

119TH CONGRESS
1ST SESSION

H. R. 2041

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2025

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

A BILL

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

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 “Hidden Fee Disclosure
5 Act of 2025”.

1 **SEC. 2. CLARIFICATION OF THE APPLICATION OF FEE DIS-**
2 **CLOSURE REQUIREMENTS TO COVERED**
3 **SERVICE PROVIDERS.**

4 (a) SERVICES.—Clause (ii)(I)(bb) of section
5 408(b)(2)(B) of the Employee Retirement Income Secu-
6 rity Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is amended—

7 (1) in subitem (AA) by striking “Brokerage
8 services,” and inserting “Services (including broker-
9 age services),”; and

10 (2) in subitem (BB)—

11 (A) by striking “Consulting,” and inserting
12 “Other services,”; and

13 (B) by striking “related to the development
14 or implementation of plan design” and all that
15 follows through the period at the end and in-
16 serting “any of the following: plan design, claim
17 repricing, insurance or insurance product selec-
18 tion (including vision and dental), record-
19 keeping, medical management, benefits adminis-
20 tration selection (including vision and dental),
21 stop-loss insurance, pharmacy benefit manage-
22 ment services, wellness design and management
23 services, transparency tools, group purchasing
24 organization agreements and services, participa-
25 tion in and services from preferred vendor pan-
26 els, disease management, compliance services,

1 employee assistance programs, or third party
 2 administration services, or consulting services
 3 related to any such services.”.

4 (b) DISCLOSURES.—Clause (iii)(III) of section
 5 408(b)(2)(B) of the Employee Retirement Income Secu-
 6 rity Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is amended
 7 by striking “, either in the aggregate or by service,” and
 8 inserting “by service”.

9 **SEC. 3. STRENGTHENING DISCLOSURE REQUIREMENTS**
 10 **WITH RESPECT TO ENTITIES PROVIDING**
 11 **PHARMACY BENEFIT MANAGEMENT SERV-**
 12 **ICES AND THIRD PARTY ADMINISTRATORS**
 13 **FOR GROUP HEALTH PLANS.**

14 (a) CERTAIN ARRANGEMENTS FOR PHARMACY BEN-
 15 EFIT MANAGEMENT SERVICES CONSIDERED AS INDI-
 16 RECT.—

17 (1) IN GENERAL.—Clause (i) of section
 18 408(b)(2)(B) of the Employee Retirement Income
 19 Security Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is
 20 amended—

21 (A) by striking “requirements of this
 22 clause” and inserting “requirements of this
 23 subparagraph”; and

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

1 with respect to a transaction described under
2 this subparagraph, a contract or arrangement
3 for services between a covered plan and an enti-
4 ty or subsidiary providing services to the plan,
5 including a health insurance issuer providing
6 health insurance coverage in connection with
7 the covered plan in which the entity or sub-
8 sidiary contracts, in connection with such plan,
9 with a service provider for pharmacy benefit
10 management services shall be considered an in-
11 direct furnishing of goods, services, or facilities
12 between the covered plan and the service pro-
13 vider for pharmacy benefit management services
14 acting as the party in interest.”.

15 (2) HEALTH INSURANCE ISSUER AND HEALTH
16 INSURANCE COVERAGE DEFINED.—Clause (ii)(I)(aa)
17 of section 408(b)(2)(B) of the Employee Retirement
18 Income Security Act of 1974 (29 U.S.C.
19 1108(b)(2)(B)) is amended by inserting before the
20 period at the end “and the terms ‘health insurance
21 coverage’ and ‘health insurance issuer’ have the
22 meanings given such terms in section 733(b)”.

23 (3) TECHNICAL AMENDMENT.—Section
24 408(b)(2)(B)(ii)(I)(aa) of the Employee Retirement
25 Income Security Act of 1974 (29 U.S.C.

1 1108(b)(2)(B)(ii)(I)(aa)) is further amended by in-
 2 serting “in” after “defined”.

