

118TH CONGRESS  
2D SESSION

# S. 3630

To amend title XI of the Social Security Act to establish a pilot program for testing the use of a predictive risk-scoring algorithm to provide oversight of payments for durable medical equipment and clinical diagnostic laboratory tests under the Medicare program.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 18, 2024

Mr. BRAUN (for himself and Mr. CASSIDY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XI of the Social Security Act to establish a pilot program for testing the use of a predictive risk-scoring algorithm to provide oversight of payments for durable medical equipment and clinical diagnostic laboratory tests 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 “Medicare Transaction  
5 Fraud Prevention Act”.

1 **SEC. 2. PILOT PROGRAM TESTING USE OF PREDICTIVE**  
 2 **RISK-SCORING ALGORITHM TO PROVIDE**  
 3 **OVERSIGHT OF PAYMENTS FOR DURABLE**  
 4 **MEDICAL EQUIPMENT AND CLINICAL DIAG-**  
 5 **NOSTIC LABORATORY TESTS UNDER THE**  
 6 **MEDICARE PROGRAM.**

7 Section 1128K of the Social Security Act (42 U.S.C.  
 8 1320a–7n) is amended—

9 (1) in the section heading by inserting “;  
 10 **PILOT PROGRAM TESTING USE OF PREDICTIVE**  
 11 **RISK-SCORING ALGORITHM TO PROVIDE OVER-**  
 12 **SIGHT OF PAYMENTS FOR DURABLE MEDICAL**  
 13 **EQUIPMENT AND CLINICAL DIAGNOSTIC LAB-**  
 14 **ORATORY TESTS UNDER THE MEDICARE PRO-**  
 15 **GRAM”** after “**ABUSE**”; and

16 (2) by adding at the end the following new sub-  
 17 section:

18 “(d) **PILOT PROGRAM TESTING USE OF PREDICTIVE**  
 19 **RISK-SCORING ALGORITHM TO PROVIDE OVERSIGHT OF**  
 20 **PAYMENTS FOR DURABLE MEDICAL EQUIPMENT AND**  
 21 **CLINICAL DIAGNOSTIC LABORATORY TESTS UNDER THE**  
 22 **MEDICARE PROGRAM.—**

23 “(1) **IN GENERAL.—**The Secretary shall estab-  
 24 lish a pilot program to test the use of predictive  
 25 risk-scoring algorithms to provide oversight of rel-  
 26 evant transactions (as defined in paragraph (7)(B)).

1           “(2) DURATION.—The pilot program shall be  
2 conducted for a period of 2 years, beginning not  
3 later than January 1, 2025.

4           “(3) SCOPE.—

5           “(A) IN GENERAL.—The Secretary shall  
6 limit the implementation of the pilot program to  
7 relevant transactions involving applicable items  
8 or services furnished to beneficiaries who have  
9 opted in to receive electronic Medicare Sum-  
10 mary Notices (in this subsection referred to as  
11 ‘applicable beneficiaries’).

12           “(B) VOLUNTARY PARTICIPATION.—An ap-  
13 plicable beneficiary may opt out of the pilot  
14 program at any time.

15           “(4) CONSIDERATIONS.—The Secretary may,  
16 for purposes of identifying and calculating the risks  
17 of relevant transactions under the pilot program,  
18 consider the following factors:

19           “(A) The absence of a prior relationship  
20 between the beneficiary and a provider of serv-  
21 ices (as defined in section 1861(u)) or supplier  
22 (as defined in section 1861(d)).

23           “(B) Aberrant billing patterns for a pro-  
24 vider of services or supplier with regards to vol-  
25 ume of claims in one particular area.

1           “(C) Electronic fund transfer (EFT)  
2 changes.

3           “(D) Changes in ownership of a provider  
4 of services or supplier.

5           “(5) COLLABORATION.—The Secretary shall  
6 work with industry representatives (including sup-  
7 pliers of durable medical equipment) on the develop-  
8 ment and implementation of the pilot program.

