

116TH CONGRESS  
1ST SESSION

# H. R. 1035

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.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2019

Mr. COLLINS of Georgia (for himself, Mr. LOEBSACK, Mr. DAVID P. ROE of Tennessee, Mr. WESTERMAN, Miss RICE of New York, Mr. KING of Iowa, Ms. CLARKE of New York, Mr. AUSTIN SCOTT of Georgia, Mr. HICE of Georgia, Mr. VELA, Mr. RASKIN, Mrs. RODGERS of Washington, Mr. WELCH, Mr. CARTER of Georgia, Mr. CRAWFORD, Mr. PETERSON, and Mr. BYRNE) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Oversight and 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

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## 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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. PHARMACY BENEFITS MANAGER STANDARDS**  
5 **UNDER THE MEDICARE PROGRAM FOR PRE-**  
6 **SCRIPTION DRUG PLANS AND MA-PD PLANS.**

7 (a) IN GENERAL.—Section 1860D–12(b) of the So-  
8 cial Security Act (42 U.S.C. 1395w–112(b)) is amended  
9 by adding at the end the following new paragraph:

10 “(8) PHARMACY BENEFITS MANAGER TRANS-  
11 PARENCY REQUIREMENTS.—Each contract entered  
12 into with a PDP sponsor under this part with re-  
13 spect to a prescription drug plan offered by such  
14 sponsor or with an MA organization offering an  
15 MA–PD plan under part C shall provide that the  
16 sponsor or organization, respectively, may not enter  
17 into a contract with any pharmacy benefits manager  
18 (referred to in this paragraph as a ‘PBM’) to man-  
19 age the prescription drug coverage provided under  
20 such plan, or to control the costs of the prescription  
21 drug coverage under such plan, if the PBM—

22 “(A) requires that a plan enrollee use a re-  
23 tail pharmacy, mail order pharmacy, specialty  
24 pharmacy, or other pharmacy entity providing  
25 pharmacy services in which the PBM has an

1 ownership interest or that has an ownership in-  
2 terest in the PBM; or

3 “(B) provides an incentive (including a re-  
4 duced copayment or coinsurance) to a plan en-  
5 rollee to encourage the enrollee to use a retail  
6 pharmacy, mail order pharmacy, specialty phar-  
7 macy, or other pharmacy entity providing phar-  
8 macy services in which the PBM has an owner-  
9 ship interest or that has an ownership interest  
10 in the PBM, if the incentive is applicable only  
11 to such pharmacies.”.

12 (b) REGULAR UPDATE OF PRESCRIPTION DRUG  
13 PRICING STANDARD.—Paragraph (6) of section 1860D-  
14 12(b) of the Social Security Act (42 U.S.C. 1395w-  
15 112(b)) is amended to read as follows:

16 “(6) REGULAR UPDATE OF PRESCRIPTION  
17 DRUG PRICING STANDARD.—

18 “(A) IN GENERAL.—If the PDP sponsor of  
19 a prescription drug plan (or MA organization  
20 offering an MA–PD plan) uses a standard for  
21 reimbursement (as described in subparagraph  
22 (B)) of pharmacies based on the cost of a drug,  
23 each contract entered into with such sponsor  
24 under this part (or organization under part C)

1 with respect to the plan shall provide that the  
2 sponsor (or organization) shall—

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

8 “(ii) disclose to applicable pharmacies  
9 and the respective contracting entities of  
10 such pharmacies the sources used for mak-  
11 ing any such update immediately without  
12 requirement of request;

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

20 “(iv) establish a process for applicable  
21 pharmacies and respective contracting enti-  
22 ties to appeal, investigate, and resolve dis-  
23 putes regarding individual drug prices that  
24 are less than the pharmacy acquisition  
25 price for such drug, which must be adju-

1           dicated within 7 days of the pharmacy fil-  
2           ing its appeal; and

3           “(v) provide to applicable pharmacies  
4           and respective contracting entities all such  
5           pricing data in an .xml spreadsheet format  
6           or a comparable easily accessible and com-  
7           plete spreadsheet format.

