

AMENDMENT TO H.R. 3962
OFFERED BY MRS. BIGGERT OF ILLINOIS
[HR 3962, as introduced]

Add at the end of subtitle B of title VI of division B the following (and conform the table of contents for such division accordingly):

1 **SEC. 1622. LIMITING THE DISCHARGE OF DEBTS IN BANK-**
2 **RUPTCY PROCEEDINGS IN CASES WHERE A**
3 **HEALTH CARE PROVIDER OR A SUPPLIER EN-**
4 **GAGES IN FRAUDULENT ACTIVITY.**

5 (a) IN GENERAL.—

6 (1) CIVIL MONETARY PENALTIES.—Section
7 1128A(a) of the Social Security Act (42 U.S.C.
8 1320a-7a(a)) is amended by adding at the end the
9 following: “Notwithstanding any other provision of
10 law, amounts made payable under this section are
11 not dischargeable under section 727, 944, 1141,
12 1228, or 1328 of title 11, United States Code, or
13 any other provision of such title.”

14 (2) RECOVERY OF OVERPAYMENT TO PRO-
15 VIDERS OF SERVICES UNDER PART A OF MEDI-
16 CARE.—Section 1815(d) of the Social Security Act
17 (42 U.S.C. 1395g(d)) is amended—

1 (A) by inserting “(1)” after “(d)”; and

2 (B) by adding at the end the following:

3 “(2) Notwithstanding any other provision of law,
4 amounts due to the Secretary under this section are not
5 dischargeable under section 727, 944, 1141, 1228, or
6 1328 of title 11, United States Code, or any other provi-
7 sion of such title if the overpayment was the result of
8 fraudulent activity, as may be defined by the Secretary.”.

9 (3) RECOVERY OF OVERPAYMENT OF BENEFITS
10 UNDER PART b OF MEDICARE.—Section 1833(j) of
11 the Social Security Act (42 U.S.C. 1395l(j)) is
12 amended—

13 (A) by inserting “(1)” after “(j)”; and

14 (B) by adding at the end the following:

15 “(2) Notwithstanding any other provision of law,
16 amounts due to the Secretary under this section are not
17 dischargeable under section 727, 944, 1141, 1228, or
18 1328 of title 11, United States Code, or any other provi-
19 sion of such title if the overpayment was the result of
20 fraudulent activity, as may be defined by the Secretary.”.

21 (4) COLLECTION OF PAST-DUE OBLIGATIONS
22 ARISING FROM BREACH OF SCHOLARSHIP AND LOAN
23 CONTRACT.—Section 1892(a) of the Social Security
24 Act (42 U.S.C. 1395ccc(a)) is amended by adding at
25 the end the following:

1 “(5) Notwithstanding any other provision of
2 law, amounts due to the Secretary under this section
3 are not dischargeable under section 727, 944, 1141,
4 1228, or 1328 of title 11, United States Code, or
5 any other provision of such title.”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 subsection (a) shall apply to bankruptcy petitions filed
8 after the date of the enactment of this Act.

9 **SEC. 1623. ILLEGAL DISTRIBUTION OF A MEDICARE OR**
10 **MEDICAID BENEFICIARY IDENTIFICATION OR**
11 **BILLING PRIVILEGES.**

12 Section 1128B(b) of the Social Security Act (42
13 U.S.C. 1320a-7b(b)), as amended by section 4(e), is
14 amended by adding at the end the following:

15 “(5) Whoever knowingly, intentionally, and with the
16 intent to defraud purchases, sells or distributes, or ar-
17 ranges for the purchase, sale, or distribution of two or
18 more medicare or medicaid beneficiary identification num-
19 bers or billing privileges under title XVIII or title XIX
20 shall be imprisoned for not more than three years or fined
21 under title 18, United States Code (or, if greater, an
22 amount equal to the monetary loss to the Federal and any
23 State government as a result of such acts), or both.”.

