

118TH CONGRESS  
1ST SESSION

# H. R. 6283

To improve services provided by pharmacy benefit managers.

---

## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 8, 2023

Mrs. MILLER-MEEKS (for herself, Ms. BARRAGÁN, Mrs. CHAVEZ-DEREMÉR, Ms. MANNING, Ms. MALLIOTAKIS, Mr. SCHNEIDER, Mr. KEAN of New Jersey, and Ms. SPANBERGER) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Education and the Workforce, and Oversight and Accountability, 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 improve services provided by 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 “Delinking Revenue  
5 from Unfair Gouging Act” or the “DRUG Act”.

6 **SEC. 2. IMPROVING PHARMACY BENEFIT MANAGER SERV-**  
7 **ICES.**

8 (a) PUBLIC HEALTH SERVICE ACT.—Part D of title  
9 XXVII of the Public Health Service Act (42 U.S.C.

1 300gg–111 et seq.) is amended by adding at the end the  
2 following:

3 **“SEC. 2799A–11. IMPROVING PHARMACY BENEFIT MANAGER**  
4 **SERVICES.**

5 “(a) GENERAL.—For plan years beginning on or  
6 after January 1, 2026, except as provided in subsection  
7 (b), a pharmacy benefit manager shall derive no remuneration from any entity for services, benefit administration, or any other activities related to prescription drugs.

10 “(b) EXCEPTION FOR BONA FIDE SERVICE FEES.—

11 “(1) IN GENERAL.—A pharmacy benefit manager may charge an entity a bona fide service fee for the provision of services to such entity if such fee is set forth in an agreement between the pharmacy benefit manager and such entity, and the amount of any bona fide service fee—

17 “(A) shall be a flat dollar amount; and

18 “(B) shall not be directly or indirectly  
19 based on, or contingent upon—

20 “(i) a drug price (such as wholesale  
21 acquisition cost) or drug benchmark price  
22 (such as average wholesale price);

23 “(ii) the amount of discounts, rebates,  
24 fees, or other direct or indirect remuneration with respect to prescription drugs pre-

1           scribed to the participants, beneficiaries, or  
2           enrollees in the group health plan or cov-  
3           erage involved; or

4                   “(iii) any other amounts prohibited by  
5           the Secretary, the Secretary of Labor, and  
6           the Secretary of the Treasury.

7           “(2) DEFINITIONS.—In this section—

8                   “(A) the term ‘bona fide service fee’ means  
9           fair market value for a bona fide, itemized serv-  
10          ice actually performed on behalf of an entity,  
11          that the entity would otherwise perform (or  
12          contract for) in the absence of the service ar-  
13          rangement and that are not passed on in whole  
14          or in part to a client or customer, whether or  
15          not the entity takes title to the drug; and

16                  “(B) the term ‘pharmacy benefit manager’  
17          means any person, business, or other entity  
18          such as a third-party administrator, regardless  
19          of whether it identifies itself as a pharmacy  
20          benefit manager, that, either directly or  
21          through an intermediary (including an affiliate,  
22          subsidiary, parent, or agent) or an arrangement  
23          with a third party—

24                   “(i) acts as a price negotiator or  
25          group purchaser for prescription drugs on

1           behalf of a group health plan or health in-  
2           surance issuer offering group or individual  
3           health insurance coverage; or

4                   “(ii) manages or administers the pre-  
5           scription drug benefits provided by a group  
6           health plan or health insurance issuer of-  
7           fering group or individual health insurance  
8           coverage, including the processing and pay-  
9           ment of claims for prescription drugs, ar-  
10          ranging alternative access to or funding for  
11          prescription drugs, the performance of  
12          drug utilization review, the processing of  
13          drug prior authorization requests, the ad-  
14          judication of appeals or grievances related  
15          to the prescription drug benefit, con-  
16          tracting with network pharmacies, control-  
17          ling the cost of covered prescription drugs,  
18          or the provision of related services.

