

112TH CONGRESS  
1ST SESSION

# H. R. 1971

To amend the Public Health Service Act to ensure transparency and proper operation of pharmacy benefit managers.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2011

Mrs. MCMORRIS RODGERS (for herself and Mr. WEINER) 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 amend the Public Health Service Act to ensure transparency and proper operation of 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 “Pharmacy Competition  
5 and Consumer Choice Act of 2011”.

1 **SEC. 2. PHARMACY BENEFITS MANAGER TRANSPARENCY**  
2 **AND PROPER OPERATION REQUIREMENTS.**

3 (a) AMENDMENT TO THE PUBLIC HEALTH SERVICE  
4 ACT RELATING TO THE GROUP MARKET.—

5 (1) IN GENERAL.—Subpart 2 of part A of title  
6 XXVII of the Public Health Service Act (42 U.S.C.  
7 300gg–4 et seq.) is amended by adding at the end  
8 the following:

9 **“SEC. 2729. PHARMACY BENEFITS MANAGER TRANS-**  
10 **PARENCY AND PROPER OPERATION RE-**  
11 **QUIREMENTS.**

12 “(a) IN GENERAL.—Notwithstanding any other pro-  
13 vision of law, a group health plan, and a health insurance  
14 issuer providing health insurance coverage in connection  
15 with a group health plan (collectively, a ‘plan sponsor’),  
16 shall not enter into a contract with any pharmacy benefits  
17 manager (referred to in this section as a ‘PBM’) to man-  
18 age the prescription drug coverage provided under such  
19 plan or insurance coverage, or to control the costs of such  
20 prescription drug coverage, unless the PBM satisfies the  
21 following requirements:

22 “(1) REQUIRED DISCLOSURES TO PLAN SPON-  
23 SOR IN ANNUAL REPORT.—The PBM shall provide  
24 at least annually a report to each plan sponsor, in-  
25 cluding, at a minimum—

1           “(A) information on the number and total  
2 cost of prescriptions under the contract filled at  
3 mail order and at retail pharmacies;

4           “(B) an estimate of aggregate average  
5 payments under the contract, per prescription  
6 (weighted by prescription volume), made to mail  
7 order and retail pharmacies, and the average  
8 amount per prescription that the PBM was  
9 paid by the plan for prescriptions filled at mail  
10 order and retail pharmacies;

11           “(C) an estimate of the aggregate average  
12 payment per prescription (weighted by prescrip-  
13 tion volume) under the contract received from  
14 pharmaceutical manufacturers, including all re-  
15 bates, discounts, price concessions, or adminis-  
16 trative and other payments from pharma-  
17 ceutical manufacturers, and a description of the  
18 types of payments, the amount of such pay-  
19 ments that were shared with the plan, and the  
20 percentage of prescriptions for which the PBM  
21 received such payments;

22           “(D) information on the overall percentage  
23 of generic drugs dispensed under the contract  
24 separately at retail and mail order pharmacies,

1 and the percentage of cases in which a generic  
2 drug is dispensed when available; and

3 “(E) information on the percentage and  
4 number of cases under the contract in which in-  
5 dividuals who had been receiving a prescribed  
6 drug that had a lower cost for the plan were  
7 later given a drug with a higher cost for the  
8 plan, because of PBM policies or at the direct  
9 or indirect control of the PBM, and the ration-  
10 ale for such changes and a description of the  
11 applicable PBM policies.

12 “(2) PBM REQUIREMENTS WITH RESPECT TO  
13 PHARMACIES.—With respect to contracts between a  
14 PBM and a pharmacy, the PBM shall—

15 “(A) include in such contracts, the meth-  
16 odology and resources utilized for the Maximum  
17 Allowable Cost (referred to in this section as  
18 ‘MAC’) pricing of the PBM, update pricing in-  
19 formation on such list at least weekly, and es-  
20 tablish a process for the prompt notification of  
21 such pricing updates to network pharmacies;

22 “(B) agree to provide timely updates, not  
23 less than once every 3 business days, to phar-  
24 macy product pricing files used to calculate pre-

1            description prices that will be used to reimburse  
2            pharmacies;

3            “(C) agree to pay pharmacies promptly for  
4            clean claims under section 1860D–12(b)(4) of  
5            the Social Security Act (42 U.S.C. 1395w–  
6            112(b)(4));

7            “(D) not require that a pharmacist or  
8            pharmacy participate in a pharmacy network  
9            managed by such PBM as a condition for the  
10           pharmacy to participate in another network  
11           managed by such PBM, and shall not exclude  
12           an otherwise qualified pharmacist or pharmacy  
13           from participation in a particular network pro-  
14           vided that the pharmacist or pharmacy—

15                   “(i) accepts the terms, conditions and  
16                   reimbursement rates of the PBM;

17                   “(ii) meets all applicable Federal and  
18                   State licensure and permit requirements;

19                   and

20                   “(iii) has not been excluded from par-  
21                   ticipation in any Federal or State program;

22           “(E) not automatically enroll a pharmacy  
23           in a contract or modify an existing contract  
24           without written agreement from the pharmacy  
25           or pharmacist; and

1           “(F) require each pharmacy to sign a con-  
2           tract before assuming responsibility to fill pre-  
3           scriptions for the PBM.

