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(Original Signature of Member)

115TH CONGRESS  
2D SESSION

# **H. R. 6690**

To establish a smart card pilot program to combat fraud, waste, and abuse  
and to protect beneficiary identity under the Medicare program.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. ROSKAM introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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## **A BILL**

To establish a smart card pilot program to combat fraud,  
waste, and abuse and to protect beneficiary identity  
under the Medicare program.

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 “Fighting Fraud to Pro-  
5       tect Care for Seniors Act of 2018”.

1 **SEC. 2. MEDICARE SMART CARD PILOT PROGRAM.**

2 Part E of title XVIII of the Social Security Act is  
3 amended by inserting after section 1866E the following  
4 new section:

5 **“SEC. 1866F. SMART CARD PILOT PROGRAM.**

6 “(a) IMPLEMENTATION.—

7 “(1) IN GENERAL.—Not later than 36 months  
8 after the date of the enactment of this section, the  
9 Secretary shall establish a pilot program (in this sec-  
10 tion referred to as the ‘pilot program’) to evaluate  
11 the feasibility of using smart card technology under  
12 this title.

13 “(2) SMART CARD TECHNOLOGY DEFINED.—In  
14 this section, the term ‘smart card technology’ means  
15 the following:

16 “(A) BENEFICIARY SMART CARD.—A ma-  
17 chine readable, tamper-resistant card (in this  
18 section referred to as a ‘smart card’) that in-  
19 cludes an embedded integrated circuit chip with  
20 a secure micro-controller (as defined by the Na-  
21 tional Institute on Standards and Technology)  
22 that enables the verification and secure, elec-  
23 tronic authentication of the identity of a Medi-  
24 care beneficiary at the point of service through  
25 a combination of the smart card and a personal

1 identification number known by or associated  
2 with such beneficiary.

3 “(B) CARD READER TECHNOLOGY.—Infor-  
4 mation technology that enables a supplier and  
5 provider to authenticate the identity of a Medi-  
6 care beneficiary through presentation of such a  
7 smart card and such components, with such au-  
8 thentication to be reflected through the use of  
9 a modifier or in another appropriate manner, as  
10 determined by the Secretary, in the claims ad-  
11 judication process.

12 “(3) PROGRAM DESIGN ELEMENTS.—The pilot  
13 program shall be conducted for a period of 3 years  
14 consistent with the following:

15 “(A) SELECTION OF AREA.—In consulta-  
16 tion with the Inspector General of the Depart-  
17 ment of Health and Human Services, the Sec-  
18 retary shall select at least 3 geographic areas in  
19 which the pilot program will operate.

20 “(B) SELECTION OF SUPPLIER AND PRO-  
21 VIDER TYPES.—In consultation with the Inspec-  
22 tor General of the Department of Health and  
23 Human Services, the Secretary shall select sup-  
24 plier and provider types that will be required to  
25 participate in the pilot program (referred to in

1 this section as ‘participating suppliers and pro-  
2 viders’). In selecting such supplier and provider  
3 types, the Secretary shall—

4 “(i) take into account the risk of  
5 fraud, waste, and abuse (as described in  
6 section 1866(j)(2)(B)) with respect to the  
7 category of provider or supplier) and other  
8 factors as determined appropriate by the  
9 Secretary; and

10 “(ii) limit the pilot program to no  
11 more than 2,000 suppliers and providers.

12 “(C) SUPPLIER AND PROVIDER HARDSHIP  
13 EXEMPTIONS.—The Secretary shall exempt  
14 from participation in the pilot program a sup-  
15 plier or provider that either—

16 “(i) does not have access to card read-  
17 er technology (as described in paragraph  
18 (2)(B));

19 “(ii) does not have sufficient internet  
20 access; or

21 “(iii) has a low volume (as determined  
22 by the Secretary) of Medicare claims for  
23 which payment is made under this title.

24 “(D) SMART CARD AND SMART CARD  
25 READER ISSUANCE.—

1                   “(i) BENEFICIARY SMART CARD  
2                   ISSUANCE.—The Secretary shall provide  
3                   for, at no cost, the issuance (and, if nec-  
4                   essary, replacement) of beneficiary smart  
5                   cards described in paragraph (2)(A) to all  
6                   Medicare beneficiaries residing in a geo-  
7                   graphic area in which the pilot program is  
8                   conducted under subparagraph (A). Infor-  
9                   mation that appears on Medicare cards  
10                  used outside the pilot program may appear  
11                  on the face of the beneficiary smart card.

12                  “(ii) SUPPLIER AND PROVIDER SMART  
13                  CARD READER ISSUANCE.—At the request  
14                  of a participating supplier or provider, the  
15                  Secretary shall provide for, at no cost, the  
16                  issuance to such supplier or provider of  
17                  smart card hardware and software nec-  
18                  essary to participate in the pilot program.

19                  “(E) INFORMATION ON OPERATION OF  
20                  PILOT PROGRAM.—The Secretary shall provide  
21                  participating suppliers and providers and Medi-  
22                  care beneficiaries who are furnished items and  
23                  services by such suppliers and providers, with  
24                  information on the operation of the pilot pro-

1           gram, including privacy protections described in  
2           subparagraph (I).

3           “(F) ACCESS TO SERVICES OUTSIDE THE  
4           PILOT PROGRAM.—

5           “(i) BENEFICIARIES.—Medicare bene-  
6           ficiaries who receive beneficiary smart  
7           cards may receive items and services from  
8           suppliers and providers not participating in  
9           the pilot program.

