

--H.R.5835--

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***One Hundred First Congress of the United States of America***

***AT THE SECOND SESSION***

Begun and held at the City of Washington on Tuesday, the twenty-third day of January,

one thousand nine hundred and ninety

An Act

To provide for reconciliation pursuant to section 4 of the concurrent resolution on the

budget for fiscal year 1991.

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the `Omnibus Budget Reconciliation Act of 1990'.

**SEC. 2. TABLE OF TITLES.**

Title I. Agriculture and related programs.

Title II. Banking, housing, and related programs.

Title III. Student loans and labor provisions.

Title IV. Medicare, medicaid, and other health-related programs.

Title V. Income security, human resources, and related programs.

Title VI. Energy and environmental programs.

Title VII. Civil service and postal service programs.

Title VIII. Veterans' programs.

Title IX. Transportation.

Title X. Miscellaneous user fees and other provisions.

Title XI. Revenue provisions.

Title XII. Pensions.

Title XIII. Budget enforcement.

## **TITLE I--AGRICULTURE AND RELATED PROGRAMS**

### **SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE- This title may be cited as the `Agricultural Reconciliation Act of 1990'.

(b) TABLE OF CONTENTS- The table of contents of this title is as follows:

Sec. 1001. Short title; table of contents.

### **Subtitle A--Commodity Programs**

Sec. 1101. Triple base for deficiency payments.

Sec. 1102. Calculation of deficiency payments based on 12-month average.

Sec. 1103. Acreage reduction program for 1991 crop.

Sec. 1104. Acreage reduction programs for 1992 through 1995 crops.

Sec. 1105. Loan origination fees and other savings.

### **Subtitle B--Other Agricultural Programs**

Sec. 1201. Authorization levels for rural electric and telephone loans.

Sec. 1202. Authorization levels for FmHA loans.

Sec. 1203. APHIS inspection user fee on international passengers.

Sec. 1204. Additional savings and other provisions.

### **Subtitle C--Effective Date**

Sec. 1301. Effective date.

Sec. 1302. Readjustment of support levels.

enrollment errata

Pursuant to the provisions of H.J. Res. 682, waiving certain enrollment requirements with respect to any reconciliation bill, appropriation bill, or continuing resolution for the remainder of the One Hundred First Congress, and providing for the subsequent preparation and certification of printed enrollments, this printed enrollment contains corrections in indentation, type face, and type size and

includes identifying obvious errors in spelling and punctuation in the hand enrollment.

### Subtitle A--Commodity Programs

## SEC. 1101. TRIPLE BASE FOR DEFICIENCY PAYMENTS.

(a) WHEAT- Section 107B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 301 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking `100 percent' and inserting `85 percent'.

(b) FEED GRAINS- Section 105B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 401 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking `100 percent' and inserting `85 percent'.

(c) UPLAND COTTON- Section 103B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 501 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking `100 percent' and inserting `85 percent'.

(d) RICE- Section 101B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 601 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking `100 percent' and inserting `85 percent'.

## SEC. 1102. CALCULATION OF DEFICIENCY PAYMENTS BASED ON 12-MONTH AVERAGE.

(a) WHEAT- Clause (ii) of section 107B(c)(1)(B) of the Agricultural Act of 1949 (as added by section 301 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

` (ii) PAYMENT RATE OF 1994 AND 1995 CROPS- The payment rate for each of the 1994 and 1995 crops of wheat shall be the amount by which the established price for the crop of wheat exceeds the higher of--

` (I) the lesser of--

` (aa) the national weighted average market price received by producers during the marketing year for the crop, as determined by the Secretary; or

` (bb) the national weighted average market price received by producers during the first 5 months of the marketing year for the crop, as determined by the Secretary, plus 10 cents per bushel; or

` (II) the loan level determined for the crop, prior to any adjustment made under subsection (a)(3) for the marketing year for the crop of wheat.'.

(b) FEED GRAINS- Clause (ii) of section 105B(c)(1)(B) of the Agricultural Act of 1949 (as added by section 401 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

` (ii) PAYMENT RATE OF 1994 AND 1995 CROPS- The payment rate for each of the 1994 and 1995 crops of corn, grain sorghums, oats, and barley shall be the amount by which the established price for the respective crop of feed grains exceeds the higher of--

` (I) the lesser of--

` (aa) the national weighted average market price received by producers during the marketing year for the crop, as determined by the Secretary; or

` (bb) the national weighted average market price received by producers during the first 5 months of the marketing year for the crop, as determined by the Secretary, plus 7 cents per bushel; or

` (II) the loan level determined for the crop, prior to any adjustment made under subsection (a)(3) for the marketing year for the respective crop of feed grains.'.

(c) RICE- Clause (ii) of section 101B(c)(1)(B) of the Agricultural Act of 1949 (as added by section 601 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

` (ii) PAYMENT RATE OF 1994 AND 1995 CROPS- The payment rate for each of the 1994 and 1995 crops of rice shall be the amount by which the established price for the crop of rice exceeds the higher of--

` (I) the lesser of--

` (aa) the national average market price received by producers during the calendar year that contains the first 5 months of the marketing year for the crop, as determined by the Secretary; or

` (bb) the national average market price received by producers during the first 5 months of the marketing year for the crop, as determined by the Secretary, plus an appropriate amount that is fair and equitable in relation to wheat and feed grains (as determined by the Secretary); or

` (II) the loan level determined for the crop.'.

(d) CONFORMING AMENDMENT- Section 114(c) of the Agricultural Act of 1949 (as amended by section 1121(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 and redesignated by section 1161(a)(1) of such Act) by striking `wheat, feed grains, and rice which payments are calculated on the basis of the national weighted average market price (or, in the case of rice, the national average market price) for the marketing year for the crop' and inserting `wheat and feed grains which payments are calculated as provided in sections 107B(c)(1)(B)(ii), 107B(p), or 105B(c)(1)(B)(ii)'.

## **SEC. 1103. ACREAGE REDUCTION PROGRAM FOR 1991 CROP.**

(a) WHEAT- In the case of the 1991 crop of wheat, the Secretary of Agriculture shall provide for an acreage limitation program as described in section 107B(e)(1)(F) of the Agricultural Act of 1949 (as added by section 301 of the Food, Agriculture, Conservation, and Trade Act of 1990).

(b) FEED GRAINS- Subparagraph (F) of section 105B(e)(1) of the Agricultural Act of 1949 (as added by section 401 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

“(F) ACREAGE LIMITATION PROGRAM FOR 1991 CROP- In the case of the 1991 crop of corn, the Secretary shall provide for an acreage limitation program (as described in paragraph (2)) under which the acreage planted to corn for harvest on a farm would be limited to the corn crop acreage base for the farm for the crop reduced by not less than 7.5 percent.”

#### SEC. 1104. ACREAGE REDUCTION PROGRAMS FOR 1992 THROUGH 1995 CROPS.

(a) IN GENERAL- Notwithstanding any other provision of law, except as provided in subsections (b) and (c), the Secretary of Agriculture shall announce an acreage limitation program for each of the 1992 through 1995 crops of--

(1) wheat under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by--

(A) in the case of the 1992 crop of wheat, not less than 6 percent;

(B) in the case of the 1993 crop of wheat, not less than 5 percent;

(C) in the case of the 1994 crop of wheat, not less than 7 percent;  
and

(D) in the case of the 1995 crop of wheat, not less than 5 percent;  
and

(2) corn, grain sorghum, and barley under which the acreage planted to the respective feed grain for harvest on a farm would be limited to the respective feed grain crop acreage base for the farm for the crop reduced by not less than 7 1/2 percent.

(b) STOCKS-TO-USE RATIO- Subsection (a) shall not apply to a crop if the Secretary estimates for such crop that the stocks-to-use ratio will be less than--

(1) in the case of wheat, 34 percent; and

(2) in the case of corn, grain sorghum, and barley, 20 percent.

(c) TERMINATION- If the Secretary determines that the quantity of soybeans on hand in the United States on the first day of the marketing year for the

1991 crop of soybeans (not including any quantity of soybeans of the 1991 crop) will be less than 325,000,000 bushels, subsection (a) shall not apply to any of the 1992 through 1995 crops of wheat and feed grains.

## **SEC. 1105. LOAN ORIGINATION FEES AND OTHER SAVINGS.**

(a) OILSEEDS- Section 205 of the Agricultural Act of 1949 (as added by section 701(2) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended--

(1) by redesignating subsection (m) as subsection (n); and

(2) by inserting after subsection (1) the following new subsection:

ˆ (m) Loan Origination Fee-

ˆ (1) LOANS- The Secretary shall charge a producer a loan origination fee for a crop of oilseeds, in connection with making a loan, equal to the product obtained by multiplying--

ˆ (A) the loan level determined for the crop under subsection (c); by

ˆ (B) 2 percent; by

ˆ (C) the quantity of oilseeds for which the producer obtains the loan.

ˆ (2) LOAN DEFICIENCY PAYMENTS- The Secretary shall deduct, from the amount of any loan deficiency payment made under subsection (e), an amount equal to the amount of the loan origination fee that would otherwise be paid under paragraph (1) if the producer obtained a loan rather a loan deficiency payment.'

(b) PEANUTS-

(1) IN GENERAL- Section 108B of the Agricultural Act of 1949 (as added by section 806 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended--

(A) by redesignating subsection (g) as subsection (h); and

(B) by inserting after subsection (f) the following new subsection:

ˆ (g) MARKETING ASSESSMENT-

ˆ (1) IN GENERAL- The Secretary shall provide, by regulation, for a nonrefundable marketing assessment applicable to each of the 1991 through 1995 crops of peanuts. The assessment shall be made in accordance with this subsection and shall be on a per pound basis in an amount equal to 1 percent of the national average quota or additional peanut support rate per pound, as applicable, for the applicable crop. No peanuts shall be assessed more than 1 percent of the applicable support

rate under this subsection.

ˆ (2) FIRST PURCHASERS-

ˆ (A) IN GENERAL- Except as provided under paragraphs (3) and (4), the first purchaser of peanuts shall--

ˆ (i) collect from the producer a marketing assessment equal to 1/2 percent of the applicable national average support rate times the quantity of peanuts acquired;

ˆ (ii) pay, in addition to the amount collected under clause (i), a marketing assessment in an amount equal to 1/2 percent of the applicable national average support rate times the quantity of peanuts acquired; and

ˆ (iii) remit the amounts required under clauses (i) and (ii) to the Commodity Credit Corporation in a manner specified by the Secretary.

ˆ (B) DEFINITION- For purposes of this subsection, the term 'first purchaser' means a person acquiring peanuts from a producer except that in the case of peanuts forfeited by a producer to the Commodity Credit Corporation, such term means the person acquiring the peanuts from the Commodity Credit Corporation.

ˆ (3) OTHER PRIVATE MARKETINGS- In the case of a private marketing by a producer directly to a consumer through a retail or wholesale outlet or in the case of a marketing by the producer outside of the continental United States, the producer shall be responsible for the full amount of the assessment and shall remit the assessment by such time as is specified by the Secretary.

ˆ (4) LOAN PEANUTS- In the case of peanuts that are pledged as collateral for a price support loan made under this section, 1/2 of the assessment shall be deducted from the proceeds of the loan. The remainder of the assessment shall be paid by the first purchaser of the peanuts. For purposes of computing net gains on peanuts under this section, the reduction in loan proceeds shall be treated as having been paid to the producer.

ˆ (5) PENALTIES- If any person fails to collect or remit the reduction required by this subsection or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary to carry out this subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying--

ˆ (A) the quantity of peanuts involved in the violation; by

ˆ (B) the national average quota peanut price support level for the applicable crop year.

` (6) ENFORCEMENT- The Secretary may enforce this subsection in the courts of the United States.'

(2) CONFORMING AMENDMENT- Section 108B(a)(2) of the Agricultural Act of 1949 (as added by section 806(3) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by inserting after `cost of land' the following: `and the cost of any assessments required under subsection (g)'

(c) SUGAR- Section 206 of the Agricultural Act of 1949 (as added by section 901(2) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended--

(1) by redesignating subsection (i) as subsection (j); and

(2) by inserting after subsection (h) the following new subsection:

` (i) Marketing Assessment-

` (1) SUGARCANE- Effective only for each of the 1991 through 1995 crops of sugarcane, the first processor of sugarcane shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to .18 cents per pound of raw cane sugar processed by the processor from domestically produced sugarcane.

` (2) SUGAR BEETS- Effective only for each of the 1991 through 1995 crops of sugar beets, the first processor of sugar beets shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to .193 cents per pound of beet sugar processed by the processor from domestically produced sugar beets.

` (3) COLLECTION- Marketing assessments required under this subsection shall be collected and remitted to the Commodity Credit Corporation in the manner prescribed by the Secretary and shall be nonrefundable.

` (4) PENALTIES- If any person fails to collect or remit the reduction required by this subsection or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary to carry out this subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying--

` (A) the quantity of cane sugar or beet sugar involved in the violation; by

` (B) the support level for the applicable crop of sugarcane or sugar beets.

` (5) ENFORCEMENT- The Secretary may enforce this subsection in the courts of the United States.'

(d) HONEY- Section 207 of the Agricultural Act of 1949 (as added by section 1001 of the Food, Agriculture, Conservation, and Trade Act of 1990) is



amended--

(1) by redesignating subsection (i) as subsection (j); and

(2) by inserting after subsection (h) the following new subsection:

^ (i) Marketing Assessment-

^ (1) IN GENERAL- Effective only for each of the 1991 through 1995 crops of honey, producers and producer-packers of honey (as defined in paragraphs (5) and (9), respectively, of section 3 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4602)) shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment on a per pound basis in an amount equal to 1 percent of the national price support level for each such crop as otherwise provided in this section.

^ (2) COLLECTION- The assessment shall be collected and remitted by the first handler of honey in the manner prescribed by the Secretary which, to the extent practicable, shall be as provided for in the Honey Research, Promotion, and Consumer Information Act.

^ (3) EXEMPTIONS- All persons who are exempt from the payment of the assessment authorized by such Act, and all imported honey, shall be exempt from the payment of the assessment required by this subsection.

^ (4) PENALTIES- If any person fails to collect or remit the reduction required by this subsection or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary to carry out this subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying--

^ (A) the quantity of honey involved in the violation; by

^ (B) the support level for the applicable crop of honey.

^ (5) ENFORCEMENT- The Secretary may enforce this subsection in the courts of the United States.'

(e) WOOL AND MOHAIR- Section 704 of the National Wool Act of 1954 (7 U.S.C. 1783) (as amended by section 201(b) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by adding at the following new subsection:

^ (c) MARKETING ASSESSMENTS- Effective only for each of the 1991 through 1995 marketing years for wool and mohair, the Secretary shall deduct an amount from the payment to be made available to producers of wool and mohair under subsection (a) equal to 1 percent of the payment.'

(f) TOBACCO- Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following new subsection:

` (g)(1) Effective only for each of the 1991 through 1995 crops of tobacco for which price support is made available under this Act, producers and purchasers of such tobacco shall each remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to .5 percent of the national price support level for each such crop as otherwise provided for in this section.

` (2) Such producer assessments and purchaser assessments shall be--

` (A) collected in the same manner as provided for in section 106A(d)(2) or 106B(d)(3), as applicable; and

` (B) enforced in the same manner as provided in section 106A(h) or 106B(j), as applicable.

` (3) The Secretary may enforce this subsection in the courts of the United States.'

(g) OTHER SAVINGS- Section 204 of the Agricultural Act of 1949 (as added by section 101 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended--

(1) in subsection (g)--

(A) in paragraph (1), by striking `1991 through 1994' and inserting `1992 through 1995';

(B) in the matter preceding subparagraph (A) of paragraph (2)--

(i) by inserting after `purchases' the following: `in the following calendar year'; and

(ii) by inserting after `producers' the following: `in such following calendar year'; and

(C) in paragraph (2)(B), by striking `that calendar year' and inserting `such following calendar year';

(2) by redesignating subsections (h) and (i) as subsections (j) and (k), respectively; and

(3) by inserting after subsection (g) the following new subsections:

` (h) Reduction in Price Received-

` (1) IN GENERAL- Beginning January 1, 1991, the Secretary shall provide for a reduction in the price received by producers for all milk produced in the United States and marketed by producers for commercial use, in addition to any reduction in price required under subsection (g).

` (2) AMOUNT- The amount of the reduction under paragraph (1) in the price received by producers shall be--

` (A) during calendar year 1991, 5 cents per hundredweight of milk marketed; and

` (B) during each of the calendar years 1992 through 1995, 11.25 cents per hundredweight of milk marketed, which rate shall be adjusted on or before May 1 of each of the calendar years 1992 through 1995 by an amount per hundredweight that is necessary to compensate for refunds made under paragraph (3) on the basis of marketings in the previous calendar year.

` (3) REFUND- The Secretary shall provide a refund of the entire reduction under paragraph (2) in the price of milk received by a producer during a calendar year, if the producer provides evidence that the producer did not increase marketings in the calendar year that such reduction was in effect when compared to the immediately preceding calendar year.

` (i) Enforcement-

` (1) COLLECTION- Reductions in price required under subsection (g) or (h) shall be collected and remitted to the Commodity Credit Corporation in the manner prescribed by the Secretary.

` (2) PENALTIES- If any person fails to collect or remit the reduction required by subsection (g) or (h) or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary to carry out such subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying--

` (A) the quantity of milk involved in the violation; by

` (B) the support rate for the applicable calendar year for milk.

` (3) ENFORCEMENT- The Secretary may enforce subsection (g) or (h) in the courts of the United States.'.

### **Subtitle B--Other Agricultural Programs**

#### **SEC. 1201. AUTHORIZATION LEVELS FOR RURAL ELECTRIC AND TELEPHONE LOANS.**

Title III of the Rural Electrification Act of 1936 (7 U.S.C. 931 et seq.) is amended by adding at the end the following new section:

#### **` SEC. 314. AUTHORIZATION LEVELS FOR RURAL ELECTRIC AND TELEPHONE LOANS.**

` (a) IN GENERAL- Subject to the other provisions of this section and notwithstanding any other provision of law, for each of fiscal years 1991 through 1995, insured loans may be made in accordance with this title from the Rural Electrification and Telephone Revolving Fund established under section 301 in amounts equal to the following levels:

- ` (1) For fiscal year 1991, \$896,000,000.
- ` (2) For fiscal year 1992, \$932,000,000.
- ` (3) For fiscal year 1993, \$969,000,000.
- ` (4) For fiscal year 1994, \$1,008,000,000.
- ` (5) For fiscal year 1995, \$1,048,000,000.

` (b) REDUCTION- Notwithstanding any other provision of law, for each of fiscal years 1991 through 1995, the Administrator shall--

` (1) reduce the amounts otherwise made available for insured loans made from the Rural Electrification and Telephone Revolving Fund by--

- ` (A) \$224,000,000 for fiscal year 1991;
- ` (B) \$234,000,000 for fiscal year 1992;
- ` (C) \$244,000,000 for fiscal year 1993;
- ` (D) \$256,000,000 for fiscal year 1994; and
- ` (E) \$267,000,000 for fiscal year 1995; and

` (2) use the funds made available from such reductions in each fiscal year to guarantee loans under subsection (d).

` (c) MANDATORY LEVELS- Notwithstanding any other provision of law, the Administrator shall make insured loans at the levels authorized by this section for each of fiscal years 1991 through 1995 taking into account any reductions under subsection (b).

` (d) GUARANTEED LOANS--

` (1) IN GENERAL- Except as otherwise provided in this subsection and subsection (e) and notwithstanding any other provision of law, in carrying out this Act, the Administrator shall guarantee loans made by legally organized lending agencies to the extent of the reduction in insured loans as provided in subsection (b).

` (2) AMOUNT OF GUARANTEE- The guarantees authorized under paragraph (1) shall be 90 percent of the principal of and interest on the loan and shall be made only upon the request of the borrower.

` (3) NO FEDERAL INSTRUMENTALITY- The Administrator may not provide any such guarantee for a loan made by the Federal Financing Bank, the Rural Telephone Bank, or any other lending agency that is an agency or instrumentality of the United States other than banks for cooperatives.

` (4) AUTHORITY- The Administrator is authorized to approve such guarantees subject to full use being made during each fiscal year of

insured loan amounts made available during the fiscal year.

` (5) CONSTRUCTION- Nothing in this subsection shall be construed as modifying the authority provided in section 306.

` (e) IMPLEMENTATION-

` (1) IN GENERAL- The Administrator shall implement the reduction in insured loans provided by subsection (b) in a manner that will lessen its adverse effect.

` (2) ALLOCATION BETWEEN ELECTRIC AND TELEPHONE PROGRAMS- The reductions required by subsection (b) shall be allocated between the electric and telephone programs for each fiscal year in proportion to the amount of insured funds made available for each such program during the fiscal year in annual appropriations Acts.

` (3) ELECTRIC BORROWER'S OPTION- If the amount of an insured electric loan is reduced as a result of the requirements of subsection (b), the electric borrower may, at the option of such borrower, obtain capital to replace the amount of the reduction--

` (A) with the assistance of a loan guarantee (as provided by subsection (d));

` (B) from internally generated funds of the electric borrower;

` (C) from private credit sources with a lien accommodation provided by the Administrator; or

` (D) from other private sources.'

## **SEC. 1202. AUTHORIZATION LEVELS FOR FmHA LOANS.**

(a) IN GENERAL- Subsection (b) of section 346 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1994(b)) is amended to read as follows:

` (b)(1) For each of the fiscal years 1991 through 1995, real estate and operating loans may be insured, made to be sold and insured, or guaranteed in accordance with subtitles A and B, respectively, from the Agricultural Credit Insurance Fund established under section 309 in amounts equal to the following levels:

` (A) For fiscal year 1991, \$4,175,000,000, of which not less than \$827,000,000 shall be for farm ownership loans under subtitle A.

` (B) For fiscal year 1992, \$4,343,000,000, of which not less than \$861,000,000 shall be for farm ownership loans under subtitle A.

` (C) For fiscal year 1993, \$4,516,000,000, of which not less than \$895,000,000 shall be for farm ownership loans under subtitle A.

` (D) For fiscal year 1994, \$4,697,000,000, of which not less than \$931,000,000 shall be for farm ownership loans under subtitle A.

` (E) For fiscal year 1995, \$4,885,000,000, of which not less than \$968,000,000 shall be for farm ownership loans under subtitle A.

` (2) Subject to paragraph (3), such amounts set forth in paragraph (1) shall be apportioned as follows:

` (A) For fiscal year 1991--

` (i) \$1,019,000,000 for insured loans, of which not less than \$83,000,000 shall be for farm ownership loans; and

` (ii) \$3,156,000,000 for guaranteed loans, of which not less than \$744,000,000 shall be for guarantees of farm ownership loans.

` (B) For fiscal year 1992--

` (i) \$1,060,000,000 for insured loans, of which not less than \$87,000,000 shall be for farm ownership loans; and

` (ii) \$3,283,000,000 for guaranteed loans, of which not less than \$774,000,000 shall be for guarantees of farm ownership loans.

` (C) For fiscal year 1993--

` (i) \$1,102,000,000 for insured loans, of which not less than \$90,000,000 shall be for farm ownership loans; and

` (ii) \$3,414,000,000 for guaranteed loans, of which not less than \$805,000,000 shall be for guarantees of farm ownership loans.

` (D) For fiscal year 1994--

` (i) \$1,147,000,000 for insured loans, of which not less than \$94,000,000 shall be for farm ownership loans; and

` (ii) \$3,550,000,000 for guaranteed loans, of which not less than \$837,000,000 shall be for guarantees of farm ownership loans.

` (E) For fiscal year 1995--

` (i) \$1,192,000,000 for insured loans, of which not less than \$97,000,000 shall be for farm ownership loans; and

` (ii) \$3,693,000,000 for guaranteed loans, of which not less than \$871,000,000 shall be for guarantees of farm ownership loans.

` (3) Notwithstanding any other provision of law:

` (A) The Secretary shall--

` (i) reduce the amounts otherwise made available for insured loans by--

` (I) \$482,000,000, for fiscal year 1991;

` (II) \$614,000,000, for fiscal year 1992;

` (III) \$760,000,000, for fiscal year 1993;

` (IV) \$859,000,000, for fiscal year 1994; and

` (V) \$907,000,000, for fiscal year 1995; and

` (ii) use the funds made available from such reductions in each fiscal year to guarantee loans under section 351.

` (B) The total amount of insured loans shall bear the same ratio to the amount of insured farm ownership loans as the dollar amount specified in paragraph (2)(A)(i) for insured loans bears to the dollar amount specified therein for insured farm ownership loans.

` (C) If more than 70 percent of the number of loans guaranteed under section 351 in a fiscal year have been guaranteed to persons to whom the Secretary had not previously made an insured loan under this Act, in lieu of the dollar amounts specified in subparagraph (A) for the immediately succeeding fiscal year, the dollar amounts which shall apply shall each be the product obtained by multiplying--

` (i) such dollar amount; by

` (ii) the quotient of--

` (I) the number of persons provided with guaranteed loans under section 351 in the fiscal year to whom the Secretary had not previously made an insured or a guaranteed loan under this Act; divided by

` (II) the total number of persons provided with guaranteed loans under section 351 in the fiscal year.

` (4) Notwithstanding subsection (a), the Secretary shall, as soon as practicable after the date of enactment of this subsection, make, insure, or guarantee loans at the levels authorized by this subsection for each of the fiscal years 1991 through 1995.'

(b) Interest Rate Reduction Program-

(1) IN GENERAL- Section 351 of such Act (7 U.S.C. 1999) is amended--

(A) in subsection (c)--

(i) by striking `50 percent' and inserting `100 percent'; and

(ii) by striking `2 percent' and inserting `4 percent'; and

(B) in subsection (d), by striking `, or 3 years, whichever is less'.

(2) EXTENSION OF PROGRAM FOR 2 YEARS- Section 1320 of the Food Security Act of 1985 (7 U.S.C. 1999 note) is amended by striking `1993' and inserting `1995'.

(c) DEMONSTRATION PROJECT FOR PURCHASE OF SYSTEM LAND- Section 351(h)(1) of such Act (7 U.S.C. 1999(h)(1)) is amended by striking `3-year' and inserting `4-year'.

#### SEC. 1203. APHIS INSPECTION USER FEE ON INTERNATIONAL PASSENGERS.

Section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 is amended--

(1) in paragraph (1), by striking `a commercial vessel, commercial aircraft, commercial truck, or railroad car,' and inserting `an international passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car.'; and

(2) in paragraph (3)(B)--

(A) by adding at the end of clause (ii) the following: `Any such reimbursement shall be subject to appropriations under clause (v).'; and

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

`(v) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated each fiscal year amounts in the Fund for use for quarantine or inspection services.'.

#### SEC. 1204. ADDITIONAL SAVINGS AND OTHER PROVISIONS.

(a) INTEGRATED FARM MANAGEMENT PROGRAM- Section 1451 of the Food, Agriculture, Conservation, and Trade Act of 1990 is amended--

(1) in subsection (d), by striking `enroll not more than' and inserting `enroll not less than'; and

(2) in subsection (h)(7)(A), by striking `shall not be eligible' and inserting `shall be eligible'.

(b) FOOD AID ASSISTANCE- The Agricultural Trade, Development, and Assistance Act of 1954 (as amended by section 1512 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended--

(1) in section 202(e)(1), by striking `private' and all that follows through `Administrator' and inserting `the Administrator, not less than \$10,000,000, and not more than \$13,500,000, shall be made available in



each fiscal year to private voluntary organizations and cooperatives';

(2) in section 406, by adding at the end the following new subsection:

`(d) AVAILABILITY OF FUNDS- Funds shall be available under this Act only to the extent provided in advance in appropriation Acts.'; and

(3) in section 407(c)(4), by striking `providing ocean' and inserting `providing ocean transportation or'.

(c) TOBACCO PROGRAM ADJUSTMENT- Section 213 of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 511r) is amended--

(1) in subsection (d), by inserting before the period the following: `, subsection (e), and subsection (f)'; and

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

`(4) Subsection (d) shall apply with respect to fees and charges imposed to cover the costs of such end user identification, certification, and reporting activities.'.

(d) EMERGENCY LOANS- Section 2269 of the Food, Agriculture, Conservation, and Trade Act of 1990 is amended by--

(1) striking `(7 U.S.C. 1981(b))' and inserting `(7 U.S.C. 1961(b))'; and

(2) striking `1988' and inserting `1990'.

(e) FIFRA USER FEES- Notwithstanding any provision of the Omnibus Budget Reconciliation Act of 1990, nothing in this title or the other provisions of this Act shall be construed to require or authorize the Administrator of the Environmental Protection Agency to assess or collect any fees or charges for services and activities authorized under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

### **Subtitle C--Effective Date**

## **SEC. 1301. EFFECTIVE DATE.**

This title and the amendments made by this title shall become effective 1 day after the date of enactment of the Food, Agriculture, Conservation, and Trade Act of 1990, or December 1, 1990, whichever is earlier.

## **SEC. 1302. READJUSTMENT OF SUPPORT LEVELS.**

(a) FAILURE TO ENTER INTO AGREEMENT- If by June 30, 1992, the United States does not enter into (within the context of section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902)) an agricultural trade agreement in the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT),

agricultural acreage limitation and price support and production adjustment programs and export promotion levels shall be reconsidered and adjusted by the Secretary of Agriculture (hereafter in this section referred to as the 'Secretary') in accordance with subsection (b), as appropriate to protect the interests of American agricultural producers and ensure the international competitiveness of United States agriculture.

(b) REQUIRED MEASURES- Pursuant to subsection (a), in order to protect the interests of American agricultural producers and ensure the competitive position of United States agriculture, the Secretary--

(1) is authorized to waive any minimum level for any acreage limitation program required or authorized for any of the 1993 through 1995 crops of wheat, feed grains, upland cotton, or rice established under section 107B(e), 105B(e), 103B(e), or 101B(e) of the Agricultural Act of 1949 (as amended by sections 301, 401, 501, and 601 of the Food, Agriculture, Conservation, and Trade Act of 1990), respectively;

(2) shall increase by \$1,000,000,000 for the period beginning October 1, 1993, and ending September 30, 1995, the level of export promotion programs authorized under the Agricultural Trade Act of 1978 (as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990), in addition to any amounts otherwise required or made available under such programs; and

(3) shall permit producers to repay price support loans for any of the 1993 through 1995 crops of wheat and feed grains at the levels provided under sections 107B(a)(4) and 105B(a)(4) of the Agricultural Act of 1949, respectively.

(c) FAILURE OF AGREEMENT TO ENTER INTO FORCE- If by June 30, 1993, an agricultural trade agreement under the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade has not entered into force for the United States, agricultural price support and other programs and export promotion levels shall be reconsidered and adjusted by the Secretary in accordance with subsection (d), if the Secretary determines such action is appropriate to protect the interests of American agricultural producers and ensure the international competitiveness of United States agriculture.

(d) SPECIFIC MEASURES-

(1) MEASURES TO BE CONSIDERED- Pursuant to subsection (c), the Secretary shall consider--

(A) waiving all or part of the requirements of this title, and the amendments made by this title, requiring reductions in agricultural spending;

(B) increasing the level of funds made available for the programs authorized under the Agricultural Trade Act of 1978; and

(C) permitting producers to repay price support loans for any of the 1993 through 1995 crops of wheat and feed grains at the levels provided under sections 107B(a)(4) and 105B(a)(4) of the Agricultural Act of 1949, respectively.

(2) AUTHORITY- The Secretary is authorized to implement the measures specified in subparagraphs (A), (B), and (C) of paragraph (1). This authority shall be in addition to, and not in place of, any other authority under any other provision of law.

(3) IMPLEMENTATION- If the Secretary determines the action is appropriate pursuant to subsection (c), the Secretary shall implement measures specified in subparagraph (A) of paragraph (1) and either or both of the measures specified in subparagraph (B) or (C) of paragraph (1).

(e) LIMITATION- This section shall not be construed to authorize the Secretary to reduce the level of income support provided to agricultural producers in the United States.

(f) TERMINATION- The provisions of subsections (a) and (b) shall cease to be effective if the President certifies to Congress that the failure referred to in subsection (a) to enter into an agricultural trade agreement in the Uruguay Round of multilateral trade negotiations under the GATT is a result in whole or in part of the provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191), or essentially similar provisions, not applying or in effect not applying during the period ending May 31, 1991 (or during the period June 1, 1991, through May 31, 1993, if the condition of section 1103(b)(1)(B)(i) is satisfied) to implementing bills submitted with respect to such an agreement entered into during the applicable period under section 1102(b) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902(b)).

## **TITLE II--BANKING, HOUSING, AND RELATED PROGRAMS**

### **Subtitle A--Federal Deposit Insurance Assessments**

Sec. 2001. Short title.

Sec. 2002. FDIC authorized to increase assessment rates as necessary to protect insurance funds.

Sec. 2003. FDIC authorized to make mid-year adjustments in assessment rates.

Sec. 2004. FDIC authorized to set designated reserve ratio as necessary in face of significant risk of substantial losses to insurance fund.

Sec. 2005. FDIC authorized to borrow from Federal Financing Bank.

### **Subtitle B--FHA Mortgage Insurance**

Sec. 2101. Increase in mortgage limit.

Sec. 2102. Mortgagor equity.

Sec. 2103. Mortgage insurance premiums.

Sec. 2104. Mutual mortgage insurance fund distributions.

Sec. 2105. Actuarial soundness of mutual mortgage insurance fund.

Sec. 2106. Home equity conversion mortgage insurance demonstration.

### **Subtitle C--Auction of Federally Insured Mortgages**

Sec. 2201. Auction of multifamily mortgages.

### **Subtitle D--Crime and Flood Insurance Programs**

Sec. 2301. Crime insurance program.

Sec. 2302. Flood insurance program.

### **Subtitle E--Effective Date**

Sec. 2401. Effective date.

## **TITLE II--BANKING, HOUSING, AND RELATED PROGRAMS**

### **Subtitle A--Federal Deposit Insurance Assessments**

#### **SEC. 2001. SHORT TITLE.**

This Act may be cited as the `FDIC Assessment Rate Act of 1990'.

**SEC. 2002. FDIC AUTHORIZED TO INCREASE ASSESSMENT RATES AS NECESSARY TO PROTECT INSURANCE FUNDS.**

(a) **BANK INSURANCE FUND-** Section 7(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(C)) is amended to read as follows:

`(C) **ASSESSMENT RATE FOR BANK INSURANCE FUND MEMBERS-**

`(i) **IN GENERAL-** The assessment rate for Bank Insurance Fund members shall be the greater of 0.15 percent or such rate as the Board of Directors, in its sole discretion, determines to be appropriate--

    ` (I) to maintain the reserve ratio at the designated reserve ratio; or

    ` (II) if the reserve ratio is less than the designated reserve

ratio, to increase the reserve ratio to the designated reserve ratio within a reasonable period of time.

` (ii) FACTORS TO BE CONSIDERED- In making any determination under clause (i), the Board of Directors shall consider the Bank Insurance Fund's expected operating expenses, case resolution expenditures, and income, the effect of the assessment rate on members' earnings and capital, and such other factors as the Board of Directors may deem appropriate.

` (iii) MINIMUM ASSESSMENT- Notwithstanding clause (i), the assessment shall not be less than \$1,000 for each member in each year.'

(b) SAVINGS ASSOCIATION INSURANCE FUND- Section 7(b)(1)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(D)) is amended to read as follows:

` (D) ASSESSMENT RATE FOR SAVINGS ASSOCIATION INSURANCE FUND MEMBERS-

` (i) IN GENERAL- The assessment rate for Savings Association Insurance Fund members shall be the greater of 0.15 percent or such rate as the Board of Directors, in its sole discretion, determines to be appropriate--

` (I) to maintain the reserve ratio at the designated reserve ratio; or

` (II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio within a reasonable period of time.

` (ii) FACTORS TO BE CONSIDERED- In making any determination under clause (i), the Board of Directors shall consider the Savings Association Insurance Fund's expected operating expenses, case resolution expenditures, and income, the effect of the assessment rate on members' earnings and capital, and such other factors as the Board of Directors may deem appropriate.

` (iii) MINIMUM ASSESSMENT- Notwithstanding clause (i), the assessment shall not be less than \$1,000 for each member in each year.

` (iv) TRANSITION RULE- Until December 31, 1997, the assessment rate for Savings Association Insurance Fund members shall not be less than the following:

` (I) From January 1, 1990, through December 31, 1990, 0.208 percent.

` (II) From January 1, 1991, through December 31, 1993, 0.23

percent.

` (III) From January 1, 1994, through December 31, 1997, 0.18 percent.'.

(c) CLERICAL AMENDMENTS REFLECTING \$1,000 MINIMUM ASSESSMENT PROVISIONS OF CURRENT LAW- Section 7(b)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)) is amended--

(1) by inserting ` or subparagraph (C)(iii) or (D)(iii) of subsection (b)(1)' after ` subsection (c)(2)'; and

(2) in clauses (i) and (ii), by inserting ` the greater of \$500 or an amount before ` equal to the product of'.

SEC. 2003. FDIC AUTHORIZED TO MAKE MID-YEAR ADJUSTMENTS IN ASSESSMENT RATES.

(a) ASSESSMENT RATES- Section 7(b)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(A)) is amended to read as follows:

` (A) ASSESSMENT RATES PRESCRIBED-

` (i) AUTHORITY TO SET RATES- Subject to clause (iii), the Corporation shall set assessment rates for insured depository institutions at such times as the Corporation, in its sole discretion, determines to be appropriate.

` (ii) RATE FOR EACH FUND TO BE SET INDEPENDENTLY- The Corporation shall fix the assessment rate of Bank Insurance Fund members independently from the assessment rate for Savings Association Insurance Fund members.

` (iii) DEADLINE FOR ANNOUNCING RATE CHANGES- The Corporation shall announce any change in assessment rates-

` (I) for the semiannual period beginning on January 1 and ending on June 30, not later than the preceding November 1; and

` (II) for the semiannual period beginning on July 1 and ending on December 31, not later than the preceding May 1.'.

(b) ASSESSMENT PROCEDURES- Section 7(b)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)), as amended by section 2(c) of this Act, is amended--

(1) by striking ` annual' each time it appears;

(2) in clause (i)(I), by inserting ` during that semiannual period' after ` member'; and

(3) in clause (ii)(I), by inserting `during that semiannual period' after `member'.

(c) CONFORMING AMENDMENT ON TIMING OF ASSESSMENT CREDITS- Section 7(d)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(d)(1)(A)) is amended to read as follows:

`(A) The Corporation shall prescribe and publish the aggregate amount to be credited to insured depository institutions--

`(i) in the semiannual period beginning on January 1 and ending on June 30, not later than the preceding November 1; and

`(ii) in the semiannual period beginning on July 1 and ending on December 31, not later than the preceding May 1.'

#### SEC. 2004. FDIC AUTHORIZED TO SET DESIGNATED RESERVE RATIO AS NECESSARY IN FACE OF SIGNIFICANT RISK OF SUBSTANTIAL LOSSES TO INSURANCE FUND.

Section 7(b)(1)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(B)) is amended--

(1) by striking `, not exceeding 1.50 percent,' each time it appears;

(2) in clause (iii)--

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

(B) by striking subclauses (II) and (III); and

(C) by redesignating subclause (IV) as subclause (II); and

(3) in clause (iv)--

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

(B) by striking subclauses (II) and (III); and

(C) by redesignating subclause (IV) as subclause (II).

#### SEC. 2005. FDIC AUTHORIZED TO BORROW FROM FEDERAL FINANCING BANK.

Section 14 of the Federal Deposit Insurance Act (12 U.S.C. 1824) is amended--

(1) in the heading, by striking `SEC. 14.' and inserting:

#### **SEC. 14. BORROWING AUTHORITY.**

`(a) BORROWING FROM TREASURY- ';

(2) in subsection (a), as designated by paragraph (1)--

(A) by striking `this section' each time it appears and inserting `this

subsection', and

(B) by striking `The Corporation may employ such funds' and inserting `The Corporation may employ any funds obtained under this section'; and

(3) by adding after subsection (a), as amended by paragraph (2), the following new subsection:

`(b) BORROWING FROM FEDERAL FINANCING BANK- The Corporation is authorized to issue and sell the Corporation's obligations, on behalf of the Bank Insurance Fund or Savings Association Insurance Fund, to the Federal Financing Bank established by the Federal Financing Bank Act of 1973. The Federal Financing Bank is authorized to purchase and sell the Corporation's obligations on terms and conditions determined by the Federal Financing Bank. Any such borrowings shall be obligations subject to the obligation limitation of section 15(c) of this Act. This subsection does not affect the eligibility of any other entity to borrow from the Federal Financing Bank.'.

### **Subtitle B--FHA Mortgage Insurance**

## **SEC. 2101. INCREASE IN MORTGAGE LIMIT.**

Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended by striking `150 percent (185 percent until October 31, 1990) of the dollar amount specified' and inserting the following: `185 percent of the dollar amount specified'.

## **SEC. 2102. MORTGAGOR EQUITY.**

Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended by adding at the end the following new undesignated paragraph:

`Notwithstanding any other provision of this paragraph, a mortgage may not involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of \$50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured. For purposes of the preceding sentence, the term `appraised value' means the amount set forth in the written statement required under section 226, or a similar amount determined by the Secretary if section 226 does not apply.'.

## **SEC. 2103. MORTGAGE INSURANCE PREMIUMS.**

(a) PREMIUMS- Section 203(c) of the National Housing Act (12 U.S.C. 1709(c)) is amended--

(1) by inserting `(1)' after `(c)';



(2) by striking the last sentence; and

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

^ (2) Notwithstanding any other provision of this section, each mortgage secured by a 1- to 4-family dwelling and executed on or after October 1, 1994, that is an obligation of the Mutual Mortgage Insurance Fund, shall be subject to the following requirements:

^ (A) The Secretary shall establish and collect, at the time of insurance, a single premium payment in an amount equal to 2.25 percent of the amount of the original insured principal obligation of the mortgage. Upon payment in full of the principal obligation of a mortgage prior to the maturity date of the mortgage, the Secretary shall refund all of the unearned premium charges paid on the mortgage pursuant to this subparagraph.

^ (B) In addition to the premium under subparagraph (A), the Secretary shall establish and collect annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments) for the following periods:

^ (i) For any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 11 years of the mortgage term.

^ (ii) For any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is greater than or equal to 90 percent of such value, for the first 30 years of the mortgage term; except that notwithstanding the matter preceding clause (i), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is greater than 95 percent of such value, the annual premium collected during the 30-year period under this clause shall be in an amount equal to 0.55 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments).'

(b) TRANSITION PROVISIONS- Notwithstanding section 203(c) of the National Housing Act (as amended by subsection (a)), mortgage insurance premiums on mortgages executed during fiscal years 1991 through 1994 and that are obligations of the Mutual Mortgage Insurance Fund shall be subject to the following requirements:

(1) 1991 AND 1992- For mortgages executed during fiscal years 1991 and 1992 (but after the date of the effectiveness of regulations issued under subsection (c)), the Secretary shall establish and collect the following

premiums:

(A) UP-FRONT- At the time of insurance, a single premium payment in an amount equal to 3.80 percent of the amount of the original insured principal obligation of the mortgage.

(B) ANNUAL- In addition to the premium under subparagraph (A), annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is--

(i) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 5 years of the mortgage term;

(ii) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 8 years of the mortgage term; and

(iii) greater than 95 percent of such value, for the first 10 years of the mortgage term.

(2) 1993 AND 1994- For mortgages executed during fiscal years 1993 and 1994, the Secretary shall establish and collect the following premiums:

(A) UP-FRONT- At the time of insurance, a single premium payment in an amount equal to 3.00 percent of the amount of the original insured principal obligation of the mortgage.

(B) ANNUAL- In addition to the premium under subparagraph (A), annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is--

(i) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 7 years of the mortgage term;

(ii) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 12 years of the mortgage term; and

(iii) greater than 95 percent of such value, for the first 30 years of the mortgage term.

(3) REFUNDS- With respect to any mortgage subject to premiums under this subsection, the Secretary shall refund all of the unearned premium charges paid on a mortgage pursuant to paragraph (1)(A) or (2)(A) upon payment in full of the principal obligation of the mortgage prior to the maturity date.

(c) REGULATIONS- The Secretary shall issue regulations to carry out this section and the amendments made by this section not later than the expiration of the 90-day period beginning on the date of the enactment of this Act.

## **SEC. 2104. MUTUAL MORTGAGE INSURANCE FUND DISTRIBUTIONS.**

Section 205 of the National Housing Act (12 U.S.C. 1711) is amended by adding at the end the following new subsection:

“(e) In determining whether there is a surplus for distribution to mortgagors under this section, the Secretary shall take into account the actuarial status of the entire Fund.”.

## **SEC. 2105. ACTUARIAL SOUNDNESS OF MUTUAL MORTGAGE INSURANCE FUND.**

Section 205 of the National Housing Act (12 U.S.C. 1711), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new subsections:

“(f)(1) The Secretary shall ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 1.25 percent within 24 months after the date of the enactment of this subsection and maintains such ratio thereafter, subject to paragraph (2).

“(2) The Secretary shall endeavor to ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 2.0 percent within 10 years after the date of the enactment of this subsection, and shall ensure that the Fund maintains at least such capital ratio at all times thereafter.

“(3) Upon the expiration of the 24-month period beginning on the date of the enactment of this subsection, the Secretary shall submit to the Congress a report describing the actions the Secretary will take to ensure that the Mutual Mortgage Insurance Fund attains the capital ratio required under paragraph (2).

“(4) For purposes of this subsection:

“(A) The term ‘capital’ means the economic net worth of the Mutual Mortgage Insurance Fund, as determined by the Secretary under the annual audit required under section 538.

“(B) The term ‘capital ratio’ means the ratio of capital to unamortized insurance-in-force.

` (C) The term `economic net worth' means the current cash available to the Fund, plus the net present value of all future cash inflows and outflows expected to result from the outstanding mortgages in the Fund.

` (D) The term `unamortized insurance-in-force' means the remaining obligation on outstanding mortgages which are obligations of the Mutual Mortgage Insurance Fund, as estimated by the Secretary.

` (g) The Secretary shall provide for an independent actuarial study of the Mutual Mortgage Insurance Fund to be conducted annually and shall report annually to the Congress regarding the financial status of the Fund.

` (h)(1) If, pursuant to the independent annual actuarial study of the Mutual Mortgage Insurance Fund required under subsection (g), the Secretary determines that the Mutual Mortgage Insurance Fund is not meeting the operational goals under paragraph (2), the Secretary may not issue distributions, and may, by regulation, propose and implement any adjustments to the insurance premiums under section 203(c) or section 2103(b) of the Omnibus Budget Reconciliation Act of 1990. Upon determining that a premium change is appropriate under the preceding sentence, the Secretary shall immediately notify Congress of the proposed change and the reasons for the change. Any such premium change shall not take effect before the expiration of the 90-day period beginning upon such notification.

` (2) The operational goals referred to in paragraph (1) shall be--

` (A) maintaining an adequate capital ratio;

` (B) meeting the needs of homebuyers with low downpayments and first-time homebuyers by providing access to mortgage credit;

` (C) minimizing the risk to the Fund and to homeowners from homeowner default; and

` (D) avoiding adverse selection.'

## **SEC. 2106. HOME EQUITY CONVERSION MORTGAGE INSURANCE DEMONSTRATION.**

(a) TERMINATION DATE- The first sentence of section 255(g) of the National Housing Act (12 U.S.C. 1715z-20(g)) is amended by striking `September 30, 1991' and inserting `September 30, 1995'.

(b) NUMBER OF MORTGAGES INSURED- Section 255(g) of the National Housing Act (12 U.S.C. 1715z-20(g)) is amended by striking the second sentence and inserting the following: `The total number of mortgages insured under this section may not exceed 25,000.'

### **Subtitle C--Auction of Federally Insured Mortgages**

**SEC. 2201. AUCTION OF MULTIFAMILY MORTGAGES.**

Section 221(g)(4) of the National Housing Act (12 U.S.C. 1715l(g)(4)) is amended by adding after subparagraph (B) the following new subparagraph:

“(C)(i) In lieu of accepting assignment of the original credit instrument and the mortgage securing the credit instrument under subparagraph (A) in exchange for receipt of debentures, the Secretary shall arrange for the sale of the beneficial interests in the mortgage loan through an auction and sale of the (I) mortgage loans, or (II) participation certificates, or other mortgage-backed obligations in a form acceptable to the Secretary (in this subparagraph referred to as “participation certificates”). The Secretary shall arrange the auction and sale at a price, to be paid to the mortgagee, of par plus accrued interest to the date of sale. The sale price shall also include the right to a subsidy payment described in clause (iii).

“(ii)(I) The Secretary shall conduct a public auction to determine the lowest interest rate necessary to accomplish a sale of the beneficial interests in the original credit instrument and mortgage securing the credit instrument.

“(II) A mortgagee who elects to assign a mortgage shall provide the Secretary and persons bidding at the auction a description of the characteristics of the original credit instrument and mortgage securing the original credit instrument, which shall include the principal mortgage balance, original stated interest rate, service fees, real estate and tenant characteristics, the level and duration of applicable Federal subsidies, and any other information determined by the Secretary to be appropriate. The Secretary shall also provide information regarding the status of the property with respect to the provisions of the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act with respect to eligibility to prepay the mortgage, a statement of whether the owner has filed a notice of intent to prepay or a plan of action under the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act, and the details with respect to incentives provided under the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act in lieu of exercising prepayment rights.

“(III) The Secretary shall, upon receipt of the information in subclause (II), promptly advertise for an auction and publish such mortgage descriptions in advance of the auction. The Secretary may conduct the auction at any time during the 6-month period beginning upon receipt of the information in subclause (II) but under no circumstances may the Secretary conduct an auction before 2 months after receiving the mortgagee's written notice of intent to assign its mortgage to the Secretary.

“(IV) In any auction under this subparagraph, the Secretary shall

accept the lowest interest rate bid for purchase that the Secretary determines to be acceptable. The Secretary shall cause the accepted bid to be published in the Federal Register. Settlement for the sale of the credit instrument and the mortgage securing the credit instrument shall occur not later than 30 business days after the date winning bidders are selected in the auction, unless the Secretary determines that extraordinary circumstances require an extension (not to exceed 60 days) of the period.

˘ (V) If no bids are received, the bids that are received are not acceptable to the Secretary, or settlement does not occur within the period under subclause (IV), the mortgagee shall retain all rights (including the right to interest, at a rate to be determined by the Secretary, for the period covering any actions taken under this subparagraph) under this section to assign the mortgage loan to the Secretary.

˘ (iii) As part of the auction process, the Secretary shall agree to provide a monthly interest subsidy payment from the General Insurance Fund to the purchaser under the auction of the original credit instrument or the mortgage securing the credit instrument (and any subsequent holders or assigns who are approved mortgagees). The subsidy payment shall be paid on the first day of each month in an amount equal to the difference between the stated interest due on the mortgage loan and the lowest interest rate necessary to accomplish a sale of the mortgage loan or participation certificates (less the servicing fee, if appropriate) for the then unpaid principal balance plus accrued interest at a rate determined by the Secretary. Each interest subsidy payment shall be treated by the holder of the mortgage as interest paid on the mortgage. The interest subsidy payment shall be provided until the earlier of--

˘ (I) the maturity date of the loan;

˘ (II) prepayment of the mortgage loan in accordance with the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act, where applicable; or

˘ (III) default and full payment of insurance benefits on the mortgage loan by the Federal Housing Administration.

˘ (iv) The Secretary shall require that the mortgage loans or participation certificates presented for assignment are auctioned as whole loans with servicing rights released and also are auctioned with servicing rights retained by the current servicer.

˘ (v) To the extent practicable, the Secretary shall encourage State housing finance agencies, nonprofit organizations, and organizations representing the tenants of the property securing the mortgage, or a qualified mortgagee participating in a plan of action under the

Emergency Low Income Housing Preservation Act of 1987 or subsequent Act to participate in the auction.

` (vi) The Secretary shall implement the requirements imposed by this subparagraph within 30 days from the date of enactment of this subparagraph and not be subject to the requirement of prior issuance of regulations in the Federal Register. The Secretary shall issue regulations implementing this section within 6 months of the enactment of this subparagraph.

` (vii) Nothing in this subparagraph shall diminish or impair the low income use restrictions applicable to the project under the original regulatory agreement or the revised agreement entered into pursuant to the Emergency Low Income Housing Preservation Act of 1987 or subsequent Act, if any, or other agreements for the provision of Federal assistance to the housing or its tenants.

` (viii) This subparagraph shall not apply after September 30, 1995. Not later than January 31 of each year (beginning in 1992), the Secretary shall submit to the Congress a report including statements of the number of mortgages auctioned and sold and their value, the amount of subsidies committed to the program under this subparagraph, the ability of the Secretary to coordinate the program with the incentives provided under the Emergency Low Income Housing Preservation Act of 1987 or subsequent Act, and the costs and benefits derived from the program for the Federal Government.'.

### **Subtitle D--Crime and Flood Insurance Programs**

## **SEC. 2301. CRIME INSURANCE PROGRAM.**

(a) EXTENSION OF GENERAL AUTHORITY- Section 1201(b) of the National Housing Act (12 U.S.C. 1749bbb(b)) is amended by striking `September 30, 1991' in the matter preceding paragraph (1) and inserting `September 30, 1995'.

(b) CONTINUATION OF EXISTING CONTRACTS- Section 1201(b)(1) of the National Housing Act (12 U.S.C. 1749bbb(b)(1)) is amended by striking `September 30, 1992' and inserting `September 30, 1996'.

(c) EXTENSION OF LIMITATION ON PREMIUMS- Section 542(c) of the Housing and Community Development Act of 1987 (12 U.S.C. 1749bbb-10c note) is amended by striking `September 30, 1991' and inserting `September 30, 1995'.

## **SEC. 2302. FLOOD INSURANCE PROGRAM.**

(a) EXTENSION OF GENERAL AUTHORITY- Section 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4026) is amended by striking `September 30, 1991' and inserting `September 30, 1995'.

(b) EXTENSION OF EMERGENCY PROGRAM- Section 1336(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4056(a)) is amended by striking `September 30, 1991' and inserting `September 30, 1995'.

(c) EXTENSION OF LIMITATION ON PREMIUMS- Section 541(d) of the Housing and Community Development Act of 1987 (42 U.S.C. 4015 note) is amended by striking `September 30, 1991' and inserting `September 30, 1995'.

(d) EXTENSION OF EROSION PROVISIONS- Section 1306(c)(7) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)(7)) is amended by striking `September 30, 1991' and inserting `September 30, 1995'.

(e) INCLUSION OF COSTS IN PREMIUMS-

(1) ESTIMATES OF PREMIUM RATES- Section 1307(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4014(a)) is amended--

(A) in paragraph (1)(B)(i), by striking `and' at the end;

(B) in paragraph (1)(B)(ii), by inserting `and' after the comma at the end;

(C) in paragraph (1)(B), by inserting at the end the following new clause:

`(iii) any remaining administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360) not included under clause (ii), which shall be recovered by a fee charged to policyholders and such fee shall not be subject to any agents' commissions, company expense allowances, or State or local premium taxes,'; and

(D) in paragraph (2), by inserting after `title' the following: `, and which, together with a fee charged to policyholders that shall not be not subject to any agents' commission, company expenses allowances, or State or local premium taxes, shall include any administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360)'.

(2) ESTABLISHMENT OF CHARGEABLE PREMIUM RATES- Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended--

(A) in subsection (b)--

(i) by striking `and' at the end of paragraph (2);

(ii) by redesignating paragraph (3) as paragraph (4); and

(iii) by inserting after paragraph (2), the following new paragraph:



` (3) adequate, together with the fee under paragraph (1)(B)(iii) or (2) of section 1307(a), to provide for any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360), and'; and

(B) by striking subsection (d) and inserting the following new subsection:

` (d) With respect to any chargeable premium rate prescribed under this section, a sum equal to the portion of the rate that covers any administrative expenses of carrying out the flood insurance and floodplain management programs which have been estimated under paragraphs (1)(B)(ii) and (1)(B)(iii) of section 1307(a) or paragraph (2) of such section (including the fees under such paragraphs), shall be paid to the Director. The Director shall deposit the sum in the National Flood Insurance Fund established under section 1310.'

(3) NATIONAL FLOOD INSURANCE FUND- Section 1310(a)(4) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)(4)) is amended to read as follows:

` (4) to the extent approved in appropriations Acts, to pay any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360); and'.

(4) ADMINISTRATIVE EXPENSES- Section 1375 of the National Flood Insurance Act of 1968 (42 U.S.C. 4126) is amended by striking `program' and all that follows and inserting the following: `and floodplain management programs authorized under this title may be paid with amounts from the National Flood Insurance Fund (as provided under section 1310(a)(4)), subject to approval in appropriations Acts.'

(5) EXCEPTION TO LIMITATION ON PREMIUM INCREASES- Notwithstanding section 541(d) of the Housing and Community Development Act of 1987 (42 U.S.C. 4015 note) (as amended by this section), the premium rates charged for flood insurance under any program established pursuant to the National Flood Insurance Act of 1968 may be increased by more than 10 percent during fiscal year 1991, except that any increase in such rates not resulting from the inclusion in chargeable premium rates of administrative expenses of the flood insurance and floodplain management programs (pursuant to the amendments made by this subsection) may not exceed 10 percent.

### **Subtitle E--Effective Date**

## **SEC. 2401. EFFECTIVE DATE.**

If the Cranston-Gonzalez National Affordable Housing Act is enacted before the enactment of this Act, the provisions of subtitles B and C (of this title)

and the amendments made by such subtitles shall not take effect. This section shall apply notwithstanding any provision relating to effective date or applicability contained in subtitle B or C.

## **TITLE III--STUDENT LOANS AND LABOR PROVISIONS**

### **Subtitle A--Student Loan Program Savings**

#### **SEC. 3001. SHORT TITLE.**

This subtitle may be cited as the `Student Loan Default Prevention Initiative Act of 1990'.

#### **SEC. 3002. SUPPLEMENTAL PRECLAIMS ASSISTANCE PAYMENTS.**

(a) ELIMINATION OF SUPPLEMENTAL PRECLAIMS ASSISTANCE REIMBURSEMENTS- Section 428(c) of the Higher Education Act of 1965 (20 U.S.C. 1078(c)) is amended--

(1) in the first sentence of paragraph (1)(A), by striking ` , including the administrative costs of supplemental preclaim assistance for default prevention as defined in paragraph (6)(C)';

(2) in paragraph (6)(C)(i), by striking `this paragraph' and inserting `subsection (I)';

(3) in paragraph (6)(C)(i)(I), by striking `required or permitted under paragraph (2)(A) of this subsection and subsection (f)' and inserting `generally comparable in intensiveness to the level of preclaims assistance performed, prior to the 120th day of delinquency, by the guaranty agency as of October 16, 1990';

(4) in paragraph (6)(C)(ii)--

(A) by striking `reimbursement' and inserting `payment under subsection (I)'; and

(B) by striking `which the guaranty agency is required or permitted to provide pursuant to paragraph (2)(A) of this subsection and subsection (f)' and inserting `described in division (i)(I) of this subparagraph'; and

(5) by striking the first sentence of paragraph (6)(C)(iv).

(b) FIXED PAYMENTS FOR PRECLAIMS ASSISTANCE- Section 428 of such Act is further amended by adding at the end thereof the following new subsection:

`(I) PRECLAIMS ASSISTANCE AND SUPPLEMENTAL PRECLAIMS ASSISTANCE-

^ (1) ASSISTANCE REQUIRED- Upon receipt of a proper request from the lender, a guaranty agency having an agreement with the Secretary under subsection (c) of this section shall engage in preclaims assistance activities (as described in subsection (c)(6)(C)(i)(I)) and supplemental preclaims assistance activities (as described in subsection (c)(6)(C)) with respect to each loan covered by such agreement.

^ (2) PAYMENTS FOR SUPPLEMENTAL PRECLAIMS ASSISTANCE- The Secretary shall make payments in accordance with the provisions of this paragraph to any guaranty agency that engages in supplemental preclaims assistance (as defined in subsection (c)(6)(C)) on a loan guaranteed under this part. Such payments shall be equal to \$50.00 for each loan on which such assistance is performed and for which a default claim is not presented to the guaranty agency by the lender on or before the 150th day after the loan becomes 120 days delinquent.'

### **SEC. 3003. INITIAL DISBURSEMENT AND ENDORSEMENT REQUIREMENTS.**

(a) AMENDMENT- Section 428G(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078-7(b)(1)) is amended to read as follows:

^ (1) FIRST YEAR STUDENTS- The first installment of the proceeds of any loan made, insured, or guaranteed under this part that is made to a student borrower who is entering the first year of a program of undergraduate education, and who has not previously obtained a loan under this part, shall not (regardless of the amount of such loan or the duration of the period of enrollment) be presented by the institution to the student for endorsement until 30 days after the borrower begins a course of study, but may be delivered to the eligible institution prior to the end of that 30-day period.'

(b) EFFECTIVE DATE- The amendment made by this section shall be effective for loans made on or after the date of enactment of this Act to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1991.

### **SEC. 3004. INELIGIBILITY BASED ON HIGH DEFAULT RATES.**

(a) IN GENERAL- Section 435(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)) is amended by adding at the end thereof the following new paragraph:

^ (3) INELIGIBILITY BASED ON HIGH DEFAULT RATES- (A) An institution whose cohort default rate is equal to or greater than the threshold percentage specified in subparagraph (B) for each of the three most recent fiscal years for which data are available shall not be eligible to participate in a program under this part for the fiscal year for which the determination is made and for the two succeeding fiscal years, unless, within 30 days of receiving notification from the Secretary of the loss of eligibility under this paragraph, the institution appeals the loss of its

eligibility to the Secretary. The Secretary shall issue a decision on any such appeal within 45 days after its submission. Such decision may permit the institution to continue to participate in a program under this part if--

- ` (i) the institution demonstrates to the satisfaction of the Secretary that the Secretary's calculation of its cohort default rate is not accurate, and that recalculation would reduce its cohort default rate for any of the three fiscal years below the threshold percentage specified in subparagraph (B); or
- ` (ii) there are, in the judgment of the Secretary, exceptional mitigating circumstances that would make the application of this paragraph inequitable.

During such appeal, the Secretary may permit the institution to continue to participate in a program under this part.

` (B) For purposes of determinations under subparagraph (A), the threshold percentage is--

- ` (i) 35 percent for fiscal year 1991 and 1992; and
- ` (ii) 30 percent for any succeeding fiscal year.

` (C) Until July 1, 1994, this paragraph shall not apply to any institution that is--

- ` (i) a part B institution within the meaning of section 322(2) of this Act;
- ` (ii) a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978; or
- ` (iii) a Navajo Community College under the Navajo Community College Act.'

(b) REFUSAL TO PROVIDE STATEMENT TO LENDER- Section 428(a)(2)(F) of such Act (20 U.S.C. 1078(a)(2)(F)) is amended by inserting before the period at the end thereof the following: ` , except that, in individual cases where the institution determines that the portion of the student's expenses to be covered by the loan can be met more appropriately, either by the institution or directly by the student, from other sources, the institution may refuse to provide such statement or may reduce the determination of need contained in such statement'.

(c) EXTENSION OF DEFAULT RATE LIMITATIONS ON SLS LOANS- Section 2003(a)(3) of the Omnibus Budget Reconciliation Act of 1989 is amended--

- (1) by inserting ` paragraph (1) of' after ` amendments made by'; and

(2) by striking out `October 1, 1991' and inserting `October 1, 1996'.

(d) EFFECTIVE DATE- The amendments made by this section shall be effective July 1, 1991, except that the amendment made by subsection (b) shall be effective upon enactment.

## **SEC. 3005. ABILITY TO BENEFIT.**

(a) IN GENERAL- Section 484(d) of the Higher Education Act of 1965 (20 U.S.C. 1091(d)) is amended to read as follows:

`(d) ABILITY TO BENEFIT- In order for a student who is admitted on the basis of ability to benefit from the education or training offered to be eligible for any grant, loan, or work assistance under this title, the student shall, prior to enrollment, pass an independently administered examination approved by the Secretary.'

(b) CONFORMING AMENDMENT- Section 481(b) of the Higher Education Act of 1965 (20 U.S.C. 1088(b)) is amended in the fourth sentence by inserting ` , except in accordance with section 484(d) of this Act,' after `shall not'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1991.

## **SEC. 3006. MAXIMUM SLS LOAN AMOUNTS.**

(a) EFFECTIVE DATE EXTENSION- Section 2003(b)(2) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking `1991' and inserting `1996'.

(b) PERIOD FOR DETERMINATION OF MAXIMUM LOAN AMOUNTS- Section 428A(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078-1(b)) is amended by striking `9 consecutive' and inserting `7 consecutive'.

## **SEC. 3007. AMENDMENTS TO BANKRUPTCY LAWS.**

(a) AUTOMATIC STAY AND PROPERTY OF THE ESTATE- (1) Section 362(b) of title 11, United States Code, is amended--

(A) in paragraph (12), by striking `or' at the end thereof;

(B) in paragraph (13), by striking the period at the end thereof and inserting a semicolon; and

(C) by inserting immediately following paragraph (13) the following new paragraphs:

`(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

` (15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution; or

` (16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act.'.

(2) Section 541(b) of title 11, United States Code, is amended--

(A) in paragraph (1), by striking `or' at the end thereof;

(B) in paragraph (2), by striking the period at the end thereof and inserting a semicolon and `or'; and

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

` (3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), or any accreditation status or State licensure of the debtor as an educational institution.'.

(3) The amendments made by this subsection shall be effective upon date of enactment of this Act.

(b) TREATMENT OF CERTAIN EDUCATION LOANS IN BANKRUPTCY PROCEEDINGS- (1) Section 1328(a)(2) of title 11, United States Code, is amended by striking `section 523(a)(5)' and inserting `paragraph (5) or (8) of section 523(a)'.

(2) The amendment made by paragraph (1) shall not apply to any case under the provisions of title 11, United States Code, commenced before the date of the enactment of this Act.

## **SEC. 3008. SUNSET PROVISION.**

The amendments made by this subtitle shall cease be effective on October 1, 1996.

### **Subtitle B--Labor Related Penalties**

## **SEC. 3101. OCCUPATIONAL SAFETY AND HEALTH.**

Section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666) is amended--

(1) in subsection (a), by striking `\$10,000 for each violation' and inserting `\$70,000 for each violation, but not less than \$5,000 for each willful violation; 1

and

1 So in original. Probably should be `violation';'.

(2) in subsections (b), (c), (d), and (i), by striking `\$1,000' and inserting `\$7,000'.

## **SEC. 3102. MINE SAFETY AND HEALTH.**

Section 110 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 820) is amended--

(1) in subsection (a), by striking `\$10,000' and inserting `\$50,000'; and

(2) in subsection (b), by striking `1,000' and inserting `\$5,000', and 2

2 So in original, The `, and' probably should be a period.

## **SEC. 3103. FAIR LABOR STANDARDS.**

Section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)) is amended--

(1) in the first sentence--

(A) by striking `or any person who repeatedly or willfully violates section 6 or 7'; and

(B) by striking `not to exceed \$1,000 for each such violation' and inserting `not to exceed \$10,000 for each employee who was the subject of such a violation';

(2) by inserting after the first sentence the following: `Any person who repeatedly or willfully violates section 6 or 7 shall be subject to a civil penalty of not to exceed \$1,000 for each such violation.';

(3) by striking `such penalty' each place the term appears except after `appropriateness of' and inserting `any penalty under this subsection', and

(4) in the last sentence, by striking `Sums' and inserting `Except for civil penalties collected for violations of section 12, sums'; and

(5) by inserting at the end the following new sentence: `Civil penalties collected for violations of section 12 shall be deposited in the general fund of the Treasury.'.

## **TITLE IV--MEDICARE, MEDICAID, AND OTHER HEALTH-RELATED PROGRAMS**

### **Subtitle A--Medicare**

**SEC. 4000. REFERENCES IN SUBTITLE; TABLE OF CONTENTS.**

(a) AMENDMENTS TO THE SOCIAL SECURITY ACT- Except as otherwise specifically provided, whenever in this title an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(b) TABLE OF CONTENTS- The table of contents of this subtitle is as follows:

Sec. 4000. References in subtitle; table of contents.

**Part 1--Provisions Relating to Part A**

Sec. 4001. Payments for capital-related costs of inpatient hospital services.

Sec. 4002. Prospective payment hospitals.

Sec. 4003. Expansion of DRG payment window.

Sec. 4004. Payments for medical education costs.

Sec. 4005. PPS-exempt hospitals.

Sec. 4006. Hospice benefit extension.

Sec. 4007. Freeze in payments under part A through December 31.

Sec. 4008. Miscellaneous and technical provisions relating to part A.

**Part 2--Provisions Relating to Part B****Subpart A--Payment for Physicians' Services**

Sec. 4101. Certain overvalued procedures.

Sec. 4102. Radiology services.

Sec. 4103. Anesthesia services.

Sec. 4104. Physician pathology services.

Sec. 4105. Update for physicians' services.

Sec. 4106. New physicians and other new health care practitioners.

Sec. 4107. Assistants at surgery.

Sec. 4108. Technical components of certain diagnostic tests.

Sec. 4109. Interpretation of electrocardiograms.



- Sec. 4110. Reciprocal billing arrangements.
- Sec. 4111. Study of prepayment medical review screens.
- Sec. 4112. Practicing physicians advisory council.
- Sec. 4113. Study of aggregation rule for claims for similar physicians' services.
- Sec. 4114. Utilization screens for physician visits in rehabilitation hospitals.
- Sec. 4115. Study of regional variations in impact of medicare physician payment reform.
- Sec. 4116. Limitation on beneficiary liability.
- Sec. 4117. Statewide fee schedule areas for physicians' services.
- Sec. 4118. Technical corrections.

### **Subpart B--Other Items and Services**

- Sec. 4151. Payments for hospital outpatient services.
- Sec. 4152. Durable medical equipment.
- Sec. 4153. Provisions relating to orthotics and prosthetics.
- Sec. 4154. Clinical diagnostic laboratory tests.
- Sec. 4155. Coverage of nurse practitioners in rural areas.
- Sec. 4156. Coverage of injectable drugs for treatment of osteoporosis.
- Sec. 4157. Separate payment under part B for services of certain health practitioners.
- Sec. 4158. Reduction in payments under part B during final 2 months of 1990.
- Sec. 4159. Payments for medical education costs.
- Sec. 4160. Certified registered nurse anesthetists.
- Sec. 4161. Community health centers and rural health clinics.
- Sec. 4162. Partial hospitalization in community mental health centers.
- Sec. 4163. Coverage of screening mammography.
- Sec. 4164. Miscellaneous and technical provisions relating to part B.

### **Part 3--Provisions Relating to Parts A and B**

Sec. 4201. Provisions relating to end stage renal disease.

Sec. 4202. Staff-assisted home dialysis demonstration project.

Sec. 4203. Extension of secondary payor provisions.

Sec. 4204. Health maintenance organizations.

Sec. 4205. Peer review organizations.

Sec. 4206. Medicare provider agreements assuring the implementation of a patient's right to participate in and direct health care decisions affecting the patient.

Sec. 4207. Miscellaneous and technical provisions relating to parts A and B.

## **Part 4--Provisions Relating to Part B Premium and Deductible**

Sec. 4301. Part B premium.

Sec. 4302. Part B deductible.

## **Part 5--Medicare Supplemental Insurance Policies**

Sec. 4351. Simplification of medicare supplemental policies.

Sec. 4352. Guaranteed renewability.

Sec. 4353. Enforcement of standards.

Sec. 4354. Preventing duplication.

Sec. 4355. Loss ratios and refund of premiums.

Sec. 4356. Clarification of treatment of plans offered by health maintenance organizations.

Sec. 4357. Pre-existing condition limitations and limitation on medical underwriting.

Sec. 4358. Medicare select policies.

Sec. 4359. Health insurance advisory services for medicare beneficiaries.

Sec. 4360. Health insurance information, counseling, and assistance grants.

Sec. 4361. Medicare and medigap information by telephone.

## ***PART 1--PROVISIONS RELATING TO PART A***

SEC. 4001. PAYMENTS FOR CAPITAL-RELATED COSTS OF INPATIENT HOSPITAL

## SERVICES.

(a) REDUCTION IN PAYMENTS FOR FISCAL YEAR 1991- Section 1886(g)(3)(A)(v) (42 U.S.C. 1395ww(g)(3)(A)(v)) is amended by striking `September 30, 1990' and inserting `September 30, 1991'.

(b) IMPLEMENTATION OF PROSPECTIVE PAYMENT FOR CAPITAL-RELATED COSTS- Section 1886(g)(1)(A) (42 U.S.C. 1395ww(g)(1)) is amended by adding at the end the following: `Aggregate payments made under subsection (d) and this subsection during fiscal years 1992 through 1995 shall be reduced in a manner that results in a reduction (as estimated by the Secretary) in the amount of such payments equal to a 10 percent reduction in the amount of payments attributable to capital-related costs that would otherwise have been made during such fiscal year had the amount of such payments been based on reasonable costs (as defined in section 1861(v)).'.

(c) EXEMPTION FOR RURAL PRIMARY CARE HOSPITALS- Section 1886(g)(3)(B) is amended by striking `subsection (d)(5)(D)(iii).' and inserting `subsection (d)(5)(D)(iii) or a rural primary care hospital (as defined in section 1861(mm)(1)).'.

**SEC. 4002. PROSPECTIVE PAYMENT HOSPITALS.**

(a) CHANGES IN UPDATE FACTORS-

(1) IN GENERAL- Section 1886(b)(3)(B)(i) (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended--

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

(B) in subclause (VI)--

(i) by striking `1991' and inserting `1994', and

(ii) by redesignating such subclause as subclause (IX); and

(C) by inserting after subclause (V) the following new subclauses:

`(VI) for fiscal year 1991, the market basket percentage increase minus 2.0 percentage points for hospitals in all areas,

`(VII) for fiscal year 1992, the market basket percentage increase minus 1.6 percentage points for hospitals in all areas,

`(VIII) for fiscal year 1993, the market basket percentage increase minus 1.55 percentage point for hospitals in all areas, and'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to payments for discharges occurring on or after January 1, 1991.

(b) CHANGES IN DISPROPORTIONATE SHARE PAYMENTS-

(1) INCREASE FOR URBAN HOSPITALS WITH MORE THAN 100 BEDS- Section 1886(d)(5)(F)(vii) (42 U.S.C. 1395ww(d)(5)(F)(vii)) is amended--

(A) in subclause (I), by striking `greater than 20.2,' and all that follows and inserting the following: `greater than 20.2--

` (a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, (P-20.2)(.65) + 5.62,

` (b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, (P-20.2)(.7) + 5.62,

` (c) for discharges occurring on or after October 1, 1993, and on or before September 30, 1994, (P-20.2)(.8) + 5.88, and

` (d) for discharges occurring on or after October 1, 1994, (P-20.2)(.825) + 5.88; or'; and

(B) in subclause (II), by striking `hospital, (P-15)(.6) + 2.5,' and inserting the following: `hospital--

` (a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, (P-15)(.6) + 2.5,

` (b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, (P-15)(.6) + 2.5,

` (c) for discharges occurring on or after October 1, 1993, (P-15)(.65) + 2.5,'.

(2) INCREASE FOR HOSPITALS WITH DISPROPORTIONATE INDIGENT CARE REVENUES- Section 1886(d)(5)(F)(iii) (42 U.S.C. 1395ww(d)(5)(F)(iii)) is amended by striking `30 percent' and inserting `35 percent'.

(3) REPEAL OF SUNSET-

(A) IN GENERAL- Section 1886(d) (42 U.S.C. 1395ww(d)) is amended by striking `and before October 1, 1995,' each place it appears in paragraph (2)(C)(iv) and paragraph (5)(F)(i).

(B) CONFORMING AMENDMENTS- (A) Section 1886(d)(5)(B)(ii) (42 U.S.C. 1395ww(d)(5)(B)) is amended to read as follows:

` (ii) For purposes of clause (i)(II), the indirect teaching adjustment factor for discharges occurring on or after May 1, 1986, is equal to  $1.89 \cdot 0A \left( \left( (1 + r) \right)^n - 1 \right)$ , where `r' is the ratio of the hospital's full-time equivalent interns and residents to beds and `n' equals .405.'

(B) Section 1886(d)(3)(C)(ii) (42 U.S.C. 1395ww(d)(3)(C)(ii)) is amended by striking `occurring--' and all that follows and inserting the following: `occurring on or after October 1, 1986, of an amount

equal to the estimated reduction in the payment amounts under paragraph (5)(B) that would have resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and by section 4003(a) (1) of the Omnibus Budget Reconciliation Act of 1987 if the factor described in clause (ii)(II) of paragraph (5)(B) (determined without regard to amendments made by the Omnibus Budget Reconciliation Act of 1990) were applied for discharges occurring on or after such date instead of the factor described in clause (ii) of that paragraph.'

(4) NO RESTANDARDIZING FOR RECENT ADJUSTMENTS-

(A) ADJUSTMENTS UNDER OBRA 1989- Section 1886(d)(2)(C)(iv) (42 U.S.C. 1395ww(d)(2)(C)(iv)) is amended by striking the period at the end and inserting the following: ` , except that the Secretary shall not exclude additional payments under such paragraph made as a result of the enactment of section 6003(c) of the Omnibus Budget Reconciliation Act of 1989.'

(B) ADJUSTMENTS UNDER OBRA 1990- Section 1886(d)(2)(C)(iv), as amended by subparagraph (A), is further amended by striking ` 1989.' and inserting ` 1989 or the enactment of section 4002(b) of the Omnibus Budget Reconciliation Act of 1990.'

(5) EFFECTIVE DATE- The amendments made by paragraphs (1), (3), and (4)(B) shall apply to discharges occurring on or after January 1, 1991, the amendment made by paragraph (2) shall apply to discharges occurring on or after October 1, 1991, and the amendment made by paragraph (4)(A) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(c) PAYMENTS TO RURAL HOSPITALS-

(1) PHASE-OUT OF SEPARATE AVERAGE STANDARDIZED AMOUNTS- Section 1886(b)(3)(B)(i) (42 U.S.C. 1395ww(b)(3)(B)(i)), as amended by subsection (a)(1), is further amended--

(A) in subclause (VI), by striking ` in all areas,' and inserting ` in a large urban or other urban area, and the market basket percentage increase minus 0.7 percentage point for hospitals located in a rural area ,';

(B) in subclause (VII), by striking ` in all areas,' and inserting ` in a large urban or other urban area, and the market basket percentage increase minus 0.6 percentage point for hospitals located in a rural area ,';

(C) in subclause (VIII), by striking ` in all areas, and' and inserting ` in a large urban or other urban area, and the market basket percentage increase minus 0.55 for hospitals located in a rural area ,';

(D) in subclause (IX)--

(i) by striking `1994' and inserting `1996', and

(ii) by redesignating such subclause as subclause (XI); and

(E) by inserting after subclause (VIII) the following new subclauses:

` (IX) for fiscal year 1994, the market basket percentage increase for hospitals located in a large urban or other urban area, and the market basket percentage increase plus 1.5 percentage points for hospitals located in a rural area,

` (X) for fiscal year 1995, the market basket percentage increase for hospitals located in a large urban or other urban area, and such percentage increase for hospitals located in a rural area as will provide for the average standardized amount determined under subsection (d)(3) (A) for hospitals located in a rural area being equal to such average standardized amount for hospitals located in an urban area (other than a large urban area), and'.

(2) CONFORMING AMENDMENTS- (A) Section 1886(b)(3)(B) (42 U.S.C. 1395ww(b)(3)) is amended--

(i) in clause (ii), by striking `(A) and (E),' and inserting `(A), (C), (D), and (E),';

(ii) in subparagraphs (C)(ii) and (D)(ii), by striking `(B)(i)' each place it appears and inserting `(B)(ii)'.

(B) Section 1886(d) (42 U.S.C. 1395ww(d)) is amended--

(i) in paragraph (1)(A)(iii), by striking `rural, large urban, or other urban area' and inserting `large urban or other area';

(ii) in paragraph (3)(A)--

(I) in clause (ii), by striking `the Secretary' and inserting `and ending on or before September 30, 1994, the Secretary',

(II) by redesignating clause (iii) as clause (v), and

(III) by inserting after clause (ii) the following new clauses:

` (iii) For discharges occurring in the fiscal year beginning on October 1, 1994, the average standardized amount for hospitals located in a rural area shall be equal to the average standardized amount for hospitals located in an other urban area.

` (iv) For discharges occurring in a fiscal year beginning on or after October 1, 1995, the Secretary shall compute an average standardized amount for hospitals located in a large urban area and for hospitals

located in other areas within the United States and within each region equal to the respective average standardized amount computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B)(i) with respect to hospitals located in the respective areas for the fiscal year involved.';

(iii) in paragraph (3)(B), by striking `for hospitals located in an urban area' and all that follows and inserting the following: `by a factor equal to the proportion of payments under this subsection (as estimated by the Secretary) based on DRG prospective payment amounts which are additional payments described in paragraph (5) (A) (relating to outlier payments).';

(iv) in paragraph (3)(D)(i)--

(I) in the matter preceding subclause (I), by striking `an urban area (or,' and all that follows through `area),' and inserting `a large urban area', and

(II) in subclause (I), by striking `an urban area' and inserting `a large urban area';

(v) in paragraph (3)(D)(ii), by striking `a rural area' each place it appears and inserting `other areas'; and

(vi) in paragraph (8)(D)--

(I) in the first sentence, by striking `for hospitals located in an urban area', and

(II) by striking the second sentence.

(3) EFFECTIVE DATE- The amendments made by paragraph (1) and paragraph (2)(A) shall apply to payments for discharges occurring on or after January 1, 1991, and the amendments made by paragraph (2)(B) shall take effect October 1, 1994.

(d) AREA WAGE INDEX-

(1) DETERMINATION OF AREA WAGE INDEX- (A) For purposes of section 1886(d)(3)(E) of the Social Security Act for discharges occurring on or after January 1, 1991, and before October 1, 1993, the Secretary of Health and Human Services shall apply an area wage index determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section.

(B) The Secretary shall apply the wage index described in subparagraph (A) without regard to a previous survey of wages and wage-related costs.

(2) STUDY OF AREA WAGE INDEX ADJUSTMENTS BASED ON PROFESSIONAL OCCUPATIONAL COMPONENT-

(A) STUDY- The Prospective Payment Assessment Commission shall examine available data from States and other sources measuring earnings and paid hours of employment of hospital workers by occupational category, and shall include in such examination an analysis of the impact of variation in occupational mix on the computation of the area wage index determined under section 1886(d)(3)(E) of the Social Security Act.

(B) REPORT TO CONGRESS- In its March 1991 report, the Commission shall include recommendations regarding the feasibility and desirability of modifying such area wage index to take into account occupational mix, including variations in occupational mix resulting from differences in State codes and requirements.

(e) EXTENSION OF REGIONAL FLOOR ON STANDARDIZED AMOUNTS-

(1) IN GENERAL- Section 1886(d)(1)(A)(iii) (42 U.S.C. 1395ww(d)(1)(A)(iii)) is amended by striking `beginning on or after' and all that follows through `1990' and inserting `beginning on or after April 1, 1988, and ending on September 30, 1993,'.

(2) STUDY- (A) The Secretary of Health and Human Services shall collect sufficient data on the input prices associated with the non-wage-related portion of the adjusted average standardized amounts established under section 1886(d)(3) of the Social Security Act to identify the extent to which variations in such amounts among hospitals located in different geographic areas are attributable to differences in such prices.

(B) Not later than June 1, 1993, the Secretary shall submit a report to Congress analyzing such data, and shall include in such report recommendations regarding a methodology for adjusting such average standardized amounts to reflect such variations.

(C) The provisions of chapter 35 of title 44, United States Code, shall not apply to data collected by the Secretary under subparagraph (A).

(4) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply to discharges occurring on or after October 1, 1990.

(f) ELIMINATION OF HOSPITAL OFF-SET FOR SERVICES OF PHYSICIAN ASSISTANTS-

(1) IN GENERAL- Section 9338 of the Omnibus Budget Reconciliation Act of 1986 is amended by striking subsection (d).

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

(g) RESPONSIBILITIES AND REPORTING REQUIREMENTS OF PROSPECTIVE PAYMENT ASSESSMENT COMMISSION-



## (1) EXPANSION OF RESPONSIBILITIES 3 .

--Section 1886(e)(2) (42 U.S.C. 1395ww(e)(2)) is amended--

3 So in original. Probably should be `RESPONSIBILITIES'.

(A) by striking `(2)' and inserting `(2)(A)'; and

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

`(B) In order to promote the efficient and effective delivery of high-quality health care services, the Commission shall, in addition to carrying out its functions under subparagraph (A), study and make recommendations for each fiscal year regarding changes in each existing reimbursement policy under this title under which payments to an institution are based upon prospectively determined rates and the development of new institutional reimbursement policies under this title, including recommendations relating to payments during such fiscal year under the prospective payment system established under this section for determining payments for the operating costs of inpatient hospital services, including changes in the number of diagnosis-related groups used to classify inpatient hospital discharges under subsection (d), adjustments to such groups to reflect severity of illness, and changes in the methods by which hospitals are reimbursed for capital-related costs, together with general recommendations on the effectiveness and quality of health care delivery systems in the United States and the effects on such systems of institutional reimbursements under this title.

`(C) By not later than June 1 of each year, the Commission shall submit a report to Congress containing an examination of issues affecting health care delivery in the United States, including issues relating to--

`(i) trends in health care costs;

`(ii) the financial condition of hospitals and the effect of the level of payments made to hospitals under this title on such condition;

`(iii) trends in the use of health care services; and

`(iv) new methods used by employers, insurers, and others to constrain growth in health care costs.'.

(2) REPORTING REQUIREMENTS FOR COMMISSION AND SECRETARY;  
ELIMINATION OF OTA REPORTING REQUIREMENTS- Section 1886 (42 U.S.C. 1395ww) is amended--

(A) by striking subparagraph (D) of subsection (d)(4);

(B) in the second sentence of subsection (e)(2)(A), as amended by paragraph (1)(A), by striking `In addition' and all that follows through `the Commission' and inserting `The Commission';

(C) in subsection (e)(3)(A)--

(i) by striking `the Secretary' and inserting `Congress', and

(ii) by striking the period at the end and inserting the following: `  
`, together with its general recommendations under paragraph (2)(B) regarding the effectiveness and quality of health care delivery systems in the United States.';

(D) in subsection (e)(4)--

(i) by striking `(4)' and inserting `(4)(A)', and

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

`(B) In addition to the recommendation made under subparagraph (A), the Secretary shall, taking into consideration the recommendations of the Commission under paragraph (2)(B), recommend for each fiscal year (beginning with fiscal year 1992) other appropriate changes in each existing reimbursement policy under this title under which payments to an institution are based upon prospectively determined rates.';

(E) in subsection (e)(5)--

(i) by striking `recommendation' each place it appears and inserting `recommendations', and

(ii) by adding at the end the following new sentence: `To the extent that the Secretary's recommendations under paragraph (4) differ from the Commission's recommendations for that fiscal year, the Secretary shall include in the publication referred to in subparagraph (A) an explanation of the Secretary's grounds for not following the Commission's recommendations.'; and

(F) in subsection (e)(6)(G)--

(i) by striking clause (i), and

(ii) by redesignating clauses (ii) and (iii) as clauses (i) and (ii).

(3) CONFORMING AMENDMENT- Section 1845(c)(1)(D) (42 U.S.C. 1395w-1(c)(1)(D)) is amended by striking `reports and'.

(4) PROPAC STUDY OF MEDICAID PAYMENTS TO HOSPITALS-

(A) STUDY- The Prospective Payment Assessment Commission shall conduct a study of hospital payment rates under State plans for medical assistance under title XIX of the Social Security Act, and shall specifically examine in such study the relationship between payments under such plans and payments made to hospitals under title XVIII of such Act, and the financial condition of hospitals receiving payments under such plans, with particular attention to hospitals in urban areas which treat large numbers of individuals

eligible for medical assistance under title XIX of such Act and other low-income individuals.

(B) REPORT- By not later than October 1, 1991, the Commission shall submit a report to Congress on the study conducted under subparagraph (A) and shall include in such report such recommendations relating to requirements for payments to hospitals under title XIX of such Act as the Commission deems appropriate.

(5) EFFECTIVE DATE- The amendments made by this subsection shall take effect on the date of the enactment of this Act.

#### (h) PROVISIONS RELATING TO GEOGRAPHIC CLASSIFICATION OF HOSPITALS-

##### (1) PAYMENTS TO RECLASSIFIED HOSPITALS-

(A) IN GENERAL- Section 1886(d)(8)(C) (42 U.S.C. 1395ww(d)(8)(C)) is amended--

(i) in clause (i), in the matter preceding subclause (I), by striking `area--' and inserting `area, or by treating hospitals located in one urban area as being located in another urban area--';

(ii) by amending clause (i)(II) to read as follows:

` (II) reduces the wage index for that urban area by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if such hospitals were located in such urban area).';

(iii) by striking clause (ii); and

(iv) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii).

(B) EFFECTIVE DATE- The amendments made by subparagraph (A) shall apply to discharges occurring on or after January 1, 1991.

##### (2) GEOGRAPHIC CLASSIFICATION REVIEW BOARD-

(A) DEADLINE FOR SUBMISSION OF APPLICATIONS- For purposes of determining whether a hospital requesting a change in geographic classification for fiscal year 1992 under section 1886(d)(10) of the Social Security Act has met the deadline described in subparagraph (C)(ii) of such section, an application submitted under such subparagraph shall be considered to have been submitted by the first day of the preceding fiscal year if it is submitted within 60 days of the date of publication of the guidelines described in subparagraph (D)(i) of such section.

(B) TECHNICAL CORRECTIONS- Section 1886(d)(10) (42 U.S.C. 1395ww(d)(10)) is amended--

(i) in subparagraph (A), by striking `Geographical' and inserting `Geographic';

(ii) in subparagraph (B)(i)--

(I) by striking `representatives' and inserting `representative', and

(II) by striking `1 member shall be a member of the Prospective Payment Assessment Commission, and at least';

(iii) in subparagraph (B)(ii), by striking `all' and inserting `initial'; and

(iv) in subparagraph (10)(C)(iii)(II)--

(I) by striking the first 2 sentences and inserting the following: `Appeal of decisions of the Board shall be subject to the provisions of section 557b of title 5, United States Code.', and

(II) by striking `after' and inserting `after the date on which'.

## **SEC. 4003. EXPANSION OF DRG PAYMENT WINDOW.**

(a) IN GENERAL- The first sentence of section 1886(a)(4) (42 U.S.C. 1395ww(a)(4)) is amended by striking the period and inserting the following: `, and includes the costs of all services for which payment may be made under this title that are provided by the hospital (or by an entity wholly owned or operated by the hospital) to the patient during the 3 days immediately preceding the date of the patient's admission if such services are diagnostic services (including clinical diagnostic laboratory tests) or are other services related to the admission (as defined by the Secretary).'

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply--

(1) in the case of any services provided during the day immediately preceding the date of a patient's admission (without regard to whether the services are related to the admission), to services furnished on or after the date of the enactment of this Act and before October 1, 1991;

(2) in the case of diagnostic services (including clinical diagnostic laboratory tests), to services furnished on or after January 1, 1991; and

(3) in the case of any other services, to services furnished on or after October 1, 1991.

(c) ISSUANCE OF INTERIM FINAL REGULATION- The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this section.

## **SEC. 4004. PAYMENTS FOR MEDICAL EDUCATION COSTS.**

### **(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT-**

(1) IN GENERAL- The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part A of title XVIII of the Social Security Act due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h).

(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT- With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

(3) EFFECTIVE DATE- Paragraphs (1) and (2) shall take effect October 1, 1990.

### **(b) UNIVERSITY HOSPITAL NURSING EDUCATION-**

(1) IN GENERAL- The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part A of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

(2) CONDITIONS FOR REIMBURSEMENT- The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if--

(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to the clinical training costs during the cost reporting period described in subparagraph (A);

(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or

allied health students participating in such program; and

(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY-

(A) IN GENERAL- The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part A of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act).

(B) REFUND OF AMOUNTS RECOUPED- If, prior to the date of the enactment of this Act, the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part A of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

(4) SPECIAL AUDIT TO DETERMINE COSTS- In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

(5) EFFECTIVE DATE- Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.

## SEC. 4005. PPS-EXEMPT HOSPITALS.

(a) ADJUSTMENT TO PAYMENT AMOUNTS-

(1) IN GENERAL- Section 1886(b)(1)(B) (42 U.S.C. 1395ww(b)(1)(B)) is amended by striking ` (ii) in the case of' and all that follows through the semicolon and inserting the following: ` (ii) in the case of cost reporting periods beginning on or after October 1, 1991, an additional amount equal to 50 percent of the amount by which the operating costs exceed the target amount (except that such additional amount may not exceed 10 percent of the target amount) after any exceptions or adjustments are made to such target amount for the cost reporting period;`.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply

to cost reporting periods beginning on or after October 1, 1991.

