

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

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Delinking Revenue  
3 from Unfair Gouging Act” or the “DRUG Act”.

**4 SEC. 2. IMPROVING PHARMACY BENEFIT MANAGER SERV-  
5 ICES.**

6 (a) PUBLIC HEALTH SERVICE ACT.—Part D of title  
7 XXVII of the Public Health Service Act (42 U.S.C.  
8 300gg–111 et seq.) is amended by adding at the end the  
9 following:

**10 “SEC. 2799A–11. IMPROVING PHARMACY BENEFIT MANAGER  
11 SERVICES.**

12 “(a) GENERAL.—For plan years beginning on or  
13 after January 1, 2026, except as provided in subsection  
14 (b), a pharmacy benefit manager shall derive no remun-  
15 eration from any entity for services, benefit administra-  
16 tion, or any other activities related to prescription drugs.

17 “(b) EXCEPTION FOR BONA FIDE SERVICE FEES.—

1           “(1) IN GENERAL.—A pharmacy benefit man-  
2           anager may charge an entity a bona fide service fee for  
3           the provision of services to such entity if such fee is  
4           set forth in an agreement between the pharmacy  
5           benefit manager and such entity, and the amount of  
6           any bona fide service fee—

7                   “(A) shall be a flat dollar amount; and

8                   “(B) shall not be directly or indirectly  
9           based on, or contingent upon—

10                   “(i) a drug price (such as wholesale  
11                   acquisition cost) or drug benchmark price  
12                   (such as average wholesale price);

13                   “(ii) the amount of discounts, rebates,  
14                   fees, or other direct or indirect remunera-  
15                   tion with respect to prescription drugs pre-  
16                   scribed to the participants, beneficiaries, or  
17                   enrollees in the group health plan or cov-  
18                   erage involved; or

19                   “(iii) any other amounts prohibited by  
20                   the Secretary, the Secretary of Labor, and  
21                   the Secretary of the Treasury.

22           “(2) DEFINITIONS.—In this section—

23                   “(A) the term ‘bona fide service fee’ means  
24                   fair market value for a bona fide, itemized serv-  
25                   ice actually performed on behalf of an entity,

1           that the entity would otherwise perform (or  
2           contract for) in the absence of the service ar-  
3           rangement and that are not passed on in whole  
4           or in part to a client or customer, whether or  
5           not the entity takes title to the drug; and

6                   “(B) the term ‘pharmacy benefit manager’  
7           means any person, business, or other entity  
8           such as a third-party administrator, regardless  
9           of whether it identifies itself as a pharmacy  
10          benefit manager, that, either directly or  
11          through an intermediary (including an affiliate,  
12          subsidiary, parent, or agent) or an arrangement  
13          with a third party—

14                   “(i) acts as a price negotiator or  
15          group purchaser for prescription drugs on  
16          behalf of a group health plan or health in-  
17          surance issuer offering group or individual  
18          health insurance coverage; or

19                   “(ii) manages or administers the pre-  
20          scription drug benefits provided by a group  
21          health plan or health insurance issuer of-  
22          fering group or individual health insurance  
23          coverage, including the processing and pay-  
24          ment of claims for prescription drugs, ar-  
25          ranging alternative access to or funding for

1 prescription drugs, the performance of  
2 drug utilization review, the processing of  
3 drug prior authorization requests, the ad-  
4 judication of appeals or grievances related  
5 to the prescription drug benefit, con-  
6 tracting with network pharmacies, control-  
7 ling the cost of covered prescription drugs,  
8 or the provision of related services.

