

109TH CONGRESS
2D SESSION

S. 3897

To amend titles XI and XVIII of the Social Security Act to provide for the sharing of certain data collected by the Centers for Medicare & Medicaid Services with certain agencies, research centers and organizations, and congressional support agencies.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 2006

Mr. GRASSLEY (for himself and Mr. BAUCUS) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend titles XI and XVIII of the Social Security Act to provide for the sharing of certain data collected by the Centers for Medicare & Medicaid Services with certain agencies, research centers and organizations, and congressional support agencies.

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 Data Access
5 and Research Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) The new Medicare drug benefit under part
2 D of title XVIII of the Social Security Act is deliv-
3 ered through private prescription drug plans. Private
4 plans submit administrative and beneficiary level
5 data to the Centers for Medicare & Medicaid Serv-
6 ices as a condition of participation and payment in
7 the new Medicare drug program.

8 (2) Data from the new Medicare drug benefit
9 can be linked with hospital, ambulatory care, and
10 other data to create a new comprehensive resource
11 for the study of drug safety and effectiveness of
12 medical care in older adults and low-income, dis-
13 abled, and vulnerable populations. With appropriate
14 protections for privacy, this data should be available
15 to the Food and Drug Administration, the Centers
16 for Disease Control and Prevention, the Agency for
17 Healthcare Research and Quality, and the National
18 Institutes of Health, and university-based research
19 centers and other research organizations interested
20 in furthering the public health through research on
21 the safety, effectiveness, and quality of health care
22 services provided under the Medicare program under
23 title XVIII of the Social Security Act.

24 (3) Timely and ready access to certain data
25 from the new Medicare drug benefit will allow con-

gressional support agencies to inform and advise
Congress on the cost, scope, and impact of the new
benefit and assess its quality.

SEC. 3. DRUG AND HEALTH CARE DATA RELEASE.

(a) IN GENERAL.—Title XI of the Social Security Act
(42 U.S.C. 1301 et seq.) is amended by inserting after
section 1121 the following new sections:

“DRUG AND HEALTH CARE CLAIMS DATA RELEASE

“SEC. 1121A. (a) IN GENERAL.—Notwithstanding
any provision under part D of title XVIII that limits the
use of prescription drug data collected under such part,
for the purpose of improving the public’s health, the Sec-
retary, acting through the Centers for Medicare & Med-
icaid Services, shall—

“(1) enter into data release agreements on an
annual basis with the agencies described in sub-
section (b) to provide access to relevant data sub-
mitted by prescription drug plans and MA–PD plans
under part D of title XVIII, excluding negotiated
price concessions under such part (such as dis-
counts, direct or indirect subsidies, rebates, and di-
rect or indirect remunerations), and linked to hos-
pital, physician, and other relevant medical claims,
utilization, and diagnostic data collected under titles
XVIII and XIX, including data from the uniform re-

1 porting systems established under section 1121(a);
2 and

3 “(2) permit agencies described in such sub-
4 section to link data provided under this section with
5 other relevant health data, including survey data,
6 vital statistics, and disease registries, as needed by
7 the agency in order to accomplish its research objec-
8 tives.

9 “(b) AGENCIES DESCRIBED.—The agencies described
10 in this subsection are as follows:

11 “(1) The Food and Drug Administration.

12 “(2) The Centers for Disease Control and Pre-
13 vention.

14 “(3) The Agency for Healthcare Research and
15 Quality.

16 “(4) The National Institutes of Health.

17 “(c) USE OF THE DATA PROVIDED.—Data provided
18 under a data release agreement under subsection (a)(1)
19 shall only be used for the following purposes:

20 “(1) FDA.—In the case of the Food and Drug
21 Administration, to enhance post marketing surveil-
22 lance by—

23 “(A) studying patterns of drug and vaccine
24 utilization over time after a drug has been
25 placed on the market;

1 “(B) studying health risks associated with
2 such utilization, particularly with respect to im-
3 proving the speed of risk identification in order
4 to mitigate or resolve such risks;

5 “(C) studying drug utilization in order to
6 promote consumer education that would allow
7 consumers and health care providers to make
8 informed product choices and informed drug
9 compliance choices; and

10 “(D) performing such other functions, con-
11 sistent with the purposes of this section and the
12 Agency’s mission, as are determined appro-
13 priate by the Secretary.

