

118TH CONGRESS  
1ST SESSION

# H. R. 2880

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2023

Mr. CARTER of Georgia (for himself, Ms. BLUNT ROCHESTER, Ms. MALLIOTAKIS, and Mr. AUCHINCLOSS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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.

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