

119TH CONGRESS  
1ST SESSION

# H. R. 2041

To amend the Employee Retirement Income Security Act of 1974 to clarify and strengthen the application of certain employer-sponsored health plan disclosure requirements.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2025

Mr. COURTNEY (for himself and Mrs. HOUCHIN) introduced the following bill;  
which was referred to the Committee on Education and Workforce

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 to clarify and strengthen the application of certain employer-sponsored health plan disclosure requirements.

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 “Hidden Fee Disclosure  
5       Act of 2025”.

1 **SEC. 2. CLARIFICATION OF THE APPLICATION OF FEE DIS-**  
2 **CLOSURE REQUIREMENTS TO COVERED**  
3 **SERVICE PROVIDERS.**

4 (a) SERVICES.—Clause (ii)(I)(bb) of section  
5 408(b)(2)(B) of the Employee Retirement Income Secu-  
6 rity Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is amended—

7 (1) in subitem (AA) by striking “Brokerage  
8 services,” and inserting “Services (including broker-  
9 age services),”; and

10 (2) in subitem (BB)—

11 (A) by striking “Consulting,” and inserting  
12 “Other services,”; and

13 (B) by striking “related to the development  
14 or implementation of plan design” and all that  
15 follows through the period at the end and in-  
16 serting “any of the following: plan design, claim  
17 repricing, insurance or insurance product selec-  
18 tion (including vision and dental), record-  
19 keeping, medical management, benefits adminis-  
20 tration selection (including vision and dental),  
21 stop-loss insurance, pharmacy benefit manage-  
22 ment services, wellness design and management  
23 services, transparency tools, group purchasing  
24 organization agreements and services, participa-  
25 tion in and services from preferred vendor pan-  
26 els, disease management, compliance services,

1 employee assistance programs, or third party  
2 administration services, or consulting services  
3 related to any such services.”.

4 (b) DISCLOSURES.—Clause (iii)(III) of section  
5 408(b)(2)(B) of the Employee Retirement Income Secu-  
6 rity Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is amended  
7 by striking “, either in the aggregate or by service,” and  
8 inserting “by service”.

9 **SEC. 3. STRENGTHENING DISCLOSURE REQUIREMENTS**  
10 **WITH RESPECT TO ENTITIES PROVIDING**  
11 **PHARMACY BENEFIT MANAGEMENT SERV-**  
12 **ICES AND THIRD PARTY ADMINISTRATORS**  
13 **FOR GROUP HEALTH PLANS.**

14 (a) CERTAIN ARRANGEMENTS FOR PHARMACY BEN-  
15 EFIT MANAGEMENT SERVICES CONSIDERED AS INDI-  
16 RECT.—

17 (1) IN GENERAL.—Clause (i) of section  
18 408(b)(2)(B) of the Employee Retirement Income  
19 Security Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is  
20 amended—

21 (A) by striking “requirements of this  
22 clause” and inserting “requirements of this  
23 subparagraph”; and

24 (B) by adding at the end the following:

25 “For purposes of applying section 406(a)(1)(C)

1 with respect to a transaction described under  
2 this subparagraph, a contract or arrangement  
3 for services between a covered plan and an enti-  
4 ty or subsidiary providing services to the plan,  
5 including a health insurance issuer providing  
6 health insurance coverage in connection with  
7 the covered plan in which the entity or sub-  
8 sidiary contracts, in connection with such plan,  
9 with a service provider for pharmacy benefit  
10 management services shall be considered an in-  
11 direct furnishing of goods, services, or facilities  
12 between the covered plan and the service pro-  
13 vider for pharmacy benefit management services  
14 acting as the party in interest.”.

15 (2) HEALTH INSURANCE ISSUER AND HEALTH  
16 INSURANCE COVERAGE DEFINED.—Clause (ii)(I)(aa)  
17 of section 408(b)(2)(B) of the Employee Retirement  
18 Income Security Act of 1974 (29 U.S.C.  
19 1108(b)(2)(B)) is amended by inserting before the  
20 period at the end “and the terms ‘health insurance  
21 coverage’ and ‘health insurance issuer’ have the  
22 meanings given such terms in section 733(b)”.

