

110TH CONGRESS  
1ST SESSION

# S. 1589

To amend title XIX of the Social Security Act to reduce the costs of prescription drugs for enrollees of Medicaid managed care organizations by extending the discounts offered under fee-for-service Medicaid to such organizations.

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## IN THE SENATE OF THE UNITED STATES

JUNE 11, 2007

Mr. BINGAMAN (for himself, Mr. KERRY, Mr. AKAKA, Mr. SALAZAR, Mr. WHITEHOUSE, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XIX of the Social Security Act to reduce the costs of prescription drugs for enrollees of Medicaid managed care organizations by extending the discounts offered under fee-for-service Medicaid to such organizations.

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 Rebate Equali-  
5       zation Act of 2007”.

1 **SEC. 2. EXTENSION OF PRESCRIPTION DRUG DISCOUNTS**  
2 **TO ENROLLEES OF MEDICAID MANAGED**  
3 **CARE ORGANIZATIONS.**

4 (a) IN GENERAL.—Section 1903(m)(2)(A) (42  
5 U.S.C. 1396b(m)(2)(A)) is amended—

6 (1) in clause (xi), by striking “and” at the end;

7 (2) in clause (xii), by striking the period at the  
8 end and inserting “; and”; and

9 (3) by adding at the end the following:

10 “(xiii) such contract provides that (I)  
11 payment for covered outpatient drugs dis-  
12 pensed to individuals eligible for medical  
13 assistance who are enrolled with the entity  
14 shall be subject to the same rebate re-  
15 quired by the agreement entered into  
16 under section 1927 as the State is subject  
17 to and that the State shall allow the entity  
18 to collect such rebates from manufacturers,  
19 and (II) capitation rates paid to the entity  
20 shall be based on actual cost experience re-  
21 lated to rebates and subject to the Federal  
22 regulations requiring actuarially sound  
23 rates.”.

24 (b) CONFORMING AMENDMENTS.—Section 1927 (42  
25 U.S.C. 1396r–8) is amended—

26 (1) in subsection (d)—

1 (A) in paragraph (1), by adding at the end  
2 the following:

3 “(C) Notwithstanding the subparagraphs  
4 (A) and (B)—

5 “(i) a medicaid managed care organi-  
6 zation with a contract under section  
7 1903(m) may exclude or otherwise restrict  
8 coverage of a covered outpatient drug on  
9 the basis of policies or practices of the or-  
10 ganization, such as those affecting utiliza-  
11 tion management, formulary adherence,  
12 and cost sharing or dispute resolution, in  
13 lieu of any State policies or practices relat-  
14 ing to the exclusion or restriction of cov-  
15 erage of such drugs; and

16 “(ii) nothing in this section or para-  
17 graph (2)(A)(xiii) of section 1903(m) shall  
18 be construed as requiring a medicaid man-  
19 aged care organization with a contract  
20 under such section to maintain the same  
21 such polices and practices as those estab-  
22 lished by the State for purposes of individ-  
23 uals who receive medical assistance for cov-  
24 ered outpatient drugs on a fee-for service  
25 basis.”; and

1 (B) in paragraph (4), by inserting after  
2 subparagraph (E) the following:

3 “(F) Notwithstanding the preceding sub-  
4 paragraphs of this paragraph, any formulary  
5 established by medicaid managed care organiza-  
6 tion with a contract under section 1903(m) may  
7 be based on positive inclusion of drugs selected  
8 by a formulary committee consisting of physi-  
9 cians, pharmacists, and other individuals with  
10 appropriate clinical experience as long as drugs  
11 excluded from the formulary are available  
12 through prior authorization, as described in  
13 paragraph (5).”; and

14 (2) in subsection (j), by striking paragraph (1)  
15 and inserting the following:

16 “(1) Covered outpatients drugs are not subject  
17 to the requirements of this section if such drugs  
18 are—

19 “(A) dispensed by a health maintenance  
20 organization other than a medicaid managed  
21 care organization with a contract under section  
22 1903(m); and

23 “(B) subject to discounts under section  
24 340B of the Public Health Service Act.”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section take effect on the date of enactment of this  
3 Act and apply to rebate agreements entered into or re-  
4 newed under section 1927 of the Social Security Act (42  
5 U.S.C. 1396r–8) on or after such date.

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