SUSPEND THE RULES AND PASS THE BILL H.R. 6331, WITH AN AMENDMENT

Strike all after the enacting clause and insert the following:

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 "Medicare Improvements for Patients and Providers Act
4 of 2008".

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

Sec. 1. Short title; table of contents.

TITLE I—MEDICARE

Subtitle A—Beneficiary Improvements

PART I—PREVENTION, MENTAL HEALTH, AND MARKETING

Sec. 101. Improvements to coverage of preventive services.
Sec. 102. Elimination of discriminatory copayment rates for Medicare outpatient psychiatric services.
Sec. 103. Prohibitions and limitations on certain sales and marketing activities under Medicare Advantage plans and prescription drug plans.
Sec. 104. Improvements to the Medigap program.

PART II—LOW-INCOME PROGRAMS

Sec. 111. Extension of qualifying individual (QI) program.
Sec. 112. Application of full LIS subsidy assets test under Medicare Savings Program.
Sec. 113. Eliminating barriers to enrollment.
Sec. 114. Elimination of Medicare part D late enrollment penalties paid by subsidy eligible individuals.
Sec. 115. Eliminating application of estate recovery.
Sec. 116. Exemptions from income and resources for determination of eligibility for low-income subsidy.

Sec. 117. Judicial review of decisions of the Commissioner of Social Security under the Medicare part D low-income subsidy program.
Sec. 118. Translation of model form.
Sec. 119. Medicare enrollment assistance.

Subtitle B—Provisions Relating to Part A

Sec. 121. Expansion and extension of the Medicare Rural Hospital Flexibility Program.
Sec. 122. Rebasing for sole community hospitals.
Sec. 123. Demonstration project on community health integration models in certain rural counties.
Sec. 124. Extension of the reclassification of certain hospitals.
Sec. 125. Revocation of unique deeming authority of the Joint Commission.

Subtitle C—Provisions Relating to Part B

Part I—Physicians' Services

Sec. 131. Physician payment, efficiency, and quality improvements.
Sec. 132. Incentives for electronic prescribing.
Sec. 133. Expanding access to primary care services.
Sec. 134. Extension of floor on Medicare work geographic adjustment under the Medicare physician fee schedule.
Sec. 135. Imaging provisions.
Sec. 136. Extension of treatment of certain physician pathology services under Medicare.
Sec. 137. Accommodation of physicians ordered to active duty in the Armed Services.
Sec. 138. Adjustment for Medicare mental health services.
Sec. 139. Improvements for Medicare anesthesia teaching programs.

Part II—Other Payment and Coverage Improvements

Sec. 141. Extension of exceptions process for Medicare therapy caps.
Sec. 142. Extension of payment rule for brachytherapy and therapeutic radiopharmaceuticals.
Sec. 143. Speech-language pathology services.
Sec. 144. Payment and coverage improvements for patients with chronic obstructive pulmonary disease and other conditions.
Sec. 145. Clinical laboratory tests.
Sec. 146. Improved access to ambulance services.
Sec. 147. Extension and expansion of the Medicare hold harmless provision under the prospective payment system for hospital outpatient department (HOPD) services for certain hospitals.
Sec. 148. Clarification of payment for clinical laboratory tests furnished by critical access hospitals.
Sec. 149. Adding certain entities as originating sites for payment of telehealth services.
Sec. 150. MedPAC study and report on improving chronic care demonstration programs.
Sec. 151. Increase of FQHC payment limits.
Sec. 152. Kidney disease education and awareness provisions.
Sec. 153. Renal dialysis provisions.
Sec. 154. Delay in and reform of Medicare DMEPOS competitive acquisition program.

Subtitle D—Provisions Relating to Part C

Sec. 161. Phase-out of indirect medical education (IME).
Sec. 162. Revisions to requirements for Medicare Advantage private fee-for-service plans.
Sec. 163. Revisions to quality improvement programs.
Sec. 164. Revisions relating to specialized Medicare Advantage plans for special needs individuals.
Sec. 165. Limitation on out-of-pocket costs for dual eligibles and qualified medicare beneficiaries enrolled in a specialized Medicare Advantage plan for special needs individuals.
Sec. 166. Adjustment to the Medicare Advantage stabilization fund.
Sec. 167. Access to Medicare reasonable cost contract plans.
Sec. 168. MedPAC study and report on quality measures.
Sec. 169. MedPAC study and report on Medicare Advantage payments.

Subtitle E—Provisions Relating to Part D

PART I—IMPROVING PHARMACY ACCESS

Sec. 171. Prompt payment by prescription drug plans and MA–PD plans under part D.
Sec. 172. Submission of claims by pharmacies located in or contracting with long-term care facilities.
Sec. 173. Regular update of prescription drug pricing standard.

PART II—OTHER PROVISIONS

Sec. 175. Inclusion of barbiturates and benzodiazepines as covered part D drugs.
Sec. 176. Formulary requirements with respect to certain categories or classes of drugs.

Subtitle F—Other Provisions

Sec. 181. Use of part D data.
Sec. 182. Revision of definition of medically accepted indication for drugs.
Sec. 183. Contract with a consensus-based entity regarding performance measurement.
Sec. 184. Cost-sharing for clinical trials.
Sec. 185. Addressing health care disparities.
Sec. 186. Demonstration to improve care to previously uninsured.
Sec. 187. Office of the Inspector General report on compliance with and enforcement of national standards on culturally and linguistically appropriate services (CLAS) in Medicare.
Sec. 188. Medicare Improvement Funding.
Sec. 189. Inclusion of Medicare providers and suppliers in Federal Payment Levy and Administrative Offset Program.

TITLE II—MEDICAID

Sec. 201. Extension of transitional medical assistance (TMA) and abstinence education program.
Sec. 202. Medicaid DSH extension.
Sec. 203. Pharmacy reimbursement under Medicaid.
Sec. 204. Review of administrative claim determinations.
Sec. 205. County medicaid health insuring organizations.

TITLE III—MISCELLANEOUS

Sec. 301. Extension of TANF supplemental grants.
Sec. 302. 70 percent federal matching for foster care and adoption assistance for the District of Columbia.
Sec. 303. Extension of Special Diabetes Grant Programs.
Sec. 304. IOM reports on best practices for conducting systematic reviews of clinical effectiveness research and for developing clinical protocols.

1 # TITLE I—MEDICARE

2 ## Subtitle A—Beneficiary
3 ## Improvements

4 ### PART I—PREVENTION, MENTAL HEALTH, AND
5 ### MARKETING

6 **SEC. 101. IMPROVEMENTS TO COVERAGE OF PREVENTIVE**
7 **SERVICES.**

8 (a) COVERAGE OF ADDITIONAL PREVENTIVE SERV-
9 ICES.—

10 (1) COVERAGE.—Section 1861 of the Social Se-
11 curity Act (42 U.S.C. 1395x), as amended by section
12 114 of the Medicare, Medicaid, and SCHIP Exten-
13 sion Act of 2007 (Public Law 110–173), is amend-
14 ed—

15 (A) in subsection (s)(2)—

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

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

20 (iii) by adding at the end the fol-
21 lowing new subparagraph:

1 "(BB) additional preventive services (described
2 in subsection (ddd)(1));"; and
3 (B) by adding at the end the following new
4 subsection:
5 "Additional Preventive Services
6 "(ddd)(1) The term 'additional preventive services'
7 means services not otherwise described in this title that
8 identify medical conditions or risk factors and that the
9 Secretary determines are—
10 "(A) reasonable and necessary for the preven-
11 tion or early detection of an illness or disability;
12 "(B) recommended with a grade of A or B by
13 the United States Preventive Services Task Force;
14 and
15 "(C) appropriate for individuals entitled to ben-
16 efits under part A or enrolled under part B.
17 "(2) In making determinations under paragraph (1)
18 regarding the coverage of a new service, the Secretary
19 shall use the process for making national coverage deter-
20 minations (as defined in section 1869(f)(1)(B)) under this
21 title. As part of the use of such process, the Secretary
22 may conduct an assessment of the relation between pre-
23 dicted outcomes and the expenditures for such service and
24 may take into account the results of such assessment in
25 making such determination.".

1 (2) PAYMENT AND COINSURANCE FOR ADDI-
2 TIONAL PREVENTIVE SERVICES.—Section 1833(a)(1)
3 of the Social Security Act (42 U.S.C. 1395l(a)(1))
4 is amended—
5 (A) by striking ''and'' before ''(V)''; and
6 (B) by inserting before the semicolon at
7 the end the following: '', and (W) with respect
8 to additional preventive services (as defined in
9 section 1861(ddd)(1)), the amount paid shall be
10 (i) in the case of such services which are clinical
11 diagnostic laboratory tests, the amount deter-
12 mined under subparagraph (D), and (ii) in the
13 case of all other such services, 80 percent of the
14 lesser of the actual charge for the service or the
15 amount determined under a fee schedule estab-
16 lished by the Secretary for purposes of this sub-
17 paragraph''.
18 (3) CONFORMING AMENDMENT REGARDING
19 COVERAGE.—Section 1862(a)(1)(A) of the Social Se-
20 curity Act (42 U.S.C. 1395y(a)(1)(A)) is amended
21 by inserting ''or additional preventive services (as
22 described in section 1861(ddd)(1))'' after ''suc-
23 ceeding subparagraph''.
24 (4) RULE OF CONSTRUCTION.—Nothing in the
25 provisions of, or amendments made by, this sub-

1 section shall be construed to provide coverage under
2 title XVIII of the Social Security Act of items and
3 services for the treatment of a medical condition
4 that is not otherwise covered under such title.
5 (b) REVISIONS TO INITIAL PREVENTIVE PHYSICAL
6 EXAMINATION.—
7 (1) IN GENERAL.—Section 1861(ww) of the So-
8 cial Security Act (42 U.S.C. 1395x(ww)) is amend-
9 ed—
10 (A) in paragraph (1)—
11 (i) by inserting ''body mass index,''
12 after ''weight'';
13 (ii) by striking '', and an electro-
14 cardiogram''; and
15 (iii) by inserting ''and end-of-life plan-
16 ning (as defined in paragraph (3)) upon
17 the agreement with the individual'' after
18 ''paragraph (2)'';
19 (B) in paragraph (2), by adding at the end
20 the following new subparagraphs:
21 ''(M) An electrocardiogram.
22 ''(N) Additional preventive services (as defined
23 in subsection (ddd)(1)).''; and
24 (C) by adding at the end the following new
25 paragraph:

1 “(3) For purposes of paragraph (1), the term ‘end-
2 of-life planning’ means verbal or written information re-
3 garding—
4 “(A) an individual’s ability to prepare an ad-
5 vance directive in the case that an injury or illness
6 causes the individual to be unable to make health
7 care decisions; and
8 “(B) whether or not the physician is willing to
9 follow the individual’s wishes as expressed in an ad-
10 vance directive.”.
11 (2) WAIVER OF APPLICATION OF DEDUCT-
12 IBLE.—The first sentence of section 1833(b) of the
13 Social Security Act (42 U.S.C. 1395l(b)) is amend-
14 ed—
15 (A) by striking “and” before “(8)”; and
16 (B) by inserting “, and (9) such deductible
17 shall not apply with respect to an initial preven-
18 tive physical examination (as defined in section
19 1861(ww))” before the period at the end.
20 (3) EXTENSION OF ELIGIBILITY PERIOD FROM
21 SIX MONTHS TO ONE YEAR.—Section 1862(a)(1)(K)
22 of the Social Security Act (42 U.S.C.
23 1395y(a)(1)(K)) is amended by striking “6 months”
24 and inserting “1 year”.

1 (4) TECHNICAL CORRECTION.—Section
2 1862(a)(1)(K) of the Social Security Act (42 U.S.C.
3 1395y(a)(1)(K)) is amended by striking ‘‘not later’’
4 and inserting ‘‘more’’.
5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to services furnished on or after
7 January 1, 2009.

8 **SEC. 102. ELIMINATION OF DISCRIMINATORY COPAYMENT**
9 **RATES FOR MEDICARE OUTPATIENT PSY-**
10 **CHIATRIC SERVICES.**

11 Section 1833(c) of the Social Security Act (42 U.S.C.
12 1395l(c)) is amended to read as follows:
13 ‘‘(c)(1) Notwithstanding any other provision of this
14 part, with respect to expenses incurred in a calendar year
15 in connection with the treatment of mental, psycho-
16 neurotic, and personality disorders of an individual who
17 is not an inpatient of a hospital at the time such expenses
18 are incurred, there shall be considered as incurred ex-
19 penses for purposes of subsections (a) and (b)—
20 ‘‘(A) for expenses incurred in years prior to
21 2010, only 62½ percent of such expenses;
22 ‘‘(B) for expenses incurred in 2010 or 2011,
23 only 68¾ percent of such expenses;
24 ‘‘(C) for expenses incurred in 2012, only 75
25 percent of such expenses;

1 "(D) for expenses incurred in 2013, only 81¼
2 percent of such expenses; and
3 "(E) for expenses incurred in 2014 or any sub-
4 sequent calendar year, 100 percent of such expenses.
5 "(2) For purposes of subparagraphs (A) through (D)
6 of paragraph (1), the term 'treatment' does not include
7 brief office visits (as defined by the Secretary) for the sole
8 purpose of monitoring or changing drug prescriptions used
9 in the treatment of such disorders or partial hospitaliza-
10 tion services that are not directly provided by a physi-
11 cian.".

12 **SEC. 103. PROHIBITIONS AND LIMITATIONS ON CERTAIN**
13 **SALES AND MARKETING ACTIVITIES UNDER**
14 **MEDICARE ADVANTAGE PLANS AND PRE-**
15 **SCRIPTION DRUG PLANS.**

16 (a) PROHIBITIONS.—
17 (1) MEDICARE ADVANTAGE PROGRAM.—
18 (A) IN GENERAL.—Section 1851 of the So-
19 cial Security Act (42 U.S.C. 1395w–21) is
20 amended—
21 (i) in subsection (h)(4)—
22 (I) in subparagraph (A)—
23 (aa) by striking "cash or
24 other monetary rebates" and in-
25 serting ", subject to subsection

1 (j)(2)(C), cash, gifts, prizes, or
2 other monetary rebates''; and
3 (bb) by striking '', and'' at
4 the end and inserting a semi-
5 colon;
6 (II) in subparagraph (B), by
7 striking the period at the end and in-
8 serting a semicolon; and
9 (III) by adding at the end the
10 following new subparagraph:
11 ''(C) shall not permit a Medicare Advan-
12 tage organization (or the agents, brokers, and
13 other third parties representing such organiza-
14 tion) to conduct the prohibited activities de-
15 scribed in subsection (j)(1); and''; and
16 (ii) by adding at the end the following
17 new subsection:
18 ''(j) PROHIBITED ACTIVITIES DESCRIBED AND LIMI-
19 TATIONS ON THE CONDUCT OF CERTAIN OTHER ACTIVI-
20 TIES.—
21 ''(1) PROHIBITED ACTIVITIES DESCRIBED.—
22 The following prohibited activities are described in
23 this paragraph:
24 ''(A) UNSOLICITED MEANS OF DIRECT
25 CONTACT.—Any unsolicited means of direct

1 contact of prospective enrollees, including solic-
2 iting door-to-door or any outbound tele-
3 marketing without the prospective enrollee initi-
4 ating contact.
5 ''(B) CROSS-SELLING.—The sale of other
6 non-health related products (such as annuities
7 and life insurance) during any sales or mar-
8 keting activity or presentation conducted with
9 respect to a Medicare Advantage plan.
10 ''(C) MEALS.—The provision of meals of
11 any sort, regardless of value, to prospective en-
12 rollees at promotional and sales activities.
13 ''(D) SALES AND MARKETING IN HEALTH
14 CARE SETTINGS AND AT EDUCATIONAL
15 EVENTS.—Sales and marketing activities for
16 the enrollment of individuals in Medicare Ad-
17 vantage plans that are conducted—
18 ''(i) in health care settings in areas
19 where health care is delivered to individ-
20 uals (such as physician offices and phar-
21 macies), except in the case where such ac-
22 tivities are conducted in common areas in
23 health care settings; and
24 ''(ii) at educational events.''.

1 (2) MEDICARE PRESCRIPTION DRUG PRO-
2 GRAM.—Section 1860D–4 of the Social Security Act
3 (42 U.S.C. 1395w–104) is amended by adding at
4 the end the following new subsection:
5 ‘‘(l) REQUIREMENTS WITH RESPECT TO SALES AND
6 MARKETING ACTIVITIES.—The following provisions shall
7 apply to a PDP sponsor (and the agents, brokers, and
8 other third parties representing such sponsor) in the same
9 manner as such provisions apply to a Medicare Advantage
10 organization (and the agents, brokers, and other third par-
11 ties representing such organization):
12 ‘‘(1) The prohibition under section
13 1851(h)(4)(C) on conducting activities described in
14 section 1851(j)(1).’’.
15 (3) EFFECTIVE DATE.—The amendments made
16 by this subsection shall apply to plan years begin-
17 ning on or after January 1, 2009.
18 (b) LIMITATIONS.—
19 (1) MEDICARE ADVANTAGE PROGRAM.—Section
20 1851 of the Social Security Act (42 U.S.C. 1395w–
21 21), as amended by subsection (a)(1), is amended—
22 (A) in subsection (h)(4), by adding at the
23 end the following new subparagraph:
24 ‘‘(D) shall only permit a Medicare Advan-
25 tage organization (and the agents, brokers, and

1 other third parties representing such organiza-
2 tion) to conduct the activities described in sub-
3 section (j)(2) in accordance with the limitations
4 established under such subsection.''; and
5 (B) in subsection (j), by adding at the end
6 the following new paragraph:
7 ''(2) LIMITATIONS.—The Secretary shall estab-
8 lish limitations with respect to at least the following:
9 ''(A) SCOPE OF MARKETING APPOINT-
10 MENTS.—The scope of any appointment with
11 respect to the marketing of a Medicare Advan-
12 tage plan. Such limitation shall require advance
13 agreement with a prospective enrollee on the
14 scope of the marketing appointment and docu-
15 mentation of such agreement by the Medicare
16 Advantage organization. In the case where the
17 marketing appointment is in person, such docu-
18 mentation shall be in writing.
19 ''(B) CO-BRANDING.—The use of the name
20 or logo of a co-branded network provider on
21 Medicare Advantage plan membership and mar-
22 keting materials.
23 ''(C) LIMITATION OF GIFTS TO NOMINAL
24 DOLLAR VALUE.—The offering of gifts and
25 other promotional items other than those that

1 are of nominal value (as determined by the Sec-
2 retary) to prospective enrollees at promotional
3 activities.
4 "(D) COMPENSATION.—The use of com-
5 pensation other than as provided under guide-
6 lines established by the Secretary. Such guide-
7 lines shall ensure that the use of compensation
8 creates incentives for agents and brokers to en-
9 roll individuals in the Medicare Advantage plan
10 that is intended to best meet their health care
11 needs.
12 "(E) REQUIRED TRAINING, ANNUAL RE-
13 TRAINING, AND TESTING OF AGENTS, BROKERS,
14 AND OTHER THIRD PARTIES.—The use by a
15 Medicare Advantage organization of any indi-
16 vidual as an agent, broker, or other third party
17 representing the organization that has not com-
18 pleted an initial training and testing program
19 and does not complete an annual retraining and
20 testing program.".
21 (2) MEDICARE PRESCRIPTION DRUG PRO-
22 GRAM.—Section 1860D–4(l) of the Social Security
23 Act, as added by subsection (a)(2), is amended by
24 adding at the end the following new paragraph:

1 "(2) The requirement under section
2 1851(h)(4)(D) to conduct activities described in sec-
3 tion 1851(j)(2) in accordance with the limitations
4 established under such subsection.".

5 (3) EFFECTIVE DATE.—The amendments made
6 by this subsection shall take effect on a date speci-
7 fied by the Secretary (but in no case later than No-
8 vember 15, 2008).

9 (c) REQUIRED INCLUSION OF PLAN TYPE IN PLAN
10 NAME.—

11 (1) MEDICARE ADVANTAGE PROGRAM.—Section
12 1851(h) of the Social Security Act (42 U.S.C.
13 1395w–21(h)) is amended by adding at the end fol-
14 lowing new paragraph:

15 "(6) REQUIRED INCLUSION OF PLAN TYPE IN
16 PLAN NAME.—For plan years beginning on or after
17 January 1, 2010, a Medicare Advantage organiza-
18 tion must ensure that the name of each Medicare
19 Advantage plan offered by the Medicare Advantage
20 organization includes the plan type of the plan
21 (using standard terminology developed by the Sec-
22 retary).".

23 (2) PRESCRIPTION DRUG PLANS.—Section
24 1860D–4(l) of the Social Security Act, as added by
25 subsection (a)(2) and amended by subsection (b)(2),

1 is amended by adding at the end the following new
2 paragraph:
3 "(3) The inclusion of the plan type in the plan
4 name under section 1851(h)(6).".
5 (d) STRENGTHENING THE ABILITY OF STATES TO
6 ACT IN COLLABORATION WITH THE SECRETARY TO AD-
7 DRESS FRAUDULENT OR INAPPROPRIATE MARKETING
8 PRACTICES.—
9 (1) MEDICARE ADVANTAGE PROGRAM.—Section
10 1851(h) of the Social Security Act (42 U.S.C.
11 1395w–21(h), as amended by subsection (c)(1), is
12 amended by adding at the end the following new
13 paragraph:
14 "(7) STRENGTHENING THE ABILITY OF STATES
15 TO ACT IN COLLABORATION WITH THE SECRETARY
16 TO ADDRESS FRAUDULENT OR INAPPROPRIATE MAR-
17 KETING PRACTICES.—
18 "(A) APPOINTMENT OF AGENTS AND BRO-
19 KERS.—Each Medicare Advantage organization
20 shall—
21 "(i) only use agents and brokers who
22 have been licensed under State law to sell
23 Medicare Advantage plans offered by the
24 Medicare Advantage organization;

1 "(ii) in the case where a State has a
2 State appointment law, abide by such law;
3 and
4 "(iii) report to the applicable State
5 the termination of any such agent or
6 broker, including the reasons for such ter-
7 mination (as required under applicable
8 State law).
9 "(B) COMPLIANCE WITH STATE INFORMA-
10 TION REQUESTS.—Each Medicare Advantage
11 organization shall comply in a timely manner
12 with any request by a State for information re-
13 garding the performance of a licensed agent,
14 broker, or other third party representing the
15 Medicare Advantage organization as part of an
16 investigation by the State into the conduct of
17 the agent, broker, or other third party.".
18 (2) PRESCRIPTION DRUG PLANS.—Section
19 1860D–4(l) of the Social Security Act, as amended
20 by subsection (c)(2), is amended by adding at the
21 end the following new paragraph:
22 "(4) The requirements regarding the appoint-
23 ment of agents and brokers and compliance with
24 State information requests under subparagraphs (A)
25 and (B), respectively, of section 1851(h)(7).".

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to plan years begin-
3 ning on or after January 1, 2009.

4 **SEC. 104. IMPROVEMENTS TO THE MEDIGAP PROGRAM.**

5 (a) IMPLEMENTATION OF NAIC RECOMMENDA-
6 TIONS.—
7 (1) IN GENERAL.—The Secretary of Health and
8 Human Services (in this section referred to as the
9 ''Secretary'') shall provide for implementation of the
10 changes in the NAIC model law and regulations ap-
11 proved by the National Association of Insurance
12 Commissioners in its Model #651 (''Model Regula-
13 tion to Implement the NAIC Medicare Supplement
14 Insurance Minimum Standards Model Act'') on
15 March 11, 2007, as modified to reflect the changes
16 made under this Act and the Genetic Information
17 Nondiscrimination Act of 2008 (Public Law 110–
18 233).
19 (2) IMPLEMENTATION DATES.—
20 (A) IN GENERAL.—The modifications to
21 Model #651 required under paragraph (1) shall
22 be completed by the National Association of In-
23 surance Commissioners not later than October
24 31, 2008. Except as provided in subparagraph
25 (B), each State shall have 1 year from the date

1 the National Association of Insurance Commis-
2 sioners adopts the revised NAIC model law and
3 regulations (as changed by Model #651, as so
4 modified) to conform the regulatory program
5 established by the State to such revised NAIC
6 model law and regulations.

7 (B) EXTENSION OF EFFECTIVE DATE FOR
8 STATE LAW AMENDMENT.—In the case of a
9 State which the Secretary determines requires
10 State legislation in order to conform the regu-
11 latory program established by the State to such
12 revised NAIC model law and regulations, the
13 State shall not be regarded as failing to comply
14 with the requirements of this section solely on
15 the basis of its failure to meet such require-
16 ments before the first day of the first calendar
17 quarter beginning after the close of the first
18 regular session of the State legislature that be-
19 gins after the date of the enactment of this Act.
20 For purposes of the previous sentence, in the
21 case of a State that has a 2-year legislative ses-
22 sion, each year of the session is considered to
23 be a separate regular session of the State legis-
24 lature.

1 (C) TRANSITION DATES.—No carrier may
2 issue a new or revised medicare supplemental
3 policy or certificate under section 1882 of the
4 Social Security Act (42 U.S.C. 1395ss) that
5 meets the requirements of such revised NAIC
6 model law and regulations for coverage effective
7 prior to June 1, 2010. A carrier may continue
8 to offer or issue a medicare supplemental policy
9 under such section that meets the requirements
10 of the NAIC model law and regulations and
11 State law (as in effect prior to the adoption of
12 such revised NAIC model law and regulations)
13 prior to June 1, 2010. Nothing shall preclude
14 carriers from marketing new or revised medi-
15 care supplemental policies or certificates that
16 meet the requirements of such revised NAIC
17 model law and regulations on or after the date
18 on which the State conforms the regulatory pro-
19 gram established by the State to such revised
20 NAIC model law and regulations.
21 (b) REQUIRED OFFERING OF A RANGE OF POLI-
22 CIES.—Section 1882(o) of the Social Security Act (42
23 U.S.C. 1395s(o)), as amended by section 104(b)(3) of the
24 Genetic Information Nondiscrimination Act of 2008 (Pub-

1 lic Law 110–233), is amended by adding at the end the
2 following new paragraph:
3 ''(5) In addition to the requirement under para-
4 graph (2), the issuer of the policy must make avail-
5 able to the individual at least Medicare supplemental
6 policies with benefit packages classified as 'C' or
7 'F'.''.
8 (c) CLARIFICATION.—Any health insurance policy
9 that provides reimbursement for expenses incurred for
10 items and services for which payment may be made under
11 title XVIII of the Social Security Act but which are not
12 reimbursable by reason of the applicability of deductibles,
13 coinsurance, copayments or other limitations imposed by
14 a Medicare Advantage plan (including a Medicare Advan-
15 tage private fee-for-service plan) under part C of such title
16 shall comply with the requirements of section 1882(o) of
17 the such Act (42 U.S.C. 1395ss(o)).

18 **PART II—LOW-INCOME PROGRAMS**

19 **SEC. 111. EXTENSION OF QUALIFYING INDIVIDUAL (QI)**
20 **PROGRAM.**

21 (a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the
22 Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is
23 amended by striking ''June 2008'' and inserting ''Decem-
24 ber 2009''.

1 (b) EXTENDING TOTAL AMOUNT AVAILABLE FOR
2 ALLOCATION.—Section 1933(g) of such Act (42 U.S.C.
3 1396u–3(g)) is amended—
4 (1) in paragraph (2)—
5 (A) by striking "and" at the end of sub-
6 paragraph (H);
7 (B) in subparagraph (I)—
8 (i) by striking "June 30" and insert-
9 ing "September 30";
10 (ii) by striking "$200,000,000" and
11 inserting "$300,000,000"; and
12 (iii) by striking the period at the end
13 and inserting a semicolon; and
14 (C) by adding at the end the following new
15 subparagraphs:
16 "(J) for the period that begins on October
17 1, 2008, and ends on December 31, 2008, the
18 total allocation amount is $100,000,000;
19 "(K) for the period that begins on January
20 1, 2009, and ends on September 30, 2009, the
21 total allocation amount is $350,000,000; and
22 "(L) for the period that begins on October
23 1, 2009, and ends on December 31, 2009, the
24 total allocation amount is $150,000,000."; and

1 (2) in paragraph (3), in the matter preceding
2 subparagraph (A), by striking ‘‘or (H)’’ and insert-
3 ing ‘‘(H), (J), or (L)’’.

4 **SEC. 112. APPLICATION OF FULL LIS SUBSIDY ASSETS TEST**
5 **UNDER MEDICARE SAVINGS PROGRAM.**

6 Section 1905(p)(1)(C) of such Act (42 U.S.C.
7 1396d(p)(1)(C)) is amended by inserting before the period
8 at the end the following: ‘‘or, effective beginning with Jan-
9 uary 1, 2010, whose resources (as so determined) do not
10 exceed the maximum resource level applied for the year
11 under subparagraph (D) of section 1860D–14(a)(3) (de-
12 termined without regard to the life insurance policy exclu-
13 sion provided under subparagraph (G) of such section) ap-
14 plicable to an individual or to the individual and the indi-
15 vidual’s spouse (as the case may be)’’.

16 **SEC. 113. ELIMINATING BARRIERS TO ENROLLMENT.**

17 (a) SSA ASSISTANCE WITH MEDICARE SAVINGS
18 PROGRAM AND LOW-INCOME SUBSIDY PROGRAM APPLI-
19 CATIONS.—Section 1144 of such Act (42 U.S.C. 1320b–
20 14) is amended by adding at the end the following new
21 subsection:

22 ‘‘(c) ASSISTANCE WITH MEDICARE SAVINGS PRO-
23 GRAM AND LOW-INCOME SUBSIDY PROGRAM APPLICA-
24 TIONS.—

1 "(1) DISTRIBUTION OF APPLICATIONS AND IN-
2 FORMATION TO INDIVIDUALS WHO ARE POTEN-
3 TIALLY ELIGIBLE FOR LOW-INCOME SUBSIDY PRO-
4 GRAM.—For each individual who submits an applica-
5 tion for low-income subsidies under section 1860D–
6 14, requests an application for such subsidies, or is
7 otherwise identified as an individual who is poten-
8 tially eligible for such subsidies, the Commissioner
9 shall do the following:
10 "(A) Provide information describing the
11 low-income subsidy program under section
12 1860D–14 and the Medicare Savings Program
13 (as defined in paragraph (7)).
14 "(B) Provide an application for enrollment
15 under such low-income subsidy program (if not
16 already received by the Commissioner).
17 "(C) In accordance with paragraph (3),
18 transmit data from such an application for pur-
19 poses of initiating an application for benefits
20 under the Medicare Savings Program.
21 "(D) Provide information on how the indi-
22 vidual may obtain assistance in completing such
23 application and an application under the Medi-
24 care Savings Program, including information on

1 how the individual may contact the State health
2 insurance assistance program (SHIP).
3 "(E) Make the application described in
4 subparagraph (B) and the information de-
5 scribed in subparagraphs (A) and (D) available
6 at local offices of the Social Security Adminis-
7 tration.
8 "(2) TRAINING PERSONNEL IN EXPLAINING
9 BENEFIT PROGRAMS AND ASSISTING IN COMPLETING
10 LIS APPLICATION.—The Commissioner shall provide
11 training to those employees of the Social Security
12 Administration who are involved in receiving applica-
13 tions for benefits described in paragraph (1)(B) in
14 order that they may promote beneficiary under-
15 standing of the low-income subsidy program and the
16 Medicare Savings Program in order to increase par-
17 ticipation in these programs. Such employees shall
18 provide assistance in completing an application de-
19 scribed in paragraph (1)(B) upon request.
20 "(3) TRANSMITTAL OF DATA TO STATES.—Be-
21 ginning on January 1, 2010, with the consent of an
22 individual completing an application for benefits de-
23 scribed in paragraph (1)(B), the Commissioner shall
24 electronically transmit to the appropriate State Med-
25 icaid agency data from such application, as deter-

1 mined by the Commissioner, which transmittal shall
2 initiate an application of the individual for benefits
3 under the Medicare Savings Program with the State
4 Medicaid agency. In order to ensure that such data
5 transmittal provides effective assistance for purposes
6 of State adjudication of applications for benefits
7 under the Medicare Savings Program, the Commis-
8 sioner shall consult with the Secretary, after the
9 Secretary has consulted with the States, regarding
10 the content, form, frequency, and manner in which
11 data (on a uniform basis for all States) shall be
12 transmitted under this subparagraph.
13 "(4) COORDINATION WITH OUTREACH.—The
14 Commissioner shall coordinate outreach activities
15 under this subsection in connection with the low-in-
16 come subsidy program and the Medicare Savings
17 Program.
18 "(5) REIMBURSEMENT OF SOCIAL SECURITY
19 ADMINISTRATION ADMINISTRATIVE COSTS.—
20 "(A) INITIAL MEDICARE SAVINGS PRO-
21 GRAM COSTS; ADDITIONAL LOW-INCOME SUB-
22 SIDY COSTS.—
23 "(i) INITIAL MEDICARE SAVINGS PRO-
24 GRAM COSTS.—There are hereby appro-
25 priated to the Commissioner to carry out

1 this subsection, out of any funds in the
2 Treasury not otherwise appropriated,
3 $24,100,000. The amount appropriated
4 under ths clause shall be available on Octo-
5 ber 1, 2008, and shall remain available
6 until expended.
7 "(ii) ADDITIONAL AMOUNT FOR LOW-
8 INCOME SUBSIDY ACTIVITIES.—There are
9 hereby appropriated to the Commissioner,
10 out of any funds in the Treasury not oth-
11 erwise appropriated, $24,800,000 for fiscal
12 year 2009 to carry out low-income subsidy
13 activities under section 1860D–14 and the
14 Medicare Savings Program (in accordance
15 with this subsection), to remain available
16 until expended. Such funds shall be in ad-
17 dition to the Social Security Administra-
18 tion's Limitation on Administrative Ex-
19 penditure appropriations for such fiscal
20 year.
21 "(B) SUBSEQUENT FUNDING UNDER
22 AGREEMENTS.—
23 "(i) IN GENERAL.—Effective for fiscal
24 years beginning on or after October 1,
25 2010, the Commissioner and the Secretary

1 shall enter into an agreement which shall
2 provide funding (subject to the amount ap-
3 propriated under clause (ii)) to cover the
4 administrative costs of the Commissioner's
5 activities under this subsection. Such
6 agreement shall—
7 "(I) provide funds to the Com-
8 missioner for the full cost of the So-
9 cial Security Administration's work
10 related to the Medicare Savings Pro-
11 gram required under this section;
12 "(II) provide such funding quar-
13 terly in advance of the applicable
14 quarter based on estimating method-
15 ology agreed to by the Commissioner
16 and the Secretary; and
17 "(III) require an annual account-
18 ing and reconciliation of the actual
19 costs incurred and funds provided
20 under this subsection.
21 "(ii) APPROPRIATION.—There are
22 hereby appropriated to the Secretary solely
23 for the purpose of providing payments to
24 the Commissioner pursuant to an agree-
25 ment specified in clause (i) that is in ef-

1 fect, out of any funds in the Treasury not
2 otherwise appropriated, not more than
3 $3,000,000 for fiscal year 2011 and each
4 fiscal year thereafter.
5 "(C) LIMITATION.—In no case shall funds
6 from the Social Security Administration's Limi-
7 tation on Administrative Expenses be used to
8 carry out activities related to the Medicare Sav-
9 ings Program. For fiscal years beginning on or
10 after October 1, 2010, no such activities shall
11 be undertaken by the Social Security Adminis-
12 tration unless the agreement specified in sub-
13 paragraph (B) is in effect and full funding has
14 been provided to the Commissioner as specified
15 in such subparagraph.
16 "(6) GAO ANALYSIS AND REPORT.—
17 "(A) ANALYSIS.—The Comptroller General
18 of the United States shall prepare an analysis
19 of the impact of this subsection—
20 "(i) in increasing participation in the
21 Medicare Savings Program, and
22 "(ii) on States and the Social Security
23 Administration.
24 "(B) REPORT.—Not later than January 1,
25 2012, the Comptroller General shall submit to

1 Congress, the Commissioner, and the Secretary
2 a report on the analysis conducted under sub-
3 paragraph (A).
4 ''(7) MEDICARE SAVINGS PROGRAM DEFINED.—
5 For purposes of this subsection, the term 'Medicare
6 Savings Program' means the program of medical as-
7 sistance for payment of the cost of medicare cost-
8 sharing under the Medicaid program pursuant to
9 sections 1902(a)(10)(E) and 1933.''.
10 (b) MEDICAID AGENCY CONSIDERATION OF DATA
11 TRANSMITTAL.—
12 (1) IN GENERAL.—Section 1935(a) of such Act
13 (42 U.S.C. 1396u–5(a)) is amended by adding at
14 the end the following new paragraph:
15 ''(4) CONSIDERATION OF DATA TRANSMITTED
16 BY THE SOCIAL SECURITY ADMINISTRATION FOR
17 PURPOSES OF MEDICARE SAVINGS PROGRAM.—The
18 State shall accept data transmitted under section
19 1144(c)(3) and act on such data in the same man-
20 ner and in accordance with the same deadlines as if
21 the data constituted an initiation of an application
22 for benefits under the Medicare Savings Program
23 (as defined for purposes of such section) that had
24 been submitted directly by the applicant. The date
25 of the individual's application for the low income

1 subsidy program from which the data have been de-
2 rived shall constitute the date of filing of such appli-
3 cation for benefits under the Medicare Savings Pro-
4 gram.''.
5 (2) CONFORMING AMENDMENTS.—Section
6 1935(a) of such Act (42 U.S.C. 1396u–5(a)) is
7 amended in the subsection heading by striking
8 ''AND'' and by inserting '', AND MEDICARE COST-
9 SHARING'' after ''ASSISTANCE''.
10 (c) EFFECTIVE DATE.—Except as otherwise pro-
11 vided, the amendments made by this section shall take ef-
12 fect on January 1, 2010.

