1 (ii) investigations;
2 (iii) financial and performance audits
3 of health care programs and operations;
4 (iv) inspections and other evaluations;
5 and
6 (v) provider and consumer education
7 regarding compliance with the provisions of
8 this subtitle.
9 (B) FUNDS USED TO SUPPLEMENT AGEN-
10 CY APPROPRIATIONS.—It is intended that dis-
11 bursements made from the Anti-Fraud Account
12 to any Federal agency be used to increase and
13 not supplant the recipient agency's appro-
14 priated operating budget.
15 (3) ANNUAL REPORT.—The Secretary and the
16 Attorney General shall submit jointly an annual re-
17 port to Congress on the amount of revenue which is
18 generated and disbursed by the Anti-Fraud Account
19 in each fiscal year.
20 (4) USE OF FUNDS BY INSPECTOR GENERAL.—
21 (A) REIMBURSEMENTS FOR INVESTIGA-
22 TIONS.—The Inspector General is authorized to
23 receive and retain for current use reimburse-
24 ment for the costs of conducting investigations,

1 when such restitution is ordered by a court, vol-
2 untarily agreed to by the payer, or otherwise.
3 (B) CREDITING.—Funds received by the
4 Inspector General as reimbursement for costs of
5 conducting investigations shall be deposited to
6 the credit of the appropriation from which ini-
7 tially paid, or to appropriations for similar pur-
8 poses currently available at the time of deposit,
9 and shall remain available for obligation for 1
10 year from the date of their deposit.

11 **SEC. 5402. APPLICATION OF FEDERAL HEALTH ANTI-FRAUD**
12 **AND ABUSE SANCTIONS TO ALL FRAUD AND**
13 **ABUSE AGAINST ANY HEALTH PLAN.**

14 (a) CRIMES.—
15 (1) SOCIAL SECURITY ACT.—Section 1128B of
16 the Social Security Act (42 U.S.C. 1320a–7b) is
17 amended as follows:
18 (A) In the heading, by adding at the end
19 the following: "OR HEALTH PLANS".
20 (B) In subsection (a)(1)—
21 (i) by striking "title XVIII or" and
22 inserting "title XVIII,", and
23 (ii) by adding at the end the follow-
24 ing: "or a health plan (as defined in sec-
25 tion 1128(i)),".

1 (C) In subsection (a)(5), by striking "title
2 XVIII or a State health care program" and in-
3 serting "title XVIII, a State health care pro-
4 gram, or a health plan".
5 (D) In the second sentence of subsection
6 (a)—
7 (i) by inserting after "title XIX" the
8 following: "or a health plan", and
9 (ii) by inserting after "the State" the
10 following: "or the plan".
11 (E) In subsection (b)(1), by striking "title
12 XVIII or a State health care program" each
13 place it appears and inserting "title XVIII, a
14 State health care program, or a health plan".
15 (F) In subsection (b)(2), by striking "title
16 XVIII or a State health care program" each
17 place it appears and inserting "title XVIII, a
18 State health care program, or a health plan".
19 (G) In subsection (b)(3), by striking "title
20 XVIII or a State health care program" each
21 place it appears in subparagraphs (A) and (C)
22 and inserting "title XVIII, a State health care
23 program, or a health plan".
24 (H) In subsection (d)(2)—

1 (i) by striking "title XIX," and insert-
2 ing "title XIX or under a health plan,",
3 and
4 (ii) by striking "State plan," and in-
5 serting "State plan or the health plan,".
6 (2) IDENTIFICATION OF COMMUNITY SERVICE
7 OPPORTUNITIES.—Section 1128B of such Act (42
8 U.S.C. 1320a–7b) is further amended by adding at
9 the end the following new subsection:
10 "(f) The Secretary may—
11 "(1) in consultation with State and local health
12 care officials, identify opportunities for the satisfac-
13 tion of community service obligations that a court
14 may impose upon the conviction of an offense under
15 this section, and
16 "(2) make information concerning such oppor-
17 tunities available to Federal and State law enforce-
18 ment officers and State and local health care
19 officials.".
20 (b) HEALTH PLAN DEFINED.—Section 1128 of the
21 Social Security Act (42 U.S.C. 1320a–7) is amended by
22 redesignating subsection (i) as subsection (j) and by in-
23 serting after subsection (h) the following new subsection:
24 "(i) HEALTH PLAN DEFINED.—For purposes of sec-
25 tions 1128A and 1128B, the term 'health plan' has the

1 same meaning given such term in section 3(a)(1) of the
2 Health Reform Act.".
3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on January 1, 1995.

5 **SEC. 5403. HEALTH CARE FRAUD AND ABUSE GUIDANCE.**

6 (a) SOLICITATION AND PUBLICATION OF MODIFICA-
7 TIONS TO EXISTING SAFE HARBORS AND NEW SAFE
8 HARBORS.—
9 (1) IN GENERAL.—
10 (A) SOLICITATION OF PROPOSALS FOR
11 SAFE HARBORS.—Not later than January 1,
12 1995, and not less than annually thereafter, the
13 Secretary shall publish a notice in the Federal
14 Register soliciting proposals, which will be ac-
15 cepted during a 60-day period, for—
16 (i) modifications to existing safe har-
17 bors issued pursuant to section 14(a) of
18 the Medicare and Medicaid Patient and
19 Program Protection Act of 1987 (42
20 U.S.C. 1320a–7b note);
21 (ii) additional safe harbors specifying
22 payment practices that shall not be treated
23 as a criminal offense under section
24 1128B(b) of the Social Security Act the
25 (42 U.S.C. 1320a–7b(b)) and shall not

1 serve as the basis for an exclusion under
2 section 1128(b)(7) of such Act (42 U.S.C.
3 1320a–7(b)(7));
4 (iii) interpretive rulings to be issued
5 pursuant to subsection (b); and
6 (iv) special fraud alerts to be issued
7 pursuant to subsection (c).
8 (B) PUBLICATION OF PROPOSED MODI-
9 FICATIONS AND PROPOSED ADDITIONAL STATE
10 HARBORS.—After considering the proposals de-
11 scribed in clauses (i) and (ii) of subparagraph
12 (A), the Secretary, in consultation with the At-
13 torney General, shall publish in the Federal
14 Register proposed modifications to existing safe
15 harbors and proposed additional safe harbors, if
16 appropriate, with a 60-day comment period.
17 After considering any public comments received
18 during this period, the Secretary shall issue
19 final rules modifying the existing safe harbors
20 and establishing new safe harbors, as appro-
21 priate.
22 (C) REPORT.—The Inspector General of
23 the Department of Health and Human Services
24 (hereafter in this section referred to as the "In-
25 spector General") shall, in an annual report to

1 Congress or as part of the year-end semiannual
2 report required by section 5 of the Inspector
3 General Act of 1978 (5 U.S.C. App.), describe
4 the proposals received under clauses (i) and (ii)
5 of subparagraph (A) and explain which propos-
6 als were included in the publication described in
7 subparagraph (B), which proposals were not in-
8 cluded in that publication, and the reasons for
9 the rejection of the proposals that were not in-
10 cluded.
11 (2) CRITERIA FOR MODIFYING AND ESTABLISH-
12 ING SAFE HARBORS.—In modifying and establishing
13 safe harbors under paragraph (1)(B), the Secretary
14 may consider the extent to which providing a safe
15 harbor for the specified payment practice may result
16 in any of the following:
17 (A) An increase or decrease in access to
18 health care services.
19 (B) An increase or decrease in the quality
20 of health care services.
21 (C) An increase or decrease in patient free-
22 dom of choice among health care providers.
23 (D) An increase or decrease in competition
24 among health care providers.

1 (E) An increase or decrease in the ability
2 of health care facilities to provide services in
3 medically underserved areas or to medically un-
4 derserved populations.
5 (F) An increase or decrease in the cost to
6 Government health care programs.
7 (G) An increase or decrease in the poten-
8 tial overutilization of health care services.
9 (H) The existence or nonexistence of any
10 potential financial benefit to a health care pro-
11 fessional or provider which may vary based on
12 their decisions of—
13 (i) whether to order a health care
14 item or service; or
15 (ii) whether to arrange for a referral
16 of health care items or services to a par-
17 ticular practitioner or provider.
18 (I) Any other factors the Secretary deems
19 appropriate in the interest of preventing fraud
20 and abuse in Government health care programs.
21 (b) INTERPRETIVE RULINGS.—
22 (1) IN GENERAL.—
23 (A) REQUEST FOR INTERPRETIVE RUL-
24 ING.—Any person may present, at any time, a
25 request to the Inspector General for a state-

1 ment of the Inspector General's current inter-
2 pretation of the meaning of a specific aspect of
3 the application of sections 1128A and 1128B of
4 the Social Security Act (hereafter in this sec-
5 tion referred to as an "interpretive ruling").
6 (B) ISSUANCE AND EFFECT OF INTERPRE-
7 TIVE RULING.—
8 (i) IN GENERAL.—If appropriate, the
9 Inspector General shall in consultation
10 with the Attorney General, issue an inter-
11 pretive ruling in response to a request de-
12 scribed in subparagraph (A). Interpretive
13 rulings shall not have the force of law and
14 shall be treated as an interpretive rule
15 within the meaning of section 553(b) of
16 title 5, United States Code. All interpretive
17 rulings issued pursuant to this provision
18 shall be published in the Federal Register
19 or otherwise made available for public in-
20 spection.
21 (ii) REASONS FOR DENIAL.—If the In-
22 spector General does not issue an interpre-
23 tive ruling in response to a request de-
24 scribed in subparagraph (A), the Inspector
25 General shall notify the requesting party of

1 such decision and shall identify the reasons
2 for such decision.
3 (2) CRITERIA FOR INTERPRETIVE RULINGS.—
4 (A) IN GENERAL.—In determining whether
5 to issue an interpretive ruling under paragraph
6 (1)(B), the Inspector General may consider—
7 (i) whether and to what extent the re-
8 quest identifies an ambiguity within the
9 language of the statute, the existing safe
10 harbors, or previous interpretive rulings;
11 and
12 (ii) whether the subject of the re-
13 quested interpretive ruling can be ade-
14 quately addressed by interpretation of the
15 language of the statute, the existing safe
16 harbor rules, or previous interpretive rul-
17 ings, or whether the request would require
18 a substantive ruling not authorized under
19 this subsection.
20 (B) NO RULINGS ON FACTUAL ISSUES.—
21 The Inspector General shall not give an inter-
22 pretive ruling on any factual issue, including
23 the intent of the parties or the fair market
24 value of particular leased space or equipment.
25 (c) SPECIAL FRAUD ALERTS.—

1 (1) IN GENERAL.—
2 (A) REQUEST FOR SPECIAL FRAUD
3 ALERTS.—Any person may present, at any
4 time, a request to the Inspector General for a
5 notice which informs the public of practices
6 which the Inspector General considers to be
7 suspect or of particular concern under section
8 1128B(b) of the Social Security Act (42 U.S.C.
9 1320a–7b(b)) (hereafter in this subsection re-
10 ferred to as a "special fraud alert").
11 (B) ISSUANCE AND PUBLICATION OF SPE-
12 CIAL FRAUD ALERTS.—Upon receipt of a re-
13 quest described in subparagraph (A), the In-
14 spector General shall investigate the subject
15 matter of the request to determine whether a
16 special fraud alert should be issued. If appro-
17 priate, the Inspector General shall in consulta-
18 tion with the Attorney General, issue a special
19 fraud alert in response to the request. All spe-
20 cial fraud alerts issued pursuant to this sub-
21 paragraph shall be published in the Federal
22 Register.
23 (2) CRITERIA FOR SPECIAL FRAUD ALERTS.—
24 In determining whether to issue a special fraud alert

1 upon a request described in paragraph (1), the In-
2 spector General may consider—
3 (A) whether and to what extent the prac-
4 tices that would be identified in the special
5 fraud alert may result in any of the con-
6 sequences described in subsection (a)(2); and
7 (B) the volume and frequency of the con-
8 duct that would be identified in the special
9 fraud alert.

