

113TH CONGRESS
1ST SESSION

S. 1123

To amend titles XVIII and XIX of the Social Security Act to curb waste, fraud, and abuse in the Medicare and Medicaid programs.

IN THE SENATE OF THE UNITED STATES

JUNE 10, 2013

Mr. CARPER (for himself, Mr. COBURN, Mr. BENNET, Mr. COONS, Ms. KLOBUCHAR, Ms. LANDRIEU, Mrs. MCCASKILL, Mr. WARNER, Ms. AYOTTE, Mr. ENZI, Mr. ISAKSON, and Mr. CORKER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act to curb waste, fraud, and abuse in the Medicare and Medicaid programs.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Preventing and Reducing Improper Medicare and Med-
6 icaid Expenditures Act of 2013” or the “PRIME Act of
7 2013”.

8 (b) TABLE OF CONTENTS.—The table of contents of
9 this Act is as follows:

Sec. 101. Requiring valid prescriber National Provider Identifiers on pharmacy claims.

Sec. 102. Reforming how CMS tracks and corrects the vulnerabilities identified by Recovery Audit Contractors.

Sec. 103. Improving Senior Medicare Patrol and fraud reporting rewards.

Sec. 104. Strengthening Medicaid Program integrity through flexibility.

Sec. 105. Establishing Medicare administrative contractor error reduction incentives.

Sec. 106. Strengthening penalties for the illegal distribution of a Medicare, Medicaid, or CHIP beneficiary identification or billing privileges.

Sec. 201. Access to the National Directory of New Hires.

Sec. 202. Improving the sharing of data between the Federal Government and State Medicaid programs.

Sec. 203. Improving claims processing and detection of fraud within the Medicaid and CHIP programs.

Sec. 301. Report on implementation.

Section 1860D–4(c) of the Social Security Act (42 U.S.C. 1395w–104(c)) is amended by adding at the end the following new paragraph:

“(A) IN GENERAL.—For plan year 2015 and subsequent plan years, subject to subparagraph (B), the Secretary shall prohibit PDP sponsors of prescription drug plans from paying

1 claims for prescription drugs under this part
2 that do not include a valid prescriber National
3 Provider Identifier.

4 “(B) PROCEDURES.—The Secretary shall
5 establish—

6 “(i) procedures for determining the
7 validity of prescriber National Provider
8 Identifiers under subparagraph (A); and

9 “(ii) procedures for transferring to
10 the Inspector General of the Department
11 of Health and Human Services and appro-
12 priate law enforcement agencies and other
13 oversight entities information on those Na-
14 tional Provider Identifiers and pharmacy
15 claims, including records related to such
16 claims, that the Secretary determines are
17 invalid under clause (i).

18 “(C) REPORT.—Not later than January 1,
19 2017, the Inspector General of the Department
20 of Health and Human Services shall submit to
21 Congress a report on the effectiveness of the
22 procedures established under subparagraph
23 (B).”.

1 **SEC. 102. REFORMING HOW CMS TRACKS AND CORRECTS**
 2 **THE VULNERABILITIES IDENTIFIED BY RE-**
 3 **COVERY AUDIT CONTRACTORS.**

4 (a) IN GENERAL.—Section 1893(h) of the Social Se-
 5 curity Act (42 U.S.C. 1395ddd(h)) is amended—

6 (1) in paragraph (8)—

7 (A) by striking “REPORT.—The Secretary”
 8 and inserting “REPORT.—

9 “(A) IN GENERAL.—Subject to subpara-
 10 graph (C), the Secretary”; and

11 (B) by adding after subparagraph (A), as
 12 inserted by subparagraph (A), the following new
 13 subparagraphs:

14 “(B) INCLUSION OF IMPROPER PAYMENT
 15 VULNERABILITIES IDENTIFIED.—Each report
 16 submitted under subparagraph (A) shall, sub-
 17 ject to subparagraph (C), include—

18 “(i) a description of—

19 “(I) the types and financial cost
 20 to the program under this title of im-
 21 proper payment vulnerabilities identi-
 22 fied by recovery audit contractors
 23 under this subsection; and

24 “(II) how the Secretary is ad-
 25 dressing such improper payment
 26 vulnerabilities; and

1 “(ii) an assessment of the effective-
 2 ness of changes made to payment policies
 3 and procedures under this title in order to
 4 address the vulnerabilities so identified.

