

116TH CONGRESS  
1ST SESSION

# H. R. 2038

To allow State-based, market-oriented, prescription drug negotiations to lower pharmaceutical drug prices, to encourage competition, to increase consumer choice and access, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2019

Mr. MEADOWS introduced the following bill; which was referred to the  
Committee on the Judiciary

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## A BILL

To allow State-based, market-oriented, prescription drug negotiations to lower pharmaceutical drug prices, to encourage competition, to increase consumer choice and access, 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 “State-Based, Market-  
5       Oriented, Prescription Drug Negotiations Act of 2019”.

1 **SEC. 2. ANTITRUST EXEMPTION FOR PRIVATE HEALTH IN-**  
2 **SURER ISSUERS TO NEGOTIATE WHOLESALE**  
3 **ACQUISITION PRICES OF PRESCRIPTION**  
4 **DRUGS PURCHASED FROM DRUG MANUFAC-**  
5 **TURERS.**

6 It shall not be a violation of the antitrust laws for  
7 one or more private health insurer issuers or their des-  
8 ignated agents to jointly negotiate wholesale acquisition  
9 prices of a prescription drug with a manufacturer of a pre-  
10 scription drug with regards to the reimbursement policies  
11 of the insurers of the manufacturer's drugs so long as no  
12 one single wholesale acquisition price is jointly determined  
13 between the insurance issuers or their designated agents.

14 **SEC. 3. DEFINITIONS.**

15 For purposes of this Act:

16 (1) **ANTITRUST LAWS.**—The term “antitrust  
17 laws” has the meaning given it in subsection (a) of  
18 the 1st section of the Clayton Act (15 U.S.C. 12(a)),  
19 except that such term includes section 5 of the Fed-  
20 eral Trade Commission Act (15 U.S.C. 45) to the  
21 extent such section 5 applies to unfair methods of  
22 competition.

23 (2) **HEALTH INSURANCE ISSUER.**—The term  
24 “health insurance issuer” means an insurance com-  
25 pany, insurance service, or insurance organization  
26 (including a health maintenance organization, as de-

1       fined in paragraph (3)) which is licensed to engage  
2       in the business of insurance in a State and which is  
3       subject to State law which regulates insurance (with-  
4       in the meaning of section 514(b)(2) of the Employee  
5       Retirement Income Security Act of 1974 (29 U.S.C.  
6       1144(b)(2))). Such term does not include a group  
7       health plan.

8               (3) HEALTH MAINTENANCE ORGANIZATION.—  
9       The term “health maintenance organization”  
10      means—

11               (A) a federally qualified health mainte-  
12              nance organization (as defined in section  
13              300e(a) of title 42 of the Code of Federal Reg-  
14              ulations),

15               (B) an organization recognized under State  
16              law as a health maintenance organization, or

17               (C) a similar organization regulated under  
18              State law for solvency in the same manner and  
19              to the same extent as such a health mainte-  
20              nance organization.

21               (4) MANUFACTURER.—The term “manufac-  
22              turer” means anyone who is engaged in manufac-  
23              turing, preparing, propagating, compounding, proc-  
24              essing, packaging, repackaging, or labeling of a pre-  
25              scription drug.

1           (5) PRESCRIPTION DRUG.—The term “prescrip-  
2       tion drug” means any human drug required by Fed-  
3       eral law or regulation to be dispensed only by a pre-  
4       scription, including finished dosage forms and active  
5       ingredients subject to section 503(b) of the Federal  
6       Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

7   **SEC. 4. EFFECTIVE DATE.**

8       This Act shall take effect on the date of the enact-  
9       ment of this Act but shall not apply with respect to con-  
10      duct that occurs before such date.

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