

111TH CONGRESS  
1ST SESSION

# H. R. 4199

To ensure patient choice in pharmacies by regulating pharmacy benefit managers and to establish a program to improve access to prescription drugs for certain individuals.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 3, 2009

Mr. BUTTERFIELD (for himself, Mr. JONES, Mr. KISSELL, Mr. MCINTYRE, Mr. COBLE, Mr. MILLER of North Carolina, Mr. ALEXANDER, and Mrs. McMORRIS RODGERS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To ensure patient choice in pharmacies by regulating pharmacy benefit managers and to establish a program to improve access to prescription drugs for certain individuals.

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 “Patient Health and  
5       Real Medication Access Cost Savings Act of 2009” or the  
6       “PHARMACY Bill”.

1 **SEC. 2. PATIENT CHOICE.**

2 A consumer shall have the right to choose to purchase  
3 prescription drugs from any domestic pharmacy that  
4 meets all applicable Federal and State licence and permit  
5 requirements.

6 **SEC. 3. REGULATION OF PHARMACY BENEFIT MANAGERS.**

7 Not later than January 1, 2011, the Secretary of  
8 Health and Human Services shall issue regulations to en-  
9 sure the following:

10 (1) ACCESS TO AND CHOICE OF PHARMACY.—

11 (A) INCENTIVES.—A pharmacy benefit  
12 manager (referred to in this section as a  
13 “PBM”) may not provide incentives (including  
14 variations in premiums, deductibles, co-pay-  
15 ments, or co-insurance rates) to enrollees of  
16 pharmacy benefit plans administered by such  
17 PBM for the purpose of encouraging such en-  
18 rollees to use certain pharmacies (including  
19 mail order pharmacies, speciality drug phar-  
20 macies, or other entities) unless the PBM offers  
21 the same incentives for all pharmacies in the  
22 network for such plan.

23 (B) MANDATES.—A PBM may not refer,  
24 coerce, or mandate that an enrollee of a phar-  
25 macy benefit plan administered by such PBM

1 use a specific mail order pharmacy, specialty  
2 drug pharmacy, or other entity—

3 (i) if the PBM has an ownership in-  
4 terest in a such pharmacy or entity; or

5 (ii) if the pharmacy or entity has an  
6 ownership interest in such PBM.

7 (C) PHARMACY NETWORKS.—A PBM or  
8 pharmacy benefit plan sponsor may not exclude  
9 a pharmacy from a pharmacy network if—

10 (i) the pharmacy agrees to the terms  
11 of the network contract;

12 (ii) the pharmacy meets all applicable  
13 Federal and State licence and permit re-  
14 quirements; and

15 (iii) the owners of the pharmacy have  
16 not been convicted of a Federal crime re-  
17 lated to owning or managing a pharmacy.

18 (2) ENCOURAGE GENERIC DRUGS.—

19 (A) COST TO CONSUMERS.—

20 (i) IN GENERAL.—Subject to clause  
21 (iii), a PBM shall ensure that enrollees of  
22 pharmacy benefit plans administered by  
23 such a PBM pay a copayment of 20 per-  
24 cent for brand name drugs, not to exceed

1 a maximum amount of \$150 per prescrip-  
2 tion.

3 (ii) ANNUAL UPDATES TO AMOUNT.—

4 The maximum amount under clause (i)  
5 shall be updated annually for inflation  
6 based on the consumer price index.

7 (iii) EXCEPTION FOR STATE MEDICAID  
8 PROGRAMS.—Clause (i) shall not apply to  
9 a PBM with respect to enrollees of a State  
10 Medicaid program that limits or prohibits  
11 copayments for prescription drugs.

12 (B) PAYMENTS TO PHARMACIES.—

13 (i) IN GENERAL.—With respect to a  
14 pharmacy benefit plan that is at least par-  
15 tially funded with Federal funds, the PBM  
16 administering such plan shall reimburse a  
17 pharmacy that is in the network for such  
18 a plan at least—

19 (I) 107 percent of the Wholesale  
20 Acquisition Cost plus a minimum pro-  
21 fessional dispensing fee of \$4.25 for a  
22 prescription for a brand-name drug;

23 (II) 190 percent of the Federal  
24 Upper Limit plus a minimum profes-

sional dispensing fee of \$8.50 for a prescription for a generic drug; and

(III) a professional service fee for any additional pharmacy services provided by the pharmacy, in an amount set by the Secretary of Health and Human Services.

(ii) ADJUSTMENT FOR INFLATION.—

The professional dispensing fees under clause (i) shall be adjusted annually for inflation, based on the consumer price index.

(3) PAYMENTS AND CHARGES BETWEEN PBMS

AND PHARMACY BENEFIT PLAN SPONSORS.—

(A) PAYMENTS.—A PBM shall be reimbursed by a pharmacy benefit plan sponsor for adjudicating and processing claims in behalf of such sponsor at a rate that is determined by such sponsor.

(B) CHARGES TO PHARMACY BENEFIT PLAN SPONSORS FOR DRUGS DISPENSED TO PLAN ENROLLEES.—The amount that a PBM charges a pharmacy benefit plan sponsor for a drug that is dispensed to enrollee of a pharmacy benefit plan administered by such PBM may not be greater than the amount that the

1 PBM paid the pharmacy for such drug (includ-  
2 ing any associated professional dispensing fee).

3 (4) TREATMENT OF DRUG MANUFACTURER RE-  
4 BATES.—

5 (A) NO REBATES TO PBMS.—A manufac-  
6 turer of prescription drugs—

7 (i) shall pay all rebates, as defined in  
8 section 5(6), directly to the pharmacy ben-  
9 efit plan sponsor; and

10 (ii) shall not pay such rebates to a  
11 PBM.

