

112TH CONGRESS
1ST SESSION

H. R. 3474

To amend titles XI and XVIII of the Social Security Act to prevent fraud and abuse under the Medicare program and to require National Provider Identifiers for reimbursement of prescriptions under part D of the Medicare program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 2011

Mr. STEARNS introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend titles XI and XVIII of the Social Security Act to prevent fraud and abuse under the Medicare program and to require National Provider Identifiers for reimbursement of prescriptions under part D of the Medicare 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 “Promoting Responsi-
5 bility in Medical Expenditures Act of 2011” or the
6 “PRIME Act of 2011”.

1 **SEC. 2. INCREASED CIVIL AND CRIMINAL PENALTIES.**

2 (a) INCREASED CIVIL MONEY PENALTIES AND
3 CRIMINAL FINES FOR FEDERAL HEALTH CARE PROGRAM
4 FRAUD AND ABUSE.—

5 (1) INCREASED CIVIL MONEY PENALTIES.—Sec-
6 tion 1128A of the Social Security Act (42 U.S.C.
7 1320a–7a) is amended—

8 (A) in subsection (a), in the matter fol-
9 lowing paragraph (10)—

10 (i) by striking “\$10,000” and insert-
11 ing “\$20,000” each place it appears;

12 (ii) by striking “\$15,000” and insert-
13 ing “\$30,000”; and

14 (iii) by striking “\$50,000” and insert-
15 ing “\$100,000” each place it appears; and

16 (B) in subsection (b)—

17 (i) in paragraph (1), in the flush text
18 following subparagraph (B), by striking
19 “\$2,000” and inserting “\$4,000”;

20 (ii) in paragraph (2), by striking
21 “\$2,000” and inserting “\$4,000”; and

22 (iii) in paragraph (3)(A)(i), by strik-
23 ing “\$5,000” and inserting “\$10,000”.

24 (2) INCREASED CRIMINAL FINES.—Section
25 1128B of such Act (42 U.S.C. 1320a–7b) is amend-
26 ed—

1 (A) in subsection (a), in the matter fol-
2 lowing paragraph (6)—

3 (i) by striking “\$25,000” and insert-
4 ing “\$100,000”; and

5 (ii) by striking “\$10,000” and insert-
6 ing “\$20,000”;

7 (B) in subsection (b)—

8 (i) in paragraph (1), in the flush text
9 following subparagraph (B), by striking
10 “\$25,000” and inserting “\$100,000”; and

11 (ii) in paragraph (2), in the flush text
12 following subparagraph (B), by striking
13 “\$25,000” and inserting “\$100,000”;

14 (C) in subsection (c), by striking
15 “\$25,000” and inserting “\$100,000”;

16 (D) in subsection (d), in the flush text fol-
17 lowing paragraph (2), by striking “\$25,000”
18 and inserting “\$100,000”; and

19 (E) in subsection (e), by striking “\$2,000”
20 and inserting “\$4,000”.

21 (b) INCREASED SENTENCES FOR FELONIES INVOLV-
22 ING FEDERAL HEALTH CARE PROGRAM FRAUD AND
23 ABUSE.—

24 (1) FALSE STATEMENTS AND REPRESENTA-
25 TIONS.—Section 1128B(a) of the Social Security Act

1 (42 U.S.C. 1320a–7b(a)) is amended, in the matter
2 following paragraph (6), by striking “not more than
3 five years or both, or (ii)” and inserting “not more
4 than 10 years or both, or (ii)”.

5 (2) ANTIKICKBACK.—Section 1128B(b) of such
6 Act (42 U.S.C. 1320a–7b(b)) is amended—

7 (A) in paragraph (1), in the flush text fol-
8 lowing subparagraph (B), by striking “not more
9 than five years” and inserting “not more than
10 10 years”; and

11 (B) in paragraph (2), in the flush text fol-
12 lowing subparagraph (B), by striking “not more
13 than five years” and inserting “not more than
14 10 years”.

