

116TH CONGRESS
1ST SESSION

H. R. 5281

To amend title XIX of the Social Security Act to improve transparency and prevent the use of abusive spread pricing and related practices in the Medicaid program.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 3, 2019

Mr. CARTER of Georgia (for himself and Mr. CÁRDENAS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend title XIX of the Social Security Act to improve transparency and prevent the use of abusive spread pricing and related practices in the Medicaid program.

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 “Drug Price Trans-
5 parency in Medicaid Act of 2019”.

6 **SEC. 2. IMPROVING TRANSPARENCY AND PREVENTING THE**
7 **USE OF ABUSIVE SPREAD PRICING AND RE-**
8 **LATED PRACTICES IN MEDICAID.**

9 (a) **PASS-THROUGH PRICING REQUIRED.**—

1 (1) IN GENERAL.—Section 1927(e) of the So-
2 cial Security Act (42 U.S.C. 1396r–8(e)) is amended
3 by adding at the end the following:

4 “(6) PASS-THROUGH PRICING REQUIRED.—A
5 contract between the State and a pharmacy benefit
6 manager (referred to in this paragraph as a ‘PBM’),
7 or a contract between the State and a managed care
8 entity or other specified entity (as such terms are
9 defined in section 1903(m)(9)(D)) that includes pro-
10 visions making the entity responsible for coverage of
11 covered outpatient drugs dispensed to individuals en-
12 rolled with the entity, shall require that payment for
13 such drugs and related administrative services (as
14 applicable), including payments made by a PBM on
15 behalf of the State or entity, is based on a pass-
16 through pricing model under which—

17 “(A) any payment made by the entity or
18 the PBM (as applicable) for such a drug—

19 “(i) is limited to—

20 “(I) ingredient cost; and

21 “(II) a professional dispensing
22 fee that is not less than the profes-
23 sional dispensing fee that the State
24 plan or waiver would pay if the plan

1 or waiver was making the payment di-
2 rectly;

3 “(ii) is passed through in its entirety
4 by the entity or PBM to the pharmacy
5 that dispenses the drug; and

6 “(iii) is made in a manner that is con-
7 sistent with section 1902(a)(30)(A) and
8 sections 447.512, 447.514, and 447.518 of
9 title 42, Code of Federal Regulations (or
10 any successor regulation) as if such re-
11 quirements applied directly to the entity or
12 the PBM;

13 “(B) payment to the entity or the PBM
14 (as applicable) for administrative services per-
15 formed by the entity or PBM is limited to a
16 reasonable administrative fee that covers the
17 reasonable cost of providing such services;

18 “(C) the entity or the PBM (as applicable)
19 shall make available to the State, and the Sec-
20 retary upon request, all costs and payments re-
21 lated to covered outpatient drugs and accom-
22 panying administrative services incurred, re-
23 ceived, or made by the entity or the PBM, in-
24 cluding ingredient costs, professional dispensing
25 fees, administrative fees, post-sale and post-in-

1 voice fees, discounts, or related adjustments
2 such as direct and indirect remuneration fees,
3 and any and all other remuneration; and

4 “(D) any form of spread pricing whereby
5 any amount charged or claimed by the entity or
6 the PBM (as applicable) is in excess of the
7 amount paid to the pharmacies on behalf of the
8 entity, including any post-sale or post-invoice
9 fees, discounts, or related adjustments such as
10 direct and indirect remuneration fees or assess-
11 ments (after allowing for a reasonable adminis-
12 trative fee as described in subparagraph (B)) is
13 not allowable for purposes of claiming Federal
14 matching payments under this title.”.

15 (2) CONFORMING AMENDMENT.—Section
16 1903(m)(2)(A)(xiii) of such Act (42 U.S.C.
17 1396b(m)(2)(A)(xiii)) is amended—

18 (A) by striking “and (III)” and inserting
19 “(III)”;

20 (B) by inserting before the period at the
21 end the following: “, and (IV) pharmacy benefit
22 management services provided by the entity, or
23 provided by a pharmacy benefit manager on be-
24 half of the entity under a contract or other ar-
25 rangement between the entity and the phar-

1 macy benefit manager, shall comply with the re-
2 quirements of section 1927(e)(6)”; and

3 (C) by moving the left margin 2 ems to the
4 left.

5 (3) EFFECTIVE DATE.—The amendments made
6 by this subsection apply to contracts between States
7 and managed care entities, other specified entities,
8 or pharmacy benefits managers that are entered into
9 or renewed on or after the date that is 18 months
10 after the date of enactment of this Act.

