

111TH CONGRESS  
1ST SESSION

# H. R. 4390

To amend title XI of the Social Security Act to provide for enhanced program and provider protections under the Medicare, Medicaid, and Children's Health Insurance programs.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2009

Mr. MURPHY of New York introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XI of the Social Security Act to provide for enhanced program and provider protections under the Medicare, Medicaid, and Children's Health Insurance programs.

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 "Medicare and Medicaid  
5 Fraud Prevention and Control Act of 2009".

1 **SEC. 2. ENHANCED CMS PROGRAM PROTECTION AUTHOR-**  
2 **ITY.**

3 (a) IN GENERAL.—Title XI of the Social Security Act  
4 (42 U.S.C. 1301 et seq.) is amended by inserting after  
5 section 1128F the following new section:

6 **“SEC. 1128G. ENHANCED PROGRAM AND PROVIDER PRO-**  
7 **TECTIONS IN THE MEDICARE, MEDICAID, AND**  
8 **CHIP PROGRAMS.**

9 “(a) CERTAIN AUTHORIZED SCREENING, ENHANCED  
10 OVERSIGHT PERIODS, ENROLLMENT MORATORIA, AND  
11 PERIODIC VALIDATIONS.—

12 “(1) AUTHORIZATION.—

13 “(A) IN GENERAL.—In which the Sec-  
14 retary has determined that there is a significant  
15 risk of fraudulent activity (as determined by the  
16 Secretary based on relevant complaints, reports,  
17 referrals by law enforcement or other sources,  
18 data analysis, trending information, or claims  
19 submissions by providers of services and sup-  
20 pliers) with respect to a category of provider of  
21 services or supplier of items or services, which  
22 may be a category within a geographic area,  
23 under title XVIII, XIX, or XXI, the Secretary  
24 may impose, subject to subparagraph (B), with  
25 respect to a program under title XVIII, XIX, or  
26 XXI, the Secretary impose any of the following

1 requirements with respect to a provider of serv-  
2 ices or a supplier (whether such provider or  
3 supplier is initially enrolling in the program or  
4 is renewing such enrollment):

5 “(i) Screening under paragraph (2).

6 “(ii) Enhanced oversight periods  
7 under paragraph (3).

8 “(iii) Enrollment moratoria under  
9 paragraph (4).

10 “(iv) Periodic validations of authoriza-  
11 tions under paragraph (5).

12 “(B) STATE REQUIREMENT.—In applying  
13 this subsection for purposes of title XIX and  
14 XXI, the Secretary may require a State to  
15 carry out the provisions of this subsection (and  
16 subsection (b)) as a requirement of the State  
17 plan under title XIX or the child health plan  
18 under title XXI. Actions taken and determina-  
19 tions made under this subsection and subsection  
20 (b) shall not be subject to review by a judicial  
21 tribunal.

22 “(2) SCREENING.—For purposes of paragraph  
23 (1), the Secretary shall establish procedures under  
24 which screening is conducted with respect to pro-

1       viders of services and suppliers described in such  
2       paragraph. Such screening may include at least—

3               “(A) licensing board checks;

4               “(B) screening against the list of individ-  
5       uals and entities excluded from the program  
6       under title XVIII, XIX, or XXI;

7               “(C) the excluded provider list system;

8               “(D) background checks;

9               “(E) unannounced pre-enrollment or other  
10       site visits; and

11              “(F) heightened disclosure of affiliations.

12              “(3) ENHANCED OVERSIGHT PERIOD.—For  
13       purposes of paragraph (1), the Secretary shall estab-  
14       lish procedures to provide for a period of not less  
15       than 30 days and not more than 365 days during  
16       which providers of services and suppliers described  
17       in such paragraph, as the Secretary determines ap-  
18       propriate, would be subject to enhanced oversight,  
19       such as required or unannounced (or required and  
20       unannounced) site visits or inspections, prepayment  
21       review, enhanced review of claims, and such other  
22       actions as specified by the Secretary, under the pro-  
23       grams under titles XVIII, XIX, and XXI. Under  
24       such procedures, the Secretary may extend such pe-  
25       riod for more than 365 days if the Secretary deter-

1 mines that after the initial period such additional  
2 period of oversight is necessary.

3 “(4) ENHANCED OVERSIGHT FOR CLAIMS OF  
4 DME SUPPLIERS.—If the Secretary determines under  
5 paragraph (1) that there is a significant risk of  
6 fraudulent activity among suppliers of durable med-  
7 ical equipment, in the case of a supplier of durable  
8 medical equipment who is within a category or geo-  
9 graphic area under title XVIII identified pursuant to  
10 such determination, whether at the time of initial  
11 enrollment under such title or otherwise, the Sec-  
12 retary shall, notwithstanding section 1842(c)(2),  
13 withhold payment under such title with respect to  
14 durable medical equipment furnished by such sup-  
15 plier during a period specified by the Secretary.

