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To provide for the development of reports based on Medicare data, data that is publicly available, or private data that is provided by a requesting entity in order to improve the quality and efficiency of health care.

IN THE SENATE OF THE UNITED STATES

APRIL 14, 2011

Mr. CORNYN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for the development of reports based on Medicare data, data that is publicly available, or private data that is provided by a requesting entity in order to improve the quality and efficiency of health care.

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 “The Consumer Infor-
5 mation Enhancement Act of 2011”.

1 **SEC. 2. QUALITY AND EFFICIENCY REPORTS BASED ON**
 2 **MEDICARE ENROLLMENT, CLAIMS, SURVEY,**
 3 **AND ASSESSMENT DATA.**

4 Title XVIII of the Social Security Act is amended by
 5 adding at the end the following new section:

6 “QUALITY AND EFFICIENCY REPORTS BASED ON
 7 MEDICARE DATA

8 “SEC. 1899B. (a) PURPOSE.—The purpose of this
 9 section is to provide for the development of reports based
 10 on Medicare data, data that is publicly available, or pri-
 11 vate data that is provided by a requesting entity (as de-
 12 fined in subsection (e)(1)(A)) in order to—

13 “(1) improve the quality and efficiency of
 14 health care;

15 “(2) enhance the education and awareness of
 16 consumers for evaluating health care services; and

17 “(3) provide the public with reports on national,
 18 regional, and provider- and supplier-specific per-
 19 formance, which may be in a provider- or supplier-
 20 identifiable format.

21 “(b) PROCEDURES FOR THE DEVELOPMENT OF RE-
 22 PORTS.—

23 “(1) IN GENERAL.—Notwithstanding sections
 24 552(b)(6) and 552a(b) of title 5, United States
 25 Code, not later than 12 months after the date of en-
 26 actment of this section, the Secretary, in accordance

1 with the purpose described in subsection (a) and the
2 requirements described in subsection (d)(3), shall es-
3 tablish and implement procedures under which a re-
4 questing entity may submit an application to a Con-
5 sumer Information Organization for such Organiza-
6 tion to develop a report based on—

7 “(A) Medicare data disclosed to the Orga-
8 nization under subsection (c);

9 “(B) data, including clinical data when
10 available, that is publicly available; and

11 “(C) private data that is provided to the
12 Organization by the requesting entity.

13 “(2) DEFINITIONS.—In this section:

14 “(A) MEDICARE DATA.—The term ‘Medi-
15 care data’ means—

16 “(i) enrollment data under this title,
17 including de-identified beneficiary enroll-
18 ment data;

19 “(ii) all claims for reimbursement for
20 all items and services furnished by a pro-
21 vider of services (as defined in section
22 1861(u)) or a supplier (as defined in sec-
23 tion 1861(d)) under part A or B in a re-
24 search identifiable format;

1 “(iii) on and after January 1, 2011,
2 all data relating to enrollment in, and cov-
3 erage for, qualified prescription drug cov-
4 erage under part D; and

5 “(iv) additional data relating to the
6 program under this title collected by the
7 Secretary for the purpose of nationwide
8 quality measurement and reporting based
9 on surveys and assessment data deter-
10 mined appropriate by the Secretary.

11 “(B) CONSUMER INFORMATION ORGANIZA-
12 TION.—The term ‘Consumer Information Orga-
13 nization’ means an entity with a contract under
14 subsection (d).

15 “(3) RULE OF CONSTRUCTION.—Nothing in
16 this section shall be construed as authorizing or re-
17 quiring the Secretary to collect any additional infor-
18 mation or data that was not collected by the Sec-
19 retary prior to the date of enactment of this section.

20 “(c) ACCESS TO MEDICARE DATA.—

21 “(1) IN GENERAL.—The procedures established
22 under subsection (b)(1) shall provide for the secure
23 disclosure of Medicare data to each Consumer Infor-
24 mation Organization.

1 “(2) ALL DATA.—The Secretary shall ensure
2 that all Medicare data (as described in subsection
3 (b)(2)(A)), beginning with data from January 1,
4 2005, is disclosed under paragraph (1), including
5 the most recent data available to the Secretary. Not
6 less than every 6 months, the Secretary shall update
7 the Medicare data disclosed under paragraph (1) to
8 each Consumer Information Organization.

