

115TH CONGRESS
2D SESSION

H. R. 6690

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 2018

Received; read twice and referred to the Committee on Finance

AN ACT

To establish a smart card pilot program to combat fraud, waste, and abuse and to protect beneficiary identity under the Medicare program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fighting Fraud to Pro-
3 tect Care for Seniors Act of 2018”.

4 **SEC. 2. MEDICARE SMART CARD PILOT PROGRAM.**

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

8 **“SEC. 1866F. SMART CARD PILOT PROGRAM.**

9 “(a) IMPLEMENTATION.—

10 “(1) IN GENERAL.—Not later than 36 months
11 after the date of the enactment of this section, the
12 Secretary shall establish a pilot program (in this sec-
13 tion referred to as the ‘pilot program’) to evaluate
14 the feasibility of using smart card technology under
15 this title.

16 “(2) SMART CARD TECHNOLOGY DEFINED.—In
17 this section, the term ‘smart card technology’ means
18 the following:

19 “(A) BENEFICIARY SMART CARD.—A ma-
20 chine readable, tamper-resistant card (in this
21 section referred to as a ‘smart card’) that in-
22 cludes an embedded integrated circuit chip with
23 a secure micro-controller (as defined by the Na-
24 tional Institute on Standards and Technology)
25 that enables the verification and secure, elec-
26 tronic authentication of the identity of a Medi-

1 care beneficiary at the point of service through
2 a combination of the smart card and a personal
3 identification number known by or associated
4 with such beneficiary.

5 “(B) CARD READER TECHNOLOGY.—Infor-
6 mation technology that enables a supplier and
7 provider to authenticate the identity of a Medi-
8 care beneficiary through presentation of such a
9 smart card and such components, with such au-
10 thentication to be reflected through the use of
11 a modifier or in another appropriate manner, as
12 determined by the Secretary, in the claims ad-
13 judication process.

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

17 “(A) SELECTION OF AREA.—In consulta-
18 tion with the Inspector General of the Depart-
19 ment of Health and Human Services, the Sec-
20 retary shall select at least three geographic
21 areas in which the pilot program will operate.

22 “(B) SELECTION OF SUPPLIER AND PRO-
23 VIDER TYPES.—In consultation with the Inspec-
24 tor General of the Department of Health and
25 Human Services, the Secretary shall select sup-

plier 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.

1 “(D) SMART CARD AND SMART CARD
2 READER ISSUANCE.—

3 “(i) BENEFICIARY SMART CARD
4 ISSUANCE.—The Secretary shall provide
5 for, at no cost, the issuance (and, if nec-
6 essary, replacement) of beneficiary smart
7 cards described in paragraph (2)(A) to all
8 Medicare beneficiaries residing in a geo-
9 graphic area in which the pilot program is
10 conducted under subparagraph (A). Infor-
11 mation that appears on Medicare cards
12 used outside the pilot program may appear
13 on the face of the beneficiary smart card.

14 “(ii) SUPPLIER AND PROVIDER SMART
15 CARD READER ISSUANCE.—At the request
16 of a participating supplier or provider, the
17 Secretary shall provide for, at no cost, the
18 issuance to such supplier or provider of
19 smart card hardware and software nec-
20 essary to participate in the pilot program.

21 “(E) INFORMATION ON OPERATION OF
22 PILOT PROGRAM.—The Secretary shall provide
23 participating suppliers and providers and Medi-
24 care beneficiaries who are furnished items and
25 services by such suppliers and providers, with

1 information on the operation of the pilot pro-
2 gram, including privacy protections described in
3 subparagraph (I).

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

6 “(i) BENEFICIARIES.—Medicare bene-
7 ficiaries who receive beneficiary smart
8 cards may receive items and services from
9 suppliers and providers not participating in
10 the pilot program.

11 “(ii) SUPPLIERS AND PROVIDER
12 CLAIMS.—

13 “(I) SUPPLIERS AND PROVIDERS
14 NOT PARTICIPATING IN PILOT.—Sup-
15 pliers and providers not participating
16 in the pilot program may submit
17 claims under this title for items and
18 services furnished without use of
19 smart card technology to Medicare
20 beneficiaries who receive beneficiary
21 smart cards.

22 “(II) PARTICIPATING SUPPLIERS
23 AND PROVIDERS FURNISHING SERV-
24 ICES TO NON-PARTICIPATING BENE-
25 FICIARIES.—Supplier and providers

1 participating in the pilot program may
2 submit claims under this title for
3 items and services furnished to Medi-
4 care beneficiaries who do not receive
5 beneficiary smart cards.

