

**\*Public Law 99-509**  
**99th Congress**

**An Act**

Oct. 21, 1986

[H.R. 5300]

To provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987.

Omnibus Budget  
 Reconciliation  
 Act of 1986.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Omnibus Budget Reconciliation Act of 1986”.

(b) **TABLE OF CONTENTS.**—

Title I. Agriculture programs.

Title II. Banking and housing programs.

Title III. Energy and environmental programs.

Title IV. Transportation and related programs.

Title V. Maritime programs.

Title VI. Civil service, Postal Service, and governmental affairs generally.

Title VII. Fiscal procedures.

Title VIII. Revenues, trade, and related programs.

Title IX. Income security, medicare, medicaid, and maternal and child health programs.

**TITLE I—AGRICULTURAL PROGRAMS**

**Subtitle A—Sale of Notes**

**SEC. 1001. SALE OF RURAL DEVELOPMENT NOTES.**

7 USC 1929a  
 note.

(a) **SALES REQUIRED.**—The Secretary of Agriculture, under such terms as the Secretary may prescribe, shall sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act in such amounts as to realize net proceeds to the Government of not less than—

(1) \$1,000,000,000 from such sales during fiscal year 1987,

(2) \$552,000,000 from such sales during fiscal year 1988, and

(3) \$547,000,000 from such sales during fiscal year 1989.

(b) **NONRECOURSE SALES.**—The second sentence of section 309A(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a(e)) is amended by—

(1) inserting “and other obligations” after “Notes”; and

(2) striking out the period at the end thereof and inserting in lieu thereof the following: “, including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes or other obligations sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed had the borrower remained indebted to the Secretary.”

7 USC 1929a  
 note.

(c) **CONTRACT PROVISIONS.**—Consistent with section 309A(e) of the Consolidated Farm and Rural Development Act, as amended by subsection (b), any sale of notes or other obligations, as described in

\*Note: This is a subsequently typeset print of the hand enrollment which was signed by the President on October 21, 1986.

subsection (a), shall not alter the terms specified in the note or other obligation, except that, on sale, a note or other obligation shall not be subject to the provisions of section 333(c) of the Consolidated Farm and Rural Development Act.

7 USC 1983.  
7 USC 1929a  
note.

(d) **ELIGIBILITY TO PURCHASE NOTES.**—Notwithstanding any other provision of law, each institution of the Farm Credit System shall be eligible to purchase notes and other obligations held in the Rural Development Insurance Fund and to service (including the extension of additional credit and all other actions necessary to preserve, conserve, or protect the institution's interest in the purchased notes or other obligations), collect, and dispose of such notes and other obligations, subject only to such terms and conditions as may be agreed to by the Secretary of Agriculture and the purchasing institution and as may be approved by the Farm Credit Administration.

(e) **LOAN SERVICING.**—Prior to selling any note or other obligation, as described in subsection (a), the Secretary of Agriculture shall require persons offering to purchase the note or other obligation to demonstrate—

7 USC 1929 note.

(1) an ability or resources to provide such servicing, with respect to the loans represented by the note or other obligation, that the Secretary deems necessary to ensure the continued performance on the loan; and

(2) the ability to generate capital to provide the borrowers of the loans such additional credit as may be necessary in proper servicing of the loans.

**SEC. 1002. LIMITATION ON SALES FROM THE AGRICULTURAL CREDIT INSURANCE FUND.**

7 USC 1729 note.

During fiscal years 1987 through 1989, no note shall be sold out of the Agricultural Credit Insurance Fund, except in connection with transactions with the Secretary of the Treasury, without prior approval by Congress.

## Subtitle B—Prepayment of Loans

**SEC. 1011. PREPAYMENT OF REA GUARANTEED LOANS.**

7 USC 936a.  
Banks and  
banking.

(a) **AMENDMENT TO RURAL ELECTRIFICATION ACT OF 1936.**—The Rural Electrification Act of 1936 is amended by inserting after section 306 (7 U.S.C. 936) the following new sections:

**“SEC. 306A. PREPAYMENT OF LOANS.**

“(a) Except as provided in subsection (c), a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of this Act may prepay such loan (or any loan advance thereunder) by paying the outstanding principal balance due on the loan (or advance), if—

“(1) the loan is outstanding on July 2, 1986;

“(2) private capital, with the existing loan guarantee, is used to replace the loan; and

“(3) the borrower certifies that any savings from such prepayment will be passed on to its customers or used to improve the financial strength of the borrower in cases of financial hardship.

“(b) No sums in addition to the payment of the outstanding principal balance due on the loan may be charged as the result of

- such prepayment against the borrower, the fund, or the Rural Electrification Administration.
- Banks and banking.** “(c)(1) A borrower will not qualify for prepayment under this section if, in the opinion of the Secretary of the Treasury, to prepay in such borrower’s case would adversely affect the operation of the Federal Financing Bank.
- Effective date.** “(2) Paragraph (1) shall be effective in fiscal year 1987 only for any loan the prepayment of the principal amount of which will cause the cumulative amount of net proceeds from all such prepayments made during such year to exceed \$2,017,500,000.
- Ante, p. 710.** “(d)(1) The Administrator shall permit, subject to subsection (a), prepayments of principal on loans in fiscal year 1987 under this section or Public Law 99-349 in such amounts as to realize net proceeds from all such prepayments in fiscal year 1987 in an amount not less than \$2,017,500,000.
- “(2) The Administrator shall establish—
- “(A) eligibility criteria to ensure that any loan prepayment activity required to be carried out under this subsection will be directed to those cooperative borrowers in greatest need of the benefits associated with prepayment, as determined by the Administrator; and
- “(B) such other eligibility criteria as the Administrator determines are necessary to carry out this subsection.
- Securities.** “(e) Any guarantee of a loan prepaid under this section shall be fully assignable under the provisions of section 306 of this Act and transferable. However, the Administrator may require that any such guarantee, if transferred or assigned, be transferred or assigned to a loan or security that, if sold, will be grouped with nonguaranteed loans or securities and sold in a manner to ensure that such sale will not unreasonably compete with the marketing of obligations of the United States.
- 7 USC 936b.** “SEC. 306B. SALE OR PREPAYMENT OF DIRECT OR INSURED LOANS.
- “A direct or insured loan made under this Act shall not be sold or prepaid at a value less than the face value of any outstanding principal balance on such loan, except when sold to or prepaid by the borrower at the lesser of the outstanding principal balance due on the loan or the loan’s present value discounted from the face value at maturity at the rate set by the Administrator. The exception contained in the preceding sentence shall be effective for the period ending September 30, 1987.”
- 7 USC 936 note.** (b) CONFORMING AMENDMENT.—Chapter I of the Act entitled “An Act making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes” (Public Law 99-349), approved July 2, 1986, is amended by striking out the undesignated paragraph relating to the prepayment of loans by Rural Electrification and Telephone Systems.
- 7 USC 936a note.** (c) REGULATIONS.—The Secretary of Agriculture shall issue regulations to implement this section within 60 days after the date of enactment of this Act. Such regulations—
- (1) shall facilitate prepayment of loans under section 306A of the Rural Electrification Act of 1936, as added by subsection (a); and
- (2) may not require any rural utility that is a borrower of loans subject to section 306A to make unreasonable reductions in rates to its customers as a condition of such prepayment.
- Ante, p. 1875.**
- Utilities.**

## Subtitle C—Advance Deficiency Payments

### SEC. 1021. ADVANCE DEFICIENCY PAYMENTS.

Notwithstanding any other provision of law, the Secretary of Agriculture, in accordance with the criteria in section 107C of the Agricultural Act of 1949, shall make advance deficiency payments available for the 1987 crops of wheat, feed grains, upland cotton, and rice. The percentage of the projected payment rate used in computing such payments shall not be less than (1) 40 percent in the case of wheat and feed grains, and (2) 30 percent in the case of rice and upland cotton.

7 USC 1445b-2  
note.

7 USC 1445b-2.

## Subtitle D—Farm Credit Institutions

### SEC. 1031. SHORT TITLE.

This subtitle may be cited as the “Farm Credit Act Amendments of 1986”.

Farm Credit Act  
Amendments of  
1986.  
12 USC 2001  
note.

### SEC. 1032. POLICY.

Section 1.1 of the Farm Credit Act of 1971 (12 U.S.C. 2001) is amended by adding at the end thereof the following new subsection:

“(c) It is declared to be the policy of Congress that the credit needs of farmers, ranchers, and their cooperatives are best served if the institutions of the Farm Credit System provide equitable and competitive interest rates to eligible borrowers, taking into consideration the creditworthiness and access to alternative sources of credit for borrowers, the cost of funds, including any costs of defeasance under section 4.8(b), the operating costs of the institution, including the costs of any loan loss amortization under section 5.19(b), the cost of servicing loans, the need to retain earnings to protect borrowers’ stock, and the volume of net new borrowing. Further, it is declared to be the policy of Congress that Farm Credit System institutions take action in accordance with the Farm Credit Act Amendments of 1986 in such manner that borrowers from the institutions derive the greatest benefit practicable from that Act: *Provided*, That in no case is any borrower to be charged a rate of interest that is below competitive market rates for similar loans made by private lenders to borrowers of equivalent creditworthiness and access to alternative credit.”

Loans.

12 USC 2159.  
*Post.*, p. 1878.

### SEC. 1033. TERMINATION OF FARM CREDIT ADMINISTRATION APPROVAL OF INTEREST RATES CHARGED BY SYSTEM INSTITUTIONS.

(a) **FEDERAL LAND BANKS.**—The first sentence of section 1.7 of the Farm Credit Act of 1971 (12 U.S.C. 2015) is amended by striking out “, with the approval of the Farm Credit Administration as provided in section 4.17 of this Act”.

(b) **FEDERAL INTERMEDIATE CREDIT BANKS.**—The second sentence of section 2.4 of the Farm Credit Act of 1971 (12 U.S.C. 2075) is amended by striking out “with the approval of the Farm Credit Administration as provided in section 4.17 of this Act”.

(c) **BANKS FOR COOPERATIVES.**—The first sentence of section 3.10(a) of the Farm Credit Act of 1971 (12 U.S.C. 2131(a)) is amended by striking out “, with the approval of the Farm Credit Administration as provided in section 4.17 of this Act”.

**SEC. 1034. CERTAIN TRANSACTIONS WITH RESPECT TO SYSTEM OBLIGATIONS.**

Section 4.8 of the Farm Credit Act of 1971 (12 U.S.C. 2159) is amended by—

- (1) inserting the designation “(a)” after the heading; and  
 (2) adding at the end thereof the following:

Contracts.

12 USC 2211.

“(b) Through December 31, 1988, each bank of the System, in addition to purchasing obligations as authorized by this Act, may, with the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, (1) reduce the cost of its borrowings by doing one or more of the following: (A) contracting with a third party, or an entity that is established as a limited purpose System institution under section 4.25 and that is not to be included in the combined financial statements of other System institutions, with respect to the payment of interest on the bank’s obligations and the obligations of other banks incurred before January 1, 1985, in consideration of the payment of market interest rates on such obligations, plus a premium, or (B) for the period July 1, 1986, through December 31, 1988, capitalizing interest costs on obligations incurred before January 1, 1985, in excess of the estimated interest costs on an equivalent amount of Farm Credit System obligations at prevailing market rates on such obligations of similar maturities as of the date of the enactment of this subsection, or (C) taking other similar action; and (2) amortize, over a period of not to exceed 20 years, the capitalization of the premium, capitalization of interest expense, or like costs of any action taken under clause (1).”.

**SEC. 1035. DETERMINATION OF INTEREST RATES.**

Loans.  
 State and local  
 governments.

Section 4.17 of the Farm Credit Act of 1971 (12 U.S.C. 2205) is amended by striking out the first sentence and inserting in lieu thereof the following: “Interest rates on loans from institutions of the Farm Credit System shall not be subject to any interest rate limitation imposed by any State constitution or statute or other laws. Such limitation is preempted for purposes of this Act.”.

**SEC. 1036. TERMINATION OF FARM CREDIT ADMINISTRATION APPROVAL OF INTEREST RATES CHARGED ON DIRECT AND DISCOUNTED LOANS.**

Section 5.17(a)(5)(A) of the Farm Credit Act of 1971 (12 U.S.C. 2252(a)(5)(A)) is amended by striking out “and on loans made or discounted by such institutions”.

**SEC. 1037. ACCOUNTING.**

Reports.  
 Banks and  
 banking.  
 Loans.  
*Supra.*

Section 5.19(b) of the Farm Credit Act of 1971 (12 U.S.C. 2254(b)) is amended by striking out the second sentence and inserting in lieu thereof the following: “Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles, except with respect to any actions taken by any banks of the System under section 4.8(b), and contain such additional information as the Farm Credit Administration by regulation may require. Notwithstanding the provisions of the preceding sentence and any other provision of this Act, for the period July 1, 1986, through December 31, 1988, the institutions of the Farm Credit System may, on the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, capitalize annually their provision for losses that is in excess of one-half of 1

percent of loans outstanding and amortize such capitalized amounts over a period not to exceed 20 years.”.

## TITLE II—BANKING AND HOUSING PROGRAMS

### SEC. 2001. SALE OF RURAL HOUSING LOANS.

42 USC 1487  
note.

(a) **REQUIRED SALES TO PUBLIC.**—The Secretary of Agriculture shall take such actions as may be necessary to ensure that loans made under title V of the Housing Act of 1949 are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than \$1,715,000,000 in fiscal year 1987 from the proceeds of such sales.

42 USC 1471.

#### (b) PROCEDURES AND TERMS OF SALES.—

(1) **ESTABLISHMENT OF GUIDELINES.**—The Secretary of Agriculture shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including the kind of protections that should be provided to borrowers and terms that will ensure that the sale of the loans will be made at the lowest practicable cost to the Federal Government.

(2) **ASSISTANCE BY FEDERAL FINANCING BANK.**—In selling loans to the public under subsection (a), the Secretary of Agriculture shall use the Federal Financing Bank as an agent to sell the loans, unless the Secretary determines that the sale of loans directly by the Secretary will result in a higher rate of return to the Federal Government. If the Secretary determines to sell loans directly under this paragraph, the Secretary shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

#### (c) REPORTS TO CONGRESS.—

(1) **NOTIFICATION OF INITIAL LOAN SALE.**—Not less than 20 days before the initial sale of loans under subsection (a), the Secretary of Agriculture shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

(2) **REPORTS BY SECRETARY.**—The Secretary of Agriculture shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Secretary under this section. Each report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of the loans. The Secretary shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subse-

quent reports each 60 days thereafter through the end of fiscal year 1987.

Records.

(3) **REPORTS BY COMPTROLLER GENERAL.**—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Secretary of Agriculture described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Secretary as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

42 USC 1487.

(d) **RELATION TO OTHER LAW.**—The sale of loans under this section shall not be subject to paragraph (2) or (3) of section 517(d) of the Housing Act of 1949.

**SEC. 2002. SALE OF EXPORT-IMPORT BANK LOANS.**

The Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.) is amended by adding at the end the following new section:

12 USC 635i-4.

**“SEC. 16. SALE OF BANK LOANS.**

**“(a) REQUIRED SALES TO PUBLIC.**—The Board of Directors shall take such actions as may be necessary to ensure that loans made by the Bank under this Act are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than \$1,500,000,000 in fiscal year 1987 from the proceeds of such sales.

**“(b) PROCEDURES AND TERMS OF SALES.**—

**“(1) ESTABLISHMENT OF GUIDELINES.**—The Board of Directors shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including terms that will ensure that the sale of the loans will bring the highest possible return to the Federal Government.

**“(2) ASSISTANCE BY FEDERAL FINANCING BANK.**—In selling loans to the public under subsection (a), the Board of Directors shall use the Federal Financing Bank as an agent to sell the loans, unless the Board of Directors determines that the sale of loans directly by the Export-Import Bank will result in a higher rate of return to the Federal Government. If the Board of Directors determines to sell loans directly under this paragraph, the Board shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

**“(c) REPORTS TO CONGRESS.**—

**“(1) NOTIFICATION OF INITIAL LOAN SALE.**—Not less than 20 days before the initial sale of loans under subsection (a), the Board of Directors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale

and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

“(2) **REPORTS BY BANK.**—The Board of Directors shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Board of Directors under this section. Each such report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of such loans. The Board of Directors shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1987.

