

118TH CONGRESS
1ST SESSION

H. R. 5393

To amend title XVIII of the Social Security Act to ensure fair assessment of pharmacy performance and quality under Medicare part D, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2023

Mr. GRIFFITH (for himself and Mr. CARTER of Georgia) 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 ensure fair assessment of pharmacy performance and quality 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. ENSURING FAIR ASSESSMENT OF PHARMACY**

4 **PERFORMANCE AND QUALITY UNDER MEDI-**

5 **CARE PART D.**

6 (a) STANDARDIZED PHARMACY PERFORMANCE

7 MEASURES.—Section 1860D–2 of the Social Security Act

1 (42 U.S.C. 1395w–102) is amended by adding at the end
2 the following new subsection:

3 “(f) APPLICATION OF STANDARDIZED PHARMACY
4 PERFORMANCE MEASURES.—

5 “(1) MEASURES.—For plan years beginning on
6 or after January 1, 2025, a PDP sponsor offering
7 a prescription drug plan and an MA organization of-
8 fering an MA–PD plan shall, for purposes of incen-
9 tive payments, price concessions, or any fees or
10 other remuneration paid or charged to a pharmacy
11 based on performance measures, only use measures
12 that are—

13 “(A) established or adopted by the Sec-
14 retary under paragraph (2) and included on the
15 list described in subparagraph (B) of such
16 paragraph; and

17 “(B) relevant to the performance of such
18 pharmacy based on the type of pharmacy (in-
19 cluding retail, mail order, specialty, long-term
20 care, and home infusion or other types of phar-
21 macies), drugs dispensed, and pharmacy serv-
22 ices used to dispense and manage drugs.

23 “(2) STANDARDIZED PHARMACY PERFORMANCE
24 MEASURES.—

25 “(A) MEASURES.—

1 “(i) IN GENERAL.—Notwithstanding
2 any other provision of law, the Secretary
3 shall establish (or adopt pursuant to clause
4 (iii)) standardized pharmacy performance
5 measures to be used by a PDP sponsor of-
6 fering a prescription drug plan and an MA
7 organization offering an MA–PD plan for
8 the purpose of determining incentive pay-
9 ments, price concessions, or fees described
10 in paragraph (1).

11 “(ii) REQUIREMENTS.—The measures
12 under clause (i) shall focus on pharmacy
13 performance and quality of care based on
14 the type of pharmacy, as determined by
15 the Secretary. Such measures shall be evi-
16 dence-based, feasible, appropriate and rea-
17 sonable. The Secretary may rely on data
18 and information collected from relevant
19 stakeholders to make determinations about
20 whether a measure satisfies the require-
21 ments of this clause.

22 “(iii) ADOPTION OF MEASURE.—In
23 lieu of establishing some or all of the
24 measures under this paragraph, the Sec-
25 retary may adopt measures and measure

1 performance criteria that are endorsed by
2 1 or more multi-stakeholder consensus or-
3 ganizations (such as the Pharmacy Quality
4 Alliance), that has participation from phar-
5 macies (including retail and specialty phar-
6 macies not owned or affiliated with a plan,
7 pharmacy benefit manager, or other phar-
8 macy), health plans, pharmacy benefit
9 managers, and the Centers for Medicare &
10 Medicaid Services. Any measure adopted
11 under this clause shall be deemed to meet
12 the requirements under clause (ii).

13 “(B) MAINTENANCE OF LIST.—

14 “(i) IN GENERAL.—The Secretary
15 shall maintain, and publish on a publicly
16 available internet website, a list of meas-
17 ures established or adopted under this
18 paragraph. Such list shall initially be pub-
19 lished no later than June 1, 2024.

20 “(ii) UPDATE.—The Secretary shall
21 periodically evaluate measures, measure
22 criteria, and how measures are applied by
23 type of pharmacy and update the measures
24 on the list under clause (i) to ensure such

1 measures meet the requirements under
2 subparagraph (A)(ii).