5 “(C) LIMITATION.—The Secretary shall
 6 ensure that each report submitted under sub-
 7 paragraph (A) does not include information
 8 that the Secretary determines would be sen-
 9 sitive or would otherwise negatively impact pro-
 10 gram integrity.”; and

11 (2) by adding at the end the following new
 12 paragraph:

13 “(10) ADDRESSING IMPROPER PAYMENT
 14 VULNERABILITIES.—The Secretary shall address im-
 15 proper payment vulnerabilities identified by recovery
 16 audit contractors under this subsection in a timely
 17 manner, prioritized based on the risk to the program
 18 under this title.”.

19 (b) USE OF MEDICARE AND MEDICAID RECOVERY
 20 AUDIT CONTRACTOR RECOVERIES FOR PROVIDER EDU-
 21 CATION AND TO PREVENT IMPROPER PAYMENTS AND
 22 FRAUD.—

23 (1) MEDICARE RAC PROGRAM.—Section
 24 1893(h)(1)(C) of the Social Security Act (42 U.S.C.
 25 1395ddd(h)(1)(C)) is amended—

1 (A) by striking “the Secretary shall re-
2 tain” and inserting “the Secretary—

3 “(i) shall retain”;

4 (B) in clause (i), as added by subpara-
5 graph (A)—

6 (i) by inserting “, in addition to any
7 other funds that may be available,” after
8 “available”;

9 (ii) by inserting “until expended”
10 after “Services”; and

11 (iii) by striking the period at the end
12 and inserting a semicolon; and

13 (C) by adding at the end the following new
14 clauses:

15 “(ii) may retain an additional portion
16 of the amounts recovered (not to exceed 25
17 percent of such amounts recovered) which
18 shall be available, in addition to any other
19 funds that may be available, to such pro-
20 gram management account until expended
21 for purposes of activities to address prob-
22 lems that contribute to improper payments
23 and fraud under this title; and

24 “(iii) shall retain an additional 5 per-
25 cent of such amounts recovered to be made

1 available, in addition to any other funds
2 that may be available, to the Inspector
3 General of the Department of Health and
4 Human Services until expended for the In-
5 specter General to carry out activities of
6 the Inspector General relating to inves-
7 tigating improper payments or auditing in-
8 ternal controls associated with payments
9 under this title.”.

10 (2) MEDICAID RAC PROGRAM.—Section 1936 of
11 the Social Security Act (42 U.S.C. 1396u–6) is
12 amended by adding at the end the following new
13 subsection:

14 “(f) AMOUNTS RECOVERED THROUGH RECOVERY
15 AUDIT CONTRACTORS.—Notwithstanding any other provi-
16 sion of law, the Secretary—

17 “(1) may retain a portion of the amounts recov-
18 ered pursuant to the program established under sec-
19 tion 1902(a)(42)(B) (not to exceed 25 percent of the
20 Federal share of such amounts recovered) which
21 shall be available, in addition to any other funds
22 that may be available, to the program management
23 account of the Centers for Medicare & Medicaid
24 Services for purposes of activities to address prob-

1 lems that contribute to improper payments and
 2 fraud under this title; and

3 “(2) shall retain an additional 5 percent of the
 4 Federal share of such amounts recovered to be made
 5 available, in addition to any other funds that may be
 6 available, to the Inspector General of the Depart-
 7 ment of Health and Human Services until expended
 8 for the Inspector General to carry out activities of
 9 the Inspector General relating to investigating im-
 10 proper payments or auditing internal controls associ-
 11 ated with payments under this title.”.

12 (3) EFFECTIVE DATE.—The amendments made
 13 by this section shall take effect on January 1, 2014.

14 **SEC. 103. IMPROVING SENIOR MEDICARE PATROL AND**
 15 **FRAUD REPORTING REWARDS.**

16 (a) IN GENERAL.—The Secretary of Health and
 17 Human Services (in this section referred to as the “Sec-
 18 retary”) shall develop a plan to revise the incentive pro-
 19 gram under section 203(b) of the Health Insurance Port-
 20 ability and Accountability Act of 1996 (42 U.S.C. 1395b–
 21 5(b)) to encourage greater participation by individuals to
 22 report fraud and abuse in the Medicare program. Such
 23 plan shall include recommendations for—

24 (1) ways to enhance rewards for individuals re-
 25 porting under the incentive program, including re-

wards based on information that leads to an administrative action; and

(2) extending the incentive program to the Medicaid program.