19          “(c) ACCOUNTABILITY AND CONDUCT.—

20                   “(1) IN GENERAL.—A pharmacy benefit man-  
21          ager shall not—

22                           “(A) charge a group health plan or health  
23          insurance issuer offering group or individual  
24          health insurance coverage a different amount  
25          for a prescription drug’s ingredient cost or dis-

1           pensing fee as compared to the amount the  
2           pharmacy benefit manager reimburses a phar-  
3           macy for the prescription drug’s ingredient cost  
4           or dispensing fee;

5           “(B) reimburse a network pharmacy or  
6           pharmacist in an amount less than the amount  
7           the pharmacy benefit manager would reimburse  
8           a network pharmacy that is owned, controlled  
9           by, or affiliated with the pharmacy benefit man-  
10          ager for dispensing the same drug or for pro-  
11          viding the same pharmacist services; or

12          “(C) directly or indirectly engage in steer-  
13          ing (as defined in paragraph (2)) to a phar-  
14          macy that is owned, controlled by, or affiliated  
15          with the pharmacy benefit manager.

16          “(2) STEERING.—In paragraph (1), the term  
17          ‘steering’ with respect to a pharmacy benefit man-  
18          ager includes—

19                 “(A) providing or implementing a benefit  
20                 design that encourages a participant, bene-  
21                 ficiary, or enrollee to utilize a pharmacy that is  
22                 owned, controlled by, or affiliated with the  
23                 pharmacy benefit manager, if such design in-  
24                 creases costs for the plan or a participant, ben-  
25                 eficiary, or enrollee, including requiring a par-

1 participant, beneficiary, or enrollee to pay higher  
2 out-of-pocket costs for a prescription if the par-  
3 ticipant, beneficiary, or enrollee chooses not to  
4 use a pharmacy owned, controlled by, or affili-  
5 ated with the pharmacy benefit manager;

6 “(B) requiring a participant, beneficiary,  
7 or enrollee to use only a pharmacy that is  
8 owned, controlled by, or affiliated with the  
9 pharmacy benefit manager;

10 “(C) retaliating, making further attempts  
11 to influence a participant, beneficiary, or en-  
12 rollee, or treating a participant, beneficiary, or  
13 enrollee or a participant, beneficiary, or enroll-  
14 ee’s claim any differently if a participant, bene-  
15 ficiary, or enrollee chooses to use a pharmacy  
16 that is not owned, controlled by, or affiliated  
17 with the pharmacy benefit manager; or

18 “(D) any other activities as defined by the  
19 Secretary, the Secretary of Labor, and the Sec-  
20 retary of the Treasury.

21 “(d) ENFORCEMENT.—

22 “(1) IN GENERAL.—The Secretary, in consulta-  
23 tion with the Secretary of Labor and the Secretary  
24 of the Treasury, shall enforce this section.

1           “(2) DISGORGEMENT.—The pharmacy benefit  
2 manager shall disgorge to a group health plan or  
3 health insurance issuer offering group or individual  
4 health insurance coverage any payment, remunera-  
5 tion, or other amount received by the pharmacy ben-  
6 efit manager or an affiliate of such pharmacy benefit  
7 manager in violation of paragraph (a) or the agree-  
8 ment entered into with such plan or issuer for bona  
9 fide service fees.

10           “(3) PENALTIES.—A pharmacy benefit man-  
11 ager that violates subsection (a), (b), or (c) shall be  
12 subject to a civil monetary penalty in the amount of  
13 \$10,000 for each day during which such violation  
14 continues.

15           “(4) PROCEDURE.—The provisions of section  
16 1128A of the Social Security Act, other than sub-  
17 sections (a) and (b) and the first sentence of sub-  
18 section (c)(1) of such section shall apply to civil  
19 monetary penalties under this subsection in the  
20 same manner as such provisions apply to a penalty  
21 or proceeding under section 1128A of the Social Se-  
22 curity Act.

23           “(e) REGULATIONS.—Notwithstanding any other  
24 provision of law, the Secretary shall initially implement  
25 this section through interim final regulations.

