

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 6690
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 “Fighting Fraud to Pro-
3 tect Care for Seniors Act of 2018”.

4 SEC. 2. MEDICARE SMART CARD PILOT PROGRAM.

5 Part E of title XVIII of the Social Security Act is
6 amended by inserting after section 1866E the following
7 new section:

8 “SEC. 1866F. SMART CARD PILOT PROGRAM.

9 “(a) IMPLEMENTATION.—

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

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

1 “(A) BENEFICIARY SMART CARD.—A ma-
2 chine readable, tamper-resistant card (in this
3 section referred to as a ‘smart card’) that in-
4 cludes an embedded integrated circuit chip with
5 a secure micro-controller (as defined by the Na-
6 tional Institute on Standards and Technology)
7 that enables the verification and secure, elec-
8 tronic authentication of the identity of a Medi-
9 care beneficiary at the point of service through
10 a combination of the smart card and a personal
11 identification number known by or associated
12 with such beneficiary.

13 “(B) CARD READER TECHNOLOGY.—Infor-
14 mation technology that enables a supplier and
15 provider to authenticate the identity of a Medi-
16 care beneficiary through presentation of such a
17 smart card and such components, with such au-
18 thentication to be reflected through the use of
19 a modifier or in another appropriate manner, as
20 determined by the Secretary, in the claims ad-
21 judication process.

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

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

6 “(B) SELECTION OF SUPPLIER AND PRO-
7 VIDER TYPES.—In consultation with the Inspec-
8 tor General of the Department of Health and
9 Human Services, the Secretary shall select sup-
10 plier and provider types that will be required to
11 participate in the pilot program (referred to in
12 this section as ‘participating suppliers and pro-
13 viders’). In selecting such supplier and provider
14 types, the Secretary shall—

15 “(i) take into account the risk of
16 fraud, waste, and abuse (as described in
17 section 1866(j)(2)(B)) with respect to the
18 category of provider or supplier) and other
19 factors as determined appropriate by the
20 Secretary; and

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

23 “(C) SUPPLIER AND PROVIDER HARDSHIP
24 EXEMPTIONS.—The Secretary shall exempt

1 from participation in the pilot program a sup-
2 plier or provider that either—

3 “(i) does not have access to card read-
4 er technology (as described in paragraph
5 (2)(B));

6 “(ii) does not have sufficient internet
7 access; or

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

11 “(D) SMART CARD AND SMART CARD
12 READER ISSUANCE.—

13 “(i) BENEFICIARY SMART CARD
14 ISSUANCE.—The Secretary shall provide
15 for, at no cost, the issuance (and, if nec-
16 essary, replacement) of beneficiary smart
17 cards described in paragraph (2)(A) to all
18 Medicare beneficiaries residing in a geo-
19 graphic area in which the pilot program is
20 conducted under subparagraph (A). Infor-
21 mation that appears on Medicare cards
22 used outside the pilot program may appear
23 on the face of the beneficiary smart card.

24 “(ii) SUPPLIER AND PROVIDER SMART
25 CARD READER ISSUANCE.—At the request

1 of a participating supplier or provider, the
2 Secretary shall provide for, at no cost, the
3 issuance to such supplier or provider of
4 smart card hardware and software nec-
5 essary to participate in the pilot program.

6 “(E) INFORMATION ON OPERATION OF
7 PILOT PROGRAM.—The Secretary shall provide
8 participating suppliers and providers and Medi-
9 care beneficiaries who are furnished items and
10 services by such suppliers and providers, with
11 information on the operation of the pilot pro-
12 gram, including privacy protections described in
13 subparagraph (I).

14 “(F) ACCESS TO SERVICES OUTSIDE THE
15 PILOT PROGRAM.—

16 “(i) BENEFICIARIES.—Medicare bene-
17 ficiaries who receive beneficiary smart
18 cards may receive items and services from
19 suppliers and providers not participating in
20 the pilot program.

21 “(ii) SUPPLIERS AND PROVIDER
22 CLAIMS.—

23 “(I) SUPPLIERS AND PROVIDERS
24 NOT PARTICIPATING IN PILOT.—Sup-
25 pliers and providers not participating

1 in the pilot program may submit
2 claims under this title for items and
3 services furnished without use of
4 smart card technology to Medicare
5 beneficiaries who receive beneficiary
6 smart cards.