(b) DEVELOPMENT OF NATIONAL PROSPECTIVE PAYMENT RATES FOR CURRENT NON-PPS HOSPITALS-

(1) DEVELOPMENT OF PROPOSAL- The Secretary of Health and Human Services shall develop a proposal to modify the current system under which hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act) receive payment for the operating and capital-related costs of inpatient hospital services under part A of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of nationally-determined average standardized amounts. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall--

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

(B) provide for adjustments to prospectively determined rates to account for changes in a hospital's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, costs related to graduate medical education programs, differences in wages and wage-related costs among hospitals located in various geographic areas, and other factors the Secretary considers appropriate; and

(E) provide for the appropriate allocation of operating and capital-related costs of hospitals not subject to the new prospective payment system and distinct units of such hospitals that would be paid under such system.

(2) REPORTS- (A) By not later than April 1, 1992, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than June 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

## (c) APPEALS OF TARGET AMOUNTS-

(1) DEADLINES FOR REVIEW AND DECISION- (A) Section 1816(f) (42 U.S.C. 1395h(f)) is amended--

(i) by striking `(1)' and `(2)' and inserting `(A)' and `(B)';

(ii) by striking `(f)' and inserting `(f)(1)'; and

(iii) by striking `Such standards and criteria' and all that follows and inserting the following:

`(2) The standards and criteria established under paragraph (1) shall include--

`(A) with respect to claims for services furnished under this part by any provider of services other than a hospital--

`(i) whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days, and

`(ii) the extent to which such agency or organization's determinations are reversed on appeal; and

`(B) with respect to applications for an exemption from or exception or adjustment to the target amount applicable under section 1886(b) to a hospital that is not a subsection (d) hospital (as defined in section 1886(d)(1)(B))--

4

`(i) if such agency or organization receives a completed application, whether such agency or organization is able to process such application not later than 75 days after the application is filed, and

4 So in original. Probably should be `(i)'.

`(ii) if such agency or organization receives an incomplete application, whether such agency or organization is able to return the application with instructions on how to complete the application not later than 60 days after the application is filed.'.

(B) Section 1886(b)(4)(A) (42 U.S.C. 1395ww(b)(4)(A)) is amended by adding at the end the following new sentence: `The Secretary shall announce a decision on any request for an exemption, exception, or adjustment under this paragraph not later than 180 days after receiving a completed application from the intermediary for such exemption, exception, or adjustment, and shall include in such decision a detailed explanation of the grounds on which such request was approved or denied.'.



(2) STANDARDS FOR ASSIGNMENT OF NEW BASE PERIOD- Section 1886(b)(4) (42 U.S.C. 1395ww(b)(4)) is amended--

(A) by redesignating subparagraph (B) as subparagraph (C); and

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

“(B) In determining under subparagraph (A) whether to assign a new base period which is more representative of the reasonable and necessary cost to a hospital of providing inpatient services, the Secretary shall take into consideration--

“(i) changes in applicable technologies and medical practices, or differences in the severity of illness among patients, that increase the hospital's costs;

“(ii) whether increases in wages and wage-related costs for hospitals located in the geographic area in which the hospital is located exceed the average of the increases in such costs paid by hospitals in the United States; and

“(iii) such other factors as the Secretary considers appropriate in determining increases in the hospital's costs of providing inpatient services.’.

(3) GUIDANCE TO INTERMEDIARIES AND HOSPITALS- The Administrator of the Health Care Financing Administration shall provide guidance to agencies and organizations performing functions pursuant to section 1816 of the Social Security Act and to hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of such Act) to assist such agencies, organizations, and hospitals in filing complete applications with the Administrator for exemptions, exceptions, and adjustments under section 1886(b)(4)(A) of such Act.

(4) EFFECTIVE DATES- The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act, and the amendments made by paragraph (2) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

## **SEC. 4006. HOSPICE BENEFIT EXTENSION.**

(a) IN GENERAL- Section 1812 (42 U.S.C. 1395d) is amended--

(1) in subsection (a)(4), by striking ‘90 days each’ and all that follows through ‘with respect to’ and inserting the following: ‘90 days each, a subsequent period of 30 days, and a subsequent extension period with respect to’; and

(2) in subsection (d)--

(A) in paragraph (1), by striking `90 days each' and all that follows through `lifetime' and inserting the following: `90 days each, a subsequent period of 30 days, and a subsequent extension period during the individual's lifetime', and

(B) in paragraph (2)(B), by striking `a 90- or 30-day period,' and inserting `a 90- or 30-day period or a subsequent extension period,'.

(b) CONFORMING AMENDMENT- Section 1814(a)(7)(A) (42 U.S.C. 1395f(a)(7)(A)) is amended--

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

(2) in clause (ii), by striking the semicolon at the end and inserting `, and'; and

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

`(iii) in a subsequent extension period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;'

(c) EFFECTIVE DATE- The amendments made by this section shall apply with respect to care and services furnished on or after January 1, 1990.

## **SEC. 4007. FREEZE IN PAYMENTS UNDER PART A THROUGH DECEMBER 31.**

(a) IN GENERAL- Notwithstanding any other provision of law, for purposes of determining the amount of payment for items or services under part A of title XVIII of the Social Security Act (including payments under section 1886 of such Act attributable to or allocated under such part) during the period described in subsection (b):

(1) The market basket percentage increase (described in section 1886(b)(3)(B)(iii) of the Social Security Act) shall be deemed to be 0 for discharges occurring during such period.

(2) The percentage increase or decrease in the medical care expenditure category of the consumer price index applicable under section 1814(i)(2)(B) of such Act shall be deemed to be 0.

(3) The area wage index applicable to a subsection (d) hospital under section 1886(d)(3)(E) of such Act shall be deemed to be the area wage index applicable to such hospital as of September 30, 1990.

(4) The percentage change in the consumer price index applicable under section 1886(h)(2)(D) of such Act shall be deemed to be 0.

(b) DESCRIPTION OF PERIOD- The period referred to in subsection (a) is the period beginning on October 21, 1990, and ending on December 31, 1990.

## SEC. 4008. MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PART A.

## (a) WAIVER OF LIABILITY FOR SKILLED NURSING FACILITIES AND HOSPICES-

(1) SKILLED NURSING FACILITIES- The second sentence of section 9126(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking `October 31, 1990' and inserting `December 31, 1995'.

(2) HOSPICES- Section 9305(f)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking `November 1, 1990' and inserting `December 31, 1995'.

(3) EFFECTIVE DATE- The amendments made by paragraphs (1) and (2) shall take effect on the date of the enactment of this Act.

## (b) HOSPITAL OBLIGATIONS WITH RESPECT TO TREATMENT OF EMERGENCY MEDICAL CONDITIONS-

(1) CIVIL MONETARY PENALTIES- Section 1867(d)(2)(A) (42 U.S.C. 1395dd(d)(2)(A)) is amended by striking `knowingly' and inserting `negligently'.

(2) APPLICATION OF PENALTIES TO SMALL HOSPITALS- Section 1867(d)(2)(A) (42 U.S.C. 1395dd(d)(2)(A)) is amended by inserting `(or not more than \$25,000 in the case of a hospital with less than 100 beds)' after `\$50,000'.

## (3) TERMINATION OF HOSPITAL PROVIDER AGREEMENTS-

(A) Section 1867 (42 U.S.C. 1395dd) is further amended--

(i) by striking paragraph (1) of subsection (d),

(ii) by redesignating paragraphs (2) and (3) of subsection (d) as paragraph (1) and (2), respectively, and

(iii) in subsection (c)(2)(C), by striking `(d)(2)(C)' and inserting `(d)(1)(C)'.

(B) Section 1866(a)(1)(I)(i) (42 U.S.C. 1395cc(a)(1)(I)(i)) is amended by inserting `and to meet the requirements of such section' before the comma at the end.

(4) EFFECTIVE DATE- The amendments made by this subsection shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act.

## (c) Inspector General Study of Prohibition on Hospital Employment of Physicians-

(1) STUDY- The Secretary of Health and Human Services (acting through

the Inspector General of the Department of Health and Human Services) shall conduct a study of the effect of State laws prohibiting the employment of physicians by hospitals on the availability and accessibility of trauma and emergency care services, and shall include in such study an analysis of the effect of such laws on the ability of hospitals to meet the requirements of section 1867 of the Social Security Act relating to the examination and treatment of individuals with an emergency medical condition and women in labor.

(2) REPORT- By not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the study conducted under paragraph (1).

(d) DESIGNATION OF RURAL PRIMARY CARE HOSPITALS-

(1) PRIORITY DESIGNATIONS OF BORDER STATE HOSPITALS- Section 1820(i)(2)(C) (42 U.S.C. 1395i-4(i)(2)(C)) is amended by adding at the end the following new sentence: `In designating facilities as rural primary care hospitals under this subparagraph, the Secretary shall give preference to facilities not meeting the requirements of clause (i) of subparagraph (A) that have entered into an agreement described in subsection (g)(2) with a rural health network located in a State receiving a grant under subsection (a)(1).`.

(2) ELIGIBILITY OF CERTAIN CLOSED HOSPITALS- Section 1820(f)(1)(B) (42 U.S.C. 1395i-4(f)(1)(B)) is amended by striking `is a hospital,` and inserting the following: `is a hospital (or, in the case of a facility that closed during the 12-month period that ends on the date the facility applies for such designation, at the time the facility closed),`.

(3) ELIGIBILITY OF URBAN HOSPITALS- Section 1820(f)(1)(A) (42 U.S.C. 1395i-4(f)(1)(A)) is amended by striking the semicolon and inserting the following: `, or is located in a county whose geographic area is substantially larger than the average geographic area for urban counties in the United States and whose hospital service area is characteristic of service areas of hospitals located in rural areas;`.

(4) EFFECTIVE DATE- The amendments made by paragraphs (1), (2), and (3) shall take effect on the date of the enactment of this Act.

(e) SKILLED NURSING FACILITY ROUTINE COST LIMITS-

(1) IN GENERAL- Section 6024 of the Omnibus Budget Reconciliation Act of 1989 is amended by adding at the end the following new sentence: `The Secretary shall update such costs under such section for cost reporting periods beginning on or after October 1, 1989, by using cost reports submitted by skilled nursing facilities for cost reporting periods ending not earlier than January 31, 1988, and not later than December 31, 1988.`.

(2) 2-YEAR UPDATES REQUIRED- Section 1888(a) (42 U.S.C. 1395yy(a)) is amended in the matter following paragraph (4) by striking the period and

inserting the following: ` , and shall, for cost reporting periods beginning on or after October 1, 1992 and every 2 years thereafter, provide for an update to the per diem cost limits described in this subsection'.

(3) EFFECTIVE DATE- The amendments made by paragraphs (1) and (2) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(f) CLARIFICATION OF EXTENSION OF WAIVER FOR FINGER LAKES AREA HOSPITAL CORPORATION-

(1) IN GENERAL- The second sentence of section 1886(c)(4) (42 U.S.C. 1395ww(c)(4)) is amended by striking `rate of increase from' and inserting `payments under the State system as compared to aggregate payments which would have been made under the national system since'.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(g) ENROLLMENT IN PART A FOR HMO MEMBERS-

(1) IN GENERAL- Section 1818(c) (42 U.S.C. 1395i-2(c)) is amended--

(A) by striking `and' at the end of paragraph (5),

(B) by striking the period at the end of paragraph (6) and inserting a semicolon, and

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

` (7) an individual who meets the conditions of subsection (a) may enroll under this part during a special enrollment period that includes any month during any part of which the individual is enrolled under section 1876 with an eligible organization and ending with the last day of the 8th consecutive month in which the individual is at no time so enrolled;

` (8) in the case of an individual who enrolls during a special enrollment period under paragraph (7)--

` (A) in any month of the special enrollment period in which the individual is at any time enrolled under section 1876 with an eligible organization or in the first month following such a month, the coverage period shall begin on the first day of the month in which the individual so enrolls (or, at the option of the individual, on the first day of any of the following three months), or

` (B) in any other month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls; and

` (9) in applying the provisions of section 1839(b), there shall not be

taken into account months for which the individual can demonstrate that the individual was enrolled under section 1876 with an eligible organization.'

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall take effect on February 1, 1991.

(h) NURSING HOME REFORM-

(1) NURSE AIDE TRAINING AND COMPETENCY EVALUATION-

(A) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES- The Secretary of Health and Human Services may not refuse to enter into an agreement or cancel an existing agreement with a State under section 1864 of the Social Security Act on the basis that the State failed to meet the requirement of section 1819(e)(1)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1819(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

(B) PART-TIME NURSE AIDES NOT ALLOWED DELAY IN TRAINING- Section 1819(b)(5)(A) (42 U.S.C. 1396r(b)(5)(A)) is amended--

(i) by striking 'A skilled nursing facility' and inserting '(i) Except as provided in clause (ii), a skilled nursing facility';

(ii) by striking '(on a full-time, temporary, per diem, or other basis)' and inserting 'on a full-time basis';

(iii) by striking '(i)' and '(ii)' and inserting '(I)' and '(II)'; and

(iv) by adding at the end the following:

(ii) A skilled nursing facility must not use on a temporary, per diem, leased, or on any basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).'

(C) REQUIREMENT TO OBTAIN INFORMATION FROM NURSE AIDE REGISTRY- Section 1819(b)(5)(C) (42 U.S.C. 1395i-3(b)(5)(C)) is amended by striking 'the State registry established under subsection (e)(2)(A) as to information in the registry' and inserting 'any State registry established under subsection (e)(2)(A) that the facility believes will include information'.

(D) RETRAINING OF NURSE AIDES- Section 1819(b)(5)(D) (42 U.S.C. 1395i-3(b)(5)(D)) is amended by striking the period at the end and inserting ', or a new competency evaluation program.'

(E) CLARIFICATION OF NURSE AIDES NOT SUBJECT TO CHARGES-  
Section 1819(f)(2)(A)(iv) (42 U.S.C. 1395i-3(f)(2)(A)(iv)) is amended--

(i) in subclause (I), by striking `and' at the end;

(ii) in subclause (II), by inserting after `nurse aide' the following: `who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program';

(iii) in subclause (II), by striking the period at the end and inserting `, and'; and

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

`(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis during the period in which the nurse aide is so employed.'

(F) MODIFICATION OF NURSING FACILITY DEFICIENCY STANDARDS-

(i) IN GENERAL- Section 1819(f)(2)(B)(iii)(I) (42 U.S.C. 1395i-3(f)(2)(B)(iii)(I)) is amended to read as follows:

`(I) offered by or in a skilled nursing facility which, within the previous 2 years--

`(a) has operated under a waiver under subsection (b)(4)(C)(ii)(II);

`(b) has been subject to an extended (or partial extended) survey under subsection (g)(2)(B)(i) or section 1919(g)(2)(B)(i); or

`(c) has been assessed a civil money penalty described in subsection (h)(2)(B)(ii) or section 1919(h)(2)(A)(ii) of not less than \$5,000, or has been subject to a remedy described in clauses (i) or (iii) of subsection (h)(2)(B), subsection (h)(4), section 1919(h)(1)(B)(i), or in clauses (i), (iii), or (iv) of section 1919(h)(2)(A), or'.

(ii) EFFECTIVE DATE- The amendments made by clause (i) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988--

(I) had its participation terminated under title XVIII of the Social Security Act or under the State plan under title XIX

of such Act;

(II) was subject to a denial of payment under either such title;

(III) was assessed a civil money penalty not less than \$5,000 for deficiencies in nursing facility standards;

(IV) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

(V) pursuant to State action, was closed or had its residents transferred.

(G) CLARIFICATION OF STATE RESPONSIBILITY TO DETERMINE COMPETENCY- Section 1819(f)(2)(B) (42 U.S.C. 1395i-3(f)(2)(B)) is amended in the second sentence by inserting ` (through subcontract or otherwise)' after ` may not delegate'.

(H) EFFECTIVE DATE- Except as provided in subparagraph (F), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

## (2) OTHER AMENDMENTS-

(A) ASSURANCE OF APPROPRIATE PAYMENT AMOUNTS- (i) Section 1861(v)(1)(E) (42 U.S.C. 1395x(v)(1)(E)) is amended in the second sentence by striking ` the costs of such facilities' and inserting ` the costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this title) of such facilities'.

(ii) Section 1888(d)(1) (42 U.S.C. 1395xx(d)(1)) is amended in the first sentence by striking ` (and capital-related costs)' and inserting ` (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this title) and capital-related costs'.

(B) DISCLOSURE OF INFORMATION OF QUALITY ASSESSMENT AND ASSURANCE COMMITTEES- Section 1819(b)(1)(B) (42 U.S.C. 1395i-3(b)(1)(B)) is amended by adding at the end the following new sentence: ` A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.'.

(C) PERIOD FOR RESIDENT ASSESSMENT- Section 1819(b)(3)(C)(i)(I) (42 U.S.C. 1395i-3(b)(3)(C)(i)(I)) is amended by striking ` 4 days'



and inserting `not later than 14 days'.

(D) CLARIFICATION OF RESPONSIBILITY FOR SERVICES FOR MENTALLY ILL AND MENTALLY RETARDED RESIDENTS- Section 1819(b)(4)(A) (42 U.S.C. 1395i-3(b)(4)(A)) is amended--

(i) by striking `and' at the end of clause (v),

(ii) by striking the period at the end of clause (vi) and inserting `; and', and

(iii) by inserting after clause (vi) the following new clause:

`(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.'

(E) NOTIFICATION OF SECRETARIAL WAIVER- Section 1819(b)(4)(C) (ii) (42 U.S.C. 1395i-3(b)(4)(C)(ii)) is amended--

(i) by striking `and' at the end of subclause (II);

(ii) by striking the period at the end of subclause (III) and inserting a comma; and

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

`(IV) the Secretary provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

`(V) the facility that is granted such a waiver notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.'

(F) CLARIFICATION OF DEFINITION OF NURSE AIDE- Section 1819(b)(5)(F)(i) (42 U.S.C. 1395i-3(b)(5)(F)(i)) is amended by striking `(G),' and inserting `(G)) or a registered dietician,'.

(G) RESIDENTS' RIGHTS TO REFUSE INTRA-FACILITY TRANSFERS FOR NON-MEDICAL REASONS- Section 1819(c)(1)(A) (42 U.S.C. 1395i-3(c)(1)(A)) is amended--

(i) by redesignating clause (x) as clause (xi) and by inserting after clause (ix) the following new clause:

`(x) REFUSAL OF CERTAIN TRANSFERS- The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility

that is a skilled nursing facility (for purposes of this title) to a portion of the facility that is not such a skilled nursing facility.'; and

(B) by adding at the end the following: `A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to benefits under this title or to medical assistance under title XIX of this Act.'.

(H) RESIDENT ACCESS TO CLINICAL RECORDS- Section 1819(c)(1)(A)(iv) (42 U.S.C. 1395i-3(c)(1)(A)(iv)) is amended by inserting before the period at the end the following: `and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request'.

(I) INCLUSION OF STATE NOTICE OF RIGHTS IN FACILITY NOTICE OF RIGHTS- Section 1819(c)(1)(B)(ii) (42 U.S.C. 1395i-3(c)(1)(B)(ii)) is amended by inserting `including the notice (if any) of the State developed under section 1919(e)(6)' after `in such rights'.

(J) SPECIFICATION OF REQUIRED PROGRAMS- Section 1819(e)(1)(A) (42 U.S.C. 1395i-3(e)(1)(A)) is amended by striking `clause (i) or (ii) of subsection (f)(2)(A)' and inserting `subsection (f)(2)'.

(K) CLARIFICATION OF NURSE AIDE REGISTRY REQUIREMENTS- Section 1819(e)(2) (42 U.S.C. 1395i-3(e)(2)) is amended--

(i) in subparagraph (A), by striking the period and inserting the following: `, or any individual described in subsection (f)(2)(B)(ii) or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.'; and

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

`(C) PROHIBITION AGAINST CHARGES- A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).'.

(L) CLARIFICATION ON FINDINGS OF NEGLECT- Section 1819(g)(1)(C) (42 U.S.C. 1395i-3(g)(1)(C)) is amended by adding at the end the following: `A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.'.

(M) TIMING OF PUBLIC DISCLOSURE OF SURVEY RESULTS- Section 1819(g)(5)(A)(i) (42 U.S.C. 1395i-3(g)(5)(A)(i)) is amended by striking `deficiencies and plans' and inserting `deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans'.

(N) OMBUDSMAN PROGRAM COORDINATION WITH STATE SURVEY

AND CERTIFICATION AGENCIES- Section 1819(g)(5)(B) (42 U.S.C. 1395i-3(g)(5)(B)) is amended by striking `with respect' and inserting `or of any adverse action taken against a skilled nursing facility under paragraphs (1), (2), or (4) of subsection (h), with respect'.

(O) MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES- Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 with respect to services described in clauses (ii), (iv), and (v) of section 1819(b)(4)(A) of the Social Security Act shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

(P) EFFECTIVE DATES- The amendments made by this paragraph shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(i) CLARIFICATION OF SECRETARIAL WAIVER AUTHORITY-

(1) RURAL HOSPITAL DEMONSTRATION- The Secretary of Health and Human Services is authorized to waive such provisions of title XVIII of the Social Security Act as are necessary to conduct any demonstration project for limited-service rural hospitals with respect to which the Secretary has entered into an agreement before the date of the enactment of the Omnibus Budget Reconciliation Act of 1989.

(2) NURSING HOME DEMONSTRATIONS- Section 6901(d)(3)(B) of the Omnibus Budget Reconciliation Act of 1989 is amended--

(A) by striking `Wisconsin' and inserting `Wisconsin and nursing home case-mix demonstration projects in other States'; and

(B) by striking the second sentence.

(3) STATE WAIVER AUTHORITY- Section 1814(b) (42 U.S.C. 1395f(b)) is amended--

(A) in paragraph (3)(B), by striking `October 1, 1983' and inserting `January 1, 1981';

(B) in the second sentence, by striking `seventh month' and inserting `37th month'; and

(C) by adding at the end the following: `If, by the end of such 36-month period, the Secretary determines, based on evidence submitted by the Governor of the State, that neither of the conditions described in subparagraph (A) or (B) of paragraph (3) continues to apply, the Secretary shall continue without interruption payment to hospitals in the State under the State's system. If, by the end of such 36-month period, the Secretary determines, based

on such evidence, that either of the conditions described in subparagraph (A) or (B) of such paragraph continues to apply, the Secretary shall (i) collect any net excess reimbursement to hospitals in the State during such 36-month period (basing such net excess reimbursement on the net difference, if any, in the rate of increase in costs per hospital inpatient admission under the State system compared to the rate of increase in such costs with respect to all hospitals in the United States over the 36-month period, as measured by including the cumulative savings under the State system based on the difference in the rate of increase in costs per hospital inpatient admission under the State system as compared to the rate of increase in such costs with respect to all hospitals in the United States between January 1, 1981, and the date of the Secretary's initial notice), and (ii) provide a reasonable period, not to exceed 2 years, for transition from the State system to the national payment system.'

(4) EFFECTIVE DATE- The amendment made by paragraphs (1) and (2) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(j) DETERMINATION OF REASONABLE COSTS RELATING TO SWING BEDS-

(1) IN GENERAL- Section 1883(a)(2)(B)-(ii)(II) (42 U.S.C. 1395tt(a)(2)(B)(ii)(II)) is amended by striking 'the previous calendar year' and all that follows through the period and inserting 'the most recent year for which cost reporting data are available with respect to such services (increased in a compounded manner by the applicable increase for payments for routine service costs of skilled nursing facilities under section 1888 for subsequent cost reporting periods and up to and including such calendar year) under this title to freestanding skilled nursing facilities in the region (as defined in section 1886(d)(2)(D)) in which the facility is located.'

(2) HOLD HARMLESS- If, as a result of the amendment made by paragraph (1), the reasonable cost of routine services furnished by a hospital during a calendar year (as determined under section 1883 of the Social Security Act) is less than the reasonable cost of such services determined under such section for the previous calendar year, the reasonable cost of such services furnished by the hospital during the calendar year under such section shall be equal to the reasonable cost determined under such section for the previous calendar year.

(3) SWING BEDS CERTIFIED PRIOR TO MAY 1, 1987- Notwithstanding the requirement of section 1883(b)(1) of the Social Security Act that the Secretary may not enter into an agreement under such section with a hospital that is not located in a rural area, any agreement entered into under such section on or before May 1, 1987, between the Secretary of Health and Human Services and a hospital located in an urban area shall remain in effect.

(4) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply to services furnished on or after October 1, 1990.

(k) PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITY SERVICES-

(1) DEVELOPMENT OF PROPOSAL- The Secretary of Health and Human Services shall develop a proposal to modify the current system under which skilled nursing facilities receive payment for extended care services under part A of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall--

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program without jeopardizing access to extended care services for individuals unable to care for themselves;

(B) provide for adjustments to prospectively determined rates to account for changes in a facility's case mix, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, differences in wages and wage-related costs among facilities located in various geographic areas, and other factors the Secretary considers appropriate; and

(E) take into consideration the appropriateness of classifying patients and payments upon functional disability, cognitive impairment, and other patient characteristics.

(2) REPORTS- (A) By not later than April 1, 1991, the Secretary (acting through the Administrator of the Health Care Financing Administration) shall submit any research studies to be used in developing the proposal under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than September 1, 1991, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(C) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(I) REVIEW OF HOSPITAL REGULATIONS WITH RESPECT TO RURAL HOSPITALS-

(1) IN GENERAL- The Secretary of Health and Human Services shall review the requirements applicable under title XVIII of the Social Security Act to determine which requirements could be made less administratively and economically burdensome (without diminishing the quality of care) for hospitals defined in section 1886(d)(1)(B) of such Act that are located in a rural area (as defined in section 1886(d)(2)(D) of such Act). Such review shall specifically include standards related to staffing requirements.

(2) REPORT- The Secretary of Health and Human Services shall report to Congress by April 1, 1992, on the results of the review conducted under subsection (a), and include conclusions on which regulations, if any, should be modified with respect to hospitals described in subsection (a).

(m) MISCELLANEOUS TECHNICAL CORRECTIONS-

(1) APPLICATION OF PREENTITLEMENT PSYCHIATRIC HOSPITAL SERVICES TO LIMIT ON INPATIENT HOSPITAL SERVICES- Effective as if included in the enactment of the Medicare Catastrophic Coverage Repeal Act of 1989, section 101(b)(1)(B) is amended by inserting ` (other than the limitation under section 1812(c) of such Act)' after ` limitation'.

(2) PROVISIONS RELATING TO HOSPITALS-

(A) Section 1886(d)(5)(D)(iii) (42 U.S.C. 1395ww(d)(5)(D)(iii)), as amended by section 6003(e)(1)(A)(iv) of Omnibus Budget Reconciliation Act of 1989 (in this subsection referred to as ` OBRA-1989'), is amended by striking ` The term' and inserting ` For purposes of this title, the term'.

(B) Section 1820 of such Act (42 U.S.C. 1395i-4), as added by section 6003(g)(1)(A) of the Omnibus Budget Reconciliation Act of 1989, is amended--

(i) in subsection (d)(1), by striking ` demonstration';

(ii) in subsection (g)(1)(A)(ii), by striking ` rural referral center' and inserting ` regional referral center'; and

(iii) in subsection (j), by inserting ` and part C' after ` this part'.

(C) Section 6003(g)(3)(C)(vii)(I) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking ` each place it

appears'.

(D) Section 1835(c) of the Social Security Act (42 U.S.C. 1395n(c)) is amended--

(i) in the first sentence, by striking `a hospital' and inserting `a hospital or a rural primary care hospital';

(ii) in the second sentence, by striking `1833(a)(2)' and inserting `1833(a)(2) (or, in the case of a rural primary care hospital, in accordance with section 1833(a)(6))'; and

(iii) by striking the third sentence.

### (3) TECHNICAL CORRECTIONS RELATING TO OTHER PROVIDERS OF SERVICES-

(A) Section 1814(i)(1)(C)(i) (42 U.S.C. 1395f(i)(1)(C)(i)), as amended by section 6005(a)(2) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking `during fiscal year 1990' and inserting `on or after January 1, 1990, and on or before September 30, 1990,'.

(B) Section 6005(c) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking `subsection (a)' and inserting `subsections (a) and (b)'.

(C) Section 1818A(d)(1) (42 U.S.C. 1395i-2a(d)(1)), as inserted by section 6012(a)(2) of the Omnibus Budget Reconciliation Act of 1989, is amended--

(i) in subparagraph (A), by inserting `for enrollment under this section' after `Premiums', and

(ii) by striking subparagraph (C).

(D) Section 1818(g)(2)(B) (42 U.S.C. 1395i-2(g)(2)(B)), as added by section 6013(a) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking `subsection (c)' and inserting `subsection (c) (6)'.

(F) Section 1819(f)(2)(A)(ii) (42 U.S.C. 1395i-3(f)(2)(A)(ii)) is amended by striking `and' at the end.

(G) Section 1866(a)(1)(F) (42 U.S.C. 1395cc(a)(1)(F)) is amended--

(i) in clause (i), by striking the comma at the end and inserting `),', and

(ii) in clause (ii), by striking `(4)(A)' and inserting `(3)(A)' and by striking the semicolon at the end and inserting a comma.

## ***PART 2--PROVISIONS RELATING TO PART B***

## ***Subpart A--Payment for Physicians' Services***

### **SEC. 4101. CERTAIN OVERVALUED PROCEDURES.**

(a) PREVIOUSLY IDENTIFIED PROCEDURES- Section 1842(b)(14) (42 U.S.C. 1395u(b)(14)) is amended--

(1) by inserting '(i)' after '(14)(A)'; and

(2) by adding at the end of subparagraph (A) the following new clause:

'(ii) In determining the reasonable charge for a physicians' service specified in subparagraph (C)(i) and furnished during 1991, the prevailing charge for such service shall be the prevailing charge otherwise recognized for such service for the period during 1990 beginning on April 1, reduced by the same amount as the amount of the reduction effected under this paragraph (as amended by the Omnibus Budget Reconciliation Act of 1990) for such service during such period.'

(b) UNSURVEYED SURGICAL AND TECHNICAL PROCEDURES- (1) Section 1842(b) (42 U.S.C. 1395u(b)) is amended by adding at the end the following new paragraph:

'(16)(A) In determining the reasonable charge for all physicians' services other than physicians' services specified in subparagraph (B) furnished during 1991, the prevailing charge for a locality shall be 6.5 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

'(B) For purposes of subparagraph (A), the physicians' services specified in this subparagraph are as follows:

'(i) Radiology, anesthesia and physician pathology services, the technical components of diagnostic tests specified in paragraph (17) and physicians' services specified in paragraph (14)(C)(i).

'(ii) Primary care services specified in subsection (i)(4), hospital inpatient medical services, consultations, other visits, preventive medicine visits, psychiatric services, emergency care facility services, and critical care services.

'(iii) Partial, simple and subcutaneous mastectomy; tendon sheath injections; small joint arthrocentesis; femoral fracture treatments; trochanteric fracture treatments; endotracheal intubation; thoracentesis; thoracostomy; lobectomy; aneurysm repair; enterectomy; colectomy; cholecystectomy; cystourethroscopy; transurethral fulguration; transurethral resection; sacral laminectomy; tympanoplasty with mastoidectomy; and ophthalmoscopy.'

(2) In applying section 1842(b)(16) of the Social Security Act:



(A) The codes for the procedures specified in clause (ii) are as follows: Hospital inpatient medical services (HCPCS codes 90200 through 90292), consultations (HCPCS codes 90600 through 90654), other visits (HCPCS code 90699), preventive medicine visits (HCPCS codes 90750 through 90764), psychiatric services (HCPCS codes 90801 through 90862), emergency care facility services (HCPCS codes 99062 through 99065), and critical care services (HCPCS codes 99160 through 99174).

(B) The codes for the procedures specified in clause (iii) are as follows: Partial, simple and subcutaneous mastectomy (HCPCS codes 19160 and 19162); tendon sheath injections and small joint arthrocentesis (HCPCS codes 20550, 20600, 20605, and 20610); femoral fracture and trochanteric fracture treatments (HCPCS codes 27230, 27232, 27234, 27238, 27240, 27242, 27246, and 27248); endotracheal intubation (HCPCS code 31500); thoracentesis (HCPCS code 32000); thoracostomy (HCPCS codes 32020, 32035, and 32036); aneurysm repair (HCPCS codes 35111); cystourethroscopy (HCPCS code 52340); transurethral fulguration and resection (HCPCS codes 52606 and 52620); tympanoplasty with mastoidectomy (HCPCS code 69645); and ophthalmoscopy (HCPCS codes 92250, and 92260).'. 5

5 So in original. The `.' should probably be deleted.

## **SEC. 4102. RADIOLOGY SERVICES.**

(a) REDUCTION IN FEE SCHEDULE- Section 1834(b)(4) (42 U.S.C. 1395m(b)(4)) is amended--

(1) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and

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

`(D) 1991 FEE SCHEDULES- For radiologist services (other than portable X-ray services) furnished under this part during 1991, the conversion factors used in a locality under this subsection shall be determined as follows:

`(i) NATIONAL WEIGHTED AVERAGE CONVERSION FACTOR- The Secretary shall estimate the national weighted average of the conversion factors used under this subsection for services furnished during 1990 beginning on April 1, using the best available data.

`(ii) REDUCED NATIONAL WEIGHTED AVERAGE- The national weighted average estimated under clause (i) shall be reduced by 13 percent.

`(iii) COMPUTATION OF 1990 LOCALITY INDEX RELATIVE TO NATIONAL AVERAGE- The Secretary shall establish an index which reflects, for each locality, the ratio of the conversion

factor used in the locality under this subsection to the national weighted average estimated under clause (i).

` (iv) LOCAL ADJUSTMENT- Subject to clause (vii), the conversion factor to be applied to the professional or technical component of a service in a locality is the sum of 1/2 of the locally-adjusted amount determined under clause (v) and 1/2 of the GPCI-adjusted amount determined under clauses (vi).

` (v) LOCALLY-ADJUSTED AMOUNT- For purposes of clause (iv), the locally adjusted amount determined under this clause is the product of (I) the national weighted average conversion factor computed under clause (ii), and (II) the index value established under clause (iii) for the locality.

` (vi) GPCI-ADJUSTED AMOUNT- For purposes of clause (iv), the GPCI-adjusted amount determined under this clause is the sum of--

` (I) the product of (a) the portion of the reduced national weighted average conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238-36243)); and

` (II) the product of (a) the remaining portion of the reduced national weighted average conversion factor computed under clause (ii), and (b) the geographic practice cost index value specified in section 1842(b)(14)(C)(iv) for the locality.

In applying this clause with respect to the professional component of a service, 80 percent of the conversion factor shall be considered to be attributable to physician work and with respect to the technical component of the service, 0 percent shall be considered to be attributable to physician work.

` (vii) LIMITS ON CONVERSION FACTOR- The conversion factor to be applied to a locality under this subparagraph to the professional or technical component of a service shall not be more than 9.5 percent below the conversion factor applied in the locality under subparagraph (C) to such component, but in no case shall the conversion factor be less than 60 percent of the national weighted average of the conversion factors (computed under clause (i)).'

(b) SPECIAL RULE FOR TRANSITION FOR RADIOLOGY SERVICES- Section 1848(a)(2)(C) (42 U.S.C. 1395w-4(a)(2)(C)) is amended--

(1) by inserting `AND RADIOLOGY' after `SPECIAL RULE FOR ANESTHESIA', and

(2) by adding at the end the following: `With respect to radiology services, `109 percent' and `9 percent' shall be substituted for `115 percent' and `15 percent', respectively, in subparagraph (A)(ii).

(c) REDUCTION IN PREVAILING CHARGE LEVEL FOR OTHER RADIOLOGY SERVICES-

(1) IN GENERAL- In applying part B of title XVIII of the Social Security Act, the prevailing charge for physicians' services, furnished during 1991, which are radiology services may not exceed the fee schedule amount established under section 1834(b) of such Act with respect to such services.

(2) EXCEPTION- Paragraph (1) shall not apply to radiology services which are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989.

(d) REDUCTION IN PAYMENTS FOR TECHNICAL COMPONENTS OF CERTAIN SCANNING SERVICES- Section 1834(b)(4) (42 U.S.C. 1395m(b)(4)) is amended by inserting after subparagraph (D) the following new paragraph:

`(E) In the case of the technical components of magnetic resonance imaging (MRI) services and computer assisted tomography (CAT) services furnished after December 31, 1990, the amount otherwise payable shall be reduced by 10 percent.'.

(e) LIMITATION ON ADJUSTMENTS- For radiologist services furnished during 1991 for which payment is made under section 1834(b) of the Social Security Act--

(1) a carrier may not make any adjustment, under section 1842(b)(3)(B) of such Act, in the payment amount for the service under section 1834(b) on the basis that the payment amount is higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier,

(2) no payment adjustment may be made under section 1842(b)(8) of such Act, and

(3) section 1842(b)(9) of such Act shall not apply.

(f) USE OF LOCALITIES- Section 1834(b)(1)(B) (42 U.S.C. 1395m(b)(1)(B)) is amended by inserting `locality,' after `statewide,'.

(g) TREATMENT OF NUCLEAR MEDICINE PHYSICIANS-

(1) CONTINUATION OF SPECIAL RULE- Section 6105(b) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking all that follows `Social Security Act' the second place it appears and inserting the

following: ` beginning April 1, 1990, and ending December 31, 1991, there shall be substituted for the fee schedule otherwise applicable a fee schedule based 1/3 on the fee schedule computed under such section (without regard to this subsection) and 2/3 on 101 percent of the 1988 prevailing charge for such services.'

(2) ADJUSTED HISTORICAL PAYMENT BASIS- Section 1848(a)(2)(D) (42 U.S.C. 1395w-4(a)(2)(D)) is amended--

(A) in clause (ii) by inserting `, but excluding nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989' after `section 1834(b)(6))', and

(B) by adding at the end the following:

` (iii) NUCLEAR MEDICINE SERVICES- In applying clause (i) in the case of physicians' services which are nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989, there shall be substituted for the weighted average prevailing charge the amount provided under such section.'

(h) EXTENSION OF SPLIT BILLING RULE FOR INTERVENTIONAL RADIOLOGISTS- Section 6105(c) of the Omnibus Budget Reconciliation Act of 1989 is amended by inserting `or 1991' after `1990' each place it appears.

(i) EFFECTIVE DATES-

(1) Except as otherwise provided, the amendments made by this section shall apply to services furnished on or after January 1, 1991.

(2) The amendment made by subsection (f) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

## **SEC. 4103. ANESTHESIA SERVICES.**

(a) REDUCTION IN FEE SCHEDULE- Section 1842(q)(1) (42 U.S.C. 1395u(q)(1)) is amended--

(1) by inserting `(A)' after `(q)(1)', and

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

` (B) For physician anesthesia services furnished under this part during 1991, the prevailing charge conversion factor used in a locality under this subsection shall be determined as follows:

` (i) The Secretary shall estimate the national weighted average of the prevailing charge conversion factors used under this subsection for services furnished during 1990 after March 31, using the best available data.

` (ii) The national weighted average estimated under clause (i) shall be reduced by 7 percent.

` (iii) Subject to clause (iv), the prevailing charge conversion factor to be applied in a locality is the sum of--

` (I) the product of (a) the portion of the reduced national weighted average prevailing charge conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238-36243)); and

` (II) the product of (a) the remaining portion of the reduced national weighted average prevailing charge conversion factor computed under clause (ii) and (b) the geographic practice cost index value specified in section 1842(b)(14)(C)(iv) for the locality.

In applying this clause, 70 percent of the prevailing charge conversion factor shall be considered to be attributable to physician work.

` (iv) The prevailing charge conversion factor to be applied to a locality under this subparagraph shall not be reduced by more than 15 percent below the prevailing charge conversion factor applied in the locality for the period during 1990 after March 31, but in no case shall the prevailing charge conversion factor be less than 60 percent of the national weighted average of the prevailing charge conversion factors (computed under clause (i)).'

(b) EXTENSION OF REDUCTION FOR SUPERVISION OF CONCURRENT SERVICES- Section 1842(b)(13) (42 U.S.C. 1395u(b)(13)) is amended by striking `1991' each place it appears and inserting `1996'.

## **SEC. 4104. PHYSICIAN PATHOLOGY SERVICES.**

(a) REDUCTION IN PAYMENTS FOR PHYSICIAN PATHOLOGY SERVICES- Subsection (f) of section 1834 (42 U.S.C. 1395m) is amended to read as follows:

` (f) REDUCTION IN PAYMENTS FOR PHYSICIAN PATHOLOGY SERVICES DURING FISCAL YEAR 1991-

` (1) IN GENERAL- For physician pathology services furnished under this part during 1991, the prevailing charges used in a locality under this part shall be 7 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

` (2) LIMITATION- The prevailing charge for the technical and professional components of an physician pathology service furnished by a physician through an independent laboratory shall not be reduced pursuant to paragraph (1) to the extent that such reduction would reduce such

prevailing charge below 115 percent of the prevailing charge for the professional component of such service when furnished by a hospital-based physician in the same locality. For purposes of the preceding sentence, an independent laboratory is a laboratory that is independent of a hospital and separate from the attending or consulting physicians' office.'

(b) CONFORMING AMENDMENTS-

(1) Section 1833(a)(1)(J) of such Act (42 U.S.C. 1395l(a)(1)) is amended by striking `or physician pathology services' and by striking `or section 1834(f), respectively'.

(2) Section 1848(a)(1) of such Act (42 U.S.C. 1395w-4(a)(1)) is amended by striking `or 1834(f)'.

(3) Section 4050 of the Omnibus Budget Reconciliation Act of 1987 is repealed.

(c) ANCILLARY POLICY- The Secretary of Health and Human Services, in establishing ancillary policies under section 1848(c)(3) of the Social Security Act, shall consider an appropriate adjustment to reflect the technical component of furnishing physician pathology services through a laboratory that is independent of a hospital and separate from an attending or consulting physician's office.

(d) EFFECTIVE DATE- The amendments made by this section shall apply to services furnished on or after January 1, 1991.

## SEC. 4105. UPDATE FOR PHYSICIANS' SERVICES.

(a) PERCENTAGE INCREASE IN MEI FOR 1991-

(1) IN GENERAL- Section 1842(b)(4)(E) (42 U.S.C. 1395u(b)(4)(E)) is amended by adding at the end the following new clause:

`(v) For purposes of this part for items and services furnished in 1991, the percentage increase in the MEI is--

`(I) 0 percent for services (other than primary care services), and

`(II) 2 percent for primary care services (as defined in subsection (i)(4)).'

(2) CUSTOMARY CHARGES FOR 1991- Section 1842(b)(4)(B) (42 U.S.C. 1395u(b)(4)(B)) is amended by adding at the end the following new clause:

`(iv) In determining the reasonable charge under paragraph (3) for physicians' services (other than primary care services, as defined in subsection (i)(4)) furnished during 1991, the customary charges shall be the same customary charges as were recognized under this section for the 9-month period

beginning April 1, 1990. In a case in which subparagraph (F) applies (relating to new physicians) so as to limit the customary charges of a physician during 1990 to a percent of prevailing charges, the previous sentence shall not prevent such limit on customary charges under such subparagraph from increasing in 1991 to a higher percent of such prevailing charges.'

(3) CHANGE IN PAYMENT FOR YEARS AFTER 1991- Section 1848 of such Act (42 U.S.C. 1395w-4) is amended in subsection (d)(3)(A)--

(A) in clause (i), by inserting `except as provided in clause (iii),' after `subparagraph (B),', and

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

`(iii) ADJUSTMENT IN PERCENTAGE INCREASE- In applying clause (i) for services furnished in 1992 for which the appropriate update index is the index described in clause (ii)(I), the percentage increase in the appropriate update index shall be reduced by 0.4 percentage points.'

(b) INCREASE IN PREVAILING CHARGE FLOOR FOR PRIMARY CARE SERVICES-

(1) IN GENERAL- Section 1842(b)(4)(A)(vi) of such Act (42 U.S.C. 1395u(b)(4)(A)(vi)) is amended by striking `50 percent' and inserting `60 percent'.

(2) BUDGET NEUTRAL IMPLEMENTATION- In computing the conversion factor under section 1848(d)(1)(B) of the Social Security Act for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B of title XVIII of such Act for physicians' services in 1991 assuming that the amendments made by this subsection did not apply.

(3) EFFECTIVE DATE- The amendments made by paragraphs (1) and (2) shall apply to services furnished on or after January 1, 1991.

(c) VOLUME PERFORMANCE STANDARD FOR FISCAL YEAR 1991- Section 1848(f) (42 U.S.C. 1395w-4(f)) is amended--

(1) in paragraph (1)(C), by striking `1990' the first place it appears and inserting `1991', and

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

`(C) Notwithstanding subparagraph (A), the performance standard rate of increase for a category of physicians' services for fiscal year 1991 shall be the sum of--

`(i) the Secretary's estimate of the percentage by which actual expenditures for the category of physicians' services under this part for fiscal year 1991 exceed actual expenditures for such category of services in fiscal year 1990 (determined without

regard to the amendments made by the Omnibus Budget Reconciliation Act of 1990), and

` (ii) the Secretary's estimate of the percentage increase or decrease in expenditures for the category of services in fiscal year 1991 (compared with fiscal year 1990) that will result from changes in law and regulations (including the Omnibus Budget Reconciliation Act of 1990), reduced by 2 percentage points.'.

(d) Not later than 45 days after the date of the enactment of this Act, the Secretary of Health and Human Services, based on the most recent data available, shall estimate and publish in the Federal Register the performance standard rates of increase specified in section 1848(f)(2)(C) of the Social Security Act for fiscal year 1991.

#### SEC. 4106. NEW PHYSICIANS AND OTHER NEW HEALTH CARE PRACTITIONERS.

(a) EXTENSION OF CUSTOMARY CHARGE LIMIT AND INCLUSION OF HEALTH CARE PRACTITIONERS-

(1) IN GENERAL- Subparagraph (F) of section 1842(b)(4) (42 U.S.C. 1395u(b)(4)) is amended to read as follows:

` (F)(i) In the case of physicians' services and professional services of a health care practitioner (other than primary care services and other than services furnished in a rural area (as defined in section 1886(d)(2)(D)) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health manpower shortage area) furnished during the physician's or practitioner's first through fourth years of practice (if payment for those services is made separately under this part and on other than a cost-related basis), the prevailing charge or fee schedule amount to be applied under this part shall be 80 percent for the first year of practice, 85 percent for the second year of practice, 90 percent for the third year of practice, and 95 percent for the fourth year of practice, of the prevailing charge or fee schedule amount for that service under the other provisions of this part.

` (ii) For purposes of clause (i):

` (I) The term `health care practitioner' means a physician assistant, certified nurse-midwife, qualified psychologist, nurse practitioner, clinical social worker, physical therapist, occupational therapist, respiratory therapist, certified registered nurse anesthetist, or any other practitioner as may be specified by the Secretary.

` (II) The term `first year of practice' means, with respect to a physician or practitioner, the first calendar year during the first 6 months of which the physician or practitioner furnishes professional services for which payment is made under this part, and includes any period before such year.

` (III) The terms `second year of practice', `third year of practice', and `fourth year of practice' mean the second, third, and fourth calendar



years, respectively, following the first year of practice.'

(2) CONFORMING AMENDMENTS- Section 6108(a)(2)(A) of the Omnibus Budget Reconciliation Act of 1989 is amended--

(A) by inserting `or 1991' after `1990', and

(B) by inserting `or 1990' after `1989'.

(b) APPLICATION UNDER FEE SCHEDULE-

(1) IN GENERAL- Section 1848(a) (42 U.S.C. 1395w-4(a)) is amended by adding at the end the following new paragraph:

`(4) TREATMENT OF NEW PHYSICIANS- In the case of physicians' services furnished by a physician before the end of the physician's first full calendar year of furnishing services for which payment may be made under this part, and during each of the 3 succeeding years, the fee schedule amount to be applied shall be 80 percent, 85 percent, 90 percent, and 95 percent, respectively, of the fee schedule amount applicable to physicians who are not subject to this paragraph. The preceding sentence shall not apply to primary care services or services furnished in a rural area (as defined in section 1886(d)(2)) that is designated under section 322(a)(1)(A) of the Public Health Service Act as a health manpower shortage area.'

(2) CONFORMING AMENDMENTS- Section 1842(b)(4)(F), as amended by subsection (a), is amended--

(A) in clause (i), by striking `physicians' services and',

(B) in clause (i), by striking `physician's or', and

(C) in clause (ii)(II), by striking `physician or' each place it appears.

(c) CONFORMING ADJUSTMENT IN CONVERSION FACTOR COMPUTATION- In computing the conversion factor under section 1848(d)(1)(B) for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B for physicians' services in 1991 assuming that the amendments made by this section (notwithstanding subsection (d)) applied to all services furnished during such year.

(d) EFFECTIVE DATES-

(1) The amendments made by subsection (a) apply to services furnished after 1990, except that--

(A) the provisions concerning the third and fourth years of practice apply only to physicians' services furnished after 1990 and 1991, respectively, and

(B) the provisions concerning the second, third, and fourth years of

practice apply only to services of a health care practitioner furnished after 1991, 1992, and 1993, respectively.

(2) The amendments made by subsection (b) shall apply to services furnished after 1991.

## **SEC. 4107. ASSISTANTS AT SURGERY.**

### (a) PHYSICIANS AS ASSISTANTS-AT-SURGERY-

(1) IN GENERAL- Section 1848(i) (42 U.S.C. 1395w-4(i)) is amended by adding at the end the following:

#### ` (2) ASSISTANTS-AT-SURGERY-

` (A) IN GENERAL- Subject to subparagraph (B), in the case of a surgical service furnished by a physician, if payment is made separately under this part for the services of a physician serving as an assistant-at-surgery, the fee schedule amount shall not exceed 16 percent of the fee schedule amount otherwise determined under this section for the global surgical service involved.

` (B) DENIAL OF PAYMENT IN CERTAIN CASES- If the Secretary determines, based on the most recent data available, that for a surgical procedure (or class of surgical procedures) the national average percentage of such procedure performed under this part which involve the use of a physician as an assistant at surgery is less than 5 percent, no payment may be made under this part for services of an assistant at surgery involved in the procedure.'

(2) APPLICATION IN 1991- Section 1848(i)(2) of the Social Security Act, as added by the amendment made by paragraph (1), shall apply to services furnished in 1991 in the same manner as it applies to services furnished after 1991. In applying the previous sentence, the prevailing charge shall be substituted for the fee schedule amount.

(b) CONFORMING AMENDMENT- Section 1862(a)(15) of such Act (42 U.S.C. 1395y(a)(15)) is amended--

(1) by inserting ` (A)' after ` (15)',

(2) by striking ` ; or' at the end and inserting ` , or', and

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

` (B) which are for services of an assistant at surgery to which section 1848(i)(2)(B) applies; or'.

(c) EFFECTIVE DATE- The amendment made by subsection shall apply with respect to services furnished on or after January 1, 1992.

## **SEC. 4108. TECHNICAL COMPONENTS OF CERTAIN DIAGNOSTIC TESTS.**

(a) IN GENERAL- Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)), as amended by section 4101, is further amended by adding at the end the following new paragraph:

“(18) With respect to payment under this part for the technical (as distinct from professional) component of diagnostic tests (other than clinical diagnostic laboratory tests and radiology services, including portable x-ray services) which the Secretary shall designate (based on their high volume of expenditures under this part), the reasonable charge for such technical component (including the applicable portion of a global service) may not exceed the national median of such charges for all localities, as estimated by the Secretary using the best available data.’.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to tests and services furnished on or after January 1, 1991.

## **SEC. 4109. INTERPRETATION OF ELECTROCARDIOGRAMS.**

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

“(3) TREATMENT OF INTERPRETATION OF ELECTROCARDIOGRAMS- If payment is made under this part for a visit to a physician or consultation with a physician and, as part of or in conjunction with the visit or consultation there is an electrocardiogram performed or ordered to be performed, no payment may be made under this part with respect to the interpretation of the electrocardiogram and no physician may bill an individual enrolled under this part separately for such an interpretation. If a physician knowingly and willfully bills one or more individuals in violation of the previous sentence, the Secretary may apply sanctions against the physician or entity in accordance with section 1842(j)(2).’.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1992. In applying section 1848(d)(1)(B) of the Social Security Act (in computing the initial budget-neutral conversion factor for 1991), the Secretary shall compute such factor assuming that section 1848(b)(3) of such Act (as added by the amendment made by subsection (a)) had applied to physicians' services furnished during 1991.

## **SEC. 4110. RECIPROCAL BILLING ARRANGEMENTS.**

(a) IN GENERAL- The first sentence of section 1842(b)(6) of the Social Security Act (42 U.S.C. 1395u(b)(6)) is amended--

(1) by striking ‘and’ before ‘(C)’, and

(2) by inserting before the period at the end the following: ‘, and (D)

payment may be made to a physician who arranges for visit services (including emergency visits and related services) to be provided to an individual by a second physician on an occasional, reciprocal basis if (i) the first physician is unavailable to provide the visit services, (ii) the individual has arranged or seeks to receive the visit services from the first physician, (iii) the claim form submitted to the carrier includes the second physician's unique identifier (provided under the system established under subsection (r)) and indicates that the claim is for such a 'covered visit service (and related services)', and (iv) the visit services are not provided by the second physician over a continuous period of longer than 60 days'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

## **SEC. 4111. STUDY OF PREPAYMENT MEDICAL REVIEW SCREENS.**

(a) IN GENERAL- The Secretary of Health and Human Services shall conduct a study of the effect of the release of medicare prepayment medical review screen parameters on physician billings for the services to which the parameters apply.

(b) LIMITATIONS- The study shall be based upon the release of the screen parameters at a minimum of six carriers.

(c) REPORT- The Secretary shall report the results of the study to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate not later than October 1, 1992.

## **SEC. 4112. PRACTICING PHYSICIANS ADVISORY COUNCIL.**

Title XVIII of the Social Security Act is amended by inserting after section 1867 the following new section:

### **^ PRACTICING PHYSICIANS ADVISORY COUNCIL**

^ SEC. 1868. (a) The Secretary shall appoint, based upon nominations submitted by medical organizations representing physicians, a Practicing Physicians Advisory Council (in this section referred to as the 'Council') to be composed of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under this title in the previous year. At least 11 of the members of the Council shall be physicians described in section 1861(r)(1) and the members of the Council shall include both participating and nonparticipating physicians and physicians practicing in rural areas and underserved urban areas.

^ (b) The Council shall meet once during each calendar quarter to discuss

certain proposed changes in regulations and carrier manual instructions related to physician services identified by the Secretary. To the extent feasible and consistent with statutory deadlines, such consultation shall occur before the publication of such proposed changes.

(c) Members of the Council shall be entitled to receive reimbursement of expenses and per diem in lieu of subsistence in the same manner as other members of advisory councils appointed by the Secretary are provided such reimbursement and per diem under this title.'

#### SEC. 4113. STUDY OF AGGREGATION RULE FOR CLAIMS FOR SIMILAR PHYSICIANS' SERVICES.

The Secretary of Health and Human Services shall carry out a study of the effects of permitting the aggregation of claims that involve common issues of law and fact furnished in the same carrier area to two or more individuals by two or more physicians within the same 12-month period for purposes of appeals provided for under section 1869(b)(2). Such study shall be conducted in at least four carrier areas. The Secretary shall report on the results of such study and any recommendations to the Committee on Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives by December 31, 1992.

#### SEC. 4114. UTILIZATION SCREENS FOR PHYSICIAN VISITS IN REHABILITATION HOSPITALS.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue guidelines to assure a uniform level of review of physician visits to patients of a rehabilitation hospital or unit patients after the medical review screen parameter established under section 4085(h) of the Omnibus Budget Reconciliation Act of 1987 has been exceeded.

#### SEC. 4115. STUDY OF REGIONAL VARIATIONS IN IMPACT OF MEDICARE PHYSICIAN PAYMENT REFORM.

(a) STUDY- The Secretary of Health and Human Services shall conduct a study of--

(1) factors that may explain geographic variations in Medicare reasonable charges for physicians' services that are not attributable to variations in physician practice costs (including the supply of physicians in an area and area variations in the mix of services furnished);

(2) the extent to which the geographic practice cost indices applied under the fee schedule established under section 1848 of the Social Security Act accurately reflect variations in practice costs and malpractice costs (and alternative sources of information upon which to base such indices);

(3) the impact of the transition to a national, resource-based fee schedule for physicians' services under Medicare on access to physicians' services in areas that experience a disproportionately large reduction in

payments for physicians' services under the fee schedule by reason of such variations; and

(4) appropriate adjustments or modifications in the transition to, or manner of determining payments under, the fee schedule established under section 1848 of the Social Security Act, to compensate for such variations and ensure continued access to physicians' services for Medicare beneficiaries in such areas.

(b) REPORT- By not later than July 1, 1992, the Secretary shall submit to Congress a report on the study conducted under subsection (a).

## **SEC. 4116. LIMITATION ON BENEFICIARY LIABILITY.**

Section 1848(g)(2)(A) (42 U.S.C. 1395w-4(g)(2)(A)) is amended by adding at the end thereof the following:

` In the case of evaluation and management services (as specified in section 1842(b)(16)(B)(ii)), the preceding sentence shall be applied by substituting ` 40 percent' for ` 25 percent'.'.

## **SEC. 4117. STATEWIDE FEE SCHEDULE AREAS FOR PHYSICIANS' SERVICES.**

(a) IN GENERAL- Notwithstanding section 1848(j)(2) of the Social Security Act (42 U.S.C. 1395w-4(j)(2)), in the case of the States of Nebraska and Oklahoma, if the respective State meets the requirements specified in subsection (b) on or before April 1, 1991, the Secretary of Health and Human Services (Secretary) shall treat the State as a single fee schedule area for purposes of determining--

(1) the adjusted historical payment basis (as defined in section 1848(a)(2)(D) of such Act (42 U.S.C. 1395w-4(a)(2)(D))), and

(2) the fee schedule amount (as referred to in section 1848(a) (42 U.S.C. 1395w-4(a)) of such Act),

for physicians' services (as defined in section 1848(j)(3) of such Act (42 U.S.C. 1395w-4(j)(3))) furnished on or after January 1, 1992.

(b) REQUIREMENTS- The requirements specified in this subsection are that (on or before April 1, 1991) there are written expressions of support for treatment of the State as a single fee schedule area (on a budget-neutral basis) from--

(1) each member of the congressional delegation from the State, and

(2) organizations representing urban and rural physicians in the State.

(c) BUDGET NEUTRALITY- Notwithstanding section 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)), the Secretary shall provide for treatment of a State as a single fee schedule area (as described in subsection (a)) in a manner that ensures that total payments for physicians' services (as so defined) furnished by physicians in the State during 1992 are not greater or less than total

payments for such services would have been but for such treatment.

(d) CONSTRUCTION- Nothing in this section shall be construed as limiting the availability (to the Secretary, the appropriate agency or organization with a contract under section 1842, or physicians in a State) of otherwise applicable administrative procedures for modifying the fee schedule area or areas in the State after implementation of subsection (a) with respect to the State.

## SEC. 4118. TECHNICAL CORRECTIONS.

### (a) OVERVALUED PROCEDURES-

(1) Section 1842(b)(14) of the Social Security Act (42 U.S.C. 1395u(b)(14)) is amended--

(A) in subparagraph (B)(iii)(I), by striking `practice expense ratio for the service (specified in table #1 in the Joint Explanatory Statement referred to in subparagraph (C)(i))' and inserting `practice expense component (percent), divided by 100, specified in appendix A (pages 187 through 194) of the Report of the Medicare and Medicaid Health Budget Reconciliation Amendments of 1989, prepared by the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives, (Committee Print 101-M, 101st Congress, 1st Session) for the service';

(B) in subparagraph (B)(iii)(II), by striking `practice expense ratio' and inserting `practice expense component (percent), divided by 100';

(C) in subparagraph (C)(i), by striking `physicians' services specified in Table #2 in the Joint Explanatory Statement of the Committee of Conference submitted with the Conference Report to accompany H.R. 3299 (the `Omnibus Budget Reconciliation Act of 1989'), 101st Congress,' and inserting `procedures specified (by code and description) in the Overvalued Procedures List for Finance Committee, Revised September 20, 1989, prepared by the Physician Payment Review Commission';

(D) in subparagraph (C)(iii), by striking `The `percent change' specified in this clause, for a physicians' service specified in clause (i), is the percent change specified for the service in table #2 in the Joint Explanatory Statement' and inserting `The `percentage change' specified in this clause, for a physicians' service specified in clause (i), is the percent difference (but expressed as a positive number) specified for the service in the list'; and

(E) in subparagraph (C)(iv), by striking `such value specified for the locality in table #3 in the Joint Explanatory Statement referred to in clause (i)' and inserting `the Geographic Overhead Costs Index specified for the locality in table 1 of the September 1989 Supplement to the Geographic Medicare Economic Index: Alternative

Approaches (prepared by the Urban Institute and the Center for Health Economics Research)'.  
 (2) Section 1842(b)(4)(E)(iv)(I) of such Act (42 U.S.C. 1395u(b)(4)(E)(iv)(I)) is amended by striking `Table #2' and all that follows through `101st Congress' and inserting `the list referred to in paragraph (14)(C)(i)'.  
 (3) The amendments made by paragraphs (1) and (2) apply to services furnished after March 1990.

(b) MVPS AS MULTIPLICATIVE, NOT ADDITIVE- Section 1848(f)(2)(A) (42 U.S.C. 1395w-4(f)(2)(A)) is amended--

(1) in the matter preceding clause (i) by striking `sum' and inserting `product';

(2) in clauses (i) through (iv), by inserting `1 plus' before `the Secretary's' each place it appears, 6

6 So in original. Probably should be `;'.

(3) in clause (i), by inserting `(divided by 100)' after `percentage increase', 7

7 So in original. Probably should be `;'.

(4) in clauses (ii) and (iv), by inserting `(divided by 100)' after `decrease', 8

8 So in original. Probably should be `;'.

(5) in clause (iii), by inserting `(divided by 100)' after `percentage growth', 9

and

9 So in original. Probably should be `;'.

(6) in the matter following clause (iv), by striking `reduced' and inserting `minus 1, multiplied by 100, and reduced'.

(c) PERIODIC REVIEW OF GEOGRAPHIC ADJUSTMENT FACTORS- Section 1848(e)(1) of such Act is amended--

(1) in subparagraph (A), by striking `subparagraph (B)' and inserting `subparagraphs (B) and (C)', and

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

`(C) PERIODIC REVIEW AND ADJUSTMENTS IN GEOGRAPHIC ADJUSTMENT FACTORS- The Secretary, not less often than every 3 years, shall review the indices established under subparagraph (A) and the geographic index values applied under this subsection for all



fee schedule areas. Based on such review, the Secretary may revise such index and adjust such index values, except that, if more than 1 year has elapsed since the last previous adjustment, the adjustment to be applied in the first year of the next adjustment shall be 1/2 of the adjustment that otherwise would be made.'

(d) ELIMINATION OF RESTRICTION ON INCORPORATION OF TIME IN VISIT CODES- Section 1848(c)(4) (42 U.S.C. 1395w-4(c)(4)) is amended by striking `only for services furnished on or after January 1, 1993'.

(e) TREATMENT OF PRICE INCREASE IN DETERMINING PERFORMANCE STANDARD RATES OF INCREASE- Section 1848(f)(2)(A)(iv) (42 U.S.C. 1395w-4(f)(2)(A)(iv)) is amended by inserting `including changes in law and regulations affecting the percentage increase described in clause (i)' after `law or regulations'.

(f) MISCELLANEOUS FEE SCHEDULE CORRECTIONS-

(1) CHANGES IN SECTION 1848- Section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is amended--

(A) in subsection (c)(1)(B), by striking the last sentence;

(B) in subsections (c)(3)(C)(ii)(II) and (c)(3)(C)(iii)(II), by striking `by' the first place it appears in each respective subsection, 10

10 So in original. Probably should be `;'.

(C) in subsection (c), by redesignating the second paragraph (3), and paragraphs (4) and (5), as paragraphs (4) through (6), respectively;

(D) in subsection (c)(4), as redesignated by subparagraph (C), is amended by striking `subsection' and inserting `section';

(E) in subsection (d)(1)(A), by striking `subparagraph (C)' and inserting `paragraph (3)';

(F) in subsection (d)(1)--

(i) in subparagraph (A)--

(I) by inserting `(or factors)' after `conversion factor' each place it appears,

(II) by inserting `or updates' after `update', and

(III) by striking `subparagraph (C)' and inserting `paragraph (3)'; and

(ii) in subparagraph (C)--

(I) in clause (i), by striking `(or factors)', and

(II) in clause (ii), by inserting `the conversion factor (or factors) which will apply to physicians' services for the following year and' before `the update (or updates)', and by striking `the following' and inserting `such';

(G) in subsection (d)(2)(A), in the matter preceding clause (i), by striking `services' the first place it appears and inserting `services (as defined in subsection (f)(5)(A))';

(H) in subsection (d)(2)(A)(ii)--

(i) by striking `(as defined in subsection (f)(5)(A))' and inserting `and for the services involved', and

(ii) by striking `all such physicians' and inserting `such'; and

(I) in the last sentence of subsection (d)(2)(A), by striking `proportion of HMO enrollees' and inserting `proportion of individuals who are enrolled under this part who are HMO enrollees';

(J) in subsection (d)(2)(E)(i), by inserting `the' after `as set forth in';

(K) in subsection (d)(2)(E)(ii)(I), by inserting `payments for' after `under this part for';

(L) in subsection (d)(3)(B)--

(i) in clause (i)--

(I) by striking `update for' and inserting `update for a category of physicians' services for'; and

(II) by striking `physicians' services (as defined in subsection (f)(5)(A))' and inserting `services in such category';

(ii) in clause (ii)--

(I) by inserting `more than' after `decrease of'; and

(II) in subclause (I), by striking `more than';

(M) in paragraphs (1)(D)(i) and (2)(A)(i) of subsection (f), by striking `calendar years' and inserting `portions of calendar years';

(N) in subsection (f)(2)(A)--

(i) by striking `each performance standard rate of increase' and inserting `the performance standard rate of increase, for all physicians' services and for each category of physicians'

services,'

(ii) in clause (i), by striking `physicians' services (as defined in subsection (f)(5)(A) 11

' and inserting `all physicians' services or for the category of physicians' services, respectively,'

11 So in original. Probably should be `(A))'.

(iii) in clause (iii), by striking `physicians' services' and inserting `all physicians' services or of the category of physicians' services, respectively,' and

(iv) in clause (iv), by striking `physicians' services (as defined in subsection (f)(5)(A))' and inserting `all physicians' services or of the category of physicians' services, respectively,';

(O) in subsection (f)(4)(A), by striking `paragraph (B)' and inserting `subparagraph (B)';

(P) in subsection (f)(4)(B), by striking `Congress specifically approves the plan' and inserting `specifically approved by law';

(Q) in subparagraphs (A) and (B) of subsection (g)(2), by inserting `other than radiologist services subject to section 1834(b),' after `during 1991,' and after `during 1992,', respectively;

(R) in subsection (i)(1)(A), by striking `historical payment basis (as defined in subsection (a)(2)(C)(i))' and inserting `adjusted historical payment basis (as defined in subsection (a)(2)(D)(i))'; and

(S) in subsection (j)(1), by striking `, and such other' and all that follows through the period and inserting `(as defined by the Secretary) and all other physicians' services.'

## (2) MISCELLANEOUS-

(A) Effective as if included in the Omnibus Budget Reconciliation Act of 1989, section 6102(e)(4) of such Act is amended by inserting `determined' after `prevailing charge rate'.

(B) Effective January 1, 1991, section 1842(b)(3)(G) of the Social Security Act, as amended by section 6102(e)(2) of Omnibus Budget Reconciliation Act of 1989, is amended by striking `subsection (j)(1)(C)' and inserting `section 1848(g)(2)'.

(C) Section 1842(b)(12)(A)(ii)(II) of the Social Security Act, as amended by section 6102(e)(4) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking `, as the case may be'.

(D) Section 1833(a)(1)(H) of the Social Security Act, as amended by section 6102(e)(5) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking ` , as the case may be'.

(E) Section 6102(e)(11) of the Omnibus Budget Reconciliation Act of 1989 is amended by inserting ` of Health and Human Services' after ` Secretary'.

(F) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, section 922(d)(1) of the Public Health Service Act (42 U.S.C. 299c-1(d)(1)) is amended--

(i) by inserting ` (other than of dissemination activities)' after ` evaluations', and

(ii) by inserting ` research, demonstration projects, or evaluations of' after ` applications with respect to'.

(g) REPEAL OF REPORTS NO LONGER REQUIRED-

(1) Subsection (b) of section 4043 of the Omnibus Budget Reconciliation Act of 1987 is repealed.

(2) Subsection (c) of section 4048 of such Act is repealed.

(3) Section 4049(b)(1) of such Act is amended by striking ` , and shall report' and all that follows up to the period at the end.

(4) Section 4056(a)(1) of such Act, as redesignated by section 411(f)(14) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking the last sentence.

(5) Section 4056(b)(2) of such Act is amended by striking the second sentence.

(h) ADJUSTMENT OF EFFECTIVE DATES- Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987--

(1) section 4048(b) of such Act is amended by striking ` January 1, 1989' and inserting ` March 1, 1989', and

(2) section 4049(b)(2) of such Act is amended by striking ` January 1, 1989' and inserting ` April 1, 1989'.

(i) TRANSFER OF PROVISION INTO TITLE XVIII-

(1) Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended by adding at the end the following new subsection:

` (r) The Secretary shall establish a system which provides for a unique identifier for each physician who furnishes services for which payment may be made under this title.'

(2) Section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking subsection (g).

(j) PPRC- (1) Section 1845 of such Act (42 U.S.C. 1395w-1) is amended--

(A) in subsection (a)(3), by striking `include physicians' and inserting `include (but need not be limited to) physicians';

(B) by striking subsection (b)(3);

(C) in subsection (b)(2)--

(i) by striking `and' at the end of subparagraph (H),

(ii) by striking the period at the end of subparagraph (I) and inserting a semicolon,

(iii) by striking subparagraphs (A), (B), (C), and (F),

(iv) by redesignating subparagraphs (D), (E), (G), (H), and (I) as subparagraphs (A), (B), (C), (D), and (E), and

(v) by adding at the end the following new subparagraphs:

` (F) make recommendations regarding major issues in the implementation of the resource-based relative value scale established under section 1848(c);

` (G) make recommendations regarding further development of the volume performance standards established under section 1848(f), including the development of State-based programs;

` (H) consider policies to provide payment incentives to increase patient access to primary care and other physician services in large urban and rural areas, including policies regarding payments to physicians pursuant to title XIX;

` (I) review and consider the number and practice specialties of physicians in training and payments under this title for graduate medical education costs;

` (J) make recommendations regarding issues relating to utilization review and quality of care, including the effectiveness of peer review procedures and other quality assurance programs applicable to physicians and providers under this title and physician certification and licensing standards and procedures;

` (K) make recommendations regarding options to help constrain the costs of health insurance to employers, including incentives under this title;

` (L) comment on the recommendations affecting physician payment

under the medicare program that are included in the budget submitted by the President pursuant to section 1105 of title 31, United States Code; and

` (M) make recommendations regarding medical malpractice liability reform and physician certification and licensing standards and procedures.'; and

(D) by striking subsection (e) and redesignating subsection (f) as subsection (e).

(2) In section 1842(b)(2)(A) is amended by striking `section 1845(f)(2)' and inserting `section 1845(e)(2)'.

(k) PROHIBITION OF CERTAIN ADJUSTMENTS- Section 1848(i) is amended by adding at the end the following new paragraph:

` (3) NO COMPARABILITY ADJUSTMENT- For physicians' services for which payment under this part is determined under this section--

` (A) a carrier may not make any adjustment in the payment amount under section 1842(b)(3)(B) on the basis that the payment amount is higher than the charge applicable, for a 12

comparable services and under comparable circumstances, to the policyholders and subscribers of the carrier,

12 So in original. ` a' probably should be omitted.

` (B) no payment adjustment may be made under section 1842(b)(8), and

` (C) section 1842(b)(9) shall not apply .'.

## ***Subpart B--Provisions Relating to Other Items and Services***

### **SEC. 4151. PAYMENTS FOR OUTPATIENT HOSPITAL SERVICES.**

(a) REDUCTION IN PAYMENTS FOR CAPITAL-RELATED COSTS-

(1) IN GENERAL- Section 1861(v)(1)(S)(ii)(I) (42 U.S.C. 1395x(v)(1)(S)(ii)(I)) is amended by inserting before the period at the end the following: `, by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1991, and by 10 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1992, 1993, 1994, or 1995'.

(2) EXEMPTION FOR RURAL PRIMARY CARE HOSPITALS- Section 1861(v)(1)(S)(ii)(II) (42 U.S.C. 1395x(v)(1)(S)(ii)(II)) is amended by striking

` 1886(d)(5)(D)(iii)).' and inserting ` 1886(d)(5)(D)(iii) or a rural primary care hospital (as defined in section 1861(mm)(1)).'

(b) REDUCTION IN REASONABLE COSTS OF HOSPITAL OUTPATIENT SERVICES-

(1) IN GENERAL- Section 1861(v)(1)(S)(ii) (42 U.S.C. 1395x(v)(1)(S)(ii)) is amended--

(A) in subclause (II)--

(i) by striking ` Subclause (I)' and inserting ` Subclauses (I) and (II)', and

(ii) by striking ` capital-related costs of any hospital' and inserting ` costs of hospital outpatient services provided by any hospital';

(B) in subclause (III)--

(i) by striking ` subclause (I)' and inserting ` subclauses (I) and (II)', and

(ii) by striking ` capital-related' and inserting ` the';

(C) by redesignating subclauses (II) and (III) as subclauses (III) and (IV); and

(D) by inserting after subclause (I) the following new subclause:

` (II) The Secretary shall reduce the reasonable cost of outpatient hospital services (other than the capital-related costs of such services) otherwise determined pursuant to section 1833(a)(2)(B)(i)(I) by 5.8 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1991, 1992, 1993, 1994, or 1995.'

(2) PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT SERVICES-

(A) DEVELOPMENT OF PROPOSAL- The Secretary of Health and Human Services shall develop a proposal to replace the current system under which payment is made for hospital outpatient services under title XVIII of the Social Security Act with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph, the Secretary shall consider--

(i) the need to provide for appropriate limits on increases in expenditures under the medicare program;

(ii) the need to adjust prospectively determined rates to account for changes in a hospital's outpatient case mix, severity of illness of patients, volume of cases, and the

development of new technologies and standards of medical practice;

(iii) providing hospitals with incentives to control the costs of providing outpatient services;

(iv) the feasibility and appropriateness of including payment for outpatient services not currently paid on a cost-related basis under the medicare program (including clinical diagnostic laboratory tests and dialysis services) in the system;

(v) the need to increase payments under the system to hospitals that treat a disproportionate share of low-income patients, teaching hospitals, and hospitals located in geographic areas with high wages and wage-related costs;

(vi) the feasibility and appropriateness of bundling services into larger units, such as episodes or visits, in establishing the basic unit for making payments under the system; and

(vii) the feasibility and appropriateness of varying payments under the system on the basis of whether services are provided in a free-standing or hospital-based facility.

(B) REPORTS- (i) By not later than January 1, 1991, the Administrator of the Health Care Financing Administration shall submit research findings relating to prospective payments for hospital outpatient services to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives.

(ii) By not later than September 1, 1991, the Secretary shall submit the proposal developed under subparagraph (A) to such Committees.

(iii) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under subparagraph (A) to such Committees.

#### (c) PAYMENTS FOR AMBULATORY SURGICAL PROCEDURES AND RADIOLOGY SERVICES-

##### (1) MODIFICATION OF COST AND ASC PROPORTIONS OF ASC BLEND AMOUNTS-

(A) IN GENERAL- Section 1833(i)(3)(B)(ii) (42 U.S.C. 1395l(i)(3)(B)(ii)) is amended--

(i) in subclause (I), by striking `and 50 percent for other cost reporting periods.' and inserting `50 percent for reporting periods beginning on or after October 1, 1988, and on or before December 31, 1990, and 42 percent for portions of cost



reporting periods beginning on or after January 1, 1991.'; and

(ii) in subclause (II), by striking `and 50 percent for other cost reporting periods.' and inserting `50 percent for reporting periods beginning on or after October 1, 1988, and on or before December 31, 1990, and 58 percent for portions of cost reporting periods beginning on or after January 1, 1991.'.

(B) EXTENSION OF ASC BLEND AMOUNTS FOR EYE AND EYE AND EAR SPECIALTY HOSPITALS- The last sentence of section 1833(i)(3)(B)(ii) (42 U.S.C. 1395I(i)(3)(B)(ii)) is amended by striking `in fiscal year 1989 or fiscal year 1990' and inserting `on or after October 1, 1988, and before January 1, 1995'.

(2) MODIFICATION OF COST AND CHARGE PROPORTIONS FOR RADIOLOGY SERVICES- Section 1833(n)(1)(B)(ii)(I) (42 U.S.C. 1395I(n)(1)(B)(ii)(I)) is amended by striking the period at the end and inserting `, and such term means 42 percent in the case of outpatient radiology services for portions of cost reporting periods beginning on or after January 1, 1991.'.

(3) 2-YEAR FREEZE IN ALLOWANCE FOR INTRAOCULAR LENSES- Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act, the amount of payment determined under such section for the insertion of an intraocular lens during or subsequent to cataract surgery furnished to an individual in an ambulatory surgical center on or after the date of the enactment of this Act and on or before December 31, 1992, shall be equal to \$200.

## **SEC. 4152. DURABLE MEDICAL EQUIPMENT.**

### **(a) PAYMENTS FOR SEAT-LIFT AND TENS-**

(1) 15 PERCENT REDUCTION IN PAYMENTS FOR TRANSCUTANEOUS ELECTRICAL NERVE STIMULATORS- Section 1834(a)(1)(D) of the Social Security Act (42 U.S.C. 1395m(a)(1)(D)) is amended by inserting before the period at the end the following: `, and, in the case of a transcutaneous electrical nerve stimulator furnished on or after January 1, 1991, the Secretary shall further reduce such payment amount (as previously reduced) by 15 percent'.

(2) SEAT-LIFTS- Section 1861(n) of the Social Security Act (42 U.S.C. 1395x(n)) is amended by adding at the end the following: `With respect to a seat-lift chair, such term includes only the seat-lift mechanism and does not include the chair.'.

(3) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to items furnished on or after January 1, 1991.

### **(b) DEVELOPMENT AND APPLICATION OF NATIONAL LIMITS ON FEES-**

(1) INEXPENSIVE AND ROUTINELY PURCHASED DURABLE MEDICAL EQUIPMENT AND ITEMS REQUIRING FREQUENT AND SUBSTANTIAL SERVICING- Paragraphs (2) and (3) of section 1834(a) of such Act (42 U.S.C. 1395m(a)) are each amended--

(A) in subparagraph (B)(i), by striking `or' at the end;

(B) by striking clause (ii) of subparagraph (B) and inserting the following:

`(ii) in 1991 is the sum of (I) 67 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(I) for 1991, and (II) 33 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1991;

`(iii) in 1992 is the sum of (I) 33 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(II) for 1992, and (II) 67 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1992; and

`(iv) in 1993 and each subsequent year is the national limited payment amount for the item or device computed under subparagraph (C)(ii) for that year.'; and

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

`(C) COMPUTATION OF LOCAL PAYMENT AMOUNT AND NATIONAL LIMITED PAYMENT AMOUNT- For purposes of subparagraph (B)--

`(i) the local payment amount for an item or device for a year is equal to--

`(I) for 1991, the amount specified in subparagraph (B)(i) for 1990 increased by the covered item update for 1991, and

`(II) for 1992, the amount determined under this clause for the preceding year increased by the covered item update for 1992; and

`(ii) the national limited payment amount for an item or device for a year is equal to--

`(I) for 1991, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the weighted average of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the weighted average of all local payment amounts determined

under such clause for such item, and

` (II) for each subsequent year, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year.'

(2) MISCELLANEOUS ITEMS AND OTHER COVERED ITEMS- Section 1834(a)(8) (42 U.S.C. 1395m(a)(8)) is amended--

(A) in subparagraph (A)(ii)--

(i) by striking `or' at the end of subclause (I);

(ii) in subclause (II)--

(I) by striking `1991 or', and

(II) by striking `the percentage increase' and all that follows through the period and inserting `the covered item update for the year.';

(iii) by redesignating subclause (II) as subclause (III); and

(iv) by inserting after subclause (I) the following new subclause:

` (II) in 1991, equal to the local purchase price computed under this clause for the previous year, increased by the covered item update for 1991, and decreased by the percentage by which the average of the reasonable charges for claims paid for all items described in paragraph (7) is lower than the average of the purchase prices submitted for such items during the final 9 months of 1988; or';

(B) by amending subparagraph (B) to read as follows:

` (B) COMPUTATION OF NATIONAL LIMITED PURCHASE PRICE- With respect to the furnishing of a particular item in a year, the Secretary shall compute a national limited purchase price--

` (i) for 1991, equal to the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year; and

` (ii) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year.';

(C) in subparagraph (C)--

(i) by striking `regional purchase price' each place it appears and inserting `national limited purchase price',

(ii) by striking `and subject to subparagraph (D)',

(iii) in clause (ii)--

(I) by striking `75' and inserting `67'; and

(II) by striking `25' and inserting `33', and

(iv) in clause (iii)--

(I) in subclause (I), by striking `50' and inserting `33' and by striking `(A)(ii)(II)' and inserting `(A)(ii)(III)'; and

(II) in subclause (II), by striking `50' and inserting `67'; and

(D) by striking subparagraph (D).

(3) OXYGEN AND OXYGEN EQUIPMENT- Section 1834(a)(9) of such Act (42 U.S.C. 1395m(a)(9)) is amended--

(A) in subparagraph (A)(ii)(II), by striking `the percentage increase' and all that follows through the period and inserting `the covered item increase for the year.';

(B) by amending subparagraph (B) to read as follows:

`(B) COMPUTATION OF NATIONAL LIMITED MONTHLY PAYMENT RATE- With respect to the furnishing of an item in a year, the Secretary shall compute a national limited monthly payment rate equal to--

`(i) for 1991, the local monthly payment rate computed under subparagraph (A)(ii)(II) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year; and

`(ii) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year.';

(C) in subparagraph (C)--

(i) by striking `regional monthly payment rate' each place it appears and inserting `national limited monthly payment rate',

(ii) in clause (ii)--

(I) by striking `75' and inserting `67'; and

(II) by striking `25' and inserting `33', and

(iii) in clause (iii)--

(I) in subclause (I), by striking `50' and inserting `33'; and

(II) in subclause (II), by striking `50' and inserting `67' and by striking `(B)(i)' and inserting `(B)(ii)'; and

(D) by striking subparagraph (D).

(4) DEFINITION- Section 1834(a) (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

`(14) COVERED ITEM UPDATE- In this subsection, the term `covered item update' means, with respect to a year--

`(A) for 1991 and 1992, 13

reduction of 1 percentage point; and

13 So in original. Probably should be `a reduction'.

`(B) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.'.

(5) CONFORMING AMENDMENT- Section 1834(a)(12) (42 U.S.C. 1395m(a)(12)) is amended by striking `defined for purposes of paragraphs (8)(B) and (9)(B)'.

(c) TREATMENT OF `RENTAL CAP' ITEMS-

(1) LIMITATION ON MONTHLY RECOGNIZED RENTAL AMOUNTS FOR MISCELLANEOUS ITEMS- Section 1834(a)(7)(A)(i) (42 U.S.C. 1395m(a)(7)(A)(i)) is amended--

(A) by striking `for each such month' and inserting `for each of the first 3 months of such period'; and

(B) by striking the semicolon at the end and inserting the following: `, and for each of the remaining months of such period is 7.5 percent of such purchase price;'.

(2) OFFER OF OPTION TO PURCHASE FOR MISCELLANEOUS ITEMS; ESTABLISHMENT OF REASONABLE LIFETIME- Section 1834(a)(7) of such

Act (42 U.S.C. 1395m(a)(7)(A)) is amended--

(A) in subparagraph (A)(i), by striking `15 months' and inserting `15 months, or, in the case of an item for which a purchase agreement has been entered into under clause (iii), a period of continuous use of longer than 13 months';

(B) in subparagraph (A)(ii)--

(i) by striking ` (ii) during the succeeding 6-month period of medical need,' and inserting ` (iv) in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii), during the first 6-month period of medical need that follows the period of medical need during which payment is made under clause (i),', and

(ii) by striking `and' at the end;

(C) in subparagraph (A)(iii)--

(i) by striking ` (iii)' and inserting ` (v) in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii),', and

(ii) by striking the period at the end and inserting `; and';

(D) by inserting after clause (i) of subparagraph (A) the following new clauses:

` (ii) in the case of a power-driven wheelchair, at the time the supplier furnishes the item, the supplier shall offer the individual patient the option to purchase the item, and payment for such item shall be made on a lump-sum basis if the patient exercises such option;

` (iii) during the 10th continuous month during which payment is made for the rental of an item under clause (i), the supplier of such item shall offer the individual patient the option to enter into a purchase agreement under which, if the patient notifies the supplier not later than 1 month after the supplier makes such offer that the patient agrees to accept such offer and exercise such option--

` (I) the supplier shall transfer title to the item to the individual patient on the first day that begins after the 13th continuous month during which payment is made for the rental of the item under clause (i),

` (II) after the supplier transfers title to the item under subclause (I), maintenance and servicing payments shall be made in accordance with clause (v);';

(E) by inserting after clause (v) of subparagraph (A) (as amended by subparagraph (C)) the following new clause:

^ (vi) in the case of an item for which a purchase agreement has been entered into under clause (ii) or clause (iii), maintenance and servicing payments may be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment), and such payments shall be in an amount established by the Secretary on the basis of reasonable charges in the locality for maintenance and servicing.'; and

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

^ (C) REPLACEMENT OF ITEMS-

^ (i) ESTABLISHMENT OF REASONABLE USEFUL LIFETIME- In accordance with clause (iii), the Secretary shall determine and establish a reasonable useful lifetime for items of durable medical equipment for which payment may be made under this paragraph or paragraph (3).

^ (ii) PAYMENT FOR REPLACEMENT ITEMS- If the reasonable lifetime of such an item, as so established, has been reached during a continuous period of medical need, or the carrier determines that the item is lost or irreparably damaged, the patient may elect to have payment for an item serving as a replacement for such item made--

^ (I) on a monthly basis for the rental of the replacement item in accordance with subparagraph (A); or

^ (II) in the case of an item for which a purchase agreement has been entered into under subparagraph (A) (ii) or (A)(iii), in a lump-sum amount for the purchase of the item.

^ (iii) LENGTH OF REASONABLE USEFUL LIFETIME- The reasonable useful lifetime of an item of durable medical equipment under this subparagraph shall be equal to 5 years, except that, if the Secretary determines that, on the basis of prior experience in making payments for such an item under this title, a reasonable useful lifetime of 5 years is not appropriate with respect to a particular item, the Secretary shall establish an alternative reasonable lifetime for such item.'

(3) APPLICATION OF REASONABLE USEFUL LIFETIME FOR ITEMS REQUIRING FREQUENT AND SUBSTANTIAL SERVICING- Section 1834(a)(3) (42 U.S.C. 1395m(a)(3)), as amended by subsection (b)(1), is further amended by adding at the end the following new subparagraph:

` (D) REPLACEMENT OF ITEMS- If the reasonable useful lifetime of such an item, as established under paragraph (7)(C), has been reached during a continuous period of medical need, or the Secretary determines on the basis of investigation by the carrier that the item is lost or irreparably damaged, payment for an item serving as a replacement for such item shall be made on a monthly basis for the rental of the replacement item in accordance with subparagraph (A).'

(4) TREATMENT OF POWER-DRIVEN WHEELCHAIRS AS MISCELLANEOUS ITEMS OF DURABLE MEDICAL EQUIPMENT-

(A) IN GENERAL- Section 1834(a)(2)(A) (42 U.S.C. 1395m(a)(2)(A)) is amended--

(i) in clause (i), by inserting `or' at the end;

(ii) in clause (ii), by striking `or' at the end; and

(iii) by striking clause (iii).

(B) CRITERIA FOR TREATMENT OF WHEELCHAIR AS CUSTOMIZED ITEM- (i) Section 1834(a)(4) (42 U.S.C. 1395m(a)(4)) is amended by adding at the end the following: `In the case of a wheelchair furnished on or after January 1, 1992, the wheelchair shall be treated as a customized item for purposes of this paragraph if the wheelchair has been measured, fitted, or adapted in consideration of the patient's body size, disability, period of need, or intended use, and has been assembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs that are intended for an individual patient's use in accordance with instructions from the patient's physician.'

(ii) The amendment made by clause (i) shall apply to items furnished on or after January 1, 1992, unless the Secretary develops specific criteria before that date for the treatment of wheelchairs as customized items for purposes of section 1834(a)(4) of the Social Security Act (in which case the amendment made by such clause shall not become effective).

(d) FREEZE IN REASONABLE CHARGES FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT DURING 1991- In determining the amount of payment under part B of title XVIII of the Social Security Act for enteral and parenteral nutrients, supplies, and equipment furnished during 1991, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such items for 1990.

(e) REQUIRING PRIOR APPROVAL FOR POTENTIALLY OVERUSED ITEMS- Section 1834(a) (42 U.S.C. 1395m(a)), as amended by subsection (b), is amended by adding at the end the following new paragraph:



^(15) CARRIER DETERMINATIONS OF POTENTIALLY OVERUSED ITEMS IN ADVANCE-

^(A) DEVELOPMENT OF LIST OF ITEMS BY SECRETARY- The Secretary shall develop and periodically update a list of items for which payment may be made under this subsection that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization, and shall include in such list seat-lift mechanisms, transcutaneous electrical nerve stimulators, and motorized scooters.

^(B) DETERMINATIONS OF COVERAGE IN ADVANCE- A carrier shall determine in advance whether payment for an item included on the list developed by the Secretary under subparagraph (A) may not be made because of the application of section 1862(a)(1).'

(f) PROHIBITION AGAINST DISTRIBUTION OF MEDICAL NECESSITY FORMS BY SUPPLIERS-

(1) IN GENERAL- Section 1834(a) (42 U.S.C. 1395m(a)), as amended by subsections (b) and (e), is further amended by adding at the end the following new paragraph:

^(16) PROHIBITION AGAINST DISTRIBUTION BY SUPPLIERS OF FORMS DOCUMENTING MEDICAL NECESSITY-

^(A) IN GENERAL- A supplier of a covered item under this subsection may not distribute to physicians or to individuals entitled to benefits under this part for commercial purposes any completed or partially completed forms or other documents required by the Secretary to be submitted to show that a covered item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

^(B) PENALTY- Any supplier of a covered item who knowingly and willfully distributes a form or other document in violation of subparagraph (A) is subject to a civil money penalty in an amount not to exceed \$1,000 for each such form or document so distributed. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1128A(a).'

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply to forms and documents distributed on or after January 1, 1991.

(g) RECERTIFICATION FOR CERTAIN PATIENTS RECEIVING HOME OXYGEN THERAPY SERVICES-

(1) IN GENERAL- Section 1834(a)(5) (42 U.S.C. 1395m(a)(5)) is amended-

(A) in subparagraph (A), by striking '(B) and (C)' and inserting '(B), (C), and (E)'; and

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

“(E) RECERTIFICATION FOR PATIENTS RECEIVING HOME OXYGEN THERAPY- In the case of a patient receiving home oxygen therapy services who, at the time such services are initiated, has an initial arterial blood gas value at or above a partial pressure of 55 or an arterial oxygen saturation at or above 89 percent (or such other values, pressures, or criteria as the Secretary may specify) no payment may be made under this part for such services after the expiration of the 90-day period that begins on the date the patient first receives such services unless the patient's attending physician certifies that, on the basis of a follow-up test of the patient's arterial blood gas value or arterial oxygen saturation conducted during the final 30 days of such 90-day period, there is a medical need for the patient to continue to receive such services.’.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to patients who first receive home oxygen therapy services on or after January 1, 1991.

(h) TECHNICAL CORRECTIONS- Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 4062(e) of such Act is amended--

(1) by inserting '(other than oxygen and oxygen equipment)' after 'covered items', and

(2) by inserting before the period at the end the following: 'and to oxygen and oxygen equipment furnished on or after June 1, 1989'.

(i) EFFECTIVE DATE- Except as otherwise provided, the amendments made by this section shall apply to items furnished on or after January 1, 1991.

