115TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 115–936
Part 1

FIGHTING FRAUD TO PROTECT CARE FOR SENIORS ACT OF 2018

SEPTEMBER 10, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BRADY of Texas, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 6690]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 6690) to establish a smart card pilot program to combat fraud, waste, and abuse and to protect beneficiary identity under the Medicare program, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
I. SUMMARY AND BACKGROUND	4
A. Purpose and Summary	4
B. Background and Need for Legislation	4
C. Legislative History	5
II. EXPLANATION OF THE BILL	5
A. Fighting Fraud to Protect Care for Seniors Act of 2018	5
III. VOTES OF THE COMMITTEE	7
IV. BUDGET EFFECTS OF THE BILL	8
A. Committee Estimate of Budgetary Effects	8
B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority	8
C. Cost Estimate Prepared by the Congressional Budget Office	8
V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE	10
A. Committee Oversight Findings and Recommendations	10
B. Statement of General Performance Goals and Objectives	10

79–006

C. Information Relating to Unfunded Mandates 10
D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits 11
E. Duplication of Federal Programs 11
F. Disclosure of Directed Rule Makings 11
VI. CORRESPONDENCE 12
VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED 15
A. Changes in Existing Law Proposed by the Bill, as Reported 15
VIII. ADDITIONAL VIEWS 19

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fighting Fraud to Protect Care for Seniors Act of 2018".

SEC. 2. MEDICARE SMART CARD PILOT PROGRAM.

Part E of title XVIII of the Social Security Act is amended by inserting after section 1866E the following new section:

"SEC. 1866F. SMART CARD PILOT PROGRAM.

"(a) IMPLEMENTATION.—

"(1) IN GENERAL.—Not later than 36 months after the date of the enactment of this section, the Secretary shall establish a pilot program (in this section referred to as the 'pilot program') to evaluate the feasibility of using smart card technology under this title.

"(2) SMART CARD TECHNOLOGY DEFINED.—In this section, the term 'smart card technology' means the following:

"(A) BENEFICIARY SMART CARD.—A machine readable, tamper-resistant card (in this section referred to as a 'smart card') that includes an embedded integrated circuit chip with a secure micro-controller (as defined by the National Institute on Standards and Technology) that enables the verification and secure, electronic authentication of the identity of a Medicare beneficiary at the point of service through a combination of the smart card and a personal identification number known by or associated with such beneficiary.

"(B) CARD READER TECHNOLOGY.—Information technology that enables a supplier and provider to authenticate the identity of a Medicare beneficiary through presentation of such a smart card and such components, with such authentication to be reflected through the use of a modifier or in another appropriate manner, as determined by the Secretary, in the claims adjudication process.

"(3) PROGRAM DESIGN ELEMENTS.—The pilot program shall be conducted for a period of 3 years consistent with the following:

"(A) SELECTION OF AREA.—In consultation with the Inspector General of the Department of Health and Human Services, the Secretary shall select at least 3 geographic areas in which the pilot program will operate.

"(B) SELECTION OF SUPPLIER AND PROVIDER TYPES.—In consultation with the Inspector General of the Department of Health and Human Services, the Secretary shall select supplier and provider types that will be required to participate in the pilot program (referred to in this section as 'participating suppliers and providers'). In selecting such supplier and provider types, the Secretary shall—

"(i) take into account the risk of fraud, waste, and abuse (as described in section 1866(j)(2)(B)) with respect to the category of provider or supplier) and other factors as determined appropriate by the Secretary; and

"(ii) limit the pilot program to no more than 2,000 suppliers and providers.

"(C) SUPPLIER AND PROVIDER HARDSHIP EXEMPTIONS.—The Secretary shall exempt from participation in the pilot program a supplier or provider that either—

"(i) does not have access to card reader technology (as described in paragraph (2)(B));

"(ii) does not have sufficient internet access; or

"(iii) has a low volume (as determined by the Secretary) of Medicare claims for which payment is made under this title.

"(D) SMART CARD AND SMART CARD READER ISSUANCE.—

"(i) BENEFICIARY SMART CARD ISSUANCE.—The Secretary shall provide for, at no cost, the issuance (and, if necessary, replacement) of beneficiary smart cards described in paragraph (2)(A) to all Medicare beneficiaries residing in a geographic area in which the pilot program is conducted under subparagraph (A). Information that appears on Medicare cards used outside the pilot program may appear on the face of the beneficiary smart card.

