

118TH CONGRESS  
1ST SESSION

# S. 2052

To amend title XVIII of the Social Security Act to enforce any willing pharmacy requirements and establish safeguards to ensure patient access to pharmacies in Medicare part D, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 20, 2023

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

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## A BILL

To amend title XVIII of the Social Security Act to enforce any willing pharmacy requirements and establish safeguards to ensure patient access to pharmacies in 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 “Protect Patient Access  
5 to Pharmacies Act”.

1 **SEC. 2. ESTABLISHING SAFEGUARDS TO ENSURE FAIR**  
2 **MARKET COMPETITION FOR PHARMACIES IN**  
3 **MEDICARE PART D.**

4 Section 1860D–4(b)(1)(C) of the Social Security Act  
5 (42 U.S.C. 1395w–104(b)(1)(C)) is amended by adding  
6 at the end the following new clauses:

7 “(v) ENFORCING ANY WILLING PRO-  
8 VIDER REQUIREMENTS TO SUPPORT PA-  
9 TIENT CHOICE OF PHARMACY.—Not later  
10 than September 30, 2024, the Secretary  
11 shall require that total payment (including  
12 dispensing fees) by a PDP sponsor offering  
13 a prescription drug plan or MA organiza-  
14 tion offering an MA–PD plan for each cov-  
15 ered part D drug dispensed to an enrollee  
16 by a network pharmacy (including spe-  
17 cialty pharmacies (as defined under section  
18 1860D–2(d)(4)(E))), net of any and all  
19 price concessions, discounts, fees of any  
20 type, incentive payments, or any other  
21 form of remuneration, ensures that at a  
22 minimum, such payment covers such phar-  
23 macy’s costs to acquire and to dispense  
24 each covered part D drug so that such  
25 pharmacy may have the option to partici-  
26 pate as a network provider, which shall in-

1           clude the ability to acquire and dispense  
2           covered part D drugs and provide phar-  
3           macy services necessary for dispensing  
4           such drugs. In carrying out this clause, the  
5           Secretary shall—

6                       “(I) utilize pharmacy acquisition  
7                       cost data on each type of pharmacy  
8                       for each covered part D drug (exclud-  
9                       ing drugs purchased under section  
10                      340B of the Public Health Service  
11                      Act) and cost to dispense data from  
12                      each type of pharmacy (including  
13                      pharmacies not otherwise owned, con-  
14                      trolled, or affiliated with any other  
15                      pharmacy, plan, or pharmacy benefit  
16                      manager);

17                     “(II) establish payment param-  
18                     eters for each covered part D drug  
19                     that considers how the drug is dis-  
20                     pensed and what pharmacy services  
21                     are provided by each type of phar-  
22                     macy to support drug management  
23                     with the individual for whom the drug  
24                     is dispensed; and

1                   “(III) establish an appeal process  
2                   in which the pharmacy may appeal  
3                   payment, in writing and with sup-  
4                   porting documentation, to the Medi-  
5                   care Pharmaceutical and Technology  
6                   Ombudsman within 60 days following  
7                   notification of the payment or any ad-  
8                   justment of such payment of such a  
9                   drug, if a network pharmacy believes  
10                  that the amount a PDP offering a  
11                  prescription drug plan or an MA orga-  
12                  nization offering an MA–PD plan has  
13                  paid for such drug is below the phar-  
14                  macy’s lowest actual acquisition and  
15                  dispensing costs of such drug.

16                  “(vi) UTILIZATION OF PHARMACY AC-  
17                  QUISITION COST DATA.—With respect to  
18                  the requirement under clause (v)(I) for the  
19                  Secretary to utilize pharmacy acquisition  
20                  cost data—

21                         “(I) the Secretary shall utilize  
22                         pharmacy acquisition cost data de-  
23                         scribed in section 1927(f), relating to  
24                         a survey of retail prices; and

1                   “(II) for each covered part D  
2                   drug not included in the survey de-  
3                   scribed in section 1927(f), the Sec-  
4                   retary shall amend the survey or es-  
5                   tablish a survey.”.

