

118TH CONGRESS  
1ST SESSION

# S. 1217

To prohibit the distribution and receipt of rebates for prescription drugs.

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IN THE SENATE OF THE UNITED STATES

APRIL 19, 2023

Mr. HAWLEY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To prohibit the distribution and receipt of rebates for prescription drugs.

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 “Ending the Prescrip-  
5 tion Drug Kickback Act of 2023”.

6 **SEC. 2. REQUIREMENTS FOR PRESCRIPTION DRUG BENE-**  
7 **FITS.**

8 (a) REMOVAL OF SAFE HARBOR PROTECTION FOR  
9 REBATES INVOLVING PRESCRIPTION DRUGS.—

10 (1) REMOVAL OF SAFE HARBOR PROTECTION  
11 FOR REBATES INVOLVING PRESCRIPTION DRUGS.—

1 Section 1128B(b) of the Social Security Act (42  
2 U.S.C. 1320a-7b(b)) is amended—

3 (A) in paragraph (3)(A), by striking “a  
4 discount” and inserting “subject to paragraph  
5 (5), a discount”; and

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

7 “(5) REMOVAL OF SAFE HARBOR PROTECTION  
8 FOR REBATES INVOLVING PRESCRIPTION DRUGS.—

9 “(A) IN GENERAL.—The safe harbor de-  
10 scribed in paragraph (3)(A) shall not apply to  
11 a rebate or other remuneration, including a re-  
12 bate or other remuneration intended to influ-  
13 ence formulary tier placement or its equivalent,  
14 from a manufacturer of prescription drugs or  
15 an entity that provides pharmacy benefits man-  
16 agement services.

17 “(B) DEFINITIONS.—In this paragraph:

18 “(i) ENTITY THAT PROVIDES PHAR-  
19 MACY BENEFITS MANAGEMENT SERV-  
20 ICES.—The term ‘entity that provides  
21 pharmacy benefits management services’  
22 means—

23 “(I) any person, business, or  
24 other entity that provides, directly or

1 through an intermediary, the service  
2 of—

3 “(aa) negotiating terms and  
4 conditions with respect to a pre-  
5 scription drug on behalf of a  
6 health plan under a Federal  
7 health care program; or

8 “(bb) managing the pre-  
9 scription drug benefits provided  
10 by the plan, which may include  
11 formulary management, the proc-  
12 essing and payment of claims for  
13 prescription drugs, the perform-  
14 ance of drug utilization review,  
15 the processing of drug prior au-  
16 thorization requests, the adju-  
17 dication of appeals or grievances  
18 related to the prescription drug  
19 benefit, contracting with network  
20 pharmacies, or the provision of  
21 related services; or

22 “(II) any entity that is owned,  
23 affiliated, or related under a common  
24 ownership structure with a person,

1 business, or entity described in sub-  
 2 clause (I).

3 “(ii) REBATE.—The term ‘rebate’  
 4 means any discount the terms of which are  
 5 fixed and disclosed in writing to the buyer  
 6 at the time of the purchase to which the  
 7 discount applies, but which is not given at  
 8 the time of purchase.”.

9 (2) EFFECTIVE DATE.—The amendments made  
 10 by this subsection shall take effect on January 1,  
 11 2025.

12 (b) REQUIREMENTS FOR PRIVATE INSURANCE  
 13 PLANS.—

14 (1) IN GENERAL.—Part D of title XXVII of the  
 15 Public Health Service Act (42 U.S.C. 300gg–111 et  
 16 seq.) is amended by adding at the end the following:

17 **“SEC. 2799A–11. REQUIREMENTS WITH RESPECT TO PRE-**  
 18 **SCRIPTION DRUG BENEFITS.**

19 “(a) IN GENERAL.—A group health plan or a health  
 20 insurance issuer offering group or individual health insur-  
 21 ance coverage shall not, and shall ensure that any entity  
 22 that provides pharmacy benefits management services on  
 23 its behalf does not, receive from a drug manufacturer a  
 24 rebate or other remuneration, including a rebate or other  
 25 remuneration intended to influence formulary tier place-

1 ment or its equivalent, with respect to any prescription  
2 drug received by an enrollee in the plan or coverage and  
3 covered by the plan or coverage.

4 “(b) DEFINITIONS.—For purposes of this section—

5 “(1) the term ‘entity that provides pharmacy  
6 benefits management services’ means—

7 “(A) any person, business, or other entity  
8 that provides, directly or through an inter-  
9 mediary, the service of—

10 “(i) negotiating terms and conditions  
11 with respect to a prescription drug on be-  
12 half of a group health plan or group or in-  
13 dividual health insurance coverage; or

14 “(ii) managing the prescription drug  
15 benefits provided by the plan or coverage,  
16 which may include formulary management,  
17 the processing and payment of claims for  
18 prescription drugs, the performance of  
19 drug utilization review, the processing of  
20 drug prior authorization requests, the ad-  
21 judication of appeals or grievances related  
22 to the prescription drug benefit, con-  
23 tracting with network pharmacies, or the  
24 provision of related services; or

1           “(B) any entity that is owned, affiliated, or  
2           related under a common ownership structure  
3           with a person, business, or entity described in  
4           paragraph (1); and

5           “(2) the term ‘rebate’ means any discount the  
6           terms of which are fixed and disclosed in writing to  
7           the buyer at the time of the purchase to which the  
8           discount applies, but which is not given at the time  
9           of purchase.”.

