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110TH CONGRESS
1ST SESSION

H. R. 3700

To amend title XIX of the Social Security Act to ensure that individuals eligible for medical assistance under the Medicaid Program continue to have access to prescription drugs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2007

Mr. PALLONE introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To amend title XIX of the Social Security Act to ensure that individuals eligible for medical assistance under the Medicaid Program continue to have access to prescription drugs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fair Medicaid Drug Payment Act of 2007''.

SEC. 2. PROVIDING ADEQUATE PHARMACY REIMBURSEMENT UNDER MEDICAID.

(a) PHARMACY REIMBURSEMENT LIMITS.—

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

(A) in paragraph (4), by striking ''(or, effective January 1, 2007, two or more)''; and

(B) by striking paragraph (5) and inserting the following:

''(5) USE OF AMP IN UPPER PAYMENT LIMITS.—The Secretary shall calculate the Federal upper reimbursement limit established under paragraph (4) as no less than 300 percent of the weighted average (determined on the basis of utilization) of the most recent average manufacturer prices for pharmaceutically and therapeutically equivalent multiple source drug products that are available for purchase by retail community pharmacies on a nationwide basis. The Secretary shall implement a smoothing process for average manufacturer prices to ensure that Federal upper reimbursement limits do not vary significantly from month to month as a result of rebates, discounts, and other pricing practices. Such process shall be similar to the smoothing process used in determining the average sales price of a drug or biological under section 1847A.''.

(2) DEFINITION OF AMP.—Section 1927(k)(1) of such Act (42 U.S.C. 1396r–8(k)(1)) is amended—

(A) in subparagraph (A), by striking ''by'' and all that follows through the period and inserting ''by—

''(i) wholesalers for drugs distributed to retail community pharmacies; and

''(ii) retail community pharmacies that purchase drugs directly from the manufacturer.''; and

(B) in subparagraph (B)—

(i) in the subparagraph heading, by striking ''EXTENDED TO WHOLESALERS'' and inserting ''AND OTHER PAYMENTS''; and

(ii) by striking ''regard to'' and all that follows through the period and inserting ''regard to—

''(i) customary prompt pay discounts extended to wholesalers;

''(ii) bona fide service fees paid by manufacturers to wholesalers or retail community pharmacies, including (but not limited to) distribution service fees, inven-

tory management fees, product stocking allowances, and fees associated with administrative services agreements and patient care programs (such as medication compliance programs and patient education programs);

''(iii) reimbursement by manufacturers for recalled, damaged, expired, or otherwise unsalable returned goods, including (but not limited to) reimbursement for the cost of the goods and any reimbursement of costs associated with return goods handling and processing, reverse logistics, and drug destruction;

''(iv) payments received from, and rebates or discounts provided to, pharmacy benefit managers, managed care organizations, health maintenance organizations, insurers, hospitals, clinics, mail order pharmacies, long term care providers, manufacturers, or any other entity that does not conduct business primarily as a wholesaler or a retail community pharmacy;

''(v) any payments made by manufacturers that are associated with drugs dis-

pensed by retail community pharmacies; and

''(vi) any other discounts, rebates, payments, or other financial transactions that are not received by, paid by, or passed through to, retail community pharmacies.''.

(3) DEFINITION OF MULTIPLE SOURCE DRUG.—Section 1927(k)(7)(A)(i) of such Act (42 U.S.C. 1396r–8(k)(7)(A)(i)) is amended—

(A) in the matter preceding subclause (I), by striking ''there at least 1 other drug product'' and inserting ''there are at least 2 other drug products''; and

(B) in subclauses (I), (II), and (III), by striking ''is'' each place it appears and inserting ''are''.

(4) DEFINITIONS OF RETAIL COMMUNITY PHARMACY; WHOLESALER.—Section 1927(k) of such Act (42 U.S.C. 1396r–8(k)) is amended by adding at the end the following new paragraphs:

''(10) RETAIL COMMUNITY PHARMACY.—The term 'retail community pharmacy' means a traditional independent pharmacy, traditional chain pharmacy, a supermarket pharmacy, or a mass merchandiser pharmacy that is licensed as a pharmacy by a

State and that dispenses medications to the general public at retail prices. Such term does not include a pharmacy that dispenses prescription medications to patients primarily through the mail, nursing home pharmacies, long-term care facility pharmacies, hospital pharmacies, clinics, charitable or not-for-profit pharmacies, government pharmacies, or pharmacy benefit managers.

''(11) WHOLESALER.—The term 'wholesaler' means a drug wholesaler that is licensed as a wholesaler by a State and that is engaged in wholesale distribution of prescription drugs to retail community pharmacies, including (but not limited to) manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses (including manufacturer's and distributor's warehouses, chain drug warehouses, and wholesale drug warehouses) independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions.''.

(b) REQUIREMENTS OF PRIOR AUTHORIZATION PROGRAMS.—Section 1927(d)(5) of such Act (42 U.S.C. 1396r–8(d)(5)) is amended—

(1) in the matter preceding subparagraph (A), by striking ''of the drug before its dispensing for

any medically accepted indication (as defined in subsection (k)(6)) only if the system providing for such approval'' and inserting ''by the State of the use of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6)). A State plan under this title shall, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, subject to prior authorization all covered outpatient drug products that are innovator multiple source drugs if such drug products are more expensive than other biologically and therapeutically equivalent drug products that are available for purchase in that State by retail community pharmacies. The system providing for such approval shall'';

(2) in each of subparagraphs (A) and (B), by striking ''provides'' and inserting ''provide'';

(3) by redesignating subparagraphs (A) and (B) (as so amended) as subparagraphs (C) and (D), respectively; and

(4) by inserting before subparagraph (C) (as so redesignated), the following new subparagraphs:

''(A) require the prescriber to request prior authorization by substantiating the medical ne-

cessity of dispensing the covered outpatient drug as opposed to dispensing a substitute covered outpatient drug;

''(B) require that a prior authorization number assigned to the approved request by the State be included on the order for the covered outpatient drug issued by the prescriber or relayed to the dispensing pharmacist by the prescriber if the prescription is orally transmitted;''.

(c) DISCLOSURE OF PRICE INFORMATION TO THE PUBLIC.—Section 1927(b)(3) of such Act (42 U.S.C. 1396r–8(b)(3)) is amended—

(1) in subparagraph (A)—

(A) in clause (i), in the matter preceding subclause (I), by inserting ''month of a'' after ''each''; and

(B) in the last sentence, by striking ''and shall,'' and all that follows through the period; and

(2) in subparagraph (D)—

(A) in clause (iii), by inserting ''and'' after the comma;

(B) in clause (iv), by striking '', and'' and inserting a period; and

(C) by striking clause (v).

(d) TECHNICAL AMENDMENT.—Section 1927(d)(1) of such Act (42 U.S.C. 1396r–8(d)(1)) is amended in the paragraph heading by inserting ''AND MANDATORY'' after ''PERMISSIBLE''.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect as if included in the enactment of the Deficit Reduction Act of 2005 (Public Law 109–171).

(2) EXCEPTION.—The amendments made by subsection (b) shall take effect on the date that is 180 days after the date of enactment of this Act.

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