9 “(c) ACCOUNTABILITY AND CONDUCT.—

10 “(1) IN GENERAL.—A pharmacy benefit man-  
11 ager shall not—

12 “(A) charge a group health plan or health  
13 insurance issuer offering group or individual  
14 health insurance coverage a different amount  
15 for a prescription drug’s ingredient cost or dis-  
16 pensing fee as compared to the amount the  
17 pharmacy benefit manager reimburses a phar-  
18 macy for the prescription drug’s ingredient cost  
19 or dispensing fee;

20 “(B) reimburse a network pharmacy or  
21 pharmacist in an amount less than the amount  
22 the pharmacy benefit manager would reimburse  
23 a network pharmacy that is owned, controlled  
24 by, or affiliated with the pharmacy benefit man-

1           ager for dispensing the same drug or for pro-  
2           viding the same pharmacist services; or

3           “(C) directly or indirectly engage in steer-  
4           ing (as defined in paragraph (2)) to a phar-  
5           macy that is owned, controlled by, or affiliated  
6           with the pharmacy benefit manager.

7           “(2) STEERING.—In paragraph (1), the term  
8           ‘steering’ with respect to a pharmacy benefit man-  
9           ager includes—

10           “(A) providing or implementing a benefit  
11           design that encourages a participant, bene-  
12           ficiary, or enrollee to utilize a pharmacy that is  
13           owned, controlled by, or affiliated with the  
14           pharmacy benefit manager, if such design in-  
15           creases costs for the plan or a participant, ben-  
16           eficiary, or enrollee, including requiring a par-  
17           ticipant, beneficiary, or enrollee to pay higher  
18           out-of-pocket costs for a prescription if the par-  
19           ticipant, beneficiary, or enrollee chooses not to  
20           use a pharmacy owned, controlled by, or affili-  
21           ated with the pharmacy benefit manager;

22           “(B) requiring a participant, beneficiary,  
23           or enrollee to use only a pharmacy that is  
24           owned, controlled by, or affiliated with the  
25           pharmacy benefit manager;

1           “(C) retaliating, making further attempts  
2           to influence a participant, beneficiary, or en-  
3           rollee, or treating a participant, beneficiary, or  
4           enrollee or a participant, beneficiary, or enroll-  
5           ee’s claim any differently if a participant, bene-  
6           ficiary, or enrollee chooses to use a pharmacy  
7           that is not owned, controlled by, or affiliated  
8           with the pharmacy benefit manager; or

9           “(D) any other activities as defined by the  
10          Secretary, the Secretary of Labor, and the Sec-  
11          retary of the Treasury.

12         “(d) ENFORCEMENT.—

13                 “(1) IN GENERAL.—The Secretary, in consulta-  
14                 tion with the Secretary of Labor and the Secretary  
15                 of the Treasury, shall enforce this section.

16                 “(2) DISGORGEMENT.—The pharmacy benefit  
17                 manager shall disgorge to a group health plan or  
18                 health insurance issuer offering group or individual  
19                 health insurance coverage any payment, remunera-  
20                 tion, or other amount received by the pharmacy ben-  
21                 efit manager or an affiliate of such pharmacy benefit  
22                 manager in violation of paragraph (a) or the agree-  
23                 ment entered into with such plan or issuer for bona  
24                 fide service fees.

1           “(3) PENALTIES.—A pharmacy benefit man-  
2           anager that violates subsection (a), (b), or (c) shall be  
3           subject to a civil monetary penalty in the amount of  
4           \$10,000 for each day during which such violation  
5           continues.

6           “(4) PROCEDURE.—The provisions of section  
7           1128A of the Social Security Act, other than sub-  
8           sections (a) and (b) and the first sentence of sub-  
9           section (c)(1) of such section shall apply to civil  
10          monetary penalties under this subsection in the  
11          same manner as such provisions apply to a penalty  
12          or proceeding under section 1128A of the Social Se-  
13          curity Act.

14          “(e) REGULATIONS.—Notwithstanding any other  
15          provision of law, the Secretary shall initially implement  
16          this section through interim final regulations.

17          “(f) RULES OF CONSTRUCTION.—

18                 “(1) Nothing in this section shall be construed  
19                 as prohibiting payments related to reimbursement  
20                 for ingredient costs to entities that acquire prescrip-  
21                 tion drugs or pharmacy dispensing fees.