1 “(f) RULES OF CONSTRUCTION.—

2 “(1) Nothing in this section shall be construed  
3 as prohibiting payments related to reimbursement  
4 for ingredient costs to entities that acquire prescrip-  
5 tion drugs or pharmacy dispensing fees.

6 “(2) Nothing in this section shall be construed  
7 to prohibit rebates, discounts, or other price conces-  
8 sions from being fully passed through to a group  
9 health plan or health insurance issuer offering group  
10 or individual health insurance coverage to lower net  
11 costs for prescription drugs.”.

12 (b) ERISA.—

13 (1) IN GENERAL.—Subpart B of part 7 of sub-  
14 title B of title I of the Employee Retirement Income  
15 Security Act of 1974 (29 U.S.C. 1185 et seq.) is  
16 amended by inserting after section 725 the fol-  
17 lowing:

18 **“SEC. 726. IMPROVING PHARMACY BENEFIT MANAGER**  
19 **SERVICES.**

20 “(a) IN GENERAL.—For plan years beginning on or  
21 after January 1, 2026, except as provided in subsection  
22 (b), a pharmacy benefit manager shall derive no remun-  
23 eration from any entity for services, benefit administra-  
24 tion, or any other activities related to prescription drugs.

25 “(b) EXCEPTION FOR BONA FIDE SERVICE FEES.—



1           “(1) IN GENERAL.—A pharmacy benefit man-  
2           anager may charge an entity a bona fide service fee for  
3           the provision of services to such entity if such fee is  
4           set forth in an agreement between the pharmacy  
5           benefit manager and such entity and the amount of  
6           any bona fide service fee—

7                   “(A) shall be a flat dollar amount;

8                   “(B) shall not be directly or indirectly  
9           based on, or contingent upon—

10                   “(i) a drug price (such as wholesale  
11           acquisition cost) or drug benchmark price  
12           (such as average wholesale price);

13                   “(ii) the amount of discounts, rebates,  
14           fees, or other direct or indirect remunera-  
15           tion with respect to prescription drugs pre-  
16           scribed to the participants, beneficiaries, or  
17           enrollees in the group health plan or cov-  
18           erage involved; or

19                   “(iii) any other amounts prohibited by  
20           the Secretary, the Secretary of Labor, and  
21           the Secretary of the Treasury.

22           “(2) DEFINITIONS.—In this section—

23                   “(A) the term ‘bona fide service fee’ means  
24           fair market value for a bona fide, itemized serv-  
25           ice actually performed on behalf of an entity,

1 that would otherwise perform (or contract for)  
2 in the absence of the service arrangement and  
3 that are not passed on in whole or in part to  
4 a client or customer, whether or not the entity  
5 takes title to the drug;

6 “(B) the term ‘pharmacy benefit manager’  
7 means any person, business, or other entity  
8 such as a third-party administrator, regardless  
9 of whether it identifies itself as a pharmacy  
10 benefit manager, that, either directly or  
11 through an intermediary (including an affiliate,  
12 subsidiary, or agent) or an arrangement with a  
13 third party—

14 “(i) acts as a price negotiator for pre-  
15 scription drugs on behalf of a group health  
16 plan or health insurance issuer offering  
17 group health insurance coverage; or

18 “(ii) manages or administers the pre-  
19 scription drug benefits provided by a group  
20 health plan or health insurance issuer of-  
21 fering group health insurance coverage, in-  
22 cluding the processing and payment of  
23 claims for prescription drugs, arranging al-  
24 ternative access to or funding for prescrip-  
25 tion drugs, the performance of drug utili-

1 zation review, the processing of drug prior  
2 authorization requests, the adjudication of  
3 appeals or grievances related to the pre-  
4 scription drug benefit, contracting with  
5 network pharmacies, controlling the cost of  
6 covered prescription drugs, or the provision  
7 of related services.

