

113TH CONGRESS
2D SESSION

H. R. 5815

To amend title XVIII of the Social Security Act to provide for pharmacy benefits manager standards under the Medicare prescription drug program to further transparency of payment methodologies to pharmacies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 9, 2014

Mr. COLLINS of Georgia (for himself and Mr. LOEBSACK) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Armed Services, and Oversight and Government Reform, 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 provide for pharmacy benefits manager standards under the Medicare prescription drug program to further transparency of payment methodologies to pharmacies, 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 “Generic Drug Pricing
5 Fairness Act”.

1 **SEC. 2. PHARMACY BENEFITS MANAGER STANDARDS**
2 **UNDER THE MEDICARE PROGRAM.**

3 (a) IN GENERAL.—Section 1860D–12(b) of the So-
4 cial Security Act (42 U.S.C. 1395w–112(b)) is amended
5 by adding at the end the following new paragraph:

6 “(7) PHARMACY BENEFITS MANAGER TRANS-
7 PARENCY REQUIREMENTS.—Each contract entered
8 into with a PDP sponsor under this part with re-
9 spect to a prescription drug plan offered by such
10 sponsor shall provide that the PDP may not enter
11 into a contract with any pharmacy benefits manager
12 (referred to in this paragraph as a ‘PBM’) to man-
13 age the prescription drug coverage provided under
14 such plan, or to control the costs of the prescription
15 drug coverage under such plan, unless the PBM ad-
16 heres to the following criteria when handling person-
17 ally identifiable utilization and claims data or other
18 sensitive patient data:

19 “(A) The PBM may not transmit any per-
20 sonally identifiable utilization or claims data,
21 with respect to a plan enrollee, to a pharmacy
22 owned by a PBM if the plan enrollee has not
23 voluntarily elected in writing or via secure elec-
24 tronic means to fill that particular prescription
25 at the PBM-owned pharmacy.

1 “(B) The PBM may not require that a
2 plan enrollee use a retail pharmacy, mail order
3 pharmacy, specialty pharmacy, or other phar-
4 macy entity providing pharmacy services in
5 which the PBM has an ownership interest or
6 that has an ownership interest in the PBM or
7 provide an incentive to a plan enrollee to en-
8 courage the enrollee to use a retail pharmacy,
9 mail order pharmacy, specialty pharmacy, or
10 other pharmacy entity providing pharmacy serv-
11 ices in which the PBM has an ownership inter-
12 est or that has an ownership interest in the
13 PBM, if the incentive is applicable only to such
14 pharmacies.”.

15 (b) REGULAR UPDATE OF PRESCRIPTION DRUG
16 PRICING STANDARD.—Paragraph (6) of section 1860D–
17 12(b) of the Social Security Act (42 U.S.C. 1395w–
18 112(b)) is amended to read as follows:

19 “(6) REGULAR UPDATE OF PRESCRIPTION
20 DRUG PRICING STANDARD.—

21 “(A) IN GENERAL.—If the PDP sponsor of
22 a prescription drug plan uses a standard for re-
23 imbursement (as described in subparagraph
24 (B)) of pharmacies based on the cost of a drug,
25 each contract entered into with such sponsor

1 under this part with respect to the plan shall
2 provide that the sponsor shall—

3 “(i) update such standard not less fre-
4 quently than once every 7 days, beginning
5 with an initial update on January 1 of
6 each year, to accurately reflect the market
7 price of acquiring the drug;

8 “(ii) disclose to applicable pharmacies
9 the sources used for making any such up-
10 date;

11 “(iii) if the source for such a standard
12 for reimbursement is not publicly available,
13 disclose to the applicable pharmacies all in-
14 dividual drug prices to be so updated in
15 advance of the use of such prices for the
16 reimbursement of claims; and

17 “(iv) establish a process to appeal, in-
18 vestigate, and resolve disputes regarding
19 individual drug prices that are less than
20 the pharmacy acquisition price for such
21 drug.

22 “(B) PRESCRIPTION DRUG PRICING
23 STANDARD DEFINED.—For purposes of sub-
24 paragraph (A), a standard for reimbursement
25 of a pharmacy is any methodology or formula

1 for varying the pricing of a drug or drugs dur-
2 ing the term of the pharmacy reimbursement
3 contract that is based on the cost of the drug
4 involved, including drug pricing references and
5 amounts that are based upon average wholesale
6 price, wholesale average cost, average manufac-
7 turer price, average sales price, maximum al-
8 lowable cost (MAC), or other costs, whether
9 publicly available or not.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to plan years beginning on or after
12 January 1, 2015.

