

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5775

[Report No. 115-]

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

JUNE --, 2018

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on May 11, 2018]

# **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,*

3 **SECTION 1. SHORT TITLE.**

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

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

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

16 *(1) in subparagraph (A), by inserting “, subject*  
17 *to subparagraph (C),” before “including”;*

18 *(2) in subparagraph (B), by adding at the end*  
19 *the following new clause:*

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

24 *“(I) the risks associated with pro-*  
25 *longed opioid use; and*

1                   “(II) coverage of nonpharma-  
2                   cological therapies, devices, and  
3                   nonopioid medications—

4                   “(aa) in the case of an MA-  
5                   PD plan under part C, under  
6                   such plan; and

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

11                  (3) by adding at the end the following new sub-  
12                  paragraph:

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

1 **SEC. 3. REQUIRING MEDICARE ADVANTAGE PLANS AND**  
2 **PRESCRIPTION DRUG PLANS TO PROVIDE IN-**  
3 **FORMATION ON THE SAFE DISPOSAL OF PRE-**  
4 **SCRIPTION DRUGS.**

5 (a) *MEDICARE ADVANTAGE.*—Section 1852 of the So-  
6 cial Security Act (42 U.S.C. 1395w–22) is amended by add-  
7 ing at the end the following new subsection:

8 “(n) *PROVISION OF INFORMATION RELATING TO THE*  
9 *SAFE DISPOSAL OF CERTAIN PRESCRIPTION DRUGS.*—

10 “(1) *IN GENERAL.*—In the case of an individual  
11 enrolled under an MA or MA-PD plan who is fur-  
12 nished an in-home health risk assessment on or after  
13 January 1, 2021, such plan shall ensure that such as-  
14 sessment includes information on the safe disposal of  
15 prescription drugs that are controlled substances that  
16 meets the criteria established under paragraph (2).  
17 Such information shall include information on drug  
18 takeback programs that meet such requirements deter-  
19 mined appropriate by the Secretary and information  
20 on in-home disposal.

21 “(2) *CRITERIA.*—The Secretary shall, through  
22 rulemaking, establish criteria the Secretary deter-  
23 mines appropriate with respect to information pro-  
24 vided to an individual to ensure that such informa-  
25 tion sufficiently educates such individual on the safe

1       *disposal of prescription drugs that are controlled sub-*  
2       *stances.”.*

3       **(b) PRESCRIPTION DRUG PLANS.**—*Section 1860D-*  
4       *4(c)(2)(B) of the Social Security Act (42 U.S.C. 1395w-*  
5       *104(c)(2)(B)) is amended—*

6             (1) *by striking “may include elements that pro-*  
7             *mote”;*

8             (2) *by redesignating clauses (i) through (iii) as*  
9             *subclauses (I) through (III) and adjusting the mar-*  
10            *gins accordingly;*

11            (3) *by inserting before subclause (I), as so reded-*  
12            *ignated, the following new clause:*

13                     *“(i) may include elements that pro-*  
14                     *mote—”;*

15            (4) *in subclause (III), as so redesignated, by*  
16            *striking the period at the end and inserting “; and”;*  
17            *and*

18            (5) *by adding at the end the following new*  
19            *clause:*

20                     *“(ii) with respect to plan years begin-*  
21                     *ning on or after January 1, 2021, shall pro-*  
22                     *vide for—*

23                             *“(I) the provision of information*  
24                             *to the enrollee on the safe disposal of*  
25                             *prescription drugs that are controlled*

1                    *substances that meets the criteria es-*  
2                    *tablished under section 1852(n)(2), in-*  
3                    *cluding information on drug takeback*  
4                    *programs that meet such requirements*  
5                    *determined appropriate by the Sec-*  
6                    *retary and information on in-home*  
7                    *disposal; and*

8                    *“(II) cost-effective means by which*  
9                    *an enrollee may so safely dispose of*  
10                   *such drugs.”.*

11 **SEC. 4. REVISING MEASURES USED UNDER THE HOSPITAL**  
12                    **CONSUMER ASSESSMENT OF HEALTHCARE**  
13                    **PROVIDERS AND SYSTEMS SURVEY RELATING**  
14                    **TO PAIN MANAGEMENT.**

15                    *(a) RESTRICTION ON THE USE OF PAIN QUESTIONS*  
16 *IN HCAHPS.—Section 1886(b)(3)(B)(viii) of the Social*  
17 *Security Act (42 U.S.C. 1395ww(b)(3)(B)(viii)) is amended*  
18 *by adding at the end the following new subclause:*

19                    *“(XII)(aa) With respect to a Hospital Consumer As-*  
20 *essment of Healthcare Providers and Systems survey (or*  
21 *a successor survey) conducted on or after January 1, 2019,*  
22 *such survey may not include questions about communica-*  
23 *tion by hospital staff with an individual about such indi-*  
24 *vidual’s pain unless such questions take into account, as*  
25 *applicable, whether an individual experiencing pain was*

1 *informed about risks associated with the use of opioids and*  
2 *about non-opioid alternatives for the treatment of pain.*

3       “(bb) *The Secretary shall not include on the Hospital*  
4 *Compare Internet website any measures based on the ques-*  
5 *tions appearing on the Hospital Consumer Assessment of*  
6 *Healthcare Providers and Systems survey in 2018 about*  
7 *communication by hospital staff with an individual about*  
8 *such individual’s pain.”.*

9       ***(b) RESTRICTION ON USE OF 2018 PAIN QUESTIONS***  
10 ***IN THE HOSPITAL VALUE-BASED PURCHASING PRO-***  
11 ***GRAM.—Section 1886(o)(2)(B) of the Social Security Act***  
12 ***(42 U.S.C. 1395ww(o)(2)(B)) is amended by adding at the***  
13 ***end the following new clause:***

14               “(iii) ***HCAHPS PAIN QUESTIONS.—***  
15               *The Secretary may not include under sub-*  
16               *paragraph (A) a measure that is based on*  
17               *the questions appearing on the Hospital*  
18               *Consumer Assessment of Healthcare Pro-*  
19               *viders and Systems survey in 2018 about*  
20               *communication by hospital staff with an*  
21               *individual about the individual’s pain.”.*