13 **SEC. 114. ELIMINATION OF MEDICARE PART D LATE EN-**
14 **ROLLMENT PENALTIES PAID BY SUBSIDY ELI-**
15 **GIBLE INDIVIDUALS.**

16 (a) WAIVER OF LATE ENROLLMENT PENALTY.—
17 (1) IN GENERAL.—Section 1860D–13(b) of the
18 Social Security Act (42 U.S.C. 1395w–113(b)) is
19 amended by adding at the end the following new
20 paragraph:
21 ''(8) WAIVER OF PENALTY FOR SUBSIDY-ELIGI-
22 BLE INDIVIDUALS.—In no case shall a part D eligi-
23 ble individual who is determined to be a subsidy eli-
24 gible individual (as defined in section 1860D–
25 14(a)(3)) be subject to an increase in the monthly

1 beneficiary premium established under subsection
2 (a).''.
3 (2) CONFORMING AMENDMENT.—Section
4 1860D–14(a)(1)(A) of the Social Security Act (42
5 U.S.C. 1395w–114(a)(1)(A)) is amended by striking
6 ''equal to'' and all that follows through the period
7 and inserting ''equal to 100 percent of the amount
8 described in subsection (b)(1), but not to exceed the
9 premium amount specified in subsection (b)(2)(B).''.
10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to subsidies for months beginning
12 with January 2009.

13 **SEC. 115. ELIMINATING APPLICATION OF ESTATE RECOV-**
14 **ERY.**

15 (a) IN GENERAL.—Section 1917(b)(1)(B)(ii) of the
16 Social Security Act (42 U.S.C. 1396p(b)(1)(B)(ii)) is
17 amended by inserting ''(but not including medical assist-
18 ance for medicare cost-sharing or for benefits described
19 in section 1902(a)(10)(E))'' before the period at the end.
20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall take effect as of January 1, 2010.

1 **SEC. 116. EXEMPTIONS FROM INCOME AND RESOURCES**
2 **FOR DETERMINATION OF ELIGIBILITY FOR**
3 **LOW-INCOME SUBSIDY.**

4 (a) IN GENERAL.—Section 1860D–14(a)(3) of the
5 Social Security Act (42 U.S.C. 1395w–114(a)(3)) is
6 amended—

7 (1) in subparagraph (C)(i), by inserting ‘‘and
8 except that support and maintenance furnished in
9 kind shall not be counted as income’’ after ‘‘section
10 1902(r)(2)’’;

11 (2) in subparagraph (D), in the matter before
12 clause (i), by inserting ‘‘subject to the life insurance
13 policy exclusion provided under subparagraph (G)’’
14 before ‘‘)’’;

15 (3) in subparagraph (E)(i), in the matter before
16 subclause (I), by inserting ‘‘subject to the life insur-
17 ance policy exclusion provided under subparagraph
18 (G)’’ before ‘‘)’’; and

19 (4) by adding at the end the following new sub-
20 paragraph:

21 ‘‘(G) LIFE INSURANCE POLICY EXCLU-
22 SION.—In determining the resources of an indi-
23 vidual (and the eligible spouse of the individual,
24 if any) under section 1613 for purposes of sub-
25 paragraphs (D) and (E) no part of the value of

1 any life insurance policy shall be taken into ac-
2 count.''.
3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect with respect to applications
5 filed on or after January 1, 2010.

6 **SEC. 117. JUDICIAL REVIEW OF DECISIONS OF THE COM-**
7 **MISSIONER OF SOCIAL SECURITY UNDER**
8 **THE MEDICARE PART D LOW-INCOME SUB-**
9 **SIDY PROGRAM.**

10 (a) IN GENERAL.—Section 1860D–14(a)(3)(B)(iv) of
11 the Social Security Act (42 U.S.C. 1395w–
12 114(a)(3)(B)(iv)) is amended—
13 (1) in subclause (I), by striking ''and'' at the
14 end;
15 (2) in subclause (II), by striking the period at
16 the end and inserting ''; and''; and
17 (3) by adding at the end the following new sub-
18 clause:
19 ''(III) judicial review of the final
20 decision of the Commissioner made
21 after a hearing shall be available to
22 the same extent, and with the same
23 limitations, as provided in subsections
24 (g) and (h) of section 205.''.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall take effect as if included in the enact-
3 ment of section 101 of the Medicare Prescription Drug,
4 Improvement, and Modernization Act of 2003.

5 **SEC. 118. TRANSLATION OF MODEL FORM.**

6 (a) IN GENERAL.—Section 1905(p)(5)(A) of the So-
7 cial Security Act (42 U.S.C. 1396d(p)(5)(A)) is amended
8 by adding at the end the following: "The Secretary shall
9 provide for the translation of such application form into
10 at least the 10 languages (other than English) that are
11 most often used by individuals applying for hospital insur-
12 ance benefits under section 226 or 226A and shall make
13 the translated forms available to the States and to the
14 Commissioner of Social Security.".

15 (b) EFFECTIVE DATE.—The amendment made by
16 subsection (a) shall take effect on January 1, 2010.

17 **SEC. 119. MEDICARE ENROLLMENT ASSISTANCE.**

18 (a) ADDITIONAL FUNDING FOR STATE HEALTH IN-
19 SURANCE ASSISTANCE PROGRAMS.—

20 (1) GRANTS.—

21 (A) IN GENERAL.—The Secretary of
22 Health and Human Services (in this section re-
23 ferred to as the "Secretary") shall use amounts
24 made available under subparagraph (B) to
25 make grants to States for State health insur-

1 ance assistance programs receiving assistance
2 under section 4360 of the Omnibus Budget
3 Reconciliation Act of 1990.
4 (B) FUNDING.—For purposes of making
5 grants under this subsection, the Secretary
6 shall provide for the transfer, from the Federal
7 Hospital Insurance Trust Fund under section
8 1817 of the Social Security Act (42 U.S.C.
9 1395i) and the Federal Supplementary Medical
10 Insurance Trust Fund under section 1841 of
11 such Act (42 U.S.C. 1395t), in the same pro-
12 portion as the Secretary determines under sec-
13 tion 1853(f) of such Act (42 U.S.C. 1395w–
14 23(f)), of $7,500,000 to the Centers for Medi-
15 care & Medicaid Services Program Management
16 Account for fiscal year 2009, to remain avail-
17 able until expended.
18 (2) AMOUNT OF GRANTS.—The amount of a
19 grant to a State under this subsection from the total
20 amount made available under paragraph (1) shall be
21 equal to the sum of the amount allocated to the
22 State under paragraph (3)(A) and the amount allo-
23 cated to the State under subparagraph (3)(B).
24 (3) ALLOCATION TO STATES.—

1 (A) ALLOCATION BASED ON PERCENTAGE
2 OF LOW-INCOME BENEFICIARIES.—The amount
3 allocated to a State under this subparagraph
4 from ⅔ of the total amount made available
5 under paragraph (1) shall be based on the num-
6 ber of individuals who meet the requirement
7 under subsection (a)(3)(A)(ii) of section
8 1860D–14 of the Social Security Act (42
9 U.S.C. 1395w–114) but who have not enrolled
10 to receive a subsidy under such section 1860D–
11 14 relative to the total number of individuals
12 who meet the requirement under such sub-
13 section (a)(3)(A)(ii) in each State, as estimated
14 by the Secretary.

15 (B) ALLOCATION BASED ON PERCENTAGE
16 OF RURAL BENEFICIARIES.—The amount allo-
17 cated to a State under this subparagraph from
18 ⅓ of the total amount made available under
19 paragraph (1) shall be based on the number of
20 part D eligible individuals (as defined in section
21 1860D–1(a)(3)(A) of such Act (42 U.S.C.
22 1395w–101(a)(3)(A))) residing in a rural area
23 relative to the total number of such individuals
24 in each State, as estimated by the Secretary.

1 (4) PORTION OF GRANT BASED ON PERCENT-
2 AGE OF LOW-INCOME BENEFICIARIES TO BE USED
3 TO PROVIDE OUTREACH TO INDIVIDUALS WHO MAY
4 BE SUBSIDY ELIGIBLE INDIVIDUALS OR ELIGIBLE
5 FOR THE MEDICARE SAVINGS PROGRAM.—Each
6 grant awarded under this subsection with respect to
7 amounts allocated under paragraph (3)(A) shall be
8 used to provide outreach to individuals who may be
9 subsidy eligible individuals (as defined in section
10 1860D–14(a)(3)(A) of the Social Security Act (42
11 U.S.C. 1395w–114(a)(3)(A)) or eligible for the
12 Medicare Savings Program (as defined in subsection
13 (f)).
14 (b) ADDITIONAL FUNDING FOR AREA AGENCIES ON
15 AGING.—
16 (1) GRANTS.—
17 (A) IN GENERAL.—The Secretary, acting
18 through the Assistant Secretary for Aging, shall
19 make grants to States for area agencies on
20 aging (as defined in section 102 of the Older
21 Americans Act of 1965 (42 U.S.C. 3002)) and
22 Native American programs carried out under
23 the Older Americans Act of 1965 (42 U.S.C.
24 3001 et seq.).

1 (B) FUNDING.—For purposes of making
2 grants under this subsection, the Secretary
3 shall provide for the transfer, from the Federal
4 Hospital Insurance Trust Fund under section
5 1817 of the Social Security Act (42 U.S.C.
6 1395i) and the Federal Supplementary Medical
7 Insurance Trust Fund under section 1841 of
8 such Act (42 U.S.C. 1395t), in the same pro-
9 portion as the Secretary determines under sec-
10 tion 1853(f) of such Act (42 U.S.C. 1395w–
11 23(f)), of $7,500,000 to the Administration on
12 Aging for fiscal year 2009, to remain available
13 until expended.
14 (2) AMOUNT OF GRANT AND ALLOCATION TO
15 STATES BASED ON PERCENTAGE OF LOW-INCOME
16 AND RURAL BENEFICIARIES.—The amount of a
17 grant to a State under this subsection from the total
18 amount made available under paragraph (1) shall be
19 determined in the same manner as the amount of a
20 grant to a State under subsection (a), from the total
21 amount made available under paragraph (1) of such
22 subsection, is determined under paragraph (2) and
23 subparagraphs (A) and (B) of paragraph (3) of such
24 subsection.
25 (3) REQUIRED USE OF FUNDS.—

1 (A) ALL FUNDS.—Subject to subparagraph
2 (B), each grant awarded under this subsection
3 shall be used to provide outreach to eligible
4 Medicare beneficiaries regarding the benefits
5 available under title XVIII of the Social Secu-
6 rity Act.
7 (B) OUTREACH TO INDIVIDUALS WHO MAY
8 BE SUBSIDY ELIGIBLE INDIVIDUALS OR ELIGI-
9 BLE FOR THE MEDICARE SAVINGS PROGRAM.—
10 Subsection (a)(4) shall apply to each grant
11 awarded under this subsection in the same
12 manner as it applies to a grant under sub-
13 section (a).
14 (c) ADDITIONAL FUNDING FOR AGING AND DIS-
15 ABILITY RESOURCE CENTERS.—
16 (1) GRANTS.—
17 (A) IN GENERAL.—The Secretary shall
18 make grants to Aging and Disability Resource
19 Centers under the Aging and Disability Re-
20 source Center grant program that are estab-
21 lished centers under such program on the date
22 of the enactment of this Act.
23 (B) FUNDING.—For purposes of making
24 grants under this subsection, the Secretary
25 shall provide for the transfer, from the Federal

1 Hospital Insurance Trust Fund under section
2 1817 of the Social Security Act (42 U.S.C.
3 1395i) and the Federal Supplementary Medical
4 Insurance Trust Fund under section 1841 of
5 such Act (42 U.S.C. 1395t), in the same pro-
6 portion as the Secretary determines under sec-
7 tion 1853(f) of such Act (42 U.S.C. 1395w–
8 23(f)), of $5,000,000 to the Administration on
9 Aging for fiscal year 2009, to remain available
10 until expended.

11 (2) REQUIRED USE OF FUNDS.—Each grant
12 awarded under this subsection shall be used to pro-
13 vide outreach to individuals regarding the benefits
14 available under the Medicare prescription drug ben-
15 efit under part D of title XVIII of the Social Secu-
16 rity Act and under the Medicare Savings Program.

17 (d) COORDINATION OF EFFORTS TO INFORM OLDER
18 AMERICANS ABOUT BENEFITS AVAILABLE UNDER FED-
19 ERAL AND STATE PROGRAMS.—

20 (1) IN GENERAL.—The Secretary, acting
21 through the Assistant Secretary for Aging, in co-
22 operation with related Federal agency partners, shall
23 make a grant to, or enter into a contract with, a
24 qualified, experienced entity under which the entity
25 shall—

1 (A) maintain and update web-based deci-
2 sion support tools, and integrated, person-cen-
3 tered systems, designed to inform older individ-
4 uals (as defined in section 102 of the Older
5 Americans Act of 1965 (42 U.S.C. 3002))
6 about the full range of benefits for which the
7 individuals may be eligible under Federal and
8 State programs;
9 (B) utilize cost-effective strategies to find
10 older individuals with the greatest economic
11 need (as defined in such section 102) and in-
12 form the individuals of the programs;
13 (C) develop and maintain an information
14 clearinghouse on best practices and the most
15 cost-effective methods for finding older individ-
16 uals with greatest economic need and informing
17 the individuals of the programs; and
18 (D) provide, in collaboration with related
19 Federal agency partners administering the Fed-
20 eral programs, training and technical assistance
21 on the most effective outreach, screening, and
22 follow-up strategies for the Federal and State
23 programs.
24 (2) FUNDING.—For purposes of making a
25 grant or entering into a contract under paragraph

1 (1), the Secretary shall provide for the transfer,
2 from the Federal Hospital Insurance Trust Fund
3 under section 1817 of the Social Security Act (42
4 U.S.C. 1395i) and the Federal Supplementary Med-
5 ical Insurance Trust Fund under section 1841 of
6 such Act (42 U.S.C. 1395t), in the same proportion
7 as the Secretary determines under section 1853(f) of
8 such Act (42 U.S.C. 1395w–23(f)), of $5,000,000 to
9 the Administration on Aging for fiscal year 2009, to
10 remain available until expended.

11 (e) REPROGRAMMING FUNDS FROM MEDICARE,
12 MEDICAID, AND SCHIP EXTENSION ACT OF 2007.—The
13 Secretary shall only use the $5,000,000 in funds allocated
14 to make grants to States for Area Agencies on Aging and
15 Aging Disability and Resource Centers for the period of
16 fiscal years 2008 through 2009 under section 118 of the
17 Medicare, Medicaid, and SCHIP Extension Act of 2007
18 (Public Law 110–173) for the sole purpose of providing
19 outreach to individuals regarding the benefits available
20 under the Medicare prescription drug benefit under part
21 D of title XVIII of the Social Security Act. The Secretary
22 shall republish the request for proposals issued on April
23 17, 2008, in order to comply with the preceding sentence.

24 (f) MEDICARE SAVINGS PROGRAM DEFINED.—For
25 purposes of this section, the term ''Medicare Savings Pro-

1 gram'' means the program of medical assistance for pay-
2 ment of the cost of medicare cost-sharing under the Med-
3 icaid program pursuant to sections 1902(a)(10)(E) and
4 1933 of the Social Security Act (42 U.S.C.
5 1396a(a)(10)(E), 1396u–3).

6 Subtitle B—Provisions Relating to 7 Part A

8 **SEC. 121. EXPANSION AND EXTENSION OF THE MEDICARE**
9 **RURAL HOSPITAL FLEXIBILITY PROGRAM.**

10 (a) IN GENERAL.—Section 1820(g) of the Social Se-
11 curity Act (42 U.S.C. 1395i–4(g)) is amended by adding
12 at the end the following new paragraph:

13 ''(6) PROVIDING MENTAL HEALTH SERVICES
14 AND OTHER HEALTH SERVICES TO VETERANS AND
15 OTHER RESIDENTS OF RURAL AREAS.—

16 ''(A) GRANTS TO STATES.—The Secretary
17 may award grants to States that have sub-
18 mitted applications in accordance with subpara-
19 graph (B) for increasing the delivery of mental
20 health services or other health care services
21 deemed necessary to meet the needs of veterans
22 of Operation Iraqi Freedom and Operation En-
23 during Freedom living in rural areas (as de-
24 fined for purposes of section 1886(d) and in-
25 cluding areas that are rural census tracks, as

1 defined by the Administrator of the Health Re-
2 sources and Services Administration), including
3 for the provision of crisis intervention services
4 and the detection of post-traumatic stress dis-
5 order, traumatic brain injury, and other signa-
6 ture injuries of veterans of Operation Iraqi
7 Freedom and Operation Enduring Freedom,
8 and for referral of such veterans to medical fa-
9 cilities operated by the Department of Veterans
10 Affairs, and for the delivery of such services to
11 other residents of such rural areas.
12 "(B) APPLICATION.—
13 "(i) IN GENERAL.—An application is
14 in accordance with this subparagraph if
15 the State submits to the Secretary at such
16 time and in such form as the Secretary
17 may require an application containing the
18 assurances described in subparagraphs
19 (A)(ii) and (A)(iii) of subsection (b)(1).
20 "(ii) CONSIDERATION OF REGIONAL
21 APPROACHES, NETWORKS, OR TECH-
22 NOLOGY.—The Secretary may, as appro-
23 priate in awarding grants to States under
24 subparagraph (A), consider whether the
25 application submitted by a State under

1 this subparagraph includes 1 or more pro-
2 posals that utilize regional approaches,
3 networks, health information technology,
4 telehealth, or telemedicine to deliver serv-
5 ices described in subparagraph (A) to indi-
6 viduals described in that subparagraph.
7 For purposes of this clause, a network
8 may, as the Secretary determines appro-
9 priate, include Federally qualified health
10 centers (as defined in section 1861(aa)(4)),
11 rural health clinics (as defined in section
12 1861(aa)(2)), home health agencies (as de-
13 fined in section 1861(o)), community men-
14 tal health centers (as defined in section
15 1861(ff)(3)(B)) and other providers of
16 mental health services, pharmacists, local
17 government, and other providers deemed
18 necessary to meet the needs of veterans.
19 "(iii) COORDINATION AT LOCAL
20 LEVEL.—The Secretary shall require, as
21 appropriate, a State to demonstrate con-
22 sultation with the hospital association of
23 such State, rural hospitals located in such
24 State, providers of mental health services,
25 or other appropriate stakeholders for the

1 provision of services under a grant award-
2 ed under this paragraph.
3 "(iv) SPECIAL CONSIDERATION OF
4 CERTAIN APPLICATIONS.—In awarding
5 grants to States under subparagraph (A),
6 the Secretary shall give special consider-
7 ation to applications submitted by States
8 in which veterans make up a high percent-
9 age (as determined by the Secretary) of
10 the total population of the State. Such
11 consideration shall be given without regard
12 to the number of veterans of Operation
13 Iraqi Freedom and Operation Enduring
14 Freedom living in the areas in which men-
15 tal health services and other health care
16 services would be delivered under the appli-
17 cation.
18 "(C) COORDINATION WITH VA.—The Sec-
19 retary shall, as appropriate, consult with the
20 Director of the Office of Rural Health of the
21 Department of Veterans Affairs in awarding
22 and administering grants to States under sub-
23 paragraph (A).
24 "(D) USE OF FUNDS.—A State awarded a
25 grant under this paragraph may, as appro-

1 priate, use the funds to reimburse providers of
2 services described in subparagraph (A) to indi-
3 viduals described in that subparagraph.
4 "(E) LIMITATION ON USE OF GRANT
5 FUNDS FOR ADMINISTRATIVE EXPENSES.—A
6 State awarded a grant under this paragraph
7 may not expend more than 15 percent of the
8 amount of the grant for administrative ex-
9 penses.
10 "(F) INDEPENDENT EVALUATION AND
11 FINAL REPORT.—The Secretary shall provide
12 for an independent evaluation of the grants
13 awarded under subparagraph (A). Not later
14 than 1 year after the date on which the last
15 grant is awarded to a State under such sub-
16 paragraph, the Secretary shall submit a report
17 to Congress on such evaluation. Such report
18 shall include an assessment of the impact of
19 such grants on increasing the delivery of mental
20 health services and other health services to vet-
21 erans of the United States Armed Forces living
22 in rural areas (as so defined and including such
23 areas that are rural census tracks), with par-
24 ticular emphasis on the impact of such grants
25 on the delivery of such services to veterans of

1 Operation Enduring Freedom and Operation
2 Iraqi Freedom, and to other individuals living
3 in such rural areas.''.
4 (b) USE OF FUNDS FOR FEDERAL ADMINISTRATIVE
5 EXPENSES.—Section 1820(g)(5) of the Social Security
6 Act (42 U.S.C. 1395i–4(g)(5)) is amended—
7 (1) by striking ''beginning with fiscal year
8 2005'' and inserting ''for each of fiscal years 2005
9 through 2008''; and
10 (2) by inserting ''and, of the total amount ap-
11 propriated for grants under paragraphs (1), (2), and
12 (6) for a fiscal year (beginning with fiscal year
13 2009)'' after ''2005)''.
14 (c) EXTENSION OF AUTHORIZATION FOR FLEX
15 GRANTS.—Section 1820(j) of the Social Security Act (42
16 U.S.C. 1395i–4(j)) is amended—
17 (1) by striking ''and for'' and inserting ''for'';
18 and
19 (2) by inserting '', for making grants to all
20 States under paragraphs (1) and (2) of subsection
21 (g), $55,000,000 in each of fiscal years 2009 and
22 2010, and for making grants to all States under
23 paragraph (6) of subsection (g), $50,000,000 in
24 each of fiscal years 2009 and 2010, to remain avail-
25 able until expended'' before the period at the end.

1 (d) MEDICARE RURAL HOSPITAL FLEXIBILITY PRO-
2 GRAM.—Section 1820(g)(1) of the Social Security Act (42
3 U.S.C. 1395i–4(g)(1)) is amended—
4 (1) in subparagraph (B), by striking ''and'' at
5 the end;
6 (2) in subparagraph (C), by striking the period
7 at the end and inserting ''; and''; and
8 (3) by adding at the end the following new sub-
9 paragraph:
10 ''(D) providing support for critical access
11 hospitals for quality improvement, quality re-
12 porting, performance improvements, and
13 benchmarking.''.
14 (e) ASSISTANCE TO SMALL CRITICAL ACCESS HOS-
15 PITALS TRANSITIONING TO SKILLED NURSING FACILI-
16 TIES AND ASSISTED LIVING FACILITIES.—Section
17 1820(g) of the Social Security Act (42 U.S.C. 1395i–
18 4(g)), as amended by subsection (a), is amended by adding
19 at the end the following new paragraph:
20 ''(7) CRITICAL ACCESS HOSPITALS
21 TRANSITIONING TO SKILLED NURSING FACILITIES
22 AND ASSISTED LIVING FACILITIES.—
23 ''(A) GRANTS.—The Secretary may award
24 grants to eligible critical access hospitals that
25 have submitted applications in accordance with

1 subparagraph (B) for assisting such hospitals
2 in the transition to skilled nursing facilities and
3 assisted living facilities.

4 "(B) APPLICATION.—An applicable critical
5 access hospital seeking a grant under this para-
6 graph shall submit an application to the Sec-
7 retary on or before such date and in such form
8 and manner as the Secretary specifies.

9 "(C) ADDITIONAL REQUIREMENTS.—The
10 Secretary may not award a grant under this
11 paragraph to an eligible critical access hospital
12 unless—

13 "(i) local organizations or the State in
14 which the hospital is located provides
15 matching funds; and

16 "(ii) the hospital provides assurances
17 that it will surrender critical access hos-
18 pital status under this title within 180
19 days of receiving the grant.

20 "(D) AMOUNT OF GRANT.—A grant to an
21 eligible critical access hospital under this para-
22 graph may not exceed $1,000,000.

23 "(E) FUNDING.—There are appropriated
24 from the Federal Hospital Insurance Trust
25 Fund under section 1817 for making grants

1 under this paragraph, $5,000,000 for fiscal
2 year 2008.
3 "(F) ELIGIBLE CRITICAL ACCESS HOS-
4 PITAL DEFINED.—For purposes of this para-
5 graph, the term 'eligible critical access hospital'
6 means a critical access hospital that has an av-
7 erage daily acute census of less than 0.5 and an
8 average daily swing bed census of greater than
9 10.0.".

10 **SEC. 122. REBASING FOR SOLE COMMUNITY HOSPITALS.**

11 (a) REBASING PERMITTED.—Section 1886(b)(3) of
12 the Social Security Act (42 U.S.C. 1395ww(b)(3)) is
13 amended by adding at the end the following new subpara-
14 graph:
15 "(L)(i) For cost reporting periods beginning on or
16 after January 1, 2009, in the case of a sole community
17 hospital there shall be substituted for the amount other-
18 wise determined under subsection (d)(5)(D)(i) of this sec-
19 tion, if such substitution results in a greater amount of
20 payment under this section for the hospital, the subpara-
21 graph (L) rebased target amount.
22 "(ii) For purposes of this subparagraph, the term
23 'subparagraph (L) rebased target amount' has the mean-
24 ing given the term 'target amount' in subparagraph (C),
25 except that—

1 "(I) there shall be substituted for the base cost
2 reporting period the 12-month cost reporting period
3 beginning during fiscal year 2006;
4 "(II) any reference in subparagraph (C)(i) to
5 the 'first cost reporting period' described in such
6 subparagraph is deemed a reference to the first cost
7 reporting period beginning on or after January 1,
8 2009; and
9 "(III) the applicable percentage increase shall
10 only be applied under subparagraph (C)(iv) for dis-
11 charges occurring on or after January 1, 2009.".
12 (b) CONFORMING AMENDMENTS.—Section
13 1886(b)(3) of the Social Security Act (42 U.S.C.
14 1395ww(b)(3)) is amended—
15 (1) in subparagraph (C), in the matter pre-
16 ceding clause (i), by striking "subparagraph (I)"
17 and inserting "subparagraphs (I) and (L)"; and
18 (2) in subparagraph (I)(i), in the matter pre-
19 ceding subclause (I), by striking "For" and inserting
20 "Subject to subparagraph (L), for".
21 **SEC. 123. DEMONSTRATION PROJECT ON COMMUNITY**
22 **HEALTH INTEGRATION MODELS IN CERTAIN**
23 **RURAL COUNTIES.**
24 (a) IN GENERAL.—The Secretary shall establish a
25 demonstration project to allow eligible entities to develop

1 and test new models for the delivery of health care services
2 in eligible counties for the purpose of improving access to,
3 and better integrating the delivery of, acute care, extended
4 care, and other essential health care services to Medicare
5 beneficiaries.
6 (b) PURPOSE.—The purpose of the demonstration
7 project under this section is to—
8 (1) explore ways to increase access to, and im-
9 prove the adequacy of, payments for acute care, ex-
10 tended care, and other essential health care services
11 provided under the Medicare and Medicaid programs
12 in eligible counties; and
13 (2) evaluate regulatory challenges facing such
14 providers and the communities they serve.
15 (c) REQUIREMENTS.—The following requirements
16 shall apply under the demonstration project:
17 (1) Health care providers in eligible counties se-
18 lected to participate in the demonstration project
19 under subsection (d)(3) shall (when determined ap-
20 propriate by the Secretary), instead of the payment
21 rates otherwise applicable under the Medicare pro-
22 gram, be reimbursed at a rate that covers at least
23 the reasonable costs of the provider in furnishing
24 acute care, extended care, and other essential health
25 care services to Medicare beneficiaries.

1 (2) Methods to coordinate the survey and cer-
2 tification process under the Medicare program and
3 the Medicaid program across all health service cat-
4 egories included in the demonstration project shall
5 be tested with the goal of assuring quality and safe-
6 ty while reducing administrative burdens, as appro-
7 priate, related to completing such survey and certifi-
8 cation process.

9 (3) Health care providers in eligible counties se-
10 lected to participate in the demonstration project
11 under subsection (d)(3) and the Secretary shall work
12 with the State to explore ways to revise reimburse-
13 ment policies under the Medicaid program to im-
14 prove access to the range of health care services
15 available in such eligible counties.

16 (4) The Secretary shall identify regulatory re-
17 quirements that may be revised appropriately to im-
18 prove access to care in eligible counties.

19 (5) Other essential health care services nec-
20 essary to ensure access to the range of health care
21 services in eligible counties selected to participate in
22 the demonstration project under subsection (d)(3)
23 shall be identified. Ways to ensure adequate funding
24 for such services shall also be explored.

25 (d) APPLICATION PROCESS.—

1 (1) ELIGIBILITY.—
2 (A) IN GENERAL.—Eligibility to partici-
3 pate in the demonstration project under this
4 section shall be limited to eligible entities.
5 (B) ELIGIBLE ENTITY DEFINED.—In this
6 section, the term ''eligible entity'' means an en-
7 tity that—
8 (i) is a Rural Hospital Flexibility Pro-
9 gram grantee under section 1820(g) of the
10 Social Security Act (42 U.S.C. 1395i–
11 4(g)); and
12 (ii) is located in a State in which at
13 least 65 percent of the counties in the
14 State are counties that have 6 or less resi-
15 dents per square mile.
16 (2) APPLICATION.—
17 (A) IN GENERAL.—An eligible entity seek-
18 ing to participate in the demonstration project
19 under this section shall submit an application to
20 the Secretary at such time, in such manner,
21 and containing such information as the Sec-
22 retary may require.
23 (B) LIMITATION.—The Secretary shall se-
24 lect eligible entities located in not more than 4

1 States to participate in the demonstration
2 project under this section.
3 (3) SELECTION OF ELIGIBLE COUNTIES.—An
4 eligible entity selected by the Secretary to partici-
5 pate in the demonstration project under this section
6 shall select not more than 6 eligible counties in the
7 State in which the entity is located in which to con-
8 duct the demonstration project.
9 (4) ELIGIBLE COUNTY DEFINED.—In this sec-
10 tion, the term ''eligible county'' means a county that
11 meets the following requirements:
12 (A) The county has 6 or less residents per
13 square mile.
14 (B) As of the date of the enactment of this
15 Act, a facility designated as a critical access
16 hospital which meets the following requirements
17 was located in the county:
18 (i) As of the date of the enactment of
19 this Act, the critical access hospital fur-
20 nished 1 or more of the following:
21 (I) Home health services.
22 (II) Hospice care.
23 (III) Rural health clinic services.

1 (ii) As of the date of the enactment of
2 this Act, the critical access hospital has an
3 average daily inpatient census of 5 or less.
4 (C) As of the date of the enactment of this
5 Act, skilled nursing facility services were avail-
6 able in the county in—
7 (i) a critical access hospital using
8 swing beds; or
9 (ii) a local nursing home.
10 (e) ADMINISTRATION.—
11 (1) IN GENERAL.—The demonstration project
12 under this section shall be administered jointly by
13 the Administrator of the Office of Rural Health Pol-
14 icy of the Health Resources and Services Adminis-
15 tration and the Administrator of the Centers for
16 Medicare & Medicaid Services, in accordance with
17 paragraphs (2) and (3).
18 (2) HRSA DUTIES.—In administering the dem-
19 onstration project under this section, the Adminis-
20 trator of the Office of Rural Health Policy of the
21 Health Resources and Services Administration
22 shall—
23 (A) award grants to the eligible entities se-
24 lected to participate in the demonstration
25 project; and

1 (B) work with such entities to provide
2 technical assistance related to the requirements
3 under the project.
4 (3) CMS DUTIES.—In administering the dem-
5 onstration project under this section, the Adminis-
6 trator of the Centers for Medicare & Medicaid Serv-
7 ices shall determine which provisions of titles XVIII
8 and XIX of the Social Security Act (42 U.S.C. 1395
9 et seq.; 1396 et seq.) the Secretary should waive
10 under the waiver authority under subsection (i) that
11 are relevant to the development of alternative reim-
12 bursement methodologies, which may include, as ap-
13 propriate, covering at least the reasonable costs of
14 the provider in furnishing acute care, extended care,
15 and other essential health care services to Medicare
16 beneficiaries and coordinating the survey and certifi-
17 cation process under the Medicare and Medicaid pro-
18 grams, as appropriate, across all service categories
19 included in the demonstration project.
20 (f) DURATION.—
21 (1) IN GENERAL.—The demonstration project
22 under this section shall be conducted for a 3-year
23 period beginning on October 1, 2009.
24 (2) BEGINNING DATE OF DEMONSTRATION
25 PROJECT.—The demonstration project under this

1 section shall be considered to have begun in a State
2 on the date on which the eligible counties selected to
3 participate in the demonstration project under sub-
4 section (d)(3) begin operations in accordance with
5 the requirements under the demonstration project.
6 (g) FUNDING.—
7 (1) CMS.—
8 (A) IN GENERAL.—The Secretary shall
9 provide for the transfer, in appropriate part
10 from the Federal Hospital Insurance Trust
11 Fund established under section 1817 of the So-
12 cial Security Act (42 U.S.C. 1395i) and the
13 Federal Supplementary Medical Insurance
14 Trust Fund established under section 1841 of
15 such Act (42 U.S.C. 1395t), of such sums as
16 are necessary for the costs to the Centers for
17 Medicare & Medicaid Services of carrying out
18 its duties under the demonstration project
19 under this section.
20 (B) BUDGET NEUTRALITY.—In conducting
21 the demonstration project under this section,
22 the Secretary shall ensure that the aggregate
23 payments made by the Secretary do not exceed
24 the amount which the Secretary estimates

1 would have been paid if the demonstration
2 project under this section was not implemented.
3 (2) HRSA.—There are authorized to be appro-
4 priated to the Office of Rural Health Policy of the
5 Health Resources and Services Administration
6 $800,000 for each of fiscal years 2010, 2011, and
7 2012 for the purpose of carrying out the duties of
8 such Office under the demonstration project under
9 this section, to remain available for the duration of
10 the demonstration project.
11 (h) REPORT.—
12 (1) INTERIM REPORT.—Not later than the date
13 that is 2 years after the date on which the dem-
14 onstration project under this section is implemented,
15 the Administrator of the Office of Rural Health Pol-
16 icy of the Health Resources and Services Adminis-
17 tration, in coordination with the Administrator of
18 the Centers for Medicare & Medicaid Services, shall
19 submit a report to Congress on the status of the
20 demonstration project that includes initial rec-
21 ommendations on ways to improve access to, and the
22 availability of, health care services in eligible coun-
23 ties based on the findings of the demonstration
24 project.

1 (2) FINAL REPORT.—Not later than 1 year
2 after the completion of the demonstration project,
3 the Administrator of the Office of Rural Health Pol-
4 icy of the Health Resources and Services Adminis-
5 tration, in coordination with the Administrator of
6 the Centers for Medicare & Medicaid Services, shall
7 submit a report to Congress on such project, to-
8 gether with recommendations for such legislation
9 and administrative action as the Secretary deter-
10 mines appropriate.

11 (i) WAIVER AUTHORITY.—The Secretary may waive
12 such requirements of titles XVIII and XIX of the Social
13 Security Act (42 U.S.C. 1395 et seq.; 1396 et seq.) as
14 may be necessary and appropriate for the purpose of car-
15 rying out the demonstration project under this section.

16 (j) DEFINITIONS.—In this section:

17 (1) EXTENDED CARE SERVICES.—The term
18 ‘‘extended care services’’ means the following:

19 (A) Home health services.

20 (B) Covered skilled nursing facility serv-
21 ices.

22 (C) Hospice care.

23 (2) COVERED SKILLED NURSING FACILITY
24 SERVICES.—The term ‘‘covered skilled nursing facil-
25 ity services’’ has the meaning given such term in

1 section 1888(e)(2)(A) of the Social Security Act (42
2 U.S.C. 1395yy(e)(2)(A)).
3 (3) CRITICAL ACCESS HOSPITAL.—The term
4 ‘‘critical access hospital’’ means a facility designated
5 as a critical access hospital under section 1820(c) of
6 such Act (42 U.S.C. 1395i–4(c)).
7 (4) HOME HEALTH SERVICES.—The term
8 ‘‘home health services’’ has the meaning given such
9 term in section 1861(m) of such Act (42 U.S.C.
10 1395x(m)).
11 (5) HOSPICE CARE.—The term ‘‘hospice care’’
12 has the meaning given such term in section
13 1861(dd) of such Act (42 U.S.C. 1395x(dd)).
14 (6) MEDICAID PROGRAM.—The term ‘‘Medicaid
15 program’’ means the program under title XIX of
16 such Act (42 U.S.C. 1396 et seq.).
17 (7) MEDICARE PROGRAM.—The term ‘‘Medicare
18 program’’ means the program under title XVIII of
19 such Act (42 U.S.C. 1395 et seq.).
20 (8) OTHER ESSENTIAL HEALTH CARE SERV-
21 ICES.—The term ‘‘other essential health care serv-
22 ices’’ means the following:
23 (A) Ambulance services (as described in
24 section 1861(s)(7) of the Social Security Act
25 (42 U.S.C. 1395x(s)(7))).

1 (B) Rural health clinic services.
2 (C) Public health services (as defined by
3 the Secretary).
4 (D) Other health care services determined
5 appropriate by the Secretary.
6 (9) RURAL HEALTH CLINIC SERVICES.—The
7 term "rural health clinic services" has the meaning
8 given such term in section 1861(aa)(1) of such Act
9 (42 U.S.C. 1395x(aa)(1)).
10 (10) SECRETARY.—The term "Secretary"
11 means the Secretary of Health and Human Services.
12 **SEC. 124. EXTENSION OF THE RECLASSIFICATION OF CER-**
13 **TAIN HOSPITALS.**
14 (a) IN GENERAL.—Subsection (a) of section 106 of
15 division B of the Tax Relief and Health Care Act of 2006
16 (42 U.S.C. 1395 note), as amended by section 117 of the
17 Medicare, Medicaid, and SCHIP Extension Act of 2007
18 (Public Law 110–173), is amended by striking "Sep-
19 tember 30, 2008" and inserting "September 30, 2009".
20 (b) SPECIAL EXCEPTION RECLASSIFICATIONS.—Sec-
21 tion 117(a)(2) of the Medicare, Medicaid, and SCHIP Ex-
22 tension Act of 2007 (Public Law 110–173)) is amended
23 by striking "September 30, 2008" and inserting "the last
24 date of the extension of reclassifications under section

1 106(a) of the Medicare Improvement and Extension Act
2 of 2006 (division B of Public Law 109–432)''.
3 (c) DISREGARDING SECTION 508 HOSPITAL RECLAS-
4 SIFICATIONS FOR PURPOSES OF GROUP RECLASSIFICA-
5 TIONS.—Section 508(g) of the Medicare Prescription
6 Drug, Improvement, and Modernization Act of 2003 (Pub-
7 lic Law 108–173, 42 U.S.C. 1395ww note), as added by
8 section 117(b) of the Medicare, Medicaid, and SCHIP Ex-
9 tension Act of 2008 (Public Law 110–173)), is amended
10 by striking ''during fiscal year 2008'' and inserting ''be-
11 ginning on October 1, 2007, and ending on the last date
12 of the extension of reclassifications under section 106(a)
13 of the Medicare Improvement and Extension Act of 2006
14 (division B of Public Law 109–432)''.

