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(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R. _____

To amend title XVIII of the Social Security Act to establish certain requirements for pharmacy benefit managers under part D of the Medicare program.

IN THE HOUSE OF REPRESENTATIVES

Mr. CARTER of Georgia introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title XVIII of the Social Security Act to establish certain requirements for pharmacy benefit managers under part D of the Medicare program.

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 “Protecting Patients
5 Against PBM Abuses Act”.

1 **SEC. 2. ESTABLISHING CERTAIN REQUIREMENTS FOR**
2 **PHARMACY BENEFIT MANAGERS UNDER**
3 **PART D OF THE MEDICARE PROGRAM.**

4 (a) PRESCRIPTION DRUG PLANS.—Section 1860D–
5 12(b) of the Social Security Act (42 U.S.C. 1395w–
6 112(b)) is amended by adding at the end the following
7 new paragraph:

8 “(9) RESPONSIBILITY OF PHARMACY BENEFIT
9 MANAGERS.—

10 “(A) IN GENERAL.—Each contract entered
11 into with a PDP sponsor under this part with
12 respect to a prescription drug plan offered by
13 such sponsor shall provide that any pharmacy
14 benefit manager acting on behalf of such spon-
15 sor complies with the following provisions:

16 “(i) The pharmacy benefit manager
17 derives no income with respect to any serv-
18 ices provided in connection with covered
19 part D drugs furnished under such plan
20 from any entity other than flat dollar
21 amount service fees.

22 “(ii) The pharmacy benefit manager
23 receives such service fees only pursuant to
24 a written agreement between the manager
25 and such sponsor that sets forth the
26 amount of any such fees. Any such fee

1 may not be directly or indirectly based on,
2 or contingent upon—

3 “ (I) the price of any covered part
4 D drug;

5 “ (II) discounts, rebates, fees, or
6 other remuneration with respect to
7 such drugs; or

8 “ (III) any other circumstance
9 specified by the Secretary.

10 “ (iii) With respect to a covered part
11 D drug dispensed by a pharmacy, the
12 pharmacy benefit manager may not charge
13 such sponsor a different amount for such
14 drug’s ingredient cost or dispensing fee
15 than the amount the pharmacy benefit
16 manager reimburses such pharmacy for
17 such drug’s ingredient cost or dispensing
18 fee.

19 “ (iv) With respect to a covered part D
20 drug dispensed by a network pharmacy,
21 the pharmacy benefit manager may not re-
22 imburse such pharmacy an amount less
23 than the amount the pharmacy benefit
24 manager would reimburse an affiliated
25 pharmacy for such drug.

1 “(v) With respect to each covered part
2 D drug included on the formulary of such
3 plan for which there is a drug that is not
4 included on such formulary with a thera-
5 peutic equivalence rating of AB (as estab-
6 lished pursuant to section 505(j)(7) of the
7 Federal Food, Drug, and Cosmetic Act) in
8 the same therapeutic class or category of
9 such covered part D drug, the pharmacy
10 benefit manager shall submit to such plan
11 a report specifying the difference between
12 the national average drug acquisition cost
13 (as published by the Secretary) for such
14 drug not included in such formulary and
15 the negotiated prices for such drug that is
16 included in such formulary.

17 “(B) CERTIFICATION.—Each PDP sponsor
18 (and each pharmacy benefit manager providing
19 services under a prescription drug plan fur-
20 nished by such sponsor) shall furnish to the
21 Secretary (in a time and manner specified by
22 the Secretary) an annual certification of compli-
23 ance with this paragraph, as well as such infor-
24 mation as the Secretary determines necessary
25 to carry out this paragraph.

1 “(C) DISGORGEMENT OF PROHIBITED PAY-
2 MENTS.—A pharmacy benefit manager shall
3 disgorge to the Secretary any payment, remun-
4 eration, or other amount received in violation
5 of this paragraph or the contract entered into
6 with a PDP sponsor under this part with re-
7 spect to a prescription drug plan. A PDP spon-
8 sor shall suspend payments to a pharmacy ben-
9 efit manager for failure to disgorge such
10 amounts pursuant to the preceding sentence or
11 for other violations of this paragraph.

12 “(D) CLARIFICATION.—The requirements
13 of this paragraph shall apply regardless of
14 whether a PDP sponsor is acting as its own
15 pharmacy benefit manager and regardless of
16 whether a pharmacy benefit manager is under
17 common ownership or control of the PDP spon-
18 sor with respect to which the manager is fur-
19 nishing services.

