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AMENDMENT
OFFERED BY MR. ABERCROMBIE OF HAWAII
(to text of H.R. 3962)

Add at the end of title I of division A the following new section:

1 **SEC. 116. MEDICAL PROVIDER PROTECTION AND RESPON-**
2 **SIBILITY DEMONSTRATION PROJECT.**

3 (a) IN GENERAL.—

4 (1) ESTABLISHMENT.—Subject to the suc-
5 ceeding provisions of this section, the Secretary shall
6 establish a demonstration project under which the
7 provisions of section 224 of the Public Health Serv-
8 ice Act (42 U.S.C. 233) shall apply with respect to
9 all services (whether or not provided under the Medi-
10 care, Medicaid, or CHIP program) provided by a
11 qualifying Medicare, Medicaid, or CHIP provider in
12 the same manner as such provisions apply to serv-
13 ices furnished by an entity described in subsection
14 (g)(4) of such section.

15 (2) REQUIREMENT FOR REGULATIONS.—This
16 section shall not apply with respect to any qualifying
17 Medicare, Medicaid, or CHIP provider until the At-
18 torney General has promulgated regulations, that

1 are effective in final form (whether interim or other-
2 wise), to carry out section 224(i) of the Public
3 Health Service Act (42 U.S.C. 233(i)).

4 (b) QUALIFYING MEDICARE, MEDICAID, OR CHIP
5 PROVIDER.—

6 (1) DEFINED.—For purposes of this section,
7 the term “qualifying Medicare, Medicaid, or CHIP
8 provider” means a hospital, physician, or other
9 health care provider that—

10 (A) applies to the Secretary for approval
11 as a qualifying Medicare, Medicaid, or CHIP
12 provider under this section;

13 (B) the Secretary, in consultation with the
14 Attorney General, determines meets the require-
15 ments of paragraph (2) for approval as such a
16 provider for such period as the Secretary speci-
17 fies; and

18 (C) is not disqualified by the Secretary
19 under paragraph (5).

20 Such term includes, to the extent specified by the
21 Secretary with respect to a hospital or other institu-
22 tional health care provider, any physicians or other
23 health care professionals who are serving on the
24 staff of such health care provider and such other
25 health care professionals who are otherwise con-

1 nected (as defined by the Secretary) to such health
2 care provider. The Secretary may provide for an ini-
3 tial or subsequent probationary period in which a
4 health care provider is approved as a qualifying
5 Medicare, Medicaid, or CHIP provider under this
6 section.

7 (2) REQUIREMENTS.—The requirements for ap-
8 proval of a health care provider as a qualifying
9 Medicare, Medicaid, or CHIP provider are as fol-
10 lows:

11 (A) A substantial proportion (as specified
12 by the Secretary in consultation with the Attor-
13 ney General) of the health care items and serv-
14 ices that the provider regularly furnishes are
15 furnished on behalf of individuals who are enti-
16 tled to benefits or assistance under title XVIII,
17 XIX, or XXI of the Social Security Act, includ-
18 ing under a managed care plan for which pay-
19 ment is made to the plan under such title.

20 (B) The health care provider participates
21 in applicable quality and patient safety initia-
22 tives of the Secretary, which may include those
23 of the Centers for Medicare & Medicaid Serv-
24 ices and of the Agency for Healthcare Research
25 and Quality.

1 (C) The health care provider provides for
2 reporting of adverse events in such manner as
3 the Secretary may specify, which may include
4 the reporting of such events to a patient safety
5 organization or other organization in accord-
6 ance with State law.

7 (D) The health care provider's license or
8 authority to provide health care services under
9 State law is not subject to any restrictions im-
10 posed by the State medical or other licensing
11 board involved.

12 Nothing in subparagraph (A) shall be construed as
13 to require the Secretary to specify the same propor-
14 tion under such subparagraph for all classes of
15 health care providers and the Secretary may provide
16 for such special rules in applying such proportion in
17 the case of health care providers furnishing services
18 in a group practice or other group setting as the
19 Secretary determines, in consultation with the Attor-
20 ney General, to be appropriate.

21 (3) ADDITIONAL REQUIREMENTS.—The Sec-
22 retary may prescribe such additional requirements
23 as the Secretary determines to be appropriate.

