16 quality measures that have been previously endorsed
17 by such an entity as new evidence is developed, in
18 a manner consistent with section 1890(b)(3).

19 “(d) QUALIFIED ENTITIES.—Before entering into
20 agreements with a qualified entity, the Secretary shall en-
21 sure that the entity is a public, nonprofit or academic in-
22 stitution with technical expertise in the area of health
23 quality measurement.

24 “(e) APPLICATION FOR GRANT.—A grant may be
25 made under this section only if an application for the

1 grant is submitted to the Secretary and the application
2 is in such form, is made in such manner, and contains
3 such agreements, assurances, and information as the Sec-
4 retary determines to be necessary to carry out this section.

5 “(f) FUNDING.—

6 “(1) IN GENERAL.—The Secretary shall provide
7 for the transfer, from the Federal Hospital Insur-
8 ance Trust Fund under section 1817 and the Fed-
9 eral Supplementary Medical Insurance Trust Fund
10 under section 1841 (in such proportion as the Sec-
11 retary determines appropriate), of \$25,000,000, to
12 the Secretary for purposes of carrying out this sec-
13 tion for each of the fiscal years 2010 through 2014.

14 “(2) AUTHORIZATION OF APPROPRIATIONS.—
15 For purposes of carrying out the provisions of this
16 section, in addition to funds otherwise available, out
17 of any funds in the Treasury not otherwise appro-
18 priated, there are appropriated to the Secretary of
19 Health and Human Services \$25,000,000 for each
20 of the fiscal years 2010 through 2014.

21 **“SEC. 1193. GAO EVALUATION OF DATA COLLECTION PROC-**
22 **ESS FOR QUALITY MEASUREMENT.**

23 “(a) GAO EVALUATIONS.—The Comptroller General
24 of the United States shall conduct periodic evaluations of

1 the implementation of the data collection processes for
2 quality measures used by the Secretary.

3 “(b) CONSIDERATIONS.—In carrying out the evalua-
4 tion under subsection (a), the Comptroller General shall
5 determine—

6 “(1) whether the system for the collection of
7 data for quality measures provides for validation of
8 data as relevant and scientifically credible;

9 “(2) whether data collection efforts under the
10 system use the most efficient and cost-effective
11 means in a manner that minimizes administrative
12 burden on persons required to collect data and that
13 adequately protects the privacy of patients’ personal
14 health information and provides data security;

15 “(3) whether standards under the system pro-
16 vide for an appropriate opportunity for physicians
17 and other clinicians and institutional providers of
18 services to review and correct findings; and

19 “(4) the extent to which quality measures are
20 consistent with section 1192(c)(1) or result in direct
21 or indirect costs to users of such measures.

22 “(c) REPORT.—The Comptroller General shall sub-
23 mit reports to Congress and to the Secretary containing
24 a description of the findings and conclusions of the results
25 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 DISTRIBUTU-**
5 **TORS OF COVERED DRUGS, DEVICES,**
6 **BIOLOGICALS, OR MEDICAL SUPPLIES**
7 **UNDER MEDICARE, MEDICAID, OR CHIP AND**
8 **PHYSICIANS AND OTHER HEALTH CARE ENTI-**
9 **TIES AND BETWEEN PHYSICIANS AND OTHER**
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

9 (b) **EFFECTIVE DATE.**—The amendments made by
10 subsection (a) shall apply to acts committed on or after
11 January 1, 2010.

12 **SEC. 1612. ENHANCED PENALTIES FOR SUBMISSION OF**
13 **FALSE STATEMENTS MATERIAL TO A FALSE**
14 **CLAIM.**

15 (a) **IN GENERAL.**—Section 1128A(a) of the Social
16 Security Act (42 U.S.C. 1320a–7a(a)), as amended by sec-
17 tion 1611, is further amended—

18 (1) in paragraph (7), by striking “or” at the
19 end;

20 (2) in paragraph (8), by inserting “or” at the
21 end; and

22 (3) by inserting after paragraph (8), the fol-
23 lowing new paragraph:

24 “(9) knowingly makes, uses, or causes to be
25 made or used, a false record or statement material
26 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 statment was material or that was
8 avoided or decreased)”.
9

10 (2) in subsection (c)(1), by striking “six years”
and inserting “10 years”; and

11 (3) in subsection (i)—

12 (A) by amending paragraph (2) to read as
13 follows:

14 “(2) The term “claim” means any application,
15 request, or demand, whether under contract, or oth-
16 erwise, for money or property for items and services
17 under a Federal health care program (as defined in
18 section 1128B(f)), whether or not the United States
19 or a State agency has title to the money or property,
20 that—

21 “(A) is presented or caused to be pre-
22 sented to an officer, employee, or agent of the
23 United States, or of any department or agency
24 thereof, or of any State agency (as defined in
25 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)”;

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 AMENDMENTS.—

18 (A) Section 1903(f)(4) of the Social Secu-
19 rity Act (42 U.S.C. 1396b(f)(4)) is amended by
20 inserting “1902(a)(10)(A)(i)(VIII),” after
21 “1902(a)(10)(A)(i)(VII),”.

22 (B) Section 1905(a) of such Act (42
23 U.S.C. 1396d(a)), as amended by sections
24 1714(a)(4) and 1731(c), is further amended, in
25 the matter preceding paragraph (1)—

1 (i) by striking “or” at the end of
2 clause (xiv);

3 (ii) by adding “or” at the end of
4 clause (xv); and

5 (iii) by inserting after clause (xv) the
6 following:

7 “(xvi) individuals described in section
8 1902(a)(10)(A)(i)(VIII),”.

9 (b) ELIGIBILITY FOR TRADITIONAL MEDICAID ELI-
10 GIBLE INDIVIDUALS WITH INCOME NOT EXCEEDING 133-
11 $\frac{1}{3}$ PERCENT OF THE FEDERAL POVERTY LEVEL.—

12 (1) IN GENERAL.—Section 1902(a)(10)(A)(i) of
13 the Social Security Act (42 U.S.C.
14 1396b(a)(10)(A)(i)), as amended by subsection (a),
15 is amended—

16 (A) by striking “or” at the end of sub-
17 clause (VII);

18 (B) by adding “or” at the end of subclause
19 (VIII); and

20 (C) by adding at the end the following new
21 subclause:

22 “(IX) who are under 65 years of
23 age, who would be eligible for medical
24 assistance under the State plan under
25 one of subclauses (I) through (VII)

1 (based on the income standards,
2 methodologies, and procedures in ef-
3 fect as of June 16, 2009) but for in-
4 come and who are in families whose
5 income does not exceed 133 $\frac{1}{3}$ percent
6 of the income official poverty line (as
7 defined by the Office of Management
8 and Budget, and revised annually in
9 accordance with section 673(2) of the
10 Omnibus Budget Reconciliation Act of
11 1981) applicable to a family of the
12 size involved;”.

13 (2) 100% FMAP FOR CERTAIN TRADITIONAL
14 MEDICAID ELIGIBLE INDIVIDUALS.—Section 1905(y)
15 of such Act (42 U.S.C. 1396d(b)), as added by sub-
16 section (a)(2)(B), is amended by inserting “or (IX)”
17 after “(VIII)”.

18 (3) CONSTRUCTION.—Nothing in this sub-
19 section shall be construed as not providing for cov-
20 erage under subclause (IX) of section
21 1902(a)(10)(A)(i) of the Social Security Act, as
22 added by paragraph (1) of, and an increased FMAP
23 under the amendment made by paragraph (2) for,
24 an individual who has been provided medical assist-
25 ance under title XIX of the Act under a demonstra-

1 tion waiver approved under section 1115 of such Act
2 or with State funds.

3 (4) CONFORMING AMENDMENT.—Section
4 1903(f)(4) of the Social Security Act (42 U.S.C.
5 1396b(f)(4)), as amended by subsection (a)(4), is
6 amended by inserting “1902(a)(10)(A)(i)(IX),” after
7 “1902(a)(10)(A)(i)(VIII),”.

8 (c) 100% MATCHING RATE FOR TEMPORARY COV-
9 ERAGE OF CERTAIN NEWBORNS.—Section 1905(y) of
10 such Act, as added by subsection (a)(2)(B), is amended—

11 (1) in paragraph (1), by inserting before the pe-
12 riod at the end the following: “, and who is not pro-
13 vided medical assistance under section 1943(b)(2) of
14 this title or section 205(d)(1)(B) of the America’s
15 Affordable Health Choices Act of 2009”; and

16 (2) by adding at the end the following:

17 “(2) Amounts expended for medical assistance
18 for children described in section 203(d)(1)(A) of the
19 America’s Affordable Health Choices Act of 2009
20 during the time period specified in such section.”.

21 (d) NETWORK ADEQUACY.—Section 1932(a)(2) of
22 the Social Security Act (42 U.S.C. 1396u–2(a)(2)) is
23 amended by adding at the end the following new subpara-
24 graph:

1 in section 204(e)(4) of the America's Affordable
2 Health Choices Act of 2009 with the Health Choices
3 Commissioner, acting in consultation with the Sec-
4 retary, with respect to coordinating the implementa-
5 tion of the provisions of division A of such Act with
6 the State plan under this title in order to ensure the
7 enrollment of Medicaid eligible individuals in accept-
8 able coverage. Nothing in this section shall be con-
9 strued as permitting such memorandum to modify or
10 vitiate any requirement of a State plan under this
11 title.

12 “(2) ENROLLMENT OF EXCHANGE-REFERRED
13 INDIVIDUALS.—

14 “(A) NON-TRADITIONAL INDIVIDUALS.—

15 Pursuant to such memorandum the State shall
16 accept without further determination the enroll-
17 ment under this title of an individual deter-
18 mined by the Commissioner to be a non-tradi-
19 tional Medicaid eligible individual. The State
20 shall not do any redeterminations of eligibility
21 for such individuals unless the periodicity of
22 such redeterminations is consistent with the pe-
23 riodicity for redeterminations by the Commis-
24 sioner of eligibility for affordability credits
25 under subtitle C of title II of division A of the

1 America’s Affordable Health Choices Act of
2 2009, as specified under such memorandum.

3 “(B) TRADITIONAL INDIVIDUALS.—

4 “(i) REGULAR ENROLLMENT OP-
5 TION.—Pursuant to such memorandum,
6 insofar as the memorandum has selected
7 the option described in section
8 205(e)(3)(A) of the America’s Affordable
9 Health Choices Act of 2009, the State
10 shall accept without further determination
11 the enrollment under this title of an indi-
12 vidual determined by the Commissioner to
13 be a traditional Medicaid eligible indi-
14 vidual. The State may do redeterminations
15 of eligibility of such individual consistent
16 with such section and the memorandum.

17 “(ii) PRESUMPTIVE ELIGIBILITY OP-
18 TION.—Pursuant to such memorandum,
19 insofar as the memorandum has selected
20 the option described in section
21 205(e)(3)(B) of the America’s Affordable
22 Health Choices Act of 2009, the State
23 shall provide for making medical assistance
24 available during the presumptive eligibility
25 period and shall, upon application of the

1 individual for medical assistance under this
2 title, promptly make a determination (and
3 subsequent redeterminations) of eligibility
4 in the same manner as if the individual
5 had applied directly to the State for such
6 assistance except that the State shall use
7 the income-related information used by the
8 Commissioner and provided to the State
9 under the memorandum in making the pre-
10 sumptive eligibility determination to the
11 maximum extent feasible.

12 “(3) DETERMINATIONS OF ELIGIBILITY FOR
13 AFFORDABILITY CREDITS.—If the Commissioner de-
14 termines that a State Medicaid agency has the ca-
15 pacity to make determinations of eligibility for af-
16 fordability credits under subtitle C of title II of divi-
17 sion A of the America’s Affordable Health Choices
18 Act of 2009, under such memorandum—

19 “(A) the State Medicaid agency shall con-
20 duct such determinations for any Exchange-eli-
21 gible individual who requests such a determina-
22 tion;

23 “(B) in the case that a State Medicaid
24 agency determines that an Exchange-eligible in-
25 dividual is not eligible for affordability credits,

1 the agency shall forward the information on the
2 basis of which such determination was made to
3 the Commissioner; and

4 “(C) the Commissioner shall reimburse the
5 State Medicaid agency for the costs of con-
6 ducting such determinations.

7 “(b) TREATMENT OF CERTAIN NEWBORNS.—

8 “(1) IN GENERAL.—In the case of a child who
9 is deemed under section 205(d)(1) of the America’s
10 Affordable Health Choices Act of 2009 to be a non-
11 traditional Medicaid eligible individual and enrolled
12 under this title pursuant to such section, the State
13 shall provide for a determination, by not later than
14 the end of the period referred to in subparagraph
15 (A) of such section, of the child’s eligibility for med-
16 ical assistance under this title.

17 “(2) EXTENDED TREATMENT AS TRADITIONAL
18 MEDICAID ELIGIBLE INDIVIDUAL.—In accordance
19 with subparagraph (B) of section 205(d)(1) of the
20 America’s Affordable Health Choices Act of 2009, in
21 the case of a child described in subparagraph (A) of
22 such section who at the end of the period referred
23 to in such subparagraph is not otherwise covered
24 under acceptable coverage, the child shall be deemed
25 (until such time as the child obtains such coverage

1 or the State otherwise makes a determination of the
2 child’s eligibility for medical assistance under its
3 plan under this title pursuant to paragraph (1)) to
4 be a traditional Medicaid eligible individual de-
5 scribed in section 1902(l)(1)(B).

6 “(c) DEFINITIONS.—In this section:

7 “(1) MEDICAID ELIGIBLE INDIVIDUALS.—In
8 this section, the terms ‘Medicaid eligible individual’,
9 ‘traditional Medicaid eligible individual’, and ‘non-
10 traditional Medicaid eligible individual’ have the
11 meanings given such terms in section 205(e)(5) of
12 the America’s Affordable Health Choices Act of
13 2009.

14 “(2) MEMORANDUM.—The term ‘memorandum’
15 means a Medicaid memorandum of understanding
16 under section 205(e)(4) of the America’s Affordable
17 Health Choices Act of 2009.

18 “(3) Y1.—The term ‘Y1’ has the meaning given
19 such term in section 100(c) of the America’s Afford-
20 able Health Choices Act of 2009.”.

21 (b) CONFORMING AMENDMENTS TO ERROR RATE.—

22 (1) Section 1903(u)(1)(D) of the Social Secu-
23 rity Act (42 U.S.C. 1396b(u)(1)(D)) is amended by
24 adding at the end the following new clause:

1 “(vi) In determining the amount of erroneous excess
2 payments, there shall not be included any erroneous pay-
3 ments made that are attributable to an error in an eligi-
4 bility determination under subtitle C of title II of division
5 A of the America’s Affordable Health Choices Act of
6 2009.”.

7 (2) Section 2105(c)(11) of such Act (42 U.S.C.
8 1397ee(c)(11)) is amended by adding at the end the
9 following new sentence: “Clause (vi) of section
10 1903(u)(1)(D) shall apply with respect to the appli-
11 cation of such requirements under this title and title
12 XIX.”.

13 **SEC. 1703. CHIP AND MEDICAID MAINTENANCE OF ELIGI-**
14 **BILITY.**

15 (a) CHIP MAINTENANCE OF ELIGIBILITY.—Section
16 1902 of the Social Security Act (42 U.S.C. 1396a) is
17 amended—

18 (1) in subsection (a), as amended by section
19 1631(b)(1)(D)—

20 (A) by striking “and” at the end of para-
21 graph (72);

22 (B) by striking the period at the end of
23 paragraph (73) and inserting “; and”; and

24 (C) by inserting after paragraph (74) the
25 following new paragraph:

1 “(75) provide for maintenance of effort under
2 the State child health plan under title XXI in ac-
3 cordance with subsection (gg).”;

4 (2) by adding at the end the following new sub-
5 section:

6 “(gg) CHIP MAINTENANCE OF ELIGIBILITY RE-
7 QUIREMENT.—

8 “(1) IN GENERAL.—Subject to paragraph (2),
9 as a condition of its State plan under this title under
10 subsection (a)(75) and receipt of any Federal finan-
11 cial assistance under section 1903(a) for calendar
12 quarters beginning after the date of the enactment
13 of this subsection and before CHIP MOE termi-
14 nation date specified in paragraph (3), a State shall
15 not have in effect eligibility standards, methodolo-
16 gies, or procedures under its State child health plan
17 under title XXI (including any waiver under such
18 title or under section 1115 that is permitted to con-
19 tinue effect) that are more restrictive than the eligi-
20 bility standards, methodologies, or procedures, re-
21 spectively, under such plan (or waiver) as in effect
22 on June 16, 2009.

23 “(2) LIMITATION.—Paragraph (1) shall not be
24 construed as preventing a State from imposing a
25 limitation described in section 2110(b)(5)(C)(i)(II)

1 for a fiscal year in order to limit expenditures under
2 its State child health plan under title XXI to those
3 for which Federal financial participation is available
4 under section 2105 for the fiscal year.

5 “(3) CHIP MOE TERMINATION DATE.—In para-
6 graph (1), the ‘CHIP MOE termination date’ for a
7 State is the date that is the first day of Y1 (as de-
8 fined in section 100(c) of the America’s Affordable
9 Health Choices Act of 2009) or, if later, the first
10 day after such date that both of the following deter-
11 minations have been made:

12 “(A) The Health Choices Commissioner
13 has determined that the Health Insurance Ex-
14 change has the capacity to support the partici-
15 pation of CHIP enrollees who are Exchange-eli-
16 gible individuals (as defined in section 202(b) of
17 the America’s Affordable Health Choices Act of
18 2009),

19 “(B) The Secretary has determined that
20 such Exchange, the State, and employers have
21 procedures in effect to ensure the timely transi-
22 tion without interruption of coverage of CHIP
23 enrollees from assistance under title XXI to ac-
24 ceptable coverage (as defined for purposes of
25 such Act).

1 In this paragraph, the term ‘CHIP enrollee’ means
2 a targeted low-income child or (if the State has
3 elected the option under section 2112, a targeted
4 low-income pregnant woman) who is or otherwise
5 would be (but for acceptable coverage) eligible for
6 child health assistance or pregnancy-related assist-
7 ance, respectively, under the State child health plan
8 referred to in paragraph (1).”.

9 (b) MEDICAID MAINTENANCE OF EFFORT; SIMPLI-
10 FYING AND COORDINATING ELIGIBILITY RULES BE-
11 TWEEN EXCHANGE AND MEDICAID.—

12 (1) IN GENERAL.—Section 1903 of such Act
13 (42 U.S.C. 1396b) is amended by adding at the end
14 the following new subsection:

15 “(aa) MAINTENANCE OF MEDICAID EFFORT; SIMPLI-
16 FYING AND COORDINATING ELIGIBILITY RULES BE-
17 TWEEN HEALTH INSURANCE EXCHANGE AND MED-
18 ICAID.—

19 “(1) MAINTENANCE OF EFFORT.—A State is
20 not eligible for payment under subsection (a) for a
21 calendar quarter beginning after the date of the en-
22 actment of this subsection if eligibility standards,
23 methodologies, or procedures under its plan under
24 this title (including any waiver under this title or
25 under section 1115 that is permitted to continue ef-

1 fect) that are more restrictive than the eligibility
2 standards, methodologies, or procedures, respec-
3 tively, under such plan (or waiver) as in effect on
4 June 16, 2009. The Secretary shall extend such a
5 waiver (including the availability of Federal financial
6 participation under such waiver) for such period as
7 may be required for a State to meet the requirement
8 of the previous sentence.

9 “(2) REMOVAL OF ASSET TEST FOR CERTAIN
10 ELIGIBILITY CATEGORIES.—

11 “(A) IN GENERAL.—A State is not eligible
12 for payment under subsection (a) for a calendar
13 quarter beginning on or after the first day of
14 Y1 (as defined in section 100(c) of the Amer-
15 ica’s Affordable Health Choices Act of 2009), if
16 the State applies any asset or resource test in
17 determining (or redetermining) eligibility of any
18 individual on or after such first day under any
19 of the following:

20 “(i) Subclause (I), (III), (IV), or (VI)
21 of section 1902(a)(10)(A)(i).

22 “(ii) Subclause (II), (IX), (XIV) or
23 (XVII) of section 1902(a)(10)(A)(ii).

24 “(iii) Section 1931(b).

1 “(B) OVERRIDING CONTRARY PROVISIONS;
2 REFERENCES.—The provisions of this title that
3 prevent the waiver of an asset or resource test
4 described in subparagraph (A) are hereby
5 waived.

6 “(C) REFERENCES.—Any reference to a
7 provision described in a provision in subpara-
8 graph (A) shall be deemed to be a reference to
9 such provision as modified through the applica-
10 tion of subparagraphs (A) and (B).”.

11 (2) CONFORMING AMENDMENTS.—(A) Section
12 1902(a)(10)(A) of such Act (42 U.S.C.
13 1396a(a)(10)(A)) is amended, in the matter before
14 clause (i), by inserting “subject to section
15 1903(aa)(2),” after “(A)”.

16 (B) Section 1931(b)(2) of such Act (42 U.S.C.
17 1396u–1(b)(1)) is amended by inserting “subject to
18 section 1903(aa)(2)” after “and (3)”.

19 (c) STANDARDS FOR BENCHMARK PACKAGES.—Sec-
20 tion 1937(b) of such Act (42 U.S.C. 1396u–7(b)) is
21 amended—

22 (1) in paragraph (1), by inserting “subject to
23 paragraph (5)”; and

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

1 “(5) MINIMUM STANDARDS.—Effective January
2 1, 2013, any benchmark benefit package (or bench-
3 mark equivalent coverage under paragraph (2))
4 must meet the minimum benefits and cost-sharing
5 standards of a basic plan offered through the Health
6 Insurance Exchange.”.

7 **SEC. 1704. REDUCTION IN MEDICAID DSH.**

8 (a) REPORT.—

9 (1) IN GENERAL.—Not later than January 1,
10 2016, the Secretary of Health and Human Services
11 (in this title referred to as the “Secretary”) shall
12 submit to Congress a report concerning the extent to
13 which, based upon the impact of the health care re-
14 forms carried out under division A in reducing the
15 number of uninsured individuals, there is a contin-
16 ued role for Medicaid DSH. In preparing the report,
17 the Secretary shall consult with community-based
18 health care networks serving low-income bene-
19 ficiaries.

20 (2) MATTERS TO BE INCLUDED.—The report
21 shall include the following:

22 (A) RECOMMENDATIONS.—Recommendations
23 regarding—

24 (i) the appropriate targeting of Med-
25 icaid DSH within States; and

1 (ii) the distribution of Medicaid DSH
2 among the States.

3 (B) SPECIFICATION OF DSH HEALTH RE-
4 FORM METHODOLOGY.—The DSH Health Re-
5 form methodology described in paragraph (2) of
6 subsection (b) for purposes of implementing the
7 requirements of such subsection.

8 (3) COORDINATION WITH MEDICARE DSH RE-
9 PORT.—The Secretary shall coordinate the report
10 under this subsection with the report on Medicare
11 DSH under section 1112.

12 (4) MEDICAID DSH.—In this section, the term
13 “Medicaid DSH” means adjustments in payments
14 under section 1923 of the Social Security Act for in-
15 patient hospital services furnished by dispropor-
16 tionate share hospitals.

17 (b) MEDICAID DSH REDUCTIONS.—

18 (1) IN GENERAL.—The Secretary shall reduce
19 Medicaid DSH so as to reduce total Federal pay-
20 ments to all States for such purpose by
21 \$1,500,000,000 in fiscal year 2017, \$2,500,000,000
22 in fiscal year 2018, and \$6,000,000,000 in fiscal
23 year 2019.

24 (2) DSH HEALTH REFORM METHODOLOGY.—
25 The Secretary shall carry out paragraph (1) through

1 use of a DSH Health Reform methodology issued by
2 the Secretary that imposes the largest percentage re-
3 ductions on the States that—

4 (A) have the lowest percentages of unin-
5 sured individuals (determined on the basis of
6 audited hospital cost reports) during the most
7 recent year for which such data are available;
8 or

9 (B) do not target their DSH payments
10 on—

11 (i) hospitals with high volumes of
12 Medicaid inpatients (as defined in section
13 1923(b)(1)(A) of the Social Security Act
14 (42 U.S.C. 1396r-4(b)(1)(A)); and

15 (ii) hospitals that have high levels of
16 uncompensated care (excluding bad debt).

17 (3) DSH ALLOTMENT PUBLICATIONS.—

18 (A) IN GENERAL.—Not later than the pub-
19 lication deadline specified in subparagraph (B),
20 the Secretary shall publish in the Federal Reg-
21 ister a notice specifying the DSH allotment to
22 each State under 1923(f) of the Social Security
23 Act for the respective fiscal year specified in
24 such subparagraph, consistent with the applica-

1 tion of the DSH Health Reform methodology
2 described in paragraph (2).

3 (B) PUBLICATAION DEADLINE.—The pub-
4 lication deadline specified in this subparagraph
5 is—

6 (i) January 1, 2016, with respect to
7 DSH allotments described in subparagraph
8 (A) for fiscal year 2017;

9 (ii) January 1, 2017, with respect to
10 DSH allotments described in subparagraph
11 (A) for fiscal year 2018; and

12 (iii) January 1, 2018, with respect to
13 DSH allotments described in subparagraph
14 (A) for fiscal year 2019.

15 (c) CONFORMING AMENDMENTS.—

16 (1) Section 1923(f) of the Social Security Act
17 (42 U.S.C. 1396r-4(f)) is amended—

18 (A) by redesignating paragraph (7) as
19 paragraph (8); and

20 (B) by inserting after paragraph (6) the
21 following new paragraph:

22 “(7) SPECIAL RULE FOR FISCAL YEARS 2017,
23 2018, AND 2019.—

1 “(A) FISCAL YEAR 2017.—Notwithstanding
2 paragraph (2), the total DSH allotments for all
3 States for—

4 “(i) fiscal year 2017, shall be the total
5 DSH allotments that would otherwise be
6 determined under this subsection for such
7 fiscal year decreased by \$1,500,000,000;

8 “(ii) fiscal year 2018, shall be the
9 total DSH allotments that would otherwise
10 be determined under this subsection for
11 such fiscal year decreased by
12 \$2,500,000,000; and

13 “(iii) fiscal year 2019, shall be the
14 total DSH allotments that would otherwise
15 be determined under this subsection for
16 such fiscal year decreased by
17 \$6,000,000,000.”.

18 (2) Section 1923(b)(4) of such Act (42 U.S.C.
19 1396r-4(b)(4)) is amended by adding before the pe-
20 riod the following: “or to affect the authority of the
21 Secretary to issue and implement the DSH Health
22 Reform methodology under section 1704(b)(2) of the
23 America’s Health Choices Act of 2009”.

1 (d) DISPROPORTIONATE SHARE HOSPITALS (DSH)
2 AND ESSENTIAL ACCESS HOSPITAL (EAH) NON-DIS-
3 CRIMINATION.—

4 (1) IN GENERAL.—Section 1923(d) of the So-
5 cial Security Act (42 U.S.C. 1396r-4) is amended by
6 adding at the end the following new paragraph:

7 “(4) No hospital may be defined or deemed as
8 a disproportionate share hospital, or as an essential
9 access hospital (for purposes of subsection
10 (f)(6)(A)(iv), under a State plan under this title or
11 subsection (b) of this section (including any waiver
12 under section 1115) unless the hospital—

13 “(A) provides services to beneficiaries
14 under this title without discrimination on the
15 ground of race, color, national origin, creed,
16 source of payment, status as a beneficiary
17 under this title, or any other ground unrelated
18 to such beneficiary’s need for the services or the
19 availability of the needed services in the hos-
20 pital; and

21 “(B) makes arrangements for, and accepts,
22 reimbursement under this title for services pro-
23 vided to eligible beneficiaries under this title.”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by subsection (a) shall be apply to expenditures
3 made on or after July 1, 2010.

4 **SEC. 1705. EXPANDED OUTSTATIONING.**

5 (a) IN GENERAL.—Section 1902(a)(55) of the Social
6 Security Act (42 U.S.C. 1396a(a)(55)) is amended by
7 striking “under subsection (a)(10)(A)(i)(IV),
8 (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or
9 (a)(10)(A)(ii)(IX)” and inserting “(including receipt and
10 processing of applications of individuals for affordability
11 credits under subtitle C of title II of division A of the
12 America’s Affordable Health Choices Act of 2009 pursu-
13 ant to a Medicaid memorandum of understanding under
14 section 1943(a)(1))”.

15 (b) EFFECTIVE DATE.—

16 (1) Except as provided in paragraph (2), the
17 amendment made by subsection (a) shall apply to
18 services furnished on or after July 1, 2010, without
19 regard to whether or not final regulations to carry
20 out such amendment have been promulgated by such
21 date.

22 (2) In the case of a State plan for medical as-
23 sistance under title XIX of the Social Security Act
24 which the Secretary of Health and Human Services
25 determines requires State legislation (other than leg-

1 islation appropriating funds) in order for the plan to
2 meet the additional requirement imposed by the
3 amendment made by this section, the State plan
4 shall not be regarded as failing to comply with the
5 requirements of such title solely on the basis of its
6 failure to meet this additional requirement before
7 the first day of the first calendar quarter beginning
8 after the close of the first regular session of the
9 State legislature that begins after the date of the en-
10 actment of this Act. For purposes of the previous
11 sentence, in the case of a State that has a 2-year
12 legislative session, each year of such session shall be
13 deemed to be a separate regular session of the State
14 legislature.

