

Union Calendar No. 209

118TH CONGRESS
1ST SESSION

H. R. 4508

[Report No. 118-259]

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

JULY 10, 2023

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

NOVEMBER 1, 2023

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on July 10, 2023]

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 2023”.*

6 **SEC. 2. CLARIFICATION OF THE APPLICATION OF FEE DIS-**
7 **CLOSURE REQUIREMENTS TO COVERED**
8 **SERVICE PROVIDERS.**

9 (a) *SERVICES.*—*Clause (ii)(I)(bb) of section*
10 *408(b)(2)(B) of the Employee Retirement Income Security*
11 *Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is amended—*

12 (1) *in subitem (AA) by striking “Brokerage serv-*
13 *ices,” and inserting “Services (including brokerage*
14 *services),”; and*

15 (2) *in subitem (BB)—*

16 (A) *by striking “Consulting,” and inserting*
17 *“Other services,”; and*

18 (B) *by inserting “any of the following:” be-*
19 *fore “plan design”.*

20 (b) *DISCLOSURES.*—*Clause (iii)(III) of section*
21 *408(b)(2)(B) of the Employee Retirement Income Security*
22 *Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is amended by strik-*
23 *ing “, either in the aggregate or by service,” and inserting*
24 *“by service”.*

1 **SEC. 3. STRENGTHENING DISCLOSURE REQUIREMENTS**
2 **WITH RESPECT TO PHARMACY BENEFIT MAN-**
3 **AGERS AND THIRD PARTY ADMINISTRATORS**
4 **FOR GROUP HEALTH PLANS.**

5 (a) *CERTAIN ARRANGEMENTS FOR PBM SERVICES*
6 *CONSIDERED AS INDIRECT.*—

7 (1) *IN GENERAL.*—*Clause (i) of section*
8 *408(b)(2)(B) of the Employee Retirement Income Se-*
9 *curity Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is*
10 *amended—*

11 (A) *by striking “requirements of this*
12 *clause” and inserting “requirements of this sub-*
13 *paragraph”;* and

14 (B) *by adding at the end the following:*
15 *“For purposes of applying section 406(a)(1)(C)*
16 *with respect to a transaction described under*
17 *this subparagraph, a contract or arrangement*
18 *for services between a covered plan and a health*
19 *insurance issuer providing health insurance cov-*
20 *erage in connection with the covered plan in*
21 *which the health insurance issuer contracts, in*
22 *connection with such plan, with a service pro-*
23 *vider for pharmacy benefit management services*
24 *shall be considered to constitute an indirect fur-*
25 *nishing of goods, services, or facilities between*

1 *the plan and the service provider acting as the*
2 *party in interest.”.*

3 (2) *HEALTH INSURANCE ISSUER AND HEALTH*
4 *INSURANCE COVERAGE DEFINED.—Clause (ii)(I)(aa)*
5 *of section 408(b)(2)(B) of the Employee Retirement*
6 *Income Security Act of 1974 ((29 U.S.C.*
7 *1108(b)(2)(B)) is amended by inserting before the pe-*
8 *riod at the end “and the terms ‘health insurance cov-*
9 *erage’ and ‘health insurance issuer’ have the mean-*
10 *ings given such terms in section 733(b)”.*

11 (b) *SPECIFIC DISCLOSURE REQUIREMENTS WITH RE-*
12 *SPECT TO PHARMACY BENEFIT MANAGEMENT SERVICES.—*

13 (1) *IN GENERAL.—Clause (iii) of section*
14 *408(b)(2)(B) of such Act (29 U.S.C. 1108(b)(2)(B)) is*
15 *amended by adding at the end the following:*

16 *“(VII) With respect to a contract or ar-*
17 *rangement with the covered plan in connection*
18 *with the provision of pharmacy benefit manage-*
19 *ment services, as part of the description required*
20 *under subclauses (III) and (IV)—*

21 *“(aa) all compensation described in*
22 *clause (ii)(I)(dd)(AA), including fees, re-*
23 *bates, alternative discounts, co-payment off-*
24 *sets, and other remuneration expected to be*
25 *received by the covered service provider, an*

1 *affiliate, or a subcontractor from a pharma-*
2 *ceutical manufacturer, distributor, rebate*
3 *aggregator, group purchasing organization,*
4 *or any other third party; and*

5 “(bb) *the amount and form of any re-*
6 *bates, discounts, or price concessions, in-*
7 *cluding the amount expected to be passed*
8 *through to the plan sponsor or the partici-*
9 *pants and beneficiaries under the covered*
10 *plan;*

11 “(cc) *all compensation expected to be*
12 *received by the covered service provider as a*
13 *result of paying a lower amount for the*
14 *drug than the amount charged as a copay-*
15 *ment, coinsurance amount, or deductible;*

16 “(dd) *all compensation expected to be*
17 *received by the covered service provider as a*
18 *result of paying pharmacies less than what*
19 *is charged the health plan, plan sponsor, or*
20 *participants and beneficiaries under the*
21 *covered plan;*

22 “(ee) *all compensation expected to be*
23 *received by the covered service provider from*
24 *drug manufacturers and any other third*
25 *party in exchange for—*

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

4 “(BB) providing business services
5 and activities, including providing ac-
6 cess to drug utilization data;

7 “(CC) keeping a percentage of the
8 list price of a drug; or

9 “(DD) any other reason related to
10 the role of a covered service provider as
11 a conduit between the drug manufac-
12 turers or any other third party and the
13 covered plan.”.

