115TH CONGRESS
2D SESSION

# S. 3680

To require the Secretary of Health and Human Services to establish reference prices for prescription drugs for purposes of Federal health programs.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2018

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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# A BILL

To require the Secretary of Health and Human Services to establish reference prices for prescription drugs for purposes of Federal health programs.

*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 ''Low Drug Prices Act''.

**SEC. 2. REFERENCE PRICES FOR PRESCRIPTION DRUGS.**

(a) REFERENCE PRICES.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary''), in accordance with subsection (b), shall establish annual reference prices for each prescription drug. Notwithstanding any other provision of law, with respect

to enrollees or beneficiaries in any of the Federal health programs described in subsection (c), the total acquisition cost (including the amount covered by the Federal health program and any cost-sharing amount and taking into account any discount or rebate provided by the manufacturer) for a drug shall not exceed the reference price for such drug.

(b) CRITERIA.—

(1) IN GENERAL.—Each year, the Secretary shall establish the reference price for each prescription drug under subsection (a) by determining the median price for the drug among the reference countries.

(2) REFERENCE COUNTRIES.—For purposes of paragraph (1), the reference countries are Japan, Germany, the United Kingdom, France, Italy, Canada, Australia, Spain, the Netherlands, Switzerland, and Sweden.

(c) FEDERAL HEALTH PROGRAMS.—The reference prices established under subsection (a) shall apply with respect to covered inpatient and outpatient drugs under—

(1) the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(2) a State Medicaid plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

(3) the State Children's Health Insurance Program under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.);

(4) the TRICARE program under chapter 55 of title 10, United States Code;

(5) hospital care and medical services furnished by the Department of Veterans Affairs under chapters 17 and 18 of title 38, United States Code;

(6) the Federal Employees Health Benefits Program established under chapter 89 of title 5, United States Code; and

(7) any health program, service, function, activity, or facility funded, in whole or part, under the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.), including through direct or contract care provided under such Act or through a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304 et seq.).

(d) APPLICABILITY TO OTHER PURCHASERS OF DRUGS.—Notwithstanding any other provision of law, as a condition for receiving reimbursements under any of the Federal programs described in subsection (c) for any drug, a drug manufacturer shall offer prescription drugs at the reference price to all individuals, including individuals who are not insured and individuals who are covered under a

group health plan or group or individual health insurance coverage. In the case of individuals covered by a group health plan or group or individual health insurance coverage, such requirement is met if the amount covered under such plan or coverage plus the cost-sharing amount does not exceed the reference price.

(e) APPLICABILITY TO BRAND AND GENERIC DRUGS.—The reference price established under subsection (a) shall apply to drugs approved under subsection (c) or (j) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or under subsection (a) or (k) of section 351 of the Public Health Service Act (42 U.S.C. 262).

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