

115TH CONGRESS  
2D SESSION

# H. R. 6690

[Report No. 115-]

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

AUGUST 28, 2018

Mr. ROSKAM (for himself and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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

SEPTEMBER --, 2018

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on August 28, 2018]

# **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”.*

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

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

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

11 *“(a) IMPLEMENTATION.—*

12 *“(1) IN GENERAL.—Not later than 36 months*  
13 *after the date of the enactment of this section, the Sec-*  
14 *retary shall establish a pilot program (in this section*  
15 *referred to as the ‘pilot program’) to evaluate the fea-*  
16 *sibility of using smart card technology under this*  
17 *title.*

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

21 *“(A) BENEFICIARY SMART CARD.—A ma-*  
22 *chine readable, tamper-resistant card (in this*  
23 *section referred to as a ‘smart card’) that in-*  
24 *cludes an embedded integrated circuit chip with*  
25 *a secure micro-controller (as defined by the Na-*

1            *tional Institute on Standards and Technology)*  
2            *that enables the verification and secure, elec-*  
3            *tronic authentication of the identity of a Medi-*  
4            *care beneficiary at the point of service through*  
5            *a combination of the smart card and a personal*  
6            *identification number known by or associated*  
7            *with such beneficiary.*

8            *“(B) CARD READER TECHNOLOGY.—Infor-*  
9            *mation technology that enables a supplier and*  
10           *provider to authenticate the identity of a Medi-*  
11           *care beneficiary through presentation of such a*  
12           *smart card and such components, with such au-*  
13           *thentication to be reflected through the use of a*  
14           *modifier or in another appropriate manner, as*  
15           *determined by the Secretary, in the claims adju-*  
16           *dications process.*

17           *“(3) PROGRAM DESIGN ELEMENTS.—The pilot*  
18           *program shall be conducted for a period of 3 years*  
19           *consistent with the following:*

20           *“(A) SELECTION OF AREA.—In consultation*  
21           *with the Inspector General of the Department of*  
22           *Health and Human Services, the Secretary shall*  
23           *select at least 3 geographic areas in which the*  
24           *pilot program will operate.*

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

10                   “(i) *take into account the risk of fraud,*  
11                   *waste, and abuse (as described in section*  
12                   *1866(j)(2)(B)) with respect to the category*  
13                   *of provider or supplier) and other factors as*  
14                   *determined appropriate by the Secretary;*  
15                   *and*

16                   “(ii) *limit the pilot program to no*  
17                   *more than 2,000 suppliers and providers.*

18           “(C) *SUPPLIER AND PROVIDER HARDSHIP*  
19           *EXEMPTIONS.*—*The Secretary shall exempt from*  
20           *participation in the pilot program a supplier or*  
21           *provider that either—*

22                   “(i) *does not have access to card reader*  
23                   *technology (as described in paragraph*  
24                   *(2)(B));*

1                   “(ii) does not have sufficient internet  
2                   access; or

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

6                   “(D) SMART CARD AND SMART CARD READ-  
7                   ER ISSUANCE.—

8                   “(i) BENEFICIARY SMART CARD  
9                   ISSUANCE.—The Secretary shall provide for,  
10                  at no cost, the issuance (and, if necessary,  
11                  replacement) of beneficiary smart cards de-  
12                  scribed in paragraph (2)(A) to all Medicare  
13                  beneficiaries residing in a geographic area  
14                  in which the pilot program is conducted  
15                  under subparagraph (A). Information that  
16                  appears on Medicare cards used outside the  
17                  pilot program may appear on the face of  
18                  the beneficiary smart card.

19                  “(ii) SUPPLIER AND PROVIDER SMART  
20                  CARD READER ISSUANCE.—At the request of  
21                  a participating supplier or provider, the  
22                  Secretary shall provide for, at no cost, the  
23                  issuance to such supplier or provider of  
24                  smart card hardware and software nec-  
25                  essary to participate in the pilot program.

1                   “(E) *INFORMATION ON OPERATION OF PILOT*  
2                   *PROGRAM.—The Secretary shall provide partici-*  
3                   *parting suppliers and providers and Medicare*  
4                   *beneficiaries who are furnished items and serv-*  
5                   *ices by such suppliers and providers, with infor-*  
6                   *mation on the operation of the pilot program,*  
7                   *including privacy protections described in sub-*  
8                   *paragraph (I).*

9                   “(F) *ACCESS TO SERVICES OUTSIDE THE*  
10                   *PILOT PROGRAM.—*

11                   “(i) *BENEFICIARIES.—Medicare bene-*  
12                   *ficiaries who receive beneficiary smart cards*  
13                   *may receive items and services from sup-*  
14                   *pliers and providers not participating in*  
15                   *the pilot program.*

16                   “(ii) *SUPPLIERS AND PROVIDER*  
17                   *CLAIMS.—*

18                   “(I) *SUPPLIERS AND PROVIDERS*  
19                   *NOT PARTICIPATING IN PILOT.—Sup-*  
20                   *pliers and providers not participating*  
21                   *in the pilot program may submit*  
22                   *claims under this title for items and*  
23                   *services furnished without use of smart*  
24                   *card technology to Medicare bene-*

