

Calendar No. 283118TH CONGRESS
1ST SESSION**S. 127**

To prevent unfair and deceptive acts or practices and the dissemination of false information related to pharmacy benefit management services for prescription drugs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 2023

Ms. CANTWELL (for herself, Mr. GRASSLEY, Mrs. HYDE-SMITH, Mr. BRAUN, Mr. MORAN, Mr. TILLIS, Mr. TESTER, Mrs. CAPITO, Mr. BOOZMAN, Mr. WELCH, Mr. MARSHALL, Mr. HEINRICH, Ms. ERNST, Mr. ROUNDS, and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

DECEMBER 13, 2023

Reported by Ms. CANTWELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To prevent unfair and deceptive acts or practices and the dissemination of false information related to pharmacy benefit management services for prescription drugs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Pharmacy Benefit
3 Manager Transparency Act of 2023”.

4 **SEC. 2. PROHIBITION ON UNFAIR OR DECEPTIVE PRE-**
5 **SCRIPTION DRUG PRICING PRACTICES.**

6 (a) **CONDUCT PROHIBITED.**—Except as provided in
7 subsection (b), it shall be unlawful for any pharmacy ben-
8 efit manager (or affiliate, subsidiary, or agent of a phar-
9 macy benefit manager), directly or indirectly, to engage
10 in any of the following activities related to pharmacy ben-
11 efit management services:

12 (1) Charge a health plan or payer a different
13 amount for a prescription drug’s ingredient cost or
14 dispensing fee than the amount the pharmacy ben-
15 efit manager reimburses a pharmacy for the pre-
16 scription drug’s ingredient cost or dispensing fee
17 where the pharmacy benefit manager retains the
18 amount of any such difference.

19 (2) Arbitrarily, unfairly, or deceptively, by con-
20 tract or any other means, reduce, rescind, or other-
21 wise claw back any reimbursement payment, in
22 whole or in part, to a pharmacist or pharmacy for
23 a prescription drug’s ingredient cost or dispensing
24 fee.

25 (3) Arbitrarily, unfairly, or deceptively, by con-
26 tract or any other means, increase fees or lower re-

1 reimbursement to a pharmacy in order to offset reim-
2 bursement changes instructed by the Federal Gov-
3 ernment under any health plan funded by the Fed-
4 eral Government.

5 (b) EXCEPTIONS.—A pharmacy benefit manager
6 shall not be in violation of subsection (a) if the pharmacy
7 benefit manager meets the following conditions:

8 (1) The pharmacy benefit manager, affiliate,
9 subsidiary, or agent passes along or returns 100 per-
10 cent of any price concession to a health plan or
11 payer, including any rebate, discount, or other price
12 concession.

13 (2) The pharmacy benefit manager, affiliate,
14 subsidiary, or agent provides full and complete dis-
15 closure of—

16 (A) the cost, price, and reimbursement of
17 the prescription drug to each health plan,
18 payer, and pharmacy with which the pharmacy
19 benefit manager, affiliate, subsidiary, or agent
20 has a contract or agreement to provide phar-
21 macy benefit management services;

22 (B) each fee, markup, and discount
23 charged or imposed by the pharmacy benefit
24 manager, affiliate, subsidiary, or agent to each
25 health plan, payer, and pharmacy with which

1 the pharmacy benefit manager, affiliate, sub-
2 sidiary, or agent has a contract or agreement
3 for pharmacy benefit management services; or

4 (C) the aggregate amount of all remunera-
5 tion the pharmacy benefit manager receives
6 from a prescription drug manufacturer for a
7 prescription drug, including any rebate, dis-
8 count, administration fee, and any other pay-
9 ment or credit obtained or retained by the phar-
10 macy benefit manager, or affiliate, subsidiary,
11 or agent of the pharmacy benefit manager, pur-
12 suant to a contract or agreement for pharmacy
13 benefit management services to a health plan,
14 payer, or any Federal agency (upon the request
15 of the agency).

16 **SEC. 3. PROHIBITION ON FALSE INFORMATION.**

17 It shall be unlawful for any person to report informa-
18 tion related to pharmacy benefit management services to
19 a Federal department or agency if—

20 (1) the person knew, or reasonably should have
21 known, the information to be false or misleading;

22 (2) the information was required by law to be
23 reported; and

24 (3) the false or misleading information reported
25 by the person would affect analysis or information

1 compiled by the Federal department or agency for
2 statistical or analytical purposes with respect to the
3 market for pharmacy benefit management services.

4 **SEC. 4. TRANSPARENCY.**

5 (a) REPORTING BY PHARMACY BENEFIT MAN-
6 AGERS.—Not later than 1 year after the date of enactment
7 of this Act, and annually thereafter, each pharmacy ben-
8 efit manager (or affiliate, subsidiary, or agent of a phar-
9 macy benefit manager) shall report to the Commission the
10 following information:

11 (1) The aggregate amount of the difference be-
12 tween the amount the pharmacy benefit manager
13 was paid by each health plan and the amount that
14 the pharmacy benefit manager paid each pharmacy
15 on behalf of the health plan for prescription drugs.

16 (2) The aggregate amount of any—

17 (A) generic effective rate fee charged to
18 each pharmacy;

19 (B) direct and indirect remuneration fee
20 charged or other price concession to each phar-
21 macy; and

22 (C) payment rescinded or otherwise clawed
23 back from a reimbursement made to each phar-
24 macy.

1 (3) If, during the reporting year, the pharmacy
2 benefit manager moved or reassigned a prescription
3 drug to a formulary tier that has a higher cost,
4 higher copayment, higher coinsurance, or higher de-
5 ductible to a consumer, or a lower reimbursement to
6 a pharmacy, an explanation of the reason why the
7 drug was moved or reassigned from 1 tier to an-
8 other, including whether the move or reassignment
9 was determined or requested by a prescription drug
10 manufacturer or other entity.

11 (4) With respect to any pharmacy benefit man-
12 ager that owns, controls, or is affiliated with a phar-
13 macy, a report regarding any difference in reim-
14 bursement rates or practices, direct and indirect re-
15 munerations fees or other price concessions, and
16 clawbacks between a pharmacy that is owned, con-
17 trolled, or affiliated with the pharmacy benefit man-
18 ager and any other pharmacy.

