

118TH CONGRESS
1ST SESSION

H. R. 4508

To amend the Employee Retirement Income Security Act of 1974 to clarify and strengthen the application of certain employer-sponsored health plan disclosure requirements.

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2023

Mr. COURTNEY (for himself and Mrs. HOUCHIN) introduced the following bill;
which was referred to the Committee on Education and the Workforce

A BILL

To amend the Employee Retirement Income Security Act of 1974 to clarify and strengthen the application of certain employer-sponsored health plan disclosure requirements.

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 “Hidden Fee Disclosure
5 Act”.

1 **SEC. 2. CLARIFICATION OF THE APPLICATION OF FEE DIS-**
2 **CLOSURE REQUIREMENTS TO COVERED**
3 **SERVICE PROVIDERS.**

4 (a) SERVICES.—Clause (ii)(I)(bb) of section
5 408(b)(2)(B) of the Employee Retirement Income Secu-
6 rity Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is amended—

7 (1) in subitem (AA) by striking “Brokerage
8 services,” and inserting “Services (including broker-
9 age services),”; and

10 (2) in subitem (BB)—

11 (A) by striking “Consulting,” and inserting
12 “Other services,”; and

13 (B) by inserting “any of the following:” be-
14 fore “plan design”.

15 (b) DISCLOSURES.—Clause (iii)(III) of section
16 408(b)(2)(B) of the Employee Retirement Income Secu-
17 rity Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is amended
18 by striking “, either in the aggregate or by service,” and
19 inserting “by service”.

20 **SEC. 3. STRENGTHENING DISCLOSURE REQUIREMENTS**
21 **WITH RESPECT TO PHARMACY BENEFIT MAN-**
22 **AGERS AND THIRD PARTY ADMINISTRATORS**
23 **FOR GROUP HEALTH PLANS.**

24 (a) CERTAIN ARRANGEMENTS FOR PBM SERVICES
25 CONSIDERED AS INDIRECT.—

1 (1) IN GENERAL.—Clause (i) of section
2 408(b)(2)(B) of the Employee Retirement Income
3 Security Act of 1974 (29 U.S.C. 1108(b)(2)(B)) is
4 amended—

5 (A) by striking “requirements of this
6 clause” and inserting “requirements of this
7 subparagraph”; and

8 (B) by adding at the end the following:
9 “For purposes of applying section 406(a)(1)(C)
10 with respect to a transaction described under
11 this subparagraph, a contract or arrangement
12 for services between a covered plan and a health
13 insurance issuer providing health insurance cov-
14 erage in connection with the covered plan in
15 which the health insurance issuer contracts, in
16 connection with such plan, with a service pro-
17 vider for pharmacy benefit management services
18 shall be considered to constitute an indirect fur-
19 nishing of goods, services, or facilities between
20 the plan and the service provider acting as the
21 party in interest.”.

22 (2) HEALTH INSURANCE ISSUER AND HEALTH
23 INSURANCE COVERAGE DEFINED.—Clause (ii)(I)(aa)
24 of section 408(b)(2)(B) of the Employee Retirement
25 Income Security Act of 1974 ((29 U.S.C.

1 1108(b)(2)(B)) is amended by inserting before the
 2 period at the end “and the terms ‘health insurance
 3 coverage’ and ‘health insurance issuer’ have the
 4 meanings given such terms in section 733(b)”.

5 (b) SPECIFIC DISCLOSURE REQUIREMENTS WITH
 6 RESPECT TO PHARMACY BENEFIT MANAGEMENT SERV-
 7 ICES.—

8 (1) IN GENERAL.—Clause (iii) of section
 9 408(b)(2)(B) of such Act (29 U.S.C. 1108(b)(2)(B))
 10 is amended by adding at the end the following:

11 “(VII) With respect to a contract or ar-
 12 rangement with the covered plan in connection
 13 with the provision of pharmacy benefit manage-
 14 ment services, as part of the description re-
 15 quired under subclauses (III) and (IV)—

16 “(aa) all compensation described in
 17 clause (ii)(I)(dd)(AA), including fees, re-
 18 bates, alternative discounts, co-payment
 19 offsets, and other remuneration expected
 20 to be received by the covered service pro-
 21 vider, an affiliate, or a subcontractor from
 22 a pharmaceutical manufacturer, dis-
 23 tributor, rebate aggregator, group pur-
 24 chasing organization, or any other third
 25 party; and

1 “(bb) the amount and form of any re-
2 bates, discounts, or price concessions, in-
3 cluding the amount expected to be passed
4 through to the plan sponsor or the partici-
5 pants and beneficiaries under the covered
6 plan;

7 “(cc) all compensation expected to be
8 received by the covered service provider as
9 a result of paying a lower amount for the
10 drug than the amount charged as a copay-
11 ment, coinsurance amount, or deductible;

12 “(dd) all compensation expected to be
13 received by the covered service provider as
14 a result of paying pharmacies less than
15 what is charged the health plan, plan spon-
16 sor, or participants and beneficiaries under
17 the covered plan;

18 “(ee) all compensation expected to be
19 received by the covered service provider
20 from drug manufacturers and any other
21 third party in exchange for—

22 “(AA) administering, invoicing,
23 allocating, or collecting rebates related
24 to the covered plan;

1 “(BB) providing business serv-
2 ices and activities, including providing
3 access to drug utilization data;

4 “(CC) keeping a percentage of
5 the list price of a drug; or

6 “(DD) any other reason related
7 to the role of a covered service pro-
8 vider as a conduit between the drug
9 manufacturers or any other third
10 party and the covered plan.”.

