

119TH CONGRESS
2D SESSION

S. _____

To amend title XIX of the Social Security Act to require the Secretary of Health and Human Services to conduct surveys of non-retail pharmacy drug prices, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WARNER 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 require the Secretary of Health and Human Services to conduct surveys of non-retail pharmacy drug prices, and for other purposes.

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 “Ensuring Accurate
5 Payments to Specialty Pharmacies 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) by redesignating paragraphs (2) through
6 (4) as paragraphs (3), (4), and (6), respectively;

7 (2) by inserting after paragraph (1) the fol-
8 lowing new paragraph:

9 “(2) DETERMINING APPLICABLE NON-RETAIL
10 PHARMACY ACTUAL ACQUISITION COSTS.—

11 “(A) IN GENERAL.—The Secretary shall
12 conduct a survey of applicable non-retail phar-
13 macy drug prices to determine national average
14 drug acquisition cost benchmarks. In con-
15 ducting such survey, the Secretary may con-
16 tract services for—

17 “(i) the determination of survey
18 prices, separate from the survey prices de-
19 scribed in paragraph (1)(A)(i), of the ap-
20 plicable non-retail national average drug
21 acquisition cost for covered outpatient
22 drugs that represent a nationwide average
23 of consumer purchase prices for such
24 drugs, net of all discounts and rebates (to
25 the extent any information with respect to
26 such discounts and rebates is available)

1 based on a monthly survey of applicable
2 non-retail pharmacies; and

3 “(ii) at the discretion of the Sec-
4 retary, for each type of applicable non-re-
5 tail pharmacy (as identified pursuant to
6 the type indicators established by the Sec-
7 retary under subsection (k)(12)(B)(ii)), the
8 determination of survey prices, separate
9 from the survey prices described in para-
10 graph (1)(A)(i) or clause (i) of this sub-
11 paragraph, of the national average drug
12 acquisition cost for such type of pharmacy
13 for covered outpatient drugs that represent
14 a nationwide average of consumer purchase
15 prices for such drugs, net of all discounts
16 and rebates (to the extent any information
17 with respect to such discounts and rebates
18 is available) based on a monthly survey of
19 such pharmacies.

20 “(B) APPLICATION OF REQUIREMENTS.—
21 Subparagraphs (C), (D), and (E) of paragraph
22 (1) shall apply to surveys of non-retail phar-
23 macy drug prices conducted under this para-
24 graph in the same manner as such subpara-

1 graphs apply to surveys of retail pharmacy drug
2 prices conducted under subparagraph (1).

3 “(C) ADDITIONAL REQUIREMENT.—In ad-
4 dition to the terms and conditions identified in
5 paragraph (1)(D), and such other terms and
6 conditions as the Secretary shall specify, a con-
7 tract with a vendor under this paragraph shall
8 require that the vendor must differentiate, in
9 collecting and reporting survey data, the rel-
10 evant pharmacy type indicator for all cost infor-
11 mation collected, including whether a pharmacy
12 is owned by, operated by, or otherwise affiliated
13 with a pharmacy benefit manager and whether
14 a pharmacy is an applicable non-retail phar-
15 macy, and, in the case of an applicable non-re-
16 tail pharmacy, which type of applicable non-re-
17 tail pharmacy (as identified pursuant to the
18 type indicators established by the Secretary
19 under subsection (k)(12)(B)(ii)) it is.

20 “(D) SURVEY REPORTING.—In order to
21 meet the requirement of section 1902(a)(54), a
22 State shall require that any applicable non-re-
23 tail pharmacy in the State that receives any
24 payment, reimbursement, administrative fee,
25 discount, or rebate related to the dispensing of

1 covered outpatient drugs to individuals receiv-
2 ing benefits under this title, regardless of
3 whether such payment, reimbursement, admin-
4 istrative fee, discount, or rebate is received
5 from the State or a managed care entity or
6 other specified entity (as such terms are defined
7 in section 1903(m)(9)(D)) directly or from a
8 pharmacy benefit manager or another entity
9 that has a contract with the State or a man-
10 aged care entity or other specified entity (as so
11 defined), shall respond to surveys conducted
12 under this paragraph.

13 “(E) SURVEY INFORMATION.—Information
14 on national drug acquisition prices obtained
15 under this paragraph shall be made publicly
16 available and shall include at least the fol-
17 lowing:

18 “(i) The monthly response rate to the
19 survey including a list of applicable non-re-
20 tail pharmacies not in compliance with
21 subparagraph (D).

22 “(ii) The sampling methodology and
23 number of applicable non-retail pharmacies
24 sampled monthly.

1 “(iii) Information on price concessions
2 to applicable non-retail pharmacies, includ-
3 ing discounts, rebates, and other price con-
4 cessions, to the extent that such informa-
5 tion may be publicly released and has been
6 collected by the Secretary as part of the
7 survey.

8 “(F) PENALTIES.—The Secretary, in con-
9 sultation with the Office of the Inspector Gen-
10 eral of the Department of Health and Human
11 Services, shall enforce the provisions of this
12 paragraph with respect to an applicable non-re-
13 tail pharmacy through the establishment of ap-
14 propriate civil monetary penalties, which may
15 be assessed with respect to each violation or
16 survey non-response, and with respect to each
17 non-compliant applicable non-retail pharmacy
18 (including a pharmacy that is part of a chain),
19 until compliance with this paragraph has been
20 completed. The provisions of section 1128A
21 (other than subsections (a) and (b)) shall apply
22 to a civil money penalty under the preceding
23 sentence in the same manner as such provisions
24 apply to a civil money penalty or proceeding
25 under section 1128A(a).

