

115TH CONGRESS
1ST SESSION

H. R.

To amend title XVIII of the Social Security Act to provide for clarification and rationalization of Medicare prescription drug plan recovery rules for certain claims.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2017

----- of ----- (for himself and Mr. KIND) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on 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 title XVIII of the Social Security Act to provide for clarification and rationalization of Medicare prescription drug plan recovery rules for certain claims.

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 “Secondary Payer Ad-
5 vancement, Rationalization, and Clarification Act” or the
6 “SPARC Act”.

1 SEC. 2. CLARIFICATION AND RATIONALIZATION OF MEDI-
 2 CARE PRESCRIPTION DRUG SECONDARY
 3 CLAIMS RESPONSIBILITY.

4 (a) IN GENERAL.—Section 1860D-2(a)(4) of the So-
 5 cial Security Act (42 U.S.C. 1395w-102(a)(4)) is amend-
 6 ed to read as follows:

7 “The provisions of section 1862(b)(10) [42 USC 1395y(b)(10)]
shall apply under this Part [42 USC 1395w-101 et seq.]

(b). Prescription Drug Coverage. Section 1862(b) [42 USC
1395y(b)] is amended by adding at the end of the provision
as follows:

68 _____“(104) SECONDARY PAYOR AND PRESCRIPTION
DRUG COVERAGERECOVERY

79 _____RIGHTS.—

810 _____“(A) Secondary Payor and Recovery
Rights IN GENERAL.—

911 _____“(i) APPLICATION OF SECONDARY
 1012 _____PAYOR.—A prescription drug plan shall be
 1113 _____secondary payor to any valid and collectible
 1214 _____payment from a primary drug plan (as de-
 1315 _____fined in clause (iv)) until such time as such
 1416 _____primary drug plan pays a final settlement,
 1517 _____judgment, or award to an individual en-
 1618 _____rolled under the prescription drug plan
 1719 _____with regard to an injury or illness involved
 1820 _____or otherwise terminates its ongoing respon-
 1921 _____sibility for medical payments with respect
 2022 _____to the individual.”

~~21~~23 _____“(ii) LIMITATION ON PARTIES MAKING
~~22~~24 _____PRESCRIPTION DRUG PLANS PRIMARY.—A
~~23~~25 _____primary drug plan (as defined in clause
~~24~~26 _____(iv), other than a group health plan or
~~25~~27 _____multiemployer or multiple employer plan

1 of, or contributed to by, an employer that
2 has 20 or fewer employees for each work-
3 ing day in each of 20 or more calendar
4 weeks in the calendar year involved or the
5 preceding calendar year), a self-insured
6 plan, a service benefit plan, a managed
7 care organization, a pharmacy benefit
8 manager, or other party that, by statute,
9 contract, or agreement, is legally respon-
10 sible for payment of a claim for a covered
11 outpatient drug, in enrolling an individual
12 or in making any payments for benefits to
13 the individual or on the individual's behalf,
14 may not take into account that the indi-
15 vidual is enrolled under a prescription drug
16 plan under this part or is eligible for or is
17 provided coverage for covered part D drugs
18 under this part.

19 “(iii) LIMITATION ON SECRETARIAL
20 CLAIMS THROUGH SUBROGATION.—The
21 Secretary shall not assert any claim on be-
22 half or against a prescription drug plan,
23 other than through the recovery from such
24 a plan of amounts paid related to a cov-
25 ered part D drug event that has been re-

1 paid to the plan through a subrogation ac-
2 tion or otherwise.

3 “(iv) PRIMARY DRUG PLAN DE-
4 FINED.—In this paragraph, the term ‘pri-
5 mary drug plan’ means, with respect to
6 benefits for covered part D drugs, a group
7 health plan or large group health plan
8 (other than a group health plan or multi-
9 employer or multiple employer plan of, or
10 contributed to by, an employer that has 20
11 or fewer employees for each working day in
12 each of 20 or more calendar weeks in the
13 calendar year involved or the preceding cal-
14 endar year), a workers’ compensation law
15 or plan, an automobile or liability insur-
16 ance policy or plan (including a self-in-
17 sured plan) or no-fault insurance insofar
18 as such a plan, law, policy, or insurance
19 provides such benefits, insofar as, under
20 the provisions of section 1862(b)(2), such
21 coverage would be treated as a primary
22 plan if benefits for covered part D drugs
23 were treated as benefits under parts A and
24 B. For purposes of this clause, an entity
25 that engages in a business, trade, or pro-

1 fession shall be deemed to have a self-in-
2 sured plan if it carries its own risk (wheth-
3 er by a failure to obtain insurance, or oth-
4 erwise) in whole or in part.

5 “(B) WAIVER.—A prescription drug plan
6 may waive (in whole or in part) the provisions
7 of this paragraph in the case of an individual
8 claim if the plan determines that the costs of
 collection may exceed the amount to be
 recovered, or for other good faith reasons
 waiver is

9 in the best interests of the program established
10 under this part.

11 “(C) RECOVERY.—A prescription drug
12 plan shall be subrogated (to the extent of pay-
13 ment made under this part by the plan for any
14 covered part D drug before the date the plan
15 received notice pursuant to subparagraph (D))
16 to any right of an individual or any other entity
17 to payment, with respect to such covered part
18 D drug, under a primary drug plan. A subroga-
19 tion claim may not be asserted pursuant to this
20 subparagraph by a prescription drug plan with
21 respect to a payment for a covered part D drug
22 after the date that is 3 years after the date
23 such plan receives notice of a payment, with re-
24 spect to such covered part D drug, pursuant to

25 5
 subparagraph (D). Any such subrogation claim

1 shall be the exclusive legal remedy of the PDP
2 sponsor of the plan and shall be reduced to take
3 into account the cost of procuring the judgment
4 or settlement with respect to such claim if an
5 individual's liability, workers' compensation, or
6 no-fault claim is disputed. Any costs or expense
7 incurred by a prescription drug plan related to
8 recoveries pursuant to this subparagraph shall
9 not be considered an administrative cost or ex-
10 pense, as those terms are used in this part.

