

1 **(b) REPORTS BY RECIPIENTS OF FUNDS.**—*The Sec-*
2 *retary of Health and Human Services may require, as a*
3 *condition of receiving funds under the amendments made*
4 *by this title, that the entity receiving such award submit*
5 *to such Secretary such reports as the such Secretary may*
6 *require on activities carried out with such award, and the*
7 *effectiveness of such activities.*

8 **TITLE VI—TRANSPARENCY AND**
9 **PROGRAM INTEGRITY**
10 **Subtitle A—Physician Ownership**
11 **and Other Transparency**

12 **SEC. 6001. LIMITATION ON MEDICARE EXCEPTION TO THE**
13 **PROHIBITION ON CERTAIN PHYSICIAN RE-**
14 **FERRALS FOR HOSPITALS.**

15 **(a) IN GENERAL.**—*Section 1877 of the Social Security*
16 *Act (42 U.S.C. 1395nn) is amended—*

17 **(1) in subsection (d)(2)—**

18 **(A) in subparagraph (A), by striking “and”**
19 **at the end;**

20 **(B) in subparagraph (B), by striking the**
21 **period at the end and inserting “; and”; and**

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

1 “(C) in the case where the entity is a hos-
2 pital, the hospital meets the requirements of
3 paragraph (3)(D).”;

4 (2) in subsection (d)(3)—

5 (A) in subparagraph (B), by striking “and”
6 at the end;

7 (B) in subparagraph (C), by striking the
8 period at the end and inserting “; and”; and

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

11 “(D) the hospital meets the requirements de-
12 scribed in subsection (i)(1) not later than 18
13 months after the date of the enactment of this
14 subparagraph.”; and

15 (3) by adding at the end the following new sub-
16 section:

17 “(i) *REQUIREMENTS FOR HOSPITALS TO QUALIFY FOR*
18 *RURAL PROVIDER AND HOSPITAL EXCEPTION TO OWNER-*
19 *SHIP OR INVESTMENT PROHIBITION.*—

20 “(1) *REQUIREMENTS DESCRIBED.*—For purposes
21 of subsection (d)(3)(D), the requirements described in
22 this paragraph for a hospital are as follows:

23 “(A) *PROVIDER AGREEMENT.*—The hospital
24 had—

1 “(i) *physician ownership or investment*
2 *on February 1, 2010; and*

3 “(ii) *a provider agreement under sec-*
4 *tion 1866 in effect on such date.*

5 “(B) *LIMITATION ON EXPANSION OF FACIL-*
6 *ITY CAPACITY.—Except as provided in para-*
7 *graph (3), the number of operating rooms, proce-*
8 *dure rooms, and beds for which the hospital is li-*
9 *icensed at any time on or after the date of the en-*
10 *actment of this subsection is no greater than the*
11 *number of operating rooms, procedure rooms,*
12 *and beds for which the hospital is licensed as of*
13 *such date.*

14 “(C) *PREVENTING CONFLICTS OF INTER-*
15 *EST.—*

16 “(i) *The hospital submits to the Sec-*
17 *retary an annual report containing a de-*
18 *tailed description of—*

19 “(I) *the identity of each physician*
20 *owner or investor and any other own-*
21 *ers or investors of the hospital; and*

22 “(II) *the nature and extent of all*
23 *ownership and investment interests in*
24 *the hospital.*

1 “(ii) *The hospital has procedures in*
2 *place to require that any referring physi-*
3 *cian owner or investor discloses to the pa-*
4 *tient being referred, by a time that permits*
5 *the patient to make a meaningful decision*
6 *regarding the receipt of care, as determined*
7 *by the Secretary—*

8 “(I) *the ownership or investment*
9 *interest, as applicable, of such referring*
10 *physician in the hospital; and*

11 “(II) *if applicable, any such own-*
12 *ership or investment interest of the*
13 *treating physician.*

14 “(iii) *The hospital does not condition*
15 *any physician ownership or investment in-*
16 *terests either directly or indirectly on the*
17 *physician owner or investor making or in-*
18 *fluencing referrals to the hospital or other-*
19 *wise generating business for the hospital.*

20 “(iv) *The hospital discloses the fact*
21 *that the hospital is partially owned or in-*
22 *vested in by physicians—*

23 “(I) *on any public website for the*
24 *hospital; and*

1 “(II) in any public advertising
2 for the hospital.

3 “(D) ENSURING BONA FIDE INVESTMENT.—

4 “(i) The percentage of the total value of
5 the ownership or investment interests held
6 in the hospital, or in an entity whose assets
7 include the hospital, by physician owners or
8 investors in the aggregate does not exceed
9 such percentage as of the date of enactment
10 of this subsection.

11 “(ii) Any ownership or investment in-
12 terests that the hospital offers to a physician
13 owner or investor are not offered on more
14 favorable terms than the terms offered to a
15 person who is not a physician owner or in-
16 vestor.

17 “(iii) The hospital (or any owner or
18 investor in the hospital) does not directly or
19 indirectly provide loans or financing for
20 any investment in the hospital by a physi-
21 cian owner or investor.

22 “(iv) The hospital (or any owner or in-
23 vestor in the hospital) does not directly or
24 indirectly guarantee a loan, make a pay-
25 ment toward a loan, or otherwise subsidize

1 *a loan, for any individual physician owner*
2 *or investor or group of physician owners or*
3 *investors that is related to acquiring any*
4 *ownership or investment interest in the hos-*
5 *pital.*

6 “(v) *Ownership or investment returns*
7 *are distributed to each owner or investor in*
8 *the hospital in an amount that is directly*
9 *proportional to the ownership or investment*
10 *interest of such owner or investor in the*
11 *hospital.*

12 “(vi) *Physician owners and investors*
13 *do not receive, directly or indirectly, any*
14 *guaranteed receipt of or right to purchase*
15 *other business interests related to the hos-*
16 *pital, including the purchase or lease of any*
17 *property under the control of other owners*
18 *or investors in the hospital or located near*
19 *the premises of the hospital.*

20 “(vii) *The hospital does not offer a*
21 *physician owner or investor the opportunity*
22 *to purchase or lease any property under the*
23 *control of the hospital or any other owner*
24 *or investor in the hospital on more favor-*
25 *able terms than the terms offered to an indi-*

1 *vidual who is not a physician owner or in-*
2 *vestor.*

3 *“(E) PATIENT SAFETY.—*

4 *“(i) Insofar as the hospital admits a*
5 *patient and does not have any physician*
6 *available on the premises to provide services*
7 *during all hours in which the hospital is*
8 *providing services to such patient, before*
9 *admitting the patient—*

10 *“(I) the hospital discloses such*
11 *fact to a patient; and*

12 *“(II) following such disclosure, the*
13 *hospital receives from the patient a*
14 *signed acknowledgment that the pa-*
15 *tient understands such fact.*

16 *“(ii) The hospital has the capacity*
17 *to—*

18 *“(I) provide assessment and ini-*
19 *tial treatment for patients; and*

20 *“(II) refer and transfer patients*
21 *to hospitals with the capability to treat*
22 *the needs of the patient involved.*

23 *“(F) LIMITATION ON APPLICATION TO CER-*
24 *TAIN CONVERTED FACILITIES.—The hospital was*
25 *not converted from an ambulatory surgical cen-*

1 *ter to a hospital on or after the date of enact-*
2 *ment of this subsection.*

3 “(2) *PUBLICATION OF INFORMATION RE-*
4 *PORTED.—The Secretary shall publish, and update on*
5 *an annual basis, the information submitted by hos-*
6 *pitals under paragraph (1)(C)(i) on the public Inter-*
7 *net website of the Centers for Medicare & Medicaid*
8 *Services.*

9 “(3) *EXCEPTION TO PROHIBITION ON EXPANSION*
10 *OF FACILITY CAPACITY.—*

11 “(A) *PROCESS.—*

12 “(i) *ESTABLISHMENT.—The Secretary*
13 *shall establish and implement a process*
14 *under which an applicable hospital (as de-*
15 *fined in subparagraph (E)) may apply for*
16 *an exception from the requirement under*
17 *paragraph (1)(B).*

18 “(ii) *OPPORTUNITY FOR COMMUNITY*
19 *INPUT.—The process under clause (i) shall*
20 *provide individuals and entities in the com-*
21 *munity in which the applicable hospital ap-*
22 *plying for an exception is located with the*
23 *opportunity to provide input with respect to*
24 *the application.*

1 “(iii) *TIMING FOR IMPLEMENTATION.*—
2 *The Secretary shall implement the process*
3 *under clause (i) on August 1, 2011.*

4 “(iv) *REGULATIONS.*—*Not later than*
5 *July 1, 2011, the Secretary shall promul-*
6 *gate regulations to carry out the process*
7 *under clause (i).*

8 “(B) *FREQUENCY.*—*The process described*
9 *in subparagraph (A) shall permit an applicable*
10 *hospital to apply for an exception up to once*
11 *every 2 years.*

12 “(C) *PERMITTED INCREASE.*—

13 “(i) *IN GENERAL.*—*Subject to clause*
14 *(ii) and subparagraph (D), an applicable*
15 *hospital granted an exception under the*
16 *process described in subparagraph (A) may*
17 *increase the number of operating rooms,*
18 *procedure rooms, and beds for which the ap-*
19 *plicable hospital is licensed above the base-*
20 *line number of operating rooms, procedure*
21 *rooms, and beds of the applicable hospital*
22 *(or, if the applicable hospital has been*
23 *granted a previous exception under this*
24 *paragraph, above the number of operating*
25 *rooms, procedure rooms, and beds for which*

1 *the hospital is licensed after the application*
2 *of the most recent increase under such an*
3 *exception).*

4 “(ii) 100 PERCENT INCREASE LIMITA-
5 TION.—*The Secretary shall not permit an*
6 *increase in the number of operating rooms,*
7 *procedure rooms, and beds for which an ap-*
8 *plicable hospital is licensed under clause (i)*
9 *to the extent such increase would result in*
10 *the number of operating rooms, procedure*
11 *rooms, and beds for which the applicable*
12 *hospital is licensed exceeding 200 percent of*
13 *the baseline number of operating rooms,*
14 *procedure rooms, and beds of the applicable*
15 *hospital.*

16 “(iii) BASELINE NUMBER OF OPER-
17 ATING ROOMS, PROCEDURE ROOMS, AND
18 BEDS.—*In this paragraph, the term ‘base-*
19 *line number of operating rooms, procedure*
20 *rooms, and beds’ means the number of oper-*
21 *ating rooms, procedure rooms, and beds for*
22 *which the applicable hospital is licensed as*
23 *of the date of enactment of this subsection.*

24 “(D) INCREASE LIMITED TO FACILITIES ON
25 THE MAIN CAMPUS OF THE HOSPITAL.—*Any in-*

1 crease in the number of operating rooms, proce-
2 dure rooms, and beds for which an applicable
3 hospital is licensed pursuant to this paragraph
4 may only occur in facilities on the main campus
5 of the applicable hospital.

6 “(E) *APPLICABLE HOSPITAL*.—In this para-
7 graph, the term ‘applicable hospital’ means a
8 hospital—

9 “(i) that is located in a county in
10 which the percentage increase in the popu-
11 lation during the most recent 5-year period
12 (as of the date of the application under sub-
13 paragraph (A)) is at least 150 percent of
14 the percentage increase in the population
15 growth of the State in which the hospital is
16 located during that period, as estimated by
17 Bureau of the Census;

18 “(ii) whose annual percent of total in-
19 patient admissions that represent inpatient
20 admissions under the program under title
21 XIX is equal to or greater than the average
22 percent with respect to such admissions for
23 all hospitals located in the county in which
24 the hospital is located;

1 “(iii) that does not discriminate
2 against beneficiaries of Federal health care
3 programs and does not permit physicians
4 practicing at the hospital to discriminate
5 against such beneficiaries;

6 “(iv) that is located in a State in
7 which the average bed capacity in the State
8 is less than the national average bed capac-
9 ity; and

10 “(v) that has an average bed occu-
11 pancy rate that is greater than the average
12 bed occupancy rate in the State in which
13 the hospital is located.

14 “(F) *PROCEDURE ROOMS.*—In this sub-
15 section, the term ‘procedure rooms’ includes
16 rooms in which catheterizations, angiographies,
17 angiograms, and endoscopies are performed, ex-
18 cept such term shall not include emergency
19 rooms or departments (exclusive of rooms in
20 which catheterizations, angiographies,
21 angiograms, and endoscopies are performed).

22 “(G) *PUBLICATION OF FINAL DECISIONS.*—
23 Not later than 60 days after receiving a complete
24 application under this paragraph, the Secretary

1 *shall publish in the Federal Register the final de-*
2 *cision with respect to such application.*

3 “(H) *LIMITATION ON REVIEW.—There shall*
4 *be no administrative or judicial review under*
5 *section 1869, section 1878, or otherwise of the*
6 *process under this paragraph (including the es-*
7 *tablishment of such process).*

8 “(4) *COLLECTION OF OWNERSHIP AND INVEST-*
9 *MENT INFORMATION.—For purposes of subparagraphs*
10 *(A)(i) and (D)(i) of paragraph (1), the Secretary*
11 *shall collect physician ownership and investment in-*
12 *formation for each hospital.*

13 “(5) *PHYSICIAN OWNER OR INVESTOR DE-*
14 *FINED.—For purposes of this subsection, the term*
15 *‘physician owner or investor’ means a physician (or*
16 *an immediate family member of such physician) with*
17 *a direct or an indirect ownership or investment inter-*
18 *est in the hospital.*

19 “(6) *CLARIFICATION.—Nothing in this subsection*
20 *shall be construed as preventing the Secretary from*
21 *revoking a hospital’s provider agreement if not in*
22 *compliance with regulations implementing section*
23 *1866.”.*

24 “(b) *ENFORCEMENT.—*

1 (1) *ENSURING COMPLIANCE.*—*The Secretary of*
 2 *Health and Human Services shall establish policies*
 3 *and procedures to ensure compliance with the require-*
 4 *ments described in subsection (i)(1) of section 1877 of*
 5 *the Social Security Act, as added by subsection*
 6 *(a)(3), beginning on the date such requirements first*
 7 *apply. Such policies and procedures may include un-*
 8 *announced site reviews of hospitals.*

9 (2) *AUDITS.*—*Beginning not later than Novem-*
 10 *ber 1, 2011, the Secretary of Health and Human*
 11 *Services shall conduct audits to determine if hospitals*
 12 *violate the requirements referred to in paragraph (1).*

13 **SEC. 6002. TRANSPARENCY REPORTS AND REPORTING OF**
 14 **PHYSICIAN OWNERSHIP OR INVESTMENT IN-**
 15 **TERESTS.**

16 *Part A of title XI of the Social Security Act (42 U.S.C.*
 17 *1301 et seq.) is amended by inserting after section 1128F*
 18 *the following new section:*

19 **“SEC. 1128G. TRANSPARENCY REPORTS AND REPORTING OF**
 20 **PHYSICIAN OWNERSHIP OR INVESTMENT IN-**
 21 **TERESTS.**

22 **“(a) TRANSPARENCY REPORTS.**—

23 **“(1) PAYMENTS OR OTHER TRANSFERS OF**
 24 **VALUE.**—

1 “(A) *IN GENERAL.*—On March 31, 2013,
2 and on the 90th day of each calendar year begin-
3 ning thereafter, any applicable manufacturer
4 that provides a payment or other transfer of
5 value to a covered recipient (or to an entity or
6 individual at the request of or designated on be-
7 half of a covered recipient), shall submit to the
8 Secretary, in such electronic form as the Sec-
9 retary shall require, the following information
10 with respect to the preceding calendar year:

11 “(i) *The name of the covered recipient.*

12 “(ii) *The business address of the cov-*
13 *ered recipient and, in the case of a covered*
14 *recipient who is a physician, the specialty*
15 *and National Provider Identifier of the cov-*
16 *ered recipient.*

17 “(iii) *The amount of the payment or*
18 *other transfer of value.*

19 “(iv) *The dates on which the payment*
20 *or other transfer of value was provided to*
21 *the covered recipient.*

22 “(v) *A description of the form of the*
23 *payment or other transfer of value, indi-*
24 *cated (as appropriate for all that apply)*
25 *as—*

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- “(I) cash or a cash equivalent;*
- “(II) in-kind items or services;*
- “(III) stock, a stock option, or any other ownership interest, dividend, profit, or other return on investment;*
- or*
- “(IV) any other form of payment or other transfer of value (as defined by the Secretary).*
- “(vi) A description of the nature of the payment or other transfer of value, indicated (as appropriate for all that apply) as—*
 - “(I) consulting fees;*
 - “(II) compensation for services other than consulting;*
 - “(III) honoraria;*
 - “(IV) gift;*
 - “(V) entertainment;*
 - “(VI) food;*
 - “(VII) travel (including the specified destinations);*
 - “(VIII) education;*
 - “(IX) research;*
 - “(X) charitable contribution;*

1 “(XI) *royalty or license;*

2 “(XII) *current or prospective*
3 *ownership or investment interest;*

4 “(XIII) *direct compensation for*
5 *-serving as faculty or as a speaker for*
6 *a medical education program;*

7 “(XIV) *grant; or*

8 “(XV) *any other nature of the*
9 *payment or other transfer of value (as*
10 *defined by the Secretary).*

11 “(vii) *If the payment or other transfer*
12 *of value is related to marketing, education,*
13 *or research specific to a covered drug, de-*
14 *vice, biological, or medical supply, the name*
15 *of that covered drug, device, biological, or*
16 *medical supply.*

17 “(viii) *Any other categories of informa-*
18 *tion regarding the payment or other trans-*
19 *fer of value the Secretary determines appro-*
20 *priate.*

21 “(B) *SPECIAL RULE FOR CERTAIN PAY-*
22 *MENTS OR OTHER TRANSFERS OF VALUE.—In*
23 *the case where an applicable manufacturer pro-*
24 *vides a payment or other transfer of value to an*
25 *entity or individual at the request of or des-*

1 *ignated on behalf of a covered recipient, the ap-*
2 *plicable manufacturer shall disclose that pay-*
3 *ment or other transfer of value under the name*
4 *of the covered recipient.*

5 “(2) *PHYSICIAN OWNERSHIP.*—*In addition to the*
6 *requirement under paragraph (1)(A), on March 31,*
7 *2013, and on the 90th day of each calendar year be-*
8 *ginning thereafter, any applicable manufacturer or*
9 *applicable group purchasing organization shall sub-*
10 *mit to the Secretary, in such electronic form as the*
11 *Secretary shall require, the following information re-*
12 *garding any ownership or investment interest (other*
13 *than an ownership or investment interest in a pub-*
14 *licly traded security and mutual fund, as described in*
15 *section 1877(c)) held by a physician (or an imme-*
16 *diante family member of such physician (as defined for*
17 *purposes of section 1877(a))) in the applicable manu-*
18 *facturer or applicable group purchasing organization*
19 *during the preceding year:*

20 “(A) *The dollar amount invested by each*
21 *physician holding such an ownership or invest-*
22 *ment interest.*

23 “(B) *The value and terms of each such own-*
24 *ership or investment interest.*

1 “(C) *Any payment or other transfer of*
2 *value provided to a physician holding such an*
3 *ownership or investment interest (or to an entity*
4 *or individual at the request of or designated on*
5 *behalf of a physician holding such an ownership*
6 *or investment interest), including the informa-*
7 *tion described in clauses (i) through (viii) of*
8 *paragraph (1)(A), except that in applying such*
9 *clauses, ‘physician’ shall be substituted for ‘cov-*
10 *ered recipient’ each place it appears.*

11 “(D) *Any other information regarding the*
12 *ownership or investment interest the Secretary*
13 *determines appropriate.*

14 “(b) *PENALTIES FOR NONCOMPLIANCE.—*

15 “(1) *FAILURE TO REPORT.—*

16 “(A) *IN GENERAL.—Subject to subpara-*
17 *graph (B) except as provided in paragraph (2),*
18 *any applicable manufacturer or applicable group*
19 *purchasing organization that fails to submit in-*
20 *formation required under subsection (a) in a*
21 *timely manner in accordance with rules or regu-*
22 *lations promulgated to carry out such subsection,*
23 *shall be subject to a civil money penalty of not*
24 *less than \$1,000, but not more than \$10,000, for*
25 *each payment or other transfer of value or own-*

1 *ership or investment interest not reported as re-*
2 *quired under such subsection. Such penalty shall*
3 *be imposed and collected in the same manner as*
4 *civil money penalties under subsection (a) of sec-*
5 *tion 1128A are imposed and collected under that*
6 *section.*

7 *“(B) LIMITATION.—The total amount of*
8 *civil money penalties imposed under subpara-*
9 *graph (A) with respect to each annual submis-*
10 *sion of information under subsection (a) by an*
11 *applicable manufacturer or applicable group*
12 *purchasing organization shall not exceed*
13 *\$150,000.*

14 *“(2) KNOWING FAILURE TO REPORT.—*

15 *“(A) IN GENERAL.—Subject to subpara-*
16 *graph (B), any applicable manufacturer or ap-*
17 *plicable group purchasing organization that*
18 *knowingly fails to submit information required*
19 *under subsection (a) in a timely manner in ac-*
20 *cordance with rules or regulations promulgated*
21 *to carry out such subsection, shall be subject to*
22 *a civil money penalty of not less than \$10,000,*
23 *but not more than \$100,000, for each payment or*
24 *other transfer of value or ownership or invest-*
25 *ment interest not reported as required under*

1 *such subsection. Such penalty shall be imposed*
2 *and collected in the same manner as civil money*
3 *penalties under subsection (a) of section 1128A*
4 *are imposed and collected under that section.*

5 *“(B) LIMITATION.—The total amount of*
6 *civil money penalties imposed under subpara-*
7 *graph (A) with respect to each annual submis-*
8 *sion of information under subsection (a) by an*
9 *applicable manufacturer or applicable group*
10 *purchasing organization shall not exceed*
11 *\$1,000,000.*

12 *“(3) USE OF FUNDS.—Funds collected by the*
13 *Secretary as a result of the imposition of a civil*
14 *money penalty under this subsection shall be used to*
15 *carry out this section.*

16 *“(c) PROCEDURES FOR SUBMISSION OF INFORMATION*
17 *AND PUBLIC AVAILABILITY.—*

18 *“(1) IN GENERAL.—*

19 *“(A) ESTABLISHMENT.—Not later than Oc-*
20 *tober 1, 2011, the Secretary shall establish proce-*
21 *dures—*

22 *“(i) for applicable manufacturers and*
23 *applicable group purchasing organizations*
24 *to submit information to the Secretary*
25 *under subsection (a); and*

1 “(ii) for the Secretary to make such in-
2 formation submitted available to the public.

3 “(B) *DEFINITION OF TERMS.*—The proce-
4 dures established under subparagraph (A) shall
5 provide for the definition of terms (other than
6 those terms defined in subsection (e)), as appro-
7 priate, for purposes of this section.

8 “(C) *PUBLIC AVAILABILITY.*—Except as
9 provided in subparagraph (E), the procedures es-
10 tablished under subparagraph (A)(ii) shall en-
11 sure that, not later than September 30, 2013,
12 and on June 30 of each calendar year beginning
13 thereafter, the information submitted under sub-
14 section (a) with respect to the preceding calendar
15 year is made available through an Internet
16 website that—

17 “(i) is searchable and is in a format
18 that is clear and understandable;

19 “(ii) contains information that is pre-
20 sented by the name of the applicable manu-
21 facturer or applicable group purchasing or-
22 ganization, the name of the covered recipi-
23 ent, the business address of the covered re-
24 cipient, the specialty of the covered recipi-
25 ent, the value of the payment or other trans-

1 *fer of value, the date on which the payment*
2 *or other transfer of value was provided to*
3 *the covered recipient, the form of the pay-*
4 *ment or other transfer of value, indicated*
5 *(as appropriate) under subsection*
6 *(a)(1)(A)(v), the nature of the payment or*
7 *other transfer of value, indicated (as appro-*
8 *priate) under subsection (a)(1)(A)(vi), and*
9 *the name of the covered drug, device, bio-*
10 *logical, or medical supply, as applicable;*

11 *“(iii) contains information that is able*
12 *to be easily aggregated and downloaded;*

13 *“(iv) contains a description of any en-*
14 *forcement actions taken to carry out this*
15 *section, including any penalties imposed*
16 *under subsection (b), during the preceding*
17 *year;*

18 *“(v) contains background information*
19 *on industry-physician relationships;*

20 *“(vi) in the case of information sub-*
21 *mitted with respect to a payment or other*
22 *transfer of value described in subparagraph*
23 *(E)(i), lists such information separately*
24 *from the other information submitted under*
25 *subsection (a) and designates such sepa-*

1 *rately listed information as funding for*
2 *clinical research;*

3 *“(vii) contains any other information*
4 *the Secretary determines would be helpful to*
5 *the average consumer;*

6 *“(viii) does not contain the National*
7 *Provider Identifier of the covered recipient,*
8 *and*

9 *“(ix) subject to subparagraph (D), pro-*
10 *vides the applicable manufacturer, applica-*
11 *ble group purchasing organization, or cov-*
12 *ered recipient an opportunity to review and*
13 *submit corrections to the information sub-*
14 *mitted with respect to the applicable manu-*
15 *facturer, applicable group purchasing orga-*
16 *nization, or covered recipient, respectively,*
17 *for a period of not less than 45 days prior*
18 *to such information being made available to*
19 *the public.*

20 *“(D) CLARIFICATION OF TIME PERIOD FOR*
21 *REVIEW AND CORRECTIONS.—In no case may the*
22 *45-day period for review and submission of cor-*
23 *rections to information under subparagraph*
24 *(C)(ix) prevent such information from being*
25 *made available to the public in accordance with*

1 *the dates described in the matter preceding*
2 *clause (i) in subparagraph (C).*

3 “(E) *DELAYED PUBLICATION FOR PAY-*
4 *MENTS MADE PURSUANT TO PRODUCT RESEARCH*
5 *OR DEVELOPMENT AGREEMENTS AND CLINICAL*
6 *INVESTIGATIONS.—*

7 “(i) *IN GENERAL.—In the case of in-*
8 *formation submitted under subsection (a)*
9 *with respect to a payment or other transfer*
10 *of value made to a covered recipient by an*
11 *applicable manufacturer pursuant to a*
12 *product research or development agreement*
13 *for services furnished in connection with re-*
14 *search on a potential new medical tech-*
15 *nology or a new application of an existing*
16 *medical technology or the development of a*
17 *new drug, device, biological, or medical sup-*
18 *ply, or by an applicable manufacturer in*
19 *connection with a clinical investigation re-*
20 *garding a new drug, device, biological, or*
21 *medical supply, the procedures established*
22 *under subparagraph (A)(ii) shall provide*
23 *that such information is made available to*
24 *the public on the first date described in the*

1 *matter preceding clause (i) in subparagraph*
2 *(C) after the earlier of the following:*

3 *“(I) The date of the approval or*
4 *clearance of the covered drug, device,*
5 *biological, or medical supply by the*
6 *Food and Drug Administration.*

7 *“(II) Four calendar years after*
8 *the date such payment or other trans-*
9 *fer of value was made.*

10 *“(ii) CONFIDENTIALITY OF INFORMA-*
11 *TION PRIOR TO PUBLICATION.—Information*
12 *described in clause (i) shall be considered*
13 *confidential and shall not be subject to dis-*
14 *closure under section 552 of title 5, United*
15 *States Code, or any other similar Federal,*
16 *State, or local law, until on or after the*
17 *date on which the information is made*
18 *available to the public under such clause.*

19 *“(2) CONSULTATION.—In establishing the proce-*
20 *dures under paragraph (1), the Secretary shall con-*
21 *sult with the Inspector General of the Department of*
22 *Health and Human Services, affected industry, con-*
23 *sumers, consumer advocates, and other interested par-*
24 *ties in order to ensure that the information made*

1 *available to the public under such paragraph is pre-*
2 *sented in the appropriate overall context.*

3 “(d) *ANNUAL REPORTS AND RELATION TO STATE*
4 *LAWS.—*

5 “(1) *ANNUAL REPORT TO CONGRESS.—Not later*
6 *than April 1 of each year beginning with 2013, the*
7 *Secretary shall submit to Congress a report that in-*
8 *cludes the following:*

9 “(A) *The information submitted under sub-*
10 *section (a) during the preceding year, aggregated*
11 *for each applicable manufacturer and applicable*
12 *group purchasing organization that submitted*
13 *such information during such year (except, in*
14 *the case of information submitted with respect to*
15 *a payment or other transfer of value described in*
16 *subsection (c)(1)(E)(i), such information shall be*
17 *included in the first report submitted to Congress*
18 *after the date on which such information is made*
19 *available to the public under such subsection).*

20 “(B) *A description of any enforcement ac-*
21 *tions taken to carry out this section, including*
22 *any penalties imposed under subsection (b), dur-*
23 *ing the preceding year.*

24 “(2) *ANNUAL REPORTS TO STATES.—Not later*
25 *than September 30, 2013 and on June 30 of each cal-*

1 *endar year thereafter, the Secretary shall submit to*
2 *States a report that includes a summary of the infor-*
3 *mation submitted under subsection (a) during the*
4 *preceding year with respect to covered recipients in*
5 *the State (except, in the case of information submitted*
6 *with respect to a payment or other transfer of value*
7 *described in subsection (c)(1)(E)(i), such information*
8 *shall be included in the first report submitted to*
9 *States after the date on which such information is*
10 *made available to the public under such subsection).*

11 *“(3) RELATION TO STATE LAWS.—*

12 *“(A) IN GENERAL.—In the case of a pay-*
13 *ment or other transfer of value provided by an*
14 *applicable manufacturer that is received by a*
15 *covered recipient (as defined in subsection (e))*
16 *on or after January 1, 2012, subject to subpara-*
17 *graph (B), the provisions of this section shall*
18 *preempt any statute or regulation of a State or*
19 *of a political subdivision of a State that requires*
20 *an applicable manufacturer (as so defined) to*
21 *disclose or report, in any format, the type of in-*
22 *formation (as described in subsection (a)) re-*
23 *garding such payment or other transfer of value.*

24 *“(B) NO PREEMPTION OF ADDITIONAL RE-*
25 *QUIREMENTS.—Subparagraph (A) shall not pre-*

1 *empt any statute or regulation of a State or of*
2 *a political subdivision of a State that requires*
3 *the disclosure or reporting of information—*

4 *“(i) not of the type required to be dis-*
5 *closed or reported under this section;*

6 *“(ii) described in subsection (e)(10)(B),*
7 *except in the case of information described*
8 *in clause (i) of such subsection;*

9 *“(iii) by any person or entity other*
10 *than an applicable manufacturer (as so de-*
11 *fined) or a covered recipient (as defined in*
12 *subsection (e)); or*

13 *“(iv) to a Federal, State, or local gov-*
14 *ernmental agency for public health surveil-*
15 *lance, investigation, or other public health*
16 *purposes or health oversight purposes.*

17 *“(C) Nothing in subparagraph (A) shall be*
18 *construed to limit the discovery or admissibility*
19 *of information described in such subparagraph*
20 *in a criminal, civil, or administrative pro-*
21 *ceeding.*

22 *“(4) CONSULTATION.—The Secretary shall con-*
23 *sult with the Inspector General of the Department of*
24 *Health and Human Services on the implementation*
25 *of this section.*

1 “(e) *DEFINITIONS.*—*In this section:*

2 “(1) *APPLICABLE GROUP PURCHASING ORGANI-*
3 *ZATION.*—*The term ‘applicable group purchasing or-*
4 *ganization’ means a group purchasing organization*
5 *(as defined by the Secretary) that purchases, arranges*
6 *for, or negotiates the purchase of a covered drug, de-*
7 *vice, biological, or medical supply which is operating*
8 *in the United States, or in a territory, possession, or*
9 *commonwealth of the United States.*

10 “(2) *APPLICABLE MANUFACTURER.*—*The term*
11 *‘applicable manufacturer’ means a manufacturer of a*
12 *covered drug, device, biological, or medical supply*
13 *which is operating in the United States, or in a terri-*
14 *tory, possession, or commonwealth of the United*
15 *States.*

16 “(3) *CLINICAL INVESTIGATION.*—*The term ‘clin-*
17 *ical investigation’ means any experiment involving 1*
18 *or more human subjects, or materials derived from*
19 *human subjects, in which a drug or device is admin-*
20 *istered, dispensed, or used.*

21 “(4) *COVERED DEVICE.*—*The term ‘covered de-*
22 *vice’ means any device for which payment is avail-*
23 *able under title XVIII or a State plan under title*
24 *XIX or XXI (or a waiver of such a plan).*

1 “(5) *COVERED DRUG, DEVICE, BIOLOGICAL, OR*
2 *MEDICAL SUPPLY.*—*The term ‘covered drug, device,*
3 *biological, or medical supply’ means any drug, bio-*
4 *logical product, device, or medical supply for which*
5 *payment is available under title XVIII or a State*
6 *plan under title XIX or XXI (or a waiver of such a*
7 *plan).*

8 “(6) *COVERED RECIPIENT.*—

9 “(A) *IN GENERAL.*—*Except as provided in*
10 *subparagraph (B), the term ‘covered recipient’*
11 *means the following:*

12 “(i) *A physician.*

13 “(ii) *A teaching hospital.*

14 “(B) *EXCLUSION.*—*Such term does not in-*
15 *clude a physician who is an employee of the ap-*
16 *licable manufacturer that is required to submit*
17 *information under subsection (a).*

18 “(7) *EMPLOYEE.*—*The term ‘employee’ has the*
19 *meaning given such term in section 1877(h)(2).*

20 “(8) *KNOWINGLY.*—*The term ‘knowingly’ has the*
21 *meaning given such term in section 3729(b) of title*
22 *31, United States Code.*

23 “(9) *MANUFACTURER OF A COVERED DRUG, DE-*
24 *VICE, BIOLOGICAL, OR MEDICAL SUPPLY.*—*The term*
25 *‘manufacturer of a covered drug, device, biological, or*

1 *medical supply’ means any entity which is engaged*
2 *in the production, preparation, propagation,*
3 *compounding, or conversion of a covered drug, device,*
4 *biological, or medical supply (or any entity under*
5 *common ownership with such entity which provides*
6 *assistance or support to such entity with respect to*
7 *the production, preparation, propagation,*
8 *compounding, conversion, marketing, promotion, sale,*
9 *or distribution of a covered drug, device, biological, or*
10 *medical supply).*

11 “(10) *PAYMENT OR OTHER TRANSFER OF*
12 *VALUE.—*

13 “(A) *IN GENERAL.—The term ‘payment or*
14 *other transfer of value’ means a transfer of any-*
15 *thing of value. Such term does not include a*
16 *transfer of anything of value that is made indi-*
17 *rectly to a covered recipient through a third*
18 *party in connection with an activity or service*
19 *in the case where the applicable manufacturer is*
20 *unaware of the identity of the covered recipient.*

21 “(B) *EXCLUSIONS.—An applicable manu-*
22 *facturer shall not be required to submit informa-*
23 *tion under subsection (a) with respect to the fol-*
24 *lowing:*

1 “(i) A transfer of anything the value of
2 which is less than \$10, unless the aggregate
3 amount transferred to, requested by, or des-
4 ignated on behalf of the covered recipient by
5 the applicable manufacturer during the cal-
6 endar year exceeds \$100. For calendar years
7 after 2012, the dollar amounts specified in
8 the preceding sentence shall be increased by
9 the same percentage as the percentage in-
10 crease in the consumer price index for all
11 urban consumers (all items; U.S. city aver-
12 age) for the 12-month period ending with
13 June of the previous year.

14 “(ii) Product samples that are not in-
15 tended to be sold and are intended for pa-
16 tient use.

17 “(iii) Educational materials that di-
18 rectly benefit patients or are intended for
19 patient use.

20 “(iv) The loan of a covered device for
21 a short-term trial period, not to exceed 90
22 days, to permit evaluation of the covered de-
23 vice by the covered recipient.

24 “(v) Items or services provided under a
25 contractual warranty, including the re-

1 *placement of a covered device, where the*
2 *terms of the warranty are set forth in the*
3 *purchase or lease agreement for the covered*
4 *device.*

5 “(vi) *A transfer of anything of value to*
6 *a covered recipient when the covered recipi-*
7 *ent is a patient and not acting in the pro-*
8 *fessional capacity of a covered recipient.*

9 “(vii) *Discounts (including rebates).*

10 “(viii) *In-kind items used for the pro-*
11 *vision of charity care.*

12 “(ix) *A dividend or other profit dis-*
13 *tribution from, or ownership or investment*
14 *interest in, a publicly traded security and*
15 *mutual fund (as described in section*
16 *1877(c)).*

17 “(x) *In the case of an applicable man-*
18 *ufacturer who offers a self-insured plan,*
19 *payments for the provision of health care to*
20 *employees under the plan.*

21 “(xi) *In the case of a covered recipient*
22 *who is a licensed non-medical professional,*
23 *a transfer of anything of value to the cov-*
24 *ered recipient if the transfer is payment*
25 *solely for the non-medical professional serv-*

1 ices of such licensed non-medical profes-
2 sional.

3 “(xii) In the case of a covered recipient
4 who is a physician, a transfer of anything
5 of value to the covered recipient if the trans-
6 fer is payment solely for the services of the
7 covered recipient with respect to a civil or
8 criminal action or an administrative pro-
9 ceeding.

10 “(11) PHYSICIAN.—The term ‘physician’ has the
11 meaning given that term in section 1861(r).”.

12 **SEC. 6003. DISCLOSURE REQUIREMENTS FOR IN-OFFICE AN-**
13 **CILLARY SERVICES EXCEPTION TO THE PRO-**
14 **HIBITION ON PHYSICIAN SELF-REFERRAL**
15 **FOR CERTAIN IMAGING SERVICES.**

16 (a) *IN GENERAL.*—Section 1877(b)(2) of the Social Se-
17 curity Act (42 U.S.C. 1395nn(b)(2)) is amended by adding
18 at the end the following new sentence: “Such requirements
19 shall, with respect to magnetic resonance imaging, com-
20 puted tomography, positron emission tomography, and any
21 other designated health services specified under subsection
22 (h)(6)(D) that the Secretary determines appropriate, in-
23 clude a requirement that the referring physician inform the
24 individual in writing at the time of the referral that the
25 individual may obtain the services for which the individual

1 *is being referred from a person other than a person de-*
2 *scribed in subparagraph (A)(i) and provide such individual*
3 *with a written list of suppliers (as defined in section*
4 *1861(d)) who furnish such services in the area in which*
5 *such individual resides.”.*

6 (b) *EFFECTIVE DATE.*—*The amendment made by this*
7 *section shall apply to services furnished on or after January*
8 *1, 2010.*

9 **SEC. 6004. PRESCRIPTION DRUG SAMPLE TRANSPARENCY.**

10 *Part A of title XI of the Social Security Act (42 U.S.C.*
11 *1301 et seq.), as amended by section 6002, is amended by*
12 *inserting after section 1128G the following new section:*

13 **“SEC. 1128H. REPORTING OF INFORMATION RELATING TO**
14 **DRUG SAMPLES.**

15 *“(a) IN GENERAL.*—*Not later than April 1 of each*
16 *year (beginning with 2012), each manufacturer and author-*
17 *ized distributor of record of an applicable drug shall submit*
18 *to the Secretary (in a form and manner specified by the*
19 *Secretary) the following information with respect to the pre-*
20 *ceding year:*

21 *“(1) In the case of a manufacturer or authorized*
22 *distributor of record which makes distributions by*
23 *mail or common carrier under subsection (d)(2) of*
24 *section 503 of the Federal Food, Drug, and Cosmetic*
25 *Act (21 U.S.C. 353), the identity and quantity of*

1 *drug samples requested and the identity and quantity*
2 *of drug samples distributed under such subsection*
3 *during that year, aggregated by—*

4 *“(A) the name, address, professional des-*
5 *ignation, and signature of the practitioner mak-*
6 *ing the request under subparagraph (A)(i) of*
7 *such subsection, or of any individual who makes*
8 *or signs for the request on behalf of the practi-*
9 *tioner; and*

10 *“(B) any other category of information de-*
11 *termined appropriate by the Secretary.*

12 *“(2) In the case of a manufacturer or authorized*
13 *distributor of record which makes distributions by*
14 *means other than mail or common carrier under sub-*
15 *section (d)(3) of such section 503, the identity and*
16 *quantity of drug samples requested and the identity*
17 *and quantity of drug samples distributed under such*
18 *subsection during that year, aggregated by—*

19 *“(A) the name, address, professional des-*
20 *ignation, and signature of the practitioner mak-*
21 *ing the request under subparagraph (A)(i) of*
22 *such subsection, or of any individual who makes*
23 *or signs for the request on behalf of the practi-*
24 *tioner; and*

1 “(B) any other category of information de-
2 termined appropriate by the Secretary.

3 “(b) *DEFINITIONS.—In this section:*

4 “(1) *APPLICABLE DRUG.—The term ‘applicable*
5 *drug’ means a drug—*

6 “(A) *which is subject to subsection (b) of*
7 *such section 503; and*

8 “(B) *for which payment is available under*
9 *title XVIII or a State plan under title XIX or*
10 *XXI (or a waiver of such a plan).*

11 “(2) *AUTHORIZED DISTRIBUTOR OF RECORD.—*
12 *The term ‘authorized distributor of record’ has the*
13 *meaning given that term in subsection (e)(3)(A) of*
14 *such section.*

15 “(3) *MANUFACTURER.—The term ‘manufacturer’*
16 *has the meaning given that term for purposes of sub-*
17 *section (d) of such section.”.*

18 **SEC. 6005. PHARMACY BENEFIT MANAGERS TRANSPARENCY**
19 **REQUIREMENTS.**

20 *Part A of title XI of the Social Security Act (42 U.S.C.*
21 *1301 et seq.) is amended by inserting after section 1150*
22 *the following new section:*

1 **“SEC. 1150A. PHARMACY BENEFIT MANAGERS TRANS-**
2 **PARENCY REQUIREMENTS.**

3 *“(a) PROVISION OF INFORMATION.—A health benefits*
4 *plan or any entity that provides pharmacy benefits man-*
5 *agement services on behalf of a health benefits plan (in this*
6 *section referred to as a ‘PBM’) that manages prescription*
7 *drug coverage under a contract with—*

8 *“(1) a PDP sponsor of a prescription drug plan*
9 *or an MA organization offering an MA–PD plan*
10 *under part D of title XVIII; or*

11 *“(2) a qualified health benefits plan offered*
12 *through an exchange established by a State under sec-*
13 *tion 1311 of the Patient Protection and Affordable*
14 *Care Act,*

15 *shall provide the information described in subsection (b) to*
16 *the Secretary and, in the case of a PBM, to the plan with*
17 *which the PBM is under contract with, at such times, and*
18 *in such form and manner, as the Secretary shall specify.*

19 *“(b) INFORMATION DESCRIBED.—The information de-*
20 *scribed in this subsection is the following with respect to*
21 *services provided by a health benefits plan or PBM for a*
22 *contract year:*

23 *“(1) The percentage of all prescriptions that were*
24 *provided through retail pharmacies compared to mail*
25 *order pharmacies, and the percentage of prescriptions*
26 *for which a generic drug was available and dispensed*

1 *(generic dispensing rate), by pharmacy type (which*
2 *includes an independent pharmacy, chain pharmacy,*
3 *supermarket pharmacy, or mass merchandiser phar-*
4 *macy that is licensed as a pharmacy by the State and*
5 *that dispenses medication to the general public), that*
6 *is paid by the health benefits plan or PBM under the*
7 *contract.*

8 *“(2) The aggregate amount, and the type of re-*
9 *bates, discounts, or price concessions (excluding bona*
10 *fide service fees, which include but are not limited to*
11 *distribution service fees, inventory management fees,*
12 *product stocking allowances, and fees associated with*
13 *administrative services agreements and patient care*
14 *programs (such as medication compliance programs*
15 *and patient education programs)) that the PBM ne-*
16 *gotiates that are attributable to patient utilization*
17 *under the plan, and the aggregate amount of the re-*
18 *bates, discounts, or price concessions that are passed*
19 *through to the plan sponsor, and the total number of*
20 *prescriptions that were dispensed.*

21 *“(3) The aggregate amount of the difference be-*
22 *tween the amount the health benefits plan pays the*
23 *PBM and the amount that the PBM pays retail phar-*
24 *macies, and mail order pharmacies, and the total*
25 *number of prescriptions that were dispensed.*

1 “(c) *CONFIDENTIALITY.*—*Information disclosed by a*
2 *health benefits plan or PBM under this section is confiden-*
3 *tial and shall not be disclosed by the Secretary or by a plan*
4 *receiving the information, except that the Secretary may*
5 *disclose the information in a form which does not disclose*
6 *the identity of a specific PBM, plan, or prices charged for*
7 *drugs, for the following purposes:*

8 “(1) *As the Secretary determines to be necessary*
9 *to carry out this section or part D of title XVIII.*

10 “(2) *To permit the Comptroller General to re-*
11 *view the information provided.*

12 “(3) *To permit the Director of the Congressional*
13 *Budget Office to review the information provided.*

14 “(4) *To States to carry out section 1311 of the*
15 *Patient Protection and Affordable Care Act.*

16 “(d) *PENALTIES.*—*The provisions of subsection*
17 *(b)(3)(C) of section 1927 shall apply to a health benefits*
18 *plan or PBM that fails to provide information required*
19 *under subsection (a) on a timely basis or that knowingly*
20 *provides false information in the same manner as such pro-*
21 *visions apply to a manufacturer with an agreement under*
22 *that section.”.*

1 ***Subtitle B—Nursing Home***
2 ***Transparency and Improvement***

3 ***PART I—IMPROVING TRANSPARENCY OF***
4 ***INFORMATION***

5 ***SEC. 6101. REQUIRED DISCLOSURE OF OWNERSHIP AND AD-***
6 ***DITIONAL DISCLOSABLE PARTIES INFORMA-***
7 ***TION.***

8 *(a) IN GENERAL.—Section 1124 of the Social Security*
9 *Act (42 U.S.C. 1320a–3) is amended by adding at the end*
10 *the following new subsection:*

11 *“(c) REQUIRED DISCLOSURE OF OWNERSHIP AND AD-*
12 *DITIONAL DISCLOSABLE PARTIES INFORMATION.—*

13 *“(1) DISCLOSURE.—A facility shall have the in-*
14 *formation described in paragraph (2) available—*

15 *“(A) during the period beginning on the*
16 *date of the enactment of this subsection and end-*
17 *ing on the date such information is made avail-*
18 *able to the public under section 6101(b) of the*
19 *Patient Protection and Affordable Care Act for*
20 *submission to the Secretary, the Inspector Gen-*
21 *eral of the Department of Health and Human*
22 *Services, the State in which the facility is lo-*
23 *located, and the State long-term care ombudsman*
24 *in the case where the Secretary, the Inspector*

1 *General, the State, or the State long-term care*
2 *ombudsman requests such information; and*

3 “(B) beginning on the effective date of the
4 *final regulations promulgated under paragraph*
5 *(3)(A), for reporting such information in accord-*
6 *ance with such final regulations.*

7 *Nothing in subparagraph (A) shall be construed as*
8 *authorizing a facility to dispose of or delete informa-*
9 *tion described in such subparagraph after the effective*
10 *date of the final regulations promulgated under para-*
11 *graph (3)(A).*

12 “(2) *INFORMATION DESCRIBED.—*

13 “(A) *IN GENERAL.—The following informa-*
14 *tion is described in this paragraph:*

15 “(i) *The information described in sub-*
16 *sections (a) and (b), subject to subpara-*
17 *graph (C).*

18 “(ii) *The identity of and information*
19 *on—*

20 “(I) *each member of the governing*
21 *body of the facility, including the*
22 *name, title, and period of service of*
23 *each such member;*

24 “(II) *each person or entity who is*
25 *an officer, director, member, partner,*

1 trustee, or managing employee of the
2 facility, including the name, title, and
3 period of service of each such person or
4 entity; and

5 “(III) each person or entity who
6 is an additional disclosable party of
7 the facility.