8 “(c) ACCOUNTABILITY AND CONDUCT.—

9 “(1) IN GENERAL.—A pharmacy benefit man-  
10 ager shall not—

11 “(A) charge a group health plan or health  
12 insurance issuer offering group health insur-  
13 ance coverage a different amount for a prescrip-  
14 tion drug’s ingredient cost or dispensing fee as  
15 compared to the amount the pharmacy benefit  
16 manager reimburses a pharmacy for the pre-  
17 scription drug’s ingredient cost or dispensing  
18 fee;

19 “(B) reimburse a network pharmacy or  
20 pharmacist in an amount less than the amount  
21 the pharmacy benefit manager would reimburse  
22 a network pharmacy that is owned, controlled  
23 by, or affiliated with the pharmacy benefit man-  
24 ager for dispensing the same drug or for pro-  
25 viding the same pharmacist services; or

1           “(C) directly or indirectly engage in steer-  
2           ing (as defined in paragraph (2)) to a phar-  
3           macy that is owned, controlled by, or affiliated  
4           with the pharmacy benefit manager.

5           “(2) STEERING.—In paragraph (1), the term  
6           ‘steering’ with respect to a pharmacy benefit man-  
7           ager includes—

8           “(A) providing or implementing a benefit  
9           plan design that encourages a participant or  
10          beneficiary to utilize a pharmacy that is owned,  
11          controlled by, or affiliated with the pharmacy  
12          benefit manager, if such plan design increases  
13          costs for the plan or the participant or bene-  
14          ficiary, including requiring a participant or ben-  
15          eficiary to pay higher out-of-pocket costs for a  
16          prescription if the participant or beneficiary  
17          chooses not to use a pharmacy owned, con-  
18          trolled by, or affiliated with the pharmacy ben-  
19          efit manager;

20          “(B) requiring a participant or beneficiary  
21          to use only a pharmacy that is owned, con-  
22          trolled by, or affiliated with the pharmacy ben-  
23          efit manager;

24          “(C) retaliating, making further attempts  
25          to influence a participant or beneficiary, or

1           treating a participant or beneficiary or a partic-  
2           ipant or beneficiary’s claim any differently if a  
3           participant or beneficiary chooses to use a phar-  
4           macy that is not owned, controlled by, or affili-  
5           ated with the pharmacy benefit manager; or

6                   “(D) any other activities as defined by the  
7           Secretary, the Secretary of Health and Human  
8           Services, and the Secretary of the Treasury.

9           “(d) ENFORCEMENT.—

10                   “(1) IN GENERAL.—The Secretary, in consulta-  
11           tion with the Secretary of Health and Human Serv-  
12           ices and the Secretary of the Treasury, shall enforce  
13           this section.

14                   “(2) DISGORGEMENT.—The pharmacy benefit  
15           manager shall disgorge to a group health plan or  
16           health insurance issuer offering group or individual  
17           health insurance coverage any payment, remunera-  
18           tion, or other amount received by the pharmacy ben-  
19           efit manager or an affiliate of such pharmacy benefit  
20           manager in violation of paragraph (a) or the agree-  
21           ment entered into with such plan or issuer for bona  
22           fide service fees.

23                   “(3) PENALTIES.—A pharmacy benefit man-  
24           ager that violates subsection (a), (b), or (c) shall be  
25           subject to a civil monetary penalty in the amount of

1 \$10,000 for each day during which such violation  
2 continues.

3 “(4) PROCEDURE.—The provisions of section  
4 1128A of the Social Security Act, other than sub-  
5 sections (a) and (b) and the first sentence of sub-  
6 section (c)(1) of such section shall apply to civil  
7 monetary penalties under this subsection in the  
8 same manner as such provisions apply to a penalty  
9 or proceeding under section 1128A of the Social Se-  
10 curity Act.

11 “(e) REGULATIONS.—Notwithstanding any other  
12 provision of law, the Secretary shall initially implement  
13 this section through interim final regulations.

