

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4758
OFFERED BY M. _____**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Accelerating Kids’ Ac-
3 cess to Care Act”.

**4 SEC. 2. STREAMLINED ENROLLMENT PROCESS FOR ELIGI-
5 BLE OUT-OF-STATE PROVIDERS UNDER MED-
6 ICAID AND CHIP.**

7 (a) IN GENERAL.—Section 1902(kk) of the Social Se-
8 curity Act (42 U.S.C. 1396a(kk)) is amended by adding
9 at the end the following new paragraph:

10 “(10) STREAMLINED ENROLLMENT PROCESS
11 FOR ELIGIBLE OUT-OF-STATE PROVIDERS.—

12 “(A) IN GENERAL.—If the State does not
13 have a standard agreement with other States
14 governing coverage and payment for services
15 furnished to Medicaid-eligible children with
16 medically complex conditions that was developed
17 consistent with guidance issued by the Sec-
18 retary under section 1945A, the State—

1 “(i) adopts and implements a process
2 to allow an eligible out-of-State provider to
3 enroll under the State plan (or a waiver of
4 such plan) to furnish items and services to,
5 or order, prescribe, refer, or certify eligi-
6 bility for, items and services for qualifying
7 individuals without the imposition of
8 screening or enrollment requirements in
9 addition to those imposed by the State in
10 which the eligible out-of-State provider is
11 located; and

12 “(ii) provides that an eligible out-of-
13 State provider that enrolls as a partici-
14 pating provider in the State plan (or a
15 waiver of such plan) through such process
16 shall be so enrolled for a 5-year period, un-
17 less the provider is terminated or excluded
18 from participation during such period.

19 “(B) DEFINITIONS.—In this paragraph:

20 “(i) ELIGIBLE OUT-OF-STATE PRO-
21 VIDER.—The term ‘eligible out-of-State
22 provider’ means, with respect to a State, a
23 provider—

24 “(I) that is located in any other
25 State;

1 “(II) that—

2 “(aa) was determined by the
3 Secretary to have a limited risk
4 of fraud, waste, and abuse for
5 purposes of determining the level
6 of screening to be conducted
7 under section 1866(j)(2), has
8 been so screened under such sec-
9 tion 1866(j)(2), and is enrolled in
10 the Medicare program under title
11 XVIII; or

12 “(bb) was determined by the
13 State agency administering or su-
14 pervising the administration of
15 the State plan (or a waiver of
16 such plan) of such other State to
17 have a limited risk of fraud,
18 waste, and abuse for purposes of
19 determining the level of screening
20 to be conducted under paragraph
21 (1) of this subsection, has been
22 so screened under such para-
23 graph (1), and is enrolled under
24 such State plan (or a waiver of
25 such plan); and

1 “(III) that has not been—

2 “(aa) excluded from partici-
3 pation in any Federal health care
4 program pursuant to section
5 1128 or 1128A;

6 “(bb) excluded from partici-
7 pation in the State plan (or a
8 waiver of such plan) pursuant to
9 part 1002 of title 42, Code of
10 Federal Regulations (or any suc-
11 cessor regulation), or State law;
12 or

13 “(cc) terminated from par-
14 ticipating in a Federal health
15 care program or the State plan
16 (or a waiver of such plan) for a
17 reason described in paragraph
18 (8)(A).

19 “(ii) QUALIFYING INDIVIDUAL.—The
20 term ‘qualifying individual’ means an indi-
21 vidual under 21 years of age who is en-
22 rolled under the State plan (or waiver of
23 such plan).

1 “(iii) STATE.—The term ‘State’
2 means 1 of the 50 States or the District
3 of Columbia.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) Section 1902(a)(77) of the Social Security
6 Act (42 U.S.C. 1396a(a)(77)) is amended by insert-
7 ing “enrollment,” after “screening,”.

8 (2) The subsection heading for section
9 1902(kk) of such Act (42 U.S.C. 1396a(kk)) is
10 amended by inserting “ENROLLMENT,” after
11 “SCREENING,”.

12 (3) Section 2107(e)(1)(G) of such Act (42
13 U.S.C. 1397gg(e)(1)(G)) is amended by inserting
14 “enrollment,” after “screening,”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on the date that is 3 years
17 after the date of enactment of this section.

18 **SEC. 3. PREVENTING THE USE OF ABUSIVE SPREAD PRIC-**
19 **ING IN MEDICAID.**

20 (a) IN GENERAL.—Section 1927(e) of the Social Se-
21 curity Act (42 U.S.C. 1396r–8(e)) is amended by adding
22 at the end the following:

23 “(6) TRANSPARENT PRESCRIPTION DRUG PASS-
24 THROUGH PRICING REQUIRED.—

1 “(A) IN GENERAL.—A contract between
2 the State and a pharmacy benefit manager (re-
3 ferred to in this paragraph as a ‘PBM’), or a
4 contract between the State and a managed care
5 entity or other specified entity (as such terms
6 are defined in section 1903(m)(9)(D) and col-
7 lectively referred to in this paragraph as the
8 ‘entity’) that includes provisions making the en-
9 tity responsible for coverage of covered out-
10 patient drugs dispensed to individuals enrolled
11 with the entity, shall require that payment for
12 such drugs and related administrative services
13 (as applicable), including payments made by a
14 PBM on behalf of the State or entity, is based
15 on a transparent prescription drug pass-
16 through pricing model under which—

17 “(i) any payment made by the entity
18 or the PBM (as applicable) for such a
19 drug—

20 “(I) is limited to—

21 “(aa) ingredient cost; and

22 “(bb) a professional dis-
23 pensing fee that is not less than
24 the professional dispensing fee
25 that the State plan or waiver

1 would pay if the plan or waiver
2 was making the payment directly;