15 (3) FALSE STATEMENT OR REPRESENTATION
16 WITH RESPECT TO CONDITIONS OR OPERATIONS OF
17 FACILITIES.—Section 1128B(e) of such Act (42
18 U.S.C. 1320a–7b(c)) is amended by striking “not
19 more than five years” and inserting “not more than
20 10 years”.

21 (4) EXCESS CHARGES.—Section 1128B(d) of
22 such Act (42 U.S.C. 1320a–7b(d)) is amended, in
23 the flush text following paragraph (2), by striking
24 “not more than five years” and inserting “not more
25 than 10 years”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to acts committed after the date
3 of the enactment of this Act.

4 **SEC. 3. ANNUAL MEDICARE, MEDICAID, AND CHIP FRAUD**
5 **REPORTS.**

6 (a) IN GENERAL.—By not later than July 1, 2012,
7 and each subsequent year, the Secretary of Health and
8 Human Services shall submit to the Committees on Ways
9 and Means and Energy and Commerce of the House of
10 Representatives and the Committee on Finance of the
11 Senate a report that contains the following:

12 (1) AMOUNT OF FRAUD.—The amount, as esti-
13 mated by the Secretary—

14 (A) of total suspected fraud committed
15 against the Medicare program under title XVIII
16 of the Social Security Act, the Medicaid pro-
17 gram under title XIX of such Act, and the Chil-
18 dren’s Health Insurance Program under title
19 XXI of such Act; and

20 (B) the amount of such suspected fraud
21 that is committed by employees of the Depart-
22 ment of Health and Human Services who have
23 access to data from any of the programs under
24 subparagraph (A).

1 (2) DATA ACCESS IMPLEMENTATION.—Informa-
2 tion on implementation of the data access require-
3 ment under section 1128J(a)(2) of the Social Secu-
4 rity Act (42 U.S.C. 1320a–7k(a)(2)).

5 (b) USE OF AUDITS.—

6 (1) ESTIMATE BASED ON AUDITED CLAIMS.—
7 The Secretary shall base the estimate of suspected
8 fraud under subsection (a)(1)(A) on an audit of a
9 random sample of at least 10,000 claims for pay-
10 ment made under the programs under title XVIII,
11 XIX, or XXI of the Social Security Act.

12 (2) AUTHORITY OF THE SECRETARY.—For pur-
13 poses of conducting the audits under paragraph (1),
14 the Secretary may—

15 (A) request that a health care provider or
16 supplier submit documentation relating to the
17 claim being audited and review such docu-
18 mentation;

19 (B) conduct unannounced onsite visits; and

20 (C) interview patients.

21 (3) SUBMISSION OF INFORMATION.—Not later
22 than 30 days after receiving a request for docu-
23 mentation under paragraph (2)(A), the health care
24 provider or supplier shall provide to the Secretary all
25 requested documentation related to such claim.

1 (4) INTERNAL AUDIT.—The Secretary shall
2 base the estimate of suspected fraud committed by
3 employees of the Department of Health and Human
4 Services under subsection (a)(1)(B) on an internal
5 audit.

6 (c) FRAUD DEFINED.—In this section, the term
7 “fraud” has the meaning given such term in section 455.2
8 of title 42, Code of Federal Regulations.

9 **SEC. 4. PROTECTING PREDICTIVE ANALYTICS TECH-**
10 **NOLOGIES FROM COMPELLED DISCLOSURE**
11 **UNDER THE FREEDOM OF INFORMATION**
12 **ACT.**

13 Section 4241 of the Small Business Jobs Act of 2010
14 (42 U.S.C. 1320a–7m) is amended by adding at the end
15 the following:

16 “(j) EXEMPTION FROM FOIA.—The algorithms used
17 in predictive modeling and other analytics technologies
18 under this section are exempt from disclosure under sec-
19 tion 552(b)(3) of title 5, United States Code.