1 **SEC. 1624. TREATMENT OF CERTAIN SOCIAL SECURITY ACT**
2 **CRIMES AS FEDERAL HEALTH CARE OF-**
3 **FENSES.**

4 (a) IN GENERAL.—Section 24(a) of title 18, United
5 States Code, is amended—

6 (1) by striking the period at the end of para-
7 graph (2) and inserting “; or”; and

8 (2) by adding at the end the following:

9 “(3) section 1128B of the Social Security Act
10 (42 U.S.C. 1320a–7b).”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall take effect on the date of the enact-
13 ment of this Act and apply to acts committed on or after
14 the date of the enactment of this Act.

Amend section 1641 to read as follows (and conform
the table of contents of division B accordingly):

15 **SEC. 1641. LIABILITY OF MEDICARE ADMINISTRATIVE CON-**
16 **TRACTORS FOR CLAIMS SUBMITTED BY EX-**
17 **CLUDED PROVIDERS.**

18 (a) REIMBURSEMENT TO THE SECRETARY FOR
19 AMOUNTS PAID TO EXCLUDED PROVIDERS.—Section
20 1874A(b) of the Social Security Act (42 U.S.C.
21 1395kk(b)) is amended by adding at the end the following
22 new paragraph:

1 “(6) REIMBURSEMENTS TO SECRETARY FOR
2 AMOUNTS PAID TO EXCLUDED PROVIDERS.—The
3 Secretary shall not enter into a contract with a
4 medicare administrative contractor under this sec-
5 tion unless the contractor agrees to reimburse the
6 Secretary for any amounts paid by the contractor
7 for a service under this title which is furnished by
8 an individual or entity during any period for which
9 the individual or entity is excluded, pursuant to sec-
10 tion 1128, 1128A, or 1156, from participation in the
11 health care program under this title if the amounts
12 are paid after the 60-day period beginning on the
13 date the Secretary provides notice of the exclusion to
14 the contractor, unless the payment was made as a
15 result of incorrect information provided by the Sec-
16 retary or the individual or entity excluded from par-
17 ticipation has concealed or altered their identity.”.

18 (b) CONFORMING REPEAL OF MANDATORY PAYMENT
19 RULE.—Section 1862(e) of the Social Security Act (42
20 U.S.C. 1395y(e)) is amended—

21 (1) in paragraph (1)(B), by striking “and when
22 the person” and all that follows through “person”;
23 and

24 (2) by amending paragraph (2) to read as fol-
25 lows:

1 “(2) No individual or entity may bill (or collect any
2 amount from) any individual for any item or service for
3 which payment is denied under paragraph (1). No indi-
4 vidual is liable for payment of any amounts billed for such
5 an item or service in violation of the preceding sentence.”.

6 (c) **EFFECTIVE DATE.**—

7 (1) **IN GENERAL.**—The amendments made by
8 this section shall apply to claims for payment sub-
9 mitted on or after the date of the enactment of this
10 Act.

11 (2) **CONTRACT MODIFICATION.**—The Secretary
12 of Health and Human Services shall take such steps
13 as may be necessary to modify contracts entered
14 into, renewed, or extended prior to the date of the
15 enactment of this Act to conform such contracts to
16 the provisions of this section.

 Add at the end of subtitle C of title VI of division
B the following (and conform the table of contents of the
division accordingly):

17 **SEC. 1648. SITE INSPECTIONS; BACKGROUND CHECKS; DE-**
18 **NIAL AND SUSPENSION OF BILLING PRIVI-**
19 **LEGES.**

20 (a) **SITE INSPECTIONS FOR DME SUPPLIERS, COM-**
21 **MUNITY MENTAL HEALTH CENTERS, AND OTHER PRO-**
22 **VIDER GROUPS.**—Title XVIII of the Social Security Act

1 (42 U.S.C. 1395 et seq.) is amended by adding at the end
2 the following:

3 “SITE INSPECTIONS FOR DME SUPPLIERS, COMMUNITY
4 MENTAL HEALTH CENTERS, AND OTHER PROVIDER
5 GROUPS

6 “SEC. 1899. (a) SITE INSPECTIONS.—

7 “(1) IN GENERAL.—The Secretary shall con-
8 duct a site inspection for each applicable provider
9 (as defined in paragraph (2)) that applies to enroll
10 under this title in order to provide items or services
11 under this title. Such site inspection shall be in addi-
12 tion to any other site inspection that the Secretary
13 would otherwise conduct with regard to an applica-
14 ble provider.

