

115TH CONGRESS
2D SESSION

H. R. 5343

To amend the Public Health Service Act to nullify certain contractual provisions prohibiting or penalizing a pharmacist's disclosure of the availability of therapeutically equivalent alternative drugs, or alternative methods of purchasing the prescription drug, that are less expensive, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2018

Mr. CARTER of Georgia (for himself, Mr. WELCH, Mr. GRIFFITH, Mr. AUSTIN SCOTT of Georgia, Mr. COLLINS of Georgia, and Mrs. MCMORRIS RODGERS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Public Health Service Act to nullify certain contractual provisions prohibiting or penalizing a pharmacist's disclosure of the availability of therapeutically equivalent alternative drugs, or alternative methods of purchasing the prescription drug, that are less expensive, 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 "Prescription Trans-
5 parency Act of 2018".

1 **SEC. 2. PROHIBITED GAG PROVISIONS.**

2 Part B of title III of the Public Health Service Act
3 (42 U.S.C. 243 et seq.) is amended by adding at the end
4 the following:

5 **“SEC. 320B. PROHIBITED GAG PROVISIONS.**

6 “(a) IN GENERAL.—No contract that is between—

7 “(1) a health insurer or any entity that pro-
8 vides pharmacy benefits management services on be-
9 half of a health insurer (commonly referred to as a
10 ‘pharmacy benefit manager’); and

11 “(2) a pharmacy, pharmacist, or a pharmacy’s
12 contracting agent, such as a pharmacy services ad-
13 ministrative organization,

14 may contain a provision prohibiting or penalizing (includ-
15 ing through increased utilization review, reduced pay-
16 ments, or other financial disincentives) a pharmacist’s dis-
17 closure to an individual purchasing a prescription drug of
18 information regarding the cost of the prescription drug to
19 the individual (including any copayment or coinsurance),
20 or regarding the availability of any therapeutically equiva-
21 lent alternative drug, or alternative methods of purchasing
22 the prescription drug (including paying a cash price), that
23 are less expensive than the cost of the prescription drug
24 to the individual.

1 “(b) NULL AND VOID.—Any provision described in
2 subsection (a) in a contract described in subsection (a)
3 is null and void.

4 “(c) APPLICABILITY.—Subsection (a) applies only
5 with respect to contracts, and contract addenda, entered
6 into or renewed on or after the date of enactment of the
7 Prescription Transparency Act of 2018.

8 “(d) REGULATIONS AND GUIDANCE.—The Secretary
9 may issue such regulations and guidance as may be nec-
10 essary for implementation of this section.

11 “(e) DEFINITIONS.—In this section:

12 “(1) The term ‘drug’ has the meaning given to
13 such term in section 201 of the Federal Food, Drug,
14 and Cosmetic Act.

15 “(2) The term ‘health insurer’ means a health
16 insurance issuer (as defined in section 2791) offer-
17 ing health insurance coverage (as defined in such
18 section) in the individual or group market or a spon-
19 sor of a group health plan (as defined in such sec-
20 tion).

21 “(3) The term ‘prescription drug’ means a drug
22 subject to section 503(b)(1) of the Federal Food,
23 Drug, and Cosmetic Act.”.

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