“(3) **REPORTS BY COMPTROLLER GENERAL.**—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Board of Directors described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Board of Directors as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

“(d) **SECURITIES LAWS NOT APPLICABLE TO SALES.**—The sale of any loan under this section shall be deemed to be a sale of exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) and section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations as may be necessary in the public interest or for the protection of investors.”

Records.

Reports.

## TITLE III—ENERGY AND ENVIRONMENTAL PROGRAMS

### Subtitle A—Distribution of Petroleum Overcharge Funds

Petroleum Overcharge Distribution and Restitution Act of 1986.  
15 USC 4501 note.

#### SEC. 3001. SHORT TITLE.

This subtitle may be cited as the “Petroleum Overcharge Distribution and Restitution Act of 1986”.

#### SEC. 3002. RESTITUTIONARY AMOUNTS COVERED.

15 USC 4501.

(a) **IN GENERAL.**—This subtitle (other than section 3005)—

(1) specifies the procedure for the disbursement of funds collected, including interest thereon, by the Secretary or the courts pursuant to the Emergency Petroleum Allocation Act of

15 USC 751 note;  
12 USC 1904  
note.

1973 or the Economic Stabilization Act of 1970 (and the regulations issued thereunder) as restitution for actual or alleged violations of such Acts or regulations; and

(2) subject to subsection (c), applies to—

(A) any amount of such funds held in escrow by the Secretary through accounts administered by the Secretary of the Treasury on or after the date of enactment of this Act; and

(B) any amount of such funds determined at any time, pursuant to judicial or administrative proceedings (including any settlement agreement or declaratory judgment) instituted by the Secretary to enforce such Acts and regulations, to be amounts paid for such actual or alleged violations, including any such amounts held in escrow by any court.

(b) **SPECIAL RULE.**—Amounts described in subsection (a)(2) and held in an escrow account by a court before the date of enactment of this Act may continue to be held by such court but shall be disbursed, together with any interest thereon, by the Secretary or, as appropriate, by the court only in accordance with the provisions of this subtitle.

(c) **EXCLUSIONS.**—Subsection (a)(2) does not apply to—

(1) any amount actually disbursed before the date of enactment of this Act to any person or class of persons pursuant to section 155 of Public Law 97-377 or any final judicial or administrative order or judgment (including any settlement agreement or declaratory judgment);

(2) any amount to which any person or class of persons has an enforceable right, created or vested, or governed by the terms and conditions of the settlement approved on July 7, 1986, in *In Re: the Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, in the United States District Court for the District of Kansas; and

(3) any amount designated by judicial or administrative order or judgment (including any settlement agreement or declaratory judgment) for disbursement at any time to any specific person or class of persons—

(A) identified in such order or judgment as injured by the violation or alleged violation of the Acts described in subsection (a)(1) (including the regulations thereunder); or

(B) identified in such order or judgment issued before the date of enactment of this Act for indirect restitution.

(d) **ESCROW ACCOUNTS.**—Subject to subsections (b) and (c), the amounts covered by subsection (a) shall be held in appropriate escrow accounts administered for the Secretary by the Secretary of the Treasury.

(e) **INTEREST.**—Consistent with the disbursement requirements of this subtitle, the Secretary of the Treasury shall provide that amounts described in subsection (a) shall earn interest at the maximum rate earned on investments of Federal trust funds by the Secretary of the Treasury in short-term and long-term securities issued by the Federal Government (including minority bank investments).

96 Stat. 1919.

Securities.  
Banks and  
banking.

15 USC 4502.

**SEC. 3003. IDENTIFICATION AND DISBURSEMENT OF RESTITUTIONARY AMOUNTS.**

(a) **IN GENERAL.**—(1) Subject to paragraph (2)—

(A) all rulings, policies, or other statements (including any administrative order or settlement agreement) issued after the date of the enactment of this Act by any office, official, or employee of the Department of Energy; and

(B) all orders, including declaratory judgments, issued by any court after the date of the enactment of this Act, shall be consistent with the provisions of this subtitle.

(2) Nothing in this section shall affect the settlement approved on July 7, 1986, in *In Re: the Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, in the United States District Court for the District of Kansas.

(b) **DISBURSEMENT OF RESTITUTIONARY AMOUNTS AS DIRECT RESTITUTION TO INJURED PERSONS.**—(1) The Secretary shall, through the Office of Hearings and Appeals of the Department of Energy, conduct proceedings expeditiously in accordance with subpart V regulations for the purpose of, to the maximum extent possible—

(A) identifying persons or classes of persons injured by any actual or alleged violation of the petroleum pricing and allocation regulations issued pursuant to the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970;

(B) establishing the amount of any injury incurred by such persons; and

(C) making restitution, through the disbursement of amounts in the escrow accounts described in subsections (b) and (d) of section 3002, to such persons.

(2) In conducting such proceedings, the Secretary shall take into consideration the reports released pursuant to several orders of the applicable Federal district court in *In Re: the Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, in the United States District Court for the District of Kansas.

(c) **DETERMINATION OF EXCESS AMOUNT TO BE USED FOR INDIRECT RESTITUTION.**—(1) Within 45 days after the date of the enactment of this Act in the case of fiscal year 1987, and within 45 days after the beginning of each fiscal year after fiscal year 1987, the Secretary shall, using the best information available to the Secretary, determine and publish (along with a justification thereof) in the Federal Register the amount held in the escrow accounts described in subsections (b) and (d) of section 3002 that is in excess of the amount that will be needed to make restitution to persons or classes of persons in accordance with subsection (b)(1) of this section and to meet other commitments of such accounts (including the requirements of section 155 of Public Law 97-377). In making such determination, the Secretary shall give primary consideration to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for making such restitution and meeting such other commitments.

(2) The Secretary shall make public the information referred to in the first sentence of paragraph (1).

(d) **DISBURSEMENT OF EXCESS AMOUNT AS INDIRECT RESTITUTION FOR ENERGY CONSERVATION PROGRAMS.**—(1) After the publication of the determination of an excess amount under subsection (c) for a fiscal year, the Secretary shall promptly provide for the disbursement of a portion or all of such excess amount for use in energy conservation programs. The amount so disbursed for a fiscal year shall be the smaller of—

(A) \$200,000,000 minus the amount of Federal funds appropriated for energy conservation programs for such fiscal year; or

15 USC 751 note.  
12 USC 1904  
note.

Reports.

Federal  
Register,  
publication.

96 Stat. 1919.

Public  
information.

(B) the amount determined under subsection (c) to be the excess amount for such fiscal year.

(2) After determining the amount to be made available under paragraph (1), the Secretary shall apportion such amount among each of the energy conservation programs in a manner that will provide funding under this subtitle for the fiscal year concerned for each of such programs in the same proportionate amount that was provided for each of the programs by the Congress for fiscal year 1986. The Secretary shall then make available each amount apportioned for use under an energy conservation program in the same manner, to the same extent, under the same rulings and regulations, and for the same uses that Federal appropriated funds are made available and used under such program.

State and local governments.

(3) The Secretary shall require that amounts made available under this subsection are used to supplement, and not supplant, funds otherwise available for energy conservation activities under Federal or State law.

15 USC 4503.

**SEC. 3004. DEPOSIT OF REMAINDER OF EXCESS AMOUNT INTO THE TREASURY AS INDIRECT RESTITUTION.**

The amount that remains from the excess amount described in section 3003(c) after all disbursements have been made for a fiscal year under section 3003(d) shall be deposited by the Secretary of the Treasury into the general fund of the Treasury.

15 USC 4504.

**SEC. 3005. STATUTE OF LIMITATION.**

(a) **IN GENERAL.**—(1) Except as provided in subsection (b), the commencement of a civil enforcement action shall be barred unless such action is commenced before the later of—

(A) September 30, 1988; or

(B) six years after the date of the violation upon which the action is based.

(2) For purposes of paragraph (1), the term “commencement of a civil enforcement action” means—

(A) the signing and issuance of a proposed remedial order against any person for filing with the Office of Hearings and Appeals of the Department of Energy; or

(B) the filing of a complaint with the appropriate district court of the United States.

(3) For purposes of this section, the term “civil enforcement action” means an administrative or judicial civil action by the Secretary under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970 (or the regulations issued thereunder) for the enforcement of any violation of such Acts or regulations.

15 USC 751 note.  
12 USC 1904 note.

(b) **EXCEPTIONS.**—(1) In computing the periods established in subparagraphs (A) and (B) of subsection (a)(1), there shall be excluded any period—

(A) during which any person who is or may become the subject of a civil enforcement action is outside the United States, has absconded or concealed himself, or is not subject to legal process;

(B) during which facts material to the establishment and maintenance of a civil enforcement action could not be known;

(C) occurring before full compliance with any subpoena or special report order issued to any person under section 13 of the Federal Energy Administration Act of 1974, and such additional

15 USC 772.

period (not to exceed 12 calendar months) after such compliance for the Secretary to consider the results thereof and commence a civil enforcement action;

(D) during the pendency of any relevant criminal action under the Acts or regulations described in subsection (a)(1) during which a civil enforcement action is held in abeyance as a result of prosecutorial discretion and with or without a stay, and such additional period (not to exceed 12 calendar months) after a final judicial order or dismissal of such criminal action to commence a civil enforcement action;

(E) before the issuance of an order that constitutes final agency action on a request for adjustment from any rule, regulation, or order under section 504 of the Department of Energy Organization Act, and such additional period (not to exceed 12 calendar months) to commence a civil enforcement action; or

(F) of extension, to which the Secretary and the defendant have consented in writing, before the expiration of the time periods prescribed in subsection (a)(1).

(2) The provisions of subsection (a) shall not affect or apply to any civil enforcement action commenced before, on, or after the date of enactment of this Act and remanded by the Office of Hearings and Appeals, the Federal Energy Regulatory Commission, or the court for further action of any kind.

(3) The provisions of subsection (a) shall not apply to any agency orders issued under the Acts or regulations described in subsection (a)(1) or to regulations issued under this Act, other than a proposed remedial order subject to this section.

(c) **EXPRESSION OF INTENT.**—(1) It is the intent of the Congress that—

(A) the Secretary and the Administrator of the Economic Regulatory Administration shall, to the greatest extent possible and within the time frames specified on September 12, 1986, by such Administrator to the Committee on Energy and Commerce of the House of Representatives, commence civil enforcement actions with respect to all cases known by such Administrator as of the date of the enactment of this Act and designated by such Administrator as “prelitigation cases”, unless such an action is found not to be warranted;

(B) the Secretary and such Administrator not delay civil enforcement actions so as to cause the limitation in subsection (a)(1) to apply to any such case;

(C) any negotiations for the purpose of settlement of alleged violations not delay the commencement of a civil enforcement action; and

(D) the Department of Justice cooperate in ensuring that activities necessary, including the enforcement of subpoenas, to commence civil enforcement actions are carried out in a timely manner.

(2) Any failure to comply with the time frames described in paragraph (1)(A) shall not be considered for any purpose in any administrative or judicial proceeding subsequently commenced.

(d) **END OF INVESTIGATIONS AND AUDITS.**—Notwithstanding any other provision of law, the Secretary shall not initiate, after January 1, 1987, any audit or investigation of alleged civil violations of the Acts or regulations described in subsection (a)(1) for the purpose of commencement of any civil enforcement action. Nothing in this subsection shall affect or apply to any audit or investigation con-

42 USC 7194.

ducted with respect to any civil enforcement action commenced (within the limitation established by subsection (a)(1)) before, on, or after the date of the enactment of this Act. Nothing in this subsection shall limit the authority of the Secretary to continue any audit or investigation initiated before January 1, 1987.

42 USC 7193,  
7194.

(e) **LIMITATION ON REVIEW.**—Any review of a final agency action determined under section 503 or 504 of the Department of Energy Organization Act may not be initiated in any court by any person subject to such action after—

(1) 60 days after the effective date of that action; or

(2) 90 days after the date of the enactment of this Act, whichever occurs later.

(f) **OVERSIGHT.**—(1) In order to ensure the expeditious, effective, and efficient resolution of all civil enforcement actions (whether or not in administrative or judicial litigation) and all cases pending at the Office of Hearings and Appeals under subpart V regulations, the Secretary shall—

(A) maintain a personnel level for the compliance program of the Economic Regulatory Administration of 170 full-time equivalents for fiscal year 1987, subject to normal attrition and subject to the provisions of any appropriation Act enacted for such fiscal year concerning such program; and

(B) maintain for the remainder of the program an adequate mix of lawyers, auditors, technical, clerical, and administrative personnel.

(2) By July 1, 1987, and by July 1 of each year thereafter, the Administrator of the Economic Regulatory Administration shall provide to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate the full-time equivalent level necessary for such compliance program for the next fiscal year and the basis for that level.

(3) The Secretary shall, in any fiscal year, provide a notice of at least 30 days to such Committees before initiating any reduction of force at the Economic Regulatory Administration. Such notice shall provide at least—

(A) the reasons for such reduction;

(B) the impact on the mix of personnel and on all cases, whether or not in litigation, including the subpart V regulation proceedings; and

(C) the expected costs and savings for the applicable fiscal year.

(4) The Administrator of the Economic Regulatory Administration shall keep such Committees fully and currently informed about the status (including delays, settlement negotiations, and other pertinent matters) of all enforcement cases (whether or not in litigation) and subpart V regulation proceedings.

15 USC 4505.

**SEC. 3006. REPORTS.**

(a) **REPORT ON RECEIPTS AND DISBURSEMENTS.**—The Secretary shall transmit, not later than 60 days after the date of the enactment of this Act, a report to the committees referred to in subsection (d) containing a clear and complete statement of all receipts, disbursements, and commitments of restitutionary amounts, as of such date of enactment, by the Secretary pursuant to—

(1) any judicial or administrative proceeding (including any settlement agreement or declaratory judgment) instituted at

any time by the Secretary to enforce the crude oil and petroleum product pricing and allocation regulations issued under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970; or

(2) section 155 of Public Law 97-377.

(b) **REPORT ON COLLECTION OF CERTAIN DEFICIENCY FUNDS.**—The Secretary shall transmit a report each fiscal year, beginning in fiscal year 1987, to such committees on the status of collections by the Secretary of deficiency funds to be deposited into the M.D.L. No. 378 escrow account established by the United States District Court for the District of Kansas until all such deficiency funds have been paid. The Secretary shall, in a manner substantially similar to that required by section 155 of Public Law 97-377 with respect to amounts disbursed under such section, monitor the disposition by the States of any funds disbursed to the States by the court pursuant to the opinion and order of such District Court, dated July 7, 1986, with respect to *In Re: the Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, including the use of such funds for administrative costs and attorneys fees.

(c) **REPORT ON AMOUNT ESTIMATED TO BE AVAILABLE FOR INDIRECT RESTITUTION.**—The Secretary shall transmit, on March 1 of each year beginning with 1987 and continuing until all the restitutionary amounts to which section 3002(a) applies have been collected and disbursed as provided in this subtitle, a report to such committees containing an estimate of the amount that will be determined under section 3003(c) to be the excess amount for purposes of section 3003(d)(1)(B) for the fiscal year beginning the next October 1.

(d) **RECEIPT BY COMMITTEES.**—The reports required by this subtitle shall be transmitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

#### SEC. 3007. TERMINATION.

(a) **IN GENERAL.**—(1) Except as provided in subsection (b), the provisions of this subtitle (other than section 3005) shall terminate 90 days after the Secretary—

(A) determines that all of the restitutionary amounts to which section 3002(a) applies have been collected and disbursed as provided in this subtitle; and

(B) submits to Congress the final report required by section 3006.

(2) Such final report shall include the determination (and the justification thereof) described in paragraph (1)(A). Such report shall also be published in the Federal Register.

(b) **EXCEPTION.**—The requirements of section 3003(d) shall continue to be applicable to the use of restitutionary amounts received under this subtitle as long as such funds remain available.