10 **SEC. 5404. REPORTING OF FRAUDULENT ACTIONS UNDER**
11 **MEDICARE.**

12 Not later than 1 year after the date of the enactment
13 of this Act, the Secretary shall establish a program
14 through which individuals entitled to benefits under the
15 medicare program may report to the Secretary on a con-
16 fidential basis (at the individual's request) instances of
17 suspected fraudulent actions arising under the program by
18 providers of items and services under the program.

19 **PART 2—REVISIONS TO CURRENT SANCTIONS**
20 **FOR FRAUD AND ABUSE**

21 **SEC. 5411. MANDATORY EXCLUSION FROM PARTICIPATION**
22 **IN MEDICARE AND STATE HEALTH CARE PRO-**
23 **GRAMS.**

24 (a) INDIVIDUAL CONVICTED OF FELONY RELATING
25 TO FRAUD.—

1 (1) IN GENERAL.—Section 1128(a) of the So-
2 cial Security Act (42 U.S.C. 1320a–7(a)) is amend-
3 ed by adding at the end the following new para-
4 graph:
5 "(3) FELONY CONVICTION RELATING TO
6 FRAUD.—Any individual or entity that has been con-
7 victed after the date of the enactment of the Health
8 Reform Act, under Federal or State law, in connec-
9 tion with the delivery of a health care item or service
10 or with respect to any act or omission in a program
11 (other than those specifically described in paragraph
12 (1)) operated by or financed in whole or in part by
13 any Federal, State, or local government agency, of
14 a criminal offense consisting of a felony relating to
15 fraud, theft, embezzlement, breach of fiduciary re-
16 sponsibility, or other financial misconduct.".
17 (2) CONFORMING AMENDMENT.—Section
18 1128(b)(1) of such Act (42 U.S.C. 1320a–7(b)(1))
19 is amended—
20 (A) in the heading, by striking "CONVIC-
21 TION" and inserting "MISDEMEANOR CONVIC-
22 TION"; and
23 (B) by striking "criminal offense" and in-
24 serting "criminal offense consisting of a mis-
25 demeanor".

1 (b) INDIVIDUAL CONVICTED OF FELONY RELATING
2 TO CONTROLLED SUBSTANCE.—
3 (1) IN GENERAL.—Section 1128(a) of the So-
4 cial Security Act (42 U.S.C. 1320a–7(a)), as amend-
5 ed by subsection (a), is amended by adding at the
6 end the following new paragraph:
7 "(4) FELONY CONVICTION RELATING TO CON-
8 TROLLED SUBSTANCE.—Any individual or entity
9 that has been convicted after the date of the enact-
10 ment of the Health Reform Act, under Federal or
11 State law, of a criminal offense consisting of a fel-
12 ony relating to the unlawful manufacture, distribu-
13 tion, prescription, or dispensing of a controlled sub-
14 stance.".
15 (2) CONFORMING AMENDMENT.—Section
16 1128(b)(3) of such Act (42 U.S.C. 1320a–7(b)(3))
17 is amended—
18 (A) in the heading, by striking "CONVIC-
19 TION" and inserting "MISDEMEANOR CONVIC-
20 TION"; and
21 (B) by striking "criminal offense" and in-
22 serting "criminal offense consisting of a mis-
23 demeanor".

1 **SEC. 5412. ESTABLISHMENT OF MINIMUM PERIOD OF EX-**
2 **CLUSION FOR CERTAIN INDIVIDUALS AND**
3 **ENTITIES SUBJECT TO PERMISSIVE EXCLU-**
4 **SION FROM MEDICARE AND STATE HEALTH**
5 **CARE PROGRAMS.**

6 Section 1128(c)(3) of the Social Security Act (42
7 U.S.C. 1320a–7(c)(3)) is amended by adding at the end
8 the following new subparagraphs:

9 "(D) In the case of an exclusion of an individual or
10 entity under paragraph (1), (2), or (3) of subsection (b),
11 the period of the exclusion shall be 3 years, unless the
12 Secretary determines in accordance with published regula-
13 tions that a shorter period is appropriate because of miti-
14 gating circumstances or that a longer period is appro-
15 priate because of aggravating circumstances.

16 "(E) In the case of an exclusion of an individual or
17 entity under subsection (b)(4) or (b)(5), the period of the
18 exclusion shall not be less than the period during which
19 the individual's or entity's license to provide health care
20 is revoked, suspended, or surrendered, or the individual
21 or the entity is excluded or suspended from a Federal or
22 State health care program.

23 "(F) In the case of an exclusion of an individual or
24 entity under subsection (b)(6)(B), the period of the exclu-
25 sion shall be not less than 1 year.".

1 **SEC. 5413. PERMISSIVE EXCLUSION OF INDIVIDUALS WITH**
2 **OWNERSHIP OR CONTROL INTEREST IN**
3 **SANCTIONED ENTITIES.**

4 Section 1128(b) of the Social Security Act (42 U.S.C.
5 1320a–7(b)) is amended by adding at the end the follow-
6 ing new paragraph:

7 "(15) INDIVIDUALS CONTROLLING A SANC-
8 TIONED ENTITY.—Any individual who has a direct
9 or indirect ownership or control interest of 5 percent
10 or more, or an ownership or control interest (as de-
11 fined in section 1124(a)(3)) in, or who is an officer,
12 director, agent, or managing employee (as defined in
13 section 1126(b)) of, an entity—

14 "(A) that has been convicted of any of-
15 fense described in subsection (a) or in para-
16 graph (1), (2), or (3) of this subsection;

17 "(B) against which a civil monetary pen-
18 alty has been assessed under section 1128A; or

19 "(C) that has been excluded from partici-
20 pation under a program under title XVIII or
21 under a State health care program.".

22 **SEC. 5414. ACTIONS SUBJECT TO CRIMINAL PENALTIES.**

23 (a) RESTRICTION ON APPLICATION OF EXCEPTION
24 FOR AMOUNTS PAID TO EMPLOYEES.—Section
25 1128B(b)(3)(B) of the Social Security Act (42 U.S.C.
26 1320a–7b(b)(3)(B)) is amended by striking "services;"

1 and inserting the following: "services, but only if the
2 amount of remuneration under the arrangement is (i) con-
3 sistent with fair market value; (ii) not determined in a
4 manner that takes into account (directly or indirectly) the
5 volume or value of any referrals of patients directly con-
6 tacted by the employee to the employer for the furnishing
7 (or arranging for the furnishing) of such items or services;
8 and (iii) provided pursuant to an arrangement that would
9 be commercially reasonable even if no such referrals were
10 made;".
11 (b) NEW EXCEPTION FOR CAPITATED PAYMENTS.—
12 Section 1128B(b)(3) of the Social Security Act (42 U.S.C.
13 1320a–7b(b)(3)) is amended—
14 (A) by striking "and" at the end of sub-
15 paragraph (D);
16 (B) by striking the period at the end of
17 subparagraph (E) and inserting a semicolon;
18 and
19 (C) by adding at the end the following new
20 subparagraphs:
21 "(F) any reduction in cost sharing or increased
22 benefits given to an individual, any amounts paid to
23 a provider for an item or service furnished to an in-
24 dividual, or any discount or reduction in price given
25 by the provider for such an item or service, if the

1 individual is enrolled with and such item or service
2 is covered under any of the following:
3 "(i) A health plan which is furnishing
4 items or services under a risk-sharing contract
5 under section 1876 or section 1903(m).
6 "(ii) A health plan receiving payments on
7 a prepaid basis, under a demonstration project
8 under section 402(a) of the Social Security
9 Amendments of 1967 or under section 222(a)
10 of the Social Security Amendments of 1972;
11 "(G) any amounts paid to a provider for an
12 item or service furnished to an individual or any dis-
13 count or reduction in price given by the provider for
14 such an item or service, if the individual is enrolled
15 with and such item or service is covered under a
16 health plan under which the provider furnishing the
17 item or service is paid by the health plan for fur-
18 nishing the item or service only on a capitated basis
19 pursuant to a written arrangement between the plan
20 and the provider in which the provider assumes fi-
21 nancial risk for furnishing the item or service;
22 "(H) differentials in coinsurance and deductible
23 amounts as part of a benefit plan design as long as
24 the differentials have been disclosed in writing to all
25 third party payors to whom claims are presented

1 and as long as the differentials meet the standards
2 as defined in regulations promulgated by the Sec-
3 retary; and

4 "(I) remuneration given to individuals to pro-
5 mote the delivery of preventive care in compliance
6 with regulations promulgated by the Secretary.".

7 **SEC. 5415. SANCTIONS AGAINST PRACTITIONERS AND PER-**
8 **SONS FOR FAILURE TO COMPLY WITH STATU-**
9 **TORY OBLIGATIONS.**

10 (a) MINIMUM PERIOD OF EXCLUSION FOR PRACTI-
11 TIONERS AND PERSONS FAILING TO MEET STATUTORY
12 OBLIGATIONS.—

13 (1) IN GENERAL.—The second sentence of sec-
14 tion 1156(b)(1) of the Social Security Act (42
15 U.S.C. 1320c-5(b)(1)) is amended by striking "may
16 prescribe)" and inserting "may prescribe, except
17 that such period may not be less than 1 year)".

