

116TH CONGRESS
1ST SESSION

S. 3

To bring stability to the individual insurance market, make insurance coverage more affordable, lower prescription drug prices, and improve Medicaid.

IN THE SENATE OF THE UNITED STATES

JANUARY 3, 2019

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

A BILL

To bring stability to the individual insurance market, make insurance coverage more affordable, lower prescription drug prices, and improve Medicaid.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Keeping Health Insurance Affordable Act of 2019”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MARKETPLACE STABILITY AND SECURITY

Sec. 101. Public health insurance option.

TITLE II—HEALTH CARE FINANCIAL ASSISTANCE

Sec. 201. Increase in eligibility for premium assistance tax credits.

TITLE III—DRUG PRICING

Sec. 301. Requiring drug manufacturers to provide drug rebates for drugs dispensed to low-income individuals.

Sec. 302. Negotiation of prices for Medicare prescription drugs.

Sec. 303. Guaranteed prescription drug benefits.

Sec. 304. Full reimbursement for qualified retiree prescription drug plans.

1 **TITLE I—MARKETPLACE**
 2 **STABILITY AND SECURITY**

3 **SEC. 101. PUBLIC HEALTH INSURANCE OPTION.**

4 (a) IN GENERAL.—Part 3 of subtitle D of title I of
 5 the Patient Protection and Affordable Care Act (Public
 6 Law 111–148) is amended by adding at the end the fol-
 7 lowing new section:

8 **“SEC. 1325. PUBLIC HEALTH INSURANCE OPTION.**

9 “(a) ESTABLISHMENT AND ADMINISTRATION OF A
 10 PUBLIC HEALTH INSURANCE OPTION.—

11 “(1) ESTABLISHMENT.—For years beginning
 12 with 2020, the Secretary of Health and Human
 13 Services (in this section referred to as the ‘Sec-
 14 retary’) shall provide for the offering through Ex-
 15 changes established under this title of a health bene-
 16 fits plan (in this Act referred to as the ‘public health
 17 insurance option’) that ensures choice, competition,
 18 and stability of affordable, high-quality coverage
 19 throughout the United States in accordance with
 20 this section. In designing the option, the Secretary’s

1 primary responsibility is to create a low-cost plan
2 without compromising quality or access to care.

3 “(2) OFFERING THROUGH EXCHANGES.—

4 “(A) EXCLUSIVE TO EXCHANGES.—The
5 public health insurance option shall be made
6 available only through Exchanges established
7 under this title.

8 “(B) ENSURING A LEVEL PLAYING
9 FIELD.—Consistent with this section, the public
10 health insurance option shall comply with re-
11 quirements that are applicable under this title
12 to health benefits plans offered through such
13 Exchanges, including requirements related to
14 benefits, benefit levels, provider networks, no-
15 tices, consumer protections, and cost sharing.

16 “(C) PROVISION OF BENEFIT LEVELS.—

17 The public health insurance option—

18 “(i) shall offer bronze, silver, and gold
19 plans; and

20 “(ii) may offer platinum plans.

21 “(3) ADMINISTRATIVE CONTRACTING.—The
22 Secretary may enter into contracts for the purpose
23 of performing administrative functions (including
24 functions described in subsection (a)(4) of section
25 1874A of the Social Security Act) with respect to

1 the public health insurance option in the same man-
2 ner as the Secretary may enter into contracts under
3 subsection (a)(1) of such section. The Secretary has
4 the same authority with respect to the public health
5 insurance option as the Secretary has under sub-
6 sections (a)(1) and (b) of section 1874A of the So-
7 cial Security Act with respect to title XVIII of such
8 Act. Contracts under this subsection shall not in-
9 volve the transfer of insurance risk to such entity.

10 “(4) OMBUDSMAN.—The Secretary shall estab-
11 lish an office of the ombudsman for the public
12 health insurance option which shall have duties with
13 respect to the public health insurance option similar
14 to the duties of the Medicare Beneficiary Ombuds-
15 man under section 1808(c)(2) of the Social Security
16 Act. In addition, such office shall work with States
17 to ensure that information and notice is provided
18 that the public health insurance option is one of the
19 health plans available through an Exchange.

20 “(5) DATA COLLECTION.—The Secretary shall
21 collect such data as may be required to establish
22 premiums and payment rates for the public health
23 insurance option and for other purposes under this
24 section, including to improve quality and to reduce

1 racial, ethnic, and other disparities in health and
2 health care.

3 “(6) ACCESS TO FEDERAL COURTS.—The provi-
4 sions of Medicare (and related provisions of title II
5 of the Social Security Act) relating to access of
6 Medicare beneficiaries to Federal courts for the en-
7 forcement of rights under Medicare, including with
8 respect to amounts in controversy, shall apply to the
9 public health insurance option and individuals en-
10 rolled under such option under this title in the same
11 manner as such provisions apply to Medicare and
12 Medicare beneficiaries.