15 “(2) APPLICABLE PROVIDER DEFINED.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), in this section the term ‘ap-
18 plicable provider’ means—

19 “(i) a supplier of durable medical
20 equipment (including items described in
21 section 1834(a)(13));

22 “(ii) a supplier of prosthetics,
23 orthotics, or supplies (including items de-
24 scribed in paragraphs (8) and (9) of sec-
25 tion 1861(s));

1 “(iii) a community mental health cen-
2 ter; or

3 “(iv) any other provider group, as de-
4 termined by the Secretary (including sup-
5 pliers, both participating suppliers and
6 non-participating suppliers, as such terms
7 are defined for purposes of section 1842).

8 “(B) EXCEPTION.—In this section, the
9 term ‘applicable provider’ does not include—

10 “(i) a physician that provides durable
11 medical equipment (as described in sub-
12 paragraph (A)(i)) or prosthetics, orthotics,
13 or supplies (as described in subparagraph
14 (A)(ii)) to an individual as incident to an
15 office visit by such individual; or

16 “(ii) a hospital that provides durable
17 medical equipment (as described in sub-
18 paragraph (A)(i)) or prosthetics, orthotics,
19 or supplies (as described in subparagraph
20 (A)(ii)) to an individual as incident to an
21 emergency room visit by such individual.

22 “(b) STANDARDS AND REQUIREMENTS.—In con-
23 ducting the site inspection pursuant to subsection (a), the
24 Secretary shall ensure that the site being inspected is in
25 full compliance with all the conditions and standards of

1 “(1) conduct the background check before au-
2 thorizing billing privileges under this title to the in-
3 dividual or entity, respectively;

4 “(2) include a search of criminal records in the
5 background check;

6 “(3) provide for procedures that ensure the
7 background check does not unreasonably delay the
8 authorization of billing privileges under this title to
9 an eligible individual or entity, respectively; and

10 “(4) establish criteria for targeted reviews when
11 the individual or entity renews participation under
12 this title, with respect to the background check of
13 the individual or entity, respectively, to detect
14 changes in ownership, bankruptcies, or felonies by
15 the individual or entity.

16 “(b) USE OF STATE LICENSING PROCEDURE.—The
17 Secretary may use the results of a State licensing proce-
18 dure as a background check under subsection (a) if the
19 State licensing procedure meets the requirements of such
20 subsection.

21 “(c) ATTORNEY GENERAL REQUIRED TO PROVIDE
22 INFORMATION.—

23 “(1) IN GENERAL.—Upon request of the Sec-
24 retary, the Attorney General shall provide the crimi-

1 nal background check information referred to in sub-
2 section (a)(2) to the Secretary.

3 “(2) RESTRICTION ON USE OF DISCLOSED IN-
4 FORMATION.—The Secretary may only use the infor-
5 mation disclosed under subsection (a) for the pur-
6 pose of carrying out the Secretary’s responsibilities
7 under this title.

8 “(d) REFUSAL TO AUTHORIZE BILLING PRIVI-
9 LEGES.—

10 “(1) AUTHORITY.—In addition to any other
11 remedy available to the Secretary, the Secretary may
12 refuse to authorize billing privileges under this title
13 to an individual or entity if the Secretary deter-
14 mines, after a background check conducted under
15 this section, that such individual or entity, respec-
16 tively, has a history of acts that indicate authoriza-
17 tion of billing privileges under this title to such indi-
18 vidual or entity, respectively, would be detrimental
19 to the best interests of the program or program
20 beneficiaries. Such acts may include—

21 “(A) any bankruptcy;

22 “(B) any act resulting in a civil judgment
23 against such individual or entity; or

24 “(C) any felony conviction under Federal
25 or State law.