18 (2) CONFORMING AMENDMENT.—Section
19 1156(b)(2) of such Act (42 U.S.C. 1320c-5(b)(2)) is
20 amended by striking "shall remain" and inserting
21 "shall (subject to the minimum period specified in
22 the second sentence of paragraph (1)) remain".

23 (b) REPEAL OF "UNWILLING OR UNABLE" CONDI-
24 TION FOR IMPOSITION OF SANCTION.—Section 1156(b)(1)

1 of the Social Security Act (42 U.S.C. 1320c–5(b)(1)) is
2 amended—
3 (1) in the second sentence, by striking "and de-
4 termines" and all that follows through "such obliga-
5 tions,"; and
6 (2) by striking the third sentence.

7 **SEC. 5416. INTERMEDIATE SANCTIONS FOR MEDICARE**
8 **HEALTH MAINTENANCE ORGANIZATIONS.**

9 (a) APPLICATION OF INTERMEDIATE SANCTIONS FOR
10 ANY PROGRAM VIOLATIONS.—
11 (1) IN GENERAL.—Section 1876(i)(1) of the
12 Social Security Act (42 U.S.C. 1395mm(i)(1)) is
13 amended by striking "the Secretary may terminate"
14 and all that follows and inserting the following: "in
15 accordance with procedures established under para-
16 graph (9), the Secretary may at any time terminate
17 any such contract or may impose the intermediate
18 sanctions described in paragraph (6)(B) or (6)(C)
19 (whichever is applicable) on the eligible organization
20 if the Secretary determines that the organization—
21 "(A) has failed substantially to carry out
22 the contract;
23 "(B) is carrying out the contract in a man-
24 ner inconsistent with the efficient and effective
25 administration of this section; or

1 "(C) no longer substantially meets the ap-
2 plicable conditions of subsections (b), (c), (e),
3 and (f).".
4 (2) OTHER INTERMEDIATE SANCTIONS FOR
5 MISCELLANEOUS PROGRAM VIOLATIONS.—Section
6 1876(i)(6) of such Act (42 U.S.C. 1395mm(i)(6)) is
7 amended by adding at the end the following new
8 subparagraph:
9 "(C) In the case of an eligible organization for which
10 the Secretary makes a determination under paragraph (1)
11 the basis of which is not described in subparagraph (A),
12 the Secretary may apply the following intermediate sanc-
13 tions:
14 "(i) Civil money penalties of not more than
15 $25,000 for each determination under paragraph (1)
16 if the deficiency that is the basis of the determina-
17 tion has directly adversely affected (or has the sub-
18 stantial likelihood of adversely affecting) an individ-
19 ual covered under the organization's contract.
20 "(ii) Civil money penalties of not more than
21 $10,000 for each week beginning after the initiation
22 of procedures by the Secretary under paragraph (9)
23 during which the deficiency that is the basis of a de-
24 termination under paragraph (1) exists.

1 "(iii) Suspension of enrollment of individuals
2 under this section after the date the Secretary noti-
3 fies the organization of a determination under para-
4 graph (1) and until the Secretary is satisfied that
5 the deficiency that is the basis for the determination
6 has been corrected and is not likely to recur.".

7 (3) PROCEDURES FOR IMPOSING SANCTIONS.—
8 Section 1876(i) of such Act (42 U.S.C. 1395mm(i))
9 is amended by adding at the end the following new
10 paragraph:

11 "(9) The Secretary may terminate a contract with an
12 eligible organization under this section or may impose the
13 intermediate sanctions described in paragraph (6) on the
14 organization in accordance with formal investigation and
15 compliance procedures established by the Secretary under
16 which—

17 "(A) the Secretary provides the organization
18 with the opportunity to develop and implement a
19 corrective action plan to correct the deficiencies that
20 were the basis of the Secretary's determination
21 under paragraph (1);

22 "(B) in deciding whether to impose sanctions,
23 the Secretary considers aggravating factors such as
24 whether an entity has a history of deficiencies or has

1 not taken action to correct deficiencies the Secretary
2 has brought to their attention;
3 "(C) there are no unreasonable or unnecessary
4 delays between the finding of a deficiency and the
5 imposition of sanctions; and
6 "(D) the Secretary provides the organization
7 with reasonable notice and opportunity for hearing
8 (including the right to appeal an initial decision) be-
9 fore imposing any sanction or terminating the con-
10 tract.".
11 (4) CONFORMING AMENDMENTS.—Section
12 1876(i)(6)(B) of such Act (42 U.S.C.
13 1395mm(i)(6)(B)) is amended by striking the sec-
14 ond sentence.
15 (b) AGREEMENTS WITH PEER REVIEW ORGANIZA-
16 TIONS.—
17 (1) REQUIREMENT FOR WRITTEN AGREE-
18 MENT.—Section 1876(i)(7)(A) of the Social Security
19 Act (42 U.S.C. 1395mm(i)(7)(A)) is amended by
20 striking "an agreement" and inserting "a written
21 agreement".
22 (2) DEVELOPMENT OF MODEL AGREEMENT.—
23 Not later than July 1, 1995, the Secretary shall de-
24 velop a model of the agreement that an eligible orga-
25 nization with a risk-sharing contract under section

1 1876 of the Social Security Act must enter into with
2 an entity providing peer review services with respect
3 to services provided by the organization under sec-
4 tion 1876(i)(7)(A) of such Act.
5 (3) REPORT BY GAO.—
6 (A) STUDY.—The Comptroller General of
7 the United States shall conduct a study of the
8 costs incurred by eligible organizations with
9 risk-sharing contracts under section 1876(b) of
10 such Act of complying with the requirement of
11 entering into a written agreement with an en-
12 tity providing peer review services with respect
13 to services provided by the organization, to-
14 gether with an analysis of how information gen-
15 erated by such entities is used by the Secretary
16 to assess the quality of services provided by
17 such eligible organizations.
18 (B) REPORT TO CONGRESS.—Not later
19 than July 1, 1997, the Comptroller General
20 shall submit a report to the Committee on
21 Ways and Means and the Committee on Energy
22 and Commerce of the House of Representatives
23 and the Committee on Finance and the Special
24 Committee on Aging of the Senate on the study
25 conducted under subparagraph (A).

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to contract years be-
3 ginning on or after January 1, 1995.

4 **SEC. 5417. EFFECTIVE DATE.**

5 The amendments made by this part shall take effect
6 January 1, 1995.

7 **PART 3—ADMINISTRATIVE AND MISCELLANEOUS**
8 **PROVISIONS**

9 **SEC. 5421. ESTABLISHMENT OF THE HEALTH CARE FRAUD**
10 **AND ABUSE DATA COLLECTION PROGRAM.**

11 (a) GENERAL PURPOSE.—Not later than January 1,
12 1995, the Secretary shall establish a national health care
13 fraud and abuse data collection program for the reporting
14 of final adverse actions (not including settlements in which
15 no findings of liability have been made) against health
16 care providers, suppliers, or practitioners as required by
17 subsection (b), with access as set forth in subsection (c).

18 (b) REPORTING OF INFORMATION.—

19 (1) IN GENERAL.—Each government agency
20 and health plan shall report any final adverse action
21 (not including settlements in which no findings of li-
22 ability have been made) taken against a health care
23 provider, supplier, or practitioner.

1 (2) INFORMATION TO BE REPORTED.—The in-
2 formation to be reported under paragraph (1) in-
3 cludes:
4 (A) The name of any health care provider,
5 supplier, or practitioner who is the subject of a
6 final adverse action.
7 (B) The name (if known) of any health
8 care entity with which a health care provider,
9 supplier, or practitioner is affiliated or associ-
10 ated.
11 (C) The nature of the final adverse action.
12 (D) A description of the acts or omissions
13 and injuries upon which the final adverse action
14 was based, and such other information as the
15 Secretary determines by regulation is required
16 for appropriate interpretation of information re-
17 ported under this section.
18 (3) CONFIDENTIALITY.—In determining what
19 information is required, the Secretary shall include
20 procedures to assure that the privacy of individuals
21 receiving health care services is appropriately pro-
22 tected.
23 (4) TIMING AND FORM OF REPORTING.—The
24 information required to be reported under this sub-
25 section shall be reported regularly (but not less often

1 than monthly) and in such form and manner as the
2 Secretary prescribes. Such information shall first be
3 required to be reported on a date specified by the
4 Secretary.
5 (5) TO WHOM REPORTED.—The information re-
6 quired to be reported under this subsection shall be
7 reported to the Secretary.
8 (c) DISCLOSURE AND CORRECTION OF INFORMA-
9 TION.—
10 (1) DISCLOSURE.—With respect to the informa-
11 tion about final adverse actions (not including settle-
12 ments in which no findings of liability have been
13 made) reported to the Secretary under this section
14 respecting a health care provider, supplier, or practi-
15 tioner, the Secretary shall, by regulation, provide
16 for—
17 (A) disclosure of the information, upon re-
18 quest, to the health care provider, supplier, or
19 licensed practitioner, and
20 (B) procedures in the case of disputed ac-
21 curacy of the information.
22 (2) CORRECTIONS.—Each Government agency
23 and health plan shall report corrections of informa-
24 tion already reported about any final adverse action
25 taken against a health care provider, supplier, or

1 practitioner, in such form and manner that the Sec-
2 retary prescribes by regulation.
3 (d) ACCESS TO REPORTED INFORMATION.—
4 (1) AVAILABILITY.—The information in this
5 database shall be available to Federal and State gov-
6 ernment agencies and health plans pursuant to pro-
7 cedures that the Secretary shall provide by regula-
8 tion.
9 (2) FEES FOR DISCLOSURE.—The Secretary
10 may establish or approve reasonable fees for the dis-
11 closure of information in this database. The amount
12 of such a fee may not exceed the costs of processing
13 the requests for disclosure and of providing such in-
14 formation. Such fees shall be available to the Sec-
15 retary or, in the Secretary's discretion to the agency
16 designated under this section to cover such costs.
17 (e) PROTECTION FROM LIABILITY FOR REPORT-
18 ING.—No person or entity, including the agency des-
19 ignated by the Secretary in subsection (b)(5) shall be held
20 liable in any civil action with respect to any report made
21 as required by this section, without knowledge of the fal-
22 sity of the information contained in the report.
23 (f) DEFINITIONS AND SPECIAL RULES.—For pur-
24 poses of this section:
25 (1) The term "final adverse action" includes:

1 (A) Civil judgments against a health care
2 provider in Federal or State court related to the
3 delivery of a health care item or service.
4 (B) Federal or State criminal convictions
5 related to the delivery of a health care item or
6 service.
7 (C) Actions by Federal or State agencies
8 responsible for the licensing and certification of
9 health care providers, suppliers, and licensed
10 health care practitioners, including—
11 (i) formal or official actions, such as
12 revocation or suspension of a license (and
13 the length of any such suspension), rep-
14 rimand, censure or probation,
15 (ii) any other loss of license of the
16 provider, supplier, or practitioner, by oper-
17 ation of law, or
18 (iii) any other negative action or find-
19 ing by such Federal or State agency that
20 is publicly available information.
21 (D) Exclusion from participation in Fed-
22 eral or State health care programs.
23 (E) Any other adjudicated actions or deci-
24 sions that the Secretary shall establish by regu-
25 lation.

