

110TH CONGRESS
1ST SESSION

S. 1951

To amend title XIX of the Social Security Act to ensure that individuals eligible for medical assistance under the Medicaid program continue to have access to prescription drugs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2007

Mr. BAUCUS (for himself, Mrs. LINCOLN, Mr. SALAZAR, Mr. LIEBERMAN, Mr. ROBERTS, Mr. COCHRAN, Mr. SMITH, and Mr. LOTT) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XIX of the Social Security Act to ensure that individuals eligible for medical assistance under the Medicaid program continue to have access to prescription drugs, 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. SHORT TITLE.**

4 This Act may be cited as the “Fair Medicaid Drug
5 Payment Act of 2007”.

1 **SEC. 2. PROVIDING ADEQUATE PHARMACY REIMBURSE-**
2 **MENT UNDER MEDICAID.**

3 (a) PHARMACY REIMBURSEMENT LIMITS.—

4 (1) IN GENERAL.—Section 1927(e) of the So-
5 cial Security Act (42 U.S.C. 1396r-8(e)) is amend-
6 ed—

7 (A) in paragraph (4), by striking “(or, ef-
8 fective January 1, 2007, two or more)”; and

9 (B) by striking paragraph (5) and insert-
10 ing the following:

11 “(5) USE OF AMP IN UPPER PAYMENT LIM-
12 ITS.—The Secretary shall calculate the Federal
13 upper reimbursement limit established under para-
14 graph (4) as no less than 300 percent of the weight-
15 ed average (determined on the basis of utilization) of
16 the most recent average manufacturer prices for
17 pharmaceutically and therapeutically equivalent mul-
18 tiple source drug products that are available for pur-
19 chase by retail community pharmacies on a nation-
20 wide basis. The Secretary shall implement a smooth-
21 ing process for average manufacturer prices to en-
22 sure that Federal upper reimbursement limits do not
23 vary significantly from month to month as a result
24 of rebates, discounts, and other pricing practices.
25 Such process shall be similar to the smoothing proc-

1 ess used in determining the average sales price of a
2 drug or biological under section 1847A.”.

3 (2) DEFINITION OF AMP.—Section 1927(k)(1)
4 of such Act (42 U.S.C. 1396r–8(k)(1)) is amend-
5 ed—

6 (A) in subparagraph (A), by striking “by”
7 and all that follows through the period and in-
8 serting “by—

9 “(i) wholesalers for drugs distributed
10 to retail community pharmacies; and

11 “(ii) retail community pharmacies
12 that purchase drugs directly from the man-
13 ufacturer.”; and

14 (B) in subparagraph (B)—

15 (i) in the subparagraph heading, by
16 striking “EXTENDED TO WHOLESALERS”
17 and inserting “AND OTHER PAYMENTS”;
18 and

19 (ii) by striking “regard to” and all
20 that follows through the period and insert-
21 ing “regard to—

22 “(i) customary prompt pay discounts
23 extended to wholesalers;

24 “(ii) bona fide service fees paid by
25 manufacturers to wholesalers or retail

1 community pharmacies, including (but not
2 limited to) distribution service fees, inven-
3 tory management fees, product stocking al-
4 lowances, and fees associated with adminis-
5 trative services agreements and patient
6 care programs (such as medication compli-
7 ance programs and patient education pro-
8 grams);

9 “(iii) reimbursement by manufactur-
10 ers for recalled, damaged, expired, or oth-
11 erwise unsalable returned goods, including
12 (but not limited to) reimbursement for the
13 cost of the goods and any reimbursement
14 of costs associated with return goods han-
15 dling and processing, reverse logistics, and
16 drug destruction;

17 “(iv) payments received from, and re-
18 bates or discounts provided to, pharmacy
19 benefit managers, managed care organiza-
20 tions, health maintenance organizations,
21 insurers, hospitals, clinics, mail order phar-
22 macies, long term care providers, manufac-
23 turers, or any other entity that does not
24 conduct business primarily as a wholesaler
25 or a retail community pharmacy;

1 “(v) any payments made by manufac-
2 turers that are associated with drugs dis-
3 pensed by retail community pharmacies;
4 and

5 “(vi) any other discounts, rebates,
6 payments, or other financial transactions
7 that are not received by, paid by, or passed
8 through to, retail community pharmacies.”.

9 (3) DEFINITION OF MULTIPLE SOURCE
10 DRUG.—Section 1927(k)(7)(A)(i) of such Act (42
11 U.S.C. 1396r–8(k)(7)(A)(i)) is amended—

12 (A) in the matter preceding subclause (I),
13 by striking “there at least 1 other drug prod-
14 uct” and inserting “there are at least 2 other
15 drug products”; and

16 (B) in subclauses (I), (II), and (III), by
17 striking “is” each place it appears and inserting
18 “are”.

