

118TH CONGRESS
1ST SESSION

H. R. 3282

To amend title XVIII of the Social Security Act to promote transparency of common ownership interests under parts C and D of the Medicare program.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2023

Mrs. HARSHBARGER (for herself, Ms. SCHRIER, Mr. BILIRAKIS, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to promote transparency of common ownership interests under parts C and D of the Medicare program.

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 “Promoting Trans-
5 parency and Healthy Competition in Medicare Act”.

1 **SEC. 2. PROMOTING TRANSPARENCY OF COMMON OWNER-**
2 **SHIP INTERESTS UNDER PARTS C AND D OF**
3 **THE MEDICARE PROGRAM.**

4 (a) **MEDICARE ADVANTAGE.**—Section 1857(e) of the
5 Social Security Act (42 U.S.C. 1395w–27(e)) is amended
6 by adding at the end the following new paragraph:

7 “(6) **REQUIRED DISCLOSURE OF CERTAIN IN-**
8 **FORMATION RELATING TO HEALTH CARE PROVIDER**
9 **OWNERSHIP.**—

10 “(A) **IN GENERAL.**—For plan years begin-
11 ning on or after January 1, 2025, a contract
12 under this section with an MA organization
13 shall require the organization to report to the
14 Secretary, not later than 1 year after the last
15 day of such plan year, the information de-
16 scribed in subparagraph (B) with respect to
17 such plan year.

18 “(B) **INFORMATION DESCRIBED.**—For pur-
19 poses of subparagraph (A), the information de-
20 scribed in this subparagraph is, with respect to
21 an MA organization and a plan year, the fol-
22 lowing:

23 “(i) The number of items and services
24 furnished during such plan year by each
25 specified provider (as defined in subpara-

graph (C)) for which payment was made
by such organization.

“(ii) The number of items and services furnished during such plan year by providers of services or suppliers not described in clause (i) for which payment was made by such organization.

“(iii) The average per-enrollee number of qualifying diagnoses (as defined in subparagraph (C)) made during such plan year by specified providers (including through chart reviews and health risk assessments) with respect to individuals enrolled under an MA plan offered by such organization, broken down by site of service of such providers, as specified by the Secretary.

“(iv) The average per-enrollee number of qualifying diagnoses made during such plan year by providers of services and suppliers not described in clause (iii) (including through such reviews and assessments) with respect to such individuals, broken down by site of service of such providers.

1 “(v) The average risk score (as cal-
2 culated under the methodology described in
3 subparagraph (C)(i)) for such an indi-
4 vidual for such plan year who received
5 items and services from a specified pro-
6 vider during such plan year.

7 “(vi) The average risk score for such
8 an individual for such plan year who did
9 not receive items and services from a speci-
10 fied provider during such plan year.

11 “(vii) The average risk score for such
12 an individual for such plan year who re-
13 ceived a health risk assessment from an
14 assessment entity that was a specified as-
15 sessment entity during such plan year.

16 “(viii) The average risk score for such
17 an individual for such plan year who re-
18 ceived a health risk assessment from an
19 assessment entity that was not a specified
20 assessment entity during such plan year.

21 “(ix) The number of prior authoriza-
22 tion requests for an item or service sub-
23 mitted to such organization during such
24 plan year, the number of such requests
25 that were approved, the number of such re-

1 requests that were denied, and the number
2 of such denied requests that were subse-
3 quently appealed and then approved, bro-
4 ken down by whether the entity proposing
5 to furnish such item or service was a speci-
6 fied provider or not a specified provider.

7 “(x) The total amount of incentive-
8 based payments made to, and the total
9 amount of shared losses recoupments col-
10 lected from, specified providers during
11 such plan year.

12 “(xi) The total amount of incentive-
13 based payments made to, and the total
14 amount of shared losses recoupments col-
15 lected from, providers of services and sup-
16 pliers not described in clause (x) during
17 such plan year.

