

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 3726  
OFFERED BY MR. BRADY OF TEXAS**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Stark Administrative  
3 Simplification Act of 2017”.

4 **SEC. 2. ALTERNATIVE SANCTIONS FOR TECHNICAL NON-**  
5                   **COMPLIANCE WITH STARK RULE UNDER**  
6                   **MEDICARE.**

7       Section 1877 of the Social Security Act (42 U.S.C.  
8 1395nn) is amended by adding at the end the following  
9 new subsection:

10       “(j) SELF-DISCLOSURE PROTOCOLS.—

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

13                   “(A) an entity or individual may volun-  
14 tarily disclose a compensation arrangement with  
15 actual or potential inadvertent technical non-  
16 compliance with subsection (a)(1) (as defined in  
17 paragraph (3)(G)) pursuant to either the self-  
18 referral disclosure protocol (defined in para-

1 graph (2)) or the alternative protocol for tech-  
2 nical noncompliance under paragraph (3);

3 “(B) disclosures voluntarily withdrawn  
4 from the alternative protocol for technical non-  
5 compliance may be submitted to the self-refer-  
6 ral disclosure protocol; and

7 “(C) an entity that, prior to the establish-  
8 ment of the alternative protocol for technical  
9 noncompliance, disclosed to the self-referral dis-  
10 closure protocol a compensation arrangement  
11 that was in inadvertent technical noncompliance  
12 with subsection (a)(1), may elect , not later  
13 than one year after such alternative protocol is  
14 established, to withdraw such disclosure from  
15 the self-referral disclosure protocol and instead  
16 submit the disclosure to such alternative pro-  
17 tocol.

18 “(2) SELF-REFERRAL DISCLOSURE PRO-  
19 TOCOL.—The term ‘self-referral disclosure protocol’  
20 or ‘SRDP’ means the protocol specified in section  
21 6409 of Public Law 111–148.

22 “(3) ALTERNATIVE PROTOCOL FOR  
23 INADVERTANT TECHNICAL NONCOMPLIANCE.—

24 “(A) IN GENERAL.—The Secretary shall  
25 establish, not later than one year after the date

1 of the enactment of this subsection, an alter-  
2 native protocol for technical noncompliance (in  
3 this subsection referred to as the ‘APTN’) to  
4 enable entities to disclose arrangements that  
5 were previously in inadvertent technical non-  
6 compliance with subsection (a)(1) and, upon the  
7 Secretary’s acceptance of the disclosure, make  
8 payment of a civil monetary penalty. Payment  
9 of such civil monetary penalty for an arrange-  
10 ment shall resolve only overpayments due and  
11 owing as a result of such arrangement’s inad-  
12 vertent technical noncompliance with this sec-  
13 tion. The provisions of section 6409 of Public  
14 Law 111–148 shall not apply to this subsection.

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

17 “(i) involve only inadvertent technical  
18 noncompliance with subsection (a)(1) that  
19 was ended by termination or expiration of  
20 the arrangement, or by action of the par-  
21 ties to the arrangement to resolve the tech-  
22 nical noncompliance, prior to the date of  
23 submission of the disclosure to the APTN;

24 “(ii) be made in the form and manner  
25 specified by the Secretary on the public

1 Internet website of the Centers for Medi-  
2 care & Medicaid Services and include de-  
3 scriptions of—

4 “(I) the compensation arrange-  
5 ment that was in technical noncompli-  
6 ance with subsection (a)(1);

7 “(II) how and when the technical  
8 noncompliance with subsection (a)(1)  
9 was ended or the arrangement was  
10 otherwise terminated; and

11 “(III) how the remuneration paid  
12 under the compensation arrangement  
13 being disclosed was—

14 “(aa) consistent with the  
15 fair market value of the items  
16 and services that were provided  
17 under the compensation arrange-  
18 ment; and

19 “(bb) not determined in a  
20 manner that directly or indirectly  
21 takes into account the volume or  
22 value of referrals or other busi-  
23 ness generated between the par-  
24 ties;

1                   “(iii) include a form settlement agree-  
2                   ment provided by the Secretary signed by  
3                   the entity; and

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

10                   “(C) ACCEPTANCE OR REJECTION OF DIS-  
11                   CLOSURE BY THE SECRETARY.—The following  
12                   rules shall apply to the acceptance or rejection  
13                   of a disclosure under the APTN:

14                   “(i) The Secretary shall accept or re-  
15                   ject a complete, accurate, and timely dis-  
16                   closure.

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

20                   “(iii) The Secretary may request addi-  
21                   tional information from the disclosing  
22                   party.

23                   “(iv) Upon acceptance by the Sec-  
24                   retary, the Secretary shall notify the dis-  
25                   closing party in writing of such acceptance.

