

115TH CONGRESS
2D SESSION

H. R. 6641

To amend title XXVII of the Public Health Service Act and title XVIII of the Social Security Act to prohibit health insurance issuers, group health plans, Medicare Advantage organizations, and prescription drug plan sponsors from limiting drug price information a pharmacy may give to a consumer.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2018

Mr. PAULSEN (for himself and Ms. ESHOO) 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 XXVII of the Public Health Service Act and title XVIII of the Social Security Act to prohibit health insurance issuers, group health plans, Medicare Advantage organizations, and prescription drug plan sponsors from limiting drug price information a pharmacy may give to a consumer.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “True Cost-sharing Of
3 Seniors’ drugs Transparency Act” or the “COST Act”.

4 **SEC. 2. PROHIBITING HEALTH INSURANCE ISSUERS,**
5 **GROUP HEALTH PLANS, MEDICARE ADVAN-**
6 **TAGE ORGANIZATIONS, AND PRESCRIPTION**
7 **DRUG PLAN SPONSORS FROM LIMITING**
8 **DRUG PRICE INFORMATION A PHARMACY**
9 **MAY GIVE TO A CONSUMER.**

10 (a) HEALTH INSURANCE ISSUERS AND GROUP
11 HEALTH PLANS.—The first subpart II of part A of title
12 XXVII of the Public Health Service Act (42 U.S.C.
13 300gg–11 et seq.) is amended by adding at the end the
14 following new section:

15 **“SEC. 2729. PROHIBITION ON PROVISIONS RELATING TO**
16 **THE COMMUNICATION OF CERTAIN PRE-**
17 **SCRIPTION DRUG PRICE INFORMATION.**

18 “(a) IN GENERAL.—A group health plan and a health
19 insurance issuer offering group or individual health insur-
20 ance coverage may not, with respect to plan years begin-
21 ning after the date the Secretary makes a determination
22 specified in subsection (c), prohibit a pharmacy from dis-
23 closing, or penalize such pharmacy (including through in-
24 creased utilization review, reduced payments, or other fi-
25 nancial disincentives) for disclosing, to an individual pur-
26 chasing a prescription drug using benefits provided under

1 such plan or such coverage alternative methods of pur-
2 chasing such drug, including paying a cash price, that may
3 be cheaper than paying the price of a drug using such
4 benefits.

5 “(b) CONSUMER INFORMATION.—

6 “(1) IN GENERAL.—A group health plan and a
7 health insurance issuer offering group or individual
8 health insurance coverage shall ensure that, in the
9 case that an applicable pharmacy (as defined in
10 paragraph (2)) informs an individual with health
11 benefits under such plan or such coverage of alter-
12 native methods of purchasing a drug, including pay-
13 ing a cash price, that may be cheaper than paying
14 the price of a drug using such benefits, such phar-
15 macy also—

16 “(A) informs such individual of—

17 “(i) the effect so purchasing such
18 drug would have on such individual’s de-
19 ductible with respect to such plan or such
20 coverage; and

21 “(ii) other information determined ap-
22 propriate by the Secretary for purposes of
23 enabling such individual to make an in-
24 formed decision with respect to the effects

1 of using such benefits or such alternative
2 methods to purchase such drug; and

3 “(B) in the case that such individual pur-
4 chases such drug using such alternative meth-
5 ods, reports to such plan or such issuer the
6 amount such individual paid for such drug
7 using such alternative methods.

8 “(2) DEFINITION.—In this subsection, the term
9 ‘applicable pharmacy’ means, with respect to a
10 group health plan and a health insurance issuer of-
11 fering group or individual health insurance coverage,
12 a pharmacy with which such plan or such issuer con-
13 tracts with under such plan or such coverage or that
14 is otherwise an in-network pharmacy under such
15 plan or such coverage.

16 “(c) DETERMINATION.—A determination specified in
17 this subsection is a determination by the Secretary that
18 a prohibition or penalty described in subsection (a) is
19 being used by a group health plan or a health insurance
20 issuer offering group or individual health insurance cov-
21 erage.”.