#### SEC. 3008. DEFINITIONS.

For purposes of this subtitle:

(1) The term “Secretary” means the Secretary of Energy.

(2) The term “subpart V regulations” means the provisions of Subpart V—Special Procedures for Distribution of Refunds (10 CFR 205.280-205.288) and any amendment made after the date of the enactment of this Act, and all precedents and decisions under such regulations, but only to the extent that such provi-

15 USC 751 note.  
12 USC 1904  
note.  
96 Stat. 1919.  
State and local  
governments.

15 USC 4506.

Reports.  
Federal  
Register,  
publication.

15 USC 4507.

sions, precedents, decisions, and amendments are consistent with the provisions of this subtitle.

(3) The term "energy conservation programs" means—

(A) the program under part A of the Energy Conservation and Existing Buildings Act of 1976 (42 U.S.C. 6861 and following);

(B) the programs under part D of title III of the Energy Policy and Conservation Act (relating to primary and supplemental State energy conservation programs; 42 U.S.C. 6321 and following);

(C) the program under part G of title III of the Energy Policy and Conservation Act (relating to energy conservation for schools and hospitals; 42 U.S.C. 6371 and following); and

(D) the program under the National Energy Extension Service Act (42 U.S.C. 7001 and following).

(4) The term "person" includes refiners, retailers, resellers, farmer cooperatives, transportation entities, public and private utilities, school districts, Federal, State, and local governmental entities, farmers, and other individuals and their successors.

(5) The term "State" means each of the several States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States.

## Subtitle B—Information and Study Requirements

### SEC. 3101. MANUFACTURERS ENERGY CONSUMPTION SURVEY.

(a) IN GENERAL.—Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding at the end the following new subsection:

"(i)(1) The Administrator shall conduct and publish the results of a survey of energy consumption in the manufacturing industries in the United States on at least a triennial basis and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information, including—

"(A) quantity of fuels consumed;

"(B) energy expenditures;

"(C) fuel switching capabilities; and

"(D) use of nonpurchased sources of energy, such as cogeneration and waste by-products.

"(2) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a)."

(b) REPEAL.—Part E of title III of the Energy Policy and Conservation Act (42 U.S.C. 6341-6346) is hereby repealed.

### SEC. 3102. CRUDE OIL PRODUCTION AND REFINING CAPACITY IN THE UNITED STATES.

(a) IN GENERAL.—(1) The Secretary of Energy, acting with the Energy Information Administration, shall conduct a study of domestic crude oil production and petroleum refining capacity and the effects of imports thereon in order to assist the Congress and the

Classified  
information.

Imports.

President in determining whether such production and capacity are adequate to protect the national security.

(2) The study provided for by this section shall be carried out within available appropriations.

(b) **PUBLIC COMMENT.**—The Secretary shall provide notice and reasonable opportunity for public comment with respect to conducting the study carried out under this section.

(c) **REPORTING DATE.**—The Secretary shall, within 120 days of the date of the enactment of this Act, transmit to the Congress and the President a copy of the findings and conclusions of the study carried out under this section. Such findings and conclusions shall be referred to the Committee on Energy and Natural Resources of the Senate and appropriate authorization committees of the House of Representatives.

(d) **ACTION BY THE PRESIDENT.**—The President shall, within 45 days after the date on which such report is transmitted to him, report his views concerning the levels at which imports of crude oil and refined petroleum products become a threat to the national security and advise the Congress concerning his views of the legislative or administrative action, or both, that will be required to prevent imports of crude oil and refined petroleum products from exceeding those import levels that threaten our national security.

President of U.S.  
Defense and  
national  
security.

## Subtitle C—Strategic Petroleum Reserve

### SEC. 3201. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1987, 1988, AND 1989.

(a) **IN GENERAL.**—The following amounts are hereby authorized to be appropriated in accordance with section 660 of the Department of Energy Organization Act for operating expenses for the Strategic Petroleum Reserve to carry out part B of title I of the Energy Policy and Conservation Act for the acquisition, transportation, and injection of petroleum products, as defined for purposes of such part B, for the Reserve and for any drawdown and distribution of the Reserve:

- (1) For fiscal year 1987, \$200,000,000.
- (2) For fiscal year 1988, \$291,000,000.
- (3) For fiscal year 1989, \$479,000,000.

42 USC 7270.

42 USC 6231.

(b) **EFFECT ON OTHER AUTHORIZATIONS.**—The authorization made by subsection (a) is in lieu of any other authorization of appropriation for fiscal years 1987, 1988, and 1989 for the expenses described in such subsection.

### SEC. 3202. FILL RATE OF THE RESERVE; LIMITATION ON UNITED STATES SHARE OF THE NAVAL PETROLEUM RESERVE.

(a) **FILL RATE OF THE RESERVE.**—Section 160(c)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6240(c)(3)) is amended—

- (1) by striking out “fiscal year 1986 and continuing through fiscal years 1987 and 1988” and inserting in lieu thereof “fiscal year 1987 and continuing through fiscal years 1988 and 1989”;
- (2) by striking out “527,000,000 barrels” and inserting in lieu thereof “750,000,000 barrels”; and
- (3) by striking out “at a level” and all that follows through the period and inserting in lieu thereof “at the highest practicable fill rate achievable, subject to the availability of appropriated funds.”

*Ante*, p. 141.

*Ante*, p. 142.

(b) **LIMITATION ON UNITED STATES SHARE OF THE NAVAL PETROLEUM RESERVE.**—Section 160(d)(1) of such Act (42 U.S.C. 6240(d)(1)) is amended—

(1) in subparagraph (A), by striking out “527,000,000 barrels” and inserting in lieu thereof “750,000,000 barrels”;

(2) in subparagraph (B)—

(A) by striking out “100,000 barrels” and inserting in lieu thereof “75,000 barrels”; and

(B) by striking out “; or” and inserting in lieu thereof a period; and

(3) by striking out subparagraph (C).

**SEC. 3203. INFORMATION TO BE CONTAINED IN ANNUAL REPORT ON SPR.**

Section 165(a) of the Energy Policy and Conservation Act (42 U.S.C. 6245(a)) is amended by striking out paragraph (1) and inserting in lieu thereof the following:

“(1) a detailed statement of the status of the Strategic Petroleum Reserve, including—

“(A) an estimate of the final capacity of the Reserve and the scheduled annual fill rate for achieving such capacity;

“(B) the scheduled quarterly fill rate for the 12-month period beginning on the date on which such report is transmitted;

“(C) the type and quality of crude oil to be acquired for the Reserve pursuant to the schedule described in subparagraph (A);

“(D) the schedule of construction of any facilities needed to achieve the final capacity of the Reserve, including a description of the type and location of such facilities and of enhancements and improvements to existing facilities;

“(E) an estimate of the cost of acquiring crude oil and constructing facilities necessary to complete the Reserve;

“(F) a description of the current distribution plan for using the Reserve, including the method of drawdown and distribution to be utilized; and

“(G) an explanation of any changes made in the matters described in subparagraphs (A) through (F) since the transmittal of the previous report under this subsection;”.

## Subtitle D—Federal Energy Management

**SEC. 3301. FEDERAL ENERGY MANAGEMENT.**

Section 545(a)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8255(a)(2)) is amended by striking out “marginal” and inserting in lieu thereof “average”.

## Subtitle E—Fees and Charges

42 USC 7178.

**SEC. 3401. FEDERAL ENERGY REGULATORY COMMISSION FEES AND ANNUAL CHARGES.**

(a) **IN GENERAL.**—(1) Except as provided in paragraph (2) and beginning in fiscal year 1987 and in each fiscal year thereafter, the Federal Energy Regulatory Commission shall, using the provisions of this subtitle and authority provided by other laws, assess and

collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.

(2) The provisions of this subtitle shall not affect the authority, requirements, exceptions, or limitations in sections 10(e) and 30(e) of the Federal Power Act.

(b) **BASIS FOR ASSESSMENTS.**—The fees or annual charges assessed shall be computed on the basis of methods that the Commission determines, by rule, to be fair and equitable.

(c) **ESTIMATES.**—The Commission may assess fees and charges under this section by making estimates based on data available to the Commission at the time of assessment.

(d) **TIME OF PAYMENT.**—The Commission shall provide that the fees and charges assessed under this section shall be paid by the end of the fiscal year for which they were assessed.

(e) **ADJUSTMENTS.**—The Commission shall, after the completion of a fiscal year, make such adjustments in the assessments for such fiscal year as may be necessary to eliminate any overrecovery or underrecovery of its total costs, and any overcharging or undercharging of any person.

(f) **USE OF FUNDS.**—All moneys received under this section shall be credited to the general fund of the Treasury.

(g) **WAIVER.**—The Commission may waive all or part of any fee or annual charge assessed under this section for good cause shown.

16 USC 803, 791.

## Subtitle F—Environmental Programs

### SEC. 3501. ABANDONED MINE RECLAMATION RESEARCH AND DEVELOPMENT.

30 USC 1231 note.

After the enactment of this Act, the research and demonstration authorities of the Department of the Interior under the provisions of section 401(c)(6) of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) shall be transferred to, and carried out by, the Director of the Bureau of Mines. Research and demonstration projects under such provision shall be selected by a panel appointed by the Director of the Bureau of Mines to be comprised of 9 persons, including 4 representatives of State abandoned mine reclamation programs, 4 representatives of the Bureau of Mines, and one representative of the Office of Surface Mining Reclamation and Enforcement.

30 USC 1231.

### SEC. 3502. GREAT SWAMP NATIONAL WILDLIFE REFUGE.

(a) No later than 60 days after the enactment of this section, the United States Environmental Protection Agency shall provide the House Committee on Merchant Marine and Fisheries and the Senate Committees on Environment and Public Works and Energy and Natural Resources with an interim status report on the implementation of agency responsibilities for conducting or approving preliminary assessments, site investigations and, if necessary, Remedial Investigation/Feasibility Studies for contaminant problems on the Great Swamp National Wildlife Refuge, as set forth in the July 9, 1985, Interagency Memorandum of Agreement between the United States Environmental Protection Agency, the United States Fish and Wildlife Service, and the National Park Service. This report shall describe in a systematic and comprehensive way the clean-up plan developed to date and the progress made thereunder, including the identification of responsible parties where possible, for

Reports.

the Rolling Knoll landfill, the Harding landfill, and all asbestos dumpsites identified within the Great Swamp National Wildlife Refuge. The report shall also discuss the appointment of appropriate field personnel to direct the clean-up effort; an assessment and ranking of the contaminant threats to the Refuge based upon information available to date; and a detailed work plan and schedule for completing site investigation work, including the analysis of samples collected during site investigations, and initiating Remedial Investigation/Feasibility Studies where necessary.

Reports.

(b) Not later than 240 days after the enactment of this section, the United States Environmental Protection Agency shall provide the committees of Congress set forth in subsection (a) of this section with an update of its interim status report. This update shall address the same factors included in the original interim report and shall identify what progress has been made in implementing the site investigation, data analysis, and remedial clean-up responsibilities set forth in the interim report.

Reports.

(c) The development of the interim and updated reports required in subsections (a) and (b) of this section shall be carried out with unobligated funds available to the United States Environmental Protection Agency.

## TITLE IV—TRANSPORTATION AND RELATED PROGRAMS

### Subtitle A—Rail Related Issues

#### PART 1—GENERAL PROVISIONS

##### SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF SUBTITLE.

(a) **SHORT TITLE.**—This subtitle may be cited as the “Conrail Privatization Act”.

(b) **TABLE OF CONTENTS OF SUBTITLE.**—

##### PART 1—GENERAL PROVISIONS

- Sec. 4001. Short title; table of contents of subtitle.
- Sec. 4002. Findings.
- Sec. 4003. Purposes.
- Sec. 4004. Definitions.

##### PART 2—CONRAIL

##### SUBPART A—SALE OF CONRAIL

- Sec. 4011. Preparation for public offering.
- Sec. 4012. Public offering.
- Sec. 4013. Fees.

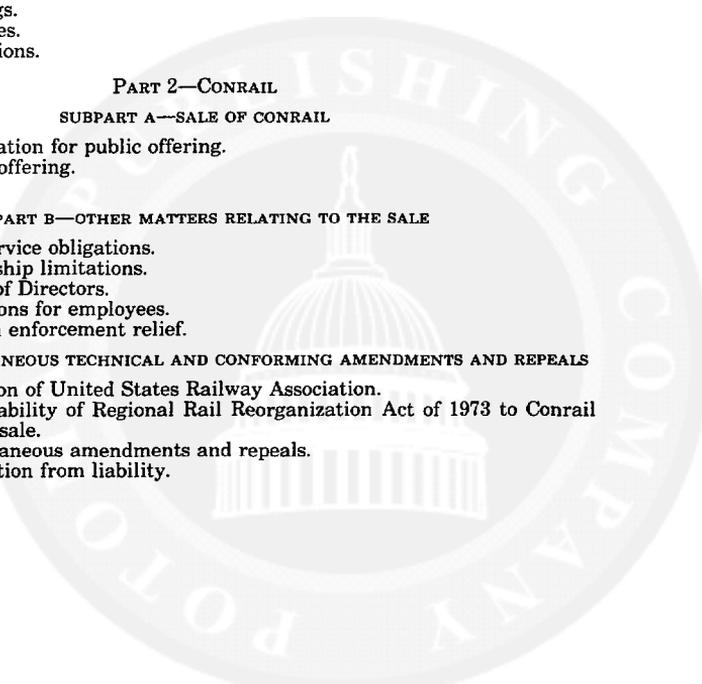
##### SUBPART B—OTHER MATTERS RELATING TO THE SALE

- Sec. 4021. Rail service obligations.
- Sec. 4022. Ownership limitations.
- Sec. 4023. Board of Directors.
- Sec. 4024. Provisions for employees.
- Sec. 4025. Certain enforcement relief.

##### SUBPART C—MISCELLANEOUS TECHNICAL AND CONFORMING AMENDMENTS AND REPEALS

- Sec. 4031. Abolition of United States Railway Association.
- Sec. 4032. Applicability of Regional Rail Reorganization Act of 1973 to Conrail after sale.
- Sec. 4033. Miscellaneous amendments and repeals.
- Sec. 4034. Exemption from liability.

Conrail Privatization Act.



- Sec. 4035. Charter amendment.
- Sec. 4036. Status of Conrail after sale.
- Sec. 4037. Effect on contracts.
- Sec. 4038. Resolution of certain issues.

## PART 3—PROMOTION OF RAIL COMPETITION

- Sec. 4051. Agriculture contract disclosure.
- Sec. 4052. Boxcar provision.

## SEC. 4002. FINDINGS.

45 USC 1301.

The Congress finds that—

(1) the bankruptcy of the Penn Central and other railroads in the Northeast and Midwest resulted in a transportation emergency which required the intervention of the Federal Government;

(2) the United States Government created the Consolidated Rail Corporation, which provides essential rail service to the Northeast and Midwest;

(3) the future of rail service in the Northeast and Midwest is essential and must be protected through rail service obligations, consistent with the transfer of the Corporation to the private sector;

(4) the Northeast Rail Service Act of 1981 has achieved its purpose in allowing the Corporation to become financially self-sustaining;

45 USC 1101  
note.

(5) the Federal Government has invested over \$7,000,000,000 in providing rail service to the Northeast and Midwest;

(6) the Government, as a result of its ownership and investment of taxpayer dollars in the Corporation, controls substantial assets, including cash of approximately \$1,000,000,000;

(7) the Corporation's viability and sound performance allow it to be sold to the American public for a substantial sum through a public offering;

(8) a public offering of the Corporation's stock will preserve competitive rail service in the region, provide a reasonable return to the Government, and protect employment;

(9) the Corporation's employees contributed significantly to the turnaround in the Corporation's financial performance and they should share in the Corporation's success through a settlement of their claims for reimbursement for wages below industry standard, and a share in the common equity of the Corporation;

(10) the requirements of section 401(e) of the Regional Rail Reorganization Act of 1973 are met by this subtitle; and

45 USC 761.

(11) the Secretary of Transportation has discharged the responsibilities of the Department of Transportation under the Northeast Rail Service Act of 1981 with respect to the sale of the Corporation as a single entity.

