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45 USC 821.

Ante, p. 1895.

(b) For provisions of law which further reduce spending for fiscal year 1981 in satisfaction of the reconciliation requirements imposed by sections 3(a)(3) and 3(a)(13) of H. Con. Res. 307 (96th Congress), see the Passenger Rail Rebuilding Act of 1980 (Public Law 96-264).

 TITLE VI—AIRPORT AND AIRWAY IMPROVEMENT ACT

Sec. 601. Notwithstanding any other provision of law, the total amount of grants which the Secretary is authorized to make from the Airport and Airway Trust Fund for airport development and airport planning and for grants under section 104(e) of the Airport Safety and Noise Abatement Act of 1979, as amended, for the fiscal year ending September 30, 1981, shall not exceed $725,000,000.

 TITLE VII—VETERANS' PROGRAMS

Sec. 701. For provisions of law which reduce spending for fiscal year 1981 in veterans' programs in satisfaction of the reconciliation requirements imposed by sections 3(a)(7) and 3(a)(20) of H. Con. Res. 307 (96th Congress), see section 401 of the Veterans' Administration Health Care Amendments of 1980 (Public Law 96-330), section 504 of the Veterans' Disability Compensation and Housing Benefits Amendments of 1980 (Public Law 96-385), and sections 201, 202, 211, 212, and 802(b), and title VI, of the Veterans' Rehabilitation and Education Amendments of 1980 (Public Law 96-466).

 TITLE VIII—SMALL BUSINESS PROGRAMS

Sec. 801. For provisions of law which reduce spending for fiscal year 1981 in small business programs in satisfaction of the reconciliation requirements imposed by sections 3(a)(6) and 3(a)(19) of H. Con. Res. 307 (96th Congress), see Public Law 96-302 (the Small Business Development Act of 1980).

 TITLE IX—MEDICARE AND MEDICAID RELATED PROVISIONS

Ante, p. 833.

 Medicare and Medicaid Amendments of 1980.

42 USC 1305 note.

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PART A—PROVISIONS RELATING TO MEDICARE AND MEDICAID

NONPROFIT HOSPITAL PHILANTHROPY

Subpart I—Provider Reimbursement Changes

Sec. 901. (a) Part A of title XI of the Social Security Act is amended by adding at the end thereof the following new section:

"NONPROFIT HOSPITAL PHILANTHROPY

"Sec. 1134. For purposes of determining, under titles V, XVIII, and XIX of this Act, the reasonable costs of services provided by nonprofit hospitals, the following items shall not be deducted from the operating costs of such hospitals:

"(1) A grant, gift, or endowment, or income therefrom, which is to or for such a hospital and which has not been designated by the donor for paying any specific operating costs.

"(2) A grant or similar payment which is to such a hospital, which was made by a governmental entity, and which is not available under the terms of the grant or payment for use as operating funds.

"(3) Those types of donor designated grants and gifts (including grants and similar payments which are made by a governmental entity), and income therefrom, which the Secretary determines, in the best interests of needed health care, should be encouraged.

"(4) The proceeds from the sale or mortgage of any real estate or other capital asset of such a hospital, which real estate or asset the hospital acquired through gift or grant, if such proceeds are not available for use as operating funds under the terms of the gift or grant.

"Paragraph (4) shall not apply to the recovery of the appropriate share of depreciation when gains or losses are realized from the disposal of depreciable assets."

(b) The amendment made by subsection (a) shall apply to grants, gifts, and endowments, and income therefrom, made or established after the date of the enactment of this Act.

42 USC 1320b-4.
42 USC 701, 1395, 1396.
Sec. 902. (a)(1) Section 1861(v)(1) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(G)(i) In any case in which a hospital provides inpatient services to an individual that would constitute post-hospital extended care services if provided by a skilled nursing facility and a Professional Standards Review Organization (or, in the absence of such a qualified organization, an organization or agency with review responsibility as is otherwise provided for under part A of title XI) determines that inpatient hospital services for the individual are not medically necessary but post-hospital extended care services for the individual are medically necessary and such extended care services are not otherwise available to the individual (as determined in accordance with criteria established by the Secretary) at the time of such determination, payment for such services provided to the individual shall continue to be made under this title at the payment rate described in clause (ii) during the period in which—

"(I) such post-hospital extended care services for the individual are medically necessary and not otherwise available to the individual (as so determined),

"(II) inpatient hospital services for the individual are not medically necessary, and

"(III) the individual is entitled to have payment made for post-hospital extended care services under this title, except that if the Secretary determines that the hospital had (during the immediately preceding calendar year) an average daily occupancy rate of 80 percent or more, such payment shall be made (during such period) on the basis of the reasonable cost of inpatient hospital services.

(ii)(i) Except as provided in subclause (II), the payment rate referred to in clause (i) is a rate equal to the estimated adjusted State-wide average rate per patient-day paid for services provided in skilled nursing facilities under the State plan approved under title XIX for the State in which such hospital is located, or, if the State in which the hospital is located does not have a State plan approved under title XIX, the estimated adjusted State-wide average allowable costs per patient-day for extended care services under this title in that State.

"(ii) If a hospital has a unit which is a skilled nursing facility, the payment rate referred to in clause (i) for the hospital is a rate equal to the lesser of the rate described in subclause (I) or the allowable costs in effect under this title for extended care services provided to patients of such unit.

"(iii) Any day on which an individual receives inpatient services for which payment is made under this subparagraph shall, for purposes of this Act (other than this subparagraph), be deemed to be a day on which the individual received inpatient hospital services.

(iv) For the purpose of determining the occupancy rate with respect to hospitals under clause (i)—

"(I) public hospitals under common ownership may elect (with the approval of the Secretary) to be treated as a single hospital, and

"(II) beginning two years after the date this subparagraph is first applied with respect to a hospital, the Secretary, to the extent feasible, shall not treat as an inpatient an individual with respect to whom payment is made to the hospital only because of this subparagraph or section 1802(h)."
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For amendment to section 1158(a) of the Social Security Act relating to these provisions, see section 981(b) of this title.

Section 1158(d) of such Act is amended by adding at the end the following new sentence: "In the case of disapproval of inpatient hospital services provided in skilled nursing facility or intermediate care facility services, the payment rate shall not apply with respect to such disapproval."

(b)(1) Section 1902(a)(13)(D) of such Act is amended—

(A) by striking 

(F) By striking out the semicolon and inserting in lieu thereof a comma, and

(C) by inserting at the end thereof the following new clause:

(ii) for payment of the reasonable cost of inappropriate inpatient services (described in subsection (h)(1)) for which payment is provided only because of subsection (h) at the rate of payment for such services provided for under such subsection, and"

(2) Section 1902 of such Act is further amended by adding at the end the following new subsection:

(h)(1) In any case in which a hospital provides inpatient services to an individual who would constitute skilled nursing facility services if provided by a skilled nursing facility or that would constitute intermediate care facility services if provided by an intermediate care facility and a Professional Standards Review Organization, or, in the absence of such a qualified organization, an organization or agency with review responsibility as is otherwise provided for under paragraph (1), the Secretary determines that inpatient hospital services for the individual are medically necessary but skilled nursing facility services or intermediate care facility services, respectively, for the individual are medically necessary and such type of facility services are not otherwise available to the individual (as determined in accordance with criteria established by the Secretary) at the time of such determination, payment for inpatient hospital services shall continue to be made under the State plan approved under this title at the rate of payment rate described in paragraph (2) for such type of services during the period in which—

(A) such skilled nursing facility services or intermediate care facility services (as the case may be) for the individual are medically necessary and not otherwise available to the individual (as so determined),

(B) skilled nursing facility services or intermediate care facility services provided to the individual are medically necessary, and

(C) the individual is entitled to receive medical assistance with respect to such facility services under the State plan, except that if the Secretary determines that the hospital had (during the immediately preceding calendar year) an average daily occupancy rate exceeding 80 percent, such payment shall be made at a rate of payment rate referred to in paragraph (1), in the case of skilled nursing facility services or intermediate care facility services, is the estimated adjusted State-wide average rate per patient-day paid under the State plan for payments for providing inpatient hospital services.

2(A) Except as provided in subparagraph (B), the payment rate referred to in paragraph (1), in the case of skilled nursing facility services or intermediate care facility services, is the estimated adjusted State-wide average rate per patient-day paid for such respective type of services provided under the State plan.

(B) If a hospital has a unit which is a skilled nursing facility or intermediate care facility, the payment rate referred to in paragraph (1), in the case of inpatient services which constitute skilled nursing facility services or intermediate care facility services, is a rate equal to the lesser of the rate described in subparagraph (A) or the
allowable costs in effect under the State plan for such type of
inpatient services provided to patients of such unit.

“(3) Any day on which an individual receives inpatient services for
which payment is made under this subsection shall, for purposes of
this Act (other than this subsection), be deemed to be a day on which
the individual received inpatient hospital services.

“(4) For the purpose of determining the occupancy rate with
respect to hospitals under paragraph (2)—

“(A) public hospitals under common ownership may elect (with
the approval of the Secretary) to be treated as a single hospital,
and

“(B) beginning two years after the date this subsection is first
applied with respect to a hospital, the Secretary, to the extent
feasible, shall not treat as an inpatient an individual with respect
to whom payment is made to the hospital only because of this
subsection or section 1861(v)(1)(G).”

(c) The amendments made by this section shall become effective on
the date of which final regulations, promulgated by the Secretary to
implement such amendments, are first issued; and those regulations
shall be issued not later than the first day of the sixth month
following the month in which this Act is enacted.

CONTINUED USE OF DEMONSTRATION PROJECT REIMBURSEMENT SYSTEMS

SEC. 903. (a) Section 1814(b) of the Social Security Act is amended—

(1) by inserting “except as provided in paragraph (3),” in
paragraph (1) before “the lesser”,

(2) by striking out “or” at the end of paragraph (1),

(3) by striking out the period at the end of paragraph (2) and
inserting in lieu thereof “; or”, and

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

“(3) If some or all of the hospitals in a State have been
reimbursed for services (for which payment may be made under
this part) pursuant to a reimbursement system approved as a
demonstration project under section 402 of the Social Security
Amendments of 1967 or section 222 of the Social Security
Amendments of 1972, if the rate of increase in such hospitals in
their costs per hospital inpatient admission of individuals enti-
tled to benefits under this part over the duration of such project
was equal to or less than such rate of increase for admissions of
such individuals with respect to all hospitals in the United States
during such period, and if either the State has legislative
authority to operate such system and the State elects to have
reimbursement to such hospitals made in accordance with this
paragraph or the system is operated through a voluntary agree-
ment of hospitals and such hospitals elect to have reimburse-
ment to those hospitals made in accordance with this paragraph,
then the Secretary may provide for continuation of reimburse-
ment to such hospitals under such system until the Secretary
determines that—

“(A) a third-party payor reimburses such a hospital on a
basis other than under such system, or

“(B) the rate of increase for the previous three-year period
in such hospitals in costs per hospital inpatient admission of
individuals entitled to benefits under this part is greater
than such rate of increase for admissions of such individuals
with respect to all hospitals in the United States for such period.

In the case of any State which has had such a demonstration project reimbursement system under part A of title XVIII in accordance with section 1814(b)(3), the plan must provide for payment of inpatient hospital services in such hospitals under the plan in accordance with the reimbursement system used under such section.

(c) Notwithstanding any other provision of law, the Secretary of Health and Human Services (hereinafter in this title referred to as the "Secretary") may not provide for more than a total of six Statewide medicare hospital reimbursement demonstration projects under the authority of section 402 of the Social Security Amendments of 1967 or of section 222 of the Social Security Amendments of 1972, including any such projects provided for before the date of the enactment of this Act.

HOSPITAL PROVIDERS OF LONG-TERM CARE SERVICES ("SWING-BEDS")

Sec. 904. (a)(1) Title XVIII of the Social Security Act is amended by adding after section 1882 the following new section:

"HOSPITAL PROVIDERS OF EXTENDED CARE SERVICES"

"SEC. 1883. (a)(1) Any hospital (other than a hospital which has in effect a waiver under subparagraph (A) of the last sentence of section 1861(e) which has an agreement under section 1866 may enter into an agreement with the Secretary under which its inpatient hospital facilities may be used for the furnishing of services of the type which, if furnished by a skilled nursing facility, would constitute extended care services.

"(B)(i) The reasonable cost of the services consists of the reasonable cost of routine services (determined under clause (ii)) and the reasonable cost of ancillary services (determined under clause (iii)).