1 “(2) REPORTING OF REFUSAL TO AUTHORIZE
2 BILLING PRIVILEGES TO THE HEALTHCARE INTEG-
3 RITY AND PROTECTION DATA BANK (HIPDB).—

4 “(A) IN GENERAL.—Subject to subpara-
5 graph (B), a determination under paragraph
6 (1) to refuse to authorize billing privileges
7 under this title to an individual or entity as a
8 result of a background check conducted under
9 this section shall be reported to the healthcare
10 integrity and protection data bank established
11 under section 1128E in accordance with the
12 procedures for reporting final adverse actions
13 taken against a health care provider, supplier,
14 or practitioner under that section.

15 “(B) EXCEPTION.—Any determination de-
16 scribed in subparagraph (A) that the Secretary
17 specifies is not appropriate for inclusion in the
18 healthcare integrity and protection data bank
19 established under section 1128E shall not be
20 reported to such data bank.”.

21 (c) DENIAL AND SUSPENSION OF BILLING PRIVI-
22 LEGES.—Section 1899A of the Social Security Act, as
23 added by subsection (b), is amended by adding at the end
24 the following new subsection:

1 “(e) AUTHORITY TO SUSPEND BILLING PRIVILEGES
2 OR REFUSE TO AUTHORIZE ADDITIONAL BILLING PRIVI-
3 LEGES.—

4 “(1) IN GENERAL.—The Secretary may suspend
5 any billing privilege under this title authorized for
6 an individual or entity or refuse to authorize any ad-
7 ditional billing privilege under this title to such indi-
8 vidual or entity if—

9 “(A) such individual or entity, respectively,
10 has an outstanding overpayment due to the
11 Secretary under this title;

12 “(B) payments under this title to such in-
13 dividual or entity, respectively, have been sus-
14 pended; or

15 “(C) 100 percent of the payment claims
16 under this title for such individual or entity, re-
17 spectively, are reviewed on a pre-payment basis.

18 “(2) APPLICATION TO RESTRUCTURED ENTI-
19 TIES.—In the case that an individual or entity is
20 subject to a suspension or refusal of billing privileges
21 under this section, if the Secretary determines that
22 the ownership or management of a new entity is
23 under the control or management of such an indi-
24 vidual or entity subject to such a suspension or re-
25 fusals, the new entity shall be subject to any such ap-

1 plicable suspension or refusal in the same manner
2 and to the same extent as the initial individual or
3 entity involved had been subject to such applicable
4 suspension or refusal.

5 “(3) DURATION OF SUSPENSION.—A suspen-
6 sion of billing privileges under this subsection, with
7 respect to an individual or entity, shall be in effect
8 beginning on the date of the Secretary’s determina-
9 tion that the offense was committed and ending not
10 earlier than such date on which all applicable over-
11 payments and other applicable outstanding debts
12 have been paid and all applicable payment suspen-
13 sions have been lifted.”.

14 (d) REGULATIONS; EFFECTIVE DATE.—

15 (1) REGULATIONS.—Not later than one year
16 after the date of the enactment of this Act, the Sec-
17 retary of Health and Human Services shall promul-
18 gate such regulations as are necessary to implement
19 the amendments made by subsections (a), (b), and
20 (c).

21 (2) EFFECTIVE DATES.—

22 (A) SITE INSPECTIONS AND BACKGROUND
23 CHECKS.—The amendments made by sub-
24 sections (a) and (b) shall apply to applications
25 to enroll under title XVIII of the Social Secu-

1 rity Act received by the Secretary of Health and
2 Human Services on or after the first day of the
3 first year beginning after the date of the enact-
4 ment of this Act.

