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:

SEC. 11409. REQUIRING PHARMACY-NEGOTIATED PRICE CONCESSIONS AND PHARMACY INCENTIVE PAYMENTS AND ADJUSTMENTS TO BE INCLUDED IN NEGOTIATED PRICES AT THE POINT-OF-SALE UNDER PART D OF THE MEDICARE PROGRAM.

Section 1860D–2(d)(1)(B) of the Social Security Act (42 U.S.C. 1395w–102(d)(1)(B)) is amended—
(1) by striking “PRICES.—For purposes” and inserting “PRICES.—
“(i) IN GENERAL.—For purposes”; and
(2) by adding at the end the following new clauses:
“(ii) PRICES NEGOTIATED WITH PHARMACY AT POINT-OF-SALE.—
“(I) IN GENERAL.—Subject to subclause (III), for plan years begin-
ning on or after January 1, 2024, negotiated prices for covered part D drugs described in clause (i) provided under a prescription drug plan, including all contingent and noncontingent concessions, adjustments, payments, and fees (including dispensing fees) negotiated with the pharmacy dispensing such drug, shall be provided at the point-of-sale of such drug. Such negotiated price shall not include any incentive payments and adjustments or any other contingent concessions, adjustments, payments, or fees that increase the amount of such negotiated price.

“(II) APPLICATION OF PHARMACY INCENTIVE PAYMENTS AND ADJUSTMENTS.—

“(aa) IN GENERAL.—For plan years beginning on or after January 1, 2024, a PDP sponsor—

“(AA) shall apply a system under which incen-
tive payments and adjust-
ments using only quality
measures established by the
Secretary under item (bb)
are made to a pharmacy
with respect to payment for
covered part D drugs dis-
dispensed by such pharmacy;
and

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

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

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

“(AA) focused on improving patient health outcomes;

“(BB) standardized across PDP sponsors;

“(CC) pharmacy-specific in application;

“(DD) relevant to the type of pharmacy concerned (such as specialty pharmacies), taking into account the items and services furnished by the pharmacy and the patient population served by the pharmacy;

“(EE) applied only when relevant to the specific drug (or drug class of such drug) being furnished by the pharmacy or when relevant to management of the condition for which such drug has been prescribed; and
“(FF) based on achievable and proven criteria measuring pharmacy performance over which the pharmacy has meaningful control and ability to influence.

In establishing such standards, the Secretary shall consult with stakeholders, including PDP sponsors and MA organizations, pharmacies across pharmacy practice types, pharmacy benefit managers, patient advocacy organizations, drug manufacturers, appropriate standard-setting organizations, and other entities determined appropriate by the Secretary.

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

ing without application of such sub-

clause.

“(IV) DISCREPANCIES BETWEEN

NEGOTIATED PRICES AND ACTUAL RE-

IMBURSEMENT.—In the case that the

Secretary determines that the nego-
tiated price of a PDP sponsor applied
at the point-of-sale with respect to a
covered part D drug for a year dis-
pensed by a pharmacy was greater
than the total reimbursement made to
such pharmacy for such drug for such
year, such sponsor shall, not later
than 90 days after receiving notice of
such determination, furnish to the
pharmacy that dispensed such drug
and to the Secretary a written expla-
nation of why such negotiated price
was greater than such reimbursement.

“(V) SPECIALTY PHARMACY.—
For purposes of carrying out this
clause (including subclause
(II)(bb)(DD)), the Secretary shall, not
later than December 31, 2023, define
the term ‘specialty pharmacy’ in consultation with relevant stakeholders.

“(VI) DEFINITIONS.—In this clause:

“(aa) INCENTIVE PAYMENTS AND ADJUSTMENTS.—The term ‘incentive payments and adjustments’ means, with respect to payment to a pharmacy by a PDP sponsor for a covered part D drug, any prospective or retrospective price concessions, rebates, discounts, fees, reconciliation adjustments, bonuses, performance payments, incentives, and any other adjustment to such payment determined through the use of a quality measure, regardless of when such payments and adjustments are applied. Such term does not include any manufacturer rebates or concessions made with respect to such drug.
“(bb) Quality Measure.—

The term ‘quality measure’
means performance criteria used
by a PDP sponsor (including an
entity that contracts with such
sponsor, such as a pharmacy ben-
efit manager) to determine the
amount or applicability of incen-
tive payments and adjustments.

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

“(iii) Reasonable Reimbursement
Requirement.—In no case may a nego-
tiated price (as described in clause (ii)(I))
for a covered part D drug furnished by a
pharmacy during a plan year beginning on
or after January 1, 2024, be less than
such pharmacy’s cost of purchasing and
dispensing such drug and providing such
other services associated with furnishing
such drug as may be specified by the Secretary.

“(iv) CLAIM REIMBURSEMENT DISCLOSURE REQUIREMENTS.—With respect to payment made by a PDP sponsor to a pharmacy for a covered part D drug furnished by such pharmacy during a plan year beginning on or after January 1, 2024, such sponsor shall promptly furnish all pricing components including the Network Reimbursement ID used to price the claim, any fees, pharmacy price concessions, discounts, incentives or any other forms of remuneration that affect payment and pricing of the claim as part of the claim adjudication response at the point-of-sale. All aforementioned items, including Network Reimbursement ID, fees, pharmacy price concessions, discounts, incentives, or any other forms of remuneration that affect payment and pricing of the claim shall each be identified in a predetermined line item in the remittance advice that is standard across the industry. The Part D sponsor shall include suitable
claim-level detail on the electronic remittance advice that accompanies each payment. This claim-level detail shall include, in an industry standardized format, all fields needed to properly identify the claim, including the Claim Authorization Number, date of service, date of payment remittance, ingredient cost reimbursed, dispensing fee reimbursed, payment amounts including the Network ID used to price the claim, the specific dollar amounts and the appropriate qualifier codes for each payment adjustment including fees, pharmacy price concessions, or incentives.

“(v) VIOLATION PROCESS.—A PDP sponsor shall participate in any process established by the Secretary for purposes of determining whether such sponsor has violated a provision of clauses (ii) through (iv).”.

SEC. 11410. PHARMACY BENEFIT MANAGER PROVISION OF INFORMATION.

(a) In General.—Section 1150A(b)(2) of the Social Security Act (42 U.S.C. 1320b–23(b)(2)) is amended by striking “excluding” and inserting “including”.
(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to contract years beginning on or after January 1, 2024.