

115TH CONGRESS
2D SESSION

S. _____

To amend title XVIII of the Social Security Act to create alternative sanctions for technical noncompliance with the Stark rule under Medicare, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. PERDUE introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title XVIII of the Social Security Act to create alternative sanctions for technical noncompliance with the Stark rule under Medicare, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stark Administrative
5 Simplification Act of 2018”.

1 **SEC. 2. ALTERNATIVE SANCTIONS FOR TECHNICAL NON-**
2 **COMPLIANCE WITH STARK RULE UNDER**
3 **MEDICARE.**

4 Section 1877 of the Social Security Act (42 U.S.C.
5 1395nn) is amended by adding at the end the following
6 new subsection:

7 “(j) SELF-DISCLOSURE PROTOCOLS.—

8 “(1) IN GENERAL.—Beginning one year after
9 the date of the enactment of this subsection—

10 “(A) an entity or individual may volun-
11 tarily disclose a compensation arrangement with
12 actual or potential inadvertent technical non-
13 compliance with subsection (a)(1) (as defined in
14 paragraph (3)(H)) pursuant to either the self-
15 referral disclosure protocol (defined in para-
16 graph (2)) or the alternative protocol for tech-
17 nical noncompliance under paragraph (3);

18 “(B) disclosures voluntarily withdrawn
19 from the alternative protocol for technical non-
20 compliance may be submitted to the self-referral
21 disclosure protocol; and

22 “(C) an entity that, prior to the establish-
23 ment of the alternative protocol for technical
24 noncompliance, disclosed to the self-referral dis-
25 closure protocol a compensation arrangement
26 that was in inadvertent technical noncompliance

1 with subsection (a)(1), may elect, not later than
2 one year after such alternative protocol is estab-
3 lished, to withdraw such disclosure from the
4 self-referral disclosure protocol and instead sub-
5 mit the disclosure to such alternative protocol.

6 “(2) SELF-REFERRAL DISCLOSURE PRO-
7 TOCOL.—The term ‘self-referral disclosure protocol’
8 or ‘SRDP’ means the protocol specified in section
9 6409 of Public Law 111–148.

10 “(3) ALTERNATIVE PROTOCOL FOR
11 INADVERTANT TECHNICAL NONCOMPLIANCE.—

12 “(A) IN GENERAL.—The Secretary shall
13 establish, not later than one year after the date
14 of the enactment of this subsection, an alter-
15 native protocol for technical noncompliance (in
16 this subsection referred to as the ‘APTN’) to
17 enable entities to disclose arrangements that
18 were previously in inadvertent technical non-
19 compliance with subsection (a)(1) and, upon the
20 Secretary’s acceptance of the disclosure, make
21 payment of a civil monetary penalty. Payment
22 of such civil monetary penalty for an arrange-
23 ment shall resolve only overpayments due and
24 owing as a result of such arrangement’s inad-
25 vertent technical noncompliance with subsection

1 (a)(1). The provisions of section 6409 of Public
2 Law 111–148 shall not apply to this subsection.

3 “(B) DISCLOSURE REQUIREMENTS.—Ar-
4 rangements disclosed to the APTN must—

5 “(i) involve only inadvertent technical
6 noncompliance with subsection (a)(1) that
7 was ended by termination or expiration of
8 the arrangement, or by action of the par-
9 ties to the arrangement to resolve the tech-
10 nical noncompliance, prior to the date of
11 submission of the disclosure to the APTN;

12 “(ii) be made in the form and manner
13 specified by the Secretary on the public
14 Internet website of the Centers for Medi-
15 care & Medicaid Services and include de-
16 scriptions of—

17 “(I) the compensation arrange-
18 ment that was in technical noncompli-
19 ance with subsection (a)(1);

20 “(II) how and when the technical
21 noncompliance with subsection (a)(1)
22 was ended or the arrangement was
23 otherwise terminated; and

1 “(III) how the remuneration paid
2 under the compensation arrangement
3 being disclosed was—

4 “(aa) consistent with the
5 fair market value of the items
6 and services that were provided
7 under the compensation arrange-
8 ment; and

9 “(bb) not determined in a
10 manner that directly or indirectly
11 takes into account the volume or
12 value of referrals or other busi-
13 ness generated between the par-
14 ties;

15 “(iii) include a form settlement agree-
16 ment provided by the Secretary signed by
17 the entity; and

18 “(iv) include a certification from the
19 entity that, to the best of the entity’s
20 knowledge, the information provided is
21 truthful information and is based on a
22 good faith effort to bring the matter to the
23 Secretary’s attention.

24 “(C) ACCEPTANCE OR REJECTION OF DIS-
25 CLOSURE BY THE SECRETARY.—The following

1 rules shall apply to the acceptance or rejection
2 of a disclosure under the APTN:

3 “(i) The Secretary shall accept or re-
4 ject a complete, accurate, and timely dis-
5 closure.

6 “(ii) Upon receipt of a disclosure, the
7 Secretary shall notify the disclosing party
8 of such receipt.

9 “(iii) The Secretary may request addi-
10 tional information from the disclosing
11 party.

12 “(iv) Upon acceptance by the Sec-
13 retary, the Secretary shall notify the dis-
14 closing party in writing of such acceptance.