15 **SEC. 125. REVOCATION OF UNIQUE DEEMING AUTHORITY**
16 **OF THE JOINT COMMISSION.**

17 (a) REVOCATION.—Section 1865 of the Social Secu-
18 rity Act (42 U.S.C. 1395bb) is amended—
19 (1) by striking subsection (a); and
20 (2) by redesignating subsections (b), (c), (d),
21 and (e) as subsections (a), (b), (c), and (d), respec-
22 tively.
23 (b) CONFORMING AMENDMENTS.—(1) Section 1865
24 of the Social Security Act (42 U.S.C. 1395bb) is amend-
25 ed—

1 (A) in subsection (a)(1), as redesignated by
2 subsection (a)(2), by striking ''In addition, if'' and
3 inserting ''If'';
4 (B) in subsection (b), as so redesignated—
5 (i) by striking ''released to him by the
6 Joint Commission on Accreditation of Hos-
7 pitals,'' and inserting ''released to the Secretary
8 by''; and
9 (ii) by striking the comma after ''Associa-
10 tion'';
11 (C) in subsection (c), as so redesignated, by
12 striking ''pursuant to subsection (a) or (b)(1)'' and
13 inserting ''pursuant to subsection (a)(1)''; and
14 (D) in subsection (d), as so redesignated, by
15 striking ''pursuant to subsection (a) or (b)(1)'' and
16 inserting ''pursuant to subsection (a)(1)''.
17 (2) Section 1861(e) of the Social Security Act (42
18 U.S.C. 1395x(e)) is amended in the fourth sentence by
19 striking ''and (ii) is accredited by the Joint Commission
20 on Accreditation of Hospitals, or is accredited by or ap-
21 proved by a program of the country in which such institu-
22 tion is located if the Secretary finds the accreditation or
23 comparable approval standards of such program to be es-
24 sentially equivalent to those of the Joint Commission on
25 Accreditation of Hospitals'' and inserting ''and (ii) is ac-

1 credited by a national accreditation body recognized by the
2 Secretary under section 1865(a), or is accredited by or
3 approved by a program of the country in which such insti-
4 tution is located if the Secretary finds the accreditation
5 or comparable approval standards of such program to be
6 essentially equivalent to those of such a national accredita-
7 tion body.''.

8 (3) Section 1864(c) of the Social Security Act (42
9 U.S.C. 1395aa(c)) is amended by striking ''pursuant to
10 subsection (a) or (b)(1) of section 1865'' and inserting
11 ''pursuant to section 1865(a)(1)''.

12 (4) Section 1875(b) of the Social Security Act (42
13 U.S.C. 1395ll(b)) is amended by striking ''the Joint Com-
14 mission on Accreditation of Hospitals,'' and inserting ''na-
15 tional accreditation bodies under section 1865(a)''.

16 (5) Section 1834(a)(20)(B) of the Social Security Act
17 (42 U.S.C. 1395m(a)(20)(B)) is amended by striking
18 ''section 1865(b)'' and inserting ''section 1865(a)''.

19 (6) Section 1852(e)(4)(C) of the Social Security Act
20 (42 U.S.C. 1395w–22(e)(4)(C)) is amended by striking
21 ''section 1865(b)(2)'' and inserting ''section 1865(a)(2)''.

22 (c) AUTHORITY TO RECOGNIZE THE JOINT COMMIS-
23 SION AS A NATIONAL ACCREDITATION BODY.—The Sec-
24 retary of Health and Human Services may recognize the
25 Joint Commission as a national accreditation body under

1 section 1865 of the Social Security Act (42 U.S.C.
2 1395bb), as amended by this section, upon such terms and
3 conditions, and upon submission of such information, as
4 the Secretary may require.

5 (d) EFFECTIVE DATE; TRANSITION RULE.—(1) Sub-
6 ject to paragraph (2), the amendments made by this sec-
7 tion shall apply with respect to accreditations of hospitals
8 granted on or after the date that is 24 months after the
9 date of the enactment of this Act.

10 (2) For purposes of title XVIII of the Social Security
11 Act (42 U.S.C. 1395 et seq.), the amendments made by
12 this section shall not effect the accreditation of a hospital
13 by the Joint Commission, or under accreditation or com-
14 parable approval standards found to be essentially equiva-
15 lent to accreditation or approval standards of the Joint
16 Commission, for the period of time applicable under such
17 accreditation.

18 Subtitle C—Provisions Relating to 19 Part B

20 PART I—PHYSICIANS' SERVICES

21 SEC. 131. PHYSICIAN PAYMENT, EFFICIENCY, AND QUALITY 22 IMPROVEMENTS.

23 (a) IN GENERAL.—

24 (1) INCREASE IN UPDATE FOR THE SECOND
25 HALF OF 2008 AND FOR 2009.—

1 (A) FOR THE SECOND HALF OF 2008.—
2 Section 1848(d)(8) of the Social Security Act
3 (42 U.S.C. 1395w–4(d)(8)), as added by section
4 101 of the Medicare, Medicaid, and SCHIP Ex-
5 tension Act of 2007 (Public Law 110–173), is
6 amended—
7 (i) in the heading, by striking ''A POR-
8 TION OF'';
9 (ii) in subparagraph (A), by striking
10 ''for the period beginning on January 1,
11 2008, and ending on June 30, 2008,''; and
12 (iii) in subparagraph (B)—
13 (I) in the heading, by striking
14 ''THE REMAINING PORTION OF 2008
15 AND''; and
16 (II) by striking ''for the period
17 beginning on July 1, 2008, and end-
18 ing on December 31, 2008, and''.
19 (B) FOR 2009.—Section 1848(d) of the So-
20 cial Security Act (42 U.S.C. 1395w–4(d)), as
21 amended by section 101 of the Medicare, Med-
22 icaid, and SCHIP Extension Act of 2007 (Pub-
23 lic Law 110–173), is amended by adding at the
24 end the following new paragraph:
25 ''(9) UPDATE FOR 2009.—

1 "(A) IN GENERAL.—Subject to paragraphs
2 (7)(B) and (8)(B), in lieu of the update to the
3 single conversion factor established in para-
4 graph (1)(C) that would otherwise apply for
5 2009, the update to the single conversion factor
6 shall be 1.1 percent.
7 "(B) NO EFFECT ON COMPUTATION OF
8 CONVERSION FACTOR FOR 2010 AND SUBSE-
9 QUENT YEARS.—The conversion factor under
10 this subsection shall be computed under para-
11 graph (1)(A) for 2010 and subsequent years as
12 if subparagraph (A) had never applied.".
13 (3) REVISION OF THE PHYSICIAN ASSISTANCE
14 AND QUALITY INITIATIVE FUND.—
15 (A) IN GENERAL.—Subject to subpara-
16 graph (B), section 1848(l)(2) of the Social Se-
17 curity Act (42 U.S.C. 1395w–4(l)(2)), as
18 amended by section 101(a)(2) of the Medicare,
19 Medicaid, and SCHIP Extension Act of 2007
20 (Public Law 110–173), is amended—
21 (i) in subparagraph (A)—
22 (I) by striking clause (i)(III); and
23 (II) by striking clause (ii)(III);
24 and
25 (ii) in subparagraph (B)—

1 (I) in clause (i), by adding ''and''
2 at the end;
3 (II) in clause (ii), by striking '';
4 and'' and inserting a period; and
5 (III) by striking clause (iii).
6 (B) CONTINGENCY.—If there is enacted,
7 before, on, or after the date of the enactment
8 of this Act, a Supplemental Appropriations Act,
9 2008 that includes a provision amending section
10 1848(l) of the Social Security Act, the alter-
11 native amendment described in subparagraph
12 (C)—
13 (i) shall apply instead of the amend-
14 ments made by subparagraph (A); and
15 (ii) shall be executed after such provi-
16 sion in such Supplemental Appropriations
17 Act.
18 (C) ALTERNATIVE AMENDMENT DE-
19 SCRIBED.—The alternative amendment de-
20 scribed in this subparagraph is as follows: Sec-
21 tion 1848(l)(2) of the Social Security Act (42
22 U.S.C. 1395w–4(l)(2)), as amended by section
23 101(a)(2) of the Medicare, Medicaid, and
24 SCHIP Extension Act of 2007 (Public Law

1 110–173) and by the Supplemental Appropria-
2 tions Act, 2008, is amended—
3 (i) in subparagraph (A)—
4 (I) by striking subclauses (III)
5 and (IV) of clause (i); and
6 (II) by striking subclauses (III)
7 and (IV) of clause (ii); and
8 (ii) in subparagraph (B)—
9 (I) in clause (i), by adding ''and''
10 at the end;
11 (II) in clause (ii), by striking the
12 semicolon at the end and inserting a
13 period; and
14 (III) by striking clauses (iii) and
15 (iv).
16 (b) EXTENSION AND IMPROVEMENT OF THE QUAL-
17 ITY REPORTING SYSTEM.—
18 (1) SYSTEM.—Section 1848(k)(2) of the Social
19 Security Act (42 U.S.C. 1395w–4(k)(2)), as amend-
20 ed by section 101(b)(1) of the Medicare, Medicaid,
21 and SCHIP Extension Act of 2007 (Public Law
22 110–173), is amended by adding at the end the fol-
23 lowing new subparagraphs:
24 ''(C) FOR 2010 AND SUBSEQUENT
25 YEARS.—

1 "(i) IN GENERAL.—Subject to clause
2 (ii), for purposes of reporting data on qual-
3 ity measures for covered professional serv-
4 ices furnished during 2010 and each subse-
5 quent year, subject to subsection
6 (m)(3)(C), the quality measures (including
7 electronic prescribing quality measures)
8 specified under this paragraph shall be
9 such measures selected by the Secretary
10 from measures that have been endorsed by
11 the entity with a contract with the Sec-
12 retary under section 1890(a).
13 "(ii) EXCEPTION.—In the case of a
14 specified area or medical topic determined
15 appropriate by the Secretary for which a
16 feasible and practical measure has not
17 been endorsed by the entity with a contract
18 under section 1890(a), the Secretary may
19 specify a measure that is not so endorsed
20 as long as due consideration is given to
21 measures that have been endorsed or
22 adopted by a consensus organization iden-
23 tified by the Secretary, such as the AQA
24 alliance.

1 "(D) OPPORTUNITY TO PROVIDE INPUT ON
2 MEASURES FOR 2009 AND SUBSEQUENT
3 YEARS.—For each quality measure (including
4 an electronic prescribing quality measure)
5 adopted by the Secretary under subparagraph
6 (B) (with respect to 2009) or subparagraph
7 (C), the Secretary shall ensure that eligible pro-
8 fessionals have the opportunity to provide input
9 during the development, endorsement, or selec-
10 tion of measures applicable to services they fur-
11 nish.".
12 (2) REDESIGNATION OF REPORTING SYSTEM.—
13 Subsection (c) of section 101 of division B of the
14 Tax Relief and Health Care Act of 2006 (42 U.S.C.
15 1395w–4 note), as amended by section 101(b)(2) of
16 the Medicare, Medicaid, and SCHIP Extension Act
17 of 2007 (Public Law 110–173), is redesignated as
18 subsection (m) of section 1848 of the Social Security
19 Act.
20 (3) INCENTIVE PAYMENTS UNDER REPORTING
21 SYSTEM.—Section 1848(m) of the Social Security
22 Act, as redesignated by paragraph (2), is amended—
23 (A) by amending the heading to read as
24 follows: "INCENTIVE PAYMENTS FOR QUALITY
25 REPORTING";

1 (B) by striking paragraph (1) and insert-
2 ing the following:
3 "(1) INCENTIVE PAYMENTS.—
4 "(A) IN GENERAL.—For 2007 through
5 2010, with respect to covered professional serv-
6 ices furnished during a reporting period by an
7 eligible professional, if—
8 "(i) there are any quality measures
9 that have been established under the physi-
10 cian reporting system that are applicable
11 to any such services furnished by such pro-
12 fessional for such reporting period; and
13 "(ii) the eligible professional satisfac-
14 torily submits (as determined under this
15 subsection) to the Secretary data on such
16 quality measures in accordance with such
17 reporting system for such reporting period,
18 in addition to the amount otherwise paid under
19 this part, there also shall be paid to the eligible
20 professional (or to an employer or facility in the
21 cases described in clause (A) of section
22 1842(b)(6)) or, in the case of a group practice
23 under paragraph (3)(C), to the group practice,
24 from the Federal Supplementary Medical Insur-
25 ance Trust Fund established under section

1 1841 an amount equal to the applicable quality
2 percent of the Secretary's estimate (based on
3 claims submitted not later than 2 months after
4 the end of the reporting period) of the allowed
5 charges under this part for all such covered
6 professional services furnished by the eligible
7 professional (or, in the case of a group practice
8 under paragraph (3)(C), by the group practice)
9 during the reporting period.
10 "(B) APPLICABLE QUALITY PERCENT.—
11 For purposes of subparagraph (A), the term
12 'applicable quality percent' means—
13 "(i) for 2007 and 2008, 1.5 percent;
14 and
15 "(ii) for 2009 and 2010, 2.0 per-
16 cent.";
17 (C) by striking paragraph (3) and redesig-
18 nating paragraph (2) as paragraph (3);
19 (D) in paragraph (3), as so redesignated—
20 (i) in the matter preceding subpara-
21 graph (A), by striking "For purposes" and
22 inserting the following:
23 "(A) IN GENERAL.—For purposes";
24 (ii) by redesignating subparagraphs
25 (A) and (B) as clauses (i) and (ii), respec-

1 tively, and moving the indentation of such
2 clauses 2 ems to the right;
3 (iii) in subparagraph (A), as added by
4 clause (i), by adding at the end the fol-
5 lowing flush sentence:
6 "For years after 2008, quality measures for
7 purposes of this subparagraph shall not include
8 electronic prescribing quality measures."; and
9 (iv) by adding at the end the following
10 new subparagraphs:
11 "(C) SATISFACTORY REPORTING MEAS-
12 URES FOR GROUP PRACTICES.—
13 "(i) IN GENERAL.—By January 1,
14 2010, the Secretary shall establish and
15 have in place a process under which eligi-
16 ble professionals in a group practice (as
17 defined by the Secretary) shall be treated
18 as satisfactorily submitting data on quality
19 measures under subparagraph (A) and as
20 meeting the requirement described in sub-
21 paragraph (B)(ii) for covered professional
22 services for a reporting period (or, for pur-
23 poses of subsection (a)(5), for a reporting
24 period for a year) if, in lieu of reporting
25 measures under subsection (k)(2)(C), the

1 group practice reports measures deter-
2 mined appropriate by the Secretary, such
3 as measures that target high-cost chronic
4 conditions and preventive care, in a form
5 and manner, and at a time, specified by
6 the Secretary.

7 "(ii) STATISTICAL SAMPLING
8 MODEL.—The process under clause (i)
9 shall provide for the use of a statistical
10 sampling model to submit data on meas-
11 ures, such as the model used under the
12 Physician Group Practice demonstration
13 project under section 1866A.

14 "(iii) NO DOUBLE PAYMENTS.—Pay-
15 ments to a group practice under this sub-
16 section by reason of the process under
17 clause (i) shall be in lieu of the payments
18 that would otherwise be made under this
19 subsection to eligible professionals in the
20 group practice for satisfactorily submitting
21 data on quality measures.

22 "(D) AUTHORITY TO REVISE SATISFAC-
23 TORILY REPORTING DATA.—For years after
24 2009, the Secretary, in consultation with stake-
25 holders and experts, may revise the criteria

1 under this subsection for satisfactorily submit-
2 ting data on quality measures under subpara-
3 graph (A) and the criteria for submitting data
4 on electronic prescribing quality measures
5 under subparagraph (B)(ii).'';
6 (E) in paragraph (5)—
7 (i) in subparagraph (C), by inserting
8 ''for 2007, 2008, and 2009,'' after ''provi-
9 sion of law,'';
10 (ii) in subparagraph (D)—
11 (I) in clause (i)—
12 (aa) by inserting ''for 2007
13 and 2008'' after ''under this sub-
14 section''; and
15 (bb) by striking ''paragraph
16 (2)'' and inserting ''this sub-
17 section'';
18 (II) in clause (ii), by striking
19 ''shall'' and inserting ''may establish
20 procedures to''; and
21 (III) in clause (iii)—
22 (aa) by inserting ''(or, in the
23 case of a group practice under
24 paragraph (3)(C), the group

1 practice)'' after ''an eligible pro-
2 fessional'';
3 (bb) by striking ''bonus in-
4 centive payment'' and inserting
5 ''incentive payment under this
6 subsection''; and
7 (cc) by adding at the end
8 the following new sentence: ''If
9 such payments for such period
10 have already been made, the Sec-
11 retary shall recoup such pay-
12 ments from the eligible profes-
13 sional (or the group practice).'';
14 (iii) in subparagraph (E)—
15 (I) by striking ''(I) IN GEN-
16 ERAL.—'';
17 (II) by striking clause (ii);
18 (III) by redesignating subclauses
19 (I) through (IV) as clauses (i)
20 through (iv), respectively, and moving
21 the indentation of such clauses 2 ems
22 to the left;
23 (IV) in clause (ii), as so redesig-
24 nated, by striking ''paragraph (2)''
25 and inserting ''this subsection''; and

1 (V) in clause (iv), as so redesig-
2 nated—
3 (aa) by striking "the bonus"
4 and inserting "any"; and
5 (bb) by inserting "and the
6 payment adjustment under sub-
7 section (a)(5)(A)" before the pe-
8 riod at the end;
9 (iv) in subparagraph (F)—
10 (I) by striking "2009, paragraph
11 (3) shall not apply, and" and insert-
12 ing "subsequent years,"; and
13 (II) by striking "paragraph (2)"
14 and inserting "this subsection"; and
15 (v) by adding at the end the following
16 new subparagraph:
17 "(G) POSTING ON WEBSITE.—The Sec-
18 retary shall post on the Internet website of the
19 Centers for Medicare & Medicaid Services, in an
20 easily understandable format, a list of the
21 names of the following:
22 "(i) The eligible professionals (or, in
23 the case of reporting under paragraph
24 (3)(C), the group practices) who satisfac-

1 torily submitted data on quality measures
2 under this subsection.
3 "(ii) The eligible professionals (or, in
4 the case of reporting under paragraph
5 (3)(C), the group practices) who are suc-
6 cessful electronic prescribers."; and
7 (F) in paragraph (6), by striking subpara-
8 graph (C) and inserting the following:
9 "(C) REPORTING PERIOD.—
10 "(i) IN GENERAL.—Subject to clauses
11 (ii) and (iii), the term 'reporting period'
12 means—
13 "(I) for 2007, the period begin-
14 ning on July 1, 2007, and ending on
15 December 31, 2007; and
16 "(II) for 2008, 2009, 2010, and
17 2011, the entire year.
18 "(ii) AUTHORITY TO REVISE REPORT-
19 ING PERIOD.—For years after 2009, the
20 Secretary may revise the reporting period
21 under clause (i) if the Secretary deter-
22 mines such revision is appropriate, pro-
23 duces valid results on measures reported,
24 and is consistent with the goals of maxi-
25 mizing scientific validity and reducing ad-

1 ministrative burden. If the Secretary re-
2 vises such period pursuant to the preceding
3 sentence, the term 'reporting period' shall
4 mean such revised period.

5 "(iii) REFERENCE.—Any reference in
6 this subsection to a reporting period with
7 respect to the application of subsection
8 (a)(5) shall be deemed a reference to the
9 reporting period under subparagraph
10 (D)(iii) of such subsection.".

11 (4) INCLUSION OF QUALIFIED AUDIOLOGISTS
12 AS ELIGIBLE PROFESSIONALS.—

13 (A) IN GENERAL.—Section 1848(k)(3)(B)
14 of the Social Security Act (42 U.S.C. 1395w–
15 4(k)(3)(B)), is amended by adding at the end
16 the following new clause:

17 "(iv) Beginning with 2009, a qualified
18 audiologist (as defined in section
19 1861(ll)(3)(B)).".

20 (B) NO CHANGE IN BILLING.—Nothing in
21 the amendment made by subparagraph (A)
22 shall be construed to change the way in which
23 billing for audiology services (as defined in sec-
24 tion 1861(ll)(2) of the Social Security Act (42

1 U.S.C. 1395x(ll)(2))) occurs under title XVIII
2 of such Act as of July 1, 2008.
3 (5) CONFORMING AMENDMENTS.—Section
4 1848(m) of the Social Security Act, as added and
5 amended by paragraphs (2) and (3), is amended—
6 (A) in paragraph (5)—
7 (i) in subparagraph (A)—
8 (I) by striking "section 1848(k)
9 of the Social Security Act, as added
10 by subsection (b)," and inserting
11 "subsection (k)"; and
12 (II) by striking "such section"
13 and inserting "such subsection";
14 (ii) in subparagraph (B), by striking
15 "of the Social Security Act (42 U.S.C.
16 1395l)";
17 (iii) in subparagraph (E), in the mat-
18 ter preceding clause (i), by striking "1869
19 or 1878 of the Social Security Act or oth-
20 erwise" and inserting "1869, section 1878,
21 or otherwise"; and
22 (iv) in subparagraph (F)—
23 (I) by striking "paragraph (2)(B)
24 of section 1848(k) of the Social Secu-

1 rity Act (42 U.S.C. 1395w–4(k))'' and
2 inserting ''subsection (k)(2)(B)''; and
3 (II) by striking ''paragraph (4)
4 of such section'' and inserting ''sub-
5 section (k)(4)'';
6 (B) in paragraph (6)—
7 (i) in subparagraph (A), by striking
8 ''section 1848(k)(3) of the Social Security
9 Act, as added by subsection (b)'' and in-
10 serting ''subsection (k)(3)''; and
11 (ii) in subparagraph (B), by striking
12 ''section 1848(k) of the Social Security
13 Act, as added by subsection (b)'' and in-
14 serting ''subsection (k)''; and
15 (C) by striking paragraph (6)(D).
16 (6) NO AFFECT ON INCENTIVE PAYMENTS FOR
17 2007 OR 2008.—Nothing in the amendments made by
18 this subsection or section 132 shall affect the oper-
19 ation of the provisions of section 1848(m) of the So-
20 cial Security Act, as redesignated and amended by
21 such subsection and section, with respect to 2007 or
22 2008.
23 (c) PHYSICIAN FEEDBACK PROGRAM TO IMPROVE
24 EFFICIENCY AND CONTROL COSTS.—

1 (1) IN GENERAL.—Section 1848 of the Social
2 Security Act (42 U.S.C. 1395w–4), as amended by
3 subsection (b), is amended by adding at the end the
4 following new subsection:
5 ''(n) PHYSICIAN FEEDBACK PROGRAM.—
6 ''(1) ESTABLISHMENT.—
7 ''(A) IN GENERAL.—The Secretary shall
8 establish a Physician Feedback Program (in
9 this subsection referred to as the 'Program')
10 under which the Secretary shall use claims data
11 under this title (and may use other data) to
12 provide confidential reports to physicians (and,
13 as determined appropriate by the Secretary, to
14 groups of physicians) that measure the re-
15 sources involved in furnishing care to individ-
16 uals under this title. If determined appropriate
17 by the Secretary, the Secretary may include in-
18 formation on the quality of care furnished to in-
19 dividuals under this title by the physician (or
20 group of physicians) in such reports.
21 ''(B) RESOURCE USE.—The resources de-
22 scribed in subparagraph (A) may be meas-
23 ured—
24 ''(i) on an episode basis;
25 ''(ii) on a per capita basis; or

1 "(iii) on both an episode and a per
2 capita basis.
3 "(2) IMPLEMENTATION.—The Secretary shall
4 implement the Program by not later than January
5 1, 2009.
6 "(3) DATA FOR REPORTS.—To the extent prac-
7 ticable, reports under the Program shall be based on
8 the most recent data available.
9 "(4) AUTHORITY TO FOCUS APPLICATION.—The
10 Secretary may focus the application of the Program
11 as appropriate, such as focusing the Program on—
12 "(A) physician specialties that account for
13 a certain percentage of all spending for physi-
14 cians' services under this title;
15 "(B) physicians who treat conditions that
16 have a high cost or a high volume, or both,
17 under this title;
18 "(C) physicians who use a high amount of
19 resources compared to other physicians;
20 "(D) physicians practicing in certain geo-
21 graphic areas; or
22 "(E) physicians who treat a minimum
23 number of individuals under this title.
24 "(5) AUTHORITY TO EXCLUDE CERTAIN INFOR-
25 MATION IF INSUFFICIENT INFORMATION.—The Sec-

1 retary may exclude certain information regarding a
2 service from a report under the Program with re-
3 spect to a physician (or group of physicians) if the
4 Secretary determines that there is insufficient infor-
5 mation relating to that service to provide a valid re-
6 port on that service.

7 "(6) ADJUSTMENT OF DATA.—To the extent
8 practicable, the Secretary shall make appropriate ad-
9 justments to the data used in preparing reports
10 under the Program, such as adjustments to take
11 into account variations in health status and other
12 patient characteristics.

13 "(7) EDUCATION AND OUTREACH.—The Sec-
14 retary shall provide for education and outreach ac-
15 tivities to physicians on the operation of, and meth-
16 odologies employed under, the Program.

17 "(8) DISCLOSURE EXEMPTION.—Reports under
18 the Program shall be exempt from disclosure under
19 section 552 of title 5, United States Code.".

20 (2) GAO STUDY AND REPORT ON THE PHYSI-
21 CIAN FEEDBACK PROGRAM.—

22 (A) STUDY.—The Comptroller General of
23 the United States shall conduct a study of the
24 Physician Feedback Program conducted under
25 section 1848(n) of the Social Security Act, as

1 added by paragraph (1), including the implementation of the Program.

(B) REPORT.—Not later than March 1, 2011, the Comptroller General of the United States shall submit a report to Congress containing the results of the study conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

(d) PLAN FOR TRANSITION TO VALUE-BASED PURCHASING PROGRAM FOR PHYSICIANS AND OTHER PRACTITIONERS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall develop a plan to transition to a value-based purchasing program for payment under the Medicare program for covered professional services (as defined in section 1848(k)(3)(A) of the Social Security Act (42 U.S.C. 1395w–4(k)(3)(A))).

(2) REPORT.—Not later than May 1, 2010, the Secretary of Health and Human Services shall submit a report to Congress containing the plan developed under paragraph (1), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

1 **SEC. 132. INCENTIVES FOR ELECTRONIC PRESCRIBING.**

2 (a) INCENTIVE PAYMENTS.—Section 1848(m) of the
3 Social Security Act, as added and amended by section
4 131(b), is amended—
5 (1) by inserting after paragraph (1), the fol-
6 lowing new paragraph:
7 "(2) INCENTIVE PAYMENTS FOR ELECTRONIC
8 PRESCRIBING.—
9 "(A) IN GENERAL.—For 2009 through
10 2013, with respect to covered professional serv-
11 ices furnished during a reporting period by an
12 eligible professional, if the eligible professional
13 is a successful electronic prescriber for such re-
14 porting period, in addition to the amount other-
15 wise paid under this part, there also shall be
16 paid to the eligible professional (or to an em-
17 ployer or facility in the cases described in
18 clause (A) of section 1842(b)(6)) or, in the case
19 of a group practice under paragraph (3)(C), to
20 the group practice, from the Federal Supple-
21 mentary Medical Insurance Trust Fund estab-
22 lished under section 1841 an amount equal to
23 the applicable electronic prescribing percent of
24 the Secretary's estimate (based on claims sub-
25 mitted not later than 2 months after the end of
26 the reporting period) of the allowed charges

1 under this part for all such covered professional
2 services furnished by the eligible professional
3 (or, in the case of a group practice under para-
4 graph (3)(C), by the group practice) during the
5 reporting period.

6 "(B) LIMITATION WITH RESPECT TO ELEC-
7 TRONIC PRESCRIBING QUALITY MEASURES.—
8 The provisions of this paragraph and subsection
9 (a)(5) shall not apply to an eligible professional
10 (or, in the case of a group practice under para-
11 graph (3)(C), to the group practice) if, for the
12 reporting period (or, for purposes of subsection
13 (a)(5), for the reporting period for a year)—

14 "(i) the allowed charges under this
15 part for all covered professional services
16 furnished by the eligible professional (or
17 group, as applicable) for the codes to
18 which the electronic prescribing quality
19 measure applies (as identified by the Sec-
20 retary and published on the Internet
21 website of the Centers for Medicare &
22 Medicaid Services as of January 1, 2008,
23 and as subsequently modified by the Sec-
24 retary) are less than 10 percent of the
25 total of the allowed charges under this part

1 for all such covered professional services
2 furnished by the eligible professional (or
3 the group, as applicable); or
4 "(ii) if determined appropriate by the
5 Secretary, the eligible professional does not
6 submit (including both electronically and
7 nonelectronically) a sufficient number (as
8 determined by the Secretary) of prescrip-
9 tions under part D.
10 If the Secretary makes the determination to
11 apply clause (ii) for a period, then clause (i)
12 shall not apply for such period.
13 "(C) APPLICABLE ELECTRONIC PRE-
14 SCRIBING PERCENT.—For purposes of subpara-
15 graph (A), the term 'applicable electronic pre-
16 scribing percent' means—
17 "(i) for 2009 and 2010, 2.0 percent;
18 "(ii) for 2011 and 2012, 1.0 percent;
19 and
20 "(iii) for 2013, 0.5 percent.";
21 (2) in paragraph (3), as redesignated by section
22 131(b)—
23 (A) in the heading, by inserting "AND SUC-
24 CESSFUL ELECTRONIC PRESCRIBER" after "RE-
25 PORTING"; and

1 (B) by inserting after subparagraph (A)
2 the following new subparagraph:
3 "(B) SUCCESSFUL ELECTRONIC PRE-
4 SCRIBER.—
5 "(i) IN GENERAL.—For purposes of
6 paragraph (2) and subsection (a)(5), an el-
7 igible professional shall be treated as a
8 successful electronic prescriber for a re-
9 porting period (or, for purposes of sub-
10 section (a)(5), for the reporting period for
11 a year) if the eligible professional meets
12 the requirement described in clause (ii), or,
13 if the Secretary determines appropriate,
14 the requirement described in clause (iii). If
15 the Secretary makes the determination
16 under the preceding sentence to apply the
17 requirement described in clause (iii) for a
18 period, then the requirement described in
19 clause (ii) shall not apply for such period.
20 "(ii) REQUIREMENT FOR SUBMITTING
21 DATA ON ELECTRONIC PRESCRIBING QUAL-
22 ITY MEASURES.—The requirement de-
23 scribed in this clause is that, with respect
24 to covered professional services furnished
25 by an eligible professional during a report-

1 ing period (or, for purposes of subsection
2 (a)(5), for the reporting period for a year),
3 if there are any electronic prescribing qual-
4 ity measures that have been established
5 under the physician reporting system and
6 are applicable to any such services fur-
7 nished by such professional for the period,
8 such professional reported each such meas-
9 ure under such system in at least 50 per-
10 cent of the cases in which such measure is
11 reportable by such professional under such
12 system.

13 "(iii) REQUIREMENT FOR ELECTRONI-
14 CALLY PRESCRIBING UNDER PART D.—The
15 requirement described in this clause is that
16 the eligible professional electronically sub-
17 mitted a sufficient number (as determined
18 by the Secretary) of prescriptions under
19 part D during the reporting period (or, for
20 purposes of subsection (a)(5), for the re-
21 porting period for a year).

22 "(iv) USE OF PART D DATA.—Not-
23 withstanding sections 1860D-15(d)(2)(B)
24 and 1860D-15(f)(2), the Secretary may
25 use data regarding drug claims submitted

1 for purposes of section 1860D-15 that are
2 necessary for purposes of clause (iii), para-
3 graph (2)(B)(ii), and paragraph (5)(G).
4 "(v) STANDARDS FOR ELECTRONIC
5 PRESCRIBING.—To the extent practicable,
6 in determining whether eligible profes-
7 sionals meet the requirements under
8 clauses (ii) and (iii) for purposes of clause
9 (i), the Secretary shall ensure that eligible
10 professionals utilize electronic prescribing
11 systems in compliance with standards es-
12 tablished for such systems pursuant to the
13 Part D Electronic Prescribing Program
14 under section 1860D–4(e)."; and
15 (3) in paragraph (5)(E), by striking clause (iii)
16 and inserting the following new clause:
17 "(iii) the determination of a successful
18 electronic prescriber under paragraph (3),
19 the limitation under paragraph (2)(B), and
20 the exception under subsection (a)(5)(B);
21 and".
22 (b) INCENTIVE PAYMENT ADJUSTMENT.—Section
23 1848(a) of the Social Security Act (42 U.S.C. 1395w–
24 4(a)) is amended by adding at the end the following new
25 paragraph:

1 "(5) INCENTIVES FOR ELECTRONIC PRE-
2 SCRIBING.—
3 "(A) ADJUSTMENT.—
4 "(i) IN GENERAL.—Subject to sub-
5 paragraph (B) and subsection (m)(2)(B),
6 with respect to covered professional serv-
7 ices furnished by an eligible professional
8 during 2012 or any subsequent year, if the
9 eligible professional is not a successful
10 electronic prescriber for the reporting pe-
11 riod for the year (as determined under
12 subsection (m)(3)(B)), the fee schedule
13 amount for such services furnished by such
14 professional during the year (including the
15 fee schedule amount for purposes of deter-
16 mining a payment based on such amount)
17 shall be equal to the applicable percent of
18 the fee schedule amount that would other-
19 wise apply to such services under this sub-
20 section (determined after application of
21 paragraph (3) but without regard to this
22 paragraph).
23 "(ii) APPLICABLE PERCENT.—For
24 purposes of clause (i), the term 'applicable
25 percent' means—

1 "(I) for 2012, 99 percent;
2 "(II) for 2013, 98.5 percent; and
3 "(III) for 2014 and each subse-
4 quent year, 98 percent.
5 "(B) SIGNIFICANT HARDSHIP EXCEP-
6 TION.—The Secretary may, on a case-by-case
7 basis, exempt an eligible professional from the
8 application of the payment adjustment under
9 subparagraph (A) if the Secretary determines,
10 subject to annual renewal, that compliance with
11 the requirement for being a successful elec-
12 tronic prescriber would result in a significant
13 hardship, such as in the case of an eligible pro-
14 fessional who practices in a rural area without
15 sufficient Internet access.
16 "(C) APPLICATION.—
17 "(i) PHYSICIAN REPORTING SYSTEM
18 RULES.—Paragraphs (5), (6), and (8) of
19 subsection (k) shall apply for purposes of
20 this paragraph in the same manner as they
21 apply for purposes of such subsection.
22 "(ii) INCENTIVE PAYMENT VALIDA-
23 TION RULES.—Clauses (ii) and (iii) of sub-
24 section (m)(5)(D) shall apply for purposes

1 of this paragraph in a similar manner as
2 they apply for purposes of such subsection.
3 ''(D) DEFINITIONS.—For purposes of this
4 paragraph:
5 ''(i) ELIGIBLE PROFESSIONAL; COV-
6 ERED PROFESSIONAL SERVICES.—The
7 terms 'eligible professional' and 'covered
8 professional services' have the meanings
9 given such terms in subsection (k)(3).
10 ''(ii) PHYSICIAN REPORTING SYS-
11 TEM.—The term 'physician reporting sys-
12 tem' means the system established under
13 subsection (k).
14 ''(iii) REPORTING PERIOD.—The term
15 'reporting period' means, with respect to a
16 year, a period specified by the Secretary.''.
17 (c) GAO REPORT ON ELECTRONIC PRESCRIBING.—
18 Not later than September 1, 2012, the Comptroller Gen-
19 eral of the United States shall submit to Congress a report
20 on the implementation of the incentives for electronic pre-
21 scribing established under the provisions of, and amend-
22 ments made by, this section. Such report shall include in-
23 formation regarding the following:
24 (1) The percentage of eligible professionals (as
25 defined in section 1848(k)(3) of the Social Security

1 Act (42 U.S.C. 1395w–4(k)(3)) that are using elec-
2 tronic prescribing systems, including a determination
3 of whether less than 50 percent of eligible profes-
4 sionals are using electronic prescribing systems.

5 (2) If less than 50 percent of eligible profes-
6 sionals are using electronic prescribing systems, rec-
7 ommendations for increasing the use of electronic
8 prescribing systems by eligible professionals, such as
9 changes to the incentive payment adjustments estab-
10 lished under section 1848(a)(5) of such Act, as
11 added by subsection (b).

12 (3) The estimated savings to the Medicare pro-
13 gram under title XVIII of such Act resulting from
14 the use of electronic prescribing systems.

15 (4) Reductions in avoidable medical errors re-
16 sulting from the use of electronic prescribing sys-
17 tems.

18 (5) The extent to which the privacy and secu-
19 rity of the personal health information of Medicare
20 beneficiaries is protected when such beneficiaries'
21 prescription drug data and usage information is
22 used for purposes other than their direct clinical
23 care, including—

24 (A) whether information identifying the
25 beneficiary is, and remains, removed from data

1 regarding the beneficiary's prescription drug
2 utilization; and
3 (B) the extent to which current law re-
4 quires sufficient and appropriate oversight and
5 audit capabilities to monitor the practice of pre-
6 scription drug data mining.
7 (6) Such other recommendations and adminis-
8 trative action as the Comptroller General determines
9 to be appropriate.
10 **SEC. 133. EXPANDING ACCESS TO PRIMARY CARE SERV-**
11 **ICES.**
12 (a) REVISIONS TO THE MEDICARE MEDICAL HOME
13 DEMONSTRATION PROJECT.—
14 (1) AUTHORITY TO EXPAND.—Section 204(b)
15 of division B of the Tax Relief and Health Care Act
16 of 2006 (42 U.S.C. 1395b–1 note) is amended—
17 (A) in paragraph (1), by striking ''The
18 project'' and inserting ''Subject to paragraph
19 (3), the project''; and
20 (B) by adding at the end the following new
21 paragraph:
22 ''(3) EXPANSION.—The Secretary may expand
23 the duration and the scope of the project under
24 paragraph (1), to an extent determined appropriate
25 by the Secretary, if the Secretary determines that

1 such expansion will result in any of the following
2 conditions being met:
3 ''(A) The expansion of the project is ex-
4 pected to improve the quality of patient care
5 without increasing spending under the Medicare
6 program (not taking into account amounts
7 available under subsection (g)).
8 ''(B) The expansion of the project is ex-
9 pected to reduce spending under the Medicare
10 program (not taking into account amounts
11 available under subsection (g)) without reducing
12 the quality of patient care.''.
13 (2) FUNDING AND APPLICATION.—Section 204
14 of division B of the Tax Relief and Health Care Act
15 of 2006 (42 U.S.C. 1395b–1 note) is amended by
16 adding at the end the following new subsections:
17 ''(g) FUNDING FROM SMI TRUST FUND.—There
18 shall be available, from the Federal Supplementary Med-
19 ical Insurance Trust Fund (under section 1841 of the So-
20 cial Security Act (42 U.S.C. 1395t)), the amount of
21 $100,000,000 to carry out the project.
22 ''(h) APPLICATION.—Chapter 35 of title 44, United
23 States Code, shall not apply to the conduct of the
24 project.''.

