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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To amend titles XI, XVIII, and XIX of the Social Security Act to establish certain requirements under Medicare and Medicaid with respect to prescription drug benefits and pharmacy benefit managers.

IN THE HOUSE OF REPRESENTATIVES

Mr. AUCHINCLOSS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend titles XI, XVIII, and XIX of the Social Security Act to establish certain requirements under Medicare and Medicaid with respect to prescription drug benefits and pharmacy benefit managers.

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 “Pharmacists Fight
5 Back in Medicare and Medicaid Act”.

1 **SEC. 2. ESTABLISHING CERTAIN REQUIREMENTS WITH RE-**
2 **SPECT TO PBMS.**

3 (a) MEDICARE.—

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

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

11 “(1) IN GENERAL.—Each contract entered into
12 with a PDP sponsor under this part with respect to
13 a prescription drug plan offered by such sponsor
14 shall provide—

15 “(A) that the sponsor (and any pharmacy
16 benefit manager acting on behalf of such spon-
17 sor, including any affiliate of such PBM, as ap-
18 plicable)—

19 “(i) shall comply with the pharmacy
20 payment requirements described in para-
21 graph (2);

22 “(ii) shall comply with the rebate
23 pass-through requirements described in
24 paragraph (3);

1 “(iii) shall comply with the reporting
2 requirement described in paragraph (4);
3 and

4 “(iv) may not engage in steering; and

5 “(B) that any pharmacy benefit manager
6 acting on behalf of such sponsor has a written
7 agreement with the PDP sponsor under which
8 the PBM, and any affiliate of such PBM, as
9 applicable, agrees to meet the requirements de-
10 scribed in subparagraph (A).

11 “(2) PHARMACY PAYMENT REQUIREMENTS.—

12 For purposes of paragraph (1)(A)(i), the pharmacy
13 payment requirements described in this paragraph
14 are, with respect to a PDP sponsor (and a PBM
15 acting on behalf of such sponsor, including any affil-
16 iate of such PBM, as applicable) the following:

17 “(A) The sponsor, PBM, or affiliate reim-
18 burses an in-network pharmacy for the ingre-
19 dient cost of a covered part D drug in an
20 amount equal to the sum of—

21 “(i) the national average drug acquisi-
22 tion cost for the drug as of the day that
23 the pharmacy submits a claim for payment
24 for such drug (as determined based upon
25 the retail survey prices obtained under sec-

1 tion 1927(f)(1)), or, in the case of a drug
2 for which no such national average drug
3 acquisition cost is available, the wholesale
4 acquisition cost for such drug as of such
5 day; and

6 “(ii) an amount equal to 4 percent of
7 the amount described in clause (i), or \$50,
8 whichever is less.

9 “(B) With respect to each covered part D
10 drug obtained from an in-network pharmacy by
11 an individual enrolled in the prescription drug
12 plan, the sponsor, PBM, or affiliate—

13 “(i) pays such pharmacy a dispensing
14 fee that is equal to the dispensing fee paid
15 for such drug under the State plan under
16 title XIX in the State in which such phar-
17 macy is located, as reported by the State
18 under section 1927(f)(2); and

19 “(ii) does not require such individual
20 to reimburse such dispensing fee or other-
21 wise increase the amount owed by such in-
22 dividual with respect to such drug to ac-
23 count for such dispensing fee.

24 “(C) The sponsor, PBM, or affiliate does
25 not impose any fee or other payment require-

1 ment upon an in-network pharmacy that would
2 have the effect of reducing the amount received
3 by the pharmacy under the other provisions of
4 this paragraph.

5 “(3) REBATE PASS-THROUGH REQUIRE-
6 MENTS.—For purposes of paragraph (1)(A)(ii), the
7 rebate pass-through requirements described in this
8 paragraph are, with respect to a PDP sponsor (and
9 a PBM acting on behalf of such sponsor, including
10 any affiliate of such PBM, as applicable), that, in
11 the case that such sponsor, PBM, or affiliate re-
12 ceives a manufacturer rebate in connection with a
13 covered part D drug—

14 “(A) in the case that such drug is obtained
15 from an in-network pharmacy by an individual
16 enrolled in the prescription drug plan, the PDP
17 sponsor, PBM, or affiliate applies, at the point
18 of sale of such drug, a reduction to the amount
19 of any coinsurance or copayment owed by such
20 individual with respect to such drug, such that
21 the amount of coinsurance or copayment so
22 owed is calculated based on an amount equal to
23 the reimbursement amount for such drug deter-
24 mined under paragraph (2)(A), less the amount
25 of such rebate (or, in the case of a rebate de-

