

114TH CONGRESS  
1ST SESSION

# S. 861

To amend titles XVIII and XIX of the Social Security Act to curb waste, fraud, and abuse in the Medicare and Medicaid programs.

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## IN THE SENATE OF THE UNITED STATES

MARCH 25, 2015

Mr. CARPER (for himself, Mr. ENZI, Mr. WHITEHOUSE, Mr. JOHNSON, Mr. COONS, Mr. PORTMAN, Ms. KLOBUCHAR, Mr. COTTON, Mrs. McCASKILL, Mr. BARRASSO, Mr. MANCHIN, Ms. AYOTTE, Mr. THUNE, and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend titles XVIII and XIX of the Social Security Act to curb waste, fraud, and abuse in the Medicare and Medicaid programs.

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 “Preventing and Reducing Improper Medicare and Med-  
6 icaid Expenditures Act of 2015” or the “PRIME Act of  
7 2015”.

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

Sec. 1. Short title; table of contents.

#### TITLE I—CURBING IMPROPER PAYMENTS

Sec. 101. Requiring valid prescriber National Provider Identifiers on pharmacy claims.

Sec. 102. Reforming how CMS tracks and corrects the vulnerabilities identified by Recovery Audit Contractors.

Sec. 103. Improving Senior Medicare Patrol and fraud reporting rewards.

Sec. 104. Strengthening Medicaid Program integrity through flexibility.

Sec. 105. Establishing Medicare administrative contractor error reduction incentives.

Sec. 106. Strengthening penalties for the illegal distribution of a Medicare, Medicaid, or CHIP beneficiary identification or billing privileges.

#### TITLE II—IMPROVING DATA SHARING

Sec. 201. Access to the National Directory of New Hires.

Sec. 202. Improving the sharing of data between the Federal Government and State Medicaid programs.

Sec. 203. Improving claims processing and detection of fraud within the Medicaid and CHIP programs.

#### TITLE III—REPORT ON IMPLEMENTATION

Sec. 301. Report on implementation.

## 3 **TITLE I—CURBING IMPROPER** 4 **PAYMENTS**

### 5 **SEC. 101. REQUIRING VALID PRESCRIBER NATIONAL PRO-** 6 **VIDER IDENTIFIERS ON PHARMACY CLAIMS.**

7 Section 1860D–4(c) of the Social Security Act (42  
 8 U.S.C. 1395w–104(e)) is amended by adding at the end  
 9 the following new paragraph:

10 “(4) REQUIRING VALID PRESCRIBER NATIONAL  
 11 PROVIDER IDENTIFIERS ON PHARMACY CLAIMS.—

12 “(A) IN GENERAL.—For plan year 2016  
 13 and subsequent plan years, subject to subpara-

1 graph (B), the Secretary shall prohibit PDP  
2 sponsors of prescription drug plans from paying  
3 claims for prescription drugs under this part  
4 that do not include a valid prescriber National  
5 Provider Identifier.

6 “(B) PROCEDURES.—The Secretary shall  
7 establish—

8 “(i) procedures for determining the  
9 validity of prescriber National Provider  
10 Identifiers under subparagraph (A); and

11 “(ii) procedures for transferring to  
12 the Inspector General of the Department  
13 of Health and Human Services and appro-  
14 priate law enforcement agencies and other  
15 oversight entities information on those Na-  
16 tional Provider Identifiers and pharmacy  
17 claims, including records related to such  
18 claims, that the Secretary determines are  
19 invalid under clause (i).

20 “(C) REPORT.—Not later than January 1,  
21 2018, the Inspector General of the Department  
22 of Health and Human Services shall submit to  
23 Congress a report on the effectiveness of the  
24 procedures established under subparagraph  
25 (B).”.

