AMENDMENT
OFFERED BY MR. DAVID P. ROE OF TENNESSEE

At the end of section 1197 of the Social Security Act, as proposed to be added by section 101(a), add the following new subsection:

“(c) NONAPPLICATION.—This section shall not apply with respect to a group health plan or health insurance issuer offering health insurance coverage.”.

At the end of section 2729A of the Public Health Service Act, as proposed to be added by section 101(b)(2)(A), add the following new subsection:

“(c) NONAPPLICATION.—This section shall not apply with respect to a group health plan or health insurance issuer offering health insurance coverage.”.

At the end of section 716 of the Employee Retirement Income Security Act of 1974, as proposed to be added by section 101(b)(2)(B)(i), add the following new subsection:

“(c) NONAPPLICATION.—This section shall not apply with respect to a group health plan or health insurance issuer offering health insurance coverage.”.
At the end of the bill, add the following new title (and update the table of contents accordingly):

1 **TITLE ______—MISCELLANEOUS**

2 SEC. ____ . PROMOTING FAIR PHARMACY BENEFIT MANAGER COMPENSATION.

3 (a) Promoting Fairness for Employers in Pharmacy Benefit Manager Compensation.—Subpart II of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–11 et seq.), is amended by adding at the end the following:

4 “SEC. 2728. PHARMACY BENEFIT MANAGER SERVICES.

5 “(a) Full Rebate Pass-through to Plan.—

6 “(1) In general.—A pharmacy benefits manager, a third-party administrator of a group health plan, a health insurance issuer offering group health insurance coverage, or an entity providing pharmacy benefits management services under such health plan or health insurance coverage shall remit 100 percent of rebates, fees, alternative discounts, and all other remuneration received from a pharmaceutical manufacturer, distributor or any other third party, that are related to utilization of drugs under such health plan or health insurance coverage, to the group health plan.
“(2) FORM AND MANNER OF REMITTANCE.—

Such rebates, fees, alternative discounts, and other remuneration shall be—

“(A) remitted to the group health plan in a timely fashion after the period for which such rebates, fees, or other remuneration is calculated, and in no case later than 90 days after the end of such period;

“(B) fully disclosed and enumerated to the group health plan sponsor, as described in (b)(1);

“(C) available for audit by the plan sponsor, or a third-party designated by a plan sponsor no less than once per plan year; and

“(D) returned to the issuer or entity providing pharmaceutical benefit management services by the group health plan if audits by such issuer or entity indicate that the amounts received are incorrect after such amounts have been paid to the group health plan.

“(3) AUDIT OF REBATE CONTRACTS.—A pharmacy benefits manager, a third-party administrator of a group health plan, a health insurance issuer offering group health insurance coverage, or an entity providing pharmacy benefits management services
under such health plan or health insurance coverage
shall make rebate contracts with drug manufactur-
ers available for audit by such plan sponsor or des-
ignated third-party, subject to confidentiality agree-
ments to prevent re-disclosure of such contracts.

“(b) DE-LINKING SERVICE FEES.—

“(1) IN GENERAL.—Entities providing phar-
macy benefit management services may receive and
retain fees for bona fide services (as defined in sub-
section (b)(2)) they perform, provided that the fees
are not linked in any way to the price or formulary
placement or position of a drug.

“(2) BONA FIDE SERVICE FEES DEFINED.—In
this subsection, the term ‘bona fide service fees’
means fees paid by a manufacturer, customer, or cli-
ent of an entity providing pharmacy benefit manage-
ment services, to an entity providing pharmacy ben-
efit management services, that represent fair market
value for a bona fide, itemized service actually per-
formed on behalf of the manufacturer, customer, or
client, that the manufacturer, customer, or client
would otherwise perform (or contract for) in the ab-


stance of the service arrangement, and that the entity
providing pharmacy benefit management services
does not pass on to another party.
“(c) ENFORCEMENT.—

“(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Labor and the Secretary of the Treasury, shall enforce this section.

“(2) FAILURE TO PASS THROUGH REBATES OR DE-LINK SERVICE FEES.—An entity providing pharmacy benefit management services that violates subsection (a) or fails to comply with the requirements of subsection (b) shall be subject to a civil monetary penalty in the amount of $10,000 for each day during which such violation continues.”; and

(b) ERISA.—Section 715 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185d) is amended—

(1) in subsection (a)(1), by striking “(as amended by the Patient Protection and Affordable Care Act)” and inserting “(including any subsequent amendments to such part)”;

(2) in subsection (b)—

(A) by striking “(as amended by the Patient Protection and Affordable Care Act)” and inserting “(including any subsequent amendments to such part)”;

(B) by striking “(as so amended)”.

(c) APPLICABILITY.—The amendments made by subsections (b) and shall take effect as though included in the enactment of the Patient Protection and Affordable Care Act (Public Law 111–148).