

115TH CONGRESS
2D SESSION

H. R. 5801

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Medicaid Providers
3 Are Required To Note Experiences in Record Systems to
4 Help In-need Patients Act” or the “Medicaid PARTNER-
5 SHIP Act”.

6 **SEC. 2. MEDICAID PROVIDERS ARE REQUIRED TO NOTE EX-**
7 **PERIENCES IN RECORD SYSTEMS TO HELP**
8 **IN-NEED PATIENTS.**

9 (a) REQUIREMENTS UNDER THE MEDICAID PRO-
10 GRAM RELATING TO QUALIFIED PRESCRIPTION DRUG
11 MONITORING PROGRAMS AND PRESCRIBING CERTAIN
12 CONTROLLED SUBSTANCES.—Title XIX of the Social Se-
13 curity Act (42 U.S.C. 1396 et seq.) is amended by insert-
14 ing after section 1943 the following new section:

15 **“SEC. 1944. REQUIREMENTS RELATING TO QUALIFIED PRE-**
16 **SCRIPTION DRUG MONITORING PROGRAMS**
17 **AND PRESCRIBING CERTAIN CONTROLLED**
18 **SUBSTANCES.**

19 “(a) IN GENERAL.—Beginning October 1, 2021, a
20 State shall, subject to subsection (d), require each covered
21 provider to check, in accordance with such timing, man-
22 ner, and form as specified by the State, the prescription
23 drug history of a covered individual being treated by the
24 covered provider through a qualified prescription drug
25 monitoring program described in subsection (b) before
26 prescribing to such individual a controlled substance.

1 “(b) QUALIFIED PRESCRIPTION DRUG MONITORING
2 PROGRAM DESCRIBED.—A qualified prescription drug
3 monitoring program described in this subsection is, with
4 respect to a State, a prescription drug monitoring pro-
5 gram administered by the State that, at a minimum, satis-
6 fies each of the following criteria:

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

11 “(A) Information regarding the prescrip-
12 tion drug history of a covered individual with
13 respect to controlled substances.

14 “(B) The number and type of controlled
15 substances prescribed to and filled for the cov-
16 ered individual during at least the most recent
17 12-month period.

18 “(C) The name, location, and contact in-
19 formation (or other identifying number selected
20 by the State, such as a national provider identi-
21 fier issued by the National Plan and Provider
22 Enumeration System of the Centers for Medi-
23 care & Medicaid Services) of each covered pro-
24 vider who prescribed a controlled substance to

1 the covered individual during at least the most
2 recent 12-month period.

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

8 A qualified prescription drug monitoring program de-
9 scribed in this subsection, with respect to a State, may
10 have in place, in accordance with applicable State and
11 Federal law, a data sharing agreement with the State
12 Medicaid program that allows the medical director and
13 pharmacy director of such program (and any designee of
14 such a director who reports directly to such director) to
15 access the information described in paragraph (1) in an
16 electronic format. The State Medicaid program under this
17 title may facilitate reasonable and limited access, as deter-
18 mined by the State and ensuring documented beneficiary
19 protections regarding the use of such data, to such quali-
20 fied prescription drug monitoring program for the medical
21 director or pharmacy director of any managed care entity
22 (as defined under section 1932(a)(1)(B)) that has a con-
23 tract with the State under section 1903(m) or under sec-
24 tion 1905(t)(3), or the medical director or pharmacy direc-
25 tor of any entity has a contract to manage the pharma-

1 ceutical benefit with respect to individuals enrolled in the
2 State plan (or waiver of the State plan). All applicable
3 State and Federal security and privacy laws shall apply
4 to the directors or designees of such directors of any State
5 Medicaid program or entity accessing a qualified prescrip-
6 tion drug monitoring program under this section.

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

17 “(d) ENSURING ACCESS.—In order to ensure reason-
18 able access to health care, the Secretary shall waive the
19 application of the requirement under subsection (a), with
20 respect to a State, in the case of natural disasters and
21 similar situations, and in the case of the provision of emer-
22 gency services (as defined for purposes of section 1860D–
23 4(c)(5)(D)(ii)(II)).