## SEC. 4003. PURPOSES.

45 USC 1302.

The purposes of this subtitle are to transfer the interest of the United States in the common stock of the Corporation to the private sector in a manner that provides for the long-term viability of the Corporation, provides for the continuation by the Corporation of its rail service in the Northeast and Midwest, provides for the protection of the public interest in a sound rail transportation system, and, to the extent not inconsistent with such purposes, secures the maximum proceeds to the United States.

45 USC 1303.

## SEC. 4004. DEFINITIONS.

For the purposes of this subtitle—

(1) the term “capital expenditures” means amounts expended by the Corporation and its subsidiaries for replacement or rehabilitation of, or enhancements to, the railroad plant, property, trackage, and equipment of the Corporation and its subsidiaries, as determined in accordance with generally accepted accounting principles, and in interpreting generally accepted accounting principles, no amount spent on normal repair, maintenance, and upkeep of such railroad plant, property, trackage, and equipment in the ordinary course of business shall constitute capital expenditures;

(2) the term “Commission” means the Interstate Commerce Commission;

(3) the term “consolidated funded debt” means the aggregate, after eliminating intercompany items, of all funded debt of the Corporation and its consolidated subsidiaries, consolidated in accordance with generally accepted accounting principles;

(4) the term “consolidated tangible net worth” means the market value of the common equity of the Corporation as of the sale date, plus or minus the change from the sale date to the date of measurement in the excess, after making appropriate deductions for any minority interest in the net worth of subsidiaries, of—

(A) the assets of the Corporation and its subsidiaries (excluding intercompany items) which, in accordance with generally accepted accounting principles, are tangible assets, after deducting adequate reserves in each case where, in accordance with generally accepted accounting principles, a reserve is proper, over

(B) all liabilities of the Corporation and its subsidiaries (excluding intercompany items), taking into account inventory and securities on the basis of the cost or current market value, whichever is lower, and not taking into account patents, trademarks, trade names, copyrights, licenses, goodwill, treasury stock, or any write-up in the book value of any assets;

(5) the term “Corporation” means the Consolidated Rail Corporation;

(6) the term “cumulative net income” means, for any period, the net income of the Corporation and its consolidated subsidiaries as determined in accordance with generally accepted accounting principles, before provision for expenses (net of income tax effect) related to—

(A) amounts paid by the Corporation under section 4024(e), and comparable payments made to present and former employees of the Corporation not covered by such section; and

(B) the aggregate value of any shares and cash distributed by the Corporation under section 4024(f);

(7) the term “debt” means (A) indebtedness, whether or not represented by bonds, debentures, notes, or other securities, for the repayment of money borrowed, (B) deferred indebtedness for the payment of the purchase price of property or assets purchased, (C) guarantees, endorsements, assumptions, and other contingent obligations in respect of, or to purchase or to other-

wise acquire, indebtedness of others, and (D) indebtedness secured by any mortgage, pledge, or lien existing on property owned, subject to such mortgage, pledge, or lien, whether or not indebtedness secured thereby shall have been assumed;

(8) the term “funded debt” means all debt created, assumed, or guaranteed, directly or indirectly, by the Corporation and its subsidiaries which matures by its terms, or is renewable at the option of the Corporation or any such subsidiary to a date, more than 1 year after the date of the original creation, assumption, or guarantee of such debt by the Corporation or such subsidiary;

(9) the term “liabilities” means all items of indebtedness or liability which, in accordance with generally accepted accounting principles, would be included in determining total liabilities as shown on the liabilities side of a balance sheet as at the date as of which liabilities are to be determined;

(10) the term “person” means an individual, corporation, partnership, association, trust, or other entity or organization, including a government or political subdivision thereof or a governmental body;

(11) the term “preferred stock” means any class or series of preferred stock, and any class or series of common stock having liquidation and dividend rights and preferences superior to the common stock of the Corporation offered for sale under section 4012;

(12) the term “public offering” means an underwritten offering to the public of such common stock of the Corporation as the Secretary of Transportation determines to sell under section 4012;

(13) the term “sale date” means the date on which the initial public offering is closed;

(14) the term “subsidiary” means any corporation more than 50 percent of whose outstanding voting securities are directly or indirectly owned by the Corporation; and

(15) the term “United States share” means a share of common stock of the Corporation held by the United States Government on the date of the enactment of this Act or as a result of any split required pursuant to section 4012(d).

## PART 2—CONRAIL

### Subpart A—Sale of Conrail

#### SEC. 4011. PREPARATION FOR PUBLIC OFFERING.

(a) PUBLIC OFFERING MANAGERS.—(1) Not later than 30 days after the date of the enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of the Treasury and the Chairman of the Board of Directors of the Corporation, shall retain the services of investment banking firms to serve jointly and be compensated equally as co-lead managers of the public offering (hereafter in this subpart referred to as the “co-lead managers”) and to establish a syndicate to underwrite the public offering. The total number of co-lead managers shall be no fewer than 4 nor greater than 6. The Secretary shall designate one co-lead manager to coordinate and administer the public offering.

(2) In selecting the investment banking firms to serve as co-lead managers of the public offering under paragraph (1), consideration

Securities.  
Banks and  
banking.  
45 USC 1311.

shall be given to the firm's institutional and retail distribution capabilities, financial strength, knowledge of the railroad industry, experience in large scale public offerings, research capability, and reputation. In addition, recognition shall also be given to contributions made by particular investment banking firms before the date of the enactment of this Act in demonstrating and promoting the long-term financial viability of the Corporation.

(b) **PAYMENT TO THE UNITED STATES.**—(1) Not later than 30 days after the date of the enactment of this Act, the Corporation shall transfer to the Secretary of the Treasury \$200,000,000.

(2) On or before February 1, 1987, or 30 days before the sale date, whichever occurs first, the Secretary of Transportation shall determine whether to require the Corporation to transfer to the Secretary of the Treasury, in addition to amounts transferred under paragraph (1), not to exceed \$100,000,000, taking into account the viability of the Corporation. The Corporation shall transfer such funds as are required to be transferred under this paragraph.

(c) **REGISTRATION STATEMENT.**—The Corporation shall prepare and cause to be filed with the Securities and Exchange Commission a registration statement with respect to the securities to be offered and sold in accordance with the securities laws and the rules and regulations thereunder in connection with the initial and any subsequent public offering.

(d) **LIMIT ON AUTHORITY TO PURCHASE STOCK.**—Section 216(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(b)) is amended by adding at the end thereof the following new paragraph:

“(5) The authority of the Association to purchase debentures or series A preferred stock of the Corporation shall terminate upon the date of the enactment of the Conrail Privatization Act.”.

Securities.  
45 USC 1312.

**SEC. 4012. PUBLIC OFFERING.**

(a) **STRUCTURE OF PUBLIC OFFERING.**—(1) After the registration statement referred to in section 4011(c) is declared effective by the Securities and Exchange Commission, the Secretary of Transportation, in consultation with the Secretary of the Treasury, the Chairman of the Board of Directors of the Corporation, and the co-lead managers, shall offer the United States shares for sale in a public offering, except as provided in paragraphs (2) and (3).

(2) The Secretary of Transportation, after such consultation, may elect to offer less than all of the United States shares for sale at the time of the initial sale.

(3) Under no circumstances shall the Secretary of Transportation offer any of the United States shares for sale unless, before the sale date, the Secretary determines, after such consultation, that the estimated sum of the gross proceeds from the sale of all the United States shares will be an adequate amount. A determination by the Secretary under this paragraph shall not be reviewable.

(4) In making a determination under paragraph (3), the Secretary shall have the goal of obtaining at least \$2,000,000,000 in aggregate gross proceeds for the United States from the public offering and any payments made under section 4011(b).

(b) **SUBSEQUENT SALES.**—If the Secretary of Transportation elects to offer for sale less than all the United States shares, the Secretary shall sell the remaining United States shares in subsequent public offerings.

(c) **CONSENT OF THE CORPORATION NOT REQUIRED.**—Any public offering under this section may be made without the consent of the Corporation.

(d) **AUTHORITY TO REQUIRE STOCK SPLITS.**—(1) The Secretary of Transportation, in consultation with the co-lead managers and the Chairman of the Board of Directors of the Corporation, may, in connection with the initial public offering described in subsection (a), before the filing of the registration statement referred to in section 4011(c), require the Corporation to declare a stock split or reverse stock split.

(2) The Corporation shall take such action as may be necessary to comply with the Secretary's requirements under this subsection.

(e) **CANCELLATION OF OTHER SECURITIES HELD BY THE UNITED STATES.**—(1) In consideration for amounts transferred to the United States under section 4011(b), the Secretary of Transportation shall, concurrent with the initial public offering described in subsection (a), deliver to the Corporation all preferred stock, 7.5 percent debentures, and contingent interest notes of the Corporation. The Corporation shall immediately cancel such debentures, preferred stock, and contingent interest notes, and any interest of the United States in such debentures, preferred stock, and contingent interest notes shall be thereby extinguished.

(2) For purposes of regulation by the Commission and State public utility regulation, the actions authorized by this subsection, the public offering, and the value of the consideration received therefor shall not change the value of the Corporation's assets net of depreciation and shall not be used to alter the calculation of the Corporation's stock or asset values, rate base, expenses, costs, returns, profits, or revenues, or otherwise affect or be the basis for a change in the regulation of any railroad service, rate, or practice provided or established by the Corporation, or any change in the financial reporting practice of the Corporation.

(f) **MINORITY INVESTMENT BANKING FIRMS.**—The Secretary of Transportation shall ensure that minority owned or controlled investment banking firms shall have an opportunity to participate to a significant degree in any public offering under this part.

(g) **INVESTMENT BANKING FIRM REQUIREMENTS.**—(1) The level of any investment banking firm's participation in the public offering shall be consistent with that firm's financial capabilities.

(2) No investment banking firm which was not in existence on September 1, 1986, shall participate in the public offering.

(h) **GENERAL ACCOUNTING OFFICE AUTHORITY TO CONDUCT AUDITS.**—The General Accounting Office may make such audits as may be deemed appropriate by the Comptroller General of the United States of all accounts, books, records, memoranda, correspondence, and other documents and transactions of the Corporation and the co-lead managers associated with the public offering. The co-lead managers shall agree, in writing, to allow the General Accounting Office to make such audits. The General Accounting Office shall report the results of all such audits to the Congress.

Records.  
Reports.

#### SEC. 4013. FEES.

45 USC 1313.

(a) **INVESTMENT BANKING FIRM FEES.**—The Secretary of Transportation, in consultation with the Secretary of the Treasury, shall agree to pay to investment banking firms and other persons participating with such firms in the public offering the absolute minimum amount in fees necessary to carry out the public offering.

(b) **COSTS OF THE PUBLIC OFFERING.**—All costs of the public offering payable by the Secretary of Transportation shall be paid from the proceeds of the public offering.

### Subpart B—Other Matters Relating to the Sale

45 USC 1321.

#### SEC. 4021. RAIL SERVICE OBLIGATIONS.

(a) **OBLIGATIONS OF THE CORPORATION.**—During a period of 5 years beginning on the date of the enactment of this Act, the following obligations shall apply to the Corporation:

(1) The Corporation shall spend in each fiscal year the greater of (A) an amount equal to the Corporation's depreciation for financial reporting purposes for such year or (B) \$500,000,000, in capital expenditures. With respect to any fiscal year, the Corporation's Board of Directors may reduce the required capital expenditures for such year to an amount which the Board determines is justified by prudent business and engineering practices, except that the Corporation's capital expenditures shall not be less than \$350,000,000 for its first fiscal year beginning after the sale date, a total of \$700,000,000 for its first two fiscal years beginning after the sale date, a total of \$1,050,000,000 for its first three fiscal years beginning after the sale date, a total of \$1,400,000,000 for its first four fiscal years beginning after the sale date, and a total of \$1,750,000,000 for its first five fiscal years beginning after the sale date.

(2)(A) Unless the Corporation is in compliance with the requirements of subparagraph (B), no common stock dividend or preferred stock dividend may be declared or paid by the Corporation.

(B)(i) The Corporation shall have been in compliance with the requirements of paragraph (1) as of the end of the fiscal year immediately preceding the fiscal year in which such dividend payment is made.

(ii) After payment of any common stock dividend, the Corporation shall have on hand cash or cash equivalents of \$400,000,000. Such amount may include amounts borrowed by the Corporation only to the extent that the consolidated funded debt of the Corporation does not exceed 175 percent of the consolidated tangible net worth of the Corporation.

(iii) After payment of any common stock dividend, the cumulative amount of all common stock dividends paid between the sale date and the date of payment of such dividend shall not exceed 45 percent of—

(I) the cumulative net income of the Corporation as reflected in the quarterly financial statements of the Corporation, for the period beginning after the end of the last fiscal quarter of the Corporation ending before the sale date, and ending at the end of the last fiscal quarter of the Corporation ending before the date of the declaration of such dividend, less

(II) the cumulative amount of any preferred stock dividends declared and paid between the sale date and the date of payment of such common stock dividend.

(C) For purposes of this paragraph—

(i) the term "common stock dividend" means—

“(ii) shall not be less in the aggregate for such organizations for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations’ conducting activities described in subparagraph (A) with respect to such eligible organizations under part B of title XI.”.

42 USC 1320c.

## (3) EFFECTIVE DATE.—

(A) HOSPITALS, SKILLED NURSING FACILITIES, AND HOME HEALTH AGENCIES.—The amendments made by paragraph (1) shall apply to provider agreements as of October 1, 1987.

42 USC 1395cc note.

(B) HMOs AND CMPS.—The amendment made by paragraph (2) shall apply to risk-sharing contracts with eligible organizations, under section 1876 of the Social Security Act, as of April 1, 1987.

Contracts.  
42 USC 1395mm note.  
42 USC 1395mm.

## Subtitle E—Medicaid and Maternal and Child Health

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PART 1—COVERAGE OF INDIVIDUALS

SEC. 9401. OPTIONAL COVERAGE OF POOR PREGNANT WOMEN, INFANTS, AND CHILDREN.

(a) CREATION OF NEW OPTIONAL CATEGORICALLY NEEDY GROUP.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(1) by striking “, or” at the end of subclause (VII) and inserting a semicolon,

(2) by inserting “or” at the end of subclause (VIII), and

(3) by adding at the end the following new subclause:

“(IX) subject to subsection (1)(4), who are described in subsection (1)(1);”.

(b) DESCRIPTION OF GROUP.—Section 1902 of such Act is amended by inserting after subsection (k) the following new subsection:

“(1)(I) Individuals described in this paragraph are—

“(A) women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy),

“(B) infants under one year of age,

“(C) children who have attained one year of age but have not attained two years of age,

“(D) children who have attained two years of age but have not attained three years of age,

“(E) children who have attained three years of age but have not attained four years of age, and

“(F) children who have attained four years of age but have not yet attained five years of age,

who are not described in subsection (a)(10)(A)(i), whose family income does not exceed the income level established by the State under paragraph (2) for a family size equal to the size of the family, including the woman, infant, or child.

“(2) For purposes of paragraph (1), the State shall establish an income level which is a percentage (not more than 100 percent) of the nonfarm income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

“(3) Notwithstanding subsection (a)(17), for individuals who are eligible for medical assistance because of subsection (a)(10)(A)(ii)(IX)—

“(A) application of a resource standard shall be at the option of the State;

“(B) any resource standard or methodology that is applied with respect to an individual described in subparagraph (A) of paragraph (1) may not be more restrictive than the resource standard or methodology that is applied under title XVI;

“(C) any resource standard or methodology that is applied with respect to an individual described in subparagraph (B), (C), (D), (E), or (F) of paragraph (1) may not be more restrictive than the corresponding methodology that is applied under the State plan under part A of title IV;

“(D) the income standard to be applied is the income standard established under paragraph (2); and

“(E) family income shall be determined in accordance with the methodology employed under the State plan under part A

State and local governments.

