

109TH CONGRESS
1ST SESSION

S. 1840

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 2005

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

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,
10 notwithstanding the limiting definition set forth in section

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

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

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

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

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

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

23 “(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(c)(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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