11 “(D) COORDINATION OF BENEFITS INFOR-
12 MATION.—Not later than 15 days after the date
13 the Secretary receives information under para-
14 graph (7) or (8) of section 1862(b) relating to
15 an individual enrolled in a prescription drug
16 plan during an applicable time, the Secretary
17 shall provide such information to such prescrip-
18 tion drug plan in a format convenient and ac-
19 cessible to such plans. The Secretary shall
20 waive any requirements under this part that a
21 prescription drug plan establish procedures for
22 determining whether costs for part D eligible
23 individuals are being reimbursed through insur-
24 ance or otherwise or identify payers that are
25 primary to the program under subparagraph

1 (A)(ii) other than as required under this para-
2 graph.

3 “(E) COORDINATION OF BENEFITS.—A
4 prescription drug plan shall, in the case of re-
5 ceipt of a notice pursuant to subparagraph (D)
6 related to an enrollee for whom a primary drug
7 plan has reported on ongoing responsibility for
8 medical costs pursuant to paragraph (7) or (8)
9 of section 1862(b), authorize the provider of
10 such covered part D drug to charge, in accord-
11 ance with the charges allowed under the pre-
12 scription drug plan, such primary drug plan for
13 such covered part D drug related to or arising
14 out of the treatment accident or injury subject
15 to such notice (other than payments subject to
16 a claim under subparagraph (B) or (F)) for the
17 period in which the enrollee remains enrolled in
18 such plan through the date upon which such
19 primary drug plan has terminated such ongoing

28 responsibility for medical payments. For purposes of this Title
[note - applies to all MSP, not just Part D], an applicable plan (as
defined in paragraph (8)) may terminate ongoing
responsibility for medicals if the plan, with a reasonable
degree of confidence, does not expect or anticipate any future
medical claims related to the accident, illness or injury.

20

21 “(F) USE OF WEB SITE TO DETERMINE
22 FINAL REIMBURSEMENT AMOUNT.—

23 “(i) NOTIFICATION OF PLANS.—Not
24 later than 10 days after the date the Sec-
25 retary receives a notice under section

1 1862(b)(2)(B)(vii)(I) relating to an indi-
2 vidual during the period the individual is
3 enrolled in a prescription drug plan, the
4 Secretary shall provide such notice to the
5 plan.

6 “(ii) STATEMENT BY PLAN.—

7 “(I) IN GENERAL.—Not later
8 than 30 days after the date a plan re-
9 ceives a notice under clause (i), the
10 plan may provide the Secretary with a
11 statement of any covered part D drug
12 for which the plan seeks reimburse-
13 ment, including the amount of such
14 reimbursement.

15 “(II) FAILURE TO PROVIDE
16 STATEMENT.—The prescription drug
17 plan shall be deemed to have waived
18 its rights under subparagraph (B)—

19 “(aa) in the case that the
20 prescription drug plan does not
21 provide such statement by such
22 date, with respect to any covered
23 part D drug provided to such in-
24 dividual with respect to such no-
25 tice; and

1 “(bb) in the case that the
2 prescription drug plan provides
3 such statement by such date,
4 with respect to any covered part
5 D drug provided to such indi-
6 vidual which was not identified in
7 the notice.

8 “(iii) INCLUSION OF INFORMATION ON
9 WEB SITE.—The Secretary shall include
10 any covered part D drug identified by a
11 prescription drug plan pursuant to clause
12 (ii) within the Secretary’s statement of re-
13 imbursement amount on the Web site as
14 described in section 1862(b)(2)(B)(vii).

15 “(iv) COLLECTION.—The Secretary
16 may collect (on behalf of a prescription
17 drug plan) the reimbursement amount for
18 covered part D drugs, as identified pursu-
19 ant to clause (ii), from the individual in-
20 volved or the primary drug plan pursuant
21 to the procedures set forth under section
22 1862(b)(2)(B)(vii). Any such amounts col-
23 lected by the Secretary for covered part D
24 drugs directly paid by the plan shall be re-
25 mitted directly by the Secretary to the ap-

1 appropriate prescription drug plan that en-
 2 rolled the individual related to the notice
 3 during the applicable time period for which
 4 such individual was enrolled, and the Sec-
 5 retary shall retain such amounts as were
 6 paid to the plan in subsidy for such
 7 drugs.”.

8 (c) REPORTING.--. Section 1862(b)(8)(G) [42 USC
1395y(b)(8)(G)] is amended by inserting a “(i)”
at the beginning of the provision and adding at
the end of the provision as follows:

9 “(ii) In responding to any query related to subsection
(8)(A)(i), the Secretary shall identify to the
applicable plan whether a claimant subject to
the query is entitled to benefits under:

(A) the program under title XVIII [42
USC 1395 et seq.] on any basis, and
to the extent applicable shall identify
by Plan name and address any
Medicare Advantage plan and
Medicare Prescription Drug Plan in
which the claimant is enrolled and
has been enrolled, within the
immediate prior three year period;
and

(B) the program under title XIX [42 USC
1396 et seq.] on any basis, and
whether the claimant is presently a
beneficiary.

10 (d) EFFECTIVE DATE.—The amendment made by
 9 ~~subsection (a) shall apply to drugs dispensed in~~
~~years be-~~
 10 ~~ginning more than~~ 6 months after the date of the
 enact-

~~11~~12 _____ment of this Act.