22                 “(2) Nothing in this section shall be construed  
23                 to prohibit rebates, discounts, or other price conces-  
24                 sions from being fully passed through to a group  
25                 health plan or health insurance issuer offering group

1 or individual health insurance coverage to lower net  
2 costs for prescription drugs.”.

3 (b) ERISA.—

4 (1) IN GENERAL.—Subpart B of part 7 of sub-  
5 title B of title I of the Employee Retirement Income  
6 Security Act of 1974 (29 U.S.C. 1185 et seq.) is  
7 amended by inserting after section 725 the fol-  
8 lowing:

9 **“SEC. 726. IMPROVING PHARMACY BENEFIT MANAGER**  
10 **SERVICES.**

11 “(a) IN GENERAL.—For plan years beginning on or  
12 after January 1, 2026, except as provided in subsection  
13 (b), a pharmacy benefit manager shall derive no remun-  
14 eration from any entity for services, benefit administra-  
15 tion, or any other activities related to prescription drugs.

16 “(b) EXCEPTION FOR BONA FIDE SERVICE FEES.—

17 “(1) IN GENERAL.—A pharmacy benefit man-  
18 ager may charge an entity a bona fide service fee for  
19 the provision of services to such entity if such fee is  
20 set forth in an agreement between the pharmacy  
21 benefit manager and such entity and the amount of  
22 any bona fide service fee—

23 “(A) shall be a flat dollar amount;

24 “(B) shall not be directly or indirectly  
25 based on, or contingent upon—



1 “(i) a drug price (such as wholesale  
2 acquisition cost) or drug benchmark price  
3 (such as average wholesale price);

4 “(ii) the amount of discounts, rebates,  
5 fees, or other direct or indirect remunera-  
6 tion with respect to prescription drugs pre-  
7 scribed to the participants, beneficiaries, or  
8 enrollees in the group health plan or cov-  
9 erage involved; or

10 “(iii) any other amounts prohibited by  
11 the Secretary, the Secretary of Labor, and  
12 the Secretary of the Treasury.

13 “(2) DEFINITIONS.—In this section—

14 “(A) the term ‘bona fide service fee’ means  
15 fair market value for a bona fide, itemized serv-  
16 ice actually performed on behalf of an entity,  
17 that would otherwise perform (or contract for)  
18 in the absence of the service arrangement and  
19 that are not passed on in whole or in part to  
20 a client or customer, whether or not the entity  
21 takes title to the drug;

22 “(B) the term ‘pharmacy benefit manager’  
23 means any person, business, or other entity  
24 such as a third-party administrator, regardless  
25 of whether it identifies itself as a pharmacy

1 benefit manager, that, either directly or  
2 through an intermediary (including an affiliate,  
3 subsidiary, or agent) or an arrangement with a  
4 third party—

5 “(i) acts as a price negotiator for pre-  
6 scription drugs on behalf of a group health  
7 plan or health insurance issuer offering  
8 group health insurance coverage; or

9 “(ii) manages or administers the pre-  
10 scription drug benefits provided by a group  
11 health plan or health insurance issuer of-  
12 fering group health insurance coverage, in-  
13 cluding the processing and payment of  
14 claims for prescription drugs, arranging al-  
15 ternative access to or funding for prescrip-  
16 tion drugs, the performance of drug utili-  
17 zation review, the processing of drug prior  
18 authorization requests, the adjudication of  
19 appeals or grievances related to the pre-  
20 scription drug benefit, contracting with  
21 network pharmacies, controlling the cost of  
22 covered prescription drugs, or the provision  
23 of related services.

