

112TH CONGRESS
1ST SESSION

H. R. 1971

To amend the Public Health Service Act to ensure transparency and proper operation of pharmacy benefit managers.

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2011

Mrs. MCMORRIS RODGERS (for herself and Mr. WEINER) 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 the 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

A BILL

To amend the Public Health Service Act to ensure transparency and proper operation of pharmacy benefit managers.

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 “Pharmacy Competition
5 and Consumer Choice Act of 2011”.

1 **SEC. 2. PHARMACY BENEFITS MANAGER TRANSPARENCY**
2 **AND PROPER OPERATION REQUIREMENTS.**

3 (a) AMENDMENT TO THE PUBLIC HEALTH SERVICE
4 ACT RELATING TO THE GROUP MARKET.—

5 (1) IN GENERAL.—Subpart 2 of part A of title
6 XXVII of the Public Health Service Act (42 U.S.C.
7 300gg–4 et seq.) is amended by adding at the end
8 the following:

9 **“SEC. 2729. PHARMACY BENEFITS MANAGER TRANS-**
10 **PARENCY AND PROPER OPERATION RE-**
11 **QUIREMENTS.**

12 “(a) IN GENERAL.—Notwithstanding any other pro-
13 vision of law, a group health plan, and a health insurance
14 issuer providing health insurance coverage in connection
15 with a group health plan (collectively, a ‘plan sponsor’),
16 shall not enter into a contract with any pharmacy benefits
17 manager (referred to in this section as a ‘PBM’) to man-
18 age the prescription drug coverage provided under such
19 plan or insurance coverage, or to control the costs of such
20 prescription drug coverage, unless the PBM satisfies the
21 following requirements:

22 “(1) REQUIRED DISCLOSURES TO PLAN SPON-
23 SOR IN ANNUAL REPORT.—The PBM shall provide
24 at least annually a report to each plan sponsor, in-
25 cluding, at a minimum—

1 “(A) information on the number and total
2 cost of prescriptions under the contract filled at
3 mail order and at retail pharmacies;

4 “(B) an estimate of aggregate average
5 payments under the contract, per prescription
6 (weighted by prescription volume), made to mail
7 order and retail pharmacies, and the average
8 amount per prescription that the PBM was
9 paid by the plan for prescriptions filled at mail
10 order and retail pharmacies;

11 “(C) an estimate of the aggregate average
12 payment per prescription (weighted by prescrip-
13 tion volume) under the contract received from
14 pharmaceutical manufacturers, including all re-
15 bates, discounts, price concessions, or adminis-
16 trative and other payments from pharma-
17 ceutical manufacturers, and a description of the
18 types of payments, the amount of such pay-
19 ments that were shared with the plan, and the
20 percentage of prescriptions for which the PBM
21 received such payments;

22 “(D) information on the overall percentage
23 of generic drugs dispensed under the contract
24 separately at retail and mail order pharmacies,

1 and the percentage of cases in which a generic
2 drug is dispensed when available; and

3 “(E) information on the percentage and
4 number of cases under the contract in which in-
5 dividuals who had been receiving a prescribed
6 drug that had a lower cost for the plan were
7 later given a drug with a higher cost for the
8 plan, because of PBM policies or at the direct
9 or indirect control of the PBM, and the ration-
10 ale for such changes and a description of the
11 applicable PBM policies.

12 “(2) PBM REQUIREMENTS WITH RESPECT TO
13 PHARMACIES.—With respect to contracts between a
14 PBM and a pharmacy, the PBM shall—

15 “(A) include in such contracts, the meth-
16 odology and resources utilized for the Maximum
17 Allowable Cost (referred to in this section as
18 ‘MAC’) pricing of the PBM, update pricing in-
19 formation on such list at least weekly, and es-
20 tablish a process for the prompt notification of
21 such pricing updates to network pharmacies;

22 “(B) agree to provide timely updates, not
23 less than once every 3 business days, to phar-
24 macy product pricing files used to calculate pre-

1 scription prices that will be used to reimburse
2 pharmacies;

3 “(C) agree to pay pharmacies promptly for
4 clean claims under section 1860D–12(b)(4) of
5 the Social Security Act (42 U.S.C. 1395w–
6 112(b)(4));

7 “(D) not require that a pharmacist or
8 pharmacy participate in a pharmacy network
9 managed by such PBM as a condition for the
10 pharmacy to participate in another network
11 managed by such PBM, and shall not exclude
12 an otherwise qualified pharmacist or pharmacy
13 from participation in a particular network pro-
14 vided that the pharmacist or pharmacy—

15 “(i) accepts the terms, conditions and
16 reimbursement rates of the PBM;

17 “(ii) meets all applicable Federal and
18 State licensure and permit requirements;

19 and

20 “(iii) has not been excluded from par-
21 ticipation in any Federal or State program;

22 “(E) not automatically enroll a pharmacy
23 in a contract or modify an existing contract
24 without written agreement from the pharmacy
25 or pharmacist; and

1 “(F) require each pharmacy to sign a con-
2 tract before assuming responsibility to fill pre-
3 scriptions for the PBM.