14 “(f) RULES OF CONSTRUCTION.—

15 “(1) Nothing in this section shall be construed  
16 as prohibiting payments related to reimbursement  
17 for ingredient costs to entities that acquire prescrip-  
18 tion drugs or pharmacy dispensing fees.

19 “(2) Nothing in this section shall be construed  
20 to prohibit rebates, discounts, or other price conces-  
21 sions from being fully passed through to a group  
22 health plan or health insurance issuer offering group  
23 or individual health insurance coverage to lower net  
24 costs for prescription drugs.”.

1           (2) CLERICAL AMENDMENT.—The table of con-  
2           tents in section 1 of the Employee Retirement In-  
3           come Security Act of 1974 (29 U.S.C. 1001 et seq.)  
4           is amended by inserting after the item relating to  
5           section 725 the following new item:

“Sec. 726. Improving pharmacy benefit manager services.”.

6           (c) INTERNAL REVENUE CODE OF 1986.—Sub-chap-  
7           ter B of chapter 100 of the Internal Revenue Code of 1986  
8           is amended by adding at the end the following:

9           **“SEC. 9826. IMPROVING PHARMACY BENEFIT MANAGER**  
10           **SERVICES.**

11           “(a) IN GENERAL.—For plan years beginning on or  
12           after January 1, 2026, except as provided in subsection  
13           (b), a pharmacy benefit manager shall derive no remun-  
14           eration from any entity for services, benefit administra-  
15           tion, or any other activities related to prescription drugs.

16           “(b) EXCEPTION FOR BONA FIDE SERVICES.—

17           “(1) IN GENERAL.—A pharmacy benefit man-  
18           ager may charge an entity a bona fide service fee for  
19           the provision of services to such entity if such fee is  
20           set forth in an agreement between the pharmacy  
21           benefit manager and such entity, and the amount of  
22           any bona fide service fee—

23           “(A) shall be a flat dollar amount; and

24           “(B) shall not be directly or indirectly  
25           based on, or contingent upon—

1           “(i) a drug price (such as wholesale  
2           acquisition cost) or drug benchmark price  
3           (such as average wholesale price);

4           “(ii) the amount of discounts, rebates,  
5           fees, or other direct or indirect remunera-  
6           tion with respect to prescription drugs pre-  
7           scribed to the participants, beneficiaries, or  
8           enrollees in the group health plan or cov-  
9           erage involved; or

10           “(iii) any other amounts prohibited by  
11           the Secretary, the Secretary of Labor, and  
12           the Secretary of the Treasury.

13           “(2) DEFINITIONS.—In this section—

14           “(A) the term ‘bona fide service fee’ means  
15           fair market value for a bona fide, itemized serv-  
16           ice actually performed on behalf of an entity,  
17           that the entity would otherwise perform (or  
18           contract for) in the absence of the arrangement  
19           and that are not passed on in whole or in part  
20           to a client or customer, whether or not the enti-  
21           ty takes title to the drug; and

22           “(B) the term ‘pharmacy benefit manager’  
23           means any person, business, or other entity  
24           such as a third-party administrator, regardless  
25           of whether it identifies itself as a pharmacy



1 benefit manager, that, either directly or  
2 through an intermediary (including an affiliate,  
3 or agent) or an arrangement with a third  
4 party—

5 “(i) acts as a price negotiator for pre-  
6 scription drugs on behalf of a group health  
7 plan; or

8 “(ii) manages or administers the pre-  
9 scription drug benefits provided by a group  
10 health plan, including the processing and  
11 payment of claims for prescription drugs,  
12 arranging alternative access to or funding  
13 for prescription drugs, the performance of  
14 drug utilization review, the processing of  
15 drug prior authorization requests, the ad-  
16 judication of appeals or grievances related  
17 to the prescription drug benefit, con-  
18 tracting with network pharmacies, control-  
19 ling the cost of covered prescription drugs,  
20 or the provision of related services.