24 “(c) ACCOUNTABILITY AND CONDUCT.—

1           “(1) IN GENERAL.—A pharmacy benefit man-  
2           ager shall not—

3                   “(A) charge a group health plan or health  
4                   insurance issuer offering group health insur-  
5                   ance coverage a different amount for a prescrip-  
6                   tion drug’s ingredient cost or dispensing fee as  
7                   compared to the amount the pharmacy benefit  
8                   manager reimburses a pharmacy for the pre-  
9                   scription drug’s ingredient cost or dispensing  
10                  fee;

11                   “(B) reimburse a network pharmacy or  
12                   pharmacist in an amount less than the amount  
13                   the pharmacy benefit manager would reimburse  
14                   a network pharmacy that is owned, controlled  
15                   by, or affiliated with the pharmacy benefit man-  
16                   ager for dispensing the same drug or for pro-  
17                   viding the same pharmacist services; or

18                   “(C) directly or indirectly engage in steer-  
19                   ing (as defined in paragraph (2)) to a phar-  
20                   macy that is owned, controlled by, or affiliated  
21                   with the pharmacy benefit manager.

22           “(2) STEERING.—In paragraph (1), the term  
23           ‘steering’ with respect to a pharmacy benefit man-  
24           ager includes—

1           “(A) providing or implementing a benefit  
2           plan design that encourages a participant or  
3           beneficiary to utilize a pharmacy that is owned,  
4           controlled by, or affiliated with the pharmacy  
5           benefit manager, if such plan design increases  
6           costs for the plan or the participant or bene-  
7           ficiary, including requiring a participant or ben-  
8           eficiary to pay higher out-of-pocket costs for a  
9           prescription if the participant or beneficiary  
10          chooses not to use a pharmacy owned, con-  
11          trolled by, or affiliated with the pharmacy ben-  
12          efit manager;

13           “(B) requiring a participant or beneficiary  
14          to use only a pharmacy that is owned, con-  
15          trolled by, or affiliated with the pharmacy ben-  
16          efit manager;

17           “(C) retaliating, making further attempts  
18          to influence a participant or beneficiary, or  
19          treating a participant or beneficiary or a partic-  
20          ipant or beneficiary’s claim any differently if a  
21          participant or beneficiary chooses to use a phar-  
22          macy that is not owned, controlled by, or affili-  
23          ated with the pharmacy benefit manager; or

1           “(D) any other activities as defined by the  
2           Secretary, the Secretary of Health and Human  
3           Services, and the Secretary of the Treasury.

4           “(d) ENFORCEMENT.—

5           “(1) IN GENERAL.—The Secretary, in consulta-  
6           tion with the Secretary of Health and Human Serv-  
7           ices and the Secretary of the Treasury, shall enforce  
8           this section.

9           “(2) DISGORGEMENT.—The pharmacy benefit  
10          manager shall disgorge to a group health plan or  
11          health insurance issuer offering group or individual  
12          health insurance coverage any payment, remunera-  
13          tion, or other amount received by the pharmacy ben-  
14          efit manager or an affiliate of such pharmacy benefit  
15          manager in violation of paragraph (a) or the agree-  
16          ment entered into with such plan or issuer for bona  
17          fide service fees.

18          “(3) PENALTIES.—A pharmacy benefit man-  
19          ager that violates subsection (a), (b), or (c) shall be  
20          subject to a civil monetary penalty in the amount of  
21          \$10,000 for each day during which such violation  
22          continues.

23          “(4) PROCEDURE.—The provisions of section  
24          1128A of the Social Security Act, other than sub-  
25          sections (a) and (b) and the first sentence of sub-

1 section (c)(1) of such section shall apply to civil  
2 monetary penalties under this subsection in the  
3 same manner as such provisions apply to a penalty  
4 or proceeding under section 1128A of the Social Se-  
5 curity Act.

6 “(e) REGULATIONS.—Notwithstanding any other  
7 provision of law, the Secretary shall initially implement  
8 this section through interim final regulations.

9 “(f) RULES OF CONSTRUCTION.—

10 “(1) Nothing in this section shall be construed  
11 as prohibiting payments related to reimbursement  
12 for ingredient costs to entities that acquire prescrip-  
13 tion drugs or pharmacy dispensing fees.

14 “(2) Nothing in this section shall be construed  
15 to prohibit rebates, discounts, or other price conces-  
16 sions from being fully passed through to a group  
17 health plan or health insurance issuer offering group  
18 or individual health insurance coverage to lower net  
19 costs for prescription drugs.”.