23 (3) TECHNICAL AMENDMENT.—Section  
24 408(b)(2)(B)(ii)(I)(aa) of the Employee Retirement  
25 Income Security Act of 1974 (29 U.S.C.

1        1108(b)(2)(B)(ii)(I)(aa)) is further amended by in-  
2        serting “in” after “defined”.

3        (b) SPECIFIC DISCLOSURE REQUIREMENTS WITH  
4        RESPECT TO ENTITIES PROVIDING PHARMACY BENEFIT  
5        MANAGEMENT SERVICES.—

6            (1) IN GENERAL.—Clause (iii) of section  
7        408(b)(2)(B) of such Act (29 U.S.C. 1108(b)(2)(B))  
8        is amended by adding at the end the following:

9            “(VII) In the case of a covered service pro-  
10        vider in a contract or arrangement with a cov-  
11        ered plan to provide pharmacy benefit manage-  
12        ment services, as part of the description re-  
13        quired under subclauses (III) and (IV)—

14            “(aa) all compensation described in  
15        clause (ii)(I)(dd)(AA), including fees, re-  
16        bates, alternative discounts, price conces-  
17        sions, co-payment offsets, and other remun-  
18        eration reasonably expected to be received  
19        by the covered service provider, an affil-  
20        iate, or a subcontractor from a drug manu-  
21        facturer, distributor, rebate aggregator, ac-  
22        cumulator, maximizer, group purchasing  
23        organization, or any other third party;

24            “(bb) the amount and form of any  
25        fees, rebates, alternative discounts, price

1 concessions, co-payment offsets, and other  
2 remuneration, including the amount ex-  
3 pected to be passed through to the plan  
4 sponsor or the participants and bene-  
5 ficiaries under the covered plan;

6 “(cc) all compensation reasonably ex-  
7 pected to be received by the covered service  
8 provider, an affiliate, or a subcontractor as  
9 a result of paying a lower amount for the  
10 drug than the amount charged as a copay-  
11 ment, coinsurance amount, or deductible;

12 “(dd) all compensation expected to be  
13 received by the covered service provider, an  
14 affiliate, or a subcontractor as a result of  
15 paying pharmacies less than the amount  
16 charged to the health plan, plan sponsor,  
17 or participants and beneficiaries (com-  
18 monly referred to as ‘spread pricing’);

19 “(ee) all compensation expected to be  
20 received by the covered service provider, an  
21 affiliate, or a subcontractor from drug  
22 manufacturers or any other third party in  
23 exchange for—

1 “(AA) administering, invoicing,  
2 allocating, or collecting rebates related  
3 to the covered plan;

4 “(BB) providing access to drug  
5 utilization data;

6 “(CC) retaining a percentage of  
7 the list price of a drug; or

8 “(DD) any other service related  
9 to the role of the covered service pro-  
10 vider as a conduit between the drug  
11 manufacturers or any other third  
12 party and the covered plan.”.

13 (2) ANNUAL DISCLOSURE.—Clause (v) of sec-  
14 tion 408(b)(2)(B) of such Act (29 U.S.C.  
15 1108(b)(2)(B)) is amended by adding at the end the  
16 following:

17 “(III) A covered service provider, with respect  
18 to a contract or arrangement with the covered plan  
19 in connection with providing pharmacy benefit man-  
20 agement services, shall disclose, on an annual basis  
21 not later than 60 days after the beginning of each  
22 plan year, to a responsible plan fiduciary, in writing,  
23 the following with respect to the preceding plan  
24 year:

1           “(aa) All direct compensation described in  
2           subclause (III) of clause (iii) and indirect com-  
3           pensation described in subclause (IV) of clause  
4           (iii) received by the covered service provider (in-  
5           cluding such compensation described in sub-  
6           clause (VII) of clause (iii)).

7           “(bb) The total gross spending by the cov-  
8           ered plan on drugs (excluding fees rebates, al-  
9           ternative discounts, price concessions, co-pay-  
10          ment offsets, and other remuneration).

11          “(cc) The total net spending by the cov-  
12          ered plan on drugs.

