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119TH CONGRESS
1ST SESSION

H. R. 2041

To amend the Employee Retirement Income Security Act of 1974 to clarify and strengthen the application of certain employer-sponsored health plan disclosure requirements.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2025

Mr. COURTNEY (for himself and Mrs. HOUCHIN) introduced the following bill; which was referred to the Committee on Education and Workforce

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A BILL

To amend the Employee Retirement Income Security Act of 1974 to clarify and strengthen the application of certain employer-sponsored health plan disclosure requirements.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Hidden Fee Disclosure Act of 2025''.

SEC. 2. CLARIFICATION OF THE APPLICATION OF FEE DISCLOSURE REQUIREMENTS TO COVERED SERVICE PROVIDERS.

(a) SERVICES.—Clause (ii)(I)(bb) of section 408(b)(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is amended—

(1) in subitem (AA) by striking ''Brokerage services,'' and inserting ''Services (including brokerage services),''; and

(2) in subitem (BB)—

(A) by striking ''Consulting,'' and inserting ''Other services,''; and

(B) by striking ''related to the development or implementation of plan design'' and all that follows through the period at the end and inserting ''any of the following: plan design, claim repricing, insurance or insurance product selection (including vision and dental), recordkeeping, medical management, benefits administration selection (including vision and dental), stop-loss insurance, pharmacy benefit management services, wellness design and management services, transparency tools, group purchasing organization agreements and services, participation in and services from preferred vendor panels, disease management, compliance services,

employee assistance programs, or third party administration services, or consulting services related to any such services.''.

(b) DISCLOSURES.—Clause (iii)(III) of section 408(b)(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is amended by striking '', either in the aggregate or by service,'' and inserting ''by service''.

SEC. 3. STRENGTHENING DISCLOSURE REQUIREMENTS WITH RESPECT TO ENTITIES PROVIDING PHARMACY BENEFIT MANAGEMENT SERVICES AND THIRD PARTY ADMINISTRATORS FOR GROUP HEALTH PLANS.

(a) CERTAIN ARRANGEMENTS FOR PHARMACY BENEFIT MANAGEMENT SERVICES CONSIDERED AS INDIRECT.—

(1) IN GENERAL.—Clause (i) of section 408(b)(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is amended—

(A) by striking ''requirements of this clause'' and inserting ''requirements of this subparagraph''; and

(B) by adding at the end the following: ''For purposes of applying section 406(a)(1)(C)

with respect to a transaction described under this subparagraph, a contract or arrangement for services between a covered plan and an entity or subsidiary providing services to the plan, including a health insurance issuer providing health insurance coverage in connection with the covered plan in which the entity or subsidiary contracts, in connection with such plan, with a service provider for pharmacy benefit management services shall be considered an indirect furnishing of goods, services, or facilities between the covered plan and the service provider for pharmacy benefit management services acting as the party in interest.''.

(2) HEALTH INSURANCE ISSUER AND HEALTH INSURANCE COVERAGE DEFINED.—Clause (ii)(I)(aa) of section 408(b)(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is amended by inserting before the period at the end ''and the terms 'health insurance coverage' and 'health insurance issuer' have the meanings given such terms in section 733(b)''.

(3) TECHNICAL AMENDMENT.—Section 408(b)(2)(B)(ii)(I)(aa) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.

1108(b)(2)(B)(ii)(I)(aa)) is further amended by inserting ''in'' after ''defined''.

