

118TH CONGRESS
1ST SESSION

S. _____

To prohibit the distribution and receipt of rebates for prescription drugs.

IN THE SENATE OF THE UNITED STATES

Mr. HAWLEY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To prohibit the distribution and receipt of rebates for prescription drugs.

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 “Ending the Prescrip-
5 tion Drug Kickback Act of 2023”.

6 **SEC. 2. REQUIREMENTS FOR PRESCRIPTION DRUG BENE-**
7 **FITS.**

8 (a) REMOVAL OF SAFE HARBOR PROTECTION FOR
9 REBATES INVOLVING PRESCRIPTION DRUGS.—

10 (1) REMOVAL OF SAFE HARBOR PROTECTION
11 FOR REBATES INVOLVING PRESCRIPTION DRUGS.—

1 Section 1128B(b) of the Social Security Act (42
2 U.S.C. 1320a-7b(b)) is amended—

3 (A) in paragraph (3)(A), by striking “a
4 discount” and inserting “subject to paragraph
5 (5), a discount”; and

6 (B) by adding at the end the following:

7 “(5) REMOVAL OF SAFE HARBOR PROTECTION
8 FOR REBATES INVOLVING PRESCRIPTION DRUGS.—

9 “(A) IN GENERAL.—The safe harbor de-
10 scribed in paragraph (3)(A) shall not apply to
11 a rebate or other remuneration, including a re-
12 bate or other remuneration intended to influ-
13 ence formulary tier placement or its equivalent,
14 from a manufacturer of prescription drugs or
15 an entity that provides pharmacy benefits man-
16 agement services.

17 “(B) DEFINITIONS.—In this paragraph:

18 “(i) ENTITY THAT PROVIDES PHAR-
19 MACY BENEFITS MANAGEMENT SERV-
20 ICES.—The term ‘entity that provides
21 pharmacy benefits management services’
22 means—

23 “(I) any person, business, or
24 other entity that provides, directly or

1 through an intermediary, the service
2 of—

3 “(aa) negotiating terms and
4 conditions with respect to a pre-
5 scription drug on behalf of a
6 health plan under a Federal
7 health care program; or

8 “(bb) managing the pre-
9 scription drug benefits provided
10 by the plan, which may include
11 formulary management, the proc-
12 essing and payment of claims for
13 prescription drugs, the perform-
14 ance of drug utilization review,
15 the processing of drug prior au-
16 thorization requests, the adju-
17 dication of appeals or grievances
18 related to the prescription drug
19 benefit, contracting with network
20 pharmacies, or the provision of
21 related services; or

22 “(II) any entity that is owned,
23 affiliated, or related under a common
24 ownership structure with a person,

1 business, or entity described in sub-
2 clause (I).

3 “(ii) REBATE.—The term ‘rebate’
4 means any discount the terms of which are
5 fixed and disclosed in writing to the buyer
6 at the time of the purchase to which the
7 discount applies, but which is not given at
8 the time of purchase.”.

9 (2) EFFECTIVE DATE.—The amendments made
10 by this subsection shall take effect on January 1,
11 2025.

12 (b) REQUIREMENTS FOR PRIVATE INSURANCE
13 PLANS.—

14 (1) IN GENERAL.—Part D of title XXVII of the
15 Public Health Service Act (42 U.S.C. 300gg–111 et
16 seq.) is amended by adding at the end the following:

17 **“SEC. 2799A–11. REQUIREMENTS WITH RESPECT TO PRE-**
18 **SCRIPTION DRUG BENEFITS.**

19 “(a) IN GENERAL.—A group health plan or a health
20 insurance issuer offering group or individual health insur-
21 ance coverage shall not, and shall ensure that any entity
22 that provides pharmacy benefits management services on
23 its behalf does not, receive from a drug manufacturer a
24 rebate or other remuneration, including a rebate or other
25 remuneration intended to influence formulary tier place-

1 ment or its equivalent, with respect to any prescription
2 drug received by an enrollee in the plan or coverage and
3 covered by the plan or coverage.

4 “(b) DEFINITIONS.—For purposes of this section—

5 “(1) the term ‘entity that provides pharmacy
6 benefits management services’ means—

7 “(A) any person, business, or other entity
8 that provides, directly or through an inter-
9 mediary, the service of—

10 “(i) negotiating terms and conditions
11 with respect to a prescription drug on be-
12 half of a group health plan or group or in-
13 dividual health insurance coverage; or

14 “(ii) managing the prescription drug
15 benefits provided by the plan or coverage,
16 which may include formulary management,
17 the processing and payment of claims for
18 prescription drugs, the performance of
19 drug utilization review, the processing of
20 drug prior authorization requests, the ad-
21 judication of appeals or grievances related
22 to the prescription drug benefit, con-
23 tracting with network pharmacies, or the
24 provision of related services; or

1 “(B) any entity that is owned, affiliated, or
2 related under a common ownership structure
3 with a person, business, or entity described in
4 paragraph (1); and

5 “(2) the term ‘rebate’ means any discount the
6 terms of which are fixed and disclosed in writing to
7 the buyer at the time of the purchase to which the
8 discount applies, but which is not given at the time
9 of purchase.”.

