

114TH CONGRESS
2D SESSION

H. R. 6120

To amend title XVIII of the Social Security Act to provide for clarification and rationalization of Medicare prescription drug plan recovery rules for certain claims.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2016

Mr. MURPHY of Pennsylvania (for himself and Mr. KIND) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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 clarification and rationalization of Medicare prescription drug plan recovery rules for certain claims.

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 “Secondary Payer Ad-
5 vancement, Rationalization, and Clarification Act” or the
6 “SPARC Act”.

1 **SEC. 2. CLARIFICATION AND RATIONALIZATION OF MEDI-**
2 **CARE PRESCRIPTION DRUG SECONDARY**
3 **CLAIMS RESPONSIBILITY.**

4 (a) IN GENERAL.—Section 1860D–2(a)(4) of the So-
5 cial Security Act (42 U.S.C. 1395w–102(a)(4)) is amend-
6 ed to read as follows:

7 “(4) SECONDARY PAYOR AND RECOVERY
8 RIGHTS.—

9 “(A) IN GENERAL.—

10 “(i) APPLICATION OF SECONDARY
11 PAYOR.—A prescription drug plan shall be
12 secondary payor to any valid and collectible
13 payment from a primary drug plan (as de-
14 fined in clause (iv)) until such time as such
15 primary drug plan pays a final settlement,
16 judgment, or award to an individual en-
17 rolled under the prescription drug plan
18 with regard to an injury or illness involved
19 or otherwise terminates its ongoing respon-
20 sibility for medical payments with respect
21 to the individual.

22 “(ii) LIMITATION ON PARTIES MAKING
23 PRESCRIPTION DRUG PLANS PRIMARY.—A
24 primary drug plan (as defined in clause
25 (iv), other than a group health plan or
26 multiemployer or multiple employer plan

1 of, or contributed to by, an employer that
2 has 20 or fewer employees for each work-
3 ing day in each of 20 or more calendar
4 weeks in the calendar year involved or the
5 preceding calendar year), a self-insured
6 plan, a service benefit plan, a managed
7 care organization, a pharmacy benefit
8 manager, or other party that, by statute,
9 contract, or agreement, is legally respon-
10 sible for payment of a claim for a covered
11 outpatient drug, in enrolling an individual
12 or in making any payments for benefits to
13 the individual or on the individual's behalf,
14 may not take into account that the indi-
15 vidual is enrolled under a prescription drug
16 plan under this part or is eligible for or is
17 provided coverage for covered part D drugs
18 under this part.

19 “(iii) LIMITATION ON SECRETARIAL
20 CLAIMS THROUGH SUBROGATION.—The
21 Secretary shall not assert any claim on be-
22 half or against a prescription drug plan,
23 other than through the recovery from such
24 a plan of amounts paid related to a cov-
25 ered part D drug event that has been re-

1 paid to the plan through a subrogation ac-
2 tion.

3 “(iv) PRIMARY DRUG PLAN DE-
4 FINED.—In this paragraph, the term ‘pri-
5 mary drug plan’ means, with respect to
6 benefits for covered part D drugs, a group
7 health plan or large group health plan
8 (other than a group health plan or multi-
9 employer or multiple employer plan of, or
10 contributed to by, an employer that has 20
11 or fewer employees for each working day in
12 each of 20 or more calendar weeks in the
13 calendar year involved or the preceding cal-
14 endar year), a workers’ compensation law
15 or plan, an automobile or liability insur-
16 ance policy or plan (including a self-in-
17 sured plan) or no-fault insurance insofar
18 as such a plan, law, policy, or insurance
19 provides such benefits, insofar as, under
20 the provisions of section 1862(b)(2), such
21 coverage would be treated as a primary
22 plan if benefits for covered part D drugs
23 were treated as benefits under parts A and
24 B. For purposes of this clause, an entity
25 that engages in a business, trade, or pro-

1 fession shall be deemed to have a self-in-
2 sured plan if it carries its own risk (wheth-
3 er by a failure to obtain insurance, or oth-
4 erwise) in whole or in part.

5 “(B) RECOVERY.—A prescription drug
6 plan shall be subrogated (to the extent of pay-
7 ment made under this part by the plan for any
8 covered part D drug before the date the plan
9 received notice pursuant to subparagraph (D))
10 to any right of an individual or any other entity
11 to payment, with respect to such covered part
12 D drug, under a primary drug plan. A subroga-
13 tion claim may not be asserted pursuant to this
14 subparagraph by a prescription drug plan with
15 respect to a payment for a covered part D drug
16 after the date that is 3 years after the date
17 such plan receives notice of a payment, with re-
18 spect to such covered part D drug, pursuant to
19 subparagraph (D). Any such subrogation claim
20 shall be the exclusive legal remedy of the PDP
21 sponsor of the plan and shall be reduced to take
22 into account the cost of procuring the judgment
23 or settlement with respect to such claim if an
24 individual’s liability, workers’ compensation, or
25 no-fault claim is disputed. Any costs or expense

1 incurred by a prescription drug plan related to
2 recoveries pursuant to this subparagraph shall
3 not be considered an administrative cost or ex-
4 pense, as those terms are used in this part.