15 **Subtitle B—Prevention**

16 **SEC. 1711. REQUIRED COVERAGE OF PREVENTIVE SERV-** 17 **ICES.**

18 (a) **COVERAGE.**—Section 1905 of the Social Security
19 Act (42 U.S.C. 1396d), as amended by section
20 1701(a)(2)(B), is amended—

21 (1) in subsection (a)(4)—

22 (A) by striking “and” before “(C)”;

23 (B) by inserting before the semicolon at
24 the end the following: “and (D) preventive serv-
25 ices described in subsection (z)”;

1 (2) by adding at the end the following new sub-
2 section:

3 “(z) PREVENTIVE SERVICES.—The preventive serv-
4 ices described in this subsection are services not otherwise
5 described in subsection (a) or (r) that the Secretary deter-
6 mines are—

7 “(1)(A) recommended with a grade of A or B
8 by the Task Force for Clinical Preventive Services;
9 or

10 “(B) vaccines recommended for use as appro-
11 priate by the Director of the Centers for Disease
12 Control and Prevention; and

13 “(2) appropriate for individuals entitled to med-
14 ical assistance under this title.”.

15 (b) CONFORMING AMENDMENT.—Section 1928 of
16 such Act (42 U.S.C. 1396s) is amended—

17 (1) in subsection (c)(2)(B)(i), by striking “the
18 advisory committee referred to in subsection (e)”
19 and inserting “the Director of the Centers for Dis-
20 ease Control and Prevention” ;

21 (2) in subsection (e), by striking “Advisory
22 Committee” and all that follows and inserting “Di-
23 rector of the Centers for Disease Control and Pre-
24 vention.”; and

25 (3) by striking subsection (g).

1 (c) EFFECTIVE DATE.—

2 (1) Except as provided in paragraph (2), the
3 amendments made by this section 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 amendments have been promulgated by
7 such 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 requirements imposed by the
14 amendments 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 these additional requirements 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 **SEC. 1712. TOBACCO CESSATION.**

2 (a) DROPPING TOBACCO CESSATION EXCLUSION
3 FROM COVERED OUTPATIENT DRUGS.—Section
4 1927(d)(2) of the Social Security Act (42 U.S.C. 1396r–
5 8(d)(2)) is amended—

6 (1) by striking subparagraph (E);

7 (2) in subparagraph (G), by inserting before the
8 period at the end the following: “, except agents ap-
9 proved by the Food and Drug Administration for
10 purposes of promoting, and when used to promote,
11 tobacco cessation”; and

12 (3) by redesignating subparagraphs (F)
13 through (K) as subparagraphs (E) through (J), re-
14 spectively.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to drugs and services furnished
17 on or after January 1, 2010.

18 **SEC. 1713. OPTIONAL COVERAGE OF NURSE HOME VISITA-**
19 **TION SERVICES.**

20 (a) IN GENERAL.—Section 1905 of the Social Secu-
21 rity Act (42 U.S.C. 1396d), as amended by sections
22 1701(a)(2) and 1711(a), is amended—

23 (1) in subsection (a)—

24 (A) in paragraph (27), by striking “and”
25 at the end;

1 (B) by redesignating paragraph (28) as
2 paragraph (29); and

3 (C) by inserting after paragraph (27) the
4 following new paragraph:

5 “(28) nurse home visitation services (as defined
6 in subsection (aa)); and”; and.

7 (2) by adding at the end the following new sub-
8 section:

9 “(aa) The term ‘nurse home visitation services’
10 means home visits by trained nurses to families with a
11 first-time pregnant woman, or a child (under 2 years of
12 age), who is eligible for medical assistance under this title,
13 but only, to the extent determined by the Secretary based
14 upon evidence, that such services are effective in one or
15 more of the following:

16 “(1) Improving maternal or child health and
17 pregnancy outcomes or increasing birth intervals be-
18 tween pregnancies.

19 “(2) Reducing the incidence of child abuse, ne-
20 glect, and injury, improving family stability (includ-
21 ing reduction in the incidence of intimate partner vi-
22 olence), or reducing maternal and child involvement
23 in the criminal justice system.

24 “(3) Increasing economic self-sufficiency, em-
25 ployment advancement, school-readiness, and edu-

1 cational achievement, or reducing dependence on
2 public assistance.”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to services furnished on or after
5 January 1, 2010.

6 (c) **CONSTRUCTION.**—Nothing in the amendments
7 made by this section shall be construed as affecting the
8 ability of a State under title XIX or XXI of the Social
9 Security Act to provide nurse home visitation services as
10 part of another class of items and services falling within
11 the definition of medical assistance or child health assist-
12 ance under the respective title, or as an administrative ex-
13 penditure for which payment is made under section
14 1903(a) or 2105(a) of such Act, respectively, on or after
15 the date of the enactment of this Act.

16 **SEC. 1714. STATE ELIGIBILITY OPTION FOR FAMILY PLAN-**
17 **NING SERVICES.**

18 (a) **COVERAGE AS OPTIONAL CATEGORICALLY**
19 **NEEDY GROUP.**—

20 (1) **IN GENERAL.**—Section 1902(a)(10)(A)(ii)
21 of the Social Security Act (42 U.S.C.
22 1396a(a)(10)(A)(ii)) is amended—

23 (A) in subclause (XVIII), by striking “or”
24 at the end;

1 (B) in subclause (XIX), by adding “or” at
2 the end; and

3 (C) by adding at the end the following new
4 subclause:

5 “(XX) who are described in subsection (hh) (re-
6 lating to individuals who meet certain income stand-
7 ards);”.

8 (2) GROUP DESCRIBED.—Section 1902 of such
9 Act (42 U.S.C. 1396a), as amended by section 1703,
10 is amended by adding at the end the following new
11 subsection:

12 “(hh)(1) Individuals described in this subsection are
13 individuals—

14 “(A) whose income does not exceed an in-
15 come eligibility level established by the State
16 that does not exceed the highest income eligi-
17 bility level established under the State plan
18 under this title (or under its State child health
19 plan under title XXI) for pregnant women; and

20 “(B) who are not pregnant.

21 “(2) At the option of a State, individuals de-
22 scribed in this subsection may include individuals
23 who, had individuals applied on or before January 1,
24 2007, would have been made eligible pursuant to the
25 standards and processes imposed by that State for

1 benefits described in clause (XV) of the matter fol-
2 lowing subparagraph (G) of section subsection
3 (a)(10) pursuant to a waiver granted under section
4 1115.

5 “(3) At the option of a State, for purposes of
6 subsection (a)(17)(B), in determining eligibility for
7 services under this subsection, the State may con-
8 sider only the income of the applicant or recipient.”.

9 (3) LIMITATION ON BENEFITS.—Section
10 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10))
11 is amended in the matter following subparagraph
12 (G)—

13 (A) by striking “and (XIV)” and inserting
14 “(XIV)”; and

15 (B) by inserting “, and (XV) the medical
16 assistance made available to an individual de-
17 scribed in subsection (hh) shall be limited to
18 family planning services and supplies described
19 in section 1905(a)(4)(C) including medical di-
20 agnosis and treatment services that are pro-
21 vided pursuant to a family planning service in
22 a family planning setting” after “cervical can-
23 cer”.

24 (4) CONFORMING AMENDMENTS.—Section
25 1905(a) of such Act (42 U.S.C. 1396d(a)), as

1 amended by section 1731(c), is amended in the mat-
2 ter preceding paragraph (1)—

3 (A) in clause (xiii), by striking “or” at the
4 end;

5 (B) in clause (xiv), by adding “or” at the
6 end; and

7 (C) by inserting after clause (xiv) the fol-
8 lowing:

9 “(xv) individuals described in section
10 1902(hh),”.

11 (b) PRESUMPTIVE ELIGIBILITY.—

12 (1) IN GENERAL.—Title XIX of the Social Se-
13 curity Act (42 U.S.C. 1396 et seq.) is amended by
14 inserting after section 1920B the following:

15 “PRESUMPTIVE ELIGIBILITY FOR FAMILY PLANNING
16 SERVICES

17 “SEC. 1920C. (a) STATE OPTION.—State plan ap-
18 proved under section 1902 may provide for making med-
19 ical assistance available to an individual described in sec-
20 tion 1902(hh) (relating to individuals who meet certain
21 income eligibility standard) during a presumptive eligi-
22 bility period. In the case of an individual described in sec-
23 tion 1902(hh), such medical assistance shall be limited to
24 family planning services and supplies described in
25 1905(a)(4)(C) and, at the State’s option, medical diag-
26 nosis and treatment services that are provided in conjunc-

1 tion with a family planning service in a family planning
2 setting.

3 “(b) DEFINITIONS.—For purposes of this section:

4 “(1) PRESUMPTIVE ELIGIBILITY PERIOD.—The
5 term ‘presumptive eligibility period’ means, with re-
6 spect to an individual described in subsection (a),
7 the period that—

8 “(A) begins with the date on which a
9 qualified entity determines, on the basis of pre-
10 liminary information, that the individual is de-
11 scribed in section 1902(hh); and

12 “(B) ends with (and includes) the earlier
13 of—

14 “(i) the day on which a determination
15 is made with respect to the eligibility of
16 such individual for services under the State
17 plan; or

18 “(ii) in the case of such an individual
19 who does not file an application by the last
20 day of the month following the month dur-
21 ing which the entity makes the determina-
22 tion referred to in subparagraph (A), such
23 last day.

24 “(2) QUALIFIED ENTITY.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), the term ‘qualified entity’ means
3 any entity that—

4 “(i) is eligible for payments under a
5 State plan approved under this title; and

6 “(ii) is determined by the State agen-
7 cy to be capable of making determinations
8 of the type described in paragraph (1)(A).

9 “(B) RULE OF CONSTRUCTION.—Nothing
10 in this paragraph shall be construed as pre-
11 venting a State from limiting the classes of en-
12 tities that may become qualified entities in
13 order to prevent fraud and abuse.

14 “(c) ADMINISTRATION.—

15 “(1) IN GENERAL.—The State agency shall pro-
16 vide qualified entities with—

17 “(A) such forms as are necessary for an
18 application to be made by an individual de-
19 scribed in subsection (a) for medical assistance
20 under the State plan; and

21 “(B) information on how to assist such in-
22 dividuals in completing and filing such forms.

23 “(2) NOTIFICATION REQUIREMENTS.—A quali-
24 fied entity that determines under subsection
25 (b)(1)(A) that an individual described in subsection

1 (a) is presumptively eligible for medical assistance
2 under a State plan shall—

3 “(A) notify the State agency of the deter-
4 mination within 5 working days after the date
5 on which determination is made; and

6 “(B) inform such individual at the time
7 the determination is made that an application
8 for medical assistance is required to be made by
9 not later than the last day of the month fol-
10 lowing the month during which the determina-
11 tion is made.

12 “(3) APPLICATION FOR MEDICAL ASSIST-
13 ANCE.—In the case of an individual described in
14 subsection (a) who is determined by a qualified enti-
15 ty to be presumptively eligible for medical assistance
16 under a State plan, the individual shall apply for
17 medical assistance by not later than the last day of
18 the month following the month during which the de-
19 termination is made.

20 “(d) PAYMENT.—Notwithstanding any other provi-
21 sion of law, medical assistance that—

22 “(1) is furnished to an individual described in
23 subsection (a)—

24 “(A) during a presumptive eligibility pe-
25 riod;

1 “(B) by a entity that is eligible for pay-
2 ments under the State plan; and
3 “(2) is included in the care and services covered
4 by the State plan,
5 shall be treated as medical assistance provided by such
6 plan for purposes of clause (4) of the first sentence of
7 section 1905(b).”.

8 (2) CONFORMING AMENDMENTS.—

9 (A) Section 1902(a)(47) of the Social Se-
10 curity Act (42 U.S.C. 1396a(a)(47)) is amend-
11 ed by inserting before the semicolon at the end
12 the following: “and provide for making medical
13 assistance available to individuals described in
14 subsection (a) of section 1920C during a pre-
15 sumptive eligibility period in accordance with
16 such section”.

17 (B) Section 1903(u)(1)(D)(v) of such Act
18 (42 U.S.C. 1396b(u)(1)(D)(v)) is amended—

19 (i) by striking “or for” and inserting
20 “for”; and

21 (ii) by inserting before the period the
22 following: “, or for medical assistance pro-
23 vided to an individual described in sub-
24 section (a) of section 1920C during a pre-

1 sumptive eligibility period under such sec-
2 tion”.

3 (c) CLARIFICATION OF COVERAGE OF FAMILY PLAN-
4 NING SERVICES AND SUPPLIES.—Section 1937(b) of the
5 Social Security Act (42 U.S.C. 1396u–7(b)) is amended
6 by adding at the end the following:

7 “(5) COVERAGE OF FAMILY PLANNING SERV-
8 ICES AND SUPPLIES.—Notwithstanding the previous
9 provisions of this section, a State may not provide
10 for medical assistance through enrollment of an indi-
11 vidual with benchmark coverage or benchmark-equiv-
12 alent coverage under this section unless such cov-
13 erage includes for any individual described in section
14 1905(a)(4)(C), medical assistance for family plan-
15 ning services and supplies in accordance with such
16 section.”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section take effect on the date of the enactment of
19 this Act and shall apply to items and services furnished
20 on or after such date.

21 **Subtitle C—Access**

22 **SEC. 1721. PAYMENTS TO PRIMARY CARE PRACTITIONERS.**

23 (a) IN GENERAL.—

1 (1) FEE-FOR-SERVICE PAYMENTS.—Section
2 1902(a)(13) of the Social Security Act (42 U.S.C.
3 1396b(a)(13)) is amended—

4 (A) by striking “and” at the end of sub-
5 paragraph (A);

6 (B) by adding “and” at the end of sub-
7 paragraph (B); and

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

10 “(C) payment for primary care services (as
11 defined in section 1848(j)(5)(A), but applied
12 without regard to clause (ii) thereof) furnished
13 by physicians (or for services furnished by other
14 health care professionals that would be primary
15 care services under such section if furnished by
16 a physician) at a rate not less than 80 percent
17 of the payment rate applicable to such services
18 and physicians or professionals (as the case
19 may be) under part B of title XVIII for services
20 furnished in 2010, 90 percent of such rate for
21 services and physicians (or professionals) fur-
22 nished in 2011, and 100 percent of such pay-
23 ment rate for services and physicians (or pro-
24 fessionals) furnished in 2012 or a subsequent
25 year;”.

1 (2) UNDER MEDICAID MANAGED CARE
2 PLANS.—Section 1923(f) of such Act (42 U.S.C.
3 1396u-2(f)) is amended—

4 (A) in the heading, by adding at the end
5 the following: “; ADEQUACY OF PAYMENT FOR
6 PRIMARY CARE SERVICES”; and

7 (B) by inserting before the period at the
8 end the following: “and, in the case of primary
9 care services described in section
10 1902(a)(13)(C), consistent with the minimum
11 payment rates specified in such section (regard-
12 less of the manner in which such payments are
13 made, including in the form of capitation or
14 partial capitation)”.

15 (b) INCREASE IN PAYMENT USING 100% FMAP.—
16 Section 1905(y), as added by section 1701(a)(2)(B) and
17 as amended by section 1701(c)(2), is amended by adding
18 at the end the following:

19 “(3)(A) The portion of the amounts expended
20 for medical assistance for services described in sec-
21 tion 1902(a)(13)(C) furnished on or after January
22 1, 2010, that is attributable to the amount by which
23 the minimum payment rate required under such sec-
24 tion (or, by application, section 1932(f)) exceeds the

1 payment rate applicable to such services under the
2 State plan as of June 16, 2009.

3 “(B) Subparagraphs (A) shall not be construed
4 as preventing the payment of Federal financial par-
5 ticipation based on the Federal medical assistance
6 percentage for amounts in excess of those specified
7 under such subparagraphs.”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to services furnished on or after
10 January 1, 2010.

11 **SEC. 1722. MEDICAL HOME PILOT PROGRAM.**

12 (a) IN GENERAL.—The Secretary of Health and
13 Human Services shall establish under this section a med-
14 ical home pilot program under which a State may apply
15 to the Secretary for approval of a medical home pilot
16 project described in subsection (b) (in this section referred
17 to as a “pilot project”) for the application of the medical
18 home concept under title XIX of the Social Security Act.
19 The pilot program shall operate for a period of up to 5
20 years.

21 (b) PILOT PROJECT DESCRIBED.—

22 (1) IN GENERAL.—A pilot project is a project
23 that applies one or more of the medical home models
24 described in section 1866E(a)(3) of the Social Secu-
25 rity Act (as inserted by section 1302(a)) or such

1 other model as the Secretary may approve, to high
2 need beneficiaries (including medically fragile chil-
3 dren and high-risk pregnant women) who are eligible
4 for medical assistance under title XIX of the Social
5 Security Act. The Secretary shall provide for appro-
6 priate coordination of the pilot program under this
7 section with the medical home pilot program under
8 section 1866E of such Act.

9 (2) LIMITATION.—A pilot project shall be for a
10 duration of not more than 5 years.

11 (c) ADDITIONAL INCENTIVES.—In the case of a pilot
12 project, the Secretary may—

13 (1) waive the requirements of section
14 1902(a)(1) of the Social Security Act (relating to
15 statewideness) and section 1902(a)(10)(B) of such
16 Act (relating to comparability); and

17 (2) increase to up to 90 percent (for the first
18 2 years of the pilot program) or 75 percent (for the
19 next 3 years) the matching percentage for adminis-
20 trative expenditures (such as those for community
21 care workers).

22 (d) MEDICALLY FRAGILE CHILDREN.—In the case of
23 a model involving medically fragile children, the model
24 shall ensure that the patient-centered medical home serv-
25 ices received by each child, in addition to fulfilling the re-

1 requirements under 1866E(b)(1) of the Social Security Act,
2 provide for continuous involvement and education of the
3 parent or caregiver and for assistance to the child in ob-
4 taining necessary transitional care if a child's enrollment
5 ceases for any reason.

6 (e) EVALUATION; REPORT.—

7 (1) EVALUATION.—The Secretary, using the
8 criteria described in section 1866E(g)(1) of the So-
9 cial Security Act (as inserted by section 1123), shall
10 conduct an evaluation of the pilot program under
11 this section.

12 (2) REPORT.—Not later than 60 days after the
13 date of completion of the evaluation under para-
14 graph (1), the Secretary shall submit to Congress
15 and make available to the public a report on the
16 findings of the evaluation under such paragraph.

17 (f) FUNDING.—The additional Federal financial par-
18 ticipation resulting from the implementation of the pilot
19 program under this section may not exceed in the aggre-
20 gate \$1,235,000,000 over the 5-year period of the pro-
21 gram.

22 **SEC. 1723. TRANSLATION OR INTERPRETATION SERVICES.**

23 (a) IN GENERAL.—Section 1903(a)(2)(E) of the So-
24 cial Security Act (42 U.S.C. 1396b(a)(2)), as added by
25 section 201(b)(2)(A) of the Children's Health Insurance

1 Program Reauthorization Act of 2009 (Public Law 111–
2 3), is amended by inserting “and other individuals” after
3 “children of families”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a) shall apply to payment for translation or
6 interpretation services furnished on or after January 1,
7 2010.

8 **SEC. 1724. OPTIONAL COVERAGE FOR FREESTANDING**
9 **BIRTH CENTER SERVICES.**

10 (a) IN GENERAL.—Section 1905 of the Social Secu-
11 rity Act (42 U.S.C. 1396d), as amended by section
12 1713(a), is amended—

13 (1) in subsection (a)—

14 (A) by redesignating paragraph (29) as
15 paragraph (30);

16 (B) in paragraph (28), by striking at the
17 end “and”; and

18 (C) by inserting after paragraph (28) the
19 following new paragraph:

20 “(29) freestanding birth center services (as de-
21 fined in subsection (l)(3)(A)) and other ambulatory
22 services that are offered by a freestanding birth cen-
23 ter (as defined in subsection (l)(3)(B)) and that are
24 otherwise included in the plan; and”;

1 (2) in subsection (1), by adding at the end the
2 following new paragraph:

3 “(3)(A) The term ‘freestanding birth center services’
4 means services furnished to an individual at a freestanding
5 birth center (as defined in subparagraph (B)), including
6 by a licensed birth attendant (as defined in subparagraph
7 (C)) at such center.

8 “(B) The term ‘freestanding birth center’ means a
9 health facility—

10 “(i) that is not a hospital; and

11 “(ii) where childbirth is planned to occur away
12 from the pregnant woman’s residence.

13 “(C) The term ‘licensed birth attendant’ means an
14 individual who is licensed or registered by the State in-
15 volved to provide health care at childbirth and who pro-
16 vides such care within the scope of practice under which
17 the individual is legally authorized to perform such care
18 under State law (or the State regulatory mechanism pro-
19 vided by State law), regardless of whether the individual
20 is under the supervision of, or associated with, a physician
21 or other health care provider. Nothing in this subpara-
22 graph shall be construed as changing State law require-
23 ments applicable to a licensed birth attendant.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to items and services furnished on
3 or after the date of the enactment of this Act.

4 **SEC. 1725. INCLUSION OF PUBLIC HEALTH CLINICS UNDER**
5 **THE VACCINES FOR CHILDREN PROGRAM.**

6 Section 1928(b)(2)(A)(iii)(I) of the Social Security
7 Act (42 U.S.C. 1396s(b)(2)(A)(iii)(I)) is amended—

8 (1) by striking “or a rural health clinic” and in-
9 serting “, a rural health clinic”; and

10 (2) by inserting “or a public health clinic,”
11 after “1905(l)(1)),”.

12 **Subtitle D—Coverage**

13 **SEC. 1731. OPTIONAL MEDICAID COVERAGE OF LOW-IN-**
14 **COME HIV-INFECTED INDIVIDUALS.**

15 (a) IN GENERAL.— Section 1902 of the Social Secu-
16 rity Act (42 U.S.C. 1396a), as amended by section
17 1714(a)(1), is amended—

18 (1) in subsection (a)(10)(A)(ii)—

19 (A) by striking “or” at the end of sub-
20 clause (XIX);

21 (B) by adding “or” at the end of subclause
22 (XX); and

23 (C) by adding at the end the following:

24 “(XXI) who are described in subsection (ii) (re-
25 lating to HIV-infected individuals);”; and

1 (2) by adding at the end, as amended by sec-
2 tions 1703 and 1714(a), the following:

3 “(ii) individuals described in this subsection are indi-
4 viduals not described in subsection (a)(10)(A)(i)—

5 “(1) who have HIV infection;

6 “(2) whose income (as determined under the
7 State plan under this title with respect to disabled
8 individuals) does not exceed the maximum amount
9 of income a disabled individual described in sub-
10 section (a)(10)(A)(i) may have and obtain medical
11 assistance under the plan; and

12 “(3) whose resources (as determined under the
13 State plan under this title with respect to disabled
14 individuals) do not exceed the maximum amount of
15 resources a disabled individual described in sub-
16 section (a)(10)(A)(i) may have and obtain medical
17 assistance under the plan.”.

18 (b) ENHANCED MATCH.—The first sentence of sec-
19 tion 1905(b) of such Act (42 U.S.C. 1396d(b)) is amended
20 by striking “section 1902(a)(10)(A)(ii)(XVIII)” and in-
21 serting “subclause (XVIII) or (XXI) of section
22 1902(a)(10)(A)(ii)”.

23 (c) CONFORMING AMENDMENTS.—Section 1905(a) of
24 such Act (42 U.S.C. 1396d(a)) is amended, in the matter
25 preceding paragraph (1)—

1 (1) by striking “or” at the end of clause (xii);

2 (2) by adding “or” at the end of clause (xiii);

3 and

4 (3) by inserting after clause (xiii) the following:

5 “(xiv) individuals described in section
6 1902(ii),”.

7 (d) EXEMPTION FROM FUNDING LIMITATION FOR
8 TERRITORIES.—Section 1108(g) of the Social Security
9 Act (42 U.S.C. 1308(g)) is amended by adding at the end
10 the following:

11 “(5) DISREGARDING MEDICAL ASSISTANCE FOR
12 OPTIONAL LOW-INCOME HIV-INFECTED INDIVID-
13 UALS.—The limitations under subsection (f) and the
14 previous provisions of this subsection shall not apply
15 to amounts expended for medical assistance for indi-
16 viduals described in section 1902(ii) who are only el-
17 igible for such assistance on the basis of section
18 1902(a)(10)(A)(ii)(XXI).”.

19 (e) EFFECTIVE DATE; SUNSET.—The amendments
20 made by this section shall apply to expenditures for cal-
21 endar quarters beginning on or after the date of the enact-
22 ment of this Act, and before January 1, 2013, without
23 regard to whether or not final regulations to carry out
24 such amendments have been promulgated by such date.

1 **SEC. 1732. EXTENDING TRANSITIONAL MEDICAID ASSIST-**
2 **ANCE (TMA).**

3 Sections 1902(e)(1)(B) and 1925(f) of the Social Se-
4 curity Act (42 U.S.C. 1396a(e)(1)(B), 1396r-6(f)), as
5 amended by section 5004(a)(1) of the American Recovery
6 and Reinvestment Act of 2009 (Public Law 111-5), are
7 each amended by striking “December 31, 2010” and in-
8 serting “December 31, 2012”.

9 **SEC. 1733. REQUIREMENT OF 12-MONTH CONTINUOUS COV-**
10 **ERAGE UNDER CERTAIN CHIP PROGRAMS.**

11 (a) IN GENERAL.—Section 2102(b) of the Social Se-
12 curity Act (42 U.S.C. 1397bb(b)) is amended by adding
13 at the end the following new paragraph:

14 “(6) REQUIREMENT FOR 12-MONTH CONTIN-
15 UOUS ELIGIBILITY.—In the case of a State child
16 health plan that provides child health assistance
17 under this title through a means other than de-
18 scribed in section 2101(a)(2), the plan shall provide
19 for implementation under this title of the 12-month
20 continuous eligibility option described in section
21 1902(e)(12) for targeted low-income children whose
22 family income is below 200 percent of the poverty
23 line.”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall apply to determinations (and redeter-
26 minations) of eligibility made on or after January 1, 2010.

1 **Subtitle E—Financing**

2 **SEC. 1741. PAYMENTS TO PHARMACISTS.**

3 (a) PHARMACY REIMBURSEMENT LIMITS.—

4 (1) IN GENERAL.—Section 1927(e) of the So-
5 cial Security Act (42 U.S.C. 1396r–8(e)) is amend-
6 ed—

7 (A) by striking paragraph (5) and insert-
8 ing the following:

9 “(5) USE OF AMP IN UPPER PAYMENT LIM-
10 ITS.—The Secretary shall calculate the Federal
11 upper reimbursement limit established under para-
12 graph (4) as 130 percent of the weighted average
13 (determined on the basis of manufacturer utiliza-
14 tion) of monthly average manufacturer prices.”

15 (2) DEFINITION OF AMP.—Section
16 1927(k)(1)(B) of such Act (42 U.S.C. 1396r–
17 8(k)(1)(B)) is amended—

18 (B) in the heading, by striking “EX-
19 TENDED TO WHOLESALERS” and inserting
20 “AND OTHER PAYMENTS”; and

21 (C) by striking “regard to” and all that
22 follows through the period and inserting the fol-
23 lowing: “regard to—

24 “(i) customary prompt pay discounts
25 extended to wholesalers;

1 “(ii) bona fide service fees paid by
2 manufacturers;

3 “(iii) reimbursement by manufactur-
4 ers for recalled, damaged, expired, or oth-
5 erwise unsalable returned goods, including
6 reimbursement for the cost of the goods
7 and any reimbursement of costs associated
8 with return goods handling and processing,
9 reverse logistics, and drug destruction;

10 “(iv) sales directly to, or rebates, dis-
11 counts, or other price concessions provided
12 to, pharmacy benefit managers, managed
13 care organizations, health maintenance or-
14 ganizations, insurers, mail order phar-
15 macies that are not open to all members of
16 the public, or long term care providers,
17 provided that these rebates, discounts, or
18 price concessions are not passed through to
19 retail pharmacies;

20 “(v) sales directly to, or rebates, dis-
21 counts, or other price concessions provided
22 to, hospitals, clinics, and physicians, unless
23 the drug is an inhalation, infusion, or
24 injectable drug, or unless the Secretary de-
25 termines, as allowed for in Agency admin-

1 istrative procedures, that it is necessary to
2 include such sales, rebates, discounts, and
3 price concessions in order to obtain an ac-
4 curate AMP for the drug. Such a deter-
5 mination shall not be subject to judicial re-
6 view; or

7 “(vi) rebates, discounts, and other
8 price concessions required to be provided
9 under agreements under subsections (f)
10 and (g) of section 1860D–2(f).”.

11 (3) MANUFACTURER REPORTING REQUIRE-
12 MENTS.—Section 1927(b)(3) of such Act (42 U.S.C.
13 1396r–8(b)(3)) is amended—

14 (A) in subparagraph (A), by adding at the
15 end the following new clause:

16 “(iv) not later than 30 days after the
17 last day of each month of a rebate period
18 under the agreement, on the manufactur-
19 er’s total number of units that are used to
20 calculate the monthly average manufac-
21 turer price for each covered outpatient
22 drug.”

