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H. R. 4199

To ensure patient choice in pharmacies by regulating pharmacy benefit managers and to establish a program to improve access to prescription drugs for certain individuals.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 3, 2009

Mr. BUTTERFIELD (for himself, Mr. JONES, Mr. KISSELL, Mr. MCINTYRE, Mr. COBLE, Mr. MILLER of North Carolina, Mr. ALEXANDER, and Mrs. MCMORRIS RODGERS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To ensure patient choice in pharmacies by regulating pharmacy benefit managers and to establish a program to improve access to prescription drugs for certain individuals.

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 ''Patient Health and Real Medication Access Cost Savings Act of 2009'' or the ''PHARMACY Bill''.

SEC. 2. PATIENT CHOICE.

A consumer shall have the right to choose to purchase prescription drugs from any domestic pharmacy that meets all applicable Federal and State licence and permit requirements.

SEC. 3. REGULATION OF PHARMACY BENEFIT MANAGERS.

Not later than January 1, 2011, the Secretary of Health and Human Services shall issue regulations to ensure the following:

(1) ACCESS TO AND CHOICE OF PHARMACY.—

(A) INCENTIVES.—A pharmacy benefit manager (referred to in this section as a ''PBM'') may not provide incentives (including variations in premiums, deductibles, co-payments, or co-insurance rates) to enrollees of pharmacy benefit plans administered by such PBM for the purpose of encouraging such enrollees to use certain pharmacies (including mail order pharmacies, speciality drug pharmacies, or other entities) unless the PBM offers the same incentives for all pharmacies in the network for such plan.

(B) MANDATES.—A PBM may not refer, coerce, or mandate that an enrollee of a pharmacy benefit plan administered by such PBM

use a specific mail order pharmacy, specialty drug pharmacy, or other entity—

(i) if the PBM has an ownership interest in a such pharmacy or entity; or

(ii) if the pharmacy or entity has an ownership interest in such PBM.

(C) PHARMACY NETWORKS.—A PBM or pharmacy benefit plan sponsor may not exclude a pharmacy from a pharmacy network if—

(i) the pharmacy agrees to the terms of the network contract;

(ii) the pharmacy meets all applicable Federal and State licence and permit requirements; and

(iii) the owners of the pharmacy have not been convicted of a Federal crime related to owning or managing a pharmacy.

(2) ENCOURAGE GENERIC DRUGS.—

(A) COST TO CONSUMERS.—

(i) IN GENERAL.—Subject to clause (iii), a PBM shall ensure that enrollees of pharmacy benefit plans administered by such a PBM pay a copayment of 20 percent for brand name drugs, not to exceed

a maximum amount of $150 per prescription.

(ii) ANNUAL UPDATES TO AMOUNT.—The maximum amount under clause (i) shall be updated annually for inflation based on the consumer price index.

(iii) EXCEPTION FOR STATE MEDICAID PROGRAMS.—Clause (i) shall not apply to a PBM with respect to enrollees of a State Medicaid program that limits or prohibits copayments for prescription drugs.

(B) PAYMENTS TO PHARMACIES.—

(i) IN GENERAL.—With respect to a pharmacy benefit plan that is at least partially funded with Federal funds, the PBM administering such plan shall reimburse a pharmacy that is in the network for such a plan at least—

(I) 107 percent of the Wholesale Acquisition Cost plus a minimum professional dispensing fee of $4.25 for a prescription for a brand-name drug;

(II) 190 percent of the Federal Upper Limit plus a minimum profes-

sional dispensing fee of $8.50 for a prescription for a generic drug; and

(III) a professional service fee for any additional pharmacy services provided by the pharmacy, in an amount set by the Secretary of Health and Human Services.

(ii) ADJUSTMENT FOR INFLATION.—The professional dispensing fees under clause (i) shall be adjusted annually for inflation, based on the consumer price index.

(3) PAYMENTS AND CHARGES BETWEEN PBMS AND PHARMACY BENEFIT PLAN SPONSORS.—

(A) PAYMENTS.—A PBM shall be reimbursed by a pharmacy benefit plan sponsor for adjudicating and processing claims in behalf of such sponsor at a rate that is determined by such sponsor.

(B) CHARGES TO PHARMACY BENEFIT PLAN SPONSORS FOR DRUGS DISPENSED TO PLAN ENROLLEES.—The amount that a PBM charges a pharmacy benefit plan sponsor for a drug that is dispensed to enrollee of a pharmacy benefit plan administered by such PBM may not be greater than the amount that the

PBM paid the pharmacy for such drug (including any associated professional dispensing fee).