1 **SEC. 102. REFORMING HOW CMS TRACKS AND CORRECTS**  
2 **THE VULNERABILITIES IDENTIFIED BY RE-**  
3 **COVERY AUDIT CONTRACTORS.**

4 (a) IN GENERAL.—Section 1893(h) of the Social Se-  
5 curity Act (42 U.S.C. 1395ddd(h)) is amended—

6 (1) in paragraph (8)—

7 (A) by striking “REPORT.—The Secretary”  
8 and inserting “REPORT.—

9 “(A) IN GENERAL.—Subject to subpara-  
10 graph (C), the Secretary”; and

11 (B) by adding after subparagraph (A), as  
12 inserted by subparagraph (A), the following new  
13 subparagraphs:

14 “(B) INCLUSION OF IMPROPER PAYMENT  
15 VULNERABILITIES IDENTIFIED.—Each report  
16 submitted under subparagraph (A) shall, sub-  
17 ject to subparagraph (C), include—

18 “(i) a description of—

19 “(I) the types and financial cost  
20 to the program under this title of im-  
21 proper payment vulnerabilities identi-  
22 fied by recovery audit contractors  
23 under this subsection; and

24 “(II) how the Secretary is ad-  
25 dressing such improper payment  
26 vulnerabilities; and

1           “(ii) an assessment of the effective-  
2           ness of changes made to payment policies  
3           and procedures under this title in order to  
4           address the vulnerabilities so identified.

5           “(C) LIMITATION.—The Secretary shall  
6           ensure that each report submitted under sub-  
7           paragraph (A) does not include information  
8           that the Secretary determines would be sen-  
9           sitive or would otherwise negatively impact pro-  
10          gram integrity.”; and

11          (2) by adding at the end the following new  
12          paragraph:

13           “(10) ADDRESSING IMPROPER PAYMENT  
14          VULNERABILITIES.—The Secretary shall address im-  
15          proper payment vulnerabilities identified by recovery  
16          audit contractors under this subsection in a timely  
17          manner, prioritized based on the risk to the program  
18          under this title.”.

19          (b) USE OF MEDICARE AND MEDICAID RECOVERY  
20          AUDIT CONTRACTOR RECOVERIES FOR PROVIDER EDU-  
21          CATION AND TO PREVENT IMPROPER PAYMENTS AND  
22          FRAUD.—

23           (1) MEDICARE RAC PROGRAM.—Section  
24          1893(h)(1)(C) of the Social Security Act (42 U.S.C.  
25          1395ddd(h)(1)(C)) is amended—

1 (A) by striking “the Secretary shall re-  
2 tain” and inserting “the Secretary—

3 “(i) shall retain”;

4 (B) in clause (i), as added by subpara-  
5 graph (A)—

6 (i) by inserting “, in addition to any  
7 other funds that may be available,” after  
8 “available”;

9 (ii) by inserting “until expended”  
10 after “Services”; and

11 (iii) by striking the period at the end  
12 and inserting a semicolon; and

13 (C) by adding at the end the following new  
14 clauses:

15 “(ii) may retain an additional portion  
16 of the amounts recovered (not to exceed 25  
17 percent of such amounts recovered) which  
18 shall be available, in addition to any other  
19 funds that may be available, to such pro-  
20 gram management account until expended  
21 for purposes of activities to address prob-  
22 lems that contribute to improper payments  
23 and fraud under this title; and

24 “(iii) shall retain an additional 5 per-  
25 cent of such amounts recovered to be made

1 available, in addition to any other funds  
2 that may be available, to the Inspector  
3 General of the Department of Health and  
4 Human Services until expended for the In-  
5 spector General to carry out activities of  
6 the Inspector General relating to inves-  
7 tigating improper payments or auditing in-  
8 ternal controls associated with payments  
9 under this title.”.

