I

119TH CONGRESS
1ST SESSION

H. R. 2214

To improve services provided by pharmacy benefit managers.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2025

Mrs. MILLER-MEEKS (for herself, Ms. BARRAGÁN, Ms. MALLIOTAKIS, Mr. SCHNEIDER, Mr. ALLEN, and Mr. NORCROSS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Education and Workforce, 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 improve services provided by pharmacy benefit managers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Delinking Revenue from Unfair Gouging Act'' or the ''DRUG Act''.

SEC. 2. IMPROVING PHARMACY BENEFIT MANAGER SERVICES.

(a) PUBLIC HEALTH SERVICE ACT.—Part D of title XXVII of the Public Health Service Act (42 U.S.C.

300gg–111 et seq.) is amended by adding at the end the following:

"SEC. 2799A–11. IMPROVING PHARMACY BENEFIT MANAGER SERVICES.

"(a) IN GENERAL.—Beginning on January 1, 2027, except as provided in subsection (b), a pharmacy benefit manager shall derive no remuneration from any entity for services, benefit administration, or any other activities related to prescription drug benefits under a group health plan or group or individual health insurance coverage.

"(b) EXCEPTION FOR BONA FIDE SERVICE FEES.—

"(1) IN GENERAL.—A pharmacy benefit manager may charge an entity a bona fide service fee for the provision of services to such entity only if such fee is set forth in an agreement between the pharmacy benefit manager and such entity and the amount of any bona fide service fee—

"(A) is a flat dollar amount; and

"(B) is not directly or indirectly based on, or contingent upon—

"(i) a drug price (such as wholesale acquisition cost) or drug benchmark price (such as average wholesale price);

"(ii) the amount of discounts, rebates, fees, or other direct or indirect remunera-

tion with respect to prescription drugs prescribed to the participants, beneficiaries, or enrollees in the group health plan or health insurance coverage involved; or

"(iii) any other amounts specified by the Secretary, the Secretary of Labor, and the Secretary of the Treasury;

"(2) DEFINITIONS.—In this section—

"(A) the term 'bona fide service fee' means a fee that is equal to the fair market value of a bona fide, itemized service that is actually performed on behalf of an entity, that the entity would otherwise perform (or contract for) in the absence of the service arrangement, and that is not passed on in whole or in part to a client or customer, whether or not the entity takes title to the drug; and

"(B) the term 'pharmacy benefit manager' means any person, business, or other entity, such as a third-party administrator, regardless of whether it identifies itself as a pharmacy benefit manager, that, either directly or through an intermediary (including an affiliate, subsidiary, or agent) or an arrangement with a third-party—

"(i) acts a price negotiator for prescription drugs on behalf of a group health plan or health insurance issuer offering group or individual health insurance coverage; or

"(ii) manages or administers the prescription drug benefits provided by a group health plan or health insurance issuer offering group or individual health insurance coverage, including creating formularies, the processing and payment of claims for prescription drugs, arranging alternative access to or funding for prescription drugs, the performance of drug utilization review, the processing of drug prior authorization requests, the adjudication of appeals or grievances related to the prescription drug benefit, contracting with network pharmacies (including retail and mail pharmacies), controlling the cost of covered prescription drugs, or the provision of related services.

"(c) ENFORCEMENT.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Labor and the Secretary of the Treasury, shall enforce this section.

''(2) DISGORGEMENT.—The pharmacy benefit manager shall disgorge to a group health plan or health insurance issuer offering group or individual health insurance coverage any payment, remuneration, or other amount received by the pharmacy benefit manager or an affiliate of such pharmacy benefit manager from such plan or issuer in violation of subsection (a) or, pursuant to subsection (b), the agreement entered into with such plan or issuer for bona fide service fees.

''(3) PENALTIES.—A pharmacy benefit manager that violates subsection (a) or (b) shall be subject to a civil monetary penalty in the amount of $10,000 for each day during which such violation continues.

''(4) PROCEDURE.—Notwithstanding section 2723, the provisions of section 1128A of the Social Security Act, other than subsection (a) and (b) and the first sentence of subsection (c)(1) of such section, shall apply to civil monetary penalties under this subsection in the same manner as such provi-

sions apply to a penalty or proceeding under section 1128A of the Social Security Act.

