

**AMENDMENT TO THE AMERICAN RESCUE PLAN
ACT OF 2021
OFFERED BY MR. CARTER OF GEORGIA**

After section 3004, insert the following new sections:

1 **SEC. 3005. REQUIRING PHARMACY-NEGOTIATED PRICE**
2 **CONCESSIONS AND PHARMACY INCENTIVE**
3 **PAYMENTS AND ADJUSTMENTS TO BE IN-**
4 **CLUDED IN NEGOTIATED PRICES AT THE**
5 **POINT-OF-SALE UNDER PART D OF THE MEDI-**
6 **CARE PROGRAM.**

7 Section 1860D–2(d)(1)(B) of the Social Security Act
8 (42 U.S.C. 1395w–102(d)(1)(B)) is amended—

9 (1) by striking “PRICES.—For purposes” and
10 inserting “PRICES.—

11 “(i) IN GENERAL.—For purposes”;

12 and

13 (2) by adding at the end the following new
14 clauses:

15 “(ii) PRICES NEGOTIATED WITH
16 PHARMACY AT POINT-OF-SALE.—

17 “(I) IN GENERAL.—Subject to
18 subclause (III), for plan years begin-
19 ning on or after January 1, 2020, ne-

1 negotiated prices for covered part D
2 drugs described in clause (i) provided
3 under a prescription drug plan, in-
4 cluding all contingent and noncontingent
5 concessions, adjustments, pay-
6 ments, and fees (including dispensing
7 fees) negotiated with the pharmacy
8 dispensing such drug, shall be pro-
9 vided at the point-of-sale of such
10 drug. Such negotiated price shall not
11 include any incentive payments and
12 adjustments or any other contingent
13 concessions, adjustments, payments,
14 or fees that increase the amount of
15 such negotiated price.

16 “(II) APPLICATION OF PHAR-
17 MACY INCENTIVE PAYMENTS AND AD-
18 JUSTMENTS.—

19 “(aa) IN GENERAL.—For
20 plan years beginning on or after
21 January 1, 2020, a PDP spon-
22 sor—

23 “(AA) shall apply a
24 system under which incen-
25 tive payments and adjust-

1 ments using only quality
2 measures established by the
3 Secretary under item (bb)
4 are made to a pharmacy
5 with respect to payment for
6 covered part D drugs dis-
7 pensed by such pharmacy;
8 and

9 “(BB) may not apply
10 any other incentive pay-
11 ments and adjustments with
12 respect to such payment
13 outside of such system.

14 Application of such system may
15 not result in a decrease in reim-
16 bursement to such pharmacy for
17 such drug after the point-of-sale
18 of such drug.

19 “(bb) STANDARD PHARMACY
20 QUALITY MEASURES.—The Sec-
21 retary shall establish standard
22 quality measures that may be
23 used in a system described in
24 item (aa). Such measures shall
25 be—

1 “(AA) focused on im-
2 proving patient health out-
3 comes;

4 “(BB) standardized
5 across PDP sponsors;

6 “(CC) pharmacy-spe-
7 cific in application;

8 “(DD) relevant to the
9 type of pharmacy concerned
10 (such as specialty phar-
11 macies), taking into account
12 the items and services fur-
13 nished by the pharmacy and
14 the patient population
15 served by the pharmacy;

16 “(EE) applied only
17 when relevant to the specific
18 drug (or drug class of such
19 drug) being furnished by the
20 pharmacy or when relevant
21 to management of the condi-
22 tion for which such drug has
23 been prescribed; and

24 “(FF) based on achiev-
25 able and proven criteria

1 measuring pharmacy per-
2 formance over which the
3 pharmacy has meaningful
4 control and ability to influ-
5 ence.

6 In establishing such standards,
7 the Secretary shall consult with
8 stakeholders, including PDP
9 sponsors and MA organizations,
10 pharmacies across pharmacy
11 practice types, pharmacy benefit
12 managers, patient advocacy orga-
13 nizations, drug manufacturers,
14 appropriate standard-setting or-
15 ganizations, and other entities
16 determined appropriate by the
17 Secretary.

18 “(III) NO INCREASE IN COST
19 SHARING.—Subclause (I) shall not
20 apply in the case where application of
21 such subclause would increase the
22 amount owed by an individual in cost
23 sharing above the amount such indi-
24 vidual would have owed in cost shar-

1 ing without application of such sub-
2 clause.

