

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 7895
OFFERED BY MR. ALLEN OF GEORGIA**

Strike all after the enacting clause and insert the following:

1 SEC. 1. SHORT TITLE.

2 This Act may be cited as the “PBM Kickback Prohi-
3 bition Act”.

**4 SEC. 2. PROHIBITION ON PHARMACY BENEFIT MANAGER
5 KICKBACKS.**

6 (a) IN GENERAL.—Section 408(b)(2)(B) of the Em-
7 ployee Retirement Income Security Act (29 U.S.C.
8 1108(b)(2)(B)) is amended by adding at the end the fol-
9 lowing:

10 “(xi)(I) In the case of a contract or arrange-
11 ment between a covered plan and a covered service
12 provider for pharmacy benefit management services,
13 no amount of compensation (whether direct com-
14 pensation or indirect compensation) may be paid by
15 such service provider to any individual or entity
16 for—

17 “(aa) the referral, recommendation, place-
18 ment, retention, or renewal of, or access to, the

1 business of the covered plan or the health insur-
2 ance issuer offering health insurance coverage
3 for the covered plan;

4 “(bb) inclusion in, participation in, or the
5 design of—

6 “(AA) a request for proposal;

7 “(BB) a market check;

8 “(CC) an evaluation;

9 “(DD) the volume, value, or use of
10 covered plan business; or

11 “(EE) any other contracting process.

12 “(II) For the purposes of this clause, the char-
13 acterization of compensation shall be based on the
14 economic substance and practical operation of the
15 contract or arrangement, without regard to the char-
16 acterization or labeling of the compensation by the
17 covered service provider.

18 “(III) Any compensation paid by a covered
19 service provider to a brokerage firm, broker, consult-
20 ant, advisor, or related entity shall be presumed to
21 be related to an activity described in item (aa) or
22 (bb) of subclause (I) unless the parties demonstrate
23 through contemporaneous written documentation
24 that such compensation—

1 “(aa) reflects fair market value for bona
2 fide services actually rendered; and

3 “(bb) is not related, directly or indirectly,
4 to any activity described in such items.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply for plan years beginning after the
7 date of enactment of this Act.