13 “(b) PREMIUMS AND FINANCING.—

14 “(1) ESTABLISHMENT OF PREMIUMS.—

15 “(A) IN GENERAL.—The Secretary shall
16 establish geographically adjusted premium rates
17 for the public health insurance option—

18 “(i) in a manner that complies with
19 the premium rules under paragraph (3);
20 and

21 “(ii) at a level sufficient to fully fi-
22 nance the costs of—

23 “(I) health benefits provided by
24 the public health insurance option;
25 and

1 “(II) administrative costs related
2 to operating the public health insur-
3 ance option.

4 “(B) CONTINGENCY MARGIN.—In estab-
5 lishing premium rates under subparagraph (A),
6 the Secretary shall include an appropriate
7 amount for a contingency margin.

8 “(2) ACCOUNT.—

9 “(A) ESTABLISHMENT.—There is estab-
10 lished in the Treasury of the United States an
11 account for the receipts and disbursements at-
12 tributable to the operation of the public health
13 insurance option, including the start-up funding
14 under subparagraph (B). Section 1854(g) of
15 the Social Security Act shall apply to receipts
16 described in the previous sentence in the same
17 manner as such section applies to payments or
18 premiums described in such section.

19 “(B) START-UP FUNDING.—

20 “(i) IN GENERAL.—In order to pro-
21 vide for the establishment of the public
22 health insurance option there is hereby ap-
23 propriated to the Secretary, out of any
24 funds in the Treasury not otherwise appro-
25 priated, \$2,000,000,000. In order to pro-

1 vide for initial claims reserves before the
2 collection of premiums, there is hereby ap-
3 propriated to the Secretary, out of any
4 funds in the Treasury not otherwise appro-
5 priated, such sums as necessary to cover
6 90 days worth of claims reserves based on
7 projected enrollment.

8 “(ii) AMORTIZATION OF START-UP
9 FUNDING.—The Secretary shall provide for
10 the repayment of the startup funding pro-
11 vided under clause (i) to the Treasury in
12 an amortized manner over the 10-year pe-
13 riod beginning with 2020.

14 “(iii) LIMITATION ON FUNDING.—
15 Nothing in this subsection shall be con-
16 strued as authorizing any additional appro-
17 priations to the account, other than such
18 amounts as are otherwise provided with re-
19 spect to other health benefits plans partici-
20 pating under the Exchange involved.

21 “(3) INSURANCE RATING RULES.—The pre-
22 mium rate charged for the public health insurance
23 option may not vary except as provided under sec-
24 tion 2701 of the Public Health Service Act.

25 “(c) PAYMENT RATES FOR ITEMS AND SERVICES.—

1 “(1) RATES ESTABLISHED BY SECRETARY.—

2 “(A) IN GENERAL.—The Secretary shall
3 establish payment rates for the public health in-
4 surance option for services and health care pro-
5 viders consistent with this subsection and may
6 change such payment rates in accordance with
7 subsection (d).

8 “(B) INITIAL PAYMENT RULES.—

9 “(i) IN GENERAL.—During 2020,
10 2021, and 2022, the Secretary shall set
11 the payment rates under this subsection
12 for services and providers described in sub-
13 paragraph (A) equal to the payment rates
14 for equivalent services and providers under
15 parts A and B of Medicare, subject to
16 clause (ii), paragraph (4), and subsection
17 (d).

18 “(ii) EXCEPTIONS.—The Secretary
19 may determine the extent to which Medi-
20 care adjustments applicable to base pay-
21 ment rates under parts A and B of Medi-
22 care for graduate medical education and
23 disproportionate share hospitals shall apply
24 under this section.

1 “(C) FOR NEW SERVICES.—The Secretary
2 shall modify payment rates described in sub-
3 paragraph (B) in order to accommodate pay-
4 ments for services, such as well-child visits, that
5 are not otherwise covered under Medicare.

6 “(D) PRESCRIPTION DRUGS.—Payment
7 rates under this subsection for prescription
8 drugs that are not paid for under part A or
9 part B of Medicare shall be at rates negotiated
10 by the Secretary.

11 “(2) SUBSEQUENT PERIODS; PROVIDER NET-
12 WORK.—

13 “(A) SUBSEQUENT PERIODS.—Beginning
14 with 2023 and for subsequent years, the Sec-
15 retary shall continue to use an administrative
16 process to set such rates in order to promote
17 payment accuracy, to ensure adequate bene-
18 ficiary access to providers, and to promote af-
19 fordability and the efficient delivery of medical
20 care consistent with subsection (a)(1). Such
21 rates shall not be set at levels expected to in-
22 crease average medical costs per enrollee cov-
23 ered under the public health insurance option
24 beyond what would be expected if the process
25 under paragraph (1)(B) were continued, as cer-

1 tified by the Office of the Actuary of the Cen-
2 ters for Medicare & Medicaid Services.

3 “(B) ESTABLISHMENT OF A PROVIDER
4 NETWORK.—Health care providers participating
5 under Medicare are participating providers in
6 the public health insurance option unless they
7 opt out in a process established by the Sec-
8 retary.