1                   “(v) The disclosure shall be rejected  
2                   if—

3                               “(I) the disclosing party fails to  
4                               furnish the additional information re-  
5                               quested by the Secretary in such form  
6                               and manner as the Secretary may  
7                               specify; or

8                               “(II) in the Secretary’s sole de-  
9                               termination, the noncompliance dis-  
10                              closed did not meet the disclosure re-  
11                              quirements specified in subparagraph  
12                              (B).

13                   “(vi) The disclosure shall be accepted  
14                   if the Secretary—

15                               “(I) has issued a written notice  
16                               to the disclosing party that the disclo-  
17                               sure is determined to satisfy the re-  
18                               quirements for disclosures under this  
19                               section; or

20                               “(II) has not rejected a complete,  
21                               accurate, and timely disclosure that  
22                               satisfies each of the requirements for  
23                               disclosures under this section and 180  
24                               calendar days have passed since noti-

1                   fication of receipt by the Secretary of  
2                   the disclosure.

3                   “(vii) In determining whether to ac-  
4                   cept a disclosure, the Secretary may rea-  
5                   sonably rely on the information and certifi-  
6                   cations included in the disclosure.

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

12                  “(E) CIVIL MONETARY PENALTIES PURSU-  
13                  ANT TO THE ALTERNATIVE PROTOCOL FOR  
14                  TECHNICAL NONCOMPLIANCE.—

15                  “(i) IN GENERAL.—Subject to clause  
16                  (ii), for each arrangement disclosed under  
17                  this subsection and accepted under sub-  
18                  paragraph (C), the Secretary shall impose  
19                  a single civil monetary penalty of—

20                  “(I) \$5,000, in the case in which  
21                  disclosure of the inadvertent tech-  
22                  nically noncompliant compensation ar-  
23                  rangement was submitted to the Sec-  
24                  retary not later than the date that is  
25                  one year after the initial date of inad-

1                   vertent technical noncompliance with  
2                   subsection (a)(1); or

3                   “(II) \$10,000, in the case in  
4                   which the disclosure of the technically  
5                   noncompliant compensation arrange-  
6                   ment was submitted to the Sec-  
7                   retary—

8                   “(aa) after the date that is  
9                   more than one year after the ini-  
10                  tial date of the entity’s inad-  
11                  vertent technical noncompliance  
12                  with subsection (a)(1); and

13                  “(bb) not after the date that  
14                  is 3 years (or, in the case of a  
15                  disclosure submitted after the  
16                  5th year for which this sub-  
17                  section applies, the date that is 2  
18                  years) from the initial date of the  
19                  entity’s inadvertent technical  
20                  noncompliance with subsection  
21                  (a)(1).

22                  “(ii) SPECIAL RULE FOR ENTITIES  
23                  THAT DISCLOSED TO THE APTN AFTER  
24                  WITHDRAWING A DISCLOSURE FROM THE  
25                  SRDP.—In the case of an entity that elects



1 under paragraph (1)(C) to withdraw a dis-  
2 closure from the self-referral disclosure  
3 protocol and instead submit the disclosure  
4 to the APTN under this subsection, in de-  
5 termining the applicable civil monetary  
6 penalty under clause (i), the date of disclo-  
7 sure to the self-referral disclosure protocol  
8 (as defined in paragraph (2)) shall be sub-  
9 stituted for the date of disclosure to the  
10 APTN.

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

15 “(G) PUBLICATION ON INTERNET WEBSITE  
16 OF APTN INFORMATION.—Not later than one  
17 year after the date of the enactment of this sec-  
18 tion, the Secretary shall post information on the  
19 public Internet website of the Centers for Medi-  
20 care & Medicaid Services to inform relevant  
21 stakeholders of how to disclose and make pay-  
22 ment of a civil monetary penalty for inadvertent  
23 technical noncompliance with subsection (a)(1).

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

1 “(i) TECHNICAL NONCOMPLIANCE.—

2 The term ‘technical noncompliance with  
3 subsection (a)(1)’ means, with respect to a  
4 compensation arrangement, that—

5 “(I) the arrangement is not  
6 signed by one or more parties to the  
7 arrangement;

8 “(II) following the expiration of  
9 the arrangement, the arrangement  
10 was a holdover arrangement for a pe-  
11 riod longer than permitted in regula-  
12 tions issued by the Secretary; or

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

21 “(ii) INADVERTENT.—The term ‘inad-  
22 vertent’ means, with respect to a com-  
23 pensation arrangement that is in non-  
24 compliance, that an entity that is a party  
25 to the compensation arrangement did not

1 know or should not have known of the non-  
2 compliance.

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

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

