

**AMENDMENT TO H.R. 4978, AS FORWARDED BY
THE SUBCOMMITTEE ON HEALTH
OFFERED BY MR. PITTS OF PENNSYLVANIA AND
MR. YARMUTH OF KENTUCKY**

At the end of the bill, add the following:

1 **SEC. 3. EXCLUDING ABUSE-DETERRENT FORMULATIONS**
2 **OF PRESCRIPTION DRUGS FROM THE MED-**
3 **ICAID ADDITIONAL REBATE REQUIREMENT**
4 **FOR NEW FORMULATIONS OF PRESCRIPTION**
5 **DRUGS.**

6 (a) **IN GENERAL.**—The last sentence of section
7 1927(c)(2)(C) of the Social Security Act (42 U.S.C.
8 1396r–8(c)(2)(C)) is amended by inserting before the pe-
9 riod at the end the following: “, but does not include an
10 abuse-deterrent formulation of the drug (as determined by
11 the Secretary), regardless of whether such abuse-deterrent
12 formulation is an extended release formulation”.

13 (b) **EFFECTIVE DATE.**—The amendment made by
14 subsection (a) shall apply to drugs that are paid for by
15 a State in calendar quarters beginning on or after the date
16 of the enactment of this Act.

1 **SEC. 4. LIMITING DISCLOSURE OF PREDICTIVE MODELING**
2 **AND OTHER ANALYTICS TECHNOLOGIES TO**
3 **IDENTIFY AND PREVENT WASTE, FRAUD, AND**
4 **ABUSE.**

5 (a) IN GENERAL.—Title XI of the Social Security Act
6 is amended by inserting after section 1128J (42 U.S.C.
7 1320a–7k) the following new section:

8 **“SEC. 1128K. DISCLOSURE OF PREDICTIVE MODELING AND**
9 **OTHER ANALYTICS TECHNOLOGIES TO IDEN-**
10 **TIFY AND PREVENT WASTE, FRAUD, AND**
11 **ABUSE.**

12 “(a) REFERENCE TO PREDICTIVE MODELING TECH-
13 NOLOGIES REQUIREMENTS.—For provisions relating to
14 the use of predictive modeling and other analytics tech-
15 nologies to identify and prevent waste, fraud, and abuse
16 with respect to the Medicare program under title XVIII,
17 the Medicaid program under title XIX, and the Children’s
18 Health Insurance Program under title XXI, see section
19 4241 of the Small Business Jobs Act of 2010 (42 U.S.C.
20 1320a–7m).

21 “(b) LIMITING DISCLOSURE OF PREDICTIVE MOD-
22 ELING TECHNOLOGIES.—In implementing such provisions
23 under such section 4241 with respect to covered algo-
24 rithms (as defined in subsection (c)), the following shall
25 apply:

1 “(1) NONAPPLICATION OF FOIA.—The covered
2 algorithms used or developed for purposes of such
3 section (including by the Secretary or a State (or an
4 entity operating under a contract with a State))
5 shall be exempt from disclosure under section
6 552(b)(3) of title 5, United States Code.

7 “(2) LIMITATION WITH RESPECT TO USE AND
8 DISCLOSURE OF INFORMATION BY STATE AGEN-
9 CIES.—

10 “(A) IN GENERAL.—A State agency may
11 not use or disclose covered algorithms used or
12 developed for purposes of such section except
13 for purposes of administering the State plan (or
14 a waiver of the plan) under the Medicaid pro-
15 gram under title XIX or the State child health
16 plan (or a waiver of the plan) under the Chil-
17 dren’s Health Insurance Program under title
18 XXI, including by enabling an entity operating
19 under a contract with a State to assist the
20 State to identify or prevent waste, fraud and
21 abuse with respect to such programs.

22 “(B) INFORMATION SECURITY.—A State
23 agency shall have in effect data security and
24 control policies that the Secretary finds ade-
25 quate to ensure the security of covered algo-

1 rithms used or developed for purposes of such
2 section 4241 and to ensure that access to such
3 information is restricted to authorized persons
4 for purposes of authorized uses and disclosures
5 described in subparagraph (A).

6 “(C) PROCEDURAL REQUIREMENTS.—
7 State agencies to which information is disclosed
8 pursuant to such section 4241 shall adhere to
9 uniform procedures established by the Sec-
10 retary.

11 “(c) COVERED ALGORITHM DEFINED.—In this sec-
12 tion, the term ‘covered algorithm’—

13 “(1) means a predictive modeling or other ana-
14 lytics technology, as used for purposes of section
15 4241(a) of the Small Business Jobs Act of 2010 (42
16 U.S.C. 1320a–7m(a)) to identify and prevent waste,
17 fraud, and abuse with respect to the Medicare pro-
18 gram under title XVIII, the Medicaid program
19 under title XIX, and the Children’s Health Insur-
20 ance Program under title XXI; and

21 “(2) includes the mathematical expressions uti-
22 lized in the application of such technology and the
23 means by which such technology is developed.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) MEDICAID STATE PLAN REQUIREMENT.—
2 Section 1902(a) of the Social Security Act (42
3 U.S.C. 1396a(a)) is amended—

4 (A) in paragraph (80), by striking “and”
5 at the end;

6 (B) in paragraph (81), by striking the pe-
7 riod at the end and inserting “; and”; and

8 (C) by inserting after paragraph (81) the
9 following new paragraph:

10 “(82) provide that the State agency responsible
11 for administering the State plan under this title pro-
12 vides assurances to the Secretary that the State
13 agency is in compliance with subparagraphs (A),
14 (B), and (C) of section 1128K(b)(2).”.

15 (2) STATE CHILD HEALTH PLAN REQUIRE-
16 MENT.—Section 2102(a)(7) of the Social Security
17 Act (42 U.S.C. 1397bb(a)(7)) is amended—

18 (A) in subparagraph (A), by striking “,
19 and” at the end and inserting a semicolon;

20 (B) in subparagraph (B), by striking the
21 period at the end and inserting “; and”; and

22 (C) by adding at the end the following new
23 subparagraph:

1 “(C) to ensure that the State agency in-
2 volved is in compliance with subparagraphs (A),
3 (B), and (C) of section 1128K(b)(2).”.

4 **SEC. 5. MEDICAID IMPROVEMENT FUND.**

5 Section 1941(b)(1) of the Social Security Act (42
6 U.S.C. 1396w-1(b)(1)) is amended to read as follows:

7 “(1) IN GENERAL.—There shall be available to
8 the Fund, for expenditures from the Fund for fiscal
9 year 2021 and thereafter, \$5,000,000.”.

 Amend the long title so as to read: “To require the
Government Accountability Office to submit to Congress
a report on neonatal abstinence syndrome (NAS) in the
United States and its treatment under Medicaid, and for
other purposes.”.

