

118TH CONGRESS  
1ST SESSION

# S. 2666

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 SENATE OF THE UNITED STATES

JULY 27, 2023

Ms. HASSAN (for herself and Mr. MULLIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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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, 2025, a group health plan and a  
14 health insurance issuer offering group or individual  
15 health insurance coverage, with respect to a partici-  
16 pating provider, as defined in section 2799–1(a)(3),  
17 shall have in place policies, subject to paragraph (4),  
18 that require any prescription for a schedule II, III,  
19 IV, or V controlled substance (as defined by section  
20 202 of the Controlled Substances Act) covered under  
21 the plan or coverage that is transmitted by such a  
22 health care practitioner for such a participant, bene-  
23 ficiary, or enrollee be electronically transmitted in  
24 accordance with such standards, consistent with  
25 standards established under paragraph (3) of section  
26 1860D–4(e) of the Social Security Act, under an

1 electronic prescription drug program that meets re-  
2 quirements that are substantially similar (as jointly  
3 determined by the Secretary, Secretary of the Treas-  
4 ury, and Secretary of Labor) to the requirements of  
5 paragraph (2) of such section 1860D–4(e).

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

16 “(A) a prescription described in any of  
17 clauses (i) through (vi) of section 1860D–  
18 4(e)(7)(B) of the Social Security Act;

19 “(B) a prescription issued for an individual  
20 who receives hospice care or for a resident of a  
21 nursing facility (as defined in section 1919(a)  
22 of the Social Security Act);

23 “(C) a prescription issued under cir-  
24 cumstances in which electronic prescribing is  
25 not available due to temporary technological or

1 electrical failure, as specified jointly by the Sec-  
2 retary, Secretary of the Treasury, and Sec-  
3 retary of Labor through rulemaking; and

4 “(D) a prescription issued by a practi-  
5 tioner allowing for the dispensing of a non-pa-  
6 tient specific prescription pursuant to a stand-  
7 ing order, approved protocol for drug therapy,  
8 collaborative drug management, or comprehen-  
9 sive medication management, in response to a  
10 public health emergency or other circumstances  
11 under which the practitioner may issue a non-  
12 patient specific prescription.

13 “(3) RULES OF CONSTRUCTION.—

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

1           “(B) AUTHORITY TO DISPENSE.—Nothing  
2           in this subsection shall be construed as affect-  
3           ing the authority of a group health plan or  
4           group or individual health insurance coverage  
5           offered by a health insurance issuer to cover, or  
6           the authority of a dispenser to continue to dis-  
7           pense, a prescription drug if the prescription  
8           for such drug is an otherwise valid written,  
9           oral, or fax prescription that is consistent with  
10          applicable law.

11          “(C) PATIENT CHOICE.—Nothing in this  
12          subsection shall be construed as affecting the  
13          ability of an individual who is a participant,  
14          beneficiary, or enrollee of a group health plan  
15          or group or individual health insurance cov-  
16          erage offered by a health insurance issuer and  
17          who is prescribed a schedule II, III, IV, or V  
18          controlled substance that is a prescription drug  
19          covered under the plan or coverage to designate  
20          a particular pharmacy to dispense a prescribed  
21          controlled substance to the extent consistent  
22          with the requirements under this subsection.

23          “(4) PROHIBITIONS.—The policies established  
24          pursuant to paragraph (1) by a group health plan or

1 health insurance issuer offering group or individual  
2 health insurance coverage may not—

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

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

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

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

23 (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT  
24 OF 1974 AMENDMENT.—Section 722 of the Employee Re-  
25 tirement Income Security Act of 1974 (29 U.S.C. 1185k)

1 is amended by adding at the end the following new sub-  
2 section:

