116TH CONGRESS
1ST SESSION

S. 3078

To amend title XVIII of the Social Security Act to improve the efficiency of the Medicare appeals process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2019

Mr. GRASSLEY (for himself and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to improve the efficiency of the Medicare appeals process, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 "Audit & Appeals Fairness, Integrity, and Reforms in
6 Medicare Act of 2019" or the "AFIRM Act".

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Authority to establish a process to review low value claims; revision of amount in controversy thresholds.

Sec. 3. Remanding appeals to the redetermination level with the introduction of new evidence.
Sec. 4. Expedited access to appeals.
Sec. 5. Authority to use sampling and extrapolation methodologies and to consolidate appeals for administrative efficiency.
Sec. 6. Identification and referral of fraud.
Sec. 7. Study to assess hearing participation.
Sec. 8. Improvements to the Office of Medicare Hearings and Appeals.
Sec. 9. Review program improvements.
Sec. 10. Creation of Medicare Provider and Supplier Ombudsman for Reviews and Appeals.
Sec. 11. Limiting the audit and recovery period for patient status reviews.
Sec. 12. Incentives and disincentives for Medicare contractors, providers, and suppliers.

1 **SEC. 2. AUTHORITY TO ESTABLISH A PROCESS TO REVIEW**
2 **LOW VALUE CLAIMS; REVISION OF AMOUNT**
3 **IN CONTROVERSY THRESHOLDS.**
4 (a) AUTHORITY TO ESTABLISH A PROCESS TO RE-
5 VIEW LOW VALUE CLAIMS.—
6 (1) IN GENERAL.—Section 1869(b) of the So-
7 cial Security Act (42 U.S.C. 1395ff(b)) is amended
8 by adding at the end the following new paragraph:
9 "(4) CONDUCT OF REVIEWS BY MEDICARE MAG-
10 ISTRATES.—
11 "(A) IN GENERAL.—The Secretary shall
12 establish, through regulations, a process under
13 which appealed claims may be reviewed by offi-
14 cials within the Office of Medicare Hearings
15 and Appeals to be known as Medicare mag-
16 istrates.
17 "(B) MEDICARE MAGISTRATE DEFINED.—
18 For purposes of this section, the term 'Medicare
19 magistrate' means an attorney who is licensed

1 by a State, has expertise in this title (including
2 regulations and policies promulgated there-
3 under), meets such other qualifications as the
4 Secretary shall require, and who performs re-
5 views and renders decisions in appeals described
6 in paragraph (1)(E)(i)(II).

7 "(C) REQUIREMENTS FOR REVIEWS CON-
8 DUCTED BY MAGISTRATES.—The provisions of
9 this subsection and subsection (d) that govern
10 hearings and decisions by administrative law
11 judges (including provisions related to reviews
12 of decisions by administrative law judges by the
13 Departmental Appeals Board of the Depart-
14 ment of Health and Human Services) shall
15 apply to reviews and decisions by Medicare
16 magistrates in the same manner and to the
17 same extent as such provisions apply to hear-
18 ings and decisions by an administrative law
19 judge. The Secretary may establish by regula-
20 tion such other requirements and procedures as
21 may be necessary so that reviews by Medicare
22 magistrates are resolved fairly, efficiently, and
23 expeditiously.".

24 (2) CONFORMING AMENDMENT.—Section
25 1869(b)(1)(A) of the Social Security Act (42 U.S.C.

1 1395ff(b)(1)(A)), as amended by section 4(b)(3), is
2 amended by inserting "and paragraph (4)" after
3 "subject to subparagraphs (D), (E), and (H)".
4 (b) AMOUNT IN CONTROVERSY THRESHOLDS.—
5 (1) IN GENERAL.—Section 1869(b)(1)(E) of the
6 Social Security Act (42 U.S.C. 1395ff(b)(1)(E)) is
7 amended—
8 (A) by striking clause (i) and inserting the
9 following:
10 "(i) IN GENERAL.—Except as other-
11 wise provided in this section, subject to
12 clause (iii)—
13 "(I) a review by a Medicare mag-
14 istrate under paragraph (4), or a
15 hearing by an administrative law
16 judge under this subsection or sub-
17 section (d), shall not be available to
18 an individual if the amount in con-
19 troversy is less than $160;
20 "(II) a review by a Medicare
21 magistrate under paragraph (4) shall
22 be available to an individual if the
23 amount in controversy is equal to or
24 greater than the amount specified in
25 subclause (I) but less than the

1 amount specified in subclause (III);
2 and
3 "(III) a hearing by an adminis-
4 trative law judge shall be available to
5 an individual under this subsection or
6 subsection (d) if the amount in con-
7 troversy is equal to or greater than
8 $1,630.";
9 (B) in clause (iii)—
10 (i) by striking "For requests for hear-
11 ings" and inserting "For requests for
12 Medicare magistrate reviews, hearings,";
13 (ii) by striking "2004" and inserting
14 "2021"; and
15 (iii) by striking "2003" and inserting
16 "2020"; and
17 (C) by adding at the end the following new
18 clause:
19 "(iv) JUDICIAL REVIEW.—Judicial re-
20 view shall not be available to an individual
21 under this section if the amount in con-
22 troversy is less than the amount specified
23 in clause (i)(III) (as adjusted under clause
24 (iii)).".
25 (2) CONFORMING AMENDMENTS.—