9           “(6) REQUIREMENTS.—Under the pilot pro-  
10 gram, the Secretary shall—

11           “(A) adopt a predictive risk-scoring algo-  
12 rithm, modeled similar to leading payment card  
13 networks’ real-time consumer feedback mecha-  
14 nisms, that would learn from beneficiary data  
15 to score relevant transactions from 1 (least  
16 risky) to 99 (most risky);

17           “(B) prior to implementation of any pre-  
18 dictive risk-scoring algorithm adopted under  
19 subparagraph (A) under the pilot program—

20           “(i) require sufficient testing, evalua-  
21 tion, and review of such algorithm, taking  
22 into consideration the Blueprint for an AI  
23 Bill of Rights issued by the White House  
24 Office of Science and Technology Policy in  
25 October, 2022;

1           “(ii) establish methods for notifying  
2           applicable beneficiaries and providers of  
3           services and suppliers impacted by the use  
4           of the algorithm regarding such usage (in-  
5           cluding information regarding how bene-  
6           ficiary data is collected and processed  
7           under the pilot program to produce a risk  
8           score for relevant transactions and the pos-  
9           sible implications associated with the use  
10          of the algorithm); and

11          “(iii) establish methods of commu-  
12          nication with the Office of the Inspector  
13          General of the Department of Health and  
14          Human Service, and the ability to waive or  
15          forgo notice to an applicable beneficiary or  
16          a provider of services or supplier if appro-  
17          priate;

18          “(C) for any relevant transaction involving  
19          an item or service furnished to an applicable  
20          beneficiary identified by a predictive risk-scor-  
21          ing algorithm adopted under subparagraph (A)  
22          and implemented under subparagraph (B) as  
23          having a risk score that exceeds a level of risk  
24          specified by the Secretary—

1 “(i) review the relevant transaction to  
2 determine whether it should be suspended  
3 pending the applicable beneficiary’s re-  
4 sponse under clause (ii);

5 “(ii) provide the applicable beneficiary  
6 the opportunity, by email or phone call re-  
7 sponse—

8 “(I) to cure a high-risk score or  
9 suspended transaction that the bene-  
10 ficiary believes is based on inaccurate  
11 underlying data; and

12 “(II) confirm the relevant trans-  
13 action;

14 “(iii) if, based on the results of the re-  
15 view, the relevant transaction is sus-  
16 pended—

17 “(I) trigger an automatic alert to  
18 the applicable beneficiary by electroni-  
19 cally sending a Medicare Summary  
20 Notice that includes the relevant  
21 transaction;

22 “(II) require that all subsequent  
23 Medicare Summary Notices involving  
24 the relevant transaction be sent elec-  
25 tronically and in two week intervals

1 for 3 months after the first alert is  
2 sent under subclause (I); and

3 “(III) include on such Medicare  
4 Summary Notices, as determined ap-  
5 propriate by the Secretary, informa-  
6 tion explaining how the beneficiary  
7 may report suspected fraud to rel-  
8 evant law enforcement agencies.

9 “(D) have the authority to determine when  
10 a Medicare card must be terminated or a new  
11 card issued to prevent fraud and abuse.

12 “(7) CLARIFICATION.—Any suspension of an  
13 account or transaction under the pilot program shall  
14 be based on a human review process, informed  
15 through the implementation of the predictive risk-  
16 scoring algorithm.

17 “(8) DEFINITIONS.—In this subsection:

18 “(A) APPLICABLE ITEM OR SERVICE.—The  
19 term ‘applicable item or service’ means—

20 “(i) an item of durable medical equip-  
21 ment (as defined in section 1861(n)); and

22 “(ii) a clinical diagnostic laboratory  
23 test.

24 “(B) RELEVANT TRANSACTION.—The term  
25 ‘relevant transaction’ means a claim for pay-

1           ment for an applicable item or service furnished  
2           to an applicable beneficiary, as determined by  
3           the Secretary.”.

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