6 **SEC. 3. ENSURING FAIR ASSESSMENT OF PHARMACY PER-**  
7 **FORMANCE AND QUALITY.**

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

10           (1) in paragraph (1)(B), by striking “For pur-  
11           poses” and inserting “Subject to paragraph (4), for  
12           purposes”; and

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

15           “(4) APPLICATION OF PHARMACY PERFORM-  
16           ANCE MEASURES.—

17           “(A) EVALUATION OF PHARMACY PER-  
18           FORMANCE MEASURES.—Not later than 6  
19           months after the date of enactment of this Act,  
20           and annually thereafter, the Secretary shall  
21           complete an evaluation of the performance  
22           measures used by PDP sponsors offering pre-  
23           scription drug plans and MA organizations of-  
24           fering MA–PD plans to assess pharmacy price  
25           concessions or any other fees based on perform-

1           ance, as established in network pharmacy  
2           agreements. Each such evaluation shall (to the  
3           extent practicable) include at least 5 years of  
4           retrospective information to examine the fol-  
5           lowing:

6                   “(i) How measures are being applied  
7                   to pharmacies, including whether such  
8                   measures are applied based on the type of  
9                   pharmacy (including specialty pharmacy),  
10                  drugs dispensed, and pharmacy services  
11                  used to dispense and manage drugs.

12                  “(ii) Whether, with respect to each  
13                  such measure, such measure results in  
14                  anything of value including any fees, phar-  
15                  macy price concessions, discounts, or in-  
16                  centives, transferred to or received from a  
17                  pharmacy by a PDP sponsor offering a  
18                  prescription drug plan or MA organization  
19                  offering an MA–PD plan after the point-  
20                  of-sale of a drug, broken down by type of  
21                  pharmacy and the drug dispensed.

22                  “(iii) The extent to which each meas-  
23                  ure is applied across prescription drug  
24                  plans offered by a PDP sponsor and MA–

1 PD plans offered by an MA organization  
 2 and if such application is uniform.

3 “(iv) How measures are applied and if  
 4 they are uniformly applied to all in-net-  
 5 work types of pharmacies or only certain  
 6 pharmacies within a network.

7 “(v) How and when pharmacies are  
 8 provided notice of measures, as well as  
 9 methods and actual data calculations used  
 10 to evaluate performance, and evaluation  
 11 outcomes by type of pharmacy.

12 “(vi) How pharmacy performance is  
 13 evaluated using such measures and the ex-  
 14 tent to which the goals or targets are—

15 “(I) achievable at scale;

16 “(II) structured to improve pa-  
 17 tient outcomes; and

18 “(III) reasonable in the context  
 19 of industry data regarding baseline  
 20 patient behavior, such as improved  
 21 patient outcomes and measure per-  
 22 formance.

23 “(B) APPLICATION OF STANDARDIZED  
 24 PHARMACY PERFORMANCE MEASURES.—For  
 25 plan years beginning on or after January 1,

1           2025, a PDP sponsor offering a prescription  
2           drug plan or an MA organization offering an  
3           MA–PD plan that makes incentive payments to  
4           a pharmacy, or receives price concessions or  
5           any other remuneration paid by a pharmacy,  
6           based on measures of the performance or qual-  
7           ity of work of the pharmacy, shall, for the pur-  
8           poses of such incentive payments and price con-  
9           cessions or fees with respect to covered part D  
10          drugs dispensed by such pharmacy, only use  
11          measures—

12                   “(i) on the most recently updated list  
13                   maintained by the Secretary under sub-  
14                   paragraph (C), as listed under clause (ii)  
15                   of such subparagraph; and

16                   “(ii) that are relevant to the perform-  
17                   ance of such pharmacy based on the type  
18                   of pharmacy, drugs dispensed, and phar-  
19                   macy services used to dispense and manage  
20                   drugs.

21                   “(C) STANDARDIZED PHARMACY PER-  
22          FORMANCE MEASURES.—

23                   “(i) IN GENERAL.—Notwithstanding  
24                   any other provision of law, the Secretary  
25                   shall, taking into account evaluations



1 under subparagraph (A), establish or adopt  
2 from one or more multi-stakeholder, neu-  
3 tral, consensus-based measure development  
4 organizations representing all types of  
5 pharmacies (including pharmacies not oth-  
6 erwise owned, controlled, or affiliated with  
7 any other pharmacy, plan, or pharmacy  
8 benefit manager) standardized pharmacy  
9 quality measures and performance criteria,  
10 such as cut points, or any type of payment  
11 to be used by a PDP sponsor offering a  
12 prescription drug plan and an MA organi-  
13 zation offering an MA–PD plan for the  
14 purposes of determining incentive pay-  
15 ments and price concessions or fees de-  
16 scribed in subparagraph (B). Such meas-  
17 ures shall be evidence-based, feasible, ap-  
18 propriate, and achievable based on indus-  
19 try data, and focus on pharmacy perform-  
20 ance and quality of care, as determined by  
21 the Secretary, that the pharmacy can im-  
22 pact based on covered part D drugs the  
23 pharmacy dispenses and manages.