7 “(II) PARTICIPATING SUPPLIERS
8 AND PROVIDERS FURNISHING SERV-
9 ICES TO NON-PARTICIPATING BENE-
10 FICIARIES.—Supplier and providers
11 participating in the pilot program may
12 submit claims under this title for
13 items and services furnished to Medi-
14 care beneficiaries who do not receive
15 beneficiary smart cards.

16 “(G) CLARIFICATION ON ACCESS TO SERV-
17 ICES WITHOUT SMART CARDS.—In the case of a
18 Medicare beneficiary who receives a beneficiary
19 smart card and does not present such card at
20 the time of receipt of items or services from a
21 participating supplier or provider, the partici-
22 pating supplier or provider—

23 “(i) shall furnish such items or serv-
24 ices to such Medicare beneficiary as if such
25 beneficiary does present such card;

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

3 “(iii) shall provide, in accordance with
4 such manner, process, and timing as speci-
5 fied by the Secretary, information to the
6 Secretary (through the contractor de-
7 scribed in subparagraph (H)) that such
8 beneficiary received such a smart card but
9 did not have the smart card at the time
10 the items or services were furnished.

11 “(H) PRIVATE SECTOR IMPLEMENTA-
12 TION.—The Secretary shall select, by using a
13 competitive procurement process in accordance
14 with the provisions of chapter 1 of title 48,
15 Code of Federal Regulations (or any successor
16 regulations), a private sector contractor to im-
17 plement and operate the pilot program.

18 “(I) PRIVACY PROTECTIONS.—The Sec-
19 retary shall ensure that the pilot program com-
20 plies with applicable Federal laws and regula-
21 tions concerning individually identifiable health
22 information, including the Privacy Act of 1974
23 and regulations promulgated under section
24 264(c) of the Health Insurance Portability and
25 Accountability Act of 1996 and such individ-

1 usually identifiable information shall be exempt
2 from disclosure under section 552(b)(3) of title
3 5, United States Code.

4 “(J) MANDATORY PARTICIPATION.—Sub-
5 ject to subparagraph (C), in the case of items
6 or services furnished by a provider or supplier
7 included in a supplier or provider type selected
8 under subparagraph (B) in a geographic area
9 selected under subparagraph (A), payment may
10 only be made under this title for such items or
11 services during the period of the pilot program
12 if the provider or supplier is participating in the
13 pilot program.

14 “(K) PROHIBITION OF SMART CARD
15 FEES.—No transaction, utilization, or other
16 fees may be imposed on Medicare beneficiaries
17 or participating suppliers and providers with re-
18 spect to the use of smart cards under the pilot
19 program.

20 “(4) STAKEHOLDER INPUT.—

21 “(A) IN GENERAL.—Not later than 6
22 months after the date of the enactment of this
23 section, the Secretary shall convene a panel
24 consisting of stakeholders (including representa-
25 tives of providers, suppliers, technology vendors,

1 Medicare beneficiaries, and claims processing
2 contractors) selected by the Secretary for pur-
3 poses of providing input to the Secretary on the
4 implementation of the pilot program (including
5 on the selection of areas and participants under
6 subparagraphs (A) and (B) of paragraph (3)
7 and the development of exemptions and require-
8 ments described in such paragraph).

9 “(B) NONAPPLICABILITY OF FACA.—The
10 Federal Advisory Committee Act shall not apply
11 to the panel convened pursuant to subpara-
12 graph (A).

13 “(5) DEFINITIONS.—In this section:

14 “(A) The terms ‘supplier’ and ‘provider’
15 have the meanings given the terms ‘supplier’
16 and ‘provider of services’ in subsections (d) and
17 (u), respectively, of section 1861.

18 “(B) The term ‘Medicare beneficiary’
19 means an individual who is enrolled in the origi-
20 nal Medicare fee-for-service program under
21 parts A and B and is not enrolled in an MA
22 plan under part C, an eligible organization
23 under section 1876, or a PACE program under
24 section 1894.

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

3 “(1) INTERIM PERFORMANCE REPORT.—Not
4 later than 2 years after the date the pilot program
5 is implemented, an interim report on the perform-
6 ance of such program.

7 “(2) FINAL PERFORMANCE REPORT.—Not later
8 than 18 months after the date of the completion of
9 the pilot program, a final evaluation on the effective-
10 ness of the pilot program. The report shall include
11 the following:

12 “(A) An evaluation of the effect of the
13 pilot program on potential fraud under the in-
14 surance programs established under this title.

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

17 “(C) Participant feedback on the pilot pro-
18 gram.

19 “(D) Recommendations regarding the fu-
20 ture use of smart cards to address fraud under
21 this title.

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

