

111TH CONGRESS  
1ST SESSION

# H. R. 904

To amend title XIX of the Social Security Act to reduce the costs of prescription drugs for enrollees of Medicaid managed care organizations by extending the discounts offered under fee-for-service Medicaid to such organizations.

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2009

Mr. STUPAK (for himself and Mr. RYAN of Ohio) introduced the following bill;  
which was referred to the Committee on Energy and Commerce

---

## A BILL

To amend title XIX of the Social Security Act to reduce the costs of prescription drugs for enrollees of Medicaid managed care organizations by extending the discounts offered under fee-for-service Medicaid to such organizations.

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 “Medicaid Prescription  
5 Drug Rebate Equalization Act of 2009”.

1 **SEC. 2. EXTENSION OF PRESCRIPTION DRUG DISCOUNTS**  
2 **TO ENROLLEES OF MEDICAID MANAGED**  
3 **CARE ORGANIZATIONS.**

4 (a) IN GENERAL.—Section 1903(m)(2)(A) of the So-  
5 cial Security Act (42 U.S.C. 1396b(m)(2)(A)) is amend-  
6 ed—

7 (1) in clause (xi), by striking “and” at the end;

8 (2) in clause (xii), by striking the period at the  
9 end and inserting “; and”; and

10 (3) by adding at the end the following:

11 “(xiii) such contract provides that (I)  
12 payment for covered outpatient drugs dis-  
13 pensed to individuals eligible for medical  
14 assistance who are enrolled with the entity  
15 shall be subject to the same rebate re-  
16 quired by the agreement entered into  
17 under section 1927 as the State is subject  
18 to, and (II) capitation rates paid to the en-  
19 tity shall be based on actual cost experi-  
20 ence related to rebates and subject to the  
21 Federal regulations requiring actuarially  
22 sound rates.”.

23 (b) CONFORMING AMENDMENTS.—Section 1927 of  
24 the Social Security Act (42 U.S.C. 1396r–8) is amended—

25 (1) in subsection (d)—

1 (A) in paragraph (1), by adding at the end  
2 the following:

3 “(C) Notwithstanding subparagraphs (A)  
4 and (B)—

5 “(i) a Medicaid managed care organi-  
6 zation with a contract under section  
7 1903(m) may exclude or otherwise restrict  
8 coverage of a covered outpatient drug on  
9 the basis of policies or practices of the or-  
10 ganization, such as those affecting utiliza-  
11 tion management, formulary adherence,  
12 and cost sharing or dispute resolution, in  
13 lieu of any State policies or practices relat-  
14 ing to the exclusion or restriction of cov-  
15 erage of such drugs, provided, however,  
16 that any such exclusions and restrictions of  
17 coverage shall be subject to any contrac-  
18 tual requirements and oversight by the  
19 State. As contained in the Medicaid man-  
20 aged care organization’s contract with the  
21 State, the State shall maintain approval  
22 authority over the formulary used by the  
23 Medicaid managed care organization; and

24 “(ii) nothing in this section or para-  
25 graph (2)(A)(xiii) of section 1903(m) shall

1 be construed as requiring a Medicaid man-  
2 aged care organization with a contract  
3 under such section to maintain the same  
4 such policies and practices as those estab-  
5 lished by the State for purposes of individ-  
6 uals who receive medical assistance for cov-  
7 ered outpatient drugs on a fee-for-service  
8 basis.”; and

9 (B) in paragraph (4), by inserting after  
10 subparagraph (E) the following:

11 “(F) Notwithstanding the preceding sub-  
12 paragraphs of this paragraph, any formulary  
13 established by a Medicaid managed care organi-  
14 zation with a contract under section 1903(m)  
15 may be based on the positive inclusion of drugs  
16 selected by a formulary committee consisting of  
17 physicians, pharmacists, and other individuals  
18 with appropriate clinical experience as long as  
19 drugs excluded from the formulary are available  
20 through prior authorization, as described in  
21 paragraph (5).”; and

22 (2) in subsection (j), by striking paragraph (1)  
23 and inserting the following:

1 “(1) Covered outpatients drugs are not subject  
2 to the requirements of this section if such drugs  
3 are—

4 “(A) dispensed by health maintenance or-  
5 ganizations, including Medicaid managed care  
6 organizations that contract under section  
7 1903(m); and

8 “(B) subject to discounts under section  
9 340B of the Public Health Service Act.”.

10 (c) REPORTING.—On a quarterly basis, the States  
11 shall report to the Department of Health and Human  
12 Services the total amount of rebates in dollars and volume  
13 received from pharmacy manufacturers for drugs provided  
14 to individuals enrolled with Medicaid managed care orga-  
15 nizations that contract under section 1903(m) of the So-  
16 cial Security Act (42 U.S.C. 1396b(m)) as a result of this  
17 section for both brand-name and generic drugs. This re-  
18 port shall be made publicly available.

19 (d) EFFECTIVE DATE.—The amendments made by  
20 this section take effect on the date of the enactment of  
21 this Act and apply to rebate agreements entered into or  
22 renewed under section 1927 of the Social Security Act (42  
23 U.S.C. 1396r–8) on or after such date.

○