

**Amendment to the Amendment in the Nature of a Substitute to H.R. 3
Offered by Rep. Arrington of Texas**

The amendment would require a partial passthrough of Part D rebates at the point of sale.

AMENDMENT

OFFERED BY MR. ARRINGTON OF TEXAS

Add at the end the following new title (and conform the table of contents accordingly):

1 **TITLE _____ —MISCELLANEOUS**

2 **SEC. _____. DRUG DISCOUNTS REQUIRED TO BE PASSED**
3 **THROUGH TO THE PLAN SPONSOR.**

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

6 (1) in the header, by inserting “**; DRUG DISCOUNTS REQUIRED TO BE PASSED THROUGH FULLY TO THE PLAN SPONSOR**” before the period at the end; and

10 (2) by adding at the end the following new subsections:

12 “(f) **DRUG DISCOUNTS REQUIRED TO BE PASSED THROUGH FULLY TO THE PLAN SPONSOR.**—

14 “(1) **REQUIREMENT.**—Beginning January 1, 2022, a PBM that manages prescription drug coverage under a contract with a PDP sponsor or MA organization described in subsection (b)(1) or a qualified health benefits plan described in subsection (b)(2), shall, with respect to the plan sponsor of a

1 health benefits plan, pass through to the plan spon-
2 sor 100 percent of the aggregate amount of the re-
3 bates, discounts, and other price concessions that
4 the PBM negotiates that are attributable to patient
5 utilization under the plan (including any rebates,
6 discounts, or other price concessions that are re-
7 ceived by an agent or affiliate of the PBM on the
8 PBM's behalf). Bona fide service fees (as defined in
9 subsection (g)) are not price concessions, and may
10 be retained by such a PBM, provided that the bona
11 fide service fees are not based on a percentage of the
12 sales for a drug or otherwise linked in any way to
13 the price or formulary position or placement of a
14 drug.

15 “(2) ESTABLISHMENT.—The Secretary shall es-
16 tablish the percent described in paragraph (1) in
17 such a manner as will ensure that patients receive
18 the maximum benefit of rebates, discounts, or price
19 concessions while taking into account the costs of
20 negotiating such rebates, discounts, and price con-
21 cessions.

22 “(3) ENFORCEMENT.—A PDP sponsor of a
23 prescription drug plan or an MA organization offer-
24 ing an MA–PD plan under part D of title XVIII

1 may not contract with a PBM that is not in compli-
2 ance with the requirement under paragraph (1).”.

3 “(g) DEFINITION.—For purposes of subsection (f),
4 the term ‘bona fide service fees’ paid to a PBM means
5 fees paid to a PBM (or an agent or affiliate of a PBM
6 acting on the PBM’s behalf) by a manufacturer, customer,
7 or client of the PBM that represent fair market value for
8 a bona fide, itemized service actually performed on behalf
9 of the manufacturer, customer, or client, that the manu-
10 facturer, customer, or client would otherwise perform (or
11 contract for) in the absence of the service arrangement,
12 and that the PBM does not pass on to another party.”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 subsection (a) shall apply to plan years beginning on or
15 after January 1, 2022.

16 **SEC. ____ . PART D NEGOTIATED PRICES REQUIRED TO IN-**
17 **CLUDE A MINIMUM PERCENT OF MANUFAC-**
18 **TURER PRICE CONCESSIONS.**

19 (a) IN GENERAL.—Section 1860D–2(d)(1)(B) of the
20 Social Security Act (42 U.S.C. 1395w–102(d)(1)(B)) is
21 amended—

22 (1) by striking “For purposes” and inserting
23 the following:

24 “(i) IN GENERAL.—For purposes”;

25 and

1 (2) by adding at the end the following new
2 clauses:

3 “(ii) NEGOTIATED PRICES AT POINT-
4 OF-SALE.—Negotiated prices for covered
5 part D drugs described in clause (i) shall
6 be provided at the point-of-sale of the cov-
7 ered part D drug. The negotiated price
8 shall include at least the specified percent
9 of the value of all rebates, discounts, or
10 other price concessions received by a PDP
11 sponsor or a Medicare Advantage organiza-
12 tion offering an MA-PD plan from a drug
13 manufacturer, either directly or indirectly
14 from the PBM to the plan sponsor or MA
15 organization, with respect to such drug. If
16 such price is not possible to calculate at
17 the point-of-sale, an approximation of such
18 price (as established by the Secretary)
19 shall be used under the prescription drug
20 plan or MA–PD plan.

21 “(iii) SPECIFIED PERCENT.—For pur-
22 poses of clause (ii), the percent specified in
23 this clause is, with respect to a drug fur-
24 nished in—

25 “(I) 2022, 10 percent;

1 “(II) 2023 or a subsequent year
2 (through 2026), the specified percent
3 for the previous year, increased by 10
4 percentage points; and

5 “(III) 2027 or a subsequent year,
6 60 percent.

7 “(iv) APPROXIMATE NEGOTIATED
8 PRICE.—In determining an approximate
9 negotiated price for a covered part D drug
10 under clause (ii), the Secretary shall en-
11 sure that—

12 “(I) such price reflects the esti-
13 mated negotiated price that is based
14 on the previous year’s negotiated price
15 concessions negotiated under the plan
16 for all or similar covered part D drugs
17 or is based on such other factors as
18 the Secretary may determine appro-
19 priate; and

20 “(II) the use of such price does
21 not prevent the use of value-based
22 contracts between drug manufactur-
23 ers, PDP sponsors, MA organizations,
24 and pharmacies.”.

1 (b) COINSURANCE LIMITATION.—Section 1860D–
2 2(b) is amended by adding at the end the following new
3 paragraph:

4 “(8) COPAYMENT LIMITATION.—Notwith-
5 standing the preceding provisions of this subsection,
6 in no case may a prescription drug plan impose a co-
7 payment amount under such plan with respect to a
8 covered part D drug that exceeds the negotiated
9 price of such drug.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply with respect to plan years begin-
12 ning on or after January 1, 2022.