4           “(3) PBM OWNERSHIP INTERESTS AND CON-  
5           FLICTS OF INTEREST; PHARMACY CHOICE.—A PBM  
6           shall not—

7           “(A) mandate that a covered individual use  
8           a specific retail pharmacy, mail order phar-  
9           macy, specialty pharmacy, or other pharmacy  
10          practice site or entity if the PBM has an own-  
11          ership interest in such pharmacy, practice site,  
12          or entity or the pharmacy, practice site, or enti-  
13          ty has an ownership interest in the PBM; or

14          “(B) provide incentives to covered plan  
15          beneficiaries, in the form of variations in pre-  
16          miums, deductibles, co-payments, or co-insur-  
17          ance rates, to encourage plan beneficiaries to  
18          use a specific pharmacy if such incentives are  
19          only applicable to a pharmacy, practice site, or  
20          entity that the PBM has an ownership interest  
21          in, unless such incentives are applicable to all  
22          network pharmacies.

23          “(4) PBM AUDIT OF PHARMACY PROVIDERS.—  
24          The following shall apply to audits of pharmacy pro-  
25          viders by a PBM:

1           “(A) The period covered by an audit may  
2 not exceed 2 years from the date the claim was  
3 submitted to or adjusted by the PBM.

4           “(B) An audit that involves clinical or pro-  
5 fessional judgment shall be conducted by, or in  
6 consultation with, a pharmacist licensed in the  
7 State of the audit or the State board of phar-  
8 macy.

9           “(C) The PBM may not require more  
10 stringent recordkeeping than that required by  
11 State or Federal law.

12           “(D) The PBM or the entity conducting  
13 an audit for the PBM shall establish a written  
14 appeals process that shall include procedures  
15 for appeals for preliminary reports and final re-  
16 ports.

17           “(E) The pharmacy, practice site, or other  
18 entity may use the records of a hospital, physi-  
19 cian, or other authorized practitioner to validate  
20 the pharmacy records and any legal prescription  
21 (one that complies with State Board of Phar-  
22 macy requirements) may be used to validate  
23 claims in connection with prescriptions, refills,  
24 or changes in prescriptions.

1           “(F) Any clerical or recordkeeping error,  
2           such as a typographical error, scrivener’s error,  
3           or computer error, regarding a required docu-  
4           ment or record shall not be subject to  
5           recoupment unless proof of intent to commit  
6           fraud or unless such discrepancy results in ac-  
7           tual financial harm to an interested party.

8           “(G) The entity conducting the audit shall  
9           not use extrapolation or other statistical expan-  
10          sion techniques in calculating the recoupment  
11          or penalties for audits.

12          “(H) The PBM shall disclose any audit  
13          recoupment to the group health plan or health  
14          insurance issuer with a copy to the pharmacy.

15          “(5) PBM CONDUCT REGARDING COVERED IN-  
16          DIVIDUALS.—A PBM shall—

17                 “(A) notify a plan sponsor if such PBM in-  
18                 tends to sell utilization or claims data that the  
19                 PBM possesses as a result of an arrangement  
20                 described in this section;

21                 “(B) notify the plan sponsor in writing at  
22                 least 30 days before selling, leasing, or renting  
23                 such data and shall provide the plan sponsor  
24                 with the name of the potential purchaser of

1 such data and the expected use of any utiliza-  
2 tion or claims data by such purchaser;

3 “(C) not sell such data unless the sale  
4 complies with all Federal and State laws and  
5 the PBM has received written approval for such  
6 sale from the plan sponsor;

7 “(D) not directly contact a covered indi-  
8 vidual by any means (including via electronic  
9 delivery, telephonic, SMS text or direct mail)  
10 without the express written permission of the  
11 plan sponsor and the covered individual;

12 “(E) not transmit any personally identifi-  
13 able utilization or claims data to a pharmacy  
14 owned by the PBM if the patient has not volun-  
15 tarily elected in writing to fill that particular  
16 prescription at the PBM-owned pharmacy; and

17 “(F) provide each covered individual with  
18 an opportunity to affirmatively opt out of the  
19 sale of his or her data prior to entering into  
20 any arrangement for the lease, rental, or sale of  
21 such information.