3 “(3) OIG REPORTS ON PHARMACY PERFORM-
4 ANCE MEASURES.—

5 “(A) OIG STUDY.—The Office of the In-
6 spector General of the Department of Health
7 and Human Services (in this paragraph re-
8 ferred to as the ‘Inspector General’) shall con-
9 duct a study of the use of performance meas-
10 ures and other quality-related mechanisms in
11 network pharmacy agreements and other rel-
12 evant contracting arrangements among PDP
13 sponsors offering a prescription drug plan, MA
14 organizations offering a MA–PD plan, phar-
15 macy benefit managers acting on behalf of such
16 sponsors and organizations, and network phar-
17 macies. Such study may include audits, reviews
18 of relevant enforcement actions, consultation
19 with relevant stakeholders, and other activities
20 determined appropriate by the Inspector Gen-
21 eral, consistent with other provisions of law.
22 Such study shall, to the extent feasible, include
23 analysis of—

24 “(i) oversight and enforcement activi-
25 ties undertaken with respect to current

1 statutory and regulatory requirements re-
2 lated to network pharmacy agreements, in-
3 cluding under sections 423.505(b)(18) and
4 423.505(i) of title 42 of the Code of Fed-
5 eral Regulations (or any successor regula-
6 tion) and under section 1860D-4(b)(1)(A);

7 “(ii) penalties or other corrective ac-
8 tions imposed with respect to the require-
9 ments described in clause (i);

10 “(iii) the prevalence of the application
11 of performance measures in network phar-
12 macy agreements, and the manner in
13 which such measures are applied, including
14 variation based on the type of pharmacy,
15 the type of drug dispensed, and the serv-
16 ices required to manage and dispense such
17 drug;

18 “(iv) the extent to which the perform-
19 ance measures and related criteria applied
20 under network agreements vary among
21 similar types of pharmacies within a single
22 network, and the extent to which the appli-
23 cation of such measures or criteria differ
24 between pharmacies—

1 “(I) affiliated with a pharmacy
2 benefit manager, a PDP sponsor of-
3 fering a prescription drug plan, or an
4 MA organization offering a MA–PD
5 plan; and

6 “(II) those not affiliated with an
7 entity described in subclause (I);

8 “(v) patterns and trends in the per-
9 formance measures applied under phar-
10 macy network agreements, including if the
11 measure is being used in accordance with
12 published measure specifications which
13 have been validated and tested, if the
14 measure is being used according to licens-
15 ing agreements with measure stewards,
16 and the level of attribution and attribution
17 criteria;

18 “(vi) the extent to which performance
19 measures result in incentive payments,
20 fees, price concessions, or other forms of
21 remuneration between pharmacies and
22 PDP sponsors or MA organizations (or
23 pharmacy benefit managers acting on their
24 behalf), including an analysis of which
25 measures most often result in incentive

1 payments to pharmacies (and the general
2 amount of such payments) and which
3 measures most often result in remunera-
4 tion paid by pharmacies to other entities
5 (and the general amount of such pay-
6 ments);

7 “(vii) variation in the type of remu-
8 nation (as described in clause (vi) result-
9 ing from the application of performance
10 measures, including between different
11 types of pharmacies, different types of
12 drugs dispensed, and affiliation status of
13 pharmacies (as described in clause (iv));

14 “(viii) when, in what manner, dif-
15 ferent types of pharmacies receive notice of
16 the application of performance measures,
17 the measures that will be utilized, the per-
18 formance criteria that will be applied, and
19 the data and methodologies that will be
20 used to evaluate performance; and

21 “(ix) the extent to which the Centers
22 for Medicare & Medicaid Services has im-
23 plemented the pharmacy performance re-
24 porting requirements of section
25 423.514(a)(5) of title 42, Code of Federal

1 Regulations, the extent to which PDP
2 sponsors or MA organizations (or phar-
3 macy benefit managers acting on their be-
4 half) comply with such provision, and the
5 extent to which the Centers for Medicare &
6 Medicaid Services has sought enforcement.

