

Union Calendar No. 560

115TH CONGRESS
2^D 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 *italie*]

[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.

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 Providers Are*
 5 *Required To Note Experiences in Record Systems to Help*
 6 *In-need Patients Act” or the “Medicaid PARTNERSHIP*
 7 *Act”.*

8 **SEC. 2. REQUIREMENTS UNDER THE MEDICAID PROGRAM**

9 **RELATING TO QUALIFIED PRESCRIPTION**
 10 **DRUG MONITORING PROGRAMS AND PRE-**
 11 **SCRIBING CERTAIN CONTROLLED SUB-**
 12 **STANCES.**

13 *Title XIX of the Social Security Act (42 U.S.C. 1396*
 14 *et seq.) is amended by inserting after section 1943 the fol-*
 15 *lowing new section:*

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

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

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

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

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

13 “(A) *Information regarding the prescription*
14 *drug history of a covered individual with respect*
15 *to controlled substances.*

16 “(B) *The number and type of controlled*
17 *substances prescribed to and filled for the covered*
18 *individual during at least the most recent 12-*
19 *month period.*

20 “(C) *The name, location, and contact infor-*
21 *mation (or other identifying number selected by*
22 *the State, such as a national provider identifier*
23 *issued by the National Plan and Provider Enu-*
24 *meration System of the Centers for Medicare &*
25 *Medicaid Services) of each covered provider who*

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

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

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

1 *a contract to manage the pharmaceutical benefit with re-*
 2 *spect to individuals enrolled in the State plan (or waiver*
 3 *of the State plan). All applicable State and Federal security*
 4 *and privacy laws shall apply to the directors or designees*
 5 *of such directors of any State Medicaid program or entity*
 6 *accessing a qualified prescription drug monitoring program*
 7 *under this section.*

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

18 “(d) *ENSURING ACCESS.—In order to ensure reason-*
 19 *able access to health care, the Secretary may waive the ap-*
 20 *plication of the requirement under subsection (a), with re-*
 21 *spect to a State, in the case of natural disasters and similar*
 22 *situations, and in the case of the provision of emergency*
 23 *services (as defined for purposes of section 1860D–*
 24 *4(c)(5)(D)(ii)(II)).*

25 “(e) *REPORTS.—*

1 “(1) *STATE REPORTS.*—*Each State shall include*
2 *in the annual report submitted to the Secretary under*
3 *section 1927(g)(3)(D), beginning with such reports*
4 *submitted for 2023, information including, at a min-*
5 *imum, the following information for the most recent*
6 *12-month period:*

7 “(A) *The percentage of covered providers (as*
8 *determined pursuant to a process established by*
9 *the State) who checked the prescription drug his-*
10 *tory of a covered individual through a qualified*
11 *prescription drug monitoring program described*
12 *in subsection (b) before prescribing to such indi-*
13 *vidual a controlled substance.*

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

16 “(i) *the number of pill counts and dos-*
17 *age for controlled substances;*

18 “(ii) *the number and dosage of con-*
19 *trolled substances prescribed per covered in-*
20 *dividual; and*

21 “(iii) *the types of controlled substances*
22 *prescribed, including the dates of such pre-*
23 *scriptions, the supplies authorized (includ-*
24 *ing the duration of such supplies), and the*
25 *period of validity of such prescriptions, in*

1 *different populations (such as individuals*
2 *who are elderly, individuals with disabil-*
3 *ities, and individuals who are enrolled*
4 *under both this title and title XVIII).*

5 “(C) *Whether or not the State requires (and*
6 *a detailed explanation as to why the State does*
7 *or does not require) pharmacists to check the*
8 *prescription drug history of a covered individual*
9 *through a qualified drug management program*
10 *before dispensing a controlled substance to such*
11 *individual.*

12 “(2) *REPORT BY CMS.—Not later than October 1,*
13 *2023, the Administrator of the Centers for Medicare*
14 *& Medicaid Services shall publish on the publicly*
15 *available website of the Centers for Medicare & Med-*
16 *icaid Services a report including the following infor-*
17 *mation:*

18 “(A) *Guidance for States on how States can*
19 *increase the percentage of covered providers who*
20 *use qualified prescription drug monitoring pro-*
21 *grams described in subsection (b).*

22 “(B) *Best practices for how States and cov-*
23 *ered providers should use such qualified prescrip-*
24 *tion drug monitoring programs to reduce the oc-*
25 *currence of abuse of controlled substances.*

1 “(f) *INCREASE TO FEDERAL MATCHING RATE FOR*
2 *CERTAIN EXPENDITURES RELATING TO QUALIFIED PRE-*
3 *SCRIPTION DRUG MANAGEMENT PROGRAMS.*—*The Sec-*
4 *retary shall increase the Federal medical assistance percent-*
5 *age or Federal matching rate that would otherwise apply*
6 *to a State under section 1903(a) for a calendar quarter oc-*
7 *curing during the period beginning October 1, 2018, and*
8 *ending September 30, 2021, for expenditures by the State*
9 *for activities under the State plan (or waiver of the State*
10 *plan) to implement a prescription drug management pro-*
11 *gram that satisfies the criteria described in paragraphs (1)*
12 *and (2) of subsection (b) if the State (in this subsection*
13 *referred to as the ‘administering State’) has in place agree-*
14 *ments with all States that are contiguous to such admin-*
15 *istering State that, when combined, enable covered pro-*
16 *viders in all such contiguous States to access, through the*
17 *prescription drug management program, the information*
18 *that is described in subsection (b)(1) of covered individuals*
19 *of such administering State and that covered providers in*
20 *such administering State are able to access through such*
21 *program. In no case shall an increase under this subsection*
22 *result in a Federal medical assistance percentage or Federal*
23 *matching rate that exceeds 100 percent.*

