

## Union Calendar No. 563

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5799

**[Report No. 115-728]**

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.

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### 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

JUNE 12, 2018

Additional sponsor: Mr. WALDEN

JUNE 12, 2018

Reported with amendments, 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 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”.*

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

8 *(a) STATE PLAN REQUIREMENT.—Section 1902(a) of*  
9 *the Social Security Act (42 U.S.C. 1396a(a)) is amended—*

10 *(1) in paragraph (82), at the end, by striking*  
11 *“and”;*

12 *(2) in paragraph (83), at the end, by striking*  
13 *the period and inserting “; and”; and*

14 *(3) by inserting after paragraph (83) the fol-*  
15 *lowing new paragraph:*

16 *“(84) provide that the State is in compliance*  
17 *with the drug review and utilization requirements*  
18 *under subsection (nn)(1).”.*

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

23 *“(nn) DRUG REVIEW AND UTILIZATION REQUIRE-*  
24 *MENTS.—*

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

5                   “(A) *CLAIMS REVIEW LIMITATIONS.*—

6                           “(i) *IN GENERAL.*—*The State has in*  
7                           *place—*

8                                   “(I) *safety edits (as specified by*  
9                                   *the State) for subsequent fills for*  
10                                   *opioids and a claims review automated*  
11                                   *process (as designed and implemented*  
12                                   *by the State) that indicates when an*  
13                                   *individual enrolled under the State*  
14                                   *plan (or under a waiver of the State*  
15                                   *plan) is prescribed a subsequent fill of*  
16                                   *opioids in excess of any limitation that*  
17                                   *may be identified by the State;*

18                                   “(II) *safety edits (as specified by*  
19                                   *the State) on the maximum daily mor-*  
20                                   *phine equivalent that can be prescribed*  
21                                   *to an individual enrolled under the*  
22                                   *State plan (or under a waiver of the*  
23                                   *State plan) for treatment of chronic*  
24                                   *pain and a claims review automated*  
25                                   *process (as designed and implemented*

1           *by the State) that indicates when an*  
2           *individual enrolled under the plan (or*  
3           *waiver) is prescribed the morphine*  
4           *equivalent for such treatment in excess*  
5           *of any limitation that may be identi-*  
6           *fied by the State; and*

7                     *“(III) a claims review automated*  
8                     *process (as designed and implemented*  
9                     *by the State) that monitors when an*  
10                    *individual enrolled under the State*  
11                    *plan (or under a waiver of the State*  
12                    *plan) is concurrently prescribed*  
13                    *opioids and—*

14                             *“(aa) benzodiazepines; or*

15                             *“(bb) antipsychotics.*

16                    *“(ii) MANAGED CARE ENTITIES.—The*  
17                    *State requires each managed care entity (as*  
18                    *defined in section 1932(a)(1)(B)) with re-*  
19                    *spect to which the State has a contract*  
20                    *under section 1903(m) or under section*  
21                    *1905(t)(3) to have in place, subject to para-*  
22                    *graph (3), with respect to individuals who*  
23                    *are eligible for medical assistance under the*  
24                    *State plan (or under a waiver of the State*  
25                    *plan) and who are enrolled with the entity,*

1           *the limitations described in subclauses (I)*  
2           *and (II) of clause (i) and a claims review*  
3           *automated process described in subclause*  
4           *(III) of such clause.*

5           “(iii) *RULES OF CONSTRUCTION.—*  
6           *Nothing in this subparagraph may be con-*  
7           *strued as prohibiting a State or managed*  
8           *care entity from designing and imple-*  
9           *menting a claims review automated process*  
10           *under this subparagraph that provides for*  
11           *prospective or retrospective reviews of*  
12           *claims. Nothing in this subparagraph shall*  
13           *be understood as prohibiting the exercise of*  
14           *clinical judgment from a provider enrolled*  
15           *as a participating provider in a State plan*  
16           *(or waiver of the State plan) or contracting*  
17           *with a managed care entity regarding the*  
18           *best items and services for an individual en-*  
19           *rolled under such State plan (or waiver).*

20           “(B) *PROGRAM TO MONITOR ANTIPSYCHOTIC*  
21           *MEDICATIONS BY CHILDREN.—The State has in*  
22           *place a program (as designed and implemented*  
23           *by the State), including such a program that the*  
24           *State had in place before the date of the enact-*  
25           *ment of this subsection, to monitor and manage*

1           *the appropriate use of antipsychotic medications*  
2           *by children enrolled under the State plan (or*  
3           *under a waiver of the State plan) and submits*  
4           *annually to the Secretary such information as*  
5           *the Secretary may require on activities carried*  
6           *out under such program for individuals not more*  
7           *than the age of 18 years generally and children*  
8           *in foster care specifically.*