21 “(c) ACCOUNTABILITY AND CONDUCT.—

22 “(1) IN GENERAL.—A pharmacy benefit man-  
23 ager shall not—

24 “(A) charge a group health plan or health  
25 insurance issuer offering group health insur-

1           ance coverage a different amount for a prescrip-  
2           tion drug’s ingredient cost or dispensing fee as  
3           compared to the amount the pharmacy benefit  
4           manager reimburses a pharmacy for the pre-  
5           scription drug’s ingredient cost or dispensing  
6           fee;

7           “(B) reimburse a network pharmacy or  
8           pharmacist in an amount less than the amount  
9           the pharmacy benefit manager would reimburse  
10          a network pharmacy that is owned, controlled  
11          by, or affiliated with the pharmacy benefit man-  
12          ager for dispensing the same drug or for pro-  
13          viding the same pharmacist services; or

14          “(C) directly or indirectly engage in steer-  
15          ing (as defined in paragraph (2)) to a phar-  
16          macy that is owned, controlled by, or affiliated  
17          with the pharmacy benefit manager.

18          “(2) STEERING.—In paragraph (1), the term  
19          ‘steering’ with respect to a pharmacy benefit man-  
20          ager includes—

21                 “(A) providing or implementing a benefit  
22                 design that encourages a participant or bene-  
23                 ficiary to utilize a pharmacy that is owned, con-  
24                 trolled by, or affiliated with the pharmacy ben-  
25                 efit manager, if such benefit design increases

1 costs for the plan or the participant or bene-  
2 ficiary, including requiring a participant or ben-  
3 eficiary to pay higher out-of-pocket costs for a  
4 prescription if the participant or beneficiary  
5 chooses not to use a pharmacy owned, con-  
6 trolled by, or affiliated with the pharmacy ben-  
7 efit manager;

8 “(B) requiring an enrollee to use only a  
9 pharmacy that is owned, controlled by, or affili-  
10 ated with the pharmacy benefit manager;

11 “(C) retaliating, making further attempts  
12 to influence a participant or beneficiary, or  
13 treating a participant or beneficiary or a partic-  
14 ipant or beneficiary’s claim any differently if a  
15 participant or beneficiary chooses to use a phar-  
16 macy that is not owned, controlled by, or affili-  
17 ated with the pharmacy benefit manager; or

18 “(D) any other activities as defined by the  
19 Secretary, the Secretary of Labor, and the Sec-  
20 retary of Health and Human Service.

21 “(d) ENFORCEMENT.—

22 “(1) IN GENERAL.—The Secretary, in consulta-  
23 tion with the Secretary of Labor and the Secretary  
24 of Health and Human Services, shall enforce this  
25 section.

1           “(2) DISGORGEMENT.—The pharmacy benefit  
2 manager shall disgorge to a group health plan or  
3 health insurance issuer offering group or individual  
4 health insurance coverage any payment, remunera-  
5 tion, or other amount received by the pharmacy ben-  
6 efit manager or an affiliate of such pharmacy benefit  
7 manager in violation of paragraph (a) or the agree-  
8 ment entered into with such plan or issuer for bona  
9 fide service fees.

10           “(3) PENALTIES.—A pharmacy benefit man-  
11 ager that violates subsection (a), (b), or (c) shall be  
12 subject to a civil monetary penalty in the amount of  
13 \$10,000 for each day during which such violation  
14 continues.

15           “(4) PROCEDURE.—The provisions of section  
16 1128A of the Social Security Act, other than sub-  
17 sections (a) and (b) and the first sentence of sub-  
18 section (c)(1) of such section shall apply to civil  
19 monetary penalties under this subsection in the  
20 same manner as such provisions apply to a penalty  
21 or proceeding under section 1128A of the Social Se-  
22 curity Act.

23           “(e) REGULATIONS.—Notwithstanding any other  
24 provision of law, the Secretary shall initially implement

1 the amendments made by this Act through interim final  
2 regulations.

3 “(f) RULES OF CONSTRUCTION.—

4 “(1) Nothing in this section shall be construed  
5 as prohibiting payments related to reimbursement  
6 for ingredient costs to entities that acquire prescrip-  
7 tion drugs or pharmacy dispensing fees.

