

116TH CONGRESS  
1ST SESSION

# S. 1987

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

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## IN THE SENATE OF THE UNITED STATES

JUNE 26, 2019

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, and for other purposes.

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 “End Price Gouging  
5 for Medications Act”.

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

7 (a) REFERENCE PRICES.—The Secretary of Health  
8 and Human Services (referred to in this section as the

1 “Secretary”), in accordance with subsection (b), shall es-  
2 tablish annual reference prices for each prescription drug.  
3 Notwithstanding any other provision of law, with respect  
4 to enrollees or beneficiaries in any of the Federal health  
5 programs described in subsection (c), the retail list price  
6 for a drug shall not exceed the reference price for such  
7 drug.

8 (b) CRITERIA.—

9 (1) IN GENERAL.—Each year, the Secretary  
10 shall establish the reference price for each prescrip-  
11 tion drug under subsection (a)—

12 (A) by determining the median retail list  
13 price for the drug among the reference coun-  
14 tries in which the drug is available, if drug pric-  
15 ing information is available for at least 3 of  
16 such countries; or

17 (B) in the case of a drug for which drug  
18 pricing information or dosage equivalents are  
19 not available for at least 3 of the reference  
20 countries, by determining an appropriate price  
21 based on the Secretary’s determination of—

22 (i) the added therapeutic effect of the  
23 drug;

24 (ii) the value of the drug;

25 (iii) patient access to the drug;

1 (iv) the costs associated with re-  
2 searching and developing the drug; and

3 (v) other factors, as the Secretary de-  
4 termines appropriate.

5 (2) REFERENCE COUNTRIES.—For purposes of  
6 paragraph (1), the reference countries are Japan,  
7 Germany, the United Kingdom, France, Italy, Can-  
8 ada, Australia, Spain, the Netherlands, Switzerland,  
9 and Sweden.

10 (c) FEDERAL HEALTH PROGRAMS.—The reference  
11 prices established under subsection (a) shall apply with re-  
12 spect to covered inpatient and outpatient drugs under—

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

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

17 (3) the State Children’s Health Insurance Pro-  
18 gram under title XXI of the Social Security Act (42  
19 U.S.C. 1397aa et seq.);

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

22 (5) hospital care and medical services furnished  
23 by the Department of Veterans Affairs under chap-  
24 ters 17 and 18 of title 38, United States Code;

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

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

11          (d) **APPLICABILITY TO OTHER PURCHASERS OF**  
12 **DRUGS.**—Notwithstanding any other provision of law, a  
13 drug manufacturer shall offer prescription drugs at the  
14 reference price to all individuals, including individuals who  
15 are not insured and individuals who are covered under a  
16 group health plan or group or individual health insurance  
17 coverage. In the case of individuals covered by a group  
18 health plan or group or individual health insurance cov-  
19 erage, such requirement is met if the amount covered  
20 under such plan or coverage plus the cost-sharing amount  
21 does not exceed the reference price.

22          (e) **ENFORCEMENT.**—

23           (1) **CIVIL PENALTY.**—A drug manufacturer who  
24           does not comply with the requirements of subsection  
25           (a) shall be subject to a civil penalty, for each year

1 in which the violation occurs and with respect to  
2 each drug for which the violation occurs, in an  
3 amount equal to 5 times the difference between—

4 (A) the total amount received by the man-  
5 ufacturer for sales of the drug under the Fed-  
6 eral health programs under subsection (c) for  
7 the year; less

8 (B) the total amount the manufacturer  
9 would have received for sales of the drug under  
10 such programs for the year if the manufacturer  
11 had complied with subsection (a).

12 (2) AMOUNTS COLLECTED.—Each year, the  
13 Secretary of the Treasury shall transfer to the Di-  
14 rector of the National Institutes of Health an  
15 amount equal to the amount collected in civil pen-  
16 alties under subsection (e) for the previous year. The  
17 Director of the National Institutes of Health shall  
18 use amounts so transferred for purposes of con-  
19 ducting drug research and development.

20 (f) APPLICABILITY TO BRAND AND GENERIC  
21 DRUGS.—The reference price established under subsection  
22 (a) shall apply to drugs approved under subsection (c) or  
23 (j) of section 505 of the Federal Food, Drug, and Cos-  
24 metic Act (21 U.S.C. 355) or under subsection (a) or (k)

1 of section 351 of the Public Health Service Act (42 U.S.C.  
2 262).