1 scribed in paragraph (5)(B)(ii), the amount of
2 such rebate that is attributable to such drug
3 and such individual); and

4 “(B) in the case that the entity receiving
5 the manufacturer rebate in connection with
6 such drug is a PBM (or any affiliate of such
7 PBM), the PBM (or affiliate) remits to the
8 PDP sponsor an amount (in this subparagraph
9 referred to as the ‘rebate remittance payment’)
10 equal to the amount of such rebate (or, in the
11 case of a rebate described in paragraph
12 (5)(B)(ii), the amount of such rebate that is at-
13 tributable to such drug and such individual),
14 less the amount by which the coinsurance or co-
15 payment owed by an individual enrolled in the
16 prescription drug plan with respect to such
17 drug was reduced pursuant to subparagraph
18 (A); and

19 “(C) in the case that such drug is obtained
20 from an in-network pharmacy by an individual
21 enrolled in the prescription drug plan who is a
22 subsidy eligible individual (as defined in section
23 1860D–14(a)(3)), the PDP sponsor remits to
24 the Secretary, at such time and in such manner
25 as the Secretary may specify—

1 “(i) in the case that the entity receiv-
2 ing the manufacturer rebate in connection
3 with such drug is a PBM (or any affiliate
4 of such PBM), the amount received by the
5 sponsor under subparagraph (B) with re-
6 spect to such drug and such individual;
7 and

8 “(ii) in the case that the entity receiv-
9 ing the manufacturer rebate in connection
10 with such drug is the PDP sponsor, an
11 amount equal to the amount of such rebate
12 (or, in the case of a rebate described in
13 paragraph (5)(B)(ii), the amount of such
14 rebate that is attributable to such drug
15 and such individual), less the amount by
16 which the coinsurance or copayment owed
17 by such individual with respect to such
18 drug was reduced pursuant to subpara-
19 graph (A).

20 “(4) REPORTING REQUIREMENT.—For pur-
21 poses of paragraph (1)(A)(iii), the reporting require-
22 ment described in this paragraph is, with respect to
23 a PBM and any affiliate of such PBM, that, not
24 later than July 1, 2028, and not less frequently than
25 annually thereafter, the PBM (or affiliate) submits

1 to the PDP sponsor and to the Secretary a report
2 containing a certification that, during the preceding
3 year, such PBM (or affiliate)—

4 “(A) complied with the requirements under
5 paragraphs (2) and (3); and

6 “(B) did not engage in steering.

7 “(5) DEFINITIONS.—For purposes of this sub-
8 section:

9 “(A) AFFILIATE.—The term ‘affiliate’
10 means, with respect to a PBM or PDP sponsor,
11 an entity that, directly or indirectly—

12 “(i) owns, controls, or has an invest-
13 ment interest in such PBM or PDP spon-
14 sor;

15 “(ii) is owned by such PBM or PDP
16 sponsor or controlled by such PBM or
17 PDP sponsor;

18 “(iii) that such PBM or PDP sponsor
19 has an investment interest in; or

20 “(iv) is under common ownership or
21 corporate control of such PBM or PDP
22 sponsor.

23 “(B) MANUFACTURER REBATE.—The term
24 ‘manufacturer rebate’—

1 “(i) means any price concession (in-
2 cluding any payment, discount, administra-
3 tion fee, credit, incentive, or penalty) pro-
4 vided by the manufacturer of a covered
5 part D drug (or any affiliate, subsidiary,
6 third party, or intermediary of such manu-
7 facturer) to a PDP sponsor (or any PBM
8 acting on behalf of such sponsor, including
9 any affiliate of such PBM, as applicable),
10 in connection with the furnishing of such
11 covered part D drug to an individual en-
12 rolled in a prescription drug plan offered
13 by such sponsor; and

14 “(ii) includes any such price conces-
15 sion that is determined based upon—

16 “(I) the aggregate volume of
17 such covered part D drug (or a group
18 of covered part D drugs that includes
19 such part D drug) furnished to indi-
20 viduals enrolled in a prescription drug
21 plan offered by such sponsor; or

22 “(II) the furnishing of any serv-
23 ice provided to the manufacturer by
24 such sponsor (or any PBM acting on
25 behalf of such sponsor, or any affiliate

1 of such PBM (including an off-shore
2 entity or group purchasing organiza-
3 tion), as applicable) in connection
4 with the furnishing of such covered
5 part D drug (or a group of covered
6 part D drugs that includes such part
7 D drug).