3 “(IV) DISCREPANCIES BETWEEN
4 NEGOTIATED PRICES AND ACTUAL RE-
5 IMBURSEMENT.—In the case that the
6 Secretary determines that the nego-
7 tiated price of a PDP sponsor applied
8 at the point-of-sale with respect to a
9 covered part D drug for a year dis-
10 pensed by a pharmacy was greater
11 than the total reimbursement made to
12 such pharmacy for such drug for such
13 year, such sponsor shall, not later
14 than 90 days after receiving notice of
15 such determination, furnish to the
16 pharmacy that dispensed such drug
17 and to the Secretary a written expla-
18 nation of why such negotiated price
19 was greater than such reimbursement.

20 “(V) SPECIALTY PHARMACY.—
21 For purposes of carrying out this
22 clause (including subclause
23 (II)(bb)(DD)), the Secretary shall, not
24 later than December 31, 2019, define

1 the term ‘specialty pharmacy’ in con-
2 sultation with relevant stakeholders.

3 “(VI) DEFINITIONS.—In this
4 clause:

5 “(aa) INCENTIVE PAYMENTS
6 AND ADJUSTMENTS.—The term
7 ‘incentive payments and adjust-
8 ments’ means, with respect to
9 payment to a pharmacy by a
10 PDP sponsor for a covered part
11 D drug, any prospective or retro-
12 spective price concessions, re-
13 bates, discounts, fees, reconcili-
14 ation adjustments, bonuses, per-
15 formance payments, incentives,
16 and any other adjustment to
17 such payment determined
18 through the use of a quality
19 measure, regardless of when such
20 payments and adjustments are
21 applied. Such term does not in-
22 clude any manufacturer rebates
23 or concessions made with respect
24 to such drug.

1 “(bb) QUALITY MEASURE.—
2 The term ‘quality measure’
3 means performance criteria used
4 by a PDP sponsor (including an
5 entity that contracts with such
6 sponsor, such as a pharmacy ben-
7 efit manager) to determine the
8 amount or applicability of incen-
9 tive payments and adjustments.

10 “(cc) PDP SPONSOR.—The
11 term ‘PDP sponsor’ includes an
12 MA organization offering an MA-
13 PD plan under part C and an en-
14 tity that contracts with such
15 sponsor or organization, such as
16 a pharmacy benefit manager.

17 “(iii) REASONABLE REIMBURSEMENT
18 REQUIREMENT.—In no case may a nego-
19 tiated price (as described in clause (ii)(I))
20 for a covered part D drug furnished by a
21 pharmacy during a plan year beginning on
22 or after January 1, 2020, be less than
23 such pharmacy’s cost of purchasing and
24 dispensing such drug and providing such
25 other services associated with furnishing

1 such drug as may be specified by the Sec-
2 retary.

3 “(iv) CLAIM REIMBURSEMENT DIS-
4 CLOSURE REQUIREMENTS.—With respect
5 to payment made by a PDP sponsor to a
6 pharmacy for a covered part D drug fur-
7 nished by such pharmacy during a plan
8 year beginning on or after January 1,
9 2020, such sponsor shall promptly furnish
10 all pricing components including the Net-
11 work Reimbursement ID used to price the
12 claim, any fees, pharmacy price conces-
13 sions, discounts, incentives or any other
14 forms of remuneration that affect payment
15 and pricing of the claim as part of the
16 claim adjudication response at the point-of-
17 sale. All aforementioned items, including
18 Network Reimbursement ID, fees, phar-
19 macy price concessions, discounts, incen-
20 tives, or any other forms of remuneration
21 that affect payment and pricing of the
22 claim shall each be identified in a predeter-
23 mined line item in the remittance advice
24 that is standard across the industry. The
25 Part D sponsor shall include suitable

1 claim-level detail on the electronic remit-
2 tance advice that accompanies each pay-
3 ment. This claim-level detail shall include,
4 in an industry standardized format, all
5 fields needed to properly identify the claim,
6 including the Claim Authorization Number,
7 date of service, date of payment remit-
8 tance, ingredient cost reimbursed, dis-
9 pensing fee reimbursed, payment amounts
10 including the Network ID used to price the
11 claim, the specific dollar amounts and the
12 appropriate qualifier codes for each pay-
13 ment adjustment including fees, pharmacy
14 price concessions, or incentives.

15 “(v) VIOLATION PROCESS.—A PDP
16 sponsor shall participate in any process es-
17 tablished by the Secretary for purposes of
18 determining whether such sponsor has vio-
19 lated a provision of clauses (ii) through
20 (iv).”.

21 **SEC. 3006. PHARMACY BENEFIT MANAGER PROVISION OF**
22 **INFORMATION.**

23 (a) IN GENERAL.—Section 1150A(b)(2) of the Social
24 Security Act (42 U.S.C. 1320b–23(b)(2)) is amended by
25 striking “excluding” and inserting “including”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to contract years be-
3 ginning on or after January 1, 2022.