8 “(iii) The organizational structure of
9 each additional disclosable party of the fa-
10 cility and a description of the relationship
11 of each such additional disclosable party to
12 the facility and to one another.

13 “(B) SPECIAL RULE WHERE INFORMATION
14 IS ALREADY REPORTED OR SUBMITTED.—To the
15 extent that information reported by a facility to
16 the Internal Revenue Service on Form 990, in-
17 formation submitted by a facility to the Securi-
18 ties and Exchange Commission, or information
19 otherwise submitted to the Secretary or any other
20 Federal agency contains the information de-
21 scribed in clauses (i), (ii), or (iii) of subpara-
22 graph (A), the facility may provide such Form
23 or such information submitted to meet the re-
24 quirements of paragraph (1).

1 “(C) *SPECIAL RULE.*—*In applying sub-*
2 *paragraph (A)(i)—*

3 “(i) *with respect to subsections (a) and*
4 *(b), ‘ownership or control interest’ shall in-*
5 *clude direct or indirect interests, including*
6 *such interests in intermediate entities; and*

7 “(ii) *subsection (a)(3)(A)(i) shall in-*
8 *clude the owner of a whole or part interest*
9 *in any mortgage, deed of trust, note, or*
10 *other obligation secured, in whole or in*
11 *part, by the entity or any of the property*
12 *or assets thereof, if the interest is equal to*
13 *or exceeds 5 percent of the total property or*
14 *assets of the entirety.*

15 “(3) *REPORTING.*—

16 “(A) *IN GENERAL.*—*Not later than the date*
17 *that is 2 years after the date of the enactment of*
18 *this subsection, the Secretary shall promulgate*
19 *final regulations requiring, effective on the date*
20 *that is 90 days after the date on which such*
21 *final regulations are published in the Federal*
22 *Register, a facility to report the information de-*
23 *scribed in paragraph (2) to the Secretary in a*
24 *standardized format, and such other regulations*
25 *as are necessary to carry out this subsection.*

1 *Such final regulations shall ensure that the facil-*
2 *ity certifies, as a condition of participation and*
3 *payment under the program under title XVIII or*
4 *XIX, that the information reported by the facil-*
5 *ity in accordance with such final regulations is,*
6 *to the best of the facility's knowledge, accurate*
7 *and current.*

8 *“(B) GUIDANCE.—The Secretary shall pro-*
9 *vide guidance and technical assistance to States*
10 *on how to adopt the standardized format under*
11 *subparagraph (A).*

12 *“(4) NO EFFECT ON EXISTING REPORTING RE-*
13 *QUIREMENTS.—Nothing in this subsection shall re-*
14 *duce, diminish, or alter any reporting requirement*
15 *for a facility that is in effect as of the date of the en-*
16 *actment of this subsection.*

17 *“(5) DEFINITIONS.—In this subsection:*

18 *“(A) ADDITIONAL DISCLOSABLE PARTY.—*
19 *The term ‘additional disclosable party’ means,*
20 *with respect to a facility, any person or entity*
21 *who—*

22 *“(i) exercises operational, financial, or*
23 *managerial control over the facility or a*
24 *part thereof, or provides policies or proce-*
25 *dures for any of the operations of the facil-*

1 *ity, or provides financial or cash manage-*
2 *ment services to the facility;*

3 *“(ii) leases or subleases real property*
4 *to the facility, or owns a whole or part in-*
5 *terest equal to or exceeding 5 percent of the*
6 *total value of such real property; or*

7 *“(iii) provides management or admin-*
8 *istrative services, management or clinical*
9 *consulting services, or accounting or finan-*
10 *cial services to the facility.*

11 *“(B) FACILITY.—The term ‘facility’ means*
12 *a disclosing entity which is—*

13 *“(i) a skilled nursing facility (as de-*
14 *finied in section 1819(a)); or*

15 *“(ii) a nursing facility (as defined in*
16 *section 1919(a)).*

17 *“(C) MANAGING EMPLOYEE.—The term*
18 *‘managing employee’ means, with respect to a fa-*
19 *ility, an individual (including a general man-*
20 *ager, business manager, administrator, director,*
21 *or consultant) who directly or indirectly man-*
22 *ages, advises, or supervises any element of the*
23 *practices, finances, or operations of the facility.*

1 “(D) *ORGANIZATIONAL STRUCTURE.*—*The*
2 *term ‘organizational structure’ means, in the*
3 *case of—*

4 “(i) *a corporation, the officers, direc-*
5 *tors, and shareholders of the corporation*
6 *who have an ownership interest in the cor-*
7 *poration which is equal to or exceeds 5 per-*
8 *cent;*

9 “(ii) *a limited liability company, the*
10 *members and managers of the limited liabil-*
11 *ity company (including, as applicable, what*
12 *percentage each member and manager has*
13 *of the ownership interest in the limited li-*
14 *ability company);*

15 “(iii) *a general partnership, the part-*
16 *ners of the general partnership;*

17 “(iv) *a limited partnership, the general*
18 *partners and any limited partners of the*
19 *limited partnership who have an ownership*
20 *interest in the limited partnership which is*
21 *equal to or exceeds 10 percent;*

22 “(v) *a trust, the trustees of the trust;*

23 “(vi) *an individual, contact informa-*
24 *tion for the individual; and*

1 “(vii) any other person or entity, such
2 information as the Secretary determines ap-
3 propriate.”.

4 (b) *PUBLIC AVAILABILITY OF INFORMATION.*—Not
5 later than the date that is 1 year after the date on which
6 the final regulations promulgated under section
7 1124(c)(3)(A) of the Social Security Act, as added by sub-
8 section (a), are published in the Federal Register, the Sec-
9 retary of Health and Human Services shall make the infor-
10 mation reported in accordance with such final regulations
11 available to the public in accordance with procedures estab-
12 lished by the Secretary.

13 (c) *CONFORMING AMENDMENTS.*—

14 (1) *IN GENERAL.*—

15 (A) *SKILLED NURSING FACILITIES.*—Sec-
16 tion 1819(d)(1) of the Social Security Act (42
17 U.S.C. 1395i–3(d)(1)) is amended by striking
18 subparagraph (B) and redesignating subpara-
19 graph (C) as subparagraph (B).

20 (B) *NURSING FACILITIES.*—Section
21 1919(d)(1) of the Social Security Act (42 U.S.C.
22 1396r(d)(1)) is amended by striking subpara-
23 graph (B) and redesignating subparagraph (C)
24 as subparagraph (B).

1 (2) *EFFECTIVE DATE.*—*The amendments made*
2 *by paragraph (1) shall take effect on the date on*
3 *which the Secretary makes the information described*
4 *in subsection (b)(1) available to the public under such*
5 *subsection.*

6 **SEC. 6102. ACCOUNTABILITY REQUIREMENTS FOR SKILLED**
7 **NURSING FACILITIES AND NURSING FACILI-**
8 **TIES.**

9 *Part A of title XI of the Social Security Act (42 U.S.C.*
10 *1301 et seq.), as amended by sections 6002 and 6004, is*
11 *amended by inserting after section 1128H the following new*
12 *section:*

13 **“SEC. 1128I. ACCOUNTABILITY REQUIREMENTS FOR FACILI-**
14 **TIES.**

15 “(a) *DEFINITION OF FACILITY.*—*In this section, the*
16 *term ‘facility’ means—*

17 “(1) *a skilled nursing facility (as defined in sec-*
18 *tion 1819(a)); or*

19 “(2) *a nursing facility (as defined in section*
20 *1919(a)).*

21 “(b) *EFFECTIVE COMPLIANCE AND ETHICS PRO-*
22 *GRAMS.—*

23 “(1) *REQUIREMENT.*—*On or after the date that*
24 *is 36 months after the date of the enactment of this*
25 *section, a facility shall, with respect to the entity that*

1 *operates the facility (in this subparagraph referred to*
2 *as the ‘operating organization’ or ‘organization’),*
3 *have in operation a compliance and ethics program*
4 *that is effective in preventing and detecting criminal,*
5 *civil, and administrative violations under this Act*
6 *and in promoting quality of care consistent with reg-*
7 *ulations developed under paragraph (2).*

8 “(2) *DEVELOPMENT OF REGULATIONS.*—

9 “(A) *IN GENERAL.*—*Not later than the date*
10 *that is 2 years after such date of the enactment,*
11 *the Secretary, working jointly with the Inspector*
12 *General of the Department of Health and*
13 *Human Services, shall promulgate regulations*
14 *for an effective compliance and ethics program*
15 *for operating organizations, which may include*
16 *a model compliance program.*

17 “(B) *DESIGN OF REGULATIONS.*—*Such reg-*
18 *ulations with respect to specific elements or for-*
19 *mality of a program shall, in the case of an or-*
20 *ganization that operates 5 or more facilities,*
21 *vary with the size of the organization, such that*
22 *larger organizations should have a more formal*
23 *program and include established written policies*
24 *defining the standards and procedures to be fol-*
25 *lowed by its employees. Such requirements may*

1 *specifically apply to the corporate level manage-*
2 *ment of multi unit nursing home chains.*

3 “(C) *EVALUATION.*—*Not later than 3 years*
4 *after the date of the promulgation of regulations*
5 *under this paragraph, the Secretary shall com-*
6 *plete an evaluation of the compliance and ethics*
7 *programs required to be established under this*
8 *subsection. Such evaluation shall determine if*
9 *such programs led to changes in deficiency cita-*
10 *tions, changes in quality performance, or*
11 *changes in other metrics of patient quality of*
12 *care. The Secretary shall submit to Congress a*
13 *report on such evaluation and shall include in*
14 *such report such recommendations regarding*
15 *changes in the requirements for such programs*
16 *as the Secretary determines appropriate.*

17 “(3) *REQUIREMENTS FOR COMPLIANCE AND ETH-*
18 *ICS PROGRAMS.*—*In this subsection, the term ‘compli-*
19 *ance and ethics program’ means, with respect to a fa-*
20 *cility, a program of the operating organization*
21 *that—*

22 “(A) *has been reasonably designed, imple-*
23 *mented, and enforced so that it generally will be*
24 *effective in preventing and detecting criminal,*

1 *civil, and administrative violations under this*
2 *Act and in promoting quality of care; and*

3 *“(B) includes at least the required compo-*
4 *nents specified in paragraph (4).*

5 *“(4) REQUIRED COMPONENTS OF PROGRAM.—*
6 *The required components of a compliance and ethics*
7 *program of an operating organization are the fol-*
8 *lowing:*

9 *“(A) The organization must have estab-*
10 *lished compliance standards and procedures to be*
11 *followed by its employees and other agents that*
12 *are reasonably capable of reducing the prospect*
13 *of criminal, civil, and administrative violations*
14 *under this Act.*

15 *“(B) Specific individuals within high-level*
16 *personnel of the organization must have been as-*
17 *signed overall responsibility to oversee compli-*
18 *ance with such standards and procedures and*
19 *have sufficient resources and authority to assure*
20 *such compliance.*

21 *“(C) The organization must have used due*
22 *care not to delegate substantial discretionary au-*
23 *thority to individuals whom the organization*
24 *knew, or should have known through the exercise*
25 *of due diligence, had a propensity to engage in*

1 *criminal, civil, and administrative violations*
2 *under this Act.*

3 “(D) *The organization must have taken*
4 *steps to communicate effectively its standards*
5 *and procedures to all employees and other*
6 *agents, such as by requiring participation in*
7 *training programs or by disseminating publica-*
8 *tions that explain in a practical manner what*
9 *is required.*

10 “(E) *The organization must have taken rea-*
11 *sonable steps to achieve compliance with its*
12 *standards, such as by utilizing monitoring and*
13 *auditing systems reasonably designed to detect*
14 *criminal, civil, and administrative violations*
15 *under this Act by its employees and other agents*
16 *and by having in place and publicizing a report-*
17 *ing system whereby employees and other agents*
18 *could report violations by others within the orga-*
19 *nization without fear of retribution.*

20 “(F) *The standards must have been consist-*
21 *ently enforced through appropriate disciplinary*
22 *mechanisms, including, as appropriate, dis-*
23 *cipline of individuals responsible for the failure*
24 *to detect an offense.*

1 “(G) After an offense has been detected, the
2 organization must have taken all reasonable
3 steps to respond appropriately to the offense and
4 to prevent further similar offenses, including any
5 necessary modification to its program to prevent
6 and detect criminal, civil, and administrative
7 violations under this Act.

8 “(H) The organization must periodically
9 undertake reassessment of its compliance pro-
10 gram to identify changes necessary to reflect
11 changes within the organization and its facili-
12 ties.

13 “(c) *QUALITY ASSURANCE AND PERFORMANCE IM-*
14 *PROVEMENT PROGRAM.*—

15 “(1) *IN GENERAL.*—Not later than December 31,
16 2011, the Secretary shall establish and implement a
17 quality assurance and performance improvement pro-
18 gram (in this subparagraph referred to as the ‘QAPI
19 program’) for facilities, including multi unit chains
20 of facilities. Under the QAPI program, the Secretary
21 shall establish standards relating to quality assurance
22 and performance improvement with respect to facili-
23 ties and provide technical assistance to facilities on
24 the development of best practices in order to meet such
25 standards. Not later than 1 year after the date on

1 *which the regulations are promulgated under para-*
2 *graph (2), a facility must submit to the Secretary a*
3 *plan for the facility to meet such standards and im-*
4 *plement such best practices, including how to coordi-*
5 *nate the implementation of such plan with quality as-*
6 *essment and assurance activities conducted under*
7 *sections 1819(b)(1)(B) and 1919(b)(1)(B), as applica-*
8 *ble.*

9 “(2) *REGULATIONS.*—*The Secretary shall pro-*
10 *mulgate regulations to carry out this subsection.*”.

11 **SEC. 6103. NURSING HOME COMPARE MEDICARE WEBSITE.**

12 *(a) SKILLED NURSING FACILITIES.*—

13 *(1) IN GENERAL.*—*Section 1819 of the Social Se-*
14 *curity Act (42 U.S.C. 1395i–3) is amended—*

15 *(A) by redesignating subsection (i) as sub-*
16 *section (j); and*

17 *(B) by inserting after subsection (h) the fol-*
18 *lowing new subsection:*

19 “*(i) NURSING HOME COMPARE WEBSITE.*—

20 “*(1) INCLUSION OF ADDITIONAL INFORMATION.*—

21 “*(A) IN GENERAL.*—*The Secretary shall en-*
22 *sure that the Department of Health and Human*
23 *Services includes, as part of the information pro-*
24 *vided for comparison of nursing homes on the of-*
25 *ficial Internet website of the Federal Government*

1 *for Medicare beneficiaries (commonly referred to*
2 *as the ‘Nursing Home Compare’ Medicare*
3 *website) (or a successor website), the following*
4 *information in a manner that is prominent, up-*
5 *dated on a timely basis, easily accessible, readily*
6 *understandable to consumers of long-term care*
7 *services, and searchable:*

8 *“(i) Staffing data for each facility (in-*
9 *cluding resident census data and data on*
10 *the hours of care provided per resident per*
11 *day) based on data submitted under section*
12 *1128I(g), including information on staffing*
13 *turnover and tenure, in a format that is*
14 *clearly understandable to consumers of long-*
15 *term care services and allows such con-*
16 *sumers to compare differences in staffing be-*
17 *tween facilities and State and national*
18 *averages for the facilities. Such format shall*
19 *include—*

20 *“(I) concise explanations of how*
21 *to interpret the data (such as a plain*
22 *English explanation of data reflecting*
23 *‘nursing home staff hours per resident*
24 *day’);*

1 “(II) differences in types of staff
2 (such as training associated with dif-
3 ferent categories of staff);

4 “(III) the relationship between
5 nurse staffing levels and quality of
6 care; and

7 “(IV) an explanation that appro-
8 priate staffing levels vary based on pa-
9 tient case mix.

10 “(ii) Links to State Internet websites
11 with information regarding State survey
12 and certification programs, links to Form
13 2567 State inspection reports (or a suc-
14 cessor form) on such websites, information
15 to guide consumers in how to interpret and
16 understand such reports, and the facility
17 plan of correction or other response to such
18 report. Any such links shall be posted on a
19 timely basis.

20 “(iii) The standardized complaint form
21 developed under section 1128I(f), including
22 explanatory material on what complaint
23 forms are, how they are used, and how to
24 file a complaint with the State survey and

1 *certification program and the State long-*
2 *term care ombudsman program.*

3 “(iv) *Summary information on the*
4 *number, type, severity, and outcome of sub-*
5 *stantiated complaints.*

6 “(v) *The number of adjudicated in-*
7 *stances of criminal violations by a facility*
8 *or the employees of a facility—*

9 “(I) *that were committed inside*
10 *the facility;*

11 “(II) *with respect to such in-*
12 *stances of violations or crimes com-*
13 *mitted inside of the facility that were*
14 *the violations or crimes of abuse, ne-*
15 *glect, and exploitation, criminal sexual*
16 *abuse, or other violations or crimes*
17 *that resulted in serious bodily injury;*
18 *and*

19 “(III) *the number of civil mone-*
20 *tary penalties levied against the facil-*
21 *ity, employees, contractors, and other*
22 *agents.*

23 “(B) *DEADLINE FOR PROVISION OF INFOR-*
24 *MATION.—*

1 “(i) *IN GENERAL.*—*Except as provided*
2 *in clause (ii), the Secretary shall ensure*
3 *that the information described in subpara-*
4 *graph (A) is included on such website (or a*
5 *successor website) not later than 1 year*
6 *after the date of the enactment of this sub-*
7 *section.*

8 “(ii) *EXCEPTION.*—*The Secretary shall*
9 *ensure that the information described in*
10 *subparagraph (A)(i) is included on such*
11 *website (or a successor website) not later*
12 *than the date on which the requirements*
13 *under section 1128I(g) are implemented.*

14 “(2) *REVIEW AND MODIFICATION OF WEBSITE.*—

15 “(A) *IN GENERAL.*—*The Secretary shall es-*
16 *tablish a process—*

17 “(i) *to review the accuracy, clarity of*
18 *presentation, timeliness, and comprehensive-*
19 *ness of information reported on such website*
20 *as of the day before the date of the enact-*
21 *ment of this subsection; and*

22 “(ii) *not later than 1 year after the*
23 *date of the enactment of this subsection, to*
24 *modify or revamp such website in accord-*

1 *ance with the review conducted under clause*
2 *(i).*

3 “(B) *CONSULTATION.*—*In conducting the*
4 *review under subparagraph (A)(i), the Secretary*
5 *shall consult with—*

6 “(i) *State long-term care ombudsman*
7 *programs;*

8 “(ii) *consumer advocacy groups;*

9 “(iii) *provider stakeholder groups; and*

10 “(iv) *any other representatives of pro-*
11 *grams or groups the Secretary determines*
12 *appropriate.”.*

13 (2) *TIMELINESS OF SUBMISSION OF SURVEY AND*
14 *CERTIFICATION INFORMATION.*—

15 (A) *IN GENERAL.*—*Section 1819(g)(5) of the*
16 *Social Security Act (42 U.S.C. 1395i–3(g)(5)) is*
17 *amended by adding at the end the following new*
18 *subparagraph:*

19 “(E) *SUBMISSION OF SURVEY AND CERTIFI-*
20 *CATION INFORMATION TO THE SECRETARY.*—*In*
21 *order to improve the timeliness of information*
22 *made available to the public under subparagraph*
23 *(A) and provided on the Nursing Home Compare*
24 *Medicare website under subsection (i), each State*
25 *shall submit information respecting any survey*

1 *or certification made respecting a skilled nursing*
2 *facility (including any enforcement actions taken*
3 *by the State) to the Secretary not later than the*
4 *date on which the State sends such information*
5 *to the facility. The Secretary shall use the infor-*
6 *mation submitted under the preceding sentence*
7 *to update the information provided on the Nurs-*
8 *ing Home Compare Medicare website as expedi-*
9 *tiously as practicable but not less frequently*
10 *than quarterly.”.*

11 (B) *EFFECTIVE DATE.*—*The amendment*
12 *made by this paragraph shall take effect 1 year*
13 *after the date of the enactment of this Act.*

14 (3) *SPECIAL FOCUS FACILITY PROGRAM.*—*Sec-*
15 *tion 1819(f) of the Social Security Act (42 U.S.C.*
16 *1395i–3(f)) is amended by adding at the end the fol-*
17 *lowing new paragraph:*

18 “(8) *SPECIAL FOCUS FACILITY PROGRAM.*—

19 “(A) *IN GENERAL.*—*The Secretary shall*
20 *conduct a special focus facility program for en-*
21 *forcement of requirements for skilled nursing fa-*
22 *ilities that the Secretary has identified as hav-*
23 *ing substantially failed to meet applicable re-*
24 *quirement of this Act.*

1 “(B) *PERIODIC SURVEYS*.—Under such pro-
2 gram the Secretary shall conduct surveys of each
3 facility in the program not less than once every
4 6 months.”.

5 (b) *NURSING FACILITIES*.—

6 (1) *IN GENERAL*.—Section 1919 of the Social Se-
7 curity Act (42 U.S.C. 1396r) is amended—

8 (A) by redesignating subsection (i) as sub-
9 section (j); and

10 (B) by inserting after subsection (h) the fol-
11 lowing new subsection:

12 “(i) *NURSING HOME COMPARE WEBSITE*.—

13 “(1) *INCLUSION OF ADDITIONAL INFORMATION*.—

14 “(A) *IN GENERAL*.—The Secretary shall en-
15 sure that the Department of Health and Human
16 Services includes, as part of the information pro-
17 vided for comparison of nursing homes on the of-
18 ficial Internet website of the Federal Government
19 for Medicare beneficiaries (commonly referred to
20 as the ‘Nursing Home Compare’ Medicare
21 website) (or a successor website), the following
22 information in a manner that is prominent, up-
23 dated on a timely basis, easily accessible, readily
24 understandable to consumers of long-term care
25 services, and searchable:

1 “(i) *Staffing data for each facility (in-*
2 *cluding resident census data and data on*
3 *the hours of care provided per resident per*
4 *day) based on data submitted under section*
5 *1128I(g), including information on staffing*
6 *turnover and tenure, in a format that is*
7 *clearly understandable to consumers of long-*
8 *term care services and allows such con-*
9 *sumers to compare differences in staffing be-*
10 *tween facilities and State and national*
11 *averages for the facilities. Such format shall*
12 *include—*

13 “(I) *concise explanations of how*
14 *to interpret the data (such as plain*
15 *English explanation of data reflecting*
16 *‘nursing home staff hours per resident*
17 *day’);*

18 “(II) *differences in types of staff*
19 *(such as training associated with dif-*
20 *ferent categories of staff);*

21 “(III) *the relationship between*
22 *nurse staffing levels and quality of*
23 *care; and*

1 “(IV) an explanation that appro-
2 priate staffing levels vary based on pa-
3 tient case mix.

4 “(ii) Links to State Internet websites
5 with information regarding State survey
6 and certification programs, links to Form
7 2567 State inspection reports (or a suc-
8 cessor form) on such websites, information
9 to guide consumers in how to interpret and
10 understand such reports, and the facility
11 plan of correction or other response to such
12 report. Any such links shall be posted on a
13 timely basis.

14 “(iii) The standardized complaint form
15 developed under section 1128I(f), including
16 explanatory material on what complaint
17 forms are, how they are used, and how to
18 file a complaint with the State survey and
19 certification program and the State long-
20 term care ombudsman program.

21 “(iv) Summary information on the
22 number, type, severity, and outcome of sub-
23 stantiated complaints.

1 “(v) *The number of adjudicated in-*
2 *stances of criminal violations by a facility*
3 *or the employees of a facility—*

4 “(I) *that were committed inside of*
5 *the facility; and*

6 “(II) *with respect to such in-*
7 *stances of violations or crimes com-*
8 *mited outside of the facility, that were*
9 *violations or crimes that resulted in*
10 *the serious bodily injury of an elder.*

11 “(B) *DEADLINE FOR PROVISION OF INFOR-*
12 *MATION.—*

13 “(i) *IN GENERAL.—Except as provided*
14 *in clause (ii), the Secretary shall ensure*
15 *that the information described in subpara-*
16 *graph (A) is included on such website (or a*
17 *successor website) not later than 1 year*
18 *after the date of the enactment of this sub-*
19 *section.*

20 “(ii) *EXCEPTION.—The Secretary shall*
21 *ensure that the information described in*
22 *subparagraph (A)(i) is included on such*
23 *website (or a successor website) not later*
24 *than the date on which the requirements*
25 *under section 1128I(g) are implemented.*

1 “(2) *REVIEW AND MODIFICATION OF WEBSITE.*—

2 “(A) *IN GENERAL.*—*The Secretary shall es-*
3 *tablish a process—*

4 “(i) *to review the accuracy, clarity of*
5 *presentation, timeliness, and comprehensive-*
6 *ness of information reported on such website*
7 *as of the day before the date of the enact-*
8 *ment of this subsection; and*

9 “(ii) *not later than 1 year after the*
10 *date of the enactment of this subsection, to*
11 *modify or revamp such website in accord-*
12 *ance with the review conducted under clause*
13 *(i).*

14 “(B) *CONSULTATION.*—*In conducting the*
15 *review under subparagraph (A)(i), the Secretary*
16 *shall consult with—*

17 “(i) *State long-term care ombudsman*
18 *programs;*

19 “(ii) *consumer advocacy groups;*

20 “(iii) *provider stakeholder groups;*

21 “(iv) *skilled nursing facility employees*
22 *and their representatives; and*

23 “(v) *any other representatives of pro-*
24 *grams or groups the Secretary determines*
25 *appropriate.”.*

1 (2) *TIMELINESS OF SUBMISSION OF SURVEY AND*
2 *CERTIFICATION INFORMATION.*—

3 (A) *IN GENERAL.*—*Section 1919(g)(5) of the*
4 *Social Security Act (42 U.S.C. 1396r(g)(5)) is*
5 *amended by adding at the end the following new*
6 *subparagraph:*

7 “(E) *SUBMISSION OF SURVEY AND CERTIFI-*
8 *CATION INFORMATION TO THE SECRETARY.*—*In*
9 *order to improve the timeliness of information*
10 *made available to the public under subparagraph*
11 *(A) and provided on the Nursing Home Compare*
12 *Medicare website under subsection (i), each State*
13 *shall submit information respecting any survey*
14 *or certification made respecting a nursing facil-*
15 *ity (including any enforcement actions taken by*
16 *the State) to the Secretary not later than the*
17 *date on which the State sends such information*
18 *to the facility. The Secretary shall use the infor-*
19 *mation submitted under the preceding sentence*
20 *to update the information provided on the Nurs-*
21 *ing Home Compare Medicare website as expedi-*
22 *tiously as practicable but not less frequently*
23 *than quarterly.”.*

1 (B) *EFFECTIVE DATE.*—*The amendment*
2 *made by this paragraph shall take effect 1 year*
3 *after the date of the enactment of this Act.*

4 (3) *SPECIAL FOCUS FACILITY PROGRAM.*—*Sec-*
5 *tion 1919(f) of the Social Security Act (42 U.S.C.*
6 *1396r(f)) is amended by adding at the end of the fol-*
7 *lowing new paragraph:*

8 “(10) *SPECIAL FOCUS FACILITY PROGRAM.*—

9 “(A) *IN GENERAL.*—*The Secretary shall*
10 *conduct a special focus facility program for en-*
11 *forcement of requirements for nursing facilities*
12 *that the Secretary has identified as having sub-*
13 *stantially failed to meet applicable requirements*
14 *of this Act.*

15 “(B) *PERIODIC SURVEYS.*—*Under such pro-*
16 *gram the Secretary shall conduct surveys of each*
17 *facility in the program not less often than once*
18 *every 6 months.”.*

19 (c) *AVAILABILITY OF REPORTS ON SURVEYS, CERTIFI-*
20 *CATIONS, AND COMPLAINT INVESTIGATIONS.*—

21 (1) *SKILLED NURSING FACILITIES.*—*Section*
22 *1819(d)(1) of the Social Security Act (42 U.S.C.*
23 *1395i–3(d)(1)), as amended by section 6101, is*
24 *amended by adding at the end the following new sub-*
25 *paragraph:*

1 “(C) AVAILABILITY OF SURVEY, CERTIFI-
2 CATION, AND COMPLAINT INVESTIGATION RE-
3 PORTS.—A skilled nursing facility must—

4 “(i) have reports with respect to any
5 surveys, certifications, and complaint inves-
6 tigations made respecting the facility dur-
7 ing the 3 preceding years available for any
8 individual to review upon request; and

9 “(ii) post notice of the availability of
10 such reports in areas of the facility that are
11 prominent and accessible to the public.

12 The facility shall not make available under
13 clause (i) identifying information about com-
14 plainants or residents.”.

15 (2) NURSING FACILITIES.—Section 1919(d)(1) of
16 the Social Security Act (42 U.S.C. 1396r(d)(1)), as
17 amended by section 6101, is amended by adding at
18 the end the following new subparagraph:

19 “(V) AVAILABILITY OF SURVEY, CERTIFI-
20 CATION, AND COMPLAINT INVESTIGATION RE-
21 PORTS.—A nursing facility must—

22 “(i) have reports with respect to any
23 surveys, certifications, and complaint inves-
24 tigations made respecting the facility dur-

1 *ing the 3 preceding years available for any*
2 *individual to review upon request; and*

3 *“(ii) post notice of the availability of*
4 *such reports in areas of the facility that are*
5 *prominent and accessible to the public.*

6 *The facility shall not make available under*
7 *clause (i) identifying information about com-*
8 *plainants or residents.”.*

9 (3) *EFFECTIVE DATE.*—*The amendments made*
10 *by this subsection shall take effect 1 year after the*
11 *date of the enactment of this Act.*

12 (d) *GUIDANCE TO STATES ON FORM 2567 STATE IN-*
13 *SPECTION REPORTS AND COMPLAINT INVESTIGATION RE-*
14 *PORTS.*—

15 (1) *GUIDANCE.*—*The Secretary of Health and*
16 *Human Services (in this subtitle referred to as the*
17 *“Secretary”) shall provide guidance to States on how*
18 *States can establish electronic links to Form 2567*
19 *State inspection reports (or a successor form), com-*
20 *plaint investigation reports, and a facility’s plan of*
21 *correction or other response to such Form 2567 State*
22 *inspection reports (or a successor form) on the Inter-*
23 *net website of the State that provides information on*
24 *skilled nursing facilities and nursing facilities and*

1 *the Secretary shall, if possible, include such informa-*
2 *tion on Nursing Home Compare.*

3 (2) *REQUIREMENT.*—*Section 1902(a)(9) of the*
4 *Social Security Act (42 U.S.C. 1396a(a)(9)) is*
5 *amended—*

6 (A) *by striking “and” at the end of sub-*
7 *paragraph (B);*

8 (B) *by striking the semicolon at the end of*
9 *subparagraph (C) and inserting “, and”; and*

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

12 “(D) *that the State maintain a consumer-*
13 *oriented website providing useful information to*
14 *consumers regarding all skilled nursing facilities*
15 *and all nursing facilities in the State, including*
16 *for each facility, Form 2567 State inspection re-*
17 *ports (or a successor form), complaint investiga-*
18 *tion reports, the facility’s plan of correction, and*
19 *such other information that the State or the Sec-*
20 *retary considers useful in assisting the public to*
21 *assess the quality of long term care options and*
22 *the quality of care provided by individual facili-*
23 *ties;”.*

24 (3) *DEFINITIONS.*—*In this subsection:*

1 (A) *NURSING FACILITY.*—*The term “nurs-*
2 *ing facility” has the meaning given such term in*
3 *section 1919(a) of the Social Security Act (42*
4 *U.S.C. 1396r(a)).*

5 (B) *SECRETARY.*—*The term “Secretary”*
6 *means the Secretary of Health and Human Serv-*
7 *ices.*

8 (C) *SKILLED NURSING FACILITY.*—*The term*
9 *“skilled nursing facility” has the meaning given*
10 *such term in section 1819(a) of the Social Secu-*
11 *rity Act (42 U.S.C. 1395i–3(a)).*

12 (e) *DEVELOPMENT OF CONSUMER RIGHTS INFORMA-*
13 *TION PAGE ON NURSING HOME COMPARE WEBSITE.*—*Not*
14 *later than 1 year after the date of enactment of this Act,*
15 *the Secretary shall ensure that the Department of Health*
16 *and Human Services, as part of the information provided*
17 *for comparison of nursing facilities on the Nursing Home*
18 *Compare Medicare website develops and includes a con-*
19 *sumer rights information page that contains links to de-*
20 *scriptions of, and information with respect to, the following:*

21 (1) *The documentation on nursing facilities that*
22 *is available to the public.*

23 (2) *General information and tips on choosing a*
24 *nursing facility that meets the needs of the indi-*
25 *vidual.*

1 (3) *General information on consumer rights with*
2 *respect to nursing facilities.*

3 (4) *The nursing facility survey process (on a na-*
4 *tional and State-specific basis).*

5 (5) *On a State-specific basis, the services avail-*
6 *able through the State long-term care ombudsman for*
7 *such State.*

8 **SEC. 6104. REPORTING OF EXPENDITURES.**

9 *Section 1888 of the Social Security Act (42 U.S.C.*
10 *1395yy) is amended by adding at the end the following new*
11 *subsection:*

12 “(f) *REPORTING OF DIRECT CARE EXPENDITURES.—*

13 “(1) *IN GENERAL.—For cost reports submitted*
14 *under this title for cost reporting periods beginning*
15 *on or after the date that is 2 years after the date of*
16 *the enactment of this subsection, skilled nursing fa-*
17 *ilities shall separately report expenditures for wages*
18 *and benefits for direct care staff (breaking out (at a*
19 *minimum) registered nurses, licensed professional*
20 *nurses, certified nurse assistants, and other medical*
21 *and therapy staff).*

22 “(2) *MODIFICATION OF FORM.—The Secretary,*
23 *in consultation with private sector accountants expe-*
24 *rienced with Medicare and Medicaid nursing facility*
25 *home cost reports, shall redesign such reports to meet*

1 *the requirement of paragraph (1) not later than 1*
2 *year after the date of the enactment of this subsection.*

3 “(3) *CATEGORIZATION BY FUNCTIONAL AC-*
4 *COUNTS.—Not later than 30 months after the date of*
5 *the enactment of this subsection, the Secretary, work-*
6 *ing in consultation with the Medicare Payment Advi-*
7 *sory Commission, the Medicaid and CHIP Payment*
8 *and Access Commission, the Inspector General of the*
9 *Department of Health and Human Services, and*
10 *other expert parties the Secretary determines appro-*
11 *priate, shall take the expenditures listed on cost re-*
12 *ports, as modified under paragraph (1), submitted by*
13 *skilled nursing facilities and categorize such expendi-*
14 *tures, regardless of any source of payment for such ex-*
15 *penditures, for each skilled nursing facility into the*
16 *following functional accounts on an annual basis:*

17 “(A) *Spending on direct care services (in-*
18 *cluding nursing, therapy, and medical services).*

19 “(B) *Spending on indirect care (including*
20 *housekeeping and dietary services).*

21 “(C) *Capital assets (including building and*
22 *land costs).*

23 “(D) *Administrative services costs.*

24 “(4) *AVAILABILITY OF INFORMATION SUB-*
25 *MITTED.—The Secretary shall establish procedures to*

1 *make information on expenditures submitted under*
 2 *this subsection readily available to interested parties*
 3 *upon request, subject to such requirements as the Sec-*
 4 *retary may specify under the procedures established*
 5 *under this paragraph.”.*

6 **SEC. 6105. STANDARDIZED COMPLAINT FORM.**

7 *(a) IN GENERAL.—Section 1128I of the Social Secu-*
 8 *rity Act, as added and amended by this Act, is amended*
 9 *by adding at the end the following new subsection:*

10 *“(f) STANDARDIZED COMPLAINT FORM.—*

11 *“(1) DEVELOPMENT BY THE SECRETARY.—The*
 12 *Secretary shall develop a standardized complaint*
 13 *form for use by a resident (or a person acting on the*
 14 *resident’s behalf) in filing a complaint with a State*
 15 *survey and certification agency and a State long-term*
 16 *care ombudsman program with respect to a facility.*

17 *“(2) COMPLAINT FORMS AND RESOLUTION PROC-*
 18 *ESSES.—*

19 *“(A) COMPLAINT FORMS.—The State must*
 20 *make the standardized complaint form developed*
 21 *under paragraph (1) available upon request to—*

22 *“(i) a resident of a facility; and*

23 *“(ii) any person acting on the resi-*
 24 *dent’s behalf.*

1 “(B) *COMPLAINT RESOLUTION PROCESS.*—
2 *The State must establish a complaint resolution*
3 *process in order to ensure that the legal rep-*
4 *resentative of a resident of a facility or other re-*
5 *sponsible party is not denied access to such resi-*
6 *dent or otherwise retaliated against if they have*
7 *complained about the quality of care provided by*
8 *the facility or other issues relating to the facility.*
9 *Such complaint resolution process shall in-*
10 *clude—*

11 “(i) *procedures to assure accurate*
12 *tracking of complaints received, including*
13 *notification to the complainant that a com-*
14 *plaint has been received;*

15 “(ii) *procedures to determine the likely*
16 *severity of a complaint and for the inves-*
17 *tigation of the complaint; and*

18 “(iii) *deadlines for responding to a*
19 *complaint and for notifying the complain-*
20 *ant of the outcome of the investigation.*

21 “(3) *RULE OF CONSTRUCTION.*—*Nothing in this*
22 *subsection shall be construed as preventing a resident*
23 *of a facility (or a person acting on the resident’s be-*
24 *half) from submitting a complaint in a manner or*
25 *format other than by using the standardized com-*

1 *plaint form developed under paragraph (1) (including*
2 *submitting a complaint orally).”.*

3 *(b) EFFECTIVE DATE.—The amendment made by this*
4 *section shall take effect 1 year after the date of the enact-*
5 *ment of this Act.*

6 **SEC. 6106. ENSURING STAFFING ACCOUNTABILITY.**

7 *Section 1128I of the Social Security Act, as added and*
8 *amended by this Act, is amended by adding at the end the*
9 *following new subsection:*

10 *“(g) SUBMISSION OF STAFFING INFORMATION BASED*
11 *ON PAYROLL DATA IN A UNIFORM FORMAT.—Beginning*
12 *not later than 2 years after the date of the enactment of*
13 *this subsection, and after consulting with State long-term*
14 *care ombudsman programs, consumer advocacy groups,*
15 *provider stakeholder groups, employees and their represent-*
16 *atives, and other parties the Secretary deems appropriate,*
17 *the Secretary shall require a facility to electronically sub-*
18 *mit to the Secretary direct care staffing information (in-*
19 *cluding information with respect to agency and contract*
20 *staff) based on payroll and other verifiable and auditable*
21 *data in a uniform format (according to specifications estab-*
22 *lished by the Secretary in consultation with such programs,*
23 *groups, and parties). Such specifications shall require that*
24 *the information submitted under the preceding sentence—*

1 “(1) specify the category of work a certified em-
2 ployee performs (such as whether the employee is a
3 registered nurse, licensed practical nurse, licensed vo-
4 cational nurse, certified nursing assistant, therapist,
5 or other medical personnel);

6 “(2) include resident census data and informa-
7 tion on resident case mix;

8 “(3) include a regular reporting schedule; and

9 “(4) include information on employee turnover
10 and tenure and on the hours of care provided by each
11 category of certified employees referenced in para-
12 graph (1) per resident per day.

13 *Nothing in this subsection shall be construed as preventing*
14 *the Secretary from requiring submission of such informa-*
15 *tion with respect to specific categories, such as nursing staff,*
16 *before other categories of certified employees. Information*
17 *under this subsection with respect to agency and contract*
18 *staff shall be kept separate from information on employee*
19 *staffing.”.*

20 **SEC. 6107. GAO STUDY AND REPORT ON FIVE-STAR QUALITY**

21 **RATING SYSTEM.**

22 (a) *STUDY.*—*The Comptroller General of the United*
23 *States (in this section referred to as the “Comptroller Gen-*
24 *eral”)* shall conduct a study on the Five-Star Quality Rat-
25 *ing System for nursing homes of the Centers for Medicare*

1 & Medicaid Services. Such study shall include an analysis
2 of—

3 (1) how such system is being implemented;

4 (2) any problems associated with such system or
5 its implementation; and

6 (3) how such system could be improved.

7 (b) *REPORT*.—Not later than 2 years after the date
8 of enactment of this Act, the Comptroller General shall sub-
9 mit to Congress a report containing the results of the study
10 conducted under subsection (a), together with recommenda-
11 tions for such legislation and administrative action as the
12 Comptroller General determines appropriate.

13 **PART II—TARGETING ENFORCEMENT**

14 **SEC. 6111. CIVIL MONEY PENALTIES.**

15 (a) *SKILLED NURSING FACILITIES*.—

16 (1) *IN GENERAL*.—Section 1819(h)(2)(B)(ii) of
17 the Social Security Act (42 U.S.C. 1395i-
18 3(h)(2)(B)(ii)) is amended—

19 (A) by striking “*PENALTIES*.—The Sec-
20 retary” and inserting “*PENALTIES*.—

21 “(I) *IN GENERAL*.—Subject to
22 subclause (II), the Secretary”; and

23 (B) by adding at the end the following new
24 subclauses:

1 “(II) *REDUCTION OF CIVIL MONEY*
2 *PENALTIES IN CERTAIN CIR-*
3 *CUMSTANCES.—Subject to subclause*
4 *(III), in the case where a facility self-*
5 *reports and promptly corrects a defi-*
6 *ciency for which a penalty was im-*
7 *posed under this clause not later than*
8 *10 calendar days after the date of such*
9 *imposition, the Secretary may reduce*
10 *the amount of the penalty imposed by*
11 *not more than 50 percent.*

12 “(III) *PROHIBITIONS ON REDUC-*
13 *TION FOR CERTAIN DEFICIENCIES.—*

14 “(aa) *REPEAT DEFI-*
15 *CIENCIES.—The Secretary may*
16 *not reduce the amount of a pen-*
17 *alty under subclause (II) if the*
18 *Secretary had reduced a penalty*
19 *imposed on the facility in the pre-*
20 *ceding year under such subclause*
21 *with respect to a repeat defi-*
22 *ciency.*

23 “(bb) *CERTAIN OTHER DEFICI-*
24 *ENCIES.—The Secretary may*
25 *not reduce the amount of a pen-*

1 *alty under subclause (II) if the*
2 *penalty is imposed on the facility*
3 *for a deficiency that is found to*
4 *result in a pattern of harm or*
5 *widespread harm, immediately*
6 *jeopardizes the health or safety of*
7 *a resident or residents of the facil-*
8 *ity, or results in the death of a*
9 *resident of the facility.*

10 *“(IV) COLLECTION OF CIVIL*
11 *MONEY PENALTIES.—In the case of a*
12 *civil money penalty imposed under*
13 *this clause, the Secretary shall issue*
14 *regulations that—*

15 *“(aa) subject to item (cc), not*
16 *later than 30 days after the impo-*
17 *sition of the penalty, provide for*
18 *the facility to have the oppor-*
19 *tunity to participate in an inde-*
20 *pendent informal dispute resolu-*
21 *tion process which generates a*
22 *written record prior to the collec-*
23 *tion of such penalty;*

24 *“(bb) in the case where the*
25 *penalty is imposed for each day of*

1 *noncompliance, provide that a*
2 *penalty may not be imposed for*
3 *any day during the period begin-*
4 *ning on the initial day of the im-*
5 *position of the penalty and ending*
6 *on the day on which the informal*
7 *dispute resolution process under*
8 *item (aa) is completed;*

9 *“(cc) may provide for the col-*
10 *lection of such civil money pen-*
11 *alty and the placement of such*
12 *amounts collected in an escrow*
13 *account under the direction of the*
14 *Secretary on the earlier of the*
15 *date on which the informal dis-*
16 *pute resolution process under item*
17 *(aa) is completed or the date that*
18 *is 90 days after the date of the*
19 *imposition of the penalty;*

20 *“(dd) may provide that such*
21 *amounts collected are kept in such*
22 *account pending the resolution of*
23 *any subsequent appeals;*

24 *“(ee) in the case where the*
25 *facility successfully appeals the*

1 *penalty, may provide for the re-*
2 *turn of such amounts collected*
3 *(plus interest) to the facility; and*

4 *“(ff) in the case where all*
5 *such appeals are unsuccessful,*
6 *may provide that some portion of*
7 *such amounts collected may be*
8 *used to support activities that*
9 *benefit residents, including assist-*
10 *ance to support and protect resi-*
11 *dents of a facility that closes (vol-*
12 *untarily or involuntarily) or is*
13 *decertified (including offsetting*
14 *costs of relocating residents to*
15 *home and community-based set-*
16 *tings or another facility), projects*
17 *that support resident and family*
18 *councils and other consumer in-*
19 *volvement in assuring quality*
20 *care in facilities, and facility im-*
21 *provement initiatives approved by*
22 *the Secretary (including joint*
23 *training of facility staff and sur-*
24 *veyors, technical assistance for fa-*
25 *ilities implementing quality as-*

1 *surance programs, the appoint-*
2 *ment of temporary management*
3 *firms, and other activities ap-*
4 *proved by the Secretary.”.*

5 (2) *CONFORMING AMENDMENT.*—*The second sen-*
6 *tence of section 1819(h)(5) of the Social Security Act*
7 *(42 U.S.C. 1395i–3(h)(5)) is amended by inserting*
8 *“(ii)(IV),” after “(i),”.*

9 (b) *NURSING FACILITIES.*—

10 (1) *IN GENERAL.*—*Section 1919(h)(3)(C)(ii) of*
11 *the Social Security Act (42 U.S.C. 1396r(h)(3)(C)) is*
12 *amended—*

13 (A) *by striking “PENALTIES.—The Sec-*
14 *retary” and inserting “PENALTIES.—*

15 *“(I) IN GENERAL.—Subject to*
16 *subclause (II), the Secretary”;* and

17 (B) *by adding at the end the following new*
18 *subclauses:*

19 *“(II) REDUCTION OF CIVIL MONEY*
20 *PENALTIES IN CERTAIN CIR-*
21 *CUMSTANCES.—Subject to subclause*
22 *(III), in the case where a facility self-*
23 *reports and promptly corrects a defi-*
24 *ciency for which a penalty was im-*
25 *posed under this clause not later than*

1 10 calendar days after the date of such
2 imposition, the Secretary may reduce
3 the amount of the penalty imposed by
4 not more than 50 percent.