10 (2) MEDICAID RAC PROGRAM.—Section 1936 of  
11 the Social Security Act (42 U.S.C. 1396u–6) is  
12 amended by adding at the end the following new  
13 subsection:

14 “(f) AMOUNTS RECOVERED THROUGH RECOVERY  
15 AUDIT CONTRACTORS.—Notwithstanding any other provi-  
16 sion of law, the Secretary—

17 “(1) may retain a portion of the amounts recov-  
18 ered pursuant to the program established under sec-  
19 tion 1902(a)(42)(B) (not to exceed 25 percent of the  
20 Federal share of such amounts recovered) which  
21 shall be available, in addition to any other funds  
22 that may be available, to the program management  
23 account of the Centers for Medicare & Medicaid  
24 Services for purposes of activities to address prob-

1 lems that contribute to improper payments and  
2 fraud under this title; and

3 “(2) shall retain an additional 5 percent of the  
4 Federal share of such amounts recovered to be made  
5 available, in addition to any other funds that may be  
6 available, to the Inspector General of the Depart-  
7 ment of Health and Human Services until expended  
8 for the Inspector General to carry out activities of  
9 the Inspector General relating to investigating im-  
10 proper payments or auditing internal controls associ-  
11 ated with payments under this title.”.

12 (3) EFFECTIVE DATE.—The amendments made  
13 by this section shall take effect on the date that is  
14 1 year after the date of enactment of this Act.

15 **SEC. 103. IMPROVING SENIOR MEDICARE PATROL AND**  
16 **FRAUD REPORTING REWARDS.**

17 (a) IN GENERAL.—The Secretary of Health and  
18 Human Services (in this section referred to as the “Sec-  
19 retary”) shall develop a plan to revise the incentive pro-  
20 gram under section 203(b) of the Health Insurance Port-  
21 ability and Accountability Act of 1996 (42 U.S.C. 1395b-  
22 5(b)) to encourage greater participation by individuals to  
23 report fraud and abuse in the Medicare program. Such  
24 plan shall include recommendations for—





1 (A) in paragraph (1), in the matter pre-  
 2 ceding subparagraph (A), by inserting “(includ-  
 3 ing the costs of equipment, salaries and bene-  
 4 fits, and travel and training)” after “Program  
 5 under this section”; and

6 (B) in paragraph (3), by striking “by 100”  
 7 and inserting “by 100, or such number as de-  
 8 termined necessary by the Secretary to carry  
 9 out the Program,”.

10 **SEC. 105. ESTABLISHING MEDICARE ADMINISTRATIVE CON-**  
 11 **TRACTOR ERROR REDUCTION INCENTIVES.**

12 (a) IN GENERAL.—Section 1874A(b)(1)(D) of the  
 13 Social Security Act (42 U.S.C. 1395kk–1(b)(1)(D)) is  
 14 amended—

15 (1) by striking “QUALITY.—The Secretary” and  
 16 inserting “QUALITY.—

17 “(i) IN GENERAL.—Subject to clauses  
 18 (ii) and (iii), the Secretary”; and

19 (2) by inserting after clause (i), as added by  
 20 paragraph (1), the following new clauses:

21 “(ii) IMPROPER PAYMENT ERROR  
 22 RATE REDUCTION INCENTIVES.—The Sec-  
 23 retary shall provide incentives for medicare  
 24 administrative contractors to reduce the

1 improper payment error rates in their ju-  
2 risdictions.

3 “(iii) INCENTIVES.—The incentives  
4 provided for under clause (ii)—

5 “(I) may include a sliding scale  
6 of bonus payments and additional in-  
7 centives to medicare administrative  
8 contractors that reduce the improper  
9 payment error rates in their jurisdic-  
10 tions to certain benchmark levels, as  
11 determined by the Secretary; and

12 “(II) shall include substantial re-  
13 ductions in award fee payments under  
14 award fee contracts, for any medicare  
15 administrative contractor that reaches  
16 an upper end error threshold or other  
17 threshold as determined by the Sec-  
18 retary.”.

19 (b) EFFECTIVE DATE.—

20 (1) IN GENERAL.—The amendments made by  
21 subsection (a) shall apply to contracts entered into  
22 or renewed on or after the date that is 12 months  
23 after the date of enactment of this Act.