1 (A) Section 1155 of the Social Security
2 Act (42 U.S.C. 1320c–4), as amended by sec-
3 tion 4(b)(1), is amended—
4 (i) in the second sentence, by striking
5 ‘‘$200 or more’’ and inserting ‘‘equal to or
6 greater than the amount specified in sec-
7 tion 1869(b)(1)(E)(i)(III)’’;
8 (ii) in the fourth sentence, by striking
9 ‘‘$2,000 or more’’ and inserting ‘‘equal to
10 or greater than the amount specified in
11 section 1869(b)(1)(E)(i)(III)’’; and
12 (iii) by inserting after the fourth sen-
13 tence the following new sentences: ‘‘Where
14 the amount in controversy is equal to or
15 greater than the amount specified in sub-
16 clause (I) of section 1869(b)(1)(E)(i) but
17 less than the amount specified in subclause
18 (III) of such section, such beneficiary shall
19 be entitled to a review by a Medicare mag-
20 istrate in accordance with procedures es-
21 tablished by the Secretary pursuant to sec-
22 tion 1869. The provisions of section
23 1869(b)(1)(E)(iii) shall apply with respect
24 to the dollar amounts referred to in this
25 section in the same manner as they apply

1 to the dollar amounts specified in section
2 1869(b)(1)(E)(i).''.
3 (B) Section 1852(g)(5) of the Social Secu-
4 rity Act (42 U.S.C. 1395w–22(g)(5)), as
5 amended by section 4(b)(2), is amended—
6 (i) in the first sentence, by striking
7 ''$100 or more'' and inserting ''equal to or
8 greater than the amount specified in sec-
9 tion 1869(b)(1)(E)(i)(III)'';
10 (ii) in the second sentence, by striking
11 ''$1,000 or more'' and inserting ''equal to
12 or greater than the amount specified in
13 section 1869(b)(1)(E)(i)(III)'';
14 (iii) by inserting after the second sen-
15 tence the following new sentence: ''If the
16 amount in controversy is equal to or great-
17 er than the amount specified in subclause
18 (I) of section 1869(b)(1)(E)(i) but less
19 than the amount specified in subclause
20 (III) of such section, such enrollee shall be
21 entitled to review by a Medicare magistrate
22 in accordance with procedures established
23 by the Secretary pursuant to section
24 1869.''; and

1 (iv) in the last sentence, by striking
2 "the first 2 sentences of".
3 (C) Section 1876(c)(5)(B) of the Social
4 Security Act (42 U.S.C. 1395mm(c)(5)(B)), as
5 amended by section 4(b)(4), is amended—
6 (i) in the first sentence, by striking
7 "$100 or more" and inserting "equal to or
8 greater than the amount specified in sec-
9 tion 1869(b)(1)(E)(i)(III)";
10 (ii) in the second sentence, by striking
11 "$1,000 or more" and inserting "equal to
12 or greater than the amount specified in
13 section 1869(b)(1)(E)(i)(III)";
14 (iii) by inserting after the second sen-
15 tence the following new sentence: "If the
16 amount in controversy is equal to or great-
17 er than the amount specified in subclause
18 (I) of section 1869(b)(1)(E)(i) but less
19 than the amount specified in subclause
20 (III) of such section, such member shall be
21 entitled to review by a Medicare magistrate
22 in accordance with procedures established
23 by the Secretary pursuant to section
24 1869."; and

1 (iv) in the fourth sentence, by striking
2 "the first 2 sentences of".
3 (c) CALCULATION OF AMOUNT IN CONTROVERSY FOR
4 THE AGGREGATION OF CLAIMS.—Section
5 1869(b)(1)(E)(ii) of the Social Security Act (42 U.S.C.
6 1395ff(b)(1)(E)(ii)) is amended—
7 (1) by redesignating subclauses (I) and (II) as
8 items (aa) and (bb), respectively, and indenting ap-
9 propriately;
10 (2) in the matter preceding item (aa), as so re-
11 designated, by striking "if the appeals involve" and
12 inserting the following: "if—
13 "(I) the appeals involve—";
14 (3) in item (bb), as so redesignated, by striking
15 the period at the end and inserting "; and"; and
16 (4) by adding at the end the following new sub-
17 clause:
18 "(II) all claims that an individual
19 seeks to aggregate are included in the
20 same request for an aggregated ap-
21 peal.".
22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect on January 1, 2021.

SEC. 3. REMANDING APPEALS TO THE REDETERMINATION LEVEL WITH THE INTRODUCTION OF NEW EVIDENCE.

(a) IN GENERAL.—Section 1869(b)(3) of the Social Security Act (42 U.S.C. 1395ff(b)(3)) is amended by striking "A provider of services" and all that follows through the period and inserting the following new subparagraphs:

"(A) REMAND UPON SUBMISSION OF NEW EVIDENCE.—

"(i) IN GENERAL.—Except as provided in subparagraph (B), when a party to an appeal, other than an individual entitled to benefits under part A or enrolled under part B, or both, or the Centers for Medicare & Medicaid Services or its contractors, introduces new evidence into the administrative record at a reconsideration conducted by a qualified independent contractor under subsection (c) or at any subsequent, higher level of appeal, the appeal shall be remanded for a new redetermination under subsection (a)(3), and any prior decisions (other than the initial determination made by the Secretary pursuant to

1 subsection (a)(1)) on this appeal shall be
2 vacated.
3 "(ii) REQUIREMENTS.—For purposes
4 of clause (i), except to the extent otherwise
5 provided by the Secretary in regulations,
6 the provisions that apply to redetermina-
7 tions under subsection (a) and this sub-
8 section shall apply to redeterminations of
9 appeals that are remanded.
10 "(B) EXCEPTIONS.—The provisions of
11 subparagraph (A) shall not apply in instances
12 where an adjudicator determines that introduc-
13 tion of new evidence is justified due to—
14 "(i) a lower-level adjudicator's inad-
15 vertent omission or erroneous decision to
16 omit such evidence from the administrative
17 record when that evidence was timely sub-
18 mitted to the lower-level adjudicator by a
19 party to the appeal;
20 "(ii) a decision by a lower-level adju-
21 dicator to issue an unfavorable decision
22 based on new or different grounds than
23 were the basis of a previous adjudication;
24 or

1 "(iii) such other circumstances for
2 good cause as the Secretary may establish.
3 "(C) NO APPEAL.—A decision to remand
4 an appeal under this paragraph shall not be
5 subject to appeal.".
6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect on January 1, 2020, and shall
8 apply to new appeals filed on or after such date.