14 “(2) CDC.—In the case of the Centers for Dis-
15 ease Control and Prevention, to—

16 “(A) improve surveillance of clinical out-
17 breaks and emerging threats;

18 “(B) study immunization rates;

19 “(C) study outcomes of specific diseases;

20 “(D) develop and monitor the use of pre-
21 ventive screening protocols using claims data;

22 “(E) study drug and medical utilization in
23 order to promote consumer education and treat-
24 ment for specific public health risks; and

1 “(F) perform such other functions, con-
2 sistent with the purposes of this section and the
3 Agency’s mission, as are determined appro-
4 priate by the Secretary.

5 “(3) AHRQ.—In the case of the Agency for
6 Healthcare Research and Quality, to—

7 “(A) carry out the Agency’s research obli-
8 gations under section 1013 of the Medicare
9 Prescription Drug, Improvement, and Mod-
10 ernization Act of 2003;

11 “(B) conduct research consistent with the
12 Agency’s mission to improve the quality, safety,
13 efficiency, and effectiveness of health care; and

14 “(C) perform such other functions, con-
15 sistent with the purposes of this section and
16 such mission, as are determined appropriate by
17 the Secretary.

18 “(4) NIH.—In the case of the National Insti-
19 tutes of Health, to—

20 “(A) help prevent, detect, diagnose, and
21 treat disease and disabilities; and

22 “(B) perform such other functions, con-
23 sistent with the purposes of this section and the
24 Agency’s mission, as are determined appro-
25 priate by the Secretary.

1 “(d) TIMEFRAME FOR DATA RELEASE.—A data re-
2 lease agreement entered into under this section shall pro-
3 vide for the release of information as needed by the Agen-
4 cy for the uses described in subsection (c).

5 “(e) DATA RELEASE PROCEDURES.—

6 “(1) DETERMINING APPROPRIATE LEVEL AND
7 ELEMENTS OF DATA FOR RELEASE.—

8 “(A) IN GENERAL.—The Secretary shall
9 establish a process to determine the appropriate
10 level and elements of data to be released to an
11 Agency under this section in order to ensure
12 that the Agency, and researchers within the
13 Agency, are able to conduct meaningful anal-
14 yses while maintaining the confidentiality of the
15 data provided under the data release agree-
16 ment.

17 “(B) RELATIONSHIP TO PROCEDURES FOR
18 RELEASE TO PRIVATE RESEARCHERS.—The
19 process established under subparagraph (A)
20 may be analogous to the process used by the
21 Centers for Medicare & Medicaid Services for
22 the release of data to private researchers.

23 “(2) AGENCY FEEDBACK ON ANALYSES CON-
24 DUCTED.—The Secretary shall establish a process
25 for Agencies that are provided data under a data re-

1 lease agreement under this section to provide the re-
2 sults of the analyses conducted using such data to
3 the Centers for Medicare & Medicaid Services for
4 use in the administration and assessment of pro-
5 grams administered by the Centers for Medicare &
6 Medicaid Services, including the program under part
7 D of title XVIII.

8 “(3) REVIEW OF DATA PROCEDURES.—The
9 Secretary shall establish a process to review and up-
10 date the following:

11 “(A) The processes established under para-
12 graphs (1)(A) and (2).

13 “(B) Procedures for transmission and re-
14 tention of data released under this section.