"(ii) The reasonable cost of routine services furnished during any calendar year by a hospital under an agreement under this section is equal to the product of—

"(I) the number of patient-days during the year for which the services were furnished, and

"(II) the average reasonable cost per patient-day, such average reasonable cost per patient-day being the average rate per patient-day paid for routine services during the previous calendar year under the State plan (of the State in which the hospital is located) under title XIX to skilled nursing facilities located in the State and which meet the requirements specified in section 1902(a)(28), or, in the case of a hospital located in a State which does not have such a State plan, the average rate per patient-day for such services as determined by the Secretary.

"(d) If a hospital is a hospital located in a State which has a State plan under title XIX for the payment of services to patients in skilled nursing facilities, then in calculating the reasonable cost of the services the Secretary shall use such State plan as the basis for such calculation, and the Secretary may make such modifications of the State plan as the Secretary determines to be necessary to implement this section, but the modifications made by the Secretary shall not result in a decrease of the amount paid for such services under the State plan than under the State plan as modified by the Secretary under this section."

42 USC 1396a.
42 USC 1395.
Ante, p. 2614.
42 USC 1395b-1 note.
42 USC 1395b-1 and note, 1995Il.
paid for routine services during the previous calendar year under this title to skilled nursing facilities in such State.

"(iii) The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

"(b) The Secretary may not enter into an agreement under this section with any hospital unless—

"(1) except as provided under subsection (g), the hospital is located in a rural area and has less than 50 beds, and

"(2) the hospital has been granted a certificate of need for the provision of long-term care services from the State health planning and development agency (designated under section 1521 of the Public Health Service Act) for the State in which the hospital is located.

"(c) An agreement with a hospital under this section shall, except as otherwise provided under regulations of the Secretary, be of the same duration and subject to termination on the same conditions as are agreements with skilled nursing facilities under section 1866 and shall, where not inconsistent with any provision of this section, impose the same duties, responsibilities, conditions, and limitations, as those imposed under such agreements entered into under section 1866; except that no such agreement with any hospital shall be in effect for any period during which the hospital does not have in effect an agreement under section 1866, or during which there is in effect for the hospital a waiver under subparagraph (A) of the last sentence of section 1861(e). A hospital with respect to which an agreement under this section has been terminated shall not be eligible to enter into a new agreement until a two-year period has elapsed from the termination date.

"(d) Any agreement with a hospital under this section shall provide that payment for services will be made only for services for which payment would be made as post-hospital extended care services if those services had been furnished by a skilled nursing facility under an agreement entered into under section 1866; and any individual who is furnished services, for which payment may be made under an agreement under this section, shall, for purposes of this title (other than this section), be deemed to have received post-hospital extended care services in like manner and to the same extent as if the services furnished to him had been post-hospital extended care services furnished by a skilled nursing facility under an agreement under section 1866.

"(e) During a period for which a hospital has in effect an agreement under this section, in order to allocate routine costs between hospital and long-term care services for purposes of determining payment for inpatient hospital services, the total reimbursement due for routine services from all classes of long-term care patients (including title XVIII, title XIX, and private pay patients) shall be subtracted from the hospital's total routine costs before calculations are made to determine title XVIII reimbursement for routine hospital services.

"(f) A hospital which enters into an agreement with the Secretary under this section shall be required to meet those conditions applicable to skilled nursing facilities relating to discharge planning and the social services function (and staffing requirements to satisfy it) which are promulgated by the Secretary under section 1861(j)(15). Services furnished by such a hospital which would otherwise constitute post-hospital extended care services if furnished by a skilled nursing facility shall be subject to the same requirements applicable to such services when furnished by a skilled nursing facility except for those
requirements the Secretary determines are inappropriate in the case of these services being furnished by a hospital under this section.

"(g) The Secretary may enter into an agreement under this section (on a demonstration basis with any hospital which does not meet the requirement of subsection (b)(1), if the hospital otherwise meets the requirements of this section).

(b) Title XIX of such Act is amended by adding after section 1912 the following new section:

"HOSPITAL PROVIDERS OF SKILLED NURSING AND INTERMEDIATE CARE SERVICES

"SEC. 1913. (a) Notwithstanding any other provision of this title, payment may be made, in accordance with this section, under a State plan approved under this title for skilled nursing facility services and intermediate care facility services furnished by a hospital which has in effect an agreement under section 1883.

"(b)(1) Payment to any such hospital, for any skilled nursing or intermediate care facility services furnished pursuant to subsection (a), shall be at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under the State plan to skilled nursing and intermediate care facilities, respectively, located in the State in which the hospital is located. The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

"(2) With respect to any period for which a hospital has an agreement under section 1883, in order to allocate routine costs between hospital and long-term care services, the total reimbursement for routine services due from all classes of long-term care patients (including title XVIII, title XIX, and private pay patients) shall be subtracted from the hospital total routine costs before calculations are made to determine reimbursement for routine hospital services under the State plan.

(c) Within three years after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Congress a report evaluating the programs established by the amendments made by this section and shall include in such report an analysis of—

(1) the extent and effect of the agreements under such programs on availability and effective and economical provision of long-term care services,

(2) whether such programs should be continued,

(3) the results of any demonstration projects conducted under such programs, and

(4) whether eligibility to participate in such programs should be extended to other hospitals, regardless of bed size or geographic location, where there is a shortage of long-term care beds.

(d) The amendments made by this section shall become effective on the date on which final regulations, promulgated by the Secretary to implement such amendments, are first issued; and those regulations shall be issued not later than the first day of the sixth month following the month in which this Act is enacted.
WITHHOLDING OF FEDERAL SHARE OF PAYMENTS TO MEDICAID PROVIDERS TO RECOVER MEDICARE OVERPAYMENTS

Sec. 905. (a) Subparagraphs (D)(i) and (E) of section 1902(a)(13) of the Social Security Act are each amended by inserting "(except where the State agency is subject to an order under section 1914)" after "payment".

(b) Section 1903(a)(1) of such Act is amended by striking out "subject to subsections (g) and (h)" and inserting in lieu thereof "subject to subsections (g), (h), and (j)".

(c)(1) Section 1903(j) of such Act is amended to read as follows: "(j) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) for any State for any quarter shall be adjusted in accordance with section 1914."

(2) Section 1903(n) of such Act is amended by striking out "or is subject to a suspension of payment order issued under subsection (j)"

(d) Title XIX of such Act is amended by adding after section 1913 (added by section 904(b) of this title) the following new section:

"WITHHOLDING OF FEDERAL SHARE OF PAYMENTS FOR CERTAIN MEDICARE PROVIDERS

Sec. 1914. (a) The Secretary may adjust, in accordance with this section, the Federal matching payment to a State with respect to expenditures for medical assistance for care or services furnished in any quarter by—

1. an institution (A) which has or previously had in effect an agreement with the Secretary under section 1866; and (B)(i) from which the Secretary has been unable to recover overpayments made under title XVIII, or (ii) from which the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such institution under title XVIII; and

2. any person (A) who (i) has previously accepted payment on the basis of an assignment under section 1842(b)(3)(B)(iii), and (ii) during the annual period immediately preceding such quarter submitted no claims for payment under title XVIII which aggregated less than the amount of overpayments made to him, and (B)(i) from whom the Secretary has been unable to recover overpayments received in violation of the terms of such assignment, or (ii) from whom the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such person under title XVIII.

(b) The Secretary may (subject to the remaining provisions of this section) reduce payment to a State under this title for any quarter by an amount equal to the lesser of the Federal matching share of payments to any institution or person specified in subsection (a), or the total overpayments to such institution or person under title XVIII, and may require the State to reduce its payment to such institution or person by such amount.

(c) The Secretary shall not make any adjustment in the payment to a State, nor require any adjustment in the payment to an institution or person, pursuant to subsection (b) until after he has provided adequate notice (which shall be not less than 60 days) to the State agency and the institution or person.

(d) The Secretary shall by regulation provide procedures for implementation of this section, which procedures shall (1) determine
the amount of the Federal payment to which the institution or person would otherwise be entitled under this section shall be treated as a setoff against overpayments under title XVIII, and (2) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under title XVIII and to which the institution or person would otherwise be entitled under this title.

"(e) The Secretary shall restore to the trust funds established under sections 1817 and 1841, as appropriate, amounts recovered under this section as setoffs against overpayments under title XVIII.

"(f) Notwithstanding any other provision of this title, an institution or person shall not be entitled to recover from any State any amount in payment for medical care and services under this title which is withheld by the State agency pursuant to an order by the Secretary under subsection (b)."

Subpart II—Other Administrative Provisions

QUALITY ASSURANCE PROGRAMS FOR CLINICAL LABORATORIES

SEC. 911. Section 1123(a) of the Social Security Act is amended by striking out "1977" and inserting in lieu thereof "1981".

REQUIREMENTS CONCERNING REPORTING OF FINANCIAL INTEREST

SEC. 912. (a) Section 1124(a)(8)(A)(ii) of the Social Security Act is amended to read as follows:

"(ii) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds $25,000 or 5 per centum of the total property and assets of the entity; or"

(b) Section 1802(a)(5) of such Act is amended to read as follows:

"(5) provide that any disclosing entity (as defined in section 1124(a)(2)) receiving payments under such plan complies with the requirements of section 1124;"

EXCLUSION OF HEALTH CARE PROFESSIONALS CONVICTED OF MEDICARE- OR MEDICAID-RELATED CRIMES

SEC. 913. (a) Part A of title XI of the Social Security Act is amended by inserting after section 1127 the following new section:

"EXCLUSION OF CERTAIN INDIVIDUALS CONVICTED OF MEDICARE- OR MEDICAID-RELATED CRIMES

"Sec. 1128. (a) Whenever the Secretary determines that a physician or other individual has been convicted (on or after October 25, 1977, or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to such individual's participation in the delivery of medical care or services under title XVIII, XIX, or XX, the Secretary—

"(l) shall bar from participation in the program under title XVIII, for such period as he may deem appropriate, each such individual otherwise eligible to participate in such program;

"(2) A shall promptly notify each appropriate State agency administering or supervising the administration of a State plan approved under title XIX or title XX, of the fact and circumstances of such determination, and (except as provided in subpar-
agraph (B) require each such agency to bar such individual from participation in such plan for such period as he shall specify, which in the case of an individual specified in paragraph (1) shall be the period established pursuant to paragraph (1);

"(B) may waive the requirement under subparagraph (A) to bar an individual from participation in a State plan under title XIX or title XX, where he receives and approves a request for such a waiver with respect to that individual from the State agency administering or supervising the administration of such plan; and

"(3) shall promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of such individual of the fact and circumstances of such determination, request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and request that such State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to such request.

"(b) A determination made by the Secretary under this section shall be effective at such time and upon such reasonable notice to the public and to the person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of inpatient hospital services, post-hospital extended care services, and home health services furnished under title XVIII, such determination shall be effective in the manner provided in paragraphs (3) and (4) of section 1866(b) with respect to terminations of agreements), and shall remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

"(c) Any person who is the subject of an adverse determination made by the Secretary under subsection (a) shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and to judicial review of the Secretary’s final decision after such hearing as is provided in section 205(g).

(b) Section 1862(e) of such Act is amended to read as follows:

"(e) No payment may be made under this title with respect to any item or service furnished by a physician or other individual during the period when he is barred pursuant to section 1128 from participation in the program under this title."

(c) Section 1902(a)(39) of such Act is amended to read as follows:

"(39) provide that the State agency shall bar any specified individual from participation in the program under the State plan for the period specified by the Secretary, when required by him to do so pursuant to section 1128, and provide that no payment may be made under the plan with respect to any item or service furnished by such individual during such period;"

(d) Section 1902(g) of such Act is repealed.

(e) Section 2003(d)(1) of such Act is amended—

(1) by striking out "and" at the end of subparagraph (I),
(2) by striking out the period at the end of subparagraph (J) and inserting in lieu thereof "; and ", and
(3) by inserting after subparagraph (J) the following new paragraph:
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“(K) provides that the State will bar any specified individual from participation in the program for the period specified by the Secretary when required by him to do so pursuant to section 1128, and provides that no payment may be made under the program with respect to any item or service furnished by such individual during such period.”