24 (2) CONTRACTS ENTERED INTO OR RENEWED  
25 PRIOR TO EFFECTIVE DATE.—In the case of con-

1 tracts in existence on or after the date of the enact-  
2 ment of this Act and that are not subject to the ef-  
3 fective date under paragraph (1), the Secretary of  
4 Health and Human Services shall, when appropriate  
5 and practicable, seek to apply the incentives pro-  
6 vided for in the amendments made by subsection (a)  
7 through contract modifications.

8 **SEC. 106. STRENGTHENING PENALTIES FOR THE ILLEGAL**  
9 **DISTRIBUTION OF A MEDICARE, MEDICAID,**  
10 **OR CHIP BENEFICIARY IDENTIFICATION OR**  
11 **BILLING PRIVILEGES.**

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

15 “(4) Whoever knowingly, intentionally, and with  
16 the intent to defraud purchases, sells or distributes,  
17 or arranges for the purchase, sale, or distribution of  
18 a Medicare, Medicaid, or CHIP beneficiary identi-  
19 fication number or billing privileges under title  
20 XVIII, title XIX, or title XXI shall be imprisoned  
21 for not more than 10 years or fined not more than  
22 \$500,000 (\$1,000,000 in the case of a corporation),  
23 or both.”.

1           **TITLE II—IMPROVING DATA**  
2   **SHARING**

3   **SEC. 201. ACCESS TO THE NATIONAL DIRECTORY OF NEW**  
4   **HIRES.**

5           Section 453(j) of the Social Security Act (42 U.S.C.  
6 653(j)) is amended by adding at the end of the following  
7 new paragraph:

8                           “(12) INFORMATION COMPARISONS AND DIS-  
9                           CLOSURES TO ASSIST IN ADMINISTRATION OF THE  
10                           MEDICARE PROGRAM AND STATE HEALTH SUBSIDY  
11                           PROGRAMS.—

12                           “(A) DISCLOSURE TO THE ADMINIS-  
13                           TRATOR OF THE CENTERS FOR MEDICARE &  
14                           MEDICAID SERVICES.—The Administrator of  
15                           the Centers for Medicare & Medicaid Services  
16                           shall have access to the information in the Na-  
17                           tional Directory of New Hires for purposes of  
18                           determining the eligibility of an applicant for,  
19                           or enrollee in, the Medicare program under title  
20                           XVIII or an applicable State health subsidy  
21                           program (as defined in section 1413(e) of the  
22                           Patient Protection and Affordable Care Act (42  
23                           U.S.C. 18083(e)).

1           “(B) DISCLOSURE TO THE INSPECTOR  
2 GENERAL OF THE DEPARTMENT OF HEALTH  
3 AND HUMAN SERVICES.—

4           “(i) IN GENERAL.—If the Inspector  
5 General of the Department of Health and  
6 Human Services transmits to the Secretary  
7 the names and social security account  
8 numbers of individuals, the Secretary shall  
9 disclose to the Inspector General informa-  
10 tion on such individuals and their employ-  
11 ers maintained in the National Directory  
12 of New Hires.

13           “(ii) USE OF INFORMATION.—The In-  
14 spector General of the Department of  
15 Health and Human Services may use in-  
16 formation provided under clause (i) only  
17 for purposes of—

18           “(I) determining the eligibility of  
19 an applicant for, or enrollee in, the  
20 Medicare program under title XVIII  
21 or an applicable State health subsidy  
22 program (as defined in section  
23 1413(e) of the Patient Protection and  
24 Affordable Care Act (42 U.S.C.  
25 18083(e))); or

1                   “(II) evaluating the integrity of  
2                   the Medicare program or an applica-  
3                   ble State health subsidy program (as  
4                   so defined).

