111TH CONGRESS
2D SESSION

S. 3632

To provide for enhanced penalties to combat Medicare and Medicaid fraud, a Medicare data-mining system, and a Beneficiary Verification Pilot Program, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 22, 2010

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To provide for enhanced penalties to combat Medicare and Medicaid fraud, a Medicare data-mining system, and a Beneficiary Verification Pilot Program, and for other purposes.

1   *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4   This Act may be cited as the ''Medicare and Medicaid

5 Fraud Enforcement and Prevention Act of 2010''.

SEC. 2. ENHANCED CRIMINAL PENALTIES TO COMBAT MEDICARE AND MEDICAID FRAUD.

(a) IN GENERAL.—Section 1128B of the Social Security Act (42 U.S.C. 1320a–7b) is amended—

    (1) in subsection (a), by striking "$10,000 or imprisoned for not more than one year" and inserting "$20,000 or imprisoned for not more than two years"; and

    (2) in each of subsections (a), (b)(1), (b)(2), (c), and (d), by striking "$25,000 or imprisoned for not more than five years" and inserting "$50,000 or imprisoned for not more than 10 years".

(b) ILLEGAL DISTRIBUTION OF MEDICARE OR MEDICAID BENEFICIARY IDENTIFICATION OR BILLING PRIVILEGES.—Section 1128B of such Act (42 U.S.C. 1320a–7b) is amended by adding at the end the following new subsection:

"(g) Whoever knowingly, intentionally, and with the intent to defraud purchases, sells, or distributes, or arranges for the purchase, sale, or distribution of one or more Medicare or Medicaid beneficiary identification numbers or billing privileges under title XVIII or title XIX shall be imprisoned for not more than three years or fined under title 18, United States Code (or, if greater, an amount equal to the monetary loss to the Federal and any State government as a result of such acts), or both.".

3

1   (c) EFFECTIVE DATE.—The amendments made by

2 this section shall apply to acts committed on or after the

3 date of the enactment of this Act.

4 **SEC. 3. ENHANCED CIVIL AUTHORITIES TO COMBAT MEDI-**

5   **CARE AND MEDICAID FRAUD.**

6   (a) IN GENERAL.—Section 1128A(a) of the Social

7 Security Act (42 U.S.C. 1320a–7a(a)) is amended—

8   (1) in paragraph (1), by striking "to an officer,

9   employee, or agent of the United States, or of any

10   department or agency thereof, or of any State agen-

11   cy (as defined in subsection (i)(1)),";

12   (2) by inserting after paragraph (10), as added

13   by section 6402(d)(2) of the Patient Protection and

14   Affordable Care Act (Public Law 111–148) the fol-

15   lowing new paragraphs:

16   "(11) conspires to commit a violation of this

17   section; or

18   "(12) knowingly makes, uses, or causes to be

19   made or used, a false record or statement material

20   to an obligation to pay or transmit money or prop-

21   erty to a Federal health care program, or knowingly

22   conceals or knowingly and improperly avoids or de-

23   creases an obligation to pay or transmit money or

24   property to a Federal health care program;";

25   (3) in the first sentence—

1   (A) by striking "or in cases under para-
2   graph (9)" and inserting "in cases under para-
3   graph (9)"; and
4   (B) by striking "fact)" and inserting
5   "fact), in cases under paragraph (11), $50,000
6   for any violation described in this section com-
7   mitted in furtherance of the conspiracy in-
8   volved, and in cases under paragraph (12),
9     $50,000 for each false record or statement, or
10   concealment, avoidance, or decrease"; and
11   (4) in the second sentence, by striking "mate-
12   rial fact)." and inserting "material fact); or in cases
13   under paragraph (11), an assessment of not more
14   than 3 times the total amount that would otherwise
15   apply for any violation described in this section com-
16   mitted in furtherance of the conspiracy involved; or
17   in cases under paragraph (12), an assessment of not
18   more than 3 times the total amount of the obligation
19   to which the false record or statement was material
20   or that was avoided or decreased.".

21   (b) TIMEFRAME.—Section 1128A(c)(1) of the Social
22 Security Act (42 U.S.C. 1320a–7a(c)(1)) is amended by
23 striking "six years" and inserting "10 years".

24   (c) DEFINITIONS.—Section 1128A(i) of the Social
25 Security Act (42 U.S.C. 1320a–7a(i)) is amended—

1 (1) by amending paragraph (2) to read as fol-

2 lows:

3 "(2) The term 'claim' means any application,

4 request, or demand, whether under contract, or oth-

5 erwise, for money or property for items and services

6 under a Federal health care program (as defined in

7 section 1128B(f)), whether or not the United States

8 or a State agency has title to the money or property,

9 that—

10 "(A) is presented or caused to be pre-

11 sented to an officer, employee, or agent of the

12 United States, or of any department or agency

13 thereof, or of any State agency (as defined in

14 subsection (i)(1)); or

15 "(B) is made to a contractor, grantee, or

16 other recipient if the money or property is to be

17 spent or used on the Federal health care pro-

18 gram's behalf or to advance a Federal health

19 care program interest, and if the Federal health

20 care program—

21 "(i) provides or has provided any por-

22 tion of the money or property requested or

23 demanded; or

24 "(ii) will reimburse such contractor,

25 grantee, or other recipient for any portion

1 of the money or property which is re-

2 quested or demanded.'';