1 (2) The terms "licensed health care practi-
2 tioner", "licensed practitioner", and "practitioner"
3 mean, with respect to a State, an individual who is
4 licensed or otherwise authorized by the State to pro-
5 vide health care services (or any individual who,
6 without authority holds himself or herself out to be
7 so licensed or authorized).
8 (3) The term "health care provider" means a
9 provider of services as defined in section 1861(u) of
10 the Social Security Act, and any entity, including a
11 health maintenance organization, group medical
12 practice, or any other entity listed by the Secretary
13 in regulation, that provides health care services.
14 (4) The term "supplier" means a supplier of
15 health care items and services described in section
16 1819(a) and (b), and section 1861 of the Social Se-
17 curity Act.
18 (5) The term "Government agency" shall in-
19 clude:
20 (A) The Department of Justice.
21 (B) The Department of Health and
22 Human Services.
23 (C) Any other Federal agency that either
24 administers or provides payment for the deliv-
25 ery of health care services, including, but not

1 limited to the Department of Defense and the
2 Veterans' Administration.
3 (D) State law enforcement agencies.
4 (E) State medicaid fraud and abuse units.
5 (F) Federal or State agencies responsible
6 for the licensing and certification of health care
7 providers and licensed health care practitioners.
8 (6) The term "health plan" has the meaning
9 given to such term by section 1128(i) of the Social
10 Security Act.
11 (7) For purposes of paragraph (2), the exist-
12 ence of a conviction shall be determined under para-
13 graph (4) of section 1128(j) of the Social Security
14 Act.
15 (g) CONFORMING AMENDMENT.—Section 1921(d) of
16 the Social Security Act is amended by inserting "and sec-
17 tion 5421 of the Health Reform Act" after "section 422
18 of the Health Care Quality Improvement Act of 1986".
19 **PART 4—CIVIL MONETARY PENALTIES**
20 **SEC. 5431. CIVIL MONETARY PENALTIES.**
21 (a) GENERAL CIVIL MONETARY PENALTIES.—Sec-
22 tion 1128A of the Social Security Act (42 U.S.C. 1320a–
23 7a) is amended as follows:

1 (1) In subsection (a)(1), by inserting "or of any
2 health plan (as defined in section 1128(i))," after
3 "subsection (i)(1)),".
4 (2) In subsection (b)(1)(A), by inserting "or
5 under a health plan" after "title XIX".
6 (3) In subsection (f)—
7 (A) by redesignating paragraph (3) as
8 paragraph (4); and
9 (B) by inserting after paragraph (2) the
10 following new paragraphs:
11 "(3) With respect to amounts recovered arising
12 out of a claim under a health plan, the portion of
13 such amounts as is determined to have been paid by
14 the plan shall be repaid to the plan, and the portion
15 of such amounts attributable to the amounts recov-
16 ered under this section by reason of the amendments
17 made by subtitle E of title V of the Health Reform
18 Act (as estimated by the Secretary) shall be depos-
19 ited into the Health Care Fraud and Abuse Control
20 Account established under section 5401(b) of such
21 Act.".
22 (4) In subsection (i)—
23 (A) in paragraph (2), by inserting "or
24 under a health plan" before the period at the
25 end, and

1 (B) in paragraph (5), by inserting "or
2 under a health plan" after "or XX".
3 (b) PROHIBITION AGAINST OFFERING INDUCEMENTS
4 TO INDIVIDUALS ENROLLED UNDER PROGRAMS OR
5 PLANS.—
6 (1) OFFER OF REMUNERATION.—Section
7 1128A(a) of the Social Security Act (42 U.S.C.
8 1320a–7a(a)) is amended—
9 (A) by striking "or" at the end of para-
10 graph (1)(D);
11 (B) by striking ", or" at the end of para-
12 graph (2) and inserting a semicolon;
13 (C) by striking the semicolon at the end of
14 paragraph (3) and inserting "; or"; and
15 (D) by inserting after paragraph (3) the
16 following new paragraph:
17 "(4) offers to or transfers remuneration to any
18 individual eligible for benefits under title XVIII of
19 this Act, or under a State health care program (as
20 defined in section 1128(h)) that such person knows
21 or should know is likely to influence such individual
22 to order or receive from a particular provider, practi-
23 tioner, or supplier any item or service for which pay-
24 ment may be made, in whole or in part, under title
25 XVIII, or a State health care program;".

1 (2) REMUNERATION DEFINED.—Section
2 1128A(i) of such Act (42 U.S.C. 1320a-7a(i)) is
3 amended by adding the following new paragraph:
4 "(6) The term 'remuneration' includes the waiv-
5 er of coinsurance and deductible amounts (or any
6 part thereof), and transfers of items or services for
7 free or for other than fair market value. The term
8 'remuneration' does not include—
9 "(A) the waiver of coinsurance and deduct-
10 ible amounts by a person, if—
11 "(i) the waiver is not offered as part
12 of any advertisement or solicitation;
13 "(ii) the person does not routinely
14 waive coinsurance or deductible amounts;
15 and
16 "(iii) the person—
17 "(I) waives the coinsurance and
18 deductible amounts after determining
19 in good faith that the individual is in
20 financial need;
21 "(II) fails to collect coinsurance
22 or deductible amounts after making
23 reasonable collection efforts; or
24 "(III) provides for any permis-
25 sible waiver as specified in section

1 1128B(b)(3) or in regulations issued
2 by the Secretary;
3 "(B) differentials in coinsurance and de-
4 ductible amounts as part of a benefit plan de-
5 sign as long as the differentials have been dis-
6 closed in writing to all third party payors to
7 whom claims are presented and as long as the
8 differentials meet the standards as defined in
9 regulations promulgated by the Secretary; or
10 "(C) incentives given to individuals to pro-
11 mote the delivery of preventive care as deter-
12 mined by the Secretary in regulations.".
13 (c) EXCLUDED INDIVIDUAL RETAINING OWNERSHIP
14 OR CONTROL INTEREST IN PARTICIPATING ENTITY.—
15 Section 1128A(a) of the Social Security Act (42 U.S.C.
16 1320a–7a(a)), as amended by subsection (b), is further
17 amended—
18 (1) by striking "or" at the end of paragraph
19 (3);
20 (2) by striking the semicolon at the end of
21 paragraph (4) and inserting "; or"; and
22 (3) by inserting after paragraph (4) the follow-
23 ing new paragraph:
24 "(5) in the case of a person who is not an orga-
25 nization, agency, or other entity, is excluded from

1 participating in a program under title XVIII or a
2 State health care program in accordance with this
3 subsection or under section 1128 and who, at the
4 time of a violation of this subsection, retains a direct
5 or indirect ownership or control interest of 5 percent
6 or more, or an ownership or control interest (as de-
7 fined in section 1124(a)(3)) in, or who is an officer,
8 director, agent, or managing employee (as defined in
9 section 1126(b)) of, an entity that is participating in
10 a program under title XVIII or a State health care
11 program;".

12 (d) MODIFICATIONS OF AMOUNTS OF PENALTIES
13 AND ASSESSMENTS.—Section 1128A(a) of the Social Se-
14 curity Act (42 U.S.C. 1320a–7a(a)), as amended by sub-
15 sections (b) and (c), is amended in the matter following
16 paragraph (6)—

17 (1) by striking "$2,000" and inserting
18 "$10,000";

19 (2) by inserting "; in cases under paragraph
20 (4), $10,000 for each such offer or transfer; in cases
21 under paragraph (5), $10,000 for each day the pro-
22 hibited relationship occurs; in cases under paragraph
23 (6) or (7), $10,000 per violation" after "false or
24 misleading information was given";

1 (3) by striking "twice the amount" and insert-
2 ing "3 times the amount"; and
3 (4) by inserting "(or, in cases under paragraph
4 (4), 3 times the amount of the illegal remunera-
5 tion)" after "for each such item or service".
6 (e) CLAIM FOR ITEM OR SERVICE BASED ON INCOR-
7 RECT CODING OR MEDICALLY UNNECESSARY SERV-
8 ICES.—Section 1128A(a)(1) of the Social Security Act (42
9 U.S.C. 1320a–7a(a)(1)) is amended—
10 (1) in subparagraph (A) by striking "claimed,"
11 and inserting the following: "claimed, including any
12 person who repeatedly presents or causes to be pre-
13 sented a claim for an item or service that is based
14 on a code that the person knows or should know will
15 result in a greater payment to the person than the
16 code the person knows or should know is applicable
17 to the item or service actually provided,";
18 (2) in subparagraph (C), by striking "or" at
19 the end;
20 (3) in subparagraph (D), by striking "; or" and
21 inserting ", or"; and
22 (4) by inserting after subparagraph (D) the fol-
23 lowing new subparagraph:

1 "(E) is for a medical or other item or serv-
2 ice that a person repeatedly knows or should
3 know is not medically necessary; or".
4 (f) PERMITTING SECRETARY TO IMPOSE CIVIL MON-
5 ETARY PENALTY.—Section 1128A(b) of the Social Secu-
6 rity Act (42 U.S.C. 1320a–7a(a)) is amended by adding
7 the following new paragraph:
8 "(3) Any person (including any organization,
9 agency, or other entity, but excluding a beneficiary
10 as defined in subsection (i)(5)) who the Secretary
11 determines has violated section 1128B(b) of this
12 title shall be subject to a civil monetary penalty of
13 not more than $10,000 for each such violation. In
14 addition, such person shall be subject to an assess-
15 ment of not more than twice the total amount of the
16 remuneration offered, paid, solicited, or received in
17 violation of section 1128B(b). The total amount of
18 remuneration subject to an assessment shall be cal-
19 culated without regard to whether some portion
20 thereof also may have been intended to serve a pur-
21 pose other than one proscribed by section
22 1128B(b).".
23 (g) SANCTIONS AGAINST PRACTITIONERS AND PER-
24 SONS FOR FAILURE TO COMPLY WITH STATUTORY OBLI-
25 GATIONS.—Section 1156(b)(3) of the Social Security Act

1 (42 U.S.C. 1320c–5(b)(3)) is amended by striking "the
2 actual or estimated cost" and inserting the following: "up
3 to $10,000 for each instance".