19 (b) REPORT TO CONGRESS.—

20 (1) IN GENERAL.—Not later than 1 year after
21 the date of enactment of this Act, and annually
22 thereafter, the Commission shall submit to the Com-
23 mittee on Commerce, Science, and Transportation of
24 the Senate and the Committee on Energy and Com-

1 merce of the House of Representatives a report that
2 addresses, at a minimum—

3 (A) the number of actions brought by the
4 Commission during the reporting year to en-
5 force this Act and the outcome of each such en-
6 forcement action;

7 (B) the number of open investigations or
8 inquiries into potential violations of this Act as
9 of the time the report is submitted;

10 (C) the number and nature of complaints
11 received by the Commission relating to an alle-
12 gation of a violation of this Act during the re-
13 porting year;

14 (D) an anonymized summary of the re-
15 ports filed with the Commission pursuant to
16 subsection (a) for the reporting year; and

17 (E) policy or legislative recommendations
18 to strengthen any enforcement action relating
19 to a violation of this Act, including rec-
20 ommendations to include additional prohibited
21 conduct in section 2(a).

22 (2) FORMULARY DESIGN OR PLACEMENT PRAC-
23 TICES.—Not later than 1 year after the date of en-
24 actment of this Act, the Commission shall submit to
25 the Committee on Commerce, Science, and Trans-

1 portation of the Senate and the Committee on En-
2 ergy and Commerce of the House of Representatives
3 a report that addresses the policies, practices, and
4 role of pharmacy benefit managers (including their
5 affiliates, subsidiaries, and agents) regarding for-
6 mulary design or placement, including whether—

7 (A) pharmacy benefit managers (including
8 their affiliates, subsidiaries, and agents) use
9 formulary design or placement to increase their
10 gross revenue without an accompanying in-
11 crease in patient access or decrease in patient
12 cost; or

13 (B) such policies or practices of pharmacy
14 benefit managers regarding formulary design or
15 placement violate section 5(a) of the Federal
16 Trade Commission Act (15 U.S.C. 45(a)).

17 (3) CONSTRUCTION.—Nothing in this section
18 shall be construed as authorizing the Commission to
19 disclose any information that is a trade secret or
20 confidential information described in section
21 552(b)(4) of title 5, United States Code.

22 (c) GAO STUDY.—Not later than 1 year after the
23 date of enactment of this Act, the Comptroller General
24 of the United States shall submit to the Committee on
25 Commerce, Science, and Transportation, the Committee

1 on Finance, and the Committee on Health, Education,
2 Labor, and Pensions of the Senate and to the Committee
3 on Ways and Means and the Committee on Energy and
4 Commerce of the House of Representatives a report
5 that—

6 (1) addresses, at minimum—

7 (A) the role that pharmacy benefit man-
8 agers play in the pharmaceutical supply chain;

9 (B) the state of competition among phar-
10 macy benefit managers, including the market
11 share for the Nation's 10 largest pharmacy
12 benefit managers;

13 (C) the use of rebates and fees by phar-
14 macy benefit managers, including data for each
15 of the 10 largest pharmacy benefit managers
16 that reflects, for each drug in the formulary of
17 each such pharmacy benefit manager—

18 (i) the amount of the rebate passed on
19 to patients;

20 (ii) the amount of the rebate passed
21 on to payors;

22 (iii) the amount of the rebate kept by
23 the pharmacy benefit manager; and

24 (iv) the role of fees charged by the
25 pharmacy benefit manager;

1 (D) whether pharmacy benefit managers
2 structure their formularies in favor of high-re-
3 bate prescription drugs over lower-cost, lower-
4 rebate alternatives;

5 (E) the average prior authorization ap-
6 proval time for each of the 10 largest pharmacy
7 benefit managers;

8 (F) factors affecting the use of step ther-
9 apy in each of the 10 largest pharmacy benefit
10 managers; and

11 (G) the extent to which the price that
12 pharmacy benefit managers charge payors, such
13 as the Medicare program under title XXVIII of
14 the Social Security Act (42 U.S.C. 1395 et
15 seq.); State Medicaid programs under title XIX
16 of the Social Security Act (42 U.S.C. 1396 et
17 seq.); the Federal Employees Health Benefits
18 Program under chapter 89 of title 5, United
19 States Code; or private payors, for a drug is
20 more than such pharmacy benefit managers pay
21 the pharmacy for the drug; and

22 (2) provides recommendations for legislative ac-
23 tion to lower the cost of prescription drugs for con-
24 sumers and payors; improve the efficiency of the
25 pharmaceutical supply chain by lowering inter-

1 mediary costs, improve competition in pharmacy
2 benefit management, and provide transparency in
3 pharmacy benefit management.

4 **SEC. 5. WHISTLEBLOWER PROTECTIONS.**

5 (a) IN GENERAL.—A pharmacy benefit manager,
6 health plan, pharmaceutical manufacturer, pharmacy, or
7 any affiliate, subsidiary, or agent thereof shall not, directly
8 or indirectly, discharge, demote, suspend, diminish, or
9 withdraw benefits from, threaten, harass, or in any other
10 manner discriminate against or adversely impact a covered
11 individual because—

12 (1) the covered individual, or anyone perceived
13 as assisting the covered individual, takes (or is sus-
14 pected to have taken or will take) a lawful action in
15 providing to Congress, an agency of the Federal
16 Government, the attorney general of a State, a State
17 regulator with authority over the distribution or in-
18 surance coverage of prescription drugs, or a law en-
19 forcement agency relating to any act or omission
20 that the covered individual reasonably believes to be
21 a violation of this Act;

22 (2) the covered individual provides information
23 that the covered individual reasonably believes evi-
24 dences such a violation to—

1 (A) a person with supervisory authority
2 over the covered individual at the pharmacy
3 benefit manager, health plan, pharmaceutical
4 manufacturer, pharmacy, or any affiliate, sub-
5 sidiary, or agent thereof; or

6 (B) another individual working for the
7 pharmacy benefit manager, health plan, phar-
8 maceutical manufacturer, pharmacy, or any af-
9 filiate, subsidiary, or agent thereof who the cov-
10 ered individual reasonably believes has the au-
11 thority to investigate, discover, or terminate the
12 violation or to take any other action to address
13 the violation;

14 (3) the covered individual testifies (or it is sus-
15 pected that the covered individual will testify) in an
16 investigation or judicial or administrative proceeding
17 concerning such a violation;

18 (4) the covered individual assists or participates
19 (or it is expected that the covered individual will as-
20 sist or participate) in such an investigation or judi-
21 cial or administrative proceeding; or

22 (5) the covered individual takes any other ac-
23 tion to assist in carrying out the purposes of this
24 Act.