23 (4) AUTHORITY TO PROMULGATE REGULA-
24 TION.—The Secretary of Health and Human Serv-
25 ices may promulgate regulations to clarify the re-

1 requirements for upper payment limits and for the de-
2 termination of the average manufacturer price in an
3 expedited manner. Such regulations may become ef-
4 fective on an interim final basis, pending oppor-
5 tunity for public comment.

6 (5) PHARMACY REIMBURSEMENTS THROUGH
7 DECEMBER 31, 2010.—The specific upper limit under
8 section 447.332 of title 42, Code of Federal Regula-
9 tions (as in effect on December 31, 2006) applicable
10 to payments made by a State for multiple source
11 drugs under a State Medicaid plan shall continue to
12 apply through December 31, 2010, for purposes of
13 the availability of Federal financial participation for
14 such payments.

15 (b) DISCLOSURE OF PRICE INFORMATION TO THE
16 PUBLIC.—Section 1927(b)(3) of such Act (42 U.S.C.
17 1396r–8(b)(3)) is amended—

18 (1) in subparagraph (A)—

19 (A) in clause (i), in the matter preceding
20 subclause (I), by inserting “month of a” after
21 “each”; and

22 (B) in the last sentence, by striking “and
23 shall,” and all that follows through the period;
24 and

1 (2) in subparagraph (D)(v), by inserting
2 “weighted” before “average manufacturer prices”.

3 **SEC. 1742. PRESCRIPTION DRUG REBATES.**

4 (a) ADDITIONAL REBATE FOR NEW FORMULATIONS
5 OF EXISTING DRUGS.—

6 (1) IN GENERAL.—Section 1927(c)(2) of the
7 Social Security Act (42 U.S.C. 1396r–8(c)(2)) is
8 amended by adding at the end the following new
9 subparagraph:

10 “(C) TREATMENT OF NEW FORMULA-
11 TIONS.—In the case of a drug that is a line ex-
12 tension of a single source drug or an innovator
13 multiple source drug that is an oral solid dos-
14 age form, the rebate obligation with respect to
15 such drug under this section shall be the
16 amount computed under this section for such
17 new drug or, if greater, the product of—

18 “(i) the average manufacturer price of
19 the line extension of a single source drug
20 or an innovator multiple source drug that
21 is an oral solid dosage form;

22 “(ii) the highest additional rebate
23 (calculated as a percentage of average
24 manufacturer price) under this section for
25 any strength of the original single source

1 drug or innovator multiple source drug;
2 and
3 “(iii) the total number of units of
4 each dosage form and strength of the line
5 extension product paid for under the State
6 plan in the rebate period (as reported by
7 the State).

8 In this subparagraph, the term ‘line extension’
9 means, with respect to a drug, an extended re-
10 lease formulation of the drug.”.

11 (2) EFFECTIVE DATE.—The amendment made
12 by paragraph (1) shall apply to drugs dispensed
13 after December 31, 2009.

14 (b) INCREASE MINIMUM REBATE PERCENTAGE FOR
15 SINGLE SOURCE DRUGS.—Section 1927(c)(1)(B)(i) of the
16 Social Security Act (42 U.S.C. 1396r–8(c)(1)(B)(i)) is
17 amended—

18 (1) in subclause (IV), by striking “and” at the
19 end;

20 (2) in subclause (V)—

21 (A) by inserting “and before January 1,
22 2010” after “December 31, 1995,”; and

23 (B) by striking the period at the end and
24 inserting “; and”; and

1 (3) by adding at the end the following new sub-
2 clause:

3 “(VI) after December 31, 2009,
4 is 22.1 percent.”.

5 **SEC. 1743. EXTENSION OF PRESCRIPTION DRUG DIS-**
6 **COUNTS TO ENROLLEES OF MEDICAID MAN-**
7 **AGED CARE ORGANIZATIONS.**

8 (a) IN GENERAL.—Section 1903(m)(2)(A) of the So-
9 cial Security Act (42 U.S.C. 1396b(m)(2)(A)) is amend-
10 ed—

11 (1) in clause (xi), by striking “and” at the end;

12 (2) in clause (xii), by striking the period at the
13 end and inserting “; and”; and

14 (3) by adding at the end the following:

15 “(xiii) such contract provides that the entity
16 shall report to the State such information, on such
17 timely and periodic basis as specified by the Sec-
18 retary, as the State may require in order to include,
19 in the information submitted by the State to a man-
20 ufacturer under section 1927(b)(2)(A), information
21 on covered outpatient drugs dispensed to individuals
22 eligible for medical assistance who are enrolled with
23 the entity and for which the entity is responsible for
24 coverage of such drugs under this subsection.”.

1 (b) CONFORMING AMENDMENTS.—Section 1927 of
2 such Act (42 U.S.C. 1396r-8) is amended—

3 (1) in the first sentence of subsection (b)(1)(A),
4 by inserting before the period at the end the fol-
5 lowing: “, including such drugs dispensed to individ-
6 uals enrolled with a medicaid managed care organi-
7 zation if the organization is responsible for coverage
8 of such drugs”;

9 (2) in subsection (b)(2), by adding at the end
10 the following new subparagraph:

11 “(C) REPORTING ON MMCO DRUGS.—On a
12 quarterly basis, each State shall report to the
13 Secretary the total amount of rebates in dollars
14 received from pharmacy manufacturers for
15 drugs provided to individuals enrolled with
16 Medicaid managed care organizations that con-
17 tract under section 1903(m).”; and

18 (3) in subsection (j)—

19 (A) in the heading by striking “EXEMP-
20 TION” and inserting “SPECIAL RULES”; and

21 (B) in paragraph (1), by striking “not”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section take effect on July 1, 2010, and shall apply
24 to drugs dispensed on or after such date, without regard

1 to whether or not final regulations to carry out such
2 amendments have been promulgated by such date.

3 **SEC. 1744. PAYMENTS FOR GRADUATE MEDICAL EDU-**
4 **CATION.**

5 (a) IN GENERAL.—Section 1905 of the Social Secu-
6 rity Act (42 U.S.C. 1396d), as amended by sections
7 1701(a)(2), 1711(a), and 1713(a), is amended by adding
8 at the end the following new subsection:

9 “(bb) PAYMENT FOR GRADUATE MEDICAL EDU-
10 CATION.—

11 “(1) IN GENERAL.—The term ‘medical assist-
12 ance’ includes payment for costs of graduate medical
13 education consistent with this subsection, whether
14 provided in or outside of a hospital.

15 “(2) SUBMISSION OF INFORMATION.—For pur-
16 poses of paragraph (1) and section
17 1902(a)(13)(A)(v), payment for such costs is not
18 consistent with this subsection unless—

19 “(A) the State submits to the Secretary, in
20 a timely manner and on an annual basis speci-
21 fied by the Secretary, information on total pay-
22 ments for graduate medical education and how
23 such payments are being used for graduate
24 medical education, including—

1 “(i) the institutions and programs eli-
2 gible for receiving the funding;

3 “(ii) the manner in which such pay-
4 ments are calculated;

5 “(iii) the types and fields of education
6 being supported;

7 “(iv) the workforce or other goals to
8 which the funding is being applied;

9 “(v) State progress in meeting such
10 goals; and

11 “(vi) such other information as the
12 Secretary determines will assist in carrying
13 out paragraphs (3) and (4); and

14 “(B) such expenditures are made con-
15 sistent with such goals and requirements as are
16 established under paragraph (4).

17 “(3) REVIEW OF INFORMATION.—The Secretary
18 shall make the information submitted under para-
19 graph (2) available to the Advisory Committee on
20 Health Workforce Evaluation and Assessment (es-
21 tablished under section 2261 of the Public Health
22 Service Act). The Secretary and the Advisory Com-
23 mittee shall independently review the information
24 submitted under paragraph (2), taking into account
25 State and local workforce needs.

1 “(4) SPECIFICATION OF GOALS AND REQUIRE-
2 MENTS.—The Secretary shall specify by rule, ini-
3 tially published by not later than December 31,
4 2011—

5 “(A) program goals for the use of funds
6 described in paragraph (1), taking into account
7 recommendations of the such Advisory Com-
8 mittee and the goals for approved medical resi-
9 dency training programs described in section
10 1886(h)(1)(B); and

11 “(B) requirements for use of such funds
12 consistent with such goals.

13 Such rule may be effective on an interim basis pend-
14 ing revision after an opportunity for public com-
15 ment.”.

16 (b) CONFORMING AMENDMENT.—Section
17 1902(a)(13)(A) of such Act (42 U.S.C. 1396a(a)(13)(A))
18 is amended—

19 (1) by striking “and” at the end of clause (iii);

20 (2) by striking “; and” and inserting “, and”;

21 and

22 (3) by adding at the end the following new
23 clause:

24 “(v) in the case of hospitals and at
25 the option of a State, such rates may in-

1 health care acquired condition determined as a non-
2 covered service under title XVIII.”.

3 (b) APPLICATION TO CHIP.—Section 2107(e)(1)(G)
4 of such Act (42 U.S.C. 1397gg(e)(1)(G)) is amended by
5 striking “and (17)” and inserting “(17), and (25)”.

6 (c) PERMISSION TO INCLUDE ADDITIONAL HEALTH
7 CARE-ACQUIRED CONDITIONS.—Nothing in this section
8 shall prevent a State from including additional health
9 care-acquired conditions for non-payment in its Medicaid
10 program under title XIX of the Social Security Act.

11 (d) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to discharges occurring on or after
13 January 1, 2010.

14 **SEC. 1752. EVALUATIONS AND REPORTS REQUIRED UNDER**
15 **MEDICAID INTEGRITY PROGRAM.**

16 Section 1936(c)(2)) of the Social Security Act (42
17 U.S.C. 1396u–7(e)(2)) is amended—

18 (1) by redesignating subparagraph (D) as sub-
19 paragraph (E); and

20 (2) by inserting after subparagraph (C) the fol-
21 lowing new subparagraph:

22 “(D) For the contract year beginning in
23 2011 and each subsequent contract year, the
24 entity provides assurances to the satisfaction of
25 the Secretary that the entity will conduct peri-

1 odic evaluations of the effectiveness of the ac-
2 tivities carried out by such entity under the
3 Program and will submit to the Secretary an
4 annual report on such activities.”.

5 **SEC. 1753. REQUIRE PROVIDERS AND SUPPLIERS TO**
6 **ADOPT PROGRAMS TO REDUCE WASTE,**
7 **FRAUD, AND ABUSE.**

8 Section 1902(a) of such Act (42 U.S.C. 42 U.S.C.
9 1396a(a)), as amended by sections 1631(b)(1) and 1703,
10 is further amended—

11 (1) in paragraph (74), by striking at the end
12 “and”;

13 (2) in paragraph (75), by striking at the end
14 the period and inserting “; and”; and

15 (3) by inserting after paragraph (75) the fol-
16 lowing new paragraph:

17 “(76) provide that any provider or supplier
18 (other than a physician or nursing facility) providing
19 services under such plan shall, subject to paragraph
20 (5) of section 1874(d), establish a compliance pro-
21 gram described in paragraph (1) of such section in
22 accordance with such section.”.

23 **SEC. 1754. OVERPAYMENTS.**

24 (a) IN GENERAL.—Section 1903(d)(2)(C) of the So-
25 cial Security Act (42 U.S.C. 1396b(d)(2)(C)) is amended

1 by inserting “(or 1 year in the case of overpayments due
2 to fraud)” after “60 days”.

3 (b) EFFECTIVE DATE.—In the case overpayments
4 discovered on or after the date of the enactment of this
5 Act.

6 **SEC. 1755. MANAGED CARE ORGANIZATIONS.**

7 (a) MINIMUM MEDICAL LOSS RATIO.—

8 (1) MEDICAID.—Section 1903(m)(2)(A) of the
9 Social Security Act (42 U.S.C. 1396b(m)(2)(A)), as
10 amended by section 1743(a)(3), is amended—

11 (A) by striking “and” at the end of clause
12 (xii);

13 (B) by striking the period at the end of
14 clause (xiii) and inserting “; and”; and

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

17 “(xiv) such contract has a medical loss ratio, as
18 determined in accordance with a methodology speci-
19 fied by the Secretary that is a percentage (not less
20 than 85 percent) as specified by the Secretary.”.

21 (2) CHIP.—Section 2107(e)(1) of such Act (42
22 U.S.C. 1397gg(e)(1)) is amended—

23 (A) by redesignating subparagraphs (H)
24 through (L) as subparagraphs (I) through (M);
25 and

1 (B) by inserting after subparagraph (G)
2 the following new subparagraph:

3 “(H) Section 1903(m)(2)(A)(xiv) (relating
4 to application of minimum loss ratios), with re-
5 spect to comparable contracts under this title.”.

6 (3) EFFECTIVE DATE.—The amendments made
7 by this subsection shall apply to contracts entered
8 into or renewed on or after July 1, 2010.

9 (b) PATIENT ENCOUNTER DATA.—

10 (1) IN GENERAL.—Section 1903(m)(2)(A)(xi)
11 of the Social Security Act (42 U.S.C.
12 1396b(m)(2)(A)(xi)) is amended by inserting “and
13 for the provision of such data to the State at a fre-
14 quency and level of detail to be specified by the Sec-
15 retary” after “patients”.

16 (2) EFFECTIVE DATE.—The amendment made
17 by paragraph (1) shall apply with respect to contract
18 years beginning on or after January 1, 2010.

19 **SEC. 1756. TERMINATION OF PROVIDER PARTICIPATION**
20 **UNDER MEDICAID AND CHIP IF TERMINATED**
21 **UNDER MEDICARE OR OTHER STATE PLAN**
22 **OR CHILD HEALTH PLAN.**

23 (a) STATE PLAN REQUIREMENT.—Section
24 1902(a)(39) of the Social Security Act (42 U.S.C. 42
25 U.S.C. 1396a(a)) is amended by inserting after “1128A,”

1 the following: “terminate the participation of any indi-
2 vidual or entity in such program if (subject to such excep-
3 tions are are permitted with respect to exclusion under
4 sections 1128(b)(3)(C) and 1128(d)(3)(B)) participation
5 of such individual or entity is terminated under title
6 XVIII, any other State plan under this title, or any child
7 health plan under title XXI,”.

8 (b) APPLICATION TO CHIP.—Section 2107(e)(1)(A)
9 of such Act (42 U.S.C. 1397gg(e)(1)(A)) is amended by
10 inserting before the period at the end the following: “and
11 section 1902(a)(39) (relating to exclusion and termination
12 of participation)”.

13 (c) EFFECTIVE DATE.—

14 (1) Except as provided in paragraph (2), the
15 amendments made by this section shall apply to
16 services furnished on or after JJanuary 1, 2011,
17 without regard to whether or not final regulations to
18 carry out such amendments have been promulgated
19 by such date.

20 (2) In the case of a State plan for medical as-
21 sistance under title XIX of the Social Security Act
22 or a child health plan under title XXI of such Act
23 which the Secretary of Health and Human Services
24 determines requires State legislation (other than leg-
25 islation appropriating funds) in order for the plan to

1 meet the additional requirement imposed by the
2 amendments made by this section, the State plan or
3 child health plan shall not be regarded as failing to
4 comply with the requirements of such title solely on
5 the basis of its failure to meet this additional re-
6 quirement before the first day of the first calendar
7 quarter beginning after the close of the first regular
8 session of the State legislature that begins after the
9 date of the enactment of this Act. For purposes of
10 the previous sentence, in the case of a State that has
11 a 2-year legislative session, each year of such session
12 shall be deemed to be a separate regular session of
13 the State legislature.

14 **SEC. 1757. MEDICAID AND CHIP EXCLUSION FROM PARTICI-**
15 **PATION RELATING TO CERTAIN OWNERSHIP,**
16 **CONTROL, AND MANAGEMENT AFFILIATIONS.**

17 (a) STATE PLAN REQUIREMENT.—Section 1902(a)
18 of the Social Security Act (42 U.S.C. 1396a(a)), as
19 amended by sections 1631(b)(1), 1703, and 1753, is fur-
20 ther amended—

21 (1) in paragraph (75), by striking at the end
22 “and”;

23 (2) in paragraph (76), by striking at the end
24 the period and inserting “; and”; and

1 (3) by inserting after paragraph (76) the fol-
2 lowing new paragraph:

3 “(77) provide that the State agency described
4 in paragraph (9) exclude, with respect to a period,
5 any individual or entity from participation in the
6 program under the State plan if such individual or
7 entity owns, controls, or manages an entity that (or
8 if such entity is owned, controlled, or managed by an
9 individual or entity that)—

10 “(A) has unpaid overpayments under this
11 title during such period determined by the Sec-
12 retary or the State agency to be delinquent;

13 “(B) is suspended or excluded from par-
14 ticipation under or whose participation is termi-
15 nated under this title during such period; or

16 “(C) is affiliated with an individual or enti-
17 ty that has been suspended or excluded from
18 participation under this title or whose participa-
19 tion is terminated under this title during such
20 period.”.

21 (b) CHILD HEALTH PLAN REQUIREMENT.—Section
22 2107(e)(1)(A) of such Act (42 U.S.C. 1397gg(e)(1)(A)),
23 as amended by section 1756(b), is amended by striking
24 “section 1902(a)(39)” and inserting “sections
25 1902(a)(39) and 1902(a)(77)”.

1 (c) EFFECTIVE DATE.—

2 (1) Except as provided in paragraph (2), the
3 amendments made by this section shall apply to
4 services furnished on or after January 1, 2011,
5 without regard to whether or not final regulations to
6 carry out such amendments have been promulgated
7 by such date.

8 (2) In the case of a State plan for medical as-
9 sistance under title XIX of the Social Security Act
10 or a child health plan under title XXI of such Act
11 which the Secretary of Health and Human Services
12 determines requires State legislation (other than leg-
13 islation appropriating funds) in order for the plan to
14 meet the additional requirement imposed by the
15 amendments made by this section, the State plan or
16 child health plan shall not be regarded as failing to
17 comply with the requirements of such title solely on
18 the basis of its failure to meet this additional re-
19 quirement before the first day of the first calendar
20 quarter beginning after the close of the first regular
21 session of the State legislature that begins after the
22 date of the enactment of this Act. For purposes of
23 the previous sentence, in the case of a State that has
24 a 2-year legislative session, each year of such session

1 shall be deemed to be a separate regular session of
2 the State legislature.

3 **SEC. 1758. REQUIREMENT TO REPORT EXPANDED SET OF**
4 **DATA ELEMENTS UNDER MMIS TO DETECT**
5 **FRAUD AND ABUSE.**

6 Section 1903(r)(1)(F) of the Social Security Act (42
7 U.S.C. 1396b(r)(1)(F)) is amended by inserting after
8 “necessary” the following: “and including, for data sub-
9 mitted to the Secretary on or after July 1, 2010, data
10 elements from the automated data system that the Sec-
11 retary determines to be necessary for detection of waste,
12 fraud, and abuse”.

13 **SEC. 1759. BILLING AGENTS, CLEARINGHOUSES, OR OTHER**
14 **ALTERNATE PAYEES REQUIRED TO REG-**
15 **ISTER UNDER MEDICAID.**

16 (a) IN GENERAL.—Section 1902(a) of the Social Se-
17 curity Act (42 U.S.C. 42 U.S.C. 1396a(a)), as amended
18 by sections 1631(b), 1703, 1753, and 1757, is further
19 amended—

20 (1) in paragraph (76); by striking at the end
21 “and”;

22 (2) in paragraph (77), by striking the period at
23 the end and inserting “and”; and

24 (3) by inserting after paragraph (77) the fol-
25 lowing new paragraph:

1 “(78) provide that any agent, clearinghouse, or
2 other alternate payee that submits claims on behalf
3 of a health care provider must register with the
4 State and the Secretary in a form and manner speci-
5 fied by the Secretary under section 1866(j)(1)(D).”.

6 (b) DENIAL OF PAYMENT.—Section 1903(i) of such
7 Act (42 U.S.C. 1396b(i)), as amended by section 1753,
8 is amended—

9 (1) by striking “or” at the end of paragraph
10 (24);

11 (2) by striking the period at the end of para-
12 graph (25) and inserting “; or”; and

13 (3) by inserting after paragraph (25) the fol-
14 lowing new paragraph:

15 “(26) with respect to any amount paid to a bill-
16 ing agent, clearinghouse, or other alternate payee
17 that is not registered with the State and the Sec-
18 retary as required under section 1902(a)(78).”.

19 (c) EFFECTIVE DATE.—

20 (1) Except as provided in paragraph (2), the
21 amendments made by this section shall apply to
22 claims submitted on or after January 1, 2012, with-
23 out regard to whether or not final regulations to
24 carry out such amendments have been promulgated
25 by such date.

1 (2) In the case of a State plan for medical as-
2 sistance under title XIX of the Social Security Act
3 which the Secretary of Health and Human Services
4 determines requires State legislation (other than leg-
5 islation appropriating funds) in order for the plan to
6 meet the additional requirement imposed by the
7 amendments made by this section, the State plan or
8 child health plan shall not be regarded as failing to
9 comply with the requirements of such title solely on
10 the basis of its failure to meet this additional re-
11 quirement before the first day of the first calendar
12 quarter beginning after the close of the first regular
13 session of the State legislature that begins after the
14 date of the enactment of this Act. For purposes of
15 the previous sentence, in the case of a State that has
16 a 2-year legislative session, each year of such session
17 shall be deemed to be a separate regular session of
18 the State legislature.

19 **SEC. 1760. DENIAL OF PAYMENTS FOR LITIGATION-RE-**
20 **LATED MISCONDUCT.**

21 (a) IN GENERAL.—Section 1903(i) of the Social Se-
22 curity Act (42 U.S.C. 1396b(i)), as previously amended
23 is amended—

24 (1) by striking “or” at the end of paragraph
25 (25);

1 (2) by striking the period at the end of para-
2 graph (26) and inserting a semicolon; and

3 (3) by inserting after paragraph (26) the fol-
4 lowing new paragraphs:

5 “(27) with respect to any amount expended—

6 “(A) on litigation in which a court imposes
7 sanctions on the State, its employees, or its
8 counsel for litigation-related misconduct; or

9 “(B) to reimburse (or otherwise com-
10 pensate) a managed care entity for payment of
11 legal expenses associated with any action in
12 which a court imposes sanctions on the man-
13 aged care entity for litigation-related mis-
14 conduct.”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 subsection (a) shall apply to amounts expended on or after
17 January 1, 2010.

18 **Subtitle G—Puerto Rico and the** 19 **Territories**

20 **SEC. 1771. PUERTO RICO AND TERRITORIES.**

21 (a) INCREASE IN CAP.—

22 (1) IN GENERAL.—Section 1108(g) of the So-
23 cial Security Act (42 U.S.C. 1308(g)) is amended—

24 (A) in paragraph (4) by striking “and (3)”
25 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 PPLICATION 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.

“SUBPART XI—HEALTH PROFESSIONAL NEEDS AREAS

“Sec. 340H. In general.
“Sec. 340I. Loan repayments.
“Sec. 340J. Report.
“Sec. 340K. Allocation.
Sec. 2212. Primary care student loan funds.
Sec. 2213. Training in family medicine, general internal medicine, general pedi-
atrics, geriatrics, and physician assistants.
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.

“SUBPART XII—PUBLIC HEALTH WORKFORCE

“Sec. 340L. Public Health Workforce Corps.

“Sec. 340M. Public Health Workforce Scholarship Program.

“Sec. 340N. Public Health Workforce Loan Repayment Program.

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 XXXI—PREVENTION AND WELLNESS

“Subtitle A—Prevention and Wellness Trust

“Sec. 3111. Prevention and Wellness Trust.

“Subtitle B—National Prevention and Wellness Strategy

“Sec. 3121. National Prevention and Wellness Strategy.

“Subtitle C—Prevention Task Forces

“Sec. 3131. Task Force on Clinical Preventive Services.

“Sec. 3132. Task Force on Community Preventive Services.

“Subtitle D—Prevention and Wellness Research

“Sec. 3141. Prevention and wellness research activity coordination.

“Sec. 3142. Community prevention and wellness research grants.

“Subtitle E—Delivery of Community Prevention and Wellness Services

“Sec. 3151. Community prevention and wellness services grants.

“Subtitle F—Core Public Health Infrastructure

“Sec. 3161. Core public health infrastructure for State, local, and tribal health departments.

“Sec. 3162. Core public health infrastructure and activities for CDC.

“Subtitle G—General Provisions

“Sec. 3171. Definitions.

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—States Failing To Adhere to Certain Employment Obligations

Sec. 2541. 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.).

1 **SEC. 2002. PUBLIC HEALTH INVESTMENT FUND.**

2 (a) ESTABLISHMENT OF FUNDS.—

3 (1) IN GENERAL.—There is established a fund
4 to be known as the “Public Health Investment
5 Fund” (referred to in this section as the “Fund”).

6 (2) FUNDING.—

7 (A) There shall be deposited into the
8 Fund—

9 (i) for fiscal year 2010,
10 \$4,600,000,000;

11 (ii) for fiscal year 2011,
12 \$5,600,000,000;

13 (iii) for fiscal year 2012,
14 \$6,900,000,000;

15 (iv) for fiscal year 2013,
16 \$7,800,000,000;

17 (v) for fiscal year 2014,
18 \$9,000,000,000;

19 (vi) for fiscal year 2015,
20 \$9,400,000,000;

21 (vii) for fiscal year 2016,
22 \$10,100,000,000;

23 (viii) for fiscal year 2017,
24 \$10,800,000,000;

25 (ix) for fiscal year 2018,
26 \$11,800,000,000; and

1 (x) for fiscal year 2019,
2 \$12,700,000,000.

3 (B) Amounts deposited into the Fund shall
4 be derived from general revenues of the Treas-
5 ury.

6 (b) AUTHORIZATION OF APPROPRIATIONS FROM THE
7 FUND.—

8 (1) NEW FUNDING.—

9 (A) IN GENERAL.—Amounts in the Fund
10 are authorized to be appropriated by the Com-
11 mittees on Appropriations of the House of Rep-
12 resentatives and the Senate for carrying out ac-
13 tivities under designated public health provi-
14 sions.

15 (B) DESIGNATED PROVISIONS.—For pur-
16 poses of this paragraph, the term “designated
17 public health provisions” means the provisions
18 for which amounts are authorized to be appro-
19 priated under section 330(s), 338(c), 338H-1,
20 799C, 872, or 3111 of the Public Health Serv-
21 ice Act, as added by this division.

22 (2) BASELINE FUNDING.—

23 (A) IN GENERAL.—Amounts in the Fund
24 are authorized to be appropriated (as described
25 in paragraph (1)) for a fiscal year only if (ex-

1 including any amounts in or appropriated from
2 the Fund)—

3 (i) the amounts specified in subpara-
4 graph (B) for the fiscal year involved are
5 equal to or greater than the amounts spec-
6 ified in subparagraph (B) for fiscal year
7 2008; and

8 (ii) the amounts appropriated, out of
9 the general fund of the Treasury, to the
10 Prevention and Wellness Trust under sec-
11 tion 3111 of the Public Health Service
12 Act, as added by this division, for the fis-
13 cal year involved are equal to or greater
14 than the funds—

15 (I) appropriated under the head-
16 ing “Prevention and Wellness Fund”
17 in title VIII of division A of the Amer-
18 ican Recovery and Reinvestment Act
19 of 2009 (Public Law 111–5); and

20 (II) allocated by the second pro-
21 viso under such heading for evidence-
22 based clinical and community-based
23 prevention and wellness strategies.

24 (B) AMOUNTS SPECIFIED.—The amounts
25 specified in this subparagraph, with respect to

1 a fiscal year, are the amounts appropriated for
2 the following:

3 (i) Community health centers (includ-
4 ing funds appropriated under the authority
5 of section 330 of the Public Health Service
6 Act (42 U.S.C. 254b)).

7 (ii) The National Health Service
8 Corps Program (including funds appro-
9 priated under the authority of section 338
10 of such Act (42 U.S.C. 254k)).

11 (iii) The National Health Service
12 Corps Scholarship and Loan Repayment
13 Programs (including funds appropriated
14 under the authority of section 338H of
15 such Act (42 U.S.C. 254q)).

16 (iv) Primary care education programs
17 (including funds appropriated under the
18 authority of sections 736, 740, 741, and
19 747 of such Act (42 U.S.C. 293, 293d,
20 and 293k)).

21 (v) Sections 761 and 770 of such Act
22 (42 U.S.C. 294n and 295e).

23 (vi) Nursing workforce development
24 (including funds appropriated under the

1 authority of title VIII of such Act (42
2 U.S.C. 296 et seq.)).

3 (vii) The National Center for Health
4 Statistics (including funds appropriated
5 under the authority of sections 304, 306,
6 307, and 308 of such Act (42 U.S.C.
7 242b, 242k, 242l, and 242m)).

8 (viii) The Agency for Healthcare Re-
9 search and Quality (including funds appro-
10 priated under the authority of title IX of
11 such Act (42 U.S.C. 299 et seq.)).

12 (3) BUDGETARY IMPLICATIONS.—Amounts ap-
13 propriated under this section, and outlays flowing
14 from such appropriations, shall not be taken into ac-
15 count for purposes of any budget enforcement proce-
16 dures including allocations under section 302(a) and
17 (b) of the Balanced Budget and Emergency Deficit
18 Control Act and budget resolutions for fiscal years
19 during which appropriations are made from the
20 Fund.

