

111TH CONGRESS  
1ST SESSION

# S. 547

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 SENATE OF THE UNITED STATES

MARCH 9, 2009

Mr. BINGAMAN (for himself, Mr. CASEY, Ms. STABENOW, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Finance

---

## 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 “Drug Rebate Equali-  
5 zation 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) (42  
 5 U.S.C. 1396b(m)(2)(A)) is amended—

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

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

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

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

22 (b) CONFORMING AMENDMENTS.—Section 1927 (42  
 23 U.S.C. 1396r–8) is amended—

24 (1) in subsection (d)—

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

1           “(C) Notwithstanding the subparagraphs  
2           (A) and (B)—

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

23                   “(ii) nothing in this section or para-  
24                   graph (2)(A)(xiii) of section 1903(m) shall  
25                   be construed as requiring a Medicaid man-

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

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

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

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

23           “(1) Covered outpatients drugs are not subject  
24           to the requirements of this section if such drugs  
25           are—

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

5           “(B) subject to discounts under section  
6           340B of the Public Health Service Act.”.

7           (c) REPORTS.—Each State with a contract with a  
8           Medicaid managed care organization under section  
9           1903(m) of the Social Security Act (42 U.S.C. 1396b(m))  
10          shall report to the Secretary on a quarterly basis the total  
11          amount of rebates in dollars and volume received from  
12          manufacturers (as defined in section 1927(k)(5) of such  
13          Act (42 U.S.C. 1396r–8(k)(5)) for drugs provided to indi-  
14          viduals enrolled with such an organization as a result of  
15          the amendments made by this section for both brand-name  
16          and generic drugs. The Secretary shall review the reports  
17          submitted by States under this subsection and, after such  
18          review, make publically available the aggregate data con-  
19          tained in such reports.

20          (d) EFFECTIVE DATE.—This section and the amend-  
21          ments made by this section take effect on the date of en-  
22          actment of this Act and apply to rebate agreements en-  
23          tered into or renewed under section 1927 of the Social  
24          Security Act (42 U.S.C. 1396r–8) on or after such date.

○