"(ii) SUPPLIER AND PROVIDER SMART CARD READER ISSUANCE.—At the request of a participating supplier or provider, the Secretary shall provide for, at no cost, the issuance to such supplier or provider of smart card hardware and software necessary to participate in the pilot program.

"(E) INFORMATION ON OPERATION OF PILOT PROGRAM.—The Secretary shall provide participating suppliers and providers and Medicare beneficiaries who are furnished items and services by such suppliers and providers, with information on the operation of the pilot program, including privacy protections described in subparagraph (I).

"(F) ACCESS TO SERVICES OUTSIDE THE PILOT PROGRAM.—

"(i) BENEFICIARIES.—Medicare beneficiaries who receive beneficiary smart cards may receive items and services from suppliers and providers not participating in the pilot program.

"(ii) SUPPLIERS AND PROVIDER CLAIMS.—

"(I) SUPPLIERS AND PROVIDERS NOT PARTICIPATING IN PILOT.—Suppliers and providers not participating in the pilot program may submit claims under this title for items and services furnished without use of smart card technology to Medicare beneficiaries who receive beneficiary smart cards.

"(II) PARTICIPATING SUPPLIERS AND PROVIDERS FURNISHING SERVICES TO NON-PARTICIPATING BENEFICIARIES.—Supplier and providers participating in the pilot program may submit claims under this title for items and services furnished to Medicare beneficiaries who do not receive beneficiary smart cards.

"(G) CLARIFICATION ON ACCESS TO SERVICES WITHOUT SMART CARDS.—In the case of a Medicare beneficiary who receives a beneficiary smart card and does not present such card at the time of receipt of items or services from a participating supplier or provider, the participating supplier or provider—

"(i) shall furnish such items or services to such Medicare beneficiary as if such beneficiary does present such card;

"(ii) may submit claims under this title for such items or services; and

"(iii) shall provide, in accordance with such manner, process, and timing as specified by the Secretary, information to the Secretary (through the contractor described in subparagraph (H)) that such beneficiary received such a smart card but did not have the smart card at the time the items or services were furnished.

"(H) PRIVATE SECTOR IMPLEMENTATION.—The Secretary shall select, by using a competitive procurement process in accordance with the provisions of chapter 1 of title 48, Code of Federal Regulations (or any successor regulations), a private sector contractor to implement and operate the pilot program.

"(I) PRIVACY PROTECTIONS.—The Secretary shall ensure that the pilot program complies with applicable Federal laws and regulations concerning individually identifiable health information, including the Privacy Act of 1974 and regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 and such individually identifiable information shall be exempt from disclosure under section 552(b)(3) of title 5, United States Code.

"(J) MANDATORY PARTICIPATION.—Subject to subparagraph (C), in the case of items or services furnished by a provider or supplier included in a supplier or provider type selected under subparagraph (B) in a geographic area selected under subparagraph (A), payment may only be made under this title for such items or services during the period of the pilot program if the provider or supplier is participating in the pilot program.

"(K) PROHIBITION OF SMART CARD FEES.—No transaction, utilization, or other fees may be imposed on Medicare beneficiaries or participating suppliers and providers with respect to the use of smart cards under the pilot program.

"(4) STAKEHOLDER INPUT.—

"(A) IN GENERAL.—Not later than 6 months after the date of the enactment of this section, the Secretary shall convene a panel consisting of stakeholders (including representatives of providers, suppliers, technology vendors, Medicare beneficiaries, and claims processing contractors) selected by the Secretary for purposes of providing input to the Secretary on the implementation of the pilot program (including on the selection of areas and participants under subparagraphs (A) and (B) of paragraph (3) and the development of exemptions and requirements described in such paragraph).

"(B) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act shall not apply to the panel convened pursuant to subparagraph (A).

"(5) DEFINITIONS.—In this section:

"(A) The terms 'supplier' and 'provider' have the meanings given the terms 'supplier' and 'provider of services' in subsections (d) and (u), respectively, of section 1861.

"(B) The term 'Medicare beneficiary' means an individual who is enrolled in the original Medicare fee-for-service program under parts A and B and is not enrolled in an MA plan under part C, an eligible organization under section 1876, or a PACE program under section 1894.

"(b) REPORTS TO CONGRESS.—The Secretary shall submit to Congress the following reports:

"(1) INTERIM PERFORMANCE REPORT.—Not later than 2 years after the date the pilot program is implemented, an interim report on the performance of such program.

"(2) FINAL PERFORMANCE REPORT.—Not later than 18 months after the date of the completion of the pilot program, a final evaluation on the effectiveness of the pilot program. The report shall include the following:

"(A) An evaluation of the effect of the pilot program on potential fraud under the insurance programs established under this title.