9 “(3) ADMINISTRATIVE PROCESS FOR SETTING
10 RATES.—Chapter 5 of title 5, United States Code
11 shall apply to the process for the initial establish-
12 ment of payment rates under this subsection but not
13 to the specific methodology for establishing such
14 rates or the calculation of such rates.

15 “(4) CONSTRUCTION.—Nothing in this section
16 shall be construed as limiting the Secretary’s author-
17 ity to correct for payments that are excessive or defi-
18 cient, taking into account the provisions of sub-
19 section (a)(1) and any appropriate adjustments
20 based on the demographic characteristics of enrollees
21 covered under the public health insurance option,
22 but in no case shall the correction of payments
23 under this paragraph result in a level of expendi-
24 tures per enrollee that exceeds the level of expendi-
25 tures that would have occurred under paragraph

1 (1)(B), as certified by the Office of the Actuary of
2 the Centers for Medicare & Medicaid Services.

3 “(5) CONSTRUCTION.—Nothing in this section
4 shall be construed as affecting the authority of the
5 Secretary to establish payment rates, including pay-
6 ments to provide for the more efficient delivery of
7 services, such as the initiatives provided for under
8 subsection (d).

9 “(6) LIMITATIONS ON REVIEW.—There shall be
10 no administrative or judicial review of a payment
11 rate or methodology established under this sub-
12 section or under subsection (d).

13 “(d) MODERNIZED PAYMENT INITIATIVES AND DE-
14 LIVERY SYSTEM REFORM.—

15 “(1) IN GENERAL.—For plan years beginning
16 with 2020, the Secretary may utilize innovative pay-
17 ment mechanisms and policies to determine pay-
18 ments for items and services under the public health
19 insurance option. The payment mechanisms and
20 policies under this subsection may include patient-
21 centered medical home and other care management
22 payments, accountable care organizations, value-
23 based purchasing, bundling of services, differential
24 payment rates, performance or utilization based pay-
25 ments, partial capitation, and direct contracting with

1 providers. Payment rates under such payment mech-
2 anisms and policies shall not be set at levels ex-
3 pected to increase average medical costs per enrollee
4 covered under the public health insurance option be-
5 yond what would be expected if the process under
6 subsection (c)(1)(B) were continued, as certified by
7 the Office of the Actuary of the Centers for Medi-
8 care & Medicaid Services.

9 “(2) REQUIREMENTS FOR INNOVATIVE PAY-
10 MENTS.—The Secretary shall design and implement
11 the payment mechanisms and policies under this
12 subsection in a manner that—

13 “(A) seeks to—

14 “(i) improve health outcomes;

15 “(ii) reduce health disparities (includ-
16 ing racial, ethnic, and other disparities);

17 “(iii) provide efficient and affordable
18 care;

19 “(iv) address geographic variation in
20 the provision of health services; or

21 “(v) prevent or manage chronic ill-
22 ness; and

23 “(B) promotes care that is integrated, pa-
24 tient-centered, high-quality, and efficient.

1 “(3) ENCOURAGING THE USE OF HIGH VALUE
2 SERVICES.—To the extent allowed by the benefit
3 standards applied to all health benefits plans partici-
4 pating under the Exchange involved, the public
5 health insurance option may modify cost sharing and
6 payment rates to encourage the use of services that
7 promote health and value.

8 “(4) NON-UNIFORMITY PERMITTED.—Nothing
9 in this section shall prevent the Secretary from vary-
10 ing payments based on different payment structure
11 models (such as accountable care organizations and
12 medical homes) under the public health insurance
13 option for different geographic areas.

14 “(e) PROVIDER PARTICIPATION.—

15 “(1) IN GENERAL.—The Secretary shall estab-
16 lish conditions of participation for health care pro-
17 viders under the public health insurance option.

18 “(2) LICENSURE OR CERTIFICATION.—The Sec-
19 retary shall not allow a health care provider to par-
20 ticipate in the public health insurance option unless
21 such provider is appropriately licensed or certified
22 under State law.

23 “(3) PAYMENT TERMS FOR PROVIDERS.—

24 “(A) PHYSICIANS.—The Secretary shall
25 provide for the annual participation of physi-

1 cians under the public health insurance option,
2 for which payment may be made for services
3 furnished during the year, in one of 2 classes:

4 “(i) PREFERRED PHYSICIANS.—Those
5 physicians who agree to accept the pay-
6 ment rate established under this section
7 (without regard to cost-sharing) as the
8 payment in full.

9 “(ii) PARTICIPATING, NON-PRE-
10 FERRED PHYSICIANS.—Those physicians
11 who agree not to impose charges (in rela-
12 tion to the payment rate described in sub-
13 section (c) for such physicians) that exceed
14 the ratio permitted under section
15 1848(g)(2)(C) of the Social Security Act.

16 “(B) OTHER PROVIDERS.—The Secretary
17 shall provide for the participation (on an annual
18 or other basis specified by the Secretary) of
19 health care providers (other than physicians)
20 under the public health insurance option under
21 which payment shall only be available if the
22 provider agrees to accept the payment rate es-
23 tablished under subsection (c) (without regard
24 to cost-sharing) as the payment in full.