(b) SPECIFIC DISCLOSURE REQUIREMENTS WITH RESPECT TO ENTITIES PROVIDING PHARMACY BENEFIT MANAGEMENT SERVICES.—

(1) IN GENERAL.—Clause (iii) of section 408(b)(2)(B) of such Act (29 U.S.C. 1108(b)(2)(B)) is amended by adding at the end the following:

''(VII) In the case of a covered service provider in a contract or arrangement with a covered plan to provide pharmacy benefit management services, as part of the description required under subclauses (III) and (IV)—

''(aa) all compensation described in clause (ii)(I)(dd)(AA), including fees, rebates, alternative discounts, price concessions, co-payment offsets, and other remuneration reasonably expected to be received by the covered service provider, an affiliate, or a subcontractor from a drug manufacturer, distributor, rebate aggregator, accumulator, maximizer, group purchasing organization, or any other third party;

''(bb) the amount and form of any fees, rebates, alternative discounts, price

concessions, co-payment offsets, and other remuneration, including the amount expected to be passed through to the plan sponsor or the participants and beneficiaries under the covered plan;

''(cc) all compensation reasonably expected to be received by the covered service provider, an affiliate, or a subcontractor as a result of paying a lower amount for the drug than the amount charged as a copayment, coinsurance amount, or deductible;

''(dd) all compensation expected to be received by the covered service provider, an affiliate, or a subcontractor as a result of paying pharmacies less than the amount charged to the health plan, plan sponsor, or participants and beneficiaries (commonly referred to as 'spread pricing');

''(ee) all compensation expected to be received by the covered service provider, an affiliate, or a subcontractor from drug manufacturers or any other third party in exchange for—

''(AA) administering, invoicing, allocating, or collecting rebates related to the covered plan;

''(BB) providing access to drug utilization data;

''(CC) retaining a percentage of the list price of a drug; or

''(DD) any other service related to the role of the covered service provider as a conduit between the drug manufacturers or any other third party and the covered plan.''.

(2) ANNUAL DISCLOSURE.—Clause (v) of section 408(b)(2)(B) of such Act (29 U.S.C. 1108(b)(2)(B)) is amended by adding at the end the following:

''(III) A covered service provider, with respect to a contract or arrangement with the covered plan in connection with providing pharmacy benefit management services, shall disclose, on an annual basis not later than 60 days after the beginning of each plan year, to a responsible plan fiduciary, in writing, the following with respect to the preceding plan year:

''(aa) All direct compensation described in subclause (III) of clause (iii) and indirect compensation described in subclause (IV) of clause (iii) received by the covered service provider (including such compensation described in subclause (VII) of clause (iii)).

''(bb) The total gross spending by the covered plan on drugs (excluding fees rebates, alternative discounts, price concessions, co-payment offsets, and other remuneration).

''(cc) The total net spending by the covered plan on drugs.

''(dd) The total gross spending on drugs at all pharmacies wholly or partially owned by the covered service provider or any entity affiliated with the covered service provider, including mail-order, specialty and retail pharmacies, with a breakdown by individual pharmacy location.

''(ee) The aggregate amount of cost-sharing collected by the covered service provider from a pharmacy for a participant or beneficiary in excess of the contracted rate from such pharmacies, including mail-order, specialty, and retail pharmacies, including—

''(AA) categorical explanations (grouped by the reason for collection of such amounts, such as contractual true-up provisions, overpayments, or non-covered medication dispensed, and including information on the amount in each category that was passed through to the covered plan and to participants and beneficiaries of the covered plan); or

''(BB) individual explanations for such amounts.

''(ff) Total aggregate amounts of fees collected by the covered service provider, an affiliate, or a subcontractor in connection with the provision of pharmacy benefit management services to the covered plan, broken down by the source of such fees (such as the covered plan, participants and beneficiaries of the covered plan, any drug manufacturer or wholesaler, or any pharmacy entity).

''(gg) Any information specified by the Secretary through regulations or guidance that may be necessary for a responsible plan fiduciary to determine the reasonableness of the contract or arrangement with the covered serv-

ice provider, any compensation paid under such a contract or arrangement, or any conflicts of interest that may exist.''.