20 “(k) AUDIT AND REVIEW.—The Inspector General of
21 the Department of Health and Human Services and the
22 Comptroller General of the United States shall, beginning
23 on January 1, 2013, and annually thereafter, complete an
24 audit and review of the implementation of this section, in-
25 cluding the effectiveness of the algorithms used in pre-

1 dictive modeling and other analytics technologies under
2 this section.”.

3 **SEC. 5. REQUIRING VALID NATIONAL PROVIDER IDENTIFI-**
4 **FIERS FOR PRESCRIBERS ON PHARMACY**
5 **CLAIMS AND LIMITING ACCESS TO THE NA-**
6 **TIONAL PROVIDER IDENTIFIER REGISTRY.**

7 (a) REQUIRING VALID NATIONAL PROVIDER IDENTIFI-
8 FIERS OF PRESCRIBERS ON PHARMACY CLAIMS.—

9 (1) IN GENERAL.—Section 1860D–2(e)(2) of
10 the Social Security Act (42 U.S.C. 1395w–
11 102(e)(2)) is amended by adding at the end the fol-
12 lowing new subparagraph:

13 “(C) DRUGS PRESCRIBED BY NONVALID
14 PRESCRIBERS.—For plan years that begin on or
15 after January 1, 2013, such term does not in-
16 clude a drug prescribed by an individual who
17 does not have a valid National Provider Identifi-
18 fier, as determined through procedures estab-
19 lished by the Secretary.”.

20 (2) IDENTIFYING AND REPORTING INVALID
21 PRESCRIBERS.—

22 (A) TRANSFER OF INFORMATION TO THE
23 INSPECTOR GENERAL.—In the case that the
24 procedures established by the Secretary of
25 Health and Human Services under section

1 1860D–2(e)(2) of the Social Security Act result
2 in a PDP sponsor identifying a claim for reim-
3 bursement under a prescription drug plan
4 under part D of title XVIII of such Act as
5 being for a drug that was prescribed by an indi-
6 vidual who did not have a valid National Pro-
7 vider Identifier, the PDP sponsor shall submit
8 to the Inspector General of the Department of
9 Health and Human Services any information on
10 such invalid prescribers on pharmacy claims, in-
11 cluding any invalid national provider identifiers
12 being used to submit such claims and any
13 records related to such claims.

14 (B) RESPONSIBILITY OF THE INSPECTOR
15 GENERAL.—The Inspector General of the De-
16 partment of Health and Human Services shall
17 provide to the appropriate law enforcement
18 agencies information submitted under subpara-
19 graph (A).

20 (C) REPORT TO CONGRESS.—Not later
21 than January 1, 2014, the Inspector General of
22 the Department of Health and Human Services
23 shall submit to Congress a report on the effec-
24 tiveness of the procedures established under

1 section 1860D–2(e)(2)(C) of the Social Security
2 Act.

3 (b) LIMITING ACCESS TO NATIONAL PROVIDER
4 IDENTIFIER REGISTRY.—

5 (1) IN GENERAL.—The Secretary of Health and
6 Human Services, in consultation with the Attorney
7 General, the Inspector General of the Department of
8 Health and Human Services, the Chairman of the
9 Federal Trade Commission, and affected parties (in-
10 cluding prescription drug plans under part D of title
11 XVIII of the Social Security Act (42 U.S.C. 1395w–
12 101 et seq.), MA–PD plans under part C of title
13 XVIII of the Social Security Act (42 U.S.C. 1395w–
14 21 et seq.), pharmacies, physicians, and pharmacy
15 computer vendors), shall establish procedures and
16 rules to restrict access to the National Provider
17 Identifier Registry in order to deter the fraudulent
18 use of National Provider Identifiers for purposes of
19 making claims under titles XVIII and XIX of the
20 Social Security Act.

