

118TH CONGRESS  
1ST SESSION

# H. R. 4712

To provide for increased oversight of entities that provide pharmacy benefit management services on behalf of group health plans and health insurance coverage.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2023

Mrs. HARSHBARGER (for herself and Ms. MANNING) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Education and the Workforce, 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

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## A BILL

To provide for increased oversight of entities that provide pharmacy benefit management services on behalf of group health plans and health insurance coverage.

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 “Patient Right to Shop  
5 Act”.

1 **SEC. 2. PROHIBITION ON BLOCKING CONSUMER DECISION-**  
2 **SUPPORT TOOLS.**

3 (a) PHSA.—Part D of title XXVII of the Public  
4 Health Service Act (42 U.S.C. 300gg–111 et seq.) is  
5 amended by adding at the end the following:

6 **“SEC. 2799A–11. PROHIBITION ON BLOCKING CONSUMER**  
7 **DECISION-SUPPORT TOOLS.**

8 “(a) IN GENERAL.—A group health plan or a health  
9 insurance issuer offering group or individual health insur-  
10 ance coverage shall not enter into a contract with an entity  
11 that provides pharmacy benefit management services with  
12 respect to such plan or coverage if such contract includes  
13 any terms, conditions, or costs that would prevent or re-  
14 strict a covered third party from accessing or using infor-  
15 mation, for purposes of the consumer decision-support  
16 tool, relevant to the operability, implementation, and utili-  
17 zation of the consumer-decision support tool regarding  
18 prescription drug benefits under the plan or coverage that  
19 are administered by the entity providing pharmacy benefit  
20 management services in contract with the plan or issuer.

21 “(b) DEFINITIONS.—In this section:

22 “(1) CONSUMER DECISION-SUPPORT TOOL.—  
23 The term ‘consumer decision-support tool’ means a  
24 tool designed to inform enrollees in a group health  
25 plan or health insurance coverage about all costs to  
26 the enrollee for prescription drugs covered by the

1 plan or coverage, including out-of-pocket, copay-  
2 ment, and coinsurance responsibility, as well as costs  
3 to the enrollee, such as purchasing at the cash price  
4 or purchasing through mail order pharmacy benefits.

5 “(2) COVERED THIRD PARTY.—The term ‘cov-  
6 ered third party’ means a third party that is in con-  
7 tract, as a business associate (as defined in section  
8 160.103 of title 45, Code of Federal Regulations (or  
9 successor regulations)), with a group health plan or  
10 a health insurance issuer offering group or indi-  
11 vidual health insurance coverage to provide a con-  
12 sumer decision-support tool.

13 “(c) RULES OF CONSTRUCTION REGARDING PRI-  
14 VACY.—

15 “(1) Nothing in this section shall be construed  
16 to alter existing obligations of a covered entity or  
17 business associate under the privacy, security, and  
18 breach notification regulations in parts 160 and 164  
19 of title 45, Code of Federal Regulations (or suc-  
20 cessor regulations).

21 “(2) Nothing in this section shall be construed  
22 to require a group health plan, a health insurance  
23 issuer offering group or individual health insurance  
24 coverage, or an entity providing pharmacy benefit  
25 management services to share protected health infor-

1 mation, as defined in section 160.103 of title 45,  
2 Code of Federal Regulations (or successor regula-  
3 tions), with a covered third party.”.

4 (b) ERISA.—

5 (1) IN GENERAL.—Subpart B of part 7 of sub-  
6 title B of title I of the Employee Retirement Income  
7 Security Act of 1974 (29 U.S.C. 1185 et seq.) is  
8 amended by adding at the end the following new sec-  
9 tion:

10 **“SEC. 726. PROHIBITION ON BLOCKING CONSUMER DECI-**  
11 **SION-SUPPORT TOOLS.**

12 “(a) IN GENERAL.—A group health plan or a health  
13 insurance issuer offering group health insurance coverage  
14 shall not enter into a contract with an entity that provides  
15 pharmacy benefit management services with respect to  
16 such plan or coverage if such contract includes any terms,  
17 conditions, or costs that would prevent or restrict a cov-  
18 ered third party from accessing or using information, for  
19 purposes of the consumer decision-support tool, relevant  
20 to the operability, implementation, and utilization of the  
21 consumer-decision support tool regarding prescription  
22 drug benefits under the plan or coverage that are adminis-  
23 tered by the entity providing pharmacy benefit manage-  
24 ment services in contract with the plan or issuer.

25 “(b) DEFINITIONS.—In this section:

1           “(1) CONSUMER DECISION-SUPPORT TOOL.—

2           The term ‘consumer decision-support tool’ means a  
3           tool designed to inform participants and bene-  
4           ficiaries in a group health plan or health insurance  
5           coverage about all costs to the participant or bene-  
6           ficiary for prescription drugs covered by the plan or  
7           coverage, including out-of-pocket, copayment, and  
8           coinsurance responsibility, as well as costs to the  
9           participant or beneficiary, such as purchasing at the  
10          cash price or purchasing through mail order phar-  
11          macy benefits.

