

as part of the Social Security Act which comprises this chapter.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 1320b-23. Pharmacy benefit managers transparency requirements

(a) Provision of information

A health benefits plan or any entity that provides pharmacy benefits management services on behalf of a health benefits plan (in this section referred to as a “PBM”) that manages prescription drug coverage under a contract with—

- (1) a PDP sponsor of a prescription drug plan or an MA organization offering an MA-PD plan under part D of subchapter XVIII; or
- (2) a qualified health benefits plan offered through an exchange established by a State under section 18031 of this title,

shall provide the information described in subsection (b) to the Secretary and, in the case of a PBM, to the plan with which the PBM is under contract with, at such times, and in such form and manner, as the Secretary shall specify.

(b) Information described

The information described in this subsection is the following with respect to services provided by a health benefits plan or PBM for a contract year:

(1) The percentage of all prescriptions that were provided through retail pharmacies compared to mail order pharmacies, and the percentage of prescriptions for which a generic drug was available and dispensed (generic dispensing rate), by pharmacy type (which includes an independent pharmacy, chain pharmacy, supermarket pharmacy, or mass merchandiser pharmacy that is licensed as a pharmacy by the State and that dispenses medication to the general public), that is paid by the health benefits plan or PBM under the contract.

(2) The aggregate amount, and the type of rebates, discounts, or price concessions (excluding bona fide service fees, which include but are not limited to distribution service fees, inventory management fees, product stocking allowances, and fees associated with administrative services agreements and patient care programs (such as medication compliance programs and patient education programs)) that the PBM negotiates that are attributable to patient utilization under the plan, and the aggregate amount of the rebates, discounts, or price concessions that are passed through to the plan sponsor, and the total number of prescriptions that were dispensed.

(3) The aggregate amount of the difference between the amount the health benefits plan pays the PBM and the amount that the PBM pays retail pharmacies, and mail order phar-

macies, and the total number of prescriptions that were dispensed.

(c) Confidentiality

Information disclosed by a health benefits plan or PBM under this section is confidential and shall not be disclosed by the Secretary or by a plan receiving the information, except that the Secretary may disclose the information in a form which does not disclose the identity of a specific PBM, plan, or prices charged for drugs, for the following purposes:

- (1) As the Secretary determines to be necessary to carry out this section or part D of subchapter XVIII.
- (2) To permit the Comptroller General to review the information provided.
- (3) To permit the Director of the Congressional Budget Office to review the information provided.
- (4) To States to carry out section 18031 of this title.

(d) Penalties

The provisions of subsection (b)(3)(C) of section 1396r-8 of this title shall apply to a health benefits plan or PBM that fails to provide information required under subsection (a) on a timely basis or that knowingly provides false information in the same manner as such provisions apply to a manufacturer with an agreement under that section.

(Aug. 14, 1935, ch. 531, title XI, §1150A, as added Pub. L. 111-148, title VI, §6005, Mar. 23, 2010, 124 Stat. 698.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1320b-23 of this title, act Aug. 14, 1935, ch. 531, title XI, §1150A, as added Pub. L. 106-553, §1(a)(2) [title VI, §635(c)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A-115, which related to prohibition of certain misuses of social security numbers, was repealed by Pub. L. 106-554, §1(a)(4) [div. A, §213(a)(6), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-180, effective as if included in Pub. L. 106-553 on Dec. 21, 2000.

§ 1320b-24. Consultation with Tribal Technical Advisory Group

The Secretary of Health and Human Services shall maintain within the Centers for Medicaid & Medicare Services¹ (CMS) a Tribal Technical Advisory Group (TTAG), which was first established in accordance with requirements of the charter dated September 30, 2003, and the Secretary of Health and Human Services shall include in such Group a representative of a national urban Indian health organization and a representative of the Indian Health Service. The inclusion of a representative of a national urban Indian health organization in such Group shall not affect the nonapplication of chapter 10 of title 5 to such Group.

(Pub. L. 111-5, div. B, title V, §5006(e)(1), Feb. 17, 2009, 123 Stat. 510; Pub. L. 117-286, §4(a)(250), Dec. 27, 2022, 136 Stat. 4333.)

¹ So in original. Probably should be “Centers for Medicare & Medicaid Services”.