

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2880
OFFERED BY M . _____**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Protecting Patients
3 Against PBM Abuses Act”.

**4 SEC. 2. ARRANGEMENTS WITH PHARMACY BENEFIT MAN-
5 AGERS WITH RESPECT TO PRESCRIPTION
6 DRUG PLANS AND MA-PD PLANS.**

7 (a) PRESCRIPTION DRUG PLANS.—Section 1860D–
8 12 of the Social Security Act (42 U.S.C. 1395w–112) is
9 amended by adding at the end the following new sub-
10 section:

11 “(h) REQUIREMENTS RELATING TO PHARMACY BEN-
12 EFIT MANAGERS.—For plan years beginning on or after
13 January 1, 2027:

14 “(1) AGREEMENTS WITH PHARMACY BENEFIT
15 MANAGERS.—Each contract entered into with a
16 PDP sponsor under this part with respect to a pre-
17 scription drug plan offered by such sponsor shall
18 provide that any pharmacy benefit manager acting

1 on behalf of such sponsor has a written agreement
2 with the PDP sponsor under which the pharmacy
3 benefit manager agrees to meet the following re-
4 quirements:

5 “(A) NO INCOME OTHER THAN BONA FIDE
6 SERVICE FEES.—

7 “(i) IN GENERAL.—The pharmacy
8 benefit manager and any affiliate of such
9 pharmacy benefit manager shall not derive
10 any remuneration with respect to any serv-
11 ices provided in connection with the utiliza-
12 tion of covered part D drugs from any en-
13 tity or individual other than bona fide serv-
14 ice fees, subject to clauses (ii) and (iii).

15 “(ii) INCENTIVE PAYMENTS.—For the
16 purposes of this subsection, an incentive
17 payment paid by a PDP sponsor to a phar-
18 macy benefit manager that is performing
19 services on behalf of such sponsor shall be
20 deemed a ‘bona fide service fee’ if such
21 payment is a flat dollar amount, is con-
22 sistent with fair market value, and is re-
23 lated to services actually performed by the
24 pharmacy benefit manager or affiliate of
25 such pharmacy benefit manager in connec-

1 tion with the utilization of covered part D
2 drugs.

3 “(iii) CLARIFICATION ON REBATES
4 AND DISCOUNTS USED TO LOWER COSTS
5 FOR COVERED PART D DRUGS.—Rebates,
6 discounts, and other price concessions re-
7 ceived from manufacturers, even if such
8 price concessions are calculated as a per-
9 centage of a drug’s price, shall not be con-
10 sidered a violation of the requirements of
11 clause (i) if they are fully passed through
12 to a PDP sponsor and exclusively used to
13 lower costs for prescription drugs under
14 this part, including in cases where a PDP
15 sponsor is acting as a pharmacy benefit
16 manager on behalf of a prescription drug
17 plan offered by such PDP sponsor.

18 “(iv) EVALUATION OF REMUNERATION
19 ARRANGEMENTS.—Remuneration arrange-
20 ments between pharmacy benefit managers
21 or affiliates of such pharmacy benefit man-
22 agers, as applicable, and other entities in-
23 volved in the dispensing or utilization of
24 covered part D drugs (including PDP
25 sponsors, manufacturers, pharmacies, and

1 other entities as determined appropriate by
2 the Secretary) shall be subject to review by
3 the Secretary and the Office of the Inspec-
4 tor General of the Department of Health
5 and Human Services. The Secretary, in
6 consultation with the Office of the Inspec-
7 tor General, shall evaluate whether remu-
8 nation under such arrangements is con-
9 sistent with fair market value through re-
10 views and assessments of such remunera-
11 tion, as determined appropriate.

12 “(B) ENFORCEMENT.—The pharmacy ben-
13 efit manager shall—

14 “(i) disgorge to a PDP sponsor (or, in
15 a case where the PDP sponsor is an affil-
16 iate of such pharmacy benefit manager, to
17 the Secretary) any payment, remuneration,
18 or other amount received by the pharmacy
19 benefit manager or an affiliate of such
20 pharmacy benefit manager in violation of
21 subparagraph (A) or the written agreement
22 entered into with such sponsor under this
23 part with respect to a prescription drug
24 plan;

1 “(ii) reimburse the PDP sponsor for
2 any civil money penalty imposed on the
3 PDP sponsor as a result of the failure of
4 the pharmacy benefit manager to meet the
5 requirements of this paragraph that are
6 applicable to the pharmacy benefit man-
7 ager under the agreement; and

8 “(iii) be subject to punitive remedies
9 for breach of contract for failure to comply
10 with the requirements applicable under this
11 paragraph.

12 “(2) CERTIFICATION OF COMPLIANCE.—Each
13 PDP sponsor shall furnish to the Secretary (in a
14 time and manner specified by the Secretary) an an-
15 nual certification of compliance with this subsection,
16 as well as such information as the Secretary deter-
17 mines necessary to carry out this subsection.

18 “(3) DEFINITIONS.—For purposes of this sub-
19 section:

20 “(A) AFFILIATE.—The term ‘affiliate’
21 means any entity that is owned by, controlled
22 by, or related under a common ownership struc-
23 ture with a pharmacy benefit manager or PDP
24 sponsor, or that acts as a contractor or agent
25 to such pharmacy benefit manager or PDP

1 sponsor, insofar as such contractor or agent
2 performs any of the functions described under
3 subparagraph (C).