22 (b) MA ORGANIZATIONS AND PDP SPONSORS.—Sec-
23 tion 1860D–4 of the Social Security Act (42 U.S.C.
24 1395w–104) is amended by adding at the end the fol-
25 lowing new subsection:

1 “(m) PROHIBITION ON LIMITING CERTAIN INFORMA-
2 TION ON PRESCRIPTION DRUG PRICES.—

3 “(1) IN GENERAL.—A PDP sponsor of a pre-
4 scription drug plan and a Medicare Advantage orga-
5 nization offering an MA–PD plan may not, with re-
6 spect to plan years beginning after the date the Sec-
7 retary makes a determination specified in paragraph
8 (3), prohibit a pharmacy from disclosing, or penalize
9 such pharmacy (including through increased utiliza-
10 tion review, reduced payments, or other financial
11 disincentives) for disclosing, to an individual pur-
12 chasing a prescription drug using benefits provided
13 under such prescription drug plan or such MA–PD
14 plan alternative methods of purchasing such drug,
15 including paying a cash price, that may be cheaper
16 than paying the price of a drug using such benefits.

17 “(2) CONSUMER INFORMATION.—

18 “(A) IN GENERAL.—A PDP sponsor of a
19 prescription drug plan and a Medicare Advan-
20 tage organization offering an MA–PD plan
21 shall ensure that, in the case that an applicable
22 pharmacy (as defined in subparagraph (B)) in-
23 forms an individual with health benefits under
24 such prescription drug plan or such MA–PD
25 plan of alternative methods of purchasing a

1 drug, including paying a cash price, that may
2 be cheaper than paying the price of a drug
3 using such benefits, such pharmacy also—

4 “(i) informs such individual of—

5 “(I) the effect so purchasing such
6 drug would have on such individual’s
7 deductible with respect to such pre-
8 scription drug plan or such MA–PD
9 plan; and

10 “(II) other information deter-
11 mined appropriate by the Secretary
12 for purposes of enabling such indi-
13 vidual to make an informed decision
14 with respect to the effects of using
15 such benefits or such alternative
16 methods to purchase such drug; and

17 “(ii) in the case that such individual
18 purchases such drug using such alternative
19 methods, reports to such sponsor or such
20 organization the amount such individual
21 paid for such drug using such alternative
22 methods.

23 “(B) DEFINITION.—For purposes of this
24 paragraph, the term ‘applicable pharmacy’
25 means, with respect to a PDP sponsor of a pre-

1 scription drug plan and a Medicare Advantage
 2 organization offering an MA–PD plan, a phar-
 3 macy with which such sponsor or such organi-
 4 zation contracts with under such prescription
 5 drug plan or such MA–PD plan or that is oth-
 6 erwise an in-network pharmacy under such pre-
 7 scription drug plan or such MA–PD plan.

8 “(3) DETERMINATION.—A determination speci-
 9 fied in this paragraph is a determination by the Sec-
 10 retary that a prohibition or penalty described in
 11 paragraph (1) is being used by a PDP sponsor of a
 12 prescription drug plan or a Medicare Advantage or-
 13 ganization offering an MA–PD plan with respect to
 14 such prescription drug plan or MA–PD plan.”.

15 (c) STUDY OF PREVALENCE OF PHARMACY PROVI-
 16 SION OF INFORMATION PROHIBITIONS.—Not later than 1
 17 year after the date of the enactment of this Act, the Sec-
 18 retary of Health and Human Services (in this section re-
 19 ferred to as the “Secretary”) shall conduct a study and
 20 submit to Congress a report on the prevalence of prohibi-
 21 tions by—

22 (1) group health plans and health insurance
 23 issuers (as such terms are defined in section 2791
 24 of the Public Health Service Act (42 U.S.C. 300gg–
 25 91)); and

1 (2) MA organizations offering MA–PD plans
2 and sponsors of prescription drug plans;
3 on pharmacies from disclosing alternative prices of a drug
4 to an individual purchasing such drug at such pharmacy
5 using benefits under such group health plan, such health
6 insurance coverage, such MA–PD plan, or such prescrip-
7 tion drug plan (as applicable).

○