

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:

1 “(c) NONAPPLICATION.—This section shall not apply
2 with respect to a group health plan or health insurance
3 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:

4 “(c) NONAPPLICATION.—This section shall not apply
5 with respect to a group health plan or health insurance
6 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:

7 “(c) NONAPPLICATION.—This section shall not apply
8 with respect to a group health plan or health insurance
9 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 MAN-**
3 **AGER COMPENSATION.**

4 (a) PROMOTING FAIRNESS FOR EMPLOYERS IN
5 PHARMACY BENEFIT MANAGER COMPENSATION.—Sub-
6 part II of part A of title XXVII of the Public Health Serv-
7 ice Act (42 U.S.C. 300gg–11 et seq.), is amended by add-
8 ing at the end the following:

9 **“SEC. 2728. PHARMACY BENEFIT MANAGER SERVICES.**

10 “(a) FULL REBATE PASS-THROUGH TO PLAN.—

11 “(1) IN GENERAL.—A pharmacy benefits man-
12 ager, a third-party administrator of a group health
13 plan, a health insurance issuer offering group health
14 insurance coverage, or an entity providing pharmacy
15 benefits management services under such health
16 plan or health insurance coverage shall remit 100
17 percent of rebates, fees, alternative discounts, and
18 all other remuneration received from a pharma-
19 ceutical manufacturer, distributor or any other third
20 party, that are related to utilization of drugs under
21 such health plan or health insurance coverage, to the
22 group health plan.

1 “(2) FORM AND MANNER OF REMITTANCE.—
2 Such rebates, fees, alternative discounts, and other
3 remuneration shall be—

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

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

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

15 “(D) returned to the issuer or entity pro-
16 viding pharmaceutical benefit management
17 services by the group health plan if audits by
18 such issuer or entity indicate that the amounts
19 received are incorrect after such amounts have
20 been paid to the group health plan.

21 “(3) AUDIT OF REBATE CONTRACTS.—A phar-
22 macy benefits manager, a third-party administrator
23 of a group health plan, a health insurance issuer of-
24 fering group health insurance coverage, or an entity
25 providing pharmacy benefits management services

1 under such health plan or health insurance coverage
2 shall make rebate contracts with drug manufactur-
3 ers available for audit by such plan sponsor or des-
4 igned third-party, subject to confidentiality agree-
5 ments to prevent re-disclosure of such contracts.

6 “(b) DE-LINKING SERVICE FEES.—

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

13 “(2) BONA FIDE SERVICE FEES DEFINED.—In
14 this subsection, the term ‘bona fide service fees’
15 means fees paid by a manufacturer, customer, or cli-
16 ent of an entity providing pharmacy benefit manage-
17 ment services, to an entity providing pharmacy ben-
18 efit management services, that represent fair market
19 value for a bona fide, itemized service actually per-
20 formed on behalf of the manufacturer, customer, or
21 client, that the manufacturer, customer, or client
22 would otherwise perform (or contract for) in the ab-
23 sence of the service arrangement, and that the entity
24 providing pharmacy benefit management services
25 does not pass on to another party.

1 “(c) ENFORCEMENT.—

2 “(1) IN GENERAL.—The Secretary, in consulta-
3 tion with the Secretary of Labor and the Secretary
4 of the Treasury, shall enforce this section.

5 “(2) FAILURE TO PASS THROUGH REBATES OR
6 DE-LINK SERVICE FEES.—An entity providing phar-
7 macy benefit management services that violates sub-
8 section (a) or fails to comply with the requirements
9 of subsection (b) shall be subject to a civil monetary
10 penalty in the amount of \$10,000 for each day dur-
11 ing which such violation continues.”; and

12 (b) ERISA.—Section 715 of the Employee Retire-
13 ment Income Security Act of 1974 (29 U.S.C. 1185d) is
14 amended—

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

19 (2) in subsection (b)—

20 (A) by striking “(as amended by the Pa-
21 tient Protection and Affordable Care Act)” and
22 inserting “(including any subsequent amend-
23 ments to such part)”;

24 (B) by striking “(as so amended)”.

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

