

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.

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## 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

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## 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.

○