15 “(f) NOTIFICATION OF INACCURACIES DISCOVERED
16 IN DATA PROVIDED.—The Secretary shall establish proce-
17 dures to ensure that an Agency that is provided data
18 under this section notifies the Secretary of any inaccura-
19 cies discovered in the data by the Agency within a reason-
20 able time of such discovery.

21 “(g) REPORT.—The Secretary shall include (begin-
22 ning with 2007), as part of the annual report submitted
23 to Congress under section 1875(b), an evaluation of the
24 data release agreements entered into under subsection
25 (a)(1), including a description of the reports and analyses

1 conducted by agencies using data provided under such an
2 agreement.

3 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated such sums as are nec-
5 essary to carry out the purposes of this section.

6 “RESEARCH CENTER AND ORGANIZATION DRUG AND
7 HEALTH CARE DATA USE

8 “SEC. 1121B. (a) IN GENERAL.—Notwithstanding
9 any provision under part D of title XVIII that limits the
10 use of prescription drug data collected under such part,
11 for the purpose of improving the public’s health, the Sec-
12 retary shall—

13 “(1) enter into data use agreements with the
14 research centers and organizations described in sub-
15 section (b) to provide access to relevant data sub-
16 mitted by prescription drug plans and MA–PD plans
17 under part D of title XVIII, excluding negotiated
18 price concessions under such part (such as dis-
19 counts, direct or indirect subsidies, rebates, and di-
20 rect or indirect remunerations), and linked to hos-
21 pital, physician, and other relevant medical claims,
22 utilization, and diagnostic data collected under titles
23 XVIII and XIX, including data from the uniform re-
24 porting systems established under section 1121(a);

25 “(2) permit research centers and organizations
26 described in such subsection to link data provided

1 under this section with other relevant health data,
 2 including survey data, vital statistics, and disease
 3 registries, as needed by the research center or orga-
 4 nization in order to accomplish its research objec-
 5 tives; and

6 “(3) prepare the linked sets of data described
 7 in paragraph (1) for release not later than July 1,
 8 2007.

9 “(b) RESEARCH CENTERS AND ORGANIZATIONS DE-
 10 SCRIBED.—The research centers and organizations de-
 11 scribed in this subsection are as follows:

12 “(1) A University-based research center.

13 “(2) Any other research center or organiza-
 14 tion—

15 “(A) whose primary mission is to conduct
 16 public health research; and

17 “(B) which the Secretary determines can
 18 appropriately conduct analyses consistent with
 19 the purposes of this section.

20 “(c) USE OF DATA AND PENALTIES.—

21 “(1) USE OF DATA.—

22 “(A) IN GENERAL.—Data provided to a re-
 23 search center or organization under a data use
 24 agreement under this section shall be used sole-
 25 ly for purposes of research on the safety, effec-

1 tiveness, and quality of, disparities in, and re-
 2 lated aspects of health care use by individuals
 3 entitled to, or enrolled for, benefits under part
 4 A of title XVIII, or enrolled for benefits under
 5 part B of such title, conducted for the purpose
 6 of developing and providing generalizable
 7 knowledge to inform the public health through
 8 scientific publication and other forms of public
 9 dissemination.

10 “(B) APPROVAL BY REVIEW BOARD FOR
 11 THE PROTECTION OF HUMAN SUBJECTS.—Such
 12 use shall be approved by a review board for the
 13 protection of human subjects.

14 “(C) REVIEW PROCESS.—The Secretary
 15 shall establish a review process to ensure that—

16 “(i) data use agreements under this
 17 section include a detailed description of
 18 how the data is to be used under the
 19 agreement; and

20 “(ii) such use is consistent with the
 21 purposes described in subparagraph (A).

22 “(2) PENALTIES.—

23 “(A) IN GENERAL.—A research center or
 24 organization who knowingly or intentionally
 25 uses data provided under a data use agreement

1 under this section for any purpose other than
2 the purposes described in paragraph (1)(A)
3 shall be subject, in addition to any other pen-
4 alties that may be prescribed by law, to—

5 “(i) a civil money penalty of not less
6 than \$25,000 for each infraction; and

7 “(ii) disqualification from receipt of
8 any data under this section for not less
9 than 2 years.

