

Union Calendar No. 354

115TH CONGRESS
1ST SESSION

H. R. 3726

[Report No. 115–479, Part I]

To amend title XVIII of the Social Security Act to create alternative sanctions for technical noncompliance with the Stark rule under Medicare, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 11, 2017

Mr. MARCHANT (for himself, Mr. KIND, and Mr. MEEHAN) 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

DECEMBER 21, 2017

Additional sponsor: Mr. CURBELO of Florida

DECEMBER 21, 2017

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

DECEMBER 21, 2017

The Committee on Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on September 11, 2017]

A BILL

To amend title XVIII of the Social Security Act to create alternative sanctions for technical noncompliance with the Stark rule under Medicare, 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 “Stark Administrative*
5 *Simplification Act of 2017”.*

6 **SEC. 2. ALTERNATIVE SANCTIONS FOR TECHNICAL NON-**
7 **COMPLIANCE WITH STARK RULE UNDER**
8 **MEDICARE.**

9 *Section 1877 of the Social Security Act (42 U.S.C.*
10 *1395nn) is amended by adding at the end the following new*
11 *subsection:*

12 *“(j) SELF-DISCLOSURE PROTOCOLS.—*

13 *“(1) IN GENERAL.—Beginning one year after the*
14 *date of the enactment of this subsection—*

15 *“(A) an entity or individual may volun-*
16 *tarily disclose a compensation arrangement with*
17 *actual or potential inadvertent technical non-*
18 *compliance with subsection (a)(1) (as defined in*
19 *paragraph (3)(H)) pursuant to either the self-re-*
20 *ferral disclosure protocol (defined in paragraph*
21 *(2)) or the alternative protocol for technical non-*
22 *compliance under paragraph (3);*

23 *“(B) disclosures voluntarily withdrawn*
24 *from the alternative protocol for technical non-*

1 compliance may be submitted to the self-referral
2 disclosure protocol; and

3 “(C) an entity that, prior to the establish-
4 ment of the alternative protocol for technical
5 noncompliance, disclosed to the self-referral dis-
6 closure protocol a compensation arrangement
7 that was in inadvertent technical noncompliance
8 with subsection (a)(1), may elect, not later than
9 one year after such alternative protocol is estab-
10 lished, to withdraw such disclosure from the self-
11 referral disclosure protocol and instead submit
12 the disclosure to such alternative protocol.

13 “(2) *SELF-REFERRAL DISCLOSURE PROTOCOL.*—
14 The term ‘self-referral disclosure protocol’ or ‘SRDP’
15 means the protocol specified in section 6409 of Public
16 Law 111–148.

17 “(3) *ALTERNATIVE PROTOCOL FOR INADVERTANT*
18 *TECHNICAL NONCOMPLIANCE.*—

19 “(A) *IN GENERAL.*—The Secretary shall es-
20 tablish, not later than one year after the date of
21 the enactment of this subsection, an alternative
22 protocol for technical noncompliance (in this
23 subsection referred to as the ‘APTN’) to enable
24 entities to disclose arrangements that were pre-
25 viously in inadvertent technical noncompliance

1 with subsection (a)(1) and, upon the Secretary’s
2 acceptance of the disclosure, make payment of a
3 civil monetary penalty. Payment of such civil
4 monetary penalty for an arrangement shall re-
5 solve only overpayments due and owing as a re-
6 sult of such arrangement’s inadvertent technical
7 noncompliance with subsection (a)(1). The provi-
8 sions of section 6409 of Public Law 111–148
9 shall not apply to this subsection.

