

117TH CONGRESS  
2D SESSION

# H. R. 8988

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to provide for requirements for electronic-prescribing for controlled substances under group health plans and group and individual health insurance coverage.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 2022

Mr. O'HALLERAN introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor, and 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

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## A BILL

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to provide for requirements for electronic-prescribing for controlled substances under group health plans and group and individual health insurance coverage.

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 “Electronic Prescribing  
5 for Controlled Substances Act” or the “EPCS 2.0 Act”.

1 **SEC. 2. REQUIREMENTS FOR ELECTRONIC-PRESCRIBING**  
2 **FOR CONTROLLED SUBSTANCES UNDER**  
3 **GROUP HEALTH PLANS AND GROUP AND IN-**  
4 **DIVIDUAL HEALTH INSURANCE COVERAGE.**

5 (a) PUBLIC HEALTH SERVICE ACT AMENDMENT.—  
6 Section 2799A–7 of the Public Health Service Act (42  
7 U.S.C. 300gg–117) is amended by adding at the end the  
8 following new subsection:

9 “(d) REQUIREMENTS FOR ELECTRONIC-PRE-  
10 SCRIBING FOR CONTROLLED SUBSTANCES.—

11 “(1) IN GENERAL.—Except as provided pursu-  
12 ant to paragraph (2), for plan years beginning on or  
13 after January 1, 2024, a group health plan and a  
14 health insurance issuer offering group or individual  
15 health insurance coverage shall, with respect to  
16 health care practitioners that have a contractual re-  
17 lationship with such plan or issuer for furnishing  
18 items or services to participants and beneficiaries  
19 under such plan or coverage, have in place policies,  
20 subject to paragraph (4), that require any prescrip-  
21 tion for a schedule II, III, IV, or V controlled sub-  
22 stance (as defined by section 202 of the Controlled  
23 Substances Act) covered under the plan or coverage  
24 that is transmitted by such a health care practi-  
25 tioner for such a participant or beneficiary be elec-  
26 tronically transmitted in accordance with such

1 standards, consistent with standards established  
2 under paragraph (3) of section 1860D–4(e) of the  
3 Social Security Act, under an electronic prescription  
4 drug program that meets requirements that are sub-  
5 stantially similar (as jointly determined by the Sec-  
6 retary, Secretary of the Treasury, and Secretary of  
7 Labor) to the requirements of paragraph (2) of such  
8 section 1860D–4(e).

9 “(2) EXCEPTION FOR CERTAIN CIR-  
10 CUMSTANCES.—The Secretary, Secretary of the  
11 Treasury, and Secretary of Labor shall jointly,  
12 through rulemaking, specify circumstances and proc-  
13 esses by which the requirement under paragraph (1)  
14 may be waived, with respect to a schedule II, III,  
15 IV, or V controlled substance that is a prescription  
16 drug covered by a group health or group or indi-  
17 vidual health insurance coverage offered by a health  
18 insurance issuer, including in the case of—

19 “(A) a prescription described in any of  
20 clauses (i) through (vi) of section 1860D–  
21 4(e)(7)(B) of the Social Security Act;

22 “(B) a prescription issued under cir-  
23 cumstances in which electronic prescribing is  
24 not available due to temporary technological or  
25 electrical failure, as specified jointly by the Sec-

1           retary, Secretary of the Treasury, and Sec-  
2           retary of Labor through rulemaking; and

3           “(C) a prescription issued by a practitioner  
4           allowing for the dispensing of a non-patient spe-  
5           cific prescription pursuant to a standing order,  
6           approved protocol for drug therapy, collabo-  
7           rative drug management, or comprehensive  
8           medication management, in response to a public  
9           health emergency or other circumstances under  
10          which the practitioner may issue a non-patient  
11          specific prescription.

12          “(3) RULES OF CONSTRUCTION.—

13                 “(A) VERIFICATION.—Nothing in this sub-  
14                 section shall be construed as requiring a dis-  
15                 penser to verify that a health care practitioner,  
16                 with respect to a prescription for a schedule II,  
17                 III, IV, or V controlled substance that is a pre-  
18                 scription drug covered under a group health  
19                 plan or group or individual health insurance  
20                 coverage offered by a health insurance issuer,  
21                 has a waiver (or is otherwise exempt) under  
22                 paragraph (2) from the requirement under  
23                 paragraph (1).

