

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.

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

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

standards, consistent with standards established under paragraph (3) of section 1860D–4(e) of the Social Security Act, under an electronic prescription drug program that meets requirements that are substantially similar (as jointly determined by the Secretary, Secretary of the Treasury, and Secretary of Labor) to the requirements of paragraph (2) of such section 1860D–4(e).

“(2) EXCEPTION FOR CERTAIN CIRCUMSTANCES.—The Secretary, Secretary of the Treasury, and Secretary of Labor shall jointly, through rulemaking, specify circumstances and processes by which the requirement under paragraph (1) may be waived, with respect to a schedule II, III, IV, or V controlled substance that is a prescription drug covered by a group health or group or individual health insurance coverage offered by a health insurance issuer, including in the case of—

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

“(B) a prescription issued under circumstances in which electronic prescribing is not available due to temporary technological or 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—

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

“(B) require dispensers of such controlled substances to submit information or data beyond what is otherwise required to process a prescription drug claim in order to confirm a practitioner’s compliance with such policies; or

“(C) reject, deny, or recoup reimbursement for a prescription drug claim based on the format in which the prescription was issued.

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

(b) EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 AMENDMENT.—Section 722 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185k) is amended by adding at the end the following new subsection:

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, collabora-
24 tive 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 consistence 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
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20 with respect to a prescription for a schedule II,
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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 consistence 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);

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4 substances to submit information or data be-
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