## **SEC. 4153. PROVISIONS RELATING TO ORTHOTICS AND PROSTHETICS.**

(a) PAYMENTS FOR PROSTHETIC DEVICES AND ORTHOTICS AND PROSTHETICS-

(1) MAINTAINING CURRENT PAYMENT METHODOLOGY- Section 1834 (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

“(h) PAYMENT FOR PROSTHETIC DEVICES AND ORTHOTICS AND PROSTHETICS-

“(1) GENERAL RULE FOR PAYMENT-

- ˘ (A) IN GENERAL- Payment under this subsection for prosthetic devices and orthotics and prosthetics shall be made in a lump-sum amount for the purchase of the item in an amount equal to 80 percent of the payment basis described in subparagraph (B).
- ˘ (B) PAYMENT BASIS- Except as provided in subparagraph (C), the payment basis described in this subparagraph is the lesser of--
  - ˘ (i) the actual charge for the item; or
  - ˘ (ii) the amount recognized under paragraph (2) as the purchase price for the item.
- ˘ (C) EXCEPTION FOR CERTAIN PUBLIC HOME HEALTH AGENCIES- Subparagraph (B)(i) shall not apply to an item furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.
- ˘ (D) EXCLUSIVE PAYMENT RULE- This subsection shall constitute the exclusive provision of this title for payment for prosthetic devices, orthotics, and prosthetics under this part or under part A to a home health agency.
- ˘ (2) PURCHASE PRICE RECOGNIZED- For purposes of paragraph (1), the amount that is recognized under this paragraph as the purchase price for prosthetic devices, orthotics, and prosthetics is the amount described in subparagraph (C) of this paragraph, determined as follows:
  - ˘ (A) COMPUTATION OF LOCAL PURCHASE PRICE- Each carrier under section 1842 shall compute a base local purchase price for the item as follows:
    - ˘ (i) The carrier shall compute a base local purchase price for each item equal to the average reasonable charge in the locality for the purchase of the item for the 12-month period ending with June 1987.
    - ˘ (ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item--
      - ˘ (I) in 1989 and 1990, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 6-month period ending with December 1987, or
      - ˘ (II) in 1991, 1992 or 1993, equal to the local purchase price computed under this clause for the previous year increased by the applicable percentage increase for the year.

˘ (B) COMPUTATION OF REGIONAL PURCHASE PRICE- With respect to the furnishing of a particular item in each region (as defined by the Secretary), the Secretary shall compute a regional purchase price--

˘ (i) for 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

˘ (ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for the previous year increased by the applicable percentage increase for the year.

˘ (C) PURCHASE PRICE RECOGNIZED- For purposes of paragraph (1) and subject to subparagraph (D), the amount that is recognized under this paragraph as the purchase price for each item furnished--

˘ (i) in 1989, 1990, or 1991, is 100 percent of the local purchase price computed under subparagraph (A)(ii);

˘ (ii) in 1992, is the sum of (I) 75 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1992, and (II) 25 percent of the regional purchase price computed under subparagraph (B) for 1992;

˘ (iii) in 1993, is the sum of (I) 50 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1993, and (II) 50 percent of the regional purchase price computed under subparagraph (B) for 1993; and

˘ (iv) in 1994 or a subsequent year, is the regional purchase price computed under subparagraph (B) for that year.

˘ (D) RANGE ON AMOUNT RECOGNIZED- The amount that is recognized under subparagraph (C) as the purchase price for an item furnished--

˘ (i) in 1992, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year; and

˘ (ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year.

˘ (3) APPLICABILITY OF CERTAIN PROVISIONS RELATING TO DURABLE MEDICAL EQUIPMENT- Paragraph (12) and subparagraphs (A) and (B) of paragraph (10) and paragraph (11) of subsection (a) shall apply to prosthetic devices, orthotics, and prosthetics in the same manner as such

provisions apply to covered items under such subsection.

` (4) DEFINITIONS- In this subsection--

` (A) the term `applicable percentage increase' means--

` (i) for 1991, 0 percent, and

` (ii) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;

` (B) the term `prosthetic devices' has the meaning given such term in section 1861(s)(8), except that such term does not include parenteral and enteral nutrition nutrients, supplies, and equipment; and

` (C) the term `orthotics and prosthetics' has the meaning given such term in section 1861(s)(9), but does not include intraocular lenses or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1861(m)(5).'

(2) CONFORMING AMENDMENTS- (A) Section 1832(a)(2) (42 U.S.C. 1395k(a)(2)) is amended--

(i) in subparagraphs (A) and (B), by striking `subparagraph (G)' each place it appears and inserting `subparagraph (G) or subparagraph (I)';

(ii) by striking `and' at the end of subparagraph (G);

(iii) by striking the period at the end of subparagraph (H) and inserting `; and'; and

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

` (I) prosthetic devices and orthotics and prosthetics (described in section 1834(h)(4)) furnished by a provider of services or by others under arrangements with them made by a provider of services.'

(B) Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended--

(i) by striking `, and (L)' and inserting `, (L)'; and

(ii) by striking `subparagraph and (N)' and inserting the following: `subparagraph, (M) with respect to prosthetic devices and orthotics and prosthetics (as defined in section 1834(h)(4)), the amounts paid shall be the amounts described in section 1834(h)(1), and (N)'.'

(C) Section 1833(a) (42 U.S.C. 1395l(a)) is amended--

(i) in paragraph (2), in the matter before subparagraph (A), by striking `and (H)' and inserting `(H), and (I)';

(ii) by striking `and' at the end of paragraph (5);

(iii) by striking the period at the end of paragraph (6) and inserting `; and'; and

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

`(7) in the case of prosthetic devices and orthotics and prosthetics (as described in section 1834(h)(4)), the amounts described in section 1834(h).'

(D) Section 1834(a) (42 U.S.C. 1395m(a)), is amended--

(i) in the heading, by striking `, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS';

(ii) in paragraph (2)(A), by striking `(13)(A)' and inserting `(13)'; and

(iii) in paragraph (13), by striking `means--' and all that follows and inserting the following: `means durable medical equipment (as defined in section 1861(n)), including such equipment described in section 1861(m)(5)).

(3) EFFECTIVE DATE- The amendments made by paragraphs (1) and (2) shall apply to items furnished on or after January 1, 1991.

(b) PROVISIONS RELATING TO EYEGLASSES-

(1) PROHIBITION ON REGULATIONS- (A) Notwithstanding any other provision of law (except as provided in subparagraph (B)) the Secretary of Health and Human Services (referred to in this subsection as the `Secretary') may not issue any regulation that changes the coverage of conventional eyewear furnished to individuals (enrolled under part B of title XVIII of the Social Security Act) following cataract surgery with insertion of an intraocular lens.

(B) Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing the amendments made by paragraph (2).

(2) CLARIFYING COVERAGE OF POST-CATARACT EYEGLASSES- (A) Section 1861(s)(8) (42 U.S.C. 1395x(s)(8)) is amended by inserting after `such devices' the following `, and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens'.

(B) Section 1862(a)(7) (42 U.S.C. 1395y(a)(7)) is amended by inserting after `eyeglasses' the first place it appears the following: `(other than eyewear described in section 1861(s)(8))'.

(C) The amendments made by subparagraphs (A) and (B) shall apply to items furnished on or after January 1, 1991.

(c) GAO STUDY OF MEDICARE PAYMENTS FOR PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS-

(1) STUDY- The Comptroller General shall conduct a study of the feasibility and desirability of establishing a separate fee schedule for use in determining the amount of payments for covered items under section 1834(a) of the Social Security Act with respect to suppliers of prosthetic devices, orthotics, and prosthetics who provide professional services that would take into account the costs to such providers of providing such services.

(2) REPORT- Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit a report on the study conducted under subparagraph (A) to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and shall include in such report any recommendations regarding payments for prosthetic devices, orthotics, and prosthetics under the medicare program that the Comptroller General considers appropriate.

(d) CLARIFICATION OF COVERAGE OF OSTOMY SUPPLIES-

(1) IN GENERAL- Section 1866(a)(1)(P) (42 U.S.C. 1395cc(a)(1)(P)) is amended by striking `ostomy supplies' and inserting `catheters, catheter supplies, ostomy bags, and supplies related to ostomy care'.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation 14

Act of 1989.

14 So in original. Probably should be `Reconciliation'.

**SEC. 4154. CLINICAL DIAGNOSTIC LABORATORY TESTS.**

(a) LIMIT ON ANNUAL FEE SCHEDULE INCREASES- Section 1833(h)(2)(A)(ii) (42 U.S.C. 13951(h)(2)(A)(ii)) is amended--

(1) by striking `any other provision of this subsection' and inserting `clause (i)';

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

(3) by striking the period at the end of subclause (II) and inserting `, and'; and

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

` (III) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1991, 1992, and 1993 shall be 2 percent.'.

(b) REDUCTION IN NATIONAL CAP ON FEE SCHEDULES-

(1) IN GENERAL- Section 1833(h)(4)(B) (42 U.S.C. 1395l(h)(4)(B)) is amended--

(A) in clause (ii), by striking `and' at the end;

(B) in clause (iii)--

(i) by inserting `and before January 1, 1991,' after `1989,', and

(ii) by striking the period at the end and inserting `, and'; and

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

` (iv) after December 31, 1990, is equal to 88 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).'

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to tests furnished on or after January 1, 1991.

(c) CLARIFICATION OF MANDATORY ASSIGNMENT FOR CLINICAL DIAGNOSTIC LABORATORY TESTS PERFORMED BY PHYSICIANS-

(1) IN GENERAL- (A) Section 1833(h)(5)(C) of such Act (42 U.S.C. 1395l(h)(5)(C)) is amended by striking `test performed by a laboratory other than a rural health clinic' and inserting `test, including a test performed in a physician's office but excluding a test performed by a rural health clinic'.

(B) Section 1833(h)(5)(D) of such Act (42 U.S.C. 1395l(i)(5)(D)) is amended by striking `test performed by a laboratory, other than a rural health clinic' and inserting `test, including a test performed in a physician's office but excluding a test performed by a rural health clinic,'.

(2) EFFECTIVE DATE- The amendment made by paragraph (1)(A) shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, and the amendment made by paragraph (1)(B) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(d) AGREEMENTS WITH STATES TO DETERMINE COMPLIANCE OF CLINICAL LABORATORIES WITH PROGRAM REQUIREMENTS-

(1) IN GENERAL- Section 1864(a) (42 U.S.C. 1395aa(a)) is amended in the first sentence by striking `1861(s),' and inserting `1861(s) or (in the case of a laboratory that does not participate or seek to participate in the medicare program) the requirements of section 353 of the Public



Health Service Act,'.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall take effect as if included in the enactment of the Clinical Laboratory Improvement Amendments of 1988.

(e) TECHNICAL CORRECTIONS-

(1) Section 1833(h)(5)(A)(ii) of such Act (42 U.S.C. 1395l(h)(5)(A)(ii)) is amended--

(A) in subclause (II), by striking `a wholly-owned subsidiary of' and inserting `wholly owned by';

(B) in subclause (III), by striking `laboratory' and inserting `laboratory (but not including a laboratory described in subclause (II)),'; and

(C) in subclause (III), by striking `submits bills or requests for payment in any year' and inserting `receives requests for testing during the year in which the test is performed'.

(2) The heading of section 1846 of such Act is amended by striking `OF' and inserting `OR SUPPLIERS OF'.

(3) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 9339(b) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking paragraph (3).

(4) Section 6111(b)(2) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking `January 1, 1990' and inserting `May 1, 1990'.

(5) The amendments made by paragraphs (1)(A) 15

(1)(B), (2), and (4) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, and the amendment made by paragraph (1)(C) shall take effect January 1, 1991.

15 So in original. Probably should be `(1)(A),'.

## **SEC. 4155. COVERAGE OF NURSE PRACTITIONERS IN RURAL AREAS.**

(a) IN GENERAL- Section 1861(s)(2)(K) (42 U.S.C. 1395x(s)(2)(K)) is amended--

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

(2) by redesignating clause (iii) as clause (iv); and

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

` (iii) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1)) and which are performed by a nurse practitioner or clinical nurse specialist (as defined in subsection (aa)(3)) working in collaboration (as defined in subsection (aa)(4)) with a physician (as defined in subsection (r)(1)) in a rural area (as defined in section 1886(d)(2)(D)) which the nurse practitioner or clinical nurse specialist is authorized to perform by the State in which the services are performed, and such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service, and'.

(b) PAYMENT-

(1) DIRECT PAYMENT- Section 1832(a)(2)(B) (42 U.S.C. 1395k(a)(2)(B)) is amended--

(A) in clause (ii), by striking `and' at the end;

(B) in clause (iii), by striking the semicolon and inserting a comma; and

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

` (iv) services of a nurse practitioner or clinical nurse specialist provided in a rural area (as defined in section 1886(d)(2)(D)); and'.

(2) AMOUNT- Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) as amended by section 4153(a)(2)(B), is amended--

(A) by striking `and' at the end of subparagraph (K); and

(B) by inserting after subparagraph (L) the following new subparagraph: `(M) with respect to services described in section 1861(s)(2)(K)(iii) (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), the amounts paid shall be 80 percent of the lesser of the actual charge or the prevailing charge that would be recognized (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1848) if the services had been performed by a physician (subject to the limitation described in subsection (r)(2))'.

(3) CAP ON PREVAILING CHARGE; BILLING ONLY ON ASSIGNMENT-RELATED BASIS- Section 1833 (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

` (r)(1) With respect to services described in section 1861(s)(2)(K)(iii) (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), payment may be made on the basis of a claim or request for payment presented by the nurse practitioner or clinical nurse specialist furnishing such services, or by a hospital, rural primary care hospital, skilled nursing facility or nursing facility (as defined in section 1919(a)), physician,

group practice, ambulatory surgical center, with which the nurse practitioner or clinical nurse specialist has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, physician, group practice, ambulatory surgical center.

` (2)(A) For purposes of subsection (a)(1)(M), the prevailing charge for services described in section 1861(s)(2)(K)(iii) may not exceed the applicable percentage (as defined in subparagraph (B)) of the prevailing charge (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1848) determined for such services performed by physicians who are not specialists.

` (B) In subparagraph (A), the term `applicable percentage' means--

` (i) 75 percent in the case of services performed in a hospital, and

` (ii) 85 percent in the case of other services.

` (3)(A) Payment under this part for services described in section 1861(s)(2)(K)(iii) may be made only on an assignment-related basis, and any such assignment agreed to by a nurse practitioner or clinical nurse specialist shall be binding upon any other person presenting a claim or request for payment for such services.

` (B) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in section 1861(s)(2)(K)(iii) in violation of subparagraph (A) is subject to a civil money penalty of not to exceed \$2,000 for each such bill or request. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

` (4) No hospital or rural primary care hospital that presents a claim or request for payment under this part for services described in section 1861(s)(2)(K)(iii) may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital for purposes of this title.'

(c) CONFORMING AMENDMENT- Section 1842(b) (42 U.S.C. 1395u(b)) is amended by striking `section 1861(s)(2)(K)' each place it appears in paragraphs (6) and (12) and inserting `clauses (i), (ii), or (iv) of section 1861(s)(2)(K)'

(d) DEFINITION- Section 1861(aa)(3) (42 U.S.C. 1395x(aa)(3)) is amended by striking `The term' and all that follows through `who performs' and inserting the following: `The term `physician assistant', the term `nurse practitioner', and the term `clinical nurse specialist' mean, for purposes of this Act, a physician assistant, nurse practitioner, or clinical nurse specialist who performs'

(e) EFFECTIVE DATE- The amendments made by this section shall apply to services furnished on or after January 1, 1991.

## SEC. 4156. COVERAGE OF INJECTABLE DRUGS FOR TREATMENT OF OSTEOPOROSIS.

(a) IN GENERAL- Section 1861 (42 U.S.C. 1395x) is amended--

(1) in subsection (s)(2)--

(A) by striking `and' at the end of subparagraph (M),

(B) by inserting `and' at the end of subparagraph (N), and

(C) by inserting after subparagraph (N) the following new subparagraph:

`(O) a covered osteoporosis drug and its administration (as defined in subsection (jj)) furnished on or after January 1, 1991, and on or before December 31, 1995; and'; and

(2) by inserting after subsection (ii) the following new subsection:

### `Covered Osteoporosis Drug

`(jj) The term `covered osteoporosis drug' means an injectable drug approved for the treatment of a bone fracture related to post-menopausal osteoporosis provided to an individual if, in accordance with regulations promulgated by the Secretary--

`(1) the individual's attending physician certifies that the patient is unable to learn the skills needed to self-administer such drug or is otherwise physically or mentally incapable of self-administering such drug; and

`(2) the individual is confined to the individual's home (except when receiving items and services referred to in subsection (m)(7)).'.

(b) STUDY OF EFFECTS OF COVERAGE-

(1) IN GENERAL- The Secretary of Health and Human Services shall conduct a study analyzing the effects of coverage of osteoporosis drugs under part B of title XVIII of the Social Security Act (as amended by subsection (a)) on the health of individuals enrolled under such part and the utilization of inpatient hospital and extended care services by such individuals.

(2) REPORT- By not later than October 1, 1994, the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in such report such recommendations regarding expansion of coverage under the medicare program of items and services for individuals with post-menopausal osteoporosis as the Secretary considers appropriate.

SEC. 4157. SEPARATE PAYMENT UNDER PART B FOR SERVICES OF CERTAIN HEALTH PRACTITIONERS.

(a) SERVICES OF CERTAIN HEALTH PRACTITIONERS NOT TO BE INCLUDED IN INPATIENT HOSPITAL SERVICES- Section 1861(b) (42 U.S.C. 1395x(b)) is amended--

(1) in paragraph (3), by striking ` (including clinical psychologist (as defined by the Secretary))', and

(2) in paragraph (4), by striking everything after `intern' and inserting ` , services described by subsection (s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist; and'.

(b) TREATMENT OF SERVICES FURNISHED IN INPATIENT SETTING- Section 1832(a)(2)(B)(iii) (42 U.S.C. 1395k(a)(2)(B)(iii)) is amended to read as follows:

` (iii) services described by section 1861(s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist; '.

(c) CONFORMING AMENDMENTS-

(1) Section 1862(a)(14) (42 U.S.C. 1395y) is amended--

(A) by striking `or are services of a certified registered nurse anesthetist', and

(B) by inserting after `this paragraph)' a comma and the following: `services described by section 1861(s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist,'.

(2) The matter in section 1866(a)(1)(H) (42 U.S.C. 1395x(a)(1)(H)) preceding clause (i) is amended by inserting after `and other than' the following: `services described by section 1861(s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and'.

(d) EFFECTIVE DATE- The amendments made by the preceding subsections apply to services furnished on or after January 1, 1991.

SEC. 4158. REDUCTION IN PAYMENTS UNDER PART B DURING FINAL 2 MONTHS OF 1990.

(a) IN GENERAL- Notwithstanding any other provision of law (including any other provision of this Act, other than subsection (b)(4)), payments under part B of title XVIII of the Social Security Act for items and services furnished during the period beginning on November 1, 1990, and ending on December 31, 1990, shall be reduced by 2 percent, in accordance with subsection (b).

**(b) SPECIAL RULES FOR APPLICATION OF REDUCTION-**

(1) PAYMENT ON THE BASIS OF COST REPORTING PERIODS- In the case in which payment for services of a provider of services is made under part B of such title on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, the reduction made under subsection (a) shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the period described in such subsection, but only in the same proportion as the fraction of the cost reporting period that occurs during such period.

(2) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES- If a reduction in payment amounts is made under subsection (a) for items or services for which payment under part B of such title is made on an assignment-related basis (as defined in section 1842(i)(1) of the Social Security Act), the person furnishing the items or services shall be considered to have accepted payment of the reasonable charge for the items or services, less any reduction in payment amount made under subsection (a), as payment in full.

(3) TREATMENT OF PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS- Subsection (a) shall not apply to payments under risk-sharing contracts under section 1876 of the Social Security Act or under similar contracts under section 402 of the Social Security Amendments of 1967 or section 222 of the Social Security Amendments of 1972.

**SEC. 4159. PAYMENTS FOR MEDICAL EDUCATION COSTS.****(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT-**

(1) IN GENERAL- The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part B of title XVIII of the Social Security Act due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h).

(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT- With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

(3) EFFECTIVE DATE- Paragraphs (1) and (2) shall take effect October 1, 1990.

**(b) UNIVERSITY HOSPITAL NURSING EDUCATION-**

(1) IN GENERAL- The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by

the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part B of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

(2) CONDITIONS FOR REIMBURSEMENT- The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if--

(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to clinical training costs during the cost reporting period described in subparagraph (A);

(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such program; and

(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY-

(A) IN GENERAL- The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part B of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act).

(B) REFUND OF AMOUNTS RECOUPED- If, prior to the date of the enactment of this Act, the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part B of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

(4) SPECIAL AUDIT TO DETERMINE COSTS- In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes

of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

(5) EFFECTIVE DATE- Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.

## **SEC. 4160. CERTIFIED REGISTERED NURSE ANESTHETISTS.**

Section 1833(l) (42 U.S.C. 1395l) is amended--

(1) in paragraph (1)--

(A) by inserting '(A)' after '(1)'; and

(B) by adding at the end the following:

(B) In establishing the fee schedule under this paragraph the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology.

(C) The provisions of this subsection shall not apply to certain services furnished in certain hospitals in rural areas under the provisions of section 9320(k) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6132 of the Omnibus Budget Reconciliation Act of 1989.;

(2) by striking the second sentence of paragraph (2); and

(3) by striking paragraph (4) and inserting the following:

(4)(A) Except as provided in subparagraphs (C) and (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, by a certified registered nurse anesthetist who is not medically directed--

(i) the conversion factor shall be--

(I) for services furnished in 1991, \$15.50,

(II) for services furnished in 1992, \$15.75,

(III) for services furnished in 1993, \$16.00,

(IV) for services furnished in 1994, \$16.25,

(V) for services furnished in 1995, \$16.50,

(VI) for services furnished in 1996, \$16.75, and

(VII) for services furnished in calendar years after 1996, the previous year's conversion factor increased by the update



determined under section 1848(d)(3) for physician anesthesia services for that year;

` (ii) the payment areas to be used shall be the fee schedule areas used under section 1848 (or, in the case of services furnished during 1991, the localities used under section 1842(b)) for purposes of computing payments for physicians' services that are anesthesia services;

` (iii) the geographic adjustment factors to be applied to the conversion factor under clause (i) for services in a fee schedule area or locality is--

` (I) in the case of services furnished in 1991, the geographic work index value and the geographic practice cost index value specified in section 1842(q)(1)(B) for physicians' services that are anesthesia services furnished in the area or locality, and

` (II) in the case of services furnished after 1991, the geographic work index value, the geographic practice cost index value, and the geographic malpractice index value used for determining payments for physicians' services that are anesthesia services under section 1848,

with 70 percent of the conversion factor treated as attributable to work and 30 percent as attributable to overhead for services furnished in 1991 (and the portions attributable to work, practice expenses, and malpractice expenses in 1992 and thereafter being the same as is applied under section 1848).

` (B)(i) Except as provided in clause (ii) and subparagraph (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, by a certified registered nurse anesthetist who is medically directed, the Secretary shall apply the same methodology specified in subparagraph (A).

` (ii) The conversion factor used under clause (i) shall be--

` (I) for services furnished in 1991, \$10.50,

` (II) for services furnished in 1992, \$10.75,

` (III) for services furnished in 1993, \$11.00,

` (IV) for services furnished in 1994, \$11.25,

` (V) for services furnished in 1995, \$11.50,

` (VI) for services furnished in 1996, \$11.70, and

` (VII) for services furnished in calendar years after 1997, the previous year's conversion factor increased by the update determined under section 1848(d)(3) for physician anesthesia services for that year.

- ^ (C) Notwithstanding subclauses (I) through (V) of subparagraph (A)(i)--
  - ^ (i) in the case of a 1990 conversion factor that is greater than \$16.50, the conversion factor for a calendar year after 1990 and before 1996 shall be the 1990 conversion factor reduced by the product of the last digit of the calendar year and one-fifth of the amount by which the 1990 conversion factor exceeds \$16.50; and
  - ^ (ii) in the case of a 1990 conversion factor that is greater than \$15.49 but less than \$16.51, the conversion factor for a calendar year after 1990 and before 1996 shall be the greater of--
    - ^ (I) the 1990 conversion factor, or
    - ^ (II) the conversion factor specified in subparagraph (A)(i) for the year involved.
- ^ (D) Notwithstanding subparagraph (C), in no case may the conversion factor used to determine payment for services in a fee schedule area or locality under this subsection, as adjusted by the adjustment factors specified in subparagraphs (A)(iii), exceed the conversion factor used to determine the amount paid for physicians' services that are anesthesia services in the area or locality.'

## **SEC. 4161. COMMUNITY HEALTH CENTERS AND RURAL HEALTH CLINICS.**

### **(a) COMMUNITY HEALTH CENTERS-**

- (1) **COVERAGE-** Section 1861(s)(2)(E) of the Social Security Act (42 U.S.C. 1395x(s)(2)(E)) is amended by inserting `and Federally qualified health center services' after `rural health clinic services'.
- (2) **SERVICES DEFINED-** Section 1861(aa) of such Act is amended--
  - (A) in the heading, by adding at the end the following: `and Federally Qualified Health Center Services',
  - (B) in paragraph (3), by striking `paragraphs (1) and (2)' and inserting `the previous provisions of this subsection' and by redesignating such paragraph and paragraph (4) as paragraph (5) and (6), respectively, and
  - (C) by inserting after paragraph (2) the following new paragraphs:
    - ^ (3) The term `Federally qualified health center services' means--
      - ^ (A) services of the type described in subparagraphs (A) through (C) of paragraph (1), and
      - ^ (B) preventive primary health services that a center is required to provide under sections 329, 330, and 340 of the Public Health Service

Act,

when furnished to an individual as an outpatient of a Federally qualified health center and, for this purpose, any reference to a rural health clinic or a physician described in paragraph (2)(B) is deemed a reference to a Federally qualified health center or a physician at the center, respectively.

(4) The term 'Federally qualified health center' means an entity which--

(A)(i) is receiving a grant under section 329, 330, or 340 of the Public Health Service Act, or

(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and (II) meets the requirements to receive a grant under section 329, 330, or 340 of such Act;

(B) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant; or

(C) was treated by the Secretary, for purposes of part B, as a comprehensive Federally funded health center as of January 1, 1990.'

### (3) PAYMENTS-

(A) IN GENERAL- Section 1832(a)(2)(D) of such Act (42 U.S.C. 1395k(a)(2)(D)) is amended by inserting '(i)' after '(D)' and by inserting 'and (ii) Federally qualified health center services' after 'rural health clinic services'.

(B) DEDUCTIBLE DOES NOT APPLY- The first sentence of section 1833(b) of such Act (42 U.S.C. 1395l(b)) is amended--

(i) by striking 'and' before '(4)',

(ii) by inserting before the period at the end the following: ', and (5) such deductible shall not apply to Federally qualified health center services'.

(C) EXCLUSION FROM PAYMENT REMOVED- Section 1862(a) of such Act (42 U.S.C. 1395y(a)) is amended--

(i) in paragraph (2), by inserting ', except in the case of Federally qualified health center services' before the semicolon at the end, and

(ii) in paragraph (3), by inserting ', in the case of Federally qualified health center services, as defined in section 1861(aa)(3),' after '1861(aa)(1),', and

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

Paragraph (7) shall not apply to Federally qualified health center services described in section 1861(aa)(3)(B).'

(4) WAIVER OF ANTI-KICKBACK REQUIREMENT- Section 1128B(b)(3) of such Act (42 U.S.C. 1320a-7b(b)(3)) is amended--

(A) by striking 'and' at the end of subparagraph (C),

(B) by redesignating subparagraph (D) as subparagraph (E), and

(C) by inserting after subparagraph (C) the following new subparagraph:

(D) a waiver of any coinsurance under part B of title XVIII by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act; and'

(5) CONFORMING AMENDMENTS- Section 1861 of such Act (42 U.S.C. 1395x) is further amended--

(A) in subsections (s)(2)(H)(i) and (s)(2)(K), by striking 'subsection (aa)(3)' and 'subsection (aa)(4)' each place either appears inserting 'subsection (aa)(5)' and 'subsection (aa)(6)', respectively, and

(B) in subsection (aa)(1)(B), by striking 'paragraph (3)' and inserting 'paragraph (5)'

(6) PRRB REVIEW OF COST REPORTS FOR FEDERALLY QUALIFIED HEALTH CENTERS- Section 1878 of the Social Security Act (42 U.S.C. 1395oo) is amended by adding at the end the following new subsection:

(j) In this section, the term 'provider of services' includes a Federally qualified health center.'

(7) GAO study of hospital staff privileges for physicians practicing in community health centers-

(A) STUDY- The Comptroller General shall conduct a study of whether physicians practicing in community and migrant health centers are able to obtain admitting privileges at local hospitals. The study shall review--

(i) how many physicians practicing in such centers are without hospital admitting privileges or have been denied admitting privileges at a local hospital, and

(i)(I) the criteria hospitals use in deciding whether to grant admitting privileges and (II) whether such criteria act as significant barriers to health center physicians obtaining hospital privileges.

(B) REPORT- By not later than 18 months after the date of the enactment of this Act, the Comptroller General shall submit a report on the study under subparagraph (A) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and shall include in such report such recommendations as the Comptroller General deems appropriate.

(8) EFFECTIVE DATE- (A) Subject to subparagraphs (B) and (C), the amendments made by this section shall apply to services furnished on or after October 1, 1991.

(B) In the case of a Federally qualified health care center that has elected, as of January 1, 1990, under part B of title XVIII of the Social Security Act, to have the amount of payments for services under such part determined on a reasonable-charge basis, the amendment made by paragraph (3)(A) shall only apply on and after such date (not earlier than October 1, 1991) as the center may elect.

(C) The amendment made by paragraph (6) shall apply to cost reports for periods beginning on or after October 1, 1991.

(b) RURAL HEALTH CLINIC SERVICES-

(1) EXPEDITED CERTIFICATION- Section 1861(aa)(2) of the Social Security Act (42 U.S.C. 1395x(aa)(2)) is amended by adding at the end the following: ` If a State agency has determined under section 1864(a) that a facility is a rural health clinic and the facility has applied to the Secretary for certification as such a clinic, the Secretary shall notify the facility of the the Secretary's approval or disapproval of the certification not later than 60 days after the date of the State agency determination or the application (whichever is later).`.

(2) TEMPORARY WAIVER OF STAFFING REQUIREMENTS- Section 1861(aa) of such Act, as amended by subsection (a), is further amended by adding at the end the following new paragraph:

` (7)(A) The Secretary shall waive for a 1-year period the requirements of paragraph (2) that a rural health clinic employ a physician assistant, nurse practitioner or certified nurse midwife or that such clinic require such providers to furnish services at least 50 percent of the time that the clinic operates for any facility that requests such waiver if the facility demonstrates that the facility has been unable, despite reasonable efforts, to hire a physician assistant, nurse practitioner, or certified nurse-midwife in the previous 90-day period.

` (B) The Secretary may not grant such a waiver under subparagraph (A) to a facility if the request for the waiver is made less than 6 months after the date of the expiration of any previous such waiver for the facility.

` (C) A waiver which is requested under this paragraph shall be deemed granted unless such request is denied by the Secretary within 60 days after the date such request is received.`.

(3) PRODUCTIVITY SCREENS- In employing any screening guideline in determining the productivity of physicians, physician assistants, nurse practitioners, and certified nurse-midwives in a rural health clinic, the Secretary of Health and Human Services shall provide that the guideline shall take into account the combined services of such staff (and not merely the service within each class of practitioner).

(4) PRRB REVIEW OF COST REPORTS FOR RURAL HEALTH CENTERS- Section 1878(j) of the Social Security Act (42 U.S.C. 1395oo(j)), as added by subsection (a)(6), is amended by inserting `a rural health clinic and' after `includes'.

(5) EFFECTIVE DATE- This subsection shall take effect on October 1, 1991, except that the amendment made by paragraph (4) shall apply to cost reports for periods beginning on or after October 1, 1991.

#### SEC. 4162. PARTIAL HOSPITALIZATION IN COMMUNITY MENTAL HEALTH CENTERS.

(a) IN GENERAL- Section 1861(ff)(3) of the Social Security Act (42 U.S.C. 1395x(ff)(3)) is amended--

(1) by striking `(3)' and inserting `(3)(A)';

(2) by striking `outpatients' and inserting `outpatients or by a community mental health center (as defined in subparagraph (B)),'; and

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

`(B) For purposes of subparagraph (A), the term `community mental health center' means an entity--

`(i) providing the services described in section 1916(c)(4) of the Public Health Service Act; and

`(ii) meeting applicable licensing or certification requirements for community mental health centers in the State in which it is located.'.

(b) CONFORMING AMENDMENTS- (1) Section 1832(a)(2) of such Act (42 U.S.C. 1395k(a)(2)) as amended by section 4153(a)(2)(A), is amended--

(A) by striking `and' at the end of subparagraph (H);

(B) by striking the period at the end of subparagraph (I) and inserting `; and'; and

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

`(J) partial hospitalization services provided by a community mental health center (as described in section 1861(ff)(2)(B)).'.

(2) Section 1866(e) of such Act (42 U.S.C. 1395cc(e)) 16

is amended by striking `include a clinic' and all that follows through the period and inserting the following: `include--

16 So in original. Probably should be `(e))'.

`(1) a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1861(p)(4)(A) (or meets the requirements of such section through the operation of section 1861(g)), or if, in the case of a public health agency, such agency meets the requirements of section 1861(p)(4)(B) (or meets the requirements of such section through the operation of section 1861(g)), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1861(g)) with respect to the furnishing of outpatient occupational therapy services; and

`(2) a community mental health center (as defined in section 1861(ff)(3)(B)), but only with respect to the furnishing of partial hospitalization services (as described in section 1861(ff)(1)).'.

(c) EFFECTIVE DATE- The amendments made by subsections (a) and (b) shall apply with respect to partial hospitalization services provided on or after October 1, 1991.

## **SEC. 4163. COVERAGE OF SCREENING MAMMOGRAPHY.**

(a) IN GENERAL- Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended--

(1) in subsection (s)--

(A) in paragraph (11), by striking all that follows `(bb))' and inserting a semicolon,

(B) in paragraph (12)(C), by striking all that follows `area)' and inserting `; and', and

(C) by inserting after paragraph (12) the following new paragraph:

`(13) screening mammography (as defined in subsection (jj));'; and

(2) by inserting after subsection (ii) the following new subsection:

` Screening Mammography

`(jj) The term `screening mammography' means a radiologic procedure provided to a woman for the purpose of early detection of breast cancer and includes a physician's interpretation of the results of the procedure.'

(b) PAYMENT AND COVERAGE- Section 1834 of such Act (42 U.S.C. 1395m) is amended--

(1) in subsection (b)(1)(B), by inserting `and subject to subsection (c)(1)(A)' after `conversion factors', and

(2) by inserting after subsection (b) the following new subsection:

`(c) PAYMENTS AND STANDARDS FOR SCREENING MAMMOGRAPHY-

`(1) IN GENERAL- Notwithstanding any other provision of this part, with respect to expenses incurred for screening mammography (as defined in section 1861(jj))--

`(A) payment may be made only for screening mammography conducted consistent with the frequency permitted under paragraph (2);

`(B) payment may be made only if the screening mammography meets the quality standards established under paragraph (3); and

`(C) the amount of the payment under this part shall, subject to the deductible established under section 1833(b), be equal to 80 percent of the least of--

`(i) the actual charge for the screening,

`(ii) the fee schedule established under subsection (b) or the fee schedule established under section 1848, whichever is applicable, with respect to both the professional and technical components of the screening mammography, or

`(iii) the limit established under paragraph (4) for the screening mammography.

`(2) FREQUENCY COVERED-

`(A) IN GENERAL- Subject to revision by the Secretary under subparagraph (B)--

`(i) No payment may be made under this part for screening mammography performed on a woman under 35 years of age.

`(ii) Payment may be made under this part for only 1 screening mammography performed on a woman over 34 years of age, but under 40 years of age.

`(iii) In the case of a woman over 39 years of age, but under 50 years of age, who--

`(I) is at a high risk of developing breast cancer (as determined pursuant to factors identified by the Secretary), payment may not be made under this part for a screening mammography performed within the 11 months following the month in which a previous screening



mammography was performed, or

` (II) is not at a high risk of developing breast cancer, payment may not be made under this part for a screening mammography performed within the 23 months following the month in which a previous screening mammography was performed.

` (iv) In the case of a woman over 49 years of age, but under 65 years of age, payment may not be made under this part for screening mammography performed within 11 months following the month in which a previous screening mammography was performed.

` (v) In the case of a woman over 64 years of age, payment may not be made for screening mammography performed within 23 months following the month in which a previous screening mammography was performed.

` (B) REVISION OF FREQUENCY-

` (i) REVIEW- The Secretary, in consultation with the Director of the National Cancer Institute, shall review periodically the appropriate frequency for performing screening mammography, based on age and such other factors as the Secretary believes to be pertinent.

` (ii) REVISION OF FREQUENCY- The Secretary, taking into consideration the review made under clause (i), may revise from time to time the frequency with which screening mammography may be paid for under this subsection, but no such revision shall apply to screening mammography performed before January 1, 1992.

` (3) QUALITY STANDARDS- The Secretary shall establish standards to assure the safety and accuracy of screening mammography performed under this part. Such standards shall include the requirements that--

` (A) the equipment used to perform the mammography must be specifically designed for mammography and must meet radiologic standards established by the Secretary for mammography;

` (B) the mammography must be performed by an individual who--

` (i) is licensed by a State to perform radiological procedures, or

` (ii) is certified as qualified to perform radiological procedures by such an appropriate organization as the Secretary specifies in regulations;

` (C) the results of the mammography must be interpreted by a physician--

˘ (i) who is certified as qualified to interpret radiological procedures by such an appropriate board as the Secretary specifies in regulations, or

˘ (ii) who is certified as qualified to interpret screening mammography procedures by such a program as the Secretary recognizes in regulation as assuring the qualifications of the individual with respect to such interpretation; and

˘ (D) with respect to the first screening mammography performed on a woman for which payment is made under this part, there are satisfactory assurances that the results of the mammography will be placed in permanent medical records maintained with respect to the woman.

˘ (4) LIMIT-

˘ (A) \$55, INDEXED- Except as provided by the Secretary under subparagraph (B), the limit established under this paragraph--

˘ (i) for screening mammography performed in 1991, is \$55, and

˘ (ii) for screening mammography performed in a subsequent year is the limit established under this paragraph for the preceding year increased by the percentage increase in the MEI for that subsequent year.

˘ (B) REDUCTION OF LIMIT- The Secretary shall review from time to time the appropriateness of the amount of the limit established under this paragraph. The Secretary may, with respect to screening mammography performed in a year after 1992, reduce the amount of such limit as it applies nationally or in any area to the amount that the Secretary estimates is required to assure that screening mammography of an appropriate quality is readily and conveniently available during the year.

˘ (C) APPLICATION OF LIMIT IN HOSPITAL OUTPATIENT SETTING- The Secretary shall provide for an appropriate allocation of the limit established under this paragraph between professional and technical components in the case of hospital outpatient screening mammography (and comparable situations) where there is a claim for professional services separate from the claim for the radiologic procedure.

˘ (5) LIMITING CHARGES OF NONPARTICIPATING PHYSICIANS-

˘ (A) IN GENERAL- In the case of mammography screening performed on or after January 1, 1991, for which payment is made under this subsection, if a nonparticipating physician or supplier provides the screening to an individual entitled to benefits under this part, the physician or supplier may not charge the individual more than the

limiting charge (as defined in subparagraph (B), or if less, as defined in subsection (b)(5)(B) or as defined in section 1848(g)(2)).

␣ (B) LIMITING CHARGE DEFINED- In subparagraph (A), the term ␣ limiting charge' means, with respect to screening mammography performed--

␣ (i) in 1991, 125 percent of the limit established under paragraph (4),

␣ (ii) in 1992, 120 percent of the limit established under paragraph (4), or

␣ (iii) after 1992, 115 percent of the limit established under paragraph (4).

␣ (C) ENFORCEMENT- If a physician or supplier knowing and willfully imposes a charge in violation of subparagraph (A), the Secretary may apply sanctions against such physician or supplier in accordance with section 1842(j)(2).'

#### (c) CERTIFICATION OF SCREENING MAMMOGRAPHY QUALITY STANDARDS-

(1) Section 1863 of such Act (42 U.S.C. 1395z) is amended by inserting ␣ or whether screening mammography meets the standards established under section 1834(c)(3),' after ␣ 1832(a)(2)(F)(i).'

(2) The first sentence of section 1864(a) of such Act (42 U.S.C. 1395aa(a)) is amended by inserting before the period the following: ␣ , or whether screening mammography meets the standards established under section 1834(c)(3)'.

(3) Section 1865(a) of such Act (42 U.S.C. 1395bb(a)) is amended by inserting ␣ 1834(c)(3),' after ␣ 1832(a)(2)(F)(i).'

#### (d) CONFORMING AMENDMENTS-

(1) Section 1833(a)(2)(E) of such Act (42 U.S.C. 1395l(a)(2)(E)) is amended by inserting ␣ , but excluding screening mammography' after ␣ imaging services'.

(2) Section 1862(a) of such Act (42 U.S.C. 1395y(a)) is amended--

(A) in paragraph (1)--

(i) in subparagraph (A), by striking ␣ subparagraph (B), (C), (D), or (E)' and inserting ␣ a succeeding subparagraph',

(ii) in subparagraph (D), by striking ␣ and' at the end,

(iii) in subparagraph (E), by striking the semicolon at the end and inserting ␣ , and', and

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

(F) in the case of screening mammography, which is performed more frequently than is covered under section 1834(c)(2) or which does not meet the standards established under section 1834(c)(3), and, in the case of screening pap smear, which is performed more frequently than is provided under section 1861(nn); and

(B) in paragraph (7), by inserting 'or under paragraph (1)(F)' after '(1)(B)';

(e) EFFECTIVE DATE- The amendments made by this section shall apply to screening mammography performed on or after January 1, 1991.

#### SEC. 4164. MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PART B.

##### (a) EXTENSION OF DEMONSTRATIONS-

(1) PREVENTION DEMONSTRATIONS- Section 9314 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 9344 of the Omnibus Budget Reconciliation Act of 1986, is amended--

(A) in subsection (a), by striking '4-year' and inserting '5-year';

(B) in subsection (e)(2), by striking 'Not later than five years after the date of the enactment of this Act, the Secretary shall submit a final report' and inserting 'Not later than April 1, 1993, the Secretary shall submit an interim report';

(C) in subsection (e), by adding at the end the following new paragraph:

(3) Not later than April 1, 1995, the Secretary shall submit a final report to those Committees on the demonstration program and shall include in the report a comprehensive evaluation of the long-term effects of the program.'

17

17 So in original. Probably should be 'program.';'

(D) in subsection (f), by striking '\$5,900,000' and inserting '\$7,500,000'; and

(E) in subsection (f), by inserting before the period at the end the following: 'and shall not exceed \$3,000,000 for the comprehensive evaluation referred to in subsection (e)(3)';

(2) ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS- Section 9342 of the Omnibus Budget Reconciliation Act of 1986 is amended--

(A) in subsection (c)(1), by striking '3 years' and inserting '4 years';

(B) in subsection (d)(1), by striking `third year' and inserting `fourth year';

(C) in subsection (f)--

(i) by striking `\$40,000,000' and inserting `\$55,000,000', and

(ii) by striking `\$2,000,000' and inserting `\$3,000,000'.

(b) DISCLOSURE OF OWNERSHIP-

(1) IN GENERAL- Title XI of the Social Security Act is amended by inserting after section 1124 the following new section:

## **DISCLOSURE REQUIREMENTS FOR OTHER PROVIDERS UNDER PART B OF MEDICARE**

SEC. 1124A. (a) DISCLOSURE REQUIRED TO RECEIVE PAYMENT- No payment may be made under part B of title XVIII for items or services furnished by any disclosing part B provider unless such provider has provided the Secretary with full and complete information--

(1) on the identity of each person with an ownership or control interest in the provider or in any subcontractor (as defined by the Secretary in regulations) in which the provider directly or indirectly has a 5 percent or more ownership interest; and

(2) with respect to any person identified under paragraph (1) or any managing employee of the provider--

(A) on the identity of any other entities providing items or services for which payment may be made under title XVIII of the Social Security Act with respect to which such person or managing employee is a person with an ownership or control interest at the time such information is supplied or at any time during the 3-year period ending on the date such information is supplied, and

(B) as to whether any penalties, assessments, or exclusions have been assessed against such person or managing employee under section 1128, 1128A, or 1128B.

(b) UPDATES TO INFORMATION SUPPLIED- A disclosing part B provider shall notify the Secretary of any changes or updates to the information supplied under subsection (a) not later than 180 days after such changes or updates take effect.

(c) DEFINITIONS- For purposes of this section--

(1) the term `disclosing part B provider' means any entity receiving payment on an assignment-related basis for furnishing items or services for which payment may be made under part B of title XVIII, except that

such term does not include an entity described in section 1124(a)(2);

(2) the term 'managing employee' means, with respect to a provider, a person described in section 1126(b); and

(3) the term 'person with an ownership or control interest' means, with respect to a provider--

(A) a person described in section 1124(a)(3), or

(B) a person who has one of the 5 largest direct or indirect ownership or control interests in the provider.'

(2) CRIMINAL PENALTY FOR PROVIDING FALSE INFORMATION- Section 1128B(c) of such Act (42 U.S.C. 1320a-7b(c)) is amended by striking 'health care program' and inserting 'health care program, or with respect to information required to be provided under section 1124A,'.

(3) FAILURE TO PROVIDE INFORMATION AS GROUNDS FOR PERMISSIVE EXCLUSION FROM PROGRAM- Section 1128(b)(9) of such Act (42 U.S.C. 1320a-7(b)(9)) is amended by striking '1124' and inserting '1124, section 1124A,'.

(4) EFFECTIVE DATE- The amendments made by paragraph (1), (2), and (3) shall apply with respect to items or services furnished on or after--

(A) January 1, 1993, in the case of items or services furnished by a provider who, on or before the date of the enactment of this Act, has furnished items or services for which payment may be made under part B of title XVIII of the Social Security Act; or

(B) January 1, 1992, in the case of items or services furnished by any other provider.

(c) DIRECTORY OF UNIQUE PHYSICIAN IDENTIFIER NUMBERS- Not later than March 31, 1991, the Secretary of Health and Human Services shall publish a directory of the unique physician identification numbers of all physicians providing services for which payment may be made under part B of title XVIII of the Social Security Act, and shall include in such directory the names, provider numbers, and billing addresses of all listed physicians.

## ***PART 3--PROVISIONS RELATING TO PARTS A AND B***

### **SEC. 4201. PROVISIONS RELATING TO END STAGE RENAL DISEASE.**

(a) INCREASE IN COMPOSITE RATES- Section 9335(a)(1) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6203(a)(1) of the Omnibus Budget Reconciliation Act of 1989, is amended--

(1) by striking `October 1, 1990,' and inserting `December 31, 1990,'; and

(2) by inserting after the first sentence the following: `With respect to services furnished on or after January 1, 1991, such base rate shall be equal to the respective rate in effect as of September 30, 1990 (determined without regard to any reductions imposed pursuant to section 6201 of the Omnibus Budget Reconciliation Act of 1989), increased by \$1.00.'.

(b) PROPAC STUDY ON ESRD COMPOSITE RATES-

(1) IN GENERAL-

(A) STUDY- The Prospective Payment Assessment Commission (in this subsection referred to as the `Commission') shall conduct a study to determine the costs and services and profits associated with various modalities of dialysis treatments provided to end stage renal disease patients provided under title XVIII of the Social Security Act.

(B) RECOMMENDATIONS- Based on information collected for the study described in subparagraph (A), the Commission shall make recommendations to Congress regarding the method or methods and the levels at which the payments made for the facility component of dialysis services by providers of service and renal dialysis facilities under title XVIII of the Social Security Act should be established for dialysis services furnished during fiscal year 1993 and the methodology to be used to update such payments for subsequent fiscal years. In making recommendations concerning the appropriate methodology the Commission shall consider--

- (i) hemodialysis and other modalities of treatment,
- (ii) the appropriate services to be included in such payments,
- (iii) the adjustment factors to be incorporated including facility characteristics, such as hospital versus free-standing facilities, urban versus rural, size and mix of services,
- (iv) adjustments for labor and nonlabor costs,
- (v) comparative profit margins for all types of renal dialysis providers of service and renal dialysis facilities,
- (vi) adjustments for patient complexity, such as age, diagnosis, case mix, and pediatric services, and
- (vii) efficient costs related to high quality of care and positive outcomes for all treatment modalities.

(2) REPORT- Not later than June 1, 1992, the Commission shall submit a report to the Committee on Finance of the Senate, and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on the study conducted under paragraph (1)(A) and shall include in the report the recommendations described in paragraph (1)(B), taking into account the factors described in paragraph (1)(B).

(3) ANNUAL REPORT- The Commission, not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1993) shall report its recommendations to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on an appropriate change factor which should be used for updating payments for services rendered in that fiscal year. The Commission in making such report to Congress shall consider conclusions and recommendations available from the Institute of Medicine.

(c) PAYMENT RATES FOR ERYTHROPOIETIN-

(1) IN GENERAL- Section 1881(b)(11) of the Social Security Act (42 U.S.C. 1395rr(b)) is amended--

(A) by striking `(11)' and inserting `(11)(A)'; and

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

(B) Erythropoietin, when provided to a patient determined to have end stage renal disease, shall not be included as a dialysis service for purposes of payment under any prospective payment amount or comprehensive fee established under this section, and payment for such item shall be made separately--

(i) in the case of erythropoietin provided by a physician, in accordance with section 1833; and

(ii) in the case of erythropoietin provided by a provider of services, renal dialysis facility, or other supplier of home dialysis supplies and equipment--

(I) for erythropoietin provided during 1991, in an amount equal to \$11 per thousand units (rounded to the nearest 100 units), and

(II) for erythropoietin provided during a subsequent year, in an amount determined to be appropriate by the Secretary, except that such amount may not exceed the amount determined under this clause for the previous year increased by the percentage increase (if any) in the implicit price deflator for gross national product (as published by the Department of Commerce) for the second quarter of the preceding year over the implicit price deflator for the second quarter of the second preceding year.'

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply



to erythropoietin furnished on or after January 1, 1991.

(d) SELF-ADMINISTERED ERYTHROPOIETIN-

(1) COVERAGE- Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)) as amended by section 4156(a)(1), is amended--

(A) by striking `and' at the end of subparagraph (N);

(B) by adding `and' at the end of subparagraph (O); and

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

`(P) erythropoietin for home dialysis patients competent to use such drug without medical or other supervision with respect to the administration of such drug, subject to methods and standards established by the Secretary by regulation for the safe and effective use of such drug, and items related to the administration of such drug; '.

(2) COVERAGE FOR METHOD II PATIENTS- Section 1881(b) (42 U.S.C. 1395rr(b)) is further amended--

(A) in paragraph (1)--

(B) by striking `and (B)' and inserting `(B), 18

and

18 So in original. Probably should be `(B)', '.

(C) by striking `equipment.' and inserting `equipment, and (C) payments to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for self-administered erythropoietin as described in section 1861(s)(2)(Q) if the Secretary finds that the patient receiving such drug from such a supplier can safely and effectively administer the drug (in accordance with the applicable methods and standards established by the Secretary pursuant to such section).'; and

(3) by adding at the end of paragraph (11), as amended by subsection (c), the following new subparagraph:

`(C) The amount payable to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for erythropoietin shall be determined in the same manner as the amount payable to a renal dialysis facility for such item.'.

(3) EFFECTIVE DATE- The amendments made by paragraphs (1) and (2) shall apply to items and services furnished on or after July 1, 1991.

SEC. 4202. STAFF-ASSISTED HOME DIALYSIS DEMONSTRATION PROJECT.

## (a) ESTABLISHMENT-

(1) IN GENERAL- Not later than 9 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall establish and carry out a 3-year demonstration project to determine whether the services of a home dialysis staff assistant providing services to a patient during hemodialysis treatment at the patient's home may be covered under the medicare program in a cost-effective manner that ensures patient safety.

(2) NUMBER OF PARTICIPANTS- The total number of eligible patients receiving services under the demonstration project established under paragraph (1) may not exceed 800.

## (b) PAYMENTS TO PARTICIPATING PROVIDERS AND FACILITIES-

## (1) SERVICES FOR WHICH PAYMENT MAY BE MADE-

(A) IN GENERAL- Under the demonstration project established under subsection (a), the Secretary shall make payments for 3 years under title XVIII of the Social Security Act to providers of services (other than a skilled nursing facility) or renal dialysis facilities for services of a home hemodialysis staff assistant provided to an individual described in subsection (c) during hemodialysis treatment at the individual's home in an amount determined under paragraph (2).

(B) SERVICES DESCRIBED- For purposes of subparagraph (A), the term `services of a home hemodialysis staff assistant' means--

(i) technical assistance with the operation of a hemodialysis machine in the patient's home and with such patient's care during in-home hemodialysis; and

(ii) administration of medications within the patient's home to maintain the patency of the extra corporeal circuit.

## (2) AMOUNT OF PAYMENT-

(A) IN GENERAL- Payment to a provider of services or renal dialysis facility participating in the demonstration project established under subsection (a) for the services described in paragraph (1) shall be prospectively determined by the Secretary, made on a per treatment basis, and shall be in an amount determined under subparagraph (B).

(B) DETERMINATION OF PAYMENT AMOUNT- (i) The amount of payment made under subparagraph (A) shall be the product of--

(I) the rate determined under clause (ii) with respect to a provider of services or a renal dialysis facility; and

(II) the factor by which the labor portion of the composite rate

determined under section 1881(b)(7) of the Social Security Act is adjusted for differences in area wage levels.

(ii) The rate determined under this clause, with respect to a provider of services or renal dialysis facility, shall be equal to the difference between--

(I) two-thirds of the labor portion of the composite rate applicable under section 1881(b)(7) of such Act to the provider or facility (as adjusted to reflect differences in area wage levels), and

(II) the product of the national median hourly wage for a home hemodialysis staff assistant and the national median time expended in the provision of home hemodialysis staff assistant services (taking into account time expended in travel and predialysis patient care).

(iii) For purposes of clause (ii)(II)--

(I) the national median hourly wage for a home hemodialysis staff assistant and the national median average time expended for home hemodialysis staff assistant services shall be determined annually on the basis of the most recent data available, and

(II) the national median hourly wage for a home hemodialysis staff assistant shall be the sum of 65 percent of the national median hourly wage for a licensed practical nurse and 35 percent of the national median hourly wage for a registered nurse.

(C) PAYMENT AS ADD-ON TO COMPOSITE RATE- The amount of payment determined under this paragraph shall be in addition to the amount of payment otherwise made to the provider of services or renal dialysis facility under section 1881(b) of such Act.

(c) INDIVIDUALS ELIGIBLE TO RECEIVE SERVICES UNDER PROJECT-

(1) IN GENERAL- An individual may receive services from a provider of services or renal dialysis facility participating in the demonstration project if--

(A) the individual is not a resident of a skilled nursing facility;

(B) the individual is an end stage renal disease patient entitled to benefits under title XVIII of the Social Security Act;

(C) the individual's physician certifies that the individual is confined to a bed or wheelchair and cannot transfer themselves from a bed to a chair;

(D) the individual has a serious medical condition (as specified by the Secretary) which would be exacerbated by travel to and from a dialysis facility;

(E) the individual is eligible for ambulance transportation to receive routine maintenance dialysis treatments, and, based on the individual's medical condition, there is reasonable expectation that such transportation will be used by the individual for a period of at least 6 consecutive months, such that the cost of ambulance transportation can reasonably be expected to meet or exceed the cost of home hemodialysis staff assistance as provided under subsection (b)(4); and

(F) no family member or other individual is available to provide such assistance to the individual.

(2) COVERAGE OF INDIVIDUALS CURRENTLY RECEIVING SERVICES- Any individual who, on the date of the enactment of this Act, is receiving staff assistance under the experimental authority provided under section 1881(f)(2) of the Social Security Act shall be deemed to be an eligible individual for purposes of this subsection.

(3) CONTINUATION OF COVERAGE UPON TERMINATION OF PROJECT- Notwithstanding any provision of title XVIII of the Social Security Act, any individual receiving services under the demonstration project established under subsection (a) as of the date of the termination of the project shall continue to be eligible for home hemodialysis staff assistance after such date under such title on the same terms and conditions as applied under the demonstration project.

(d) QUALIFICATIONS FOR HOME HEMODIALYSIS STAFF ASSISTANTS- For purposes of subsection (b), a home dialysis aide is qualified if the aide--

(1) meets minimum qualifications as specified by the Secretary; and

(2) meets any applicable qualifications as specified under the law of the State in which the home hemodialysis staff assistant is providing services.

(e) REPORTS-

(1) INTERIM STATUS REPORT- Not later than December 1, 1992, the Secretary shall submit to Congress a preliminary report on the status of the demonstration project established under subsection (a).

(2) FINAL REPORT- Not later than December 31, 1995, the Secretary shall submit to Congress a final report evaluating the project, and shall include in such report recommendations regarding appropriate eligibility criteria and cost-control mechanisms for medicare coverage of the services of a home dialysis aide providing medical assistance to a patient during hemodialysis treatment at the patient's home.

(f) AUTHORIZATION OF APPROPRIATIONS- The Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund (established under section 1841 of the Social Security Act) of not more than the following amounts to carry out the demonstration project established under subsection (a) (without regard to amounts appropriated in advance in appropriation Acts):

- (1) For fiscal year 1991, \$4,000,000.
- (2) For fiscal year 1992, \$4,000,000.
- (3) For fiscal year 1993, \$3,000,000.
- (4) For fiscal year 1994, \$2,000,000.
- (5) For fiscal year 1995, \$1,000,000.

## **SEC. 4203. EXTENSION OF SECONDARY PAYOR PROVISIONS.**

### (a) EXTENSION OF TRANSFER OF DATA-

(1) Section 1862(b)(5)(C)(iii) (42 U.S.C. 1395y(b)(5)(C)(iii)) is amended by striking `September 30, 1991' and inserting `September 30, 1995'.

(2) Section 6103(l)(12)(F) of the Internal Revenue Code of 1986 is amended--

(A) in clause (i), by striking `September 30, 1991' and inserting `September 30, 1995';

(B) in clause (ii)(I), by striking `1990' and inserting `1994'; and

(C) in clause (ii)(II), by striking `1991' and inserting `1995'.

(b) EXTENSION OF APPLICATION TO DISABLED BENEFICIARIES- Section 1862(b)(1)(B)(iii) (42 U.S.C. 1395y(b)(1)(B)(iii)) is amended by striking `January 1, 1992' and inserting `October 1, 1995'.

### (c) INDIVIDUALS WITH END STAGE RENAL DISEASE-

(1) IN GENERAL- Section 1862(b)(1)(C) (42 U.S.C. 1395y(b)(1)(C)) is amended--

(A) in clause (i), by striking `during the 12-month period' and all that follows and inserting `during the 12-month period which begins with the first month in which the individual becomes entitled to benefits under part A under the provisions of section 226A, or, if earlier, the first month in which the individual would have been entitled to benefits under such part under the provisions of section 226A if the individual had filed an application for such benefits; and'

(B) in the matter following clause (ii), by adding at the end the

following: ` Effective for items and services furnished on or after February 1, 1991, and on or before January 1, 1996, (with respect to periods beginning on or after February 1, 1990), clauses (i) and (ii) shall be applied by substituting ` 18-month' for ` 12-month' each place it appears.'

(2) GAO STUDY OF EXTENSION OF SECONDARY PAYER PERIOD- (A) The Comptroller General shall conduct a study of the impact of the application of clause (iii) of section 1862(b)(1)(C) of the Social Security Act on individuals entitled to benefits under title XVIII of such Act by reason of section 226A of such Act, and shall include in such report information relating to--

(i) the number (and geographic distribution) of such individuals for whom medicare is secondary;

(ii) the amount of savings to the medicare program achieved annually by reason of the application of such clause;

(iii) the effect on access to employment, and employment-based health insurance, for such individuals and their family members (including coverage by employment-based health insurance of cost-sharing requirements under medicare after such employment-based insurance becomes secondary);

(iv) the effect on the amount paid for each dialysis treatment under employment-based health insurance;

(v) the effect on cost-sharing requirements under employment-based health insurance (and on out-of-pocket expenses of such individuals) during the period for which medicare is secondary;

(vi) the appropriateness of applying the provisions of section 1862(b)(1)(C) to all group health plans.

(B) The Comptroller General shall submit a preliminary report on the study conducted under subparagraph (A) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate not later than January 1, 1993, and a final report on such study not later than January 1, 1995.

(d) EFFECTIVE DATE- The amendments made this subsection shall take effect on the date of the enactment of this Act and the amendment made by subsection (a)(2)(B) shall apply to requests made on or after such date.

## **SEC. 4204. HEALTH MAINTENANCE ORGANIZATIONS.**

(a) REGULATION OF INCENTIVE PAYMENTS TO PHYSICIANS-

(1) IN GENERAL- Section 1876(i) (42 U.S.C. 1395mm(i)) is amended by adding at the end the following new paragraph:

` (8)(A) Each contract with an eligible organization under this section shall provide that the organization may not operate any physician incentive plan (as defined in subparagraph (B)) unless the following requirements are met:

` (i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.

` (ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization--

` (I) provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive services from the physician or the physician group, and

` (II) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.

` (iii) The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.

` (B) In this paragraph, the term `physician incentive plan' means any compensation arrangement between an eligible organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization.'.

(2) PENALTIES- Section 1876(i)(6)(A)(vi) (42 U.S.C. 1395mm(i)(6)(A)(vi)) is amended by striking `(g)(6)(A);' and inserting `(g)(6)(A) or paragraph (8);'.

(3) REPEAL OF PROHIBITION- Section 1128A(b)(1) (42 U.S.C. 1320a-7a(b)(1)) is amended--

(A) by striking `, an eligible organization' and all that follows through `section 1876,',

(B) by adding `and' at the end of subparagraph (A),

(C) by striking subparagraph (B),

(D) by redesignating subparagraph (C) as subparagraph (B), and

(E) by striking `or organization'.

(4) EFFECTIVE DATE- The amendments made by paragraphs (1) and (2) shall apply with respect to contract years beginning on or after January 1, 1992, and the amendments made by paragraph (3) shall take effect on the date of the enactment of this Act.

(b) REQUIREMENTS WITH RESPECT TO ACTUARIAL EQUIVALENCE OF AAPCC-

(1) Not later than January 1, 1992, the Secretary of Health and Human Services (in this section referred to as the `Secretary') shall submit a proposal to Congress that provides for a modified payment method for organizations with a risk contract under section 1876(g) of the Social Security Act that is more accurate than the current payment methodology in predicting the actual service utilization and annual medical expenditures of the beneficiary population enrolled in a specific organization.

(2) The proposal shall include--

(A)(i) recommendations on modifying the current adjusted average per capita cost formula, by adding predictors of medical utilization such as health status adjustors or prior utilization measures; or

(ii) recommendations for a new payment methodology as an alternative to the adjusted average per capita cost;

(B) data to support any recommended changes in payment methodology for organizations with risk contracts under section 1876(g) of the Social Security Act; and

(C) analysis demonstrating that any proposed or revised payment methodology under this section is effective in explaining at least 15 percent of the variation in health care utilization and costs (as determined in consultation with the American Academy of Actuaries) among individuals enrolled in such organizations.

(3) Not later than March 1, 1992, the Secretary shall cause to have published in the Federal Register a proposed rule providing for the implementation of the payment methodology specified in the proposal submitted pursuant to paragraph (1).

(4) Not later than May 1, 1992, the Comptroller General shall review the proposal and recommendations made pursuant to paragraphs (1) and (2), and shall report to Congress on appropriate modifications in such payment methodology.

(5) Taking into account the recommendations made pursuant to paragraph (4), on or after August 1, 1992, the Secretary shall issue a final rule implementing a payment methodology that meets the requirements of paragraph (1), effective for contract years beginning on or after January 1, 1993.

(c) APPLICATION OF NATIONAL COVERAGE DECISIONS-



(1) IN GENERAL- Section 1876(c)(2) (42 U.S.C. 1395mm(c)(2)) is amended--

(A) by redesignating clauses (i) and (ii) and subparagraphs (A) and (B) as subclauses (I) and (II) and clauses (i) and (ii), respectively;

(B) by inserting ` (A)' after ` (2)'; and

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

` (B) If there is a national coverage determination made in the period beginning on the date of an announcement under subsection (a)(1)(A) and ending on the date of the next announcement under such subsection that the Secretary projects will result in a significant 19

change in the costs to the organization of providing the benefits that are the subject of such national coverage determination and that was not incorporated in the determination of the per capita rate of payment included in the announcement made at the beginning of such period--

19 So in original. Probably should be `significant'.

` (i) such determination shall not apply to risk-sharing contracts under this section until the first contract year that begins after the end of such period; and

` (ii) if such coverage determination provides for coverage of additional benefits or under additional circumstances, subsection (a)(3) shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period,

unless otherwise required by law.'.

(2) CONFORMING AMENDMENT- Section 1876(a)(6) of such Act is amended by striking `subsection (c)(7)' and inserting `subsections (c)(2)(B)(ii) and (c)(7)'.

(3) EFFECTIVE DATE- The amendments made by this subsection shall apply with respect to national coverage determinations that are not incorporated in the determination of the per capita rate of payment for individuals enrolled for 1991 with an eligible organization which has entered into a risk-sharing contract under section 1876 of the Social Security Act.

(d) PAYMENTS FOR SERVICES FURNISHED BY NON-CONTRACT PROVIDERS-

(1) IN GENERAL- Section 1876(j) (42 U.S.C. 1395mm(j)) is amended--

(A) in paragraph (1)(A)--

(i) by striking `physician' each place it appears and inserting

`physician or provider of services or renal dialysis facility',

(ii) by striking `physicians' services' and inserting `physicians' services or renal dialysis services', and

(iii) by striking `participation agreement under section 1842(h)(1)' and inserting `applicable participation agreement',

(B) in paragraph (2)--

(i) by striking `physicians' services' each place it appears and inserting `physicians' services or renal dialysis services', and

(ii) by striking `which--' and all that follows and inserting `which are furnished to an enrollee of an eligible organization under this section 20

by a physician, provider of services, or renal dialysis facility who is not under a contract with the organization.'

20 So in original. Probably should be `section'.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply with respect to items and services furnished on or after January 1, 1991.

(e) RETROACTIVE ENROLLMENT-

(1) IN GENERAL- Section 1876(a)(1)(E) (42 U.S.C. 1395mm(a)(1)(E)) is amended--

(A) by striking `(E)' and inserting `(E)(i)'; and

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

`(ii)(I) Subject to subclause (II), the Secretary may make retroactive adjustments under clause (i) to take into account individuals enrolled during the period beginning on the date on which the individual enrolls with an eligible organization (which has a risk-sharing contract under this section) under a health benefit plan operated, sponsored, or contributed to, by the individual's employer or former employer (or the employer or former employer of the individual's spouse) and ending on the date on which the individual is enrolled in the plan under this section, except that for purposes of making such retroactive adjustments under this clause, such period may not exceed 90 days.

`(II) No adjustment may be made under subclause (I) with respect to any individual who does not certify that the organization provided the individual with the explanation described in subsection (c)(3)(E) at the time the individual enrolled with the organization.'

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply with respect to individuals enrolling with an eligible organization (which

has a risk-sharing contract under section 1876 of the Social Security Act) under a health benefit plan operated, sponsored, or contributed to, by the individual's employer or former employer (or the employer or former employer of the individual's spouse) on or after January 1, 1991.

(f) STUDY OF CHIROPRACTIC SERVICES-

(1) The Secretary shall conduct a study of the extent to which health maintenance organizations with contracts under section 1876 of the Social Security Act make available to enrollees entitled to benefits under title XVIII of such Act chiropractic services that are covered under such title.

(2) The study shall examine the arrangements under which such services are made available and the types of practitioners furnishing such services to such enrollees.

(3) The study shall be based on contracts entered into or renewed on or after January 1, 1991, and before January 1, 1993.

(4) The Secretary shall issue a final report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the results of the study not later than January 1, 1993. The report shall include recommendations with respect to any legislative and regulatory changes that the Secretary determines are necessary to ensure access to such services.

(g) PROHIBITING CERTAIN EMPLOYER MARKETING ACTIVITIES-

(1) IN GENERAL- Section 1862(b)(3) (42 U.S.C. 1395y(b)(3)) is amended by adding at the end the following new subparagraph:

“(C) PROHIBITION OF FINANCIAL INCENTIVES NOT TO ENROLL IN A GROUP HEALTH PLAN- It is unlawful for an employer or other entity to offer any financial or other incentive for an individual entitled to benefits under this title not to enroll (or to terminate enrollment) under a group health plan which would (in the case of such enrollment) be a primary plan (as defined in paragraph (2)(A)), unless such incentive is also offered to all individuals who are eligible for coverage under the plan. Any entity that violates the previous sentence is subject to a civil money penalty of not to exceed \$5,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).”.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply to incentives offered on or after the date of the enactment of this Act.

## SEC. 4205. PEER REVIEW ORGANIZATIONS.

## (a) USE OF CORRECTIVE ACTION PLANS-

(1) IN GENERAL- Section 1156(b)(1) (42 U.S.C. 1320c-5(b)(1)) is amended--

(A) by inserting `and, if appropriate, after the practitioner or person has been given a reasonable opportunity to enter into and complete a corrective action plan (which may include remedial education) agreed to by the organization, and has failed successfully to complete such plan,' after `concerned,'; and

(B) by inserting after the second sentence the following: `In determining wheheter 21

a practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with such obligations, the Secretary shall consider the practitioner's or person's willingness or lack of ability, during the period before the organization submits its report and recommendations, to enter into and successfully complete a corrective action plan.'

21 So in original. Probably should be `whether'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to initial determinations made by organizations on or after the date of the enactment of this Act.

## (b) TREATMENT OF OPTOMETRISTS AND PODIATRISTS-

(1) IN GENERAL- Section 1154 (42 U.S.C. 1320c-3) is amended--

(A) in subsection (a)(7)(A)(i), by inserting `, optometry, and podiatry' after `dentistry'; and

(B) in subsection (c), by striking `or dentistry' each place it appears and inserting `dentistry, optometry, or podiatry'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to contracts entered into or renewed on or after the date of the enactment of this Act.

## (c) COORDINATION OF PROS AND CARRIERS-

(1) DEVELOPMENT AND IMPLEMENTATION OF PLAN- The Secretary of Health and Human Services shall develop and implement a plan to coordinate the physician review activities of peer review organizations and carriers. Such plan shall include--

(A) the development of common utilization and medical review criteria;

(B) criteria for the targetting of reviews by peer review organizations and carriers; and

(C) improved methods for exchange of information among peer review organizations and carriers.

(2) REPORT- Not later than January 1, 1992, the Secretary shall submit to Congress a report on the development of the plan described under paragraph (1) and shall include in the report such recommendations for changes in legislation as may be appropriate.

(d) PEER REVIEW NOTICE-

(1) NOTICE OF PROPOSED SANCTIONS-

(A) REQUIREMENT- Section 1154(a)(9) (42 U.S.C. 1320c-3(a)(9)) is amended--

(i) by inserting `(A)' after `(9)'; and

(ii) by adding at the end the following:

`(B) If the organization finds, after notice and hearing, that a physician has furnished services in violation of this subsection, the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician of its finding and decision.'.

(B) DISCLOSURE- Section 1160(b)(1) (42 U.S.C. 1320c-9(b)(1)) is amended--

(i) by striking `and' at the end of subparagraph (B),

(ii) by adding `and' at the end of subparagraph (C), and

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

`(D) to provide notice to the State medical board in accordance with section 1154(a)(9)(B) when the organization submits a report and recommendations to the Secretary under section 1156(b)(1) with respect to a physician whom the board is responsible for licensing;'.

(C) EFFECTIVE DATE- The amendments made by this paragraph shall apply to notices of proposed sanctions issued more than 60 days after the date of the enactment of this Act.

(2) NOTICE TO STATE MEDICAL BOARDS WHEN ADVERSE ACTIONS TAKEN BY SECRETARY-

(A) IN GENERAL- Section 1156(b) (42 U.S.C. 1320c-5(b)) is amended by adding at the end the following new paragraph:

`(6) When the Secretary effects an exclusion of a physician under paragraph (2), the Secretary shall notify the State board responsible for the licensing of the physician of the exclusion.'.

(B) EFFECTIVE DATE- The amendments made by this paragraph shall apply to sanctions effected more than 60 days after the date of the enactment of this Act.

(e) CONFIDENTIALITY OF PEER REVIEW DELIBERATIONS-

(1) IN GENERAL- Section 1160(d) (42 U.S.C. 1320c-9(d)) is amended by adding at the end the following: `No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1154(a)(1)(B) or 1156(a)(2) shall be subject to subpoena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization's findings and conclusions in making the determination.'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to all proceedings as of the date of the enactment of this Act.

(f) CLARIFICATION OF LIMITATION ON LIABILITY- Section 1157(b) (42 U.S.C. 1320c-6(b)) is amended--

(1) by inserting `organization having a contract with the Secretary under this part and no' after `No',

(2) by striking `by him', and

(3) by striking `he has exercised due care' and inserting `due care was exercised in the performance of such duty, function, or activity'.

(g) MISCELLANEOUS AND TECHNICAL AMENDMENTS RELATING TO PEER REVIEW ORGANIZATIONS-

(1) CLARIFICATION OF PATIENT NOTIFICATION REQUIREMENTS FOR DENIAL OF PAYMENT BY PRO-

(A) IN GENERAL- Section 1154(a)(3)(E) (42 U.S.C. 1320c-3(a)(3)(E)) is amended--

(i) by striking `(E)' and inserting `(E)(i)';

(ii) by inserting after `items' the following: `provided by a physician that were';

(iii) by striking `physician and hospital.' and inserting `physician.'; and

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

`(ii) In the case of services or items provided by an entity or practitioner other than a physician, the Secretary may substitute the entity or practitioner which provided the services or items for the term `physician'

in the notice described in clause (i).'

(B) EFFECTIVE DATE- The amendments made by subparagraph (A) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation 22

Act of 1989.

22 So in original. Probably should be `Reconciliation'.

(2) CLARIFICATION OF APPLICATION OF CRITERIA FOR DENIAL OF PAYMENT-

(A) IN GENERAL- Section 1154(a)(2) (42 U.S.C. 1320c-3(a)(2)) is amended by striking the third sentence and inserting the following: `The organization shall identify cases for which payment should not be made by reason of paragraph (1)(B) only through the use of criteria developed pursuant to guidelines established by the Secretary.'

(B) EFFECTIVE DATE- The amendment made by subparagraph (A) shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 4206. MEDICARE PROVIDER AGREEMENTS ASSURING THE IMPLEMENTATION OF A PATIENT'S RIGHT TO PARTICIPATE IN AND DIRECT HEALTH CARE DECISIONS AFFECTING THE PATIENT.

(a) IN GENERAL- Section 1866(a)(1) (42 U.S.C. 1395cc(a)(1)) is amended--

(1) in subsection (a)(1)--

(A) by striking `and' at the end of subparagraph (O),

(B) by striking the period at the end of subparagraph (P) and inserting `, and', and

(C) by inserting after subparagraph (P) the following new subparagraph:

`(Q) in the case of hospitals, skilled nursing facilities, home health agencies, and hospice programs, to comply with the requirement of subsection (f) (relating to maintaining written policies and procedures respecting advance directives).'; and

(2) by inserting after subsection (e) the following new subsection:

`(f)(1) For purposes of subsection (a)(1)(Q) and sections 1819(c)(2)(E), 1833(r), 1876(c)(8), and 1891(a)(6), the requirement of this subsection is that a provider of services or prepaid or eligible organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization--

- ˘ (A) to provide written information to each such individual concerning--
  - ˘ (i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and
  - ˘ (ii) the written policies of the provider or organization respecting the implementation of such rights;
- ˘ (B) to document in the individual's medical record whether or not the individual has executed an advance directive;
- ˘ (C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;
- ˘ (D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives at facilities of the provider or organization; and
- ˘ (E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

˘ (2) The written information described in paragraph (1)(A) shall be provided to an adult individual--

- ˘ (A) in the case of a hospital, at the time of the individual's admission as an inpatient,
- ˘ (B) in the case of a skilled nursing facility, at the time of the individual's admission as a resident,
- ˘ (C) in the case of a home health agency, in advance of the individual coming under the care of the agency,
- ˘ (D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and
- ˘ (E) in the case of an eligible organization (as defined in section 1876(b)) or an organization provided payments under section 1833(a)(1) (A), at the time of enrollment of the individual with the organization.

˘ (3) In this subsection, the term 'advance directive' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.'



## (b) APPLICATION TO PREPAID ORGANIZATIONS-

(1) ELIGIBLE ORGANIZATIONS- Section 1876(c) of such Act (42 U.S.C. 1395mm(c)) is amended by adding at the end the following new paragraph:

^ (8) A contract under this section shall provide that the eligible organization shall meet the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).'

(2) OTHER PREPAID ORGANIZATIONS- Section 1833 of such Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

^ (r) The Secretary may not provide for payment under subsection (a)(1)(A) with respect to an organization unless the organization provides assurances satisfactory to the Secretary that the organization meets the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).'

(c) EFFECT ON STATE LAW- Nothing in subsections (a) and (b) shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which, as a matter of conscience, cannot implement an advance directive.

## (d) CONFORMING AMENDMENTS-

(1) Section 1819(c)(1) of such Act (42 U.S.C. 1395i-3(c)(1)) is amended by adding at the end the following new subparagraph:

^ (E) INFORMATION RESPECTING ADVANCE DIRECTIVES- A skilled nursing facility must comply with the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).'

(2) Section 1891(a) of such Act (42 U.S.C. 1395bbb(a)) is amended by adding at the end the following:

^ (6) The agency complies with the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).'

## (e) EFFECTIVE DATES-

(1) The amendments made by subsections (a) and (d) shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act.

(2) The amendments made by subsection (b) shall apply to contracts under section 1876 of the Social Security Act and payments under section 1833(a)(1)(A) of such Act as of first day of the first month beginning

more than 1 year after the date of the enactment of this Act.

SEC. 4027. MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PARTS A AND B.

(a) HOSPITAL AND PHYSICIAN OBLIGATIONS WITH RESPECT TO EMERGENCY MEDICAL CONDITIONS-

(1) PEER REVIEW- (A) Section 1867(d) (42 U.S.C. 1395dd(d)), as amended by section 4008(b)(3), is amended by adding at the end the following new paragraph:

^ (3) CONSULTATION WITH PEER REVIEW ORGANIZATIONS- In considering allegations of violations of the requirements of this section in imposing sanctions under paragraph (1), the Secretary shall request the appropriate utilization and quality control peer review organization (with a contract under part B of title XI) to assess whether the individual involved had an emergency medical condition which had not been stabilized, and provide a report on its findings. Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall request such a review before effecting a sanction under paragraph (1) and shall provide a period of at least 60 days for such review. 23

23 So in original. Probably should be `review.'.'.

(B) Section 1154(a) (42 U.S.C. 1320c-4(a)) is amended by adding at the end the following new paragraph:

^ (16) The organization shall provide for a review and report to the Secretary when requested by the Secretary under section 1867(d)(3). The organization shall provide reasonable notice of the review to the physician and hospital involved. Within the time period permitted by the Secretary, the organization shall provide a reasonable opportunity for discussion with the physician and hospital involved, and an opportunity for the physician and hospital to submit additional information, before issuing its report to the Secretary under such section.'.

(C) The amendment made by subparagraph (A) shall take effect on the first day of the first month beginning more than 60 days after the date of the enactment of this Act. The amendment made by subparagraph (B) shall apply to contracts under part B of title XI of the Social Security Act as of the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

(2) CIVIL MONETARY PENALTIES- Section 1867(d)(2)(B) (42 U.S.C. 1395dd(d)(2)(B)) is amended by striking `knowingly' and inserting `negligently'.

(3) EXCLUSION- Section 1867(d)(2)(B) (42 U.S.C. 1395dd(d)(2)(B)) is amended by striking `knowing and willful or negligent' and inserting `is gross and flagrant or is repeated'.

(4) EFFECTIVE DATE- The amendments made by this subsection shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act.

(b) EXTENSIONS OF EXPIRING PROVISIONS-

(1) PROHIBITION ON COST SAVINGS POLICIES BEFORE BEGINNING OF FISCAL YEAR- Notwithstanding any other provision of law, the Secretary of Health and Human Services may not issue any proposed or final regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in a fiscal year (beginning with fiscal year 1991 and ending with fiscal year 1993, or, if later, the last fiscal year for which there is a maximum deficit amount specified under section 3(7) of the Congressional Budget and Impoundment Control Act of 1974) of more than \$50,000,000, except as follows:

(A) The Secretary may issue such a proposed regulation, instruction, or other policy with respect to the fiscal year before the May 15 preceding the beginning of the fiscal year.

(B) The Secretary may issue such a final regulation, instruction, or other policy with respect to the fiscal year on or after October 15 of the fiscal year.

(C) The Secretary may, at any time, issue such a proposed or final regulation, instruction, or other policy with respect to the fiscal year if required to implement specific provisions under statute.

(2) PROHIBITION OF PAYMENT CYCLE CHANGES- Notwithstanding any other provision of law, the Secretary of Health and Human Services is not authorized to issue, after the date of the enactment of this Act, any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down or speeding up claims processing, or delaying payment of claims, under title XVIII of the Social Security Act.

(3) WAIVER OF LIABILITY FOR HOME HEALTH AGENCIES- Section 9305(g)(3) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 426(d) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking `November 1, 1990' and inserting `December 31, 1995'.

(4) EXTENSION AND EXPANSION OF WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS-

(A) EXTENSION OF CURRENT WAIVERS- Section 4018(b) of the Omnibus Budget Reconciliation Act of 1987 is amended--

(i) in paragraph (1), by striking `September 30, 1992' and inserting `December 31, 1995'; and

(ii) in paragraph (4)--

(I) by striking `final' and inserting `second interim', and

(II) by striking the period at the end and inserting the following: `, and shall submit a final report on the demonstration projects conducted under section 2355 of the Deficit Reduction Act of 1984 not later than March 31, 1996.'.

(B) EXPANSION OF DEMONSTRATIONS- Section 2355 of the Deficit Reduction Act of 1984 is amended--

(i) in subsection (a), by adding at the end the following: `Not later than 12 months after the date of the enactment of the Omnibus Budget Reconciliation Act of 1990, the Secretary shall approve such applications or protocols for not more than 4 additional projects described in subsection (b).';

(ii) by amending paragraph (1) of subsection (b) to read as follows:

`(1) to demonstrate--

`(A) the concept of a social health maintenance organization with the organizations as described in Project No. 18-P-9 7604/1-04 of the University Health Policy Consortium of Brandeis University, or

`(B) in the case of a project conducted as a result of the amendments made by section 12907(c)(4)(A) of the Omnibus Budget Reconciliation Act of 1990, the effectiveness and feasibility 24

of innovative approaches to refining targeting and financing methodologies and benefit design, including the effectiveness of feasibility of--

24 So in original. Probably should be `feasibility'.

`(i) the benefits of expanded post-acute and community care case management through links between chronic care case management services and acute care providers;

`(ii) refining targeting or reimbursement methodologies;

`(iii) the establishment and operation of a rural services delivery system; or

`(iv) the effectiveness of second-generation sites in reducing the costs of the commencement and management of health care service delivery;';

(iii) in subsection (b)--

(I) by inserting `and' at the end of paragraph (3),

(II) by striking the semicolon at the end of paragraph (4) and inserting a period, and

(III) by striking paragraphs (5), (6), and (7). 25

25 So in original. Probably should be `(7)';.

(iv) in subsection (c)--

(I) by striking `and' at the end of paragraph (1),

(II) by striking the period at the end of paragraph (2) and inserting `; and', and

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

`(3) in the case of a project conducted as a result of the amendments made by section 12907(c)(4)(A) of the Omnibus Budget Reconciliation Act of 1990, any requirements of titles XVIII or XIX of the Social Security Act that, if imposed, would prohibit such project from being conducted.'; and

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

`(e) There are authorized to be appropriated \$3,500,000 for the costs of technical assistance and evaluation related to projects conducted as a result of the amendments made by section 12907(c)(4)(A) of the Omnibus Budget Reconciliation Act of 1990.'.

(c) DEVELOPMENT OF PROSPECTIVE PAYMENT SYSTEM FOR HOME HEALTH SERVICES-

(1) DEVELOPMENT OF PROPOSAL- The Secretary of Health and Human Services shall develop a proposal to modify the current system under which payment is made for home health services under title XVIII of the Social Security Act or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall--

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

(B) provide for adjustments to prospectively determined rates to account for changes in a provider's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided

to patients whose length of treatment or costs of treatment greatly exceed the length or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as differences in wages and wage-related costs among agencies located in various geographic areas and other factors the Secretary considers appropriate; and

(E) analyze the feasibility and appropriateness of establishing the episode of illness as the basic unit for making payments under the system.

(2) REPORTS- (A) By not later than April 1, 1993, the Secretary of Health and Human Services shall submit the research findings upon which the proposal described in paragraph (1) shall be based to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than September 1, 1993, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(C) By not later than March 1, 1994, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(d) HOME HEALTH WAGE INDEX-

(1) IN GENERAL- Section 1861(v)(1)(L)(iii) (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended to read as follows:

^ (iii) Not later than July 1, 1991, and annually thereafter, the Secretary shall establish limits under this subparagraph for cost reporting periods beginning on or after such date by utilizing the area wage index applicable under section 1886(d)(3)(E) as of such date to hospitals located in the geographic area in which the home health agency is located (determined without regard to whether such hospitals have been reclassified to a new geographic area pursuant to section 1886(d)(8)(B), a decision of the Medicare Geographic Classification Review Board under section 1886(d)(10), or a decision of the Secretary).'

(2) APPLICATION ON BUDGET-NEUTRAL BASIS- In updating the wage index for establishing limits under section 1861(v)(1)(L)(iii) of the Social Security Act, the Secretary shall ensure that aggregate payments to home health agencies under title XVIII of such Act will be no greater or lesser than such payments would have been without regard to such update.

(3) TRANSITION PROVISION- Notwithstanding section 1861(v)(1)(L)(iii) of the Social Security Act, the Secretary of Health and Human Services shall, in determining the limits of reasonable costs under title XVIII of such Act with respect to services furnished by a home health agency, utilize a wage index equal to--

(A) for cost reporting periods beginning on or after July 1, 1991, and on or before June 30, 1992, a combined area wage index consisting of--

(i) 67 percent of the area wage index applicable under section 1861(v)(1)(L)(iii) of such Act to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States conducted under such section, and

(ii) 33 percent of the area wage index applicable under section 1886(d)(3)(E) of such Act to hospitals located in the geographic area in which the home health agency is located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section; and

(B) for cost reporting periods beginning on or after July 1, 1992, and on or before June 30, 1993, a combined area wage index consisting of--

(i) 33 percent of the area wage index applicable under section 1861(v)(1)(L)(iii) of such Act to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States conducted under such section, and

(ii) 67 percent of the area wage index applicable under section 1886(d)(3)(E) of such Act to hospitals located in the geographic area in which the home health agency is located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section.

(3) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply with respect to home health agency cost reporting periods beginning on or after July 1, 1991.

(e) CLARIFICATION OF DEFINITIONS AND REPORTING REQUIREMENTS RELATING TO PHYSICIAN OWNERSHIP AND REFERRAL-

(1) CLARIFYING DEFINITIONS- Section 1877(h) of the Social Security Act (42 U.S.C. 1395nn(h)) is amended--

(A) in paragraph (6)(A), by striking `in the case of' and all that follows through `the service,' and inserting `in the case of an item or service for which payment may be made under part B, the request

by a physician for the item or service,';

(B) in paragraph (6)(B), by striking `in the case of another clinical laboratory service,' and

(C) by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

` (6) INVESTOR- The term `investor' means, with respect to an entity, a person with a financial relationship specified in subsection (a)(2) with the entity.'

(2) EXEMPTION FOR FINANCIAL RELATIONSHIPS WITH HOSPITAL UNRELATED TO THE PROVISION OF CLINICAL LABORATORY SERVICES- Section 1877(b) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

` (4) HOSPITAL FINANCIAL RELATIONSHIP UNRELATED TO THE PROVISION OF CLINICAL LABORATORY SERVICES- In the case of a financial relationship with a hospital if the financial relationship does not relate to the provision of clinical laboratory services.'

(3) REVISION OF REPORTING REQUIREMENTS- Section 1877(f) (42 U.S.C. 1395nn(f)) is amended--

(A) by amending paragraph (2) to read as follows:

` (2) the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in subsection (a)(2)(A)) in the entity, or whose immediate relatives have such an ownership or investment.';

(B) in the third sentence, by striking `1 year after the date of the enactment of this section' and inserting `October 1, 1991'; and

(C) by adding at the end the following new sentences: `The requirement of this subsection shall not apply to covered items and services provided outside the United States or to entities which the Secretary determines provides services for which payment may be made under this title very infrequently. The Secretary may waive the requirements of this subsection (and the requirements of chapter 35 of title 44, United States Code, with respect to information provided under this subsection) with respect to reporting by entities in a State (except for entities providing clinical laboratory services) so long as such reporting occurs in at least 10 States, and the Secretary may waive such requirements with respect to the providers in a State required to report so long as such requirements are not waived with respect to parenteral and enteral suppliers, end stage renal disease facilities, suppliers of ambulance services, hospitals, entities providing physical therapy services, and entities providing diagnostic imaging services of any type.'



(4) DATE OF ISSUANCE OF REPORTS AND REGULATIONS- (A) Section 6204 of the Omnibus Budget Reconciliation Act of 1989 is amended by striking subsection (f) and inserting the following:

“(f) STATISTICAL SUMMARY OF COMPARATIVE UTILIZATION- Not later than June 30, 1992, the Secretary of Health and Human Services shall submit to Congress a statistical profile comparing utilization of items and services by medicare beneficiaries served by entities in which the referring physician has a direct or indirect financial interest and by medicare beneficiaries served by other entities, for the States and entities specified in section 1877(f) of the Social Security Act (other than entities providing clinical laboratory services).”.

(B) Section 6204(d) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking “October 1, 1990” and inserting “October 1, 1991”.

(5) EFFECTIVE DATE- The amendments made by this subsection shall be effective as if included in the enactment of section 6204 of the Omnibus Budget Reconciliation Act of 1989.

(f) CASE MANAGEMENT DEMONSTRATION PROJECT-

(1) IN GENERAL- Notwithstanding any other provision of law, the Secretary of Health and Human Services shall resume the 3 case management demonstration projects described in paragraph (2) and approved under section 425 of the Medicare Catastrophic Coverage Act of 1988 (in this subsection referred to as “MCCA”).

(2) PROJECT DESCRIPTIONS- The demonstration projects referred to in paragraph (1) are--

(A) the project proposed to be conducted by Providence Hospital for case management of the elderly at risk for acute hospitalization as described in Project No. 18-P-99379/5-01;

(B) the project proposed to be conducted by the Iowa Foundation for Medical Care to study patients with chronic congestive conditions to reduce repeated hospitalizations of such patients as described in Project No. P-99399/4-01; and

(C) the project proposed to be conducted by Key Care Health Resources, Inc., to examine the effects of case management on 2,500 high cost medicare beneficiaries as described in Project No. 18-P-99396/5.

(3) TERMS AND CONDITIONS- Except as provided in paragraph (4), the demonstration projects resumed pursuant to paragraph (1) shall be subject to the same terms and conditions established under section 425 of MCCA. In determining the 2-year duration period of a project resumed pursuant to paragraph (1), the Secretary may not take into account any period of time for which the project was in effect under section 425 of MCCA.

(4) AUTHORIZATION OF APPROPRIATIONS- Notwithstanding section 425(g) of MCCA, there are authorized to be appropriated for administrative costs in carrying out the demonstration projects resumed pursuant to paragraph (1) \$2,000,000 in each of fiscal years 1991 and 1992.

(g) PROHIBITION OF USER FEES FOR SURVEY AND CERTIFICATION- Section 1864 (42 U.S.C. 1395aa) is amended by adding at the end the following new subsection:

“(e) Notwithstanding any other provision of law, the Secretary may not impose, or require a State to impose, any fee on any facility or entity subject to a determination under subsection (a), or any renal dialysis facility subject to the requirements of section 1881(b)(1), for any such determination or any survey relating to determining the compliance of such facility or entity with any requirement of this title.”.

(h) DELEGATION OF AUTHORITY TO INSPECTOR GENERAL- Section 1128A(j) (42 U.S.C. 1320a-7a(j)) is amended--

(i) by striking “(j)” and inserting “(j)(1)”; and

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

“(2) The Secretary may delegate authority granted under this section and under section 1128 to the Inspector General of the Department of Health and Human Services.”.

(i) MODIFICATION OF HOME HEALTH AGENCY DEFICIENCY STANDARDS-

(1) IN GENERAL- Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 1891(a)(3)(D)(iii) of the Social Security Act (42 U.S.C. 1395bbb(a)(3)(D)(iii)) is amended by striking “which has been determined” and all that follows and inserting the following: “which, within the previous 2 years--

“(I) has been determined to be out of compliance with subparagraph (A), (B), or (C);

“(II) has been subject to an extended (or partial extended) survey under subsection (c)(2)(D);

“(III) has been assessed a civil money penalty described in subsection (f)(2)(A)(i) of not less than \$5,000; or

“(IV) has been subject to the remedies described in subsection (e)(1) or in clauses (ii) or (iii) of subsection (f)(2)(A).”.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, except that the Secretary may not permit approval of a training and competency evaluation program or a

competency evaluation program offered by or in a home health agency which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988--

(i) had its participation terminated under title XVIII of the Social Security Act;

(ii) was assessed a civil money penalty not less than \$5,000 for deficiencies in applicable quality standards for home health agencies;

(iii) was subject to suspension by the Secretary of all or part of the payments to which it would otherwise be entitled under such title. 26

26 So in original. Probably should be `;`.

(iv) operated under a temporary management appointed to oversee the operation of the agency and to ensure the health and safety of the agency's patients; or

(v) pursuant to State action, was closed or had its residents transferred.

