

112TH CONGRESS
1ST SESSION

H. R. 3342

To amend title XIX of the Social Security Act to encourage States to increase generic drug utilization under Medicaid.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2011

Mr. BASS of New Hampshire (for himself, Mrs. EMERSON, and Mr. WELCH) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend title XIX of the Social Security Act to encourage States to increase generic drug utilization 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 “Affordable Medicines
5 Utilization Act of 2011”.

6 **SEC. 2. SAVINGS REBATE FOR STATES THAT INCREASE GE-**
7 **NERIC DRUG UTILIZATION UNDER MEDICAID.**

8 (a) IN GENERAL.—Section 1903 of the Social Secu-
9 rity Act (42 U.S.C. 1396b) is amended by inserting after
10 subsection (g) the following:

1 “(h)(1) With respect to each of fiscal years 2012,
2 2013, and 2014, if the generic substitution rate deter-
3 mined for the State under section 1927(l)(2) for the most
4 recent preceding fiscal year for which data are available
5 is greater than the State’s generic substitution rate (as
6 so determined) for the second most recent preceding fiscal
7 year for which data are available, the amount determined
8 under subsection (a)(1) for the State for each quarter of
9 the fiscal year shall be increased by an amount equal to
10 50 percent of the generic drug utilization savings amount
11 determined for the State and the quarter under paragraph
12 (2).

13 “(2) The generic drug utilization savings amount de-
14 termined under this paragraph with respect to a State and
15 a quarter is the product of—

16 “(A) the difference between the—

17 “(i) total amount expended by the State
18 for the corresponding quarter of the preceding
19 fiscal year for providing medical assistance for
20 multiple source drugs (as defined in section
21 1927(k)(7)(A)(i)), as determined after the ap-
22 plication of section 1927(b)(1)(B); and

23 “(ii) total amount expended by the State
24 for the quarter involved for providing medical

1 assistance for such drugs (as so determined);
2 and

3 “(B) the State percentage determined for the
4 State under section 1905(b).”.

5 (b) ANNUAL DETERMINATION OF STATE GENERIC
6 SUBSTITUTION RATES AND PERFORMANCE RANKINGS.—

7 Section 1927 of the Social Security Act (42 U.S.C. 1396r-
8 8) is amended by adding at the end the following:

9 “(1) ANNUAL DETERMINATION OF STATE GENERIC
10 SUBSTITUTION RATES AND PERFORMANCE RANKINGS.—

11 “(1) IN GENERAL.—Not later than January 1,
12 2012, and annually thereafter, the Secretary shall
13 determine the generic substitution rate (as defined
14 in paragraph (2)) for each State for the most recent
15 preceding fiscal year and the second most recent
16 preceding fiscal year for which data are available.
17 The Secretary annually shall publish on the Internet
18 Web site of the Centers for Medicare & Medicaid
19 Services the generic substitution rates determined
20 for each State for such preceding fiscal years and,
21 with respect to a State, the percentage increase or
22 decrease in such rates when compared with each
23 other. On the basis of such comparison, the Sec-
24 retary shall list the States in order of the States

1 with the greatest increase in the generic substitution
2 rate.

3 “(2) GENERIC SUBSTITUTION RATE.—In para-
4 graph (1), the term ‘generic substitution rate’
5 means, with respect to a State, the share of all drug
6 units for which payment is made to the State under
7 this title for the 20 most widely prescribed multiple
8 source drugs under the State program under this
9 title that have a specific National Drug Code and
10 meet the requirements of subsection (k)(7)(A)(i).”.

11 (c) EVALUATION AND REPORT.—

12 (1) IN GENERAL.—Not later than December 31,
13 2014, the Secretary of Health and Human Services
14 shall evaluate and report to Congress on the effec-
15 tiveness of the generic drug utilization savings pay-
16 ments authorized under section 1903(h) of the So-
17 cial Security Act (42 U.S.C. 1396b(h)) (as added by
18 subsection (a)) in encouraging States to increase
19 their Medicaid generic substitution rate. The evalua-
20 tion shall include the following:

21 (A) An analysis of the amounts each State
22 Medicaid program saves through increased ge-
23 neric drug substitution.

24 (B) An analysis of any indirect savings to
25 State Medicaid programs through increased

1 medication adherence due to increased accessi-
2 bility and affordability of prescriptions.

3 (C) An analysis of future estimated sav-
4 ings to State Medicaid programs and the Fed-
5 eral Government after termination of the ge-
6 neric drug utilization savings payments author-
7 ized under such section.

8 (2) MEDICAID GENERIC SUBSTITUTION RATE.—

9 In paragraph (1), the term “Medicaid generic substi-
10 tution rate” has the meaning given the term “ge-
11 neric substitution rate” under section 1927(l)(2) of
12 the Social Security Act (42 U.S.C. 1396r–8(l)(2))
13 (as added by subsection (b)).

14 **SEC. 3. INNOVATIVE HEALTH CARE SAVINGS PROGRAM.**

15 (a) IN GENERAL.—Section 1903 of the Social Secu-
16 rity Act (42 U.S.C. 1396b) is amended by adding at the
17 end the following:

18 “(aa) INNOVATIVE HEALTH CARE SAVINGS PRO-
19 GRAM.—

20 “(1) IN GENERAL.—In addition to the pay-
21 ments provided under subsection (a), subject to
22 paragraph (5), the Secretary shall provide for pay-
23 ments to eligible States for the implementation of
24 programs to achieve reductions in expenditures
25 under this title or under title XVIII.

1 “(2) ELIGIBLE STATE.—A State is eligible for
2 a payment under this subsection if the State
3 achieves a generic substitution rate (as determined
4 under section 1927(l)(2)) of at least 92 percent.

5 “(3) USE OF FUNDS.—A State may only use
6 funds received through a payment under this sub-
7 section to implement programs to achieve reductions
8 in expenditures under this title or title XVIII (such
9 as innovative approaches to cost savings and health
10 care delivery).

11 “(4) APPLICATION, TERMS, AND CONDITIONS.—

12 “(A) APPLICATION.—No payments shall be
13 made to a State under this subsection unless
14 the State applies to the Secretary for such pay-
15 ments in a form, manner, and time specified by
16 the Secretary and such application is approved
17 by the Secretary.

18 “(B) TERMS AND CONDITIONS.—Payments
19 made under this subsection are made under
20 such terms and conditions consistent with this
21 subsection as the Secretary prescribes.

22 “(5) FUNDING.—

23 “(A) LIMITATION.—The total amount of
24 payments under this subsection for a quarter
25 shall not exceed 5 percent of the sum of the ge-

1 neric drug utilization savings amount (as deter-
2 mined under subsection (h)(2)) for all States
3 for the quarter. This subsection constitutes
4 budget authority in advance of appropriations
5 Acts and represents the obligation of the Sec-
6 retary to provide for the payment of amounts
7 provided under this subsection.

8 “(B) ALLOCATION OF FUNDS.—The Sec-
9 retary shall specify a method for allocating the
10 funds made available under this subsection
11 among eligible States.

12 “(C) FORM AND MANNER OF PAYMENT.—
13 Payment to an eligible State under this sub-
14 section shall be made in the same manner as
15 other payments under section 1903(a). There is
16 no requirement for State matching funds to re-
17 ceive payments under this subsection.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall be effective for quarters beginning on
20 or after the date of enactment of this Act.

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