COORDINATED AUDITS UNDER THE SOCIAL SECURITY ACT

Sec. 914. (a) Title XI of the Social Security Act is amended by inserting after section 1128 (added by section 913(a) of this title) the following new section:

“COORDINATED AUDITS

“Sec. 1129. (a) If an entity provides services reimbursable on a cost-related basis under title V or XIX, as well as services reimbursable on such a basis under title XVIII, the Secretary shall require, as a condition for payment to any State under title V or XIX with respect to administrative costs incurred in the performance of audits of the books, accounts, and records of that entity, that these audits be coordinated through common audit procedures with audits performed with respect to the entity for purposes of title XVIII. The Secretary shall specify by regulation such methods as he finds feasible and equitable for the apportionment of the cost of coordinated audits between the program established under title V or XIX and the program established under title XVIII. Where the Secretary finds that a State has declined to participate in such a common audit with respect to title V or XIX, he shall reduce the payments otherwise due such State under such title by an amount which he estimates to be in excess of the amount that would have been apportioned to the State under the title (for the expenses of the State incurred in the common audit) if it had participated in the common audit.

“(b)(1) In the case of entities which have audits coordinated under subsection (a), the Secretary shall establish one or more projects to demonstrate the feasibility of creating a single coordinated appeal hearing to adjudicate those administrative cost items which are determined under such a coordinated audit and which such entities dispute and appeal.

“(2) In the case of a demonstration project under this subsection, the Secretary may waive such requirements of title V, XVIII, or XIX as would prevent carrying out the project or would require duplicative activity or otherwise create unnecessary administrative burdens in carrying out the project.

“(c) The Secretary shall report to Congress not later than December 31, 1982, with respect to demonstration projects conducted under this subsection, including the reaction of the entities involved and estimates of any savings effected through reduction of duplication of appeal hearings, and shall include in such report recommendations for such legislation as the Secretary deems appropriate to insure the maximum feasible coordination of such appeal hearings.

“(d) The Secretary shall also provide for the review of the feasibility of establishing a single coordinated process for the collection of overpayments established in a coordinated audit under subsection (a). The Secretary shall report to Congress not later than December 31, 1981, on such review and on such recommendations for changes in legislation as the Secretary deems appropriate.”

42 USC 1320a-8.
42 USC 701, 1396.
42 USC 1395.

Demonstration projects.
Waiver.
Report to Congress.
Review, report to Congress.
(A) by striking out "and" at the end of paragraph (40); (B) by striking out the period at the end of paragraph (41) and inserting in lieu thereof "; and"; and (C) by inserting after paragraph (41) the following new paragraph: 

"(42) provide (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for such entities also providing services under title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such part, and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1129(a)."

(2)(A) The amendments made by paragraph (1) shall (except as provided under subparagraph (B)) apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act, on and after the first day of the first calendar quarter beginning more than 30 days after the date of the enactment of this Act.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (1), 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.

(c)(1) Section 508(a) of such Act is amended—

(A) by striking out "and" at the end of paragraph (14); (B) by striking out the period at the end of paragraph (15) and inserting in lieu thereof "; and"; and (C) by inserting after paragraph (15) the following new paragraph:

"(16) provides (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for entities also providing services under title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such part, and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1129(a)."

(2) The amendments made by paragraph (1) shall apply to services provided, under a State plan approved under title V of the Social Security Act, on and after the first day of the first calendar quarter beginning more than 30 days after the date of the enactment of this Act.

(d) The Secretary shall report to the Congress, not later than December 31, 1981, on actions the Secretary has taken (1) to coordinate the conduct of institutional audits and inspections which are required under the programs funded under title V, XVIII, or XIX of the Social Security Act, and (2) to coordinate such audits and inspections with those conducted by other cost payers, and he shall include in such report recommendations for such legislation as he
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deems appropriate to assure the maximum feasible coordination of such institutional audits and inspections.

LIFE SAFETY CODE REQUIREMENTS

Sec. 915. (a) Section 1861(j)(13) of the Social Security Act is amended by striking out “the Life Safety Code of the National Fire Protection Association (23rd edition, 1973)” and inserting in lieu thereof “such edition as is specified by the Secretary in regulations of the Life Safety Code of the National Fire Protection Association”.

(b) Any institution (or part of an institution) which complied with the requirements of section 1861(j)(13) of the Social Security Act on the day before the date of the enactment of this Act shall, so long as such compliance is maintained (either by meeting the applicable provisions of the Life Safety Code (21st edition, 1967, or 22nd edition, 1973), with or without waivers of specific provisions, or by meeting the applicable provisions of a fire and safety code imposed by State law as provided for in such section 1861(j)(13)), be considered (for purposes of titles XVIII or XIX of such Act) to be in compliance with the requirements of such section 1861(j)(13), as it is amended by subsection (a) of this section.

ALTERNATIVE TO DECERTIFICATION OF LONG-TERM CARE FACILITIES OUT OF COMPLIANCE WITH CONDITIONS OF PARTICIPATION; LOOK BEHIND AUTHORITY

Sec. 916. (a) Section 1866 of the Social Security Act is amended by adding at the end thereof the following new subsection:

“(x) Where the Secretary determines that a skilled nursing facility which has filed an agreement pursuant to subsection (a)(1) or which has been certified for participation in a plan approved under title XIX no longer substantially meets the provisions of section 1861(j), and further determines that the facility’s deficiencies—

(A) immediately jeopardize the health and safety of its patients, the Secretary shall provide for the termination of the agreement or of the certification of the facility and shall provide, or

(B) do not immediately jeopardize the health and safety of its patients, the Secretary may, in lieu of terminating the agreement or certification of the facility, provide

that no payment shall be made under this title (and order a State agency established or designated pursuant to section 1902(a)(5) of this Act to administer or supervise the administration of the State plan under title XIX of this Act to deny payment under such title XIX) with respect to any individual admitted to such facility after a date specified by him.

(2) The Secretary shall not make such a decision with respect to a facility until such facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the provisions of section 1861(j), to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

(3) The Secretary’s decision to deny payment may be made effective only after such notice to the public and to the facility as may be prescribed in regulations, and its effectiveness shall terminate (A) when the Secretary finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the provisions of section 1861(j), or (B) in the case described in
paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of section 1861(j) on the date specified in such clause, the Secretary shall terminate such facility's agreement or provide for termination of such facility's certification, notwithstanding the provisions of paragraph (2) of subsection (b), effective with the first day of the first month following the month specified in such clause.

(b)(1)(A) Section 1902 of such Act is amended by adding after subsection (h) (added by section 902(b)(2) of this title) the following new subsection:

"(i)(1) In addition to any other authority under State law, where a State determines that a skilled nursing facility or intermediate care facility which is certified for participation under its plan no longer substantially meets the provisions of section 1861(j) or section 1905(c), respectively, and further determines that the facility's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the State shall provide for the termination of the facility's certification for participation under the plan and may provide, or

(B) do not immediately jeopardize the health and safety of its patients, the State may, in lieu of providing for terminating the facility's certification for participation under the plan, provide that no payment will be made under the State plan with respect to any individual admitted to such facility after a date specified by the State.

(2) The State shall not make such a decision with respect to a facility until the facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the provisions of section 1861(j) or section 1905(c) (as the case may be), to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

(3) The State's decision to deny payment may be made effective only after such notice to the public and to the facility as may be provided for by the State, and its effectiveness shall terminate (A) when the State finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the provisions of section 1861(j) or section 1905(c) (as the case may be), or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of the respective section on the date specified in such clause, the State shall terminate such facility's certification for participation under the plan effective with the first day of the first month following the month specified in such clause.

(B) Such section is further amended by inserting before the semicolon at the end of subsection (a)(3)(B) the following: "exempt that, if the Secretary has cause to question the adequacy of such determinations, the Secretary is authorized to validate State determinations and, on that basis, make independent and binding determinations concerning the extent to which individual institutions and agencies meet the requirements for participation.

(2) Section 1910 of such Act is amended by adding at the end thereof the following new subsection:

"(c)(1) The Secretary may cancel approval of any skilled nursing or intermediate care facility at any time if he finds on the basis of a
in the seventh month following the date the determination is made. If a State agency determines that a facility is not in compliance with the provisions of section 1902(a)(28) or section 1905(c), or if it finds grounds for termination of the facility pursuant to section 1906(b), in that event the Secretary shall notify the State agency and the facility that approval of eligibility of the facility to participate in the programs established by this title and title XVIII shall be terminated at a time specified by the Secretary. The approval of eligibility of any such facility to participate in such programs may not be reinstated unless the Secretary finds that the reason for termination has been removed and there is reasonable assurance that it will not recur.

(2) Any skilled nursing facility or intermediate care facility which is dissatisfied with a determination by the Secretary that it no longer qualifies as a skilled nursing facility or intermediate care facility for purposes of this title shall be entitled to a hearing by the Secretary to the same extent as is provided in section 205(b) and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). Any agreement between such facility and the Secretary shall remain in effect until the period for filing a request for a hearing has expired or, if a request has been filed, until a decision has been made by the Secretary; except that the agreement shall not be extended if the Secretary makes a written determination, specifying the reasons therefor, that the continuation of the agreement constitutes an immediate and serious threat to the health and safety of patients, and the Secretary certifies that the facility has been notified of its deficiencies and has failed to correct them.

CRIMINAL STANDARDS FOR CERTAIN MEDICARE- AND MEDICAID-RELATED CRIMES

SEC. 917. Paragraphs (1) and (2) of section 1877(b) of the Social Security Act and of section 1909(b) of such Act are each amended by inserting "knowingly and willfully" after "Whoever".

REIMBURSEMENT OF CLINICAL LABORATORIES

SEC. 918. (a)(1) Section 1842 of the Social Security Act is amended by inserting at the end the following new subsection:

(1) If the bill or request for payment indicates that the physician who submitted the bill or for whose services the request for payment was made personally performed or supervised the performance of the test or that another physician with whom the physician shares his practice personally performed or supervised the test, the payment shall be the reasonable charge for the test (less the applicable deductible and coinsurance amounts).

(2) If the bill or request for payment indicates that the test was performed by a laboratory, identifies the laboratory, and indicates the amount the laboratory charged the physician who submitted the bill or for whose services the request for payment was made, payment for the test shall be the lower of:

(A) the laboratory's reasonable charge to individuals enrolled under this part for the test, or
“(B) the amount the laboratory charged the physician for
the test,
plus a nominal fee (where the physician bills for such a service) to
cover the physician’s costs in collecting and handling the sample
on which the test was performed (less the applicable deductible and
insurance amounts).

“(3) If the bill or request for payment (A) does not indicate who
performed the test, or (B) indicates that the test was performed
by a laboratory but does not identify the laboratory or include
the amount charged by the laboratory, payment shall be the
lowest charged at which the carrier estimates the test could have
been secured by a physician from a laboratory serving the
locality (less the applicable deductible and insurance amounts).”

(2) The amendment made by paragraph (1) shall apply to bills
submitted and requests for payment made on or after such date (not
later than April 1, 1981) as the Secretary of Health and Human
Services prescribes by a notice published in the Federal Register.

(3) Not later than 24 months after the effective date specified in
paragraph (2), the Secretary shall report to the Congress—
(A) the proportion of bills and requests for payment submitted
during the 18-month period beginning on such effective date
under title XVIII of the Social Security Act for laboratory tests
which did not identify who performed the tests,
(B) the proportion of bills and requests for payment submitted
during such period for laboratory tests with respect to which the
amount paid under such title was less than the amount that
would otherwise have been payable in the absence of section
1842(h) of such Act,
(C) with respect to requests for payment described in
subparagraph (B) which were submitted by patients, the average
additional cost per laboratory test to patients resulting from
reductions in payment that would otherwise have been made for
such tests in the absence of such section 1842(h), and
(D) with respect to bills described in subparagraph (B) which
were submitted by physicians, the average reduction in payment
per laboratory test to physicians resulting from the application
of such section 1842(h).

(4) Section 1833(a)(1)(D) of the Social Security Act is amended by
striking out “subsection (g)” and inserting in lieu thereof “subsection
(h).”

(b)(1) Section 1902(a) of the Social Security Act (as amended by
section 914(b)(1) of this Act) is further amended—
(A) by striking out “and” at the end of paragraph (41);
(B) by striking out the period at the end of paragraph (42) and
inserting in lieu thereof “; and”; and
(C) by adding after paragraph (42) the following new para-
graph:

“(43) if the State plan makes provision for payment to a
physician for laboratory services the performance of which such
physician (or any other physician with whom he shares his
practice) did not personally perform or supervise, include provi-
sion to insure that payment under the State plan for such
laboratory services not exceed the payment authorized for such
services by section 1842(h).”

