STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN (for himself and Mr. PORTMAN):

S. 551. A bill to amend title XVIII of the Social Security Act to require manufacturers of certain single-dose vial drugs payable under part B of the Medicare program to provide rebates with respect to amounts of such drugs discarded, and for other purposes; to the Committee on Finance.

Mr. DURBIN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 551

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Recovering Excessive Funds for Unused and Needless Drugs Act of 2019'' or the ''REFUND Act of 2019''.

SEC. 2. REQUIRING MANUFACTURERS OF CERTAIN SINGLE-DOSE VIAL DRUGS PAYABLE UNDER PART B OF THE MEDICARE PROGRAM TO PROVIDE REBATES WITH RESPECT TO DISCARDED AMOUNTS OF SUCH DRUGS.

(a) IN GENERAL.—Section 1834 of the Social Security Act (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

''(w) REBATE FOR CERTAIN DISCARDED SINGLE-DOSE VIAL DRUGS.—

''(1) IN GENERAL.—The manufacturer (as defined in section 1847A(c)(6)(A)) of a rebatable single-dose vial drug furnished in a calendar quarter shall, not later than 30 days after the date of receipt of information described in paragraph (2)(A)(iii) with respect to such quarter, provide to the Secretary a rebate that is equal to the amount specified in paragraph (3) for such drug for such quarter.

''(2) SECRETARIAL DUTIES.—

''(A) IN GENERAL.—For each calendar quarter, the Secretary shall, with respect to a rebatable single-dose vial drug of a manufacturer furnished during such quarter—

''(i) require, through use of a modifier such as the JW modifier used as of the date of enactment of this subsection (or any such successor code that includes such data as determined appropriate by the Secretary), an indication on a claim for such drug of the amount of such drug that was discarded after such drug was furnished, if any;

''(ii) determine the rebatable amount (as defined in subparagraph (B)) with respect to such drug; and

''(iii) not later than 60 days after the end of such quarter, provide to such manufacturer notice of—

''(I) the total number of units of such drug discarded during such quarter (as determined by the Secretary based on the aggregate rebatable amount (as so defined) with respect to such drug for such quarter), if any; and

''(II) the rebate amount specified in paragraph (3) for such drug and such quarter.

''(B) REBATABLE AMOUNT.—The term 'rebatable amount' means, with respect to a rebatable single-dose vial drug of a manufacturer furnished during a quarter, 90 percent of the amount (if any) of such drug that was discarded as indicated pursuant to subparagraph (A)(i).

''(3) REBATE AMOUNT.—The amount of the rebate specified in this paragraph is, with respect to a rebatable single-dose vial drug of a manufacturer furnished in a calendar quarter, an amount equal to the product of—

''(A) the total number of units of such drug discarded during such quarter as determined under paragraph (2)(A)(iii)(I); and

''(B) the lesser of—

''(i) the average sales price (as defined in section 1847A(c)(1)) for a unit of such drug for such quarter (or, in the case of a drug subject to an agreement with such manufacturer under section 340B of the Public Health Service Act, the price for a unit of such drug for such quarter under such agreement); or

''(ii) the wholesale acquisition cost (as defined in section 1847A(c)(6)(B)) for a unit of such drug.

''(4) REBATE DEPOSITS.—Amounts paid as rebates pursuant to paragraph (1) shall be deposited into the Federal Supplementary Medical Insurance Trust Fund established under section 1841.

''(5) ENFORCEMENT.—

''(A) AUDITS.—Each manufacturer of a rebatable single dose-vial drug that is required to provide a rebate under this subsection shall be subject to periodic audit with respect to such drug and such rebates by the Secretary.

''(B) CIVIL MONEY PENALTY.—

''(i) IN GENERAL.—The Secretary shall impose a civil money penalty on a manufacturer of a rebatable single dose-vial drug who has failed to comply with the requirement under paragraph (1) for such drug for a calendar quarter in an amount the Secretary determines is commensurate with the sum of—

''(I) the amount that the manufacturer would have paid under such paragraph with respect to such drug for such quarter; and

''(II) 25 percent of such amount.