8 “(C) PHARMACY BENEFIT MANAGER;
9 PBM.—The terms ‘pharmacy benefit manager’
10 and ‘PBM’ mean a person, business entity, af-
11 filiate, or other entity that performs pharmacy
12 benefits management services.

13 “(D) PHARMACY BENEFITS MANAGEMENT
14 SERVICES.—The term ‘pharmacy benefits man-
15 agement services’—

16 “(i) means the managing or adminis-
17 tration of a plan or program that pays for,
18 reimburses, and covers the cost of prescrip-
19 tion drugs and medical devices; and

20 “(ii) includes the processing and pay-
21 ment of claims for prescription drugs and
22 the adjudication of appeals or grievances
23 related to qualified prescription drug cov-
24 erage under this part.

1 “(E) STEERING.—The term ‘steering’
2 means, with respect to a PDP sponsor (and any
3 PBM acting on behalf of such sponsor, includ-
4 ing any affiliate of such PBM, as applicable)—

5 “(i) directing, ordering, or requiring
6 an enrollee in a prescription drug plan to
7 use a specific pharmacy, including an affil-
8 iate pharmacy, for the purpose of filling a
9 prescription for a covered part D drug or
10 receiving services from a pharmacist;

11 “(ii) offering or implementing a pre-
12 scription drug plan design that—

13 “(I) requires an enrollee in a pre-
14 scription drug plan to utilize a phar-
15 macy, including an affiliate pharmacy;
16 or

17 “(II) increases costs to the PDP
18 sponsor or an enrollee, including by
19 requiring an enrollee to pay the full
20 cost for a covered part D drug when
21 such enrollee chooses not to use an af-
22 filiate pharmacy;

23 “(iii) advertising, marketing, or pro-
24 moting a pharmacy, including an affiliate
25 pharmacy, in a manner that encourages

1 enrollees to choose such pharmacy over an-
2 other in-network pharmacy;

3 “(iv) creating more than one network
4 of pharmacies with respect to a prescrip-
5 tion drug plan such that an in-network
6 pharmacy belonging to a specific network
7 (such as a preferred pharmacy network,
8 narrow pharmacy network, or specialty
9 pharmacy network) receives preferential
10 treatment, or engaging in any practice (in-
11 cluding accreditation or credentialing
12 standards, day supply limitations, or deliv-
13 ery method limitations) that has the effect
14 of excluding an in-network pharmacy from
15 participation in the network of the PDP
16 sponsor or restricting an in-network phar-
17 macy from filling a prescription for a cov-
18 ered part D drug; or

19 “(v) engaging in any practice that at-
20 tempts to influence or induce a manufac-
21 turer of a covered part D drug to limit the
22 distribution of such drug to a small num-
23 ber of pharmacies or certain types of phar-
24 macies, or to restrict distribution of such
25 drug to non-affiliate pharmacies.”.

1 (2) REQUIREMENT TO DEDUCT EXPECTED RE-
2 BATE AMOUNTS FROM PLAN BIDS.—Section 1860D–
3 11(b)(2)(C) of the Social Security Act (42 U.S.C.
4 1395w–111(b)(2)(C)) is amended—

5 (A) in clause (iii), by striking “and” at the
6 end;

7 (B) by redesignating clause (iv) as clause
8 (v); and

9 (C) by inserting after clause (iii) the fol-
10 lowing new clause:

11 “(iv) with respect to bids beginning
12 with plan year 2027, assumptions regard-
13 ing any rebate remittance payments pro-
14 vided under section 1860D–12(h)(3)(B),
15 subtracted from the actuarial value to
16 produce such bid; and”.

17 (3) MA–PD PLANS.—Section 1857(f)(3) of the
18 Social Security Act (42 U.S.C. 1395w–27(f)(3)) is
19 amended by adding at the end the following new
20 subparagraph:

21 “(F) REQUIREMENTS RELATING TO PHAR-
22 MACY BENEFIT MANAGERS.—For plan years be-
23 ginning on or after January 1, 2027, section
24 1860D–12(h).”.