18 “(xii) For each MA plan offered by
19 such organization during such plan year—

20 “(I) the total amount of pay-
21 ments made under section 1853(a)(1)
22 to such organization for coverage of
23 individuals under such plan, and the
24 total amount of payments made by

1 such individuals to such organization
2 for coverage under such plan;

3 “(II) the total amount expended
4 under such plan as payment for items
5 and services furnished by each speci-
6 fied provider during such year;

7 “(III) the total amount expended
8 under such plan as payment for items
9 and services furnished by providers of
10 services or suppliers not described in
11 subclause (II) during such year;

12 “(IV) the medical loss ratio
13 under such plan with respect to indi-
14 viduals furnished an item or service
15 from a specified provider during such
16 year; and

17 “(V) the medical loss ratio under
18 such plan with respect to individuals
19 not described in subclause (IV).

20 “(C) DEFINITIONS.—In this paragraph:

21 “(i) ASSESSMENT ENTITY.—The term
22 ‘assessment entity’ means an entity with a
23 focus on furnishing in-home medical as-
24 sessments, as specified by the Secretary.

1 “(ii) QUALIFYING DIAGNOSIS.—The
2 term ‘qualifying diagnosis’ means, with re-
3 spect to an individual, a diagnosis that is
4 taken into account in calculating a risk
5 score for such individual under the risk ad-
6 justment methodology established by the
7 Secretary pursuant to section 1853(a)(3).

8 “(iii) SPECIFIED ASSESSMENT ENTI-
9 TY.—The term ‘specified assessment enti-
10 ty’ means, with respect to an MA organiza-
11 tion and a plan year, an assessment entity
12 with respect to which such organization (or
13 any person with an ownership or control
14 interest (as defined in section 1124(a)(3))
15 in such organization) is a person with an
16 ownership or control interest (as so de-
17 fined).

18 “(iv) SPECIFIED PROVIDER.—The
19 term ‘specified provider’ means, with re-
20 spect to an MA organization and a plan
21 year, a provider of services or supplier with
22 respect to which such organization (or any
23 person with an ownership or control inter-
24 est (as defined in section 1124(a)(3)) in
25 such organization) is a person with an

1 ownership or control interest (as so de-
2 fined).

3 “(D) NONAPPLICATION OF PAPERWORK
4 REDUCTION ACT.—Chapter 35 of title 44,
5 United States Code, shall not apply to informa-
6 tion collected under this paragraph.”.

7 (b) PHARMACY BENEFIT MANAGER AND PHARMACY
8 INFORMATION.—Section 1860D–12(b) of the Social Secu-
9 rity Act (42 U.S.C. 1395w–112(b)) is amended by adding
10 at the end the following new paragraphs:

11 “(9) PROVISION OF INFORMATION RELATING TO
12 PHARMACY OWNERSHIP.—

13 “(A) IN GENERAL.—For plan years begin-
14 ning on or after January 1, 2025, a contract
15 entered into under this part with a PDP spon-
16 sor shall require the sponsor to report to the
17 Secretary, not later than 1 year after the last
18 day of such plan year, the information de-
19 scribed in subparagraph (B) with respect to
20 such plan year.

21 “(B) INFORMATION DESCRIBED.—For pur-
22 poses of subparagraph (A), the information de-
23 scribed in this subparagraph is, for each pre-
24 scription drug plan offered by a PDP sponsor
25 for a plan year, the following:

1 “(i) The negotiated price for each cov-
2 ered part D drug for which benefits are
3 available under such plan for each network
4 pharmacy (including an identification of
5 whether each such pharmacy is a specified
6 pharmacy).

7 “(ii) The average per-drug amount of
8 direct and indirect remuneration paid by
9 specified pharmacies for such covered part
10 D drugs dispensed during such plan year
11 under such plan.

12 “(iii) The average per-drug amount of
13 direct and indirect remuneration paid by
14 pharmacies not described in clause (ii) for
15 such covered part D drugs dispensed dur-
16 ing such plan year under such plan.

17 “(C) DEFINITIONS.—In this paragraph:

18 “(i) DIRECT AND INDIRECT REMU-
19 NERATION.—The term ‘direct and indirect
20 remuneration’ has the meaning given such
21 term in section 423.308 of title 42, Code
22 of Federal Regulations (or any successor
23 regulation).

24 “(ii) NETWORK PHARMACY.—The
25 term ‘network pharmacy’ has the meaning

1 given such term in section 423.100 of title
2 42, Code of Federal Regulations (or any
3 successor regulation).