10           (2) ERISA.—

11           (A) IN GENERAL.—Subpart B of part 7 of  
12           subtitle B of title I of the Employee Retirement  
13           Income Security Act of 1974 (29 U.S.C. 1185  
14           et seq.) is amended by adding at the end the  
15           following:

16           **“SEC. 726. REQUIREMENTS WITH RESPECT TO PRESCRIP-**  
17           **TION DRUG BENEFITS.**

18           “(a) IN GENERAL.—A group health plan or a health  
19           insurance issuer offering group health insurance coverage  
20           shall not, and shall ensure that any entity that provides  
21           pharmacy benefits management services on its behalf does  
22           not, receive from a drug manufacturer a rebate or other  
23           remuneration, including a rebate or other remuneration  
24           intended to influence formulary tier placement or its  
25           equivalent, with respect to any prescription drug received

1 by an enrollee in the plan or coverage and covered by the  
2 plan or coverage.

3 “(b) DEFINITIONS.—For purposes of this section—

4 “(1) the term ‘entity that provides pharmacy  
5 benefits management services’ means—

6 “(A) any person, business, or other entity  
7 that provides, directly or through an inter-  
8 mediary, the service of—

9 “(i) negotiating terms and conditions  
10 with respect to a prescription drug on be-  
11 half of a group health plan or group health  
12 insurance coverage; or

13 “(ii) managing the prescription drug  
14 benefits provided by the plan or coverage,  
15 which may include formulary management,  
16 the processing and payment of claims for  
17 prescription drugs, the performance of  
18 drug utilization review, the processing of  
19 drug prior authorization requests, the ad-  
20 judication of appeals or grievances related  
21 to the prescription drug benefit, con-  
22 tracting with network pharmacies, or the  
23 provision of related services; or

24 “(B) any entity that is owned, affiliated, or  
25 related under a common ownership structure

1 with a person, business, or entity described in  
2 paragraph (1); and

3 “(2) the term ‘rebate’ means any discount the  
4 terms of which are fixed and disclosed in writing to  
5 the buyer at the time of the purchase to which the  
6 discount applies, but which is not given at the time  
7 of purchase.”.

8 (B) CLERICAL AMENDMENT.—The table of  
9 contents of the Employee Retirement Income  
10 Security Act of 1974 is amended by inserting  
11 after the item relating to section 725 the fol-  
12 lowing:

“Sec. 726. Requirements with respect to prescription drug benefits.”.

13 (3) IRC.—

14 (A) IN GENERAL.—Subchapter B of chap-  
15 ter 100 of the Internal Revenue Code of 1986  
16 is amended by adding at the end the following:

17 **“SEC. 9826. REQUIREMENTS WITH RESPECT TO PRESCRIP-**  
18 **TION DRUG BENEFITS.**

19 “(a) IN GENERAL.—A group health plan shall not,  
20 and shall ensure that any entity that provides pharmacy  
21 benefits management services on its behalf does not, re-  
22 ceive from a drug manufacturer a rebate or other remun-  
23 eration with respect to any prescription drug received by  
24 an enrollee in the plan and covered by the plan.

25 “(b) DEFINITIONS.—For purposes of this section—



1           “(1) the term ‘entity that provides pharmacy  
2           benefits management services’ means—

3                   “(A) any person, business, or other entity  
4                   that provides, directly or through an inter-  
5                   mediary, the service of—

6                           “(i) negotiating terms and conditions  
7                           with respect to a prescription drug on be-  
8                           half of a group health plan; or

9                           “(ii) managing the prescription drug  
10                          benefits provided by the plan, which may  
11                          include formulary management, the proc-  
12                          essing and payment of claims for prescrip-  
13                          tion drugs, the performance of drug utili-  
14                          zation review, the processing of drug prior  
15                          authorization requests, the adjudication of  
16                          appeals or grievances related to the pre-  
17                          scription drug benefit, contracting with  
18                          network pharmacies, or the provision of re-  
19                          lated services; or

20                          “(B) any entity that is owned, affiliated, or  
21                          related under a common ownership structure  
22                          with a person, business, or entity described in  
23                          paragraph (1); and

24                          “(2) the term ‘rebate’ means any discount the  
25                          terms of which are fixed and disclosed in writing to

1 the buyer at the time of the purchase to which the  
2 discount applies, but which is not given at the time  
3 of purchase.”.

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

“Sec. 9826. Requirements with respect to prescription drug benefits.”.

8 (4) EFFECTIVE DATE.—The amendments made  
9 by paragraphs (1), (2), and (3) shall take effect on  
10 January 1, 2025.

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