9 **SEC. 4. EXPEDITED ACCESS TO APPEALS.**

10 (a) IN GENERAL.—Section 1869(b)(1) of the Social
11 Security Act (42 U.S.C. 1395ff(b)(1)) is amended by add-
12 ing at the end the following new subparagraph:
13 "(H) EXPEDITED ACCESS TO APPEALS FOR
14 DECISIONS ON THE RECORD.—
15 "(i) DECISION ON THE RECORD.—Not
16 later than 1 year after the date of the en-
17 actment of this subparagraph, the Sec-
18 retary shall establish by regulation and im-
19 plement a process authorizing an adminis-
20 trative law judge reviewing a decision pur-
21 suant to this subsection or subsection (d)
22 to issue a decision on the record in cases
23 where, based on the evidence of record,
24 there are no material issues of fact in dis-
25 pute and the administrative law judge de-

1 termines that there is a binding authority
2 that controls the decision in the matter
3 under review.
4 "(ii) APPLICATION OF HEARING
5 RULES TO DECISIONS ON THE RECORD.—
6 The provisions of subsection (d) that gov-
7 ern hearings by administrative law judges
8 shall apply to a decision issued by an ad-
9 ministrative law judge without a hearing
10 pursuant to clause (i) in the same manner
11 and to the same extent as such provisions
12 apply to a hearing by an administrative
13 law judge.".
14 (b) CONFORMING AMENDMENTS.—
15 (1) Section 1155 of the Social Security Act (42
16 U.S.C. 1320c–4) is amended—
17 (A) in the second sentence, by striking
18 "Where" and inserting "Subject to the suc-
19 ceeding sentences of this section, where"; and
20 (B) by adding at the end the following new
21 sentence: "The provisions of subparagraph (H)
22 of section 1869(b)(1) shall apply with respect to
23 decisions by an administrative law judge under
24 this section in the same manner as they apply

1 to decisions by an administrative law judge
2 under such subparagraph (H).''.
3 (2) Section 1852(g)(5) of the Social Security
4 Act (42 U.S.C. 1395w–22(g)(5)) is amended—
5 (A) in the first sentence, by striking ''An
6 enrollee'' and inserting ''Subject to the suc-
7 ceeding sentences of this paragraph, an en-
8 rollee''; and
9 (B) by adding at the end the following new
10 sentence: ''The provisions of subparagraph (H)
11 of section 1869(b)(1) shall apply with respect to
12 decisions by an administrative law judge under
13 this paragraph in the same manner as they
14 apply to decisions by an administrative law
15 judge under such subparagraph (H).''.
16 (3) Section 1869(b)(1)(A) of the Social Secu-
17 rity Act (42 U.S.C. 1395ff(b)(1)(A)) is amended by
18 striking ''subparagraphs (D) and (E)'' and inserting
19 ''subparagraphs (D), (E), and (H)''.
20 (4) Section 1876(c)(5)(B) of the Social Security
21 Act (42 U.S.C. 1395mm(c)(5)(B)) is amended—
22 (A) in the first sentence, by striking ''A
23 member'' and inserting ''Subject to the suc-
24 ceeding sentences of this subparagraph, a mem-
25 ber''; and

1 (B) by adding at the end the following new
2 sentence: ''The provisions of subparagraph (H)
3 of section 1869(b)(1) shall apply with respect to
4 decisions by an administrative law judge under
5 this subparagraph in the same manner as they
6 apply to decisions by an administrative law
7 judge under such subparagraph (H).''.

8 (c) EFFECTIVE DATE.—Unless otherwise specified,
9 the amendments made by subsections (a) and (b) shall
10 take effect on the date of the enactment of this Act and
11 shall apply to cases that are pending as of such date.

12 **SEC. 5. AUTHORITY TO USE SAMPLING AND EXTRAPO-**
13 **LATION METHODOLOGIES AND TO CONSOLI-**
14 **DATE APPEALS FOR ADMINISTRATIVE EFFI-**
15 **CIENCY.**

16 (a) IN GENERAL.—Section 1869 of the Social Secu-
17 rity Act (42 U.S.C. 1395ff) is amended by adding at the
18 end the following new subsection:

19 ''(j) AUTHORITIES TO PROMOTE ADMINISTRATIVE
20 EFFICIENCIES.—

21 ''(1) AUTHORITY TO CONSOLIDATE APPEALS.—

22 ''(A) IN GENERAL.—Any individual or en-
23 tity conducting redeterminations, reconsider-
24 ations, reviews, or hearings under subsection
25 (a)(3), (b), (c), or (d) (in this section, referred

1 to as an 'adjudicator') may consolidate pending
2 requests for review into a single action, and
3 may issue a single decision, or separate deci-
4 sions, with respect to such review requests—
5 "(i) if such requests involve one or
6 more common questions of fact or law for
7 similar claims submitted by the same ap-
8 pellant;
9 "(ii) if such requests involve claims
10 that were included within a statistical sam-
11 ple during the initial determination or any
12 previous level of appeal;
13 "(iii) if the appellant requests aggre-
14 gation of two or more claims under sub-
15 section (b)(1)(E)(ii); or
16 "(iv) in any other case in which the
17 adjudicator determines that consolidation
18 would promote administrative efficiency,
19 consistent with such standards as the Sec-
20 retary may establish by regulation.
21 "(B) DEADLINES.—The Secretary may es-
22 tablish applicable timeframes for appellants to
23 request consolidations and for adjudicators to
24 issue decisions on appeals that have been con-
25 solidated.