1 (b) ENFORCEMENT.—An individual who alleges any
 2 adverse action in violation of subsection (a) may bring an
 3 action for a jury trial in the appropriate district court of
 4 the United States for the following relief:

5 (1) Temporary relief while the case is pending.

6 (2) Reinstatement with the same seniority sta-
 7 tus that the individual would have had, but for the
 8 discharge or discrimination.

9 (3) Twice the amount of back pay otherwise
 10 owed to the individual, with interest.

11 (4) Consequential and compensatory damages,
 12 and compensation for litigation costs, expert witness
 13 fees, and reasonable attorneys' fees.

14 (c) WAIVER OF RIGHTS AND REMEDIES.—The rights
 15 and remedies provided for in this section shall not be
 16 waived by any policy form or condition of employment, in-
 17 cluding by a predispute arbitration agreement.

18 (d) PREDISPUTE ARBITRATION AGREEMENTS.—No
 19 predispute arbitration agreement shall be valid or enforce-
 20 able if the agreement requires arbitration of a dispute
 21 arising under this section.

22 **SEC. 6. ENFORCEMENT.**

23 (a) ENFORCEMENT BY THE COMMISSION.—

24 (1) UNFAIR AND DECEPTIVE ACTS OR PRAC-
 25 TICES.—A violation of this Act shall be treated as

1 a violation of a rule defining an unfair or deceptive
2 act or practice under section 18(a)(1)(B) of the Fed-
3 eral Trade Commission Act (15 U.S.C.
4 57a(a)(1)(B)).

5 (2) POWERS OF THE COMMISSION.—

6 (A) IN GENERAL.—Except as provided in
7 subparagraph (C), the Commission shall enforce
8 this Act in the same manner, by the same
9 means, and with the same jurisdiction, powers,
10 and duties as though all applicable terms and
11 provisions of the Federal Trade Commission
12 Act (15 U.S.C. 41 et seq.) were incorporated
13 into and made a part of this Act.

14 (B) PRIVILEGES AND IMMUNITIES.—Sub-
15 ject to paragraph (3), any person who violates
16 this Act shall be subject to the penalties and
17 entitled to the privileges and immunities pro-
18 vided in the Federal Trade Commission Act (15
19 U.S.C. 41 et seq.).

20 (C) NONPROFIT ORGANIZATIONS AND IN-
21 SURANCE.—Notwithstanding section 4 or 6 of
22 the Federal Trade Commission Act (15 U.S.C.
23 44, 46), section 2 of McCarran-Ferguson Act
24 (15 U.S.C. 1012), or any other jurisdictional
25 limitation of the Commission, the Commission

1 shall also enforce this Act, in the same manner
2 provided in subparagraphs (A) and (B) of this
3 paragraph, with respect to—

4 (i) organizations not organized to
5 carry on business for their own profit or
6 that of their members; and

7 (ii) the business of insurance, and
8 persons engaged in such business.

9 (D) ~~AUTHORITY PRESERVED.~~—Nothing in
10 this section shall be construed to limit the au-
11 thority of the Commission under any other pro-
12 vision of law.

13 ~~(3) PENALTIES.—~~

14 (A) ~~ADDITIONAL CIVIL PENALTY.~~—In ad-
15 dition to any penalty applicable under the Fed-
16 eral Trade Commission Act (15 U.S.C. 41 et
17 seq.); any person that violates this Act shall be
18 liable for a civil penalty of not more than
19 \$1,000,000.

20 (B) ~~METHOD.~~—The penalties provided by
21 subparagraph (A) shall be obtained in the same
22 manner as civil penalties imposed under section
23 18(a)(1)(B) of the Federal Trade Commission
24 Act (15 U.S.C. 57a(a)(1)(B)).

1 (C) ~~MULTIPLE OFFENSES; MITIGATING~~
2 ~~FACTORS.~~—In assessing a penalty under sub-
3 ~~paragraph (A)~~—

4 (i) each day of a continuing violation
5 shall be considered a separate violation;
6 and

7 (ii) the court shall take into consider-
8 ation, among other factors—

9 (I) the seriousness of the viola-
10 tion;

11 (II) the efforts of the person
12 committing the violation to remedy
13 the harm caused by the violation in a
14 timely manner; and

15 (III) whether the violation was
16 intentional.

17 (b) ~~ENFORCEMENT BY STATES.~~—

18 (1) ~~IN GENERAL.~~—If the attorney general of a
19 State has reason to believe that an interest of the
20 residents of the State has been or is being threat-
21 ened or adversely affected by a practice that violates
22 this Act, the attorney general of the State may bring
23 a civil action on behalf of the residents of the State
24 in an appropriate district court of the United States
25 to obtain appropriate relief.

1 (2) RIGHTS OF THE COMMISSION.—

2 (A) NOTICE TO THE COMMISSION.—

3 (i) IN GENERAL.—Except as provided
4 in clause (iii), the attorney general of a
5 State, before initiating a civil action under
6 paragraph (1), shall provide written notifi-
7 cation to the Commission that the attorney
8 general intends to bring such civil action.

9 (ii) CONTENTS.—The notification re-
10 quired under clause (i) shall include a copy
11 of the complaint to be filed to initiate the
12 civil action.

13 (iii) EXCEPTION.—If it is not feasible
14 for the attorney general of a State to pro-
15 vide the notification required under clause
16 (i) before initiating a civil action under
17 paragraph (1), the attorney general shall
18 notify the Commission immediately upon
19 instituting the civil action.

20 (B) INTERVENTION BY THE COMMISS-
21 SION.—The Commission may—

22 (i) intervene in any civil action
23 brought by the attorney general of a State
24 under paragraph (1); and

25 (ii) upon intervening—

1 (I) be heard on all matters arising in the civil action; and

2
3 (II) file petitions for appeal of a decision in the civil action.

4
5 (3) CONSTRUCTION.—Nothing in this subsection may be construed to prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of the State to conduct investigations, to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary or other evidence.

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11
12 (4) VENUE; SERVICE OF PROCESS.—

13 (A) VENUE.—Any action brought under paragraph (1) may be brought in—

14 (i) the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code; or

15 (ii) another court of competent jurisdiction.

16
17 (B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which—

1 (i) the defendant is an inhabitant,
2 may be found, or transacts business; or

3 (ii) venue is proper under section
4 1391 of title 28, United States Code.

5 (5) ACTIONS BY OTHER STATE OFFICIALS.—

6 (A) IN GENERAL.—If an attorney general
7 lacks appropriate jurisdiction to bring a civil ac-
8 tion under paragraph (1), any other officer of
9 a State who is authorized by the State to do so
10 may bring a civil action under paragraph (1),
11 subject to the same requirements and limita-
12 tions that apply under this subsection to civil
13 actions brought by attorneys general.