14 (2) ANNUAL DISCLOSURE.—

15 (A) Clause (v) of section 408(b)(2)(B) of
16 such Act (29 U.S.C. 1108(b)(2)(B)) is amended
17 by adding at the end the following:

18 “(III) A covered service provider, with respect to
19 a contract or arrangement with the covered plan in
20 connection with providing pharmacy benefit manage-
21 ment services, shall disclose, on an annual basis not
22 later than 60 days after the beginning of the current
23 plan year, to a responsible plan fiduciary, in writing,
24 the following with respect to the twelve months pre-
25 ceding the current plan 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 subclause
6 (VII) of clause (iii)).

7 “(bb) For each drug covered under the cov-
8 ered plan, the amount by which the price for the
9 drug paid by the plan exceeds the amount paid
10 to pharmacies by the covered service provider.

11 “(cc) The total gross spending by the cov-
12 ered plan on drugs (excluding rebates, discounts,
13 or other price concessions).

14 “(dd) The total net spending by the covered
15 plan on drugs.

16 “(ee) The total gross spending at all phar-
17 macies wholly or partially owned by the covered
18 service provider, including mail-order, specialty
19 and retail pharmacies, with a breakdown by in-
20 dividual pharmacy location.

21 “(ff) The aggregate amount of clawback
22 from pharmacies, including mail-order, spe-
23 cialty, and retail pharmacies.

24 “(AA) categorical explanations
25 (grouped by the reason for clawback, such as

1 *contractual true-up provisions, overpay-*
2 *ments, or non-covered medication dispensed,*
3 *and including information on the amount*
4 *in each category that was passed through to*
5 *the covered plan and to participants and*
6 *beneficiaries of the covered plan); or*

7 *“(BB) individual explanations for such*
8 *clawbacks.*

9 *“(gg) Total aggregate amounts of fees col-*
10 *lected by the covered service provider in connec-*
11 *tion with the provision of pharmacy benefit*
12 *management services to the covered plan.*

13 *“(hh) Any other information specified by*
14 *the Secretary through regulations or guidance*
15 *that may be necessary for a responsible plan fi-*
16 *duciary to consider the merits of the contract or*
17 *arrangement with the covered service provider*
18 *and any conflicts of interest that may exist.”.*

19 (3) *PHARMACY BENEFIT MANAGEMENT SERVICES*
20 *DEFINED.—Clause (ii)(I) of section 408(b)(2)(B) of*
21 *such Act (29 U.S.C. 1108(b)(2)(B)) is amended by*
22 *adding at the end the following:*

23 *“(gg) The term ‘pharmacy benefit manage-*
24 *ment services’ includes any services provided by*
25 *a covered service provider to a covered plan with*

1 *respect to the administration of prescription*
2 *drug benefits under the covered plan, includ-*
3 *ing—*

4 *“(AA) the processing and payment of*
5 *claims;*

6 *“(BB) design of pharmacy networks;*

7 *“(CC) negotiation, aggregation, and*
8 *distribution of rebates, discounts, and other*
9 *price concessions;*

10 *“(DD) formulary design and mainte-*
11 *nance;*

12 *“(EE) operation of pharmacies (wheth-*
13 *er retail, mail order, specialty drug, or oth-*
14 *erwise); recordkeeping;*

15 *“(FF) utilization review;*

16 *“(GG) adjudication of claims; and*

17 *“(HH) any other services specified by*
18 *the Secretary through guidance or rule-*
19 *making.”.*

20 (4) *CLAWBACK DEFINED.*—*Clause (i)(I) of sec-*
21 *tion 408(b)(2)(B) of such Act (29 U.S.C.*
22 *1108(b)(2)(B)), as amended by paragraph (3), is*
23 *amended by adding at the end the following:*

24 *“(hh) The term ‘clawback’ means amounts*
25 *collected by a pharmacy benefit manager from a*

1 *pharmacy for copayments collected from a par-*
2 *ticipant or beneficiary in excess of the contracted*
3 *rate.”.*

4 *(c) SPECIFIC DISCLOSURE REQUIREMENTS WITH RE-*
5 *SPECT TO THIRD PARTY ADMINISTRATION SERVICES FOR*
6 *GROUP HEALTH PLANS.—*

