

114TH CONGRESS  
1ST SESSION

# H. R. 2568

To amend title XVIII of the Social Security Act to improve the process of audits by recovery audit contractors and the recovery of overpayments under the Medicare program.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2015

Mr. HOLDING (for himself and Mr. NUNES) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 improve the process of audits by recovery audit contractors and the recovery of overpayments under the Medicare program.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Fair Medical Audits Act of 2015”.

6 (b) TABLE OF CONTENTS.—The table of contents of  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Transparency of audit process and audit report.
- Sec. 3. Qualifications of auditors.
- Sec. 4. Recoupments.
- Sec. 5. Extrapolation.
- Sec. 6. Payment for the provision of supporting documentation.
- Sec. 7. Notice of over-utilization of codes.
- Sec. 8. Change in look back period.
- Sec. 9. General effective date.

1 **SEC. 2. TRANSPARENCY OF AUDIT PROCESS AND AUDIT RE-**  
 2 **PORT.**

3 Section 1893(h)(1) of the Social Security Act (42  
 4 U.S.C. 1395ddd(h)(1)) is amended—

5 (1) by redesignating subparagraphs (B) and  
 6 (C) as subparagraphs (C) and (D), respectively; and

7 (2) by inserting after subparagraph (A) the fol-  
 8 lowing new subparagraph:

9 “(B) contractors shall be required to pro-  
 10 vide healthcare providers with—

11 “(i) the names and contact informa-  
 12 tion for the auditors;

13 “(ii) the legal authority under which  
 14 the audit is conducted;

15 “(iii) a clear designation of the  
 16 records to be reviewed under the audit;

17 “(iv) the dates by which records shall  
 18 be submitted;

19 “(v) the address to which the records  
 20 shall be sent;

1 “(vi) identification of any errors dis-  
2 covered in the audit, including specification  
3 of all medical and reimbursement policies  
4 used in the audit findings;

5 “(vii) identification of any underpay-  
6 ments discovered in the audit; and

7 “(viii) a description of how any re-  
8 quested overpayment amount was cal-  
9 culated, including, in cases in which ex-  
10 trapolation was used, the extrapolation for-  
11 mula and a description of how the random  
12 sample was developed;”.

13 **SEC. 3. QUALIFICATIONS OF AUDITORS.**

14 Section 1893(h)(6) of the Social Security Act (42  
15 U.S.C. 1395ddd(h)(6)) is amended—

16 (1) in subparagraph (A), by inserting before the  
17 period at the end the following: “, including knowl-  
18 edge and experience in applicable ICD, CPT, and  
19 HCPCS codes, the format and contents of medical  
20 records and claims forms, and (for those individuals  
21 conducting medical necessity reviews) licensure in a  
22 clinical discipline providing necessary expertise to  
23 determine whether clinical tests and procedures were  
24 medically necessary without the benefit of examining  
25 the patient, specifically including, for medical neces-

1       sity reviews of physician records, a doctor of medi-  
2       cine or osteopathy of the same specialty and sub-  
3       specialty and with knowledge of the coverage rules  
4       being applied for the same area as the physician  
5       under review”; and

6               (2) by adding at the end the following new sub-  
7       paragraphs:

8               “(D) LIABILITY FOR EXCESSIVE OVER-  
9       TURNED DETERMINATIONS.—Contractors that  
10       have a certain percentage (as determined by the  
11       Secretary in regulations) of overpayment deter-  
12       minations overturned by an Administrative Law  
13       Judge at the Office of Medicare Hearings and  
14       Appeals shall be subject to administrative pen-  
15       alty established by the Secretary in such regula-  
16       tions.

17              “(E) PROVIDER COMPENSATION FOR CER-  
18       TAIN CONTRACTOR ERRORS.—A contractor shall  
19       be liable for payment to providers of service and  
20       suppliers for reasonable attorneys’ fees when  
21       the contractor’s overpayment determination is  
22       equal to or more than double the final overpay-  
23       ment amount determined by an Administrative  
24       Law Judge at the Office of Medicare Hearings  
25       and Appeals.