12 (B) NEGOTIATION ALLOWED.—A PBM  
13 may negotiate rebate amounts with a manufac-  
14 turer of prescription drugs on behalf of a phar-  
15 macy benefit plan sponsor.

16 (5) PROVISION OF COST INFORMATION TO PHY-  
17 SICIANS.—In the case that the premium, deductible,  
18 co-payments, co-insurance, or other insurance-re-  
19 lated charge under a pharmacy benefit plan is un-  
20 derwritten, in whole or in part, by a Federal, State,  
21 or local government, the pharmacy benefit plan  
22 sponsor shall provide a list of the wholesale acquisi-  
23 tion costs of the top 500 most frequently prescribed  
24 drugs to physicians who are licenced to prescribe

1 drugs and who provide treatment to enrollees in  
2 such a plan.

3 (6) TREATMENT OF PHARMACISTS AS PROFES-  
4 SIONAL HEALTH CARE PROVIDERS.—Section  
5 1861(s)(2) of the Social Security Act (42 U.S.C.  
6 1395x(s)(2)) is amended—

7 (A) by striking “and” at the end of sub-  
8 paragraph (DD);

9 (B) by adding “and” at the end of sub-  
10 paragraph (EE); and

11 (C) by inserting after subparagraph (EE),  
12 the following new subparagraph:

13 “(FF) pharmacist services;”.

14 **SEC. 4. PHARMACEUTICAL ACCESS PROGRAM.**

15 (a) ESTABLISHMENT.—Not later than January 1,  
16 2011, the Secretary of Health and Human Services shall  
17 establish a pharmaceutical access program to provide af-  
18 fordable access to prescription drugs to individuals who  
19 receive drug benefits under Federal programs (except for  
20 the Medicaid program under title XIX of the Social Secu-  
21 rity Act).

22 (b) ELIGIBILITY.—Any individual in a State shall be  
23 eligible to enroll in the program under subsection (a).

24 (c) FEES.—

1           (1) IN GENERAL.—A pharmacy that dispenses  
2       prescription drugs in the United States shall remit  
3       to the Secretary of Health and Human Services—

4           (A) \$0.50 for each prescription dispensed  
5       by such pharmacy for a brand name drug; and

6           (B) \$1.00 for each prescription dispensed  
7       by such pharmacy for a generic drug.

8           (2) TREATMENT FOR INFLATION.—The fees  
9       under paragraph (1) shall be adjusted annually for  
10      inflation, based on the consumer price index.

11          (3) TREATMENT OF MEDICAID PROGRAMS.—  
12      The rule under paragraph (1) shall not apply to  
13      drugs dispensed under a State Medicaid program  
14      under title XIX of the Social Security Act.

15          (4) INCREASE IN PROFESSIONAL DISPENSING  
16      FEE FOR PRIVATE PLANS.—The professional dis-  
17      pensing fee paid to pharmacies by a pharmacy ben-  
18      efit plan that is not funded by any Federal funds  
19      shall be increased by such plan sponsor—

20           (A) by \$0.50 for each brand name pre-  
21      scription; and

22           (B) by \$1.00 for each generic prescription.

23          (d) USE OF FUNDS.—Funds generated under sub-  
24      section (c) shall be used solely to provide affordable access



1 to prescription drugs to low-income individuals who have  
2 enrolled in the program under subsection (a).

3 **SEC. 5. DEFINITIONS.**

4 For purposes of this Act:

5 (1) BRAND NAME DRUGS.—The term “brand  
6 name drug” means a prescription drug that is under  
7 patent by the drug’s original manufacturer and is  
8 protected from competition by other manufacturers  
9 of prescription drugs.

10 (2) GENERIC DRUG.—The term “generic drug”  
11 means a prescription drug that has lost patient pro-  
12 tection provided to a single manufacturer or multiple  
13 manufacturers and is widely available from multiple  
14 manufacturers.

15 (3) PHARMACY BENEFIT PLAN.—The term  
16 “pharmacy benefit plan” means an insurance plan  
17 or insurance coverage that provides benefits for pre-  
18 scription drugs, including a group health plan (as  
19 such term is defined in section 733(a) of the Patient  
20 Health and Real Medication Access Cost Savings  
21 Act of 2009 (29 U.S.C. 1191b(a))) that provides  
22 prescription drug benefits.

23 (4) PROFESSIONAL DISPENSING FEE.—The  
24 term “professional dispensing fee” means the fee  
25 paid for the dispensing of a drug by the pharmacist

1 and excludes any reimbursement for the cost of the  
2 drug.

3 (5) PROFESSIONAL SERVICE FEE.—The term  
4 “professional service fee” means a fee paid to a  
5 pharmacy for professional services preformed by a  
6 pharmacist, excluding dispensing drugs and any re-  
7 imbursement for the cost of the drug. Such term  
8 may include medication reviews, injections, and cho-  
9 lesterol checks.

10 (6) REBATE.—The term “rebate” means any  
11 item of value, including monetary value, that is dis-  
12 tributed by the manufacturer conditional upon the  
13 receipt of a payment for drugs produced by such  
14 manufacturer.

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