4 “(iii) NEGOTIATED PRICE.—The ‘ne-
5 gotiated price’ for a covered part D drug
6 shall take into account all negotiated price
7 concessions, such as discounts, direct or in-
8 direct subsidies, rebates, and direct or indi-
9 rect remunerations, for such drug, and in-
10 clude any dispensing fee for such drug.

11 “(iv) SPECIFIED PHARMACY.—The
12 term ‘specified pharmacy’ means, with re-
13 spect to an PDP sponsor and a plan year,
14 a pharmacy with respect to which such
15 sponsor (or any person with an ownership
16 or control interest (as defined in section
17 1124(a)(3)) in such sponsor) is a person
18 with an ownership or control interest (as
19 so defined).

20 “(D) NONAPPLICATION OF PAPERWORK
21 REDUCTION ACT.—Chapter 35 of title 44,
22 United States Code, shall not apply to informa-
23 tion collected under this paragraph.

24 “(10) PROVISION OF INFORMATION BY PHAR-
25 MACY BENEFIT MANAGERS.—

1 “(A) IN GENERAL.—For plan years begin-
2 ning on or after January 1, 2025, a contract
3 entered into under this part with a PDP spon-
4 sor shall prohibit such sponsor from entering
5 into a contract with a specified pharmacy ben-
6 efit manager for purposes of performing any
7 service with respect to covered part D drugs
8 dispensed under any prescription drug plan of-
9 fered by such sponsor for such plan year unless
10 such manager agrees to report to the Secretary,
11 not later than 1 year after the last day of such
12 plan year, the information described in subpara-
13 graph (B) with respect to each prescription
14 drug plan for which such manager is providing
15 any such service during such plan year, regard-
16 less of the sponsor of such plan.

17 “(B) INFORMATION DESCRIBED.—For pur-
18 poses of subparagraph (A), the information de-
19 scribed in this subparagraph is, with respect to
20 a pharmacy benefit manager performing serv-
21 ices under a prescription drug plan for a plan
22 year, the following:

23 “(i) With respect to the total amount
24 of pharmacy and manufacturer rebates col-
25 lected by such manager (or collected on be-

1 half of such plan by any other entity with
2 a contract in effect with such manager for
3 such collection) for all covered part D
4 drugs dispensed under such plan during
5 such plan year—

6 “(I) the total amount of such re-
7 bates passed through to the PDP
8 sponsor of such plan; and

9 “(II) the total amount of such re-
10 bates retained by such manager or
11 such other entities.

12 “(ii) The total amount paid by such
13 manager to pharmacies for drugs furnished
14 under such plan during such plan year.

15 “(iii) The total amount of payments
16 made by such sponsor to such manager as
17 reimbursement for such manager’s pay-
18 ments described in clause (ii).

19 “(iv) The total amount of payments
20 made by such sponsor to such manager as
21 fees for services furnished by such man-
22 ager with respect to such plan for such
23 plan year (not including payments de-
24 scribed in clause (iii)).

1 “(v) The total amount of administra-
2 tive costs incurred by such manager for
3 furnishing such services under such plan
4 for such plan year.

5 “(vi) A specification as to whether
6 such manager is a specified pharmacy ben-
7 efit manager with respect to the PDP
8 sponsor of such plan.

9 “(C) DEFINITION.—In this paragraph, the
10 term ‘specified pharmacy benefit manager’
11 means, with respect to an PDP sponsor and a
12 plan year, a pharmacy benefit manager with re-
13 spect to which such sponsor (or any person with
14 an ownership or control interest (as defined in
15 section 1124(a)(3)) in such sponsor) is a person
16 with an ownership or control interest (as so de-
17 fined).”.

18 (c) PUBLICATION.—Not later than January 1, 2027,
19 the Secretary of Health and Human Services shall estab-
20 lish a process under which information submitted to the
21 Secretary pursuant to the amendments made by this sec-
22 tion is publicly disclosed. Such process shall ensure that
23 any information so disclosed does not identify a specific
24 drug manufacturer, provider of services or supplier, phar-

- 1 macy, pharmacy benefit manager, or any price charged
- 2 with respect to a particular drug.

