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118TH CONGRESS
2D SESSION

H. R. 9096

To establish pharmacy payment and reimbursement by pharmacy benefits managers; to amend title XIX of the Social Security Act to improve prescription drug transparency; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2024

Mr. AUCHINCLOSS (for himself and Mrs. HARSHBARGER) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Oversight and Accountability, and Armed Services, 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 establish pharmacy payment and reimbursement by pharmacy benefits managers; to amend title XIX of the Social Security Act to improve prescription drug transparency; 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 Act’’.

1 **SEC. 2. PHARMACY PAYMENT AND REIMBURSEMENT.**

2 (a) IN GENERAL.—A pharmacy benefits manager
3 (hereinafter referred to as a ''PBM'') administering pre-
4 scription drug benefits on behalf of a Federal health care
5 program, either directly or through an affiliate of such
6 PBM, shall, on behalf of such program—

7 (1) reimburse an in-network pharmacy for the
8 ingredient cost of a prescription drug in an amount
9 equal to the sum of—

10 (A) the national average drug acquisition
11 cost for the drug on the day of claim adjudica-
12 tion (or, in the case of a drug that does not ap-
13 pear on the national average drug acquisition
14 cost index, the wholesale acquisition cost for
15 such prescription drug); and

16 (B) an amount equal to 2 percent of the
17 amount described in subparagraph (A), or $25,
18 whichever is less;

19 (2) pay an in-network pharmacy a professional
20 dispensing fee that is equal to the professional dis-
21 pensing fee paid by the State in which the pharmacy
22 is located under title XIX of the Social Security Act
23 (42 U.S.C. 1396 et seq.) for dispensing a prescrip-
24 tion drug; and

25 (3)(A) subject to subparagraph (B), calculate a
26 beneficiary's cost sharing requirement for a prescrip-

1 tion drug at the point of sale based on a price that
2 is reduced by an amount equal to at least 80 percent
3 of all rebates received in connection with the dis-
4 pensing of the prescription drug; or
5 (B) in the case of a prescription drug for which
6 the rebate cannot be determined at the point of sale,
7 calculate a beneficiary's cost sharing requirement for
8 a prescription drug at the point of sale based on a
9 price that is reduced by an amount equal to 80 per-
10 cent of the lesser of the average aggregate rebate for
11 such drug in the previous calendar year, or the high-
12 est possible rebate that can be received for such
13 drug.
14 (b) PROHIBITED ACTIONS.—A PBM administering
15 prescription drug benefits under a Federal health care
16 program shall not—
17 (1) engage in steering;
18 (2) engage in any practice that restricts a bene-
19 ficiary from using any in-network pharmacy to fill a
20 prescription drug;
21 (3) charge a beneficiary more for a prescription
22 drug than the amount of reimbursement made to the
23 pharmacy that dispenses such drug;
24 (4) require a beneficiary to obtain a brand
25 name prescription drug when a lower cost, AB-rated

1 generic version of such brand name drug is avail-
2 able;
3 (5) engage in spread pricing;
4 (6) lower, impose a fee, or otherwise make an
5 adjustment to a prescription drug claim at the time
6 the claim for such drug is adjudicated, or after the
7 claim is adjudicated, that in any way reduces the
8 amount a pharmacy is reimbursed for such drug
9 pursuant to subsection (a), including a fee charged
10 to a pharmacy even if such fee is not tied to a pre-
11 scription drug claim; or
12 (7) engage in any practice that bases pharmacy
13 reimbursement for a prescription drug on pharmacy,
14 patient, or any other outcomes, scores, or metrics,
15 provided that nothing shall prohibit pharmacy reim-
16 bursement, in addition to reimbursement pursuant
17 to subsection (a), for providing care and services
18 within a pharmacy or a pharmacist's applicable
19 State scope of practice.
20 (c) RECOUPMENT OF FUNDS PURSUANT TO
21 AUDIT.—A PBM may recoup funds pursuant to an audit
22 in compliance with applicable Federal and State law in
23 which—
24 (1) an overpayment or misfill was found to have
25 occurred; or

1 (2) in the case of fraud, provided that all
2 amounts recouped be passed back to the applicable
3 Federal health care program.

4 (d) ENFORCEMENT.—

5 (1) IN GENERAL.—A PBM, or any person act-
6 ing on behalf of a PBM, that knowingly and willfully
7 violates this Act shall be guilty of a felony and, upon
8 conviction thereof, shall be fined not more than
9 $1,000,000 for each act in violation, or imprisoned
10 for not more than 10 years, or both.