''(ii) APPLICATION.—The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

''(6) DEFINITIONS.—In this subsection:

''(A) REBATABLE SINGLE-DOSE VIAL DRUG.—The term 'rebatable single-dose vial drug' means a single source drug or biological (as defined in section 1847A(c)(6)(D)) paid for under this part and furnished on or after January 1, 2020, from a single-dose vial.

''(B) UNIT.—The term 'unit' has the meaning given such term in section 1847A(b)(2)(B).''.

(b) COLLECTION OF COINSURANCE ONLY FOR PORTION OF REBATABLE SINGLE-DOSE VIAL DRUG ADMINISTERED.—Section 1833(a) of the Social Security Act (42 U.S.C. 1395l) is amended—

(1) in subsection (a)(1)(S), by inserting subject to subsection (cc), before with respect to; and

(2) by adding at the end the following new subsection:

''(cc) COLLECTION OF COINSURANCE ONLY FOR PORTION OF REBATABLE SINGLE-DOSE VIAL DRUG ADMINISTERED.—When processing a claim for a rebatable single-dose vial drug (as defined in section 1834(w)(6)), the Secretary, acting through the relevant medicare administrative contractor with respect to such claim, shall only collect coinsurance from a beneficiary, taking into account any coverage under a Medicare supplemental policy certified under section 1882 or any other supplemental insurance coverage of the beneficiary, with respect to the portion of the drug administered (as indicated by the J-portion of the claim for the drug used as of the date of enactment of this subsection, or any successor code that includes such data as determined appropriate by the Secretary), in an amount equal to 20 percent of the amount of payment that would be made if payment for the claim was based only on the portion of the drug administered (as so indicated). Nothing in the preceding sentence shall affect the amount paid to the provider of services or supplier with respect to the drug under this part (as determined based on the total amount of the drug for which the claim was submitted, including the portion of the drug administered and the portion discarded, as indicated by the J-portion of the claim and the JW modifier, respectively, used as of such date of enactment or any successor codes that include such data as determined appropriate by the Secretary).''.

AUTHORITY FOR COMMITTEES TO MEET

Mrs. FISCHER. Mr. President, I have a request for one committee to meet during today's session of the Senate. It has the approval of the Majority and Minority leaders.

Pursuant to rule XXVI, paragraph 5(a), of the Standing Rules of the Senate, the following committee is authorized to meet during today's session of the Senate:

COMMITTEE ON FOREIGN RELATIONS

The Committee on Foreign Relations is authorized to meet during the session of the Senate on Monday, February 25, 2019, at 5 p.m., to conduct a closed hearing.

BIENNIAL REPORT OF BOARD OF DIRECTORS OF CONGRESSIONAL WORKPLACE RIGHTS

U.S. CONGRESS, OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS,
Washington, DC, February 25, 2019.

Hon. CHARLES GRASSLEY,
President Pro Tempore, U.S. Senate, Washington, DC.

DEAR MR. PRESIDENT: Section 102(b) of the Congressional Accountability Act of 1995 (CAA) requires the Board of Directors of the Office of Congressional Workplace Rights (OCWR) to biennially submit a report containing recommendations regarding Federal workplace rights, safety and health, and public access laws and regulations that should be made applicable to Congress and its agencies. The purpose of this report is to ensure that the rights afforded by the CAA to legislative branch employees and visitors to Capitol Hill and district offices remain equivalent to those in the private sector and the executive branch of the Federal government. As such, these recommendations support the intent of Congress to keep pace with advances in workplace rights and public access laws.

Accompanying this letter is a copy of our section 102(b) report—titled ''Recommendations for Improvements to the Congressional Accountability Act''—for consideration by the 116th Congress. We welcome discussion on these issues and urge that Congress act on these important recommendations.

Your office is receiving this initial copy prior to it being uploaded to our public website. On March 4, 2019, this report will be disseminated to the larger Congressional community and available on www.ocwr.gov. As required by the Congressional Accountability Act, 2 U.S.C. §1302(b), I request that this publication be printed in the Congressional Record, and referred to the committees of the House of Representatives and Senate with jurisdiction.

Sincerely,

SUSAN TSUI GRUNDMANN,
Executive Director.