

114TH CONGRESS
1ST SESSION

H. R. 2156

To amend title XVIII of the Social Security Act to reform the practices of recovery audit contractors under the Medicare program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2015

Mr. GRAVES of Missouri (for himself, Mr. SCHIFF, Mr. BOST, Mrs. WAGNER, and Mr. CRAWFORD) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 title XVIII of the Social Security Act to reform the practices of recovery audit contractors under 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 “Medicare Audit Im-
5 provement Act of 2015”.

1 **SEC. 2. REFORMING THE PRACTICES OF RECOVERY AUDIT**
2 **CONTRACTORS UNDER THE MEDICARE PRO-**
3 **GRAM.**

4 (a) **ELIMINATION OF CONTINGENCY FEE PAYMENT**
5 **SYSTEM.**—Section 1893(h) of the Social Security Act (42
6 U.S.C. 1395ddd(h)) is amended—

7 (1) in paragraph (1), by inserting “, for recov-
8 ery activities conducted during a fiscal year before
9 fiscal year 2015” after “Under the contracts”; and

10 (2) by adding at the end the following new
11 paragraph:

12 “(11) **PAYMENT FOR RECOVERY ACTIVITIES**
13 **PERFORMED AFTER FISCAL YEAR 2014.**—

14 “(A) **IN GENERAL.**—Under the contracts,
15 subject to paragraphs (B) and (C), payment
16 shall be made to recovery audit contractors for
17 recovery activities conducted during fiscal year
18 2015 and each fiscal year thereafter in the
19 same manner, and from the same amounts, as
20 payment is made to eligible entities under con-
21 tracts entered into for recovery activities con-
22 ducted during fiscal year 2014 under subsection
23 (a).

24 “(B) **PROHIBITION ON INCENTIVE PAY-**
25 **MENTS.**—Under the contracts, payment made
26 to a recovery audit contractor for recovery ac-

1 activities conducted during fiscal year 2015 or
2 any fiscal year thereafter may not include any
3 incentive payments.

4 “(C) PERFORMANCE ACCOUNTABILITY.—

5 “(i) IN GENERAL.—Under the con-
6 tracts, payment made to a recovery audit
7 contractor for recovery activities conducted
8 during fiscal year 2015 or any fiscal year
9 thereafter shall, in the case that the con-
10 tractor has a complex audit denial overturn
11 rate at the end of such fiscal year (as cal-
12 culated under the methodology described in
13 clause (iv)) that is .1 or greater, be re-
14 duced in an amount determined in accord-
15 ance with clause (ii).

16 “(ii) PAYMENT REDUCTIONS.—

17 “(I) SLIDING SCALE OF AMOUNT
18 OF REDUCTIONS.—The Secretary
19 shall establish, for purposes of deter-
20 mining the amount of a reduction in
21 payment to a recovery audit con-
22 tractor under clause (i) for recovery
23 activities conducted during fiscal year,
24 a linear sliding scale of payment re-
25 ductions for recovery audit contrac-

1 tors for such fiscal year. Under such
2 linear sliding scale, the amount of
3 such a reduction in payment to a re-
4 covery audit contractor for a fiscal
5 year shall be calculated in a manner
6 that provides for such reduction to be
7 greater than the reduction for such
8 fiscal year for recovery audit contrac-
9 tors that have complex audit denial
10 overturn rates at the end of such fis-
11 cal year (as calculated under the
12 methodology described in clause (iv))
13 that are lower than the complex audit
14 denial overturn rate of the contractor
15 at the end of such fiscal year (as so
16 calculated).

17 “(II) MANNER OF COLLECTING
18 REDUCTION.—The Secretary may as-
19 sess and collect the reductions in pay-
20 ment to recovery audit contractors
21 under clause (i) in such manner as
22 the Secretary may specify (such as by
23 reducing the amount paid to the con-
24 tractor for recovery activities con-
25 ducted during a fiscal year or by as-

1 sessing the reduction as a separate
2 penalty payment to be paid to the
3 Secretary by the contractor with re-
4 spect to each complex audit denial
5 issued by the contractor that is over-
6 turned on appeal).