22 “(b) DEFINITION.—For purposes of this section, the  
23 term ‘fraud’ has the meaning given the term ‘health care  
24 fraud’ in section 1347 of title 18, United States Code.”.

1           (2) EFFECTIVE DATE.—The amendment made  
2           by this subsection shall apply to plan sponsors for  
3           plan years beginning on or after the date of enact-  
4           ment of this Act.

5           (b) AMENDMENTS TO THE PUBLIC HEALTH SERVICE  
6 ACT RELATING TO THE INDIVIDUAL MARKET.—

7           (1) IN GENERAL.—Subpart 2 of part B of title  
8           XXVII of the Public Health Service Act (42 U.S.C.  
9           300gg–51 et seq.) is amended by adding at the end  
10          the following:

11 **“SEC. 2754. PHARMACY BENEFITS MANAGER TRANS-**  
12 **PARENCY AND PROPER OPERATION RE-**  
13 **QUIREMENTS.**

14          “The provisions of section 2729 of the Public Health  
15 Service Act shall apply to health insurance coverage of-  
16 fered by a health insurance issuer in the individual market  
17 in the same manner as they apply to a group health plan  
18 and a health insurance issuer providing health insurance  
19 coverage under that section.”.

20          (2) CONFORMING AMENDMENTS.—

21               (A) ERISA AMENDMENT.—

22                       (i) IN GENERAL.—Subpart B of part  
23                       7 of subtitle B of title I of the Employee  
24                       Retirement Income Security Act of 1974

1 (29 U.S.C. 1185 et seq.) is amended by  
2 adding at the end the following:

3 **“SEC. 716. PHARMACY BENEFITS MANAGER TRANS-**  
4 **PARENCY AND PROPER OPERATION RE-**  
5 **QUIREMENTS.**

6 “The provisions of section 2729 of the Public Health  
7 Service Act shall apply to a group health plan, and a  
8 health insurance issuer providing health insurance cov-  
9 erage in connection with a group health plan, in the same  
10 manner as such provisions apply to a group health plan  
11 and a health insurance issuer providing health insurance  
12 coverage under that section.”.

13 (ii) CLERICAL AMENDMENT.—The  
14 table of contents in section 1 of the Em-  
15 ployee Retirement Income Security Act of  
16 1974 is amended by inserting after the  
17 item relating to section 714 the following:

“Sec. 715. Additional market reforms.

“Sec. 716. Pharmacy benefits manager transparency and proper operation re-  
quirements.”.

18 (B) IRC AMENDMENT.—

19 (i) IN GENERAL.—Subpart B of chap-  
20 ter 100 of the Internal Revenue Code of  
21 1986 (26 U.S.C. 9811 et seq.) is amended  
22 by adding at the end the following:

1 **“SEC. 9814. PHARMACY BENEFITS MANAGER TRANS-**  
 2 **PARENCY AND PROPER OPERATION RE-**  
 3 **QUIREMENTS.**

4 “The provisions of section 2729 of the Public Health  
 5 Service Act shall apply to a group health plan, and a  
 6 health insurance issuer providing health insurance cov-  
 7 erage in connection with a group health plan, in the same  
 8 manner as such provisions apply to a group health plan  
 9 and a health insurance issuer providing health insurance  
 10 coverage under that section.”.

11 (ii) **CLERICAL AMENDMENT.**—The  
 12 table of sections for subpart B of chapter  
 13 100 of the Internal Revenue Code of 1986  
 14 is amended by inserting after the item re-  
 15 lating to section 9813 the following new  
 16 item:

“Sec. 9814. Pharmacy benefits manager transparency and proper operation re-  
 quirements.”.

17 (3) **EFFECTIVE DATE.**—The amendments made  
 18 by paragraphs (1) and (2) shall apply with respect  
 19 to health insurance coverage offered, sold, issued, re-  
 20 newed, in effect, or operated in the individual mar-  
 21 ket on or after the date of enactment of this Act.

22 (c) **MEDICARE PRESCRIPTION DRUG PLANS.**—

23 (1) **IN GENERAL.**—Subpart 2 of part D of title  
 24 XVIII of the Social Security Act (42 U.S.C. 1395w–

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

3 **“SEC. 1860D–17. PHARMACY BENEFITS MANAGER TRANS-**  
4 **PARENCY AND PROPER OPERATION RE-**  
5 **QUIREMENTS.**

6 “The provisions of section 2729 of the Public Health  
7 Service Act shall apply to health insurance coverage of-  
8 fered by a prescription drug plan under this part in the  
9 same manner as such provisions apply to a group health  
10 plan and a health insurance issuer providing health insur-  
11 ance coverage under that section.”.

12 (2) **EFFECTIVE DATE.**—The amendment made  
13 by this subsection shall apply with respect to plan  
14 years beginning on or after the date of enactment of  
15 this Act.

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