25 (b) MEDICAID.—

1 (1) IN GENERAL.—Section 1927 of the Social
2 Security Act (42 U.S.C. 1396r–8) is amended—

3 (A) in subsection (e), by adding at the end
4 the following new paragraph:

5 “(6) REQUIREMENTS RELATED TO PHARMACY
6 BENEFIT MANAGERS.—A contract between the State
7 and a pharmacy benefit manager, or a contract be-
8 tween the State and a managed care entity or other
9 specified entity (as such terms are defined in section
10 1903(m)(9)(D) and collectively referred to in this
11 paragraph as the ‘entity’) that includes provisions
12 making the entity responsible for coverage of covered
13 outpatient drugs dispensed to individuals enrolled
14 with the entity, shall require—

15 “(A) that the entity or PBM (as applica-
16 ble) does not engage in steering;

17 “(B) that any payment made by the entity
18 or the PBM (as applicable) for such a drug and
19 related administrative services (as applicable),
20 including payments made by a PBM on behalf
21 of the State or entity, is equal to—

22 “(i) the ingredient cost of such drug,
23 which shall be in an amount equal to the
24 sum of—

1 “(I) the national average drug
2 acquisition cost for the drug as of the
3 day that the pharmacy submits a
4 claim for payment for such drug (as
5 determined based upon the retail sur-
6 vey prices obtained under subsection
7 (f)(1)), or, in the case of a drug for
8 which no such national average drug
9 acquisition cost is available, the
10 wholesale acquisition cost for such
11 drug as of such day; and

12 “(II) an amount equal to 4 per-
13 cent of the amount described in item
14 (aa), or \$50, whichever is less; and

15 “(ii) a dispensing fee that is equal to
16 the dispensing fee paid for such drug
17 under the State plan under this title in the
18 State in which such pharmacy is located,
19 as reported by the State under subsection
20 (f)(2); and

21 “(C) that, in the case that the entity or
22 PBM (as applicable) receives from a manufac-
23 turer of a covered outpatient drug a rebate or
24 discount in connection with the furnishing of
25 such drug to an individual enrolled under the

1 State plan (or waiver of such plan), the entity
2 or PBM remits to the State an amount equal
3 to the amount of such rebate.”; and

4 (B) in subsection (k), by adding at the end
5 the following new paragraphs:

6 “(13) PHARMACY BENEFIT MANAGER; PBM.—
7 The terms ‘pharmacy benefit manager’ and ‘PBM’
8 have the meaning given such terms in section
9 1860D–12(h)(C).

10 “(14) STEERING.—The term ‘steering’ has the
11 meaning given such term in section 1860D–
12 12(h)(E), except that any reference in such section
13 to the ‘PDP sponsor’ is deemed a reference to a
14 managed care entity or other specified entity (as
15 such terms are defined in section 1903(m)(9)(D))
16 that is responsible for coverage of covered outpatient
17 drugs, and any reference to a ‘covered part D drug’
18 is deemed a reference to a covered outpatient
19 drug.”.

20 (2) CONFORMING AMENDMENTS.—Section
21 1903(m) of such Act (42 U.S.C. 1396b(m)) is
22 amended—

23 (A) in paragraph (2)(A)(xiii)—

24 (i) by striking “and (III)” and insert-
25 ing “(III)”;

1 (ii) by inserting before the period at
2 the end the following: “, and (IV) if the
3 contract includes provisions making the en-
4 tity responsible for coverage of covered
5 outpatient drugs, the entity shall comply
6 with the requirements of section
7 1927(e)(6)”; and

8 (iii) by moving the margin 2 ems to
9 the left; and

10 (B) by adding at the end the following new
11 paragraph:

12 “(10) No payment shall be made under this title to
13 a State with respect to expenditures incurred by the State
14 for payment for services provided by an other specified
15 entity (as defined in paragraph (9)(D)(iii)) unless such
16 services are provided in accordance with a contract be-
17 tween the State and such entity which satisfies the re-
18 quirements of paragraph (2)(A)(xiii).”.

19 (3) EFFECTIVE DATE.—The amendments made
20 by this subsection shall apply to contracts between
21 States and managed care entities, other specified en-
22 tities, or pharmacy benefit managers that have an
23 effective date beginning on or after January 1,
24 2027.

25 (c) PENALTIES FOR NONCOMPLIANT PBMs.—

1 (1) CRIMINAL PENALTIES.—Section 1128B of
2 the Social Security Act (42 U.S.C. 1320a–7b) is
3 amended by adding at the end the following new
4 subsection:

5 “(i) Whoever provides pharmacy benefits manage-
6 ment services on behalf of a prescription drug plan spon-
7 sor under part D of title XVIII or a medicaid managed
8 care organization under title XIX and—

9 “(1) knowingly and willfully fails to comply
10 with the pharmacy payment requirements under sec-
11 tion 1860D–12(h)(2) or section 1927(e)(6)(A), as
12 applicable;

13 “(2) knowingly and willfully engages in steering
14 (as defined in section 1860D–12(h)); or

15 “(3) knowingly and willfully fails to comply
16 with the rebate pass-through requirements under
17 section 1860D–12(h)(3) or section 1927(e)(6)(C), as
18 applicable,

19 shall be guilty of a felony and upon conviction thereof shall
20 be fined not more than \$1,000,000, or imprisoned for not
21 more than 10 years, or both.”.