24 (4) PREFERENCES.—In approving health care
25 providers as qualifying Medicare, Medicaid, or CHIP

1 providers under this section, the Secretary shall give
2 preference to providers that furnish services in medi-
3 cally underserved areas or health professional short-
4 age areas, and physicians and other health profes-
5 sionals who specialize in health care occupations ex-
6 periencing national or local shortages.

7 (5) DISQUALIFICATION.—

8 (A) IN GENERAL.—The Secretary or the
9 Attorney General, in consultation with each
10 other, may deny or terminate the approval of a
11 health care provider as a qualifying Medicare,
12 Medicaid, or CHIP provider under this section
13 if the Secretary or the Attorney General, in
14 consultation with each other, determines that
15 the quality of services furnished by the health
16 care provider, whether under title XVIII, XIX,
17 or XXI of the Social Security Act, no longer
18 meets requirements for approval under para-
19 graph (2), or otherwise does not meet quali-
20 fying standards specified by the Secretary. Such
21 a determination may be based on claims made
22 pursuant to the application of this section, but
23 such a termination shall not apply to claims
24 arising before or during the period of the pro-
25 vider's approval under this section.

1 (B) SPECIAL CONSIDERATION.—The Sec-
2 retary or the Attorney General, in determining
3 whether to deny or terminate the approval of a
4 health care provider under subparagraph (A),
5 may consider the number of civil actions or pro-
6 ceedings with claims against the United States
7 for money damages for personal injury or death
8 caused by the negligent or wrongful act or
9 omission of such provider.

10 (C) TERMINATION PROCESS.—In the case
11 of a termination of such a health care provider
12 that was previously approved under this section,
13 the termination shall not occur unless the
14 health care provider has been given such prior
15 notice as the Secretary and Attorney General
16 shall specify and an opportunity to correct defi-
17 ciencies that have resulted in the initiation of
18 the termination process.

19 (6) NOTICE.—The Secretary shall notify the
20 Attorney General from time to time of the identity
21 of health care providers that have been approved by
22 the Secretary as qualifying Medicare, Medicaid, or
23 CHIP providers under this section.

24 (7) JURY TRIALS.—Notwithstanding section
25 2402 of title 28, United States Code, any civil action

1 or proceeding with a claim against the United States
2 for money damages for personal injury or death
3 caused by the negligent or wrongful act or omission
4 of a qualifying Medicare, Medicaid, or CHIP pro-
5 vider, while providing services under subsection
6 (a)(1), shall, at the request of either party to such
7 action, be tried by the Federal district court of the
8 jurisdiction of origin with a jury.

9 (c) LENGTH OF DEMONSTRATION PROJECT.—The
10 demonstration project established under this section shall
11 be conducted for a period of 3 consecutive years, and shall
12 apply with respect to any civil action or proceeding with
13 a claim against the United States for money damages for
14 personal injury or death caused by the negligent or wrong-
15 ful act or omission, which occurs before the completion
16 of such project, of a qualifying Medicare, Medicaid, or
17 CHIP provider, while providing services under subsection
18 (a)(1).

19 (d) REPORTS.—

20 (1) ANNUAL REPORTS.—The Secretary shall
21 submit to Congress an annual report on the progress
22 of the demonstration project conducted under this
23 section.

24 (2) FINAL REPORT AND RECOMMENDATION.—

25 Not later than 180 days before the completion of the

1 demonstration project, the Secretary shall evaluate
2 the impact of the demonstration project on the
3 amount of damage awards in and volume of medical
4 malpractice claims involving qualifying Medicare,
5 Medicaid, or CHIP providers under this section and
6 submit to the Committee on Energy and Commerce
7 and the Committee on the Judiciary of the House of
8 Representatives and the Committee on Finance and
9 the Committee on the Judiciary of the Senate a re-
10 port on the evaluation together with such rec-
11 ommendations for legislation or administrative ac-
12 tion as the Secretary determines appropriate.

13 (e) DEFINITIONS.—In this section—

14 (1) the term “health professional shortage
15 area” has the same meaning as is given such term
16 in section 332(a)(1) of the Public Health Service
17 Act (42 U.S.C. 254(a)(1));

18 (2) the term “medically underserved area” has
19 the same meaning as is given such term in section
20 330I(a)(4) of the Public Health Service Act (42
21 U.S.C. 254c-14(a)(4)); and

22 (3) the term “Secretary” means the Secretary
23 of Health and Human Services.

24 (f) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated to the Secretary and

- 1 the Attorney General such sums as are necessary to carry
- 2 out this section.