24 “(g) *RULE OF CONSTRUCTION.*—*Nothing in this sec-*
25 *tion prevents a State from requiring pharmacists to check*

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

4 “(h) *DEFINITIONS.—In this section:*

5 “(1) *CONTROLLED SUBSTANCE.—The term ‘con-*
 6 *trolled substance’ means a drug that is included in*
 7 *schedule II of section 202(c) of the Controlled Sub-*
 8 *stances Act and, at the option of the State involved,*
 9 *a drug included in schedule III or IV of such section.*

10 “(2) *COVERED INDIVIDUAL.—The term ‘covered*
 11 *individual’ means, with respect to a State, an indi-*
 12 *vidual who is enrolled in the State plan (or under a*
 13 *waiver of such plan). Such term does not include an*
 14 *individual who—*

15 “(A) *is receiving—*

16 “(i) *hospice or palliative care; or*

17 “(ii) *treatment for cancer;*

18 “(B) *is a resident of a long-term care facil-*
 19 *ity, of a facility described in section 1905(d), or*
 20 *of another facility for which frequently abused*
 21 *drugs are dispensed for residents through a con-*
 22 *tract with a single pharmacy; or*

23 “(C) *the State elects to treat as exempted*
 24 *from such term.*

25 “(3) *COVERED PROVIDER.—*

1 “(A) *IN GENERAL.*—The term ‘covered pro-
2 vider’ means, subject to subparagraph (B), with
3 respect to a State, a health care provider who is
4 participating under the State plan (or waiver of
5 the State plan) and licensed, registered, or other-
6 wise permitted by the State to prescribe a con-
7 trolled substance (or the designee of such pro-
8 vider).

9 “(B) *EXCEPTIONS.*—

10 “(i) *IN GENERAL.*—Beginning October
11 1, 2021, for purposes of this section, such
12 term does not include a health care provider
13 included in any type of health care provider
14 determined by the Secretary to be exempt
15 from application of this section under
16 clause (ii).

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

1 *from the definition of the term ‘covered pro-*
 2 *vider’ for purposes of this section.”.*

3 **SEC. 3. GUIDANCE.**

4 *Not later than October 1, 2019, the Administrator of*
 5 *the Centers for Medicare & Medicaid Services, in consulta-*
 6 *tion with the Director of the Centers for Disease Control*
 7 *and Prevention, shall issue guidance on best practices on*
 8 *the uses of prescription drug monitoring programs required*
 9 *of prescribers and on protecting the privacy of Medicaid*
 10 *beneficiary information maintained in and accessed*
 11 *through prescription drug monitoring programs.*

12 **SEC. 4. DEVELOPMENT OF MODEL STATE PRACTICES.**

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

20 *(1) Monitoring and preventing fraud, waste, and*
 21 *abuse.*

22 *(2) Improving health care for individuals en-*
 23 *rolled in a State plan under title XIX of such Act (or*
 24 *waiver of such plan) who—*

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

3 (B) *may have sources of health care cov-*
 4 *erage in addition to coverage under such title; or*

5 (C) *pay for prescription drugs with cash.*

6 (3) *Any other purposes specified by the Sec-*
 7 *retary.*

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

10 (1) *may include strategies for assisting States in*
 11 *allowing the medical director or pharmacy director*
 12 *(or designees of such a director) of managed care or-*
 13 *ganizations or pharmaceutical benefit managers to*
 14 *access information with respect to all covered individ-*
 15 *uals served by such managed care organizations or*
 16 *pharmaceutical benefit managers to access as a single*
 17 *data set, in an electronic format; and*

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

20 (c) *CONSULTATION.—In developing model practices*
 21 *under this section, the Secretary shall consult with the Na-*
 22 *tional Association of Medicaid Directors, managed care en-*
 23 *tities (as defined in section 1932(a)(1)(B) of the Social Se-*
 24 *curity Act) with contracts with States pursuant to section*
 25 *1903(m) of such Act, pharmaceutical benefit managers,*

1 *physicians and other health care providers, beneficiary ad-*
2 *vocates, and individuals with expertise in health care tech-*
3 *nology related to prescription drug monitoring programs*
4 *and electronic health records.*

5 **SEC. 5. REPORT BY COMPTROLLER GENERAL.**

6 *Not later than October 1, 2020, the Comptroller Gen-*
7 *eral of the United States shall issue a report examining*
8 *the operation of prescription drug monitoring programs ad-*
9 *ministered by States, including data security and access*
10 *standards used by such programs.*

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