14 (B) CLARIFICATION OF AUTHORITY.—The
15 authority provided by subparagraph (A) shall
16 supplant, and not supplement, the authorities of
17 State attorneys general under paragraph (1).

18 (C) SAVINGS PROVISION.—Nothing in this
19 subsection may be construed to prohibit an au-
20 thorized official of a State from initiating or
21 continuing any proceeding in a court of the
22 State for a violation of any civil or criminal law
23 of the State.

24 (c) AFFIRMATIVE DEFENSE.—In an action brought
25 under this section to enforce section 2, it shall be an af-

1 firmative defense, on which the defendant has the burden
 2 of persuasion by a preponderance of the evidence, that the
 3 conduct alleged to be a violation of section 2 was
 4 nonpretextual and reasonably necessary to—

5 (1) prevent a violation of, or comply with, Fed-
 6 eral or State law;

7 (2) protect patient safety; or

8 (3) protect patient access.

9 **SEC. 7. EFFECT ON STATE LAWS.**

10 Nothing in this Act shall be construed to preempt,
 11 displace, or supplant any State laws, rules, regulations,
 12 or requirements, or the enforcement thereof.

13 **SEC. 8. DEFINITIONS.**

14 In this Act:

15 (1) **COMMISSION.**—The term “Commission”
 16 means the Federal Trade Commission.

17 (2) **COVERED INDIVIDUAL.**—The term “covered
 18 individual” means a current or former employee,
 19 contractor, subcontractor, service provider, or agent
 20 of a pharmacy benefit manager, health plan, phar-
 21 maceutical manufacturer, pharmacy, or any affiliate,
 22 subsidiary, or agent thereof.

23 (3) **HEALTH PLAN.**—The term “health plan”
 24 means any group or individual health insurance plan
 25 or coverage, including any health insurance plan or

1 coverage sponsored or funded by the Federal Gov-
2 ernment or the government of any State, Territory,
3 or subdivision thereof.

4 (4) PHARMACY BENEFIT MANAGER.—The term
5 “pharmacy benefit manager” means any entity that
6 provides pharmacy benefit management services on
7 behalf of a health plan, a payer, or health insurance
8 issuer.

9 (5) PHARMACY BENEFIT MANAGEMENT SERV-
10 ICES.—The term “pharmacy benefit management
11 services” means, pursuant to a written agreement
12 with a payer or health plan offering group or indi-
13 vidual health insurance coverage, directly or through
14 an intermediary, the service of—

15 (A) negotiating terms and conditions, in-
16 cluding rebates and price concessions, with re-
17 spect to a prescription drug on behalf of the
18 health plan, coverage, or payer; or

19 (B) managing the prescription drug bene-
20 fits provided by the health plan, coverage, or
21 payer, which may include formulary manage-
22 ment the processing and payment of claims for
23 prescription drugs; the performance of drug uti-
24 lization review; the processing of drug prior au-
25 thorization requests; the adjudication of appeals

1 or grievances related to the prescription drug
 2 benefit, contracting with network pharmacies,
 3 or the provision of related services.

4 (6) PRESCRIPTION DRUG.—The term “prescrip-
 5 tion drug” means—

6 (A) a drug, as that term is defined in sec-
 7 tion 201(g) of the Federal Food, Drug, and
 8 Cosmetic Act (21 U.S.C. 321(g)), that is—

9 (i) approved by the Food and Drug
 10 Administration under section 505 of such
 11 Act (21 U.S.C. 355); and

12 (ii) subject to the requirements of sec-
 13 tion 503(b)(1) of such Act (21 U.S.C.
 14 353(b)(1));

15 (B) a biological product as that term is de-
 16 fined in section 351 of the Public Health Serv-
 17 ice Act (42 U.S.C. 262(i)(1)); or

18 (C) a product that is biosimilar to, or
 19 interchangeable with, a biologic product under
 20 section 351 of the Public Health Service Act
 21 (42 U.S.C. 262(i)).

22 **SECTION 1. SHORT TITLE.**

23 *This Act may be cited as the “Pharmacy Benefit Man-*
 24 *ager Transparency Act of 2023”.*

1 **SEC. 2. PROHIBITION ON UNFAIR OR DECEPTIVE PRESCRIP-**
2 **TION DRUG PRICING PRACTICES.**

3 (a) *CONDUCT PROHIBITED.*—*Except as provided in*
4 *subsection (b), it shall be unlawful for any pharmacy ben-*
5 *efit manager (or affiliate, subsidiary, or agent of a phar-*
6 *macy benefit manager), directly or indirectly, to engage in*
7 *any of the following activities related to pharmacy benefit*
8 *management services:*

9 (1) *Charge a health plan or payer a different*
10 *amount for a prescription drug’s ingredient cost or*
11 *dispensing fee than the amount the pharmacy benefit*
12 *manager reimburses a pharmacy for the prescription*
13 *drug’s ingredient cost or dispensing fee where the*
14 *pharmacy benefit manager retains the amount of any*
15 *such difference.*

16 (2) *Arbitrarily, unfairly, or deceptively, by con-*
17 *tract or any other means, reduce, rescind, or other-*
18 *wise claw back any reimbursement payment, in whole*
19 *or in part, to a pharmacist or pharmacy for a pre-*
20 *scription drug’s ingredient cost or dispensing fee, un-*
21 *less—*

22 (A) *the original claim was submitted fraud-*
23 *ulently;*

24 (B) *the original claim payment was incon-*
25 *sistent with the reimbursement terms in the con-*
26 *tract; or*

1 (C) *the pharmacist services were not ren-*
2 *dered by the pharmacy or pharmacist.*

3 (3) *Arbitrarily, unfairly, or deceptively, by con-*
4 *tract or any other means, increase fees or lower reim-*
5 *bursement to a pharmacy in order to offset reimburse-*
6 *ment changes instructed by the Federal Government*
7 *under any health plan funded by the Federal Govern-*
8 *ment.*

9 (b) *EXCEPTIONS.—A pharmacy benefit manager shall*
10 *not be in violation of paragraph (1) or (3) of subsection*
11 *(a) if the pharmacy benefit manager meets the following*
12 *conditions:*

13 (1) *The pharmacy benefit manager, affiliate,*
14 *subsidiary, or agent passes along or returns 100 per-*
15 *cent of any price concession to a health plan or*
16 *payer, including any rebate, discount, or other price*
17 *concession.*