16 “(5) PERIODIC REVIEW OF PHYSICIAN AUTHOR-  
17 IZATIONS.—For purposes of paragraph (1), the Sec-  
18 retary shall establish a program under which, in  
19 cases in which the Secretary (or an administrative  
20 contractor) determines under a program described in  
21 paragraph (1) that there may have been a pattern  
22 of excessive prescribing or authorization of items or  
23 services by a physician or other health care profes-  
24 sional—

1           “(A) the Secretary (or contractor) submits  
2           to the physician or professional on a quarterly  
3           basis a list of the claims submitted under the  
4           program based on a prescription or authoriza-  
5           tion by the physician or professional; and

6           “(B) if the physician or professional does  
7           not validate by the end of the 90-day period be-  
8           ginning on the date of receipt of the list the le-  
9           gitimacy of the previously identified claims for  
10          items and services prescribed or authorized by  
11          the physician or professional, claims relating to  
12          such items and services prescribed or author-  
13          ized by such physician or professional for subse-  
14          quent periods shall be denied until such valida-  
15          tion is made.

16          “(6) MORATORIUM ON ENROLLMENT OF PRO-  
17          VIDERS AND SUPPLIERS.—For purposes of para-  
18          graph (1), the Secretary, based upon a finding of a  
19          risk of serious ongoing fraud within a program  
20          under title XVIII, XIX, or XXI, may impose a mor-  
21          atorium on the enrollment of providers of services  
22          and suppliers within a category of providers of serv-  
23          ices and suppliers (including a category within a spe-  
24          cific geographic area) under such title. Such a mora-  
25          torium may only be imposed if the Secretary makes

1 a determination that the moratorium would not ad-  
2 versely impact access of individuals to care under  
3 such program.

4 “(7) CLARIFICATION.—Nothing in this sub-  
5 section shall be interpreted to preclude or limit the  
6 ability of a State to engage in provider screening or  
7 enhanced provider oversight activities beyond those  
8 required by the Secretary.

9 “(b) PROBATIONARY PERIOD TO DETERMINE LEGIT-  
10 IMACY OF NEW PROVIDERS AND SUPPLIERS.—The Sec-  
11 retary shall establish procedures (without regard to sec-  
12 tion 1874A(h)) under which at the time a provider or sup-  
13 plier is first approved for participation in the program  
14 under title XVIII, XIX, or XXI, there shall be a proba-  
15 tionary period of heightened review (specified by the Sec-  
16 retary, but in no case longer than 1 year) under which—

17 “(1) the Secretary (or an administrative con-  
18 tractor) shall review a random or other appropriate  
19 sample of claims to determine the legitimacy of the  
20 operations of the provider or supplier;

21 “(2) the Secretary (or such contractor) shall  
22 validate the legitimacy of physician prescriptions or  
23 other authorizations for the items and services fur-  
24 nished by such provider or supplier; and

1           “(3) if the Secretary, on the basis of such a re-  
2           view of such claims or such validation, makes a pre-  
3           liminary finding that a significant or dispropor-  
4           tionate number of such claims are not legitimate (as  
5           determined by the Secretary), the Secretary may  
6           suspend or terminate the participation of the pro-  
7           vider or supplier with notice to the provider or sup-  
8           plier.

9           The provisions of subsections (c) through (g) of section  
10          1128 shall apply to a suspension or termination under  
11          paragraph (3) in the same manner as such provisions  
12          apply to an exclusion under subsection (a) or (b) of such  
13          section. In the case of a physician or other professional  
14          that fails to cooperate with the Secretary (or a contractor)  
15          in the validation of prescriptions or authorizations de-  
16          scribed in paragraph (2), the Secretary may impose a civil  
17          monetary penalty of not to exceed \$10,000 with respect  
18          to the validation of items and services furnished by any  
19          particular provider or supplier. The provisions of section  
20          1128A (other than subsections (a) and (b)) shall apply  
21          to a civil money penalty under the previous sentence in  
22          the same manner as such provisions apply to a penalty  
23          or proceeding under section 1128A(a).”.

1 (b) REVISION OF PROMPT PAY PROVISIONS.—Sec-  
2 tions 1816(c)(2) and 1842(c)(2) of such Act (42 U.S.C.  
3 1395h(c)(2), 1395u(c)(2)) are each amended—

4 (1) in subparagraph (A), by striking “Each  
5 contract” and inserting “Subject to subparagraph  
6 (C), each contract”; and

7 (2) by adding at the end the following new sub-  
8 paragraph:

9 “(C) Subparagraph (A) shall not apply to claims of  
10 providers or suppliers in cases in which the Secretary iden-  
11 tifies a pattern or practice of claim submission that appear  
12 to be suspicious or otherwise indicative of a higher likeli-  
13 hood of being fraudulent.”.

