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(Original Signature of Member)

115TH CONGRESS  
2D SESSION

**H. R.**

To amend title XVIII of the Social Security Act to require pharmacy-negotiated price concessions and pharmacy incentive payments and adjustments to be included in negotiated prices at the point-of-sale under part D of the Medicare program, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. COLLINS of Georgia introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend title XVIII of the Social Security Act to require pharmacy-negotiated price concessions and pharmacy incentive payments and adjustments to be included in negotiated prices at the point-of-sale under part D of the Medicare program, and for other purposes.

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 “Phair Pricing Act of  
5 2018”.

1 **SEC. 2. REQUIRING PHARMACY-NEGOTIATED PRICE CON-**  
2 **CESSIONS AND PHARMACY INCENTIVE PAY-**  
3 **MENTS AND ADJUSTMENTS TO BE INCLUDED**  
4 **IN NEGOTIATED PRICES AT THE POINT-OF-**  
5 **SALE UNDER PART D OF THE MEDICARE PRO-**  
6 **GRAM.**

7 Section 1860D–2(d)(1)(B) of the Social Security Act  
8 (42 U.S.C. 1395w–102(d)(1)(B)) is amended—

9 (1) by striking “PRICES.—For purposes” and  
10 inserting “PRICES.—

11 “(i) IN GENERAL.—For purposes”;  
12 and

13 (2) by adding at the end the following new  
14 clauses:

15 “(ii) PRICES NEGOTIATED WITH  
16 PHARMACY AT POINT-OF-SALE.—

17 “(I) IN GENERAL.—Subject to  
18 subclause (III), for plan years begin-  
19 ning on or after January 1, 2019, ne-  
20 gotiated prices for covered part D  
21 drugs described in clause (i) provided  
22 under a prescription drug plan, in-  
23 cluding all pharmacy price concessions  
24 and all incentive payments and ad-  
25 justments negotiated with the phar-  
26 macy dispensing such drug, shall be

1 provided at the point-of-sale of the  
2 covered part D drug. If the negotiated  
3 price of such drug, including all phar-  
4 macy price concessions and all incen-  
5 tive payments and adjustments nego-  
6 tiated with such pharmacy, is not pos-  
7 sible to calculate at the point-of-sale,  
8 the PDP sponsor of such plan shall  
9 use an estimated negotiated price, in-  
10 cluding all estimated pharmacy nego-  
11 tiated price concessions and incentive  
12 payments and adjustments and taking  
13 into account the negotiated price of  
14 such drug in the prior year (if avail-  
15 able).

16 “(II) APPLICATION OF INCEN-  
17 TIVE PAYMENTS AND ADJUST-  
18 MENTS.—For plan years beginning on  
19 or after January 1, 2019, in the case  
20 that a PDP sponsor uses incentive  
21 payments and adjustments with re-  
22 spect to payment to a pharmacy for a  
23 covered part D drug, such payments  
24 and adjustments shall be determined  
25 through the use of a quality measure

1 approved by the Secretary and estab-  
2 lished by the working group estab-  
3 lished under clause (iii).

4 “(III) NO INCREASE IN COST  
5 SHARING.—Subclause (I) shall not  
6 apply in the case where application of  
7 such subclause would increase the  
8 amount owed by an individual in cost  
9 sharing above the amount such indi-  
10 vidual would have owed in cost shar-  
11 ing without application of such sub-  
12 clause.

13 “(IV) DISCREPANCIES BETWEEN  
14 NEGOTIATED PRICES AND ACTUAL RE-  
15 IMBURSEMENT.—In the case that the  
16 Secretary determines that the nego-  
17 tiated price of a PDP sponsor applied  
18 at the point-of-sale with respect to a  
19 covered part D drug for a year dis-  
20 pensed by a pharmacy was not equal  
21 to the total reimbursement made to  
22 such pharmacy for such drug for such  
23 year (taking into account any incen-  
24 tive payments and adjustments and  
25 pharmacy price concessions, regard-

1 less of when such payments and ad-  
2 justments or price concessions were  
3 applied), such sponsor shall, not later  
4 than 90 days after receiving notice of  
5 such determination, furnish to the  
6 pharmacy that dispensed such drug  
7 and to the Secretary a written expla-  
8 nation of why such negotiated price  
9 was not equal to such reimbursement.

