

115TH CONGRESS  
2D SESSION

# H. R. 5775

To amend title XVIII of the Social Security Act to require Medicare Advantage plans and part D prescription drug plans to include information on the risks associated with opioids, coverage of certain nonopioid treatments used to treat pain, and on the safe disposal of prescription drugs, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2018

Mr. PAULSEN (for himself, Mr. POLIQUIN, Mr. KIND, and Mr. LAMB) 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

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## A BILL

To amend title XVIII of the Social Security Act to require Medicare Advantage plans and part D prescription drug plans to include information on the risks associated with opioids, coverage of certain nonopioid treatments used to treat pain, and on the safe disposal of prescription drugs, 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,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Providing Reliable Op-  
3 tions for Patients and Educational Resources Act of  
4 2018” or the “PROPER Act of 2018”.

5 **SEC. 2. REQUIRING MEDICARE ADVANTAGE PLANS AND**  
6 **PART D PRESCRIPTION DRUG PLANS TO IN-**  
7 **CLUDE INFORMATION ON RISKS ASSOCIATED**  
8 **WITH OPIOIDS AND COVERAGE OF NON-**  
9 **PHARMACOLOGICAL THERAPIES AND**  
10 **NONOPIOID MEDICATIONS OR DEVICES USED**  
11 **TO TREAT PAIN.**

12       Section 1860D–4(a)(1) of the Social Security Act (42  
13 U.S.C. 1395w–104(a)(1)) is amended—

14           (1) in subparagraph (A), by inserting “, subject  
15 to subparagraph (C),” before “including”;

16           (2) in subparagraph (B), by adding at the end  
17 the following new clause:

18                   “(vi) For plan year 2021 and each  
19 subsequent plan year, subject to subpara-  
20 graph (C), with respect to the treatment of  
21 pain—

22                           “(I) the risks associated with  
23 prolonged opioid use; and

24                           “(II) coverage of nonpharma-  
25 cological therapies, devices, and  
26 nonopioid medications—

1 “(aa) in the case of an MA–  
 2 PD plan under part C, under  
 3 such plan; and

4 “(bb) in the case of a pre-  
 5 scription drug plan, under such  
 6 plan and under parts A and B.”;  
 7 and

8 (3) by adding at the end the following new sub-  
 9 paragraph:

10 “(C) TARGETED PROVISION OF INFORMA-  
 11 TION.—A PDP sponsor of a prescription drug  
 12 plan may, in lieu of disclosing the information  
 13 described in subparagraph (B)(vi) to each en-  
 14 rollee under the plan, disclose such information  
 15 through mail or electronic communications to a  
 16 subset of enrollees under the plan, such as en-  
 17 rollees who have been prescribed an opioid in  
 18 the previous two-year period.”.

19 **SEC. 3. REQUIRING MEDICARE ADVANTAGE PLANS AND**  
 20 **PRESCRIPTION DRUG PLANS TO PROVIDE IN-**  
 21 **FORMATION ON THE SAFE DISPOSAL OF PRE-**  
 22 **SCRIPTION DRUGS.**

23 (a) MEDICARE ADVANTAGE.—Section 1852 of the  
 24 Social Security Act (42 U.S.C. 1395w–22) is amended by  
 25 adding at the end the following new subsection:

1 “(n) PROVISION OF INFORMATION RELATING TO THE  
2 SAFE DISPOSAL OF CERTAIN PRESCRIPTION DRUGS.—

3 “(1) IN GENERAL.—In the case of an individual  
4 enrolled under an MA or MA–PD plan who is fur-  
5 nished an in-home health risk assessment on or after  
6 January 1, 2021, such plan shall ensure that such  
7 assessment includes information on the safe disposal  
8 of prescription drugs that are controlled substances  
9 that meets the criteria established under paragraph  
10 (2). Such information shall include information on  
11 drug takeback programs that meet such require-  
12 ments determined appropriate by the Secretary and  
13 information on in-home disposal.

14 “(2) CRITERIA.—The Secretary shall, through  
15 rulemaking, establish criteria the Secretary deter-  
16 mines appropriate with respect to information pro-  
17 vided to an individual to ensure that such informa-  
18 tion sufficiently educates such individual on the safe  
19 disposal of prescription drugs that are controlled  
20 substances.”.

21 (b) PRESCRIPTION DRUG PLANS.—Section 1860D–  
22 4(c)(2)(B) of the Social Security Act (42 U.S.C. 1395w–  
23 104(c)(2)(B)) is amended—

24 (1) by striking “may include elements that pro-  
25 mote”;

1           (2) by redesignating clauses (i) through (iii) as  
2           subclauses (I) through (III) and adjusting the mar-  
3           gins accordingly;

4           (3) by inserting before subclause (I), as so re-  
5           designated, the following new clause:

6                       “(i) may include elements that pro-  
7                       mote—”;

8           (4) in subclause (III), as so redesignated, by  
9           striking the period at the end and inserting “; and”;  
10          and

11          (5) by adding at the end the following new  
12          clause:

13                       “(ii) with respect to plan years begin-  
14                       ning on or after January 1, 2021, shall  
15                       provide for—

16                               “(I) the provision of information  
17                               to the enrollee on the safe disposal of  
18                               prescription drugs that are controlled  
19                               substances that meets the criteria es-  
20                               tablished under section 1852(n)(2),  
21                               including information on drug  
22                               takeback programs that meet such re-  
23                               quirements determined appropriate by  
24                               the Secretary and information on in-  
25                               home disposal; and

1 “(II) cost-effective means by  
 2 which an enrollee may so safely dis-  
 3 pose of such drugs.”.

4 **SEC. 4. REVISING MEASURES USED UNDER THE HOSPITAL**  
 5 **CONSUMER ASSESSMENT OF HEALTHCARE**  
 6 **PROVIDERS AND SYSTEMS SURVEY RELAT-**  
 7 **ING TO PAIN MANAGEMENT.**

8 (a) RESTRICTION ON THE USE OF PAIN QUESTIONS  
 9 IN HCAHPS.—Section 1886(b)(3)(B)(viii) of the Social  
 10 Security Act (42 U.S.C. 1395ww(b)(3)(B)(viii)) is amend-  
 11 ed by adding at the end the following new subclause:

12 “(XII) With respect to a Hospital Consumer Assess-  
 13 ment of Healthcare Providers and Systems survey (or a  
 14 successor survey) conducted on or after January 1, 2019,  
 15 such survey may not include questions about communica-  
 16 tion by hospital staff with an individual about such indi-  
 17 vidual’s pain unless such questions take into account, as  
 18 applicable, whether an individual experiencing pain was in-  
 19 formed about risks associated with the use of opioids and  
 20 about non-opioid alternatives for the treatment of pain.”.

21 (b) RESTRICTION ON USE OF PAIN QUESTIONS IN  
 22 THE HOSPITAL VALUE-BASED PURCHASING PROGRAM  
 23 FOR FISCAL YEAR 2019.—Section 1886(o)(2)(B) is  
 24 amended by adding at the end the following new clause:

1           “(iii) FOR FISCAL YEAR 2019.—For  
2           value-based incentive payments made with  
3           respect to discharges occurring during fis-  
4           cal year 2019, the Secretary shall ensure  
5           that measures selected under subparagraph  
6           (A) do not include a measure based on  
7           questions about communication by hospital  
8           staff with an individual about such individ-  
9           ual’s pain included in the Hospital Con-  
10          sumer Assessment of Healthcare Providers  
11          and Systems survey.”.

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