11 (b) SURVEY OF RETAIL PRICES.—

12 (1) IN GENERAL.—Section 1927(f) of the Social
13 Security Act (42 U.S.C. 1396r–8(f)) is amended—

14 (A) by striking “and” after the semicolon
15 at the end of paragraph (1)(A)(i) and all that
16 precedes it through “(1)” and inserting the fol-
17 lowing:

18 “(1) SURVEY OF RETAIL PRICES.—The Sec-
19 retary shall conduct a survey of retail community
20 drug prices, to include at least the national average
21 drug acquisition cost, as follows:

22 “(A) USE OF VENDOR.—The Secretary
23 may contract services for—

24 “(i) with respect to retail community
25 pharmacies, the determination on a month-

1 ly basis of retail survey prices of the na-
2 tional average drug acquisition cost for
3 covered outpatient drugs for such phar-
4 macies, net of all discounts and rebates (to
5 the extent any information with respect to
6 such discounts and rebates is available),
7 the average reimbursement received for
8 such drugs by such pharmacies from all
9 sources of payment, including third par-
10 ties, and, to the extent available, the usual
11 and customary charges to consumers for
12 such drugs; and”;

13 (B) by adding at the end of paragraph (1)
14 the following:

15 “(F) SURVEY REPORTING.—In order to
16 meet the requirement of section 1902(a)(54), a
17 State shall require that any retail community
18 pharmacy in the State that receives any pay-
19 ment, administrative fee, discount, or rebate re-
20 lated to the dispensing of covered outpatient
21 drugs to individuals receiving benefits under
22 this title, regardless of whether such payment,
23 fee, discount, or rebate is received from the
24 State or a managed care entity directly or from
25 a pharmacy benefit manager or another entity

1 that has a contract with the State or a man-
2 aged care entity, shall respond to surveys of re-
3 tail prices conducted under this subsection.

4 “(G) SURVEY INFORMATION.—Information
5 on retail community prices obtained under this
6 paragraph shall be made publicly available and
7 shall include at least the following:

8 “(i) The monthly response rate of the
9 survey including a list of pharmacies not in
10 compliance with subparagraph (F).

11 “(ii) The sampling frame and number
12 of pharmacies sampled monthly.

13 “(iii) Characteristics of reporting
14 pharmacies, including type (such as inde-
15 pendent or chain), geographic or regional
16 location, and dispensing volume.

17 “(iv) Reporting of a separate national
18 average drug acquisition cost for each drug
19 for independent retail pharmacies and
20 chain operated pharmacies.

21 “(v) Information on price concessions
22 including on and off invoice discounts, re-
23 bates, and other price concessions.

24 “(vi) Information on average profes-
25 sional dispensing fees paid.

1 “(H) REPORT ON SPECIALTY PHAR-
2 MACIES.—

3 “(i) IN GENERAL.—Not later than 1
4 year after the effective date of this sub-
5 paragraph, the Secretary shall submit a re-
6 port to Congress examining specialty drug
7 coverage and reimbursement under this
8 title.

9 “(ii) CONTENT OF REPORT.—Such re-
10 port shall include a description of how
11 State Medicaid programs define specialty
12 drugs, how much State Medicaid programs
13 pay for specialty drugs, how States and
14 managed care plans determine payment for
15 specialty drugs, the settings in which spe-
16 cialty drugs are dispensed (such as retail
17 community pharmacies or specialty phar-
18 macies), whether acquisition costs for spe-
19 cialty drugs are captured in the national
20 average drug acquisition cost survey, and
21 recommendations as to whether specialty
22 pharmacies should be included in the sur-
23 vey of retail prices to ensure national aver-
24 age drug acquisition costs capture drugs

1 sold at specialty pharmacies and how such
2 specialty pharmacies should be defined.”;

3 (C) in paragraph (2)—

4 (i) in subparagraph (A), by inserting
5 “, including payments rates under Med-
6 icaid managed care plans,” after “under
7 this title”; and

8 (ii) in subparagraph (B), by inserting
9 “and the basis for such dispensing fees”
10 before the semicolon; and

11 (D) in paragraph (4), by inserting “, and
12 \$5,000,000 for fiscal year 2020 and each fiscal
13 year thereafter,” after “2010”.

14 (2) EFFECTIVE DATE.—The amendments made
15 by this subsection take effect on the first day of the
16 first quarter that begins on or after the date that is
17 18 months after the date of enactment of this Act.

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