AMENDMENT TO

RULES COMMITTEE PRINT 116–41

OFFERED BY M__. _____

Add at the end of title VIII the following new section (and conform the table of contents accordingly):

SEC. 812. 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 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;

''(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 remuneration; and

''(D) any form of spread pricing whereby any amount charged or claimed by the entity or the PBM (as applicable) that 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.''.

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

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

(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)''.

(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) SURVEY OF RETAIL PRICES.—

(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) SURVEY OF RETAIL PRICES.—The Secretary shall conduct a survey of retail community drug prices, to include at least 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 on a monthly basis of retail survey prices of the national average drug acquisition cost for covered outpatient drugs for such pharmacies, net of all discounts and rebates (to the extent any information with respect to such discounts and rebates is available), the average reimbursement received for such drugs by such pharmacies from all sources of payment, including third parties, and, to the extent available, the usual and customary charges to consumers for such drugs; 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, 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 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 inde-

pendent 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 operated pharmacies.

''(v) Information on price concessions including on and off invoice discounts, rebates, and other price concessions.

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

''(H) PENALTIES.—

''(i) FAILURE TO PROVIDE TIMELY INFORMATION.—A retail community pharmacy that fails to respond to a survey conducted under this subsection on a timely basis may be subject to a civil monetary penalty in the amount of $10,000 for each day in which such information has not been provided.

''(ii) FALSE INFORMATION.—A retail community pharmacy that knowingly provides false information in response to a survey conducted under this subsection may be subject to a civil money penalty in

an amount not to exceed $100,000 for each item of false information.

''(iii) OTHER PENALTIES.—Any civil money penalties imposed under this subparagraph shall be in addition to other penalties as may be prescribed by law. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceedings under section 1128A(a).

''(I) 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 2020 and each fiscal year thereafter,'' after ''2010''.

(2) EFFECTIVE DATE.—The amendments made by this subsection take effect on the 1st day of the 1st quarter that begins on or after the date that is 18 months after the date of enactment of this Act.

(c) MANUFACTURER REPORTING OF WHOLESALE ACQUISITION COST.—Section 1927(b)(3) of such Act (42 U.S.C. 1396r–8(b)(3)) is amended—

(1) in subparagraph (A)(i)—

(A) in subclause (I), by striking ''and'' after the semicolon;

(B) in subclause (II), by adding ''and'' after the semicolon;

(C) by moving the left margins of subclause (I) and (II) 2 ems to the right; and

(D) by adding at the end the following:

''(III) in the case of rebate periods that begin on or after the date of enactment of this subclause, on the wholesale acquisition cost (as defined in section 1847A(c)(6)(B)) for covered outpatient drugs for the rebate period under the agreement (including for all such drugs that are sold under a new drug application approved

under section 505(c) of the Federal Food, Drug, and Cosmetic Act);''; and

(2) in subparagraph (D)—

(A) in the matter preceding clause (i), by inserting ''and clause (vii) of this subparagraph'' after ''1847A'';

(B) in clause (v), by striking ''and'' after the comma;

(C) in clause (vi), by striking the period and inserting '', and''; and

(D) by inserting after clause (vi) the following:

''(vii) to the Secretary to disclose (through a website accessible to the public) the most recently reported wholesale acquisition cost (as defined in section 1847A(c)(6)(B)) for each covered outpatient drug (including for all such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act), as reported under subparagraph (A)(i)(III).''.

Page 195, line 9, strike ''$500,000,000'' and insert ''$680,000,000''.

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