4 “(3) PBM OWNERSHIP INTERESTS AND CON-
5 FLICTS OF INTEREST; PHARMACY CHOICE.—A PBM
6 shall not—

7 “(A) mandate that a covered individual use
8 a specific retail pharmacy, mail order phar-
9 macy, specialty pharmacy, or other pharmacy
10 practice site or entity if the PBM has an own-
11 ership interest in such pharmacy, practice site,
12 or entity or the pharmacy, practice site, or enti-
13 ty has an ownership interest in the PBM; or

14 “(B) provide incentives to covered plan
15 beneficiaries, in the form of variations in pre-
16 miums, deductibles, co-payments, or co-insur-
17 ance rates, to encourage plan beneficiaries to
18 use a specific pharmacy if such incentives are
19 only applicable to a pharmacy, practice site, or
20 entity that the PBM has an ownership interest
21 in, unless such incentives are applicable to all
22 network pharmacies.

23 “(4) PBM AUDIT OF PHARMACY PROVIDERS.—
24 The following shall apply to audits of pharmacy pro-
25 viders by a PBM:

1 “(A) The period covered by an audit may
2 not exceed 2 years from the date the claim was
3 submitted to or adjusted by the PBM.

4 “(B) An audit that involves clinical or pro-
5 fessional judgment shall be conducted by, or in
6 consultation with, a pharmacist licensed in the
7 State of the audit or the State board of phar-
8 macy.

9 “(C) The PBM may not require more
10 stringent recordkeeping than that required by
11 State or Federal law.

12 “(D) The PBM or the entity conducting
13 an audit for the PBM shall establish a written
14 appeals process that shall include procedures
15 for appeals for preliminary reports and final re-
16 ports.

17 “(E) The pharmacy, practice site, or other
18 entity may use the records of a hospital, physi-
19 cian, or other authorized practitioner to validate
20 the pharmacy records and any legal prescription
21 (one that complies with State Board of Phar-
22 macy requirements) may be used to validate
23 claims in connection with prescriptions, refills,
24 or changes in prescriptions.

1 “(F) Any clerical or recordkeeping error,
2 such as a typographical error, scrivener’s error,
3 or computer error, regarding a required docu-
4 ment or record shall not be subject to
5 recoupment unless proof of intent to commit
6 fraud or unless such discrepancy results in ac-
7 tual financial harm to an interested party.

8 “(G) The entity conducting the audit shall
9 not use extrapolation or other statistical expan-
10 sion techniques in calculating the recoupment
11 or penalties for audits.

12 “(H) The PBM shall disclose any audit
13 recoupment to the group health plan or health
14 insurance issuer with a copy to the pharmacy.

15 “(5) PBM CONDUCT REGARDING COVERED IN-
16 DIVIDUALS.—A PBM shall—

17 “(A) notify a plan sponsor if such PBM in-
18 tends to sell utilization or claims data that the
19 PBM possesses as a result of an arrangement
20 described in this section;

21 “(B) notify the plan sponsor in writing at
22 least 30 days before selling, leasing, or renting
23 such data and shall provide the plan sponsor
24 with the name of the potential purchaser of

1 such data and the expected use of any utiliza-
2 tion or claims data by such purchaser;

3 “(C) not sell such data unless the sale
4 complies with all Federal and State laws and
5 the PBM has received written approval for such
6 sale from the plan sponsor;

7 “(D) not directly contact a covered indi-
8 vidual by any means (including via electronic
9 delivery, telephonic, SMS text or direct mail)
10 without the express written permission of the
11 plan sponsor and the covered individual;

12 “(E) not transmit any personally identifi-
13 able utilization or claims data to a pharmacy
14 owned by the PBM if the patient has not volun-
15 tarily elected in writing to fill that particular
16 prescription at the PBM-owned pharmacy; and

17 “(F) provide each covered individual with
18 an opportunity to affirmatively opt out of the
19 sale of his or her data prior to entering into
20 any arrangement for the lease, rental, or sale of
21 such information.

