

112TH CONGRESS  
1ST SESSION

# H. R. 3735

To provide for enhanced penalties to combat Medicare and Medicaid fraud, a Medicare data-mining system and biometric technology pilot program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2011

Ms. ROS-LEHTINEN 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

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## A BILL

To provide for enhanced penalties to combat Medicare and Medicaid fraud, a Medicare data-mining system and biometric technology 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 Fraud En-  
5 forcement and Prevention Act of 2011”.

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

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

5 (1) in subsection (a), by striking “\$10,000 or  
6 imprisoned for not more than one year” and insert-  
7 ing “\$20,000 or imprisoned for not more than two  
8 years”; and

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

13 (b) ILLEGAL DISTRIBUTION OF MEDICARE OR MED-  
14 ICAID BENEFICIARY IDENTIFICATION OR BILLING PRIVI-  
15 LEGES.—Section 1128B of such Act (42 U.S.C. 1320a–  
16 7b) is amended by adding at the end the following new  
17 subsection:

18 “(g) Whoever knowingly, intentionally, and with the  
19 intent to defraud purchases, sells, or distributes, or ar-  
20 ranges for the purchase, sale, or distribution of two or  
21 more Medicare or Medicaid beneficiary identification num-  
22 bers or billing privileges under title XVIII or title XIX  
23 shall be imprisoned for not more than 10 years or fined  
24 under title 18, United States Code (or, if greater, an  
25 amount equal to the monetary loss to the Federal and any  
26 State government as a result of such acts), or both.”.

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) CIVIL MONETARY PENALTIES LAW ALIGNMENT  
7 AND OTHER CHANGES.—

8 (1) Section 1128A(a) of the Social Security Act  
9 (42 U.S.C. 1320a–7a(a)) is amended—

10 (A) in paragraph (1), by striking “to an  
11 officer, employee, or agent of the United States,  
12 or of any department or agency thereof, or of  
13 any State agency (as defined in subsection  
14 (i)(1)),”;

15 (B) by inserting after paragraph (10), as  
16 added by section 6402(d)(2) of the Patient Pro-  
17 tection and Affordable Care Act (Public Law  
18 111–148) the following new paragraphs:

19 “(11) conspires to commit a violation of this  
20 section; or

21 “(12) knowingly makes, uses, or causes to be  
22 made or used, a false record or statement material  
23 to an obligation to pay or transmit money or prop-  
24 erty to a Federal health care program, or knowingly  
25 conceals or knowingly and improperly avoids or de-

1 creases an obligation to pay or transmit money or  
2 property to a Federal health care program;”;

3 (C) in the first sentence—

4 (i) by striking “or in cases under  
5 paragraph (9)” and inserting “in cases  
6 under paragraph (9)”; and

7 (ii) by striking “fact)” and inserting  
8 “fact), in cases under paragraph (11),  
9 \$50,000 for any violation described in this  
10 section committed in furtherance of the  
11 conspiracy involved, and in cases under  
12 paragraph (12), \$50,000 for each false  
13 record or statement, or concealment, avoid-  
14 ance, or decrease”; and

15 (D) in the second sentence, by striking  
16 “material fact).” and inserting “material fact);  
17 or in cases under paragraph (11), an assess-  
18 ment of not more than 3 times the total  
19 amount that would otherwise apply for any vio-  
20 lation described in this section committed in  
21 furtherance of the conspiracy involved; or in  
22 cases under paragraph (12), an assessment of  
23 not more than 3 times the total amount of the  
24 obligation to which the false record or state-

1           ment was material or that was avoided or de-  
2           creased.”.

3           (2) Section 1128A(c)(1) of the Social Security  
4           Act (42 U.S.C. 1320a-7a(c)(1)) is amended by  
5           striking “six years” and inserting “10 years”.

6           (3) Section 1128A(i) of the Social Security Act  
7           (42 U.S.C. 1320a-7a(i)) is amended—

8                   (A) by amending paragraph (2) to read as  
9                   follows:

10                   “(2) The term ‘claim’ means any application,  
11                   request, or demand, whether under contract, or oth-  
12                   erwise, for money or property for items and services  
13                   under a Federal health care program (as defined in  
14                   section 1128B(f)), whether or not the United States  
15                   or a State agency has title to the money or property,  
16                   that—

17                           “(A) is presented or caused to be pre-  
18                           sented to an officer, employee, or agent of the  
19                           United States, or of any department or agency  
20                           thereof, or of any State agency (as defined in  
21                           subsection (i)(1)); or

22                           “(B) is made to a contractor, grantee, or  
23                           other recipient if the money or property is to be  
24                           spent or used on the Federal health care pro-  
25                           gram’s behalf or to advance a Federal health

1 care program interest, and if the Federal health  
2 care program—

3 “(i) provides or has provided any por-  
4 tion of the money or property requested or  
5 demanded; or

6 “(ii) will reimburse such contractor,  
7 grantee, or other recipient for any portion  
8 of the money or property which is re-  
9 quested or demanded.”;

10 (B) by amending paragraph (3) to read as  
11 follows:

12 “(3) The term ‘item or service’ means, without  
13 limitation, any medical, social, management, admin-  
14 istrative, or other item or service used in connection  
15 with or directly or indirectly related to a Federal  
16 health care program.”;

17 (C) in paragraph (7)—

18 (i) by striking “term ‘should know’  
19 means” and inserting “terms ‘knowing’,  
20 ‘knowingly’, and ‘should know’ mean”;