1 “(4) EXCLUSION OF CERTAIN PROVIDERS.—
 2 The Secretary shall exclude from participation under
 3 the public health insurance option a health care pro-
 4 vider that is excluded from participation in a Fed-
 5 eral health care program (as defined in section
 6 1128B(f) of the Social Security Act).

7 “(f) APPLICATION OF FRAUD AND ABUSE PROVI-
 8 SIONS.—Provisions of law (other than criminal law provi-
 9 sions) identified by the Secretary by regulation, in con-
 10 sultation with the Inspector General of the Department
 11 of Health and Human Services, that impose sanctions
 12 with respect to waste, fraud, and abuse under Medicare,
 13 such as the False Claims Act (31 U.S.C. 3729 et seq.),
 14 shall also apply to the public health insurance option.

15 “(g) MEDICARE DEFINED.—For purposes of this sec-
 16 tion, the term ‘Medicare’ means the health insurance pro-
 17 grams under title XVIII of the Social Security Act.”.

18 (b) CONFORMING AMENDMENTS.—

19 (1) TREATMENT AS QUALIFIED HEALTH
 20 PLAN.—Section 1301(a)(2) of the Patient Protection
 21 and Affordable Care Act is amended—

22 (A) in the heading, by inserting “, THE
 23 PUBLIC HEALTH INSURANCE OPTION,” before
 24 “AND”; and

1 (B) by inserting “the public health insur-
 2 ance option under section 1325,” before “and a
 3 multi-State plan”.

4 (2) LEVEL PLAYING FIELD.—Section 1324(a)
 5 of such Act is amended by inserting “the public
 6 health insurance option under section 1325,” before
 7 “or a multi-State qualified health plan”.

8 **TITLE II—HEALTH CARE** 9 **FINANCIAL ASSISTANCE**

10 **SEC. 201. INCREASE IN ELIGIBILITY FOR PREMIUM ASSIST-** 11 **ANCE TAX CREDITS.**

12 (a) IN GENERAL.—Subparagraph (A) of section
 13 36B(c)(1) of the Internal Revenue Code of 1986 is amend-
 14 ed by striking “400 percent” and inserting “600 percent”.

15 (b) CONFORMING AMENDMENT.—The table con-
 16 tained in clause (i) of section 36B(b)(3)(A)(i) of the Inter-
 17 nal Revenue Code of 1986 is amended by striking “400%”
 18 and inserting “600%”.

19 (c) RECONCILIATION OF CREDIT AND ADVANCE
 20 CREDIT.—Clause (i) of section 36B(f)(2)(B) of the Inter-
 21 nal Revenue Code of 1986 is amended—

22 (1) by striking “In the case of” and all that fol-
 23 lows through “the amount of” and inserting “The
 24 amount of”; and

1 (2) by striking “but less than 400%” in the
2 table.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2018.

6 **TITLE III—DRUG PRICING**

7 **SEC. 301. REQUIRING DRUG MANUFACTURERS TO PROVIDE** 8 **DRUG REBATES FOR DRUGS DISPENSED TO** 9 **LOW-INCOME INDIVIDUALS.**

10 (a) IN GENERAL.—Section 1860D–2 of the Social
11 Security Act (42 U.S.C. 1395w–102) is amended—

12 (1) in subsection (e)(1), in the matter preceding
13 subparagraph (A), by inserting “and subsection (f)”
14 after “this subsection”; and

15 (2) by adding at the end the following new sub-
16 section:

17 “(f) PRESCRIPTION DRUG REBATE AGREEMENT FOR
18 REBATE ELIGIBLE INDIVIDUALS.—

19 “(1) REQUIREMENT.—

20 “(A) IN GENERAL.—For plan years begin-
21 ning on or after January 1, 2021, in this part,
22 the term ‘covered part D drug’ does not include
23 any drug or biological product that is manufac-
24 tured by a manufacturer that has not entered

1 into and have in effect a rebate agreement de-
2 scribed in paragraph (2).

3 “(B) 2020 PLAN YEAR REQUIREMENT.—
4 Any drug or biological product manufactured by
5 a manufacturer that declines to enter into a re-
6 bate agreement described in paragraph (2) for
7 the period beginning on January 1, 2020, and
8 ending on December 31, 2020, shall not be in-
9 cluded as a ‘covered part D drug’ for the subse-
10 quent plan year.

11 “(2) REBATE AGREEMENT.—A rebate agree-
12 ment under this subsection shall require the manu-
13 facturer to provide to the Secretary a rebate for
14 each rebate period (as defined in paragraph (6)(B))
15 ending after December 31, 2019, in the amount
16 specified in paragraph (3) for any covered part D
17 drug of the manufacturer dispensed after December
18 31, 2019, to any rebate eligible individual (as de-
19 fined in paragraph (6)(A)) for which payment was
20 made by a PDP sponsor or MA organization under
21 this part for such period, including payments passed
22 through the low-income and reinsurance subsidies
23 under sections 1860D–14 and 1860D–15(b), respec-
24 tively. Such rebate shall be paid by the manufac-
25 turer to the Secretary not later than 30 days after

1 the date of receipt of the information described in
2 section 1860D–12(b)(8), including as such section is
3 applied under section 1857(f)(3), or 30 days after
4 the receipt of information under subparagraph (D)
5 of paragraph (3), as determined by the Secretary.
6 Insofar as not inconsistent with this subsection, the
7 Secretary shall establish terms and conditions of
8 such agreement relating to compliance, penalties,
9 and program evaluations, investigations, and audits
10 that are similar to the terms and conditions for re-
11 bate agreements under paragraphs (3) and (4) of
12 section 1927(b).

