

115TH CONGRESS  
1ST SESSION

# H. R. 1316

To amend title XVIII of the Social Security Act to provide for pharmacy benefits manager standards under the Medicare prescription drug program and Medicare Advantage program to further transparency of payment methodologies to pharmacies, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2017

Mr. COLLINS of Georgia (for himself, Mr. LOEBSACK, Mr. CARTER of Georgia, Mr. DUNCAN of Tennessee, Mrs. McMORRIS RODGERS, Mr. BLUM, Mr. SARBANES, and Mr. BABIN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Armed Services, and Oversight and Government Reform, 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

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## A BILL

To amend title XVIII of the Social Security Act to provide for pharmacy benefits manager standards under the Medicare prescription drug program and Medicare Advantage program to further transparency of payment methodologies to pharmacies, and for other purposes.

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 “Prescription Drug  
3 Price Transparency Act”.

4 **SEC. 2. PHARMACY BENEFITS MANAGER STANDARDS**  
5 **UNDER THE MEDICARE PROGRAM FOR PRE-**  
6 **SCRIPTION DRUG PLANS AND MA-PD PLANS.**

7 (a) IN GENERAL.—Section 1860D–12(b) of the So-  
8 cial Security Act (42 U.S.C. 1395w–112(b)) is amended  
9 by adding at the end the following new paragraph:

10 “(7) PHARMACY BENEFITS MANAGER TRANS-  
11 PARENCY REQUIREMENTS.—Each contract entered  
12 into with a PDP sponsor under this part with re-  
13 spect to a prescription drug plan offered by such  
14 sponsor or with an MA organization offering an  
15 MA–PD plan under part C shall provide that the  
16 sponsor or organization, respectively, may not enter  
17 into a contract with any pharmacy benefits manager  
18 (referred to in this paragraph as a ‘PBM’) to man-  
19 age the prescription drug coverage provided under  
20 such plan, or to control the costs of the prescription  
21 drug coverage under such plan, unless the PBM ad-  
22 heres to the following criteria when handling person-  
23 ally identifiable utilization and claims data or other  
24 sensitive patient data:

25 “(A) The PBM may not transmit any per-  
26 sonally identifiable utilization, protected health

1 information, or claims data, with respect to a  
2 plan enrollee, to a pharmacy owned by a PBM  
3 if the plan enrollee has not voluntarily elected  
4 in writing or via secure electronic means to fill  
5 that particular prescription at the PBM-owned  
6 pharmacy.

7 “(B) The PBM may not require that a  
8 plan enrollee use a retail pharmacy, mail order  
9 pharmacy, specialty pharmacy, or other phar-  
10 macy entity providing pharmacy services in  
11 which the PBM has an ownership interest or  
12 that has an ownership interest in the PBM, or  
13 provide an incentive to a plan enrollee to en-  
14 courage the enrollee to use a retail pharmacy,  
15 mail order pharmacy, specialty pharmacy, or  
16 other pharmacy entity providing pharmacy serv-  
17 ices in which the PBM has an ownership inter-  
18 est or that has an ownership interest in the  
19 PBM, if the incentive is applicable only to such  
20 pharmacies.”.

21 (b) REGULAR UPDATE OF PRESCRIPTION DRUG  
22 PRICING STANDARD.—Paragraph (6) of section 1860D–  
23 12(b) of the Social Security Act (42 U.S.C. 1395w–  
24 112(b)) is amended to read as follows:

1           “(6) REGULAR UPDATE OF PRESCRIPTION  
2 DRUG PRICING STANDARD.—

3           “(A) IN GENERAL.—If the PDP sponsor of  
4 a prescription drug plan (or MA organization  
5 offering an MA–PD plan) uses a standard for  
6 reimbursement (as described in subparagraph  
7 (B)) of pharmacies based on the cost of a drug,  
8 each contract entered into with such sponsor  
9 under this part (or organization under part C)  
10 with respect to the plan shall provide that the  
11 sponsor (or organization) shall—

12           “(i) update such standard not less fre-  
13 quently than once every 7 days, beginning  
14 with an initial update on January 1 of  
15 each year, to accurately reflect the market  
16 price of acquiring the drug;

17           “(ii) disclose to applicable pharmacies  
18 and the contracting entities of such phar-  
19 macies the sources used for making any  
20 such update immediately without require-  
21 ment of request;

22           “(iii) if the source for such a standard  
23 for reimbursement is not publicly available,  
24 disclose to the applicable pharmacies and  
25 the respective contracting entities of such

1 pharmacies all individual drug prices to be  
2 so updated in advance of the use of such  
3 prices for the reimbursement of claims;

4 “(iv) establish a process to appeal, in-  
5 vestigate, and resolve disputes regarding  
6 individual drug prices that are less than  
7 the pharmacy acquisition price for such  
8 drug, which must be adjudicated within 7  
9 days of the pharmacy filing its appeal; and

10 “(v) provide all such pricing data in  
11 an .xml spreadsheet format or a com-  
12 parable easily accessible and complete  
13 spreadsheet format.

