

115TH CONGRESS
1ST SESSION

S. 637

To amend titles XI and XVIII of the Social Security Act to provide greater transparency of discounts provided by drug manufacturers.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2017

Mr. WYDEN (for himself, Mr. BROWN, and Ms. HEITKAMP) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XI and XVIII of the Social Security Act to provide greater transparency of discounts provided by drug manufacturers.

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 “Creating Transparency
5 to Have Drug Rebates Unlocked (C-THRU) Act of 2017”.

6 **SEC. 2. PUBLIC DISCLOSURE OF DRUG DISCOUNTS.**

7 (a) IN GENERAL.—Section 1150A of the Social Secu-
8 rity Act (42 U.S.C. 1320b–23) is amended—

1 (1) in subsection (c), in the matter preceding
2 paragraph (1), by striking “this section” and insert-
3 ing “subsection (b)(1)”; and

4 (2) by adding at the end the following new sub-
5 section:

6 “(e) PUBLIC AVAILABILITY OF CERTAIN INFORMA-
7 TION.—In order to allow patients and employers to com-
8 pare PBMs’ ability to negotiate rebates, discounts, and
9 price concessions and the amount of such rebates, dis-
10 counts, and price concessions that are passed through to
11 plan sponsors, beginning January 1, 2018, the Secretary
12 shall make available on the Internet website of the Depart-
13 ment of Health and Human Services the information pro-
14 vided to the Secretary under paragraphs (2) and (3) of
15 subsection (b) with respect to each PBM. The Secretary
16 shall ensure that such information is displayed in a man-
17 ner that prevents the disclosure of information on rebates,
18 discounts, and price concessions with respect to an indi-
19 vidual drug or an individual plan.”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 subsection (a) shall take effect on January 1, 2018.

1 **SEC. 3. MINIMUM DRUG DISCOUNTS REQUIRED TO BE**
 2 **PASSED THROUGH TO THE PLAN SPONSOR.**

3 (a) IN GENERAL.—Section 1150A of the Social Secu-
 4 rity Act (42 U.S.C. 1320b–23), as amended by section
 5 2(a)(2), is amended—

6 (1) in the heading, by inserting “**; MINIMUM**
 7 **DRUG DISCOUNTS REQUIRED TO BE PASSED**
 8 **THROUGH TO THE PLAN SPONSOR**” before the
 9 period at the end; and

10 (2) by adding at the end the following new sub-
 11 section:

12 “(f) MINIMUM DRUG DISCOUNTS REQUIRED TO BE
 13 PASSED THROUGH TO THE PLAN SPONSOR.—

14 “(1) REQUIREMENT.—Beginning January 1,
 15 2020, a PBM that manages prescription drug cov-
 16 erage under a contract with a PDP sponsor or MA
 17 organization described in subsection (b)(1) or a
 18 qualified health benefits plan described in subsection
 19 (b)(2), shall, with respect to the plan sponsor of a
 20 health benefits plan, pass through to the plan spon-
 21 sor a minimum percent (as established by the Sec-
 22 retary) of the aggregate amount of the rebates, dis-
 23 counts, or price concessions that the PBM nego-
 24 tiates that are attributable to patient utilization
 25 under the plan.

8 “(3) ENFORCEMENT.—A PDP sponsor of a
9 prescription drug plan or an MA organization offer-
10 ing an MA–PD plan under part D of title XVIII
11 may not contract with a PBM that is not in compli-
12 ance with the requirement under paragraph (1).”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on January 1, 2020.

15 SEC. 4. PART D NEGOTIATED PRICES REQUIRED TO TAKE
16 INTO ACCOUNT ALL PRICE CONCESSIONS AT
17 THE POINT-OF-SALE.

(a) IN GENERAL.—Section 1860D-2(d)(1)(B) of the Social Security Act (42 U.S.C. 1395w-102(d)(1)(B)) is amended—

21 (1) by striking “PRICES.—For purposes” and
22 inserting “PRICES.—

23 “(i) IN GENERAL.—For purposes”;
24 and

1 (2) by adding at the end the following new
2 clause:

3 “(ii) NEGOTIATED PRICES AT POINT-
4 OF-SALE.—

5 “(I) IN GENERAL.—Negotiated
6 prices for covered part D drugs de-
7 scribed in clause (i), including all
8 price negotiated concessions, shall be
9 provided at the point-of-sale of the
10 covered part D drug. If the negotiated
11 price, including all negotiated price
12 concessions, is not possible to cal-
13 culate at the point-of-sale, an approxi-
14 mate negotiated price (as established
15 by the Secretary) shall be used under
16 the prescription drug plan or MA–PD
17 plan.

18 “(II) APPROXIMATE NEGOTIATED
19 PRICE.—In determining an approxi-
20 mate negotiated price for a covered
21 part D drug under subclause (I), the
22 Secretary shall ensure that—

23 “(aa) such price reflects the
24 estimated negotiated price that is
25 based on the previous year’s ne-

1 negotiated price concessions nego-
2 tiated under the plan for all or
3 similar covered part D drugs or
4 is based on such other factors as
5 the Secretary may determine ap-
6 propriate; and

7 “(bb) the use of such price
8 does not prevent the use of value-
9 based contracts between drug
10 manufacturers, PDP sponsors,
11 MA organizations, and phar-
12 macies.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall apply to plan years beginning on or
15 after January 1, 2019.

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