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117TH CONGRESS
1ST SESSION

# H. R. 6101

To amend title XIX of the Social Security Act to improve transparency and prevent the use of abusive spread pricing and related practices in the Medicaid program.

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IN THE HOUSE OF REPRESENTATIVES

DECEMBER 1, 2021

Mr. CARTER of Georgia (for himself and Mr. VICENTE GONZALEZ of Texas) 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 improve transparency and prevent the use of abusive spread pricing and related practices in the Medicaid program.

*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 ''Drug Price Transparency in Medicaid Act of 2021''.

**SEC. 2. IMPROVING TRANSPARENCY AND PREVENTING THE USE OF ABUSIVE SPREAD PRICING AND RELATED PRACTICES IN MEDICAID.**

(a) PASS-THROUGH PRICING REQUIRED.—

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

''(6) PASS-THROUGH PRICING REQUIRED.—A contract between the State and a pharmacy benefit manager (referred to in this paragraph as a 'PBM'), or a contract between the State and a managed care entity or other specified entity (as such terms are defined in section 1903(m)(9)(D)) that includes provisions making the entity responsible for coverage of covered outpatient drugs dispensed to individuals enrolled with the entity, shall require that payment for such drugs and related administrative services (as applicable), including payments made by a PBM on behalf of the State or entity, is based on a pass-through pricing model under which—

''(A) any payment made by the entity or the PBM (as applicable) for such a drug—

''(i) is limited to—

''(I) ingredient cost; and

''(II) a professional dispensing fee that is not less than the professional dispensing fee that the State plan or waiver would pay if the plan

or waiver was making the payment directly;

''(ii) is passed through in its entirety by the entity or PBM to the pharmacy or provider that dispenses the drug; and

''(iii) is made in a manner that is consistent with section 1902(a)(30)(A) and sections 447.512, 447.514, and 447.518 of title 42, Code of Federal Regulations (or any successor regulation) as if such requirements applied directly to the entity or the PBM, except that any payment by the entity or the PBM (as applicable) for the ingredient cost of a covered outpatient drug dispensed by providers and pharmacies referenced in clauses (i) or (ii) of section 447.518(a)(1) of title 42, Code of Federal Regulations (or any successor regulation) shall be the same as the payment amount for the ingredient cost when dispensed by providers and pharmacies not referenced in such clauses, and in no case shall payment for the ingredient cost of a covered outpatient drug be based on the actual acquisition cost of a drug dispensed

by providers and pharmacies referenced in such clauses or take into account a drug's status as a drug purchased at a discounted price by a provider or pharmacy referenced in such clauses;

''(B) payment to the entity or the PBM (as applicable) for administrative services performed by the entity or PBM is limited to a reasonable administrative fee that covers the reasonable cost of providing such services;

''(C) the entity or the PBM (as applicable) shall make available to the State, and the Secretary upon request, all costs and payments related to covered outpatient drugs and accompanying administrative services incurred, received, or made by the entity or the PBM, including ingredient costs, professional dispensing fees, administrative fees, post-sale and post-invoice fees, discounts, or related adjustments such as direct and indirect remuneration fees, and any and all other remuneration; and

''(D) any form of spread pricing whereby any amount charged or claimed by the entity or the PBM (as applicable) is in excess of the amount paid to the pharmacies on behalf of the

entity, including any post-sale or post-invoice fees, discounts, or related adjustments such as direct and indirect remuneration fees or assessments (after allowing for a reasonable administrative fee as described in subparagraph (B)) is not allowable for purposes of claiming Federal matching payments under this title.

''(7) PROTECTION AGAINST MANDATES RELATING TO USE OF 340B DRUGS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, no State, Medicaid managed care organization (as defined in section 1903(m)(1)(A)), or pharmacy benefit manager may prohibit a covered entity under section 340B of the Public Health Service Act, or a pharmacy under contract with a covered entity to dispense drugs on behalf of the covered entity, from dispensing covered outpatient drugs purchased under such section to individuals receiving benefits under this title and from receiving payment in accordance with this section, or require that such covered entity or pharmacy dispense covered outpatient drugs purchased under section 340B to such individuals.

''(B) NOTIFICATION.—The Secretary shall notify States that States may not prohibit a provider under this title that is a covered entity under section 340B of the Public Health Services Act, or a pharmacy under contract with a covered entity, from submitting claims for reimbursement for drugs purchased under such section that are dispensed to individuals receiving benefits under this title and may not require such provider to dispense covered outpatient drugs purchased under such section to such individuals.''.