(b) PUBLIC AWARENESS AND EDUCATION CAMPAIGN.—The plan developed under subsection (a) shall also include recommendations for the use of the Senior Medicare Patrols authorized under section 411 of the Older Americans Act of 1965 (42 U.S.C. 3032) to conduct a public awareness and education campaign to encourage participation in the revised incentive program under subsection (a).

(c) SUBMISSION OF PLAN.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to Congress the plan developed under subsection (a).

SEC. 104. STRENGTHENING MEDICAID PROGRAM INTEGRITY THROUGH FLEXIBILITY.

Section 1936 of the Social Security Act (42 U.S.C. 1396u–6) is amended—

(1) in subsection (a), by inserting “, or otherwise,” after “entities”; and

(2) in subsection (e)—

(A) in paragraph (1), in the matter preceding subparagraph (A), by inserting “(includ-

ing the costs of equipment, salaries and benefits, and travel and training)” after “Program under this section”; and

(B) in paragraph (3), by striking “by 100” and inserting “by 100, or such number as determined necessary by the Secretary to carry out the Program,”.

SEC. 105. ESTABLISHING MEDICARE ADMINISTRATIVE CONTRACTOR ERROR REDUCTION INCENTIVES.

(a) IN GENERAL.—Section 1874A(b)(1)(D) of the Social Security Act (42 U.S.C. 1395kk(b)(1)(D)) is amended—

(1) by striking “QUALITY.—The Secretary” and inserting “QUALITY.—

“(i) IN GENERAL.—Subject to clauses

(ii) and (iii), the Secretary”; and

(2) by inserting after clause (i), as added by paragraph (1), the following new clauses:

“(ii) IMPROPER PAYMENT ERROR RATE REDUCTION INCENTIVES.—The Secretary shall provide incentives for medicare administrative contractors to reduce the improper payment error rates in their jurisdictions.

1 “(iii) INCENTIVES.—The incentives
2 provided for under clause (ii)—

3 “(I) may include a sliding scale
4 of bonus payments and additional in-
5 centives to medicare administrative
6 contractors that reduce the improper
7 payment error rates in their jurisdic-
8 tions to certain benchmark levels, as
9 determined by the Secretary; and

10 “(II) shall include substantial re-
11 ductions in award fee payments under
12 award fee contracts, for any medicare
13 administrative contractor that reaches
14 an upper end error threshold or other
15 threshold as determined by the Sec-
16 retary.”.

17 (b) EFFECTIVE DATE.—

18 (1) IN GENERAL.—The amendments made by
19 subsection (a) shall apply to contracts entered into
20 or renewed on or after the date that is 12 months
21 after the date of enactment of this Act.

22 (2) CONTRACTS ENTERED INTO OR RENEWED
23 PRIOR TO EFFECTIVE DATE.—In the case of con-
24 tracts in existence on or after the date of the enact-
25 ment of this Act and that are not subject to the ef-

1 fective date under paragraph (1), the Secretary of
 2 Health and Human Services shall, when appropriate
 3 and practicable, seek to apply the incentives pro-
 4 vided for in the amendments made by subsection (a)
 5 through contract modifications.

6 **SEC. 106. STRENGTHENING PENALTIES FOR THE ILLEGAL**
 7 **DISTRIBUTION OF A MEDICARE, MEDICAID,**
 8 **OR CHIP BENEFICIARY IDENTIFICATION OR**
 9 **BILLING PRIVILEGES.**

10 Section 1128B(b) of the Social Security Act (42
 11 U.S.C. 1320a–7b(b)) is amended by adding at the end the
 12 following:

13 “(4) Whoever knowingly, intentionally, and with
 14 the intent to defraud purchases, sells or distributes,
 15 or arranges for the purchase, sale, or distribution of
 16 a Medicare, Medicaid, or CHIP beneficiary identi-
 17 fication number or billing privileges under title
 18 XVIII, title XIX, or title XXI shall be imprisoned
 19 for not more than 10 years or fined not more than
 20 \$500,000 (\$1,000,000 in the case of a corporation),
 21 or both.”.

**TITLE II—IMPROVING DATA
SHARING**

**SEC. 201. ACCESS TO THE NATIONAL DIRECTORY OF NEW
HIRES.**

Section 453(j) of the Social Security Act (42 U.S.C. 653 (j)) is amended by adding at the end of the following new paragraph:

“(12) INFORMATION COMPARISONS AND DISCLOSURES TO ASSIST IN ADMINISTRATION OF THE MEDICARE PROGRAM AND STATE HEALTH SUBSIDY PROGRAMS.—

“(A) DISCLOSURE TO THE ADMINISTRATOR OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES.—The Administrator of the Centers for Medicare & Medicaid shall have access to the information in the National Directory of New Hires for purposes of determining the eligibility of an applicant for, or enrollee in, the Medicare program under title XVIII or an applicable State health subsidy program (as defined in section 1413(e) of the Patient Protection and Affordable Care Act (42 U.S.C. 18083(e))).