(3) PHARMACY BENEFIT MANAGEMENT SERVICES DEFINED.—Clause (ii)(I) of section 408(b)(2)(B) of such Act (29 U.S.C. 1108(b)(2)(B)) is amended by adding at the end the following:

''(gg) The term 'pharmacy benefit management services' includes any services provided by a covered service provider to a covered plan with respect to the administration of prescription drug benefits under the covered plan, including—

''(AA) the processing and payment of claims;

''(BB) design of pharmacy networks;

''(CC) negotiation, aggregation, and distribution of rebates, discounts, and other price concessions;

''(DD) formulary design and maintenance;

''(EE) operation of pharmacies (whether retail, mail order, specialty drug, or otherwise); recordkeeping;

''(FF) utilization review;

"(GG) adjudication of claims; and

"(HH) any other services specified by the Secretary through guidance or rule-making.".

(c) SPECIFIC DISCLOSURE REQUIREMENTS WITH RESPECT TO THIRD PARTY ADMINISTRATION SERVICES FOR GROUP HEALTH PLANS.—

(1) IN GENERAL.—Clause (iii) of section 408(b)(2)(B) of such Act (29 U.S.C. 1108(b)(2)(B)), as amended by subsection (b)(1), is further amended by adding at the end the following:

"(VIII) With respect to a contract or arrangement with the covered plan in connection with the provision of third party administration services for group health plans, as part of the description required under subclauses (III) and (IV)—

"(aa) the amount and form of any rebates, discounts, savings fees, refunds, or amounts received from providers and facilities, including the amounts that will be retained by the covered service provider;

"(bb) the amount and form of fees expected to be received from other service providers in relation to the covered plan,

including the amounts that will be retained by the covered service provider as a fee, to the extent feasible; and

''(cc) the amount and form of expected recoveries by the covered service provider, including the amounts that will be retained by the covered service provider (disaggregated by category), as a result of—

''(AA) overpayments;

''(BB) erroneous payments;

''(CC) uncashed checks or incomplete payments;

''(DD) billing errors;

''(EE) subrogation;

''(FF) fraud; or

''(GG) any other reason on behalf of the covered plan.''.

(2) ANNUAL DISCLOSURE.—Clause (v) of section 408(b)(2)(B) of such Act (29 U.S.C. 1108(b)(2)(B)), as amended by subsection (b)(2), is amended by adding at the end the following:

''(IV) A covered service provider, with respect to a contract or arrangement with the covered plan in connection with providing third party administra-

tion services for group health plans, shall disclose, on an annual basis not later than 60 days after the beginning of each plan year, to a responsible plan fiduciary, in writing, the following with respect to the preceding plan year:

''(aa) All direct compensation described in subclause (III) of clause (iii).

''(bb) All indirect compensation described in subclause (IV) of clause (iii) received by the covered service provider, an affiliate, or a subcontractor (including such compensation described in subclause (VIII) of clause (iii)).

''(cc) The aggregate amount for which the covered service provider, an affiliate, or a subcontractor received indirect compensation and the estimated amount of cost-sharing incurred by plan participants and beneficiaries as a result.

''(dd) The total gross spending by the covered plan on all costs and fees arising under or paid under the administrative services agreement with the covered service provider (not including any amounts described in items (aa) through (cc) of clause (iii)(VIII)).

''(ee) The total net spending by the covered plan on all costs and fees arising under or paid under the administrative services agreement with the covered service provider.

''(ff) The aggregate fees collected by the covered service provider, an affiliate, or a subcontractor from any source.

''(gg) Any other information specified by the Secretary through regulations or guidance that may be necessary for a responsible plan fiduciary to determine the reasonableness of the contract or arrangement with the covered service provider any compensation paid under such a contractor or arrangement, or any conflicts of interest that may exist.''.