''(d) REGULATIONS.—Notwithstanding any other provision of law, the Secretary, in consultation with the Secretary of Labor and the Secretary of the Treasury, shall implement this section through interim final regulations.

''(e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

''(1) as prohibiting payments related to reimbursement for ingredient costs to entities that acquire prescription drugs or pharmacy dispensing fees; and

''(2) to prohibit rebates, discounts, or other price concessions from being fully passed through to a group health plan or health insurance issuer offering group or individual health insurance coverage to lower net costs for prescription drugs.''.

(b) ERISA.—

(1) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by inserting after section 725 the following:

"SEC. 726. IMPROVING PHARMACY BENEFIT MANAGER SERVICES.

"(a) GENERAL.—Beginning on January 1, 2027, except as provided in subsection (b), a pharmacy benefit manager shall derive no remuneration from any entity for services, benefit administration, or any other activities related to prescription drug benefits under a group health plan or group health insurance coverage.

"(b) EXCEPTION FOR BONA FIDE SERVICE FEES.—

"(1) IN GENERAL.—A pharmacy benefit manager may charge an entity a bona fide service fee for the provision of services to an entity only if such fee is set forth in an agreement between the pharmacy benefit manager and such entity and the amount of any bona fide service fee—

"(A) is a flat dollar amount; and

"(B) is not directly or indirectly based on, or contingent upon—

"(i) a drug price (such as wholesale acquisition cost) or drug benchmark price (such as average wholesale price);

"(ii) the amount of discounts, rebates, fees, or other direct or indirect remuneration with respect to prescription drugs prescribed to the participants, beneficiaries, or

enrollees in the group health plan or health insurance coverage involved; or

''(iii) any other amounts specified by the Secretary, the Secretary of Health and Human Services, and the Secretary of the Treasury.

''(2) DEFINITIONS.—In this section—

''(A) the term 'bona fide service fee' means a fee that is equal to the fair market value of a bona fide, itemized service that is actually performed on behalf of an entity, that the entity would otherwise perform (or contract for) in the absence of the service arrangement, and that is not passed on in whole or in part to a client or customer, whether or not the entity takes title to the drug; and

''(B) the term 'pharmacy benefit manager' means any person, business, or other entity, such as a third-party administrator, regardless of whether it identifies itself as a pharmacy benefit manager, that, either directly or through an intermediary (including an affiliate, subsidiary, or agent) or an arrangement with a third-party—

"(i) acts a price negotiator for prescription drugs on behalf of a group health plan or health insurance issuer offering group health insurance coverage; or

"(ii) manages or administers the prescription drug benefits provided by a group health plan or health insurance issuer offering group health insurance coverage, including creating formularies, the processing and payment of claims for prescription drugs, arranging alternative access to or funding for prescription drugs, the performance of drug utilization review, the processing of drug prior authorization requests, the adjudication of appeals or grievances related to the prescription drug benefit, contracting with network pharmacies (including retail and mail pharmacies), controlling the cost of covered prescription drugs, or the provision of related services.

"(c) ENFORCEMENT.—The Secretary shall enforce this section as provided for in section 502(c)(13).

"(d) REGULATIONS.—Notwithstanding any other provision of law, the Secretary, in consultation with the

Secretary of Health and Human Services and the Secretary of the Treasury, shall implement this section through interim final regulations.

''(e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

''(1) as prohibiting payments related to reimbursement for ingredient costs to entities that acquire prescription drugs or pharmacy dispensing fees; and

''(2) to prohibit rebates, discounts, or other price concessions from being fully passed through to a group health plan or health insurance issuer offering group health insurance coverage to lower net costs for prescription drugs.''.

(2) ENFORCEMENT.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended—

(A) in subsection (a)(6), by striking ''or (9)'' and inserting ''(9), or (13)''; and

(B) in subsection (c), by adding at the end the following:

''(13) SECRETARIAL ENFORCEMENT AUTHORITY RELATING TO PHARMACY BENEFIT MANAGER SERVICES.—

''(A) DISGORGEMENT.—With respect to a violation of section 726 by a pharmacy benefit manager,

such pharmacy benefit manager shall disgorge to a group health plan or health insurance issuer offering group health insurance coverage any payment, remuneration, or other amount received by the pharmacy benefit manager or an affiliate of such pharmacy benefit manager from such plan or issuer in violation of subsection (a) of such section or, pursuant to subsection (b) of such section, the agreement entered into with such plan or issuer for bona fide service fees.