18 (2) *The pharmacy benefit manager, affiliate,*
19 *subsidiary, or agent provides full and complete disclo-*
20 *sure of—*

21 (A) *the cost, price, and reimbursement of a*
22 *prescription drug to each health plan, payer,*
23 *and pharmacy with which the pharmacy benefit*
24 *manager, affiliate, subsidiary, or agent has a*

1 *contract or agreement to provide pharmacy ben-*
2 *efit management services;*

3 *(B) each fee, markup, and discount charged*
4 *or imposed by the pharmacy benefit manager, af-*
5 *ffiliate, subsidiary, or agent to each health plan,*
6 *payer, and pharmacy with which the pharmacy*
7 *benefit manager, affiliate, subsidiary, or agent*
8 *has a contract or agreement for pharmacy ben-*
9 *efit management services; or*

10 *(C) the aggregate amount of all remunera-*
11 *tion the pharmacy benefit manager receives from*
12 *a prescription drug manufacturer for a prescrip-*
13 *tion drug, including any rebate, discount, ad-*
14 *ministration fee, and any other payment or*
15 *credit obtained or retained by the pharmacy ben-*
16 *efit manager, or affiliate, subsidiary, or agent of*
17 *the pharmacy benefit manager, pursuant to a*
18 *contract or agreement for pharmacy benefit man-*
19 *agement services to a health plan, payer, or any*
20 *Federal agency (upon the request of the agency).*

21 **SEC. 3. PROHIBITION ON FALSE INFORMATION.**

22 *It shall be unlawful for any person to report informa-*
23 *tion related to pharmacy benefit management services to*
24 *a Federal department or agency if—*

1 (1) *the person knew, or reasonably should have*
2 *known, the information to be false or misleading;*

3 (2) *the information was required by law to be re-*
4 *ported; and*

5 (3) *the false or misleading information reported*
6 *by the person would affect analysis or information*
7 *compiled by the Federal department or agency for*
8 *statistical or analytical purposes with respect to the*
9 *market for pharmacy benefit management services.*

10 **SEC. 4. TRANSPARENCY.**

11 (a) *REPORTING BY PHARMACY BENEFIT MANAGERS.—*
12 *Subject to subsection (d), not later than 1 year after the*
13 *date of enactment of this Act, and annually thereafter, each*
14 *pharmacy benefit manager (or affiliate, subsidiary, or*
15 *agent of a pharmacy benefit manager) shall report to the*
16 *Commission and the Secretary of Health and Human Serv-*
17 *ices the following information:*

18 (1) *The aggregate amount of the difference be-*
19 *tween the amount the pharmacy benefit manager was*
20 *paid by each health plan and the amount that the*
21 *pharmacy benefit manager paid each pharmacy on*
22 *behalf of the health plan for prescription drugs.*

23 (2) *The aggregate amount of any—*

24 (A) *generic effective rate fee charged to each*
25 *pharmacy;*

1 (B) direct and indirect remuneration fee
2 charged or other price concession to each phar-
3 macy; and

4 (C) payment rescinded or otherwise clawed
5 back from a reimbursement made to each phar-
6 macy.

7 (3) If, during the reporting year, the pharmacy
8 benefit manager moved or reassigned a prescription
9 drug to a formulary tier that has a higher cost, higher
10 copayment, higher coinsurance, or higher deductible
11 to a consumer, or a lower reimbursement to a phar-
12 macy, an explanation of the reason why the drug was
13 moved or reassigned from 1 tier to another, including
14 whether the move or reassignment was determined or
15 requested by a prescription drug manufacturer or
16 other entity.

17 (4) With respect to any pharmacy benefit man-
18 ager that owns, controls, or is affiliated with a phar-
19 macy, a report regarding any difference in reimburse-
20 ment rates or practices, direct and indirect remunera-
21 tion fees or other price concessions, and clawbacks be-
22 tween a pharmacy that is owned, controlled, or affili-
23 ated with the pharmacy benefit manager and any
24 other pharmacy.

25 (b) REPORT TO CONGRESS.—

1 (1) *IN GENERAL.*—Not later than 1 year after
2 the date of enactment of this Act, and annually there-
3 after, the Commission shall submit to the Committee
4 on Commerce, Science, and Transportation of the
5 Senate and the Committee on Energy and Commerce
6 of the House of Representatives a report that address-
7 es, at a minimum—

8 (A) the number actions brought by the Com-
9 mission during the reporting year to enforce this
10 Act and the outcome of each such enforcement ac-
11 tion;

12 (B) the number of open investigations or in-
13 quiries into potential violations of this Act as of
14 the time the report is submitted;

15 (C) the number and nature of complaints
16 received by the Commission relating to an alle-
17 gation of a violation of this Act during the re-
18 porting year;

19 (D) an anonymized summary of the reports
20 filed with the Commission pursuant to subsection
21 (a) for the reporting year;

22 (E) an analysis of the requirements of this
23 Act and whether the implementation of such re-
24 quirements leads to mergers (including hori-
25 zontal mergers or vertical mergers) amongst any

1 *pharmacy benefit managers, or any pharmacy*
2 *benefit manager that owns, controls, or is affili-*
3 *ated with a pharmacy, or any pharmacy benefit*
4 *manager that owns, controls, or is affiliated with*
5 *a health plan, and the effect of such merger (in-*
6 *cluding the likelihood of a substantial decrease in*
7 *competition or the potential for a monopoly);*
8 *and*

9 *(F) policy or legislative recommendations to*
10 *strengthen any enforcement action relating to a*
11 *violation of this Act, including recommendations*
12 *to include additional prohibited conduct in sec-*
13 *tion 2(a), and recommendations to encourage*
14 *more competition and decrease the likelihood of*
15 *a monopoly in the pharmaceutical supply chain.*

16 (2) *FORMULARY DESIGN OR PLACEMENT PRAC-*
17 *TICES.—Not later than 1 year after the date of enact-*
18 *ment of this Act, the Commission shall submit to the*
19 *Committee on Commerce, Science, and Transporta-*
20 *tion of the Senate, the Committee on Finance of the*
21 *Senate, the Committee on Health, Education, Labor,*
22 *and Pensions of the Senate, the Committee on Ways*
23 *and Means of the House of Representatives, and the*
24 *Committee on Energy and Commerce of the House of*
25 *Representatives a report that addresses the policies,*

1 *practices, and role of pharmacy benefit managers (in-*
2 *cluding their affiliates, subsidiaries, and agents) re-*
3 *garding formulary design or placement, including—*