5 (B) DENIALS AND SUSPENSIONS OF BILL-
6 ING PRIVILEGES.—The amendment made by
7 subsection (c) shall apply to overpayments or
8 debts in existence on or after the date of the
9 enactment of this Act, regardless of whether the
10 final determination, with respect to such over-
11 payment or debt, was made before, on, or after
12 such date.

13 (e) USE OF MEDICARE INTEGRITY PROGRAM
14 FUNDS.—The Secretary of Health and Human Services
15 may use funds appropriated or transferred for purposes
16 of carrying out the medicare integrity program established
17 under section 1893 of the Social Security Act (42 U.S.C.
18 1395ddd) to carry out the provisions of sections 1899 and
19 1899A of that Act (as added by subsections (a) and (b)).

20 **SEC. 1649. REGISTRATION AND BACKGROUND CHECKS OF**
21 **BILLING AGENCIES AND INDIVIDUALS.**

22 (a) IN GENERAL.—Title XVIII of the Social Security
23 Act (42 U.S.C. 1395 et seq.) (as amended by section 2(b))
24 is amended by adding at the end the following new section:

1 “REGISTRATION AND BACKGROUND CHECKS OF BILLING
2 AGENCIES AND INDIVIDUALS; IDENTIFICATION NUM-
3 BERS REQUIRED FOR PROVIDERS AND SUPPLIERS

4 “SEC. 1899B. (a) REGISTRATION.—

5 “(1) IN GENERAL.—The Secretary shall estab-
6 lish procedures, including modifying the Provider
7 Enrollment and Chain Ownership System (PECOS)
8 administered by the Centers for Medicare & Med-
9 icaid Services, to provide for the registration of all
10 applicable persons in accordance with this section.

11 “(2) REQUIRED APPLICATION.—Each applicable
12 person shall submit a registration application to the
13 Secretary at such time, in such manner, and accom-
14 panied by such information as the Secretary may re-
15 quire.

16 “(3) IDENTIFICATION NUMBER.—If the Sec-
17 retary approves an application submitted under sub-
18 section (b), the Secretary shall assign a unique iden-
19 tification number to the applicable person.

20 “(4) REQUIREMENT.—Every claim for reim-
21 bursement under this title that is compiled or sub-
22 mitted by an applicable person shall contain the
23 identification number that is assigned to the applica-
24 ble person pursuant to subsection (c).

1 “(5) TIMELY REVIEW.—The Secretary shall
2 provide for procedures that ensure the timely consid-
3 eration and determination regarding approval of ap-
4 plications under this subsection.

5 “(6) DEFINITION OF APPLICABLE PERSON.—In
6 this section, the term ‘applicable person’ means any
7 individual or entity that compiles or submits claims
8 for reimbursement under this title to the Secretary
9 on behalf of any individual or entity.

10 “(b) BACKGROUND CHECKS.—

11 “(1) IN GENERAL.—Except as provided in paragraph
12 (2), the Secretary shall conduct a background check on
13 any applicable person that registers under subsection (a).
14 In performing the background check, the Secretary
15 shall—

16 “(A) conduct the background check before
17 issuing a unique identification number to the appli-
18 cable person;

19 “(B) include a search of criminal records in the
20 background check;

21 “(C) provide for procedures that ensure the
22 background check does not unreasonably delay the
23 issuance of the unique identification number to an
24 eligible applicable person; and

1 “(D) establish criteria for periodic targeted re-
2 views with respect to the background check of the
3 applicable person.

4 “(2) USE OF STATE LICENSING PROCEDURE.—The
5 Secretary may use the results of a State licensing proce-
6 dure as a background check under paragraph (1) if the
7 State licensing procedure meets the requirements of such
8 paragraph.

9 “(3) ATTORNEY GENERAL REQUIRED TO PROVIDE
10 INFORMATION.—

11 “(A) IN GENERAL.—Upon request of the Sec-
12 retary, the Attorney General shall provide the crimi-
13 nal background check information referred to in
14 paragraph (1)(B) to the Secretary.