7 “(B) OIG REPORTS.—

8 “(i) REPORT ON INITIAL FINDINGS.—

9 Not later than December 31, 2024, the In-
10 spector General shall submit a report to
11 Congress outlining, to the extent prac-
12 ticable, a status update on the study under
13 subparagraph (A), together with initial
14 findings with respect to the issues included
15 under such study. Such report may include
16 an analysis of barriers to accessing any of
17 the information required under such study,
18 along with recommendations for addressing
19 such barriers. Such report may also in-
20 clude recommendations for the effective
21 implementation of the requirements en-
22 acted under this subsection as well as ex-
23 isting regulations, including section
24 423.514(a)(5) of title 42, Code of Federal
25 Regulations, along with other recommenda-

1 tions, as determined appropriate by the In-
2 spector General.

3 “(ii) INTERIM REPORT.—Not later
4 than July 31, 2025, the Inspector General
5 shall submit to Congress an interim report
6 on the study under subparagraph (A), in-
7 cluding additional recommendations for the
8 implementation of the requirements en-
9 acted under this subsection as well as
10 under existing regulations, including sec-
11 tion 423.514(a)(5) of title 42, Code of
12 Federal Regulations.

13 “(iii) FINAL REPORT.—Not later than
14 December 31, 2025, the Inspector General
15 shall submit to Congress a final report on
16 the study under subparagraph (A), to-
17 gether with additional recommendations,
18 as determined appropriate by the Inspector
19 General.

20 “(4) NONAPPLICATION OF PAPERWORK REDUC-
21 TION ACT.—Chapter 35 of title 44, United States
22 Code, shall not apply to any data collection under-
23 taken by the Secretary under this paragraph.”.

24 (b) FUNDING.—In addition to amounts otherwise
25 available, there is appropriated to the Centers for Medi-

1 care & Medicaid Services Program Management Account,
2 out of any money in the Treasury not otherwise appro-
3 priated, \$4,000,000 for fiscal year 2025, to remain avail-
4 able until expended, to carry out the amendment made
5 by subsection (a).

6 **SEC. 2. PROMOTING TRANSPARENCY FOR PHARMACIES**
7 **UNDER MEDICARE PART D.**

8 (a) **TRANSPARENCY FOR PHARMACIES.**—Section
9 1860D–2(f) of the Social Security Act (42 U.S.C. 1395w–
10 102(f)), as added by section 3, is amended by adding at
11 the end the following new paragraph:

12 “(3) **TRANSPARENCY FOR PHARMACIES.**—

13 “(A) **IN GENERAL.**—For plan years begin-
14 ning on or after January 1, 2025, a PDP spon-
15 sor offering a prescription drug plan and an
16 MA organization offering an MA–PD plan, with
17 respect to payment made by such PDP sponsor
18 or such MA organization to a pharmacy for a
19 covered part D drug dispensed by such phar-
20 macy during a plan year, shall promptly fur-
21 nish, upon receiving a claim for a covered Part
22 D drug from a pharmacy, to such pharmacy in-
23 formation related to such claim, such as the
24 Network Reimbursement ID, fees, pharmacy
25 price concessions, discounts, incentives, or any

1 other forms of remuneration that affect pay-
2 ment and pricing of the claim.

3 “(B) STANDARDIZED FORMAT.—The PDP
4 sponsor and the MA organization shall furnish
5 the information described in subparagraph (A)
6 in a standardized format (as specified by the
7 Secretary) that includes all fields needed to
8 price the claim for a covered part D drug dis-
9 pensed by such pharmacy.

10 “(C) IMPLEMENTATION.—The Secretary
11 shall implement this paragraph by program in-
12 struction or other forms of program guidance.”.

13 (b) FUNDING.—In addition to amounts otherwise
14 available, there is appropriated to the Centers for Medi-
15 care & Medicaid Services Program Management Account,
16 out of any money in the Treasury not otherwise appro-
17 priated, \$2,000,000 for fiscal year 2025, to remain avail-
18 able until expended, to carry out the amendment made
19 by subsection (a).

○