3 (2) by amending paragraph (3) to read as fol-

4 lows:

5 ''(3) The term 'item or service' means, without

6 limitation, any medical, social, management, admin-

7 istrative, or other item or service used in connection

8 with or directly or indirectly related to a Federal

9 health care program.'';

10 (3) in paragraph (7)—

11 (A) by striking ''term 'should know'

12 means'' and inserting ''terms 'knowing', 'know-

13 ingly', and 'should know' mean'';

14 (B) by redesignating subparagraphs (A)

15 and (B) as subparagraphs (B) and (C), respec-

16 tively;

17 (C) by inserting before subparagraph (B),

18 as redesignated by clause (ii), the following new

19 subparagraph:

20 ''(A) has actual knowledge of the informa-

21 tion;''; and

22 (D) in the matter following subparagraph

23 (C), as redesignated by clause (ii)—

24 (i) by inserting ''require'' after ''and'';

25 and

1   (ii) by striking "is required"; and

2   (4) by adding at the end the following new

3 paragraphs:

4   "(8) The term 'obligation' means an established

5 duty, whether or not fixed, arising from an express

6 or implied contractual, grantor-grantee, or licensor

7 licensee relationship, from a fee-based or similar re-

8 lationship, from statute or regulation, or from the

9 retention of any overpayment.

10   "(9) The term 'material' means having a nat-

11 ural tendency to influence, or be capable of influ-

12 encing, the payment or receipt of money or prop-

13 erty.".

14 **SEC. 4. MEDICARE DATA-MINING SYSTEM; BENEFICIARY**

15   **VERIFICATION PILOT PROGRAM.**

16   (a) ACCESS TO CLAIMS AND PAYMENT DATA.—

17 Section1128J(a)(2) of the Social Security Act, as added

18 by section 6402(a) of the Patient Protection and Afford-

19 able Care Act (Public Law 111–148), is amended—

20   (1) by inserting "including claims and payment

21 data," after "access to claims and payment data";

22 and

23   (2) by adding at the end the following sentence:

24 "In carrying out this section, the Inspector General

25 of the Department of Health and Human Services,

1 in consultation with the Attorney General, shall im-
2 plement mechanisms for the sharing of information
3 about suspected fraud relating to the Federal health
4 care programs under titles XVIII, XIX, and XXI
5 with other appropriate law enforcement officials.''.

6 (b) BENEFICIARY VERIFICATION PILOT PROGRAM.—

7 (1) IN GENERAL.—By not later than 1 year
8 after the date of the enactment of this Act, the Sec-
9 retary of Health and Human Services (in this sub-
10 section referred to as the ''Secretary'') shall imple-
11 ment a 5-year pilot program (to be know as the
12 ''Beneficiary Verification Pilot Program'') under
13 which the Secretary shall establish a process to
14 verify, with respect to claims for reimbursement
15 under title XVIII of the Social Security Act for
16 items and services (as specified by the Secretary)
17 furnished to Medicare beneficiaries, that the bene-
18 ficiary for which the claim was made was actually
19 furnished such item or service. Such process may in-
20 clude communicating, by phone or other means, di-
21 rectly with the beneficiary in order to conduct such
22 verification.

23 (2) REPORTS.—The Secretary shall, for each of
24 the third, fourth, and fifth years of the Beneficiary
25 Verification Pilot Program under this section, sub-

1 mit to Congress a report on the effectiveness of the

2 pilot program in reducing the occurrence of waste,

3 fraud, and abuse in the Medicare program under

4 title XVIII of the Social Security Act.

5 (3) AUTHORIZATION OF APPROPRIATIONS.—For

6 purpose of carrying out the Beneficiary Verification

7 Pilot Program under this subsection, there is au-

8 thorized to be appropriated such sums as may be

9 necessary.

SEC. 5. GAO STUDY AND REPORT.

11 (a) STUDY.—The Comptroller General of the United

12 States shall conduct a study on Medicare administrative

13 contractors under section 1874A of the Social Security

14 Act, including Recovery Audit Contractors, regarding the

15 following areas:

16 (1) Training and expertise in identifying fraud,

17 including the education levels of the key individuals

18 tasked to identify or refer potential cases of fraud,

19 and whether the Centers for Medicare & Medicaid

20 Services should be providing more training to con-

21 tractors, or require contractors to hire experts with

22 greater medical training.

23 (2) Acquisition and implementation of data

24 mining software among Medicare administrative con-

25 tractors, if applicable, and the ability or availability

1   of such software to provide real-time data mining ca-

2   pabilities.

3   (b) REPORT.—Not later than one year after the date

4 of the enactment of this Act, the Comptroller General of

5 the United States shall complete the study under this sec-

6 tion and submit a report to Congress regarding the find-

7 ings of the study and recommendations for legislation and

8 administrative action.

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