

119TH CONGRESS
1ST SESSION

S. _____

To amend title XIX of the Social Security Act to ensure accurate payments to pharmacies under Medicaid and to prevent the use of abusive spread pricing practices under Medicaid.

IN THE SENATE OF THE UNITED STATES

Mr. WELCH (for himself, Mr. MARSHALL, Mr. WARNER, and Mr. CASSIDY) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title XIX of the Social Security Act to ensure accurate payments to pharmacies under Medicaid and to prevent the use of abusive spread pricing practices under Medicaid.

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 “Protecting Pharmacies
5 in Medicaid Act”.

1 **SEC. 2. ENSURING ACCURATE PAYMENTS TO PHARMACIES**
2 **UNDER MEDICAID.**

3 (a) IN GENERAL.—Section 1927(f) of the Social Se-
4 curity Act (42 U.S.C. 1396r–8(f)) is amended—

5 (1) in paragraph (1)(A)—

6 (A) by redesignating clause (ii) as clause
7 (iii); and

8 (B) by striking “and” after the semicolon
9 at the end of clause (i) and all that precedes it
10 through “(1)” and inserting the following:

11 “(1) DETERMINING PHARMACY ACTUAL ACQUI-
12 SITION COSTS.—The Secretary shall conduct a sur-
13 vey of retail community pharmacy drug prices and
14 applicable non-retail pharmacy drug prices to deter-
15 mine national average drug acquisition cost bench-
16 marks (as such term is defined by the Secretary) as
17 follows:

18 “(A) USE OF VENDOR.—The Secretary
19 may contract services for—

20 “(i) with respect to retail community
21 pharmacies, the determination of retail
22 survey prices of the national average drug
23 acquisition cost for covered outpatient
24 drugs that represent a nationwide average
25 of consumer purchase prices for such
26 drugs, net of all discounts, rebates, and

1 other price concessions (to the extent any
2 information with respect to such discounts,
3 rebates, and other price concessions is
4 available) based on a monthly survey of
5 such pharmacies;

6 “(ii) with respect to applicable non-re-
7 tail pharmacies—

8 “(I) the determination of survey
9 prices, separate from the survey prices
10 described in clause (i), of the non-re-
11 tail national average drug acquisition
12 cost for covered outpatient drugs that
13 represent a nationwide average of con-
14 sumer purchase prices for such drugs,
15 net of all discounts, rebates, and other
16 price concessions (to the extent any
17 information with respect to such dis-
18 counts, rebates, and other price con-
19 cessions is available) based on a
20 monthly survey of such pharmacies;
21 and

22 “(II) at the discretion of the Sec-
23 retary, for each type of applicable
24 non-retail pharmacy, the determina-
25 tion of survey prices, separate from

1 the survey prices described in clause
2 (i) or subclause (I) of this clause, of
3 the national average drug acquisition
4 cost for such type of pharmacy for
5 covered outpatient drugs that rep-
6 resent a nationwide average of con-
7 sumer purchase prices for such drugs,
8 net of all discounts, rebates, and other
9 price concessions (to the extent any
10 information with respect to such dis-
11 counts, rebates, and other price con-
12 cessions is available) based on a
13 monthly survey of such pharmacies;
14 and”;

15 (2) in subparagraph (B) of paragraph (1), by
16 striking “subparagraph (A)(ii)” and inserting “sub-
17 paragraph (A)(iii)”;

18 (3) in subparagraph (D) of paragraph (1), by
19 striking clauses (ii) and (iii) and inserting the fol-
20 lowing:

21 “(ii) The vendor must update the Sec-
22 retary no less often than monthly on the
23 survey prices for covered outpatient drugs.

24 “(iii) The vendor must differentiate,
25 in collecting and reporting survey data, for

1 all cost information collected, whether a
2 pharmacy is a retail community pharmacy
3 or an applicable non-retail pharmacy, in-
4 cluding whether such pharmacy is an affil-
5 iate (as defined in subsection (k)(14)),
6 and, in the case of an applicable non-retail
7 pharmacy, which type of applicable non-re-
8 tail pharmacy it is using the relevant phar-
9 macy type indicators included in the guid-
10 ance required by subsection (d)(2) of sec-
11 tion 2 of the **【Protecting Pharmacies in**
12 **Medicaid Act】**.”;

13 (4) by adding at the end of paragraph (1) the
14 following:

15 “(F) SURVEY REPORTING.—In order to
16 meet the requirement of section 1902(a)(54), a
17 State shall require that any retail community
18 pharmacy or applicable non-retail pharmacy in
19 the State that receives any payment, reimburse-
20 ment, administrative fee, discount, rebate, or
21 other price concession related to the dispensing
22 of covered outpatient drugs to individuals re-
23 ceiving benefits under this title, regardless of
24 whether such payment, reimbursement, admin-
25 istrative fee, discount, rebate, or other price

1 concession is received from the State or a man-
2 aged care entity or other specified entity (as
3 such terms are defined in section
4 1903(m)(9)(D)) directly or from a pharmacy
5 benefit manager or another entity that has a
6 contract with the State or a managed care enti-
7 ty or other specified entity (as so defined), shall
8 respond to surveys conducted under this para-
9 graph.

10 “(G) SURVEY INFORMATION.—Information
11 on national drug acquisition prices obtained
12 under this paragraph shall be made publicly
13 available in a form and manner to be deter-
14 mined by the Secretary and shall include at
15 least the following:

16 “(i) The monthly response rate to the
17 survey including a list of pharmacies not in
18 compliance with subparagraph (F).

19 “(ii) The sampling methodology and
20 number of pharmacies sampled monthly.

21 “(iii) Information on price concessions
22 to pharmacies, including discounts, re-
23 bates, and other price concessions, to the
24 extent that such information may be pub-

1 licly released and has been collected by the
2 Secretary as part of the survey.

3 “(H) PENALTIES.—

4 “(i) IN GENERAL.—Subject to clauses
5 (ii), (iii), and (iv), the Secretary shall en-
6 force the provisions of this paragraph with
7 respect to a pharmacy through the estab-
8 lishment of civil money penalties applicable
9 to a retail community pharmacy or an ap-
10 plicable non-retail pharmacy.

11 “(ii) BASIS FOR PENALTIES.—The
12 Secretary shall impose a civil money pen-
13 alty established under this subparagraph
14 on a retail community pharmacy or appli-
15 cable non-retail pharmacy if—

16 “(I) the retail pharmacy or appli-
17 cable non-retail pharmacy refuses or
18 otherwise fails to respond to a request
19 for information about prices in con-
20 nection with a survey under this sub-
21 section;

22 “(II) knowingly provides false in-
23 formation in response to such a sur-
24 vey; or

1 as determined appropriate by the Sec-
2 retary.

3 “(iv) RULE OF APPLICATION.—The
4 provisions of section 1128A (other than
5 subsections (a) and (b)) shall apply to a
6 civil money penalty under this subpara-
7 graph in the same manner as such provi-
8 sions apply to a civil money penalty or pro-
9 ceeding under section 1128A(a).

10 “(I) LIMITATION ON USE OF APPLICABLE
11 NON-RETAIL PHARMACY PRICING INFORMA-
12 TION.—No State shall use pricing information
13 reported by applicable non-retail pharmacies
14 under subparagraph (A)(ii) to develop or inform
15 payment methodologies for retail community
16 pharmacies.”;

17 (5) in paragraph (2)—

18 (A) in subparagraph (A), by inserting “,
19 including payment rates and methodologies for
20 determining ingredient cost reimbursement
21 under managed care entities or other specified
22 entities (as such terms are defined in section
23 1903(m)(9)(D)),” after “under this title”; and

1 (B) in subparagraph (B), by inserting
2 “and the basis for such dispensing fees” before
3 the semicolon;

4 (6) by redesignating paragraph (4) as para-
5 graph (5);

6 (7) by inserting after paragraph (3) the fol-
7 lowing new paragraph:

8 “(4) OVERSIGHT.—

9 “(A) IN GENERAL.—The Inspector General
10 of the Department of Health and Human Serv-
11 ices shall conduct periodic studies of the survey
12 data reported under this subsection, as appro-
13 priate, including with respect to substantial
14 variations in acquisition costs or other applica-
15 ble costs, as well as with respect to how internal
16 transfer prices and related party transactions
17 may influence the costs reported by pharmacies
18 that are affiliates (as defined in subsection
19 (k)(14)) or are owned by, controlled by, or re-
20 lated under a common ownership structure with
21 a wholesaler, distributor, or other entity that
22 acquires covered outpatient drugs relative to
23 costs reported by pharmacies not affiliated with
24 such entities. The Inspector General shall pro-
25 vide periodic updates to Congress on the results

1 of such studies, as appropriate, in a manner
2 that does not disclose trade secrets or other
3 proprietary information.