"(B) A description of any barriers to implementation of the pilot program.

"(C) Participant feedback on the pilot program.

"(D) Recommendations regarding the future use of smart cards to address fraud under this title.

"(E) Data on the information provided under subsection (a)(3)(G)(iii).".

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 6690, the "Fighting Fraud to Protect Care for Seniors Act of 2018," as ordered reported by the Committee on Ways and Means on September 5, 2018, establishes a three-year pilot program to test the use of smart card technology in the Medicare program.

B. BACKGROUND AND NEED FOR LEGISLATION

The Government Accountability Office (GAO) has designated the Medicare program as high-risk for waste, fraud, and abuse. One type of fraud scheme in Medicare occurs when a federal health care program is billed by a third party (whether a legitimate provider or not) using a beneficiary's or provider's identification without the beneficiary's or provider's knowledge. Experience in the financial services sector has shown that smart card technology can help to combat credit card fraud. As such, vendors of smart card technology have suggested that one way to help limit this type of fraud in the Medicare program would be to use smart card technology—credit card-like devices that use integrated circuit chips to store and process data—to authenticate the beneficiary at the point of service. In 2016, the GAO performed an analysis of 739 health care fraud cases and found that the use of smart cards could have affected the entire case or the part of the case in about 165 cases, or 22 percent of the cases reviewed, which included schemes that

involved the lack of verification of the beneficiary or provider at the point of service.

C. LEGISLATIVE HISTORY

Background

H.R. 6690 was introduced on August 28, 2018, and was referred to the Committee on Ways and Means and additionally the Committee on Energy and Commerce.

Committee hearings

On June, 10, 2015, the full Committee held a hearing on The President's Fiscal year 2016 Budget to review the President's budget proposals during which this policy was discussed.

On March 24, 2015, the Subcommittee on Health held a hearing on The Use of Data to Stop Medicare Fraud to review ways to strengthen the integrity of the Medicare program.

Committee action

The Committee on Ways and Means marked up H.R. 6690, the "Fighting Fraud to Protect Care for Seniors Act of 2018," on September 5, 2018, and ordered the bill, as amended, favorably reported (with a quorum being present).

II. EXPLANATION OF THE BILL

A. FIGHTING FRAUD TO PROTECT CARE FOR SENIORS ACT OF 2018

PRESENT LAW

Currently, Medicare beneficiary identification cards are paper and are not required to contain smart card technology. While the Medicare program has several programs in place to combat fraud including the Fraud Prevention System, the Health Fraud Prevention Partnership, prior authorization and temporary moratoriums, and provider screenings, the Centers for Medicare and Medicaid (CMS) mainly reviews claims after the payments are made. This leads to CMS recouping the payment from the provider after the improper payment is identified, commonly referred to as "pay and chase." In fiscal year 2017, improper payments to Medicare providers, suppliers and plans resulted in nearly $45 billion in overpayments. A little more than half, $24 billion, was actually recovered resulting in a monetary loss of $21 billion to the federal government due to improper payments.[1]

REASONS FOR CHANGE

The pilot program established under H.R. 6690 aims to evaluate the feasibility of using smart card technology in the Medicare program, including such technology's ability to reduce fraud, waste and abuse.

EXPLANATION OF PROVISIONS

Section 1: Short Title: "The Medicare Common Access Card Act of 2018"

[1] https://paymentaccuracy.gov/chart-engine/.

Section 2: Medicare Smart Card Pilot Program.

Implementation: Not later than 36 months after the date of enactment, the Secretary shall establish a pilot program to evaluate smart card technology as a cost-effective fraud tool in Medicare.

Smart Card Technology Defined: A beneficiary smart card is defined as a machine-readable and tamper-resistant card that includes an embedded integrated circuit chip with a secure microcontroller, as defined by the National Institute of Standards and Technology, that enables the verification and secure, electronic authentication of a beneficiary's identity at the point of service through a combination of the smart card and a personal identification number known by or associated with the beneficiary.

The card reader technology must enable a supplier and provider to authenticate the identity of a Medicare beneficiary through presentation of a smart card. The authentication may occur through the use of a claim form modifier or in another manner specified by the Secretary.

Program Design Elements: The Department of Health and Human Services Office of Inspector General (HHS OIG) and the Secretary are required to consult on the selection of the area and of the supplier and provider types. The Secretary is required to select at least three geographic areas; is limited to no more than 2,000 providers and suppliers; and must take into account the risk of fraud, waste and abuse when choosing a provider or supplier. Additionally, the pilot program must be conducted for three years.