5 “(III) PROHIBITIONS ON REDUC-
6 TION FOR CERTAIN DEFICIENCIES.—

7 “(aa) REPEAT DEFI-
8 CIENCIES.—The Secretary may
9 not reduce the amount of a pen-
10 alty under subclause (II) if the
11 Secretary had reduced a penalty
12 imposed on the facility in the pre-
13 ceding year under such subclause
14 with respect to a repeat defi-
15 ciency.

16 “(bb) CERTAIN OTHER DEFI-
17 CIENCIES.—The Secretary may
18 not reduce the amount of a pen-
19 alty under subclause (II) if the
20 penalty is imposed on the facility
21 for a deficiency that is found to
22 result in a pattern of harm or
23 widespread harm, immediately
24 jeopardizes the health or safety of
25 a resident or residents of the facil-

1 *ity, or results in the death of a*
2 *resident of the facility.*

3 “(IV) *COLLECTION OF CIVIL*
4 *MONEY PENALTIES.—In the case of a*
5 *civil money penalty imposed under*
6 *this clause, the Secretary shall issue*
7 *regulations that—*

8 *“(aa) subject to item (cc), not*
9 *later than 30 days after the impo-*
10 *sition of the penalty, provide for*
11 *the facility to have the oppor-*
12 *tunity to participate in an inde-*
13 *pendent informal dispute resolu-*
14 *tion process which generates a*
15 *written record prior to the collec-*
16 *tion of such penalty;*

17 *“(bb) in the case where the*
18 *penalty is imposed for each day of*
19 *noncompliance, provide that a*
20 *penalty may not be imposed for*
21 *any day during the period begin-*
22 *ning on the initial day of the im-*
23 *position of the penalty and ending*
24 *on the day on which the informal*

1 *dispute resolution process under*
2 *item (aa) is completed;*
3 *“(cc) may provide for the col-*
4 *lection of such civil money pen-*
5 *alty and the placement of such*
6 *amounts collected in an escrow*
7 *account under the direction of the*
8 *Secretary on the earlier of the*
9 *date on which the informal dis-*
10 *pute resolution process under item*
11 *(aa) is completed or the date that*
12 *is 90 days after the date of the*
13 *imposition of the penalty;*
14 *“(dd) may provide that such*
15 *amounts collected are kept in such*
16 *account pending the resolution of*
17 *any subsequent appeals;*
18 *“(ee) in the case where the*
19 *facility successfully appeals the*
20 *penalty, may provide for the re-*
21 *turn of such amounts collected*
22 *(plus interest) to the facility; and*
23 *“(ff) in the case where all*
24 *such appeals are unsuccessful,*
25 *may provide that some portion of*

1 *such amounts collected may be*
2 *used to support activities that*
3 *benefit residents, including assist-*
4 *ance to support and protect resi-*
5 *dents of a facility that closes (vol-*
6 *untarily or involuntarily) or is*
7 *decertified (including offsetting*
8 *costs of relocating residents to*
9 *home and community-based set-*
10 *tings or another facility), projects*
11 *that support resident and family*
12 *councils and other consumer in-*
13 *volvement in assuring quality*
14 *care in facilities, and facility im-*
15 *provement initiatives approved by*
16 *the Secretary (including joint*
17 *training of facility staff and sur-*
18 *veyors, technical assistance for fa-*
19 *cilities implementing quality as-*
20 *surance programs, the appoint-*
21 *ment of temporary management*
22 *firms, and other activities ap-*
23 *proved by the Secretary).”.*

24 (2) CONFORMING AMENDMENT.—Section
25 1919(h)(5)(8) of the Social Security Act (42 U.S.C.

1 1396r(h)(5)(8)) is amended by inserting “(ii)(IV),”
2 after “(i),”.

3 (c) *EFFECTIVE DATE.*—The amendments made by this
4 section shall take effect 1 year after the date of the enact-
5 ment of this Act.

6 **SEC. 6112. NATIONAL INDEPENDENT MONITOR DEM-**
7 **ONSTRATION PROJECT.**

8 (a) *ESTABLISHMENT.*—

9 (1) *IN GENERAL.*—The Secretary, in consultation
10 with the Inspector General of the Department of
11 Health and Human Services, shall conduct a dem-
12 onstration project to develop, test, and implement an
13 independent monitor program to oversee interstate
14 and large intrastate chains of skilled nursing facili-
15 ties and nursing facilities.

16 (2) *SELECTION.*—The Secretary shall select
17 chains of skilled nursing facilities and nursing facili-
18 ties described in paragraph (1) to participate in the
19 demonstration project under this section from among
20 those chains that submit an application to the Sec-
21 retary at such time, in such manner, and containing
22 such information as the Secretary may require.

23 (3) *DURATION.*—The Secretary shall conduct the
24 demonstration project under this section for a 2-year
25 period.

1 (4) *IMPLEMENTATION.*—*The Secretary shall im-*
2 *plement the demonstration project under this section*
3 *not later than 1 year after the date of the enactment*
4 *of this Act.*

5 (b) *REQUIREMENTS.*—*The Secretary shall evaluate*
6 *chains selected to participate in the demonstration project*
7 *under this section based on criteria selected by the Sec-*
8 *retary, including where evidence suggests that a number of*
9 *the facilities of the chain are experiencing serious safety*
10 *and quality of care problems. Such criteria may include*
11 *the evaluation of a chain that includes a number of facili-*
12 *ties participating in the “Special Focus Facility” program*
13 *(or a successor program) or multiple facilities with a record*
14 *of repeated serious safety and quality of care deficiencies.*

15 (c) *RESPONSIBILITIES.*—*An independent monitor that*
16 *enters into a contract with the Secretary to participate in*
17 *the conduct of the demonstration project under this section*
18 *shall—*

19 (1) *conduct periodic reviews and prepare root-*
20 *cause quality and deficiency analyses of a chain to*
21 *assess if facilities of the chain are in compliance with*
22 *State and Federal laws and regulations applicable to*
23 *the facilities;*

24 (2) *conduct sustained oversight of the efforts of*
25 *the chain, whether publicly or privately held, to*

1 *achieve compliance by facilities of the chain with*
2 *State and Federal laws and regulations applicable to*
3 *the facilities;*

4 *(3) analyze the management structure, distribu-*
5 *tion of expenditures, and nurse staffing levels of fa-*
6 *cilities of the chain in relation to resident census,*
7 *staff turnover rates, and tenure;*

8 *(4) report findings and recommendations with*
9 *respect to such reviews, analyses, and oversight to the*
10 *chain and facilities of the chain, to the Secretary, and*
11 *to relevant States; and*

12 *(5) publish the results of such reviews, analyses,*
13 *and oversight.*

14 *(d) IMPLEMENTATION OF RECOMMENDATIONS.—*

15 *(1) RECEIPT OF FINDING BY CHAIN.—Not later*
16 *than 10 days after receipt of a finding of an inde-*
17 *pendent monitor under subsection (c)(4), a chain par-*
18 *ticipating in the demonstration project shall submit*
19 *to the independent monitor a report—*

20 *(A) outlining corrective actions the chain*
21 *will take to implement the recommendations in*
22 *such report; or*

23 *(B) indicating that the chain will not im-*
24 *plement such recommendations, and why it will*
25 *not do so.*

1 (2) *RECEIPT OF REPORT BY INDEPENDENT MON-*
2 *ITOR.*—Not later than 10 days after receipt of a re-
3 port submitted by a chain under paragraph (1), an
4 independent monitor shall finalize its recommenda-
5 tions and submit a report to the chain and facilities
6 of the chain, the Secretary, and the State or States,
7 as appropriate, containing such final recommenda-
8 tions.

9 (e) *COST OF APPOINTMENT.*—A chain shall be respon-
10 sible for a portion of the costs associated with the appoint-
11 ment of independent monitors under the demonstration
12 project under this section. The chain shall pay such portion
13 to the Secretary (in an amount and in accordance with
14 procedures established by the Secretary).

15 (f) *WAIVER AUTHORITY.*—The Secretary may waive
16 such requirements of titles XVIII and XIX of the Social Se-
17 curity Act (42 U.S.C. 1395 et seq.; 1396 et seq.) as may
18 be necessary for the purpose of carrying out the demonstra-
19 tion project under this section.

20 (g) *AUTHORIZATION OF APPROPRIATIONS.*—There are
21 authorized to be appropriated such sums as may be nec-
22 essary to carry out this section.

23 (h) *DEFINITIONS.*—In this section:

24 (1) *ADDITIONAL DISCLOSABLE PARTY.*—The term
25 “additional disclosable party” has the meaning given

1 *such term in section 1124(c)(5)(A) of the Social Secu-*
2 *rity Act, as added by section 4201(a).*

3 (2) *FACILITY.*—*The term “facility” means a*
4 *skilled nursing facility or a nursing facility.*

5 (3) *NURSING FACILITY.*—*The term “nursing fa-*
6 *cility” has the meaning given such term in section*
7 *1919(a) of the Social Security Act (42 U.S.C.*
8 *1396r(a)).*

9 (4) *SECRETARY.*—*The term “Secretary” means*
10 *the Secretary of Health and Human Services, acting*
11 *through the Assistant Secretary for Planning and*
12 *Evaluation.*

13 (5) *SKILLED NURSING FACILITY.*—*The term*
14 *“skilled nursing facility” has the meaning given such*
15 *term in section 1819(a) of the Social Security Act (42*
16 *U.S.C. 1395(a)).*

17 (i) *EVALUATION AND REPORT.*—

18 (1) *EVALUATION.*—*The Secretary, in consulta-*
19 *tion with the Inspector General of the Department of*
20 *Health and Human Services, shall evaluate the dem-*
21 *onstration project conducted under this section.*

22 (2) *REPORT.*—*Not later than 180 days after the*
23 *completion of the demonstration project under this*
24 *section, the Secretary shall submit to Congress a re-*
25 *port containing the results of the evaluation con-*

1 *ducted under paragraph (1), together with rec-*
2 *ommendations—*

3 *(A) as to whether the independent monitor*
4 *program should be established on a permanent*
5 *basis;*

6 *(B) if the Secretary recommends that such*
7 *program be so established, on appropriate proce-*
8 *dures and mechanisms for such establishment;*
9 *and*

10 *(C) for such legislation and administrative*
11 *action as the Secretary determines appropriate.*

12 **SEC. 6113. NOTIFICATION OF FACILITY CLOSURE.**

13 *(a) IN GENERAL.—Section 1128I of the Social Secu-*
14 *rity Act, as added and amended by this Act, is amended*
15 *by adding at the end the following new subsection:*

16 “*(h) NOTIFICATION OF FACILITY CLOSURE.—*

17 “*(1) IN GENERAL.—Any individual who is the*
18 *administrator of a facility must—*

19 “*(A) submit to the Secretary, the State*
20 *long-term care ombudsman, residents of the facil-*
21 *ity, and the legal representatives of such resi-*
22 *dents or other responsible parties, written notifi-*
23 *cation of an impending closure—*

1 “(i) subject to clause (ii), not later
2 than the date that is 60 days prior to the
3 date of such closure; and

4 “(ii) in the case of a facility where the
5 Secretary terminates the facility’s partici-
6 pation under this title, not later than the
7 date that the Secretary determines appro-
8 priate;

9 “(B) ensure that the facility does not admit
10 any new residents on or after the date on which
11 such written notification is submitted; and

12 “(C) include in the notice a plan for the
13 transfer and adequate relocation of the residents
14 of the facility by a specified date prior to closure
15 that has been approved by the State, including
16 assurances that the residents will be transferred
17 to the most appropriate facility or other setting
18 in terms of quality, services, and location, taking
19 into consideration the needs, choice, and best in-
20 terests of each resident.

21 “(2) RELOCATION.—

22 “(A) IN GENERAL.—The State shall ensure
23 that, before a facility closes, all residents of the
24 facility have been successfully relocated to an-

1 *other facility or an alternative home and com-*
2 *munity-based setting.*

3 “(B) *CONTINUATION OF PAYMENTS UNTIL*
4 *RESIDENTS RELOCATED.*—*The Secretary may, as*
5 *the Secretary determines appropriate, continue*
6 *to make payments under this title with respect*
7 *to residents of a facility that has submitted a no-*
8 *tification under paragraph (1) during the period*
9 *beginning on the date such notification is sub-*
10 *mitted and ending on the date on which the resi-*
11 *dent is successfully relocated.*

12 “(3) *SANCTIONS.*—*Any individual who is the ad-*
13 *ministrator of a facility that fails to comply with the*
14 *requirements of paragraph (1)—*

15 “(A) *shall be subject to a civil monetary*
16 *penalty of up to \$100,000;*

17 “(B) *may be subject to exclusion from par-*
18 *ticipation in any Federal health care program*
19 *(as defined in section 1128B(f)); and*

20 “(C) *shall be subject to any other penalties*
21 *that may be prescribed by law.*

22 “(4) *PROCEDURE.*—*The provisions of section*
23 *1128A (other than subsections (a) and (b) and the*
24 *second sentence of subsection (f)) shall apply to a civil*
25 *money penalty or exclusion under paragraph (3) in*

1 *the same manner as such provisions apply to a pen-*
2 *alty or proceeding under section 1128A(a).”.*

3 **(b) CONFORMING AMENDMENTS.**—*Section 1819(h)(4)*
4 *of the Social Security Act (42 U.S.C. 1395i–3(h)(4)) is*
5 *amended—*

6 *(1) in the first sentence, by striking “the Sec-*
7 *retary shall terminate” and inserting “the Secretary,*
8 *subject to section 1128I(h), shall terminate”;* and

9 *(2) in the second sentence, by striking “sub-*
10 *section (c)(2)” and inserting “subsection (c)(2) and*
11 *section 1128I(h).”.*

12 **(c) EFFECTIVE DATE.**—*The amendments made by this*
13 *section shall take effect 1 year after the date of the enact-*
14 *ment of this Act.*

15 **SEC. 6114. NATIONAL DEMONSTRATION PROJECTS ON CUL-**
16 **TURE CHANGE AND USE OF INFORMATION**
17 **TECHNOLOGY IN NURSING HOMES.**

18 **(a) IN GENERAL.**—*The Secretary shall conduct 2 dem-*
19 *onstration projects, 1 for the development of best practices*
20 *in skilled nursing facilities and nursing facilities that are*
21 *involved in the culture change movement (including the de-*
22 *velopment of resources for facilities to find and access fund-*
23 *ing in order to undertake culture change) and 1 for the de-*
24 *velopment of best practices in skilled nursing facilities and*

1 *nursing facilities for the use of information technology to*
2 *improve resident care.*

3 (b) *CONDUCT OF DEMONSTRATION PROJECTS.—*

4 (1) *GRANT AWARD.—Under each demonstration*
5 *project conducted under this section, the Secretary*
6 *shall award 1 or more grants to facility-based settings*
7 *for the development of best practices described in sub-*
8 *section (a) with respect to the demonstration project*
9 *involved. Such award shall be made on a competitive*
10 *basis and may be allocated in 1 lump-sum payment.*

11 (2) *CONSIDERATION OF SPECIAL NEEDS OF RESI-*
12 *DENTS.—Each demonstration project conducted under*
13 *this section shall take into consideration the special*
14 *needs of residents of skilled nursing facilities and*
15 *nursing facilities who have cognitive impairment, in-*
16 *cluding dementia.*

17 (c) *DURATION AND IMPLEMENTATION.—*

18 (1) *DURATION.—The demonstration projects*
19 *shall each be conducted for a period not to exceed 3*
20 *years.*

21 (2) *IMPLEMENTATION.—The demonstration*
22 *projects shall each be implemented not later than 1*
23 *year after the date of the enactment of this Act.*

24 (d) *DEFINITIONS.—In this section:*

1 (1) *NURSING FACILITY.*—*The term “nursing fa-*
2 *cility” has the meaning given such term in section*
3 *1919(a) of the Social Security Act (42 U.S.C.*
4 *1396r(a)).*

5 (2) *SECRETARY.*—*The term “Secretary” means*
6 *the Secretary of Health and Human Services.*

7 (3) *SKILLED NURSING FACILITY.*—*The term*
8 *“skilled nursing facility” has the meaning given such*
9 *term in section 1819(a) of the Social Security Act (42*
10 *U.S.C. 1395(a)).*

11 (e) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*
12 *authorized to be appropriated such sums as may be nec-*
13 *essary to carry out this section.*

14 (f) *REPORT.*—*Not later than 9 months after the com-*
15 *pletion of the demonstration project, the Secretary shall sub-*
16 *mit to Congress a report on such project, together with rec-*
17 *ommendations for such legislation and administrative ac-*
18 *tion as the Secretary determines appropriate.*

19 ***PART III—IMPROVING STAFF TRAINING***

20 ***SEC. 6121. DEMENTIA AND ABUSE PREVENTION TRAINING.***

21 (a) *SKILLED NURSING FACILITIES.*—

22 (1) *IN GENERAL.*—*Section 1819(f)(2)(A)(i)(I) of*
23 *the Social Security Act (42 U.S.C. 1395i-*
24 *3(f)(2)(A)(i)(I)) is amended by inserting “(including,*
25 *in the case of initial training and, if the Secretary*

1 *determines appropriate, in the case of ongoing train-*
2 *ing, dementia management training, and patient*
3 *abuse prevention training” before “, (II)”.*

4 (2) *CLARIFICATION OF DEFINITION OF NURSE*
5 *AIDE.—Section 1819(b)(5)(F) of the Social Security*
6 *Act (42 U.S.C. 1395i–3(b)(5)(F)) is amended by add-*
7 *ing at the end the following flush sentence:*

8 “*Such term includes an individual who provides*
9 *such services through an agency or under a con-*
10 *tract with the facility.”.*

11 (b) *NURSING FACILITIES.—*

12 (1) *IN GENERAL.—Section 1919(f)(2)(A)(i)(I) of*
13 *the Social Security Act (42 U.S.C.*
14 *1396r(f)(2)(A)(i)(I)) is amended by inserting “(in-*
15 *cluding, in the case of initial training and, if the Sec-*
16 *retary determines appropriate, in the case of ongoing*
17 *training, dementia management training, and pa-*
18 *tient abuse prevention training” before “, (II)”.*

19 (2) *CLARIFICATION OF DEFINITION OF NURSE*
20 *AIDE.—Section 1919(b)(5)(F) of the Social Security*
21 *Act (42 U.S.C. 1396r(b)(5)(F)) is amended by adding*
22 *at the end the following flush sentence:*

23 “*Such term includes an individual who provides*
24 *such services through an agency or under a con-*
25 *tract with the facility.”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall take effect 1 year after the date of the enact-*
3 *ment of this Act.*

4 ***Subtitle C—Nationwide Program***
5 ***for National and State Back-***
6 ***ground Checks on Direct Patient***
7 ***Access Employees of Long-term***
8 ***Care Facilities and Providers***

9 ***SEC. 6201. NATIONWIDE PROGRAM FOR NATIONAL AND***
10 ***STATE BACKGROUND CHECKS ON DIRECT PA-***
11 ***TIENT ACCESS EMPLOYEES OF LONG-TERM***
12 ***CARE FACILITIES AND PROVIDERS.***

13 (a) *IN GENERAL.*—*The Secretary of Health and*
14 *Human Services (in this section referred to as the “Sec-*
15 *retary”), shall establish a program to identify efficient, ef-*
16 *fective, and economical procedures for long term care facili-*
17 *ties or providers to conduct background checks on prospec-*
18 *tive direct patient access employees on a nationwide basis*
19 *(in this subsection, such program shall be referred to as the*
20 *“nationwide program”). Except for the following modifica-*
21 *tions, the Secretary shall carry out the nationwide program*
22 *under similar terms and conditions as the pilot program*
23 *under section 307 of the Medicare Prescription Drug, Im-*
24 *provement, and Modernization Act of 2003 (Public Law*
25 *108–173; 117 Stat. 2257), including the prohibition on hir-*

1 *ing abusive workers and the authorization of the imposition*
2 *of penalties by a participating State under subsection*
3 *(b)(3)(A) and (b)(6), respectively, of such section 307:*

4 (1) *AGREEMENTS.—*

5 (A) *NEWLY PARTICIPATING STATES.—The*
6 *Secretary shall enter into agreements with each*
7 *State—*

8 (i) *that the Secretary has not entered*
9 *into an agreement with under subsection*
10 *(c)(1) of such section 307;*

11 (ii) *that agrees to conduct background*
12 *checks under the nationwide program on a*
13 *Statewide basis; and*

14 (iii) *that submits an application to the*
15 *Secretary containing such information and*
16 *at such time as the Secretary may specify.*

17 (B) *CERTAIN PREVIOUSLY PARTICIPATING*
18 *STATES.—The Secretary shall enter into agree-*
19 *ments with each State—*

20 (i) *that the Secretary has entered into*
21 *an agreement with under such subsection*
22 *(c)(1), but only in the case where such*
23 *agreement did not require the State to con-*
24 *duct background checks under the program*

1 *established under subsection (a) of such sec-*
2 *tion 307 on a Statewide basis;*

3 *(ii) that agrees to conduct background*
4 *checks under the nationwide program on a*
5 *Statewide basis; and*

6 *(iii) that submits an application to the*
7 *Secretary containing such information and*
8 *at such time as the Secretary may specify.*

9 (2) *NONAPPLICATION OF SELECTION CRITERIA.—*
10 *The selection criteria required under subsection*
11 *(c)(3)(B) of such section 307 shall not apply.*

12 (3) *REQUIRED FINGERPRINT CHECK AS PART OF*
13 *CRIMINAL HISTORY BACKGROUND CHECK.—The proce-*
14 *dures established under subsection (b)(1) of such sec-*
15 *tion 307 shall—*

16 *(A) require that the long-term care facility*
17 *or provider (or the designated agent of the long-*
18 *term care facility or provider) obtain State and*
19 *national criminal history background checks on*
20 *the prospective employee through such means as*
21 *the Secretary determines appropriate, efficient,*
22 *and effective that utilize a search of State-based*
23 *abuse and neglect registries and databases, in-*
24 *cluding the abuse and neglect registries of an-*
25 *other State in the case where a prospective em-*

1 *employee previously resided in that State, State*
2 *criminal history records, the records of any pro-*
3 *ceedings in the State that may contain disquali-*
4 *fying information about prospective employees*
5 *(such as proceedings conducted by State profes-*
6 *sional licensing and disciplinary boards and*
7 *State Medicaid Fraud Control Units), and Fed-*
8 *eral criminal history records, including a finger-*
9 *print check using the Integrated Automated Fin-*
10 *gerprint Identification System of the Federal*
11 *Bureau of Investigation;*

12 *(B) require States to describe and test meth-*
13 *ods that reduce duplicative fingerprinting, in-*
14 *cluding providing for the development of “rap*
15 *back” capability by the State such that, if a di-*
16 *rect patient access employee of a long-term care*
17 *facility or provider is convicted of a crime fol-*
18 *lowing the initial criminal history background*
19 *check conducted with respect to such employee,*
20 *and the employee’s fingerprints match the prints*
21 *on file with the State law enforcement depart-*
22 *ment, the department will immediately inform*
23 *the State and the State will immediately inform*
24 *the long-term care facility or provider which em-*

1 *employs the direct patient access employee of such*
2 *conviction; and*

3 *(C) require that criminal history back-*
4 *ground checks conducted under the nationwide*
5 *program remain valid for a period of time speci-*
6 *fied by the Secretary.*

7 *(4) STATE REQUIREMENTS.—An agreement en-*
8 *tered into under paragraph (1) shall require that a*
9 *participating State—*

10 *(A) be responsible for monitoring compli-*
11 *ance with the requirements of the nationwide*
12 *program;*

13 *(B) have procedures in place to—*

14 *(i) conduct screening and criminal his-*
15 *tory background checks under the nation-*
16 *wide program in accordance with the re-*
17 *quirements of this section;*

18 *(ii) monitor compliance by long-term*
19 *care facilities and providers with the proce-*
20 *dures and requirements of the nationwide*
21 *program;*

22 *(iii) as appropriate, provide for a pro-*
23 *visional period of employment by a long-*
24 *term care facility or provider of a direct*
25 *patient access employee, not to exceed 60*

1 *days, pending completion of the required*
2 *criminal history background check and, in*
3 *the case where the employee has appealed*
4 *the results of such background check, pend-*
5 *ing completion of the appeals process, dur-*
6 *ing which the employee shall be subject to*
7 *direct on-site supervision (in accordance*
8 *with procedures established by the State to*
9 *ensure that a long-term care facility or pro-*
10 *vider furnishes such direct on-site super-*
11 *vision);*

12 *(iv) provide an independent process by*
13 *which a provisional employee or an em-*
14 *ployee may appeal or dispute the accuracy*
15 *of the information obtained in a back-*
16 *ground check performed under the nation-*
17 *wide program, including the specification of*
18 *criteria for appeals for direct patient access*
19 *employees found to have disqualifying infor-*
20 *mation which shall include consideration of*
21 *the passage of time, extenuating cir-*
22 *cumstances, demonstration of rehabilitation,*
23 *and relevancy of the particular disquali-*
24 *fying information with respect to the cur-*
25 *rent employment of the individual;*

1 (v) provide for the designation of a
2 single State agency as responsible for—

3 (I) overseeing the coordination of
4 any State and national criminal his-
5 tory background checks requested by a
6 long-term care facility or provider (or
7 the designated agent of the long-term
8 care facility or provider) utilizing a
9 search of State and Federal criminal
10 history records, including a fingerprint
11 check of such records;

12 (II) overseeing the design of ap-
13 propriate privacy and security safe-
14 guards for use in the review of the re-
15 sults of any State or national criminal
16 history background checks conducted
17 regarding a prospective direct patient
18 access employee to determine whether
19 the employee has any conviction for a
20 relevant crime;

21 (III) immediately reporting to the
22 long-term care facility or provider that
23 requested the criminal history back-
24 ground check the results of such review;
25 and

1 (IV) in the case of an employee
2 with a conviction for a relevant crime
3 that is subject to reporting under sec-
4 tion 1128E of the Social Security Act
5 (42 U.S.C. 1320a–7e), reporting the ex-
6 istence of such conviction to the data-
7 base established under that section;
8 (vi) determine which individuals are
9 direct patient access employees (as defined
10 in paragraph (6)(B)) for purposes of the
11 nationwide program;
12 (vii) as appropriate, specify offenses,
13 including convictions for violent crimes, for
14 purposes of the nationwide program; and
15 (viii) describe and test methods that re-
16 duce duplicative fingerprinting, including
17 providing for the development of “rap back”
18 capability such that, if a direct patient ac-
19 cess employee of a long-term care facility or
20 provider is convicted of a crime following
21 the initial criminal history background
22 check conducted with respect to such em-
23 ployee, and the employee’s fingerprints
24 match the prints on file with the State law
25 enforcement department—

1 (I) *the department will immediately*
2 *inform the State agency des-*
3 *ignated under clause (v) and such*
4 *agency will immediately inform the fa-*
5 *ility or provider which employs the*
6 *direct patient access employee of such*
7 *conviction; and*

8 (II) *the State will provide, or will*
9 *require the facility to provide, to the*
10 *employee a copy of the results of the*
11 *criminal history background check con-*
12 *ducted with respect to the employee at*
13 *no charge in the case where the indi-*
14 *vidual requests such a copy.*

15 (5) *PAYMENTS.—*

16 (A) *NEWLY PARTICIPATING STATES.—*

17 (i) *IN GENERAL.—As part of the appli-*
18 *cation submitted by a State under para-*
19 *graph (1)(A)(iii), the State shall guarantee,*
20 *with respect to the costs to be incurred by*
21 *the State in carrying out the nationwide*
22 *program, that the State will make available*
23 *(directly or through donations from public*
24 *or private entities) a particular amount of*
25 *non-Federal contributions, as a condition of*

1 receiving the Federal match under clause
2 (ii).

3 (ii) FEDERAL MATCH.—The payment
4 amount to each State that the Secretary en-
5 ters into an agreement with under para-
6 graph (1)(A) shall be 3 times the amount
7 that the State guarantees to make available
8 under clause (i), except that in no case may
9 the payment amount exceed \$3,000,000.

10 (B) PREVIOUSLY PARTICIPATING STATES.—

11 (i) IN GENERAL.—As part of the appli-
12 cation submitted by a State under para-
13 graph (1)(B)(iii), the State shall guarantee,
14 with respect to the costs to be incurred by
15 the State in carrying out the nationwide
16 program, that the State will make available
17 (directly or through donations from public
18 or private entities) a particular amount of
19 non-Federal contributions, as a condition of
20 receiving the Federal match under clause
21 (ii).

22 (ii) FEDERAL MATCH.—The payment
23 amount to each State that the Secretary en-
24 ters into an agreement with under para-
25 graph (1)(B) shall be 3 times the amount

1 *that the State guarantees to make available*
2 *under clause (i), except that in no case may*
3 *the payment amount exceed \$1,500,000.*

4 (6) *DEFINITIONS.—Under the nationwide pro-*
5 *gram:*

6 (A) *CONVICTION FOR A RELEVANT CRIME.—*
7 *The term “conviction for a relevant crime”*
8 *means any Federal or State criminal conviction*
9 *for—*

10 (i) *any offense described in section*
11 *1128(a) of the Social Security Act (42*
12 *U.S.C. 1320a–7); or*

13 (ii) *such other types of offenses as a*
14 *participating State may specify for pur-*
15 *poses of conducting the program in such*
16 *State.*

17 (B) *DISQUALIFYING INFORMATION.—The*
18 *term “disqualifying information” means a con-*
19 *viction for a relevant crime or a finding of pa-*
20 *tient or resident abuse.*

21 (C) *FINDING OF PATIENT OR RESIDENT*
22 *ABUSE.—The term “finding of patient or resi-*
23 *dent abuse” means any substantiated finding by*
24 *a State agency under section 1819(g)(1)(C) or*
25 *1919(g)(1)(C) of the Social Security Act (42*

1 *U.S.C. 1395i-3(g)(1)(C), 1396r(g)(1)(C)) or a*
2 *Federal agency that a direct patient access em-*
3 *ployee has committed—*

4 *(i) an act of patient or resident abuse*
5 *or neglect or a misappropriation of patient*
6 *or resident property; or*

7 *(ii) such other types of acts as a par-*
8 *ticipating State may specify for purposes of*
9 *conducting the program in such State.*

10 *(D) DIRECT PATIENT ACCESS EMPLOYEE.—*

11 *The term “direct patient access employee” means*
12 *any individual who has access to a patient or*
13 *resident of a long-term care facility or provider*
14 *through employment or through a contract with*
15 *such facility or provider and has duties that in-*
16 *volve (or may involve) one-on-one contact with a*
17 *patient or resident of the facility or provider, as*
18 *determined by the State for purposes of the na-*
19 *tionwide program. Such term does not include a*
20 *volunteer unless the volunteer has duties that are*
21 *equivalent to the duties of a direct patient access*
22 *employee and those duties involve (or may in-*
23 *volve) one-on-one contact with a patient or resi-*
24 *dent of the long-term care facility or provider.*

1 (E) *LONG-TERM CARE FACILITY OR PRO-*
2 *VIDER.—The term “long-term care facility or*
3 *provider” means the following facilities or pro-*
4 *viders which receive payment for services under*
5 *title XVIII or XIX of the Social Security Act:*

6 (i) *A skilled nursing facility (as de-*
7 *defined in section 1819(a) of the Social Secu-*
8 *rity Act (42 U.S.C. 1395i–3(a))).*

9 (ii) *A nursing facility (as defined in*
10 *section 1919(a) of such Act (42 U.S.C.*
11 *1396r(a))).*

12 (iii) *A home health agency.*

13 (iv) *A provider of hospice care (as de-*
14 *defined in section 1861(dd)(1) of such Act (42*
15 *U.S.C. 1395x(dd)(1))).*

16 (v) *A long-term care hospital (as de-*
17 *scribed in section 1886(d)(1)(B)(iv) of such*
18 *Act (42 U.S.C. 1395ww(d)(1)(B)(iv))).*

19 (vi) *A provider of personal care serv-*
20 *ices.*

21 (vii) *A provider of adult day care.*

22 (viii) *A residential care provider that*
23 *arranges for, or directly provides, long-term*
24 *care services, including an assisted living*

1 *facility that provides a level of care estab-*
2 *lished by the Secretary.*

3 *(ix) An intermediate care facility for*
4 *the mentally retarded (as defined in section*
5 *1905(d) of such Act (42 U.S.C. 1396d(d))).*

6 *(x) Any other facility or provider of*
7 *long-term care services under such titles as*
8 *the participating State determines appro-*
9 *priate.*

10 (7) *EVALUATION AND REPORT.—*

11 (A) *EVALUATION.—*

12 *(i) IN GENERAL.—The Inspector Gen-*
13 *eral of the Department of Health and*
14 *Human Services shall conduct an evalua-*
15 *tion of the nationwide program.*

16 *(ii) INCLUSION OF SPECIFIC TOPICS.—*
17 *The evaluation conducted under clause (i)*
18 *shall include the following:*

19 *(I) A review of the various proce-*
20 *dures implemented by participating*
21 *States for long-term care facilities or*
22 *providers, including staffing agencies,*
23 *to conduct background checks of direct*
24 *patient access employees under the na-*
25 *tionwide program and identification of*

1 *the most appropriate, efficient, and ef-*
2 *fective procedures for conducting such*
3 *background checks.*

4 (II) *An assessment of the costs of*
5 *conducting such background checks (in-*
6 *cluding start up and administrative*
7 *costs).*

8 (III) *A determination of the ex-*
9 *tent to which conducting such back-*
10 *ground checks leads to any unintended*
11 *consequences, including a reduction in*
12 *the available workforce for long-term*
13 *care facilities or providers.*

14 (IV) *An assessment of the impact*
15 *of the nationwide program on reducing*
16 *the number of incidents of neglect,*
17 *abuse, and misappropriation of resi-*
18 *dent property to the extent practicable.*

19 (V) *An evaluation of other aspects*
20 *of the nationwide program, as deter-*
21 *mined appropriate by the Secretary.*

22 (B) *REPORT.—Not later than 180 days*
23 *after the completion of the nationwide program,*
24 *the Inspector General of the Department of*
25 *Health and Human Services shall submit a re-*

1 *port to Congress containing the results of the*
2 *evaluation conducted under subparagraph (A).*

3 **(b) FUNDING.—**

4 **(1) NOTIFICATION.—***The Secretary of Health and*
5 *Human Services shall notify the Secretary of the*
6 *Treasury of the amount necessary to carry out the na-*
7 *tionwide program under this section for the period of*
8 *fiscal years 2010 through 2012, except that in no case*
9 *shall such amount exceed \$160,000,000.*

10 **(2) TRANSFER OF FUNDS.—**

11 **(A) IN GENERAL.—***Out of any funds in the*
12 *Treasury not otherwise appropriated, the Sec-*
13 *retary of the Treasury shall provide for the*
14 *transfer to the Secretary of Health and Human*
15 *Services of the amount specified as necessary to*
16 *carry out the nationwide program under para-*
17 *graph (1). Such amount shall remain available*
18 *until expended.*

19 **(B) RESERVATION OF FUNDS FOR CONDUCT**
20 **OF EVALUATION.—***The Secretary may reserve not*
21 *more than \$3,000,000 of the amount transferred*
22 *under subparagraph (A) to provide for the con-*
23 *duct of the evaluation under subsection*
24 *(a)(7)(A).*

1 ***Subtitle D—Patient-Centered***
 2 ***Outcomes Research***

3 **SEC. 6301. PATIENT-CENTERED OUTCOMES RESEARCH.**

4 (a) *IN GENERAL.*—*Title XI of the Social Security Act*
 5 *(42 U.S.C. 1301 et seq.) is amended by adding at the end*
 6 *the following new part:*

7 “*PART D—COMPARATIVE CLINICAL EFFECTIVENESS*
 8 *RESEARCH*

9 “*COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH*

10 “*SEC. 1181. (a) DEFINITIONS.*—*In this section:*

11 “(1) *BOARD.*—*The term ‘Board’ means the*
 12 *Board of Governors established under subsection (f).*

13 “(2) *COMPARATIVE CLINICAL EFFECTIVENESS*
 14 *RESEARCH; RESEARCH.*—

15 “(A) *IN GENERAL.*—*The terms ‘comparative*
 16 *clinical effectiveness research’ and ‘research’*
 17 *mean research evaluating and comparing health*
 18 *outcomes and the clinical effectiveness, risks, and*
 19 *benefits of 2 or more medical treatments, serv-*
 20 *ices, and items described in subparagraph (B).*

21 “(B) *MEDICAL TREATMENTS, SERVICES,*
 22 *AND ITEMS DESCRIBED.*—*The medical treat-*
 23 *ments, services, and items described in this sub-*
 24 *paragraph are health care interventions, proto-*
 25 *cols for treatment, care management, and deliv-*

1 *ery, procedures, medical devices, diagnostic tools,*
2 *pharmaceuticals (including drugs and*
3 *biologicals), integrative health practices, and any*
4 *other strategies or items being used in the treat-*
5 *ment, management, and diagnosis of, or preven-*
6 *tion of illness or injury in, individuals.*

7 “(3) *CONFLICT OF INTEREST.*—*The term ‘conflict*
8 *of interest’ means an association, including a finan-*
9 *cial or personal association, that have the potential to*
10 *bias or have the appearance of biasing an individ-*
11 *ual’s decisions in matters related to the Institute or*
12 *the conduct of activities under this section.*

13 “(4) *REAL CONFLICT OF INTEREST.*—*The term*
14 *‘real conflict of interest’ means any instance where a*
15 *member of the Board, the methodology committee es-*
16 *tablished under subsection (d)(6), or an advisory*
17 *panel appointed under subsection (d)(4), or a close*
18 *relative of such member, has received or could receive*
19 *either of the following:*

20 “(A) *A direct financial benefit of any*
21 *amount deriving from the result or findings of a*
22 *study conducted under this section.*

23 “(B) *A financial benefit from individuals or*
24 *companies that own or manufacture medical*
25 *treatments, services, or items to be studied under*

1 *this section that in the aggregate exceeds \$10,000*
2 *per year. For purposes of the preceding sentence,*
3 *a financial benefit includes honoraria, fees, stock,*
4 *or other financial benefit and the current value*
5 *of the member or close relative's already existing*
6 *stock holdings, in addition to any direct finan-*
7 *cial benefit deriving from the results or findings*
8 *of a study conducted under this section.*

9 “(b) *PATIENT-CENTERED OUTCOMES RESEARCH IN-*
10 *STITUTE.*—

11 “(1) *ESTABLISHMENT.*—*There is authorized to*
12 *be established a nonprofit corporation, to be known as*
13 *the ‘Patient-Centered Outcomes Research Institute’*
14 *(referred to in this section as the ‘Institute’) which is*
15 *neither an agency nor establishment of the United*
16 *States Government.*

17 “(2) *APPLICATION OF PROVISIONS.*—*The Insti-*
18 *tute shall be subject to the provisions of this section,*
19 *and, to the extent consistent with this section, to the*
20 *District of Columbia Nonprofit Corporation Act.*

21 “(3) *FUNDING OF COMPARATIVE CLINICAL EF-*
22 *ECTIVENESS RESEARCH.*—*For fiscal year 2010 and*
23 *each subsequent fiscal year, amounts in the Patient-*
24 *Centered Outcomes Research Trust Fund (referred to*
25 *in this section as the ‘PCORTF’) under section 9511*

1 of the Internal Revenue Code of 1986 shall be avail-
2 able, without further appropriation, to the Institute
3 to carry out this section.

4 “(c) *PURPOSE.*—The purpose of the Institute is to as-
5 sist patients, clinicians, purchasers, and policy-makers in
6 making informed health decisions by advancing the quality
7 and relevance of evidence concerning the manner in which
8 diseases, disorders, and other health conditions can effec-
9 tively and appropriately be prevented, diagnosed, treated,
10 monitored, and managed through research and evidence
11 synthesis that considers variations in patient subpopula-
12 tions, and the dissemination of research findings with re-
13 spect to the relative health outcomes, clinical effectiveness,
14 and appropriateness of the medical treatments, services,
15 and items described in subsection (a)(2)(B).