42 USC 9902.

42 USC 1381.

42 USC 601.

or E of title IV, and costs incurred for medical care or for any other type of remedial care shall not be taken into account. Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals. 42 USC 670.

“(4)(A) A State plan may not elect the option of furnishing medical assistance to individuals described in subsection (a)(10)(A)(ii)(IX) unless the State has in effect, under its plan established under part A of title IV, payment levels that are not less than the payment levels in effect under its plan on April 17, 1986. State and local governments.

“(B)(i) A State may not elect, under subsection (a)(10)(A)(ii)(IX), to cover only individuals described in paragraph (1)(A) or to cover only individuals described in paragraph (1)(B).

“(ii) A State may not elect, under subsection (a)(10)(A)(ii)(IX), to cover individuals described in subparagraph (C), (D), (E), or (F) of paragraph (1) unless the State has elected, under such subsection, to cover individuals described in the preceding subparagraphs of such paragraph.”

(c) LIMITED BENEFITS FOR NEWLY ELIGIBLE PREGNANT WOMEN.—Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)) is amended, in the matter after subparagraph (D)—

(1) by striking “and” before “(VI)”, and

(2) by inserting before the semicolon at the end the following: “, and (VII) the medical assistance made available to an individual described in subsection (1)(1)(A) who is eligible for medical assistance only because of subparagraph (A)(ii)(IX) shall be limited to medical assistance for services related to pregnancy (including prenatal, delivery, and postpartum services) and to other conditions which may complicate pregnancy”.

(d) CONTINUATION OF MEDICAL ASSISTANCE FOR CERTAIN PREGNANT WOMEN DURING PREGNANCY AND FOR CERTAIN INFANTS AND CHILDREN RECEIVING INPATIENT SERVICES.—Section 1902(e) of such Act (42 U.S.C. 1396a(e)) is amended by adding at the end the following new paragraphs:

“(6) At the option of a State, if a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX), the plan may provide that any woman described in such subsection and subsection (1)(1)(A) shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) without regard to any change in income of the family of which she is a member until the end of the 60-day period beginning on the last day of her pregnancy. State and local governments.

“(7) If a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX), in the case of an infant or child described in subparagraph (B), (C), (D), (E), or (F) of subsection (1)(1)—

“(A) who is receiving inpatient services for which medical assistance is provided on the date the infant or child attains the maximum age with respect to which coverage is provided under the State plan for such individuals, and

“(B) who, but for attaining such age, would remain eligible for medical assistance under such subsection, the infant or child shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) and subsection (1)(1) until the end of the stay for which the inpatient services are furnished.”

(e) CONFORMING AMENDMENTS.—

(1) Section 1902(a)(17) of such Act (42 U.S.C. 1396(a)(17)) is amended by inserting “except as provided in subsection (l)(3),” after “(17)”.

(2) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended by inserting “for any individual described in section 1902(a)(10)(A)(ii)(IX) or” after “as medical assistance”.

42 USC 1396a  
note.

**(f) EFFECTIVE DATES.—**

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to medical assistance furnished in calendar quarters beginning on or after April 1, 1987.

(2)(A) Subparagraph (C) of section 1902(l)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1987.

(B) Subparagraph (D) of section 1902(l)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1988.

(C) Subparagraph (E) of section 1902(l)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1989.

(D) Subparagraph (F) of section 1902(l)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1990.

(3) An amendment made by this section shall become effective as provided in paragraph (1) or (2) without regard to whether or not final regulations to carry out such amendment have been promulgated by the applicable date.

**SEC. 9402. OPTIONAL COVERAGE OF ELDERLY AND DISABLED POOR FOR ALL MEDICAID BENEFITS.**

**(a) CREATION OF NEW OPTIONAL CATEGORICALLY NEEDY GROUPS.—**

(1) **IN GENERAL.**—Subsection (a)(10)(A)(ii) of section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by section 9401(a) of this subtitle, is amended—

(A) by striking “or” at the end of subclause (VIII),

(B) by striking the semicolon at the end of subclause (IX) and inserting “, or”, and

(C) by adding at the end the following new subclause:  
“(X) subject to subsection (m)(3), who are described in subsection (m)(1);”.

(2) **DESCRIPTION OF INDIVIDUALS.**—Section 1902 of such Act is further amended by adding after subsection (l), as added by section 9401(b) of this subtitle, the following new subsection:

“(m)(1) Individuals described in this paragraph are individuals—  
“(A) who are 65 years of age or older or are disabled individuals (as determined under section 1614(a)(3)),

“(B) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and

“(C) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum

42 USC 1382c.  
State and local  
governments.  
42 USC 1382a.

42 USC 1382b.

amount of resources that an individual may have and obtain benefits under that program.

“(2)(A) The income level established under paragraph (1)(B) may not exceed a percentage (not more than 100 percent) of the nonfarm official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

42 USC 9902.

“(B) In the case of a State that provides medical assistance to individuals not described in subsection (a)(10)(A) and at the State’s option, the State may use under paragraph (1)(C) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in subsection (a)(10)(A).”

State and local governments.

(b) REQUIREMENT OF COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND OTHER SPECIAL RULES.—Section 1902(m) of such Act, as added by subsection (a)(2), is further amended by adding at the end the following new paragraphs:

42 USC 1396a.

“(3) A State plan may not provide coverage for individuals under subsection (a)(10)(A)(ii)(X), unless the plan provides coverage of some or all of the individuals described in subsection (1)(1).

State and local governments.

“(4) Notwithstanding subsection (a)(17), for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(X)—

“(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

“(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

42 USC 1382a.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments to States for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

State and local governments.  
42 USC 1396a note.

#### SEC. 9403. OPTIONAL COVERAGE OF POOR MEDICARE BENEFICIARIES FOR MEDICARE COST-SHARING EXPENSES.

(a) ELIGIBILITY OF QUALIFIED MEDICARE BENEFICIARY.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended—

42 USC 1396a.

(1) by striking “and” at the end of subparagraph (C),

(2) by inserting “and” at the end of subparagraph (D), and

(3) by inserting after subparagraph (D) the following new subparagraph:

“(E) at the option of a State, but subject to subsection (m)(3), for making medical assistance available for medicare cost-sharing (as defined in section 1905(p)(3)) for qualified medicare beneficiaries described in section 1905(p)(1);”

State and local governments.

42 USC 1396d.

(b) QUALIFIED MEDICARE BENEFICIARY DEFINED.—Section 1905 of such Act (42 U.S.C. 1396d) is amended by adding at the end the following new subsection:

“(p)(1) The term ‘qualified medicare beneficiary’ means an individual—

- 42 USC 1395c.  
42 USC 1395i-2.
- State and local governments.  
42 USC 1382a.
- 42 USC 1382b.
- 42 USC 9902.
- State and local governments.
- 42 USC 1396a.
- 42 USC 1396d.
- 42 USC 1396o.
- 42 USC 1395i-2.  
42 USC 1395e.  
42 USC 1395f.  
State and local governments.
- 42 USC 1395mm.
- “(A) who is entitled to hospital insurance benefits under part A of title XVIII (including an individual entitled to such benefits pursuant to an enrollment under section 1818),
- “(B) who, but for section 1902(a)(10)(E) and the election of the State, is not eligible for medical assistance under the plan,
- “(C) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and
- “(D) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.
- “(2)(A) The income level established under paragraph (1)(C) may not exceed a percentage (not more than 100 percent) of the nonfarm official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.
- “(B) In the case of a State that provides medical assistance to individuals not described in section 1902(a)(10)(A) and at the State’s option, the State may use under paragraph (1)(D) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1902(a)(10)(A).”.
- (c) LIMITED, MEDICARE GAP-FILLING BENEFITS.—Section 1902(a)(10) of such Act (42 U.S.C. 1395a(a)(10)), as amended by section 9401(c) of this subtitle and by subsection (a) of this section, is amended, in the matter after subparagraph (E)—
- (1) by striking “and” before “(VII)”, and
- (2) by inserting before the semicolon at the end the following:
- “, and (VIII) the medical assistance made available to a qualified medicare beneficiary described in section 1905(p)(1) shall be limited to medical assistance for medicare cost-sharing (described in section 1905(p)(3)), subject to the provisions of subsection (n) and section 1916(b)”.
- (d) MEDICARE COST-SHARING DEFINED.—Section 1905(p) of such Act, as added by subsection (b), is amended by adding at the end the following:
- “(3) The term ‘medicare cost-sharing’ means the following costs incurred with respect to a qualified medicare beneficiary:
- “(A) Premiums under part B and (if applicable) under section 1818.
- “(B) Deductibles and coinsurance described in section 1813.
- “(C) The annual deductible described in section 1833(b).
- “(D) The difference between the amount that is paid under section 1833(a) and the amount that would be paid under such section if any reference to ‘80 percent’ therein were deemed a reference to ‘100 percent’.
- Such term also may include, at the option of a State, premiums for enrollment of a qualified medicare beneficiary with an eligible organization under section 1876.”.
- (e) PAYMENT AMOUNTS.—Section 1902 of such Act, as amended by sections 9401(b) and 9402(a)(2) of this subtitle, is further amended by adding at the end the following new subsection:

“(n) In the case of medical assistance furnished under this title for medicare cost-sharing respecting the furnishing of a service or item to a qualified medicare beneficiary, the State plan may provide payment in an amount with respect to the service or item that results in the sum of such payment amount and any amount of payment made under title XVIII with respect to the service or item exceeding the amount that is otherwise payable under the State plan for the item or service for eligible individuals who are not qualified medicare beneficiaries.”

State and local governments.

42 USC 1395.

**(f) REQUIREMENT OF COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND OTHER SPECIAL RULES.—**

42 USC 1396a.

**(1) REQUIRING COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND INCOME STANDARD TO BE USED.—**Section 1902(m) of such Act, as added by section 9402(a)(2) of this subtitle, and as amended by section 9402(b) of this subtitle, is amended—

(A) in paragraph (3), by inserting “or coverage under subsection (a)(10)(E)” after “subsection (a)(10)(A)(ii)(IX)”, and

(B) by adding at the end the following new paragraph:

“(5) Notwithstanding subsection (a)(17), for qualified medicare beneficiaries described in section 1905(p)(1)—

42 USC 1396d.

“(A) the income standard to be applied is the income standard described in section 1905(p)(1)(C), and

“(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

42 USC 1382a.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.”

**(2) EFFECTIVE DATE OF BENEFITS.—**Section 1902(e) of such Act, as amended by section 9401(d) of this subtitle, is amended by adding at the end the following new paragraph:

“(8) If an individual is determined to be a qualified medicare beneficiary (as defined in section 1905(p)(1)), such determination shall apply to services furnished after the end of the month in which the determination first occurs. For purposes of payment to a State under section 1903(a), such determination shall be considered to be valid for an individual for a period of 12 months, except that a State may provide for such determinations more frequently, but not more frequently than once every 6 months for an individual.”

State and local governments.

42 USC 1396b.

**(g) CONFORMING AMENDMENTS.—**

**(1) TREATMENT OF BENEFITS.—**Section 1902(a)(10)(C) of such Act (42 U.S.C. 1396a(a)(10)(C)) is amended, in the matter before clause (i), by inserting “or (E)” after “subparagraph (A)”.

**(2) PAYMENT OF MEDICARE PREMIUMS AND PART A DEDUCTIBLE.—**Section 1903(a)(1) of such Act (42 U.S.C. 1396b(a)(1)) is amended—

(A) by inserting “deductible amounts under part A and” after “(including expenditures for”,

(B) by inserting “(and, in the case of qualified medicare beneficiaries described in section 1905(p)(1), part A)” after “premiums under part B”, and

(C) by striking “or (B)” and inserting “(B) are qualified medicare beneficiaries described in section 1905(p)(1), or (C)”.

(3) **TIMING OF BENEFITS.**—Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended, in the matter before subdivision (i), by inserting “or, in the case of a qualified medicare beneficiary described in subsection (p)(1), if provided after the month in which the individual becomes such a beneficiary” after “makes application for assistance”.

(4) **COPAYMENTS.**—

(A) Section 1902(a)(15) of such Act (42 U.S.C. 1396a(a)(15)) is amended by inserting “are not qualified medicare beneficiaries (as defined in section 1905(p)(1)) but” after “older who”.

(B) Subsections (a) and (b) of section 1916 of such Act (42 U.S.C. 1396o) are each amended by striking “section 1902(a)(10)(A)” and inserting “subparagraph (A) or (E) of section 1902(a)(10)”.

(h) **EFFECTIVE DATE.**—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

**SEC. 9404. MEDICAID ELIGIBILITY FOR QUALIFIED SEVERELY IMPAIRED INDIVIDUALS.**

(a) **AS CATEGORICALLY NEEDY.**—Section 1902(a)(10)(A)(i)(II) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(II)) is amended by inserting “or who are qualified severely impaired individuals (as defined in section 1905(q))” after “title XVI”.

(b) **DESCRIPTION OF QUALIFIED SEVERELY IMPAIRED INDIVIDUALS.**—Section 1905 of such Act (42 U.S.C. 1396d), as amended by section 9403(b) of this subtitle, is amended by adding at the end the following new subsection:

“(q) The term ‘qualified severely impaired individual’ means an individual under age 65—

“(1) who for the month preceding the first month to which this subsection applies to such individual—

“(A) received (i) a payment of supplemental security income benefits under section 1611(b) on the basis of blindness or disability, (ii) a supplementary payment under section 1616 of this Act or under section 212 of Public Law 93-66 on such basis, (iii) a payment of monthly benefits under section 1619(a), or (iv) a supplementary payment under section 1616(c)(3), and

“(B) was eligible for medical assistance under the State plan approved under this title; and

“(2) with respect to whom the Secretary determines that—

“(A) the individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all non-disability-related requirements for eligibility for benefits under title XVI,

“(B) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments),

42 USC 1396a  
note.  
42 USC 1396.

42 USC 1382.

42 USC 1382e.  
42 USC 1382  
note.  
42 USC 1382h.

State and local  
governments.

42 USC 1381.

“(C) the lack of eligibility for benefits under this title would seriously inhibit his ability to continue or obtain employment, and

“(D) the individual’s earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under title XVI (including any federally administered State supplementary payments), this title, and publicly funded attendant care services (including personal care assistance) that would be available to him in the absence of such earnings.

State and local governments.

42 USC 1381.

In the case of an individual who is eligible for medical assistance pursuant to section 1619(b) in June, 1987, the individual shall be a qualified severely impaired individual for so long as such individual meets the requirements of paragraph (2).”

42 USC 1382h.

(c) **EFFECTIVE DATE.**—(1) The amendments made by this section apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether regulations to implement such amendments are promulgated by such date.

42 USC 1396a note.

42 USC 1396.

(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 (other than legislation appropriating funds) 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.

State and local governments.

**SEC. 9405. CLARIFICATION OF ELIGIBILITY OF HOMELESS INDIVIDUALS.**

Section 1902(b)(2) of the Social Security Act (42 U.S.C. 1396a(b)(2)) is amended by inserting before the semicolon the following: “, regardless of whether or not the residence is maintained permanently or at a fixed address”.

**SEC. 9406. PAYMENT FOR ALIENS UNDER MEDICAID.**

(a) **IN GENERAL.**—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended by adding at the end thereof the following new subsection:

“(v)(1) Notwithstanding the preceding provisions of this section, except as provided in paragraph (2), no payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

State and local governments.

“(2) Payment shall be made under this section for care and services that are furnished to an alien described in paragraph (1) only if—

“(A) such care and services are necessary for the treatment of an emergency medical condition of the alien, and

“(B) such alien otherwise meets the eligibility requirements for medical assistance under the State plan approved under this title (other than the requirement of the receipt of aid or assistance under title IV, supplemental security income benefits under title XVI, or a State supplementary payment).

42 USC 601.

42 USC 1381.

“(3) For purposes of this subsection, the term ‘emergency medical condition’ means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

“(A) placing the patient’s health in serious jeopardy,

“(B) serious impairment to bodily functions, or

“(C) serious dysfunction of any bodily organ or part.”.

State and local governments.