22 (2) CIVIL MONETARY PENALTIES.—Section
23 1128A(a) of the Social Security Act (42 U.S.C.
24 1320a–7a(a)) is amended—

1 (A) in paragraph (10), by adding “or” at
2 the end;

3 (B) by inserting after paragraph (10) the
4 following new paragraph:

5 “(11) commits an act described in section
6 1128B(i);”; and

7 (C) in the first sentence—

8 (i) by striking “or in cases under
9 paragraph (9)” and inserting “in cases
10 under paragraph (9)”; and

11 (ii) by striking “fact)” and inserting
12 “fact, or in cases under paragraph (11),
13 \$1,000,000 for each such act)”.

14 (3) EFFECTIVE DATE.—The amendments made
15 by this subsection shall apply beginning on January
16 1, 2027.

17 **SEC. 3. IMPROVING PRESCRIPTION DRUG TRANSPARENCY**
18 **UNDER THE MEDICAID PROGRAM.**

19 Section 1927(f) of the Social Security Act (42 U.S.C.
20 1396r–8(f)) is amended—

21 (1) in the subsection heading, by striking “RE-
22 TAIL” and inserting “COVERED OUTPATIENT DRUG”;
23 and

24 (2) in paragraph (1)—

1 (A) in the paragraph heading, by striking
2 “RETAIL” and inserting “COVERED OUT-
3 PATIENT DRUG”;

4 (B) in subparagraph (A)(i), by striking
5 “retail community pharmacy” and inserting
6 “pharmacy that dispenses covered outpatient
7 drugs, including a retail community pharmacy,
8 mail-order pharmacy, specialty pharmacy, nurs-
9 ing home pharmacy, long-term care facility
10 pharmacy, hospital pharmacy, or clinic phar-
11 macy (but not including a charitable pharmacy
12 or a not-for-profit pharmacy)”;

13 (C) in subparagraph (C)—

14 (i) in clause (i)—

15 (I) by striking “retail”; and

16 (II) by striking “prescription”

17 and inserting “covered outpatient”;

18 and

19 (ii) in clause (ii), by striking “retail
20 community”;

21 (D) in subparagraph (D)(ii), by striking
22 “retail”;

23 (E) in subparagraph (E), by striking the
24 term “retail” each place it appears; and

1 (F) by adding at the end the following new
2 subparagraphs:

3 “(F) SURVEY REPORTING.—In order to
4 meet the requirement of section 1902(a)(54), a
5 State shall require that any pharmacy in the
6 State that receives any payment, reimburse-
7 ment, administrative fee, discount, rebate, or
8 other price concession related to the dispensing
9 of a covered outpatient drug to an individual re-
10 ceiving benefits under this title, regardless of
11 whether such payment, reimbursement, fee, dis-
12 count, rebate, or other price concession is re-
13 ceived directly from the State or a managed
14 care entity or other specified entity (as such
15 terms are defined in section 1903(m)(9)(D)), or
16 is received indirectly from a pharmacy benefits
17 manager or another entity that has a contract
18 with the State or a managed care entity or
19 other specified entity (as so defined)—

20 “(i) shall respond to surveys con-
21 ducted under this paragraph; and

22 “(ii) shall include in each such re-
23 sponse the pharmacy’s acquisition price for
24 each such drug, net of all such payments,
25 reimbursements, administrative fees, dis-

1 counts, rebates, and other price conces-
2 sions (or, in the case that the pharmacy is
3 unable to determine the net acquisition
4 cost for such a drug at the time that the
5 survey is received, the pharmacy's nego-
6 tiated price for such drug).

7 “(G) SURVEY INFORMATION.—The Sec-
8 retary shall make information on national drug
9 acquisition prices obtained under this para-
10 graph publicly available. Such information shall
11 include at least the following:

12 “(i) The monthly response rate to the
13 survey, including a list of pharmacies not
14 in compliance with subparagraph (F).

15 “(ii) The sampling methodology and
16 number of pharmacies sampled monthly.

17 “(iii) Information on price concessions
18 to each pharmacy, including discounts, re-
19 bates, and other price concessions, to the
20 extent that such information is available
21 during the survey period.

22 “(H) LIMITATION ON USE OF APPLICABLE
23 NON-RETAIL PHARMACY PRICING INFORMA-
24 TION.—No State shall use pricing information
25 reported by a pharmacy that is not a retail

- 1 pharmacy to develop or inform reimbursement
- 2 rates for retail community pharmacies.”.