1 (b) APPLICATION OF BUDGET-NEUTRALITY ADJUS-
2 TOR TO CONVERSION FACTOR.—Section 1848(c)(2)(B) of
3 the Social Security Act (42 U.S.C. 1395w–4(c)(2)(B)) is
4 amended by adding at the end the following new clause:
5 "(vi) ALTERNATIVE APPLICATION OF
6 BUDGET-NEUTRALITY ADJUSTMENT.—Not-
7 withstanding subsection (d)(9)(A), effective
8 for fee schedules established beginning
9 with 2009, with respect to the 5-year re-
10 view of work relative value units used in
11 fee schedules for 2007 and 2008, in lieu of
12 continuing to apply budget-neutrality ad-
13 justments required under clause (ii) for
14 2007 and 2008 to work relative value
15 units, the Secretary shall apply such budg-
16 et-neutrality adjustments to the conversion
17 factor otherwise determined for years be-
18 ginning with 2009.".

19 **SEC. 134. EXTENSION OF FLOOR ON MEDICARE WORK GEO-**
20 **GRAPHIC ADJUSTMENT UNDER THE MEDI-**
21 **CARE PHYSICIAN FEE SCHEDULE.**

22 (a) IN GENERAL.—Section 1848(e)(1)(E) of the So-
23 cial Security Act (42 U.S.C. 1395w–4(e)(1)(E)), as
24 amended by section 103 of the Medicare, Medicaid, and
25 SCHIP Extension Act of 2007 (Public Law 110–173), is

1 amended by striking "before July 1, 2008" and inserting
2 "before January 1, 2010".
3 (b) TREATMENT OF PHYSICIANS' SERVICES FUR-
4 NISHED IN CERTAIN AREAS.—Section 1848(e)(1)(G) of
5 the Social Security Act (42 U.S.C. 1395w–4(e)(1)(G)) is
6 amended by adding at the end the following new sentence:
7 "For purposes of payment for services furnished in the
8 State described in the preceding sentence on or after Jan-
9 uary 1, 2009, after calculating the work geographic index
10 in subparagraph (A)(iii), the Secretary shall increase the
11 work geographic index to 1.5 if such index would otherwise
12 be less than 1.5".
13 (c) TECHNICAL CORRECTION.—Section 602(1) of the
14 Medicare Prescription Drug, Improvement, and Mod-
15 ernization Act of 2003 (Public Law 108–173; 117 Stat.
16 2301) is amended to read as follows:
17 "(1) in subparagraph (A), by striking 'subpara-
18 graphs (B), (C), and (E)' and inserting 'subpara-
19 graphs (B), (C), (E), and (G)'; and".
20 **SEC. 135. IMAGING PROVISIONS.**
21 (a) ACCREDITATION REQUIREMENT.—
22 (1) ACCREDITATION REQUIREMENT.—Section
23 1834 of the Social Security Act (42 U.S.C. 1395m)
24 is amended by inserting after subsection (d) the fol-
25 lowing new subsection:

1 "(e) ACCREDITATION REQUIREMENT FOR ADVANCED
2 DIAGNOSTIC IMAGING SERVICES.—
3 "(1) IN GENERAL.—
4 "(A) IN GENERAL.—Beginning with Janu-
5 ary 1, 2012, with respect to the technical com-
6 ponent of advanced diagnostic imaging services
7 for which payment is made under the fee sched-
8 ule established under section 1848(b) and that
9 are furnished by a supplier, payment may only
10 be made if such supplier is accredited by an ac-
11 creditation organization designated by the Sec-
12 retary under paragraph (2)(B)(i).
13 "(B) ADVANCED DIAGNOSTIC IMAGING
14 SERVICES DEFINED.—In this subsection, the
15 term 'advanced diagnostic imaging services' in-
16 cludes—
17 "(i) diagnostic magnetic resonance
18 imaging, computed tomography, and nu-
19 clear medicine (including positron emission
20 tomography); and
21 "(ii) such other diagnostic imaging
22 services, including services described in
23 section 1848(b)(4)(B) (excluding X-ray,
24 ultrasound, and fluoroscopy), as specified
25 by the Secretary in consultation with phy-

1 sician specialty organizations and other
2 stakeholders.
3 ''(C) SUPPLIER DEFINED.—In this sub-
4 section, the term 'supplier' has the meaning
5 given such term in section 1861(d).
6 ''(2) ACCREDITATION ORGANIZATIONS.—
7 ''(A) FACTORS FOR DESIGNATION OF AC-
8 CREDITATION ORGANIZATIONS.—The Secretary
9 shall consider the following factors in desig-
10 nating accreditation organizations under sub-
11 paragraph (B)(i) and in reviewing and modi-
12 fying the list of accreditation organizations des-
13 ignated pursuant to subparagraph (C):
14 ''(i) The ability of the organization to
15 conduct timely reviews of accreditation ap-
16 plications.
17 ''(ii) Whether the organization has es-
18 tablished a process for the timely integra-
19 tion of new advanced diagnostic imaging
20 services into the organization's accredita-
21 tion program.
22 ''(iii) Whether the organization uses
23 random site visits, site audits, or other
24 strategies for ensuring accredited suppliers

1 maintain adherence to the criteria de-
2 scribed in paragraph (3).
3 "(iv) The ability of the organization
4 to take into account the capacities of sup-
5 pliers located in a rural area (as defined in
6 section 1886(d)(2)(D)).
7 "(v) Whether the organization has es-
8 tablished reasonable fees to be charged to
9 suppliers applying for accreditation.
10 "(vi) Such other factors as the Sec-
11 retary determines appropriate.
12 "(B) DESIGNATION.—Not later than Janu-
13 ary 1, 2010, the Secretary shall designate orga-
14 nizations to accredit suppliers furnishing the
15 technical component of advanced diagnostic im-
16 aging services. The list of accreditation organi-
17 zations so designated may be modified pursuant
18 to subparagraph (C).
19 "(C) REVIEW AND MODIFICATION OF LIST
20 OF ACCREDITATION ORGANIZATIONS.—
21 "(i) IN GENERAL.—The Secretary
22 shall review the list of accreditation organi-
23 zations designated under subparagraph (B)
24 taking into account the factors under sub-
25 paragraph (A). Taking into account the re-

1 sults of such review, the Secretary may, by
2 regulation, modify the list of accreditation
3 organizations designated under subpara-
4 graph (B).
5 "(ii) SPECIAL RULE FOR ACCREDITA-
6 TIONS DONE PRIOR TO REMOVAL FROM
7 LIST OF DESIGNATED ACCREDITATION OR-
8 GANIZATIONS.—In the case where the Sec-
9 retary removes an organization from the
10 list of accreditation organizations des-
11 ignated under subparagraph (B), any sup-
12 plier that is accredited by the organization
13 during the period beginning on the date on
14 which the organization is designated as an
15 accreditation organization under subpara-
16 graph (B) and ending on the date on
17 which the organization is removed from
18 such list shall be considered to have been
19 accredited by an organization designated
20 by the Secretary under subparagraph (B)
21 for the remaining period such accreditation
22 is in effect.
23 "(3) CRITERIA FOR ACCREDITATION.—The Sec-
24 retary shall establish procedures to ensure that the
25 criteria used by an accreditation organization des-

1 ignated under paragraph (2)(B) to evaluate a sup-
2 plier that furnishes the technical component of ad-
3 vanced diagnostic imaging services for the purpose
4 of accreditation of such supplier is specific to each
5 imaging modality. Such criteria shall include—

6 ‘‘(A) standards for qualifications of med-
7 ical personnel who are not physicians and who
8 furnish the technical component of advanced di-
9 agnostic imaging services;

10 ‘‘(B) standards for qualifications and re-
11 sponsibilities of medical directors and super-
12 vising physicians, including standards that rec-
13 ognize the considerations described in para-
14 graph (4);

15 ‘‘(C) procedures to ensure that equipment
16 used in furnishing the technical component of
17 advanced diagnostic imaging services meets per-
18 formance specifications;

19 ‘‘(D) standards that require the supplier
20 have procedures in place to ensure the safety of
21 persons who furnish the technical component of
22 advanced diagnostic imaging services and indi-
23 viduals to whom such services are furnished;

24 ‘‘(E) standards that require the establish-
25 ment and maintenance of a quality assurance

1 and quality control program by the supplier
2 that is adequate and appropriate to ensure the
3 reliability, clarity, and accuracy of the technical
4 quality of diagnostic images produced by such
5 supplier; and
6 "(F) any other standards or procedures
7 the Secretary determines appropriate.
8 "(4) RECOGNITION IN STANDARDS FOR THE
9 EVALUATION OF MEDICAL DIRECTORS AND SUPER-
10 VISING PHYSICIANS.—The standards described in
11 paragraph (3)(B) shall recognize whether a medical
12 director or supervising physician—
13 "(A) in a particular specialty receives
14 training in advanced diagnostic imaging serv-
15 ices in a residency program;
16 "(B) has attained, through experience, the
17 necessary expertise to be a medical director or
18 a supervising physician;
19 "(C) has completed any continuing medical
20 education courses relating to such services; or
21 "(D) has met such other standards as the
22 Secretary determines appropriate.
23 "(5) RULE FOR ACCREDITATIONS MADE PRIOR
24 TO DESIGNATION.—In the case of a supplier that is
25 accredited before January 1, 2010, by an accredita-

1 tion organization designated by the Secretary under
2 paragraph (2)(B) as of January 1, 2010, such sup-
3 plier shall be considered to have been accredited by
4 an organization designated by the Secretary under
5 such paragraph as of January 1, 2012, for the re-
6 maining period such accreditation is in effect.''.
7 (2) CONFORMING AMENDMENTS.—
8 (A) IN GENERAL.—Section 1862(a) of the
9 Social Security Act (42 U.S.C. 1395y(a)) is
10 amended—
11 (i) in paragraph (21), by striking ''or''
12 at the end;
13 (ii) in paragraph (22), by striking the
14 period at the end and inserting ''; or''; and
15 (iii) by inserting after paragraph (22)
16 the following new paragraph:
17 ''(23) which are the technical component of ad-
18 vanced diagnostic imaging services described in sec-
19 tion 1834(e)(1)(B) for which payment is made under
20 the fee schedule established under section 1848(b)
21 and that are furnished by a supplier (as defined in
22 section 1861(d)), if such supplier is not accredited
23 by an accreditation organization designated by the
24 Secretary under section 1834(e)(2)(B).''.

1 (B) EFFECTIVE DATE.—The amendments
2 made by this paragraph shall apply to advanced
3 diagnostic imaging services furnished on or
4 after January 1, 2012.

5 (b) DEMONSTRATION PROJECT TO ASSESS THE AP-
6 PROPRIATE USE OF IMAGING SERVICES.—

7 (1) CONDUCT OF DEMONSTRATION PROJECT.—

8 (A) IN GENERAL.—The Secretary of
9 Health and Human Services (in this section re-
10 ferred to as the ‘‘Secretary’’) shall conduct a
11 demonstration project using the models de-
12 scribed in paragraph (2)(E) to collect data re-
13 garding physician compliance with appropriate-
14 ness criteria selected under paragraph (2)(D) in
15 order to determine the appropriateness of ad-
16 vanced diagnostic imaging services furnished to
17 Medicare beneficiaries.

18 (B) ADVANCED DIAGNOSTIC IMAGING
19 SERVICES.—In this subsection, the term ‘‘ad-
20 vanced diagnostic imaging services’’ has the
21 meaning given such term in section
22 1834(e)(1)(B) of the Social Security Act, as
23 added by subsection (a).

24 (C) AUTHORITY TO FOCUS DEMONSTRA-
25 TION PROJECT.—The Secretary may focus the

1 demonstration project with respect to certain
2 advanced diagnostic imaging services, such as
3 services that account for a large amount of ex-
4 penditures under the Medicare program, serv-
5 ices that have recently experienced a high rate
6 of growth, or services for which appropriateness
7 criteria exists.

8 (2) IMPLEMENTATION AND DESIGN OF DEM-
9 ONSTRATION PROJECT.—

10 (A) IMPLEMENTATION AND DURATION.—

11 (i) IMPLEMENTATION.—The Secretary
12 shall implement the demonstration project
13 under this subsection not later than Janu-
14 ary 1, 2010.

15 (ii) DURATION.—The Secretary shall
16 conduct the demonstration project under
17 this subsection for a 2-year period.

18 (B) APPLICATION AND SELECTION OF PAR-
19 TICIPATING PHYSICIANS.—

20 (i) APPLICATION.—Each physician
21 that desires to participate in the dem-
22 onstration project under this subsection
23 shall submit an application to the Sec-
24 retary at such time, in such manner, and

1 containing such information as the Sec-
2 retary may require.
3 (ii) SELECTION.—The Secretary shall
4 select physicians to participate in the dem-
5 onstration project under this subsection
6 from among physicians submitting applica-
7 tions under clause (i). The Secretary shall
8 ensure that the physicians selected—
9 (I) represent a wide range of geo-
10 graphic areas, demographic character-
11 istics (such as urban, rural, and sub-
12 urban), and practice settings (such as
13 private and academic practices); and
14 (II) have the capability to submit
15 data to the Secretary (or an entity
16 under a subcontract with the Sec-
17 retary) in an electronic format in ac-
18 cordance with standards established
19 by the Secretary.
20 (C) ADMINISTRATIVE COSTS AND INCEN-
21 TIVES.—The Secretary shall—
22 (i) reimburse physicians for reason-
23 able administrative costs incurred in par-
24 ticipating in the demonstration project
25 under this subsection; and

1 (ii) provide reasonable incentives to
2 physicians to encourage participation in
3 the demonstration project under this sub-
4 section.
5 (D) USE OF APPROPRIATENESS CRI-
6 TERIA.—
7 (i) IN GENERAL.—The Secretary, in
8 consultation with medical specialty soci-
9 eties and other stakeholders, shall select
10 criteria with respect to the clinical appro-
11 priateness of advanced diagnostic imaging
12 services for use in the demonstration
13 project under this subsection.
14 (ii) CRITERIA SELECTED.—Any cri-
15 teria selected under clause (i) shall—
16 (I) be developed or endorsed by a
17 medical specialty society; and
18 (II) be developed in adherence to
19 appropriateness principles developed
20 by a consensus organization, such as
21 the AQA alliance.
22 (E) MODELS FOR COLLECTING DATA RE-
23 GARDING PHYSICIAN COMPLIANCE WITH SE-
24 LECTED CRITERIA.—Subject to subparagraph
25 (H), in carrying out the demonstration project

1 under this subsection, the Secretary shall use
2 each of the following models for collecting data
3 regarding physician compliance with appro-
4 priateness criteria selected under subparagraph
5 (D):
6 (i) A model described in subparagraph
7 (F).
8 (ii) A model described in subpara-
9 graph (G).
10 (iii) Any other model that the Sec-
11 retary determines to be useful in evalu-
12 ating the use of appropriateness criteria
13 for advanced diagnostic imaging services.
14 (F) POINT OF SERVICE MODEL DE-
15 SCRIBED.—A model described in this subpara-
16 graph is a model that—
17 (i) uses an electronic or paper intake
18 form that—
19 (I) contains a certification by the
20 physician furnishing the imaging serv-
21 ice that the data on the intake form
22 was confirmed with the Medicare ben-
23 eficiary before the service was fur-
24 nished;

1 (II) contains standardized data
2 elements for diagnosis, service or-
3 dered, service furnished, and such
4 other information determined by the
5 Secretary, in consultation with med-
6 ical specialty societies and other
7 stakeholders, to be germane to evalu-
8 ating the effectiveness of the use of
9 appropriateness criteria selected under
10 subparagraph (D); and
11 (III) is accessible to physicians
12 participating in the demonstration
13 project under this subsection in a for-
14 mat that allows for the electronic sub-
15 mission of such form; and
16 (ii) provides for feedback reports in
17 accordance with paragraph (3)(B).
18 (G) POINT OF ORDER MODEL DE-
19 SCRIBED.—A model described in this subpara-
20 graph is a model that—
21 (i) uses a computerized order-entry
22 system that requires the transmittal of rel-
23 evant supporting information at the time
24 of referral for advanced diagnostic imaging
25 services and provides automated decision-

1 support feedback to the referring physician
2 regarding the appropriateness of fur-
3 nishing such imaging services; and
4 (ii) provides for feedback reports in
5 accordance with paragraph (3)(B).
6 (H) LIMITATION.—In no case may the
7 Secretary use prior authorization—
8 (i) as a model for collecting data re-
9 garding physician compliance with appro-
10 priateness criteria selected under subpara-
11 graph (D) under the demonstration project
12 under this subsection; or
13 (ii) under any model used for col-
14 lecting such data under the demonstration
15 project.
16 (I) REQUIRED CONTRACTS AND PERFORM-
17 ANCE STANDARDS FOR CERTAIN ENTITIES.—
18 (i) IN GENERAL.—The Secretary shall
19 enter into contracts with entities to carry
20 out the model described in subparagraph
21 (G).
22 (ii) PERFORMANCE STANDARDS.—The
23 Secretary shall establish and enforce per-
24 formance standards for such entities under
25 the contracts entered into under clause (i),

1 including performance standards with re-
2 spect to—
3 (I) the satisfaction of Medicare
4 beneficiaries who are furnished ad-
5 vanced diagnostic imaging services by
6 a physician participating in the dem-
7 onstration project;
8 (II) the satisfaction of physicians
9 participating in the demonstration
10 project;
11 (III) if applicable, timelines for
12 the provision of feedback reports
13 under paragraph (3)(B); and
14 (IV) any other areas determined
15 appropriate by the Secretary.
16 (3) COMPARISON OF UTILIZATION OF AD-
17 VANCED DIAGNOSTIC IMAGING SERVICES AND FEED-
18 BACK REPORTS.—
19 (A) COMPARISON OF UTILIZATION OF AD-
20 VANCED DIAGNOSTIC IMAGING SERVICES.—The
21 Secretary shall consult with medical specialty
22 societies and other stakeholders to develop
23 mechanisms for comparing the utilization of ad-
24 vanced diagnostic imaging services by physi-

1 cians participating in the demonstration project
2 under this subsection against—
3 (i) the appropriateness criteria se-
4 lected under paragraph (2)(D); and
5 (ii) to the extent feasible, the utiliza-
6 tion of such services by physicians not par-
7 ticipating in the demonstration project.
8 (B) FEEDBACK REPORTS.—The Secretary
9 shall, in consultation with medical specialty so-
10 cieties and other stakeholders, develop mecha-
11 nisms to provide feedback reports to physicians
12 participating in the demonstration project
13 under this subsection. Such feedback reports
14 shall include—
15 (i) a profile of the rate of compliance
16 by the physician with appropriateness cri-
17 teria selected under paragraph (2)(D), in-
18 cluding a comparison of—
19 (I) the rate of compliance by the
20 physician with such criteria; and
21 (II) the rate of compliance by the
22 physician's peers (as defined by the
23 Secretary) with such criteria; and
24 (ii) to the extent feasible, a compari-
25 son of—

1 (I) the rate of utilization of ad-
2 vanced diagnostic imaging services by
3 the physician; and
4 (II) the rate of utilization of such
5 services by the physician's peers (as
6 defined by the Secretary) who are not
7 participating in the demonstration
8 project.
9 (4) CONDUCT OF DEMONSTRATION PROJECT
10 AND WAIVER.—
11 (A) CONDUCT OF DEMONSTRATION
12 PROJECT.—Chapter 35 of title 44, United
13 States Code, shall not apply to the conduct of
14 the demonstration project under this sub-
15 section.
16 (B) WAIVER.—The Secretary may waive
17 such provisions of titles XI and XVIII of the
18 Social Security Act (42 U.S.C. 1301 et seq.;
19 1395 et seq.) as may be necessary to carry out
20 the demonstration project under this sub-
21 section.
22 (5) EVALUATION AND REPORT.—
23 (A) EVALUATION.—The Secretary shall
24 evaluate the demonstration project under this
25 subsection to—

1 (i) assess the timeliness and efficacy
2 of the demonstration project;
3 (ii) assess the performance of entities
4 under a contract entered into under para-
5 graph (2)(I)(i);
6 (iii) analyze data—
7 (I) on the rates of appropriate,
8 uncertain, and inappropriate advanced
9 diagnostic imaging services furnished
10 by physicians participating in the
11 demonstration project;
12 (II) on patterns and trends in
13 the appropriateness and inappropri-
14 ateness of such services furnished by
15 such physicians;
16 (III) on patterns and trends in
17 national and regional variations of
18 care with respect to the furnishing of
19 such services; and
20 (IV) on the correlation between
21 the appropriateness of the services
22 furnished and image results; and
23 (iv) address—
24 (I) the thresholds used under the
25 demonstration project to identify ac-

1 ceptable and outlier levels of perform-
2 ance with respect to the appropriate-
3 ness of advanced diagnostic imaging
4 services furnished;
5 (II) whether prospective use of
6 appropriateness criteria could have an
7 effect on the volume of such services
8 furnished;
9 (III) whether expansion of the
10 use of appropriateness criteria with
11 respect to such services to a broader
12 population of Medicare beneficiaries
13 would be advisable;
14 (IV) whether, under such an ex-
15 pansion, physicians who demonstrate
16 consistent compliance with such ap-
17 propriateness criteria should be ex-
18 empted from certain requirements;
19 (V) the use of incident-specific
20 versus practice-specific outlier infor-
21 mation in formulating future rec-
22 ommendations with respect to the use
23 of appropriateness criteria for such
24 services under the Medicare program;
25 and

1 (VI) the potential for using
2 methods (including financial incen-
3 tives), in addition to those used under
4 the models under the demonstration
5 project, to ensure compliance with
6 such criteria.
7 (B) REPORT.—Not later than 1 year after
8 the completion of the demonstration project
9 under this subsection, the Secretary shall sub-
10 mit to Congress a report containing the results
11 of the evaluation of the demonstration project
12 conducted under subparagraph (A), together
13 with recommendations for such legislation and
14 administrative action as the Secretary deter-
15 mines appropriate.
16 (6) FUNDING.—The Secretary shall provide for
17 the transfer from the Federal Supplementary Med-
18 ical Insurance Trust Fund established under section
19 1841 of the Social Security Act (42 U.S.C. 1395t)
20 of $10,000,000, for carrying out the demonstration
21 project under this subsection (including costs associ-
22 ated with administering the demonstration project,
23 reimbursing physicians for administrative costs and
24 providing incentives to encourage participation under
25 paragraph (2)(C), entering into contracts under

1 paragraph (2)(I), and evaluating the demonstration
2 project under paragraph (5)).
3 (c) GAO STUDY AND REPORTS ON ACCREDITATION
4 REQUIREMENT FOR ADVANCED DIAGNOSTIC IMAGING
5 SERVICES.—
6 (1) STUDY.—
7 (A) IN GENERAL.—The Comptroller Gen-
8 eral of the United States (in this subsection re-
9 ferred to as the ''Comptroller General'') shall
10 conduct a study, by imaging modality, on—
11 (i) the effect of the accreditation re-
12 quirement under section 1834(e) of the So-
13 cial Security Act, as added by subsection
14 (a); and
15 (ii) any other relevant questions in-
16 volving access to, and the value of, ad-
17 vanced diagnostic imaging services for
18 Medicare beneficiaries.
19 (B) ISSUES.—The study conducted under
20 subparagraph (A) shall examine the following:
21 (i) The impact of such accreditation
22 requirement on the number, type, and
23 quality of imaging services furnished to
24 Medicare beneficiaries.

1 (ii) The cost of such accreditation re-
2 quirement, including costs to facilities of
3 compliance with such requirement and
4 costs to the Secretary of administering
5 such requirement.
6 (iii) Access to imaging services by
7 Medicare beneficiaries, especially in rural
8 areas, before and after implementation of
9 such accreditation requirement.
10 (iv) Such other issues as the Sec-
11 retary determines appropriate.
12 (2) REPORTS.—
13 (A) PRELIMINARY REPORT.—Not later
14 than March 1, 2013, the Comptroller General
15 shall submit a preliminary report to Congress
16 on the study conducted under paragraph (1).
17 (B) FINAL REPORT.—Not later than
18 March 1, 2014, the Comptroller General shall
19 submit a final report to Congress on the study
20 conducted under paragraph (1), together with
21 recommendations for such legislation and ad-
22 ministrative action as the Comptroller General
23 determines appropriate.

1 **SEC. 136. EXTENSION OF TREATMENT OF CERTAIN PHYSI-**
2 **CIAN PATHOLOGY SERVICES UNDER MEDI-**
3 **CARE.**

4 Section 542(c) of the Medicare, Medicaid, and
5 SCHIP Benefits Improvement and Protection Act of 2000
6 (as enacted into law by section 1(a)(6) of Public Law 106–
7 554), as amended by section 732 of the Medicare Prescrip-
8 tion Drug, Improvement, and Modernization Act of 2003
9 (42 U.S.C. 1395w–4 note), section 104 of division B of
10 the Tax Relief and Health Care Act of 2006 (42 U.S.C.
11 1395w–4 note), and section 104 of the Medicare, Med-
12 icaid, and SCHIP Extension Act of 2007 (Public Law
13 110–173), is amended by striking "2007, and the first 6
14 months of 2008" and inserting "2007, 2008, and 2009".

15 **SEC. 137. ACCOMMODATION OF PHYSICIANS ORDERED TO**
16 **ACTIVE DUTY IN THE ARMED SERVICES.**

17 Section 1842(b)(6)(D)(iii) of the Social Security Act
18 (42 U.S.C. 1395u(b)(6)(D)(iii)), as amended by section
19 116 of the Medicare, Medicaid, and SCHIP Extension Act
20 of 2007 (Public Law 110–173), is amended by striking
21 "(before July 1, 2008)".

22 **SEC. 138. ADJUSTMENT FOR MEDICARE MENTAL HEALTH**
23 **SERVICES.**

24 (a) PAYMENT ADJUSTMENT.—
25 (1) IN GENERAL.—For purposes of payment for
26 services furnished under the physician fee schedule

1 under section 1848 of the Social Security Act (42
2 U.S.C. 1395w–4) during the period beginning on
3 July 1, 2008, and ending on December 31, 2009,
4 the Secretary of Health and Human Services shall
5 increase the fee schedule otherwise applicable for
6 specified services by 5 percent.

7 (2) NONAPPLICATION OF BUDGET-NEU-
8 TRALITY.—The budget-neutrality provision of sec-
9 tion 1848(c)(2)(B)(ii) of the Social Security Act (42
10 U.S.C. 1395w–4(c)(2)(B)(ii)) shall not apply to the
11 adjustments described in paragraph (1).

12 (b) DEFINITION OF SPECIFIED SERVICES.—In this
13 section, the term ''specified services'' means procedure
14 codes for services in the categories of the Health Care
15 Common Procedure Coding System, established by the
16 Secretary of Health and Human Services under section
17 1848(c)(5) of the Social Security Act (42 U.S.C. 1395w–
18 4(c)(5)), as of July 1, 2007, and as subsequently modified
19 by the Secretary, consisting of psychiatric therapeutic pro-
20 cedures furnished in office or other outpatient facility set-
21 tings or in inpatient hospital, partial hospital, or residen-
22 tial care facility settings, but only with respect to such
23 services in such categories that are in the subcategories
24 of services which are—

1 (1) insight oriented, behavior modifying, or sup-
2 portive psychotherapy; or
3 (2) interactive psychotherapy.
4 (c) IMPLEMENTATION.—Notwithstanding any other
5 provision of law, the Secretary may implement this section
6 by program instruction or otherwise.

7 **SEC. 139. IMPROVEMENTS FOR MEDICARE ANESTHESIA**
8 **TEACHING PROGRAMS.**

9 (a) SPECIAL PAYMENT RULE FOR TEACHING ANES-
10 THESIOLOGISTS.—Section 1848(a) of the Social Security
11 Act (42 U.S.C. 1395w–4(a)), as amended by section
12 132(b), is amended—
13 (1) in paragraph (4)(A), by inserting ‘‘except as
14 provided in paragraph (5),’’ after ‘‘anesthesia
15 cases,’’; and
16 (2) by adding at the end the following new
17 paragraph:
18 ‘‘(6) SPECIAL RULE FOR TEACHING ANESTHE-
19 SIOLOGISTS.—With respect to physicians' services
20 furnished on or after January 1, 2010, in the case
21 of teaching anesthesiologists involved in the training
22 of physician residents in a single anesthesia case or
23 two concurrent anesthesia cases, the fee schedule
24 amount to be applied shall be 100 percent of the fee
25 schedule amount otherwise applicable under this sec-

1 tion if the anesthesia services were personally per-
2 formed by the teaching anesthesiologist alone and
3 paragraph (4) shall not apply if—
4 ‘‘(A) the teaching anesthesiologist is
5 present during all critical or key portions of the
6 anesthesia service or procedure involved; and
7 ‘‘(B) the teaching anesthesiologist (or an-
8 other anesthesiologist with whom the teaching
9 anesthesiologist has entered into an arrange-
10 ment) is immediately available to furnish anes-
11 thesia services during the entire procedure.’’.
12 (b) TREATMENT OF CERTIFIED REGISTERED NURSE
13 ANESTHETISTS.—With respect to items and services fur-
14 nished on or after January 1, 2010, the Secretary of
15 Health and Human Services shall make appropriate ad-
16 justments to payments under the Medicare program under
17 title XVIII of the Social Security Act for teaching certified
18 registered nurse anesthetists to implement a policy with
19 respect to teaching certified registered nurse anesthetists
20 that—
21 (1) is consistent with the adjustments made by
22 the special rule for teaching anesthesiologists under
23 section 1848(a)(6) of the Social Security Act, as
24 added by subsection (a); and

1 (2) maintains the existing payment differences
2 between teaching anesthesiologists and teaching cer-
3 tified registered nurse anesthetists.

4 **PART II—OTHER PAYMENT AND COVERAGE**
5 **IMPROVEMENTS**

6 **SEC. 141. EXTENSION OF EXCEPTIONS PROCESS FOR MEDI-**
7 **CARE THERAPY CAPS.**

8 Section 1833(g)(5) of the Social Security Act (42
9 U.S.C. 1395l(g)(5)), as amended by section 105 of the
10 Medicare, Medicaid, and SCHIP Extension Act of 2007
11 (Public Law 110–173), is amended by striking "June 30,
12 2008" and inserting "December 31, 2009".

13 **SEC. 142. EXTENSION OF PAYMENT RULE FOR**
14 **BRACHYTHERAPY AND THERAPEUTIC RADIO-**
15 **PHARMACEUTICALS.**

16 Section 1833(t)(16)(C) of the Social Security Act (42
17 U.S.C. 1395l(t)(16)(C)), as amended by section 106 of the
18 Medicare, Medicaid, and SCHIP Extension Act of 2007
19 (Public Law 110–173), is amended by striking "July 1,
20 2008" each place it appears and inserting "January 1,
21 2010".

22 **SEC. 143. SPEECH-LANGUAGE PATHOLOGY SERVICES.**

23 (a) IN GENERAL.—Section 1861(ll) of the Social Se-
24 curity Act (42 U.S.C. 1395x(ll)) is amended—

1 (1) by redesignating paragraphs (2) and (3) as
2 paragraphs (3) and (4), respectively; and
3 (2) by inserting after paragraph (1) the fol-
4 lowing new paragraph:
5 "(2) The term 'outpatient speech-language pathology
6 services' has the meaning given the term 'outpatient phys-
7 ical therapy services' in subsection (p), except that in ap-
8 plying such subsection—
9 "(A) 'speech-language pathology' shall be sub-
10 stituted for 'physical therapy' each place it appears;
11 and
12 "(B) 'speech-language pathologist' shall be sub-
13 stituted for 'physical therapist' each place it ap-
14 pears.".
15 (b) CONFORMING AMENDMENTS.—
16 (1) Section 1832(a)(2)(C) of the Social Security
17 Act (42 U.S.C. 1395k(a)(2)(C)) is amended—
18 (A) by striking "and outpatient" and in-
19 serting ", outpatient"; and
20 (B) by inserting before the semicolon at
21 the end the following: ", and outpatient speech-
22 language pathology services (other than services
23 to which the second sentence of section 1861(p)
24 applies through the application of section
25 1861(ll)(2))".

1 (2) Subparagraphs (A) and (B) of section
2 1833(a)(8) of the Social Security Act (42 U.S.C.
3 1395l(a)(8)) are each amended by striking ''(which
4 includes outpatient speech-language pathology serv-
5 ices)'' and inserting '', outpatient speech-language
6 pathology services,''.
7 (3) Section 1833(g)(1) of the Social Security
8 Act (42 U.S.C. 1395l(g)(1)) is amended—
9 (A) by inserting ''and speech-language pa-
10 thology services of the type described in such
11 section through the application of section
12 1861(ll)(2)'' after ''1861(p)''; and
13 (B) by inserting ''and speech-language pa-
14 thology services'' after ''and physical therapy
15 services''.
16 (4) The second sentence of section 1835(a) of
17 the Social Security Act (42 U.S.C. 1395n(a)) is
18 amended—
19 (A) by striking ''section 1861(g)'' and in-
20 serting ''subsection (g) or (ll)(2) of section
21 1861'' each place it appears; and
22 (B) by inserting ''or outpatient speech-lan-
23 guage pathology services, respectively'' after
24 ''occupational therapy services''.

1 (5) Section 1861(p) of the Social Security Act
2 (42 U.S.C. 1395x(p)) is amended by striking the
3 fourth sentence.
4 (6) Section 1861(s)(2)(D) of the Social Secu-
5 rity Act (42 U.S.C. 1395x(s)(2)(D)) is amended by
6 inserting '', outpatient speech-language pathology
7 services,'' after ''physical therapy services''.
8 (7) Section 1862(a)(20) of the Social Security
9 Act (42 U.S.C. 1395y(a)(20)) is amended—
10 (A) by striking ''outpatient occupational
11 therapy services or outpatient physical therapy
12 services'' and inserting ''outpatient physical
13 therapy services, outpatient speech-language pa-
14 thology services, or outpatient occupational
15 therapy services''; and
16 (B) by striking ''section 1861(g)'' and in-
17 serting ''subsection (g) or (ll)(2) of section
18 1861''.
19 (8) Section 1866(e)(1) of the Social Security
20 Act (42 U.S.C. 1395cc(e)(1)) is amended—
21 (A) by striking ''section 1861(g)'' and in-
22 serting ''subsection (g) or (ll)(2) of section
23 1861'' the first two places it appears;
24 (B) by striking ''defined) or'' and inserting
25 ''defined),''; and

1 (C) by inserting before the semicolon at
2 the end the following: '', or (through the oper-
3 ation of section 1861(ll)(2)) with respect to the
4 furnishing of outpatient speech-language pa-
5 thology''.

6 (9) Section 1877(h)(6) of the Social Security
7 Act (42 U.S.C. 1395nn(h)(6)) is amended by adding
8 at the end the following new subparagraph:

9 ''(L) Outpatient speech-language pathology
10 services.''.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to services furnished on or after
13 July 1, 2009.

14 (d) CONSTRUCTION.—Nothing in this section shall be
15 construed to affect existing regulations and policies of the
16 Centers for Medicare & Medicaid Services that require
17 physician oversight of care as a condition of payment for
18 speech-language pathology services under part B of the
19 Medicare program.

20 **SEC. 144. PAYMENT AND COVERAGE IMPROVEMENTS FOR**
21 **PATIENTS WITH CHRONIC OBSTRUCTIVE**
22 **PULMONARY DISEASE AND OTHER CONDI-**
23 **TIONS.**

24 (a) COVERAGE OF PULMONARY AND CARDIAC REHA-
25 BILITATION.—

1 (1) IN GENERAL.—Section 1861 of the Social
2 Security Act (42 U.S.C. 1395x), as amended by sec-
3 tion 101(a), is amended—
4 (A) in subsection (s)(2)—
5 (i) in subparagraph (AA), by striking
6 ''and'' at the end;
7 (ii) by adding at the end the following
8 new subparagraphs:
9 ''(CC) items and services furnished under
10 a cardiac rehabilitation program (as defined in
11 subsection (eee)(1)) or under a pulmonary reha-
12 bilitation program (as defined in subsection
13 (fff)(1)); and
14 ''(DD) items and services furnished under
15 an intensive cardiac rehabilitation program (as
16 defined in subsection (eee)(4));''; and
17 (B) by adding at the end the following new
18 subsections:
19 ''Cardiac Rehabilitation Program; Intensive Cardiac
20 Rehabilitation Program
21 ''(eee)(1) The term 'cardiac rehabilitation program'
22 means a physician-supervised program (as described in
23 paragraph (2)) that furnishes the items and services de-
24 scribed in paragraph (3).

1 ‘‘(2) A program described in this paragraph is a pro-
2 gram under which—
3 ‘‘(A) items and services under the program are
4 delivered—
5 ‘‘(i) in a physician’s office;
6 ‘‘(ii) in a hospital on an outpatient basis;
7 or
8 ‘‘(iii) in other settings determined appro-
9 priate by the Secretary.
10 ‘‘(B) a physician is immediately available and
11 accessible for medical consultation and medical
12 emergencies at all times items and services are being
13 furnished under the program, except that, in the
14 case of items and services furnished under such a
15 program in a hospital, such availability shall be pre-
16 sumed; and
17 ‘‘(C) individualized treatment is furnished
18 under a written plan established, reviewed, and
19 signed by a physician every 30 days that describes—
20 ‘‘(i) the individual’s diagnosis;
21 ‘‘(ii) the type, amount, frequency, and du-
22 ration of the items and services furnished under
23 the plan; and
24 ‘‘(iii) the goals set for the individual under
25 the plan.