21 **TITLE I—COMMUNITY HEALTH** 22 **CENTERS**

23 **SEC. 2101. INCREASED FUNDING.**

24 Section 330 of the Public Health Service Act (42
25 U.S.C. 254b) is amended—

1 (1) in subsection (r)(1)—

2 (A) in subparagraph (D), by striking
3 “and” at the end;

4 (B) in subparagraph (E), by striking the
5 period at the end and inserting “; and”; and

6 (C) by inserting at the end the following:

7 “(F) Such sums as may be necessary for
8 each of fiscal years 2013 and 2019.”; and

9 (2) by inserting after subsection (r) the fol-
10 lowing:

11 “(s) ADDITIONAL FUNDING.—For the purpose of
12 carrying out this section, in addition to any other amounts
13 authorized to be appropriated for such purpose, there are
14 authorized to be appropriated, out of any monies in the
15 Public Health Investment Fund, the following:

16 “(1) For fiscal year 2010, \$1,000,000,000.

17 “(2) For fiscal year 2011, \$1,500,000,000.

18 “(3) For fiscal year 2012, \$2,500,000,000.

19 “(4) For fiscal year 2013, \$3,000,000,000.

20 “(5) For fiscal year 2014, \$4,000,000,000.

21 “(6) For fiscal year 2015, \$4,400,000,000.

22 “(7) For fiscal year 2016, \$4,800,000,000.

23 “(8) For fiscal year 2017, \$5,300,000,000.

24 “(9) For fiscal year 2018, \$5,900,000,000.

25 “(10) For fiscal year 2019, \$6,400,000,000.”.

1 **TITLE II—WORKFORCE**
2 **Subtitle A—Primary Care**
3 **Workforce**

4 **PART 1—NATIONAL HEALTH SERVICE CORPS**

5 **SEC. 2201. NATIONAL HEALTH SERVICE CORPS.**

6 (a) FULFILLMENT OF OBLIGATED SERVICE RE-
7 QUIREMENT THROUGH HALF-TIME SERVICE.—

8 (1) WAIVERS.—Subsection (i) of section 331
9 (42 U.S.C. 254d) is amended—

10 (A) in paragraph (1), by striking “In car-
11 rying out subpart III” and all that follows
12 through the period and inserting “In carrying
13 out subpart III, the Secretary may, in accord-
14 ance with this subsection, issue waivers to indi-
15 viduals who have entered into a contract for ob-
16 ligated service under the Scholarship Program
17 or the Loan Repayment Program under which
18 the individuals are authorized to satisfy the re-
19 quirement of obligated service through pro-
20 viding clinical practice that is half-time.”;

21 (B) in paragraph (2)—

22 (i) in subparagraphs (A)(ii) and (B),
23 by striking “less than full time” each place
24 it appears and inserting “half time”;

1 (ii) in subparagraphs (C) and (F), by
2 striking “less than full-time service” each
3 place it appears and inserting “half-time
4 service”; and

5 (iii) by amending subparagraphs (D)
6 and (E) to read as follows:

7 “(D) the entity and the Corps member agree in
8 writing that the Corps member will perform half-
9 time clinical practice;

10 “(E) the Corps member agrees in writing to
11 fulfill all of the service obligations under section
12 338C through half-time clinical practice and ei-
13 ther—

14 “(i) double the period of obligated service
15 that would otherwise be required; or

16 “(ii) in the case of contracts entered into
17 under section 338B, accept a minimum service
18 obligation of 2 years with an award amount
19 equal to 50 percent of the amount that would
20 otherwise be payable for full-time service; and”;
21 and

22 (C) in paragraph (3), by striking “In eval-
23 uating a demonstration project described in
24 paragraph (1)” and inserting “In evaluating
25 waivers issued under paragraph (1)”.

1 (2) DEFINITIONS.—Subsection (j) of section
2 331 (42 U.S.C. 254d) is amended by adding at the
3 end the following:

4 “(5) The terms ‘full time’ and ‘full-time’ mean
5 a minimum of 40 hours per week in a clinical prac-
6 tice, for a minimum of 45 weeks per year.

7 “(6) The terms ‘half time’ and ‘half-time’ mean
8 a minimum of 20 hours per week (not to exceed 39
9 hours per week) in a clinical practice, for a min-
10 imum of 45 weeks per year.”.

11 (b) REAPPOINTMENT TO NATIONAL ADVISORY COUN-
12 CIL.—Section 337(b)(1) (42 U.S.C. 254j(b)(1)) is amend-
13 ed by striking “Members may not be reappointed to the
14 Council.”.

15 (c) LOAN REPAYMENT AMOUNT.—Section
16 338B(g)(2)(A) is amended (42 U.S.C. 254l–1(g)(2)(A))
17 by striking “\$35,000” and inserting “\$50,000, plus, be-
18 ginning with fiscal year 2012, an amount determined by
19 the Secretary on an annual basis to reflect inflation,”.

20 (d) TREATMENT OF TEACHING AS OBLIGATED SERV-
21 ICE.—Subsection (a) of section 338C (42 U.S.C. 254m)
22 is amended by adding at the end the following: “The Sec-
23 retary may treat teaching as clinical practice for up to
24 20 percent of such period of obligated service.”.

1 **SEC. 2202. AUTHORIZATIONS OF APPROPRIATIONS.**

2 (a) NATIONAL HEALTH SERVICE CORPS PRO-
3 GRAM.—Section 338 (42 U.S.C. 254k) is amended—

4 (1) in subsection (a), by striking “2012” and
5 inserting “2019”; and

6 (2) by adding at the end the following:

7 “(c) For the purpose of carrying out this subpart,
8 in addition to any other amounts authorized to be appro-
9 priated for such purpose, there are authorized to be appro-
10 priated, out of any monies in the Public Health Invest-
11 ment Fund, the following:

12 “(1) \$63,000,000 for fiscal year 2010.

13 “(2) \$66,000,000 for fiscal year 2011.

14 “(3) \$70,000,000 for fiscal year 2012.

15 “(4) \$73,000,000 for fiscal year 2013.

16 “(5) \$77,000,000 for fiscal year 2014.

17 “(6) \$81,000,000 for fiscal year 2015.

18 “(7) \$85,000,000 for fiscal year 2016.

19 “(8) \$89,000,000 for fiscal year 2017.

20 “(9) \$94,000,000 for fiscal year 2018.

21 “(10) \$98,000,000 for fiscal year 2019.”.

22 (b) SCHOLARSHIP AND LOAN REPAYMENT PRO-
23 GRAMS.—Subpart III of part D of title III of the Public
24 Health Service Act (42 U.S.C. 254l et seq.) is amended—

25 (1) in section 338H(a)—

1 (A) in paragraph (4), by striking “and” at
2 the end;

3 (B) in paragraph (5), by striking the pe-
4 riod at the end and inserting “; and”; and

5 (C) by adding at the end the following:

6 “(6) for fiscal years 2013 and 2019, such sums
7 as may be necessary.”; and

8 (2) by inserting after section 338H the fol-
9 lowing:

10 **“SEC. 338H-1. ADDITIONAL FUNDING.**

11 “For the purpose of carrying out this subpart, in ad-
12 dition to any other amounts authorized to be appropriated
13 for such purpose, there are authorized to be appropriated,
14 out of any monies in the Public Health Investment Fund,
15 the following:

16 “(1) \$254,000,000 for fiscal year 2010.

17 “(2) \$266,000,000 for fiscal year 2011.

18 “(3) \$278,000,000 for fiscal year 2012.

19 “(4) \$292,000,000 for fiscal year 2013.

20 “(5) \$306,000,000 for fiscal year 2014.

21 “(6) \$321,000,000 for fiscal year 2015.

22 “(7) \$337,000,000 for fiscal year 2016.

23 “(8) \$354,000,000 for fiscal year 2017.

24 “(9) \$372,000,000 for fiscal year 2018.

25 “(10) \$391,000,000 for fiscal year 2019.”.

1 **PART 2—PROMOTION OF PRIMARY CARE AND**
2 **DENTISTRY**

3 **SEC. 2211. FRONTLINE HEALTH PROVIDERS.**

4 Part D of title III (42 U.S.C. 254b et seq.) is amend-
5 ed by adding at the end the following:

6 **“Subpart XI—Health Professional Needs Areas**

7 **“SEC. 340H. IN GENERAL.**

8 “(a) PROGRAM.—The Secretary, acting through the
9 Administrator of the Health Resources and Services Ad-
10 ministration, shall establish a program, to be known as
11 the Frontline Health Providers Loan Repayment Pro-
12 gram, to address unmet health care needs in health profes-
13 sional needs areas through loan repayments under section
14 340I.

15 “(b) DESIGNATION OF HEALTH PROFESSIONAL
16 NEEDS AREAS.—

17 “(1) IN GENERAL.—In this subpart, the term
18 ‘health professional needs area’ means an area, pop-
19 ulation, or facility that is designated by the Sec-
20 retary in accordance with paragraph (2).

21 “(2) DESIGNATION.—To be designated by the
22 Secretary as a health professional needs area under
23 this subpart:

24 “(A) In the case of an area, the area must
25 be a rational area for the delivery of health
26 services.

1 “(B) The area, population, or facility must
2 have, in one or more health disciplines, special-
3 ties, or subspecialties for the population served,
4 as determined by the Secretary—

5 “(i) insufficient capacity of health
6 professionals; or

7 “(ii) high needs for health services.

8 “(C) With respect to the delivery of pri-
9 mary health services, the area, population, or
10 facility must not include a health professional
11 shortage area (as designated under section
12 332), except that the area, population, or facil-
13 ity may include such a health professional
14 shortage area in which there is an unmet need
15 for such services.

16 “(c) ELIGIBILITY.—To be eligible to participate in
17 the Program, an individual shall—

18 “(1) hold a degree in a course of study or pro-
19 gram (approved by the Secretary) from a school de-
20 fined in section 799B(1)(A) (other than a school of
21 public health);

22 “(2) hold a degree in a course of study or pro-
23 gram (approved by the Secretary) from a school or
24 program defined in subparagraph (C), (D), or

1 (E)(4) of section 799B(1), as designated by the Sec-
2 retary;

3 “(3) be enrolled as a full-time student—

4 “(A) in a school or program defined in
5 subparagraph (C), (D), or (E)(4) of section
6 799B(1), as designated by the Secretary, or a
7 school described in paragraph (1); and

8 “(B) in the final year of a course of study
9 or program, offered by such school or program
10 and approved by the Secretary, leading to a de-
11 gree in a discipline referred to in subparagraph
12 (A) (other than a graduate degree in public
13 health), (C), (D), or (E)(4) of section 799B(1);

14 “(4) be a practitioner described in section
15 1842(b)(18)(C) or 1848(k)(3)(B)(iii) or (iv) of the
16 Social Security Act; or

17 “(5) be a practitioner in the field of respiratory
18 therapy, medical technology, or radiologic tech-
19 nology.

20 “(d) DEFINITION.—In this subpart, the term ‘pri-
21 mary health services’ has the meaning given to such term
22 in section 331(a)(3)(D).

23 **“SEC. 340I. LOAN REPAYMENTS.**

24 “(a) LOAN REPAYMENTS.—The Secretary, acting
25 through the Administrator of the Health Resources and

1 Services Administration, shall enter into contracts with in-
2 dividuals under which—

3 “(1) the individual agrees—

4 “(A) to serve as a full-time primary health
5 services provider or as a full-time or part-time
6 provider of other health services for a period of
7 time equal to 2 years or such longer period as
8 the individual may agree to;

9 “(B) to serve in a health professional
10 needs area in a health discipline, specialty, or a
11 subspecialty for which the area, population, or
12 facility is designated as a health professional
13 needs area under section 340H; and

14 “(C) in the case of an individual described
15 in subsection 340H(c)(3) who is in the final
16 year of study and who has accepted employ-
17 ment as primary health services provider or
18 provider of other health services in accordance
19 with subparagraphs (A) and (B), to complete
20 the education or training and maintain an ac-
21 ceptable level of academic standing (as deter-
22 mined by the educational institution offering
23 the course of study or training); and

24 “(2) the Secretary agrees to pay, for each year
25 of such service, an amount on the principal and in-

1 terest of the undergraduate or graduate educational
2 loans (or both) of the individual that is not more
3 than 50 percent of the average award made under
4 the National Health Service Corps Loan Repayment
5 Program under subpart III in that year.

6 “(b) PRACTICE SETTING.—A contract entered into
7 under this section shall allow the individual receiving the
8 loan repayment to satisfy the service requirement de-
9 scribed in subsection (a)(1) through employment in a solo
10 or group practice, a clinic, an accredited public or private
11 nonprofit hospital, or any other health care entity, as
12 deemed appropriate by the Secretary.

13 “(c) APPLICATION OF CERTAIN PROVISIONS.—The
14 provisions of subpart III of part D shall, except as incon-
15 sistent with this section, apply to the loan repayment pro-
16 gram under this subpart in the same manner and to the
17 same extent as such provisions apply to the National
18 Health Service Corps Loan Repayment Program estab-
19 lished under section 338B.

20 “(d) INSUFFICIENT NUMBER OF APPLICANTS.—If
21 there are an insufficient number of applicants for loan re-
22 payments under this section to obligate all appropriated
23 funds, the Secretary shall transfer the unobligated funds
24 to the National Health Service Corps for the purpose of
25 recruiting applicants and entering into contracts with indi-

1 viduals so as to ensure a sufficient number of participants
2 in the National Health Service Corps for the following
3 year.

4 **“SEC. 340J. REPORT.**

5 “The Secretary shall submit to the Congress an an-
6 nual report on the program carried out under this subpart.

7 **“SEC. 340K. ALLOCATION.**

8 “Of the amount of funds obligated under this subpart
9 each fiscal year for loan repayments—

10 “(1) 90 percent shall be for physicians and
11 other health professionals providing primary health
12 services; and

13 “(2) 10 percent shall be for health professionals
14 not described in paragraph (1).”.

15 **SEC. 2212. PRIMARY CARE STUDENT LOAN FUNDS.**

16 (a) IN GENERAL.—Section 735 (42 U.S.C. 292y) is
17 amended—

18 (1) by redesignating subsection (f) as sub-
19 section (g); and

20 (2) by inserting after subsection (e) the fol-
21 lowing:

22 “(f) DETERMINATION OF FINANCIAL NEED.—The
23 Secretary—

24 “(1) may require, or authorize a school or other
25 entity to require, the submission of financial infor-

1 mation to determine the financial resources available
2 to any individual seeking assistance under this sub-
3 part; and

4 “(2) shall take into account the extent to which
5 such individual is financially independent in deter-
6 mining whether to require or authorize the submis-
7 sion of such information regarding such individual’s
8 family members.”.

9 (b) REVISED GUIDELINES.—The Secretary of Health
10 and Human Services shall—

11 (1) strike the second sentence of section
12 57.206(b) of title 42, Code of Federal Regulations;
13 and

14 (2) make such other revisions to guidelines and
15 regulations in effect as of the date of the enactment
16 of this Act as may be necessary for consistency with
17 the amendments made by paragraph (1).

18 **SEC. 2213. TRAINING IN FAMILY MEDICINE, GENERAL IN-**
19 **TERNAL MEDICINE, GENERAL PEDIATRICS,**
20 **GERIATRICS, AND PHYSICIAN ASSISTANTS.**

21 Section 747 (42 U.S.C. 293k) is amended—

22 (1) by amending the section heading to read as
23 follows: “**PRIMARY CARE TRAINING AND EN-**
24 **HANCEMENT**”;

1 (2) by redesignating subsection (e) as sub-
2 section (f); and

3 (3) by striking subsections (a) through (d) and
4 inserting the following:

5 “(a) PROGRAM.—The Secretary shall establish a pri-
6 mary care training and capacity building program con-
7 sisting of awarding grants and contracts under sub-
8 sections (b) and (c).

9 “(b) SUPPORT AND DEVELOPMENT OF PRIMARY
10 CARE TRAINING PROGRAMS.—

11 “(1) IN GENERAL.—The Secretary shall make
12 grants to, or enter into contracts with, eligible enti-
13 ties—

14 “(A) to plan, develop, operate, or partici-
15 pate in an accredited professional training pro-
16 gram, including an accredited residency or in-
17 ternship program, in the field of family medi-
18 cine, general internal medicine, general pediatri-
19 cs, or geriatrics for medical students, interns,
20 residents, or practicing physicians;

21 “(B) to provide financial assistance in the
22 form of traineeships and fellowships to medical
23 students, interns, residents, or practicing physi-
24 cians, who are participants in any such pro-
25 gram, and who plan to specialize or work in

1 family medicine, general internal medicine, gen-
2 eral pediatrics, or geriatrics;

3 “(C) to plan, develop, operate, or partici-
4 pate in an accredited program for the training
5 of physicians who plan to teach in family medi-
6 cine, general internal medicine, general pedi-
7 rics, or geriatrics training programs including
8 in community-based settings;

9 “(D) to provide financial assistance in the
10 form of traineeships and fellowships to prac-
11 ticing physicians who are participants in any
12 such programs and who plan to teach in a fam-
13 ily medicine, general internal medicine, general
14 pediatrics, or geriatrics training program; and

15 “(E) to plan, develop, operate, or partici-
16 pate in an accredited program for physician as-
17 sistant education, and for the training of indi-
18 viduals who plan to teach in programs to pro-
19 vide such training.

20 “(2) ELIGIBILITY.—To be eligible for a grant
21 or contract under paragraph (1), an entity shall
22 be—

23 “(A) an accredited school of medicine or
24 osteopathic medicine, public or nonprofit private

1 hospital, or physician assistant training pro-
2 gram;

3 “(B) a public or private nonprofit entity;

4 or

5 “(C) a consortium of 2 or more entities de-
6 scribed in subparagraphs (A) and (B).

7 “(c) CAPACITY BUILDING IN PRIMARY CARE.—

8 “(1) IN GENERAL.—The Secretary shall make
9 grants to or enter into contracts with eligible entities
10 to establish, maintain, or improve—

11 “(A) academic administrative units (in-
12 cluding departments, divisions, or other appro-
13 priate units) in the specialties of family medi-
14 cine, general internal medicine, general pedi-
15 atrics, or geriatrics; or

16 “(B) programs that improve clinical teach-
17 ing in such specialties.

18 “(2) ELIGIBILITY.—To be eligible for a grant
19 or contract under paragraph (1), an entity shall be
20 an accredited school of medicine or osteopathic med-
21 icine.

22 “(d) PREFERENCE.—In awarding grants or contracts
23 under this section, the Secretary shall give preference to
24 entities that have a demonstrated record of the following:

1 “(1) Training the greatest percentage, or sig-
2 nificantly improving the percentage, of health care
3 professionals who provide primary care.

4 “(2) Training individuals who are from under-
5 represented minority groups or disadvantaged back-
6 grounds.

7 “(3) A high rate of placing graduates in prac-
8 tice settings having the principal focus of serving in
9 underserved areas or populations experiencing health
10 disparities (including serving patients eligible for
11 medical assistance under title XIX of the Social Se-
12 curity Act or for child health assistance under title
13 XXI of such Act or those with special health care
14 needs).

15 “(4) Supporting teaching programs that ad-
16 dress the health care needs of vulnerable popu-
17 lations.

18 “(e) REPORT.—The Secretary shall submit to the
19 Congress an annual report on the program carried out
20 under this section.

21 “(f) DEFINITION.—In this section, the term ‘health
22 disparities’ has the meaning given the term in section
23 3171.”.

1 **SEC. 2214. TRAINING OF MEDICAL RESIDENTS IN COMMU-**
2 **NITY-BASED SETTINGS.**

3 Title VII (42 U.S.C. 292 et seq.) is amended—

4 (1) by redesignating section 748 as 749A; and

5 (2) by inserting after section 747 the following:

6 **“SEC. 748. TRAINING OF MEDICAL RESIDENTS IN COMMU-**
7 **NITY-BASED SETTINGS.**

8 “(a) PROGRAM.—The Secretary shall establish a pro-
9 gram for the training of medical residents in community-
10 based settings consisting of awarding grants and contracts
11 under this section.

12 “(b) DEVELOPMENT AND OPERATION OF COMMU-
13 NITY-BASED PROGRAMS.—The Secretary shall make
14 grants to, or enter into contracts with, eligible entities—

15 “(1) to plan and develop a new primary care
16 residency training program, which may include—

17 “(A) planning and developing curricula;

18 “(B) recruiting and training residents and
19 faculty; and

20 “(C) other activities designated to result in
21 accreditation of such a program; or

22 “(2) to operate or participate in an established
23 primary care residency training program, which may
24 include—

25 “(A) planning and developing curricula;

1 “(B) recruitment and training of residents;

2 and

3 “(C) retention of faculty.

4 “(c) ELIGIBLE ENTITY.—To be eligible to receive a
5 grant or contract under subsection (b), an entity shall—

6 “(1) be designated as a recipient of payment
7 for the direct costs of medical education under sec-
8 tion 1886(k) of the Social Security Act;

9 “(2) be designated as an approved teaching
10 health center under section 1502(d) of the America’s
11 Affordable Health Choices Act of 2009 and con-
12 tinuing to participate in the demonstration project
13 under such section; or

14 “(3) be an applicant for designation described
15 in paragraph (1) or (2) and have demonstrated to
16 the Secretary appropriate involvement of an accred-
17 ited teaching hospital to carry out the inpatient re-
18 sponsibilities associated with a primary care resi-
19 dency training program.

20 “(d) PREFERENCES.—In awarding grants and con-
21 tracts under paragraph (1) or (2) of subsection (b), the
22 Secretary shall give preference to entities that—

23 “(1) support teaching programs that address
24 the health care needs of vulnerable populations; or

1 “(2) are a Federally qualified health center (as
2 defined in section 1861(aa)(4) of the Social Security
3 Act) or a rural health clinic (as defined in section
4 1861(aa)(2) of such Act).

5 “(e) ADDITIONAL PREFERENCES FOR ESTABLISHED
6 PROGRAMS.—In awarding grants and contracts under
7 subsection (b)(2), the Secretary shall give preference to
8 entities that have a demonstrated record of training—

9 “(1) a high or significantly improved percentage
10 of health care professionals who provide primary
11 care;

12 “(2) individuals who are from underrepresented
13 minority groups or disadvantaged backgrounds; or

14 “(3) individuals who practice in settings having
15 the principal focus of serving underserved areas or
16 populations experiencing health disparities (including
17 serving patients eligible for medical assistance under
18 title XIX of the Social Security Act or for child
19 health assistance under title XXI of such Act or
20 those with special health care needs).

21 “(f) PERIOD OF AWARDS.—

22 “(1) IN GENERAL.—The period of a grant or
23 contract under this section—

24 “(A) shall not exceed 3 years for awards
25 under subsection (b)(1); and

1 “(B) shall not exceed 5 years for awards
2 under subsection (b)(2).

3 “(2) SPECIAL RULES.—

4 “(A) An award of a grant or contract
5 under subsection (b)(1) shall not be renewed.

6 “(B) The period of a grant or contract
7 awarded to an entity under subsection (b)(2)
8 shall not overlap with the period of any grant
9 or contact awarded to the same entity under
10 subsection (b)(1).

11 “(g) REPORT.—The Secretary shall submit to the
12 Congress an annual report on the program carried out
13 under this section.

14 “(h) DEFINITIONS.—In this section:

15 “(1) HEALTH DISPARITIES.—The term ‘health
16 disparities’ has the meaning given the term in sec-
17 tion 3171.

18 “(2) PRIMARY CARE.—The term ‘primary care’
19 has the meaning given the term in section
20 1888(h)(5)(H) of the Social Security Act.

21 “(3) PRIMARY CARE RESIDENCY TRAINING PRO-
22 GRAM.—The term ‘primary care residency training
23 program’ means an approved medical residency
24 training program described in section 1886(h)(5)(A)
25 of the Social Security Act that is—

1 “(A) in the case of entities seeking awards
2 under subsection (b)(1), actively applying to be
3 accredited by the Accreditation Council for
4 Graduate Medical Education or the American
5 Osteopathic Association; or

6 “(B) in the case of entities seeking awards
7 under subsection (b)(2), so accredited.”.

8 **SEC. 2215. TRAINING FOR GENERAL, PEDIATRIC, AND PUB-**
9 **LIC HEALTH DENTISTS AND DENTAL HYGIEN-**
10 **ISTS.**

11 Title VII (42 U.S.C. 292 et seq.) is amended—

12 (1) in section 791(a)(1), by striking “747 and
13 750” and inserting “747, 749, and 750”; and

14 (2) by inserting after section 748, as added, the
15 following:

16 **“SEC. 749. TRAINING FOR GENERAL, PEDIATRIC, AND PUB-**
17 **LIC HEALTH DENTISTS AND DENTAL HYGIEN-**
18 **ISTS.**

19 “(a) PROGRAM.—The Secretary shall establish a
20 training program for oral professionals consisting of
21 awarding grants and contracts under this section.

22 “(b) SUPPORT AND DEVELOPMENT OF DENTAL
23 TRAINING PROGRAMS.—The Secretary shall make grants
24 to, or enter into contracts with, eligible entities—

1 “(1) to plan, develop, operate, or participate in
2 an accredited professional training program for oral
3 health professionals;

4 “(2) to provide financial assistance to oral
5 health professionals who are in need thereof, who
6 are participants in any such program, and who plan
7 to work in general, pediatric, or public health den-
8 tistry, or dental hygiene;

9 “(3) to plan, develop, operate, or participate in
10 a program for the training of oral health profes-
11 sionals who plan to teach in general, pediatric, or
12 public health dentistry, or dental hygiene;

13 “(4) to provide financial assistance in the form
14 of traineeships and fellowships to oral health profes-
15 sionals who plan to teach in general, pediatric, or
16 public health dentistry or dental hygiene;

17 “(5) to establish, maintain, or improve—

18 “(A) academic administrative units (in-
19 cluding departments, divisions, or other appro-
20 priate units) in the specialties of general, pedi-
21 atric, or public health dentistry; or

22 “(B) programs that improve clinical teach-
23 ing in such specialties;

1 “(6) to plan, develop, operate, or participate in
2 predoctoral and postdoctoral training in general, pe-
3 diatric, or public health dentistry programs;

4 “(7) to plan, develop, operate, or participate in
5 a loan repayment program for full-time faculty in a
6 program of general, pediatric, or public health den-
7 tistry; and

8 “(8) to provide technical assistance to pediatric
9 dental training programs in developing and imple-
10 menting instruction regarding the oral health status,
11 dental care needs, and risk-based clinical disease
12 management of all pediatric populations with an em-
13 phasis on underserved children.

14 “(c) ELIGIBILITY.—To be eligible for a grant or con-
15 tract under subsection (a), an entity shall be—

16 “(1) an accredited school of dentistry, training
17 program in dental hygiene, or public or nonprofit
18 private hospital;

19 “(2) a training program in dental hygiene at an
20 accredited institution of higher education;

21 “(3) a public or private nonprofit entity; or

22 “(4) a consortium of—

23 “(A) 1 or more of the entities described in
24 paragraphs (1) through (3); and

25 “(B) an accredited school of public health.

1 “(d) PREFERENCE.—In awarding grants or contracts
2 under this section, the Secretary shall give preference to
3 entities that have a demonstrated record of the following:

4 “(1) Training the greatest percentage, or sig-
5 nificantly improving the percentage, of oral health
6 professionals who practice general, pediatric, or pub-
7 lic health dentistry.

8 “(2) Training individuals who are from under-
9 represented minority groups or disadvantaged back-
10 grounds.

11 “(3) A high rate of placing graduates in prac-
12 tice settings having the principal focus of serving in
13 underserved areas or populations experiencing health
14 disparities (including serving patients eligible for
15 medical assistance under title XIX of the Social Se-
16 curity Act or for child health assistance under title
17 XXI of such Act or those with special health care
18 needs).

19 “(4) Supporting teaching programs that ad-
20 dress the dental needs of vulnerable populations.

21 “(5) Providing instruction regarding the oral
22 health status, dental care needs, and risk-based clin-
23 ical disease management of all pediatric populations
24 with an emphasis on underserved children.

1 “(e) REPORT.—The Secretary shall submit to the
2 Congress an annual report on the program carried out
3 under this section.

4 “(f) DEFINITIONS.—In this section:

5 “(1) The term ‘health disparities’ has the
6 meaning given the term in section 3171.

7 “(2) The term ‘oral health professional’ means
8 an individual training or practicing—

9 “(A) in general dentistry, pediatric den-
10 tistry, public health dentistry, or dental hy-
11 giene; or

12 “(B) another oral health specialty, as
13 deemed appropriate by the Secretary.”.

14 **SEC. 2216. AUTHORIZATION OF APPROPRIATIONS.**

15 (a) IN GENERAL.—Part F of title VII (42 U.S.C.
16 295j et seq.) is amended by adding at the end the fol-
17 lowing:

18 **“SEC. 799C. FUNDING THROUGH PUBLIC HEALTH INVEST-
19 MENT FUND.**

20 “(a) PROMOTION OF PRIMARY CARE AND DEN-
21 TISTRY.—For the purpose of carrying out subpart XI of
22 part D of title III and sections 747, 748, and 749, in addi-
23 tion to any other amounts authorized to be appropriated
24 for such purpose, there is authorized to be appropriated,

1 out of any monies in the Public Health Investment Fund,
2 the following:

3 “(1) \$240,000,000 for fiscal year 2010.

4 “(2) \$253,000,000 for fiscal year 2011.

5 “(3) \$265,000,000 for fiscal year 2012.

6 “(4) \$278,000,000 for fiscal year 2013.

7 “(5) \$292,000,000 for fiscal year 2014.