16 “(d) *DUTIES.*—

17 “(1) *IDENTIFYING RESEARCH PRIORITIES AND*
18 *ESTABLISHING RESEARCH PROJECT AGENDA.*—

19 “(A) *IDENTIFYING RESEARCH PRIOR-*
20 *ITIES.*—The Institute shall identify national pri-
21 orities for research, taking into account factors of
22 disease incidence, prevalence, and burden in the
23 United States (with emphasis on chronic condi-
24 tions), gaps in evidence in terms of clinical out-
25 comes, practice variations and health disparities

1 *in terms of delivery and outcomes of care, the po-*
2 *tential for new evidence to improve patient*
3 *health, well-being, and the quality of care, the ef-*
4 *fect on national expenditures associated with a*
5 *health care treatment, strategy, or health condi-*
6 *tions, as well as patient needs, outcomes, and*
7 *preferences, the relevance to patients and clini-*
8 *cians in making informed health decisions, and*
9 *priorities in the National Strategy for quality*
10 *care established under section 399H of the Public*
11 *Health Service Act that are consistent with this*
12 *section.*

13 “(B) *ESTABLISHING RESEARCH PROJECT*
14 *AGENDA.—The Institute shall establish and up-*
15 *date a research project agenda for research to ad-*
16 *dress the priorities identified under subpara-*
17 *graph (A), taking into consideration the types of*
18 *research that might address each priority and*
19 *the relative value (determined based on the cost*
20 *of conducting research compared to the potential*
21 *usefulness of the information produced by re-*
22 *search) associated with the different types of re-*
23 *search, and such other factors as the Institute de-*
24 *termines appropriate.*

1 “(2) *CARRYING OUT RESEARCH PROJECT AGEN-*
2 *DA.—*

3 “(A) *RESEARCH.—The Institute shall carry*
4 *out the research project agenda established under*
5 *paragraph (1)(B) in accordance with the meth-*
6 *odological standards adopted under paragraph*
7 *(9) using methods, including the following:*

8 “(i) *Systematic reviews and assess-*
9 *ments of existing and future research and*
10 *evidence including original research con-*
11 *ducted subsequent to the date of the enact-*
12 *ment of this section.*

13 “(ii) *Primary research, such as ran-*
14 *domized clinical trials, molecularly in-*
15 *formed trials, and observational studies.*

16 “(iii) *Any other methodologies rec-*
17 *ommended by the methodology committee es-*
18 *tablished under paragraph (6) that are*
19 *adopted by the Board under paragraph (9).*

20 “(B) *CONTRACTS FOR THE MANAGEMENT OF*
21 *FUNDING AND CONDUCT OF RESEARCH.—*

22 “(i) *CONTRACTS.—*

23 “(I) *IN GENERAL.—In accordance*
24 *with the research project agenda estab-*
25 *lished under paragraph (1)(B), the In-*

1 *stitute shall enter into contracts for the*
2 *management of funding and conduct of*
3 *research in accordance with the fol-*
4 *lowing:*

5 *“(aa) Appropriate agencies*
6 *and instrumentalities of the Fed-*
7 *eral Government.*

8 *“(bb) Appropriate academic*
9 *research, private sector research,*
10 *or study-conducting entities.*

11 *“(II) PREFERENCE.—In entering*
12 *into contracts under subclause (I), the*
13 *Institute shall give preference to the*
14 *Agency for Healthcare Research and*
15 *Quality and the National Institutes of*
16 *Health, but only if the research to be*
17 *conducted or managed under such con-*
18 *tract is authorized by the governing*
19 *statutes of such Agency or Institutes.*

20 *“(ii) CONDITIONS FOR CONTRACTS.—A*
21 *contract entered into under this subpara-*
22 *graph shall require that the agency, instru-*
23 *mentality, or other entity—*

24 *“(I) abide by the transparency*
25 *and conflicts of interest requirements*

1 *under subsection (h) that apply to the*
2 *Institute with respect to the research*
3 *managed or conducted under such con-*
4 *tract;*

5 *“(II) comply with the methodo-*
6 *logical standards adopted under para-*
7 *graph (9) with respect to such research;*

8 *“(III) consult with the expert ad-*
9 *visory panels for clinical trials and*
10 *rare disease appointed under clauses*
11 *(ii) and (iii), respectively, of para-*
12 *graph (4)(A);*

13 *“(IV) subject to clause (iv), permit*
14 *a researcher who conducts original re-*
15 *search under the contract for the agen-*
16 *cy, instrumentality, or other entity to*
17 *have such research published in a peer-*
18 *reviewed journal or other publication;*

19 *“(V) have appropriate processes*
20 *in place to manage data privacy and*
21 *meet ethical standards for the research;*

22 *“(VI) comply with the require-*
23 *ments of the Institute for making the*
24 *information available to the public*
25 *under paragraph (8); and*

1 “(VII) *comply with other terms*
2 *and conditions determined necessary*
3 *by the Institute to carry out the re-*
4 *search agenda adopted under para-*
5 *graph (2).*

6 “(iii) *COVERAGE OF COPAYMENTS OR*
7 *COINSURANCE.—A contract entered into*
8 *under this subparagraph may allow for the*
9 *coverage of copayments or coinsurance, or*
10 *allow for other appropriate measures, to the*
11 *extent that such coverage or other measures*
12 *are necessary to preserve the validity of a*
13 *research project, such as in the case where*
14 *the research project must be blinded.*

15 “(iv) *REQUIREMENTS FOR PUBLICA-*
16 *TION OF RESEARCH.—Any research pub-*
17 *lished under clause (ii)(IV) shall be within*
18 *the bounds of and entirely consistent with*
19 *the evidence and findings produced under*
20 *the contract with the Institute under this*
21 *subparagraph. If the Institute determines*
22 *that those requirements are not met, the In-*
23 *stitute shall not enter into another contract*
24 *with the agency, instrumentality, or entity*
25 *which managed or conducted such research*

1 *for a period determined appropriate by the*
2 *Institute (but not less than 5 years).*

3 “(C) *REVIEW AND UPDATE OF EVIDENCE.*—
4 *The Institute shall review and update evidence*
5 *on a periodic basis as appropriate.*

6 “(D) *TAKING INTO ACCOUNT POTENTIAL*
7 *DIFFERENCES.*—*Research shall be designed, as*
8 *appropriate, to take into account the potential*
9 *for differences in the effectiveness of health care*
10 *treatments, services, and items as used with var-*
11 *ious subpopulations, such as racial and ethnic*
12 *minorities, women, age, and groups of individ-*
13 *uals with different comorbidities, genetic and*
14 *molecular sub-types, or quality of life preferences*
15 *and include members of such subpopulations as*
16 *subjects in the research as feasible and appro-*
17 *priate.*

18 “(E) *DIFFERENCES IN TREATMENT MODALI-*
19 *TIES.*—*Research shall be designed, as appro-*
20 *priate, to take into account different characteris-*
21 *tics of treatment modalities that may affect re-*
22 *search outcomes, such as the phase of the treat-*
23 *ment modality in the innovation cycle and the*
24 *impact of the skill of the operator of the treat-*
25 *ment modality.*

1 “(3) *DATA COLLECTION.*—

2 “(A) *IN GENERAL.*—*The Secretary shall,*
3 *with appropriate safeguards for privacy, make*
4 *available to the Institute such data collected by*
5 *the Centers for Medicare & Medicaid Services*
6 *under the programs under titles XVIII, XIX, and*
7 *XXI, as well as provide access to the data net-*
8 *works developed under section 937(f) of the Pub-*
9 *lic Health Service Act, as the Institute and its*
10 *contractors may require to carry out this section.*
11 *The Institute may also request and obtain data*
12 *from Federal, State, or private entities, includ-*
13 *ing data from clinical databases and registries.*

14 “(B) *USE OF DATA.*—*The Institute shall*
15 *only use data provided to the Institute under*
16 *subparagraph (A) in accordance with laws and*
17 *regulations governing the release and use of such*
18 *data, including applicable confidentiality and*
19 *privacy standards.*

20 “(4) *APPOINTING EXPERT ADVISORY PANELS.*—

21 “(A) *APPOINTMENT.*—

22 “(i) *IN GENERAL.*—*The Institute may*
23 *appoint permanent or ad hoc expert advi-*
24 *sory panels as determined appropriate to*
25 *assist in identifying research priorities and*

1 *establishing the research project agenda*
2 *under paragraph (1) and for other pur-*
3 *poses.*

4 “(ii) *EXPERT ADVISORY PANELS FOR*
5 *CLINICAL TRIALS.—The Institute shall ap-*
6 *point expert advisory panels in carrying*
7 *out randomized clinical trials under the re-*
8 *search project agenda under paragraph*
9 *(2)(A)(ii). Such expert advisory panels shall*
10 *advise the Institute and the agency, instru-*
11 *mentality, or entity conducting the research*
12 *on the research question involved and the*
13 *research design or protocol, including im-*
14 *portant patient subgroups and other pa-*
15 *rameters of the research. Such panels shall*
16 *be available as a resource for technical ques-*
17 *tions that may arise during the conduct of*
18 *such research.*

19 “(iii) *EXPERT ADVISORY PANEL FOR*
20 *RARE DISEASE.—In the case of a research*
21 *study for rare disease, the Institute shall*
22 *appoint an expert advisory panel for pur-*
23 *poses of assisting in the design of the re-*
24 *search study and determining the relative*

1 *value and feasibility of conducting the re-*
2 *search study.*

3 “(B) *COMPOSITION.*—*An expert advisory*
4 *panel appointed under subparagraph (A) shall*
5 *include representatives of practicing and re-*
6 *search clinicians, patients, and experts in sci-*
7 *entific and health services research, health serv-*
8 *ices delivery, and evidence-based medicine who*
9 *have experience in the relevant topic, and as ap-*
10 *propriate, experts in integrative health and pri-*
11 *mary prevention strategies. The Institute may*
12 *include a technical expert of each manufacturer*
13 *or each medical technology that is included*
14 *under the relevant topic, project, or category for*
15 *which the panel is established.*

16 “(5) *SUPPORTING PATIENT AND CONSUMER REP-*
17 *RESENTATIVES.*—*The Institute shall provide support*
18 *and resources to help patient and consumer represent-*
19 *atives effectively participate on the Board and expert*
20 *advisory panels appointed by the Institute under*
21 *paragraph (4).*

22 “(6) *ESTABLISHING METHODOLOGY COM-*
23 *MITTEE.*—

24 “(A) *IN GENERAL.*—*The Institute shall es-*
25 *tablish a standing methodology committee to*

1 *carry out the functions described in subpara-*
2 *graph (C).*

3 “(B) *APPOINTMENT AND COMPOSITION.*—
4 *The methodology committee established under*
5 *subparagraph (A) shall be composed of not more*
6 *than 15 members appointed by the Comptroller*
7 *General of the United States. Members appointed*
8 *to the methodology committee shall be experts in*
9 *their scientific field, such as health services re-*
10 *search, clinical research, comparative clinical ef-*
11 *fectiveness research, biostatistics, genomics, and*
12 *research methodologies. Stakeholders with such*
13 *expertise may be appointed to the methodology*
14 *committee. In addition to the members appointed*
15 *under the first sentence, the Directors of the Na-*
16 *tional Institutes of Health and the Agency for*
17 *Healthcare Research and Quality (or their des-*
18 *ignees) shall each be included as members of the*
19 *methodology committee.*

20 “(C) *FUNCTIONS.*—*Subject to subparagraph*
21 *(D), the methodology committee shall work to de-*
22 *velop and improve the science and methods of*
23 *comparative clinical effectiveness research by,*
24 *not later than 18 months after the establishment*
25 *of the Institute, directly or through subcontract,*

1 *developing and periodically updating the fol-*
2 *lowing:*

3 “(i) *Methodological standards for re-*
4 *search. Such methodological standards shall*
5 *provide specific criteria for internal valid-*
6 *ity, generalizability, feasibility, and timeli-*
7 *ness of research and for health outcomes*
8 *measures, risk adjustment, and other rel-*
9 *evant aspects of research and assessment*
10 *with respect to the design of research. Any*
11 *methodological standards developed and up-*
12 *dated under this subclause shall be scientif-*
13 *ically based and include methods by which*
14 *new information, data, or advances in tech-*
15 *nology are considered and incorporated into*
16 *ongoing research projects by the Institute,*
17 *as appropriate. The process for developing*
18 *and updating such standards shall include*
19 *input from relevant experts, stakeholders,*
20 *and decisionmakers, and shall provide op-*
21 *portunities for public comment. Such stand-*
22 *ards shall also include methods by which*
23 *patient subpopulations can be accounted for*
24 *and evaluated in different types of research.*
25 *As appropriate, such standards shall build*

1 *on existing work on methodological stand-*
2 *ards for defined categories of health inter-*
3 *ventions and for each of the major cat-*
4 *egories of comparative clinical effectiveness*
5 *research methods (determined as of the date*
6 *of enactment of the Patient Protection and*
7 *Affordable Care Act).*

8 *“(ii) A translation table that is de-*
9 *signed to provide guidance and act as a ref-*
10 *erence for the Board to determine research*
11 *methods that are most likely to address each*
12 *specific research question.*

13 *“(D) CONSULTATION AND CONDUCT OF EX-*
14 *AMINATIONS.—The methodology committee may*
15 *consult and contract with the Institute of Medi-*
16 *cine of the National Academies and academic,*
17 *nonprofit, or other private and governmental en-*
18 *tities with relevant expertise to carry out activi-*
19 *ties described in subparagraph (C) and may con-*
20 *sult with relevant stakeholders to carry out such*
21 *activities.*

22 *“(E) REPORTS.—The methodology com-*
23 *mittee shall submit reports to the Board on the*
24 *committee’s performance of the functions de-*
25 *scribed in subparagraph (C). Reports shall con-*

1 *tain recommendations for the Institute to adopt*
2 *methodological standards developed and updated*
3 *by the methodology committee as well as other*
4 *actions deemed necessary to comply with such*
5 *methodological standards.*

6 “(7) *PROVIDING FOR A PEER-REVIEW PROCESS*
7 *FOR PRIMARY RESEARCH.—*

8 “(A) *IN GENERAL.—The Institute shall en-*
9 *sure that there is a process for peer review of*
10 *primary research described in subparagraph*
11 *(A)(ii) of paragraph (2) that is conducted under*
12 *such paragraph. Under such process—*

13 “(i) *evidence from such primary re-*
14 *search shall be reviewed to assess scientific*
15 *integrity and adherence to methodological*
16 *standards adopted under paragraph (9);*
17 *and*

18 “(ii) *a list of the names of individuals*
19 *contributing to any peer-review process dur-*
20 *ing the preceding year or years shall be*
21 *made public and included in annual reports*
22 *in accordance with paragraph (10)(D).*

23 “(B) *COMPOSITION.—Such peer-review*
24 *process shall be designed in a manner so as to*
25 *avoid bias and conflicts of interest on the part*

1 *of the reviewers and shall be composed of experts*
2 *in the scientific field relevant to the research*
3 *under review.*

4 “(C) *USE OF EXISTING PROCESSES.*—

5 “(i) *PROCESSES OF ANOTHER ENTI-*
6 *TY.*—*In the case where the Institute enters*
7 *into a contract or other agreement with an-*
8 *other entity for the conduct or management*
9 *of research under this section, the Institute*
10 *may utilize the peer-review process of such*
11 *entity if such process meets the requirements*
12 *under subparagraphs (A) and (B).*

13 “(ii) *PROCESSES OF APPROPRIATE*
14 *MEDICAL JOURNALS.*—*The Institute may*
15 *utilize the peer-review process of appro-*
16 *priate medical journals if such process*
17 *meets the requirements under subpara-*
18 *graphs (A) and (B).*

19 “(8) *RELEASE OF RESEARCH FINDINGS.*—

20 “(A) *IN GENERAL.*—*The Institute shall, not*
21 *later than 90 days after the conduct or receipt*
22 *of research findings under this part, make such*
23 *research findings available to clinicians, pa-*
24 *tients, and the general public. The Institute shall*
25 *ensure that the research findings—*

1 “(i) convey the findings of research in
2 a manner that is comprehensible and useful
3 to patients and providers in making health
4 care decisions;

5 “(ii) fully convey findings and discuss
6 considerations specific to certain subpopula-
7 tions, risk factors, and comorbidities, as ap-
8 propriate;

9 “(iii) include limitations of the re-
10 search and what further research may be
11 needed as appropriate;

12 “(iv) not be construed as mandates for
13 practice guidelines, coverage recommenda-
14 tions, payment, or policy recommendations;
15 and

16 “(v) not include any data which would
17 violate the privacy of research participants
18 or any confidentiality agreements made
19 with respect to the use of data under this
20 section.

21 “(B) DEFINITION OF RESEARCH FIND-
22 INGS.—In this paragraph, the term ‘research
23 findings’ means the results of a study or assess-
24 ment.

1 “(9) *ADOPTION.*—*Subject to subsection (h)(1),*
2 *the Institute shall adopt the national priorities iden-*
3 *tified under paragraph (1)(A), the research project*
4 *agenda established under paragraph (1)(B), the meth-*
5 *odological standards developed and updated by the*
6 *methodology committee under paragraph (6)(C)(i),*
7 *and any peer-review process provided under para-*
8 *graph (7) by majority vote. In the case where the In-*
9 *stitute does not adopt such processes in accordance*
10 *with the preceding sentence, the processes shall be re-*
11 *ferred to the appropriate staff or entity within the In-*
12 *stitute (or, in the case of the methodological stand-*
13 *ards, the methodology committee) for further review.*

14 “(10) *ANNUAL REPORTS.*—*The Institute shall*
15 *submit an annual report to Congress and the Presi-*
16 *dent, and shall make the annual report available to*
17 *the public. Such report shall contain—*

18 “(A) *a description of the activities con-*
19 *ducted under this section, research priorities*
20 *identified under paragraph (1)(A) and methodo-*
21 *logical standards developed and updated by the*
22 *methodology committee under paragraph*
23 *(6)(C)(i) that are adopted under paragraph (9)*
24 *during the preceding year;*

1 “(B) *the research project agenda and budget*
2 *of the Institute for the following year;*

3 “(C) *any administrative activities con-*
4 *ducted by the Institute during the preceding*
5 *year;*

6 “(D) *the names of individuals contributing*
7 *to any peer-review process under paragraph (7),*
8 *without identifying them with a particular re-*
9 *search project; and*

10 “(E) *any other relevant information (in-*
11 *cluding information on the membership of the*
12 *Board, expert advisory panels, methodology com-*
13 *mittee, and the executive staff of the Institute,*
14 *any conflicts of interest with respect to these in-*
15 *dividuals, and any bylaws adopted by the Board*
16 *during the preceding year).*

17 “(e) *ADMINISTRATION.—*

18 “(1) *IN GENERAL.—Subject to paragraph (2), the*
19 *Board shall carry out the duties of the Institute.*

20 “(2) *NONDELEGABLE DUTIES.—The activities de-*
21 *scribed in subsections (d)(1) and (d)(9) are nondele-*
22 *gable.*

23 “(f) *BOARD OF GOVERNORS.—*

1 “(1) *IN GENERAL.*—*The Institute shall have a*
2 *Board of Governors, which shall consist of the fol-*
3 *lowing members:*

4 “(A) *The Director of Agency for Healthcare*
5 *Research and Quality (or the Director’s des-*
6 *ignee).*

7 “(B) *The Director of the National Institutes*
8 *of Health (or the Director’s designee).*

9 “(C) *Seventeen members appointed, not*
10 *later than 6 months after the date of enactment*
11 *of this section, by the Comptroller General of the*
12 *United States as follows:*

13 “(i) *3 members representing patients*
14 *and health care consumers.*

15 “(ii) *5 members representing physi-*
16 *cians and providers, including at least 1*
17 *surgeon, nurse, State-licensed integrative*
18 *health care practitioner, and representative*
19 *of a hospital.*

20 “(iii) *3 members representing private*
21 *payers, of whom at least 1 member shall*
22 *represent health insurance issuers and at*
23 *least 1 member shall represent employers*
24 *who self-insure employee benefits.*

1 “(iv) 3 members representing pharma-
2 ceutical, device, and diagnostic manufactur-
3 ers or developers.

4 “(v) 1 member representing quality
5 improvement or independent health service
6 researchers.

7 “(vi) 2 members representing the Fed-
8 eral Government or the States, including at
9 least 1 member representing a Federal
10 health program or agency.

11 “(2) QUALIFICATIONS.—The Board shall rep-
12 resent a broad range of perspectives and collectively
13 have scientific expertise in clinical health sciences re-
14 search, including epidemiology, decisions sciences,
15 health economics, and statistics. In appointing the
16 Board, the Comptroller General of the United States
17 shall consider and disclose any conflicts of interest in
18 accordance with subsection (h)(4)(B). Members of the
19 Board shall be recused from relevant Institute activi-
20 ties in the case where the member (or an immediate
21 family member of such member) has a real conflict of
22 interest directly related to the research project or the
23 matter that could affect or be affected by such partici-
24 pation.

1 “(3) *TERMS; VACANCIES.*—*A member of the*
2 *Board shall be appointed for a term of 6 years, except*
3 *with respect to the members first appointed, whose*
4 *terms of appointment shall be staggered evenly over 2-*
5 *year increments. No individual shall be appointed to*
6 *the Board for more than 2 terms. Vacancies shall be*
7 *filled in the same manner as the original appoint-*
8 *ment was made.*

9 “(4) *CHAIRPERSON AND VICE-CHAIRPERSON.*—
10 *The Comptroller General of the United States shall*
11 *designate a Chairperson and Vice Chairperson of the*
12 *Board from among the members of the Board. Such*
13 *members shall serve as Chairperson or Vice Chair-*
14 *person for a period of 3 years.*

15 “(5) *COMPENSATION.*—*Each member of the*
16 *Board who is not an officer or employee of the Fed-*
17 *eral Government shall be entitled to compensation*
18 *(equivalent to the rate provided for level IV of the Ex-*
19 *ecutive Schedule under section 5315 of title 5, United*
20 *States Code) and expenses incurred while performing*
21 *the duties of the Board. An officer or employee of the*
22 *Federal government who is a member of the Board*
23 *shall be exempt from compensation.*

24 “(6) *DIRECTOR AND STAFF; EXPERTS AND CON-*
25 *SULTANTS.*—*The Board may employ and fix the com-*

1 *persone of an Executive Director and such other*
2 *personnel as may be necessary to carry out the duties*
3 *of the Institute and may seek such assistance and*
4 *support of, or contract with, experts and consultants*
5 *that may be necessary for the performance of the du-*
6 *ties of the Institute.*

7 “(7) *MEETINGS AND HEARINGS.*—*The Board*
8 *shall meet and hold hearings at the call of the Chair-*
9 *person or a majority of its members. Meetings not*
10 *solely concerning matters of personnel shall be adver-*
11 *tised at least 7 days in advance and open to the pub-*
12 *lic. A majority of the Board members shall constitute*
13 *a quorum, but a lesser number of members may meet*
14 *and hold hearings.*

15 “(g) *FINANCIAL AND GOVERNMENTAL OVERSIGHT.*—

16 “(1) *CONTRACT FOR AUDIT.*—*The Institute shall*
17 *provide for the conduct of financial audits of the In-*
18 *stitute on an annual basis by a private entity with*
19 *expertise in conducting financial audits.*

20 “(2) *REVIEW AND ANNUAL REPORTS.*—

21 “(A) *REVIEW.*—*The Comptroller General of*
22 *the United States shall review the following:*

23 “(i) *Not less frequently than on an an-*
24 *ual basis, the financial audits conducted*
25 *under paragraph (1).*

1 “(ii) Not less frequently than every 5
2 years, the processes established by the Insti-
3 tute, including the research priorities and
4 the conduct of research projects, in order to
5 determine whether information produced by
6 such research projects is objective and cred-
7 ible, is produced in a manner consistent
8 with the requirements under this section,
9 and is developed through a transparent
10 process.

11 “(iii) Not less frequently than every 5
12 years, the dissemination and training ac-
13 tivities and data networks established under
14 section 937 of the Public Health Service
15 Act, including the methods and products
16 used to disseminate research, the types of
17 training conducted and supported, and the
18 types and functions of the data networks es-
19 tablished, in order to determine whether the
20 activities and data are produced in a man-
21 ner consistent with the requirements under
22 such section.

23 “(iv) Not less frequently than every 5
24 years, the overall effectiveness of activities
25 conducted under this section and the dis-

1 *semination, training, and capacity building*
2 *activities conducted under section 937 of the*
3 *Public Health Service Act. Such review*
4 *shall include an analysis of the extent to*
5 *which research findings are used by health*
6 *care decision-makers, the effect of the dis-*
7 *semination of such findings on reducing*
8 *practice variation and disparities in health*
9 *care, and the effect of the research conducted*
10 *and disseminated on innovation and the*
11 *health care economy of the United States.*

12 “(v) Not later than 8 years after the
13 date of enactment of this section, the ade-
14 quacy and use of the funding for the Insti-
15 tute and the activities conducted under sec-
16 tion 937 of the Public Health Service Act,
17 including a determination as to whether,
18 based on the utilization of research findings
19 by public and private payers, funding
20 sources for the Patient-Centered Outcomes
21 Research Trust Fund under section 9511 of
22 the Internal Revenue Code of 1986 are ap-
23 propriate and whether such sources of fund-
24 ing should be continued or adjusted.

1 “(B) *ANNUAL REPORTS.*—Not later than
2 *April 1 of each year, the Comptroller General of*
3 *the United States shall submit to Congress a re-*
4 *port containing the results of the review con-*
5 *ducted under subparagraph (A) with respect to*
6 *the preceding year (or years, if applicable), to-*
7 *gether with recommendations for such legislation*
8 *and administrative action as the Comptroller*
9 *General determines appropriate.*

10 “(h) *ENSURING TRANSPARENCY, CREDIBILITY, AND*
11 *ACCESS.*—*The Institute shall establish procedures to ensure*
12 *that the following requirements for ensuring transparency,*
13 *credibility, and access are met:*

14 “(1) *PUBLIC COMMENT PERIODS.*—*The Institute*
15 *shall provide for a public comment period of not less*
16 *than 45 days and not more than 60 days prior to the*
17 *adoption under subsection (d)(9) of the national pri-*
18 *orities identified under subsection (d)(1)(A), the re-*
19 *search project agenda established under subsection*
20 *(d)(1)(B), the methodological standards developed and*
21 *updated by the methodology committee under sub-*
22 *section (d)(6)(C)(i), and the peer-review process pro-*
23 *vided under paragraph (7), and after the release of*
24 *draft findings with respect to systematic reviews of*
25 *existing research and evidence.*

1 “(2) *ADDITIONAL FORUMS.*—*The Institute shall*
2 *support forums to increase public awareness and ob-*
3 *tain and incorporate public input and feedback*
4 *through media (such as an Internet website) on re-*
5 *search priorities, research findings, and other duties,*
6 *activities, or processes the Institute determines appro-*
7 *priate.*

8 “(3) *PUBLIC AVAILABILITY.*—*The Institute shall*
9 *make available to the public and disclose through the*
10 *official public Internet website of the Institute the fol-*
11 *lowing:*

12 “(A) *Information contained in research*
13 *findings as specified in subsection (d)(9).*

14 “(B) *The process and methods for the con-*
15 *duct of research, including the identity of the en-*
16 *tity and the investigators conducting such re-*
17 *search and any conflicts of interests of such par-*
18 *ties, any direct or indirect links the entity has*
19 *to industry, and research protocols, including*
20 *measures taken, methods of research and anal-*
21 *ysis, research results, and such other information*
22 *the Institute determines appropriate) concurrent*
23 *with the release of research findings.*

1 “(C) Notice of public comment periods
2 under paragraph (1), including deadlines for
3 public comments.

4 “(D) Subsequent comments received during
5 each of the public comment periods.

6 “(E) In accordance with applicable laws
7 and processes and as the Institute determines ap-
8 propriate, proceedings of the Institute.

9 “(4) DISCLOSURE OF CONFLICTS OF INTER-
10 EST.—

11 “(A) IN GENERAL.—A conflict of interest
12 shall be disclosed in the following manner:

13 “(i) By the Institute in appointing
14 members to an expert advisory panel under
15 subsection (d)(4), in selecting individuals to
16 contribute to any peer-review process under
17 subsection (d)(7), and for employment as
18 executive staff of the Institute.

19 “(ii) By the Comptroller General in
20 appointing members of the methodology
21 committee under subsection (d)(6);

22 “(iii) By the Institute in the annual
23 report under subsection (d)(10), except that,
24 in the case of individuals contributing to
25 any such peer review process, such descrip-

1 *tion shall be in a manner such that those*
2 *individuals cannot be identified with a par-*
3 *ticular research project.*

4 “(B) *MANNER OF DISCLOSURE.*—*Conflicts*
5 *of interest shall be disclosed as described in sub-*
6 *paragraph (A) as soon as practicable on the*
7 *Internet web site of the Institute and of the Gov-*
8 *ernment Accountability Office. The information*
9 *disclosed under the preceding sentence shall in-*
10 *clude the type, nature, and magnitude of the in-*
11 *terests of the individual involved, except to the*
12 *extent that the individual recuses himself or her-*
13 *self from participating in the consideration of or*
14 *any other activity with respect to the study as*
15 *to which the potential conflict exists.*

16 “(i) *RULES.*—*The Institute, its Board or staff, shall*
17 *be prohibited from accepting gifts, bequeaths, or donations*
18 *of services or property. In addition, the Institute shall be*
19 *prohibited from establishing a corporation or generating*
20 *revenues from activities other than as provided under this*
21 *section.*

22 “(j) *RULES OF CONSTRUCTION.*—

23 “(1) *COVERAGE.*—*Nothing in this section shall*
24 *be construed—*

1 *comes Research Institute established under section*
2 *1181(b) of the Social Security Act (referred to in this*
3 *section as the ‘Institute’) and other government-fund-*
4 *ed research relevant to comparative clinical effective-*
5 *ness research. The Office shall create informational*
6 *tools that organize and disseminate research findings*
7 *for physicians, health care providers, patients, payers,*
8 *and policy makers. The Office shall also develop a*
9 *publicly available resource database that collects and*
10 *contains government-funded evidence and research*
11 *from public, private, not-for profit, and academic*
12 *sources.*

13 *“(2) REQUIREMENTS.—The Office shall provide*
14 *for the dissemination of the Institute’s research find-*
15 *ings and government-funded research relevant to com-*
16 *parative clinical effectiveness research to physicians,*
17 *health care providers, patients, vendors of health in-*
18 *formation technology focused on clinical decision sup-*
19 *port, appropriate professional associations, and Fed-*
20 *eral and private health plans. Materials, forums, and*
21 *media used to disseminate the findings, informational*
22 *tools, and resource databases shall—*

23 *“(A) include a description of considerations*
24 *for specific subpopulations, the research method-*
25 *ology, and the limitations of the research, and*

1 *the names of the entities, agencies, instrumental-*
2 *ities, and individuals who conducted any re-*
3 *search which was published by the Institute; and*

4 *“(B) not be construed as mandates, guide-*
5 *lines, or recommendations for payment, coverage,*
6 *or treatment.*

7 *“(b) INCORPORATION OF RESEARCH FINDINGS.—The*
8 *Office, in consultation with relevant medical and clinical*
9 *associations, shall assist users of health information tech-*
10 *nology focused on clinical decision support to promote the*
11 *timely incorporation of research findings disseminated*
12 *under subsection (a) into clinical practices and to promote*
13 *the ease of use of such incorporation.*

14 *“(c) FEEDBACK.—The Office shall establish a process*
15 *to receive feedback from physicians, health care providers,*
16 *patients, and vendors of health information technology fo-*
17 *cused on clinical decision support, appropriate professional*
18 *associations, and Federal and private health plans about*
19 *the value of the information disseminated and the assist-*
20 *ance provided under this section.*

21 *“(d) RULE OF CONSTRUCTION.—Nothing in this sec-*
22 *tion shall preclude the Institute from making its research*
23 *findings publicly available as required under section*
24 *1181(d)(8) of the Social Security Act.*

1 “(e) *TRAINING OF RESEARCHERS.*—*The Agency for*
2 *Health Care Research and Quality, in consultation with*
3 *the National Institutes of Health, shall build capacity for*
4 *comparative clinical effectiveness research by establishing a*
5 *grant program that provides for the training of researchers*
6 *in the methods used to conduct such research, including sys-*
7 *tematic reviews of existing research and primary research*
8 *such as clinical trials. At a minimum, such training shall*
9 *be in methods that meet the methodological standards*
10 *adopted under section 1181(d)(9) of the Social Security Act.*

11 “(f) *BUILDING DATA FOR RESEARCH.*—*The Secretary*
12 *shall provide for the coordination of relevant Federal health*
13 *programs to build data capacity for comparative clinical*
14 *effectiveness research, including the development and use of*
15 *clinical registries and health outcomes research data net-*
16 *works, in order to develop and maintain a comprehensive,*
17 *interoperable data network to collect, link, and analyze data*
18 *on outcomes and effectiveness from multiple sources, includ-*
19 *ing electronic health records.*

20 “(g) *AUTHORITY TO CONTRACT WITH THE INSTI-*
21 *TUTE.*—*Agencies and instrumentalities of the Federal Gov-*
22 *ernment may enter into agreements with the Institute, and*
23 *accept and retain funds, for the conduct and support of re-*
24 *search described in this part, provided that the research to*
25 *be conducted or supported under such agreements is author-*

1 ized under the governing statutes of such agencies and in-
2 strumentalities.”.

3 (c) *IN GENERAL.*—Part D of title XI of the Social Se-
4 curity Act, as added by subsection (a), is amended by add-
5 ing at the end the following new section:

6 “LIMITATIONS ON CERTAIN USES OF COMPARATIVE
7 CLINICAL EFFECTIVENESS RESEARCH

8 “SEC. 1182. (a) *The Secretary may only use evidence*
9 *and findings from research conducted under section 1181*
10 *to make a determination regarding coverage under title*
11 *XVIII if such use is through an iterative and transparent*
12 *process which includes public comment and considers the*
13 *effect on subpopulations.*

14 “(b) *Nothing in section 1181 shall be construed as—*

15 “(1) *superceding or modifying the coverage of*
16 *items or services under title XVIII that the Secretary*
17 *determines are reasonable and necessary under section*
18 *1862(l)(1); or*

19 “(2) *authorizing the Secretary to deny coverage*
20 *of items or services under such title solely on the basis*
21 *of comparative clinical effectiveness research.*

22 “(c)(1) *The Secretary shall not use evidence or findings*
23 *from comparative clinical effectiveness research conducted*
24 *under section 1181 in determining coverage, reimburse-*
25 *ment, or incentive programs under title XVIII in a manner*
26 *that treats extending the life of an elderly, disabled, or ter-*

1 *minally ill individual as of lower value than extending the*
2 *life of an individual who is younger, nondisabled, or not*
3 *terminally ill.*

4 “(2) Paragraph (1) shall not be construed as pre-
5 *venting the Secretary from using evidence or findings from*
6 *such comparative clinical effectiveness research in deter-*
7 *mining coverage, reimbursement, or incentive programs*
8 *under title XVIII based upon a comparison of the difference*
9 *in the effectiveness of alternative treatments in extending*
10 *an individual’s life due to the individual’s age, disability,*
11 *or terminal illness.*

12 “(d)(1) The Secretary shall not use evidence or find-
13 *ings from comparative clinical effectiveness research con-*
14 *ducted under section 1181 in determining coverage, reim-*
15 *bursement, or incentive programs under title XVIII in a*
16 *manner that precludes, or with the intent to discourage, an*
17 *individual from choosing a health care treatment based on*
18 *how the individual values the tradeoff between extending*
19 *the length of their life and the risk of disability.*

20 “(2)(A) Paragraph (1) shall not be construed to—

21 “(i) *limit the application of differential copay-*
22 *ments under title XVIII based on factors such as cost*
23 *or type of service; or*

24 “(ii) *prevent the Secretary from using evidence*
25 *or findings from such comparative clinical effective-*

1 *ness research in determining coverage, reimbursement,*
2 *or incentive programs under such title based upon a*
3 *comparison of the difference in the effectiveness of al-*
4 *ternative health care treatments in extending an indi-*
5 *vidual's life due to that individual's age, disability,*
6 *or terminal illness.*

7 *“(3) Nothing in the provisions of, or amendments*
8 *made by the Patient Protection and Affordable Care Act,*
9 *shall be construed to limit comparative clinical effectiveness*
10 *research or any other research, evaluation, or dissemination*
11 *of information concerning the likelihood that a health care*
12 *treatment will result in disability.*

13 *“(e) The Patient-Centered Outcomes Research Institute*
14 *established under section 1181(b)(1) shall not develop or*
15 *employ a dollars-per-quality adjusted life year (or similar*
16 *measure that discounts the value of a life because of an indi-*
17 *vidual's disability) as a threshold to establish what type*
18 *of health care is cost effective or recommended. The Sec-*
19 *retary shall not utilize such an adjusted life year (or such*
20 *a similar measure) as a threshold to determine coverage,*
21 *reimbursement, or incentive programs under title XVIII.”.*

22 *(d) IN GENERAL.—Part D of title XI of the Social Se-*
23 *curity Act, as added by subsection (a) and amended by sub-*
24 *section (c), is amended by adding at the end the following*
25 *new section:*

1 *“TRUST FUND TRANSFERS TO PATIENT-CENTERED*
2 *OUTCOMES RESEARCH TRUST FUND*

3 *“SEC. 1183. (a) IN GENERAL.—The Secretary shall*
4 *provide for the transfer, from the Federal Hospital Insur-*
5 *ance Trust Fund under section 1817 and the Federal Sup-*
6 *plementary Medical Insurance Trust Fund under section*
7 *1841, in proportion (as estimated by the Secretary) to the*
8 *total expenditures during such fiscal year that are made*
9 *under title XVIII from the respective trust fund, to the Pa-*
10 *tient-Centered Outcomes Research Trust Fund (referred to*
11 *in this section as the ‘PCORTF’) under section 9511 of the*
12 *Internal Revenue Code of 1986, of the following:*

13 *“(1) For fiscal year 2013, an amount equal to*
14 *\$1 multiplied by the average number of individuals*
15 *entitled to benefits under part A, or enrolled under*
16 *part B, of title XVIII during such fiscal year.*

17 *“(2) For each of fiscal years 2014, 2015, 2016,*
18 *2017, 2018, and 2019, an amount equal to \$2 multi-*
19 *plied by the average number of individuals entitled to*
20 *benefits under part A, or enrolled under part B, of*
21 *title XVIII during such fiscal year.*

22 *“(b) ADJUSTMENTS FOR INCREASES IN HEALTH CARE*
23 *SPENDING.—In the case of any fiscal year beginning after*
24 *September 30, 2014, the dollar amount in effect under sub-*
25 *section (a)(2) for such fiscal year shall be equal to the sum*

1 of such dollar amount for the previous fiscal year (deter-
 2 mined after the application of this subsection), plus an
 3 amount equal to the product of—

4 “(1) such dollar amount for the previous fiscal
 5 year, multiplied by

6 “(2) the percentage increase in the projected per
 7 capita amount of National Health Expenditures, as
 8 most recently published by the Secretary before the be-
 9 ginning of the fiscal year.”.

10 (e) *PATIENT-CENTERED OUTCOMES RESEARCH TRUST*
 11 *FUND; FINANCING FOR TRUST FUND.*—

12 (1) *ESTABLISHMENT OF TRUST FUND.*—

13 (A) *IN GENERAL.*—Subchapter A of chapter
 14 98 of the Internal Revenue Code of 1986 (relat-
 15 ing to establishment of trust funds) is amended
 16 by adding at the end the following new section:

17 **“SEC. 9511. PATIENT-CENTERED OUTCOMES RESEARCH**
 18 **TRUST FUND.**

19 “(a) *CREATION OF TRUST FUND.*—There is established
 20 in the Treasury of the United States a trust fund to be
 21 known as the ‘Patient-Centered Outcomes Research Trust
 22 Fund’ (hereafter in this section referred to as the
 23 ‘PCORTF’), consisting of such amounts as may be appro-
 24 priated or credited to such Trust Fund as provided in this
 25 section and section 9602(b).

1 “(b) *TRANSFERS TO FUND.*—

2 “(1) *APPROPRIATION.*—*There are hereby appro-*
3 *priated to the Trust Fund the following:*

4 “(A) *For fiscal year 2010, \$10,000,000.*

5 “(B) *For fiscal year 2011, \$50,000,000.*

6 “(C) *For fiscal year 2012, \$150,000,000.*

7 “(D) *For fiscal year 2013—*

8 “(i) *an amount equivalent to the net*
9 *revenues received in the Treasury from the*
10 *fees imposed under subchapter B of chapter*
11 *34 (relating to fees on health insurance and*
12 *self-insured plans) for such fiscal year; and*

13 “(ii) *\$150,000,000.*

14 “(E) *For each of fiscal years 2014, 2015,*
15 *2016, 2017, 2018, and 2019—*

16 “(i) *an amount equivalent to the net*
17 *revenues received in the Treasury from the*
18 *fees imposed under subchapter B of chapter*
19 *34 (relating to fees on health insurance and*
20 *self-insured plans) for such fiscal year; and*

21 “(ii) *\$150,000,000.*

22 *The amounts appropriated under subparagraphs*
23 *(A), (B), (C), (D)(i), and (E)(i) shall be trans-*
24 *ferred from the general fund of the Treasury,*
25 *from funds not otherwise appropriated.*

1 “(2) *TRUST FUND TRANSFERS.*—*In addition to*
2 *the amounts appropriated under paragraph (1), there*
3 *shall be credited to the PCORTF the amounts trans-*
4 *ferred under section 1183 of the Social Security Act.*

5 “(3) *LIMITATION ON TRANSFERS TO PCORTF.*—
6 *No amount may be appropriated or transferred to the*
7 *PCORTF on and after the date of any expenditure*
8 *from the PCORTF which is not an expenditure per-*
9 *mitted under this section. The determination of*
10 *whether an expenditure is so permitted shall be made*
11 *without regard to—*

12 “(A) *any provision of law which is not con-*
13 *tained or referenced in this chapter or in a rev-*
14 *enue Act, and*

15 “(B) *whether such provision of law is a sub-*
16 *sequently enacted provision or directly or indi-*
17 *rectly seeks to waive the application of this para-*
18 *graph.*

19 “(c) *TRUSTEE.*—*The Secretary of the Treasury shall*
20 *be a trustee of the PCORTF.*

21 “(d) *EXPENDITURES FROM FUND.*—

22 “(1) *AMOUNTS AVAILABLE TO THE PATIENT-CEN-*
23 *TERED OUTCOMES RESEARCH INSTITUTE.*—*Subject to*
24 *paragraph (2), amounts in the PCORTF are avail-*
25 *able, without further appropriation, to the Patient-*

1 *Centered Outcomes Research Institute established*
2 *under section 1181(b) of the Social Security Act for*
3 *carrying out part D of title XI of the Social Security*
4 *Act (as in effect on the date of enactment of such Act).*

5 “(2) *TRANSFER OF FUNDS.*—

6 “(A) *IN GENERAL.*—*The trustee of the*
7 *PCORTF shall provide for the transfer from the*
8 *PCORTF of 20 percent of the amounts appro-*
9 *priated or credited to the PCORTF for each of*
10 *fiscal years 2011 through 2019 to the Secretary*
11 *of Health and Human Services to carry out sec-*
12 *tion 937 of the Public Health Service Act.*

13 “(B) *AVAILABILITY.*—*Amounts transferred*
14 *under subparagraph (A) shall remain available*
15 *until expended.*

16 “(C) *REQUIREMENTS.*—*Of the amounts*
17 *transferred under subparagraph (A) with respect*
18 *to a fiscal year, the Secretary of Health and*
19 *Human Services shall distribute—*

20 “(i) *80 percent to the Office of Commu-*
21 *nication and Knowledge Transfer of the*
22 *Agency for Healthcare Research and Qual-*
23 *ity (or any other relevant office designated*
24 *by Agency for Healthcare Research and*
25 *Quality) to carry out the activities de-*

1 scribed in section 937 of the Public Health
2 Service Act; and

3 “(ii) 20 percent to the Secretary to
4 carry out the activities described in such
5 section 937.

6 “(e) *NET REVENUES*.—For purposes of this section, the
7 term ‘net revenues’ means the amount estimated by the Sec-
8 retary of the Treasury based on the excess of—

9 “(1) the fees received in the Treasury under sub-
10 chapter B of chapter 34, over

11 “(2) the decrease in the tax imposed by chapter
12 1 resulting from the fees imposed by such subchapter.

13 “(f) *TERMINATION*.—No amounts shall be available for
14 expenditure from the PCORTF after September 30, 2019,
15 and any amounts in such Trust Fund after such date shall
16 be transferred to the general fund of the Treasury.”.

17 (B) *CLERICAL AMENDMENT*.—The table of
18 sections for subchapter A of chapter 98 of such
19 Code is amended by adding at the end the fol-
20 lowing new item:

“Sec. 9511. Patient-centered outcomes research trust fund.”.

21 (2) *FINANCING FOR FUND FROM FEES ON IN-*
22 *SURED AND SELF-INSURED HEALTH PLANS*.—

23 (A) *GENERAL RULE*.—Chapter 34 of the In-
24 ternal Revenue Code of 1986 is amended by add-
25 ing at the end the following new subchapter:

1 **“Subchapter B—Insured and Self-Insured**
2 **Health Plans**

“Sec. 4375. Health insurance.

“Sec. 4376. Self-insured health plans.

“Sec. 4377. Definitions and special rules.

3 **“SEC. 4375. HEALTH INSURANCE.**

4 “(a) *IMPOSITION OF FEE.*—There is hereby imposed
5 on each specified health insurance policy for each policy
6 year ending after September 30, 2012, a fee equal to the
7 product of \$2 (\$1 in the case of policy years ending during
8 fiscal year 2013) multiplied by the average number of lives
9 covered under the policy.

10 “(b) *LIABILITY FOR FEE.*—The fee imposed by sub-
11 section (a) shall be paid by the issuer of the policy.

12 “(c) *SPECIFIED HEALTH INSURANCE POLICY.*—For
13 purposes of this section:

14 “(1) *IN GENERAL.*—Except as otherwise provided
15 in this section, the term ‘specified health insurance
16 policy’ means any accident or health insurance policy
17 (including a policy under a group health plan) issued
18 with respect to individuals residing in the United
19 States.

20 “(2) *EXEMPTION FOR CERTAIN POLICIES.*—The
21 term ‘specified health insurance policy’ does not in-
22 clude any insurance if substantially all of its coverage
23 is of excepted benefits described in section 9832(c).

1 “(3) *TREATMENT OF PREPAID HEALTH COV-*
2 *ERAGE ARRANGEMENTS.—*

3 “(A) *IN GENERAL.—In the case of any ar-*
4 *rangement described in subparagraph (B), such*
5 *arrangement shall be treated as a specified*
6 *health insurance policy, and the person referred*
7 *to in such subparagraph shall be treated as the*
8 *issuer.*

9 “(B) *DESCRIPTION OF ARRANGEMENTS.—*
10 *An arrangement is described in this subpara-*
11 *graph if under such arrangement fixed payments*
12 *or premiums are received as consideration for*
13 *any person’s agreement to provide or arrange for*
14 *the provision of accident or health coverage to*
15 *residents of the United States, regardless of how*
16 *such coverage is provided or arranged to be pro-*
17 *vided.*

18 “(d) *ADJUSTMENTS FOR INCREASES IN HEALTH CARE*
19 *SPENDING.—In the case of any policy year ending in any*
20 *fiscal year beginning after September 30, 2014, the dollar*
21 *amount in effect under subsection (a) for such policy year*
22 *shall be equal to the sum of such dollar amount for policy*
23 *years ending in the previous fiscal year (determined after*
24 *the application of this subsection), plus an amount equal*
25 *to the product of—*

1 “(1) *such dollar amount for policy years ending*
2 *in the previous fiscal year, multiplied by*

3 “(2) *the percentage increase in the projected per*
4 *capita amount of National Health Expenditures, as*
5 *most recently published by the Secretary before the be-*
6 *ginning of the fiscal year.*

7 “(e) *TERMINATION.—This section shall not apply to*
8 *policy years ending after September 30, 2019.*

9 **“SEC. 4376. SELF-INSURED HEALTH PLANS.**

10 “(a) *IMPOSITION OF FEE.—In the case of any applica-*
11 *ble self-insured health plan for each plan year ending after*
12 *September 30, 2012, there is hereby imposed a fee equal to*
13 *\$2 (\$1 in the case of plan years ending during fiscal year*
14 *2013) multiplied by the average number of lives covered*
15 *under the plan.*

16 “(b) *LIABILITY FOR FEE.—*

17 “(1) *IN GENERAL.—The fee imposed by sub-*
18 *section (a) shall be paid by the plan sponsor.*

19 “(2) *PLAN SPONSOR.—For purposes of para-*
20 *graph (1) the term ‘plan sponsor’ means—*

21 “(A) *the employer in the case of a plan es-*
22 *tablished or maintained by a single employer,*

23 “(B) *the employee organization in the case*
24 *of a plan established or maintained by an em-*
25 *ployee organization,*

1 “(C) *in the case of—*

2 “(i) *a plan established or maintained*
3 *by 2 or more employers or jointly by 1 or*
4 *more employers and 1 or more employee or-*
5 *ganizations,*

6 “(ii) *a multiple employer welfare ar-*
7 *rangement, or*

8 “(iii) *a voluntary employees’ bene-*
9 *ficiary association described in section*
10 *501(c)(9), the association, committee, joint*
11 *board of trustees, or other similar group of*
12 *representatives of the parties who establish*
13 *or maintain the plan, or*

14 “(D) *the cooperative or association de-*
15 *scribed in subsection (c)(2)(F) in the case of a*
16 *plan established or maintained by such a cooper-*
17 *ative or association.*

18 “(c) *APPLICABLE SELF-INSURED HEALTH PLAN.—For*
19 *purposes of this section, the term ‘applicable self-insured*
20 *health plan’ means any plan for providing accident or*
21 *health coverage if—*

22 “(1) *any portion of such coverage is provided*
23 *other than through an insurance policy, and*

24 “(2) *such plan is established or maintained—*

1 “(A) by 1 or more employers for the benefit
2 of their employees or former employees,

3 “(B) by 1 or more employee organizations
4 for the benefit of their members or former mem-
5 bers,

6 “(C) jointly by 1 or more employers and 1
7 or more employee organizations for the benefit of
8 employees or former employees,

9 “(D) by a voluntary employees’ beneficiary
10 association described in section 501(c)(9),

11 “(E) by any organization described in sec-
12 tion 501(c)(6), or

13 “(F) in the case of a plan not described in
14 the preceding subparagraphs, by a multiple em-
15 ployer welfare arrangement (as defined in sec-
16 tion 3(40) of Employee Retirement Income Secu-
17 rity Act of 1974), a rural electric cooperative (as
18 defined in section 3(40)(B)(iv) of such Act), or
19 a rural telephone cooperative association (as de-
20 fined in section 3(40)(B)(v) of such Act).