1 "(3) The items and services described in this para-
2 graph are—
3 "(A) physician-prescribed exercise;
4 "(B) cardiac risk factor modification, including
5 education, counseling, and behavioral intervention
6 (to the extent such education, counseling, and behav-
7 ioral intervention is closely related to the individual's
8 care and treatment and is tailored to the individual's
9 needs);
10 "(C) psychosocial assessment;
11 "(D) outcomes assessment; and
12 "(E) such other items and services as the Sec-
13 retary may determine, but only if such items and
14 services are—
15 "(i) reasonable and necessary for the diag-
16 nosis or active treatment of the individual's
17 condition;
18 "(ii) reasonably expected to improve or
19 maintain the individual's condition and func-
20 tional level; and
21 "(iii) furnished under such guidelines re-
22 lating to the frequency and duration of such
23 items and services as the Secretary shall estab-
24 lish, taking into account accepted norms of

1 medical practice and the reasonable expectation
2 of improvement of the individual.
3 ''(4)(A) The term 'intensive cardiac rehabilitation
4 program' means a physician-supervised program (as de-
5 scribed in paragraph (2)) that furnishes the items and
6 services described in paragraph (3) and has shown, in
7 peer-reviewed published research, that it accomplished—
8 ''(i) one or more of the following:
9 ''(I) positively affected the progression of
10 coronary heart disease; or
11 ''(II) reduced the need for coronary bypass
12 surgery; or
13 ''(III) reduced the need for percutaneous
14 coronary interventions; and
15 ''(ii) a statistically significant reduction in 5 or
16 more of the following measures from their level be-
17 fore receipt of cardiac rehabilitation services to their
18 level after receipt of such services:
19 ''(I) low density lipoprotein;
20 ''(II) triglycerides;
21 ''(III) body mass index;
22 ''(IV) systolic blood pressure;
23 ''(V) diastolic blood pressure; or
24 ''(VI) the need for cholesterol, blood pres-
25 sure, and diabetes medications.

1 “(B) To be eligible for an intensive cardiac rehabilita-
2 tion program, an individual must have—
3 “(i) had an acute myocardial infarction within
4 the preceding 12 months;
5 “(ii) had coronary bypass surgery;
6 “(iii) stable angina pectoris;
7 “(iv) had heart valve repair or replacement;
8 “(v) had percutaneous transluminal coronary
9 angioplasty (PTCA) or coronary stenting; or
10 “(vi) had a heart or heart-lung transplant.
11 “(C) An intensive cardiac rehabilitation program may
12 be provided in a series of 72 one-hour sessions (as defined
13 in section 1848(b)(5)), up to 6 sessions per day, over a
14 period of up to 18 weeks.
15 “(5) The Secretary shall establish standards to en-
16 sure that a physician with expertise in the management
17 of individuals with cardiac pathophysiology who is licensed
18 to practice medicine in the State in which a cardiac reha-
19 bilitation program (or the intensive cardiac rehabilitation
20 program, as the case may be) is offered—
21 “(A) is responsible for such program; and
22 “(B) in consultation with appropriate staff, is
23 involved substantially in directing the progress of in-
24 dividual in the program.

1 “Pulmonary Rehabilitation Program

2 “(fff)(1) The term ‘pulmonary rehabilitation pro-
3 gram’ means a physician-supervised program (as de-
4 scribed in subsection (eee)(2) with respect to a program
5 under this subsection) that furnishes the items and serv-
6 ices described in paragraph (2).

7 “(2) The items and services described in this para-
8 graph are—

9 “(A) physician-prescribed exercise;

10 “(B) education or training (to the extent the
11 education or training is closely and clearly related to
12 the individual’s care and treatment and is tailored to
13 such individual’s needs);

14 “(C) psychosocial assessment;

15 “(D) outcomes assessment; and

16 “(E) such other items and services as the Sec-
17 retary may determine, but only if such items and
18 services are—

19 “(i) reasonable and necessary for the diag-
20 nosis or active treatment of the individual’s
21 condition;

22 “(ii) reasonably expected to improve or
23 maintain the individual’s condition and func-
24 tional level; and

1 "(iii) furnished under such guidelines re-
2 lating to the frequency and duration of such
3 items and services as the Secretary shall estab-
4 lish, taking into account accepted norms of
5 medical practice and the reasonable expectation
6 of improvement of the individual.

7 "(3) The Secretary shall establish standards to en-
8 sure that a physician with expertise in the management
9 of individuals with respiratory pathophysiology who is li-
10 censed to practice medicine in the State in which a pul-
11 monary rehabilitation program is offered—

12 "(A) is responsible for such program; and

13 "(B) in consultation with appropriate staff, is
14 involved substantially in directing the progress of in-
15 dividual in the program.".

16 (2) PAYMENT FOR INTENSIVE CARDIAC REHA-
17 BILITATION PROGRAMS.—

18 (A) INCLUSION IN PHYSICIAN FEE SCHED-
19 ULE.—Section 1848(j)(3) of the Social Security
20 Act (42 U.S.C. 1395w–4(j)(3)) is amended by
21 inserting "(2)(DD)," after "(2)(AA),".

22 (B) CONFORMING AMENDMENT.—Section
23 1848(b) of the Social Security Act (42 U.S.C.
24 1395w–4(b)) is amended by adding at the end
25 the following new paragraph:

1 "(5) TREATMENT OF INTENSIVE CARDIAC RE-
2 HABILITATION PROGRAM.—
3 "(A) IN GENERAL.—In the case of an in-
4 tensive cardiac rehabilitation program described
5 in section 1861(eee)(4), the Secretary shall sub-
6 stitute the Medicare OPD fee schedule amount
7 established under the prospective payment sys-
8 tem for hospital outpatient department service
9 under paragraph (3)(D) of section 1833(t) for
10 cardiac rehabilitation (under HCPCS codes
11 93797 and 93798 for calendar year 2007, or
12 any succeeding HCPCS codes for cardiac reha-
13 bilitation).
14 "(B) DEFINITION OF SESSION.—Each of
15 the services described in subparagraphs (A)
16 through (E) of section 1861(eee)(3), when fur-
17 nished for one hour, is a separate session of in-
18 tensive cardiac rehabilitation.
19 "(C) MULTIPLE SESSIONS PER DAY.—Pay-
20 ment may be made for up to 6 sessions per day
21 of the series of 72 one-hour sessions of inten-
22 sive cardiac rehabilitation services described in
23 section 1861(eee)(4)(B).".

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to items and services
3 furnished on or after January 1, 2010.
4 (b) REPEAL OF TRANSFER OF OWNERSHIP OF OXY-
5 GEN EQUIPMENT.—
6 (1) IN GENERAL.—Section 1834(a)(5)(F) of the
7 Social Security Act (42 U.S.C. 1395m(a)(5)(F)) is
8 amended—
9 (A) in the heading, by striking "OWNER-
10 SHIP OF EQUIPMENT" and inserting "RENT-
11 AL CAP"; and
12 (B) by striking clause (ii) and inserting the
13 following:
14 "(ii) PAYMENTS AND RULES AFTER
15 RENTAL CAP.—After the 36th continuous
16 month during which payment is made for
17 the equipment under this paragraph—
18 "(I) the supplier furnishing such
19 equipment under this subsection shall
20 continue to furnish the equipment
21 during any period of medical need for
22 the remainder of the reasonable useful
23 lifetime of the equipment, as deter-
24 mined by the Secretary;

1 "(II) payments for oxygen shall
2 continue to be made in the amount
3 recognized for oxygen under para-
4 graph (9) for the period of medical
5 need; and
6 "(III) maintenance and servicing
7 payments shall, if the Secretary deter-
8 mines such payments are reasonable
9 and necessary, be made (for parts and
10 labor not covered by the supplier's or
11 manufacturer's warranty, as deter-
12 mined by the Secretary to be appro-
13 priate for the equipment), and such
14 payments shall be in an amount deter-
15 mined to be appropriate by the Sec-
16 retary.".
17 (2) EFFECTIVE DATE.—The amendments made
18 by paragraph (1) shall take effect on January 1,
19 2009.
20 **SEC. 145. CLINICAL LABORATORY TESTS.**
21 (a) REPEAL OF MEDICARE COMPETITIVE BIDDING
22 DEMONSTRATION PROJECT FOR CLINICAL LABORATORY
23 SERVICES.—

1 (1) IN GENERAL.—Section 1847 of the Social
2 Security Act (42 U.S.C. 1395w–3) is amended by
3 striking subsection (e).
4 (2) CONFORMING AMENDMENTS.—Section
5 1833(a)(1)(D) of the Social Security Act (42 U.S.C.
6 1395l(a)(1)(D)) is amended—
7 (A) by inserting ''or'' before ''(ii)''; and
8 (B) by striking ''or (iii) on the basis'' and
9 all that follows before the comma at the end.
10 (3) EFFECTIVE DATE.—The amendments made
11 by this subsection shall take effect on the date of the
12 enactment of this Act.
13 (b) CLINICAL LABORATORY TEST FEE SCHEDULE
14 UPDATE ADJUSTMENT.—Section 1833(h)(2)(A)(i) of the
15 Social Security Act (42 U.S.C. 1395l(h)(2)(A)(ii)) is
16 amended by inserting ''minus, for each of the years 2009
17 through 2013, 0.5 percentage points'' after ''city aver-
18 age)''.
19 **SEC. 146. IMPROVED ACCESS TO AMBULANCE SERVICES.**
20 (a) EXTENSION OF INCREASED MEDICARE PAY-
21 MENTS FOR GROUND AMBULANCE SERVICES.—Section
22 1834(l)(13) of the Social Security Act (42 U.S.C.
23 1395m(l)(13)) is amended—
24 (1) in subparagraph (A)—

1 (A) in the matter preceding clause (i), by
2 inserting "and for such services furnished on or
3 after July 1, 2008, and before January 1,
4 2010" after "2007,";
5 (B) in clause (i), by inserting "(or 3 per-
6 cent if such service is furnished on or after July
7 1, 2008, and before January 1, 2010)" after "2
8 percent"; and
9 (C) in clause (ii), by inserting "(or 2 per-
10 cent if such service is furnished on or after July
11 1, 2008, and before January 1, 2010)" after "1
12 percent"; and
13 (2) in subparagraph (B)—
14 (A) in the heading, by striking "2006" and
15 inserting "APPLICABLE PERIOD"; and
16 (B) by inserting "applicable" before "pe-
17 riod".
18 (b) AIR AMBULANCE PAYMENT IMPROVEMENTS.—
19 (1) TREATMENT OF CERTAIN AREAS FOR PAY-
20 MENT FOR AIR AMBULANCE SERVICES UNDER THE
21 AMBULANCE FEE SCHEDULE.—Notwithstanding any
22 other provision of law, for purposes of making pay-
23 ments under section 1834(l) of the Social Security
24 Act (42 U.S.C. 1395m(l)) for air ambulance services
25 furnished during the period beginning on July 1,

1 2008, and ending on December 31, 2009, any area
2 that was designated as a rural area for purposes of
3 making payments under such section for air ambu-
4 lance services furnished on December 31, 2006, shall
5 be treated as a rural area for purposes of making
6 payments under such section for air ambulance serv-
7 ices furnished during such period.
8 (2) CLARIFICATION REGARDING SATISFACTION
9 OF REQUIREMENT OF MEDICALLY NECESSARY.—
10 (A) IN GENERAL.—Section
11 1834(l)(14)(B)(i) of the Social Security Act (42
12 U.S.C. 1395m(l)(14)(B)(i)) is amended by
13 striking ‘‘reasonably determines or certifies’’
14 and inserting ‘‘certifies or reasonably deter-
15 mines’’.
16 (B) EFFECTIVE DATE.—The amendment
17 made by subparagraph (A) shall apply to serv-
18 ices furnished on or after the date of the enact-
19 ment of this Act.

1 **SEC. 147. EXTENSION AND EXPANSION OF THE MEDICARE**
2 **HOLD HARMLESS PROVISION UNDER THE**
3 **PROSPECTIVE PAYMENT SYSTEM FOR HOS-**
4 **PITAL OUTPATIENT DEPARTMENT (HOPD)**
5 **SERVICES FOR CERTAIN HOSPITALS.**

6 Section 1833(t)(7)(D)(i) of the Social Security Act
7 (42 U.S.C. 1395l(t)(7)(D)(i)) is amended—
8 (1) in subclause (II)—
9 (A) in the first sentence, by striking
10 ''2009'' and inserting ''2010''; and
11 (B) by striking the second sentence and in-
12 serting the following new sentence: ''For pur-
13 poses of the preceding sentence, the applicable
14 percentage shall be 95 percent with respect to
15 covered OPD services furnished in 2006, 90
16 percent with respect to such services furnished
17 in 2007, and 85 percent with respect to such
18 services furnished in 2008 or 2009.''; and
19 (2) by adding at the end the following new sub-
20 clause:
21 ''(III) In the case of a sole community
22 hospital (as defined in section
23 1886(d)(5)(D)(iii)) that has not more than
24 100 beds, for covered OPD services fur-
25 nished on or after January 1, 2009, and
26 before January 1, 2010, for which the

1 PPS amount is less than the pre-BBA
2 amount, the amount of payment under this
3 subsection shall be increased by 85 percent
4 of the amount of such difference.''.

5 **SEC. 148. CLARIFICATION OF PAYMENT FOR CLINICAL LAB-**
6 **ORATORY TESTS FURNISHED BY CRITICAL**
7 **ACCESS HOSPITALS.**

8 (a) IN GENERAL.—Section 1834(g)(4) of the Social
9 Security Act (42 U.S.C. 1395m(g)(4)) is amended—
10 (1) in the heading, by striking ''NO BENE-
11 FICIARY COST-SHARING FOR'' and inserting ''TREAT-
12 MENT OF''; and
13 (2) by adding at the end the following new sen-
14 tence: ''For purposes of the preceding sentence and
15 section 1861(mm)(3), clinical diagnostic laboratory
16 services furnished by a critical access hospital shall
17 be treated as being furnished as part of outpatient
18 critical access services without regard to whether the
19 individual with respect to whom such services are
20 furnished is physically present in the critical access
21 hospital, or in a skilled nursing facility or a clinic
22 (including a rural health clinic) that is operated by
23 a critical access hospital, at the time the specimen
24 is collected.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services furnished on or after July 1, 2009.

SEC. 149. ADDING CERTAIN ENTITIES AS ORIGINATING SITES FOR PAYMENT OF TELEHEALTH SERVICES.

(a) IN GENERAL.—Section 1834(m)(4)(C)(ii) of the Social Security Act (42 U.S.C. 1395m(m)(4)(C)(ii)) is amended by adding at the end the following new subclauses:

"(VI) A hospital-based or critical access hospital-based renal dialysis center (including satellites).

"(VII) A skilled nursing facility (as defined in section 1819(a)).

"(VIII) A community mental health center (as defined in section 1861(ff)(3)(B)).".

(b) CONFORMING AMENDMENT.—Section 1888(e)(2)(A)(ii) of the Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(ii)) is amended by inserting "telehealth services furnished under section 1834(m)(4)(C)(ii)(VII)," after "section 1861(s)(2),".

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to services furnished on or after
3 January 1, 2009.

4 **SEC. 150. MEDPAC STUDY AND REPORT ON IMPROVING**
5 **CHRONIC CARE DEMONSTRATION PRO-**
6 **GRAMS.**

7 (a) STUDY.—The Medicare Payment Advisory Com-
8 mission (in this section referred to as the ''Commission'')
9 shall conduct a study on the feasability and advisability
10 of establishing a Medicare Chronic Care Practice Research
11 Network that would serve as a standing network of pro-
12 viders testing new models of care coordination and other
13 care approaches for chronically ill beneficiaries, including
14 the initiation, operation, evaluation, and, if appropriate,
15 expansion of such models to the broader Medicare patient
16 population. In conducting such study, the Commission
17 shall take into account the structure, implementation, and
18 results of prior and existing care coordination and disease
19 management demonstrations and pilots, including the
20 Medicare Coordinated Care Demonstration Project under
21 section 4016 of the Balanced Budget Act of 1997 (42
22 U.S.C. 1395b–1 note) and the chronic care improvement
23 programs under section 1807 of the Social Security Act
24 (42 U.S.C. 1395b–8), commonly known to as ''Medicare
25 Health Support''.

1 (b) REPORT.—Not later than June 15, 2009, the
2 Commission shall submit to Congress a report containing
3 the results of the study conducted under subsection (a).

4 **SEC. 151. INCREASE OF FQHC PAYMENT LIMITS.**

5 (a) IN GENERAL.—Section 1833 of the Social Secu-
6 rity Act (42 U.S.C. 1395l) is amended by adding at the
7 end the following new subsection:
8 "(v) INCREASE OF FQHC PAYMENT LIMITS.—In the
9 case of services furnished by Federally qualified health
10 centers (as defined in section 1861(aa)(4)), the Secretary
11 shall establish payment limits with respect to such services
12 under this part for services furnished—
13 "(1) in 2010, at the limits otherwise established
14 under this part for such year increased by $5; and
15 "(2) in a subsequent year, at the limits estab-
16 lished under this subsection for the previous year in-
17 creased by the percentage increase in the MEI (as
18 defined in section 1842(i)(3)) for such subsequent
19 year.".
20 (b) STUDY AND REPORT ON THE EFFECTS AND ADE-
21 QUACY OF THE MEDICARE FEDERALLY QUALIFIED
22 HEALTH CENTER PAYMENT STRUCTURE.—
23 (1) STUDY.—The Comptroller General of the
24 United States shall conduct a study to determine
25 whether the structure for payments for services fur-

1 nished by Federally qualified health centers (as de-
2 fined in section 1861(aa)(4) of the Social Security
3 Act (42 U.S.C. 1395x(aa)(4)) under part B of title
4 XVIII of the Social Security Act (42 U.S.C. 1395j
5 et seq.) adequately reimburses Federally qualified
6 health centers for the care furnished to Medicare
7 beneficiaries. In conducting such study, the Comp-
8 troller General shall—

9 (A) use the most current cost report data
10 available;

11 (B) examine the effects of the payment
12 limits established with respect to such services
13 under such part B on the ability of Federally
14 qualified health centers to furnish care to Medi-
15 care beneficiaries; and

16 (C) examine the cost of furnishing services
17 covered under the Medicare program as of the
18 date of the enactment of this Act that were not
19 covered under such program as of the date on
20 which the Secretary determined the payment
21 rate for Federally qualified health centers in
22 1991.

23 (2) REPORT.—Not later than 15 months after
24 the date of the enactment of this Act, the Comp-
25 troller General of the United States shall submit to

1 Congress a report on the study conducted under
2 paragraph (1), together with recommendations for
3 such legislation and administrative action the Comp-
4 troller General determines appropriate, taking into
5 consideration the structure and adequacy of the pro-
6 spective payment methodology used to make pay-
7 ments to Federally qualified health centers under
8 the Medicaid program under title XIX of the Social
9 Security Act (42 U.S.C. 1396 et seq.).

10 **SEC. 152. KIDNEY DISEASE EDUCATION AND AWARENESS**
11 **PROVISIONS.**

12 (a) CHRONIC KIDNEY DISEASE INITIATIVES.—Part
13 P of title III of the Public Health Service Act (42 U.S.C.
14 280g et seq.) is amended by adding at the end the fol-
15 lowing new section:

16 **"SEC. 399R. CHRONIC KIDNEY DISEASE INITIATIVES.**

17 "(a) IN GENERAL.—The Secretary shall establish
18 pilot projects to—
19 "(1) increase public and medical community
20 awareness (particularly of those who treat patients
21 with diabetes and hypertension) regarding chronic
22 kidney disease, focusing on prevention;
23 "(2) increase screening for chronic kidney dis-
24 ease, focusing on Medicare beneficiaries at risk of
25 chronic kidney disease; and

1 "(3) enhance surveillance systems to better as-
2 sess the prevalence and incidence of chronic kidney
3 disease.
4 "(b) SCOPE AND DURATION.—
5 "(1) SCOPE.—The Secretary shall select at
6 least 3 States in which to conduct pilot projects
7 under this section.
8 "(2) DURATION.—The pilot projects under this
9 section shall be conducted for a period that is not
10 longer than 5 years and shall begin on January 1,
11 2009.
12 "(c) EVALUATION AND REPORT.—The Comptroller
13 General of the United States shall conduct an evaluation
14 of the pilot projects conducted under this section. Not
15 later than 12 months after the date on which the pilot
16 projects are completed, the Comptroller General shall sub-
17 mit to Congress a report on the evaluation.
18 "(d) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated such sums as may be
20 necessary for the purpose of carrying out this section.".
21 (b) MEDICARE COVERAGE OF KIDNEY DISEASE PA-
22 TIENT EDUCATION SERVICES.—
23 (1) COVERAGE OF KIDNEY DISEASE EDUCATION
24 SERVICES.—

1 (A) COVERAGE.—Section 1861(s)(2) of the
2 Social Security Act (42 U.S.C. 1395x(s)(2)), as
3 amended by section 144(a), is amended—
4 (i) in subparagraph (CC), by striking
5 ''and'' after the semicolon at the end;
6 (ii) in subparagraph (DD), by adding
7 ''and'' after the semicolon at the end; and
8 (iii) by adding at the end the fol-
9 lowing new subparagraph:
10 ''(EE) kidney disease education services (as de-
11 fined in subsection (ggg));''.
12 (B) SERVICES DESCRIBED.—Section 1861
13 of the Social Security Act (42 U.S.C. 1395x),
14 as amended by section 144(a), is amended by
15 adding at the end the following new subsection:
16 ''Kidney Disease Education Services
17 ''(ggg)(1) The term 'kidney disease education serv-
18 ices' means educational services that are—
19 ''(A) furnished to an individual with stage IV
20 chronic kidney disease who, according to accepted
21 clinical guidelines identified by the Secretary, will re-
22 quire dialysis or a kidney transplant;
23 ''(B) furnished, upon the referral of the physi-
24 cian managing the individual's kidney condition, by
25 a qualified person (as defined in paragraph (2)); and

1 ‘‘(C) designed—
2 ‘‘(i) to provide comprehensive information
3 (consistent with the standards set under para-
4 graph (3)) regarding—
5 ‘‘(I) the management of comorbidities,
6 including for purposes of delaying the need
7 for dialysis;
8 ‘‘(II) the prevention of uremic com-
9 plications; and
10 ‘‘(III) each option for renal replace-
11 ment therapy (including hemodialysis and
12 peritoneal dialysis at home and in-center
13 as well as vascular access options and
14 transplantation);
15 ‘‘(ii) to ensure that the individual has the
16 opportunity to actively participate in the choice
17 of therapy; and
18 ‘‘(iii) to be tailored to meet the needs of
19 the individual involved.
20 ‘‘(2)(A) The term ‘qualified person’ means—
21 ‘‘(i) a physician (as defined in section
22 1861(r)(1)) or a physician assistant, nurse practi-
23 tioner, or clinical nurse specialist (as defined in sec-
24 tion 1861(aa)(5)), who furnishes services for which

1 payment may be made under the fee schedule estab-
2 lished under section 1848; and
3 ''(ii) a provider of services located in a rural
4 area (as defined in section 1886(d)(2)(D)).
5 ''(B) Such term does not include a provider of serv-
6 ices (other than a provider of services described in sub-
7 paragraph (A)(ii)) or a renal dialysis facility.
8 ''(3) The Secretary shall set standards for the con-
9 tent of such information to be provided under paragraph
10 (1)(C)(i) after consulting with physicians, other health
11 professionals, health educators, professional organizations,
12 accrediting organizations, kidney patient organizations, di-
13 alysis facilities, transplant centers, network organizations
14 described in section 1881(c)(2), and other knowledgeable
15 persons. To the extent possible the Secretary shall consult
16 with persons or entities described in the previous sentence,
17 other than a dialysis facility, that has not received indus-
18 try funding from a drug or biological manufacturer or di-
19 alysis facility.
20 ''(4) No individual shall be furnished more than 6
21 sessions of kidney disease education services under this
22 title.''.
23 (C) PAYMENT UNDER THE PHYSICIAN FEE
24 SCHEDULE.—Section 1848(j)(3) of the Social
25 Security Act (42 U.S.C. 1395w–4(j)(3)), as

1 amended by section 144(b), is amended by in-
2 serting "(2)(EE)," after "(2)(DD),".
3 (D) LIMITATION ON NUMBER OF SES-
4 SIONS.—Section 1862(a)(1) of the Social Secu-
5 rity Act (42 U.S.C. 1395y(a)(1)) is amended—
6 (i) in subparagraph (M), by striking
7 "and" at the end;
8 (ii) in subparagraph (N), by striking
9 the semicolon at the end and inserting ",
10 and"; and
11 (iii) by adding at the end the fol-
12 lowing new subparagraph:
13 "(O) in the case of kidney disease education
14 services (as defined in paragraph (1) of section
15 1861(ggg)), which are furnished in excess of the
16 number of sessions covered under paragraph (4) of
17 such section;".
18 (2) EFFECTIVE DATE.—The amendments made
19 by this subsection shall apply to services furnished
20 on or after January 1, 2010.
21 **SEC. 153. RENAL DIALYSIS PROVISIONS.**
22 (a) COMPOSITE RATE.—
23 (1) UPDATE.—Section 1881(b)(12)(G) of the
24 Social Security Act (42 U.S.C. 1395rr(b)(12)(G)) is
25 amended—

1 (A) in clause (i), by striking ''and'' at the
2 end;
3 (B) in clause (ii)—
4 (i) by inserting ''and before January
5 1, 2009,'' after ''April 1, 2007,''; and
6 (ii) by striking the period at the end
7 and inserting a semicolon; and
8 (C) by adding at the end the following new
9 clauses:
10 ''(iii) furnished on or after January 1, 2009,
11 and before January 1, 2010, by 1.0 percent above
12 the amount of such composite rate component for
13 such services furnished on December 31, 2008; and
14 ''(iv) furnished on or after January 1, 2010, by
15 1.0 percent above the amount of such composite rate
16 component for such services furnished on December
17 31, 2009.''.
18 (2) SITE NEUTRAL COMPOSITE RATE.—Section
19 1881(b)(12)(A) of the Social Security Act (42
20 U.S.C. 1395rr(b)(12)(A)) is amended by adding at
21 the end the following new sentence: ''Under such
22 system, the payment rate for dialysis services fur-
23 nished on or after January 1, 2009, by providers of
24 services shall be the same as the payment rate (com-
25 puted without regard to this sentence) for such serv-

1 ices furnished by renal dialysis facilities, and in ap-
2 plying the geographic index under subparagraph (D)
3 to providers of services, the labor share shall be
4 based on the labor share otherwise applied for renal
5 dialysis facilities.''.

6 (b) DEVELOPMENT OF ESRD BUNDLED PAYMENT
7 SYSTEM.—

8 (1) IN GENERAL.—Section 1881(b) of the So-
9 cial Security Act (42 U.S.C. 1395rr(b)) is amended
10 by adding at the end the following new paragraph:

11 ''(14)(A)(i) Subject to subparagraph (E), for services
12 furnished on or after January 1, 2011, the Secretary shall
13 implement a payment system under which a single pay-
14 ment is made under this title to a provider of services or
15 a renal dialysis facility for renal dialysis services (as de-
16 fined in subparagraph (B)) in lieu of any other payment
17 (including a payment adjustment under paragraph
18 (12)(B)(ii)) and for such services and items furnished pur-
19 suant to paragraph (4).

20 ''(ii) In implementing the system under this para-
21 graph the Secretary shall ensure that the estimated total
22 amount of payments under this title for 2011 for renal
23 dialysis services shall equal 98 percent of the estimated
24 total amount of payments for renal dialysis services, in-
25 cluding payments under paragraph (12)(B)(ii), that would

1 have been made under this title with respect to services
2 furnished in 2011 if such system had not been imple-
3 mented. In making the estimation under subclause (I), the
4 Secretary shall use per patient utilization data from 2007,
5 2008, or 2009, whichever has the lowest per patient utili-
6 zation.

7 ''(B) For purposes of this paragraph, the term 'renal
8 dialysis services' includes—

9 ''(i) items and services included in the com-
10 posite rate for renal dialysis services as of December
11 31, 2010;

12 ''(ii) erythropoiesis stimulating agents and any
13 oral form of such agents that are furnished to indi-
14 viduals for the treatment of end stage renal disease;

15 ''(iii) other drugs and biologicals that are fur-
16 nished to individuals for the treatment of end stage
17 renal disease and for which payment was (before the
18 application of this paragraph) made separately
19 under this title, and any oral equivalent form of
20 such drug or biological; and

21 ''(iv) diagnostic laboratory tests and other items
22 and services not described in clause (i) that are fur-
23 nished to individuals for the treatment of end stage
24 renal disease.

25 Such term does not include vaccines.

1 "(C) The system under this paragraph may provide
2 for payment on the basis of services furnished during a
3 week or month or such other appropriate unit of payment
4 as the Secretary specifies.

5 "(D) Such system—

6 "(i) shall include a payment adjustment based
7 on case mix that may take into account patient
8 weight, body mass index, comorbidities, length of
9 time on dialysis, age, race, ethnicity, and other ap-
10 propriate factors;

11 "(ii) shall include a payment adjustment for
12 high cost outliers due to unusual variations in the
13 type or amount of medically necessary care, includ-
14 ing variations in the amount of erythropoiesis stimu-
15 lating agents necessary for anemia management;

16 "(iii) shall include a payment adjustment that
17 reflects the extent to which costs incurred by low-
18 volume facilities (as defined by the Secretary) in fur-
19 nishing renal dialysis services exceed the costs in-
20 curred by other facilities in furnishing such services,
21 and for payment for renal dialysis services furnished
22 on or after January 1, 2011, and before January 1,
23 2014, such payment adjustment shall not be less
24 than 10 percent; and

1 "(iv) may include such other payment adjust-
2 ments as the Secretary determines appropriate, such
3 as a payment adjustment—
4 "(I) for pediatric providers of services and
5 renal dialysis facilities;
6 "(II) by a geographic index, such as the
7 index referred to in paragraph (12)(D), as the
8 Secretary determines to be appropriate; and
9 "(III) for providers of services or renal di-
10 alysis facilities located in rural areas.
11 The Secretary shall take into consideration the unique
12 treatment needs of children and young adults in estab-
13 lishing such system.
14 "(E)(i) The Secretary shall provide for a four-year
15 phase-in (in equal increments) of the payment amount
16 under the payment system under this paragraph, with
17 such payment amount being fully implemented for renal
18 dialysis services furnished on or after January 1, 2014.
19 "(ii) A provider of services or renal dialysis facility
20 may make a one-time election to be excluded from the
21 phase-in under clause (i) and be paid entirely based on
22 the payment amount under the payment system under this
23 paragraph. Such an election shall be made prior to Janu-
24 ary 1, 2011, in a form and manner specified by the Sec-
25 retary, and is final and may not be rescinded.

1 "(iii) The Secretary shall make an adjustment to the
2 payments under this paragraph for years during which the
3 phase-in under clause (i) is applicable so that the esti-
4 mated total amount of payments under this paragraph,
5 including payments under this subparagraph, shall equal
6 the estimated total amount of payments that would other-
7 wise occur under this paragraph without such phase-in.
8 "(F)(i) Subject to clause (ii), beginning in 2012, the
9 Secretary shall annually increase payment amounts estab-
10 lished under this paragraph by an ESRD market basket
11 percentage increase factor for a bundled payment system
12 for renal dialysis services that reflects changes over time
13 in the prices of an appropriate mix of goods and services
14 included in renal dialysis services minus 1.0 percentage
15 point.
16 "(ii) For years during which a phase-in of the pay-
17 ment system pursuant to subparagraph (E) is applicable,
18 the following rules shall apply to the portion of the pay-
19 ment under the system that is based on the payment of
20 the composite rate that would otherwise apply if the sys-
21 tem under this paragraph had not been enacted:
22 "(I) The update under clause (i) shall not
23 apply.
24 "(II) The Secretary shall annually increase
25 such composite rate by the ESRD market basket

1 percentage increase factor described in clause (i)
2 minus 1.0 percentage point.

3 "(G) There shall be no administrative or judicial re-
4 view under section 1869, section 1878, or otherwise of the
5 determination of payment amounts under subparagraph
6 (A), the establishment of an appropriate unit of payment
7 under subparagraph (C), the identification of renal dialy-
8 sis services included in the bundled payment, the adjust-
9 ments under subparagraph (D), the application of the
10 phase-in under subparagraph (E), and the establishment
11 of the market basket percentage increase factors under
12 subparagraph (F).

13 "(H) Erythropoiesis stimulating agents and other
14 drugs and biologicals shall be treated as prescribed and
15 dispensed or administered and available only under part
16 B if they are—

17 "(i) furnished to an individual for the treatment
18 of end stage renal disease; and

19 "(ii) included in subparagraph (B) for purposes
20 of payment under this paragraph.".

21 (2) PROHIBITION OF UNBUNDLING.—Section
22 1862(a) of the Social Security Act (42 U.S.C.
23 1395y(a)), as amended by section 135(a)(2), is
24 amended—

1 (A) in paragraph (22), by striking ''or'' at
2 the end;
3 (B) in paragraph (23), by striking the pe-
4 riod at the end and inserting ''; or''; and
5 (C) by inserting after paragraph (23) the
6 following new paragraph:
7 ''(24) where such expenses are for renal dialysis
8 services (as defined in subparagraph (B) of section
9 1881(b)(14)) for which payment is made under such
10 section unless such payment is made under such sec-
11 tion to a provider of services or a renal dialysis facil-
12 ity for such services.''.
13 (3) CONFORMING AMENDMENTS.—(A) Section
14 1881(b) of the Social Security Act (42 U.S.C.
15 1395rr(b)) is amended—
16 (i) in paragraph (12)(A), by striking ''In
17 lieu of payment'' and inserting ''Subject to
18 paragraph (14), in lieu of payment'';
19 (ii) in the second sentence of paragraph
20 (12)(F)—
21 (I) by inserting ''or paragraph (14)''
22 after ''this paragraph''; and
23 (II) by inserting ''or under the system
24 under paragraph (14)'' after ''subpara-
25 graph (B)''; and

1 (iii) in paragraph (13)—
2 (I) in subparagraph (A), in the matter
3 preceding clause (i), by striking "The pay-
4 ment amounts" and inserting "Subject to
5 paragraph (14), the payment amounts";
6 and
7 (II) in subparagraph (B)—
8 (aa) in clause (i), by striking
9 "(i)" after "(B)" and by inserting ",
10 subject to paragraph (14)" before the
11 period at the end; and
12 (bb) by striking clause (ii).
13 (B) Section 1861(s)(2)(F) of the Social Secu-
14 rity Act (42 U.S.C. 1395x(s)(2)(F)) is amended by
15 inserting ", and, for items and services furnished on
16 or after January 1, 2011, renal dialysis services (as
17 defined in section 1881(b)(14)(B))" before the semi-
18 colon at the end.
19 (C) Section 623(e) of the Medicare Prescription
20 Drug, Improvement, and Modernization Act of 2003
21 (42 U.S.C. 1395rr note) is repealed.
22 (4) RULE OF CONSTRUCTION.—Nothing in this
23 subsection or the amendments made by this sub-
24 section shall be construed as authorizing or requir-
25 ing the Secretary of Health and Human Services to

1 make payments under the payment system imple-
2 mented under paragraph (14)(A)(i) of section
3 1881(b) of the Social Security Act (42 U.S.C.
4 1395rr(b)), as added by paragraph (1), for any un-
5 recovered amount for any bad debt attributable to
6 deductible and coinsurance on items and services not
7 included in the basic case-mix adjusted composite
8 rate under paragraph (12) of such section as in ef-
9 fect before the date of the enactment of this Act.

10 (c) QUALITY INCENTIVES IN THE END-STAGE RENAL
11 DISEASE PROGRAM.—Section 1881 of the Social Security
12 Act (42 U.S.C. 1395rr) is amended by adding at the end
13 the following new subsection:

14 ''(h) QUALITY INCENTIVES IN THE END-STAGE
15 RENAL DISEASE PROGRAM.—

16 ''(1) QUALITY INCENTIVES.—

17 ''(A) IN GENERAL.—With respect to renal
18 dialysis services (as defined in subsection
19 (b)(14)(B)) furnished on or after January 1,
20 2012, in the case of a provider of services or a
21 renal dialysis facility that does not meet the re-
22 quirement described in subparagraph (B) with
23 respect to the year, payments otherwise made
24 to such provider or facility under the system
25 under subsection (b)(14) for such services shall

1 be reduced by up to 2.0 percent, as determined
2 appropriate by the Secretary.
3 "(B) REQUIREMENT.—The requirement
4 described in this subparagraph is that the pro-
5 vider or facility meets (or exceeds) the total
6 performance score under paragraph (3) with re-
7 spect to performance standards established by
8 the Secretary with respect to measures specified
9 in paragraph (2).
10 "(C) NO EFFECT IN SUBSEQUENT
11 YEARS.—The reduction under subparagraph
12 (A) shall apply only with respect to the year in-
13 volved, and the Secretary shall not take into ac-
14 count such reduction in computing the single
15 payment amount under the system under para-
16 graph (14) in a subsequent year.
17 "(2) MEASURES.—
18 "(A) IN GENERAL.—The measures speci-
19 fied under this paragraph with respect to the
20 year involved shall include—
21 "(i) measures on anemia management
22 that reflect the labeling approved by the
23 Food and Drug Administration for such
24 management and measures on dialysis ade-
25 quacy;

1 "(ii) to the extent feasible, such meas-
2 ure (or measures) of patient satisfaction as
3 the Secretary shall specify; and
4 "(iii) such other measures as the Sec-
5 retary specifies, including, to the extent
6 feasible, measures on—
7 "(I) iron management;
8 "(II) bone mineral metabolism;
9 and
10 "(III) vascular access, including
11 for maximizing the placement of arte-
12 rial venous fistula.
13 "(B) USE OF ENDORSED MEASURES.—
14 "(i) IN GENERAL.—Subject to clause
15 (ii), any measure specified by the Secretary
16 under subparagraph (A)(iii) must have
17 been endorsed by the entity with a contract
18 under section 1890(a).
19 "(ii) EXCEPTION.—In the case of a
20 specified area or medical topic determined
21 appropriate by the Secretary for which a
22 feasible and practical measure has not
23 been endorsed by the entity with a contract
24 under section 1890(a), the Secretary may
25 specify a measure that is not so endorsed

1 as long as due consideration is given to
2 measures that have been endorsed or
3 adopted by a consensus organization iden-
4 tified by the Secretary.

5 "(C) UPDATING MEASURES.—The Sec-
6 retary shall establish a process for updating the
7 measures specified under subparagraph (A) in
8 consultation with interested parties.