9 “(d) CONSUMER INFORMATION ORGANIZATIONS.—

10 “(1) IN GENERAL.—

11 “(A) CONTRACTS WITH PRIVATE ENTI-
12 TIES.—Subject to subparagraph (B), the Sec-
13 retary shall enter into a contract with 3 private
14 entities, as well as any State described in sub-
15 paragraph (C)(i), to serve as Consumer Infor-
16 mation Organizations, under which each such
17 entity or State shall—

18 “(i) store the Medicare data that is to
19 be disclosed under subsection (c); and

20 “(ii) develop and release reports pur-
21 suant to subsection (e).

22 “(B) ADDITIONAL CONTRACTS WITH PRI-
23 VATE ENTITIES.—If the Secretary determines
24 that reports are not being developed and re-
25 leased within 6 months of the receipt of the re-

1 quest for the report, the Secretary shall enter
2 into contracts with additional private entities in
3 order to ensure that such reports are developed
4 and released in a timely manner.

5 “(C) CONTRACTS WITH STATES.—

6 “(i) IN GENERAL.—At the request of
7 a State, the Secretary shall enter into a
8 contract with such State to serve as a Con-
9 sumer Information Organization.

10 “(ii) EXISTING DATA USE AGREE-
11 MENTS.—Nothing in this section shall be
12 construed to preempt, modify, or otherwise
13 affect any data use agreement relating to
14 Medicare patient-level data that has been
15 entered into by the Secretary and a State
16 prior to the date of enactment of this sec-
17 tion.

18 “(2) QUALIFICATIONS.—The Secretary shall
19 enter into a contract with a private entity or a State
20 under paragraph (1) only if the Secretary deter-
21 mines that such entity or State—

22 “(A) has the research capability to conduct
23 and complete reports under this section;

24 “(B) has in place—

1 “(i) an information technology infra-
2 structure to support the entire database of
3 Medicare data; and

4 “(ii) operational standards to provide
5 security for such database;

6 “(C) has experience with, and expertise on,
7 the development of reports on health care qual-
8 ity and efficiency based on Medicare or private
9 sector claims data;

10 “(D) is incorporated in the United States;

11 “(E) has provided sufficient assurances
12 that any data provided to such entity or State
13 under this section shall not be made accessible
14 to any individual or entity residing outside of
15 the United States; and

16 “(F) has demonstrated the ability to sat-
17 isfy the requirements described in paragraph
18 (3).

19 “(3) CONFIDENTIALITY AND PRIVACY REQUIRE-
20 MENTS.—The Secretary shall issue such regulations
21 and include in each contract described in paragraph
22 (1) such terms as are necessary to ensure that each
23 private entity or State meets the following require-
24 ments:

25 “(A) ENSURING BENEFICIARY PRIVACY.—

1 “(i) HIPAA.—The entity or State
2 shall meet the requirements imposed on a
3 covered entity for purposes of applying
4 part C of title XI and all regulatory provi-
5 sions promulgated thereunder, including
6 regulations (relating to privacy) adopted
7 pursuant to the authority of the Secretary
8 under section 264(c) of the Health Insur-
9 ance Portability and Accountability Act of
10 1996 (42 U.S.C. 1320d–2 note).

11 “(ii) PRIVACY.—The entity or State
12 shall provide assurances that such entity
13 or State will not use the Medicare data
14 disclosed under subsection (c) in a manner
15 that violates sections 552 or 552a of title
16 5, United States Code, with regard to the
17 privacy of individually identifiable bene-
18 ficiary health information.

19 “(B) PROPRIETARY INFORMATION.—The
20 entity or State shall not disclose any trade se-
21 crets, commercial or financial information, or
22 pricing data that is identifiable to a particular
23 entity, including—

24 “(i) part D negotiated price conces-
25 sions, such as discounts, direct or indirect

1 subsidies, rebates, and direct or indirect
2 remunerations, obtained by prescription
3 drug plans and MA–PD plans for covered
4 part D drugs;

5 “(ii) pricing information between a
6 Medicare Advantage Organization and any
7 provider, supplier, contractor, or subcon-
8 tractor; and

9 “(iii) any other proprietary cost infor-
10 mation.

11 “(C) PROTECTION OF INFORMATION.—The
12 entity or State shall use Medicare data dis-
13 closed under subsection (c) solely for the pur-
14 poses described in this section. Nothing in this
15 section shall be construed to limit the require-
16 ments imposed on such entity or State by sec-
17 tion 1905 of title 18, United States Code, or
18 pursuant to the public disclosure protections
19 provided under section 552(b) of title 5, United
20 States Code.