''(B) PENALTIES.—A pharmacy benefit manager that violates subsection (a) or (b) of section 726 shall be subject to a civil monetary penalty in the amount of $10,000 for each day during which such violation continues.

''(C) PROCEDURE.—Except as provided in this paragraph, the provisions of this section shall apply to civil monetary penalties under this paragraph in the same manner as such provisions apply to other civil penalties under this section.

''(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall effect the authority of the Secretary under subsection (a)(5).''.

(3) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement In-

come Security Act of 1974 (29 U.S.C. 1001 et seq.) is amended by inserting after the item relating to section 725 the following new item:

Sec. 726. Improving pharmacy benefit manager services.

(c) INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

"SEC. 9826. IMPROVING PHARMACY BENEFIT MANAGER SERVICES.

''(a) IN GENERAL.—Beginning on January 1, 2027, except as provided in subsection (b), a pharmacy benefit manager shall derive no remuneration from any entity for services, benefit administration, or any other activities related to prescription drug benefits under a group health plan.

''(b) EXCEPTION FOR BONA FIDE SERVICE FEES.—

''(1) IN GENERAL.—A pharmacy benefit manager may charge an entity a bona fide service fee for the provision of services to such entity only if such fee is set forth in an agreement between the pharmacy benefit manager and such entity and the amount of any bona fide service fee—

''(A) is a flat dollar amount; and

''(B) is not directly or indirectly based on, or contingent upon—

"(i) a drug price (such as wholesale acquisition cost) or drug benchmark price (such as average wholesale price);

"(ii) the amount of discounts, rebates, fees, or other direct or indirect remuneration with respect to prescription drugs prescribed to the participants, beneficiaries, or enrollees in the group health plan involved; or

"(iii) any other amounts specified by the Secretary, the Secretary of Health and Human Services, and the Secretary of the Labor.

"(2) DEFINITIONS.—In this section—

"(A) the term 'bona fide service fee' means a fee that is equal to the fair market value of a bona fide, itemized service that is actually performed on behalf of an entity, that the entity would otherwise perform (or contract for) in the absence of the service arrangement, and that is not passed on in whole or in part to a client or customer, whether or not the entity takes title to the drug; and

"(B) the term 'pharmacy benefit manager' means any person, business, or other entity

such as a third-party administrator, regardless of whether it identifies itself as a pharmacy benefit manager, that, either directly or through an intermediary (including an affiliate, subsidiary, or agent) or an arrangement with a third-party—

"(i) acts as a price negotiator for prescription drugs on behalf of a group health plan; or

"(ii) manages or administers the prescription drug benefits provided by a group health plan, including creating formularies, the processing and payment of claims for prescription drugs, arranging alternative access to or funding for prescription drugs, the performance of drug utilization review, the processing of drug prior authorization requests, the adjudication of appeals or grievances related to the prescription drug benefit, contracting with network pharmacies, controlling the cost of covered prescription drugs, or the provision of related services.

"(c) ENFORCEMENT.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Health and Human Services and the Secretary of Labor, shall enforce this section.

''(2) DISGORGEMENT.—The pharmacy benefit manager shall disgorge to a group health plan any payment, remuneration, or other amount received by the pharmacy benefit manager or an affiliate of such pharmacy benefit manager from such plan or issuer in violation of subsection (a) or, pursuant to subsection (b), the agreement entered into with such plan for bona fide service fees.

''(3) PENALTIES.—A pharmacy benefit manager that violates subsection (a) or (b) shall be subject to a civil monetary penalty in the amount of $10,000 for each day during which such violation continues.

''(4) PROCEDURE.—The provisions of section 1128A of the Social Security Act, other than subsection (a) and (b) and the first sentence of subsection (c)(1) of such section, shall apply to civil monetary penalties under this subsection in the same manner as such provisions apply to a penalty or proceeding under section 1128A of the Social Security Act.

''(d) REGULATIONS.—Notwithstanding any other provision of law, the Secretary, in consultation with the Secretary of Health and Human Services and the Secretary of Labor, shall implement this section through interim final regulations.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 9826. Improving pharmacy benefit manager services.''.

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