

**AMENDMENT TO THE SENATE AMENDMENT TO  
H.R. 5376  
OFFERED BY MR. CARTER OF GEORGIA**

Add at the end of subtitle B of title I the following  
new sections:

1 **SEC. 11409. 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-

1                   ning on or after January 1, 2024, ne-  
2                   negotiated prices for covered part D  
3                   drugs described in clause (i) provided  
4                   under a prescription drug plan, in-  
5                   cluding all contingent and noncontin-  
6                   gent concessions, adjustments, pay-  
7                   ments, and fees (including dispensing  
8                   fees) negotiated with the pharmacy  
9                   dispensing such drug, shall be pro-  
10                  vided at the point-of-sale of such  
11                  drug. Such negotiated price shall not  
12                  include any incentive payments and  
13                  adjustments or any other contingent  
14                  concessions, adjustments, payments,  
15                  or fees that increase the amount of  
16                  such negotiated price.

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

20   “(aa) IN GENERAL.—For  
21   plan years beginning on or after  
22   January 1, 2024, a PDP spon-  
23   sor—

24   “(AA) shall apply a  
25   system under which incen-

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

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

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

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

1 item (aa). Such measures shall  
2 be—

3 “(AA) focused on im-  
4 proving patient health out-  
5 comes;

6 “(BB) standardized  
7 across PDP sponsors;

8 “(CC) pharmacy-spe-  
9 cific in application;

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

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

1                   “(FF) based on achiev-  
2                   able and proven criteria  
3                   measuring pharmacy per-  
4                   formance over which the  
5                   pharmacy has meaningful  
6                   control and ability to influ-  
7                   ence.

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

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

1           vidual would have owed in cost shar-  
2           ing without application of such sub-  
3           clause.

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

21                   “(V) SPECIALTY PHARMACY.—  
22          For purposes of carrying out this  
23          clause (including subclause  
24          (II)(bb)(DD)), the Secretary shall, not  
25          later than December 31, 2023, 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, 2024, 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           2024, 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. 11410. 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 amendment made by  
2 subsection (a) shall apply with respect to contract years  
3 beginning on or after January 1, 2024.