21 (2) ACCESS.—

22 (A) IN GENERAL.—The procedures estab-
23 lished under paragraph (1) shall provide gov-
24 ernmental and nongovernmental entities with
25 appropriate (as determined by the Secretary)

1 access to the National Provider Identifier Reg-
2 istry.

3 (B) DATA USE AGREEMENTS.—In order to
4 receive such access, each such governmental
5 and nongovernmental entity shall enter into a
6 data use agreement with the Secretary and
7 agree to use the data in such registry in accord-
8 ance with rules established by the Secretary
9 pursuant such paragraph.

10 **SEC. 6. ENCOURAGING THE ESTABLISHMENT OF STATE**
11 **PRESCRIPTION DRUG MONITORING PRO-**
12 **GRAMS.**

13 (a) IN GENERAL.—Section 1905 of the Social Secu-
14 rity Act is amended by adding at the end the following:

15 “(ee) INCENTIVES FOR STATES TO IDENTIFY FRAUD
16 THROUGH STATE PRESCRIPTION DRUG MONITORING
17 PROGRAMS.—

18 “(1) IN GENERAL.—With respect to a calendar
19 quarter, the Federal medical assistance percentage
20 for the amounts under clauses (i) and (II) of sub-
21 paragraph (C) shall be decreased by 10 percent for
22 such quarter, if—

23 “(A) a State is receiving a grant for a
24 State controlled substance monitoring program
25 under section 3990 of the Public Health Serv-

1 ice Act (or the Secretary determines that the
2 State meets the requirements for such a grant);

3 “(B) through such program, the State
4 identifies fraud, waste, or abuse in connection
5 the provision of prescription drug coverage
6 under the State plan; and

7 “(C) the State or a political subdivision of
8 the State—

9 “(i) is reimbursed an amount by a
10 third party (pursuant to the provisions of
11 the State plan in compliance with section
12 1902(a)(25)) for expenditures related to
13 such fraud, waste, or abuse; or

14 “(ii) recovered (as such term is used
15 under section 1903(d)(3)(A)) an amount.

16 “(2) USE OF FUNDS.—A State may use the
17 amounts received as a result of the increased Fed-
18 eral medical assistance percentage under paragraph
19 (1) to support the State controlled substance moni-
20 toring program established by the State.”.

21 (b) CONFORMING AMENDMENTS.—Section 1905(b)
22 of the Social Security Act is amended by striking “Subject
23 to subsections (y), (z), and (aa)” and inserting “Subject
24 to subsections (y), (z), (aa), and (ee)”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this subsection shall apply to calendar quarters beginning
3 on or after the end of the 30-day period after the date
4 of the enactment of this Act.

5 **SEC. 7. PROHIBITING THE DISPLAY OF SOCIAL SECURITY**
6 **ACCOUNT NUMBERS ON NEWLY ISSUED**
7 **MEDICARE IDENTIFICATION CARDS AND**
8 **COMMUNICATIONS PROVIDED TO MEDICARE**
9 **BENEFICIARIES.**

10 (a) IN GENERAL.—Not later than 2 years after the
11 date of enactment of this Act, the Secretary of Health and
12 Human Services (referred to in this section as the “Sec-
13 retary”), acting in consultation with the Commissioner of
14 Social Security, shall establish and implement procedures
15 to eliminate the unnecessary collection, use, and display
16 of Social Security account numbers of Medicare bene-
17 ficiaries under the Medicare program under title XVIII
18 of the Social Security Act (42 U.S.C. 1395 et seq.).

