

116TH CONGRESS  
2D SESSION

# S. 4274

To amend title XI of the Social Security Act to exclude discounts for covered part D drugs from the anti-kickback prohibition, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 22, 2020

Mr. PAUL introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XI of the Social Security Act to exclude discounts for covered part D drugs from the anti-kickback prohibition, 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 “Legalizing Drug Dis-  
5 counts for Seniors Act of 2020”.

1 **SEC. 2. EXCLUSION OF DISCOUNTS FOR COVERED PART D**  
 2 **DRUGS FROM THE ANTI-KICKBACK PROHIBI-**  
 3 **TION.**

4 (a) EXCLUSION OF DISCOUNTS.—Section  
 5 1128B(b)(3) of the Social Security Act (42 U.S.C. 1320a–  
 6 7b(b)(3)) is amended—

7 (1) in subparagraph (J)—

8 (A) by moving such subparagraph 2 ems to  
 9 the left; and

10 (B) by striking “and” at the end;

11 (2) in subparagraph (K)—

12 (A) by moving such subparagraph 2 ems to  
 13 the left; and

14 (B) by striking the period at the end and  
 15 inserting “; and”; and

16 (3) by adding at the end the following new sub-  
 17 paragraph:

18 “(L) a discount, including through a rebate,  
 19 discount card, or coupon, with respect to a covered  
 20 part D drug (as defined in section 1860D–2(e))  
 21 under part D of title XVIII if—

22 “(i) the full value of such discount is pro-  
 23 vided initially to a part D eligible individual (as  
 24 defined in section 1860D–1(a)(3)(A)) enrolled  
 25 in a part D plan (as defined in section 1860D–  
 26 23(a)(5)), and the discount is not structured

1 for the specific purpose of providing a price  
 2 concession, other than a bona fide service fee,  
 3 to another individual or entity; and

4 “(ii) in the case where such discount in-  
 5 cludes a reduction in price applicable to individ-  
 6 uals enrolled in a health plan but not to individ-  
 7 uals enrolled in a prescription drug plan under  
 8 such part D or a MA–PD plan under part C of  
 9 such title XVIII, such discount is not struc-  
 10 tured for the specific purpose of increasing uti-  
 11 lization of such covered part D drug under such  
 12 a prescription drug plan or MA–PD plan.”.

13 (b) APPLICATION OF THE PROTECTION AGAINST  
 14 OUT-OF-POCKET EXPENDITURES.—Section 1860D–  
 15 2(b)(4)(C)(iii) of the Social Security Act (42 U.S.C.  
 16 1395w–102(b)(4)(C)(iii)) is amended—

17 (1) in subclause (III), by striking “or” at the  
 18 end;

19 (2) in subclause (IV), by striking the period at  
 20 the end and inserting “; or”; and

21 (3) by adding at the end the following:

22 “(V) under an arrangement de-  
 23 scribed in section 1128B(b)(3)(L).”.

1           (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect on January 1, 2021.

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