15 “(v) The disclosure shall be rejected
16 if—

17 “(I) the disclosing party fails to
18 furnish the additional information re-
19 quested by the Secretary in such form
20 and manner as the Secretary may
21 specify; or

22 “(II) in the Secretary’s sole de-
23 termination, the noncompliance dis-
24 closed did not meet the disclosure re-

1 requirements specified in subparagraph
2 (B).

3 “(vi) The disclosure shall be accepted
4 if—

5 “(I) the Secretary has issued a
6 written notice to the disclosing party
7 that the disclosure is determined to
8 satisfy the requirements for disclo-
9 sures under this section; or

10 “(II) the disclosure is complete,
11 accurate, and timely and satisfies
12 each of the requirements for disclo-
13 sures under this section, 180 calendar
14 days have passed since notification of
15 receipt by the Secretary of the disclo-
16 sure, and the Secretary has not re-
17 jected the disclosure during that pe-
18 riod.

19 “(vii) In determining whether to ac-
20 cept a disclosure, the Secretary may rea-
21 sonably rely on the information and certifi-
22 cations included in the disclosure.

23 “(D) RULE FOR WITHDRAWAL OF DISCLO-
24 SURE.—Prior to acceptance or rejection of a
25 disclosure by the Secretary, an entity may vol-

1 untarily withdraw such disclosure from the
2 APTN.

3 “(E) CIVIL MONETARY PENALTIES PURSU-
4 ANT TO THE ALTERNATIVE PROTOCOL FOR
5 TECHNICAL NONCOMPLIANCE.—

6 “(i) IN GENERAL.—Subject to clause
7 (ii), for each arrangement disclosed under
8 this subsection and accepted under sub-
9 paragraph (C), the Secretary shall impose
10 a single civil monetary penalty of—

11 “(I) \$5,000, in the case in which
12 disclosure of the inadvertant technical
13 noncompliance with subsection (a)(1)
14 was submitted to the Secretary not
15 later than the date that is one year
16 after the initial date of inadvertent
17 technical noncompliance with sub-
18 section (a)(1); or

19 “(II) \$10,000, in the case in
20 which the disclosure of the
21 inadvertant technically noncompliance
22 with subsection (a)(1) was submitted
23 to the Secretary—

24 “(aa) after the date that is
25 more than one year after the ini-

1 tial date of the entity's inad-
2 vertent technical noncompliance
3 with subsection (a)(1); and

4 “(bb) not after the date that
5 is 3 years (or, in the case of a
6 disclosure submitted after the
7 5th year for which this sub-
8 section applies, the date that is 2
9 years) from the initial date of the
10 entity's inadvertent technical
11 noncompliance with subsection
12 (a)(1).

13 “(ii) SPECIAL RULE FOR ENTITIES
14 THAT DISCLOSED TO THE APTN AFTER
15 WITHDRAWING A DISCLOSURE FROM THE
16 SRDP.—In the case of an entity that elects
17 under paragraph (1)(C) to withdraw a dis-
18 closure from the self-referral disclosure
19 protocol (as defined in paragraph (2)) and
20 instead submit the disclosure to the APTN
21 under this subsection, in determining the
22 applicable civil monetary penalty under
23 clause (i), the date of disclosure to the self-
24 referral disclosure protocol shall be sub-

1 stituted for the date of disclosure to the
2 APTN.

3 “(F) RELATION TO ADVISORY OPINIONS.—
4 The APTN shall be separate from the advisory
5 opinion process set forth in regulations imple-
6 menting subsection (g) of this section.

7 “(G) PUBLICATION ON INTERNET WEBSITE
8 OF APTN INFORMATION.—Not later than one
9 year after the date of the enactment of this
10 subsection, the Secretary shall post information
11 on the public Internet website of the Centers
12 for Medicare & Medicaid Services to inform rel-
13 evant stakeholders of how to disclose and make
14 payment of a civil monetary penalty for inad-
15 vertent technical noncompliance with subsection
16 (a)(1).

17 “(H) DEFINITIONS.—In this subsection:

18 “(i) TECHNICAL NONCOMPLIANCE.—
19 The term ‘technical noncompliance with
20 subsection (a)(1)’ means, with respect to a
21 compensation arrangement, that—

22 “(I) the arrangement is not
23 signed by one or more parties to the
24 arrangement;

1 “(II) following the expiration of
2 the arrangement, the arrangement
3 was a holdover arrangement for a pe-
4 riod longer than permitted in regula-
5 tions issued by the Secretary; or

6 “(III) the contemporaneous writ-
7 ten documentation evidencing the
8 terms of the arrangement identifies
9 the parties to the arrangement and
10 the items, services, space, or equip-
11 ment, as applicable, but is not suffi-
12 cient to satisfy the writing require-
13 ment of an applicable exception.

14 “(ii) INADVERTENT.—The term ‘inad-
15 vertent’ means, with respect to a com-
16 pensation arrangement that is in technical
17 noncompliance with subsection (a)(1), that
18 an entity that is a party to the compensa-
19 tion arrangement did not know or should
20 not have known of the noncompliance.

21 “(I) ADMINISTRATION.—Chapter 35 of
22 title 44, United States Code, shall not apply to
23 this subsection.

24 “(J) IMPLEMENTATION.—Notwithstanding
25 any other provision of law, the Secretary may

- 1 implement the provisions of this paragraph by
- 2 program instruction or otherwise.”.