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(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R. _____

To amend title XVIII of the Social Security Act to ensure fair assessment of pharmacy performance and quality under Medicare part D, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. GRIFFITH introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title XVIII of the Social Security Act to ensure fair assessment of pharmacy performance and quality under Medicare part D, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ENSURING FAIR ASSESSMENT OF PHARMACY PERFORMANCE AND QUALITY UNDER MEDICARE PART D.

(a) STANDARDIZED PHARMACY PERFORMANCE MEASURES.—Section 1860D–2 of the Social Security Act

(42 U.S.C. 1395w–102) is amended by adding at the end the following new subsection:

''(f) APPLICATION OF STANDARDIZED PHARMACY PERFORMANCE MEASURES.—

''(1) MEASURES.—For plan years beginning on or after January 1, 2025, a PDP sponsor offering a prescription drug plan and an MA organization offering an MA–PD plan shall, for purposes of incentive payments, price concessions, or any fees or other remuneration paid or charged to a pharmacy based on performance measures, only use measures that are—

''(A) established or adopted by the Secretary under paragraph (2) and included on the list described in subparagraph (B) of such paragraph; and

''(B) relevant to the performance of such pharmacy based on the type of pharmacy (including retail, mail order, specialty, long term care, and home infusion or other types of pharmacies), drugs dispensed, and pharmacy services used to dispense and manage drugs.

''(2) STANDARDIZED PHARMACY PERFORMANCE MEASURES.—

''(A) MEASURES.—

''(i) IN GENERAL .—Notwithstanding any other provision of law, the Secretary shall establish (or adopt pursuant to clause (iii)) standardized pharmacy performance measures to be used by a PDP sponsor offering a prescription drug plan and an MA organization offering an MA–PD plan for the purpose of determining incentive payments, price concessions, or fees described in paragraph (1).

''(ii) REQUIREMENTS.—The measures under clause (i) shall focus on pharmacy performance and quality of care based on the type of pharmacy, as determined by the Secretary. Such measures shall be evidence-based, feasible, appropriate and reasonable. The Secretary may rely on data and information collected from relevant stakeholders to make determinations about whether a measure satisfies the requirements of this clause.

''(iii) ADOPTION OF MEASURE.—In lieu of establishing some or all of the measures under this paragraph, the Secretary may adopt measures and measure

performance criteria that are endorsed by 1 or more multi-stakeholder consensus organizations (such as the Pharmacy Quality Alliance), that has participation from pharmacies (including retail and specialty pharmacies not owned or affiliated with a plan, pharmacy benefit manager, or other pharmacy), health plans, pharmacy benefit managers, and the Centers for Medicare & Medicaid Services. Any measure adopted under this clause shall be deemed to meet the requirements under clause (ii).

''(B) MAINTENANCE OF LIST.—

''(i) IN GENERAL.—The Secretary shall maintain, and publish on a publicly available internet website, a list of measures established or adopted under this paragraph. Such list shall initially be published no later than June 1, 2024.

''(ii) UPDATE.—The Secretary shall periodically evaluate measures, measure criteria, and how measures are applied by type of pharmacy and update the measures on the list under clause (i) to ensure such

measures meet the requirements under subparagraph (A)(ii).

''(3) OIG REPORTS ON PHARMACY PERFORMANCE MEASURES.—

''(A) OIG STUDY.—The Office of the Inspector General of the Department of Health and Human Services (in this paragraph referred to as the 'Inspector General') shall conduct a study of the use of performance measures and other quality-related mechanisms in network pharmacy agreements and other relevant contracting arrangements among PDP sponsors offering a prescription drug plan, MA organizations offering a MA–PD plan, pharmacy benefit managers acting on behalf of such sponsors and organizations, and network pharmacies. Such study may include audits, reviews of relevant enforcement actions, consultation with relevant stakeholders, and other activities determined appropriate by the Inspector General, consistent with other provisions of law. Such study shall, to the extent feasible, include analysis of—

''(i) oversight and enforcement activities undertaken with respect to current

statutory and regulatory requirements related to network pharmacy agreements, including under sections 423.505(b)(18) and 423.505(i) of title 42 of the Code of Federal Regulations (or any successor regulation) and under section 1860D–4(b)(1)(A);

''(ii) penalties or other corrective actions imposed with respect to the requirements described in clause (i);

''(iii) the prevalence of the application of performance measures in network pharmacy agreements, and the manner in which such measures are applied, including variation based on the type of pharmacy, the type of drug dispensed, and the services required to manage and dispense such drug;

''(iv) the extent to which the performance measures and related criteria applied under network agreements vary among similar types of pharmacies within a single network, and the extent to which the application of such measures or criteria differ between pharmacies—

''(I) affiliated with a pharmacy benefit manager, a PDP sponsor offering a prescription drug plan, or an MA organization offering a MA–PD plan; and

