

## Calendar No. 425

114TH CONGRESS  
2D SESSION**S. 185**

To create a limited population pathway for approval of certain antibacterial drugs.

---

 IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2015

Mr. HATCH (for himself, Mr. BENNET, Ms. AYOTTE, Mr. ISAKSON, Mr. KIRK, Mr. CARPER, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

APRIL 18, 2016

Reported by Mr. ALEXANDER, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

---

**A BILL**

To create a limited population pathway for approval of certain antibacterial drugs.

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 “~~Promise for Antibiotics~~  
5 ~~and Therapeutics for Health Act~~” or the “~~PATH Act~~”.

1 **SEC. 2. LIMITED POPULATION PATHWAY FOR ANTI-**  
2 **BACTERIAL DRUGS.**

3 Section 506 of the Federal Food, Drug, and Cosmetic  
4 Act (21 U.S.C. 356) is amended—

5 (1) by transferring subsection (e) so that it ap-  
6 pears before subsection (f); and

7 (2) by adding at the end the following:

8 “(g) **LIMITED POPULATION PATHWAY FOR ANTI-**  
9 **BACTERIAL DRUGS.—**

10 “(1) **IN GENERAL.—**The Secretary shall estab-  
11 lish a program under which the Secretary may, at  
12 the request of a sponsor, approve an antibacterial  
13 drug, alone or in combination with one or more  
14 drugs, as a limited population antibacterial drug,  
15 upon a determination that such drug is intended to  
16 treat a serious or life-threatening disease, condition,  
17 or infection and address an unmet medical need for  
18 such disease, condition, or infection within an identi-  
19 fiable limited population.

20 “(2) **LIMITED POPULATION PATHWAY.—**

21 “(A) **IN GENERAL.—**The sponsor of an  
22 antibacterial drug that the Secretary deter-  
23 mines to be eligible for approval as a limited  
24 population antibacterial drug shall be required  
25 to demonstrate the safety and effectiveness of  
26 such drug, as required under section 505(d) or

1 section 351(a) of the Public Health Service Act,  
2 for the intended use of the drug. The Secretary  
3 shall determine the safety and effectiveness of  
4 an antibacterial drug under the limited popu-  
5 lation pathway for antibacterial drugs in ac-  
6 cordance with subparagraph (B). An anti-  
7 bacterial drug shall be eligible for approval  
8 under the limited population pathway only upon  
9 the request of the sponsor.

10 “(B) CONSIDERATIONS.—

11 “(i) BENEFIT-RISK PROFILE.—The  
12 Secretary’s determination of safety and ef-  
13 fectiveness of a limited population anti-  
14 bacterial drug shall reflect the benefit-risk  
15 profile of the drug in the intended limited  
16 population, taking into account the sever-  
17 ity, rarity, or prevalence of the infection  
18 the drug is intended to treat and the avail-  
19 ability or lack of alternative treatment for  
20 such infection. Approval of a drug under  
21 the limited population antibacterial drug  
22 pathway shall not be denied due to a lack  
23 of evidence to fully establish a favorable  
24 benefit-risk profile in a population that is

1 broader than the intended limited popu-  
2 lation.

3 “(ii) TYPES OF EVIDENCE.—In deter-  
4 mining whether to approve a drug under  
5 the limited population pathway, the Sec-  
6 retary—

7 “(I) shall rely on sufficient evi-  
8 dence, which may include traditional  
9 endpoints, alternate endpoints, or a  
10 combination of traditional and alter-  
11 nate endpoints, and, as appropriate,  
12 small clinical data sets; and

13 “(II) may rely on supplemental  
14 data, including preclinical evidence,  
15 pharmacologic or pathophysiologic evi-  
16 dence, nonclinical susceptibility, phar-  
17 macokinetic data, and other such con-  
18 firmatory evidence as the Secretary  
19 determines appropriate.

20 “(3) REQUIREMENTS.—With respect to a drug  
21 approved through the limited population pathway,  
22 the Secretary shall require—

23 “(A) the labeling of such antibacterial  
24 drug, such as through a logo or other means,  
25 to indicate that the drug has been approved for

1 use only in a limited population and that the  
2 safety and efficacy of the drug has been dem-  
3 onstrated only with respect to such limited pop-  
4 ulation; and

5 “(B) the sponsor to submit copies of all  
6 promotional materials related to the limited  
7 population antibacterial drug, at least 30 days  
8 prior to dissemination of the materials.

