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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To amend chapter 89 of title 5, United States Code, to limit the costs of pharmacy benefit managers with respect to Federal employee health benefit plans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To amend chapter 89 of title 5, United States Code, to limit the costs of pharmacy benefit managers with respect to Federal employee health benefit plans, and for other purposes.

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 Federal Employee Health Benefit Plans Act]”.

1 **SEC. 2. PHARMACY PAYMENT AND REIMBURSEMENT RE-**
2 **QUIREMENTS.**

3 (a) IN GENERAL.—Section 8904 of title 5, United
4 States Code, is amended by adding at the end the fol-
5 lowing new subsection:

6 “(c)(1) The Office of Personnel Management may not
7 contract for or approve a health benefits plan under sec-
8 tion 8903 of this title unless such plan—

9 “(A) requires any pharmacy benefits man-
10 ager administering prescription drug benefits
11 on behalf of such health benefits plan, either di-
12 rectly or through an affiliate of such pharmacy
13 benefits manager, to—

14 “(i) reimburse an in-network phar-
15 macy for the ingredient cost of a prescrip-
16 tion drug in an amount equal to the sum
17 of—

18 “(I) the national average drug
19 acquisition cost for the drug on the
20 day of claim adjudication (or, in the
21 case of a drug that does not appear
22 on the national average drug acquisi-
23 tion cost index, the wholesale acquisi-
24 tion cost for such prescription drug);
25 and

1 “(II) the lesser of the amount
2 that is equal to 4 percent of the
3 amount described in subclause (I) or
4 \$50;

5 “(ii) pay an in-network pharmacy a
6 professional dispensing fee that is equal to
7 the professional dispensing fee paid by the
8 State in which the pharmacy is located
9 under title XIX of the Social Security Act
10 (42 U.S.C. 1396 et seq.) for dispensing a
11 prescription drug; and

12 “(iii) for any manufacturer rebate
13 such pharmacy benefits manager or affil-
14 iate thereof receives in connection with a
15 drug obtained at an in-network pharmacy
16 by an individual pursuant to such prescrip-
17 tion drug benefits, such pharmacy benefits
18 manager or affiliate shall—

19 “(I) apply, at the point of sale of
20 such drug, a reduction to the amount
21 of any coinsurance or copayment owed
22 by such individual with respect to
23 such drug, such that the amount of
24 coinsurance or copayment so owed is

1 calculated based on the net cost of the
2 drug, including such rebate; and

3 “(II) remit to the carrier for
4 such health benefits plan an amount
5 equal to the amount of such rebate,
6 less the amount by which the coinsur-
7 ance or copayment owed by such indi-
8 vidual with respect to such drug was
9 reduced under subclause (I);

10 “(B) prohibits such pharmacy benefits
11 manager and any affiliate thereof from—

12 “(i) directing, ordering, or requiring
13 an individual enrolled in such health bene-
14 fits plan to use a specific pharmacy, in-
15 cluding a pharmacy that is an affiliate of
16 such pharmacy benefits manager, for the
17 purpose of filling a prescription for a pre-
18 scription drug or receiving services;

19 “(ii) advertising, marketing, or pro-
20 moting a specific pharmacy, including a
21 pharmacy that is an affiliate of such phar-
22 macy benefits manager, over another in-
23 network pharmacy;

24 “(iii) creating any network or engag-
25 ing in any practice, including accreditation

1 or credentialing standards, day supply lim-
2 itations, or delivery method limitations,
3 that excludes an in-network pharmacy or
4 restricts an in-network pharmacy from fill-
5 ing a prescription for a prescription drug
6 for which benefits are available under such
7 health benefits plan;

8 “(iv) directly or indirectly engaging in
9 any practice that attempts to influence or
10 induce a pharmaceutical manufacturer to
11 limit the distribution of a prescription drug
12 to a small number of pharmacies or certain
13 types of pharmacies, or to restrict distribu-
14 tion of such drug to non-affiliate phar-
15 macies; or

16 “(v) requiring an individual enrolled
17 in such health benefits plan to reimburse
18 the pharmacy benefits manager or affiliate
19 for the dispensing fee paid to an in-net-
20 work pharmacy pursuant to subparagraph
21 (A)(ii) with respect to a prescription drug
22 obtained at such pharmacy by such indi-
23 vidual, or otherwise increasing the amount
24 owed by such individual with respect to

1 such drug to account for such dispensing
2 fee;

3 “(C) prohibits any such pharmacy benefits
4 manager from lowering, imposing a fee on, or
5 otherwise make any adjustment to a prescrip-
6 tion drug claim at the time the claim for such
7 drug is adjudicated or after the claim is adju-
8 dicated that reduces the amount a pharmacy is
9 reimbursed for such drug pursuant to subpara-
10 graph (A), including by charging any fee to
11 such pharmacy that is not associated with a
12 prescription drug claim; and

13 “(D) requires the carrier providing such
14 health benefits plan to cooperate with any in-
15 spection of such carrier carried out under sec-
16 tion 8902b(a)(3)(B) of this title, including by
17 making available to the Office such documents,
18 personnel, and facilities of the carrier as and
19 when determined necessary to Office to carry
20 out such inspection.