13 “(3) REBATE FOR REBATE ELIGIBLE MEDICARE
14 DRUG PLAN ENROLLEES.—

15 “(A) IN GENERAL.—The amount of the re-
16 bate specified under this paragraph for a manu-
17 facturer for a rebate period, with respect to
18 each dosage form and strength of any covered
19 part D drug provided by such manufacturer
20 and dispensed to a rebate eligible individual,
21 shall be equal to the product of—

22 “(i) the total number of units of such
23 dosage form and strength of the drug so
24 provided and dispensed for which payment
25 was made by a PDP sponsor or an MA or-

1 ganization under this part for the rebate
2 period, including payments passed through
3 the low-income and reinsurance subsidies
4 under sections 1860D–14 and 1860D–
5 15(b), respectively; and

6 “(ii) the amount (if any) by which—

7 “(I) the Medicaid rebate amount
8 (as defined in subparagraph (B)) for
9 such form, strength, and period, ex-
10 ceeds

11 “(II) the average Medicare drug
12 program rebate eligible rebate amount
13 (as defined in subparagraph (C)) for
14 such form, strength, and period.

15 “(B) MEDICAID REBATE AMOUNT.—For
16 purposes of this paragraph, the term ‘Medicaid
17 rebate amount’ means, with respect to each
18 dosage form and strength of a covered part D
19 drug provided by the manufacturer for a rebate
20 period—

21 “(i) in the case of a single source
22 drug or an innovator multiple source drug,
23 the amount specified in paragraph
24 (1)(A)(ii)(II) or (2)(C) of section 1927(c)
25 plus the amount, if any, specified in sub-

1 paragraph (A)(ii) of paragraph (2) of such
2 section, for such form, strength, and pe-
3 riod; or

4 “(ii) in the case of any other covered
5 outpatient drug, the amount specified in
6 paragraph (3)(A)(i) of such section for
7 such form, strength, and period.

8 “(C) AVERAGE MEDICARE DRUG PROGRAM
9 REBATE ELIGIBLE REBATE AMOUNT.—For pur-
10 poses of this subsection, the term ‘average
11 Medicare drug program rebate eligible rebate
12 amount’ means, with respect to each dosage
13 form and strength of a covered part D drug
14 provided by a manufacturer for a rebate period,
15 the sum, for all PDP sponsors under part D
16 and MA organizations administering an MA-
17 PD plan under part C, of—

18 “(i) the product, for each such spon-
19 sor or organization, of—

20 “(I) the sum of all rebates, dis-
21 counts, or other price concessions (not
22 taking into account any rebate pro-
23 vided under paragraph (2) or any dis-
24 counts under the program under sec-
25 tion 1860D–14A) for such dosage

1 form and strength of the drug dis-
2 pensed, calculated on a per-unit basis,
3 but only to the extent that any such
4 rebate, discount, or other price con-
5 cession applies equally to drugs dis-
6 pensed to rebate eligible Medicare
7 drug plan enrollees and drugs dis-
8 pensed to PDP and MA–PD enrollees
9 who are not rebate eligible individuals;
10 and

11 “(II) the number of the units of
12 such dosage and strength of the drug
13 dispensed during the rebate period to
14 rebate eligible individuals enrolled in
15 the prescription drug plans adminis-
16 tered by the PDP sponsor or the MA–
17 PD plans administered by the MA or-
18 ganization; divided by

19 “(ii) the total number of units of such
20 dosage and strength of the drug dispensed
21 during the rebate period to rebate eligible
22 individuals enrolled in all prescription drug
23 plans administered by PDP sponsors and
24 all MA–PD plans administered by MA or-
25 ganizations.

1 “(D) USE OF ESTIMATES.—The Secretary
2 may establish a methodology for estimating the
3 average Medicare drug program rebate eligible
4 rebate amounts for each rebate period based on
5 bid and utilization information under this part
6 and may use these estimates as the basis for
7 determining the rebates under this section. If
8 the Secretary elects to estimate the average
9 Medicare drug program rebate eligible rebate
10 amounts, the Secretary shall establish a rec-
11 onciliation process for adjusting manufacturer
12 rebate payments not later than 3 months after
13 the date that manufacturers receive the infor-
14 mation collected under section 1860D–
15 12(b)(8)(B).

16 “(4) LENGTH OF AGREEMENT.—The provisions
17 of paragraph (4) of section 1927(b) (other than
18 clauses (iv) and (v) of subparagraph (B)) shall apply
19 to rebate agreements under this subsection in the
20 same manner as such paragraph applies to a rebate
21 agreement under such section.

