

115TH CONGRESS
2D SESSION

H. R. 5801

To amend title XIX of the Social Security Act to provide for requirements under the Medicaid program relating to the use of qualified prescription drug monitoring programs and prescribing certain controlled substances.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2018

Mr. GRIFFITH (for himself and Mr. FITZPATRICK) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend title XIX of the Social Security Act to provide for requirements under the Medicaid program relating to the use of qualified prescription drug monitoring programs and prescribing certain controlled substances.

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 “Medicaid Providers
5 Are Required To Note Experiences in Record Systems to
6 Help In-need Patients Act” or the “Medicaid PARTNER-
7 SHIP Act”.

1 **SEC. 2. REQUIREMENTS UNDER THE MEDICAID PROGRAM**
2 **RELATING TO QUALIFIED PRESCRIPTION**
3 **DRUG MONITORING PROGRAMS AND PRE-**
4 **SCRIBING CERTAIN CONTROLLED SUB-**
5 **STANCES.**

6 Title XIX of the Social Security Act (42 U.S.C. 1396
7 et seq.) is amended by inserting after section 1943 the
8 following new section:

9 **“SEC. 1944. REQUIREMENTS RELATING TO QUALIFIED PRE-**
10 **SCRIPTION DRUG MONITORING PROGRAMS**
11 **AND PRESCRIBING CERTAIN CONTROLLED**
12 **SUBSTANCES.**

13 “(a) IN GENERAL.—Beginning October 1, 2021, a
14 State shall, subject to subsection (d), require each covered
15 provider to check the prescription drug history of a cov-
16 ered individual being treated by the covered provider
17 through a qualified prescription drug monitoring program
18 described in subsection (b) before prescribing to such indi-
19 vidual a controlled substance.

20 “(b) QUALIFIED PRESCRIPTION DRUG MONITORING
21 PROGRAM DESCRIBED.—A qualified prescription drug
22 monitoring program described in this subsection is, with
23 respect to a State, a prescription drug monitoring pro-
24 gram administered by the State that, at a minimum, satis-
25 fies each of the following criteria:

1 “(1) The program facilitates access by a cov-
2 ered provider to, at a minimum, the following infor-
3 mation with respect to a covered individual, in as
4 close to real-time as possible:

5 “(A) Information regarding the prescrip-
6 tion drug history of a covered individual with
7 respect to controlled substances.

8 “(B) The number and type of controlled
9 substances prescribed to and filled for the cov-
10 ered individual during at least the most recent
11 12-month period.

12 “(C) The name, location, and contact in-
13 formation (or other identifying number selected
14 by the State, such as a national provider identi-
15 fier issued by the National Plan and Provider
16 Enumeration System of the Centers for Medi-
17 care & Medicaid Services) of each covered pro-
18 vider who prescribed a controlled substance to
19 the covered individual during at least the most
20 recent 12-month period.

21 “(2) The program facilitates the integration of
22 information described in paragraph (1) into the
23 workflow of a covered provider, which may include
24 the electronic system the covered provider uses to
25 prescribe controlled substances.

1 “(3) The program has in place a data sharing
2 agreement with the State Medicaid program that al-
3 lows, at a minimum, the medical director and phar-
4 macy director of such program (and any designee of
5 such a director who reports directly to such director)
6 to access the information described in paragraph (1)
7 in an electronic format for purposes of improving
8 health care outcomes of individuals enrolled in the
9 State plan (or waiver of such plan) and monitoring
10 and preventing fraud, waste, and abuse.

11 “(c) APPLICATION OF PRIVACY RULES CLARIFICA-
12 TION.—The Secretary shall clarify privacy requirements,
13 including requirements under the regulations promulgated
14 pursuant to section 264(c) of the Health Insurance Port-
15 ability and Accountability Act of 1996 (42 U.S.C. 1320d–
16 2 note), related to the sharing of data under subsection
17 (b) in the same manner as the Secretary is required under
18 subparagraph (J) of section 1860D–4(c)(5) to clarify pri-
19 vacy requirements related to the sharing of data described
20 in such subparagraph.

21 “(d) ENSURING ACCESS.—In order to ensure reason-
22 able access to health care, the Secretary may waive the
23 application of the requirement under subsection (a), with
24 respect to a State, in the case of natural disasters and
25 similar situations, and in the case of the provision of emer-

1 gency services (as defined for purposes of section 1860D–
2 4(c)(5)(D)(ii)(II)).

