

116TH CONGRESS
1ST SESSION

S. 640

To amend title XVIII of the Social Security Act to require pharmacy-negotiated price concessions to be included in negotiated prices at the point-of-sale under part D of the Medicare program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 4, 2019

Mr. KENNEDY 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 require pharmacy-negotiated price concessions to be included in negotiated prices at the point-of-sale under part D of the Medicare program, 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 “Phair Pricing Act of
5 2019”.

1 **SEC. 2. REQUIRING PHARMACY-NEGOTIATED PRICE CON-**
 2 **CESSIONS AND PHARMACY INCENTIVE PAY-**
 3 **MENTS AND ADJUSTMENTS TO BE INCLUDED**
 4 **IN NEGOTIATED PRICES AT THE POINT-OF-**
 5 **SALE UNDER PART D OF THE MEDICARE PRO-**
 6 **GRAM.**

7 Section 1860D–2(d)(1)(B) of the Social Security Act
 8 (42 U.S.C. 1395w–102(d)(1)(B)) is amended—

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

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

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

15 “(ii) PRICES NEGOTIATED WITH
 16 PHARMACY AT POINT-OF-SALE.—

17 “(I) IN GENERAL.—Subject to
 18 subclause (III), for plan years begin-
 19 ning on or after January 1, 2020, ne-
 20 gotiated prices for covered part D
 21 drugs described in clause (i) provided
 22 under a prescription drug plan, in-
 23 cluding all contingent and noncontin-
 24 gent concessions, adjustments, pay-
 25 ments, and fees (including dispensing
 26 fees) negotiated with the pharmacy

1 dispensing such drug, shall be pro-
 2 vided at the point-of-sale of such
 3 drug. Such negotiated price shall not
 4 include any incentive payments and
 5 adjustments or any other contingent
 6 concessions, adjustments, payments,
 7 or fees that increase the amount of
 8 such negotiated price.

9 “(II) APPLICATION OF PHAR-
 10 MACY INCENTIVE PAYMENTS AND AD-
 11 JUSTMENTS.—

12 “(aa) IN GENERAL.—For
 13 plan years beginning on or after
 14 January 1, 2020, a PDP spon-
 15 sor—

16 “(AA) shall apply a
 17 system under which incen-
 18 tive payments and adjust-
 19 ments using only quality
 20 measures established by the
 21 Secretary under item (bb)
 22 are made to a pharmacy
 23 with respect to payment for
 24 covered part D drugs dis-

1 pensed by such pharmacy;
2 and

3 “(BB) may not apply
4 any other incentive pay-
5 ments and adjustments with
6 respect to such payment
7 outside of such system.

8 Application of such system may
9 not result in a decrease in reim-
10 bursement to such pharmacy for
11 such drug after the point-of-sale
12 of such drug.

13 “(bb) STANDARD PHARMACY
14 QUALITY MEASURES.—The Sec-
15 retary shall establish standard
16 quality measures that may be
17 used in a system described in
18 item (aa). Such measures shall
19 be—

20 “(AA) focused on im-
21 proving patient health out-
22 comes;

23 “(BB) standardized
24 across PDP sponsors;

1 “(CC) pharmacy-spe-
2 cific in application;

3 “(DD) relevant to the
4 type of pharmacy concerned
5 (such as specialty phar-
6 macies), taking into account
7 the items and services fur-
8 nished by the pharmacy and
9 the patient population
10 served by the pharmacy;

11 “(EE) applied only
12 when relevant to the specific
13 drug (or drug class of such
14 drug) being furnished by the
15 pharmacy or when relevant
16 to management of the condi-
17 tion for which such drug has
18 been prescribed; and

19 “(FF) based on achiev-
20 able and proven criteria
21 measuring pharmacy per-
22 formance over which the
23 pharmacy has meaningful
24 control and ability to influ-
25 ence.

1 In establishing such standards,
2 the Secretary shall consult with
3 stakeholders, including PDP
4 sponsors and MA organizations,
5 pharmacies across pharmacy
6 practice types, pharmacy benefit
7 managers, patient advocacy orga-
8 nizations, drug manufacturers,
9 appropriate standard-setting or-
10 ganizations, and other entities
11 determined appropriate by the
12 Secretary.

13 “(III) NO INCREASE IN COST
14 SHARING.—Subclause (I) shall not
15 apply in the case where application of
16 such subclause would increase the
17 amount owed by an individual in cost
18 sharing above the amount such indi-
19 vidual would have owed in cost shar-
20 ing without application of such sub-
21 clause.