20 (2) CLERICAL AMENDMENT.—The table of con-  
21 tents in section 1 of the Employee Retirement In-  
22 come Security Act of 1974 (29 U.S.C. 1001 et seq.)  
23 is amended by inserting after the item relating to  
24 section 725 the following new item:

“Sec. 726. Improving pharmacy benefit manager services.”.

1 (c) INTERNAL REVENUE CODE OF 1986.—Sub-chap-  
2 ter B of chapter 100 of the Internal Revenue Code of 1986  
3 is amended by adding at the end the following:

4 **“SEC. 9826. IMPROVING PHARMACY BENEFIT MANAGER**  
5 **SERVICES.**

6 “(a) IN GENERAL.—For plan years beginning on or  
7 after January 1, 2026, except as provided in subsection  
8 (b), a pharmacy benefit manager shall derive no remun-  
9 eration from any entity for services, benefit administra-  
10 tion, or any other activities related to prescription drugs.

11 “(b) EXCEPTION FOR BONA FIDE SERVICES.—

12 “(1) IN GENERAL.—A pharmacy benefit man-  
13 ager may charge an entity a bona fide service fee for  
14 the provision of services to such entity if such fee is  
15 set forth in an agreement between the pharmacy  
16 benefit manager and such entity, and the amount of  
17 any bona fide service fee—

18 “(A) shall be a flat dollar amount; and

19 “(B) shall not be directly or indirectly  
20 based on, or contingent upon—

21 “(i) a drug price (such as wholesale  
22 acquisition cost) or drug benchmark price  
23 (such as average wholesale price);

24 “(ii) the amount of discounts, rebates,  
25 fees, or other direct or indirect remunera-

1                   tion with respect to prescription drugs pre-  
2                   scribed to the participants, beneficiaries, or  
3                   enrollees in the group health plan or cov-  
4                   erage involved; or

5                   “(iii) any other amounts prohibited by  
6                   the Secretary, the Secretary of Labor, and  
7                   the Secretary of the Treasury.

8                   “(2) DEFINITIONS.—In this section—

9                   “(A) the term ‘bona fide service fee’ means  
10                  fair market value for a bona fide, itemized serv-  
11                  ice actually performed on behalf of an entity,  
12                  that the entity would otherwise perform (or  
13                  contract for) in the absence of the arrangement  
14                  and that are not passed on in whole or in part  
15                  to a client or customer, whether or not the enti-  
16                  ty takes title to the drug; and

17                  “(B) the term ‘pharmacy benefit manager’  
18                  means any person, business, or other entity  
19                  such as a third-party administrator, regardless  
20                  of whether it identifies itself as a pharmacy  
21                  benefit manager, that, either directly or  
22                  through an intermediary (including an affiliate,  
23                  or agent) or an arrangement with a third  
24                  party—



1           “(i) acts as a price negotiator for pre-  
2           scription drugs on behalf of a group health  
3           plan; or

4           “(ii) manages or administers the pre-  
5           scription drug benefits provided by a group  
6           health plan, including the processing and  
7           payment of claims for prescription drugs,  
8           arranging alternative access to or funding  
9           for prescription drugs, the performance of  
10          drug utilization review, the processing of  
11          drug prior authorization requests, the ad-  
12          judication of appeals or grievances related  
13          to the prescription drug benefit, con-  
14          tracting with network pharmacies, control-  
15          ling the cost of covered prescription drugs,  
16          or the provision of related services.