4 (A) *whether pharmacy benefit managers*
5 *(including their affiliates, subsidiaries, and*
6 *agents) use formulary design or placement to in-*
7 *crease their gross revenue without an accom-*
8 *panying increase in patient access or decrease in*
9 *patient cost; or*

10 (B) *recommendations to Congress for legis-*
11 *lative action addressing such policies, practices,*
12 *and role of pharmacy benefit managers (includ-*
13 *ing their affiliates, subsidiaries, and agents).*

14 (3) *CONSTRUCTION.—Nothing in this section*
15 *shall be construed as authorizing the Commission to*
16 *disclose any information that is a trade secret or con-*
17 *fidential information described in section 552(b)(4) of*
18 *title 5, United States Code, except as necessary to en-*
19 *force this Act.*

20 (4) *CONFIDENTIALITY.—The Commission may*
21 *disclose the information in a form which does not dis-*
22 *close the identity of a specific pharmacy benefit man-*
23 *ager, pharmacy, or health plan for the following pur-*
24 *poses:*

1 (A) To permit the Comptroller General of
2 the United States to review the information pro-
3 vided to carry out this Act.

4 (B) To permit the Director of the Congres-
5 sional Budget Office to review the information
6 provided.

7 (c) GAO STUDY.—Not later than 1 year after the date
8 of enactment of this Act, the Comptroller General of the
9 United States shall submit to the Committee on Commerce,
10 Science, and Transportation, the Committee on Finance,
11 and the Committee on Health, Education, Labor, and Pen-
12 sions of the Senate and to the Committee on Ways and
13 Means and the Committee on Energy and Commerce of the
14 House of Representatives a report that—

15 (1) addresses, at minimum—

16 (A) the role that pharmacy benefit man-
17 agers play in the pharmaceutical supply chain;

18 (B) the state of competition among phar-
19 macy benefit managers, including the market
20 share for the Nation's 10 largest pharmacy ben-
21 efit managers;

22 (C) the use of rebates and fees by pharmacy
23 benefit managers, including data for each of the
24 10 largest pharmacy benefit managers that re-

1 *flects, for each drug in the formulary of each*
2 *such pharmacy benefit manager—*

3 *(i) the amount of the rebate passed on*
4 *to patients;*

5 *(ii) the amount of the rebate passed on*
6 *to payors;*

7 *(iii) the amount of the rebate kept by*
8 *the pharmacy benefit manager; and*

9 *(iv) the role of fees charged by the*
10 *pharmacy benefit manager;*

11 *(D) whether pharmacy benefit managers*
12 *structure their formularies in favor of high-re-*
13 *bate prescription drugs over lower-cost, lower-re-*
14 *bate alternatives;*

15 *(E) the average prior authorization ap-*
16 *proval time for each of the 10 largest pharmacy*
17 *benefit managers;*

18 *(F) factors affecting the use of step therapy*
19 *in each of the 10 largest pharmacy benefit man-*
20 *agers;*

21 *(G) the extent to which the price that phar-*
22 *macy benefit managers charge payors, such as*
23 *the Medicare program under title XXVIII of the*
24 *Social Security Act (42 U.S.C. 1395 et seq.),*
25 *State Medicaid programs under title XIX of the*

1 *Social Security Act (42 U.S.C. 1396 et seq.), the*
2 *Federal Employees Health Benefits Program*
3 *under chapter 89 of title 5, United States Code,*
4 *or private payors, for a drug is more than such*
5 *pharmacy benefit managers pay the pharmacy*
6 *for the drug; and*

7 *(H) the competitive impact of pharmacy*
8 *benefit managers' business practices, including*
9 *the impact that such business practices have on*
10 *the cost of health plan premiums or prescription*
11 *drugs for consumers; and*

12 *(2) provides recommendations for legislative ac-*
13 *tion to lower the cost of prescription drugs for con-*
14 *sumers and payors, improve the efficiency of the*
15 *pharmaceutical supply chain by lowering inter-*
16 *mediary costs, improve competition in pharmacy ben-*
17 *efit management, and provide transparency in phar-*
18 *macy benefit management.*

19 *(d) PRIVACY REQUIREMENTS.—Any entity shall pro-*
20 *vide information under subsection (a) in a manner con-*
21 *sistent with the privacy, security, and breach notification*
22 *regulations promulgated under section 264(c) of the Health*
23 *Insurance Portability and Accountability Act of 1996 (42*
24 *U.S.C. 1320d–2 note) (or any successor regulation), and*

1 *shall restrict the use and disclosure of such information ac-*
2 *ording to such regulations.*

3 **SEC. 5. WHISTLEBLOWER PROTECTIONS.**

4 (a) *IN GENERAL.*—A *pharmacy benefit manager,*
5 *health plan, pharmaceutical manufacturer, pharmacy, or*
6 *any affiliate, subsidiary, or agent thereof shall not, directly*
7 *or indirectly, discharge, demote, suspend, diminish, or*
8 *withdraw benefits from, threaten, harass, or in any other*
9 *manner discriminate against or adversely impact a covered*
10 *individual because—*

11 (1) *the covered individual, or anyone perceived*
12 *as assisting the covered individual, takes (or is sus-*
13 *pected to have taken or will take) a lawful action in*
14 *providing to Congress, an agency of the Federal Gov-*
15 *ernment, the attorney general of a State, a State reg-*
16 *ulator with authority over the distribution or insur-*
17 *ance coverage of prescription drugs, or a law enforce-*
18 *ment agency relating to any act or omission that the*
19 *covered individual reasonably believes to be a viola-*
20 *tion of this Act;*

21 (2) *the covered individual provides information*
22 *that the covered individual reasonably believes evi-*
23 *dences such a violation to—*

24 (A) *a person with supervisory authority*
25 *over the covered individual at the pharmacy ben-*

1 *efit manager, health plan, pharmaceutical man-*
2 *ufacturer, pharmacy, or any affiliate, sub-*
3 *subsidiary, or agent thereof; or*

4 *(B) another individual working for the*
5 *pharmacy benefit manager, health plan, phar-*
6 *maceutical manufacturer, pharmacy, or any af-*
7 *ffiliate, subsidiary, or agent thereof who the cov-*
8 *ered individual reasonably believes has the au-*
9 *thority to investigate, discover, or terminate the*
10 *violation or to take any other action to address*
11 *the violation;*

12 *(3) the covered individual testifies (or it is sus-*
13 *pected that the covered individual will testify) in an*
14 *investigation or judicial or administrative proceeding*
15 *concerning such a violation; or*

