

Suspend the Rules And Pass the Bill, H.R. 2115, With Amendments

(The amendments strike all after the enacting clause and insert a new text and a new title)

116TH CONGRESS
1ST SESSION

H. R. 2115

To amend title XI of the Social Security Act to provide greater transparency of discounts provided by drug manufacturers.

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2019

Ms. SPANBERGER (for herself, Mr. ARRINGTON, and Mr. BRENDAN F. BOYLE of Pennsylvania) 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 XI of the Social Security Act to provide greater transparency of discounts provided by drug manufacturers.

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 “Public Disclosure of
3 Drug Discounts and Real-Time Beneficiary Drug Cost
4 Act”.

5 **SEC. 2. PUBLIC DISCLOSURE OF DRUG DISCOUNTS.**

6 Section 1150A of the Social Security Act (42 U.S.C.
7 1320b–23) is amended—

8 (1) in subsection (e), in the matter preceding
9 paragraph (1), by inserting “(other than as per-
10 mitted under subsection (e))” after “disclosed by the
11 Secretary”; and

12 (2) by adding at the end the following new sub-
13 section:

14 “(e) PUBLIC AVAILABILITY OF CERTAIN INFORMA-
15 TION.—

16 “(1) IN GENERAL.—In order to allow the com-
17 parison of PBMs’ ability to negotiate rebates, dis-
18 counts, direct and indirect remuneration fees, ad-
19 ministrative fees, and price concessions and the
20 amount of such rebates, discounts, direct and indi-
21 rect remuneration fees, administrative fees, and
22 price concessions that are passed through to plan
23 sponsors, beginning January 1, 2020, the Secretary
24 shall make available on the Internet website of the
25 Department of Health and Human Services the in-
26 formation with respect to the second preceding cal-

1 endar year provided to the Secretary on generic dis-
2 pensing rates (as described in paragraph (1) of sub-
3 section (b)) and information provided to the Sec-
4 retary under paragraphs (2) and (3) of such sub-
5 section that, as determined by the Secretary, is with
6 respect to each PBM.

7 “(2) AVAILABILITY OF DATA.—In carrying out
8 paragraph (1), the Secretary shall ensure the fol-
9 lowing:

10 “(A) CONFIDENTIALITY.—The information
11 described in such paragraph is displayed in a
12 manner that prevents the disclosure of informa-
13 tion, with respect to an individual drug or an
14 individual plan, on rebates, discounts, direct
15 and indirect remuneration fees, administrative
16 fees, and price concessions.

17 “(B) CLASS OF DRUG.—The information
18 described in such paragraph is made available
19 by class of drug, using an existing classification
20 system, but only if the class contains such num-
21 ber of drugs, as specified by the Secretary (but
22 not fewer than three drugs), to ensure confiden-
23 tiality of proprietary information or other infor-
24 mation that is prevented to be disclosed under
25 subparagraph (A).”.

1 **SEC. 3. REQUIRING PRESCRIPTION DRUG PLAN SPONSORS**
2 **TO INCLUDE REAL-TIME BENEFIT INFORMA-**
3 **TION AS PART OF SUCH SPONSOR'S ELEC-**
4 **TRONIC PRESCRIPTION PROGRAM UNDER**
5 **THE MEDICARE PROGRAM.**

6 Section 1860D–4(e)(2) of the Social Security Act (42
7 U.S.C. 1395w–104(e)(2)) is amended—

8 (1) in subparagraph (D), by striking “To the
9 extent” and inserting “Except as provided in sub-
10 paragraph (F), to the extent”; and

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

13 “(F) REAL-TIME BENEFIT INFORMA-
14 TION.—

15 “(i) IN GENERAL.—Not later than
16 January 1, 2021, the program shall imple-
17 ment real-time benefit tools that are capa-
18 ble of integrating with a prescribing health
19 care professional’s electronic prescribing or
20 electronic health record system for the
21 transmission of formulary and benefit in-
22 formation in real time to prescribing health
23 care professionals. With respect to a cov-
24 ered part D drug, such tools shall be capa-
25 ble of transmitting such information spe-
26 cific to an individual enrolled in a prescrip-

1 tion drug plan. Such information shall in-
2 clude the following:

3 “(I) A list of any clinically-appro-
4 priate alternatives to such drug in-
5 cluded in the formulary of such plan.

6 “(II) Cost-sharing information
7 for such drug and such alternatives,
8 including a description of any vari-
9 ance in cost sharing based on the
10 pharmacy dispensing such drug or
11 such alternatives.

12 “(III) Information relating to
13 whether such drug is included in the
14 formulary of such plan and any prior
15 authorization or other utilization man-
16 agement requirements applicable to
17 such drug and such alternatives so in-
18 cluded.

19 “(ii) ELECTRONIC TRANSMISSION.—
20 The provisions of subclauses (I) and (II) of
21 clause (ii) of subparagraph (E) shall apply
22 to an electronic transmission described in
23 clause (i) in the same manner as such pro-
24 visions apply with respect to an electronic

1 transmission described in clause (i) of such
2 subparagraph.

3 “(iii) SPECIAL RULE FOR 2021.—The
4 program shall be deemed to be in compli-
5 ance with clause (i) for 2021 if the pro-
6 gram complies with the provisions of sec-
7 tion 423.160(b)(7) of title 42, Code of
8 Federal Regulations (or a successor regula-
9 tion), for such year.

10 “(iv) RULE OF CONSTRUCTION.—
11 Nothing in this subparagraph shall be con-
12 strued as to allow a real-time benefits tool
13 to steer an individual, without the consent
14 of the individual, to a particular pharmacy
15 or pharmacy setting over their preferred
16 pharmacy setting nor prohibit the designa-
17 tion of a preferred pharmacy under such
18 tool.”.

19 **SEC. 4. SENSE OF CONGRESS REGARDING THE NEED TO EX-**
20 **PAND COMMERCIALLY AVAILABLE DRUG**
21 **PRICING COMPARISON PLATFORMS.**

22 It is the sense of Congress that—

23 (1) commercially available drug pricing com-
24 parison platforms can, at no cost, help patients find

1 the lowest price for their medications at their local
2 pharmacy;

3 (2) such platforms should be integrated, to the
4 maximum extent possible, in the health care delivery
5 ecosystem; and

6 (3) pharmacy benefit managers should work to
7 disclose generic and brand name drug prices to such
8 platforms to ensure that—

9 (A) patients can benefit from the lowest
10 possible price available to them; and

11 (B) overall drug prices can be reduced as
12 more educated purchasing decisions are made
13 based on price transparency.

Amend the title so as to read: “A bill to amend titles XI and XVIII of the Social Security Act to provide greater transparency for discounts provided by manufacturers, to include real-time benefit information as part of a prescription drug plan’s electronic prescription program under the Medicare program, and for other purposes.”.