4 (h) PROCEDURAL PROVISIONS.—Section 1876(i)(6)
5 of such Act (42 U.S.C. 1395mm(i)(6)) is further amended
6 by adding at the end the following new subparagraph:

7 "(D) The provisions of section 1128A (other than
8 subsections (a) and (b)) shall apply to a civil money pen-
9 alty under subparagraph (A) or (B) in the same manner
10 as they apply to a civil money penalty or proceeding under
11 section 1128A(a).".

12 (i) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect January 1, 1995.

14 **PART 5—AMENDMENTS TO CRIMINAL LAW**

15 **SEC. 5441. HEALTH CARE FRAUD.**

16 (a) IN GENERAL.—

17 (1) FINES AND IMPRISONMENT FOR HEALTH
18 CARE FRAUD VIOLATIONS.—Chapter 63 of title 18,
19 United States Code, is amended by adding at the
20 end the following new section:

21 **"§ 1347. Health care fraud**

22 "(a) Whoever knowingly executes, or attempts to exe-
23 cute, a scheme or artifice—

1 "(1) to defraud any health plan or other per-
2 son, in connection with the delivery of or payment
3 for health care benefits, items, or services; or
4 "(2) to obtain, by means of false or fraudulent
5 pretenses, representations, or promises, any of the
6 money or property owned by, or under the custody
7 or control of, any health plan, or person in connec-
8 tion with the delivery of or payment for health care
9 benefits, items, or services;
10 shall be fined under this title or imprisoned not more than
11 10 years, or both. If the violation results in serious bodily
12 injury (as defined in section 1365(g)(3) of this title), such
13 person shall be imprisoned for any term of years.
14 "(b) For purposes of this section, the term 'health
15 plan' has the same meaning given such term in section
16 1128(i) of the Social Security Act.".
17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions at the beginning of chapter 63 of title 18,
19 United States Code, is amended by adding at the
20 end the following:

"1347. Health care fraud.".

21 (b) CRIMINAL FINES DEPOSITED IN THE HEALTH
22 CARE FRAUD AND ABUSE CONTROL ACCOUNT.—The Sec-
23 retary of the Treasury shall deposit into the Health Care
24 Fraud and Abuse Control Account established under sec-
25 tion 5401(b) an amount equal to the criminal fines im-

1 posed under section 1347 of title 18, United States Code
2 (relating to health care fraud).

3 **SEC. 5442. FORFEITURES FOR FEDERAL HEALTH CARE OF-**
4 **FENSES.**

5 (a) IN GENERAL.—Section 982(a) of title 18, United
6 States Code, is amended by adding after paragraph (5)
7 the following new paragraph:
8 "(6)(A) The court, in imposing sentence on a person
9 convicted of a Federal health care offense, shall order the
10 person to forfeit property, real or personal, that—
11 "(i) is used in the commission of the offense if
12 the offense results in a financial loss or gain of
13 $50,000 or more; or
14 "(ii) constitutes or is derived from proceeds
15 traceable to the commission of the offense.
16 "(B) For purposes of this paragraph, the term 'Fed-
17 eral health care offense' means a violation of, or a criminal
18 conspiracy to violate—
19 "(i) section 1347 of this title;
20 "(ii) section 1128B of the Social Security Act;
21 "(iii) sections 287, 371, 664, 666, 1001, 1027,
22 1341, 1343, or 1954 of this title if the violation or
23 conspiracy relates to health care fraud; and

1 "(iv) section 501 or 511 of the Employee Re-
2 tirement Income Security Act of 1974, if the viola-
3 tion or conspiracy relates to health care fraud.".
4 (b) PROPERTY FORFEITED DEPOSITED IN HEALTH
5 CARE FRAUD AND ABUSE CONTROL ACCOUNT.—The Sec-
6 retary of the Treasury shall deposit into the Health Care
7 Fraud and Abuse Control Account established under sec-
8 tion 5401(b) an amount equal to amounts resulting from
9 forfeiture of property by reason of a Federal health care
10 offense pursuant to section 982(a)(6) of title 18, United
11 States Code.

12 **SEC. 5443. INJUNCTIVE RELIEF RELATING TO FEDERAL**
13 **HEALTH CARE OFFENSES.**

14 Section 1345(a)(1) of title 18, United States Code,
15 is amended—
16 (1) by striking "or" at the end of subparagraph
17 (A);
18 (2) by inserting "or" at the end of subpara-
19 graph (B); and
20 (3) by adding at the end the following:
21 "(C) committing or about to commit a
22 Federal health care offense (as defined in sec-
23 tion 982(a)(6)(B) of this title);".

1 **PART 6—PAYMENTS FOR STATE HEALTH CARE**
2 **FRAUD CONTROL UNITS**

3 **SEC. 5451. ESTABLISHMENT OF STATE FRAUD UNITS.**

4 (a) ESTABLISHMENT OF HEALTH CARE FRAUD AND
5 ABUSE CONTROL UNIT.—The Governor of each State
6 shall, consistent with State law, establish and maintain in
7 accordance with subsection (b) a State agency to act as
8 a Health Care Fraud and Abuse Control Unit for purposes
9 of this part.

10 (b) DEFINITION.—In this section, a "State Fraud
11 Unit" means a Health Care Fraud and Abuse Control
12 Unit designated under subsection (a) that the Secretary
13 certifies meets the requirements of this part.

14 **SEC. 5452. REQUIREMENTS FOR STATE FRAUD UNITS.**

15 (a) IN GENERAL.—The State Fraud Unit must—
16 (1) be a single identifiable entity of the State
17 government;
18 (2) be separate and distinct from any State
19 agency with principal responsibility for the adminis-
20 tration of any Federally-funded or mandated health
21 care program;
22 (3) meet the other requirements of this section.

23 (b) SPECIFIC REQUIREMENTS DESCRIBED.—The
24 State Fraud Unit shall—
25 (1) be a Unit of the office of the State Attorney
26 General or of another department of State govern-

1 ment which possesses statewide authority to pros-
2 ecute individuals for criminal violations;
3 (2) if it is in a State the constitution of which
4 does not provide for the criminal prosecution of indi-
5 viduals by a statewide authority and has formal pro-
6 cedures, (A) assure its referral of suspected criminal
7 violations to the appropriate authority or authorities
8 in the State for prosecution, and (B) assure its as-
9 sistance of, and coordination with, such authority or
10 authorities in such prosecutions; or
11 (3) have a formal working relationship with the
12 office of the State Attorney General or the appro-
13 priate authority or authorities for prosecution and
14 have formal procedures (including procedures for its
15 referral of suspected criminal violations to such of-
16 fice) which provide effective coordination of activities
17 between the Fraud Unit and such office with respect
18 to the detection, investigation, and prosecution of
19 suspected criminal violations relating to any Feder-
20 ally-funded or mandated health care programs.
21 (c) STAFFING REQUIREMENTS.—The State Fraud
22 Unit shall—
23 (1) employ attorneys, auditors, investigators
24 and other necessary personnel; and

1 (2) be organized in such a manner and provide
2 sufficient resources as is necessary to promote the
3 effective and efficient conduct of State Fraud Unit
4 activities.
5 (d) COOPERATIVE AGREEMENTS; MEMORANDA OF
6 UNDERSTANDING.—The State Fraud Unit shall have co-
7 operative agreements with—
8 (1) Federally-funded or mandated health care
9 programs;
10 (2) similar Fraud Units in other States, as ex-
11 emplified through membership and participation in
12 the National Association of Medicaid Fraud Control
13 Units or its successor; and
14 (3) the Secretary.
15 (e) REPORTS.—The State Fraud Unit shall submit
16 to the Secretary an application and an annual report con-
17 taining such information as the Secretary determines to
18 be necessary to determine whether the State Fraud Unit
19 meets the requirements of this section.
20 (f) FUNDING SOURCE; PARTICIPATION IN ALL-
21 PAYER PROGRAM.—In addition to those sums expended
22 by a State under section 5454(a) for purposes of deter-
23 mining the amount of the Secretary's payments, a State
24 Fraud Unit may receive funding for its activities from
25 other sources, the identity of which shall be reported to

1 the Secretary in its application or annual report. The
2 State Fraud Unit shall participate in the all-payer fraud
3 and abuse control program established under section
4 5401.

5 **SEC. 5453. SCOPE AND PURPOSE.**

6 The State Fraud Unit shall carry out the following
7 activities:

8 (1) The State Fraud Unit shall conduct a state-
9 wide program for the investigation and prosecution
10 (or referring for prosecution) of violations of all ap-
11 plicable state laws regarding any and all aspects of
12 fraud in connection with any aspect of the adminis-
13 tration and provision of health care services and ac-
14 tivities of providers of such services under any Fed-
15 erally-funded or mandated health care programs;

16 (2) The State Fraud Unit shall have procedures
17 for reviewing complaints of the abuse or neglect of
18 patients of facilities (including patients in residential
19 facilities and home health care programs) that re-
20 ceive payments under any Federally-funded or man-
21 dated health care programs, and, where appropriate,
22 to investigate and prosecute such complaints under
23 the criminal laws of the State or for referring the
24 complaints to other State agencies for action.

1 (3) The State Fraud Unit shall provide for the
2 collection, or referral for collection to the appro-
3 priate agency, of overpayments that are made under
4 any Federally-funded or mandated health care pro-
5 gram and that are discovered by the State Fraud
6 Unit in carrying out its activities.

7 **SEC. 5454. PAYMENTS TO STATES.**

8 (a) MATCHING PAYMENTS TO STATES.—Subject to
9 subsection (c), for each year for which a State has a State
10 Fraud Unit approved under section 5452(b) in operation
11 the Secretary shall provide for a payment to the State for
12 each quarter in a fiscal year in an amount equal to the
13 applicable percentage of the sums expended during the
14 quarter by the State Fraud Unit.

15 (2) TIME OF PAYMENT.—The Secretary shall
16 provide for a payment under paragraph (1) for a
17 quarter by not later than 30 days after the end of
18 the quarter.