Supplier and Provider Hardship Exemption: Providers and suppliers may be exempt from the pilot program if the provider or supplier does not have access to card reader technology, does not have sufficient internet access, or has a low volume of Medicare claims.

Smart Card and Smart Card Reader Issuance: At the request of a supplier or provider, the Secretary is required to provide, at no cost, smart card hardware and software necessary to participate in the pilot program. The Secretary is required to issue smart cards to beneficiaries residing in the geographic area in which the pilot is operating, as well as information on the operation of the pilot program, including privacy protections. If lost, beneficiary smart cards shall be replaced at no cost to the beneficiary.

Access to Services Outside of the Pilot Program: Nothing in this bill prevents a beneficiary from receiving services from a non-participating suppliers or providers or prevents a nonparticipating supplier or provider from submitting Medicare claims without the use of the smart card technology to beneficiaries issued smart cards. Further, this bill does not prevent a participating supplier or provider from providing services to non-participating beneficiaries. If a beneficiary does not present a smart card at the point of service to a participating provider or supplier, the beneficiary cannot be denied access to care, nor is the provider or supplier prohibited from submitting a claim for the care provided.

Private Sector Implementation: The Secretary is required to operate the pilot program through a competitive procurement process. The Secretary is required to ensure that the pilot program complies with existing privacy protections.

Mandatory Participation: Providers and suppliers in the geographic areas chosen for the pilot program implementation are required to participate if not exempted under the three hardship ex-

emptions contained in the legislation. Transaction, utilization, or other fees are prohibited from being imposed on Medicare beneficiaries or participating suppliers and providers.

Stakeholder Input: The Secretary is required to convene a stakeholder panel consisting of providers, suppliers, claims-process contractors, and beneficiaries prior to the implementation of the pilot.

Reports to Congress: Two reports are required under this section: (1) an interim report on performance of the pilot is due to Congress no later than two years after the pilot program is implemented and (2) a final report on the performance of the pilot is required to be submitted to Congress no later than 18 months after the date of the completion of the pilot program.

EFFECTIVE DATE

Pilot implementation: Not later than 36 months after the date of enactment, the Secretary shall establish a pilot program to evaluate smart card technology as a cost-effective fraud tool in Medicare.

Stakeholder Input: Not later than 6 months after the date of enactment, the Secretary is required to convene a panel consisting of stakeholders (including representatives of providers, suppliers, technology vendors, Medicare beneficiaries, and claims processing contractors selected by the Secretary for the purpose of providing input on the implementation of the pilot program.

Interim Report: Not later than 2 years after the date of the pilot program is implemented.

Final Report: Not later than 18 months after the date of the completion of the pilot program.

III. VOTES OF THE COMMITTEE

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 6690, "Fighting Fraud to Protect Care for Seniors Act of 2018", on September 5, 2018.

The vote on Mr. Reichert's motion to table Ms. Sewell's appeal of the ruling of the Chair was agreed to by a roll call vote of 23 yeas to 16 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Brady	X			Mr. Neal		X	
Mr. Johnson	X			Mr. Levin		X	
Mr. Nunes	X			Mr. Lewis		X	
Mr. Reichert	X			Mr. Doggett		X	
Mr. Roskam	X			Mr. Thompson		X	
Mr. Buchanan	X			Mr. Larson		X	
Mr. Smith (NE)	X			Mr. Blumenauer		X	
Ms. Jenkins	X			Mr. Kind		X	
Mr. Paulsen	X			Mr. Pascrell		X	
Mr. Marchant	X			Mr. Crowley		X	
Ms. Black	X			Mr. Davis		X	
Mr. Reed	X			Ms. Sanchez		X	
Mr. Kelly	X			Mr. Higgins		X	
Mr. Renacci				Ms. Sewell		X	
Ms. Noem	X			Ms. DelBene		X	
Mr. Holding	X			Ms. Chu		X	
Mr. Smith (MO)	X						
Mr. Rice	X						
Mr. Schweikert	X						

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Ms. Walorski	X						
Mr. Curbelo	X						
Mr. Bishop	X						
Mr. LaHood	X						
Mr. Wenstrup	X						

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 6690, the Fighting Fraud to Protect Care for Seniors Act of 2018, on September 5, 2018.

The Chairman's amendment in the nature of a substitute was adopted by a voice vote (with a quorum being present).

The bill, H.R. 6690, was ordered favorably reported as amended by voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 6690, as reported. The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO), which is included below.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee states further that the bill involves no new or increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 10, 2018.