4 “(B) APPROPRIATION.—There is appro-
5 priated to the Inspector General of the Depart-
6 ment of Health and Human Services, out of
7 any money in the Treasury not otherwise ap-
8 propriated, \$5,000,000 for fiscal year 2026, to
9 remain available until expended, to carry out
10 this paragraph.”; and

11 (8) in paragraph (5), as so redesignated—

12 (A) by inserting “, and \$9,000,000 for fis-
13 cal year 2026 and each fiscal year thereafter,”
14 after “2010”; and

15 (B) by inserting “Funds appropriated
16 under this paragraph for fiscal year 2026 and
17 any subsequent fiscal year shall remain avail-
18 able until expended.” after the period.

19 (b) DEFINITIONS.—Section 1927(k) of the Social Se-
20 curity Act (42 U.S.C. 1396r–8(k)) is amended—

21 (1) in the matter preceding paragraph (1), by
22 striking “In the section” and inserting “In this sec-
23 tion”; and

24 (2) by adding at the end the following new
25 paragraphs:

1 “(12) APPLICABLE NON-RETAIL PHARMACY.—

2 The term ‘applicable non-retail pharmacy’ means a
3 pharmacy that is licensed as a pharmacy by the
4 State and that is not a retail community pharmacy,
5 including a pharmacy that dispenses prescription
6 medications to patients primarily through mail and
7 specialty pharmacies. Such term does not include
8 nursing home pharmacies, long-term care facility
9 pharmacies, hospital pharmacies, clinics, charitable
10 or not-for-profit pharmacies, government phar-
11 macies, or low dispensing pharmacies (as defined by
12 the Secretary).

13 “(13) AFFILIATE.—The term ‘affiliate’ means
14 any entity that is owned by, controlled by, or related
15 under a common ownership structure with a phar-
16 macy benefit manager or a managed care entity or
17 other specified entity (as such terms are defined in
18 section 1903(m)(9)(D)).”.

19 (c) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Subject to paragraph (2),
21 the amendments made by this section shall take ef-
22 fect on the first day of the first quarter that begins
23 on or after the date that is 6 months after the date
24 of enactment of this Act.

1 (2) DELAYED APPLICATION TO APPLICABLE
2 NON-RETAIL PHARMACIES.—The pharmacy survey
3 requirements established by the amendments to sec-
4 tion 1927(f) of the Social Security Act (42 U.S.C.
5 1396r–8(f)) made by this section shall apply to re-
6 tail community pharmacies beginning on the effec-
7 tive date described in paragraph (1), but shall not
8 apply to applicable non-retail pharmacies until the
9 first day of the first quarter that begins on or after
10 the date that is 18 months after the date of enact-
11 ment of this Act.

12 (d) IDENTIFICATION OF APPLICABLE NON-RETAIL
13 PHARMACIES.—

14 (1) IN GENERAL.—Not later than January 1,
15 2027, the Secretary of Health and Human Services
16 shall, in consultation with stakeholders as appro-
17 priate, publish guidance specifying pharmacies that
18 meet the definition of applicable non-retail phar-
19 macies (as such term is defined in subsection
20 (k)(12) of section 1927 of the Social Security Act
21 (42 U.S.C. 1396r–8), as added by subsection (b)),
22 and that will be subject to the survey requirements
23 under subsection (f)(1) of such section, as amended
24 by subsection (a).

1 (2) INCLUSION OF PHARMACY TYPE INDICA-
2 TORS.—The guidance published under paragraph (1)
3 shall include pharmacy type indicators to distinguish
4 between different types of applicable non-retail phar-
5 macies, such as pharmacies that dispense prescrip-
6 tions primarily through the mail and pharmacies
7 that dispense prescriptions that require special han-
8 dling or distribution. An applicable non-retail phar-
9 macy may be identified through multiple pharmacy
10 type indicators.

11 (e) IMPLEMENTATION.—

12 (1) IN GENERAL.—Notwithstanding any other
13 provision of law, the Secretary of Health and
14 Human Services may implement the amendments
15 made by this section by program instruction or oth-
16 erwise.

