

112TH CONGRESS
2D SESSION

H. R. 4215

To amend title XVIII of the Social Security Act to provide for pharmacy benefits manager standards under the Medicare prescription drug program to further fair audits of and payments to pharmacies.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2012

Mrs. McMORRIS RODGERS introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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 provide for pharmacy benefits manager standards under the Medicare prescription drug program to further fair audits of and payments to pharmacies.

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 “Medicare Pharmacy
5 Transparency and Fair Auditing Act”.

1 **SEC. 2. PHARMACY BENEFITS MANAGER STANDARDS**
2 **UNDER MEDICARE FOR FAIR AUDITS AND**
3 **PAYMENTS TO PHARMACIES.**

4 Section 1860D–12(b) of the Social Security Act (42
5 U.S.C. 1395w–112(b)) is amended by adding at the end
6 the following new paragraphs:

7 “(7) PHARMACY BENEFITS MANAGER TRANS-
8 PARENCY AND PROPER OPERATIONS REQUIRE-
9 MENTS.—Each contract entered into with a PDP
10 sponsor for the offering of a prescription drug plan
11 under this part for a plan year beginning after 2013
12 shall provide that the PDP sponsor may not enter
13 into a contract with any pharmacy benefits manager
14 to manage the prescription drug coverage provided
15 under such plan, or to control the costs of the pre-
16 scription drug coverage under such plan, unless the
17 pharmacy benefits manager satisfies the following
18 requirements:

19 “(A) PBM AUDIT REQUIREMENTS.—The
20 following shall apply to each audit of a phar-
21 macy conducted by or for the pharmacy benefits
22 manager with respect to such prescription drug
23 plan:

24 “(i) The period covered by the audit
25 may not exceed 2 years from the date the

1 claim involved was submitted to or ad-
2 justed by the pharmacy benefits manager.

3 “(ii) In the case the audit involves
4 clinical or professional judgment, the audit
5 shall be conducted by, or in consultation
6 with, a pharmacist licensed in the State of
7 the audit or the State board of pharmacy.

8 “(iii) The pharmacy benefits manager
9 may not apply recordkeeping requirements
10 on the pharmacy that are more stringent
11 than such requirements applied under Fed-
12 eral law or the State law involved.

13 “(iv) The pharmacy benefits manager,
14 or the entity conducting the audit for the
15 pharmacy benefits manager, shall have in
16 place a written appeals process that shall
17 include procedures for appeals for prelimi-
18 nary reports and final reports related to
19 such audit.

20 “(v) The pharmacy, practice site, or
21 other entity may use the records of a hos-
22 pital, physician, or other authorized practi-
23 tioner to validate the pharmacy records
24 and any legal prescription (one that com-
25 plies with State Board of Pharmacy re-

1 requirements) may be used to validate claims
2 submitted by the pharmacy in connection
3 with prescriptions, refills, or changes in
4 prescriptions.

5 “(vi) The pharmacy benefits manager
6 may not, pursuant to the audit, disallow or
7 reduce payment with respect to a claim
8 submitted by the pharmacy because of a
9 clerical or recordkeeping error (such as a
10 typographical error, scrivener’s error, or
11 computer error) if there is an absence of
12 intent to commit fraud.

13 “(vii) The pharmacy benefits manager
14 or other entity conducting the audit may
15 not use extrapolation or other statistical
16 expansion techniques in calculating any
17 recoupment or penalty pursuant to the
18 audit.

19 “(viii) The pharmacy benefits man-
20 ager shall disclose the amount of each pay-
21 ment recovered pursuant to the audit to
22 the PDP sponsor with a copy to the phar-
23 macy.

24 “(ix) Any payment recovered by the
25 pharmacy benefit manager pursuant to the

1 audit shall be returned to the PDP spon-
2 sor.

3 “(B) DISCLOSURE REQUIREMENTS.—In
4 the case of a pharmacy benefits manager that
5 uses a maximum allowable cost list with respect
6 to determining reimbursements to pharmacies
7 for multiple source drugs (as defined in section
8 1927(k)), with respect to any contract between
9 the pharmacy benefits manager and a phar-
10 macy, with respect to the prescription drug plan
11 offered by the PDP sponsor, the pharmacy ben-
12 efits manager shall—

13 “(i) include in such contract the
14 methodology and resources utilized for
15 such maximum allowable cost list;

16 “(ii) update pricing information on
17 such list at least weekly, starting on Janu-
18 ary 1 of each calendar year; and

19 “(iii) establish a process to provide
20 prompt notification of such pricing infor-
21 mation updates to the pharmacy.”.

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