

118TH CONGRESS
1ST SESSION

S. 3330

To require the Secretary of Labor to conduct a study on the fiduciary duties of pharmacy benefit managers.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2023

Mr. BRAUN (for himself, Ms. HASSAN, Mr. MARSHALL, Mr. BUDD, and Mr. KAINE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To require the Secretary of Labor to conduct a study on the fiduciary duties of pharmacy benefit managers.

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. STUDY ON FIDUCIARY DUTIES OF PHARMACY**

4 **BENEFIT MANAGERS.**

5 (a) IN GENERAL.—Not later than 2 years after the
6 date of enactment of this Act, the Secretary of Labor shall
7 conduct, and submit to Congress a report describing the
8 results of, a study on the impacts of a change in policy
9 described in subsection (b).

1 (b) POLICY DESCRIBED.—Under a policy referred to
2 in subsection (a)—

3 (1) an entity providing pharmacy benefit man-
4 agement services would be considered a fiduciary
5 within the meaning of section 3(21) of the Employee
6 Retirement Income Security Act of 1974 (29 U.S.C.
7 1002(21)) with respect to a group health plan or
8 group health insurance coverage;

9 (2) such an entity would—

10 (A) be subject to the responsibilities, obli-
11 gations, and duties imposed on fiduciaries
12 under part 4 of subtitle B of title I of such Act
13 (29 U.S.C. 1101 et seq.); and

14 (B) make the required fiduciary disclosure
15 under section 408(b)(2)(B)(iii) of such Act (29
16 U.S.C. 1108(b)(2)(B)(iii)) with respect to the
17 pharmacy benefit management services provided
18 to the plan or coverage;

19 (3) nothing would be construed to prohibit enti-
20 ties providing pharmacy benefits management serv-
21 ices from retaining bona fide service fees in accord-
22 ance with the requirements of section 408(b)(2) of
23 the Employee Retirement Income Security Act of
24 1974 (29 U.S.C. 1108(b)(2)); and

1 (4) bona fide service fees would be per se un-
2 reasonable for purposes of this section and such sec-
3 tion if such fees are—

4 (A) based on drug price (such as wholesale
5 acquisition cost) or drug benchmark price (such
6 as average wholesale price);

7 (B) discounts, rebates, fees, or other remu-
8 nation with respect to prescription drugs pre-
9 scribed to participants or beneficiaries in the
10 plan or coverage; or

11 (C) otherwise determined by the Secretary
12 to be unreasonable.

13 (c) DEFINITIONS.—In this section:

14 (1) BONA FIDE SERVICE FEES.—The term
15 “bona fide service fees” means fees paid by a manu-
16 facturer, customer, or client (other than a group
17 health plan or health insurance issuer) of an entity
18 providing pharmacy benefit management services, to
19 an entity providing pharmacy benefit management
20 services, that represent fair-market value for bona
21 fide, itemized services actually performed on behalf
22 of the manufacturer, customer, or client and that
23 the manufacturer, customer, or client would other-
24 wise perform or contract for in the absence of the
25 service arrangement, and that are not passed on in

1 whole or in part to a client or customer of an entity,
2 whether or not the entity takes possession of the
3 drug.

4 (2) WHOLESALE ACQUISITION COST.—The term
5 “wholesale acquisition cost” has the meaning given
6 such term in section 1847A(c)(6)(B) of the Social
7 Security Act (42 U.S.C. 1395w–3a(c)(6)(B)).

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