

107TH CONGRESS  
2D SESSION

# S. 3142

To amend title XIX of the Social Security Act to require drug manufacturers to pay rebates to State prescription drug discount programs as a condition of participation in a rebate agreement for outpatient prescription drugs under the medicaid program, to provide increased rebate payments to State medicaid programs, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 17, 2002

Mr. WELLSTONE (for himself, Mr. BINGAMAN, and Mrs. LINCOLN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XIX of the Social Security Act to require drug manufacturers to pay rebates to State prescription drug discount programs as a condition of participation in a rebate agreement for outpatient prescription drugs under the medicaid program, to provide increased rebate payments to State medicaid programs, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “State Prescription  
3 Drug Discount Act of 2002”.

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) More than 70,000,000 Americans, including  
7 more than 18,000,000 Medicare beneficiaries, are  
8 uninsured or underinsured for prescription drug cov-  
9 erage.

10 (2) High prescription drug prices are denying  
11 uninsured and underinsured Americans access to  
12 medically necessary care, thereby threatening their  
13 health and safety. Many of these Americans require  
14 repeated doctor or medical clinic appointments, be-  
15 coming sicker because they cannot afford to take the  
16 drugs prescribed for them. Many are admitted to or  
17 treated at hospitals because they cannot afford the  
18 drugs prescribed for them that could have prevented  
19 the need for hospitalization. Many enter expensive  
20 institutional care settings because they cannot afford  
21 the prescription drugs that could have supported  
22 them outside of an institution. In each of these cir-  
23 cumstances, uninsured and underinsured residents  
24 too often become medicaid recipients because of  
25 their inability to afford prescription drugs.

1           (3) Pursuant to the Social Security Act, State  
 2           medicaid programs receive discounts in the form of  
 3           rebates for outpatient prescription drugs. On aver-  
 4           age, these rebates provide discounts of more than 40  
 5           percent off retail prices.

6           (4) In 49 States, individual Americans do not  
 7           have access to medicaid rebates. But in 1 State,  
 8           since June 1, 2001, over 100,000 Americans have  
 9           received discounts from those rebates through the  
 10          “Healthy Maine” program. This program, estab-  
 11          lished as a demonstration project pursuant to a  
 12          waiver from the Secretary of Health and Human  
 13          Services has proven to work. Americans need that  
 14          program replicated in every State, immediately.

15          (5) The Federal and State governments are the  
 16          only agents that, as a practical matter, can play an  
 17          effective role as a market participant on behalf of  
 18          Americans who are uninsured or underinsured.

19 **SEC. 3. STATE PRESCRIPTION DISCOUNT PROGRAM.**

20          (a) IN GENERAL.—Section 1927(a) of the Social Se-  
 21          curity Act (42 U.S.C. 1396r–8(a)) is amended by adding  
 22          at the end the following:

23                 “(7) REQUIREMENTS RELATING TO AGREE-  
 24          MENTS FOR DRUGS PROCURED BY INDIVIDUALS

1       THROUGH STATE PRESCRIPTION DRUG DISCOUNT  
2       PROGRAMS.—

3               “(A) IN GENERAL.—A manufacturer meets  
4       the requirements of this paragraph if the manu-  
5       facturer enters into an agreement with the  
6       State to make rebate payments for drugs cov-  
7       ered by a State prescription drug discount pro-  
8       gram in the same amounts as are paid by the  
9       manufacturer to the State for such drugs under  
10      a rebate agreement described in subsection (b).

11              “(B) STATE PRESCRIPTION DRUG DIS-  
12      COUNT PROGRAM DEFINED.—

13              “(i) IN GENERAL.—In this paragraph,  
14      the term ‘State prescription drug discount  
15      program’ means a State program under  
16      which, with respect to a rebate period, not  
17      less than the amount equal to 95 percent  
18      of all the rebates paid to the State under  
19      agreements entered into under subpara-  
20      graph (A) during such period is provided  
21      to eligible State residents in the form of  
22      discounted prices for the purchase of out-  
23      patient prescription drugs.

24              “(ii) ELIGIBLE STATE RESIDENT.—  
25      For purposes of clause (i), the term ‘eligi-

1           ble State resident’ means an individual  
2           who is a State resident and—

3                   “(I) who is eligible for benefits  
4                   under title XVIII; or

5                   “(II) whose income does not ex-  
6                   ceed 300 percent of the income official  
7                   poverty line (as defined by the Office  
8                   of Management and Budget, and re-  
9                   vised annually in accordance with sec-  
10                  tion 673(2) of the Omnibus Budget  
11                  Reconciliation Act of 1981) applicable  
12                  to a family of the size involved.

13                  “(iii) ADDITIONAL SUBSIDIES.—Noth-  
14                  ing in this subparagraph shall be construed  
15                  as—

16                   “(I) requiring a State to expend  
17                   State funds to carry out a State pre-  
18                   scription drug discount program; or

19                   “(II) prohibiting a State from  
20                   electing to contribute State funds to a  
21                   State prescription drug discount pro-  
22                   gram to provide greater subsidies to  
23                   eligible State residents for outpatient  
24                   prescription drugs covered under the  
25                   program.

1                   “(C) NO OFFSET AGAINST MEDICAL AS-  
 2                   SISTANCE.—Amounts received by a State under  
 3                   an agreement entered into under subparagraph  
 4                   (A) in any quarter shall not be considered to be  
 5                   a reduction in the amount expended under the  
 6                   State plan in the quarter for medical assistance  
 7                   for purposes of section 1903(a)(1).”.

8           (b) CONFORMING AMENDMENT.—The first sentence  
 9 of section 1927(a)(1) of the Social Security Act (42  
 10 U.S.C. 1396r–8(a)(1)) is amended, by striking “and para-  
 11 graph (6)” and inserting “, paragraph (6), and paragraph  
 12 (7)”.

13 **SEC. 4. ENHANCED REBATES FOR STATE MEDICAID PRO-**  
 14 **GRAMS.**

15           Section 1927(b)(1)(B) of the Social Security Act (42  
 16 U.S.C. 1396r–8(b)(1)(B) is amended—

17                   (1) by striking “Amounts” and inserting the  
 18                   following:

19                               “(i) IN GENERAL.—Except as pro-  
 20                               vided in clause (ii) and subsection  
 21                               (a)(7)(C), amounts”; and

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

23                               “(ii) ENHANCED REBATE.—In the  
 24                               case of a State that has a State prescrip-  
 25                               tion drug discount program described in

1 subsection (a)(7) and that has entered into  
2 a rebate agreement described in paragraph  
3 (1) or (4) of subsection (a) that provides  
4 a greater rebate for a covered outpatient  
5 drug than the rebate that would be paid  
6 for the covered outpatient drug under sub-  
7 section (c), then, notwithstanding clause  
8 (i), only the amount equal to  $\frac{1}{2}$  of the dif-  
9 ference between the amount received by  
10 the State in any quarter under such a re-  
11 bate agreement and the amount of the re-  
12 bate that would be paid under subsection  
13 (c) for such covered outpatient drug shall  
14 be considered to be a reduction in the  
15 amount expended under the State plan in  
16 the quarter for medical assistance for pur-  
17 poses of section 1903(a)(1).”.

18 **SEC. 5. EFFECTIVE DATE.**

19 The amendments made by this Act take effect on  
20 January 1, 2004.

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