8 “(6) \$307,000,000 for fiscal year 2015.

9 “(7) \$322,000,000 for fiscal year 2016.

10 “(8) \$338,000,000 for fiscal year 2017.

11 “(9) \$355,000,000 for fiscal year 2018.

12 “(10) \$373,000,000 for fiscal year 2019.”.

13 (b) EXISTING AUTHORIZATION OF APPROPRIA-
14 TIONS.—Subsection (f), as so redesignated, of section 747
15 (42 U.S.C. 293k) is amended by striking “2002” and in-
16 serting “2019”.

17 **Subtitle B—Nursing Workforce**

18 **SEC. 2221. AMENDMENTS TO PUBLIC HEALTH SERVICE ACT.**

19 (a) DEFINITIONS.—Section 801 (42 U.S.C. 296 et
20 seq.) is amended—

21 (1) in paragraph (1), by inserting “nurse-man-
22 aged health centers” after “nursing centers,”; and

23 (2) by adding at the end the following:

24 “(16) NURSE-MANAGED HEALTH CENTER.—

25 The term ‘nurse-managed health center’ means a

1 nurse-practice arrangement, managed by advanced
2 practice nurses, that provides primary care or
3 wellness services to underserved or vulnerable popu-
4 lations and is associated with an accredited school of
5 nursing, Federally qualified health center, or inde-
6 pendent nonprofit health or social services agency.”.

7 (a) GRANTS FOR HEALTH PROFESSIONS EDU-
8 CATION.—Title VIII (42 U.S.C. 296 et seq.) is amended
9 by striking section 807.

10 (b) REPORTS.—Part A of title VIII (42 U.S.C. 296
11 et seq.) is amended by adding at the end the following:
12 **“SEC. 809. REPORTS.**

13 “The Secretary shall submit to the Congress a sepa-
14 rate annual report on the activities carried out under each
15 of sections 811, 821, 836, 846A, and 861.”.

16 (c) ADVANCED EDUCATION NURSING GRANTS.—Sec-
17 tion 811(f) (42 U.S.C. 296j(f)) is amended—

18 (1) by striking paragraph (2);

19 (2) by redesignating paragraph (3) as para-
20 graph (2); and

21 (3) in paragraph (2), as so redesignated, by
22 striking “that agrees” and all that follows through
23 the end and inserting: “that agrees to expend the
24 award—

1 “(A) to train advanced education nurses
2 who will practice in health professional shortage
3 areas designated under section 332; or

4 “(B) to increase diversity among advanced
5 education nurses.”.

6 (d) NURSE EDUCATION, PRACTICE, AND RETENTION
7 GRANTS.—Section 831 (42 U.S.C. 296p) is amended—

8 (1) in subsection (b), by amending paragraph
9 (3) to read as follows:

10 “(3) providing coordinated care, quality care,
11 and other skills needed to practice nursing;” and

12 (2) by striking subsection (e) and redesignating
13 subsections (f) through (h) as subsections (e)
14 through (g), respectively.

15 (e) STUDENT LOANS.—Subsection (a) of section 836
16 (42 U.S.C. 297b) is amended—

17 (1) by striking “\$2,500” and inserting
18 “\$3,300”;

19 (2) by striking “\$4,000” and inserting
20 “\$5,200”;

21 (3) by striking “\$13,000” and inserting
22 “\$17,000”; and

23 (4) by adding at the end the following: “Begin-
24 ning with fiscal year 2012, the dollar amounts speci-
25 fied in this subsection shall be adjusted by an

1 amount determined by the Secretary on an annual
2 basis to reflect inflation.”.

3 (f) LOAN REPAYMENT.—Section 846 (42 U.S.C.
4 297n) is amended—

5 (1) in subsection (a), by amending paragraph
6 (3) to read as follows:

7 “(3) who enters into an agreement with the
8 Secretary to serve for a period of not less than 2
9 years—

10 “(A) as a nurse at a health care facility
11 with a critical shortage of nurses; or

12 “(B) as a faculty member at an accredited
13 school of nursing;” and

14 (2) in subsection (g)(1), by striking “to provide
15 health services” each place it appears and inserting
16 “to provide health services or serve as a faculty
17 member”.

18 (g) NURSE FACULTY LOAN PROGRAM.—Paragraph
19 (2) of section 846A(c) (42 U.S.C. 297n–1(c)) is amended
20 by striking “\$30,000” and all that follows through the
21 semicolon and inserting “\$35,000, plus, beginning with
22 fiscal year 2012, an amount determined by the Secretary
23 on an annual basis to reflect inflation;”.

24 (h) PUBLIC SERVICE ANNOUNCEMENTS.—Title VIII
25 (42 U.S.C. 296 et seq.) is amended by striking part H.

1 (i) TECHNICAL AND CONFORMING AMENDMENTS.—

2 Title VIII (42 U.S.C. 296 et seq.) is amended—

3 (1) by moving section 810 (relating to prohibi-
4 tion against discrimination by schools on the basis of
5 sex) so that it follows section 809, as added by sub-
6 section (b);

7 (2) in sections 835, 836, 838, 840, and 842, by
8 striking the term “this subpart” each place it ap-
9 pears and inserting “this part”;

10 (3) in section 836(h), by striking the last sen-
11 tence;

12 (4) in section 836, by redesignating subsection
13 (l) as subsection (k);

14 (5) in section 839, by striking “839” and all
15 that follows through “(a)” and inserting “839. (a)”;

16 (6) in section 835(b), by striking “841” each
17 place it appears and inserting “871”;

18 (7) by redesignating section 841 as section 871,
19 moving part F to the end of the title, and redesign-
20 ating such part as part H;

21 (8) in part G—

22 (A) by redesignating section 845 as section
23 851; and

24 (B) by redesignating part G as part F; and

25 (9) in part I—

1 (A) by redesignating section 855 as section
2 861; and

3 (B) by redesignating part I as part G.

4 (j) FUNDING.—

5 (1) IN GENERAL.—Part H, as redesignated, of
6 title VIII is amended by adding at the end the fol-
7 lowing:

8 **“SEC. 872. FUNDING THROUGH PUBLIC HEALTH INVEST-**
9 **MENT FUND.**

10 “For the purpose of carrying out this title, in addi-
11 tion to any other amounts authorized to be appropriated
12 for such purpose, there are authorized to be appropriated,
13 out of any monies in the Public Health Investment Fund,
14 the following:

15 “(1) \$115,000,000 for fiscal year 2010.

16 “(2) \$122,000,000 for fiscal year 2011.

17 “(3) \$127,000,000 for fiscal year 2012.

18 “(4) \$134,000,000 for fiscal year 2013.

19 “(5) \$140,000,000 for fiscal year 2014.

20 “(6) \$147,000,000 for fiscal year 2015.

21 “(7) \$154,000,000 for fiscal year 2016.

22 “(8) \$162,000,000 for fiscal year 2017.

23 “(9) \$170,000,000 for fiscal year 2018.

24 “(10) \$179,000,000 for fiscal year 2019.”.

1 (2) EXISTING AUTHORIZATIONS OF APPROPRIA-
2 TIONS.—

3 (A) SECTIONS 831, 846, 846A, AND 861.—
4 Sections 831(g) (as so redesignated), 846(i)(1)
5 (42 U.S.C. 297n(i)(1)), 846A(f) (42 U.S.C.
6 297n–1(f)), and 861(e) (as so redesignated) are
7 amended by striking “2007” each place it ap-
8 pears and inserting “2019”.

9 (B) SECTION 871.—Section 871, as so re-
10 designated, is amended to read as follows:

11 **“SEC. 871. FUNDING.**

12 “For the purpose of carrying out parts B, C, and D
13 (subject to section 845(g)), there are authorized to be ap-
14 propriated such sums as may be necessary for each fiscal
15 year through fiscal year 2019.”.

16 **Subtitle C—Public Health**
17 **Workforce**

18 **SEC. 2231. PUBLIC HEALTH WORKFORCE CORPS.**

19 Part D of title III (42 U.S.C. 254b et seq.), as
20 amended by section 2211, is amended by adding at the
21 end the following:

22 **“Subpart XII—Public Health Workforce**

23 **“SEC. 340L. PUBLIC HEALTH WORKFORCE CORPS.**

24 “(a) ESTABLISHMENT.—There is established, within
25 the Service, the Public Health Workforce Corps (in this

1 subpart referred to as the ‘Corps’), for the purpose of en-
2 suring an adequate supply of public health professionals
3 throughout the Nation. The Corps shall consist of—

4 “(1) such officers of the Regular and Reserve
5 Corps of the Service as the Secretary may designate;

6 “(2) such civilian employees of the United
7 States as the Secretary may appoint; and

8 “(3) such other individuals who are not employ-
9 ees of the United States.

10 “(b) ADMINISTRATION.—Except as provided in sub-
11 section (c), the Secretary shall carry out this subpart act-
12 ing through the Administrator of the Health Resources
13 and Services Administration.

14 “(c) PLACEMENT AND ASSIGNMENT.—The Secretary,
15 acting through the Director of the Centers for Disease
16 Control and Prevention, shall develop a methodology for
17 placing and assigning Corps participants as public health
18 professionals. Such methodology may allow for placing and
19 assigning such participants in State, local, and tribal
20 health departments and Federally qualified health centers
21 (as defined in section 1861(aa)(4) of the Social Security
22 Act).

23 “(d) APPLICATION OF CERTAIN PROVISIONS.—The
24 provisions of subpart II shall, except as inconsistent with
25 this subpart, apply to the Public Health Workforce Corps

1 in the same manner and to the same extent as such provi-
2 sions apply to the National Health Service Corps estab-
3 lished under section 331.

4 “(e) REPORT.—The Secretary shall submit to the
5 Congress an annual report on the programs carried out
6 under this subpart.

7 **“SEC. 340M. PUBLIC HEALTH WORKFORCE SCHOLARSHIP**
8 **PROGRAM.**

9 “(a) ESTABLISHMENT.—The Secretary shall estab-
10 lish the Public Health Workforce Scholarship Program
11 (referred to in this section as the ‘Program’) for the pur-
12 pose described in section 340L(a).

13 “(b) ELIGIBILITY.—To be eligible to participate in
14 the Program, an individual shall—

15 “(1)(A) be accepted for enrollment, or be en-
16 rolled, as a full-time or part-time student in a course
17 of study or program (approved by the Secretary) at
18 an accredited graduate school or program of public
19 health; or

20 “(B) have demonstrated expertise in public
21 health and be accepted for enrollment, or be en-
22 rolled, as a full-time or part-time student in a course
23 of study or program (approved by the Secretary)
24 at—

1 “(i) an accredited graduate school or pro-
2 gram of nursing; health administration, man-
3 agement, or policy; preventive medicine; labora-
4 tory science; veterinary medicine; or dental
5 medicine; or

6 “(ii) another accredited graduate school or
7 program, as deemed appropriate by Secretary;

8 “(2) be eligible for, or hold, an appointment as
9 a commissioned officer in the Regular or Reserve
10 Corps of the Service or be eligible for selection for
11 civilian service in the Corps; and

12 “(3) sign and submit to the Secretary a written
13 contract (described in subsection (c)) to serve full-
14 time as a public health professional, upon the com-
15 pletion of the course of study or program involved,
16 for the period of obligated service described in sub-
17 section (c)(2)(E).

18 “(c) CONTRACT.—The written contract between the
19 Secretary and an individual under subsection (b)(3) shall
20 contain—

21 “(1) an agreement on the part of the Secretary
22 that the Secretary will—

23 “(A) provide the individual with a scholar-
24 ship for a period of years (not to exceed 4 aca-
25 demic years) during which the individual shall

1 pursue an approved course of study or program
2 to prepare the individual to serve in the public
3 health workforce; and

4 “(B) accept (subject to the availability of
5 appropriated funds) the individual into the
6 Corps;

7 “(2) an agreement on the part of the individual
8 that the individual will—

9 “(A) accept provision of such scholarship
10 to the individual;

11 “(B) maintain full-time or part-time enroll-
12 ment in the approved course of study or pro-
13 gram described in subsection (b)(1) until the in-
14 dividual completes that course of study or pro-
15 gram;

16 “(C) while enrolled in the approved course
17 of study or program, maintain an acceptable
18 level of academic standing (as determined by
19 the educational institution offering such course
20 of study or program);

21 “(D) if applicable, complete a residency or
22 internship; and

23 “(E) serve full-time as a public health pro-
24 fessional for a period of time equal to the great-
25 er of—

1 “(i) 1 year for each academic year for
2 which the individual was provided a schol-
3 arship under the Program; or

4 “(ii) 2 years; and

5 “(3) an agreement by both parties as to the na-
6 ture and extent of the scholarship assistance, which
7 may include—

8 “(A) payment of reasonable educational ex-
9 penses of the individual, including tuition, fees,
10 books, equipment, and laboratory expenses; and

11 “(B) payment of a stipend of not more
12 than \$1,269 (plus, beginning with fiscal year
13 2011, an amount determined by the Secretary
14 on an annual basis to reflect inflation) per
15 month for each month of the academic year in-
16 volved, with the dollar amount of such a stipend
17 determined by the Secretary taking into consid-
18 eration whether the individual is enrolled full-
19 time or part-time.

20 “(d) APPLICATION OF CERTAIN PROVISIONS.—The
21 provisions of subpart III shall, except as inconsistent with
22 this subpart, apply to the scholarship program under this
23 section in the same manner and to the same extent as
24 such provisions apply to the National Health Service

1 Corps Scholarship Program established under section
2 338A.

3 **“SEC. 340N. PUBLIC HEALTH WORKFORCE LOAN REPAY-**
4 **MENT PROGRAM.**

5 “(a) ESTABLISHMENT.—The Secretary shall estab-
6 lish the Public Health Workforce Loan Repayment Pro-
7 gram (referred to in this section as the ‘Program’) for the
8 purpose described in section 340L(a).

9 “(b) ELIGIBILITY.—To be eligible to participate in
10 the Program, an individual shall—

11 “(1)(A) have a graduate degree from an accred-
12 ited school or program of public health;

13 “(B) have demonstrated expertise in public
14 health and have a graduate degree in a course of
15 study or program (approved by the Secretary)
16 from—

17 “(i) an accredited school or program of
18 nursing; health administration, management, or
19 policy; preventive medicine; laboratory science;
20 veterinary medicine; or dental medicine; or

21 “(ii) another accredited school or program
22 approved by the Secretary; or

23 “(C) be enrolled as a full-time or part-time stu-
24 dent in the final year of a course of study or pro-
25 gram (approved by the Secretary) offered by a

1 school or program described in subparagraph (A) or
2 (B), leading to a graduate degree;

3 “(2) be eligible for, or hold, an appointment as
4 a commissioned officer in the Regular or Reserve
5 Corps of the Service or be eligible for selection for
6 civilian service in the Corps;

7 “(3) if applicable, complete a residency or in-
8 ternship; and

9 “(4) sign and submit to the Secretary a written
10 contract (described in subsection (c)) to serve full-
11 time as a public health professional for the period of
12 obligated service described in subsection (c)(2).

13 “(c) CONTRACT.—The written contract between the
14 Secretary and an individual under subsection (b)(4) shall
15 contain—

16 “(1) an agreement by the Secretary to repay on
17 behalf of the individual loans incurred by the indi-
18 vidual in the pursuit of the relevant public health
19 workforce educational degree in accordance with the
20 terms of the contract;

21 “(2) an agreement by the individual to serve
22 full-time as a public health professional for a period
23 of time equal to 2 years or such longer period as the
24 individual may agree to; and

1 “(3) in the case of an individual described in
2 subsection (b)(1)(C) who is in the final year of study
3 and who has accepted employment as a public health
4 professional, in accordance with subsection 340L(c),
5 an agreement on the part of the individual to com-
6 plete the education or training, maintain an accept-
7 able level of academic standing (as determined by
8 the educational institution offering the course of
9 study or training), and serve the period of obligated
10 service described in paragraph (2).

11 “(d) PAYMENTS.—

12 “(1) IN GENERAL.—A loan repayment provided
13 for an individual under a written contract under the
14 Program shall consist of payment, in accordance
15 with paragraph (2), on behalf of the individual of
16 the principal, interest, and related expenses on gov-
17 ernment and commercial loans received by the indi-
18 vidual regarding the undergraduate or graduate edu-
19 cation of the individual (or both), which loans were
20 made for reasonable educational expenses, including
21 tuition, fees, books, equipment, and laboratory ex-
22 penses, incurred by the individual.

23 “(2) PAYMENTS FOR YEARS SERVED.—

24 “(A) IN GENERAL.—For each year of obli-
25 gated service that an individual contracts to

1 serve under subsection (c), the Secretary may
2 pay up to \$35,000 (plus, beginning with fiscal
3 year 2012, an amount determined by the Sec-
4 retary on an annual basis to reflect inflation)
5 on behalf of the individual for loans described
6 in paragraph (1).

7 “(B) REPAYMENT SCHEDULE.—Any ar-
8 rangement made by the Secretary for the mak-
9 ing of loan repayments in accordance with this
10 subsection shall provide that any repayments
11 for a year of obligated service shall be made no
12 later than the end of the fiscal year in which
13 the individual completes such year of service.

14 “(e) APPLICATION OF CERTAIN PROVISIONS.—The
15 provisions of subpart III shall, except as inconsistent with
16 this subpart, apply to the loan repayment program under
17 this section in the same manner and to the same extent
18 as such provisions apply to the National Health Service
19 Corps Loan Repayment Program established under sec-
20 tion 338B.”.

21 **SEC. 2232. ENHANCING THE PUBLIC HEALTH WORKFORCE.**

22 Section 765 (42 U.S.C. 295) is amended to read as
23 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 school or program of public
13 health; nursing; health administration, management,
14 or policy; preventive medicine; laboratory science;
15 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 **PART 2—INTERDISCIPLINARY TRAINING**

2 **PROGRAMS**

3 **SEC. 2251. CULTURAL AND LINGUISTIC COMPETENCY**

4 **TRAINING FOR HEALTH CARE PROFES-**

5 **SIONALS.**

6 Section 741 (42 U.S.C. 293e) is amended—

7 (1) in the section heading, by striking “GRANTS
8 FOR HEALTH PROFESSIONS EDUCATION” and in-
9 serting “CULTURAL AND LINGUISTIC COMPETENCY
10 TRAINING FOR HEALTH CARE PROFESSIONALS”;

11 (2) by redesignating subsection (b) as sub-
12 section (h); and

13 (3) by striking subsection (a) and inserting the
14 following:

15 “(a) PROGRAM.—The Secretary shall establish a cul-
16 tural and linguistic competency training program for
17 health care professionals, including nurse professionals,
18 consisting of awarding grants and contracts under sub-
19 section (b).

20 “(b) CULTURAL AND LINGUISTIC COMPETENCY
21 TRAINING.—The Secretary shall award grants and con-
22 tracts to eligible entities—

23 “(1) to test, develop, and evaluate models of
24 cultural and linguistic competency training (includ-
25 ing continuing education) for health professionals;
26 and

1 “(2) to implement cultural and linguistic com-
2 petency training programs for health professionals
3 developed under paragraph (1) or otherwise.

4 “(c) ELIGIBILITY.—To be eligible for a grant or con-
5 tract under subsection (b), an entity shall be—

6 “(1) an accredited health professions school or
7 program;

8 “(2) an academic health center;

9 “(3) a public or private nonprofit entity; or

10 “(4) a consortium of 2 or more entities de-
11 scribed in paragraphs (1) through (3).

12 “(d) PREFERENCE.—In awarding grants and con-
13 tracts under this section, the Secretary shall give pref-
14 erence to entities that have a demonstrated record of the
15 following:

16 “(1) Addressing, or partnering with an entity
17 with experience addressing, the cultural and lin-
18 guistic competency needs of the population to be
19 served through the grant or contract.

20 “(2) Addressing health disparities.

21 “(3) Placing health professionals in regions ex-
22 periencing significant changes in the cultural and
23 linguistic demographics of populations, including
24 communities along the United States-Mexico border.

1 “(b) TRAINING PROGRAMS.—The Secretary shall
2 award grants to, or enter into contracts with, eligible enti-
3 ties—

4 “(1) to test, develop, and evaluate health pro-
5 fessional training programs (including continuing
6 education) designed to promote—

7 “(A) the delivery of health services through
8 interdisciplinary and team-based models, which
9 may include patient-centered medical home
10 models, medication therapy management mod-
11 els, and models integrating physical, mental, or
12 oral health services; and

13 “(B) coordination of the delivery of health
14 care within and across settings, including health
15 care institutions, community-based settings,
16 and the patient’s home; and

17 “(2) to implement such training programs de-
18 veloped under paragraph (1) or otherwise.

19 “(c) ELIGIBILITY.—To be eligible for a grant or con-
20 tract under subsection (b), an entity shall be—

21 “(1) an accredited health professions school or
22 program;

23 “(2) an academic health center;

1 “(3) a public or private nonprofit entity (includ-
2 ing an area health education center or a geriatric
3 education center); or

4 “(4) a consortium of 2 or more entities de-
5 scribed in paragraphs (1) through (3).

6 “(d) PREFERENCES.—In awarding grants and con-
7 tracts under this section, the Secretary shall give pref-
8 erence to entities that have a demonstrated record of the
9 following:

10 “(1) Training the greatest percentage, or sig-
11 nificantly increasing the percentage, of health pro-
12 fessionals who serve in underserved communities.

13 “(2) Broad interdisciplinary team-based collabo-
14 rations.

15 “(3) Addressing health disparities.

16 “(e) REPORT.—The Secretary shall submit to the
17 Congress an annual report on the program carried out
18 under this section.

19 “(f) DEFINITIONS.—In this section:

20 “(1) The term ‘health disparities’ has the
21 meaning given the term in section 3171.

22 “(2) The term ‘interdisciplinary’ means collabo-
23 ration across health professions and specialties,
24 which may include public health, nursing, allied
25 health, and appropriate medical specialties.”.

1 **PART 3—ADVISORY COMMITTEE ON HEALTH**
2 **WORKFORCE EVALUATION AND ASSESSMENT**
3 **SEC. 2261. HEALTH WORKFORCE EVALUATION AND ASSESS-**
4 **MENT.**

5 Subpart 1 of part E of title VII (42 U.S.C. 294n
6 et seq.) is amended by adding at the end the following:

7 **“SEC. 764. HEALTH WORKFORCE EVALUATION AND ASSESS-**
8 **MENT.**

9 “(a) **ADVISORY COMMITTEE.**—The Secretary, acting
10 through the Assistant Secretary for Health, shall establish
11 a permanent advisory committee to be known as the Advi-
12 sory Committee on Health Workforce Evaluation and As-
13 sessment (referred to in this section as the ‘Advisory Com-
14 mittee’).

15 “(b) **RESPONSIBILITIES.**—The Advisory Committee
16 shall—

17 “(1) not later than 1 year after the date of the
18 establishment of the Advisory Committee, submit
19 recommendations to the Secretary on—

20 “(A) classifications of the health workforce
21 to ensure consistency of data collection on the
22 health workforce; and

23 “(B) based on such classifications, stand-
24 arized methodologies and procedures to enu-
25 merate the health workforce;

1 “(2) not later than 2 years after the date of the
2 establishment of the Advisory Committee, submit
3 recommendations to the Secretary on—

4 “(A) the supply, diversity, and geographic
5 distribution of the health workforce;

6 “(B) the retention of the health workforce
7 to ensure quality and adequacy of such work-
8 force; and

9 “(C) policies to carry out the recommenda-
10 tions made pursuant to subparagraphs (A) and
11 (B); and

12 “(3) not later than 4 years after the date of the
13 establishment of the Advisory Committee, and every
14 2 years thereafter, submit updated recommendations
15 to the Secretary under paragraphs (1) and (2).

16 “(c) **ROLE OF AGENCY.**—The Secretary shall provide
17 ongoing administrative, research, and technical support
18 for the operations of the Advisory Committee, including
19 coordinating and supporting the dissemination of the rec-
20 ommendations of the Advisory Committee.

21 “(d) **MEMBERSHIP.**—

22 “(1) **NUMBER; APPOINTMENT.**—The Secretary
23 shall appoint 15 members to serve on the Advisory
24 Committee.

25 “(2) **TERMS.**—

1 “(A) IN GENERAL.—The Secretary shall
2 appoint members of the Advisory Committee for
3 a term of 3 years and may reappoint such
4 members, but the Secretary may not appoint
5 any member to serve more than a total of 6
6 years.

7 “(B) STAGGERED TERMS.—Notwith-
8 standing subparagraph (A), of the members
9 first appointed to the Advisory Committee
10 under paragraph (1)—

11 “(i) 5 shall be appointed for a term of
12 1 year;

13 “(ii) 5 shall be appointed for a term
14 of 2 years; and

15 “(iii) 5 shall be appointed for a term
16 of 3 years.

17 “(3) QUALIFICATIONS.—Members of the Advi-
18 sory Committee shall be appointed from among indi-
19 viduals who possess expertise in at least one of the
20 following areas:

21 “(A) Conducting and interpreting health
22 workforce market analysis, including health
23 care labor workforce analysis.

24 “(B) Conducting and interpreting health
25 finance and economics research.

1 “(C) Delivering and administering health
2 care services.

3 “(D) Delivering and administering health
4 workforce education and training.

5 “(4) REPRESENTATION.—In appointing mem-
6 bers of the Advisory Committee, the Secretary
7 shall—

8 “(A) include no less than one representa-
9 tive of each of—

10 “(i) health professionals within the
11 health workforce;

12 “(ii) health care patients and con-
13 sumers;

14 “(iii) employers;

15 “(iv) labor unions; and

16 “(v) third-party health payors; and

17 “(B) ensure that—

18 “(i) all areas of expertise described in
19 paragraph (3) are represented;

20 “(ii) the members of the Advisory
21 Committee include members who, collec-
22 tively, have significant experience working
23 with—

1 “(I) populations in urban and
2 federally designated rural and non-
3 metropolitan areas; and

4 “(II) populations who are under-
5 represented in the health professions,
6 including underrepresented minority
7 groups; and

8 “(iii) individuals who are directly in-
9 volved in health professions education or
10 practice do not constitute a majority of the
11 members of the Advisory Committee.

12 “(5) DISCLOSURE AND CONFLICTS OF INTER-
13 EST.—Members of the Advisory Committee shall not
14 be considered employees of the Federal Government
15 by reason of service on the Advisory Committee, ex-
16 cept members of the Advisory Committee shall be
17 considered to be special Government employees with-
18 in the meaning of section 107 of the Ethics in Gov-
19 ernment Act of 1978 (5 U.S.C. App.) and section
20 208 of title 18, United States Code, for the purposes
21 of disclosure and management of conflicts of interest
22 under those sections.

23 “(6) NO PAY; RECEIPT OF TRAVEL EX-
24 PENSES.—Members of the Advisory Committee shall
25 not receive any pay for service on the Committee,

1 but may receive travel expenses, including a per
2 diem, in accordance with applicable provisions of
3 subchapter I of chapter 57 of title 5, United States
4 Code.

5 “(e) CONSULTATION.—In carrying out this section,
6 the Secretary shall consult with the Secretary of Edu-
7 cation and the Secretary of Labor.

8 “(f) COLLABORATION.—The Advisory Committee
9 shall collaborate with the advisory bodies at the Health
10 Resources and Services Administration, the National Ad-
11 visory Council (as authorized in section 337), the Advisory
12 Committee on Training in Primary Care Medicine and
13 Dentistry (as authorized in section 749A), the Advisory
14 Committee on Interdisciplinary, Community-Based Link-
15 ages (as authorized in section 756), the Advisory Council
16 on Graduate Medical Education (as authorized in section
17 762), and the National Advisory Council on Nurse Edu-
18 cation and Practice (as authorized in section 851).

19 “(g) FACA.—The Federal Advisory Committee Act
20 (5 U.S.C. App.) except for section 14 of such Act shall
21 apply to the Advisory Committee under this section only
22 to the extent that the provisions of such Act do not conflict
23 with the requirements of this section.

1 “(h) REPORT.—The Secretary shall submit to the
2 Congress an annual report on the activities of the Advisory
3 Committee.

4 “(i) DEFINITION.—In this section, the term ‘health
5 workforce’ includes all health care providers with direct
6 patient care and support responsibilities, including physi-
7 cians, nurses, physician assistants, pharmacists, oral
8 health professionals (as defined in section 749(f)), allied
9 health professionals, mental and behavioral health profes-
10 sionals, and public health professionals (including veteri-
11 narians engaged in public health practice).”.

12 **PART 4—HEALTH WORKFORCE ASSESSMENT**

13 **SEC. 2271. HEALTH WORKFORCE ASSESSMENT.**

14 (a) IN GENERAL.—Section 761 (42 U.S.C. 294n) is
15 amended—

16 (1) by redesignating subsection (c) as sub-
17 section (e); and

18 (2) by striking subsections (a) and (b) and in-
19 serting the following:

20 “(a) IN GENERAL.—The Secretary shall, based upon
21 the classifications and standardized methodologies and
22 procedures developed by the Advisory Committee on
23 Health Workforce Evaluation and Assessment under sec-
24 tion 764(b)—

1 “(1) collect data on the health workforce (as
2 defined in section 764(i)), disaggregated by field,
3 discipline, and specialty, with respect to—

4 “(A) the supply (including retention) of
5 health professionals relative to the demand for
6 such professionals;

7 “(B) the diversity of health professionals
8 (including with respect to race, ethnic back-
9 ground, and gender); and

10 “(C) the geographic distribution of health
11 professionals; and

12 “(2) collect such data on individuals partici-
13 pating in the programs authorized by subtitles A, B,
14 and C and part 1 of subtitle D of title II of division
15 C of the America’s Affordable Health Choices Act of
16 2009.

