To amend title XVIII of the Social Security Act to improve the process of audits by recovery audit contractors and the recovery of overpayments under the Medicare program.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2015

Mr. HOLDING (for himself and Mr. Nunes) 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.

A BILL

To amend title XVIII of the Social Security Act to improve the process of audits by recovery audit contractors and the recovery of overpayments under the Medicare program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Fair Medical Audits Act of 2015”.

(b) Table of Contents.—The table of contents of this Act is as follows:
Sec. 1. Short title; table of contents.
Sec. 2. Transparency of audit process and audit report.
Sec. 3. Qualifications of auditors.
Sec. 4. Recoupments.
Sec. 5. Extrapolation.
Sec. 6. Payment for the provision of supporting documentation.
Sec. 7. Notice of over-utilization of codes.
Sec. 8. Change in look back period.
Sec. 9. General effective date.

SEC. 2. TRANSPARENCY OF AUDIT PROCESS AND AUDIT REPORT.

Section 1893(h)(1) of the Social Security Act (42 U.S.C. 1395ddd(h)(1)) is amended—

(1) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(2) by inserting after subparagraph (A) the following new subparagraph:

“(B) contractors shall be required to provide healthcare providers with—

“(i) the names and contact information for the auditors;

“(ii) the legal authority under which the audit is conducted;

“(iii) a clear designation of the records to be reviewed under the audit;

“(iv) the dates by which records shall be submitted;

“(v) the address to which the records shall be sent;
“(vi) identification of any errors discovered in the audit, including specification of all medical and reimbursement policies used in the audit findings;

“(vii) identification of any underpayments discovered in the audit; and

“(viii) a description of how any requested overpayment amount was calculated, including, in cases in which extrapolation was used, the extrapolation formula and a description of how the random sample was developed;”.

SEC. 3. QUALIFICATIONS OF AUDITORS.

Section 1893(h)(6) of the Social Security Act (42 U.S.C. 1395ddd)(h)(6)) is amended—

   (1) in subparagraph (A), by inserting before the period at the end the following: “, including knowledge and experience in applicable ICD, CPT, and HCPCS codes, the format and contents of medical records and claims forms, and (for those individuals conducting medical necessity reviews) licensure in a clinical discipline providing necessary expertise to determine whether clinical tests and procedures were medically necessary without the benefit of examining the patient, specifically including, for medical neces-
sity reviews of physician records, a doctor of medi-
cine or osteopathy of the same specialty and sub-
specialty and with knowledge of the coverage rules
being applied for the same area as the physician
under review”; and

(2) by adding at the end the following new sub-
paragraphs:

“(D) Liability for Excessive Over-
turned Determinations.—Contractors that
have a certain percentage (as determined by the
Secretary in regulations) of overpayment deter-
minations overturned by an Administrative Law
Judge at the Office of Medicare Hearings and
Appeals shall be subject to administrative penal-
alty established by the Secretary in such regula-
tions.

“(E) Provider Compensation for Cer-
tain Contractor Errors.—A contractor shall
be liable for payment to providers of service and
suppliers for reasonable attorneys’ fees when
the contractor’s overpayment determination is
equal to or more than double the final overpay-
ment amount determined by an Administrative
Law Judge at the Office of Medicare Hearings
and Appeals.
“(F) INCENTIVE PAYMENTS FOR PROVIDER EDUCATION.—Administrative penalties collected under subparagraph (D) shall be available to the Secretary without appropriation to provide incentive payments to Medicare administrative contractors under section 1874A to carry out improper payment outreach and education programs under subsection (h) of such section.”.

SEC. 4. RECOUPMENTS.

(a) IN GENERAL.—Section 1893(f)(2)(A) of the Social Security Act (42 U.S.C. 1395ddd(f)(2)(A)) is amended—

(1) by striking “until the date the decision on the reconsideration has been rendered.” and inserting the following: “until the date a decision has been rendered at the third level of appeal by an Administrative Law Judge at the Office of Medicare Hearings and Appeals.”; and

(2) by adding at the end the following: “Any recoupments made under this subparagraph based on a decision that is subsequently reversed on appeal shall be returned to the provider of services or supplier involved not later than 30 business days after the date of the decision of reversal on appeal.”.
(b) **Effective Date.**—The amendment made by subsection (a) shall apply to recoupments occurring after the date of the enactment of this Act.

### SEC. 5. EXTRAPOLATION.

(a) **In General.**—Section 1893(f)(3) of the Social Security Act (42 U.S.C. 1395ddd(f)(3)) is amended—

(1) by striking the last sentence; and

(2) by adding after and below subparagraph (B) the following:

“Extrapolation may only be used if it is based on a statistically valid, stratified random sample, with all zero paid claims and outliers removed. When extrapolation is used, the median amount shall be used as the central data point for calculating overpayments unless the data are normally distributed, approximately normally distributed, or symmetrical.”.

(b) **Effective Date.**—The amendments made by subsection (a) shall apply to determinations made after the date of the enactment of this Act.

### SEC. 6. PAYMENT FOR THE PROVISION OF SUPPORTING DOCUMENTATION.

Section 1893(f)(4) of the Social Security Act (42 U.S.C. 1395ddd(f)(4)) is amended by adding at the end the following: “The Secretary shall require that contractors reimburse providers of services or suppliers for the
cost of such production at rates established by the Sec-
retary.”.

SEC. 7. NOTICE OF OVER-UTILIZATION OF CODES.

Section 1893(f)(6) of the Social Security Act (42
U.S.C. 1395ddd(f)(6)) is amended by adding at the end
the following: “The Secretary shall require that contrac-
tors provide such notice of over-utilization of codes at least
90 days before the date of initiating an audit, documenta-
tion request, or recoupment with respect to the identified
over-utilized codes against any member of the class of pro-
viders of services or suppliers identified by the contractor
as over-utilizing codes.”.

SEC. 8. CHANGE IN LOOK BACK PERIOD.

Section 1893(h)(4)(B) of the Social Security Act (42
U.S.C. 1395ddd(h)(4)(B)) is amended by striking “4 fis-
cal years” and inserting “2 fiscal years”.

SEC. 9. GENERAL EFFECTIVE DATE.

Except as otherwise provided, the amendments made
by this Act shall apply with respect to contracts entered
into, or renewed, after the date of the enactment of this
Act.