9 "(D) CONSIDERATION.—In specifying
10 measures under subparagraph (A), the Sec-
11 retary shall consider the availability of meas-
12 ures that address the unique treatment needs of
13 children and young adults with kidney failure.

14 "(3) PERFORMANCE SCORES.—

15 "(A) TOTAL PERFORMANCE SCORE.—

16 "(i) IN GENERAL.—Subject to clause
17 (ii), the Secretary shall develop a method-
18 ology for assessing the total performance
19 of each provider of services and renal di-
20 alysis facility based on performance stand-
21 ards with respect to the measures selected
22 under paragraph (2) for a performance pe-
23 riod established under paragraph (4)(D)
24 (in this subsection referred to as the 'total
25 performance score').

1 "(ii) APPLICATION.—For providers of
2 services and renal dialysis facilities that do
3 not meet (or exceed) the total performance
4 score established by the Secretary, the Sec-
5 retary shall ensure that the application of
6 the methodology developed under clause (i)
7 results in an appropriate distribution of re-
8 ductions in payment under paragraph (1)
9 among providers and facilities achieving
10 different levels of total performance scores,
11 with providers and facilities achieving the
12 lowest total performance scores receiving
13 the largest reduction in payment under
14 paragraph (1)(A).
15 "(iii) WEIGHTING OF MEASURES.—In
16 calculating the total performance score, the
17 Secretary shall weight the scores with re-
18 spect to individual measures calculated
19 under subparagraph (B) to reflect prior-
20 ities for quality improvement, such as
21 weighting scores to ensure that providers
22 of services and renal dialysis facilities have
23 strong incentives to meet or exceed anemia
24 management and dialysis adequacy per-

1 formance standards, as determined appro-
2 priate by the Secretary.
3 "(B) PERFORMANCE SCORE WITH RE-
4 SPECT TO INDIVIDUAL MEASURES.—The Sec-
5 retary shall also calculate separate performance
6 scores for each measure, including for dialysis
7 adequacy and anemia management.
8 "(4) PERFORMANCE STANDARDS.—
9 "(A) ESTABLISHMENT.—Subject to sub-
10 paragraph (E), the Secretary shall establish
11 performance standards with respect to meas-
12 ures selected under paragraph (2) for a per-
13 formance period with respect to a year (as es-
14 tablished under subparagraph (D)).
15 "(B) ACHIEVEMENT AND IMPROVE-
16 MENT.—The performance standards established
17 under subparagraph (A) shall include levels of
18 achievement and improvement, as determined
19 appropriate by the Secretary.
20 "(C) TIMING.—The Secretary shall estab-
21 lish the performance standards under subpara-
22 graph (A) prior to the beginning of the per-
23 formance period for the year involved.
24 "(D) PERFORMANCE PERIOD.—The Sec-
25 retary shall establish the performance period

1 with respect to a year. Such performance period
2 shall occur prior to the beginning of such year.
3 "(E) SPECIAL RULE.—The Secretary shall
4 initially use as the performance standard for
5 the measures specified under paragraph
6 (2)(A)(i) for a provider of services or a renal di-
7 alysis facility the lesser of—
8 "(i) the performance of such provider
9 or facility for such measures in the year
10 selected by the Secretary under the second
11 sentence of subsection (b)(14)(A)(ii); or
12 "(ii) a performance standard based on
13 the national performance rates for such
14 measures in a period determined by the
15 Secretary.
16 "(5) LIMITATION ON REVIEW.—There shall be
17 no administrative or judicial review under section
18 1869, section 1878, or otherwise of the following:
19 "(A) The determination of the amount of
20 the payment reduction under paragraph (1).
21 "(B) The establishment of the performance
22 standards and the performance period under
23 paragraph (4).
24 "(C) The specification of measures under
25 paragraph (2).

1 "(D) The methodology developed under
2 paragraph (3) that is used to calculate total
3 performance scores and performance scores for
4 individual measures.
5 "(6) PUBLIC REPORTING.—
6 "(A) IN GENERAL.—The Secretary shall
7 establish procedures for making information re-
8 garding performance under this subsection
9 available to the public, including—
10 "(i) the total performance score
11 achieved by the provider of services or
12 renal dialysis facility under paragraph (3)
13 and appropriate comparisons of providers
14 of services and renal dialysis facilities to
15 the national average with respect to such
16 scores; and
17 "(ii) the performance score achieved
18 by the provider or facility with respect to
19 individual measures.
20 "(B) OPPORTUNITY TO REVIEW.—The pro-
21 cedures established under subparagraph (A)
22 shall ensure that a provider of services and a
23 renal dialysis facility has the opportunity to re-
24 view the information that is to be made public

1 with respect to the provider or facility prior to
2 such data being made public.
3 ''(C) CERTIFICATES.—
4 ''(i) IN GENERAL.—The Secretary
5 shall provide certificates to providers of
6 services and renal dialysis facilities who
7 furnish renal dialysis services under this
8 section to display in patient areas. The
9 certificate shall indicate the total perform-
10 ance score achieved by the provider or fa-
11 cility under paragraph (3).
12 ''(ii) DISPLAY.—Each facility or pro-
13 vider receiving a certificate under clause (i)
14 shall prominently display the certificate at
15 the provider or facility.
16 ''(D) WEB-BASED LIST.—The Secretary
17 shall establish a list of providers of services and
18 renal dialysis facilities who furnish renal dialy-
19 sis services under this section that indicates the
20 total performance score and the performance
21 score for individual measures achieved by the
22 provider and facility under paragraph (3). Such
23 information shall be posted on the Internet
24 website of the Centers for Medicare & Medicaid
25 Services in an easily understandable format.''.

1 (d) GAO REPORT ON ESRD BUNDLING SYSTEM AND
2 QUALITY INITIATIVE.—Not later than March 1, 2013, the
3 Comptroller General of the United States shall submit to
4 Congress a report on the implementation of the payment
5 system under subsection (b)(14) of section 1881 of the
6 Social Security Act (as added by subsection (b)) for renal
7 dialysis services and related services (defined in subpara-
8 graph (B) of such subsection (b)(14)) and the quality ini-
9 tiative under subsection (h) of such section 1881 (as
10 added by subsection (b)). Such report shall include the fol-
11 lowing information:
12 (1) The changes in utilization rates for
13 erythropoiesis stimulating agents.
14 (2) The mode of administering such agents, in-
15 cluding information on the proportion of individuals
16 receiving such agents intravenously as compared to
17 subcutaneously.
18 (3) An analysis of the payment adjustment
19 under subparagraph (D)(iii) of such subsection
20 (b)(14), including an examination of the extent to
21 which costs incurred by rural, low-volume providers
22 and facilities (as defined by the Secretary) in fur-
23 nishing renal dialysis services exceed the costs in-
24 curred by other providers and facilities in furnishing

1 such services, and a recommendation regarding the
2 appropriateness of such adjustment.
3 (4) The changes, if any, in utilization rates of
4 drugs and biologicals that the Secretary identifies
5 under subparagraph (B)(iii) of such subsection
6 (b)(14), and any oral equivalent or oral substitutable
7 forms of such drugs and biologicals or of drugs and
8 biologicals described in clause (ii), that have oc-
9 curred after implementation of the payment system
10 under such subsection (b)(14).
11 (5) Any other information or recommendations
12 for legislative and administrative actions determined
13 appropriate by the Comptroller General.
14 **SEC. 154. DELAY IN AND REFORM OF MEDICARE DMEPOS**
15 **COMPETITIVE ACQUISITION PROGRAM.**
16 (a) TEMPORARY DELAY AND REFORM.—
17 (1) IN GENERAL.—Section 1847(a)(1) of the
18 Social Security Act (42 U.S.C. 1395w–3(a)(1)) is
19 amended—
20 (A) in paragraph (1)—
21 (i) in subparagraph (B)(i), in the
22 matter before subclause (I), by inserting
23 ‘‘consistent with subparagraph (D)’’ after
24 ‘‘in a manner’’;

1 (ii) in subparagraph (B)(i)(II), by
2 striking "80" and "in 2009" and inserting
3 "an additional 70" and "in 2011", respec-
4 tively;
5 (iii) in subparagraph (B)(i)(III), by
6 striking "after 2009" and inserting "after
7 2011 (or, in the case of national mail order
8 for items and services, after 2010)"; and
9 (iv) by adding at the end the following
10 new subparagraphs:
11 "(D) CHANGES IN COMPETITIVE ACQUISI-
12 TION PROGRAMS.—
13 "(i) ROUND 1 OF COMPETITIVE AC-
14 QUISITION PROGRAM.—Notwithstanding
15 subparagraph (B)(i)(I) and in imple-
16 menting the first round of the competitive
17 acquisition programs under this section—
18 "(I) the contracts awarded under
19 this section before the date of the en-
20 actment of this subparagraph are ter-
21 minated, no payment shall be made
22 under this title on or after the date of
23 the enactment of this subparagraph
24 based on such a contract, and, to the
25 extent that any damages may be ap-

1 plicable as a result of the termination
2 of such contracts, such damages shall
3 be payable from the Federal Supple-
4 mentary Medical Insurance Trust
5 Fund under section 1841;
6 "(II) the Secretary shall conduct
7 the competition for such round in a
8 manner so that it occurs in 2009 with
9 respect to the same items and services
10 and the same areas, except as pro-
11 vided in subclauses (III) and (IV);
12 "(III) the Secretary shall exclude
13 Puerto Rico so that such round of
14 competition covers 9, instead of 10, of
15 the largest metropolitan statistical
16 areas; and
17 "(IV) there shall be excluded
18 negative pressure wound therapy
19 items and services.
20 Nothing in subclause (I) shall be construed
21 to provide an independent cause of action
22 or right to administrative or judicial review
23 with regard to the termination provided
24 under such subclause.

1 "(ii) ROUND 2 OF COMPETITIVE AC-
2 QUISITION PROGRAM.—In implementing
3 the second round of the competitive acqui-
4 sition programs under this section de-
5 scribed in subparagraph (B)(i)(II)—
6 "(I) the metropolitan statistical
7 areas to be included shall be those
8 metropolitan statistical areas selected
9 by the Secretary for such round as of
10 June 1, 2008; and
11 "(II) the Secretary may sub-
12 divide metropolitan statistical areas
13 with populations (based upon the
14 most recent data from the Census Bu-
15 reau) of at least 8,000,000 into sepa-
16 rate areas for competitive acquisition
17 purposes.
18 "(iii) EXCLUSION OF CERTAIN AREAS
19 IN SUBSEQUENT ROUNDS OF COMPETITIVE
20 ACQUISITION PROGRAMS.—In imple-
21 menting subsequent rounds of the competi-
22 tive acquisition programs under this sec-
23 tion, including under subparagraph
24 (B)(i)(III), for competitions occurring be-
25 fore 2015, the Secretary shall exempt from

1 the competitive acquisition program (other
2 than national mail order) the following:
3 "(I) Rural areas.
4 "(II) Metropolitan statistical
5 areas not selected under round 1 or
6 round 2 with a population of less than
7 250,000.
8 "(III) Areas with a low popu-
9 lation density within a metropolitan
10 statistical area that is otherwise se-
11 lected, as determined for purposes of
12 paragraph (3)(A).
13 "(E) VERIFICATION BY OIG.—The Inspec-
14 tor General of the Department of Health and
15 Human Services shall, through post-award
16 audit, survey, or otherwise, assess the process
17 used by the Centers for Medicare & Medicaid
18 Services to conduct competitive bidding and
19 subsequent pricing determinations under this
20 section that are the basis for pivotal bid
21 amounts and single payment amounts for items
22 and services in competitive bidding areas under
23 rounds 1 and 2 of the competitive acquisition
24 programs under this section and may continue

1 to verify such calculations for subsequent
2 rounds of such programs.

3 "(F) SUPPLIER FEEDBACK ON MISSING FI-
4 NANCIAL DOCUMENTATION.—

5 "(i) IN GENERAL.—In the case of a
6 bid where one or more covered documents
7 in connection with such bid have been sub-
8 mitted not later than the covered document
9 review date specified in clause (ii), the Sec-
10 retary—

11 "(I) shall provide, by not later
12 than 45 days (in the case of the first
13 round of the competitive acquisition
14 programs as described in subpara-
15 graph (B)(i)(I)) or 90 days (in the
16 case of a subsequent round of such
17 programs) after the covered document
18 review date, for notice to the bidder of
19 all such documents that are missing
20 as of the covered document review
21 date; and

22 "(II) may not reject the bid on
23 the basis that any covered document
24 is missing or has not been submitted
25 on a timely basis, if all such missing

1 documents identified in the notice pro-
2 vided to the bidder under subclause
3 (I) are submitted to the Secretary not
4 later than 10 business days after the
5 date of such notice.
6 "(ii) COVERED DOCUMENT REVIEW
7 DATE.—The covered document review date
8 specified in this clause with respect to a
9 competitive acquisition program is the
10 later of—
11 "(I) the date that is 30 days be-
12 fore the final date specified by the
13 Secretary for submission of bids
14 under such program; or
15 "(II) the date that is 30 days
16 after the first date specified by the
17 Secretary for submission of bids
18 under such program.
19 "(iii) LIMITATIONS OF PROCESS.—
20 The process provided under this subpara-
21 graph—
22 "(I) applies only to the timely
23 submission of covered documents;
24 "(II) does not apply to any deter-
25 mination as to the accuracy or com-

1 pleteness of covered documents sub-
2 mitted or whether such documents
3 meet applicable requirements;
4 "(III) shall not prevent the Sec-
5 retary from rejecting a bid based on
6 any basis not described in clause
7 (i)(II); and
8 "(IV) shall not be construed as
9 permitting a bidder to change bidding
10 amounts or to make other changes in
11 a bid submission.
12 "(iv) COVERED DOCUMENT DE-
13 FINED.—In this subparagraph, the term
14 'covered document' means a financial, tax,
15 or other document required to be sub-
16 mitted by a bidder as part of an original
17 bid submission under a competitive acqui-
18 sition program in order to meet required
19 financial standards. Such term does not in-
20 clude other documents, such as the bid
21 itself or accreditation documentation.";
22 and
23 (B) in paragraph (2)(A), by inserting be-
24 fore the period at the end the following: "and
25 excluding certain complex rehabilitative power

1 wheelchairs recognized by the Secretary as clas-
2 sified within group 3 or higher (and related ac-
3 cessories when furnished in connection with
4 such wheelchairs)''.
5 (2) BUDGET NEUTRAL OFFSET.—
6 (A) IN GENERAL.—Section 1834(a)(14) of
7 such Act (42 U.S.C. 1395m(a)(14)) is amend-
8 ed—
9 (i) by striking ''and'' at the end of
10 subparagraphs (H) and (I);
11 (ii) by redesignating subparagraph (J)
12 as subparagraph (M); and
13 (iii) by inserting after subparagraph
14 (I) the following new subparagraphs:
15 ''(J) for 2009—
16 ''(i) in the case of items and services
17 furnished in any geographic area, if such
18 items or services were selected for competi-
19 tive acquisition in any area under the com-
20 petitive acquisition program under section
21 1847(a)(1)(B)(i)(I) before July 1, 2008,
22 including related accessories but only if
23 furnished with such items and services se-
24 lected for such competition and diabetic

1 supplies but only if furnished through mail
2 order, - 9.5 percent; or
3 "(ii) in the case of other items and
4 services, the percentage increase in the
5 consumer price index for all urban con-
6 sumers (U.S. urban average) for the 12-
7 month period ending with June 2008;
8 "(K) for 2010, 2011, 2012, and 2013, the
9 percentage increase in the consumer price index
10 for all urban consumers (U.S. urban average)
11 for the 12-month period ending with June of
12 the previous year;
13 "(L) for 2014—
14 "(i) in the case of items and services
15 described in subparagraph (J)(i) for which
16 a payment adjustment has not been made
17 under subsection (a)(1)(F)(ii) in any pre-
18 vious year, the percentage increase in the
19 consumer price index for all urban con-
20 sumers (U.S. urban average) for the 12-
21 month period ending with June 2013, plus
22 2.0 percentage points; or
23 "(ii) in the case of other items and
24 services, the percentage increase in the
25 consumer price index for all urban con-

1 sumers (U.S. urban average) for the 12-
2 month period ending with June 2013;
3 and''.
4 (B) CONFORMING TREATMENT FOR CER-
5 TAIN ITEMS AND SERVICES.—The second sen-
6 tence of section 1842(s)(1) of such Act (42
7 U.S.C. 1395u(s)(1)) is amended by striking
8 ''except that'' and all that follows and inserting
9 the following: ''except that for items and serv-
10 ices described in paragraph (2)(D)—
11 ''(A) for 2009 section 1834(a)(14)(J)(i) shall
12 apply under this paragraph instead of the percent-
13 age increase otherwise applicable; and
14 ''(B) for 2014, if subparagraph (A) is applied
15 to the items and services and there has not been a
16 payment adjustment under paragraph (3)(B) for the
17 items and services for any previous year, the per-
18 centage increase computed under section
19 1834(a)(14)(L)(i) shall apply instead of the percent-
20 age increase otherwise applicable.''.
21 (3) CONFORMING DELAY.—Subsections
22 (a)(1)(F) and (h)(1)(H) of section 1834 of the So-
23 cial Security Act (42 U.S.C. 1395m) are each
24 amended by striking ''January 1, 2009'' and insert-
25 ing ''January 1, 2011''.

1 (4) CONSIDERATIONS IN APPLICATION.—Sec-
2 tion 1834 of such Act (42 U.S.C. 1395m) is amend-
3 ed—
4 (A) in subsection (a)(1)—
5 (i) in subparagraph (F), by inserting
6 "subject to subparagraph (G)," before
7 "that are included"; and
8 (ii) by adding at the end the following
9 new subparagraph:
10 "(G) USE OF INFORMATION ON COMPETI-
11 TIVE BID RATES.—The Secretary shall specify
12 by regulation the methodology to be used in ap-
13 plying the provisions of subparagraph (F)(ii)
14 and subsection (h)(1)(H)(ii). In promulgating
15 such regulation, the Secretary shall consider the
16 costs of items and services in areas in which
17 such provisions would be applied compared to
18 the payment rates for such items and services
19 in competitive acquisition areas."; and
20 (B) in subsection (h)(1)(H), by inserting
21 "subject to subsection (a)(1)(G)," before "that
22 are included".
23 (b) QUALITY STANDARDS.—
24 (1) APPLICATION OF ACCREDITATION REQUIRE-
25 MENT.—

1 (A) IN GENERAL.—Section 1834(a)(20) of
2 the Social Security Act (42 U.S.C.
3 1395m(a)(20)) is amended—
4 (i) in subparagraph (E), by inserting
5 "including subparagraph (F)," after
6 "under this paragraph,"; and
7 (ii) by adding at the end the following
8 new subparagraph:
9 "(F) APPLICATION OF ACCREDITATION RE-
10 QUIREMENT.—In implementing quality stand-
11 ards under this paragraph—
12 "(i) subject to clause (ii), the Sec-
13 retary shall require suppliers furnishing
14 items and services described in subpara-
15 graph (D) on or after October 1, 2009, di-
16 rectly or as a subcontractor for another en-
17 tity, to have submitted to the Secretary
18 evidence of accreditation by an accredita-
19 tion organization designated under sub-
20 paragraph (B) as meeting applicable qual-
21 ity standards; and
22 "(ii) in applying such standards and
23 the accreditation requirement of clause (i)
24 with respect to eligible professionals (as
25 defined in section 1848(k)(3)(B)), and in-

1 cluding such other persons, such as
2 orthotists and prosthetists, as specified by
3 the Secretary, furnishing such items and
4 services—
5 "(I) such standards and accredi-
6 tation requirement shall not apply to
7 such professionals and persons unless
8 the Secretary determines that the
9 standards being applied are designed
10 specifically to be applied to such pro-
11 fessionals and persons; and
12 "(II) the Secretary may exempt
13 such professionals and persons from
14 such standards and requirement if the
15 Secretary determines that licensing,
16 accreditation, or other mandatory
17 quality requirements apply to such
18 professionals and persons with respect
19 to the furnishing of such items and
20 services.".
21 (B) CONSTRUCTION.—Section
22 1834(a)(20)(F)(ii) of the Social Security Act,
23 as added by subparagraph (A), shall not be con-
24 strued as preventing the Secretary of Health
25 and Human Services from implementing the

1 first round of competition under section 1847
2 of such Act on a timely basis.
3 (2) DISCLOSURE OF SUBCONTRACTORS UNDER
4 COMPETITIVE ACQUISITION PROGRAM.—Section
5 1847(b)(3) of such Act (42 U.S.C. 1395w–3(b)(3))
6 is amended by adding at the end the following new
7 subparagraph:
8 ''(C) DISCLOSURE OF SUBCONTRAC-
9 TORS.—
10 ''(i) INITIAL DISCLOSURE.—Not later
11 than 10 days after the date a supplier en-
12 ters into a contract with the Secretary
13 under this section, such supplier shall dis-
14 close to the Secretary, in a form and man-
15 ner specified by the Secretary, the infor-
16 mation on—
17 ''(I) each subcontracting relation-
18 ship that such supplier has in fur-
19 nishing items and services under the
20 contract; and
21 ''(II) whether each such subcon-
22 tractor meets the requirement of sec-
23 tion 1834(a)(20)(F)(i), if applicable
24 to such subcontractor.

1 "(ii) SUBSEQUENT DISCLOSURE.—Not
2 later than 10 days after such a supplier
3 subsequently enters into a subcontracting
4 relationship described in clause (i)(II),
5 such supplier shall disclose to the Sec-
6 retary, in such form and manner, the in-
7 formation described in subclauses (I) and
8 (II) of clause (i).".
9 (3) COMPETITIVE ACQUISITION OMBUDSMAN.—
10 Such section is further amended by adding at the
11 end the following new subsection:
12 "(f) COMPETITIVE ACQUISITION OMBUDSMAN.—The
13 Secretary shall provide for a competitive acquisition om-
14 budsman within the Centers for Medicare & Medicaid
15 Services in order to respond to complaints and inquiries
16 made by suppliers and individuals relating to the applica-
17 tion of the competitive acquisition program under this sec-
18 tion. The ombudsman may be within the office of the
19 Medicare Beneficiary Ombudsman appointed under sec-
20 tion 1808(c). The ombudsman shall submit to Congress
21 an annual report on the activities under this subsection,
22 which report shall be coordinated with the report provided
23 under section 1808(c)(2)(C).".
24 (c) CHANGE IN REPORTS AND DEADLINES.—

1 (1) GAO REPORT.—Section 302(b)(3) of the
2 Medicare Prescription Drug, Improvement, and
3 Modernization Act of 2003 (Public Law 108-173) is
4 amended—
5 (A) in subparagraph (A)—
6 (i) by inserting "and as amended by
7 section 2 of the Medicare DMEPOS Com-
8 petitive Acquisition Reform Act of 2008"
9 after "as amended by paragraph (1)"; and
10 (ii) by inserting before the period at
11 the end the following: "and the topics spec-
12 ified in subparagraph (C)";
13 (B) in subparagraph (B), by striking "Not
14 later than January 1, 2009," and inserting
15 "Not later than 1 year after the first date that
16 payments are made under section 1847 of the
17 Social Security Act,"; and
18 (C) by adding at the end the following new
19 subparagraph:
20 "(C) TOPICS.—The topics specified in this
21 subparagraph, for the study under subpara-
22 graph (A) concerning the competitive acquisi-
23 tion program, are the following:
24 "(i) Beneficiary access to items and
25 services under the program, including the

1 impact on such access of awarding con-
2 tracts to bidders that—
3 ‘‘(I) did not have a physical pres-
4 ence in an area where they received a
5 contract; or
6 ‘‘(II) had no previous experience
7 providing the product category they
8 were contracted to provide.
9 ‘‘(ii) Beneficiary satisfaction with the
10 program and cost savings to beneficiaries
11 under the program.
12 ‘‘(iii) Costs to suppliers of partici-
13 pating in the program and recommenda-
14 tions about ways to reduce those costs
15 without compromising quality standards or
16 savings to the Medicare program.
17 ‘‘(iv) Impact of the program on small
18 business suppliers.
19 ‘‘(v) Analysis of the impact on utiliza-
20 tion of different items and services paid
21 within the same Healthcare Common Pro-
22 cedure Coding System (HCPCS) code.
23 ‘‘(vi) Costs to the Centers for Medi-
24 care & Medicaid Services, including pay-
25 ments made to contractors, for admin-

1 istering the program compared with ad-
2 ministration of a fee schedule, in compari-
3 son with the relative savings of the pro-
4 gram.
5 "(vii) Impact on access, Medicare
6 spending, and beneficiary spending of any
7 difference in treatment for diabetic testing
8 supplies depending on how such supplies
9 are furnished.
10 "(viii) Such other topics as the Comp-
11 troller General determines to be appro-
12 priate.".
13 (2) DELAY IN OTHER DEADLINES.—
14 (A) PROGRAM ADVISORY AND OVERSIGHT
15 COMMITTEE.—Section 1847(c)(5) of the Social
16 Security Act (42 U.S.C. 1395w–3(c)(5)) is
17 amended by striking "December 31, 2009" and
18 inserting "December 31, 2011".
19 (B) SECRETARIAL REPORT.—Section
20 1847(d) of such Act (42 U.S.C. 1395w–3(d)) is
21 amended by striking "July 1, 2009" and insert-
22 ing "July 1, 2011".
23 (C) IG REPORT.—Section 302(e) of the
24 Medicare Prescription Drug, Improvement, and
25 Modernization Act of 2003 (Public Law 108-

1 173) is amended by striking "July 1, 2009"
2 and inserting "July 1, 2011".
3 (3) EVALUATION OF CERTAIN CODE.—The Sec-
4 retary of Health and Human Services shall evaluate
5 the existing Health Care Common Procedure Coding
6 System (HCPCS) codes for negative pressure wound
7 therapy to ensure accurate reporting and billing for
8 items and services under such codes. In carrying out
9 such evaluation, the Secretary shall use an existing
10 process, administered by the Durable Medical Equip-
11 ment Medicare Administrative Contractors, for the
12 consideration of coding changes and consider all rel-
13 evant studies and information furnished pursuant to
14 such process.
15 (d) OTHER PROVISIONS.—
16 (1) EXEMPTION FROM COMPETITIVE ACQUISI-
17 TION FOR CERTAIN OFF-THE-SHELF ORTHOTICS.—
18 Section 1847(a) of the Social Security Act (42
19 U.S.C. 1395w–3(a)) is amended by adding at the
20 end the following new paragraph:
21 "(7) EXEMPTION FROM COMPETITIVE ACQUISI-
22 TION.—The programs under this section shall not
23 apply to the following:

1 "(A) CERTAIN OFF-THE-SHELF
2 ORTHOTICS.—Items and services described in
3 paragraph (2)(C) if furnished—
4 "(i) by a physician or other practi-
5 tioner (as defined by the Secretary) to the
6 physician's or practitioner's own patients
7 as part of the physician's or practitioner's
8 professional service; or
9 "(ii) by a hospital to the hospital's
10 own patients during an admission or on
11 the date of discharge.
12 "(B) CERTAIN DURABLE MEDICAL EQUIP-
13 MENT.—Those items and services described in
14 paragraph (2)(A)—
15 "(i) that are furnished by a hospital
16 to the hospital's own patients during an
17 admission or on the date of discharge; and
18 "(ii) to which such programs would
19 not apply, as specified by the Secretary, if
20 furnished by a physician to the physician's
21 own patients as part of the physician's
22 professional service.".
23 (2) CORRECTION IN FACE-TO-FACE EXAMINA-
24 TION REQUIREMENT.—Section 1834(a)(1)(E)(ii) of

1 such Act (42 U.S.C. 1395m(a)(1)(E)(ii)) is amended
2 by striking ‘‘1861(r)(1)’’ and inserting ‘‘1861(r)’’.
3 (3) SPECIAL RULE IN CASE OF NATIONAL MAIL-
4 ORDER COMPETITION FOR DIABETIC TESTING
5 STRIPS.—Section 1847(b) of such Act (42 U.S.C.
6 1395w–3(b)) is amended—
7 (A) by redesignating paragraph (10) as
8 paragraph (11); and
9 (B) by inserting after paragraph (9) the
10 following new paragraph:
11 ‘‘(10) SPECIAL RULE IN CASE OF COMPETITION
12 FOR DIABETIC TESTING STRIPS.—
13 ‘‘(A) IN GENERAL.—With respect to the
14 competitive acquisition program for diabetic
15 testing strips conducted after the first round of
16 the competitive acquisition programs, if an enti-
17 ty does not demonstrate to the Secretary that
18 its bid covers types of diabetic testing strip
19 products that, in the aggregate and taking into
20 account volume for the different products, cover
21 50 percent (or such higher percentage as the
22 Secretary may specify) of all such types of
23 products, the Secretary shall reject such bid.
24 The volume for such types of products may be
25 determined in accordance with such data (which

1 may be market based data) as the Secretary
2 recognizes.
3 "(B) STUDY OF TYPES OF TESTING STRIP
4 PRODUCTS.—Before 2011, the Inspector Gen-
5 eral of the Department of Health and Human
6 Services shall conduct a study to determine the
7 types of diabetic testing strip products by vol-
8 ume that could be used to make determinations
9 pursuant to subparagraph (A) for the first com-
10 petition under the competitive acquisition pro-
11 gram described in such subparagraph and sub-
12 mit to the Secretary a report on the results of
13 the study. The Inspector General shall also con-
14 duct such a study and submit such a report be-
15 fore the Secretary conducts a subsequent com-
16 petitive acquistion program described in sub-
17 paragraph (A).".
18 (4) OTHER CONFORMING AMENDMENTS.—Sec-
19 tion 1847(b)(11) of such Act, as redesignated by
20 paragraph (3), is amended—
21 (A) in subparagraph (C), by inserting "and
22 the identification of areas under subsection
23 (a)(1)(D)(iii)" after "(a)(1)(A)";

1 (B) in subparagraph (D), by inserting
2 "and implementation of subsection (a)(1)(D)"
3 after "(a)(1)(B)";
4 (C) in subparagraph (E), by striking "or"
5 at the end;
6 (D) in subparagraph (F), by striking the
7 period at the end and inserting "; or"; and
8 (E) by adding at the end the following new
9 subparagraph:
10 "(G) the implementation of the special rule
11 described in paragraph (10).".
12 (5) FUNDING FOR IMPLEMENTATION.—In addi-
13 tion to funds otherwise available, for purposes of im-
14 plementing the provisions of, and amendments made
15 by, this section, other than the amendment made by
16 subsection (c)(1) and other than section
17 1847(a)(1)(E) of the Social Security Act, the Sec-
18 retary of Health and Human Services shall provide
19 for the transfer from the Federal Supplementary
20 Medical Insurance Trust Fund established under
21 section 1841 of the Social Security Act (42 U.S.C.
22 1395t) to the Centers for Medicare & Medicaid Serv-
23 ices Program Management Account of $20,000,000
24 for fiscal year 2008, and $25,000,000 for each of
25 fiscal years 2009 through 2012. Amounts trans-

1 ferred under this paragraph for a fiscal year shall be
2 available until expended.
3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect as of June 30, 2008.

5 Subtitle D—Provisions Relating to 6 Part C

7 SEC. 161. PHASE-OUT OF INDIRECT MEDICAL EDUCATION 8 (IME).

9 (a) IN GENERAL.—Section 1853(k) of the Social Se-
10 curity Act (42 U.S.C. 1395w–23(k)) is amended—
11 (1) in paragraph (1), in the matter preceding
12 subparagraph (A), by striking ''paragraph (2)'' and
13 inserting ''paragraphs (2) and (4)''; and
14 (2) by adding at the end the following new
15 paragraph:
16 ''(4) PHASE-OUT OF THE INDIRECT COSTS OF
17 MEDICAL EDUCATION FROM CAPITATION RATES.—
18 ''(A) IN GENERAL.—After determining the
19 applicable amount for an area for a year under
20 paragraph (1) (beginning with 2010), the Sec-
21 retary shall adjust such applicable amount to
22 exclude from such applicable amount the phase-
23 in percentage (as defined in subparagraph
24 (B)(i)) for the year of the Secretary's estimate
25 of the standardized costs for payments under

1 section 1886(d)(5)(B) in the area for the year.
2 Any adjustment under the preceding sentence
3 shall be made prior to the application of para-
4 graph (2).
5 "(B) PERCENTAGES DEFINED.—For pur-
6 poses of this paragraph:
7 "(i) PHASE-IN PERCENTAGE.—The
8 term 'phase-in percentage' means, for an
9 area for a year, the ratio (expressed as a
10 percentage, but in no case greater than
11 100 percent) of—
12 "(I) the maximum cumulative ad-
13 justment percentage for the year (as
14 defined in clause (ii)); to
15 "(II) the standardized IME cost
16 percentage (as defined in clause (iii))
17 for the area and year.
18 "(ii) MAXIMUM CUMULATIVE ADJUST-
19 MENT PERCENTAGE.—The term 'maximum
20 cumulative adjustment percentage' means,
21 for—
22 "(I) 2010, 0.60 percent; and
23 "(II) a subsequent year, the max-
24 imum cumulative adjustment percent-

1 age for the previous year increased by
2 0.60 percentage points.
3 "(iii) STANDARDIZED IME COST PER-
4 CENTAGE.—The term 'standardized IME
5 cost percentage' means, for an area for a
6 year, the per capita costs for payments
7 under section 1886(d)(5)(B) (expressed as
8 a percentage of the fee-for-service amount
9 specified in subparagraph (C)) for the area
10 and the year.
11 "(C) FEE-FOR-SERVICE AMOUNT.—The
12 fee-for-service amount specified in this subpara-
13 graph for an area for a year is the amount
14 specified under subsection (c)(1)(D) for the
15 area and the year.".
16 (b) EXCLUDING ADJUSTMENT FROM THE UP-
17 DATE.—Section 1853(k)(1)(B)(i) of the Social Security
18 Act (42 U.S.C. 1395w–23(k)(1)(B)(i)) is amended by
19 striking "paragraph (2)" and inserting "paragraphs (2)
20 and (4)".
21 (c) HOLD HARMLESS FOR PACE PROGRAM PAY-
22 MENTS.—Section 1894(d) of the Social Security Act (42
23 U.S.C. 1395eee(d)) is amended by adding at the end the
24 following new paragraph:

1 "(3) CAPITATION RATES DETERMINED WITH-
2 OUT REGARD TO THE PHASE-OUT OF THE INDIRECT
3 COSTS OF MEDICAL EDUCATION FROM THE ANNUAL
4 MEDICARE ADVANTAGE CAPITATION RATE.—Capita-
5 tion amounts under this subsection shall be deter-
6 mined without regard to the application of section
7 1853(k)(4).".

8 **SEC. 162. REVISIONS TO REQUIREMENTS FOR MEDICARE**
9 **ADVANTAGE PRIVATE FEE-FOR-SERVICE**
10 **PLANS.**

11 (a) REQUIREMENTS TO ASSURE ACCESS TO NET-
12 WORK COVERAGE.—
13 (1) INDIVIDUAL MARKET.—Section 1852(d) of
14 the Social Security Act (42 U.S.C. 1395w–22(d)) is
15 amended—
16 (A) in paragraph (4), in the second sen-
17 tence, by striking "The Secretary" and insert-
18 ing "Subject to paragraph (5), the Secretary";
19 and
20 (B) by adding at the end the following new
21 paragraph:
22 "(5) REQUIREMENT OF CERTAIN NON-
23 EMPLOYER MEDICARE ADVANTAGE PRIVATE FEE-
24 FOR-SERVICE PLANS TO USE CONTRACTS WITH PRO-
25 VIDERS.—

1 "(A) IN GENERAL.—For plan year 2011
2 and subsequent plan years, in the case of a
3 Medicare Advantage private fee-for-service plan
4 not described in paragraph (1) or (2) of section
5 1857(i) operating in a network area (as defined
6 in subparagraph (B)), the plan shall meet the
7 access standards under paragraph (4) in that
8 area only through entering into written con-
9 tracts as provided for under subparagraph (B)
10 of such paragraph and not, in whole or in part,
11 through the establishment of payment rates
12 meeting the requirements under subparagraph
13 (A) of such paragraph.
14 "(B) NETWORK AREA DEFINED.—For pur-
15 poses of subparagraph (A), the term 'network
16 area' means, for a plan year, an area which the
17 Secretary identifies (in the Secretary's an-
18 nouncement of the proposed payment rates for
19 the previous plan year under section
20 1853(b)(1)(B)) as having at least 2 network-
21 based plans (as defined in subparagraph (C))
22 with enrollment under this part as of the first
23 day of the year in which such announcement is
24 made.
25 "(C) NETWORK-BASED PLAN DEFINED.—

1 "(i) IN GENERAL.—For purposes of
2 subparagraph (B), the term 'network-
3 based plan' means—
4 "(I) except as provided in clause
5 (ii), a Medicare Advantage plan that
6 is a coordinated care plan described in
7 section 1851(a)(2)(A)(i);
8 "(II) a network-based MSA plan;
9 and
10 "(III) a reasonable cost reim-
11 bursement plan under section 1876.
12 "(ii) EXCLUSION OF NON-NETWORK
13 REGIONAL PPOS.—The term 'network-
14 based plan' shall not include an MA re-
15 gional plan that, with respect to the area,
16 meets access adequacy standards under
17 this part substantially through the author-
18 ity of section 422.112(a)(1)(ii) of title 42,
19 Code of Federal Regulations, rather than
20 through written contracts.".
21 (2) EMPLOYER PLANS.—Section 1852(d) of the
22 Social Security Act (42 U.S.C. 1395w–22(d)), as
23 amended by paragraph (1), is amended—

1 (A) in paragraph (4), in the second sen-
2 tence, by striking "paragraph (5)" and insert-
3 ing "paragraphs (5) and (6)"; and
4 (B) by adding at the end the following new
5 paragraph:
6 "(6) REQUIREMENT OF ALL EMPLOYER MEDI-
7 CARE ADVANTAGE PRIVATE FEE-FOR-SERVICE PLANS
8 TO USE CONTRACTS WITH PROVIDERS.—For plan
9 year 2011 and subsequent plan years, in the case of
10 a Medicare Advantage private fee-for-service plan
11 that is described in paragraph (1) or (2) of section
12 1857(i), the plan shall meet the access standards
13 under paragraph (4) only through entering into writ-
14 ten contracts as provided for under subparagraph
15 (B) of such paragraph and not, in whole or in part,
16 through the establishment of payment rates meeting
17 the requirements under subparagraph (A) of such
18 paragraph.".
19 (3) ACCESS REQUIREMENTS.—
20 (A) IN GENERAL.—Section 1852(d)(4)(B)
21 of the Social Security Act (42 U.S.C. 1395w–
22 22(d)(4)(B)) is amended by striking "a suffi-
23 cient number" through "terms of the plan" and
24 inserting "a sufficient number and range of
25 providers within such category to meet the ac-

1 cess standards in subparagraphs (A) through
2 (E) of paragraph (1)''.
3 (B) EFFECTIVE DATE.—The amendment
4 made by subparagraph (A) shall apply to plan
5 year 2010 and subsequent plan years.
6 (b) CLARIFICATION REGARDING UTILIZATION.—Sec-
7 tion 1859(b)(2) of the Social Security Act (42 U.S.C.
8 1395w–28(b)(2)) is amended by adding at the end the fol-
9 lowing flush sentence:
10 ''Nothing in subparagraph (B) shall be construed to
11 preclude a plan from varying rates for such a pro-
12 vider based on the specialty of the provider, the loca-
13 tion of the provider, or other factors related to such
14 provider that are not related to utilization, or to pre-
15 clude a plan from increasing rates for such a pro-
16 vider based on increased utilization of specified pre-
17 ventive or screening services.''.