11 (2) ANNUAL DISCLOSURE.—

12 (A) Clause (v) of section 408(b)(2)(B) of
13 such Act (29 U.S.C. 1108(b)(2)(B)) is amended
14 by adding at the end the following:

15 “(III) A covered service provider, with re-
16 spect to a contract or arrangement with the
17 covered plan in connection with providing phar-
18 macy benefit management services, shall dis-
19 close, on an annual basis not later than 60 days
20 after the beginning of the current plan year, to
21 a responsible plan fiduciary, in writing, the fol-
22 lowing with respect to the twelve months pre-
23 ceding the current plan year:

24 “(aa) All direct compensation de-
25 scribed in subclause (III) of clause (iii)

1 and indirect compensation described in
2 subclause (IV) of clause (iii) received by
3 the covered service provider (including
4 such compensation described in subclause
5 (VII) of clause (iii)).

6 “(bb) For each drug covered under
7 the covered plan, the amount by which the
8 price for the drug paid by the plan exceeds
9 the amount paid to pharmacies by the cov-
10 ered service provider.

11 “(cc) The total gross spending by the
12 covered plan on drugs (excluding rebates,
13 discounts, or other price concessions).

14 “(dd) The total net spending by the
15 covered plan on drugs.

16 “(ee) The total gross spending at all
17 pharmacies wholly or partially owned by
18 the covered service provider, including
19 mail-order, specialty and retail pharmacies,
20 with a breakdown by individual pharmacy
21 location.

22 “(ff) The aggregate amount of
23 clawback from pharmacies, including mail-
24 order, specialty, and retail pharmacies.

1 “(AA) categorical explanations
2 (grouped by the reason for clawback,
3 such as contractual true-up provi-
4 sions, overpayments, or non-covered
5 medication dispensed, and including
6 information on the amount in each
7 category that was passed through to
8 the covered plan and to participants
9 and beneficiaries of the covered plan);
10 or

11 “(BB) individual explanations for
12 such clawbacks.

13 “(gg) Total aggregate amounts of fees
14 collected by the covered service provider in
15 connection with the provision of pharmacy
16 benefit management services to the covered
17 plan.

18 “(hh) Any other information specified
19 by the Secretary through regulations or
20 guidance that may be necessary for a re-
21 sponsible plan fiduciary to consider the
22 merits of the contract or arrangement with
23 the covered service provider and any con-
24 flicts of interest that may exist.”.

1 (3) PHARMACY BENEFIT MANAGEMENT SERV-
2 ICES DEFINED.—Clause (ii)(I) of section
3 408(b)(2)(B) of such Act (29 U.S.C. 1108(b)(2)(B))
4 is amended by adding at the end the following:

5 “(gg) The term ‘pharmacy benefit
6 management services’ includes any services
7 provided by a covered service provider to a
8 covered plan with respect to the adminis-
9 tration of prescription drug benefits under
10 the covered plan, including—

11 “(AA) the processing and pay-
12 ment of claims;

13 “(BB) design of pharmacy net-
14 works;

15 “(CC) negotiation, aggregation,
16 and distribution of rebates, discounts,
17 and other price concessions;

18 “(DD) formulary design and
19 maintenance;

20 “(EE) operation of pharmacies
21 (whether retail, mail order, specialty
22 drug, or otherwise); recordkeeping;

23 “(FF) utilization review;

24 “(GG) adjudication of claims;

25 and

1 “(HH) any other services speci-
2 fied by the Secretary through guid-
3 ance or rulemaking.”.

4 (4) CLAWBACK DEFINED.—Clause (ii)(I) of sec-
5 tion 408(b)(2)(B) of such Act (29 U.S.C.
6 1108(b)(2)(B)), as amended by paragraph (3), is
7 amended by adding at the end the following:

8 “(hh) The term ‘clawback’ means
9 amounts collected by a pharmacy benefit
10 manager from a pharmacy for copayments
11 collected from a participant or beneficiary
12 in excess of the contracted rate.”.

