

115TH CONGRESS
2D SESSION

H. R. 5773

To amend title XVIII of the Social Security Act to require Medicare prescription drug plans to establish drug management programs for at-risk beneficiaries, require electronic prior authorization for covered part D drugs, and to provide for other program integrity measures under parts C and D of the Medicare program.

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2018

Mr. ROSKAM (for himself, Ms. SEWELL of Alabama, Mr. KNIGHT, and Ms. SINEMA) 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 require Medicare prescription drug plans to establish drug management programs for at-risk beneficiaries, require electronic prior authorization for covered part D drugs, and to provide for other program integrity measures under parts C and D of the Medicare program.

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 “Preventing Addiction
3 for Susceptible Seniors Act of 2018” or the “PASS Act
4 of 2018”.

5 **SEC. 2. REQUIRING PRESCRIPTION DRUG PLAN SPONSORS**
6 **UNDER MEDICARE TO ESTABLISH DRUG**
7 **MANAGEMENT PROGRAMS FOR AT-RISK**
8 **BENEFICIARIES.**

9 Section 1860D–4(c) of the Social Security Act (42
10 U.S.C. 1395w–104(c)) is amended—

11 (1) in paragraph (1), by inserting after sub-
12 paragraph (E) the following new subparagraph:

13 “(F) With respect to plan years beginning
14 on or after January 1, 2021, a drug manage-
15 ment program for at-risk beneficiaries described
16 in paragraph (5).”; and

17 (2) in paragraph (5)(A), by inserting “(and for
18 plan years beginning on or after January 1, 2021,
19 a PDP sponsor shall)” after “A PDP sponsor may”.

20 **SEC. 3. ELECTRONIC PRIOR AUTHORIZATION FOR COV-**
21 **ERED PART D DRUGS.**

22 (a) **INCLUSION IN ELECTRONIC PRESCRIPTION PRO-**
23 **GRAM.**—Section 1860D–4(e)(2) of the Social Security Act
24 (42 U.S.C. 1395w–104(e)(2)) is amended by adding at the
25 end the following new subparagraph:

“(E) ELECTRONIC PRIOR AUTHORIZATION.—

“(i) IN GENERAL.—Not later than January 1, 2021, the program shall provide for the secure electronic transmittal of—

“(I) a prior authorization request from the prescribing health care professional for coverage of a covered part D drug for a part D eligible individual enrolled in a part D plan (as defined in section 1860D–23(a)(5)) to the PDP sponsor or Medicare Advantage organization offering such plan; and

“(II) a response, in accordance with this subparagraph, from such PDP sponsor or Medicare Advantage organization, respectively, to such professional.

“(ii) ELECTRONIC TRANSMISSION.—

“(I) EXCLUSIONS.—For purposes of this subparagraph, a facsimile, a proprietary payer portal that does not meet standards specified by the Sec-

1 retary, or an electronic form shall not
2 be treated as an electronic trans-
3 mission described in clause (i).

4 “(II) STANDARDS.—In order to
5 be treated, for purposes of this sub-
6 paragraph, as an electronic trans-
7 mission described in clause (i), such
8 transmission shall comply with tech-
9 nical standards adopted by the Sec-
10 retary in consultation with the Na-
11 tional Council for Prescription Drug
12 Programs, other standard setting or-
13 ganizations determined appropriate by
14 the Secretary, and stakeholders in-
15 cluding PDP sponsors, Medicare Ad-
16 vantage organizations, health care
17 professionals, and health information
18 technology software vendors.”.

19 (b) SENSE OF CONGRESS REGARDING ELECTRONIC
20 PRIOR AUTHORIZATION.—It is the sense of the Congress
21 that—

22 (1) there should be increased use of electronic
23 prior authorizations for coverage of covered part D
24 drugs for part D eligible individuals enrolled in pre-
25 scription drug plans under part D of title XVIII of

1 the Social Security Act and MA–PD plans under
 2 part C of such title to reduce access delays by re-
 3 solving coverage issues before prescriptions for such
 4 drugs are transmitted; and

5 (2) greater priority should be placed on increas-
 6 ing the adoption of use of such electronic prior au-
 7 thorizations among prescribers of such drugs, phar-
 8 macies, PDP sponsors, and Medicare Advantage or-
 9 ganizations.