8           “(B)    PRESCRIPTION    DRUG    PRICING  
9           STANDARD   DEFINED.—For purposes of sub-  
10          paragraph (A), a standard for reimbursement  
11          of a pharmacy is any methodology or formula  
12          for varying the pricing of a drug or drugs dur-  
13          ing the term of the pharmacy reimbursement  
14          contract that is based on the cost of the drug  
15          involved, including drug pricing references and  
16          amounts that are based upon average wholesale  
17          price, wholesale average cost, average manufac-  
18          turer price, average sales price, maximum al-  
19          lowable cost (MAC), or other costs, whether  
20          publicly available or not.”.

21          (c) EFFECTIVE DATE.—The amendments made by  
22          this section shall apply to plan years beginning on or after  
23          January 1, 2020.

1 **SEC. 3. PRESCRIPTION DRUG TRANSPARENCY IN THE FED-**  
2 **ERAL EMPLOYEES HEALTH BENEFITS PRO-**  
3 **GRAM.**

4 (a) IN GENERAL.—Section 8902 of title 5, United  
5 States Code, is amended by adding at the end the fol-  
6 lowing new subsections:

7 “(p) A contract may not be made or a plan approved  
8 under this chapter under which a carrier has an agree-  
9 ment with a pharmacy benefits manager (in this sub-  
10 section referred to as a ‘PBM’) to manage prescription  
11 drug coverage or to control the costs of the prescription  
12 drug coverage if the PBM—

13 “(1) requires that an individual enrolled under  
14 such contract or plan use a retail pharmacy, mail  
15 order pharmacy, specialty pharmacy, or other phar-  
16 macy entity providing pharmacy services in which  
17 the PBM has an ownership interest or that has an  
18 ownership interest in the PBM; or

19 “(2) provides an incentive (including a reduced  
20 copayment or coinsurance) to a plan enrollee to en-  
21 courage the enrollee to use a retail pharmacy, mail  
22 order pharmacy, specialty pharmacy, or other phar-  
23 macy entity providing pharmacy services in which  
24 the PBM has an ownership interest or that has an  
25 ownership interest in the PBM, if the incentive is  
26 applicable only to such pharmacies.

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

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

10          “(B) disclose to applicable pharmacies and the  
11 respective contracting entities of such pharmacies  
12 the sources used for making any such update imme-  
13 diately without requirement of request;

14          “(C) if the source for such a standard for reim-  
15 bursement is not publicly available, disclose to the  
16 applicable pharmacies and respective contracting en-  
17 tities of such pharmacies all individual drug prices  
18 to be so updated in advance of the use of such prices  
19 for the reimbursement of claims;

20          “(D) establish a process for applicable phar-  
21 macies and respective contracting entities to appeal,  
22 investigate, and resolve disputes regarding individual  
23 drug prices that are less than the pharmacy acquisi-  
24 tion price for such drug, which must be adjudicated  
25 within 7 days of the pharmacy filing its appeal; and

1           “(E) provide to applicable pharmacies and re-  
2           spective contracting entities all such pricing data in  
3           an .xml spreadsheet format or a comparable easily  
4           accessible and complete spreadsheet format.

5           “(2) For purposes of paragraph (1), a standard for  
6 reimbursement of a pharmacy is any methodology or for-  
7 mula for varying the pricing of a drug or drugs during  
8 the term of the pharmacy reimbursement contract that is  
9 based on the cost of the drug involved, including drug pric-  
10 ing references and amounts that are based upon average  
11 wholesale price, wholesale average cost, average manufac-  
12 turer price, average sales price, maximum allowable cost,  
13 or other costs, whether publicly available or not.”.

14           (b) APPLICATION.—The amendment made by sub-  
15 section (a) shall apply to any contract entered into under  
16 section 8902 of title 5, United States Code, on or after  
17 the date of enactment of this section.

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