10 “(B) PROCEDURE.—The provisions of sec-
11 tion 1128A (other than subsections (a) and (b)
12 and the second sentence of subsection (f)) shall
13 apply to a civil money penalty under this para-
14 graph in the same manner as such provisions
15 apply to a penalty or proceeding under section
16 1128A(a).

17 “(d) RELEASE OF DATA.—

18 “(1) IN GENERAL.—A data use agreement en-
19 tered into under subsection (a)(1) shall provide for
20 the release of information according to a schedule
21 approved by the Secretary under the criteria devel-
22 oped in accordance with paragraph (2).

23 “(2) CRITERIA FOR APPROVING RESEARCH AP-
24 PPLICATIONS.—

1 “(A) DEVELOPMENT.—The Secretary, in
2 consultation with health services researchers
3 and academicians, shall develop criteria for the
4 approval of a data use agreement under this
5 section.

6 “(B) CRITERIA.—The criteria developed
7 under subparagraph (A) shall include the fol-
8 lowing requirements:

9 “(i) The research center or organiza-
10 tion has well-documented scientific exper-
11 tise, a record of scholarship on the topic of
12 the proposed study, and a likelihood of
13 successful publication, as demonstrated by
14 a prior record of relevant publication by
15 key staff and other evidence of appropriate
16 scientific qualifications of the proposed re-
17 search team.

18 “(ii) The research center or organiza-
19 tion demonstrates a credible capability to
20 conduct and complete the proposed study,
21 including experience with scientific inves-
22 tigations using similar types of data.

23 “(iii) The research center or organiza-
24 tion demonstrates the public health impor-
25 tance of the proposed study, and the po-

1 tential of such study to provide public
2 knowledge needed to improve the safety,
3 use, and outcomes of treatments, the ad-
4 ministration of the program under title
5 XVIII, and the care provided to individuals
6 entitled to, or enrolled for, benefits under
7 part A of title XVIII, or enrolled for bene-
8 fits under part B of such title.

9 “(iv) The research center or organiza-
10 tion develops a data management plan that
11 describes in detail the measures that will
12 be implemented to safeguard the data and
13 protect the privacy of individuals entitled
14 to, or enrolled for, benefits under part A of
15 title XVIII, or enrolled for benefits under
16 part B of such title, including any pro-
17 posed data linkages.

18 “(v) The research center or organiza-
19 tion enters into an agreement under which
20 the research center or organization agrees
21 to—

22 “(I) place detailed results of the
23 proposed study in the public domain
24 through publication in a reasonable
25 timeframe, not to exceed 1 year after

1 completion of such study, including a
2 thorough description of the method-
3 ology used to conduct the study;

4 “(II) make available to the pub-
5 lic, without charge, any product or
6 tool developed using the data provided
7 under this section; and

8 “(III) not sell such data to other
9 entities or create commercial data
10 products (such as data extracts or an-
11 alytical files) using such data.

12 “(vi) The research center or organiza-
13 tion and the proposed research team pro-
14 vide assurances that such team is inde-
15 pendent from the sources of funding or
16 any other party and has the right to inde-
17 pendently and freely publish the scientific
18 findings of the study.

19 “(vii) Such other requirements, con-
20 sistent with the purposes of this section, as
21 the Secretary determines appropriate.

22 “(3) TIMELY REVIEW AND ACTION ON RE-
23 QUESTS.—The Secretary shall provide for timely re-
24 view of, and action on, requests for a data use
25 agreement under this section, taking into consider-

1 ation the reasonable needs of the research center or
2 organization.

3 “(4) PUBLIC DISCLOSURE.—The Secretary shall
4 make available to the public the criteria used to
5 grant or deny data use agreements under the cri-
6 teria developed under paragraph (2)(A).