15 “(B) RESTRICTION ON USE OF DISCLOSED IN-
16 FORMATION.—The Secretary may only use the infor-
17 mation disclosed under paragraph (1) for the pur-
18 pose of carrying out the Secretary’s responsibilities
19 under this title.

20 “(4) REFUSAL TO ISSUE UNIQUE IDENTIFICATION
21 NUMBER.—In addition to any other remedy available to
22 the Secretary, the Secretary may refuse to issue a unique
23 identification number described in subsection (a)(3) to an
24 applicable person if the Secretary determines, after a
25 background check conducted under this subsection, that

1 such person has a history of acts that indicate issuance
2 of such number under this title to such person would be
3 detrimental to the best interests of the program or pro-
4 gram beneficiaries. Such acts may include—

5 “(A) any bankruptcy;

6 “(B) any act resulting in a civil judgment
7 against such person; or

8 “(C) any felony conviction under Federal or
9 State law.

10 “(c) IDENTIFICATION NUMBERS FOR PROVIDERS
11 AND SUPPLIERS.—The Secretary shall establish proce-
12 dures to ensure that each provider of services and each
13 supplier that submits claims for reimbursement under this
14 title to the Secretary is assigned a unique identification
15 number.”.

16 (b) PERMISSIVE EXCLUSION.—Section 1128(b) of
17 the Social Security Act (42 U.S.C. 1320a–7(b)) is amend-
18 ed by adding at the end the following:

19 “(16) FRAUD BY APPLICABLE PERSON.—An ap-
20 plicable person (as defined in section 1899B(a)(6))
21 that the Secretary determines knowingly submitted
22 or caused to be submitted a claim for reimbursement
23 under title XVIII that the applicable person knows
24 or should know is false or fraudulent.”.

25 (c) REGULATIONS; EFFECTIVE DATE.—

1 (1) REGULATIONS.—Not later than one year
2 after the date of the enactment of this Act, the Sec-
3 retary of Health and Human Services shall promul-
4 gate such regulations as are necessary to implement
5 the amendments made by subsections (a) and (b).

6 (2) EFFECTIVE DATE.—The amendments made
7 by subsections (a) and (b) shall apply to applicable
8 persons and other entities on and after the first day
9 of the first year beginning after the date of the en-
10 actment of this Act.

11 **SEC. 1649A. COMMUNITY MENTAL HEALTH CENTERS.**

12 (a) IN GENERAL.—Section 1861(ff)(3)(B) of the So-
13 cial Security Act (42 U.S.C. 1395x(ff)(3)(B)) is amended
14 by striking “entity that—” and all that follows and insert-
15 ing the following: “entity that—

16 “(i) provides the community mental health serv-
17 ices specified in paragraph (1) of section 1913(c) of
18 the Public Health Service Act;

19 “(ii) meets applicable certification or licensing
20 requirements for community mental health centers
21 in the State in which it is located;

22 “(iii) provides a significant share of its services
23 to individuals who are not eligible for benefits under
24 this title; and

1 activities within the lawful jurisdiction of such Inspector

2 General—

3 (1) obtain and execute any warrant or other
4 process issued under the authority of the United
5 States;

6 (2) make an arrest without a warrant for—

7 (A) any offense against the United States
8 committed in the presence of such investigator;
9 or

10 (B) any felony offense against the United
11 States, if such investigator has reasonable cause
12 to believe that the person to be arrested has
13 committed or is committing that felony offense;
14 and

15 (3) exercise any other authority necessary to
16 carry out the authority described in paragraphs (1)
17 and (2).

18 (b) FUNDS.—The Office of Inspector General of the
19 Department of Health and Human Services may receive
20 and expend funds that represent the equitable share from
21 the forfeiture of property in investigations in which the
22 Office of Inspector General participated, and that are
23 transferred to the Office of Inspector General by the De-
24 partment of Justice, the Department of the Treasury, or
25 the United States Postal Service. Such equitable sharing

1 funds shall be deposited in a separate account and shall
2 remain available until expended.