21 “(D) DISCLOSURE.—The entity or State
22 shall disclose—

23 “(i) any financial, reporting, or con-
24 tractual relationship between such entity or
25 State and any provider of services (as de-

1 fined in section 1861(u)) or supplier (as
2 defined in section 1861(d)); and

3 “(ii) if applicable, the fact that the
4 entity is managed, controlled, or operated
5 by any such provider of services or sup-
6 plier.

7 “(E) COMPONENT OF ANOTHER ORGANIZA-
8 TION.—If an entity is a component of another
9 organization, such entity—

10 “(i) shall maintain Medicare data and
11 reports separately from the rest of the or-
12 ganization and establish appropriate secu-
13 rity measures to maintain the confiden-
14 tiality and privacy of the Medicare data
15 and reports; and

16 “(ii) shall not make an unauthorized
17 disclosure to the rest of the organization of
18 Medicare data or reports in breach of such
19 confidentiality and privacy requirement.

20 “(F) TERMINATION OR NONRENEWAL.—If
21 a contract under this section is terminated or
22 not renewed, the following requirements shall
23 apply:

24 “(i) CONFIDENTIALITY AND PRIVACY
25 PROTECTIONS.—The entity or State shall

1 continue to comply with the confidentiality
2 and privacy requirements under this sec-
3 tion with respect to all Medicare data dis-
4 closed to such entity or State and each re-
5 port developed by such entity or State.

6 “(ii) DISPOSITION OF DATA AND RE-
7 PORTS.—The entity or State shall—

8 “(I) return to the Secretary all
9 Medicare data disclosed to such entity
10 or State and each report developed by
11 such entity or State; or

12 “(II) if returning the Medicare
13 data and reports is not practicable,
14 destroy such data and reports.

15 “(4) COMPETITIVE PROCEDURES.—Competitive
16 procedures (as defined in section 4(5) of the Federal
17 Procurement Policy Act) shall be used to enter into
18 contracts with private entities under subparagraphs
19 (A) or (B) of paragraph (1).

20 “(5) REVIEW OF CONTRACT IN THE EVENT OF
21 A MERGER OR ACQUISITION.—For purposes of con-
22 tracts described under subparagraphs (A) and (B) of
23 paragraph (1), the Secretary shall review the con-
24 tract with a Consumer Information Organization
25 under this section in the event of a merger or acqui-

1 sition of the Organization in order to ensure that the
 2 requirements under this section will continue to be
 3 met.

4 “(e) DEVELOPMENT AND RELEASE OF REPORTS
 5 BASED ON REQUESTS.—

6 “(1) REQUEST FOR A REPORT.—

7 “(A) REQUESTING ENTITY.—The term ‘re-
 8 questing entity’ means an individual, group, or
 9 State that has submitted a request to a Con-
 10 sumer Information Organization for develop-
 11 ment of a report based upon Medicare data dis-
 12 closed to such Organization under subsection
 13 (c), data that is publicly available, or private
 14 data that is provided by the requesting entity.

15 “(B) REQUEST.—

16 “(i) IN GENERAL.—Subject to the
 17 purpose described in subsection (a), the
 18 procedures established under subsection
 19 (b)(1) shall include a process for a request-
 20 ing entity to submit an application to a
 21 Consumer Information Organization for
 22 development of a report.

23 “(ii) REQUEST FOR SPECIFIC METH-
 24 ODOLOGY.—The process described in
 25 clause (i) shall permit a requesting entity

1 to request that a specific methodology, in-
2 cluding appropriate risk-adjustment, be
3 used by the Consumer Information Organi-
4 zation in developing the report. The Orga-
5 nization shall work with the requesting en-
6 tity to finalize the methodology to be used.

7 “(iii) REQUEST FOR A SPECIFIC CON-
8 SUMER INFORMATION ORGANIZATION.—

9 The process described in clause (i) shall
10 permit a requesting entity to submit an ap-
11 plication for a report to any Consumer In-
12 formation Organization.