3 “(e) REPORTS.—

4 “(1) STATE REPORTS.—Each State shall in-
5 clude in the annual report submitted to the Sec-
6 retary under section 1927(g)(3)(D), beginning with
7 such reports submitted for 2023, information includ-
8 ing, at a minimum, the following information for the
9 most recent 12-month period:

10 “(A) The percentage of covered providers
11 (as determined pursuant to a process estab-
12 lished by the State) who checked the prescrip-
13 tion drug history of a covered individual
14 through a qualified prescription drug moni-
15 toring program described in subsection (b) be-
16 fore prescribing to such individual a controlled
17 substance.

18 “(B) Aggregate trends with respect to pre-
19 scribing controlled substances such as—

20 “(i) the number of pill counts and
21 dosage for controlled substances;

22 “(ii) the number and dosage of con-
23 trolled substances prescribed per covered
24 individual; and

1 “(iii) the types of controlled sub-
2 stances prescribed, including the dates of
3 such prescriptions, the supplies authorized
4 (including the duration of such supplies),
5 and the period of validity of such prescrip-
6 tions, in different populations (such as in-
7 dividuals who are elderly, individuals with
8 disabilities, and individuals who are en-
9 rolled under both this title and title
10 XVIII).

11 “(C) Whether or not the State requires
12 (and a detailed explanation as to why the State
13 does or does not require) pharmacists to check
14 the prescription drug history of a covered indi-
15 vidual through a qualified drug management
16 program before dispensing a controlled sub-
17 stance to such individual.

18 “(2) REPORT BY CMS.—Not later than October
19 1, 2023, the Administrator of the Centers for Medi-
20 care & Medicaid Services shall publish on the pub-
21 licly available website of the Centers for Medicare &
22 Medicaid Services a report including the following
23 information:

24 “(A) Guidance for States on how States
25 can increase the percentage of covered providers

1 who use qualified prescription drug monitoring
2 programs described in subsection (b).

3 “(B) Best practices for how States and
4 covered providers should use such qualified pre-
5 scription drug monitoring programs to reduce
6 the occurrence of abuse of controlled sub-
7 stances.

8 “(f) INCREASE TO FEDERAL MATCHING RATE FOR
9 CERTAIN EXPENDITURES RELATING TO QUALIFIED PRE-
10 SCRIPTION DRUG MANAGEMENT PROGRAMS.—The Sec-
11 retary shall increase the Federal medical assistance per-
12 centage or Federal matching rate that would otherwise
13 apply to a State under section 1903(a) for a calendar
14 quarter occurring during the period beginning October 1,
15 2018, and ending September 30, 2021, for expenditures
16 by the State for activities under the State plan (or waiver
17 of the State plan) to implement a prescription drug man-
18 agement program that satisfies the criteria described in
19 paragraphs (1) through (3) of subsection (b) if the State
20 (in this subsection referred to as the ‘administering State’)
21 has in place agreements with all States that are contig-
22 uous to such administering State that, when combined, en-
23 able covered providers in all such contiguous States to ac-
24 cess, through the prescription drug management program,
25 the information that is described in subsection (b)(1) of

1 covered individuals of such administering State and that
 2 covered providers in such administering State are able to
 3 access through such program. In no case shall an increase
 4 under this subsection result in a Federal medical assist-
 5 ance percentage or Federal matching rate that exceeds
 6 100 percent.

7 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-
 8 tion prevents a State from requiring pharmacists to check
 9 the prescription drug history of covered individuals
 10 through a qualified drug management program before dis-
 11 pensing controlled substances to such individuals.

12 “(h) DEFINITIONS.—In this section:

13 “(1) CONTROLLED SUBSTANCE.—The term
 14 ‘controlled substance’ means a drug that is included
 15 in schedule II of section 202(c) of the Controlled
 16 Substances Act and, at the option of the State in-
 17 volved, a drug included in schedule III or IV of such
 18 section.

19 “(2) COVERED INDIVIDUAL.—The term ‘cov-
 20 ered individual’ means, with respect to a State, an
 21 individual who is enrolled in the State plan (or
 22 under a waiver of such plan). Such term does not in-
 23 clude an individual who—

24 “(A) is receiving—

25 “(i) hospice or palliative care; or

1 “(ii) treatment for cancer;

2 “(B) is a resident of a long-term care facil-
3 ity, of a facility described in section 1905(d), or
4 of another facility for which frequently abused
5 drugs are dispensed for residents through a
6 contract with a single pharmacy; or

7 “(C) the State elects to treat as exempted
8 from such term.