1 *ficiaries who receive beneficiary smart*  
2 *cards.*

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

12 *“(G) CLARIFICATION ON ACCESS TO SERV-*  
13 *ICES WITHOUT SMART CARDS.—In the case of a*  
14 *Medicare beneficiary who receives a beneficiary*  
15 *smart card and does not present such card at the*  
16 *time of receipt of items or services from a par-*  
17 *ticipating supplier or provider, the participating*  
18 *supplier or provider—*

19 *“(i) shall furnish such items or services*  
20 *to such Medicare beneficiary as if such ben-*  
21 *eficiary does present such card;*

22 *“(ii) may submit claims under this*  
23 *title for such items or services; and*

24 *“(iii) shall provide, in accordance with*  
25 *such manner, process, and timing as speci-*



1           *fied by the Secretary, information to the*  
2           *Secretary (through the contractor described*  
3           *in subparagraph (H)) that such beneficiary*  
4           *received such a smart card but did not have*  
5           *the smart card at the time the items or serv-*  
6           *ices were furnished.*

7           “(H) *PRIVATE SECTOR IMPLEMENTATION.*—  
8           *The Secretary shall select, by using a competitive*  
9           *procurement process in accordance with the pro-*  
10          *visions of chapter 1 of title 48, Code of Federal*  
11          *Regulations (or any successor regulations), a*  
12          *private sector contractor to implement and oper-*  
13          *ate the pilot program.*

14          “(I) *PRIVACY PROTECTIONS.*—*The Secretary*  
15          *shall ensure that the pilot program complies*  
16          *with applicable Federal laws and regulations*  
17          *concerning individually identifiable health infor-*  
18          *mation, including the Privacy Act of 1974 and*  
19          *regulations promulgated under section 264(c) of*  
20          *the Health Insurance Portability and Account-*  
21          *ability Act of 1996 and such individually identi-*  
22          *fiable information shall be exempt from disclo-*  
23          *sure under section 552(b)(3) of title 5, United*  
24          *States Code.*

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

11          “(K) *PROHIBITION OF SMART CARD FEES.*—  
12          No transaction, utilization, or other fees may be  
13          imposed on Medicare beneficiaries or partici-  
14          pating suppliers and providers with respect to  
15          the use of smart cards under the pilot program.

16          “(4) *STAKEHOLDER INPUT.*—

17          “(A) *IN GENERAL.*—Not later than 6  
18          months after the date of the enactment of this  
19          section, the Secretary shall convene a panel con-  
20          sisting of stakeholders (including representatives  
21          of providers, suppliers, technology vendors, Medi-  
22          care beneficiaries, and claims processing contrac-  
23          tors) selected by the Secretary for purposes of  
24          providing input to the Secretary on the imple-  
25          mentation of the pilot program (including on the

1           *selection of areas and participants under sub-*  
2           *paragraphs (A) and (B) of paragraph (3) and*  
3           *the development of exemptions and requirements*  
4           *described in such paragraph).*

5           “(B) *NONAPPLICABILITY OF FACA.*—*The*  
6           *Federal Advisory Committee Act shall not apply*  
7           *to the panel convened pursuant to subparagraph*  
8           *(A).*

9           “(5) *DEFINITIONS.*—*In this section:*

10           “(A) *The terms ‘supplier’ and ‘provider’*  
11           *have the meanings given the terms ‘supplier’ and*  
12           *‘provider of services’ in subsections (d) and (u),*  
13           *respectively, of section 1861.*

14           “(B) *The term ‘Medicare beneficiary’ means*  
15           *an individual who is enrolled in the original*  
16           *Medicare fee-for-service program under parts A*  
17           *and B and is not enrolled in an MA plan under*  
18           *part C, an eligible organization under section*  
19           *1876, or a PACE program under section 1894.*

20           “(b) *REPORTS TO CONGRESS.*—*The Secretary shall*  
21           *submit to Congress the following reports:*

22           “(1) *INTERIM PERFORMANCE REPORT.*—*Not later*  
23           *than 2 years after the date the pilot program is im-*  
24           *plemented, an interim report on the performance of*  
25           *such program.*

1           “(2) *FINAL PERFORMANCE REPORT.*—Not later  
2           *than 18 months after the date of the completion of the*  
3           *pilot program, a final evaluation on the effectiveness*  
4           *of the pilot program. The report shall include the fol-*  
5           *lowing:*

6                       “(A) *An evaluation of the effect of the pilot*  
7                       *program on potential fraud under the insurance*  
8                       *programs established under this title.*

9                       “(B) *A description of any barriers to imple-*  
10                      *mentation of the pilot program.*

11                     “(C) *Participant feedback on the pilot pro-*  
12                     *gram.*

13                     “(D) *Recommendations regarding the future*  
14                     *use of smart cards to address fraud under this*  
15                     *title.*

16                     “(E) *Data on the information provided*  
17                     *under subsection (a)(3)(G)(iii).”.*