13 “(C) RELEASE TO PUBLIC.—The proce-
14 dures established under subsection (b)(1) shall
15 provide that at the time an application for a re-
16 port is finalized under subparagraph (A) by a
17 Consumer Information Organization, the Orga-
18 nization shall make available to the public,
19 through the Internet Web site of the Centers
20 for Medicare & Medicaid Services and other ap-
21 propriate means, a brief description of both the
22 requested report and the methodology to be
23 used to develop such report.

24 “(D) RIGHT OF APPEAL.—The Secretary
25 shall promulgate regulations establishing a

1 right of appeal and appeals process with respect
2 to the denial of a request for development of a
3 report by a Consumer Information Organiza-
4 tion, under which the requesting entity may ap-
5 peal the decision of the Organization.

6 “(2) DEVELOPMENT AND RELEASE OF RE-
7 PORT.—

8 “(A) DEVELOPMENT.—

9 “(i) IN GENERAL.—Subject to clauses
10 (ii) and (iii), if an application for a report
11 complies with the purpose described in
12 subsection (a), the Consumer Information
13 Organization may develop the report based
14 upon such application.

15 “(ii) STANDARDS AND METHOD-
16 OLOGY.—A report developed under clause
17 (i) shall include a detailed description of
18 the standards, methodologies, and meas-
19 ures of quality used in developing the re-
20 port.

21 “(iii) CONSULTATION REQUIRE-
22 MENT.—For purposes of developing a re-
23 port under clause (i), the Consumer Infor-
24 mation Organization shall consult with rel-
25 evant national professional organizations

1 (as determined appropriate based upon the
2 content of the report) and include in the
3 report a summary of any comments or
4 feedback provided by such organizations.

5 “(B) REVIEW OF REPORT BY SECRETARY
6 TO ENSURE COMPLIANCE WITH PRIVACY RE-
7 QUIREMENT.—Prior to release of a report by a
8 Consumer Information Organization under sub-
9 paragraph (C), the Secretary shall review the
10 report to ensure that the report complies with
11 the Federal regulations (concerning the privacy
12 of individually identifiable beneficiary health in-
13 formation) promulgated under section 264(c) of
14 the Health Insurance Portability and Account-
15 ability Act of 1996 and sections 552 or 552a of
16 title 5, United States Code, with regard to the
17 privacy of individually identifiable beneficiary
18 health information, as well as any requirements
19 described in subsection (d)(3) regarding use
20 and protection of data disclosed to the Organi-
21 zation. The Secretary shall act within 30 busi-
22 ness days of receiving such report.

23 “(C) RELEASE OF REPORT.—

24 “(i) RELEASE TO ENTITY MAKING RE-
25 QUEST.—If the Secretary finds that the re-

1 port complies with the provisions described
2 in subparagraph (B), the Consumer Infor-
3 mation Organization shall release the re-
4 port to the requesting entity.

5 “(ii) RELEASE TO PUBLIC.—The pro-
6 cedures established under subsection (b)(1)
7 shall provide for the following:

8 “(I) UPDATED DESCRIPTION.—

9 At the time of the release of a report
10 by a Consumer Information Organiza-
11 tion under clause (i), the requesting
12 entity shall make available to the pub-
13 lic, through the Internet Web site of
14 the Centers for Medicare & Medicaid
15 Services and other appropriate means,
16 an updated brief description of both
17 the requested report and the method-
18 ology used to develop such report.

19 “(II) COMPLETE REPORT.—Sub-
20 ject to clause (iii), not later than 1
21 year after the date of the release of a
22 report under clause (i), the report
23 shall be made available to the public
24 through the Internet Web site of the

1 Centers for Medicare & Medicaid
2 Services and other appropriate means.

3 “(iii) PUBLIC COMMENT.—The Sec-
4 retary shall establish a process that pro-
5 vides an opportunity for public comment,
6 for a period of not less than 90 days, fol-
7 lowing the release of the report to the pub-
8 lic under clause (ii)(II), with any public
9 comments received to be included with the
10 report on the Internet Web site of the Cen-
11 ters for Medicare & Medicaid Services.

12 “(f) ANNUAL REVIEW OF REPORTS AND TERMI-
13 NATION OF CONTRACTS.—

14 “(1) ANNUAL REVIEW OF REPORTS.—The
15 Comptroller General of the United States shall—

16 “(A) review reports released under sub-
17 section (e)(2)(C) to ensure that such reports
18 comply with the purpose described in subsection
19 (a);

20 “(B) review whether such reports result in
21 limitations on patient access to health care
22 services; and

23 “(C) annually submit a report to the Sec-
24 retary on such review.