11 (2) CIVIL ACTION.—A person may bring a civil
12 action for violation of this Act for the person and
13 the United States Government. The action shall be
14 brought in the name of the United States Govern-
15 ment. The action may be dismissed only if the court
16 and the United States Attorney General give written
17 consent to the dismissal and their reasons for con-
18 senting. Any such action shall be subject to the same
19 terms, conditions, and provisions set forth in section
20 3730 of title 31, United States Code, which are
21 hereby incorporated into this Act for purposes of a
22 civil action brought against a PBM, or any person
23 acting on behalf of a PBM, that knowingly and will-
24 fully violates this Act.

25 (e) DEFINITIONS.—In this section:

1 (1) AFFILIATE.—The term ''affiliate'' means an
2 entity, including a pharmacy, that directly or indi-
3 rectly through one or more intermediaries—
4 (A) owns, controls, or has an investment
5 interest in a PBM;
6 (B) is owned, controlled by, or has an in-
7 vestment interest holder who is a PBM; or
8 (C) is under common ownership or cor-
9 porate control of a PBM.
10 (2) BENEFICIARY.—The term ''beneficiary''
11 means a person who receives prescription drug bene-
12 fits pursuant to a Federal health care program.
13 (3) COST SHARING REQUIREMENT.—The term
14 ''cost sharing requirement'' means any coinsurance
15 or deductible imposed on a beneficiary for a pre-
16 scription drug furnished under a Federal health care
17 program.
18 (4) FEDERAL HEALTH CARE PROGRAM.—The
19 term ''Federal health care program'' means a pre-
20 scription drug plan under part D of title XVIII of
21 the Social Security Act, an MA–PD plan under part
22 C of such title, a managed care entity (as defined
23 in section 1932(a)(1)(B) of the Social Security Act
24 (42 U.S.C. 1396u–2(a)(1)(B)), the Federal employ-
25 ees health benefits plan under chapter 89 of title 5,

1 United States Code, or the TRICARE program (as
2 defined in section 1072 of title 10, United States
3 Code).

4 (5) IN-NETWORK PHARMACY.—The term "in-
5 network pharmacy" means a pharmacy that is li-
6 censed by the State board of pharmacy in the State
7 in which such pharmacy is located, that fills or seeks
8 to fill a prescription for a prescription drug for a
9 beneficiary, and is not an excluded entity and does
10 not have an owner or employee who is on a list of
11 excluded individuals or entities maintained by the
12 Office of Inspector General pursuant to section 1128
13 of the Social Security Act (42 U.S.C. 1320a–7).

14 (6) PHARMACY BENEFITS MANAGER.—The
15 term "pharmacy benefits manager" means a person,
16 business entity, affiliate, or other entity that per-
17 forms pharmacy benefits management services.

18 (7) PHARMACY BENEFITS MANAGEMENT SERV-
19 ICES.—The term "pharmacy benefits management
20 services"—

21 (A) means the managing or administration
22 of a plan or program that pays for, reimburses,
23 and covers the cost of prescription drugs and
24 medical devices; and

1 (B) includes the processing and payment
2 of claims for prescription drugs and the adju-
3 dication of appeals or grievances related to the
4 prescription drug benefit.

5 (8) PRESCRIPTION DRUG.—The term ''prescrip-
6 tion drug'' means a prescription drug covered by a
7 Federal health care program that is dispensed to a
8 beneficiary for self-administration.

9 (9) REBATE.—The term ''rebate'' means any
10 payments and concessions that accrue to a PBM or
11 the plan sponsor client of such PBM, directly or in-
12 directly, including through an affiliate, subsidiary,
13 third party, or intermediary, including an off-shore
14 entity or group purchasing organization, from a
15 pharmaceutical manufacturer, its affiliate, sub-
16 sidiary, third party, or intermediary, including pay-
17 ments, discounts, administration fees, credits, incen-
18 tives, or penalties associated directly or indirectly in
19 any way with claims administered by such PBM on
20 behalf of a Federal health care program.

