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(Original Signature of Member)

115TH CONGRESS
1ST SESSION

H. R. 3726

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 HOUSE OF REPRESENTATIVES

Mr. MARCHANT (for himself and Mr. KIND) introduced the following bill; which was 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 2017”.

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)(G)) 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18 “(B) disclosures voluntarily withdrawn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-refer-
21 ral 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
2 than one year after such alternative protocol is
3 established, to withdraw such disclosure from
4 the self-referral disclosure protocol and instead
5 submit the disclosure to such alternative pro-
6 tocol.

7 “(2) SELF-REFERRAL DISCLOSURE PRO-
8 TOCOL.—The term ‘self-referral disclosure protocol’
9 or ‘SRDP’ means the protocol specified in section
10 6409 of Public Law 111–148.

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

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

1 vertent technical noncompliance with this sec-
2 tion. The provisions of section 6409 of Public
3 Law 111–148 shall not apply to this subsection.

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

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

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

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

21 “(II) how and when the technical
22 noncompliance with subsection (a)(1)
23 was ended or the arrangement was
24 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 the Secretary—

5 “(I) has issued a written notice
6 to the disclosing party that the disclo-
7 sure is determined to satisfy the re-
8 quirements for disclosures under this
9 section; or

10 “(II) has not rejected a complete,
11 accurate, and timely disclosure that
12 satisfies each of the requirements for
13 disclosures under this section and 180
14 calendar days have passed since noti-
15 fication of receipt by the Secretary of
16 the disclosure.

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

21 “(D) WITHDRAWAL OF DISCLOSURE.—
22 Prior to acceptance or rejection of a disclosure
23 by the Secretary, an entity may voluntarily
24 withdraw such disclosure from the APTN.

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

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

9 “(I) \$5,000, in the case in which
10 disclosure of the inadvertent tech-
11 nically noncompliant compensation ar-
12 rangement was submitted to the Sec-
13 retary not later than the date that is
14 one year after the initial date of inad-
15 vertent technical noncompliance with
16 subsection (a)(1); or

17 “(II) \$10,000, in the case in
18 which the disclosure of the technically
19 noncompliant compensation arrange-
20 ment was submitted to the Sec-
21 retary—

22 “(aa) after the date that is
23 more than one year after the ini-
24 tial date of the entity’s inad-

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

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

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

1 “(F) RELATION TO ADVISORY OPINIONS.—

2 The APTN shall be separate from the advisory
3 opinion process set forth in regulations imple-
4 menting subsection (g) of this section.

5 “(G) PUBLICATION ON INTERNET WEBSITE

6 OF APTN INFORMATION.—Not later than one
7 year after the date of the enactment of this sec-
8 tion, the Secretary shall post information on the
9 public Internet website of the Centers for Medi-
10 care & Medicaid Services to inform relevant
11 stakeholders of how to disclose and make pay-
12 ment of a civil monetary penalty for inadvertent
13 technical noncompliance with subsection (a)(1).

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

15 “(i) TECHNICAL NONCOMPLIANCE.—

16 The term ‘technical noncompliance with
17 subsection (a)(1)’ means, with respect to a
18 compensation arrangement, that—

19 “(I) the arrangement is not
20 signed by one or more parties to the
21 arrangement;

22 “(II) following the expiration of
23 the arrangement, the arrangement
24 was a holdover arrangement for a pe-

1 riod longer than permitted in regula-
2 tions issued by the Secretary; or

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

11 “(ii) INADVERTENT.—The term ‘inad-
12 vertent’ means, with respect to a com-
13 pensation arrangement that is in non-
14 compliance, that an entity that is a party
15 to the compensation arrangement did not
16 know or should not have known of the non-
17 compliance.

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

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