4 “(B) BONA FIDE SERVICE FEE.—The term
5 ‘bona fide service fee’ means a fee that is reflec-
6 tive of the fair market value for a bona fide,
7 itemized service actually performed on behalf of
8 an entity, that the entity would otherwise per-
9 form (or contract for) in the absence of the
10 service arrangement and that are not passed on
11 in whole or in part to a client or customer,
12 whether or not the entity takes title to the
13 drug. Such fee must be a flat dollar amount
14 and shall not be directly or indirectly based on,
15 or contingent upon—

16 “(i) drug price, such as wholesale ac-
17 quisition cost or drug benchmark price
18 (such as average wholesale price);

19 “(ii) discounts, rebates, fees, or other
20 direct or indirect remuneration amounts
21 with respect to covered part D drugs dis-
22 pensed to enrollees in a prescription drug
23 plan, except as permitted pursuant to
24 paragraph (1)(A)(ii);

1 “(iii) coverage or formulary placement
2 decisions or the volume or value of any re-
3 ferrals or business generated between the
4 parties to the arrangement; or

5 “(iv) any other amounts or meth-
6 odologies prohibited by the Secretary.

7 “(C) PHARMACY BENEFIT MANAGER.—The
8 term ‘pharmacy benefit manager’ means any
9 person or entity that, either directly or through
10 an intermediary, acts as a price negotiator or
11 group purchaser on behalf of a PDP sponsor or
12 prescription drug plan, or manages the pre-
13 scription drug benefits provided by such spon-
14 sor or plan, including the processing and pay-
15 ment of claims for prescription drugs, the per-
16 formance of drug utilization review, the proc-
17 essing of drug prior authorization requests, the
18 adjudication of appeals or grievances related to
19 the prescription drug benefit, contracting with
20 network pharmacies, controlling the cost of cov-
21 ered part D drugs, or the provision of related
22 services. Such term includes any person or enti-
23 ty that carries out one or more of the activities
24 described in the preceding sentence, irrespective

1 of whether such person or entity calls itself a
2 ‘pharmacy benefit manager.’.”.

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

6 “(F) REQUIREMENTS RELATING TO PHAR-
7 MACY BENEFIT MANAGERS.—For plan years be-
8 ginning on or after January 1, 2027, section
9 1860D–12(h).”.

10 **SEC. 3. ENHANCING PBM TRANSPARENCY REQUIREMENTS.**

11 (a) IN GENERAL.—Section 1150A of the Social Secu-
12 rity Act (42 U.S.C. 1320b–23) is amended—

13 (1) by striking subsection (a) and inserting the
14 following:

15 “(a) PROVISION OF INFORMATION.—

16 “(1) IN GENERAL.—The following entities shall
17 provide the information described in subsection (b)
18 to the Secretary and, in the case of an entity de-
19 scribed in subparagraph (B) or an affiliate of such
20 entity described in subparagraph (C), to the health
21 benefits plan with which the entity is under contract,
22 at such times, and in such form and manner, as the
23 Secretary shall specify:

24 “(A) A health benefits plan.

1 “(B) Any entity that provides pharmacy
2 benefits management services on behalf of a
3 health benefits plan (in this section referred to
4 as a ‘PBM’) that manages prescription drug
5 coverage under a contract with—

6 “(i) a PDP sponsor of a prescription
7 drug plan or an MA organization offering
8 an MA–PD plan under part D of title
9 XVIII; or

10 “(ii) a qualified health benefits plan
11 offered through an exchange established by
12 a State under section 1311 of the Patient
13 Protection and Affordable Care Act.

14 “(C) Any affiliate of an entity described in
15 subparagraph (B) that acts as a price nego-
16 tiator or group purchaser on behalf of such
17 PBM, PDP sponsor, MA organization, or quali-
18 fied health benefits plan.

19 “(2) AFFILIATE DEFINED.—In this section, the
20 term ‘affiliate’ means any entity that is owned by,
21 controlled by, or related under a common ownership
22 structure with a PBM (including an entity owned or
23 controlled by the PDP sponsor of a prescription
24 drug plan, MA organization offering an MA–PD
25 plan, or qualified health benefits plan for which such

1 entity is acting as a price negotiator or group pur-
2 chaser).”;

3 (2) in subsection (b)—

4 (A) in paragraph (2), by inserting “and
5 percentage” after “and the aggregate amount”;
6 and

7 (B) by adding at the end the following new
8 paragraph:

9 “(4) The amount (in the aggregate and
10 disaggregated by type) of all fees the PBM or an af-
11 filiate of the PBM receives from all pharmaceutical
12 manufacturers in connection with patient utilization
13 under the plan, and the amount and percentage (in
14 the aggregate and disaggregated by type) of such
15 fees that are passed through to the plan sponsor or
16 issuer.”; and

17 (3) by adding at the end the following new sub-
18 section:

19 “(e) ANNUAL REPORT.—The Secretary shall make
20 publicly available on the Internet website of the Centers
21 for Medicare & Medicaid Services an annual report that
22 summarizes the trends observed with respect to data re-
23 ported under subsection (b).”.

1 (b) **EFFECTIVE DATE.**—The amendments made by
2 this section shall apply to plan or contract years beginning
3 on or after January 1, 2027.

4 (c) **IMPLEMENTATION.**—Notwithstanding any other
5 provision of law, the Secretary may implement the amend-
6 ments made by this section by program instruction or oth-
7 erwise.

8 (d) **NON-APPLICATION OF THE PAPERWORK REDUC-**
9 **TION ACT.**—Chapter 35 of title 44, United States Code
10 (commonly referred to as the “Paperwork Reduction Act
11 of 1995”), shall not apply to the implementation of the
12 amendments made by this section.