3 **SEC. 1649C. UNIVERSAL PRODUCT NUMBERS ON CLAIMS**
4 **FORMS FOR REIMBURSEMENT UNDER THE**
5 **MEDICARE PROGRAM.**

6 (a) UPNS ON CLAIMS FORMS FOR REIMBURSEMENT
7 UNDER THE MEDICARE PROGRAM.—

8 (1) ACCOMMODATION OF UPNS ON MEDICARE
9 CLAIMS FORMS.—Not later than February 1, 2011,
10 all claims forms developed or used by the Secretary
11 of Health and Human Services for reimbursement
12 under the medicare program under title XVIII of the
13 Social Security Act (42 U.S.C. 1395 et seq.) shall
14 accommodate the use of universal product numbers
15 for a UPN covered item.

16 (2) REQUIREMENT FOR PAYMENT OF CLAIMS.—
17 Title XVIII of the Social Security Act (42 U.S.C.
18 1395 et seq.), as amended by sections 2 and 3, is
19 amended by adding at the end the following new sec-
20 tion:

21 “USE OF UNIVERSAL PRODUCT NUMBERS
22 “SEC. 1899C. (a) IN GENERAL.—No payment shall
23 be made under this title for any claim for reimbursement
24 for any UPN covered item unless the claim contains the
25 universal product number of the UPN covered item.

26 “(b) DEFINITIONS.—In this section:

1 “(1) UPN COVERED ITEM.—

2 “(A) IN GENERAL.—Except as provided in
3 subparagraph (B), the term ‘UPN covered
4 item’ means—

5 “(i) a covered item as that term is de-
6 fined in section 1834(a)(13);

7 “(ii) an item described in paragraph
8 (8) or (9) of section 1861(s);

9 “(iii) an item described in paragraph
10 (5) of section 1861(s); and

11 “(iv) any other item for which pay-
12 ment is made under this title that the Sec-
13 retary determines to be appropriate.

14 “(B) EXCLUSION.—The term ‘UPN cov-
15 ered item’ does not include a customized item
16 for which payment is made under this title.

17 “(2) UNIVERSAL PRODUCT NUMBER.—The
18 term ‘universal product number’ means a number
19 that is—

20 “(A) affixed by the manufacturer to each
21 individual UPN covered item that uniquely
22 identifies the item at each packaging level; and

23 “(B) based on commercially acceptable
24 identification standards such as, but not limited
25 to, standards established by the Uniform Code

1 Council-International Article Numbering Sys-
2 tem or the Health Industry Business Commu-
3 nication Council.”.

4 (3) DEVELOPMENT AND IMPLEMENTATION OF
5 PROCEDURES.—

6 (A) INFORMATION INCLUDED IN UPN.—

7 The Secretary of Health and Human Services,
8 in consultation with manufacturers and entities
9 with appropriate expertise, shall determine the
10 relevant descriptive information appropriate for
11 inclusion in a universal product number for a
12 UPN covered item.

13 (B) REVIEW OF PROCEDURE.—From the
14 information obtained by the use of universal
15 product numbers on claims for reimbursement
16 under the medicare program, the Secretary of
17 Health and Human Services, in consultation
18 with interested parties, shall periodically review
19 the UPN covered items billed under the Health
20 Care Financing Administration Common Proce-
21 dure Coding System and adjust such coding
22 system to ensure that functionally equivalent
23 UPN covered items are billed and reimbursed
24 under the same codes.

1 (4) EFFECTIVE DATE.—The amendment made
2 by paragraph (2) shall apply to claims for reim-
3 bursement submitted on and after February 1,
4 2011.

5 (b) STUDY AND REPORTS TO CONGRESS.—

6 (1) STUDY.—The Secretary of Health and
7 Human Services shall conduct a study on the results
8 of the implementation of the provisions in para-
9 graphs (1) and (3) of subsection (a) and the amend-
10 ment to the Social Security Act in paragraph (2) of
11 such subsection.

