

114TH CONGRESS  
1ST SESSION

# H. R. 804

To amend title XVIII of the Social Security Act to increase access to Medicare data.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2015

Mr. RYAN of Wisconsin (for himself and Mr. KIND) 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 title XVIII of the Social Security Act to increase access to Medicare data.

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 “Expanding the Avail-  
5 ability of Medicare Data Act”.

6 **SEC. 2. EXPANDING AVAILABILITY OF MEDICARE DATA.**

7 (a) EXPANDING USES OF MEDICARE DATA BY  
8 QUALIFIED ENTITIES.—

9 (1) ADDITIONAL ANALYSES.—

1           (A) IN GENERAL.—Subject to subpara-  
2 graph (B), to the extent consistent with appli-  
3 cable information, privacy, security, and diselo-  
4 sure laws (including paragraph (3)), notwith-  
5 standing paragraph (4)(B) of section 1874(e) of  
6 the Social Security Act (42 U.S.C. 1395kk(e))  
7 and the second sentence of paragraph (4)(D) of  
8 such section, beginning July 1, 2015, a quali-  
9 fied entity may use the combined data described  
10 in paragraph (4)(B)(iii) of such section received  
11 by such entity under such section, and informa-  
12 tion derived from the evaluation described in  
13 such paragraph (4)(D), to conduct additional  
14 non-public analyses (as determined appropriate  
15 by the Secretary) and provide or sell such anal-  
16 yses to authorized users for non-public use (in-  
17 cluding for the purposes of assisting providers  
18 of services and suppliers to develop and partici-  
19 pate in quality and patient care improvement  
20 activities, including developing new models of  
21 care).

22           (B) LIMITATIONS WITH RESPECT TO ANAL-  
23 YSES.—

24           (i) EMPLOYERS.—Any analyses pro-  
25 vided or sold under subparagraph (A) to

1 an employer described in paragraph  
2 (9)(A)(iii) may only be used by such em-  
3 ployer for purposes of providing health in-  
4 surance to employees and retirees of the  
5 employer.

6 (ii) HEALTH INSURANCE ISSUERS.—A  
7 qualified entity may not provide or sell an  
8 analysis to a health insurance issuer de-  
9 scribed in paragraph (9)(A)(iv) unless the  
10 issuer is providing the qualified entity with  
11 data under section 1874(e)(4)(B)(iii) of  
12 the Social Security Act (42 U.S.C.  
13 1395kk(e)(4)(B)(iii)).

14 (2) ACCESS TO CERTAIN DATA.—

15 (A) ACCESS.—To the extent consistent  
16 with applicable information, privacy, security,  
17 and disclosure laws (including paragraph (3)),  
18 notwithstanding paragraph (4)(B) of section  
19 1874(e) of the Social Security Act (42 U.S.C.  
20 1395kk(e)) and the second sentence of para-  
21 graph (4)(D) of such section, beginning July 1,  
22 2015, a qualified entity may—

23 (i) provide or sell the combined data  
24 described in paragraph (4)(B)(iii) of such  
25 section to authorized users described in

1 clauses (i), (ii), and (v) of paragraph  
2 (9)(A) for non-public use, including for the  
3 purposes described in subparagraph (B);  
4 or

5 (ii) subject to subparagraph (C), pro-  
6 vide Medicare claims data to authorized  
7 users described in clauses (i), (ii), and (v),  
8 of paragraph (9)(A) for non-public use, in-  
9 cluding for the purposes described in sub-  
10 subparagraph (B).

11 (B) PURPOSES DESCRIBED.—The purposes  
12 described in this subparagraph are assisting  
13 providers of services and suppliers in developing  
14 and participating in quality and patient care  
15 improvement activities, including developing  
16 new models of care.

17 (C) MEDICARE CLAIMS DATA MUST BE  
18 PROVIDED AT NO COST.—A qualified entity may  
19 not charge a fee for providing the data under  
20 subparagraph (A)(ii).

21 (3) PROTECTION OF INFORMATION.—

22 (A) IN GENERAL.—Except as provided in  
23 subparagraph (B), an analysis or data that is  
24 provided or sold under paragraph (1) or (2)

1 shall not contain information that individually  
2 identifies a patient.

3 (B) INFORMATION ON PATIENTS OF THE  
4 PROVIDER OF SERVICES OR SUPPLIER.—To the  
5 extent consistent with applicable information,  
6 privacy, security, and disclosure laws, an anal-  
7 ysis or data that is provided or sold to a pro-  
8 vider of services or supplier under paragraph  
9 (1) or (2) may contain information that individ-  
10 ually identifies a patient of such provider or  
11 supplier, including with respect to items and  
12 services furnished to the patient by other pro-  
13 viders of services or suppliers.

