

115TH CONGRESS
2D SESSION

S. 2842

To prohibit the marketing of bogus opioid treatment programs or products.

IN THE SENATE OF THE UNITED STATES

MAY 15, 2018

Mrs. CAPITO (for herself and Ms. CORTEZ MASTO) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit the marketing of bogus opioid treatment programs or products.

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 “Opioid Addiction Re-
5 covery Fraud Prevention Act of 2018”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) OPIOID TREATMENT PRODUCT.—The term
9 “opioid treatment product” means a product, includ-
10 ing any supplement or medication, for use or mar-

1 keted for use in the treatment, cure, or prevention
 2 of an opioid use disorder.

3 (2) OPIOID TREATMENT PROGRAM.—The term
 4 “opioid treatment program” means a program that
 5 provides treatment for people diagnosed with, hav-
 6 ing, or purporting to have an opioid use disorder.

7 (3) OPIOID TREATMENT DISORDER.—The term
 8 “opioid use disorder” means a cluster of cognitive,
 9 behavioral, or physiological symptoms in which the
 10 individual continues use of opioids despite significant
 11 opioid-induced problems, such as adverse health ef-
 12 fects.

13 **SEC. 3. FALSE OR MISLEADING REPRESENTATIONS WITH**
 14 **RESPECT TO OPIOID TREATMENT PROGRAMS**
 15 **AND PRODUCTS.**

16 (a) UNLAWFUL ACTIVITY.—It is unlawful to make
 17 any deceptive representation with respect to the cost,
 18 price, efficacy, performance, benefit, risk, or safety of any
 19 opioid treatment program or opioid treatment product.

20 (b) ENFORCEMENT BY THE FEDERAL TRADE COM-
 21 MISSION.—

22 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
 23 TICES.—A violation of subsection (a) shall be treated
 24 as a violation of a rule under section 18 of the Fed-

1 eral Trade Commission Act (15 U.S.C. 57a) regard-
2 ing unfair or deceptive acts or practices.

3 (2) POWERS OF THE FEDERAL TRADE COMMIS-
4 SION.—

5 (A) IN GENERAL.—The Federal Trade
6 Commission shall enforce this section in the
7 same manner, by the same means, and with the
8 same jurisdiction, powers, and duties as though
9 all applicable terms and provisions of the Fed-
10 eral Trade Commission Act (15 U.S.C. 41 et
11 seq.) were incorporated into and made a part of
12 this section.

13 (B) PRIVILEGES AND IMMUNITIES.—Any
14 person who violates subsection (a) shall be sub-
15 ject to the penalties and entitled to the privi-
16 leges and immunities provided in the Federal
17 Trade Commission Act as though all applicable
18 terms and provisions of the Federal Trade
19 Commission Act (15 U.S.C. 41 et seq.) were in-
20 corporated and made part of this section.

21 (C) AUTHORITY PRESERVED.—Nothing in
22 this section shall be construed to limit the au-
23 thority of the Federal Trade Commission under
24 any other provision of law.

25 (c) ENFORCEMENT BY STATES.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (4), in any case in which the attorney general
3 of a State has reason to believe that an interest of
4 the residents of the State has been or is threatened
5 or adversely affected by any person who violates sub-
6 section (a), the attorney general of the State, as
7 *parens patriae*, may bring a civil action on behalf of
8 the residents of the State in an appropriate district
9 court of the United States to obtain appropriate re-
10 lief.

11 (2) RIGHTS OF FEDERAL TRADE COMMIS-
12 SION.—

13 (A) NOTICE TO FEDERAL TRADE COMMIS-
14 SION.—

15 (i) IN GENERAL.—Except as provided
16 in clause (iii), the attorney general of a
17 State shall notify the Federal Trade Com-
18 mission in writing that the attorney gen-
19 eral intends to bring a civil action under
20 paragraph (1) before initiating the civil ac-
21 tion.

22 (ii) CONTENTS.—The notification re-
23 quired by clause (i) with respect to a civil
24 action shall include a copy of the complaint
25 to be filed to initiate the civil action.

1 (iii) EXCEPTION.—If it is not feasible
2 for the attorney general of a State to pro-
3 vide the notification required by clause (i)
4 before initiating a civil action under para-
5 graph (1), the attorney general shall notify
6 the Federal Trade Commission imme-
7 diately upon instituting the civil action.

8 (B) INTERVENTION BY FEDERAL TRADE
9 COMMISSION.—The Federal Trade Commission
10 may—

11 (i) intervene in any civil action
12 brought by the attorney general of a State
13 under paragraph (1); and

14 (ii) upon intervening—

15 (I) be heard on all matters aris-
16 ing in the civil action; and

17 (II) file petitions for appeal.

18 (3) INVESTIGATORY POWERS.—Nothing in this
19 subsection shall be construed to prevent the attorney
20 general of a State from exercising the powers con-
21 ferred on the attorney general by the laws of the
22 State to conduct investigations, to administer oaths
23 or affirmations, or to compel the attendance of wit-
24 nesses or the production of documentary or other
25 evidence.

1 (4) PREEMPTIVE ACTION BY FEDERAL TRADE
 2 COMMISSION.—If the Federal Trade Commission or
 3 the Attorney General on behalf of the Commission
 4 institutes a civil action, or the Federal Trade Com-
 5 mission institutes an administrative action, with re-
 6 spect to a violation of subsection (a), the attorney
 7 general of a State may not, during the pendency of
 8 that action, bring a civil action under paragraph (1)
 9 against any defendant or respondent named in the
 10 complaint of the Commission for the violation with
 11 respect to which the Commission instituted such ac-
 12 tion.

13 (5) VENUE; SERVICE OF PROCESS.—

14 (A) VENUE.—Any action brought under
 15 paragraph (1) may be brought in any district
 16 court of the United States that meets applicable
 17 requirements relating to venue under section
 18 1391 of title 28, United States Code.

19 (B) SERVICE OF PROCESS.—In an action
 20 brought under paragraph (1), process may be
 21 served in any district in which the defendant—

22 (i) is an inhabitant; or

23 (ii) may be found.

24 (6) ACTIONS BY OTHER STATE OFFICIALS.—In
 25 addition to civil actions brought by attorneys general

1 under paragraph (1), any other consumer protection
2 officer of a State who is authorized by the State to
3 do so may bring a civil action under paragraph (1),
4 subject to the same requirements and limitations
5 that apply under this subsection to civil actions
6 brought by attorneys general.

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