17          “(c) ACCOUNTABILITY AND CONDUCT.—

18                 “(1) IN GENERAL.—A pharmacy benefit man-  
19          ager shall not—

20                 “(A) charge a group health plan or health  
21          insurance issuer offering group health insur-  
22          ance coverage a different amount for a prescrip-  
23          tion drug’s ingredient cost or dispensing fee as  
24          compared to the amount the pharmacy benefit  
25          manager reimburses a pharmacy for the pre-

1 prescription drug’s ingredient cost or dispensing  
2 fee;

3 “(B) reimburse a network pharmacy or  
4 pharmacist in an amount less than the amount  
5 the pharmacy benefit manager would reimburse  
6 a network pharmacy that is owned, controlled  
7 by, or affiliated with the pharmacy benefit man-  
8 ager for dispensing the same drug or for pro-  
9 viding the same pharmacist services; or

10 “(C) directly or indirectly engage in steer-  
11 ing (as defined in paragraph (2)) to a phar-  
12 macy that is owned, controlled by, or affiliated  
13 with the pharmacy benefit manager.

14 “(2) STEERING.—In paragraph (1), the term  
15 ‘steering’ with respect to a pharmacy benefit man-  
16 ager includes—

17 “(A) providing or implementing a benefit  
18 design that encourages a participant or bene-  
19 ficiary to utilize a pharmacy that is owned, con-  
20 trolled by, or affiliated with the pharmacy ben-  
21 efit manager, if such benefit design increases  
22 costs for the plan or the participant or bene-  
23 ficiary, including requiring a participant or ben-  
24 efiary to pay higher out-of-pocket costs for a  
25 prescription if the participant or beneficiary

1 chooses not to use a pharmacy owned, con-  
2 trolled by, or affiliated with the pharmacy ben-  
3 efit manager;

4 “(B) requiring an enrollee to use only a  
5 pharmacy that is owned, controlled by, or affili-  
6 ated with the pharmacy benefit manager;

7 “(C) retaliating, making further attempts  
8 to influence a participant or beneficiary, or  
9 treating a participant or beneficiary or a partic-  
10 ipant or beneficiary’s claim any differently if a  
11 participant or beneficiary chooses to use a phar-  
12 macy that is not owned, controlled by, or affili-  
13 ated with the pharmacy benefit manager; or

14 “(D) any other activities as defined by the  
15 Secretary, the Secretary of Labor, and the Sec-  
16 retary of Health and Human Service.

17 “(d) ENFORCEMENT.—

18 “(1) IN GENERAL.—The Secretary, in consulta-  
19 tion with the Secretary of Labor and the Secretary  
20 of Health and Human Services, shall enforce this  
21 section.

22 “(2) DISGORGEMENT.—The pharmacy benefit  
23 manager shall disgorge to a group health plan or  
24 health insurance issuer offering group or individual  
25 health insurance coverage any payment, remunera-

1       tion, or other amount received by the pharmacy ben-  
2       efit manager or an affiliate of such pharmacy benefit  
3       manager in violation of paragraph (a) or the agree-  
4       ment entered into with such plan or issuer for bona  
5       fide service fees.

6           “(3) PENALTIES.—A pharmacy benefit man-  
7       ager that violates subsection (a), (b), or (c) shall be  
8       subject to a civil monetary penalty in the amount of  
9       \$10,000 for each day during which such violation  
10      continues.

11          “(4) PROCEDURE.—The provisions of section  
12      1128A of the Social Security Act, other than sub-  
13      sections (a) and (b) and the first sentence of sub-  
14      section (c)(1) of such section shall apply to civil  
15      monetary penalties under this subsection in the  
16      same manner as such provisions apply to a penalty  
17      or proceeding under section 1128A of the Social Se-  
18      curity Act.

19          “(e) REGULATIONS.—Notwithstanding any other  
20      provision of law, the Secretary shall initially implement  
21      the amendments made by this Act through interim final  
22      regulations.

23          “(f) RULES OF CONSTRUCTION.—

24           “(1) Nothing in this section shall be construed  
25      as prohibiting payments related to reimbursement

1 for ingredient costs to entities that acquire prescrip-  
2 tion drugs or pharmacy dispensing fees.

3 “(2) Nothing in this section shall be construed  
4 to prohibit rebates, discounts, or other price conces-  
5 sions from being fully passed through to a group  
6 health plan or health insurance issuer offering group  
7 or individual health insurance coverage to lower net  
8 costs for prescription drugs.”.