17 (2) NONAPPLICATION OF ADMINISTRATIVE PRO-
18 CEDURE ACT.—Implementation of the amendments
19 made by this section shall be exempt from the re-
20 quirements of section 553 of title 5, United States
21 Code.

22 (f) NONAPPLICATION OF PAPERWORK REDUCTION
23 ACT.—Chapter 35 of title 44, United States Code, shall
24 not apply to any data collection undertaken by the Sec-
25 retary of Health and Human Services under section

1 1927(f) of the Social Security Act (42 U.S.C. 1396r–8(f)),
2 as amended by this section.

3 **SEC. 3. PREVENTING THE USE OF ABUSIVE SPREAD PRIC-**
4 **ING IN MEDICAID.**

5 (a) IN GENERAL.—Section 1927 of the Social Secu-
6 rity Act (42 U.S.C. 1396r–8) is amended—

7 (1) in subsection (e), by adding at the end the
8 following new paragraph:

9 “(6) TRANSPARENT PRESCRIPTION DRUG PASS-
10 THROUGH PRICING REQUIRED.—

11 “(A) IN GENERAL.—A contract between
12 the State and a pharmacy benefit manager (re-
13 ferred to in this paragraph as a ‘PBM’), or a
14 contract between the State and a managed care
15 entity or other specified entity (as such terms
16 are defined in section 1903(m)(9)(D) and col-
17 lectively referred to in this paragraph as the
18 ‘entity’) that includes provisions making the en-
19 tity responsible for coverage of covered out-
20 patient drugs dispensed to individuals enrolled
21 with the entity, shall require that payment for
22 such drugs and related administrative services
23 (as applicable), including payments made by a
24 PBM on behalf of the State or entity, is based

1 on a transparent prescription drug pass-
2 through pricing model under which—

3 “(i) any payment made by the entity
4 or the PBM (as applicable) for such a
5 drug—

6 “(I) is limited to—

7 “(aa) ingredient cost; and

8 “(bb) a professional dis-
9 pensing fee that is not less than
10 the professional dispensing fee
11 that the State would pay if the
12 State were making the payment
13 directly in accordance with the
14 State plan;

15 “(II) is passed through in its en-
16 tirety (except as reduced under Fed-
17 eral or State laws and regulations in
18 response to instances of waste, fraud,
19 or abuse) by the entity or PBM to the
20 pharmacy or provider that dispenses
21 the drug; and

22 “(III) is made in a manner that
23 is consistent with sections 447.502,
24 447.512, 447.514, and 447.518 of
25 title 42, Code of Federal Regulations

1 (or any successor regulation) as if
2 such requirements applied directly to
3 the entity or the PBM, except that
4 any payment by the entity or the
5 PBM for the ingredient cost of such
6 drug purchased by a covered entity
7 (as defined in subsection (a)(5)(B))
8 may exceed the actual acquisition cost
9 (as defined in 447.502 of title 42,
10 Code of Federal Regulations, or any
11 successor regulation) for such drug
12 if—

13 “(aa) such drug was subject
14 to an agreement under section
15 340B of the Public Health Serv-
16 ice Act;

17 “(bb) such payment for the
18 ingredient cost of such drug does
19 not exceed the maximum pay-
20 ment that would have been made
21 by the entity or the PBM for the
22 ingredient cost of such drug if
23 such drug had not been pur-
24 chased by such covered entity;
25 and

1 “(cc) such covered entity re-
2 ports to the Secretary (in a form
3 and manner specified by the Sec-
4 retary), on an annual basis and
5 with respect to payments for the
6 ingredient costs of such drugs so
7 purchased by such covered entity
8 that are in excess of the actual
9 acquisition costs for such drugs,
10 the aggregate amount of such ex-
11 cess;

12 “(ii) payment to the entity or the
13 PBM (as applicable) for administrative
14 services performed by the entity or PBM is
15 limited to an administrative fee that re-
16 flects the fair market value (as defined by
17 the Secretary) of such services;

18 “(iii) the entity or the PBM (as appli-
19 cable) makes available to the State, and
20 the Secretary upon request in a form and
21 manner specified by the Secretary, all costs
22 and payments related to covered outpatient
23 drugs and accompanying administrative
24 services (as described in clause (ii)) in-
25 curred, received, or made by the entity or

