

112TH CONGRESS  
1ST SESSION

# H. R. 2296

To establish an America Rx program to establish fairer pricing for prescription drugs for individuals without access to prescription drugs at discounted prices.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 2011

Mr. MICHAUD (for himself, Mr. HINCHEY, Ms. PINGREE of Maine, and Mr. JACKSON of Illinois) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To establish an America Rx program to establish fairer pricing for prescription drugs for individuals without access to prescription drugs at discounted prices.

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; PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “America Rx Act of 2011”.

6 (b) PURPOSE.—The purpose of this Act is to estab-  
7 lish an America Rx program that utilizes manufacturer  
8 rebates and pharmacy discounts to reduce prescription

1 drug prices to those residents who are without access to  
2 discounted prices for outpatient prescription drugs.

3 **SEC. 2. AMERICA RX PROGRAM.**

4 (a) ESTABLISHMENT.—

5 (1) IN GENERAL.—Not later than 1 year after  
6 the date of the enactment of this Act, the Secretary  
7 of Health and Human Services shall establish a pro-  
8 gram (in this section referred to as the “America Rx  
9 program”) consistent with the provisions of this sec-  
10 tion to provide qualified residents with access to dis-  
11 counted prices for outpatient prescription drugs  
12 through rebate agreements that the Secretary has  
13 negotiated with prescription drug manufacturers.

14 (2) OUTREACH.—The Secretary shall provide  
15 for—

16 (A) outreach efforts to build public aware-  
17 ness of the program and maximize enrollment  
18 of qualified residents; and

19 (B) simplified eligibility procedures and  
20 uniform eligibility standards for qualified resi-  
21 dents.

22 (3) SUSPENSION; TERMINATION.—If the Sec-  
23 retary determines that American Health Benefit Ex-  
24 changes are operational under subtitle D of title I of  
25 the Patient Protection and Affordable Care Act

1 (Public Law 111–148) and the America Rx program  
2 is no longer needed to ensure that qualified residents  
3 have access to outpatient prescription drugs at af-  
4 fordable prices, the Secretary may suspend or termi-  
5 nate the program.

6 (b) REBATE AGREEMENTS WITH MANUFACTUR-  
7 ERS.—

8 (1) IN GENERAL.—Under the America Rx pro-  
9 gram the Secretary shall negotiate with manufactur-  
10 ers of outpatient prescription drugs rebate agree-  
11 ments with respect to drugs offered under the pro-  
12 gram to qualified residents.

13 (2) MINIMUM AMOUNT OF REBATES.—In nego-  
14 tiating the amount of such a rebate under paragraph  
15 (1), the Secretary shall take into consideration the  
16 amount of the rebate calculated under the Medicaid  
17 program, the average manufacturer price of pre-  
18 scription drugs, and other information on prescrip-  
19 tion drug prices and price discounts. The Secretary  
20 shall negotiate the amount of such rebates in a man-  
21 ner so that the rebates on average are comparable  
22 to the average percentage rebate obtained in out-  
23 patient prescription drugs provided under section  
24 1927(c) of the Social Security Act (42 U.S.C.  
25 1396r–8(c)).

1           (3) DISCOUNTED PRICES.—The Secretary shall  
2           specify the method for computing and applying such  
3           discounts, including a method for computing and ap-  
4           plying discounts on a uniform, average percentage  
5           basis.

6           (4) PAYMENT.—Rebates under such agreements  
7           shall be payable to the Secretary according to a  
8           schedule (not less often than quarterly) negotiated  
9           with manufacturers and shall be paid, directly or  
10          through States, to participating pharmacies that  
11          provide discounts to qualified residents.

12          (5) INCENTIVE.—In order to induce manufac-  
13          turers of outpatient prescription drugs to enter into  
14          such rebate agreements to carry out the purpose de-  
15          scribed in section 1(b), the Secretary shall provide,  
16          in the case of a manufacturer that has not entered  
17          into such an agreement, for a denial of a deduction  
18          under chapter 1 of the Internal Revenue Code of  
19          1986 for the amount of expenses of the manufac-  
20          turer for advertising and marketing of drugs of the  
21          manufacturer, other than expenses for free samples  
22          of drugs subject to section 503(b)(1) of the Federal  
23          Food, Drug, and Cosmetic Act intended to be dis-  
24          tributed to patients.

1           (6) APPLICATION OF REBATES.—Amounts re-  
2           ceived by the Secretary as rebates under this sub-  
3           section shall be placed into an appropriate account  
4           in the Treasury and shall be available in advance of  
5           appropriations to the Secretary for the payment of  
6           discounts and other costs of participating phar-  
7           macies in carrying out the America Rx program and  
8           for the payment of administrative costs in carrying  
9           out the program. Under the America Rx program,  
10          participating pharmacies shall be ensured reasonable  
11          and timely payment of discounts they provide to  
12          qualified residents under the program.

13          (c) ROLE OF STATES IN ADMINISTERING PRO-  
14          GRAM.—

15                 (1) IN GENERAL.—Under the America Rx pro-  
16                 gram the Secretary may enter into appropriate ar-  
17                 rangements with States under which States provide  
18                 for the administration of the program in return for  
19                 payment of the reasonable administrative expenses  
20                 associated with such administration.