1 "(2) REQUIREMENTS FOR CLAIMS THAT WERE
2 INCLUDED IN AN EXTRAPOLATED OVERPAYMENT OR
3 PREVIOUSLY CONSOLIDATED.—An individual or enti-
4 ty requesting a redetermination, reconsideration, re-
5 view or hearing under subsection (a)(3), (b), (c), or
6 (d) with respect to two or more claims that were in-
7 cluded in an extrapolated overpayment, or claims
8 that were consolidated into a single appeal at a
9 lower-level adjudication under this section, must sub-
10 mit a single request for review or hearing with re-
11 spect to such claims in order to be entitled to a re-
12 view or hearing.
13 "(3) AUTHORITY TO USE STATISTICAL SAM-
14 PLING AND EXTRAPOLATION METHODOLOGIES IN
15 ADJUDICATIONS.—With the consent of the appellant,
16 an adjudicator may use statistical sampling and ex-
17 trapolation methodologies in reaching a decision with
18 respect to a claim or claims for benefits for items or
19 services furnished under part A or B. When an ap-
20 peal involves a decision that was based on a statis-
21 tical sample at the lower level, the adjudicator's de-
22 cision shall be based on the same statistical sam-
23 ple.".
24 (b) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by this section
3 shall apply to requests for review that are filed after
4 the date of the enactment of this Act.

5 (2) EXCEPTION.—The requirements described
6 in subsection (j)(2) of section 1869 of the Social Se-
7 curity Act (42 U.S.C. 1395ff), as added by sub-
8 section (a), shall apply to requests for review and re-
9 quests for hearing that are pending at any level of
10 appeal as of the date of enactment of this Act and
11 to those filed after such date.

12 **SEC. 6. IDENTIFICATION AND REFERRAL OF FRAUD.**

13 Not later than 1 year after the date of enactment
14 of this Act, the Secretary of Health and Human Services,
15 in consultation with the Inspector General of the Depart-
16 ment of Health and Human Services and the Attorney
17 General of the United States, shall establish and imple-
18 ment a process under which the Office of Medicare Hear-
19 ings and Appeals and the Departmental Appeals Board
20 of the Department of Health and Human Services shall
21 refer cases in which there is a credible suspicion of fraudu-
22 lent activity to appropriate law enforcement agencies and
23 to the Centers for Medicare & Medicaid Services.

1 **SEC. 7. STUDY TO ASSESS HEARING PARTICIPATION.**

2 (a) STUDY.—Not later than 1 year after the date of
3 enactment of this Act, the Secretary of Health and
4 Human Services shall conduct a study to determine wheth-
5 er it would be feasible to cost-effectively increase the par-
6 ticipation, with respect to hearings conducted by the Of-
7 fice of Medicare Hearings and Appeals, of—

8 (1) the Centers for Medicare & Medicaid Serv-
9 ices;

10 (2) entities serving as qualified independent
11 contractors under section 1869(c) of the Social Se-
12 curity Act (42 U.S.C. 1395ff(c));

13 (3) entities serving as medicare administrative
14 contractors under section 1874A of such Act (42
15 U.S.C. 1395kk–1);

16 (4) entities serving as recovery audit contrac-
17 tors under section 1893(h) of such Act (42 U.S.C.
18 1395ddd(h)); and

19 (5) other Medicare claims review entities deter-
20 mined appropriate by the Secretary.

21 (b) REPORT.—Not later than 2 years after the date
22 of the enactment of this Act, the Secretary of Health and
23 Human Services shall publish a report containing the re-
24 sults of the study required under subsection (a) on the
25 Internet website of the Department of Health and Human
26 Services.

SEC. 8. IMPROVEMENTS TO THE OFFICE OF MEDICARE HEARINGS AND APPEALS.

(a) TRAINING FOR ALJS AND MEDICARE MAGISTRATES.—Section 1869(e)(3) of the Social Security Act (42 U.S.C. 1395ff(e)(3)) is amended—

(1) in the paragraph heading, by striking "AND ADMINISTRATIVE LAW JUDGES" and inserting ", ADMINISTRATIVE LAW JUDGES, AND MEDICARE MAGISTRATES; ANNUAL TRAINING FOR ADMINISTRATIVE LAW JUDGES AND MEDICARE MAGISTRATES";

(2) by striking "The Secretary" and inserting the following:

"(A) CONTINUING EDUCATION REQUIREMENT.—The Secretary";

(3) by inserting "and, beginning in 2020, to Medicare magistrates" after "administrative law judges" the first place it appears;

(4) by striking "and administrative law judges" and inserting ", administrative law judges, and Medicare magistrates"; and

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

"(B) ANNUAL TRAINING.—Beginning with calendar year 2020, each calendar year the Secretary shall provide to each administrative law judge and Medicare magistrate within the Of-

1 fice of Medicare Hearings and Appeals training
2 on Medicare policies, including any policies that
3 were changed or instituted in the previous
4 year.''.