13 (c) SPECIFIC DISCLOSURE REQUIREMENTS WITH
14 RESPECT TO THIRD PARTY ADMINISTRATION SERVICES
15 FOR GROUP HEALTH PLANS.—

16 (1) IN GENERAL.—Clause (iii) of section
17 408(b)(2)(B) of such Act (29 U.S.C.
18 1108(b)(2)(B)), as amended by subsection (b)(1), is
19 amended by adding at the end the following:

20 “(VIII) With respect to a contract or ar-
21 rangement with the covered plan in connection
22 with the provision of third party administration
23 services for group health plans, as part of the
24 description required under subclauses (III) and
25 (IV)—

1 “(aa) the amount and form of any re-
2 bates, discounts, savings fees, refunds, or
3 amounts received from providers and facili-
4 ties, including the amounts that will be re-
5 tained by the covered service provider as a
6 fee;

7 “(bb) the amount and form of fees ex-
8 pected to be received from other service
9 providers in relation to the covered plan,
10 including the amounts that will be retained
11 by the covered service provider as a fee;
12 and

13 “(cc) the amount and form of ex-
14 pected recoveries by the covered service
15 provider, including the amounts that will
16 be retained by the covered service provider
17 as a fee (disaggregated by category), as a
18 result of—

19 “(AA) overpayments;

20 “(BB) erroneous payments;

21 “(CC) uncashed checks or incom-
22 plete payments;

23 “(DD) billing errors;

24 “(EE) subrogation;

25 “(FF) fraud; or

1 “(GG) any other reason on behalf
2 of the covered plan, .”.

3 (2) ANNUAL DISCLOSURE.—Clause (v) of sec-
4 tion 408(b)(2)(B) of such Act (29 U.S.C.
5 1108(b)(2)(B)), as amended by subsection (b)(2), is
6 amended by adding at the end the following:

7 “(IV) A covered service provider, with re-
8 spect to a contract or arrangement with the
9 covered plan in connection with providing third
10 party administration services for group health
11 plans, shall disclose, on an annual basis not
12 later than 60 days after the beginning of the
13 current plan year, to a responsible plan fidu-
14 ciary, in writing, the following with respect to
15 the twelve months preceding the current plan
16 year:

17 “(aa) All direct compensation de-
18 scribed in subclause (III) of clause (iii).

19 “(bb) All indirect compensation de-
20 scribed in subclause (IV) of clause (iii) re-
21 ceived by the covered service provider (in-
22 cluding such compensation described in
23 subclause (VIII) of clause (iii)).

24 “(cc) The aggregate amount for which
25 the covered service provider received indi-

1 rect compensation and the estimated
2 amount of cost-sharing incurred by plan
3 participants and beneficiaries as a result.

4 “(dd) The total gross spending by the
5 covered plan on all costs and fees arising
6 under or paid under the administrative
7 services agreement with the third-party ad-
8 ministrator (not including any amounts de-
9 scribed in items (aa) through (cc) of clause
10 (iii)(VIII).

11 “(ee) The total net spending by the
12 covered plan on all costs and fees arising
13 under or paid under the administrative
14 services agreement with the covered service
15 provider.

16 “(ff) The aggregate fees collected by
17 the covered service provider.

18 “(gg) Any other information specified
19 by the Secretary through regulations or
20 guidance that may be necessary for a re-
21 sponsible plan fiduciary to consider the
22 merits of the contract or arrangement with
23 the covered service provider and any con-
24 flicts of interest that may exist.”.

1 (3) THIRD PARTY ADMINISTRATION SERVICES
2 FOR GROUP HEALTH PLANS DEFINED.—Clause
3 (ii)(I) of section 408(b)(2)(B) of such Act (29
4 U.S.C. 1108(b)(2)(B)), as amended by subsection
5 (b)(3), is amended by adding at the end the fol-
6 lowing:

7 “(ii) The term ‘third party adminis-
8 tration services for group health plans’ in-
9 cludes any services provided by a covered
10 service provider to a covered plan with re-
11 spect to the administration of health bene-
12 fits under the covered plan, including—

13 “(AA) the processing, repricing,
14 and payment of claims;

15 “(BB) design, creation, and
16 maintenance of provider networks;

17 “(CC) negotiation of discounts
18 off gross rates;

19 “(DD) benefit and plan design;
20 negotiation of payment rates;

21 “(EE) recordkeeping;

22 “(FF) utilization review;

23 “(GG) adjudication of claims;

24 “(HH) regulatory compliance;

25 and

1 “(II) any other services set forth
2 in an administrative services agree-
3 ment or similar agreement or specified
4 by the Secretary through guidance or
5 rulemaking.”.

6 (d) RULE OF CONSTRUCTION.—Nothing in the
7 amendments made by this section shall be construed to
8 imply that a practice in relation to which a covered service
9 provider is required to provide information as a result of
10 such amendments is permissible under Federal law.

11 (e) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on January 1, 2025.

13 **SEC. 4. IMPLEMENTATION.**

14 Not later than 1 year after the date of enactment
15 of this Act, the Secretary of Labor shall issue notice and
16 comment rulemaking as necessary to implement the provi-
17 sions of this Act. The Secretary shall ensure that such
18 rulemaking—

19 (1) accounts for the varied compensation prac-
20 tices of covered service providers (as defined under
21 section 408(b)(2)(B); and

22 (2) establishes standards for the disclosure of
23 expected compensation by such covered service pro-
24 viders.

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