9 “(4) OTHER PROGRAMS.—A sponsor of a drug  
10 that seeks approval of a drug through the limited  
11 population pathway for antibacterial drugs may also  
12 seek approval of such drug under subsections (a),  
13 (b), and (c), and sections 505E and 524.

14 “(5) GUIDANCE.—Not later than 18 months  
15 after the date of enactment of the Promise for Anti-  
16 biotics and Therapeutics for Health Act, the Sec-  
17 retary shall issue draft guidance describing criteria,  
18 processes, and other general considerations for dem-  
19 onstrating the safety and effectiveness of limited  
20 population antibacterial drugs and how the pathway  
21 can be expanded to other therapeutic areas in addi-  
22 tion to antibacterial infections. The Secretary may  
23 approve antibacterial drugs through such limited  
24 population pathway prior to issuing guidance under  
25 this paragraph.

1           “(6) POSTAPPROVAL MONITORING PROGRAMS  
2           FOR ANTIBACTERIAL DRUGS.—The Secretary, in  
3           consultation with the Commissioner and other rel-  
4           evant heads of agencies, shall conduct postapproval  
5           monitoring programs to study how antibacterial  
6           drugs approved through the pathway under this sub-  
7           section are used and to monitor changes in bacterial  
8           resistance to drugs, including drugs approved under  
9           this pathway.

10           “(7) ADVICE.—The Secretary shall provide  
11           prompt advice to the sponsor of a drug for which the  
12           sponsor seeks approval through the limited popu-  
13           lation pathway for antibacterial drugs to enable the  
14           sponsor to plan a development program to obtain the  
15           necessary data for approval of such drug through  
16           the limited population pathway for antibacterial  
17           drugs and to conduct any additional studies that  
18           would be required to gain approval of such drug for  
19           use in a broader population.

20           “(8) TERMINATION OF LIMITATIONS.—If, after  
21           approval of a drug through the limited population  
22           pathway for antibacterial drugs, the Secretary ap-  
23           proves a broader indication for such drug for which  
24           the sponsor applies under section 505(b) or section  
25           351 of the Public Health Service Act, the Secretary

1 may remove any postmarketing conditions, including  
2 requirements with respect to labeling and review of  
3 promotional materials under paragraph (3) and  
4 postapproval monitoring under paragraph (6), appli-  
5 cable to the approval of the drug through the limited  
6 population pathway for antibacterial drugs.

7 “(9) RULES OF CONSTRUCTION.—

8 “(A) STANDARDS OF EVIDENCE AND AU-  
9 THORITY OF SECRETARY.—Nothing in this sub-  
10 section shall be construed to alter the standards  
11 of evidence applicable to the review and ap-  
12 proval of a drug under this Act or the Public  
13 Health Service Act, or to modify or limit the  
14 authority of the Secretary to approve or mon-  
15 itor drugs pursuant to this Act or the Public  
16 Health Service Act as authorized prior to the  
17 date of enactment of the Promise for Anti-  
18 biotics and Therapeutics for Health Act.

19 “(B) PRESCRIBING AUTHORITY.—Nothing  
20 in this subsection shall be construed to restrict  
21 the prescribing of antibiotics or other products,  
22 including drugs approved under the limited pop-  
23 ulation pathway, by health care professionals,  
24 or to limit the practice of health care.

1           “(10) **EXPANSION OF PATHWAY.**—Beginning on  
 2           October 1, 2016, the limited population pathway for  
 3           antibiotic drugs may be expanded to apply to ap-  
 4           proval of other drugs intended to treat a serious or  
 5           life-threatening illness. The approval of such drugs  
 6           shall be subject to the considerations and require-  
 7           ments described in this subsection, unless the Sec-  
 8           retary delivers a report to Congress prior to that  
 9           date explaining why such pathway should not be  
 10          used for other therapeutic areas in addition to anti-  
 11          bacterial infections.”.