(2)(A) The amendments made by paragraph (1) shall (except as
otherwise provided in subparagraph (B)) apply to medical assistance
provided, under a State plan approved under title XIX of the Social
Security Act, on and after the first day of the first calendar quarter that begins more than six months after the date of the enactment of this Act.

(b) 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 in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (1), 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.

STUDY OF NEED FOR DUAL PARTICIPATION OF SKILLED NURSING FACILITIES

SEC. 919. (a)(1) The Secretary of Health and Human Services shall conduct a study of the availability and need for skilled nursing facility services covered under part A of title XVIII of the Social Security Act and under State plans approved under title XIX of such Act.

(2) Such study shall include—

(A) an investigation of the desirability and feasibility of imposing a requirement that skilled nursing facilities (i) which furnish services to patients covered under State plans approved under title XIX of the Social Security Act also furnish such services to patients covered under part A of title XVIII of such Act, and (ii) which furnish services to patients covered under such title XVIII also furnish such services to patients covered under such State plans,

(B) an evaluation of the impact of existing laws and regulations on skilled nursing facilities and individuals covered under such State plans and under part A of such title XVIII, and an evaluation of the extent to which existing laws and regulations encourage skilled nursing facilities to accept only title XVIII beneficiaries or title XIX recipients, and

(C) an investigation of possible changes in regulations and legislation which would result in encouraging a greater availability of skilled nursing facility services.

(3) In developing such study, the Secretary shall consult with professional organizations, health experts, private insurers, nursing home providers, and consumers of skilled nursing facility services.

(a) Within one year after the date of the enactment of this Act, the Secretary shall complete such study and shall submit to the Congress a full and complete report thereon, together with recommendations with respect to the matters covered by such study (including any recommendations for administrative or legislative changes).

Subpart III—Provisions Relating to Professional Standards Review Organizations (PSROs)

EXPANDED MEMBERSHIP OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

SEC. 921. Section 1152(b)(1)(A) of the Social Security Act is amended—
(1) by inserting “and, if the organization so elects, of other health care practitioners engaged in the practice of their professions in such area who hold independent hospital admitting privileges,” after the comma at the end of clause (ii); and
(2) by inserting “(except as otherwise provided under section 1155(c))” after “does not” in clause (vi).

REGISTERED NURSE AND DENTIST MEMBERSHIP ON STATEWIDE COUNCIL ADVISORY GROUP

Sect. 922. (a) Section 1162(e)(1) of the Social Security Act is amended by inserting “(including at least one registered professional nurse and at least one doctor of dental surgery or of dental medicine)” after “representatives”.
(b) The amendment made by this section shall become effective 180 days after the date of the enactment of this Act.

NONPHYSICIAN MEMBERSHIP ON NATIONAL PROFESSIONAL STANDARDS REVIEW COUNCIL

Sect. 923. (a) Section 1163(a)(1) of the Social Security Act is amended by inserting “one doctor of dental surgery or of dental medicine, one registered professional nurse, and one other health practitioner (other than a physician as defined in section 1861(r)(1))” after “physicians,”.
(b) Section 1163(a)(2) of such Act is amended by striking out “four members” and inserting in lieu thereof “five members”.
(c) Section 1163(a)(3) of such Act is amended by inserting “physician” before “members”.
(d) Section 1163(b) of such Act is amended by striking out “Members” and inserting in lieu thereof “Physician members”.
(e) Section 1173 of such Act is amended by striking out “(except sections 1155(c) and 1163)” and inserting in lieu thereof “(except section 1155(c))”.
(f) The amendments made by this section shall become effective 180 days after the date of the enactment of this Act.

REQUIRED ACTIVITIES OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Sect. 924. (a)(1) Subsection (b) of section 1154 of the Social Security Act is amended—
(A) by striking out “in addition to review of health care services provided by or in institutions, only such of the duties and functions required under this part of Professional Standards Review Organization as he determines such organization to be capable of performing” in the first sentence and inserting in lieu thereof “in addition to review of health care services (other than ancillary, ambulatory care, and long-term care services) provided by or in hospitals and to review of alcohol detoxification facility services, only such of the duties and functions as he requires the organization to perform under subsection (f)(2) or subsection (f)(4) and which the organization is capable of performing”;
(B) by striking out “only if the Secretary finds that it is substantially carrying out in a satisfactory manner, the activities and functions required of Professional Standards Review Organizations under this part with respect to the review of health care services provided by or in institutions (including ancillary serv-
organization so elects, of other than the practice of their profession dependent hospital admitting the end of clause (ii); and otherwise provided under section 1153(a)), after the following new subsection:

"(f)(1) The Secretary shall establish a program (hereinafter in this subsection referred to as the 'program') for the evaluation of the cost-effectiveness of review of particular health care services by Professional Standards Review Organizations.

"(2) In order to demonstrate the cost-effectiveness of requiring review of particular health care services before such review is generally required, the program shall be designed in a manner so that the Secretary will require particular Professional Standards Review Organizations, chosen by a statistically valid method that will permit a valid evaluation of the cost-effectiveness of such review, to review particular health care services.

"(3) The program shall provide for the evaluation of cost-effectiveness of the review of particular health care services under the program, particularly in comparison with areas in which such review was not required or performed.

"(4) Based upon such evaluation, or upon an evaluation of comparable statistical validity, and a finding that review of particular health care services is cost-effective or yields other significant benefits, the Secretary shall specify such particular health care services which Professional Standards Review Organizations (either generally or under such conditions and circumstances as the Secretary may specify) have the duty and function of reviewing under this part."

"(5) For purposes of this subsection, the term 'particular health care services' does not include health care services (other than ancillary, ambulatory care, and long-term care services) provided by or in hospitals or alcohol detoxification facility services."

(b) Section 1155(a) of such Act is amended—

(1) by striking out "at the earliest date practicable" in paragraph (1) and inserting in lieu thereof "to the extent and at the time specified by the Secretary under section 1154(f)";

(2) by inserting ", consistent with section 1154(f)," in paragraph (7)(A) after "only"; and

(3) by inserting "consistent with section 1154(f)" in paragraph (7)(B) after "to the extent".

c) Subsection (g) of section 1155 of such Act is repealed.

d) Section 1155 of such Act is amended by adding at the end thereof the following new subsection:

"If the Secretary has designated an organization (other than under section 1154) as a Professional Standards Review Organization, but that organization has not assumed responsibility for the review of particular activities in its area included in subsection (a)(i), the Secretary may designate another qualified Professional Standards Review Organization (in reasonable proximity to the providers and practitioners whose services are to be reviewed) to assume the responsibility for the review of some or all of those particular activities."
EFFICIENCY IN DELEGATED REVIEW

42 USC 1320c-4. Sec. 925. Section 1155(e) of the Social Security Act is amended by striking out "effectively and in timely fashion" and inserting in lieu thereof "effectively, efficiently, and in timely fashion".

REVIEW OF ROUTINE HOSPITAL ADMISSION SERVICES AND PREOPERATIVE HOSPITAL STAYS BY PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

42 USC 1320c-4. Sec. 926. Section 1155(a)(2) of the Social Security Act is amended to read as follows:

"(2) Each Professional Standards Review Organization shall have the authority to determine, in advance, in the case of—

(A) any elective admission to a hospital or other health care facility (including admissions occurring on weekends), and

(B) any routine diagnostic services furnished in connection with such an admission,

whether such service, if provided, or if provided by a particular health care practitioner or by a particular hospital or other health care facility, organization, or agency, would meet the criteria specified in subparagraphs (A) and (C) of paragraph (1). Each such Organization may be directed by the Secretary to exercise such authority where the Secretary finds (consistent with section 1154(f)) that such determinations can be made on a timely basis by the Organization and appropriate procedures will be applied to assure prompt notification of such determinations to providers, physicians, practitioners, and persons on whose behalf payment may be made under this Act for services and items."

CONSULTATION BY PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS WITH HEALTH CARE PRACTITIONERS

42 USC 1320c-4. Sec. 927. (a) Section 1155(a) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(8) Each Professional Standards Review Organization shall consult (with such frequency and in such manner as may be prescribed by the Secretary) with representatives of health care practitioners (other than physicians described in section 1861(r)(1)) and of institutional and noninstitutional providers of health care services, in relation to the Professional Standards Review Organization's responsibility for the review under paragraph (1) of the professional activities of such practitioners and providers."

42 USC 1395a.

42 USC 1320c-11.

Effective date. 42 USC 1320c-4 note.

RESPONSE OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS TO FREEDOM OF INFORMATION ACT REQUESTS

42 USC 1320c-15

note.

42 USC 1320c.

Sec. 928. No Professional Standards Review Organization designated (conditionally or otherwise) under part B of title XI of the Social Security Act shall be required to make available any records pursuant to a request made under section 552 of title 5, United States Code, until the later of (1) one year after the date of entry of a final court order requiring that such records be made available, or (2) the last date of the Congress during which the court order was entered.
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STUDY OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS NORMS, STANDARDS, AND CRITERIA

Sec. 929. The Secretary of Health and Human Services shall, in consultation with the National Professional Standards Review Council, conduct a nationwide study of the differences in medical criteria and length-of-stay norms utilized by Professional Standards Review Organizations in the various regions of the country. The study shall include an assessment of the rationale that contributes to these regional differences. The Secretary shall report the findings and conclusions made with respect to the study to the Congress one year within the date of the enactment of this Act.

PART B—PROVISIONS RELATING TO MEDICARE

Subpart I—Changes in Services or Benefits

HOME HEALTH SERVICES

Sec. 930. (a) Section 1811 of the Social Security Act is amended by striking out “and related post-hospital services and inserting in lieu thereof “, related post-hospital, and home health services”.

(b) Section 1812(a)(3) of such Act is amended to read as follows: “(3) home health services.”

c) Section 1812(d) of such Act is repealed.

d) Section 1812(e) of such Act is amended—

1. by striking out “(c), and (d)” and inserting in lieu thereof “(b) and (c)”;

2. by striking out “post-hospital extended care services, and post-hospital home health services” and inserting in lieu thereof “post-hospital extended care services”.

e) Sections 1814(a) and 1855(a) of such Act are amended by adding the following new sentence at the end of each such section: “With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, such home health agency from performing such certification and from establishing or reviewing such plan.”

(f) Section 1814(a)(2)(D) of such Act is amended—

1. by striking out “post-hospital home health services” and inserting in lieu thereof “home health services”;

2. by inserting “, occupational,” after “or physical”;

3. by striking out “, for any of the conditions and all that follows through “extended care services”,

(g) Section 1852(a)(2)(A) of such Act is amended by striking out “for up to 100 visits during a calendar year”.

(h) Section 1833(b) of such Act is amended—

1. by striking out “and” at the end of clause (1) in the first sentence;

2. by inserting before the period at the end of the first sentence the following: “, (3) such deductible shall not apply with respect to home health services”.

(i) Section 1834 of such Act is repealed.
(j) Section 1835(a)(2)(A) of such Act is amended by inserting "occupational," after "or physical."

(k) Section 1861(e) of such Act is amended—

(1) by striking out "subsections (i) and (n)" in the material preceding paragraph (1) and inserting in lieu thereof "subsection (i)", and

(2) by striking out "subsections (i) and (n)" in the third sentence and inserting in lieu thereof "subsection (i)".

(l) Section 1861(m)(4) of such Act is amended by inserting the following before the semicolon: "who has successfully completed a training program approved by the Secretary."

(m) Section 1861(n) of such Act is repealed.

(n) Section 1861(o) of such Act is amended—

(1) by striking out "and" at the end of paragraph (5), by inserting "and" at the end of paragraph (6), and by adding the following new paragraph after paragraph (6):

"(7) meets such additional requirements (including conditions relating to bonding or establishing of escrow accounts as the Secretary finds necessary for the financial security of the program) as the Secretary finds necessary for the effective and efficient operation of the program;"; and

(2) by striking out "except that" the first place it appears in the material following paragraph (6) and all that follows through "regulations; and"

(o) Section 1816(e) of such Act is amended—

(1) by inserting "subject to the provisions of paragraph (4))" after "the Secretary may" in paragraph (2); and

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

"Notwithstanding subsections (a) and (d) and paragraphs (1), (2), and (3) of this subsection, the Secretary shall designate regional agencies or organizations which have entered into an agreement with him under this section to perform functions under such agreement with respect to home health agencies (as defined in section 1861(o)) in the region, except that in assigning such agencies to such designated regional agencies or organizations the Secretary shall assign a home health agency which is a subdivision of a hospital (and such agency and hospital are affiliated or under common control) only if, after applying such criteria relating to administrative efficiency and effectiveness as he shall promulgate, he determines that such assignment would result in the more effective and efficient administration of this title."