21 “(2) In this subsection:

22 “(A) The term ‘affiliate’ means an entity, in-
23 cluding a pharmacy, that directly or indirectly
24 through one or more intermediaries—

1 “(i) owns, in whole or in part, or controls
2 a pharmacy benefits manager;

3 “(ii) is owned, in whole or in part, or con-
4 trolled by that is a pharmacy benefits manager;
5 or

6 “(iii) is a subsidiary of or owned, in whole
7 or in part, or controlled by an entity that owns
8 or controls a pharmacy benefits manager.

9 “(B) The term ‘beneficiary’ means a person
10 who receives prescription drug benefits under a
11 health benefits plan.

12 “(C) The term ‘in-network pharmacy’ means a
13 pharmacy that is licensed by the State board of
14 pharmacy in the State in which such pharmacy is lo-
15 cated, that fills or seeks to fill a prescription for a
16 prescription drug for a beneficiary, and is not barred
17 from participating in the program under this chap-
18 ter under section 8902a.

19 “(D) The term ‘pharmacy benefits manager’
20 means a person, business entity, affiliate, or other
21 entity that performs pharmacy benefits management
22 services.

23 “(E) The term ‘pharmacy benefits management
24 services’—

1 “(i) means the managing or administration
2 of a plan or program that pays for, reimburses,
3 and covers the cost of prescription drugs and
4 medical devices; and

5 “(ii) includes the processing and payment
6 of claims for prescription drugs and the adju-
7 dication of appeals or grievances related to the
8 prescription drug benefit.

9 “(F) The term ‘prescription drug’ means a pre-
10 scription drug covered by a health benefits plan that
11 is dispensed to a beneficiary for self-administra-
12 tion.”.

13 (b) NONCOMPLIANCE PENALTIES.—

14 (1) IN GENERAL.—Chapter 89 of title 5, United
15 States Code, is amended by inserting after section
16 8902a the following new section:

17 **“§ 8902b. Pharmacy benefit manager-related sanc-**
18 **tions**

19 “(a) MONETARY PENALTIES.—

20 “(1) IN GENERAL.—Except as otherwise pro-
21 vided by this subsection and subsection (c), if the
22 Office of Personnel Management determines that a
23 pharmacy benefits manager violated a requirement
24 or prohibition applicable to such pharmacy benefits
25 manager with respect to a health benefits plan pur-

1 suant to section 8904(c)(1) of this title, the Office
2 shall, in addition to any other penalties that may be
3 prescribed by law and after consultation with the At-
4 torney General, impose a civil monetary penalty of
5 \$10,000 for each such violation—

6 “(A) on such pharmacy benefits manager;
7 and

8 “(B) if, during the 10-year period ending
9 on the imposition of such civil monetary pen-
10 alty, not fewer than five civil monetary pen-
11 alties have been imposed on such pharmacy
12 benefits manager under this paragraph with re-
13 spect to health benefit plans provided by the
14 carrier providing such health benefits plan, on
15 such carrier.

16 “(2) MAXIMUM PENALTY AMOUNT.—

17 “(A) PHARMACY BENEFIT MANAGERS.—
18 For each carrier providing a health benefits
19 plan with respect to which a pharmacy benefits
20 manager is determined to have committed a vio-
21 lation described in paragraph (1), the total
22 amount of civil monetary penalties imposed on
23 such pharmacy benefits manager under such
24 paragraph for violations with respect to the

1 health benefit plans of such carrier many not
2 exceed \$100,000 during any 10-year period.

3 “(B) CARRIERS.—The total amount of civil
4 monetary penalties imposed on a carrier under
5 paragraph (1) may not exceed \$50,000 during
6 any 10-year period.

7 “(3) REMEDIATION PLAN.—

8 “(A) IN GENERAL.—Not later than 60
9 days after the date on which the Office of Per-
10 sonnel Management imposes a civil monetary
11 penalty on a carrier under paragraph (1) with
12 respect to a pharmacy benefits manager that is
13 the fifth such civil monetary penalty imposed on
14 such carrier with respect to such pharmacy ben-
15 efits manager in a 10-year period, such carrier
16 shall develop and submit to the Office of Per-
17 sonnel Management a plan to ensure that each
18 pharmacy benefit manager administering pre-
19 scription drug benefits on behalf of a health
20 benefits plan provided by such carrier complies
21 with the requirements and prohibitions applica-
22 ble to such pharmacy benefit manager pursuant
23 to section 8904(c)(1).