5 (b) PUBLICATION OF APPEALS INFORMATION.—Sec-
6 tion 1869(e) of the Social Security Act (42 U.S.C.
7 1395ff(e)) is amended by adding at the end the following
8 new paragraph:

9 ''(5) PUBLICATION OF APPEALS INFORMA-
10 TION.—Not later than January 1, 2020, and annu-
11 ally thereafter, the Secretary of Health and Human
12 Services shall publish and maintain on the Internet
13 website of the Department of Health and Human
14 Services the following information regarding appeals
15 heard by the Office of Medicare Hearings and Ap-
16 peals for each fiscal year:

17 ''(A) The percentage of appeals that re-
18 ceived fully favorable, partially favorable, and
19 unfavorable decisions.

20 ''(B) For each type of service, the percent-
21 age of appeals that received fully favorable, par-
22 tially favorable, and unfavorable decisions.

23 ''(C) The average length of time elapsed
24 between the initial request for review and a
25 final decision.

1 "(D) Such other information as the Sec-
2 retary determines necessary to ensure greater
3 transparency for the Office of Medicare Hear-
4 ings and Appeals.".

5 **SEC. 9. REVIEW PROGRAM IMPROVEMENTS.**

6 (a) IN GENERAL.—Section 1893 of the Social Secu-
7 rity Act (42 U.S.C. 1395ddd) is amended—
8 (1) in subsection (b), by adding at the end the
9 following new paragraph:
10 "(7) The review program improvements de-
11 scribed in subsection (k)."; and
12 (2) by adding at the end the following new sub-
13 section:
14 "(k) REVIEW PROGRAM IMPROVEMENTS.—
15 "(1) IN GENERAL.—
16 "(A) GUIDELINES.—
17 "(i) IN GENERAL.—To promote uni-
18 formity and consistency in initial deter-
19 minations and appeals decisions relating to
20 the appropriateness of payment with re-
21 spect to items or services furnished under
22 this title, the Secretary shall establish
23 claim review guidelines for review contrac-
24 tors for reviewing claims for payment sub-

1 mitted by providers of services and sup-
2 pliers.
3 "(ii) REQUIREMENTS.—Prior to the
4 implementation of the claim review guide-
5 lines described in subparagraph (A)(i), the
6 Secretary shall—
7 "(I) approve the claim review
8 guidelines;
9 "(II) make the claim review
10 guidelines publicly available as de-
11 scribed in subparagraph (B); and
12 "(III) ensure that review contrac-
13 tors, Medicare magistrates, adminis-
14 trative law judges, and appropriate
15 members of the Departmental Appeals
16 Board are trained in the application
17 of the claim review guidelines.
18 "(iii) TRANSITION PERIOD.—The Sec-
19 retary may provide for or establish one or
20 more transition periods, during which the
21 use of existing claim review guidelines for
22 reviewing claims submitted by providers of
23 services and suppliers shall be permitted to
24 continue until such time as the Secretary
25 is able to review and approve the claim re-

1 view guidelines established under this sub-
2 paragraph.
3 ‘‘(B) TRANSPARENCY.—
4 ‘‘(i) IN GENERAL.—The Secretary
5 shall ensure that the information described
6 in clause (iii)—
7 ‘‘(I) is published on the Internet
8 website of the Department of Health
9 and Human Services for not less than
10 30 days prior to its implementation;
11 ‘‘(II) remains available on such
12 Internet website after such publica-
13 tion; and
14 ‘‘(III) is updated at least annu-
15 ally.
16 ‘‘(ii) EXPEDITED PROCESS.—The Sec-
17 retary of Health and Human Services may
18 expedite the process described in clause (i)
19 for claims review guidelines that are ex-
20 pected to impact the improper payment
21 rate, frequency of denials of payment, or
22 costs to the Medicare program.
23 ‘‘(iii) INFORMATION DESCRIBED.—
24 The information described in this clause is
25 the following:

1 "(I) Subject to clause (ii) and
2 subparagraph (A), any new claim re-
3 view guideline approved for use under
4 this paragraph.
5 "(II) Any updates or revisions to
6 existing claim review guidelines.
7 "(C) LIMITATION.—Nothing in this section
8 is intended to—
9 "(i) delineate sample size or how
10 claims are to be selected for review;
11 "(ii) require the publication of algo-
12 rithms or methodologies used for claim se-
13 lection; or
14 "(iii) require the publication of infor-
15 mation that could promote fraud or poten-
16 tial gaming.
17 "(D) REVIEW CONTRACTOR DEFINED.—In
18 this subsection, the term 'review contractor'
19 means—
20 "(i) a medicare administrative con-
21 tractor (as defined in section
22 1874A(a)(3)(A)) with a contract to con-
23 duct prepayment or post-payment reviews
24 of claims for payment by providers of serv-
25 ices or suppliers;

1 "(ii) a recovery audit contractor with
2 a contract under subsection (h); or
3 "(iii) any other contractor the Sec-
4 retary determines appropriate.
5 "(2) PROGRAM INTEGRITY INITIATIVES.—To
6 improve existing and future Medicare program integ-
7 rity initiatives, and to limit unnecessary burdens on
8 providers of services and suppliers, the Secretary
9 shall designate a point of contact to oversee and un-
10 dertake the following:
11 "(A) Develop a comprehensive strategy for
12 claim review determinations made on a prepay-
13 ment, post-payment, or prior-authorization
14 basis that—
15 "(i) focuses on identifying and reduc-
16 ing those claim errors that have the largest
17 impact on the improper payment rate, pose
18 the greatest risk to the Federal Hospital
19 Insurance Trust Fund under section 1817
20 or the Federal Supplementary Medical In-
21 surance Trust Fund under section 1841,
22 or are likely to negatively affect quality of
23 care;
24 "(ii) reduces unnecessary burden on
25 providers of services and suppliers and

