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.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

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SEC. 2. ALTERNATIVE SANCTIONS FOR TECHNICAL NON-

COMPLIANCE WITH STARK RULE UNDER MEDICARE.

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

“(j) SELF-DISCLOSURE PROTOCOLS.—

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

“(A) an entity or individual may voluntarily disclose a compensation arrangement with actual or potential inadvertent technical non-compliance with subsection (a)(1) (as defined in paragraph (3)(H)) pursuant to either the self-referral disclosure protocol (defined in paragraph (2)) or the alternative protocol for technical nonecompliance under paragraph (3);

“(B) disclosures voluntarily withdrawn from the alternative protocol for technical non-compliance may be submitted to the self-referral disclosure protocol; and

“(C) an entity that, prior to the establishment of the alternative protocol for technical nonecompliance, disclosed to the self-referral disclosure protocol a compensation arrangement that was in inadvertent technical noncompliance
with subsection (a)(1), may elect, not later than
one year after such alternative protocol is estab-
lished, to withdraw such disclosure from the
self-referral disclosure protocol and instead sub-
mit the disclosure to such alternative protocol.

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

“(3) ALTERNATIVE PROTOCOL FOR
INADVERTENT TECHNICAL NONCOMPLIANCE.—

“(A) IN GENERAL.—The Secretary shall
establish, not later than one year after the date
of the enactment of this subsection, an alter-
native protocol for technical noncompliance (in
this subsection referred to as the ‘APTN’) to
enable entities to disclose arrangements that
were previously in inadvertent technical non-
compliance with subsection (a)(1) and, upon the
Secretary’s acceptance of the disclosure, make
payment of a civil monetary penalty. Payment
of such civil monetary penalty for an arrange-
ment shall resolve only overpayments due and
owing as a result of such arrangement’s inad-
vertent technical noncompliance with subsection
(a)(1). The provisions of section 6409 of Public Law 111–148 shall not apply to this subsection.

“(B) DISCLOSURE REQUIREMENTS.—Arangements disclosed to the APTN must—

“(i) involve only inadvertent technical noncompliance with subsection (a)(1) that was ended by termination or expiration of the arrangement, or by action of the parties to the arrangement to resolve the technical noncompliance, prior to the date of submission of the disclosure to the APTN;

“(ii) be made in the form and manner specified by the Secretary on the public Internet website of the Centers for Medicare & Medicaid Services and include descriptions of—

“(I) the compensation arrangement that was in technical noncompliance with subsection (a)(1);

“(II) how and when the technical noncompliance with subsection (a)(1) was ended or the arrangement was otherwise terminated; and
“(III) how the remuneration paid under the compensation arrangement being disclosed was—

“(aa) consistent with the fair market value of the items and services that were provided under the compensation arrangement; and

“(bb) not determined in a manner that directly or indirectly takes into account the volume or value of referrals or other business generated between the parties;

“(iii) include a form settlement agreement provided by the Secretary signed by the entity; and

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

“(C) ACCEPTANCE OR REJECTION OF DISCLOSURE BY THE SECRETARY.—The following
rules shall apply to the acceptance or rejection of a disclosure under the APTN:

“(i) The Secretary shall accept or reject a complete, accurate, and timely disclosure.

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

“(iii) The Secretary may request additional information from the disclosing party.

“(iv) Upon acceptance by the Secretary, the Secretary shall notify the disclosing party in writing of such acceptance.

“(v) The disclosure shall be rejected if—

“(I) the disclosing party fails to furnish the additional information requested by the Secretary in such form and manner as the Secretary may specify; or

“(II) in the Secretary’s sole determination, the noncompliance disclosed did not meet the disclosure re-
requirements specified in subparagraph (B).

“(vi) The disclosure shall be accepted if—

“(I) the Secretary has issued a written notice to the disclosing party that the disclosure is determined to satisfy the requirements for disclosures under this section; or

“(II) the disclosure is complete, accurate, and timely and satisfies each of the requirements for disclosures under this section, 180 calendar days have passed since notification of receipt by the Secretary of the disclosure, and the Secretary has not rejected the disclosure during that period.

“(vii) In determining whether to accept a disclosure, the Secretary may reasonably rely on the information and certifications included in the disclosure.

“(D) RULE FOR WITHDRAWAL OF DISCLOSURE.—Prior to acceptance or rejection of a disclosure by the Secretary, an entity may vol-
untarily withdraw such disclosure from the APTN.

“(E) CIVIL MONETARY PENALTIES PURSUANT TO THE ALTERNATIVE PROTOCOL FOR TECHNICAL NONCOMPLIANCE.—

“(i) IN GENERAL.—Subject to clause (ii), for each arrangement disclosed under this subsection and accepted under subparagraph (C), the Secretary shall impose a single civil monetary penalty of—

“(I) $5,000, in the case in which disclosure of the inadvertant technical noncompliance with subsection (a)(1) was submitted to the Secretary not later than the date that is one year after the initial date of inadvertent technical noncompliance with subsection (a)(1); or

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

“(aa) after the date that is more than one year after the ini-
tial date of the entity’s inadvertent technical noncompliance with subsection (a)(1); and

“(bb) not after the date that is 3 years (or, in the case of a disclosure submitted after the 5th year for which this subsection applies, the date that is 2 years) from the initial date of the entity’s inadvertent technical noncompliance with subsection (a)(1).

“(ii) SPECIAL RULE FOR ENTITIES THAT DISCLOSED TO THE APTN AFTER WITHDRAWING A DISCLOSURE FROM THE SRDP.—In the case of an entity that elects under paragraph (1)(C) to withdraw a disclosure from the self-referral disclosure protocol (as defined in paragraph (2)) and instead submit the disclosure to the APTN under this subsection, in determining the applicable civil monetary penalty under clause (i), the date of disclosure to the self-referral disclosure protocol shall be sub-
stituted for the date of disclosure to the
APTN.

“(F) Relation to advisory opinions.—
The APTN shall be separate from the advisory
opinion process set forth in regulations imple-
menting subsection (g) of this section.

“(G) Publication on internet website
of APTN information.—Not later than one
year after the date of the enactment of this
subsection, the Secretary shall post information
on the public Internet website of the Centers
for Medicare & Medicaid Services to inform rel-
levant stakeholders of how to disclose and make
payment of a civil monetary penalty for inad-
vertent technical noncompliance with subsection
(a)(1).

“(H) Definitions.—In this subsection:

“(i) Technical noncompliance.—
The term ‘technical noncompliance with
subsection (a)(1)’ means, with respect to a
compensation arrangement, that—

“(I) the arrangement is not
signed by one or more parties to the
arrangement;
“(II) following the expiration of
the arrangement, the arrangement
was a holdover arrangement for a pe-
period longer than permitted in regula-
tions issued by the Secretary; or

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

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

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

“(J) Implementation.—Notwithstanding
any other provision of law, the Secretary may
implement the provisions of this paragraph by 
program instruction or otherwise.”.