24 “(B) OVERSIGHT.—Not later than 60 days
25 after the date on which a carrier submits plan

1 under subparagraph (A), and with such fre-
2 quency thereafter as determined appropriate by
3 the Office of Personnel Management, the Office
4 of Personnel Management shall inspect such
5 carrier to assess the compliance of such carrier
6 with such plan.

7 “(4) SEQUENTIAL IMPOSITION.—For the pur-
8 poses of this subsection, any civil monetary penalties
9 concurrently imposed under paragraph (1) shall be
10 deemed to be imposed sequentially.

11 “(5) CIVIL ACTION.—

12 “(A) IN GENERAL.—A civil action to re-
13 cover a civil monetary penalty imposed under
14 this subsection shall be brought by the Attorney
15 General in the name of the United States, and
16 may be brought in the United States district
17 court for the district where the claim involved
18 was presented or where the pharmacy benefits
19 manager or carrier subject to such civil mone-
20 tary penalty resides.

21 “(B) TREATMENT OF AMOUNTS RECOV-
22 ERED.—Amounts recovered under this sub-
23 section shall be paid to the Office of Personnel
24 Management for deposit into the Employees
25 Health Benefits Fund.

1 “(6) DEDUCTION FROM AMOUNTS OWED.—The
2 amount of a civil monetary penalty imposed under
3 this subsection may be deducted from any sum then
4 or later owing by the United States to the party
5 against whom the penalty or assessment has been
6 levied.

7 “(7) STATUTE OF LIMITATIONS.—The Office of
8 Personnel Management may not initiate any action
9 to impose a civil monetary penalty on a pharmacy
10 benefits manager or carrier under this subsection
11 later than 6 years after the date of the violation of
12 the requirement or prohibition by the pharmacy ben-
13 efits manager for which such civil monetary penalty
14 would be imposed.

15 “(b) DEBARMENT.—

16 “(1) IN GENERAL.—The Office of Personnel
17 Management shall bar a pharmacy benefits manager
18 from administering prescription drug benefits on be-
19 half of a health benefits plan, either directly or
20 through an affiliate of such pharmacy benefits man-
21 ager, under the program under this chapter if, in
22 any 10-year period, the Office of Personnel Manage-
23 ment imposes 10 or more civil monetary penalties on
24 such pharmacy benefits manager under subsection
25 (a).

1 “(2) EFFECTIVE DATE.—Except as provided by
2 subsection (c), debarment of a pharmacy benefits
3 manager under paragraph (1) shall be effective on
4 the date that is 90 days after the date on which the
5 Office of Personnel Management imposes the first
6 civil monetary penalty pursuant to which such phar-
7 macy benefits manager is subject to such debarment.

8 “(3) PAYMENT PROHIBITED.—

9 “(A) IN GENERAL.—Notwithstanding sec-
10 tion 8902(j) or any other provision of this chap-
11 ter, if, under this section a pharmacy benefits
12 manager is debarred under paragraph (1), no
13 payment may be made by a carrier pursuant to
14 any contract under this chapter (either to such
15 pharmacy benefits manager or by reimburse-
16 ment) for any service or supply furnished by
17 such pharmacy benefits manager during the pe-
18 riod of the debarment.

19 “(B) SUBCONTRACT CONTRACTS.—Each
20 contract under this chapter shall contain such
21 provisions as may be necessary to carry out
22 subparagraph (A) and the other provisions of
23 this section.

24 “(4) TERMINATION.—The debarment of a phar-
25 macy benefits manager under paragraph (1) shall be

1 immediately terminated if all civil monetary pen-
2 alties pursuant to which such pharmacy benefits
3 manager is subject to such debarment are over-
4 turned or wholly set aside on appeal.

5 “(5) RULE OF CONSTRUCTION.—For the pur-
6 poses of this subsection, a civil monetary penalty is
7 a civil monetary penalty pursuant to which a phar-
8 macy benefits manager is subject to debarment
9 under paragraph (1) if such civil monetary penalty
10 is not less than the tenth civil monetary penalty im-
11 posed on such pharmacy benefits manager under
12 subsection (a) during a 10-year period that—

13 “(A) has not been appealed and for which
14 the period of appeal has elapsed; or

15 “(B) has been appealed, all appeals have
16 been exhausted, and has not be overturned or
17 wholly set aside.