Hon. Kevin Brady,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6690, the Fighting Fraud to Protect Care for Seniors Act of 2018.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lara Robillard.

Sincerely,

Keith Hall,
Director.

Enclosure.

H.R. 6690—Fighting Fraud to Protect Care for Seniors Act of 2018

Summary: H.R. 6690 would direct the Secretary of Health and Human Services (HHS) to implement a pilot program for smart cards in the Medicare program. CBO estimates that enacting H.R. 6690 would cost $40 million over the 2019–2023 period, assuming the availability of appropriated funds.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 6690 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 6690 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 6690 is shown in the following table. The costs of the legislation fall within budget function 570 (Medicare).

	By fiscal year, in millions of dollars—						
	2018	2019	2020	2021	2022	2023	2019–2023
INCREASES OR DECREASES (−) IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level	0	40	0	0	0	0	40
Estimated Outlays	0	5	5	10	10	10	40

Basis of estimate: Cards that include integrated computer circuitry are called smart cards and have many uses, including banking, identification, and data storage. Smart cards also can be used for health care coverage and payment purposes. In France, for example, the *carte vitale* includes information about coverage and benefits under the country's social insurance system and a photo of the covered individual.

When individuals begin Medicare coverage, whether through age or disability, they receive an identification card, which is presented when receiving medical services and has an identification number unique to the beneficiary. Medicare cards are not smart cards and do not have any sort of technology, like a computer chip, to furnish additional information about the beneficiary, such as identity verification or previous medical care.

H.R. 6690 would direct the Secretary of HHS to conduct a pilot project for smart cards within the Medicare program. Within 36 months, the Secretary would be required to select at least three geographic areas in which to conduct the test. The pilot would include no more than 2,000 suppliers and providers, who would be selected partly because the category of services provided is at high risk of fraud, waste, or abuse. Providers could apply for a hardship exemption if participation was not feasible because—for example, they lack Internet access. All beneficiaries in the designated geographic areas would receive a smart card, but could continue to receive services from providers and suppliers not enrolled in the demonstration.

Based on discussions with and data from representatives of the smart-card industry, CBO estimates that the demonstration would cost about $40 million over the 2019–2023 period, assuming the availability of appropriated funds. That estimated cost includes a contract with a private-sector entity to implement the demonstra-

tion, as well as costs for cards and card readers, software, and other technical components. Among the elements of the demonstration, CBO estimates that each card would cost around $2.50 and card readers would cost around $1 million in total.

H.R. 6690 would give the Secretary considerable latitude in implementing the demonstration within a relatively short timeframe. CBO anticipates that the demonstration would be designed in a way to allow implementation within 36 months and to minimize any burden on providers or beneficiaries. CBO also expects that the pilot program would focus on providers who have a face-to-face interaction with beneficiaries for primary or routine care—for example, general practitioners and internists who see beneficiaries for scheduled office visits.

CBO aims to produce estimates that generally reflect the middle of a range of the most likely budgetary outcomes that would result if the legislation was enacted. Because H.R. 6690 gives the HHS Secretary considerable flexibility in designing the smart card pilot program, it is possible that implementation—and therefore costs—could be different from what CBO estimates.

Pay-As-You-Go considerations: None.

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 6690 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: H.R. 6690 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Lara Robillard; Mandates: Andrew Laughlin.

Estimate reviewed by: Tom Bradley, Chief, Health Systems and Medicare Cost Estimates Unit; Susan Willie, Chief, Mandates Unit; Theresa Gullo, Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

E. Duplication of Federal Programs

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

F. Disclosure of Directed Rule Makings

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

VI. CORRESPONDENCE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

September 7, 2018

The Honorable Greg Walden
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden,

I write to you regarding several health bills the Committee on Ways and Means ordered favorably reported to the House. The following bills were also referred to the Committee on Energy and Commerce.

I ask that the Committee on Energy and Commerce waive formal consideration of the following bills so that they may proceed expeditiously to the House Floor:

- H.R. 6662, Empowering Seniors' Enrollment Decision Act of 2018;
- H.R. 6690, Fighting Fraud to Protect Care for Seniors Act of 2018;
- H.R. 6561, Comprehensive Care for Seniors Act of 2018; and
- H.R. 3635, Local Coverage Determination Clarification Act of 2018.

I acknowledge that by waiving formal consideration of the bills, the Committee on Energy and Commerce is in no way waiving its jurisdiction over the subject matter contained in those provisions of the bills that fall within your Rule X jurisdiction. I would support your effort to seek appointment of an appropriate number of conferees on any House-Senate conference involving this legislation.

