

118TH CONGRESS
1ST SESSION

H. R. 2816

To amend title XI of the Social Security Act to strengthen transparency requirements with respect to pharmacy benefit managers.

IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2023

Mrs. HARSHBARGER (for herself, Ms. SPANBERGER, Mrs. MILLER-MEEKS, and Mr. KRISHNAMOORTHY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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 title XI of the Social Security Act to strengthen transparency requirements with respect to 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 Benefit
5 Manager Sunshine and Accountability Act”.

1 **SEC. 2. STRENGTHENING PHARMACY BENEFIT MANAGER**
2 **TRANSPARENCY REQUIREMENTS.**

3 Section 1150A of the Social Security Act (42 U.S.C.
4 1320b–23) is amended—

5 (1) in subsection (a)—

6 (A) in paragraph (1), by striking “; or”
7 and inserting a semicolon;

8 (B) in paragraph (2), by striking the
9 comma at the end and inserting “; or”; and

10 (C) by adding at the end the following new
11 paragraph:

12 “(3) a group health plan or health insurance
13 issuer offering group or individual health insurance
14 coverage (as such terms are defined in section 2791
15 of the Public Health Service Act),”;

16 (2) by amending subsection (b) to read as fol-
17 lows:

18 “(b) INFORMATION DESCRIBED.—The information
19 described in this subsection is the following with respect
20 to services provided by a health benefits plan or PBM for
21 a contract year:

22 “(1) With respect to a contract with each entity
23 described in paragraphs (1) through (3) of sub-
24 section (a), the aggregate dollar amount of all—

1 “(A) rebates that a PBM or health bene-
2 fits plan received under each such contract
3 from all drug manufacturers;

4 “(B) administrative fees that a PBM or
5 health benefits plan received under each such
6 contract with from all drug manufacturers;

7 “(C) administrative fees that a PBM or
8 health benefits plan received under each con-
9 tract from each such entity;

10 “(D) rebates that a PBM or health bene-
11 fits plan received under each contract with each
12 entity from all pharmaceutical manufacturers
13 that were not passed through to such entities;

14 “(E) administrative fees that a PBM or
15 health benefits plan received under each con-
16 tract from all pharmaceutical manufacturers
17 and did not pass through to such entities;

18 “(F) total post-claim adjudication pay-
19 ments that a PBM or health benefits plan col-
20 lected from a pharmacy under each contract,
21 including any fees, reimbursements, or other
22 claw backs including generic effective rate and
23 brand effective rate contracts; and

24 “(G) any post-claim adjudication payments
25 that a PBM or health benefits plan collected

1 from a pharmacy under each contract, including
2 any fees, reimbursements, or other claw backs
3 including generic effective rate and brand effective
4 rate contracts that were not passed through
5 to such entities.

6 “(2) The aggregate retained rebate percentage
7 under each contract (that is the value in paragraph
8 (1)(D) divided by the value in paragraph (1)(A)).

9 “(3) Across all contractual relationships for
10 each PBM whereby such PBM is managing prescription
11 drug coverage for a entity described in in paragraphs
12 (1) through (3) of subsection (a), the highest
13 retained rebate percentage and lowest retained rebate
14 percentage for each contract under which such
15 PBM provided services.”;

16 (3) in subsection (c)—

17 (A) in the matter preceding paragraph (1),
18 by striking “, plan, or prices charged for
19 drugs,” and inserting “or plan, the prices
20 charged for a specific drug or classes of drugs,
21 or the amount of any rebates provided for a
22 specific drug or classes of drugs,”; and

23 (B) by adding at the end the following new
24 paragraph:

1 “(5) To carry out the reporting requirement
2 under subsection (e).”; and

3 (4) by adding at the end the following new sub-
4 sections:

5 “(e) PUBLIC REPORTING REQUIREMENT.—Not later
6 than the first calendar quarter following the first full plan
7 year beginning on or after the date of enactment of this
8 subsection, and annually thereafter, the Secretary shall
9 publish on a public website of the Department of Health
10 and Human Services the information reported under sub-
11 section (b), in accordance with the confidentiality require-
12 ments described in subsection (c).

13 “(f) DEFINITIONS.—In this section:

14 “(1) BRAND EFFECTIVE RATE.—The term
15 ‘brand effective rate’ means the claim reimburse-
16 ment for a brand name drug, expressed as a per-
17 centage discount from the average wholesale price of
18 such drug.

19 “(2) GENERIC EFFECTIVE RATE.—The term
20 ‘generic effective rate’ means the claim reimburse-
21 ment for a generic drug, expressed as a percentage
22 discount from the average wholesale price of such
23 drug.

1 “(3) PHARMACY BENEFITS MANAGER.—The
2 term ‘pharmacy benefits manager’ or ‘PBM’
3 means—

4 “(A) an entity that manages prescription
5 drug benefits on behalf of an entity described in
6 paragraphs (1) through (3) of subsection (a);
7 and

8 “(B) for purposes of this section, includes
9 any other organization that—

10 “(i) has directly or indirectly (as de-
11 termined by the Secretary in regulations),
12 an ownership interest of 5 percent or more
13 in the PBM;

14 “(ii) shares, or is otherwise a part of,
15 the same organizational structure as the
16 PBM;

17 “(iii) exercises operational, financial,
18 or managerial control over the PBM or a
19 part thereof, or provides policies or proce-
20 dures for any of the operations of the
21 PBM, or provides financial or cash man-
22 agement services to the PBM; or

23 “(iv) provides management or admin-
24 istrative services, management or clinical

1 consulting services, or accounting or finan-
2 cial services to the PBM.

3 “(4) ORGANIZATIONAL STRUCTURE.—The term
4 ‘organizational structure’ means, in the case of—

5 “(A) a corporation, the officers, directors,
6 and shareholders of the corporation who have
7 an ownership interest in the corporation which
8 is equal to or exceeds 5 percent;

9 “(B) a limited liability company, the mem-
10 bers and managers of the limited liability com-
11 pany;

12 “(C) a general partnership, the partners of
13 the general partnership;

14 “(D) a limited partnership, the general
15 partners and any limited partners of the limited
16 partnership who have an ownership interest in
17 the limited partnership which is equal to or ex-
18 ceeds 5 percent;

19 “(E) a trust, the trustees of the trust; or

20 “(F) any other person or entity as the Sec-
21 retary determines appropriate.”.

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