19 (4) DEFINITIONS OF RETAIL COMMUNITY PHAR-
20 MACY; WHOLESALER.—Section 1927(k) of such Act
21 (42 U.S.C. 1396r–8(k)) is amended by adding at the
22 end the following new paragraphs:

23 “(10) RETAIL COMMUNITY PHARMACY.—The
24 term ‘retail community pharmacy’ means a tradi-
25 tional independent pharmacy, traditional chain phar-

1 macy, a supermarket pharmacy, or a mass merchan-
2 diser pharmacy that is licensed as a pharmacy by a
3 State and that dispenses medications to the general
4 public at retail prices. Such term does not include a
5 pharmacy that dispenses prescription medications to
6 patients primarily through the mail, nursing home
7 pharmacies, long-term care facility pharmacies, hos-
8 pital pharmacies, clinics, charitable or not-for-profit
9 pharmacies, government pharmacies, or pharmacy
10 benefit managers.

11 “(11) WHOLESALER.—The term ‘wholesaler’
12 means a drug wholesaler that is licensed as a whole-
13 saler by a State and that is engaged in wholesale
14 distribution of prescription drugs to retail commu-
15 nity pharmacies, including (but not limited to) man-
16 ufacturers, repackers, own-label distributors, private-
17 label distributors, jobbers, brokers, warehouses (in-
18 cluding manufacturer’s and distributor’s warehouses,
19 chain drug warehouses, and wholesale drug ware-
20 houses) independent wholesale drug traders, and re-
21 tail pharmacies that conduct wholesale distribu-
22 tions.”.

23 (b) REQUIREMENTS OF PRIOR AUTHORIZATION PRO-
24 GRAMS.—Section 1927(d)(5) of such Act (42 U.S.C.
25 1396r–8(d)(5)) is amended—

1 (1) in the matter preceding subparagraph (A),
2 by striking “of the drug before its dispensing for
3 any medically accepted indication (as defined in sub-
4 section (k)(6)) only if the system providing for such
5 approval” and inserting “by the State of the use of
6 the drug before its dispensing for any medically ac-
7 cepted indication (as defined in subsection (k)(6)). A
8 State plan under this title shall, as a condition of
9 coverage or payment for a covered outpatient drug
10 for which Federal financial participation is available
11 in accordance with this section, subject to prior au-
12 thorization all covered outpatient drug products that
13 are innovator multiple source drugs if such drug
14 products are more expensive than other biologically
15 and therapeutically equivalent drug products that
16 are available for purchase in that State by retail
17 community pharmacies. The system providing for
18 such approval shall”;

19 (2) in each of subparagraphs (A) and (B), by
20 striking “provides” and inserting “provide”;

21 (3) by redesignating subparagraphs (A) and
22 (B) (as so amended) as subparagraphs (C) and (D),
23 respectively; and

24 (4) by inserting before subparagraph (C) (as so
25 redesignated), the following new subparagraphs:

1 “(A) require the prescriber to request prior
2 authorization by substantiating the medical ne-
3 cessity of dispensing the covered outpatient
4 drug as opposed to dispensing a substitute cov-
5 ered outpatient drug;

6 “(B) require that a prior authorization
7 number assigned to the approved request by the
8 State be included on the order for the covered
9 outpatient drug issued by the prescriber or re-
10 layed to the dispensing pharmacist by the pre-
11 scriber if the prescription is orally trans-
12 mitted;”.

13 (c) DISCLOSURE OF PRICE INFORMATION TO THE
14 PUBLIC.—Section 1927(b)(3) of such Act (42 U.S.C.
15 1396r-8(b)(3)) is amended—

16 (1) in subparagraph (A)—

17 (A) in clause (i), in the matter preceding
18 subclause (I), by inserting “month of a” after
19 “each”; and

20 (B) in the last sentence, by striking “and
21 shall,” and all that follows through the period;
22 and

23 (2) in subparagraph (D)—

24 (A) in clause (iii), by inserting “and” after
25 the comma;

1 (B) in clause (iv), by striking “, and” and
2 inserting a period; and

3 (C) by striking clause (v).

4 (d) TECHNICAL AMENDMENT.—Section 1927(d)(1)
5 of such Act (42 U.S.C. 1396r–8(d)(1)) is amended in the
6 paragraph heading by inserting “AND MANDATORY” after
7 “PERMISSIBLE”.

8 (e) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2), the amendments made by this section
11 shall take effect as if included in the enactment of
12 the Deficit Reduction Act of 2005 (Public Law 109–
13 171).

14 (2) EXCEPTION.—The amendments made by
15 subsection (b) shall take effect on the date that is
16 180 days after the date of enactment of this Act.

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