To amend title XVIII of the Social Security Act to provide for pharmacy benefits manager standards under the Medicare prescription drug program and Medicare Advantage program to further transparency of payment methodologies to pharmacies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2017

Mr. COLLINS of Georgia (for himself, Mr. LOEBSACK, Mr. CARTER of Georgia, Mr. DUNCAN of Tennessee, Mrs. McMORRIS RODGERS, Mr. BLUM, Mr. SARBAKES, and Mr. BABIN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Armed Services, and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to provide for pharmacy benefits manager standards under the Medicare prescription drug program and Medicare Advantage program to further transparency of payment methodologies to pharmacies, and for other purposes.

Be it enacted by the Senate and House of Representa-
SECTION 1. SHORT TITLE.

This Act may be cited as the “Prescription Drug Price Transparency Act”.

SEC. 2. PHARMACY BENEFITS MANAGER STANDARDS UNDER THE MEDICARE PROGRAM FOR PRESCRIPTION DRUG PLANS AND MA–PD PLANS.

(a) IN GENERAL.—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:

“(7) PHARMACY BENEFITS MANAGER TRANSPARENCY REQUIREMENTS.—Each contract entered into with a PDP sponsor under this part with respect to a prescription drug plan offered by such sponsor or with an MA organization offering an MA–PD plan under part C shall provide that the sponsor or organization, respectively, may not enter into a contract with any pharmacy benefits manager (referred to in this paragraph as a ‘PBM’) to manage the prescription drug coverage provided under such plan, or to control the costs of the prescription drug coverage under such plan, unless the PBM adheres to the following criteria when handling personally identifiable utilization and claims data or other sensitive patient data:

“(A) The PBM may not transmit any personally identifiable utilization, protected health
information, or claims data, with respect to a plan enrollee, to a pharmacy owned by a PBM if the plan enrollee has not voluntarily elected in writing or via secure electronic means to fill that particular prescription at the PBM-owned pharmacy.

“(B) The PBM may not require that a plan enrollee use a retail pharmacy, mail order pharmacy, specialty pharmacy, or other pharmacy entity providing pharmacy services in which the PBM has an ownership interest or that has an ownership interest in the PBM, or provide an incentive to a plan enrollee to encourage the enrollee to use a retail pharmacy, mail order pharmacy, specialty pharmacy, or other pharmacy entity providing pharmacy services in which the PBM has an ownership interest or that has an ownership interest in the PBM, if the incentive is applicable only to such pharmacies.”.

(b) Regular Update of Prescription Drug Pricing Standard.—Paragraph (6) of section 1860D–12(b) of the Social Security Act (42 U.S.C. 1395w–112(b)) is amended to read as follows:
“(6) Regular update of prescription drug pricing standard.—

“(A) In general.—If the PDP sponsor of a prescription drug plan (or MA organization offering an MA–PD plan) uses a standard for reimbursement (as described in subparagraph (B)) of pharmacies based on the cost of a drug, each contract entered into with such sponsor under this part (or organization under part C) with respect to the plan shall provide that the sponsor (or organization) shall—

“(i) update such standard not less frequently than once every 7 days, beginning with an initial update on January 1 of each year, to accurately reflect the market price of acquiring the drug;

“(ii) disclose to applicable pharmacies and the contracting entities of such pharmacies the sources used for making any such update immediately without requirement of request;

“(iii) if the source for such a standard for reimbursement is not publicly available, disclose to the applicable pharmacies and the respective contracting entities of such
pharmacies all individual drug prices to be so updated in advance of the use of such prices for the reimbursement of claims;

“(iv) establish a process to appeal, investigate, and resolve disputes regarding individual drug prices that are less than the pharmacy acquisition price for such drug, which must be adjudicated within 7 days of the pharmacy filing its appeal; and

“(v) provide all such pricing data in an .xml spreadsheet format or a comparable easily accessible and complete spreadsheet format.