19 (b) NEWLY ISSUED MEDICARE CARDS AND COMMU-
20 NICATIONS PROVIDED TO BENEFICIARIES.—Not later
21 than 4 years after the date of the enactment of this Act,
22 the Secretary shall do the following:

23 (1) NEWLY ISSUED CARDS.—Acting in con-
24 sultation with the Commissioner of Social Security,
25 ensure that each newly issued Medicare identifica-

1 tion card does not display or electronically store, in
2 an unencrypted format, a Medicare beneficiary's So-
3 cial Security account number, except—

4 (A) if the health insurance claim number
5 of a beneficiary is the Social Security number
6 of the beneficiary, the beneficiary's spouse, or
7 another individual, the Secretary may use such
8 number on such card; and

9 (B) if the Secretary determines that the
10 risk of fraudulent use of such numbers is not
11 unacceptably high, the Secretary may use a
12 partial Social Security account number on a
13 Medicare identification card.

14 (2) COMMUNICATIONS PROVIDED TO BENE-
15 FICIARIES.—Prohibit the display of a Medicare bene-
16 ficiary's Social Security account number in any writ-
17 ten or electronic communication provided to the ben-
18 eficiary unless the Secretary, in consultation with
19 the Commissioner of Social Security, determines
20 that inclusion of Social Security account numbers in
21 such communications is essential for the operation of
22 the Medicare program.

23 (c) MEDICARE BENEFICIARY DEFINED.—In this sec-
24 tion, the term “Medicare beneficiary” means an individual
25 who is entitled to, or enrolled for, benefits under part A

1 of title XVIII of the Social Security Act or enrolled under
2 part B of such title.

3 (d) CONFORMING AMENDMENTS.—

4 (1) REFERENCE IN THE SOCIAL SECURITY
5 ACT.—Section 205(c)(2)(C) of the Social Security
6 Act (42 U.S.C. 405(c)(2)(C)) is amended—

7 (A) by moving clause (x), as added by sec-
8 tion 1414(a)(2) of the Patient Protection and
9 Affordable Care Act (Public Law 111–148), 6
10 ems to the left;

11 (B) by redesignating clause (x), as added
12 by section 2(a)(1) of the Social Security Num-
13 ber Protection Act of 2010 (42 U.S.C. 1305
14 note), as clause (xii); and

15 (C) by adding after clause (xii), as redesi-
16 gnated by subparagraph (B), the following new
17 clause:

18 “(xiii) Subject to section 7 of the Promoting Respon-
19 sibility in Medical Expenditures Act of 2011, social secu-
20 rity account numbers shall not be displayed on Medicare
21 identification cards or on communications provided to
22 Medicare beneficiaries.”.

23 (2) ACCESS TO INFORMATION.—Section 205(r)
24 of the Social Security Act (405 U.S.C. 405(r)) is

1 amended by adding at the end the following new
2 paragraph:

3 “(10)(A) To prevent and identify fraudulent activ-
4 ity—

5 “(i) the Attorney General or the Secretary of
6 Health and Human Services may submit to the
7 Commissioner a request that the Commissioner
8 enter into an agreement under this paragraph; and

9 “(ii) subject to the requirements of subpara-
10 graphs (A) and (B) of paragraph (3), upon receiving
11 a request under subparagraph (A), the Commis-
12 sioner shall enter into a reimbursable agreement
13 with the individual making such request to provide
14 to such individual the information collected under
15 paragraph (1).

16 “(B) The agreement under subparagraph (A)(ii) shall
17 contain appropriate provisions (as determined by the Com-
18 missioner) to protect the confidentiality of information
19 provided by the Commissioner under such agreement.”.

20 (e) PILOT PROGRAM.—

21 (1) ESTABLISHMENT.—Not later than 1 year
22 after the date of the enactment of this Act, the Sec-
23 retary shall establish a pilot program utilizing smart
24 card technology to evaluate—

1 (A) the applicability of smart card tech-
2 nology to the Medicare program under title
3 XVIII of the Social Security Act (42 U.S.C.
4 1395 et seq.); and

5 (B) whether such cards would be effective
6 in preventing fraud under the Medicare pro-
7 gram.

8 (2) SCOPE AND DURATION.—The Secretary
9 shall conduct the pilot program—

10 (A) in not less than 2 States; and

11 (B) for a period of not less than 180 days
12 and not more than 2 years.