8 “(2) Nothing in this section shall be construed  
9 to prohibit rebates, discounts, or other price conces-  
10 sions from being fully passed through to a group  
11 health plan or health insurance issuer offering group  
12 or individual health insurance coverage to lower net  
13 costs for prescription drugs.”.

14 (d) FEDERAL EMPLOYEES HEALTH BENEFITS  
15 ACT.—Chapter 89 of subpart G of part III of title 5 of  
16 the United States Code is amended by adding at the end  
17 following:

18 **“SEC. 8915. IMPROVING PHARMACY BENEFIT MANAGER**  
19 **SERVICES.**

20 “(a) IN GENERAL.—For plan years beginning on or  
21 after January 1, 2026, except as provided in subsection  
22 (b), a pharmacy benefit manager shall derive no remu-  
23 nation from any entity for services, benefit administra-  
24 tion, or any other activities related to prescription drugs.

25 “(b) EXCEPTION FOR BONA FIDE SERVICES.—

1           “(1) IN GENERAL.—A pharmacy benefit man-  
2           anager may charge an entity a bona fide service fee for  
3           the provision of services to such entity if such fee is  
4           set forth in an agreement between the pharmacy  
5           benefit manager and such entity, and

6           “(2) the amount of any bona fide service fee—

7                   “(A) shall be a flat dollar amount;

8                   “(B) shall not be directly or indirectly  
9           based on, or contingent upon—

10                   “(i) a drug price (such as wholesale  
11                   acquisition cost) or drug benchmark price  
12                   (such as average wholesale price);

13                   “(ii) the amount of discounts, rebates,  
14                   fees, or other direct or indirect remunera-  
15                   tion with respect to prescription drugs pre-  
16                   scribed to the participants, beneficiaries, or  
17                   enrollees in the group health plan or cov-  
18                   erage involved; or

19                   “(iii) any other amounts prohibited by  
20                   the Office of Personnel Management.

21           “(2) DEFINITIONS.—In this section—

22                   “(A) the term ‘bona fide service fee’ means  
23                   fair market value for a bona fide, itemized serv-  
24                   ice actually performed on behalf of an entity,  
25                   that the entity would otherwise perform (or

1 contract for) in the absence of the arrangement  
2 and that are not passed on in whole or in part  
3 to a client or customer, whether or not the enti-  
4 ty takes title to the drug; and

5 “(B) the term ‘pharmacy benefit manager’  
6 means any person, business, or other entity  
7 such as a third-party administrator, regardless  
8 of whether it identifies itself as a pharmacy  
9 benefit manager, that, either directly or  
10 through an intermediary (including an affiliate,  
11 or agent) or an arrangement with a third  
12 party—

13 “(i) acts as a price negotiator for pre-  
14 scription drugs on behalf of a health bene-  
15 fits plan or carrier; or

16 “(ii) manages or administers the pre-  
17 scription drug benefits provided by a  
18 health benefits plan or carrier including  
19 the processing and payment of claims for  
20 prescription drugs, arranging alternative  
21 access to or funding for prescription drugs,  
22 the performance of drug utilization review,  
23 the processing of drug prior authorization  
24 requests, the adjudication of appeals or  
25 grievances related to the prescription drug

1 benefit, contracting with network phar-  
2 macies, controlling the cost of covered pre-  
3 scription drugs, or the provision of related  
4 services.