1 the PBM, broken down (as specified by the
2 Secretary), to the extent such costs and
3 payments are attributable to an individual
4 covered outpatient drug, by each such
5 drug, including any ingredient costs, pro-
6 fessional dispensing fees, administrative
7 fees (as described in clause (ii)), post-sale
8 and post-invoice fees, discounts, or related
9 adjustments such as direct and indirect re-
10 munerations fees, and any and all other re-
11 munerations, as defined by the Secretary;
12 and

13 “(iv) any form of spread pricing
14 whereby any amount charged or claimed by
15 the entity or the PBM (as applicable) that
16 exceeds the amount paid to the pharmacies
17 or providers on behalf of the State or enti-
18 ty, including any post-sale or post-invoice
19 fees, discounts, or related adjustments
20 such as direct and indirect remuneration
21 fees or assessments, as defined by the Sec-
22 retary, (after allowing for an administra-
23 tive fee as described in clause (ii)) is not
24 allowable for purposes of claiming Federal
25 matching payments under this title.

1 (2) in subsection (k), as amended by section
2 2(b), by adding at the end the following new para-
3 graph:

4 “(14) PHARMACY BENEFIT MANAGER.—The
5 term ‘pharmacy benefit manager’ means any person
6 or entity that, either directly or through an inter-
7 mediary, acts as a price negotiator or group pur-
8 chaser on behalf of a State, managed care entity (as
9 defined in section 1903(m)(9)(D)), or other specified
10 entity (as so defined), or manages the prescription
11 drug benefits provided by a State, managed care en-
12 tity, or other specified entity, including the proc-
13 essing and payment of claims for prescription drugs,
14 the performance of drug utilization review, the proc-
15 essing of drug prior authorization requests, the man-
16 aging of appeals or grievances related to the pre-
17 scription drug benefits, contracting with pharmacies,
18 controlling the cost of covered outpatient drugs, or
19 the provision of services related thereto. Such term
20 includes any person or entity that acts as a price ne-
21 gotiator (with regard to payment amounts to phar-
22 macies and providers for a covered outpatient drug
23 or the net cost of the drug) or group purchaser on
24 behalf of a State, managed care entity, or other
25 specified entity or that carries out 1 or more of the

1 other activities described in the preceding sentence,
2 irrespective of whether such person or entity calls
3 itself a pharmacy benefit manager.”.

4 (b) CONFORMING AMENDMENTS.—Section 1903(m)
5 of such Act (42 U.S.C. 1396b(m)) is amended—

6 (1) in paragraph (2)(A)(xiii)—

7 (A) by striking “and (III)” and inserting
8 “(III)”;

9 (B) by inserting before the period at the
10 end the following: “, and (IV) if the contract in-
11 cludes provisions making the entity responsible
12 for coverage of covered outpatient drugs, the
13 entity shall comply with the requirements of
14 section 1927(e)(6)”;

15 (C) by moving the margin 2 ems to the
16 left; and

17 (2) by adding at the end the following new
18 paragraph:

19 “(10) No payment shall be made under this
20 title to a State with respect to expenditures incurred
21 by the State for payment for services provided by an
22 other specified entity (as defined in paragraph
23 (9)(D)(iii)) unless such services are provided in ac-
24 cordance with a contract between the State and such

1 entity which satisfies the requirements of paragraph
2 (2)(A)(xiii).”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to contracts between States and
5 managed care entities, other specified entities, or phar-
6 macy benefit managers that have an effective date begin-
7 ning on or after the date that is 18 months after the date
8 of enactment of this Act.

9 (d) IMPLEMENTATION.—

10 (1) IN GENERAL.—Notwithstanding any other
11 provision of law, the Secretary of Health and
12 Human Services may implement the amendments
13 made by this section by program instruction or oth-
14 erwise.

15 (2) NONAPPLICATION OF ADMINISTRATIVE PRO-
16 CEDURE ACT.—Implementation of the amendments
17 made by this section shall be exempt from the re-
18 quirements of section 553 of title 5, United States
19 Code.

20 (e) NONAPPLICATION OF PAPERWORK REDUCTION
21 ACT.—Chapter 35 of title 44, United States Code, shall
22 not apply to any data collection undertaken by the Sec-
23 retary of Health and Human Services under section
24 1927(e) of the Social Security Act (42 U.S.C. 1396r-
25 8(e)), as amended by this section.