

117TH CONGRESS
1ST SESSION

S. 1523

To amend title XI of the Social Security Act and title XXVII of the Public Health Service Act to establish requirements with respect to prescription drug benefits.

IN THE SENATE OF THE UNITED STATES

APRIL 29, 2021

Mr. BRAUN (for himself and Mrs. HYDE-SMITH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title XI of the Social Security Act and title XXVII of the Public Health Service Act to establish requirements with respect to prescription drug benefits.

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 “Drug Price Trans-
5 parency Act of 2021”.

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

8 (a) REMOVAL OF SAFE HARBOR PROTECTION FOR
9 REBATES INVOLVING PRESCRIPTION DRUGS AND ESTAB-

1 LISHMENT OF NEW SAFE HARBOR PROTECTIONS IN-
 2 VOLVING PRESCRIPTION DRUGS.—

3 (1) REMOVAL OF SAFE HARBOR PROTECTION
 4 FOR REBATES INVOLVING PRESCRIPTION DRUGS.—
 5 Section 1128B(b) of the Social Security Act (42
 6 U.S.C. 1320a–7b(b)) is amended—

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

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

11 “(5) REMOVAL OF SAFE HARBOR PROTECTION
 12 FOR REBATES INVOLVING PRESCRIPTION DRUGS.—
 13 The safe harbor described in paragraph (3)(A) shall
 14 not apply to a reduction in price or other remunera-
 15 tion from a manufacturer of prescription drugs to a
 16 sponsor of a prescription drug plan under part D of
 17 title XVIII, an MA organization offering an MA–PD
 18 plan under part C of such title, or a pharmacy ben-
 19 efit manager under contract with such a sponsor or
 20 such an organization and, except as provided in sub-
 21 paragraphs (L) and (M) of paragraph (3), para-
 22 graphs (1) and (2) shall apply to any such reduction
 23 in price or other remuneration.”.

24 (2) ESTABLISHMENT OF NEW SAFE HARBOR
 25 PROTECTIONS INVOLVING PRESCRIPTION DRUGS .—

1 Section 1128B(b)(3) of the Social Security Act (42
2 U.S.C. 1320a-7b(b)(3)) is amended—

3 (A) in subparagraph (J), by striking “and”
4 at the end;

5 (B) in subparagraph (K), by striking the
6 period at the end and inserting a semicolon;
7 and

8 (C) by adding at the end the following:

9 “(L) a reduction in price offered by a man-
10 ufacturer of prescription drugs to a sponsor of
11 a prescription drug plan under part D of title
12 XVIII, an MA organization offering an MA-PD
13 plan under part C of such title, or a pharmacy
14 benefit manager under contract with such a
15 sponsor or such an organization, that is re-
16 flected at the point of sale to the individual and
17 meets such other conditions as the Secretary
18 may establish; and

19 “(M) flat fee service fees a manufacturer
20 of prescription drugs pays to a pharmacy ben-
21 efit manager for services rendered to the manu-
22 facturer that relate to arrangements by the
23 pharmacy benefit manager to provide pharmacy
24 benefit management services to a health plan, if
25 certain conditions established by the Secretary

1 are met, including requirements that the fees
2 are transparent to the health plan.”.

3 (3) EFFECTIVE DATE.—The amendments made
4 by this subsection shall take effect on January 1,
5 2023.

6 (b) REQUIREMENTS FOR PRIVATE INSURANCE
7 PLANS.—

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

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

13 “(a) IN GENERAL.—A group health plan or a health
14 insurance issuer offering group or individual health insur-
15 ance coverage shall not, and shall ensure that any entity
16 that provides pharmacy benefits management services
17 under a contract with any such health plan or health in-
18 surance coverage does not, receive from a drug manufac-
19 turer a reduction in price or other remuneration with re-
20 spect to any prescription drug received by an enrollee in
21 the plan or coverage and covered by the plan or coverage,
22 unless—

23 “(1) any such reduction in price is reflected at
24 the point of sale to the enrollee and meets such
25 other conditions as the Secretary may establish; and

1 “(2) any such other remuneration is a flat fee-
2 based service fee that a manufacturer of prescription
3 drugs pays to an entity that provides pharmacy ben-
4 efits management services for services rendered to
5 the manufacturer that relate to arrangements by the
6 pharmacy benefit manager to provide pharmacy ben-
7 efit management services to a health plan or health
8 insurance issuer, if certain conditions established by
9 the Secretary are met, including requirements that
10 the fees are transparent to the health plan or health
11 insurance issuer.

12 “(b) ENTITY THAT PROVIDES PHARMACY BENEFITS
13 MANAGEMENT SERVICES.—For purposes of this section,
14 the term ‘entity that provides pharmacy benefits manage-
15 ment services’ means—

16 “(1) any person, business, or other entity that,
17 pursuant to a written agreement with a group health
18 plan or a health insurance issuer offering group or
19 individual health insurance coverage, directly or
20 through an intermediary—

21 “(A) acts as a price negotiator on behalf of
22 the plan or coverage; or

23 “(B) manages the prescription drug bene-
24 fits provided by the plan or coverage, which
25 may include the processing and payment of

claims 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; or

“(2) any entity that is owned, affiliated, or related under a common ownership structure with a person, business, or entity described in paragraph (1).”.