''(II) those not affiliated with an entity described in subclause (I);

''(v) patterns and trends in the performance measures applied under pharmacy network agreements, including if the measure is being used in accordance with published measure specifications which have been validated and tested, if the measure is being used according to licensing agreements with measure stewards, and the level of attribution and attribution criteria;

''(vi) the extent to which performance measures result in incentive payments, fees, price concessions, or other forms of remuneration between pharmacies and PDP sponsors or MA organizations (or pharmacy benefit managers acting on their behalf), including an analysis of which measures most often result in incentive

payments to pharmacies (and the general amount of such payments) and which measures most often result in remuneration paid by pharmacies to other entities (and the general amount of such payments);

''(vii) variation in the type of remuneration (as described in clause (vi) resulting from the application of performance measures, including between different types of pharmacies, different types of drugs dispensed, and affiliation status of pharmacies (as described in clause (iv));

''(viii) when, in what manner, different types of pharmacies receive notice of the application of performance measures, the measures that will be utilized, the performance criteria that will be applied, and the data and methodologies that will be used to evaluate performance; and

''(ix) the extent to which the Centers for Medicare & Medicaid Services has implemented the pharmacy performance reporting requirements of section 423.514(a)(5) of title 42, Code of Federal

Regulations, the extent to which PDP sponsors or MA organizations (or pharmacy benefit managers acting on their behalf) comply with such provision, and the extent to which the Centers for Medicare & Medicaid Services has sought enforcement.

''(B) OIG REPORTS.—

''(i) REPORT ON INITIAL FINDINGS.—Not later than December 31, 2024, the Inspector General shall submit a report to Congress outlining, to the extent practicable, a status update on the study under subparagraph (A), together with initial findings with respect to the issues included under such study. Such report may include an analysis of barriers to accessing any of the information required under such study, along with recommendations for addressing such barriers. Such report may also include recommendations for the effective implementation of the requirements enacted under this subsection as well as existing regulations, including section 423.514(a)(5) of title 42, Code of Federal Regulations, along with other recommenda-

tions, as determined appropriate by the Inspector General.

''(ii) INTERIM REPORT.—Not later than July 31, 2025, the Inspector General shall submit to Congress an interim report on the study under subparagraph (A), including additional recommendations for the implementation of the requirements enacted under this subsection as well as under existing regulations, including section 423.514(a)(5) of title 42, Code of Federal Regulations.

''(iii) FINAL REPORT.—Not later than December 31, 2025, the Inspector General shall submit to Congress a final report on the study under subparagraph (A), together with additional recommendations, as determined appropriate by the Inspector General.

''(4) NONAPPLICATION OF PAPERWORK REDUCTION ACT.—Chapter 35 of title 44, United States Code, shall not apply to any data collection undertaken by the Secretary under this paragraph.''.

(b) FUNDING.—In addition to amounts otherwise available, there is appropriated to the Centers for Medi-

care & Medicaid Services Program Management Account, out of any money in the Treasury not otherwise appropriated, $4,000,000 for fiscal year 2025, to remain available until expended, to carry out the amendment made by subsection (a).

SEC. 2. PROMOTING TRANSPARENCY FOR PHARMACIES UNDER MEDICARE PART D.

(a) TRANSPARENCY FOR PHARMACIES.—Section 1860D–2(f) of the Social Security Act (42 U.S.C. 1395w–102(f)), as added by section 3, is amended by adding at the end the following new paragraph:

''(3) TRANSPARENCY FOR PHARMACIES.—

''(A) IN GENERAL.—For plan years beginning on or after January 1, 2025, a PDP sponsor offering a prescription drug plan and an MA organization offering an MA–PD plan, with respect to payment made by such PDP sponsor or such MA organization to a pharmacy for a covered part D drug dispensed by such pharmacy during a plan year, shall promptly furnish, upon receiving a claim for a covered Part D drug from a pharmacy, to such pharmacy information related to such claim, such as the Network Reimbursement ID, fees, pharmacy price concessions, discounts, incentives, or any

other forms of remuneration that affect payment and pricing of the claim.

''(B) STANDARDIZED FORMAT.—The PDP sponsor and the MA organization shall furnish the information described in subparagraph (A) in a standardized format (as specified by the Secretary) that includes all fields needed to price the claim for a covered part D drug dispensed by such pharmacy.

''(C) IMPLEMENTATION.—The Secretary shall implement this paragraph by program instruction or other forms of program guidance.''.

(b) FUNDING.—In addition to amounts otherwise available, there is appropriated to the Centers for Medicare & Medicaid Services Program Management Account, out of any money in the Treasury not otherwise appropriated, $2,000,000 for fiscal year 2025, to remain available until expended, to carry out the amendment made by subsection (a).