118TH CONGRESS
1ST SESSION

S. 2405

To amend title XVIII of the Social Security Act to assure pharmacy access and choice for Medicare beneficiaries.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2023

Mr. THUNE (for himself, Mr. BROWN, Mr. BARRASSO, and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend title XVIII of the Social Security Act to assure pharmacy access and choice for Medicare beneficiaries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Strengthening Pharmacy Access for Seniors Act''.

SEC. 2. ASSURING PHARMACY ACCESS AND CHOICE FOR MEDICARE BENEFICIARIES.

Section 1860D–4(b)(1) of the Social Security Act (42 U.S.C. 1395w–104(b)(1)) is amended by adding at the end the following new subparagraph:

''(F) LIMITED ACCESS DRUGS.—

''(i) LIMITATION ON RESTRICTIONS OR LIMITS ON ACCESS.—For each plan year (beginning with plan year 2026), a PDP sponsor offering a prescription drug plan or pharmacy benefit manager—

''(I) may not restrict or limit access to any covered part D drug to a subset of their network pharmacies, other than with respect to a limited access drug, as defined in clause (v); and

''(II) shall record in writing the rationale for why a covered part D drug meets the definition of a limited access drug under clause (v) and maintain written records of any such rationales, if such plan restricts or limits access to a limited access drug to a subset of network pharmacies.

''(ii) ANNUAL SUBMISSION OF INFORMATION TO THE SECRETARY ON LIMITED ACCESS DRUGS.—For each plan year (beginning with plan year 2026), each PDP sponsor offering a prescription drug plan

shall submit to the Secretary, at a time and in a manner specified by the Secretary, with respect to each prescription drug plan offered by the sponsor during such plan year—

"(I) a list of all covered part D drugs that the PDP sponsor designated as a limited access drug;

"(II) the written rationales for why any covered part D drugs listed under subclause (I) meet the definition of a limited access drug;

"(III) the requirements imposed on network pharmacies to ensure appropriate handling and dispensing of the covered part D drugs listed under subclause (I);

"(IV) the percentages of covered part D drugs listed under subclause (I) that are dispensed through retail pharmacies, specialty pharmacies, mail order pharmacies, or other dispensing channels as defined by the PDP sponsor, respectively, during the

most recent plan year for which such data are available;

''(V) the annual percentage of covered part D drugs listed under subclause (I) that are dispensed through pharmacies wholly or partially owned by, or otherwise affiliated with (such as through common ownership), the plan or pharmacy benefit manager; and

''(VI) any other information determined appropriate by the Secretary.

''(iii) PHARMACY ACCESS TO LIMITED ACCESS DRUG INFORMATION.—For plan years beginning with plan year 2026, upon the request of a network pharmacy, a PDP sponsor of a prescription drug plan (or a pharmacy benefit manager acting on behalf of such sponsor) shall present such pharmacy, on a timely basis (as determined by the Secretary), with information specific to any covered part D drug listed under subclause (II) of clause (i) of this subparagraph, along with the rationale for its des-

ignation as a limited access drug (as described in subclause (II) of clause (ii)) and the requirements imposed with respect to such drug (as described in subclause (III) of clause (ii)). Any PDP sponsor or pharmacy benefit manager that provides false information upon such a request or that fails to provide the information requested on a timely basis shall be found in violation of this subsection.

''(iv) HHS ANNUAL REPORT ON LIMITED ACCESS DRUGS.—Not later than December 31, 2027, and annually thereafter, the Secretary shall submit to the Committee on Finance of the Senate, and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report on compliance by PDP sponsors with the requirements under this subparagraph. Each such report shall include—

''(I) a description of the patterns, trends, variations, and rationales for the designation by PDP sponsors of certain covered part D drugs as lim-

ited access drugs described in clause (v), and the implications of such designations on beneficiary access to such covered part D drugs;

"(II) a description of the information submitted to the Secretary under clause (ii) (in a manner that does not disclose the identity of a pharmacy, a PDP sponsor, a prescription drug plan, or pharmacy benefit manager, or any proprietary pricing information); and

"(III) any other information determined appropriate by the Secretary.

"(v) LIMITED ACCESS DRUG DEFINED.—In this subparagraph, the term 'limited access drug' means a covered part D drug that meets at least one of the following:

"(I) The Food and Drug Administration has restricted distribution of such covered part D drug to certain facilities or physicians.

"(II) The dispensing of such covered part D drug requires extraordinary special handling, provider coordination, or patient education that cannot be met by a network pharmacy.".

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