14 (C) PROHIBITION ON USING ANALYSES OR  
15 DATA FOR MARKETING PURPOSES.—An author-  
16 ized user shall not use an analysis or data pro-  
17 vided or sold under paragraph (1) or (2) for  
18 marketing purposes.

19 (4) DATA USE AGREEMENT.—A qualified entity  
20 and an authorized user described in clauses (i), (ii),  
21 and (v) of paragraph (9)(A) shall enter into an  
22 agreement regarding the use of any data that the  
23 qualified entity is providing or selling to the author-  
24 ized user under paragraph (2). Such agreement shall  
25 describe the requirements for privacy and security of

1 the data and, as determined appropriate by the Sec-  
2 retary, any prohibitions on using such data to link  
3 to other individually identifiable sources of informa-  
4 tion. If the authorized user is not a covered entity  
5 under the rules promulgated pursuant to the Health  
6 Insurance Portability and Accountability Act of  
7 1996, the agreement shall identify the relevant regu-  
8 lations, as determined by the Secretary, that the  
9 user shall comply with as if it were acting in the ca-  
10 pacity of such a covered entity.

11 (5) NO REDISCLOSURE OF ANALYSES OR  
12 DATA.—

13 (A) IN GENERAL.—Except as provided in  
14 subparagraph (B), an authorized user that is  
15 provided or sold an analysis or data under  
16 paragraph (1) or (2) shall not redisclose or  
17 make public such analysis or data or any anal-  
18 ysis using such data.

19 (B) PERMITTED REDISCLOSURE.—A pro-  
20 vider of services or supplier that is provided or  
21 sold an analysis or data under paragraph (1) or  
22 (2) may, as determined by the Secretary, redis-  
23 close such analysis or data for the purposes of  
24 performance improvement and care coordination

1 activities but shall not make public such anal-  
2 ysis or data or any analysis using such data.

3 (6) OPPORTUNITY FOR PROVIDERS OF SERV-  
4 ICES AND SUPPLIERS TO REVIEW.—Prior to a quali-  
5 fied entity providing or selling an analysis to an au-  
6 thorized user under paragraph (1), to the extent  
7 that such analysis would individually identify a pro-  
8 vider of services or supplier who is not being pro-  
9 vided or sold such analysis, such qualified entity  
10 shall provide such provider or supplier with the op-  
11 portunity to appeal and correct errors in the manner  
12 described in section 1874(e)(4)(C)(ii) of the Social  
13 Security Act (42 U.S.C. 1395kk(e)(4)(C)(ii)).

14 (7) ASSESSMENT FOR A BREACH.—

15 (A) IN GENERAL.—In the case of a breach  
16 of a data use agreement under this section or  
17 section 1874(e) of the Social Security Act (42  
18 U.S.C. 1395kk(e)), the Secretary shall impose  
19 an assessment on the qualified entity both in  
20 the case of—

21 (i) an agreement between the Sec-  
22 retary and a qualified entity; and

23 (ii) an agreement between a qualified  
24 entity and an authorized user.

1 (B) ASSESSMENT.—The assessment under  
2 subparagraph (A) shall be an amount up to  
3 \$100 for each individual entitled to, or enrolled  
4 for, benefits under part A of title XVIII of the  
5 Social Security Act or enrolled for benefits  
6 under part B of such title—

7 (i) in the case of an agreement de-  
8 scribed in subparagraph (A)(i), for whom  
9 the Secretary provided data on to the  
10 qualified entity under paragraph (2); and

11 (ii) in the case of an agreement de-  
12 scribed in subparagraph (A)(ii), for whom  
13 the qualified entity provided data on to the  
14 authorized user under paragraph (2).

15 (C) DEPOSIT OF AMOUNTS COLLECTED.—  
16 Any amounts collected pursuant to this para-  
17 graph shall be deposited in Federal Supple-  
18 mentary Medical Insurance Trust Fund under  
19 section 1841 of the Social Security Act (42  
20 U.S.C. 1395t).

21 (8) ANNUAL REPORTS.—Any qualified entity  
22 that provides or sells an analysis or data under  
23 paragraph (1) or (2) shall annually submit to the  
24 Secretary a report that includes—

1 (A) a summary of the analyses provided or  
2 sold, including the number of such analyses, the  
3 number of purchasers of such analyses, and the  
4 total amount of fees received for such analyses;

5 (B) a description of the topics and pur-  
6 poses of such analyses;

7 (C) information on the entities who re-  
8 ceived the data under paragraph (2), the uses  
9 of the data, and the total amount of fees re-  
10 ceived for providing, selling, or sharing the  
11 data; and

12 (D) other information determined appro-  
13 priate by the Secretary.

