

117TH CONGRESS
1ST SESSION

S. 1909

To amend title XVIII of the Social Security Act to reform requirements with respect to direct and indirect remuneration under Medicare part D, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 27, 2021

Mr. TESTER (for himself, Mrs. CAPITO, Mr. BROWN, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to reform requirements with respect to direct and indirect remuneration under Medicare part D, 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 “Pharmacy DIR Reform
5 To Reduce Senior Drug Costs Act”.

1 **SEC. 2. REQUIRING PHARMACY-NEGOTIATED PRICE CON-**
 2 **CESSIONS, PAYMENT, AND FEES TO BE IN-**
 3 **CLUDED IN NEGOTIATED PRICES AT THE**
 4 **POINT-OF-SALE UNDER PART D OF THE MEDI-**
 5 **CARE PROGRAM.**

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

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

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

12 (2) by adding at the end the following new
 13 clause:

14 “(ii) PRICES NEGOTIATED WITH
 15 PHARMACY AT POINT-OF-SALE.—For plan
 16 years beginning on or after January 1,
 17 2022, a negotiated price for a covered part
 18 D drug described in clause (i) shall include
 19 price concessions, payments, and fees nego-
 20 tiated with such pharmacy as defined by
 21 the Secretary, but shall not include incen-
 22 tive payments based on pharmacy perform-
 23 ance paid or to be paid to such pharmacy.
 24 Such negotiated price shall be provided at
 25 the point-of-sale of such drug.”.

1 **SEC. 3. DISCLOSURE TO PHARMACY OF POST-POINT-OF-**
 2 **SALE PHARMACY PRICE CONCESSIONS AND**
 3 **INCENTIVE PAYMENTS.**

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

6 (1) by striking “DISCLOSURE.—A PDP spon-
 7 sor” and inserting “DISCLOSURE.—

8 “(A) TO THE SECRETARY.—A PDP spon-
 9 sor”; and

10 (2) by adding at the end the following new sub-
 11 paragraph:

12 “(B) TO PHARMACIES.—

13 “(i) IN GENERAL.—For plan year
 14 2022 and subsequent plan years, a PDP
 15 sponsor offering a prescription drug plan
 16 and an MA organization offering an MA–
 17 PD plan shall report any pharmacy price
 18 concession or incentive payment that oc-
 19 curs with respect to a pharmacy after pay-
 20 ment for covered part D drugs at the
 21 point-of-sale, including by an intermediary
 22 organization with which a PDP sponsor or
 23 MA organization has contracted, to the
 24 pharmacy.

25 “(ii) TIMING.—The reporting of price
 26 concessions and incentive payments to a

pharmacy under clause (i) shall be made on a periodic basis (but in no case less frequently than annually).

“(iii) CLAIM LEVEL.—The reporting of price concessions and incentive payments to a pharmacy under clause (i) shall be at the claim level or approximated at the claim level if the price concession or incentive payment was applied at a level other than at the claim level.”.

SEC. 4. ESTABLISHMENT OF PHARMACY PERFORMANCE MEASURES UNDER MEDICARE PART D.

Section 1860D–4(c) of the Social Security Act (42 U.S.C. 1395w–104(c)) is amended—

(1) by redesignating paragraph (6), as added by section 50354 of division E of the Bipartisan Budget Act of 2018 (Public Law 115–123), as paragraph (7); and

(2) by adding at the end the following new paragraph:

“(8) APPLICATION OF STANDARDIZED PHARMACY PERFORMANCE MEASURES.—

“(A) IN GENERAL.—A PDP sponsor and MA–PD plan that makes incentive payments to a pharmacy or receives price concessions paid

1 by a pharmacy based on performance measures
2 shall, for the purposes of such incentive pay-
3 ments and price concessions with respect to cov-
4 ered part D drugs dispensed by such pharmacy,
5 only use measures—

6 “(i) established or adopted by the Sec-
7 retary under subparagraph (B), as listed
8 under clause (ii) of such subparagraph;
9 and

10 “(ii) that are relevant to the perform-
11 ance of such pharmacy with respect to
12 areas that the pharmacy can impact based
13 on covered part D drugs dispensed and
14 managed.

15 “(B) STANDARDIZED PHARMACY PER-
16 FORMANCE MEASURES.—

17 “(i) IN GENERAL.—Notwithstanding
18 any other provision of law, the Secretary
19 shall establish or adopt standardized phar-
20 macy performance measures from one or
21 more multi-stakeholder, consensus organi-
22 zations representing all pharmacy types
23 (including specialty pharmacies) to be used
24 by a PDP sponsor and MA–PD plan for
25 the purposes of determining incentive pay-

1 ments and price concessions described in
2 subparagraph (A). Such measures shall be
3 evidence-based and focus on pharmacy per-
4 formance on patient health outcomes and
5 other areas, as determined by the Sec-
6 retary, that the pharmacy can impact
7 based on covered part D drugs dispensed
8 and managed.

9 “(ii) MAINTENANCE OF LIST.—The
10 Secretary shall maintain a single list of
11 measures established or adopted under this
12 subparagraph and measures shall be evalu-
13 ated and updated on an ongoing basis
14 through stakeholder consensus organiza-
15 tions to ensure they are transparent,
16 achievable, and clinically meaningful.

17 “(iii) APPLICATION TO STAR RAT-
18 INGS.—The Secretary shall require the de-
19 velopment of measures to apply in the star
20 rating system under this part to assess the
21 use of a standard set of pharmacy per-
22 formance measures by PDP sponsors and
23 MA–PD plans.

24 “(C) SPECIALTY PHARMACY.—For pur-
25 poses of subparagraph (B)(i), the Secretary

1 shall, not later than December 31, 2022, define
2 the term ‘specialty pharmacy’ in consultation
3 with relevant stakeholders.

4 “(D) EFFECTIVE DATE.—The requirement
5 under subparagraph (A) shall take effect for
6 plan years beginning on January 1, 2022, or
7 such earlier date specified by the Secretary if
8 the Secretary determines there are sufficient
9 measures established or adopted under subpara-
10 graph (B) for the purposes of the requirement
11 under subparagraph (A).”.

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