19 (b) APPLICABLE PERCENTAGE DEFINED.—

20 (1) IN GENERAL.—In subsection (a), the "ap-
21 plicable percentage" with respect to a State for a
22 fiscal year is—

23 (A) 90 percent, for quarters occurring dur-
24 ing the first 3 years for which the State Fraud
25 Unit is in operation; or

1 (B) 75 percent, for any other quarters.
2 (2) TREATMENT OF STATES WITH MEDICAID
3 FRAUD CONTROL UNITS.—In the case of a State
4 with a State medicaid fraud control in operation
5 prior to or as of the date of the enactment of this
6 Act, in determining the number of years for which
7 the State Fraud Unit under this part has been in
8 operation, there shall be included the number of
9 years for which such State medicaid fraud control
10 unit was in operation.
11 (c) LIMIT ON PAYMENT.—Notwithstanding sub-
12 section (a), the total amount of payments made to a State
13 under this section for a fiscal year may not exceed—
14 (1) for fiscal year 1996, 4 times the amount
15 paid to the State under section 1903(a)(6) of the
16 Social Security Act during the first quarter of 1995;
17 and
18 (2) for each succeeding fiscal year, the amount
19 determined under this subsection in the previous fis-
20 cal year, increased by the percentage increase in the
21 consumer price index for all urban consumers (U.S.
22 city average) for the year.

1 # Subtitle F—Health Care
2 # Malpractice Reform

3 **SEC. 5501. FINDINGS AND PURPOSE.**

4 (a) FINDINGS.—Congress finds the following:

5 (1) EFFECT ON HEALTH CARE ACCESS AND
6 COSTS.—The civil justice system of the United
7 States is a costly and inefficient mechanism that has
8 an adverse impact on the availability of, and access
9 to, health care services and the cost of health care
10 in the United States.

11 (2) EFFECT ON INTERSTATE COMMERCE.—The
12 health care and insurance industries and the litiga-
13 tion system used to resolve health care liability dis-
14 putes affect interstate commerce by contributing to
15 the high cost of health care and premiums for health
16 care liability insurance purchased by participants in
17 the health care system.

18 (3) EFFECT ON FEDERAL SPENDING.—The
19 problems in the health care liability litigation sys-
20 tems existing throughout the United States have a
21 significant effect on the amount, distribution, and
22 use of Federal funds.

23 (4) COMPELLING INTEREST.—There is a com-
24 pelling governmental interest in reforming the health
25 care liability litigation system.

1 (b) PURPOSE.—It is the purpose of this subtitle to
2 implement reasonable, comprehensive, and effective health
3 care liability reform that is designed to—
4 (1) ensure that individuals with meritorious
5 health care injury claims receive fair, adequate, and
6 expeditious compensation, including reasonable non-
7 economic damages;
8 (2) improve the availability of health care serv-
9 ices; and
10 (3) reduce the incidence of defensive medicine
11 and lower the cost of health care liability insurance.
12 **SEC. 5502. APPLICABILITY.**
13 Except as provided in section 5521, this subtitle shall
14 apply to any health care liability action brought in a Fed-
15 eral or State court, and to any health care liability claim
16 subject to an alternative dispute resolution system, that
17 is initiated on or after January 1, 1995.
18 **SEC. 5503. DEFINITIONS.**
19 As used in this subtitle:
20 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
21 TEM.—The term "alternative dispute resolution sys-
22 tem" means a system that provides for the resolu-
23 tion of health care liability claims in a manner other
24 than through health care liability actions brought in
25 Federal or State courts.

1 (2) CLAIMANT.—The term "claimant" means
2 any person who asserts a health care liability claim
3 of health care liability action, including a person who
4 asserts or claims a right to legal or equitable con-
5 tribution, indemnity or subrogation, arising out of a
6 health care liability claim or action, and any individ-
7 ual on whose behalf such a claim is asserted or such
8 an action is brought, whether deceased, incompetent,
9 or a minor.
10 (3) ECONOMIC LOSSES.—The term "economic
11 losses" means losses for hospital and medical ex-
12 penses, lost wages, lost employment, and other pecu-
13 niary losses incurred by an individual with respect to
14 which a health care liability claim or action is pur-
15 sued.
16 (4) HEALTH CARE PROFESSIONAL.—The term
17 "health care professional" means any individual who
18 provides health professional services as defined in
19 section 1101(6).
20 (5) HEALTH CARE PROVIDER.—The term
21 "health care provider" means any organization or
22 institution that is engaged in the delivery of health
23 care interventions (as defined in section 1101(4)) in
24 a State and that is required by Federal or State law
25 or regulation to be licensed, registered or certified by

1 the Federal or State government to engage in the
2 delivery of such services, or who is certified to pro-
3 vide health care services pursuant to a program of
4 education and training and examination by an ac-
5 credited institution, professional board, or profes-
6 sional organization.

7 (6) HEALTH CARE NEGLIGENCE.—The term
8 "health care negligence" means an act or omission
9 by a health care provider or a health care profes-
10 sional which deviates from the applicable State
11 standard of care and causes an injury.

12 (7) HEALTH CARE LIABILITY ACTION.—The
13 term "health care liability action" means a civil ac-
14 tion brought in a State or Federal court against a
15 health care provider, health care professional, or
16 other defendant joined in the action (regardless of
17 the theory of liability on which the claim is based)
18 in which the claimant alleges a health care liability
19 claim.

20 (8) HEALTH CARE LIABILITY CLAIM.—The
21 term "health care liability claim" means a claim
22 brought against a health care provider, health care
23 professional, or other defendant joined in a claim al-
24 leging that an injury was suffered by the claimant
25 as the result of health care negligence or gross neg-

1 ligence, breach of express or implied warranty or
2 contract, or failure to discharge a duty to warn or
3 instruction to obtain consent arising from the provi-
4 sion of (or failure to provide) health care services.
5 (9) INJURY.—The term "injury" means an in-
6 jury, illness, disease, or other harm suffered by an
7 individual as a result of the provision of health care
8 interventions (as defined in section 1101(4)) by a
9 health care provider or health care professional.
10 (10) NONECONOMIC LOSSES.—The term "non-
11 economic losses" means losses for physical and emo-
12 tional pain, suffering, inconvenience, physical im-
13 pairment, mental anguish, disfigurement, loss of en-
14 joyment of life, loss of consortium, and other
15 nonpecuniary losses incurred by an individual with
16 respect to which a health care liability claim or ac-
17 tion is pursued.

18 **PART 1—ALTERNATIVE DISPUTE RESOLUTION**

19 **SEC. 5511. ALTERNATIVE DISPUTE RESOLUTION.**

20 (a) APPLICATION TO HEALTH CARE LIABILITY
21 CLAIMS UNDER PLANS.—In the case of any health care
22 liability claim, no health care liability action may be
23 brought with respect to such claim until the final resolu-
24 tion of the claim under the alternative dispute resolution
25 method adopted by the State under subsection (b).

1 (b) ADOPTION OF MECHANISM BY STATES.—Each
2 State shall—
3 (1) adopt at least one of the alternative dispute
4 resolution methods specified under this section for
5 the resolution of health care liability claims arising
6 from the provision of health care services; and
7 (2) require that health plans disclose to enroll-
8 ees (and potential enrollees), in accordance with
9 standards established by the Secretary, the availabil-
10 ity and procedures for consumer grievances under
11 the plan, including the alternative dispute resolution
12 method or methods adopted under this section.
13 (c) SPECIFICATION OF PERMISSIBLE ALTERNATIVE
14 DISPUTE RESOLUTION METHODS.—
15 (1) IN GENERAL.—The Secretary shall, by reg-
16 ulation, develop or certify existing alternative dis-
17 pute resolution methods for the use by States in re-
18 solving health care malpractice claims under sub-
19 section (a). Such methods shall include at least the
20 following:
21 (A) BINDING ARBITRATION.—The use of
22 binding arbitration.
23 (B) FAULT-BASED SYSTEMS.—The use of
24 fault-based administrative systems, expedited

1 review and dismissal of claims when not ade-
2 quately supported.
3 (C) MEDIATION.—The use of mediation, a
4 settlement process coordinated by a neutral
5 third party without the ultimate rendering of a
6 formal obligation as to factual or legal findings.
7 (D) EARLY NEUTRAL EVALUATION.—The
8 use of early neutral evaluation, in which the
9 parties make a presentation to a neutral attor-
10 ney or other neutral evaluator for an assess-
11 ment of the merits, to encourage settlement. If
12 the parties do not settle as a result of assess-
13 ment and proceed to trail, the neutral eval-
14 uator's opinion shall be kept confidential.
15 (E) EARLY OFFERS OF SETTLEMENT.—A
16 process by which health care providers are en-
17 couraged to make, and claimants are encour-
18 aged to accept, early offers of settlement.
19 (F) CATASTROPHIC SYSTEMS.—The use of
20 catastrophic injury compensation systems.
21 (2) STANDARDS FOR ESTABLISHING METH-
22 ODS.—In developing alternative dispute resolution
23 methods under paragraph (1), the Secretary shall
24 assure that the methods promote the resolution of
25 health care liability claims in a manner that—

1 (A) is affordable for the parties involved;
2 (B) provides for timely resolution of
3 claims;
4 (C) provides for the consistent and fair
5 resolution of claims; and
6 (D) provides for reasonably convenient ac-
7 cess to dispute resolution for individuals en-
8 rolled in qualified health plans.
9 (d) STATE INITIATED ALTERNATIVE.—A State will
10 be permitted to operate an alternative dispute resolution
11 method (other than a method described in subsection (c))
12 that otherwise complies with this part if such method—
13 (1) is determined by the Secretary to accom-
14 plish the purposes and otherwise meet the require-
15 ments of this section; and
16 (2) is certified by the Secretary as an appro-
17 priate alternative dispute resolution method.
18 (e) FAILURE TO ESTABLISH SYSTEM.—If a State
19 fails to establish an alternative resolution system that
20 meets the requirements of this section, the Secretary shall
21 provide for the operation of an approved alternative dis-
22 pute resolution method in such State until such time as
23 a system under this section is adopted.
24 **SEC. 5512. COURT ACTIONS.**
25 (a) FURTHER REDRESS.—

1 (1) IN GENERAL.—The extent to which any
2 party seeks further redress (subsequent to a decision
3 of an alternative dispute resolution method) concern-
4 ing a health care liability claim or action in a Fed-
5 eral or State court shall be dependent upon the
6 methods of alternative dispute resolution adopted by
7 the State.
8 (2) CLAIMANT.—With respect to further redress
9 described in paragraph (1), if the party initiating
10 such court action is the claimant and the claimant
11 receives a worse result, with respect to liability or a
12 level of damages that equals 33⅓ percent less under
13 the decision of the court than under the State alter-
14 native dispute resolution method, such party shall
15 bear the costs, including legal fees, incurred in the
16 court action by the other party or parties to such ac-
17 tion.
18 (3) PROVIDER OR OTHER DEFENDANT.—If the
19 party initiating such court action is the health care
20 professional, health care provider, or other defendant
21 joined in the claim and the health care professional,
22 health care provider or other defendant receives a
23 worse result, with respect to liability or a level of
24 damages that equals 33⅓ percent more under the
25 decision of the court than under the State alter-

1 native dispute resolution method, such party shall
2 bear the costs, including legal fees, incurred in the
3 court action by the other party or parties to such ac-
4 tion.
5 (b) FEDERAL COURT JURISDICTION NOT ESTAB-
6 LISHED ON FEDERAL QUESTION GROUNDS.—Nothing in
7 this subtitle shall be construed to establish any jurisdiction
8 in the district courts of the United States over health care
9 liability actions on the basis of section 1331 or 1337 of
10 title 28, United States Code.