3 “(d) REQUIREMENTS FOR ELECTRONIC-PRE-  
4 SCRIBING FOR CONTROLLED SUBSTANCES.—

5 “(1) IN GENERAL.—Except as provided pursu-  
6 ant to paragraph (2), for plan years beginning on or  
7 after January 1, 2025, a group health plan and a  
8 health insurance issuer offering group health insur-  
9 ance coverage, with respect to a participating pro-  
10 vider, as defined in section 716(a)(3), shall have in  
11 place policies, subject to paragraph (4), that require  
12 any prescription for a schedule II, III, IV, or V con-  
13 trolled substance (as defined by section 202 of the  
14 Controlled Substances Act) covered under the plan  
15 or coverage that is transmitted by such a health care  
16 practitioner for such a participant or beneficiary be  
17 electronically transmitted in accordance with such  
18 standards, consistent with standards established  
19 under paragraph (3) of section 1860D–4(e) of the  
20 Social Security Act, under an electronic prescription  
21 drug program that meets requirements that are sub-  
22 stantially similar (as jointly determined by the Sec-  
23 retary, Secretary of the Treasury, and Secretary of  
24 Labor) to the requirements of paragraph (2) of such  
25 section 1860D–4(e).

1           “(2) EXCEPTION FOR CERTAIN CIR-  
2 CUMSTANCES.—The Secretary, Secretary of the  
3 Treasury, and Secretary of Health and Human  
4 Services shall jointly, through rulemaking, specify  
5 circumstances and processes by which the require-  
6 ment under paragraph (1) may be waived, with re-  
7 spect to a schedule II, III, IV, or V controlled sub-  
8 stance that is a prescription drug covered by a group  
9 health plan or group health insurance coverage of-  
10 fered by a health insurance issuer, including in the  
11 case of—

12                   “(A) a prescription described in any of  
13 clauses (i) through (vi) of section 1860D-  
14 4(e)(7)(B) of the Social Security Act;

15                   “(B) a prescription issued for an individual  
16 who receives hospice care or for a resident of a  
17 nursing facility (as defined in section 1919(a)  
18 of the Social Security Act);

19                   “(C) a prescription issued under cir-  
20 cumstances in which electronic prescribing is  
21 not available due to temporary technological or  
22 electrical failure, as specified jointly by the Sec-  
23 retary, Secretary of the Treasury, and Sec-  
24 retary of Health and Human Services through  
25 rulemaking; and



1           “(D) a prescription issued by a practi-  
2           tioner allowing for the dispensing of a non-pa-  
3           tient specific prescription pursuant to a stand-  
4           ing order, approved protocol for drug therapy,  
5           collaborative drug management, or comprehen-  
6           sive medication management, in response to a  
7           public health emergency or other circumstances  
8           under which the practitioner may issue a non-  
9           patient specific prescription.

10          “(3) RULES OF CONSTRUCTION.—

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

22           “(B) AUTHORITY TO DISPENSE.—Nothing  
23           in this subsection shall be construed as affect-  
24           ing the authority of a group health plan or  
25           group health insurance coverage offered by a

1 health insurance issuer to cover, or the author-  
2 ity of a dispenser to continue to dispense, a pre-  
3 scription drug if the prescription for such drug  
4 is an otherwise valid written, oral, or fax pre-  
5 scription that is consistent with applicable law.

6 “(C) PATIENT CHOICE.—Nothing in this  
7 subsection shall be construed as affecting the  
8 ability of an individual who is a participant or  
9 beneficiary of a group health plan or group or  
10 individual health insurance coverage offered by  
11 a health insurance issuer and who is prescribed  
12 a schedule II, III, IV, or V controlled substance  
13 that is a prescription drug covered under the  
14 plan or coverage to designate a particular phar-  
15 macy to dispense a prescribed controlled sub-  
16 stance to the extent consistent with the require-  
17 ments under this subsection.

18 “(4) PROHIBITIONS.—The policies established  
19 pursuant to paragraph (1) by a group health plan or  
20 health insurance issuer offering group health insur-  
21 ance coverage 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 Health and Human  
15 Services shall jointly consult with dispensers of con-  
16 trolled substances, State insurance regulators, and  
17 health care practitioners.”.