7 “(iii) TIMING OF DETERMINATIONS OF
8 PAYMENT REDUCTIONS.—The Secretary
9 shall, with respect to a recovery audit con-
10 tractor, determine not later than six
11 months after the end of a fiscal year—

12 “(I) whether to reduce payment
13 to the recovery audit contractor under
14 clause (i) for recovery activities con-
15 ducted during such fiscal year; and

16 “(II) in the case that the Sec-
17 retary determines to so reduce pay-
18 ment to the contractor, the amount of
19 such payment reduction.

20 “(iv) METHODOLOGY FOR CALCULA-
21 TION OF OVERTURNED COMPLEX AUDIT
22 DENIAL OVERTURN RATE.—

23 “(I) CALCULATION OF OVERTURN
24 RATE.—The Secretary shall calculate
25 a complex audit denial overturn rate

1 for a recovery audit contractor for a
2 fiscal year by—

3 “(aa) determining, with re-
4 spect to the contract entered into
5 under paragraph (1) by the con-
6 tractor, the number of complex
7 audit denials issued by the con-
8 tractor under the contract (in-
9 cluding denials issued before such
10 fiscal year and during such fiscal
11 year) that are overturned on ap-
12 peal; and

13 “(bb) dividing the number
14 determined under item (aa) by
15 the number of complex audit de-
16 nials issued by the contractor
17 under such contract (including
18 denials issued before such fiscal
19 year and during such fiscal year).

20 “(II) FAIRNESS AND TRANS-
21 PARENCY.—The Secretary shall cal-
22 culate the percentage described in
23 subclause (I) in a fair and trans-
24 parent manner.

1 “(III) ACCOUNTING FOR SUBSE-
2 QUENTLY OVERTURNED APPEALS.—
3 The Secretary shall calculate the per-
4 centage described in subclause (I) in a
5 manner that accounts for the likeli-
6 hood that complex audit denials
7 issued by the contractor for such fis-
8 cal year will be overturned on appeal
9 in a subsequent fiscal year.

10 “(IV) COMPLEX AUDIT DENIAL
11 DEFINED.—In this subparagraph, the
12 term ‘complex audit denial’ means a
13 denial by a recovery audit contractor
14 of a claim for payment under this title
15 submitted by a hospital, psychiatric
16 hospital, or critical access hospital
17 that is so denied by the contractor
18 after the contractor has—

19 “(aa) requested that the
20 hospital, psychiatric hospital, or
21 critical access hospital, in order
22 to support such claim for pay-
23 ment, provide supporting medical
24 records to the contractor; and

1 “(bb) reviewed such medical
2 records in order to determine
3 whether an improper payment
4 has been made to the hospital,
5 psychiatric hospital, or critical
6 access hospital for such claim.

7 “(V) OVERTURNED ON APPEAL
8 DEFINED.—In this subparagraph, the
9 term ‘overturned on appeal’ means,
10 with respect to a complex audit de-
11 nial, a denial that is overturned on
12 appeal at the reconsideration level, the
13 redetermination level, or the adminis-
14 trative law judge hearing level.

15 “(D) APPLICATION TO EXISTING CON-
16 TRACTS.—Not later than 60 days after the date
17 of the enactment of this paragraph, the Sec-
18 retary shall modify, as necessary, each contract
19 under paragraph (1) that the Secretary entered
20 into prior to such date of enactment in order to
21 ensure that payment with respect to recovery
22 activities conducted under such contract is
23 made in accordance with the requirements de-
24 scribed in this paragraph.”.