21 “(d) *ADJUSTMENTS FOR INCREASES IN HEALTH CARE*
22 *SPENDING.*—In the case of any plan year ending in any
23 fiscal year beginning after September 30, 2014, the dollar
24 amount in effect under subsection (a) for such plan year
25 shall be equal to the sum of such dollar amount for plan

1 *years ending in the previous fiscal year (determined after*
2 *the application of this subsection), plus an amount equal*
3 *to the product of—*

4 “(1) *such dollar amount for plan years ending*
5 *in the previous fiscal year, multiplied by*

6 “(2) *the percentage increase in the projected per*
7 *capita amount of National Health Expenditures, as*
8 *most recently published by the Secretary before the be-*
9 *ginning of the fiscal year.*

10 “(e) *TERMINATION.—This section shall not apply to*
11 *plan years ending after September 30, 2019.*

12 **“SEC. 4377. DEFINITIONS AND SPECIAL RULES.**

13 “(a) *DEFINITIONS.—For purposes of this subchapter—*

14 “(1) *ACCIDENT AND HEALTH COVERAGE.—The*
15 *term ‘accident and health coverage’ means any cov-*
16 *erage which, if provided by an insurance policy,*
17 *would cause such policy to be a specified health insur-*
18 *ance policy (as defined in section 4375(c)).*

19 “(2) *INSURANCE POLICY.—The term ‘insurance*
20 *policy’ means any policy or other instrument whereby*
21 *a contract of insurance is issued, renewed, or ex-*
22 *tended.*

23 “(3) *UNITED STATES.—The term ‘United States’*
24 *includes any possession of the United States.*

25 “(b) *TREATMENT OF GOVERNMENTAL ENTITIES.—*

1 “(1) *IN GENERAL.*—*For purposes of this sub-*
2 *chapter—*

3 “(A) *the term ‘person’ includes any govern-*
4 *mental entity, and*

5 “(B) *notwithstanding any other law or rule*
6 *of law, governmental entities shall not be exempt*
7 *from the fees imposed by this subchapter except*
8 *as provided in paragraph (2).*

9 “(2) *TREATMENT OF EXEMPT GOVERNMENTAL*
10 *PROGRAMS.*—*In the case of an exempt governmental*
11 *program, no fee shall be imposed under section 4375*
12 *or section 4376 on any covered life under such pro-*
13 *gram.*

14 “(3) *EXEMPT GOVERNMENTAL PROGRAM DE-*
15 *FINED.*—*For purposes of this subchapter, the term ‘ex-*
16 *empt governmental program’ means—*

17 “(A) *any insurance program established*
18 *under title XVIII of the Social Security Act,*

19 “(B) *the medical assistance program estab-*
20 *lished by title XIX or XXI of the Social Security*
21 *Act,*

22 “(C) *any program established by Federal*
23 *law for providing medical care (other than*
24 *through insurance policies) to individuals (or the*
25 *spouses and dependents thereof) by reason of*

1 *such individuals being members of the Armed*
 2 *Forces of the United States or veterans, and*

3 “(D) *any program established by Federal*
 4 *law for providing medical care (other than*
 5 *through insurance policies) to members of Indian*
 6 *tribes (as defined in section 4(d) of the Indian*
 7 *Health Care Improvement Act).*

8 “(c) *TREATMENT AS TAX.—For purposes of subtitle F,*
 9 *the fees imposed by this subchapter shall be treated as if*
 10 *they were taxes.*

11 “(d) *NO COVER OVER TO POSSESSIONS.—Notwith-*
 12 *standing any other provision of law, no amount collected*
 13 *under this subchapter shall be covered over to any posses-*
 14 *sion of the United States.”.*

15 (B) *CLERICAL AMENDMENTS.—*

16 (i) *Chapter 34 of such Code is amend-*
 17 *ed by striking the chapter heading and in-*
 18 *serting the following:*

19 **“CHAPTER 34—TAXES ON CERTAIN**
 20 **INSURANCE POLICIES**

 “SUBCHAPTER A. *POLICIES ISSUED BY FOREIGN INSURERS*

 “SUBCHAPTER B. *INSURED AND SELF-INSURED HEALTH PLANS*

21 **“Subchapter A—Policies Issued By Foreign**
 22 **Insurers”.**

23 (ii) *The table of chapters for subtitle D*
 24 *of such Code is amended by striking the*

1 *item relating to chapter 34 and inserting*
2 *the following new item:*

 “CHAPTER 34—TAXES ON CERTAIN INSURANCE POLICIES”.

3 (f) *TAX-EXEMPT STATUS OF THE PATIENT-CENTERED*
4 *OUTCOMES RESEARCH INSTITUTE.—Subsection 501(l) of*
5 *the Internal Revenue Code of 1986 is amended by adding*
6 *at the end the following new paragraph:*

7 “(4) *The Patient-Centered Outcomes Research*
8 *Institute established under section 1181(b) of the So-*
9 *cial Security Act.”.*

10 **SEC. 6302. FEDERAL COORDINATING COUNCIL FOR COM-**
11 **PARATIVE EFFECTIVENESS RESEARCH.**

12 *Notwithstanding any other provision of law, the Fed-*
13 *eral Coordinating Council for Comparative Effectiveness*
14 *Research established under section 804 of Division A of the*
15 *American Recovery and Reinvestment Act of 2009 (42*
16 *U.S.C. 299b–8), including the requirement under subsection*
17 *(e)(2) of such section, shall terminate on the date of enact-*
18 *ment of this Act.*

1 **Subtitle E—Medicare, Medicaid,**
2 **and CHIP Program Integrity**
3 **Provisions**

4 **SEC. 6401. PROVIDER SCREENING AND OTHER ENROLL-**
5 **MENT REQUIREMENTS UNDER MEDICARE,**
6 **MEDICAID, AND CHIP.**

7 (a) *MEDICARE.*—Section 1866(j) of the Social Security
8 Act (42 U.S.C. 1395cc(j)) is amended—

9 (1) in paragraph (1)(A), by adding at the end
10 the following: “Such process shall include screening of
11 providers and suppliers in accordance with para-
12 graph (2), a provisional period of enhanced oversight
13 in accordance with paragraph (3), disclosure require-
14 ments in accordance with paragraph (4), the imposi-
15 tion of temporary enrollment moratoria in accordance
16 with paragraph (5), and the establishment of compli-
17 ance programs in accordance with paragraph (6).”;

18 (2) by redesignating paragraph (2) as para-
19 graph (7); and

20 (3) by inserting after paragraph (1) the fol-
21 lowing:

22 “(2) *PROVIDER SCREENING.*—

23 “(A) *PROCEDURES.*—Not later than 180
24 days after the date of enactment of this para-
25 graph, the Secretary, in consultation with the

1 *Inspector General of the Department of Health*
2 *and Human Services, shall establish procedures*
3 *under which screening is conducted with respect*
4 *to providers of medical or other items or services*
5 *and suppliers under the program under this*
6 *title, the Medicaid program under title XIX, and*
7 *the CHIP program under title XXI.*

8 “(B) *LEVEL OF SCREENING.*—*The Secretary*
9 *shall determine the level of screening conducted*
10 *under this paragraph according to the risk of*
11 *fraud, waste, and abuse, as determined by the*
12 *Secretary, with respect to the category of pro-*
13 *vider of medical or other items or services or*
14 *supplier. Such screening—*

15 “(i) *shall include a licensure check,*
16 *which may include such checks across*
17 *States; and*

18 “(ii) *may, as the Secretary determines*
19 *appropriate based on the risk of fraud,*
20 *waste, and abuse described in the preceding*
21 *sentence, include—*

22 “(I) *a criminal background check;*

23 “(II) *fingerprinting;*

1 “(III) *unscheduled and unan-*
2 *nounced site visits, including*
3 *preenrollment site visits;*

4 “(IV) *database checks (including*
5 *such checks across States); and*

6 “(V) *such other screening as the*
7 *Secretary determines appropriate.*

8 “(C) *APPLICATION FEES.—*

9 “(i) *INDIVIDUAL PROVIDERS.—Except*
10 *as provided in clause (iii), the Secretary*
11 *shall impose a fee on each individual pro-*
12 *vider of medical or other items or services*
13 *or supplier (such as a physician, physician*
14 *assistant, nurse practitioner, or clinical*
15 *nurse specialist) with respect to which*
16 *screening is conducted under this paragraph*
17 *in an amount equal to—*

18 “(I) *for 2010, \$200; and*

19 “(II) *for 2011 and each subse-*
20 *quent year, the amount determined*
21 *under this clause for the preceding*
22 *year, adjusted by the percentage change*
23 *in the consumer price index for all*
24 *urban consumers (all items; United*
25 *States city average) for the 12-month*

1 *period ending with June of the pre-*
2 *vious year.*

3 “(ii) *INSTITUTIONAL PROVIDERS.—Ex-*
4 *cept as provided in clause (iii), the Sec-*
5 *retary shall impose a fee on each institu-*
6 *tional provider of medical or other items or*
7 *services or supplier (such as a hospital or*
8 *skilled nursing facility) with respect to*
9 *which screening is conducted under this*
10 *paragraph in an amount equal to—*

11 “(I) *for 2010, \$500; and*

12 “(II) *for 2011 and each subse-*
13 *quent year, the amount determined*
14 *under this clause for the preceding*
15 *year, adjusted by the percentage change*
16 *in the consumer price index for all*
17 *urban consumers (all items; United*
18 *States city average) for the 12-month*
19 *period ending with June of the pre-*
20 *vious year.*

21 “(iii) *HARDSHIP EXCEPTION; WAIVER*
22 *FOR CERTAIN MEDICAID PROVIDERS.—The*
23 *Secretary may, on a case-by-case basis, ex-*
24 *empt a provider of medical or other items*
25 *or services or supplier from the imposition*

1 *of an application fee under this subpara-*
2 *graph if the Secretary determines that the*
3 *imposition of the application fee would re-*
4 *sult in a hardship. The Secretary may*
5 *waive the application fee under this sub-*
6 *paragraph for providers enrolled in a State*
7 *Medicaid program for whom the State dem-*
8 *onstrates that imposition of the fee would*
9 *impede beneficiary access to care.*

10 “(iv) *USE OF FUNDS.—Amounts col-*
11 *lected as a result of the imposition of a fee*
12 *under this subparagraph shall be used by*
13 *the Secretary for program integrity efforts,*
14 *including to cover the costs of conducting*
15 *screening under this paragraph and to*
16 *carry out this subsection and section 1128J.*

17 “(D) *APPLICATION AND ENFORCEMENT.—*

18 “(i) *NEW PROVIDERS OF SERVICES AND*
19 *SUPPLIERS.—The screening under this*
20 *paragraph shall apply, in the case of a pro-*
21 *vider of medical or other items or services*
22 *or supplier who is not enrolled in the pro-*
23 *gram under this title, title XIX , or title*
24 *XXI as of the date of enactment of this*

1 *paragraph, on or after the date that is 1*
2 *year after such date of enactment.*

3 “(ii) *CURRENT PROVIDERS OF SERV-*
4 *ICES AND SUPPLIERS.—The screening under*
5 *this paragraph shall apply, in the case of a*
6 *provider of medical or other items or serv-*
7 *ices or supplier who is enrolled in the pro-*
8 *gram under this title, title XIX, or title XXI*
9 *as of such date of enactment, on or after the*
10 *date that is 2 years after such date of enact-*
11 *ment.*

12 “(iii) *REVALIDATION OF ENROLL-*
13 *MENT.—Effective beginning on the date that*
14 *is 180 days after such date of enactment,*
15 *the screening under this paragraph shall*
16 *apply with respect to the revalidation of en-*
17 *rollment of a provider of medical or other*
18 *items or services or supplier in the program*
19 *under this title, title XIX, or title XXI.*

20 “(iv) *LIMITATION ON ENROLLMENT*
21 *AND REVALIDATION OF ENROLLMENT.—In*
22 *no case may a provider of medical or other*
23 *items or services or supplier who has not*
24 *been screened under this paragraph be ini-*
25 *tially enrolled or reenrolled in the program*

1 *under this title, title XIX, or title XXI on*
2 *or after the date that is 3 years after such*
3 *date of enactment.*

4 “(E) *EXPEDITED RULEMAKING.*—*The Sec-*
5 *retary may promulgate an interim final rule to*
6 *carry out this paragraph.*

7 “(3) *PROVISIONAL PERIOD OF ENHANCED OVER-*
8 *SIGHT FOR NEW PROVIDERS OF SERVICES AND SUP-*
9 *PLIERS.*—

10 “(A) *IN GENERAL.*—*The Secretary shall es-*
11 *tablish procedures to provide for a provisional*
12 *period of not less than 30 days and not more*
13 *than 1 year during which new providers of med-*
14 *ical or other items or services and suppliers, as*
15 *the Secretary determines appropriate, including*
16 *categories of providers or suppliers, would be*
17 *subject to enhanced oversight, such as prepay-*
18 *ment review and payment caps, under the pro-*
19 *gram under this title, the Medicaid program*
20 *under title XIX, and the CHIP program under*
21 *title XXI.*

22 “(B) *IMPLEMENTATION.*—*The Secretary*
23 *may establish by program instruction or other-*
24 *wise the procedures under this paragraph.*

25 “(4) *INCREASED DISCLOSURE REQUIREMENTS.*—

1 “(A) *DISCLOSURE.*—A provider of medical
2 or other items or services or supplier who sub-
3 mits an application for enrollment or revalida-
4 tion of enrollment in the program under this
5 title, title XIX, or title XXI on or after the date
6 that is 1 year after the date of enactment of this
7 paragraph shall disclose (in a form and manner
8 and at such time as determined by the Sec-
9 retary) any current or previous affiliation (di-
10 rectly or indirectly) with a provider of medical
11 or other items or services or supplier that has
12 uncollected debt, has been or is subject to a pay-
13 ment suspension under a Federal health care
14 program (as defined in section 1128B(f)), has
15 been excluded from participation under the pro-
16 gram under this title, the Medicaid program
17 under title XIX, or the CHIP program under
18 title XXI, or has had its billing privileges denied
19 or revoked.

20 “(B) *AUTHORITY TO DENY ENROLLMENT.*—
21 If the Secretary determines that such previous
22 affiliation poses an undue risk of fraud, waste,
23 or abuse, the Secretary may deny such applica-
24 tion. Such a denial shall be subject to appeal in
25 accordance with paragraph (7).

1 “(5) *AUTHORITY TO ADJUST PAYMENTS OF PRO-*
2 *VIDERS OF SERVICES AND SUPPLIERS WITH THE*
3 *SAME TAX IDENTIFICATION NUMBER FOR PAST-DUE*
4 *OBLIGATIONS.—*

5 “(A) *IN GENERAL.—Notwithstanding any*
6 *other provision of this title, in the case of an ap-*
7 *plicable provider of services or supplier, the Sec-*
8 *retary may make any necessary adjustments to*
9 *payments to the applicable provider of services*
10 *or supplier under the program under this title in*
11 *order to satisfy any past-due obligations de-*
12 *scribed in subparagraph (B)(ii) of an obligated*
13 *provider of services or supplier.*

14 “(B) *DEFINITIONS.—In this paragraph:*

15 “(i) *IN GENERAL.—The term ‘applica-*
16 *ble provider of services or supplier’ means a*
17 *provider of services or supplier that has the*
18 *same taxpayer identification number as-*
19 *signed under section 6109 of the Internal*
20 *Revenue Code of 1986 as is assigned to the*
21 *obligated provider of services or supplier*
22 *under such section, regardless of whether the*
23 *applicable provider of services or supplier is*
24 *assigned a different billing number or na-*
25 *tional provider identification number under*

1 *the program under this title than is as-*
2 *signed to the obligated provider of services*
3 *or supplier.*

4 “(ii) *OBLIGATED PROVIDER OF SERV-*
5 *ICES OR SUPPLIER.—The term ‘obligated*
6 *provider of services or supplier’ means a*
7 *provider of services or supplier that owes a*
8 *past-due obligation under the program*
9 *under this title (as determined by the Sec-*
10 *retary).*

11 “(6) *TEMPORARY MORATORIUM ON ENROLLMENT*
12 *OF NEW PROVIDERS.—*

13 “(A) *IN GENERAL.—The Secretary may im-*
14 *pose a temporary moratorium on the enrollment*
15 *of new providers of services and suppliers, in-*
16 *cluding categories of providers of services and*
17 *suppliers, in the program under this title, under*
18 *the Medicaid program under title XIX, or under*
19 *the CHIP program under title XXI if the Sec-*
20 *retary determines such moratorium is necessary*
21 *to prevent or combat fraud, waste, or abuse*
22 *under either such program.*

23 “(B) *LIMITATION ON REVIEW.—There shall*
24 *be no judicial review under section 1869, section*

1 1878, or otherwise, of a temporary moratorium
2 imposed under subparagraph (A).

3 “(7) COMPLIANCE PROGRAMS.—

4 “(A) *IN GENERAL.*—On or after the date of
5 implementation determined by the Secretary
6 under subparagraph (C), a provider of medical
7 or other items or services or supplier within a
8 particular industry sector or category shall, as a
9 condition of enrollment in the program under
10 this title, title XIX, or title XXI, establish a com-
11 pliance program that contains the core elements
12 established under subparagraph (B) with respect
13 to that provider or supplier and industry or cat-
14 egory.

15 “(B) *ESTABLISHMENT OF CORE ELE-*
16 *MENTS.*—The Secretary, in consultation with the
17 Inspector General of the Department of Health
18 and Human Services, shall establish core ele-
19 ments for a compliance program under subpara-
20 graph (A) for providers or suppliers within a
21 particular industry or category.

22 “(C) *TIMELINE FOR IMPLEMENTATION.*—
23 The Secretary shall determine the timeline for
24 the establishment of the core elements under sub-
25 paragraph (B) and the date of the implementa-

1 *tion of subparagraph (A) for providers or sup-*
2 *pliers within a particular industry or category.*
3 *The Secretary shall, in determining such date of*
4 *implementation, consider the extent to which the*
5 *adoption of compliance programs by a provider*
6 *of medical or other items or services or supplier*
7 *is widespread in a particular industry sector or*
8 *with respect to a particular provider or supplier*
9 *category.”.*

10 *(b) MEDICAID.—*

11 *(1) STATE PLAN AMENDMENT.—Section 1902(a)*
12 *of the Social Security Act (42 U.S.C. 1396a(a)), as*
13 *amended by section 4302(b), is amended—*

14 *(A) in subsection (a)—*

15 *(i) by striking “and” at the end of*
16 *paragraph (75);*

17 *(ii) by striking the period at the end of*
18 *paragraph (76) and inserting a semicolon;*

19 *and*

20 *(iii) by inserting after paragraph (76)*
21 *the following:*

22 *“(77) provide that the State shall comply with*
23 *provider and supplier screening, oversight, and re-*
24 *porting requirements in accordance with subsection*
25 *(ii);”;* and

1 (B) by adding at the end the following:

2 “(ii) PROVIDER AND SUPPLIER SCREENING, OVER-
3 SIGHT, AND REPORTING REQUIREMENTS.—For purposes of
4 subsection (a)(77), the requirements of this subsection are
5 the following:

6 “(1) SCREENING.—The State complies with the
7 process for screening providers and suppliers under
8 this title, as established by the Secretary under sec-
9 tion 1886(j)(2).

10 “(2) PROVISIONAL PERIOD OF ENHANCED OVER-
11 SIGHT FOR NEW PROVIDERS AND SUPPLIERS.—The
12 State complies with procedures to provide for a provi-
13 sional period of enhanced oversight for new providers
14 and suppliers under this title, as established by the
15 Secretary under section 1886(j)(3).

16 “(3) DISCLOSURE REQUIREMENTS.—The State
17 requires providers and suppliers under the State plan
18 or under a waiver of the plan to comply with the dis-
19 closure requirements established by the Secretary
20 under section 1886(j)(4).

21 “(4) TEMPORARY MORATORIUM ON ENROLLMENT
22 OF NEW PROVIDERS OR SUPPLIERS.—

23 “(A) TEMPORARY MORATORIUM IMPOSED BY
24 THE SECRETARY.—

1 “(i) *IN GENERAL.*—Subject to clause
2 (ii), the State complies with any temporary
3 moratorium on the enrollment of new pro-
4 viders or suppliers imposed by the Secretary
5 under section 1886(j)(6).

6 “(ii) *EXCEPTION.*—A State shall not be
7 required to comply with a temporary mora-
8 torium described in clause (i) if the State
9 determines that the imposition of such tem-
10 porary moratorium would adversely impact
11 beneficiaries’ access to medical assistance.

12 “(B) *MORATORIUM ON ENROLLMENT OF*
13 *PROVIDERS AND SUPPLIERS.*—At the option of
14 the State, the State imposes, for purposes of en-
15 tering into participation agreements with pro-
16 viders or suppliers under the State plan or
17 under a waiver of the plan, periods of enrollment
18 moratoria, or numerical caps or other limits, for
19 providers or suppliers identified by the Secretary
20 as being at high-risk for fraud, waste, or abuse
21 as necessary to combat fraud, waste, or abuse,
22 but only if the State determines that the imposi-
23 tion of any such period, cap, or other limits
24 would not adversely impact beneficiaries’ access
25 to medical assistance.

1 “(5) *COMPLIANCE PROGRAMS.*—*The State re-*
2 *quires providers and suppliers under the State plan*
3 *or under a waiver of the plan to establish, in accord-*
4 *ance with the requirements of section 1866(j)(7), a*
5 *compliance program that contains the core elements*
6 *established under subparagraph (B) of that section*
7 *1866(j)(7) for providers or suppliers within a par-*
8 *ticular industry or category.*

9 “(6) *REPORTING OF ADVERSE PROVIDER AC-*
10 *TIONS.*—*The State complies with the national system*
11 *for reporting criminal and civil convictions, sanc-*
12 *tions, negative licensure actions, and other adverse*
13 *provider actions to the Secretary, through the Admin-*
14 *istrator of the Centers for Medicare & Medicaid Serv-*
15 *ices, in accordance with regulations of the Secretary.*

16 “(7) *ENROLLMENT AND NPI OF ORDERING OR*
17 *REFERRING PROVIDERS.*—*The State requires—*

18 “(A) *all ordering or referring physicians or*
19 *other professionals to be enrolled under the State*
20 *plan or under a waiver of the plan as a partici-*
21 *parting provider; and*

22 “(B) *the national provider identifier of any*
23 *ordering or referring physician or other profes-*
24 *sional to be specified on any claim for payment*

1 *that is based on an order or referral of the physi-*
2 *cian or other professional.*

3 “(8) *OTHER STATE OVERSIGHT.*—*Nothing in*
4 *this subsection shall be interpreted to preclude or*
5 *limit the ability of a State to engage in provider and*
6 *supplier screening or enhanced provider and supplier*
7 *oversight activities beyond those required by the Sec-*
8 *retary.”.*

9 (2) *DISCLOSURE OF MEDICARE TERMINATED*
10 *PROVIDERS AND SUPPLIERS TO STATES.*—*The Admin-*
11 *istrator of the Centers for Medicare & Medicaid Serv-*
12 *ices shall establish a process for making available to*
13 *the each State agency with responsibility for admin-*
14 *istering a State Medicaid plan (or a waiver of such*
15 *plan) under title XIX of the Social Security Act or*
16 *a child health plan under title XXI the name, na-*
17 *tional provider identifier, and other identifying infor-*
18 *mation for any provider of medical or other items or*
19 *services or supplier under the Medicare program*
20 *under title XVIII or under the CHIP program under*
21 *title XXI that is terminated from participation under*
22 *that program within 30 days of the termination (and,*
23 *with respect to all such providers or suppliers who are*
24 *terminated from the Medicare program on the date of*
25 *enactment of this Act, within 90 days of such date).*

1 (3) *CONFORMING AMENDMENT.*—Section
2 1902(a)(23) of the Social Security Act (42 U.S.C.
3 1396a), is amended by inserting before the semicolon
4 at the end the following: “or by a provider or supplier
5 to which a moratorium under subsection (ii)(4) is ap-
6 plied during the period of such moratorium”.

7 (c) *CHIP.*—Section 2107(e)(1) of the Social Security
8 Act (42 U.S.C. 1397gg(e)(1)), as amended by section
9 2101(d), is amended—

10 (1) by redesignating subparagraphs (D) through
11 (M) as subparagraphs (E) through (N), respectively;
12 and

13 (2) by inserting after subparagraph (C), the fol-
14 lowing:

15 “(D) Subsections (a)(77) and (ii) of section
16 1902 (relating to provider and supplier screen-
17 ing, oversight, and reporting requirements).”.

18 **SEC. 6402. ENHANCED MEDICARE AND MEDICAID PROGRAM**
19 **INTEGRITY PROVISIONS.**

20 (a) *IN GENERAL.*—Part A of title XI of the Social Se-
21 curity Act (42 U.S.C. 1301 et seq.), as amended by sections
22 6002, 6004, and 6102, is amended by inserting after section
23 1128I the following new section:

1 **“SEC. 1128J. MEDICARE AND MEDICAID PROGRAM INTEG-**
2 **RITY PROVISIONS.**

3 “(a) *DATA MATCHING.*—

4 “(1) *INTEGRATED DATA REPOSITORY.*—

5 “(A) *INCLUSION OF CERTAIN DATA.*—

6 “(i) *IN GENERAL.*—*The Integrated*
7 *Data Repository of the Centers for Medicare*
8 *& Medicaid Services shall include, at a*
9 *minimum, claims and payment data from*
10 *the following:*

11 “(I) *The programs under titles*
12 *XVIII and XIX (including parts A, B,*
13 *C, and D of title XVIII).*

14 “(II) *The program under title*
15 *XXI.*

16 “(III) *Health-related programs*
17 *administered by the Secretary of Vet-*
18 *erans Affairs.*

19 “(IV) *Health-related programs ad-*
20 *ministered by the Secretary of Defense.*

21 “(V) *The program of old-age, sur-*
22 *vivors, and disability insurance bene-*
23 *fits established under title II.*

24 “(VI) *The Indian Health Service*
25 *and the Contract Health Service pro-*
26 *gram.*

1 “(i) *PRIORITY FOR INCLUSION OF*
2 *CERTAIN DATA.*—*Inclusion of the data de-*
3 *scribed in subclause (I) of such clause in the*
4 *Integrated Data Repository shall be a pri-*
5 *ority. Data described in subclauses (II)*
6 *through (VI) of such clause shall be included*
7 *in the Integrated Data Repository as appro-*
8 *priate.*

9 “(B) *DATA SHARING AND MATCHING.*—

10 “(i) *IN GENERAL.*—*The Secretary shall*
11 *enter into agreements with the individuals*
12 *described in clause (ii) under which such*
13 *individuals share and match data in the*
14 *system of records of the respective agencies*
15 *of such individuals with data in the system*
16 *of records of the Department of Health and*
17 *Human Services for the purpose of identi-*
18 *fying potential fraud, waste, and abuse*
19 *under the programs under titles XVIII and*
20 *XIX.*

21 “(ii) *INDIVIDUALS DESCRIBED.*—*The*
22 *following individuals are described in this*
23 *clause:*

24 “(I) *The Commissioner of Social*
25 *Security.*

1 “(II) *The Secretary of Veterans*
2 *Affairs.*

3 “(III) *The Secretary of Defense.*

4 “(IV) *The Director of the Indian*
5 *Health Service.*

6 “(iii) *DEFINITION OF SYSTEM OF*
7 *RECORDS.—For purposes of this paragraph,*
8 *the term ‘system of records’ has the meaning*
9 *given such term in section 552a(a)(5) of*
10 *title 5, United States Code.*

11 “(2) *ACCESS TO CLAIMS AND PAYMENT DATA-*
12 *BASES.—For purposes of conducting law enforcement*
13 *and oversight activities and to the extent consistent*
14 *with applicable information, privacy, security, and*
15 *disclosure laws, including the regulations promul-*
16 *gated under the Health Insurance Portability and Ac-*
17 *countability Act of 1996 and section 552a of title 5,*
18 *United States Code, and subject to any information*
19 *systems security requirements under such laws or oth-*
20 *erwise required by the Secretary, the Inspector Gen-*
21 *eral of the Department of Health and Human Serv-*
22 *ices and the Attorney General shall have access to*
23 *claims and payment data of the Department of*
24 *Health and Human Services and its contractors re-*
25 *lated to titles XVIII, XIX, and XXI.*

1 “(b) *OIG AUTHORITY TO OBTAIN INFORMATION.*—

2 “(1) *IN GENERAL.*—*Notwithstanding and in ad-*
3 *dition to any other provision of law, the Inspector*
4 *General of the Department of Health and Human*
5 *Services may, for purposes of protecting the integrity*
6 *of the programs under titles XVIII and XIX, obtain*
7 *information from any individual (including a bene-*
8 *ficiary provided all applicable privacy protections are*
9 *followed) or entity that—*

10 “(A) *is a provider of medical or other items*
11 *or services, supplier, grant recipient, contractor,*
12 *or subcontractor; or*

13 “(B) *directly or indirectly provides, orders,*
14 *manufactures, distributes, arranges for, pre-*
15 *scribes, supplies, or receives medical or other*
16 *items or services payable by any Federal health*
17 *care program (as defined in section 1128B(f)) re-*
18 *gardless of how the item or service is paid for,*
19 *or to whom such payment is made.*

20 “(2) *INCLUSION OF CERTAIN INFORMATION.*—*In-*
21 *formation which the Inspector General may obtain*
22 *under paragraph (1) includes any supporting docu-*
23 *mentation necessary to validate claims for payment*
24 *or payments under title XVIII or XIX, including a*
25 *prescribing physician’s medical records for an indi-*

1 *vidual who is prescribed an item or service which is*
2 *covered under part B of title XVIII, a covered part*
3 *D drug (as defined in section 1860D–2(e)) for which*
4 *payment is made under an MA–PD plan under part*
5 *C of such title, or a prescription drug plan under*
6 *part D of such title, and any records necessary for*
7 *evaluation of the economy, efficiency, and effectiveness*
8 *of the programs under titles XVIII and XIX.*

9 “(c) *ADMINISTRATIVE REMEDY FOR KNOWING PAR-*
10 *TICIPATION BY BENEFICIARY IN HEALTH CARE FRAUD*
11 *SCHEME.—*

12 “(1) *IN GENERAL.—In addition to any other ap-*
13 *plicable remedies, if an applicable individual has*
14 *knowingly participated in a Federal health care*
15 *fraud offense or a conspiracy to commit a Federal*
16 *health care fraud offense, the Secretary shall impose*
17 *an appropriate administrative penalty commensurate*
18 *with the offense or conspiracy.*

19 “(2) *APPLICABLE INDIVIDUAL.—For purposes of*
20 *paragraph (1), the term ‘applicable individual’ means*
21 *an individual—*

22 “(A) *entitled to, or enrolled for, benefits*
23 *under part A of title XVIII or enrolled under*
24 *part B of such title;*

1 “(B) eligible for medical assistance under a
2 State plan under title XIX or under a waiver of
3 such plan; or

4 “(C) eligible for child health assistance
5 under a child health plan under title XXI.

6 “(d) *REPORTING AND RETURNING OF OVERPAY-*
7 *MENTS.—*

8 “(1) *IN GENERAL.—If a person has received an*
9 *overpayment, the person shall—*

10 “(A) *report and return the overpayment to*
11 *the Secretary, the State, an intermediary, a car-*
12 *rier, or a contractor, as appropriate, at the cor-*
13 *rect address; and*

14 “(B) *notify the Secretary, State, inter-*
15 *mediary, carrier, or contractor to whom the over-*
16 *payment was returned in writing of the reason*
17 *for the overpayment.*

18 “(2) *DEADLINE FOR REPORTING AND RETURNING*
19 *OVERPAYMENTS.—An overpayment must be reported*
20 *and returned under paragraph (1) by the later of—*

21 “(A) *the date which is 60 days after the*
22 *date on which the overpayment was identified; or*

23 “(B) *the date any corresponding cost report*
24 *is due, if applicable.*

1 “(3) *ENFORCEMENT.*—*Any overpayment re-*
2 *tained by a person after the deadline for reporting*
3 *and returning the overpayment under paragraph (2)*
4 *is an obligation (as defined in section 3729(b)(3) of*
5 *title 31, United States Code) for purposes of section*
6 *3729 of such title.*

7 “(4) *DEFINITIONS.*—*In this subsection:*

8 “(A) *KNOWING AND KNOWINGLY.*—*The*
9 *terms ‘knowing’ and ‘knowingly’ have the mean-*
10 *ing given those terms in section 3729(b) of title*
11 *31, United States Code.*

12 “(B) *OVERPAYMENT.*—*The term “overpay-*
13 *ment” means any funds that a person receives or*
14 *retains under title XVIII or XIX to which the*
15 *person, after applicable reconciliation, is not en-*
16 *titled under such title.*

17 “(C) *PERSON.*—

18 “(i) *IN GENERAL.*—*The term ‘person’*
19 *means a provider of services, supplier, med-*
20 *icaid managed care organization (as de-*
21 *defined in section 1903(m)(1)(A)), Medicare*
22 *Advantage organization (as defined in sec-*
23 *tion 1859(a)(1)), or PDP sponsor (as de-*
24 *defined in section 1860D–41(a)(13)).*

1 “(ii) *EXCLUSION.*—*Such term does not*
2 *include a beneficiary.*”

3 “(e) *INCLUSION OF NATIONAL PROVIDER IDENTIFIER*
4 *ON ALL APPLICATIONS AND CLAIMS.*—*The Secretary shall*
5 *promulgate a regulation that requires, not later than Janu-*
6 *ary 1, 2011, all providers of medical or other items or serv-*
7 *ices and suppliers under the programs under titles XVIII*
8 *and XIX that qualify for a national provider identifier to*
9 *include their national provider identifier on all applica-*
10 *tions to enroll in such programs and on all claims for pay-*
11 *ment submitted under such programs.”.*

12 (b) *ACCESS TO DATA.*—

13 (1) *MEDICARE PART D.*—*Section 1860D–15(f)(2)*
14 *of the Social Security Act (42 U.S.C. 1395w–*
15 *116(f)(2)) is amended by striking “may be used by”*
16 *and all that follows through the period at the end and*
17 *inserting “may be used—*

18 *“(A) by officers, employees, and contractors*
19 *of the Department of Health and Human Serv-*
20 *ices for the purposes of, and to the extent nec-*
21 *essary in—*

22 *“(i) carrying out this section; and*

23 *“(ii) conducting oversight, evaluation,*
24 *and enforcement under this title; and*

1 “(B) by the Attorney General and the
2 Comptroller General of the United States for the
3 purposes of, and to the extent necessary in, car-
4 rying out health oversight activities.”.

5 (2) *DATA MATCHING*.—Section 552a(a)(8)(B) of
6 title 5, United States Code, is amended—

7 (A) in clause (vii), by striking “or” at the
8 end;

9 (B) in clause (viii), by inserting “or” after
10 the semicolon; and

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

13 “(ix) matches performed by the Sec-
14 retary of Health and Human Services or
15 the Inspector General of the Department of
16 Health and Human Services with respect to
17 potential fraud, waste, and abuse, including
18 matches of a system of records with non-
19 Federal records;”.

20 (3) *MATCHING AGREEMENTS WITH THE COMMIS-*
21 *SIONER OF SOCIAL SECURITY*.—Section 205(r) of the
22 Social Security Act (42 U.S.C. 405(r)) is amended by
23 adding at the end the following new paragraph:

24 “(9)(A) The Commissioner of Social Security
25 shall, upon the request of the Secretary or the Inspec-

1 *tor General of the Department of Health and Human*
2 *Services—*

3 *“(i) enter into an agreement with the Sec-*
4 *retary or such Inspector General for the purpose*
5 *of matching data in the system of records of the*
6 *Social Security Administration and the system*
7 *of records of the Department of Health and*
8 *Human Services; and*

9 *“(ii) include in such agreement safeguards*
10 *to assure the maintenance of the confidentiality*
11 *of any information disclosed.*

12 *“(B) For purposes of this paragraph, the term*
13 *‘system of records’ has the meaning given such term*
14 *in section 552a(a)(5) of title 5, United States Code.”.*

15 *(c) WITHHOLDING OF FEDERAL MATCHING PAYMENTS*
16 *FOR STATES THAT FAIL TO REPORT ENROLLEE ENCOUN-*
17 *TER DATA IN THE MEDICAID STATISTICAL INFORMATION*
18 *SYSTEM.—Section 1903(i) of the Social Security Act (42*
19 *U.S.C. 1396b(i)) is amended—*

20 *(1) in paragraph (23), by striking “or” at the*
21 *end;*

22 *(2) in paragraph (24), by striking the period at*
23 *the end and inserting “; or”; and*

24 *(3) by adding at the end the following new para-*
25 *graph.:*

1 “(25) with respect to any amounts expended for
2 medical assistance for individuals for whom the State
3 does not report enrollee encounter data (as defined by
4 the Secretary) to the Medicaid Statistical Information
5 System (MSIS) in a timely manner (as determined
6 by the Secretary).”.

7 (d) *PERMISSIVE EXCLUSIONS AND CIVIL MONETARY*
8 *PENALTIES.*—

9 (1) *PERMISSIVE EXCLUSIONS.*—Section 1128(b)
10 of the Social Security Act (42 U.S.C. 1320a–7(b)) is
11 amended by adding at the end the following new
12 paragraph:

13 “(16) *MAKING FALSE STATEMENTS OR MIS-*
14 *REPRESENTATION OF MATERIAL FACTS.*—Any indi-
15 vidual or entity that knowingly makes or causes to be
16 made any false statement, omission, or misrepresenta-
17 tion of a material fact in any application, agreement,
18 bid, or contract to participate or enroll as a provider
19 of services or supplier under a Federal health care
20 program (as defined in section 1128B(f)), including
21 Medicare Advantage organizations under part C of
22 title XVIII, prescription drug plan sponsors under
23 part D of title XVIII, medicaid managed care organi-
24 zations under title XIX, and entities that apply to

1 *participate as providers of services or suppliers in*
2 *such managed care organizations and such plans.”.*

3 (2) *CIVIL MONETARY PENALTIES.—*

4 (A) *IN GENERAL.—Section 1128A(a) of the*
5 *Social Security Act (42 U.S.C. 1320a–7a(a)) is*
6 *amended—*

7 (i) *in paragraph (1)(D), by striking*
8 *“was excluded” and all that follows through*
9 *the period at the end and inserting “was ex-*
10 *cluded from the Federal health care pro-*
11 *gram (as defined in section 1128B(f)) under*
12 *which the claim was made pursuant to Fed-*
13 *eral law.”;*

14 (ii) *in paragraph (6), by striking “or”*
15 *at the end;*

16 (iii) *by inserting after paragraph (7),*
17 *the following new paragraphs:*

18 “(8) *orders or prescribes a medical or other item*
19 *or service during a period in which the person was*
20 *excluded from a Federal health care program (as so*
21 *defined), in the case where the person knows or should*
22 *know that a claim for such medical or other item or*
23 *service will be made under such a program;*

24 “(9) *knowingly makes or causes to be made any*
25 *false statement, omission, or misrepresentation of a*

1 *material fact in any application, bid, or contract to*
2 *participate or enroll as a provider of services or a*
3 *supplier under a Federal health care program (as so*
4 *defined), including Medicare Advantage organizations*
5 *under part C of title XVIII, prescription drug plan*
6 *sponsors under part D of title XVIII, medicaid man-*
7 *aged care organizations under title XIX, and entities*
8 *that apply to participate as providers of services or*
9 *suppliers in such managed care organizations and*
10 *such plans;*

11 *“(10) knows of an overpayment (as defined in*
12 *paragraph (4) of section 1128J(d)) and does not re-*
13 *port and return the overpayment in accordance with*
14 *such section;”;*

15 *(iv) in the first sentence—*

16 *(I) by striking the “or” after*
17 *“prohibited relationship occurs;” and*

18 *(II) by striking “act)” and insert-*
19 *ing “act; or in cases under paragraph*
20 *(9), \$50,000 for each false statement or*
21 *misrepresentation of a material fact)”;*

22 *and*

23 *(v) in the second sentence, by striking*
24 *“purpose)” and inserting “purpose; or in*
25 *cases under paragraph (9), an assessment of*

1 *not more than 3 times the total amount*
2 *claimed for each item or service for which*
3 *payment was made based upon the applica-*
4 *tion containing the false statement or mis-*
5 *representation of a material fact)”.*

6 *(B) CLARIFICATION OF TREATMENT OF CER-*
7 *TAIN CHARITABLE AND OTHER INNOCUOUS PRO-*
8 *GRAMS.—Section 1128A(i)(6) of the Social Secu-*
9 *urity Act (42 U.S.C. 1320a–7a(i)(6)) is amend-*
10 *ed—*

11 *(i) in subparagraph (C), by striking*
12 *“or” at the end;*

13 *(ii) in subparagraph (D), as redesign-*
14 *ated by section 4331(e) of the Balanced*
15 *Budget Act of 1997 (Public Law 105–33),*
16 *by striking the period at the end and insert-*
17 *ing a semicolon;*

18 *(iii) by redesignating subparagraph*
19 *(D), as added by section 4523(c) of such*
20 *Act, as subparagraph (E) and striking the*
21 *period at the end and inserting “; or”; and*

22 *(iv) by adding at the end the following*
23 *new subparagraphs:*

24 *“(F) any other remuneration which pro-*
25 *motates access to care and poses a low risk of harm*

1 to patients and Federal health care programs (as
2 defined in section 1128B(f) and designated by
3 the Secretary under regulations);

4 “(G) the offer or transfer of items or services
5 for free or less than fair market value by a per-
6 son, if—

7 “(i) the items or services consist of cou-
8 pons, rebates, or other rewards from a re-
9 tailer;

10 “(ii) the items or services are offered or
11 transferred on equal terms available to the
12 general public, regardless of health insur-
13 ance status; and

14 “(iii) the offer or transfer of the items
15 or services is not tied to the provision of
16 other items or services reimbursed in whole
17 or in part by the program under title XVIII
18 or a State health care program (as defined
19 in section 1128(h));

20 “(H) the offer or transfer of items or serv-
21 ices for free or less than fair market value by a
22 person, if—

23 “(i) the items or services are not of-
24 fered as part of any advertisement or solici-
25 tation;

1 “(ii) *the items or services are not tied*
2 *to the provision of other services reimbursed*
3 *in whole or in part by the program under*
4 *title XVIII or a State health care program*
5 *(as so defined);*

6 “(iii) *there is a reasonable connection*
7 *between the items or services and the med-*
8 *ical care of the individual; and*

9 “(iv) *the person provides the items or*
10 *services after determining in good faith that*
11 *the individual is in financial need; or*

12 “(I) *effective on a date specified by the Sec-*
13 *retary (but not earlier than January 1, 2011),*
14 *the waiver by a PDP sponsor of a prescription*
15 *drug plan under part D of title XVIII or an MA*
16 *organization offering an MA–PD plan under*
17 *part C of such title of any copayment for the*
18 *first fill of a covered part D drug (as defined in*
19 *section 1860D–2(e)) that is a generic drug for*
20 *individuals enrolled in the prescription drug*
21 *plan or MA–PD plan, respectively.”.*

22 (e) *TESTIMONIAL SUBPOENA AUTHORITY IN EXCLU-*
23 *SION-ONLY CASES.—Section 1128(f) of the Social Security*
24 *Act (42 U.S.C. 1320a–7(f)) is amended by adding at the*
25 *end the following new paragraph:*

1 “(4) *The provisions of subsections (d) and (e) of*
2 *section 205 shall apply with respect to this section to*
3 *the same extent as they are applicable with respect to*
4 *title II. The Secretary may delegate the authority*
5 *granted by section 205(d) (as made applicable to this*
6 *section) to the Inspector General of the Department of*
7 *Health and Human Services for purposes of any in-*
8 *vestigation under this section.”.*

9 (f) *HEALTH CARE FRAUD.—*

10 (1) *KICKBACKS.—Section 1128B of the Social*
11 *Security Act (42 U.S.C. 1320a–7b) is amended by*
12 *adding at the end the following new subsection:*

13 “(g) *In addition to the penalties provided for in this*
14 *section or section 1128A, a claim that includes items or*
15 *services resulting from a violation of this section constitutes*
16 *a false or fraudulent claim for purposes of subchapter III*
17 *of chapter 37 of title 31, United States Code.”.*

18 (2) *REVISING THE INTENT REQUIREMENT.—Sec-*
19 *tion 1128B of the Social Security Act (42 U.S.C.*
20 *1320a–7b), as amended by paragraph (1), is amended*
21 *by adding at the end the following new subsection:*

22 “(h) *With respect to violations of this section, a person*
23 *need not have actual knowledge of this section or specific*
24 *intent to commit a violation of this section.”.*

25 (g) *SURETY BOND REQUIREMENTS.—*

1 (1) *DURABLE MEDICAL EQUIPMENT.*—Section
2 1834(a)(16)(B) of the Social Security Act (42 U.S.C.
3 1395m(a)(16)(B)) is amended by inserting “that the
4 Secretary determines is commensurate with the vol-
5 ume of the billing of the supplier” before the period
6 at the end.

7 (2) *HOME HEALTH AGENCIES.*—Section
8 1861(o)(7)(C) of the Social Security Act (42 U.S.C.
9 1395x(o)(7)(C)) is amended by inserting “that the
10 Secretary determines is commensurate with the vol-
11 ume of the billing of the home health agency” before
12 the semicolon at the end.

