

118TH CONGRESS
1ST SESSION

S. 1374

To prohibit group health plans and health insurance issuers from entering into contracts that would prevent or restrict patient access to drug pricing information otherwise available through consumer decision-support tools.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2023

Mr. MARSHALL (for himself, Mr. MARKEY, Mr. GRASSLEY, and Mr. KAINE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit group health plans and health insurance issuers from entering into contracts that would prevent or restrict patient access to drug pricing information otherwise available through consumer decision-support tools.

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 “Patient Right to Shop
5 Act”.

1 **SEC. 2. PROHIBITION ON BLOCKING CONSUMER DECISION-**
2 **SUPPORT TOOLS.**

3 (a) PHSA.—Part D of title XXVII of the Public
4 Health Service Act (42 U.S.C. 300gg–111 et seq.) is
5 amended by adding at the end the following:

6 **“SEC. 2799A–11. PROHIBITION ON BLOCKING CONSUMER**
7 **DECISION-SUPPORT TOOLS.**

8 “(a) IN GENERAL.—A group health plan or a health
9 insurance issuer offering group or individual health insur-
10 ance coverage shall not enter into a contract with an entity
11 that provides pharmacy benefit management services with
12 respect to such plan or coverage if such contract—

13 “(1) includes any terms, conditions, or costs
14 that would prevent or restrict a third party who is
15 in contract with the plan or issuer to provide a con-
16 sumer decision-support tool from using relevant in-
17 formation regarding prescription drug benefits under
18 the plan or coverage that are administered by the
19 entity providing pharmacy benefit management serv-
20 ices in contract with the plan or issuer; or

21 “(2) fails to clearly state that the entity pro-
22 viding pharmacy benefit management services is re-
23 quired to provide data required under paragraph (1)
24 in machine readable format for the operability, im-
25 plementation, and utilization of any such consumer
26 decision-support tool at no cost (direct or indirect)

1 to the group health plan, health insurance issuer, or
 2 the third party providing such consumer decision
 3 support.

4 “(b) CONSUMER DECISION-SUPPORT TOOL.—In this
 5 section, the term ‘consumer decision-support tool’ means
 6 a tool designed to inform enrollees in a group health plan
 7 or health insurance coverage about all costs for prescrip-
 8 tion drugs covered by the plan or coverage, including out-
 9 of-pocket, copayment, and coinsurance responsibility, as
 10 well as additional savings opportunities through other
 11 channels such as manufacturer copayment assistance,
 12 cash price, and mail order pharmacy benefits.”.

13 (b) ERISA.—

14 (1) IN GENERAL.—Subpart B of part 7 of sub-
 15 title B of title I of the Employee Retirement Income
 16 Security Act of 1974 (29 U.S.C. 1185 et seq.) is
 17 amended by adding at the end the following:

18 **“SEC. 726. PROHIBITION ON BLOCKING CONSUMER DECI-**
 19 **SION-SUPPORT TOOLS.**

20 “(a) IN GENERAL.—A group health plan or a health
 21 insurance issuer offering group health insurance coverage
 22 shall not enter into a contract with an entity that provides
 23 pharmacy benefit management services with respect to
 24 such plan or coverage if such contract—

1 “(1) includes any terms, conditions, or costs
2 that would prevent or restrict a third party who is
3 in contract with the plan or issuer to provide a con-
4 sumer decision-support tool from using relevant in-
5 formation regarding prescription drug benefits under
6 the plan or coverage that are administered by the
7 entity providing pharmacy benefit management serv-
8 ices in contract with the plan or issuer; or

9 “(2) fails to clearly state that the entity pro-
10 viding pharmacy benefit management services is re-
11 quired to provide data required under paragraph (1)
12 in machine readable format for the operability, im-
13 plementation, and utilization of any such consumer
14 decision-support tool at no cost (direct or indirect)
15 to the group health plan, health insurance issuer, or
16 the third party providing such consumer decision
17 support.

18 “(b) CONSUMER DECISION-SUPPORT TOOL.—In this
19 section, the term ‘consumer decision-support tool’ means
20 a tool designed to inform participants and beneficiaries in
21 a group health plan or health insurance coverage about
22 all costs for prescription drugs covered by the plan or cov-
23 erage, including out-of-pocket, copayment, and coinsur-
24 ance responsibility, as well as additional savings opportu-
25 nities through other channels such as manufacturer copay-

1 ment assistance, cash price, and mail order pharmacy ben-
2 efits.”.

3 (2) CLERICAL AMENDMENT.—The table of con-
4 tents in section 1 of the Employee Retirement In-
5 come Security Act of 1974 (29 U.S.C. 1001 et seq.)
6 is amended by inserting after the item relating to
7 section 725 the following:

“Sec. 726. Prohibition on blocking consumer decision-support tools.”.

8 (c) INTERNAL REVENUE CODE.—

9 (1) IN GENERAL.—Subchapter B of chapter
10 100 of the Internal Revenue Code of 1986 is amend-
11 ed by adding at the end the following new section:

12 **“SEC. 9826. PROHIBITION ON BLOCKING CONSUMER DECI-**
13 **SION-SUPPORT TOOLS.**

14 “(a) IN GENERAL.—A group health plan offering
15 group health insurance coverage shall not enter into a con-
16 tract with an entity that provides pharmacy benefit man-
17 agement services with respect to such plan if such con-
18 tract—

19 “(1) includes any terms, conditions, or costs
20 that would prevent or restrict a third party who is
21 in contract with the plan to provide a consumer deci-
22 sion-support tool from using relevant information re-
23 garding prescription drug benefits under the plan
24 that are administered by the entity providing phar-

1 macy benefit management services in contract with
2 the plan; or

3 “(2) fails to clearly state that the entity pro-
4 viding pharmacy benefit management services is re-
5 quired to provide data required under paragraph (1)
6 in machine readable format for the operability, im-
7 plementation, and utilization of any such consumer
8 decision-support tool at no cost (direct or indirect)
9 to the group health plan or the third party providing
10 such consumer decision support.

11 “(b) CONSUMER DECISION-SUPPORT TOOL.—In this
12 section, the term ‘consumer decision-support tool’ means
13 a tool designed to inform participants and beneficiaries in
14 a group health plan about all costs for prescription drugs
15 covered by the plan, including out-of-pocket, copayment,
16 and coinsurance responsibility, as well as additional sav-
17 ings opportunities through other channels such as manu-
18 facturer copayment assistance, cash price, and mail order
19 pharmacy benefits.”.

20 (2) CLERICAL AMENDMENT.—The table of sec-
21 tions for subchapter B of chapter 100 of such Code
22 is amended by adding at the end the following new
23 item:

“Sec. 9826. Prohibition on blocking consumer decision-support tools.”.

24 (d) APPLICATION.—The amendments made by sub-
25 sections (a), (b), and (c) shall apply with respect to plan

1 years beginning on or after the date that is 2 years after
2 the date of enactment of this Act.

3 (e) REGULATIONS.—The Secretary of Health and
4 Human Services, the Secretary of Labor, and the Sec-
5 retary of the Treasury shall jointly promulgate regulations
6 to carry out the amendments made by subsections (a), (b),
7 and (c), and shall issue draft regulations not later than
8 1 year after the date of enactment of this Act.

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