16 *(4) the covered individual assists or participates*
17 *(or it is expected that the covered individual will as-*
18 *sist or participate) in such an investigation or judi-*
19 *cial or administrative proceeding.*

20 ***(b) ENFORCEMENT.***—*An individual who alleges any*
21 *adverse action in violation of subsection (a) may bring an*
22 *action for a jury trial in the appropriate district court of*
23 *the United States for the following relief:*

24 *(1) Temporary relief while the case is pending.*

1 (2) *Reinstatement with the same seniority status*
2 *that the individual would have had, but for the dis-*
3 *charge or discrimination.*

4 (3) *Twice the amount of back pay otherwise*
5 *owed to the individual, with interest.*

6 (4) *Consequential and compensatory damages,*
7 *and compensation for litigation costs, expert witness*
8 *fees, and reasonable attorneys' fees.*

9 (c) *WAIVER OF RIGHTS AND REMEDIES.—The rights*
10 *and remedies provided for in this section shall not be*
11 *waived by any policy form or condition of employment, in-*
12 *cluding by a predispute arbitration agreement.*

13 (d) *PREDISPUTE ARBITRATION AGREEMENTS.—No*
14 *predispute arbitration agreement shall be valid or enforce-*
15 *able if the agreement requires arbitration of a dispute aris-*
16 *ing under this section.*

17 **SEC. 6. ENFORCEMENT.**

18 (a) *ENFORCEMENT BY THE COMMISSION.—*

19 (1) *UNFAIR AND DECEPTIVE ACTS OR PRAC-*
20 *TICES.—A violation of this Act shall be treated as a*
21 *violation of a rule defining an unfair or deceptive act*
22 *or practice under section 18(a)(1)(B) of the Federal*
23 *Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).*

24 (2) *POWERS OF THE COMMISSION.—*

1 (A) *IN GENERAL.*—*Except as provided in*
2 *subparagraph (C), the Commission shall enforce*
3 *this Act in the same manner, by the same means,*
4 *and with the same jurisdiction, powers, and du-*
5 *ties as though all applicable terms and provi-*
6 *sions of the Federal Trade Commission Act (15*
7 *U.S.C. 41 et seq.) were incorporated into and*
8 *made a part of this Act.*

9 (B) *PRIVILEGES AND IMMUNITIES.*—*Subject*
10 *to paragraph (3), any person who violates this*
11 *Act shall be subject to the penalties and entitled*
12 *to the privileges and immunities provided in the*
13 *Federal Trade Commission Act (15 U.S.C. 41 et.*
14 *seq.).*

15 (C) *NONPROFIT ORGANIZATIONS AND INSUR-*
16 *ANCE.*—*Notwithstanding section 4 or 6 of the*
17 *Federal Trade Commission Act (15 U.S.C. 44,*
18 *46), section 2 of McCarran-Ferguson Act (15*
19 *U.S.C. 1012), or any other jurisdictional limita-*
20 *tion of the Commission, the Commission shall*
21 *also enforce this Act, in the same manner pro-*
22 *vided in subparagraphs (A) and (B) of this*
23 *paragraph, with respect to—*

1 (i) organizations not organized to
2 carry on business for their own profit or
3 that of their members; and

4 (ii) the business of insurance, and per-
5 sons engaged in such business.

6 (D) *AUTHORITY PRESERVED.*—Nothing in
7 this section shall be construed to limit the au-
8 thority of the Commission under any other pro-
9 vision of law.

10 (3) *PENALTIES.*—

11 (A) *ADDITIONAL CIVIL PENALTY.*—In addi-
12 tion to any penalty applicable under the Federal
13 Trade Commission Act (15 U.S.C. 41 et seq.),
14 any person that violates this Act shall be liable
15 for a civil penalty of not more than \$1,000,000.

16 (B) *METHOD.*—The penalties provided by
17 subparagraph (A) shall be obtained in the same
18 manner as civil penalties imposed under section
19 18(a)(1)(B) of the Federal Trade Commission
20 Act (15 U.S.C. 57a(a)(1)(B)).

21 (C) *MULTIPLE OFFENSES; MITIGATING FAC-*
22 *TORS.*—In assessing a penalty under subpara-
23 graph (A)—

24 (i) each day of a continuing violation
25 shall be considered a separate violation; and

1 (ii) the court shall take into consider-
2 ation, among other factors—

3 (I) the seriousness of the violation;

4 (II) the efforts of the person com-
5 mitting the violation to remedy the
6 harm caused by the violation in a
7 timely manner; and

8 (III) whether the violation was
9 intentional.

10 (b) ENFORCEMENT BY STATES.—

11 (1) IN GENERAL.—If the attorney general of a
12 State has reason to believe that an interest of the resi-
13 dents of the State has been or is being threatened or
14 adversely affected by a practice that violates this Act,
15 the attorney general of the State may bring a civil ac-
16 tion on behalf of the residents of the State in an ap-
17 propriate district court of the United States to obtain
18 appropriate relief.

19 (2) RIGHTS OF THE COMMISSION.—

20 (A) NOTICE TO THE COMMISSION.—

21 (i) IN GENERAL.—Except as provided
22 in clause (iii), the attorney general of a
23 State, before initiating a civil action under
24 paragraph (1), shall provide written notifi-

1 *cation to the Commission that the attorney*
 2 *general intends to bring such civil action.*

3 *(ii) CONTENTS.—The notification re-*
 4 *quired under clause (i) shall include a copy*
 5 *of the complaint to be filed to initiate the*
 6 *civil action.*

7 *(iii) EXCEPTION.—If it is not feasible*
 8 *for the attorney general of a State to pro-*
 9 *vide the notification required under clause*
 10 *(i) before initiating a civil action under*
 11 *paragraph (1), the attorney general shall*
 12 *notify the Commission immediately upon*
 13 *instituting the civil action.*

14 *(B) INTERVENTION BY THE COMMISSION.—*

15 *The Commission may—*

16 *(i) intervene in any civil action*
 17 *brought by the attorney general of a State*
 18 *under paragraph (1); and*

19 *(ii) upon intervening—*

20 *(I) be heard on all matters arising*
 21 *in the civil action; and*

22 *(II) file petitions for appeal of a*
 23 *decision in the civil action.*

24 *(3) CONSTRUCTION.—*

1 (A) *POWERS CONFERRED ON THE ATTOR-*
 2 *NEY GENERAL OF A STATE.*—*Nothing in this sub-*
 3 *section may be construed to prevent the attorney*
 4 *general of a State from exercising the powers*
 5 *conferred on the attorney general by the laws of*
 6 *the State to conduct investigations, to administer*
 7 *oaths or affirmations, or to compel the attend-*
 8 *ance of witnesses or the production of documen-*
 9 *tary or other evidence.*

