IB

Union Calendar No. 560

115TH CONGRESS
2D SESSION

H. R. 5801

[Report No. 115–725]

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

JUNE 12, 2018

Additional sponsor: Mrs. BLACKBURN and Mr. WALDEN

JUNE 12, 2018

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 15, 2018]

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicaid Providers Are Required To Note Experiences in Record Systems to Help In-need Patients Act" or the "Medicaid PARTNERSHIP Act".

SEC. 2. REQUIREMENTS UNDER THE MEDICAID PROGRAM RELATING TO QUALIFIED PRESCRIPTION DRUG MONITORING PROGRAMS AND PRESCRIBING CERTAIN CONTROLLED SUBSTANCES.

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

"SEC. 1944. REQUIREMENTS RELATING TO QUALIFIED PRESCRIPTION DRUG MONITORING PROGRAMS AND PRESCRIBING CERTAIN CONTROLLED SUBSTANCES.

"(a) IN GENERAL.—Beginning October 1, 2021, a State shall, subject to subsection (d), require each covered provider to check the prescription drug history of a covered individual being treated by the covered provider through a qualified prescription drug monitoring program described

in subsection (b) before prescribing to such individual a controlled substance.

"(b) QUALIFIED PRESCRIPTION DRUG MONITORING PROGRAM DESCRIBED.—A qualified prescription drug monitoring program described in this subsection is, with respect to a State, a prescription drug monitoring program administered by the State that, at a minimum, satisfies each of the following criteria:

"(1) The program facilitates access by a covered provider to, at a minimum, the following information with respect to a covered individual, in as close to real-time as possible:

"(A) Information regarding the prescription drug history of a covered individual with respect to controlled substances.

"(B) The number and type of controlled substances prescribed to and filled for the covered individual during at least the most recent 12-month period.

"(C) The name, location, and contact information (or other identifying number selected by the State, such as a national provider identifier issued by the National Plan and Provider Enumeration System of the Centers for Medicare & Medicaid Services) of each covered provider who

prescribed a controlled substance to the covered individual during at least the most recent 12-month period.

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

A qualified prescription drug monitoring program described in this subsection, with respect to a State, may have in place, in accordance with applicable State and Federal law, a data sharing agreement with the State Medicaid program that allows the medical director and pharmacy director of such program (and any designee of such a director who reports directly to such director) to access the information described in paragraph (1) in an electronic format. The State Medicaid program under this title may facilitate reasonable and limited access, as determined by the State and ensuring documented beneficiary protections regarding the use of such data, to such qualified prescription drug monitoring program for the medical director or pharmacy director of any managed care entity (as defined under section 1932(a)(1)(B)) that has a contract with the State under section 1903(m) or under section 1905(t)(3), or the medical director or pharmacy director of any entity has

a contract to manage the pharmaceutical benefit with respect to individuals enrolled in the State plan (or waiver of the State plan). All applicable State and Federal security and privacy laws shall apply to the directors or designees of such directors of any State Medicaid program or entity accessing a qualified prescription drug monitoring program under this section.

"(c) APPLICATION OF PRIVACY RULES CLARIFICATION.—The Secretary shall clarify privacy requirements, including requirements under the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note), related to the sharing of data under subsection (b) in the same manner as the Secretary is required under subparagraph (J) of section 1860D–4(c)(5) to clarify privacy requirements related to the sharing of data described in such subparagraph.

"(d) ENSURING ACCESS.—In order to ensure reasonable access to health care, the Secretary may waive the application of the requirement under subsection (a), with respect to a State, in the case of natural disasters and similar situations, and in the case of the provision of emergency services (as defined for purposes of section 1860D–4(c)(5)(D)(ii)(II)).

"(e) REPORTS.—

"(1) STATE REPORTS.—Each State shall include in the annual report submitted to the Secretary under section 1927(g)(3)(D), beginning with such reports submitted for 2023, information including, at a minimum, the following information for the most recent 12-month period:

"(A) The percentage of covered providers (as determined pursuant to a process established by the State) who checked the prescription drug history of a covered individual through a qualified prescription drug monitoring program described in subsection (b) before prescribing to such individual a controlled substance.

"(B) Aggregate trends with respect to prescribing controlled substances such as—

"(i) the number of pill counts and dosage for controlled substances;

"(ii) the number and dosage of controlled substances prescribed per covered individual; and

"(iii) the types of controlled substances prescribed, including the dates of such prescriptions, the supplies authorized (including the duration of such supplies), and the period of validity of such prescriptions, in

different populations (such as individuals who are elderly, individuals with disabilities, and individuals who are enrolled under both this title and title XVIII).

"(C) Whether or not the State requires (and a detailed explanation as to why the State does or does not require) pharmacists to check the prescription drug history of a covered individual through a qualified drug management program before dispensing a controlled substance to such individual.

"(2) REPORT BY CMS.—Not later than October 1, 2023, the Administrator of the Centers for Medicare & Medicaid Services shall publish on the publicly available website of the Centers for Medicare & Medicaid Services a report including the following information:

"(A) Guidance for States on how States can increase the percentage of covered providers who use qualified prescription drug monitoring programs described in subsection (b).