5                   “(C) DISCLOSURE TO STATE AGENCIES.—

6                   “(i) IN GENERAL.—If, for purposes of  
7                   administering an applicable State health  
8                   subsidy program (as defined in section  
9                   1413(e) of the Patient Protection and Af-  
10                  fordable Care Act (42 U.S.C. 18083(e))), a  
11                  State agency responsible for administering  
12                  such program transmits to the Secretary  
13                  the names and social security account  
14                  numbers of individuals, the Secretary shall  
15                  disclose to such State agency information  
16                  on such individuals and their employers  
17                  maintained in the National Directory of  
18                  New Hires, subject to this subparagraph.

19                  “(ii) CONDITION ON DISCLOSURE BY  
20                  THE SECRETARY.—The Secretary shall  
21                  make a disclosure under clause (i) only to  
22                  the extent that the Secretary determines  
23                  that the disclosure would not interfere with  
24                  the effective operation of the program  
25                  under this part.

1           “(iii) USE AND DISCLOSURE OF IN-  
2           FORMATION BY STATE AGENCIES.—

3                   “(I) IN GENERAL.—A State  
4           agency may not use or disclose infor-  
5           mation provided under clause (i) ex-  
6           cept for purposes of administering a  
7           program referred to in clause (i).

8                   “(II) INFORMATION SECURITY.—  
9           The State agency shall have in effect  
10          data security and control policies that  
11          the Secretary finds adequate to ensure  
12          the security of information obtained  
13          under clause (i) and to ensure that  
14          access to such information is re-  
15          stricted to authorized persons for pur-  
16          poses of authorized uses and disclo-  
17          sures.

18                   “(III) PENALTY FOR MISUSE OF  
19          INFORMATION.—An officer or em-  
20          ployee of the State agency who fails to  
21          comply with this clause shall be sub-  
22          ject to the sanctions under subsection  
23          (1)(2) to the same extent as if such of-  
24          ficer or employee were an officer or  
25          employee of the United States.



1           “(iv) PROCEDURAL REQUIREMENTS.—  
 2           State agencies requesting information  
 3           under clause (i) shall adhere to uniform  
 4           procedures established by the Secretary  
 5           governing information requests and data  
 6           matching under this paragraph.

7           “(v) REIMBURSEMENT OF COSTS.—  
 8           The State agency shall reimburse the Sec-  
 9           retary, in accordance with subsection  
 10          (k)(3), for the costs incurred by the Sec-  
 11          retary in furnishing the information re-  
 12          quested under this subparagraph.”.

13 **SEC. 202. IMPROVING THE SHARING OF DATA BETWEEN**  
 14                   **THE FEDERAL GOVERNMENT AND STATE**  
 15                   **MEDICAID PROGRAMS.**

16          (a) IN GENERAL.—The Secretary of Health and  
 17          Human Services (in this section referred to as the “Sec-  
 18          retary”) shall establish a plan to encourage and facilitate  
 19          the participation of States in the Medicare-Medicaid Data  
 20          Match Program (commonly referred to as the “Medi-Medi  
 21          Program”) under section 1893(g) of the Social Security  
 22          Act (42 U.S.C. 1395ddd(g)).

23          (b) PROGRAM REVISIONS TO IMPROVE MEDI-MEDI  
 24          DATA MATCH PROGRAM PARTICIPATION BY STATES.—

1 Section 1893(g)(1)(A) of the Social Security Act (42  
2 U.S.C. 1395ddd(g)(1)(A)) is amended—

3 (1) in the matter preceding clause (i), by insert-  
4 ing “or otherwise” after “eligible entities”;

5 (2) in clause (i)—

6 (A) by inserting “to review claims data”  
7 after “algorithms”; and

8 (B) by striking “service, time, or patient”  
9 and inserting “provider, service, time, or pa-  
10 tient”;

11 (3) in clause (ii)—

12 (A) by inserting “to investigate and re-  
13 cover amounts with respect to suspect claims”  
14 after “appropriate actions”; and

15 (B) by striking “; and” and inserting a  
16 semicolon;

17 (4) in clause (iii), by striking the period and in-  
18 serting “; and”;

19 (5) by adding at the end the following new  
20 clause:

21 “(iv) furthering the Secretary’s de-  
22 sign, development, installation, or enhance-  
23 ment of an automated data system archi-  
24 tecture—

1 “(I) to collect, integrate, and as-  
2 sess data for purposes of program in-  
3 tegrity, program oversight, and ad-  
4 ministration, including the Medi-Medi  
5 Program; and

6 “(II) that improves the coordina-  
7 tion of requests for data from  
8 States.”.