10 “(B) *DISCLOSURE REQUIREMENTS.*—Ar-
11 rangements disclosed to the APTN must—

12 “(i) involve only inadvertent technical
13 noncompliance with subsection (a)(1) that
14 was ended by termination or expiration of
15 the arrangement, or by action of the parties
16 to the arrangement to resolve the technical
17 noncompliance, prior to the date of submis-
18 sion of the disclosure to the APTN;

19 “(ii) be made in the form and manner
20 specified by the Secretary on the public
21 Internet website of the Centers for Medicare
22 & Medicaid Services and include descrip-
23 tions of—

1 “(I) the compensation arrange-
2 ment that was in technical noncompli-
3 ance with subsection (a)(1);

4 “(II) how and when the technical
5 noncompliance with subsection (a)(1)
6 was ended or the arrangement was oth-
7 erwise terminated; and

8 “(III) how the remuneration paid
9 under the compensation arrangement
10 being disclosed was—

11 “(aa) consistent with the fair
12 market value of the items and
13 services that were provided under
14 the compensation arrangement;
15 and

16 “(bb) not determined in a
17 manner that directly or indirectly
18 takes into account the volume or
19 value of referrals or other business
20 generated between the parties;

21 “(iii) include a form settlement agree-
22 ment provided by the Secretary signed by
23 the entity; and

24 “(iv) include a certification from the
25 entity that, to the best of the entity’s knowl-

1 *edge, the information provided is truthful*
2 *information and is based on a good faith ef-*
3 *fort to bring the matter to the Secretary's*
4 *attention.*

5 “(C) *ACCEPTANCE OR REJECTION OF DIS-*
6 *CLOSURE BY THE SECRETARY.—The following*
7 *rules shall apply to the acceptance or rejection of*
8 *a disclosure under the APTN:*

9 “(i) *The Secretary shall accept or re-*
10 *ject a complete, accurate, and timely disclo-*
11 *sure.*

12 “(ii) *Upon receipt of a disclosure, the*
13 *Secretary shall notify the disclosing party*
14 *of such receipt.*

15 “(iii) *The Secretary may request addi-*
16 *tional information from the disclosing*
17 *party.*

18 “(iv) *Upon acceptance by the Sec-*
19 *retary, the Secretary shall notify the dis-*
20 *closing party in writing of such acceptance.*

21 “(v) *The disclosure shall be rejected*
22 *if—*

23 “(I) *the disclosing party fails to*
24 *furnish the additional information re-*
25 *quested by the Secretary in such form*

1 *and manner as the Secretary may*
2 *specify; or*

3 *“(II) in the Secretary’s sole deter-*
4 *mination, the noncompliance disclosed*
5 *did not meet the disclosure require-*
6 *ments specified in subparagraph (B).*

7 *“(vi) The disclosure shall be accepted*
8 *if—*

9 *“(I) the Secretary has issued a*
10 *written notice to the disclosing party*
11 *that the disclosure is determined to sat-*
12 *isfy the requirements for disclosures*
13 *under this section; or*

14 *“(II) the disclosure is complete,*
15 *accurate, and timely and satisfies each*
16 *of the requirements for disclosures*
17 *under this section, 180 calendar days*
18 *have passed since notification of re-*
19 *ceipt by the Secretary of the disclosure,*
20 *and the Secretary has not rejected the*
21 *disclosure during that period.*

22 *“(vii) In determining whether to ac-*
23 *cept a disclosure, the Secretary may reason-*
24 *ably rely on the information and certifi-*
25 *cations included in the disclosure.*

1 “(D) *RULE FOR WITHDRAWAL OF DISCLO-*
2 *SURE.—Prior to acceptance or rejection of a dis-*
3 *closure by the Secretary, an entity may volun-*
4 *tarily withdraw such disclosure from the APTN.*

5 “(E) *CIVIL MONETARY PENALTIES PURSU-*
6 *ANT TO THE ALTERNATIVE PROTOCOL FOR TECH-*
7 *NICAL NONCOMPLIANCE.—*

8 “(i) *IN GENERAL.—Subject to clause*
9 *(ii), for each arrangement disclosed under*
10 *this subsection and accepted under subpara-*
11 *graph (C), the Secretary shall impose a sin-*
12 *gle civil monetary penalty of—*