18 **SEC. 163. REVISIONS TO QUALITY IMPROVEMENT PRO-**
19 **GRAMS.**

20 (a) REQUIREMENT FOR MA PRIVATE FEE-FOR-
21 SERVICE AND MSA PLANS TO HAVE A QUALITY IM-
22 PROVEMENT PROGRAM.—Section 1852(e)(1) of the Social
23 Security Act (42 U.S.C. 1395w–22(e)(1)) is amended by
24 striking ''(other than an MA private fee-for-service plan
25 or an MSA plan)''.

1 (b) DATA COLLECTION REQUIREMENTS FOR MA RE-
2 GIONAL PLANS, MA PRIVATE FEE-FOR-SERVICE PLANS,
3 AND MSA PLANS.—Section 1852(e)(3)(A) of the Social
4 Security Act (42 U.S.C. 1395w–22(e)(3)(A)) is amend-
5 ed—

6 (1) in clause (i), by adding at the end the fol-
7 lowing new sentence: ''With respect to MA private
8 fee-for-service plans and MSA plans, the require-
9 ments under the preceding sentence may not exceed
10 the requirements under this subparagraph with re-
11 spect to MA local plans that are preferred provider
12 organization plans, except that, for plan year 2010,
13 the limitation under clause (iii) shall not apply and
14 such requirements shall apply only with respect to
15 administrative claims data.''

16 (2) by striking clause (ii); and

17 (3) in clause (iii)—

18 (A) in the heading—

19 (i) by inserting ''LOCAL'' after ''TO'';
20 and

21 (ii) by inserting ''AND MA REGIONAL
22 PLANS'' after ''ORGANIZATIONS''; and

23 (B) by inserting ''and to MA regional
24 plans'' after ''organization plans''.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plan years beginning on or after
3 January 1, 2010.

4 **SEC. 164. REVISIONS RELATING TO SPECIALIZED MEDI-**
5 **CARE ADVANTAGE PLANS FOR SPECIAL**
6 **NEEDS INDIVIDUALS.**

7 (a) EXTENSION OF AUTHORITY TO RESTRICT EN-
8 ROLLMENT.—Section 1859(f) of the Social Security Act
9 (42 U.S.C. 1395w–28(f)), as amended by section 108(a)
10 of the Medicare, Medicaid, and SCHIP Extension Act of
11 2007 (Public Law 110–173) is amended by striking
12 "2010" and inserting "2011".
13 (b) MORATORIUM ON AUTHORITY TO DESIGNATE
14 OTHER PLANS AS SPECIALIZED MA PLANS.—During the
15 period beginning on January 1, 2010, and ending on De-
16 cember 31, 2010, the Secretary of Health and Human
17 Services may not exercise the authority provided under
18 section 231(d) of the Medicare Prescription Drug, Im-
19 provement, and Modernization Act of 2003 (42 U.S.C.
20 1395w–21 note) to designate other plans as specialized
21 MA plans for special needs individuals.
22 (c) REQUIREMENTS FOR ENROLLMENT.—
23 (1) IN GENERAL.—Section 1859 of the Social
24 Security Act (42 U.S.C. 1395w–28) is amended—

1 (A) in subsection (b)(6)(A), by inserting
2 "and that, as of January 1, 2010, meets the
3 applicable requirements of paragraph (2), (3),
4 or (4) of subsection (f), as the case may be" be-
5 fore the period at the end; and
6 (B) in subsection (f)—
7 (i) by amending the heading to read
8 as follows: "REQUIREMENTS REGARDING
9 ENROLLMENT IN SPECIALIZED MA PLANS
10 FOR SPECIAL NEEDS INDIVIDUALS";
11 (ii) by designating the sentence begin-
12 ning "In the case of" as paragraph (1)
13 with the heading "REQUIREMENTS FOR
14 ENROLLMENT.—" and with appropriate in-
15 dentation; and
16 (iii) by adding at the end the fol-
17 lowing new paragraphs:
18 "(2) ADDITIONAL REQUIREMENTS FOR INSTI-
19 TUTIONAL SNPS.—In the case of a specialized MA
20 plan for special needs individuals described in sub-
21 section (b)(6)(B)(i), the applicable requirements de-
22 scribed in this paragraph are as follows:
23 "(A) Each individual that enrolls in the
24 plan on or after January 1, 2010, is a special
25 needs individuals described in subsection

1 (b)(6)(B)(i). In the case of an individual who is
2 living in the community but requires an institu-
3 tional level of care, such individual shall not be
4 considered a special needs individual described
5 in subsection (b)(6)(B)(i) unless the determina-
6 tion that the individual requires an institutional
7 level of care was made—
8 ''(i) using a State assessment tool of
9 the State in which the individual resides;
10 and
11 ''(ii) by an entity other than the orga-
12 nization offering the plan.
13 ''(B) The plan meets the requirements de-
14 scribed in paragraph (5).
15 ''(3) ADDITIONAL REQUIREMENTS FOR DUAL
16 SNPS.—In the case of a specialized MA plan for spe-
17 cial needs individuals described in subsection
18 (b)(6)(B)(ii), the applicable requirements described
19 in this paragraph are as follows:
20 ''(A) Each individual that enrolls in the
21 plan on or after January 1, 2010, is a special
22 needs individuals described in subsection
23 (b)(6)(B)(ii).
24 ''(B) The plan meets the requirements de-
25 scribed in paragraph (5).

1 "(C) The plan provides each prospective
2 enrollee, prior to enrollment, with a comprehen-
3 sive written statement (using standardized con-
4 tent and format established by the Secretary)
5 that describes—
6 "(i) the benefits and cost-sharing pro-
7 tections that the individual is entitled to
8 under the State Medicaid program under
9 title XIX; and
10 "(ii) which of such benefits and cost-
11 sharing protections are covered under the
12 plan.
13 Such statement shall be included with any de-
14 scription of benefits offered by the plan.
15 "(D) The plan has a contract with the
16 State Medicaid agency to provide benefits, or
17 arrange for benefits to be provided, for which
18 such individual is entitled to receive as medical
19 assistance under title XIX. Such benefits may
20 include long-term care services consistent with
21 State policy.
22 "(4) ADDITIONAL REQUIREMENTS FOR SEVERE
23 OR DISABLING CHRONIC CONDITION SNPS.—In the
24 case of a specialized MA plan for special needs indi-
25 viduals described in subsection (b)(6)(B)(iii), the ap-

1 plicable requirements described in this paragraph
2 are as follows:
3 “(A) Each individual that enrolls in the
4 plan on or after January 1, 2010, is a special
5 needs individual described in subsection
6 (b)(6)(B)(iii).
7 “(B) The plan meets the requirements de-
8 scribed in paragraph (5).”.
9 (2) AUTHORITY TO OPERATE BUT NO SERVICE
10 AREA EXPANSION FOR DUAL SNPS THAT DO NOT
11 MEET CERTAIN REQUIREMENTS.—Notwithstanding
12 subsection (f) of section 1859 of the Social Security
13 Act (42 U.S.C. 1395w–28), during the period begin-
14 ning on January 1, 2010, and ending on December
15 31, 2010, in the case of a specialized Medicare Ad-
16 vantage plan for special needs individuals described
17 in subsection (b)(6)(B)(ii) of such section, as
18 amended by this section, that does not meet the re-
19 quirement described in subsection (f)(3)(D) of such
20 section, the Secretary of Health and Human Serv-
21 ices—
22 (A) shall permit such plan to be offered
23 under part C of title XVIII of such Act; and
24 (B) shall not permit an expansion of the
25 service area of the plan under such part C.

1 (3) RESOURCES FOR STATE MEDICAID AGEN-
2 CIES.—The Secretary of Health and Human Serv-
3 ices shall provide for the designation of appropriate
4 staff and resources that can address State inquiries
5 with respect to the coordination of State and Fed-
6 eral policies for specialized MA plans for special
7 needs individuals described in section
8 1859(b)(6)(B)(ii) of the Social Security Act (42
9 U.S.C. 1395w–28(b)(6)(B)(ii)), as amended by this
10 section.

11 (4) NO REQUIREMENT FOR CONTRACT.—Noth-
12 ing in the provisions of, or amendments made by,
13 this subsection shall require a State to enter into a
14 contract with a Medicare Advantage organization
15 with respect to a specialized MA plan for special
16 needs individuals described in section
17 1859(b)(6)(B)(ii) of the Social Security Act (42
18 U.S.C. 1395w–28(b)(6)(B)(ii)), as amended by this
19 section.

20 (d) CARE MANAGEMENT REQUIREMENTS FOR ALL
21 SNPS.—

22 (1) REQUIREMENTS.—Section 1859(f) of the
23 Social Security Act (42 U.S.C. 1395w–28(f)), as
24 amended by subsection (c)(1), is amended by adding
25 at the end the following new paragraph:

1 "(5) CARE MANAGEMENT REQUIREMENTS FOR
2 ALL SNPS.—The requirements described in this
3 paragraph are that the organization offering a spe-
4 cialized MA plan for special needs individuals de-
5 scribed in subsection (b)(6)(B)(i)—
6 "(A) have in place an evidenced-based
7 model of care with appropriate networks of pro-
8 viders and specialists; and
9 "(B) with respect to each individual en-
10 rolled in the plan—
11 "(i) conduct an initial assessment and
12 an annual reassessment of the individual's
13 physical, psychosocial, and functional
14 needs;
15 "(ii) develop a plan, in consultation
16 with the individual as feasible, that identi-
17 fies goals and objectives, including measur-
18 able outcomes as well as specific services
19 and benefits to be provided; and
20 "(iii) use an interdisciplinary team in
21 the management of care.".
22 (2) REVIEW TO ENSURE COMPLIANCE WITH
23 CARE MANAGEMENT REQUIREMENTS.—Section
24 1857(d) of the Social Security Act (42 U.S.C.

1 1395w–27(d)) is amended by adding at the end the
2 following new paragraph:
3 “(6) REVIEW TO ENSURE COMPLIANCE WITH
4 CARE MANAGEMENT REQUIREMENTS FOR SPECIAL-
5 IZED MEDICARE ADVANTAGE PLANS FOR SPECIAL
6 NEEDS INDIVIDUALS.—In conjunction with the peri-
7 odic audit of a specialized Medicare Advantage plan
8 for special needs individuals under paragraph (1),
9 the Secretary shall conduct a review to ensure that
10 such organization offering the plan meets the re-
11 quirements described in section 1859(f)(5).”.
12 (e) CLARIFICATION OF THE DEFINITION OF A SE-
13 VERE OR DISABLING CHRONIC CONDITIONS SPECIALIZED
14 NEEDS INDIVIDUAL.—
15 (1) IN GENERAL.—Section 1859(b)(6)(B)(iii) of
16 the Social Security Act (42 U.S.C. 1395w–
17 28(b)(6)(B)(iii)) is amended by inserting “who have
18 one or more comorbid and medically complex chronic
19 conditions that are substantially disabling or life
20 threatening, have a high risk of hospitalization or
21 other significant adverse health outcomes, and re-
22 quire specialized delivery systems across domains of
23 care” before the period at the end.
24 (2) PANEL.—The Secretary of Health and
25 Human Services shall convene a panel of clinical ad-

1 visors to determine the conditions that meet the def-
2 inition of severe and disabling chronic conditions
3 under section 1859(b)(6)(B)(iii) of the Social Secu-
4 rity Act (42 U.S.C. 1395w–28(b)(6)(B)(iii)), as
5 amended by paragraph (1). The panel shall include
6 the Director of the Agency for Healthcare Research
7 and Quality (or the Director's designee).
8 (f) SPECIAL REQUIREMENTS REGARDING QUALITY
9 REPORTING FOR SPECIALIZED MA PLANS FOR SPECIAL
10 NEEDS INDIVIDUALS.—
11 (1) IN GENERAL.—Section 1852(e)(3)(A) of the
12 Social Security Act (42 U.S.C. 1395w–22(e)(3)(A)),
13 as amended by section 163, is amended by inserting
14 after clause (i) the following new clause:
15 "(ii) SPECIAL REQUIREMENTS FOR
16 SPECIALIZED MA PLANS FOR SPECIAL
17 NEEDS INDIVIDUALS.—In addition to the
18 data required to be collected, analyzed, and
19 reported under clause (i) and notwith-
20 standing the limitations under subpara-
21 graph (B), as part of the quality improve-
22 ment program under paragraph (1), each
23 MA organization offering a specialized
24 Medicare Advantage plan for special needs
25 individuals shall provide for the collection,

1 analysis, and reporting of data that per-
2 mits the measurement of health outcomes
3 and other indices of quality with respect to
4 the requirements described in paragraphs
5 (2) through (5) of subsection (f). Such
6 data may be based on claims data and
7 shall be at the plan level.''.
8 (2) EFFECTIVE DATE.—The amendment made
9 by paragraph (1) shall take effect on a date specified
10 by the Secretary of Health and Human Services (but
11 in no case later than January 1, 2010), and shall
12 apply to all specialized Medicare Advantage plans
13 for special needs individuals regardless of when the
14 plan first entered the Medicare Advantage program
15 under part C of title XVIII of the Social Security
16 Act.
17 (g) EFFECTIVE DATE AND APPLICATION.—The
18 amendments made by subsections (c)(1), (d), and (e)(1)
19 shall apply to plan years beginning on or after January
20 1, 2010, and shall apply to all specialized Medicare Advan-
21 tage plans for special needs individuals regardless of when
22 the plan first entered the Medicare Advantage program
23 under part C of title XVIII of the Social Security Act.
24 (h) NO AFFECT ON MEDICAID BENEFITS FOR
25 DUALS.—Nothing in the provisions of, or amendments

1 made by, this section shall affect the benefits available
2 under the Medicaid program under title XIX of the Social
3 Security Act for special needs individuals described in sec-
4 tion 1859(b)(6)(B)(ii) of such Act (42 U.S.C. 1395w–
5 28(b)(6)(B)(ii)).

6 **SEC. 165. LIMITATION ON OUT-OF-POCKET COSTS FOR**
7 **DUAL ELIGIBLES AND QUALIFIED MEDICARE**
8 **BENEFICIARIES ENROLLED IN A SPECIAL-**
9 **IZED MEDICARE ADVANTAGE PLAN FOR SPE-**
10 **CIAL NEEDS INDIVIDUALS.**

11 (a) IN GENERAL.—Section 1852(a) of the Social Se-
12 curity Act (42 U.S.C. 1395w–22(a)) is amended by adding
13 at the end the following new paragraph:

14 “(7) LIMITATION ON COST-SHARING FOR DUAL
15 ELIGIBLES AND QUALIFIED MEDICARE BENE-
16 FICIARIES.—In the case of an individual who is a
17 full-benefit dual eligible individual (as defined in sec-
18 tion 1935(c)(6)) or a qualified medicare beneficiary
19 (as defined in section 1905(p)(1)) and who is en-
20 rolled in a specialized Medicare Advantage plan for
21 special needs individuals described in section
22 1859(b)(6)(B)(ii), the plan may not impose cost-
23 sharing that exceeds the amount of cost-sharing that
24 would be permitted with respect to the individual

1 under title XIX if the individual were not enrolled
2 in such plan.''.
3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply to plan years beginning on or
5 after January 1, 2010.

6 **SEC. 166. ADJUSTMENT TO THE MEDICARE ADVANTAGE**
7 **STABILIZATION FUND.**

8 Section 1858(e)(2)(A)(i) of the Social Security Act
9 (42 U.S.C. 1395w–27a(e)(2)(A)(i)), as amended by sec-
10 tion 110 of the Medicare, Medicaid, and SCHIP Extension
11 Act of 2007 (Public Law 110–173), is amended—
12 (1) by striking ''2013'' and inserting ''2014'';
13 and
14 (2) by striking ''$1,790,000,000'' and inserting
15 ''$1''.

16 **SEC. 167. ACCESS TO MEDICARE REASONABLE COST CON-**
17 **TRACT PLANS.**

18 (a) EXTENSION OF REASONABLE COST CON-
19 TRACTS.—Section 1876(h)(5)(C)(ii) of the Social Security
20 Act (42 U.S.C. 1395mm(h)(5)(C)(ii)), as amended by sec-
21 tion 109 of the Medicare, Medicaid, and SCHIP Extension
22 Act of 2007 (Public Law 110–173), is amended by strik-
23 ing ''January 1, 2009'' and inserting ''January 1, 2010''
24 in the matter preceding subclause (I).

1 (b) REQUIREMENT FOR AT LEAST TWO MEDICARE
2 ADVANTAGE ORGANIZATIONS TO BE OFFERING A PLAN
3 IN AN AREA FOR THE PROHIBITION TO BE APPLICA-
4 BLE.—Subclauses (I) and (II) of section 1876(h)(5)(C)(ii)
5 of the Social Security Act (42 U.S.C.
6 1395mm(h)(5)(C)(ii)) are each amended by inserting ",
7 provided that all such plans are not offered by the same
8 Medicare Advantage organization" after "clause (iii)".
9 (c) REVISION OF REQUIREMENTS FOR A PLAN THAT
10 ARE USED TO DETERMINE IF PROHIBITION IS APPLICA-
11 BLE.—
12 (1) IN GENERAL.—Section 1876(h)(5)(C)(iii)(I)
13 of the Social Security Act (42 U.S.C.
14 1395mm(h)(5)(C)(iii)(I)) is amended by inserting
15 "that are not in another Metropolitan Statistical
16 Area with a population of more than 250,000" after
17 "such Metropolitan Statistical Area".
18 (2) CLARIFICATION.—Section
19 1876(h)(5)(C)(iii)(I) of the Social Security Act (42
20 U.S.C. 1395mm(h)(5)(C)(iii)(I)) is amended by add-
21 ing at the end the following new sentence: "If the
22 service area includes a portion in more than 1 Met-
23 ropolitan Statistical Area with a population of more
24 than 250,000, the minimum enrollment determina-
25 tion under the preceding sentence shall be made

1 with respect to each such Metropolitan Statistical
2 Area (and such applicable contiguous counties to
3 such Metropolitan Statistical Area).''.
4 (d) GAO STUDY AND REPORT.—
5 (1) STUDY.—The Comptroller General of the
6 United States shall conduct a study of the reasons
7 (if any) why reasonable cost contracts under section
8 1876(h) of the Social Security Act (42 U.S.C.
9 1395mm(h)) are unable to become Medicare Advan-
10 tage plans under part C of title XVIII of such Act.
11 (2) REPORT.—Not later than December 31,
12 2009, the Comptroller General of the United States
13 shall submit to Congress a report containing the re-
14 sults of the study conducted under paragraph (1),
15 together with recommendations for such legislation
16 and administrative action as the Comptroller Gen-
17 eral determines appropriate.
18 **SEC. 168. MEDPAC STUDY AND REPORT ON QUALITY MEAS-**
19 **URES.**
20 (a) STUDY.—The Medicare Payment Advisory Com-
21 mission shall conduct a study on how comparable meas-
22 ures of performance and patient experience can be col-
23 lected and reported by 2011 for the Medicare Advantage
24 program under part C of title XVIII of the Social Security
25 Act and the original Medicare fee-for-service program

1 under parts A and B of such title. Such study shall ad-
2 dress technical issues, such as data requirements, in addi-
3 tion to issues relating to appropriate quality benchmarks
4 that—

5 (1) compare the quality of care Medicare bene-
6 ficiaries receive across Medicare Advantage plans;
7 and

8 (2) compare the quality of care Medicare bene-
9 ficiaries receive under Medicare Advantage plans
10 and under the original Medicare fee-for-service pro-
11 gram.

12 (b) REPORT.—Not later than March 31, 2010, the
13 Medicare Payment Advisory Commission shall submit to
14 Congress a report containing the results of the study con-
15 ducted under subsection (a), together with recommenda-
16 tions for such legislation and administrative action as the
17 Medicare Payment Advisory Commission determines ap-
18 propriate.

19 **SEC. 169. MEDPAC STUDY AND REPORT ON MEDICARE AD-**
20 **VANTAGE PAYMENTS.**

21 (a) STUDY.—The Medicare Payment Advisory Com-
22 mission (in this section referred to as the "Commission")
23 shall conduct a study of the following:

24 (1) The correlation between—

1 (A) the costs that Medicare Advantage or-
2 ganizations with respect to Medicare Advantage
3 plans incur in providing coverage under the
4 plan for items and services covered under the
5 original Medicare fee-for-service program under
6 parts A and B of title XVIII of the Social Secu-
7 rity Act, as reflected in plan bids; and
8 (B) county-level spending under such origi-
9 nal Medicare fee-for-service program on a per
10 capita basis, as calculated by the Chief Actuary
11 of the Centers for Medicare & Medicaid Serv-
12 ices.
13 The study with respect to the issue described in the
14 preceding sentence shall include differences in cor-
15 relation statistics by plan type and geographic area.
16 (2) Based on these results of the study with re-
17 spect to the issue described in paragraph (1), and
18 other data the Commission determines appro-
19 priate—
20 (A) alternate approaches to payment with
21 respect to a Medicare beneficiary enrolled in a
22 Medicare Advantage plan other than through
23 county-level payment area equivalents.
24 (B) the accuracy and completeness of
25 county-level estimates of per capita spending

1 under such original Medicare fee-for-service
2 program (including counties in Puerto Rico), as
3 used to determine the annual Medicare Advan-
4 tage capitation rate under section 1853 of the
5 Social Security Act (42 U.S.C. 1395w–23), and
6 whether such estimates include—
7 (i) expenditures with respect to Medi-
8 care beneficiaries at facilities of the De-
9 partment of Veterans Affairs; and
10 (ii) all appropriate administrative ex-
11 penses, including claims processing.
12 (3) Ways to improve the accuracy and com-
13 pleteness of county-level estimates of per capita
14 spending described in paragraph (2)(B).
15 (b) REPORT.—Not later than March 31, 2010, the
16 Commission shall submit to Congress a report containing
17 the results of the study conducted under subsection (a),
18 together with recommendations for such legislation and
19 administrative action as the Commission determines ap-
20 propriate.

Subtitle E—Provisions Relating to Part D

PART I—IMPROVING PHARMACY ACCESS

SEC. 171. PROMPT PAYMENT BY PRESCRIPTION DRUG PLANS AND MA–PD PLANS UNDER PART D.

(a) PROMPT PAYMENT BY PRESCRIPTION DRUG PLANS.—Section 1860D–12(b) of the Social Security Act (42 U.S.C. 1395w–112(b)) is amended by adding at the end the following new paragraph:

"(4) PROMPT PAYMENT OF CLEAN CLAIMS.—

"(A) PROMPT PAYMENT.—

"(i) IN GENERAL.—Each contract entered into with a PDP sponsor under this part with respect to a prescription drug plan offered by such sponsor shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to all clean claims submitted by pharmacies (other than pharmacies that dispense drugs by mail order only or are located in, or contract with, a long-term care facility) under this part within the applicable number of calendar days after the date on which the claim is received.

1 “(ii) CLEAN CLAIM DEFINED.—In this
2 paragraph, the term ‘clean claim’ means a
3 claim that has no defect or impropriety
4 (including any lack of any required sub-
5 stantiating documentation) or particular
6 circumstance requiring special treatment
7 that prevents timely payment from being
8 made on the claim under this part.
9 “(iii) DATE OF RECEIPT OF CLAIM.—
10 In this paragraph, a claim is considered to
11 have been received—
12 “(I) with respect to claims sub-
13 mitted electronically, on the date on
14 which the claim is transferred; and
15 “(II) with respect to claims sub-
16 mitted otherwise, on the 5th day after
17 the postmark date of the claim or the
18 date specified in the time stamp of the
19 transmission.
20 “(B) APPLICABLE NUMBER OF CALENDAR
21 DAYS DEFINED.—In this paragraph, the term
22 ‘applicable number of calendar days’ means—
23 “(i) with respect to claims submitted
24 electronically, 14 days; and

1 "(ii) with respect to claims submitted
2 otherwise, 30 days.
3 "(C) INTEREST PAYMENT.—
4 "(i) IN GENERAL.—Subject to clause
5 (ii), if payment is not issued, mailed, or
6 otherwise transmitted within the applicable
7 number of calendar days (as defined in
8 subparagraph (B)) after a clean claim is
9 received, the PDP sponsor shall pay inter-
10 est to the pharmacy that submitted the
11 claim at a rate equal to the weighted aver-
12 age of interest on 3-month marketable
13 Treasury securities determined for such
14 period, increased by 0.1 percentage point
15 for the period beginning on the day after
16 the required payment date and ending on
17 the date on which payment is made (as de-
18 termined under subparagraph (D)(iv)). In-
19 terest amounts paid under this subpara-
20 graph shall not be counted against the ad-
21 ministrative costs of a prescription drug
22 plan or treated as allowable risk corridor
23 costs under section 1860D–15(e).
24 "(ii) AUTHORITY NOT TO CHARGE IN-
25 TEREST.—The Secretary may provide that

1 a PDP sponsor is not charged interest
2 under clause (i) in the case where there
3 are exigent circumstances, including nat-
4 ural disasters and other unique and unex-
5 pected events, that prevent the timely proc-
6 essing of claims.
7 "(D) PROCEDURES INVOLVING CLAIMS.—
8 "(i) CLAIM DEEMED TO BE CLEAN.—
9 A claim is deemed to be a clean claim if
10 the PDP sponsor involved does not provide
11 notice to the claimant of any deficiency in
12 the claim—
13 "(I) with respect to claims sub-
14 mitted electronically, within 10 days
15 after the date on which the claim is
16 received; and
17 "(II) with respect to claims sub-
18 mitted otherwise, within 15 days after
19 the date on which the claim is re-
20 ceived.
21 "(ii) CLAIM DETERMINED TO NOT BE
22 A CLEAN CLAIM.—
23 "(I) IN GENERAL.—If a PDP
24 sponsor determines that a submitted
25 claim is not a clean claim, the PDP

1 sponsor shall, not later than the end
2 of the period described in clause (i),
3 notify the claimant of such determina-
4 tion. Such notification shall specify all
5 defects or improprieties in the claim
6 and shall list all additional informa-
7 tion or documents necessary for the
8 proper processing and payment of the
9 claim.

10 "(II) DETERMINATION AFTER
11 SUBMISSION OF ADDITIONAL INFOR-
12 MATION.—A claim is deemed to be a
13 clean claim under this paragraph if
14 the PDP sponsor involved does not
15 provide notice to the claimant of any
16 defect or impropriety in the claim
17 within 10 days of the date on which
18 additional information is received
19 under subclause (I).

20 "(iii) OBLIGATION TO PAY.—A claim
21 submitted to a PDP sponsor that is not
22 paid or contested by the sponsor within the
23 applicable number of days (as defined in
24 subparagraph (B)) after the date on which
25 the claim is received shall be deemed to be

1 a clean claim and shall be paid by the
2 PDP sponsor in accordance with subpara-
3 graph (A).
4 "(iv) DATE OF PAYMENT OF CLAIM.—
5 Payment of a clean claim under such sub-
6 paragraph is considered to have been made
7 on the date on which—
8 "(I) with respect to claims paid
9 electronically, the payment is trans-
10 ferred; and
11 "(II) with respect to claims paid
12 otherwise, the payment is submitted
13 to the United States Postal Service or
14 common carrier for delivery.
15 "(E) ELECTRONIC TRANSFER OF
16 FUNDS.—A PDP sponsor shall pay all clean
17 claims submitted electronically by electronic
18 transfer of funds if the pharmacy so requests or
19 has so requested previously. In the case where
20 such payment is made electronically, remittance
21 may be made by the PDP sponsor electronically
22 as well.
23 "(F) PROTECTING THE RIGHTS OF CLAIM-
24 ANTS.—

1 "(i) IN GENERAL.—Nothing in this
2 paragraph shall be construed to prohibit or
3 limit a claim or action not covered by the
4 subject matter of this section that any in-
5 dividual or organization has against a pro-
6 vider or a PDP sponsor.
7 "(ii) ANTI-RETALIATION.—Consistent
8 with applicable Federal or State law, a
9 PDP sponsor shall not retaliate against an
10 individual or provider for exercising a right
11 of action under this subparagraph.
12 "(G) RULE OF CONSTRUCTION.—A deter-
13 mination under this paragraph that a claim
14 submitted by a pharmacy is a clean claim shall
15 not be construed as a positive determination re-
16 garding eligibility for payment under this title,
17 nor is it an indication of government approval
18 of, or acquiescence regarding, the claim sub-
19 mitted. The determination shall not relieve any
20 party of civil or criminal liability with respect to
21 the claim, nor does it offer a defense to any ad-
22 ministrative, civil, or criminal action with re-
23 spect to the claim.".
24 (b) PROMPT PAYMENT BY MA–PD PLANS.—Section
25 1857(f) of the Social Security Act (42 U.S.C. 1395w–27)

1 is amended by adding at the end the following new para-
2 graph:

3 "(3) INCORPORATION OF CERTAIN PRESCRIP-
4 TION DRUG PLAN CONTRACT REQUIREMENTS.—The
5 following provisions shall apply to contracts with a
6 Medicare Advantage organization offering an MA–
7 PD plan in the same manner as they apply to con-
8 tracts with a PDP sponsor offering a prescription
9 drug plan under part D:

10 "(A) PROMPT PAYMENT.—Section 1860D–
11 12(b)(4).".

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to plan years beginning on or after
14 January 1, 2010.

15 **SEC. 172. SUBMISSION OF CLAIMS BY PHARMACIES LO-**
16 **CATED IN OR CONTRACTING WITH LONG-**
17 **TERM CARE FACILITIES.**

18 (a) SUBMISSION OF CLAIMS BY PHARMACIES LO-
19 CATED IN OR CONTRACTING WITH LONG-TERM CARE FA-
20 CILITIES.—

21 (1) SUBMISSION OF CLAIMS TO PRESCRIPTION
22 DRUG PLANS.—Section 1860D–12(b) of the Social
23 Security Act (42 U.S.C. 1395w–112(b)), as amend-
24 ed by section 171(a), is amended by adding at the
25 end the following new paragraph:

1 "(5) SUBMISSION OF CLAIMS BY PHARMACIES
2 LOCATED IN OR CONTRACTING WITH LONG-TERM
3 CARE FACILITIES.—Each contract entered into with
4 a PDP sponsor under this part with respect to a
5 prescription drug plan offered by such sponsor shall
6 provide that a pharmacy located in, or having a con-
7 tract with, a long-term care facility shall have not
8 less than 30 days (but not more than 90 days) to
9 submit claims to the sponsor for reimbursement
10 under the plan.".
11 (2) SUBMISSION OF CLAIMS TO MA–PD
12 PLANS.—Section 1857(f)(3) of the Social Security
13 Act, as added by section 171(b), is amended by add-
14 ing at the end the following new subparagraph:
15 "(B) SUBMISSION OF CLAIMS BY PHAR-
16 MACIES LOCATED IN OR CONTRACTING WITH
17 LONG-TERM CARE FACILITIES.—Section
18 1860D–12(b)(5).".
19 (b) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to plan years beginning on or after
21 January 1, 2010.
22 **SEC. 173. REGULAR UPDATE OF PRESCRIPTION DRUG**
23 **PRICING STANDARD.**
24 (a) REQUIREMENT FOR PRESCRIPTION DRUG
25 PLANS.—Section 1860D–12(b) of the Social Security Act

1 (42 U.S.C. 1395w–112(b)), as amended by section
2 172(a)(1), is amended by adding at the end the following
3 new paragraph:

4 "(6) REGULAR UPDATE OF PRESCRIPTION
5 DRUG PRICING STANDARD.—If the PDP sponsor of
6 a prescription drug plan uses a standard for reim-
7 bursement of pharmacies based on the cost of a
8 drug, each contract entered into with such sponsor
9 under this part with respect to the plan shall provide
10 that the sponsor shall update such standard not less
11 frequently than once every 7 days, beginning with an
12 initial update on January 1 of each year, to accu-
13 rately reflect the market price of acquiring the
14 drug.".

15 (b) REQUIREMENT FOR MA–PD PLANS.—Section
16 1857(f)(3) of the Social Security Act, as amended by sec-
17 tion 172(a)(2), is amended by adding at the end the fol-
18 lowing new subparagraph:

19 "(C) REGULAR UPDATE OF PRESCRIPTION
20 DRUG PRICING STANDARD.—Section 1860D–
21 12(b)(6).".

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to plan years beginning on or after
24 January 1, 2009.

PART II—OTHER PROVISIONS

SEC. 175. INCLUSION OF BARBITURATES AND BENZODIAZEPINES AS COVERED PART D DRUGS.

(a) IN GENERAL.—Section 1860D–2(e)(2)(A) of the Social Security Act (42 U.S.C. 1395w–102(e)(2)(A)) is amended by inserting after ''agents),'' the following ''other than subparagraph (I) of such section (relating to barbiturates) if the barbiturate is used in the treatment of epilepsy, cancer, or a chronic mental health disorder, and other than subparagraph (J) of such section (relating to benzodiazepines),''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to prescriptions dispensed on or after January 1, 2013.

SEC. 176. FORMULARY REQUIREMENTS WITH RESPECT TO CERTAIN CATEGORIES OR CLASSES OF DRUGS.

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

(1) in subparagraph (C)(i), by striking ''The formulary'' and inserting ''Subject to subparagraph (G), the formulary''; and

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

1 "(G) REQUIRED INCLUSION OF DRUGS IN
2 CERTAIN CATEGORIES AND CLASSES.—
3 "(i) IDENTIFICATION OF DRUGS IN
4 CERTAIN CATEGORIES AND CLASSES.—Be-
5 ginning with plan year 2010, the Secretary
6 shall identify, as appropriate, categories
7 and classes of drugs for which both of the
8 following criteria are met:
9 "(I) Restricted access to drugs in
10 the category or class would have
11 major or life threatening clinical con-
12 sequences for individuals who have a
13 disease or disorder treated by the
14 drugs in such category or class.
15 "(II) There is significant clinical
16 need for such individuals to have ac-
17 cess to multiple drugs within a cat-
18 egory or class due to unique chemical
19 actions and pharmacological effects of
20 the drugs within the category or class,
21 such as drugs used in the treatment
22 of cancer.
23 "(ii) FORMULARY REQUIREMENTS.—
24 Subject to clause (iii), PDP sponsors offer-
25 ing prescription drug plans shall be re-

1 quired to include all covered part D drugs
2 in the categories and classes identified by
3 the Secretary under clause (i).
4 "(iii) EXCEPTIONS.—The Secretary
5 may establish exceptions that permits a
6 PDP sponsor of a prescription drug plan
7 to exclude from its formulary a particular
8 covered part D drug in a category or class
9 that is otherwise required to be included in
10 the formulary under clause (ii) (or to oth-
11 erwise limit access to such a drug, includ-
12 ing through prior authorization or utiliza-
13 tion management). Any exceptions estab-
14 lished under the preceding sentence shall
15 be provided under a process that—
16 "(I) ensures that any exception
17 to such requirement is based upon sci-
18 entific evidence and medical standards
19 of practice (and, in the case of
20 antiretroviral medications, is con-
21 sistent with the Department of Health
22 and Human Services Guidelines for
23 the Use of Antiretroviral Agents in
24 HIV-1-Infected Adults and Adoles-
25 cents); and

1 "(II) includes a public notice and
2 comment period.".

3 Subtitle F—Other Provisions

4 **SEC. 181. USE OF PART D DATA.**

5 Section 1860D–12(b)(3)(D) of the Social Security
6 Act (42 U.S.C. 1395w–112(b)(3)(D)) is amended by add-
7 ing at the end the following sentence: "Notwithstanding
8 any other provision of law, information provided to the
9 Secretary under the application of section 1857(e)(1) to
10 contracts under this section under the preceding sen-
11 tence—

12 "(i) may be used for the purposes of
13 carrying out this part, improving public
14 health through research on the utilization,
15 safety, effectiveness, quality, and efficiency
16 of health care services (as the Secretary
17 determines appropriate); and

18 "(ii) shall be made available to Con-
19 gressional support agencies (in accordance
20 with their obligations to support Congress
21 as set out in their authorizing statutes) for
22 the purposes of conducting Congressional
23 oversight, monitoring, making rec-
24 ommendations, and analysis of the pro-
25 gram under this title.".

