

113TH CONGRESS
2D SESSION

S. 2361

To amend title XVIII of the Social Security Act to crack down on fraud in the Medicare program to protect seniors, people with disabilities, and taxpayers.

IN THE SENATE OF THE UNITED STATES

MAY 20, 2014

Mr. NELSON (for himself, Ms. COLLINS, Mr. CARPER, Mr. GRASSLEY, and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to crack down on fraud in the Medicare program to protect seniors, people with disabilities, and taxpayers.

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 “Stop Schemes and
5 Crimes Against Medicare and Seniors (Stop SCAMS)
6 Act”.

1 **SEC. 2. ENSURING THAT NEW MEDICAL CODING SYSTEMS**
2 **DO NOT COMPROMISE FRAUD PREVENTION**
3 **EFFORTS.**

4 (a) IN GENERAL.—Section 1173(c) of the Social Se-
5 curity Act (42 U.S.C. 1320d–2(c)) is amended—

6 (1) in paragraph (1)—

7 (A) in subparagraph (A), by striking “;
8 or” and inserting “or, if no code sets for such
9 data elements have been developed, establish
10 code sets for the data elements;”; and

11 (B) by striking subparagraph (B) and add-
12 ing the following new subparagraphs:

13 “(B) ensure that any entity producing and
14 transmitting valid transactions that include
15 code sets are subject to a consistent, industry-
16 wide framework that supports a seamless tran-
17 sition to new and modified code sets; and

18 “(C) establish, by a rule promulgated after
19 notice and an opportunity for a hearing on the
20 record, an end-to-end testing procedure for new
21 and modified code sets that shall require the
22 participation of any entity producing and trans-
23 mitting valid transactions that use such new or
24 modified code set.”; and

25 (2) by adding at the end the following para-
26 graphs:

1 “(3) ADOPTING NEW AND MODIFIED CODE
 2 SETS.—The Secretary shall not adopt a new or
 3 modified code set unless the Secretary—

4 “(A) assesses the impact of the code set on
 5 fraud prevention and pre-payment review, de-
 6 termines that anti-fraud edits work as intended,
 7 and confirms that a plan is in place to ensure
 8 continuing effective detection of fraud following
 9 the adoption of the code set;

10 “(B) ensures that the end-to-end testing
 11 procedure established by the Secretary under
 12 paragraph (1) has been completed; and

13 “(C) completes end-to-end testing with any
 14 Federal Government entity that produces and
 15 transmits valid transactions that include the
 16 code set with private sector tracking partners.

17 “(4) ROUTINE UPDATES TO EXISTING CODE
 18 SETS.—Paragraph (3) shall not apply to routine,
 19 regularly scheduled updates to existing code sets.”.

20 (b) EFFECTIVE DATE.—The amendments made by
 21 this section shall be effective as of October 1, 2015.

22 **SEC. 3. VERIFICATION OF PROVIDER OWNERSHIP INTER-**
 23 **ESTS.**

24 (a) IN GENERAL.—Section 1124(c) of the Social Se-
 25 curity Act (42 U.S.C. 1320a–3(c)) is amended—

1 (1) by redesignating paragraph (5) as para-
2 graph (6); and

3 (2) by inserting after paragraph (4) the fol-
4 lowing paragraph:

5 “(5) VERIFICATION OF INFORMATION.—

6 “(A) IN GENERAL.—With respect to infor-
7 mation supplied by a disclosing entity under
8 subsections (a) and (b), the Secretary shall—

9 “(i) verify such information by com-
10 paring it to available data on the provider
11 collected through disclosures made to the
12 Secretary under section 1128G(a)(2), or,
13 in the case of a disclosing entity to which
14 section 1128G(a)(2) does not apply, verify
15 such information through comparison with
16 at least one other public or private data-
17 base which contains information as to the
18 identity of each person with an ownership
19 or control interest in the entity; and

20 “(ii) confirm the accuracy of any so-
21 cial security account number or employer
22 identification number supplied under sub-
23 section (a) by verifying—

1 “(I) each social security account
 2 number with the Commissioner of So-
 3 cial Security; and

4 “(II) each employer identification
 5 number with the Secretary of the
 6 Treasury.

7 “(B) DISCREPANCIES.—If the comparison
 8 described in subparagraph (A)(i) reveals a dis-
 9 crepancy between information supplied by a dis-
 10 closing entity under subsections (a) and (b) and
 11 available data on the provider collected through
 12 disclosures made to the Secretary under section
 13 1128G(a)(2), the Secretary shall independently
 14 verify the accuracy of such data collected under
 15 section 1128G(a)(2) before taking any action
 16 against a provider based on such discrepancy.”.

17 (b) EFFECTIVE DATE.—The amendments made by
 18 this section shall be effective as of the date that is 1 year
 19 after the date of enactment of this Act.

20 **SEC. 4. SUPPORTING PUBLIC AND PRIVATE INFORMATION**
 21 **SHARING TO PREVENT HEALTH CARE FRAUD.**

22 (a) DEFINITIONS.—In this section:

23 (1) HEALTHCARE FRAUD PREVENTION PART-
 24 NERSHIP; PARTNERSHIP.—The terms “Healthcare
 25 Fraud Prevention Partnership” and “Partnership”

mean the information sharing partnership established between the Department of Health and Human Services, the Department of Justice, and other public and private stakeholders, including private insurers, under the authority of section 1128C(a)(2) of the Social Security Act (42 U.S.C. 1320a–7c(a)(2)) for the purpose of detecting and preventing health care fraud.

(2) PRIVATE INSURER.—The term “private insurer” has the meaning given the term “health insurance issuer” under section 2791(b)(2) of the Public Health Service Act (42 U.S.C. 300GG–91(b)(2)).

