

114TH CONGRESS  
2D SESSION

# H. R. 5267

To amend title XI of the Social Security Act to expand the permissive exclusion from Federal health programs to include certain individuals with prior interest in sanctioned entities and entities affiliated with sanctioned entities and to provide a criminal penalty for the illegal distribution of Medicare, Medicaid, or CHIP beneficiary identification or provider numbers, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2016

Ms. FRANKEL of Florida (for herself and Mr. KEATING) 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

---

## A BILL

To amend title XI of the Social Security Act to expand the permissive exclusion from Federal health programs to include certain individuals with prior interest in sanctioned entities and entities affiliated with sanctioned entities and to provide a criminal penalty for the illegal distribution of Medicare, Medicaid, or CHIP beneficiary identification or provider numbers, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fighting Medicare  
3 Fraud Act of 2016”.

4 **SEC. 2. PERMISSIVE EXCLUSION FROM FEDERAL HEALTH**  
5 **PROGRAMS EXPANDED TO CERTAIN INDIVID-**  
6 **UALS WITH PRIOR INTEREST IN SANCTIONED**  
7 **ENTITIES AND ENTITIES AFFILIATED WITH**  
8 **SANCTIONED ENTITIES.**

9 Paragraph (15) of section 1128(b) of the Social Secu-  
10 rity Act (42 U.S.C. 1320a–7(b)) is amended to read as  
11 follows:

12 “(15) INDIVIDUALS AND ENTITIES AFFILIATED  
13 WITH A SANCTIONED ENTITY.—(A) Any of the fol-  
14 lowing:

15 “(i) Any individual who—

16 “(I) is a person with an ownership or  
17 control interest in a sanctioned entity or  
18 an affiliated entity of such sanctioned enti-  
19 ty (or was a person with such an owner-  
20 ship or control interest at the time of any  
21 of the conduct that formed a basis for the  
22 conviction or exclusion described in sub-  
23 paragraph (B)); and

24 “(II) knows or should have known (as  
25 defined in section 1128A(i)(7)) (or knew or  
26 should have known) of such conduct.

1           “(ii) Any individual who is an officer or  
2           managing employee (as defined in section  
3           1126(b)) of a sanctioned entity or affiliated en-  
4           tity of such sanctioned entity (or was such an  
5           officer or managing employee at the time of any  
6           of the conduct that formed a basis for the con-  
7           viction or exclusion described in subparagraph  
8           (B)).

9           “(iii) Any affiliated entity of a sanctioned  
10          entity.

11          “(B) For purposes of this paragraph, the term  
12          ‘sanctioned entity’ means an entity—

13               “(i) that has been convicted of any offense  
14               described in subsection (a) of this section or in  
15               paragraph (1), (2), or (3) of this subsection; or

16               “(ii) that has been excluded from partici-  
17               pation under a program under title XVIII or  
18               under a State health care program.

19          “(C) For purposes of subparagraph (A), the  
20          term ‘affiliated entity’ means, with respect to a  
21          sanctioned entity, an entity that is (or was at the  
22          time of any of the conduct that formed the basis for  
23          the conviction or exclusion described in subpara-  
24          graph (B)) affiliated with such sanctioned entity,  
25          and includes an entity—

1           “(i) that is a person with an ownership or  
2 control interest in such sanctioned entity (or  
3 was such a person with respect to such sanc-  
4 tioned entity at the time of any conduct that  
5 formed the basis for the conviction described in  
6 subparagraph (B));

7           “(ii) with respect to which a sanctioned en-  
8 tity is a person with an ownership or control in-  
9 terest in such entity (or was such a person with  
10 respect to such entity at the time of any con-  
11 duct that formed the basis for the conviction  
12 described in subparagraph (B));

13           “(iii) with respect to which a person with  
14 an ownership or control interest in such entity  
15 also has such an interest in such sanctioned en-  
16 tity; or

17           “(iv) with respect to which a person who is  
18 an officer or managing employee (as defined in  
19 section 1126(b)) of such entity also is such an  
20 officer or managing employee of such sanc-  
21 tioned entity.

22           “(D) For purposes of this paragraph, the term  
23 ‘person with an ownership or control interest’ has  
24 the meaning given such term in section  
25 1124(a)(3).”.

1 **SEC. 3. CRIMINAL PENALTY FOR ILLEGAL DISTRIBUTION**  
2 **OF MEDICARE, MEDICAID, OR CHIP BENE-**  
3 **FICIARY IDENTIFICATION OR PROVIDER**  
4 **NUMBERS.**

5 Section 1128B(b) of the Social Security Act (42  
6 U.S.C. 1320a–7b(b)) is amended by adding at the end the  
7 following:

8 “(5) Whoever knowingly and with the intent to de-  
9 fraud purchases, sells or distributes, or arranges for the  
10 purchase, sale, or distribution of two or more beneficiary  
11 identification numbers or unique health identifier for a  
12 health care provider under title XVIII, title XIX, or title  
13 XXI shall be imprisoned for not more than 15 years or  
14 fined under title 18, United States Code (or, if greater,  
15 an amount equal to the monetary loss to the Federal and  
16 any State government as a result of such acts), or both.”.

17 **SEC. 4. REPORTS ON INCIDENCES OF FRAUD AND ABUSE**  
18 **UNDER MEDICARE PARTS C AND D.**

19 (a) IN GENERAL.—Section 1857(d) of the Social Se-  
20 curity Act (42 U.S.C. 1395w–27(d)) is amended by adding  
21 at the end the following new paragraph:

22 “(7) REPORT ON INCIDENCES OF FRAUD AND  
23 ABUSE.—

24 “(A) IN GENERAL.—A contract under this  
25 section with an MA organization offering an  
26 MA plan shall provide that such MA organiza-

1           tion report to the Secretary (or to any person  
2           or organization designated by the Secretary for  
3           such purpose) any instances of fraud or abuse  
4           related to the payment or delivery of health  
5           benefits under such contract not later than 60  
6           days after such organization identifies such in-  
7           stance.

8           “(B) GUIDANCE.—Not later than 90 days  
9           after the date of the enactment of this para-  
10          graph, the Secretary, in consultation with the  
11          Inspector General of the Department of Health  
12          and Human Services and the Attorney General,  
13          shall issue to MA organizations (and PDP  
14          sponsors) guidance for defining the terms  
15          ‘fraud’ and ‘abuse’ for purposes of subpara-  
16          graph (A).”.

17          (b) CONFORMING AMENDMENT TO PART D.—Section  
18          1860D–12(b)(3)(C) of the Social Security Act (42 U.S.C.  
19          1395w–112(b)(3)(C)) is amended by inserting before the  
20          period at the end the following: “, except in applying para-  
21          graph (7) of such section any reference to an MA organi-  
22          zation, with respect to an MA plan, shall be deemed a ref-  
23          erence to a PDP sponsor or MA organization, with respect  
24          to a prescription drug plan or MA–PD plan”.

1           (c) EFFECTIVE DATE.—The amendments made by  
2 subsections (a) and (b) shall apply with respect to plan  
3 years beginning on or after the date of the enactment of  
4 this Act.

○