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

6 (1) IN GENERAL.—Clause (iii) of section
 7 408(b)(2)(B) of such Act (29 U.S.C. 1108(b)(2)(B))
 8 is amended by adding at the end the following:

9 “(VII) In the case of a covered service pro-
 10 vider in a contract or arrangement with a cov-
 11 ered plan to provide pharmacy benefit manage-
 12 ment services, as part of the description re-
 13 quired under subclauses (III) and (IV)—

14 “(aa) all compensation described in
 15 clause (ii)(I)(dd)(AA), including fees, re-
 16 bates, alternative discounts, price conces-
 17 sions, co-payment offsets, and other remun-
 18 eration reasonably expected to be received
 19 by the covered service provider, an affil-
 20 iate, or a subcontractor from a drug manu-
 21 facturer, distributor, rebate aggregator, ac-
 22 cumulator, maximizer, group purchasing
 23 organization, or any other third party;

24 “(bb) the amount and form of any
 25 fees, rebates, alternative discounts, price

1 concessions, co-payment offsets, and other
2 remuneration, including the amount ex-
3 pected to be passed through to the plan
4 sponsor or the participants and bene-
5 ficiaries under the covered plan;

6 “(cc) all compensation reasonably ex-
7 pected to be received by the covered service
8 provider, an affiliate, or a subcontractor as
9 a result of paying a lower amount for the
10 drug than the amount charged as a copay-
11 ment, coinsurance amount, or deductible;

12 “(dd) all compensation expected to be
13 received by the covered service provider, an
14 affiliate, or a subcontractor as a result of
15 paying pharmacies less than the amount
16 charged to the health plan, plan sponsor,
17 or participants and beneficiaries (com-
18 monly referred to as ‘spread pricing’);

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

1 “(AA) administering, invoicing,
2 allocating, or collecting rebates related
3 to the covered plan;

4 “(BB) providing access to drug
5 utilization data;

6 “(CC) retaining a percentage of
7 the list price of a drug; or

8 “(DD) any other service related
9 to the role of the covered service pro-
10 vider as a conduit between the drug
11 manufacturers or any other third
12 party and the covered plan.”.

13 (2) ANNUAL DISCLOSURE.—Clause (v) of sec-
14 tion 408(b)(2)(B) of such Act (29 U.S.C.
15 1108(b)(2)(B)) is amended by adding at the end the
16 following:

17 “(III) A covered service provider, with respect
18 to a contract or arrangement with the covered plan
19 in connection with providing pharmacy benefit man-
20 agement services, shall disclose, on an annual basis
21 not later than 60 days after the beginning of each
22 plan year, to a responsible plan fiduciary, in writing,
23 the following with respect to the preceding plan
24 year:

1 “(aa) All direct compensation described in
2 subclause (III) of clause (iii) and indirect com-
3 pensation described in subclause (IV) of clause
4 (iii) received by the covered service provider (in-
5 cluding such compensation described in sub-
6 clause (VII) of clause (iii)).

7 “(bb) The total gross spending by the cov-
8 ered plan on drugs (excluding fees rebates, al-
9 ternative discounts, price concessions, co-pay-
10 ment offsets, and other remuneration).

11 “(cc) The total net spending by the cov-
12 ered plan on drugs.

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

19 “(ee) The aggregate amount of cost-shar-
20 ing collected by the covered service provider
21 from a pharmacy for a participant or bene-
22 ficiary in excess of the contracted rate from
23 such pharmacies, including mail-order, spe-
24 cialty, and retail pharmacies, including—

1 “(AA) categorical explanations
2 (grouped by the reason for collection of
3 such amounts, such as contractual true-up
4 provisions, overpayments, or non-covered
5 medication dispensed, and including infor-
6 mation on the amount in each category
7 that was passed through to the covered
8 plan and to participants and beneficiaries
9 of the covered plan); or

10 “(BB) individual explanations for
11 such amounts.

12 “(ff) Total aggregate amounts of fees col-
13 lected by the covered service provider, an affil-
14 iate, or a subcontractor in connection with the
15 provision of pharmacy benefit management
16 services to the covered plan, broken down by
17 the source of such fees (such as the covered
18 plan, participants and beneficiaries of the cov-
19 ered plan, any drug manufacturer or whole-
20 saler, or any pharmacy entity).

21 “(gg) Any information specified by the
22 Secretary through regulations or guidance that
23 may be necessary for a responsible plan fidu-
24 ciary to determine the reasonableness of the
25 contract or arrangement with the covered serv-

1 ice provider, any compensation paid under such
2 a contract or arrangement, or any conflicts of
3 interest that may exist.”.