1 minimizes any negative effects on Medicare
2 beneficiaries; and
3 "(iii) utilizes data and other sources,
4 including claims data, improper payment
5 rate data, and reports from the Office of
6 the Inspector General of the Department
7 of Health and Human Services, the Gen-
8 eral Accountability Office, and the Medi-
9 care Payment Advisory Commission.
10 "(B) Develop methods designed to mini-
11 mize, using available data, unnecessary dupli-
12 cate reviews by review contractors.
13 "(C) To the extent possible given the spe-
14 cific mission of each entity that has contracted
15 with the Secretary, work with all review con-
16 tractors to develop a uniform, consistent, and
17 transparent review process to reduce the burden
18 on providers of services and suppliers, including
19 a uniform approach for such entities to notify
20 parties of pending reviews and to request med-
21 ical documentation, improved communication
22 with providers of services and suppliers, better
23 refinement of audits to target claims that are at
24 the highest risk for improper payments or other
25 errors, and any other areas in which the Sec-

1 retary determines that the burden on providers
2 of services and suppliers may be decreased.
3 ‘‘(D) To the extent practicable, identify
4 local coverage determinations, national coverage
5 determinations, regulations, and program in-
6 structions issued by the Centers for Medicare &
7 Medicaid Services for the Medicare program
8 that need updating or that inappropriately con-
9 flict with other Medicare policies and make
10 modifications where appropriate, and, if nec-
11 essary, establish new policies or claim review
12 guidelines with input from stakeholders as ap-
13 propriate.
14 ‘‘(E) Publish on the Internet website of the
15 Department of Health and Human Services the
16 volume and type of prepayment and post-pay-
17 ment claim reviews performed by medicare ad-
18 ministrative contractors under section 1874A
19 and recovery audit contractors under subsection
20 (h).
21 ‘‘(F) Coordinate with the Office of Medi-
22 care Hearings and Appeals and the Depart-
23 mental Appeals Board of the Department of
24 Health and Human Services in the implementa-
25 tion of the improved claim review guidelines

1 and evidentiary standards established by the
2 provisions of, and the amendments made by,
3 the Audit & Appeals Fairness, Integrity, and
4 Reforms in Medicare Act of 2019, such as the
5 decision to remand an appeal.

6 "(G) Ensure that providers of services and
7 suppliers subject to post-payment review by a
8 medicare administrative contractor are granted
9 a discussion period with the contractor of at
10 least 30 days from the letter from the con-
11 tractor regarding the result of the review.

12 "(H) Develop qualification standards for
13 review contractors that require prepayment and
14 post-payment reviews of claims for payment
15 submitted by providers of services or suppliers
16 be overseen by a medical director of the review
17 contractor who has knowledge of relevant Medi-
18 care laws, regulations, and program instruction,
19 as appropriate.

20 "(I) Undertake verification methods, such
21 as sampling, to determine whether decisions by
22 review contractors are consistent with Medicare
23 laws, regulations, and program instruction (tak-
24 ing into account geographical variations that
25 are a result of local coverage determinations).

1 "(J) Determine whether punitive actions
2 against ineffective review contractors could be
3 taken and what, if any, financial incentives or
4 disincentives could be used to promote the accu-
5 racy of a review contractor's reviews.".

6 (b) ANNUAL RAC REPORT.—Section 1893(h)(8) of
7 the Social Security Act (42 U.S.C. 1395ddd(h)(8)) is
8 amended by inserting ", and, with respect to reports sub-
9 mitted after the date of the enactment of the Audit & Ap-
10 peals Fairness, Integrity, and Reforms in Medicare Act
11 of 2019, the number of claims corrected in the discussion
12 period, the percentage of appeals of determinations by re-
13 covery audit contractors that were ultimately successful,
14 a careful description of the denominator of total audits
15 and appeals (given the likelihood that many appeals in a
16 given year will not have a decision in that year), and sepa-
17 rate reports on complex Medicare part A, complex Medi-
18 care part B, semiautomated, and automated reviews" be-
19 fore the period at the end.

20 (c) INDEPENDENCE OF ADJUDICATORS.—Nothing in
21 this section or the amendments made thereby shall be con-
22 strued as authorizing the Secretary of Health and Human
23 Services to limit the authority or decisional independence
24 of Medicare magistrates, administrative law judges, or the

Departmental Appeals Board of the Department of Health and Human Services.

SEC. 10. CREATION OF MEDICARE PROVIDER AND SUPPLIER OMBUDSMAN FOR REVIEWS AND APPEALS.

Section 1808 of the Social Security Act (42 U.S.C. 1395b–9) is amended by adding at the end the following new subsection:

"(e) MEDICARE REVIEWS AND APPEALS OMBUDSMAN.—

"(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this subsection, the Secretary shall appoint within the Centers for Medicare & Medicaid Services a Medicare Reviews and Appeals Ombudsman.

