



(Original Signature of Member)

117TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

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

Mr. CARTER of Georgia introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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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.

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 Price Trans-  
5 parency in Medicaid Act of 2021”.

1 **SEC. 2. IMPROVING TRANSPARENCY AND PREVENTING THE**  
2 **USE OF ABUSIVE SPREAD PRICING AND RE-**  
3 **LATED PRACTICES IN MEDICAID.**

4 (a) PASS-THROUGH PRICING REQUIRED.—

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

8 “(6) PASS-THROUGH PRICING REQUIRED.—A  
9 contract between the State and a pharmacy benefit  
10 manager (referred to in this paragraph as a ‘PBM’),  
11 or a contract between the State and a managed care  
12 entity or other specified entity (as such terms are  
13 defined in section 1903(m)(9)(D)) that includes pro-  
14 visions making the entity responsible for coverage of  
15 covered outpatient drugs dispensed to individuals en-  
16 rolled with the entity, shall require that payment for  
17 such drugs and related administrative services (as  
18 applicable), including payments made by a PBM on  
19 behalf of the State or entity, is based on a pass-  
20 through pricing model under which—

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

23 “(i) is limited to—

24 “(I) ingredient cost; and

25 “(II) a professional dispensing  
26 fee that is not less than the profes-

1           sional dispensing fee that the State  
2           plan or waiver would pay if the plan  
3           or waiver was making the payment di-  
4           rectly;

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

8           “(iii) is made in a manner that is con-  
9           sistent with section 1902(a)(30)(A) and  
10          sections 447.512, 447.514, and 447.518 of  
11          title 42, Code of Federal Regulations (or  
12          any successor regulation) as if such re-  
13          quirements applied directly to the entity or  
14          the PBM, except that any payment by the  
15          entity or the PBM (as applicable) for the  
16          ingredient cost of a covered outpatient  
17          drug dispensed by providers and phar-  
18          macies referenced in clauses (i) or (ii) of  
19          section 447.518(a)(1) of title 42, Code of  
20          Federal Regulations (or any successor reg-  
21          ulation) shall be the same as the payment  
22          amount for the ingredient cost when dis-  
23          pensed by providers and pharmacies not  
24          referenced in such clauses, and in no case  
25          shall payment for the ingredient cost of a

1 covered outpatient drug be based on the  
2 actual acquisition cost of a drug dispensed  
3 by providers and pharmacies referenced in  
4 such clauses or take into account a drug's  
5 status as a drug purchased at a discounted  
6 price by a provider or pharmacy referenced  
7 in such clauses;

8 “(B) payment to the entity or the PBM  
9 (as applicable) for administrative services per-  
10 formed by the entity or PBM is limited to a  
11 reasonable administrative fee that covers the  
12 reasonable cost of providing such services;

13 “(C) the entity or the PBM (as applicable)  
14 shall make available to the State, and the Sec-  
15 retary upon request, all costs and payments re-  
16 lated to covered outpatient drugs and accom-  
17 panying administrative services incurred, re-  
18 ceived, or made by the entity or the PBM, in-  
19 cluding ingredient costs, professional dispensing  
20 fees, administrative fees, post-sale and post-in-  
21 voice fees, discounts, or related adjustments  
22 such as direct and indirect remuneration fees,  
23 and any and all other remuneration; and

24 “(D) any form of spread pricing whereby  
25 any amount charged or claimed by the entity or

1 the PBM (as applicable) is in excess of the  
2 amount paid to the pharmacies on behalf of the  
3 entity, including any post-sale or post-invoice  
4 fees, discounts, or related adjustments such as  
5 direct and indirect remuneration fees or assess-  
6 ments (after allowing for a reasonable adminis-  
7 trative fee as described in subparagraph (B)) is  
8 not allowable for purposes of claiming Federal  
9 matching payments under this title.

10 “(7) PROTECTION AGAINST MANDATES RELAT-  
11 ING TO USE OF 340B DRUGS.—

12 “(A) IN GENERAL.—Notwithstanding any  
13 other provision of law, no State, Medicaid man-  
14 aged care organization (as defined in section  
15 1903(m)(1)(A)), or pharmacy benefit manager  
16 may prohibit a covered entity under section  
17 340B of the Public Health Service Act, or a  
18 pharmacy under contract with a covered entity  
19 to dispense drugs on behalf of the covered enti-  
20 ty, from dispensing covered outpatient drugs  
21 purchased under such section to individuals re-  
22 ceiving benefits under this title and from receiv-  
23 ing payment in accordance with this section, or  
24 require that such covered entity or pharmacy

1 dispense covered outpatient drugs purchased  
2 under section 340B to such individuals.

3 “(B) NOTIFICATION.—The Secretary shall  
4 notify States that States may not prohibit a  
5 provider under this title that is a covered entity  
6 under section 340B of the Public Health Serv-  
7 ices Act, or a pharmacy under contract with a  
8 covered entity, from submitting claims for reim-  
9 bursement for drugs purchased under such sec-  
10 tion that are dispensed to individuals receiving  
11 benefits under this title and may not require  
12 such provider to dispense covered outpatient  
13 drugs purchased under such section to such in-  
14 dividuals.”.