18 “(c) HEARING.—

19 “(1) IN GENERAL.—The Office of Personnel
20 Management shall not make a determination adverse
21 to a pharmacy benefits manager or carrier under
22 subsection (a) or a determination adverse to a phar-
23 macy benefits manager (b) until such pharmacy ben-
24 efits manager or carrier, as applicable, has been
25 given reasonable notice and an opportunity for the

1 determination to be made after a hearing as pro-
2 vided in accordance with this subsection.

3 “(2) HEARING REQUIRED.—Any pharmacy ben-
4 efits manager or carrier that is the subject of an ad-
5 verse determination by the Office of Personnel Man-
6 agement under this section shall be entitled to rea-
7 sonable notice and an opportunity to request a hear-
8 ing on the record, and to judicial review as provided
9 in this subsection after the Office of Personnel Man-
10 agement makes a final decision regarding such ad-
11 verse determination.

12 “(3) HEARING CRITERIA.—The Office of Per-
13 sonnel Management shall grant a request for a hear-
14 ing under paragraph (2) upon a showing that due
15 process rights have not previously been afforded with
16 respect to any finding of fact which is relied upon
17 as a cause for an adverse determination under this
18 section. Such hearing shall be conducted without re-
19 gard to subchapter II of chapter 5 and chapter 7 of
20 this title by a hearing officer who shall be designated
21 by the Director of the Office of Personnel Manage-
22 ment and who shall not otherwise have been involved
23 in the adverse determination being appealed.

24 “(4) REQUEST FOR HEARING.—A request for a
25 hearing under paragraph (2) shall be filed within

1 such period and in accordance with such procedures
2 as the Office of Personnel Management shall pre-
3 scribe by regulation.

4 “(5) APPEAL.—

5 “(A) IN GENERAL.—Any pharmacy bene-
6 fits manager or carrier adversely affected by a
7 final decision of the Office of Personnel Man-
8 agement regarding an adverse determination
9 that is made after a hearing under paragraph
10 (2) with respect to such adverse determination
11 and to which such pharmacy benefits manager
12 or carrier was a party may seek review of such
13 final decision in the United States District
14 Court for the District of Columbia or for the
15 district in which the pharmacy benefits man-
16 ager or carrier resides or has his or her prin-
17 cipal place of business by filing a notice of ap-
18 peal in such court within 60 days after the date
19 the decision is issued, and by simultaneously
20 sending copies of such notice by certified mail
21 to the Director of the Office and to the Attor-
22 ney General.

23 “(B) ANSWER.—In answer to an appeal
24 filed under subparagraph (A), the Director of
25 the Office of Personnel Management shall

1 promptly file in the relevant court a certified
2 copy of the transcript of the record of the hear-
3 ing conducted under paragraph (2) and other
4 evidence upon which the findings and final deci-
5 sion complained of are based.

6 “(C) COURT AUTHORITY.—With respect to
7 an appeal filed under subparagraph (A), the
8 court shall have power to enter, upon the plead-
9 ings and evidence of record, a judgment affirm-
10 ing, modifying, or setting aside, in whole or in
11 part, the final decision of the Office of Per-
12 sonnel Management that is the subject of such
13 appeal, with or without remanding the case for
14 a rehearing. The court shall not set aside or re-
15 mand such final decision unless there is not
16 substantial evidence on the record, taken as
17 whole, to support the such final decision or un-
18 less the actions of the Office of Personnel Man-
19 agement with respect to such final decision con-
20 stitutes an abuse of discretion.

21 “(6) DEFENSE FORFEITURE.—Matters that
22 were raised or that could have been raised in a hear-
23 ing under paragraph (2) or an appeal under para-
24 graph (5) may not be raised as a defense to a civil

1 action by the United States to collect a civil mone-
2 tary penalty imposed under subsection (a).

3 “(d) AFFILIATE; PHARMACY BENEFITS MANAGER;
4 PRESCRIPTION DRUG DEFINED.—In this section, the
5 terms ‘affiliate’, ‘pharmacy benefits manager’ and ‘pre-
6 scription drug’ have the meanings given such terms, re-
7 spectively, in section 8904(c) of this title.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-
9 tions for chapter 89 of title 5, United States Code,
10 is amended by inserting after the item relating to
11 section 8902a the following new item:

“8902b. Pharmacy benefit manager-related sanctions.”.

12 (c) CONFORMING AMENDMENT.—Section 8903a(b)
13 of title 5, United States Code, is amended—

14 (1) in paragraph (3), by striking “and” at the
15 end;

16 (2) in paragraph (4), by striking the period at
17 the end and inserting “; and”; and

18 (3) by adding at the end the following new
19 paragraph:

20 “(5) complies with the requirements under sec-
21 tion 8904(c).”.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this Act shall take effect on the date that is one year after
24 the date of the enactment of this Act.