13          “(dd) The total gross spending on drugs at  
14          all pharmacies wholly or partially owned by the  
15          covered service provider or any entity affiliated  
16          with the covered service provider, including  
17          mail-order, specialty and retail pharmacies, with  
18          a breakdown by individual pharmacy location.

19          “(ee) The aggregate amount of cost-shar-  
20          ing collected by the covered service provider  
21          from a pharmacy for a participant or bene-  
22          ficiary in excess of the contracted rate from  
23          such pharmacies, including mail-order, spe-  
24          cialty, and retail pharmacies, including—

1                   “(AA)     categorical     explanations  
2                   (grouped by the reason for collection of  
3                   such amounts, such as contractual true-up  
4                   provisions, overpayments, or non-covered  
5                   medication dispensed, and including infor-  
6                   mation on the amount in each category  
7                   that was passed through to the covered  
8                   plan and to participants and beneficiaries  
9                   of the covered plan); or

10                  “(BB)   individual   explanations   for  
11                  such amounts.

12                  “(ff) Total aggregate amounts of fees col-  
13                  lected by the covered service provider, an affil-  
14                  iate, or a subcontractor in connection with the  
15                  provision of pharmacy benefit management  
16                  services to the covered plan, broken down by  
17                  the source of such fees (such as the covered  
18                  plan, participants and beneficiaries of the cov-  
19                  ered plan, any drug manufacturer or whole-  
20                  saler, or any pharmacy entity).

21                  “(gg) Any information specified by the  
22                  Secretary through regulations or guidance that  
23                  may be necessary for a responsible plan fidu-  
24                  ciary to determine the reasonableness of the  
25                  contract or arrangement with the covered serv-

1 ice provider, any compensation paid under such  
2 a contract or arrangement, or any conflicts of  
3 interest that may exist.”.

4 (3) PHARMACY BENEFIT MANAGEMENT SERV-  
5 ICES DEFINED.—Clause (ii)(I) of section  
6 408(b)(2)(B) of such Act (29 U.S.C. 1108(b)(2)(B))  
7 is amended by adding at the end the following:

8 “(gg) The term ‘pharmacy benefit manage-  
9 ment services’ includes any services provided by  
10 a covered service provider to a covered plan  
11 with respect to the administration of prescrip-  
12 tion drug benefits under the covered plan, in-  
13 cluding—

14 “(AA) the processing and payment of  
15 claims;

16 “(BB) design of pharmacy networks;

17 “(CC) negotiation, aggregation, and  
18 distribution of rebates, discounts, and  
19 other price concessions;

20 “(DD) formulary design and mainte-  
21 nance;

22 “(EE) operation of pharmacies  
23 (whether retail, mail order, specialty drug,  
24 or otherwise); recordkeeping;

25 “(FF) utilization review;

1 “(GG) adjudication of claims; and  
2 “(HH) any other services specified by  
3 the Secretary through guidance or rule-  
4 making.”.

5 (c) SPECIFIC DISCLOSURE REQUIREMENTS WITH  
6 RESPECT TO THIRD PARTY ADMINISTRATION SERVICES  
7 FOR GROUP HEALTH PLANS.—

8 (1) IN GENERAL.—Clause (iii) of section  
9 408(b)(2)(B) of such Act (29 U.S.C.  
10 1108(b)(2)(B)), as amended by subsection (b)(1), is  
11 further amended by adding at the end the following:

12 “(VIII) With respect to a contract or ar-  
13 rangement with the covered plan in connection  
14 with the provision of third party administration  
15 services for group health plans, as part of the  
16 description required under subclauses (III) and  
17 (IV)—

18 “(aa) the amount and form of any re-  
19 bates, discounts, savings fees, refunds, or  
20 amounts received from providers and facili-  
21 ties, including the amounts that will be re-  
22 tained by the covered service provider;

23 “(bb) the amount and form of fees ex-  
24 pected to be received from other service  
25 providers in relation to the covered plan,

1 including the amounts that will be retained  
 2 by the covered service provider as a fee, to  
 3 the extent feasible; and

4 “(cc) the amount and form of ex-  
 5 pected recoveries by the covered service  
 6 provider, including the amounts that will  
 7 be retained by the covered service provider  
 8 (disaggregated by category), as a result  
 9 of—

10 “(AA) overpayments;

11 “(BB) erroneous payments;

12 “(CC) uncashed checks or incom-  
 13 plete payments;

14 “(DD) billing errors;

15 “(EE) subrogation;

16 “(FF) fraud; or

17 “(GG) any other reason on behalf  
 18 of the covered plan.”.