24 “(e) REPORTS.—

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

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

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

17 “(i) the quantity of daily morphine
18 milligram equivalents prescribed for con-
19 trolled substances;

20 “(ii) the number and quantity of daily
21 morphine milligram equivalents prescribed
22 for controlled substances per covered indi-
23 vidual; and

24 “(iii) the types of controlled sub-
25 stances prescribed, including the dates of

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

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

16 “(2) REPORT BY CMS.—Not later than October
17 1, 2023, the Administrator of the Centers for Medi-
18 care & Medicaid Services shall publish on the pub-
19 licly available website of the Centers for Medicare &
20 Medicaid Services a report including the following
21 information:

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

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

6 “(f) INCREASE TO FEDERAL MATCHING RATE FOR
7 CERTAIN EXPENDITURES RELATING TO QUALIFIED PRE-
8 SCRIPTON DRUG MANAGEMENT PROGRAMS.—The Sec-
9 retary shall increase the Federal medical assistance per-
10 centage or Federal matching rate that would otherwise
11 apply to a State under section 1903(a) for a calendar
12 quarter occurring during the period beginning October 1,
13 2018, and ending September 30, 2021, for expenditures
14 by the State for activities under the State plan (or waiver
15 of the State plan) to implement a prescription drug man-
16 agement program that satisfies the criteria described in
17 paragraphs (1) and (2) of subsection (b) if the State (in
18 this subsection referred to as the ‘administering State’)
19 has in place agreements with all States that are contig-
20 uous to such administering State that, when combined, en-
21 able covered providers in all such contiguous States to ac-
22 cess, through the prescription drug management program,
23 the information that is described in subsection (b)(1) of
24 covered individuals of such administering State and that
25 covered providers in such administering State are able to

1 access through such program. In no case shall an increase
2 under this subsection result in a Federal medical assist-
3 ance percentage or Federal matching rate that exceeds
4 100 percent.

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

10 “(h) DEFINITIONS.—In this section:

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

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

22 “(A) is receiving—

23 “(i) hospice or palliative care; or

24 “(ii) treatment for cancer;

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

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

8 “(3) COVERED PROVIDER.—

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

17 “(B) EXCEPTIONS.—

18 “(i) IN GENERAL.—Beginning Octo-
19 ber 1, 2021, for purposes of this section,
20 such term does not include a health care
21 provider included in any type of health
22 care provider determined by the Secretary
23 to be exempt from application of this sec-
24 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 (b) GUIDANCE.—Not later than October 1, 2019, the
14 Administrator of the Centers for Medicare & Medicaid
15 Services, in consultation with the Director of the Centers
16 for Disease Control and Prevention, shall issue guidance
17 on best practices on the uses of prescription drug moni-
18 toring programs required of prescribers and on protecting
19 the privacy of Medicaid beneficiary information main-
20 tained in and accessed through prescription drug moni-
21 toring programs.

22 (c) DEVELOPMENT OF MODEL STATE PRACTICES.—

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

1 State Medicaid program operations in identifying
2 and implementing strategies to utilize data sharing
3 agreements described in the matter following para-
4 graph (2) of section 1944(b) of the Social Security
5 Act, as added by subsection (a), for the following
6 purposes:

7 (A) Monitoring and preventing fraud,
8 waste, and abuse.

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

12 (i) transition in and out of coverage
13 under such title;

14 (ii) may have sources of health care
15 coverage in addition to coverage under
16 such title; or

17 (iii) pay for prescription drugs with
18 cash.

19 (C) Any other purposes specified by the
20 Secretary.

21 (2) ELEMENTS OF MODEL PRACTICES.—The
22 model practices described in paragraph (1)—

23 (A) shall include strategies for assisting
24 States in allowing the medical director or phar-
25 macy director (or designees of such a director)

1 of managed care organizations or pharma-
2 ceutical benefit managers to access information
3 with respect to all covered individuals served by
4 such managed care organizations or pharma-
5 ceutical benefit managers to access as a single
6 data set, in an electronic format; and

7 (B) shall include any appropriate bene-
8 ficiary protections and privacy guidelines.

9 (3) CONSULTATION.—In developing model prac-
10 tices under this subsection, the Secretary shall con-
11 sult with the National Association of Medicaid Di-
12 rectors, managed care entities (as defined in section
13 1932(a)(1)(B) of the Social Security Act) with con-
14 tracts with States pursuant to section 1903(m) of
15 such Act, pharmaceutical benefit managers, physi-
16 cians and other health care providers, beneficiary
17 advocates, and individuals with expertise in health
18 care technology related to prescription drug moni-
19 toring programs and electronic health records.

20 (d) REPORT BY COMPTROLLER GENERAL.—Not later
21 than October 1, 2020, the Comptroller General of the
22 United States shall issue a report examining the operation
23 of prescription drug monitoring programs administered by

- 1 States, including data security and access standards used
- 2 by such programs.

Passed the House of Representatives June 19, 2018.

Attest:

Clerk.

115TH CONGRESS
2^D SESSION

H. R. 5801

AN ACT

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.