I will include a copy of our letters in the *Congressional Record* during consideration of this legislation on the House floor.

Sincerely,

Kevin Brady
Chairman

cc: The Honorable Paul Ryan, Speaker
The Honorable Richard E. Neal
The Honorable Frank Pallone
Thomas J. Wickham, Jr., Parliamentarian

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225-2927
Minority (202) 225-3641

September 7, 2018

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Brady:

Thank you for your letter regarding H.R. 3635, Local Coverage Determination Clarification Act of 2018; H.R. 6561, Comprehensive Care for Seniors Act of 2018; H.R. 6662, Empowering Seniors' Enrollment Decision Act of 2018; and H.R. 6690, Fighting Fraud to Protect Care for Seniors Act of 2018.

The Committee on Energy and Commerce will forgo consideration of both bills so that they may proceed expeditiously to the House Floor.

I appreciate your assurance that by forgoing action on these bills, the Committee is in no way waiving its jurisdiction over the subject matter contained in the bills. I also appreciate your offer of support for the appointment of conferees from the Committee to any House-Senate conference involving this legislation.

Sincerely,

Greg Walden
Chairman

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

A. CHANGES IN EXISTING LAW PROPOSED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * * * *

TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

* * * * * * *

PART E—MISCELLANEOUS PROVISIONS

* * * * * * *

SEC. 1866F. SMART CARD PILOT PROGRAM.

(a) IMPLEMENTATION.—

(1) IN GENERAL.—Not later than 36 months after the date of the enactment of this section, the Secretary shall establish a pilot program (in this section referred to as the "pilot program") to evaluate the feasibility of using smart card technology under this title.

(2) SMART CARD TECHNOLOGY DEFINED.—In this section, the term "smart card technology" means the following:

(A) BENEFICIARY SMART CARD.—A machine readable, tamper-resistant card (in this section referred to as a "smart card") that includes an embedded integrated circuit chip with a secure micro-controller (as defined by the National Institute on Standards and Technology) that enables the verification and secure, electronic authentication of the identity of a Medicare beneficiary at the point of service through a combination of the smart card and a personal identification number known by or associated with such beneficiary.

(B) CARD READER TECHNOLOGY.—Information technology that enables a supplier and provider to authenticate the identity of a Medicare beneficiary through presentation of such a smart card and such components, with such authentication to be reflected through the use of a modifier or in

another appropriate manner, as determined by the Secretary, in the claims adjudication process.

(3) PROGRAM DESIGN ELEMENTS.—The pilot program shall be conducted for a period of 3 years consistent with the following:

(A) SELECTION OF AREA.—In consultation with the Inspector General of the Department of Health and Human Services, the Secretary shall select at least 3 geographic areas in which the pilot program will operate.

(B) SELECTION OF SUPPLIER AND PROVIDER TYPES.—In consultation with the Inspector General of the Department of Health and Human Services, the Secretary shall select supplier and provider types that will be required to participate in the pilot program (referred to in this section as "participating suppliers and providers"). In selecting such supplier and provider types, the Secretary shall—

(i) take into account the risk of fraud, waste, and abuse (as described in section 1866(j)(2)(B)) with respect to the category of provider or supplier) and other factors as determined appropriate by the Secretary; and

(ii) limit the pilot program to no more than 2,000 suppliers and providers.

(C) SUPPLIER AND PROVIDER HARDSHIP EXEMPTIONS.—The Secretary shall exempt from participation in the pilot program a supplier or provider that either—

(i) does not have access to card reader technology (as described in paragraph (2)(B));

(ii) does not have sufficient internet access; or

(iii) has a low volume (as determined by the Secretary) of Medicare claims for which payment is made under this title.

(D) SMART CARD AND SMART CARD READER ISSUANCE.—

(i) BENEFICIARY SMART CARD ISSUANCE.—The Secretary shall provide for, at no cost, the issuance (and, if necessary, replacement) of beneficiary smart cards described in paragraph (2)(A) to all Medicare beneficiaries residing in a geographic area in which the pilot program is conducted under subparagraph (A). Information that appears on Medicare cards used outside the pilot program may appear on the face of the beneficiary smart card.

(ii) SUPPLIER AND PROVIDER SMART CARD READER ISSUANCE.—At the request of a participating supplier or provider, the Secretary shall provide for, at no cost, the issuance to such supplier or provider of smart card hardware and software necessary to participate in the pilot program.