22 “(b) DEFINITION.—For purposes of this section, the
23 term ‘fraud’ has the meaning given the term ‘health care
24 fraud’ in section 1347 of title 18, United States Code.”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by this subsection shall apply to plan sponsors for
3 plan years beginning on or after the date of enact-
4 ment of this Act.

5 (b) AMENDMENTS TO THE PUBLIC HEALTH SERVICE
6 ACT RELATING TO THE INDIVIDUAL MARKET.—

7 (1) IN GENERAL.—Subpart 2 of part B of title
8 XXVII of the Public Health Service Act (42 U.S.C.
9 300gg–51 et seq.) is amended by adding at the end
10 the following:

11 **“SEC. 2754. PHARMACY BENEFITS MANAGER TRANS-**
12 **PARENCY AND PROPER OPERATION RE-**
13 **QUIREMENTS.**

14 “The provisions of section 2729 of the Public Health
15 Service Act shall apply to health insurance coverage of-
16 fered by a health insurance issuer in the individual market
17 in the same manner as they apply to a group health plan
18 and a health insurance issuer providing health insurance
19 coverage under that section.”.

20 (2) CONFORMING AMENDMENTS.—

21 (A) ERISA AMENDMENT.—

22 (i) IN GENERAL.—Subpart B of part
23 7 of subtitle B of title I of the Employee
24 Retirement Income Security Act of 1974

1 (29 U.S.C. 1185 et seq.) is amended by
2 adding at the end the following:

3 **“SEC. 716. PHARMACY BENEFITS MANAGER TRANS-**
4 **PARENCY AND PROPER OPERATION RE-**
5 **QUIREMENTS.**

6 “The provisions of section 2729 of the Public Health
7 Service Act shall apply to a group health plan, and a
8 health insurance issuer providing health insurance cov-
9 erage in connection with a group health plan, in the same
10 manner as such provisions apply to a group health plan
11 and a health insurance issuer providing health insurance
12 coverage under that section.”.

13 (ii) CLERICAL AMENDMENT.—The
14 table of contents in section 1 of the Em-
15 ployee Retirement Income Security Act of
16 1974 is amended by inserting after the
17 item relating to section 714 the following:

“Sec. 715. Additional market reforms.

“Sec. 716. Pharmacy benefits manager transparency and proper operation re-
quirements.”.

18 (B) IRC AMENDMENT.—

19 (i) IN GENERAL.—Subpart B of chap-
20 ter 100 of the Internal Revenue Code of
21 1986 (26 U.S.C. 9811 et seq.) is amended
22 by adding at the end the following:

1 **“SEC. 9814. PHARMACY BENEFITS MANAGER TRANS-**
 2 **PARENCY AND PROPER OPERATION RE-**
 3 **QUIREMENTS.**

4 “The provisions of section 2729 of the Public Health
 5 Service Act shall apply to a group health plan, and a
 6 health insurance issuer providing health insurance cov-
 7 erage in connection with a group health plan, in the same
 8 manner as such provisions apply to a group health plan
 9 and a health insurance issuer providing health insurance
 10 coverage under that section.”.

11 (ii) **CLERICAL AMENDMENT.**—The
 12 table of sections for subpart B of chapter
 13 100 of the Internal Revenue Code of 1986
 14 is amended by inserting after the item re-
 15 lating to section 9813 the following new
 16 item:

“Sec. 9814. Pharmacy benefits manager transparency and proper operation re-
 quirements.”.

17 (3) **EFFECTIVE DATE.**—The amendments made
 18 by paragraphs (1) and (2) shall apply with respect
 19 to health insurance coverage offered, sold, issued, re-
 20 newed, in effect, or operated in the individual mar-
 21 ket on or after the date of enactment of this Act.

22 (c) **MEDICARE PRESCRIPTION DRUG PLANS.**—

23 (1) **IN GENERAL.**—Subpart 2 of part D of title
 24 XVIII of the Social Security Act (42 U.S.C. 1395w–

1 111 et seq.) is amended by adding at the end the
2 following:

3 **“SEC. 1860D–17. PHARMACY BENEFITS MANAGER TRANS-**
4 **PARENCY AND PROPER OPERATION RE-**
5 **QUIREMENTS.**

6 “The provisions of section 2729 of the Public Health
7 Service Act shall apply to health insurance coverage of-
8 fered by a prescription drug plan under this part in the
9 same manner as such provisions apply to a group health
10 plan and a health insurance issuer providing health insur-
11 ance coverage under that section.”.

12 (2) **EFFECTIVE DATE.**—The amendment made
13 by this subsection shall apply with respect to plan
14 years beginning on or after the date of enactment of
15 this Act.

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