6 “(G) CLARIFICATION ON ACCESS TO SERV-
7 ICES WITHOUT SMART CARDS.—In the case of a
8 Medicare beneficiary who receives a beneficiary
9 smart card and does not present such card at
10 the time of receipt of items or services from a
11 participating supplier or provider, the partici-
12 pating supplier or provider—

13 “(i) shall furnish such items or serv-
14 ices to such Medicare beneficiary as if such
15 beneficiary does present such card;

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

18 “(iii) shall provide, in accordance with
19 such manner, process, and timing as speci-
20 fied by the Secretary, information to the
21 Secretary (through the contractor de-
22 scribed in subparagraph (H)) that such
23 beneficiary received such a smart card but
24 did not have the smart card at the time
25 the items or services were furnished.

1 “(H) PRIVATE SECTOR IMPLEMENTA-
2 TION.—The Secretary shall select, by using a
3 competitive procurement process in accordance
4 with the provisions of chapter 1 of title 48,
5 Code of Federal Regulations (or any successor
6 regulations), a private sector contractor to im-
7 plement and operate the pilot program.

8 “(I) PRIVACY PROTECTIONS.—The Sec-
9 retary shall ensure that the pilot program com-
10 plies with applicable Federal laws and regula-
11 tions concerning individually identifiable health
12 information, including the Privacy Act of 1974
13 and regulations promulgated under section
14 264(c) of the Health Insurance Portability and
15 Accountability Act of 1996 and such individ-
16 ually identifiable information shall be exempt
17 from disclosure under section 552(b)(3) of title
18 5, United States Code.

19 “(J) MANDATORY PARTICIPATION.—Sub-
20 ject to subparagraph (C), in the case of items
21 or services furnished by a provider or supplier
22 included in a supplier or provider type selected
23 under subparagraph (B) in a geographic area
24 selected under subparagraph (A), payment may
25 only be made under this title for such items or

1 services during the period of the pilot program
2 if the provider or supplier is participating in the
3 pilot program.

4 “(K) PROHIBITION OF SMART CARD
5 FEES.—No transaction, utilization, or other
6 fees may be imposed on Medicare beneficiaries
7 or participating suppliers and providers with re-
8 spect to the use of smart cards under the pilot
9 program.

10 “(4) STAKEHOLDER INPUT.—

11 “(A) IN GENERAL.—Not later than 6
12 months after the date of the enactment of this
13 section, the Secretary shall convene a panel
14 consisting of stakeholders (including representa-
15 tives of providers, suppliers, technology vendors,
16 Medicare beneficiaries, and claims processing
17 contractors) selected by the Secretary for pur-
18 poses of providing input to the Secretary on the
19 implementation of the pilot program (including
20 on the selection of areas and participants under
21 subparagraphs (A) and (B) of paragraph (3)
22 and the development of exemptions and require-
23 ments described in such paragraph).

24 “(B) NONAPPLICABILITY OF FACA.—The
25 Federal Advisory Committee Act shall not apply

1 to the panel convened pursuant to subpara-
2 graph (A).

3 “(5) DEFINITIONS.—In this section:

4 “(A) The terms ‘supplier’ and ‘provider’
5 have the meanings given the terms ‘supplier’
6 and ‘provider of services’ in subsections (d) and
7 (u), respectively, of section 1861.

8 “(B) The term ‘Medicare beneficiary’
9 means an individual who is enrolled in the origi-
10 nal Medicare fee-for-service program under
11 parts A and B and is not enrolled in an MA
12 plan under part C, an eligible organization
13 under section 1876, or a PACE program under
14 section 1894.

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

17 “(1) INTERIM PERFORMANCE REPORT.—Not
18 later than 2 years after the date the pilot program
19 is implemented, an interim report on the perform-
20 ance of such program.

21 “(2) FINAL PERFORMANCE REPORT.—Not later
22 than 18 months after the date of the completion of
23 the pilot program, a final evaluation on the effective-
24 ness of the pilot program. The report shall include
25 the following:

1 “(A) An evaluation of the effect of the
2 pilot program on potential fraud under the in-
3 surance programs established under this title.

4 “(B) A description of any barriers to im-
5 plementation of the pilot program.

6 “(C) Participant feedback on the pilot pro-
7 gram.

8 “(D) Recommendations regarding the fu-
9 ture use of smart cards to address fraud under
10 this title.

11 “(E) Data on the information provided
12 under subsection (a)(3)(G)(iii).”.

Passed the House of Representatives September 12,
2018.

Attest:

KAREN L. HAAS,
Clerk.