11 **PART 2—LIABILITY REFORM**

12 **SEC. 5521. PREEMPTION OF STATE LAW.**

13 (a) IN GENERAL.—Subject to subsection (b), the pro-
14 visions of this subtitle shall preempt any State law to the
15 extent that such State law is inconsistent with the limita-
16 tions contained in such provisions. With respect to any
17 issue in a health care liability action to which this subtitle
18 does not apply, such issue shall be governed by any other-
19 wise applicable Federal or State law.
20 (b) LIMITATIONS.—
21 (1) DAMAGES AND ATTORNEY'S FEES.—The
22 provisions of this subtitle shall preempt any State
23 law, with respect to both procedural and substantive
24 matters, to the extent that such State law—

1 (A) permits the recovery of damages by a
2 claimant in an amount that is greater than that
3 which is permitted under this subtitle; and
4 (B) permits the awarding of attorneys' fees
5 in an amount that is greater than that which
6 is permitted under this subtitle.
7 (2) GREATER RESTRICTIONS.—The provisions
8 of this subtitle shall not preempt any State law that
9 imposes restrictions on liability or damages that are
10 more stringent than those provided under this sub-
11 title.
12 (3) ALTERNATIVE DISPUTE RESOLUTION.—The
13 provisions of this subtitle shall not be construed as
14 preempting or displacing any State sponsored or pri-
15 vate alternative dispute resolution system that dif-
16 fers from the methods described in section 5511.
17 (4) RIGHTS OF ACTION.—Nothing in this sub-
18 title shall be construed—
19 (A) to create any new rights of action not
20 otherwise permitted under State law;
21 (B) to prohibit a State from establishing
22 overall limits on damages with respect to health
23 care liability claims or actions or any other
24 claims or actions;

1 (C) to establish remedies that are not oth-
2 erwise provided under applicable Federal or
3 State law; and
4 (D) to prohibit parties from agreeing to re-
5 solve health care liability claims pursuant to
6 private contractual arrangements.
7 (c) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE
8 OF LAW OR VENUE.—Nothing in this section shall be con-
9 strued to—
10 (1) waive or affect any defense of sovereign im-
11 munity asserted by any State under any provision of
12 law;
13 (2) waive or affect any defense of sovereign im-
14 munity asserted by the United States;
15 (3) affect the applicability of any provision of
16 the Foreign Sovereign Immunities Act of 1976;
17 (4) preempt State choice-of-law rules with re-
18 spect to claims brought by a foreign nation or a citi-
19 zen of a foreign nation; or
20 (5) affect the right of any court to transfer
21 venue or to apply the law of a foreign nation or to
22 dismiss a claim of a foreign nation or of a citizen
23 of a foreign nation on the ground of inconvenient
24 forum.

1 **SEC. 5522. LIMITATION ON AMOUNT OF ATTORNEY'S CON-**
2 **TINGENCY FEES.**

3 (a) IN GENERAL.—With respect to an attorney or at-
4 torneys who represent, on a contingency fee basis, a plain-
5 tiff or plaintiffs in a health care liability claim or action,
6 the total amount of such fees that may be charged, re-
7 ceived, or collected for services rendered in connection with
8 such action (including the resolution of the claim that is
9 the subject of the action under any alternative dispute res-
10 olution system) shall not exceed—
11 (1) 33⅓ percent of the first $150,000 of the
12 total amount recovered by judgment or settlement in
13 such action (based on after tax recovery); plus
14 (2) 25 percent of any amount recovered in ex-
15 cess of the amount described in paragraph (1).
16 (b) APPLICABILITY.—The limitations described in
17 subsection (a) shall apply to any amount recovered, with
18 respect to a health care liability claim or action, whether
19 by judgment, settlement, mediation, arbitration, or any
20 other form of alternative dispute resolution. With respect
21 to a health care liability claim or action involving a minor
22 or incompetent individual, a court may authorize or ap-
23 prove an attorneys' fee that is less than that permitted
24 under the limits described in subsection (a).
25 (c) CONTINGENCY FEE.—For purposes of this sec-
26 tion, the term "contingency fee" means all compensation

1 for professional legal services which is payable only if a
2 recovery is effected on behalf of one or more claimants.

3 **SEC. 5523. REFORM OF DAMAGES.**

4 (a) LIMITATION ON NONECONOMIC DAMAGES.—With
5 respect to a health care liability claim or action brought
6 in any forum, the total amount of damages that may be
7 awarded to an individual and the family members of such
8 individual for noneconomic losses resulting from an injury
9 alleged under such claim or action may not exceed
10 $250,000 (indexed annually based on the Consumer Price
11 Index), regardless of the number of health care profes-
12 sionals, health care providers and other defendants
13 against whom the action is brought or the number of ac-
14 tions brought with respect to the injury. With respect to
15 actions heard by a jury, the jury may not be informed
16 of limitation contained in this subsection, and if necessary,
17 a reduction in the jury's damage award shall be made by
18 the court.

19 (b) DEVELOPMENT OF ALTERNATIVE LIMITS ON
20 NONECONOMIC DAMAGES.—

21 (1) IN GENERAL.—

22 (A) COMMITTEE.—Not later than 60 days
23 after the date of enactment of this Act, the Sec-
24 retary shall appoint the committee described in
25 paragraph (4). The committee shall develop rec-

1 ommendations for alternative limits on the
2 amount of noneconomic damages that may be
3 awarded with respect to health liability claims
4 and the legislative specifications necessary to
5 replace the limit imposed under subsection (a)
6 on the amount of such damages with such alter-
7 native limits.
8 (B) TRANSMITTAL.—Not later than 1 year
9 after the date described in section 5502, the
10 Secretary shall transmit to Congress the rec-
11 ommendations of the committee established
12 under subparagraph (A) concerning alternative
13 limits.
14 (C) PURPOSE.—The purpose of the devel-
15 opment of the limits under this paragraph is to
16 provide certainty and fairness in health care li-
17 ability awards and to avoid unwarranted dis-
18 parities among health care providers and health
19 care professionals who have engaged in similar
20 conduct.
21 (2) ESTABLISHMENT OF SEPARATE LIMITS FOR
22 CATEGORIES OF INJURIES.—In developing limits
23 under paragraph (1), the committee shall establish
24 separate limits for noneconomic damages resulting
25 from each of the following categories of injuries:

1 (A) Non-physical injuries.

2 (B) Insignificant physical injuries.

3 (C) Temporary minor physical injuries.

4 (D) Temporary major physical injuries.

5 (E) Permanent minor physical injuries.

6 (F) Permanent substantial physical inju-
7 ries.

8 (G) Permanent major physical injuries.

9 (H) Permanent grave physical injuries.

10 (I) Death.

11 (3) FACTORS CONSIDERED.—In developing lim-
12 its under paragraph (1) for each of the categories
13 described in paragraph (2), the committee shall—

14 (A) examine the most recent available data
15 on the amount of damages awarded with re-
16 spect to such claims; and

17 (B) set specific limits that reasonably com-
18 pensate most injured parties, utilizing for guid-
19 ance the level of compensation currently pro-
20 vided, excluding those levels of compensation
21 that the Board finds unreasonably large.

22 (4) COMPOSITION OF COMMITTEE.—In develop-
23 ing limits under this subsection, the Secretary shall
24 appoint a committee to be made up of an equal
25 number of representatives of each of the following:

1 (A) Attorneys who represent plaintiffs in
2 health care liability actions.
3 (B) Attorneys who represent health care
4 professionals and health care providers in
5 health care liability actions.
6 (C) Physicians and other health care pro-
7 fessionals and providers.
8 (D) Individuals who have suffered injury
9 as a result of medical malpractice.
10 (E) Representatives of health plans.
11 (F) Additional representatives of each of
12 the following:
13 (i) Judges who preside over health
14 care liability actions.
15 (ii) Medical ethicists.
16 (iii) Health care economists.
17 (iv) Liability insurers.
18 (5) CONSULTATION.—In developing rec-
19 ommendation under this subsection, the committee
20 shall consult with other experts in the fields of their
21 expertise.
22 (6) GUIDANCE TO ENTITIES RESOLVING
23 CLAIMS.—If Congress enacts legislation that imposes
24 separate limits, for categories of injury, on the
25 amount of noneconomic damages that may be

1 awarded with respect to health care liability claims,
2 the Secretary shall prepare and disseminate guide-
3 lines to assist courts and other entities resolving
4 such claims in the determination of the particular
5 category of injury specified in paragraph (2) to
6 which a claimant's injury shall be assigned for pur-
7 poses of applying the appropriate limit on such dam-
8 ages.

9 (c) ALLOCATION OF PUNITIVE DAMAGE AWARDS FOR
10 PROVIDER LICENSING AND DISCIPLINARY ACTIVITIES.—

11 (1) IN GENERAL.—With respect to the total
12 amount of any punitive damages awarded in a
13 health care liability action, 75 percent of such
14 amount shall be paid to the State in which the ac-
15 tion is brought (or, in a case brought in Federal
16 court, in the State in which the health care services
17 that caused the injury that is the subject of the ac-
18 tion were provided) for the purposes of carrying out
19 the activities described in paragraph (2).

20 (2) ACTIVITIES DESCRIBED.—A State shall use
21 amounts paid pursuant to paragraph (1) to carry
22 out activities to ensure the safety and quality of
23 health care services provided in the State,
24 including—

1 (A) licensing or certifying health care pro-
2 fessionals and health care providers in the
3 State;
4 (B) implementing health care quality as-
5 surance programs;
6 (C) carrying out programs to reduce mal-
7 practice-related costs for providers volunteering
8 to provide services in medically underserved
9 areas; and
10 (D) providing resources for additional in-
11 vestigation and disciplinary activities by the
12 State licensing board.
13 (3) MAINTENANCE OF EFFORT.—A State shall
14 use any amounts paid pursuant to paragraph (1) to
15 supplement and not to replace amounts spent by the
16 State for the activities described in paragraph (2).
17 (d) SEVERAL LIABILITY.—
18 (1) IN GENERAL.—With respect to a health
19 care liability claim or action, the liability of each de-
20 fendant for noneconomic and punitive damages shall
21 be several only, and shall not be joint. Each defend-
22 ant shall be liable only for the amount of non-
23 economic and punitive damages allocated to such de-
24 fendant in direct proportion to such defendant's per-

1 centage of responsibility as determined under para-
2 graph (2).
3 (2) PROPORTION OF RESPONSIBILITY.—For
4 purposes of this subsection, the trier of fact shall de-
5 termine the proportion of responsibility of each
6 party for the claimant's harm.