24                 “(B) AUTHORITY TO DISPENSE.—Nothing  
25                 in this subsection shall be construed as affect-

1 ing the ability of a group health plan or group  
2 or individual health insurance coverage offered  
3 by a health insurance issuer to cover, or the  
4 ability of a pharmacist to continue to dispense,  
5 a prescription drug if the prescription for such  
6 drug is an otherwise valid written, oral, or fax  
7 prescription that is consistent with applicable  
8 laws and regulations.

9 “(C) PATIENT CHOICE.—Nothing in this  
10 subsection shall be construed as affecting the  
11 ability of an individual who is a participant or  
12 beneficiary of a group health plan or group or  
13 individual health insurance coverage offered by  
14 a health insurance issuer and who is being pre-  
15 scribed a schedule II, III, IV, or V controlled  
16 substance that is a prescription drug covered  
17 under the plan or coverage to designate a par-  
18 ticular pharmacy to dispense such controlled  
19 substance to the extent consistent with the re-  
20 quirements under this subsection.

21 “(4) PROHIBITIONS.—The policies established  
22 pursuant to paragraph (1) by a group health plan or  
23 health insurance issuer offering group or individual  
24 health insurance coverage may not—

1           “(A) require dispensers of a schedule II,  
2           III, IV, or V controlled substance to confirm  
3           that the prescription for the controlled sub-  
4           stance was electronically issued by a health care  
5           practitioner in accordance with such policies, as  
6           described in paragraph (1);

7           “(B) require dispensers of such controlled  
8           substances to submit information or data be-  
9           yond what is otherwise required to process a  
10          prescription drug claim in order to confirm a  
11          practitioner’s compliance with such policies; or

12          “(C) reject, deny, or recoup reimbursement  
13          for a prescription drug claim based on the for-  
14          mat in which the prescription was issued.

15          “(5) CONSULTATION REQUIREMENT FOR RULE-  
16          MAKING.—In promulgating regulations to carry out  
17          this subsection, the Secretary, Secretary of the  
18          Treasury, and Secretary of Labor shall jointly con-  
19          sult with dispensers of controlled substances, State  
20          insurance regulators, and health care practitioners.”.

21          (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT  
22          OF 1974 AMENDMENT.—Section 722 of the Employee Re-  
23          tirement Income Security Act of 1974 (29 U.S.C. 1185k)  
24          is amended by adding at the end the following new sub-  
25          section:

1       “(d) REQUIREMENTS FOR ELECTRONIC-PRE-  
2       SCRIBING FOR CONTROLLED SUBSTANCES.—

3               “(1) IN GENERAL.—Except as provided pursu-  
4       ant to paragraph (2), for plan years beginning on or  
5       after January 1, 2024, a group health plan and a  
6       health insurance issuer offering group health insur-  
7       ance coverage shall, with respect to health care prac-  
8       titioners that have a contractual relationship with  
9       such plan or issuer for furnishing items or services  
10      to participants and beneficiaries under such plan or  
11      coverage, have in place policies, subject to paragraph  
12      (4), that require any prescription for a schedule II,  
13      III, IV, or V controlled substance (as defined by sec-  
14      tion 202 of the Controlled Substances Act) covered  
15      under the plan or coverage that is transmitted by  
16      such a health care practitioner for such a participant  
17      or beneficiary be electronically transmitted in ac-  
18      cordance with such standards, consistent with stand-  
19      ards established under paragraph (3) of section  
20      1860D–4(e) of the Social Security Act, under an  
21      electronic prescription drug program that meets re-  
22      quirements that are substantially similar (as jointly  
23      determined by the Secretary, Secretary of the Treas-  
24      ury, and Secretary of Labor) to the requirements of  
25      paragraph (2) of such section 1860D–4(e).

