

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3547

To amend section 340B of the Public Health Service Act to increase the affordability of inpatient drugs for Medicaid and safety net hospitals.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2005

Mrs. EMERSON (for herself, Mr. RUSH, Mr. BERRY, Mr. SIMPSON, Mr. STRICKLAND, and Mr. JONES of North Carolina) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend section 340B of the Public Health Service Act to increase the affordability of inpatient drugs for Medicaid and safety net hospitals.

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 “Safety Net Inpatient  
5 Drug Affordability Act”.

6 **SEC. 2. EXTENSION OF DISCOUNTS TO INPATIENT DRUGS.**

7 (a) IN GENERAL.—Section 340B(b) of the Public  
8 Health Service Act (42 U.S.C. 256b(b)) is amended by  
9 inserting before the period the following: “, except that,

1 notwithstanding the limiting definition set forth in section  
2 1927(k)(3) of the Social Security Act, the terms ‘covered  
3 outpatient drug’ and ‘covered drug’ include any inpatient  
4 or outpatient drug purchased by a hospital described in  
5 subsection (a)(4)(L)”.

6 (b) PAYMENT OF MEDICAID REBATES ON INPATIENT  
7 DRUGS.—Section 340B(c) of such Act (42 U.S.C.  
8 256b(c)) is amended to read as follows:

9 “(c) PAYMENT OF MEDICAID REBATES ON INPA-  
10 TIENT DRUGS.—

11 “(1) IN GENERAL.—For the cost reporting pe-  
12 riod covered by the most recently filed Medicare cost  
13 report, a hospital described in subsection (a)(4)(L)  
14 shall provide to each State with an approved State  
15 plan under title XIX of such Act—

16 “(A) a rebate on the estimated annual  
17 costs of single source and innovator multiple  
18 source drugs provided to Medicaid recipients for  
19 inpatient use; and

20 “(B) a rebate on the estimated annual  
21 costs of noninnovator multiple source drugs  
22 provided to Medicaid recipients for inpatient  
23 use.

24 “(2) CALCULATIONS OF REBATES.—

1           “(A) SINGLE SOURCE AND INNOVATOR  
2 MULTIPLE SOURCE DRUGS.—For purposes of  
3 paragraph (1)(A)—

4           “(i) the rebate under such paragraph  
5 shall be calculated by multiplying the esti-  
6 mated annual costs of single source and in-  
7 novator multiple source drugs provided to  
8 Medicaid recipients for inpatient use by  
9 the minimum rebate percentage described  
10 in section 1927(c)(1)(B) of the Social Se-  
11 curity Act;

12           “(ii) the estimated annual costs of  
13 single source drugs and innovator multiple  
14 source drugs provided to Medicaid recipi-  
15 ents for inpatient use under clause (i) shall  
16 be equal to the product of—

17           “(I) the hospital’s actual acquisi-  
18 tion costs of all drugs purchased dur-  
19 ing the cost reporting period for inpa-  
20 tient use;

21           “(II) the Medicaid inpatient drug  
22 charges as reported on the hospital’s  
23 most recently filed Medicare cost re-  
24 port divided by total inpatient drug

1 charges reported on the cost report;  
2 and

3 “(III) the percent of the hos-  
4 pital’s annual inpatient drug costs de-  
5 scribed in subclause (I) arising out of  
6 the purchase of single source and in-  
7 novator multiple source drugs; and

8 “(iii) the terms ‘single source drug’  
9 and ‘innovator multiple source drug’ have  
10 the meanings given such terms in section  
11 1927(k)(7) of the Social Security Act.

12 “(B) NONINNOVATOR MULTIPLE SOURCE  
13 DRUGS.—For purposes of subparagraph (1)  
14 (B)—

15 “(i) the rebate under such paragraph  
16 shall be calculated by multiplying the esti-  
17 mated annual costs of noninnovator mul-  
18 tiple source drugs provided to Medicaid re-  
19 cipients for inpatient use by the applicable  
20 percentage as defined in section  
21 1927(e)(3)(B) of the Social Security Act;

22 “(ii) the estimated annual costs of  
23 noninnovator multiple source drugs pro-  
24 vided to Medicaid recipients for inpatient  
25 use shall be equal to the product of—

1                   “(I) the hospital’s actual acquisi-  
2                   tion cost of all drugs purchased dur-  
3                   ing the cost reporting period for inpa-  
4                   tient use;

5                   “(II) the Medicaid inpatient drug  
6                   charges as reported on the hospital’s  
7                   most recently filed Medicare cost re-  
8                   port divided by total inpatient drug  
9                   charges reported on the cost report;  
10                  and

11                  “(III) the percent of the hos-  
12                  pital’s annual inpatient drug costs de-  
13                  scribed in subclause (I) arising out of  
14                  the purchase of noninnovator multiple  
15                  source drugs; and

16                  “(iii) the term ‘noninnovator multiple  
17                  source drug’ has the meaning given such  
18                  term in section 1927(k)(7) of the Social  
19                  Security Act.

20                  “(3) PAYMENT DEADLINE.—The rebates pro-  
21                  vided by a hospital under paragraph (1) shall be  
22                  paid within 90 days of the filing of the hospital’s  
23                  most recently filed Medicare cost report.

24                  “(4) OFFSET AGAINST MEDICAL ASSISTANCE.—  
25                  Amounts received by a State under this subsection

1 in any quarter shall be considered to be a reduction  
2 in the amount expended under the State plan in the  
3 quarter for medical assistance for purposes of sec-  
4 tion 1903(a)(1) of the Social Security Act.”.

5 (c) CLARIFICATION THAT GROUP PURCHASING PRO-  
6 HIBITION FOR CERTAIN HOSPITALS IS NOT APPLICABLE  
7 TO INPATIENT DRUGS.—Section 340B(a)(4)(L)(iii) of  
8 such Act (42 U.S.C. 256b(a)(4)(L)(iii)) is amended by in-  
9 serting “(not including such drugs purchased for inpatient  
10 use)” after “covered outpatient drugs”.

11 **SEC. 3. PROVIDING ACCESS TO DISCOUNTED DRUG PRICES**  
12 **FOR CRITICAL ACCESS HOSPITALS.**

13 (a) IN GENERAL.—Section 340B of the Public  
14 Health Service Act (42 U.S.C. 256b) is amended—

15 (1) in subsection (a)(4), by adding at the end  
16 the following:

17 “(M) An entity that—

18 “(i) is a critical access hospital (as de-  
19 termined under section 1820(c)(2) of the  
20 Social Security Act); and

21 “(ii) does not obtain covered out-  
22 patient drugs through a group purchasing  
23 organization or other group purchasing ar-  
24 rangement (not including such drugs pur-  
25 chased for inpatient use).”;

1           (2) in subsection (b), as amended by section  
2           2(a), by inserting “or subsection (a)(4)(M)” after  
3           “subsection (a)(4)(L)”; and

4           (3) in subsection (c)(1), as added by inserting  
5           “or subsection (a)(4)(M)” after “subsection  
6           (a)(4)(L)”.

7           (b) EXCLUSION FROM MEDICAID BEST PRICE CAL-  
8           CULATIONS.—Section 1927(c)(1)(C)(i)(I) of the Social Se-  
9           curity Act (42 U.S.C. 1396r–8(c)(1)(C)(i)(I)) is amended  
10          by inserting “and to critical access hospitals described in  
11          section 340B(a)(4)(M) of such Act” after “Public Health  
12          Service Act”.

13          (c) EFFECTIVE DATE.—The amendments made by  
14          this section shall apply to drugs purchased on or after  
15          January 1, 2006.

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