12 **SECTION 1. SHORT TITLE.**

13           *This Act may be cited as the “Promise for Antibiotics*  
 14 *and Therapeutics for Health Act” or the “PATH Act”.*

15 **SEC. 2. ANTIBACTERIAL RESISTANCE MONITORING.**

16           *Section 319E of the Public Health Service Act (42*  
 17 *U.S.C. 247d-5) is amended—*

18           (1) *by redesignating subsections (f) and (g) as*  
 19 *subsections (k) and (l), respectively; and*

20           (2) *by inserting after subsection (e), the fol-*  
 21 *lowing:*

22           “(f) **MONITORING AT FEDERAL HEALTH CARE FACILI-**  
 23 *TIES.*—*The Secretary shall encourage reporting on aggre-*  
 24 *gate antibacterial drug use and bacterial resistance to anti-*  
 25 *bacterial drugs and the implementation of antibiotic stew-*



1 *ardship programs by health care facilities of the Depart-*  
2 *ment of Defense, the Department of Veterans Affairs, and*  
3 *the Indian Health Service and shall provide technical as-*  
4 *sistance to the Secretary of Defense and the Secretary of*  
5 *Veterans Affairs, as appropriate and upon request.*

6       “(g) *REPORT ON ANTIBACTERIAL RESISTANCE IN HU-*  
7 *MANS AND USE OF ANTIBACTERIAL DRUGS.—Not later*  
8 *than 1 year after the date of enactment of this subsection,*  
9 *and annually thereafter, the Secretary shall prepare and*  
10 *make publically available data and information con-*  
11 *cerning—*

12               “(1) *aggregate national and regional trends of*  
13 *bacterial resistance in humans to antibacterial drugs,*  
14 *including those approved under section 506(g) of the*  
15 *Federal Food, Drug, and Cosmetic Act;*

16               “(2) *antibacterial stewardship, which may in-*  
17 *clude summaries of State efforts to address bacterial*  
18 *resistance in humans to antibacterial drugs and anti-*  
19 *bacterial stewardship; and*

20               “(3) *coordination between the Director of the*  
21 *Centers for Disease Control and Prevention and the*  
22 *Commissioner of Food and Drugs with respect to the*  
23 *monitoring of—*

24                       “(A) *any applicable resistance under para-*  
25 *graph (1); and*

1                   “(B) drugs approved under section 506(g) of  
2                   the Federal Food, Drug, and Cosmetic Act.

3                   “(h) *INFORMATION RELATED TO ANTIBIOTIC STEW-*  
4 *ARDSHIP PROGRAMS.—The Secretary shall, as appropriate,*  
5 *disseminate guidance, educational materials, or other ap-*  
6 *propriate materials related to the development and imple-*  
7 *mentation of evidence-based antibiotic stewardship pro-*  
8 *grams or practices at health care facilities, such as nursing*  
9 *homes and other long-term care facilities, ambulatory sur-*  
10 *gical centers, dialysis centers, and community and rural*  
11 *hospitals.*

12                   “(i) *SUPPORTING STATE-BASED ACTIVITIES TO COM-*  
13 *BAT ANTIBACTERIAL RESISTANCE.—The Secretary shall*  
14 *continue to work with State and local public health depart-*  
15 *ments on statewide or regional programs related to anti-*  
16 *bacterial resistance. Such efforts may include activities to*  
17 *related to—*

18                   “(1) *identifying patterns of bacterial resistance*  
19                   *in humans to antibacterial drugs;*

20                   “(2) *preventing the spread of bacterial infections*  
21                   *that are resistant to antibacterial drugs; and*

22                   “(3) *promoting antibiotic stewardship.*

23                   “(j) *ANTIBACTERIAL RESISTANCE AND STEWARDSHIP*  
24 *ACTIVITIES.—*

1           “(1) *IN GENERAL.*—*For the purposes of sup-*  
2           *porting stewardship activities, examining changes in*  
3           *bacterial resistance, and evaluating the effectiveness of*  
4           *section 506(g) of the Federal Food, Drug, and Cos-*  
5           *metic Act, the Secretary shall—*

6                   “(A) *provide a mechanism for facilities to*  
7                   *report data related to their antimicrobial stew-*  
8                   *ardship activities (including analyzing the out-*  
9                   *comes of such activities); and*

10                   “(B) *evaluate—*

11                           “(i) *antimicrobial resistance data*  
12                           *using a standardized approach; and*

13                           “(ii) *trends in the utilization of drugs*  
14                           *approved under such section 506(g) with re-*  
15                           *spect to patient populations.*