4 (3) PHARMACY BENEFIT MANAGEMENT SERV-
5 ICES DEFINED.—Clause (ii)(I) of section
6 408(b)(2)(B) of such Act (29 U.S.C. 1108(b)(2)(B))
7 is amended by adding at the end the following:

8 “(gg) The term ‘pharmacy benefit manage-
9 ment services’ includes any services provided by
10 a covered service provider to a covered plan
11 with respect to the administration of prescrip-
12 tion drug benefits under the covered plan, in-
13 cluding—

14 “(AA) the processing and payment of
15 claims;

16 “(BB) design of pharmacy networks;

17 “(CC) negotiation, aggregation, and
18 distribution of rebates, discounts, and
19 other price concessions;

20 “(DD) formulary design and mainte-
21 nance;

22 “(EE) operation of pharmacies
23 (whether retail, mail order, specialty drug,
24 or otherwise); recordkeeping;

25 “(FF) utilization review;

1 “(GG) adjudication of claims; and
2 “(HH) any other services specified by
3 the Secretary through guidance or rule-
4 making.”.

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

8 (1) IN GENERAL.—Clause (iii) of section
9 408(b)(2)(B) of such Act (29 U.S.C.
10 1108(b)(2)(B)), as amended by subsection (b)(1), is
11 further amended by adding at the end the following:

12 “(VIII) With respect to a contract or ar-
13 rangement with the covered plan in connection
14 with the provision of third party administration
15 services for group health plans, as part of the
16 description required under subclauses (III) and
17 (IV)—

18 “(aa) the amount and form of any re-
19 bates, discounts, savings fees, refunds, or
20 amounts received from providers and facili-
21 ties, including the amounts that will be re-
22 tained by the covered service provider;

23 “(bb) the amount and form of fees ex-
24 pected to be received from other service
25 providers in relation to the covered plan,

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

4 “(cc) the amount and form of ex-
 5 pected recoveries by the covered service
 6 provider, including the amounts that will
 7 be retained by the covered service provider
 8 (disaggregated by category), as a result
 9 of—

10 “(AA) overpayments;

11 “(BB) erroneous payments;

12 “(CC) uncashed checks or incom-
 13 plete payments;

14 “(DD) billing errors;

15 “(EE) subrogation;

16 “(FF) fraud; or

17 “(GG) any other reason on behalf
 18 of the covered plan.”.

19 (2) ANNUAL DISCLOSURE.—Clause (v) of sec-
 20 tion 408(b)(2)(B) of such Act (29 U.S.C.
 21 1108(b)(2)(B)), as amended by subsection (b)(2), is
 22 amended by adding at the end the following:

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

1 tion services for group health plans, shall disclose,
2 on an annual basis not later than 60 days after the
3 beginning of each plan year, to a responsible plan fi-
4 duciary, in writing, the following with respect to the
5 preceding plan year:

6 “(aa) All direct compensation described in
7 subclause (III) of clause (iii).

8 “(bb) All indirect compensation described
9 in subclause (IV) of clause (iii) received by the
10 covered service provider, an affiliate, or a sub-
11 contractor (including such compensation de-
12 scribed in subclause (VIII) of clause (iii)).

13 “(cc) The aggregate amount for which the
14 covered service provider, an affiliate, or a sub-
15 contractor received indirect compensation and
16 the estimated amount of cost-sharing incurred
17 by plan participants and beneficiaries as a re-
18 sult.

19 “(dd) The total gross spending by the cov-
20 ered plan on all costs and fees arising under or
21 paid under the administrative services agree-
22 ment with the covered service provider (not in-
23 cluding any amounts described in items (aa)
24 through (cc) of clause (iii)(VIII)).

1 “(ee) The total net spending by the cov-
 2 ered plan on all costs and fees arising under or
 3 paid under the administrative services agree-
 4 ment with the covered service provider.

5 “(ff) The aggregate fees collected by the
 6 covered service provider, an affiliate, or a sub-
 7 contractor from any source.

8 “(gg) Any other information specified by
 9 the Secretary through regulations or guidance
 10 that may be necessary for a responsible plan fi-
 11 duciary to determine the reasonableness of the
 12 contract or arrangement with the covered serv-
 13 ice provider any compensation paid under such
 14 a contractor or arrangement, or any conflicts of
 15 interest that may exist.”.

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

22 “(hh) The term ‘third party administration
 23 services for group health plans’ includes any
 24 services provided by a covered service provider
 25 to a covered plan with respect to the adminis-

1 tration of health benefits under the covered
2 plan, including—

3 “(AA) the processing, repricing, and
4 payment of claims;

5 “(BB) design, creation, and mainte-
6 nance of provider networks;

7 “(CC) negotiation of discounts off
8 gross rates;

9 “(DD) benefit and plan design; nego-
10 tiation of payment rates;

11 “(EE) recordkeeping;

12 “(FF) utilization review;

13 “(GG) adjudication of claims;

14 “(HH) regulatory compliance; and

15 “(II) any other services set forth in
16 an administrative services agreement or
17 similar agreement or specified by the Sec-
18 retary through guidance or rulemaking.”.