(b) **CONFORMING AMENDMENT.**—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended by adding at the end thereof the following new sentence: “Notwithstanding paragraph (10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1903(v).”.

42 USC 1396a note.

(c) **EFFECTIVE DATE.**—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to medical assistance furnished to aliens on or after January 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

42 USC 1396.

(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 (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made in subsection (b), 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 such additional requirement 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.

**SEC. 9407. OPTIONAL PRESUMPTIVE ELIGIBILITY PERIOD FOR PREGNANT WOMEN.**

(a) **STATE OPTION.**—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking “and” at the end of paragraph (45),

(2) by striking the period at the end of paragraph (46) and inserting in lieu thereof “; and”, and

(3) by adding at the end the following:

“(47) at the option of the State, provide for making ambulatory prenatal care available to pregnant women during a presumptive eligibility period in accordance with section 1920.”.

(b) **PRESUMPTIVE ELIGIBILITY.**—Title XIX of the Social Security Act is amended by redesignating section 1920 as section 1921 and inserting after section 1919 the following new section:

42 USC 1396s.

“**PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN**

42 USC 1396r-1.

“**SEC. 1920.** (a) A State plan approved under section 1902 may provide for making ambulatory prenatal care available to a pregnant woman during a presumptive eligibility period.

“(b) For purposes of this section—

“(1) the term ‘presumptive eligibility period’ means, with respect to a pregnant woman, the period that—

“(A) begins with the date on which a qualified provider determines, on the basis of preliminary information, that the family income of the woman does not exceed the applicable income level of eligibility under the State plan, and

“(B) ends with (and includes) the earlier of—

“(i) the day on which a determination is made with respect to the eligibility of the woman for medical assistance under the State plan,

“(ii) the day that is 45 days after the date on which the provider makes the determination referred to in subparagraph (A), or

“(iii) in the case of a woman who does not file an application for medical assistance within 14 calendar days after the date on which the provider makes the determination referred to in subparagraph (A), the fourteenth calendar day after such determination is made; and

“(2) the term ‘qualified provider’ means any provider that—

“(A) is eligible for payments under a State plan approved under this title,

“(B) provides services of the type described in subparagraph (A) or (B) of section 1905(a)(2) or in section 1905(a)(9),

“(C) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A), and

“(D)(i) receives funds under—

“(I) section 329 or section 330 of the Public Health Service Act, or

“(II) title V of this Act;

“(ii) participates in a program established under—

“(I) section 17 of the Child Nutrition Act of 1966, or

“(II) section 4(a) of the Agriculture and Consumer Protection Act of 1973; or

“(iii) participates in a State perinatal program.

“(c)(1) The State agency shall provide qualified providers with—

“(A) such forms as are necessary for a pregnant woman to make application for medical assistance under the State plan, and

“(B) information on how to assist such women in completing and filing such forms.

“(2) A qualified provider that determines under subsection (b)(1)(A) that a pregnant woman is presumptively eligible for medical assistance under a State plan shall—

“(A) notify the State agency of the determination within 5 working days after the date on which determination is made, and

“(B) inform the woman at the time the determination is made that she is required to make application for medical assistance under the State plan within 14 calendar days after the date on which the determination is made.

“(3) A pregnant woman who is determined by a qualified provider to be presumptively eligible for medical assistance under a State plan shall make application for medical assistance under such plan within 14 calendar days after the date on which the determination is made.

42 USC 1396d.

42 USC 254b,  
254c.

42 USC 701.

42 USC 1786.

42 USC 1446a.

“(d) Notwithstanding any other provision of this title, ambulatory prenatal care that—

“(1) is furnished to a pregnant woman—

“(A) during a presumptive eligibility period,

“(B) by a qualified provider; and

“(2) is included in the care and services covered by a State plan;

shall be treated as medical assistance provided by such plan for purposes of section 1903.”

42 USC 1396b.

(c) CONFORMING CHANGE.—Section 1903(u)(1)(D) of such Act (42 U.S.C. 1396b(u)(1)(D)) is amended by adding at the end the following:

“(v) In determining the amount of erroneous excess payments, there shall not be included any erroneous payments made for ambulatory prenatal care provided during a presumptive eligibility period (as defined in section 1920(b)(1)).”

Ante, p. 2058.

42 USC 1396a note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to ambulatory prenatal care furnished in calendar quarters beginning on or after April 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

**SEC. 9408. RESPIRATORY CARE SERVICES FOR VENTILATOR-DEPENDENT INDIVIDUALS.**

(a) REQUIRED SERVICES.—Section 1902(e) of the Social Security Act (42 U.S.C. 1396b(e)), as amended by sections 9401(d) and 9403(f) of this subtitle, is further amended by adding at the end the following new paragraph:

42 USC 1396a.

State and local governments.

“(9)(A) At the option of the State, the plan may include as medical assistance respiratory care services for any individual who—

“(i) is medically dependent on a ventilator for life support at least six hours per day;

“(ii) has been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less) as an inpatient;

Health care facilities.

“(iii) but for the availability of respiratory care services, would require respiratory care as an inpatient in a hospital, skilled nursing facility, or intermediate care facility, and would be eligible to have payment made for such inpatient care under the State plan;

“(iv) has adequate social support services to be cared for at home; and

“(v) wishes to be cared for at home.

“(B) The requirements of subparagraph (A)(ii) may be satisfied by a continuous stay in one or more hospitals, skilled nursing facilities, or intermediate care facilities.

“(C) For purposes of this paragraph, respiratory care services means services provided on a part-time basis in the home of the individual by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State), payment for which is not otherwise included within other items and services furnished to such individual as medical assistance under the plan.”

(b) WAIVER OF COMPARABILITY.—Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)), as amended by sections 9401(c), 9403(a), and

9403(c) of this subtitle, is further amended, in the matter following subparagraph (E)—

(1) by striking “and” before “(VIII)”;

(2) by inserting before the semicolon at the end thereof the following: “, and (IX) the making available of respiratory care services in accordance with subsection (e)(9) shall not, by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any individuals not included under subsection (e)(9)(A), provided such services are made available (in the same amount, duration, and scope) to all individuals described in such subsection”.

(c) CONFORMING CHANGES.—

(1) Section 1905(a) of the Social Security Act (42 U.S.C. 1395d(a)), as amended by section 1895(c)(3) of the Tax Reform Act of 1986, is further amended—

(A) by striking “and” at the end of paragraph (19),

(B) by redesignating paragraph (20) as paragraph (21), and

(C) by inserting after paragraph (19) the following new paragraph:

“(20) respiratory care services (as defined in section 1902(e)(9)(C)); and”.

(2) Section 1902(j) of the Social Security Act (42 U.S.C. 1396a(j)), as amended by section 1895(c)(3) of the Tax Reform Act of 1986, is amended by striking “(20)” and inserting in lieu thereof “(21)”.

(3) Section 1902(a)(10)(C)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)(iv)), as amended by section 1895(c)(3) of the Tax Reform Act of 1986, is amended by striking “through (19)” and inserting in lieu thereof “through (20)”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after the date of the enactment of this Act.

*Ante*, p. 2981.

*Ante*, p. 2060.

42 USC 1396a note.

## PART 2—PROVISION OF SERVICES UNDER WAIVER AUTHORITY

### SEC. 9411. PERMITTING STATES TO OFFER HOME AND COMMUNITY-BASED SERVICES TO CERTAIN LOW-INCOME INDIVIDUALS.

(a) WAIVER AUTHORITY.—

(1) Section 1915(c)(1) of the Social Security Act (42 U.S.C. 1396n(c)(1)) is amended—

(A) by inserting “a hospital or” after “level of care provided in”, and

(B) by striking out all beginning with “or but for” through “State plan” the third place it appears.

(2) Section 1915(c)(2)(B) of such Act is amended—

(A) in clause (i) by striking “skilled nursing facility or” and inserting in lieu thereof “inpatient hospital, skilled nursing facility, or”, and

(B) in the matter following clause (iii) by inserting “inpatient hospital,” after “need for”.

(3) Section 1915(c)(7) of such Act is amended to read as follows:

“(7) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with a particular illness or

Health care facilities.

condition who are inpatients in hospitals or in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure that would have been made in a fiscal year for those individuals under the State plan separately from the expenditures for other individuals who are inpatients of those respective facilities.”.

State and local governments.  
AIDS.  
42 USC 1396n.

(b) **PROVIDING CASE MANAGEMENT SERVICES TO PATIENTS WITH CERTAIN CONDITIONS.**—Section 1915(g)(1) of such Act is amended by adding at the end the following: “A State may limit the provision of case management services under this subsection to individuals with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either, and a State may limit the provision of case management services under this subsection to individuals with chronic mental illness.”.

*Ante*, pp. 203,  
204.  
42 USC 1396a.

(c) **WAIVER OF COMPARABILITY REQUIREMENT.**—The first sentence of section 1915(c)(3) of such Act is amended by striking all that follows “statewideness)” and inserting “and section 1902(a)(10)(B) (relating to comparability).”.

(d) **PROVIDING CERTAIN OTHER SERVICES TO PATIENTS WITH CHRONIC MENTAL ILLNESS.**—Section 1915(c)(4)(B) of such Act is amended by inserting before the period at the end the following: “and for day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness”.

42 USC 1396n  
note.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to applications for waivers (or renewals thereof) approved on or after the date of the enactment of this Act.

**SEC. 9412. WAIVER AUTHORITY FOR CHRONICALLY MENTALLY ILL AND FRAIL ELDERLY.**

(a) **CHRONICALLY MENTALLY ILL DEMONSTRATION PROGRAM.**—

State and local governments.  
42 USC 1396.

(1) The Secretary of Health and Human Services may, in accordance with this subsection, waive certain provisions of title XIX of the Social Security Act in order to allow States to implement demonstration programs to improve the continuity, quality, and cost-effectiveness of mental health services available to chronically mentally ill medicaid beneficiaries.

(2) A waiver shall be granted under this subsection with respect to a demonstration program only if—

Grants.

(A) the demonstration program has been awarded a grant from the Robert Wood Johnson Foundation and the Department of Housing and Urban Development under their “Program for the Chronically Mentally Ill”,

(B) the State provides assurances satisfactory to the Secretary that under such waiver—

(i) the average per capita expenditure estimated by the State in any fiscal year for medical assistance for mental health services provided with respect to individuals covered under the program does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such services for such individuals if the waiver had not been granted, and

(ii) there will be no reduction or limitation in benefits to a medicaid beneficiary under the program.

(3) The authority under this subsection extends only to the following, as they relate to the provision of mental health services:

(A) A waiver of the requirements of sections 1902(a)(1), 1902(a)(10)(B), 1902(a)(23), and 1902(a)(30) and clauses (i) and (ii) of section 1903(m)(2) of the Social Security Act.

42 USC 1396a,  
1396b.

(B) Including as "medical assistance" under the State plan case management services with respect to mentally ill patients, habilitation services (as defined in section 1915(c)(5) of such Act), day treatment or other partial hospitalization services, residential services (other than room and board), psychosocial rehabilitation services, clinic services (whether or not furnished in a facility), and such other services as the State may request and the Secretary may approve for individuals covered under the demonstration project.

42 USC 1396n.

(4)(A) A waiver under this subsection shall be for an initial term of three years which may be extended for an additional two-year term. The request of a State for extension of such a waiver shall be deemed granted unless the Secretary denies such request in writing within 90 days after the date of its submission to the Secretary.

(B) The authority to approve a waiver under this subsection extends only during the five-year period beginning on October 1, 1986.

(5) Subsections (c)(6) and (e)(1) of section 1915 of the Social Security Act shall apply to a waiver under this subsection in the same manner as they apply to a waiver under that section.

(6) The Secretary shall report, not later than January 1, 1993, to Congress on the cost, accessibility, utilization, and quality of services provided under waivers granted under this subsection.

Reports.

**(b) FRAIL ELDERLY DEMONSTRATION PROJECT WAIVERS.—**

(1) The Secretary of Health and Human Services shall grant waivers of certain requirements of titles XVIII and XIX of the Social Security Act to not more than 10 public or nonprofit private community-based organizations to enable such organizations to provide comprehensive health care services on a capitated basis to frail elderly patients at risk of institutionalization.

42 USC 1395,  
1396.

(2)(A) Except as provided in subparagraph (B), the terms and conditions of a waiver granted pursuant to this subsection shall be substantially the same as the terms and conditions of the On Lok waiver (referred to in section 603(c) of the Social Security Amendments of 1983 and extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985).

42 USC 1395b-1  
notes.  
*Ante*, p. 183.  
Grants.

(B) In order to receive a waiver under this subsection, an organization must be awarded a grant from the Robert Wood Johnson Foundation.

(C) Subject to subparagraph (B), any waiver granted pursuant to this subsection shall be for an initial period of 3 years. The Secretary may extend such waiver beyond such initial period for so long as the Secretary finds that the organization complies with the terms and conditions described in subparagraphs (A) and (B).

**SEC. 9413. CONTINUATION OF "CASE-MANAGED MEDICAL CARE FOR NURSING HOME PATIENTS" DEMONSTRATION PROJECT.**

Massachusetts.

42 USC 1395,  
1396.

42 USC 1315.

(a) **APPROVAL OF APPLICATION.**—The Secretary of Health and Human Services shall approve any application for a waiver of any requirement of title XVIII or XIX of the Social Security Act necessary to provide for continuation, from July 1, 1987, through June 30, 1989, of the "Case-Managed Medical Care for Nursing Home Patients" demonstration project (#95-P-98346/1-01) carried out pursuant to section 222 of the Social Security Amendments of 1972, section 402 of the Social Security Amendments of 1967, and section 1115 of the Social Security Act by the Department of Public Welfare, Commonwealth of Massachusetts.

(b) **TERMS AND CONDITIONS.**—The Secretary's approval of an application (or renewal of an application) under subsection (a) shall be on the same terms and conditions as applied to the demonstration project on July 1, 1986.

**SEC. 9414. NEW JERSEY RESPITE CARE PILOT PROJECT.**

Handicapped persons.  
Aged persons.

(a) **ESTABLISHMENT.**—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with the State of New Jersey (in this section referred to as the "State") for the purpose of conducting a pilot project (in this section referred to as the "project") under title XIX of the Social Security Act for providing respite care services for elderly and disabled individuals in order to determine the extent to which—

(1) the provision of necessary respite care services to individuals at risk of institutionalization will delay or avert the need for institutional care, and

(2) respite care services enhance and sustain the role of the family in providing long-term care services for elderly and disabled individuals at risk of institutionalization.

Contracts.

(b) **CONDITIONS.**—The agreement with the Secretary under this section shall—

State and local governments.

(1) provide that the project shall be administered by a State health services agency designated for such 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),

42 USC 1396.

(2) provide that if the project imposes any cost sharing requirements on participants who are eligible for benefits under title XIX of the Social Security Act, such requirements shall be imposed only in accordance with the provisions of section 1916 of such Act,

42 USC 1396o.

(3) provide for a system of review to assure that respite care services are provided only to individuals reasonably determined to be in need of such services, and

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

(c) **DEFINITION.**—For purposes of this section, the term "respite care services" shall include—

(1) short-term and intermittent—

(A) companion or sitter services (paid as well as volunteer),

(B) homemaker and personal-care services,

(C) adult day care, and

(D) inpatient care in a hospital, a skilled nursing facility, or an intermediate care facility (not to exceed a total of 14 days for any individual); and

(2) peer support and training for family caregivers (using informal support groups and organized counseling).

(d) **PAYMENTS.**—The agreement under this section shall be entered into between the Secretary and the State agency designated by the Governor. Under such agreement the Secretary shall pay to the State, as in additional payment under section 1903 of the Social Security Act for each quarter, an amount equal to 50 percent of the reasonable costs incurred by such State during such quarter in providing respite care services under the project for elderly and disabled individuals who are eligible for medical assistance under the State plan approved under title XIX of such Act (or who would be eligible if coverage under such plan was as broad as allowed under Federal law). The Federal payment shall not exceed \$1,000,000 for fiscal year 1987, and \$2,000,000 for each of the fiscal years 1988, 1989, and 1990. No payments shall be made pursuant to this section for any fiscal year beginning after September 30, 1990.

