

116TH CONGRESS  
1ST SESSION

# S. 1437

To amend title XI of the Social Security Act to require that direct-to-consumer advertisements for prescription drugs and biological products include truthful and non-misleading pricing information.

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## IN THE SENATE OF THE UNITED STATES

MAY 13, 2019

Mr. DURBIN (for himself, Mr. GRASSLEY, Mr. KING, and Mr. ALEXANDER) 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 require that direct-to-consumer advertisements for prescription drugs and biological products include truthful and non-misleading pricing information.

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 “Drug-price Trans-  
5 parency in Communications (DTC) Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) Direct-to-consumer advertising of prescrip-  
2           tion pharmaceuticals is legally permitted in only 2  
3           developed countries, the United States and New  
4           Zealand.

5           (2) In 2018, pharmaceutical ad spending ex-  
6           ceeded \$6,046,000,000, a 4.8-percent increase over  
7           2017, resulting in the average American seeing 9  
8           drug advertisements per day.

9           (3) In 2015, pharmaceutical companies spent  
10          more than \$100,000,000 on advertising with respect  
11          to each of the 16 most advertised brand-name drugs  
12          and biological products, primarily new and relatively  
13          high-cost medications.

14          (4) The 10 most commonly advertised drugs  
15          have list prices ranging from \$535 to \$11,000 per  
16          30-day supply or usual course of therapy.

17          (5) According to a 2011 Congressional Budget  
18          Office report, direct-to-consumer advertising is used  
19          to promote only a small set of specific drugs, typi-  
20          cally the expensive, brand-name medications. And  
21          the top-selling drugs in any given year are fre-  
22          quently among the drugs with the largest expendi-  
23          tures for direct-to-consumer advertising.

24          (6) According to a 2011 Congressional Budget  
25          Office report, pharmaceutical manufacturers adver-

1       tise their products directly to consumers in an at-  
2       tempt to boost demand for their products and there-  
3       by raise the price that consumers are willing to pay,  
4       increase the quantity of drugs sold, or achieve some  
5       combination of the two.

6               (7) Studies show that patients are more likely  
7       to ask their doctor for a specific medication and for  
8       the doctor to write a prescription for it, if a patient  
9       has seen an advertisement for such medication, re-  
10      gardless of whether the medication is clinically ap-  
11      propriate for the patient or whether a lower-cost ge-  
12      neric may be available.

13              (8) According to a 2011 Congressional Budget  
14      Office report, the average number of prescriptions  
15      written for newly approved brand-name drugs with  
16      direct-to-consumer advertising was 9 times greater  
17      than the average number of prescriptions written for  
18      newly approved brand-name drugs without direct-to-  
19      consumer advertising.

20              (9) Approximately half of Americans have high-  
21      deductible health plans, under which they often pay  
22      the list price of a drug until their insurance deduct-  
23      ible is met. All of the top Medicare prescription drug  
24      plans use coinsurance rather than fixed-dollar copay-  
25      ments for medications on nonpreferred drug tiers.

1           (10) The Centers for Medicare & Medicaid  
2 Services is the single largest drug payer in the Na-  
3 tion. Drug price inflation accounts for a significant  
4 portion of the 22-percent, 32-percent, and 42-per-  
5 cent growth in Medicare parts D and B and Med-  
6 icaid expenditures, respectively, on a per beneficiary  
7 basis between 2013 and 2016.

8           (11) The 20 most advertised drugs on television  
9 cost Medicare and Medicaid a combined  
10 \$24,000,000,000 in 2017.

11           (12) Price shopping is the mark of rational eco-  
12 nomic behavior, and markets operate more efficiently  
13 when consumers have relevant information about a  
14 product, including its price, before making an in-  
15 formed decision about whether to buy that product.

16           (13) The American Medical Association has  
17 passed resolutions supporting the requirement for  
18 price transparency in any direct-to-consumer adver-  
19 tising.

20           (14) The Kaiser Family Foundation found that  
21 88 percent of the public favors the Federal Govern-  
22 ment requiring prescription drug advertisements to  
23 include a statement on how much the drug costs.

24           (15) Pursuant to its existing authority under  
25 sections 1102 and 1871 of the Social Security Act,

1 on May 10, 2019, the Centers for Medicare & Med-  
 2 icaid Services published regulations (subpart L of  
 3 part 403 of title 42, Code of Federal Regulations)  
 4 to require direct-to-consumer television advertise-  
 5 ments of prescription drugs and biological products  
 6 for which payment is available through or under  
 7 Medicare or Medicaid to include the wholesale acqui-  
 8 sition cost of that drug or biological product.

9 (16) To support the permanence and clarity of  
 10 this policy, and to facilitate future planning, Con-  
 11 gress finds a benefit to codifying such regulation.

12 **SEC. 3. REQUIREMENT THAT DIRECT-TO-CONSUMER AD-**  
 13 **VERTISEMENTS FOR PRESCRIPTION DRUGS**  
 14 **AND BIOLOGICAL PRODUCTS INCLUDE**  
 15 **TRUTHFUL AND NON-MISLEADING PRICING**  
 16 **INFORMATION.**

17 Part A of title XI of the Social Security Act is  
 18 amended by adding at the end the following new section:

19 “REQUIREMENT THAT DIRECT-TO-CONSUMER ADVERTISE-  
 20 MENTS FOR PRESCRIPTION DRUGS AND BIOLOGICAL  
 21 PRODUCTS INCLUDE TRUTHFUL AND NON-MIS-  
 22 LEADING PRICING INFORMATION

23 “SEC. 1150C. (a) IN GENERAL.—The Secretary shall  
 24 require that each direct-to-consumer advertisement for a  
 25 prescription drug or biological product for which payment  
 26 is available under title XVIII or XIX includes an appro-

1 priate disclosure of truthful and non-misleading pricing in-  
2 formation with respect to the drug or product.

3 “(b) DETERMINATION BY CMS.—The Secretary, act-  
4 ing through the Administrator of the Centers for Medicare  
5 & Medicaid Services, shall determine the components of  
6 the requirement under subsection (a), such as the forms  
7 of advertising, the manner of disclosure, the price point  
8 listing, and the price information for disclosure.”.

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