12 (2) REPORTS.—

13 (A) PROGRESS REPORT.—Not later than
14 six months after the date of the enactment of
15 this Act, the Secretary of Health and Human
16 Services shall submit to Congress a report that
17 contains a detailed description of the progress
18 of the matters studied pursuant to paragraph
19 (1).

20 (B) IMPLEMENTATION.—Not later than 18
21 months after the date of the enactment of this
22 Act, and annually thereafter for three years, the
23 Secretary of Health and Human Services shall
24 submit to Congress a report that contains a de-
25 tailed description of the results of the study

1 conducted pursuant to paragraph (1), together
2 with the Secretary's recommendations regard-
3 ing the use of universal product numbers and
4 the use of data obtained from the use of such
5 numbers.

6 (c) DEFINITIONS.—In this section:

7 (1) UPN COVERED ITEM.—The term “UPN
8 covered item” has the meaning given such term in
9 section 1899C(b)(1) of the Social Security Act (as
10 added by subsection (a)(2)).

11 (2) UNIVERSAL PRODUCT NUMBER.—The term
12 “universal product number” has the meaning given
13 such term in section 1899C(b)(2) of the Social Secu-
14 rity Act (as added by subsection (a)(2)).

15 (d) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated such sums as may be
17 necessary for the purpose of carrying out the provisions
18 in paragraphs (1) and (3) of subsection (a), subsection
19 (b), and section 1899C of the Social Security Act (as
20 added by subsection (a)(2)).

 Insert after subsection (c) of section 1652 the fol-
 lowing (and redesignate the subsequent subsections ap-
 propriately):

21 (e) EXPANDED ACCESS TO INFORMATION PRE-
22 VIOUSLY IN THE HEALTHCARE INTEGRITY AND PROTEC-

1 TION DATA BANK (HIPDB) CONSOLIDATED IN THE
2 NPDB.—

3 (1) IN GENERAL.—Section 1128E(d)(1) of the
4 Social Security Act (42 U.S.C. 1320a-7e(d)(1)) is
5 amended to read as follows:

6 “(1) AVAILABILITY.—The information in the
7 data bank maintained under this section shall be
8 available to—

9 “(A) Federal and State government agen-
10 cies and health plans, and any health care pro-
11 vider, supplier, or practitioner entering an em-
12 ployment or contractual relationship with an in-
13 dividual or entity who could potentially be the
14 subject of a final adverse action, where the con-
15 tract involves the furnishing of items or services
16 reimbursed by one or more Federal health care
17 programs (regardless of whether the individual
18 or entity is paid by the programs directly, or
19 whether the items or services are reimbursed di-
20 rectly or indirectly through the claims of a di-
21 rect provider); and

22 “(B) utilization and quality control peer
23 review organizations and accreditation entities
24 as defined by the Secretary, including but not

1 limited to organizations described in part B of
2 this title and in section 1154(a)(4)(C).”.

3 (2) NO FEES FOR USE OF HIPDB BY ENTITIES
4 CONTRACTING WITH MEDICARE.—Section
5 1128E(d)(2) of the Social Security Act (42 U.S.C.
6 1320a-7e(d)(2)) is amended by striking “Federal
7 agencies” and inserting “Federal agencies or other
8 entities, such as fiscal intermediaries and carriers,
9 acting under contract on behalf of such agencies”.

10 (3) CRIMINAL PENALTY FOR MISUSE OF INFOR-
11 MATION.—Section 1128B(b) of the Social Security
12 Act (42 U.S.C. 1320a-7b(b)) is amended by adding
13 at the end the following:

14 “(4) Whoever knowingly uses information maintained
15 in the healthcare integrity and protection data bank main-
16 tained in accordance with section 1128E for a purpose
17 other than a purpose authorized under that section shall
18 be imprisoned for not more than three years or fined
19 under title 18, United States Code, or both.”.

20 (4) EFFECTIVE DATE.—The amendments made
21 by this section shall take effect on the date of the
22 enactment of this Act.