21 (ii) by redesignating subparagraphs  
22 (A) and (B) as subparagraphs (B) and  
23 (C), respectively;

1 (iii) by inserting before subparagraph  
2 (B), as redesignated by clause (ii), the fol-  
3 lowing new subparagraph:

4 “(A) has actual knowledge of the informa-  
5 tion;”; and

6 (iv) in the matter following subpara-  
7 graph (C), as redesignated by clause (ii)—

8 (I) by inserting “require” after  
9 “and”; and

10 (II) by striking “is required”;  
11 and

12 (D) by adding at the end the following new  
13 paragraphs:

14 “(8) The term ‘obligation’ means an established  
15 duty, whether or not fixed, arising from an express  
16 or implied contractual, grantor-grantee, or licensor  
17 licensee relationship, from a fee-based or similar re-  
18 lationship, from statute or regulation, or from the  
19 retention of any overpayment.

20 “(9) The term ‘material’ means having a nat-  
21 ural tendency to influence, or be capable of influ-  
22 encing, the payment or receipt of money or prop-  
23 erty.”.

24 (b) EXCLUSION OF RESPONSIBLE CORPORATE OFFI-  
25 CIALS.—Section 1128(b) of the Social Security Act (42

1 U.S.C. 1320a–7(b)) is amended by striking clauses (i) and  
2 (ii) of paragraph (15)(A) and inserting the following:

3 “(i) who has or had a direct or indi-  
4 rect ownership or control interest in a  
5 sanctioned entity at the time of and who  
6 knew or should have known (as defined in  
7 section 1128(i)(7)) of any of the conduct  
8 that formed a basis for the conviction or  
9 exclusion described in subparagraph (B);  
10 or

11 “(ii) who is or was an officer or man-  
12 aging employee (as defined in section  
13 1126(b)) of such an entity at the time of  
14 any of the conduct that formed a basis for  
15 the conviction or exclusion so described.”.

16 (c) PAYMENT SUSPENSIONS.—Subsection (o)(1) of  
17 section 1862 of the Social Security Act (42 U.S.C. 1395y),  
18 as added by section 6402(h) of the Patient Protection and  
19 Affordable Care Act (Public Law 111–148), is amended  
20 by striking “may” and inserting “shall”.

21 (d) CIVIL MONETARY PENALTIES FOR FALSE STATE-  
22 MENTS OR DELAYING INSPECTIONS.—Paragraph (9) of  
23 section 1128A(a) of the Social Security Act (42 U.S.C.  
24 1320a–7a(a)), as added by section 6408(a) of the Patient  
25 Protection and Affordable Care Act (Public Law 111–



1 148), is amended by inserting “or to timely provide infor-  
2 mation in response to a request authorized by section  
3 1128J(b),” after “regulations),”.

4 **SEC. 4. ENHANCED SCREENING, MEDICARE DATA-MINING**  
5 **SYSTEM; BIOMETRIC TECHNOLOGY PILOT**  
6 **PROGRAM.**

7 (a) ENHANCED SCREENING.—Section  
8 1866(j)(2)(B)(ii) of the Social Security Act (42 U.S.C.  
9 1395cc(j)), as inserted by section 6401(a)(3) of the Pa-  
10 tient Protection and Affordable Care Act (Public Law  
11 111–148), is amended by striking “may” and inserting  
12 “shall”.

13 (b) ACCESS TO REAL TIME CLAIMS AND PAYMENT  
14 DATA.—Section 1128J(a)(2) of the Social Security Act,  
15 as added by section 6402(a) of the Patient Protection and  
16 Affordable Care Act (Public Law 111–148), is amended—

17 (1) by inserting “including real time claims and  
18 payment data,” after “access to claims and payment  
19 data”; and

20 (2) by adding at the end the following sentence:  
21 “In carrying out this section, the Inspector General  
22 of the Department of Health and Human Services,  
23 in consultation with the Attorney General, shall im-  
24 plement mechanisms for the sharing of information  
25 about suspected fraud relating to the Federal health

1 care programs under titles XVIII, XIX, and XXI  
2 with other appropriate law enforcement officials.”.

3 (c) BIOMETRIC TECHNOLOGY PILOT PROGRAM.—

4 (1) IN GENERAL.—By not later than one year  
5 after the date of the enactment of this Act, the Sec-  
6 retary of Health and Human Services shall carry out  
7 a 5-year pilot program that implements biometric  
8 technology to ensure that individuals entitled to ben-  
9 efits under part A of title XVIII of the Social Secu-  
10 rity Act or enrolled under part B of such title are  
11 physically present at the time and place of receipt of  
12 certain items and services (specified by the Sec-  
13 retary) for which payment may be made under such  
14 title. Under such pilot program the Secretary may  
15 provide for financial incentives to encourage vol-  
16 untary participation of providers of services (as de-  
17 fined in section 1861(u) of such Act) and suppliers  
18 (as defined in section 1861(d) of such Act).

19 (2) REPORTS.—The Secretary of Health and  
20 Human Services shall, for each of the third, fourth,  
21 and fifth years of the pilot program under para-  
22 graph (1), submit to Congress a report on the effec-  
23 tiveness of the pilot program in reducing the occur-  
24 rence of waste, fraud, and abuse in the Medicare

1 program under title XVIII of the Social Security  
2 Act.

3 (3) AUTHORIZATION OF APPROPRIATIONS.—For  
4 purpose of carrying out paragraph (1), there is au-  
5 thorized to be appropriated such sums as may be  
6 necessary.

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