

## Legislation to Curb Medicare and Medicaid Fraud Would Increase Cost and Compliance Burdens on Health Care Providers

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On March 25, 2015, a bipartisan group of U.S. Senators reintroduced the Preventing and Reducing Improper Medicare and Medicaid Expenditures Act (“PRIME Act” or “Act”),<sup>1</sup> following the lead of the U.S. House of Representatives, which tapped the bill for reconsideration in February. The PRIME Act would amend the Social Security Act to stiffen protections against Medicare and Medicaid fraud and abuse and to increase fraud detection measures. At the same time, however, the bill places heightened requirements and restrictions on health care entities, increasing regulatory pressure on those who provide care to Medicare and Medicaid beneficiaries.

The PRIME Act has been introduced twice in the Senate, once in 2011 and again in 2013, but died in committee relatively quickly both times. The Act has been reintroduced in both houses of Congress with no changes to the original language. Of course, the changed composition of the Senate after the last election will alter the calculus for passage of this bill in the current Congress.

All health care providers should consider writing to their state’s U.S. Senators to describe the additional cost and compliance burdens that the PRIME Act would place on them and the health care industry in general.

### PRIME Act Provisions Relevant to Providers

The PRIME Act’s sponsors seek to increase oversight of billing procedures, recovery audit contractors, and transfers of personally identifiable information. Certain provisions of the PRIME Act would have a significant impact on health care providers. Specifically, these provisions would:

- prohibit prescription drug plan sponsors from paying Medicare or Medicaid claims for prescription drugs without a valid national provider number (“NPI”);

<sup>1</sup> The text of the legislation is available at <https://www.congress.gov/114/bills/s861/BILLS-114s861is.pdf>.

- prohibit reimbursement on a claim for medical services under Medicaid without a valid beneficiary identification number, as determined by a state Medicaid agency;
- require the Centers for Medicare & Medicaid Services (“CMS”) to establish new procedures for verifying NPIs;
- provide bonuses for Medicare administrative contractors (“MACs”) that reduce improper payment errors to certain levels and penalties for MACs that reach an upper-end error threshold; and
- increase penalties for intentional fraud relating to Medicare, Medicaid, or Children's Health Insurance Plan (“CHIP”) beneficiary identification numbers or billing privileges to imprisonment for not more than 10 years and/or a monetary fine of not more than \$500,000.

### Effect on Providers

The PRIME Act would increase scrutiny on billing practices, creating additional administrative burdens that will raise costs for pharmacies and other health care providers and lengthen the time for providers to receive reimbursement. Currently, pharmacies are not required to provide the prescriber's NPI when submitting a claim. If the Act becomes law, verified NPIs must be submitted with each claim, placing added administrative burdens on both the prescribing physician (to provide the NPI) and the pharmacy (to ensure that the prescribing physician provides the NPI) so that Medicare and Medicaid pharmaceutical benefit claims are submitted with proper NPIs in order to avoid rejection. To minimize the effect of this requirement, all pharmacies should consider storing (whether electronically or otherwise) physician NPIs for reference on subsequent claims. However, even if proper identification numbers are provided for all claims, CMS and state Medicaid agencies must verify the identification numbers—an additional step that may cause significant delays in reimbursement for pharmacies.

In addition, the PRIME Act creates incentives for MACs that significantly reduce improper payment error rates and penalties for those MACs that allow such error rates to rise. Offering quality incentives for MAC oversight may encourage MACs to attempt to lower error rates by creating additional compliance requirements and standards for providers. Thus, health care providers would likely need to adjust administrative and practice policies and procedures in order to comply with the MACs.

Epstein Becker Green will be tracking the progress of the PRIME Act as Congress takes action on the proposed bill and would be happy to assist in drafting letters to members of Congress.

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*This Client Alert was authored by **Arthur J. Fried** and **Benjamin M. Zegarelli**. For additional information about the possible impact of the PRIME Act on the health care industry and health care providers or any other issues discussed in this Client Alert, please contact one of the authors or the Epstein Becker Green attorney who regularly handles your legal matters.*

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