(j) USE OF INTERIM FINAL REGULATIONS- The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this title and the amendments made by this title.

(k) Miscellaneous Technical Corrections-

(1) The third sentence of subsections (a) and (b)(1) of section 1882 of the Social Security Act (42 U.S.C. 1395ss), as amended by section 203(a)(1)(A) of the Medicare Catastrophic Coverage Repeal Act, is amended by striking `(k)(4),`.

(2) Section 1877(g)(5) of the Social Security Act, as added by section 6204(a) of OBRA-1989, is amended by adding at the end the following new sentence: `The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).`.

(3) Subsection (i) of section 1867 of the Social Security Act, as added by section 6211(f) of the Omnibus Budget Reconciliation Act of 1989, is amended to read as follows:

`(i) WHISTLEBLOWER PROTECTIONS- A participating hospital may not penalize or take adverse action against a qualified medical person described in subsection (c)(1)(A)(iii) or a physician because the person or physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized or against any hospital employee

because the employee reports a violation of a requirement of this section.'

(4) Section 6213(d) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking 'take effect' and inserting 'apply to services furnished on or after'.

(5) Section 6217(a) of the Omnibus Budget Reconciliation Act of 1989 is amended in the matter preceding paragraph (1) by inserting after 'payments' the following: 'out of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate in a year)'.

(6) Section 1139(d) of the Social Security Act, as amended by section 6221 of Omnibus Budget Reconciliation Act of 1989, is amended by striking 'interim report' and all that follows through 'setting forth' and inserting the following: 'interim report no later than March 31, 1990, and a final report no later than March 31, 1991, setting forth'.

## ***PART 4--PROVISIONS RELATING TO MEDICARE PART B PREMIUM AND DEDUCTIBLE***

### **SEC. 4301. PART B PREMIUM.**

Section 1839(e)(1) (42 U.S.C. 1395r(e)(1)) is amended--

(1) by inserting '(A)' after '(e)(1)', and

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

(B) Notwithstanding the provisions of subsection (a), the monthly premium for each individual enrolled under this part for each month in--

(i) 1991 shall be \$29.90,

(ii) 1992 shall be \$31.80,

(iii) 1993 shall be \$36.60,

(iv) 1994 shall be \$41.10, and

(v) 1995 shall be \$46.10.'

### **SEC. 4302. PART B DEDUCTIBLE.**

Section 1833(b) (42 U.S.C. 1395l) is amended by inserting after '\$75' the following: 'for calendar years before 1991 and \$100 for 1991 and subsequent years'.

## ***PART 5--MEDICARE SUPPLEMENTAL INSURANCE POLICIES***

### **SEC. 4351. SIMPLIFICATION OF MEDICARE SUPPLEMENTAL POLICIES.**

(a) IN GENERAL- Section 1882 (42 U.S.C. 1395ss) is amended--

(1) in subsection (b)(1)(B), by striking `through (4)' and inserting `through (5)';

(2) in subsection (c)--

(A) by striking `and' at the end of paragraph (3),

(B) by striking the period at the end of paragraph (4) and inserting `; and', and

(C) by inserting after paragraph (4) the following new paragraph:

`(5) meets the applicable requirements of subsections (o) through (t).'; and

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

`(o) The requirements of this subsection are as follows:

`(1) Each medicare supplemental policy shall provide for coverage of a group of benefits consistent with subsection (p).

`(2) If the medicare supplemental policy provides for coverage of a group of benefits other than the core group of basic benefits described in subsection (p)(2)(B), the issuer of the policy must make available to the individual a medicare supplemental policy with only such core group of basic benefits.

`(3) The issuer of the policy has provided, before the sale of the policy, an outline of coverage that uses uniform language and format (including layout and print size) that facilitates comparison among medicare supplemental policies and comparison with medicare benefits.

`(p)(1)(A) If, within 9 months after the date of the enactment of this subsection, the National Association of Insurance Commissioners (in this subsection referred to as the `Association') promulgates--

`(i) limitations on the groups or packages of benefits that may be offered under a medicare supplemental policy consistent with paragraphs (2) and (3) of this subsection,

`(ii) uniform language and definitions to be used with respect to such

benefits,

` (iii) uniform format to be used in the policy with respect to such benefits, and

` (iv) other standards to meet the additional requirements imposed by the amendments made by the Omnibus Budget Reconciliation Act of 1990,

(such limitations, language, definitions, format, and standards referred to collectively in this subsection as `NAIC standards'), subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, included a reference to the NAIC standards.

` (B) If the Association does not promulgate NAIC standards within the 9-month period specified in subparagraph (A), the Secretary shall promulgate, not later than 9 months after the end of such period, limitations, language, definitions, format, and standards described in clauses (i) through (iv) of such subparagraph (in this subsection referred to collectively as `Federal standards') and subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, included a reference to the Federal standards.

` (C)(i) Subject to clause (ii), the date specified in this subparagraph for a State is the date the State adopts the NAIC standards or the Federal standards or 1 year after the date the Association or the Secretary first adopts such standards, whichever is earlier.

` (ii) In the case of a State which the Secretary identifies, in consultation with the Association, as--

` (I) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet the NAIC or Federal standards, but

` (II) having a legislature which is not scheduled to meet in 1992 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1992. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

` (D) In promulgating standards under this paragraph, the Association or Secretary shall consult with a working group composed of representatives of issuers of medicare supplemental policies, consumer groups, medicare beneficiaries, and other qualified individuals. Such representatives shall be

selected in a manner so as to assure balanced representation among the interested groups.

^ (E) If benefits (including deductibles and coinsurance) under this title are changed and the Secretary determines, in consultation with the Association, that changes in the NAIC or Federal standards are needed to reflect such changes, the preceding provisions of this paragraph shall apply to the modification of standards previously established in the same manner as they applied to the original establishment of such standards.

^ (2) The benefits under the NAIC or Federal standards shall provide--

^ (A) for such groups or packages of benefits as may be appropriate taking into account the considerations specified in paragraph (3) and the requirements of the succeeding subparagraphs;

^ (B) for identification of a core group of basic benefits common to all policies, and

^ (C) that, subject to paragraph (5)(B), the total number of different benefit packages (counting the core group of basic benefits described in subparagraph (B) and each other combination of benefits that may be offered as a separate benefit package) that may be established in all the States and by all issuers shall not exceed 10.

^ (3) The benefits under paragraph (2) shall, to the extent possible--

^ (A) provide for benefits that offer consumers the ability to purchase the benefits that are available in the market as of the date of the enactment of this subsection; and

^ (B) balance the objectives of (i) simplifying the market to facilitate comparisons among policies, (ii) avoiding adverse selection, (iii) providing consumer choice, (iv) providing market stability, and (v) promoting competition.

^ (4)(A)(i) Except as provided in subparagraph (B), no State with a regulatory program approved under subsection (b)(1) may provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy unless such grouping meets the applicable standards.

^ (ii) Except as provided in subparagraph (B), the Secretary may not provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy seeking approval by the Secretary unless such grouping meets the applicable standards.

^ (B) With the approval of the State (in the case of a policy issued in a State with an approved regulatory program) or the Secretary (in the case of any other policy), the issuer of a medicare supplemental policy may offer new or innovative benefits in addition to the benefits provided in a policy that otherwise complies with the applicable standards. Any such new or innovative

benefits may include benefits that are not otherwise available and are cost-effective and shall be offered in a manner which is consistent with the goal of simplification of medicare supplemental policies.

ˆ (5)(A) Except as provided in subparagraph (B), this subsection shall not be construed as preventing a State from restricting the groups of benefits that may be offered in medicare supplemental policies in the State.

ˆ (B) A State with a regulatory program approved under subsection (b)(1) may not restrict under subparagraph (A) the offering of a medicare supplemental policy consisting only of the core group of benefits described in paragraph (2) (B).

ˆ (6) The Secretary may waive the application of standards in regard to the limitation of benefits described in paragraph (4) in those States that on the date of enactment of this subsection had in place an alternative simplification program.

ˆ (7) This subsection shall not be construed as preventing an issuer of a medicare supplemental policy who otherwise meets the requirements of this section from providing, through an arrangement with a vendor, for discounts from that vendor to policyholder or certificateholders for the purchase of items or services not covered under its medicare supplemental policies.

ˆ (8) Any person who sells or issues a medicare supplemental policy, after the effective date of the NAIC or Federal standards with respect to the policy, in violation of the previous requirements of this subsection is subject to a civil money penalty of not to exceed \$25,000 (or \$15,000 in the case of a seller who is not an issuer of a policy) for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

ˆ (9)(A) Anyone who sells a medicare supplemental policy to an individual shall make available for sale to the individual a medicare supplemental policy with only the core group of basic benefits (described in paragraph (2)(B)).

ˆ (B) Anyone who sells a medicare supplemental policy to an individual shall provide the individual, before the sale of the policy, an outline of coverage which describes the benefits under the policy. Such outline shall be on a standard form approved by the State regulatory program or the Secretary (as the case may be) consistent with the NAIC or Federal standards under this subsection.

ˆ (C) Whoever sells a medicare supplemental policy in violation of this paragraph is subject to a civil money penalty of not to exceed \$25,000 (or \$15,000 in the case of a seller who is not the issuer of the policy) for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).



` (10) No penalty may be imposed under paragraph (8) or (9) in the case of a seller who is not the issuer of a policy until the Secretary has published a list of the groups of benefit packages that may be sold or issued consistent with this subsection.'

## **SEC. 4352. GUARANTEED RENEWABILITY.**

Section 1882 is amended by adding at the end the following new subsection:

` (q) The requirements of this subsection are as follows:

` (1) Each medicare supplemental policy shall be guaranteed renewable and--

` (A) the issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

` (B) the issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

` (2) If the medicare supplemental policy is terminated by the group policyholder and is not replaced as provided under paragraph (2), the issuer shall offer certificateholders an individual medicare supplemental policy which (at the option of the certificateholder)--

` (A) provides for continuation of the benefits contained in the group policy, or

` (B) provides for such benefits as otherwise meets the requirements of this section.

` (3) If an individual is a certificateholder in a group medicare supplemental policy and the individual terminates membership in the group, the issuer shall--

` (A) offer the certificateholder the conversion opportunity described in paragraph (2), or

` (B) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

` (4) If a group medicare supplemental policy is replaced by another group medicare supplemental policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.'

## **SEC. 4353. ENFORCEMENT OF STANDARDS.**

(a) REQUIRING CONFORMITY WITH STANDARDS- Section 1882 is amended--

(1) in the heading, by striking `VOLUNTARY'; and

(2) in subsection (a)--

(A) by inserting `(1)' after `(a)',

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

`(2) No medicare supplemental policy may be issued in a State on or after the date specified in subsection (p)(1)(C) unless--

`(A) the State's regulatory program under subsection (b)(1) provides for the application and enforcement of the standards and requirements set forth in such subsection (including the NAIC standards or the Federal standards (as the case may be)) by the date specified in subsection (p)(1)(C); or

`(B) if the State's program does not provide for the application and enforcement of such standards and requirements, the policy has been certified by the Secretary under paragraph (1) as meeting the standards and requirements set forth in subsection (c) (including such applicable standards) by such date.

Any person who issues a medicare supplemental policy, after the effective date of the NAIC or Federal standards with respect to the policy, in violation of this paragraph is subject to a civil money penalty of not to exceed \$25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).'

(b) PERIODIC REVIEW OF STATE REGULATORY PROGRAMS- Section 1882(b) is amended--

(1) in paragraph (1), by striking `Supplemental Health Insurance Panel (established under paragraph (2))' and inserting `the Secretary',

(2) in paragraph (1), by striking `the Panel' and inserting `the Secretary',

(3) in subparagraphs (A) and (D) of paragraph (1), by inserting `and enforcement' after `application', and

(4) by amending paragraph (2) to read as follows:

`(2) The Secretary periodically shall review State regulatory programs to determine if they continue to meet the standards and requirements specified in paragraph (1). If the Secretary finds that a State regulatory program no longer meets the standards and requirements, before making a final determination, the Secretary shall provide the State an opportunity to adopt such a plan of correction as would permit the State regulatory program to

continue to meet such standards and requirements. If the Secretary makes a final determination that the State regulatory program, after such an opportunity, fails to meet such standards and requirements, the program shall no longer be considered to have in operation a program meeting such standards and requirements.'

(c) ENFORCEMENT BY STATES- Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)) is amended--

(1) by striking `and' at the end of subparagraph (D);

(2) by inserting `and' at the end of subparagraph (E);

(3) by inserting after subparagraph (E) the following:

` (F) reports to the Secretary on the implementation and enforcement of standards and requirements of this paragraph at intervals established by the Secretary,'; and

(5) by adding at the end the following new sentence: `The report required under subsection (F) shall include information on loss ratios of policies sold in the State, frequency and types of instances in which policies approved by the State fail to meet the standards of this paragraph, actions taken by the State to bring such policies into compliance, and information regarding State programs implementing consumer protection provisions, and such further information as the Secretary in consultation with the National Association of Insurance Commissioners, may specify.'

(d) REQUIRING APPROVAL OF STATE FOR SALE IN THE STATE-

(1) IN GENERAL- Section 1882(d)(4)(B) (42 U.S.C. 1395ss(d)(4)(B)) is amended by striking the second sentence.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply to policies mailed, or caused to be mailed, on and after July 1, 1991.

## **SEC. 4354. PREVENTING DUPLICATION.**

(a) IN GENERAL- Subsection (d)(3) of section 1882 (42 U.S.C. 1395ss) is amended--

(1) in subparagraph (A)--

(A) by striking `Whoever knowingly sells' and inserting `It is unlawful for a person to sell or issue',

(B) by striking `substantially',

(C) by striking `, shall be fined' and inserting ` . Whoever violates the previous sentence shall be fined',

(D) in subparagraph (A), by inserting `or title XIX' after `other than this title',

(E) in subparagraph (A), by striking `\$5,000' and inserting `\$25,000 (or \$15,000 in the case of a person other than the issuer of the policy)', and

(F) by adding at the end the following: `A seller (who is not the issuer of a health insurance policy) shall not be considered to violate the previous sentence if the policy is sold in compliance with subparagraph (B) and the statement under such subparagraph indicates on its face that the sale of the policy will not duplicate health benefits to which the individual is otherwise entitled. This subsection shall not apply to such a seller until such date as the Secretary publishes a list of the standardized benefit packages that may be offered consistent with subsection (p).';

(2) by amending subparagraph (B) to read as follows:

`(B)(i) It is unlawful for a person to issue or sell a medicare supplemental policy to an individual entitled to benefits under part A or enrolled under part B, whether directly, through the mail, or otherwise, unless--

`(I) the person obtains from the individual, as part of the application for the issuance or purchase and on a form described in clause (ii), a written statement signed by the individual stating, to the best of the individual's knowledge, what health insurance policies the individual has, from what source, and whether the individual is entitled to any medical assistance under title XIX, whether as a qualified medicare beneficiary or otherwise, and

`(II) the written statement is accompanied by a written acknowledgment, signed by the seller of the policy, of the request for and receipt of such statement.

`(ii) The statement required by clause (i) shall be made on a form that--

`(I) states in substance that a medicare-eligible individual does not need more than one medicare supplemental policy,

`(II) states in substance that individuals 65 years of age or older may be eligible for benefits under the State medicaid program under title XIX and that such individuals who are entitled to benefits under that program usually do not need a medicare supplemental policy and that benefits and premiums under any such policy shall be suspended upon request of the policyholder during the period (of not longer than 24 months) of entitlement to benefits under such title and may be reinstated upon loss of such entitlement, and

`(III) states that counseling services may be available in the State to provide advice concerning the purchase of medicare supplemental policies and enrollment under the medicaid program and may provide the

telephone number for such services.

` (iii)(I) Except as provided in subclauses (II) and (III), if the statement required by clause (i) is not obtained or indicates that the individual has another medicare supplemental policy or indicates that the individual is entitled to any medical assistance under title XIX, the sale of such a policy shall be considered to be a violation of subparagraph (A).

` (II) Subclause (I) shall not apply in the case of an individual who has another policy, if the individual indicates in writing, as part of the application for purchase, that the policy being purchased replaces such other policy and indicates an intent to terminate the policy being replaced when the new policy becomes effective and the issuer or seller certifies in writing that such policy will not, to the best of the issuer or seller's knowledge, duplicate coverage (taking into account any such replacement).

` (III) Subclause (I) also shall not apply if a State medicaid plan under title XIX pays the premiums for the policy, or pays less than an individual's (who is described in section 1905(p)(1)) full liability for medicare cost sharing as defined in section 1905(p)(3)(A).

` (iv) Whoever issues or sells a medicare supplemental policy in violation of this subparagraph shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed \$25,000 (or \$15,000 in the case of a seller who is not the issuer of a policy) for each such violation.'

(b) SUSPENSION OF POLICY DURING MEDICAID ENTITLEMENT- Section 1882(q), as added by section 4352, is amended by adding at the end the following new paragraph:

` (5)(A) Each medicare supplemental policy shall provide that benefits and premiums under the policy shall be suspended at the request of the policyholder for the period (not to exceed 24 months) in which the policyholder has applied for and is determined to be entitled to medical assistance under title XIX of the Social Security Act, but only if the policyholder notifies the issuer of such policy within 90 days after the date the individual becomes entitled to such assistance. If such suspension occurs and if the policyholder or certificate holder loses entitlement to such medical assistance, such policy shall be automatically reinstated (effective as of the date of termination of such entitlement) under terms described in subsection (n)(6)(A)(ii) as of the termination of such entitlement if the policyholder provides notice of loss of such entitlement within 90 days after the date of such loss.

` (B) Nothing in this section shall be construed as affecting the authority of a State, under title XIX of the Social Security Act, to purchase a medicare supplemental policy for an individual otherwise entitled to assistance under such title.

` (C) Any person who issues a medicare supplemental policy and fails to

comply with the requirements of this paragraph is subject to a civil money penalty of not to exceed \$25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to policies issued or sold more than 1 year after the date of the enactment of this Act.

## **SEC. 4355. LOSS RATIOS AND REFUND OF PREMIUMS.**

(a) IN GENERAL- Section 1882 (42 U.S.C. 1395ss) is further amended--

(1) in subsection (c), by amending paragraph (2) to read as follows:

` (2) meets the requirements of subsection (r);'

(2) by striking the sentence following subsection (c)(4); and

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

` (r)(1) A medicare supplemental policy may not be issued or sold in any State unless--

` (A) the policy can be expected (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such periods and in accordance with a uniform methodology, including uniform reporting standards, developed by the National Association of Insurance Commissioners 27

, to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 65 percent in the case of individual policies; and

27 So in original. Probably should be `Commissioners),'

` (B) the issuer of the policy provides for the issuance of a proportional refund, or a credit against future premiums of a proportional amount, based on the premium paid and in accordance with paragraph (2), of the amount of premiums received necessary to assure that the ratio of aggregate benefits provided to the aggregate premiums collected (net of such refunds or credits) complies with the expectation required under subparagraph (A).

For purposes of applying subparagraph (A) only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

` (2)(A) Paragraph (1)(B) shall be applied with respect to each type of policy by policy number. Paragraph (1)(B) shall not apply to a policy with respect to the first 2 years in which it is in effect. The Comptroller General, in consultation with the National Association of Insurance Commissioners, shall submit to Congress a report containing recommendations on adjustments in the percentages under paragraph (1)(A) that may be appropriate in order to apply paragraph (1)(B) to the first 2 years in which policies are effective.

` (B) A refund or credit required under paragraph (1)(B) shall be made to each policyholder insured under the applicable policy as of the last day of the year involved.

` (C) Such a refund or credit shall include interest from the end of the policy year involved until the date of the refund or credit at a rate as specified by the Secretary for this purpose from time to time which is not less than the average rate of interest for 13-week Treasury notes.

` (D) For purposes of this paragraph and paragraph (1)(B), refunds or credits against premiums due shall be made, with respect to a policy year, not later than the third quarter of the succeeding policy year.

` (3) The provisions of this subsection do not preempt a State from requiring a higher percentage than that specified in paragraph (1)(A).

` (4) The Secretary shall submit in February of each year (beginning with 1993) a report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate on loss-ratios under medicare supplemental policies and the use of sanctions, such as a required rebate or credit or the disallowance 28

of premium increases, for policies that fail to meet the requirements of this subsection (relating to loss-ratios). Such report shall include a list of the policies that failed to comply with such loss-ratio requirements or other requirements of this section.

28 So in original. Probably should be `disallowance'.

` (5)(A) The Comptroller General shall periodically, not less often than once every 3 years, perform audits with respect to the compliance of medicare supplemental policies with the loss ratio requirements of this subsection and shall report the results of such audits to the State involved and to the Secretary.

` (B) The Secretary may independently perform such compliance audits.

` (6)(A) A person who issues a policy in violation of the loss ratio requirements of this subsection is subject to a civil money penalty of not to exceed \$25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section

1128A(a).

`(B) Each issuer of a policy subject to the requirements of paragraph (1)(B) shall be liable to policyholders for credits required under such paragraph.'.

(b) ASSURING ACCESS TO LOSS RATIO INFORMATION- Section 1882(b)(1)(C) (42 U.S.C. 1395ss(b)(1)(C)) is amended by striking the semicolon at the end and inserting a comma and the following:

`and that a copy of each such policy, the most recent premium for each such policy, and a listing of the ratio of benefits provided to premiums collected for the most recent 3-year period for each such policy issued or sold in the State is maintained and made available to interested persons;'.

(c) IMPLEMENTATION OF PROCESS TO APPROVE PREMIUM INCREASES- Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)) is further amended--

(1) by striking `and' at the end of subparagraph (E);

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

(3) by adding at the end thereof the following new subparagraph:

`(G) provides for a process for approving or disapproving proposed premium increases with respect to such policies, and establishes a policy for the holding of public hearings prior to approval of a premium increase,'.

(d) EFFECTIVE DATE- The amendments made by this section shall apply to policies sold or issued more than 1 year after the date of the enactment of this Act.

#### SEC. 4356. CLARIFICATION OF TREATMENT OF PLANS OFFERED BY HEALTH MAINTENANCE ORGANIZATIONS.

(a) IN GENERAL- The first sentence of section 1882(g)(1) is amended by inserting before the period at the end the following: `and does not include a policy or plan of a health maintenance organization or other direct service organization which offers benefits under this title, including such services under a contract under under section 1876 or an agreement under section 1833'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

#### SEC. 4357. PRE-EXISTING CONDITION LIMITATIONS AND LIMITATION ON MEDICAL UNDERWRITING.

(a) IN GENERAL- Section 1882 is amended--

(1) in subsection (c), in the matter before paragraph (1), by inserting `or



the requirement described in subsection (s)' after ` paragraph (3)', and

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

` (s)(1) If a medicare supplemental policy replaces another medicare supplemental policy, the issuer of the replacing policy shall waive any time periods applicable to preexisting conditions, waiting period, elimination periods and probationary periods in the new medicare supplemental policy for similar benefits to the extent such time was spent under the original policy.

` (2)(A) The issuer of a medicare supplemental policy may not deny or condition the issuance or effectiveness of a medicare supplemental policy, or discriminate in the pricing of the policy, because of health status, claims experience, receipt of health care, or medical condition for which an application is submitted during the 6 month period beginning with the first month in which the individual (who is 65 years of age or older) first is enrolled for benefits under part B.

` (B) Subject to subparagraph (C), subparagraph (A) shall not be construed as preventing the exclusion of benefits under a policy, during its first 6 months, based on a pre-existing condition for which the policyholder received treatment or was otherwise diagnosed during the 6 months before it became effective.

` (C) If a medicare supplemental policy or certificate replaces another such policy or certificate which has been in effect for 6 months or longer, the replacing policy may not provide any time period applicable to pre-existing conditions, waiting periods, elimination periods, and probationary periods in the new policy or certificate for similar benefits.

` (3) Any issuer of a medicare supplemental policy that fails to meet the requirements of paragraphs (1) and (2) is subject to a civil money penalty of not to exceed \$5,000 for each such failure. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).'

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall take effect 1 year after the date of the enactment of this Act.

## **SEC. 4358. MEDICARE SELECT POLICIES.**

(a) IN GENERAL- Section 1882 (42 U.S.C. 1395ss) is further amended by adding at the end the following:

` (t)(1) If a policy meets the NAIC Model Standards and otherwise complies with the requirements of this section except that benefits under the policy are restricted to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), the policy shall nevertheless be treated as meeting those standards if--

` (A) full benefits are provided for items and services furnished through a network of entities which have entered into contracts with the issuer of the policy;

` (B) full benefits are provided for items and services furnished by other entities if the services are medically necessary and immediately required because of an unforeseen illness, injury, or condition and it is not reasonable given the circumstances to obtain the services through the network;

` (C) the network offers sufficient access;

` (D) the issuer of the policy has arrangements for an ongoing quality assurance program for items and services furnished through the network;

` (E)(i) the issuer of the policy provides to each enrollee at the time of enrollment an explanation of (I) the restrictions on payment under the policy for services furnished other than by or through the network, (II) out of area coverage under the policy, (III) the policy's coverage of emergency services and urgently needed care, and (IV) the availability of a policy through the entity that meets the NAIC standards without reference to this subsection and the premium charged for such policy, and

` (ii) each enrollee prior to enrollment acknowledges receipt of the explanation provided under clause (i); and

` (F) the issuer of the policy makes available to individuals, in addition to the policy described in this subsection, any policy (otherwise offered by the issuer to individuals in the State) that meets the NAIC standards and other requirements of this section without reference to this subsection.

` (2) If the Secretary determines that an issuer of a policy approved under paragraph (1)--

` (A) fails substantially to provide medically necessary items and services to enrollees seeking such items and services through the issuer's network, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual,

` (B) imposes premiums on enrollees in excess of the premiums approved by the State,

` (C) acts to expel an enrollee for reasons other than nonpayment of premiums, or

` (D) does not provide the explanation required under paragraph (1)(E)(i) or does not obtain the acknowledgment required under paragraph (1)(E)(ii),

is subject to a civil money penalty in an amount not to exceed \$25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil

money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

` (3) The Secretary may enter into a contract with an entity whose policy has been certified under paragraph (1) or has been approved by a State under subsection (b)(1)(H) to determine whether items and services (furnished to individuals entitled to benefits under this title and under that policy) are not allowable under section 1862(a)(1). Payments to the entity shall be in such amounts as the Secretary may determine, taking into account estimated savings under contracts with carriers and fiscal intermediaries and other factors that the Secretary finds appropriate. Paragraph (1), the first sentence of paragraph (2)(A), paragraph (2)(B), paragraph (3)(C), paragraph (3)(D), and paragraph (3)(E) of section 1842(b) shall apply to the entity.'

(b) CONFORMING AMENDMENTS- (1) Section 1882(c)(1) (42 U.S.C. 1395ss(c)(1)) is amended by inserting ` (except as otherwise provided by subsection (t))' before the semicolon.

(2) Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)), as previously amended, is amended--

(A) in subparagraph (A), by inserting ` , except as otherwise provided by subparagraph (H)' before the semicolon;

(B) by striking ` and' at the end of subparagraph (F);

(C) by inserting ` and' at the end of subparagraph (G); and

(D) by adding after subparagraph (G) the following:

` (H) in the case of a policy that meets the standards under subparagraph (A) except that benefits under the policy are limited to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), provides for the application of requirements equal to or more stringent than the requirements under subsection (t),'.

(3) The first sentence of section 1154(a)(4)(B) (42 U.S.C. 1320c-3(a)(4)(B)) is amended by inserting ` (or subject to review under section 1882(t))' after ` section 1876'.

(c) EFFECTIVE DATE- The amendments made by this section shall only apply in 15 States (as determined by the Secretary of Health and Human Services) and only during the 3-year period beginning with 1992.

(d) EVALUATION- The Secretary of Health and Human Services shall conduct an evaluation of the amendments made by this section and shall report to Congress on such evaluation by not later than January 1, 1995.

#### SEC. 4359. HEALTH INSURANCE ADVISORY SERVICE FOR MEDICARE BENEFICIARIES.

(a) IN GENERAL- The Secretary of Health and Human Services shall establish a health insurance advisory service program (in this section referred to as the `beneficiary assistance program') to assist medicare-eligible individuals with the receipt of services under the medicare and medicaid programs and other health insurance programs.

(b) OUTREACH ELEMENTS- The beneficiary assistance program shall provide assistance--

- (1) through operation using local Federal offices that provide information on the medicare program,
- (2) using community outreach programs, and
- (3) using a toll-free telephone information service.

(c) ASSISTANCE PROVIDED- The beneficiary assistance program shall provide for information, counseling, and assistance for medicare-eligible individuals with respect to at least the following:

(1) With respect to the medicare program--

- (A) eligibility,
- (B) benefits (both covered and not covered),
- (C) the process of payment for services,
- (D) rights and process for appeals of determinations,
- (E) other medicare-related entities (such as peer review organizations, fiscal intermediaries, and carriers), and
- (F) recent legislative and administrative changes in the medicare program.

(2) With respect to the medicaid program--

- (A) eligibility, benefits, and the application process,
- (B) linkages between the medicaid and medicare programs, and
- (C) referral to appropriate State and local agencies involved in the medicaid program.

(3) With respect to medicare supplemental policies--

- (A) the program under section 1882 of the Social Security Act and standards required under such program,
- (B) how to make informed decisions on whether to purchase such policies and on what criteria to use in evaluating different policies,

(C) appropriate Federal, State, and private agencies that provide information and assistance in obtaining benefits under such policies, and

(D) other issues deemed appropriate by the Secretary.

The beneficiary assistance program also shall provide such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the medicare program and to improve the relationship between beneficiaries and the program.

(d) EDUCATIONAL MATERIAL- The Secretary, through the Administrator of the Health Care Financing Administration, shall develop appropriate educational materials and other appropriate techniques to assist employees in carrying out this section.

(e) NOTICE TO BENEFICIARIES- The Secretary shall take such steps as are necessary to assure that medicare-eligible beneficiaries and the general public are made aware of the beneficiary assistance program.

(f) REPORT- The Secretary shall include, in an annual report transmitted to the Congress, a report on the beneficiary assistance program and on other health insurance informational and counseling services made available to medicare-eligible individuals. The Secretary shall include in the report recommendations for such changes as may be desirable to improve the relationship between the medicare program and medicare-eligible individuals.

#### SEC. 4360. HEALTH INSURANCE INFORMATION, COUNSELING, AND ASSISTANCE GRANTS.

(a) GRANTS- The Secretary of Health and Human Services (in this section referred to as the `Secretary') shall make grants to States, with approved State regulatory programs under section 1882 of the Social Security Act, that submit applications to the Secretary that meet the requirements of this section for the purpose of providing information, counseling, and assistance relating to the procurement of adequate and appropriate health insurance coverage to individuals who are eligible to receive benefits under title XVIII of the Social Security Act (in this section referred to as `eligible individuals'). The Secretary shall prescribe regulations to establish a minimum level of funding for a grant issued under this section.

(b) GRANT APPLICATIONS-

(1) In submitting an application under this section, a State may consolidate and coordinate an application that consists of parts prepared by more than one agency or department of such State.

(2) As part of an application for a grant under this section, a State shall submit a plan for a State-wide health insurance information, counseling, and assistance program. Such program shall--

(A) establish or improve upon a health insurance information,

counseling, and assistance program that provides counseling and assistance to eligible individuals in need of health insurance information, including--

(i) information that may assist individuals in obtaining benefits and filing claims under titles XVIII and XIX of the Social Security Act;

(ii) policy comparison information for medicare supplemental policies (as described in section 1882(g)(1) of the Social Security Act 29

and information that may assist individuals in filing claims under such medicare supplemental policies;

29 So in original. Probably should be `Act)'.

(iii) information regarding long-term care insurance; and

(iv) information regarding other types of health insurance benefits that the Secretary determines to be appropriate;

(B) in conjunction with the health insurance information, counseling, and assistance program described in subparagraph (A), establish a system of referral to appropriate Federal or State departments or agencies for assistance with problems related to health insurance coverage (including legal problems), as determined by the Secretary;

(C) provide for a sufficient number of staff positions (including volunteer positions) necessary to provide the services of the health insurance information, counseling, and assistance program;

(D) provide assurances that staff members (including volunteer staff members) of the health insurance information, counseling, and assistance program have no conflict of interest in providing the services described in subparagraph (A);

(E) provide for the collection and dissemination of timely and accurate health care information to staff members;

(F) provide for training programs for staff members (including volunteer staff members);

(G) provide for the coordination of the exchange of health insurance information between the staff of departments and agencies of the State government and the staff of the health insurance information, counseling, and assistance program;

(H) make recommendations concerning consumer issues and complaints related to the provision of health care to agencies and departments of the State government and the Federal Government responsible for providing or regulating health insurance;

(I) establish an outreach program to provide the health insurance information and counseling described in subparagraph (A) and the assistance described in subparagraph (B) to eligible individuals; and

(J) demonstrate, to the satisfaction of the Secretary, an ability to provide the counseling and assistance required under this section.

(c) SPECIAL GRANTS-

(1) A State that is conducting a health insurance information, counseling, and assistance program that is substantially similar to a program described in subsection (b)(2) shall, as a requirement for eligibility for a grant under this section, demonstrate, to the satisfaction of the Secretary, that such State shall maintain the activities of such program at least at the level that such activities were conducted immediately preceding the date of the issuance of any grant during the period of time covered by such grant under this section and that such activities will continue to be maintained at such level.

(2) If the Secretary determines that the existing health insurance information, counseling, and assistance program is substantially similar to a program described in subsection (b)(2), the Secretary may waive some or all of the requirements described in such subsection and issue a grant to the State for the purpose of increasing the number of services offered by the health insurance information, counseling, and assistance program, experimenting with new methods of outreach in conducting such program, or expanding such program to geographic areas of the State not previously served by the program.

(d) CRITERIA FOR ISSUING GRANTS- In issuing a grant under this section, the Secretary shall consider--

(1) the commitment of the State to carrying out the health insurance information, counseling, and assistance program described in subsection (b)(2), including the level of cooperation demonstrated--

(A) by the office of the chief insurance regulator of the State, or the equivalent State entity;

(B) other officials of the State responsible for overseeing insurance plans issued by nonprofit hospital and medical service associations; and

(C) departments and agencies of such State responsible for--

(i) administering funds under title XIX of the Social Security Act, and

(ii) administering funds appropriated under the Older Americans Act;

(2) the population of eligible individuals in such State as a percentage of

the population of such State; and

(3) in order to ensure the needs of rural areas in such State, the relative costs and special problems associated with addressing the special problems of providing health care information, counseling, and assistance to the rural areas of such State.

(e) ANNUAL STATE REPORT- A State that receives a grant under subsection (c) or (d) 30

shall, not later than 180 days after receiving such grant, and annually thereafter, issue an annual report to the Secretary that includes information concerning--

30 So in original. Probably should be '(a) or (c)'.

(1) the number of individuals served by the State-wide health insurance information, counseling and assistance program of such State;

(2) an estimate of the amount of funds saved by the State, and by eligible individuals in the State, in the implementation of such program; and

(3) the problems that eligible individuals in such State encounter in procuring adequate and appropriate health care coverage.

(f) REPORT TO CONGRESS- Not later than 180 days after the date of the enactment of this section, and annually thereafter, the Secretary shall issue a report to the Committee on Finance of the Senate, the Special Committee on Aging of the Senate, the Committee on Ways and Means of the House of Representatives, the Committee on Energy and Commerce of the House of Representatives, and the Select Committee on Aging of the House of Representatives that--

(1) summarizes the allocation of funds authorized for grants under this section and the expenditure of such funds;

(2) summarizes the scope and content of training conferences convened under this section;

(3) outlines the problems that eligible individuals encounter in procuring adequate and appropriate health care coverage;

(4) makes recommendations that the Secretary determines to be appropriate to address the problems described in paragraph (3); and

(5) in the case of the report issued 2 years after the date of enactment of this section, evaluates the effectiveness of counseling programs established under this program, and makes recommendations regarding continued authorization of funds for these purposes.

(f) AUTHORIZATION OF APPROPRIATIONS FOR GRANTS- There are authorized to be appropriated, in equal parts from the Federal Hospital Insurance Trust



Fund and from the Federal Supplementary Medical Insurance Trust Fund, \$10,000,000 for each of fiscal years 1991, 1992, and 1993, to fund the grant programs described in this section.

## **SEC. 4361. MEDICARE AND MEDIGAP INFORMATION BY TELEPHONE.**

(a) IN GENERAL- Title XVIII (42 U.S.C. 1395 et seq.) is amended by inserting after section 1888 the following:

### **^ MEDICARE AND MEDIGAP INFORMATION BY TELEPHONE**

^ SEC. 1889. The Secretary shall provide information via a toll-free telephone number on the programs under this title and on medicare supplemental policies as defined in section 1882(g)(1) (including the relationship of State programs under title XIX to such policies).'

(b) DEMONSTRATION PROJECTS- The Secretary of Health and Human Services is authorized to conduct demonstration projects in up to 5 States for the purpose of establishing statewide toll-free telephone numbers for providing information on medicare benefits, medicare supplemental policies available in the State, and benefits under the State medicaid program.

## **Subtitle B--Medicaid**

### **Part 1--Reduction in Spending**

Sec. 4401. Reimbursement for prescribed drugs.

Sec. 4402. Requiring medicaid payment of premiums and cost-sharing for enrollment under group health plans where cost-effective.

### **Part 2--Protection of Low-Income Medicare Beneficiaries**

Sec. 4501. Phased-in extension of medicaid payments for medicare premiums for certain individuals with income below 120 percent of the official poverty line.

### **Part 3--Improvements in Child Health**

Sec. 4601. Medicaid child health provisions.

Sec. 4602. Mandatory use of outreach locations other than welfare offices.

Sec. 4603. Mandatory continuation of benefits throughout pregnancy or first year of life.

Sec. 4604. Adjustment in payment for hospital services furnished to low-income

children under the age of 6 years.

Sec. 4605. Presumptive eligibility.

Sec. 4606. Role in paternity determinations.

Sec. 4607. Report and transition on errors in eligibility determinations.

## **Part 4--Miscellaneous**

### **subpart a--payments**

Sec. 4701. State medicaid matching payments through voluntary contributions and State taxes.

Sec. 4702. Disproportionate share hospitals: counting of inpatient days.

Sec. 4703. Disproportionate share hospitals: alternative State payment adjustments and systems.

Sec. 4704. Federally-qualified health centers.

Sec. 4705. Hospice payments.

Sec. 4706. Limitation on disallowances or deferral of Federal financial participation for certain inpatient psychiatric hospital services for individuals under age 21.

Sec. 4707. Treatment of interest on Indiana disallowance.

Sec. 4708. Billing for services of substitute physician.

### **subpart b--eligibility and coverage**

Sec. 4711. Home and community-based care as optional service.

Sec. 4712. Community supported living arrangements services.

Sec. 4713. Providing Federal medical assistance for payments for premiums for 'COBRA' continuation coverage where cost effective.

Sec. 4714. Provisions relating to spousal impoverishment.

Sec. 4715. Disregarding German reparation payments from post-eligibility treatment of income under the medicaid program.

Sec. 4716. Amendments relating to medicaid transition provision.

Sec. 4717. Clarifying effect of hospice election.

Sec. 4718. Medically needy income levels for certain 1-member families.

Sec. 4719. Codification of coverage of rehabilitation services.

Sec. 4720. Personal care services for Minnesota.

Sec. 4721. Medicaid coverage of personal care services outside the home.

Sec. 4722. Medicaid coverage of alcoholism and drug dependency treatment services.

Sec. 4723. Medicaid spenddown option.

Sec. 4424. Optional State medicaid disability determinations independent of the Social Security Administration.

### **subpart c--health maintenance organizations**

Sec. 4731. Regulation of incentive payments to physicians.

Sec. 4732. Special rules.

Sec. 4733. Extension and expansion of Minnesota prepaid medicaid demonstration project.

Sec. 4734. Treatment of certain county-operated health insuring organizations.

### **subpart d--demonstration projects and home and community-based waivers**

Sec. 4741. Home and community-based waivers.

Sec. 4742. Timely payment under waivers of freedom of choice of hospital services.

Sec. 4744. Provisions relating to frail elderly demonstration project waivers.

Sec. 4745. Demonstration projects to study the effect of allowing States to extend medicaid coverage to certain low-income families not otherwise qualified to receive medicaid benefits.

Sec. 4746. Medicaid respite demonstration project extended.

Sec. 4747. Demonstration project to provide medicaid coverage for HIV-positive individuals.

### **subpart e--miscellaneous**

Sec. 4751. Requirements for advanced directives under State plans for medical assistance.

Sec. 4752. Improvement in quality of physician services.

Sec. 4753. Clarification of authority of Inspector General.

Sec. 4754. Notice to State medical boards when adverse actions taken.

Sec. 4755. Miscellaneous provisions.

## **Part 5--Provisions Relating to Nursing Home Reform**

Sec. 4801. Technical corrections relating to nursing home reform.

### ***PART 1--REDUCTIONS IN SPENDING***

#### **SEC. 4401. REIMBURSEMENT FOR PRESCRIBED DRUGS.**

(a) IN GENERAL-

(1) DENIAL OF FEDERAL FINANCIAL PARTICIPATION UNLESS REBATE AGREEMENTS AND DRUG USE REVIEW IN EFFECT- Section 1903(i) (42 U.S.C. 1396b(i)) is amended--

(A) by striking the period at the end of paragraph (9) and inserting `; or', and

(B) by inserting after paragraph (9) the following new paragraph:

` (10) with respect to covered outpatient drugs of a manufacturer dispensed in any State unless, (A) except as provided in section 1927(a) (3), the manufacturer complies with the rebate requirements of section 1927(a) with respect to the drugs so dispensed in all States, and (B) effective January 1, 1993, the State provides for drug use review in accordance with section 1927(g).'

(2) PROHIBITING STATE PLAN DRUG ACCESS LIMITATIONS FOR DRUGS COVERED UNDER A REBATE AGREEMENT- Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended--

(A) by striking `and' at the end of paragraph (52),

(B) by striking the period at the end of paragraph (53) and inserting `; and', and

(C) by inserting after paragraph (53) the following new paragraph:

` (54)(A) provide that, any formulary or similar restriction (except as provided in section 1927(d)) on the coverage of covered outpatient drugs under the plan shall permit the coverage of covered outpatient drugs of any manufacturer which has entered into and complies with an agreement under section 1927(a), which are prescribed for a medically accepted indication (as defined in subsection 1927(k)(6)), and

` (B) comply with the reporting requirements of section 1927(b)(2)(A) and the requirements of subsections (d) and (g) of section 1927.'

(3) REBATE AGREEMENTS FOR COVERED OUTPATIENT DRUGS, DRUG USE

REVIEW, AND RELATED PROVISIONS- Title XIX of the Social Security Act is amended by redesignating section 1927 as section 1928 and by inserting after section 1926 the following new section:

## **PAYMENT FOR COVERED OUTPATIENT DRUGS**

### **SEC. 1927. (a) REQUIREMENT FOR REBATE AGREEMENT-**

(1) IN GENERAL- In order for payment to be available under section 1903(a) for covered outpatient drugs of a manufacturer, the manufacturer must have entered into and have in effect a rebate agreement described in subsection (b) with the Secretary, on behalf of States (except that, the Secretary may authorize a State to enter directly into agreements with a manufacturer). Any agreement between a State and a manufacturer prior to April 1, 1991, shall be deemed to have been entered into on January 1, 1991, and payment to such manufacturer shall be retroactively calculated as if the agreement between the manufacturer and the State had been entered into on January 1, 1991. If a manufacturer has not entered into such an agreement before March 1, 1991, such an agreement, subsequently entered into, shall not be effective until the first day of the calendar quarter that begins more than 60 days after the date the agreement is entered into.

(2) EFFECTIVE DATE- Paragraph (1) shall first apply to drugs dispensed under this title on or after January 1, 1991.

(3) AUTHORIZING PAYMENT FOR DRUGS NOT COVERED UNDER REBATE AGREEMENTS- Paragraph (1), and section 1903(i)(10)(A), shall not apply to the dispensing of a single source drug or innovator multiple source drug if (A)(i) the State has made a determination that the availability of the drug is essential to the health of beneficiaries under the State plan for medical assistance; (ii) such drug has been given a rating of 1-A by the Food and Drug Administration; and (iii)(I) the physician has obtained approval for use of the drug in advance of its dispensing in accordance with a prior authorization program described in subsection (d), or (II) the Secretary has reviewed and approved the State's determination under subparagraph (A); or (B) the Secretary determines that in the first calendar quarter of 1991, there were extenuating circumstances.

(4) EFFECT ON EXISTING AGREEMENTS- In the case of a rebate agreement in effect between a State and a manufacturer on the date of the enactment of this section, such agreement, for the initial agreement period specified therein, shall be considered to be a rebate agreement in compliance with this section with respect to that State, if the State agrees to report to the Secretary any rebates paid pursuant to the agreement and such agreement provides for a minimum aggregate rebate of 10 percent of the State's total expenditures under the State plan for coverage of the manufacturer's drugs under this title. If, after the initial agreement period, the State establishes to the satisfaction of the Secretary that an agreement in effect on the date of the enactment of

this section provides for rebates that are at least as large as the rebates otherwise required under this section, and the State agrees to report any rebates under the agreement to the Secretary, the agreement shall be considered to be a rebate agreement in compliance with the section for the renewal periods of such agreement.

˘ (b) TERMS OF REBATE AGREEMENT-

˘ (1) PERIODIC REBATES-

˘ (A) IN GENERAL- A rebate agreement under this subsection shall require the manufacturer to provide, to each State plan approved under this title, a rebate each calendar quarter (or periodically in accordance with a schedule specified by the Secretary) in an amount specified in subsection (c) for covered outpatient drugs of the manufacturer dispensed under the plan during the quarter (or such other period as the Secretary may specify). Such rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information described in paragraph (2) for the period involved.

˘ (B) OFFSET AGAINST MEDICAL ASSISTANCE- Amounts received by a State under this section (or under an agreement authorized by the Secretary under subsection (a)(1) or an agreement described in subsection (a)(4)) in any quarter shall be considered to be a reduction in the amount expended under the State plan in the quarter for medical assistance for purposes of section 1903(a)(1).

˘ (2) STATE PROVISION OF INFORMATION-

˘ (A) STATE RESPONSIBILITY- Each State agency under this title shall report to each manufacturer not later than 60 days after the end of each calendar quarter and in a form consistent with a standard reporting format established by the Secretary, information on the total number of dosage units of each covered outpatient drug dispensed under the plan during the quarter, and shall promptly transmit a copy of such report to the Secretary.

˘ (B) AUDITS- A manufacturer may audit the information provided (or required to be provided) under subparagraph (A). Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

˘ (3) MANUFACTURER PROVISION OF PRICE INFORMATION-

˘ (A) IN GENERAL- Each manufacturer with an agreement in effect under this section shall report to the Secretary--

˘ (i) not later than 30 days after the last day of each quarter (beginning on or after January 1, 1991), on the average manufacturer price (as defined in subsection (k)(1)) and, (for single source drugs and innovator multiple source drugs), the manufacturer's best price (as defined in subsection (c)(2)(B))

for covered outpatient drugs for the quarter, and

^ (ii) not later than 30 days after the date of entering into an agreement under this section on the average manufacturer price (as defined in subsection (k)(1)) as of October 1, 1990 31

for each of the manufacturer's covered outpatient drugs.

31 So in original. Probably should be ^ 1990,'.

^ (B) VERIFICATION SURVEYS OF AVERAGE MANUFACTURER PRICE- The Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs, when necessary, to verify manufacturer prices reported under subparagraph (A). The Secretary may impose a civil monetary penalty in an amount not to exceed \$100,000 on a wholesaler, manufacturer, or direct seller, if the wholesaler, manufacturer, or direct seller of a covered outpatient drug refuses a request for information about charges or prices by the Secretary in connection with a survey under this subparagraph or knowingly provides false information. The provisions of section 1128A (other than subsections (a) (with respect to amounts of penalties or additional assessments) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

^ (C) PENALTIES-

^ (i) FAILURE TO PROVIDE TIMELY INFORMATION- In the case of a manufacturer with an agreement under this section that fails to provide information required under subparagraph (A) on a timely basis, the amount of the penalty shall be increased by \$10,000 for each day in which such information has not been provided and such amount shall be paid to the Treasury, and, if such information is not reported within 90 days of the deadline imposed, the agreement shall be suspended for services furnished after the end of such 90-day period and until the date such information is reported (but in no case shall such suspension be for a period of less than 30 days).

^ (ii) FALSE INFORMATION- Any manufacturer with an agreement under this section that knowingly provides false information is subject to a civil money penalty in an amount not to exceed \$100,000 for each item of false information. Such civil money penalties are in addition to other penalties as may be prescribed by law. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

^ (D) CONFIDENTIALITY OF INFORMATION- Notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers under this paragraph is confidential and shall not be

disclosed by the Secretary or a State agency (or contractor therewith) in a form which discloses the identity of a specific manufacturer or wholesaler, prices charged for drugs by such manufacturer or wholesaler, except as the Secretary determines to be necessary to carry out this section and to permit the Comptroller General to review the information provided.

˘ (4) LENGTH OF AGREEMENT-

˘ (A) IN GENERAL- A rebate agreement shall be effective for an initial period of not less than 1 year and shall be automatically renewed for a period of not less than one year unless terminated under subparagraph (B).

˘ (B) TERMINATION-

˘ (i) BY THE SECRETARY- The Secretary may provide for termination of a rebate agreement for violation of the requirements of the agreement or other good cause shown. Such termination shall not be effective earlier than 60 days after the date of notice of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination.

˘ (ii) BY A MANUFACTURER- A manufacturer may terminate a rebate agreement under this section for any reason. Any such termination shall not be effective until such period after the date of the notice as the Secretary may provide (but not beyond the term of the agreement).

˘ (iii) EFFECTIVENESS OF TERMINATION- Any termination under this subparagraph shall not affect rebates due under the agreement before the effective date of its termination.

˘ (C) DELAY BEFORE REENTRY- In the case of any rebate agreement with a manufacturer under this section which is terminated, another such agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 calendar quarter has elapsed since the date of the termination, unless the Secretary finds good cause for an earlier reinstatement of such an agreement.

˘ (c) AMOUNT OF REBATE-

˘ (1) BASIC REBATE FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS- With respect to single source drugs and innovator multiple source drugs, each manufacturer shall remit a basic rebate to the State medical assistance plan. Except as otherwise provided in this subsection, the amount of the rebate to a State for a calendar quarter (or other period specified by the Secretary) with respect to each dosage form and strength of single source drugs and innovator multiple source drugs shall be equal to the product of--



- ^(A) the total number of units of each dosage form and strength dispensed under the plan under this title in the quarter (or other period) reported by the State under subsection (b)(2); and
- ^(B)(i) for quarters (or periods) beginning after December 31, 1990, and before January 1, 1993, the greater of--
  - ^(I) the difference between the average manufacturer price (after deducting customary prompt payment discounts) and 87.5 percent of such price for the quarter (or other period), or
  - ^(II) the difference between the average manufacturer price for a drug and the best price (as defined in paragraph (2)(B)) for such quarter (or period) for such drug (except that for calendar quarters beginning after December 31, 1990, and ending before January 1, 1992, the rebate shall not exceed 25 percent of the average manufacturer price, and for calendar quarters beginning after December 31, 1991, and ending before January 1, 1993, the rebate shall not exceed 50 percent of the average manufacturer price); and
- ^(ii) for quarters (or other periods) beginning after December 31, 1992, the greater of--
  - ^(I) the difference between the average manufacturer price for a drug and 85 percent of such price, or
  - ^(II) the difference between the average manufacturer price for a drug and the best price (as defined in paragraph (2)(B)) for such quarter (or period) for such drug.
- ^(C) For the purposes of this paragraph, the term 'best price' means, with respect to a single source drug or innovator multiple source drug of a manufacturer, the lowest price available from the manufacturer to any wholesaler, retailer, nonprofit entity, or governmental entity within the United States (excluding depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government). The best price shall be inclusive of cash discounts, free goods, volume discounts, and rebates (other than rebates under this section) and shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package, and shall not take into account prices that are merely nominal in amount; 32

32 So in original. Probably should be `.'.

^(D) In the case of a covered outpatient drug approved for marketing after October 1, 1990, any reference in this paragraph to 'October 1, 1990' shall be a reference to the first day of the first month during which the drug was marketed.

^(2) ADDITIONAL REBATE FOR SINGLE SOURCE AND INNOVATOR

MULTIPLE SOURCE DRUGS- (A) Each manufacturer shall remit an additional rebate to the State medical assistance plan in an amount equal to:

    ` (i) For calendar quarters (or other periods) beginning after December 31, 1990 and ending before January 1, 1994--

        ` (I) the total number of each dosage form and strength of a single source or innovator multiple source drug dispensed during the calendar quarter (or other period); multiplied by

        ` (II)(aa) the average manufacturer price for each dosage form and strength, minus

        ` (bb) the average manufacturer price for each such dosage form and strength in effect on October 1, 1990, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. average) from October 1, 1990, to the month before the beginning of the calendar quarter (or other period) involved; 33

33 So in original. Probably should be ` .'.

    ` (ii) For calendar quarters (or other periods) beginning after December 31, 1993--

        ` (I) the total number of each dosage form and strength of a single source or innovative multiple source drug dispensed during the calendar quarter (or other period); multiplied by

        ` (II) the amount, if any, by which the weighted average manufacturer price for single source and innovator multiple source drugs of a manufacturer exceeds the weighted average manufacturer price for the manufacturer as of October 1, 1990, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. average) from October 1, 1990, to the month before the beginning of the calendar quarter (or other period) involved.

    ` (B)(i) For the purposes of subparagraph (A)(ii), the term `weighted average manufacturer price' means (with respect to a calendar quarter or other period) the ratio of--

        ` (I) the sum of the products (for all covered drugs of the manufacturer purchased under a State program under this title) of--

            ` (aa) the average manufacturer price for each such covered drug; and

            ` (bb) the number of units of the covered drug sold to any State program under this title during such period, to

“(II) the total number of units of all such covered drugs sold under a State program under this title in such period,

except that the Secretary may exclude certain new drugs from the calculation of the weighted average if the inclusion of any such drug in such calculation has the effect of--

“(aa) reducing the rebate otherwise calculated pursuant to subparagraph (A)(ii); or

“(bb) increasing the rebate otherwise calculated pursuant to subparagraph (A)(ii) (in cases where such calculation under the conditions outlined in clause (ii). 34

34 So in original. Probably should be “(ii)”.

“(ii)(I) The Secretary may exclude drugs approved by the Food and Drug Administration on or after October 1, 1990, from the calculation of weighted average manufacturer price if inclus 35

manufacturer demonstrates through a petition, in a form and manner prescribed by the Secretary, undue hardship on such manufacturer as a result of the inclusion of such drug in such calculation). 36

35 So in original. The “inclus” probably should be “the”.

36 So in original. Probably should be “calculation.”.

“(II) The Secretary may promulgate guidelines to restrict the conditions under which the Secretary may consider such petitions.

“(C) For each of 8 calendar quarters beginning after December 31, 1991, the Secretary shall compare the aggregate amount of the rebates under subparagraph (A)(i) to the aggregate amount of rebates under subparagraph (A)(ii). Based on any such comparison, the Secretary may propose and utilize an alternative formula for the purpose of calculating an aggregate rebate.

“(3) REBATE FOR OTHER DRUGS- The amount of the rebate to a State for a calendar quarter (or other period specified by the Secretary) with respect to covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of--

“(A) the applicable percentage (as described in paragraph (4) 37

of the average manufacturer price for each dosage form and strength of such drugs (after deducting customary prompt payment discounts) for the quarter (or other period), and

37 So in original. Probably should be “(4)”.

“(B) the number of units of such form and dosage dispensed under

the plan under this title in the quarter (or other period) reported by the State under subsection (b)(2).

- ˘ (4) For the purposes of paragraph (3), the applicable percentage is--
  - ˘ (A) with respect to calendar quarters beginning after December 31, 1990, and ending before January 1, 1994, 10 percent; and
  - ˘ (B) with respect to calendar quarters beginning on or after December 31, 1993, 11 percent.

˘ (d) LIMITATIONS ON COVERAGE OF DRUGS-

˘ (1) PERMISSIBLE RESTRICTIONS- (A) Except as provided in paragraph (6), a State may subject to prior authorization any covered outpatient drug. Any such prior authorization program shall comply with the requirements of paragraph (5).

˘ (B) A State may exclude or otherwise restrict coverage of a covered outpatient drug if--

˘ (i) the prescribed use is not for a medically accepted indication (as defined in (k)(6));

˘ (ii) the drug is contained in the list referred to in paragraph (2); or

˘ (iii) the drug is subject to such restrictions pursuant to an agreement between a manufacturer and a State authorized by the Secretary under subsection (a)(1) or in effect pursuant to subsection (a)(4).

˘ (2) LIST OF DRUGS SUBJECT TO RESTRICTION- The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted:

˘ (A) Agents when used for anorexia or weight gain.

˘ (B) Agents when used to promote fertility.

˘ (C) Agents when used for cosmetic purposes or hair growth.

˘ (D) Agents when used for the symptomatic relief of cough and colds.

˘ (E) Agents when used to promote smoking cessation.

˘ (F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

˘ (G) Nonprescription drugs.

˘ (H) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring

services be purchased exclusively from the manufacturer or its designee.

` (I) Drugs described in section 107(c)(3) of the Drug Amendments of 1962 and identical, similar, or related drugs (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations ('DESI' drugs)).

` (J) Barbiturates.

` (K) Benzodiazepines.

` (3) UPDATE OF DRUG LISTINGS- The Secretary shall (except with respect to new drugs approved by the FDA for the first 6 months following the date of approval of such drugs shall not be subject to being listed in paragraph (2) under the provisions of this paragraph), by regulation, periodically update the list of drugs described in paragraph (2) or classes of drugs, or their medical uses, which the Secretary has determined, based on data collected by surveillance and utilization review programs of State medical assistance programs, to be subject to clinical abuse or inappropriate use.

` (4) INNOVATOR MULTIPLE-SOURCE DRUGS- Innovator multiple-source drugs shall be treated under applicable State and Federal law and regulation.

` (5) PRIOR AUTHORIZATION PROGRAMS- A State plan under this title may not require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6)) unless the system providing for such approval--

` (A) provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and

` (B) except with respect to the drugs on the list referred to in paragraph (2), provides for the dispensing of at least a 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

` (6) TREATMENT OF NEW DRUGS- A State may not exclude for coverage, subject to prior authorization, or otherwise restrict any new biological or drug approved by the Food and Drug Administration after the date of enactment of this section, for a period of 6 months after such approval.

` (7) OTHER PERMISSIBLE RESTRICTIONS- A State may impose limitations, with respect to all such drugs in a therapeutic class, on the minimum or maximum quantities per prescription or on the number of refills, provided such limitations are necessary to discourage waste.

Nothing in this section shall restrict the ability of a State to address individual

instances of fraud or abuse in any manner authorized under the Social Security Act.

` (8) DELAYED EFFECTIVE DATE- The provisions of paragraph (5) shall become effective with respect to drugs dispensed under this title on or after July 1, 1991.

` (e) DENIAL OF FEDERAL FINANCIAL PARTICIPATION IN CERTAIN CASES- The Secretary shall provide that no payment shall be made to a State under section 1903(a) for an innovator multiple-source drug dispensed on or after July 1, 1991, if, under applicable State law, a less expensive noninnovator multiple source drug (other than the innovator multiple-source drug) could have been dispensed.

` (f) PHARMACY REIMBURSEMENT-

` (1) NO REDUCTIONS IN REIMBURSEMENT LIMITS- (A) During the period of time beginning on January 1, 1991, and ending on December 31, 1994, the Secretary may not modify by regulation the formula used to determine reimbursement limits described in the regulations under 42 CFR 447.331 through 42 CFR 447.334 (as in effect on the date of the enactment of the Omnibus Budget Reconciliation Act of 1990) to reduce such limits for covered outpatient drugs.

(B) 38

During the period of time described in subparagraph (A), any State that was in compliance with the regulations described in subparagraph (A) may not reduce the limits for covered outpatient drugs described in subparagraph (A) or dispensing fees for such drugs.

38 So in original. Probably should be `(B)'.

` (2) ESTABLISHMENT OF UPPER PAYMENT LIMITS- HCFA shall establish a Federal upper reimbursement limit for each multiple source drug for which the FDA has rated three or more products therapeutically and pharmaceutically equivalent, regardless of whether all such additional formulations are rated as such and shall use only such formulations when determining any such upper limit.

` (g) DRUG USE REVIEW-

` (1) IN GENERAL-

` (A) In order to meet the requirement of section 1903(i)(10)(B), a State shall provide, by not later than January 1, 1993, for a drug use review program described in paragraph (2) for covered outpatient drugs in order to assure that prescriptions (i) are appropriate, (ii) are medically necessary, and (iii) are not likely to result in adverse medical results. The program shall be designed to educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or

medically unnecessary care, among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs, as well as potential and actual severe adverse reactions to drugs including education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse.

^ (B) The program shall assess data on drug use against predetermined standards, consistent with the following:

^ (i) compendia which shall consist of the following:

^ (I) American Hospital Formulary Service Drug Information;

^ (II) United States Pharmacopeia-Drug Information; and

^ (III) American Medical Association Drug Evaluations; and

^ (ii) the peer-reviewed medical literature.

^ (C) The Secretary, under the procedures established in section 1903, shall pay to each State an amount equal to 75 per centum of so much of the sums expended by the State plan during calendar years 1991 through 1993 as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of this subsection.

^ (D) States shall not be required to perform additional drug use reviews with respect to drugs dispensed to residents of nursing facilities which are in compliance with the drug regimen review procedures prescribed by the Secretary for such facilities in regulations implementing section 1919, currently at section 483.60 of title 42, Code of Federal Regulations.

^ (2) DESCRIPTION OF PROGRAM- Each drug use review program shall meet the following requirements for covered outpatient drugs:

^ (A) PROSPECTIVE DRUG REVIEW- (i) The State plan shall provide for a review of drug therapy before each prescription is filled or delivered to an individual receiving benefits under this title, typically at the point-of-sale or point of distribution. The review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs), incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse. Each State shall use the compendia and literature referred to in paragraph (1)(B) as its source of standards for such review.

^ (ii) As part of the State's prospective drug use review program

under this subparagraph applicable State law shall establish standards for counseling of individuals receiving benefits under this title by pharmacists which includes at least the following:

` (I) The pharmacist must offer to discuss with each individual receiving benefits under this title or caregiver of such individual (in person, whenever practicable, or through access to a telephone service which is toll-free for long-distance calls) who presents a prescription, matters which in the exercise of the pharmacist's professional judgment (consistent with State law respecting the provision of such information), the pharmacist deems significant including the following:

` (aa) The name and description of the medication.

` (bb) The route, dosage form, dosage, route of administration, and duration of drug therapy.

` (cc) Special directions and precautions for preparation, administration and use by the patient.

` (dd) Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur.

` (ee) Techniques for self-monitoring drug therapy.

` (ff) Proper storage.

` (gg) Prescription refill information.

` (hh) Action to be taken in the event of a missed dose.

` (II) A reasonable effort must be made by the pharmacist to obtain, record, and maintain at least the following information regarding individuals receiving benefits under this title:

` (aa) Name, address, telephone number, date of birth (or age) and gender.

` (bb) Individual history where significant, including disease state or states, known allergies and drug reactions, and a comprehensive list of medications and relevant devices.

` (cc) Pharmacist comments relevant to the individuals drug therapy.

Nothing in this clause shall be construed as requiring a pharmacist to provide consultation when an individual receiving benefits under this title or caregiver of such individual refuses such consultation.



` (B) RETROSPECTIVE DRUG USE REVIEW- The program shall provide, through its mechanized drug claims processing and information retrieval systems (approved by the Secretary under section 1903(r)) or otherwise, for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists and individuals receiving benefits under this title, or associated with specific drugs or groups of drugs.

` (C) APPLICATION OF STANDARDS- The program shall, on an ongoing basis, assess data on drug use against explicit predetermined standards (using the compendia and literature referred to in subsection (1)(B) as the source of standards for such assessment) including but not limited to monitoring for therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, and clinical abuse/misuse and, as necessary, introduce remedial strategies, in order to improve the quality of care and to conserve program funds or personal expenditures.

` (D) EDUCATIONAL PROGRAM- The program shall, through its State drug use review board established under paragraph (3), either directly or through contracts with accredited health care educational institutions, State medical societies or State pharmacists associations/societies or other organizations as specified by the State, and using data provided by the State drug use review board on common drug therapy problems, provide for active and ongoing educational outreach programs (including the activities described in paragraph (3)(C)(iii) of this subsection) to educate practitioners on common drug therapy problems with the aim of improving prescribing or dispensing practices.

` (3) STATE DRUG USE REVIEW BOARD-

` (A) ESTABLISHMENT- Each State shall provide for the establishment of a drug use review board (hereinafter referred to as the `DUR Board') either directly or through a contract with a private organization.

` (B) MEMBERSHIP- The membership of the DUR Board shall include health care professionals who have recognized knowledge and expertise in one or more of the following:

` (i) The clinically appropriate prescribing of covered outpatient drugs.

` (ii) The clinically appropriate dispensing and monitoring of covered outpatient drugs.

- ˘ (iii) Drug use review, evaluation, and intervention.
- ˘ (iv) Medical quality assurance.

The membership of the DUR Board shall be made up at least 1/3 but no more than 51 percent licensed and actively practicing physicians and at least 1/3 \* \* \* licensed and actively practicing pharmacists.

˘ (C) ACTIVITIES- The activities of the DUR Board shall include but not be limited to the following:

- ˘ (i) Retrospective DUR as defined in section (2)(B).
- ˘ (ii) Application of standards as defined in section (2)(C).
- ˘ (iii) Ongoing interventions for physicians and pharmacists, targeted toward therapy problems or individuals identified in the course of retrospective drug use reviews performed under this subsection. Intervention programs shall include, in appropriate instances, at least:
  - ˘ (I) information dissemination sufficient to ensure the ready availability to physicians and pharmacists in the State of information concerning its duties, powers, and basis for its standards;
  - ˘ (II) written, oral, or electronic reminders containing patient-specific or drug-specific (or both) information and suggested changes in prescribing or dispensing practices, communicated in a manner designed to ensure the privacy of patient-related information;
  - ˘ (III) use of face-to-face discussions between health care professionals who are experts in rational drug therapy and selected prescribers and pharmacists who have been targeted for educational intervention, including discussion of optimal prescribing, dispensing, or pharmacy care practices, and follow-up face-to-face discussions; and
  - ˘ (IV) intensified review or monitoring of selected prescribers or dispensers.

The Board shall re-evaluate interventions after an appropriate period of time to determine if the intervention improved the quality of drug therapy, to evaluate the success of the interventions and make modifications as necessary.

˘ (D) ANNUAL REPORT- Each State shall require the DUR Board to prepare a report on an annual basis. The State shall submit a report on an annual basis to the Secretary which shall include a description of the activities of the Board, including the nature and scope of the prospective and retrospective drug use review programs, a summary

of the interventions used, an assessment of the impact of these educational interventions on quality of care, and an estimate of the cost savings generated as a result of such program. The Secretary shall utilize such report in evaluating the effectiveness of each State's drug use review program.

^ (h) ELECTRONIC CLAIMS MANAGEMENT-

^ (1) IN GENERAL- In accordance with chapter 35 of title 44, United States Code (relating to coordination of Federal information policy), the Secretary shall encourage each State agency to establish, as its principal means of processing claims for covered outpatient drugs under this title, a point-of-sale electronic claims management system, for the purpose of performing on-line, real time eligibility verifications, claims data capture, adjudication of claims, and assisting pharmacists (and other authorized persons) in applying for and receiving payment.

^ (2) ENCOURAGEMENT- In order to carry out paragraph (1)--

^ (A) for calendar quarters during fiscal years 1991 and 1992, expenditures under the State plan attributable to development of a system described in paragraph (1) shall receive Federal financial participation under section 1903(a)(3)(A)(i) (at a matching rate of 90 percent) if the State acquires, through applicable competitive procurement process in the State, the most cost-effective telecommunications network and automatic data processing services and equipment; and

^ (B) the Secretary may permit, in the procurement described in subparagraph (A) in the application of part 433 of title 42, Code of Federal Regulations, and parts 95, 205, and 307 of title 45, Code of Federal Regulations, the substitution of the State's request for proposal in competitive procurement for advance planning and implementation documents otherwise required.

^ (i) ANNUAL REPORT-

^ (1) IN GENERAL- Not later than May 1 of each year the Secretary shall transmit to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives a report on the the operation of this section in the preceding fiscal year.

^ (2) DETAILS- Each report shall include information on--

^ (A) ingredient costs paid under this title for single source drugs, multiple source drugs, and nonprescription covered outpatient drugs;

^ (B) the total value of rebates received and number of manufacturers providing such rebates;

^ (C) how the size of such rebates compare with the size or rebates

offered to other purchasers of covered outpatient drugs;

` (D) the effect of inflation on the value of rebates required under this section;

` (E) trends in prices paid under this title for covered outpatient drugs; and

` (F) Federal and State administrative costs associated with compliance with the provisions of this title.

` (j) EXEMPTION OF ORGANIZED HEALTH CARE SETTINGS- (1) Covered outpatient drugs dispensed by \* \* \* Health Maintenance Organizations, including those organizations that contract under section 1903(m), are not subject to the requirements of this section.

` (2) The State plan shall provide that a hospital (providing medical assistance under such plan) that dispenses covered outpatient drugs using drug formulary systems, and bills the plan no more than the hospital's purchasing costs for covered outpatient drugs (as determined under the State plan) shall not be subject to the requirements of this section.

` (3) Nothing in this subsection shall be construed as providing that amounts for covered outpatient drugs paid by the institutions described in this subsection should not be taken into account for purposes of determining the best price as described in subsection (c).

` (k) DEFINITIONS- In this section--

` (1) AVERAGE MANUFACTURER PRICE- The term `average manufacturer price' means, with respect to a covered outpatient drug of a manufacturer for a calendar quarter, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade.

` (2) COVERED OUTPATIENT DRUG- Subject to the exceptions in paragraph (3), the term `covered outpatient drug' means--

` (A) of those drugs which are treated as prescribed drugs for purposes of section 1905(a)(12), a drug which may be dispensed only upon prescription (except as provided in paragraph (5)), and--

` (i) which is approved for safety and effectiveness as a prescription drug under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act or which is approved under section 505(j) of such Act;

` (ii)(I) which was commercially used or sold in the United States before the date of the enactment of the Drug Amendments of 1962 or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) which has

not been the subject of a final determination by the Secretary that it is a `new drug' (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act) or an action brought by the Secretary under section 301, 302(a), or 304(a) of such Act to enforce section 502(f) or 505(a) of such Act; or

`(iii)(I) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act on a proposed order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling; and

`(B) a biological product, other than a vaccine which--

`(i) may only be dispensed upon prescription,

`(ii) is licensed under section 351 of the Public Health Service Act, and

`(iii) is produced at an establishment licensed under such section to produce such product; and

`(C) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act.

`(3) LIMITING DEFINITION- The term `covered outpatient drug' does not include any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as, any of the following (and for which payment may be made under this title as part of payment for the following and not as direct reimbursement for the drug):

`(A) Inpatient hospital services.

`(B) Hospice services.

`(C) Dental services, except that drugs for which the State plan authorizes direct reimbursement to the dispensing dentist are covered outpatient drugs.

`(D) Physicians'services.

`(E) Outpatient hospital services \* \* \* \* 39

emergency room visits.

39 So in original. Probably should be `services emergency'.

- ` (F) Nursing facility services.
- ` (G) Other laboratory and x-ray services.
- ` (H) Renal dialysis.

Such term also does not include any such drug or product which is used for a medical indication which is not a medically accepted indication.

` (4) NONPRESCRIPTION DRUGS- If a State plan for medical assistance under this title includes coverage of prescribed drugs as described in section 1905(a)(12) and permits coverage of drugs which may be sold without a prescription (commonly referred to as `over-the-counter' drugs), if they are prescribed by a physician (or other person authorized to prescribe under State law), such a drug shall be regarded as a covered outpatient drug.

` (5) MANUFACTURER- The term `manufacturer' means any entity which is engaged in--

- ` (A) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or
- ` (B) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

` (6) MEDICALLY ACCEPTED INDICATION- The term `medically accepted indication' means any use for a covered outpatient drug which is approved under the Federal Food, Drug, and Cosmetic Act, which appears in peer-reviewed medical literature or which is accepted by one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, and the United States Pharmacopeia-Drug Information.

` (7) MULTIPLE SOURCE DRUG; INNOVATOR MULTIPLE SOURCE DRUG; NONINNOVATOR MULTIPLE SOURCE DRUG; SINGLE SOURCE DRUG-

` (A) DEFINED-

- ` (i) MULTIPLE SOURCE DRUG- The term `multiple source drug' means, with respect to a calendar quarter, a covered outpatient drug (not including any drug described in paragraph (5)) for which there are 2 or more drug products which--

^ (I) are rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of ^ Approved Drug Products with Therapeutic Equivalence Evaluations'),

^ (II) except as provided in subparagraph (B), are pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C) and as determined by the Food and Drug Administration, and

^ (III) are sold or marketed in the State during the period.

^ (ii) INNOVATOR MULTIPLE SOURCE DRUG- The term ^ innovator multiple source drug' means a multiple source drug that was originally marketed under an original new drug application approved by the Food and Drug Administration.

^ (iii) NONINNOVATOR MULTIPLE SOURCE DRUG- The term ^ noninnovator multiple source drug' means a multiple source drug that is not an innovator multiple source drug.

^ (iv) SINGLE SOURCE DRUG- The term ^ single source drug' means a covered outpatient drug which is produced or distributed under an original new drug application approved by the Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributors 40

operating under the new drug application.

40 So in original. Probably should be ^ distributors'.

^ (B) EXCEPTION- Subparagraph (A)(i)(II) shall not apply if the Food and Drug Administration changes by regulation the requirement that, for purposes of the publication described in subparagraph (A)(i)(I), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C).

^ (C) DEFINITIONS- For purposes of this paragraph--

^ (i) drug products are pharmaceutically 41

equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity;

41 So in original. Probably should be ^ pharmaceutically'.

^ (ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence; and

` (iii) a drug product is considered to be sold or marketed in a State if it appears in a published national listing of average wholesale prices selected by the Secretary, provided that the listed product is generally available to the public through retail pharmacies in that State.

` (8) STATE AGENCY- The term `State agency' means the agency designated under section 1902(a)(5) to administer or supervise the administration of the State plan for medical assistance.'

(b) FUNDING-

(1) DRUG USE REVIEW PROGRAMS- Section 1903(a)(3) (42 U.S.C. 1936b(a)(3)) is amended--

(A) by striking `plus' at the end of subparagraph (C) and inserting `and', and

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

` (D) 75 percent of so much of the sums expended by the State plan during a quarter in 1991, 1992, or 1993, as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of section 1927(g); plus'.

(2) TEMPORARY INCREASE IN FEDERAL MATCH FOR ADMINISTRATIVE COSTS- The per centum to be applied under section 1903(a)(7) of the Social Security Act for amounts expended during calendar quarters in fiscal year 1991 which are attributable to administrative activities necessary to carry out section 1927 (other than subsection (g)) of such Act shall be 75 percent, rather than 50 percent; after fiscal year 1991, the match shall revert back to 50 percent.

(c) DEMONSTRATION PROJECTS-

(1) PROSPECTIVE DRUG UTILIZATION REVIEW-

(A) The Secretary of Health and Human Services shall provide, through competitive procurement by not later than January 1, 1992, for the establishment of at least 10 statewide demonstration projects to evaluate the efficiency and cost-effectiveness of prospective drug utilization review (as a component of on-line, real-time electronic point-of-sales claims management) in fulfilling patient counseling and in reducing costs for prescription drugs.

(B) Each of such projects shall establish a central electronic repository for capturing, storing, and updating prospective drug utilization review data and for providing access to such data by participating pharmacists (and other authorized participants).

(C) Under each project, the pharmacist or other authorized



participant shall assess the active drug regimens of recipients in terms of duplicate drug therapy, therapeutic overlap, allergy and cross-sensitivity reactions, drug interactions, age precautions, drug regiment compliance, prescribing limits, and other appropriate elements.

(D) Not later than January 1, 1994, the Secretary shall submit to Congress a report on the demonstration projects conducted under this paragraph.

(2) DEMONSTRATION PROJECT ON COST-EFFECTIVENESS OF REIMBURSEMENT FOR PHARMACISTS' COGNITIVE SERVICES-

(A) The Secretary of Health and Human Services shall conduct a demonstration project to evaluate the impact on quality of care and cost-effectiveness of paying pharmacists under title XIX of the Social Security Act, whether or not a drug is dispensed, for drug use review services. For this purpose, the Secretary shall provide for no fewer than 5 demonstration sites in different States and the participation of a significant number of pharmacists.

(B) Not later than January 1, 1995, the Secretary shall submit a report to the Congress on the results of the demonstration project conducted under subparagraph (A).

(d) STUDIES-

(1) STUDY OF DRUG PURCHASING AND BILLING ACTIVITIES OF VARIOUS HEALTH CARE SYSTEMS-

(A) The Comptroller General shall conduct a study of the drug purchasing and billing practices of hospitals, other institutional facilities, and managed care plans which provide covered outpatient drugs in the medicaid program. The study shall compare the ingredient costs of drugs for medicaid prescriptions to these facilities and plans and the charges billed to medical assistance programs by these facilities and plans compared to retail pharmacies.

(B) The study conducted under this subsection shall include an assessment of--

(i) the prices paid by these institutions for covered outpatient drugs compared to prices that would be paid under this section,

(ii) the quality of outpatient drug use review provided by these institutions as compared to drug use review required under this section, and

(iii) the efficiency of mechanisms used by these institutions for billing and receiving payment for covered outpatient drugs dispensed under this title.

(C) By not later than May 1, 1991, the Comptroller General shall report to the Secretary of Health and Human Services (hereafter in this section referred to as the `Secretary'), the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the study conducted under subparagraph (A).

(2) REPORT ON DRUG PRICING- By not later than May 1 of each year, the Comptroller General shall submit to the Secretary, the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and House of Representatives an annual report on changes in prices charged by manufacturers for prescription drugs to the Department of Veterans Affairs, other Federal programs, retail and hospital pharmacies, and other purchasing groups and managed care plans.

(3) STUDY ON PRIOR APPROVAL PROCEDURES-

(A) The Secretary, acting in consultation with the Comptroller General, shall study prior approval procedures utilized by State medical assistance programs conducted under title XIX of the Social Security Act, including--

(i) the appeals provisions under such programs; and

(ii) the effects of such procedures on beneficiary and provider access to medications covered under such programs.

(B) By not later than December 31, 1991, the Secretary and the Comptroller General shall report to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the results of the study conducted under subparagraph (A) and shall make recommendations with respect to which procedures are appropriate or inappropriate to be utilized by State plans for medical assistance.

(4) STUDY ON REIMBURSEMENT RATES TO PHARMACISTS-

(A) The Secretary shall conduct a study on (i) the adequacy of current reimbursement rates to pharmacists under each State medical assistance programs conducted under title XIX of the Social Security Act; and (ii) the extent to which reimbursement rates under such programs have an effect on beneficiary access to medications covered and pharmacy services under such programs.

(B) By not later than December 31, 1991, the Secretary shall report to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aqing of the Senate and the House of

Representatives on the results of the study conducted under subparagraph (A).

(5) STUDY OF PAYMENTS FOR VACCINES- The Secretary of Health and Human Services shall undertake a study of the relationship between State medical assistance plans and Federal and State acquisition and reimbursement policies for vaccines and the accessibility of vaccinations and immunization to children provided under this title. The Secretary shall report to the Congress on the Study not later than one year after the date of the enactment of this Act.

(6) STUDY ON APPLICATION OF DISCOUNTING OF DRUGS UNDER MEDICARE- The Comptroller General shall conduct a study examining methods to encourage providers of items and services under title XVIII of the Social Security Act to negotiate discounts with suppliers of prescription drugs to such providers. The Comptroller General shall submit to Congress a report on such study no later than 1 year after the date of enactment of this subsection.

#### SEC. 4402. REQUIRING MEDICAID PAYMENT OF PREMIUMS AND COST-SHARING FOR ENROLLMENT UNDER GROUP HEALTH PLANS WHERE COST-EFFECTIVE.

(a) IN GENERAL- Title XIX (42 U.S.C. 1396 et seq.) is amended--

(1) in section 1902(a)(25) (42 U.S.C. 1396a(a)(25))--

(A) by striking `and' at the end of subparagraph (E),

(B) by adding `and' at the end of subparagraph (F), and

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

`(G) that the State plan shall meet the requirements of section 1906 (relating to enrollment of individuals under group health plans in certain cases);'; and

(2) by inserting after section 1905 the following new section:

### **ENROLLMENT OF INDIVIDUALS UNDER GROUP HEALTH PLANS**

SEC. 1906. (a) For purposes of section 1902(a)(25)(G) and subject to subsection (d), each State plan--

(1) shall implement guidelines established by the Secretary, consistent with subsection (b), to identify those cases in which enrollment of an individual otherwise entitled to medical assistance under this title in a group health plan (in which the individual is otherwise eligible to be enrolled) is cost-effective (as defined in subsection (e)(2));

(2) shall require, in case of an individual so identified and as a condition

of the individual being or remaining eligible for medical assistance under this title and subject to subsection (b)(2), notwithstanding any other provision of this title, that the individual (or in the case of a child, the child's parent) apply for enrollment in the group health plan; and

^ (3) in the case of such enrollment (except as provided in subsection (c)(1)(B)), shall provide for payment of all enrollee premiums for such enrollment and all deductibles, coinsurance, and other cost-sharing obligations for items and services otherwise covered under the State plan under this title (exceeding the amount otherwise permitted under section 1916), and shall treat coverage under the group health plan as a third party liability (under section 1902(a)(25)).

^ (b)(1) In establishing guidelines under subsection (a)(1), the Secretary shall take into account that an individual may only be eligible to enroll in group health plans at limited times and only if other individuals (not entitled to medical assistance under the plan) are also enrolled in the plan simultaneously.

^ (2) If a parent of a child fails to enroll the child in a group health plan in accordance with subsection (a)(2), such failure shall not affect the child's eligibility for benefits under this title.

^ (c)(1)(A) In the case of payments of premiums, deductibles, coinsurance, and other cost-sharing obligations under this section shall be considered, for purposes of section 1903(a), to be payments for medical assistance.

^ (B) If all members of a family are not eligible for medical assistance under this title and enrollment of the members so eligible in a group health plan is not possible without also enrolling members not so eligible--

^ (i) payment of premiums for enrollment of such other members shall be treated as payments for medical assistance for eligible individuals, if it would be cost-effective (taking into account payment of all such premiums), but

^ (ii) payment of deductibles, coinsurance, and other cost-sharing obligations for such other members shall not be treated as payments for medical assistance for eligible individuals.

^ (2) The fact that an individual is enrolled in a group health plan under this section shall not change the individual's eligibility for benefits under the State plan, except insofar as section 1902(a)(25) provides that payment for such benefits shall first be made by such plan.

^ (d)(1) In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title.

^ (2) This section, and section 1902(a)(25)(G), shall only apply to a State that

is one of the 50 States or the District of Columbia.

`(e) In this section:

`(1) The term `group health plan' has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of 1986, and includes the provision of continuation coverage by such a plan pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986, or title VI of the Employee Retirement Income Security Act of 1974.

`(2) The term `cost-effective' means, as established by the Secretary, that the reduction in expenditures under this title with respect to an individual who is enrolled in a group health plan is likely to be greater than the additional expenditures for premiums and cost-sharing required under this section with respect to such enrollment.'

(b) TREATMENT OF ERRONEOUS EXCESS PAYMENTS FOR MEDICAL ASSISTANCE- Section 1903(u)(1)(C)(iv) (42 U.S.C. 1396b(u)(1)(C)(iv)) is amended by inserting before the period at the end the following: `or with respect to payments made in violation of section 1906'.

(c) OPTIONAL MINIMUM 6-MONTH ELIGIBILITY- Section 1902(e) (42 U.S.C. 1396a(e)) is amended by adding at the end the following new paragraph:

`(11)(A) In the case of an individual who is enrolled with a group health plan under section 1906 and who would (but for this paragraph) lose eligibility for benefits under this title before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this title, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but only with respect to such benefits provided to the individual as an enrollee of such plan.

`(B) For purposes of subparagraph (A), the term `minimum enrollment period' means, with respect to an individual's enrollment with a group health plan, a period established by the State, of not more than 6 months beginning on the date the individual's enrollment under the plan becomes effective.'

(d) CONFORMING AMENDMENTS-

(1) Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended in the matter following subparagraph (E)--

(A) by striking `and' at the end of subdivision (IX);

(B) by inserting `and' at the end of subdivision (X); and

(C) by adding at the end the following new subdivision: `(XI) the making available of medical assistance to cover the costs of premiums, deductibles, coinsurance, and other cost-sharing obligations for certain individuals for private health coverage as

described in section 1906 shall not, by reason of paragraph (10), require the making available of any such benefits or the making available of services of the same amount, duration, and scope of such private coverage to any other individuals;'

(2) Section 1905(a) (42 U.S.C. 1396d(a)) is amended by adding at the end the following: `The payment described in the first sentence may include expenditures for medicare cost-sharing and for premiums under part B of title XVIII for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, or with respect to whom supplemental security income benefits are being paid under title XVI, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A), and, except in the case of individuals 65 years of age or older and disabled individuals entitled to health insurance benefits under title XVIII who are not enrolled under part B of title XVIII, other insurance premiums for medical or any other type of remedial care or the cost thereof.'

(3) Section 1903(a)(1) (42 U.S.C. 1396b(a)(1)) is amended by striking `(including expenditures for' and all that follows through `or the cost thereof)'

(e) EFFECTIVE DATE- (1) The amendments made by this section apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

## ***PART 2--PROTECTION OF LOW-INCOME MEDICARE BENEFICIARIES***

SEC. 4501. PHASED-IN EXTENSION OF MEDICAID PAYMENTS FOR MEDICARE PREMIUMS FOR CERTAIN INDIVIDUALS WITH INCOME BELOW 120 PERCENT OF THE OFFICIAL POVERTY LINE.

(a) 1-YEAR ACCELERATION OF BUY-IN OF PREMIUMS AND COST SHARING FOR QUALIFIED MEDICARE BENEFICIARIES UP TO 100 PERCENT OF POVERTY LINE- Section 1905(p)(2) (42 U.S.C. 1396d(p)(2)) is further amended--

(1) in subparagraph (B)--

(A) by adding `and' at the end of clause (ii);

(B) in clause (iii), by striking `95 percent, and' and inserting `100 percent.'; and

(C) by striking clause (iv); and

(2) in subparagraph (C)--

(A) in clause (iii), by striking `90' and inserting `95';

(B) by adding `and' at the end of clause (iii);

(C) in clause (iv), by striking `95 percent, and' and inserting `100 percent.'; and

(D) by striking clause (v).

(b) ENTITLEMENT- Section 1902(a)(10)(E) (42 U.S.C. 1395b(a)(10)(E)(ii)) is amended--

(1) by striking `, and' at the end of clause (i) and inserting a semicolon;

(2) by adding `and' at the end of clause (ii); and

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

`(iii) for making medical assistance available for medicare cost sharing described in section 1905(p)(3)(A)(ii) subject to section 1905(p)(4), for individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) but for the fact that their income exceeds the income level established by the State under section 1905(p)(2) but is less than 110 percent in 1993 and 1994, and 120 percent in 1995 and years thereafter of the official poverty line (referred to in such section) for a family of the size involved;'.

(c) APPLICATION IN CERTAIN STATES AND TERRITORIES- Section 1905(p)(4) (42 U.S.C. 1396d(p)(4)) is amended--

(1) in subparagraph (B), by inserting `or 1902(a)(10)(E)(iii)' after `subparagraph (B)', and

(2) by adding at the end the following:

`In the case of any State which is providing medical assistance to its

residents under a waiver granted under section 1115, the Secretary shall require the State to meet the requirement of section 1902(a)(10)(E) in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title.'

(d) CONFORMING AMENDMENT- Section 1843(h) (42 U.S.C. 1395v(h)) is amended by adding at the end the following new paragraph:

`(3) In this subsection, the term `qualified medicare beneficiary' also includes an individual described in section 1902(a)(10)(E)(iii).'

(e) DELAY IN COUNTING SOCIAL SECURITY COLA INCREASES UNTIL NEW POVERTY GUIDELINES PUBLISHED-

(1) IN GENERAL- Section 1905(p) is amended--

(A) in paragraph (1)(B), by inserting `, except as provided in paragraph (2)(D)' after `supplementary social security income program', and

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

`(D)(i) In determining under this subsection the income of an individual who is entitled to monthly insurance benefits under title II for a transition month (as defined in clause (ii)) in a year, such income shall not include any amounts attributable to an increase in the level of monthly insurance benefits payable under such title which have occurred pursuant to section 215(i) for benefits payable for months beginning with December of the previous year.

`(ii) For purposes of clause (i), the term `transition month' means each month in a year through the month following the month in which the annual revision of the official poverty line, referred to in subparagraph (A), is published.'

(2) CONFORMING AMENDMENTS- Section 1902(m) (42 U.S.C. 1396a(m)) is amended--

(A) in paragraph (1)(B), by inserting `, except as provided in paragraph (2)(C)' after `supplemental security income program', and

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

`(C) The provisions of section 1905(p)(2)(D) shall apply to determinations of income under this subsection in the same manner as they apply to determinations of income under section 1905(p).'

(f) EFFECTIVE DATE- The amendments made by this section shall apply to calendar quarters beginning on or after January 1, 1991, without regard to whether or not regulations to implement such amendments are promulgated by such date; except that the amendments made by subsection (e) shall apply to determinations of income for months beginning with January 1991.



## ***PART 3--IMPROVEMENTS IN CHILD HEALTH***

### **SEC. 4601. MEDICAID CHILD HEALTH PROVISIONS.**

(a) PHASED-IN MANDATORY COVERAGE OF CHILDREN UP TO 100 Percent of Poverty Level-

(1) IN GENERAL- Section 1902 (42 U.S.C. 1396a) is amended--

(A) in subsection (a)(10)(A)(i)--

(i) by striking `or' at the end of subclause (V),

(ii) by striking the semicolon at the end of subclause (VI) and inserting `, or', and

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

` (VII) who are described in subparagraph (D) of subsection (I)(1) and whose family income does not exceed the income level the State is required to establish under subsection (I)(2)(C) for such a family;';

(B) in subsection (a)(10)(A)(ii)(IX), by striking `or clause (i)(VI)' and inserting `, clause (i)(VI), or clause (i)(VII)';

(C) in subsection (I)--

(i) in subparagraph (C) of paragraph (1) by inserting `children' after `(C)';

(ii) by striking subparagraph (D) of paragraph (1) and inserting the following:

` (D) children born after September 30, 1983, who have attained 6 years of age but have not attained 19 years of age;';

(iii) by striking subparagraph (C) of paragraph (2) and inserting the following:

` (C) For purposes of paragraph (1) with respect to individuals described in subparagraph (D) of that paragraph, the State shall establish an income level which is equal to 100 percent of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.';

(iv) in paragraph (3) by inserting `, (a)(10)(A)(i)(VII),' after `(a)(10)(A)(i)(VI)';

(v) in paragraph (4)(A), by inserting `or subsection (a)(10)(A)(i)(VII)' after `(a)(10)(A)(i)(VI)'; and

(vi) in paragraph (4)(B), by striking `or (a)(10)(A)(i)(VI)' ` , and inserting ` (a)(10)(A)(i)(VI), or (a)(10)(A)(i)(VII)'; and

(D) in subsection (r)(2)(A), by inserting ` (a)(10)(A)(i)(VII),' after ` (a)(10)(A)(i)(VI),'.

(2) CONFORMING AMENDMENT TO QUALIFIED CHILDREN- Section 1905(n)(2) (42 U.S.C. 1396d(n)(2)) is amended by striking `age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)' and inserting `age of 19'.

(3) ADDITIONAL CONFORMING AMENDMENTS-

(A) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended--

(i) by striking ` 1902(a)(10)(A)(i)(IV),' and inserting ` 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V),' , and

(ii) by inserting ` 1902(a)(10)(A)(i)(VII),' after ` 1902(a)(10)(A)(i)(VI),'.

(B) Subsections (a)(3)(C) and (b)(3)(C)(i) of section 1925 of such Act (42 U.S.C. 1396r-6), as amended by section 6411(i)(3) of the Omnibus Budget Reconciliation Act of 1989, are each amended by inserting ` (i)(VII),' after ` (i)(VI)'.

(b) EFFECTIVE DATE- (1) The amendments made by this subsection apply (except as otherwise provided in this subsection) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 4602. MANDATORY USE OF OUTREACH LOCATIONS OTHER THAN WELFARE OFFICES.