19 (2) ANNUAL DISCLOSURE.—Clause (v) of sec-  
 20 tion 408(b)(2)(B) of such Act (29 U.S.C.  
 21 1108(b)(2)(B)), as amended by subsection (b)(2), is  
 22 amended by adding at the end the following:

23 “(IV) A covered service provider, with respect  
 24 to a contract or arrangement with the covered plan  
 25 in connection with providing third party administra-

1       tion services for group health plans, shall disclose,  
2       on an annual basis not later than 60 days after the  
3       beginning of each plan year, to a responsible plan fi-  
4       duciary, in writing, the following with respect to the  
5       preceding plan year:

6               “(aa) All direct compensation described in  
7       subclause (III) of clause (iii).

8               “(bb) All indirect compensation described  
9       in subclause (IV) of clause (iii) received by the  
10      covered service provider, an affiliate, or a sub-  
11      contractor (including such compensation de-  
12      scribed in subclause (VIII) of clause (iii)).

13              “(cc) The aggregate amount for which the  
14      covered service provider, an affiliate, or a sub-  
15      contractor received indirect compensation and  
16      the estimated amount of cost-sharing incurred  
17      by plan participants and beneficiaries as a re-  
18      sult.

19              “(dd) The total gross spending by the cov-  
20      ered plan on all costs and fees arising under or  
21      paid under the administrative services agree-  
22      ment with the covered service provider (not in-  
23      cluding any amounts described in items (aa)  
24      through (cc) of clause (iii)(VIII)).

1           “(ee) The total net spending by the cov-  
 2           ered plan on all costs and fees arising under or  
 3           paid under the administrative services agree-  
 4           ment with the covered service provider.

5           “(ff) The aggregate fees collected by the  
 6           covered service provider, an affiliate, or a sub-  
 7           contractor from any source.

8           “(gg) Any other information specified by  
 9           the Secretary through regulations or guidance  
 10          that may be necessary for a responsible plan fi-  
 11          duciary to determine the reasonableness of the  
 12          contract or arrangement with the covered serv-  
 13          ice provider any compensation paid under such  
 14          a contractor or arrangement, or any conflicts of  
 15          interest that may exist.”.

16          (3) THIRD PARTY ADMINISTRATION SERVICES  
 17          FOR GROUP HEALTH PLANS DEFINED.—Clause  
 18          (ii)(I) of section 408(b)(2)(B) of such Act (29  
 19          U.S.C. 1108(b)(2)(B)), as amended by subsection  
 20          (b)(3), is amended by adding at the end the fol-  
 21          lowing:

22               “(hh) The term ‘third party administration  
 23               services for group health plans’ includes any  
 24               services provided by a covered service provider  
 25               to a covered plan with respect to the adminis-

1           tration of health benefits under the covered  
2           plan, including—

3                   “(AA) the processing, repricing, and  
4                   payment of claims;

5                   “(BB) design, creation, and mainte-  
6                   nance of provider networks;

7                   “(CC) negotiation of discounts off  
8                   gross rates;

9                   “(DD) benefit and plan design; nego-  
10                  tiation of payment rates;

11                  “(EE) recordkeeping;

12                  “(FF) utilization review;

13                  “(GG) adjudication of claims;

14                  “(HH) regulatory compliance; and

15                  “(II) any other services set forth in  
16                  an administrative services agreement or  
17                  similar agreement or specified by the Sec-  
18                  retary through guidance or rulemaking.”.