10 (B) *ERISA.*—*No civil action brought pur-*
 11 *suant to this subsection shall conflict with the*
 12 *Employee Retirement Income Security Act of*
 13 *1974 (29 U.S.C. 1001 et seq.).*

14 (4) *VENUE; SERVICE OF PROCESS.*—

15 (A) *VENUE.*—*Any action brought under*
 16 *paragraph (1) may be brought in—*

17 (i) *the district court of the United*
 18 *States that meets applicable requirements*
 19 *relating to venue under section 1391 of title*
 20 *28, United States Code; or*

21 (ii) *another court of competent juris-*
 22 *isdiction.*

23 (B) *SERVICE OF PROCESS.*—*In an action*
 24 *brought under paragraph (1), process may be*
 25 *served in any district in which—*

1 (i) *the defendant is an inhabitant,*
2 *may be found, or transacts business; or*

3 (ii) *venue is proper under section 1391*
4 *of title 28, United States Code.*

5 (5) *ACTIONS BY OTHER STATE OFFICIALS.—*

6 (A) *IN GENERAL.—If an attorney general*
7 *lacks appropriate jurisdiction to bring a civil*
8 *action under paragraph (1), any other officer of*
9 *a State who is authorized by the State to do so*
10 *may bring a civil action under paragraph (1),*
11 *subject to the same requirements and limitations*
12 *that apply under this subsection to civil actions*
13 *brought by attorneys general.*

14 (B) *CLARIFICATION OF AUTHORITY.—The*
15 *authority provided by subparagraph (A) shall*
16 *supplant, and not supplement, the authorities of*
17 *State attorneys general under paragraph (1).*

18 (C) *SAVINGS PROVISION.—Nothing in this*
19 *subsection may be construed to prohibit an au-*
20 *thorized official of a State from initiating or*
21 *continuing any proceeding in a court of the*
22 *State for a violation of any civil or criminal law*
23 *of the State.*

24 (c) *AFFIRMATIVE DEFENSE.—*

1 (1) *IN GENERAL.*—*In an action brought under*
2 *this section to enforce section 2, it shall be an affirm-*
3 *ative defense, on which the defendant has the burden*
4 *of persuasion by a preponderance of the evidence, that*
5 *the conduct alleged to be a violation of section 2 was*
6 *nonpretextual and reasonably necessary to—*

7 (A) *prevent a violation of, or comply with,*

8 *Federal or State law;*

9 (B) *protect patient safety; or*

10 (C) *protect patient access.*

11 (2) *CLARIFICATION.*—*Nothing in this subsection*
12 *shall be construed to prohibit a defendant from rais-*
13 *ing any other affirmative defense available.*

14 **SEC. 7. PROTECTION OF PERSONAL HEALTH INFORMATION.**

15 *In making any disclosure or report required by this*
16 *Act, a pharmacy benefit manager (including their affiliates,*
17 *subsidiaries, and agents) shall not include any information*
18 *that would identify a patient or a provider that issued a*
19 *prescription.*

20 **SEC. 8. EFFECT ON STATE LAWS.**

21 *Nothing in this Act shall be construed to preempt, dis-*
22 *place, or supplant any State laws, rules, regulations, or re-*
23 *quirements, or the enforcement thereof.*

24 **SEC. 9. DEFINITIONS.**

25 *In this Act:*

1 (1) *COMMISSION.*—*The term “Commission”*
2 *means the Federal Trade Commission.*

3 (2) *COVERED INDIVIDUAL.*—*The term “covered*
4 *individual” means a current or former employee, con-*
5 *tractor, subcontractor, service provider, or agent of a*
6 *pharmacy benefit manager, health plan, pharma-*
7 *ceutical manufacturer, pharmacy, or any affiliate,*
8 *subsidiary, or agent thereof.*

9 (3) *HEALTH PLAN.*—*The term “health plan”*
10 *means any group or individual health insurance plan*
11 *or coverage, including any health insurance plan or*
12 *coverage sponsored or funded by the Federal Govern-*
13 *ment or the government of any State, Territory, or*
14 *subdivision thereof.*

15 (4) *PHARMACY BENEFIT MANAGER.*—*The term*
16 *“pharmacy benefit manager” means any entity that*
17 *provides pharmacy benefit management services on*
18 *behalf of a health plan, a payer, or health insurance*
19 *issuer.*

20 (5) *PHARMACY BENEFIT MANAGEMENT SERV-*
21 *ICES.*—*The term “pharmacy benefit management*
22 *services” means, pursuant to a written agreement*
23 *with a payer or health plan offering group or indi-*
24 *vidual health insurance coverage, directly or through*
25 *an intermediary, the service of—*

1 (A) negotiating terms and conditions, in-
2 cluding rebates and price concessions, with re-
3 spect to a prescription drug on behalf of the
4 health plan, coverage, or payer; or

5 (B) managing the prescription drug benefits
6 provided by the health plan, coverage, or payer,
7 which may include formulary management the
8 processing and payment of claims for prescrip-
9 tion drugs, the performance of drug utilization
10 review, the processing of drug prior authoriza-
11 tion requests, the adjudication of appeals or
12 grievances related to the prescription drug ben-
13 efit, contracting with network pharmacies, or the
14 provision of related services.

15 (6) *PRESCRIPTION DRUG.*—The term “prescrip-
16 tion drug” means—

17 (A) a drug, as that term is defined in sec-
18 tion 201(g) of the Federal Food, Drug, and Cos-
19 metic Act (21 U.S.C. 321(g)), that is—

20 (i) approved by the Food and Drug
21 Administration under section 505 of such
22 Act (21 U.S.C. 355); and

23 (ii) subject to the requirements of sec-
24 tion 503(b)(1) of such Act (21 U.S.C.
25 353(b)(1));

1 (B) a biological product as that term is de-
2 fined in section 351 of the Public Health Service
3 Act (42 U.S.C. 262(i)(1)); or

4 (C) a product that is biosimilar to, or inter-
5 changeable with, a biologic product under section
6 351 of the Public Health Service Act (42 U.S.C.
7 262(i)).

Calendar No. 283

118TH CONGRESS
1ST Session
S. 127

A BILL

To prevent unfair and deceptive acts or practices and the dissemination of false information related to pharmacy benefit management services for prescription drugs, and for other purposes.

DECEMBER 13, 2023

Reported with an amendment