17 “(b) GRANTS AND CONTRACTS FOR HEALTH WORK-
18 FORCE ANALYSIS.—

19 “(1) IN GENERAL.—The Secretary may award
20 grants or contracts to eligible entities to carry out
21 subsection (a).

22 “(2) ELIGIBILITY.—To be eligible for a grant
23 or contract under this subsection, an entity shall
24 be—

1 “(A) an accredited health professions
2 school or program;

3 “(B) an academic health center;

4 “(C) a State, local, or tribal government;

5 “(D) a public or private entity; or

6 “(E) a consortium of 2 or more entities de-
7 scribed in subparagraphs (A) through (D).

8 “(c) COLLABORATION AND DATA SHARING.—The
9 Secretary shall collaborate with Federal departments and
10 agencies, health professions organizations (including
11 health professions education organizations), and profes-
12 sional medical societies for the purpose of carrying out
13 subsection (a).

14 “(d) REPORT.—The Secretary shall submit to the
15 Congress an annual report on the data collected under
16 subsection (a).”.

17 (b) PERIOD BEFORE COMPLETION OF NATIONAL
18 STRATEGY.—Pending completion of the classifications and
19 standardized methodologies and procedures developed by
20 the Advisory Committee on Health Workforce Evaluation
21 and Assessment under section 764(b) of the Public Health
22 Service Act, as added by section 2261, the Secretary of
23 Health and Human Services, acting through the Adminis-
24 trator of the Health Resources and Services Administra-
25 tion and in consultation with such Advisory Committee,

1 may make a judgment about the classifications, meth-
2 odologies, and procedures to be used for collection of data
3 under section 761(a) of the Public Health Service Act, as
4 amended by this section.

5 **PART 5—AUTHORIZATION OF APPROPRIATIONS**

6 **SEC. 2281. AUTHORIZATION OF APPROPRIATIONS.**

7 (a) IN GENERAL.—Section 799C, as added by section
8 2216 of this Act, is amended by adding at the end the
9 following:

10 “(c) HEALTH PROFESSIONS TRAINING FOR DIVER-
11 SITY.—For the purpose of carrying out sections 736, 737,
12 738, 739, and 739A, in addition to any other amounts
13 authorized to be appropriated for such purpose, there are
14 authorized to be appropriated, out of any monies in the
15 Public Health Investment Fund, the following:

16 “(1) \$90,000,000 for fiscal year 2010.

17 “(2) \$97,000,000 for fiscal year 2011.

18 “(3) \$100,000,000 for fiscal year 2012.

19 “(4) \$104,000,000 for fiscal year 2013.

20 “(5) \$110,000,000 for fiscal year 2014.

21 “(6) \$116,000,000 for fiscal year 2015.

22 “(7) \$121,000,000 for fiscal year 2016.

23 “(8) \$127,000,000 for fiscal year 2017.

24 “(9) \$133,000,000 for fiscal year 2018.

25 “(10) \$140,000,000 for fiscal year 2019.

1 “(d) INTERDISCIPLINARY TRAINING PROGRAMS, AD-
2 VISORY COMMITTEE ON HEALTH WORKFORCE EVALUA-
3 TION AND ASSESSMENT, AND HEALTH WORKFORCE AS-
4 SESSMENT.—For the purpose of carrying out sections
5 741, 759, 761, and 764, in addition to any other amounts
6 authorized to be appropriated for such purpose, there are
7 authorized to be appropriated, out of any monies in the
8 Public Health Investment Fund, the following:

9 “(1) \$91,000,000 for fiscal year 2010.

10 “(2) \$97,000,000 for fiscal year 2011.

11 “(3) \$101,000,000 for fiscal year 2012.

12 “(4) \$105,000,000 for fiscal year 2013.

13 “(5) \$111,000,000 for fiscal year 2014.

14 “(6) \$117,000,000 for fiscal year 2015.

15 “(7) \$122,000,000 for fiscal year 2016.

16 “(8) \$129,000,000 for fiscal year 2017.

17 “(9) \$135,000,000 for fiscal year 2018.

18 “(10) \$141,000,000 for fiscal year 2019.”.

19 (b) EXISTING AUTHORIZATIONS OF APPROPRIA-
20 TIONS.—

21 (1) SECTION 736.—Paragraph (1) of section
22 736(i) (42 U.S.C. 293(h)), as redesignated, is
23 amended by striking “2002” and inserting “2019”.

24 (2) SECTIONS 737, 738, AND 739.—Subsections
25 (a), (b), and (c) of section 740 are amended by

1 striking “2002” each place it appears and inserting
2 “2019”.

3 (3) SECTION 741.—Subsection (h), as so reded-
4 igned, of section 741 is amended—

5 (A) by striking “and” after “fiscal year
6 2003,”; and

7 (B) by inserting “, and such sums as may
8 be necessary for subsequent fiscal years
9 through the end of fiscal year 2019” before the
10 period at the end.

11 (4) SECTION 761.—Subsection (e)(1), as so re-
12 igned, of section 761 is amended by striking
13 “2002” and inserting “2019”.

14 **TITLE III—PREVENTION AND** 15 **WELLNESS**

16 **SEC. 2301. PREVENTION AND WELLNESS.**

17 (a) IN GENERAL.—The Public Health Service Act
18 (42 U.S.C. 201 et seq.) is amended by adding at the end
19 the following:

1 **“TITLE XXXI—PREVENTION AND**
2 **WELLNESS**

3 **“Subtitle A—Prevention and**
4 **Wellness Trust**

5 **“SEC. 3111. PREVENTION AND WELLNESS TRUST.**

6 “(a) DEPOSITS INTO TRUST.—There is established
7 a Prevention and Wellness Trust. There are authorized
8 to be appropriated to the Trust—

9 “(1) amounts described in section
10 2002(b)(2)(ii) of the America’s Affordable Health
11 Choices Act of 2009 for each fiscal year; and

12 “(2) in addition, out of any monies in the Pub-
13 lic Health Investment Fund—

14 “(A) for fiscal year 2010, \$2,400,000,000;

15 “(B) for fiscal year 2011, \$2,800,000,000;

16 “(C) for fiscal year 2012, \$3,100,000,000;

17 “(D) for fiscal year 2013, \$3,400,000,000;

18 “(E) for fiscal year 2014, \$3,500,000,000;

19 “(F) for fiscal year 2015, \$3,600,000,000;

20 “(G) for fiscal year 2016, \$3,700,000,000;

21 “(H) for fiscal year 2017, \$3,900,000,000;

22 “(I) for fiscal year 2018, \$4,300,000,000;

23 and

24 “(J) for fiscal year 2019, \$4,600,000,000.

1 “(b) AVAILABILITY OF FUNDS.—Amounts in the Pre-
2 vention and Wellness Trust shall be available, as provided
3 in advance in appropriation Acts, for carrying out this
4 title.

5 “(c) ALLOCATION.—Of the amounts authorized to be
6 appropriated in subsection (a)(2), there are authorized to
7 be appropriated—

8 “(1) for carrying out subtitle C (Prevention
9 Task Forces)—

10 “(A) \$30,000,000 for each of fiscal years
11 2010 through 2014; and

12 “(B) \$35,000,000 for each of fiscal years
13 2015 through 2019;

14 “(2) for carrying out subtitle D (Prevention
15 and Wellness Research)—

16 “(A) for fiscal year 2010, \$100,000,000;

17 “(B) for fiscal year 2011, \$150,000,000;

18 “(C) for fiscal year 2012, \$200,000,000;

19 “(D) for fiscal year 2013, \$250,000,000;

20 “(E) for fiscal year 2014, \$300,000,000;

21 “(F) for fiscal year 2015, \$315,000,000;

22 “(G) for fiscal year 2016, \$331,000,000;

23 “(H) for fiscal year 2017, \$347,000,000;

24 “(I) for fiscal year 2018, \$364,000,000;

25 and

1 “(J) for fiscal year 2019, \$383,000,000.

2 “(3) for carrying out subtitle E (Delivery of
3 Community Preventive and Wellness Services)—

4 “(A) for fiscal year 2010, \$1,100,000,000;

5 “(B) for fiscal year 2011, \$1,300,000,000;

6 “(C) for fiscal year 2012, \$1,400,000,000;

7 “(D) for fiscal year 2013, \$1,600,000,000;

8 “(E) for fiscal year 2014, \$1,700,000,000;

9 “(F) for fiscal year 2015, \$1,800,000,000;

10 “(G) for fiscal year 2016, \$1,900,000,000;

11 “(H) for fiscal year 2017, \$2,000,000,000;

12 “(I) for fiscal year 2018, \$2,100,000,000;

13 and

14 “(J) for fiscal year 2019, \$2,300,000,000.

15 “(4) for carrying out section 3161 (Core Public
16 Health Infrastructure for State, Local, and Tribal
17 Health Departments)—

18 “(A) for fiscal year 2010, \$800,000,000;

19 “(B) for fiscal year 2011, \$1,000,000,000;

20 “(C) for fiscal year 2012, \$1,100,000,000;

21 “(D) for fiscal year 2013, \$1,200,000,000;

22 “(E) for fiscal year 2014, \$1,300,000,000;

23 “(F) for fiscal year 2015, \$1,400,000,000;

24 “(G) for fiscal year 2016, \$1,500,000,000;

25 “(H) for fiscal year 2017, \$1,600,000,000;

1 “(I) for fiscal year 2018, \$1,800,000,000;
2 and
3 “(J) for fiscal year 2019, \$1,900,000,000;
4 and
5 “(5) for carrying out section 3162 (Core Public
6 Health Infrastructure and Activities for CDC)—
7 “(A) \$350,000,000 for each of fiscal years
8 2010 through 2014; and
9 “(B) \$400,000,000 for each of fiscal years
10 2015 through 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 individuals with expertise in health dis-
20 parities.

21 “(e) SUBGROUPS.—As appropriate to maximize effi-
22 ciency, the Task Force may delegate authority for con-
23 ducting reviews and making recommendations to sub-
24 groups consisting of Task Force members, subject to final
25 approval by the Task Force.

1 “(f) CLINICAL PREVENTION STAKEHOLDERS
2 BOARD.—

3 “(1) IN GENERAL.—The Task Force shall con-
4 vene a clinical prevention stakeholders board com-
5 posed of representatives of appropriate public and
6 private entities with an interest in clinical preventive
7 services to advise the Task Force on developing, up-
8 dating, publishing, and disseminating evidence-based
9 recommendations on the use of clinical preventive
10 services.

11 “(2) MEMBERSHIP.—The members of the clin-
12 ical prevention stakeholders board shall include rep-
13 resentatives of the following:

14 “(A) Health care consumers and patient
15 groups.

16 “(B) Providers of clinical preventive serv-
17 ices, including community-based providers.

18 “(C) Federal departments and agencies,
19 including—

20 “(i) appropriate health agencies and
21 offices in the Department, including the
22 Office of the Surgeon General of the Pub-
23 lic Health Service, the Office of Minority
24 Health, the National Center on Minority

1 Health and Health Disparities, and the Of-
2 fice on Women’s 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 or the clinical prevention stakeholders board, except
2 members of the Task Force or the clinical prevention
3 stakeholders board shall be considered to be special Gov-
4 ernment employees within the meaning of section 107 of
5 the Ethics in Government Act of 1978 (5 U.S.C. App.)
6 and section 208 of title 18, United States Code, for the
7 purposes of disclosure and management of conflicts of in-
8 terest under those sections.

9 “(h) NO PAY; RECEIPT OF TRAVEL EXPENSES.—
10 Members of the Task Force or the clinical prevention
11 stakeholders board shall not receive any pay for service
12 on the Task Force, but may receive travel expenses, in-
13 cluding a per diem, in accordance with applicable provi-
14 sions of subchapter I of chapter 57 of title 5, United
15 States Code.

16 “(i) APPLICATION OF FACA.—The Federal Advisory
17 Committee Act (5 U.S.C. App.) except for section 14 of
18 such Act shall apply to the Task Force to the extent that
19 the provisions of such Act do not conflict with the provi-
20 sions of this title.

21 “(j) REPORT.—The Secretary shall submit to the
22 Congress an annual report on the Task Force, including
23 with respect to gaps identified and recommendations made
24 under subsection (b)(4).

1 “(4) identify gaps in community preventive
2 services research and evaluation and recommend pri-
3 ority areas for such research and evaluation;

4 “(5) as appropriate, consult with the commu-
5 nity prevention stakeholders board in accordance
6 with subsection (f);

7 “(6) as appropriate, consult with the Task
8 Force on Clinical Preventive Services established
9 under section 3131; and

10 “(7) as appropriate, in carrying out this sec-
11 tion, consider the national strategy under section
12 3121.

13 “(c) ROLE OF AGENCY.—The Secretary shall provide
14 ongoing administrative, research, and technical support
15 for the operations of the Task Force, including coordi-
16 nating and supporting the dissemination of the rec-
17 ommendations of the Task Force.

18 “(d) MEMBERSHIP.—

19 “(1) NUMBER; APPOINTMENT.—The Task
20 Force shall be composed of 30 members, appointed
21 by the Secretary.

22 “(2) TERMS.—

23 “(A) IN GENERAL.—The Secretary shall
24 appoint members of the Task Force for a term
25 of 6 years and may reappoint such members,

1 but the Secretary may not appoint any member
2 to serve more than a total of 12 years.

3 “(B) STAGGERED TERMS.—Notwith-
4 standing subparagraph (A), of the members
5 first appointed to serve on the Task Force after
6 the enactment of this section—

7 “(i) 10 shall be appointed for a term
8 of 2 years;

9 “(ii) 10 shall be appointed for a term
10 of 4 years; and

11 “(iii) 10 shall be appointed for a term
12 of 6 years.

13 “(3) QUALIFICATIONS.—Members of the Task
14 Force shall be appointed from among individuals
15 who possess expertise in at least one of the following
16 areas:

17 “(A) Public health.

18 “(B) Evaluation of research and system-
19 atic evidence reviews.

20 “(C) Disciplines relevant to community
21 preventive services, including health promotion;
22 disease prevention; chronic disease; worksite
23 health; qualitative and quantitative analysis;
24 and health economics, policy, law, and statis-
25 tics.

1 “(4) REPRESENTATION.—In appointing mem-
2 bers of the Task Force, the Secretary—

3 “(A) shall ensure that all areas of exper-
4 tise described in paragraph (3) are represented;

5 “(B) shall ensure that such members in-
6 clude sufficient representatives of each of—

7 “(i) State health officers;

8 “(ii) local health officers;

9 “(iii) health care practitioners; and

10 “(iv) public health practitioners; and

11 “(C) shall appoint individuals who have ex-
12 pertise in health disparities.

13 “(e) SUBGROUPS.—As appropriate to maximize effi-
14 ciency, the Task Force may delegate authority for con-
15 ducting reviews and making recommendations to sub-
16 groups consisting of Task Force members, subject to final
17 approval by the Task Force.

18 “(f) COMMUNITY PREVENTION STAKEHOLDERS
19 BOARD.—

20 “(1) IN GENERAL.—The Task Force shall con-
21 vene a community prevention stakeholders board
22 composed of representatives of appropriate public
23 and private entities with an interest in community
24 preventive services to advise the Task Force on de-
25 veloping, updating, publishing, and disseminating

1 evidence-based recommendations on the use of com-
2 munity preventive services.

3 “(2) MEMBERSHIP.—The members of the com-
4 munity prevention stakeholders board shall include
5 representatives of the following:

6 “(A) Health care consumers and patient
7 groups.

8 “(B) Providers of community preventive
9 services, including community-based providers.

10 “(C) Federal departments and agencies,
11 including—

12 “(i) appropriate health agencies and
13 offices in the Department, including the
14 Office of the Surgeon General of the Pub-
15 lic Health Service, the Office of Minority
16 Health, the National Center on Minority
17 Health and Health Disparities, and the Of-
18 fice on Women’s Health; and

19 “(ii) as appropriate, other Federal de-
20 partments and agencies whose programs
21 have a significant impact upon health (as
22 determined by the Secretary).

23 “(D) Private health care payors.

1 “(3) RESPONSIBILITIES.—In accordance with
2 subsection (b)(5), the community prevention stake-
3 holders board shall—

4 “(A) recommend community preventive
5 services for review by the Task Force;

6 “(B) suggest scientific evidence for consid-
7 eration by the Task Force related to reviews
8 undertaken by the Task Force;

9 “(C) provide feedback regarding draft rec-
10 ommendations by the Task Force; and

11 “(D) assist with efforts regarding dissemi-
12 nation of recommendations by the Director of
13 the Centers for Disease Control and Prevention.

14 “(g) DISCLOSURE AND CONFLICTS OF INTEREST.—
15 Members of the Task Force or the community prevention
16 stakeholders board shall not be considered employees of
17 the Federal Government by reason of service on the Task
18 Force or the community prevention stakeholders board,
19 except members of the Task Force or the community pre-
20 vention stakeholders board shall be considered to be spe-
21 cial Government employees within the meaning of section
22 107 of the Ethics in Government Act of 1978 (5 U.S.C.
23 App.) and section 208 of title 18, United States Code, for
24 the purposes of disclosure and management of conflicts
25 of interest under those sections.

1 trol and Prevention, the Director of the National Insti-
2 tutes of Health, and the heads of other agencies within
3 the Department of Health and Human Services con-
4 ducting or supporting such research, shall take into con-
5 sideration the national strategy under section 3121 and
6 the recommendations of the Task Force on Clinical Pre-
7 ventive Services under section 3131 and the Task Force
8 on Community Preventive Services under section 3132.

9 **“SEC. 3142. COMMUNITY PREVENTION AND WELLNESS RE-**
10 **SEARCH GRANTS.**

11 “(a) IN GENERAL.—The Secretary, acting through
12 the Director of the Centers for Disease Control and Pre-
13 vention, shall conduct, or award grants to eligible entities
14 to conduct, research in priority areas identified by the Sec-
15 retary in the national strategy under section 3121 or by
16 the Task Force on Community Preventive Services as re-
17 quired by section 3132.

18 “(b) ELIGIBILITY.—To be eligible for a grant under
19 this section, an entity shall be—

20 “(1) a State, local, or tribal department of
21 health;

22 “(2) a public or private nonprofit entity; or

23 “(3) a consortium of 2 or more entities de-
24 scribed in paragraphs (1) and (2).

1 “(c) REPORT.—The Secretary shall submit to the
2 Congress an annual report on the program of research
3 under this section.

4 **“Subtitle E—Delivery of Commu-**
5 **nity Prevention and Wellness**
6 **Services**

7 **“SEC. 3151. COMMUNITY PREVENTION AND WELLNESS**
8 **SERVICES GRANTS.**

9 “(a) IN GENERAL.—The Secretary, acting through
10 the Director of the Centers for Disease Control and Pre-
11 vention, shall establish a program for the delivery of com-
12 munity prevention and wellness services consisting of
13 awarding grants to eligible entities—

14 “(1) to provide evidence-based, community pre-
15 vention and wellness services in priority areas identi-
16 fied by the Secretary in the national strategy under
17 section 3121; or

18 “(2) to plan such services.

19 “(b) ELIGIBILITY.—

20 “(1) DEFINITION.—To be eligible for a grant
21 under this section, an entity shall be—

22 “(A) a State, local, or tribal department of
23 health;

24 “(B) a public or private entity; or

25 “(C) a consortium of—

1 “(i) 2 or more entities described in
2 subparagraph (A) or (B); and

3 “(ii) a community partnership rep-
4 resenting a Health Empowerment Zone.

5 “(2) HEALTH EMPOWERMENT ZONE.—In this
6 subsection, the term ‘Health Empowerment Zone’
7 means an area—

8 “(A) in which multiple community preven-
9 tion and wellness services are implemented in
10 order to address one or more health disparities,
11 including those identified by the Secretary in
12 the national strategy under section 3121; and

13 “(B) which is represented by a community
14 partnership that demonstrates community sup-
15 port and coordination with State, local, or tribal
16 health departments and includes—

17 “(i) a broad cross section of stake-
18 holders;

19 “(ii) residents of the community; and

20 “(iii) representatives of entities that
21 have a history of working within and serv-
22 ing the community.

23 “(c) PREFERENCES.—In awarding grants under this
24 section, the Secretary shall give preference to entities
25 that—

1 “(1) will address one or more goals or objec-
2 tives identified by the Secretary in the national
3 strategy under section 3121;

4 “(2) will address significant health disparities,
5 including those identified by the Secretary in the na-
6 tional strategy under section 3121;

7 “(3) will address unmet community prevention
8 and wellness needs and avoids duplication of effort;

9 “(4) have been demonstrated to be effective in
10 communities comparable to the proposed target com-
11 munity;

12 “(5) will contribute to the evidence base for
13 community prevention and wellness services;

14 “(6) demonstrate that the community preven-
15 tion and wellness services to be funded will be sus-
16 tainable; and

17 “(7) demonstrate coordination or collaboration
18 across governmental and nongovernmental partners.

19 “(d) HEALTH DISPARITIES.—Of the funds awarded
20 under this section for a fiscal year, the Secretary shall
21 award not less than 50 percent for planning or imple-
22 menting community prevention and wellness services
23 whose primary purpose is to achieve a measurable reduc-
24 tion in one or more health disparities, including those

1 identified by the Secretary in the national strategy under
2 section 3121.

3 “(e) EMPHASIS ON RECOMMENDED SERVICES.—For
4 fiscal year 2013 and subsequent fiscal years, the Secretary
5 shall award grants under this section only for planning
6 or implementing services recommended by the Task Force
7 on Community Preventive Services under section 3122 or
8 deemed effective based on a review of comparable rigor
9 (as determined by the Director of the Centers for Disease
10 Control and Prevention).

11 “(f) PROHIBITED USES OF FUNDS.—An entity that
12 receives a grant under this section may not use funds pro-
13 vided through the grant—

14 “(1) to build or acquire real property or for
15 construction; or

16 “(2) for services or planning to the extent that
17 payment has been made, or can reasonably be ex-
18 pected to be made—

19 “(A) under any insurance policy;

20 “(B) under any Federal or State health
21 benefits program (including titles XIX and XXI
22 of the Social Security Act); or

23 “(C) by an entity which provides health
24 services on a prepaid basis.

1 “(g) REPORT.—The Secretary shall submit to the
2 Congress an annual report on the program of grants
3 awarded under this section.

4 “(h) DEFINITIONS.—In this section, the term ‘evi-
5 dence-based’ means that methodologically sound research
6 has demonstrated a beneficial health effect, in the judg-
7 ment of the Director of the Centers for Disease Control
8 and Prevention.

9 **“Subtitle F—Core Public Health**
10 **Infrastructure**

11 **“SEC. 3161. CORE PUBLIC HEALTH INFRASTRUCTURE FOR**
12 **STATE, LOCAL, AND TRIBAL HEALTH DEPART-**
13 **MENTS.**

14 “(a) PROGRAM.—The Secretary, acting through the
15 Director of the Centers for Disease Control and Preven-
16 tion shall establish a core public health infrastructure pro-
17 gram consisting of awarding grants under subsection (b).

18 “(b) GRANTS.—

19 “(1) AWARD.—For the purpose of addressing
20 core public health infrastructure needs, the Sec-
21 retary—

22 “(A) shall award a grant to each State
23 health department; and

1 “(B) may award grants on a competitive
2 basis to State, local, or tribal health depart-
3 ments.

4 “(2) ALLOCATION.—Of the total amount of
5 funds awarded as grants under this subsection for a
6 fiscal year—

7 “(A) not less than 50 percent shall be for
8 grants to State health departments under para-
9 graph (1)(A); and

10 “(B) not less than 30 percent shall be for
11 grants to State, local, or tribal health depart-
12 ments under paragraph (1)(B).

13 “(c) USE OF FUNDS.—The Secretary may award a
14 grant to an entity under subsection (b)(1) only if the enti-
15 ty agrees to use the grant to address core public health
16 infrastructure needs, including those identified in the ac-
17 creditation process under subsection (g).

18 “(d) FORMULA GRANTS TO STATE HEALTH DEPART-
19 MENTS.—In making grants under subsection (b)(1)(A),
20 the Secretary shall award funds to each State health de-
21 partment in accordance with—

22 “(1) a formula based on population size; burden
23 of preventable disease and disability; and core public
24 health infrastructure gaps, including those identified

1 in the accreditation process under subsection (g);
2 and

3 “(2) application requirements established by the
4 Secretary, including a requirement that the State
5 submit a plan that demonstrates to the satisfaction
6 of the Secretary that the State’s health department
7 will—

8 “(A) address its highest priority core pub-
9 lic health infrastructure needs; and

10 “(B) as appropriate, allocate funds to local
11 health departments within the State.

12 “(e) COMPETITIVE GRANTS TO STATE, LOCAL, AND
13 TRIBAL HEALTH DEPARTMENTS.—In making grants
14 under subsection (b)(1)(B), the Secretary shall give pri-
15 ority to applicants demonstrating core public health infra-
16 structure needs identified in the accreditation process
17 under subsection (g).

18 “(f) MAINTENANCE OF EFFORT.—The Secretary
19 may award a grant to an entity under subsection (b) only
20 if the entity demonstrates to the satisfaction of the Sec-
21 retary that—

22 “(1) funds received through the grant will be
23 expended only to supplement, and not supplant, non-
24 Federal and Federal funds otherwise available to the

1 entity for the purpose of addressing core public
2 health infrastructure needs; and

3 “(2) with respect to activities for which the
4 grant is awarded, the entity will maintain expendi-
5 tures of non-Federal amounts for such activities at
6 a level not less than the level of such expenditures
7 maintained by the entity for the fiscal year pre-
8 ceding the fiscal year for which the entity receives
9 the grant.

10 “(g) ESTABLISHMENT OF A PUBLIC HEALTH AC-
11 CREDITATION PROGRAM.—

12 “(1) IN GENERAL.—The Secretary, acting
13 through the Director of the Centers for Disease
14 Control and Prevention, shall—

15 “(A) develop, and periodically review and
16 update, standards for voluntary accreditation of
17 State, local, or tribal health departments and
18 public health laboratories for the purpose of ad-
19 vancing the quality and performance of such de-
20 partments and laboratories; and

21 “(B) implement a program to accredit
22 such health departments and laboratories in ac-
23 cordance with such standards.

24 “(2) COOPERATIVE AGREEMENT.—The Sec-
25 retary may enter into a cooperative agreement with

1 a private nonprofit entity to carry out paragraph
2 (1).

3 “(h) REPORT.—The Secretary shall submit to the
4 Congress an annual report on progress being made to ac-
5 credit entities under subsection (g), including—

6 “(1) a strategy, including goals and objectives,
7 for accrediting entities under subsection (g) and
8 achieving the purpose described in subsection (g)(1);
9 and

10 “(2) identification of gaps in research related to
11 core public health infrastructure and recommenda-
12 tions of priority areas for such research.

13 **“SEC. 3162. CORE PUBLIC HEALTH INFRASTRUCTURE AND**
14 **ACTIVITIES FOR CDC.**

15 “(a) IN GENERAL.—The Secretary, acting through
16 the Director of the Centers for Disease Control and Pre-
17 vention, shall expand and improve the core public health
18 infrastructure and activities of the Centers for Disease
19 Control and Prevention to address unmet and emerging
20 public health needs.

21 “(b) REPORT.—The Secretary shall submit to the
22 Congress an annual report on the activities funded
23 through this section.

1 **“Subtitle G—General Provisions**

2 **“SEC. 3171. DEFINITIONS.**

3 “In this title:

4 “(1) The term ‘core public health infrastruc-
5 ture’ includes workforce capacity and competency;
6 laboratory systems; health information, health infor-
7 mation systems, and health information analysis;
8 communications; financing; other relevant compo-
9 nents of organizational capacity; and other related
10 activities.

11 “(2) The terms ‘Department’ and ‘depart-
12 mental’ refer to the Department of Health and
13 Human Services.

14 “(3) The term ‘health disparities’ includes
15 health and health care disparities and means popu-
16 lation-specific differences in the presence of disease,
17 health outcomes, or access to health care. For pur-
18 poses of the preceding sentence, a population may be
19 delineated by race, ethnicity, geographic setting, or
20 other population or subpopulation determined appro-
21 priate by the Secretary.

22 “(4) The term ‘tribal’ refers to an Indian tribe,
23 a Tribal organization, or an Urban Indian organiza-
24 tion, as such terms are defined in section 4 of the
25 Indian Health Care Improvement Act.”.

1 (b) TRANSITION PROVISIONS APPLICABLE TO TASK
2 FORCES.—

3 (1) FUNCTIONS, PERSONNEL, ASSETS, LIABIL-
4 ITIES, AND ADMINISTRATIVE ACTIONS.—All func-
5 tions, personnel, assets, and liabilities of, and ad-
6 ministrative actions applicable to, the Preventive
7 Services Task Force convened under section 915(a)
8 of the Public Health Service Act and the Task Force
9 on Community Preventive Services (as such section
10 and Task Forces were in existence on the day before
11 the date of the enactment of this Act) shall be trans-
12 ferred to the Task Force on Clinical Preventive
13 Services and the Task Force on Community Preven-
14 tive Services, respectively, established under sections
15 3121 and 3122 of the Public Health Service Act, as
16 added by subsection (a).

