

118TH CONGRESS
2D SESSION

S. 4349

To require private health plans to provide for secure electronic transmission of prior authorization requests for prescription drugs.

IN THE SENATE OF THE UNITED STATES

MAY 15, 2024

Mr. MARSHALL (for himself, Mr. LUJÁN, Mr. WICKER, Mr. MANCHIN, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To require private health plans to provide for secure electronic transmission of prior authorization requests for prescription drugs.

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. ELECTRONIC PRIOR AUTHORIZATION FOR PRE-**
4 **SCRIPTION DRUGS.**

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

1 **“SEC. 2799A-11. ELECTRONIC PRIOR AUTHORIZATION FOR**
2 **PRESCRIPTION DRUGS.**

3 “(a) IN GENERAL.—For plan years beginning on or
4 after January 1, 2027, a group health plan or health in-
5 surance issuer offering group or individual health insur-
6 ance coverage shall provide for the secure electronic trans-
7 mission of—

8 “(1) a prior authorization request from the pre-
9 scribing health care professional for coverage of a
10 prescription drug for a participant, beneficiary, or
11 enrollee in such plan or coverage to such plan or
12 issuer; and

13 “(2) a response, in accordance with this section,
14 from such plan or issuer to such professional.

15 “(b) ELECTRONIC TRANSMISSION.—

16 “(1) EXCLUSIONS.—For purposes of this sec-
17 tion, a facsimile, a proprietary payer portal that
18 does not meet standards specified by the Secretary,
19 or an electronic form shall not be treated as an elec-
20 tronic transmission described in subsection (a).

21 “(2) STANDARDS.—In order to be treated, for
22 purposes of this section, as an electronic trans-
23 mission described in subsection (a), such trans-
24 mission shall comply with technical standards adopt-
25 ed by the Secretary, in consultation with the Sec-
26 retary of Labor, the Secretary of the Treasury, the

1 National Council for Prescription Drug Programs,
2 other standard-setting organizations as determined
3 appropriate by the Secretary, and stakeholders, in-
4 cluding group health plans and health insurance
5 issuers offering group or individual health insurance
6 coverage, health care professionals, and health infor-
7 mation technology software vendors.

8 “(3) APPLICATION.—Notwithstanding any other
9 provision of law, for purposes of this section, the
10 Secretary may require the use of standards adopted
11 under paragraph (2) in lieu of any other applicable
12 standards for an electronic transmission described in
13 subsection (a) for prescription drugs for a partici-
14 pant, beneficiary, or enrollee described in such sub-
15 section.”.

16 (b) ERISA.—

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

21 **“SEC. 726. ELECTRONIC PRIOR AUTHORIZATION FOR PRE-**
22 **SCRIPTION DRUGS.**

23 “(a) IN GENERAL.—For plan years beginning on or
24 after January 1, 2027, a group health plan or health in-

1 surance issuer offering group health insurance coverage
2 shall provide for the secure electronic transmission of—

3 “(1) a prior authorization request from the pre-
4 scribing health care professional for coverage of a
5 prescription drug for a participant or beneficiary in
6 such plan or coverage to such plan or issuer; and

7 “(2) a response, in accordance with this section,
8 from such plan or issuer to such professional.

9 “(b) ELECTRONIC TRANSMISSION.—

10 “(1) EXCLUSIONS.—For purposes of this sec-
11 tion, a facsimile, a proprietary payer portal that
12 does not meet standards specified by the Secretary,
13 or an electronic form shall not be treated as an elec-
14 tronic transmission described in subsection (a).

15 “(2) STANDARDS.—In order to be treated, for
16 purposes of this section, as an electronic trans-
17 mission described in subsection (a), such trans-
18 mission shall comply with technical standards adopt-
19 ed by the Secretary, in consultation with the Sec-
20 retary of Health and Human Services, the Secretary
21 of the Treasury, the National Council for Prescrip-
22 tion Drug Programs, other standard-setting organi-
23 zations as determined appropriate by the Secretary,
24 and stakeholders, including group health plans and
25 health insurance issuers offering group health insur-

1 ance coverage, health care professionals, and health
2 information technology software vendors.

3 “(3) APPLICATION.—Notwithstanding any other
4 provision of law, for purposes of this section, the
5 Secretary may require the use of standards adopted
6 under paragraph (2) in lieu of any other applicable
7 standards for an electronic transmission described in
8 subsection (a) for prescription drugs for a partici-
9 pant or beneficiary described in such subsection.”.

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

“Sec. 726. Electronic prior authorization for prescription drugs.”.

15 (c) IRC.—

16 (1) IN GENERAL.—Subchapter B of chapter
17 100 of the Internal Revenue Code of 1986 is amend-
18 ed by adding at the end the following:

19 **“SEC. 9826. ELECTRONIC PRIOR AUTHORIZATION FOR PRE-**
20 **SCRIPTION DRUGS.**

21 “(a) IN GENERAL.—For plan years beginning on or
22 after January 1, 2027, a group health plan shall provide
23 for the secure electronic transmission of—

24 “(1) a prior authorization request from the pre-
25 scribing health care professional for coverage of a

1 prescription drug for a participant or beneficiary in
2 such plan to such plan; and

3 “(2) a response, in accordance with this section,
4 from such plan to such professional.

5 “(b) ELECTRONIC TRANSMISSION.—

6 “(1) EXCLUSIONS.—For purposes of this sec-
7 tion, a facsimile, a proprietary payer portal that
8 does not meet standards specified by the Secretary,
9 or an electronic form shall not be treated as an elec-
10 tronic transmission described in subsection (a).

11 “(2) STANDARDS.—In order to be treated, for
12 purposes of this section, as an electronic trans-
13 mission described in subsection (a), such trans-
14 mission shall comply with technical standards adopt-
15 ed by the Secretary of Health and Human Services,
16 in consultation with the Secretary of Labor, the Na-
17 tional Council for Prescription Drug Programs,
18 other standard-setting organizations as determined
19 appropriate by the Secretary, and stakeholders, in-
20 cluding group health plans, health care profes-
21 sionals, and health information technology software
22 vendors.

23 “(3) APPLICATION.—Notwithstanding any other
24 provision of law, for purposes of this section, the
25 Secretary may require the use of standards adopted

1 under paragraph (2) in lieu of any other applicable
2 standards for an electronic transmission described in
3 subsection (a) for prescription drugs for a partici-
4 pant or beneficiary described in such subsection.”.

5 (2) CLERICAL AMENDMENT.—The table of sec-
6 tions for subchapter B of chapter 100 of the Inter-
7 nal Revenue Code of 1986 is amended by adding at
8 the end the following new item:

“Sec. 9826. Electronic prior authorization for prescription drugs.”.

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