22 “(5) OTHER TERMS AND CONDITIONS.—The
23 Secretary shall establish other terms and conditions
24 of the rebate agreement under this subsection, in-

1 including terms and conditions related to compliance,
 2 that are consistent with this subsection.

3 “(6) DEFINITIONS.—In this subsection and sec-
 4 tion 1860D–12(b)(8):

5 “(A) REBATE ELIGIBLE INDIVIDUAL.—The
 6 term ‘rebate eligible individual’ means—

7 “(i) a subsidy eligible individual (as
 8 defined in section 1860D–14(a)(3)(A));

9 “(ii) a Medicaid beneficiary treated as
 10 a subsidy eligible individual under clause
 11 (v) of section 1860D–14(a)(3)(B); and

12 “(iii) any part D eligible individual
 13 not described in clause (i) or (ii) who is de-
 14 termined for purposes of the State plan
 15 under title XIX to be eligible for medical
 16 assistance under clause (i), (iii), or (iv) of
 17 section 1902(a)(10)(E).

18 “(B) REBATE PERIOD.—The term ‘rebate
 19 period’ has the meaning given such term in sec-
 20 tion 1927(k)(8).”.

21 (b) REPORTING REQUIREMENT FOR THE DETER-
 22 MINATION AND PAYMENT OF REBATES BY MANUFACTUR-
 23 ERS RELATED TO REBATE FOR REBATE ELIGIBLE MEDI-
 24 CARE DRUG PLAN ENROLLEES.—

1 (1) REQUIREMENTS FOR PDP SPONSORS.—Sec-
2 tion 1860D–12(b) of the Social Security Act (42
3 U.S.C. 1395w–112(b)) is amended by adding at the
4 end the following new paragraph:

5 “(8) REPORTING REQUIREMENT FOR THE DE-
6 TERMINATION AND PAYMENT OF REBATES BY MANU-
7 FACTURERS RELATED TO REBATE FOR REBATE ELI-
8 GIBLE MEDICARE DRUG PLAN ENROLLEES.—

9 “(A) IN GENERAL.—For purposes of the
10 rebate under section 1860D–2(f) for contract
11 years beginning on or after January 1, 2021,
12 each contract entered into with a PDP sponsor
13 under this part with respect to a prescription
14 drug plan shall require that the sponsor comply
15 with subparagraphs (B) and (C).

16 “(B) REPORT FORM AND CONTENTS.—Not
17 later than a date specified by the Secretary, a
18 PDP sponsor of a prescription drug plan under
19 this part shall report to each manufacturer—

20 “(i) information (by National Drug
21 Code number) on the total number of units
22 of each dosage, form, and strength of each
23 drug of such manufacturer dispensed to re-
24 bate eligible Medicare drug plan enrollees
25 under any prescription drug plan operated

1 by the PDP sponsor during the rebate pe-
2 riod;

3 “(ii) information on the price dis-
4 counts, price concessions, and rebates for
5 such drugs for such form, strength, and
6 period;

7 “(iii) information on the extent to
8 which such price discounts, price conces-
9 sions, and rebates apply equally to rebate
10 eligible Medicare drug plan enrollees and
11 PDP enrollees who are not rebate eligible
12 Medicare drug plan enrollees; and

13 “(iv) any additional information that
14 the Secretary determines is necessary to
15 enable the Secretary to calculate the aver-
16 age Medicare drug program rebate eligible
17 rebate amount (as defined in paragraph
18 (3)(C) of such section), and to determine
19 the amount of the rebate required under
20 this section, for such form, strength, and
21 period.

22 Such report shall be in a form consistent with
23 a standard reporting format established by the
24 Secretary.

1 “(C) SUBMISSION TO SECRETARY.—Each
2 PDP sponsor shall promptly transmit a copy of
3 the information reported under subparagraph
4 (B) to the Secretary for the purpose of audit
5 oversight and evaluation.

6 “(D) CONFIDENTIALITY OF INFORMA-
7 TION.—The provisions of subparagraph (D) of
8 section 1927(b)(3), relating to confidentiality of
9 information, shall apply to information reported
10 by PDP sponsors under this paragraph in the
11 same manner that such provisions apply to in-
12 formation disclosed by manufacturers or whole-
13 salers under such section, except—

14 “(i) that any reference to ‘this sec-
15 tion’ in clause (i) of such subparagraph
16 shall be treated as being a reference to this
17 section;

18 “(ii) the reference to the Director of
19 the Congressional Budget Office in clause
20 (iii) of such subparagraph shall be treated
21 as including a reference to the Medicare
22 Payment Advisory Commission; and

23 “(iii) clause (iv) of such subparagraph
24 shall not apply.

1 “(E) OVERSIGHT.—Information reported
2 under this paragraph may be used by the In-
3 spector General of the Department of Health
4 and Human Services for the statutorily author-
5 ized purposes of audit, investigation, and eval-
6 uations.

