

Edward J. Markey
Amendment 2

AMENDMENT NO. _____

Calendar No. _____

Purpose: To prohibit group health plans and health insurance issuers from entering into contracts that would prevent or restrict patient access to drug pricing information otherwise available through consumer decision-support tools.

IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.

S. 1339

To provide for increased oversight of entities that provide pharmacy benefit management services on behalf of group health plans and health insurance coverage.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. MARKEY (for himself, Mr. MARSHALL, and Mr. KAINE)

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . PROHIBITION ON BLOCKING CONSUMER DECI-**
3 **SION-SUPPORT TOOLS.**

4 (a) PHSA.—Part D of title XXVII of the Public
5 Health Service Act (42 U.S.C. 300gg–111 et seq.), as
6 amended by section 2, is further amended by adding at
7 the end the following:

1 **“SEC. 2799A-12. PROHIBITION ON BLOCKING CONSUMER**
2 **DECISION-SUPPORT TOOLS.**

3 “(a) IN GENERAL.—A group health plan or a health
4 insurance issuer offering group or individual health insur-
5 ance coverage shall not enter into a contract with an entity
6 that provides pharmacy benefit management services with
7 respect to such plan or coverage if such contract includes
8 any terms, conditions, or costs that would prevent or re-
9 strict a covered third party from accessing or using infor-
10 mation, for purposes of the consumer decision-support
11 tool, relevant to the operability, implementation, and utili-
12 zation of the consumer-decision support tool regarding
13 prescription drug benefits under the plan or coverage that
14 are administered by the entity providing pharmacy benefit
15 management services in contract with the plan or issuer.

16 “(b) DEFINITIONS.—In this section:

17 “(1) CONSUMER DECISION-SUPPORT TOOL.—
18 The term ‘consumer decision-support tool’ means a
19 tool designed to inform enrollees in a group health
20 plan or health insurance coverage about all costs to
21 the enrollee for prescription drugs covered by the
22 plan or coverage, including out-of-pocket, copay-
23 ment, and coinsurance responsibility, as well as
24 means for reducing the cost to the enrollee, such as
25 manufacturer copayment assistance, purchasing at

1 the cash price, and purchasing through mail order
2 pharmacy benefits.

3 “(2) COVERED THIRD PARTY.—The term ‘cov-
4 ered third party’ means a third party that is in con-
5 tract, as a business associate (as defined in section
6 160.103 of title 45, Code of Federal Regulations (or
7 successor regulations)), with a group health plan or
8 a health insurance issuer offering group or indi-
9 vidual health insurance coverage to provide a con-
10 sumer decision-support tool.

11 “(c) RULES OF CONSTRUCTION REGARDING PRI-
12 VACY.—

13 “(1) Nothing in this section shall be construed
14 to alter existing obligations of a covered entity or
15 business associate under the privacy, security, and
16 breach notification regulations in parts 160 and 164
17 of title 45, Code of Federal Regulations (or suc-
18 cessor regulations).

19 “(2) Nothing in this section shall be construed
20 to require a group health plan, a health insurance
21 issuer offering group or individual health insurance
22 coverage, or an entity providing pharmacy benefit
23 management services to share protected health infor-
24 mation, as defined in section 160.103 of title 45,

1 Code of Federal Regulations (or successor regula-
2 tions), with a covered third party.”.

3 (b) ERISA.—

4 (1) IN GENERAL.—Subpart B of part 7 of sub-
5 title B of title I of the Employee Retirement Income
6 Security Act of 1974 (29 U.S.C. 1185 et seq.), as
7 amended by section 2, is further amended by adding
8 at the end the following:

9 **“SEC. 727. PROHIBITION ON BLOCKING CONSUMER DECI-**
10 **SION-SUPPORT TOOLS.**

11 “(a) IN GENERAL.—A group health plan or a health
12 insurance issuer offering group health insurance coverage
13 shall not enter into a contract with an entity that provides
14 pharmacy benefit management services with respect to
15 such plan or coverage if such contract includes any terms,
16 conditions, or costs that would prevent or restrict a cov-
17 ered third party from accessing or using information, for
18 purposes of the consumer decision-support tool, relevant
19 to the operability, implementation, and utilization of the
20 consumer-decision support tool regarding prescription
21 drug benefits under the plan or coverage that are adminis-
22 tered by the entity providing pharmacy benefit manage-
23 ment services in contract with the plan or issuer.

24 “(b) DEFINITIONS.—In this section:

1 “(1) CONSUMER DECISION-SUPPORT TOOL.—

2 The term ‘consumer decision-support tool’ means a
3 tool designed to inform participants and bene-
4 ficiaries in a group health plan or health insurance
5 coverage about all costs to the participant or bene-
6 ficiary for prescription drugs covered by the plan or
7 coverage, including out-of-pocket, copayment, and
8 coinsurance responsibility, as well as means for re-
9 ducing the cost to the participant or beneficiary,
10 such as manufacturer copayment assistance, pur-
11 chasing at the cash price, and purchasing through
12 mail order pharmacy benefits.