"(2) DUTIES.—The Medicare Reviews and Appeals Ombudsman shall—

"(A) identify, investigate, and assist in the resolution of complaints and inquiries related to the Medicare audits and appeals process from providers of services or suppliers with respect to benefits under part A or B;

"(B) identify trends in complaints and inquiries regarding the current Medicare review and appeals systems to provide recommenda-

1 tions for improvements to the Secretary that
2 would improve the efficacy and efficiency of
3 claim review and appeals systems, as well as
4 communication to beneficiaries, providers of
5 services, and suppliers;

6 ''(C) design a system by which to objec-
7 tively measure and evaluate reviewer responsive-
8 ness to addressing inquiries from providers of
9 services and suppliers and inquiries from the
10 Ombudsman;

11 ''(D) provide assistance to appellants and
12 those considering an appeal;

13 ''(E) publish data regarding the number of
14 review determinations appealed, each appeal's
15 outcome, and aggregate appeal statistics—

16 ''(i) for each medicare administrative
17 contractor conducting redeterminations
18 under section 1869(a)(3);

19 ''(ii) for each qualified independent
20 contractor conducting reconsiderations
21 under section 1869(c);

22 ''(iii) for each recovery audit con-
23 tractor conducting reviews under section
24 1893(h);

1 ''(iv) by type of provider of services;
2 and
3 ''(v) by type of supplier;
4 ''(F) assist in education and training ef-
5 forts for providers of services, suppliers, and re-
6 view contractors (as defined in section
7 1893(k)(1)(D));
8 ''(G) communicate with the Medicare Ben-
9 eficiary Ombudsman to assist with the identi-
10 fication, investigation, and resolution of bene-
11 ficiary-related complaints, including those that
12 overlap with requests for review and appeals
13 submitted by providers of services or suppliers;
14 and
15 ''(H) perform such other duties as deter-
16 mined appropriate by the Secretary.''.

17 **SEC. 11. LIMITING THE AUDIT AND RECOVERY PERIOD FOR**
18 **PATIENT STATUS REVIEWS.**

19 (a) IN GENERAL.—Section 1893(h)(4) of the Social
20 Security Act (42 U.S.C. 1395ddd(h)(4)) is amended—
21 (1) by redesignating subparagraphs (A) and
22 (B) as clauses (i) and (ii), respectively, and moving
23 such clauses 2 ems to the right;
24 (2) by striking ''Each such'' and inserting the
25 following:

1 "(A) IN GENERAL.—Except as provided in
2 subparagraph (B), each such"; and
3 (3) by adding at the end the following new sub-
4 paragraph:
5 "(B) LIMITATION.—
6 "(i) IN GENERAL.—With respect to
7 the classification of an individual entitled
8 to benefits under part A or enrolled under
9 part B, or both, as an inpatient or an out-
10 patient for purposes of hospital claims for
11 payment for items or services furnished to
12 such individual under this title, such con-
13 tracts shall provide that a recovery audit
14 contractor shall only send additional docu-
15 mentation requests related to the appro-
16 priateness of such classification in the first
17 6 months after the date on which such
18 items or services were furnished.
19 "(ii) EXCEPTION.—The limitation de-
20 scribed in clause (i) shall not apply where
21 a claim for payment is submitted more
22 than 3 months after the date on which
23 such items or services were furnished.".
24 (b) STUDY ON SHORTENING THE AUDIT AND RECOV-
25 ERY PERIOD FOR OTHER REVIEWS.—

1 (1) STUDY.—The Secretary of Health and
2 Human Services shall conduct a study to assess—
3 (A) the potential burden on providers of
4 services (as defined in subsection (u) of section
5 1861 of the Social Security Act (42 U.S.C.
6 1395x)) and suppliers (as defined in subsection
7 (d) of such section) under the Medicare pro-
8 gram of the audit and recovery period applica-
9 ble to audit and recovery activities conducted by
10 recovery audit contractors under section
11 1893(h)(4) of such Act (42 U.S.C.
12 1395ddd(h)(4)); and
13 (B) the impact of shortening such period
14 with respect to different types of reviews.
15 (2) REPORT.—Not later than 1 year after the
16 date of the enactment of this Act, the Secretary of
17 Health and Human Services shall publish a report
18 containing the results of the study required under
19 paragraph (1) on the Internet website of the Depart-
20 ment of Health and Human Services.
21 (c) AUTHORITY TO IMPLEMENT SHORTER AUDIT
22 AND RECOVERY PERIOD.—Section 1893(h)(4) of the So-
23 cial Security Act (42 U.S.C. 1395ddd(h)(4)), as amended
24 by subsection (a), is further amended—

1 (1) in subparagraph (A), by striking ‘‘subpara-
2 graph (B)’’ and inserting ‘‘subparagraphs (B) and
3 (C)’’; and

4 (2) by adding at the end the following new sub-
5 paragraph:

6 ‘‘(C) AUTHORITY TO IMPLEMENT SHORTER
7 AUDIT AND RECOVERY PERIOD.—Notwith-
8 standing subparagraph (A)(ii), with respect to
9 payments made under this title for specific cat-
10 egories of services, the Secretary may enter into
11 contracts under paragraph (1) that provide for
12 a retrospective period during which audit and
13 recovery activities may be conducted of not
14 more than 3 years.’’.

15 (d) REPORT ON RAC PAYMENT STRUCTURE.—Not
16 later than 6 months after the date of the enactment of
17 this Act, the Secretary of Health and Human Services
18 shall submit to Congress a report on ways to change, in
19 a budget neutral manner, the payment structure for recov-
20 ery audit contractors under section 1893(h)(1) of the So-
21 cial Security Act (42 U.S.C. 1395ddd(h)(1)) from an in-
22 centive-based model to a non-incentive based approach
23 that does not impose additional financial burdens on pro-
24 viders.