(2) ERISA.—

(A) 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 adding at the end the following:

“SEC. 726. REQUIREMENTS WITH RESPECT TO PRESCRIPTION DRUG BENEFITS.

“(a) IN GENERAL.—A group health plan or a health insurance issuer offering group health insurance coverage shall not, and shall ensure that any entity that provides pharmacy benefits management services under a contract with any such health plan or health insurance coverage

1 does not, receive from a drug manufacturer a reduction
 2 in price or other remuneration with respect to any pre-
 3 scription drug received by an enrollee in the plan or cov-
 4 erage and covered by the plan or coverage, unless—

5 “(1) any such reduction in price is reflected at
 6 the point of sale to the enrollee and meets such
 7 other conditions as the Secretary may establish; and

8 “(2) any such other remuneration is a flat fee-
 9 based service fee that a manufacturer of prescription
 10 drugs pays to an entity that provides pharmacy ben-
 11 efits management services for services rendered to
 12 the manufacturer that relate to arrangements by the
 13 pharmacy benefit manager to provide pharmacy ben-
 14 efit management services to a health plan or health
 15 insurance issuer, if certain conditions established by
 16 the Secretary are met, including requirements that
 17 the fees are transparent to the health plan or health
 18 insurance issuer.

19 “(b) ENTITY THAT PROVIDES PHARMACY BENEFITS
 20 MANAGEMENT SERVICES.—For purposes of this section,
 21 the term ‘entity that provides pharmacy benefits manage-
 22 ment services’ means—

23 “(1) any person, business, or other entity that,
 24 pursuant to a written agreement with a group health
 25 plan or a health insurance issuer offering group

1 health insurance coverage, directly or through an
 2 intermediary—

3 “(A) acts as a price negotiator on behalf of
 4 the plan or coverage; or

5 “(B) manages the prescription drug bene-
 6 fits provided by the plan or coverage, which
 7 may include the processing and payment of
 8 claims for prescription drugs, the performance
 9 of drug utilization review, the processing of
 10 drug prior authorization requests, the adjudica-
 11 tion of appeals or grievances related to the pre-
 12 scription drug benefit, contracting with network
 13 pharmacies, controlling the cost of covered pre-
 14 scription drugs, or the provision of related serv-
 15 ices; or

16 “(2) any entity that is owned, affiliated, or re-
 17 lated under a common ownership structure with a
 18 person, business, or entity described in paragraph
 19 (1).”.

20 (B) CLERICAL AMENDMENT.—The table of
 21 contents of the Employee Retirement Income
 22 Security Act of 1974 is amended by inserting
 23 after the item relating to section 725 the fol-
 24 lowing:

“Sec. 725. Requirements with respect to prescription drug benefits.”.

25 (3) IRC.—

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

4 **“SEC. 9826. REQUIREMENTS WITH RESPECT TO PRESCRIP-**
5 **TION DRUG BENEFITS.**

6 “(a) IN GENERAL.—A group health plan shall not,
7 and shall ensure that any entity that provides pharmacy
8 benefits management services under a contract with any
9 such health plan does not, receive from a drug manufac-
10 turer a reduction in price or other remuneration with re-
11 spect to any prescription drug received by an enrollee in
12 the plan and covered by the plan, unless—

13 “(1) any such reduction in price is reflected at
14 the point of sale to the enrollee and meets such
15 other conditions as the Secretary may establish; and

16 “(2) any such other remuneration is a flat fee-
17 based service fee that a manufacturer of prescription
18 drugs pays to an entity that provides pharmacy ben-
19 efits management services for services rendered to
20 the manufacturer that relate to arrangements by the
21 pharmacy benefit manager to provide pharmacy ben-
22 efit management services to a health plan, if certain
23 conditions established by the Secretary are met, in-
24 cluding requirements that the fees are transparent
25 to the health plan.

1 “(b) ENTITY THAT PROVIDES PHARMACY BENEFITS
 2 MANAGEMENT SERVICES.—For purposes of this section,
 3 the term ‘entity that provides pharmacy benefits manage-
 4 ment services’ means—

5 “(1) any person, business, or other entity that,
 6 pursuant to a written agreement with a group health
 7 plan, directly or through an intermediary—

8 “(A) acts as a price negotiator on behalf of
 9 the plan; or

10 “(B) manages the prescription drug bene-
 11 fits provided by the plan, which may include the
 12 processing and payment of claims for prescrip-
 13 tion drugs, the performance of drug utilization
 14 review, the processing of drug prior authoriza-
 15 tion requests, the adjudication of appeals or
 16 grievances related to the prescription drug ben-
 17 efit, contracting with network pharmacies, con-
 18 trolling the cost of covered prescription drugs,
 19 or the provision of related services; or

20 “(2) any entity that is owned, affiliated, or re-
 21 lated under a common ownership structure with a
 22 person, business, or entity described in paragraph
 23 (1).”.

24 (B) CLERICAL AMENDMENT.—The table of
 25 sections for subchapter B of chapter 100 of the

1 Internal Revenue Code of 1986 is amended by
2 adding at the end the following:

“Sec. 9816. Requirements with respect to prescription drug benefits.”.

3 (4) EFFECTIVE DATE.—The amendments made
4 by paragraphs (1), (2), and (3) shall take effect on
5 January 1, 2023.

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