Contracts.  
State and local  
governments.  
Aged persons.  
Handicapped  
persons.  
42 USC 1396b.

42 USC 1396.

(e) **DURATION.**—The project under this section shall be of a maximum duration of four years, plus an additional time period of up to six months for final evaluation and reporting.

Reports.

(f) **REPORTS.**—The State shall arrange for an independent evaluation of the project and shall transmit the evaluation to the Secretary not more than six months after the conclusion of project.

(g) **PROVISIONS SUBJECT TO WAIVER.**—At the request of the State, the Secretary shall waive the following provisions of title XIX of the Social Security Act as they relate to the pilot project: section 1902(a)(1), section 1902(a)(10)(B), section 1902(a)(13), and section 1902(a)(30). The Secretary may not waive any other provision of such title with respect to the pilot project.

42 USC 1396a.

#### SEC. 9415. INAPPLICABILITY OF PAPERWORK REDUCTION ACT.

Notwithstanding any other provision of law, chapter 35 of title 44, United States Code, shall not apply to information required to carry out any provision of this part or the amendments made by this part.

44 USC 3501 *et*  
*seq.*

### PART 3—PAYMENTS

#### SEC. 9421. HOLDING STATES HARMLESS IN FISCAL YEAR 1987 AGAINST A DECREASE IN THE FEDERAL MEDICAL ASSISTANCE PERCENTAGE.

(a) **IN GENERAL.**—Section 9528 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end the following new subsection:

42 USC 1301  
note.  
*Ante*, p. 1972.

“(c) **HOLD HARMLESS PROVISION.**—Notwithstanding subsection (b), for calendar quarters occurring during fiscal year 1987 and only for purposes of making payment to a State under section 1903 of the Social Security Act, the amendments made by subsection (a) shall not apply to a State if the effect of the applying the amendments would be to reduce the amount of payment made to the State under that section.”

42 USC 1396b.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall be effective as though it had been included in the Consolidated Omnibus Budget Reconciliation Act of 1985 at the time of its enactment.

42 USC 1301  
note.  
*Ante*, p. 82.

#### SEC. 9422. WAIVER OF CERTAIN REQUIREMENTS.

Notwithstanding the three-month limitation set forth in sections 1902(a)(34) and 1905(a) of the Social Security Act, payment may be

South Carolina.  
42 USC 1396a,  
1396d.

42 USC 1396.

made under title XIX of such Act with respect to care and services provided by the Medical University of South Carolina, after September 30, 1984, and before July 1, 1985, to individuals—

42 USC 1396a.  
Women.  
State and local governments.

(1) who are not described in section 1902(a)(10)(A) of such Act,  
(2) who, upon application, would have been eligible as individuals under the age of 18 or pregnant women, for medical assistance under the State plan approved under such title at the time such care and services were provided, and

(3) who, not later than six months after the date of the enactment of this Act, are determined by the State agency administering or supervising the administration of such plan to have been so eligible.

### PART 4—OTHER QUALITY AND EFFICIENCY MEASURES

#### SEC. 9431. INDEPENDENT QUALITY REVIEW OF HMO SERVICES.

(a) **IN GENERAL.**—Section 1902(a)(30) of the Social Security Act (42 U.S.C. 1396a(a)(30)) is amended—

Contracts.  
State and local governments.  
42 USC 1320c.

(1) by inserting “and” at the end of subparagraph (B), and

(2) by adding at the end the following new subparagraph:  
“(C) provide a utilization and quality control peer review organization (under part B of title XI) or a private accreditation body to conduct (on an annual basis) an independent, external review of the quality of services furnished under each contract under section 1903(m), with the results of such review made available to the State and, upon request, to the Secretary, the Inspector General in the Department of Health and Human Services, and the Comptroller General;”.

42 USC 1396b.

(b) **CONFORMING AMENDMENTS.**—(1) Section 1902(d) of such Act (42 U.S.C. 1396a(d)) is amended by inserting “(including quality review functions described in subsection (a)(30)(C))” after “medical or utilization review functions”.

(2) Section 1903(a)(3)(C) of such Act (42 U.S.C. 1396b(a)(3)(C)) is amended by inserting “or quality review” after “medical and utilization review”.

42 USC 1396a note.

(c) **EFFECTIVE DATE.**—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

#### SEC. 9432. STATE UTILIZATION REVIEW SYSTEMS.

Health care facilities.  
42 USC 1396a note.

(a) **IN GENERAL.**—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) may not, during the period beginning with the date of the enactment of this Act and ending with the date that is 180 days after the day on which the report required by subsection (b) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act to include a program requiring second surgical opinions or a program of inpatient hospital preadmission review.

42 USC 1396.

(b) **REPORT.**—

(1) The Secretary shall report to Congress, by not later than October 1, 1988, for each State in a representative sample of States—

(A) the identity of those procedures which are high volume or high cost procedures among patients who are covered under the State medicaid plan,

(B) the payment rates under those plans for such procedures, and the aggregate annual payment amounts made under such plans for such procedures (including the Federal share of such payment amounts),

(C) the rate at which each such procedure is performed on medicaid patients and (to the extent that data are available) comparisons to the rate at which such procedure is performed on patients of comparable age who are not medicaid patients,

(D) with respect to each such procedure—

(i) the number of board certified or board eligible physicians in the State who provide care and services to medicaid patients and who perform the procedure, and

Health care professionals.

(ii) in the case of a State with a mandatory second surgical opinion program in operation, the number of physicians described in clause (i) who provide second opinions (of the type described in section 1164 of the Social Security Act) for the procedure at prevailing payment rates under the State medicaid plan, and

*Ante*, p. 196.

(E) in the case of a State with a mandatory second surgical opinion program or a program of inpatient hospital preadmission review in operation, a description of—

Health care facilities.

(i) the extent to which such program impedes access to necessary care and services, and

(ii) the measures that the State has taken to address such impediments, particularly in rural areas.

Rural areas.

(2) Such report shall also include a list of those surgical procedures which the Secretary believes meet the following criteria and for which a mandatory second opinion program under medicaid plans may be appropriate:

(A) The procedure is one which generally can be postponed without undue risk to the patient.

(B) The procedure is a high volume procedure among patients who are covered under State medicaid plans or is a high cost procedure.

(C) The procedure has a comparatively high rate of nonconfirmation upon examination by another qualified physician, there is substantial geographic variation in the rates of performance of the procedure, or there are other reasons why requiring second opinions for 100 percent of such procedures would be cost effective.

Health care professionals.

(3) The representative sample of States required to be included in the report shall include States with mandatory second surgical opinion programs in operation, States with programs of inpatient hospital preadmission review in operation, and States with neither such program in operation.

Health care facilities.

(4) In this subsection, the term "medicaid plan" means a State plan approved under title XIX of the Social Security Act.

42 USC 1396.

(c) **Study.**—

(1) The Secretary shall conduct a study of the utilization of selected medical treatments and surgical procedures by medicaid beneficiaries in order to assess the appropriateness, necessity, and effectiveness of such treatments and procedures.

(2) The study shall analyze the extent to which there is significant variation in the rate of utilization by medicaid bene-

ficiaries of selected treatments and procedures for different geographic areas within States and among States.

(3) The study shall also identify underutilized, medically necessary treatments and procedures for which—

(A) a failure to furnish could have an adverse effect on health status, and

(B) the rate of utilization by medicaid beneficiaries is significantly less than the rate for comparable, age-adjusted populations.

(4) The study shall be coordinated, to the extent practicable, with the research program established pursuant to section 1875(c) of the Social Security Act, with particular regard to the relationship of the variations described in paragraph (2) to patient outcomes.

(5) The Secretary shall report the results of the study to the Congress not later than January 1, 1990.

Research and  
development.  
*Ante*, p. 2006.

**SEC. 9433. CLARIFICATION OF FLEXIBILITY FOR STATE MEDICAID PAYMENT SYSTEMS FOR INPATIENT SERVICES.**

(a) **IN GENERAL.**—Section 2173 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35, 95 Stat. 809) is amended by adding at the end the following new subsection:

42 USC 1396a.

42 USC 1396a.

Health care  
facilities.

Disadvantaged  
persons.

42 USC 1396a  
note.

95 Stat. 357.

“(d) Section 1902 of such Act is further amended by inserting before subsection (i) the following new subsection:

“(h) Nothing in this title (including subsections (a)(13) and (a)(30) of this section) shall be construed as authorizing the Secretary to limit the amount of payment adjustments that may be made under a plan under this title with respect to hospitals that serve a disproportionate number of low-income patients with special needs.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply as though it was included in the enactment of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35).

**SEC. 9434. FINANCIAL DISCLOSURE REQUIREMENTS FOR HMOs; CIVIL MONEY PENALTIES.**

(a) **DISCLOSURE OF INTERLOCKING RELATIONSHIPS.**—

(1) Section 1903(m) of the Social Security Act (42 U.S.C. 1396b(m)) is amended—

(A) in paragraph (2)(A)—

(i) by striking “and” at the end of clause (vi),

(ii) by striking the period at the end of clause (vii) and inserting “, and”, and

(iii) by adding after clause (vii) the following new clause:

Contracts.

42 USC 1320a-3.

“(viii) such contract provides for disclosure of information in accordance with section 1124 and paragraph (4) of this subsection.”; and

Reports.

42 USC 300e-9.

(B) by adding at the end the following new paragraph:

“(4)(A) Each health maintenance organization which is not a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) must report to the State and, upon request, to the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General a description of transactions between the organization and a party in interest (as defined in section 1318(b) of such Act), including the following transactions:

42 USC 300e-17.

“(i) Any sale or exchange, or leasing of any property between the organization and such a party.

Gifts and property.

“(ii) Any furnishing for consideration of goods, services (including management services), or facilities between the organization and such a party, but not including salaries paid to employees for services provided in the normal course of their employment.

“(iii) Any lending of money or other extension of credit between the organization and such a party.

The State or Secretary may require that information reported respecting an organization which controls, or is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

State and local governments.

“(B) Each organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.”

(2) Section 1903(m)(2)(A)(iii) of the Social Security Act (42 U.S.C. 1396b(m)(2)(A)(iii)) is amended by inserting before the semicolon the following: “and under which the Secretary must provide prior approval for contracts providing for expenditures in excess of \$100,000”.

Contracts.

(3)(A) The amendments made by paragraph (1) shall take effect 6 months after the date of the enactment of this Act.

Effective date.  
Contracts.  
42 USC 1396b note.

(B) The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act and shall apply to contracts entered into, renewed, or extended after the end of the 30-day period beginning on the date of the enactment of this Act.

(b) **CIVIL MONEY PENALTIES.**—Section 1903(m) of the Social Security Act, as amended by subsection (a), is further amended by adding at the end the following new paragraph:

“(5)(A) Any entity with a contract under this subsection that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than \$10,000 for each such failure.

Contracts.

“(B) The provisions of section 1128A (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.”

*Ante*, pp. 2003, 2008.

**SEC. 9435. COBRA TECHNICAL CORRECTIONS AND CLARIFICATIONS RELATING TO THE MEDICAID PROGRAM.**

(a) **MAINTENANCE INCOME STANDARDS.**—Section 9502(j)(4) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking out “on or after” and inserting in lieu thereof “before, on, or after”.

42 USC 1396n note.  
*Ante*, p. 202.

(b) **HOSPICE CARE FOR DUAL ELIGIBLES.**—

(1) Section 1902(a)(13)(D) of the Social Security Act, as amended by sections 9505(c)(1) and 9509(a)(4) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by inserting before the first semicolon the following: “and for payment of amounts under section 1905(o)(3)”.

42 USC 1396a.  
*Ante*, pp. 208, 211.  
42 USC 1396d.

(2) Section 1905(o) of the Social Security Act, as amended by section 9505(a)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by adding at the end the following new paragraph:

*Ante*, p. 208.

State and local governments.

“(3) In the case of a State which elects not to provide medical assistance for hospice care, but provides medical assistance for skilled nursing or intermediate care facility services with respect to an individual—

“(A) who is residing in a skilled nursing or intermediate care facility and is receiving medical assistance for services in such facility under the plan,

42 USC 1395c.

42 USC 1395d.

“(B) who is entitled to benefits under part A of title XVIII and has elected, under section 1812(d), to receive hospice care under such part, and

“(C) with respect to whom the hospice program under such title and the skilled nursing or intermediate care facility have entered into a written agreement under which the program takes full responsibility for the professional management of the individual’s hospice care and the facility agrees to provide room and board to the individual, instead of any payment otherwise made under the plan with respect to the facility’s services, the State shall provide for payment to the hospice program of an amount equal to the amounts allocated under the plan for room and board in the facility, in accordance with the rates established under section 1902(a)(13), and, if the individual is an individual described in section 1902(a)(10)(A), shall provide for payment of any coinsurance amounts imposed under section 1813(a)(4). For purposes of this paragraph and section 1902(a)(13)(D), the term ‘room and board’ includes performance of personal care services, including assistance in activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident’s room, and supervising and assisting in the use of durable medical equipment and prescribed therapies.”

42 USC 1396a.

42 USC 1395e.

42 USC 1396a note.

*Ante*, p. 210.

Handicapped persons.

(c) **MEDICAID QUALIFYING TRUSTS.**—Section 9506 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end the following new subsection:

“(c) **EXCEPTION.**—The amendment made by subsection (a) shall not apply to any trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded.”

(d) **EFFECTIVE DATES.**—

*Ante*, pp. 208, 210.

(1) Sections 9505(e) and 9508(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 are each amended by inserting before the period at the end the following: “, without regard to whether or not regulations to carry out the amendments have been promulgated by that date”.

*Ante*, p. 212.

(2) Sections 9510(b) and 9511(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 are each amended by inserting before the period at the end the following: “, without regard to whether or not regulations to carry out the amendment have been promulgated by that date”.

42 USC 1396b note.

*Ante*, p. 2931.

(e) **HEALTH INSURING ORGANIZATIONS.**—Section 9517(c)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 1895(c)(4) of the Tax Reform Act of 1986, is amended by adding at the end the following new subparagraph:

“(D) Nothing in section 1903(m)(1)(A) of the Social Security Act shall be construed as requiring a health-insuring organization to be organized under the health maintenance organization laws of a State.”

State and local governments.  
42 USC 1396b.

(F) **EFFECTIVE DATE.**—The amendments made by this section shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

42 USC 1396a note.

*Ante*, p. 82.

**SEC. 9436. PAYMENT FOR CERTAIN LONG-TERM CARE PATIENTS IN HOSPITALS.**

(a) **IN GENERAL.**—In the case of a State which received a waiver under the authority of section 402(b) of the Social Security Amendments of 1967 with respect to payment methodology for inpatient hospital services under title XVIII and XIX of the Social Security Act during the 3-year period beginning January 1, 1983, notwithstanding section 1902(a)(13) of such Act, the State may pay under title XIX of such Act for hospital patients receiving services at an inappropriate level of care at the rate for hospital patients receiving an appropriate level of care if the Secretary of Health and Human Services determines that a sufficient number of hospital beds have been decertified in the State to reduce the payments to hospitals under such title in the State by amount equal to or greater than the amount by which payments to hospitals under such title in such State will increase as a result of the payment of such higher rates for patients receiving inappropriate levels of care.

State and local governments.  
42 USC 1395b-1.  
42 USC 1395, 1396.  
42 USC 1396a.

(b) **EFFECTIVE PERIOD.**—Subsection (a) shall apply to payments for services furnished during the 3-year period beginning January 1, 1986, after the date the Secretary makes the determination described in that subsection.

## PART 5—MATERNAL AND CHILD HEALTH

**SEC. 9441. AUTHORIZATION AND ALLOTMENT OF ADDITIONAL FUNDS.**

(a) **ADDITIONAL FUNDS.**—Section 501(a) of the Social Security Act (42 U.S.C. 701(a)) is amended by striking “\$478,000,000 for fiscal year 1984” and inserting “\$553,000,000 for fiscal year 1987, \$557,000,000 for fiscal year 1988, and \$561,000,000 for fiscal year 1989”.