1           “(2)   EXCEPTION   FOR   CERTAIN   CIR-  
2   CUMSTANCES.—The Secretary, Secretary of the  
3   Treasury, and Secretary of Labor shall jointly,  
4   through rulemaking, specify circumstances and proc-  
5   esses by which the requirement under paragraph (1)  
6   may be waived, with respect to a schedule II, III,  
7   IV, or V controlled substance that is a prescription  
8   drug covered by a group health or group health in-  
9   surance coverage offered by a health insurance  
10  issuer, including in the case of—

11                   “(A) a prescription described in any of  
12                   clauses (i) through (vi) of section 1860D-  
13                   4(e)(7)(B) of the Social Security Act;

14                   “(B) a prescription issued under cir-  
15                   cumstances in which electronic prescribing is  
16                   not available due to temporary technological or  
17                   electrical failure, as specified jointly by the Sec-  
18                   retary, Secretary of the Treasury, and Sec-  
19                   retary of Labor through rulemaking; and

20                   “(C) a prescription issued by a practitioner  
21                   allowing for the dispensing of a non-patient spe-  
22                   cific prescription pursuant to a standing order,  
23                   approved protocol for drug therapy, collabo-  
24                   rative drug management, or comprehensive  
25                   medication management, in response to a public



1 health emergency or other circumstances under  
2 which the practitioner may issue a non-patient  
3 specific prescription.

4 “(3) RULES OF CONSTRUCTION.—

5 “(A) VERIFICATION.—Nothing in this sub-  
6 section shall be construed as requiring a dis-  
7 penser to verify that a health care practitioner,  
8 with respect to a prescription for a schedule II,  
9 III, IV, or V controlled substance that is a pre-  
10 scription drug covered under a group health  
11 plan or group or individual health insurance  
12 coverage offered by a health insurance issuer,  
13 has a waiver (or is otherwise exempt) under  
14 paragraph (2) from the requirement under  
15 paragraph (1).

16 “(B) AUTHORITY TO DISPENSE.—Nothing  
17 in this subsection shall be construed as affect-  
18 ing the ability of a group health plan or group  
19 health insurance coverage offered by a health  
20 insurance issuer to cover, or the ability of a  
21 pharmacist to continue to dispense, a prescrip-  
22 tion drug if the prescription for such drug is an  
23 otherwise valid written, oral, or fax prescription  
24 that is consistent with applicable laws and reg-  
25 ulations.

1           “(C) PATIENT CHOICE.—Nothing in this  
2 subsection shall be construed as affecting the  
3 ability of an individual who is a participant or  
4 beneficiary of a group health plan or group or  
5 individual health insurance coverage offered by  
6 a health insurance issuer and who is being pre-  
7 scribed a schedule II, III, IV, or V controlled  
8 substance that is a prescription drug covered  
9 under the plan or coverage to designate a par-  
10 ticular pharmacy to dispense such controlled  
11 substance to the extent consistent with the re-  
12 quirements under this subsection.

13           “(4) PROHIBITIONS.—The policies established  
14 pursuant to paragraph (1) by a group health plan or  
15 health insurance issuer offering group health insur-  
16 ance coverage may not—

17           “(A) require dispensers of a schedule II,  
18 III, IV, or V controlled substance to confirm  
19 that the prescription for the controlled sub-  
20 stance was electronically issued by a health care  
21 practitioner in accordance with such policies, as  
22 described in paragraph (1);

23           “(B) require dispensers of such controlled  
24 substances to submit information or data be-  
25 yond what is otherwise required to process a

1 prescription drug claim in order to confirm a  
2 practitioner’s compliance with such policies; or

3 “(C) reject, deny, or recoup reimbursement  
4 for a prescription drug claim based on the for-  
5 mat in which the prescription was issued.

6 “(5) CONSULTATION REQUIREMENT FOR RULE-  
7 MAKING.—In promulgating regulations to carry out  
8 this subsection, the Secretary, Secretary of the  
9 Treasury, and Secretary of Labor shall jointly con-  
10 sult with dispensers of controlled substances, State  
11 insurance regulators, and health care practitioners.”.

12 (c) INTERNAL REVENUE CODE OF 1986 AMEND-  
13 MENT.—Section 9822 of the Internal Revenue Code of  
14 1986 is amended by adding at the end the following new  
15 subsection:

16 “(d) REQUIREMENTS FOR ELECTRONIC-PRE-  
17 SCRIBING FOR CONTROLLED SUBSTANCES.—

18 “(1) IN GENERAL.—Except as provided pursu-  
19 ant to paragraph (2), for plan years beginning on or  
20 after January 1, 2024, a group health plan shall,  
21 with respect to health care practitioners that have a  
22 contractual relationship with such plan for fur-  
23 nishing items or services to participants and bene-  
24 ficiaries under such plan, have in place policies, sub-  
25 ject to paragraph (4), that require any prescription

1 for a schedule II, III, IV, or V controlled substance  
2 (as defined by section 202 of the Controlled Sub-  
3 stances Act) covered under the plan that is trans-  
4 mitted by such a health care practitioner for such a  
5 participant or beneficiary be electronically trans-  
6 mitted in accordance with such standards, consistent  
7 with standards established under paragraph (3) of  
8 section 1860D–4(e) of the Social Security Act,  
9 under an electronic prescription drug program that  
10 meets requirements that are substantially similar (as  
11 jointly determined by the Secretary, Secretary of the  
12 Treasury, and Secretary of Labor) to the require-  
13 ments of paragraph (2) of such section 1860D–4(e).