16           “(2) *USE OF SYSTEMS.*—*The Secretary shall use*  
17           *available systems, including the National Healthcare*  
18           *Safety Network or other systems identified by the Sec-*  
19           *retary, to fulfill the requirements or conduct activities*  
20           *under this section.*

21           “(3) *AVAILABILITY OF DATA.*—*The Secretary*  
22           *shall make the data collected pursuant to this sub-*  
23           *section public. Nothing in this subsection shall be con-*  
24           *strued as authorizing the Secretary to disclose any in-*  
25           *formation that is a trade secret or confidential infor-*

1 *mation subject to section 552(b)(4) of title 5, United*  
 2 *States Code, or section 1905 of title 18, United States*  
 3 *Code.”.*

4 **SEC. 3. LIMITED POPULATION PATHWAY FOR ANTI-**  
 5 **BACTERIAL DRUGS.**

6 *Section 506 of the Federal Food, Drug, and Cosmetic*  
 7 *Act (21 U.S.C. 356) is amended—*

8 *(1) by transferring subsection (e) so that it ap-*  
 9 *pears before subsection (f); and*

10 *(2) by adding at the end the following:*

11 *“(g) LIMITED POPULATION PATHWAY FOR ANTI-*  
 12 *BACTERIAL DRUGS.—*

13 *“(1) IN GENERAL.—The Secretary may approve*  
 14 *an antibacterial drug, alone or in combination with*  
 15 *one or more other drugs, as a limited population drug*  
 16 *pursuant to this subsection only if—*

17 *“(A) the drug is intended to treat a serious*  
 18 *or life-threatening infection in a limited popu-*  
 19 *lation of patients with unmet needs;*

20 *“(B) the standards for approval under sec-*  
 21 *tion 505(c) and (d), or the standards for licen-*  
 22 *sure under section 351 of the Public Health*  
 23 *Service Act, as applicable, are met; and*

1           “(C) *the Secretary receives a written request*  
2           *from the sponsor to approve the drug as a lim-*  
3           *ited population drug pursuant to this subsection.*

4           “(2) *BENEFIT-RISK CONSIDERATION.—The Sec-*  
5           *retary’s determination of safety and effectiveness of a*  
6           *limited population antibacterial drug shall reflect the*  
7           *benefit-risk profile of the drug in the intended limited*  
8           *population, taking into account the severity, rarity,*  
9           *or prevalence of the infection the drug is intended to*  
10          *treat and the availability or lack of alternative treat-*  
11          *ment in such limited population. Such drug may be*  
12          *approved under this subsection notwithstanding a*  
13          *lack of evidence to fully establish a favorable benefit-*  
14          *risk profile in a population that is broader than the*  
15          *intended limited population.*

16          “(3) *ADDITIONAL REQUIREMENTS.—A drug ap-*  
17          *proved under this subsection shall be subject to the re-*  
18          *quirements of this paragraph, in addition to any*  
19          *other applicable requirements of this Act:*

20                 “(A) *LABELING.—To indicate that the safe-*  
21                 *ty and effectiveness of a drug approved under*  
22                 *this subsection has been demonstrated only with*  
23                 *respect to a limited population—*

24                         “(i) *all labeling and advertising of an*  
25                         *antibacterial drug approved under this sub-*

1           *section shall contain the statement ‘Limited*  
2           *Population’ in a prominent manner and*  
3           *adjacent to, and not more prominent*  
4           *than—*

5                     *“(I) the proprietary name of such*  
6                     *drug, if any; or*

7                     *“(II) if there is no proprietary*  
8                     *name, the established name of the drug,*  
9                     *if any, as defined in section 503(e)(3),*  
10                    *or for drugs which are biological prod-*  
11                    *ucts, the proper name, as defined by*  
12                    *regulation; and*

13                    *“(ii) the prescribing information for*  
14                    *such antibacterial drug required by section*  
15                    *201.57 of title 21, Code of Federal Regula-*  
16                    *tions (or any successor regulation) shall*  
17                    *also include the following statement: ‘This*  
18                    *drug is indicated for use in a limited and*  
19                    *specific population of patients.’.*

20                    *“(B) PROMOTIONAL MATERIAL.—The spon-*  
21                    *sor of an antibacterial drug subject to this sub-*  
22                    *section shall submit to the Secretary copies of all*  
23                    *promotional materials related to such drug at*  
24                    *least 30 calendar days prior to dissemination of*  
25                    *the materials.*

1           “(4) *OTHER PROGRAMS.*—A sponsor of a drug  
2           that seeks approval of a drug under this subsection for  
3           antibacterial drugs may also seek designation or ap-  
4           proval, as applicable, of such drug under other appli-  
5           cable sections or subsections of this Act of the Public  
6           Health Service Act.