20 “(E) DEFINITIONS.—For purposes of this
21 paragraph:

22 “(i) AFFILIATED PHARMACY.—The
23 term ‘affiliated pharmacy’ means, with re-
24 spect to a pharmacy benefit manager, a
25 pharmacy that directly or indirectly

1 through one or more intermediaries is
2 owned by, controlled by, or is under com-
3 mon ownership or control of such manager,
4 or a pharmacy in which such manager has
5 a financial interest.

6 “(ii) PHARMACY BENEFIT MAN-
7 AGER.—The term ‘pharmacy benefit man-
8 ager’ means any entity (and any affiliate,
9 subsidiary, or agent of such entity) that,
10 pursuant to an agreement with a PDP
11 sponsor either directly or through an inter-
12 mediary acts as a price negotiator or group
13 purchaser on behalf of such sponsor, or
14 manages the prescription drug benefits
15 provided by such sponsor, including by
16 processing and paying claims for covered
17 part D drugs, performing drug utilization
18 review, processing drug prior authorization
19 requests, adjudicating appeals or griev-
20 ances related to covered part D drugs, con-
21 tracting with network pharmacies, control-
22 ling the cost of such drugs, or providing
23 any related services.

24 “(F) NONDISCLOSURE OF CERTAIN INFOR-
25 MATION.—Nothing in this paragraph shall be

1 construed to require public disclosure of any in-
2 formation that is a trade secret or confidential
3 information (as described in section 552(b)(4)
4 of title 5, United States Code).”.

5 (b) MA–PD PLANS.—Section 1857(f)(3) of the So-
6 cial Security Act (42 U.S.C. 1395w-27(f)(3)) is amended
7 by adding at the end the following new subparagraph:

8 “(F) RESPONSIBILITY OF PHARMACY BEN-
9 EFIT MANAGERS.—Section 1860D–12(b)(9).”.

10 **SEC. 3. CONFLICT OF INTEREST.**

11 Section 1860D–4(b)(3)(A)(ii)(I) of the Social Secu-
12 rity Act (42 U.S.C. 1395w-104(b)(3)(A)(ii)(I)) is amend-
13 ed by striking “with respect to the sponsor and plan” and
14 replacing it with “with respect to the sponsor, plan, and
15 any pharmacy benefit manager furnishing services to such
16 sponsor or plan”.

17 **SEC. 4. PBM TRANSPARENCY.**

18 Section 1150A of the Social Security Act (42 U.S.C.
19 1320b–23) is amended—

20 (1) in subsection (b), by adding at the end the
21 following new paragraph:

22 “(4) In the case of the provision of information
23 by a PBM that manages prescription drug coverage
24 under a contract with a sponsor described in sub-
25 section (a)(1) for a plan so described—

1 “(A) the aggregate dollar amount of all re-
2 bates that the PBM received with respect to
3 drugs furnished under such plan from drug
4 manufacturers;

5 “(B) the aggregate dollar amount of all
6 administrative fees that the PBM received with
7 respect to drugs furnished under such plan
8 from drug manufacturers;

9 “(C) the aggregate dollar amount of all re-
10 bates described in subparagraph (A) that the
11 PBM did not pass through to such sponsor;

12 “(D) the percentage of the aggregate dol-
13 lar amount of all rebates described in subpara-
14 graph (A) that the PBM did not pass through
15 to such sponsor; and

16 “(E) with respect to all plans described in
17 subsection (a)(1) for which the PBM manages
18 prescription drug coverage, the highest percent-
19 age calculated under subparagraph (D) and the
20 lowest such percentage.”;

21 (2) by redesignating subsections (c) and (d) as
22 subsections (d) and (e), respectively; and

23 (3) by inserting after subsection (b), the fol-
24 lowing new subsection:

1 “(c) PUBLICATION OF PART D INFORMATION.—The
2 Secretary shall publish, not less frequently than annually,
3 the information reported under subsection (b) by or on
4 behalf of sponsors described in subsection (a)(1) on a pub-
5 licly available website, provided that such information
6 shall be made available in a form that does not disclose
7 the identity of a specific plan, the prices charged for spe-
8 cific drugs or classes of drugs, or the amount of any re-
9 bates provided for specific drugs or classes of drugs.”.

10 **SEC. 5. EFFECTIVE DATE.**

11 The amendments made by this Act shall take effect
12 January 1, 2024.

13 **SEC. 6. REGULATIONS.**

14 Notwithstanding any other provision of law, the Sec-
15 retary shall initially implement the amendments made by
16 this Act through interim final regulations.