(E) INFORMATION ON OPERATION OF PILOT PROGRAM.—The Secretary shall provide participating suppliers and providers and Medicare beneficiaries who are furnished items and services by such suppliers and providers, with information on the operation of the pilot program, including privacy protections described in subparagraph (I).

(F) ACCESS TO SERVICES OUTSIDE THE PILOT PROGRAM.—

(i) BENEFICIARIES.—Medicare beneficiaries who receive beneficiary smart cards may receive items and services from suppliers and providers not participating in the pilot program.

(ii) SUPPLIERS AND PROVIDER CLAIMS.—

(I) SUPPLIERS AND PROVIDERS NOT PARTICIPATING IN PILOT.—Suppliers and providers not participating in the pilot program may submit claims under this title for items and services furnished without use of smart card technology to Medicare beneficiaries who receive beneficiary smart cards.

(II) PARTICIPATING SUPPLIERS AND PROVIDERS FURNISHING SERVICES TO NON-PARTICIPATING BENEFICIARIES.—Supplier and providers participating in the pilot program may submit claims under this title for items and services furnished to Medicare beneficiaries who do not receive beneficiary smart cards.

(G) CLARIFICATION ON ACCESS TO SERVICES WITHOUT SMART CARDS.—In the case of a Medicare beneficiary who receives a beneficiary smart card and does not present such card at the time of receipt of items or services from a participating supplier or provider, the participating supplier or provider—

(i) shall furnish such items or services to such Medicare beneficiary as if such beneficiary does present such card;

(ii) may submit claims under this title for such items or services; and

(iii) shall provide, in accordance with such manner, process, and timing as specified by the Secretary, information to the Secretary (through the contractor described in subparagraph (H)) that such beneficiary received such a smart card but did not have the smart card at the time the items or services were furnished.

(H) PRIVATE SECTOR IMPLEMENTATION.—The Secretary shall select, by using a competitive procurement process in accordance with the provisions of chapter 1 of title 48, Code of Federal Regulations (or any successor regulations), a private sector contractor to implement and operate the pilot program.

(I) PRIVACY PROTECTIONS.—The Secretary shall ensure that the pilot program complies with applicable Federal laws and regulations concerning individually identifiable health information, including the Privacy Act of 1974 and regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 and such individually identifiable information shall be exempt from disclosure under section 552(b)(3) of title 5, United States Code.

(J) MANDATORY PARTICIPATION.—Subject to subparagraph (C), in the case of items or services furnished by a provider or supplier included in a supplier or provider type selected under subparagraph (B) in a geographic area se-

lected under subparagraph (A), payment may only be made under this title for such items or services during the period of the pilot program if the provider or supplier is participating in the pilot program.

(K) PROHIBITION OF SMART CARD FEES.—No transaction, utilization, or other fees may be imposed on Medicare beneficiaries or participating suppliers and providers with respect to the use of smart cards under the pilot program.

(4) STAKEHOLDER INPUT.—

(A) IN GENERAL.—Not later than 6 months after the date of the enactment of this section, the Secretary shall convene a panel consisting of stakeholders (including representatives of providers, suppliers, technology vendors, Medicare beneficiaries, and claims processing contractors) selected by the Secretary for purposes of providing input to the Secretary on the implementation of the pilot program (including on the selection of areas and participants under subparagraphs (A) and (B) of paragraph (3) and the development of exemptions and requirements described in such paragraph).

(B) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act shall not apply to the panel convened pursuant to subparagraph (A).

(5) DEFINITIONS.—In this section:

(A) The terms "supplier" and "provider" have the meanings given the terms "supplier" and "provider of services" in subsections (d) and (u), respectively, of section 1861.

(B) The term "Medicare beneficiary" means an individual who is enrolled in the original Medicare fee-for-service program under parts A and B and is not enrolled in an MA plan under part C, an eligible organization under section 1876, or a PACE program under section 1894.

(b) REPORTS TO CONGRESS.—The Secretary shall submit to Congress the following reports:

(1) INTERIM PERFORMANCE REPORT.—Not later than 2 years after the date the pilot program is implemented, an interim report on the performance of such program.

(2) FINAL PERFORMANCE REPORT.—Not later than 18 months after the date of the completion of the pilot program, a final evaluation on the effectiveness of the pilot program. The report shall include the following:

(A) An evaluation of the effect of the pilot program on potential fraud under the insurance programs established under this title.

(B) A description of any barriers to implementation of the pilot program.

(C) Participant feedback on the pilot program.

(D) Recommendations regarding the future use of smart cards to address fraud under this title.

(E) Data on the information provided under subsection (a)(3)(G)(iii).