19 (d) PRIVACY REQUIREMENTS.—Section 408(b)(2) of
20 the Employee Retirement Income Security Act of 1974
21 (29 U.S.C. 1108(b)(2)), as amended by subsection (c), is
22 further amended by adding at the end the following:

23 “(C) PRIVACY REQUIREMENTS.—Covered serv-
24 ice providers shall provide information under sub-
25 paragraph (B) in a manner consistent with the pri-

1 vacy regulations promulgated under section
2 13402(a) of the Health Information Technology for
3 Clinical Health Act (42 U.S.C. 17932(a)), and con-
4 sistent with the privacy regulations promulgated
5 under the Health Insurance Portability and Ac-
6 countability Act of 1996 in part 160 and subparts
7 A and E of part 164 of title 45, Code of Federal
8 Regulations (or successor regulations) and shall re-
9 strict the use and disclosure of such information ac-
10 cording to such privacy, security, and breach notifi-
11 cation regulations and such privacy regulations.

12 “(D) DISCLOSURE AND REDISCLOSURE.—

13 “(i) LIMITATION TO BUSINESS ASSOCI-
14 ATES.—A responsible plan fiduciary receiving
15 information disclosed under subparagraph (B)
16 may disclose such information only to the entity
17 from which the information was received, the
18 group health plan to which the information per-
19 tains, or to that entity’s business associates as
20 defined in section 160.103 of title 45, Code of
21 Federal Regulations (or successor regulations)
22 or as permitted by the HIPAA Privacy Rule
23 (parts 160 and 164, subparts A and E of title
24 45, Code of Federal Regulations).

1 “(ii) CLARIFICATION REGARDING PUBLIC
2 DISCLOSURE OF INFORMATION.—Nothing in
3 this section shall prevent a group health plan or
4 health insurance issuer offering group health
5 insurance coverage, or a covered service pro-
6 vider, from placing reasonable restrictions on
7 the public disclosure of the information de-
8 scribed in this subparagraph, except that such
9 plan, issuer, or entity may not restrict disclo-
10 sure of such information to the Department of
11 Labor.

12 “(E) ADDITIONAL PRIVACY REQUIREMENTS.—

13 “(i) IN GENERAL.—Covered service pro-
14 viders shall ensure that information provided
15 under subparagraph (B) contains only summary
16 health information, as defined in section
17 164.504(a) of title 45, Code of Federal Regula-
18 tions (or successor regulations).

19 “(ii) RESTRICTIONS.—A group health plan
20 shall comply with section 164.504(f) of title 45,
21 Code of Federal Regulations (or successor regu-
22 lations) with respect to any information re-
23 ceived by the plan or disclosed to a plan spon-
24 sor or any other entity pursuant to this section,
25 and a responsible plan administrator who is a

1 plan sponsor shall act in accordance with the
2 terms of the agreement described in such sec-
3 tion.

4 “(F) RULE OF CONSTRUCTION.—Nothing in
5 this section shall be construed to modify the require-
6 ments for the creation, receipt, maintenance, or
7 transmission of protected health information under
8 the privacy regulations promulgated under the
9 Health Insurance Portability and Accountability Act
10 of 1996 in part 160 and subparts A and E of part
11 164 of title 45, Code of Federal Regulations (or suc-
12 cessor regulations).”.

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

18 (f) EFFECTIVE DATE.—The amendments made by
19 this subsection shall not apply to any contract or arrange-
20 ment entered into prior to January 1, 2026. Such amend-
21 ments shall apply to any contract or arrangement entered
22 into on or after to such date, including any extension or
23 renewal of a contract or arrangement, regardless of the
24 date on which the original contract or agreement (or any
25 previous extension or renewal) was entered into.

1 **SEC. 4. IMPLEMENTATION.**

2 Not later than 1 year after the date of enactment
3 of this Act, the Secretary of Labor shall issue notice and
4 comment rulemaking as necessary to implement the provi-
5 sions of this Act. The Secretary shall ensure that such
6 rulemaking—

7 (1) accounts for the varied compensation prac-
8 tices of covered service providers (as defined under
9 section 408(b)(2)(B); and

10 (2) establishes standards for the disclosure of
11 expected compensation by such covered service pro-
12 viders.

○