17 (2) RECOMMENDATIONS.—All recommendations
18 of the Preventive Services Task Force and the Task
19 Force on Community Preventive Services, as in ex-
20 istence on the day before the date of the enactment
21 of this Act, shall be considered to be recommenda-
22 tions of the Task Force on Clinical Preventive Serv-
23 ices and the Task Force on Community Preventive
24 Services, respectively, established under sections

1 3121 and 3122 of the Public Health Service Act, as
2 added by subsection (a).

3 (3) MEMBERS ALREADY SERVING.—

4 (A) INITIAL MEMBERS.—The Secretary of
5 Health and Human Services may select those
6 individuals already serving on the Preventive
7 Services Task Force and the Task Force on
8 Community Preventive Services, as in existence
9 on the day before the date of the enactment of
10 this Act, to be among the first members ap-
11 pointed to the Task Force on Clinical Preven-
12 tive Services and the Task Force on Commu-
13 nity Preventive Services, respectively, under sec-
14 tions 3121 and 3122 of the Public Health Serv-
15 ice Act, as added by subsection (a).

16 (B) CALCULATION OF TOTAL SERVICE.—In
17 calculating the total years of service of a mem-
18 ber of a task force for purposes of section
19 3131(d)(2)(A) or 3132(d)(2)(A) of the Public
20 Health Service Act, as added by subsection (a),
21 the Secretary of Health and Human Services
22 shall not include any period of service by the
23 member on the Preventive Services Task Force
24 or the Task Force on Community Preventive

1 Services, respectively, as in existence on the day
2 before the date of the enactment of this Act.

3 (c) PERIOD BEFORE COMPLETION OF NATIONAL
4 STRATEGY.—Pending completion of the national strategy
5 under section 3121 of the Public Health Service Act, as
6 added by subsection (a), the Secretary of Health and
7 Human Services, acting through the relevant agency head,
8 may make a judgment about how the strategy will address
9 an issue and rely on such judgment in carrying out any
10 provision of subtitle C, D, E, or F of title XXXI of such
11 Act, as added by subsection (a), that requires the Sec-
12 retary—

13 (1) to take into consideration such strategy;

14 (2) to conduct or support research or provide
15 services in priority areas identified in such strategy;
16 or

17 (3) to take any other action in reliance on such
18 strategy.

19 (d) CONFORMING AMENDMENTS.—

20 (1) Paragraph (61) of section 3(b) of the In-
21 dian Health Care Improvement Act (25 U.S.C.
22 1602) is amended by striking “United States Pre-
23 ventive Services Task Force” and inserting “Task
24 Force on Clinical Preventive Services”.

1 (2) Section 126 of the Medicare, Medicaid, and
2 SCHIP Benefits Improvement and Protection Act of
3 2000 (Appendix F of Public Law 106–554) is
4 amended by striking “United States Preventive
5 Services Task Force” each place it appears and in-
6 serting “Task Force on Clinical Preventive Serv-
7 ices”.

8 (3) Paragraph (7) of section 317D of the Pub-
9 lic Health Service Act (42 U.S.C. 247b–5) is amend-
10 ed by striking “United States Preventive Services
11 Task Force” each place it appears and inserting
12 “Task Force on Clinical Preventive Services”.

13 (4) Section 915 of the Public Health Service
14 Act (42 U.S.C. 299b–4) is amended by striking sub-
15 section (a).

16 (5) Subsections (s)(2)(AA)(iii)(II), (xx)(1), and
17 (ddd)(1)(B) of section 1861 of the Social Security
18 Act (42 U.S.C. 1395x) are amended by striking
19 “United States Preventive Services Task Force”
20 each place it appears and inserting “Task Force on
21 Clinical Preventive Services”.

1 **TITLE IV—QUALITY AND**
2 **SURVEILLANCE**

3 **SEC. 2401. IMPLEMENTATION OF BEST PRACTICES IN THE**
4 **DELIVERY OF HEALTH CARE.**

5 (a) IN GENERAL.—Title IX of the Public Health
6 Service Act (42 U.S.C. 299 et seq.) is amended—

7 (1) by redesignating part D as part E;

8 (2) by redesignating sections 931 through 938
9 as sections 941 through 948, respectively;

10 (3) in section 938(1), by striking “931” and in-
11 serting “941”; and

12 (4) by inserting after part C the following:

13 **“PART D—IMPLEMENTATION OF BEST**
14 **PRACTICES IN THE DELIVERY OF HEALTH CARE**
15 **“SEC. 931. CENTER FOR QUALITY IMPROVEMENT.**

16 “(a) IN GENERAL.—There is established the Center
17 for Quality Improvement (referred to in this part as the
18 ‘Center’), to be headed by the Director.

19 “(b) PRIORITIZATION.—

20 “(1) IN GENERAL.—The Director shall
21 prioritize areas for the identification, development,
22 evaluation, and implementation of best practices (in-
23 cluding innovative methodologies and strategies) for
24 quality improvement activities in the delivery of

1 health care services (in this section referred to as
2 ‘best practices’).

3 “(2) CONSIDERATIONS.—In prioritizing areas
4 under paragraph (1), the Director shall consider—

5 “(A) the priorities established under sec-
6 tion 1191 of the Social Security Act; and

7 “(B) the key health indicators identified by
8 the Assistant Secretary for Health Information
9 under section 1709.

10 “(c) OTHER RESPONSIBILITIES.—The Director, act-
11 ing directly or by awarding a grant or contract to an eligi-
12 ble entity, shall—

13 “(1) identify existing best practices under sub-
14 section (e);

15 “(2) develop new best practices under sub-
16 section (f);

17 “(3) evaluate best practices under subsection
18 (g);

19 “(4) implement best practices under subsection
20 (h);

21 “(5) ensure that best practices are identified,
22 developed, evaluated, and implemented under this
23 section consistent with standards adopted by the
24 Secretary under section 3004 for health information
25 technology used in the collection and reporting of

1 quality information (including for purposes of the
2 demonstration of meaningful use of certified elec-
3 tronic health record (EHR) technology by physicians
4 and hospitals under the Medicare program (under
5 sections 1848(o)(2) and 1886(n)(3), respectively, of
6 the Social Security Act)); and

7 “(6) provide for dissemination of information
8 and reporting under subsections (i) and (j).

9 “(d) ELIGIBILITY.—To be eligible for a grant or con-
10 tract under subsection (c), an entity shall—

11 “(1) be a nonprofit entity;

12 “(2) agree to work with a variety of institu-
13 tional health care providers, physicians, nurses, and
14 other health care practitioners; and

15 “(3) if the entity is not the organization holding
16 a contract under section 1153 of the Social Security
17 Act for the area to be served, agree to cooperate
18 with and avoid duplication of the activities of such
19 organization.

20 “(e) IDENTIFYING EXISTING BEST PRACTICES.—The
21 Secretary shall identify best practices that are—

22 “(1) currently utilized by health care providers
23 (including hospitals, physician and other clinician
24 practices, community cooperatives, and other health

1 care entities) that deliver consistently high-quality,
2 efficient health care services; and

3 “(2) easily adapted for use by other health care
4 providers and for use across a variety of health care
5 settings.

6 “(f) DEVELOPING NEW BEST PRACTICES.—The Sec-
7 retary shall develop best practices that are—

8 “(1) based on a review of existing scientific evi-
9 dence;

10 “(2) sufficiently detailed for implementation
11 and incorporation into the workflow of health care
12 providers; and

13 “(3) designed to be easily adapted for use by
14 health care providers across a variety of health care
15 settings.

16 “(g) EVALUATION OF BEST PRACTICES.—The Direc-
17 tor shall evaluate best practices identified or developed
18 under this section. Such evaluation—

19 “(1) shall include determinations of which best
20 practices—

21 “(A) most reliably and effectively achieve
22 significant progress in improving the quality of
23 patient care; and

1 “(B) are easily adapted for use by health
2 care providers across a variety of health care
3 settings;

4 “(2) shall include regular review, updating, and
5 improvement of such best practices; and

6 “(3) may include in-depth case studies or em-
7 pirical assessments of health care providers (includ-
8 ing hospitals, physician and other clinician practices,
9 community cooperatives, and other health care enti-
10 ties) and simulations of such best practices for de-
11 terminations under paragraph (1).

12 “(h) IMPLEMENTATION OF BEST PRACTICES.—

13 “(1) IN GENERAL.—The Director shall enter
14 into arrangements with entities in a State or region
15 to implement best practices identified or developed
16 under this section. Such implementation—

17 “(A) may include forming collaborative
18 multi-institutional teams; and

19 “(B) shall include an evaluation of the best
20 practices being implemented, including the
21 measurement of patient outcomes before, dur-
22 ing, and after implementation of such best
23 practices.

1 “(2) PREFERENCES.—In carrying out this sub-
2 section, the Director shall give priority to health
3 care providers implementing best practices that—

4 “(A) have the greatest impact on patient
5 outcomes and satisfaction;

6 “(B) are the most easily adapted for use
7 by health care providers across a variety of
8 health care settings;

9 “(C) promote coordination of health care
10 practitioners across the continuum of care; and

11 “(D) engage patients and their families in
12 improving patient care and outcomes.

13 “(i) PUBLIC DISSEMINATION OF INFORMATION.—
14 The Director shall provide for the public dissemination of
15 information with respect to best practices and activities
16 under this section. Such information shall be made avail-
17 able in appropriate formats and languages to reflect the
18 varying needs of consumers and diverse levels of health
19 literacy.

20 “(j) REPORT.—

21 “(1) IN GENERAL.—The Director shall submit
22 an annual report to the Congress and the Secretary
23 on activities under this section.

24 “(2) CONTENT.—Each report under paragraph
25 (1) shall include—

1 “(A) information on activities conducted
2 pursuant to grants and contracts awarded;

3 “(B) summary data on patient outcomes
4 before, during, and after implementation of best
5 practices; and

6 “(C) recommendations on the adaptability
7 of best practices for use by health providers.”.

8 (b) INITIAL QUALITY IMPROVEMENT ACTIVITIES AND
9 INITIATIVES TO BE IMPLEMENTED.—Until the Director
10 of the Agency for Healthcare Research and Quality has
11 established initial priorities under section 931(b) of the
12 Public Health Service Act, as added by subsection (a), the
13 Director shall, for purposes of such section, prioritize the
14 following:

15 (1) HEALTH CARE-ASSOCIATED INFECTIONS.—
16 Reducing health care-associated infections, including
17 infections in nursing homes and outpatient settings.

18 (2) SURGERY.—Increasing hospital and out-
19 patient perioperative patient safety, including reduc-
20 ing surgical-site infections and surgical errors (such
21 as wrong-site surgery and retained foreign bodies).

22 (3) EMERGENCY ROOM.—Improving care in
23 hospital emergency rooms, including through the use
24 of principles of efficiency of design and delivery to
25 improve patient flow.

1 (4) OBSTETRICS.—Improving the provision of
2 obstetrical and neonatal care, including the identi-
3 fication of interventions that are effective in reduc-
4 ing the risk of preterm and premature labor and the
5 implementation of best practices for labor and deliv-
6 ery care.

7 (c) REPORT.—Not later than 18 months after the
8 date of the enactment of this Act, the Director of the
9 Agency for Healthcare Research and Quality shall submit
10 a report to the Congress on the impact of the nurse-to-
11 patient ratio on the quality of care and patient outcomes,
12 including recommendations for further integration into
13 quality measurement and quality improvement activities.

14 **SEC. 2402. ASSISTANT SECRETARY FOR HEALTH INFORMA-**
15 **TION.**

16 (a) ESTABLISHMENT.—Title XVII (42 U.S.C. 300u
17 et seq.) is amended—

18 (1) by redesignating sections 1709 and 1710 as
19 sections 1710 and 1711, respectively; and

20 (2) by inserting after section 1708 the fol-
21 lowing:

22 **“SEC. 1709. ASSISTANT SECRETARY FOR HEALTH INFORMA-**
23 **TION.**

24 “(a) IN GENERAL.—There is established within the
25 Department an Assistant Secretary for Health Informa-

1 tion (in this section referred to as the ‘Assistant Sec-
2 retary’), to be appointed by the Secretary.

3 “(b) RESPONSIBILITIES.—The Assistant Secretary
4 shall—

5 “(1) ensure the collection, collation, reporting,
6 and publishing of information (including full and
7 complete statistics) on key health indicators regard-
8 ing the Nation’s health and the performance of the
9 Nation’s health care;

10 “(2) facilitate and coordinate the collection, col-
11 lation, reporting, and publishing of information re-
12 garding the Nation’s health and the performance of
13 the Nation’s health care (other than information de-
14 scribed in paragraph (1));

15 “(3)(A) develop standards for the collection of
16 data regarding the Nation’s health and the perform-
17 ance of the Nation’s health care; and

18 “(B) in carrying out subparagraph (A)—

19 “(i) ensure appropriate specificity and
20 standardization for data collection at the na-
21 tional, regional, State, and local levels;

22 “(ii) include standards, as appropriate, for
23 the collection of accurate data on health and
24 health care by race, ethnicity, primary lan-
25 guage, sex, sexual orientation, gender identity,

1 disability, socioeconomic status, rural, urban, or
2 other geographic setting, and any other popu-
3 lation or subpopulation determined appropriate
4 by the Secretary;

5 “(iii) ensure, with respect to data on race
6 and ethnicity, consistency with the 1997 Office
7 of Management and Budget Standards for
8 Maintaining, Collecting and Presenting Federal
9 Data on Race and Ethnicity (or any successor
10 standards); and

11 “(iv) in consultation with the Director of
12 the Office of Minority Health, and the Director
13 of the Office of Civil Rights, of the Department,
14 develop standards for the collection of data on
15 health and health care with respect to primary
16 language;

17 “(4) provide support to Federal departments
18 and agencies whose programs have a significant im-
19 pact upon health (as determined by the Secretary)
20 for the collection and collation of information de-
21 scribed in paragraphs (1) and (2);

22 “(5) ensure the sharing of information de-
23 scribed in paragraphs (1) and (2) among the agen-
24 cies of the Department;

1 “(6) facilitate the sharing of information de-
2 scribed in paragraphs (1) and (2) by Federal depart-
3 ments and agencies whose programs have a signifi-
4 cant impact upon health (as determined by the Sec-
5 retary);

6 “(7) identify gaps in information described in
7 paragraphs (1) and (2) and the appropriate agency
8 or entity to address such gaps;

9 “(8) facilitate and coordinate identification and
10 monitoring by the agencies of the Department of
11 health disparities to inform program and policy ef-
12 forts to reduce such disparities, including facilitating
13 and funding analyses conducted in cooperation with
14 the Social Security Administration, the Bureau of
15 the Census, and other appropriate agencies and enti-
16 ties;

17 “(9) consistent with privacy, proprietary, and
18 other appropriate safeguards, facilitate public acces-
19 sibility of datasets (such as de-identified Medicare
20 datasets or publicly available data on key health in-
21 dicators) by means of the Internet; and

22 “(10) award grants or contracts for the collec-
23 tion and collation of information described in para-
24 graphs (1) and (2) (including through statewide sur-
25 veys that provide standardized information).

1 “(c) KEY HEALTH INDICATORS.—

2 “(1) IN GENERAL.—In carrying out subsection
3 (b)(1), the Assistant Secretary shall—

4 “(A) identify, and reassess at least once
5 every 3 years, key health indicators described in
6 such subsection;

7 “(B) publish statistics on such key health
8 indicators for the public—

9 “(i) not less than annually; and

10 “(ii) on a supplemental basis when-
11 ever warranted by—

12 “(I) the rate of change for a key
13 health indicator; or

14 “(II) the need to inform policy
15 regarding the Nation’s health and the
16 performance of the Nation’s health
17 care; and

18 “(C) ensure consistency with the national
19 strategy developed by the Secretary under sec-
20 tion 3121 and consideration of the indicators
21 specified in the reports under sections 308,
22 903(a)(6), and 913(b)(2).

23 “(2) RELEASE OF KEY HEALTH INDICATORS.—

24 The regulations, rules, processes, and procedures of
25 the Office of Management and Budget governing the

1 review, release, and dissemination of key health indi-
2 cators shall be the same as the regulations, rules,
3 processes, and procedures of the Office of Manage-
4 ment and Budget governing the review, release, and
5 dissemination of Principal Federal Economic Indica-
6 tors (or equivalent statistical data) by the Bureau of
7 Labor Statistics.

8 “(d) COORDINATION.—In carrying out this section,
9 the Assistant Secretary shall coordinate with—

10 “(1) public and private entities that collect and
11 disseminate information on health and health care,
12 including foundations; and

13 “(2) the head of the Office of the National Co-
14 ordinator for Health Information Technology to en-
15 sure optimal use of health information technology.

16 “(e) REQUEST FOR INFORMATION FROM OTHER DE-
17 PARTMENTS AND AGENCIES.—Consistent with applicable
18 law, the Assistant Secretary may secure directly from any
19 Federal department or agency information necessary to
20 enable the Assistant Secretary to carry out this section.

21 “(f) REPORT.—

22 “(1) SUBMISSION.—The Assistant Secretary
23 shall submit to the Secretary and the Congress an
24 annual report containing—

1 “(A) a description of national, regional, or
2 State changes in health or health care, as re-
3 flected by the key health indicators identified
4 under subsection (c)(1);

5 “(B) a description of gaps in the collection,
6 collation, reporting, and publishing of informa-
7 tion regarding the Nation’s health and the per-
8 formance of the Nation’s health care;

9 “(C) recommendations for addressing such
10 gaps and identification of the appropriate agen-
11 cy within the Department or other entity to ad-
12 dress such gaps;

13 “(D) a description of analyses of health
14 disparities, including the results of completed
15 analyses, the status of ongoing longitudinal
16 studies, and proposed or planned research; and

17 “(E) a plan for actions to be taken by the
18 Assistant Secretary to address gaps described
19 in subparagraph (B).

20 “(2) CONSIDERATION.—In preparing a report
21 under paragraph (1), the Assistant Secretary shall
22 take into consideration the findings and conclusions
23 in the reports under sections 308, 903(a)(6), and
24 913(b)(2).

1 “(g) PROPRIETARY AND PRIVACY PROTECTIONS.—
2 Nothing in this section shall be construed to affect appli-
3 cable proprietary or privacy protections.

4 “(h) CONSULTATION.—In carrying out this section,
5 the Assistant Secretary shall consult with—

6 “(1) the heads of appropriate health agencies
7 and offices in the Department, including the Office
8 of the Surgeon General of the Public Health Service,
9 the Office of Minority Health, and the Office on
10 Women’s Health; and

11 “(2) as appropriate, the heads of other Federal
12 departments and agencies whose programs have a
13 significant impact upon health (as determined by the
14 Secretary).

15 “(i) DEFINITION.—In this section:

16 “(1) The terms ‘agency’ and ‘agencies’ include
17 an epidemiology center established under section 214
18 of the Indian Health Care Improvement Act.

19 “(2) The term ‘Department’ means the Depart-
20 ment of Health and Human Services.

21 “(3) The term ‘health disparities’ has the
22 meaning given to such term in section 3171.”.

23 “(b) OTHER COORDINATION RESPONSIBILITIES.—
24 Title III (42 U.S.C. 241 et seq.) is amended—

1 (1) in paragraphs (1) and (2) of section 304(c)
2 (42 U.S.C. 242b(c)), by inserting “, acting through
3 the Assistant Secretary for Health Information,”
4 after “The Secretary” each place it appears; and

5 (2) in section 306(j) (42 U.S.C. 242k(j)), by in-
6 serting “, acting through the Assistant Secretary for
7 Health Information,” after “of this section, the Sec-
8 retary”.

9 **SEC. 2403. AUTHORIZATION OF APPROPRIATIONS.**

10 Section 799C, as added and amended, is further
11 amended by adding at the end the following:

12 “(e) **QUALITY AND SURVEILLANCE.**—For the pur-
13 pose of carrying out part D of title IX and section 1709,
14 in addition to any other amounts authorized to be appro-
15 priated for such purpose, there is authorized to be appro-
16 priated, out of any monies in the Public Health Invest-
17 ment Fund, \$300,000,000 for each of fiscal years 2010
18 through 2014 and \$330,000,000 for each of fiscal years
19 2015 through 2019.”.

20 **TITLE V—OTHER PROVISIONS**

21 **Subtitle A—Drug Discount for**

22 **Rural and Other Hospitals**

23 **SEC. 2501. EXPANDED PARTICIPATION IN 340B PROGRAM.**

24 (a) **EXPANSION OF COVERED ENTITIES RECEIVING**
25 **DISCOUNTED PRICES.**—Section 340B(a)(4) (42 U.S.C.

1 256b(a)(4)) is amended by adding at the end the fol-
2 lowing:

3 “(M) A children’s hospital excluded from
4 the Medicare prospective payment system pur-
5 suant to section 1886(d)(1)(B)(iii) of the Social
6 Security Act which would meet the require-
7 ments of subparagraph (L), including the dis-
8 proportionate share adjustment percentage re-
9 quirement under subparagraph (L)(ii), if the
10 hospital were a subsection (d) hospital as de-
11 fined in section 1886(d)(1)(B) of the Social Se-
12 curity Act.

13 “(N) An entity that is a critical access hos-
14 pital (as determined under section 1820(e)(2)
15 of the Social Security Act).

16 “(O) An entity receiving funds under title
17 V of the Social Security Act (relating to mater-
18 nal and child health) for the provision of health
19 services.

20 “(P) An entity receiving funds under sub-
21 part I of part B of title XIX of the Public
22 Health Service Act (relating to comprehensive
23 mental health services) for the provision of com-
24 munity mental health services.

1 “(Q) An entity receiving funds under sub-
2 part II of such part B (relating to the preven-
3 tion and treatment of substance abuse) for the
4 provision of treatment services for substance
5 abuse.

6 “(R) An entity that is a Medicare-depend-
7 ent, small rural hospital (as defined in section
8 1886(d)(5)(G)(iv) of the Social Security Act).

9 “(S) An entity that is a sole community
10 hospital (as defined in section
11 1886(d)(5)(D)(iii) of the Social Security Act).

12 “(T) An entity that is classified as a rural
13 referral center under section 1886(d)(5)(C) of
14 the Social Security Act.”.

15 (b) PROHIBITION ON GROUP PURCHASING ARRANGE-
16 MENTS.—Section 340B(a) (42 U.S.C. 256b(a)) is amend-
17 ed—

18 (1) in paragraph (4)(L)—

19 (A) by adding “and” at the end of clause
20 (i);

21 (B) by striking “; and” at the end of
22 clause (ii) and inserting a period; and

23 (C) by striking clause (iii);

24 (2) in paragraph (5), by redesignating subpara-
25 graphs (C) and (D) as subparagraphs (D) and (E),

1 respectively, and by inserting after subparagraph
2 (B) the following:

3 “(C) PROHIBITING USE OF GROUP PUR-
4 CHASING ARRANGEMENTS.—

5 “(i) A hospital described in subpara-
6 graph (L), (M), (N), (R), (S), or (T) of
7 paragraph (4) shall not obtain covered out-
8 patient drugs through a group purchasing
9 organization or other group purchasing ar-
10 rangement, except as permitted or pro-
11 vided pursuant to clause (ii).

12 “(ii) The Secretary shall establish rea-
13 sonable exceptions to the requirement of
14 clause (i)—

15 “(I) with respect to a covered
16 outpatient drug that is unavailable to
17 be purchased through the program
18 under this section due to a drug
19 shortage problem, manufacturer non-
20 compliance, or any other reason be-
21 yond the hospital’s control;

22 “(II) to facilitate generic substi-
23 tution when a generic covered out-
24 patient drug is available at a lower
25 price; and

1 “(III) to reduce in other ways
2 the administrative burdens of man-
3 aging both inventories of drugs ob-
4 tained under this section and not
5 under this section, if such exception
6 does not create a duplicate discount
7 problem in violation of subparagraph
8 (A) or a diversion problem in violation
9 of subparagraph (B).”.

10 **SEC. 2502. EXTENSION OF DISCOUNTS TO INPATIENT**
11 **DRUGS.**

12 (a) IN GENERAL.—Section 340B (42 U.S.C. 256b)
13 is amended—

14 (1) in subsection (b)—

15 (A) by striking “In this section, the terms”
16 and inserting the following: “In this section:

17 “(1) IN GENERAL.—The terms”; and

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

20 “(2) COVERED DRUG.—The term ‘covered
21 drug’—

22 “(A) means a covered outpatient drug (as
23 defined in section 1927(k)(2) of the Social Se-
24 curity Act); and

1 “(B) includes, notwithstanding the section
2 1927(k)(3)(A) of such Act, a drug used in con-
3 nection with an inpatient or outpatient service
4 provided by a hospital described in subpara-
5 graph (L), (M), (N), (R), (S), or (T) of sub-
6 section (a)(4) that is enrolled to participate in
7 the drug discount program under this section.”;
8 and

9 (2) in paragraphs (5), (7), and (9) of sub-
10 section (a), by striking “outpatient” each place it
11 appears.

12 (b) MEDICAID CREDITS ON INPATIENT DRUGS.—
13 Subsection (c) of section 340B (42 U.S.C. 256b(c)) is
14 amended to read as follows:

15 “(c) MEDICAID CREDITS ON INPATIENT DRUGS.—

16 “(1) IN GENERAL.—For the cost reporting pe-
17 riod covered by the most recently filed Medicare cost
18 report under title XVIII of the Social Security Act,
19 a hospital described in subparagraph (L), (M), (N),
20 (R), (S), or (T) of subsection (a)(4) and enrolled to
21 participate in the drug discount program under this
22 section shall provide to each State under its plan
23 under title XIX of such Act—

24 “(A) a credit on the estimated annual
25 costs to such hospital of single source and inno-

1 vator multiple source drugs provided to Med-
2 icaid beneficiaries for inpatient use; and

3 “(B) a credit on the estimated annual
4 costs to such hospital of noninnovator multiple
5 source drugs provided to Medicaid beneficiaries
6 for inpatient use.

7 “(2) AMOUNT OF CREDITS.—

8 “(A) SINGLE SOURCE AND INNOVATOR
9 MULTIPLE SOURCE DRUGS.—For purposes of
10 paragraph (1)(A)—

11 “(i) the credit under such paragraph
12 shall be equal to the product of—

13 “(I) the annual value of single
14 source and innovator multiple source
15 drugs purchased under this section by
16 the hospital based on the drugs’ aver-
17 age manufacturer 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 minimum rebate per-
23 centage described in section
24 1927(c)(1)(B) of the Social Security
25 Act;

1 “(ii) the reference in clause (i)(I) to
2 the annual value of single source and inno-
3 vator multiple source drugs purchased
4 under this section by the hospital based on
5 the drugs’ average manufacturer price
6 shall be equal to the sum of—

7 “(I) the annual quantity of each
8 single source and innovator multiple
9 source drug purchased during the cost
10 reporting 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 terms ‘single source drug’
25 and ‘innovator multiple source drug’ have

1 the meanings given such terms in section
2 1927(k)(7) of the Social Security Act.

3 “(B) NONINNOVATOR MULTIPLE SOURCE
4 DRUGS.—For purposes of paragraph (1)(B)—

5 “(i) the credit under such paragraph
6 shall be equal to the product of—

7 “(I) the annual value of noninno-
8 vator multiple source drugs purchased
9 under this section by the hospital
10 based on the drugs’ average manufac-
11 turer price;

12 “(II) the estimated percentage of
13 the hospital’s drug purchases attrib-
14 utable to Medicaid beneficiaries for in-
15 patient use; and

16 “(III) the applicable percentage
17 as defined in section 1927(e)(3)(B) of
18 the Social Security Act;

19 “(ii) the reference in clause (i)(I) to
20 the annual value of noninnovator multiple
21 source drugs purchased under this section
22 by the hospital based on the drugs’ average
23 manufacturer price shall be equal to the
24 sum of—

1 “(I) the annual quantity of each
2 noninnovator multiple source drug
3 purchased during the cost reporting
4 period, multiplied by

5 “(II) the average manufacturer
6 price for that drug;

7 “(iii) the reference in clause (i)(II) to
8 the estimated percentage of the hospital’s
9 drug purchases attributable to Medicaid
10 beneficiaries for inpatient use shall be
11 equal to—

12 “(I) the Medicaid inpatient drug
13 charges as reported on the hospital’s
14 most recently filed Medicare cost re-
15 port, divided by

16 “(II) total drug charges reported
17 on the cost report; and

18 “(iv) the term ‘noninnovator multiple
19 source drug’ has the meaning given such
20 term in section 1927(k)(7) of the Social
21 Security Act.

22 “(3) CALCULATION OF CREDITS.—

23 “(A) IN GENERAL.—Each State calculates
24 credits under paragraph (1) and informs hos-

1 pitals of amount under section 1927(a)(5)(D)
2 of the Social Security Act.

3 “(B) HOSPITAL PROVISION OF INFORMA-
4 TION.—Not later than 30 days after the date of
5 the filing of the hospital’s most recently filed
6 Medicare cost report, the hospital shall provide
7 the State with the information described in
8 paragraphs (2)(A)(ii) and (2)(B)(ii). With re-
9 spect to each drug purchased during the cost
10 reporting period, the hospital shall provide the
11 dosage form, strength, package size, date of
12 purchase and the number of units purchased.

13 “(4) PAYMENT DEADLINE.—The credits pro-
14 vided by a hospital under paragraph (1) shall be
15 paid within 60 days after receiving the information
16 specified in paragraph (3)(A).

