

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 6283
OFFERED BY MR. LYNCH OF MASSACHUSETTS**

Add at the end of section 2 the following:

1 (e) FEHBP: ACCESS TO PBM CONTRACT INFORMA-
2 TION.—

3 (1) IN GENERAL.—Chapter 89 of title 5, United
4 States Code, is amended—

5 (A) in section 8902, by adding at the end
6 the following:

7 “(q) A contract may not be made or a plan approved
8 under this chapter, with respect to a carrier that is a party
9 to a PBM carrier arrangement, unless the PBM and such
10 carrier comply with the requirements of section 8916. The
11 Office shall terminate such contract or discontinue such
12 plan for failure to comply with such requirements.”; and

13 (B) by adding after section 8915 (as added
14 by subsection (d) of this Act) the following:

15 **“§ 8916. FEHBP: access to PBM contract information**

16 “(a) ACCESS TO PBM CONTRACT INFORMATION.—

17 “(1) IN GENERAL.—Under a PBM carrier ar-
18 rangement, at the request of the Office of Personnel
19 Management, a PBM shall provide to the Office and

1 to the Inspector General of the Office of Personnel
2 Management full access to information relating to
3 contracts entered into by such PBM under such ar-
4 rangement (such as PBM manufacturer contracts
5 and PBM contracts with pharmacies). Such informa-
6 tion shall include—

7 “(A) ~~companywide~~ rebate receipt aging re-
8 ports that cover all of the PBM’s lines of busi-
9 ness;

10 “(B) information and methodology used to
11 calculate and allocate rebates between the
12 PBM’s lines of business; *within the FEHB program*

13 “(C) information on average wholesale
14 prices, wholesale acquisition costs, and max-
15 imum allowable costs;

16 “(D) information on dispensing fees (in-
17 cluding fees in the form of rebates or alter-
18 native discounts) paid; and

19 “(E) information and methodologies used
20 to calculate additional administrative and serv-
21 ice fees (including fees in the form of rebates
22 or alternative discounts) charged to the carrier.

23 “(2) CONFIDENTIALITY.—Information provided
24 by a PBM under this subsection is confidential and

1 shall not be disclosed by the Office, except that
2 nothing in this paragraph shall prevent—

3 “(A) a disclosure required under the In-
4 spector General Act of 1978; or

5 “(B) any disclosure which the Office, in its
6 sole discretion, considers necessary in order to
7 carry out this section, if such disclosure is made
8 in a form which does not disclose the identity
9 of a specific PBM or carrier or the price
10 charged for a particular prescription drug.

11 “(3) EXEMPTION FROM FOIA.—Any information
12 obtained under this subsection shall be exempt from
13 disclosure under section 552.

14 “(4) DEFINITIONS.—For purposes of this sub-
15 section—

16 “(A) GENERIC DRUG.—The term ‘generic
17 drug’ means a drug approved pursuant to an
18 abbreviated application submitted under section
19 505(j) of the Federal Food, Drug, and Cos-
20 metic Act (21 U.S.C. 355(j)).

21 “(B) MAXIMUM ALLOWABLE COST.—The
22 term ‘maximum allowable cost’ means a cost
23 that is set by a PBM as the upper payment
24 limit on the ingredient costs for a generic drug.

1 “(C) WHOLESALE ACQUISITION COST.—

2 The term ‘wholesale acquisition cost’ means a
3 publicly available list price for sales of a drug
4 by a manufacturer to a wholesaler.

5 “(b) APPLICATION.—This section shall only apply to
6 contracts entered into by carriers under this chapter.

7 “(c) DEFINITIONS.—In this section and section
8 8902(q):

9 “(1) PBM CARRIER ARRANGEMENT.—The term
10 ‘PBM carrier arrangement’ means a contract be-
11 tween a PBM and a carrier for the provision or ad-
12 ministration of a program of prescription drug cov-
13 erage under a health benefits plan under this chap-
14 ter. Such a contract may provide, among other du-
15 ties, for the PBM to—

16 “(A) process and pay prescription drug
17 claims;

18 “(B) provide programs and services de-
19 signed to—

20 “(i) maximize the effectiveness of pre-
21 scription drugs dispensed under such plan;
22 or

23 “(ii) contain prescription drug ex-
24 penditures under such plan; and

1 “(C) engage in other activities related to
2 the administration of such prescription drug
3 coverage.

4 “(2) PBM MANUFACTURER CONTRACT.—The
5 term ‘PBM manufacturer contract’ means a contract
6 between a PBM and a prescription drug manufac-
7 turer for the provision of prescription drugs to en-
8 rollees of health benefits plans with prescription
9 drug coverage that is administered or provided by
10 the PBM.

11 “(3) PHARMACY BENEFIT MANAGER; PBM.—
12 The terms ‘pharmacy benefit manager’ and ‘PBM’
13 mean an entity that contracts with a carrier to pro-
14 vide or administer prescription drug coverage under
15 a health benefits plan under this chapter.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions for chapter 89 of title 5, United States Code,
18 is amended by adding at the end the following:

“8916. FEHBP: access to PBM contract information.”.



*Savings clause: nothing in this
section shall be construed to
include information not directly
related to an FEHB contract
or potential contract*