15 (2) CONFORMING AMENDMENT.—Section  
16 1903(m)(2)(A)(xiii) of such Act (42 U.S.C.  
17 1396b(m)(2)(A)(xiii)) is amended—

18 (A) by striking “and (III)” and inserting  
19 “(III)”;

20 (B) by inserting before the period at the  
21 end the following: “, and (IV) pharmacy benefit  
22 management services provided by the entity, or  
23 provided by a pharmacy benefit manager on be-  
24 half of the entity under a contract or other ar-  
25 rangement between the entity and the phar-

1 macy benefit manager, shall comply with the re-  
2 quirements of section 1927(e)(6)”; and

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

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

11 (b) ENSURING ACCURATE PAYMENTS TO PHAR-  
12 MACIES UNDER MEDICAID.—

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

15 (A) by striking “and” after the semicolon  
16 at the end of paragraph (1)(A)(i) and all that  
17 precedes it through “(1)” and inserting the fol-  
18 lowing:

19 “(1) DETERMINING PHARMACY ACTUAL ACQUI-  
20 SITION COSTS.—The Secretary shall conduct a sur-  
21 vey of retail community pharmacy drug prices to de-  
22 termine the national average drug acquisition cost as  
23 follows:

24 “(A) USE OF VENDOR.—The Secretary  
25 may contract services for—

1           “(i) with respect to retail community  
2           pharmacies, the determination of retail  
3           survey prices of the national average drug  
4           acquisition cost for covered outpatient  
5           drugs based on a monthly survey of such  
6           pharmacies, net of all discounts and re-  
7           bates (to the extent any information with  
8           respect to such discounts and rebates is  
9           available); and”;

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

12           “(F) SURVEY REPORTING.—In order to  
13           meet the requirement of section 1902(a)(54), a  
14           State shall require that any retail community  
15           pharmacy in the State that receives any pay-  
16           ment, reimbursement, administrative fee, dis-  
17           count, or rebate related to the dispensing of  
18           covered outpatient drugs to individuals receiv-  
19           ing benefits under this title, regardless of  
20           whether such payment, fee, discount, or rebate  
21           is received from the State or a managed care  
22           entity directly or from a pharmacy benefit man-  
23           ager or another entity that has a contract with  
24           the State or a managed care entity, shall re-



1           spond to surveys of retail prices conducted  
2           under this subsection.

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

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

11                  “(ii) The sampling frame and number  
12                  of pharmacies sampled monthly.

13                  “(iii) Characteristics of reporting  
14                  pharmacies, including type (such as inde-  
15                  pendent or chain), geographic or regional  
16                  location, and dispensing volume.

17                  “(iv) Reporting of a separate national  
18                  average drug acquisition cost for each drug  
19                  for independent retail pharmacies and  
20                  chain pharmacies.

21                  “(v) Information on price concessions  
22                  including on and off invoice discounts, re-  
23                  bates, and other price concessions to the  
24                  extent that such information is available  
25                  during the survey period.

1                   “(vi) Information on average profes-  
2                   sional dispensing fees paid.

3                   “(H) REPORT ON SPECIALTY PHAR-  
4                   MACIES.—

5                   “(i) IN GENERAL.—Not later than 1  
6                   year after the effective date of this sub-  
7                   paragraph, the Secretary shall submit a re-  
8                   port to Congress examining specialty drug  
9                   coverage and reimbursement under this  
10                  title.

11                  “(ii) CONTENT OF REPORT.—Such re-  
12                  port shall include a description of how  
13                  State Medicaid programs define specialty  
14                  drugs, how much State Medicaid programs  
15                  pay for specialty drugs, how States and  
16                  managed care plans determine payment for  
17                  specialty drugs, the settings in which spe-  
18                  cialty drugs are dispensed (such as retail  
19                  community pharmacies or specialty phar-  
20                  macies), whether acquisition costs for spe-  
21                  cialty drugs are captured in the national  
22                  average drug acquisition cost survey, and  
23                  recommendations as to whether specialty  
24                  pharmacies should be included in the sur-  
25                  vey of retail prices to ensure national aver-

1           age drug acquisition costs capture drugs  
2           sold at specialty pharmacies and how such  
3           specialty pharmacies should be defined.”;

4           (C) in paragraph (2)—

5                 (i) in subparagraph (A), by inserting  
6                 “, including payments rates under Med-  
7                 icaid managed care plans,” after “under  
8                 this title”; and

9                 (ii) in subparagraph (B), by inserting  
10                “and the basis for such dispensing fees”  
11                before the semicolon; and

12           (D) in paragraph (4), by inserting “, and  
13           \$5,000,000 for fiscal year 2023 and each fiscal  
14           year thereafter,” after “2010”.

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