

107TH CONGRESS  
2D SESSION

# S. 2536

To amend title XIX of the Social Security Act to clarify that section 1927 of that Act does not prohibit a State from entering into drug rebate agreements in order to make outpatient prescription drugs accessible and affordable for residents of the State who are not otherwise eligible for medical assistance under the medicaid program.

---

## IN THE SENATE OF THE UNITED STATES

MAY 21, 2002

Ms. STABENOW (for herself, Mr. DURBIN, Mr. LEAHY, Mr. JEFFORDS, Mrs. BOXER, Mr. LEVIN, Mr. DORGAN, Mr. SCHUMER, and Mr. JOHNSON) 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 clarify that section 1927 of that Act does not prohibit a State from entering into drug rebate agreements in order to make outpatient prescription drugs accessible and affordable for residents of the State who are not otherwise eligible for medical assistance under 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,*

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Rx Flexibility for  
3 States Act”.

**4 SEC. 2. CLARIFICATION OF STATE AUTHORITY RELATING  
5 TO MEDICAID DRUG REBATE AGREEMENTS.**

6 Section 1927 of the Social Security Act (42 U.S.C.  
7 1396r-8) is amended by adding at the end the following:

8 “(l) RULE OF CONSTRUCTION.—Nothing in this sec-  
9 tion shall be construed as prohibiting a State from—

10           “(1) directly entering into rebate agreements  
11           that are similar to a rebate agreement described in  
12           subsection (b) with a manufacturer for purposes of  
13           ensuring the affordability of outpatient prescription  
14           drugs in order to provide access to such drugs by  
15           residents of a State who are not otherwise eligible  
16           for medical assistance under this title; or

17           “(2) making prior authorization (that satisfies  
18           the requirements of subsection (d) and that does not  
19           violate any requirements of this title that are de-  
20           signed to ensure access to medically necessary pre-  
21           scribed drugs for individuals enrolled in the State  
22           program under this title) a condition of not partici-  
23           pating in such a similar rebate agreement.”.

○