* * * * * * *

VIII. ADDITIONAL VIEWS

H.R. 6690 establishes a three-year pilot program to test the use of smart card technology—credit card-like devices that use integrated circuit chips to store and process data in the Medicare program. The pilot program would be tested in at least three geographic areas; is limited to no more than 2,000 providers and suppliers; and must take into account the risk of fraud, waste, and abuse when choosing providers or suppliers to participate in the pilot.

Democrats expressed concern about the cost-effectiveness of such an approach. The Government Accountability Office (GAO) has reviewed the potential of smart cards for the Medicare program and issued several reports, which found that integrating smart cards into Medicare would be a large, expensive undertaking. GAO also found that smart card technology would not have prevented the majority of fraud schemes nor would it detect provider misrepresentation of actual services provided, even if they verified the beneficiary's and provider's presence.

Smart card technology would not have affected schemes in which the beneficiary was not present or the verification of the beneficiary and provider was not relevant to the scheme. For example, the U.S. Department of Justice (DOJ) is moving forward with a lawsuit claiming UnitedHealth Group wrongly retained more than $1 billion from Medicare. Smart cards would have had no effect on this fraudulent scheme. Likewise, with providers that upcode patient severity to increase Medicare revenue—false claims—would not be stopped by a smart card. In a 2016 report, the GAO analyzed 739 health care fraud cases and found that the use of smart cards would not have affected 574 cases (approximately 80 percent) and could have affected the entire case for only 18 fraud cases (two percent).

Smart cards have not been shown to be more cost effective in fighting fraud than current fraud-fighting activities and would increase provider burden in a time when providers already raise issues around electronic health records and other technology-adoption burdens.

The return on investment (ROI) for the Health Care Fraud and Abuse Control (HCFAC) program over the last three years (2015–2017) is $4.20 returned for every $1.00 expended. The broader program integrity activities in the Centers for Medicare & Medicaid Services (CMS) returned $12.40 for every $1.00 expended. The Administration has broad fraud-fighting authority, and had it been determined that smart cards would be more cost effective in fighting fraud, the Administration could adopt such an approach. And in fact, the Administration does not have all the funding it currently needs to fight fraud.

As a result of sequestration of mandatory funding in 2017, there were fewer resources for the DOJ, the Federal Bureau of Investigation, Department of Health and Human Service (HHS) and the Inspector General of HHS to fight fraud and abuses against Medicare, Medicaid, and other health care programs. A total of $20.7 million was sequestered from the HCFAC program in fiscal year (FY) 2017, for a combined total of $115.5 million in the past five years. Rather than further siphoning off money for a demonstration, Congress should instead shore up the existing resources and fill the gaps in fraud-fighting funding that has been cut in recent years.

The bill does not provide any funding for CMS to conduct this demonstration, so the agency would need to take money currently being used on existing activities and redirect it to this demonstration. There is no estimate of the cost to implement this demonstration, but it would include the cost of purchasing and mailing smart cards (and replacement cards) to beneficiaries, the cost of purchasing smart card readers for providers, as well as potential transaction costs.

If this smart card demonstration was implemented on a broad scale, there are a number of beneficiary access concerns. If the beneficiary protections included in the pilot were not continued, beneficiaries could potentially be denied or delayed access to care. For example, if a beneficiary can only receive services with a smart card present, a frail elder that forgets or loses his/her card could potentially be denied services. Cards could get misplaced as a beneficiary transfers between home, a hospital, and post-acute care settings, which could further delay access to necessary care.

Democrats offered one amendment, by Ms. Sewell of Alabama, which would delay the implementation of this demonstration until such time as the three years of solvency cut from the Medicare Trust Fund as a result of the Republican actions, including their tax law, is restored. Republicans have repeatedly attacked Medicare, threatening health care for 58 million seniors and individuals with disabilities. While the Affordable Care Act (ACA) added 12 years of additional solvency to the Medicare Trust Fund, the effect of the Republican tax bill signed into law in 2017 was to shorten the life of the Trust Fund by three years.

The Republican agenda is directly attacking seniors and the programs they depend on for health care. The Republican bill to repeal the ACA cut $75 billion from Medicare. The Trump FY 19 budget proposed $532 billion in cuts from Medicare and $1.4 trillion from Medicaid. Republicans clearly have Medicare in their crosshairs, continuing to put forward proposals to dramatically cut the program that provides health care for Americans over age 65. The Sewell amendment was ruled non-germane and the point of order against it was sustained along party lines.

RICHARD E. NEAL,
Ranking Member.

○