22 “(IV) DISCREPANCIES BETWEEN
23 NEGOTIATED PRICES AND ACTUAL RE-
24 IMBURSEMENT.—In the case that the
25 Secretary determines that the nego-

1 tiated price of a PDP sponsor applied
 2 at the point-of-sale with respect to a
 3 covered part D drug for a year dis-
 4 pensed by a pharmacy was greater
 5 than the total reimbursement made to
 6 such pharmacy for such drug for such
 7 year, such sponsor shall, not later
 8 than 90 days after receiving notice of
 9 such determination, furnish to the
 10 pharmacy that dispensed such drug
 11 and to the Secretary a written expla-
 12 nation of why such negotiated price
 13 was greater than such reimbursement.

14 “(V) SPECIALTY PHARMACY.—

15 For purposes of carrying out this
 16 clause (including subclause
 17 (II)(bb)(DD)), the Secretary shall, not
 18 later than December 31, 2019, define
 19 the term ‘specialty pharmacy’ in con-
 20 sultation with relevant stakeholders.

21 “(VI) DEFINITIONS.—In this

22 clause:

23 “(aa) INCENTIVE PAYMENTS

24 AND ADJUSTMENTS.—The term

25 ‘incentive payments and adjust-

1 ments’ means, with respect to
2 payment to a pharmacy by a
3 PDP sponsor for a covered part
4 D drug, any prospective or retro-
5 spective price concessions, re-
6 bates, discounts, fees, reconcili-
7 ation adjustments, bonuses, per-
8 formance payments, incentives,
9 and any other adjustment to
10 such payment determined
11 through the use of a quality
12 measure, regardless of when such
13 payments and adjustments are
14 applied. Such term does not in-
15 clude any manufacturer rebates
16 or concessions made with respect
17 to such drug.

18 “(bb) QUALITY MEASURE.—
19 The term ‘quality measure’
20 means performance criteria used
21 by a PDP sponsor (including an
22 entity that contracts with such
23 sponsor, such as a pharmacy ben-
24 efit manager) to determine the

1 amount or applicability of incen-
2 tive payments and adjustments.

3 “(cc) PDP SPONSOR.—The
4 term ‘PDP sponsor’ includes an
5 MA organization offering an
6 MA–PD plan under part C and
7 an entity that contracts with
8 such sponsor or organization,
9 such as a pharmacy benefit man-
10 ager.

11 “(iii) REASONABLE REIMBURSEMENT
12 REQUIREMENT.—In no case may a nego-
13 tiated price (as described in clause (ii)(I))
14 for a covered part D drug furnished by a
15 pharmacy during a plan year beginning on
16 or after January 1, 2020, be less than
17 such pharmacy’s cost of purchasing and
18 dispensing such drug and providing such
19 other services associated with furnishing
20 such drug as may be specified by the Sec-
21 retary.

22 “(iv) CLAIM REIMBURSEMENT DIS-
23 CLOSURE REQUIREMENTS.—With respect
24 to payment made by a PDP sponsor to a
25 pharmacy for a covered part D drug fur-

nished by such pharmacy during a plan year beginning on or after January 1, 2020, such sponsor shall promptly furnish all pricing components including the Network Reimbursement ID used to price the claim, any fees, pharmacy price concessions, discounts, incentives or any other forms of remuneration that affect payment and pricing of the claim as part of the claim adjudication response at the point-of-sale. All aforementioned items, including Network Reimbursement ID, fees, pharmacy price concessions, discounts, incentives, or any other forms of remuneration that affect payment and pricing of the claim shall each be identified in a predetermined line item in the remittance advice that is standard across the industry. The Part D sponsor shall include suitable claim-level detail on the electronic remittance advice that accompanies each payment. This claim-level detail shall include, in an industry standardized format, all fields needed to properly identify the claim, including the Claim Authorization Number,

1 date of service, date of payment remit-
 2 tance, ingredient cost reimbursed, dis-
 3 pensing fee reimbursed, payment amounts
 4 including the Network ID used to price the
 5 claim, the specific dollar amounts and the
 6 appropriate qualifier codes for each pay-
 7 ment adjustment including fees, pharmacy
 8 price concessions, or incentives.

9 “(v) VIOLATION PROCESS.—A PDP
 10 sponsor shall participate in any process es-
 11 tablished by the Secretary for purposes of
 12 determining whether such sponsor has vio-
 13 lated a provision of clauses (ii) through
 14 (iv).”.

15 **SEC. 3. PHARMACY BENEFIT MANAGER PROVISION OF IN-**
 16 **FORMATION.**

17 (a) IN GENERAL.—Section 1150A(b)(2) of the Social
 18 Security Act (42 U.S.C. 1320b–23(b)(2)) is amended by
 19 striking “excluding” and inserting “including”.

20 (b) EFFECTIVE DATE.—The amendment made by
 21 subsection (a) shall apply with respect to contract years
 22 beginning on or after January 1, 2020.

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