21                 (2) ADMINISTRATIVE FUNCTIONS.—Such ad-  
22                 ministration functions may include—

23                         (A) determinations of eligibility of qualified  
24                         residents;

1 (B) arrangements with participating phar-  
2 macies; and

3 (C) such other functions as the Secretary  
4 determines appropriate.

5 (3) CONTRACTUAL AUTHORITY.—In carrying  
6 out responsibilities under this section, the Secretary  
7 and States may enter into agreements with phar-  
8 macy benefit managers and other third parties.

9 (d) PROGRAM ELIGIBILITY.—

10 (1) QUALIFIED RESIDENT DEFINED.—For pur-  
11 poses of this section, the term “qualified resident”  
12 means an individual who—

13 (A) is a citizen or national of the United  
14 States or is lawfully present in the United  
15 States (as determined in accordance with sec-  
16 tion 1411 of the Patient Protection and Afford-  
17 able Care Act); and

18 (B) as determined under regulations of the  
19 Secretary, is not covered under any public or  
20 private program that provides substantial bene-  
21 fits (which may be discounted prices) towards  
22 the purchase of outpatient prescription drugs.

23 (2) SCREENING.—

24 (A) FOR OTHER GOVERNMENTAL PRO-  
25 GRAMS.—Individuals who apply for benefits

1 under the America Rx program shall be  
2 screened for eligibility under the Medicaid pro-  
3 gram and other applicable Governmental health  
4 care programs and, if found eligible, shall be  
5 enrolled in such program or programs.

6 (B) SCREENING BY HEALTH INSURANCE  
7 EXCHANGES.—In the case of individuals enroll-  
8 ing in a qualified health plan through a Health  
9 Insurance Exchange under title I of the Patient  
10 Protection and Affordable Care Act, the Ex-  
11 change shall provide (at the time of enrollment)  
12 for a screening of the individual to determine if  
13 the individual is a qualified resident for pur-  
14 poses of the America Rx program.

15 (3) RELATION TO OTHER COVERAGE.—In order  
16 not to discourage employers and health insurance  
17 issuers from providing comprehensive prescription  
18 drug coverage through a group health plan or health  
19 insurance coverage, no such employer or issuer may  
20 participate in a Health Insurance Exchange if the  
21 Secretary determines that the prescription drug ben-  
22 efits under the plan or coverage have been reduced  
23 as a result of the America Rx program.

24 (4) PROTECTION OF THE LOW INCOME.—Noth-  
25 ing in this section shall be construed as reducing the

1 prescription drug benefits available to low-income in-  
2 dividuals, as well as senior citizens and the disabled,  
3 under the Medicare or Medicaid programs as a re-  
4 sult of the implementation of the America Rx pro-  
5 gram.

6 (e) ARRANGEMENTS WITH PARTICIPATING PHAR-  
7 MACIES.—

8 (1) IN GENERAL.—Under the America Rx pro-  
9 gram arrangements are made with pharmacies for  
10 the provision of prescription drugs at discounted  
11 prices to qualified residents in a reasonably acces-  
12 sible manner. Such arrangements shall provide  
13 that—

14 (A) each participating pharmacy shall—

15 (i) provide discounts on prices for out-  
16 patient prescription drugs for qualified  
17 residents in return for prompt reimburse-  
18 ment of the amount of such discounts and  
19 a reasonable dispensing fee;

20 (ii) not charge qualified residents  
21 more (before such discounts) for outpatient  
22 prescription drugs than the amount that  
23 individuals who are not qualified residents  
24 are charged for such drugs; and



1 (iii) report to the Secretary (or the  
2 Secretary's designee) information regard-  
3 ing the discounts provided and fees in-  
4 curred; and

5 (B) the program shall—

6 (i) ensure the reasonable and timely  
7 payment to a participating retail pharmacy  
8 on a prompt basis (no less promptly than  
9 as provided under the Medicare program)  
10 for discounted prices provided to qualified  
11 residents under the program and for rea-  
12 sonable dispensing fees; and

13 (ii) not impose any additional fees on  
14 such pharmacies in connection with partici-  
15 pation in the program.

16 (2) DISCOUNTED PRICES.—The amount of the  
17 discount provided to enrolled qualifying residents  
18 shall reflect the amount of rebates obtained, reduced  
19 by expenses relating to administrative costs of the  
20 Federal and State governments and of participating  
21 pharmacies.

22 (f) DEFINITIONS.—For purposes of this section:

23 (1) The term “Health Insurance Exchange”  
24 means such an Exchange as established and oper-

1       ated under part 3 of subtitle D of title I of the Pa-  
2       tient Protection and Affordable Care Act.

3               (2) The term “manufacturer” has the meaning  
4       given such term in section 1927(k)(5) of the Social  
5       Security Act (42 U.S.C. 1396r–8(k)(5)).

6               (3) The term “Medicaid program” means a  
7       State program under title XIX of the Social Security  
8       Act, including such a program operating under a  
9       Statewide waiver under section 1115 of such Act.

10              (4) The term “outpatient prescription drug”  
11       has the meaning given the term “covered outpatient  
12       drug” in section 1927(k)(2) of the Social Security  
13       Act (42 U.S.C. 1396r–8(k)(2)).

14              (5) The term “Secretary” means the Secretary  
15       of Health and Human Services.

16              (6) The term “State” has the meaning given  
17       such term for purposes of title XIX of the Social Se-  
18       curity Act.

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