10 **SEC. 4. PROGRAM INTEGRITY TRANSPARENCY MEASURES**

11 **UNDER MEDICARE PARTS C AND D.**

12 (a) IN GENERAL.—Section 1859 of the Social Secu-
 13 rity Act (42 U.S.C. 1395w–28) is amended by adding at
 14 the end the following new subsection:

15 “(i) PROGRAM INTEGRITY TRANSPARENCY MEAS-
 16 URES.—

17 “(1) PROGRAM INTEGRITY PORTAL.—

18 “(A) IN GENERAL.—Not later than two
 19 years after the date of the enactment of this
 20 subsection, the Secretary shall, after consulta-
 21 tion with stakeholders, establish a secure Inter-
 22 net website portal (or other successor tech-
 23 nology) that would allow a secure path for com-
 24 munication between the Secretary, MA plans
 25 under this part, prescription drug plans under

1 part D, and an eligible entity with a contract
2 under section 1893 (such as a Medicare drug
3 integrity contractor or an entity responsible for
4 carrying out program integrity activities under
5 this part and part D) for the purpose of ena-
6 bling through such portal (or other successor
7 technology)—

8 “(i) the referral by such plans of sub-
9 stantiated fraud, waste, and abuse for ini-
10 tiating or assisting investigations con-
11 ducted by the eligible entity; and

12 “(ii) data sharing among such MA
13 plans, prescription drug plans, and the
14 Secretary.

15 “(B) REQUIRED USES OF PORTAL.—The
16 Secretary shall disseminate the following infor-
17 mation to MA plans under this part and pre-
18 scription drug plans under part D through the
19 secure Internet website portal (or other suc-
20 cessor technology) established under subpara-
21 graph (A):

22 “(i) Providers of services and sup-
23 pliers that have been referred pursuant to
24 subparagraph (A)(i) during the previous
25 12-month period.

1 “(ii) Providers of services and sup-
2 pliers who are the subject of an active ex-
3 clusion under section 1128 or who are sub-
4 ject to a suspension of payment under this
5 title pursuant to section 1862(o) or other-
6 wise.

7 “(iii) Providers of services and sup-
8 pliers who are the subject of an active rev-
9 ocation of participation under this title, in-
10 cluding for not satisfying conditions of par-
11 ticipation.

12 “(iv) In the case of such a plan that
13 makes a referral under subparagraph
14 (A)(i) through the portal (or other suc-
15 cessor technology) with respect to activities
16 of substantiated fraud, waste, or abuse of
17 a provider of services or supplier, if such
18 provider or supplier has been the subject of
19 an administrative action under this title or
20 title XI with respect to similar activities, a
21 notification to such plan of such action so
22 taken.

23 “(C) RULEMAKING.—For purposes of this
24 paragraph, the Secretary shall, through rule-
25 making, specify what constitutes substantiated

1 fraud, waste, and abuse, using guidance such as
2 what is provided in the Medicare Program In-
3 tegrity Manual 4.7.1. In carrying out this sub-
4 section, a fraud hotline tip (as defined by the
5 Secretary) without further evidence shall not be
6 treated as sufficient evidence for substantiated
7 fraud, waste, or abuse.

8 “(D) HIPAA COMPLIANT INFORMATION
9 ONLY.—For purposes of this subsection, com-
10 munications may only occur if the communica-
11 tions are permitted under the Federal regula-
12 tions (concerning the privacy of individually
13 identifiable health information) promulgated
14 under section 264(c) of the Health Insurance
15 Portability and Accountability Act of 1996.