(2) CONFORMING AMENDMENT.—Section 1903(m)(2)(A)(xiii) of such Act (42 U.S.C. 1396b(m)(2)(A)(xiii)) is amended—

(A) by striking ''and (III)'' and inserting ''(III)'';

(B) by inserting before the period at the end the following: '', and (IV) pharmacy benefit management services provided by the entity, or provided by a pharmacy benefit manager on behalf of the entity under a contract or other arrangement between the entity and the pharmacy benefit manager, shall comply with the requirements of section 1927(e)(6)''; and

(C) by moving the left margin 2 ems to the left.

(3) EFFECTIVE DATE.—The amendments made by this subsection apply to contracts between States and managed care entities, other specified entities, or pharmacy benefits managers that are entered into or renewed on or after the date that is 18 months after the date of enactment of this Act.

(b) ENSURING ACCURATE PAYMENTS TO PHARMACIES UNDER MEDICAID.—

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

(A) by striking ''and'' after the semicolon at the end of paragraph (1)(A)(i) and all that precedes it through ''(1)'' and inserting the following:

''(1) DETERMINING PHARMACY ACTUAL ACQUISITION COSTS.—The Secretary shall conduct a survey of retail community pharmacy drug prices to determine the national average drug acquisition cost as follows:

''(A) USE OF VENDOR.—The Secretary may contract services for—

''(i) with respect to retail community pharmacies, the determination of retail

survey prices of the national average drug acquisition cost for covered outpatient drugs based on a monthly survey of such pharmacies, net of all discounts and rebates (to the extent any information with respect to such discounts and rebates is available); and'';

(B) by adding at the end of paragraph (1) the following:

''(F) SURVEY REPORTING.—In order to meet the requirement of section 1902(a)(54), a State shall require that any retail community pharmacy in the State that receives any payment, reimbursement, administrative fee, discount, or rebate related to the dispensing of covered outpatient drugs to individuals receiving benefits under this title, regardless of whether such payment, fee, discount, or rebate is received from the State or a managed care entity directly or from a pharmacy benefit manager or another entity that has a contract with the State or a managed care entity, shall respond to surveys of retail prices conducted under this subsection.

''(G) SURVEY INFORMATION.—Information on retail community actual acquisition prices obtained under this paragraph shall be made publicly available and shall include at least the following:

''(i) The monthly response rate of the survey including a list of pharmacies not in compliance with subparagraph (F).

''(ii) The sampling frame and number of pharmacies sampled monthly.

''(iii) Characteristics of reporting pharmacies, including type (such as independent or chain), geographic or regional location, and dispensing volume.

''(iv) Reporting of a separate national average drug acquisition cost for each drug for independent retail pharmacies and chain pharmacies.

''(v) Information on price concessions including on and off invoice discounts, rebates, and other price concessions to the extent that such information is available during the survey period.

''(vi) Information on average professional dispensing fees paid.

"(H) REPORT ON SPECIALTY PHARMACIES.—

"(i) IN GENERAL.—Not later than 1 year after the effective date of this subparagraph, the Secretary shall submit a report to Congress examining specialty drug coverage and reimbursement under this title.

"(ii) CONTENT OF REPORT.—Such report shall include a description of how State Medicaid programs define specialty drugs, how much State Medicaid programs pay for specialty drugs, how States and managed care plans determine payment for specialty drugs, the settings in which specialty drugs are dispensed (such as retail community pharmacies or specialty pharmacies), whether acquisition costs for specialty drugs are captured in the national average drug acquisition cost survey, and recommendations as to whether specialty pharmacies should be included in the survey of retail prices to ensure national average drug acquisition costs capture drugs

sold at specialty pharmacies and how such specialty pharmacies should be defined.'';

(C) in paragraph (2)—

(i) in subparagraph (A), by inserting '', including payments rates under Medicaid managed care plans,'' after ''under this title''; and

(ii) in subparagraph (B), by inserting ''and the basis for such dispensing fees'' before the semicolon; and

(D) in paragraph (4), by inserting '', and $5,000,000 for fiscal year 2023 and each fiscal year thereafter,'' after ''2010''.

(2) EFFECTIVE DATE.—The amendments made by this subsection take effect on the first day of the first quarter that begins on or after the date that is 18 months after the date of enactment of this Act.

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