5 “(c) ACCOUNTABILITY AND CONDUCT.—

6 “(1) IN GENERAL.—A pharmacy benefit man-  
7 ager shall not—

8 “(A) charge a health benefits plan or car-  
9 rier different amount for a prescription drug’s  
10 ingredient cost or dispensing fee as compared to  
11 the amount the pharmacy benefit manager re-  
12 imburse a pharmacy for the prescription  
13 drug’s ingredient cost or dispensing fee;

14 “(B) reimburse a network pharmacy or  
15 pharmacist in an amount less than the amount  
16 the pharmacy benefit manager would reimburse  
17 a network pharmacy that is owned, controlled  
18 by, or affiliated with the pharmacy benefit man-  
19 ager for dispensing the same drug or for pro-  
20 viding the same pharmacist services; or

21 “(C) directly or indirectly engage in steer-  
22 ing (as defined in paragraph (2)) to a phar-  
23 macy that is owned, controlled by, or affiliated  
24 with the pharmacy benefit manager.



1           “(2) STEERING.—In paragraph (1), the term  
2           ‘steering’ with respect to a pharmacy benefit man-  
3           ager includes—

4                   “(A) providing or implementing a benefit  
5                   design that encourages a participant or bene-  
6                   ficiary to utilize a pharmacy that is owned, con-  
7                   trolled by, or affiliated with the pharmacy ben-  
8                   efit manager, if such benefit design increases  
9                   costs for the plan or the participant or bene-  
10                  ficiary, including requiring a participant or ben-  
11                  eficiary to pay higher out-of-pocket costs for a  
12                  prescription if the participant or beneficiary  
13                  chooses not to use a pharmacy owned, con-  
14                  trolled by, or affiliated with the pharmacy ben-  
15                  efit manager;

16                  “(B) requiring an enrollee to use only a  
17                  pharmacy that is owned, controlled by, or affili-  
18                  ated with the pharmacy benefit manager;

19                  “(C) retaliating, making further attempts  
20                  to influence a participant or beneficiary, or  
21                  treating a participant or beneficiary or a partic-  
22                  ipant or beneficiary’s claim any differently if a  
23                  participant or beneficiary chooses to use a phar-  
24                  macy that is not owned, controlled by, or affili-  
25                  ated with the pharmacy benefit manager; or

1                   “(D) any other activities as defined by the  
2                   Office of Personnel Management.

3                   “(d) ENFORCEMENT.—

4                   “(1) IN GENERAL.—The Office of Personnel  
5                   Management shall enforce this section.

6                   “(2) DISGORGEMENT.—The pharmacy benefit  
7                   manager shall disgorge to a health benefits plan or  
8                   carrier any payment, remuneration, or other amount  
9                   received by the pharmacy benefit manager or an af-  
10                  filiate of such pharmacy benefit manager in violation  
11                  of paragraph (a) or the agreement entered into with  
12                  such plan or carrier for bona fide service fees.

13                  “(3) PENALTIES.—A pharmacy benefit man-  
14                  ager that violates subsection (a), (b), or (c) shall be  
15                  subject to a civil monetary penalty in the amount of  
16                  \$10,000 for each day during which such violation  
17                  continues.

18                  “(4) PROCEDURE.—The provisions of section  
19                  1128A of the Social Security Act, other than sub-  
20                  sections (a) and (b) and the first sentence of sub-  
21                  section (c)(1) of such section shall apply to civil  
22                  monetary penalties under this subsection in the  
23                  same manner as such provisions apply to a penalty  
24                  or proceeding under section 1128A of the Social Se-  
25                  curity Act, except that for the purpose of this para-

1 graph the ‘Office of Personnel Management’ is sub-  
2 stituted wherever the term ‘Secretary’ is used in sec-  
3 tion 1128A.

4 “(e) REGULATIONS.—Notwithstanding any other  
5 provision of law, the Director shall initially implement the  
6 amendments made by this Act through interim final regu-  
7 lations.

8 “(f) RULES OF CONSTRUCTION.—

9 “(1) Nothing in this section shall be construed  
10 as prohibiting payments related to reimbursement  
11 for ingredient costs to entities that acquire prescrip-  
12 tion drugs or pharmacy dispensing fees.

13 “(2) Nothing in this section shall be construed  
14 to prohibit rebates, discounts, or other price conces-  
15 sions from being fully passed through to a health  
16 benefits plan or carrier to lower net costs for pre-  
17 scription drugs.”.

○