(b) SAFE HARBOR FOR THE SHARING OF INFORMATION.—

(1) GENERAL IMMUNITY.—

(A) IN GENERAL.—A non-governmental entity participating in the Partnership (including a private insurer) that—

(i) provides data or information described in clause (i) or (ii) of subparagraph (B) to the Department of Health and Human Services, the Department of Justice, any other Federal or State law enforcement agency, any contractor of such

1 Department or agency, or another entity
2 participating in the Partnership (including
3 a private insurer); or

4 (ii) uses such data or information as
5 permitted by this subsection,

6 shall be immune from civil liability with respect
7 to the provision or authorized use of such data
8 or information.

9 (B) DATA OR INFORMATION.—

10 (i) DATA.—The data described in this
11 clause is aggregated claims data or other
12 information described in clause (ii) that
13 does not include individually identifiable
14 information with respect to any health care
15 provider, supplier, or beneficiary, whether
16 or not analysis of such information results
17 in the identification of a health care pro-
18 vider, supplier, or other person or organi-
19 zation as having committed fraud or hav-
20 ing committed acts suspected of being
21 fraudulent.

22 (ii) INFORMATION.—The information
23 described in this clause is information con-
24 cerning fraud or suspected fraudulent acts
25 that identifies a specific health care pro-

vider, supplier, or other person or organization if the provider, supplier, or other person or organization so identified—

(I) is the subject of a bona fide fraud investigation conducted by the entity participating in the Partnership, including a private insurer, that is providing the information;

(II) is the subject of a fraud-related allegation that has been filed by or received by the entity participating in the Partnership, including a private insurer, that is providing the information; or

(III) has been convicted of a fraud-related offense.

(2) LIMITATION.—The immunity described in paragraph (1) shall apply only where—

(A) the data or information involved was provided in good faith and without malice; and

(B) the data or information provided is true, based on a reasonable belief, to the knowledge of the person providing the information, or if false, the information is provided without

1 knowledge of, and without reckless disregard
2 for, its falsity.

3 (3) USE OF PARTNERSHIP DATA OR INFORMA-
4 TION.—For purposes of this subsection, data or in-
5 formation relating to a specific provider or supplier
6 received by a private insurer solely through the
7 Partnership shall be used, with respect to such pro-
8 vider or supplier, only for the purpose of informing
9 decisionmaking by the private insurer related to
10 fraud investigations, including whether to conduct
11 such an investigation. Nothing in the preceding sen-
12 tence shall prevent a private insurer or other entity
13 participating in the Partnership from taking other
14 actions, not specific to such provider or supplier,
15 based on such data or information.

16 (c) REPORT.—Not later than October 1 of each cal-
17 endar year that begins after the date of enactment of this
18 Act, the Secretary of Health and Human Services shall
19 submit to the Special Committee on Aging, the Committee
20 on Finance, and the Committee on Homeland Security
21 and Governmental Affairs of the Senate, and the Com-
22 mittee on Ways and Means and the Committee on Energy
23 and Commerce of the House of Representatives, a report
24 that describes the activities of the Healthcare Fraud Pre-
25 vention Partnership. Such report shall include—

1 (1) a description of how input was obtained
 2 from private insurers regarding the appropriate
 3 usage of data shared through the Healthcare Fraud
 4 Prevention Partnership; and

5 (2) plans for the Partnership to be expanded to
 6 encompass a representative sample of national pri-
 7 vate insurers and to include health care provider or-
 8 ganizations.

9 **SEC. 5. MEDPAC STUDY AND REPORT.**

10 (a) **STUDY.**—The Medicare Payment Advisory Com-
 11 mission shall conduct a study on administrative efforts to
 12 strengthen program integrity in the Medicare program.
 13 Such study may include—

14 (1) an evaluation of ways to detect fraudulent
 15 claims before payment is made;

16 (2) a review of the efficiency and effectiveness
 17 of post-payment recovery methods;

18 (3) analysis by the Centers for Medicare &
 19 Medicaid Services and public reporting of claims and
 20 spending patterns; and

21 (4) a review of the organizational structure and
 22 resources of the Centers for Medicare & Medicaid
 23 Services as they relate to program integrity.

24 (b) **REPORT.**—Not later than June 15, 2016, the
 25 Medicare Payment Advisory Commission shall submit to

1 Congress a report on the study conducted under sub-
 2 section (a), together with recommendations for such legis-
 3 lative and administrative action as the Commission deter-
 4 mines appropriate.

5 **SEC. 6. ABILITY TO MEASURE FRAUD PREVENTION EF-**
 6 **FORTS.**

7 Section 4241 of the Small Business Jobs Act of 2010
 8 (42 U.S.C. 1320a–7m) is amended—

9 (1) in subsection (b)(4), by inserting “and on
 10 civil recoveries, administrative actions, and criminal
 11 convictions for fraud” after “reimbursement”; and

12 (2) in subsection (c), by adding at the end the
 13 following paragraph:

14 “(7) IMPLEMENTATION OF AMENDMENTS.—The
 15 Secretary shall implement amendments made to this
 16 subsection by the Stop Schemes and Crimes Against
 17 Medicare and Seniors (Stop SCAMS) Act not later
 18 than 6 months after the date of enactment of such
 19 Act. If the Secretary determines that new technology
 20 or data processing systems are required to carry out
 21 such amendments, the Secretary shall issue a re-
 22 quest for proposals to carry out such amendments
 23 not later than 6 months after the enactment of such
 24 Act, and the contractors selected under such request
 25 for proposal shall implement such amendments not

1 later than 12 months after the date of enactment of
2 such Act.”.

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