16 “(2) QUARTERLY REPORTS.—Beginning two
17 years after the date of enactment of this subsection,
18 the Secretary shall make available to MA plans
19 under this part and prescription drug plans under
20 part D in a timely manner (but no less frequently
21 than quarterly) and using information submitted to
22 an entity described in paragraph (1) through the
23 portal (or other successor technology) described in
24 such paragraph or pursuant to section 1893, infor-
25 mation on fraud, waste, and abuse schemes and

1 trends in identifying suspicious activity. Information
2 included in each such report shall—

3 “(A) include administrative actions, perti-
4 nent information related to opioid overpre-
5 scribing, and other data determined appropriate
6 by the Secretary in consultation with stake-
7 holders; and

8 “(B) be anonymized information submitted
9 by plans without identifying the source of such
10 information.

11 “(3) CLARIFICATION.—Nothing in this sub-
12 section shall be construed as precluding or otherwise
13 affecting referrals described in subparagraph (A)
14 that may otherwise be made to law enforcement en-
15 tities or to the Secretary.”.

16 (b) CONTRACT REQUIREMENT TO COMMUNICATE
17 PLAN CORRECTIVE ACTIONS AGAINST OPIOID OVER-PRE-
18 SCRIBERS.—Section 1857(e)(4)(C) of the Social Security
19 Act (42 U.S.C. 1395w–27(e)(4)(C)) is amended by adding
20 at the end the following new paragraph:

21 “(5) COMMUNICATING PLAN CORRECTIVE AC-
22 TIONS AGAINST OPIOIDS OVER-PRESCRIBERS.—

23 “(A) IN GENERAL.—Beginning with plan
24 years beginning on or after January 1, 2021, a
25 contract under this section with an MA organi-

1 zation shall require the organization to submit
2 to the Secretary, through the process estab-
3 lished under subparagraph (B), information on
4 the investigations and other actions taken by
5 such plans related to providers of services who
6 prescribe a high volume of opioids.

7 “(B) PROCESS.—Not later than January
8 1, 2021, the Secretary shall, in consultation
9 with stakeholders, establish a process under
10 which MA plans and prescription drug plans
11 shall submit to the Secretary information de-
12 scribed in subparagraph (A).

13 “(C) REGULATIONS.—For purposes of this
14 paragraph, including as applied under section
15 1860D–12(b)(3)(D), the Secretary shall, pursu-
16 ant to rulemaking—

17 “(i) specify a definition for the term
18 ‘high volume of opioids’ and a method for
19 determining if a provider of services pre-
20 scribes such a high volume; and

21 “(ii) establish the process described in
22 subparagraph (B) and the types of infor-
23 mation that shall be submitted through
24 such process.”.

1 (c) REFERENCE UNDER PART D TO PROGRAM IN-
 2 TEGRITY TRANSPARENCY MEASURES.—Section 1860D–4
 3 of the Social Security Act (42 U.S.C. 1395w–104) is
 4 amended by adding at the end the following new sub-
 5 section:

6 “(m) PROGRAM INTEGRITY TRANSPARENCY MEAS-
 7 URES.—For program integrity transparency measures ap-
 8 plied with respect to prescription drug plan and MA plans,
 9 see section 1859(i).”.

10 **SEC. 5. EXPANDING ELIGIBILITY FOR MEDICATION THER-**
 11 **APY MANAGEMENT PROGRAMS UNDER PART**
 12 **D.**

13 Section 1860D–4(c)(2)(A)(ii) of the Social Security
 14 Act (42 U.S.C. 1395w–104(c)(2)(A)(ii)) is amended—

15 (1) by redesignating subclauses (I) through
 16 (III) as items (aa) through (cc), respectively, and
 17 adjusting the margins accordingly;

18 (2) by striking “are part D eligible individuals
 19 who—” and inserting “are the following:

20 “(I) Part D eligible individuals
 21 who—”; and

22 (3) by adding at the end the following new sub-
 23 clause:

24 “(II) Beginning January 1,
 25 2021, at-risk beneficiaries for pre-

1 scription drug abuse (as defined in
2 paragraph (5)(C)).”.