1           “(F) INCENTIVE PAYMENTS FOR PROVIDER  
2           EDUCATION.—Administrative penalties collected  
3           under subparagraph (D) shall be available to  
4           the Secretary without appropriation to provide  
5           incentive payments to Medicare administrative  
6           contractors under section 1874A to carry out  
7           improper payment outreach and education pro-  
8           grams under subsection (h) of such section.”.

9   **SEC. 4. RECOUPMENTS.**

10       (a) IN GENERAL.—Section 1893(f)(2)(A) of the So-  
11       cial Security Act (42 U.S.C. 1395ddd(f)(2)(A)) is amend-  
12       ed—

13           (1) by striking “until the date the decision on  
14           the reconsideration has been rendered.” and insert-  
15           ing the following: “until the date a decision has been  
16           rendered at the third level of appeal by an Adminis-  
17           trative Law Judge at the Office of Medicare Hear-  
18           ings and Appeals.”; and

19           (2) by adding at the end the following: “Any  
20           recoupments made under this subparagraph based  
21           on a decision that is subsequently reversed on appeal  
22           shall be returned to the provider of services or sup-  
23           plier involved not later than 30 business days after  
24           the date of the decision of reversal on appeal.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall apply to recoupments occurring after  
3 the date of the enactment of this Act.

4 **SEC. 5. EXTRAPOLATION.**

5 (a) IN GENERAL.—Section 1893(f)(3) of the Social  
6 Security Act (42 U.S.C. 1395ddd(f)(3)) is amended—

7 (1) by striking the last sentence; and

8 (2) by adding after and below subparagraph  
9 (B) the following:

10 “Extrapolation may only be used if it is based on a  
11 statistically valid, stratified random sample, with all  
12 zero paid claims and outliers removed. When ex-  
13 trapolation is used, the median amount shall be used  
14 as the central data point for calculating overpay-  
15 ments unless the data are normally distributed, ap-  
16 proximately normally distributed, or symmetrical.”.

17 (b) EFFECTIVE DATE.—The amendments made by  
18 subsection (a) shall apply to determinations made after  
19 the date of the enactment of this Act.

20 **SEC. 6. PAYMENT FOR THE PROVISION OF SUPPORTING**  
21 **DOCUMENTATION.**

22 Section 1893(f)(4) of the Social Security Act (42  
23 U.S.C. 1395ddd(f)(4)) is amended by adding at the end  
24 the following: “The Secretary shall require that contrac-  
25 tors reimburse providers of services or suppliers for the

1 cost of such production at rates established by the Sec-  
2 retary.”.

3 **SEC. 7. NOTICE OF OVER-UTILIZATION OF CODES.**

4 Section 1893(f)(6) of the Social Security Act (42  
5 U.S.C. 1395ddd(f)(6)) is amended by adding at the end  
6 the following: “The Secretary shall require that contrac-  
7 tors provide such notice of over-utilization of codes at least  
8 90 days before the date of initiating an audit, documenta-  
9 tion request, or recoupment with respect to the identified  
10 over-utilized codes against any member of the class of pro-  
11 viders of services or suppliers identified by the contractor  
12 as over-utilizing codes.”.

13 **SEC. 8. CHANGE IN LOOK BACK PERIOD.**

14 Section 1893(h)(4)(B) of the Social Security Act (42  
15 U.S.C. 1395ddd(h)(4)(B)) is amended by striking “4 fis-  
16 cal years” and inserting “2 fiscal years”.

17 **SEC. 9. GENERAL EFFECTIVE DATE.**

18 Except as otherwise provided, the amendments made  
19 by this Act shall apply with respect to contracts entered  
20 into, or renewed, after the date of the enactment of this  
21 Act.

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