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

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

16 *“(aa) the amount and form of any rebates,*
17 *discounts, savings fees, refunds, or amounts re-*
18 *ceived from providers and facilities, including*
19 *the amounts that will be retained by the covered*
20 *service provider as a fee;*

21 *“(bb) the amount and form of fees expected*
22 *to be received from other service providers in re-*
23 *lation to the covered plan, including the amounts*
24 *that will be retained by the covered service pro-*
25 *vider as a fee; and*

1 “(cc) the amount and form of expected re-
2 coveries by the covered service provider, includ-
3 ing the amounts that will be retained by the cov-
4 ered service provider as a fee (disaggregated by
5 category), as a result of—

6 “(AA) overpayments;

7 “(BB) erroneous payments;

8 “(CC) uncashed checks or incomplete
9 payments;

10 “(DD) billing errors;

11 “(EE) subrogation;

12 “(FF) fraud; or

13 “(GG) any other reason on behalf of
14 the covered plan.”.

15 (2) ANNUAL DISCLOSURE.—Clause (v) of section
16 408(b)(2)(B) of such Act (29 U.S.C. 1108(b)(2)(B)),
17 as amended by subsection (b)(2), is amended by add-
18 ing at the end the following:

19 “(IV) A covered service provider, with respect to
20 a contract or arrangement with the covered plan in
21 connection with providing third party administration
22 services for group health plans, shall disclose, on an
23 annual basis not later than 60 days after the begin-
24 ning of the current plan year, to a responsible plan

1 *fiduciary, in writing, the following with respect to the*
2 *twelve months preceding the current plan year:*

3 “(aa) *All direct compensation described in*
4 *subclause (III) of clause (iii).*”

5 “(bb) *All indirect compensation described in*
6 *subclause (IV) of clause (iii) received by the cov-*
7 *ered service provider (including such compensa-*
8 *tion described in subclause (VIII) of clause (iii)).*”

9 “(cc) *The aggregate amount for which the*
10 *covered service provider received indirect com-*
11 *penetration and the estimated amount of cost-shar-*
12 *ing incurred by plan participants and bene-*
13 *ficiaries as a result.*”

14 “(dd) *The total gross spending by the cov-*
15 *ered plan on all costs and fees arising under or*
16 *paid under the administrative services agreement*
17 *with the third-party administrator (not includ-*
18 *ing any amounts described in items (aa) through*
19 *(cc) of clause (iii)(VIII).*”

20 “(ee) *The total net spending by the covered*
21 *plan on all costs and fees arising under or paid*
22 *under the administrative services agreement with*
23 *the covered service provider.*”

24 “(ff) *The aggregate fees collected by the cov-*
25 *ered service provider.*”

1 “(gg) Any other information specified by
2 the Secretary through regulations or guidance
3 that may be necessary for a responsible plan fi-
4 duciary to consider the merits of the contract or
5 arrangement with the covered service provider
6 and any conflicts of interest that may exist.”.

7 (3) *THIRD PARTY ADMINISTRATION SERVICES*
8 *FOR GROUP HEALTH PLANS DEFINED.*—Clause (i)(I)
9 of section 408(b)(2)(B) of such Act (29 U.S.C.
10 1108(b)(2)(B)), as amended by paragraphs (3) and
11 (4) of subsection (b), is amended by adding at the end
12 the following:

13 “(ii) The term ‘third party administration
14 services for group health plans’ includes any
15 services provided by a covered service provider to
16 a covered plan with respect to the administra-
17 tion of health benefits under the covered plan, in-
18 cluding—

19 “(AA) the processing, repricing, and
20 payment of claims;

21 “(BB) design, creation, and mainte-
22 nance of provider networks;

23 “(CC) negotiation of discounts off gross
24 rates;

1 “(DD) benefit and plan design; nego-
2 tiation of payment rates;
3 “(EE) recordkeeping;
4 “(FF) utilization review;
5 “(GG) adjudication of claims;
6 “(HH) regulatory compliance; and
7 “(II) any other services set forth in an
8 administrative services agreement or simi-
9 lar agreement or specified by the Secretary
10 through guidance or rulemaking.”.

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

16 (e) *EFFECTIVE DATE.*—The amendments made by this
17 section shall take effect on January 1, 2025.

18 **SEC. 4. IMPLEMENTATION.**

19 Not later than 1 year after the date of enactment of
20 this Act, the Secretary of Labor shall issue notice and com-
21 ment rulemaking as necessary to implement the provisions
22 of this Act. The Secretary shall ensure that such rule-
23 making—

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

4 (2) *establishes standards for the disclosure of ex-*
5 *pected compensation by such covered service pro-*
6 *viders.*

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A BILL

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