9           “(C) *FRAUD AND ABUSE IDENTIFICATION.*—

10          *The State has in place a process (as designed*  
11          *and implemented by the State), including such a*  
12          *process that the State had in place before the*  
13          *date of the enactment of this subsection, that*  
14          *identifies potential fraud or abuse of controlled*  
15          *substances by individuals enrolled under the*  
16          *State plan (or under a waiver of the State plan),*  
17          *health care providers prescribing drugs to indi-*  
18          *viduals so enrolled, and pharmacies dispensing*  
19          *drugs to individuals so enrolled.*

20          “(D) *REPORTS.*—*The State shall include in*  
21          *the annual report submitted to the Secretary*  
22          *under section 1927(g)(3)(D) information on the*  
23          *limitations, requirement, program, and processes*  
24          *applied by the State under subparagraphs (A)*

1           *through (C) in accordance with such manner*  
2           *and time as specified by the Secretary.*

3           “(2) *ANNUAL REPORT BY SECRETARY.*—*For each*  
4           *fiscal year beginning with fiscal year 2020, the Sec-*  
5           *retary shall submit to Congress a report on the most*  
6           *recent information submitted by States under para-*  
7           *graph (1)(D).*

8           “(3) *EXCEPTIONS.*—

9           “(A) *CERTAIN INDIVIDUALS EXEMPTED.*—  
10          *The drug review and utilization requirements*  
11          *under this subsection shall not apply with re-*  
12          *spect to an individual who—*

13                 “(i) *is receiving—*

14                         “(I) *hospice or palliative care; or*

15                         “(II) *treatment for cancer;*

16                         “(ii) *is a resident of a long-term care*  
17                         *facility, of a facility described in section*  
18                         *1905(d), or of another facility for which fre-*  
19                         *quently abused drugs are dispensed for resi-*  
20                         *dents through a contract with a single phar-*  
21                         *macy; or*

22                         “(iii) *the State elects to treat as ex-*  
23                         *empted from such requirements.*

24           “(B) *EXCEPTION RELATING TO ENSURING*  
25           *ACCESS.*—*In order to ensure reasonable access to*

1           *health care, the Secretary may waive the drug*  
 2           *review and utilization requirements under this*  
 3           *subsection, with respect to a State, in the case of*  
 4           *natural disasters and similar situations, and in*  
 5           *the case of the provision of emergency services*  
 6           *(as defined for purposes of section 1860D-*  
 7           *4(c)(5)(D)(ii)(II)).”.*

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

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

20          **SEC. 3. IDENTIFYING AND ADDRESSING INAPPROPRIATE**  
 21   **PRESCRIBING AND BILLING PRACTICES**  
 22   **UNDER MEDICAID.**

23           *(a) IN GENERAL.—Section 1927(g) of the Social Secu-*  
 24          *rity Act (42 U.S.C. 1396r–8(g)) is amended—*

25                                   *(1) in paragraph (1)(A)—*

1           (A) by striking “of section 1903(i)(10)(B)”  
2 and inserting “of section 1902(a)(54)”;

3           (B) by striking “, by not later than Janu-  
4 ary 1, 1993,”;

5           (C) by inserting after “gross overuse,” the  
6 following: “excessive utilization,”; and

7           (D) by striking “or inappropriate or medi-  
8 cally unnecessary care” and inserting “inappro-  
9 priate or medically unnecessary care, or pre-  
10 scribing or billing practices that indicate abuse  
11 or excessive utilization”; and

12           (2) in paragraph (2)(B)—

13           (A) by inserting after “gross overuse,” the  
14 following: “excessive utilization,”;

15           (B) by striking “or inappropriate or medi-  
16 cally unnecessary care” and inserting “inappro-  
17 priate or medically unnecessary care, or pre-  
18 scribing or billing practices that indicate abuse  
19 or excessive utilization”; and

20           (C) by adding at the end the following new  
21 sentence: “In the case that the program identifies  
22 a pattern described in the previous sentence, the  
23 State shall take such remedial actions as deter-  
24 mined necessary to address such pattern.”.

1           **(b) EFFECTIVE DATE.**—*The amendments made by sub-*  
2 *section (a) shall take effect with respect to retrospective drug*  
3 *use reviews conducted on or after October 1, 2020.*

Amend the title so as to read: “A bill to amend title XIX of the Social Security Act to require under Medicaid that State Medicaid plans have in place certain drug utilization review activities, and to require States to identify and address inappropriate prescribing and billing practices under Medicaid.”.

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