

115TH CONGRESS  
1ST SESSION

# H. R. 3173

To amend title XVIII of the Social Security Act to create alternative sanctions for technical noncompliance with the Stark rule under Medicare, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2017

Mr. MARCHANT (for himself, Mr. KIND, and Mr. MEEHAN) 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 XVIII of the Social Security Act to create alternative sanctions for technical noncompliance with the Stark rule under Medicare, and for other purposes.

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 “Stark Administrative  
5 Simplification Act of 2017”.

1 **SEC. 2. ALTERNATIVE SANCTIONS FOR TECHNICAL NON-**  
2 **COMPLIANCE WITH STARK RULE UNDER**  
3 **MEDICARE.**

4 Section 1877(g) of the Social Security Act (42 U.S.C.  
5 1395nn(g)) is amended—

6 (1) in paragraph (1), by striking “No” and in-  
7 serting “Subject to paragraph (7), no”;

8 (2) in paragraph (2), by striking “If” and in-  
9 serting “Subject to paragraph (7), if”;

10 (3) in paragraph (3), by striking “Any” and in-  
11 serting “Subject to paragraph (7), any”; and

12 (4) by adding at the end the following new  
13 paragraph:

14 “(7) ALTERNATIVE SANCTIONS FOR TECHNICAL  
15 NONCOMPLIANCE.—

16 “(A) SINGLE PENALTY FOR COMPENSA-  
17 TION ARRANGEMENTS IN TECHNICAL NON-  
18 COMPLIANCE.—In the case of a compensation  
19 arrangement between a physician (or an imme-  
20 diate family member of such physician) and a  
21 person or entity that is in violation of sub-  
22 section (a)(1) solely due to technical noncompli-  
23 ance, instead of the sanctions described in para-  
24 graphs (1), (2), and (3) for any such violation,  
25 the person or entity with respect to such ar-  
26 rangement shall be subject to a single civil mon-

etary penalty under this paragraph in an amount that does not exceed—

“(i) in the case in which the disclosure of the violation is submitted to the Secretary not later than the date that is one year after the initial date of noncompliance, \$5,000; and

“(ii) in the case in which the disclosure of the violation is submitted to the Secretary after the date that is one year after the initial date of noncompliance, \$10,000.

“(B) ACCEPTANCE OF VOLUNTARY DISCLOSURES.—

“(i) IN GENERAL.—Beginning as of the date of the enactment of this paragraph, the Secretary shall accept the voluntary disclosure of a technically noncompliant compensation arrangement if such voluntary disclosure is made as described in clause (iii). The Secretary may accept and reasonably rely on information provided by a person or entity that is in violation of subsection (a)(1) only because

1 of a compensation arrangement that is  
2 technically noncompliant.

3 “(ii) ACCEPTANCE OF DISCLOSURE.—

4 The Secretary may reject any voluntary  
5 disclosure submitted under clause (iii)  
6 within 90 days after the receipt of the dis-  
7 closure only if the Secretary determines  
8 that the disclosure does not conform to the  
9 requirements described in clause (iii). If  
10 the Secretary fails to reject a voluntary  
11 disclosure within such 90-day period, the  
12 voluntary disclosure is deemed to be ac-  
13 cepted.

14 “(iii) VOLUNTARY DISCLOSURE.—A

15 voluntary disclosure described in this  
16 clause is a disclosure concerning a com-  
17 pensation arrangement that is submitted  
18 to the Secretary by a party to such ar-  
19 rangement that contains the following:

20 “(I) The identification of the dis-

21 closing party and all other parties to  
22 the disclosed compensation arrange-  
23 ment.

1                   “(II) A description of the com-  
2                   pensation paid under the arrangement  
3                   and the dates of noncompliance.

4                   “(III) A certification by the dis-  
5                   closing party that the compensation  
6                   arrangement satisfies the require-  
7                   ments described in clause (v).

8                   “(IV) Payment for the full  
9                   amount of the civil monetary penalty  
10                  under clause (i) or (ii), as applicable,  
11                  of subparagraph (A).

12                  “(iv) SETTLEMENT OF LIABILITY AND  
13                  PAYMENT OF CLAIMS.—A voluntary disclo-  
14                  sure of a technically noncompliant com-  
15                  pensation arrangement that is made and  
16                  accepted under this subparagraph shall  
17                  constitute a full and complete settlement of  
18                  liability under this subsection to the extent  
19                  such liability is with respect to such tech-  
20                  nically noncompliant compensation ar-  
21                  rangement. Any bill or claim for payment  
22                  related to a technically noncompliant com-  
23                  pensation arrangement shall not be subject  
24                  to the sanctions under this subsection and

1 shall be payable after a voluntary disclo-  
2 sure is made as described in clause (iii).

3 “(v) COMPENSATION ARRANGEMENT  
4 REQUIREMENTS.—For purposes of clause  
5 (iii)(III), the requirements described in  
6 this clause, with respect to a compensation  
7 arrangement, are the following:

8 “(I) The compensation arrange-  
9 ment is technically noncompliant (as  
10 defined by subparagraph (C)).

11 “(II) The compensation arrange-  
12 ment has been cured of the technical  
13 noncompliance, or is otherwise termi-  
14 nated.

15 “(III) In the case of technical  
16 noncompliance described in subpara-  
17 graph (C)(i), the compensation ar-  
18 rangement is consistent with fair mar-  
19 ket value, and the remuneration under  
20 the arrangement is not determined in  
21 a manner that takes into account di-  
22 rectly or indirectly the volume or  
23 value of any referrals.

