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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Employee Retirement Income Security Act of 1974 to ensure that pharmacy benefit managers are considered fiduciaries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. AUCHINCLOSS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Employee Retirement Income Security Act of 1974 to ensure that pharmacy benefit managers are considered fiduciaries, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. ESTABLISHING FIDUCIARY DUTIES OF PHAR-**
4 **MACY BENEFIT MANAGERS.**

5 (a) DEEMING PHARMACY BENEFIT MANAGERS AS
6 ERISA FIDUCIARIES.—Section 3(21) of the Employee
7 Retirement Income Security Act of 1974 (29 U.S.C.
8 1002(21)) is amended by adding at the end the following:

1 “(C) A person or entity shall be deemed to be a fidu-
2 ciary with respect to a group health plan for the purposes
3 of this Act if the person or entity—

4 “(i) maintains for the group health plan, the
5 plan sponsor or plan administrator of such plan, or
6 a health insurance issuer offering group health in-
7 surance coverage a prescription drug provider net-
8 work or prescription drug formulary through the
9 purchase of prescription drugs from a drug manu-
10 facturer, distributor, wholesaler, rebate aggregator,
11 group purchasing organization, or any associated
12 third party; or

13 “(ii) engages in, on behalf of, or in connection
14 with, the group health plan, the plan sponsor or plan
15 administrator of such plan, or a health insurance
16 issuer offering group health insurance coverage—

17 “(I) the negotiation or aggregation of re-
18 bates, fees, discounts, or other price concessions
19 for prescription drugs;

20 “(II) the processing and payment of claims
21 for prescription drugs; or

22 “(III) the performance of utilization review
23 and management for prescription drugs on be-
24 half of a group health plan.”.

1 (b) REQUIRED COMPENSATION DISCLOSURES FROM
2 PHARMACY BENEFIT MANAGERS AND THIRD PARTY AD-
3 MINISTRATORS.—Section 408(b)(2)(B)(ii)(I)(bb) of the
4 Employee Retirement Income Security Act of 1974 (29
5 U.S.C. 1108(b)(2)(B)(ii)(I)(bb)) is amended by adding at
6 the end the following:

7 “(CC) Pharmacy benefit management
8 services provided to a covered plan, for
9 which the covered service provider, an affil-
10 iate, or a subcontractor reasonably expects
11 to receive indirect compensation or direct
12 compensation described in item (dd), in-
13 cluding the establishment and maintenance
14 of a prescription drug provider network or
15 prescription drug formulary or through the
16 purchase of prescription drugs from a drug
17 manufacturer, distributor, wholesaler, re-
18 bate aggregator, group purchasing organi-
19 zation, or any associated third party for
20 the covered plan.

21 “(DD) Third party administrative
22 services provided to a covered plan, for
23 which the covered service provider, an affil-
24 iate, or a subcontractor reasonably expects
25 to receive indirect compensation or direct

1 compensation described in item (dd), in-
2 cluding establishing and maintaining a net-
3 work of medical providers, adjudicating or
4 processing health claims, maintaining
5 records, and negotiating reimbursement
6 rates for the covered plan.”.

7 (c) CLARIFICATION OF RESPONSIBLE PLAN FIDU-
8 CIARY.—Section 408(b)(2)(B)(ii)(I)(ee) of the Employee
9 Retirement Income Security Act of 1974 (29 U.S.C.
10 1108(b)(2)(B)(ii)(I)(ee)) is amended by inserting at the
11 end the following: “A covered service provider may not be
12 the responsible plan fiduciary for purposes of the dislo-
13 sures required under clause (iii). Notwithstanding the pre-
14 ceding sentence, in the case of a pharmacy benefit man-
15 ager who sponsors a covered plan for the employees of the
16 pharmacy benefit manager, the pharmacy benefit manager
17 may be considered the responsible plan fiduciary for such
18 plan.”.

19 (d) PROHIBITION ON INDEMNIFICATION FOR
20 BREACHES BY A SECTION 3(21)(C) FIDUCIARY.—Section
21 410(a) of the Employee Retirement Income Security Act
22 of 1974 (29 U.S.C. 1110(a)) is amended—

23 (1) by striking “Except” and inserting “(1) Ex-
24 cept”; and

25 (2) by adding at the end the following:

1 “(2) Except as provided in subsection (b)(2), no per-
2 son or entity deemed to be a fiduciary under section
3 3(21)(C) may be indemnified, directly or indirectly, or oth-
4 erwise relieved from liability for any responsibility, obliga-
5 tion, or duty of such person or entity under this part.

6 “(3) Any provision of contract in violation of para-
7 graph (2) shall be void as against public policy.”.

8 (e) TECHNICAL AMENDMENT.—Section
9 408(b)(2)(B)(i) of the Employee Retirement Income Secu-
10 rity Act of 1974 (29 U.S.C. 1108(b)(2)(B)(i)) is amended
11 by striking “this clause” and inserting “this subpara-
12 graph”.

13 (f) EFFECTIVE DATE.—The amendments made by
14 this section shall apply with respect to plan years begin-
15 ning with the first plan year that begins at least 12
16 months after the date of enactment of this Act.