(p) Section 1861(v)(1) of such Act is amended by adding after subparagraph (G) (as added by section 902(a)(1) of this title) the following new subparagraph:

"In determining such reasonable cost with respect to home health agencies, the Secretary may not include—

"(i) any costs incurred in connection with bonding or establishing an escrow account by any such agency as a result of the financial security requirement described in subsection (o)(7);

"(ii) in the case of home health agencies to which the financial security requirement described in subsection (o)(7) applies, any costs attributed to interest charged such an agency in connection with amounts borrowed by the agency to repay overpayments made under this title to the agency, except that such costs may be included in reasonable cost if the Secretary determines that the agency was acting in good faith in borrowing the amounts; and

"(iii) in the case of contracts entered into by a home health agency after the date of the enactment of this subparagraph for
the purpose of having services furnished for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract (I) which is entered into for a period exceeding five years, or (II) which determines the amount payable by the home health agency on the basis of a percentage of the agency's reimbursement or claim for reimbursement for services furnished by the agency; and

"(iv) in the case of contracts entered into by a home health agency before the date of the enactment of this subparagraph for the purpose of having services furnished for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract, which determines the amount payable by the home health agency on the basis of a percentage of the agency's reimbursement or claim for reimbursement for services furnished by the agency, to the extent that such cost exceeds the reasonable value of the services furnished on behalf of such agency."

(q) Section 226(c)(1) of such Act is amended—

(1) by striking out "and post-hospital home health services" and inserting in lieu thereof "and home health services"; and

(2) by striking out "or post-hospital home health services" in clause (B).

(r) Section 7(d)(1) of the Railroad Retirement Act of 1974 is amended by striking out "posthospital home health services" and inserting in lieu thereof "home health services".

(a)(1) the amendments made by this section shall become effective with respect to services furnished on or after July 1, 1981, except that the amendments made by subsections (n)(1) and (o) shall become effective on the date of the enactment of this Act.

(2) The Secretary of Health and Human Services shall take administrative action to assure that improvements, in accordance with the amendments made by subsection (n), shall be made not later than June 30, 1981.

ALCOHOL DETOXIFICATION FACILITY SERVICES

Sec. 931. (a) Section 1812(a) of the Social Security Act is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and", and by adding after paragraph (3) the following new paragraph:

"(4) alcohol detoxification facility services."

(b) Section 1812(a)(2) of such Act is amended by striking out "or" at the end of subparagraph (D) and inserting in lieu thereof "or" at the end of subparagraph (E), and by adding after subparagraph (E) the following new subparagraph:

"(F) in the case of alcohol detoxification facility services, such services are required on an inpatient basis (based upon an examination by such certifying physician made prior to initiation of alcohol detoxification)."

(c) Section 1861(u) of such Act is amended by inserting "detoxification facility," after "home health agency,"

(d) Section 1861 of such Act is further amended by adding after subsection (aa) the following new subsection:

"Alcohol Detoxification Facility Services

"(bb) The term 'alcohol detoxification facility services' means services provided by a detoxification facility in order to reduce or
eliminate the amount of alcohol in the body, but only to the extent that such services would be covered under subsection (b) if furnished as inpatient services by a hospital, or are physicians' services covered under subsection (s).

“(2) The term ‘detoxification facility’ means a public or voluntary community-based nonprofit facility, other than a hospital, which—

“(A) is engaged in furnishing to inpatients the services described in paragraph (1);

“(B) is accredited by the Joint Commission on the Accreditation of Hospitals as meeting the Accreditation Program for Psychiatric Facilities standards (1979 edition), or is found by the Secretary to meet such standards;

“(C) has arrangements with one or more hospitals, having agreements in effect under section 1866, for the referral and admission of patients requiring services not available at the facility; and

“(D) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by the facility.”.

(e) The amendments made by subsections (a) through (d) of this section shall become effective on April 1, 1981.

(f) The Secretary of Health and Human Services shall conduct a study and make recommendations, within 18 months after the date of the enactment of this Act, concerning the appropriateness of extending medicare coverage to drug detoxification, postdetoxification rehabilitation, and to outpatient detoxification and concerning incentives for the use of lower-cost detoxification facilities.

(g) Section 1155 of the Social Security Act is amended by adding after subsection (h) (added by section 924(d) of this title) the following new subsection:

“(i) Any Professional Standards Review Organization which has assumed responsibility under this section for review of inpatient hospital services in an area shall also assume responsibility in such area for review of detoxification facility services.”.

(h) Section 1158 of such Act is amended—

(1) by striking out “section 1159 and subsection (d)” in subsection (a) and inserting in lieu thereof “subsections (d) and (e) of this section and in sections 1159, 1861(v)(1)(G), and 1902(h)”, and

(2) by adding after subsection (d) the following new subsection:

“(e) Subsection (a) of this section shall not apply to a determination by a Professional Standards Review Organization under section 1155(a)(1)(C) that detoxification services provided or proposed to be provided in a hospital on an inpatient basis could be more economically provided in a detoxification facility.”.

PREADMISSION DIAGNOSTIC TESTING

Sec. 932. (a)(1) Section 1833(a)(1) of the Social Security Act is amended—

(A) by striking out “and (E)” and inserting in lieu thereof “(E)”, and

(B) by inserting the following after “section 1881,” at the end of clause (E): “(F) with respect to expenses incurred for physicians’ services (furnished by a physician who has an agreement in effect with the Secretary by which the physician agrees to accept an assignment described in section 1842(b)(3)(B)(ii) with respect to payment for all physicians’ services which are preadmission diagnostic services furnished by the physician to individuals
body, but only to the extent that the subsection (b) if furnished by physicians' services covered thereunder means a public or voluntary organization other than a hospital, which—
(ii) to the extent practicable as determined by regulations prescribed by the Secretary, to another hospital, or
is found by the Commission on the Accreditation of Hospitals (Accreditation Program for Hospitals 1979 edition), or by the Secretary, to any or more hospitals, having, in 1986, the referral and diagnostic testing services not available at the hospital.

The Secretary may find the health and safety of individuals furnished the services under this section as the Secretary may find necessary.

Sections (a) through (d) of this title shall apply.

An Organization shall conduct a survey of the appropriateness of extension, reorganization and concerning incentives for additional services within a year after the date of enactment of this Act and in lieu thereof a semicolon, and by adding the following new subparagraph at the end thereof:

(E) comprehensive outpatient rehabilitation facility services;

and;

and

(c) Section 1861(u) of such Act is amended by inserting "comprehensive outpatient rehabilitation facility," immediately after "skilled nursing facility":

(d) Section 1861(z) of such Act is amended by striking out "extended care facility," and inserting therein, "comprehensive outpatient rehabilitation facility,"

(e) Section 1861 of such Act is amended by adding after subsection (bb) (added by section 931(d) of this title) the following new subsection:

"Comprehensive Outpatient Rehabilitation Facility Services"

"(cc)(1) The term 'comprehensive outpatient rehabilitation facility services' means the following services furnished by a physician or other qualified professional personnel (as defined in regulations by the Secretary) to an individual who is an outpatient of

[Further text not fully visible]
a comprehensive outpatient rehabilitation facility under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician—

(A) physicians' services;
(B) physical therapy, occupational therapy, speech pathology services, and respiratory therapy;
(C) prosthetic and orthotic devices, including testing, fitting, or training in the use of prosthetic and orthotic devices;
(D) social and psychological services;
(E) nursing care provided by or under the supervision of a registered professional nurse;
(F) drugs and biologicals which cannot, as determined in accordance with regulations, be self administered;
(G) supplies, appliances, and equipment, including the purchase or rental of equipment; and
(H) such other items and services as are medically necessary for the rehabilitation of the patient and are ordinarily furnished by comprehensive outpatient rehabilitation facilities, excluding, however, any item or service if it would not be included under subsection (b) if furnished to an outpatient of a hospital.

(2) The term 'comprehensive outpatient rehabilitation facility' means a facility which—

(A) is primarily engaged in providing (by or under the supervision of physicians) diagnostic, therapeutic, and restorative services to outpatients for the rehabilitation of injured, disabled, or sick persons;
(B) provides at least the following comprehensive outpatient rehabilitation services: (i) physicians' services (rendered by physicians, as defined in section 1861(r)(1), who are available at the facility on a full- or part-time basis); (ii) physical therapy; and (iii) social or psychological services;
(C) maintains clinical records on all patients;
(D) has policies established by a group of professional personnel (associated with the facility), including one or more physicians defined in subsection (r)(1) to govern the comprehensive outpatient rehabilitation services it furnishes, and provides for the carrying out of such policies by a full- or part-time physician referred to in subparagraph (B(i));
(E) has a requirement that every patient must be under the care of a physician;

(F) in the case of a facility in any State in which State or applicable local law provides for the licensing of facilities of this nature (i) is licensed pursuant to such law, or (ii) is approved by the agency of such State or locality, responsible for licensing facilities of this nature, as meeting the standard establishment for such licensing;
(G) has in effect a utilization review plan in accordance with regulations prescribed by the Secretary;
(H) has in effect an overall plan and budget that meets the requirements of subsection (2); and

(I) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such facility, including conditions concerning qualifications of personnel in these facilities."

(f) Section 1863 of such Act is amended by striking out "and (o)(6)" in the first sentence and inserting in lieu thereof "(o)(6), and (cc)(2)(l)".
(g) Section 1864(a) of such Act is amended—

(1) by inserting “or a comprehensive outpatient rehabilitation facility as defined in section 1861(oc)(2)” after “section 1861(aa)(2)” in the first sentence; and

(2) by inserting “comprehensive outpatient rehabilitation facility,” after “rural health clinic,” each place it appears in the second and fifth sentences.

(h) The amendments made by this section shall become effective with respect to a comprehensive outpatient rehabilitation facility’s first accounting period which begins on or after July 1, 1981.

OUTPATIENT SURGERY

Sec. 934. (a) Section 1832(a)(2) of the Social Security Act is amended by adding after subparagraph (E) (added by section 933(a) of this title) the following new subparagraph:

“(F) facility services furnished in connection with surgical procedures specified by the Secretary—

“(I) pursuant to section 1833(i)(1)(A) and performed in an ambulatory surgical center (which meets health, safety, and other standards specified by the Secretary in regulations) if the center has an agreement in effect with the Secretary by which the center agrees to accept the amount determined under section 1833(i)(2)(A) as full payment for such services and to accept an assignment described in section 1842(b)(3)(B)(ii) with respect to payment for all such services furnished by the center to individuals enrolled under this part, or

“(II) pursuant to section 1833(i)(1)(B) and performed by a physician, described in section 1861(r)(1), in his office, if the Secretary has determined that—

“(I) a Professional Standards Review Organization (designated, conditionally or otherwise, under part B of title XI of this Act) is willing, able, and has agreed to carry out a review (on a sample or other reasonable basis) of the physician’s performing such procedures in the physician’s office,

“(II) the particular physician involved has agreed to make available to such Organization such records as the Secretary determines to be necessary to carry out the review, and

“(III) the physician is authorized to perform the procedure in a hospital located in the area in which the office is located,

and if the physician agrees to accept the amount determined under section 1833(i)(2)(B) as full payment for all services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1861(a) and furnished in connection with such surgical procedure to individuals enrolled under this part.’”.