5 “(C) WAIVER.—A prescription drug plan
6 may waive (in whole or in part) the provisions
7 of this paragraph in the case of an individual
8 claim if the plan determines that the waiver is
9 in the best interests of the program established
10 under this part.

11 “(D) COORDINATION OF BENEFITS INFOR-
12 MATION.—Not later than 15 days after the date
13 the Secretary receives information under para-
14 graph (7) or (8) of section 1862(b) relating to
15 an individual enrolled in a prescription drug
16 plan during an applicable time, the Secretary
17 shall provide such information to such prescrip-
18 tion drug plan in a format convenient and ac-
19 cessible to such plans. The Secretary shall
20 waive any requirements under this part that a
21 prescription drug plan establish procedures for
22 determining whether costs for part D eligible
23 individuals are being reimbursed through insur-
24 ance or otherwise or identify payers that are
25 primary to the program under subparagraph

(A)(ii) other than as required under this paragraph.

“(E) COORDINATION OF BENEFITS.—A prescription drug plan shall, in the case of receipt of a notice pursuant to subparagraph (D) related to an enrollee for whom a primary drug plan has reported on ongoing responsibility for medical costs pursuant to paragraph (7) or (8) of section 1862(b), authorize the provider of such covered part D drug to charge, in accordance with the charges allowed under the prescription drug plan, such primary drug plan for such covered part D drug related to or arising out of the treatment accident or injury subject to such notice (other than payments subject to a claim under subparagraph (B) or (F)) for the period in which the enrollee remains enrolled in such plan through the date upon which such primary drug plan has terminated such ongoing responsibility for medical payments.

“(F) USE OF WEBSITE TO DETERMINE FINAL REIMBURSEMENT AMOUNT.—

“(i) NOTIFICATION OF PLANS.—Not later than 10 days after the date the Secretary receives a notice under section

1 1862(b)(2)(B)(vii)(I) relating to an indi-
2 vidual during the period the individual is
3 enrolled in a prescription drug plan, the
4 Secretary shall provide such notice to the
5 plan.

6 “(ii) STATEMENT BY PLAN.—

7 “(I) IN GENERAL.—Not later
8 than 20 days after the date a plan re-
9 ceives a notice under clause (i), the
10 plan may provide the Secretary with a
11 statement of any covered part D drug
12 for which the plan seeks reimburse-
13 ment, including the amount of such
14 reimbursement.

15 “(II) FAILURE TO PROVIDE
16 STATEMENT.—The prescription drug
17 plan shall be deemed to have waived
18 its rights under subparagraph (B)—

19 “(aa) in the case that the
20 prescription drug plan does not
21 provide such statement by such
22 date, with respect to any covered
23 part D drug provided to such in-
24 dividual with respect to such no-
25 tice; and

1 “(bb) in the case that the
2 prescription drug plan provides
3 such statement by such date,
4 with respect to any covered part
5 D drug provided to such indi-
6 vidual which was not identified in
7 the notice.

8 “(iii) INCLUSION OF INFORMATION ON
9 WEBSITE.—The Secretary shall include
10 any covered part D drug identified by a
11 prescription drug plan pursuant to clause
12 (ii) within the Secretary’s statement of re-
13 imbursement amount on the website as de-
14 scribed in section 1862(b)(2)(B)(vii).

15 “(iv) COLLECTION.—The Secretary
16 may collect (on behalf of a prescription
17 drug plan) the reimbursement amount for
18 covered part D drugs, as identified pursu-
19 ant to clause (ii), from the individual in-
20 volved or the primary drug plan pursuant
21 to the procedures set forth under section
22 1862(b)(2)(B)(vii). Any such amounts col-
23 lected by the Secretary for covered part D
24 drugs shall be remitted directly by the Sec-
25 retary to the appropriate prescription drug

1 plan that enrolled the individual related to
2 the notice during the applicable time pe-
3 riod for which such individual was en-
4 rolled.”.

5 (b) CLARIFICATION.—Section 1860D–2(b)(4)(D) of
6 the Social Security Act (42 U.S.C. 1395w–102(b)(4)(D)),
7 is amended by striking “THIRD-PARTY REIMBURSE-
8 MENT.—” and inserting “THIRD-PARTY REIMBURSE-
9 MENT.—Solely for the purpose of applying the require-
10 ments of subparagraph (C)(ii):”.

11 (c) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall apply to drugs dispensed in years be-
13 ginning more than 6 months after the date of the enact-
14 ment of this Act.

○