14 (9) DEFINITIONS.—In this subsection and sub-  
15 section (b):

16 (A) AUTHORIZED USER.—The term “au-  
17 thorized user” means the following:

18 (i) A provider of services.

19 (ii) A supplier.

20 (iii) An employer (as defined in sec-  
21 tion 3(5) of the Employee Retirement In-  
22 surance Security Act of 1974).

23 (iv) A health insurance issuer (as de-  
24 fined in section 2791 of the Public Health  
25 Service Act).

1 (v) A medical society or hospital asso-  
2 ciation.

3 (vi) Any entity not described in  
4 clauses (i) through (v) that is approved by  
5 the Secretary (other than an employer or  
6 health insurance issuer not described in  
7 clauses (iii) and (iv), respectively, as deter-  
8 mined by the Secretary).

9 (B) PROVIDER OF SERVICES.—The term  
10 “provider of services” has the meaning given  
11 such term in section 1861(u) of the Social Se-  
12 curity Act (42 U.S.C. 1395x(u)).

13 (C) QUALIFIED ENTITY.—The term “quali-  
14 fied entity” has the meaning given such term in  
15 section 1874(e)(2) of the Social Security Act  
16 (42 U.S.C. 1395kk(e)).

17 (D) SECRETARY.—The term “Secretary”  
18 means the Secretary of Health and Human  
19 Services.

20 (E) SUPPLIER.—The term “supplier” has  
21 the meaning given such term in section 1861(d)  
22 of the Social Security Act (42 U.S.C.  
23 1395x(d)).

1 (b) ACCESS TO MEDICARE DATA BY QUALIFIED  
2 CLINICAL DATA REGISTRIES TO FACILITATE QUALITY  
3 IMPROVEMENT.—

4 (1) ACCESS.—

5 (A) IN GENERAL.—To the extent con-  
6 sistent with applicable information, privacy, se-  
7 curity, and disclosure laws, beginning July 1,  
8 2015, the Secretary shall, at the request of a  
9 qualified clinical data registry under section  
10 1848(m)(3)(E) of the Social Security Act (42  
11 U.S.C. 1395w-4(m)(3)(E)), provide the data  
12 described in subparagraph (B) (in a form and  
13 manner determined to be appropriate) to such  
14 qualified clinical data registry for purposes of  
15 linking such data with clinical outcomes data  
16 and performing risk-adjusted, scientifically valid  
17 analyses and research to support quality im-  
18 provement or patient safety, provided that any  
19 public reporting of such analyses or research  
20 that identifies a provider of services or supplier  
21 shall only be conducted with the opportunity of  
22 such provider or supplier to appeal and correct  
23 errors in the manner described in subsection  
24 (a)(6).

1 (B) DATA DESCRIBED.—The data de-  
2 scribed in this subparagraph is—

3 (i) claims data under the Medicare  
4 program under title XVIII of the Social  
5 Security Act; and

6 (ii) if the Secretary determines appro-  
7 priate, claims data under the Medicaid  
8 program under title XIX of such Act and  
9 the State Children’s Health Insurance Pro-  
10 gram under title XXI of such Act.

11 (2) FEE.—Data described in paragraph (1)(B)  
12 shall be provided to a qualified clinical data registry  
13 under paragraph (1) at a fee equal to the cost of  
14 providing such data. Any fee collected pursuant to  
15 the preceding sentence shall be deposited in the Cen-  
16 ters for Medicare & Medicaid Services Program  
17 Management Account.

18 (c) EXPANSION OF DATA AVAILABLE TO QUALIFIED  
19 ENTITIES.—Section 1874(e) of the Social Security Act  
20 (42 U.S.C. 1395kk(e)) is amended—

21 (1) in the subsection heading, by striking  
22 “MEDICARE”; and

23 (2) in paragraph (3)—

24 (A) by inserting after the first sentence the  
25 following new sentence: “Beginning July 1,

1           2015, if the Secretary determines appropriate,  
2           the data described in this paragraph may also  
3           include standardized extracts (as determined by  
4           the Secretary) of claims data under titles XIX  
5           and XXI for assistance provided under such ti-  
6           tles for one or more specified geographic areas  
7           and time periods requested by a qualified enti-  
8           ty.”; and

9                       (B) in the last sentence, by inserting “or  
10           under titles XIX or XXI” before the period at  
11           the end.

12           (d) REVISION OF PLACEMENT OF FEES.—Section  
13   1874(e)(4)(A) of the Social Security Act (42 U.S.C.  
14   1395kk(e)(4)(A)) is amended, in the second sentence—

15                       (1) by inserting “, for periods prior to July 1,  
16           2015,” after “deposited”; and

17                       (2) by inserting the following before the period  
18           at the end: “, and, beginning July 1, 2015, into the  
19           Centers for Medicare & Medicaid Services Program  
20           Management Account”.

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