

118TH CONGRESS
1ST SESSION

S. 1967

To amend title XVIII of the Social Security Act to establish requirements relating to the responsibility of pharmacy benefit managers under Medicare part D.

IN THE SENATE OF THE UNITED STATES

JUNE 14, 2023

Mr. MENENDEZ (for himself, Mrs. BLACKBURN, Mr. TESTER, Mr. MARSHALL, Mr. WYDEN, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to establish requirements relating to the responsibility of pharmacy benefit managers under Medicare part D.

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 “Patients Before Mid-
5 dlemen Act” or the “PBM Act”.

6 **SEC. 2. RESPONSIBILITY OF PHARMACY BENEFIT MAN-**
7 **AGERS UNDER MEDICARE PART D.**

8 (a) PRESCRIPTION DRUG PLANS.—Section 1860D–
9 12(b) of the Social Security Act (42 U.S.C. 1395w–

1 112(b)) is amended by adding at the end the following
 2 new paragraph:

3 “(9) RESPONSIBILITY OF PHARMACY BENEFIT
 4 MANAGERS.—

5 “(A) IN GENERAL.—Each contract entered
 6 into with a PDP sponsor under this part with
 7 respect to a prescription drug plan offered by
 8 such sponsor shall provide that any pharmacy
 9 benefit manager (or affiliate, subsidiary, or
 10 agent of a pharmacy benefit manager) acting
 11 on behalf of such sponsor—

12 “(i) derives no income with respect to
 13 any services provided in connection with
 14 part D utilization from any entity or indi-
 15 vidual other than bona fide service fees;
 16 and

17 “(ii) sets forth in an agreement be-
 18 tween the pharmacy benefit manager and
 19 the PDP sponsor the amount of any bona
 20 fide service fee. The bona fide service fee
 21 must be a flat dollar amount, cannot be
 22 passed on in whole or in part to another
 23 party whether or not the pharmacy benefit
 24 manager takes title to the drug, and shall

1 not be directly or indirectly based on, or
 2 contingent upon—

3 “(I) drug price, such as wholesale
 4 acquisition cost or drug benchmark
 5 price (such as average wholesale
 6 price);

7 “(II) discounts, rebates, fees, or
 8 other remuneration with respect to
 9 prescription drugs prescribed to en-
 10 rollees in the plan; or

11 “(III) any other amounts prohib-
 12 ited by the Secretary.

13 “(B) CLARIFICATION REGARDING PDP
 14 SPONSOR ACTING AS PBM.—In the case where a
 15 PDP sponsor is acting as a pharmacy benefit
 16 manager on behalf of a prescription drug plan
 17 offered by the PDP sponsor, the requirements
 18 under subparagraph (A) shall not be construed
 19 as preventing the PDP sponsor from accepting
 20 any rebates, discounts, or price concessions that
 21 lower net costs for covered part D drugs.

22 “(C) CERTIFICATION OF COMPLIANCE.—
 23 The PDP sponsor and pharmacy benefit man-
 24 ager shall furnish to the Secretary (in a time
 25 and manner specified by the Secretary) an an-

1 nual certification of compliance with this para-
2 graph, as well as such information as the Sec-
3 retary determines necessary to carry out this
4 paragraph.

5 “(D) DISGORGEMENT OF EXCESS
6 AMOUNTS RECEIVED.—A pharmacy benefit
7 manager (or affiliate, subsidiary, or agent of a
8 pharmacy benefit manager) shall disgorge to
9 the Secretary any payment, remuneration, or
10 other amount received in violation of this para-
11 graph or the contract entered into with a PDP
12 sponsor under this part with respect to a pre-
13 scription drug plan.

14 “(E) CLARIFICATION.—The requirements
15 of this paragraph shall apply regardless of
16 whether the pharmacy benefit manager is a
17 first-tier, downstream, or related entity to the
18 PDP sponsor.

19 “(F) RULE OF CONSTRUCTION.—Nothing
20 in this paragraph shall be construed as prohib-
21 iting payments related to reimbursement for in-
22 gredient costs to entities that acquire prescrip-
23 tion drugs or pharmacy dispensing fees.

24 “(G) DEFINITIONS.—For purposes of this
25 paragraph:

1 “(i) BONA FIDE SERVICE FEE.—The
 2 term ‘bona fide service fee’ means fair
 3 market value for a bona fide, itemized
 4 service actually performed on behalf of an
 5 entity, that the entity would otherwise per-
 6 form (or contract for) in the absence of the
 7 service arrangement and that are not
 8 passed on in whole to a client or customer,
 9 whether or not the entity takes title to the
 10 drug.

11 “(ii) PHARMACY BENEFIT MAN-
 12 AGER.—The term ‘pharmacy benefit man-
 13 ager’ means any person, business, or other
 14 entity that, pursuant to an agreement with
 15 a PDP sponsor or part D plan either di-
 16 rectly or through an intermediary acts as
 17 a price negotiator or group purchaser on
 18 behalf of such sponsor or plan, or manages
 19 the prescription drug benefits provided by
 20 such sponsor or plan, including the proc-
 21 essing and payment of claims for prescrip-
 22 tion drugs, the performance of drug utili-
 23 zation review, the processing of drug prior
 24 authorization requests, the adjudication of
 25 appeals or grievances related to the pre-

1 scription drug benefit, contracting with
 2 network pharmacies, controlling the cost of
 3 covered part D drugs, or the provision of
 4 services related thereto. Such term in-
 5 cludes—

6 “(I) any person, business, or
 7 other entity that carries out one or
 8 more of the activities described in the
 9 preceding sentence; and

10 “(II) any entity that is owned,
 11 affiliated, or related under a common
 12 ownership structure with such a per-
 13 son, business, or entity (including an
 14 entity owned by or affiliated with the
 15 PDP sponsor) or that acts as a con-
 16 tractor or agent to such a person,
 17 business, or entity,
 18 irrespective of whether such person, busi-
 19 ness, or entity calls itself a ‘pharmacy ben-
 20 efit manager’.”.

21 (b) MA–PD PLANS.—Section 1857(f)(3) of the So-
 22 cial Security Act (42 U.S.C. 1395w–27(f)(3)) is amended
 23 by adding at the end the following new subparagraph:

1 “(E) RESPONSIBILITY OF PHARMACY BEN-
2 EFIT MANAGERS.—Section 1860D–12(b)(9).”.