7 “(F) PENALTIES FOR FAILURE TO PRO-
8 VIDE TIMELY INFORMATION AND PROVISION OF
9 FALSE INFORMATION.—In the case of a PDP
10 sponsor—

11 “(i) that fails to provide information
12 required under subparagraph (B) on a
13 timely basis, the sponsor is subject to a
14 civil money penalty in the amount of
15 \$10,000 for each day in which such infor-
16 mation has not been provided; or

17 “(ii) that knowingly (as defined in
18 section 1128A(i)) provides false informa-
19 tion under such subparagraph, the sponsor
20 is subject to a civil money penalty in an
21 amount not to exceed \$100,000 for each
22 item of false information.

23 Such civil money penalties are in addition to
24 other penalties as may be prescribed by law.
25 The provisions of section 1128A (other than

1 subsections (a) and (b)) shall apply to a civil
 2 money penalty under this subparagraph in the
 3 same manner as such provisions apply to a pen-
 4 alty or proceeding under section 1128A(a).”.

5 (2) APPLICATION TO MA ORGANIZATIONS.—Sec-
 6 tion 1857(f)(3) of the Social Security Act (42
 7 U.S.C. 1395w–27(f)(3)) is amended by adding at
 8 the end the following:

9 “(E) REPORTING REQUIREMENT RELATED
 10 TO REBATE FOR REBATE ELIGIBLE MEDICARE
 11 DRUG PLAN ENROLLEES.—Section 1860D–
 12 12(b)(8).”.

13 (c) DEPOSIT OF REBATES INTO MEDICARE PRE-
 14 SCRIPTION DRUG ACCOUNT.—Section 1860D–16(c) of the
 15 Social Security Act (42 U.S.C. 1395w–116(c)) is amended
 16 by adding at the end the following new paragraph:

17 “(6) REBATE FOR REBATE ELIGIBLE MEDICARE
 18 DRUG PLAN ENROLLEES.—Amounts paid under a re-
 19 bate agreement under section 1860D–2(f) shall be
 20 deposited into the Account.”.

21 (d) EXCLUSION FROM DETERMINATION OF BEST
 22 PRICE AND AVERAGE MANUFACTURER PRICE UNDER
 23 MEDICAID.—

24 (1) EXCLUSION FROM BEST PRICE DETERMINA-
 25 TION.—Section 1927(c)(1)(C)(ii)(I) of the Social Se-

1 security Act (42 U.S.C. 1396r-8(c)(1)(C)(ii)(I)) is
 2 amended by inserting “and amounts paid under a
 3 rebate agreement under section 1860D-2(f)” after
 4 “this section”.

5 (2) EXCLUSION FROM AVERAGE MANUFAC-
 6 Turer PRICE DETERMINATION.—Section
 7 1927(k)(1)(B)(i) of the Social Security Act (42
 8 U.S.C. 1396r-8(k)(1)(B)(i)) is amended—

9 (A) in subclause (IV), by striking “and”
 10 after the semicolon;

11 (B) in subclause (V), by striking the period
 12 at the end and inserting “; and”; and

13 (C) by adding at the end the following:

14 “(VI) amounts paid under a re-
 15 bate agreement under section 1860D-
 16 2(f).”.

17 **SEC. 302. NEGOTIATION OF PRICES FOR MEDICARE PRE-**
 18 **SCRIPTION DRUGS.**

19 Section 1860D-11 of the Social Security Act (42
 20 U.S.C. 1395w-111) is amended by striking subsection (i)
 21 (relating to noninterference) and inserting the following:

22 “(i) NEGOTIATION; NO NATIONAL FORMULARY OR
 23 PRICE STRUCTURE.—

24 “(1) NEGOTIATION OF PRICES WITH MANUFAC-
 25 TURERS.—In order to ensure that beneficiaries en-

1 rolled under prescription drug plans and MA–PD
2 plans pay the lowest possible price, the Secretary
3 shall have and exercise authority similar to that of
4 other Federal entities that purchase prescription
5 drugs in bulk to negotiate contracts with manufac-
6 turers of covered part D drugs, consistent with the
7 requirements and in furtherance of the goals of pro-
8 viding quality care and containing costs under this
9 part.

10 “(2) NO NATIONAL FORMULARY OR PRICE
11 STRUCTURE.—In order to promote competition
12 under this part and in carrying out this part, the
13 Secretary may not require a particular formulary or
14 institute a price structure for the reimbursement of
15 covered part D drugs.”.

16 **SEC. 303. GUARANTEED PRESCRIPTION DRUG BENEFITS.**

17 (a) IN GENERAL.—Section 1860D–3 of the Social
18 Security Act (42 U.S.C. 1395w–103) is amended to read
19 as follows:

20 “ACCESS TO A CHOICE OF QUALIFIED PRESCRIPTION
21 DRUG COVERAGE

22 “SEC. 1860D–3. (a) ASSURING ACCESS TO A CHOICE
23 OF COVERAGE.—

24 “(1) CHOICE OF AT LEAST THREE PLANS IN
25 EACH AREA.—Beginning on January 1, 2021, the
26 Secretary shall ensure that each part D eligible indi-

1 vidual has available, consistent with paragraph (2),
2 a choice of enrollment in—

3 “(A) a nationwide prescription drug plan
4 offered by the Secretary in accordance with
5 subsection (b); and

6 “(B) at least 2 qualifying plans (as defined
7 in paragraph (3)) in the area in which the indi-
8 vidual resides, at least one of which is a pre-
9 scription drug plan.