14 (c) CONFORMING AMENDMENTS.—

15 (1) MEDICAID.—Section 1902(a) of the Social  
16 Security Act (42 U.S.C. 1396a(a)) is amended—

17 (A) in paragraph (23), by inserting before  
18 the semicolon at the end the following: “or by  
19 a person to whom or entity to which a morato-  
20 rium under section 1128G(a)(4) is applied dur-  
21 ing the period of such moratorium”;

22 (B) in paragraph (72); by striking at the  
23 end “and”;

24 (C) in paragraph (73), by striking the pe-  
25 riod at the end and inserting “; and”; and

1 (D) by adding after paragraph (73) the  
2 following new paragraph:

3 “(74) provide that the State will enforce any  
4 determination made by the Secretary under sub-  
5 section (a) (relating to a significant risk of fraudu-  
6 lent activity with respect to a category of provider  
7 or supplier described in such subsection through use  
8 of the appropriate procedures described in such sub-  
9 section) or subsection (b) section 1128G and that  
10 the State will carry out any activities as required by  
11 the Secretary for purposes of such subsection (a).”.

12 (2) CHIP.—Section 2102 of such Act (42  
13 U.S.C. 1397bb) is amended by adding at the end the  
14 following new subsection:

15 “(d) PROGRAM INTEGRITY.—A State child health  
16 plan shall include a description of the procedures to be  
17 used by the State—

18 “(1) to enforce any determination made by the  
19 Secretary under subsection (a) (relating to a signifi-  
20 cant risk of fraudulent activity with respect to a cat-  
21 egory of provider or supplier described in such sub-  
22 section through use of the appropriate procedures  
23 described in such subsection) or subsection (b) sec-  
24 tion 1128G; and

1           “(2) to carry out any activities as required by  
2           the Secretary for purposes of such subsection.”.

3           (3) MEDICARE.—Section 1866(j) of such Act  
4           (42 U.S.C. 1395cc(j)) is amended by adding at the  
5           end the following new paragraph:

6           “(3) PROGRAM INTEGRITY.—The provisions of  
7           subsections (a) and (b) of section 1128G apply to  
8           enrollments and renewals of enrollments of providers  
9           of services and suppliers under this title.”.

10          (d) CONSULTATION WITH OIG.—In implementing  
11          the amendments made by this section and determining  
12          under paragraph (1) of section 1128G(a) of the Social Se-  
13          curity Act, as inserted by subsection (a), that a provider,  
14          supplier, or type of service, for an area, is a significant  
15          risk of fraudulent activity, the Secretary of Health and  
16          Human Services shall consult with the Inspector General  
17          of the Department of Health and Human Services in order  
18          to identify classes of providers and suppliers or types of  
19          items and services, or such a type of provider, supplier,  
20          or service for a specific geographic area, as being particu-  
21          larly subject to fraud or abuse under Medicare, Medicaid,  
22          or the State children’s health insurance program.

23          (e) ADDITIONAL FUNDING.—There are authorized to  
24          be appropriated such sums as may be appropriate to carry  
25          out this section (and the amendments made by this sec-

1 tion). Such sums shall be in addition to any amounts that  
2 may be available from the Health Care Fraud and Abuse  
3 Control Account under section 1817(k) of the Social Secu-  
4 rity Act (42 U.S.C. 1395i(k)).

5 (f) EFFECTIVE DATE; EXPEDITED IMPLEMENTA-  
6 TION.—

7 (1) EFFECTIVE DATE.—The amendments made  
8 by this section shall take effect upon the date of the  
9 enactment of this Act and section 1128G(b) of the  
10 Social Security Act shall apply to providers and sup-  
11 pliers that are first approved for participation on  
12 and after the date that is 6 months after the date  
13 of the enactment of this Act.

14 (2) EXPEDITED IMPLEMENTATION.—The Sec-  
15 retary of Health and Human Services shall promul-  
16 gate regulations not later than 6 months after the  
17 date of the enactment of this Act to carry out this  
18 section, which regulations shall be effective and final  
19 immediately on an interim basis as of the date of  
20 publication of the interim final regulation. With re-  
21 spect to such an interim final regulation, the Sec-  
22 retary shall provide for a period of public comments  
23 on such regulation after the date of publication. The

- 1 Secretary may change or revise such regulation after
- 2 completion of the period of public comment.

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