

118TH CONGRESS  
1ST SESSION

# S. 3245

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.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 2023

Mr. WARNER (for himself and Mr. CASSIDY) 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 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 frame and number  
23 of applicable non-retail pharmacies sam-  
24 pled 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 2024, 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 2024 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, 2026, in consulta-  
19 tion with stakeholders as appropriate, issue  
20 guidance specifying pharmacies that meet  
21 the definition of applicable non-retail phar-  
22 macies and that will, beginning January 1,  
23 2027, be subject to the survey require-  
24 ments under subsection (f)(2).

1                   “(ii) INCLUSION OF PHARMACY TYPE  
2                   INDICATORS.—The guidance promulgated  
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 or  
18                  other specified entity (as such terms are defined in  
19                  section 1903(m)(9)(D)), or manages the prescription  
20                  drug benefits provided by such State, managed care  
21                  entity, 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 that carries out 1 or  
5       more of the activities described in the preceding sen-  
6       tence, irrespective of whether such person or entity  
7       calls itself a ‘pharmacy benefit manager’.”.

8       (c) EFFECTIVE DATE.—The amendments made by  
9       this section take effect on the first day of the first quarter  
10      that begins on or after the date that is 18 months after  
11      the date of enactment of this Act.

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