1 **SEC. 182. REVISION OF DEFINITION OF MEDICALLY AC-**
2 **CEPTED INDICATION FOR DRUGS.**
3 (a) REVISION OF DEFINITION FOR PART D
4 DRUGS.—
5 (1) IN GENERAL.—Section 1860D–2(e)(1) of
6 the Social Security Act (42 U.S.C. 1395w–
7 102(e)(1)) is amended, in the matter following sub-
8 paragraph (B)—
9 (A) by striking "(as defined in section
10 1927(k)(6))" and inserting "(as defined in
11 paragraph (4))"; and
12 (B) by adding at the end the following new
13 paragraph:
14 "(4) MEDICALLY ACCEPTED INDICATION DE-
15 FINED.—
16 "(A) IN GENERAL.—For purposes of para-
17 graph (1), the term 'medically accepted indica-
18 tion' has the meaning given that term—
19 "(i) in the case of a covered part D
20 drug used in an anticancer
21 chemotherapeutic regimen, in section
22 1861(t)(2)(B), except that in applying
23 such section—
24 "(I) 'prescription drug plan or
25 MA–PD plan' shall be substituted for
26 'carrier' each place it appears; and

1 "(II) subject to subparagraph
2 (B), the compendia described in sec-
3 tion 1927(g)(1)(B)(i)(III) shall be in-
4 cluded in the list of compendia de-
5 scribed in clause (ii)(I) section
6 1861(t)(2)(B); and
7 "(ii) in the case of any other covered
8 part D drug, in section 1927(k)(6).
9 "(B) CONFLICT OF INTEREST.—On and
10 after January 1, 2010, subparagraph (A)(i)(II)
11 shall not apply unless the compendia described
12 in section 1927(g)(1)(B)(i)(III) meets the re-
13 quirement in the third sentence of section
14 1861(t)(2)(B).
15 "(C) UPDATE.—For purposes of applying
16 subparagraph (A)(ii), the Secretary shall revise
17 the list of compendia described in section
18 1927(g)(1)(B)(i) as is appropriate for identi-
19 fying medically accepted indications for drugs.
20 Any such revision shall be done in a manner
21 consistent with the process for revising com-
22 pendia under section 1861(t)(2)(B).".
23 (2) EFFECTIVE DATE.—The amendments made
24 by this subsection shall apply to plan years begin-
25 ning on or after January 1, 2009.

1 (b) CONFLICTS OF INTEREST.—Section
2 1861(t)(2)(B) of the Social Security Act (42 U.S.C.
3 1395x(t)(2)(B)) is amended by adding at the end the fol-
4 lowing new sentence: ''On and after January 1, 2010, no
5 compendia may be included on the list of compendia under
6 this subparagraph unless the compendia has a publicly
7 transparent process for evaluating therapies and for iden-
8 tifying potential conflicts of interests.''.

9 **SEC. 183. CONTRACT WITH A CONSENSUS-BASED ENTITY**
10 **REGARDING PERFORMANCE MEASUREMENT.**

11 (a) CONTRACT.—
12 (1) IN GENERAL.—Part E of title XVIII of the
13 Social Security Act (42 U.S.C. 1395x et seq.) is
14 amended by inserting after section 1889 the fol-
15 lowing new section:
16 ''CONTRACT WITH A CONSENSUS-BASED ENTITY
17 REGARDING PERFORMANCE MEASUREMENT
18 ''SEC. 1890. (a) CONTRACT.—
19 ''(1) IN GENERAL.—For purposes of activities
20 conducted under this Act, the Secretary shall iden-
21 tify and have in effect a contract with a consensus-
22 based entity, such as the National Quality Forum,
23 that meets the requirements described in subsection
24 (c). Such contract shall provide that the entity will
25 perform the duties described in subsection (b).

1 "(2) TIMING FOR FIRST CONTRACT.—As soon
2 as practicable after the date of the enactment of this
3 subsection, the Secretary shall enter into the first
4 contract under paragraph (1).
5 "(3) PERIOD OF CONTRACT.—A contract under
6 paragraph (1) shall be for a period of 4 years (ex-
7 cept as may be renewed after a subsequent bidding
8 process).
9 "(4) COMPETITIVE PROCEDURES.—Competitive
10 procedures (as defined in section 4(5) of the Office
11 of Federal Procurement Policy Act (41 U.S.C.
12 403(5))) shall be used to enter into a contract under
13 paragraph (1).
14 "(b) DUTIES.—The duties described in this sub-
15 section are the following:
16 "(1) PRIORITY SETTING PROCESS.—The entity
17 shall synthesize evidence and convene key stake-
18 holders to make recommendations, with respect to
19 activities conducted under this Act, on an integrated
20 national strategy and priorities for health care per-
21 formance measurement in all applicable settings. In
22 making such recommendations, the entity shall—
23 "(A) ensure that priority is given to meas-
24 ures—

1 "(i) that address the health care pro-
2 vided to patients with prevalent, high-cost
3 chronic diseases;
4 "(ii) with the greatest potential for
5 improving the quality, efficiency, and pa-
6 tient-centeredness of health care; and
7 "(iii) that may be implemented rap-
8 idly due to existing evidence, standards of
9 care, or other reasons; and
10 "(B) take into account measures that—
11 "(i) may assist consumers and pa-
12 tients in making informed health care deci-
13 sions;
14 "(ii) address health disparities across
15 groups and areas; and
16 "(iii) address the continuum of care a
17 patient receives, including services fur-
18 nished by multiple health care providers or
19 practitioners and across multiple settings.
20 "(2) ENDORSEMENT OF MEASURES.—The enti-
21 ty shall provide for the endorsement of standardized
22 health care performance measures. The endorsement
23 process under the preceding sentence shall consider
24 whether a measure—

1 "(A) is evidence-based, reliable, valid,
2 verifiable, relevant to enhanced health out-
3 comes, actionable at the caregiver level, feasible
4 to collect and report, and responsive to vari-
5 ations in patient characteristics, such as health
6 status, language capabilities, race or ethnicity,
7 and income level; and
8 "(B) is consistent across types of health
9 care providers, including hospitals and physi-
10 cians.
11 "(3) MAINTENANCE OF MEASURES.—The entity
12 shall establish and implement a process to ensure
13 that measures endorsed under paragraph (2) are up-
14 dated (or retired if obsolete) as new evidence is de-
15 veloped.
16 "(4) PROMOTION OF THE DEVELOPMENT OF
17 ELECTRONIC HEALTH RECORDS.—The entity shall
18 promote the development and use of electronic
19 health records that contain the functionality for
20 automated collection, aggregation, and transmission
21 of performance measurement information.
22 "(5) ANNUAL REPORT TO CONGRESS AND THE
23 SECRETARY; SECRETARIAL PUBLICATION AND COM-
24 MENT.—

1 "(A) ANNUAL REPORT.—By not later than
2 March 1 of each year (beginning with 2009),
3 the entity shall submit to Congress and the Sec-
4 retary a report containing a description of—
5 "(i) the implementation of quality
6 measurement initiatives under this Act and
7 the coordination of such initiatives with
8 quality initiatives implemented by other
9 payers;
10 "(ii) the recommendations made
11 under paragraph (1); and
12 "(iii) the performance by the entity of
13 the duties required under the contract en-
14 tered into with the Secretary under sub-
15 section (a).
16 "(B) SECRETARIAL REVIEW AND PUBLICA-
17 TION OF ANNUAL REPORT.—Not later than 6
18 months after receiving a report under subpara-
19 graph (A) for a year, the Secretary shall—
20 "(i) review such report; and
21 "(ii) publish such report in the Fed-
22 eral Register, together with any comments
23 of the Secretary on such report.
24 "(c) REQUIREMENTS DESCRIBED.—The require-
25 ments described in this subsection are the following:

1 "(1) PRIVATE NONPROFIT.—The entity is a pri-
2 vate nonprofit entity governed by a board.
3 "(2) BOARD MEMBERSHIP.—The members of
4 the board of the entity include—
5 "(A) representatives of health plans and
6 health care providers and practitioners or rep-
7 resentatives of groups representing such health
8 plans and health care providers and practi-
9 tioners;
10 "(B) health care consumers or representa-
11 tives of groups representing health care con-
12 sumers; and
13 "(C) representatives of purchasers and em-
14 ployers or representatives of groups rep-
15 resenting purchasers or employers.
16 "(3) ENTITY MEMBERSHIP.—The membership
17 of the entity includes persons who have experience
18 with—
19 "(A) urban health care issues;
20 "(B) safety net health care issues;
21 "(C) rural and frontier health care issues;
22 and
23 "(D) health care quality and safety issues.
24 "(4) OPEN AND TRANSPARENT.—With respect
25 to matters related to the contract with the Secretary

1 under subsection (a), the entity conducts its business
2 in an open and transparent manner and provides the
3 opportunity for public comment on its activities.
4 ''(5) VOLUNTARY CONSENSUS STANDARDS SET-
5 TING ORGANIZATION.—The entity operates as a vol-
6 untary consensus standards setting organization as
7 defined for purposes of section 12(d) of the National
8 Technology Transfer and Advancement Act of 1995
9 (Public Law 104–113) and Office of Management
10 and Budget Revised Circular A–119 (published in
11 the Federal Register on February 10, 1998).
12 ''(6) EXPERIENCE.—The entity has at least 4
13 years of experience in establishing national con-
14 sensus standards.
15 ''(7) MEMBERSHIP FEES.—If the entity re-
16 quires a membership fee for participation in the
17 functions of the entity, such fees shall be reasonable
18 and adjusted based on the capacity of the potential
19 member to pay the fee. In no case shall membership
20 fees pose a barrier to the participation of individuals
21 or groups with low or nominal resources to partici-
22 pate in the functions of the entity.
23 ''(d) FUNDING.—For purposes of carrying out this
24 section, the Secretary shall provide for the transfer, from
25 the Federal Hospital Insurance Trust Fund under section

1 1817 and the Federal Supplementary Medical Insurance
2 Trust Fund under section 1841 (in such proportion as the
3 Secretary determines appropriate), of $10,000,000 to the
4 Centers for Medicare & Medicaid Services Program Man-
5 agement Account for each of fiscal years 2009 through
6 2012.''.
7 (2) SENSE OF THE SENATE.—It is the Sense of
8 the Senate that the selection by the Secretary of
9 Health and Human Services of an entity to contract
10 with under section 1890(a) of the Social Security
11 Act, as added by paragraph (1), should not be con-
12 strued as diminishing the significant contributions of
13 the Boards of Medicine, the quality alliances, and
14 other clinical and technical experts to efforts to
15 measure and improve the quality of health care serv-
16 ices.
17 (b) GAO STUDY AND REPORTS ON THE PERFORM-
18 ANCE AND COSTS OF THE CONSENSUS-BASED ENTITY
19 UNDER THE CONTRACT.—
20 (1) IN GENERAL.—The Comptroller General of
21 the United States shall conduct a study on—
22 (A) the performance of the entity with a
23 contract with the Secretary of Health and
24 Human Services under section 1890(a) of the

1 Social Security Act, as added by subsection (a),
2 of its duties under such contract; and
3 (B) the costs incurred by such entity in
4 performing such duties.
5 (2) REPORTS.—Not later than 18 months and
6 36 months after the effective date of the first con-
7 tract entered into under such section 1890(a), the
8 Comptroller General of the United States shall sub-
9 mit to Congress a report containing the results of
10 the study conducted under paragraph (1), together
11 with recommendations for such legislation and ad-
12 ministrative action as the Comptroller General deter-
13 mines appropriate.

14 **SEC. 184. COST-SHARING FOR CLINICAL TRIALS.**

15 Section 1833 of the Social Security Act (42 U.S.C.
16 1395l), as amended by section 151(a), is amended by add-
17 ing at the end the following new subsection:
18 ''(w) METHODS OF PAYMENT.—The Secretary may
19 develop alternative methods of payment for items and
20 services provided under clinical trials and comparative ef-
21 fectiveness studies sponsored or supported by an agency
22 of the Department of Health and Human Services, as de-
23 termined by the Secretary, to those that would otherwise
24 apply under this section, to the extent such alternative
25 methods are necessary to preserve the scientific validity

1 of such trials or studies, such as in the case where mask-
2 ing the identity of interventions from patients and inves-
3 tigators is necessary to comply with the particular trial
4 or study design.''.

5 **SEC. 185. ADDRESSING HEALTH CARE DISPARITIES.**

6 Title XVIII of the Social Security Act (42 U.S.C.
7 1395 et seq.) is amended by inserting after section 1808
8 the following new section:

9 ''ADDRESSING HEALTH CARE DISPARITIES

10 ''SEC. 1809. (a) EVALUATING DATA COLLECTION
11 APPROACHES.—The Secretary shall evaluate approaches
12 for the collection of data under this title, to be performed
13 in conjunction with existing quality reporting require-
14 ments and programs under this title, that allow for the
15 ongoing, accurate, and timely collection and evaluation of
16 data on disparities in health care services and performance
17 on the basis of race, ethnicity, and gender. In conducting
18 such evaluation, the Secretary shall consider the following
19 objectives:

20 ''(1) Protecting patient privacy.

21 ''(2) Minimizing the administrative burdens of
22 data collection and reporting on providers and health
23 plans participating under this title.

24 ''(3) Improving Medicare program data on race,
25 ethnicity, and gender.

26 ''(b) REPORTS TO CONGRESS.—

1 "(1) REPORT ON EVALUATION.—Not later than
2 18 months after the date of the enactment of this
3 section, the Secretary shall submit to Congress a re-
4 port on the evaluation conducted under subsection
5 (a). Such report shall, taking into consideration the
6 results of such evaluation—
7 "(A) identify approaches (including defin-
8 ing methodologies) for identifying and collecting
9 and evaluating data on health care disparities
10 on the basis of race, ethnicity, and gender for
11 the original Medicare fee-for-service program
12 under parts A and B, the Medicare Advantage
13 program under part C, and the Medicare pre-
14 scription drug program under part D; and
15 "(B) include recommendations on the most
16 effective strategies and approaches to reporting
17 HEDIS quality measures as required under sec-
18 tion 1852(e)(3) and other nationally recognized
19 quality performance measures, as appropriate,
20 on the basis of race, ethnicity, and gender.
21 "(2) REPORTS ON DATA ANALYSES.—Not later
22 than 4 years after the date of the enactment of this
23 section, and 4 years thereafter, the Secretary shall
24 submit to Congress a report that includes rec-
25 ommendations for improving the identification of

1 health care disparities for Medicare beneficiaries
2 based on analyses of the data collected under sub-
3 section (c).
4 "(c) IMPLEMENTING EFFECTIVE APPROACHES.—Not
5 later than 24 months after the date of the enactment of
6 this section, the Secretary shall implement the approaches
7 identified in the report submitted under subsection (b)(1)
8 for the ongoing, accurate, and timely collection and eval-
9 uation of data on health care disparities on the basis of
10 race, ethnicity, and gender.".

11 **SEC. 186. DEMONSTRATION TO IMPROVE CARE TO PRE-**
12 **VIOUSLY UNINSURED.**

13 (a) ESTABLISHMENT.—Within one year after the
14 date of the enactment of this Act, the Secretary (in this
15 section referred to as the "Secretary") shall establish a
16 demonstration project to determine the greatest needs and
17 most effective methods of outreach to medicare bene-
18 ficiaries who were previously uninsured.
19 (b) SCOPE.—The demonstration shall be in no fewer
20 than 10 sites, and shall include state health insurance as-
21 sistance programs, community health centers, community-
22 based organizations, community health workers, and other
23 service providers under parts A, B, and C of title XVIII
24 of the Social Security Act. Grantees that are plans oper-
25 ating under part C shall document that enrollees who were

1 previously uninsured receive the ‘‘Welcome to Medicare’’
2 physical exam.

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

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

9 (1) An analysis of the effectiveness of outreach
10 activities targeting beneficiaries who were previously
11 uninsured, such as revising outreach and enrollment
12 materials (including the potential for use of video in-
13 formation), providing one-on-one counseling, working
14 with community health workers, and amending the
15 Medicare and You handbook.

16 (2) The effect of such outreach on beneficiary
17 access to care, utilization of services, efficiency and
18 cost-effectiveness of health care delivery, patient sat-
19 isfaction, and select health outcomes.

1 **SEC. 187. OFFICE OF THE INSPECTOR GENERAL REPORT**
2 **ON COMPLIANCE WITH AND ENFORCEMENT**
3 **OF NATIONAL STANDARDS ON CULTURALLY**
4 **AND LINGUISTICALLY APPROPRIATE SERV-**
5 **ICES (CLAS) IN MEDICARE.**

6 (a) REPORT.—Not later than two years after the date
7 of the enactment of this Act, the Inspector General of the
8 Department of Health and Human Services shall prepare
9 and publish a report on—
10 (1) the extent to which Medicare providers and
11 plans are complying with the Office for Civil Rights'
12 Guidance to Federal Financial Assistance Recipients
13 Regarding Title VI Prohibition Against National Or-
14 igin Discrimination Affecting Limited English Pro-
15 ficient Persons and the Office of Minority Health's
16 Culturally and Linguistically Appropriate Services
17 Standards in health care; and
18 (2) a description of the costs associated with or
19 savings related to the provision of language services.
20 Such report shall include recommendations on improving
21 compliance with CLAS Standards and recommendations
22 on improving enforcement of CLAS Standards.
23 (b) IMPLEMENTATION.—Not later than one year
24 after the date of publication of the report under subsection
25 (a), the Department of Health and Human Services shall

1 implement changes responsive to any deficiencies identi-
2 fied in the report.

3 **SEC. 188. MEDICARE IMPROVEMENT FUNDING.**

4 (a) MEDICARE IMPROVEMENT FUND.—
5 (1) IN GENERAL.—Subject to paragraph (2),
6 title XVIII of the Social Security Act (42 U.S.C.
7 1395 et seq.) is amended by adding at the end the
8 following new section:

9 ''MEDICARE IMPROVEMENT FUND

10 ''SEC. 1898. (a) ESTABLISHMENT.—
11 ''The Secretary shall establish under this title a
12 Medicare Improvement Fund (in this section re-
13 ferred to as the 'Fund') which shall be available to
14 the Secretary to make improvements under the origi-
15 nal fee-for-service program under parts A and B for
16 individuals entitled to, or enrolled for, benefits under
17 part A or enrolled under part B.
18 ''(b) FUNDING.—
19 ''(1) IN GENERAL.—There shall be available to
20 the Fund, for expenditures from the Fund for serv-
21 ices furnished during fiscal years 2014 through
22 2017, $19,900,000,000.
23 ''(2) PAYMENT FROM TRUST FUNDS.—The
24 amount specified under paragraph (1) shall be avail-
25 able to the Fund, as expenditures are made from the
26 Fund, from the Federal Hospital Insurance Trust

1 Fund and the Federal Supplementary Medical In-
2 surance Trust Fund in such proportion as the Sec-
3 retary determines appropriate.

4 "(3) FUNDING LIMITATION.—Amounts in the
5 Fund shall be available in advance of appropriations
6 but only if the total amount obligated from the
7 Fund does not exceed the amount available to the
8 Fund under paragraph (1). The Secretary may obli-
9 gate funds from the Fund only if the Secretary de-
10 termines (and the Chief Actuary of the Centers for
11 Medicare & Medicaid Services and the appropriate
12 budget officer certify) that there are available in the
13 Fund sufficient amounts to cover all such obligations
14 incurred consistent with the previous sentence.".

15 (2) CONTINGENCY.—

16 (A) IN GENERAL.—If there is enacted, be-
17 fore, on, or after the date of the enactment of
18 this Act, a Supplemental Appropriations Act,
19 2008 that includes a provision providing for a
20 Medicare Improvement Fund under a section
21 1898 of the Social Security Act, the alternative
22 amendment described in subparagraph (B)—

23 (i) shall apply instead of the amend-
24 ment made by paragraph (1); and

1 (ii) shall be executed after such provi-
2 sion in such Supplemental Appropriations
3 Act.
4 (B) ALTERNATIVE AMENDMENT DE-
5 SCRIBED.—The alternative amendment de-
6 scribed in this subparagraph is as follows: Sec-
7 tion 1898(b)(1) of the Social Security Act, as
8 added by the Supplemental Appropriations Act,
9 2008, is amended by inserting before the period
10 at the end the following: " and, in addition for
11 services furnished during fiscal years 2014
12 through 2017, $19,900,000,000''.
13 (b) IMPLEMENTATION.—For purposes of carrying out
14 the provisions of, and amendments made by, this title, in
15 addition to any other amounts provided in such provisions
16 and amendments, the Secretary of Health and Human
17 Services shall provide for the transfer, from the Federal
18 Hospital Insurance Trust Fund under section 1817 of the
19 Social Security Act (42 U.S.C. 1395i) and the Federal
20 Supplementary Medical Insurance Trust Fund under sec-
21 tion 1841 of such Act (42 U.S.C. 1395t), in the same pro-
22 portion as the Secretary determines under section 1853(f)
23 of such Act (42 U.S.C. 1395w–23(f)), of $140,000,000
24 to the Centers for Medicare & Medicaid Services Program

1 Management Account for the period of fiscal years 2009
2 through 2013.

3 **SEC. 189. INCLUSION OF MEDICARE PROVIDERS AND SUP-**
4 **PLIERS IN FEDERAL PAYMENT LEVY AND AD-**
5 **MINISTRATIVE OFFSET PROGRAM.**

6 (a) IN GENERAL.—Section 1874 of the Social Secu-
7 rity Act (42 U.S.C. 1395kk) is amended by adding at the
8 end the following new subsection:

9 ‘‘(d) INCLUSION OF MEDICARE PROVIDER AND SUP-
10 PLIER PAYMENTS IN FEDERAL PAYMENT LEVY PRO-
11 GRAM.—

12 ‘‘(1) IN GENERAL.—The Centers for Medicare
13 & Medicaid Services shall take all necessary steps to
14 participate in the Federal Payment Levy Program
15 under section 6331(h) of the Internal Revenue Code
16 of 1986 as soon as possible and shall ensure that—

17 ‘‘(A) at least 50 percent of all payments
18 under parts A and B are processed through
19 such program beginning within 1 year after the
20 date of the enactment of this section;

21 ‘‘(B) at least 75 percent of all payments
22 under parts A and B are processed through
23 such program beginning within 2 years after
24 such date; and

1 "(C) all payments under parts A and B
2 are processed through such program beginning
3 not later than September 30, 2011.
4 "(2) ASSISTANCE.—The Financial Management
5 Service and the Internal Revenue Service shall pro-
6 vide assistance to the Centers for Medicare & Med-
7 icaid Services to ensure that all payments described
8 in paragraph (1) are included in the Federal Pay-
9 ment Levy Program by the deadlines specified in
10 that subsection.".
11 (b) APPLICATION OF ADMINISTRATIVE OFFSET PRO-
12 VISIONS TO MEDICARE PROVIDER OR SUPPLIER PAY-
13 MENTS.—Section 3716 of title 31, United States Code, is
14 amended—
15 (1) by inserting "the Department of Health and
16 Human Services," after "United States Postal Serv-
17 ice," in subsection (c)(1)(A); and
18 (2) by adding at the end of subsection (c)(3)
19 the following new subparagraph:
20 "(D) This section shall apply to payments
21 made after the date which is 90 days after the
22 enactment of this subparagraph (or such earlier
23 date as designated by the Secretary of Health
24 and Human Services) with respect to claims or

1 debts, and to amounts payable, under title
2 XVIII of the Social Security Act.''.
3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the date of the enactment
5 of this Act.

6 TITLE II—MEDICAID

7 SEC. 201. EXTENSION OF TRANSITIONAL MEDICAL ASSIST-
8 ANCE (TMA) AND ABSTINENCE EDUCATION
9 PROGRAM.

10 Section 401 of division B of the Tax Relief and
11 Health Care Act of 2006 (Public Law 109–432, 120 Stat.
12 2994), as amended by section 1 of Public Law 110–48
13 (121 Stat. 244), section 2 of the TMA, Abstinence, Edu-
14 cation, and QI Programs Extension Act of 2007 (Public
15 Law 110–90, 121 Stat. 984), and section 202 of the Medi-
16 care, Medicaid, and SCHIP Extension Act of 2007 (Public
17 Law 110–173) is amended—
18 (1) by striking ''June 30, 2008'' and inserting
19 ''June 30, 2009'';
20 (2) by striking ''the third quarter of fiscal year
21 2008'' and inserting ''the third quarter of fiscal year
22 2009''; and
23 (3) by striking ''the third quarter of fiscal year
24 2007'' and inserting ''the third quarter of fiscal year
25 2008''.

1 **SEC. 202. MEDICAID DSH EXTENSION.**

2 Section 1923(f)(6) of the Social Security Act (42
3 U.S.C. 1396r–4(f)(6)) is amended—
4 (1) in the heading, by striking "FISCAL YEAR
5 2007 AND PORTIONS OF FISCAL YEAR 2008" and in-
6 serting "FISCAL YEARS 2007 THROUGH 2009 AND THE
7 FIRST CALENDAR QUARTER OF FISCAL YEAR 2010";
8 and
9 (2) in subparagraph (A)—
10 (A) in clause (i)—
11 (i) in the second sentence—
12 (I) by striking "fiscal year 2008
13 for the period ending on June 30,
14 2008" and inserting "fiscal years
15 2008 and 2009"; and
16 (II) by striking "¾ of"; and
17 (ii) by adding at the end the following
18 new sentences: "Only with respect to fiscal
19 year 2010 for the period ending on Decem-
20 ber 31, 2009, the DSH allotment for Ten-
21 nessee for such portion of the fiscal year,
22 notwithstanding such table or terms, shall
23 be ¼ of the amount specified in the first
24 sentence for fiscal year 2007.";

1 (B) in clause (ii), by striking "or for a pe-
2 riod in fiscal year 2008" and inserting ", 2008,
3 2009, or for a period in fiscal year 2010";
4 (C) in clause (iv)—
5 (i) in the heading, by striking "FISCAL
6 YEAR 2007 AND FISCAL YEAR 2008" and in-
7 serting "FISCAL YEARS 2007 THROUGH 2009
8 AND THE FIRST CALENDAR QUARTER OF
9 FISCAL YEAR 2010";
10 (ii) in subclause (I), by striking "or
11 for a period in fiscal year 2008" and in-
12 serting ", 2008, 2009, or for a period in
13 fiscal year 2010"; and
14 (iii) in subclause (II), by striking "or
15 for a period in fiscal year 2008" and in-
16 serting ", 2008, 2009, or for a period in
17 fiscal year 2010"; and
18 (3) in subparagraph (B)(i)—
19 (A) in the first sentence, by striking "fiscal
20 year 2007" and inserting "each of fiscal years
21 2007 through 2009"; and
22 (B) by striking the second sentence and in-
23 serting the following: "Only with respect to fis-
24 cal year 2010 for the period ending on Decem-
25 ber 31, 2009, the DSH allotment for Hawaii

1 for such portion of the fiscal year, notwith-
2 standing the table set forth in paragraph (2),
3 shall be $2,500,000.''.

4 **SEC. 203. PHARMACY REIMBURSEMENT UNDER MEDICAID.**

5 (a) DELAY IN APPLICATION OF NEW PAYMENT
6 LIMIT FOR MULTIPLE SOURCE DRUGS UNDER MED-
7 ICAID.—Notwithstanding paragraphs (4) and (5) of sub-
8 section (e) of section 1927 of the Social Security Act (42
9 U.S.C. 1396r–8) or part 447 of title 42, Code of Federal
10 Regulations, as published on July 17, 2007 (72 Federal
11 Register 39142)—

12 (1) the specific upper limit under section
13 447.332 of title 42, Code of Federal Regulations (as
14 in effect on December 31, 2006) applicable to pay-
15 ments made by a State for multiple source drugs
16 under a State Medicaid plan shall continue to apply
17 through September 30, 2009, for purposes of the
18 availability of Federal financial participation for
19 such payments; and

20 (2) the Secretary of Health and Human Serv-
21 ices shall not, prior to October 1, 2009, finalize, im-
22 plement, enforce, or otherwise take any action
23 (through promulgation of regulation, issuance of
24 regulatory guidance, use of Federal payment audit
25 procedures, or other administrative action, policy, or

1 practice, including a Medical Assistance Manual
2 transmittal or letter to State Medicaid directors) to
3 impose the specific upper limit established under
4 section 447.514(b) of title 42, Code of Federal Reg-
5 ulations as published on July 17, 2007 (72 Federal
6 Register 39142).

7 (b) TEMPORARY SUSPENSION OF UPDATED PUB-
8 LICLY AVAILABLE AMP DATA.—Notwithstanding clause
9 (v) of section 1927(b)(3)(D) of the Social Security Act (42
10 U.S.C. 1396r–8(b)(3)(D)), the Secretary of Health and
11 Human Services shall not, prior to October 1, 2009, make
12 publicly available any AMP disclosed to the Secretary.

13 (c) DEFINITIONS.—In this subsection:

14 (1) The term ''multiple source drug'' has the
15 meaning given that term in section 1927(k)(7)(A)(i)
16 of the Social Security Act (42 U.S.C. 1396r–
17 8(k)(7)(A)(i)).

18 (2) The term ''AMP'' has the meaning given
19 ''average manufacturer price'' in section 1927(k)(1)
20 of the Social Security Act (42 U.S.C. 1396r–
21 8(k)(1)) and ''AMP'' in section 447.504(a) of title
22 42, Code of Federal Regulations as published on
23 July 17, 2007 (72 Federal Register 39142).

1 **SEC. 204. REVIEW OF ADMINISTRATIVE CLAIM DETERMINA-**
2 **TIONS.**
3 (a) IN GENERAL.—Section 1116 of the Social Secu-
4 rity Act (42 U.S.C. 1316) is amended by adding at the
5 end the following new subsection:
6 ''(e)(1) Whenever the Secretary determines that any
7 item or class of items on account of which Federal finan-
8 cial participation is claimed under title XIX shall be dis-
9 allowed for such participation, the State shall be entitled
10 to and upon request shall receive a reconsideration of the
11 disallowance, provided that such request is made during
12 the 60-day period that begins on the date the State re-
13 ceives notice of the disallowance.
14 ''(2)(A) A State may appeal a disallowance of a claim
15 for federal financial participation under title XIX by the
16 Secretary, or an unfavorable reconsideration of a disallow-
17 ance, during the 60-day period that begins on the date
18 the State receives notice of the disallowance or of the unfa-
19 vorable reconsideration, in whole or in part, to the Depart-
20 mental Appeals Board, established in the Department of
21 Health and Human Services (in this paragraph referred
22 to as the 'Board'), by filing a notice of appeal with the
23 Board.
24 ''(B) The Board shall consider a State's appeal of
25 a disallowance of such a claim (or of an unfavorable recon-
26 sideration of a disallowance) on the basis of such docu-

1 mentation as the State may submit and as the Board may
2 require to support the final decision of the Board. In de-
3 ciding whether to uphold a disallowance of such a claim
4 or any portion thereof, the Board shall be bound by all
5 applicable laws and regulations and shall conduct a thor-
6 ough review of the issues, taking into account all relevant
7 evidence. The Board's decision of an appeal under sub-
8 paragraph (A) shall be the final decision of the Secretary
9 and shall be subject to reconsideration by the Board only
10 upon motion of either party filed during the 60-day period
11 that begins on the date of the Board's decision or to judi-
12 cial review in accordance with subparagraph (C).
13 "(C) A State may obtain judicial review of a decision
14 of the Board by filing an action in any United States Dis-
15 trict Court located within the appealing State (or, if sev-
16 eral States jointly appeal the disallowance of claims for
17 Federal financial participation under section 1903, in any
18 United States District Court that is located within any
19 State that is a party to the appeal) or the United States
20 District Court for the District of Columbia. Such an ac-
21 tion may only be filed—
22 "(i) if no motion for reconsideration was filed
23 within the 60-day period specified in subparagraph
24 (B), during such 60-day period; or

1 "(ii) if such a motion was filed within such pe-
2 riod, during the 60-day period that begins on the
3 date of the Board's decision on such motion.".
4 (b) CONFORMING AMENDMENT.—Section 1116(d) of
5 such Act (42 U.S.C. 1316(d)) is amended by striking "or
6 XIX,".
7 (c) EFFECTIVE DATE.—The amendments made by
8 this section take effect on the date of the enactment of
9 this Act and apply to any disallowance of a claim for Fed-
10 eral financial participation under title XIX of the Social
11 Security Act (42 U.S.C. 1396 et seq.) made on or after
12 such date or during the 60-day period prior to such date.

13 **SEC. 205. COUNTY MEDICAID HEALTH INSURING ORGANI-**
14 **ZATIONS.**

15 (a) IN GENERAL.—Section 9517(c)(3) of the Consoli-
16 dated Omnibus Budget Reconciliation Act of 1985 (42
17 U.S.C. 1396b note), as added by section 4734 of the Om-
18 nibus Budget Reconciliation Act of 1990 and as amended
19 by section 704 of the Medicare, Medicaid, and SCHIP
20 Benefits Improvement and Protection Act of 2000, is
21 amended—
22 (1) in subparagraph (A), by inserting ", in the
23 case of any health insuring organization described in
24 such subparagraph that is operated by a public enti-
25 ty established by Ventura County, and in the case

1 of any health insuring organization described in such
2 subparagraph that is operated by a public entity es-
3 tablished by Merced County'' after ''described in
4 subparagraph (B)''; and
5 (2) in subparagraph (C), by striking ''14 per-
6 cent'' and inserting ''16 percent''.
7 (b) EFFECTIVE DATE.—The amendments made by
8 subsection (a) shall take effect on the date of the enact-
9 ment of this Act.

10 TITLE III—MISCELLANEOUS

11 SEC. 301. EXTENSION OF TANF SUPPLEMENTAL GRANTS.

12 (a) EXTENSION THROUGH FISCAL YEAR 2009.—Sec-
13 tion 7101(a) of the Deficit Reduction Act of 2005 (Public
14 Law 109–171; 120 Stat. 135) is amended by striking ''fis-
15 cal year 2008'' and inserting ''fiscal year 2009''.
16 (b) CONFORMING AMENDMENT.—Section
17 403(a)(3)(H)(ii) of the Social Security Act (42 U.S.C.
18 603(a)(3)(H)(ii)) is amended to read as follows:
19 ''(ii) subparagraph (G) shall be ap-
20 plied as if 'fiscal year 2009' were sub-
21 stituted for 'fiscal year 2001'; and''.

1 **SEC. 302. 70 PERCENT FEDERAL MATCHING FOR FOSTER**
2 **CARE AND ADOPTION ASSISTANCE FOR THE**
3 **DISTRICT OF COLUMBIA.**

4 (a) IN GENERAL.—Section 474(a) of the Social Secu-
5 rity Act (42 U.S.C. 674(a)) is amended in each of para-
6 graphs (1) and (2) by striking ''(as defined in section
7 1905(b) of this Act)'' and inserting ''(which shall be as
8 defined in section 1905(b), in the case of a State other
9 than the District of Columbia, or 70 percent, in the case
10 of the District of Columbia)''.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall take effect on October 1, 2008, and
13 shall apply to calendar quarters beginning on or after that
14 date.

15 **SEC. 303. EXTENSION OF SPECIAL DIABETES GRANT PRO-**
16 **GRAMS.**

17 (a) SPECIAL DIABETES PROGRAMS FOR TYPE I DIA-
18 BETES.—Section 330B(b)(2)(C) of the Public Health
19 Service Act (42 U.S.C. 254c–2(b)(2)) is amended by strik-
20 ing ''2009'' and inserting ''2011''.

21 (b) SPECIAL DIABETES PROGRAMS FOR INDIANS.—
22 Section 330C(c)(2)(C) of the Public Health Service Act
23 (42 U.S.C. 254c–3(c)(2)(C)) is amended by striking
24 ''2009'' and inserting ''2011''.

25 (c) REPORT ON GRANT PROGRAMS.—Section 4923(b)
26 of the Balanced Budget Act of 1997 (42 U.S.C. 1254c–

1 2 note), as amended by section 931(c) of the Medicare,
2 Medicaid, and SCHIP Benefits Improvement and Protec-
3 tion Act of 2000, as enacted into law by section 1(a)(6)
4 of Public Law 106–554, and section 1(c) of Public Law
5 107–360, is amended—
6 (1) in paragraph (1), by striking ''and'' at the
7 end;
8 (2) in paragraph (2)—
9 (A) by striking ''a final report'' and insert-
10 ing ''a second interim report''; and
11 (B) by striking the period at the end and
12 inserting ''; and''; and
13 (3) by adding at the end the following new
14 paragraph:
15 ''(3) a report on such evaluation not later than
16 January 1, 2011.''.

17 **SEC. 304. IOM REPORTS ON BEST PRACTICES FOR CON-**
18 **DUCTING SYSTEMATIC REVIEWS OF CLIN-**
19 **ICAL EFFECTIVENESS RESEARCH AND FOR**
20 **DEVELOPING CLINICAL PROTOCOLS.**

21 (a) SYSTEMATIC REVIEWS OF CLINICAL EFFECTIVE-
22 NESS RESEARCH.—
23 (1) STUDY.—Not later than 60 days after the
24 date of the enactment of this Act, the Secretary of
25 Health and Human Services shall enter into a con-

1 tract with the Institute of Medicine of the National
2 Academies (in this section referred to as the ''Insti-
3 tute'') under which the Institute shall conduct a
4 study to identify the methodological standards for
5 conducting systematic reviews of clinical effective-
6 ness research on health and health care in order to
7 ensure that organizations conducting such reviews
8 have information on methods that are objective, sci-
9 entifically valid, and consistent.
10 (2) REPORT.—Not later than 18 months after
11 the effective date of the contract under paragraph
12 (1), the Institute, as part of such contract, shall
13 submit to the Secretary of Health and Human Serv-
14 ices and the appropriate committees of jurisdiction
15 of Congress a report containing the results of the
16 study conducted under paragraph (1), together with
17 recommendations for such legislation and adminis-
18 trative action as the Institute determines appro-
19 priate.
20 (3) PARTICIPATION.—The contract under para-
21 graph (1) shall require that stakeholders with exper-
22 tise in conducting clinical effectiveness research par-
23 ticipate on the panel responsible for conducting the
24 study under paragraph (1) and preparing the report
25 under paragraph (2).

1 (b) CLINICAL PROTOCOLS.—
2 (1) STUDY.—Not later than 60 days after the
3 date of the enactment of this Act, the Secretary of
4 Health and Human Services shall enter into a con-
5 tract with the Institute of Medicine of the National
6 Academies (in this section referred to as the ''Insti-
7 tute'') under which the Institute shall conduct a
8 study on the best methods used in developing clinical
9 practice guidelines in order to ensure that organiza-
10 tions developing such guidelines have information on
11 approaches that are objective, scientifically valid,
12 and consistent.
13 (2) REPORT.—Not later than 18 months after
14 the effective date of the contract under paragraph
15 (1), the Institute, as part of such contract, shall
16 submit to the Secretary of Health and Human Serv-
17 ices and the appropriate committees of jurisdiction
18 of Congress a report containing the results of the
19 study conducted under paragraph (1), together with
20 recommendations for such legislation and adminis-
21 trative action as the Institute determines appro-
22 priate.
23 (3) PARTICIPATION.—The contract under para-
24 graph (1) shall require that stakeholders with exper-
25 tise in making clinical recommendations participate

1 on the panel responsible for conducting the study
2 under paragraph (1) and preparing the report under
3 paragraph (2).
4 (c) FUNDING.—Out of any funds in the Treasury not
5 otherwise appropriated, there are appropriated for the pe-
6 riod of fiscal years 2009 and 2010, $3,000,000 to carry
7 out this section.