

116TH CONGRESS  
1ST SESSION

# S. 476

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

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2019

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

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## 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  
6 2019”.

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

8 (a) IN GENERAL.—Section 1150A of the Social Secu-  
9 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, 2020, 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, 2020.

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 2022, 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.

1           “(2) ESTABLISHMENT.—The Secretary shall es-  
 2           tablish the minimum percent described in paragraph  
 3           (1) in such a manner as will ensure that patients re-  
 4           ceive the maximum benefit of rebates, discounts, or  
 5           price concessions while taking into account the costs  
 6           of negotiating such rebates, discounts, and price  
 7           concessions.

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).”.

13          (b) EFFECTIVE DATE.—The amendments made by  
 14          subsection (a) shall take effect on January 1, 2022.

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

18          (a) IN GENERAL.—Section 1860D–2(d)(1)(B) of the  
 19          Social Security Act (42 U.S.C. 1395w–102(d)(1)(B)) is  
 20          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 amendments made by  
14 subsection (a) shall apply to plan years beginning on or  
15 after January 1, 2021.

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