To amend title XVIII of the Social Security Act to establish certain requirements for pharmacy benefit managers under part D of the Medicare program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protecting Patients Against PBM Abuses Act”.

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SEC. 2. ESTABLISHING CERTAIN REQUIREMENTS FOR

PHARMACY BENEFIT MANAGERS UNDER

PART D OF THE MEDICARE PROGRAM.

(a) PRESCRIPTION DRUG PLANS.—Section 1860D–12(b) of the Social Security Act (42 U.S.C. 1395w–112(b)) is amended by adding at the end the following new paragraph:

“(9) RESPONSIBILITY OF PHARMACY BENEFIT MANAGERS.—

“(A) IN GENERAL.—Each contract entered into with a PDP sponsor under this part with respect to a prescription drug plan offered by such sponsor shall provide that any pharmacy benefit manager acting on behalf of such sponsor complies with the following provisions:

“(i) The pharmacy benefit manager derives no income with respect to any services provided in connection with covered part D drugs furnished under such plan from any entity other than flat dollar amount service fees.

“(ii) The pharmacy benefit manager receives such service fees only pursuant to a written agreement between the manager and such sponsor that sets forth the amount of any such fees. Any such fee
may not be directly or indirectly based on, or contingent upon—

“(I) the price of any covered part D drug;

“(II) discounts, rebates, fees, or other remuneration with respect to such drugs; or

“(III) any other circumstance specified by the Secretary.

“(iii) With respect to a covered part D drug dispensed by a pharmacy, the pharmacy benefit manager may not charge such sponsor a different amount for such drug’s ingredient cost or dispensing fee than the amount the pharmacy benefit manager reimburses such pharmacy for such drug’s ingredient cost or dispensing fee.

“(iv) With respect to a covered part D drug dispensed by a network pharmacy, the pharmacy benefit manager may not reimburse such pharmacy an amount less than the amount the pharmacy benefit manager would reimburse an affiliated pharmacy for such drug.
“(v) With respect to each covered part
D drug included on the formulary of such
plan for which there is a drug that is not
included on such formulary with a therapeu-
tic equivalence rating of AB (as estab-
lished pursuant to section 505(j)(7) of the
Federal Food, Drug, and Cosmetic Act) in
the same therapeutic class or category of
such covered part D drug, the pharmacy
benefit manager shall submit to such plan
a report specifying the difference between
the national average drug acquisition cost
(as published by the Secretary) for such
drug not included in such formulary and
the negotiated prices for such drug that is
included in such formulary.

“(B) CERTIFICATION.—Each PDP sponsor
(and each pharmacy benefit manager providing
services under a prescription drug plan fur-
nished by such sponsor) shall furnish to the
Secretary (in a time and manner specified by
the Secretary) an annual certification of compli-
ance with this paragraph, as well as such infor-
mation as the Secretary determines necessary
to carry out this paragraph.
“(C) DISGORGEMENT OF PROHIBITED PAYMENTS.—A pharmacy benefit manager shall disgorge to the Secretary any payment, remuneration, or other amount received in violation of this paragraph or the contract entered into with a PDP sponsor under this part with respect to a prescription drug plan. A PDP sponsor shall suspend payments to a pharmacy benefit manager for failure to disgorge such amounts pursuant to the preceding sentence or for other violations of this paragraph.

“(D) CLARIFICATION.—The requirements of this paragraph shall apply regardless of whether a PDP sponsor is acting as its own pharmacy benefit manager and regardless of whether a pharmacy benefit manager is under common ownership or control of the PDP sponsor with respect to which the manager is furnishing services.

“(E) DEFINITIONS.—For purposes of this paragraph:

“(i) AFFILIATED PHARMACY.—The term ‘affiliated pharmacy’ means, with respect to a pharmacy benefit manager, a pharmacy that directly or indirectly
through one or more intermediaries is
owned by, controlled by, or is under com-
mon ownership or control of such manager,
or a pharmacy in which such manager has
a financial interest.

“(ii) PHARMACY BENEFIT MAN-
AGER.—The term ‘pharmacy benefit man-
ger’ means any entity (and any affiliate,
subsidiary, or agent of such entity) that,
pursuant to an agreement with a PDP
sponsor either directly or through an inter-
mediary acts as a price negotiator or group
purchaser on behalf of such sponsor, or
manages the prescription drug benefits
provided by such sponsor, including by
processing and paying claims for covered
part D drugs, performing drug utilization
review, processing drug prior authorization
requests, adjudicating appeals or griev-
ances related to covered part D drugs, con-
tracting with network pharmacies, control-
ling the cost of such drugs, or providing
any related services.

“(F) NONDISCLOSURE OF CERTAIN INFOR-
MATION.—Nothing in this paragraph shall be
construed to require public disclosure of any information that is a trade secret or confidential information (as described in section 552(b)(4) of title 5, United States Code).”.

(b) MA–PD PLANS.—Section 1857(f)(3) of the Social Security Act (42 U.S.C. 1395w–27(f)(3)) is amended by adding at the end the following new subparagraph:

“(F) RESPONSIBILITY OF PHARMACY BENEFIT MANAGERS.—Section 1860D–12(b)(9).”.

SEC. 3. CONFLICT OF INTEREST.

Section 1860D–4(b)(3)(A)(ii)(I) of the Social Security Act (42 U.S.C. 1395w–104(b)(3)(A)(ii)(I)) is amended by striking “with respect to the sponsor and plan” and replacing it with “with respect to the sponsor, plan, and any pharmacy benefit manager furnishing services to such sponsor or plan”.

SEC. 4. PBM TRANSPARENCY.

Section 1150A of the Social Security Act (42 U.S.C. 1320b–23) is amended—

(1) in subsection (b), by adding at the end the following new paragraph:

“(4) In the case of the provision of information by a PBM that manages prescription drug coverage under a contract with a sponsor described in subsection (a)(1) for a plan so described—
“(A) the aggregate dollar amount of all rebates that the PBM received with respect to drugs furnished under such plan from drug manufacturers;

“(B) the aggregate dollar amount of all administrative fees that the PBM received with respect to drugs furnished under such plan from drug manufacturers;

“(C) the aggregate dollar amount of all rebates described in subparagraph (A) that the PBM did not pass through to such sponsor;

“(D) the percentage of the aggregate dollar amount of all rebates described in subparagraph (A) that the PBM did not pass through to such sponsor; and

“(E) with respect to all plans described in subsection (a)(1) for which the PBM manages prescription drug coverage, the highest percentage calculated under subparagraph (D) and the lowest such percentage.”;

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b), the following new subsection:
“(c) Publication of Part D Information.—The Secretary shall publish, not less frequently than annually, the information reported under subsection (b) by or on behalf of sponsors described in subsection (a)(1) on a publicly available website, provided that such information shall be made available in a form that does not disclose the identity of a specific plan, the prices charged for specific drugs or classes of drugs, or the amount of any rebates provided for specific drugs or classes of drugs.”.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect January 1, 2024.

SEC. 6. REGULATIONS.

Notwithstanding any other provision of law, the Secretary shall initially implement the amendments made by this Act through interim final regulations.