(4) TREATMENT OF DRUG MANUFACTURER REBATES.—

(A) NO REBATES TO PBMS.—A manufacturer of prescription drugs—

(i) shall pay all rebates, as defined in section 5(6), directly to the pharmacy benefit plan sponsor; and

(ii) shall not pay such rebates to a PBM.

(B) NEGOTIATION ALLOWED.—A PBM may negotiate rebate amounts with a manufacturer of prescription drugs on behalf of a pharmacy benefit plan sponsor.

(5) PROVISION OF COST INFORMATION TO PHYSICIANS.—In the case that the premium, deductible, co-payments, co-insurance, or other insurance-related charge under a pharmacy benefit plan is underwritten, in whole or in part, by a Federal, State, or local government, the pharmacy benefit plan sponsor shall provide a list of the wholesale acquisition costs of the top 500 most frequently prescribed drugs to physicians who are licenced to prescribe

drugs and who provide treatment to enrollees in such a plan.

(6) TREATMENT OF PHARMACISTS AS PROFESSIONAL HEALTH CARE PROVIDERS.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(A) by striking ''and'' at the end of subparagraph (DD);

(B) by adding ''and'' at the end of subparagraph (EE); and

(C) by inserting after subparagraph (EE), the following new subparagraph:

''(FF) pharmacist services;''.

SEC. 4. PHARMACEUTICAL ACCESS PROGRAM.

(a) ESTABLISHMENT.—Not later than January 1, 2011, the Secretary of Health and Human Services shall establish a pharmaceutical access program to provide affordable access to prescription drugs to individuals who receive drug benefits under Federal programs (except for the Medicaid program under title XIX of the Social Security Act).

(b) ELIGIBILITY.—Any individual in a State shall be eligible to enroll in the program under subsection (a).

(c) FEES.—

(1) IN GENERAL.—A pharmacy that dispenses prescription drugs in the United States shall remit to the Secretary of Health and Human Services—

(A) $0.50 for each prescription dispensed by such pharmacy for a brand name drug; and

(B) $1.00 for each prescription dispensed by such pharmacy for a generic drug.

(2) TREATMENT FOR INFLATION.—The fees under paragraph (1) shall be adjusted annually for inflation, based on the consumer price index.

(3) TREATMENT OF MEDICAID PROGRAMS.—The rule under paragraph (1) shall not apply to drugs dispensed under a State Medicaid program under title XIX of the Social Security Act.

(4) INCREASE IN PROFESSIONAL DISPENSING FEE FOR PRIVATE PLANS.—The professional dispensing fee paid to pharmacies by a pharmacy benefit plan that is not funded by any Federal funds shall be increased by such plan sponsor—

(A) by $0.50 for each brand name prescription; and

(B) by $1.00 for each generic prescription.

(d) USE OF FUNDS.—Funds generated under subsection (c) shall be used solely to provide affordable access

to prescription drugs to low-income individuals who have enrolled in the program under subsection (a).

SEC. 5. DEFINITIONS.

For purposes of this Act:

(1) BRAND NAME DRUGS.—The term ''brand name drug'' means a prescription drug that is under patent by the drug's original manufacturer and is protected from competition by other manufacturers of prescription drugs.

(2) GENERIC DRUG.—The term ''generic drug'' means a prescription drug that has lost patient protection provided to a single manufacturer or multiple manufacturers and is widely available from multiple manufacturers.

(3) PHARMACY BENEFIT PLAN.—The term ''pharmacy benefit plan'' means an insurance plan or insurance coverage that provides benefits for prescription drugs, including a group health plan (as such term is defined in section 733(a) of the Patient Health and Real Medication Access Cost Savings Act of 2009 (29 U.S.C. 1191b(a))) that provides prescription drug benefits.

(4) PROFESSIONAL DISPENSING FEE.—The term ''professional dispensing fee'' means the fee paid for the dispensing of a drug by the pharmacist

and excludes any reimbursement for the cost of the drug.

(5) PROFESSIONAL SERVICE FEE.—The term ''professional service fee'' means a fee paid to a pharmacy for professional services preformed by a pharmacist, excluding dispensing drugs and any reimbursement for the cost of the drug. Such term may include medication reviews, injections, and cholesterol checks.

(6) REBATE.—The term ''rebate'' means any item of value, including monetary value, that is distributed by the manufacturer conditional upon the receipt of a payment for drugs produced by such manufacturer.

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