13 (3) *REQUIREMENTS FOR CERTAIN OTHER PRO-*
14 *VIDERS OF SERVICES AND SUPPLIERS.*—Section 1862
15 of the Social Security Act (42 U.S.C. 1395y) is
16 amended by adding at the end the following new sub-
17 section:

18 “(n) *REQUIREMENT OF A SURETY BOND FOR CERTAIN*
19 *PROVIDERS OF SERVICES AND SUPPLIERS.*—

20 “(1) *IN GENERAL.*—The Secretary may require a
21 provider of services or supplier described in para-
22 graph (2) to provide the Secretary on a continuing
23 basis with a surety bond in a form specified by the
24 Secretary in an amount (not less than \$50,000) that
25 the Secretary determines is commensurate with the

1 *volume of the billing of the provider of services or*
2 *supplier. The Secretary may waive the requirement of*
3 *a bond under the preceding sentence in the case of a*
4 *provider of services or supplier that provides a com-*
5 *parable surety bond under State law.*

6 “(2) *PROVIDER OF SERVICES OR SUPPLIER DE-*
7 *SCRIBED.—A provider of services or supplier de-*
8 *scribed in this paragraph is a provider of services or*
9 *supplier the Secretary determines appropriate based*
10 *on the level of risk involved with respect to the pro-*
11 *vider of services or supplier, and consistent with the*
12 *surety bond requirements under sections*
13 *1834(a)(16)(B) and 1861(o)(7)(C).”*

14 *(h) SUSPENSION OF MEDICARE AND MEDICAID PAY-*
15 *MENTS PENDING INVESTIGATION OF CREDIBLE ALLEGA-*
16 *TIONS OF FRAUD.—*

17 *(1) MEDICARE.—Section 1862 of the Social Se-*
18 *curity Act (42 U.S.C. 1395y), as amended by sub-*
19 *section (g)(3), is amended by adding at the end the*
20 *following new subsection:*

21 “(o) *SUSPENSION OF PAYMENTS PENDING INVESTIGA-*
22 *TION OF CREDIBLE ALLEGATIONS OF FRAUD.—*

23 *“(1) IN GENERAL.—The Secretary may suspend*
24 *payments to a provider of services or supplier under*
25 *this title pending an investigation of a credible alle-*

1 *gation of fraud against the provider of services or*
2 *supplier, unless the Secretary determines there is good*
3 *cause not to suspend such payments.*

4 “(2) *CONSULTATION.*—*The Secretary shall con-*
5 *sult with the Inspector General of the Department of*
6 *Health and Human Services in determining whether*
7 *there is a credible allegation of fraud against a pro-*
8 *vider of services or supplier.*

9 “(3) *PROMULGATION OF REGULATIONS.*—*The*
10 *Secretary shall promulgate regulations to carry out*
11 *this subsection and section 1903(i)(2)(C).”.*

12 (2) *MEDICAID.*—*Section 1903(i)(2) of such Act*
13 *(42 U.S.C. 1396b(i)(2)) is amended—*

14 (A) *in subparagraph (A), by striking “or”*
15 *at the end; and*

16 (B) *by inserting after subparagraph (B),*
17 *the following:*

18 “(C) *by any individual or entity to whom*
19 *the State has failed to suspend payments under*
20 *the plan during any period when there is pend-*
21 *ing an investigation of a credible allegation of*
22 *fraud against the individual or entity, as deter-*
23 *mined by the State in accordance with regula-*
24 *tions promulgated by the Secretary for purposes*
25 *of section 1862(o) and this subparagraph, unless*

1 *the State determines in accordance with such*
2 *regulations there is good cause not to suspend*
3 *such payments; or”.*

4 *(i) INCREASED FUNDING TO FIGHT FRAUD AND*
5 *ABUSE.—*

6 *(1) IN GENERAL.—Section 1817(k) of the Social*
7 *Security Act (42 U.S.C. 1395i(k)) is amended—*

8 *(A) by adding at the end the following new*
9 *paragraph:*

10 *“(7) ADDITIONAL FUNDING.—In addition to the*
11 *funds otherwise appropriated to the Account from the*
12 *Trust Fund under paragraphs (3) and (4) and for*
13 *purposes described in paragraphs (3)(C) and (4)(A),*
14 *there are hereby appropriated an additional*
15 *\$10,000,000 to such Account from such Trust Fund*
16 *for each of fiscal years 2011 through 2020. The funds*
17 *appropriated under this paragraph shall be allocated*
18 *in the same proportion as the total funding appro-*
19 *priated with respect to paragraphs (3)(A) and (4)(A)*
20 *was allocated with respect to fiscal year 2010, and*
21 *shall be available without further appropriation until*
22 *expended.”; and*

23 *(B) in paragraph (4)(A), by inserting*
24 *“until expended” after “appropriation”.*

25 *(2) INDEXING OF AMOUNTS APPROPRIATED.—*

1 (A) *DEPARTMENTS OF HEALTH AND HUMAN*
2 *SERVICES AND JUSTICE.—Section*
3 *1817(k)(3)(A)(i) of the Social Security Act (42*
4 *U.S.C. 1395i(k)(3)(A)(i)) is amended—*

5 (i) *in subclause (III), by inserting*
6 *“and” at the end;*

7 (ii) *in subclause (IV)—*

8 (I) *by striking “for each of fiscal*
9 *years 2007, 2008, 2009, and 2010”*
10 *and inserting “for each fiscal year*
11 *after fiscal year 2006”; and*

12 (II) *by striking “; and” and in-*
13 *serting a period; and*

14 (iii) *by striking subclause (V).*

15 (B) *OFFICE OF THE INSPECTOR GENERAL*
16 *OF THE DEPARTMENT OF HEALTH AND HUMAN*
17 *SERVICES.—Section 1817(k)(3)(A)(ii) of such*
18 *Act (42 U.S.C. 1395i(k)(3)(A)(ii)) is amended—*

19 (i) *in subclause (VIII), by inserting*
20 *“and” at the end;*

21 (ii) *in subclause (IX)—*

22 (I) *by striking “for each of fiscal*
23 *years 2008, 2009, and 2010” and in-*
24 *serting “for each fiscal year after fiscal*
25 *year 2007”; and*

1 (II) by striking “; and” and in-
2 serting a period; and
3 (iii) by striking subclause (X).

4 (C) *FEDERAL BUREAU OF INVESTIGA-*
5 *TION.—Section 1817(k)(3)(B) of the Social Secu-*
6 *rity Act (42 U.S.C. 1395i(k)(3)(B)) is amend-*
7 *ed—*

8 (i) in clause (vii), by inserting “and”
9 at the end;

10 (ii) in clause (viii)—

11 (I) by striking “for each of fiscal
12 years 2007, 2008, 2009, and 2010”
13 and inserting “for each fiscal year
14 after fiscal year 2006”; and

15 (II) by striking “; and” and in-
16 serting a period; and

17 (iii) by striking clause (ix).

18 (D) *MEDICARE INTEGRITY PROGRAM.—Sec-*
19 *tion 1817(k)(4)(C) of the Social Security Act (42*
20 *U.S.C. 1395i(k)(4)(C)) is amended by adding at*
21 *the end the following new clause:*

22 “(ii) For each fiscal year after 2010,
23 by the percentage increase in the consumer
24 price index for all urban consumers (all

1 *items; United States city average) over the*
2 *previous year.”.*

3 *(j) MEDICARE INTEGRITY PROGRAM AND MEDICAID*
4 *INTEGRITY PROGRAM.—*

5 *(1) MEDICARE INTEGRITY PROGRAM.—*

6 *(A) REQUIREMENT TO PROVIDE PERFORM-*
7 *ANCE STATISTICS.—Section 1893(c) of the Social*
8 *Security Act (42 U.S.C. 1395ddd(c)) is amend-*
9 *ed—*

10 *(i) in paragraph (3), by striking*
11 *“and” at the end;*

12 *(ii) by redesignating paragraph (4) as*
13 *paragraph (5); and*

14 *(iii) by inserting after paragraph (3)*
15 *the following new paragraph:*

16 *“(4) the entity agrees to provide the Secretary*
17 *and the Inspector General of the Department of*
18 *Health and Human Services with such performance*
19 *statistics (including the number and amount of over-*
20 *payments recovered, the number of fraud referrals,*
21 *and the return on investment of such activities by the*
22 *entity) as the Secretary or the Inspector General may*
23 *request; and”.*

24 *(B) EVALUATIONS AND ANNUAL REPORT.—*

25 *Section 1893 of the Social Security Act (42*

1 *U.S.C. 1395ddd) is amended by adding at the*
2 *end the following new subsection:*

3 “(i) *EVALUATIONS AND ANNUAL REPORT.—*

4 “(1) *EVALUATIONS.—The Secretary shall con-*
5 *duct evaluations of eligible entities which the Sec-*
6 *retary contracts with under the Program not less fre-*
7 *quently than every 3 years.*

8 “(2) *ANNUAL REPORT.—Not later than 180 days*
9 *after the end of each fiscal year (beginning with fiscal*
10 *year 2011), the Secretary shall submit a report to*
11 *Congress which identifies—*

12 “(A) *the use of funds, including funds*
13 *transferred from the Federal Hospital Insurance*
14 *Trust Fund under section 1817 and the Federal*
15 *Supplementary Insurance Trust Fund under sec-*
16 *tion 1841, to carry out this section; and*

17 “(B) *the effectiveness of the use of such*
18 *funds.”.*

19 “(C) *FLEXIBILITY IN PURSUING FRAUD AND*
20 *ABUSE.—Section 1893(a) of the Social Security*
21 *Act (42 U.S.C. 1395ddd(a)) is amended by in-*
22 *serting “, or otherwise,” after “entities”.*

23 “(2) *MEDICAID INTEGRITY PROGRAM.—*

24 “(A) *REQUIREMENT TO PROVIDE PERFORM-*
25 *ANCE STATISTICS.—Section 1936(c)(2) of the So-*

1 *cial Security Act (42 U.S.C. 1396u-6(c)(2)) is*
2 *amended—*

3 *(i) by redesignating subparagraph (D)*
4 *as subparagraph (E); and*

5 *(ii) by inserting after subparagraph*
6 *(C) the following new subparagraph:*

7 *“(D) The entity agrees to provide the Sec-*
8 *retary and the Inspector General of the Depart-*
9 *ment of Health and Human Services with such*
10 *performance statistics (including the number*
11 *and amount of overpayments recovered, the num-*
12 *ber of fraud referrals, and the return on invest-*
13 *ment of such activities by the entity) as the Sec-*
14 *retary or the Inspector General may request.”.*

15 *(B) EVALUATIONS AND ANNUAL REPORT.—*
16 *Section 1936(e) of the Social Security Act (42*
17 *U.S.C. 1396u-7(e)) is amended—*

18 *(i) by redesignating paragraph (4) as*
19 *paragraph (5); and*

20 *(ii) by inserting after paragraph (3)*
21 *the following new paragraph:*

22 *“(4) EVALUATIONS.—The Secretary shall con-*
23 *duct evaluations of eligible entities which the Sec-*
24 *retary contracts with under the Program not less fre-*
25 *quently than every 3 years.”.*

1 (k) *EXPANDED APPLICATION OF HARDSHIP WAIVERS*
2 *FOR EXCLUSIONS.*—Section 1128(c)(3)(B) of the Social Se-
3 *curity Act (42 U.S.C. 1320a–7(c)(3)(B)) is amended by*
4 *striking “individuals entitled to benefits under part A of*
5 *title XVIII or enrolled under part B of such title, or both”*
6 *and inserting “beneficiaries (as defined in section*
7 *1128A(i)(5)) of that program”.*

8 **SEC. 6403. ELIMINATION OF DUPLICATION BETWEEN THE**
9 **HEALTHCARE INTEGRITY AND PROTECTION**
10 **DATA BANK AND THE NATIONAL PRACTI-**
11 **TIONER DATA BANK.**

12 (a) *INFORMATION REPORTED BY FEDERAL AGENCIES*
13 *AND HEALTH PLANS.*—Section 1128E of the Social Secu-
14 *rity Act (42 U.S.C. 1320a–7e) is amended—*

15 (1) *by striking subsection (a) and inserting the*
16 *following:*

17 “(a) *IN GENERAL.*—The Secretary shall maintain a
18 *national health care fraud and abuse data collection pro-*
19 *gram under this section for the reporting of certain final*
20 *adverse actions (not including settlements in which no find-*
21 *ings of liability have been made) against health care pro-*
22 *viders, suppliers, or practitioners as required by subsection*
23 *(b), with access as set forth in subsection (d), and shall fur-*
24 *nish the information collected under this section to the Na-*
25 *tional Practitioner Data Bank established pursuant to the*

1 *Health Care Quality Improvement Act of 1986 (42 U.S.C.*
2 *11101 et seq.)*.”;

3 (2) *by striking subsection (d) and inserting the*
4 *following:*

5 “(d) *ACCESS TO REPORTED INFORMATION.*—

6 “(1) *AVAILABILITY.*—*The information collected*
7 *under this section shall be available from the National*
8 *Practitioner Data Bank to the agencies, authorities,*
9 *and officials which are provided under section*
10 *1921(b) information reported under section 1921(a).*

11 “(2) *FEEES FOR DISCLOSURE.*—*The Secretary*
12 *may establish or approve reasonable fees for the dis-*
13 *closure of information under this section. The amount*
14 *of such a fee may not exceed the costs of processing*
15 *the requests for disclosure and of providing such in-*
16 *formation. Such fees shall be available to the Sec-*
17 *retary to cover such costs.*”;

18 (3) *by striking subsection (f) and inserting the*
19 *following:*

20 “(f) *APPROPRIATE COORDINATION.*—*In implementing*
21 *this section, the Secretary shall provide for the maximum*
22 *appropriate coordination with part B of the Health Care*
23 *Quality Improvement Act of 1986 (42 U.S.C. 11131 et seq.)*
24 *and section 1921.*”;

25 (4) *in subsection (g)*—

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(A) in paragraph (1)(A)—

(i) in clause (iii)—

(I) by striking “or State” each place it appears;

(II) by redesignating subclauses (II) and (III) as subclauses (III) and (IV), respectively; and

(III) by inserting after subclause (I) the following new subclause:

“(II) any dismissal or closure of the proceedings by reason of the provider, supplier, or practitioner surrendering their license or leaving the State or jurisdiction”; and

(ii) by striking clause (iv) and inserting the following:

“(iv) Exclusion from participation in a Federal health care program (as defined in section 1128B(f)).”;

(B) in paragraph (3)—

(i) by striking subparagraphs (D) and (E); and

(ii) by redesignating subparagraph (F) as subparagraph (D); and

1 (C) in subparagraph (D) (as so redesign-
2 nated), by striking “or State”.

3 (b) *INFORMATION REPORTED BY STATE LAW OR*
4 *FRAUD ENFORCEMENT AGENCIES.*—Section 1921 of the So-
5 *cial Security Act (42 U.S.C. 1396r-2) is amended—*

6 (1) in subsection (a)—

7 (A) in paragraph (1)—

8 (i) by striking “SYSTEM.—The State”
9 and all that follows through the semicolon
10 and inserting SYSTEM.—

11 “(A) *LICENSING OR CERTIFICATION AC-*
12 *TIONS.*—The State must have in effect a system
13 *of reporting the following information with re-*
14 *spect to formal proceedings (as defined by the*
15 *Secretary in regulations) concluded against a*
16 *health care practitioner or entity by a State li-*
17 *icensing or certification agency.”;*

18 (ii) by redesignating subparagraphs
19 (A) through (D) as clauses (i) through (iv),
20 respectively, and indenting appropriately;

21 (iii) in subparagraph (A)(iii) (as so
22 redesignated)—

23 (I) by striking “the license of”
24 and inserting “license or the right to
25 apply for, or renew, a license by”; and

1 (II) by inserting “nonrenew-
2 ability,” after “voluntary surrender;”;
3 and

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

6 “(B) OTHER FINAL ADVERSE ACTIONS.—
7 The State must have in effect a system of report-
8 ing information with respect to any final ad-
9 verse action (not including settlements in which
10 no findings of liability have been made) taken
11 against a health care provider, supplier, or prac-
12 titioner by a State law or fraud enforcement
13 agency.”; and

14 (B) in paragraph (2), by striking “the au-
15 thority described in paragraph (1)” and insert-
16 ing “a State licensing or certification agency or
17 State law or fraud enforcement agency”;

18 (2) in subsection (b)—

19 (A) by striking paragraph (2) and inserting
20 the following:

21 “(2) to State licensing or certification agencies
22 and Federal agencies responsible for the licensing and
23 certification of health care providers, suppliers, and
24 licensed health care practitioners;”;

1 (B) in each of paragraphs (4) and (6), by
2 inserting “, but only with respect to information
3 provided pursuant to subsection (a)(1)(A)” before
4 the comma at the end;

5 (C) by striking paragraph (5) and inserting
6 the following:

7 “(5) to State law or fraud enforcement agen-
8 cies,”;

9 (D) by redesignating paragraphs (7) and
10 (8) as paragraphs (8) and (9), respectively; and

11 (E) by inserting after paragraph (6) the fol-
12 lowing new paragraph:

13 “(7) to health plans (as defined in section
14 1128C(e));”;

15 (3) by redesignating subsection (d) as subsection
16 (h), and by inserting after subsection (c) the following
17 new subsections:

18 “(d) *DISCLOSURE AND CORRECTION OF INFORMA-*
19 *TION.*—

20 “(1) *DISCLOSURE.*—With respect to information
21 reported pursuant to subsection (a)(1), the Secretary
22 shall—

23 “(A) provide for disclosure of the informa-
24 tion, upon request, to the health care practitioner

1 *who, or the entity that, is the subject of the infor-*
2 *mation reported; and*

3 *“(B) establish procedures for the case where*
4 *the health care practitioner or entity disputes the*
5 *accuracy of the information reported.*

6 *“(2) CORRECTIONS.—Each State licensing or*
7 *certification agency and State law or fraud enforce-*
8 *ment agency shall report corrections of information*
9 *already reported about any formal proceeding or final*
10 *adverse action described in subsection (a), in such*
11 *form and manner as the Secretary prescribes by regu-*
12 *lation.*

13 *“(e) FEES FOR DISCLOSURE.—The Secretary may es-*
14 *tablish or approve reasonable fees for the disclosure of infor-*
15 *mation under this section. The amount of such a fee may*
16 *not exceed the costs of processing the requests for disclosure*
17 *and of providing such information. Such fees shall be avail-*
18 *able to the Secretary to cover such costs.*

19 *“(f) PROTECTION FROM LIABILITY FOR REPORTING.—*
20 *No person or entity, including any agency designated by*
21 *the Secretary in subsection (b), shall be held liable in any*
22 *civil action with respect to any reporting of information*
23 *as required under this section, without knowledge of the fal-*
24 *sity of the information contained in the report.*

25 *“(g) REFERENCES.—For purposes of this section:*

1 “(1) *STATE LICENSING OR CERTIFICATION AGEN-*
2 *CY.—The term ‘State licensing or certification agen-*
3 *cy’ includes any authority of a State (or of a political*
4 *subdivision thereof) responsible for the licensing of*
5 *health care practitioners (or any peer review organi-*
6 *zation or private accreditation entity reviewing the*
7 *services provided by health care practitioners) or enti-*
8 *ties.*

9 “(2) *STATE LAW OR FRAUD ENFORCEMENT*
10 *AGENCY.—The term ‘State law or fraud enforcement*
11 *agency’ includes—*

12 “(A) *a State law enforcement agency; and*

13 “(B) *a State medicaid fraud control unit*
14 *(as defined in section 1903(q)).*

15 “(3) *FINAL ADVERSE ACTION.—*

16 “(A) *IN GENERAL.—Subject to subpara-*
17 *graph (B), the term ‘final adverse action’ in-*
18 *cludes—*

19 “(i) *civil judgments against a health*
20 *care provider, supplier, or practitioner in*
21 *State court related to the delivery of a*
22 *health care item or service;*

23 “(ii) *State criminal convictions related*
24 *to the delivery of a health care item or serv-*
25 *ice;*

1 “(iii) exclusion from participation in
2 State health care programs (as defined in
3 section 1128(h));

4 “(iv) any licensing or certification ac-
5 tion described in subsection (a)(1)(A) taken
6 against a supplier by a State licensing or
7 certification agency; and

8 “(v) any other adjudicated actions or
9 decisions that the Secretary shall establish
10 by regulation.

11 “(B) *EXCEPTION.*—Such term does not in-
12 clude any action with respect to a malpractice
13 claim.”; and

14 (4) in subsection (h), as so redesignated, by
15 striking “The Secretary” and all that follows through
16 the period at the end and inserting “In implementing
17 this section, the Secretary shall provide for the max-
18 imum appropriate coordination with part B of the
19 Health Care Quality Improvement Act of 1986 (42
20 U.S.C. 11131 et seq.) and section 1128E.”.

21 (c) *CONFORMING AMENDMENT.*—Section 1128C(a)(1)
22 of the Social Security Act (42 U.S.C. 1320a-7c(a)(1)) is
23 amended—

24 (1) in subparagraph (C), by adding “and” after
25 the comma at the end;

1 (2) *in subparagraph (D), by striking “, and”*
2 *and inserting a period; and*

3 (3) *by striking subparagraph (E).*

4 (d) *TRANSITION PROCESS; EFFECTIVE DATE.—*

5 (1) *IN GENERAL.—Effective on the date of enact-*
6 *ment of this Act, the Secretary of Health and Human*
7 *Services (in this section referred to as the “Sec-*
8 *retary”) shall implement a transition process under*
9 *which, by not later than the end of the transition pe-*
10 *riod described in paragraph (5), the Secretary shall*
11 *cease operating the Healthcare Integrity and Protec-*
12 *tion Data Bank established under section 1128E of*
13 *the Social Security Act (as in effect before the effective*
14 *date specified in paragraph (6)) and shall transfer all*
15 *data collected in the Healthcare Integrity and Protec-*
16 *tion Data Bank to the National Practitioner Data*
17 *Bank established pursuant to the Health Care Quality*
18 *Improvement Act of 1986 (42 U.S.C. 11101 et seq.).*
19 *During such transition process, the Secretary shall*
20 *have in effect appropriate procedures to ensure that*
21 *data collection and access to the Healthcare Integrity*
22 *and Protection Data Bank and the National Practi-*
23 *tioner Data Bank are not disrupted.*

1 (2) *REGULATIONS.*—*The Secretary shall promul-*
2 *gate regulations to carry out the amendments made*
3 *by subsections (a) and (b).*

4 (3) *FUNDING.*—

5 (A) *AVAILABILITY OF FEES.*—*Fees collected*
6 *pursuant to section 1128E(d)(2) of the Social*
7 *Security Act prior to the effective date specified*
8 *in paragraph (6) for the disclosure of informa-*
9 *tion in the Healthcare Integrity and Protection*
10 *Data Bank shall be available to the Secretary,*
11 *without fiscal year limitation, for payment of*
12 *costs related to the transition process described*
13 *in paragraph (1). Any such fees remaining after*
14 *the transition period is complete shall be avail-*
15 *able to the Secretary, without fiscal year limita-*
16 *tion, for payment of the costs of operating the*
17 *National Practitioner Data Bank.*

18 (B) *AVAILABILITY OF ADDITIONAL FUNDS.*—
19 *In addition to the fees described in subparagraph*
20 *(A), any funds available to the Secretary or to*
21 *the Inspector General of the Department of*
22 *Health and Human Services for a purpose re-*
23 *lated to combating health care fraud, waste, or*
24 *abuse shall be available to the extent necessary*
25 *for operating the Healthcare Integrity and Pro-*

1 *tection Data Bank during the transition period,*
2 *including systems testing and other activities*
3 *necessary to ensure that information formerly re-*
4 *ported to the Healthcare Integrity and Protec-*
5 *tion Data Bank will be accessible through the*
6 *National Practitioner Data Bank after the end*
7 *of such transition period.*

8 (4) *SPECIAL PROVISION FOR ACCESS TO THE NA-*
9 *TIONAL PRACTITIONER DATA BANK BY THE DEPART-*
10 *MENT OF VETERANS AFFAIRS.—*

11 (A) *IN GENERAL.—Notwithstanding any*
12 *other provision of law, during the 1-year period*
13 *that begins on the effective date specified in*
14 *paragraph (6), the information described in sub-*
15 *paragraph (B) shall be available from the Na-*
16 *tional Practitioner Data Bank to the Secretary*
17 *of Veterans Affairs without charge.*

18 (B) *INFORMATION DESCRIBED.—For pur-*
19 *poses of subparagraph (A), the information de-*
20 *scribed in this subparagraph is the information*
21 *that would, but for the amendments made by this*
22 *section, have been available to the Secretary of*
23 *Veterans Affairs from the Healthcare Integrity*
24 *and Protection Data Bank.*

1 (5) *TRANSITION PERIOD DEFINED.*—For pur-
2 poses of this subsection, the term “transition period”
3 means the period that begins on the date of enactment
4 of this Act and ends on the later of—

5 (A) the date that is 1 year after such date
6 of enactment; or

7 (B) the effective date of the regulations pro-
8 mulgated under paragraph (2).

9 (6) *EFFECTIVE DATE.*—The amendments made
10 by subsections (a), (b), and (c) shall take effect on the
11 first day after the final day of the transition period.

12 **SEC. 6404. MAXIMUM PERIOD FOR SUBMISSION OF MEDI-**
13 **CARE CLAIMS REDUCED TO NOT MORE THAN**
14 **12 MONTHS.**

15 (a) *REDUCING MAXIMUM PERIOD FOR SUBMISSION.*—

16 (1) *PART A.*—Section 1814(a) of the Social Secu-
17 rity Act (42 U.S.C. 1395f(a)(1)) is amended—

18 (A) in paragraph (1), by striking “period of
19 3 calendar years” and all that follows through
20 the semicolon and inserting “period ending 1
21 calendar year after the date of service;”; and

22 (B) by adding at the end the following new
23 sentence: “In applying paragraph (1), the Sec-
24 retary may specify exceptions to the 1 calendar
25 year period specified in such paragraph.”

1 (2) *PART B.*—

2 (A) *Section 1842(b)(3) of such Act (42*
3 *U.S.C. 1395u(b)(3)(B)) is amended—*

4 (i) *in subparagraph (B), in the flush*
5 *language following clause (i), by striking*
6 *“close of the calendar year following the*
7 *year in which such service is furnished*
8 *(deeming any service furnished in the last 3*
9 *months of any calendar year to have been*
10 *furnished in the succeeding calendar year)”*
11 *and inserting “period ending 1 calendar*
12 *year after the date of service”; and*

13 (ii) *by adding at the end the following*
14 *new sentence: “In applying subparagraph*
15 *(B), the Secretary may specify exceptions to*
16 *the 1 calendar year period specified in such*
17 *subparagraph.”*

18 (B) *Section 1835(a) of such Act (42 U.S.C.*
19 *1395n(a)) is amended—*

20 (i) *in paragraph (1), by striking “pe-*
21 *riod of 3 calendar years” and all that fol-*
22 *lows through the semicolon and inserting*
23 *“period ending 1 calendar year after the*
24 *date of service;”; and*

1 (ii) by adding at the end the following
2 new sentence: “In applying paragraph (1),
3 the Secretary may specify exceptions to the
4 1 calendar year period specified in such
5 paragraph.”

6 (b) *EFFECTIVE DATE.*—

7 (1) *IN GENERAL.*—The amendments made by
8 subsection (a) shall apply to services furnished on or
9 after January 1, 2010.

10 (2) *SERVICES FURNISHED BEFORE 2010.*—In the
11 case of services furnished before January 1, 2010, a
12 bill or request for payment under section 1814(a)(1),
13 1842(b)(3)(B), or 1835(a) shall be filed not later than
14 December 31, 2010.

15 **SEC. 6405. PHYSICIANS WHO ORDER ITEMS OR SERVICES**
16 **REQUIRED TO BE MEDICARE ENROLLED PHY-**
17 **SICIANS OR ELIGIBLE PROFESSIONALS.**

18 (a) *DME.*—Section 1834(a)(11)(B) of the Social Secu-
19 rity Act (42 U.S.C. 1395m(a)(11)(B)) is amended by strik-
20 ing “physician” and inserting “physician enrolled under
21 section 1866(j) or an eligible professional under section
22 1848(k)(3)(B) that is enrolled under section 1866(j)”.

23 (b) *HOME HEALTH SERVICES.*—

24 (1) *PART A.*—Section 1814(a)(2) of such Act (42
25 U.S.C. 1395(a)(2)) is amended in the matter pre-

1 ceding subparagraph (A) by inserting “in the case of
2 services described in subparagraph (C), a physician
3 enrolled under section 1866(j) or an eligible profes-
4 sional under section 1848(k)(3)(B),” before “or, in the
5 case of services”.

6 (2) *PART B.*—Section 1835(a)(2) of such Act (42
7 U.S.C. 1395n(a)(2)) is amended in the matter pre-
8 ceding subparagraph (A) by inserting “, or in the
9 case of services described in subparagraph (A), a phy-
10 sician enrolled under section 1866(j) or an eligible
11 professional under section 1848(k)(3)(B),” after “a
12 physician”.

13 (c) *APPLICATION TO OTHER ITEMS OR SERVICES.*—
14 The Secretary may extend the requirement applied by the
15 amendments made by subsections (a) and (b) to durable
16 medical equipment and home health services (relating to re-
17 quiring certifications and written orders to be made by en-
18 rolled physicians and health professions) to all other cat-
19 egories of items or services under title XVIII of the Social
20 Security Act (42 U.S.C. 1395 et seq.), including covered
21 part D drugs as defined in section 1860D–2(e) of such Act
22 (42 U.S.C. 1395w–102), that are ordered, prescribed, or re-
23 ferred by a physician enrolled under section 1866(j) of such
24 Act (42 U.S.C. 1395cc(j)) or an eligible professional under

1 *section 1848(k)(3)(B) of such Act (42 U.S.C. 1395w-*
2 *4(k)(3)(B)).*

3 *(d) EFFECTIVE DATE.—The amendments made by this*
4 *section shall apply to written orders and certifications*
5 *made on or after July 1, 2010.*

6 **SEC. 6406. REQUIREMENT FOR PHYSICIANS TO PROVIDE**
7 **DOCUMENTATION ON REFERRALS TO PRO-**
8 **GRAMS AT HIGH RISK OF WASTE AND ABUSE.**

9 *(a) PHYSICIANS AND OTHER SUPPLIERS.—Section*
10 *1842(h) of the Social Security Act (42 U.S.C. 1395u(h))*
11 *is amended by adding at the end the following new para-*
12 *graph:*

13 *“(9) The Secretary may revoke enrollment, for a period*
14 *of not more than one year for each act, for a physician*
15 *or supplier under section 1866(j) if such physician or sup-*
16 *plier fails to maintain and, upon request of the Secretary,*
17 *provide access to documentation relating to written orders*
18 *or requests for payment for durable medical equipment, cer-*
19 *tifications for home health services, or referrals for other*
20 *items or services written or ordered by such physician or*
21 *supplier under this title, as specified by the Secretary.”.*

22 *(b) PROVIDERS OF SERVICES.—Section 1866(a)(1) of*
23 *such Act (42 U.S.C. 1395cc) is further amended—*

24 *(1) in subparagraph (U), by striking at the end*
25 *“and”;*

1 (2) *in subparagraph (V), by striking the period*
2 *at the end and adding “; and”; and*

3 (3) *by adding at the end the following new sub-*
4 *paragraph:*

5 “(W) *maintain and, upon request of the*
6 *Secretary, provide access to documentation relat-*
7 *ing to written orders or requests for payment for*
8 *durable medical equipment, certifications for*
9 *home health services, or referrals for other items*
10 *or services written or ordered by the provider*
11 *under this title, as specified by the Secretary.”.*

12 (c) *OIG PERMISSIVE EXCLUSION AUTHORITY.—Sec-*
13 *tion 1128(b)(11) of the Social Security Act (42 U.S.C.*
14 *1320a–7(b)(11)) is amended by inserting “, ordering, refer-*
15 *ring for furnishing, or certifying the need for” after “fur-*
16 *nishing”.*

17 (d) *EFFECTIVE DATE.—The amendments made by this*
18 *section shall apply to orders, certifications, and referrals*
19 *made on or after January 1, 2010.*

1 **SEC. 6407. FACE TO FACE ENCOUNTER WITH PATIENT RE-**
2 **QUIRED BEFORE PHYSICIANS MAY CERTIFY**
3 **ELIGIBILITY FOR HOME HEALTH SERVICES**
4 **OR DURABLE MEDICAL EQUIPMENT UNDER**
5 **MEDICARE.**

6 (a) *CONDITION OF PAYMENT FOR HOME HEALTH*
7 *SERVICES.*—

8 (1) *PART A.*—*Section 1814(a)(2)(C) of such Act*
9 *is amended—*

10 (A) *by striking “and such services” and in-*
11 *serting “such services”; and*

12 (B) *by inserting after “care of a physician”*
13 *the following: “, and, in the case of a certifi-*
14 *cation made by a physician after January 1,*
15 *2010, prior to making such certification the phy-*
16 *sician must document that the physician himself*
17 *or herself has had a face-to-face encounter (in-*
18 *cluding through use of telehealth, subject to the*
19 *requirements in section 1834(m), and other than*
20 *with respect to encounters that are incident to*
21 *services involved) with the individual within a*
22 *reasonable timeframe as determined by the Sec-*
23 *retary”.*

24 (2) *PART B.*—*Section 1835(a)(2)(A) of the Social*
25 *Security Act is amended—*

26 (A) *by striking “and” before “(iii)”;* and

1 (B) by inserting after “care of a physician”
2 the following: “, and (iv) in the case of a certifi-
3 cation after January 1, 2010, prior to making
4 such certification the physician must document
5 that the physician has had a face-to-face encoun-
6 ter (including through use of telehealth and other
7 than with respect to encounters that are incident
8 to services involved) with the individual during
9 the 6-month period preceding such certification,
10 or other reasonable timeframe as determined by
11 the Secretary”.

12 (b) *CONDITION OF PAYMENT FOR DURABLE MEDICAL*
13 *EQUIPMENT.*—Section 1834(a)(11)(B) of the Social Secu-
14 *rity Act (42 U.S.C. 1395m(a)(11)(B)) is amended—*

15 (1) by striking “ORDER.—The Secretary” and
16 inserting “ORDER.—

17 “(i) *IN GENERAL.*—The Secretary”;

18 and

19 (2) by adding at the end the following new
20 clause:

21 “(ii) *REQUIREMENT FOR FACE TO*
22 *FACE ENCOUNTER.*—The Secretary shall re-
23 quire that such an order be written pursu-
24 ant to the physician documenting that a
25 physician, a physician assistant, a nurse

1 *practitioner, or a clinical nurse specialist*
2 *(as those terms are defined in section*
3 *1861(aa)(5)) has had a face-to-face encoun-*
4 *ter (including through use of telehealth*
5 *under subsection (m) and other than with*
6 *respect to encounters that are incident to*
7 *services involved) with the individual in-*
8 *volved during the 6-month period preceding*
9 *such written order, or other reasonable*
10 *timeframe as determined by the Secretary.”.*

11 *(c) APPLICATION TO OTHER AREAS UNDER MEDI-*
12 *CARE.—The Secretary may apply the face-to-face encounter*
13 *requirement described in the amendments made by sub-*
14 *sections (a) and (b) to other items and services for which*
15 *payment is provided under title XVIII of the Social Secu-*
16 *rity Act based upon a finding that such an decision would*
17 *reduce the risk of waste, fraud, or abuse.*

18 *(d) APPLICATION TO MEDICAID.—The requirements*
19 *pursuant to the amendments made by subsections (a) and*
20 *(b) shall apply in the case of physicians making certifi-*
21 *cations for home health services under title XIX of the So-*
22 *cial Security Act in the same manner and to the same ex-*
23 *tent as such requirements apply in the case of physicians*
24 *making such certifications under title XVIII of such Act.*

1 **SEC. 6408. ENHANCED PENALTIES.**

2 (a) *CIVIL MONETARY PENALTIES FOR FALSE STATE-*
3 *MENTS OR DELAYING INSPECTIONS.*—*Section 1128A(a) of*
4 *the Social Security Act (42 U.S.C. 1320a–7a(a)), as*
5 *amended by section 5002(d)(2)(A), is amended—*

6 (1) *in paragraph (6), by striking “or” at the*
7 *end; and*

8 (2) *by inserting after paragraph (7) the fol-*
9 *lowing new paragraphs:*

10 “(8) *knowingly makes, uses, or causes to be made*
11 *or used, a false record or statement material to a false*
12 *or fraudulent claim for payment for items and serv-*
13 *ices furnished under a Federal health care program;*
14 *or*

15 “(9) *fails to grant timely access, upon reasonable*
16 *request (as defined by the Secretary in regulations),*
17 *to the Inspector General of the Department of Health*
18 *and Human Services, for the purpose of audits, inves-*
19 *tigations, evaluations, or other statutory functions of*
20 *the Inspector General of the Department of Health*
21 *and Human Services;”;* and

22 (3) *in the first sentence—*

23 (A) *by striking “or in cases under para-*
24 *graph (7)” and inserting “in cases under para-*
25 *graph (7)”;* and

1 (B) by striking “act)” and inserting “act,
2 in cases under paragraph (8), \$50,000 for each
3 false record or statement, or in cases under para-
4 graph (9), \$15,000 for each day of the failure de-
5 scribed in such paragraph)”.

6 (b) *MEDICARE ADVANTAGE AND PART D PLANS.*—

7 (1) *ENSURING TIMELY INSPECTIONS RELATING*
8 *TO CONTRACTS WITH MA ORGANIZATIONS.*—Section
9 1857(d)(2) of such Act (42 U.S.C. 1395w–27(d)(2)) is
10 amended—

11 (A) in subparagraph (A), by inserting
12 “timely” before “inspect”; and

13 (B) in subparagraph (B), by inserting
14 “timely” before “audit and inspect”.

15 (2) *MARKETING VIOLATIONS.*—Section
16 1857(g)(1) of the Social Security Act (42 U.S.C.
17 1395w–27(g)(1)) is amended—

18 (A) in subparagraph (F), by striking “or”
19 at the end;

20 (B) by inserting after subparagraph (G) the
21 following new subparagraphs:

22 “(H) except as provided under subpara-
23 graph (C) or (D) of section 1860D–1(b)(1), en-
24 rolls an individual in any plan under this part

1 *without the prior consent of the individual or the*
2 *designee of the individual;*

3 *“(I) transfers an individual enrolled under*
4 *this part from one plan to another without the*
5 *prior consent of the individual or the designee of*
6 *the individual or solely for the purpose of earn-*
7 *ing a commission;*

8 *“(J) fails to comply with marketing restric-*
9 *tions described in subsections (h) and (j) of sec-*
10 *tion 1851 or applicable implementing regula-*
11 *tions or guidance; or*

12 *“(K) employs or contracts with any indi-*
13 *vidual or entity who engages in the conduct de-*
14 *scribed in subparagraphs (A) through (J) of this*
15 *paragraph;”;* and

16 *(C) by adding at the end the following new*
17 *sentence: “The Secretary may provide, in addi-*
18 *tion to any other remedies authorized by law, for*
19 *any of the remedies described in paragraph (2),*
20 *if the Secretary determines that any employee or*
21 *agent of such organization, or any provider or*
22 *supplier who contracts with such organization,*
23 *has engaged in any conduct described in sub-*
24 *paragraphs (A) through (K) of this paragraph.”.*

1 (3) *PROVISION OF FALSE INFORMATION.*—Section
2 1857(g)(2)(A) of the Social Security Act (42
3 U.S.C. 1395w–27(g)(2)(A)) is amended by inserting
4 “except with respect to a determination under sub-
5 paragraph (E), an assessment of not more than the
6 amount claimed by such plan or plan sponsor based
7 upon the misrepresentation or falsified information
8 involved,” after “for each such determination,”.

9 (c) *OBSTRUCTION OF PROGRAM AUDITS.*—Section
10 1128(b)(2) of the Social Security Act (42 U.S.C. 1320a–
11 7(b)(2)) is amended—

12 (1) in the heading, by inserting “OR AUDIT”
13 after “INVESTIGATION”; and

14 (2) by striking “investigation into” and all that
15 follows through the period and inserting “investiga-
16 tion or audit related to—”

17 “(i) any offense described in para-
18 graph (1) or in subsection (a); or

19 “(ii) the use of funds received, directly
20 or indirectly, from any Federal health care
21 program (as defined in section 1128B(f)).”.

22 (d) *EFFECTIVE DATE.*—

23 (1) *IN GENERAL.*—Except as provided in para-
24 graph (2), the amendments made by this section shall
25 apply to acts committed on or after January 1, 2010.

1 (2) *EXCEPTION.*—*The amendments made by sub-*
2 *section (b)(1) take effect on the date of enactment of*
3 *this Act.*

4 **SEC. 6409. MEDICARE SELF-REFERRAL DISCLOSURE PRO-**
5 **TOCOL.**

6 (a) *DEVELOPMENT OF SELF-REFERRAL DISCLOSURE*
7 *PROTOCOL.*—

8 (1) *IN GENERAL.*—*The Secretary of Health and*
9 *Human Services, in cooperation with the Inspector*
10 *General of the Department of Health and Human*
11 *Services, shall establish, not later than 6 months after*
12 *the date of the enactment of this Act, a protocol to en-*
13 *able health care providers of services and suppliers to*
14 *disclose an actual or potential violation of section*
15 *1877 of the Social Security Act (42 U.S.C. 1395nn)*
16 *pursuant to a self-referral disclosure protocol (in this*
17 *section referred to as an “SRDP”). The SRDP shall*
18 *include direction to health care providers of services*
19 *and suppliers on—*

20 (A) *a specific person, official, or office to*
21 *whom such disclosures shall be made; and*

22 (B) *instruction on the implication of the*
23 *SRDP on corporate integrity agreements and*
24 *corporate compliance agreements.*

1 (2) *PUBLICATION ON INTERNET WEBSITE OF*
2 *SRDP INFORMATION.*—*The Secretary of Health and*
3 *Human Services shall post information on the public*
4 *Internet website of the Centers for Medicare & Med-*
5 *icaid Services to inform relevant stakeholders of how*
6 *to disclose actual or potential violations pursuant to*
7 *an SRDP.*

8 (3) *RELATION TO ADVISORY OPINIONS.*—*The*
9 *SRDP shall be separate from the advisory opinion*
10 *process set forth in regulations implementing section*
11 *1877(g) of the Social Security Act.*

12 (b) *REDUCTION IN AMOUNTS OWED.*—*The Secretary*
13 *of Health and Human Services is authorized to reduce the*
14 *amount due and owing for all violations under section 1877*
15 *of the Social Security Act to an amount less than that speci-*
16 *fied in subsection (g) of such section. In establishing such*
17 *amount for a violation, the Secretary may consider the fol-*
18 *lowing factors:*

19 (1) *The nature and extent of the improper or il-*
20 *legal practice.*

21 (2) *The timeliness of such self-disclosure.*

22 (3) *The cooperation in providing additional in-*
23 *formation related to the disclosure.*

24 (4) *Such other factors as the Secretary considers*
25 *appropriate.*

1 (c) *REPORT.*—Not later than 18 months after the date
2 on which the SRDP protocol is established under subsection
3 (a)(1), the Secretary shall submit to Congress a report on
4 the implementation of this section. Such report shall in-
5 clude—

6 (1) the number of health care providers of serv-
7 ices and suppliers making disclosures pursuant to the
8 SRDP;

9 (2) the amounts collected pursuant to the SRDP;

10 (3) the types of violations reported under the
11 SRDP; and

12 (4) such other information as may be necessary
13 to evaluate the impact of this section.

14 **SEC. 6410. ADJUSTMENTS TO THE MEDICARE DURABLE**
15 **MEDICAL EQUIPMENT, PROSTHETICS,**
16 **ORTHOTICS, AND SUPPLIES COMPETITIVE AC-**
17 **QUISITION PROGRAM.**

18 (a) *EXPANSION OF ROUND 2 OF THE DME COMPETI-*
19 *TIVE BIDDING PROGRAM.*—Section 1847(a)(1) of the Social
20 Security Act (42 U.S.C. 1395w-3(a)(1)) is amended—

21 (1) in subparagraph (B)(i)(II), by striking “70”
22 and inserting “91”; and

23 (2) in subparagraph (D)(ii)—

24 (A) in subclause (I), by striking “and” at
25 the end;

1 (B) by redesignating subclause (II) as sub-
2 clause (III); and

3 (C) by inserting after subclause (I) the fol-
4 lowing new subclause:

5 “(II) the Secretary shall include
6 the next 21 largest metropolitan statis-
7 tical areas by total population (after
8 those selected under subclause (I)) for
9 such round; and”.

10 (b) *REQUIREMENT TO EITHER COMPETITIVELY BID*
11 *AREAS OR USE COMPETITIVE BID PRICES BY 2016.*—Sec-
12 *tion 1834(a)(1)(F) of the Social Security Act (42 U.S.C.*
13 *1395m(a)(1)(F)) is amended—*

14 (1) in clause (i), by striking “and” at the end;

15 (2) in clause (ii)—

16 (A) by inserting “(and, in the case of cov-
17 ered items furnished on or after January 1,
18 2016, subject to clause (iii), shall)” after “may”;
19 and

20 (B) by striking the period at the end and
21 inserting “; and”; and

22 (3) by adding at the end the following new
23 clause:

24 “(iii) in the case of covered items fur-
25 nished on or after January 1, 2016, the

1 *Secretary shall continue to make such ad-*
2 *justments described in clause (ii) as, under*
3 *such competitive acquisition programs, ad-*
4 *ditional covered items are phased in or in-*
5 *formation is updated as contracts under*
6 *section 1847 are recompeted in accordance*
7 *with section 1847(b)(3)(B).”.*

8 **SEC. 6411. EXPANSION OF THE RECOVERY AUDIT CON-**
9 **TRACTOR (RAC) PROGRAM.**

10 *(a) EXPANSION TO MEDICAID.—*

11 *(1) STATE PLAN AMENDMENT.—Section*
12 *1902(a)(42) of the Social Security Act (42 U.S.C.*
13 *1396a(a)(42)) is amended—*

14 *(A) by striking “that the records” and in-*
15 *serting “that—*

16 *“(A) the records”;*

17 *(B) by inserting “and” after the semicolon;*

18 *and*

19 *(C) by adding at the end the following:*

20 *“(B) not later than December 31, 2010, the*
21 *State shall—*

22 *“(i) establish a program under which*
23 *the State contracts (consistent with State*
24 *law and in the same manner as the Sec-*
25 *retary enters into contracts with recovery*

1 *audit contractors under section 1893(h),*
2 *subject to such exceptions or requirements as*
3 *the Secretary may require for purposes of*
4 *this title or a particular State) with 1 or*
5 *more recovery audit contractors for the pur-*
6 *pose of identifying underpayments and*
7 *overpayments and recouping overpayments*
8 *under the State plan and under any waiver*
9 *of the State plan with respect to all services*
10 *for which payment is made to any entity*
11 *under such plan or waiver; and*

12 *“(ii) provide assurances satisfactory to*
13 *the Secretary that—*

14 *“(I) under such contracts, pay-*
15 *ment shall be made to such a con-*
16 *tractor only from amounts recovered;*

17 *“(II) from such amounts recov-*
18 *ered, payment—*

19 *“(aa) shall be made on a*
20 *contingent basis for collecting*
21 *overpayments; and*

22 *“(bb) may be made in such*
23 *amounts as the State may specify*
24 *for identifying underpayments;*

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“(III) the State has an adequate process for entities to appeal any adverse determination made by such contractors; and

“(IV) such program is carried out in accordance with such requirements as the Secretary shall specify, including—

“(aa) for purposes of section 1903(a)(7), that amounts expended by the State to carry out the program shall be considered amounts expended as necessary for the proper and efficient administration of the State plan or a waiver of the plan;

“(bb) that section 1903(d) shall apply to amounts recovered under the program; and

“(cc) that the State and any such contractors under contract with the State shall coordinate such recovery audit efforts with other contractors or entities performing audits of entities receiv-

1 *ing payments under the State*
2 *plan or waiver in the State, in-*
3 *cluding efforts with Federal and*
4 *State law enforcement with re-*
5 *spect to the Department of Jus-*
6 *stice, including the Federal Bureau*
7 *of Investigations, the Inspector*
8 *General of the Department of*
9 *Health and Human Services, and*
10 *the State medicaid fraud control*
11 *unit; and”.*

12 (2) *COORDINATION; REGULATIONS.—*

13 (A) *IN GENERAL.—The Secretary of Health*
14 *and Human Services, acting through the Admin-*
15 *istrator of the Centers for Medicare & Medicaid*
16 *Services, shall coordinate the expansion of the*
17 *Recovery Audit Contractor program to Medicaid*
18 *with States, particularly with respect to each*
19 *State that enters into a contract with a recovery*
20 *audit contractor for purposes of the State’s Med-*
21 *icaid program prior to December 31, 2010.*

22 (B) *REGULATIONS.—The Secretary of*
23 *Health and Human Services shall promulgate*
24 *regulations to carry out this subsection and the*
25 *amendments made by this subsection, including*

1 *with respect to conditions of Federal financial*
2 *participation, as specified by the Secretary.*

3 **(b) EXPANSION TO MEDICARE PARTS C AND D.**—*Sec-*
4 *tion 1893(h) of the Social Security Act (42 U.S.C.*
5 *1395ddd(h)) is amended—*

6 (1) *in paragraph (1), in the matter preceding*
7 *subparagraph (A), by striking “part A or B” and in-*
8 *serting “this title”;*

9 (2) *in paragraph (2), by striking “parts A and*
10 *B” and inserting “this title”;*

11 (3) *in paragraph (3), by inserting “(not later*
12 *than December 31, 2010, in the case of contracts re-*
13 *lating to payments made under part C or D)” after*
14 *“2010”;*

15 (4) *in paragraph (4), in the matter preceding*
16 *subparagraph (A), by striking “part A or B” and in-*
17 *serting “this title”; and*

18 (5) *by adding at the end the following:*

19 **“(9) SPECIAL RULES RELATING TO PARTS C AND**
20 *D.—The Secretary shall enter into contracts under*
21 *paragraph (1) to require recovery audit contractors*
22 *to—*

23 **“(A) ensure that each MA plan under part**
24 *C has an anti-fraud plan in effect and to review*
25 *the effectiveness of each such anti-fraud plan;*

1 “(B) ensure that each prescription drug
2 plan under part D has an anti-fraud plan in ef-
3 fect and to review the effectiveness of each such
4 anti-fraud plan;

5 “(C) examine claims for reinsurance pay-
6 ments under section 1860D–15(b) to determine
7 whether prescription drug plans submitting such
8 claims incurred costs in excess of the allowable
9 reinsurance costs permitted under paragraph (2)
10 of that section; and

11 “(D) review estimates submitted by pre-
12 scription drug plans by private plans with re-
13 spect to the enrollment of high cost beneficiaries
14 (as defined by the Secretary) and to compare
15 such estimates with the numbers of such bene-
16 ficiaries actually enrolled by such plans.”.

