

116TH CONGRESS  
1ST SESSION

# S. 640

To amend title XVIII of the Social Security Act to require pharmacy-negotiated price concessions to be included in negotiated prices at the point-of-sale under part D of the Medicare program, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 4, 2019

Mr. KENNEDY introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to require pharmacy-negotiated price concessions to be included in negotiated prices at the point-of-sale under part D of the Medicare program, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Phair Pricing Act of  
5 2019”.

1 **SEC. 2. REQUIRING PHARMACY-NEGOTIATED PRICE CON-**  
2 **CESSIONS AND PHARMACY INCENTIVE PAY-**  
3 **MENTS AND ADJUSTMENTS TO BE INCLUDED**  
4 **IN NEGOTIATED PRICES AT THE POINT-OF-**  
5 **SALE UNDER PART D OF THE MEDICARE PRO-**  
6 **GRAM.**

7 Section 1860D–2(d)(1)(B) of the Social Security Act  
8 (42 U.S.C. 1395w–102(d)(1)(B)) is amended—

9 (1) by striking “PRICES.—For purposes” and  
10 inserting “PRICES.—

11 “(i) IN GENERAL.—For purposes”;  
12 and

13 (2) by adding at the end the following new  
14 clauses:

15 “(ii) PRICES NEGOTIATED WITH  
16 PHARMACY AT POINT-OF-SALE.—

17 “(I) IN GENERAL.—Subject to  
18 subclause (III), for plan years begin-  
19 ning on or after January 1, 2020, ne-  
20 gotiated prices for covered part D  
21 drugs described in clause (i) provided  
22 under a prescription drug plan, in-  
23 cluding all contingent and noncontingent  
24 concessions, adjustments, pay-  
25 ments, and fees (including dispensing  
26 fees) negotiated with the pharmacy

1 dispensing such drug, shall be pro-  
2 vided at the point-of-sale of such  
3 drug. Such negotiated price shall not  
4 include any incentive payments and  
5 adjustments or any other contingent  
6 concessions, adjustments, payments,  
7 or fees that increase the amount of  
8 such negotiated price.

9 “(II) APPLICATION OF PHAR-  
10 MACY INCENTIVE PAYMENTS AND AD-  
11 JUSTMENTS.—

12 “(aa) IN GENERAL.—For  
13 plan years beginning on or after  
14 January 1, 2020, a PDP spon-  
15 sor—

16 “(AA) shall apply a  
17 system under which incen-  
18 tive payments and adjust-  
19 ments using only quality  
20 measures established by the  
21 Secretary under item (bb)  
22 are made to a pharmacy  
23 with respect to payment for  
24 covered part D drugs dis-

1                   pensed by such pharmacy;  
2                   and

3                   “(BB) may not apply  
4                   any other incentive pay-  
5                   ments and adjustments with  
6                   respect to such payment  
7                   outside of such system.

8                   Application of such system may  
9                   not result in a decrease in reim-  
10                  bursement to such pharmacy for  
11                  such drug after the point-of-sale  
12                  of such drug.

13                  “(bb) STANDARD PHARMACY  
14                  QUALITY MEASURES.—The Sec-  
15                  retary shall establish standard  
16                  quality measures that may be  
17                  used in a system described in  
18                  item (aa). Such measures shall  
19                  be—

20                  “(AA) focused on im-  
21                  proving patient health out-  
22                  comes;

23                  “(BB)        standardized  
24                  across PDP sponsors;

1                   “(CC) pharmacy-spe-  
2                   cific in application;

3                   “(DD) relevant to the  
4                   type of pharmacy concerned  
5                   (such as specialty phar-  
6                   macies), taking into account  
7                   the items and services fur-  
8                   nished by the pharmacy and  
9                   the patient population  
10                  served by the pharmacy;

11                  “(EE) applied only  
12                  when relevant to the specific  
13                  drug (or drug class of such  
14                  drug) being furnished by the  
15                  pharmacy or when relevant  
16                  to management of the condi-  
17                  tion for which such drug has  
18                  been prescribed; and

19                  “(FF) based on achiev-  
20                  able and proven criteria  
21                  measuring pharmacy per-  
22                  formance over which the  
23                  pharmacy has meaningful  
24                  control and ability to influ-  
25                  ence.

1 In establishing such standards,  
2 the Secretary shall consult with  
3 stakeholders, including PDP  
4 sponsors and MA organizations,  
5 pharmacies across pharmacy  
6 practice types, pharmacy benefit  
7 managers, patient advocacy orga-  
8 nizations, drug manufacturers,  
9 appropriate standard-setting or-  
10 ganizations, and other entities  
11 determined appropriate by the  
12 Secretary.

13 “(III) NO INCREASE IN COST  
14 SHARING.—Subclause (I) shall not  
15 apply in the case where application of  
16 such subclause would increase the  
17 amount owed by an individual in cost  
18 sharing above the amount such indi-  
19 vidual would have owed in cost shar-  
20 ing without application of such sub-  
21 clause.