1 # Subtitle G—Patient's Right to Self-
2 # Determination Regarding
3 # Health Care

4 **SEC. 5601. TREATMENT OF ADVANCE DIRECTIVES.**

5 (a) IN GENERAL.—An advance directive validly exe-
6 cuted outside the State in which such directive is pre-
7 sented must be given effect to the same extent as an ad-
8 vance directive validly executed under the law of the State
9 in which presented.

10 (b) NO INFERENCE.—Nothing in this section may be
11 construed to authorize the administration, withholding, or
12 withdrawal of health care otherwise prohibited by the laws
13 of the State.

14 (c) EFFECTIVE DATE.—This section shall take effect
15 on the date that is 6 months after the date of enactment
16 of this Act.

17 **SEC. 5602. AMENDMENTS TO RULES UNDER MEDICARE AND**
18 **MEDICAID.**

19 (a) MEDICARE.—Section 1866(f)(1) of the Social Se-
20 curity Act (42 U.S.C. 1395cc(f)(1)) is amended—
21 (1) in subparagraph (A), by striking "and" at
22 the end of clause (i), by redesignating clause (ii) as
23 clause (iii), and by inserting after clause (i) the fol-
24 lowing new clause:

1 "(ii) the result under such State law if the
2 individual is incapacitated in the absence of an
3 advance directive, and";
4 (2) in subparagraph (B), by inserting "and to
5 include the content of such directive if the individual
6 so desires" before the semicolon;
7 (3) in subparagraph (D), by striking "and" at
8 the end;
9 (4) in subparagraph (E), by striking the period
10 at the end and inserting "; and"; and
11 (5) by inserting after subparagraph (E) the fol-
12 lowing new subparagraph:
13 "(F) to provide for effective communication be-
14 tween the individual (or surrogate decision maker
15 when appropriate) and the appropriate provider re-
16 garding all aspects of health care decisions affecting
17 the individual, including obtaining informed consent,
18 individual prognosis and treatment decisions, and
19 the formulation of advance directives.".
20 (b) MEDICAID.—Section 1902(w)(1) of the Social Se-
21 curity Act (42 U.S.C. 1396a(w)(1)) is amended—
22 (1) in subparagraph (A), by striking "and" at
23 the end of clause (i), by redesignating clause (ii) as
24 clause (iii), and by inserting after clause (i) the fol-
25 lowing new clause:

1 "(ii) the result under such State law if the
2 individual is incapacitated in the absence of an
3 advance directive, and";
4 (2) in subparagraph (B), by inserting "and to
5 include the content of such directive if the individual
6 so desires" before the semicolon;
7 (3) in subparagraph (D), by striking "and" at
8 the end;
9 (4) in subparagraph (E), by striking the period
10 at the end and inserting "; and"; and
11 (5) by inserting after subparagraph (E) the fol-
12 lowing new subparagraph:
13 "(F) to provide for effective communication be-
14 tween the individual (or surrogate decision maker
15 when appropriate) and the appropriate provider re-
16 garding all aspects of health care decisions affecting
17 the individual, including obtaining informed consent,
18 individual prognosis and treatment decisions, and
19 the formulation of advance directives.".
20 (c) APPLICATION TO KIDNEY DIALYSIS CENTERS OF
21 PROVISIONS RELATING TO ADVANCE DIRECTIVES.—
22 (1) MEDICARE.—Section 1866(a)(1)(Q) of the
23 Social Security Act (42 U.S.C.1395cc(a)(1)(Q)) is
24 amended by striking "and hospice programs" and

1 inserting "hospice programs, and kidney dialysis
2 centers".
3 (2) MEDICAID.—Section 1902(a)(57) of such
4 Act (42 U.S.C. 1396(a)(57)) is amended by striking
5 "hospice program" and inserting "hospice program,
6 kidney dialysis center".
7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on and after the date which
9 is 1 year after the date of the enactment of this Act.

10 **SEC. 5603. STUDY OF ISSUES RELATED TO END OF LIFE**
11 **CARE.**

12 (a) STUDY.—
13 (1) IN GENERAL.—Within 6 months after the
14 date of the enactment of this Act, the Secretary
15 shall enter into an agreement with the Institute of
16 Medicine of the National Academy of Sciences (or
17 with another nonprofit, nongovernmental organiza-
18 tion or consortium of institutions if the Institute de-
19 clines to perform the study) to investigate and re-
20 port on issues relating to care at the end of life, in-
21 cluding how to determine the application of medi-
22 cally necessary or appropriate care for gravely or
23 terminally ill or injured persons of all ages.

1 (2) SPECIFIC ISSUES.—The study described in
2 paragraph (1) shall specifically include an examina-
3 tion of the following issues:
4 (A) The epidemiology of dying.
5 (B) Conditions that promote or impede ap-
6 propriate care (such as professional training
7 and beliefs, financing and organization of serv-
8 ices, patient and public knowledge and atti-
9 tudes).
10 (C) Concerns of health care practitioners
11 and providers, medical educators, the religious
12 and medical ethics communities, the general
13 public, and others responsible for public and
14 private decisions about the organization, financ-
15 ing, and quality of health care in the United
16 States.
17 (D) Methods of communication and health
18 care decisionmaking among providers, patients,
19 and surrogates.
20 (E) Priorities for research on the issues
21 described in the preceding subparagraphs.
22 (b) REPORT.—The Institute of Medicine (or the orga-
23 nization conducting the study under this section) shall
24 submit to the Secretary and the Congress a report on the

1 study described in subsection (a) within 27 months after
2 the date of the enactment of this Act.
3 (c) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated such sums as are nec-
5 essary to carry out the purposes of this section.

TITLE VI—REVENUE PROVISIONS

SEC. 6000. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this title 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 Internal Revenue Code of 1986.

Subtitle A—Financing Provisions

PART 1—INCREASE IN TAX ON TOBACCO PRODUCTS

SEC. 6101. INCREASE IN EXCISE TAXES ON TOBACCO PRODUCTS.

(a) CIGARETTES.—Subsection (b) of section 5701 is amended by striking paragraph (1) and all that follows and inserting the following:

"(1) SMALL CIGARETTES.—On cigarettes, weighing not more than 3 pounds per thousand, the amount per thousand determined under the following table:

"In the case of cigarettes removed—	The tax per thousand is—
After July 31, 1995, and before January 1, 1997	$19.50
During 1997	$24.50
During 1998	$29.50
After December 31, 1998	$34.50

1 "(2) LARGE CIGARETTES.—On cigarettes,
2 weighing more than 3 pounds per thousand, removed
3 at any time, an amount per thousand equal to 2.1
4 times the tax per thousand imposed by paragraph
5 (1) on cigarettes removed at such time; except that,
6 if more than 6½ inches in length, they shall be tax-
7 able at the rate prescribed for cigarettes weighing
8 not more than 3 pounds per thousand, counting each
9 2¾ inches, or fraction thereof, of the length of each
10 as one cigarette."
11 (b) CIGARS.—Paragraphs (1) and (2) of section
12 5701(a) are amended to read as follows:
13 "(1) SMALL CIGARS.—On cigars, weighing not
14 more than 3 pounds per thousand, the amount per
15 thousand determined under the following table:

"In the case of cigars removed—	The tax per thousand is—
After July 31, 1995, and before January 1, 1997	$1.83
During 1997	$2.30
During 1998	$2.77
After December 31, 1998	$3.23.

16 "(2) LARGE CIGARS.—On cigars, weighing more
17 than 3 pounds per thousand, the applicable percent-
18 age (determined under the following table) of the
19 price for which sold but not more than the applica-

1 ble limitation (determined under such table) per
2 thousand:

"In the case of cigars removed—	The applicable percentage is—	The limitation is—
After July 31, 1995 and before January 1, 1997	21 percent	$48.75
During 1997	26 percent	$61.26
During 1998	31 percent	$73.74
After December 31, 1998	37 percent	$86.25."

3 (c) CIGARETTE PAPERS.—Subsection (c) of section
4 5701 is amended—
5 (1) by striking "0.75 cent (0.625 cent on ciga-
6 rette papers removed during 1991 or 1992)" and in-
7 serting "the amount determined in accordance with
8 the following table", and
9 (2) by adding at the end the following:

"In the case of cigarette papers removed—	The tax for each 50 papers is—
After July 31, 1995 and before January 1, 1997	1.22 cents
During 1997	1.53 cents
During 1998	1.84 cents
After December 31, 1998	2.16 cents."

10 (d) CIGARETTE TUBES.—Subsection (d) of section
11 5701 is amended—
12 (1) by striking "1.5 cents (1.25 cents on ciga-
13 rette tubes removed during 1991 or 1992)" and in-
14 serting "the amount determined in accordance with
15 the following table", and
16 (2) by adding at the end the following:

"In the case of cigarette tubes removed—	The tax for each 50 tubes is—
After July 31, 1995 and before January 1, 1997	2.44 cents

"In the case of cigarette tubes removed—	The tax for each 50 tubes is—
During 1997	3.06 cents
During 1998	3.69 cents
After December 31, 1998	4.31 cents."

1 (e) SNUFF.—Paragraph (1) of section 5701(e) is
2 amended—
3 (1) by striking "36 cents (30 cents on snuff re-
4 moved during 1991 or 1992)" and inserting "the
5 amount determined in accordance with the following
6 table", and
7 (2) by adding at the end the following:

"In the case of snuff removed—	The tax per pound is—
After July 31, 1995 and before January 1, 1997	58.5 cents
During 1997	73.5 cents
During 1998	88.5 cents
After December 31, 1998	$1.03½."

8 (f) CHEWING TOBACCO.—Paragraph (2) of section
9 5701(e) is amended—
10 (1) by striking "12 cents (10 cents on chewing
11 tobacco removed during 1991 or 1992)" and insert-
12 ing "the amount determined in accordance with the
13 following table", and
14 (2) by adding at the end the following:

"In the case of chewing tobacco removed—	The tax per pound is—
After July 31, 1995 and before January 1, 1997	19.5 cents
During 1997	24.5 cents
During 1998	29.5 cents
After December 31, 1998	34.5 cents."

15 (g) PIPE TOBACCO.—Subsection (f) of section 5701
16 is amended—