1 **SEC. 12. INCENTIVES AND DISINCENTIVES FOR MEDICARE**
2 **CONTRACTORS, PROVIDERS, AND SUPPLIERS.**

3 Section 1893 of the Social Security Act (42 U.S.C.
4 1395ddd), as amended by section 10, is further amended
5 by adding at the end the following new subsection:

6 "(l) COMPLIANCE INCENTIVE PROGRAM.—

7 "(1) IN GENERAL.—Not later than 1 year after
8 the date of enactment of this subsection, the Sec-
9 retary shall establish a compliance incentive pro-
10 gram, consisting of the components described in
11 paragraphs (2) and (3), to encourage—

12 "(A) providers of services and suppliers to
13 submit accurate claims that comply with this
14 title and the policies, regulations, and program
15 instructions promulgated thereunder, as well as
16 any applicable national or local coverage deter-
17 minations; and

18 "(B) entities that have entered into con-
19 tracts with the Secretary under subsection (h)
20 (referred to in this subsection as 'review con-
21 tractors') to conduct reviews under this section
22 in a manner that is consistent with the provi-
23 sions of this title and the claim review guide-
24 lines, regulations, and program instructions
25 promulgated thereunder, as well as any applica-
26 ble national or local coverage determinations.

1 "(2) Compliance with claim procedures
2 by providers of services and suppliers.—
3 "(A) In general.—Not later than 6
4 months after the date of enactment of this sub-
5 section, the Secretary shall establish a system
6 through which a provider of services or supplier
7 that has achieved a low rate of denials of claims
8 for payment subject to additional documenta-
9 tion requests over a 2-year period, as deter-
10 mined by the Secretary, shall be exempt for a
11 period of 1 year from any post-payment review
12 of claims for payment conducted by review con-
13 tractors.
14 "(B) Limitation.—The Secretary shall
15 not exempt or shall rescind an exemption grant-
16 ed to a provider of services or supplier under
17 subparagraph (A) if the Secretary determines
18 that there is a reasonable basis to suspect gam-
19 ing, fraud, abuse, or delay in the provision of
20 services or items by such provider or services or
21 supplier.
22 "(3) Compliance with review procedures
23 by medicare contractors.—
24 "(A) In general.—Not later than 6
25 months after the date of enactment of this sub-

1 section, the Secretary shall establish a process,
2 which may include the use of sampling, for de-
3 termining the frequency with which the deci-
4 sions made by a review contractor with respect
5 to reviews conducted under this section are con-
6 sistent with the provisions of this title and the
7 policies, regulations, and program instructions
8 promulgated thereunder, as well as any applica-
9 ble national or local coverage determinations.
10 The results of this process shall be made avail-
11 able to the public on the Internet website of the
12 Department of Health and Human Services.

13 ''(B) ACCESS TO MEDICAL RECORDS BY
14 REVIEW CONTRACTORS.—

15 ''(i) ACCESS TO RECORDS BASED ON
16 PERFORMANCE REVIEW.—Not later than 6
17 months after the date of enactment of this
18 Act, the Secretary shall establish a system
19 under which, in addition to any other ad-
20 justments that the Secretary may make to
21 the number of medical records that a re-
22 view contractor may request, for any incen-
23 tive period—

24 ''(I) the number of medical
25 records that a review contractor that

1 was a high-performing review con-
2 tractor in the performance review pe-
3 riod associated with such incentive pe-
4 riod may request from a provider of
5 services or supplier in carrying out ac-
6 tivities under this section may be in-
7 creased (on a sliding scale); and

8 "(II) the number of medical
9 records that a review contractor that
10 was a low-performing review con-
11 tractor in the performance review pe-
12 riod associated with such incentive pe-
13 riod may request from a provider of
14 services or supplier in carrying out ac-
15 tivities under this section may be de-
16 creased (on a sliding scale).

17 "(ii) DEFINITIONS.—In this subpara-
18 graph:

19 "(I) HIGH-PERFORMING REVIEW
20 CONTRACTOR.—The term 'high-per-
21 forming review contractor' means a
22 review contractor that, for a given
23 performance review period, makes de-
24 cisions with respect to reviews con-
25 ducted under this section of the activi-

1 ties of providers of services and sup-
2 pliers that are consistent with the pro-
3 visions of this title and the policies,
4 regulations, and program instructions
5 promulgated thereunder, as well as
6 any applicable national or local cov-
7 erage determinations, at a rate that is
8 equal to or greater than 95 percent.
9 "(II) INCENTIVE PERIOD.—The
10 term 'incentive period' means, with re-
11 spect to a performance review period,
12 a period of time (to be determined by
13 the Secretary) following such perform-
14 ance review period during which the
15 number of medical records that a re-
16 view contractor may request from a
17 provider of services or supplier may be
18 increased or decreased based on such
19 contractor's status as a high-per-
20 forming review contractor or a low-
21 performing review contractor for such
22 performance review period.
23 "(III) LOW-PERFORMING REVIEW
24 CONTRACTOR.—The term 'low-per-
25 forming review contractor' means a

1 review contractor that, for a given
2 performance review period, is not de-
3 scribed in subclause (I).

4 "(IV) PERFORMANCE REVIEW
5 PERIOD.—The term 'performance re-
6 view period' means a period of time
7 (to be determined by the Secretary)
8 during which a review contractor's de-
9 cisions with respect to reviews con-
10 ducted under this section are evalu-
11 ated to determine if such review con-
12 tractor is a high-performing con-
13 tractor or a low-performing contractor
14 for such period.".

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