3 “(II) is passed through in its en-
4 tirety (except as reduced under Fed-
5 eral or State laws and regulations in
6 response to instances of waste, fraud,
7 or abuse) by the entity or PBM to the
8 pharmacy or provider that dispenses
9 the drug; and

10 “(III) is made in a manner that
11 is consistent with sections 447.502,
12 447.512, 447.514, and 447.518 of
13 title 42, Code of Federal Regulations
14 (or any successor regulation) as if
15 such requirements applied directly to
16 the entity or the PBM, except that
17 any payment by the entity or the
18 PBM for the ingredient cost of such
19 drug purchased by a covered entity
20 (as defined in subsection (a)(5)(B))
21 may exceed the actual acquisition cost
22 (as defined in 447.502 of title 42,
23 Code of Federal Regulations, or any
24 successor regulation) for such drug
25 if—

1 “(aa) such drug was subject
2 to an agreement under section
3 340B of the Public Health Serv-
4 ice Act;

5 “(bb) such payment for the
6 ingredient cost of such drug does
7 not exceed the maximum pay-
8 ment that would have been made
9 by the entity or the PBM for the
10 ingredient cost of such drug if
11 such drug had not been pur-
12 chased by such covered entity;
13 and

14 “(cc) such covered entity re-
15 ports to the Secretary (in a form
16 and manner specified by the Sec-
17 retary), on an annual basis and
18 with respect to payments for the
19 ingredient costs of such drugs so
20 purchased by such covered entity
21 that are in excess of the actual
22 acquisition costs for such drugs,
23 the aggregate amount of such ex-
24 cess;

1 “(ii) payment to the entity or the
2 PBM (as applicable) for administrative
3 services performed by the entity or PBM is
4 limited to an administrative fee that re-
5 flects the fair market value of such serv-
6 ices;

7 “(iii) the entity or the PBM (as appli-
8 cable) makes available to the State, and
9 the Secretary upon request, all costs and
10 payments related to covered outpatient
11 drugs and accompanying administrative
12 services incurred, received, or made by the
13 entity or the PBM, including ingredient
14 costs, professional dispensing fees, admin-
15 istrative fees, post-sale and post-invoice
16 fees, discounts, or related adjustments
17 such as direct and indirect remuneration
18 fees, and any and all other remuneration;
19 and

20 “(iv) any form of spread pricing
21 whereby any amount charged or claimed by
22 the entity or the PBM (as applicable) that
23 exceeds the amount paid to the pharmacies
24 or providers on behalf of the State or enti-
25 ty, including any post-sale or post-invoice

1 fees, discounts, or related adjustments
2 such as direct and indirect remuneration
3 fees or assessments (after allowing for an
4 administrative fee as described in clause
5 (ii)) is not allowable for purposes of claim-
6 ing Federal matching payments under this
7 title.

8 “(B) MAKING CERTAIN INFORMATION
9 AVAILABLE.—The Secretary shall publish, not
10 less frequently than on an annual basis, infor-
11 mation received by the Secretary pursuant to
12 subparagraph (A)(i)(III)(cc). Such information
13 shall be so published in an electronic and
14 searchable format, such as through the 340B
15 Office of Pharmacy Affairs Information System
16 (or a successor system).”.

17 (b) CONFORMING AMENDMENTS.—Section 1903(m)
18 of such Act (42 U.S.C. 1396b(m)) is amended—

19 (1) in paragraph (2)(A)(xiii)—

20 (A) by striking “and (III)” and inserting
21 “(III)”;

22 (B) by inserting before the period at the
23 end the following: “, and (IV) if the contract in-
24 cludes provisions making the entity responsible
25 for coverage of covered outpatient drugs, the

1 entity shall comply with the requirements of
2 section 1927(e)(6)”; and

3 (C) by moving the left margin 2 ems to the
4 left; and

5 (2) by adding at the end the following new
6 paragraph:

7 “(10) No payment shall be made under this
8 title to a State with respect to expenditures incurred
9 by the State for payment for services provided by an
10 other specified entity (as defined in paragraph
11 (9)(D)(iii)) unless such services are provided in ac-
12 cordance with a contract between the State and such
13 entity which satisfies the requirements of paragraph
14 (2)(A)(xiii).”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to contracts between States and
17 managed care entities, other specified entities, or phar-
18 macy benefit managers that have an effective date begin-
19 ning on or after the date that is 18 months after the date
20 of enactment of this Act.

21 (d) IMPLEMENTATION.—

22 (1) IN GENERAL.—Notwithstanding any other
23 provision of law, the Secretary of Health and
24 Human Services may implement the amendments

1 made by this section by program instruction or oth-
2 erwise.

3 (2) NONAPPLICATION OF ADMINISTRATIVE PRO-
4 CEDURE ACT.—Implementation of the amendments
5 made by this section shall be exempt from the re-
6 quirements of section 553 of title 5, United States
7 Code.

8 (e) NONAPPLICATION OF PAPERWORK REDUCTION
9 ACT.—Chapter 35 of title 44, United States Code, shall
10 not apply to any data collection undertaken by the Sec-
11 retary of Health and Human Services under section
12 1927(f) of the Social Security Act (42 U.S.C. 1396r–8(f)),
13 as amended by this section.

14 **SEC. 4. MEDICAID IMPROVEMENT FUND.**

15 Section 1941(b)(3)(A) of the Social Security Act (42
16 U.S.C. 1396w–1(b)(3)(A)) is amended by striking “\$0”
17 and inserting “\$88,000,000”.

Amend the title so as to read: “A bill to amend title
XIX of the Social Security Act to streamline enrollment
under the Medicaid program of certain providers across
State lines, and to prevent the use of abusive spread pric-
ing in Medicaid.”.