12          “(2) COVERED THIRD PARTY.—The term ‘cov-  
13          ered third party’ means a third party that is in con-  
14          tract, as a business associate (as defined in section  
15          160.103 of title 45, Code of Federal Regulations (or  
16          successor regulations)), with a group health plan or  
17          a health insurance issuer offering group health in-  
18          surance coverage to provide a consumer decision-  
19          support tool.

20          “(c) RULES OF CONSTRUCTION.—

21          “(1) Nothing in this section shall be construed  
22          to alter existing obligations of a covered entity or  
23          business associate under the privacy, security, and  
24          breach notification regulations in parts 160 and 164

1 of title 45, Code of Federal Regulations (or suc-  
2 cessor regulations).

3 “(2) Nothing in this section shall be construed  
4 to require a group health plan, a health insurance  
5 issuer offering group health insurance coverage, or  
6 an entity providing pharmacy benefit management  
7 services to share protected health information, as de-  
8 fined in section 160.103 of title 45, Code of Federal  
9 Regulations (or successor regulations), with a cov-  
10 ered third party.”

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

“Sec. 726. Prohibition on blocking consumer decision-support tools.”

16 (c) INTERNAL REVENUE CODE.—

17 (1) IN GENERAL.—Subchapter B of chapter  
18 100 of the Internal Revenue Code of 1986, as  
19 amended by section 2, is further amended by adding  
20 at the end the following new section:

21 **“SEC. 9826. PROHIBITION ON BLOCKING CONSUMER DECI-**  
22 **SION-SUPPORT TOOLS.**

23 “(a) IN GENERAL.—A group health plan offering  
24 group health insurance coverage shall not enter into a con-  
25 tract with an entity that provides pharmacy benefit man-

1 agement services with respect to such plan if such contract  
2 includes any terms, conditions, or costs that would prevent  
3 or restrict a covered third party from accessing or using  
4 information, for purposes of the consumer decision-sup-  
5 port tool, relevant to the operability, implementation, and  
6 utilization of the consumer-decision support tool regarding  
7 prescription drug benefits under the plan that are admin-  
8 istered by the entity providing pharmacy benefit manage-  
9 ment services in contract with the plan.

10 “(b) DEFINITIONS.—In this section:

11 “(1) CONSUMER DECISION-SUPPORT TOOL.—

12 The term ‘consumer decision-support tool’ means a  
13 tool designed to inform participants and bene-  
14 ficiaries in a group health plan about all costs to the  
15 participant or beneficiary for prescription drugs cov-  
16 ered by the plan, including out-of-pocket, copayment,  
17 and coinsurance responsibility, as well as costs to  
18 the participant or beneficiary, such as purchasing at  
19 the cash price or purchasing through mail order  
20 pharmacy benefits.

21 “(2) COVERED THIRD PARTY.—The term ‘cov-

22 ered third party’ means a third party that is in con-  
23 tract, as a business associate (as defined in section  
24 160.103 of title 45, Code of Federal Regulations (or  
25 successor regulations)), with a group health plan or

1 a health insurance issuer offering group health in-  
2 surance coverage to provide a consumer decision-  
3 support tool.

4 “(c) RULES OF CONSTRUCTION.—

5 “(1) Nothing in this section shall be construed  
6 to alter existing obligations of a covered entity or  
7 business associate under the privacy, security, and  
8 breach notification regulations in parts 160 and 164  
9 of title 45, Code of Federal Regulations (or suc-  
10 cessor regulations).

11 “(2) Nothing in this section shall be construed  
12 to require a group health plan or an entity providing  
13 pharmacy benefit management services to share pro-  
14 tected health information, as defined in section  
15 160.103 of title 45, Code of Federal Regulations (or  
16 successor regulations), with a covered third party.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-  
18 tions for subchapter B of chapter 100 of such Code  
19 is amended by adding at the end the following new  
20 item:

“Sec. 9826. Prohibition on blocking consumer decision-support tools.”.

21 (d) APPLICATION.—The amendments made by sub-  
22 sections (a), (b), and (c) shall apply with respect to plan  
23 years beginning on or after the date that is 2 years after  
24 the date of enactment of this Act.



1           (e) REGULATIONS.—The Secretary of Health and  
2 Human Services, the Secretary of Labor, and the Sec-  
3 retary of the Treasury shall jointly promulgate regulations  
4 to carry out the amendments made by subsections (a), (b),  
5 and (c), and shall issue draft regulations not later than  
6 1 year after the date of enactment of this Act.

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