(a) IN GENERAL- Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 4401(a)(2) of this title, is amended--

(1) by striking `and' at the end of paragraph (53),

(2) by striking the period at the end of paragraph (54) and inserting ` ; and', and

(3) by inserting after paragraph (54) the following new paragraph:

` (55) provide for receipt and initial processing of applications of individuals for medical assistance under subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX)--

` (A) at locations which are other than those used for the receipt and processing of applications for aid under part A of title IV and which include facilities defined as disproportionate share hospitals under section 1923(a)(1)(A) and Federally-qualified health centers described in section 1905(1)(2)(B), and

` (B) using applications which are other than those used for applications for aid under such part.'.

(b) EFFECTIVE DATE- The amendments made by subsection (a) apply to payments under title XIX of the Social Security Act for calendar 42

quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

42 So in original. Probably should be `calendar'.

#### SEC. 4603. MANDATORY CONTINUATION OF BENEFITS THROUGHOUT PREGNANCY OR FIRST YEAR OF LIFE.

(a) IN GENERAL- Section 1902(e) (42 U.S.C. 1396a(e)) is amended--

(1) in the first sentence of paragraph (4), by inserting `(or would remain if pregnant)' after `remains'; and

(2) in paragraph (6)--

(A) by striking `At the option of a State, in' and inserting `In';

(B) by striking `the State plan may nonetheless treat the woman as being' and inserting `the woman shall be deemed to continue to be'; and

(C) by adding at the end the following new sentence: `The preceding sentence shall not apply in the case of a woman who has been provided ambulatory prenatal care pursuant to section 1920 during a presumptive eligibility period and is then, in accordance with such section, determined to be ineligible for medical assistance under the State plan.'.

(b) EFFECTIVE DATE-

(1) INFANTS- The amendment made by subsection (a)(1) shall apply to individuals born on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(2) PREGNANT WOMEN- The amendments made by subsection (a)(2) shall apply with respect to determinations to terminate the eligibility of women, based on change of income, made on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 4604. ADJUSTMENT IN PAYMENT FOR HOSPITAL SERVICES FURNISHED TO LOW-INCOME CHILDREN UNDER THE AGE OF 6 YEARS.

(a) IN GENERAL- Section 1902 (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

“(s) In order to meet the requirements of subsection (a)(55), the State plan must provide that payments to hospitals under the plan for inpatient hospital services furnished to infants who have not attained the age of 1 year, and to children who have not attained the age of 6 years and who receive such services in a disproportionate share hospital described in section 1923(b)(1), shall--

“(1) if made on a prospective basis (whether per diem, per case, or otherwise) provide for an outlier adjustment in payment amounts for medically necessary inpatient hospital services involving exceptionally high costs or exceptionally long lengths of stay,

“(2) not be limited by the imposition of day limits with respect to the delivery of such services to such individuals, and

“(3) not be limited by the imposition of dollar limits (other than such limits resulting from prospective payments as adjusted pursuant to paragraph (1)) with respect to the delivery of such services to any such individual who has not attained their first birthday (or in the case of such an individual who is an inpatient on his first birthday until such individual is discharged).”.

(b) CONFORMING AMENDMENT- Section 1902(a) (42 U.S.C. 1396a(a)), as amended by section 4401(a)(2), is further amended--

(1) by striking “and” at the end of paragraph (53);

(2) by striking the period at the end of paragraph (54) and by inserting “; and”; and

(3) by inserting after paragraph (54) and before the end matter the following new paragraph:

“(55) provide, in accordance with subsection (s), for adjusted payments for certain inpatient hospital services.”.

(c) PROHIBITION ON WAIVER- Section 1915(b) (42 U.S.C. 1396n(b)) is amended in the matter preceding paragraph (1) by inserting ` (other than subsection (s))' after ` Section 1902'.

(d) EFFECTIVE DATE- (1) The amendments made by this subsection shall become effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

## **SEC. 4605. PRESUMPTIVE ELIGIBILITY.**

(a) EXTENSION OF PRESUMPTIVE ELIGIBILITY PERIOD- Section 1920 (42 U.S.C. 1396r-1) is amended--

(1) in subsection (b)(1)(B)--

(A) by adding ` or' at the end of clause (i),

(B) by striking clause (ii), and

(C) by amending clause (iii) to read as follows:

` (ii) in the case of a woman who does not file an application by the last day of the month following the month during which the provider makes the determination referred to in subparagraph (A), such last day; and'; and

(2) in subsections (c)(2)(B) and (c)(3), by striking ` within 14 calendar days after the date on which' and inserting ` by not later than the last day of the month following the month during which'.] 43

43 So in original. Probably should be ` which'.

(b) FLEXIBILITY IN APPLICATION- Section 1920(c)(3) (42 U.S.C. 1396r-1(c)(3)) is amended by inserting before the period at the end the following: `, which application may be the application used for the receipt of medical assistance by individuals described in section 1902(l)(1)(A)'.

**(c) EFFECTIVE DATES-**

(1) The amendments made by subsection (a) apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) The amendment made by subsection (b) shall be effective as if included in the enactment of section 9407(b) of the Omnibus Budget Reconciliation Act of 1986.

**SEC. 4606. ROLE IN PATERNITY DETERMINATIONS.**

(a) IN GENERAL- Section 1912(a)(1)(B) (42 U.S.C. 1396k(a)(1)(B)) is amended by inserting 'the individual is described in section 1902(l)(1)(A) or' after 'unless (in either case)'

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

**SEC. 4607. REPORT AND TRANSITION ON ERRORS IN ELIGIBILITY DETERMINATIONS.**

(a) REPORT- The Secretary of Health and Human Services shall report to Congress, by not later than July 1, 1991, on error rates by States in determining eligibility of individuals described in subparagraph (A) or (B) of section 1902(l)(1) of the Social Security Act for medical assistance under plans approved under title XIX of such Act. Such report may include data for medical assistance provided before July 1, 1989.

(b) ERROR RATE TRANSITION- There shall not be taken into account, for purposes of section 1903(u) of the Social Security Act, payments and expenditures for medical assistance which--

(1) are attributable to medical assistance for individuals described in subparagraph (A) or (B) of section 1902(l)(1) of such Act, and

(2) are made on or after July 1, 1989, and before the first calendar quarter that begins more than 12 months after the date of submission of the report under subsection (a).

***PART 4--MISCELLANEOUS******Subpart A--Payments*****SEC. 4701. STATE MEDICAID MATCHING PAYMENTS THROUGH VOLUNTARY CONTRIBUTIONS AND STATE TAXES.**

(a) EXTENSION OF PROVISION ON VOLUNTARY CONTRIBUTIONS AND

PROVIDER-SPECIFIC TAXES- Section 8431 of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking `December 31, 1990' and inserting `December 31, 1991'.

(b) STATE TAX CONTRIBUTIONS- (1) Section 1902 (42 U.S.C. 1396a) as amended by section 4604, is further amended by adding at the end the following new subsection:

`(t) Except as provided in section 1903(i), nothing in this title (including sections 1903(a) and 1905(a)) shall be construed as authorizing the Secretary to deny or limit payments to a State for expenditures, for medical assistance for items or services, attributable to taxes (whether or not of general applicability) imposed with respect to the provision of such items or services.'

(2) Section 1903(i) (42 U.S.C. 1396b(i)) is amended--

(A) by striking the period at the end of paragraph (9) and inserting `; or'; and

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

`(10) with respect to any amount expended for medical assistance for care or services furnished by a hospital, nursing facility, or intermediate care facility for the mentally retarded to reimburse the hospital or facility for the costs attributable to taxes imposed by the State solely 44

with respect to hospitals or facilities.'

44 So in original. Probably should be `solely'.

(c) EFFECTIVE DATES- The amendment made by subsection (b) shall take effect on January 1, 1991.

#### SEC. 4702. DISPROPORTIONATE SHARE HOSPITALS: COUNTING OF INPATIENT DAYS.

(a) CLARIFICATION OF MEDICAID DISPROPORTIONATE SHARE ADJUSTMENT CALCULATION- Section 1923(b)(2) (42 U.S.C. 1396r-4(b)(2)) is amended by adding at the end the following new sentence: `In this paragraph, the term `inpatient day' includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.'

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on July 1, 1990.

#### SEC. 4703. DISPROPORTIONATE SHARE HOSPITALS: ALTERNATIVE STATE PAYMENT ADJUSTMENTS AND SYSTEMS.

(a) ALTERNATIVE STATE PAYMENT ADJUSTMENTS- Section 1923(c) (42 U.S.C. 1396r-4(c)) is amended--

(1) by striking `or' at the end of paragraph (1);

(2) by adding `or' at the end of paragraph (2); and

(3) by inserting after paragraph (2) the following new paragraph:

`(3) provide for a minimum specified additional payment amount (or increased percentage payment) that varies according to type of hospital under a methodology that--

    ` (A) applies equally to all hospitals of each type; and

    ` (B) results in an adjustment for each type of hospital that is reasonably related to the costs, volume, or proportion of services provided to patients eligible for medical assistance under a State plan approved under this title or to low-income patients.'.

(b) CLARIFICATION OF SPECIAL RULE FOR STATE USING HEALTH INSURING ORGANIZATION- Section 1923(e)(2) (42 U.S.C. 1396r-4(e)(2)) is amended by striking `during the 3-year period'.

(c) CONFORMING AMENDMENT- Section 1923(c)(2) (42 U.S.C. 1396r-4(c)(2)) is amended by inserting after `State' `or the hospital's low-income utilization rate (as defined in paragraph (b)(3))'.

(d) EFFECTIVE DATE- The amendments made by this section shall take effect as if included in the enactment of section 412(a)(2) of the Omnibus Budget Reconciliation Act of 1987.

## **SEC. 4704. FEDERALLY 45**

### QUALIFIED HEALTH CENTERS.

45 So in original. Probably should be `FEDERALLY'.

(a) CLARIFICATION OF USE OF MEDICARE PAYMENT METHODOLOGY- Section 1902(a)(13)(E) (42 U.S.C. 1396a(a)(13)(E)) is amended--

(1) by striking `may prescribe' the first place it appears and inserting `prescribes', and

(2) by striking `on such tests of reasonableness as the Secretary may prescribe in regulations under this subparagraph' and inserting `on the same methodology used under section 1833(a)(3)'.

(b) MINIMUM PAYMENT RATES BY HEALTH MAINTENANCE ORGANIZATIONS- (1) Section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)) is amended--

(A) by striking `and' at the end of clause (vii),

(B) by striking the period at the end of clause (viii) and inserting `, and', and



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

“(ix) such contract provides, in the case of an entity that has entered into a contract for the provision of services of such center with a federally qualified health center, that (I) rates of prepayment from the State are adjusted to reflect fully the rates of payment specified in section 1902(a)(13)(E), and (II) at the election of such center payments made by the entity to such a center for services described in 1905(a)(2)(C) are made at the rates of payment specified in section 1902(a)(13)(E).”.

(2) Section 1903(m)(2)(B) (42 U.S.C. 1396b(m)(2)(A)) is amended by striking “(A)” and inserting “(A) except with respect to clause (ix) of subparagraph (A),”.

(3) Section 1915(b) (42 U.S.C. 1396n(b)) is amended by inserting after “section 1902” “(other than sections 1902(a)(13)(E) and 1902(a)(10)(A) insofar as it requires provision of the care and services described in section 1905(a)(2)(C))”.

(c) CLARIFICATION IN TREATMENT OF OUTPATIENTS- Section 1905(l)(2) (42 U.S.C. 1396d(l)(2)) is amended--

(1) in subparagraph (A), by striking “outpatient” and inserting “patient”,

(2) in subparagraph (B), by striking “facility” and inserting “entity”, and

(3) by redesignating clause (ii) as clause (iii) and by inserting after clause (i) the following new clause:

“(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and

“(II) meets the requirements to receive a grant under section 329, 330, or 340 of such Act;”.

(d) TREATMENT OF INDIAN TRIBES- The first sentence of section 1905(l)(2)(B) (42 U.S.C. 1396d(l)(2)(B)) is amended--

(1) by striking the period at the end and inserting a comma, and

(2) by adding, after and below clause (ii), the following:

“and includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93-638).”.

(e) TECHNICAL CORRECTION- Section 6402 of the Omnibus Budget Reconciliation Act of 1989 is amended--

(1) by striking subsection (c), and

(2) by amending subsection (d) to read as follows:

`(c) EFFECTIVE DATE- The amendments made by this section (except as otherwise provided in such amendments) shall take effect on the date of the enactment of this Act.'

(f) EFFECTIVE DATE- The amendments made by this section shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

## **SEC. 4705. HOSPICE PAYMENTS.**

(a) IN GENERAL- Section 1905(o)(3) (42 U.S.C. 1396d(o)(3)) is amended--

(1) by striking `a State which elects' and all that follows through `with respect to' the first place it appears,

(2) by striking `skilled nursing or intermediate care facility' in subparagraphs (A) and (C) and inserting `nursing facility or intermediate care facility for the mentally retarded';

(3) by striking `the amounts allocated under the plan for room and board in the facility, in accordance with the rates established under section 1902(a)(13),' and inserting `the additional amount described in section 1902(a)(13)(D)', and

(4) by striking the last sentence.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall be effective as if included in the amendments made by section 6408(c)(1) of the Omnibus Budget Reconciliation Act of 1989.

## **SEC. 4706. LIMITATION ON DISALLOWANCES OR DEFERRAL OF FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR INDIVIDUALS UNDER AGE 21.**

(a) IN GENERAL- (1) If the Secretary of Health and Human Services makes a determination that a psychiatric facility has failed to comply with certification of need requirements for inpatient psychiatric hospital services for individuals under age 21 pursuant to section 1905(h) of the Social Security Act, and such determination has not been subject to a final judicial decision, any disallowance or deferral of Federal financial participation under such Act based on such determination shall only apply to the period of time beginning with the first day of noncompliance and ending with the date by which the psychiatric facility develops documentation (using plan of care or utilization review procedures) of the need for inpatient care with respect to such individuals.

(2) Any disallowance of Federal financial participation under title XIX of the Social Security Act relating to the failure of a psychiatric facility to comply with certification of need requirements--

(A) shall not exceed 25 percent of the amount of Federal financial participation for the period described in paragraph (1); and

(B) shall not apply to any fiscal year before the fiscal year that is 3 years before the fiscal year in which the determination of noncompliance described in paragraph (1) is made.

(b) EFFECTIVE DATE- Subsection (a) shall apply to disallowance actions and deferrals of Federal financial participation with respect to services provided before the date of enactment of this Act.

## **SEC. 4707. TREATMENT OF INTEREST ON INDIANA DISALLOWANCE.**

With respect to any disallowance of Federal financial participation under section 1903(a) of the Social Security Act for intermediate care facility services, intermediate care facility services for the mentally retarded, or skilled nursing facility services on the ground that the facilities in the State of Indiana were not certified in accordance with law during the period beginning June 1, 1982, and ending September 30, 1984, payment of such disallowance may be deferred without interest that would otherwise accrue without regard to this subsection, until every opportunity to appeal has been exhausted.

## **SEC. 4708. BILLING FOR SERVICES OF SUBSTITUTE PHYSICIAN.**

(a) UNDER MEDICAID- Section 1902(a)(32) (42 U.S.C. 1396a(a)(32))--

(1) by striking `and' before `(B)',

(2) by inserting `and' at the end of subparagraph (B), and

(3) by adding at the end the following:

`(C) in the case of services furnished (during a period that does not exceed 14 continuous days in the case of an informal reciprocal arrangement or 90 continuous days (or such longer period as the Secretary may provide) in the case of an arrangement involving per diem or other fee-for-time compensation) by, or incident to the services of, one physician to the patients of another physician who submits the claim for such services, payment shall be made to the physician submitting the claim (as if the services were furnished by, or incident to, the physician's services), but only if the claim identifies (in a manner specified by the Secretary) the physician who furnished the services.'

(b) EFFECTIVE DATE- The amendments made by this section shall apply to services furnished on or after the date of the enactment of this Act.

## ***Subpart B--Eligibility and Coverage***

## **SEC. 4711. HOME AND COMMUNITY-BASED CARE AS OPTIONAL SERVICE.**

(a) PROVISION AS OPTIONAL SERVICE- Section 1905(a) (42 U.S.C. 1396d(a)), as amended by section 6201, is further amended--

(1) by striking `and' at the end of paragraph (22);

(2) by redesignating paragraph (23) as paragraph (24); and

(3) by inserting after paragraph (22) the following new paragraph:

`(23) home and community care (to the extent allowed and as defined in section 1929) for functionally disabled elderly individuals; and'.

(b) HOME AND COMMUNITY CARE FOR FUNCTIONALLY DISABLED ELDERLY INDIVIDUALS- Title XIX (42 U.S.C. 1396 et seq.) as amended by section 4402 is further amended--

(1) by redesignating section 1929 as section 1930; and

(2) by inserting after section 1928 the following new section:

## **` HOME AND COMMUNITY CARE FOR FUNCTIONALLY DISABLED ELDERLY INDIVIDUALS**

` SEC. 1929. (a) HOME AND COMMUNITY CARE DEFINED- In this title, the term `home and community care' means one or more of the following services furnished to an individual who has been determined, after an assessment under subsection (c), to be a functionally disabled elderly individual, furnished in accordance with an individual community care plan (established and periodically reviewed and revised by a qualified community care case manager under subsection (d)):

` (1) Homemaker/home health aide services.

` (2) Chore services.

` (3) Personal care services.

` (4) Nursing care services provided by, or under the supervision of, a registered nurse.

` (5) Respite care.

` (6) Training for family members in managing the individual.

` (7) Adult day care.

` (8) In the case of an individual with chronic mental illness, day

treatment or other partial hospitalization, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility).

` (9) Such other home and community-based services (other than room and board) as the Secretary may approve.

` (b) FUNCTIONALLY DISABLED ELDERLY INDIVIDUAL DEFINED-

` (1) IN GENERAL- In this title, the term `functionally disabled elderly individual' means an individual who--

` (A) is 65 years of age or older,

` (B) is determined to be a functionally disabled individual under subsection (c), and

` (C) subject to section 1902(f) (as applied consistent with section 1902(r)(2)), is receiving supplemental security income benefits under title XVI (or under a State plan approved under title XVI) or, at the option of the State, is described in section 1902(a)(10)(C).

` (2) TREATMENT OF CERTAIN INDIVIDUALS PREVIOUSLY COVERED UNDER A WAIVER- (A) In the case of a State which--

` (i) at the time of its election to provide coverage for home and community care under this section has a waiver approved under section 1915(c) or 1915(d) with respect to individuals 65 years of age or older, and

` (ii) subsequently discontinues such waiver, individuals who were eligible for benefits under the waiver as of the date of its discontinuance and who would, but for income or resources, be eligible for medical assistance for home and community care under the plan shall, notwithstanding any other provision of this title, be deemed a functionally disabled elderly individual for so long as the individual would have remained eligible for medical assistance under such waiver.

` (B) In the case of a State which used a health insuring organization before January 1, 1986, and which, as of December 31, 1990, had in effect a waiver under section 1115 that provides under the State plan under this title for personal care services for functionally disabled individuals, the term `functionally disabled elderly individual' may include, at the option of the State, an individual who--

` (i) is 65 years of age or older or is disabled (as determined under the supplemental security income program under title XVI);

` (ii) is determined to meet the test of functional disability applied under the waiver as of such date; and

` (iii) meets the resource requirement and income standard that

apply in the State to individuals described in section 1902(a)(10)(A)(ii)(V).

^ (3) USE OF PROJECTED INCOME- In applying section 1903(f)(1) in determining the eligibility of an individual (described in section 1902(a)(10)(C)) for medical assistance for home and community care, a State may, at its option, provide for the determination of the individual's anticipated medical expenses (to be deducted from income) over a period of up to 6 months.

^ (c) DETERMINATIONS OF FUNCTIONAL DISABILITY-

^ (1) IN GENERAL- In this section, an individual is ^ functionally disabled' if the individual--

^ (A) is unable to perform without substantial assistance from another individual at least 2 of the following 3 activities of daily living: toileting, transferring, and eating; or

^ (B) has a primary or secondary diagnosis of Alzheimer's disease and is (i) unable to perform without substantial human assistance (including verbal reminding or physical cueing) or supervision at least 2 of the following 5 activities of daily living: bathing, dressing, toileting, transferring, and eating; or (ii) cognitively impaired so as to require substantial supervision from another individual because he or she engages in inappropriate behaviors that pose serious health or safety hazards to himself or herself or others.

^ (2) ASSESSMENTS OF FUNCTIONAL DISABILITY-

^ (A) REQUESTS FOR ASSESSMENTS- If a State has elected to provide home and community care under this section, upon the request of an individual who is 65 years of age or older and who meets the requirements of subsection (b)(1)(C) (or another person on such individual's behalf), the State shall provide for a comprehensive functional assessment under this subparagraph which--

^ (i) is used to determine whether or not the individual is functionally disabled,

^ (ii) is based on a uniform minimum data set specified by the Secretary under subparagraph (C)(i), and

^ (iii) uses an instrument which has been specified by the State under subparagraph (B).

No fee may be charged for such an assessment.

^ (B) SPECIFICATION OF ASSESSMENT INSTRUMENT- The State shall specify the instrument to be used in the State in complying with the requirement of subparagraph (A)(iii) which instrument shall be--

- ˘ (i) one of the instruments designated under subparagraph (C) (ii); or

- ˘ (ii) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary in subparagraph (C)(i).

˘ (C) SPECIFICATION OF ASSESSMENT DATA SET AND INSTRUMENTS- The Secretary shall--

- ˘ (i) not later than July 1, 1991--

- ˘ (I) specify a minimum data set of core elements and common definitions for use in conducting the assessments required under subparagraph (A); and

- ˘ (II) establish guidelines for use of the data set; and

- ˘ (ii) by not later than July 1, 1991, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subparagraph (B) for use in complying with the requirements of subparagraph (A).

˘ (D) PERIODIC REVIEW- Each individual who qualifies as a functionally disabled elderly individual shall have the individual's assessment periodically reviewed and revised not less often than once every 12 months.

˘ (E) CONDUCT OF ASSESSMENT BY INTERDISCIPLINARY TEAMS- An assessment under subparagraph (A) and a review under subparagraph (D) must be conducted by an interdisciplinary team designated by the State. The Secretary shall permit a State to provide for assessments and reviews through teams under contracts-

- ˘ (i) with public organizations; or

- ˘ (ii) with nonpublic organizations which do not provide home and community care or nursing facility services and do not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, community care or nursing facility services.

˘ (F) CONTENTS OF ASSESSMENT- The interdisciplinary team must--

- ˘ (i) identify in each such assessment or review each individual's functional disabilities and need for home and community care, including information about the individual's health status, home and community environment, and informal support system; and

ˆ (ii) based on such assessment or review, determine whether the individual is (or continues to be) functionally disabled.

The results of such an assessment or review shall be used in establishing, reviewing, and revising the individual's ICCP under subsection (d)(1).

ˆ (G) APPEAL PROCEDURES- Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (F).

ˆ (d) INDIVIDUAL COMMUNITY CARE PLAN (ICCP)-

ˆ (1) INDIVIDUAL COMMUNITY CARE PLAN DEFINED- In this section, the terms ˆ individual community care plan' and ˆ ICCP' mean, with respect to a functionally disabled elderly individual, a written plan which--

ˆ (A) is established, and is periodically reviewed and revised, by a qualified case manager after a face-to-face interview with the individual or primary caregiver and based upon the most recent comprehensive functional assessment of such individual conducted under subsection (c)(2);

ˆ (B) specifies, within any amount, duration, and scope limitations imposed on home and community care provided under the State plan, the home and community care to be provided to such individual under the plan, and indicates the individual's preferences for the types and providers of services; and

ˆ (C) may specify other services required by such individual.

An ICCP may also designate the specific providers (qualified to provide home and community care under the State plan) which will provide the home and community care described in subparagraph (B). Nothing in this section shall be construed as authorizing an ICCP or the State to restrict the specific persons or individuals (who are competent to provide home and community care under the State plan) who will provide the home and community care described in subparagraph (B).

ˆ (2) QUALIFIED COMMUNITY CARE CASE MANAGER DEFINED- In this section, the term ˆ qualified community care case manager' means a nonprofit or public agency or organization which--

ˆ (A) has experience or has been trained in establishing, and in periodically reviewing and revising, individual community care plans and in the provision of case management services to the elderly;

ˆ (B) is responsible for (i) assuring that home and community care covered under the State plan and specified in the ICCP is being provided, (ii) visiting each individual's home or community setting



where care is being provided not less often than once every 90 days, and (iii) informing the elderly individual or primary caregiver on how to contact the case manager if service providers fail to properly provide services or other similar problems occur;

` (C) in the case of a nonpublic agency, does not provide home and community care or nursing facility services and does not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, home and community care or nursing facility services;

` (D) has procedures for assuring the quality of case management services that includes a peer review process;

` (E) completes the ICCP in a timely manner and reviews and discusses new and revised ICCPs with elderly individuals or primary caregivers; and

` (F) meets such other standards, established by the Secretary, as to assure that--

    ` (i) such a manager is competent to perform case management functions;

    ` (ii) individuals whose home and community care they manage are not at risk of financial exploitation due to such a manager; and

    ` (iii) meets such other standards as the State may establish.

The Secretary may waive the requirement of subparagraph (C) in the case of a nonprofit agency located in a rural area.

` (3) APPEALS PROCESS- Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals who disagree with the ICCP established.

` (e) CEILING ON PAYMENT AMOUNTS AND MAINTENANCE OF EFFORT-

    ` (1) CEILING ON PAYMENT AMOUNTS- Payments may not be made under section 1903(a) to a State for home and community care provided under this section in a quarter to the extent that the medical assistance for such care in the quarter exceeds 50 percent of the product of--

        ` (A) the average number of individuals in the quarter receiving such care under this section;

        ` (B) the average per diem rate of payment which the Secretary has determined (before the beginning of the quarter) will be payable under title XVIII (without regard to coinsurance) for extended care services to be provided in the State during such quarter; and

` (C) the number of days in such quarter.

` (2) MAINTENANCE OF EFFORT-

` (A) ANNUAL REPORTS- As a condition for the receipt of payment under section 1903(a) with respect to medical assistance provided by a State for home and community care (other than a waiver under section 1915(c) and other than home health care services described in section 1905(a)(7) and personal care services specified under regulations under section 1905(a)(23)), the State shall report to the Secretary, with respect to each Federal fiscal year (beginning with fiscal year 1990) and in a format developed or approved by the Secretary, the amount of funds obligated by the State with respect to the provision of home and community care to the functionally disabled elderly in that fiscal year.

` (B) REDUCTION IN PAYMENT IF FAILURE TO MAINTAIN EFFORT- If the amount reported under subparagraph (A) by a State with respect to a fiscal year is less than the amount reported under subparagraph (A) with respect to fiscal year 1989, the Secretary shall provide for a reduction in payments to the State under section 1903(a) in an amount equal to the difference between the amounts so reported.

` (f) MINIMUM REQUIREMENTS FOR HOME AND COMMUNITY CARE-

` (1) REQUIREMENTS- Home and Community care provided under this section must meet such requirements for individuals' rights and quality as are published or developed by the Secretary under subsection (k). Such requirements shall include--

` (A) the requirement that individuals providing care are competent to provide such care; and

` (B) the rights specified in paragraph (2).

` (2) SPECIFIED RIGHTS- The rights specified in this paragraph are as follows:

` (A) The right to be fully informed in advance, orally and in writing, of the care to be provided, to be fully informed in advance of any changes in care to be provided, and (except with respect to an individual determined incompetent) to participate in planning care or changes in care.

` (B) The right to voice grievances with respect to services that are (or fail to be) furnished without discrimination or reprisal for voicing grievances, and to be told how to complain to State and local authorities.

` (C) The right to confidentiality of personal and clinical records.

` (D) The right to privacy and to have one's property treated with

respect.

` (E) The right to refuse all or part of any care and to be informed of the likely consequences of such refusal.

` (F) The right to education or training for oneself and for members of one's family or household on the management of care.

` (G) The right to be free from physical or mental abuse, corporal punishment, and any physical or chemical restraints imposed for purposes of discipline or convenience and not included in an individual's ICCP.

` (H) The right to be fully informed orally and in writing of the individual's rights.

` (I) Guidelines for such minimum compensation for individuals providing such care as will assure the availability and continuity of competent individuals to provide such care for functionally disabled individuals who have functional disabilities of varying levels of severity.

` (J) Any other rights established by the Secretary.

` (g) MINIMUM REQUIREMENTS FOR SMALL COMMUNITY CARE SETTINGS-

` (1) SMALL COMMUNITY CARE SETTINGS DEFINED- In this section, the term `small community care setting' means--

` (A) a nonresidential setting that serves more than 2 and less than 8 individuals; or

` (B) a residential setting in which more than 2 and less than 8 unrelated adults reside and in which personal services (other than merely board) are provided in conjunction with residing in the setting.

` (2) MINIMUM REQUIREMENTS- A small community care setting in which community care is provided under this section must--

` (A) meet such requirements as are published or developed by the Secretary under subsection (k);

` (B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1919(c), to the extent applicable to such a setting;

` (C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives community care in the setting, of the individual's legal rights with respect to such a setting and the care provided in the setting;

- ˘ (D) meet any applicable State or local requirements regarding certification or licensure;
  - ˘ (E) meet any applicable State and local zoning, building, and housing codes, and State and local fire and safety regulations; and
  - ˘ (F) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents.
- ˘ (h) MINIMUM REQUIREMENTS FOR LARGE COMMUNITY CARE SETTINGS-
- ˘ (1) LARGE COMMUNITY CARE SETTING DEFINED- In this section, the term 'large community care setting' means--
    - ˘ (A) a nonresidential setting in which more than 8 individuals are served; or
    - ˘ (B) a residential setting in which more than 8 unrelated adults reside and in which personal services are provided in conjunction with residing in the setting in which home and community care under this section is provided.
  - ˘ (2) MINIMUM REQUIREMENTS- A large community care setting in which community care is provided under this section must--
    - ˘ (A) meet such requirements as are published or developed by the Secretary under subsection (k);
    - ˘ (B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1919(c), to the extent applicable to such a setting;
    - ˘ (C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives home and community care in the setting, of the individual's legal rights with respect to such a setting and the care provided in the setting; and
    - ˘ (D) meet the requirements of paragraphs (2) and (3) of section 1919(d) (relating to administration and other matters) in the same manner as such requirements apply to nursing facilities under such section; except that, in applying the requirement of section 1919(d) (2) (relating to life safety code), the Secretary shall provide for the application of such life safety requirements (if any) that are appropriate to the setting.
  - ˘ (3) DISCLOSURE OF OWNERSHIP AND CONTROL INTERESTS AND EXCLUSION OF REPEATED VIOLATORS- A community care setting--
    - ˘ (A) must disclose persons with an ownership or control interest (including such persons as defined in section 1124(a)(3)) in the setting; and

` (B) may not have, as a person with an ownership or control interest in the setting, any individual or person who has been excluded from participation in the program under this title or who has had such an ownership or control interest in one or more community care settings which have been found repeatedly to be substandard or to have failed to meet the requirements of paragraph (2).

` (i) SURVEY AND CERTIFICATION PROCESS-

` (1) CERTIFICATIONS-

` (A) RESPONSIBILITIES OF THE STATE- Under each State plan under this title, the State shall be responsible for certifying the compliance of providers of home and community care and community care settings with the applicable requirements of subsections (f), (g) and (h). The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

` (B) RESPONSIBILITIES OF THE SECRETARY- The Secretary shall be responsible for certifying the compliance of State providers of home and community care, and of State community care settings in which such care is provided, with the requirements of subsections (f), (g) and (h).

` (C) FREQUENCY OF CERTIFICATIONS- Certification of providers and settings under this subsection shall occur no less frequently than once every 12 months.

` (2) REVIEWS OF PROVIDERS-

` (A) IN GENERAL- The certification under this subsection with respect to a provider of home or community care must be based on a periodic review of the provider's performance in providing the care required under ICCP's in accordance with the requirements of subsection (f).

` (B) SPECIAL REVIEWS OF COMPLIANCE- Where the Secretary has reason to question the compliance of a provider of home or community care with any of the requirements of subsection (f), the Secretary may conduct a review of the provider and, on the basis of that review, make independent and binding determinations concerning the extent to which the provider meets such requirements.

` (3) Surveys of community care settings-

` (A) IN GENERAL- The certification under this subsection with respect to community care settings must be based on a survey. Such survey for such a setting must be conducted without prior notice to the setting. Any individual who notifies (or causes to be notified) a

community care setting of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed \$2,000. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). The Secretary shall review each State's procedures for scheduling and conducting such surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

ˆ (B) SURVEY PROTOCOL- Surveys under this paragraph shall be conducted based upon a protocol which the Secretary has provided for under subsection (k).

ˆ (C) PROHIBITION OF CONFLICT OF INTEREST IN SURVEY TEAM MEMBERSHIP- A State and the Secretary may not use as a member of a survey team under this paragraph an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the community care setting being surveyed (or the person responsible for such setting) respecting compliance with the requirements of subsection (g) or (h) or who has a personal or familial financial interest in the setting being surveyed.

ˆ (D) VALIDATION SURVEYS OF COMMUNITY CARE SETTINGS- The Secretary shall conduct onsite surveys of a representative sample of community care settings in each State, within 2 months of the date of surveys conducted under subparagraph (A) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under subparagraph (A). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under subparagraph (B). If the State has determined that an individual setting meets the requirements of subsection (g), but the Secretary determines that the setting does not meet such requirements, the Secretary's determination as to the setting's noncompliance with such requirements is binding and supersedes that of the State survey.

ˆ (E) SPECIAL SURVEYS OF COMPLIANCE- Where the Secretary has reason to question the compliance of a community care setting with any of the requirements of subsection (g) or (h), the Secretary may conduct a survey of the setting and, on the basis of that survey, make independent and binding determinations concerning the extent to which the setting meets such requirements.

ˆ (4) INVESTIGATION OF COMPLAINTS AND MONITORING OF PROVIDERS AND SETTINGS- Each State and the Secretary shall maintain procedures and adequate staff to investigate complaints of violations of applicable requirements imposed on providers of community care or on community care settings under subsections (f), (g) and (h).

` (5) INVESTIGATION OF ALLEGATIONS OF INDIVIDUAL NEGLECT AND ABUSE AND MISAPPROPRIATION OF INDIVIDUAL PROPERTY- The State shall provide, through the agency responsible for surveys and certification of providers of home or community care and community care settings under this subsection, for a process for the receipt, review, and investigation of allegations of individual neglect and abuse (including injuries of unknown source) by individuals providing such care or in such setting and of misappropriation of individual property by such individuals. The State shall, after notice to the individual involved and a reasonable opportunity for hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that an individual has neglected or abused an individual receiving community care or misappropriated such individual's property, the State shall notify the individual against whom the finding is made. A State shall not make a finding that a person has neglected an individual receiving community care if the person demonstrates that such neglect was caused by factors beyond the control of the person. The State shall provide for public disclosure of findings under this paragraph upon request and for inclusion, in any such disclosure of such findings, of any brief statement (or of a clear and accurate summary thereof) of the individual disputing such findings.

` (6) DISCLOSURE OF RESULTS OF INSPECTIONS AND ACTIVITIES-

` (A) PUBLIC INFORMATION- Each State, and the Secretary, shall make available to the public--

` (i) information respecting all surveys, reviews, and certifications made under this subsection respecting providers of home or community care and community care settings, including statements of deficiencies,

` (ii) copies of cost reports (if any) of such providers and settings filed under this title,

` (iii) copies of statements of ownership under section 1124, and

` (iv) information disclosed under section 1126.

` (B) NOTICES OF SUBSTANDARD CARE- If a State finds that--

` (i) a provider of home or community care has provided care of substandard quality with respect to an individual, the State shall make a reasonable effort to notify promptly (I) an immediate family member of each such individual and (II) individuals receiving home or community care from that provider under this title, or

` (ii) a community care setting is substandard, the State shall make a reasonable effort to notify promptly (I) individuals receiving community care in that setting, and (II) immediate

family members of such individuals.

^ (C) ACCESS TO FRAUD CONTROL UNITS- Each State shall provide its State medicaid fraud and abuse control unit (established under section 1903(q)) with access to all information of the State agency responsible for surveys, reviews, and certifications under this subsection.

^ (j) ENFORCEMENT PROCESS FOR PROVIDERS OF COMMUNITY CARE-

^ (1) STATE AUTHORITY-

^ (A) IN GENERAL- If a State finds, on the basis of a review under subsection (i)(2) or otherwise, that a provider of home or community care no longer meets the requirements of this section, the State may terminate the provider's participation under the State plan and may provide in addition for a civil money penalty. Nothing in this subparagraph shall be construed as restricting the remedies available to a State to remedy a provider's deficiencies. If the State finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A) for the period during which it finds that the provider was not in compliance with such requirements.

^ (B) CIVIL MONEY PENALTY-

^ (i) IN GENERAL- Each State shall establish by law (whether statute or regulation) at least the following remedy: A civil money penalty assessed and collected, with interest, for each day in which the provider is or was out of compliance with a requirement of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty under subsection (i)(3)(A)) may be applied to reimbursement of individuals for personal funds lost due to a failure of home or community care providers to meet the requirements of this section. The State also shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

^ (ii) DEADLINE AND GUIDANCE- Each State which elects to provide home and community care under this section must establish the civil money penalty remedy described in clause (i) applicable to all providers of community care covered under this section. The Secretary shall provide, through regulations or otherwise by not later than July 1, 1990, guidance to States in



establishing such remedy; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedy.

ˆ (2) SECRETARIAL AUTHORITY-

ˆ (A) FOR STATE PROVIDERS- With respect to a State provider of home or community care, the Secretary shall have the authority and duties of a State under this subsection, except that the civil money penalty remedy described in subparagraph (C) shall be substituted for the civil money remedy described in paragraph (1)(B)(i).

ˆ (B) OTHER PROVIDERS- With respect to any other provider of home or community care in a State, if the Secretary finds that a provider no longer meets a requirement of this section, the Secretary may terminate the provider's participation under the State plan and may provide, in addition, for a civil money penalty under subparagraph (C). If the Secretary finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C) for the period during which the Secretary finds that the provider was not in compliance with such requirements.

ˆ (C) CIVIL MONEY PENALTY- If the Secretary finds on the basis of a review under subsection (i)(2) or otherwise that a home or community care provider no longer meets the requirements of this section, the Secretary shall impose a civil money penalty in an amount not to exceed \$10,000 for each day of noncompliance. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). The Secretary shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

ˆ (k) SECRETARIAL RESPONSIBILITIES-

ˆ (1) PUBLICATION OF INTERIM REQUIREMENTS-

ˆ (A) IN GENERAL- The Secretary shall publish, by December 1, 1991, a proposed regulation that sets forth interim requirements, consistent with subparagraph (B), for the provision of home and community care and for community care settings, including--

ˆ (i) the requirements of subsection (c)(2) (relating to comprehensive functional assessments, including the use of assessment instruments), of subsection (d)(2)(E) (relating to qualifications for qualified case managers), of subsection (f)

(relating to minimum requirements for home and community care), of subsection (g) (relating to minimum requirements for small community care settings), and of subsection (h) (relating to minimum requirements for large community care settings, 46

and

46 So in original. Probably should be `settings),`.

` (ii) survey protocols (for use under subsection (i)(3)(A)) which relate to such requirements.

` (B) MINIMUM PROTECTIONS- Interim requirements under subparagraph (A) and final requirements under paragraph (2) shall assure, through methods other than reliance on State licensure processes, that individuals receiving home and community care are protected from neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, and the provision of health care services by unqualified personnel in community care settings.

` (2) DEVELOPMENT OF FINAL REQUIREMENTS- The Secretary shall develop, by not later than October 1, 1992--

` (A) final requirements, consistent with paragraph (1)(B), respecting the provision of appropriate, quality home and community care and respecting community care settings under this section, and including at least the requirements referred to in paragraph (1)(A)(i), and

` (B) survey protocols and methods for evaluating and assuring the quality of community care settings.

The Secretary may, from time to time, revise such requirements, protocols, and methods.

` (3) NO DELEGATION TO STATES- The Secretary's authority under this subsection shall not be delegated to States.

` (4) NO PREVENTION OF MORE STRINGENT REQUIREMENTS BY STATES- Nothing in this section shall be construed as preventing States from imposing requirements that are more stringent than the requirements published or developed by the Secretary under this subsection.

` (I) WAIVER OF STATEWIDENESS- States may waive the requirement of section 1902(a)(1) (related to State wideness) 47

for a program of home and community care under this section.

47 So in original. Probably should be `Statewideness)`.

` (m) LIMITATION ON AMOUNT OF EXPENDITURES AS MEDICAL ASSISTANCE-

` (1) LIMITATION ON AMOUNT- The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, \$40,000,000, for fiscal year 1992, \$70,000,000, for fiscal year 1993, \$130,000,000, for fiscal year 1994, \$160,000,000, and for fiscal year 1995, \$180,000,000.

` (2) ASSURANCE OF ENTITLEMENT TO SERVICE- A State which receives Federal medical assistance for expenditures for home and community care under this section must provide home and community care specified under the Individual Community Care Plan under subsection (d) to individuals described in subsection (b) for the duration of the election period, without regard to the amount of funds available to the State under paragraph (1). For purposes of this paragraph, an election period is the period of 4 or more calendar quarters elected by the State, and approved by the Secretary, for the provision of home and community care under this section.

` (3) LIMITATION ON ELIGIBILITY- The State may limit eligibility for home and community care under this section during an election period under paragraph (2) to reasonable classifications (based on age, degree of functional disability, and need for services).

` (4) ALLOCATION OF MEDICAL ASSISTANCE- The Secretary shall establish a limitation on the amount of Federal medical assistance available to any State during the State's election period under paragraph (2). The limitation under this paragraph shall take into account the limitation under paragraph (1) and the number of elderly individuals age 65 or over residing in such State in relation to the number of such elderly individuals in the United States during 1990. For purposes of the previous sentence, elderly individuals shall, to the maximum extent practicable, be low-income elderly individuals.'

(c) PAYMENT FOR HOME AND COMMUNITY CARE-

(1) REASONABLE AND ADEQUATE PAYMENT RATES- Section 1902 (42 U.S.C. 1396a) is amended--

(A) in subsection (a)(13)--

(i) by striking `and' at the end of subparagraph (D),

(ii) by inserting `and' at the end of subparagraph (E), and

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

` (F) for payment for home and community care (as defined in section 1929(a) and provided under such section) through rates which are reasonable and adequate to meet the costs of providing care, efficiently and economically, in conformity with applicable State and Federal laws, regulations, and quality and safety standards;'; and

(B) in subsection (h), by adding before the period at the end the following: `or to limit the amount of payment that may be made under a plan under this title for home and community care'.

(2) DENIAL OF PAYMENT FOR CIVIL MONEY PENALTIES, ETC- Section 1903(i)(8) of such Act (42 U.S.C. 1396b(i)(8)) is amended by inserting `(A)' after `medical assistance' and by inserting before the semicolon at the end the following: `or (B) for home and community care to reimburse (or otherwise compensate) a provider of such care for payment of a civil money penalty imposed under this title or title XI or for legal expenses in defense of an exclusion or civil money penalty under this title or title XI if there is no reasonable legal ground for the provider's case'.

(d) CONFORMING AMENDMENTS-

(1) Section 1902(j) (42 U.S.C. 1396a(j)) is amended by striking `(21)' and inserting `(22)'.

(2) Section 1902(a)(10)(C)(iv) (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by striking `through (20)' and inserting `through (21)'.

(e) EFFECTIVE DATES-

(1) Except as provided in this subsection, the amendments made by this section shall apply to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2)(A) The amendments made by subsection (c)(1) shall apply to home and community care furnished on or after July 1, 1991, or, if later, 30 days after the date of publication of interim regulations under section 1929(k)(1).

(B) The amendment made by subsection (c)(2) shall apply to civil money penalties imposed after the date of the enactment of this Act.

(f) WAIVER OF PAPERWORK REDUCTION, ETC- Chapter 35 of title 44, United States Code, and Executive Order 12291 shall not apply to information and regulations required for purposes of carrying out this Act and implementing the amendments made by this Act.

## **SEC. 4712. COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES.**

(a) PROVISION AS OPTIONAL SERVICE- Section 1905(a) (42 U.S.C. 1396d(a)) as amended by section 4711 is further amended--

(1) by striking `and' at the end of paragraph (23);

(2) by redesignating paragraph (24) as paragraph (25); and

(3) by inserting after paragraph (23) the following new paragraph:

“(24) community supported living arrangements services (to the extent allowed and as defined in section 1930).”.

(b) COMMUNITY SUPPORTED LIVING ARRANGEMENTS- Title XIX (42 U.S.C. 1396 et seq.) as amended by sections 4402 and 4711 is further amended--

(1) by redesignating section 1930 as section 1931; and

(2) by inserting after section 1929 the following new section:

## “ COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES

“ SEC. 1930. (a) COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES- In this title, the term “community supported living arrangements services” means one or more of the following services meeting the requirements of subsection (h) provided in a State eligible to provide services under this section (as defined in subsection (d)) to assist a developmentally disabled individual (as defined in subsection (b)) in activities of daily living necessary to permit such individual to live in the individual's own home, apartment, family home, or rental unit furnished in a community supported living arrangement setting:

“(1) Personal assistance.

“(2) Training and habilitation services (necessary to assist the individual in achieving increased integration, independence and productivity).

“(3) 24-hour emergency assistance (as defined by the Secretary).

“(4) Assistive technology.

“(5) Adaptive equipment.

“(6) Other services (as approved by the Secretary, except those services described in subsection (g)).

“(7) Support services necessary to aid an individual to participate in community activities.

“(b) DEVELOPMENTALLY DISABLED INDIVIDUAL DEFINED- In this title the term, “developmentally disabled individual” means an individual who as defined by the Secretary is described within the term “mental retardation and related conditions” as defined in regulations as in effect on July 1, 1990, and who is residing with the individual's family or legal guardian in such individual's own home in which no more than 3 other recipients of services under this section are residing and without regard to whether or not such individual is at risk of institutionalization (as defined by the Secretary).

^ (c) CRITERIA FOR SELECTION OF PARTICIPATING STATES- The Secretary shall develop criteria to review the applications of States submitted under this section to provide community supported living arrangement services. The Secretary shall provide in such criteria that during the first 5 years of the provision of services under this section that no less than 2 and no more than 8 States shall be allowed to receive Federal financial participation for providing the services described in this section.

^ (d) QUALITY ASSURANCE- A State selected by the Secretary to provide services under this section shall in order to continue to receive Federal financial participation for providing services under this section be required to establish and maintain a quality assurance program, that provides that--

^ (1) the State will certify and survey providers of services under this section (such surveys to be unannounced and average at least 1 a year);

^ (2) the State will adopt standards for survey and certification that include--

^ (A) minimum qualifications and training requirements for provider staff;

^ (B) financial operating standards; and

^ (C) a consumer grievance process;

^ (3) the State will provide a system that allows for monitoring boards consisting of providers, family members, consumers, and neighbors;

^ (4) the State will establish reporting procedures to make available information to the public;

^ (5) the State will provide ongoing monitoring of the health and well-being of each recipient;

^ (6) the State will provide the services defined in subsection (a) in accordance with an individual support plan (as defined by the Secretary in regulations); and

^ (7) the State plan amendment under this section shall be reviewed by the State Planning Council established under section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, and the Protection and Advocacy System established under section 142 of such Act.'. 48

48 So in original. Probably should be ^ Act.'.

The Secretary shall not approve a quality assurance plan under this subsection and allow a State to continue to receive Federal financial participation under this section unless the State provides for public hearings on the plan prior to adoption and implementation of its plan under this subsection.

` (e) MAINTENANCE OF EFFORT- States selected by the Secretary to receive Federal financial participation to provide services under this section shall maintain current levels of spending for such services in order to be eligible to continue to receive Federal financial participation for the provision of such services under this section.

` (f) EXCLUDED SERVICES- No Federal financial participation shall be allowed for the provision of the following services under this section:

` (1) Room and board.

` (2) Cost of prevocational, vocational and supported employment.

` (g) WAIVER OF REQUIREMENTS- The Secretary may waive such provisions of this title as necessary to carry out the provisions of this section including the following requirements of this title--

` (1) comparability of amount, duration, and scope of services; and

` (2) statewideness.

` (h) Minimum Protections-

` (1) PUBLICATION OF INTERIM AND FINAL REQUIREMENTS-

` (A) IN GENERAL- The Secretary shall publish, by July 1, 1991, a regulation (that shall be effective on an interim basis pending the promulgation of final regulations), and by October 1, 1992, a final regulation, that sets forth interim and final requirements, respectively, consistent with subparagraph (B), to protect the health, safety, and welfare of individuals receiving community supported living arrangements services.

` (B) MINIMUM PROTECTIONS- Interim and final requirements under subparagraph (A) shall assure, through methods other than reliance on State licensure processes or the State quality assurance programs under subsection (d), that--

` (i) individuals receiving community supported living arrangements services are protected from neglect, physical and sexual abuse, and financial exploitation;

` (ii) a provider of community supported living arrangements services may not use individuals who have been convicted of child or client abuse, neglect, or mistreatment or of a felony involving physical harm to an individual and shall take all reasonable steps to determine whether applicants for employment by the provider have histories indicating involvement in child or client abuse, neglect, or mistreatment or a criminal record involving physical harm to an individual;

` (iii) individuals or entities delivering such services are not

unjustly enriched as a result of abusive financial arrangements (such as owner lease-backs); and

` (iv) individuals or entities delivering such services to clients, or relatives of such individuals, are prohibited from being named beneficiaries of life insurance policies purchased by (or on behalf of) such clients.

` (2) SPECIFIED REMEDIES- If the Secretary finds that a provider has not met an applicable requirement under subsection (h), the Secretary shall impose a civil money penalty in an amount not to exceed \$10,000 for each day of noncompliance. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

` (i) TREATMENT OF FUNDS- Any funds expended under this section for medical assistance shall be in addition to funds expended for any existing services covered under the State plan, including any waiver services for which an individual receiving services under this program is already eligible.

` (j) LIMITATION ON AMOUNTS OF EXPENDITURES AS MEDICAL ASSISTANCE- The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, \$5,000,000, for fiscal year 1992, \$10,000,000, for fiscal year 1993, \$20,000,000, for fiscal year 1994, \$30,000,000, for fiscal year 1995, \$35,000,000, and for fiscal years thereafter such sums as provided by Congress.'

(c) EFFECTIVE DATE-

(1) IN GENERAL- The amendments made by this section shall apply to community supported living arrangements services furnished on or after the later of July 1, 1991, or 30 days after the publication of regulations setting forth interim requirements under subsection (h) without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) APPLICATION PROCESS- The Secretary of Health and Human Services shall provide that the applications required to be submitted by States under this section shall be received and approved prior to the effective date specified in paragraph (1).

SEC. 4713. PROVIDING FEDERAL MEDICAL ASSISTANCE FOR PAYMENTS FOR PREMIUMS FOR ` COBRA' CONTINUATION COVERAGE WHERE COST EFFECTIVE.

(a) OPTIONAL PAYMENT OF COBRA PREMIUMS FOR QUALIFIED COBRA CONTINUATION BENEFICIARIES- Section 1902 (42 U.S.C. 1396a) is amended--

(1) in subsection (a)(10)--

(A) by striking `and' at the end of subparagraph (D),



(B) by adding `and' at the end of subparagraph (E),

(C) by inserting after subparagraph (E) the following new subparagraph:

`(F) at the option of a State, for making medical assistance available for COBRA premiums (as defined in subsection (u)(2)) for qualified COBRA continuation beneficiaries described in section 1902(u)(1);', and

(D) in the matter following subparagraph (E), by striking `and' before `(X)' and by inserting before the semicolon at the end the following: `, and (XI) the medical assistance made available to an individual described in subsection (u)(1) who is eligible for medical assistance only because of subparagraph (F) shall be limited to medical assistance for COBRA continuation premiums (as defined in subsection (u)(2))'; and

(2) by adding after the subsections added by section 4604 and 4701(b) the following new subsection:

`(u)(1) Individuals described in this paragraph are individuals--

`(A) who are entitled to elect COBRA continuation coverage (as defined in paragraph (3)),

`(B) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed 100 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved,

`(C) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program, and

`(D) with respect to whose enrollment for COBRA continuation coverage the State has determined that the savings in expenditures under this title resulting from such enrollment is likely to exceed the amount of payments for COBRA premiums made.

`(2) For purposes of subsection (a)(10)(F) and this subsection, the term `COBRA premiums' means the applicable premium imposed with respect to COBRA continuation coverage.

`(3) In this subsection, the term `COBRA continuation coverage' means coverage under a group health plan provided by an employer with 75 or more employees provided pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986, or title VI of the Employee Retirement Income Security Act of 1974.

` (4) Notwithstanding subsection (a)(17), for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(XI)--

` (A) the income standard to be applied is the income standard described in paragraph (1)(B), and

` (B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(10)(B) or (a)(17), require or permit such treatment for other individuals.'

(b) CONFORMING AMENDMENT- Section 1905(a) (42 U.S.C. 1396d(a)) is amended--

(1) by striking `or' at the end of clause (viii),

(2) by adding `or' at the end of clause (ix), and

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

` (x) individuals described in section 1902(u)(1),'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to medical assistance furnished on or after January 1, 1991.

## **SEC. 4714. PROVISIONS RELATING TO SPOUSAL IMPOVERISHMENT.**

(a) CLARIFICATION OF NON-APPLICATION OF STATE COMMUNITY PROPERTY LAWS- Section 1924(b)(2) (42 U.S.C. 1396r-1(b)(2)) as amended by subsection (a), is further amended by striking `, after the institutionalized spouse has been determined or redetermined to be eligible for medical assistance' and inserting `for purposes of the post-eligibility income determination described in subsection (d)'.

(b) CLARIFICATION OF TRANSFER OF RESOURCES TO COMMUNITY SPOUSE- Section 1924(f)(1) (42 U.S.C. 1396r-5(f)(1)) is amended by striking `section 1917' and inserting `section 1917(c)(1)'.

(c) CLARIFICATION OF PERIOD OF CONTINUOUS ELIGIBILITY- Section 1924(c)(1) (42 U.S.C. 1396r-1(c)(1)) is amended by striking `the beginning of a continuous period of institutionalization of the institutionalized spouse' each place it appears and inserting `the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse'.

(d) EFFECTIVE DATE- The amendments made this section shall take effect as

if included in the enactment of section 303 of the Medicare Catastrophic Coverage Act of 1988.

**SEC. 4715. DISREGARDING GERMAN REPARATION PAYMENTS FROM POST-ELIGIBILITY TREATMENT OF INCOME UNDER THE MEDICAID PROGRAM.**

(a) IN GENERAL- Section 1902(r)(1) (42 U.S.C. 1396a(r)(1)) is amended by inserting `there shall be disregarded reparation payments made by the Federal Republic of Germany and' after `under such a waiver'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to treatment of income for months beginning more than 30 days after the date of the enactment of this Act.

**SEC. 4716. AMENDMENTS RELATING TO MEDICAID TRANSITION PROVISION.**

(a) AMENDMENTS- Subsection (f) of section 1925 (42 U.S.C. 1396s) is amended--

(1) in subsection (b)(2)(B)(i), by inserting at the end the following: `A State may permit such additional extended assistance under this subsection notwithstanding a failure to report under this clause if the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis.';

(2) in subsection (b)(2)(B), by adding at the end the following new clause:

`(iii) CLARIFICATION ON FREQUENCY OF REPORTING- A State may not require that a family receiving extended assistance under this subsection or subsection (a) report more frequently than as required under clause (i) or (ii).'; and

(3) in subsection (b)(3)(B), by adding at the end the following: `No such termination shall be effective earlier than 10 days after the date of mailing of such notice.'.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall be effective as if included in the enactment of the Family Support Act of 1988.

**SEC. 4717. CLARIFYING EFFECT OF HOSPICE ELECTION.**

Section 1905(o)(1)(A) (42 U.S.C. 1396d(o)(1)(A)) is amended by inserting `and for which payment may otherwise be made under title XVIII' after `described in section 1812(d)(2)(A)'.

**SEC. 4718. MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 1-MEMBER FAMILIES.**

(a) IN GENERAL- For purposes of section 1903(f)(1)(B), for payments made before, on, or after the date of the enactment of this Act, a State described in subparagraph (B) may use, in determining the `highest amount which would ordinarily be paid to a family of the same size' (under the State's plan

approved under part A of title IV of such Act) in the case of a family consisting only of one individual and without regard to whether or not such plan provides for aid to families consisting only of one individual, an amount reasonably related to the highest money payment which would ordinarily be made under such a plan to a family of two without income or resources.

(b) STATES COVERED- Subsection (a) shall only apply to a State the State plan of which (under title XIX of the Social Security Act) as of June 1, 1989, provided for the policy described in such paragraph. For purposes of the previous sentence, a State plan includes all the matter included in a State plan under section 2373(c)(5) of the Deficit Reduction Act of 1984 (as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987).

## **SEC. 4719. CODIFICATION OF COVERAGE OF REHABILITATION SERVICES.**

(a) IN GENERAL- Section 1905(a)(13) (42 U.S.C. 1396d(a)(13)) is amended by inserting before the semicolon at the end the following: ` , including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

## **SEC. 4720. PERSONAL CARE SERVICES FOR MINNESOTA.**

(a) CLARIFICATION OF COVERAGE- In applying section 1905 of the Social Security Act with respect to Minnesota, medical assistance shall include payment for personal care services described in subsection (b).

(b) PERSONAL CARE SERVICES DEFINED- For purposes of this section, the term `personal care services' means services--

(1) prescribed by a physician for an individual in accordance with a plan of treatment,

(2) provided by a person who is qualified to provide such services who is not a member of the individual's family,

(3) supervised by a registered nurse, and

(4) furnished in a home or other location;

but does not include such services furnished to an inpatient or resident of a hospital or nursing facility.

(c) EFFECTIVE DATE- This section shall take effect on the date of the

enactment of this Act and shall apply with respect to--

(1) personal care services furnished before such date pursuant to regulations in effect as of July 1, 1989; and

(2) such services furnished before October 1, 1994.

#### SEC. 4721. MEDICAID COVERAGE OF PERSONAL CARE SERVICES OUTSIDE THE HOME.

(a) IN GENERAL- Section 1905(a)(7) (42 U.S.C. 1396d(a)(7)) is amended by striking `services' and inserting `services including personal care services (A) prescribed by a physician for an individual in accordance with a plan of treatment, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, (C) supervised by a registered nurse, and (D) furnished in a home or other location; but not including such services furnished to an inpatient or resident of a nursing facility'.

(b) EFFECTIVE DATE- The amendment made by this section shall become effective with respect to personal care services provided on or after October 1, 1994.

#### SEC. 4722. MEDICAID COVERAGE OF ALCOHOLISM AND DRUG DEPENDENCY TREATMENT SERVICES.

Section 1905(a) of the Social Security Act is amended by adding at the end the following new sentence: `No service (including counseling) shall be excluded from the definition of `medical assistance' solely because it is provided as a treatment service for alcoholism or drug dependency.'.

### **SEC. 4723. MEDICAID SPENDDOWN OPTION.**

(a) IN GENERAL- Section 1903(f)(2) (42 U.S.C. 1396b(f)(2)) is amended by--

(1) inserting `(A)' after `(2)'; and

(2) by adding before the period at the end the following: `or, (B) notwithstanding section 1916 at State option, an amount paid by such family, at the family's option, to the State, provided that the amount, when combined with costs incurred in prior months, is sufficient when excluded from the family's income to reduce such family's income below the applicable income limitation described in paragraph (1). The amount of State expenditures for which medical assistance is available under subsection (a)(1) will be reduced by amounts paid to the State pursuant to this subparagraph.'

(b) CONFORMING AMENDMENT- Section 1902(a)(17) (42 U.S.C. 1396a(a)(17)) is amended by inserting after `insurance premiums' `, payments made to the State under section 1903(f)(2)(B), '.

#### SEC. 4724. OPTIONAL STATE MEDICAID DISABILITY DETERMINATIONS

## INDEPENDENT OF THE SOCIAL SECURITY ADMINISTRATION.

(a) IN GENERAL- Section 1902 (42 U.S.C. 1396a) as amended by this title, is further amended by adding at the end the following new subsection:

“(v)(1) A State plan may provide for the making of determinations of disability or blindness for the purpose of determining eligibility for medical assistance under the State plan by the single State agency or its designee, and make medical assistance available to individuals whom it finds to be blind or disabled and who are determined otherwise eligible for such assistance during the period of time prior to which a final determination of disability or blindness is made by the Social Security Administration with respect to such an individual. In making such determinations, the State must apply the definitions of disability and blindness found in section 1614(a) of the Social Security Act.’.

## ***Subpart C--Health Maintenance Organizations***

### **SEC. 4731. REGULATION OF INCENTIVE PAYMENTS TO PHYSICIANS.**

(a) PHYSICIAN PAYMENT PLAN- Section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)) as amended by this title is further amended--

(1) by striking ‘, and’ at the end of clause (viii) and inserting a semicolon;

(2) by striking the period at the end of clause (ix) and inserting ‘; and’; and

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

“(x) any physician incentive plan that it operates meets the requirements described in section 1876(i)(8).’.

(b) REPEAL OF PROHIBITION AGAINST PHYSICIAN INCENTIVE PAYMENTS- Section 1128A(b)(1) (42 U.S.C. 1320a-7a(b)(1)) is--

(1) REPEAL OF PROHIBITION- Section 1128A(b)(1) (42 U.S.C. 1320a-7a(b)(1)) is amended by striking ‘or an entity with a contract under section 1903(m)’.

(2) PENALTIES- Section 1903(m)(5)(A) (42 U.S.C. 1396b(m)(5)(A)) is amended--

(A) by striking ‘or’ at the end of clause (iii);

(B) by adding ‘or’ at the end of clause (iv); and

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

` (v) fails to comply with the requirements of section 1876(i)(8),'.

(c) EFFECTIVE DATE- The amendments made by subsections (a) and (b)(2) shall apply with respect to contract years beginning on or after January 1, 1992, and the amendments made by subsection (b)(1) shall take effect on the date of the enactment of this Act.

## **SEC. 4732. SPECIAL RULES.**

(a) WAIVER OF 75 PERCENT RULE FOR PUBLIC ENTITIES- Section 1903(m)(2)(D) (42 U.S.C. 1396b(m)(2)(D)) is amended by striking `(i) special circumstances warrant such modification or waiver, and (ii)'.

(b) EXTENDING SPECIAL TREATMENT TO MEDICARE COMPETITIVE MEDICAL PLANS-

(1) 6-MONTH MINIMUM ENROLLMENT PERIOD OPTION- Section 1902(e)(2)(A) (42 U.S.C. 1396a(e)(2)(A)) is amended by inserting `or with an eligible organization with a contract under section 1876' after `1903(m)(2)(A)'.

(2) ENROLLMENT LOCK-IN- Section 1903(m)(2)(F)(i) (42 U.S.C. 1396b(m)(2)(F)(i)) is amended--

(A) by striking `(G) or' and inserting `(G),', and

(B) adding at the end the following: `or with an eligible organization with a contract under section 1876 which meets the requirement of subparagraph (A)(ii), or'.

(c) AUTOMATIC 1-MONTH REENROLLMENT FOR SHORT PERIODS OF INELIGIBILITY- Section 1903(m)(2) is amended by adding at the end the following new subparagraph:

` (H) In the case of an individual who--

` (i) in a month is eligible for benefits under this title and enrolled with a health maintenance organization with a contract under this paragraph,

` (ii) in the next month (or in the next 2 months) is not eligible for such benefits, but

` (iii) in the succeeding month is again eligible for such benefits,

the State plan, subject to subparagraph (A)(vi), may enroll the individual for that succeeding month with the health maintenance organization described in clause (i) if the organization continues to have a contract under this paragraph with the State.'

(d) ELIMINATION OF PROVISIONAL QUALIFICATION FOR HMOS- Section 1903(m) is amended--

(1) in paragraph (2)(A)(i), by striking ` (or the State as authorized by paragraph (3))', and

(2) by striking paragraph (3).

(e) EFFECTIVE DATE- The amendments made by this section shall take effect on the date of the enactment of this Act.

#### SEC. 4733. EXTENSION AND EXPANSION OF MINNESOTA PREPAID MEDICAID DEMONSTRATION PROJECT.

Section 507 of the Family Support Act of 1988 is amended--

(1) by striking ` 1991' and inserting ` 1996'; and

(2) by striking the period at the end and inserting the following: `, and shall amend such waiver to permit the State to expand such demonstration project to other counties if the amount of medical assistance provided under title XIX of such Act after such expansion will not exceed the amount of medical assistance provided under such title had the project not been expanded to other counties.'.

#### SEC. 4734. TREATMENT OF CERTAIN COUNTY-OPERATED HEALTH INSURING ORGANIZATIONS.

Section 9517(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended--

(1) in paragraph (2)(A), by inserting ` and in paragraph (3)' after ` subparagraph (B)', and

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

` (3)(A) Subject to subparagraph (C), in the case of up to 3 health insuring organizations which are described in subparagraph (B), which first become operational on or after January 1, 1986, and which are designated by the Governor, and approved by the Legislature, of California, the amendments made by paragraph (1) shall not apply.

` (B) A health insuring organization described in this subparagraph is one that-

` (i) is operated directly by a public entity established by a county government in the State of California under a State enabling statute;

` (ii) enrolls all medicaid beneficiaries residing in the county in which it operates;

` (iii) meets the requirements for health maintenance organizations under the Knox-Keene Act (Cal. Health and Safety Code, section 1340 et seq.) and the Waxman-Duffy Act (Cal. Welfare and Institutions Code, section 14450 et seq.);



` (iv) assures a reasonable choice of providers, which includes providers that have historically served medicaid beneficiaries and which does not impose any restriction which substantially impairs access to covered services of adequate quality where medically necessary;

` (v) provides for a payment adjustment for a disproportionate share hospital (as defined under State law consistent with section 1923 of the Social Security Act) in a manner consistent with the requirements of such section; and

` (vi) provides for payment, in the case of childrens' hospital services provided to medicaid beneficiaries who are under 21 years of age, who are children with special health care needs under title V of the Social Security Act, and who are receiving care coordination services under such title, at rates determined by the California Medical Assistance Commission.

` (C) Subparagraph (A) shall not apply with respect to any period for which the Secretary of Health and Human Services determines that the number of medicaid beneficiaries enrolled with health insuring organizations described in subparagraph (B) exceeds 10 percent of the number of such beneficiaries in the State of California.

` (D) In this paragraph, the term ` medicaid beneficiary' means an individual who is entitled to medical assistance under the State plan under title XIX of the Social Security Act, other than a qualified medicare beneficiary who is only entitled to such assistance because of section 1902(a)(10)(E) of such title.'

## ***Subpart D--Demonstration Projects and Home and Community-Based Waivers***

### **SEC. 4741. HOME AND COMMUNITY-BASED WAIVERS.**

(a) TREATMENT OF ROOM AND BOARD- (1) Subsections (c)(1) and (d)(1) of section 1915 (42 U.S.C. 1396n) are each amended by adding at the end the following: ` For purposes of this subsection, the term ` room and board' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.'

(b) ADJUSTMENT TO 1915(d) CEILING TO TAKE INTO ACCOUNT THE ADDED COSTS OF OBRA 87- Section 1915(d)(5)(B)(iv) (42 U.S.C. 1396n(d)(5)(B)(iv)) is amended by striking ` this title' the first place it appears and inserting ` this title whose provisions become effective on or after such date'.

### **SEC. 4742. TIMELY PAYMENT UNDER WAIVERS OF FREEDOM OF CHOICE OF HOSPITAL SERVICES.**

(a) IN GENERAL- Section 1915(b)(4) (42 U.S.C. 1396n(b)(4)) is amended by inserting before the period at the end the following: ` and if providers under such restriction are paid on a timely basis in the same manner as health care practitioners must be paid under section 1902(a)(37)(A)'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect as of the first calendar quarter beginning more than 30 days after the date of the enactment of this Act.

(c) TREATMENT OF PERSONS WITH MENTAL RETARDATION OR A RELATED CONDITION IN A DECERTIFIED FACILITY-

(1) IN GENERAL- Section 1915(c)(7) (42 U.S.C. 1396n(c)(7)) is amended by adding at the end the following new subparagraph:

` (C) In making estimates under paragraph (2)(D) in the case of a waiver to the extent that it applies to individuals with mental retardation or a related condition who are resident in an intermediate care facility for the mentally retarded the participation of which under the State plan is terminated, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals without regard to any such termination.'.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981, but shall only apply to facilities the participation of which under a State plan under title XIX of the Social Security Act is terminated on or after the date of the enactment of this Act.

(d) SCOPE OF RESPITE CARE-

(1) IN GENERAL- Section 1915(c)(4) is amended by adding at the end the following:

` Except as provided under paragraph (2)(D), the Secretary may not restrict the number of hours or days of respite care in any period which a State may provide under a waiver under this subsection.'.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981.

(e) PERMITTING ADJUSTMENT IN ESTIMATES TO TAKE INTO ACCOUNT PREADMISSION SCREENING REQUIREMENT- In the case of a waiver under section 1915(c) of the Social Security Act for individuals with mental retardation or a related condition in a State, the Secretary of Health and Human Services shall permit the State to adjust the estimate of average per capita expenditures submitted under paragraph (2)(D) of such section, with respect to such expenditures made on or after January 1, 1989, to take into account increases in expenditures for, or utilization of, intermediate care facilities for the mentally retarded resulting from implementation of section

1919(e)(7)(A) of such Act.

SEC. 4744. PROVISIONS RELATING TO FRAILELDERLY DEMONSTRATION PROJECT WAIVERS.

(a) EXPANSION OF WAIVERS- Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 is amended--

(1) in paragraph (1), by striking `10' and inserting `15'; and

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

` (3) In the case of an organization receiving an initial waiver under this subsection on or after October 1, 1990, the Secretary (at the request of the organization) shall not require the organization to provide services under title XVIII of the Social Security Act on a capitated or other risk basis during the first 2 years of the waiver.'

(b) APPLICATION OF SPOUSAL IMPOVERISHMENT RULES- (1) Section 1924(a) (42 U.S.C. 1396r-5(a)) is amended by adding at the end the following new paragraph:

` (5) APPLICATION TO INDIVIDUALS RECEIVING SERVICES FROM ORGANIZATIONS RECEIVING CERTAIN WAIVERS- This section applies to individuals receiving institutional or noninstitutional services from any organization receiving a frail elderly demonstration project waiver under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986.'

(2) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, as amended by subsection (a), is amended by adding at the end the following new paragraph:

` (4) Section 1924 of the Social Security Act shall apply to any individual receiving services from an organization receiving a waiver under this subsection.'

SEC. 4745. DEMONSTRATION PROJECTS TO STUDY THE EFFECT OF ALLOWING STATES TO EXTEND MEDICAID COVERAGE TO CERTAIN LOW-INCOME FAMILIES NOT OTHERWISE QUALIFIED TO RECEIVE MEDICAID BENEFITS.

(a) DEMONSTRATION PROJECTS-

(1) IN GENERAL- (A) The Secretary of Health and Human Services (hereafter in this section referred to as the `Secretary') shall enter into agreements with 3 and no more than 4 States submitting applications under this section for the purpose of conducting demonstration projects to study the effect on access to, and costs of, health care of eliminating the categorical eligibility requirement for medicaid benefits for certain low-income individuals.

(B) In entering into agreements with States under this section the Secretary shall provide that at least 1 and no more than 2 of the projects

are conducted on a substate basis.

(2) REQUIREMENTS- (A) The Secretary may not enter into an agreement with a State to conduct a project unless the Secretary determines that--

(i) the project can reasonably be expected to improve access to health insurance coverage for the uninsured;

(ii) with respect to projects for which the statewideness requirement has not been waived, the State provides, under its plan under title XIX of the Social Security Act, for eligibility for medical assistance for all individuals described in subparagraphs (A), (B), (C), and (D) of paragraph (1) of section 1902(l) of such Act (based on the State's election of certain eligibility options the highest income standards and, based on the State's waiver of the application of any resource standard);

(iii) eligibility for benefits under the project is limited to individuals in families with income below 150 percent of the income official poverty line and who are not individuals receiving benefits under title XIX of the Social Security Act;

(iv) if the Secretary determines that it is cost-effective for the project to utilize employer coverage (as described in section 1925(b)(4)(D) of the Social Security Act), the project must require an employer contribution and benefits under the State plan under title XIX of such Act will continue to be made available to the extent they are not available under the employer coverage;

(v) the project provides for coverage of benefits consistent with subsection (b); and

(vi) the project only imposes premiums, coinsurance, and other cost-sharing consistent with subsection (c).

(B) The Secretary may waive the requirements of clause (ii) of this paragraph with respect to those projects described in subparagraph (B) of paragraph (1).

(3) PERMISSIBLE RESTRICTIONS- A project may limit eligibility to individuals whose assets are valued below a level specified by the State. For this purpose, any evaluation of such assets shall be made in a manner consistent with the standards for valuation of assets under the State plan under title XIX of the Social Security Act for individuals entitled to assistance under part A of title IV of such Act. Nothing in this section shall be construed as requiring a State to provide for eligibility for individuals for months before the month in which such eligibility is first established.

(4) EXTENSION OF ELIGIBILITY- A project may provide for extension of eligibility for medical assistance for individuals covered under the project in a manner similar to that provided under section 1925 of the Social

Security Act to certain families receiving aid pursuant to a plan of the State approved under part A of title IV of such Act.

(5) WAIVER OF REQUIREMENTS-

(A) IN GENERAL- Subject to subparagraph (B), the Secretary may waive such requirements of title XIX of the Social Security Act (except section 1903(m) of the Social Security Act) as may be required to provide for additional coverage of individuals under projects under this section.

(B) NONWAIVABLE PROVISIONS- Except with respect to those projects described in subparagraph (B) of paragraph (1), the Secretary may not waive, under subparagraph (A), the statewideness requirement of section 1902(a)(1) of the Social Security Act or the Federal medical assistance percentage specified in section 1905(b) of such Act.

(b) BENEFITS-

(1) IN GENERAL- Except as provided in this subsection, the amount, duration, and scope of medical assistance made available under a project shall be the same as the amount, duration, and scope of such assistance made available to individuals entitled to medical assistance under the State plan under section 1902(a)(10)(A)(i) of the Social Security Act.

(2) LIMITS ON BENEFITS-

(A) REQUIRED- Except with respect to those projects described in subparagraph (B) of paragraph (1), no medical assistance shall be made available under a project for nursing facility services or community-based long-term care services (as defined by the Secretary) or for pregnancy-related services. No medical assistance shall be made available under a project to individuals confined to a State correctional facility, county jail, local or county detention center, or other State institution.

(B) PERMISSIBLE- A State, with the approval of the Secretary, may limit or otherwise deny eligibility for medical assistance under the project and may limit coverage of items and services under the project, other than early and periodic screening, diagnostic, and treatment services for children under 18 years of age.

(3) USE OF UTILIZATION CONTROLS- Nothing in this subsection shall be construed as limiting a State's authority to impose controls over utilization of services, including preadmission requirements, managed care provisions, use of preferred providers, and use of second opinions before surgical procedures.

(c) PREMIUMS AND COST-SHARING-

(1) NONE FOR THOSE WITH INCOME BELOW THE POVERTY LINE- Under a

project, there shall be no premiums, coinsurance, or other cost-sharing for individuals whose family income level does not exceed 100 percent of the income official poverty line (as defined in subsection (g)(1)) applicable to a family of the size involved.

(2) LIMIT FOR THOSE WITH INCOME ABOVE THE POVERTY LINE- Under a project, for individuals whose family income level exceeds 100 percent, but is less than 150 percent, of the income official poverty line applicable to a family of the size involved, the monthly average amount of premiums, coinsurance, and other cost-sharing for covered items and services shall not exceed 3 percent of the family's average gross monthly earnings.

(3) INCOME DETERMINATION- Each project shall provide for determinations of income in a manner consistent with the methodology used for determinations of income under title XIX of the Social Security Act for individuals entitled to benefits under part A of title IV of such Act.

(d) DURATION- Each project under this section shall commence not later than July 1, 1991 and shall be conducted for a 3-year period; except that the Secretary may terminate such a project if the Secretary determines that the project is not in substantial compliance with the requirements of this section.

(e) LIMITS ON EXPENDITURES AND FUNDING-

(1) IN GENERAL- (A) The Secretary in conducting projects shall limit the total amount of the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act to no more than \$12,000,000 in each of fiscal years 1991, 1992, and 1993, and to no more than \$4,000,000 in fiscal year 1994.

(B) Of the amounts appropriated under subparagraph (A), the Secretary shall provide that no more than one-third of such amounts shall be used to carry out the projects described in paragraph (1)(B) of subsection (a) (for which the statewideness requirement has been waived).

(2) NO FUNDING OF CURRENT BENEFICIARIES- No funding shall be available under a project with respect to medical assistance provided to individuals who are otherwise eligible for medical assistance under the plan without regard to the project.

(3) NO INCREASE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE- Payments to a State under a project with respect to expenditures made for medical assistance made available under the project may not exceed the Federal medical assistance percentage (as defined in section 1905(b) of the Social Security Act) of such expenditures.

(f) EVALUATION AND REPORT-

(1) EVALUATIONS- For each project the Secretary shall provide for an evaluation to determine the effect of the project with respect to--

- (A) access to, and costs of, health care,
- (B) private health care insurance coverage, and
- (C) premiums and cost-sharing.

(2) REPORTS- The Secretary shall prepare and submit to Congress an interim report on the status of the projects not later than January 1, 1993, and a final report containing such summary together with such further recommendations as the Secretary may determine appropriate not later than January 1, 1995.

(g) DEFINITIONS- In this section:

(1) The term 'income official poverty line' means such line as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(2) The term 'project' refers to a demonstration project under subsection (a).

## **SEC. 4746. MEDICAID RESPITE DEMONSTRATION PROJECT EXTENDED.**

Section 9414 of the Omnibus Budget Reconciliation Act of 1986 is amended--

(1) by amending subsection (e) to read as follows:

'(e) DURATION- The project under this section may continue until September 30, 1992.'; and

(2) in subsection (d), by striking the last sentence and inserting in lieu thereof the following new sentence: 'For the period beginning October 1, 1990, and ending September 30, 1992, Federal payments for the project shall not exceed amounts expended under the project in the preceding fiscal year.'

## **SEC. 4747. DEMONSTRATION PROJECT TO PROVIDE MEDICAID COVERAGE FOR HIV-POSITIVE INDIVIDUALS.**

(a) IN GENERAL- Not later than 3 months after the date of the enactment of this Act, the Secretary of Health and Human Services (hereafter in this section referred to as the 'Secretary') shall provide for 2 demonstration projects to be administered by States that submit an application under this section, through programs administered by the States under title XIX of the Social Security Act. Such demonstration projects shall provide coverage for the services described in subsection (c) to individuals whose income and resources do not exceed the maximum allowable amount for eligibility for any individual in any category of disability under the State plan under section 1902 of the Social Security Act, and who have tested positive for the presence of HIV virus (without regard to the presence of any symptoms of AIDS or opportunistic diseases related to

AIDS).

(b) SERVICES AVAILABLE UNDER A DEMONSTRATION PROJECT- (1) The medical assistance made available to individuals described in section 1902(a)(10)(A) of the Social Security Act shall be made available to individuals described in subsection (a) who receive services under a demonstration project under such paragraph.

(2) A demonstration project under subsection (a) shall provide services in addition to the services described in paragraph (1) which shall be limited only on the basis of medical necessity or the appropriateness of such services. To the extent not provided as described in paragraph (1), such additional services shall include--

(A) general and preventative 49

medical care services (including inpatient, outpatient, residential care, physician visits, clinic visits, and hospice care);

49 So in original. Probably should be `preventive'.

(B) prescription drugs, including drugs for the purposes of preventative health care services;

(C) counseling and social services;

(D) substance abuse treatment services (including services for multiple substances abusers);

(E) home care services (including assistance in carrying out activities of daily living);

(F) case management;

(G) health education services;

(H) respite care for caregivers;

(I) dental services; and

(J) diagnostic and laboratory services 50

50 So in original. Probably should be `services.'.

(c) AGREEMENTS WITH STATES- (1) Each State conducting a demonstration project under subsection (a) shall enter into an agreement with a hospital and at least one other nonprofit organization submitting applications to the State. The State shall require that such hospital and other entity have a demonstrated record of case management of patients who have tested positive for the presence of HIV virus and have access to a control group of such type of patients who are not receiving State or Federal payments for medical services (or other payments from private insurance coverage) before



developing symptoms of AIDS. Under such agreement, the State shall agree to pay each such entity for the services provided under subsection (b) and not later than 12 months after the commencement of a demonstration project, institute a system of monthly payment to each such entity based on the average per capita cost of the services described in subsection (c) provided to individuals described in paragraphs (1) and (2) of subsection (a).

(2) A demonstration project described in subsection (a) shall be limited to an enrollment of not more than 200 individuals.

(3) A demonstration project conducted under subsection (a) shall commence not later than 9 months after the date of the enactment of this Act and shall terminate on the date that is 3 years after the date of commencement.

(4)(A) The Secretary shall provide for an evaluation of the comparative costs of providing services to individuals who have tested positive for the presence of HIV virus at an early stage after detection of such virus and those that are treated at a later stage after such detection.

(B) The Secretary shall report to Congress on the results of the evaluation conducted under subparagraph (A) no later than 6 months after the date of termination of the demonstration projects described in this section.

(d) FEDERAL SHARE OF COSTS- The Federal share of the cost of services described in paragraph (3) furnished under a demonstration project conducted under paragraph (1) shall be determined by the otherwise applicable Federal matching assistance percentage pursuant to section 1905(b) of the Social Security Act.

(e) WAIVER OF REQUIREMENTS OF THE SOCIAL SECURITY ACT- The Secretary may waive such requirements of the Social Security Act as the Secretary determines to be necessary to carry out the purposes of this section.

(f) LIMITATION ON AMOUNT OF EXPENDITURES- The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be \$5,000,000 for fiscal year 1991, \$12,000,000 for fiscal year 1992, and \$13,000,000 for fiscal year 1993.

## ***Subpart E--Miscellaneous***

### **SEC. 4751. REQUIREMENTS FOR ADVANCED DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE.**

(a) IN GENERAL- Section 1902 (42 U.S.C. 1396a(a)), as amended by sections 4401(a)(2), 4601(d), 4701(a), 4711(a), and 4722 of this title, is amended--

(1) in subsection (a)--

(A) by striking `and' at the end of paragraph (55),

(B) by striking the period at the end of paragraph (56) and inserting

`; and', and

(C) by inserting after paragraph (56) the following new paragraphs:

` (57) provide that each hospital, nursing facility, provider of home health care or personal care services, hospice program, or health maintenance organization (as defined in section 1903(m)(1)(A)) receiving funds under the plan shall comply with the requirements of subsection (w);

` (58) provide that the State, acting through a State agency, association, or other private nonprofit entity, develop a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives that would be distributed by providers or organizations under the requirements of subsection (w).'; and

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

` (w)(1) For purposes of subsection (a)(57) and sections 1903(m)(1)(A) and 1919(c)(2)(E), the requirement of this subsection is that a provider or organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization--

` (A) to provide written information to each such individual concerning--

` (i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

` (ii) the provider's or organization's written policies respecting the implementation of such rights;

` (B) to document in the individual's medical record whether or not the individual has executed an advance directive;

` (C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

` (D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives; and

` (E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

` (2) The written information described in paragraph (1)(A) shall be provided to an adult individual--

` (A) in the case of a hospital, at the time of the individual's admission as an inpatient,

` (B) in the case of a nursing facility, at the time of the individual's admission as a resident,

` (C) in the case of a provider of home health care or personal care services, in advance of the individual coming under the care of the provider,

` (D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

` (E) in the case of a health maintenance organization, at the time of enrollment of the individual with the organization.

` (3) Nothing in this section shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which as a matter of conscience cannot implement an advance directive.'. 51

51 So in original. Probably should be `directive.'.

` (4) In this subsection, the term `advance directive' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated. 52

52 So in original. Probably should be `incapacitated.'.

#### (b) CONFORMING AMENDMENTS-

(1) Section 1903(m)(1)(A) (42 U.S.C. 1396b(m)(1)(A)) is amended--

(A) by inserting `meets the requirement of section 1902(w)' after `which' the first place it appears, and

(B) by inserting `meets the requirement of section 1902(a) and' after `which' the second place it appears.

(2) Section 1919(c)(2) of such Act (42 U.S.C. 1396r(c)(2)) is amended by adding at the end the following new subparagraph:

` (E) INFORMATION RESPECTING ADVANCE DIRECTIVES- A nursing facility must comply with the requirement of section 1902(w) (relating to maintaining written policies and procedures respecting advance directives).'

(c) EFFECTIVE DATE- The amendments made by this section shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act.

(d) PUBLIC EDUCATION CAMPAIGN-

(1) IN GENERAL- The Secretary, no later than 6 months after the date of enactment of this section, shall develop and implement a national campaign to inform the public of the option to execute advance directives and of a patient's right to participate and direct health care decisions.

(2) DEVELOPMENT AND DISTRIBUTION OF INFORMATION- The Secretary shall develop or approve nationwide informational materials that would be distributed by providers under the requirements of this section, to inform the public and the medical and legal profession of each person's right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment, and the existence of advance directives.

(3) PROVIDING ASSISTANCE TO STATES- The Secretary shall assist appropriate State agencies, associations, or other private entities in developing the State-specific documents that would be distributed by providers under the requirements of this section. The Secretary shall further assist appropriate State agencies, associations, or other private entities in ensuring that providers are provided a copy of the documents that are to be distributed under the requirements of the section.

(4) DUTIES OF SECRETARY- The Secretary shall mail information to Social Security recipients, add a page to the medicare handbook with respect to the provisions of this section.

## **SEC. 4752. IMPROVEMENT IN QUALITY OF PHYSICIAN SERVICES.**

(a) USE OF UNIQUE PHYSICIAN IDENTIFIERS-

(1) ESTABLISHMENT OF SYSTEM-

(A) IN GENERAL- Section 1902 (42 U.S.C. 1396a) as amended by sections 4601(d), 4701(a), 4711(a), 4722(a), and 4751(a) is further amended by adding at the end the following new subsection:

“(x) The Secretary shall establish a system, for implementation by not later than July 1, 1991, which provides for a unique identifier for each physician who furnishes services for which payment may be made under a State plan approved under this title.”.

(B) DEADLINE AND CONSIDERATIONS- The system established under the amendment made by subparagraph (A) may be the same as, or different from, the system established under section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) REQUIRING INCLUSION WITH CLAIMS- Section 1903(i) (42 U.S.C. 1396b(i)), as amended by this title, is amended--

(A) by striking the period at the end of paragraph (11) and inserting `; or', and

(B) by inserting after paragraph (11) the following new paragraph:

` (12) with respect to any amount expended for physicians' services furnished on or after the first day of the first quarter beginning more than 60 days after the date of establishment of the physician identifier system under section 1902(x), unless the claim for the services includes the unique physician identifier provided under such system.'

(b) MAINTENANCE OF ENCOUNTER DATA BY HEALTH MAINTENANCE ORGANIZATIONS-

(1) IN GENERAL- Section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)), as amended by this title, is amended--

(A) by striking `and' at the end of clause (ix),

(B) by striking the period at the end of clause (x) and inserting `; and', and

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

` (xi) such contract provides for maintenance of sufficient patient encounter data to identify the physician who delivers services to patients.'

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to contract years beginning after the date of the establishment of the system described in section 1902(x) of the Social Security Act.

(c) MAINTENANCE OF LIST OF PHYSICIANS BY STATES-

(1) IN GENERAL- Section 1902(a) (42 U.S.C. 1396a(a)), as amended by this title, is further amended--

(A) by striking `and' at the end of paragraph (56),

(B) by striking the period at the end of paragraph (57) and inserting `; and', and

(C) by inserting after paragraph (57) the following new paragraph:

` (58) maintain a list (updated not less often than monthly, and containing each physician's unique identifier provided under the system established under subsection (v)) of all physicians who are certified to participate under the State plan.'

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to medical assistance for calendar quarters beginning more than 60 days after the date of establishment of the physician identifier system under section 1902(x) of the Social Security Act.

(d) FOREIGN MEDICAL GRADUATE CERTIFICATION-

(1) PASSAGE OF FMGEMS EXAMINATION IN ORDER TO OBTAIN IDENTIFIER- The Secretary of Health and Human Service 53

shall provide, in the identifier system established under section 1902(x) of the Social Security Act, that no foreign medical graduate (as defined in section 1886(h)(5)(D) of such Act) shall be issued an identifier under such system unless the individual--

53 So in original. Probably should be `Services'.

(A) has passed the FMGEMS examination (as defined in section 1886(h)(5)(E) of such Act);

(B) has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates; or

(C) has held a license from 1 or more States continuously since 1958.

(2) EFFECTIVE DATE- Paragraph (1) shall apply with respect to issuance of an identifier applicable to services furnished on or after January 1, 1992.

(e) MINIMUM QUALIFICATIONS FOR BILLING FOR PHYSICIANS' SERVICES TO CHILDREN AND PREGNANT WOMEN- Section 1903(i) (42 U.S.C. 1396b(i)), as amended by this title and subsection (a)(2) of this section, is further amended--

(1) by striking the period at the end of paragraph (13) and inserting `or'; and

(2) by inserting after paragraph (13) the following new paragraph:

`(14) with respect to any amount expended for physicians' services furnished by a physician on or after January 1, 1992, to--

`(A) a child under 21 years of age, unless the physician--

`(i) is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics,

`(ii) is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B)),

` (iii) holds admitting privileges at a hospital participating in a State plan approved under this title,

` (iv) is a member of the National Health Service Corps,

` (v) documents a current, formal, consultation and referral arrangement with a pediatrician or family practitioner who has the certification described in clause (i) for purposes of specialized treatment and admission to a hospital, or

` (vi) has been certified by the Secretary as qualified to provide physicians' services to a child under 21 years of age; or

` (B) to a pregnant woman (or during the 60 day period beginning on the date of termination of the pregnancy) unless the physician--

` (i) is certified in family practice or obstetrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or obstetrics,

` (ii) is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B)),

` (iii) holds admitting privileges at a hospital participating in a State plan approved under this title,

` (iv) is a member of the National Health Service Corps,

` (v) documents a current, formal, consultation and referral arrangement with an obstetrician or family practitioner who has the certification described in clause (i) for purposes of specialized treatment and admission to a hospital, or

` (vi) has been certified by the Secretary as qualified to provide physicians' services to pregnant women.'

#### (f) REPORTING OF MISCONDUCT OR SUBSTANDARD CARE-

(1) IN GENERAL- Section 1921(a) (42 U.S.C. 1396r-2(a)) is amended--

(A) in paragraph (1), in the matter before subparagraph (A), by inserting ` (or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners)' after `health care practitioners'; and

(B) in paragraph (1), by adding at the end the following new subparagraph:

` (D) Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.'

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply

to State information reporting systems as of January 1, 1992, without regard to whether or not the Secretary of Health and Human Services has promulgated any regulations to carry out such amendments by such date.

## **SEC. 4753. CLARIFICATION OF AUTHORITY OF INSPECTOR GENERAL.**

Section 1128A(j) (42 U.S.C. 1320a-7a(j)) is amended--

(1) by striking `(j)' and inserting `(j)(1)'; and

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

“(2) The Secretary may delegate authority granted under this section and under section 1128 to the Inspector General of the Department of Health and Human Services.’.

## **SEC. 4754. NOTICE TO STATE MEDICAL BOARDS WHEN ADVERSE ACTIONS TAKEN.**

(a) IN GENERAL- Section 1902(a)(41) (42 U.S.C. 1396a(a)(41)) is amended by inserting `and, in the case of a physician and notwithstanding paragraph (7), the State medical licensing board' after `shall promptly notify the Secretary’.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to sanctions effected more than 60 days after the date of the enactment of this Act.

## **SEC. 4755. MISCELLANEOUS PROVISIONS.**

(a) PSYCHIATRIC HOSPITALS-

(1) CLARIFICATION OF COVERAGE OF INPATIENT PSYCHIATRIC HOSPITAL SERVICES-

(A) IN GENERAL- Section 1905(h)(1)(A) (42 U.S.C. 1396d(h)(1)(A)), as amended by section 2340(b) of the Deficit Reduction Act of 1984, is amended by inserting `or in another inpatient setting that the Secretary has specified in regulations' after `1861(f)’.

(B) EFFECTIVE DATE- The amendment made by subparagraph (A) shall be effective as if included in the enactment of the Deficit Reduction Act of 1984.

(2) INTERMEDIATE SANCTIONS FOR PSYCHIATRIC HOSPITALS- Section 1902 (42 U.S.C. 1396a) as amended by this title is further amended by adding at the end the following new subsection:

“(y)(1) In addition to any other authority under State law, where a State determines that a psychiatric hospital which is certified for participation under its plan no longer meets the requirements for a psychiatric hospital (referred to in section 1905(h)) and further finds that the hospital's deficiencies--



` (A) immediately jeopardize the health and safety of its patients, the State shall terminate the hospital's participation under the State plan; or

` (B) do not immediately jeopardize the health and safety of its patients, the State may terminate the hospital's participation under the State plan, or provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the effective date of the finding, or both.