(b) Section 1838 of such Act is amended by adding at the end the following new subsection:

“(i)(1) The Secretary shall, in consultation with the National Professional Standards Review Council and appropriate medical organizations—
“(A) specify those surgical procedures which are appropriately
(when considered in terms of the proper utilization of hospital
inpatient facilities) performed on an inpatient basis in a hospital
but which also can be performed safely on an ambulatory basis in
an ambulatory surgical center (meeting the standards specified
under section 1832(a)(2)(F)(i)) or hospital outpatient department,
and
“(B) specify those surgical procedures which are appropriately
(when considered in terms of the proper utilization of hospital
inpatient facilities) performed on an inpatient basis in a hospital
but which also can be performed safely on an ambulatory basis in
a physician’s office.
“(2)(A) The amount of payment to be made for facility services
furnished in connection with a surgical procedure specified pursuant
to paragraph (1)(A) and furnished to an individual in an ambulatory
surgical center described in such paragraph shall be equal to a
standard overhead amount established by the Secretary (with respect
to each such procedure) on the basis of the Secretary’s estimate of a
fair fee which—
“(i) takes into account the costs incurred by such centers, or
classes of centers, generally in providing services furnished in
connection with the performance of such procedure, and
“(ii) takes such costs into account in such a manner as will
assure that the performance of the procedure in such a center
will result in substantially less amounts paid under this title
than would have been paid if the procedure had been performed
on an inpatient basis in a hospital.
Each amount so established shall be reviewed periodically and may
be adjusted by the Secretary, when appropriate, to take account of
varying conditions in different areas.
“(B) The amount of payment to be made under this part for facility
services furnished, in connection with a surgical procedure specified
pursuant to paragraph (1)(B), in a physician’s office shall be equal to a
standard overhead amount established by the Secretary (with respect
to each such procedure) on the basis of the Secretary’s estimate of a
fair fee which—
“(i) takes into account additional costs, not usually included in
the professional fee, incurred by physicians in securing, mainte-
ning, and staffing the facilities and ancillary services appro-
priate for the performance of such procedure in the physician’s
office, and
“(ii) takes such items into account in such a manner which will
assure that the performance of such procedure in the physician’s
office will result in substantially less amounts paid under this
title than would have been paid if the services had been furn-
nished on an inpatient basis in a hospital.
Each amount so established shall be reviewed periodically and may
be adjusted by the Secretary, when appropriate, to take account of
varying conditions in different areas.
“(3) In the case of services (including all pre- and post-operative
services) described in paragraphs (1) and (2)(A) of section 1861(a) and
furnished in connection with surgical procedures (specified pursuant
to paragraph (1) of this subsection) in a physician’s office, an ambula-
tory surgical center described in such paragraph, or a hospital
outpatient department, payment for such services shall be deter-
mined in accordance with subsection (a)(1)(G) if the physician accepts
an assignment described in section 1842(b)(3)(B)(ii) with respect to
payment for such services.
"(4)(A) The Secretary is authorized to provide by regulations that in the case of a surgical procedure, specified by the Secretary pursuant to paragraph (1)(A), performed in an ambulatory surgical center described in such paragraph, there shall be paid (in lieu of any amounts otherwise payable under this part) with respect to the facility services furnished by such center and with respect to all related services (including physicians' services, laboratory, X-ray, and diagnostic services) a single all-inclusive fee established pursuant to subparagraph (B), if all parties furnishing all such services agree to accept such fee (to be divided among the parties involved in such manner as they have previously agreed upon) as full payment for the services furnished.

"(B) In implementing this paragraph, the Secretary shall establish with respect to each surgical procedure specified pursuant to paragraph (1)(A) the amount of the all-inclusive fee for such procedure, taking into account such factors as may be appropriate. The amount so established with respect to any surgical procedure shall be reviewed periodically and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas."

42 USC 1396a.

Ante, p. 2637.

(2) Section 1864(a) of such Act is amended—

(A) by inserting before the period at the end of the first sentence the following: "", or whether an ambulatory surgical center meets the standards specified under section 1832a(a)(2)(F)(ii)"; and

(B) by inserting "ambulatory surgical center," in the fifth sentence after "health care facility," each place it appears.

42 USC 1395a.

Ante, p. 2637.

(3) The first sentence of section 1833(b) of such Act, as amended by section 930(h) of this title, is further amended by adding before the period at the end of the following: "", and (4) such total amount shall not include expenses incurred for services the amount of payment for which is determined under subsection (a)(1)(G) or under subsection (a)(2) or (a)(4)".

OUTPATIENT PHYSICAL THERAPY SERVICES

Sec. 935. (a) Section 1833(g) of the Social Security Act is amended by striking out "$100" and inserting in lieu thereof "$500".

(b) The amendment made by subsection (a) shall apply to expenses incurred in calendar years beginning with calendar year 1982.

DENTISTS' SERVICES

Sec. 936. (a) Clause (2) of the first sentence of section 1861(r) of the Social Security Act is amended to read as follows: "(2) a doctor of dental surgery or of dental medicine who is legally authorized to
practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions.

Section 1814(a)(2)(E) of such Act is amended to read as follows: “(E) in the case of inpatient hospital services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services; or”.

Section 1862(a)(12) of such Act is amended by inserting “or because of the severity of the dental procedure,” after “clinical status”.

The amendments made by this section shall apply with respect to services provided on or after July 1, 1981.

OPTOMETRISTS’ SERVICES

(a) Clause (4) of the first sentence of section 1861(r) of the Social Security Act is amended by striking out “but only with respect to establishing the necessity for prosthetic lenses,” and inserting in lieu thereof “but only with respect to services related to the condition of aphakia.”

(b) The Secretary of Health and Human Services shall submit to the Congress by January 1, 1982, legislative recommendations with respect to reimbursement under title XVIII of the Social Security Act for services furnished by optometrists in connection with cataracts and such other services which they are legally authorized to perform.

(c) The amendment made by subsection (a) shall apply to services furnished on or after July 1, 1981.

ANTIGENS

Section 1861(s)(2) of the Social Security Act is amended by striking out “and” at the end of subparagraph (E), by adding “and” after the semicolon at the end of subparagraph (F), and by inserting the following new subparagraph after subparagraph (F):

“(G) antigens (subject to quantity limitations prescribed in regulations by the Secretary) prepared by a physician, as defined in section 1861(r)(1), for a particular patient, including antigens so prepared which are forwarded to another qualified person (including a rural health clinic) for administration to such patient, from time to time, by or under the supervision of another such physician;”.

The amendments made by subsection (a) shall apply to services furnished on or after January 1, 1981.

TREATMENT OF PLANTAR WARTS

Section 1862(a)(13)(C) of the Social Security Act is amended by striking out “warts.”.

The amendment made by subsection (a) shall apply with respect to services furnished on or after July 1, 1981.
Subpart II—Administrative Changes and Miscellaneous Provisions

PRELIMINARY PROVISIONS

Sec. 941. (a) Section 1814 of the Social Security Act is amended by striking out subsections (h) and (i) and by redesignating subsection (j) as subsection (i). 42 USC 1395f.

(b) Section 1814(c) of such Act is amended by striking out "subsection (i)" and inserting in lieu thereof "subsection (h)".

(c) The amendments made by this section shall take effect on January 1, 1981.

PAYMENT TO PROVIDERS OF SERVICES

Sec. 942. Section 1833(a) of such Act is amended by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2) in the case of services described in section 1832(a)(2) (except those services described in subparagraphs (D), (E), and (F) of such section and in paragraph (5) of this subsection and unless otherwise specified in section 1881)—

(A) with respect to home health services, the reasonable cost of such services, as determined under section 1861(v);

(B) with respect to other services (except those described in subparagraph (C) of this paragraph), the reasonable costs of such services, as so determined, less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A), but in no case may the payment for such other services exceed 80 percent of such costs; and

(C) with respect to services described in the second sentence of section 1861(p), 80 percent of the reasonable charges for such services;

(3) in the case of services described in subparagraphs (D) and (E) of section 1832(a)(2), the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1861(v)(1)(A), less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A), but in no case may the payment for such services exceed 80 percent of such costs;

(4) in the case of facility services described in subparagraph (F) of section 1832(a)(2), the applicable amount described in paragraph (2) of section 1833(i); and

(5) in the case of preadmission diagnostic services described in section 1861(s)(2)(C) which are furnished to an individual by the outpatient department of a hospital within 7 days of such individual’s admission to the same hospital as an inpatient or (to the extent practicable as determined by regulations prescribed by the Secretary) to another hospital, the reasonable costs for such services.

LIMITATION ON PAYMENTS TO RADIOLOGISTS AND PATHOLOGISTS

Sec. 943. (a) Subsections (a)(1)(B) and (b)(2) of section 1833 of the Social Security Act are each amended by inserting after "pathology" the following: "who has in effect an agreement with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1842b(k)(3)(B)(iii) for all physicians’ services furnished by him to hospital inpatients enrolled under this part").
PHYSICIAN TREATMENT PLAN FOR SPEECH PATHOLOGY

(b) The amendments made by subsection (a) shall apply to services furnished after the sixth calendar month beginning after the date of the enactment of this Act.

REENROLLMENT AND OPEN ENROLLMENT IN PART B

Sec. 945. (a) Subsection (b) of section 1837 of the Social Security Act is repealed.

(b)(1) Subsection (e) of such section is amended to read as follows:

"(e) There shall be a general enrollment period which is any period after the period described in subsection (d)."

(2) Subsection (g)(3) of such section is amended by striking out “the earlier of the then current” and all that follows through “subsection (e) of this section)” and inserting in lieu thereof “the month in which the individual files an application establishing such entitlement”.

(c)(1) Section 1838(a)(2)(E) of such Act is amended by striking out “the July 1” and inserting in lieu thereof “the first day of the third month”.

(2) The second sentence of subsection (d) of section 1839 of such Act is amended by striking out “who enrolls for the second time” (2)” and all that follows through “in which he enrolled for the second time” and inserting in lieu thereof “who reenrolls” (2) the months which elapsed between the date of termination of a previous coverage period and the month after the month in which he reenrolled”.

(d) The amendments made by subsections (a), (b), and (c) shall apply to enrollments occurring on or after April 1, 1981.

(e) Section 1843 of the Social Security Act is amended by inserting “or during 1981,” in subsections (a), (g)(1), and (h)(1) after “January 1, 1970,” each place it appears.

DETERMINATION OF REASONABLE CHARGE

Sec. 946. (a) The third sentence of section 1842(b)(3) of the Social Security Act is amended by striking out “in which the bill is submitted or the request for payment is made” and inserting in lieu thereof “in which the service is rendered”.

(b) Such section is further amended by striking out “and” at the end of subparagraph (D), by inserting “and” after the semicolon at the end of subparagraph (E), and by inserting after subparagraph (E) the following new subparagraph:

“(F) will take such action as may be necessary to assure that where payment under this part for a service rendered is on a charge basis, such payment shall be determined on the basis of the charge that is determined in accordance with this section on the basis of customary and prevailing charge levels in effect at the time the service was rendered or, in the case of services rendered more than 12 months before the year (ending on June 30) in which the bill is submitted or request for payment is made, on the basis of such levels in effect for the 12-month period preceding such year;”.

"42 USC 1395j note."
(a) The amendments made by subsections (a) and (b) shall become effective with respect to bills submitted or requests for payment made on or after July 1, 1981.

Sec. 947. (a) Section 1843(e) of the Social Security Act is amended by adding at the end thereof the following: "The coverage period under this part of any such individual who (in the last month of his coverage period attributable to the State agreement or in any of the following six months) files notice that he no longer wishes to participate in the insurance program established by this part, shall terminate at the close of the month in which the notice is filed."

(b) The second sentence of section 1838(b) of such Act is amended by inserting "(except as otherwise provided in section 1843(e))" after "shall."
1861(b)(6) but which does not meet the conditions described in section 1861(b)(7), the carrier shall not provide (except on the basis described in subparagraph (C)) for payment for such services under this part—

"(i) unless—

"(I) the physician renders sufficient personal and identifiable physicians’ services to the patient to exercise full, personal control over the management of the portion of the case for which the payment is sought,

"(II) the services are of the same character as the services the physician furnishes to patients not entitled to benefits under this title, and

"(III) at least 25 percent of the hospital’s patients (during a representative past period, as determined by the Secretary) who were not entitled to benefits under this title and who were furnished services described in subclauses (I) and (II) paid all or a substantial part of charges (other than nominal charges) imposed for such services; and

"(ii) to the extent that the amount of the payment exceeds the reasonable charge for the services (with the customary charge determined consistent with subparagraph (B)).

"(B) The customary charge for such services in a hospital shall be determined in accordance with regulations issued by the Secretary and taking into account the following factors:

"(i) In the case of a physician who has a substantial practice outside the teaching setting, the carrier shall take into account the amounts the physician charges for similar services in the physician’s outside practice.

"(ii) In the case of a physician who does not have a practice described in clause (i), if the hospital, its physicians, or other appropriate billing entity has established one or more schedules of charges which are collected for medical and surgical services, the carrier shall base payment under this title on the greater of—

"(I) the charges (other than nominal charges) which are most frequently collected in full or substantial part with respect to patients who were not entitled to benefits under this title and who were furnished services described in subclauses (I) and (II) of subparagraph (A)(i), or

"(II) the mean of the charges (other than nominal charges) which were collected in full or substantial part with respect to such patients.