19           (d) PRIVACY REQUIREMENTS.—Section 408(b)(2) of  
20   the Employee Retirement Income Security Act of 1974  
21   (29 U.S.C. 1108(b)(2)), as amended by subsection (c), is  
22   further amended by adding at the end the following:

23                   “(C) PRIVACY REQUIREMENTS.—Covered serv-  
24           ice providers shall provide information under sub-  
25           paragraph (B) in a manner consistent with the pri-

1       vacy regulations promulgated under section  
2       13402(a) of the Health Information Technology for  
3       Clinical Health Act (42 U.S.C. 17932(a)), and con-  
4       sistent with the privacy regulations promulgated  
5       under the Health Insurance Portability and Ac-  
6       countability Act of 1996 in part 160 and subparts  
7       A and E of part 164 of title 45, Code of Federal  
8       Regulations (or successor regulations) and shall re-  
9       strict the use and disclosure of such information ac-  
10      cording to such privacy, security, and breach notifi-  
11      cation regulations and such privacy regulations.

12           “(D) DISCLOSURE AND REDISCLOSURE.—

13           “(i) LIMITATION TO BUSINESS ASSOCI-  
14      ATES.—A responsible plan fiduciary receiving  
15      information disclosed under subparagraph (B)  
16      may disclose such information only to the entity  
17      from which the information was received, the  
18      group health plan to which the information per-  
19      tains, or to that entity’s business associates as  
20      defined in section 160.103 of title 45, Code of  
21      Federal Regulations (or successor regulations)  
22      or as permitted by the HIPAA Privacy Rule  
23      (parts 160 and 164, subparts A and E of title  
24      45, Code of Federal Regulations).

1           “(ii) CLARIFICATION REGARDING PUBLIC  
2           DISCLOSURE OF INFORMATION.—Nothing in  
3           this section shall prevent a group health plan or  
4           health insurance issuer offering group health  
5           insurance coverage, or a covered service pro-  
6           vider, from placing reasonable restrictions on  
7           the public disclosure of the information de-  
8           scribed in this subparagraph, except that such  
9           plan, issuer, or entity may not restrict disclo-  
10          sure of such information to the Department of  
11          Labor.

12          “(E) ADDITIONAL PRIVACY REQUIREMENTS.—

13               “(i) IN GENERAL.—Covered service pro-  
14               viders shall ensure that information provided  
15               under subparagraph (B) contains only summary  
16               health information, as defined in section  
17               164.504(a) of title 45, Code of Federal Regula-  
18               tions (or successor regulations).

19               “(ii) RESTRICTIONS.—A group health plan  
20               shall comply with section 164.504(f) of title 45,  
21               Code of Federal Regulations (or successor regu-  
22               lations) with respect to any information re-  
23               ceived by the plan or disclosed to a plan spon-  
24               sor or any other entity pursuant to this section,  
25               and a responsible plan administrator who is a

1 plan sponsor shall act in accordance with the  
2 terms of the agreement described in such sec-  
3 tion.

4 “(F) RULE OF CONSTRUCTION.—Nothing in  
5 this section shall be construed to modify the require-  
6 ments for the creation, receipt, maintenance, or  
7 transmission of protected health information under  
8 the privacy regulations promulgated under the  
9 Health Insurance Portability and Accountability Act  
10 of 1996 in part 160 and subparts A and E of part  
11 164 of title 45, Code of Federal Regulations (or suc-  
12 cessor regulations).”.

13 (e) RULE OF CONSTRUCTION.—Nothing in the  
14 amendments made by this section shall be construed to  
15 imply that a practice in relation to which a covered service  
16 provider is required to provide information as a result of  
17 such amendments is permissible under Federal law.

18 (f) EFFECTIVE DATE.—The amendments made by  
19 this subsection shall not apply to any contract or arrange-  
20 ment entered into prior to January 1, 2026. Such amend-  
21 ments shall apply to any contract or arrangement entered  
22 into on or after to such date, including any extension or  
23 renewal of a contract or arrangement, regardless of the  
24 date on which the original contract or agreement (or any  
25 previous extension or renewal) was entered into.

1 **SEC. 4. IMPLEMENTATION.**

2 Not later than 1 year after the date of enactment  
3 of this Act, the Secretary of Labor shall issue notice and  
4 comment rulemaking as necessary to implement the provi-  
5 sions of this Act. The Secretary shall ensure that such  
6 rulemaking—

7 (1) accounts for the varied compensation prac-  
8 tices of covered service providers (as defined under  
9 section 408(b)(2)(B); and

10 (2) establishes standards for the disclosure of  
11 expected compensation by such covered service pro-  
12 viders.

○