21 (10) SPREAD PRICING.—The term ''spread pric-
22 ing'' means the practice of a PBM charging a Fed-
23 eral health care program more for a prescription
24 drug than the amount such PBM pays a pharmacy
25 for a drug, including any post-sale or post-adjudica-

1 tion fees, discounts, or adjustments, provided that
2 nothing herein shall be construed to allow post-sale
3 or post-adjudication fees, discounts, or adjustments
4 where otherwise prohibited by law.
5 (11) STEERING.—The term ''steering'' means—
6 (A) directing, ordering, or requiring a ben-
7 eficiary to use a specific pharmacy or phar-
8 macies, including an affiliate pharmacy, for the
9 purpose of filling a prescription or receiving
10 services or other care from a pharmacist;
11 (B) offering or implementing health insur-
12 ance plan designs that require a beneficiary to
13 utilize a pharmacy or pharmacies, including an
14 affiliate pharmacy, or that increases costs to a
15 Federal healthcare program or a beneficiary, in-
16 cluding requiring a beneficiary to pay the full
17 cost for a prescription drug when such bene-
18 ficiary chooses not to use a PBM affiliate phar-
19 macy;
20 (C) advertising, marketing, or promoting a
21 pharmacy, including an affiliate pharmacy, over
22 another in-network pharmacy;
23 (D) creating any network or engaging in
24 any practice, including accreditation or
25 credentialing standards, day supply limitations,

1 or delivery method limitations, that exclude an
2 in-network pharmacy or restrict an in-network
3 pharmacy from filling a prescription for a pre-
4 scription drug; or
5 (E) directly or indirectly engaging in any
6 practice that attempts to influence or induce a
7 pharmaceutical manufacturer to limit the dis-
8 tribution of a prescription drug to a small num-
9 ber of pharmacies or certain types of phar-
10 macies, or to restrict distribution of such drug
11 to non-affiliate pharmacies.

12 **SEC. 3. IMPROVING PRESCRIPTION DRUG TRANSPARENCY**
13 **UNDER THE MEDICAID PROGRAM.**

14 Section 1927(f) of the Social Security Act (42 U.S.C.
15 1396r–8(f)) is amended—
16 (1) in the subsection heading, by striking ‘‘RE-
17 TAIL’’ and inserting ‘‘COVERED OUTPATIENT DRUG’’;
18 and
19 (2) in paragraph (1)—
20 (A) in the paragraph heading, by striking
21 ‘‘RETAIL’’ and inserting ‘‘COVERED OUT-
22 PATIENT DRUG’’;
23 (B) in subparagraph (A)(i), by striking
24 ‘‘retail community pharmacy’’ and inserting
25 ‘‘pharmacy that dispenses covered outpatient

1 drugs, including a retail community pharmacy,
2 mail-order pharmacy, specialty pharmacy, nurs-
3 ing home pharmacy, long-term care facility
4 pharmacy, hospital pharmacy, or clinic phar-
5 macy (but not including a charitable pharmacy
6 or a not-for-profit pharmacy)'';
7 (C) in subparagraph (C)—
8 (i) in clause (i)—
9 (I) by striking ''retail''; and
10 (II) by striking ''prescription''
11 and inserting ''covered outpatient'';
12 and
13 (ii) in clause (ii), by striking ''retail
14 community'';
15 (D) in subparagraph (D)(ii), by striking
16 ''retail'';
17 (E) in subparagraph (E), by striking the
18 term ''retail'' each place it appears; and
19 (F) by adding at the end the following new
20 subparagraphs:
21 ''(F) SURVEY REPORTING.—Each State
22 shall require that any pharmacy in such State
23 that receives any payment, reimbursement, ad-
24 ministrative fee, discount, or rebate related to
25 the dispensing of a covered outpatient drug to

1 an individual receiving benefits under this title,
2 regardless of whether such payment, fee, dis-
3 count, or rebate is received from the State, a
4 managed care entity, or from a pharmacy bene-
5 fits manager that has a contract with a State
6 or managed care entity, shall respond to sur-
7 veys of drug prices conducted pursuant to sub-
8 paragraph (A).

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

14 ''(i) The monthly response rate of the
15 surveys conducted pursuant to subpara-
16 graph (A), including a list of the phar-
17 macies described in subparagraph (F) that
18 did not respond to such survey.

19 ''(ii) The sampling frame and number
20 of pharmacies sampled monthly.

21 ''(iii) Information on price concessions
22 to each pharmacy, including discounts, re-
23 bates, and other price concessions, to the
24 extent that such information is available
25 during the survey period.

1 "(H) LIMITATION ON USE OF APPLICABLE
2 NON-RETAIL PHARMACY PRICING INFORMA-
3 TION.—No State or Federal health care pro-
4 gram shall use pricing information reported by
5 applicable non-retail pharmacies to develop or
6 inform reimbursement rates for retail commu-
7 nity pharmacies.".

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