9 “(3) COVERED PROVIDER.—

10 “(A) IN GENERAL.—The term ‘covered
11 provider’ means, subject to subparagraph (B),
12 with respect to a State, a health care provider
13 who is participating under the State plan (or
14 waiver of the State plan) and licensed, reg-
15 istered, or otherwise permitted by the State to
16 prescribe a controlled substance (or the des-
17 ignee of such provider).

18 “(B) EXCEPTIONS.—

19 “(i) IN GENERAL.—Beginning Octo-
20 ber 1, 2021, for purposes of this section,
21 such term does not include a health care
22 provider included in any type of health
23 care provider determined by the Secretary
24 to be exempt from application of this sec-
25 tion under clause (ii).

1 “(ii) EXCEPTIONS PROCESS.—Not
 2 later than October 1, 2020, the Secretary,
 3 after consultation with the National Asso-
 4 ciation of Medicaid Directors, national
 5 health care provider associations, Medicaid
 6 beneficiary advocates, and advocates for in-
 7 dividuals with rare diseases, shall deter-
 8 mine, based on such consultations, the
 9 types of health care providers (if any) that
 10 should be exempted from the definition of
 11 the term ‘covered provider’ for purposes of
 12 this section.”.

13 **SEC. 3. GUIDANCE.**

14 Not later than October 1, 2019, the Administrator
 15 of the Centers for Medicare & Medicaid Services, in con-
 16 sultation with the Director of the Centers for Disease Con-
 17 trol and Prevention, shall issue guidance on best practices
 18 on the uses of prescription drug monitoring programs re-
 19 quired of prescribers and on protecting the privacy of
 20 Medicaid beneficiary information maintained in and
 21 accessed through prescription drug monitoring programs.

22 **SEC. 4. DEVELOPMENT OF MODEL STATE PRACTICES.**

23 (a) IN GENERAL.—Not later than October 1, 2020,
 24 the Secretary of Health and Human Services shall develop
 25 and publish model practices to assist State Medicaid pro-

1 gram operations in identifying and implementing strate-
2 gies to utilize data sharing agreements described in section
3 1944(b)(3) of the Social Security Act, as added by section
4 2, for the following purposes:

5 (1) Monitoring and preventing fraud, waste,
6 and abuse.

7 (2) Improving health care for individuals en-
8 rolled in a State plan under title XIX of such Act
9 (or waiver of such plan) who—

10 (A) transition in and out of coverage under
11 such title;

12 (B) may have sources of health care cov-
13 erage in addition to coverage under such title;
14 or

15 (C) pay for prescription drugs with cash.

16 (3) Any other purposes specified by the Sec-
17 retary.

18 (b) ELEMENTS OF MODEL PRACTICES.—The model
19 practices described in subsection (a)—

20 (1) may include strategies for assisting States
21 in allowing the medical director or pharmacy direc-
22 tor (or designees of such a director) of managed
23 care organizations or pharmaceutical benefit man-
24 agers to access information with respect to all cov-
25 ered individuals served by such managed care orga-

1 nizations or pharmaceutical benefit managers to ac-
2 cess as a single data set, in an electronic format;
3 and

4 (2) shall include any appropriate beneficiary
5 protections and privacy guidelines.

6 (c) CONSULTATION.—In developing model practices
7 under this section, the Secretary shall consult with the Na-
8 tional Association of Medicaid Directors, managed care
9 entities (as defined in section 1932(a)(1)(B) of the Social
10 Security Act) with contracts with States pursuant to sec-
11 tion 1903(m) of such Act, pharmaceutical benefit man-
12 agers, physicians and other health care providers, bene-
13 ficiary advocates, and individuals with expertise in health
14 care technology related to prescription drug monitoring
15 programs and electronic health records.

16 **SEC. 5. REPORT BY COMPTROLLER GENERAL.**

17 Not later than October 1, 2020, the Comptroller Gen-
18 eral of the United States shall issue a report examining
19 the operation of prescription drug monitoring programs
20 administered by States, including data security and access
21 standards used by such programs.

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