` (2) Except as provided in paragraph (3), if a psychiatric hospital described in paragraph (1)(B) has not complied with the requirements for a psychiatric hospital under this title--

` (A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the State shall provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the end of such 3-month period, or

` (B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no Federal financial participation shall be provided under section 1903(a) with respect to further services provided in the hospital until the State finds that the hospital is in compliance with the requirements of this title.

` (3) The Secretary may continue payments, over a period of not longer than 6 months from the date the hospital is found to be out of compliance with such requirements, if--

` (A) the State finds that it is more appropriate to take alternative action to assure compliance of the hospital with the requirements than to terminate the certification of the hospital,

` (B) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

` (C) the State agrees to repay to the Federal Government payments received under this paragraph if the corrective action is not taken in accordance with the approved plan and timetable.'

(b) STATE UTILIZATION REVIEW SYSTEMS- Section 9432 of the Omnibus Budget Reconciliation Act of 1986 is amended--

(1) in subsection (a)--

(A) by inserting `(1)' after `IN GENERAL- ',

(B) by striking `, during the period' and all that follows through `Congress,', and

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

` (2) The Secretary may not, during the period beginning on the date of the enactment of the Omnibus Budget Reconciliation Act of 1990 and ending on the date that is 180 days after the date on which the report required by subsection (d) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act to include a program for ambulatory surgery, preadmission testing, or same-day surgery.';

(2) in subsection (b)(4), by inserting ` and subsection (d)' after ` In this subsection'; and

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

` (d) REPORT- The Secretary shall report to Congress, by not later than January 1, 1993, for each State in a representative sample of States--

` (1) an analysis of the procedures for which programs for ambulatory surgery, preadmission testing, and same-day surgery are appropriate for patients who are covered under the State medicaid plan, and

` (2) the effects of such programs on access of such patients to necessary care, quality of care, and costs of care.

In selecting such a sample of States, the Secretary shall include some States with medicaid plans that include such programs.'.

(c) ADDITIONAL MISCELLANEOUS PROVISIONS-

(1) Effective July 1, 1990--

(A) section 1902(a)(10)(C)(iv) of the Social Security Act is amended by striking ` through (20)' and inserting ` through (21)', and

(B) section 1902(j) of such Act is amended by striking ` through (21)' and inserting ` through (22)'.

(2) Effective as if included in subtitle D of title VI of the Omnibus Budget Reconciliation Act of 1989, section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)) is amended by adding at the end the following: ` This paragraph does not authorize the withholding of information from either House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee of such committee or any joint committee of Congress or any subcommittee of such joint committee.'.

(3) Section 505(b) (42 U.S.C. 705(b)) is amended in the matter preceding paragraph (1) by striking ` requirement' and inserting ` requirements'.

## ***PART 5--PROVISIONS RELATING TO NURSING HOME REFORM***

## SEC. 4801. TECHNICAL CORRECTIONS RELATING TO NURSING HOME REFORM.

## (a) NURSE AIDE TRAINING AND COMPETENCY EVALUATION-

(1) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES- The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act on the basis of the State's failure to meet the requirement of section 1919(e)(1)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1919(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

(2) PART-TIME NURSE AIDES NOT ALLOWED DELAY IN TRAINING- Section 1919(b)(5)(A) (42 U.S.C. 1396r(b)(5)(A)) is amended--

(i) by striking `A nursing facility' and inserting `(i) Except as provided in clause (ii), a nursing facility';

(ii) by striking `(on a full-time, temporary, per diem, or other basis) 54

and inserting `on a full-time basis';

54 So in original. Probably should be `basis)';

(iii) by striking `(i)' and `(ii)' and inserting `(I)' and `(II)'; and

(iv) by adding at the end the following:

`(ii) A nursing facility must not use on a temporary, per diem, leased, or on any other basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).'

(3) REQUIREMENT TO OBTAIN INFORMATION FROM NURSE AIDE REGISTRY- Section 1919(b)(5)(C) (42 U.S.C. 1396r(b)(5)(C)) is amended by striking `the State registry established under subsection (e)(2)(A) as to information in the registry' and inserting `any State registry established under subsection (e)(2)(A) that the facility believes will include information'.

(4) RETRAINING OF NURSE AIDES- Section 1919(b)(5)(D) (42 U.S.C. 1396r(b)(5)(D)) is amended by striking the period at the end and inserting `, or a new competency evaluation program.'.

(5) CLARIFICATION OF NURSE AIDES NOT SUBJECT TO CHARGES- Section 1919(f)(2)(A)(iv) (42 U.S.C. 1396r(f)(2)(A)(iv)) is amended--

(A) in subclause (I), by striking `and' at the end;

(B) in subclause (II), by inserting after `nurse aide' the following: `who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program';

(C) in subclause (II), by striking the period at the end and inserting `, and'; and

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

`(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis during the period in which the nurse aide is so employed.'

#### (6) MODIFICATION OF NURSING FACILITY DEFICIENCY STANDARDS-

(A) IN GENERAL- Section 1919(f)(2)(B)(iii)(I) (42 U.S.C. 1396r(f)(2)(B)(iii)(I)) is amended to read as follows:

`(I) offered by or in a nursing facility which, within the previous 2 years--

`(a) has operated under a waiver under subsection (b)(4)(C)(ii) that was granted on the basis of a demonstration that the facility is unable to provide the nursing care required under subsection (b)(4)(C)(i) for a period in excess of 48 hours during a week;

`(b) has been subject to an extended (or partial extended) survey under section 1819(g)(2)(B)(i) or subsection (g)(2)(B)(i); or

`(c) has been assessed a civil money penalty described in section 1819(h)(2)(B)(ii) or subsection (h)(2)(A)(ii) of not less than \$5,000, or has been subject to a remedy described in subsection (h)(1)(B)(i), clauses (i), (iii), or (iv) of subsection (h)(2)(A), clauses (i) or (iii) of section 1819(h)(2)(B), or section 1819(h)(4), or'.

(B) EFFECTIVE DATE- The amendments made by subparagraph (A) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988--

(i) had its participation terminated under title XVIII of the Social Security Act or under the State plan under title XIX of such Act;

(ii) was subject to a denial of payment under either such title;

(iii) was assessed a civil money penalty not less than \$5,000 for deficiencies in nursing facility standards;

(iv) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

(v) pursuant to State action, was closed or had its residents transferred.

(7) CLARIFICATION OF STATE RESPONSIBILITY TO DETERMINE COMPETENCY- Section 1919(f)(2)(B) (42 U.S.C. 1396r(f)(2)(B)) is amended in the second sentence by inserting `(through subcontract or otherwise)' after `may not delegate'.

(8) EXTENSION OF ENHANCED MATCH RATE UNTIL OCTOBER 1, 1990- Section 1903(a)(2)(B) (42 U.S.C. 1396b(a)(2)(B)) is amended by striking `July 1, 1990' and inserting `October 1, 1990'.

(9) EFFECTIVE DATE- Except as provided in paragraph (6), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(b) PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW-

(1) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES- The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 or section 1919(e)(7)(D) of the Social Security Act on the basis of the State's failure to meet the requirement of section 1919(e)(7)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing minimum criteria under section 1919(f)(8)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

(2) CLARIFICATION WITH RESPECT TO ADMISSIONS AND READMISSION FROM A HOSPITAL- Section 1919 of the Social Security Act (42 U.S.C. 1396r) is amended--

(A) in subsection (b)(3)(F), by striking `A nursing facility' and by inserting `Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A), a nursing facility'; and

(B) in subsection (e)(7)(A)--

(i) by redesignating the first 2 sentences as clause (i) with the following heading (and appropriate indentation):

`(i) IN GENERAL- ', and

(ii) by adding at the end the following:

ˆ (ii) CLARIFICATION WITH RESPECT TO CERTAIN READMISSIONS- The preadmission screening program under clause (i) need not provide for determinations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.

ˆ (iii) EXCEPTION FOR CERTAIN HOSPITAL DISCHARGES- The preadmission screening program under clause (i) shall not apply to the admission to a nursing facility of an individual--

ˆ (I) who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,

ˆ (II) who requires nursing facility services for the condition for which the individual received care in the hospital, and

ˆ (III) whose attending physician has certified, before admission to the facility, that the individual is likely to require less than 30 days of nursing facility services.'.

(3) DENIAL OF PAYMENTS FOR CERTAIN RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES- Section 1919(e)(7) (42 U.S.C. 1395r(e)(7)) is amended--

(A) in subparagraph (D)--

(i) in the heading, by striking 'WHERE FAILURE TO CONDUCT PREADMISSION SCREENING',

(ii) by designating the first sentence as clause (i) with the following heading (and appropriate indentation):

ˆ (i) FOR FAILURE TO CONDUCT PREADMISSION SCREENING OR ANNUAL REVIEW- ', and

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

ˆ (ii) FOR CERTAIN RESIDENTS NOT REQUIRING NURSING FACILITY LEVEL OF SERVICES- No payment may be made under section 1903(a) with respect to nursing facility services furnished to an individual (other than an individual described in subparagraph (C)(i)) who does not require the level of services provided by a nursing facility.'; and

(B) in subparagraph (E), by striking 'the requirement of this paragraph' and inserting 'the requirements of subparagraphs (A) through (C) of this paragraph'.

(4) NO DELEGATION OF AUTHORITY TO CONDUCT SCREENING AND

## REVIEWS- Section 1919 is further amended--

(A) in subsection (b)(3)(F), by adding at the end the following: ` A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).'; and

(B) in subsection (e)(7)(B), by adding at the end the following new clause:

` (iv) PROHIBITION OF DELEGATION- A State mental health authority, a State mental retardation or developmental disability authority, and a State may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).'

## (5) ANNUAL REPORTS-

(A) STATE REPORTS- Section 1919(e)(7)(C) (42 U.S.C. 1396r(e)(7)(C)) is amended by adding at the end the following new clause:

` (iv) ANNUAL REPORT- Each State shall report to the Secretary annually concerning the number and disposition of residents described in each of clauses (ii) and (iii).'

(B) SECRETARIAL REPORT- Section 4215 of the Omnibus Budget Reconciliation Act of 1987 is amended by adding at the end the following new sentence: ` Each such report shall also include a summary of the information reported by States under section 1919(e)(7)(C)(iv) of such Act.'

(6) REVISION OF ALTERNATIVE DISPOSITION PLANS- Section 1919(e)(7)(E) (42 U.S.C. 1396r(e)(7)(E)) is amended by adding at the end the following: ` The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.'

(7) DEFINITION OF MENTALLY ILL- Section 1919(e)(7)(G)(i) (42 U.S.C. 1396r(e)(7)(G)(i)) is amended--

(A) by striking ` primary or secondary' and all that follows through ` 3rd edition)' and inserting ` serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)',

(B) by inserting before the period ` or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a

serious mental illness'.

(8) SUBSTITUTION OF `SPECIALIZED SERVICES' FOR `ACTIVE TREATMENT'- Sections 1919(b)(3)(F) and 1919(e)(7) (42 U.S.C. 1396r(b)(3)(F), 1396r(e)(7)) are each amended by striking `active treatment' and `ACTIVE TREATMENT' each place either appears and inserting `specialized services' and `SPECIALIZED SERVICES', respectively.

(9) EFFECTIVE DATES-

(A) IN GENERAL- Except as provided in subparagraph (B), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(B) EXCEPTION- The amendments made by paragraphs (4), (6), and (8) shall take effect on the date of the enactment of this Act, without regard to whether or not regulations to implement such amendments have been promulgated.

(c) ENFORCEMENT PROCESS- The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act on the basis of the State's failure to meet the requirements of section 1919(h)(2) of such Act before the effective date of guidelines, issued by the Secretary, regarding the establishment of remedies by the State under such section, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirements before such effective date.

(d) SUPERVISION OF HEALTH CARE OF RESIDENTS OF NURSING FACILITIES BY NURSE PRACTITIONERS, CLINICAL NURSE SPECIALISTS, AND PHYSICIAN ASSISTANTS ACTING IN COLLABORATION WITH PHYSICIANS-

(1) IN GENERAL- Section 1919(b)(6)(A) (42 U.S.C. 1396r(b)(6)(A)) is amended by inserting `(or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician)' after `physician'.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) applies with respect to nursing facility services furnished on or after October 1, 1990, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(e) OTHER AMENDMENTS-

(1) ASSURANCE OF APPROPRIATE PAYMENT AMOUNTS-

(A) IN GENERAL- Section 1902(a)(13)(A) (42 U.S.C. 1396a(a)(13)(A)) is amended by inserting `(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under



this title)' after `take into account the costs'.

(B) DETAILS IN PLAN AMENDMENT- Section 4211(b)(2) of the Omnibus Budget Reconciliation Act of 1987 is amended by inserting after the first sentence the following: `Each such amendment shall include a detailed description of the specific methodology to be used in determining the appropriate adjustment in payment amounts for nursing facility services.'

(2) DISCLOSURE OF INFORMATION OF QUALITY ASSESSMENT AND ASSURANCE COMMITTEES- Section 1919(b)(1)(B) (42 U.S.C. 1396r(b)(1)(B)) is amended by adding at the end the following new sentence: `A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.'

(3) PERIOD FOR RESIDENT ASSESSMENT- Section 1919(b)(3)(C)(i)(I) (42 U.S.C. 1396r(b)(3)(C)(i)(I)) is amended by striking `4 days' and inserting `not later than 14 days'.

(4) CLARIFICATION OF RESPONSIBILITY FOR SERVICES FOR MENTALLY ILL AND MENTALLY RETARDED RESIDENTS- Section 1919(b)(4)(A) (42 U.S.C. 1396r(b)(4)(A)) is amended--

(A) by striking `and' at the end of clause (v),

(B) by striking the period at the end of clause (vi) and inserting `; and', and

(C) by inserting after clause (vi) the following new clause:

`(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.'

(5) CLARIFICATION OF EXTENT OF STATE WAIVER AUTHORITY; NOTIFICATION OF WAIVERS- Section 1919(b)(4)(C)(ii) (42 U.S.C. 1396r(b)(4)(C)(ii)) is amended--

(A) by striking `A State' and all that follows through `a facility if' and inserting `To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if';

(B) by striking `and' at the end of subclause (II);

(C) by striking the period at the end of subclause (III) and inserting a comma; and

(D) by adding at the end the following new subclauses:

`(IV) the State agency granting a waiver of such

requirements provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

` (V) the nursing facility that is granted such a waiver by a State notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.'.

(6) CLARIFICATION OF DEFINITION OF NURSE AIDE- Section 1919(b)(5)(F)(i) (42 U.S.C. 1396r(b)(5)(F)(i)) is amended by striking `(G)),` and inserting `(G)) or a registered dietician,'.

(7) CHARGES APPLICABLE IN CASES OF CERTAIN MEDICAID-ELIGIBLE INDIVIDUALS-

(A) IN GENERAL- Section 1919(c) (42 U.S.C. 1396r(c)) is amended--

(i) by redesignating paragraph (7) as paragraph (8); and

(ii) by inserting after paragraph (6) the following new paragraph:

` (7) LIMITATION ON CHARGES IN CASE OF MEDICAID-ELIGIBLE INDIVIDUALS-

` (A) IN GENERAL- A nursing facility may not impose charges, for certain medicaid-eligible individuals for nursing facility services covered by the State under its plan under this title, that exceed the payment amounts established by the State for such services under this title.

` (B) CERTAIN MEDICAID INDIVIDUALS DEFINED- In subparagraph (A), the term `certain medicaid-eligible individual' means an individual who is entitled to medical assistance for nursing facility services in the facility under this title but with respect to whom such benefits are not being paid because, in determining the amount of the individual's income to be applied monthly to payment for the costs of such services, the amount of such income exceeds the payment amounts established by the State for such services under this title.'.

(B) EFFECTIVE DATE- The amendments made by subparagraph (A) shall take effect on the date of the enactment of this Act, without regard to whether or not regulations to implement such amendments have been promulgated.

(8) RESIDENTS' RIGHTS TO REFUSE INTRA-FACILITY TRANSFERS TO MOVE THE RESIDENT TO A MEDICARE-QUALIFIED PORTION- Section 1919(c)(1)

(A) (42 U.S.C. 1396r(c)(1)(A)) is amended--

(A) by redesignating clause (x) as clause (xi) and by inserting after clause (ix) the following new clause:

“(x) REFUSAL OF CERTAIN TRANSFERS- The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is not a skilled nursing facility (for purposes of title XVIII) to a portion of the facility that is such a skilled nursing facility.”; and

(B) by adding at the end the following: “A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to medical assistance under this title or a State's entitlement to Federal medical assistance under this title with respect to services furnished to such a resident.”.

(9) RESIDENT ACCESS TO CLINICAL RECORDS- Section section 55

1919(c)(1)(A)(iv) (42 U.S.C. 1396r(c)(1)(A)(iv)) is amended by inserting before the period at the end the following: “and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request”.

55 So in original. Probably should be “Section 1919(c)(1)(A)(iv)”.

(10) INCLUSION OF STATE NOTICE OF RIGHTS IN FACILITY NOTICE OF RIGHTS- Section 1919(c)(1)(B)(ii) (42 U.S.C. 1396r(c)(1)(B)(ii)) is amended by inserting “including the notice (if any) of the State developed under subsection (e)(6)” after “in such rights”.

(11) REMOVAL OF DUPLICATIVE REQUIREMENT FOR QUALIFICATIONS OF NURSING HOME ADMINISTRATORS- Effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1919(f)(4) of the Social Security Act-

(A) paragraph (29) of section 1902(a) of such Act (42 U.S.C. 1396a(a)) is repealed; and

(B) section 1908 of such Act (42 U.S.C. 1396g) is repealed.

(12) CLARIFICATION OF NURSE AIDE REGISTRY REQUIREMENTS- Section 1919(e)(2) (42 U.S.C. 1396r(e)(2)) is amended--

(A) in subparagraph (A), by striking the period and inserting the following: “, or any individual described in subsection (f)(2)(B)(ii) or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.”; and

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

“(C) PROHIBITION AGAINST CHARGES- A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).”.

(13) CLARIFICATION ON FINDINGS OF NEGLECT- Section 1919(g)(1)(C) (42 U.S.C. 1396r(g)(1)(C)) is amended by adding at the end the following: “A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.”.

(14) TIMING OF PUBLIC DISCLOSURE OF SURVEY RESULTS- Section 1919(g)(5)(A)(i) (42 U.S.C. 1396r(g)(5)(A)(i)) is amended by striking “deficiencies and plans” and inserting “deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans”.

(15) OMBUDSMAN PROGRAM COORDINATION WITH STATE SURVEY AND CERTIFICATION AGENCIES- Section 1919(g)(5)(B) (42 U.S.C. 1396r(g)(5)(B)) is amended by striking “with respect” and inserting “or of any adverse action taken against a nursing facility under paragraphs (1), (2), or (3) of subsection (h), with respect”.

(16) DENIAL OF PAYMENT OF LEGAL FEES FOR FRIVOLOUS LITIGATION-

(A) IN GENERAL- Section 1903(i) (42 U.S.C. 1396b(i)), [[as amended by section X???(a)(1)(B) of this Act]], is amended--

(i) by striking “or” at the end of paragraph (9);

(ii) by striking the period at the end of paragraph (10) and inserting “; or”; and

(iii) by inserting after paragraph (10) the following new paragraph:

“(11) with respect to any amount expended to reimburse (or otherwise compensate) a nursing facility for payment of legal expenses associated with any action initiated by the facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action.”

(B) EFFECTIVE DATE- The amendments made by subparagraph (A) shall apply with respect to actions initiated on or after the date of the enactment of this Act.

(17) PROVISIONS RELATING TO STAFFING REQUIREMENTS-

(A) MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES- Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the

Omnibus Budget Reconciliation Act of 1987 with respect to services described in clauses (ii), (iv), and (v) of section 1919(b)(4)(A) of the Social Security Act shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

(B) STUDY ON STAFFING REQUIREMENTS IN NURSING FACILITIES- The Secretary shall conduct a study and report to Congress no later than January 1, 1992, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for skilled nursing facilities serving as providers of services under title XVIII of the Social Security Act and nursing facilities receiving payments under a State plan under title XIX of the Social Security Act, and shall include in such study recommendations regarding appropriate minimum ratios.

(18) STATE REQUIREMENTS RELATING TO PROGRAMS- Amend 1919(e)(1)(A) to strike `under clause (i) or (ii) of subsection (f)(2)(A) and insert `under subsection (f)(2)'.

(19) EFFECTIVE DATES- Except as provided in paragraphs (7), (11), and (16), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

## **TITLE V--INCOME SECURITY, HUMAN RESOURCES, AND RELATED PROGRAMS**

### **Subtitle A--Human Resource and Family Policy Amendments**

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Sec. 5001. Table of contents.

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## **Chapter 6--Child Care**

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## **SEC. 502. AMENDMENT OF SOCIAL SECURITY ACT.**

Except as otherwise expressly provided, wherever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Social Security Act.

## **CHAPTER 1--CHILD SUPPORT ENFORCEMENT**

### **SEC. 5011. EXTENSION OF IRS INTERCEPT FOR NON-AFDC FAMILIES.**

(a) AUTHORITY OF STATES TO REQUEST WITHHOLDING OF FEDERAL TAX REFUNDS FROM PERSONS OWING PAST DUE CHILD SUPPORT- Section 464(a)(2)(B) (42 U.S.C. 664(a)(2)(B)) is amended by striking ` , and before January 1, 1991'.

(b) WITHHOLDING OF FEDERAL TAX REFUNDS AND COLLECTION OF PAST DUE CHILD SUPPORT ON BEHALF OF DISABLED CHILD OF ANY AGE, AND OF SPOUSAL SUPPORT INCLUDED IN ANY CHILD SUPPORT ORDER- Section 464(c) (42 U.S.C. 664(c)) is amended--

(1) in paragraph (2), by striking `minor child.' and inserting `qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent).'; and

(2) by adding at the end the following:

`(3) For purposes of paragraph (2), the term `qualified child' means a child--

`(A) who is a minor; or

`(B)(i) who, while a minor, was determined to be disabled under title II or XVI; and

`(ii) for whom an order of support is in force.'.

(c) EFFECTIVE DATE- The amendments made by subsection (b) shall take effect on January 1, 1991.

## **SEC. 5012. EXTENSION OF COMMISSION ON INTERSTATE CHILD SUPPORT.**

(a) REAUTHORIZATION- Section 126 of the Family Support Act of 1988 (42 U.S.C. 666 note; Public Law 100-485) is amended--

(1) in subsection (d)--

(A) in paragraph (1), by striking `1990' and inserting `1991'; and

(B) in paragraph (2), by striking `1991' and inserting `1992';

(2) in subsection (e), by adding at the end the following:

`(5)(A) Individuals may be appointed to serve the Commission without regard to the provisions of title 5 that govern appointments in the competitive service, without regard to the competitive service, and without regard to the classification system in chapter 53 of title 5, United States Code. The chairman of the Commission may fix the compensation of the Executive Director at a rate that shall not exceed the maximum rate of the basic pay payable under GS-18 of the General Schedule as contained in title 5, United States Code.

`(B) The Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

`(C) On the request of the chairman, the head of any Federal department or



agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section without regard to section 3341 of title 5, United States Code.'; and

(3) in subsection (f)(1), by striking `1991' and inserting `1992'.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

## **SEC. 5013. CHILD SUPPORT ENFORCEMENT WAIVER.**

(a) IN GENERAL- The Secretary of Health and Human Services (in this section referred to as the `Secretary') shall enter into an agreement with the State of Texas waiving (with respect to cases where a court has issued an order for child support) the following requirements under the State plan for child and spousal support that are described in subparagraphs (A) and (B) of section 454(6) of the Social Security Act, with respect to a project, based in the county of Bexar, of delinquency monitoring for child support enforcement:

(1) The submission of a written application by an individual requesting child support collection services.

(2) The payment of an application fee with respect to an application for such services.

(b) CONTENTS OF WAIVER AGREEMENT- In the agreement between the Secretary and the State of Texas described in subsection (a), the waiver granted under such agreement shall provide the following:

(1) The waiver shall apply only with respect to the provision of child support collection services.

(2) Before the provision of any child support collection services, the organizational unit designated under section 454(3) of the Social Security Act (in this section referred to as the `State agency') shall provide written notification to each custodial parent of the right of such parent to refuse such services.

(3) The State shall ensure that, to the extent possible, each parent of the child on behalf of whom such services are provided (regardless of whether such parent is a custodial parent) is to receive written notice at the time such services are provided, explaining--

(A) the legal rights of parents with respect to the child support collection services provided; and

(B) the responsibilities of the State agency in providing such child support collection services (including the monitoring of delinquent child support payments).

(4) A case record shall be deemed to have been established by the State

agency upon notification of a custodial parent of the option to receive the child support enforcement services described in this subsection.

(5) Any period of enforcement by the State agency under this section with respect to the collection of delinquent child support payments shall be deemed to begin on the first day of any such delinquency.

(d) STUDY AND REPORT-

(1) STUDY REQUIRED- As a condition precedent to granting the waiver described in subsection (a), the State agency shall agree to conduct a study of the cost-effectiveness to the Federal Government and to the State of Texas of the monitoring of delinquent child support payments under the State plan under section 454 of the Social Security Act.

(2) CONDUCT OF STUDY-

(A) IN GENERAL- The study required by paragraph (1) shall be conducted in accordance with the criteria established by the Secretary in accordance with subparagraph (B).

(B) CRITERIA- Not later than February 1, 1991, the Secretary shall establish the criteria required by subparagraph (A), in consultation with--

- (i) 1 or more representatives of organizations representing child support administrators;
- (ii) 1 or more representatives of the General Accounting Office;
- (iii) 1 or more representatives of the State of Texas; and
- (iv) such other individuals or organizations with experience in the evaluation of child support programs, as the Secretary may designate.

(3) REPORT- Not later than 3 months after the expiration of the waiver described in subsection (a), the State agency shall submit to the Secretary and to the Congress a report that includes the findings of the study required by this subsection.

(e) DURATION OF WAIVER- The waiver described in subsection (a) shall be effective for not more than 2 years.

(f) MATCHING PAYMENTS-

(1) GENERAL EXPENDITURES- In lieu of any payment under section 455 of the Social Security Act with respect to expenditures of the State of Texas to carry out child support enforcement programs with respect to which the waiver described in subsection (a) applies, the Secretary shall pay the State an amount equal to the lesser of--

(A) 66 percent of such expenditures; or

(B) \$500,000.

(2) STUDY EXPENDITURES- In lieu of any payment under section 455 of the Social Security Act with respect to expenditures of the State of Texas to carry out the study required by subsection (d), the Secretary shall pay the State an amount equal to 66 percent of such expenditures.

## CHAPTER 2--UNEMPLOYMENT COMPENSATION

### SEC. 5021. AMOUNTS TRANSFERRED TO STATE UNEMPLOYMENT COMPENSATION PROGRAM ACCOUNTS.

(a) ALLOCATION OF AMOUNTS- Paragraph (2) of section 903(a) (42 U.S.C. 1103(a)(2)) is amended to read as follows:

^ (2) Each State's share of the funds to be transferred under this subsection as of any October 1--

^ (A) shall be determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury before such date, and

^ (B) shall bear the same ratio to the total amount to be so transferred as--

^ (i) the amount of wages subject to tax under section 3301 of the Internal Revenue Code of 1986 during the preceding calendar year which are determined by the Secretary of Labor to be attributable to the State, bears to

^ (ii) the total amount of wages subject to such tax during such year.'

(b) USE OF TRANSFERRED AMOUNTS- Paragraph (2) of section 903(c) (42 U.S.C. 1103(c)(2)) is amended--

(1) by striking ^ and' at the end of subparagraph (C), and

(2) by striking so much of such paragraph as follows subparagraph (C) and inserting the following:

^ (D)(i) the appropriation law limits the total amount which may be obligated under such appropriation at any time to an amount which does not exceed, at any such time, the amount by which--

^ (I) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b), exceeds

^ (II) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State, and

` (ii) for purposes of clause (i), amounts used by a State for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into, and

` (E) the use of the money is accounted for in accordance with standards established by the Secretary of Labor.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to fiscal years beginning after the date of the enactment of this Act.

## **CHAPTER 3--SUPPLEMENTAL SECURITY INCOME**

### **SEC. 5031. EXCLUSION FROM INCOME AND RESOURCES OF VICTIMS' COMPENSATION PAYMENTS.**

(a) EXCLUSION FROM INCOME- Section 1612(b) (42 U.S.C. 1382a(b)) is amended--

(1) by striking `and' at the end of paragraph (15);

(2) by striking the period at the end of paragraph (16) and inserting ` ; and'; and

(3) by adding at the end the following:

` (17) any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime.'

(b) EXCLUSION FROM RESOURCES- Section 1613(a) (42 U.S.C. 1382b(a)) is amended--

(1) by striking `and' at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting ` ; and'; and

(3) by adding at the end the following:

` (9) for the 9-month period beginning after the month in which received, any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime, to the extent that such individual (or such spouse) demonstrates that such amount was paid as compensation for expenses incurred or losses suffered as a result of a crime.'

(c) VICTIMS COMPENSATION AWARD NOT REQUIRED TO BE ACCEPTED AS CONDITION OF RECEIVING BENEFITS- Section 1631(a) (42 U.S.C. 1383(a)) is amended by adding at the end the following:

` (9) Benefits under this title shall not be denied to any individual solely by reason of the refusal of the individual to accept an amount offered as

compensation for a crime of which the individual was a victim.'

(d) EFFECTIVE DATE- The amendments made by this section shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5032. ATTAINMENT OF AGE 65 NOT TO SERVE AS BASIS FOR TERMINATION OF ELIGIBILITY UNDER SECTION 1619(b).

(a) IN GENERAL- Section 1619(b)(1) (42 U.S.C. 1392h(b)(1)) is amended by striking `under age 65'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5033. EXCLUSION FROM INCOME OF IMPAIRMENT-RELATED WORK EXPENSES.

(a) IN GENERAL- Section 1612(b)(4)(B)(ii) (42 U.S.C. 1382a(b)(4)(B)(ii)) is amended by striking `(for purposes of determining the amount of his or her benefits under this title and of determining his or her eligibility for such benefits for consecutive months of eligibility after the initial month of such eligibility)'

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to benefits payable for calendar months beginning after the date of the enactment of this Act.

SEC. 5034. TREATMENT OF ROYALTIES AND HONORARIA AS EARNED INCOME.

(a) IN GENERAL- Section 1612(a) (42 U.S.C. 1382a(a)) is amended--

(1) in paragraph (1)--

(A) by striking `and' at the end of subparagraph (C); and

(B) by adding at the end the following:

`(E) any royalty earned by an individual in connection with any publication of the work of the individual, and that portion of any honorarium which is received for services rendered; and'; and

(2) in paragraph (2)(F), by inserting `not described in paragraph (1)(E)' before the period.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall apply with respect to benefits for months beginning on or after the first day of the 13th calendar month following the month in which this Act is enacted.

SEC. 5035. CERTAIN STATE RELOCATION ASSISTANCE EXCLUDED FROM SSI INCOME AND RESOURCES.

(a) EXCLUSION FROM INCOME- Section 1612(b) (42 U.S.C. 1382a(b)), as

amended by section 5031(a) of this Act, is amended--

(1) by striking 'and' at the end of paragraph (16);

(2) by striking the period at the end of paragraph (17) and inserting a semicolon; and

(3) by inserting after paragraph (17) the following:

'(18) relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act.'

(b) EXCLUSION FROM RESOURCES- Section 1613(a) (42 U.S.C. 1382b(a)), as amended by section 5031(b) of this Act, is amended--

(1) by striking 'and' at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting ' ; and'; and

(3) by inserting after paragraph (9) the following:

'(10) for the 9-month period beginning after the month in which received, relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply with respect to benefits for calendar months beginning in the 3-year period that begins on the first day of the 6th calendar month following the month in which this Act is enacted.

#### SEC. 5036. EVALUATION OF CHILD'S DISABILITY BY PEDIATRICIAN OR OTHER QUALIFIED SPECIALIST.

(a) IN GENERAL- Section 1614(a)(3) (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

'(H) In making any determination under this title with respect to the disability of a child who has not attained the age of 18 years and to whom section 221(h) does not apply, the Secretary shall make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the disability of the child (as determined by the Secretary) evaluates the case of such child.'

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to determinations made 6 or more months after the date of the enactment of

this Act.

SEC. 5037. REIMBURSEMENT FOR VOCATIONAL REHABILITATION SERVICES FURNISHED DURING CERTAIN MONTHS OF NONPAYMENT OF SSI BENEFITS.

(a) IN GENERAL- Section 1615 (42 U.S.C. 1382d) is amended by adding at the end the following:

^ (e) The Secretary may reimburse the State agency described in subsection (d) for the costs described therein incurred in the provision of rehabilitation services--

^ (1) for any month for which an individual received--

^ (A) benefits under section 1611 or 1619(a);

^ (B) assistance under section 1619(b); or

^ (C) a federally administered State supplementary payment under section 1616 of this Act or section 212(b) of Public Law 93-66; and

^ (2) for any month before the 13th consecutive month for which an individual, for a reason other than cessation of disability or blindness, was ineligible for--

^ (A) benefits under section 1611 or 1619(a);

^ (B) assistance under section 1619(b); or

^ (C) a federally administered State supplementary payment under section 1616 of this Act or section 212(b) of Public Law 93-66.'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to claims for reimbursement pending on or after such date.

SEC. 5038. EXTENSION OF PERIOD OF PRESUMPTIVE ELIGIBILITY FOR BENEFITS.

(a) IN GENERAL- Section 1631(a)(4)(B) (42 U.S.C. 1383(a)(4)(B)) is amended by striking `3' and inserting `6'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5039. CONTINUING DISABILITY OR BLINDNESS REVIEWS NOT REQUIRED MORE THAN ONCE ANNUALLY.

(a) IN GENERAL 56

--Section 1619 (42 U.S.C. 1382h) is amended--

56 So in original. Probably should be `GENERAL- '.

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

“(c) Subsection (a)(2) and section 1631(j)(2)(A) shall not be construed, singly or jointly, to require more than 1 determination during any 12-month period with respect to the continuing disability or blindness of an individual.’.

(b) CONFORMING AMENDMENT- Section 1631(j)(2)(A) (42 U.S.C. 1383(j)(2)(A)) is amended by inserting “(other than subsection (c) thereof)” after “1619” the 1st place such term appears.

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

#### SEC. 5040. CONCURRENT SSI AND FOOD STAMP APPLICATIONS BY INSTITUTIONALIZED INDIVIDUALS.

Section 1631 (42 U.S.C. 1383) is amended--

(1) in subsection (m), by striking the second sentence; and

(2) by adding at the end the following:

### **“ CONCURRENT SSI AND FOOD STAMP APPLICATIONS BY INSTITUTIONALIZED INDIVIDUALS**

“(n) The Secretary and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this subsection shall also be permitted to apply at the same time for participation in the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).’.

#### SEC. 5041. NOTIFICATION OF CERTAIN INDIVIDUALS ELIGIBLE TO RECEIVE RETROACTIVE BENEFITS.

In notifying individuals of their eligibility to receive retroactive supplemental security income benefits as a result of *Sullivan v. Zebley*, 110 S. Ct. 2658 (1990), the Secretary shall include written notice, in language that is easily understandable, explaining--

(1) the 6-month limitation on the exclusion from resources under section 1613(a)(7) of the Social Security Act (42 U.S.C. 1382b(a)(7));

(2) the potential effects under title XVI of the Social Security Act, attributable to the receipt of such payment, including--

(A) potential discontinuation of eligibility; and



(B) potential reductions in the amount of benefits;

(3) the possibility of establishing a trust account that would not be considered as income or resources for the purposes of such title if the trust met certain conditions; and

(4) that legal assistance in establishing such a trust may be available through legal referral services offered by a State or local bar association, or through the Legal Services Corporation.

## **CHAPTER 4--AID TO FAMILIES WITH DEPENDENT CHILDREN**

### **SEC. 5051. OPTIONAL MONTHLY REPORTING AND RETROSPECTIVE BUDGETING.**

(a) OPTIONAL MONTHLY REPORTING- Section 402(a)(14) (42 U.S.C. 602(a)(14)) is amended--

(1) by striking `with respect to' and all that follows through `(A) provide' and insert `provide, at the option of the State and with respect to such category or categories as the State may select and identify in its State plan (A)';

(2) by striking `(with the prior approval of the Secretary in recent work history and earned income cases)'; and

(3) by striking `upon a determination' and all that follows through `paragraph'.

(b) OPTIONAL RETROSPECTIVE BUDGETING- Section 402(a)(13) (42 U.S.C. 602(a)(13)) is amended by striking all that precedes subparagraph (A) and inserting the following:

`(13) at the option of the State, but only with respect to any one or more categories of families required to report monthly to the State agency pursuant to paragraph (14), provide that--'.

(c) EFFECTIVE DATE- The amendments made by this section shall take effect with respect to reports pertaining to, or aid payable for, months beginning in or after October 1990.

### **SEC. 5052. CHILDREN RECEIVING FOSTER CARE MAINTENANCE OR ADOPTION ASSISTANCE PAYMENTS NOT TREATED AS MEMBER OF FAMILY UNIT FOR PURPOSES OF DETERMINING ELIGIBILITY FOR, OR AMOUNT OF, AFDC BENEFIT.**

(a) IN GENERAL- Part A of title IV (42 U.S.C. 601 et seq.) is amended by inserting after section 408 the following:

## **` EXCLUSION FROM AFDC UNIT OF CHILD FOR WHOM FEDERAL, STATE, OR LOCAL FOSTER CARE MAINTENANCE OR ADOPTION ASSISTANCE**

## PAYMENTS ARE MADE

SEC. 409. (a) Notwithstanding any other provision of this title (other than subsection (b))--

(1) a child with respect to whom foster care maintenance payments or adoption assistance payments are made under part E or under State or local law shall not, for the period for which such payments are made, be regarded as a member of a family for purposes of determining the amount of benefits of the family under this part; and

(2) the income and resources of such child shall be excluded from the income and resources of a family under this part.

(b) Subsection (a) shall not apply in the case of a child with respect to whom adoption assistance payments are made under part E or under State or local law, if application of such subsection would reduce the benefits under this part of the family of which the child would otherwise be regarded as a member.'

(b) CONFORMING REPEAL- Section 478 (42 U.S.C. 678) is hereby repealed.

(c) EFFECTIVE DATE- The amendment made by subsection (a) and the repeal made by subsection (b) shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

## SEC. 5053. ELIMINATION OF TERM 'LEGAL GUARDIAN'.

(a) IN GENERAL- Section 402(a)(39) (42 U.S.C. 602(a)(39)) is amended--

(1) by striking 'or legal guardian'; and

(2) by striking 'or legal guardians'.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

## SEC. 5054. REPORTING OF CHILD ABUSE AND NEGLECT.

(a) CONCERNING AFDC APPLICANTS AND RECIPIENTS-

(1) IN GENERAL- Section 402(a)(16) (42 U.S.C. 602(a)(16)) is amended to read as follows:

(16) provide that the State agency will--

(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under this part under circumstances which indicate that the child's health

or welfare is threatened thereby; and

` (B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have; '.

(2) CONFORMING AMENDMENTS- Section 402(a)(9) (42 U.S.C. 602(a)(9)) is amended--

(A) in subparagraph (C), by striking `and'; and

(B) by inserting `, and (E) reporting and providing information pursuant to paragraph (16) to appropriate authorities with respect to known or suspected child abuse or neglect' before the 1st semicolon.

(b) CONCERNING RECIPIENTS OF FOSTER CARE OR ADOPTION ASSISTANCE-

(1) IN GENERAL- Section 471(a)(9) (42 U.S.C. 671(a)(9)) is amended to read as follows:

` (9) provides that the State agency will--

` (A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

` (B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have; '.

(2) CONFORMING AMENDMENTS- Section 471(a)(8) (42 U.S.C. 671(a)(8)) is amended--

(A) in subparagraph (C), by striking `and'; and

(B) by inserting `, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect' before the 1st semicolon.

(c) EFFECTIVE DATE- The amendments made by this section shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

#### SEC. 5055. DISCLOSURE OF INFORMATION ABOUT AFDC APPLICANTS AND RECIPIENTS AUTHORIZED FOR PURPOSES DIRECTLY CONNECTED TO STATE FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS.

(a) IN GENERAL- Section 402(a)(9)(A) (42 U.S.C. 602(a)(9)(A)) is amended by striking `or D' and inserting `, D, or E'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

**SEC. 5056. REPATRIATION.**

(a) IN GENERAL- Section 1113 (42 U.S.C. 1313) is amended--

(1) in subsection (d), by striking 'on or after October 1, 1989' and inserting 'after September 30, 1991'; and

(2) by adding at the end the following:

(e)(1) The Secretary may accept on behalf of the United States gifts, in cash or in kind, for use in carrying out the program established under this section. Gifts in the form of cash shall be credited to the appropriation account from which this program is funded, in addition to amounts otherwise appropriated, and shall remain available until expended.

(2) Gifts accepted under paragraph (1) shall be available for obligation or other use by the United States only to the extent and in the amounts provided in appropriation Acts.'

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall be effective for fiscal years beginning after September 30, 1989.

**SEC. 5057. TECHNICAL AMENDMENT TO NATIONAL COMMISSION ON CHILDREN.**

Section 1139(d) (42 U.S.C. 1320b-9(d)) is amended in the matter preceding paragraph (1), by striking 'an interim report no later than March 31, 1991, and a final report no later than September 30, 1990' and inserting 'an interim report no later than September 30, 1990, and a final report no later than March 31, 1991'.

**SEC. 5058. EXTENSION OF PROHIBITION AGAINST IMPLEMENTATION OF PROPOSED REGULATIONS ON EMERGENCY ASSISTANCE AND AFDC SPECIAL NEEDS.**

Section 8005 of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 606 note) is amended in each of subsections (a)(2) and (c) by striking '1990' and inserting '1991'.

**SEC. 5059. AMENDMENTS TO MINNESOTA FAMILY INVESTMENT PLAN DEMONSTRATION.**

Section 8015 of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 602 note) is amended--

(1) in subsection (a), by striking 'part A' and inserting 'parts A and F';

(2) in subsection (b)(3), by striking '(e)' and inserting '(d)';

(3) in subsection (b)(6), by inserting 'or that is assigned to and found eligible for the project' after 'in the project';

(4) in subsection (b)(8)(B)(ii), by inserting '(except that the age of the youngest child may be age 1 under the project even if the State plan

specifies age 3)' after `such compliance';

(5) in subsection (b)(8)(B)(ii)(I), by inserting `and' after the semicolon;

(6) in subsection (b)(8)(B)(ii), by striking `; and' after `age of 1 year' and all that follows through the end of subclause (III) and inserting `(except that, in a 2-parent family, this clause applies only to 1 parent).';

(7) by amending subsection (b)(9) to read as follows:

`(9) AVAILABILITY OF EDUCATION, EMPLOYMENT, AND TRAINING SERVICES- The State will make available education, employment, and training services equivalent to those services available under the State plan approved under part F of title IV of the Social Security Act to families required to enter into and comply with a contract with a county agency under the 1989 Minnesota Laws, section 10 of article 5 of chapter 282.';

(8) in subsection (b)(10)(A)--

(A) by inserting `, except when a sanction is implemented under the 1989 Minnesota Laws, subdivision 3 of section 10 of article 5 of chapter 282,' after `ensure that'; and

(B) by striking `cash';

(9) in subsection (b), by adding at the end the following:

`(12) LIABILITY FOR COSTS- For each fiscal year, the Secretary shall not be liable for any costs related to carrying out the project in excess of those that the Secretary would have been liable for had the project not been implemented, except for costs for evaluating the project.';

(10) in subsection (c)(1)(B), by striking `50' and inserting `25';

(11) in subsection (c)(2), by striking `part A' and inserting `parts A and F';

(12) in subsection (d)(1)(B)(ii)--

(A) by inserting `except when a sanction is implemented under the 1989 Minnesota Laws, subdivision 3 of section 10 of article 5 of chapter 282,' before `permit'; and

(B) by striking `cash';

(13) in subsection (d)(1)(B)(iii), by striking `section 402(a)(19)(C) of such Act' and inserting `subparagraph (C), (D), or (E) of section 402(a)(19) of such Act (except that the exemption for a parent with a child under 1 year of age need not be specified in the State plan)'; and

(14) by adding at the end the following:

` (i) CONSTRUCTION- For purposes of any Federal, State, or local law other than part A of title IV of the Social Security Act, the Food Stamp Act of 1977, or this section--

` (1) families participating in the project shall be considered to be recipients of aid under such part; and

` (2) cash assistance provided under the project to any such family and not designated by the State as food assistance shall be treated as if such assistance were aid received under such part.'

#### SEC. 5060. GOOD CAUSE EXCEPTION TO REQUIRED COOPERATION FOR TRANSITIONAL CHILD CARE BENEFITS.

(a) IN GENERAL- Section 402(g)(1)(A)(vi)(II) (42 U.S.C. 602(g)(1)(A)(vi)(II)) is amended to read as follows:

` (II) refused to cooperate with the State in establishing and enforcing his or her child support obligations, without good cause as determined by the State agency in accordance with standards prescribed by the Secretary which shall take into consideration the best interests of the child for whom child care is to be provided.'

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

#### SEC. 5061. TECHNICAL CORRECTIONS REGARDING PENALTY FOR FAILURE TO PARTICIPATE IN JOBS PROGRAM.

(a) IN GENERAL- Section 407(b)(1)(B) (42 U.S.C. 607(b)(1)(B))) 57

is amended--

57 So in original. Probably should be `607(b)(1)(B))'.

(1) in clause (iii)--

(A) by striking `--' and all that follows through `(II)'; and

(B) by striking `and ' at the end;

(2) in clause (iv), by striking the period and inserting `; and'; and

(3) by adding at the end the following:

` (v) that, if and for so long as the child's parent described in subparagraph (A)(i), unless meeting a condition of section 402(a) (19)(C), is, without good cause, not participating (or available for participation) in a program under part F, or if exempt under such section by reason of clause (vii) thereof or because there has not been established or provided under part F a program in which such

parent can effectively participate, is not registered with the public employment offices in the State, the needs of such parent shall not be taken into account in determining the need of such parent's family under section 402(a)(7), and the needs of such parent's spouse shall not be so taken into account unless such spouse is participating in such a program, or if not participating solely by reason of section 402(a)(19)(C)(vii) or because there has not been established or provided under part F a program in which such spouse can effectively participate, is registered with the public employment offices of the State; and if neither parents' needs are so taken into account, the payment provisions of section 402(a)(19)(G)(i)(I) shall apply.'

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall take effect at the same time and in the same manner as the amendments made by title II of the Family Support Act of 1988 take effect.

#### SEC. 5062. TECHNICAL CORRECTIONS REGARDING AFDC-UP ELIGIBILITY REQUIREMENTS.

(a) IN GENERAL- Section 407(d)(1) (42 U.S.C. 607(d)(1)) is amended--

(1) by striking `a calendar quarter (A)' and inserting `(A) a calendar quarter';

(2) by striking `or' at the end of subparagraph (A); and

(3) by inserting `, and (C) a calendar quarter ending before October 1990 in which such individual participated in a community work experience program under section 409 (as in effect for a State immediately before the effective date for that State of the amendments made by title II of the Family Support Act of 1988) or the work incentive program established under part C (as in effect for a State immediately before such effective date)' before the semicolon.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

#### SEC. 5063. FAMILY SUPPORT ACT DEMONSTRATION PROJECTS.

Section 505 of the Family Support Act of 1988 (42 U.S.C. 1315; P.L. 100-385) is amended--

(1) in subsection (a), by inserting `in each of the fiscal years 1990, 1991, and 1992,' before `shall'; and

(2) in subsection (e), by striking `September 30, 1989' and inserting `September 30 of the fiscal year specified in the agreement described in subsection (a)'.

#### SEC. 5064. STUDY OF JOBS PROGRAMS OPERATED BY INDIAN TRIBES AND ALASKA NATIVE ORGANIZATIONS.

(a) IN GENERAL- Within 180 days after the date of the enactment of this Act, the Comptroller General of the United States (in this section referred to as the 'Comptroller') shall conduct a study of the implementation of section 482(i) of the Social Security Act (42 U.S.C. 682(i)) relating to job opportunities and basic skills training programs (in this section referred to as 'JOBS programs') operated by Indian tribes and Alaska Native organizations (as defined in paragraph (5) of such section 482(i)).

(b) REQUIREMENTS FOR STUDY- In conducting the study described in subsection (a), the Comptroller shall--

(1) identify any problems associated with the implementation of section 482(i) of the Social Security Act; and

(2) assess (to the extent practicable) the effectiveness of the JOBS programs operated by Indian tribes and Alaska Native organizations.

(c) REPORT- Upon completion of the study described in subsection (a), the Comptroller shall submit a report to the appropriate committees of the Congress that includes--

(1) a summary of the findings of the study; and

(2) recommendations with respect to proposed legislation or changes in administrative policy to improve the effectiveness of JOBS programs conducted pursuant to section 482(i) of the Social Security Act.

## **CHAPTER 5--CHILD WELFARE AND FOSTER CARE**

### **SEC. 5071. ACCOUNTING FOR ADMINISTRATIVE COSTS.**

(a) RECLASSIFICATION- Section 474(a)(3) (42 U.S.C. 674(a)(3)) is amended by inserting 'provision of child placement services and for the' before 'proper and efficient'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

### **SEC. 5072. SECTION 427 TRIENNIAL REVIEWS.**

(a) AMENDMENTS TO SECTION 10406 OF OBRA 1989- Section 10406 of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 627 note) is amended--

(1) by striking '1991' and inserting '1992';

(2) by striking '1990' and inserting '1991'; and

(3) in the section heading, by striking '1990' and inserting '1991'.

(b) CONFORMING AMENDMENT- The item relating to section 10406 in the



table of contents appearing immediately after section 10000 of such Act is amended by striking `1990' and inserting `1991'.

## **SEC. 5073. INDEPENDENT LIVING INITIATIVES.**

(a) IN GENERAL- Section 477(a)(2)(C) (42 U.S.C. 677(a)(2)(C)) is amended--

(1) by inserting `who has not attained age 21' after `may at the option of the State also include any child'; and

(2) by striking `, but such child' and all that follows through `care'.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall apply to payments made under part E of title IV of the Social Security Act for fiscal years beginning in or after fiscal year 1991.

## **CHAPTER 6--CHILD CARE**

### **SEC. 5081. GRANTS TO STATES FOR CHILD CARE.**

(a) RULES GOVERNING PROVISION OF CHILD CARE TO ELIGIBLE FAMILIES- Section 402 (42 U.S.C. 602) is amended by adding at the end the following:

`(i)(1) Each State agency may, to the extent that it determines that resources are available, provide child care in accordance with paragraph (2) to any low income family that the State determines--

`(A) is not receiving aid under the State plan approved under this part;

`(B) needs such care in order to work; and

`(C) would be at risk of becoming eligible for aid under the State plan approved under this part if such care were not provided.

`(2) The State agency may provide child care pursuant to paragraph (1) by--

`(A) providing such care directly;

`(B) arranging such care through providers by use of purchase of service contracts or vouchers;

`(C) providing cash or vouchers in advance to the family;

`(D) reimbursing the family; or

`(E) adopting such other arrangements as the agency deems appropriate.

`(3)(A) A family provided with child care under paragraph (1) shall contribute to such care in accordance with a sliding scale formula established by the State agency based on the family's ability to pay.

- ^(B) The State agency shall make payment for the cost of child care provided under paragraph (1) with respect to a family in an amount that is the lesser of--
  - ^(i) the actual cost of such care; and
  - ^(ii) the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary).
- ^(4) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for the care) under this subsection--
  - ^(A) shall not be treated as income or as a deductible expense for purposes of any other Federal or federally assisted program that bases eligibility for or amount of benefits upon need; and
  - ^(B) may not be claimed as an employment-related expense for purposes of the credit under section 21 of the Internal Revenue Code of 1986.
- ^(5) Amounts expended by the State agency for child care under paragraph (1) shall be treated as amounts for which payment may be made to a State under section 403(n) only to the extent that--
  - ^(A) such amounts are paid in accordance with paragraph (3)(B);
  - ^(B) the care involved meets applicable standards of State and local law;
  - ^(C) the provider of the care--
    - ^(i) in the case of a provider who is not an individual that provides such care solely to members of the family of the individual, is licensed, regulated, or registered by the State or locality in which the care is provided; and
    - ^(ii) allows parental access; and
  - ^(D) such amounts are not used to supplant any other Federal or State funds used for child care services.
- ^(6)(A)(i) Each State shall prepare reports annually, beginning with fiscal year 1993, on the activities of the State carried out with funds made available under section 403(n).
- ^(ii) The State shall make available for public inspection within the State copies of each report required by this paragraph, shall transmit a copy of each such report to the Secretary, and shall provide a copy of each such report, on request, to any interested public agency.
- ^(iii) The Secretary shall annually compile, and submit to the Congress, the State reports transmitted to the Secretary pursuant to clause (ii).

^ (B) Each report prepared and transmitted by a State under subparagraph (A) shall set forth with respect to child care services provided under this subsection--

^ (i) showing separately for center-based child care services, group home child care services, family child care services, and relative care services, the number of children who received such services and the average cost of such services;

^ (ii) the criteria applied in determining eligibility or priority for receiving services, and sliding fee schedules;

^ (iii) the child care licensing and regulatory (including registration) requirements in effect in the State with respect to each type of service specified in clause (i); and

^ (iv) the enforcement policies and practices in effect in the State which apply to licensed and regulated child care providers (including providers required to register).

^ (C) Within 12 months after the date of the enactment of this subsection, the Secretary shall establish uniform reporting requirements for use by the States in preparing the information required by this paragraph, and make such other provision as may be necessary or appropriate to ensure that compliance with this subsection will not be unduly burdensome on the States.

^ (D) Not later than July 1, 1992, the Secretary shall issue a report as on the implementation of this subsection, based on such information as as has 58

been made available to the Secretary by the States.'

58 So in original. Probably should be ^ information as has'.

(b) PAYMENTS TO STATES- Section 403 (42 U.S.C. 603) is amended by adding at the end the following:

^ (n)(1) In addition to any payment under subsection (a) or (l), each State shall be entitled to payment from the Secretary of an amount equal to the lesser of--

^ (A) the Federal medical assistance percentage (as defined in section 1905(b)) of the expenditures by the State in providing child care services pursuant to section 402(i), and in administering the provision of such child care services, for any fiscal year; and

^ (B) the limitation determined under paragraph (2) with respect to the State for the fiscal year.

^ (2)(A) The limitation determined under this paragraph with respect to a State for any fiscal year is the amount that bears the same ratio to the amount specified in subparagraph (B) for such fiscal year as the number of children residing in the State in the second preceding fiscal year bears to the number

of children residing in the United States in the second preceding fiscal year.

` (B) The amount specified in this subparagraph is--

` (i) \$300,000,000 for fiscal year 1991;

` (ii) \$300,000,000 for fiscal year 1992;

` (iii) \$300,000,000 for fiscal year 1993;

` (iv) \$300,000,000 for fiscal year 1994; and

` (v) \$300,000,000 for fiscal year 1995, and for each fiscal year thereafter.

` (C) If the limitation determined under subparagraph (A) with respect to a State for a fiscal year exceeds the amount paid to the State under this subsection for the fiscal year, the limitation determined under this paragraph with respect to the State for the immediately succeeding fiscal year shall be increased by the amount of such excess.

` (3) Amounts appropriated for a fiscal year to carry out this part shall be made available for payments under this subsection for such fiscal year.'

(c) AMENDMENTS TO GRANTS TO STATES TO IMPROVE CHILD CARE LICENSING AND REGISTRATION REQUIREMENTS, AND TO MONITOR CHILD CARE PROVIDED TO CHILDREN RECEIVING AFDC-

(1) GRANTS INCREASED AND EXTENDED- Section 402(g)(6)(D) (42 U.S.C. 602(g)(6)(D)) is amended by inserting ` , and \$50,000,000 for each of fiscal years 1992, 1993, and 1994' before the period.

(2) NEW PURPOSES FOR GRANTS- Section 402(g)(6)(A) (42 U.S.C. 602(g)(6)(A)) is amended by striking ` and to monitor child care provided to children receiving aid under the State plan approved under subsection (a)' and inserting ` to enforce standards with respect to child care provided to children under this part, and to provide for the training of child care providers'.

(3) HALF OF GRANT REQUIRED TO BE EXPENDED FOR TRAINING OF CHILD CARE PROVIDERS- Section 402(g)(6) (42 U.S.C. 602(g)(6)) is amended by adding at the end the following:

` (E) Each State to which the Secretary makes a grant under this paragraph shall expend not less than 50 percent of the amount of the grant to provide for the training of child care providers.'

(d) COORDINATION WITH OTHER PROGRAMS FOR CHILDREN- Section 402(g)(7) (42 U.S.C. 602(g)(7)) is amended by inserting ` and subsection (i)' after ` this subsection'.

(e) EFFECTIVE DATE- Except as otherwise expressly provided, the

amendments made by this section shall take effect on October 1, 1990.

## **SEC. 5082. CHILD CARE AND DEVELOPMENT BLOCK GRANT.**

Chapter 8 of subtitle A of title IV of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) is amended--

(1) by redesignating subchapters C, D, and E, as subchapters D, E, and F, respectively; and

(2) by inserting after subchapter B the following new subchapter:

### **Subchapter C--Child Care and Development Block Grant**

#### **SEC. 658A. SHORT TITLE.**

This subchapter may be cited as the 'Child Care and Development Block Grant Act of 1990'.

#### **SEC. 658B. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out this subchapter, \$750,000,000 for fiscal year 1991, \$825,000,000 for fiscal year 1992, \$925,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 and 1995.

#### **SEC. 658C. ESTABLISHMENT OF BLOCK GRANT PROGRAM.**

The Secretary is authorized to make grants to States in accordance with the provisions of this subchapter.

#### **SEC. 658D. LEAD AGENCY.**

(a) DESIGNATION- The chief executive officer of a State desiring to receive a grant under this subchapter shall designate, in an application submitted to the Secretary under section 658E, an appropriate State agency that complies with the requirements of subsection (b) to act as the lead agency.

(b) DUTIES-

(1) IN GENERAL- The lead agency shall--

(A) administer, directly or through other State agencies, the financial assistance received under this subchapter by the State;

(B) develop the State plan to be submitted to the Secretary under section 658E(a);

(C) in conjunction with the development of the State plan as required under subparagraph (B), hold at least one hearing in the

State to provide to the public an opportunity to comment on the provision of child care services under the State plan; and

ˆ (D) coordinate the provision of services under this subchapter with other Federal, State and local child care and early childhood development programs.

ˆ (2) DEVELOPMENT OF PLAN- In the development of the State plan described in paragraph (1)(B), the lead agency shall consult with appropriate representatives of units of general purpose local government. Such consultations may include consideration of local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which funds made available under this subchapter can be used to effectively address local shortages.

## ˆ **SEC. 658E. APPLICATION AND PLAN.**

ˆ (a) APPLICATION- To be eligible to receive assistance under this subchapter, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall by rule require, including--

ˆ (1) an assurance that the State will comply with the requirements of this subchapter; and

ˆ (2) a State plan that meets the requirements of subsection (c).

ˆ (b) PERIOD COVERED BY PLAN- The State plan contained in the application under subsection (a) shall be designed to be implemented--

ˆ (1) during a 3-year period for the initial State plan; and

ˆ (2) during a 2-year period for subsequent State plans.

ˆ (c) Requirements of a Plan-

ˆ (1) LEAD AGENCY- The State plan shall identify the lead agency designated under section 658D.

ˆ (2) POLICIES AND PROCEDURES- The State plan shall:

ˆ (A) PARENTAL CHOICE OF PROVIDERS- Provide assurances that--

ˆ (i) the parent or parents of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under this subchapter, other than through assistance provided under paragraph (3)(C), are given the option either--

ˆ (I) to enroll such child with a child care provider that has a grant or contract for the provision of such services; or

^ (II) to receive a child care certificate as defined in section 658P(2);

^ (ii) in cases in which the parent selects the option described in clause (i)(I), the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable; and

^ (iii) child care certificates offered to parents selecting the option described in clause (i)(II) shall be of a value commensurate with the subsidy value of child care services provided under the option described in clause (i)(I);

except that nothing in this subparagraph shall require a State to have a child care certificate program in operation prior to October 1, 1992.

^ (B) UNLIMITED PARENTAL ACCESS- Provide assurances that procedures are in effect within the State to ensure that child care providers who provide services for which assistance is made available under this subchapter afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operation of such providers and whenever such children are in the care of such providers.

^ (C) PARENTAL COMPLAINTS- Provide assurances that the State maintains a record of substantiated parental complaints and makes information regarding such parental complaints available to the public on request.

^ (D) CONSUMER EDUCATION- Provide assurances that consumer education information will be made available to parents and the general public within the State concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State.

^ (E) COMPLIANCE WITH STATE AND LOCAL REGULATORY REQUIREMENTS- Provide assurances that--

^ (i) all providers of child care services within the State for which assistance is provided under this subchapter comply with all licensing or regulatory requirements (including registration requirements) applicable under State and local law; and

^ (ii) providers within the State that are not required to be licensed or regulated under State or local law are required to be registered with the State prior to payment being made under this subchapter, in accordance with procedures designed to facilitate appropriate payment to such providers, and to permit the State to furnish information to such providers, including information on the availability of health and safety training, technical assistance, and any relevant information pertaining to regulatory requirements in the State, and that such providers

shall be permitted to register with the State after selection by the parents of eligible children and before such payment is made.

This subparagraph shall not be construed to prohibit a State from imposing more stringent standards and licensing or regulatory requirements on child care providers within the State that provide services for which assistance is provided under this subchapter than the standards or requirements imposed on other child care providers in the State.

ˆ (F) ESTABLISHMENT OF HEALTH AND SAFETY REQUIREMENTS- Provide assurances that there are in effect within the State, under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under this subchapter. Such requirements shall include--

- ˆ (i) the prevention and control of infectious diseases (including immunization);
- ˆ (ii) building and physical premises safety; and
- ˆ (iii) minimum health and safety training appropriate to the provider setting.

Nothing in this subparagraph shall be construed to require the establishment of additional health and safety requirements for child care providers that are subject to health and safety requirements in the categories described in this subparagraph on the date of enactment of this subchapter under State or local law.

ˆ (G) COMPLIANCE WITH STATE AND LOCAL HEALTH AND SAFETY REQUIREMENTS- Provide assurances that procedures are in effect to ensure that child care providers within the State that provide services for which assistance is provided under this subchapter comply with all applicable State or local health and safety requirements as described in subparagraph (F).

ˆ (H) REDUCTION IN STANDARDS- Provide assurances that if the State reduces the level of standards applicable to child care services provided in the State on the date of enactment of this subchapter, the State shall inform the Secretary of the rationale for such reduction in the annual report of the State described in section 658K.

ˆ (I) REVIEW OF STATE LICENSING AND REGULATORY REQUIREMENTS- Provide assurances that not later than 18 months after the date of the submission of the application under section 658E, the State will complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in



the State unless the State has reviewed such law, requirements, and policies in the 3-year period ending on the date of the enactment of this subchapter.

˘ (J) SUPPLEMENTATION- Provide assurances that funds received under this subchapter by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs in the State.

˘ (3) USE OF BLOCK GRANT FUNDS-

˘ (A) GENERAL REQUIREMENT- The State plan shall provide that the State will use the amounts provided to the State for each fiscal year under this subchapter as required under subparagraphs (B) and (C).

˘ (B) CHILD CARE SERVICES- Subject to the reservation contained in subparagraph (C), the State shall use amounts provided to the State for each fiscal year under this subchapter for--

˘ (i) child care services, that meet the requirements of this subchapter, that are provided to eligible children in the State on a sliding fee scale basis using funding methods provided for in section 658E(c)(2)(A), with priority being given for services provided to children of families with very low family incomes (taking into consideration family size) and to children with special needs; and

˘ (ii) activities designed to improve the availability and quality of child care.

˘ (C) ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE AND TO INCREASE THE AVAILABILITY OF EARLY CHILDHOOD DEVELOPMENT AND BEFORE- AND AFTER-SCHOOL CARE SERVICES- The State shall reserve 25 percent of the amounts provided to the State for each fiscal year under this subchapter to carry out activities designed to improve the quality of child care (as described in section 658G) and to provide before- and after-school and early childhood development services (as described in section 658H).

˘ (4) PAYMENT RATES-

˘ (A) IN GENERAL- The State plan shall provide assurances that payment rates for the provision of child care services for which assistance is provided under this subchapter are sufficient to ensure equal access for eligible children to comparable child care services in the State or substate area that are provided to children whose parents are not eligible to receive assistance under this subchapter or for child care assistance under any other Federal or State programs. Such payment rates shall take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional costs of

providing child care for children with special needs.

ˆ (B) CONSTRUCTION- Nothing in this paragraph shall be construed to create a private right of action.

ˆ (5) SLIDING FEE SCALE- The State plan shall provide that the State will establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by the families that receive child care services for which assistance is provided under this subchapter.

ˆ (d) APPROVAL OF APPLICATION- The Secretary shall approve an application that satisfies the requirements of this section.

## **SEC. 658F. 59**

### LIMITATIONS ON STATE ALLOTMENTS.

59 So in original. Probably should be ˆ sec. 658f.'.

ˆ (a) NO ENTITLEMENT TO CONTRACT OR GRANT- Nothing in this subchapter shall be construed--

ˆ (1) to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit; or

ˆ (2) to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subchapter.

ˆ (b) CONSTRUCTION OF FACILITIES-

ˆ (1) IN GENERAL- No funds made available under this subchapter shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility.

ˆ (2) SECTARIAN AGENCY OR ORGANIZATION- In the case of a sectarian agency or organization, no funds made available under this subchapter may be used for the purposes described in paragraph (1) except to the extent that renovation or repair is necessary to bring the facility of such agency or organization into compliance with health and safety requirements referred to in section 658E(c)(2)(F).

## **ˆ SEC. 658G. ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE.**

ˆ A State that receives financial assistance under this subchapter shall use not less than 20 percent of the amounts reserved by such State under section 658E(c)(3)(C) for each fiscal year for one or more of the following:

ˆ (1) RESOURCE AND REFERRAL PROGRAMS- Operating directly or providing financial assistance to private nonprofit organizations or public

organizations (including units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care.

` (2) GRANTS OR LOANS TO ASSIST IN MEETING STATE AND LOCAL STANDARDS- Making grants or providing loans to child care providers to assist such providers in meeting applicable State and local child care standards.

` (3) MONITORING OF COMPLIANCE WITH LICENSING AND REGULATORY REQUIREMENTS- Improving the monitoring of compliance with, and enforcement of, State and local licensing and regulatory requirements (including registration requirements).

` (4) TRAINING- Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and the care of children with special needs.

` (5) COMPENSATION- Improving salaries and other compensation paid to full- and part-time staff who provide child care services for which assistance is provided under this subchapter.

## **` SEC. 658H. EARLY CHILDHOOD DEVELOPMENT AND BEFORE- AND AFTER-SCHOOL SERVICES.**

` (a) IN GENERAL- A State that receives financial assistance under this subchapter shall use not less than 75 percent of the amounts reserved by such State under section 658E(c)(3)(C) for each fiscal year to establish or expand and conduct, through the provision of grants or contracts, early childhood development or before- and after-school child care programs, or both.

` (b) PROGRAM DESCRIPTION- Programs that receive assistance under this section shall--

` (1) in the case of early childhood development programs, consist of services that are not intended to serve as a substitute for a compulsory academic programs but that are intended to provide an environment that enhances the educational, social, cultural, emotional, and recreational development of children; and

` (2) in the case of before- and after-school child care programs--

` (A) be provided Monday through Friday, including school holidays and vacation periods other than legal public holidays, to children attending early childhood development programs, kindergarten, or elementary or secondary school classes during such times of the day and on such days that regular instructional services are not in session; and

^ (B) not be intended to extend or replace the regular academic program.

^ (c) PRIORITY FOR ASSISTANCE- In awarding grants and contracts under this section, the State shall give the highest priority to geographic areas within the State that are eligible to receive grants under section 1006 of the Elementary and Secondary Education Act of 1965, and shall then give priority to--

^ (1) any other areas with concentrations of poverty; and

^ (2) any areas with very high or very low population densities.

## ^ SEC. 658I. ADMINISTRATION AND ENFORCEMENT.

^ (a) ADMINISTRATION- The Secretary shall--

^ (1) coordinate all activities of the Department of Health and Human Services relating to child care, and, to the maximum extent practicable, coordinate such activities with similar activities of other Federal entities;

^ (2) collect, publish and make available to the public a listing of State child care standards at least once every 3 years; and

^ (3) provide technical assistance to assist States to carry out this subchapter, including assistance on a reimbursable basis.

^ (b) Enforcement-

^ (1) REVIEW OF COMPLIANCE WITH STATE PLAN- The Secretary shall review and monitor State compliance with this subchapter and the plan approved under section 658E(c) for the State, and shall have the power to terminate payments to the State in accordance with paragraph (2).

^ (2) Noncompliance-

^ (A) IN GENERAL- If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds that--

^ (i) there has been a failure by the State to comply substantially with any provision or requirement set forth in the plan approved under section 658E(c) for the State; or

^ (ii) in the operation of any program for which assistance is provided under this subchapter there is a failure by the State to comply substantially with any provision of this subchapter;

the Secretary shall notify the State of the finding and that no further payments may be made to such State under this subchapter (or, in the case of noncompliance in the operation of a program or activity, that no further payments to the State will be made with respect to

such program or activity) until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected.

` (B) ADDITIONAL SANCTIONS- In the case of a finding of noncompliance made pursuant to subparagraph (A), the Secretary may, in addition to imposing the sanctions described in such subparagraph, impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by this subchapter, and disqualification from the receipt of financial assistance under this subchapter.

` (C) NOTICE- The notice required under subparagraph (A) shall include a specific identification of any additional sanction being imposed under subparagraph (B).

` (3) ISSUANCE OF RULES- The Secretary shall establish by rule procedures for--

` (A) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this subchapter; and

` (B) imposing sanctions under this section.

## ` **SEC. 658J. PAYMENTS.**

` (a) IN GENERAL- Subject to the availability of appropriations, a State that has an application approved by the Secretary under section 658E(d) shall be entitled to a payment under this section for each fiscal year in an amount equal to its allotment under section 658O for such fiscal year.

` (b) METHOD OF PAYMENT-

` (1) IN GENERAL- Subject to paragraph (2), the Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

` (2) LIMITATION- The Secretary may not make such payments in a manner that prevents the State from complying with the requirement specified in section 658E(c)(3).

` (c) SPENDING OF FUNDS BY STATE- Payments to a State from the allotment under section 658O for any fiscal year may be expended by the State in that fiscal year or in the succeeding fiscal year.

## ` **SEC. 658K. ANNUAL REPORT AND AUDITS.**

` (a) ANNUAL REPORT- Not later than December 31, 1992, and annually thereafter, a State that receives assistance under this subchapter shall

prepare and submit to the Secretary a report--

- ˘ (1) specifying the uses for which the State expended funds specified under paragraph (3) of section 658E(c) and the amount of funds expended for such uses;
- ˘ (2) containing available data on the manner in which the child care needs of families in the State are being fulfilled, including information concerning--
  - ˘ (A) the number of children being assisted with funds provided under this subchapter, and under other Federal child care and pre-school programs;
  - ˘ (B) the type and number of child care programs, child care providers, caregivers, and support personnel located in the State;
  - ˘ (C) salaries and other compensation paid to full- and part-time staff who provide child care services; and
  - ˘ (D) activities in the State to encourage public-private partnerships that promote business involvement in meeting child care needs;
- ˘ (3) describing the extent to which the affordability and availability of child care services has increased;
- ˘ (4) if applicable, describing, in either the first or second such report, the findings of the review of State licensing and regulatory requirements and policies described in section 658E(c), including a description of actions taken by the State in response to such reviews;
- ˘ (5) containing an explanation of any State action, in accordance with section 658E, to reduce the level of child care standards in the State, if applicable; and
- ˘ (6) describing the standards and health and safety requirements applicable to child care providers in the State, including a description of State efforts to improve the quality of child care;

during the period for which such report is required to be submitted.

˘ (b) AUDITS-

- ˘ (1) REQUIREMENT- A State shall, after the close of each program period covered by a 60

application approved under section 658E(d) audit its expenditures during such program period from amounts received under this subchapter.

60 So in original. Probably should be 'an'.

- ˘ (2) INDEPENDENT AUDITOR- Audits under this subsection shall be

conducted by an entity that is independent of any agency administering activities that receive assistance under this subchapter and be in accordance with generally accepted auditing principles.

˘ (3) SUBMISSION- Not later than 30 days after the completion of an audit under this subsection, the State shall submit a copy of the audit to the legislature of the State and to the Secretary.

˘ (4) REPAYMENT OF AMOUNTS- Each State shall repay to the United States any amounts determined through an audit under this subsection not to have been expended in accordance with this subchapter, or the Secretary may offset such amounts against any other amount to which the State is or may be entitled under this subchapter.

## ˘ **SEC. 658L. REPORT BY SECRETARY.**

˘ Not later than July 31, 1993, and annually thereafter, the Secretary shall prepare and submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report that contains a summary and analysis of the data and information provided to the Secretary in the State reports submitted under section 658K. Such report shall include an assessment, and where appropriate, recommendations for the Congress concerning efforts that should be undertaken to improve the access of the public to quality and affordable child care in the United States.

## ˘ **SEC. 658M. LIMITATIONS ON USE OF FINANCIAL ASSISTANCE FOR CERTAIN PURPOSES.**

˘ (a) SECTARIAN PURPOSES AND ACTIVITIES- No financial assistance provided under this subchapter, pursuant to the choice of a parent under section 658E(c)(2)(A)(i)(I) or through any other grant or contract under the State plan, shall be expended for any sectarian purpose or activity, including sectarian worship or instruction.

˘ (b) TUITION- With regard to services provided to students enrolled in grades 1 through 12, no financial assistance provided under this subchapter shall be expended for--

˘ (1) any services provided to such students during the regular school day;

˘ (2) any services for which such students receive academic credit toward graduation; or

˘ (3) any instructional services which supplant or duplicate the academic program of any public or private school.

## ˘ **SEC. 658N. NONDISCRIMINATION.**

˘ (a) RELIGIOUS NONDISCRIMINATION-

˘ (1) CONSTRUCTION-

˘ (A) IN GENERAL- Except as provided in subparagraph (B), nothing in this section shall be construed to modify or affect the provisions of any other Federal law or regulation that relates to discrimination in employment on the basis of religion.

˘ (B) EXCEPTION- A sectarian organization may require that employees adhere to the religious tenets and teachings of such organization, and such organization may require that employees adhere to rules forbidding the use of drugs or alcohol.

˘ (2) DISCRIMINATION AGAINST CHILD-

˘ (A) IN GENERAL- A child care provider (other than a family child care provider) that receives assistance under this subchapter shall not discriminate against any child on the basis of religion in providing child care services.

˘ (B) NON-FUNDED CHILD CARE SLOTS- Nothing in this section shall prohibit a child care provider from selecting children for child care slots that are not funded directly with assistance provided under this subchapter because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

˘ (3) EMPLOYMENT IN GENERAL-

˘ (A) PROHIBITION- A child care provider that receives assistance under this subchapter shall not discriminate in employment on the basis of the religion of the prospective employee if such employee's primary responsibility is or will be working directly with children in the provision of child care services.

˘ (B) QUALIFIED APPLICANTS- If two or more prospective employees are qualified for any position with a child care provider receiving assistance under this subchapter, nothing in this section shall prohibit such child care provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates such provider.

˘ (C) PRESENT EMPLOYEES- This paragraph shall not apply to employees of child care providers receiving assistance under this subchapter if such employees are employed with the provider on the date of enactment of this subchapter.

˘ (4) EMPLOYMENT AND ADMISSION PRACTICES- Notwithstanding paragraphs (1)(B), (2), and (3), if assistance provided under this subchapter, and any other Federal or State program, amounts to 80 percent or more of the operating budget of a child care provider that receives such assistance, the Secretary shall not permit such provider to



receive any further assistance under this subchapter unless the grant or contract relating to the financial assistance, or the employment and admissions policies of the provider, specifically provides that no person with responsibilities in the operation of the child care program, project, or activity of the provider will discriminate against any individual in employment, if such employee's primary responsibility is or will be working directly with children in the provision of child care, or admissions because of the religion of such individual.

^ (b) EFFECT ON STATE LAW- Nothing in this subchapter shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian institutions, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this subchapter.

## ^ **SEC. 6580. AMOUNTS RESERVED; ALLOTMENTS.**

^ (a) AMOUNTS RESERVED-

^ (1) TERRITORIES AND POSSESSIONS- The Secretary shall reserve not to exceed one half of 1 percent of the amount appropriated under this subchapter in each fiscal year for payments to Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands to be allotted in accordance with their respective needs.

^ (2) INDIANS TRIBES- The Secretary shall reserve not more than 3 percent of the amount appropriated under section 658B in each fiscal year for payments to Indian tribes and tribal organizations with applications approved under subsection (c).

^ (b) State Allotment-

^ (1) GENERAL RULE- From the amounts appropriated under section 658B for each fiscal year remaining after reservations under subsection (a), the Secretary shall allot to each State an amount equal to the sum of--

^ (A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States; and

^ (B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

^ (2) YOUNG CHILD FACTOR- The term 'young child factor' means the ratio of the number of children in the State under 5 years of age to the number of such children in all States as provided by the most recent

annual estimates of population in the States by the Census Bureau of the Department of Commerce.

` (3) SCHOOL LUNCH FACTOR- The term `school lunch factor' means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of such children in all the States as determined annually by the Department of Agriculture.

` (4) Allotment percentage-

` (A) IN GENERAL- The allotment percentage for a State is determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

` (B) LIMITATIONS- If an allotment percentage determined under subparagraph (A)--

` (i) exceeds 1.2 percent, then the allotment percentage of that State shall be considered to be 1.2 percent; and

` (ii) is less than 0.8 percent, then the allotment percentage of the State shall be considered to be 0.8 percent.

` (C) PER CAPITA INCOME- For purposes of subparagraph (A), per capita income shall be--

` (i) determined at 2-year intervals;

` (ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and

` (iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

` (c) PAYMENTS FOR THE BENEFIT OF INDIAN CHILDREN-

` (1) GENERAL AUTHORITY- From amounts reserved under subsection (a) (2), the Secretary may make grants to or enter into contracts with Indian tribes or tribal organizations that submit applications under this section, for the planning and carrying out of programs or activities consistent with the purposes of this subchapter.

` (2) APPLICATIONS AND REQUIREMENTS- An application for a grant or contract under this section shall provide that:

` (A) COORDINATION- The applicant will coordinate, to the maximum

extent feasible, with the lead agency in the State or States in which the applicant will carry out programs or activities under this section.

ˆ (B) SERVICES ON RESERVATIONS- In the case of an applicant located in a State other than Alaska, California, or Oklahoma, programs and activities under this section will be carried out on the Indian reservation for the benefit of Indian children.

ˆ (C) REPORTS AND AUDITS- The applicant will make such reports on, and conduct such audits of, programs and activities under a grant or contract under this section as the Secretary may require.

ˆ (3) CONSIDERATION OF SECRETARIAL APPROVAL- In determining whether to approve an application for a grant or contract under this section, the Secretary shall take into consideration--

ˆ (A) the availability of child care services provided in accordance with this subchapter by the State or States in which the applicant proposes to carry out a program to provide child care services; and

ˆ (B) whether the applicant has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the proposed program or activity.

ˆ (4) THREE-YEAR LIMIT- Grants or contracts under this section shall be for periods not to exceed 3 years.

ˆ (5) DUAL ELIGIBILITY OF INDIAN CHILDREN- The awarding of a grant or contract under this section for programs or activities to be conducted in a State or States shall not affect the eligibility of any Indian child to receive services provided or to participate in programs and activities carried out 61

under a grant to the State or States under this subchapter.

61 So in original. Probably should be `out'.

ˆ (d) DATA AND INFORMATION- The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b).

ˆ (e) Reallotments-

ˆ (1) IN GENERAL- Any portion of the allotment under subsection (b) to a State that the Secretary determines is not required to carry out a State plan approved under section 658E(d), in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

ˆ (2) LIMITATIONS-

` (A) REDUCTION- The amount of any reallocation to which a State is entitled to under paragraph (1) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 658E(d).

` (B) REALLOTMENTS- The amount of such reduction shall be similarly reallocated among States for which no reduction in an allotment or reallocation is required by this subsection.

` (3) AMOUNTS REALLOTTED- For purposes of any other section of this subchapter, any amount reallocated to a State under this subsection shall be considered to be part of the allotment made under subsection (b) to the State.

` (f) DEFINITION- For the purposes of this section, the term `State' includes only the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

## ` SEC. 658P. DEFINITIONS.

` As used in this subchapter:

` (1) CAREGIVER- The term `caregiver' means an individual who provides a service directly to an eligible child on a person-to-person basis.

` (2) CHILD CARE CERTIFICATE- The term `child care certificate' means a certificate (that may be a check or other disbursement) that is issued by a State or local government under this subchapter directly to a parent who may use such certificate only as payment for child care services. Nothing in this subchapter shall preclude the use of such certificates for sectarian child care services if freely chosen by the parent. For purposes of this subchapter, child care certificates shall not be considered to be grants or contracts.

` (3) ELEMENTARY SCHOOL- The term `elementary school' means a day or residential school that provides elementary education, as determined under State law.

` (4) ELIGIBLE CHILD- The term `eligible child' means an individual--

` (A) who is less than 13 years of age;

` (B) whose family income does not exceed 75 percent of the State median income for a family of the same size; and

` (C) who--

` (i) resides with a parent or parents who are working or attending a job training or educational program; or

` (ii) is receiving, or needs to receive, protective services and resides with a parent or parents not described in clause (i).

` (5) ELIGIBLE CHILD CARE PROVIDER- The term `eligible child care provider' means--

` (A) a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that--

` (i) is licensed, regulated, or registered under State law as described in section 658E(c)(2)(E); and

` (ii) satisfies the State and local requirements, including those referred to in section 658E(c)(2)(F);

applicable to the child care services it provides; or

` (B) a child care provider that is 18 years of age or older who provides child care services only to eligible children who are, by affinity or consanguinity, or by court decree, the grandchild, niece, or nephew of such provider, if such provider is registered and complies with any State requirements that govern child care provided by the relative involved.

` (6) FAMILY CHILD CARE PROVIDER- The term `family child care provider' means one individual who provides child care services for fewer than 24 hours per day, as the sole caregiver, and in a private residence.

` (7) INDIAN TRIBE- The term `Indian tribe' has the meaning given it in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(b)).

` (8) LEAD AGENCY- The term `lead agency' means the agency designated under section 658B(a).

` (9) PARENT- The term `parent' includes a legal guardian or other person standing in loco parentis.

` (10) SECONDARY SCHOOL- The term `secondary school' means a day or residential school which provides secondary education, as determined under State law.

` (11) SECRETARY- The term `Secretary' means the Secretary of Health and Human Services unless the context specifies otherwise.

` (12) SLIDING FEE SCALE- The term `sliding fee scale' means a system of cost sharing by a family based on income and size of the family.

` (13) STATE- The term `State' means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

` (14) TRIBAL ORGANIZATION- The term `tribal organization' has the meaning given it in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(c)).

## **SEC. 658Q. PARENTAL RIGHTS AND RESPONSIBILITIES.**

` Nothing in this subchapter shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

## **SEC. 658R. SEVERABILITY.**

` If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions of applications of this subchapter which can be given effect without regard to the invalid provision or application, and to this end the provisions of this subchapter shall be severable.'

## **Subtitle B--Old-Age, Survivors, and Disability Insurance**

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Sec. 5100. Table of contents.

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## **SEC. 5101. AMENDMENT OF THE SOCIAL SECURITY ACT.**

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a

section or other provision of the Social Security Act.

## **SEC. 5102. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.**

Subsection (g) of section 223 (42 U.S.C. 423(g)) is amended--

(1) in paragraph (1), in the matter following subparagraph (C), by inserting `or' after `hearing,', and by striking `pending, or (iii) June 1991.' and inserting `pending.'; and

(2) by striking paragraph (3).

## **SEC. 5103. REPEAL OF SPECIAL DISABILITY STANDARD FOR WIDOWS AND WIDOWERS.**

(a) IN GENERAL- Section 223(d)(2) (42 U.S.C. 423(d)(2)) is amended--

(1) in subparagraph (A), by striking `(except a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) or (f))';

(2) by striking subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

(b) CONFORMING AMENDMENTS-

(1) The third sentence of section 216(i)(1) (42 U.S.C. 416(i)(1)) is amended by striking `(2)(C)' and inserting `(2)(B)'.

(2) Section 223(f)(1)(B) (42 U.S.C. 423(f)(1)(B)) is amended to read as follows:

`(B) the individual is now able to engage in substantial gainful activity; or'.

(3) Section 223(f)(2)(A)(ii) (42 U.S.C. 423(f)(2)(A)(ii)) is amended to read as follows:

`(ii) the individual is now able to engage in substantial gainful activity, or'.

(4) Section 223(f)(3) (42 U.S.C. 423(f)(3)) is amended by striking `therefore--' and all that follows and inserting `therefore the individual is able to engage in substantial gainful activity; or'.

(5) Section 223(f) is further amended, in the matter following paragraph (4), by striking `(or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband)' each place it appears.



(c) TRANSITIONAL RULES RELATING TO MEDICAID AND MEDICARE ELIGIBILITY-

(1) DETERMINATION OF MEDICAID ELIGIBILITY- Section 1634(d) (42 U.S.C. 1383c(d)) is amended--

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(B) by striking ` (d) If any person--' and inserting ` (d)(1) This subsection applies with respect to any person who--';

(C) in subparagraph (A) (as redesignated), by striking ` as required' and all that follows through ` but not entitled' and inserting ` being then not entitled';

(D) in subparagraph (B) (as redesignated), by striking ` section 1616(a),' and inserting ` section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66).'; and

(E) by striking ` such person shall' and all that follows and inserting the following new paragraph:

` (2) For purposes of title XIX, each person with respect to whom this subsection applies--

` (A) shall be deemed to be a recipient of supplemental security income benefits under this title if such person received such a benefit for the month before the month in which such person began to receive a benefit described in paragraph (1)(A), and

` (B) shall be deemed to be a recipient of State supplementary payments of the type referred to in section 1616(a) of this Act (or payments of the type described in section 212(a) of Public Law 93-66) if such person received such a payment for the month before the month in which such person began to receive a benefit described in paragraph (1)(A),

for so long as such person (i) would be eligible for such supplemental security income benefits, or such State supplementary payments (or payments of the type described in section 212(a) of Public Law 93-66), in the absence of benefits described in paragraph (1)(A), and (ii) is not entitled to hospital insurance benefits under part A of title XVIII.'

(2) INCLUSION OF MONTHS OF SSI ELIGIBILITY WITHIN 5-MONTH DISABILITY WAITING PERIOD AND 24-MONTH MEDICARE WAITING PERIOD-

(A) WIDOW'S BENEFITS BASED ON DISABILITY- Section 202(e)(5) (42 U.S.C. 402(e)(5)) is amended--

(i) in subparagraph (B), by striking ` (i)' and ` (ii)' and inserting ` (I)' and ` (II)', respectively;

(ii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(iii) by inserting ` (A)' after ` (5)'; and

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

` (B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widow or surviving divorced wife is first eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.'

(B) WIDOWER'S BENEFITS BASED ON DISABILITY- Section 202(f)(6) (42 U.S.C. 402(f)(6)) is amended--

(i) in subparagraph (B), by striking ` (i)' and ` (ii)' and inserting ` (I)' and ` (II)', respectively;

(ii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(iii) by inserting ` (A)' after ` (6)'; and

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

` (B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widower or surviving divorced husband is first eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.'

(C) MEDICARE BENEFITS- Section 226(e)(1) (42 U.S.C. 426(e)(1)) is amended--

(i) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(ii) by inserting ` (A)' after ` (e)(1)'; and

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

` (B) For purposes of subsection (b)(2)(A)(iii), each month in the period commencing with the first month for which an individual is first eligible for

supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) of this Act (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), shall be included as one of the 24 months for which such individual must have been entitled to widow's or widower's insurance benefits on the basis of disability in order to become entitled to hospital insurance benefits on that basis.'

(d) DEEMED DISABILITY FOR PURPOSES OF ENTITLEMENT TO WIDOW'S AND WIDOWER'S INSURANCE BENEFITS FOR WIDOWS AND WIDOWERS ON SSI ROLLS-

(1) WIDOW'S INSURANCE BENEFITS- Section 202(e) (42 U.S.C. 402(e)) is amended by adding at the end the following new paragraph:

^ (9) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.'

(2) WIDOWER'S INSURANCE BENEFITS- Section 202(f) (42 U.S.C. 402(f)) is amended by adding at the end the following new paragraph:

^ (9) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in such section 1616(a) (or in section 212(b) of Public Law 93-66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.'

(e) EFFECTIVE DATE-

(1) IN GENERAL- The amendments made by this section (other than paragraphs (1) and (2)(C) of subsection (c)) shall apply with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after January 1, 1991, or are pending on such date. The amendments made by subsection (c)(1) shall apply with respect to medical assistance provided after December 1990. The amendments made by subsection (c)(2)(C) shall apply with respect to items and services furnished after December 1990.

(2) APPLICATION REQUIREMENTS FOR CERTAIN INDIVIDUALS ON BENEFIT ROLLS- In the case of any individual who--

(A) is entitled to disability insurance benefits under section 223 of the Social Security Act for December 1990 or is eligible for supplemental security income benefits under title XVI of such Act, or State supplementary payments of the type referred to in section 1616(a) of such Act (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in such section 1616(a) (or in section 212(b) of Public Law 93-66), for January 1991,

(B) applied for widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act during 1990, and

(C) is not entitled to such benefits under such subsection (e) or (f) for any month on the basis of such application by reason of the definition of disability under section 223(d)(2)(B) of the Social Security Act (as in effect immediately before the date of the enactment of this Act), and would have been so entitled for such month on the basis of such application if the amendments made by this section had been applied with respect to such application,

for purposes of determining such individual's entitlement to such benefits under subsection (e) or (f) of section 202 of the Social Security Act for months after December 1990, the requirement of paragraph (1)(C)(i) of such subsection shall be deemed to have been met.

#### SEC. 5104. DEPENDENCY REQUIREMENTS APPLICABLE TO A CHILD ADOPTED BY A SURVIVING SPOUSE.

(a) IN GENERAL- Section 216(e) (42 U.S.C. 416(e)) is amended in the second sentence--

(1) by striking `at the time of such individual's death living in such individual's household' and inserting `either living with or receiving at least one-half of his support from such individual at the time of such individual's death'; and

(2) by striking `; except' and all that follows and inserting a period.

(b) EFFECTIVE DATE- The amendments made by this section shall apply with respect to benefits payable for months after December 1990, but only on the basis of applications filed after December 31, 1990.

#### SEC. 5105. REPRESENTATIVE PAYEE REFORMS.

(a) IMPROVEMENTS IN THE REPRESENTATIVE PAYEE SELECTION AND RECRUITMENT PROCESS-

(1) AUTHORITY FOR CERTIFICATION OF PAYMENTS TO REPRESENTATIVE PAYEES-

(A) TITLE II- Section 205(j)(1) (42 U.S.C. 405(j)) is amended to read as follows:

## Representative Payees

(j)(1) If the Secretary determines that the interest of any individual under this title would be served thereby, certification of payment of such individual's benefit under this title may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's 'representative payee'). If the Secretary or a court of competent jurisdiction determines that a representative payee has misused any individual's benefit paid to such representative payee pursuant to this subsection or section 1631(a)(2), the Secretary shall promptly revoke certification for payment of benefits to such representative payee pursuant to this subsection and certify payment to an alternative representative payee or to the individual.'

### (B) TITLE XVI-

(i) IN GENERAL- Section 1631(a)(2)(A) (42 U.S.C. 1383(a)(2)(A)) is amended to read as follows:

(A)(i) Payments of the benefit of any individual may be made to any such individual or to the eligible spouse (if any) of such individual or partly to each.

(ii) Upon a determination by the Secretary that the interest of such individual would be served thereby, or in the case of any individual or eligible spouse referred to in section 1611(e)(3)(A), such payments shall be made, regardless of the legal competency or incompetency of the individual or eligible spouse, to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual's 'representative payee') for the use and benefit of the individual or eligible spouse.

(iii) If the Secretary or a court of competent jurisdiction determines that the representative payee of an individual or eligible spouse has misused any benefits which have been paid to the representative payee pursuant to clause (ii) or section 205(j)(1), the Secretary shall promptly terminate payment of benefits to the representative payee pursuant to this subparagraph, and provide for payment of benefits to the individual or eligible spouse or to an alternative representative payee of the individual or eligible spouse.'

(ii) CONFORMING AMENDMENTS- Section 1631(a)(2)(C) (42 U.S.C. 1383(a)(2)(C)) is amended--

(I) in clause (i), by striking 'a person other than the individual or spouse entitled to such payment' and inserting 'representative payee of an individual or spouse';

(II) in clauses (ii), (iii), and (iv), by striking `other person to whom such payment is made' each place it appears and inserting `representative payee'; and

(III) in clause (v)--

(aa) by striking `person receiving payments on behalf of another' and inserting `representative payee'; and

(bb) by striking `person receiving such payments' and inserting `representative payee'.