1 “(2) TERMINATION OF CONTRACTS.—The Sec-
2 retary may terminate a contract with a Consumer
3 Information Organization if the Secretary deter-
4 mines that there is a pattern of reports being re-
5 leased by the Organization that do not comply with
6 the purpose described in subsection (a).

7 “(g) FEES.—

8 “(1) FEES FOR SECRETARY.—

9 “(A) IN GENERAL.—Subject to subpara-
10 graph (B), the Secretary shall charge each Con-
11 sumer Information Organization a fee that is
12 sufficient to cover costs incurred by the Sec-
13 retary in regard to—

14 “(i) disclosure of Medicare data under
15 subsection (e); and

16 “(ii) conducting the review under sub-
17 section (e)(2)(B).

18 “(B) COMPARABLE TO FEES CHARGED FOR
19 EXISTING DATA USE AGREEMENTS.—For pur-
20 poses of the fees described in subparagraph (A),
21 such fees shall be reasonably comparable to fees
22 charged by the Secretary in relation to data use
23 agreements described in subsection
24 (d)(1)(C)(ii).

1 “(2) FEES FOR CONSUMER INFORMATION OR-
2 GANIZATION.—

3 “(A) IN GENERAL.—Subject to subpara-
4 graphs (B) and (C), a Consumer Information
5 Organization may charge a requesting entity a
6 reasonable fee for the development and release
7 of the report.

8 “(B) DISCOUNT FOR SMALL ENTITIES.—In
9 the case of a requesting entity (including a not-
10 for-profit organization) that has annual revenue
11 that does not exceed \$10,000,000, the Con-
12 sumer Information Organization shall reduce
13 the reasonable fee charged to such entity under
14 subparagraph (A) by an amount equal to 10
15 percent of such fee.

16 “(C) INCREASE FOR LARGE ENTITIES
17 THAT DO NOT AGREE TO RELEASE REPORTS
18 WITHIN 6 MONTHS.—In the case of a requesting
19 entity that is not described in subparagraph (B)
20 and that does not agree to the report being re-
21 leased to the public under clause (ii)(II) of sub-
22 section (e)(2)(C) within 6 months of the date of
23 the release of the report to the entity under
24 clause (i) of such subsection, the Consumer In-
25 formation Organization shall increase the fee

1 charged to such entity under subparagraph (A)
2 by an amount equal to 10 percent of such fee.

3 “(D) RULE OF CONSTRUCTION.—Nothing
4 in this paragraph shall be construed to effect
5 the requirement that a report be released to the
6 public under clause (ii)(II) of subsection
7 (e)(2)(C) by not later than 1 year after the date
8 of the release of the report to the requesting en-
9 tity under clause (i) of such subsection.

10 “(h) REGULATIONS.—Not later than 6 months after
11 the date of enactment of this section, the Secretary shall,
12 after providing notice and comment opportunities to the
13 public, prescribe regulations to carry out this section, in-
14 cluding such regulations as are necessary to carry out the
15 confidentiality and privacy requirements described in sub-
16 section (d)(3).”.

17 **SEC. 3. RESEARCH ACCESS TO MEDICARE DATA AND RE-**
18 **PORTING ON PERFORMANCE.**

19 (a) IN GENERAL.—The Secretary of Health and
20 Human Services shall permit researchers that meet cri-
21 teria used to ensure the appropriateness of the release of
22 Centers for Medicare & Medicaid Services data for re-
23 search purposes to—

1 (1) have access to all Medicare data (as defined
2 in section 1899B(b)(2)(A) of the Social Security
3 Act, as added by section 2); and

4 (2) report on the performance of providers of
5 services (as defined in subsection (u) of section 1861
6 of such Act) and suppliers (as defined in subsection
7 (d) of such section), including reporting in a
8 provider- or supplier-identifiable format.

9 (b) CONFIDENTIALITY AND PRIVACY REQUIRE-
10 MENTS.—For purposes of disclosing any information or
11 data to a researcher under this section, the Secretary of
12 Health and Human Services shall ensure that the con-
13 fidentiality and privacy requirements described in sub-
14 paragraphs (A) through (C) of section 1899B(d)(3) of the
15 Social Security Act are applied to such researcher in the
16 same manner as such requirements are applied to a pri-
17 vate entity or State under such subparagraphs.

○