14 “(B) PRESCRIPTION DRUG PRICING  
15 STANDARD DEFINED.—For purposes of sub-  
16 paragraph (A), a standard for reimbursement  
17 of a pharmacy is any methodology or formula  
18 for varying the pricing of a drug or drugs dur-  
19 ing the term of the pharmacy reimbursement  
20 contract that is based on the cost of the drug  
21 involved, including drug pricing references and  
22 amounts that are based upon average wholesale  
23 price, wholesale average cost, average manufac-  
24 turer price, average sales price, maximum al-

1 lowable cost (MAC), or other costs, whether  
2 publicly available or not.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to plan years beginning on or after  
5 January 1, 2018.

6 **SEC. 3. REGULAR UPDATE OF PRESCRIPTION DRUG PRIC-**  
7 **ING STANDARD UNDER TRICARE RETAIL**  
8 **PHARMACY PROGRAM.**

9 Section 1074g(d) of title 10, United States Code, is  
10 amended by adding at the end the following new para-  
11 graph:

12 “(3) To the extent practicable, with respect to the  
13 TRICARE retail pharmacy program described in sub-  
14 section (a)(2)(E)(ii), the Secretary shall ensure that a con-  
15 tract entered into with a TRICARE managed care support  
16 contractor includes requirements described in section  
17 1860D–12(b)(6) of the Social Security Act (42 U.S.C.  
18 1395w–112(b)(6)) to ensure the provision of information  
19 regarding the pricing standard for prescription drugs.”.

20 **SEC. 4. PRESCRIPTION DRUG TRANSPARENCY IN THE FED-**  
21 **ERAL EMPLOYEES HEALTH BENEFITS PRO-**  
22 **GRAM.**

23 (a) IN GENERAL.—Section 8902 of title 5, United  
24 States Code, is amended by adding at the end the fol-  
25 lowing new subsections:

1       “(p) A contract may not be made or a plan approved  
2 under this chapter under which a carrier has an agree-  
3 ment with a pharmacy benefits manager (in this sub-  
4 section referred to as a ‘PBM’) to manage prescription  
5 drug coverage or to control the costs of the prescription  
6 drug coverage unless the carrier and PBM adhere to the  
7 following criteria:

8               “(1) The PBM may not transmit any personally  
9 identifiable utilization, protected health information,  
10 or claims data with respect to an individual enrolled  
11 under such contract or plan to a pharmacy owned by  
12 the PBM if the individual has not voluntarily elected  
13 in writing or via secure electronic means to fill that  
14 particular prescription at such a pharmacy.

15               “(2) The PBM may not require that an indi-  
16 vidual enrolled under such contract or plan use a re-  
17 tail pharmacy, mail order pharmacy, specialty phar-  
18 macy, or other pharmacy entity providing pharmacy  
19 services in which the PBM has an ownership interest  
20 or that has an ownership interest in the PBM or  
21 provide an incentive to a plan enrollee to encourage  
22 the enrollee to use a retail pharmacy, mail order  
23 pharmacy, specialty pharmacy, or other pharmacy  
24 entity providing pharmacy services in which the  
25 PBM has an ownership interest or that has an own-

1        ership interest in the PBM, if the incentive is appli-  
2        cable only to such pharmacies.

3        “(q)(1) If a contract made or plan approved under  
4 this chapter provides for a standard for reimbursement  
5 (as described in paragraph (2)) with respect to a prescrip-  
6 tion drug plan, such contract or plan shall provide that  
7 the applicable carrier—

8            “(A) update such standard not less frequently  
9        than once every 7 days, beginning with an initial up-  
10       date on January 1 of each year, to accurately reflect  
11       the market price of acquiring the drug;

12           “(B) disclose to applicable pharmacies and the  
13       contracting entities of such pharmacies the sources  
14       used for making any such update immediately with-  
15       out requirement of request;

16           “(C) if the source for such a standard for reim-  
17       bursement is not publicly available, disclose to the  
18       applicable pharmacies and contracting entities of  
19       such pharmacies all individual drug prices to be so  
20       updated in advance of the use of such prices for the  
21       reimbursement of claims;

22           “(D) establish a process to appeal, investigate,  
23       and resolve disputes regarding individual drug prices  
24       that are less than the pharmacy acquisition price for



1 such drug, which must be adjudicated within 7 days  
2 of the pharmacy filing its appeal; and

3 “(E) provide all such pricing data in an .xml  
4 spreadsheet format or a comparable easily accessible  
5 and complete spreadsheet format.

6 “(2) For purposes of paragraph (1), a standard for  
7 reimbursement of a pharmacy is any methodology or for-  
8 mula for varying the pricing of a drug or drugs during  
9 the term of the pharmacy reimbursement contract that is  
10 based on the cost of the drug involved, including drug pric-  
11 ing references and amounts that are based upon average  
12 wholesale price, wholesale average cost, average manufac-  
13 turer price, average sales price, maximum allowable cost,  
14 or other costs, whether publicly available or not.”.

15 (b) APPLICATION.—The amendment made by sub-  
16 section (a) shall apply to any contract entered into under  
17 section 8902 of title 5, United States Code, on or after  
18 the date of enactment of this section.

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