1 (b) ELIMINATION OF ONE-YEAR TIMELY FILING
2 LIMIT TO REBILL PART B CLAIMS.—

3 (1) IN GENERAL.—Section 1842(b) of the So-
4 cial Security Act (42 U.S.C. 1395u(b)) is amended
5 by adding at the end the following new paragraph:

6 “(20) EXCEPTION TO THE ONE-YEAR TIMELY
7 FILING LIMIT FOR CERTAIN REBILLED CLAIMS.—

8 “(A) IN GENERAL.—In the case of a claim
9 submitted under this part by a hospital (as de-
10 fined in subparagraph (B)(i)) for hospital serv-
11 ices with respect to which there was a previous
12 claim submitted under part A as inpatient hos-
13 pital services or inpatient critical access hos-
14 pital services that was denied by a Medicare
15 contractor (as defined in subparagraph (B)(ii))
16 because of a determination that the inpatient
17 admission was not medically reasonable and
18 necessary under section 1862(a)(1)(A), the
19 deadline described in this paragraph is 180
20 days from the date of the final denial of such
21 claim under part A.

22 “(B) DEFINITIONS.—In this paragraph:

23 “(i) HOSPITAL.—The term ‘hospital’
24 has the meaning given such term in section
25 1861(e), and includes a psychiatric hos-

1 pital (as defined in section 1861(f)) and a
2 critical access hospital (as defined in sec-
3 tion 1861(mm)(1)).

4 “(ii) MEDICARE CONTRACTOR.—The
5 term ‘Medicare contractor’ has the mean-
6 ing given such term under section 1889(g),
7 and includes a recovery audit contractor
8 with a contract under section 1893(h).

9 “(iii) FINAL DENIAL.—The term ‘final
10 denial’ means—

11 “(I) in the case that a hospital
12 elects not to appeal a denial described
13 in subparagraph (A) by a Medicare
14 contractor, the date of such denial; or

15 “(II) in the case that a hospital
16 elects to appeal a such a denial, the
17 date on which such appeal is ex-
18 hausted.”.

19 (2) CONFORMING AMENDMENTS.—

20 (A) Section 1835(a)(1) of the Social Secu-
21 rity Act (42 U.S.C. 1395n(a)(1)) is amended by
22 inserting “or, in the case of a claim described
23 in section 1842(b)(20), the no later than the
24 deadline described in such paragraph” after
25 “the date of service”.

1 (B) Section 1842(b)(3)(B) of the Social
2 Security Act (42 U.S.C. 1395u(b)(3)(B)) is
3 amended in the flush language following clause
4 (ii) by inserting “or, in the case of a claim de-
5 scribed in section 1842(b)(20), the no later
6 than the deadline described in such paragraph”
7 after “the date of service”.

8 (3) EFFECTIVE DATE.—The amendments made
9 by this subsection shall take effect on the date of the
10 enactment of this Act and shall apply to claims sub-
11 mitted under part B of title XVIII of the Social Se-
12 curity Act for hospital services for which there was
13 a previous claim submitted under part A as inpa-
14 tient hospital services or inpatient critical access
15 hospital services that was subject to a final denial
16 (as defined in paragraph (20)(B)(iii) of section
17 1842(b) of such Act (42 U.S.C. 1395u(b)) on or
18 after such date of enactment.

19 (c) MEDICAL DOCUMENTATION CONSIDERED FOR
20 MEDICAL NECESSITY REVIEWS OF CLAIMS FOR INPA-
21 TIENT HOSPITAL SERVICES.—Section 1862(a) of the So-
22 cial Security Act (42 U.S.C. 1395y(a)) is amended by add-
23 ing at the end the following new sentence: “A determina-
24 tion under paragraph (1) of whether inpatient hospital
25 services or inpatient critical access hospital services fur-

1 nished to an individual on or after the date of the enact-
2 ment of this sentence are reasonable and necessary shall
3 be based solely upon information available to the admit-
4 ting physician at the time of the inpatient admission of
5 the individual for such inpatient services, as documented
6 in the medical record.”

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