

115TH CONGRESS
2D SESSION

H. R. 5958

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

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2018

Mr. COLLINS of Georgia (for himself, Mr. CARTER of Georgia, Mr. DUNCAN of Tennessee, and Mr. GONZALEZ of Texas) 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 XVIII of the Social Security Act to require pharmacy-negotiated price concessions and pharmacy incentive payments and adjustments 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 2018”.

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, 2019, 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 pharmacy price concessions
24 and all incentive payments and ad-
25 justments negotiated with the phar-
26 macy dispensing such drug, shall be

1 provided at the point-of-sale of the
2 covered part D drug. If the negotiated
3 price of such drug, including all phar-
4 macy price concessions and all incen-
5 tive payments and adjustments nego-
6 tiated with such pharmacy, is not pos-
7 sible to calculate at the point-of-sale,
8 the PDP sponsor of such plan shall
9 use an estimated negotiated price, in-
10 cluding all estimated pharmacy nego-
11 tiated price concessions and incentive
12 payments and adjustments and taking
13 into account the negotiated price of
14 such drug in the prior year (if avail-
15 able).

16 “(II) APPLICATION OF INCEN-
17 TIVE PAYMENTS AND ADJUST-
18 MENTS.—For plan years beginning on
19 or after January 1, 2019, in the case
20 that a PDP sponsor uses incentive
21 payments and adjustments with re-
22 spect to payment to a pharmacy for a
23 covered part D drug, such payments
24 and adjustments shall be determined
25 through the use of a quality measure

1 approved by the Secretary and estab-
2 lished by the working group estab-
3 lished under clause (iii).

4 “(III) NO INCREASE IN COST
5 SHARING.—Subclause (I) shall not
6 apply in the case where application of
7 such subclause would increase the
8 amount owed by an individual in cost
9 sharing above the amount such indi-
10 vidual would have owed in cost shar-
11 ing without application of such sub-
12 clause.

13 “(IV) DISCREPANCIES BETWEEN
14 NEGOTIATED PRICES AND ACTUAL RE-
15 IMBURSEMENT.—In the case that the
16 Secretary determines that the nego-
17 tiated price of a PDP sponsor applied
18 at the point-of-sale with respect to a
19 covered part D drug for a year dis-
20 pensed by a pharmacy was not equal
21 to the total reimbursement made to
22 such pharmacy for such drug for such
23 year (taking into account any incen-
24 tive payments and adjustments and
25 pharmacy price concessions, regard-

1 less of when such payments and ad-
2 justments or price concessions were
3 applied), such sponsor shall, not later
4 than 90 days after receiving notice of
5 such determination, furnish to the
6 pharmacy that dispensed such drug
7 and to the Secretary a written expla-
8 nation of why such negotiated price
9 was not equal to such reimbursement.

10 “(V) DEFINITIONS.—In this
11 clause:

12 “(aa) INCENTIVE PAYMENTS
13 AND ADJUSTMENTS.—The term
14 ‘incentive payments and adjust-
15 ments’ means, with respect to
16 payment to a pharmacy by a
17 PDP sponsor for a covered part
18 D drug, any prospective or retro-
19 spective price concessions, re-
20 bates, discounts, fees, reconcili-
21 ation adjustments, bonuses, per-
22 formance payments, incentives,
23 and any other adjustment to
24 such payment determined
25 through the use of a quality

1 measure, and any other adjust-
2 ment made with respect to such
3 payment, regardless of when such
4 payments and adjustments are
5 applied. Such term does not in-
6 clude any manufacturer rebates
7 or concessions made with respect
8 to such drug.

9 “(bb) PDP SPONSOR.—The
10 term ‘PDP sponsor’ includes an
11 MA organization offering an
12 MA–PD plan under part C and
13 an entity that contracts with
14 such sponsor or organization,
15 such as a pharmacy benefit man-
16 ager.

17 “(cc) QUALITY MEASURE.—
18 The term ‘quality measure’
19 means performance criteria es-
20 tablished by a PDP sponsor (in-
21 cluding an entity that contracts
22 with such sponsor, such as a
23 pharmacy benefit manager) to
24 determine the amount or applica-

1 bility of incentive payments and
2 adjustments.

3 “(iii) QUALITY MEASURE WORKING
4 GROUP.—

5 “(I) IN GENERAL.—Not later
6 than September 1, 2018, the Sec-
7 retary shall convene a quality meas-
8 ures working group (in this clause re-
9 ferred to as the ‘working group’) for
10 purposes of establishing quality meas-
11 ures (as defined in clause (ii)(IV))
12 that may be used by a PDP sponsor
13 (as defined in clause (ii)) under this
14 part.

15 “(II) COMPOSITION.—The work-
16 ing group shall consist of representa-
17 tives from each the following:

18 “(aa) PDP sponsors.

19 “(bb) Pharmacies rep-
20 resenting all pharmacy practice
21 types.

22 “(cc) Pharmacy benefit
23 managers.

24 “(dd) Patient advocacy or-
25 ganizations.

1 “(ee) Such other entities as
2 the Secretary determines appro-
3 priate.

4 “(III) DUTIES.—The working
5 group shall provide for the establish-
6 ment of quality measures that may be
7 used by a PDP sponsor (as defined in
8 clause (ii)) with respect to incentive
9 payments and adjustments (as defined
10 in clause (ii)(IV)) for a pharmacy
11 under this part. Such measures estab-
12 lished by such group shall include only
13 such measures that—

14 “(aa) are reasonable and rel-
15 evant with respect to the practice
16 type of the applicable pharmacy;
17 and

18 “(bb) evaluate criteria over
19 which the pharmacy has mean-
20 ingful control and ability to influ-
21 ence, consistent with the phar-
22 macy’s practice type.”.

1 **SEC. 3. PHARMACY BENEFIT MANAGER PROVISION OF IN-**
2 **FORMATION.**

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

6 (b) **EFFECTIVE DATE.**—The amendment made by
7 subsection (a) shall apply with respect to contract years
8 beginning on or after January 1, 2019.

○