

**[DISCUSSION DRAFT]**113<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION**H. R.** \_\_\_\_\_

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**

Mr. BOUSTANY introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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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. ALTERNATIVE SANCTIONS FOR TECHNICAL**  
4                               **NONCOMPLIANCE WITH STARK RULE UNDER**  
5                               **MEDICARE.**

6       Section 1877(g) of the Social Security Act (42 U.S.C.  
7       1395nn(g)) is amended—

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

3 (2) in paragraph (2), by striking “If” and in-  
4 sserting “Subject to paragraph (7), if”;

5 (3) in paragraph (3), by striking “Any” and in-  
6 sserting “Subject to paragraph (7), any”; and

7 (4) by adding at the end the following new  
8 paragraph:

9 “(7) ALTERNATIVE SANCTIONS FOR TECHNICAL  
10 NONCOMPLIANCE.—

11 “(A) SINGLE PENALTY FOR FINANCIAL RE-  
12 LATIONSHIP ARRANGEMENTS IN TECHNICAL  
13 NONCOMPLIANCE.—In the case of a financial  
14 relationship between a physician (or an imme-  
15 diate family member of such physician) and a  
16 person or entity that is in violation of sub-  
17 section (a)(1) solely due to technical noncompli-  
18 ance, instead of the sanctions described in para-  
19 graphs (1), (2), and (3) for any such violation,  
20 the person or entity with respect to such ar-  
21 rangement shall be subject to a single civil mon-  
22 etary penalty under this paragraph in an  
23 amount that does not exceed—

24 “(i) in the case where the disclosure  
25 of the violation is submitted to the Sec-

1           retary not later than the date that is one  
2           year after the initial date of noncompli-  
3           ance, \$5,000; and

4           “(ii) in the case where the disclosure  
5           of the violation is submitted to the Sec-  
6           retary after the date that is one year after  
7           the initial date of noncompliance, \$10,000.

8           “(B) ACCEPTANCE OF VOLUNTARY DIS-  
9           CLOSURES.—

10           “(i) IN GENERAL.—Effective on the  
11           date of the enactment of this paragraph,  
12           the Secretary shall accept the voluntary  
13           disclosure of a technically noncompliant fi-  
14           nancial relationship if such voluntary dis-  
15           closure is made as described in clause (iii).  
16           The Secretary may accept and reasonably  
17           rely on information provided by a person  
18           or entity that is in violation of subsection  
19           (a)(1) only because of a financial relation-  
20           ship that is technically noncompliant.

21           “(ii) ACCEPTANCE OF DISCLOSURE.—  
22           The Secretary may reject any voluntary  
23           disclosure submitted under clause (iii)  
24           within 90 days after the receipt of the dis-  
25           closure. If the Secretary fails to reject a

1 voluntary disclosure within such 90-day pe-  
2 riod, the voluntary disclosure is deemed to  
3 be accepted.

4 “(iii) VOLUNTARY DISCLOSURE.—A  
5 voluntary disclosure described in this  
6 clause, with respect to a financial relation-  
7 ship, is a disclosure submitted to the Sec-  
8 retary, by a party to such arrangement  
9 that contains the following:

10 “(I) The identification of the dis-  
11 closing party.

12 “(II) A description of the com-  
13 pensation paid under the arrangement  
14 and the dates of noncompliance.

15 “(III) A certification by the dis-  
16 closing party that the financial rela-  
17 tionship—

18 “(aa) is technically non-  
19 compliant (as defined by sub-  
20 paragraph (C));

21 “(bb) has been cured of the  
22 technical noncompliance, or is  
23 otherwise terminated; and

24 “(cc) is, in the case of tech-  
25 nical noncompliance under sub-

1 paragraph (C)(i), a valid contract  
2 under State law, an arrangement  
3 consistent with fair market value,  
4 and one in which remuneration  
5 under the arrangement is not de-  
6 termined in a manner that takes  
7 into account directly or indirectly  
8 the volume or value of any refer-  
9 rals.

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

14 “(C) DEFINITION TECHNICAL NONCOMPLI-  
15 ANCE.—For purposes of this paragraph, the  
16 term ‘technical noncompliance’ means an ar-  
17 rangement that is in violation of subsection  
18 (a)(1) only because—

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

21 “(ii) the arrangement is not signed by  
22 1 or more parties to the arrangement; or

23 “(iii) a prior arrangement expired and  
24 services continued without the execution of

1 an amendment to such arrangement or a  
2 new arrangement.

3 “(D) APPLICABILITY TO PRE-ENACTMENT  
4 DISCLOSURES TO RELIEVE BACKLOG.—The Sec-  
5 retary shall provide for the application of this  
6 paragraph to any technically noncompliant fi-  
7 nancial relationship that has been disclosed,  
8 and to which there has not been a final settle-  
9 ment as of the date of enactment of this para-  
10 graph.

11 “(E) REPORT.—Not later than 24 months  
12 after the date of enactment of this paragraph,  
13 the Inspector General of the Department of  
14 Health and Human Services shall submit to  
15 Congress a report on the implementation of this  
16 paragraph. Such report shall include—

17 “(i) the number of persons or entities  
18 making disclosures of technical noncompli-  
19 ance under this paragraph;

20 “(ii) the amount and type of alter-  
21 native sanctions collected or imposed for  
22 technical noncompliance;

23 “(iii) the types of violations disclosed;  
24 and

1                   “(iv) such other information as the  
2                   Inspector General determines may be nec-  
3                   essary to evaluate the impact of this para-  
4                   graph.”.