13 (3) REPORT.—Not later than 12 months after
14 the completion of the pilot program under this sub-
15 section, the Secretary shall submit to the appro-
16 priate committees of Congress and make available to
17 the public a report that includes the following:

18 (A) A summary of the pilot program and
19 findings resulting from such program, includ-
20 ing—

21 (i) any costs or savings to the Medi-
22 care program as a result of the implemen-
23 tation of the pilot program;

24 (ii) whether the use of smart card
25 technology resulted in improvements in the

1 quality of care provided to Medicare bene-
2 ficiaries under the pilot program; and

3 (iii) whether such technology was use-
4 ful in preventing or detecting fraud, waste,
5 and abuse in the Medicare program.

6 (B) Recommendations regarding whether
7 the use of smart card technology should be ex-
8 panded under the Medicare program.

9 (4) DEFINITIONS.—In this subsection:

10 (A) MEDICARE BENEFICIARY.—The term
11 “Medicare beneficiary” means an individual en-
12 titled to, or enrolled for, benefits under part A
13 of title XVIII of the Social Security Act (42
14 U.S.C. 1395c et seq.) or enrolled for benefits
15 under part B of such title (42 U.S.C. 1395j et
16 seq.).

17 (B) MEDICARE PROVIDER.—The term
18 “Medicare provider” means—

19 (i) a provider of services (as defined
20 in section 1861(u) of the Social Security
21 Act (42 U.S.C. 1395x(u))); or

22 (ii) a supplier (as defined in section
23 1861(d) of such Act (42 U.S.C.
24 1395x(d))).

1 (C) SMART CARD.—The term “smart
2 card” means an identification card used by a
3 Medicare beneficiary or a Medicare provider
4 that includes antifraud attributes. Such a
5 card—

6 (i) may rely on existing commercial
7 data transfer networks or on a network of
8 proprietary card readers or databases; and

9 (ii) may include—

10 (I) cards using technology adapt-
11 ed from the financial services indus-
12 try;

13 (II) cards containing individual
14 biometric identification, provided that
15 such identification is encrypted and
16 not contained in any central database;

17 (III) cards adapting technology
18 and processes utilized in the
19 TRICARE program under chapter 55
20 of title 10, United States Code, or by
21 the Veterans Administration; or

22 (IV) such other technology as the
23 Secretary determines appropriate.

1 **SEC. 8. IMPROVING CLAIMS PROCESSING AND DETECTION**
2 **OF FRAUD WITHIN THE MEDICAID AND CHIP**
3 **PROGRAMS.**

4 (a) MEDICAID.—Section 1903(i) of the Social Secu-
5 rity Act (42 U.S.C. 1396b(i)) is amended—

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

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

10 (3) by inserting after paragraph (26) the fol-
11 lowing paragraph:

12 “(27) with respect to any amount expended for
13 an item or service unless the claim for payment for
14 such item or service contains—

15 “(A) a valid beneficiary identification num-
16 ber for the individual to whom such item or
17 service was furnished, and the State has deter-
18 mined that such number corresponds to an indi-
19 vidual who is enrolled under the State plan or
20 an applicable waiver of a requirement of such
21 plan; and

22 “(B) a valid provider identifier for the pro-
23 vider who furnished such item or service, and
24 the State has determined that such identifier
25 corresponds to a provider that is eligible to re-
26 ceive payment for furnishing such item or serv-

1 ice under the State plan or an applicable waiver
2 of a requirement of such plan.”.

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 **SEC. 9. GAO REPORT.**

7 Not later than January 1, 2013, the Comptroller
8 General of the United States shall submit to the Congress
9 a report that contains recommendations on methods that
10 the Secretary of Health and Human Services could use
11 to make Medicare claims data available to the public for
12 the purpose of improving transparency within the Medi-
13 care program while protecting the privacy of individual
14 Medicare beneficiaries, providers of services, and sup-
15 pliers.

○