Summary of Regulatory and Contracting Reform Conference Agreement

The conferees have resolved differences between the Houses on the regulatory and contracting reform provisions contained in title IX of H.R. 1 and title V (and several corresponding provisions in titles IV and VI) of S. 1.

The conference agrees to the House regulatory reform provisions with the following modifications and additions (other than minor drafting differences):

- In section 903(c) of H.R. 1, (relating to reliance on guidance), House recedes to Senate on the scope of provider sanctions, from the House standard of any sanction (including repayment of overpayments) to the Senate standard limited to penalty and interest imposed under titles XI or XVIII of the Social Security Act [section 533 of S. 1], and changes the effective date to guidance written on or after July 24, 2003.

- In section 904(b) of H. R. 1, (relating to reporting requirements of the Secretary on legal and regulatory inconsistencies), House recedes to Senate on requirements for reports every three years, and on the elimination of the requirement to collect information from the Medicare Provider Ombudsman.

- In section 911 of H. R. 1, (relating to contracting reform), House recedes to Senate (1) to include in the description of functions under section 1874A(a)(4) development of local coverage determinations, (2) to include a specific reference to Medicare Integrity Program contractors in the additional functions under section 1874A(a)(4)(G), and (3) to include standards for measurement in the development of performance requirements under section 1874A(b)(3).

- In section 911(d) in H. R. 1, (relating to contracting reform), House recedes to Senate section 521(d)(1) of S. 1 in the deadline for competitive bidding (October 1, 2011) and section 521(d)(2) of S. 1 on transition rules (providing for specific authority for the Secretary to continue to enter into contracts with fiscal intermediaries and carriers during the transition period).

- House recedes to Senate section 521(f) of S. 1 (relating to contracting reform) that requires the Secretary to submit legislative proposals for technical corrections.

- House recedes to Senate section 531(d) of S. 1 (relating to provider education provisions) with respect to a construction clause clarifying that contractors are not permitted to disclose (1) information that would compromise law enforcement activities, and (2) screens used to identify claims for medical review.

- House recedes to Senate on section 532(c) of S. 1 to authorize appropriations for requirements imposed on contractors to communicate with beneficiaries and providers of services, and the monitoring of those communications.

- In section 921(d) of H.R. 1, (relating to enhanced education and training of providers with respect to proper billing, coding, and other functions), (1) to modify authorization of appropriations to be such sums as are necessary beginning with FY 2005, and (2) House recedes to the Senate to include technical assistance to small providers (in second sentence of section 1889(b)(1) in Senate section 531(c)(2)(A)).

- In section 922 of H.R. 1, (relating to a demonstration project for small providers), House recedes to Senate to (1) omit a provision related to recovery actions (subsection (d)), and (2) omit the authorization of appropriations for the project.

- In section 923 of H.R. 1, House recedes to strike provisions in that section related to a Medicare Provider Ombudsman.

- In section 931(a) of H. R. 1, (relating to the transfer of responsibility for Medicare appeals), House recedes to Senate on (1) the date of submission of an implementation plan (April 1, 2004), and (2) the inclusion of specific requirements for plan (with modifications.)

- In section 932(a) of H. R. 1, (relating to expedited access to judicial review), House recedes to Senate section 512(a) (comparable provision) that (1) excepts termination of services appeals provided for in another provision of current law, and (2) limits application of the provision to the authority of the Departmental Appeals Board. Further modifications include revising the definition of a review entity to be up to three reviewers selected by the Secretary from among administrative law judges and members of the Departmental Appeals Board.

- In section 932(d) of H.R. 1, (relating to expedited review of certain provider agreement determinations), House recedes to Senate section 513(a) (providing for such review in the cases of termination, and with respect to skilled nursing facilities in the case of denial or payment, imposition of temporary management, and the suspension of nurse aide training programs) with modifications, and House recedes on section 932(e). (relating to process of reinstatement of approval of certain SNF training programs) of H.R. 1.

- House recedes to Senate on section 516 of S. 1, providing authority for providers to appeal a determination when there is no other party available to pursue the appeal.

- House recedes to Senate on paragraphs (1) and (2) of section 518 of S. 1 (relating to revision of appeals timeframes for reconsiderations).

- In section 937 of H. R. 1, (relating to process for correction of minor errors and omissions on claims), House recedes to deadline in section 543(b) of S. 1 (one year after the date of enactment).

- House recedes to Senate on section 937(b) of H.R. 1, omitting the provision.

- [In section 938 of H.R. 1, (relating to a process for prior determination of coverage of health care services and advance beneficiary notices), the provision is modified (1) to sunset the provision 5 years, (2) to be limited to the provision of health care services by participating physicians and only with the consent of the beneficiary, (3) to limit the scope of physicians' services to those paid for under the physician fee schedule, and (4) provides the Secretary with discretion to limit the health care items and service for which a prior determination of coverage may be made (including the amount of payment for the services, administrative costs and burdens and other relative factors).]

- In section 941(b) of H. R. 1, (relating to pilot projects to test evaluation and management documentation guidelines), House recedes to Senate on modifications to (1) limit duration of individual projects to one year (2) omit the provision prohibiting use of data collected in the project to seek recoupment for overpayments (subsection (b)(4)), and (3) to modify reporting requirements to apply with respect to each pilot project, to be

submitted to Congress within 6 months of completion of the projects, and to include findings with respect to achieving objectives of the proposed guidelines.

- In section 942(d) of H.R. 1, (relating to process for adoption of ICD codes), House recedes to Senate, omitting the provision.

- Section 944(d) of H.R. 1 (relating to waiver of EMTALA screening requirements for certain patients), House recedes to Senate, omitting the provision.

- [House recedes on section 947 of H.R. 1, (relating to application of OSHA bloodborne pathogen standards to certain hospitals), omitting the provision.]

- House recedes on section 949 of H. R. 1, (relating to the authority to waive a program exclusion), to Senate on section 544 of S. 1 (comparable provision) which includes a requirement on the Secretary to consult with the Inspector General of the Department of Health and Human Services.

- In connection with Senate receding on section 517 of S. 1 (relating to provider review of local coverage determinations), House recedes on section 426 of S. 1 (relating to coverage of air ambulance services) with modification to prevent coverage where conflicts of interest between air ambulance service and the requestor of the service and other technical modifications.