9 (d) FEDERAL EMPLOYEES HEALTH BENEFITS PRO-  
10 GRAM.—

11 (1) IN GENERAL.—Chapter 89 of title 5, United  
12 States Code, is amended by adding at the end fol-  
13 lowing:

14 **“§ 8915. Improving pharmacy benefit manager serv-**  
15 **ices**

16 “(a) IN GENERAL.—For plan years beginning on or  
17 after January 1, 2026, except as provided in subsection  
18 (b), a pharmacy benefit manager that contracts with a  
19 carrier offering a health benefits plan under this chapter  
20 shall derive no remuneration from any entity for services,  
21 benefit administration, or any other activities related to  
22 prescription drugs.

23 “(b) EXCEPTION FOR BONA FIDE SERVICES.—

24 “(1) IN GENERAL.—A pharmacy benefit man-  
25 ager may charge an entity a bona fide service fee for

1 the provision of services to such entity only if such  
2 fee is set forth in an agreement between the phar-  
3 macy benefit manager and such entity, and

4 “(2) the amount of any bona fide service fee—

5 “(A) shall be a flat dollar amount; and

6 “(B) shall not be directly or indirectly  
7 based on, or contingent upon—

8 “(i) a drug price (such as wholesale  
9 acquisition cost) or drug benchmark price  
10 (such as average wholesale price);

11 “(ii) the amount of discounts, rebates,  
12 fees, or other direct or indirect remunera-  
13 tion with respect to prescription drugs pre-  
14 scribed to a covered individual, in the  
15 group health plan or coverage involved; or

16 “(iii) any other amounts prohibited by  
17 the Office of Personnel Management.

18 “(2) DEFINITIONS.—In this section—

19 “(A) the term ‘bona fide service fee’ means  
20 fair market value for a bona fide, itemized serv-  
21 ice actually performed on behalf of an entity,  
22 that the entity would otherwise perform (or  
23 contract for) in the absence of the arrangement  
24 and that are not passed on in whole or in part

1 to a client or customer, whether or not the enti-  
2 ty takes title to the drug;

3 “(B) the term ‘covered individual’ means  
4 an employee, annuitant, family member, former  
5 spouse, or any other individual covered by a  
6 health benefits plan under this chapter; and

7 “(C) the term ‘pharmacy benefit manager’  
8 means any person, business, or other entity  
9 such as a third-party administrator, regardless  
10 of whether it identifies itself as a pharmacy  
11 benefit manager, that contracts with a carrier  
12 and, either directly or through an intermediary  
13 (including an affiliate, or agent) or an arrange-  
14 ment with a third party—

15 “(i) acts as a price negotiator for pre-  
16 scription drugs on behalf of a health bene-  
17 fits plan or carrier; or

18 “(ii) manages or administers the pre-  
19 scription drug benefits provided by a  
20 health benefits plan or carrier including  
21 the processing and payment of claims for  
22 prescription drugs, arranging alternative  
23 access to or funding for prescription drugs,  
24 the performance of drug utilization review,  
25 the processing of drug prior authorization

1 requests, the adjudication of appeals or  
2 grievances related to the prescription drug  
3 benefit, contracting with network phar-  
4 macies, controlling the cost of covered pre-  
5 scription drugs, or the provision of related  
6 services.

7 “(c) ACCOUNTABILITY AND CONDUCT.—

8 “(1) IN GENERAL.—A pharmacy benefit man-  
9 ager may not—

10 “(A) charge a health benefits plan or car-  
11 rier a different amount for a prescription drug,  
12 including a prescription drug’s ingredient cost  
13 or dispensing fee as compared to the amount  
14 the pharmacy benefit manager reimburses a  
15 pharmacy for the prescription drug, prescrip-  
16 tion drug’s ingredient cost, or dispensing fee;

17 “(B) reimburse a network pharmacy or  
18 pharmacist in an amount less than the amount  
19 the pharmacy benefit manager would reimburse  
20 a network pharmacy that is owned, controlled  
21 by, or affiliated with the pharmacy benefit man-  
22 ager for dispensing the same drug or for pro-  
23 viding the same pharmacist services; or

24 “(C) directly or indirectly engage in steer-  
25 ing to a pharmacy that is owned, controlled by,



1 or affiliated with the pharmacy benefit man-  
2 ager.