10 “(V) DEFINITIONS.—In this  
11 clause:

12 “(aa) INCENTIVE PAYMENTS  
13 AND ADJUSTMENTS.—The term  
14 ‘incentive payments and adjust-  
15 ments’ means, with respect to  
16 payment to a pharmacy by a  
17 PDP sponsor for a covered part  
18 D drug, any prospective or retro-  
19 spective price concessions, re-  
20 bates, discounts, fees, reconcili-  
21 ation adjustments, bonuses, per-  
22 formance payments, incentives,  
23 and any other adjustment to  
24 such payment determined  
25 through the use of a quality

1 measure, and any other adjust-  
2 ment made with respect to such  
3 payment, regardless of when such  
4 payments and adjustments are  
5 applied. Such term does not in-  
6 clude any manufacturer rebates  
7 or concessions made with respect  
8 to such drug.

9 “(bb) PDP SPONSOR.—The  
10 term ‘PDP sponsor’ includes an  
11 MA organization offering an MA-  
12 PD plan under part C and an en-  
13 tity that contracts with such  
14 sponsor or organization, such as  
15 a pharmacy benefit manager

16 “(cc) QUALITY MEASURE.—  
17 The term ‘quality measure’  
18 means performance criteria es-  
19 tablished by a PDP sponsor (in-  
20 cluding an entity that contracts  
21 with such sponsor, such as a  
22 pharmacy benefit manager) to  
23 determine the amount or applica-  
24 bility of incentive payments and  
25 adjustments.

1                   “(iii) QUALITY MEASURE WORKING  
2                   GROUP.—

3                   “(I) IN GENERAL.—Not later  
4                   than September 1, 2018, the Sec-  
5                   retary shall convene a quality meas-  
6                   ures working group (in this clause re-  
7                   ferred to as the ‘working group’) for  
8                   purposes of establishing quality meas-  
9                   ures (as defined in clause (ii)(IV))  
10                  that may be used by a PDP sponsor  
11                  (as defined in clause (ii)) under this  
12                  part.

13                  “(II) COMPOSITION.—The work-  
14                  ing group shall consist of representa-  
15                  tives from each the following:

16                         “(aa) PDP sponsors.

17                         “(bb) Pharmacies rep-  
18                         resenting all pharmacy practice  
19                         types.

20                         “(cc) Pharmacy benefit  
21                         managers.

22                         “(dd) Patient advocacy or-  
23                         ganizations.

1                   “(ee) Such other entities as  
2                   the Secretary determines appro-  
3                   priate.

4                   “(III) DUTIES.—The working  
5                   group shall provide for the establish-  
6                   ment of quality measures that may be  
7                   used by a PDP sponsor (as defined in  
8                   clause (ii)) with respect to incentive  
9                   payments and adjustments (as defined  
10                  in clause (ii)(IV)) for a pharmacy  
11                  under this part. Such measures estab-  
12                  lished by such group shall include only  
13                  such measures that—

14                   “(aa) are reasonable and rel-  
15                   evant with respect to the practice  
16                   type of the applicable pharmacy;  
17                   and

18                   “(bb) evaluate criteria over  
19                   which the pharmacy has mean-  
20                   ingful control and ability to influ-  
21                   ence, consistent with the phar-  
22                   macy’s practice type.”.



1 **SEC. 3. PHARMACY BENEFIT MANAGER PROVISION OF IN-**  
2 **FORMATION.**

3 (a) **IN GENERAL.**—Section 1150A(b)(2) of the Social  
4 Security Act (42 U.S.C. 1320b–23(b)(2)) is amended by  
5 striking “excluding” and inserting “including”.

6 (b) **EFFECTIVE DATE.**—The amendment made by  
7 subsection (a) shall apply with respect to contract years  
8 beginning on or after January 1, 2019.