10          “(ii) SUPPLIERS AND PROVIDER  
11          CLAIMS.—

12           “(I) SUPPLIERS AND PROVIDERS  
13           NOT PARTICIPATING IN PILOT.—Sup-  
14           pliers and providers not participating  
15           in the pilot program may submit  
16           claims under this title for items and  
17           services furnished without use of  
18           smart card technology to Medicare  
19           beneficiaries who receive beneficiary  
20           smart cards.

21           “(II) PARTICIPATING SUPPLIERS  
22           AND PROVIDERS FURNISHING SERV-  
23           ICES TO NON-PARTICIPATING BENE-  
24           FIARIES.—Supplier and providers  
25           participating in the pilot program may

1 submit claims under this title for  
2 items and services furnished to Medi-  
3 care beneficiaries who do not receive  
4 beneficiary smart cards.

5 “(G) CLARIFICATION ON ACCESS TO SERV-  
6 ICES WITHOUT SMART CARDS.—In the case of a  
7 Medicare beneficiary who receives a beneficiary  
8 smart card and does not present such card at  
9 the time of receipt of items or services from a  
10 participating supplier or provider, the partici-  
11 pating supplier or provider—

12 “(i) shall furnish such items or serv-  
13 ices to such Medicare beneficiary as if such  
14 beneficiary does present such card;

15 “(ii) may submit claims under this  
16 title for such items or services; and

17 “(iii) shall provide, in accordance with  
18 such manner, process, and timing as speci-  
19 fied by the Secretary, information to the  
20 Secretary (through the contractor de-  
21 scribed in subparagraph (H)) that such  
22 beneficiary received such a smart card but  
23 did not have the smart card at the time  
24 the items or services were furnished.

1           “(H) PRIVATE SECTOR IMPLEMENTA-  
2           TION.—The Secretary shall select, by using a  
3           competitive procurement process in accordance  
4           with the provisions of chapter 1 of title 48,  
5           Code of Federal Regulations (or any successor  
6           regulations), a private sector contractor to im-  
7           plement and operate the pilot program.

8           “(I) PRIVACY PROTECTIONS.—The Sec-  
9           retary shall ensure that the pilot program com-  
10          plies with applicable Federal laws and regula-  
11          tions concerning individually identifiable health  
12          information, including the Privacy Act of 1974  
13          and regulations promulgated under section  
14          264(c) of the Health Insurance Portability and  
15          Accountability Act of 1996 and such individ-  
16          ually identifiable information shall be exempt  
17          from disclosure under section 552(b)(3) of title  
18          5, United States Code.

19          “(J) MANDATORY PARTICIPATION.—Sub-  
20          ject to subparagraph (C), in the case of items  
21          or services furnished by a provider or supplier  
22          included in a supplier or provider type selected  
23          under subparagraph (B) in a geographic area  
24          selected under subparagraph (A), payment may  
25          only be made under this title for such items or



1 services during the period of the pilot program  
2 if the provider or supplier is participating in the  
3 pilot program.

4 “(K) PROHIBITION OF SMART CARD  
5 FEES.—No transaction, utilization, or other  
6 fees may be imposed on Medicare beneficiaries  
7 or participating suppliers and providers with re-  
8 spect to the use of smart cards under the pilot  
9 program.

10 “(4) STAKEHOLDER INPUT.—

11 “(A) IN GENERAL.—Not later than 6  
12 months after the date of the enactment of this  
13 section, the Secretary shall convene a panel  
14 consisting of stakeholders (including representa-  
15 tives of providers, suppliers, Medicare bene-  
16 ficiaries, and claims processing contractors) se-  
17 lected by the Secretary for purposes of pro-  
18 viding input to the Secretary on the implemen-  
19 tation of the pilot program (including on the se-  
20 lection of areas and participants under subpara-  
21 graphs (A) and (B) of paragraph (3) and the  
22 development of exemptions and requirements  
23 described in such paragraph).

24 “(B) NONAPPLICABILITY OF FACA.—The  
25 Federal Advisory Committee Act shall not apply

1 to the panel convened pursuant to subpara-  
2 graph (A).

3 “(5) DEFINITIONS.—In this section:

4 “(A) The terms ‘supplier’ and ‘provider’  
5 have the meanings given the terms ‘supplier’  
6 and ‘provider of services’ in subsections (d) and  
7 (u), respectively, of section 1861.

8 “(B) The term ‘Medicare beneficiary’  
9 means an individual who is enrolled in the origi-  
10 nal Medicare fee-for-service program under  
11 parts A and B and is not enrolled in an MA  
12 plan under part C, an eligible organization  
13 under section 1876, or a PACE program under  
14 section 1894.

15 “(b) REPORTS TO CONGRESS.—The Secretary shall  
16 submit to Congress the following reports:

17 “(1) INTERIM PERFORMANCE REPORT.—Not  
18 later than 2 years after the date the pilot program  
19 is implemented, an interim report on the perform-  
20 ance of such program.

21 “(2) FINAL PERFORMANCE REPORT.—Not later  
22 than 18 months after the date of the completion of  
23 the pilot program, a final evaluation on the effective-  
24 ness of the pilot program. The report shall include  
25 the following:

1           “(A) An evaluation of the extent to which  
2 health care fraud schemes were affected by the  
3 use of smart card technology.

4           “(B) A description of any barriers to im-  
5 plementation of the pilot program.

6           “(C) Participant feedback on the pilot pro-  
7 gram.

8           “(D) Recommendations regarding the fu-  
9 ture use of smart cards to address fraud under  
10 this title.

11           “(E) Data on the information provided  
12 under subsection (a)(3)(G)(iii).”.