10 (2) ERISA.—

11 (A) IN GENERAL.—Subpart B of part 7 of
12 subtitle B of title I of the Employee Retirement
13 Income Security Act of 1974 (29 U.S.C. 1185
14 et seq.) is amended by adding at the end the
15 following:

16 **“SEC. 726. REQUIREMENTS WITH RESPECT TO PRESCRIP-**
17 **TION DRUG BENEFITS.**

18 “(a) IN GENERAL.—A group health plan or a health
19 insurance issuer offering group health insurance coverage
20 shall not, and shall ensure that any entity that provides
21 pharmacy benefits management services on its behalf does
22 not, receive from a drug manufacturer a rebate or other
23 remuneration, including a rebate or other remuneration
24 intended to influence formulary tier placement or its
25 equivalent, with respect to any prescription drug received

1 by an enrollee in the plan or coverage and covered by the
2 plan or coverage.

3 “(b) DEFINITIONS.—For purposes of this section—

4 “(1) the term ‘entity that provides pharmacy
5 benefits management services’ means—

6 “(A) any person, business, or other entity
7 that provides, directly or through an inter-
8 mediary, the service of—

9 “(i) negotiating terms and conditions
10 with respect to a prescription drug on be-
11 half of a group health plan or group health
12 insurance coverage; or

13 “(ii) managing the prescription drug
14 benefits provided by the plan or coverage,
15 which may include formulary management,
16 the processing and payment of claims for
17 prescription drugs, the performance of
18 drug utilization review, the processing of
19 drug prior authorization requests, the ad-
20 judication of appeals or grievances related
21 to the prescription drug benefit, con-
22 tracting with network pharmacies, or the
23 provision of related services; or

24 “(B) any entity that is owned, affiliated, or
25 related under a common ownership structure

1 with a person, business, or entity described in
2 paragraph (1); and

3 “(2) the term ‘rebate’ means any discount the
4 terms of which are fixed and disclosed in writing to
5 the buyer at the time of the purchase to which the
6 discount applies, but which is not given at the time
7 of purchase.”.

8 (B) CLERICAL AMENDMENT.—The table of
9 contents of the Employee Retirement Income
10 Security Act of 1974 is amended by inserting
11 after the item relating to section 725 the fol-
12 lowing:

“Sec. 726. Requirements with respect to prescription drug benefits.”.

13 (3) IRC.—

14 (A) IN GENERAL.—Subchapter B of chap-
15 ter 100 of the Internal Revenue Code of 1986
16 is amended by adding at the end the following:

17 **“SEC. 9826. REQUIREMENTS WITH RESPECT TO PRESCRIP-**
18 **TION DRUG BENEFITS.**

19 “(a) IN GENERAL.—A group health plan shall not,
20 and shall ensure that any entity that provides pharmacy
21 benefits management services on its behalf does not, re-
22 ceive from a drug manufacturer a rebate or other remu-
23 nation with respect to any prescription drug received by
24 an enrollee in the plan and covered by the plan.

25 “(b) DEFINITIONS.—For purposes of this section—

1 “(1) the term ‘entity that provides pharmacy
2 benefits management services’ means—

3 “(A) any person, business, or other entity
4 that provides, directly or through an inter-
5 mediary, the service of—

6 “(i) negotiating terms and conditions
7 with respect to a prescription drug on be-
8 half of a group health plan; or

9 “(ii) managing the prescription drug
10 benefits provided by the plan, which may
11 include formulary management, the proc-
12 essing and payment of claims for prescrip-
13 tion drugs, the performance of drug utili-
14 zation review, the processing of drug prior
15 authorization requests, the adjudication of
16 appeals or grievances related to the pre-
17 scription drug benefit, contracting with
18 network pharmacies, or the provision of re-
19 lated services; or

20 “(B) any entity that is owned, affiliated, or
21 related under a common ownership structure
22 with a person, business, or entity described in
23 paragraph (1); and

24 “(2) the term ‘rebate’ means any discount the
25 terms of which are fixed and disclosed in writing to

1 the buyer at the time of the purchase to which the
2 discount applies, but which is not given at the time
3 of purchase.”.

4 (B) CLERICAL AMENDMENT.—The table of
5 sections for subchapter B of chapter 100 of the
6 Internal Revenue Code of 1986 is amended by
7 adding at the end the following:

“Sec. 9826. Requirements with respect to prescription drug benefits.”.

8 (4) EFFECTIVE DATE.—The amendments made
9 by paragraphs (1), (2), and (3) shall take effect on
10 January 1, 2025.