1 “(B) DISCLOSURE TO THE INSPECTOR
2 GENERAL OF THE DEPARTMENT OF HEALTH
3 AND HUMAN SERVICES.—

4 “(i) IN GENERAL.—If the Inspector
5 General of the Department of Health and
6 Human Services transmits to the Secretary
7 the names and social security account
8 numbers of individuals, the Secretary shall
9 disclose to the Inspector General informa-
10 tion on such individuals and their employ-
11 ers maintained in the National Directory
12 of New Hires.

13 “(ii) USE OF INFORMATION.—The In-
14 specter General of the Department of
15 Health and Human Services may use in-
16 formation provided under clause (i) only
17 for purposes of—

18 “(I) determining the eligibility of
19 an applicant for, or enrollee in, the
20 Medicare program under title XVIII
21 or an applicable State health subsidy
22 program (as defined in section
23 1413(e) of the Patient Protection and
24 Affordable Care Act (42 U.S.C.
25 18083(e))); or

1 “(II) evaluating the integrity of
2 the Medicare program or an applica-
3 ble State health subsidy program (as
4 so defined).

5 “(C) DISCLOSURE TO STATE AGENCIES.—

6 “(i) IN GENERAL.—If, for purposes of
7 administering an applicable State health
8 subsidy program (as defined in section
9 1413(e) of the Patient Protection and Af-
10 fordable Care Act (42 U.S.C. 18083(e))), a
11 State agency responsible for administering
12 such program transmits to the Secretary
13 the names and social security account
14 numbers of individuals, the Secretary shall
15 disclose to such State agency information
16 on such individuals and their employers
17 maintained in the National Directory of
18 New Hires, subject to this subparagraph.

19 “(ii) CONDITION ON DISCLOSURE BY
20 THE SECRETARY.—The Secretary shall
21 make a disclosure under clause (i) only to
22 the extent that the Secretary determines
23 that the disclosure would not interfere with
24 the effective operation of the program
25 under this part.

1 “(iii) USE AND DISCLOSURE OF IN-
2 FORMATION BY STATE AGENCIES.—

3 “(I) IN GENERAL.—A State
4 agency may not use or disclose infor-
5 mation provided under clause (i) ex-
6 cept for purposes of administering a
7 program referred to in clause (i).

8 “(II) INFORMATION SECURITY.—
9 The State agency shall have in effect
10 data security and control policies that
11 the Secretary finds adequate to ensure
12 the security of information obtained
13 under clause (i) and to ensure that
14 access to such information is re-
15 stricted to authorized persons for pur-
16 poses of authorized uses and disclo-
17 sures.

18 “(III) PENALTY FOR MISUSE OF
19 INFORMATION.—An officer or em-
20 ployee of the State agency who fails to
21 comply with this clause shall be sub-
22 ject to the sanctions under subsection
23 (l)(2) to the same extent as if such of-
24 ficer or employee were an officer or
25 employee of the United States.

1 “(iv) PROCEDURAL REQUIREMENTS.—
 2 State agencies requesting information
 3 under clause (i) shall adhere to uniform
 4 procedures established by the Secretary
 5 governing information requests and data
 6 matching under this paragraph.

7 “(v) REIMBURSEMENT OF COSTS.—
 8 The State agency shall reimburse the Sec-
 9 retary, in accordance with subsection
 10 (k)(3), for the costs incurred by the Sec-
 11 retary in furnishing the information re-
 12 quested under this subparagraph.”.

13 **SEC. 202. IMPROVING THE SHARING OF DATA BETWEEN**
 14 **THE FEDERAL GOVERNMENT AND STATE**
 15 **MEDICAID PROGRAMS.**

16 (a) IN GENERAL.—The Secretary of Health and
 17 Human Services (in this section referred to as the “Sec-
 18 retary”) shall establish a plan to encourage and facilitate
 19 the participation of States in the Medicare-Medicaid Data
 20 Match Program (commonly referred to as the “Medi-Medi
 21 Program”) under section 1893(g) of the Social Security
 22 Act (42 U.S.C. 1395ddd(g)).