14 “(2) EXCEPTION FOR CERTAIN CIR-  
15 CUMSTANCES.—The Secretary, Secretary of the  
16 Treasury, and Secretary of Labor shall jointly,  
17 through rulemaking, specify circumstances and proc-  
18 esses by which the requirement under paragraph (1)  
19 may be waived, with respect to a schedule II, III,  
20 IV, or V controlled substance that is a prescription  
21 drug covered by a group health, including in the  
22 case of—

23 “(A) a prescription described in any of  
24 clauses (i) through (vi) of section 1860D–  
25 4(e)(7)(B) of the Social Security Act;

1           “(B) a prescription issued under cir-  
2           cumstances in which electronic prescribing is  
3           not available due to temporary technological or  
4           electrical failure, as specified jointly by the Sec-  
5           retary, Secretary of the Treasury, and Sec-  
6           retary of Labor through rulemaking; and

7           “(C) a prescription issued by a practitioner  
8           allowing for the dispensing of a non-patient spe-  
9           cific prescription pursuant to a standing order,  
10          approved protocol for drug therapy, collabo-  
11          rative drug management, or comprehensive  
12          medication management, in response to a public  
13          health emergency or other circumstances under  
14          which the practitioner may issue a non-patient  
15          specific prescription.

16          “(3) RULES OF CONSTRUCTION.—

17                 “(A) VERIFICATION.—Nothing in this sub-  
18                 section shall be construed as requiring a dis-  
19                 penser to verify that a health care practitioner,  
20                 with respect to a prescription for a schedule II,  
21                 III, IV, or V controlled substance that is a pre-  
22                 scription drug covered under a group health  
23                 plan, has a waiver (or is otherwise exempt)  
24                 under paragraph (2) from the requirement  
25                 under paragraph (1).

1           “(B) AUTHORITY TO DISPENSE.—Nothing  
2           in this subsection shall be construed as affect-  
3           ing the ability of a group health plan to cover,  
4           or the ability of a pharmacist to continue to  
5           dispense, a prescription drug if the prescription  
6           for such drug is an otherwise valid written,  
7           oral, or fax prescription that is consistent with  
8           applicable laws and regulations.

9           “(C) PATIENT CHOICE.—Nothing in this  
10          subsection shall be construed as affecting the  
11          ability of an individual who is a participant or  
12          beneficiary of a group health plan and who is  
13          being prescribed a schedule II, III, IV, or V  
14          controlled substance that is a prescription drug  
15          covered under the plan to designate a particular  
16          pharmacy to dispense such controlled substance  
17          to the extent consistent with the requirements  
18          under this subsection.

19          “(4) PROHIBITIONS.—The policies established  
20          pursuant to paragraph (1) by a group health plan  
21          may not—

22                 “(A) require dispensers of a schedule II,  
23                 III, IV, or V controlled substance to confirm  
24                 that the prescription for the controlled sub-  
25                 stance was electronically issued by a health care

1 practitioner in accordance with such policies, as  
2 described in paragraph (1);

3 “(B) require dispensers of such controlled  
4 substances to submit information or data be-  
5 yond what is otherwise required to process a  
6 prescription drug claim in order to confirm a  
7 practitioner’s compliance with such policies; or

8 “(C) reject, deny, or recoup reimbursement  
9 for a prescription drug claim based on the for-  
10 mat in which the prescription was issued.

11 “(5) CONSULTATION REQUIREMENT FOR RULE-  
12 MAKING.—In promulgating regulations to carry out  
13 this subsection, the Secretary, Secretary of the  
14 Treasury, and Secretary of Labor shall jointly con-  
15 sult with dispensers of controlled substances, State  
16 insurance regulators, and health care practitioners.”.

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