

118TH CONGRESS  
1ST SESSION

# H. R. 1613

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

MARCH 17, 2023

Mr. CARTER of Georgia (for himself, Mr. VICENTE GONZALEZ of Texas, Ms. STEFANIK, Ms. ROSS, Mr. ALLEN, and Mr. AUCHINCLOSS) 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.

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 2023”.

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 clause (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 (2) CONFORMING AMENDMENT.—Section  
11 1903(m)(2)(A)(xiii) of such Act (42 U.S.C.  
12 1396b(m)(2)(A)(xiii)) is amended—

13 (A) by striking “and (III)” and inserting  
14 “(III)”;

15 (B) by inserting before the period at the  
16 end the following: “, and (IV) pharmacy benefit  
17 management services provided by the entity, or  
18 provided by a pharmacy benefit manager on be-  
19 half of the entity under a contract or other ar-  
20 rangement between the entity and the phar-  
21 macy benefit manager, shall comply with the re-  
22 quirements of section 1927(e)(6)”;

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

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

7           (b) ENSURING ACCURATE PAYMENTS TO PHAR-  
8           MACIES UNDER MEDICAID.—

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

11                   (A) by striking “and” after the semicolon  
12                   at the end of paragraph (1)(A)(i) and all that  
13                   precedes it through “(1)” and inserting the fol-  
14                   lowing:

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

20                           “(A) USE OF VENDOR.—The Secretary  
21                           may contract services for—

22                                   “(i) with respect to retail community  
23                                   pharmacies, the determination of retail  
24                                   survey prices of the national average drug  
25                                   acquisition cost for covered outpatient

1 drugs based on a monthly survey of such  
2 pharmacies; and”;

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

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

20 “(G) SURVEY INFORMATION.—Information  
21 on national drug acquisition prices obtained  
22 under this paragraph shall be made publicly  
23 available and shall include at least the fol-  
24 lowing:

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

4           “(ii) The sampling frame and number  
5 of pharmacies sampled monthly.

6           “(iii) Information on price concessions  
7 to the pharmacy, including discounts, re-  
8 bates, and other price concessions, to the  
9 extent that such information is available  
10 during the survey period.

11           “(H) REPORT ON SPECIALTY PHAR-  
12 MACIES.—

13           “(i) IN GENERAL.—Not later than 1  
14 year after the effective date of this sub-  
15 paragraph, the Secretary shall submit a re-  
16 port to Congress examining specialty drug  
17 coverage and reimbursement under this  
18 title.

19           “(ii) CONTENT OF REPORT.—Such re-  
20 port shall include a description of how  
21 State Medicaid programs define specialty  
22 drugs and specialty pharmacies, how much  
23 State Medicaid programs pay for specialty  
24 drugs, how States and managed care plans  
25 determine payment for specialty drugs, the



1 settings in which specialty drugs are dis-  
2 pensed (such as retail community phar-  
3 macies or specialty pharmacies), to what  
4 extent acquisition costs for specialty drugs  
5 are captured in the national average drug  
6 acquisition cost survey or through another  
7 process, examples of specialty drug dis-  
8 pensing fees to support the services associ-  
9 ated with dispensing specialty drugs, and  
10 recommendations as to whether specialty  
11 pharmacies should be included in the sur-  
12 vey of retail prices to ensure national aver-  
13 age drug acquisition costs capture drugs  
14 sold at specialty pharmacies and how such  
15 specialty pharmacies should be defined.”;

16 (C) in paragraph (2)—

17 (i) in subparagraph (A), by inserting  
18 “, including payments rates under Med-  
19 icaid managed care plans,” after “under  
20 this title”; and

21 (ii) in subparagraph (B), by inserting  
22 “and the basis for such dispensing fees”  
23 before the semicolon; and

1           (D) in paragraph (4), by inserting “, and  
2           \$5,000,000 for fiscal year 2025 and each fiscal  
3           year thereafter,” after “2010”.

4           (2) EFFECTIVE DATE.—The amendments made  
5           by this subsection take effect on the first day of the  
6           first quarter that begins on or after the date that is  
7           18 months after the date of enactment of this Act.

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