23 (b) PROGRAM REVISIONS TO IMPROVE MEDI-MEDI
 24 DATA MATCH PROGRAM PARTICIPATION BY STATES.—

1 Section 1893(g)(1)(A) of the Social Security Act (42
2 U.S.C. 1395ddd(g)(1)(A)) is amended—

3 (1) in the matter preceding clause (i), by insert-
4 ing “or otherwise” after “eligible entities”;

5 (2) in clause (i)—

6 (A) by inserting “to review claims data”
7 after “algorithms”; and

8 (B) by striking “service, time, or patient”
9 and inserting “provider, service, time, or pa-
10 tient”;

11 (3) in clause (ii)—

12 (A) by inserting “to investigate and re-
13 cover amounts with respect to suspect claims”
14 after “appropriate actions”; and

15 (B) by striking “; and” and inserting a
16 semicolon;

17 (4) in clause (iii), by striking the period and in-
18 serting “; and”; and

19 (5) by adding at end the following new clause:

20 “(iv) furthering the Secretary’s de-
21 sign, development, installation, or enhance-
22 ment of an automated data system archi-
23 tecture—

24 “(I) to collect, integrate, and as-
25 sess data for purposes of program in-

1 integrity, program oversight, and ad-
 2 ministration, including the Medi-Medi
 3 Program; and

4 “(II) that improves the coordina-
 5 tion of requests for data from
 6 States.”.

7 (c) PROVIDING STATES WITH DATA ON IMPROPER
 8 PAYMENTS MADE FOR ITEMS OR SERVICES PROVIDED TO
 9 DUAL ELIGIBLE INDIVIDUALS.—

10 (1) IN GENERAL.—The Secretary shall develop
 11 and implement a plan that allows each State agency
 12 responsible for administering a State plan for med-
 13 ical assistance under title XIX of the Social Security
 14 Act access to relevant data on improper or fraudu-
 15 lent payments made under the Medicare program
 16 under title XVIII of the Social Security Act (42
 17 U.S.C. 1395 et seq.) for health care items or serv-
 18 ices provided to dual eligible individuals.

19 (2) DUAL ELIGIBLE INDIVIDUAL DEFINED.—In
 20 this section, the term “dual eligible individual”
 21 means an individual who is entitled to, or enrolled
 22 for, benefits under part A of title XVIII of the So-
 23 cial Security Act (42 U.S.C. 1395c et seq.), or en-
 24 rolled for benefits under part B of title XVIII of
 25 such Act (42 U.S.C. 1395j et seq.), and is eligible

1 for medical assistance under a State plan under title
 2 XIX of such Act (42 U.S.C. 1396 et seq.) or under
 3 a waiver of such plan.

4 **SEC. 203. IMPROVING CLAIMS PROCESSING AND DETEC-**
 5 **TION OF FRAUD WITHIN THE MEDICAID AND**
 6 **CHIP PROGRAMS.**

7 (a) MEDICAID.—Section 1903(i) of the Social Secu-
 8 rity Act (42 U.S.C. 1396b(i)), as amended by section
 9 2001(a)(2)(B) of the Patient Protection and Affordable
 10 Care Act (Public Law 111–148), is amended—

11 (1) in paragraph (25), by striking “or” at the
 12 end;

13 (2) in paragraph (26), by striking the period
 14 and inserting “; or”; and

15 (3) by adding after paragraph (26), the fol-
 16 lowing new paragraph:

17 “(27) with respect to amounts expended for an
 18 item or service for which medical assistance is pro-
 19 vided under the State plan or under a waiver of such
 20 plan unless the claim for payment for such item or
 21 service contains a valid beneficiary identification
 22 number that, for purposes of the individual who re-
 23 ceived such item or service, has been determined by
 24 the State agency to correspond to an individual who

1 is eligible to receive benefits under the State plan or
 2 waiver.”.

3 (b) CHIP.—Section 2107(e)(1)(I) of the Social Secu-
 4 rity Act (42 U.S.C. 1397gg(e)(1)(I)) is amended by strik-
 5 ing “and (17)” and inserting “(17), and (27)”.

6 **TITLE III—REPORT ON** 7 **IMPLEMENTATION**

8 **SEC. 301. REPORT ON IMPLEMENTATION.**

9 Not later than 270 days after the date of the enact-
 10 ment of this Act, the Secretary of Health and Human
 11 Services shall submit to Congress a report on the imple-
 12 mentation of the provisions of, and the amendments made
 13 by, this Act.

○