18 (c) INTERNAL REVENUE CODE OF 1986 AMEND-  
19 MENT.—Section 9822 of the Internal Revenue Code of  
20 1986 is amended by adding at the end the following new  
21 subsection:

22 “(d) REQUIREMENTS FOR ELECTRONIC-PRE-  
23 SCRIBING FOR CONTROLLED SUBSTANCES.—

24 “(1) IN GENERAL.—Except as provided pursu-  
25 ant to paragraph (2), for plan years beginning on or

1 after January 1, 2025, a group health plan, with re-  
2 spect to a participating provider, as defined in sec-  
3 tion 9816(a)(3), shall have in place policies, subject  
4 to paragraph (4), that require any prescription for  
5 a schedule II, III, IV, or V controlled substance (as  
6 defined by section 202 of the Controlled Substances  
7 Act) covered under the plan that is transmitted by  
8 such a health care practitioner for such a participant  
9 or beneficiary be electronically transmitted in ac-  
10 cordance with such standards, consistent with stand-  
11 ards established under paragraph (3) of section  
12 1860D–4(e) of the Social Security Act, under an  
13 electronic prescription drug program that meets re-  
14 quirements that are substantially similar (as jointly  
15 determined by the Secretary, Secretary of the Treas-  
16 ury, and Secretary of Labor) to the requirements of  
17 paragraph (2) of such section 1860D–4(e).

18 “(2) EXCEPTION FOR CERTAIN CIR-  
19 CUMSTANCES.—The Secretary, Secretary of Health  
20 and Human Services, and Secretary of Labor shall  
21 jointly, through rulemaking, specify circumstances  
22 and processes by which the requirement under para-  
23 graph (1) may be waived, with respect to a schedule  
24 II, III, IV, or V controlled substance that is a pre-

1        scription drug covered by a group health, including  
2        in the case of—

3                “(A) a prescription described in any of  
4                clauses (i) through (vi) of section 1860D–  
5                4(e)(7)(B) of the Social Security Act;

6                “(B) a prescription issued for an individual  
7                who receives hospice care or for a resident of a  
8                nursing facility (as defined in section 1919(a)  
9                of the Social Security Act);

10              “(C) a prescription issued under cir-  
11              cumstances in which electronic prescribing is  
12              not available due to temporary technological or  
13              electrical failure, as specified jointly by the Sec-  
14              retary, Secretary of Health and Human Serv-  
15              ices, and Secretary of Labor through rule-  
16              making; and

17              “(D) a prescription issued by a practi-  
18              tioner allowing for the dispensing of a non-pa-  
19              tient specific prescription pursuant to a stand-  
20              ing order, approved protocol for drug therapy,  
21              collaborative drug management, or comprehen-  
22              sive medication management, in response to a  
23              public health emergency or other circumstances  
24              under which the practitioner may issue a non-  
25              patient specific prescription.

1 “(3) RULES OF CONSTRUCTION.—

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

11 “(B) AUTHORITY TO DISPENSE.—Nothing  
12 in this subsection shall be construed as affect-  
13 ing the ability of a group health plan to cover,  
14 or the ability of a dispenser to continue to dis-  
15 pense, a prescription drug if the prescription  
16 for such drug is an otherwise valid written,  
17 oral, or fax prescription that is consistent with  
18 applicable laws and regulations.

19 “(C) PATIENT CHOICE.—Nothing in this  
20 subsection shall be construed as affecting the  
21 ability of an individual who is a participant or  
22 beneficiary of a group health plan and who is  
23 prescribed a schedule II, III, IV, or V con-  
24 trolled substance that is a prescription drug  
25 covered under the plan to designate a particular

1 pharmacy to dispense a prescribed controlled  
2 substance to the extent consistent with the re-  
3 quirements under this subsection.

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

7 “(A) require dispensers of a schedule II,  
8 III, IV, or V controlled substance to confirm  
9 that the prescription for the controlled sub-  
10 stance was electronically issued by a health care  
11 practitioner in accordance with such policies, as  
12 described in paragraph (1);

13 “(B) require dispensers of such controlled  
14 substances to submit information or data be-  
15 yond what is otherwise required to process a  
16 prescription drug claim in order to confirm a  
17 practitioner’s compliance with such policies; or

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

21 “(5) CONSULTATION REQUIREMENT FOR RULE-  
22 MAKING.—In promulgating regulations to carry out  
23 this subsection, the Secretary, Secretary of Health  
24 and Human Services, and Secretary of Labor shall  
25 jointly consult with dispensers of controlled sub-

1 stances, State insurance regulators, and health care  
2 practitioners.”.

○