9 (c) PROVIDING STATES WITH DATA ON IMPROPER  
10 PAYMENTS MADE FOR ITEMS OR SERVICES PROVIDED TO  
11 DUAL ELIGIBLE INDIVIDUALS.—

12 (1) IN GENERAL.—The Secretary shall develop  
13 and implement a plan that allows each State agency  
14 responsible for administering a State plan for med-  
15 ical assistance under title XIX of the Social Security  
16 Act access to relevant data on improper or fraudu-  
17 lent payments made under the Medicare program  
18 under title XVIII of the Social Security Act (42  
19 U.S.C. 1395 et seq.) for health care items or serv-  
20 ices provided to dual eligible individuals.

21 (2) DUAL ELIGIBLE INDIVIDUAL DEFINED.—In  
22 this section, the term “dual eligible individual”  
23 means an individual who is entitled to, or enrolled  
24 for, benefits under part A of title XVIII of the So-  
25 cial Security Act (42 U.S.C. 1395c et seq.), or en-

1 rolled for benefits under part B of title XVIII of  
2 such Act (42 U.S.C. 1395j et seq.), and is eligible  
3 for medical assistance under a State plan under title  
4 XIX of such Act (42 U.S.C. 1396 et seq.) or under  
5 a waiver of such plan.

6 **SEC. 203. IMPROVING CLAIMS PROCESSING AND DETEC-**  
7 **TION OF FRAUD WITHIN THE MEDICAID AND**  
8 **CHIP PROGRAMS.**

9 (a) MEDICAID.—Section 1903(i) of the Social Secu-  
10 rity Act (42 U.S.C. 1396b(i)) is amended (after the appli-  
11 cation of the amendments made by subsection (c) of this  
12 section)—

13 (1) in paragraph (25), by striking “or” at the  
14 end;

15 (2) in paragraph (26), by striking the period  
16 and inserting “; or”; and

17 (3) by inserting after paragraph (26), the fol-  
18 lowing new paragraph:

19 “(27) with respect to amounts expended for an  
20 item or service for which medical assistance is pro-  
21 vided under the State plan or under a waiver of such  
22 plan unless the claim for payment for such item or  
23 service contains a valid beneficiary identification  
24 number that, for purposes of the individual who re-  
25 ceived such item or service, has been determined by

1 the State agency to correspond to an individual who  
 2 is eligible to receive benefits under the State plan or  
 3 waiver.”.

4 (b) CHIP.—Section 2107(e)(1)(I) of the Social Secu-  
 5 rity Act (42 U.S.C. 1397gg(e)(1)(I)) is amended by strik-  
 6 ing “and (17)” and inserting “(17), and (27)”.

7 (c) TECHNICAL CORRECTIONS.—Effective as if in-  
 8 cluded in the enactment of Public Law 111–148, the fol-  
 9 lowing sections of such Act are amended as follows:

10 (1) Section 6402(c)(3) is amended by striking  
 11 “by adding at the end” and inserting “by inserting  
 12 after paragraph (24)”.

13 (2) Section 2001(a)(2)(B)(iii) is amended by  
 14 striking “by adding at the end” and inserting “by  
 15 inserting after paragraph (25)”.

## 16 **TITLE III—REPORT ON** 17 **IMPLEMENTATION**

### 18 **SEC. 301. REPORT ON IMPLEMENTATION.**

19 Not later than 270 days after the date of the enact-  
 20 ment of this Act, the Secretary of Health and Human  
 21 Services shall submit to Congress a report on the imple-  
 22 mentation of the provisions of, and the amendments made  
 23 by, this Act.

○