10 “(2) REQUIREMENT FOR DIFFERENT PLAN
11 SPONSORS.—The requirement in paragraph (1)(B) is
12 not satisfied with respect to an area if only one enti-
13 ty offers all the qualifying plans in the area.

14 “(3) QUALIFYING PLAN DEFINED.—For pur-
15 poses of this section, the term ‘qualifying plan’
16 means—

17 “(A) a prescription drug plan;

18 “(B) an MA–PD plan described in section
19 1851(a)(2)(A)(i) that provides—

20 “(i) basic prescription drug coverage;

21 or

22 “(ii) qualified prescription drug cov-
23 erage that provides supplemental prescrip-
24 tion drug coverage so long as there is no
25 MA monthly supplemental beneficiary pre-

1 mium applied under the plan, due to the
2 application of a credit against such pre-
3 mium of a rebate under section
4 1854(b)(1)(C); or

5 “(C) a nationwide prescription drug plan
6 offered by the Secretary in accordance with
7 subsection (b).

8 “(b) HHS AS PDP SPONSOR FOR A NATIONWIDE
9 PRESCRIPTION DRUG PLAN.—

10 “(1) IN GENERAL.—The Secretary, acting
11 through the Administrator of the Centers for Medi-
12 care & Medicaid Services, shall take such steps as
13 may be necessary to qualify and serve as a PDP
14 sponsor and to offer a prescription drug plan that
15 offers basic prescription drug coverage throughout
16 the United States. Such a plan shall be in addition
17 to, and not in lieu of, other prescription drug plans
18 offered under this part.

19 “(2) PREMIUM; SOLVENCY; AUTHORITIES.—In
20 carrying out paragraph (1), the Secretary—

21 “(A) shall establish a premium in the
22 amount of \$37 for months in 2021 and, for
23 months in subsequent years, in the amount
24 specified in this paragraph for months in the
25 previous year increased by the annual percent-

1 age increase described in section 1860D–
2 2(b)(6) (relating to growth in Medicare pre-
3 scription drug costs per beneficiary) for the
4 year involved;

5 “(B) is deemed to have met any applicable
6 solvency and capital adequacy standards; and

7 “(C) shall exercise such authorities (includ-
8 ing the use of regional or other pharmaceutical
9 benefit managers) as the Secretary determines
10 necessary to offer the prescription drug plan in
11 the same or a comparable manner as is the case
12 for prescription drug plans offered by private
13 PDP sponsors.

14 “(c) FLEXIBILITY IN RISK ASSUMED.—In order to
15 ensure access pursuant to subsection (a) in an area the
16 Secretary may approve limited risk plans under section
17 1860D–11(f) for the area.”.

18 (b) CONFORMING AMENDMENT.—Section 1860D–
19 11(g) of the Social Security Act (42 U.S.C. 1395w–
20 111(g)) is amended by adding at the end the following
21 new paragraph:

22 “(8) APPLICATION.—This subsection shall not
23 apply on or after January 1, 2021.”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to plan years beginning on or after
 3 January 1, 2021.

4 **SEC. 304. FULL REIMBURSEMENT FOR QUALIFIED RETIREE**
 5 **PRESCRIPTION DRUG PLANS.**

6 (a) ELIMINATION OF TRUE OUT-OF-POCKET LIMITA-
 7 TION.—Section 1860D–2(b)(4)(C)(iii) of the Social Secu-
 8 rity Act (42 U.S.C. 1395w–102(b)(4)(C)(iii)) is amend-
 9 ed—

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

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

14 (3) by adding at the end the following new sub-
 15 clause:

16 “(V) under a qualified retiree
 17 prescription drug plan (as defined in
 18 section 1860D–22(a)(2)).”.

19 (b) EQUALIZATION OF SUBSIDIES.—Notwithstanding
 20 any other provision of law, the Secretary of Health and
 21 Human Services shall provide for such increase in the spe-
 22 cial subsidy payment amounts under section 1860D–
 23 22(a)(3) of the Social Security Act (42 U.S.C. 1395w–
 24 132(a)(3)) as may be appropriate to provide for payments
 25 in the aggregate equivalent to the payments that would

1 have been made under section 1860D–15 of such Act (42
2 U.S.C. 1395w–115) if the individuals were not enrolled
3 in a qualified retiree prescription drug plan. In making
4 such computation, the Secretary shall not take into ac-
5 count the application of the amendments made by section
6 1202 of the Medicare Prescription Drug, Improvement,
7 and Modernization Act of 2003 (Public Law 108–173; 117
8 Stat. 2480).

9 (c) EFFECTIVE DATE.—This section, and the amend-
10 ments made by this section, shall take effect on January
11 1, 2021.

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