

116TH CONGRESS
2D SESSION

H. R. 8139

To amend title XIX of the Social Security Act to remove direct sales of drugs near expiration during the COVID–19 emergency from the calculation of certain pricing metrics under the Medicaid program.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 1, 2020

Mr. BILIRAKIS (for himself and Mr. SOTO) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend title XIX of the Social Security Act to remove direct sales of drugs near expiration during the COVID–19 emergency from the calculation of certain pricing metrics under the Medicaid program.

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 “Surplus Utilization of
5 Pharmaceutical Products Leveraged In Emergency Sce-
6 narios Act of 2020” or the “SUPPLIES Act of 2020”.

1 **SEC. 2. REMOVING DIRECT SALES OF DRUGS NEAR EXPIRA-**
2 **TION DURING THE COVID-19 EMERGENCY**
3 **FROM THE CALCULATION OF CERTAIN PRIC-**
4 **ING METRICS UNDER THE MEDICAID PRO-**
5 **GRAM.**

6 (a) IN GENERAL.—Section 1927 of the Social Secu-
7 rity Act (42 U.S.C. 1396r–8) is amended—

8 (1) in subsection (c)(1)(C)—

9 (A) in clause (i)—

10 (i) in subclause (V), by striking “and”
11 at the end;

12 (ii) in subclause (VI), by striking the
13 period and inserting “; and”; and

14 (iii) by adding at the end the fol-
15 lowing new subclause:

16 “(VII) any prices charged with
17 respect to the direct sale by a manu-
18 facturer of a short-dated drug (as de-
19 fined in clause (iv)) during the period
20 beginning on the first day of the
21 emergency period described in section
22 1135(g)(1)(B) and ending on the date
23 that is 6 months after the last day of
24 such emergency period.”; and

25 (B) by adding at the end the following new
26 clause:

1 “(iv) SHORT-DATED DRUG DE-
2 FINED.—

3 “(I) IN GENERAL.—For purposes
4 of clause (i)(VII), the term ‘short-
5 dated drug’ means, in the case of a
6 drug with an applicable shelf life (as
7 defined in subclause (II))—

8 “(aa) of 1 year or greater, a
9 drug expiring (as determined by
10 the labeled expiration date) not
11 later than 1 year after the date
12 of sale of such drug; and

13 “(bb) of less than 1 year, a
14 drug expiring (as determined by
15 the labeled expiration date) not
16 later than the end of the period
17 beginning on the date of sale of
18 such drug and ending on the date
19 that is the number of days of the
20 applicable shelf life of such drug
21 after such date of sale.

22 “(II) APPLICABLE SHELF
23 LIFE.—The term ‘applicable shelf life’
24 means, with respect to a drug, 50 per-
25 cent of the number of days occurring

1 during the period beginning on the
 2 date such drug is manufactured and
 3 ending on the date such drug expires
 4 (as determined by the labeled expira-
 5 tion date), rounded to the nearest
 6 whole day.”; and

7 (2) in subsection (k)(1)(B)—

8 (A) in subclause (IV), by striking “and” at
 9 the end;

10 (B) in subclause (V), by striking the period
 11 and inserting “; and”; and

12 (C) by adding at the end the following new
 13 subclause:

14 “(VI) any prices described in
 15 subsection (c)(1)(C)(i)(VII).”.

16 (b) OUTREACH TO MANUFACTURERS.—The Sec-
 17 retary of Health and Human Services shall notify drug
 18 manufacturers of the amendments made by subsection (a)
 19 through an electronic communication through MLN Con-
 20 nects or such other method as determined appropriate by
 21 the Secretary.

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