24 “(ii) MAINTENANCE OF LIST.—The  
25 Secretary shall maintain a single list of

1 measures established or adopted under this  
2 subparagraph. Such measures shall be  
3 evaluated and such list updated on an on-  
4 going basis through stakeholder consensus  
5 organizations representing all types of  
6 pharmacies as referenced in clause (i) to  
7 ensure the measures on such list are evi-  
8 dence-based, feasible, appropriate, and  
9 achievable. Such list shall be published on  
10 a public website not later than January 1,  
11 2024, and updated thereafter as appro-  
12 priate as determined by the Secretary.

13 “(D) TRANSPARENCY TO PHARMACY.—For  
14 plan years beginning on or after January 1,  
15 2025, the Secretary shall establish a uniform  
16 process under which a PDP sponsor offering a  
17 prescription drug plan and an MA organization  
18 offering an MA–PD plan shall promptly dis-  
19 close, upon receiving a claim for a covered part  
20 D drug from a pharmacy, to such pharmacy all  
21 pricing components related to such claim, in-  
22 cluding the Network Reimbursement ID used to  
23 price the claim, any service fees and other fees,  
24 pharmacy price concessions, discounts, incen-

1 tives or anything else of value to or from the  
2 pharmacy.

3 “(E) SPECIALTY PHARMACY.—For pur-  
4 poses of this subparagraph and section 1860D-  
5 4(b)(1)(C), not later than December 31, 2024,  
6 the Secretary shall define the term ‘specialty  
7 pharmacy’ in consultation with all relevant  
8 stakeholders.

9 “(F) DEFINITIONS.—For purposes of this  
10 subparagraph:

11 “(i) AFFILIATED.—The term ‘affili-  
12 ated’ means, with respect to a pharmacy,  
13 a PDP sponsor offering a prescription  
14 drug plan, or an MA organization offering  
15 an MA–PD plan, that the pharmacy, PDP  
16 sponsor, or MA organization—

17 “(I) is directly or indirectly  
18 through one or more intermediaries  
19 wholly or partially owned by, con-  
20 trolled by, or is under common owner-  
21 ship of such pharmacy, PDP sponsor,  
22 or MA organization; or

23 “(II) has a financial interest in  
24 such pharmacy, PDP sponsor, or MA  
25 organization.

1           “(ii) TYPE OF PHARMACY.—The term  
2           ‘type of pharmacy’ means any type of  
3           pharmacy licensed by a State, including a  
4           retail pharmacy, specialty pharmacy, and  
5           any other type of pharmacy specified by  
6           the Secretary.”.

7   **SEC. 4. ENCOURAGING USE OF PHARMACY PERFORMANCE**  
8           **MEASURES THROUGH QUALITY RATINGS.**

9           Section 1853(o)(4)(A) of the Social Security Act (42  
10   U.S.C. 1395w-23(o)(4)(A)) is amended—

11           (1) by striking “DETERMINATION.—The qual-  
12           ity” and inserting DETERMINATION.—

13                   “(i) IN GENERAL.—Subject to clause  
14                   (ii), the quality”; and

15           (2) by adding at the end the following new  
16           clause:

17                   “(ii) ENCOURAGING USE OF PHAR-  
18                   MACY PERFORMANCE MEASURES.—

19                           “(I) IN GENERAL.—In the case  
20                           of a plan described in subclause (II),  
21                           with respect to the determination of  
22                           quality ratings on or after January 1,  
23                           2024, the Secretary shall provide for  
24                           an increase in the quality rating oth-  
25                           erwise determined under clause (i) in

1 a manner determined appropriate by  
2 the Secretary.

3 “(II) PLAN DESCRIBED.—For  
4 purposes of subclause (I), a plan de-  
5 scribed in this subclause is a prescrip-  
6 tion drug plan offered by a PDP  
7 sponsor or an MA–PD plan offered by  
8 an MA organization that makes incen-  
9 tive payments to a pharmacy, or re-  
10 ceives price concessions or any other  
11 remuneration paid by a pharmacy,  
12 based on measures of the performance  
13 or quality of work of the pharmacy.”.

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