13 “(I) *\$5,000, in the case in which*
14 *disclosure of the inadvertant technical*
15 *noncompliance with subsection (a)(1)*
16 *was submitted to the Secretary not*
17 *later than the date that is one year*
18 *after the initial date of inadvertent*
19 *technical noncompliance with sub-*
20 *section (a)(1); or*

21 “(II) *\$10,000, in the case in*
22 *which the disclosure of the inadvertant*
23 *technically noncompliance with sub-*
24 *section (a)(1) was submitted to the*
25 *Secretary—*

1 “(aa) after the date that is
2 more than one year after the ini-
3 tial date of the entity’s inad-
4 vertent technical noncompliance
5 with subsection (a)(1); and

6 “(bb) not after the date that
7 is 3 years (or, in the case of a dis-
8 closure submitted after the 5th
9 year for which this subsection ap-
10 plies, the date that is 2 years)
11 from the initial date of the enti-
12 ty’s inadvertent technical non-
13 compliance with subsection (a)(1).

14 “(ii) *SPECIAL RULE FOR ENTITIES*
15 *THAT DISCLOSED TO THE APTN AFTER*
16 *WITHDRAWING A DISCLOSURE FROM THE*
17 *SRDP.—In the case of an entity that elects*
18 *under paragraph (1)(C) to withdraw a dis-*
19 *closure from the self-referral disclosure pro-*
20 *cedure (as defined in paragraph (2)) and in-*
21 *stead submit the disclosure to the APTN*
22 *under this subsection, in determining the*
23 *applicable civil monetary penalty under*
24 *clause (i), the date of disclosure to the self-*
25 *referral disclosure procedure shall be sub-*

1 stituted for the date of disclosure to the
2 APTN.

3 “(F) *RELATION TO ADVISORY OPINIONS.*—
4 The APTN shall be separate from the advisory
5 opinion process set forth in regulations imple-
6 menting subsection (g) of this section.

7 “(G) *PUBLICATION ON INTERNET WEBSITE*
8 *OF APTN INFORMATION.*—Not later than one year
9 after the date of the enactment of this subsection,
10 the Secretary shall post information on the pub-
11 lic Internet website of the Centers for Medicare
12 & Medicaid Services to inform relevant stake-
13 holders of how to disclose and make payment of
14 a civil monetary penalty for inadvertent tech-
15 nical noncompliance with subsection (a)(1).

16 “(H) *DEFINITIONS.*—In this subsection:

17 “(i) *TECHNICAL NONCOMPLIANCE.*—
18 The term ‘technical noncompliance with
19 subsection (a)(1)’ means, with respect to a
20 compensation arrangement, that—

21 “(I) the arrangement is not signed
22 by one or more parties to the arrange-
23 ment;

24 “(II) following the expiration of
25 the arrangement, the arrangement was

1 *a holdover arrangement for a period*
2 *longer than permitted in regulations*
3 *issued by the Secretary; or*

4 “(III) *the contemporaneous writ-*
5 *ten documentation evidencing the*
6 *terms of the arrangement identifies the*
7 *parties to the arrangement and the*
8 *items, services, space, or equipment, as*
9 *applicable, but is not sufficient to sat-*
10 *isfy the writing requirement of an ap-*
11 *plicable exception.*

12 “(ii) *INADVERTENT.—The term ‘inad-*
13 *vertent’ means, with respect to a compensa-*
14 *tion arrangement that is in technical non-*
15 *compliance with subsection (a)(1), that an*
16 *entity that is a party to the compensation*
17 *arrangement did not know or should not*
18 *have known of the noncompliance.*

19 “(I) *ADMINISTRATION.—Chapter 35 of title*
20 *44, United States Code, shall not apply to this*
21 *subsection.*

22 “(J) *IMPLEMENTATION.—Notwithstanding*
23 *any other provision of law, the Secretary may*
24 *implement the provisions of this paragraph by*
25 *program instruction or otherwise.”.*

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