24 “(C) DEFINITION TECHNICAL NONCOMPLI-  
25 ANCE.—For purposes of this paragraph, the

term ‘technical noncompliance’ means, with respect to a compensation arrangement, such an arrangement that is in violation of subsection (a)(1) only because—

“(i) the arrangement is not set forth in writing;

“(ii) the arrangement is not signed by one or more parties to the arrangement; or

“(iii) the arrangement became in violation of such subsection by reason of its expiration.

“(D) APPLICABILITY TO PRE-ENACTMENT DISCLOSURES TO RELIEVE BACKLOG.—In addition to the application of this paragraph to technically noncompliant compensation arrangements disclosed on or after the date of the enactment of this paragraph, the Secretary shall provide for the application of this paragraph to any technically noncompliant compensation arrangement that has been disclosed, and to which there has not been a final settlement, as of the date of enactment of this paragraph.

“(E) REPORT.—Not later than 24 months after the date of enactment of this paragraph, the Administrator of the Centers for Medicare

& Medicaid Services shall submit to Congress a report on the implementation of this paragraph.

Such report shall include—

“(i) the number of persons or entities making disclosures of technical noncompliance under this paragraph;

“(ii) the amount and type of alternative sanctions collected or imposed for technical noncompliance;

“(iii) the types of violations disclosed; and

“(iv) such other information as the Inspector General determines may be necessary to evaluate the impact of this paragraph.”.

**SEC. 3. CLARIFICATION OF THE WRITING REQUIREMENT AND SIGNATURE REQUIREMENT FOR ARRANGEMENTS PURSUANT TO THE STARK RULE UNDER MEDICARE.**

(a) WRITING REQUIREMENT.—Section 1877(h)(1) of the Social Security Act (42 U.S.C. 1395nn(h)(1)) is amended by adding at the end the following new subparagraph:

“(D) WRITTEN REQUIREMENT CLARIFIED.—In the case of any requirement pursuant to this section

1 for a compensation arrangement to be in writing,  
 2 such requirement shall be satisfied by such means as  
 3 determined by the Secretary, including by a collec-  
 4 tion of documents, including contemporaneous docu-  
 5 ments evidencing the course of conduct between the  
 6 parties involved.”.

7 (b) SIGNATURE REQUIREMENT.—Section 1877(e) of  
 8 the Social Security Act (42 U.S.C. 1395nn(e)) is amend-  
 9 ed—

10 (1) in paragraph (1)(A)(i), by inserting “before  
 11 or not later than 90 days after the effective date of  
 12 the lease” after “signed by the parties”;

13 (2) in paragraph (1)(B)(i), by inserting “before  
 14 or not later than 90 days after the effective date of  
 15 the lease” after “signed by the parties”; and

16 (3) in paragraph (3)(A)(i), by inserting “before  
 17 or not later than 90 days after the effective date of  
 18 the arrangement” after “signed by the parties”.

19 **SEC. 4. INDEFINITE HOLDOVER FOR LEASE ARRANGE-**  
 20 **MENTS AND PERSONAL SERVICES ARRANGE-**  
 21 **MENTS PURSUANT TO THE STARK RULE**  
 22 **UNDER MEDICARE.**

23 Section 1877 of the Social Security Act (42 U.S.C.  
 24 1395nn) is amended—

25 (1) in subsection (e)—

1 (A) in paragraph (1), by adding at the end  
2 the following new subparagraph:

3 “(C) HOLDOVER LEASE ARRANGE-  
4 MENTS.—In the case of a holdover lease ar-  
5 rangement for the lease of office space or equip-  
6 ment, which immediately follows a lease ar-  
7 rangement described in subparagraph (A) for  
8 the use of such office space or subparagraph  
9 (B) for the use of such equipment and that ex-  
10 pired after a term of at least one year, pay-  
11 ments made by the lessee to the lessor pursuant  
12 to such holdover lease arrangement, if—

13 “(i) the lease arrangement met the  
14 conditions of subparagraph (A) for the  
15 lease of office space or subparagraph (B)  
16 for the use of equipment when the ar-  
17 rangement expired;

18 “(ii) the holdover lease arrangement is  
19 on the same terms and conditions as the  
20 immediately preceding arrangement; and

21 “(iii) the holdover arrangement con-  
22 tinues to satisfy the conditions of subpara-  
23 graph (A) for the lease of office space or  
24 subparagraph (B) for the use of equip-  
25 ment.”; and

1 (B) in paragraph (3), by adding at the end  
2 the following new subparagraph:

3 “(C) HOLDOVER PERSONAL SERVICE AR-  
4 RANGEMENT.—In the case of a holdover per-  
5 sonal service arrangement, which immediately  
6 follows an arrangement described in subpara-  
7 graph (A) that expired after a term of at least  
8 one year, remuneration from an entity pursuant  
9 to such holdover personal service arrangement,  
10 if—

11 “(i) the personal service arrangement  
12 hmet the conditions of subparagraph (A)  
13 when the arrangement expired;

14 “(ii) the holdover personal service ar-  
15 rangement is on the same terms and condi-  
16 tions as the immediately preceding ar-  
17 rangement; and

18 “(iii) the holdover arrangement con-  
19 tinues to satisfy the conditions of subpara-  
20 graph (A).”; and

21 (2) in subsection (h)(1), as amended by section  
22 3(a)—

23 (A) in the heading, by inserting “; HOLD-  
24 OVER ARRANGEMENT” after “REMUNERATION”;  
25 and

1 (B) by adding at the end the following new  
2 subparagraph:

3 “(E) HOLDOVER ARRANGEMENT.—The term  
4 ‘holdover arrangement’ means an arrangement, with  
5 respect to an agreement (including a lease or other  
6 arrangement) that has expired but as of the date of  
7 such expiration had been in compliance with the ap-  
8 plicable requirements of this section, under which  
9 the parties to such expired agreement have, since  
10 such date of expiration, continued to perform under  
11 the terms and conditions of such expired agree-  
12 ment.”.

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