"(C) In the case of physicians’ services furnished to a patient in a hospital with a teaching program approved as specified in section 1861(b)(6) but which does not meet the conditions described in section 1861(b)(7), if the conditions described in subclauses (I) and (II) of subparagraph (A)(i) are met and if the physician elects payment to be determined under this subparagraph, the carrier shall provide for payment for such services under this part on the basis of regulations of the Secretary governing reimbursement for the services of hospital-based physicians (and not on any other basis)."

(c)(1) The amendments made by subsection (a) shall apply with respect to cost accounting periods beginning on or after October 1, 1978. A hospital’s election under section 1861(b)(7)(A) of the Social Security Act (as administered in accordance with section 15 of Public Law 93–233) as of September 30, 1978, shall constitute such hospital’s election under such section (as amended by subsection (a)(1)) on and after October 1, 1978, until otherwise provided by the hospital.
(2) The amendment made by subsection (b) shall apply with respect to cost accounting periods beginning on or after January 1, 1981.

FLEXIBILITY IN APPLICATION OF STANDARDS TO RURAL HOSPITALS

Sec. 949. Section 1861(e) of the Social Security Act is amended by adding the following new sentence at the end thereof: “The term ‘hospital’ also includes a facility of fifty beds or less which is located in an area determined by the Secretary to meet the definition relating to a rural area described in subparagraph (A) of paragraph (5) of this subsection and which meets the other requirements of this subsection, except that—

(A) with respect to the requirements for nursing services applicable after December 31, 1978, such requirements shall provide for temporary waiver of the requirements, for such period as the Secretary deems appropriate, where (i) the facility’s failure to fully comply with the requirements is attributable to a temporary shortage of qualified nursing personnel in the area in which the facility is located, (ii) a registered professional nurse is present on the premises to render or supervise the nursing service provided during at least the regular daytime shift, and (iii) the Secretary determines that the employment of such nursing personnel as are available to the facility during such temporary period will not adversely affect the health and safety of patients;

(B) with respect to the health and safety requirements promulgated under paragraph (9), such requirements shall be applied by the Secretary to a facility herein defined in such manner as to assure that personnel requirements take into account the availability of technical personnel and the educational opportunities for technical personnel in the area in which such facility is located, and the scope of services rendered by such facility; and the Secretary, by regulations, shall provide for the continued participation of such a facility on which such personnel requirements are not fully met, for such period as the Secretary determines that (i) the facility is making good faith efforts to fully comply with the personnel requirements, (ii) the employment by the facility of such personnel as are available to the facility will not adversely affect the health and safety of patients, and (iii) if the Secretary has determined that because of the facility’s waiver under this subparagraph the facility should limit its scope of services in order not to adversely affect the health and safety of the facility’s patients, the facility is so limiting the scope of services it provides; and

(C) with respect to the fire and safety requirements promulgated under paragraph (9), the Secretary may (i) waive, for such period as he deems appropriate, specific provisions of such requirements which if rigidly applied would result in unreasonable hardship for such a facility and which, if not applied, would not jeopardize the health and safety of patients, and (ii) may accept a facility’s compliance with all applicable State codes relating to fire and safety in lieu of compliance with the fire and safety requirements promulgated under paragraph (9), if he determines that such State has in effect fire and safety codes, imposed by State law, which adequately protect patients.”
Sec. 950. Section 1861(i) of the Social Security Act is amended—
(1) by striking out "14 days" each place it appears and inserting in lieu thereof "30 days"; and
(2) by striking out "", or (B) within 28 days" and all that follows through "he resides, or (C)" and inserting in lieu thereof ", or (B)".

CERTIFICATION AND UTILIZATION REVIEW BY PODIATRISTS

Sec. 951. (a) Section 1861(r)(3) of the Social Security Act is amended to read as follows: "(3) a doctor of podiatric medicine for the purposes of subsection (g) of this section but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them; and for the purposes of subsections (k) and (m) of this section and sections 1814(a) and 1835 but only if his performance of functions under subsections (k) and (m) and sections 1814(a) and 1835 is consistent with the policy of the institution or agency with respect to which he performs them and with the functions which he is legally authorized to perform.

(b) Section 1861(k)(2)(A) of such Act is amended by inserting after "two or more physicians" the following: "(of which at least two must be physicians described in subsection (r)(1) of this section)"

(c) The amendments made by this section shall take effect on January 1, 1981.

ACCESS TO BOOKS AND RECORDS OF SUBCONTRACTORS

Sec. 952. Section 1861(r)(1) of the Social Security Act is amended by adding after subparagraph (H) (added by section 930(p) of this title) the following new subparagraph:

"(i) In determining such reasonable cost, the Secretary may not include any costs incurred by a provider with respect to any services furnished in connection with matters for which payment may be made under this title and furnished pursuant to a contract between the provider and any of its subcontractors which is entered into after the date of the enactment of this subparagraph and the value or cost of which is $10,000 or more over a twelve-month period unless the contract contains a clause to the effect that—

"(i) until the expiration of four years after the furnishing of such services pursuant to such contract, the subcontractor shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives, the contract, and books, documents and records of such subcontractor that are necessary to certify the nature and extent of such costs, and

"(ii) if the subcontractor carries out any of the duties of the contract through a subcontract, with a value or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and
records of such organization that are necessary to verify the nature and extent of such costs.
The Secretary shall prescribe in regulation criteria and procedures which the Secretary shall use in obtaining access to books, documents, and records under clauses required in contracts and subcontracts under this subparagraph.

MEDICARE LIABILITY SECONDARY WHERE PAYMENT CAN BE MADE UNDER LIABILITY OR NO FAULT INSURANCE

Sec. 953. Section 1852(b) of the Social Security Act is amended—
(1) by inserting “or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance” before the period at the end of the first sentence;
(2) by inserting “, policy, plan, or insurance” before the period at the end of the second sentence; and
(3) by adding at the end the following new sentence: “The Secretary may waive the provisions of this subsection in the case of an individual claim if he determines that the probability of recovery or amount involved in such claim does not warrant the pursuing of the claim.”.

PAYMENT FOR PHYSICIANS’ SERVICES WHERE BENEFICIARY HAS DIED

Sec. 954. (a) Section 1870(f) of the Social Security Act is amended to read as follows:
“(f) If an individual who received medical and other health services for which payment may be made under section 1832(a)(1) dies, and no assignment of the right to payment for such services was made by such individual before his death, and payment for such services has not been made—

(1) if the person or persons who furnished the services agree that the reasonable charge is the full charge for the services, payment for such services shall be made to such person or persons, and

(2) if the person or persons who furnished the services do not agree that the reasonable charge is the full charge for the services, payment for such services shall be made on the basis of an itemized bill to the person who has agreed to assume the legal obligation to make payment for such services and files a request for payment (with such accompanying evidence of such legal obligation as may be required in regulations), but only in such amount and subject to such conditions as would be applicable if the individual who received the services had not died.”.

(b) The amendment made by this section shall apply only to claims filed on or after January 1, 1981.

PROVIDER REIMBURSEMENT REVIEW BOARD

Sec. 955. Section 1879(k)(1) of the Social Security Act is amended by inserting the following after the second sentence thereof: “Providers shall also have the right to obtain judicial review of any action of the fiscal intermediary which involves a question of law or regulations relevant to the matters in controversy whenever the Board determines (on its own motion or at the request of a provider of services as described in the following sentence) that it is without authority to decide the question, by a civil action commenced within sixty days of the date on which such determination is rendered. If a provider of
services may obtain a hearing under subsection (a) and has filed a request for such a hearing, such provider may file a request for a determination by the Board of its authority to decide the question of law or regulations relevant to the matters in controversy (accompanied by such documents and materials as the Board shall require for purposes of rendering such determination). The Board shall render such determination in writing within thirty days after the Board receives the request and such accompanying documents and materials, and the determination shall be considered a final decision and not subject to review by the Secretary. If the Board fails to render such determination within such period, the provider may bring a civil action (within sixty days of the end of such period) with respect to the matter in controversy contained in such request for a hearing."

PAYMENT WHERE BENEFICIARY NOT AT FAULT

SEC. 956. (a) Section 1879 of the Social Security Act is amended by adding the following new subsection at the end thereof:

"(e) Where payment for inpatient hospital services or extended care services may not be made under part A of this title on behalf of an individual entitled to benefits under such part solely because of an unintentional, inadvertent, or erroneous action with respect to the transfer of such individual from a hospital or skilled nursing facility that meets the requirements of section 1861 (e) or (j) by such a provider of services acting in good faith in accordance with the advice of a utilization review committee, professional standards review organization, or fiscal intermediary, or on the basis of a clearly erroneous administrative decision by a provider of services, the Secretary shall take such action with respect to the payment of such benefits as he determines may be necessary to correct the effects of such unintentional, inadvertent, or erroneous action."

(b) The amendment made by subsection (a) shall take effect on January 1, 1981.

TECHNICAL RENAL DISEASE AMENDMENTS

SEC. 957. (a) Section 1881(e) of the Social Security Act is amended—

(1) by striking out "and" the first place it appears in paragraph (1) and inserting a comma in lieu thereof;

(2) by inserting "and nonprofit entities which the Secretary finds can furnish equipment economically and efficiently," after "renal dialysis facilities," in paragraph (1);

(3) by striking out "such providers and facilities" and inserting in lieu thereof "such providers, facilities, and nonprofit entities"; and

(4) by striking out "or facility will—" in paragraph (2) and inserting in lieu thereof "facility, or other entity will—".

(b) Section 1881(g) of such Act is amended by striking out "April" each place it appears and inserting in lieu thereof "July".

STUDIES AND DEMONSTRATION PROJECTS

SEC. 958. (a) The Secretary of Health and Human Services shall develop and carry out a demonstration project to determine (1) the extent to which the commencement of nutritional therapy in early renal failure, utilizing (but not limited to) controlled protein substances, can retard or arrest the progression of the disease with a resultant substantive deferment of dialysis, and (2) the administra-
Section (a) and has filed a
thereof:

the Board shall require for

The Board shall render
deficiency standards and

provider may bring a civil

shall take effect on

AMENDMENTS

the Social Security Act is amended—

Security Act shall mean,

July 1, 1981, a report on the findings of this study and such specific

of which services furnished with respect to respiratory

and other entities which the Secretary

paragraph 2a thereof "July".

(1) The Board shall conduct a project to determine (1) the

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tive, financial, and other aspects of making such nutritional therapy

generally available as part of the benefits received under title XVIII

of the Social Security Act.

(b) The Secretary shall submit, to the Congress, within one year

after the date of the enactment of this Act, a report on the demonstra-
tion projects being conducted by the Secretary with respect to

waiving the applicable cost sharing amounts which beneficiaries

under title XVIII of the Social Security Act have to pay for obtaining

a second opinion on having surgery performed. Such report shall

include any recommendations for legislative changes in such title

which the Secretary finds desirable as a result of such demonstration

projects.

c) The Secretary shall conduct a study of the circumstances and

conditions under which services furnished by registered dietitians

should be covered as a home health benefit under title XVIII of the

Social Security Act.

d) The Secretary shall develop and carry out demonstration

projects to determine the administrative, financial, and other aspects

of making the services of clinical social workers more generally

available as part of the benefits received under title XVIII of the

Social Security Act.

e) The Secretary shall, in consultation with appropriate profes-
sional organizations, conduct a comprehensive study of methods for

providing coverage under part B of title XVIII of the Social Security

Act for orthopedic shoes for individuals with disabling or deforming

conditions who require special fitting considerations to help protect

against increasing disability or serious medical complications or who

require special shoes in conjunction with the use of an orthosis or foot

support. The Secretary shall submit to the Congress, no later than

July 1, 1981, a report on the findings of this study and such specific

legislative recommendations as is appropriate with respect to the

utilization, cost control, quality of care, and equitable and efficient

administration of such an extension of coverage.

(f) The Secretary shall conduct a study of the circumstances and

conditions under which services furnished with respect to respiratory

therapy should be covered as a home health benefit under title XVIII

of the Social Security Act.

(g) The Secretary shall conduct a study involving a comprehensive

analysis of the cost effects of alternative approaches to improving

coverage under title XVIII of the Social Security Act for the treat-

ment of various types of foot conditions.

(h) The Secretary shall submit a report on each of the demonstra-
tion projects and studies described in subsections (a), (c), (d), (f), and

(g). Each such report shall be submitted within twenty-four months of

the date of the enactment of this Act and shall contain any recom-

mendations for legislative changes which the Secretary finds desir-

able as a result of conducting the demonstration project or study with

respect to which the report is submitted.