17 (c) *ANNUAL REPORT.*—The Secretary of Health and
18 Human Services, acting through the Administrator of the
19 Centers for Medicare & Medicaid Services, shall submit an
20 annual report to Congress concerning the effectiveness of the
21 Recovery Audit Contractor program under Medicaid and
22 Medicare and shall include such reports recommendations
23 for expanding or improving the program.

1 ***Subtitle F—Additional Medicaid***
2 ***Program Integrity Provisions***

3 ***SEC. 6501. TERMINATION OF PROVIDER PARTICIPATION***
4 ***UNDER MEDICAID IF TERMINATED UNDER***
5 ***MEDICARE OR OTHER STATE PLAN.***

6 *Section 1902(a)(39) of the Social Security Act (42*
7 *U.S.C. 42 U.S.C. 1396a(a)) is amended by inserting after*
8 *“1128A,” the following: “terminate the participation of any*
9 *individual or entity in such program if (subject to such ex-*
10 *ceptions as are permitted with respect to exclusion under*
11 *sections 1128(c)(3)(B) and 1128(d)(3)(B)) participation of*
12 *such individual or entity is terminated under title XVIII*
13 *or any other State plan under this title.”.*

14 ***SEC. 6502. MEDICAID EXCLUSION FROM PARTICIPATION RE-***
15 ***LATING TO CERTAIN OWNERSHIP, CONTROL,***
16 ***AND MANAGEMENT AFFILIATIONS.***

17 *Section 1902(a) of the Social Security Act (42 U.S.C.*
18 *1396a(a)), as amended by section 6401(b), is amended by*
19 *inserting after paragraph (77) the following:*

20 *“(78) provide that the State agency described in*
21 *paragraph (9) exclude, with respect to a period, any*
22 *individual or entity from participation in the pro-*
23 *gram under the State plan if such individual or enti-*
24 *ty owns, controls, or manages an entity that (or if*

1 *such entity is owned, controlled, or managed by an*
2 *individual or entity that)—*

3 *“(A) has unpaid overpayments (as defined*
4 *by the Secretary) under this title during such pe-*
5 *riod determined by the Secretary or the State*
6 *agency to be delinquent;*

7 *“(B) is suspended or excluded from partici-*
8 *pation under or whose participation is termi-*
9 *nated under this title during such period; or*

10 *“(C) is affiliated with an individual or en-*
11 *tity that has been suspended or excluded from*
12 *participation under this title or whose participa-*
13 *tion is terminated under this title during such*
14 *period;”.*

15 **SEC. 6503. BILLING AGENTS, CLEARINGHOUSES, OR OTHER**
16 **ALTERNATE PAYEES REQUIRED TO REGISTER**
17 **UNDER MEDICAID.**

18 *(a) IN GENERAL.—Section 1902(a) of the Social Secu-*
19 *rity Act (42 U.S.C. 42 U.S.C. 1396a(a)), as amended by*
20 *section 6502(a), is amended by inserting after paragraph*
21 *(78), the following:*

22 *“(79) provide that any agent, clearinghouse, or*
23 *other alternate payee (as defined by the Secretary)*
24 *that submits claims on behalf of a health care pro-*

1 *vider must register with the State and the Secretary*
2 *in a form and manner specified by the Secretary;”.*

3 **SEC. 6504. REQUIREMENT TO REPORT EXPANDED SET OF**
4 **DATA ELEMENTS UNDER MMIS TO DETECT**
5 **FRAUD AND ABUSE.**

6 *(a) IN GENERAL.—Section 1903(r)(1)(F) of the Social*
7 *Security Act (42 U.S.C. 1396b(r)(1)(F)) is amended by in-*
8 *serting after “necessary” the following: “and including, for*
9 *data submitted to the Secretary on or after January 1,*
10 *2010, data elements from the automated data system that*
11 *the Secretary determines to be necessary for program integ-*
12 *rity, program oversight, and administration, at such fre-*
13 *quency as the Secretary shall determine”.*

14 *(b) MANAGED CARE ORGANIZATIONS.—*

15 *(1) IN GENERAL.—Section 1903(m)(2)(A)(xi) of*
16 *the Social Security Act (42 U.S.C.*
17 *1396b(m)(2)(A)(xi)) is amended by inserting “and for*
18 *the provision of such data to the State at a frequency*
19 *and level of detail to be specified by the Secretary”*
20 *after “patients”.*

21 *(2) EFFECTIVE DATE.—The amendment made by*
22 *paragraph (1) shall apply with respect to contract*
23 *years beginning on or after January 1, 2010.*

1 **SEC. 6505. PROHIBITION ON PAYMENTS TO INSTITUTIONS**
2 **OR ENTITIES LOCATED OUTSIDE OF THE**
3 **UNITED STATES.**

4 *Section 1902(a) of the Social Security Act (42 U.S.C.*
5 *1396b(a)), as amended by section 6503, is amended by in-*
6 *serting after paragraph (79) the following new paragraph:*

7 *“(80) provide that the State shall not provide*
8 *any payments for items or services provided under*
9 *the State plan or under a waiver to any financial in-*
10 *stitution or entity located outside of the United*
11 *States;”.*

12 **SEC. 6506. OVERPAYMENTS.**

13 *(a) EXTENSION OF PERIOD FOR COLLECTION OF*
14 *OVERPAYMENTS DUE TO FRAUD.—*

15 *(1) IN GENERAL.—Section 1903(d)(2) of the So-*
16 *cial Security Act (42 U.S.C. 1396b(d)(2)) is amend-*
17 *ed—*

18 *(A) in subparagraph (C)—*

19 *(i) in the first sentence, by striking*
20 *“60 days” and inserting “1 year”; and*

21 *(ii) in the second sentence, by striking*
22 *“60 days” and inserting “1-year period”;*
23 *and*

24 *(B) in subparagraph (D)—*

25 *(i) in inserting “(i)” after “(D)”;* and

26 *(ii) by adding at the end the following:*

1 “(ii) *In any case where the State is unable to recover*
2 *a debt which represents an overpayment (or any portion*
3 *thereof) made to a person or other entity due to fraud with-*
4 *in 1 year of discovery because there is not a final deter-*
5 *mination of the amount of the overpayment under an ad-*
6 *ministrative or judicial process (as applicable), including*
7 *as a result of a judgment being under appeal, no adjustment*
8 *shall be made in the Federal payment to such State on ac-*
9 *count of such overpayment (or portion thereof) before the*
10 *date that is 30 days after the date on which a final judg-*
11 *ment (including, if applicable, a final determination on an*
12 *appeal) is made.”.*

13 (2) *EFFECTIVE DATE.*—*The amendments made*
14 *by this subsection take effect on the date of enactment*
15 *of this Act and apply to overpayments discovered on*
16 *or after that date.*

17 (b) *CORRECTIVE ACTION.*—*The Secretary shall pro-*
18 *mulgate regulations that require States to correct Federally*
19 *identified claims overpayments, of an ongoing or recurring*
20 *nature, with new Medicaid Management Information Sys-*
21 *tem (MMIS) edits, audits, or other appropriate corrective*
22 *action.*

1 **SEC. 6507. MANDATORY STATE USE OF NATIONAL CORRECT**
2 **CODING INITIATIVE.**

3 *Section 1903(r) of the Social Security Act (42 U.S.C.*
4 *1396b(r)) is amended—*

5 *(1) in paragraph (1)(B)—*

6 *(A) in clause (ii), by striking “and” at the*
7 *end;*

8 *(B) in clause (iii), by adding “and” after*
9 *the semi-colon; and*

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

12 *“(iv) effective for claims filed on or*
13 *after October 1, 2010, incorporate compat-*
14 *ible methodologies of the National Correct*
15 *Coding Initiative administered by the Sec-*
16 *retary (or any successor initiative to pro-*
17 *mote correct coding and to control improper*
18 *coding leading to inappropriate payment)*
19 *and such other methodologies of that Initia-*
20 *tive (or such other national correct coding*
21 *methodologies) as the Secretary identifies in*
22 *accordance with paragraph (4);”;* and

23 *(2) by adding at the end the following new para-*
24 *graph:*

25 *“(4) For purposes of paragraph (1)(B)(iv), the Sec-*
26 *retary shall do the following:*

1 “(A) Not later than September 1, 2010:

2 “(i) Identify those methodologies of the Na-
3 national Correct Coding Initiative administered by
4 the Secretary (or any successor initiative to pro-
5 mote correct coding and to control improper cod-
6 ing leading to inappropriate payment) which
7 are compatible to claims filed under this title.

8 “(ii) Identify those methodologies of such
9 Initiative (or such other national correct coding
10 methodologies) that should be incorporated into
11 claims filed under this title with respect to items
12 or services for which States provide medical as-
13 sistance under this title and no national correct
14 coding methodologies have been established under
15 such Initiative with respect to title XVIII.

16 “(iii) Notify States of—

17 “(I) the methodologies identified under
18 subparagraphs (A) and (B) (and of any
19 other national correct coding methodologies
20 identified under subparagraph (B)); and

21 “(II) how States are to incorporate
22 such methodologies into claims filed under
23 this title.

24 “(B) Not later than March 1, 2011, submit a re-
25 port to Congress that includes the notice to States

1 *under clause (iii) of subparagraph (A) and an anal-*
2 *ysis supporting the identification of the methodologies*
3 *made under clauses (i) and (ii) of subparagraph*
4 *(A).”.*

5 **SEC. 6508. GENERAL EFFECTIVE DATE.**

6 *(a) IN GENERAL.—Except as otherwise provided in*
7 *this subtitle, this subtitle and the amendments made by this*
8 *subtitle take effect on January 1, 2011, without regard to*
9 *whether final regulations to carry out such amendments*
10 *and subtitle have been promulgated by that date.*

11 *(b) DELAY IF STATE LEGISLATION REQUIRED.—In the*
12 *case of a State plan for medical assistance under title XIX*
13 *of the Social Security Act or a child health plan under title*
14 *XXI of such Act which the Secretary of Health and Human*
15 *Services determines requires State legislation (other than*
16 *legislation appropriating funds) in order for the plan to*
17 *meet the additional requirement imposed by the amend-*
18 *ments made by this subtitle, the State plan or child health*
19 *plan shall not be regarded as failing to comply with the*
20 *requirements of such title solely on the basis of its failure*
21 *to meet this additional requirement before the first day of*
22 *the first calendar quarter beginning after the close of the*
23 *first regular session of the State legislature that begins after*
24 *the date of the enactment of this Act. For purposes of the*
25 *previous sentence, in the case of a State that has a 2-year*

1 *legislative session, each year of such session shall be deemed*
2 *to be a separate regular session of the State legislature.*

3 ***Subtitle G—Additional Program***
4 ***Integrity Provisions***

5 ***SEC. 6601. PROHIBITION ON FALSE STATEMENTS AND REP-***
6 ***RESENTATIONS.***

7 *(a) PROHIBITION.—Part 5 of subtitle B of title I of*
8 *the Employee Retirement Income Security Act of 1974 (29*
9 *U.S.C. 1131 et seq.) is amended by adding at the end the*
10 *following:*

11 ***“SEC. 519. PROHIBITION ON FALSE STATEMENTS AND REP-***
12 ***RESENTATIONS.***

13 *“No person, in connection with a plan or other ar-*
14 *rangement that is multiple employer welfare arrangement*
15 *described in section 3(40), shall make a false statement or*
16 *false representation of fact, knowing it to be false, in con-*
17 *nection with the marketing or sale of such plan or arrange-*
18 *ment, to any employee, any member of an employee organi-*
19 *zation, any beneficiary, any employer, any employee orga-*
20 *nization, the Secretary, or any State, or the representative*
21 *or agent of any such person, State, or the Secretary, con-*
22 *cerning—*

23 *“(1) the financial condition or solvency of such*
24 *plan or arrangement;*

1 “(2) the benefits provided by such plan or ar-
2 rangement;

3 “(3) the regulatory status of such plan or other
4 arrangement under any Federal or State law gov-
5 erning collective bargaining, labor management rela-
6 tions, or intern union affairs; or

7 “(4) the regulatory status of such plan or other
8 arrangement regarding exemption from state regu-
9 latory authority under this Act.

10 *This section shall not apply to any plan or arrangement*
11 *that does not fall within the meaning of the term ‘multiple*
12 *employer welfare arrangement’ under section 3(40)(A).”.*

13 **(b) CRIMINAL PENALTIES.**—*Section 501 of the Em-*
14 *ployee Retirement Income Security Act of 1974 (29 U.S.C.*
15 *1131) is amended—*

16 *(1) by inserting “(a)” before “Any person”; and*

17 *(2) by adding at the end the following:*

18 *“(b) Any person that violates section 519 shall upon*
19 *conviction be imprisoned not more than 10 years or fined*
20 *under title 18, United States Code, or both.”.*

21 **(c) CONFORMING AMENDMENT.**—*The table of sections*
22 *for part 5 of subtitle B of title I of the Employee Retirement*
23 *Income Security Act of 1974 is amended by adding at the*
24 *end the following:*

“Sec. 519. Prohibition on false statement and representations.”.

1 **SEC. 6602. CLARIFYING DEFINITION.**

2 *Section 24(a)(2) of title 18, United States Code, is*
3 *amended by inserting “or section 411, 518, or 511 of the*
4 *Employee Retirement Income Security Act of 1974,” after*
5 *“1954 of this title”.*

6 **SEC. 6603. DEVELOPMENT OF MODEL UNIFORM REPORT**
7 **FORM.**

8 *Part C of title XXVII of the Public Health Service Act*
9 *(42 U.S.C. 300gg–91 et seq.) is amended by adding at the*
10 *end the following:*

11 **“SEC. 2794. UNIFORM FRAUD AND ABUSE REFERRAL FOR-**
12 **MAT.**

13 *“The Secretary shall request the National Association*
14 *of Insurance Commissioners to develop a model uniform re-*
15 *port form for private health insurance issuer seeking to refer*
16 *suspected fraud and abuse to State insurance departments*
17 *or other responsible State agencies for investigation. The*
18 *Secretary shall request that the National Association of In-*
19 *surance Commissioners develop recommendations for uni-*
20 *form reporting standards for such referrals.”.*

21 **SEC. 6604. APPLICABILITY OF STATE LAW TO COMBAT**
22 **FRAUD AND ABUSE.**

23 *(a) IN GENERAL.—Part 5 of subtitle B of title I of*
24 *the Employee Retirement Income Security Act of 1974 (29*
25 *U.S.C. 1131 et seq.), as amended by section 6601, is further*
26 *amended by adding at the end the following:*

1 **“SEC. 520. APPLICABILITY OF STATE LAW TO COMBAT**
2 **FRAUD AND ABUSE.**

3 *“The Secretary may, for the purpose of identifying,*
4 *preventing, or prosecuting fraud and abuse, adopt regu-*
5 *latory standards establishing, or issue an order relating to*
6 *a specific person establishing, that a person engaged in the*
7 *business of providing insurance through a multiple em-*
8 *ployer welfare arrangement described in section 3(40) is*
9 *subject to the laws of the States in which such person oper-*
10 *ates which regulate insurance in such State, notwith-*
11 *standing section 514(b)(6) of this Act or the Liability Risk*
12 *Retention Act of 1986, and regardless of whether the law*
13 *of the State is otherwise preempted under any of such provi-*
14 *sions. This section shall not apply to any plan or arrange-*
15 *ment that does not fall within the meaning of the term ‘mul-*
16 *tiple employer welfare arrangement’ under section*
17 *3(40)(A).”.*

18 *(b) CONFORMING AMENDMENT.—The table of sections*
19 *for part 5 of subtitle B of title I of the Employee Retirement*
20 *Income Security Act of 1974, as amended by section 6601,*
21 *is further amended by adding at the end the following:*

“Sec. 520. Applicability of State law to combat fraud and abuse.”.

1 **SEC. 6605. ENABLING THE DEPARTMENT OF LABOR TO**
2 **ISSUE ADMINISTRATIVE SUMMARY CEASE**
3 **AND DESIST ORDERS AND SUMMARY SEI-**
4 **ZURES ORDERS AGAINST PLANS THAT ARE IN**
5 **FINANCIALLY HAZARDOUS CONDITION.**

6 (a) *IN GENERAL.*—Part 5 of subtitle B of title I of
7 the Employee Retirement Income Security Act of 1974 (29
8 U.S.C. 1131 et seq.), as amended by section 6604, is further
9 amended by adding at the end the following:

10 **“SEC. 521. ADMINISTRATIVE SUMMARY CEASE AND DESIST**
11 **ORDERS AND SUMMARY SEIZURE ORDERS**
12 **AGAINST MULTIPLE EMPLOYER WELFARE AR-**
13 **RANGEMENTS IN FINANCIALLY HAZARDOUS**
14 **CONDITION.**

15 “(a) *IN GENERAL.*—The Secretary may issue a cease
16 and desist (*ex parte*) order under this title if it appears
17 to the Secretary that the alleged conduct of a multiple em-
18 ployer welfare arrangement described in section 3(40), other
19 than a plan or arrangement described in subsection (g), is
20 fraudulent, or creates an immediate danger to the public
21 safety or welfare, or is causing or can be reasonably ex-
22 pected to cause significant, imminent, and irreparable pub-
23 lic injury.

24 “(b) *HEARING.*—A person that is adversely affected by
25 the issuance of a cease and desist order under subsection
26 (a) may request a hearing by the Secretary regarding such

1 *order. The Secretary may require that a proceeding under*
2 *this section, including all related information and evidence,*
3 *be conducted in a confidential manner.*

4 “(c) *BURDEN OF PROOF.*—*The burden of proof in any*
5 *hearing conducted under subsection (b) shall be on the party*
6 *requesting the hearing to show cause why the cease and de-*
7 *sist order should be set aside.*

8 “(d) *DETERMINATION.*—*Based upon the evidence pre-*
9 *sented at a hearing under subsection (b), the cease and de-*
10 *sist order involved may be affirmed, modified, or set aside*
11 *by the Secretary in whole or in part.*

12 “(e) *SEIZURE.*—*The Secretary may issue a summary*
13 *seizure order under this title if it appears that a multiple*
14 *employer welfare arrangement is in a financially hazardous*
15 *condition.*

16 “(f) *REGULATIONS.*—*The Secretary may promulgate*
17 *such regulations or other guidance as may be necessary or*
18 *appropriate to carry out this section.*

19 “(g) *EXCEPTION.*—*This section shall not apply to any*
20 *plan or arrangement that does not fall within the meaning*
21 *of the term ‘multiple employer welfare arrangement’ under*
22 *section 3(40)(A).”.*

23 “(b) *CONFORMING AMENDMENT.*—*The table of sections*
24 *for part 5 of subtitle B of title I of the Employee Retirement*

1 *Income Security Act of 1974, as amended by section 6604,*
2 *is further amended by adding at the end the following:*

“Sec. 521. Administrative summary cease and desist orders and summary seizure orders against health plans in financially hazardous condition.”.

3 **SEC. 6606. MEWA PLAN REGISTRATION WITH DEPARTMENT**
4 **OF LABOR.**

5 *Section 101(g) of the Employee Retirement Income Se-*
6 *curity Act of 1974 (29 U.S.C. 1021(g)) is amended—*

7 *(1) by striking “Secretary may” and inserting*
8 *“Secretary shall”; and*

9 *(2) by inserting “to register with the Secretary*
10 *prior to operating in a State and may, by regulation,*
11 *require such multiple employer welfare arrangements”*
12 *after “not group health plans”.*

13 **SEC. 6607. PERMITTING EVIDENTIARY PRIVILEGE AND CON-**
14 **FIDENTIAL COMMUNICATIONS.**

15 *Section 504 of the Employee Retirement Income Secu-*
16 *urity Act of 1974 (29 U.S.C. 1134) is amended by adding*
17 *at the end the following:*

18 *“(d) The Secretary may promulgate a regulation that*
19 *provides an evidentiary privilege for, and provides for the*
20 *confidentiality of communications between or among, any*
21 *of the following entities or their agents, consultants, or em-*
22 *ployees:*

23 *“(1) A State insurance department.*

24 *“(2) A State attorney general.*

1 “(3) *The National Association of Insurance Com-*
2 *missioners.*

3 “(4) *The Department of Labor.*

4 “(5) *The Department of the Treasury.*

5 “(6) *The Department of Justice.*

6 “(7) *The Department of Health and Human*
7 *Services.*

8 “(8) *Any other Federal or State authority that*
9 *the Secretary determines is appropriate for the pur-*
10 *poses of enforcing the provisions of this title.*

11 “(e) *The privilege established under subsection (d)*
12 *shall apply to communications related to any investigation,*
13 *audit, examination, or inquiry conducted or coordinated by*
14 *any of the agencies. A communication that is privileged*
15 *under subsection (d) shall not waive any privilege otherwise*
16 *available to the communicating agency or to any person*
17 *who provided the information that is communicated.”.*

18 ***Subtitle H—Elder Justice Act***

19 ***SEC. 6701. SHORT TITLE OF SUBTITLE.***

20 *This subtitle may be cited as the “Elder Justice Act*
21 *of 2009”.*

22 ***SEC. 6702. DEFINITIONS.***

23 *Except as otherwise specifically provided, any term*
24 *that is defined in section 2011 of the Social Security Act*

1 *(as added by section 6703(a)) and is used in this subtitle*
 2 *has the meaning given such term by such section.*

3 **SEC. 6703. ELDER JUSTICE.**

4 *(a) ELDER JUSTICE.—*

5 *(1) IN GENERAL.—Title XX of the Social Secu-*
 6 *rity Act (42 U.S.C. 1397 et seq.) is amended—*

7 *(A) in the heading, by inserting “AND*
 8 **ELDER JUSTICE”** *after “SOCIAL*
 9 **SERVICES”;**

10 *(B) by inserting before section 2001 the fol-*
 11 *lowing:*

12 **“Subtitle A—Block Grants to States**
 13 **for Social Services”;**

14 *and*

15 *(C) by adding at the end the following:*

16 **“Subtitle B—Elder Justice**

17 **“SEC. 2011. DEFINITIONS.**

18 *“In this subtitle:*

19 *“(1) ABUSE.—The term ‘abuse’ means the know-*
 20 *ing infliction of physical or psychological harm or the*
 21 *knowing deprivation of goods or services that are nec-*
 22 *essary to meet essential needs or to avoid physical or*
 23 *psychological harm.*

24 *“(2) ADULT PROTECTIVE SERVICES.—The term*
 25 *‘adult protective services’ means such services pro-*

1 *vided to adults as the Secretary may specify and in-*
2 *cludes services such as—*

3 *“(A) receiving reports of adult abuse, ne-*
4 *glect, or exploitation;*

5 *“(B) investigating the reports described in*
6 *subparagraph (A);*

7 *“(C) case planning, monitoring, evaluation,*
8 *and other case work and services; and*

9 *“(D) providing, arranging for, or facili-*
10 *tating the provision of medical, social service,*
11 *economic, legal, housing, law enforcement, or*
12 *other protective, emergency, or support services.*

13 *“(3) CAREGIVER.—The term ‘caregiver’ means*
14 *an individual who has the responsibility for the care*
15 *of an elder, either voluntarily, by contract, by receipt*
16 *of payment for care, or as a result of the operation*
17 *of law, and means a family member or other indi-*
18 *vidual who provides (on behalf of such individual or*
19 *of a public or private agency, organization, or insti-*
20 *tution) compensated or uncompensated care to an*
21 *elder who needs supportive services in any setting.*

22 *“(4) DIRECT CARE.—The term ‘direct care’*
23 *means care by an employee or contractor who pro-*
24 *vides assistance or long-term care services to a recipi-*
25 *ent.*

1 “(5) *ELDER.*—The term ‘elder’ means an indi-
2 vidual age 60 or older.

3 “(6) *ELDER JUSTICE.*—The term ‘elder justice’
4 means—

5 “(A) from a societal perspective, efforts to—

6 “(i) prevent, detect, treat, intervene in,
7 and prosecute elder abuse, neglect, and ex-
8 ploitation; and

9 “(ii) protect elders with diminished ca-
10 pacity while maximizing their autonomy;
11 and

12 “(B) from an individual perspective, the
13 recognition of an elder’s rights, including the
14 right to be free of abuse, neglect, and exploi-
15 tation.

16 “(7) *ELIGIBLE ENTITY.*—The term ‘eligible enti-
17 ty’ means a State or local government agency, Indian
18 tribe or tribal organization, or any other public or
19 private entity that is engaged in and has expertise in
20 issues relating to elder justice or in a field necessary
21 to promote elder justice efforts.

22 “(8) *EXPLOITATION.*—The term ‘exploitation’
23 means the fraudulent or otherwise illegal, unauthor-
24 ized, or improper act or process of an individual, in-
25 cluding a caregiver or fiduciary, that uses the re-

1 *sources of an elder for monetary or personal benefit,*
2 *profit, or gain, or that results in depriving an elder*
3 *of rightful access to, or use of, benefits, resources, be-*
4 *longings, or assets.*

5 “(9) *FIDUCIARY.*—*The term ‘fiduciary’—*

6 “(A) *means a person or entity with the*
7 *legal responsibility—*

8 “(i) *to make decisions on behalf of and*
9 *for the benefit of another person; and*

10 “(ii) *to act in good faith and with*
11 *fairness; and*

12 “(B) *includes a trustee, a guardian, a con-*
13 *servator, an executor, an agent under a financial*
14 *power of attorney or health care power of attor-*
15 *ney, or a representative payee.*

16 “(10) *GRANT.*—*The term ‘grant’ includes a con-*
17 *tract, cooperative agreement, or other mechanism for*
18 *providing financial assistance.*

19 “(11) *GUARDIANSHIP.*—*The term ‘guardianship’*
20 *means—*

21 “(A) *the process by which a State court de-*
22 *termines that an adult individual lacks capacity*
23 *to make decisions about self-care or property,*
24 *and appoints another individual or entity*

1 *known as a guardian, as a conservator, or by a*
2 *similar term, as a surrogate decisionmaker;*

3 *“(B) the manner in which the court-ap-*
4 *pointed surrogate decisionmaker carries out du-*
5 *ties to the individual and the court; or*

6 *“(C) the manner in which the court exer-*
7 *cises oversight of the surrogate decisionmaker.*

8 *“(12) INDIAN TRIBE.—*

9 *“(A) IN GENERAL.—The term ‘Indian tribe’*
10 *has the meaning given such term in section 4 of*
11 *the Indian Self-Determination and Education*
12 *Assistance Act (25 U.S.C. 450b).*

13 *“(B) INCLUSION OF PUEBLO AND*
14 *RANCHERIA.—The term ‘Indian tribe’ includes*
15 *any Pueblo or Rancheria.*

16 *“(13) LAW ENFORCEMENT.—The term ‘law en-*
17 *forcement’ means the full range of potential respond-*
18 *ers to elder abuse, neglect, and exploitation includ-*
19 *ing—*

20 *“(A) police, sheriffs, detectives, public safety*
21 *officers, and corrections personnel;*

22 *“(B) prosecutors;*

23 *“(C) medical examiners;*

24 *“(D) investigators; and*

25 *“(E) coroners.*

1 “(14) *LONG-TERM CARE*.—

2 “(A) *IN GENERAL*.—*The term ‘long-term*
3 *care’ means supportive and health services speci-*
4 *fied by the Secretary for individuals who need*
5 *assistance because the individuals have a loss of*
6 *capacity for self-care due to illness, disability, or*
7 *vulnerability.*

8 “(B) *LOSS OF CAPACITY FOR SELF-CARE*.—
9 *For purposes of subparagraph (A), the term ‘loss*
10 *of capacity for self-care’ means an inability to*
11 *engage in 1 or more activities of daily living, in-*
12 *cluding eating, dressing, bathing, management of*
13 *one’s financial affairs, and other activities the*
14 *Secretary determines appropriate.*

15 “(15) *LONG-TERM CARE FACILITY*.—*The term*
16 *‘long-term care facility’ means a residential care pro-*
17 *vider that arranges for, or directly provides, long-*
18 *term care.*

19 “(16) *NEGLECT*.—*The term ‘neglect’ means—*

20 “(A) *the failure of a caregiver or fiduciary*
21 *to provide the goods or services that are nec-*
22 *essary to maintain the health or safety of an*
23 *elder; or*

24 “(B) *self-neglect.*

25 “(17) *NURSING FACILITY*.—

1 “(A) *IN GENERAL.*—*The term ‘nursing fa-*
2 *cility’ has the meaning given such term under*
3 *section 1919(a).*

4 “(B) *INCLUSION OF SKILLED NURSING FA-*
5 *CILITY.*—*The term ‘nursing facility’ includes a*
6 *skilled nursing facility (as defined in section*
7 *1819(a)).*

8 “(18) *SELF-NEGLECT.*—*The term ‘self-neglect’*
9 *means an adult’s inability, due to physical or mental*
10 *impairment or diminished capacity, to perform essen-*
11 *tial self-care tasks including—*

12 “(A) *obtaining essential food, clothing, shel-*
13 *ter, and medical care;*

14 “(B) *obtaining goods and services necessary*
15 *to maintain physical health, mental health, or*
16 *general safety; or*

17 “(C) *managing one’s own financial affairs.*

18 “(19) *SERIOUS BODILY INJURY.*—

19 “(A) *IN GENERAL.*—*The term ‘serious bod-*
20 *ily injury’ means an injury—*

21 “(i) *involving extreme physical pain;*

22 “(ii) *involving substantial risk of*
23 *death;*

1 “(iii) involving protracted loss or im-
2 pairment of the function of a bodily mem-
3 ber, organ, or mental faculty; or

4 “(iv) requiring medical intervention
5 such as surgery, hospitalization, or physical
6 rehabilitation.

7 “(B) *CRIMINAL SEXUAL ABUSE*.—*Serious*
8 *bodily injury shall be considered to have oc-*
9 *curring if the conduct causing the injury is con-*
10 *duct described in section 2241 (relating to aggra-*
11 *vated sexual abuse) or 2242 (relating to sexual*
12 *abuse) of title 18, United States Code, or any*
13 *similar offense under State law.*

14 “(20) *SOCIAL*.—*The term ‘social’, when used*
15 *with respect to a service, includes adult protective*
16 *services.*

17 “(21) *STATE LEGAL ASSISTANCE DEVELOPER*.—
18 *The term ‘State legal assistance developer’ means an*
19 *individual described in section 731 of the Older*
20 *Americans Act of 1965.*

21 “(22) *STATE LONG-TERM CARE OMBUDSMAN*.—
22 *The term ‘State Long-Term Care Ombudsman’ means*
23 *the State Long-Term Care Ombudsman described in*
24 *section 712(a)(2) of the Older Americans Act of 1965.*

1 **“SEC. 2012. GENERAL PROVISIONS.**

2 “(a) *PROTECTION OF PRIVACY.*—*In pursuing activi-*
3 *ties under this subtitle, the Secretary shall ensure the pro-*
4 *tection of individual health privacy consistent with the reg-*
5 *ulations promulgated under section 264(c) of the Health In-*
6 *surance Portability and Accountability Act of 1996 and ap-*
7 *plicable State and local privacy regulations.*

8 “(b) *RULE OF CONSTRUCTION.*—*Nothing in this sub-*
9 *title shall be construed to interfere with or abridge an elder’s*
10 *right to practice his or her religion through reliance on*
11 *prayer alone for healing when this choice—*

12 “(1) *is contemporaneously expressed, either oral-*
13 *ly or in writing, with respect to a specific illness or*
14 *injury which the elder has at the time of the decision*
15 *by an elder who is competent at the time of the deci-*
16 *sion;*

17 “(2) *is previously set forth in a living will,*
18 *health care proxy, or other advance directive docu-*
19 *ment that is validly executed and applied under State*
20 *law; or*

21 “(3) *may be unambiguously deduced from the el-*
22 *der’s life history.*

1 **“PART I—NATIONAL COORDINATION OF ELDER**
2 **JUSTICE ACTIVITIES AND RESEARCH**
3 **“Subpart A—Elder Justice Coordinating Council and**
4 **Advisory Board on Elder Abuse, Neglect, and Ex-**
5 **ploitation**

6 **“SEC. 2021. ELDER JUSTICE COORDINATING COUNCIL.**

7 “(a) *ESTABLISHMENT.*—*There is established within*
8 *the Office of the Secretary an Elder Justice Coordinating*
9 *Council (in this section referred to as the ‘Council’).*

10 “(b) *MEMBERSHIP.*—

11 “(1) *IN GENERAL.*—*The Council shall be com-*
12 *posed of the following members:*

13 “(A) *The Secretary (or the Secretary’s des-*
14 *ignee).*

15 “(B) *The Attorney General (or the Attorney*
16 *General’s designee).*

17 “(C) *The head of each Federal department*
18 *or agency or other governmental entity identified*
19 *by the Chair referred to in subsection (d) as hav-*
20 *ing responsibilities, or administering programs,*
21 *relating to elder abuse, neglect, and exploitation.*

22 “(2) *REQUIREMENT.*—*Each member of the Coun-*
23 *cil shall be an officer or employee of the Federal Gov-*
24 *ernment.*

1 “(c) *VACANCIES.*—*Any vacancy in the Council shall*
2 *not affect its powers, but shall be filled in the same manner*
3 *as the original appointment was made.*

4 “(d) *CHAIR.*—*The member described in subsection*
5 *(b)(1)(A) shall be Chair of the Council.*

6 “(e) *MEETINGS.*—*The Council shall meet at least 2*
7 *times per year, as determined by the Chair.*

8 “(f) *DUTIES.*—

9 “(1) *IN GENERAL.*—*The Council shall make rec-*
10 *ommendations to the Secretary for the coordination of*
11 *activities of the Department of Health and Human*
12 *Services, the Department of Justice, and other rel-*
13 *evant Federal, State, local, and private agencies and*
14 *entities, relating to elder abuse, neglect, and exploi-*
15 *tation and other crimes against elders.*

16 “(2) *REPORT.*—*Not later than the date that is 2*
17 *years after the date of enactment of the Elder Justice*
18 *Act of 2009 and every 2 years thereafter, the Council*
19 *shall submit to the Committee on Finance of the Sen-*
20 *ate and the Committee on Ways and Means and the*
21 *Committee on Energy and Commerce of the House of*
22 *Representatives a report that—*

23 “(A) *describes the activities and accomplish-*
24 *ments of, and challenges faced by—*

25 “(i) *the Council; and*

1 “(ii) *the entities represented on the*
2 *Council; and*

3 “(B) *makes such recommendations for legis-*
4 *lation, model laws, or other action as the Council*
5 *determines to be appropriate.*

6 “(g) *POWERS OF THE COUNCIL.—*

7 “(1) *INFORMATION FROM FEDERAL AGENCIES.—*
8 *Subject to the requirements of section 2012(a), the*
9 *Council may secure directly from any Federal depart-*
10 *ment or agency such information as the Council con-*
11 *siders necessary to carry out this section. Upon re-*
12 *quest of the Chair of the Council, the head of such de-*
13 *partment or agency shall furnish such information to*
14 *the Council.*

15 “(2) *POSTAL SERVICES.—The Council may use*
16 *the United States mails in the same manner and*
17 *under the same conditions as other departments and*
18 *agencies of the Federal Government.*

19 “(h) *TRAVEL EXPENSES.—The members of the Council*
20 *shall not receive compensation for the performance of serv-*
21 *ices for the Council. The members shall be allowed travel*
22 *expenses, including per diem in lieu of subsistence, at rates*
23 *authorized for employees of agencies under subchapter I of*
24 *chapter 57 of title 5, United States Code, while away from*
25 *their homes or regular places of business in the performance*

1 of services for the Council. Notwithstanding section 1342
2 of title 31, United States Code, the Secretary may accept
3 the voluntary and uncompensated services of the members
4 of the Council.

5 “(i) *DETAIL OF GOVERNMENT EMPLOYEES.*—Any
6 Federal Government employee may be detailed to the Coun-
7 cil without reimbursement, and such detail shall be without
8 interruption or loss of civil service status or privilege.

9 “(j) *STATUS AS PERMANENT COUNCIL.*—Section 14 of
10 the Federal Advisory Committee Act (5 U.S.C. App.) shall
11 not apply to the Council.

12 “(k) *AUTHORIZATION OF APPROPRIATIONS.*—There
13 are authorized to be appropriated such sums as are nec-
14 essary to carry out this section.

15 **“SEC. 2022. ADVISORY BOARD ON ELDER ABUSE, NEGLECT,**
16 **AND EXPLOITATION.**

17 “(a) *ESTABLISHMENT.*—There is established a board
18 to be known as the ‘Advisory Board on Elder Abuse, Neglect,
19 and Exploitation’ (in this section referred to as the ‘Advi-
20 sory Board’) to create short- and long-term multidisci-
21 plinary strategic plans for the development of the field of
22 elder justice and to make recommendations to the Elder
23 Justice Coordinating Council established under section
24 2021.

1 “(b) *COMPOSITION.*—*The Advisory Board shall be*
2 *composed of 27 members appointed by the Secretary from*
3 *among members of the general public who are individuals*
4 *with experience and expertise in elder abuse, neglect, and*
5 *exploitation prevention, detection, treatment, intervention,*
6 *or prosecution.*

7 “(c) *SOLICITATION OF NOMINATIONS.*—*The Secretary*
8 *shall publish a notice in the Federal Register soliciting*
9 *nominations for the appointment of members of the Advi-*
10 *sory Board under subsection (b).*

11 “(d) *TERMS.*—

12 “(1) *IN GENERAL.*—*Each member of the Advi-*
13 *sory Board shall be appointed for a term of 3 years,*
14 *except that, of the members first appointed—*

15 “(A) *9 shall be appointed for a term of 3*
16 *years;*

17 “(B) *9 shall be appointed for a term of 2*
18 *years; and*

19 “(C) *9 shall be appointed for a term of 1*
20 *year.*

21 “(2) *VACANCIES.*—

22 “(A) *IN GENERAL.*—*Any vacancy on the*
23 *Advisory Board shall not affect its powers, but*
24 *shall be filled in the same manner as the original*
25 *appointment was made.*

1 “(B) *FILLING UNEXPIRED TERM.*—*An indi-*
2 *vidual chosen to fill a vacancy shall be ap-*
3 *pointed for the unexpired term of the member re-*
4 *placed.*

5 “(3) *EXPIRATION OF TERMS.*—*The term of any*
6 *member shall not expire before the date on which the*
7 *member’s successor takes office.*

8 “(e) *ELECTION OF OFFICERS.*—*The Advisory Board*
9 *shall elect a Chair and Vice Chair from among its members.*
10 *The Advisory Board shall elect its initial Chair and Vice*
11 *Chair at its initial meeting.*

12 “(f) *DUTIES.*—

13 “(1) *ENHANCE COMMUNICATION ON PROMOTING*
14 *QUALITY OF, AND PREVENTING ABUSE, NEGLECT, AND*
15 *EXPLOITATION IN, LONG-TERM CARE.*—*The Advisory*
16 *Board shall develop collaborative and innovative ap-*
17 *proaches to improve the quality of, including pre-*
18 *venting abuse, neglect, and exploitation in, long-term*
19 *care.*

20 “(2) *COLLABORATIVE EFFORTS TO DEVELOP*
21 *CONSENSUS AROUND THE MANAGEMENT OF CERTAIN*
22 *QUALITY-RELATED FACTORS.*—

23 “(A) *IN GENERAL.*—*The Advisory Board*
24 *shall establish multidisciplinary panels to ad-*
25 *dress, and develop consensus on, subjects relating*

1 *to improving the quality of long-term care. At*
2 *least 1 such panel shall address, and develop con-*
3 *sensus on, methods for managing resident-to-resi-*
4 *dent abuse in long-term care.*

5 “(B) *ACTIVITIES CONDUCTED.*—*The multi-*
6 *disciplinary panels established under subpara-*
7 *graph (A) shall examine relevant research and*
8 *data, identify best practices with respect to the*
9 *subject of the panel, determine the best way to*
10 *carry out those best practices in a practical and*
11 *feasible manner, and determine an effective man-*
12 *ner of distributing information on such subject.*

13 “(3) *REPORT.*—*Not later than the date that is*
14 *18 months after the date of enactment of the Elder*
15 *Justice Act of 2009, and annually thereafter, the Ad-*
16 *visory Board shall prepare and submit to the Elder*
17 *Justice Coordinating Council, the Committee on Fi-*
18 *nance of the Senate, and the Committee on Ways and*
19 *Means and the Committee on Energy and Commerce*
20 *of the House of Representatives a report containing—*

21 “(A) *information on the status of Federal,*
22 *State, and local public and private elder justice*
23 *activities;*

24 “(B) *recommendations (including rec-*
25 *ommended priorities) regarding—*

1 “(i) elder justice programs, research,
2 training, services, practice, enforcement,
3 and coordination;

4 “(ii) coordination between entities pur-
5 suing elder justice efforts and those involved
6 in related areas that may inform or overlap
7 with elder justice efforts, such as activities
8 to combat violence against women and child
9 abuse and neglect; and

10 “(iii) activities relating to adult fidu-
11 ciary systems, including guardianship and
12 other fiduciary arrangements;

13 “(C) recommendations for specific modifica-
14 tions needed in Federal and State laws (includ-
15 ing regulations) or for programs, research, and
16 training to enhance prevention, detection, and
17 treatment (including diagnosis) of, intervention
18 in (including investigation of), and prosecution
19 of elder abuse, neglect, and exploitation;

20 “(D) recommendations on methods for the
21 most effective coordinated national data collec-
22 tion with respect to elder justice, and elder abuse,
23 neglect, and exploitation; and

1 “(E) *recommendations for a multidisci-*
2 *plinary strategic plan to guide the effective and*
3 *efficient development of the field of elder justice.*

4 “(g) *POWERS OF THE ADVISORY BOARD.—*

5 “(1) *INFORMATION FROM FEDERAL AGENCIES.—*
6 *Subject to the requirements of section 2012(a), the Ad-*
7 *visory Board may secure directly from any Federal*
8 *department or agency such information as the Advi-*
9 *sory Board considers necessary to carry out this sec-*
10 *tion. Upon request of the Chair of the Advisory*
11 *Board, the head of such department or agency shall*
12 *furnish such information to the Advisory Board.*

13 “(2) *SHARING OF DATA AND REPORTS.—The Ad-*
14 *visory Board may request from any entity pursuing*
15 *elder justice activities under the Elder Justice Act of*
16 *2009 or an amendment made by that Act, any data,*
17 *reports, or recommendations generated in connection*
18 *with such activities.*

19 “(3) *POSTAL SERVICES.—The Advisory Board*
20 *may use the United States mails in the same manner*
21 *and under the same conditions as other departments*
22 *and agencies of the Federal Government.*

23 “(h) *TRAVEL EXPENSES.—The members of the Advi-*
24 *sory Board shall not receive compensation for the perform-*
25 *ance of services for the Advisory Board. The members shall*

1 *be allowed travel expenses for up to 4 meetings per year,*
2 *including per diem in lieu of subsistence, at rates author-*
3 *ized for employees of agencies under subchapter I of chapter*
4 *57 of title 5, United States Code, while away from their*
5 *homes or regular places of business in the performance of*
6 *services for the Advisory Board. Notwithstanding section*
7 *1342 of title 31, United States Code, the Secretary may ac-*
8 *cept the voluntary and uncompensated services of the mem-*
9 *bers of the Advisory Board.*

10 “(i) *DETAIL OF GOVERNMENT EMPLOYEES.—Any*
11 *Federal Government employee may be detailed to the Advi-*
12 *sory Board without reimbursement, and such detail shall*
13 *be without interruption or loss of civil service status or*
14 *privilege.*

15 “(j) *STATUS AS PERMANENT ADVISORY COMMITTEE.—*
16 *Section 14 of the Federal Advisory Committee Act (5 U.S.C.*
17 *App.) shall not apply to the advisory board.*

18 “(k) *AUTHORIZATION OF APPROPRIATIONS.—There*
19 *are authorized to be appropriated such sums as are nec-*
20 *essary to carry out this section.*

21 **“SEC. 2023. RESEARCH PROTECTIONS.**

22 “(a) *GUIDELINES.—The Secretary shall promulgate*
23 *guidelines to assist researchers working in the area of elder*
24 *abuse, neglect, and exploitation, with issues relating to*
25 *human subject protections.*

1 “(b) *DEFINITION OF LEGALLY AUTHORIZED REPRESENTATIVE FOR APPLICATION OF REGULATIONS.*—For
2 *purposes of the application of subpart A of part 46 of title*
3 *45, Code of Federal Regulations, to research conducted*
4 *under this subpart, the term ‘legally authorized representa-*
5 *tive’ means, unless otherwise provided by law, the indi-*
6 *vidual or judicial or other body authorized under the appli-*
7 *cable law to consent to medical treatment on behalf of an-*
8 *other person.*

10 **“SEC. 2024. AUTHORIZATION OF APPROPRIATIONS.**

11 *“There are authorized to be appropriated to carry out*
12 *this subpart—*

13 *“(1) for fiscal year 2011, \$6,500,000; and*

14 *“(2) for each of fiscal years 2012 through 2014,*
15 *\$7,000,000.*

16 **“Subpart B—Elder Abuse, Neglect, and Exploitation**
17 **Forensic Centers**

18 **“SEC. 2031. ESTABLISHMENT AND SUPPORT OF ELDER**
19 **ABUSE, NEGLECT, AND EXPLOITATION FO-**
20 **RENSIC CENTERS.**

21 “(a) *IN GENERAL.*—*The Secretary, in consultation*
22 *with the Attorney General, shall make grants to eligible en-*
23 *tities to establish and operate stationary and mobile foren-*
24 *sic centers, to develop forensic expertise regarding, and pro-*

1 *vide services relating to, elder abuse, neglect, and exploi-*
2 *tation.*

3 “(b) *STATIONARY FORENSIC CENTERS.*—*The Sec-*
4 *retary shall make 4 of the grants described in subsection*
5 *(a) to institutions of higher education with demonstrated*
6 *expertise in forensics or commitment to preventing or treat-*
7 *ing elder abuse, neglect, or exploitation, to establish and*
8 *operate stationary forensic centers.*

9 “(c) *MOBILE CENTERS.*—*The Secretary shall make 6*
10 *of the grants described in subsection (a) to appropriate enti-*
11 *ties to establish and operate mobile forensic centers.*

12 “(d) *AUTHORIZED ACTIVITIES.*—

13 “(1) *DEVELOPMENT OF FORENSIC MARKERS AND*
14 *METHODOLOGIES.*—*An eligible entity that receives a*
15 *grant under this section shall use funds made avail-*
16 *able through the grant to assist in determining wheth-*
17 *er abuse, neglect, or exploitation occurred and whether*
18 *a crime was committed and to conduct research to de-*
19 *scribe and disseminate information on—*

20 “(A) *forensic markers that indicate a case*
21 *in which elder abuse, neglect, or exploitation*
22 *may have occurred; and*

23 “(B) *methodologies for determining, in such*
24 *a case, when and how health care, emergency*
25 *service, social and protective services, and legal*

1 *service providers should intervene and when the*
2 *providers should report the case to law enforce-*
3 *ment authorities.*

4 “(2) *DEVELOPMENT OF FORENSIC EXPERTISE.—*
5 *An eligible entity that receives a grant under this sec-*
6 *tion shall use funds made available through the grant*
7 *to develop forensic expertise regarding elder abuse, ne-*
8 *glect, and exploitation in order to provide medical*
9 *and forensic evaluation, therapeutic intervention, vic-*
10 *tim support and advocacy, case review, and case*
11 *tracking.*

12 “(3) *COLLECTION OF EVIDENCE.—The Secretary,*
13 *in coordination with the Attorney General, shall use*
14 *data made available by grant recipients under this*
15 *section to develop the capacity of geriatric health care*
16 *professionals and law enforcement to collect forensic*
17 *evidence, including collecting forensic evidence relat-*
18 *ing to a potential determination of elder abuse, ne-*
19 *glect, or exploitation.*

20 “(e) *APPLICATION.—To be eligible to receive a grant*
21 *under this section, an entity shall submit an application*
22 *to the Secretary at such time, in such manner, and con-*
23 *taining such information as the Secretary may require.*

24 “(f) *AUTHORIZATION OF APPROPRIATIONS.—There are*
25 *authorized to be appropriated to carry out this section—*

- 1 “(1) for fiscal year 2011, \$4,000,000;
2 “(2) for fiscal year 2012, \$6,000,000; and
3 “(3) for each of fiscal years 2013 and 2014,
4 \$8,000,000.