7 “(e) FEEDBACK BY RESEARCH CENTER OR ORGANI-
8 ZATION.—

9 “(1) NOTIFICATION OF INACCURACIES DISCOV-
10 ERED IN DATA PROVIDED.—The Secretary shall es-
11 tablish procedures to ensure that a research center
12 or organization that is provided data under this sec-
13 tion notifies the Secretary of any inaccuracies dis-
14 covered in the data by the center or organization
15 within a reasonable time of such discovery.

16 “(2) FEEDBACK ON DATA COLLECTION.—The
17 Secretary shall permit researchers to provide feed-
18 back on the collection of data with respect to the
19 programs administered by the Centers for Medicare
20 & Medicaid Services and make recommendations
21 with respect to the collection of additional data ele-
22 ments with respect to such programs.

23 “(f) CONFIDENTIALITY.—

24 “(1) DETERMINING APPROPRIATE LEVEL OF
25 DATA TO BE PROVIDED.—The Secretary shall estab-

1 lish a process to determine the appropriate level of
2 data to be provided to a research center or organiza-
3 tion under this section in order to ensure that the
4 center or organization, and researchers within the
5 center or organization, are able to conduct meaning-
6 ful analyses while maintaining the confidentiality of
7 the data provided under the data use agreement.

8 “(2) SAFEGUARDS TO PROTECT CONFIDEN-
9 TIALITY OF DATA PROVIDED.—

10 “(A) IN GENERAL.—The Secretary shall
11 establish safeguards to protect the confiden-
12 tiality of data after it is provided to a research
13 center or organization under this section. Such
14 safeguards shall not provide for greater disclo-
15 sure by the research center or organization
16 than is permitted under any of the following:

17 “(i) The Federal regulations (con-
18 cerning the privacy of individually identifi-
19 able health information) promulgated
20 under section 264(c) of the Health Insur-
21 ance Portability and Accountability Act of
22 1996.

23 “(ii) Sections 552 or 552a of title 5,
24 United States Code, with regard to the pri-

1 vacy of individually identifiable beneficiary
2 health information.

3 “(B) CONFIDENTIALITY OF PHYSICIANS
4 AND MEDICAL PRACTICES.—The safeguards es-
5 tablished under subparagraph (A) shall ensure
6 that the data provided to a research center or
7 organization under this section that identifies
8 individual physicians or medical practices is not
9 released by the research center or organization,
10 or otherwise made public.

11 “(g) REPORT.—The Secretary shall include (begin-
12 ning with 2007), as part of the annual report submitted
13 to Congress under section 1875(b), an evaluation of the
14 agreements entered into under subsection (a).

15 “(h) REASONABLE FEE.—The Secretary may charge
16 a research center or organization a reasonable fee based
17 on the cost of preparing and providing data to such center
18 or organization under this section.”.

19 (b) CRITERIA DEVELOPMENT AND PUBLICATION.—
20 The Secretary shall develop and publish the criteria re-
21 quired under section 1121B(d)(2)(A) of the Social Secu-
22 rity Act, as added by subsection (a), not later than 180
23 days after the date of enactment of this Act.

1 **SEC. 4. ACCESS TO DATA ON PRESCRIPTION DRUG PLANS**
2 **AND MEDICARE ADVANTAGE PLANS.**

3 (a) IN GENERAL.—Section 1875 of the Social Secu-
4 rity Act (42 U.S.C. 1395ll) is amended—

5 (1) in the heading, by inserting “TO CONGRESS;
6 PROVIDING INFORMATION TO CONGRESSIONAL SUP-
7 PORT AGENCIES” after “AND RECOMMENDATIONS”;
8 and

9 (2) by adding at the end the following new sub-
10 section:

11 “(c) PROVIDING INFORMATION TO CONGRESSIONAL
12 SUPPORT AGENCIES.—

13 “(1) IN GENERAL.—Notwithstanding any provi-
14 sion under part D that limits the use of prescription
15 drug data collected under such part, upon the re-
16 quest of a congressional support agency, the Sec-
17 retary shall provide such agency with information
18 submitted to, or compiled by, the Secretary under
19 part D (subject to the restriction on disclosure under
20 paragraph (2)), including—

21 “(A) only with respect to congressional
22 support agencies that make official baseline
23 spending projections, conduct oversight studies
24 mandated by Congress, or make official rec-
25 ommendations on the program under this title
26 to Congress—

1 “(i) aggregate negotiated prices for
2 drugs covered under prescription drug
3 plans and MA–PD plans; and

4 “(ii) bid information (described in sec-
5 tion 1860D–11(b)(2)(C)) submitted by
6 such plans; and

7 “(B) access to drug event data submitted
8 by such plans under section 1860D–
9 15(d)(2)(A), except, with respect to data that
10 reveals prices negotiated with drug manufactur-
11 ers, such data shall only be available to con-
12 gressional support agencies that make official
13 baseline spending projections, conduct oversight
14 studies mandated by Congress, or make official
15 recommendations on the program under this
16 title to Congress.

17 “(2) RESTRICTION ON DATA DISCLOSURE.—

18 “(A) IN GENERAL.—Data provided to a
19 congressional support agency under this sub-
20 section shall not be disclosed, reported, or re-
21 leased in identifiable form.

22 “(B) IDENTIFIABLE FORM.—For purposes
23 of subparagraph (A), the term ‘identifiable
24 form’ means any representation of information
25 that permits identification of a specific prescrip-

tion drug plan, MA–PD plan, pharmacy benefit manager, drug manufacturer, drug wholesaler, or individual enrolled in a prescription drug plan or an MA–PD plan under part D.

“(3) TIMING.—The Secretary shall release data under this subsection in a timeframe that enables congressional support agencies to complete congressional requests.

“(4) USE OF THE DATA PROVIDED.—Data provided to a congressional support agency under this subsection shall only be used by such agency for carrying out the functions and activities of the agency mandated by Congress.

“(5) CONFIDENTIALITY.—The Secretary shall establish safeguards to protect the confidentiality of data released under this subsection. Such safeguards shall not provide for greater disclosure than is permitted under any of the following:

“(A) The Federal regulations (concerning the privacy of individually identifiable health information) promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

“(B) Sections 552 or 552a of title 5, United States Code, with regard to the privacy

1 of individually identifiable beneficiary health in-
 2 formation.

3 “(6) DEFINITIONS.—In this subsection:

4 “(A) CONGRESSIONAL SUPPORT AGEN-
 5 CY.—The term ‘Congressional support agency’
 6 means—

7 “(i) the Medicare Payment Advisory
 8 Commission;

9 “(ii) the Congressional Research Serv-
 10 ice;

11 “(iii) the Congressional Budget Office;
 12 and

13 “(iv) the Government Accountability
 14 Office.

15 “(B) MA–PD PLAN.—The term ‘MA–PD
 16 plan’ has the meaning given such term in sec-
 17 tion 1860D–1(a)(3)(C).

18 “(C) PRESCRIPTION DRUG PLAN.—The
 19 term ‘prescription drug plan’ has the meaning
 20 given such term in section 1860D–41(a)(14).”.

21 (b) CONFORMING AMENDMENT.—Section 1805(b)(2)
 22 of the Social Security Act (42 U.S.C. 1395b–6(b)(2)) is
 23 amended by adding at the end the following new subpara-
 24 graph:

1 “(D) PART D.—Specifically, the Commis-
2 sion shall review payment policies with respect
3 to the Voluntary Prescription Drug Benefit
4 Program under part D, including—
5 “(i) the factors affecting expenditures;
6 “(ii) payment methodologies; and
7 “(iii) their relationship to access and
8 quality of care for Medicare beneficiaries.”.

○