13 “(2) COVERED THIRD PARTY.—The term ‘cov-
14 ered third party’ means a third party that is in con-
15 tract, as a business associate (as defined in section
16 160.103 of title 45, Code of Federal Regulations (or
17 successor regulations)), with a group health plan or
18 a health insurance issuer offering group health in-
19 surance coverage to provide a consumer decision-
20 support tool.

21 “(c) RULES OF CONSTRUCTION.—

22 “(1) Nothing in this section shall be construed
23 to alter existing obligations of a covered entity or
24 business associate under the privacy, security, and
25 breach notification regulations in parts 160 and 164

1 of title 45, Code of Federal Regulations (or suc-
2 cessor regulations).

3 “(2) Nothing in this section shall be construed
4 to require a group health plan, a health insurance
5 issuer offering group health insurance coverage, or
6 an entity providing pharmacy benefit management
7 services to share protected health information, as de-
8 fined in section 160.103 of title 45, Code of Federal
9 Regulations (or successor regulations), with a cov-
10 ered third party.”

11 (2) CLERICAL AMENDMENT.—The table of con-
12 tents in section 1 of the Employee Retirement In-
13 come Security Act of 1974 (29 U.S.C. 1001 et seq.)
14 is amended by inserting after the item relating to
15 section 725 the following:

“Sec. 727. Prohibition on blocking consumer decision-support tools.”

16 (c) INTERNAL REVENUE CODE.—

17 (1) IN GENERAL.—Subchapter B of chapter
18 100 of the Internal Revenue Code of 1986, as
19 amended by section 2, is further amended by adding
20 at the end the following new section:

21 **“SEC. 9827. PROHIBITION ON BLOCKING CONSUMER DECI-**
22 **SION-SUPPORT TOOLS.**

23 “(a) IN GENERAL.—A group health plan offering
24 group health insurance coverage shall not enter into a con-
25 tract with an entity that provides pharmacy benefit man-

1 agement services with respect to such plan if such contract
2 includes any terms, conditions, or costs that would prevent
3 or restrict a covered third party from accessing or using
4 information, for purposes of the consumer decision-sup-
5 port tool, relevant to the operability, implementation, and
6 utilization of the consumer-decision support tool regarding
7 prescription drug benefits under the plan that are admin-
8 istered by the entity providing pharmacy benefit manage-
9 ment services in contract with the plan.

10 “(b) DEFINITIONS.—In this section:

11 “(1) CONSUMER DECISION-SUPPORT TOOL.—

12 The term ‘consumer decision-support tool’ means a
13 tool designed to inform participants and bene-
14 ficiaries in a group health plan about all costs to the
15 participant or beneficiary for prescription drugs cov-
16 ered by the plan, including out-of-pocket, copayment,
17 and coinsurance responsibility, as well as means for
18 reducing the cost to the participant or beneficiary,
19 such as manufacturer copayment assistance, pur-
20 chasing at the cash price, and purchasing through
21 mail order pharmacy benefits.

22 “(2) COVERED THIRD PARTY.—The term ‘cov-
23 ered third party’ means a third party that is in con-
24 tract, as a business associate (as defined in section
25 160.103 of title 45, Code of Federal Regulations (or

1 successor regulations)), with a group health plan or
2 a health insurance issuer offering group health in-
3 surance coverage to provide a consumer decision-
4 support tool.

5 “(c) RULES OF CONSTRUCTION.—

6 “(1) Nothing in this section shall be construed
7 to alter existing obligations of a covered entity or
8 business associate under the privacy, security, and
9 breach notification regulations in parts 160 and 164
10 of title 45, Code of Federal Regulations (or suc-
11 cessor regulations).

12 “(2) Nothing in this section shall be construed
13 to require a group health plan or an entity providing
14 pharmacy benefit management services to share pro-
15 tected health information, as defined in section
16 160.103 of title 45, Code of Federal Regulations (or
17 successor regulations), with a covered third party.”.

18 (2) CLERICAL AMENDMENT.—The table of sec-
19 tions for subchapter B of chapter 100 of such Code
20 is amended by adding at the end the following new
21 item:

“Sec. 9827. Prohibition on blocking consumer decision-support tools.”.

22 (d) APPLICATION.—The amendments made by sub-
23 sections (a), (b), and (c) shall apply with respect to plan
24 years beginning on or after the date that is 2 years after
25 the date of enactment of this Act.

1 (e) REGULATIONS.—The Secretary of Health and
2 Human Services, the Secretary of Labor, and the Sec-
3 retary of the Treasury shall jointly promulgate regulations
4 to carry out the amendments made by subsections (a), (b),
5 and (c), and shall issue draft regulations not later than
6 1 year after the date of enactment of this Act.