118TH CONGRESS 1ST SESSION

S.

To amend title XVIII of the Social Security Act to establish requirements relating to the responsibility of pharmacy benefit managers under Medicare part D.

IN THE SENATE OF THE UNITED STATES

Mr. Menendez (for himself, Mrs. Blackburn, Mr. Tester, Mr. Marshall, Mr. Wyden, and Mr. Crapo) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend title XVIII of the Social Security Act to establish requirements relating to the responsibility of pharmacy benefit managers under Medicare part D.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Patients Before Middlemen Act” or the “PBM Act”.

SEC. 2. RESPONSIBILITY OF PHARMACY BENEFIT MANAGERS UNDER MEDICARE PART D.

(a) PRESCRIPTION DRUG PLANS.—Section 1860D–12(b) of the Social Security Act (42 U.S.C. 1395w–
112(b)) is amended by adding at the end the following new paragraph:

“(9) RESPONSIBILITY OF PHARMACY BENEFIT MANAGERS.—

“(A) IN GENERAL.—Each contract entered into with a PDP sponsor under this part with respect to a prescription drug plan offered by such sponsor shall provide that any pharmacy benefit manager (or affiliate, subsidiary, or agent of a pharmacy benefit manager) acting on behalf of such sponsor—

“(i) derives no income with respect to any services provided in connection with part D utilization from any entity or individual other than bona fide service fees; and

“(ii) sets forth in an agreement between the pharmacy benefit manager and the PDP sponsor the amount of any bona fide service fee. The bona fide service fee must be a flat dollar amount, cannot be passed on in whole or in part to another party whether or not the pharmacy benefit manager takes title to the drug, and shall
not be directly or indirectly based on, or contigent upon—

“(I) drug price, such as wholesale acquisition cost or drug benchmark price (such as average wholesale price)

“(II) discounts, rebates, fees, or other remuneration with respect to prescription drugs prescribed to enrollees in the plan; or

“(III) any other amounts prohibited by the Secretary.

“(B) Clarification Regarding PDP Sponsor Acting as PBM.—In the case where a PDP sponsor is acting as a pharmacy benefit manager on behalf of a prescription drug plan offered by the PDP sponsor, the requirements under subparagraph (A) shall not be construed as preventing the PDP sponsor from accepting any rebates, discounts, or price concessions that lower net costs for covered part D drugs.

“(C) Certification of Compliance.—

The PDP sponsor and pharmacy benefit manager shall furnish to the Secretary (in a time and manner specified by the Secretary) an an-
annual certification of compliance with this para-
graph, as well as such information as the Sec-
retary determines necessary to carry out this
paragraph.

“(D) DISGORGEメント OF EXCESS
AMOUNTS RECEIVED.—A pharmacy benefit
manager (or affiliate, subsidiary, or agent of a
pharmacy benefit manager) shall disgorge to
the Secretary any payment, remuneration, or
other amount received in violation of this para-
graph or the contract entered into with a PDP
sponsor under this part with respect to a pre-
scription drug plan.

“(E) CLARIFICATION.—The requirements
of this paragraph shall apply regardless of
whether the pharmacy benefit manager is a
first-tier, downstream, or related entity to the
PDP sponsor.

“(F) RULE OF CONSTRUCTION.—Nothing
in this paragraph shall be construed as prohib-
iting payments related to reimbursement for in-
gredient costs to entities that acquire prescrip-
tion drugs or pharmacy dispensing fees.

“(G) DEFINITIONS.—For purposes of this
paragraph:
“(i) Bona fide service fee.—The term ‘bona fide service fee’ means fair market value for a bona fide, itemized service actually performed on behalf of an entity, that the entity would otherwise perform (or contract for) in the absence of the service arrangement and that are not passed on in whole to a client or customer, whether or not the entity takes title to the drug.

“(ii) Pharmacy benefit manager.—The term ‘pharmacy benefit manager’ means any person, business, or other entity that, pursuant to an agreement with a PDP sponsor or part D plan either directly or through an intermediary acts as a price negotiator or group purchaser on behalf of such sponsor or plan, or manages the prescription drug benefits provided by such sponsor or plan, including the processing and payment of claims for prescription drugs, the performance of drug utilization review, the processing of drug prior authorization requests, the adjudication of appeals or grievances related to the pre-
scription drug benefit, contracting with network pharmacies, controlling the cost of covered part D drugs, or the provision of services related thereto. Such term includes—

“(I) any person, business, or other entity that carries out one or more of the activities described in the preceding sentence; and

“(II) any entity that is owned, affiliated, or related under a common ownership structure with such a person, business, or entity (including an entity owned by or affiliated with the PDP sponsor) or that acts as a contractor or agent to such a person, business, or entity,

irrespective of whether such person, business, or entity calls itself a ‘pharmacy benefit manager’.”.

(b) MA–PD PLANS.—Section 1857(f)(3) of the Social Security Act (42 U.S.C. 1395w–27(f)(3)) is amended by adding at the end the following new subparagraph:

“(E) RESPONSIBILITY OF PHARMACY BENEFIT MANAGERS.—Section 1860D–12(b)(9).”.