"(B) Best practices for how States and covered providers should use such qualified prescription drug monitoring programs to reduce the occurrence of abuse of controlled substances.

"(f) INCREASE TO FEDERAL MATCHING RATE FOR CERTAIN EXPENDITURES RELATING TO QUALIFIED PRESCRIPTION DRUG MANAGEMENT PROGRAMS.—The Secretary shall increase the Federal medical assistance percentage or Federal matching rate that would otherwise apply to a State under section 1903(a) for a calendar quarter occurring during the period beginning October 1, 2018, and ending September 30, 2021, for expenditures by the State for activities under the State plan (or waiver of the State plan) to implement a prescription drug management program that satisfies the criteria described in paragraphs (1) and (2) of subsection (b) if the State (in this subsection referred to as the 'administering State') has in place agreements with all States that are contiguous to such administering State that, when combined, enable covered providers in all such contiguous States to access, through the prescription drug management program, the information that is described in subsection (b)(1) of covered individuals of such administering State and that covered providers in such administering State are able to access through such program. In no case shall an increase under this subsection result in a Federal medical assistance percentage or Federal matching rate that exceeds 100 percent.

"(g) RULE OF CONSTRUCTION.—Nothing in this section prevents a State from requiring pharmacists to check

the prescription drug history of covered individuals through a qualified drug management program before dispensing controlled substances to such individuals.

"(h) DEFINITIONS.—In this section:

"(1) CONTROLLED SUBSTANCE.—The term 'controlled substance' means a drug that is included in schedule II of section 202(c) of the Controlled Substances Act and, at the option of the State involved, a drug included in schedule III or IV of such section.

"(2) COVERED INDIVIDUAL.—The term 'covered individual' means, with respect to a State, an individual who is enrolled in the State plan (or under a waiver of such plan). Such term does not include an individual who—

"(A) is receiving—

"(i) hospice or palliative care; or

"(ii) treatment for cancer;

"(B) is a resident of a long-term care facility, of a facility described in section 1905(d), or of another facility for which frequently abused drugs are dispensed for residents through a contract with a single pharmacy; or

"(C) the State elects to treat as exempted from such term.

"(3) COVERED PROVIDER.—

"(A) IN GENERAL.—The term 'covered provider' means, subject to subparagraph (B), with respect to a State, a health care provider who is participating under the State plan (or waiver of the State plan) and licensed, registered, or otherwise permitted by the State to prescribe a controlled substance (or the designee of such provider).

"(B) EXCEPTIONS.—

"(i) IN GENERAL.—Beginning October 1, 2021, for purposes of this section, such term does not include a health care provider included in any type of health care provider determined by the Secretary to be exempt from application of this section under clause (ii).

"(ii) EXCEPTIONS PROCESS.—Not later than October 1, 2020, the Secretary, after consultation with the National Association of Medicaid Directors, national health care provider associations, Medicaid beneficiary advocates, and advocates for individuals with rare diseases, shall determine, based on such consultations, the types of health care providers (if any) that should be exempted

from the definition of the term 'covered provider' for purposes of this section.".

SEC. 3. GUIDANCE.

Not later than October 1, 2019, the Administrator of the Centers for Medicare & Medicaid Services, in consultation with the Director of the Centers for Disease Control and Prevention, shall issue guidance on best practices on the uses of prescription drug monitoring programs required of prescribers and on protecting the privacy of Medicaid beneficiary information maintained in and accessed through prescription drug monitoring programs.

SEC. 4. DEVELOPMENT OF MODEL STATE PRACTICES.

(a) IN GENERAL.—Not later than October 1, 2020, the Secretary of Health and Human Services shall develop and publish model practices to assist State Medicaid program operations in identifying and implementing strategies to utilize data sharing agreements described in the matter following paragraph (2) of section 1944(b) of the Social Security Act, as added by section 2, for the following purposes:

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

(2) Improving health care for individuals enrolled in a State plan under title XIX of such Act (or waiver of such plan) who—

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

(B) may have sources of health care coverage in addition to coverage under such title; or

(C) pay for prescription drugs with cash.

(3) Any other purposes specified by the Secretary.

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

(1) may include strategies for assisting States in allowing the medical director or pharmacy director (or designees of such a director) of managed care organizations or pharmaceutical benefit managers to access information with respect to all covered individuals served by such managed care organizations or pharmaceutical benefit managers to access as a single data set, in an electronic format; and

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

(c) CONSULTATION.—In developing model practices under this section, the Secretary shall consult with the National Association of Medicaid Directors, managed care entities (as defined in section 1932(a)(1)(B) of the Social Security Act) with contracts with States pursuant to section 1903(m) of such Act, pharmaceutical benefit managers,

physicians and other health care providers, beneficiary advocates, and individuals with expertise in health care technology related to prescription drug monitoring programs and electronic health records.

SEC. 5. REPORT BY COMPTROLLER GENERAL.

Not later than October 1, 2020, the Comptroller General of the United States shall issue a report examining the operation of prescription drug monitoring programs administered by States, including data security and access standards used by such programs.

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