3 “(2) STEERING.—In paragraph (1), the term  
4 ‘steering’ with respect to a pharmacy benefit man-  
5 ager includes—

6 “(A) providing or implementing a benefit  
7 design that encourages a covered individual to  
8 utilize a pharmacy that is owned, controlled by,  
9 or affiliated with the pharmacy benefit man-  
10 ager, if such benefit design increases costs for  
11 the plan or the covered individual, including re-  
12 quiring a covered individual to pay higher out-  
13 of-pocket costs for a prescription if the covered  
14 individual chooses not to use a pharmacy  
15 owned, controlled by, or affiliated with the  
16 pharmacy benefit manager;

17 “(B) requiring a covered individual to use  
18 only a pharmacy that is owned, controlled by,  
19 or affiliated with the pharmacy benefit man-  
20 ager;

21 “(C) retaliating, making further attempts  
22 to influence a covered individual, or treating a  
23 covered individual or a covered individual’s  
24 claim any differently if a covered individual  
25 chooses to use a pharmacy that is not owned,

1 controlled by, or affiliated with the pharmacy  
2 benefit manager; or

3 “(D) any other activities as defined by the  
4 Office of Personnel Management.

5 “(d) ENFORCEMENT.—

6 “(1) IN GENERAL.—The Office of Personnel  
7 Management shall enforce this section.

8 “(2) DISGORGEMENT.—The pharmacy benefit  
9 manager shall disgorge to a health benefits plan or  
10 carrier any payment, remuneration, or other amount  
11 received by the pharmacy benefit manager or an af-  
12 filiate of such pharmacy benefit manager in violation  
13 of paragraph (a) or the agreement entered into with  
14 such plan or carrier for bona fide service fees.

15 “(3) PENALTIES.—A pharmacy benefit man-  
16 ager that violates subsection (a), (b), or (c) shall be  
17 subject to a civil monetary penalty in the amount of  
18 \$10,000 for each day during which such violation  
19 continues.

20 “(4) PROCEDURE.—The provisions of section  
21 1128A of the Social Security Act, other than sub-  
22 sections (a) and (b) and the first sentence of sub-  
23 section (c)(1) of such section shall apply to civil  
24 monetary penalties under this subsection in the  
25 same manner as such provisions apply to a penalty

1 or proceeding under section 1128A of the Social Se-  
2 curity Act, except that—

3 “(A) for the purpose of this paragraph the  
4 term ‘Office of Personnel Management’ is sub-  
5 stituted wherever the term ‘Secretary’ is used  
6 in section 1128A; and

7 “(B) amounts collected as such civil mone-  
8 tary penalties shall be transferred to the Office  
9 of Personnel Management, which shall deposit  
10 such amounts into the Employees Health Bene-  
11 fits Fund established under section 8909.

12 “(e) REGULATIONS.—Notwithstanding any other  
13 provision of law, the Director shall initially implement this  
14 section through interim final regulations under section  
15 553(b)(B) of this title.

16 “(f) RULES OF CONSTRUCTION.—

17 “(1) Nothing in this section shall be construed  
18 as prohibiting payments related to reimbursement  
19 for ingredient costs to entities that acquire prescrip-  
20 tion drugs or pharmacy dispensing fees.

21 “(2) Nothing in this section shall be construed  
22 to prohibit rebates, discounts, or other price conces-  
23 sions from being fully passed through to a health  
24 benefits plan or carrier to lower net costs for pre-  
25 scription drugs.”.

1           (2) CLERICAL AMENDMENT.—The table of sec-  
2           tions for such chapter 89 is amended by inserting  
3           after the item relating to section 8914 the following:

“8915. Improving pharmacy benefit manager services.”.