13 **SEC. 3. REGULAR UPDATE OF PRESCRIPTION DRUG PRIC-**
14 **ING STANDARD UNDER TRICARE RETAIL**
15 **PHARMACY PROGRAM.**

16 Section 1074g(d) of title 10, United States Code, is
17 amended by adding at the end the following new para-
18 graph:

19 “(3) To the extent practicable, with respect to the
20 TRICARE retail pharmacy program described in sub-
21 section (a)(2)(E)(ii), the Secretary shall ensure that a con-
22 tract entered into with a TRICARE managed care support
23 contractor includes requirements described in section
24 1860D–12(b)(6) of the Social Security Act (42 U.S.C.

1 1395w–112(b)(6)) to ensure the provision of information
 2 regarding the pricing standard for prescription drugs.”.

3 **SEC. 4. PRESCRIPTION DRUG TRANSPARENCY IN THE FED-**
 4 **ERAL EMPLOYEE HEALTH BENEFITS PRO-**
 5 **GRAM.**

6 (a) IN GENERAL.—Section 8902 of title 5, United
 7 States Code, is amended by adding at the end the fol-
 8 lowing new subsections:

9 “(p) A contract may not be made or a plan approved
 10 under this chapter under which a carrier has an agree-
 11 ment with a pharmacy benefits manager (in this sub-
 12 section referred to as a ‘PBM’) to manage prescription
 13 drug coverage or to control the costs of the prescription
 14 drug coverage unless the carrier and PBM adhere to the
 15 following criteria:

16 “(1) The PBM may not transmit any personally
 17 identifiable utilization or claims data with respect to
 18 an individual enrolled under such contract or plan to
 19 a pharmacy owned by the PBM if the individual has
 20 not voluntarily elected in writing or via secure elec-
 21 tronic means to fill that particular prescription at
 22 such a pharmacy.

23 “(2) The PBM may not require that an indi-
 24 vidual enrolled under such contract or plan use a re-
 25 tail pharmacy, mail order pharmacy, specialty phar-

1 macy, or other pharmacy entity providing pharmacy
2 services in which the PBM has an ownership interest
3 or that has an ownership interest in the PBM or
4 provide an incentive to a plan enrollee to encourage
5 the enrollee to use a retail pharmacy, mail order
6 pharmacy, specialty pharmacy, or other pharmacy
7 entity providing pharmacy services in which the
8 PBM has an ownership interest or that has an own-
9 ership interest in the PBM, if the incentive is appli-
10 cable only to such pharmacies.

11 “(q)(1) If a contract made or plan approved under
12 this chapter provides for a standard for reimbursement
13 (as described in paragraph (2)) with respect to a prescrip-
14 tion drug plan, such contract or plan shall provide that
15 the applicable carrier—

16 “(A) update such standard not less frequently
17 than once every 7 days, beginning with an initial up-
18 date on January 1 of each year, to accurately reflect
19 the market price of acquiring the drug;

20 “(B) disclose to applicable pharmacies the
21 sources used for making any such update;

22 “(C) if the source for such a standard for reim-
23 bursement is not publicly available, disclose to the
24 applicable pharmacies all individual drug prices to be

1 so updated in advance of the use of such prices for
2 the reimbursement of claims; and

3 “(D) establish a process to appeal, investigate,
4 and resolve disputes regarding individual drug prices
5 that are less than the pharmacy acquisition price for
6 such drug.

7 “(2) For purposes of paragraph (1), a standard for
8 reimbursement of a pharmacy is any methodology or for-
9 mula for varying the pricing of a drug or drugs during
10 the term of the pharmacy reimbursement contract that is
11 based on the cost of the drug involved, including drug pric-
12 ing references and amounts that are based upon average
13 wholesale price, wholesale average cost, average manufac-
14 turer price, average sales price, maximum allowable cost,
15 or other costs, whether publicly available or not.”.

16 (b) APPLICATION.—The amendment made by sub-
17 section (a) shall apply to any contract entered into under
18 section 8902 of title 5, United States Code, on or after
19 the date of enactment of this section.

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