(b) **ALLOTMENT OF ADDITIONAL APPROPRIATIONS.**—Section 502 of such Act (42 U.S.C. 702) is amended—

(1) in subsection (a)(1) by striking “amount appropriated under section 501(a)” and inserting in lieu thereof “amounts appropriated under section 501(a) for a fiscal year that are not in excess of \$478,000,000”;

(2) in subsection (b)—

(A) by inserting “that are not in excess of \$478,000,000” after “fiscal year” the first place it appears, and

(B) by striking paragraph (3); and

(3) by adding at the end the following new subsections:

“(c)(1) Of the amounts appropriated for a fiscal year in excess of \$478,000,000, an amount equal to 7 percent for fiscal year 1987, 8 percent for fiscal year 1988, and 9 percent for fiscal year 1989 shall be retained by the Secretary for the purpose of carrying out (through grants, contracts, or otherwise) projects for the screening of newborns for sickle-cell anemia and other genetic disorders. The provisions of paragraph (3) of subsection (a) shall apply to projects authorized by this paragraph to the same extent as such provisions apply to projects authorized under such subsection.

Grants.  
Contracts.

“(2)(A) Of the amounts appropriated for a fiscal year in excess of \$478,000,000 that remain after the Secretary has retained the applicable amount (if any) for such fiscal year under paragraph (1), an amount equal to 33 $\frac{1}{3}$  percent shall be retained and allotted in the same manner as the amounts retained and allotted under subsections (a) and (b).

Research and development.

“(B) The amounts retained by the Secretary under this paragraph shall be used for the purpose of carrying out (through grants, contracts, or otherwise) special projects of regional or national significance, training, and research to promote access to primary health services for children and community-based service networks and case management services for children with special health care needs.

State and local governments.

“(C) The amounts allotted to the States under this paragraph shall be used to develop primary health services demonstration programs and projects for children and to promote the development of community-based service networks and case management services for children with special health care needs.

“(D) For purposes of this paragraph—

“(i) the term ‘primary health services’ includes—

“(I) any assessment, diagnosis, or treatment service provided on an outpatient basis that is designed to promote the health, to prevent the development of disease or disability, or to treat an illness or other health condition, of a child, and

“(II) any service designed to promote the access of children to high quality, continuous, and comprehensive primary health services, including case management;

“(ii) the term ‘community-based service network for children with special health care needs’ means a network of coordinated, high-quality services that is located in or near the home communities of children with special health care needs in order to improve the health status, functioning, and well-being of such children;

“(iii) the term ‘case management services’ means services to promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children and their families; and

“(iv) the term ‘comprehensive services’ includes early identification and intervention services, diagnostic and evaluation services, treatment services, rehabilitation services, family support services, and special education services.

“(3) Of the amounts appropriated for a fiscal year in excess of \$478,000,000 that remain after the Secretary has retained the applicable amount (if any) for such fiscal year under paragraph (1), an amount equal to 66 $\frac{2}{3}$  percent shall be retained and allotted in the same manner and for the same purposes as the amounts retained and allotted under subsections (a) and (b).

State and local governments.

“(d)(1) To the extent that all the funds appropriated under this title for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 505 for the fiscal year or because some States have indicated in their descriptions of activities under section 505 that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

42 USC 705.

“(2) To the extent that all the funds appropriated under this title for a fiscal year are not otherwise allotted to States because some State allotments are offset under section 506(b)(2), such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.”

42 USC 706.

**SEC. 9442. MATERNAL AND CHILD HEALTH AND ADOPTION CLEARINGHOUSE.**

The Secretary of Health and Human Services shall establish, either directly or by grant or contract, a National Adoption Information Clearinghouse. The Clearinghouse shall—

Grants.  
Contracts.  
42 USC 679a.

(1) collect, compile, and maintain information obtained from available research, studies, and reports by public and private agencies, institutions, or individuals concerning all aspects of infant adoption and adoption of children with special needs;

(2) compile, maintain, and periodically revise directories of information concerning—

Women.  
Education.  
State and local  
governments.

(A) crisis pregnancy centers,

(B) shelters and residences for pregnant women,

(C) training programs on adoption,

(D) educational programs on adoption,

(E) licensed adoption agencies,

(F) State laws relating to adoption,

(G) intercountry adoption, and

(H) any other information relating to adoption for pregnant women, infertile couples, adoptive parents, unmarried individuals who want to adopt children, individuals who have been adopted, birth parents who have placed a child for adoption, adoption agencies, social workers, counselors, or other individuals who work in the adoption field;

(3) disseminate the information compiled and maintained pursuant to paragraph (1) and the directories compiled and maintained pursuant to paragraph (2); and

(4) upon the establishment of an adoption and foster care data collection system pursuant to section 479 of the Social Security Act, disseminate the data and information made available through that system.

*Infra.*

**SEC. 9443. COLLECTION OF DATA RELATING TO ADOPTION AND FOSTER CARE.**

Part E of title IV of the Social Security Act, as amended by section 1883(b)(10) of the Tax Reform Act of 1986, is further amended by adding at the end thereof the following new section:

**“COLLECTION OF DATA RELATING TO ADOPTION AND FOSTER CARE**

“SEC. 479. (a)(1) Not later than 90 days after the date of the enactment of this subsection, the Secretary shall establish an Advisory Committee on Adoption and Foster Care Information (in this section referred to as the ‘Advisory Committee’) to study the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

42 USC 679.

“(2) The study required by paragraph (1) shall—

“(A) identify the types of data necessary to—

“(i) assess (on a continuing basis) the incidence, characteristics, and status of adoption and foster care in the United States, and

“(ii) develop appropriate national policies with respect to adoption and foster care;

“(B) evaluate the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies;

“(C) assess the validity of various methods of collecting data with respect to adoption and foster care; and

“(D) evaluate the financial and administrative impact of implementing each such method.

Reports.

“(3) Not later than October 1, 1987, the Advisory Committee shall submit to the Secretary and the Congress a report setting forth the results of the study required by paragraph (1) and evaluating and making recommendations with respect to the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

“(4)(A) Subject to subparagraph (B), the membership and organization of the Advisory Committee shall be determined by the Secretary.

State and local governments.

“(B) The membership of the Advisory Committee shall include representatives of—

“(i) private, nonprofit organizations with an interest in child welfare (including organizations that provide foster care and adoption services),

“(ii) organizations representing State and local governmental agencies with responsibility for foster care and adoption services,

“(iii) organizations representing State and local governmental agencies with responsibility for the collection of health and social statistics,

“(iv) organizations representing State and local judicial bodies with jurisdiction over family law,

“(v) Federal agencies responsible for the collection of health and social statistics, and

“(vi) organizations and agencies involved with privately arranged or international adoptions.

“(5) After the date of the submission of the report required by paragraph (3), the Advisory Committee shall cease to exist.

Reports.

“(b)(1)(A) Not later than July 1, 1988, the Secretary shall submit to the Congress a report that—

“(i) proposes a method of establishing, administering, and financing a system for the collection of data relating to adoption and foster care in the United States,

“(ii) evaluates the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies, and

“(iii) evaluates the impact of the system proposed under clause (i) on the agencies with responsibility for implementing it.

Reports.

“(B) The report required by subparagraph (A) shall—

“(i) specify any changes in law that will be necessary to implement the system proposed under subparagraph (A)(i), and

“(ii) describe the type of system that will be implemented under paragraph (2) in the absence of such changes.

“(2) Not later than December 31, 1988, the Secretary shall promulgate final regulations providing for the implementation of— Regulations.

“(A) the system proposed under paragraph (1)(A)(i), or

“(B) if the changes in law specified pursuant to paragraph (1)(B)(i) have not been enacted, the system described in paragraph (1)(B)(ii).

Such regulations shall provide for the full implementation of the system not later than October 1, 1991.

“(c) Any data collection system developed and implemented under this section shall—

“(1) avoid unnecessary diversion of resources from agencies responsible for adoption and foster care;

“(2) assure that any data that is collected is reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies;

“(3) provide comprehensive national information with respect to—

“(A) the demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents,

“(B) the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care),

“(C) the number and characteristics of—

“(i) children placed in or removed from foster care, and

“(ii) children adopted or with respect to whom adoptions have been terminated, and

“(D) the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided; and

“(4) utilize appropriate requirements and incentives to ensure that the system functions reliably throughout the United States.”.

State and local governments.

### Subtitle F—Provision Relating to Access to Health Care

Sec. 9501. Continuation coverage for retirees in cases of bankruptcies.

#### SEC. 9501. CONTINUATION COVERAGE FOR RETIREES IN CASES OF BANKRUPTCIES.

(a) LOSS OF COVERAGE OF RETIREE THROUGH BANKRUPTCY AS QUALIFYING EVENT.—

(1) IRC AMENDMENT.—Paragraph (3) of section 162(k) of the Internal Revenue Code of 1986 (relating to qualifying event with respect to continuation coverage requirements under group health plans) is amended by adding at the end the following:

Post, p. 2095.  
26 USC 162.

“(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

Employment and unemployment.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with

respect to a qualified beneficiary described in paragraph (7)(B)(iv) within one year before or after the date of commencement of the proceeding.”

(2) ERISA AMENDMENT.—Section 603 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1163) is amended by adding at the end the following:

Employment  
and  
unemployment.

“(6) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in paragraph (6), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in section 607(3)(C) within one year before or after the date of commencement of the proceeding.”

Post, p. 2077.

(b) PERIOD OF CONTINUATION COVERAGE.—

(1) LIFE OF COVERED EMPLOYEE OR WIDOW AND ADDITIONAL 36 MONTHS FOR SURVIVING SPOUSE AND DEPENDENTS.—

(A) IRC AMENDMENTS.—Clause (i) of section 162(k)(2)(B) of the Internal Revenue Code of 1986 (relating to maximum period), as amended by section 1895(d)(2)(A) of the Tax Reform Act of 1986, is amended—

Post, p. 2095;  
26 USC 162.

(i) in subclause (II), by inserting “(other than a qualifying event described in paragraph (3)(F))” after “qualifying event” the first place it appears,

(ii) in subclause (III), by inserting “or (3)(F)” after “(3)(B)”,

(iii) by redesignating subclause (III) as subclause (IV), and

(iv) by inserting after subclause (II) the following new subclause:

“(III) SPECIAL RULE FOR CERTAIN BANKRUPTCY PROCEEDINGS.—In the case of a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in paragraph (7)(B)(iv)(III)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.”

(B) ERISA AMENDMENTS.—Subparagraph (A) of section 602(2) of the Employee Retirement Income Security Act of 1974 (relating to maximum period), as amended by section 1895(d)(2)(B) of the Tax Reform Act of 1986, is amended—

Post, p. 2095;  
29 USC 1162.

(i) in clause (ii), by inserting “(other than a qualifying event described in section 603(6))” after “qualifying event” the first place it appears,

(ii) in clause (iii), by inserting “or 603(6)” after “603(2)”,

(iii) by redesignating clause (iii) as clause (iv), and

(iv) by inserting after clause (ii) the following new clause:

“(iii) SPECIAL RULE FOR CERTAIN BANKRUPTCY PROCEEDINGS.—In the case of a qualifying event described in 603(6) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in section 607(3)(C)(iii)), or in the case of the surviving spouse or dependent children

of the covered employee, 36 months after the date of the death of the covered employee.”

(2) COVERAGE NOT LOST UPON ENTITLEMENT TO MEDICARE BENEFITS.—

(A) IRC AMENDMENT.—Subclause (II) of section 162(k)(2)(B)(iv) of the Internal Revenue Code of 1986 (relating to reemployment or medicare eligibility) is amended by inserting “in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iv),” before “entitled”.

26 USC 162.

(B) ERISA AMENDMENT.—Clause (ii) of section 602(2)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162(2)(D)) is amended by inserting “in the case of a qualified beneficiary other than a qualified beneficiary described in section 607(3)(C),” before “entitled”.

*Infra.*

(C) DEFINITION OF QUALIFIED BENEFICIARY MODIFIED IN REORGANIZATION CASES.—

(1) IRC AMENDMENT.—Section 162(k)(7)(B) of the Internal Revenue Code of 1986, as amended by section 1895(d)(7) of the Tax Reform Act of 1986 (relating to special rule for termination and reduced employment in definition of qualified beneficiary), is amended by adding at the end the following new clause:

*Post, p. 2095.*

“(iv) SPECIAL RULE FOR RETIREES AND WIDOWS.—In the case of a qualifying event described in paragraph (3)(F), the term ‘qualified beneficiary’ includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

“(I) as the spouse of the covered employee,

“(II) as the dependent child of the employee, or

“(III) as the surviving spouse of the covered employee.”

(2) ERISA AMENDMENT.—Section 607(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(3)) (relating to special rule for termination and reduced employment in definition of qualified beneficiary) is amended by adding at the end the following new subparagraph:

“(C) SPECIAL RULE FOR RETIREES AND WIDOWS.—In the case of a qualifying event described in section 603(6), the term ‘qualified beneficiary’ includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

*Ante, p. 2076.*

“(i) as the spouse of the covered employee,

“(ii) as the dependent child of the employee, or

“(iii) as the surviving spouse of the covered employee.”

(d) NOTICE.—

(1) IRC AMENDMENT.—Subparagraphs (B) and (D)(i) of section 162(k)(6) of the Internal Revenue Code of 1986 (relating to notice requirements) are amended by striking “or (D)” each place it appears and inserting in lieu thereof “(D), or (F)”.

*Post, p. 2095.*

(2) ERISA AMENDMENT.—Paragraphs (2) and (4)(A) of section 606 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1166) (relating to notice requirements) are amended by

striking "or (4)" each place it appears and inserting in lieu thereof "(4), or (6)".

26 USC 162 note.

(e) EFFECTIVE DATE.—

Ante, p. 222.

(1) IN GENERAL.—The amendments made by this section shall take effect as if included in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985.

Ante, pp. 222, 227.

(2) TREATMENT OF CERTAIN BANKRUPTCY PROCEEDINGS.—Notwithstanding paragraph (1), section 10001(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985, and section 10002(d) of such Act, the amendments made by this section and by sections 10001 and 10002 of such Act shall apply in the case of plan years ending during the 12-month period beginning July 1, 1986, but only with respect to—

Ante, p. 2095.

Ante, p. 2076.

(A) a qualifying event described in section 162(k)(3)(F) of the Internal Revenue Code of 1986 or section 603(6) of the Employee Retirement Income Security Act of 1974, and

(B) a qualifying event described in section 162(k)(3)(A) of the Internal Revenue Code of 1986 or section 603(1) of the Employee Retirement Income Security Act of 1974 relating to the death of a retired employee occurring after the date of the qualifying event described in subparagraph (A).

(3) TREATMENT OF CURRENT RETIREES.—Section 162(k)(3)(F) of the Internal Revenue Code of 1986 and section 603(6) of the Employee Retirement Income Security Act of 1974 apply to covered employees who retired before, on, or after the date of the enactment of this Act.

Ante, p. 230.

Ante, p. 2077.

Post, p. 2095;

26 USC 162.

(4) NOTICE.—In the case of a qualifying event described in section 603(6) of the Employee Retirement Income Security Act of 1974 that occurred before the date of the enactment of this Act, the notice required under section 606(2) of such Act (and under section 162(k)(6)(B) of the Internal Revenue Code of 1986) with respect to such event shall be provided no later than 30 days after the date of the enactment of this Act.

Approved October 21, 1986.

LEGISLATIVE HISTORY—H.R. 5300 (S. 2706) (S. 2799):

HOUSE REPORTS: No. 99-727 (Comm. on the Budget) and No. 99-1012 (Comm. of Conference).

SENATE REPORTS: No. 99-348 accompanying S. 2706 (Comm. on the Budget) and No. 99-479 accompanying S. 2799 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 132 (1986):

Sept. 17-19, S. 2706 considered and passed Senate.

Sept. 24, H.R. 5300 considered and passed House.

Sept. 25, considered and passed Senate, amended, in lieu of S. 2706.

Sept. 27, S. 2799 considered and passed Senate.

Oct. 17, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 22 (1986):

Oct. 21, Presidential statement.