115TH CONGRESS
2D SESSION

S. 2460

To amend title XVIII of the Social Security Act to require e-prescribing for coverage under part D of the Medicare program of prescription drugs that are controlled substances.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2018

Mr. BENNET (for himself, Mr. HELLER, Ms. WARREN, and Mr. TOOMEY) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend title XVIII of the Social Security Act to require e-prescribing for coverage under part D of the Medicare program of prescription drugs that are controlled substances.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Every Prescription Conveyed Securely Act''.

SEC. 2. REQUIRING E-PRESCRIBING FOR COVERAGE OF COVERED PART D CONTROLLED SUBSTANCES.

(a) IN GENERAL.—Section 1860D–4(e) of the Social Security Act (42 U.S.C. 1395w–104(e)) is amended by adding at the end the following:

''(7) REQUIREMENT OF E-PRESCRIBING FOR CONTROLLED SUBSTANCES.—

''(A) IN GENERAL.—Subject to subparagraph (B), a prescription for a covered part D drug under a prescription drug plan (or under an MA–PD plan) for a schedule II, III, IV, or V controlled substance shall be transmitted by a health care practitioner electronically in accordance with an electronic prescription drug program that meets the requirements of paragraph (2).

''(B) EXCEPTION FOR CERTAIN CIRCUMSTANCES.—The Secretary shall, pursuant to rulemaking, specify circumstances with respect to which the Secretary may waive the requirement under subparagraph (A), with respect to a covered part D drug, including in the case of—

"(i) a prescription issued when the prescriber and dispenser are the same entity;

"(ii) a prescription issued that cannot be transmitted electronically due to the constraints of the most recently implemented version of the National Council for Prescription Drug Programs SCRIPT Standard;

"(iii) a prescription issued by a practitioner who has received a waiver or a renewal thereof for a specified period determined by the Secretary, not to exceed one year, from the requirement to use electronic prescribing, pursuant to a process established by regulation by the Secretary, due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the practitioner, or other exceptional circumstance demonstrated by the practitioner;

"(iv) a prescription issued by a practitioner under circumstances in which, notwithstanding the practitioner's ability to make an electronic prescription as required

by this subsection, such practitioner reasonably determines that it would be impractical for the individual involved to obtain substances prescribed by electronic prescription in a timely manner, and such delay would adversely impact the individual's medical condition involved;

''(v) a prescription issued by a practitioner allowing for the dispensing of a non-patient specific prescription pursuant to a standing order, approved protocol for drug therapy, collaborative drug management, or comprehensive medication management, in response to a public health emergency, or other circumstances where the practitioner may issue a non-patient specific prescription;

''(vi) a prescription issued by a practitioner prescribing a drug under a research protocol;

''(vii) a prescription issued by a practitioner for a drug for which the Food and Drug Administration requires the prescription to contain certain elements that are not able to be accomplished with electronic

prescribing such as, a drug with risk evaluation and mitigation strategies that include elements to assure safe use; and

''(viii) a prescription issued by a practitioner for an individual who—

''(I) receives hospice care under this title; or

''(II) is a resident of a long-term care facility, of a facility described in section 1905(d), or of another facility for which frequently abused drugs are dispensed for residents through a contract with a single pharmacy.

''(C) DISPENSING.—(i) Nothing in this paragraph shall be construed as requiring a sponsor of a prescription drug plan under this part, MA organization offering an MA–PD plan under part C, or a pharmacist to verify that a practitioner, with respect to a prescription for a covered part D drug, has a waiver (or is otherwise exempt) under subparagraph (B) from the requirement under subparagraph (A).

''(ii) Nothing in this paragraph shall be construed as affecting the ability of the plan to cover or the pharmacists' ability to continue to

dispense covered part D drugs from otherwise valid written, oral or fax prescriptions that are consistent with laws and regulations.

''(iii) Nothing in this paragraph shall be construed as affecting the ability of an individual who is being prescribed a covered part D drug to designate a particular pharmacy to dispense the covered part D drug to the extent consistent with the requirements under subsection (b)(1) and under this paragraph.

''(D) ENFORCEMENT.—The Secretary shall, pursuant to rulemaking, have authority to enforce and specify appropriate penalties for noncompliance with the requirement under subparagraph (A).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to coverage of drugs prescribed on or after January 1, 2020.

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