5 **“PART II—PROGRAMS TO PROMOTE ELDER**

6 **JUSTICE**

7 **“SEC. 2041. ENHANCEMENT OF LONG-TERM CARE.**

8 “(a) *GRANTS AND INCENTIVES FOR LONG-TERM CARE*
9 *STAFFING.*—

10 “(1) *IN GENERAL.*—*The Secretary shall carry*
11 *out activities, including activities described in para-*
12 *graphs (2) and (3), to provide incentives for individ-*
13 *uals to train for, seek, and maintain employment*
14 *providing direct care in long-term care.*

15 “(2) *SPECIFIC PROGRAMS TO ENHANCE TRAIN-*
16 *ING, RECRUITMENT, AND RETENTION OF STAFF.*—

17 “(A) *COORDINATION WITH SECRETARY OF*
18 *LABOR TO RECRUIT AND TRAIN LONG-TERM CARE*
19 *STAFF.*—*The Secretary shall coordinate activities*
20 *under this subsection with the Secretary of Labor*
21 *in order to provide incentives for individuals to*
22 *train for and seek employment providing direct*
23 *care in long-term care.*

1 “(B) *CAREER LADDERS AND WAGE OR BEN-*
2 *EFIT INCREASES TO INCREASE STAFFING IN*
3 *LONG-TERM CARE.*—

4 “(i) *IN GENERAL.*—*The Secretary shall*
5 *make grants to eligible entities to carry out*
6 *programs through which the entities—*

7 “(I) *offer, to employees who pro-*
8 *vide direct care to residents of an eligi-*
9 *ble entity or individuals receiving com-*
10 *munity-based long-term care from an*
11 *eligible entity, continuing training and*
12 *varying levels of certification, based on*
13 *observed clinical care practices and the*
14 *amount of time the employees spend*
15 *providing direct care; and*

16 “(II) *provide, or make arrange-*
17 *ments to provide, bonuses or other in-*
18 *creased compensation or benefits to em-*
19 *ployees who achieve certification under*
20 *such a program.*

21 “(ii) *APPLICATION.*—*To be eligible to*
22 *receive a grant under this subparagraph, an*
23 *eligible entity shall submit an application*
24 *to the Secretary at such time, in such man-*
25 *ner, and containing such information as the*

1 *Secretary may require (which may include*
2 *evidence of consultation with the State in*
3 *which the eligible entity is located with re-*
4 *spect to carrying out activities funded*
5 *under the grant).*

6 *“(iii) AUTHORITY TO LIMIT NUMBER*
7 *OF APPLICANTS.—Nothing in this subpara-*
8 *graph shall be construed as prohibiting the*
9 *Secretary from limiting the number of ap-*
10 *plicants for a grant under this subpara-*
11 *graph.*

12 *“(3) SPECIFIC PROGRAMS TO IMPROVE MANAGE-*
13 *MENT PRACTICES.—*

14 *“(A) IN GENERAL.—The Secretary shall*
15 *make grants to eligible entities to enable the enti-*
16 *ties to provide training and technical assistance.*

17 *“(B) AUTHORIZED ACTIVITIES.—An eligible*
18 *entity that receives a grant under subparagraph*
19 *(A) shall use funds made available through the*
20 *grant to provide training and technical assist-*
21 *ance regarding management practices using*
22 *methods that are demonstrated to promote reten-*
23 *tion of individuals who provide direct care, such*
24 *as—*

1 “(i) *the establishment of standard*
2 *human resource policies that reward high*
3 *performance, including policies that provide*
4 *for improved wages and benefits on the*
5 *basis of job reviews;*

6 “(ii) *the establishment of motivational*
7 *and thoughtful work organization practices;*

8 “(iii) *the creation of a workplace cul-*
9 *ture that respects and values caregivers and*
10 *their needs;*

11 “(iv) *the promotion of a workplace cul-*
12 *ture that respects the rights of residents of*
13 *an eligible entity or individuals receiving*
14 *community-based long-term care from an el-*
15 *igible entity and results in improved care*
16 *for the residents or the individuals; and*

17 “(v) *the establishment of other pro-*
18 *grams that promote the provision of high*
19 *quality care, such as a continuing edu-*
20 *cation program that provides additional*
21 *hours of training, including on-the-job*
22 *training, for employees who are certified*
23 *nurse aides.*

24 “(C) *APPLICATION.—To be eligible to re-*
25 *ceive a grant under this paragraph, an eligible*

1 *entity shall submit an application to the Sec-*
2 *retary at such time, in such manner, and con-*
3 *taining such information as the Secretary may*
4 *require (which may include evidence of consulta-*
5 *tion with the State in which the eligible entity*
6 *is located with respect to carrying out activities*
7 *funded under the grant).*

8 “(D) *AUTHORITY TO LIMIT NUMBER OF AP-*
9 *PLICANTS.—Nothing in this paragraph shall be*
10 *construed as prohibiting the Secretary from lim-*
11 *iting the number of applicants for a grant under*
12 *this paragraph.*

13 “(4) *ACCOUNTABILITY MEASURES.—The Sec-*
14 *retary shall develop accountability measures to ensure*
15 *that the activities conducted using funds made avail-*
16 *able under this subsection benefit individuals who*
17 *provide direct care and increase the stability of the*
18 *long-term care workforce.*

19 “(5) *DEFINITIONS.—In this subsection:*

20 “(A) *COMMUNITY-BASED LONG-TERM*
21 *CARE.—The term ‘community-based long-term*
22 *care’ has the meaning given such term by the*
23 *Secretary.*

24 “(B) *ELIGIBLE ENTITY.—The term ‘eligible*
25 *entity’ means the following:*

1 “(i) *A long-term care facility.*

2 “(ii) *A community-based long-term*
3 *care entity (as defined by the Secretary).*

4 “(b) *CERTIFIED EHR TECHNOLOGY GRANT PRO-*
5 *GRAM.—*

6 “(1) *GRANTS AUTHORIZED.—The Secretary is*
7 *authorized to make grants to long-term care facilities*
8 *for the purpose of assisting such entities in offsetting*
9 *the costs related to purchasing, leasing, developing,*
10 *and implementing certified EHR technology (as de-*
11 *fined in section 1848(o)(4)) designed to improve pa-*
12 *tient safety and reduce adverse events and health care*
13 *complications resulting from medication errors.*

14 “(2) *USE OF GRANT FUNDS.—Funds provided*
15 *under grants under this subsection may be used for*
16 *any of the following:*

17 “(A) *Purchasing, leasing, and installing*
18 *computer software and hardware, including*
19 *handheld computer technologies.*

20 “(B) *Making improvements to existing com-*
21 *puter software and hardware.*

22 “(C) *Making upgrades and other improve-*
23 *ments to existing computer software and hard-*
24 *ware to enable e-prescribing.*

1 “(D) *Providing education and training to*
2 *eligible long-term care facility staff on the use of*
3 *such technology to implement the electronic*
4 *transmission of prescription and patient infor-*
5 *mation.*

6 “(3) *APPLICATION.—*

7 “(A) *IN GENERAL.—To be eligible to receive*
8 *a grant under this subsection, a long-term care*
9 *facility shall submit an application to the Sec-*
10 *retary at such time, in such manner, and con-*
11 *taining such information as the Secretary may*
12 *require (which may include evidence of consulta-*
13 *tion with the State in which the long-term care*
14 *facility is located with respect to carrying out*
15 *activities funded under the grant).*

16 “(B) *AUTHORITY TO LIMIT NUMBER OF AP-*
17 *PLICANTS.—Nothing in this subsection shall be*
18 *construed as prohibiting the Secretary from lim-*
19 *iting the number of applicants for a grant under*
20 *this subsection.*

21 “(4) *PARTICIPATION IN STATE HEALTH EX-*
22 *CHANGES.—A long-term care facility that receives a*
23 *grant under this subsection shall, where available,*
24 *participate in activities conducted by a State or a*
25 *qualified State-designated entity (as defined in sec-*

1 *tion 3013(f) of the Public Health Service Act) under*
2 *a grant under section 3013 of the Public Health Serv-*
3 *ice Act to coordinate care and for other purposes de-*
4 *termined appropriate by the Secretary.*

5 “(5) *ACCOUNTABILITY MEASURES.*—*The Sec-*
6 *retary shall develop accountability measures to ensure*
7 *that the activities conducted using funds made avail-*
8 *able under this subsection help improve patient safety*
9 *and reduce adverse events and health care complica-*
10 *tions resulting from medication errors.*

11 “(c) *ADOPTION OF STANDARDS FOR TRANSACTIONS IN-*
12 *VOLVING CLINICAL DATA BY LONG-TERM CARE FACILI-*
13 *TIES.*—

14 “(1) *STANDARDS AND COMPATIBILITY.*—*The Sec-*
15 *retary shall adopt electronic standards for the ex-*
16 *change of clinical data by long-term care facilities,*
17 *including, where available, standards for messaging*
18 *and nomenclature. Standards adopted by the Sec-*
19 *retary under the preceding sentence shall be compat-*
20 *ible with standards established under part C of title*
21 *XI, standards established under subsections*
22 *(b)(2)(B)(i) and (e)(4) of section 1860D–4, standards*
23 *adopted under section 3004 of the Public Health Serv-*
24 *ice Act, and general health information technology*
25 *standards.*

1 “(2) *ELECTRONIC SUBMISSION OF DATA TO THE*
2 *SECRETARY.*—

3 “(A) *IN GENERAL.*—*Not later than 10 years*
4 *after the date of enactment of the Elder Justice*
5 *Act of 2009, the Secretary shall have procedures*
6 *in place to accept the optional electronic submis-*
7 *sion of clinical data by long-term care facilities*
8 *pursuant to the standards adopted under para-*
9 *graph (1).*

10 “(B) *RULE OF CONSTRUCTION.*—*Nothing in*
11 *this subsection shall be construed to require a*
12 *long-term care facility to submit clinical data*
13 *electronically to the Secretary.*

14 “(3) *REGULATIONS.*—*The Secretary shall pro-*
15 *mulgate regulations to carry out this subsection. Such*
16 *regulations shall require a State, as a condition of the*
17 *receipt of funds under this part, to conduct such data*
18 *collection and reporting as the Secretary determines*
19 *are necessary to satisfy the requirements of this sub-*
20 *section.*

21 “(d) *AUTHORIZATION OF APPROPRIATIONS.*—*There*
22 *are authorized to be appropriated to carry out this sec-*
23 *tion—*

24 “(1) *for fiscal year 2011, \$20,000,000;*

25 “(2) *for fiscal year 2012, \$17,500,000; and*

1 “(3) for each of fiscal years 2013 and 2014,
2 \$15,000,000.

3 **“SEC. 2042. ADULT PROTECTIVE SERVICES FUNCTIONS AND**
4 **GRANT PROGRAMS.**

5 “(a) *SECRETARIAL RESPONSIBILITIES.*—

6 “(1) *IN GENERAL.*—*The Secretary shall ensure*
7 *that the Department of Health and Human Serv-*
8 *ices—*

9 “(A) *provides funding authorized by this*
10 *part to State and local adult protective services*
11 *offices that investigate reports of the abuse, ne-*
12 *glect, and exploitation of elders;*

13 “(B) *collects and disseminates data annu-*
14 *ally relating to the abuse, exploitation, and ne-*
15 *glect of elders in coordination with the Depart-*
16 *ment of Justice;*

17 “(C) *develops and disseminates information*
18 *on best practices regarding, and provides train-*
19 *ing on, carrying out adult protective services;*

20 “(D) *conducts research related to the provi-*
21 *sion of adult protective services; and*

22 “(E) *provides technical assistance to States*
23 *and other entities that provide or fund the provi-*
24 *sion of adult protective services, including*

1 *through grants made under subsections (b) and*
2 *(c).*

3 “(2) *AUTHORIZATION OF APPROPRIATIONS.—*
4 *There are authorized to be appropriated to carry out*
5 *this subsection, \$3,000,000 for fiscal year 2011 and*
6 *\$4,000,000 for each of fiscal years 2012 through 2014.*

7 “(b) *GRANTS TO ENHANCE THE PROVISION OF ADULT*
8 *PROTECTIVE SERVICES.—*

9 “(1) *ESTABLISHMENT.—There is established an*
10 *adult protective services grant program under which*
11 *the Secretary shall annually award grants to States*
12 *in the amounts calculated under paragraph (2) for*
13 *the purposes of enhancing adult protective services*
14 *provided by States and local units of government.*

15 “(2) *AMOUNT OF PAYMENT.—*

16 “(A) *IN GENERAL.—Subject to the avail-*
17 *ability of appropriations and subparagraphs (B)*
18 *and (C), the amount paid to a State for a fiscal*
19 *year under the program under this subsection*
20 *shall equal the amount appropriated for that*
21 *year to carry out this subsection multiplied by*
22 *the percentage of the total number of elders who*
23 *reside in the United States who reside in that*
24 *State.*

1 “(B) *GUARANTEED MINIMUM PAYMENT*
2 *AMOUNT.*—

3 “(i) *50 STATES.*—*Subject to clause (ii),*
4 *if the amount determined under subpara-*
5 *graph (A) for a State for a fiscal year is*
6 *less than 0.75 percent of the amount appro-*
7 *priated for such year, the Secretary shall*
8 *increase such determined amount so that the*
9 *total amount paid under this subsection to*
10 *the State for the year is equal to 0.75 per-*
11 *cent of the amount so appropriated.*

12 “(ii) *TERRITORIES.*—*In the case of a*
13 *State other than 1 of the 50 States, clause*
14 *(i) shall be applied as if each reference to*
15 *‘0.75’ were a reference to ‘0.1’.*

16 “(C) *PRO RATA REDUCTIONS.*—*The Sec-*
17 *retary shall make such pro rata reductions to the*
18 *amounts described in subparagraph (A) as are*
19 *necessary to comply with the requirements of*
20 *subparagraph (B).*

21 “(3) *AUTHORIZED ACTIVITIES.*—

22 “(A) *ADULT PROTECTIVE SERVICES.*—
23 *Funds made available pursuant to this sub-*
24 *section may only be used by States and local*
25 *units of government to provide adult protective*

1 *services and may not be used for any other pur-*
2 *pose.*

3 “(B) *USE BY AGENCY.*—*Each State receiv-*
4 *ing funds pursuant to this subsection shall pro-*
5 *vide such funds to the agency or unit of State*
6 *government having legal responsibility for pro-*
7 *viding adult protective services within the State.*

8 “(C) *SUPPLEMENT NOT SUPPLANT.*—*Each*
9 *State or local unit of government shall use funds*
10 *made available pursuant to this subsection to*
11 *supplement and not supplant other Federal,*
12 *State, and local public funds expended to provide*
13 *adult protective services in the State.*

14 “(4) *STATE REPORTS.*—*Each State receiving*
15 *funds under this subsection shall submit to the Sec-*
16 *retary, at such time and in such manner as the Sec-*
17 *retary may require, a report on the number of elders*
18 *served by the grants awarded under this subsection.*

19 “(5) *AUTHORIZATION OF APPROPRIATIONS.*—
20 *There are authorized to be appropriated to carry out*
21 *this subsection, \$100,000,000 for each of fiscal years*
22 *2011 through 2014.*

23 “(c) *STATE DEMONSTRATION PROGRAMS.*—

24 “(1) *ESTABLISHMENT.*—*The Secretary shall*
25 *award grants to States for the purposes of conducting*

1 *demonstration programs in accordance with para-*
2 *graph (2).*

3 “(2) *DEMONSTRATION PROGRAMS.—Funds made*
4 *available pursuant to this subsection may be used by*
5 *States and local units of government to conduct dem-*
6 *onstration programs that test—*

7 “(A) *training modules developed for the*
8 *purpose of detecting or preventing elder abuse;*

9 “(B) *methods to detect or prevent financial*
10 *exploitation of elders;*

11 “(C) *methods to detect elder abuse;*

12 “(D) *whether training on elder abuse*
13 *forensics enhances the detection of elder abuse by*
14 *employees of the State or local unit of govern-*
15 *ment; or*

16 “(E) *other matters relating to the detection*
17 *or prevention of elder abuse.*

18 “(3) *APPLICATION.—To be eligible to receive a*
19 *grant under this subsection, a State shall submit an*
20 *application to the Secretary at such time, in such*
21 *manner, and containing such information as the Sec-*
22 *retary may require.*

23 “(4) *STATE REPORTS.—Each State that receives*
24 *funds under this subsection shall submit to the Sec-*
25 *retary a report at such time, in such manner, and*

1 *containing such information as the Secretary may re-*
2 *quire on the results of the demonstration program*
3 *conducted by the State using funds made available*
4 *under this subsection.*

5 “(5) *AUTHORIZATION OF APPROPRIATIONS.—*
6 *There are authorized to be appropriated to carry out*
7 *this subsection, \$25,000,000 for each of fiscal years*
8 *2011 through 2014.*

9 **“SEC. 2043. LONG-TERM CARE OMBUDSMAN PROGRAM**
10 **GRANTS AND TRAINING.**

11 “(a) *GRANTS TO SUPPORT THE LONG-TERM CARE*
12 *OMBUDSMAN PROGRAM.—*

13 “(1) *IN GENERAL.—The Secretary shall make*
14 *grants to eligible entities with relevant expertise and*
15 *experience in abuse and neglect in long-term care fa-*
16 *cilities or long-term care ombudsman programs and*
17 *responsibilities, for the purpose of—*

18 “(A) *improving the capacity of State long-*
19 *term care ombudsman programs to respond to*
20 *and resolve complaints about abuse and neglect;*

21 “(B) *conducting pilot programs with State*
22 *long-term care ombudsman offices or local om-*
23 *budsman entities; and*

24 “(C) *providing support for such State long-*
25 *term care ombudsman programs and such pilot*

1 *programs (such as through the establishment of*
 2 *a national long-term care ombudsman resource*
 3 *center).*

4 “(2) *AUTHORIZATION OF APPROPRIATIONS.—*
 5 *There are authorized to be appropriated to carry out*
 6 *this subsection—*

7 *“(A) for fiscal year 2011, \$5,000,000;*

8 *“(B) for fiscal year 2012, \$7,500,000; and*

9 *“(C) for each of fiscal years 2013 and 2014,*
 10 *\$10,000,000.*

11 “(b) *OMBUDSMAN TRAINING PROGRAMS.—*

12 *“(1) IN GENERAL.—The Secretary shall establish*
 13 *programs to provide and improve ombudsman train-*
 14 *ing with respect to elder abuse, neglect, and exploi-*
 15 *tation for national organizations and State long-term*
 16 *care ombudsman programs.*

17 “(2) *AUTHORIZATION OF APPROPRIATIONS.—*
 18 *There are authorized to be appropriated to carry out*
 19 *this subsection, for each of fiscal years 2011 through*
 20 *2014, \$10,000,000.*

21 **“SEC. 2044. PROVISION OF INFORMATION REGARDING, AND**
 22 **EVALUATIONS OF, ELDER JUSTICE PRO-**
 23 **GRAMS.**

24 “(a) *PROVISION OF INFORMATION.—To be eligible to*
 25 *receive a grant under this part, an applicant shall agree—*

1 “(1) *except as provided in paragraph (2), to pro-*
2 *vide the eligible entity conducting an evaluation*
3 *under subsection (b) of the activities funded through*
4 *the grant with such information as the eligible entity*
5 *may require in order to conduct such evaluation; or*

6 “(2) *in the case of an applicant for a grant*
7 *under section 2041(b), to provide the Secretary with*
8 *such information as the Secretary may require to*
9 *conduct an evaluation or audit under subsection (c).*

10 “(b) *USE OF ELIGIBLE ENTITIES TO CONDUCT EVAL-*
11 *UATIONS.—*

12 “(1) *EVALUATIONS REQUIRED.—Except as pro-*
13 *vided in paragraph (2), the Secretary shall—*

14 “(A) *reserve a portion (not less than 2 per-*
15 *cent) of the funds appropriated with respect to*
16 *each program carried out under this part; and*

17 “(B) *use the funds reserved under subpara-*
18 *graph (A) to provide assistance to eligible enti-*
19 *ties to conduct evaluations of the activities fund-*
20 *ed under each program carried out under this*
21 *part.*

22 “(2) *CERTIFIED EHR TECHNOLOGY GRANT PRO-*
23 *GRAM NOT INCLUDED.—The provisions of this sub-*
24 *section shall not apply to the certified EHR tech-*
25 *nology grant program under section 2041(b).*

1 “(3) *AUTHORIZED ACTIVITIES.*—A recipient of
2 *assistance described in paragraph (1)(B) shall use the*
3 *funds made available through the assistance to con-*
4 *duct a validated evaluation of the effectiveness of the*
5 *activities funded under a program carried out under*
6 *this part.*

7 “(4) *APPLICATIONS.*—To be eligible to receive as-
8 *istance under paragraph (1)(B), an entity shall sub-*
9 *mit an application to the Secretary at such time, in*
10 *such manner, and containing such information as the*
11 *Secretary may require, including a proposal for the*
12 *evaluation.*

13 “(5) *REPORTS.*—Not later than a date specified
14 *by the Secretary, an eligible entity receiving assist-*
15 *ance under paragraph (1)(B) shall submit to the Sec-*
16 *retary, the Committee on Ways and Means and the*
17 *Committee on Energy and Commerce of the House of*
18 *Representatives, and the Committee on Finance of the*
19 *Senate a report containing the results of the evalua-*
20 *tion conducted using such assistance together with*
21 *such recommendations as the entity determines to be*
22 *appropriate.*

23 “(c) *EVALUATIONS AND AUDITS OF CERTIFIED EHR*
24 *TECHNOLOGY GRANT PROGRAM BY THE SECRETARY.*—

1 “(1) *EVALUATIONS.*—*The Secretary shall con-*
2 *duct an evaluation of the activities funded under the*
3 *certified EHR technology grant program under sec-*
4 *tion 2041(b). Such evaluation shall include an eval-*
5 *uation of whether the funding provided under the*
6 *grant is expended only for the purposes for which it*
7 *is made.*

8 “(2) *AUDITS.*—*The Secretary shall conduct ap-*
9 *propriate audits of grants made under section*
10 *2041(b).*

11 **“SEC. 2045. REPORT.**

12 *“Not later than October 1, 2014, the Secretary shall*
13 *submit to the Elder Justice Coordinating Council estab-*
14 *lished under section 2021, the Committee on Ways and*
15 *Means and the Committee on Energy and Commerce of the*
16 *House of Representatives, and the Committee on Finance*
17 *of the Senate a report—*

18 “(1) *compiling, summarizing, and analyzing the*
19 *information contained in the State reports submitted*
20 *under subsections (b)(4) and (c)(4) of section 2042;*
21 *and*

22 “(2) *containing such recommendations for legis-*
23 *lative or administrative action as the Secretary deter-*
24 *mines to be appropriate.*

1 **“SEC. 2046. RULE OF CONSTRUCTION.**

2 *“Nothing in this subtitle shall be construed as—*

3 *“(1) limiting any cause of action or other relief*
4 *related to obligations under this subtitle that is avail-*
5 *able under the law of any State, or political subdivi-*
6 *sion thereof; or*

7 *“(2) creating a private cause of action for a vio-*
8 *lation of this subtitle.”.*

9 (2) *OPTION FOR STATE PLAN UNDER PROGRAM*
10 *FOR TEMPORARY ASSISTANCE FOR NEEDY FAMI-*
11 *LIES.—*

12 (A) *IN GENERAL.—Section 402(a)(1)(B) of*
13 *the Social Security Act (42 U.S.C. 602(a)(1)(B))*
14 *is amended by adding at the end the following*
15 *new clause:*

16 *“(v) The document shall indicate*
17 *whether the State intends to assist individ-*
18 *uals to train for, seek, and maintain em-*
19 *ployment—*

20 *“(I) providing direct care in a*
21 *long-term care facility (as such terms*
22 *are defined under section 2011); or*

23 *“(II) in other occupations related*
24 *to elder care determined appropriate*
25 *by the State for which the State identi-*

1 *fies an unmet need for service per-*
2 *sonnel,*
3 *and, if so, shall include an overview of such*
4 *assistance.”.*

5 *(B) EFFECTIVE DATE.—The amendment*
6 *made by subparagraph (A) shall take effect on*
7 *January 1, 2011.*

8 *(b) PROTECTING RESIDENTS OF LONG-TERM CARE*
9 *FACILITIES.—*

10 *(1) NATIONAL TRAINING INSTITUTE FOR SUR-*
11 *VEYORS.—*

12 *(A) IN GENERAL.—The Secretary of Health*
13 *and Human Services shall enter into a contract*
14 *with an entity for the purpose of establishing*
15 *and operating a National Training Institute for*
16 *Federal and State surveyors. Such Institute shall*
17 *provide and improve the training of surveyors*
18 *with respect to investigating allegations of abuse,*
19 *neglect, and misappropriation of property in*
20 *programs and long-term care facilities that re-*
21 *ceive payments under title XVIII or XIX of the*
22 *Social Security Act.*

23 *(B) ACTIVITIES CARRIED OUT BY THE IN-*
24 *STITUTE.—The contract entered into under sub-*
25 *paragraph (A) shall require the Institute estab-*

1 *lished and operated under such contract to carry*
2 *out the following activities:*

3 *(i) Assess the extent to which State*
4 *agencies use specialized surveyors for the in-*
5 *vestigation of reported allegations of abuse,*
6 *neglect, and misappropriation of property*
7 *in such programs and long-term care facili-*
8 *ties.*

9 *(ii) Evaluate how the competencies of*
10 *surveyors may be improved to more effec-*
11 *tively investigate reported allegations of*
12 *such abuse, neglect, and misappropriation*
13 *of property, and provide feedback to Federal*
14 *and State agencies on the evaluations con-*
15 *ducted.*

16 *(iii) Provide a national program of*
17 *training, tools, and technical assistance to*
18 *Federal and State surveyors on inves-*
19 *tigating reports of such abuse, neglect, and*
20 *misappropriation of property.*

21 *(iv) Develop and disseminate informa-*
22 *tion on best practices for the investigation*
23 *of such abuse, neglect, and misappropria-*
24 *tion of property.*

1 (v) *Assess the performance of State*
2 *complaint intake systems, in order to ensure*
3 *that the intake of complaints occurs 24*
4 *hours per day, 7 days a week (including*
5 *holidays).*

6 (vi) *To the extent approved by the Sec-*
7 *retary of Health and Human Services, pro-*
8 *vide a national 24 hours per day, 7 days a*
9 *week (including holidays), back-up system*
10 *to State complaint intake systems in order*
11 *to ensure optimum national responsiveness*
12 *to complaints of such abuse, neglect, and*
13 *misappropriation of property.*

14 (vii) *Analyze and report annually on*
15 *the following:*

16 (I) *The total number and sources*
17 *of complaints of such abuse, neglect,*
18 *and misappropriation of property.*

19 (II) *The extent to which such com-*
20 *plaints are referred to law enforcement*
21 *agencies.*

22 (III) *General results of Federal*
23 *and State investigations of such com-*
24 *plaints.*

1 (viii) *Conduct a national study of the*
2 *cost to State agencies of conducting com-*
3 *plaint investigations of skilled nursing fa-*
4 *ilities and nursing facilities under sections*
5 *1819 and 1919, respectively, of the Social*
6 *Security Act (42 U.S.C. 1395i-3; 1396r),*
7 *and making recommendations to the Sec-*
8 *retary of Health and Human Services with*
9 *respect to options to increase the efficiency*
10 *and cost-effectiveness of such investigations.*

11 (C) *AUTHORIZATION.*—*There are authorized*
12 *to be appropriated to carry out this paragraph,*
13 *for the period of fiscal years 2011 through 2014,*
14 *\$12,000,000.*

15 (2) *GRANTS TO STATE SURVEY AGENCIES.*—

16 (A) *IN GENERAL.*—*The Secretary of Health*
17 *and Human Services shall make grants to State*
18 *agencies that perform surveys of skilled nursing*
19 *facilities or nursing facilities under sections*
20 *1819 or 1919, respectively, of the Social Security*
21 *Act (42 U.S.C. 1395i-3; 1395r).*

22 (B) *USE OF FUNDS.*—*A grant awarded*
23 *under subparagraph (A) shall be used for the*
24 *purpose of designing and implementing com-*
25 *plaint investigations systems that—*

1 (i) promptly prioritize complaints in
2 order to ensure a rapid response to the most
3 serious and urgent complaints;

4 (ii) respond to complaints with opti-
5 mum effectiveness and timeliness; and

6 (iii) optimize the collaboration between
7 local authorities, consumers, and providers,
8 including—

9 (I) such State agency;

10 (II) the State Long-Term Care
11 Ombudsman;

12 (III) local law enforcement agen-
13 cies;

14 (IV) advocacy and consumer orga-
15 nizations;

16 (V) State aging units;

17 (VI) Area Agencies on Aging; and

18 (VII) other appropriate entities.

19 (C) AUTHORIZATION.—There are authorized
20 to be appropriated to carry out this paragraph,
21 for each of fiscal years 2011 through 2014,
22 \$5,000,000.

23 (3) REPORTING OF CRIMES IN FEDERALLY FUND-
24 ED LONG-TERM CARE FACILITIES.—Part A of title XI
25 of the Social Security Act (42 U.S.C. 1301 et seq.),

1 *as amended by section 6005, is amended by inserting*
2 *after section 1150A the following new section:*

3 *“REPORTING TO LAW ENFORCEMENT OF CRIMES OCCUR-*
4 *RING IN FEDERALLY FUNDED LONG-TERM CARE FA-*
5 *CILITIES*

6 *“SEC. 1150B. (a) DETERMINATION AND NOTIFICA-*
7 *TION.—*

8 *“(1) DETERMINATION.—The owner or operator of*
9 *each long-term care facility that receives Federal*
10 *funds under this Act shall annually determine wheth-*
11 *er the facility received at least \$10,000 in such Fed-*
12 *eral funds during the preceding year.*

13 *“(2) NOTIFICATION.—If the owner or operator*
14 *determines under paragraph (1) that the facility re-*
15 *ceived at least \$10,000 in such Federal funds during*
16 *the preceding year, such owner or operator shall an-*
17 *nually notify each covered individual (as defined in*
18 *paragraph (3)) of that individual’s obligation to com-*
19 *ply with the reporting requirements described in sub-*
20 *section (b).*

21 *“(3) COVERED INDIVIDUAL DEFINED.—In this*
22 *section, the term ‘covered individual’ means each in-*
23 *dividual who is an owner, operator, employee, man-*
24 *ager, agent, or contractor of a long-term care facility*
25 *that is the subject of a determination described in*
26 *paragraph (1).*

1 “(b) *REPORTING REQUIREMENTS.*—

2 “(1) *IN GENERAL.*—*Each covered individual*
3 *shall report to the Secretary and 1 or more law en-*
4 *forcement entities for the political subdivision in*
5 *which the facility is located any reasonable suspicion*
6 *of a crime (as defined by the law of the applicable po-*
7 *litical subdivision) against any individual who is a*
8 *resident of, or is receiving care from, the facility.*

9 “(2) *TIMING.*—*If the events that cause the sus-*
10 *picion—*

11 “(A) *result in serious bodily injury, the in-*
12 *dividual shall report the suspicion immediately,*
13 *but not later than 2 hours after forming the sus-*
14 *picion; and*

15 “(B) *do not result in serious bodily injury,*
16 *the individual shall report the suspicion not*
17 *later than 24 hours after forming the suspicion.*

18 “(c) *PENALTIES.*—

19 “(1) *IN GENERAL.*—*If a covered individual vio-*
20 *lates subsection (b)—*

21 “(A) *the covered individual shall be subject*
22 *to a civil money penalty of not more than*
23 *\$200,000; and*

24 “(B) *the Secretary may make a determina-*
25 *tion in the same proceeding to exclude the cov-*

1 *ered individual from participation in any Fed-*
2 *eral health care program (as defined in section*
3 *1128B(f)).*

4 *“(2) INCREASED HARM.—If a covered individual*
5 *violates subsection (b) and the violation exacerbates*
6 *the harm to the victim of the crime or results in harm*
7 *to another individual—*

8 *“(A) the covered individual shall be subject*
9 *to a civil money penalty of not more than*
10 *\$300,000; and*

11 *“(B) the Secretary may make a determina-*
12 *tion in the same proceeding to exclude the cov-*
13 *ered individual from participation in any Fed-*
14 *eral health care program (as defined in section*
15 *1128B(f)).*

16 *“(3) EXCLUDED INDIVIDUAL.—During any pe-*
17 *riod for which a covered individual is classified as an*
18 *excluded individual under paragraph (1)(B) or*
19 *(2)(B), a long-term care facility that employs such*
20 *individual shall be ineligible to receive Federal funds*
21 *under this Act.*

22 *“(4) EXTENUATING CIRCUMSTANCES.—*

23 *“(A) IN GENERAL.—The Secretary may take*
24 *into account the financial burden on providers*

1 *with underserved populations in determining*
2 *any penalty to be imposed under this subsection.*

3 “(B) *UNDERSERVED POPULATION DE-*
4 *FINED.—In this paragraph, the term ‘under-*
5 *served population’ means the population of an*
6 *area designated by the Secretary as an area with*
7 *a shortage of elder justice programs or a popu-*
8 *lation group designated by the Secretary as hav-*
9 *ing a shortage of such programs. Such areas or*
10 *groups designated by the Secretary may in-*
11 *clude—*

12 “(i) *areas or groups that are geo-*
13 *graphically isolated (such as isolated in a*
14 *rural area);*

15 “(ii) *racial and ethnic minority popu-*
16 *lations; and*

17 “(iii) *populations underserved because*
18 *of special needs (such as language barriers,*
19 *disabilities, alien status, or age).*

20 “(d) *ADDITIONAL PENALTIES FOR RETALIATION.—*

21 “(1) *IN GENERAL.—A long-term care facility*
22 *may not—*

23 “(A) *discharge, demote, suspend, threaten,*
24 *harass, or deny a promotion or other employ-*
25 *ment-related benefit to an employee, or in any*

1 *other manner discriminate against an employee*
2 *in the terms and conditions of employment be-*
3 *cause of lawful acts done by the employee; or*

4 *“(B) file a complaint or a report against a*
5 *nurse or other employee with the appropriate*
6 *State professional disciplinary agency because of*
7 *lawful acts done by the nurse or employee,*
8 *for making a report, causing a report to be made, or*
9 *for taking steps in furtherance of making a report*
10 *pursuant to subsection (b)(1).*

11 *“(2) PENALTIES FOR RETALIATION.—If a long-*
12 *term care facility violates subparagraph (A) or (B) of*
13 *paragraph (1) the facility shall be subject to a civil*
14 *money penalty of not more than \$200,000 or the Sec-*
15 *retary may classify the entity as an excluded entity*
16 *for a period of 2 years pursuant to section 1128(b),*
17 *or both.*

18 *“(3) REQUIREMENT TO POST NOTICE.—Each*
19 *long-term care facility shall post conspicuously in an*
20 *appropriate location a sign (in a form specified by*
21 *the Secretary) specifying the rights of employees*
22 *under this section. Such sign shall include a state-*
23 *ment that an employee may file a complaint with the*
24 *Secretary against a long-term care facility that vio-*

1 *lates the provisions of this subsection and information*
2 *with respect to the manner of filing such a complaint.*

3 *“(e) PROCEDURE.—The provisions of section 1128A*
4 *(other than subsections (a) and (b) and the second sentence*
5 *of subsection (f)) shall apply to a civil money penalty or*
6 *exclusion under this section in the same manner as such*
7 *provisions apply to a penalty or proceeding under section*
8 *1128A(a).*

9 *“(f) DEFINITIONS.—In this section, the terms ‘elder*
10 *justice’, ‘long-term care facility’, and ‘law enforcement’ have*
11 *the meanings given those terms in section 2011.”.*

12 *(c) NATIONAL NURSE AIDE REGISTRY.—*

13 *(1) DEFINITION OF NURSE AIDE.—In this sub-*
14 *section, the term “nurse aide” has the meaning given*
15 *that term in sections 1819(b)(5)(F) and 1919(b)(5)(F)*
16 *of the Social Security Act (42 U.S.C. 1395i-*
17 *3(b)(5)(F); 1396r(b)(5)(F)).*

18 *(2) STUDY AND REPORT.—*

19 *(A) IN GENERAL.—The Secretary, in con-*
20 *sultation with appropriate government agencies*
21 *and private sector organizations, shall conduct a*
22 *study on establishing a national nurse aide reg-*
23 *istry.*

1 (B) *AREAS EVALUATED.*—*The study con-*
2 *ducted under this subsection shall include an*
3 *evaluation of—*

4 (i) *who should be included in the reg-*
5 *istry;*

6 (ii) *how such a registry would comply*
7 *with Federal and State privacy laws and*
8 *regulations;*

9 (iii) *how data would be collected for*
10 *the registry;*

11 (iv) *what entities and individuals*
12 *would have access to the data collected;*

13 (v) *how the registry would provide ap-*
14 *propriate information regarding violations*
15 *of Federal and State law by individuals in-*
16 *cluded in the registry;*

17 (vi) *how the functions of a national*
18 *nurse aide registry would be coordinated*
19 *with the nationwide program for national*
20 *and State background checks on direct pa-*
21 *tient access employees of long-term care fa-*
22 *ilities and providers under section 4301;*
23 *and*

24 (vii) *how the information included in*
25 *State nurse aide registries developed and*

1 *maintained under sections 1819(e)(2) and*
2 *1919(e)(2) of the Social Security Act (42*
3 *U.S.C. 1395i–3(e)(2); 1396r(e)(2)(2)) would*
4 *be provided as part of a national nurse aide*
5 *registry.*

6 (C) *CONSIDERATIONS.*—*In conducting the*
7 *study and preparing the report required under*
8 *this subsection, the Secretary shall take into con-*
9 *sideration the findings and conclusions of rel-*
10 *evant reports and other relevant resources, in-*
11 *cluding the following:*

12 (i) *The Department of Health and*
13 *Human Services Office of Inspector General*
14 *Report, Nurse Aide Registries: State Com-*
15 *pliance and Practices (February 2005).*

16 (ii) *The General Accounting Office*
17 *(now known as the Government Account-*
18 *ability Office) Report, Nursing Homes:*
19 *More Can Be Done to Protect Residents*
20 *from Abuse (March 2002).*

21 (iii) *The Department of Health and*
22 *Human Services Office of the Inspector*
23 *General Report, Nurse Aide Registries:*
24 *Long-Term Care Facility Compliance and*
25 *Practices (July 2005).*

1 (iv) *The Department of Health and*
2 *Human Services Health Resources and*
3 *Services Administration Report, Nursing*
4 *Aides, Home Health Aides, and Related*
5 *Health Care Occupations—National and*
6 *Local Workforce Shortages and Associated*
7 *Data Needs (2004) (in particular with re-*
8 *spect to chapter 7 and appendix F).*

9 (v) *The 2001 Report to CMS from the*
10 *School of Rural Public Health, Texas A&M*
11 *University, Preventing Abuse and Neglect*
12 *in Nursing Homes: The Role of Nurse Aide*
13 *Registries.*

14 (vi) *Information included in State*
15 *nurse aide registries developed and main-*
16 *tained under sections 1819(e)(2) and*
17 *1919(e)(2) of the Social Security Act (42*
18 *U.S.C. 1395i–3(e)(2); 1396r(e)(2)(2)).*

19 (D) *REPORT.—Not later than 18 months*
20 *after the date of enactment of this Act, the Sec-*
21 *retary shall submit to the Elder Justice Coordi-*
22 *nating Council established under section 2021 of*
23 *the Social Security Act, as added by section*
24 *1805(a), the Committee on Finance of the Sen-*
25 *ate, and the Committee on Ways and Means and*

1 *the Committee on Energy and Commerce of the*
2 *House of Representatives a report containing the*
3 *findings and recommendations of the study con-*
4 *ducted under this paragraph.*

5 *(E) FUNDING LIMITATION.—Funding for the*
6 *study conducted under this subsection shall not*
7 *exceed \$500,000.*

8 *(3) CONGRESSIONAL ACTION.—After receiving the*
9 *report submitted by the Secretary under paragraph*
10 *(2)(D), the Committee on Finance of the Senate and*
11 *the Committee on Ways and Means and the Com-*
12 *mittee on Energy and Commerce of the House of Rep-*
13 *resentatives shall, as they deem appropriate, take ac-*
14 *tion based on the recommendations contained in the*
15 *report.*

16 *(4) AUTHORIZATION OF APPROPRIATIONS.—*
17 *There are authorized to be appropriated such sums as*
18 *are necessary for the purpose of carrying out this sub-*
19 *section.*

20 *(d) CONFORMING AMENDMENTS.—*

21 *(1) TITLE XX.—Title XX of the Social Security*
22 *Act (42 U.S.C. 1397 et seq.), as amended by section*
23 *6703(a), is amended—*

24 *(A) in the heading of section 2001, by strik-*
25 *ing “TITLE” and inserting “SUBTITLE”; and*

1 (B) in subtitle 1, by striking “this title”
2 each place it appears and inserting “this sub-
3 title”.

4 (2) *TITLE IV.—Title IV of the Social Security*
5 *Act (42 U.S.C. 601 et seq.) is amended—*

6 (A) in section 404(d)—

7 (i) in paragraphs (1)(A), (2)(A), and
8 (3)(B), by inserting “subtitle 1 of” before
9 “title XX” each place it appears;

10 (ii) in the heading of paragraph (2),
11 by inserting “SUBTITLE 1 OF” before
12 “TITLE XX”; and

13 (iii) in the heading of paragraph
14 (3)(B), by inserting “SUBTITLE 1 OF” before
15 “TITLE XX”; and

16 (B) in sections 422(b), 471(a)(4), 472(h)(1),
17 and 473(b)(2), by inserting “subtitle 1 of” before
18 “title XX” each place it appears.

19 (3) *TITLE XI.—Title XI of the Social Security*
20 *Act (42 U.S.C. 1301 et seq.) is amended—*

21 (A) in section 1128(h)(3)—

22 (i) by inserting “subtitle 1 of” before
23 “title XX”; and

24 (ii) by striking “such title” and insert-
25 ing “such subtitle”; and

1 (B) in section 1128A(i)(1), by inserting
2 “subtitle 1 of” before “title XX”.

3 ***Subtitle I—Sense of the Senate***
4 ***Regarding Medical Malpractice***

5 **SEC. 6801. SENSE OF THE SENATE REGARDING MEDICAL**
6 ***MALPRACTICE.***

7 *It is the sense of the Senate that—*

8 (1) *health care reform presents an opportunity to*
9 *address issues related to medical malpractice and*
10 *medical liability insurance;*

11 (2) *States should be encouraged to develop and*
12 *test alternatives to the existing civil litigation system*
13 *as a way of improving patient safety, reducing med-*
14 *ical errors, encouraging the efficient resolution of dis-*
15 *putes, increasing the availability of prompt and fair*
16 *resolution of disputes, and improving access to liabil-*
17 *ity insurance, while preserving an individual’s right*
18 *to seek redress in court; and*

19 (3) *Congress should consider establishing a State*
20 *demonstration program to evaluate alternatives to the*
21 *existing civil litigation system with respect to the res-*
22 *olution of medical malpractice claims.*