“(B) PRESCRIPTION DRUG PRICING STANDARD DEFINED.—For purposes of subparagraph (A), a standard for reimbursement of a pharmacy is any methodology or formula for varying the pricing of a drug or drugs during the term of the pharmacy reimbursement contract that is based on the cost of the drug involved, including drug pricing references and amounts that are based upon average wholesale price, wholesale average cost, average manufacturer price, average sales price, maximum al-
lowable cost (MAC), or other costs, whether
publicly available or not.”.

(c) Effective Date.—The amendments made by
this section shall apply to plan years beginning on or after
January 1, 2018.

SEC. 3. REGULAR UPDATE OF PRESCRIPTION DRUG PRIC-
ING STANDARD UNDER TRICARE RETAIL
PHARMACY PROGRAM.

Section 1074g(d) of title 10, United States Code, is
amended by adding at the end the following new para-
graph:

“(3) To the extent practicable, with respect to the
TRICARE retail pharmacy program described in sub-
section (a)(2)(E)(ii), the Secretary shall ensure that a con-
tract entered into with a TRICARE managed care support
contractor includes requirements described in section
1860D–12(b)(6) of the Social Security Act (42 U.S.C.
1395w–112(b)(6)) to ensure the provision of information
regarding the pricing standard for prescription drugs.”.

SEC. 4. PRESCRIPTION DRUG TRANSPARENCY IN THE FED-
ERAL EMPLOYEES HEALTH BENEFITS PRO-
GRAM.

(a) In General.—Section 8902 of title 5, United
States Code, is amended by adding at the end the fol-
lowing new subsections:
“(p) A contract may not be made or a plan approved under this chapter under which a carrier has an agreement with a pharmacy benefits manager (in this subsection referred to as a ‘PBM’) to manage prescription drug coverage or to control the costs of the prescription drug coverage unless the carrier and PBM adhere to the following criteria:

“(1) The PBM may not transmit any personally identifiable utilization, protected health information, or claims data with respect to an individual enrolled under such contract or plan to a pharmacy owned by the PBM if the individual has not voluntarily elected in writing or via secure electronic means to fill that particular prescription at such a pharmacy.

“(2) The PBM may not require that an individual enrolled under such contract or plan use a retail pharmacy, mail order pharmacy, specialty pharmacy, or other pharmacy entity providing pharmacy services in which the PBM has an ownership interest or that has an ownership interest in the PBM or provide an incentive to a plan enrollee to encourage the enrollee to use a retail pharmacy, mail order pharmacy, specialty pharmacy, or other pharmacy entity providing pharmacy services in which the PBM has an ownership interest or that has an own-
ership interest in the PBM, if the incentive is appli-
cable only to such pharmacies.

“(q)(1) If a contract made or plan approved under
this chapter provides for a standard for reimbursement
(as described in paragraph (2)) with respect to a prescrip-
tion drug plan, such contract or plan shall provide that
the applicable carrier—

“(A) update such standard not less frequently
than once every 7 days, beginning with an initial up-
date on January 1 of each year, to accurately reflect
the market price of acquiring the drug;

“(B) disclose to applicable pharmacies and the
contracting entities of such pharmacies the sources
used for making any such update immediately with-
out requirement of request;

“(C) if the source for such a standard for reim-
bursement is not publicly available, disclose to the
applicable pharmacies and contracting entities of
such pharmacies all individual drug prices to be so
updated in advance of the use of such prices for the
reimbursement of claims;

“(D) establish a process to appeal, investigate,
and resolve disputes regarding individual drug prices
that are less than the pharmacy acquisition price for
such drug, which must be adjudicated within 7 days of the pharmacy filing its appeal; and

“(E) provide all such pricing data in an .xml spreadsheet format or a comparable easily accessible and complete spreadsheet format.

“(2) For purposes of paragraph (1), a standard for reimbursement of a pharmacy is any methodology or formula for varying the pricing of a drug or drugs during the term of the pharmacy reimbursement contract that is based on the cost of the drug involved, including drug pricing references and amounts that are based upon average wholesale price, wholesale average cost, average manufacturer price, average sales price, maximum allowable cost, or other costs, whether publicly available or not.”.

(b) Application.—The amendment made by subsection (a) shall apply to any contract entered into under section 8902 of title 5, United States Code, on or after the date of enactment of this section.