

115TH CONGRESS
2D SESSION

H. R. 5799

To amend title XIX of the Social Security Act to require as a condition of receipt of full Federal medical assistance percentage under Medicaid that State Medicaid plans have in place certain drug utilization review activities.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2018

Mrs. BLACKBURN (for herself, Mr. BARR, and Mr. KNIGHT) 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 require as a condition of receipt of full Federal medical assistance percentage under Medicaid that State Medicaid plans have in place certain drug utilization review activities.

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 Drug Review,
5 Utilization, Good Governance Improvement Act” or the
6 “Medicaid DRUG Improvement Act”.

1 **SEC. 2. MEDICAID DRUG UTILIZATION REVIEW.**

2 (a) STATE PLAN REQUIREMENT.—Section 1902(a)
3 of the Social Security Act (42 U.S.C. 1396a(a)) is amend-
4 ed—

5 (1) in paragraph (82), at the end, by striking
6 “and”;

7 (2) in paragraph (83), at the end, by striking
8 the period and inserting “; and”; and

9 (3) by inserting after paragraph (83) the fol-
10 lowing new paragraph:

11 “(84) provide that the State is in compliance
12 with the drug review and utilization requirements
13 under subsection (nn)(1).”.

14 (b) DRUG REVIEW AND UTILIZATION REQUIRE-
15 MENTS.—Section 1902 of the Social Security Act (42
16 U.S.C. 1396a) is amended by adding at the end the fol-
17 lowing new subsection:

18 “(nn) DRUG REVIEW AND UTILIZATION REQUIRE-
19 MENTS.—

20 “(1) IN GENERAL.—For purposes of subsection
21 (a)(84), the drug review and utilization requirements
22 under this subsection are, subject to paragraph (3)
23 and beginning October 1, 2019, the following:

24 “(A) CLAIMS REVIEW LIMITATIONS.—

25 “(i) IN GENERAL.—The State has in
26 place—

1 “(I) safety edits (as specified by
2 the State) for subsequent fills for
3 opioids and a claims review automated
4 process (as designed and implemented
5 by the State) that indicates when an
6 individual enrolled under the State
7 plan (or under a waiver of the State
8 plan) is prescribed a subsequent fill of
9 opioids in excess of any limitation
10 that may be identified by the State;

11 “(II) safety edits (as specified by
12 the State) on the maximum daily mor-
13 phine equivalent that can be pre-
14 scribed to an individual enrolled under
15 the State plan (or under a waiver of
16 the State plan) for treatment of
17 chronic pain and a claims review auto-
18 mated process (as designed and imple-
19 mented by the State) that indicates
20 when an individual enrolled under the
21 plan (or waiver) is prescribed the mor-
22 phine equivalent for such treatment in
23 excess of any limitation that may be
24 identified by the State; and

1 “(III) a claims review automated
2 process (as designed and implemented
3 by the State) that monitors when an
4 individual enrolled under the State
5 plan (or under a waiver of the State
6 plan) is concurrently prescribed
7 opioids and—

8 “(aa) benzodiazepines; or

9 “(bb) antipsychotics.

10 “(ii) MANAGED CARE ENTITIES.—The
11 State requires each managed care entity
12 (as defined in section 1932(a)(1)(B)) with
13 respect to which the State has a contract
14 under section 1903(m) or under section
15 1905(t)(3) to have in place, subject to
16 paragraph (3), with respect to individuals
17 who are eligible for medical assistance
18 under the State plan (or under a waiver of
19 the State plan) and who are enrolled with
20 the entity, the limitations described in sub-
21 clauses (I) and (II) of clause (i) and a
22 claims review automated process described
23 in subclause (III) of such clause.

24 “(iii) RULES OF CONSTRUCTION.—

25 Nothing in this subparagraph may be con-

1 strued as prohibiting a State or managed
2 care entity from designing and imple-
3 menting a claims review automated process
4 under this subparagraph that provides for
5 prospective or retrospective reviews of
6 claims. Nothing in this subparagraph shall
7 be understood as prohibiting the exercise
8 of clinical judgment from a provider en-
9 rolled as a participating provider in a
10 State plan (or waiver of the State plan) or
11 contracting with a managed care entity re-
12 garding the best items and services for an
13 individual enrolled under such State plan
14 (or waiver).

15 “(B) PROGRAM TO MONITOR
16 ANTIPSYCHOTIC MEDICATIONS BY CHILDREN.—

17 The State has in place a program (as designed
18 and implemented by the State), including such
19 a program that the State had in place before
20 the date of the enactment of this subsection, to
21 monitor and manage the appropriate use of
22 antipsychotic medications by children enrolled
23 under the State plan (or under a waiver of the
24 State plan) and submits annually to the Sec-
25 retary such information as the Secretary may

1 require on activities carried out under such pro-
2 gram for individuals not more than the age of
3 18 years generally and children in foster care
4 specifically.

5 “(C) FRAUD AND ABUSE IDENTIFICA-
6 TION.—The State has in place a process (as de-
7 signed and implemented by the State), includ-
8 ing such a process that the State had in place
9 before the date of the enactment of this sub-
10 section, that identifies potential fraud or abuse
11 of controlled substances by individuals enrolled
12 under the State plan (or under a waiver of the
13 State plan), health care providers prescribing
14 drugs to individuals so enrolled, and pharmacies
15 dispensing drugs to individuals so enrolled.

16 “(D) REPORTS.—The State shall include
17 in the annual report submitted to the Secretary
18 under section 1927(g)(3)(D) information on the
19 limitations, requirement, program, and proc-
20 esses applied by the State under subparagraphs
21 (A) through (C) in accordance with such man-
22 ner and time as specified by the Secretary.

23 “(2) ANNUAL REPORT BY SECRETARY.—For
24 each fiscal year beginning with fiscal year 2020, the
25 Secretary shall submit to Congress a report on the

1 most recent information submitted by States under
2 paragraph (1)(D).

3 “(3) EXCEPTIONS.—

4 “(A) CERTAIN INDIVIDUALS EXEMPTED.—

5 The drug review and utilization requirements
6 under this subsection shall not apply with re-
7 spect to an individual who—

8 “(i) is receiving—

9 “(I) hospice or palliative care; or

10 “(II) treatment for cancer;

11 “(ii) is a resident of a long-term care
12 facility, of a facility described in section
13 1905(d), or of another facility for which
14 frequently abused drugs are dispensed for
15 residents through a contract with a single
16 pharmacy; or

17 “(iii) the State elects to treat as ex-
18 empted from such requirements.

19 “(B) EXCEPTION RELATING TO ENSURING
20 ACCESS.—In order to ensure reasonable access
21 to health care, the Secretary may waive the
22 drug review and utilization requirements under
23 this subsection, with respect to a State, in the
24 case of natural disasters and similar situations,
25 and in the case of the provision of emergency

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

3 (c) MANAGED CARE ENTITIES.—Section 1932 of the
4 Social Security Act (42 U.S.C. 1396u–2) is amended by
5 adding at the end the following new subsection:

6 “(i) DRUG UTILIZATION REVIEW ACTIVITIES AND
7 REQUIREMENTS.—Beginning not later than October 1,
8 2019, each contract under a State plan with a managed
9 care entity (other than a primary care case manager)
10 under section 1903(m) shall provide that the entity is in
11 compliance with the applicable provisions of section
12 438.3(s)(2) of title 42 of the Code of Federal Regulations,
13 section 483.3(s)(4) of such title, and section 483.3(s)(5)
14 of such title, as such provisions were in effect on March
15 31, 2018.”.

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