(3) THIRD PARTY ADMINISTRATION SERVICES FOR GROUP HEALTH PLANS DEFINED.—Clause (ii)(I) of section 408(b)(2)(B) of such Act (29 U.S.C. 1108(b)(2)(B)), as amended by subsection (b)(3), is amended by adding at the end the following:

''(hh) The term 'third party administration services for group health plans' includes any services provided by a covered service provider to a covered plan with respect to the adminis-

tration of health benefits under the covered plan, including—

''(AA) the processing, repricing, and payment of claims;

''(BB) design, creation, and maintenance of provider networks;

''(CC) negotiation of discounts off gross rates;

''(DD) benefit and plan design; negotiation of payment rates;

''(EE) recordkeeping;

''(FF) utilization review;

''(GG) adjudication of claims;

''(HH) regulatory compliance; and

''(II) any other services set forth in an administrative services agreement or similar agreement or specified by the Secretary through guidance or rulemaking.''.

(d) PRIVACY REQUIREMENTS.—Section 408(b)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(2)), as amended by subsection (c), is further amended by adding at the end the following:

''(C) PRIVACY REQUIREMENTS.—Covered service providers shall provide information under subparagraph (B) in a manner consistent with the pri-

vacy regulations promulgated under section 13402(a) of the Health Information Technology for Clinical Health Act (42 U.S.C. 17932(a)), and consistent with the privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 in part 160 and subparts A and E of part 164 of title 45, Code of Federal Regulations (or successor regulations) and shall restrict the use and disclosure of such information according to such privacy, security, and breach notification regulations and such privacy regulations.

''(D) DISCLOSURE AND REDISCLOSURE.—

''(i) LIMITATION TO BUSINESS ASSOCIATES.—A responsible plan fiduciary receiving information disclosed under subparagraph (B) may disclose such information only to the entity from which the information was received, the group health plan to which the information pertains, or to that entity's business associates as defined in section 160.103 of title 45, Code of Federal Regulations (or successor regulations) or as permitted by the HIPAA Privacy Rule (parts 160 and 164, subparts A and E of title 45, Code of Federal Regulations).

''(ii) CLARIFICATION REGARDING PUBLIC DISCLOSURE OF INFORMATION.—Nothing in this section shall prevent a group health plan or health insurance issuer offering group health insurance coverage, or a covered service provider, from placing reasonable restrictions on the public disclosure of the information described in this subparagraph, except that such plan, issuer, or entity may not restrict disclosure of such information to the Department of Labor.

''(E) ADDITIONAL PRIVACY REQUIREMENTS.—

''(i) IN GENERAL.—Covered service providers shall ensure that information provided under subparagraph (B) contains only summary health information, as defined in section 164.504(a) of title 45, Code of Federal Regulations (or successor regulations).

''(ii) RESTRICTIONS.—A group health plan shall comply with section 164.504(f) of title 45, Code of Federal Regulations (or successor regulations) with respect to any information received by the plan or disclosed to a plan sponsor or any other entity pursuant to this section, and a responsible plan administrator who is a

plan sponsor shall act in accordance with the terms of the agreement described in such section.

''(F) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to modify the requirements for the creation, receipt, maintenance, or transmission of protected health information under the privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 in part 160 and subparts A and E of part 164 of title 45, Code of Federal Regulations (or successor regulations).''.

(e) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall be construed to imply that a practice in relation to which a covered service provider is required to provide information as a result of such amendments is permissible under Federal law.

(f) EFFECTIVE DATE.—The amendments made by this subsection shall not apply to any contract or arrangement entered into prior to January 1, 2026. Such amendments shall apply to any contract or arrangement entered into on or after to such date, including any extension or renewal of a contract or arrangement, regardless of the date on which the original contract or agreement (or any previous extension or renewal) was entered into.

SEC. 4. IMPLEMENTATION.

Not later than 1 year after the date of enactment of this Act, the Secretary of Labor shall issue notice and comment rulemaking as necessary to implement the provisions of this Act. The Secretary shall ensure that such rulemaking—

(1) accounts for the varied compensation practices of covered service providers (as defined under section 408(b)(2)(B); and

(2) establishes standards for the disclosure of expected compensation by such covered service providers.

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