22 “(IV) DISCREPANCIES BETWEEN  
23 NEGOTIATED PRICES AND ACTUAL RE-  
24 IMBURSEMENT.—In the case that the  
25 Secretary determines that the nego-

1            tiated price of a PDP sponsor applied  
2            at the point-of-sale with respect to a  
3            covered part D drug for a year dis-  
4            pensed by a pharmacy was greater  
5            than the total reimbursement made to  
6            such pharmacy for such drug for such  
7            year, such sponsor shall, not later  
8            than 90 days after receiving notice of  
9            such determination, furnish to the  
10           pharmacy that dispensed such drug  
11           and to the Secretary a written expla-  
12           nation of why such negotiated price  
13           was greater than such reimbursement.

14                   “(V) SPECIALTY PHARMACY.—  
15           For purposes of carrying out this  
16           clause       (including       subclause  
17           (II)(bb)(DD)), the Secretary shall, not  
18           later than December 31, 2019, define  
19           the term ‘specialty pharmacy’ in con-  
20           sultation with relevant stakeholders.

21                   “(VI) DEFINITIONS.—In this  
22           clause:

23                           “(aa) INCENTIVE PAYMENTS  
24                           AND ADJUSTMENTS.—The term  
25                           ‘incentive payments and adjust-

1                   ments’ means, with respect to  
2                   payment to a pharmacy by a  
3                   PDP sponsor for a covered part  
4                   D drug, any prospective or retro-  
5                   spective price concessions, re-  
6                   bates, discounts, fees, reconcili-  
7                   ation adjustments, bonuses, per-  
8                   formance payments, incentives,  
9                   and any other adjustment to  
10                  such payment determined  
11                  through the use of a quality  
12                  measure, regardless of when such  
13                  payments and adjustments are  
14                  applied. Such term does not in-  
15                  clude any manufacturer rebates  
16                  or concessions made with respect  
17                  to such drug.

18                   “(bb) QUALITY MEASURE.—  
19                   The term ‘quality measure’  
20                   means performance criteria used  
21                   by a PDP sponsor (including an  
22                   entity that contracts with such  
23                   sponsor, such as a pharmacy ben-  
24                   efit manager) to determine the



1 amount or applicability of incen-  
2 tive payments and adjustments.

3 “(cc) PDP SPONSOR.—The  
4 term ‘PDP sponsor’ includes an  
5 MA organization offering an  
6 MA–PD plan under part C and  
7 an entity that contracts with  
8 such sponsor or organization,  
9 such as a pharmacy benefit man-  
10 ager.

11 “(iii) REASONABLE REIMBURSEMENT  
12 REQUIREMENT.—In no case may a nego-  
13 tiated price (as described in clause (ii)(I))  
14 for a covered part D drug furnished by a  
15 pharmacy during a plan year beginning on  
16 or after January 1, 2020, be less than  
17 such pharmacy’s cost of purchasing and  
18 dispensing such drug and providing such  
19 other services associated with furnishing  
20 such drug as may be specified by the Sec-  
21 retary.

22 “(iv) CLAIM REIMBURSEMENT DIS-  
23 CLOSURE REQUIREMENTS.—With respect  
24 to payment made by a PDP sponsor to a  
25 pharmacy for a covered part D drug fur-

1 nished by such pharmacy during a plan  
2 year beginning on or after January 1,  
3 2020, such sponsor shall promptly furnish  
4 all pricing components including the Net-  
5 work Reimbursement ID used to price the  
6 claim, any fees, pharmacy price conces-  
7 sions, discounts, incentives or any other  
8 forms of remuneration that affect payment  
9 and pricing of the claim as part of the  
10 claim adjudication response at the point-of-  
11 sale. All aforementioned items, including  
12 Network Reimbursement ID, fees, phar-  
13 macy price concessions, discounts, incen-  
14 tives, or any other forms of remuneration  
15 that affect payment and pricing of the  
16 claim shall each be identified in a predeter-  
17 mined line item in the remittance advice  
18 that is standard across the industry. The  
19 Part D sponsor shall include suitable  
20 claim-level detail on the electronic remit-  
21 tance advice that accompanies each pay-  
22 ment. This claim-level detail shall include,  
23 in an industry standardized format, all  
24 fields needed to properly identify the claim,  
25 including the Claim Authorization Number,

1 date of service, date of payment remit-  
 2 tance, ingredient cost reimbursed, dis-  
 3 pensing fee reimbursed, payment amounts  
 4 including the Network ID used to price the  
 5 claim, the specific dollar amounts and the  
 6 appropriate qualifier codes for each pay-  
 7 ment adjustment including fees, pharmacy  
 8 price concessions, or incentives.

9 “(v) VIOLATION PROCESS.—A PDP  
 10 sponsor shall participate in any process es-  
 11 tablished by the Secretary for purposes of  
 12 determining whether such sponsor has vio-  
 13 lated a provision of clauses (ii) through  
 14 (iv).”.

15 **SEC. 3. PHARMACY BENEFIT MANAGER PROVISION OF IN-**  
 16 **FORMATION.**

17 (a) IN GENERAL.—Section 1150A(b)(2) of the Social  
 18 Security Act (42 U.S.C. 1320b–23(b)(2)) is amended by  
 19 striking “excluding” and inserting “including”.

20 (b) EFFECTIVE DATE.—The amendment made by  
 21 subsection (a) shall apply with respect to contract years  
 22 beginning on or after January 1, 2020.

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