3 **SEC. 6. MEDICARE NOTIFICATIONS TO OUTLIER PRE-**
4 **SCRIBERS OF OPIOIDS.**

5 Section 1860D–4(c)(4) of the Social Security Act (42
6 U.S.C. 1395w–104(c)(4)) is amended by adding at the end
7 the following new paragraph:

8 “(D) OUTLIER PRESCRIBER NOTIFICA-
9 TION.—

10 “(i) NOTIFICATION.—Beginning not
11 later than two years after the date of the
12 enactment of this subparagraph, the Sec-
13 retary shall, in the case of a prescriber
14 identified by the Secretary under clause
15 (ii) to be an outlier prescriber of opioids,
16 provide, subject to clause (iv), an annual
17 notification to such prescriber that such
18 prescriber has been so identified and that
19 includes resources on proper prescribing
20 methods and other information specified in
21 accordance with clause (iii).

22 “(ii) IDENTIFICATION OF OUTLIER
23 PRESCRIBERS OF OPIOIDS.—

24 “(I) IN GENERAL.—The Sec-
25 retary shall, subject to subclause (III),

1 using the valid prescriber National
2 Provider Identifiers included pursuant
3 to subparagraph (A) on claims for
4 covered part D drugs for part D eligi-
5 ble individuals enrolled in prescription
6 drug plans under this part or MA-PD
7 plans under part C and based on the
8 threshold established under subclause
9 (II), conduct an analysis to identify
10 prescribers that are outlier opioid pre-
11 scribers for a period specified by the
12 Secretary.

13 “(II) ESTABLISHMENT OF
14 THRESHOLD.—For purposes of sub-
15 clause (I) and subject to subclause
16 (III), the Secretary shall, after con-
17 sultation with stakeholders, establish
18 a threshold, based on prescriber spe-
19 cialty and geographic area, for identi-
20 fying whether a prescriber in a spe-
21 cialty and geographic area is an
22 outlier prescriber of opioids as com-
23 pared to other prescribers of opioids
24 within such specialty and area.

1 “(III) EXCLUSIONS.—The Sec-
2 retary may exclude the following indi-
3 viduals and prescribers from the anal-
4 ysis under this clause:

5 “(aa) Individuals receiving
6 hospice services.

7 “(bb) Individuals with a
8 cancer diagnosis.

9 “(cc) Prescribers who are
10 the subject of an investigation by
11 the Centers for Medicare & Med-
12 icaid Services or the Office of In-
13 spector General of the Depart-
14 ment of Health and Human
15 Services.

16 “(iii) CONTENTS OF NOTIFICATION.—
17 The Secretary shall, based on input from
18 stakeholders, specify the resources and
19 other information to be included in notifi-
20 cations provided under clause (i).

21 “(iv) MODIFICATIONS AND EXPAN-
22 SIONS.—

23 “(I) FREQUENCY.—Beginning 5
24 years after the date of the enactment
25 of this subparagraph, the Secretary

1 may change the frequency of the noti-
2 fications described in clause (i) based
3 on stakeholder input.

4 “(II) EXPANSION TO OTHER
5 PRESCRIPTIONS.—The Secretary may
6 expand notifications under this sub-
7 paragraph to include identifications
8 and notifications with respect to con-
9 current prescriptions of covered Part
10 D drugs used in combination with
11 opioids that are considered to have
12 adverse side effects when so used in
13 such combination, as determined by
14 the Secretary.

15 “(v) OPIOIDS DEFINED.—For pur-
16 poses of this subparagraph, the term
17 ‘opioids’ has such meaning as specified by
18 the Secretary through program instruction
19 or otherwise.”.

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