17 “(5) OPT OUT.—A hospital shall not be re-
18 quired to provide the Medicaid credit required under
19 paragraph (1) if it can demonstrate to the State
20 that it will lose reimbursement under the State plan
21 resulting from the extension of discounts to inpa-
22 tient drugs under subsection (b)(2) and that the loss
23 of reimbursement will exceed the amount of the
24 credit otherwise owed by the hospital.

1 “(6) OFFSET AGAINST MEDICAL ASSISTANCE.—
2 Amounts received by a State under this subsection
3 in any quarter shall be considered to be a reduction
4 in the amount expended under the State plan in the
5 quarter for medical assistance for purposes of sec-
6 tion 1903(a)(1) of the Social Security Act.”.

7 (c) CONFORMING AMENDMENTS.—Section 1927 of
8 the Social Security Act (42 U.S.C. 1396r–8) is amended—

9 (1) in subsection (a)(5)(A), by striking “covered
10 outpatient drugs” and inserting “covered drugs (as
11 defined in section 340B(b)(2) of the Public Health
12 Service Act)”;

13 (2) in subsection (a)(5), by striking subpara-
14 graph (D) and inserting the following:

15 “(D) STATE RESPONSIBILITY FOR CALCULATING HOSPITAL CREDITS.—The State shall
16 calculate the credits owed by the hospital under
17 paragraph (1) of section 340B(e) of the Public
18 Health Service Act and provide the hospital
19 with both the amounts and an explanation of
20 how it calculated the credits. In performing the
21 calculations specified in paragraphs (2)(A)(ii)
22 and (2)(B)(ii) of such section, the State shall
23 use the average manufacturer price applicable
24

1 to the calendar quarter in which the drug was
2 purchased by the hospital.”; and

3 (3) in subsection (k)(1)—

4 (A) in subparagraph (A), by striking “sub-
5 paragraph (B)” and inserting “subparagraphs
6 (B) and (D)”;

7 (B) by adding at the end the following:

8 “(D) CALCULATION FOR COVERED
9 DRUGS.—With respect to a covered drug (as de-
10 fined in section 340B(b)(2) of the Public
11 Health Service Act), the average manufacturer
12 price shall be determined in accordance with
13 subparagraph (A) except that, in the event a
14 covered drug is not distributed to the retail
15 pharmacy class of trade, it shall mean the aver-
16 age price paid to the manufacturer for the drug
17 in the United States by wholesalers for drugs
18 distributed to the acute care class of trade,
19 after deducting customary prompt pay dis-
20 counts.”.

21 **SEC. 2503. EFFECTIVE DATE.**

22 (a) IN GENERAL.—The amendments made by this
23 subtitle shall take effect on July 1, 2010, and shall apply
24 to drugs dispensed on or after such date.

1 (b) EFFECTIVENESS.—The amendments made by
2 this subtitle shall be effective, and shall be taken into ac-
3 count in determining whether a manufacturer is deemed
4 to meet the requirements of section 340B(a) of the Public
5 Health Service Act (42 U.S.C. 256b(a)) and of section
6 1927(a)(5) of the Social Security Act (42 U.S.C. 1396r-
7 8(a)(5)), notwithstanding any other provision of law.

8 **Subtitle B—School-Based Health** 9 **Clinics**

10 **SEC. 2511. SCHOOL-BASED HEALTH CLINICS.**

11 (a) IN GENERAL.—Part Q of title III (42 U.S.C.
12 280h et seq.) is amended by adding at the end the fol-
13 lowing:

14 **“SEC. 399Z-1. SCHOOL-BASED HEALTH CLINICS.**

15 “(a) PROGRAM.—The Secretary shall establish a
16 school-based health clinic program consisting of awarding
17 grants to eligible entities to support the operation of
18 school-based health clinics (referred to in this section as
19 ‘SBHCs’).

20 “(b) ELIGIBILITY.—To be eligible for a grant under
21 this section, an entity shall—

22 “(1) be an SBHC (as defined in subsection
23 (1)(4)); and

24 “(2) submit an application at such time, in
25 such manner, and containing such information as

1 the Secretary may require, including at a min-
2 imum—

3 “(A) evidence that the applicant meets all
4 criteria necessary to be designated as an
5 SBHC;

6 “(B) evidence of local need for the services
7 to be provided by the SBHC;

8 “(C) an assurance that—

9 “(i) SBHC services will be provided in
10 accordance with Federal, State, and local
11 laws;

12 “(ii) the SBHC has established and
13 maintains collaborative relationships with
14 other health care providers in the
15 catchment area of the SBHC;

16 “(iii) the SBHC will provide on-site
17 access during the academic day when
18 school is in session and has an established
19 network of support and access to services
20 with backup health providers when the
21 school or SBHC is closed;

22 “(iv) the SBHC will be integrated into
23 the school environment and will coordinate
24 health services with appropriate school per-

1 sonnel and other community providers co-
2 located at the school; and

3 “ (v) the SBHC sponsoring facility as-
4 sumes all responsibility for the SBHC ad-
5 ministration, operations, and oversight;
6 and

7 “ (D) such other information as the Sec-
8 retary may require.

9 “ (c) USE OF FUNDS.—Funds awarded under a grant
10 under this section may be used for—

11 “ (1) providing training related to the provision
12 of comprehensive primary health services and addi-
13 tional health services;

14 “ (2) the management and operation of SBHC
15 programs; and

16 “ (3) the payment of salaries for health profes-
17 sionals and other appropriate SBHC personnel.

18 “ (d) CONSIDERATION OF NEED.—In determining the
19 amount of a grant under this section, the Secretary shall
20 take into consideration—

21 “ (1) the financial need of the SBHC;

22 “ (2) State, local, or other sources of funding
23 provided to the SBHC; and

24 “ (3) other factors as determined appropriate by
25 the Secretary.

1 “(e) PREFERENCES.—In awarding grants under this
2 section, the Secretary shall give preference to SBHCs that
3 have a demonstrated record of service to the following:

4 “(1) A high percentage of medically under-
5 served children and adolescents.

6 “(2) Communities or populations in which chil-
7 dren and adolescents have difficulty accessing health
8 and mental health services.

9 “(3) Communities with high percentages of chil-
10 dren and adolescents who are uninsured, under-
11 insured, or eligible for medical assistance under Fed-
12 eral or State health benefits programs (including ti-
13 tles XIX and XXI of the Social Security Act).

14 “(f) MATCHING REQUIREMENT.—The Secretary may
15 award a grant to an SBHC only if the SBHC agrees to
16 provide, from non-Federal sources, an amount equal to 20
17 percent of the amount of the grant (which may be pro-
18 vided in cash or in kind) to carry out the activities sup-
19 ported by the grant.

20 “(g) SUPPLEMENT, NOT SUPPLANT.—The Secretary
21 may award a grant to an SBHC under this section only
22 if the SBHC demonstrates to the satisfaction of the Sec-
23 retary that funds received through the grant will be ex-
24 pended only to supplement, and not supplant, non-Federal
25 and Federal funds otherwise available to the SBHC for

1 operation of the SBHC (including each activity described
2 in paragraph (1) or (2) of subsection (c)).

3 “(h) PAYOR OF LAST RESORT.—The Secretary may
4 award a grant to an SBHC under this section only if the
5 SBHC demonstrates to the satisfaction of the Secretary
6 that funds received through the grant will not be expended
7 for any activity to the extent that payment has been made,
8 or can reasonably be expected to be made—

9 “(1) under any insurance policy;

10 “(2) under any Federal or State health benefits
11 program (including titles XIX and XXI of the Social
12 Security Act); or

13 “(3) by an entity which provides health services
14 on a prepaid basis.

15 “(i) REGULATIONS REGARDING REIMBURSEMENT
16 FOR HEALTH SERVICES.—The Secretary shall issue regu-
17 lations regarding the reimbursement for health services
18 provided by SBHCs to individuals eligible to receive such
19 services through the program under this section, including
20 reimbursement under any insurance policy or any Federal
21 or State health benefits program (including titles XIX and
22 XXI of the Social Security Act).

23 “(j) TECHNICAL ASSISTANCE.—The Secretary shall
24 provide (either directly or by grant or contract) technical
25 and other assistance to SBHCs to assist such SBHCs to

1 meet the requirements of this section. Such assistance
2 may include fiscal and program management assistance,
3 training in fiscal and program management, operational
4 and administrative support, and the provision of informa-
5 tion to the SBHCs of the variety of resources available
6 under this title and how those resources can be best used
7 to meet the health needs of the communities served by
8 the SBHCs.

9 “(k) EVALUATION; REPORT.—The Secretary shall—

10 “(1) develop and implement a plan for evalu-
11 ating SBHCs and monitoring quality performances
12 under the awards made under this section; and

13 “(2) submit to the Congress on an annual basis
14 a report on the program under this section.

15 “(l) DEFINITIONS.—In this section:

16 “(1) COMPREHENSIVE PRIMARY HEALTH SERV-
17 ICES.—The term ‘comprehensive primary health
18 services’ means the core services offered by SBHCs,
19 which shall include the following:

20 “(A) PHYSICAL.—Comprehensive health
21 assessments, diagnosis, and treatment of minor,
22 acute, and chronic medical conditions and refer-
23 rals to, and follow-up for, specialty care.

24 “(B) MENTAL HEALTH.—Mental health
25 assessments, crisis intervention, counseling,

1 treatment, and referral to a continuum of serv-
2 ices including emergency psychiatric care, com-
3 munity support programs, inpatient care, and
4 outpatient programs.

5 “(C) OPTIONAL SERVICES.—Additional
6 services, which may include oral health, social,
7 and age-appropriate health education services,
8 including nutritional counseling.

9 “(2) MEDICALLY UNDERSERVED CHILDREN
10 AND ADOLESCENTS.—The term ‘medically under-
11 served children and adolescents’ means a population
12 of children and adolescents who are residents of an
13 area designated by the Secretary as an area with a
14 shortage of personal health services and health in-
15 frastructure for such children and adolescents.

16 “(3) SCHOOL-BASED HEALTH CLINIC.—The
17 term ‘school-based health clinic’ means a health clin-
18 ic that—

19 “(A) is located in, or is adjacent to, a
20 school facility of a local educational agency;

21 “(B) is organized through school, commu-
22 nity, and health provider relationships;

23 “(C) is administered by a sponsoring facil-
24 ity; and

1 “(D) provides, at a minimum, comprehen-
2 sive primary health services during school hours
3 to children and adolescents by health profes-
4 sionals in accordance with State and local laws
5 and regulations, established standards, and
6 community practice.

7 “(4) SPONSORING FACILITY.—The term ‘spon-
8 soring facility’ is—

9 “(A) a hospital;

10 “(B) a public health department;

11 “(C) a community health center;

12 “(D) a nonprofit health care agency;

13 “(E) a local educational agency; or

14 “(F) a program administered by the In-
15 dian Health Service or the Bureau of Indian
16 Affairs or operated by an Indian tribe or a trib-
17 al organization under the Indian Self-Deter-
18 mination and Education Assistance Act, a Na-
19 tive Hawaiian entity, or an urban Indian pro-
20 gram under title V of the Indian Health Care
21 Improvement Act.

22 “(m) AUTHORIZATION OF APPROPRIATIONS.—For
23 purposes of carrying out this section, there are authorized
24 to be appropriated \$50,000,000 for fiscal year 2010 and

1 such sums as may be necessary for each of the fiscal years
2 2011 through 2014.”.

3 (b) EFFECTIVE DATE.—The Secretary of Health and
4 Human Services shall begin awarding grants under section
5 399Z–1 of the Public Health Service Act, as added by sub-
6 section (b), not later than July 1, 2010, without regard
7 to whether or not final regulations have been issued under
8 section 399Z–1(h) of such Act.

9 **Subtitle C—National Medical** 10 **Device Registry**

11 **SEC. 2521. NATIONAL MEDICAL DEVICE REGISTRY.**

12 (a) REGISTRY.—

13 (1) IN GENERAL.—Section 519 of the Federal
14 Food, Drug, and Cosmetic Act (21 U.S.C. 360i) is
15 amended—

16 (A) by redesignating subsection (g) as sub-
17 section (h); and

18 (B) by inserting after subsection (f) the
19 following:

20 “National Medical Device Registry

21 “(g)(1) The Secretary shall establish a national med-
22 ical device registry (in this subsection referred to as the
23 ‘registry’) to facilitate analysis of postmarket safety and
24 outcomes data on each device that—

25 “(A) is or has been used in or on a patient; and

1 “(B) is—

2 “(i) a class III device; or

3 “(ii) a class II device that is implantable,
4 life-supporting, or life-sustaining.

5 “(2) In developing the registry, the Secretary shall,
6 in consultation with the Commissioner of Food and Drugs,
7 the Administrator of the Centers for Medicare & Medicaid
8 Services, the head of the Office of the National Coordi-
9 nator for Health Information Technology, and the Sec-
10 retary of Veterans Affairs, determine the best methods
11 for—

12 “(A) including in the registry, in a manner con-
13 sistent with subsection (f), appropriate information
14 to identify each device described in paragraph (1) by
15 type, model, and serial number or other unique iden-
16 tifier;

17 “(B) validating methods for analyzing patient
18 safety and outcomes data from multiple sources and
19 for linking such data with the information included
20 in the registry as described in subparagraph (A), in-
21 cluding, to the extent feasible, use of—

22 “(i) data provided to the Secretary under
23 other provisions of this chapter; and

24 “(ii) information from public and private
25 sources identified under paragraph (3);

1 “(C) integrating the activities described in this
2 subsection with—

3 “(i) activities under paragraph (3) of sec-
4 tion 505(k) (relating to active postmarket risk
5 identification);

6 “(ii) activities under paragraph (4) of sec-
7 tion 505(k) (relating to advanced analysis of
8 drug safety data); and

9 “(iii) other postmarket device surveillance
10 activities of the Secretary authorized by this
11 chapter; and

12 “(D) providing public access to the data and
13 analysis collected or developed through the registry
14 in a manner and form that protects patient privacy
15 and proprietary information and is comprehensive,
16 useful, and not misleading to patients, physicians,
17 and scientists.

18 “(3)(A) To facilitate analyses of postmarket safety
19 and patient outcomes for devices described in paragraph
20 (1), the Secretary shall, in collaboration with public, aca-
21 demic, and private entities, develop methods to—

22 “(i) obtain access to disparate sources of
23 patient safety and outcomes data, including—

24 “(I) Federal health-related electronic
25 data (such as data from the Medicare pro-

1 gram under title XVIII of the Social Secu-
2 rity Act or from the health systems of the
3 Department of Veterans Affairs);

4 “(II) private sector health-related
5 electronic data (such as pharmaceutical
6 purchase data and health insurance claims
7 data); and

8 “(III) other data as the Secretary
9 deems necessary to permit postmarket as-
10 sessment of device safety and effectiveness;
11 and

12 “(ii) link data obtained under clause (i)
13 with information in the registry.

14 “(B) In this paragraph, the term ‘data’ refers to in-
15 formation respecting a device described in paragraph (1),
16 including claims data, patient survey data, standardized
17 analytic files that allow for the pooling and analysis of
18 data from disparate data environments, electronic health
19 records, and any other data deemed appropriate by the
20 Secretary.

21 “(4) Not later than 36 months after the date of the
22 enactment of this subsection, the Secretary shall promul-
23 gate regulations for establishment and operation of the
24 registry under paragraph (1). Such regulations—

1 “(A)(i) in the case of devices that are described
2 in paragraph (1) and sold on or after the date of the
3 enactment of this subsection, shall require manufac-
4 turers of such devices to submit information to the
5 registry, including, for each such device, the type,
6 model, and serial number or, if required under sub-
7 section (f), other unique device identifier; and

8 “(ii) in the case of devices that are described in
9 paragraph (1) and sold before such date, may re-
10 quire manufacturers of such devices to submit such
11 information to the registry, if deemed necessary by
12 the Secretary to protect the public health;

13 “(B) shall establish procedures—

14 “(i) to permit linkage of information sub-
15 mitted pursuant to subparagraph (A) with pa-
16 tient safety and outcomes data obtained under
17 paragraph (3); and

18 “(ii) to permit analyses of linked data;

19 “(C) may require device manufacturers to sub-
20 mit such other information as is necessary to facili-
21 tate postmarket assessments of device safety and ef-
22 fectiveness and notification of device risks;

23 “(D) shall establish requirements for regular
24 and timely reports to the Secretary, which shall be
25 included in the registry, concerning adverse event

1 trends, adverse event patterns, incidence and preva-
2 lence of adverse events, and other information the
3 Secretary determines appropriate, which may include
4 data on comparative safety and outcomes trends;
5 and

6 “(E) shall establish procedures to permit public
7 access to the information in the registry in a manner
8 and form that protects patient privacy and propri-
9 etary information and is comprehensive, useful, and
10 not misleading to patients, physicians, and sci-
11 entists.

12 “(5) To carry out this subsection, there are author-
13 ized to be appropriated such sums as may be necessary
14 for fiscal years 2010 and 2011.”.

15 (2) EFFECTIVE DATE.—The Secretary of
16 Health and Human Services shall establish and
17 begin implementation of the registry under section
18 519(g) of the Federal Food, Drug, and Cosmetic
19 Act, as added by paragraph (1), by not later than
20 the date that is 36 months after the date of the en-
21 actment of this Act, without regard to whether or
22 not final regulations to establish and operate the
23 registry have been promulgated by such date.

24 (3) CONFORMING AMENDMENT.—Section
25 303(f)(1)(B)(ii) of the Federal Food, Drug, and

1 Cosmetic Act (21 U.S.C. 333(f)(1)(B)(ii)) is amend-
2 ed by striking “519(g)” and inserting “519(h)”.

3 (b) ELECTRONIC EXCHANGE AND USE IN CERTIFIED
4 ELECTRONIC HEALTH RECORDS OF UNIQUE DEVICE
5 IDENTIFIERS.—

6 (1) RECOMMENDATIONS.—The HIT Policy
7 Committee established under section 3002 of the
8 Public Health Service Act (42 U.S.C. 300jj–12)
9 shall recommend to the head of the Office of the Na-
10 tional Coordinator for Health Information Tech-
11 nology standards, implementation specifications, and
12 certification criteria for the electronic exchange and
13 use in certified electronic health records of a unique
14 device identifier for each device described in section
15 519(g)(1) of the Federal Food, Drug, and Cosmetic
16 Act, as added by subsection (a).

17 (2) STANDARDS, IMPLEMENTATION CRITERIA,
18 AND CERTIFICATION CRITERIA.—The Secretary of
19 the Health Human Services, acting through the
20 head of the Office of the National Coordinator for
21 Health Information Technology, shall adopt stand-
22 ards, implementation specifications, and certification
23 criteria for the electronic exchange and use in cer-
24 tified electronic health records of a unique device
25 identifier for each device described in paragraph (1),

1 if such an identifier is required by section 519(f) of
2 the Federal Food, Drug, and Cosmetic Act (21
3 U.S.C. 360i(f)) for the device.

4 **Subtitle D—Grants for Comprehensive**
5 **Programs To Provide Edu-**
6 **cation to Nurses and Create a**
7 **Pipeline to Nursing**

8 **SEC. 2531. ESTABLISHMENT OF GRANT PROGRAM.**

9 (a) PURPOSES.—It is the purpose of this section to
10 authorize grants to—

11 (1) address the projected shortage of nurses by
12 funding comprehensive programs to create a career
13 ladder to nursing (including Certified Nurse Assist-
14 ants, Licensed Practical Nurses, Licensed Vocational
15 Nurses, and Registered Nurses) for incumbent ancil-
16 lary health care workers;

17 (2) increase the capacity for educating nurses
18 by increasing both nurse faculty and clinical oppor-
19 tunities through collaborative programs between
20 staff nurse organizations, health care providers, and
21 accredited schools of nursing; and

22 (3) provide training programs through edu-
23 cation and training organizations jointly adminis-
24 tered by health care providers and health care labor
25 organizations or other organizations representing

1 staff nurses and frontline health care workers, work-
2 ing in collaboration with accredited schools of nurs-
3 ing and academic institutions.

4 (b) GRANTS.—Not later than 6 months after the date
5 of the enactment of this Act, the Secretary of Labor (re-
6 ferred to in this section as the “Secretary”) shall establish
7 a partnership grant program to award grants to eligible
8 entities to carry out comprehensive programs to provide
9 education to nurses and create a pipeline to nursing for
10 incumbent ancillary health care workers who wish to ad-
11 vance their careers, and to otherwise carry out the pur-
12 poses of this section.

13 (c) ELIGIBILITY.—To be eligible for a grant under
14 this section, an entity shall be—

15 (1) a health care entity that is jointly adminis-
16 tered by a health care employer and a labor union
17 representing the health care employees of the em-
18 ployer and that carries out activities using labor
19 management training funds as provided for under
20 section 302(c)(6) of the Labor Management Rela-
21 tions Act, 1947 (29 U.S.C. 186(c)(6));

22 (2) an entity that operates a training program
23 that is jointly administered by—

1 (A) one or more health care providers or
2 facilities, or a trade association of health care
3 providers; and

4 (B) one or more organizations which rep-
5 resent the interests of direct care health care
6 workers or staff nurses and in which the direct
7 care health care workers or staff nurses have
8 direct input as to the leadership of the organi-
9 zation;

10 (3) a State training partnership program that
11 consists of nonprofit organizations that include equal
12 participation from industry, including public or pri-
13 vate employers, and labor organizations including
14 joint labor-management training programs, and
15 which may include representatives from local govern-
16 ments, worker investment agency one-stop career
17 centers, community-based organizations, community
18 colleges, and accredited schools of nursing; or

19 (4) a school of nursing (as defined in section
20 801 of the Public Health Service Act (42 U.S.C.
21 296)).

22 (d) ADDITIONAL REQUIREMENTS FOR HEALTH CARE
23 EMPLOYER DESCRIBED IN SUBSECTION (c).—To be eligi-
24 ble for a grant under this section, a health care employer
25 described in subsection (c) shall demonstrate that it—

1 (1) has an established program within their fa-
2 cility to encourage the retention of existing nurses;

3 (2) provides wages and benefits to its nurses
4 that are competitive for its market or that have been
5 collectively bargained with a labor organization; and

6 (3) supports programs funded under this sec-
7 tion through 1 or more of the following:

8 (A) The provision of paid leave time and
9 continued health coverage to incumbent health
10 care workers to allow their participation in
11 nursing career ladder programs, including cer-
12 tified nurse assistants, licensed practical nurses,
13 licensed vocational nurses, and registered
14 nurses.

15 (B) Contributions to a joint labor-manage-
16 ment training fund which administers the pro-
17 gram involved.

18 (C) The provision of paid release time, in-
19 centive compensation, or continued health cov-
20 erage to staff nurses who desire to work full- or
21 part-time in a faculty position.

22 (D) The provision of paid release time for
23 staff nurses to enable them to obtain a bachelor
24 of science in nursing degree, other advanced

1 nursing degrees, specialty training, or certifi-
2 cation program.

3 (E) The payment of tuition assistance
4 which is managed by a joint labor-management
5 training fund or other jointly administered pro-
6 gram.

7 (e) OTHER REQUIREMENTS.—

8 (1) MATCHING REQUIREMENT.—

9 (A) IN GENERAL.—The Secretary may not
10 make a grant under this section unless the ap-
11 plicant involved agrees, with respect to the costs
12 to be incurred by the applicant in carrying out
13 the program under the grant, to make available
14 non-Federal contributions (in cash or in kind
15 under subparagraph (B)) toward such costs in
16 an amount equal to not less than \$1 for each
17 \$1 of Federal funds provided in the grant. Such
18 contributions may be made directly or through
19 donations from public or private entities, or
20 may be provided through the cash equivalent of
21 paid release time provided to incumbent worker
22 students.

23 (B) DETERMINATION OF AMOUNT OF NON-
24 FEDERAL CONTRIBUTION.—Non-Federal con-
25 tributions required in subparagraph (A) may be

1 in cash or in kind (including paid release time),
2 fairly evaluated, including equipment or services
3 (and excluding indirect or overhead costs).
4 Amounts provided by the Federal Government,
5 or services assisted or subsidized to any signifi-
6 cant extent by the Federal Government, may
7 not be included in determining the amount of
8 such non-Federal contributions.

9 (2) REQUIRED COLLABORATION.—Entities car-
10 rying out or overseeing programs carried out with
11 assistance provided under this section shall dem-
12 onstrate collaboration with accredited schools of
13 nursing which may include community colleges and
14 other academic institutions providing associate,
15 bachelor's, or advanced nursing degree programs or
16 specialty training or certification programs.

17 (f) USE OF FUNDS.—Amounts awarded to an entity
18 under a grant under this section shall be used for the fol-
19 lowing:

20 (1) To carry out programs that provide edu-
21 cation and training to establish nursing career lad-
22 ders to educate incumbent health care workers to be-
23 come nurses (including certified nurse assistants, li-
24 censed practical nurses, licensed vocational nurses,

1 and registered nurses). Such programs shall include
2 one or more of the following:

3 (A) Preparing incumbent workers to return
4 to the classroom through English -as-a-second
5 language education, GED education, pre-college
6 counseling, college preparation classes, and sup-
7 port with entry level college classes that are a
8 prerequisite to nursing.

9 (B) Providing tuition assistance with pref-
10 erence for dedicated cohort classes in commu-
11 nity colleges, universities, accredited schools of
12 nursing with supportive services including tu-
13 toring and counseling.

14 (C) Providing assistance in preparing for
15 and meeting all nursing licensure tests and re-
16 quirements.

17 (D) Carrying out orientation and
18 mentorship programs that assist newly grad-
19 uated nurses in adjusting to working at the
20 bedside to ensure their retention
21 postgraduation, and ongoing programs to sup-
22 port nurse retention.

23 (E) Providing stipends for release time and
24 continued health care coverage to enable incum-

1 bent health care workers to participate in these
2 programs.

3 (2) To carry out programs that assist nurses in
4 obtaining advanced degrees and completing specialty
5 training or certification programs and to establish
6 incentives for nurses to assume nurse faculty posi-
7 tions on a part-time or full-time basis. Such pro-
8 grams shall include one or more of the following:

9 (A) Increasing the pool of nurses with ad-
10 vanced degrees who are interested in teaching
11 by funding programs that enable incumbent
12 nurses to return to school.

13 (B) Establishing incentives for advanced
14 degree bedside nurses who wish to teach in
15 nursing programs so they can obtain a leave
16 from their bedside position to assume a full- or
17 part-time position as adjunct or full-time fac-
18 ulty without the loss of salary or benefits.

19 (C) Collaboration with accredited schools
20 of nursing which may include community col-
21 leges and other academic institutions providing
22 associate, bachelor's, or advanced nursing de-
23 gree programs, or specialty training or certifi-
24 cation programs, for nurses to carry out innova-

1 tive nursing programs which meet the needs of
2 bedside nursing and health care providers.

3 (g) PREFERENCE.—In awarding grants under this
4 section the Secretary shall give preference to programs
5 that—

6 (1) provide for improving nurse retention;

7 (2) provide for improving the diversity of the
8 new nurse graduates to reflect changes in the demo-
9 graphics of the patient population;

10 (3) provide for improving the quality of nursing
11 education to improve patient care and safety;

12 (4) have demonstrated success in upgrading in-
13 cumbent health care workers to become nurses or
14 which have established effective programs or pilots
15 to increase nurse faculty; or

16 (5) are modeled after or affiliated with such
17 programs described in paragraph (4).

18 (h) EVALUATION.—

19 (1) PROGRAM EVALUATIONS.—An entity that
20 receives a grant under this section shall annually
21 evaluate, and submit to the Secretary a report on,
22 the activities carried out under the grant and the
23 outcomes of such activities. Such outcomes may in-
24 clude—

1 (A) an increased number of incumbent
2 workers entering an accredited school of nurs-
3 ing and in the pipeline for nursing programs;

4 (B) an increasing number of graduating
5 nurses and improved nurse graduation and li-
6 censure rates;

7 (C) improved nurse retention;

8 (D) an increase in the number of staff
9 nurses at the health care facility involved;

10 (E) an increase in the number of nurses
11 with advanced degrees in nursing;

12 (F) an increase in the number of nurse
13 faculty;

14 (G) improved measures of patient quality
15 (which may include staffing ratios of nurses,
16 patient satisfaction rates, patient safety meas-
17 ures); and

18 (H) an increase in the diversity of new
19 nurse graduates relative to the patient popu-
20 lation.

21 (2) GENERAL REPORT.—Not later than 2 years
22 after the date of the enactment of this Act, and an-
23 nually thereafter, the Secretary of Labor shall, using
24 data and information from the reports received
25 under paragraph (1), submit to the Congress a re-

1 port concerning the overall effectiveness of the grant
2 program carried out under this section.

3 (i) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to carry out this section
5 such sums as may be necessary.

6 **Subtitle E—States Failing To Ad-**
7 **here to Certain Employment Ob-**
8 **ligations**

9 **SEC. 2541. LIMITATION ON FEDERAL FUNDS.**

10 A State is eligible for Federal funds under the provi-
11 sions of the Public Health Service Act (42 U.S.C. 201 et
12 seq.) only if the State—

13 (1) agrees to be subject in its capacity as an
14 employer to each obligation under division A of this
15 Act and the amendments made by such division ap-
16 plicable to persons in their capacity as an employer;
17 and

18 (2) assures that all political subdivisions in the
19 State will do the same.