1 “(G) LIMITATION ON USE OF APPLICABLE
2 NON-RETAIL PHARMACY PRICING INFORMA-
3 TION.—No State shall use pricing information
4 reported by applicable non-retail pharmacies
5 under subparagraph (A) to develop or inform
6 reimbursement rates for retail community phar-
7 macies.”;

8 (3) in paragraph (3), as so redesignated—

9 (A) in subparagraph (A), by inserting “,
10 including payment rates under managed care
11 entities or other specified entities (as such
12 terms are defined in section 1903(m)(9)(D)),”
13 after “under this title”; and

14 (B) in subparagraph (B), by inserting
15 “and the basis for such dispensing fees” before
16 the semicolon;

17 (4) by inserting after paragraph (4), as so re-
18 designated, the following new paragraph:

19 “(5) OVERSIGHT.—

20 “(A) IN GENERAL.—The Inspector General
21 of the Department of Health and Human Serv-
22 ices shall conduct periodic studies of the survey
23 data reported under this subsection, as appro-
24 priate, including with respect to substantial
25 variations in acquisition costs or other applica-

1 ble costs, as well as with respect to how internal
2 transfer prices and related party transactions
3 may influence the costs reported by pharmacies
4 affiliated with pharmacy benefit managers,
5 wholesalers, distributors, and other entities that
6 acquire covered outpatient drugs relative to
7 costs reported by pharmacies not affiliated with
8 such entities. The Inspector General shall pro-
9 vide periodic updates to Congress on the results
10 of such studies, as appropriate, in a manner
11 that does not disclose trade secrets or other
12 proprietary information.

13 “(B) APPROPRIATION.—There is appro-
14 priated to the Inspector General of the Depart-
15 ment of Health and Human Services, out of
16 any money in the Treasury not otherwise ap-
17 propriated, \$5,000,000 for fiscal year 2027, to
18 remain available until expended, to carry out
19 this paragraph.”; and

20 (5) in paragraph (6), as so redesignated, by in-
21 serting “, and \$9,000,000 for fiscal year 2027 and
22 each fiscal year thereafter,” after “2010”.

23 (b) DEFINITIONS.—Section 1927(k) of the Social Se-
24 curity Act (42 U.S.C. 1396r–8(k)) is amended by adding
25 the following—

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

2 “(A) IN GENERAL.—The term ‘applicable
3 non-retail pharmacy’ means a pharmacy that is
4 licensed as a pharmacy by the State and that
5 is not a retail community pharmacy, including
6 a pharmacy that dispenses prescription medica-
7 tions to patients primarily through mail and
8 specialty pharmacies. Such term does not in-
9 clude nursing home pharmacies, long-term care
10 facility pharmacies, hospital pharmacies, clinics,
11 charitable or not-for-profit pharmacies, govern-
12 ment pharmacies, or low dispensing pharmacies
13 (as defined by the Secretary).

14 “(B) IDENTIFICATION OF APPLICABLE
15 NON-RETAIL PHARMACIES.—

16 “(i) IN GENERAL.—For purposes of
17 subsection (f), the Secretary shall, not
18 later than January 1, 2028, in consulta-
19 tion with stakeholders as appropriate, pub-
20 lish guidance specifying pharmacies that
21 meet the definition of applicable non-retail
22 pharmacies and that will be subject to the
23 survey requirements under subsection
24 (f)(2).

1 “(ii) INCLUSION OF PHARMACY TYPE
2 INDICATORS.—The guidance published
3 under clause (i) shall include pharmacy
4 type indicators to distinguish between dif-
5 ferent types of applicable non-retail phar-
6 macies, such as pharmacies that dispense
7 prescriptions primarily through the mail
8 and pharmacies that dispense prescriptions
9 that require special handling or distribu-
10 tion. An applicable non-retail pharmacy
11 may be identified through multiple phar-
12 macy type indicators.

13 “(13) PHARMACY BENEFIT MANAGER.—The
14 term ‘pharmacy benefit manager’ means any person
15 or entity that, either directly or through an inter-
16 mediary, acts as a price negotiator or group pur-
17 chaser on behalf of a State, managed care entity (as
18 defined in section 1903(m)(9)(D)), or other specified
19 entity (as so defined), or manages the prescription
20 drug benefits provided by a State, managed care en-
21 tity, or other specified entity, including the proc-
22 essing and payment of claims for prescription drugs,
23 the performance of drug utilization review, the proc-
24 essing of drug prior authorization requests, the man-
25 aging of appeals or grievances related to the pre-

1 scription drug benefits, contracting with pharmacies,
2 controlling the cost of covered outpatient drugs, or
3 the provision of services related thereto. Such term
4 includes any person or entity acts as a price nego-
5 tiator (with regard to payment amounts to phar-
6 macies and providers for a covered outpatient drug
7 or the net cost of the drug) or group purchaser on
8 behalf of a State, managed care entity, or other
9 specified entity or that carries out 1 or more of the
10 other activities described in the preceding sentence,
11 irrespective of whether such person or entity calls
12 itself a pharmacy benefit manager.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section take effect on the first day of the first quarter
15 that begins on or after the date that is 18 months after
16 the date of enactment of this Act.