## (2) PROCEDURE FOR SELECTING REPRESENTATIVE PAYEES-

### (A) IN GENERAL-

(i) TITLE II- Section 205(j)(2) (42 U.S.C. 405(j)(2)) is amended to read as follows:

`(2)(A) Any certification made under paragraph (1) for payment of benefits to an individual's representative payee shall be made on the basis of--

`(i) an investigation by the Secretary of the person to serve as representative payee, which shall be conducted in advance of such certification and shall, to the extent practicable, include a face-to-face interview with such person, and

`(ii) adequate evidence that such certification is in the interest of such individual (as determined by the Secretary in regulations).

`(B)(i) As part of the investigation referred to in subparagraph (A)(i), the Secretary shall--

`(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity has been submitted with an application for benefits under this title or title XVI,

`(II) verify such person's social security account number (or employer identification number),

`(III) determine whether such person has been convicted of a violation of section 208 or 1632, and

`(IV) determine whether certification of payment of benefits to such person has been revoked pursuant to this subsection or payment of benefits to such person has been terminated pursuant to section 1631(a)(2)(A)(iii) by reason of misuse of funds paid as benefits under this title or title XVI.

`(ii) The Secretary shall establish and maintain a centralized file, which shall be updated periodically and which shall be in a form which renders it readily

retrievable by each servicing office of the Social Security Administration. Such file shall consist of--

` (I) a list of the names and social security account numbers (or employer identification numbers) of all persons with respect to whom certification of payment of benefits has been revoked on or after January 1, 1991, pursuant to this subsection, or with respect to whom payment of benefits has been terminated on or after such date pursuant to section 1631(a)(2)(A)(iii), by reason of misuse of funds paid as benefits under this title or title XVI, and

` (II) a list of the names and social security account numbers (or employer identification numbers) of all persons who have been convicted of a violation of section 208 or 1632.

` (C)(i) Benefits of an individual may not be certified for payment to any other person pursuant to this subsection if--

` (I) such person has previously been convicted as described in subparagraph (B)(i)(III),

` (II) except as provided in clause (ii), certification of payment of benefits to such person under this subsection has previously been revoked as described in subparagraph (B)(i)(IV), or payment of benefits to such person pursuant to section 1631(a)(2)(A)(ii) has previously been terminated as described in section 1631(a)(2)(B)(ii)(IV), or

` (III) except as provided in clause (iii), such person is a creditor of such individual who provides such individual with goods or services for consideration.

` (ii) The Secretary shall prescribe regulations under which the Secretary may grant exemptions to any person from the provisions of clause (i)(II) on a case-by-case basis if such exemption is in the best interest of the individual whose benefits would be paid to such person pursuant to this subsection.

` (iii) Clause (i)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is--

` (I) a relative of such individual if such relative resides in the same household as such individual,

` (II) a legal guardian or legal representative of such individual,

` (III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State,

` (IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the certification of payment to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative

representative payee to whom such certification of payment would serve the best interests of such individual, or

` (V) an individual who is determined by the Secretary, on the basis of written findings and under procedures which the Secretary shall prescribe by regulation, to be acceptable to serve as a representative payee.

` (iv) The procedures referred to in clause (iii)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Secretary, that--

` (I) such individual poses no risk to the beneficiary,

` (II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest, and

` (III) no other more suitable representative payee can be found.

` (D)(i) Subject to clause (ii), if the Secretary makes a determination described in the first sentence of paragraph (1) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Secretary may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subsection.

` (ii)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (i) shall be for a period of not more than 1 month.

` (II) Subclause (I) shall not apply in any case in which the individual is, as of the date of the Secretary's determination, legally incompetent or under the age of 15.

` (iii) Payment pursuant to this subsection of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual or the representative payee as a single sum or over such period of time as the Secretary determines is in the best interest of the individual entitled to such benefits.

` (E)(i) Any individual who is dissatisfied with a determination by the Secretary to certify payment of such individual's benefit to a representative payee under paragraph (1) or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Secretary to the same extent as is provided in subsection (b), and to judicial review of the Secretary's final decision as is provided in subsection (g).

` (ii) In advance of the certification of payment of an individual's benefit to a representative payee under paragraph (1), the Secretary shall provide written notice of the Secretary's initial determination to certify such payment. Such notice shall be provided to such individual, except that, if such individual--



- ` (I) is under the age of 15,
- ` (II) is an unemancipated minor under the age of 18, or
- ` (III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

` (iii) Any notice described in clause (ii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (i) of such individual or of such individual's legal guardian or legal representative--

- ` (I) to appeal a determination that a representative payee is necessary for such individual,
- ` (II) to appeal the designation of a particular person to serve as the representative payee of such individual, and
- ` (III) to review the evidence upon which such designation is based and submit additional evidence.'

(ii) TITLE XVI- Section 1631(a)(2)(B) (42 U.S.C. 1383(a)(2)(B)) is amended to read as follows:

` (B)(i) Any determination made under subparagraph (A) for payment of benefits to the representative payee of an individual or eligible spouse shall be made on the basis of--

- ` (I) an investigation by the Secretary of the person to serve as representative payee, which shall be conducted in advance of such payment, and shall, to the extent practicable, include a face-to-face interview with such person; and
- ` (II) adequate evidence that such payment is in the interest of the individual or eligible spouse (as determined by the Secretary in regulations).

` (ii) As part of the investigation referred to in clause (i)(I), the Secretary shall--

- ` (I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity was submitted with an application for benefits under title II or this title;
- ` (II) verify the social security account number (or employer identification number) of such person;
- ` (III) determine whether such person has been convicted of a violation of section 208 or 1632; and

` (IV) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), and whether certification of payment of benefits to such person has been revoked pursuant to section 205(j), by reason of misuse of funds paid as benefits under title II or this title.

` (iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if--

` (I) such person has previously been convicted as described in clause (ii)(III);

` (II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in clause (ii)(IV), or certification of payment of benefits to such person under section 205(j) has previously been revoked as described in section 205(j)(2)(B)(i)(IV); or

` (III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration.

` (iv) The Secretary shall prescribe regulations under which the Secretary may grant an exemption from clause (iii)(II) to any person on a case-by-case basis if such exemption would be in the best interest of the individual or eligible spouse whose benefits under this title would be paid to such person pursuant to subparagraph (A)(ii).

` (v) Clause (iii)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is--

` (I) a relative of such individual if such relative resides in the same household as such individual;

` (II) a legal guardian or legal representative of such individual;

` (III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State;

` (IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the payment of benefits under this title to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom the payment of such benefits would serve the best interests of such individual; or

` (V) an individual who is determined by the Secretary, on the basis of written findings and under procedures which the Secretary shall prescribe by regulation, to be acceptable to serve as a representative payee.

` (vi) The procedures referred to in clause (v)(V) shall require the individual

who will serve as representative payee to establish, to the satisfaction of the Secretary, that--

- ˘ (I) such individual poses no risk to the beneficiary;
  - ˘ (II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest; and
  - ˘ (III) no other more suitable representative payee can be found.
- ˘ (vii) Subject to clause (viii), if the Secretary makes a determination described in subparagraph (A)(ii) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Secretary may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subparagraph.
- ˘ (viii)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (vii) shall be for a period of not more than 1 month.
- ˘ (II) Subclause (I) shall not apply in any case in which the individual or eligible spouse is, as of the date of the Secretary's determination, legally incompetent, under the age 15 years, or a drug addict or alcoholic referred to in section 1611(e)(3)(A).
- ˘ (ix) Payment pursuant to this subparagraph of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual, or to the representative payee upon such selection, as a single sum or over such period of time as the Secretary determines is in the best interests of the individual entitled to such benefits.
- ˘ (x) Any individual who is dissatisfied with a determination by the Secretary to pay such individual's benefits to a representative payee under this title, or with the designation of a particular person to serve as representative payee, shall be entitled to a hearing by the Secretary, and to judicial review of the Secretary's final decision, to the same extent as is provided in subsection (c).
- ˘ (xi) In advance of the first payment of an individual's benefit to a representative payee under subparagraph (A)(ii), the Secretary shall provide written notice of the Secretary's initial determination to make any such payment. Such notice shall be provided to such individual, except that, if such individual--
- ˘ (I) is under the age of 15,
  - ˘ (II) is an unemancipated minor under the age of 18, or
  - ˘ (III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal

representative of such individual.

` (xii) Any notice described in clause (xi) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (x) of such individual or of such individual's legal guardian or legal representative--

` (I) to appeal a determination that a representative payee is necessary for such individual,

` (II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

` (III) to review the evidence upon which such designation is based and submit additional evidence.'

(B) REPORT ON FEASIBILITY OF OBTAINING READY ACCESS TO CERTAIN CRIMINAL FRAUD RECORDS- As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services, in consultation with the Attorney General of the United States and the Secretary of the Treasury, shall study the feasibility of establishing and maintaining a current list, which would be readily available to local offices of the Social Security Administration for use in investigations undertaken pursuant to section 205(j)(2) or 1631(a)(2)(B) of the Social Security Act, of the names and social security account numbers of individuals who have been convicted of a violation of section 495 of title 18, United States Code. The Secretary of Health and Human Services shall, not later than July 1, 1992, submit the results of such study, together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

### (3) PROVISION FOR COMPENSATION OF QUALIFIED ORGANIZATIONS SERVING AS REPRESENTATIVE PAYEES-

#### (A) IN GENERAL-

(i) TITLE II- Section 205(j) (42 U.S.C. 405(j)) is amended by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

` (4)(A) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to this subsection if such fee does not exceed the lesser of--

` (i) 10 percent of the monthly benefit involved, or

` (ii) \$25.00 per month.

Any agreement providing for a fee in excess of the amount permitted under this subparagraph shall be void and shall be treated as misuse by such organization of such individual's benefits.

^ (B) For purposes of this paragraph, the term ^qualified organization' means any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee and which, in accordance with any applicable regulations of the Secretary--

^ (i) regularly provides services as the representative payee, pursuant to this subsection or section 1631(a)(2), concurrently to 5 or more individuals,

^ (ii) demonstrates to the satisfaction of the Secretary that such agency is not otherwise a creditor of any such individual, and

^ (iii) was in existence on October 1, 1988.

The Secretary shall prescribe regulations under which the Secretary may grant an exception from clause (ii) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

^ (C) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under subparagraph (A) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, United States Code, or imprisoned not more than 6 months, or both.

^ (D) This paragraph shall cease to be effective on July 1, 1994.'

(ii) TITLE XVI- Section 1631(a)(2) (42 U.S.C. 1383(a)(2)) is amended--

(I) by redesignating subparagraph (D) as subparagraph (E);

(III) 62

by inserting after subparagraph (C) the following:

62 So in original. Probably should be ^ (II)'.

^ (D)(i) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to subparagraph (A)(ii) if the fee does not exceed the lesser of--

^ (I) 10 percent of the monthly benefit involved, or

^ (II) \$25.00 per month.

Any agreement providing for a fee in excess of the amount permitted under

this clause shall be void and shall be treated as misuse by the organization of such individual's benefits.

` (ii) For purposes of this subparagraph, the term `qualified organization' means any community-based nonprofit social service agency which--

` (I) is bonded or licensed in each State in which the agency serves as a representative payee;

` (II) in accordance with any applicable regulations of the Secretary--

` (aa) regularly provides services as a representative payee pursuant to subparagraph (A)(ii) or section 205(j)(4) concurrently to 5 or more individuals;

` (bb) demonstrates to the satisfaction of the Secretary that such agency is not otherwise a creditor of any such individual; and

` (cc) was in existence on October 1, 1988.

The Secretary shall prescribe regulations under which the Secretary may grant an exception from subclause (II)(bb) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

` (iii) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under clause (i) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, United States Code, or imprisoned not more than 6 months, or both.

` (iv) This subparagraph shall cease to be effective on July 1, 1994.'

#### (B) STUDIES AND REPORTS-

(i) REPORT BY SECRETARY OF HEALTH AND HUMAN SERVICES- Not later than January 1, 1993, the Secretary of Health and Human Services shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the number and types of qualified organizations which have served as representative payees and have collected fees for such service pursuant to any amendment made by subparagraph (A).

(ii) REPORT BY COMPTROLLER GENERAL- Not later than July 1, 1992, the Comptroller General of the United States shall conduct a study of the advantages and disadvantages of allowing qualified organizations serving as representative payees to charge fees pursuant to the amendments made by subparagraph (A) and shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the results of such study.

(4) STUDY RELATING TO FEASIBILITY OF SCREENING OF INDIVIDUALS WITH CRIMINAL RECORDS- As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct a study of the feasibility of determining the type of representative payee applicant most likely to have a felony or misdemeanor conviction, the suitability of individuals with prior convictions to serve as representative payees, and the circumstances under which such applicants could be allowed to serve as representative payees. The Secretary shall transmit the results of such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1992.

(5) EFFECTIVE DATES-

(A) USE AND SELECTION OF REPRESENTATIVE PAYEES- The amendments made by paragraphs (1) and (2) shall take effect July 1, 1991, and shall apply only with respect to--

(i) certifications of payment of benefits under title II of the Social Security Act to representative payees made on or after such date; and

(ii) provisions for payment of benefits under title XVI of such Act to representative payees made on or after such date.

(B) COMPENSATION OF REPRESENTATIVE PAYEES- The amendments made by paragraph (3) shall take effect July 1, 1991, and the Secretary of Health and Human Services shall prescribe initial regulations necessary to carry out such amendments not later than such date.

(b) IMPROVEMENTS IN RECORDKEEPING AND AUDITING REQUIREMENTS-

(1) IMPROVED ACCESS TO CERTAIN INFORMATION-

(A) IN GENERAL- Section 205(j)(3) (42 U.S.C. 605(j)(3)) is amended-

(i) by striking subparagraph (B);

(ii) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively;

(iii) in subparagraph (D) (as so redesignated), by striking '(A), (B), (C), and (D)' and inserting '(A), (B), and (C)'; and

(iv) by adding at the end the following new subparagraphs:

(E) The Secretary shall maintain a centralized file, which shall be updated periodically and which shall be in a form which will be readily retrievable by each servicing office of the Social Security Administration, of--

` (i) the address and the social security account number (or employer identification number) of each representative payee who is receiving benefit payments pursuant to this subsection or section 1631(a)(2), and

` (ii) the address and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this subsection or section 1631(a)(2).

` (F) Each servicing office of the Administration shall maintain a list, which shall be updated periodically, of public agencies and community-based nonprofit social service agencies which are qualified to serve as representative payees pursuant to this subsection or section 1631(a)(2) and which are located in the area served by such servicing office.'

(B) EFFECTIVE DATE- The amendments made by subparagraph (A) shall take effect October 1, 1992, and the Secretary of Health and Human Services shall take such actions as are necessary to ensure that the requirements of section 205(j)(3)(E) of the Social Security Act (as amended by subparagraph (A) of this paragraph) are satisfied as of such date.

## (2) STUDY RELATING TO MORE STRINGENT OVERSIGHT OF HIGH-RISK REPRESENTATIVE PAYEES-

(A) IN GENERAL- As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct a study of the need for a more stringent accounting system for high-risk representative payees than is otherwise generally provided under section 205(j)(3) or 1631(a)(2)(C) of the Social Security Act, which would include such additional reporting requirements, record maintenance requirements, and other measures as the Secretary considers necessary to determine whether services are being appropriately provided by such payees in accordance with such sections 205(j) and 1631(a)(2).

(B) SPECIAL PROCEDURES- In such study, the Secretary shall determine the appropriate means of implementing more stringent, statistically valid procedures for--

(i) reviewing reports which would be submitted to the Secretary under any system described in subparagraph (A), and

(ii) periodic, random audits of records which would be kept under such a system,

in order to identify any instances in which high-risk representative payees are misusing payments made pursuant to section 205(j) or 1631(a)(2) of the Social Security Act.

(C) HIGH-RISK REPRESENTATIVE PAYEE- For purposes of this paragraph, the term `high-risk representative payee' means a representative payee under section 205(j) or 1631(a)(2) of the Social



Security Act (42 U.S.C. 405(j) and 1383(a)(2), respectively) (other than a Federal or State institution) who--

(i) regularly provides concurrent services as a representative payee under such section 205(j), such section 1631(a)(2), or both such sections, for 5 or more individuals who are unrelated to such representative payee,

(ii) is neither related to an individual on whose behalf the payee is being paid benefits nor living in the same household with such individual,

(iii) is a creditor of such individual, or

(iv) is in such other category of payees as the Secretary may determine appropriate.

(D) REPORT- The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing stricter accounting and review procedures for high-risk representative payees in all servicing offices of the Social Security Administration (together with proposed legislative language).

### (3) DEMONSTRATION PROJECTS RELATING TO PROVISION OF INFORMATION TO LOCAL AGENCIES PROVIDING CHILD AND ADULT PROTECTIVE SERVICES-

(A) IN GENERAL- As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall implement a demonstration project under this paragraph in all or part of not fewer than 2 States. Under each such project, the Secretary shall enter into an agreement with the State in which the project is located to make readily available, for the duration of the project, to the appropriate State agency, a listing of addresses of multiple benefit recipients.

(B) LISTING OF ADDRESSES OF MULTIPLE BENEFIT RECIPIENTS- The list referred to in subparagraph (A) shall consist of a current list setting forth each address within the State at which benefits under title II, benefits under title XVI, or any combination of such benefits are being received by 5 or more individuals. For purposes of this subparagraph, in the case of benefits under title II, all individuals receiving benefits on the basis of the wages and self-employment income of the same individual shall be counted as 1 individual.

(C) APPROPRIATE STATE AGENCY- The appropriate State agency referred to in subparagraph (A) is the agency of the State which the Secretary determines is primarily responsible for regulating care facilities operated in such State or providing for child and adult

protective services in such State.

(D) REPORT- The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing the programs established pursuant to this paragraph on a permanent basis.

(E) STATE- For purposes of this paragraph, the term 'State' means a State, including the entities included in such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).

(c) RESTITUTION-

(1) TITLE II- Section 205(j) (42 U.S.C. 405(j)) is amended by redesignating paragraph (5) (as so redesignated by subsection (a)(3)(A)(i) of this section) as paragraph (6) and by inserting after paragraph (4) (as added by subsection (a)(3)(A)(i)) the following new paragraph:

“(5) In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Secretary shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to such misused benefits. The Secretary shall make a good faith effort to obtain restitution from the terminated representative payee.”

(2) TITLE XVI- Section 1631(a)(2) (42 U.S.C. 1383(a)(2)) is amended by redesignating subparagraph (E) (as so redesignated by subsection (a)(3)(A)(ii)(I) of this section) as subparagraph (F) and by inserting after subparagraph (D) (as added by subsection (a)(3)(A)(i)(III)) the following new subparagraph:

“(E) RESTITUTION- In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Secretary shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. The Secretary shall make a good faith effort to obtain restitution from the terminated representative payee.”

(d) REPORTS TO THE CONGRESS-

(1) IN GENERAL-

(A) TITLE II- Section 205(j)(5) (as so redesignated by subsection (c) (1) of this section) is amended to read as follows:

“(5) The Secretary shall include as a part of the annual report required under section 704 information with respect to the implementation of the preceding provisions of this subsection, including the number of cases in which the representative payee was changed, the number of cases discovered where

there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.'.

(B) TITLE XVI- Section 1631(a)(2)(E) (42 U.S.C. 1383(a)(2)(E)), as so redesignated by subsection (c)(2) of this section, is amended to read as follows:

` (E) The Secretary shall include as a part of the annual report required under section 704 information with respect to the implementation of the preceding provisions of this paragraph, including--

- ` (i) the number of cases in which the representative payee was changed;
- ` (ii) the number of cases discovered where there has been a misuse of funds;
- ` (iii) how any such cases were dealt with by the Secretary;
- ` (iv) the final disposition of such cases (including any criminal penalties imposed); and
- ` (v) such other information as the Secretary determines to be appropriate.'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply with respect to annual reports issued for years after 1991.

(3) FEASIBILITY STUDY REGARDING INVOLVEMENT OF DEPARTMENT OF VETERANS AFFAIRS- As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services, in cooperation with the Secretary of Veterans Affairs, shall conduct a study of the feasibility of designating the Department of Veterans Affairs as the lead agency for purposes of selecting, appointing, and monitoring representative payees for those individuals who receive benefits paid under title II or XVI of the Social Security Act and benefits paid by the Department of Veterans Affairs. Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report setting forth the results of such study, together with any recommendations.

## SEC. 5106. FEES FOR REPRESENTATION OF CLAIMANTS IN ADMINISTRATIVE PROCEEDINGS.

(a) IN GENERAL-

(1) TITLE II- Subsection (a) of section 206 (42 U.S.C. 406(a)) is amended--

(A) by inserting `(1)' after `(a)';

(B) in the fifth sentence, by striking `Whenever' and inserting `Except as provided in paragraph (2)(A), whenever'; and

(C) by striking the sixth sentence and all that follows through `Any person who' in the seventh sentence and inserting the following:

(2)(A) In the case of a claim of entitlement to past-due benefits under this title, if--

(i) an agreement between the claimant and another person regarding any fee to be recovered by such person to compensate such person for services with respect to the claim is presented in writing to the Secretary prior to the time of the Secretary's determination regarding the claim,

(ii) the fee specified in the agreement does not exceed the lesser of--

(I) 25 percent of the total amount of such past-due benefits (as determined before any applicable reduction under section 1127(a)), or

(II) \$4,000, and

(iii) the determination is favorable to the claimant,

then the Secretary shall approve that agreement at the time of the favorable determination, and (subject to paragraph (3)) the fee specified in the agreement shall be the maximum fee. The Secretary may from time to time increase the dollar amount under clause (ii)(II) to the extent that the rate of increase in such amount, as determined over the period since January 1, 1991, does not at any time exceed the rate of increase in primary insurance amounts under section 215(i) since such date. The Secretary shall publish any such increased amount in the Federal Register.

(B) For purposes of this subsection, the term `past-due benefits' excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 223.

(C) In the case of a claim with respect to which the Secretary has approved an agreement pursuant to subparagraph (A), the Secretary shall provide the claimant and the person representing the claimant a written notice of--

(i) the dollar amount of the past-due benefits (as determined before any applicable reduction under section 1127(a)) and the dollar amount of the past-due benefits payable to the claimant,

(ii) the dollar amount of the maximum fee which may be charged or recovered as determined under this paragraph, and

(iii) a description of the procedures for review under paragraph (3).

` (3)(A) The Secretary shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(C)--

` (i) the claimant, or the administrative law judge or other adjudicator who made the favorable determination, submits a written request to the Secretary to reduce the maximum fee, or

` (ii) the person representing the claimant submits a written request to the Secretary to increase the maximum fee.

Any such review shall be conducted after providing the claimant, the person representing the claimant, and the adjudicator with reasonable notice of such request and an opportunity to submit written information in favor of or in opposition to such request. The adjudicator may request the Secretary to reduce the maximum fee only on the basis of evidence of the failure of the person representing the claimant to represent adequately the claimant's interest or on the basis of evidence that the fee is clearly excessive for services rendered.

` (B)(i) In the case of a request for review under subparagraph (A) by the claimant or by the person representing the claimant, such review shall be conducted by the administrative law judge who made the favorable determination or, if the Secretary determines that such administrative law judge is unavailable or if the determination was not made by an administrative law judge, such review shall be conducted by another person designated by the Secretary for such purpose.

` (ii) In the case of a request by the adjudicator for review under subparagraph (A), the review shall be conducted by the Secretary or by an administrative law judge or other person (other than such adjudicator) who is designated by the Secretary.

` (C) Upon completion of the review, the administrative law judge or other person conducting the review shall affirm or modify the amount which would otherwise be the maximum fee. Any such amount so affirmed or modified shall be considered the amount of the maximum fee which may be recovered under paragraph (2). The decision of the administrative law judge or other person conducting the review shall not be subject to further review.

` (4)(A) Subject to subparagraph (B), if the claimant is determined to be entitled to past-due benefits under this title and the person representing the claimant is an attorney, the Secretary shall, notwithstanding section 205(i), certify for payment out of such past-due benefits (as determined before any applicable reduction under section 1127(a)) to such attorney an amount equal to so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1127(a)).

` (B) The Secretary shall not in any case certify any amount for payment to the attorney pursuant to this paragraph before the expiration of the 15-day period

referred to in paragraph (3)(A) or, in the case of any review conducted under paragraph (3), before the completion of such review.

(5) Any person who'

(2) TITLE XVI- Paragraph (2)(A) of section 1631(d) (42 U.S.C. 1383(d)(2)(A)) is amended to read as follows:

(2)(A) The provisions of section 206(a) (other than paragraph (4) thereof) shall apply to this part to the same extent as they apply in the case of title II, except that paragraph (2) thereof shall be applied--

(i) by substituting 'section 1127(a) or 1631(g)' for 'section 1127(a)'; and

(ii) by substituting 'section 1631(a)(7)(A) or the requirements of due process of law' for 'subsection (g) or (h) of section 223'.

(b) PROTECTION OF ATTORNEY'S FEES FROM OFFSETTING SSI BENEFITS- Subsection (a) of section 1127 (42 U.S.C. 1320a-6(a)) is amended by adding at the end the following new sentence: 'A benefit under title II shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the maximum fee which may be recovered from such benefit by an attorney pursuant to section 206(a)(4).'

(c) LIMITATION OF TRAVEL EXPENSES FOR REPRESENTATION OF CLAIMANTS AT ADMINISTRATIVE PROCEEDINGS- Section 201(j) (42 U.S.C. 401(j)), section 1631(h) (42 U.S.C. 1383(h)), and section 1817(i) (42 U.S.C. 1395i(i)) are each amended by adding at the end the following new sentence: 'The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.'

(d) EFFECTIVE DATE- The amendments made by this section shall apply with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after April 1, 1991.

## SEC. 5107. APPLICABILITY OF ADMINISTRATIVE RES JUDICATA; RELATED NOTICE REQUIREMENTS.

(a) IN GENERAL-

(1) TITLE II- Section 205(b) (42 U.S.C. 405(b)) is amended by adding at the end the following new paragraph:

(3)(A) A failure to timely request review of an initial adverse determination with respect to an application for any benefit under this title or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent

application for any benefit under this title if the applicant demonstrates that the applicant, or any other individual referred to in paragraph (1), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for benefits in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 221.

` (B) In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Secretary shall describe in clear and specific language the effect on possible entitlement to benefits under this title of choosing to reapply in lieu of requesting review of the determination.'

(2) TITLE XVI- Section 1631(c)(1) (42 U.S.C. 1383(c)(1)) is amended--

(A) by inserting `(A)' after `(c)(1)'; and

(B) by adding at the end the following:

` (B)(i) A failure to timely request review of an initial adverse determination with respect to an application for any payment under this title or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any payment under this title if the applicant demonstrates that the applicant, or any other individual referred to in paragraph (1), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for payments in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 221.

` (ii) In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Secretary shall describe in clear and specific language the effect on possible eligibility to receive payments under this title of choosing to reapply in lieu of requesting review of the determination.'

(b) EFFECTIVE DATE- The amendments made by this section shall apply with respect to adverse determinations made on or after July 1, 1991.

#### SEC. 5108. DEMONSTRATION PROJECTS RELATING TO ACCOUNTABILITY FOR TELEPHONE SERVICE CENTER COMMUNICATIONS.

(a) IN GENERAL- The Secretary of Health and Human Services shall develop and carry out demonstration projects designed to implement the accountability procedures described in subsection (b) in each of not fewer than 3 telephone service centers operated by the Social Security Administration. Telephone service centers shall be selected for implementation of the accountability procedures so as to permit a thorough evaluation of such procedures as they would operate in conjunction with the service technology most recently employed by the Social Security Administration. Each such

demonstration project shall commence not later than 180 days after the date of the enactment of this Act and shall remain in operation for not less than 1 year and not more than 3 years.

(b) ACCOUNTABILITY PROCEDURES-

(1) IN GENERAL- During the period of each demonstration project developed and carried out by the Secretary of Health and Human Services with respect to a telephone service center pursuant to subsection (a), the Secretary shall provide for the application at such telephone service center of accountability procedures consisting of the following:

(A) In any case in which a person communicates with the Social Security Administration by telephone at such telephone service center and provides in such communication his or her name, address, and such other identifying information as the Secretary determines necessary and appropriate for purposes of this subparagraph, the Secretary must thereafter promptly provide such person a written receipt which sets forth--

(i) the name of any individual representing the Social Security Administration with whom such person has spoken in such communication,

(ii) the date of the communication;

(iii) a description of the nature of the communication,

(iv) any action that an individual representing the Social Security Administration has indicated in the communication will be taken in response to the communication, and

(v) a description of the information or advice offered in the communication by an individual representing the Social Security Administration.

(B) Such person must be notified during the communication by an individual representing the Social Security Administration that, if adequate identifying information is provided to the Administration, a receipt described in subparagraph (A) will be provided to such person.

(C) A copy of any receipt required to be provided to any person under subparagraph (A) must be--

(i) included in the file maintained by the Social Security Administration relating to such person, or

(ii) if there is no such file, otherwise retained by the Social Security Administration in retrievable form until the end of the 5-year period following the termination of the project.



(2) EXCLUSION OF CERTAIN ROUTINE TELEPHONE COMMUNICATIONS-  
The Secretary may exclude from demonstration projects carried out pursuant to this section routine telephone communications which do not relate to potential or current eligibility or entitlement to benefits.

(c) REPORT-

(1) IN GENERAL 63

--The Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report on the progress of the demonstration projects conducted pursuant to this section, together with any related data and materials which the Secretary may consider appropriate. The report shall be submitted not later than 90 days after the termination of the project.

63 So in original. Probably should be `GENERAL- '.

(2) SPECIFIC MATTERS TO BE INCLUDED- The report required under paragraph (1) shall--

(A) assess the costs and benefits of the accountability procedures,

(B) identify any major difficulties encountered in implementing the demonstration project, and

(C) assess the feasibility of implementing the accountability procedures on a national basis.

## SEC. 5109. NOTICE REQUIREMENTS.

(a) REQUIREMENTS-

(1) TITLE II- Section 205 (42 U.S.C. 405) is amended by inserting after subsection (r) the following new subsection:

### ` NOTICE REQUIREMENTS

`(s) The Secretary shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this title by the Secretary or by a State agency--

`(1) is written in simple and clear language, and

`(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone

number through which such office can be reached.'

(2) TITLE XVI- Section 1631 (42 U.S.C. 1383) is amended by adding at the end the following:

## NOTICE REQUIREMENTS

(n) The Secretary shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this title by the Secretary or by a State agency--

(1) is written in simple and clear language, and

(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.'

(b) EFFECTIVE DATE- The amendments made by this section shall apply with respect to notices issued on or after July 1, 1991.

### SEC. 5110. TELEPHONE ACCESS TO THE SOCIAL SECURITY ADMINISTRATION.

(a) REQUIRED MINIMUM LEVEL OF ACCESS TO LOCAL OFFICES- In addition to such other access by telephone to offices of the Social Security Administration as the Secretary of Health and Human Services may consider appropriate, the Secretary shall maintain access by telephone to local offices of the Social Security Administration at the level of access generally available as of September 30, 1989.

(b) TELEPHONE LISTINGS- The Secretary shall make such requests of local telephone utilities in the United States as are necessary to ensure that the listings subsequently maintained and published by such utilities for each locality include the address and telephone number for each local office of the Social Security Administration to which direct telephone access is maintained under subsection (a) in such locality. Such listing may also include information concerning the availability of a toll-free number which may be called for general information.

(c) REPORT BY SECRETARY- Not later than January 1, 1993, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which--

(1) assesses the impact of the requirements established by this section on the Social Security Administration's allocation of resources, workload levels, and service to the public, and

(2) presents a plan for using new, innovative technologies to enhance access to the Social Security Administration, including access to local offices.

(d) GAO REPORT- The Comptroller General of the United States shall review the level of telephone access by the public to the local offices of the Social Security Administration. The Comptroller General shall file an interim report with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate describing such level of telephone access not later than 120 days after the date of the enactment of this Act and shall file a final report with such Committees describing such level of access not later than 210 days after such date.

(e) EFFECTIVE DATE- The Secretary of Health and Human Services shall meet the requirements of subsections (a) and (b) as soon as possible after the date of the enactment of this Act but not later 180 days after such date.

#### SEC. 5111. AMENDMENTS RELATING TO SOCIAL SECURITY ACCOUNT STATEMENTS.

(a) IN GENERAL- Section 1142 (42 U.S.C. 1320b-13), as added by section 10308 of the Omnibus Budget Reconciliation Act of 1989 (103 Stat. 2485), is amended--

(1) by striking `SEC. 1142.' and inserting `SEC. 1143.'; and

(2) in subsection (c)(2), by striking `a biennial' and inserting `an annual'.

(b) DISCLOSURE OF ADDRESS INFORMATION BY INTERNAL REVENUE SERVICE TO SOCIAL SECURITY ADMINISTRATION-

(1) IN GENERAL- Section 6103(m) of the Internal Revenue Code of 1986 (relating to disclosure of taxpayer identity information) is amended by adding at the end the following new paragraph:

`(7) SOCIAL SECURITY ACCOUNT STATEMENT FURNISHED BY SOCIAL SECURITY ADMINISTRATION- Upon written request by the Commissioner of Social Security, the Secretary may disclose the mailing address of any taxpayer who is entitled to receive a social security account statement pursuant to section 1143(c) of the Social Security Act, for use only by officers, employees or agents of the Social Security Administration for purposes of mailing such statement to such taxpayer.'.

(2) SAFEGUARDS- Section 6103(p)(4) of such Code (relating to safeguards) is amended, in the matter following subparagraph (f)(iii), by striking `subsection (m)(2), (4), or (6)' and inserting `paragraph (2), (4), (6), or (7) of subsection (m)'.

(3) UNAUTHORIZED DISCLOSURE PENALTIES- Paragraph (2) of section 7213(a) of such Code (relating to unauthorized disclosure of returns and return information) is amended by striking `(m)(2), (4), or (6)' and inserting `(m)(2), (4), (6), or (7)'.

SEC. 5112. TRIAL WORK PERIOD DURING ROLLING FIVE-YEAR PERIOD FOR ALL DISABLED BENEFICIARIES.

(a) IN GENERAL- Section 222(c) (42 U.S.C. 422(c)) is amended--

(1) in paragraph (4)(A), by striking ` , beginning on or after the first day of such period,' and inserting ` , in any period of 60 consecutive months,'; and

(2) by striking paragraph (5).

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall take effect on January 1, 1992.

SEC. 5113. CONTINUATION OF BENEFITS ON ACCOUNT OF PARTICIPATION IN A NON-STATE VOCATIONAL REHABILITATION PROGRAM.

(a) IN GENERAL- Section 225(b) (42 U.S.C. 425(b)) is amended--

(1) by striking paragraph (1) and inserting the following new paragraph:

` (1) such individual is participating in a program of vocational rehabilitation services approved by the Secretary, and'; and

(2) in paragraph (2), by striking ` Commissioner of Social Security' and inserting ` Secretary'.

(b) PAYMENTS AND PROCEDURES- Section 1631(a)(6) (42 U.S.C. 1383(a)(6)) is amended--

(1) by striking subparagraph (A) and inserting the following new subparagraph:

` (A) such individual is participating in a program of vocational rehabilitation services approved by the Secretary, and'; and

(2) in subparagraph (B), by striking ` Commissioner of Social Security' and inserting ` Secretary'.

(c) EFFECTIVE DATE- The amendments made by this section shall be effective with respect to benefits payable for months after the eleventh month following the month in which this Act is enacted and shall apply only with respect to individuals whose blindness or disability has or may have ceased after such eleventh month.

SEC. 5114. LIMITATION ON NEW ENTITLEMENT TO SPECIAL AGE-72 PAYMENTS.

(a) IN GENERAL- Section 228(a)(2) (42 U.S.C. 428(a)(2)) is amended by striking ` (B)' and inserting ` (B)(i) attained such age after 1967 and before 1972, and (ii)'.

(b) EFFECTIVE DATE--The amendment made by subsection (a) shall apply with

respect benefits payable on the basis of applications filed after the date of the enactment of this Act.

SEC. 5115. ELIMINATION OF ADVANCED CREDITING TO THE TRUST FUNDS OF SOCIAL SECURITY PAYROLL TAXES.

(a) IN GENERAL- Section 201(a) (42 U.S.C. 401(a)) is amended--

(1) in the first sentence following clause (4)--

(A) by striking `monthly on the first day of each calendar month' both places it appears and inserting `from time to time';

(B) by striking `to be paid to or deposited into the Treasury during such month' and inserting `paid to or deposited into the Treasury'; and

(2) in the last sentence, by striking `Fund;' and inserting `Fund. Notwithstanding the preceding sentence, in any case in which the Secretary of the Treasury determines that the assets of either such Trust Fund would otherwise be inadequate to meet such Fund's obligations for any month, the Secretary of the Treasury shall transfer to such Trust Fund on the first day of such month the amount which would have been transferred to such Fund under this section as in effect on October 1, 1990; and'.

(c) EFFECTIVE DATE- The amendments made by this section shall become effective on the first day of the month following the month in which this Act is enacted.

SEC. 5116. ELIMINATION OF ELIGIBILITY FOR RETROACTIVE BENEFITS FOR CERTAIN INDIVIDUALS ELIGIBLE FOR REDUCED BENEFITS.

(a) IN GENERAL- Section 202(j)(4) (42 U.S.C. 402(j)(4)) is amended--

(1) in subparagraph (A), by striking `if the effect' and all that follows and inserting `if the amount of the monthly benefit to which such individual would otherwise be entitled for any such month would be subject to reduction pursuant to subsection (q).'; and

(2) in subparagraph (B), by striking clauses (i) and (iv) and by redesignating clauses (ii), (iii), and (v) as clauses (i), (ii), and (iii), respectively.

(b) EFFECTIVE DATE- The amendments made by this section shall apply with respect to applications for benefits filed on or after January 1, 1991.

SEC. 5117. CONSOLIDATION OF OLD METHODS OF COMPUTING PRIMARY INSURANCE AMOUNTS.

(a) CONSOLIDATION OF COMPUTATION METHODS-

(1) IN GENERAL- Section 215(a)(5) (42 U.S.C. 415(a)(5)) is amended--

(A) by striking `For purposes of' and inserting `(A) Subject to subparagraphs (B), (C), (D) and (E), for purposes of';

(B) by striking the last sentence; and

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

`(B)(i) Subject to clauses (ii), (iii), and (iv), and notwithstanding any other provision of law, the primary insurance amount of any individual described in subparagraph (C) shall be, in lieu of the primary insurance amount as computed pursuant to any of the provisions referred to in subparagraph (D), the primary insurance amount computed under subsection (a) of section 215 as in effect in December 1978, without regard to subsection (b)(4) and (c) of such section as so in effect.

`(ii) The computation of a primary insurance amount under this subparagraph shall be subject to section 104(j)(2) of the Social Security Amendments of 1972 (relating to the number of elapsed years under section 215(b)).

`(iii) In computing a primary insurance amount under this subparagraph, the dollar amount specified in paragraph (3) of section 215(a) (as in effect in December 1978) shall be increased to \$11.50.

`(iv) In the case of an individual to whom section 215(d) applies, the primary insurance amount of such individual shall be the greater of--

`(I) the primary insurance amount computed under the preceding clauses of this subparagraph, or

`(II) the primary insurance amount computed under section 215(d).

`(C) An individual is described in this subparagraph if--

`(i) paragraph (1) does not apply to such individual by reason of such individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979, and

`(ii) such individual's primary insurance amount computed under this section as in effect immediately before the date of the enactment of the Omnibus Budget Reconciliation Act of 1990 would have been computed under the provisions described in subparagraph (D).

`(D) The provisions described in this subparagraph are--

`(i) the provisions of this subsection as in effect prior to the enactment of the Social Security Amendments of 1965, if such provisions would preclude the use of wages prior to 1951 in the computation of the primary insurance amount,

`(ii) the provisions of section 209 as in effect prior to the enactment of

the Social Security Act Amendments of 1950, and

` (iii) the provisions of section 215(d) as in effect prior to the enactment of the Social Security Amendments of 1977.

` (E) For purposes of this paragraph, the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) for each year after 1978.'

(2) COMPUTATION OF PRIMARY INSURANCE BENEFIT UNDER 1939 ACT-

(A) DIVISION OF WAGES BY ELAPSED YEARS- Section 215(d)(1) (42 U.S.C. 415(d)(1)) is amended--

(i) in subparagraph (A), by inserting ` and subject to section 104(j)(2) of the Social Security Amendments of 1972' after ` thereof'; and

(ii) by striking ` (B) For purposes' in subparagraph (B) and all that follows through clause (ii) of such subparagraph and inserting the following:

` (B) For purposes of subparagraphs (B) and (C) of subsection (b)(2) (as so in effect)--

` (i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual--

` (I) shall, in the case of an individual who attained age 21 prior to 1950, be divided by the number of years (hereinafter in this subparagraph referred to as the ` divisor') elapsing after the year in which the individual attained age 20, or 1936 if later, and prior to the earlier of the year of death or 1951, except that such divisor shall not include any calendar year entirely included in a period of disability, and in no case shall the divisor be less than one, and

` (II) shall, in the case of an individual who died before 1950 and before attaining age 21, be divided by the number of years (hereinafter in this subparagraph referred to as the ` divisor') elapsing after the second year prior to the year of death, or 1936 if later, and prior to the year of death, and in no case shall the divisor be less than one; and

` (ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who either attained age 21 after 1949 or died after 1949 before attaining age 21, shall be divided by the number of years (hereinafter in this subparagraph referred to as the ` divisor') elapsing after 1949 and prior to 1951.'

(B) CREDITING OF WAGES TO YEARS- Clause (iii) of section 215(d)

(1)(B) (42 U.S.C. 415(d)(1)(B)(iii)) is amended to read as follows:

“(iii) if the quotient exceeds \$3,000, only \$3,000 shall be deemed to be the individual's wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual's total wages prior to 1951 (I) if less than \$3,000, shall be deemed credited to the computation base year (as defined in subsection (b)(2) as in effect in December 1977) immediately preceding the earliest year used in computing the amount of the divisor, or (II) if \$3,000 or more, shall be deemed credited, in \$3,000 increments, to the computation base year (as so defined) immediately preceding the earliest year used in computing the amount of the divisor and to each of the computation base years (as so defined) consecutively preceding that year, with any remainder less than \$3,000 being credited to the computation base year (as so defined) immediately preceding the earliest year to which a full \$3,000 increment was credited; and”.

(C) APPLICABILITY- Section 215(d) is further amended--

(i) in paragraph (2)(B), by striking “except as provided in paragraph (3),”;

(ii) by striking paragraph (2)(C) and inserting the following:

“(C)(i) who becomes entitled to benefits under section 202(a) or 223 or who dies, or

“(ii) whose primary insurance amount is required to be recomputed under paragraph (2), (6), or (7) of subsection (f) or under section 231.”; and

(iii) by striking paragraphs (3) and (4).

(3) CONFORMING AMENDMENTS-

(A) Section 215(i)(4) (42 U.S.C. 415(i)(4)) is amended in the first sentence by inserting “and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990” after “as then in effect”.

(B) Section 203(a)(8) (42 U.S.C. 403(a)(8)) is amended in the first sentence by inserting “and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990,” after “December 1978” the second place it appears.

(C) Section 215(c) (42 U.S.C. 415(c)) is amended by striking “This” and inserting “Subject to the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990, this”.

(D) Section 215(f)(7) (42 U.S.C. 415(f)(7)) is amended by striking the period at the end of the first sentence and inserting “, including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by



section 5117 of the Omnibus Budget Reconciliation Act of 1990'.

(E)(i) Section 215(d) (42 U.S.C. 415(d)) is further amended by redesignating paragraph (5) as paragraph (3).

(ii) Subsections (a)(7)(A), (a)(7)(C)(ii), and (f)(9)(A) of section 215 (42 U.S.C. 415) are each amended by striking `subsection (d)(5)' each place it appears and inserting `subsection (d)(3)'.

(iii) Section 215(f)(9)(B) (42 U.S.C. 415(f)(9)(B)) is amended by striking `subsection (a)(7) or (d)(5)' each place it appears and inserting `subsection (a)(7) or (d)(3)'.

#### (4) EFFECTIVE DATE-

(A) IN GENERAL- Except as provided in subparagraph (B), the amendments made by this subsection shall apply with respect to the computation of the primary insurance amount of any insured individual in any case in which a person becomes entitled to benefits under section 202 or 223 on the basis of such insured individual's wages and self-employment income for months after the 18-month period following the month in which this Act is enacted, except that such amendments shall not apply if any person is entitled to benefits based on the wages and self-employment income of such insured individual for the month preceding the initial month of such person's entitlement to such benefits under section 202 or 223.

(B) RECOMPUTATIONS- The amendments made by this subsection shall apply with respect to any primary insurance amount upon the recomputation of such primary insurance amount if such recomputation is first effective for monthly benefits for months after the 18-month period following the month in which this Act is enacted.

(b) BENEFITS IN CASE OF VETERANS- Section 217(b) (42 U.S.C. 417(b)) is amended--

(1) in the first sentence of paragraph (1), by striking `Any' and inserting `Subject to paragraph (3), any'; and

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

(3)(A) The preceding provisions of this subsection shall apply for purposes of determining the entitlement to benefits under section 202, based on the primary insurance amount of the deceased World War II veteran, of any surviving individual only if such surviving individual makes application for such benefits before the end of the 18-month period after the month in which the Omnibus Budget Reconciliation Act of 1990 was enacted.

(B) Subparagraph (A) shall not apply if any person is entitled to benefits under section 202 based on the primary insurance amount of such veteran for the month preceding the month in which such application is made.'

(c) APPLICABILITY OF ALTERNATIVE METHOD FOR DETERMINING QUARTERS OF COVERAGE WITH RESPECT TO WAGES IN THE PERIOD FROM 1937 TO 1950-

(1) APPLICABILITY WITHOUT REGARD TO NUMBER OF ELAPSED YEARS- Section 213(c) (42 U.S.C. 413(c)) is amended--

(A) by inserting ` and 215(d)' after ` 214(a)'; and

(B) by striking ` except where--' and all that follows and inserting the following: ` except where such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to such individual for periods after 1950.'.

(2) APPLICABILITY WITHOUT REGARD TO DATE OF DEATH- Section 155(b)(2) of the Social Security Amendments of 1967 is amended by striking ` after such date'.

(3) EFFECTIVE DATE- The amendments made by this subsection shall apply only with respect to individuals who--

(A) make application for benefits under section 202 of the Social Security Act after the 18-month period following the month in which this Act is enacted, and

(B) are not entitled to benefits under section 227 or 228 of such Act for the month in which such application is made.

SEC. 5118. SUSPENSION OF DEPENDENT'S BENEFITS WHEN THE WORKER IS IN AN EXTENDED PERIOD OF ELIGIBILITY.

(a) IN GENERAL- Section 223(e) (42 U.S.C. 623(e)) is amended by--

(1) by inserting ` (1)' after ` (e)'; and

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

` (2) No benefit shall be payable under section 202 on the basis of the wages and self-employment income of an individual entitled to a benefit under subsection (a)(1) of this section for any month for which the benefit of such individual under subsection (a)(1) is not payable under paragraph (1).'.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall apply with respect to benefits for months after the date of the enactment of this Act.

SEC. 5119. ENTITLEMENT TO BENEFITS OF DEEMED SPOUSE AND LEGAL SPOUSE.

(a) CONTINUED ENTITLEMENT OF DEEMED SPOUSE DESPITE ENTITLEMENT OF LEGAL SPOUSE- Section 216(h)(1) (42 U.S.C. 416(h)(1)) is amended--

(1) in subparagraph (A)--

(A) by inserting ` (i)' after ` (h)(1)(A)'; and

(B) by striking ` If such courts' in the second sentence and inserting the following:

` (ii) If such courts'; and

(2) in subparagraph (B)--

(A) by inserting ` (i)' after ` (B)';

(B) by striking ` The provisions of the preceding sentence' in the second sentence and inserting the following:

` (ii) The provisions of clause (i)';

(C) by striking ` (i) if another' in the second sentence and all that follows through ` or (ii)';

(D) by striking ` The entitlement' in the third sentence and inserting the following:

` (iii) The entitlement';

(E) by striking ` subsection (b), (c), (e), (f), or (g)' the first place it appears in the third sentence and inserting ` subsection (b) or (c)',

(F) by striking ` wife, widow, husband, or widower' the first place it appears in the third sentence and inserting ` wife or husband';

(G) by striking ` (i) in which' in the third sentence and all that follows through ` in which such applicant entered' and inserting ` in which such person enters';

(H) by striking ` For purposes' in the fourth sentence and inserting the following:

` (iv) For purposes';

and

(I) by striking ` (i)' and ` (ii)' in the fourth sentence and inserting ` (I)' and ` (II)', respectively.

(b) TREATMENT OF DIVORCE IN THE CONTEXT OF INVALID MARRIAGE- Section 216(h)(1)(B)(i) (as amended by subsection (a)) is further amended--

(1) by striking ` where under subsection (b), (c), (f), or (g) such applicant is not the wife, widow, husband, or widower of such individual' and inserting ` where under subsection (b), (c), (d), (f), or (g) such applicant

is not the wife, divorced wife, widow, surviving divorced wife, husband, divorced husband, widower, or surviving divorced husband of such individual';

(2) by striking `and such applicant' and all that follows through `files the application,';

(3) by striking `subsections (b), (c), (f), and (g)' and inserting `subsections (b), (c), (d), (f), and (g)'; and

(4) by adding at the end the following new sentences: `Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife, widow, husband, or widower of the insured individual, such marriage shall not be deemed to be a valid marriage unless the applicant and the insured individual were living in the same household at the time of the death of the insured individual or (if the insured individual is living) at the time the applicant files the application. A marriage that is deemed to be a valid marriage by reason of the preceding sentence shall continue to be deemed a valid marriage if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of the death of such insured individual.'

(c) TREATMENT OF MULTIPLE ENTITLEMENTS UNDER THE FAMILY MAXIMUM- Section 203(a)(3) (42 U.S.C. 403(a)(3)) is amended by adding after subparagraph (C) the following new subparagraph:

`(D) In any case in which--

`(i) two or more individuals are entitled to monthly benefits for the same month as a spouse under subsection (b) or (c) of section 202, or as a surviving spouse under subsection (e), (f), or (g) of section 202,

`(ii) at least one of such individuals is entitled by reason of subparagraph (A)(ii) or (B) of section 216(h)(1), and

`(iii) such entitlements are based on the wages and self-employment income of the same insured individual,

the benefit of the entitled individual whose entitlement is based on a valid marriage (as determined without regard to subparagraphs (A)(ii) and (B) of section 216(h)(1)) to such insured individual shall, for such month and all months thereafter, be determined without regard to this subsection, and the benefits of all other individuals who are entitled, for such month or any month thereafter, to monthly benefits under section 202 based on the wages and self-employment income of such insured individual shall be determined as if such entitled individual were not entitled to benefits for such month.'

(d) CONFORMING AMENDMENT- Section 203(a)(6) (42 U.S.C. 403(a)(6)) is amended by inserting `(3)(D),' after `(3)(C),'

(e) EFFECTIVE DATE-

(1) IN GENERAL- The amendments made by this section shall apply with respect to benefits for months after December 1990.

(2) Application requirement-

(A) GENERAL RULE- Except as provided in subparagraph (B), the amendments made by this section shall apply only with respect to benefits for which application is filed with the Secretary of Health and Human Services after December 31, 1990.

(B) EXCEPTION FROM APPLICATION REQUIREMENT- Subparagraph (A) shall not apply with respect to the benefits of any individual if such individual is entitled to a benefit under subsection (b), (c), (e), or (f) of section 202 of the Social Security Act for December 1990 and the individual on whose wages and self-employment income such benefit for December 1990 is based is the same individual on the basis of whose wages and self-employment income application would otherwise be required under subparagraph (A).

## **SEC. 5120. VOCATIONAL REHABILITATION DEMONSTRATION PROJECTS.**

(a) DEMONSTRATION PROJECT-

(1) IN GENERAL- Pursuant to section 505 of the Social Security Disability Amendments of 1980, the Secretary of Health and Human Services shall develop and carry out under this section demonstration projects in each of not fewer than three States. Each such demonstration project shall be designed to assess the advantages and disadvantages of permitting disabled beneficiaries (as defined in paragraph (3)) to select, from among both public and private qualified vocational rehabilitation providers, providers of vocational rehabilitation services directed at enabling such beneficiaries to engage in substantial gainful activity. Each such demonstration project shall commence as soon as practicable after the date of the enactment of this Act and shall remain in operation until the end of fiscal year 1993.

(2) SCOPE AND PARTICIPATION- Each demonstration project shall be of sufficient scope and open to sufficient participation by disabled beneficiaries so as to permit meaningful determinations under subsection (b).

(3) DISABLED BENEFICIARY- For purposes of this section, the term 'disabled beneficiary' means an individual who is entitled to disability insurance benefits under section 223 of the Social Security Act or benefits under section 202 of such Act based on such individual's own disability.

(b) MATTERS TO BE DETERMINED- In the course of each demonstration project conducted under this section, the Secretary shall determine the following:

- (1) the extent to which disabled beneficiaries participate in the process of selecting providers of rehabilitation services, and their reasons for participating or not participating;
- (2) notable characteristics of participating disabled beneficiaries (including their impairments), classified by the type of provider selected;
- (3) the various needs for rehabilitation demonstrated by participating disabled beneficiaries, classified by the type of provider selected;
- (4) the extent to which providers of rehabilitation services which are not agencies or instrumentalities of States accept referrals of disabled beneficiaries under procedures in effect under section 222(d) of the Social Security Act as of the date of the enactment of this Act relating to reimbursement for such services and the most effective way of reimbursing such providers in accordance with such provisions;
- (5) the extent to which providers participating in the demonstration projects enter into contracts with third parties for services and the types of such services;
- (6) whether, and if so the extent to which, disabled beneficiaries who select their own providers of rehabilitation services are more likely to engage in substantial gainful activity and thereby terminate their entitlement under section 202 or 223 of the Social Security Act than those who do not;
- (7) the cost effectiveness of permitting disabled beneficiaries to select their providers of vocational rehabilitation services, and the comparative cost effectiveness of different types of providers; and
- (8) the feasibility of establishing a permanent national program for allowing disabled beneficiaries to choose their own qualified vocational rehabilitation provider and any additional safeguards which would be necessary to assure the effectiveness of such a program.

(c) PROCEDURAL REQUIREMENTS-

- (1) SELECTION OF PARTICIPANTS- The Secretary shall select for participation in each demonstration project under this section disabled beneficiaries for whom there is a reasonable likelihood that rehabilitation services provided to them will result in performance by them of substantial gainful activity for a continuous period of nine months prior to termination of the project.
- (2) SELECTION OF PROVIDERS OF REHABILITATION SERVICES- The Secretary shall select qualified rehabilitation agencies to serve as providers of rehabilitation services in the geographic area covered by each demonstration project conducted under this section. The Secretary shall make such selection after consultation with disabled individuals and organizations representing such individuals. With respect to each demonstration project, the Secretary may approve on a case-by-case

basis additional qualified rehabilitation agencies from outside the geographic area covered by the project to serve particular disabled beneficiaries.

### (3) REIMBURSEMENT OF PROVIDERS-

(A) Except as provided in subparagraph (B), providers of rehabilitation services under each demonstration project under this section shall be reimbursed in accordance with the procedures in effect under the provisions of section 222(d) of the Social Security Act as of the date of the enactment of this Act relating to reimbursement for services provided under such section.

(B) The Secretary may contract with providers of rehabilitation services under each demonstration project under this section on a fee-for-service basis in order to--

(i) conduct vocational evaluations directed at identifying those disabled beneficiaries who have reasonable potential for engaging in substantial gainful activity and thereby terminating their entitlement to benefits under section 202 or 223 of the Social Security Act if provided with vocational rehabilitation services as participants in the project, and

(ii) develop jointly with each disabled beneficiary so identified an individualized, written rehabilitation program.

(C) Each written rehabilitation program developed pursuant to subparagraph (B)(ii) for any participant shall include among its provisions--

(i) a statement of the participant's rehabilitation goal,

(ii) a statement of the specific rehabilitation services to be provided and of the identity of the provider to furnish such services,

(iii) the projected date for the initiation of such services and their anticipated duration, and

(iv) objective criteria and an evaluation procedure and schedule for determining whether the stated rehabilitation goal is being achieved.

(d) **REPORTS-** The Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an interim written report on the progress of the demonstration projects conducted under this section not later than April 1, 1992, together with any related data and materials which the Secretary considers appropriate. The Secretary shall submit a final written report to such Committees addressing the matters to be determined under subsection (b) not later than April 1, 1994.

(e) STATE- For purposes of this section, the term `State' means a State, including the entities included in such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).

(f) CONTINUATION OF DEMONSTRATION AUTHORITY- Section 505(c) of the Social Security Disability Amendments of 1980 (42 U.S.C. 1310 note) is amended to read as follows:

`(c) The Secretary shall submit to the Congress a final report with respect to all experiments and demonstration projects carried out under this section (other than demonstration projects conducted under section 5120 of the Omnibus Budget Reconciliation of 1990) no later than October 1, 1993.'

SEC. 5121. EXEMPTION FOR CERTAIN ALIENS, RECEIVING AMNESTY UNDER THE IMMIGRATION AND NATIONALITY ACT, FROM PROSECUTION FOR MISREPORTING OF EARNINGS OR MISUSE OF SOCIAL SECURITY ACCOUNT NUMBERS OR SOCIAL SECURITY CARDS.

(a) IN GENERAL- Section 208 (42 U.S.C. 408) is amended by adding at the end the following:

`(d)(1) Except as provided in paragraph (2), an alien--

`(A) whose status is adjusted to that of lawful temporary resident under section 210 or 245A of the Immigration and Nationality Act or under section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,

`(B) whose status is adjusted to that of permanent resident--

`(i) under section 202 of the Immigration Reform and Control Act of 1986, or

`(ii) pursuant to section 249 of the Immigration and Nationality Act, or

`(C) who is granted special immigrant status under section 101(a)(27)(I) of the Immigration and Nationality Act,

shall not be subject to prosecution for any alleged conduct described in paragraph (6) or (7) of subsection (a) if such conduct is alleged to have occurred prior to 60 days after the date of the enactment of the Omnibus Budget Reconciliation Act of 1990.

`(2) Paragraph (1) shall not apply with respect to conduct (described in subsection (a)(7)(C)) consisting of--

`(A) selling a card that is, or purports to be, a social security card issued by the Secretary,

`(B) possessing a social security card with intent to sell it, or



` (C) counterfeiting a social security card with intent to sell it.

` (3) Paragraph (1) shall not apply with respect to any criminal conduct involving both the conduct described in subsection (a)(7) to which paragraph (1) applies and any other criminal conduct if such other conduct would be criminal conduct if the conduct described in subsection (a)(7) were not committed.'

(b) TECHNICAL AND CONFORMING AMENDMENTS- So much of section 208 as precedes subsection (d) (as added by subsection (a) of this section) is amended--

(1) in subsection (a), by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) in subsection (g), by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(3) by redesignating subsections (a) through (h) as paragraphs (1) through (8), respectively;

(4) by inserting `(a)' before `Whoever';

(5) by inserting `(b)' at the beginning of the next-to-last undesignated paragraph; and

(6) by inserting `(c)' at the beginning of the last undesignated paragraph.

#### SEC. 5122. REDUCTION OF AMOUNT OF WAGES NEEDED TO EARN A YEAR OF COVERAGE APPLICABLE IN DETERMINING SPECIAL MINIMUM PRIMARY INSURANCE AMOUNT.

(a) IN GENERAL- Section 215(a)(1)(C)(ii) (42 U.S.C. 415(a)(1)(C)(ii)) is amended by striking `of not less than 25 percent' the first place it appears and all that follows through `1977) if' and inserting `of not less than 25 percent (in the case of a year after 1950 and before 1978) of the maximum amount which (pursuant to subsection (e)) may be counted for such year, or 25 percent (in the case of a year after 1977 and before 1991) or 15 percent (in the case of a year after 1990) of the maximum amount which (pursuant to subsection (e)) could be counted for such year if'.

(b) RETENTION OF CURRENT AMOUNT OF WAGES NEEDED TO EARN A YEAR OF COVERAGE FOR PURPOSES OF WINDFALL ELIMINATION PROVISION- Section 215(a)(7)(D) (42 U.S.C. 415(a)(7)(D)) is amended--

(1) in the first sentence, by striking `(as defined in paragraph (1)(C)(ii))'; and

(2) by adding at the end (after the table) the following new flush sentence:

` For purposes of this subparagraph, the term `year of coverage' shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to `15 percent' therein shall be deemed to be a reference to `25 percent'.'.

## SEC. 5123. CHARGING OF EARNINGS OF CORPORATE DIRECTORS.

### (a) IN GENERAL-

(1) Title II is amended by moving the last undesignated paragraph of section 211(a) of such title (as added by section 9022(a) of the Omnibus Budget Reconciliation Act of 1987) to the end of section 203(f)(5) of such title.

(2) The undesignated paragraph moved to section 203(f)(5) of the Social Security Act by paragraph (1) is amended--

(A) by striking `Any income of an individual which results from or is attributable to' and inserting `(E) For purposes of this section, any individual's net earnings from self-employment which result from or are attributable to',

(B) by striking `the income is actually paid' and inserting `the income, on which the computation of such net earnings from self-employment is based, is actually paid'; and

(C) by striking `unless it was' and inserting `unless such income was'.

(3) The last undesignated paragraph of section 1402(a) of the Internal Revenue Code of 1986 (as added by section 9022(b) of the Omnibus Budget Reconciliation Act of 1987) is repealed.

(b) EFFECTIVE DATE- The amendments made by this section shall apply with respect to income received for services performed in taxable years beginning after December 31, 1990.

## SEC. 5124. COLLECTION OF EMPLOYEE SOCIAL SECURITY AND RAILROAD RETIREMENT TAXES ON TAXABLE GROUP-TERM LIFE INSURANCE PROVIDED TO RETIREES.

(a) SOCIAL SECURITY TAXES- Section 3102 of the Internal Revenue Code of 1986 (relating to deduction of tax from wages) is amended by adding at the end thereof the following new subsection:

### `(d) SPECIAL RULE FOR CERTAIN TAXABLE GROUP-TERM LIFE INSURANCE BENEFITS-

`(1) IN GENERAL- In the case of any payment for group-term life insurance to which this subsection applies--

`(A) subsection (a) shall not apply,

` (B) the employer shall separately include on the statement required under section 6051--

` (i) the portion of the wages which consists of payments for group-term life insurance to which this subsection applies, and

` (ii) the amount of the tax imposed by section 3101 on such payments, and

` (C) the tax imposed by section 3101 on such payments shall be paid by the employee.

` (2) BENEFITS TO WHICH SUBSECTION APPLIES- This subsection shall apply to any payment for group-term life insurance to the extent--

` (A) such payment constitutes wages, and

` (B) such payment is for coverage for periods during which an employment relationship no longer exists between the employee and the employer.'

(b) RAILROAD RETIREMENT TAXES- Section 3202 of such Code (relating to deduction of tax from compensation) is amended by adding at the end thereof the following new subsection:

` (d) SPECIAL RULE FOR CERTAIN TAXABLE GROUP-TERM LIFE INSURANCE BENEFITS-

` (1) IN GENERAL- In the case of any payment for group-term life insurance to which this subsection applies--

` (A) subsection (a) shall not apply,

` (B) the employer shall separately include on the statement required under section 6051--

` (i) the portion of the compensation which consists of payments for group-term life insurance to which this subsection applies, and

` (ii) the amount of the tax imposed by section 3201 on such payments, and

` (C) the tax imposed by section 3201 on such payments shall be paid by the employee.

` (2) BENEFITS TO WHICH SUBSECTION APPLIES- This subsection shall apply to any payment for group-term life insurance to the extent--

` (A) such payment constitutes compensation, and

` (B) such payment is for coverage for periods during which an employment relationship no longer exists between the employee and

the employer.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to coverage provided after December 31, 1990.

#### SEC. 5125. TIER 1 RAILROAD RETIREMENT TAX RATES EXPLICITLY DETERMINED BY REFERENCE TO SOCIAL SECURITY TAXES.

(a) TAX ON EMPLOYEES- Subsection (a) of section 3201 of the Internal Revenue Code of 1986 (relating to rate of tax) is amended--

(1) by striking `following' and inserting `applicable', and

(2) by striking `employee:' and all that follows and inserting `employee. For purposes of the preceding sentence, the term `applicable percentage' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 for the calendar year.'

(b) TAX ON EMPLOYEE REPRESENTATIVES- Paragraph (1) of section 3211(a) of such Code (relating to rate of tax) is amended--

(1) by striking `following' and inserting `applicable', and

(2) by striking `representative:' and all that follows and inserting `representative. For purposes of the preceding sentence, the term `applicable percentage' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 and subsections (a) and (b) of section 3111 for the calendar year.'

(c) TAX ON EMPLOYERS- Subsection (a) of section 3221 of such Code (relating to rate of tax) is amended--

(1) by striking `following' and inserting `applicable', and

(2) by striking `employer:' and all that follows and inserting `employer. For purposes of the preceding sentence, the term `applicable percentage' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3111 for the calendar year.'

#### SEC. 5126. TRANSFER TO RAILROAD RETIREMENT ACCOUNT.

Subsection (c)(1)(A) of section 224 of the Railroad Retirement Solvency Act of 1983 (relating to section 72(r) revenue increase transferred to certain railroad accounts) is amended by striking `1990' and inserting `1992'.

#### SEC. 5127. WAIVER OF 2-YEAR WAITING PERIOD FOR INDEPENDENT ENTITLEMENT TO DIVORCED SPOUSE'S BENEFITS.

(a) WAIVER FOR PURPOSES OF DEDUCTIONS ON ACCOUNT OF WORK- Section 203(b)(2) (42 U.S.C. 403(b)(2)) is amended--

(1) by striking `(2) When' and all that follows through `2 years, the

benefit' and inserting the following:

` (2)(A) Except as provided in subparagraph (B), in any case in which--

` (i) any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 202(b) or (c) for any month, and

` (ii) such person has been divorced for not less than 2 years,

the benefit'; and

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

` (B) Clause (ii) of subparagraph (A) shall not apply with respect to any divorced spouse in any case in which the individual referred to in paragraph (1) became entitled to old-age insurance benefits under section 202(a) before the date of the divorce.'

(b) WAIVER IN CASE OF NONCOVERED WORK OUTSIDE THE UNITED STATES- Section 203(d)(1)(B) (42 U.S.C. 403(d)(1)(B)) is amended--

(1) by striking `(B) When' and all that follows through `2 years, the benefit' and inserting the following:

` (B)(i) Except as provided in clause (ii), in any case in which--

` (I) a divorced spouse is entitled to monthly benefits under section 202(b) or (c) for any month, and

` (II) such divorced spouse has been divorced for not less than 2 years,

the benefit'; and

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

` (ii) Subclause (II) of clause (i) shall not apply with respect to any divorced spouse in any case in which the individual entitled to old-age insurance benefits referred to in subparagraph (A) became entitled to such benefits before the date of the divorce.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply with respect to benefits for months after December 1990.

#### SEC. 5128. MODIFICATION OF THE PREEFFECTUATION REVIEW REQUIREMENT APPLICABLE TO DISABILITY INSURANCE CASES.

(a) IN GENERAL- Section 221(c)(3) (42 U.S.C. 421(c)(3)) is amended to read as follows:

` (3)(A) In carrying out the provisions of paragraph (2) with respect to the review of determinations made by State agencies pursuant to this section that individuals are under disabilities (as defined in section 216(i) or 223(d)), the

Secretary shall review--

` (i) at least 50 percent of all such determinations made by State agencies on applications for benefits under this title, and

` (ii) other determinations made by State agencies pursuant to this section to the extent necessary to assure a high level of accuracy in such other determinations.

` (B) In conducting reviews pursuant to subparagraph (A), the Secretary shall, to the extent feasible, select for review those determinations which the Secretary identifies as being the most likely to be incorrect.

` (C) Not later than April 1, 1992, and annually thereafter, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report setting forth the number of reviews conducted under subparagraph (A)(ii) during the preceding fiscal year and the findings of the Secretary based on such reviews of the accuracy of the determinations made by State agencies pursuant to this section.'

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply with respect to determinations made by State agencies in fiscal years after fiscal year 1990.

#### SEC. 5129. RECOVERY OF OASDI OVERPAYMENTS BY MEANS OF REDUCTION IN TAX REFUNDS.

(a) ADDITIONAL METHOD OF RECOVERY- Section 204(a)(1)(A) (42 U.S.C. 404(a)(1)(A)) is amended by inserting after `payments to such overpaid person,' the following: `or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31, United States Code,'.

(b) RECOVERY BY MEANS OF REDUCTION IN TAX REFUNDS- Section 3720A of title 31, United States Code (relating to collection of debts owed to Federal agencies) is amended--

(1) in subsection (a), by striking `OASDI overpayment and';

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting the following new subsection after subsection (e):

` (f)(1) Subsection (a) shall apply with respect to an OASDI overpayment made to any individual only if such individual is not currently entitled to monthly insurance benefits under title II of the Social Security Act.

` (2)(A) The requirements of subsection (b) shall not be treated as met in the case of the recovery of an OASDI overpayment from any individual under this section unless the notification under subsection (b)(1) describes the conditions under which the Secretary of Health and Human Services is required

to waive recovery of an overpayment, as provided under section 204(b) of the Social Security Act.

` (B) In any case in which an individual files for a waiver under section 204(b) of the Social Security Act within the 60-day period referred to in subsection (b) (2), the Secretary of Health and Human Services shall not certify to the Secretary of the Treasury that the debt is valid under subsection (b)(4) before rendering a decision on the waiver request under such section 204(b). In lieu of payment, pursuant to subsection (c), to the Secretary of Health and Human Services of the amount of any reduction under this subsection based on an OASDI overpayment, the Secretary of the Treasury shall deposit such amount in the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, whichever is certified to the Secretary of the Treasury as appropriate by the Secretary of Health and Human Services.'.

### (c) INTERNAL REVENUE CODE PROVISIONS-

(1) IN GENERAL- Subsection (d) of section 6402 of the Internal Revenue Code of 1986 (relating to collection of debts owed to Federal agencies) is amended--

(A) in paragraph (1), by striking `any OASDI overpayment and'; and

(B) by striking paragraph (3) and inserting the following new paragraph:

### ` (3) TREATMENT OF OASDI OVERPAYMENTS-

` (A) REQUIREMENTS- Paragraph (1) shall apply with respect to an OASDI overpayment only if the requirements of paragraphs (1) and (2) of section 3720A(f) of title 31, United States Code, are met with respect to such overpayment.

### ` (B) NOTICE; PROTECTION OF OTHER PERSONS FILING JOINT RETURN-

` (i) NOTICE- In the case of a debt consisting of an OASDI overpayment, if the Secretary determines upon receipt of the notice referred to in paragraph (1) that the refund from which the reduction described in paragraph (1)(A) would be made is based upon a joint return, the Secretary shall--

` (I) notify each taxpayer filing such joint return that the reduction is being made from a refund based upon such return, and

` (II) include in such notification a description of the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

### ` (ii) ADJUSTMENTS BASED ON PROTECTIONS GIVEN TO OTHER

**TAXPAYERS ON JOINT RETURN-** If the other person filing a joint return with the person owing the OASDI overpayment takes appropriate action to secure his or her proper share of the refund subject to reduction under this subsection, the Secretary shall pay such share to such other person. The Secretary shall deduct the amount of such payment from amounts which are derived from subsequent reductions in refunds under this subsection and are payable to a trust fund referred to in subparagraph (C).

ˆ (C) **DEPOSIT OF AMOUNT OF REDUCTION INTO APPROPRIATE TRUST FUND-** In lieu of payment, pursuant to paragraph (1)(B), of the amount of any reduction under this subsection to the Secretary of Health and Human Services, the Secretary shall deposit such amount in the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, whichever is certified to the Secretary as appropriate by the Secretary of Health and Human Services.

ˆ (D) **OASDI OVERPAYMENT-** For purposes of this paragraph, the term 'OASDI overpayment' means any overpayment of benefits made to an individual under title II of the Social Security Act.'

(2) **PRESERVATION OF REMEDIES-** Subsection (e) of section 6402 of such Code (relating to review of reductions) is amended in the last sentence by inserting before the period the following: 'or any such action against the Secretary of Health and Human Services which is otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act'.

(d) **EFFECTIVE DATE-** The amendments made by this section--

(1) shall take effect January 1, 1991, and

(2) shall not apply to refunds to which the amendments made by section 2653 of the Deficit Reduction Act of 1984 (98 Stat. 1153) do not apply.

## **SEC. 5130. MISCELLANEOUS TECHNICAL CORRECTIONS.**

(a) **IN GENERAL-**

(1) **AMENDMENT RELATING TO SECTION 7088 OF PUBLIC LAW 100-690-** Section 208 (42 U.S.C. 408) is amended, in the last undesignated paragraph, by striking 'section 405(c)(2) of this title' and inserting 'section 205(c)(2)'.

(2) **AMENDMENTS RELATING TO SECTION 322 OF PUBLIC LAW 98-21-** Paragraphs (1) and (2) of section 322(b) of the Social Security Amendments of 1983 (Public Law 98-21, 97 Stat. 121) are each amended by inserting 'the first place it appears' before 'the following'.



(3) AMENDMENT RELATING TO SECTION 1011B(b)(4) OF PUBLIC LAW 100-647- Section 211(a) (42 U.S.C. 411(a)) is amended by redesignating the second paragraph (14) as paragraph (15).

(4) AMENDMENT RELATING TO SECTION 2003(d) OF PUBLIC LAW 100-647- Paragraph (3) of section 3509(d) of the Internal Revenue Code of 1986 (as amended by section 2003(d) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647; 102 Stat. 3598)) is further amended by striking `subsection (d)(4)' and inserting `subsection (d)(3)'.

(5) AMENDMENT RELATING TO SECTION 10208 OF PUBLIC LAW 101-239- Section 209(a)(7)(B) (42 U.S.C. 409(a)(7)(B)) is amended by striking `subparagraph (B)' in the matter following clause (ii) and inserting `clause (ii)'.

(b) EFFECTIVE DATES- The amendments made by subsection (a) shall be effective as if included in the enactment of the provision to which it relates.

## TITLE VI--ENERGY AND ENVIRONMENTAL PROGRAMS

### Subtitle A--Abandoned Mine Reclamation

#### SEC. 6001. SHORT TITLE.

This subtitle may be cited as the `Abandoned Mine Reclamation Act of 1990'.

#### SEC. 6002. ABANDONED MINE RECLAMATION FUND.

(a) SOURCES OF DEPOSITS- Section 401(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231(b)) is amended as follows:

(1) Amend paragraph (1) to read as follows:

`(1) the reclamation fees levied under section 402;'

(2) Strike `and' at the end of paragraph (3); strike the period at the end of paragraph (4) and insert `; and'; and add the following new paragraph at the end:

`(5) interest credited to the fund under subsection (e).'

(b) USE OF MONEY- Section 401(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231(c)) is amended as follows:

(1) In paragraph (1), strike `402(g)(2)' and insert `402(g)(1)'.

(2) Amend paragraph (2) to read as follows:

`(2) for transfer on an annual basis to the Secretary of Agriculture for use under section 406;'

(3) In paragraph (6), strike `by contract' and insert `conducted in accordance with section 3501 of the Omnibus Budget Reconciliation Act of 1986' after `projects'.

(4) Strike `and' at the end of paragraph (9).

(5) Strike paragraph (10) and insert the following:

` (10) for use under section 411;

` (11) for the purpose of section 507(c), except that not more than \$10,000,000 shall annually be available for such purpose; and

` (12) all other necessary expenses to accomplish the purposes of this title.'

(c) INTEREST- Section 401 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231) is amended by adding the following new subsection at the end:

` (e) INTEREST- The Secretary of the Interior shall notify the Secretary of the Treasury as to what portion of the fund is not, in his judgment, required to meet current withdrawals. The Secretary of the Treasury shall invest such portion of the fund in public debt securities with maturities suitable for the needs of such fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to, and form a part of, the fund.'

## **SEC. 6003. RECLAMATION FEES.**

(a) DUE DATE- Section 402(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(b)) is amended by striking `fifteen years after the date of enactment of this Act unless extended by an Act of Congress' and inserting `September 30, 1995'.

(b) STATEMENT- Section 402(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(c)) is amended by adding the following at the end thereof:  
 ` Such statement shall include an identification of the permittee of the surface coal mining operation, any operator in addition to the permittee, the owner of the coal, the preparation plant, tripple, 64

or loading point for the coal, and the person purchasing the coal from the operator. The report shall also specify the number of the permit required under section 506 and the mine safety and health identification number. Each quarterly report shall contain a notification of any changes in the information required by this subsection since the date of the preceding quarterly report. The information contained in the quarterly reports under this subsection shall be maintained by the Secretary in a computerized database.'

64 So in original. Probably should be `tipple'.

(c) AUDITS- Section 402(d) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(d)) is amended by inserting `(1)' after `(d)' and by adding the following at the end thereof:

(2) The Secretary shall conduct such audits of coal production and the payment of fees under this title as may be necessary to ensure full compliance with the provisions of this title. For purposes of performing such audits the Secretary (or any duly designated officer, employee, or representative of the Secretary) shall, at all reasonable times, upon request, have access to, and may copy, all books, papers, and other documents of any person subject to the provisions of this title. The Secretary may at any time conduct audits of any surface coal mining and reclamation operation, including without limitation, tipples and preparation plants, as may be necessary in the judgment of the Secretary to ensure full and complete payment of the fees under this title.'

(d) NOTICE- Section 402(f) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(f)) is amended by adding the following at the end thereof:

'Whenever the Secretary believes that any person has not paid the full amount of the fee payable under subsection (a) the Secretary shall notify the Federal agency responsible for ensuring compliance with the provisions of section 4121 of the Internal Revenue Code of 1986.'

## **SEC. 6004. ALLOCATION OF FUNDS.**

Section 402(g) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)) is amended to read as follows:

(g) ALLOCATION OF FUNDS- (1) Moneys deposited into the fund shall be allocated by the Secretary to accomplish the purposes of this title as follows:

(A) 50 percent of the reclamation fees collected annually in any State (other than fees collected with respect to Indian lands) shall be allocated annually by the Secretary to the State, subject to such State having each of the following:

(i) An approved abandoned mine reclamation program pursuant to section 405.

(ii) Lands and waters which are eligible pursuant to section 404 (in the case of a State not certified under section 411(a)) or pursuant to section 411(b) (in the case of a State certified under section 411(a)).

(B) 50 percent of the reclamation fees collected annually with respect to Indian lands shall be allocated annually by the Secretary to the Indian tribe having jurisdiction over such lands, subject to such tribe having each of the following:

(i) an approved abandoned mine reclamation program pursuant to section 405.

^ (ii) Lands and waters which are eligible pursuant to section 404 (in the case of an Indian tribe not certified under section 411(a)) or pursuant to section 411(b) (in the case of a tribe certified under section 411(a)).

^ (C) The funds allocated by the Secretary under this paragraph to States and Indian tribes shall only be used for annual reclamation project construction and program administration grants.

^ (D) To the extent not expended within 3 years after the date of any grant award under this paragraph, such grant shall be available for expenditure by the Secretary in any area under paragraph (2), (3), (4), or (5).

^ (2) 20 percent of the amounts available in the fund in any fiscal year which are not allocated under paragraph (1) in that fiscal year (including that interest accruing as provided in section 401(e) and including funds available for reallocation pursuant to paragraph (1)(D)), shall be allocated to the Secretary only for the purpose of making the annual transfer to the Secretary of Agriculture under section 401(c)(2).

^ (3) Amounts available in the fund which are not allocated to States and Indian tribes under paragraph (1) or allocated under paragraphs (2) and (5) are authorized to be expended by the Secretary for any of the following:

^ (A) For the purpose of section 507(c), either directly or through grants to the States, subject to the limitation contained in section 401(c)(11).

^ (B) For the purpose of section 410 (relating to emergencies).

^ (C) For the purpose of meeting the objectives of the fund set forth in section 403(a) for eligible lands and waters pursuant to section 404 in States and on Indian lands where the State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 405.

^ (D) For the administration of this title by the Secretary.

^ (4)(A) Amounts available in the fund which are not allocated under paragraphs (1), (2), and (5) or expended under paragraph (3) in any fiscal year are authorized to be expended by the Secretary under this paragraph for the reclamation or drainage abatement of lands and waters within unreclaimed sites which are mined for coal or which were affected by such mining, wastebanks, coal processing or other coal mining processes and left in an inadequate reclamation status.

^ (B) Funds made available under this paragraph may be used for reclamation or drainage abatement at a site referred to in subparagraph (A) if the Secretary makes either of the following findings:

^ (i) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before the date on which the Secretary approved a State program pursuant to section 503 for

a State in which the site is located, and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site.

^ (ii) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before the date of enactment of this paragraph, and that the surety of such mining operator became insolvent during such period, and as of the date of enactment of this paragraph, funds immediately available from proceedings relating to such insolvency, or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

^ (C) In determining which sites to reclaim pursuant to this paragraph, the Secretary shall follow the priorities stated in paragraphs (1) and (2) of section 403(a). The Secretary shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a local community.

^ (D) Amounts collected from the assessment of civil penalties under section 518 are authorized to be appropriated to carry out this paragraph.

^ (E) Any State may expend grants made available under paragraphs (1) and (5) for reclamation and abatement of any site referred to in subparagraph (A) if the State, with the concurrence of the Secretary, makes either of the findings referred to in clause (i) or (ii) of subparagraph (B) and if the State determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for eligible lands and waters pursuant to section 404 under the priorities stated in paragraphs (1) and (2) of section 403(a).

^ (F) For the purposes of the certification referred to in section 411(a), sites referred to in subparagraph (A) of this paragraph shall be considered as having the same priorities as those stated in section 403(a) for eligible lands and waters pursuant to section 404. All sites referred to in subparagraph (A) of this paragraph within any State shall be reclaimed prior to such State making the certification referred to in section 411(a).

^ (5) The Secretary shall allocate 40 percent of the amount in the fund after making the allocation referred to in paragraph (1) for making additional annual grants to States and Indian tribes which are not certified under section 411(a) to supplement grants received by such States and Indian tribes pursuant to paragraph (1)(C) until the priorities stated in paragraphs (1) and (2) of section 403(a) have been achieved by such State or Indian tribe. The allocation of such funds for the purpose of making such expenditures shall be through a formula based on the amount of coal historically produced in the State or from the Indian lands concerned prior to August 3, 1977. Funds allocated or expended by the Secretary under paragraphs (2), (3), or (4) of this subsection for any State or Indian tribe shall not be deducted against any allocation of funds to the State or Indian tribe under paragraph (1) or under this paragraph.

^ (6) Any State may receive and retain, without regard to the 3-year limitation

referred to in paragraph (1)(D), up to 10 percent of the total of the grants made annually to such State under paragraphs (1) and (5) if such amounts are deposited into either--

` (A) a special trust fund established under State law pursuant to which such amounts (together with all interest earned on such amounts) are expended by the State solely to achieve the priorities stated in section 403(a) after September 30, 1995, or

` (B) an acid mine drainage abatement and treatment fund established under State law as provided in paragraph (7).

` (7)(A) Any State may establish under State law an acid mine drainage abatement and treatment fund from which amounts (together with all interest earned on such amounts) are expended by the State to implement, in consultation with the Soil Conservation Service, acid mine drainage abatement and treatment plans approved by the Secretary. Such plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices.

` (B) The plan shall include, but shall not be limited to, each of the following:

` (i) An identification of the qualified hydrologic unit.

` (ii) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit.

` (iii) An identification of the sources of acid mine drainage within the hydrologic unit.

` (iv) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit.

` (v) The cost of undertaking the proposed abatement and treatment measures.

` (vi) An identification of existing and proposed sources of funding for such measures.

` (vii) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.

` (C) The Secretary may approve any plan under this paragraph only after determining that such plan meets the requirements of this paragraph. In conducting an analysis of the items referred to in clauses (iv), (v), and (vii) the Director of the Office of Surface Mining shall obtain the comments of the Director of the Bureau of Mines. In approving plans under this paragraph, the Secretary shall give a priority to those plans which will be implemented in coordination with measures undertaken by the Secretary of Agriculture under section 406.

` (D) For purposes of this paragraph, the term `qualified hydrologic unit' means a

hydrologic unit--

` (i) in which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner which adversely impacts biological resources; and

` (ii) which contains lands and waters which are--

` (I) eligible pursuant to section 404 and include any of the priorities stated in paragraph (1), (2), or (3) of section 403(a); and

` (II) proposed to be the subject of the expenditures by the State (from amounts available from the forfeiture of bonds required under section 509 or from other State sources) to mitigate acid mine drainage.

` (8) Of the funds available for expenditure under this subsection in any fiscal year, the Secretary shall allocate annually not less than \$2,000,000 for expenditure in each State, and for each Indian tribe, having an approved abandoned mine reclamation program pursuant to section 405 and eligible lands and waters pursuant to section 404 so long as an allocation of funds to such State or such tribe is necessary to achieve the priorities stated in paragraphs (1) and (2) of section 403(a).'

## **SEC. 6005. FUND OBJECTIVES.**

Section 403 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1233) is amended as follows:

(1) Insert `(a) PRIORITIES- ' after `SEC. 403.'

(2) Insert `, except as provided for under section 411,' after `title'.

(3) Add at the end the following new subsections:

` (b) UTILITIES AND OTHER FACILITIES- (1) Any State or Indian tribe not certified under section 411(a) may expend up to 30 percent of the funds allocated to such State or Indian tribe in any year through the grants made available under paragraphs (1) and (5) of section 402(g) for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

` (2) If the adverse effect on water supplies referred to in this subsection occurred both prior to and after August 3, 1977, section 404 shall not be construed to prohibit a State or Indian tribe referred to in paragraph (1) from using funds referred to in such paragraph for the purposes of this subsection if the State or Indian tribe determines that such adverse effects occurred predominantly prior to August 3, 1977.

` (c) INVENTORY- For the purposes of assisting in the planning and evaluation of reclamation projects pursuant to section 405, and assisting in making the

certification referred to in section 411(a), the Secretary shall maintain an inventory of eligible lands and waters pursuant to section 404 which meet the priorities stated in paragraphs (1) and (2) of subsection (a). Under standardized procedures established by the Secretary, States and Indian tribes with approved abandoned mine reclamation programs pursuant to section 405 may offer amendments to update the inventory as it applies to eligible lands and waters under the jurisdiction of such States or tribes. The Secretary shall provide such States and tribes with the financial and technical assistance necessary for the purpose of making inventory amendments. The Secretary shall compile and maintain an inventory for States and Indian lands in the case when a State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 405. On a regular basis, but not less than annually, the projects completed under this title shall be so noted on the inventory under standardized procedures established by the Secretary.'

## **SEC. 6006. ELIGIBLE LANDS AND WATERS.**

Section 404 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1234) is amended by inserting ` , except as provided for under section 411' after ` processes', and by adding the following at the end thereof: ` For other provisions relating to lands and waters eligible for such expenditures, see section 402(g)(4), section 403(b)(1), and section 409.'

## **SEC. 6007. STATE RECLAMATION PROGRAMS.**

Section 405 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1235) is amended by adding the following at the end thereof:

` (1) No State shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out a State abandoned mine reclamation plan approved under this section. This subsection shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.'

## **SEC. 6008. CLARIFICATION.**

Section 406(d) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236(d)) is amended by striking ` experimental'.

## **SEC. 6009. VOIDS AND TUNNELS.**

Section 409 of the the 65

Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1239) is amended--  
65 So in original. Probably should be ` of the Surface'.

(1) in subsection (a) by striking ` chairman of any tribe' and inserting in



lieu thereof ` the governing body of an Indian tribe';

(2) in subsection (b), by striking ` or Indian reservations under the provisions of subsection 402(g)' and inserting ` or Indian tribes under the provisions of paragraphs (1) and (5) of section 402(g)'; and

(3) by amending subsection (c) to read as follows:

` (c)(1) The Secretary may make expenditures and carry out the purposes of this section in such States where requests are made by the Governor or governing body of an Indian tribe for those reclamation projects which meet the priorities stated in section 403(a)(1), except that for the purposes of this section the reference to coal in section 403(a)(1) shall not apply.

` (2) The provisions of section 404 shall apply to this section, with the exception that such mined lands need not have been mined for coal.

` (3) The Secretary shall not make any expenditures for the purposes of this section in those States which have made the certification referred to in section 411(a).'

## **SEC. 6010. CERTIFICATION.**

Title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 et seq.) is amended as follows:

(1) Redesignate sections 411, 412, and 413 as sections 412, 413, and 414, respectively.

(2) Insert after section 410 the following new section:

## **SEC. 411. CERTIFICATION.**

` (a) CERTIFICATION OF COMPLETION OF COAL RECLAMATION- The Governor of a State, or the head of a governing body of an Indian tribe, with an approved abandoned mine reclamation program under section 405 may certify to the Secretary that all of the priorities stated in section 403(a) for eligible lands and waters pursuant to section 404 have been achieved. The Secretary, after notice in the Federal Register and opportunity for public comment, shall concur with such certification if the Secretary determines that such certification is correct.

` (b) ELIGIBLE LANDS, WATERS, AND FACILITIES- If the Secretary has concurred in a State or tribal certification under subsection (a), for purposes of determining the eligibility of lands and waters for annual grants under section 402(g)(1), section 404 shall not apply, and eligible lands, waters, and facilities shall be those--

` (1) which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

` (2) for which there is no continuing reclamation responsibility under State or other Federal laws. In determining the eligibility under this

subsection of Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date referred to in paragraph (1) the applicable date shall be August 28, 1974, and November 26, 1980, respectively.

^ (c) PRIORITIES- Expenditures of moneys for lands, waters, and facilities referred to in subsection (b) shall reflect the following objectives and priorities in the order stated (in lieu of the priorities set forth in section 403):

^ (1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of mineral mining and processing practices.

^ (2) The protection of public health, safety, and general welfare from adverse effects of mineral mining and processing practices.

^ (3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

^ (d) SPECIFIC SITES AND AREAS NOT ELIGIBLE- Sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 and following) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 and following) shall not be eligible for expenditures from the Fund under this section.

^ (e) UTILITIES AND OTHER FACILITIES- Reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices, shall be deemed part of the objectives set forth, and undertaken as they relate to, the priorities stated in subsection (c).

^ (f) Notwithstanding subsection (e), where the Secretary has concurred in the certification referenced in subsection (a) and where the Governor of a State or the head of a governing body of an Indian tribe determines there is a need for activities or construction of specific public facilities related to the coal or minerals industry in States impacted by coal or minerals development and the Secretary concurs in such need, then the State or Indian tribe, as the case may be, may use annual grants made available under section 402(g)(1) to carry out such activities or construction.

^ (g) APPLICATION OF OTHER PROVISIONS- The provisions of sections 407 and 408 shall apply to subsections (a) through (e) of this section, except that for purposes of this section the references to coal in sections 407 and 408 shall not apply.'

## **SEC. 6011. SMALL OPERATOR ASSISTANCE.**

Section 507(c) of the Surface Mining Control and Reclamation Act of 1977 (30

U.S.C. 1257(c)) is amended by striking `100,000' and inserting `300,000'.

## **SEC. 6012. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) TABLE OF CONTENTS- The table of contents in the first section of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) is amended as follows:

(1) Redesignate the items relating to sections 411, 412, and 413 as items 412, 413, and 414, respectively.

(2) Insert after the item relating to section 410 the following:

`Sec. 411. Certification.'

(b) REFERENCE- Section 712 (b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1302(b)) is amended to read as follows:

`(b) For the implementation and funding of section 507(c), see the provisions of section 401(c)(11).'

(c) REPEAL- Section 406(i) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236(i)) is repealed.

(d) TECHNICAL CORRECTIONS- The following provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 and following) are amended as follows:

(1) Section 405(a) is amended by striking out `perparation' and inserting `preparation'.

(2) Section 405(h) is amended by striking out `Upon approved' and inserting `Upon approval'.

(3) Section 406(a) is amended by striking out `including owners' and inserting `(including owners'.

(4) Section 407(a)(4) is amended by striking out the period and inserting a semicolon.

(5) Section 407(a) is amended by striking out `Then' and inserting `then'.

(6) Section 407(e) is amended by striking out `paragraph (1), of this subsection' and inserting `paragraph (1) of subsection (c)'

(7) Section 407(g)(2) is amended by striking out `the use of' and inserting `the use or'.

## **SEC. 6013. SAVINGS CLAUSE.**

Nothing in this subtitle shall be construed to affect the certifications made by the

State of Wyoming, the State of Montana, and the State of Louisiana to the Secretary of the Interior prior to the date of enactment of this subtitle that such State has completed the reclamation of eligible abandoned coal mine lands.

## **SEC. 6014. EFFECTIVE DATE.**

The amendments made by this subtitle shall take effect at the beginning of the first fiscal year immediately following the fiscal year in which this subtitle is enacted.

### **Subtitle B--NRC User Fees and Annual Charges**

## **SEC. 6101. NRC USER FEES AND ANNUAL CHARGES.**

### **(a) ANNUAL ASSESSMENT-**

(1) IN GENERAL- Except as provided in paragraph (3), the Nuclear Regulatory Commission (in this section referred to as the `Commission') shall annually assess and collect such fees and charges as are described in subsections (b) and (c).