(i) Where any study or demonstration project conducted under this

section relates to payments with respect to services furnished by

independent practitioners, such study or project shall include an

evaluation of the effect of such payments on coordination of care,

cost, quality, and the organization in the provision of services and the

utilization of services.

(j) Grants, payments under contracts, and other expenditures made

for studies and demonstration projects under this section shall be

made in appropriate part from the Federal Hospital Insurance Trust

Fund (established by section 1917 of the Social Security Act) and the

42 USC 1395.

Report to

Congress.

42 USC 1395j.

Report to

Congress.
Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

**TEMPORARY DELAY IN PERIODIC INTERIM PAYMENTS**

Sec. 959. Notwithstanding section 1815(a) of the Social Security Act, in the case of a hospital which is paid periodic interim payments under such section, the Secretary of Health and Human Services shall provide that with respect to the last twenty-one days for which such payments would otherwise be made during fiscal year 1981, such payments shall be deferred until fiscal year 1982.

**PART C—PROVISIONS RELATING TO MEDICAID**

**DISPUTED MEDICAID CLAIMS**

Sec. 961. (a) Section 1903(d) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(5) In any case in which the Secretary estimates that there has been an overpayment under this section to a State on the basis of a claim by such State that has been disallowed by the Secretary under section 1119(d), and such State disputes such disallowance, the amount of the Federal payment in controversy shall, at the option of the State, be retained by such State or recovered by the Secretary pending a final determination with respect to such payment amount. If such final determination is to the effect that any amount was properly disallowed, and the State chose to retain payment of the amount in controversy, the Secretary shall offset, from any subsequent payments made to such State under this title, an amount equal to the proper amount of the disallowance plus interest on such amount disallowed for the period beginning on the date such amount was disallowed and ending on the date of such final determination (but not to exceed a period of twelve months with respect to disallowances made prior to October 1, 1981, or six months with respect to disallowances made thereafter) at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day treasury bill auction rates during such period."

(b) The amendment made by subsection (a) shall be effective with respect to expenditures for services furnished on or after October 1, 1980.

**REIMBURSEMENT RATES UNDER MEDICAID FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES**

Sec. 962. (a) Section 1902(a)(13)(E) of the Social Security Act is amended to read as follows:

"(E) for payment of the skilled nursing facility and intermediate care facility services provided under the plan through the use of rates (determined in accordance with methods and standards developed by the State) which the State finds, and makes
assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards; and such State makes further assurances, satisfactory to the Secretary, for the filing of uniform cost reports by each skilled nursing or intermediate care facility and periodic audits by the State of such reports; and"

(b) The amendment made by subsection (a) shall become effective on October 1, 1980.

EXTENSION OF INCREASED FUNDING FOR STATE MEDICAID FRAUD CONTROL UNITS

Sec. 963. Section 1903(a)(6) of the Social Security Act is amended by striking out "an amount equal to" and all that follows through "with respect to costs incurred" and inserting in lieu thereof the following:

"(A) 90 per centum of the sums expended during such a quarter within the twelve-quarter period beginning with the first quarter in which a payment is made to the State pursuant to this paragraph, and"

"(B) 75 per centum of the sums expended during each succeeding calendar quarter, with respect to costs incurred".

CHANGE IN CALENDAR QUARTER FOR WHICH SATISFACTORY UTILIZATION REVIEW MUST BE SHOWN TO RECEIVE WAIVER OF MEDICAID REDUCTION

Sec. 964. Section 1903(g)(3)(B) of the Social Security Act is amended—

(1) by striking out "October 1, 1977" and inserting in lieu thereof "January 1, 1978"; and

(2) by striking out "the calendar quarter ending on December 31, 1977" and inserting in lieu thereof "any calendar quarter ending on or before December 31, 1978".

REIMBURSEMENT UNDER MEDICAID FOR SERVICES FURNISHED BY NURSE-MIDWIVES

Sec. 965. (a)(1) Subsection (a) of section 1905 of the Social Security Act is amended—

(A) by striking out "and" at the end of paragraph (10);

(B) by redesignating paragraph (17) as paragraph (18); and

(C) by inserting after paragraph (16) the following new paragraph:

"(17) services furnished by a nurse-midwife (as defined in subsection (m)) which he is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not he is under the supervision of, or associated with, a physician or other health care provider; and"

(2) Such section is further amended by adding at the end thereof the following new subsection:

"(m) The term 'nurse-midwife' means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified
by an organization recognized by the Secretary, and performs services in the area of management of the care of mothers and babies (throughout the maternity cycle) which he is legally authorized to perform in the State in which he performs such services.”.

(b) Section 1902(a) of such Act is amended—

(1) by striking out “clauses (1) through (5)” in paragraph (13)(B) and inserting in lieu thereof “paragraphs (1) through (5) and (17)”;

(2) by striking out “clauses (1) through (5)” in paragraph (13)(C)(i) and inserting in lieu thereof “paragraphs (1) through (5) and (17)”;

(3) by striking out “clauses numbered (1) through (16)” in paragraph (13)(C)(ii) and inserting in lieu thereof “paragraphs numbered (1) through (17)”;

(4) by striking out “clauses (1) through (5) and (7)” in paragraph (14)(A)(i) and inserting in lieu thereof “paragraphs (1) through (5), (7), and (17)”.

(c)(1) The amendments made by this section shall (except as provided under paragraph (2)) be effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning more than one hundred and twenty days after the date of the enactment of this Act.

(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 in order for the plan to meet the additional requirements imposed by the amendments made by this section, 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.

DEMONSTRATION PROJECTS RELATING TO THE TRAINING OF AFDC RECIPIENTS AS HOME HEALTH AIDES

Sec. 966. (a) The Secretary of Health and Human Services shall enter into agreements with States, selected at his discretion, for the purpose of conducting demonstration projects for the training and employment of eligible participants as homemakers or home health aides, who shall provide authorized services to elderly or disabled individuals, or other individuals in need of such services, to whom such services, are not otherwise reasonably and actually available or provided, and who would, without the availability of such services, be reasonably anticipated to require institutional care.

(b) For purposes of this section, the term “eligible participant” means an individual who has voluntarily applied for participation and who, at the time such individual enters the project established under this section, has been certified by the appropriate agency of State or local government as being eligible for financial assistance under a State plan approved under part A of title IV of the Social Security Act and as having continuously received such financial assistance during the ninety-day period which immediately precedes the date on which such individual enters such project and who, within such ninety-day period, had not been employed as a homemaker or home health aide.

(c)(1) The Secretary shall enter into agreements under this section with no more than twelve States. Priority shall be given to States
which have demonstrated interest in providing services of the type authorized under this section.

(2) A State may apply to enter into an agreement under this section in such manner and at such time as the Secretary may prescribe.

(3) Any State entering into an agreement with the Secretary under this section must—

(A) provide that the demonstration project shall be administered by a State health services agency designated for this purpose by the Governor (which may be the State agency administering or responsible for the administration of the State plan for medical assistance under title XIX of the Social Security Act);

(B) provide that the agency designated pursuant to subparagraph (A) shall, to the extent feasible, arrange for coordinating its activities under the agreement with activities of other State agencies having related responsibilities;

(C) establish a formal training program, which meets such standards as the Secretary may establish to assure the adequacy of such program, to prepare eligible participants to provide part-time and intermittent homemaker services or home health aide services to individuals who are elderly, disabled, or otherwise in need of such services;

(D) provide for the full-time employment of those eligible participants who successfully complete the training program with one or more public agencies (or, by contract, with private bona fide nonprofit agencies) as homemakers or home health aides, rendering authorized services, under the supervision of persons determined by the State to be qualified to supervise the performance of such services, to individuals described in subsection (a) at wage levels comparable to the prevailing wage levels in the area for similar work;

(E) provide that such services provided under subparagraph (D) shall be made available without regard to income of the individual requiring such services, but that a reasonable fee will be charged (on a sliding scale basis) for such services provided to individuals with income in excess of 200 percent of the needs standard in such State under the State plan approved under part A of title IV of the Social Security Act for a household of the same size as such individual's household;

(F) provide for a system of continuing independent professional review by an appropriate panel, which is not affiliated with the entity providing the services involved, to assure that services are provided only to individuals reasonably determined to be in need of such supportive services;

(G) provide for evaluation of the project and review of all agencies providing services under the project;

(H) submit periodic reports to the Secretary as he may require; and

(I) meet such other requirements as the Secretary may establish for the proper and efficient implementation of the project.

(4) The number of participants in any project shall not exceed that number which the Secretary determines to be reasonable, based upon the capability of the agencies involved to train, employ, and properly utilize eligible participants. Such number may be appropriately modified, subsequently, with the approval of the Secretary.

(5) Any contract with a private bona fide nonprofit agency entered into pursuant to paragraph (3)(D) shall provide for reasonable reimbursement of such agencies for services on a basis proportionate to
the amount of time allocated to individuals eligible to receive such services under this section (and, in case such agency is an institution, the amount of the reimbursement shall not exceed the amount of reimbursement which would have been payable if the services involved had been provided by a free-standing agency).

(6) For purposes of this section, a facility of the Veterans' Administration shall, at the request of the Administrator of Veterans' Affairs, be considered to be a public agency. In the case of any such facility which is so considered to be a public agency, of the costs determined under this section which are attributable to such facility, 90 percent shall be paid by the State and 10 percent by the Veterans' Administration.

(d)(1) For purposes of this section, authorized homemaker and home health aide services include part-time or intermittent—

(A) personal care, such as bathing, grooming, and toilet care;
(B) assisting patients having limited mobility;
(C) feeding and diet assistance;
(D) home management, housekeeping, and shopping;
(E) health-oriented recordkeeping;
(F) family planning services; and
(G) simple procedures for identifying potential health problems.

(2) Such authorized services do not include any services performed in an institution, or any services provided under circumstances where institutionalization would be substantially more efficient as a means of providing such services.

(e)(1) Agreements shall be entered into under this section between the Secretary and the State agency designated by the Governor. Under such agreement the Secretary shall pay to the State, as an additional payment under section 1803 of the Social Security Act for each quarter, an amount equal to 90 percent of the reasonable costs incurred (less the Federal share of any related fees collected) by such State during such quarter in carrying out a demonstration project under this section, including reasonable wages and other employment costs of eligible participants employed full time under such project (and, for purposes of determining the amount of such additional payment, the 10 percent referred to in subsection (e)(5), paid by the Veterans' Administration, shall be deemed to be a cost incurred by the State in carrying out such a project).

(2) Demonstration projects under this section shall be of a maximum duration of four years, plus an additional time period of up to six months for planning and development, and up to six months for final evaluation and reporting. Federal funding under this subsection shall not be available for the employment of any eligible participant under the project after such participant has been employed for a period of three years.

(f) For purposes of title IV of the Social Security Act, any eligible participant taking part in a training program under a project authorized under this section shall be deemed to be participating in a work incentive program established by part C of such title.

(g) For the first year (and such additional immediately succeeding period as the State may specify) during which an eligible participant is employed under the project established under this section, such participant shall, notwithstanding any other provision of law, retain any eligibility for medical assistance under a State plan approved under title XIX of the Social Security Act, and any eligibility for social and supportive services provided under the State plan approved under part A of title IV of such Act, which such participant
Title X—Other Social Security Act Programs; Unemployment Compensation

Subtitle A—Public Assistance

Federal Day Care Regulations

Sec. 1001. (a) Section 2002(a)(9) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(D) The requirements imposed by this paragraph or by any regulations promulgated by the Department of Health and Human Services to carry out this paragraph shall be inapplicable to child day care services provided after June 30, 1980, and prior to July 1, 1981, which meet applicable standards of State and local law.

(b) The provisions of section 3(f) of Public Law 93–647 shall not apply with respect to child day care services provided after June 30, 1980, and prior to July 1, 1981, which meet applicable standards of State and local law.

(c) The Department of Health and Human Services shall assist each State in conducting a systematic assessment of current practices in day care programs funded under title XX of the Social Security Act. Upon completion of such assessments, but not later than June 1, 1981, the Secretary shall provide a summary report of the results of such assessments to the Congress.

Additional Savings


Subtitle B—Old-Age, Survivors, and Disability Insurance Program

Limit on Retroactive Benefits

Sec. 1011. (a) The first sentence of section 202(j)(1) of the Social Security Act is amended by striking out "prior to the end of the