7           “(5) *GUIDANCE.*—Not later than 18 months after  
8           the date of enactment of the Promise for Antibiotics  
9           and Therapeutics for Health Act, the Secretary shall  
10          issue draft guidance describing criteria, processes,  
11          and other general considerations for demonstrating  
12          the safety and effectiveness of limited population anti-  
13          bacterial drugs. The Secretary shall publish final  
14          guidance within 18 months of the close of the public  
15          comment period on such draft guidance. The Sec-  
16          retary may approve antibacterial drugs under this  
17          subsection prior to issuing guidance under this para-  
18          graph.

19          “(6) *ADVICE.*—The Secretary shall provide  
20          prompt advice to the sponsor of a drug for which the  
21          sponsor seeks approval under this subsection for anti-  
22          bacterial drugs to enable the sponsor to plan a devel-  
23          opment program to obtain the necessary data for ap-  
24          proval of such drug under this subsection for anti-  
25          bacterial drugs and to conduct any additional studies

1       *that would be required to gain approval of such drug*  
2       *for use in a broader population.*

3           “(7) *TERMINATION OF LIMITATIONS.*—*If, after*  
4       *approval of a drug under this subsection, the Sec-*  
5       *retary approves a broader indication for such drug*  
6       *for which the sponsor applies under section 505(b) or*  
7       *section 351(a) of the Public Health Service Act, the*  
8       *Secretary may remove any postmarketing conditions,*  
9       *including requirements with respect to labeling and*  
10       *review of promotional materials under paragraph (3),*  
11       *applicable to the approval of the drug under this sub-*  
12       *section.*

13           “(8) *RULES OF CONSTRUCTION.*—*Nothing in this*  
14       *subsection shall be construed to alter the authority of*  
15       *the Secretary to approve drugs pursuant to this Act*  
16       *and section 351 of the Public Health Service Act, in-*  
17       *cluding the standards of evidence, and applicable con-*  
18       *ditions, for approval under such Acts, the standards*  
19       *of approval of a drug under this Act or the Public*  
20       *Health Service Act, or to alter the authority of the*  
21       *Secretary to monitor drugs pursuant to this Act or*  
22       *the Public Health Service Act.*

23           “(9) *REPORTING AND ACCOUNTABILITY.*—

24           “(A) *BIANNUAL REPORTING.*—*The Secretary*  
25       *shall report to Congress not less often than once*



1 every 2 years on the number of requests for ap-  
2 proval, and the number of approvals, of an anti-  
3 bacterial drug under this subsection.

4 “(B) GAO REPORT.—Not later than Decem-  
5 ber 2021, the Comptroller General of the United  
6 States shall report on the coordination of activi-  
7 ties required under section 319E of the Public  
8 Health Service Act, a review of such activities,  
9 and the extent to which the use of the pathway  
10 established under this subsection has streamlined  
11 premarket approval for antibacterial drugs for  
12 limited populations, if such pathway has func-  
13 tioned as intended, if such pathway has helped  
14 provide for safe and effective treatment for pa-  
15 tients, if such premarket approval would be ap-  
16 propriate for other categories of drugs, and if the  
17 authorities under this subsection have affected  
18 antibiotic resistance.”.

19 **SEC. 4. PRESCRIBING AUTHORITY.**

20 Nothing in this Act, or an amendment made by this  
21 Act, shall be construed to restrict the prescribing of anti-  
22 bacterial drugs or other products, including drugs approved  
23 under section 506(g) of the Federal Food, Drug, and Cos-  
24 metic Act (21 U.S.C. 356(g)), by health care professionals,  
25 or to limit the practice of health care.

Calendar No. 425

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**S. 185**

---

---

**A BILL**

To create a limited population pathway for approval  
of certain antibacterial drugs.

---

---

APRIL 18, 2016

Reported with an amendment