(2) FIRST ASSESSMENT- The first assessment of fees under subsection (b) and annual charges under subsection (c) shall be made not later than September 30, 1991.

(3) LAST ASSESSMENT OF ANNUAL CHARGES- The last assessment of annual charges under subsection (c) shall be made not later than September 30, 1995.

(b) FEES FOR SERVICE OR THING OF VALUE- Pursuant to section 9701 of title 31, United States Code, any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value.

### **(c) ANNUAL CHARGES-**

(1) PERSONS SUBJECT TO CHARGE- Any licensee of the Commission may be required to pay, in addition to the fees set forth in subsection (b), an annual charge.

(2) AGGREGATE AMOUNT OF CHARGES- The aggregate amount of the annual charge collected from all licensees shall equal an amount that approximates 100 percent of the budget authority of the Commission in the fiscal year in which such charge is collected, less any amount appropriated to the Commission from the Nuclear Waste Fund and the amount of fees collected under subsection (b) in such fiscal year.

(3) AMOUNT PER LICENSEE- The Commission shall establish, by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges described in paragraph (2) among licensees. To the maximum extent practicable, the charges shall have a reasonable relationship to

the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees.

(d) DEFINITION- As used in this section, the term `Nuclear Waste Fund' means the fund established pursuant to section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)).

(e) CONFORMING AMENDMENT TO COBRA- Paragraph (1)(A) of section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by striking `except that for fiscal year 1990 such maximum amount shall be estimated to be equal to 45 percent of the costs incurred by the Commission for fiscal year 1990' and inserting `except as otherwise provided by law'.

### **Subtitle C--Amendments to Coastal Zone Management Act of 1972**

#### **SEC. 6201. SHORT TITLE.**

This subtitle may be cited as the `Coastal Zone Act Reauthorization Amendments of 1990'.

#### **SEC. 6202. FINDINGS AND PURPOSE OF THIS SUBTITLE.**

(a) FINDINGS- Congress finds and declares the following:

(1) Our oceans, coastal waters, and estuaries constitute a unique resource. The condition of the water quality in and around the coastal areas is significantly declining. Growing human pressures on the coastal ecosystem will continue to degrade this resource until adequate actions and policies are implemented.

(2) Almost one-half of our total population now lives in coastal areas. By 2010, the coastal population will have grown from 80,000,000 in 1960 to 127,000,000 people, an increase of approximately 60 percent, and population density in coastal counties will be among the highest in the Nation.

(3) Marine resources contribute to the Nation's economic stability. Commercial and recreational fishery activities support an industry with an estimated value of \$12,000,000,000 a year.

(4) Wetlands play a vital role in sustaining the coastal economy and environment. Wetlands support and nourish fishery and marine resources. They also protect the Nation's shores from storm and wave damage. Coastal wetlands contribute an estimated \$5,000,000,000 to the production of fish and shellfish in the United States coastal waters. Yet, 50 percent of the Nation's coastal wetlands have been destroyed, and more are likely to decline in the near future.

(5) Nonpoint source pollution is increasingly recognized as a significant factor in coastal water degradation. In urban areas, storm water and

combined sewer overflow are linked to major coastal problems, and in rural areas, run-off from agricultural activities may add to coastal pollution.

(6) Coastal planning and development control measures are essential to protect coastal water quality, which is subject to continued ongoing stresses. Currently, not enough is being done to manage and protect our coastal resources.

(7) Global warming results from the accumulation of man-made gases, released into the atmosphere from such activities as the burning of fossil fuels, deforestation, and the production of chlorofluorocarbons, which trap solar heat in the atmosphere and raise temperatures worldwide. Global warming could result in significant global sea level rise by 2050 resulting from ocean expansion, the melting of snow and ice, and the gradual melting of the polar ice cap. Sea level rise will result in the loss of natural resources such as beaches, dunes, estuaries, and wetlands, and will contribute to the salinization of drinking water supplies. Sea level rise will also result in damage to properties, infrastructures, and public works. There is a growing need to plan for sea level rise.

(8) There is a clear link between coastal water quality and land use activities along the shore. State management programs under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) are among the best tools for protecting coastal resources and must play a larger role, particularly in improving coastal zone water quality.

(9) All coastal States should have coastal zone management programs in place that conform to the Coastal Zone Management Act of 1972, as amended by this Act.

(b) PURPOSE- It is the purpose of Congress in this subtitle to enhance the effectiveness of the Coastal Zone Management Act of 1972 by increasing our understanding of the coastal environment and expanding the ability of State coastal zone management programs to address coastal environmental problems.

#### SEC. 6203. FINDINGS AND POLICY OF COASTAL ZONE MANAGEMENT ACT OF 1972.

(a) FINDINGS- (1) Section 302(d) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451(d)) is amended by inserting `habitat areas of the' immediately before `coastal zone'.

(2) Section 302(f) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451(f)) is amended by inserting `exclusive economic zone,' immediately after `territorial sea,'.

(3) Section 302 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451) is amended by adding at the end the following new subsections:

` (k) Land uses in the coastal zone, and the uses of adjacent lands which drain into the coastal zone, may significantly affect the quality of coastal waters and habitats, and efforts to control coastal water pollution from land use activities

must be improved.

` (l) Because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence.

` (m) Because of their proximity to and reliance upon the ocean and its resources, the coastal states have substantial and significant interests in the protection, management, and development of the resources of the exclusive economic zone that can only be served by the active participation of coastal states in all Federal programs affecting such resources and, wherever appropriate, by the development of state ocean resource plans as part of their federally approved coastal zone management programs.'.

(b) POLICY- (1) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)) is amended by striking `as well as the needs for' and inserting in lieu thereof `as well as the needs for compatible'.

(2) Section 303(2)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)(B)) is amended by striking `of subsidence' and inserting in lieu thereof the following: `likely to be affected by or vulnerable to sea level rise, land subsidence,'.

(3) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)), as amended by paragraph (1), is amended--

(A) by redesignating subparagraphs (C) through (I) as subparagraphs (D) through (J), respectively; and

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

` (C) the management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters,'.

(4) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)), as amended by paragraphs (1) and (3), is further amended--

(A) by striking `and' at the end of subparagraph (I), as so redesignated by paragraph (3);

(B) by striking the semicolon in subparagraph (J), as so redesignated by paragraph (3), and inserting in lieu thereof a comma; and

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

` (K) the study and development, in any case in which the Secretary considers it to be appropriate, of plans for addressing the adverse effects upon the coastal zone of land subsidence and of sea level rise; and'.

(5) Section 303(3) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(3)) is amended by inserting `including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes,' immediately after `hazardous areas,'.

(6) Section 303 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452) is amended by striking `and' at the end of paragraph (3); by striking the period at the end of paragraph (4) and inserting in lieu thereof a semicolon; and by adding at the end the following new paragraphs:

` (5) to encourage coordination and cooperation with and among the appropriate Federal, State, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support State and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

` (6) to respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging States to consider such issues as ocean uses potentially affecting the coastal zone.'.172SEC. 6204. DEFINITIONS.

(a) COASTAL ZONE- The third sentence of section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)) is amended--

(1) by inserting `, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise' immediately before the period at the end; and

(2) by striking `the United States territorial sea.' and inserting in lieu thereof `the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note), or section 1 of the Act of November 20, 1963 (48 U.S.C. 1705, 66

as applicable.'.

66 So in original. Probably should be `1705),'.

(b) ENFORCEABLE POLICY- Section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453) is amended by inserting after paragraph (6) the following'  
67

67 So in original. Probably should be `following:'.

` (6a) 68

The term `enforceable policy' means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or



judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.'

68 So in original. Probably should be `(6)(a)'.

(c) WATER USE- Section 304(18) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(18)) is amended by striking all after `means' and inserting in lieu thereof `a use, activity, or project conducted in or on waters within the coastal zone.'

## **SEC. 6205. MANAGEMENT PROGRAM DEVELOPMENT GRANTS.**

Section 305 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454) is amended to read as follows:

### **` MANAGEMENT PROGRAM DEVELOPMENT GRANTS**

` SEC. 305. (a) In fiscal years 1991, 1992, and 1993, the Secretary may make a grant annually to any coastal state without an approved program if the coastal state demonstrates to the satisfaction of the Secretary that the grant will be used to develop a management program consistent with the requirements set forth in section 306. The amount of any such grant shall not exceed \$200,000 in any fiscal year, and shall require State matching funds according to a 4-to-1 ratio of Federal-to-State contributions. After an initial grant is made to a coastal state pursuant to this subsection, no subsequent grant shall be made to that coastal state pursuant to this subsection unless the Secretary finds that the coastal state is satisfactorily developing its management program. No coastal State is eligible to receive more than two grants pursuant to this subsection.

` (b) Any coastal State which has completed the development of its management program shall submit such program to the Secretary for review and approval pursuant to section 306.'

## **SEC. 6206. ADMINISTRATIVE GRANTS.**

(a) IN GENERAL- Section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) is amended to read as follows:

### **` ADMINISTRATIVE GRANTS**

` SEC. 306. (a) The Secretary may make grants to any coastal State for the purpose of administering that State's management program, if the State matches any such grant according to the following ratios of Federal-to-State contributions for the applicable fiscal year:

` (1) For those States for which programs were approved prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 1 to 1 for any fiscal year.

` (2) For programs approved after enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 4 to 1 for the first fiscal year, 2.3 to 1 for the second fiscal year, 1.5 to 1 for the third fiscal year, and 1 to 1 for each fiscal year thereafter.

` (b) The Secretary may make a grant to a coastal State under subsection (a) only if the Secretary finds that the management program of the coastal State meets all applicable requirements of this title and has been approved in accordance with subsection (d);

` (c) Grants under this section shall be allocated to coastal States with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Secretary shall establish, after consulting with the coastal States, maximum and minimum grants for any fiscal year to promote equity between coastal States and effective coastal management.

` (d) Before approving a management program submitted by a coastal State, the Secretary shall find the following:

` (1) The State has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303.

` (2) The management program includes each of the following required program elements:

` (A) An identification of the boundaries of the coastal zone subject to the management program.

` (B) A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

` (C) An inventory and designation of areas of particular concern within the coastal zone.

` (D) An identification of the means by which the State proposes to exert control over the land uses and water uses referred to in subparagraph (B), including a list of relevant State constitutional provisions, laws, regulations, and judicial decisions.

` (E) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

` (F) A description of the organizational structure proposed to

implement such management program, including the responsibilities and interrelationships of local, areawide, State, regional, and interstate agencies in the management process.

` (G) A definition of the term `beach' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

` (H) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities.

` (I) A planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion.

` (3) The State has--

` (A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone--

` (i) existing on January 1 of the year in which the State's management program is submitted to the Secretary; and

` (ii) which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency; and

` (B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be effective for purposes of this subparagraph unless it requires that--

` (i) the management agency, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, shall send a notice of the management program decision to any local government whose zoning authority is affected;

` (ii) within the 30-day period commencing on the date of receipt of that notice, the local government may submit to the management agency written comments on the management program decision, and any recommendation for alternatives; and

` (iii) the management agency, if any comments are submitted

to it within the 30-day period by any local government--

` (I) shall consider the comments;

` (II) may, in its discretion, hold a public hearing on the comments; and

` (III) may not take any action within the 30-day period to implement the management program decision.

` (4) The State has held public hearings in the development of the management program.

` (5) The management program and any changes thereto have been reviewed and approved by the Governor of the State.

` (6) The Governor of the State has designated a single State agency to receive and administer grants for implementing the management program.

` (7) The State is organized to implement the management program.

` (8) The management program provides for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the Secretary shall find that the State has given consideration to any applicable national or interstate energy plan or program.

` (9) The management program includes procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical, or esthetic values.

` (10) The State, acting through its chosen agency or agencies (including local governments, areawide agencies, regional agencies, or interstate agencies) has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power--

` (A) to administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and

` (B) to acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

` (11) The management program provides for any one or a combination of the following general techniques for control of land uses and water uses within the coastal zone:

- ˘ (A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement.
- ˘ (B) Direct State land and water use planning and regulation.
- ˘ (C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any State or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.
- ˘ (12) The management program contains a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit.
- ˘ (13) The management program provides for--
  - ˘ (A) the inventory and designation of areas that contain one or more coastal resources of national significance; and
  - ˘ (B) specific and enforceable standards to protect such resources.
- ˘ (14) The management program provides for public participation in permitting processes, consistency determinations, and other similar decisions.
- ˘ (15) The management program provides a mechanism to ensure that all State agencies will adhere to the program.
- ˘ (16) The management program contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the State required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.
- ˘ (e) A coastal State may amend or modify a management program which it has submitted and which has been approved by the Secretary under this section, subject to the following conditions:
  - ˘ (1) The State shall promptly notify the Secretary of any proposed amendment, modification, or other program change and submit it for the Secretary's approval. The Secretary may suspend all or part of any grant made under this section pending State submission of the proposed amendments, modification, or other program change.
  - ˘ (2) Within 30 days after the date the Secretary receives any proposed amendment, the Secretary shall notify the State whether the Secretary approves or disapproves the amendment, or whether the Secretary finds it is necessary to extend the review of the proposed amendment for a period not to exceed 120 days after the date the Secretary received the proposed amendment. The Secretary may extend this period only as

necessary to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). If the Secretary does not notify the coastal State that the Secretary approves or disapproves the amendment within that period, then the amendment shall be conclusively presumed as approved.

` (3)(A) Except as provided in subparagraph (B), a coastal State may not implement any amendment, modification, or other change as part of its approved management program unless the amendment, modification, or other change is approved by the Secretary under this subsection.

` (B) The Secretary, after determining on a preliminary basis, that an amendment, modification, or other change which has been submitted for approval under this subsection is likely to meet the program approval standards in this section, may permit the State to expend funds awarded under this section to begin implementing the proposed amendment, modification, or change. This preliminary approval shall not extend for more than 6 months and may not be renewed. A proposed amendment, modification, or change which has been given preliminary approval and is not finally approved under this paragraph shall not be considered an enforceable policy for purposes of section 307.'

(b) **ADDITIONAL PROGRAM REQUIREMENTS-** Each State which submits a management program for approval under section 306 of the Coastal Zone Management Act of 1972, as amended by this subtitle (including a State which submitted a program before the date of enactment of this Act), shall demonstrate to the Secretary--

(1) that the program complies with section 306(d)(14) and (15) of that Act, by not later than 3 years after the date of the enactment of this Act; and

(2) that the program complies with section 306(d)(16) of that Act, by not later than 30 months after the date of publication of final guidance under section 6217(g) of this Act.

## **SEC. 6207. RESOURCE MANAGEMENT IMPROVEMENT GRANTS.**

Section 306A(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455a(b)(1)) is amended by adding before the period at the end the following: ` , or for the purpose of restoring and enhancing shellfish production by the purchase and distribution of clutch material on publicly owned reef tracts'.

## **SEC. 6208. COASTAL ZONE MANAGEMENT CONSISTENCY.**

(a) **FEDERAL AGENCY ACTIVITIES-** Section 307(c)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(1)) is amended to read as follows:

` (c)(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with

the enforceable policies of approved State management programs. A Federal agency activity shall be subject to this paragraph unless it is subject to paragraph (2) or (3).

(B) After any final judgment, decree, or order of any Federal court that is appealable under section 1291 or 1292 of title 28, United States Code, or under any other applicable provision of Federal law, that a specific Federal agency activity is not in compliance with subparagraph (A), and certification by the Secretary that mediation under subsection (h) is not likely to result in such compliance, the President may, upon written request from the Secretary, exempt from compliance those elements of the Federal agency activity that are found by the Federal court to be inconsistent with an approved State program, if the President determines that the activity is in the paramount interest of the United States. No such exemption shall be granted on the basis of a lack of appropriations unless the President has specifically requested such appropriations as part of the budgetary process, and the Congress has failed to make available the requested appropriations.

(C) Each Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 306(d)(6) at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.'

(b) Technical and Conforming Changes-

(1) Section 307(c)(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(2)) is amended by inserting 'the enforceable policies of' before 'approved State management programs'.

(2) Section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(A)) is amended in the first sentence--

(A) by inserting ', in or outside of the coastal zone,' after 'to conduct an activity';

(B) by striking 'land or water uses in' and inserting 'any land or water use or natural resource of'; and

(C) by inserting 'the enforceable policies of' after the words 'the proposed activity complies with'.

(3) Section 307(c)(3)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(B)) is amended in the first sentence--

(A) by striking 'land use or water use in' and inserting 'land or water use or natural resource of'; and

(B) by inserting 'the enforceable policies of' after 'such plan complies'.

(4) Section 307(d) of the Coastal Zone Management Act of 1972 (16

U.S.C. 1456(d)) is amended--

(A) by striking 'affecting' and inserting ', in or outside of the coastal zone, affecting any land or water use of natural resource of'; and

(B) by inserting 'the enforceable policies of' after 'that are inconsistent with'.

(c) FEDERAL FEE- Section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456) is amended by adding at the end the following:

(i) With respect to appeals under subsections (c)(3) and (d) which are submitted after the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990, the Secretary shall collect an application fee of not less than \$200 for minor appeals and not less than \$500 for major appeals, unless the Secretary, upon consideration of an applicant's request for a fee waiver, determines that the applicant is unable to pay the fee. The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c).'

## **SEC. 6209. COASTAL ZONE MANAGEMENT FUND.**

Section 308 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456) is amended to read as follows:

### **COASTAL ZONE MANAGEMENT FUND**

SEC. 308. (a)(1) The obligations of any coastal State or unit of general purpose local government to repay loans made pursuant to this section as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990, and any repayment schedule established pursuant to this Act as in effect before that date of enactment, are not altered by any provision of this title. Such loans shall be repaid under authority of this subsection and the Secretary may issue regulations governing such repayment. If the Secretary finds that any coastal State or unit of local government is unable to meet its obligations pursuant to this subsection because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable such State or unit to meet such obligations in accordance with the appropriate repayment schedule, the Secretary shall, after review of the information submitted by such State or unit, take any of the following actions:

(A) Modify the terms and conditions of such loan.

(B) Refinance the loan.

(C) Recommend to the Congress that legislation be enacted to forgive the loan.

(2) Loan repayments made pursuant to this subsection shall be retained by the



Secretary as offsetting collections, and shall be deposited into the Coastal Zone Management Fund established under subsection (b).

(b)(1) The Secretary shall establish and maintain a fund, to be known as the Coastal Zone Management Fund' (hereinafter in this section referred to as the Fund'), which shall consist of amounts retained and deposited into the Fund under subsection (a).

(2) Subject to amounts provided in appropriation Acts, amounts in the Fund shall be available to the Secretary for use for the following:

(A) Expenses incident to the administration of this title, in an amount not to exceed--

- (i) \$5,000,000 for fiscal year 1991;
- (ii) \$5,225,000 for fiscal year 1992;
- (iii) \$5,460,125 for fiscal year 1993;
- (iv) \$5,705,830 for fiscal year 1994; and
- (v) \$5,962,593 for fiscal year 1995.

(B) After use under subparagraph (A)--

- (i) projects to address management issues which are regional in scope, including interstate projects;
- (ii) demonstration projects which have high potential for improving coastal zone management, especially at the local level;
- (iii) emergency grants to State coastal zone management agencies to address unforeseen or disaster-related circumstances;
- (iv) appropriate awards recognizing excellence in coastal zone management as provided in section 314;
- (v) program development grants as authorized by section 305; and
- (vi) to provide financial support to coastal States for use for investigating and applying the public trust doctrine to implement State management programs approved under section 306.

(3) On December 1 of each year, the Secretary shall transmit to the Congress an annual report on the Fund, including the balance of the Fund and an itemization of all deposits into and disbursements from the Fund in the preceding fiscal year.'

## **SEC. 6210. COASTAL ZONE ENHANCEMENT GRANTS.**

Section 309 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452b) is amended to read as follows:

## COASTAL ZONE ENHANCEMENT GRANTS

SEC. 309. (a) For purposes of this section, the term 'coastal zone enhancement objective' means any of the following objectives:

- (1) Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.
- (2) Preventing or significantly reducing threats to life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lakes level rise.
- (3) Attaining increased opportunities for public access, taking into account current and future public access needs, to coastal areas of recreational, historical, aesthetic, ecological, or cultural value.
- (4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.
- (5) Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.
- (6) Preparing and implementing special area management plans for important coastal areas.
- (7) Planning for the use of ocean resources.
- (8) Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.

(b) Subject to the limitations and goals established in this section, the Secretary may make grants to coastal States to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

(c) The Secretary shall evaluate and rank State proposals for funding under this section, and make funding awards based on those proposals, taking into account the criteria established by the Secretary under subsection (d). The Secretary shall ensure that funding decisions under this section take into consideration the fiscal and technical needs of proposing States and the overall merit of each proposal in terms of benefits to the public.

(d) Within 12 months following the date of enactment of this section, and

consistent with the notice and participation requirements established in section 317, the Secretary shall promulgate regulations concerning coastal zone enhancement grants that establish--

` (1) specific and detailed criteria that must be addressed by a coastal state (including the State's priority needs for improvement as identified by the Secretary after careful consultation with the State) as part of the State's development and implementation of coastal zone enhancement objectives;

` (2) administrative or procedural rules or requirements as necessary to facilitate the development and implementation of such objectives by coastal states; and

` (3) other funding award criteria as are necessary or appropriate to ensure that evaluations of proposals, and decisions to award funding, under this section are based on objective standards applied fairly and equitably to those proposals.

` (e) A State shall not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

` (f) Beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 306 and 306A of this title shall be retained by the Secretary for use in implementing this section, up to a maximum of \$10,000,000 annually.

` (g) If the Secretary finds that the State is not undertaking the actions committed to under the terms of the grant, the Secretary shall suspend the State's eligibility for further funding under this section for at least one year.'

## **SEC. 6211. TECHNICAL ASSISTANCE.**

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) is amended by inserting immediately after section 309 the following new section:

` *technical assistance*

` SEC. 310. (a) The Secretary shall conduct a program of technical assistance and management-oriented research necessary to support the development and implementation of State coastal management program amendments under section 309, and appropriate to the furtherance of international cooperative efforts and technical assistance in coastal zone management. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and technical assistance which does not interfere with the performance of the primary duties of such department, agency, or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this

subsection.

` (b)(1) The Secretary shall provide for the coordination of technical assistance, studies, and research activities under this section with any other such activities that are conducted by or subject to the authority of the Secretary.

` (2) The Secretary shall make the results of research and studies conducted pursuant to this section available to coastal States in the form of technical assistance publications, workshops, or other means appropriate.

` (3) The Secretary shall consult with coastal States on a regular basis regarding the development and implementation of the program established by this section.'

## **SEC. 6212. COASTAL ZONE MANAGEMENT REVIEW.**

(a) PUBLIC PARTICIPATION- Subsection (b) of section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458) is amended to read as follows:

` (b) In evaluating a coastal State's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days' notice of such public meetings by placing a notice in the Federal Register, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process. The final report of the evaluation shall be completed within 120 days after the last public meeting held in the State being evaluated. Copies of the evaluation shall be immediately provided to all persons and organizations participating in the evaluation process.'

(b) INTERIM SANCTIONS- Subsection (c) of section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458(c)) is amended to read as follows:

` (c)(1) The Secretary may suspend payment of any portion of financial assistance extended to any coastal State under this title, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal state is failing to adhere to (A) the management program or a State plan developed to manage a national estuarine reserve established under section 315 of this title, or a portion of the program or plan approved by the Secretary, or (B) the terms of any grant or cooperative agreement funded under this title.

` (2) Financial assistance may not be suspended under paragraph (1) unless the Secretary provides the Governor of the coastal state with--

` (A) written specifications and a schedule for the actions that should be taken by the State in order that such suspension of financial assistance may be withdrawn; and

^ (B) written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal state to take the actions referred to in subparagraph (A).

^ (3) The suspension of financial assistance may not last for less than 6 months or more than 36 months after the date of suspension.'

(c) FINAL SANCTIONS- Section 312(d) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458(d)) is amended to read as follows:

^ (d) The Secretary shall withdraw approval of the management program of any coastal State and shall withdraw financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal State has failed to take the actions referred to in subsection (c)(2)(A).'

(d) REPEAL- Subsection (f) of section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458) is repealed.

## **SEC. 6213. COASTAL ZONE MANAGEMENT AWARDS.**

The Coastal Zone Management Act of 1972 is amended by inserting after section 313 the following:

### **^ WALTER B. JONES EXCELLENCE IN COASTAL ZONE MANAGEMENT AWARDS**

^ SEC. 313. (a) The Secretary shall, using sums in the Coastal Zone Management Fund established under section 308, implement a program to promote excellence in coastal zone management by identifying and acknowledging outstanding accomplishments in the field.

^ (b) The Secretary shall elect annually--

^ (1) one individual, other than an employee or officer of the Federal Government, whose contribution to the field of coastal zone management has been the most significant;

^ (2) 5 local governments which have made the most progress in developing and implementing the coastal zone management principles embodied in this title; and

^ (3) up to 10 graduate students whose academic study promises to contribute materially to development of new or improved approaches to coastal zone management.

^ (c) In making selections under subsection (b)(2) the Secretary shall solicit nominations from the coastal states, and shall consult with experts in local government planning and land use.

` (d) In making selections under subsection (b)(3) the Secretary shall solicit nominations from coastal states and the National Sea Grant College Program.

` (e) Using sums in the Coastal Zone Management Fund established under section 308, the Secretary shall establish and execute appropriate awards, to be known as the `Walter B. Jones Awards', including--

- ` (1) cash awards in an amount not to exceed \$5,000 each;
- ` (2) research grants; and
- ` (3) public ceremonies to acknowledge such awards.'

## **SEC. 6214. NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM.**

(a) AMENDMENT TO SECTION HEADING- The heading for section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461) is amended by striking `RESERVE RESEARCH' and inserting in lieu thereof `RESEARCH RESERVE'.

(b) GRANTS FOR ACQUISTION OF LANDS AND WATERS- Section 315(e)(3)(A) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461(e)(3)(A)) is amended by striking `per centum' and inserting in lieu thereof `percent', and by striking `\$4,000,000' and inserting in lieu thereof `\$5,000,000'.

(c) GRANTS FOR OPERATIONS AND EDUCATION- Section 315(e)(3)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461(e)(3)(B)) is amended--

- (1) by striking `50 per centum' and inserting in lieu thereof `70 percent'; and
- (2) by inserting immediately before the period at the end the following:  
` ; except that the amount of the financial assistance provided under paragraph (1)(A)(iii) may be up to 100 percent of any costs for activities that benefit the entire System'.

(d) CLERICAL AMENDMENT- Section 315(e)(3) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461(e)) is amended by striking `of subsection (e)' each place it appears.

## **SEC. 6215. AUTHORIZATION OF APPROPRIATIONS.**

Section 318(a) of the Coastal Zone Management Act of 1972 (16 U.S.C 1464) is amended by striking all after `Secretary--' and inserting in lieu thereof the following:

- ` (1) such sums, not to exceed \$750,000 for each of the fiscal years occurring during the period beginning October 1, 1990, and ending September 30, 1993, as may be necessary for grants under section 305, to remain available until expended;

` (2) such sums, not to exceed \$42,000,000 for the fiscal year ending September 30, 1991, \$48,890,000 for the fiscal year ending September 30, 1992, \$58,870,000 for the fiscal year ending September 30, 1993, \$67,930,000 for the fiscal year ending September 30, 1994, and \$90,090,000 for the fiscal year ending September 30, 1995, as may be necessary for grants under sections 306, 306A, and 309, to remain available until expended;

` (3) such sums, not to exceed \$6,000,000 for the fiscal year ending September 30, 1991, \$6,270,000 for the fiscal year ending September 30, 1992, \$6,552,000 for the fiscal year ending September 30, 1993, \$6,847,000 for the fiscal year ending September 30, 1994, and \$7,155,000 for the fiscal year ending September 30, 1995, as may be necessary for grants under section 315, to remain available until expended; and

` (4) such sums, not to exceed \$10,000,000 for each of the fiscal years occurring during the period beginning October 1, 1990, and ending September 30, 1995, as may be necessary for activities under section 310 and for administrative expenses incident to the administration of this title; except that expenditures for such administrative expenses shall not exceed \$5,000,000 in any such fiscal year.'

## **SEC. 6216. CONFORMING AMENDMENTS.**

(a) Section 306a(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455a(b)(1)) is amended by striking ` 306(c)(9)' and inserting in lieu thereof ` 306(d)(9)'.

(b) Section 312(a) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458(a)) is amended by striking ` through (I)' and inserting in lieu thereof ` through (K)'.

## **SEC. 6217. PROTECTING COASTAL WATERS.**

(a) IN GENERAL-

(1) PROGRAM DEVELOPMENT- Not later than 30 months after the date of the publication of final guidance under subsection (g), each State for which a management program has been approved pursuant to section 306 of the Coastal Zone Management Act of 1972 shall prepare and submit to the Secretary and the Administrator a Coastal Nonpoint Pollution Control Program for approval pursuant to this section. The purpose of the program shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other State and local authorities.

(2) PROGRAM COORDINATION- A State program under this section shall be coordinated closely with State and local water quality plans and programs developed pursuant to sections 208, 303, 319, and 320 of the Federal Water Pollution Control Act (33 U.S.C. 1288, 1313, 1329, and

1330) and with State plans developed pursuant to the Coastal Zone Management Act of 1972, as amended by this Act. The program shall serve as an update and expansion of the State nonpoint source management program developed under section 319 of the Federal Water Pollution Control Act, as the program under that section relates to land and water uses affecting coastal waters.

(b) PROGRAM CONTENTS- Each State program under this section shall provide for the implementation, at a minimum, of management measures in conformity with the guidance published under subsection (g), to protect coastal waters generally, and shall also contain the following:

(1) IDENTIFYING LAND USES- The identification of, and a continuing process for identifying, land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of--

(A) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, as determined by the State pursuant to its water quality planning processes; or

(B) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources.

(2) IDENTIFYING CRITICAL COASTAL AREAS- The identification of, and a continuing process for identifying, critical coastal areas adjacent to coastal waters referred to in paragraph (1)(A) and (B), within which any new land uses or substantial expansion of existing land uses shall be subject to management measures in addition to those provided for in subsection (g).

(3) MANAGEMENT MEASURES- The implementation and continuing revision from time to time of additional management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that are necessary to achieve and maintain applicable water quality standards under section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313) and protect designated uses.

(4) TECHNICAL ASSISTANCE- The provision of technical and other assistance to local governments and the public for implementing the measures referred to in paragraph (3), which may include assistance in developing ordinances and regulations, technical guidance, and modeling to predict and assess the effectiveness of such measures, training, financial incentives, demonstration projects, and other innovations to protect coastal water quality and designated uses.

(5) PUBLIC PARTICIPATION- Opportunities for public participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means.



(6) ADMINISTRATIVE COORDINATION- The establishment of mechanisms to improve coordination among State agencies and between State and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety, through the use of joint project review, memoranda of agreement, or other mechanisms.

(7) STATE COASTAL ZONE BOUNDARY MODIFICATION- A proposal to modify the boundaries of the State coastal zone as the coastal management agency of the State determines is necessary to implement the recommendations made pursuant to subsection (e). If the coastal management agency does not have the authority to modify such boundaries, the program shall include recommendations for such modifications to the appropriate State authority.

(c) PROGRAM SUBMISSION, APPROVAL, AND IMPLEMENTATION-

(1) REVIEW AND APPROVAL- Within 6 months after the date of submission by a State of a program pursuant to this section, the Secretary and the Administrator shall jointly review the program. The program shall be approved if--

(A) the Secretary determines that the portions of the program under the authority of the Secretary meet the requirements of this section and the Administrator concurs with that determination; and

(B) the Administrator determines that the portions of the program under the authority of the Administrator meet the requirements of this section and the Secretary concurs with that determination.

(2) IMPLEMENTATION OF APPROVED PROGRAM- If the program of a State is approved in accordance with paragraph (1), the State shall implement the program, including the management measures included in the program pursuant to subsection (b), through--

(A) changes to the State plan for control of nonpoint source pollution approved under section 319 of the Federal Water Pollution Control Act; and

(B) changes to the State coastal zone management program developed under section 306 of the Coastal Zone Management Act of 1972, as amended by this Act.

(3) WITHHOLDING COASTAL MANAGEMENT ASSISTANCE- If the Secretary finds that a coastal State has failed to submit an approvable program as required by this section, the Secretary shall withhold for each fiscal year until such a program is submitted a portion of grants otherwise available to the State for the fiscal year under section 306 of the Coastal Zone Management Act of 1972, as follows:

(A) 10 percent for fiscal year 1996.

(B) 15 percent for fiscal year 1997.

(C) 20 percent for fiscal year 1998.

(D) 30 percent for fiscal year 1999 and each fiscal year thereafter.

The Secretary shall make amounts withheld under this paragraph available to coastal States having programs approved under this section.

(4) WITHHOLDING WATER POLLUTION CONTROL ASSISTANCE- If the Administrator finds that a coastal State has failed to submit an approvable program as required by this section, the Administrator shall withhold from grants available to the State under section 319 of the Federal Water Pollution Control Act, for each fiscal year until such a program is submitted, an amount equal to a percentage of the grants awarded to the State for the preceding fiscal year under that section, as follows:

(A) For fiscal year 1996, 10 percent of the amount awarded for fiscal year 1995.

(B) For fiscal year 1997, 15 percent of the amount awarded for fiscal year 1996.

(C) For fiscal year 1998, 20 percent of the amount awarded for fiscal year 1997.

(D) For fiscal year 1999 and each fiscal year thereafter, 30 percent of the amount awarded for fiscal year 1998 or other preceding fiscal year.

The Administrator shall make amounts withheld under this paragraph available to States having programs approved pursuant to this subsection.

(d) TECHNICAL ASSISTANCE- The Secretary and the Administrator shall provide technical assistance to coastal States and local governments in developing and implementing programs under this section. Such assistance shall include--

(1) methods for assessing water quality impacts associated with coastal land uses;

(2) methods for assessing the cumulative water quality effects of coastal development;

(3) maintaining and from time to time revising an inventory of model ordinances, and providing other assistance to coastal States and local governments in identifying, developing, and implementing pollution control measures; and

(4) methods to predict and assess the effects of coastal land use management measures on coastal water quality and designated uses.

(e) INLAND COASTAL ZONE BOUNDARIES-

(1) REVIEW- The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall, within 18 months after the effective date of this title, review the inland coastal zone boundary of each coastal State program which has been approved or is proposed for approval under section 306 of the Coastal Zone Management Act of 1972, and evaluate whether the State's coastal zone boundary extends inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the State.

(2) RECOMMENDATION- If the Secretary, in consultation with the Administrator, finds that modifications to the inland boundaries of a State's coastal zone are necessary for that State to more effectively manage land and water uses to protect coastal waters, the Secretary, in consultation with the Administrator, shall recommend appropriate modifications in writing to the affected State.

(f) FINANCIAL ASSISTANCE-

(1) IN GENERAL- Upon request of a State having a program approved under section 306 of the Coastal Zone Management Act of 1972, the Secretary, in consultation with the Administrator, may provide grants to the State for use for developing a State program under this section.

(2) AMOUNT- The total amount of grants to a State under this subsection shall not exceed 50 percent of the total cost to the State of developing a program under this section.

(3) STATE SHARE- The State share of the cost of an activity carried out with a grant under this subsection shall be paid from amounts from non-Federal sources.

(4) ALLOCATION- Amounts available for grants under this subsection shall be allocated among States in accordance with regulations issued pursuant to section 306(c) of the Coastal Zone Management Act of 1972, except that the Secretary may use not more than 25 percent of amounts available for such grants to assist States which the Secretary, in consultation with the Administrator, determines are making exemplary progress in preparing a State program under this section or have extreme needs with respect to coastal water quality.

(g) GUIDANCE FOR COASTAL NONPOINT SOURCE POLLUTION CONTROL-

(1) IN GENERAL- The Administrator, in consultation with the Secretary and the Director of the United States Fish and Wildlife Service and other Federal agencies, shall publish (and periodically revise thereafter) guidance for specifying management measures for sources of nonpoint pollution in coastal waters.

(2) CONTENT- Guidance under this subsection shall include, at a

minimum--

(A) a description of a range of methods, measures, or practices, including structural and nonstructural controls and operation and maintenance procedures, that constitute each measure;

(B) a description of the categories and subcategories of activities and locations for which each measure may be suitable;

(C) an identification of the individual pollutants or categories or classes of pollutants that may be controlled by the measures and the water quality effects of the measures;

(D) quantitative estimates of the pollution reduction effects and costs of the measures;

(E) a description of the factors which should be taken into account in adapting the measures to specific sites or locations; and

(F) any necessary monitoring techniques to accompany the measures to assess over time the success of the measures in reducing pollution loads and improving water quality.

(3) PUBLICATION- The Administrator, in consultation with the Secretary, shall publish--

(A) proposed guidance pursuant to this subsection not later than 6 months after the date of the enactment of this Act; and

(B) final guidance pursuant to this subsection not later than 18 months after such effective date.

(4) NOTICE AND COMMENT- The Administrator shall provide to coastal States and other interested persons an opportunity to provide written comments on proposed guidance under this subsection.

(5) MANAGEMENT MEASURES- For purposes of this subsection, the term 'management measures' means economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

#### (h) AUTHORIZATIONS OF APPROPRIATIONS-

(1) ADMINISTRATOR- There is authorized to be appropriated to the Administrator for use for carrying out this section not more than \$1,000,000 for each of fiscal years 1992, 1993, and 1994.

(2) SECRETARY- (A) Of amounts appropriated to the Secretary for a fiscal year under section 318(a)(4) of the Coastal Zone Management Act of

1972, as amended by this Act, not more than \$1,000,000 shall be available for use by the Secretary for carrying out this section for that fiscal year, other than for providing in the form of grants under subsection (f).

(B) There is authorized to be appropriated to the Secretary for use for providing in the form of grants under subsection (f) not more than--

- (i) \$6,000,000 for fiscal year 1992;
- (ii) \$12,000,000 for fiscal year 1993;
- (iii) \$12,000,000 for fiscal year 1994; and
- (iv) \$12,000,000 for fiscal year 1995.

(i) DEFINITIONS- In this section--

(1) the term `Administrator' means the Administrator of the Environmental Protection Agency;

(2) the term `coastal State' has the meaning given the term `coastal state' under section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453);

(3) each of the terms `coastal waters', and `coastal zone' has the meaning that term has in the Coastal Management Act of 1972;

(4) the term `coastal management agency' means a State agency designated pursuant to section 306(d)(6) of the Coastal Zone Management Act of 1972;

(5) the term `land use' includes a use of waters adjacent to coastal waters; and

(6) the term `Secretary' means the Secretary of Commerce.

### **Subtitle D--Extension of Superfund for 3 Years**

SEC. 6301. 3-YEAR EXTENSION OF COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended--

(1) by inserting after `Reauthorization Act of 1986,' in subsection (a) the following: `and not more than \$5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994,';

(2) by striking `5-fiscal-year period' in subsection (c)(11) and inserting `8-fiscal year period';

(3) by striking `and 1991' in subsection (c)(12) and inserting `1991, 1992, 1993, and 1994';

(4) by striking `1990 and 1991' in subsection (m) and inserting `1990, 1991, 1992, 1993, and 1994';

(5) by striking `and 1991' in subsection (n)(1) and inserting `1991, 1992, 1993, and 1994';

(6) by striking subsection (n)(2)(E) and inserting the following new subparagraph:

`(E) For each of the fiscal years 1991, 1992, 1993, and 1994, \$35,000,000.';

(7) by striking `and 1991' in subsection (n)(3) and inserting `1991, 1992, 1993, and 1994'; and

(8) by inserting after subparagraph (E) of subsection (p)(1) the following new subparagraphs:

`(F) For fiscal year 1992, \$212,500,000.

`(G) For fiscal year 1993, \$212,500,000.

`(H) For fiscal year 1994, \$212,500,000.'.

### **Subtitle E--Shale Oil Contract Modification**

## **SEC. 6401. SHALE OIL CONTRACT MODIFICATION.**

Section 7404(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by adding at the end the following sentence: `The Secretary of the Treasury shall have the authority to negotiate and execute agreements modifying an existing contract relating to the production of synthetic crude oil from oil shale, entered into under the Defense Production Act Amendments of 1980 and subsequently transferred to the Secretary of the Treasury for administration, provided the terms and conditions of any modification(s) are revenue neutral or result in a fiscal savings to the United States Government, and in no event would increase the financial exposure of the United States Government under the contract: *Provided, however,* That the Secretary of the Treasury shall have no authority to increase the total amount of funds originally authorized for the existing contract: *And provided further,* That the Secretary shall have no authority to negotiate and execute any agreement modifying the existing contract if such modification(s) would increase or accelerate the financial support per unit for the synthetic fuel to be produced under the contract.'.

### **Subtitle F--Environmental Protection Agency Fees**

## **SEC. 6501. ENVIRONMENTAL PROTECTION AGENCY FEES.**

(a) ASSESSMENT AND COLLECTION- The Administrator of the Environmental Protection Agency shall, by regulation, assess and collect fees and charges for services and activities carried out pursuant to laws administered by the Environmental Protection Agency.

(b) AMOUNT OF FEES AND CHARGES- Fees and charges assessed pursuant to this section shall be in such amounts as may be necessary to ensure that the aggregate amount of fees and charges collected pursuant to this section, in excess of the amount of fees and charges collected under current law--

(1) in fiscal year 1991, is not less than \$28,000,000; and

(2) in each of fiscal years 1992, 1993, 1994, and 1995, is not less than \$38,000,000.

(c) LIMITATION ON FEES AND CHARGES- (1) The maximum aggregate amount of fees and charges in excess of the amounts being collected under current law which may be assessed and collected pursuant to this section in a fiscal year--

(A) for services and activities carried out pursuant to 69

the Federal Water Pollution Control Act is \$10,000,000; and

69 So in original. Probably should be `to'.

(B) for services and activities in programs within the jurisdiction of the House Committee on Energy and Commerce and administered by the Environmental Protection Agency through the Administrator, shall be limited to such sums collected as of the date of enactment of this Act pursuant to sections 26(b) and 305(e)(2) of the Toxic Substances Control Act, and such sums specifically authorized by the Clean Air Act Amendments of 1990.

(2) Any remaining amounts required to be collected under this section shall be collected from services and programs administered by the Environmental Protection Agency other than those specified in subparagraphs (A) and (B) of paragraph (1).

(d) RULE OF CONSTRUCTION- Nothing in this section increases or diminishes the authority of the Administrator to promulgate regulations pursuant to the Independent Office Appropriations Act (31 U.S.C. 9701).

(e) USES OF FEES- Fees and charges collected pursuant to this section shall be deposited into a special account for environmental services in the Treasury of the United States. Subject to appropriation Acts, such funds shall be available to the Environmental Protection Agency to carry out the activities for which such fees and charges are collected. Such funds shall remain available until expended.

## **SEC. 6601. SHORT TITLE.**

This subtitle may be cited as the `Pollution Prevention Act of 1990'.

**SEC. 6602. FINDINGS AND POLICY.**

(a) FINDINGS- The Congress finds that:

(1) The United States of America annually produces millions of tons of pollution and spends tens of billions of dollars per year controlling this pollution.

(2) There are significant opportunities for industry to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw materials use. Such changes offer industry substantial savings in reduced raw material, pollution control, and liability costs as well as help protect the environment and reduce risks to worker health and safety.

(3) The opportunities for source reduction are often not realized because existing regulations, and the industrial resources they require for compliance, focus upon treatment and disposal, rather than source reduction; existing regulations do not emphasize multi-media management of pollution; and businesses need information and technical assistance to overcome institutional barriers to the adoption of source reduction practices.

(4) Source reduction is fundamentally different and more desirable than waste management and pollution control. The Environmental Protection Agency needs to address the historical lack of attention to source reduction.

(5) As a first step in preventing pollution through source reduction, the Environmental Protection Agency must establish a source reduction program which collects and disseminates information, provides financial assistance to States, and implements the other activities provided for in this subtitle.

(b) POLICY- The Congress hereby declares it to be the national policy of the United States that pollution should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

**SEC. 6603. DEFINITIONS.**

For purposes of this subtitle--

(1) The term `Administrator' means the Administrator of the Environmental Protection Agency.

(2) The term `Agency' means the Environmental Protection Agency.



(3) The term `toxic chemical' means any substance on the list described in section 313(c) of the Superfund Amendments and Reauthorization Act of 1986.

(4) The term `release' has the same meaning as provided by section 329(8) of the Superfund Amendments and Reauthorization Act of 1986.

(5)(A) The term `source reduction' means any practice which--

(i) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(B) The term `source reduction' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

(6) The term `multi-media' means water, air, and land.

(7) The term `SIC codes' refers to the 2-digit code numbers used for classification of economic activity in the Standard Industrial Classification Manual.

## **SEC. 6604. EPA ACTIVITIES.**

(a) **AUTHORITIES-** The Administrator shall establish in the Agency an office to carry out the functions of the Administrator under this subtitle. The office shall be independent of the Agency's single-medium program offices but shall have the authority to review and advise such offices on their activities to promote a multi-media approach to source reduction. The office shall be under the direction of such officer of the Agency as the Administrator shall designate.

(b) **FUNCTIONS-** The Administrator shall develop and implement a strategy to promote source reduction. As part of the strategy, the Administrator shall--

(1) establish standard methods of measurement of source reduction;

(2) ensure that the Agency considers the effect of its existing and

proposed programs on source reduction efforts and shall review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction;

(3) coordinate source reduction activities in each Agency Office and coordinate with appropriate offices to promote source reduction practices in other Federal agencies, and generic research and development on techniques and processes which have broad applicability;

(4) develop improved methods of coordinating, streamlining and assuring public access to data collected under Federal environmental statutes;

(5) facilitate the adoption of source reduction techniques by businesses. This strategy shall include the use of the Source Reduction Clearinghouse and State matching grants provided in this subtitle to foster the exchange of information regarding source reduction techniques, the dissemination of such information to businesses, and the provision of technical assistance to businesses. The strategy shall also consider the capabilities of various businesses to make use of source reduction techniques;

(6) identify, where appropriate, measurable goals which reflect the policy of this subtitle, the tasks necessary to achieve the goals, dates at which the principal tasks are to be accomplished, required resources, organizational responsibilities, and the means by which progress in meeting the goals will be measured;

(8) establish an advisory panel of technical experts comprised of representatives from industry, the States, and public interest groups, to advise the Administrator on ways to improve collection and dissemination of data;

(9) establish a training program on source reduction opportunities, including workshops and guidance documents, for State and Federal permit issuance, enforcement, and inspection officials working within all agency program offices.

(10) identify and make recommendations to Congress to eliminate barriers to source reduction including the use of incentives and disincentives;

(11) identify opportunities to use Federal procurement to encourage source reduction;

(12) develop, test and disseminate model source reduction auditing procedures designed to highlight source reduction opportunities; and

(13) establish an annual award program to recognize a company or companies which operate outstanding or innovative source reduction programs.

## SEC. 6605. GRANTS TO STATES FOR STATE TECHNICAL ASSISTANCE PROGRAMS.

(a) GENERAL AUTHORITY- The Administrator shall make matching grants to States for programs to promote the use of source reduction techniques by businesses.

(b) CRITERIA- When evaluating the requests for grants under this section, the Administrator shall consider, among other things, whether the proposed State program would accomplish the following:

(1) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to business seeking assistance and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques. Such training may be provided through local engineering schools or any other appropriate means.

(c) MATCHING FUNDS- Federal funds used in any State program under this section shall provide no more than 50 per centum of the funds made available to a State in each year of that State's participation in the program.

(d) EFFECTIVENESS- The Administrator shall establish appropriate means for measuring the effectiveness of the State grants made under this section in promoting the use of source reduction techniques by businesses.

(e) INFORMATION- States receiving grants under this section shall make information generated under the grants available to the Administrator.

## **SEC. 6606. SOURCE REDUCTION CLEARINGHOUSE.**

(a) AUTHORITY- The Administrator shall establish a Source Reduction Clearinghouse to compile information including a computer data base which contains information on management, technical, and operational approaches to source reduction. The Administrator shall use the clearinghouse to--

(1) serve as a center for source reduction technology transfer;

(2) mount active outreach and education programs by the States to further the adoption of source reduction technologies; and

(3) collect and compile information reported by States receiving grants under section 6605 on the operation and success of State source reduction programs.

(b) PUBLIC AVAILABILITY- The Administrator shall make available to the public such information on source reduction as is gathered pursuant to this subtitle and such other pertinent information and analysis regarding source reduction as may be available to the Administrator. The data base shall

permit entry and retrieval of information to any person.

## **SEC. 6607. SOURCE REDUCTION AND RECYCLING DATA COLLECTION.**

(a) REPORTING REQUIREMENTS- Each owner or operator of a facility required to file an annual toxic chemical release form under section 313 of the Superfund Amendments and Reauthorization Act of 1986 ('SARA') for any toxic chemical shall include with each such annual filing a toxic chemical source reduction and recycling report for the preceeding 70

calendar year. The toxic chemical source reduction and recycling report shall cover each toxic chemical required to be reported in the annual toxic chemical release form filed by the owner or operator under section 313(c) of that Act. This section shall take effect with the annual report filed under section 313 for the first full calendar year beginning after the enactment of this subtitle.

70 So in original. Probably should be 'preceding'.

(b) ITEMS INCLUDED IN REPORT- The toxic chemical source reduction and recycling report required under subsection (a) shall set forth each of the following on a facility-by-facility basis for each toxic chemical:

(1) The quantity of the chemical entering any waste stream (or otherwise released into the environment) prior to recycling, treatment, or disposal during the calendar year for which the report is filed and the percentage change from the previous year. The quantity reported shall not include any amount reported under paragraph (7). When actual measurements of the quantity of a toxic chemical entering the waste streams are not readily available, reasonable estimates should be made based on best engineering judgment.

(2) The amount of the chemical from the facility which is recycled (at the facility or elsewhere) during such calendar year, the percentage change from the previous year, and the process of recycling used.

(3) The source reduction practices used with respect to that chemical during such year at the facility. Such practices shall be reported in accordance with the following categories unless the Administrator finds other categories to be more appropriate:

(A) Equipment, technology, process, or procedure modifications.

(B) Reformulation or redesign of products.

(C) Substitution of raw materials.

(D) Improvement in management, training, inventory control, materials handling, or other general operational phases of industrial facilities.

(4) The amount expected to be reported under paragraph (1) and (2) for the two calendar years immediately following the calendar year for which the report is filed. Such amount shall be expressed as a percentage change from the amount reported in paragraphs (1) and (2).

(5) A ratio of production in the reporting year to production in the previous year. The ratio should be calculated to most closely reflect all activities involving the toxic chemical. In specific industrial classifications subject to this section, where a feedstock or some variable other than production is the primary influence on waste characteristics or volumes, the report may provide an index based on that primary variable for each toxic chemical. The Administrator is encouraged to develop production indexes to accommodate individual industries for use on a voluntary basis.

(6) The techniques which were used to identify source reduction opportunities. Techniques listed should include, but are not limited to, employee recommendations, external and internal audits, participative team management, and material balance audits. Each type of source reduction listed under paragraph (3) should be associated with the techniques or multiples of techniques used to identify the source reduction technique.

(7) The amount of any toxic chemical released into the environment which resulted from a catastrophic event, remedial action, or other one-time event, and is not associated with production processes during the reporting year.

(8) The amount of the chemical from the facility which is treated (at the facility or elsewhere) during such calendar year and the percentage change from the previous year. For the first year of reporting under this subsection, comparison with the previous year is required only to the extent such information is available.

(c) SARA PROVISIONS- The provisions of sections 322, 325(c), and 326 of the Superfund Amendments and Reauthorization Act of 1986 shall apply to the reporting requirements of this section in the same manner as to the reports required under section 313 of that Act. The Administrator may modify the form required for purposes of reporting information under section 313 of that Act to the extent he deems necessary to include the additional information required under this section.

(d) ADDITIONAL OPTIONAL INFORMATION- Any person filing a report under this section for any year may include with the report additional information regarding source reduction, recycling, and other pollution control techniques in earlier years.

(e) AVAILABILITY OF DATA- Subject to section 322 of the Superfund Amendments and Reauthorization Act of 1986, the Administrator shall make data collected under this section publicly available in the same manner as the data collected under section 313 of the Superfund Amendments and

Reauthorization Act of 1986.

## SEC. 6608. EPA REPORT.

(a) BIENNIAL REPORTS- The Administrator shall provide Congress with a report within eighteen months after enactment of this subtitle and biennially thereafter, containing a detailed description of the actions taken to implement the strategy to promote source reduction developed under section 4(b) and of the results of such actions. The report shall include an assessment of the effectiveness of the clearinghouse and grant program established under this subtitle in promoting the goals of the strategy, and shall evaluate data gaps and data duplication with respect to data collected under Federal environmental statutes.

(b) SUBSEQUENT REPORTS- Each biennial report submitted under subsection (a) after the first report shall contain each of the following:

(1) An analysis of the data collected under section 6607 on an industry-by-industry basis for not less than five SIC codes or other categories as the Administrator deems appropriate. The analysis shall begin with those SIC codes or other categories of facilities which generate the largest quantities of toxic chemical waste. The analysis shall include an evaluation of trends in source reduction by industry, firm size, production, or other useful means. Each such subsequent report shall cover five SIC codes or other categories which were not covered in a prior report until all SIC codes or other categories have been covered.

(2) An analysis of the usefulness and validity of the data collected under section 6607 for measuring trends in source reduction and the adoption of source reduction by business.

(3) Identification of regulatory and nonregulatory barriers to source reduction, and of opportunities for using existing regulatory programs, and incentives and disincentives to promote and assist source reduction.

(4) Identification of industries and pollutants that require priority assistance in multi-media source reduction 71

71 So in original. Probably should be `reduction.'.

(5) Recommendations as to incentives needed to encourage investment and research and development in source reduction.

(6) Identification of opportunities and development of priorities for research and development in source reduction methods and techniques.

(7) An evaluation of the cost and technical feasibility, by industry and processes, of source reduction opportunities and current activities and an identification of any industries for which there are significant barriers to source reduction with an analysis of the basis of this identification.

(8) An evaluation of methods of coordinating, streamlining, and improving public access to data collected under Federal environmental statutes.

(9) An evaluation of data gaps and data duplication with respect to data collected under Federal environmental statutes.

In the report following the first biennial report provided for under this subsection, paragraphs (3) through (9) may be included at the discretion of the Administrator.

## **SEC. 6609. SAVINGS PROVISIONS.**

(a) Nothing in this subtitle shall be construed to modify or interfere with the implementation of title III of the Superfund Amendments and Reauthorization Act of 1986.

(b) Nothing contained in this subtitle shall be construed, interpreted or applied to supplant, displace, preempt or otherwise diminish the responsibilities and liabilities under other State or Federal law, whether statutory or common.

## **SEC. 6610. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated to the Administrator \$8,000,000 for each of the fiscal years 1991, 1992 and 1993 for functions carried out under this subtitle (other than State Grants), and \$8,000,000 for each of the fiscal years 1991, 1992 and 1993, for grant programs to States issued pursuant to section 6605.

### **TITLE VII--CIVIL SERVICE AND POSTAL SERVICE PROGRAMS**

#### **Subtitle A--Civil Service**

## **SEC. 7001. ELIMINATION OF LUMP-SUM RETIREMENT BENEFIT.**

(a) LUMP-SUM BENEFIT- (1) Sections 8343a and 8420a of title 5, United States Code, are each amended by adding at the end the following:

^ (f)(1) Notwithstanding any other provision of this section, and except as provided in paragraph (2), an alternative form of annuity under this section may not be elected if the commencement date of the annuity would be later than December 1, 1990.

^ (2) Nothing in this subsection shall prevent an election from being made by any individual--

^ (A) who is separated from Government service involuntarily (other than for cause on charges of misconduct or delinquency), excluding--

` (i) any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

` (ii) the Vice President;

` (iii) any individual holding a position placed in the Executive Schedule under sections 5312 through 5317;

` (iv) any individual appointed to a position by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107 (a)(1) or (b)(1) of title 3, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule;

` (v) any noncareer appointee in the Senior Executive Service or noncareer member of the Senior Foreign Service; and

` (vi) any individual holding a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

` (B) as to whom the application of paragraph (1) would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

` (3) This subsection shall cease to be effective as of October 1, 1995.'

(2) Section 4005 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239; 103 Stat. 2135) is amended--

(A) in subsection (a), by striking `October 1, 1990.' and inserting `December 2, 1990.'; and

(B) by adding at the end the following:

` (f) CONTINUED APPLICABILITY- The preceding provisions of this section (disregarding the provision in subsection (a) limiting this section's applicability to annuities commencing before the date specified in such provision) shall also apply in the case of any employee or Member whose election of an alternative form of annuity would not have been allowable under section 8343a(f) or 8420a(f) of title 5, United States Code (as the case may be), but for--

` (1) paragraph (2)(A) thereof; or

` (2) section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990.'

(C)(i) Section 6001(b)(2) of the Omnibus Budget Reconciliation Act of 1987 (5 U.S.C. 8343a note) and section 4005(b)(2) of the Omnibus Budget Reconciliation Act of 1989 (103 Stat. 2135) are each amended by striking `described in paragraph (1).'

and inserting `on which the payment described



in paragraph (1) is paid.'

(ii) The amendments made by clause (i) shall not apply in any case in which the first half of the lump-sum payment involved was paid before the beginning of the 11-month period which ends on the date of the enactment of this Act.

(D) Section 2 of Public Law 101-227 (103 Stat. 1943) is repealed.

(3) Section 8348(a)(1)(B) of title 5, United States Code, is amended by inserting `in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law),' before `and in withholding'.

(4)(A) In applying the provisions of section 8343a(f) or 8420a(f) of title 5, United States Code (as amended by paragraph (1)) to any individual described in subparagraph (B), the reference in such provisions to `December 1, 1990' shall be deemed to read `December 1, 1991'.

(B) This paragraph applies with respect to any individual who--

(i)(I) is a member of the Armed Forces of the United States who, before December 1, 1990, was called or ordered to active duty (other than for training) pursuant to section 672, 673, 673b, 674, 675, or 688 of title 10, United States Code, in connection with Operation Desert Shield; or

(II) is an employee of the Department of Defense who is certified by the Secretary of Defense to have performed, after November 30, 1990, duties essential for the support of Operation Desert Shield; and

(ii) would have been eligible to make an election under section 8343a or 8420a of title 5, United States Code (as amended by paragraph (1)) as of November 30, 1990.

(C) The Office of Personnel Management may prescribe such regulations as may be necessary to carry out this paragraph.

(b) PRIOR REFUNDS- (1) Section 8334(d) of title 5, United States Code, is amended--

(A) by striking `(d)' and inserting `(d)(1)'; and

(B) by adding at the end the following:

`(2)(A) This paragraph applies with respect to any employee or Member who--

`(i) separates before October 1, 1990, and receives (or elects, in accordance with applicable provisions of this subchapter, to receive) a refund (described in paragraph (1)) which relates to a period of service ending before October 1, 1990;

`(ii) is entitled to an annuity under this subchapter (other than a disability annuity) which is based on service of such employee or Member, and which commences on or after December 2, 1990; and

^(iii) does not make the deposit (described in paragraph (1)) required in order to receive credit for the period of service with respect to which the refund relates.

^(B) Notwithstanding the second sentence of paragraph (1), the annuity to which an employee or Member under this paragraph is entitled shall (subject to adjustment under section 8340) be equal to an amount which, when taken together with the unpaid amount referred to in subparagraph (A)(iii), would result in the present value of the total being actuarially equivalent to the present value of the annuity which would otherwise be provided the employee or Member under this subchapter, as computed under subsections (a)-(i) and (n) of section 8339 (treating, for purposes of so computing the annuity which would otherwise be provided under this subchapter, the deposit referred to in subparagraph (A)(iii) as if it had been timely made).

^(C) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this paragraph.'

(2)(A) Section 8334 of title 5, United States Code, is amended in paragraphs (1) and (2) of subsection (e), and in subsection (h), by striking ` (d),' and inserting ` (d)(1),'.

(B) Section 8334(f) and section 8339(i)(1) of title 5, United States Code, are amended by striking ` (d)' and inserting ` (d)(1)'.

(C) Section 8339(e) of title 5, United States Code, is amended by striking ` 8334(d)' and inserting ` 8334(d)(1)'.

(D) The second sentence of section 8342(a) of title 5, United States Code, is amended by inserting ` or 8334(d)(2)' after ` 8343a'.

(3) The amendments made by this subsection shall be effective with respect to any annuity having a commencement date later than December 1, 1990.

## **SEC. 7002. REFORMS IN THE HEALTH BENEFITS PROGRAM.**

(a) HOSPITALIZATION-COST-CONTAINMENT MEASURES- Section 8902 of title 5, United States Code, is amended by adding at the end the following:

^(n) A contract for a plan described by section 8903 (1), (2), or (3), or section 8903a, shall require the carrier--

^(1) to implement hospitalization-cost-containment measures, such as measures--

^(A) for verifying the medical necessity of any proposed treatment or surgery;

^(B) for determining the feasibility or appropriateness of providing services on an outpatient rather than on an inpatient basis;

^(C) for determining the appropriate length of stay (through

concurrent review or otherwise) in cases involving inpatient care; and

(D) involving case management, if the circumstances so warrant; and

(2) to establish incentives to encourage compliance with measures under paragraph (1).'

(b) IMPROVED CASH MANAGEMENT- Section 8909(a) of title 5, United States Code, is amended by adding at the end (as a flush left sentence) the following:

Payments from the Fund to a plan participating in a letter-of-credit arrangement under this chapter shall, in connection with any payment or reimbursement to be made by such plan for a health service or supply, be made, to the maximum extent practicable, on a checks-presented basis (as defined under regulations of the Department of the Treasury).'

(c) EXEMPTION FROM STATE PREMIUM TAXES- Section 8909 of title 5, United States Code, is amended by adding at the end the following:

(f)(1) No tax, fee, or other monetary payment may be imposed, directly or indirectly, on a carrier or an underwriting or plan administration subcontractor of an approved health benefits plan by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, with respect to any payment made from the Fund.

(2) Paragraph (1) shall not be construed to exempt any carrier or underwriting or plan administration subcontractor of an approved health benefits plan from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by such carrier or underwriting or plan administration subcontractor from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.'

(d) IMPROVED COORDINATION WITH MEDICARE- Section 8910 of title 5, United States Code, is amended by adding at the end the following:

(d) The Office, in consultation with the Department of Health and Human Services, shall develop and implement a system through which the carrier for an approved health benefits plan described by section 8903 or 8903a will be able to identify those annuitants or other individuals covered by such plan who are entitled to benefits under part A or B of title XVIII of the Social Security Act in order to ensure that payments under coordination of benefits with Medicare do not exceed the statutory maximums which physicians may charge Medicare enrollees.'

(e) AMENDMENTS TO PUBLIC LAW 101-76- Public Law 101-76 (103 Stat. 556) is amended--

(1) in subsection (a)(1), by striking `contract year 1990 or 1991,' and inserting `each of contract years 1990 through 1993 (inclusive),'; and

(2) in subsection (c), by striking `contract year 1991,' and inserting `a contract year (or any period thereafter),'.

(f) APPLICATION OF CERTAIN MEDICARE LIMITS TO FEDERAL EMPLOYEE HEALTH BENEFITS ENROLLEES AGE 65 OR OLDER- (1) Section 8904 of title 5, United States Code, is amended by inserting `(a)' before the first sentence and by adding at the end of the section the following new subsection:

`(b)(1) A plan, other than a prepayment plan described in section 8903(4) of this title, may not provide benefits, in the case of any retired enrolled individual who is age 65 or older and is not covered to receive Medicare hospital and insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), to pay a charge imposed by any health care provider, for inpatient hospital services which are covered for purposes of benefit payments under this chapter and part A of title XVIII of the Social Security Act, to the extent that such charge exceeds applicable limitations on hospital charges established for Medicare purposes under section 1886 of the Social Security Act (42 U.S.C. 1395ww). Hospital providers who have in force participation agreements with the Secretary of Health and Human Services consistent with sections 1814(a) and 1866 of the Social Security Act (42 U.S.C. 1395f(a) and 1395cc), whereby the participating provider accepts Medicare benefits as full payment for covered items and services after applicable patient copayments under section 1813 of such Act (42 U.S.C. 1395e) have been satisfied, shall accept equivalent benefit payments and enrollee copayments under this chapter as full payment for services described in the preceding sentence. The Office of Personnel Management shall notify the Secretary of Health and Human Services if a hospital is found to knowingly and willfully violate this subsection on a repeated basis and the Secretary may invoke appropriate sanctions in accordance with section 1866(b)(2) of the Social Security Act (42 U.S.C. 1395cc(b)(2)) and applicable regulations.

`(2) Notwithstanding any other provision of law, the Secretary of Health and Human Services and the Director of the Office of Personnel Management, and their agents, shall exchange any information necessary to implement this subsection.

`(3)(A) Not later than December 1, 1991, and periodically thereafter, the Secretary of Health and Human Services (in consultation with the Director of the Office of Personnel Management) shall supply to carriers of plans described in paragraphs (1) through (3) of section 8903 the Medicare program information necessary for them to comply with paragraph (1).

`(B) For purposes of this paragraph, the term `Medicare program information' includes the limitations on hospital charges established for Medicare purposes under section 1886 of the Social Security Act (42 U.S.C. 1395ww) and the identity of hospitals which have in force agreements with the Secretary of Health and Human Services consistent with section 1814(a) and 1866 of the Social Security Act (42 U.S.C. 1395f(a) and 1395cc).'

(2) The amendments made by this subsection shall apply with respect to contract years beginning on or after January 1, 1992.

(g) EFFECTIVE DATE- Except as provided in subsection (f), the amendments made by this section shall apply with respect to contract years beginning on or after January 1, 1991.

### **Subtitle B--Postal Service**

#### **SEC. 7101. FUNDING OF COLAS FOR POSTAL SERVICE ANNUITANTS AND SURVIVOR ANNUITANTS.**

(a) EXPANDED SCOPE OF COVERAGE; CHANGE IN PRORATION RULE- Section 8348(m)(1) of title 5, United States Code, is amended by striking `October 1, 1986,' each place it appears and inserting `July 1, 1971,'.

(b) REPEAL OF PROVISION RELATING TO CERTAIN EARLIER COLAS- Section 4002(b) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239; 103 Stat. 2134) is repealed.

(c) PROVISION RELATING TO PRE-1991 COLAS- (1) For the purpose of this subsection--

(A) the term `pre-1991 COLA' means a cost-of-living adjustment which took effect in any of the fiscal years specified in subparagraphs (A)-(N) of paragraph (3);

(B) the term `post-1990 fiscal year' means a fiscal year after fiscal year 1990; and

(C) the term `pre-1991 fiscal year' means a fiscal year before fiscal year 1991.

(2) Notwithstanding any other provision of law, an installment (equal to an amount determined by reference to paragraph (3)) shall be payable by the United States Postal Service in a post-1990 fiscal year, with respect to a pre-1991 COLA, if such fiscal year occurs within the 15-fiscal-year period which begins with the first fiscal year in which that COLA took effect, subject to section 7104.

(3) Notwithstanding any provision of section 8348(m) of title 5, United States Code, or any determination thereunder (including any made under such provision, as in effect before October 1, 1990), the estimated increase in the unfunded liability referred to in paragraph (1) of such section 8348(m) shall be payable, in accordance with this subsection, based on annual installments equal to--

(A) \$6,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1977;

(B) \$7,000,000 each, with respect to the cost-of-living adjustment which

took effect in fiscal year 1978;

(C) \$10,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1979;

(D) \$20,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1980;

(E) \$26,100,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1981;

(F) \$28,100,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1982;

(G) \$30,600,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1983;

(H) \$5,700,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1984;

(I) \$19,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1985;

(J) \$7,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1986;

(K) \$8,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1987;

(L) \$36,800,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1988;

(M) \$51,600,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1989; and

(N) \$63,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1990.

(4) Any installment payable under this subsection shall be paid by the Postal Service at the same time as when it pays any installments due in that same fiscal year under section 8348(m) of title 5, United States Code.

(5) An installment payable under this subsection in a fiscal year, with respect to a pre-1991 COLA, shall be in lieu of any other installment for which the Postal Service might otherwise be liable in such fiscal year, with respect to such COLA, under section 8348(m) of title 5, United States Code.

(d) EFFECTIVE DATE- This section and the amendments made by this section shall take effect on October 1, 1990.

## SEC. 7102. FUNDING OF HEALTH BENEFITS FOR POSTAL SERVICE RETIREES AND SURVIVORS OF POSTAL SERVICE EMPLOYEES OR RETIREES.

(a) EXPANDED SCOPE OF COVERAGE- Section 8906(g)(2) of title 5, United States Code, is amended by striking `October 1, 1986,' each place it appears and inserting `July 1, 1971,'.

(b) CONTRIBUTIONS TO BE PRORATED- Section 8906(g)(2) of title 5, United States Code, as amended by subsection (a), is further amended--

(1) by striking `(2)' and inserting `(2)(A)'; and

(2) by adding at the end the following:

`(B) In determining any amount for which the Postal Service is liable under this paragraph, the amount of the liability shall be prorated to reflect only that portion of total service which is attributable to civilian service performed (by the former postal employee or by the deceased individual referred to in subparagraph (A), as the case may be) after June 30, 1971, as estimated by the Office of Personnel Management.'.

(c) EFFECTIVE DATE- The amendments made by this section shall take effect on October 1, 1990, and shall apply with respect to amounts payable for periods beginning on or after that date.

#### SEC. 7103. PAYMENTS RELATING TO AMOUNTS WHICH WOULD HAVE BEEN DUE BEFORE FISCAL YEAR 1987.

(a) DEFINITION- For the purpose of this section, the term `pre-1987 fiscal year' means a fiscal year before fiscal year 1987.

(b) FOR PAST RETIREMENT COLAS- As payment for any amounts which would have been due in any pre-1987 fiscal year under the provisions of section 8348(m) of title 5, United States Code (as amended by section 7101) if such provisions had been in effect as of July 1, 1971, the United States Postal Service shall pay into the Civil Service Retirement and Disability Fund--

(1) \$216,000,000, not later than September 30, 1991;

(2) \$266,000,000, not later than September 30, 1992;

(3) \$316,000,000, not later than September 30, 1993;

(4) \$416,000,000, not later than September 30, 1994; and

(5) \$471,000,000, not later than September 30, 1995.

(c) FOR PAST HEALTH BENEFITS- As payment for any amounts which would, for any period ending before the start of fiscal year 1987, have been payable under the provisions of section 8906(g)(2) of title 5, United States Code (as amended by section 7102) if such provisions had been in effect as of July 1, 1971, the United States Postal Service shall pay into the Employees Health Benefits Fund--

(1) \$56,000,000, not later than September 30, 1991;

- (2) \$47,000,000, not later than September 30, 1992;
- (3) \$62,000,000, not later than September 30, 1993;
- (4) \$56,000,000, not later than September 30, 1994; and
- (5) \$234,000,000, not later than September 30, 1995.

### **Subtitle C--Miscellaneous**

#### **SEC. 7201. COMPUTER MATCHING OF FEDERAL BENEFITS INFORMATION AND PRIVACY PROTECTION.**

(a) **SHORT TITLE-** This section may be cited as the `Computer Matching and Privacy Protection Amendments of 1990'.

(b) **VERIFICATION REQUIREMENTS AMENDMENT-** (1) Subsection (p) of section 552a of title 5, United States Code, is amended to read as follows:

`(p) **VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS-** (1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until--

`(A)(i) the agency has independently verified the information; or

`(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that--

`(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

`(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

`(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

`(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

`(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.



` (2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of--

` (A) the amount of any asset or income involved;

` (B) whether such individual actually has or had access to such asset or income for such individual's own use; and

` (C) the period or periods when the individual actually had such asset or income.

` (3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.'

(2) Not later than 90 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall publish guidance under subsection (p)(1)(A)(ii) of section 552a of title 5, United States Code, as amended by this Act.

(c) LIMITATION ON APPLICATION OF VERIFICATION REQUIREMENT- Section 552a(p)(1)(A)(ii)(II) of title 5, United States Code, as amended by section 2, shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b-7), until the earlier of--

(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or

(2) 30 days after the date of publication of guidance under section 2(b).

## SEC. 7202. PORTABILITY OF BENEFITS FOR EMPLOYEES CONVERTING TO THE CIVIL SERVICE SYSTEM.

(a) SHORT TITLE- This section may be cited as the `Portability of Benefits for Nonappropriated Fund Employees Act of 1990'.

(b) DEFINITIONAL AMENDMENT- Section 2105(c) of title 5, United States Code, is amended--

(1) by amending paragraph (1) to read as follows:

` (1) laws administered by the Office of Personnel Management, except--

` (A) section 7204;

` (B) as otherwise specifically provided in this title;

` (C) the Fair Labor Standards Act of 1938; or

` (D) for the purpose of entering into an interchange agreement to provide for the noncompetitive movement of employees between such instrumentalities and the competitive service; or'; and

(2) in paragraph (2), by striking `chapter 84' and inserting `chapter 84 (except to the extent specifically provided therein)'.

(c) AMENDMENT RELATING TO ORDER OF RETENTION- Section 3502(a)(C) of title 5, United States Code, is amended to read as follows:

` (C) is entitled to credit for--

` (i) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

` (ii) service rendered as an employee described in section 2105(c) if such employee moves or has moved, on or after January 1, 1987, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).'

(d) AMENDMENT RELATING TO PAY ON A CHANGE OF POSITION- Section 5334 of title 5, United States Code, is amended by adding at the end the following:

` (g) An employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) who moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter, may have such employee's initial rate of basic pay fixed at the minimum rate of the appropriate grade or at any step of such grade that does not exceed the highest previous rate of basic pay received by that employee during the employee's service described in section 2105(c). In the case of a nonappropriated fund employee who is moved involuntarily from such nonappropriated fund instrumentality without a break in service of more than 3 days and without substantial change in duties to a position that is subject to this subchapter, the employee's pay shall be set at a rate (not above the maximum for the grade, except as may be provided for under section 5365) that is not less than the employee's rate of basic pay under the nonappropriated fund instrumentality immediately prior to so moving.'

(e) AMENDMENT RELATING TO PERIODIC STEP INCREASES- Section 5335 of title 5, United States Code, is amended by adding at the end the following:

` (g) In computing periods of service under subsection (a) in the case of an employee who moves without a break in service of more than 3 days from a

position under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) to a position under the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter, service under such instrumentality shall, under regulations prescribed by the Office, be deemed service in a position subject to this subchapter.'

(f) AMENDMENT RELATING TO GRADE AND PAY RETENTION- Section 5365(b) of title 5, United States Code, is amended by adding at the end, as a flush left sentence, the following:

` Individuals with respect to whom authority under paragraph (2) may be exercised include individuals who are moved without a break in service of more than 3 days from employment in nonappropriated fund instrumentalities of the Department of Defense or the Coast Guard described in section 2105(c) to employment in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).'

(g) AMENDMENT RELATING TO PAY FOR ACCUMULATED AND ACCRUED LEAVE- Section 5551(a) of title 5, United States Code, is amended by adding at the end the following new sentence: ` For the purposes of this subsection, movement to employment described in section 2105(c) shall not be deemed separation from the service in the case of an employee whose annual leave is transferred under section 6308(b).'

(h) AMENDMENTS RELATING TO TRANSFERS BETWEEN POSITIONS UNDER DIFFERENT LEAVE SYSTEMS- Section 6308 of title 5, United States Code, is amended--

(1) by inserting `(a)' before `The annual'; and

(2) by adding at the end the following:

` (b) The annual leave, sick leave, and home leave to the credit of a nonappropriated fund employee of the Department of Defense or the Coast Guard described in section 2105(c) who moves without a break in service of more than 3 days to a position in the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter shall be transferred to the employee's credit. The annual leave, sick leave, and home leave to the credit of an employee of the Department of Defense or the Coast Guard who is subject to this subchapter and who moves without a break in service of more than 3 days to a position under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c), shall be transferred to the employee's credit under the nonappropriated fund instrumentality. The Secretary of Defense or the Secretary of Transportation, as appropriate, may provide for a transfer of funds in an amount equal to the value of the transferred annual leave to compensate the gaining entity for the cost of a transfer of annual leave under this subsection.'

(i) AMENDMENTS TO INCLUDE ADDITIONAL SERVICE FOR LEAVE ACCRUAL PURPOSES- (1) Section 6312 is amended to read as follows:

Sec. 6312. Accrual and accumulation for former ASCS county office and nonappropriated fund employees

(a) Credit shall be given in determining years of service for the purpose of section 6303(a) for--

(1) service as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or an association of producers described in section 10(b) of the Agricultural Adjustment Act; and

(2) service under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) by an employee who has moved without a break in service of more than 30 days to a position subject to this subchapter in the Department of Defense or the Coast Guard, respectively.

(b) The provisions of subsections (a) and (b) of section 6308 for transfer of leave between leave systems shall apply to the leave systems established for such county office employees and employees of such Department of Defense and Coast Guard nonappropriated fund instrumentalities, respectively.'

(2) The item relating to section 6312 in the table of sections for chapter 63 of title 5, United States Code, is amended to read as follows:

6312. Accrual and accumulation for former ASCS county office and nonappropriated fund employees.'

(j) AMENDMENTS RELATING TO THE CIVIL SERVICE RETIREMENT SYSTEM- (1) Section 8331 of title 5, United States Code, is amended--

(A) by striking 'and' at the end of paragraph (1)(J);

(B) by inserting 'and' after the semicolon at the end of paragraph (1)(K);

(C) by inserting after paragraph (1)(K) the following:

(L) an employee described in section 2105(c) who has made an election under section 8347(p)(1) to remain covered under this subchapter;';

(D) in paragraph (1)(ii), by striking the matter following 'Government employees' through the semicolon and inserting '(besides any employee excluded by clause (x), but including any employee who has made an election under section 8347(p)(2) to remain covered by a retirement system established for employees described in section 2105(c));'; and

(E) in paragraph (7), by striking 'and Gallaudet College;' and inserting 'Gallaudet College, and, in the case of an employee described in paragraph (1)(L), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);'.

(2) Section 8347 of title 5, United States Code, is amended by adding at the end the following:

` (p)(1) Under regulations prescribed by the Office of Personnel Management, an employee of the Department of Defense or the Coast Guard who--

` (A) has not previously made or had an opportunity to make an election under this subsection;

` (B) has 5 or more years of civilian service creditable under this subchapter; and

` (C) moves, without a break in service of more than 3 days, to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered as an employee under this subchapter during any employment described in section 2105(c) after such move.

` (2) Under regulations prescribed by the Office of Personnel Management, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c), who--

` (A) has not previously made or had an opportunity to make an election under this subsection;

` (B) is a vested participant in a retirement system established for employees described in section 2105(c), as the term 'vested participant' is defined by such system;

` (C) moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c); and

` (D) is excluded from coverage under chapter 84 by section 8402(b),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered, during any subsequent employment as an employee as defined in section 2105(a) or section 2105(c), by the retirement system applicable to such employee's current or most recent employment described in section 2105(c) rather than be subject to this subchapter.'

(k) AMENDMENTS RELATING TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM- (1) Section 8401 of title 5, United States Code, is amended--

(A) in paragraph (11)--

(i) by striking 'and' at the end of subparagraph (A);

(ii) by inserting 'and' after the semicolon at the end of subparagraph (B);

(iii) by inserting after subparagraph (B) the following:

^ (C) an employee described in section 2105(c) who has made an election under section 8461(n)(1) to remain covered under this chapter;';

(iv) by striking `or' at the end of clause (ii);

(v) by inserting `or' after the semicolon at the end of clause (iii); and

(vi) by inserting after clause (iii) the following:

^ (iv) an employee who has made an election under section 8461(n)(2) to remain covered by a retirement system established for employees described in section 2105(c);'; and

(B) in paragraph (15), by striking `and Gallaudet College;' and inserting ` , Gallaudet College, and, in the case of an employee described in paragraph (11)(C), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);'.

(2) Section 8461 of title 5, United States Code, is amended by adding at the end the following:

^ (n)(1) Under regulations prescribed by the Office, an employee of the Department of Defense or the Coast Guard who--

^ (A) has not previously made or had an opportunity to make an election under this subsection;

^ (B) has 5 or more years of civilian service creditable under this chapter; and

^ (C) moves, without a break in service of more than 3 days, to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered as an employee under this chapter during any employment described in section 2105(c) after such move.

^ (2) Under regulations prescribed by the Office, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in `section 2105(c), who--

^ (A) has not previously made or had an opportunity to make an election under this subsection;

^ (B) is a vested participant in a retirement system established for employees described in section 2105(c), as the term `vested participant' is defined by such system;

` (C) moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is not described by section 2105(c); and

` (D) is not eligible to make an election under section 8347(p),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered, during any subsequent employment as an employee as defined by section 2105(a) or section 2105(c), by the retirement system applicable to such employee's current or most recent employment described by section 2105(c) rather than be subject to this chapter.'

(I) AMENDMENTS RELATING TO HEALTH BENEFITS- Section 8901(3)(A) of title 5, United States Code, is amended--

(1) by striking `or' at the end of clause (ii);

(2) by inserting `or' after the semicolon at the end of clause (iii); and

(3) by inserting after clause (iii) the following:

` (iv) on an immediate annuity under a retirement system established for employees described in section 2105(c), in the case of an individual who elected under section 8347(p)(2) or 8461(n)(2) to remain subject to such a system;'

(m) APPLICABILITY- (1) The amendments made by this section shall apply with respect to any individual who, on or after January 1, 1987--

(A) moves without a break in service of more than 3 days from employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard that is described in section 2105(c) of title 5, United States Code, to employment in the Department of Defense or the Coast Guard, respectively, that is not described in such section 2105(c); or

(B) moves without a break in service from employment in the Department of Defense or the Coast Guard that is not described in such section 2105(c) to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, that is described in such section 2105(c).

(2) The Secretary of Defense, the Secretary of Transportation, the Director of the Office of Personnel Management, and the Executive Director of the Federal Retirement Thrift Investment Board, as applicable, shall take such actions as may be practicable to ensure that each individual who has moved as described under paragraph (1) on or after January 1, 1987, and before the date of enactment of this Act, receives the benefit of the amendments made by this section as if such amendments had been in effect at the time such individual so moved. Each such individual who wishes to make an election of retirement coverage under the amendments made by subsection (j) or (k) of this section

shall complete such election within 180 days after the date of enactment of this Act.

(n) CLARIFYING PROVISIONS RELATING TO TREATMENT OF INDIVIDUALS ELECTING TO REMAIN SUBJECT TO THEIR FORMER RETIREMENT SYSTEM- (1) For the purpose of this section, the term 'nonappropriated fund instrumentality' means a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c) of title 5, United States Code.

(2)(A) If an individual makes an election under section 8347(p)(1) of title 5, United States Code, to remain covered by subchapter III of chapter 83 of such title, any nonappropriated fund instrumentality thereafter employing such individual shall deduct from such individual's pay and contribute to the Thrift Savings Fund such sums as are required for such individual in accordance with section 8351 of such title.

(B) Notwithstanding subsection (a) or (b) of section 8432 of title 5, United States Code, any individual who, as of the date of enactment of this Act, becomes eligible to make an election under section 8347(p)(1) of such title may, within 30 days after such individual makes an election thereunder in accordance with subsection (m)(2), make any election described in section 8432(b)(1)(A) of such title.

(3)(A) If an individual makes an election under section 8461(n)(1) of title 5, United States Code, to remain covered by chapter 84 of such title, any nonappropriated fund instrumentality thereafter employing such individual shall deduct from such individual's pay and shall contribute to the Thrift Savings Fund the funds deducted, together with such other sums as are required for such individual under subchapter III of such chapter.

(B) Notwithstanding subsection (a) or (b) of section 8432 of title 5, United States Code, any individual who, as of the date of enactment of this Act, becomes eligible to make an election under section 8461(n)(1) of such title may, within 30 days after such individual makes an election thereunder in accordance with subsection (m)(2), make any election described in section 8432(b)(1)(A) of such title.

(4) If an individual makes an election under section 8347(p)(2) or 8461(n)(2) of title 5, United States Code, to remain covered by a retirement system established for employees described in section 2105(c) of such title, any Government agency thereafter employing such individual shall, in lieu of any deductions or contributions for which it would otherwise be responsible with respect to such individual under chapter 83 or 84 of such title, make such deductions from pay and such contributions as would be required (under the retirement system for nonappropriated fund employees involved) if it were a nonappropriated fund instrumentality. Any such deductions and contributions shall be remitted to the Department of Defense or the Coast Guard, as applicable, for transmission to the appropriate retirement system.

### **Subtitle D--Coordination**



## **SEC. 7301. COORDINATION.**

For purposes of section 202 of the Balanced Budget and Emergency Deficit Reaffirmation Act of 1987, this title and the amendments made by this title shall be considered an exception under subsection (b) of such section.

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## Subtitle A--Compensation, DIC, and Pension

SEC. 8001. LIMITATION ON COMPENSATION BENEFITS FOR CERTAIN INCOMPETENT VETERANS.

(a) IN GENERAL- (1) Chapter 55 of title 38, United States Code, is amended by adding at the end the following new section:

Sec. 3205. Limitation on compensation payments for certain incompetent veterans

(a) In any case in which a veteran having neither spouse, child, nor dependent parent is rated by the Secretary in accordance with regulations as being incompetent and the value of the veteran's estate (excluding the value of the veteran's home) exceeds \$25,000, further payment of compensation to which the veteran would otherwise be entitled may not be made until the value of such estate is reduced to less than \$10,000.

(b)(1) Subject to paragraph (2) of this subsection, if a veteran denied payment of compensation pursuant to subsection (a) is subsequently rated as being competent, the Secretary shall pay to the veteran a lump sum equal to the total of the compensation which was denied the veteran pursuant to such paragraph. The Secretary shall make the lump-sum payment as soon as practicable after the end of the 90-day period beginning on the date of the competency rating.

(2) A lump-sum payment may not be made under paragraph (1) to a veteran who, within such 90-day period, dies or is again rated by the Secretary as being incompetent.

(3) The costs of administering this subsection shall be paid from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

(c) This section expires on September 30, 1992.'

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

3205. Limitation on compensation payments for certain incompetent veterans.'

(b) EFFECTIVE DATE- The amendment made by this section shall apply with respect to payment of compensation for months after October 1990.

SEC. 8002. ELIMINATION OF PRESUMPTION OF TOTAL DISABILITY IN DETERMINATION OF PENSION FOR CERTAIN VETERANS.

(a) ELIMINATION OF PRESUMPTION- That portion of subsection (a) of section 502 of title 38, United States Code, preceding paragraph (1) is amended to read as follows:

` (a) For the purposes of this chapter, a person shall be considered to be permanently and totally disabled if such a person is unemployable as a result of disability reasonably certain to continue throughout the life of the disabled person, or is suffering from--'.

(b) APPLICABILITY- The amendment made by subsection (a) shall apply with respect to claims filed after October 31, 1990.

SEC. 8003. REDUCTION IN PENSION FOR CERTAIN VETERANS RECEIVING MEDICAID-COVERED NURSING HOME CARE.

(a) IN GENERAL- Section 3203 of title 38, United States Code, is amended by adding at the end the following:

` (f)(1) For the purposes of this subsection--

` (A) the term `Medicaid plan' means a State plan for medical assistance referred to in section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)); and

` (B) the term `nursing facility' means a nursing facility described in section 1919 of such Act (42 U.S.C. 1396r).

` (2) If a veteran having neither spouse nor child is covered by a Medicaid plan for services furnished such veteran by a nursing facility, no pension in excess of \$90 per month shall be paid to or for the veteran for any period after the month of admission to such nursing facility.

` (3) Notwithstanding any provision of title XIX of the Social Security Act, the amount of the payment paid a nursing facility pursuant to a Medicaid plan for services furnished a veteran may not be reduced by any amount of pension permitted to be paid such veteran under paragraph (2) of this subsection.

` (4) A veteran is not liable to the United States for any payment of pension in excess of the amount permitted under this subsection that is paid to or for the veteran by reason of the inability or failure of the Secretary to reduce the veteran's pension under this subsection unless such inability or failure is the result of a willful concealment by the veteran of information necessary to make a reduction in pension under this subsection.

` (5) The costs of administering this subsection shall be paid for from amounts available to the Department of Veterans Affairs for the payment of

compensation and pension.

` (6) This subsection expires on September 30, 1992.'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on November 1, 1990, or the date of the enactment of this Act, whichever is later.

#### SEC. 8004. INELIGIBILITY OF REMARRIED SURVIVING SPOUSES OR MARRIED CHILDREN FOR REINSTATEMENT OF BENEFITS ELIGIBILITY UPON BECOMING SINGLE.

(a) IN GENERAL- Section 103 of title 38, United States Code, is amended--

(1) in subsection (d)--

(A) by striking out `(1)'; and

(B) by striking out paragraphs (2) and (3); and

(2) in subsection (e)--

(A) by striking out `(1)'; and

(B) by striking out paragraph (2).

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall apply with respect to claims filed after October 31, 1990, and shall not operate to reduce or terminate benefits to any individual whose benefits were predicated on section 103(d)(2), 103(d)(3), or 103(e)(2) before the effective date of those amendments.

#### SEC. 8005. COST-OF-LIVING INCREASES IN COMPENSATION RATES.

(a) POLICY REGARDING FISCAL YEAR 1991- The fiscal year 1991 cost-of-living adjustments in the rates of compensation payable under chapter 11 of title 38, United States Code, and of the dependency and indemnity compensation payable under chapter 13 of such title will be no more than a 5.4 percent increase, with all increased monthly rates rounded down to the next lower dollar. The effective date for such adjustments will not be earlier than January 1, 1991.

(b) INCREASE PAYABLE AS OF JANUARY 1992- The amount of compensation or dependency and indemnity compensation payable to any individual for the month of January 1992 who is entitled to such benefits as of January 1, 1992, shall be increased for such month by the amount equal to the amount of the monthly increase provided for that individual's benefit level as of January 1, 1991, pursuant to the adjustments described in subsection (a).

#### Subtitle B--Health-Care Benefits

**SEC. 8011. MEDICAL-CARE COST RECOVERY.**

(a) APPLICABILITY- Section 629(a)(2) of title 38, United States Code, is amended--

(1) by striking out `or' at the end of clause (C);

(2) by striking out the period at the end of clause (D) and inserting in lieu thereof `; or'; and

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

`(E) for which care and services are furnished before October 1, 1993, under this chapter to a veteran who--

`(i) has a service-connected disability; and

`(ii) is entitled to care (or payment of the expenses of care) under a health-plan contract.'.

(b) MAXIMUM AMOUNT RECOVERABLE- Clause (B) of section 629(c)(2) of such title is amended by striking out `in accordance with the prevailing rates at which the third party makes payments under comparable health-plan contracts with' and inserting in lieu thereof `if provided by'.

(c) ESTABLISHMENT OF MEDICAL-CARE COST RECOVERY FUND- Section 629(g) of such title is amended to read as follows:

`(g)(1) There is established in the Treasury a fund to be known as the Department of Veterans Affairs Medical-Care Cost Recovery Fund (hereafter referred to in this section as the `Fund').

`(2) Amounts recovered or collected under this section shall be deposited in the Fund.

`(3) Sums in the Fund shall be available to the Secretary for the following:

`(A) Payment of necessary expenses for the identification, billing, and collection of the cost of care and services furnished under this chapter, and for the administration and collection of payments required under section 610(f) of this title for hospital care or nursing home care, under section 612(f) of this title for medical services, and under section 622A of this title for medications, including--

`(i) the costs of computer hardware and software, word processing and telecommunications equipment, other equipment, supplies, and furniture;

`(ii) personnel training and travel costs;

`(iii) personnel and administrative costs for attorneys in the Office of General Counsel of the Department and for support personnel of

such office;

` (iv) other personnel and administrative costs; and

` (v) the costs of any contract for identification, billing, or collection services.

` (B) Payment of the Secretary for reasonable charges, as determined by the Secretary, imposed for (i) services and utilities (including light, water, and heat) furnished by the Secretary, (ii) recovery and collection activities under this section, and (iii) administration of the Fund.

` (4) Not later than January 1 of each year, there shall be deposited into the Treasury as miscellaneous receipts an amount equal to the amount of the unobligated balance remaining in the Fund at the close of business on September 30 of the preceding year minus any part of such balance that the Secretary determines is necessary in order to enable the Secretary to defray, during the fiscal year in which the deposit is made, the expenses, payments, and costs described in paragraph (3).'

(d) TRANSFER TO FUND-

(1) AMOUNT TO BE TRANSFERRED- The Secretary of the Treasury shall transfer \$25,000,000 from the Department of Veterans Affairs Loan Guaranty Revolving Fund to the Department of Veterans Affairs Medical-Care Cost Recovery Fund established by section 629(g) of title 38, United States Code (as amended by subsection (c)). The amount so transferred shall be available until the end of September 30, 1991, for the support of the equivalent of 800 full-time employees and other expenses described in paragraph (3) of such section.

(2) REIMBURSEMENT OF LOAN GUARANTY REVOLVING FUND-  
Notwithstanding section