

116TH CONGRESS
1ST SESSION

S. 3013

To amend title XVIII of the Social Security Act to allow for the offering of additional prescription drug plans under Medicare part D.

IN THE SENATE OF THE UNITED STATES

DECEMBER 10, 2019

Mr. TOOMEY (for himself and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to allow for the offering of additional prescription drug plans under Medicare part D.

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 “Encouraging Innova-
5 tive Benefit Design to Lower Costs for Seniors Act”.

6 **SEC. 2. ALLOWING THE OFFERING OF ADDITIONAL PRE-**
7 **SCRIPTION DRUG PLANS UNDER MEDICARE**
8 **PART D.**

9 (a) RESCINDING AND ISSUANCE OF NEW GUID-
10 ANCE.—Not later than one year after the date of the en-

1 actment of this Act, the Secretary of Health and Human
2 Services (in this section referred to as the “Secretary”)
3 shall—

4 (1) rescind sections of any sub-regulatory guid-
5 ance that limit the number of prescription drug
6 plans in each PDP region that may be offered by a
7 PDP sponsor under part D of title XVIII of the So-
8 cial Security Act (42 U.S.C. 1395w–101 et seq.);
9 and

10 (2) issue new guidance specifying that a PDP
11 sponsor may offer up to 4 (or a greater number if
12 determined appropriate by the Secretary) prescrip-
13 tion drug plans in each PDP region, except in case
14 where the PDP sponsor may offer up to 2 additional
15 plans in a PDP region pursuant to section 1860D–
16 11(d)(4) of the Social Security Act (42 U.S.C.
17 1395w–111(d)(4)), as added by subsection (b).

18 (b) OFFERING OF ADDITIONAL PLANS.—Section
19 1860D–11(d) of the Social Security Act (42 U.S.C.
20 1395w–111(d)) is amended by adding at the end the fol-
21 lowing new paragraph:

22 “(4) OFFERING OF ADDITIONAL PLANS.—

23 “(A) IN GENERAL.—For plan year 2022
24 and each subsequent plan year, a PDP sponsor
25 may offer up to 2 additional prescription drug

1 plans in a PDP region (in addition to any limit
2 established by the Secretary under this part)
3 provided that the PDP sponsor complies with
4 subparagraph (B) with respect to at least one
5 such prescription drug plan.

6 “(B) REQUIREMENTS.—In order to be eli-
7 gible to offer up to 2 additional plans in a PDP
8 region pursuant to subparagraph (A), a PDP
9 sponsor must ensure that, with respect to at
10 least one such prescription drug plan, the spon-
11 sor or any entity that provides pharmacy bene-
12 fits management services under a contract with
13 any such sponsor or plan does not receive direct
14 or indirect remuneration, as defined in section
15 423.308 of title 42, Code of Federal Regula-
16 tions (or any successor regulation), unless at
17 least 10 percent of the aggregate reductions in
18 price or other remuneration received by the
19 PDP sponsor or entity from drug manufactur-
20 ers with respect to the plan and plan year—

21 “(i) are reflected at the point-of-sale
22 to the enrollee; or

23 “(ii) are used to reduce total bene-
24 ficiary cost-sharing estimated by the PDP
25 sponsor for prescription drug coverage

1 under the plan in the annual bid submitted
2 by the PDP sponsor under section 1860D–
3 11(b).

4 “(C) DEFINITION OF REDUCTIONS IN
5 PRICE.—For purposes of subparagraph (B), the
6 term ‘reductions in price’ refers only to collect-
7 ible amounts, as determined by the Secretary,
8 which excludes amounts which after adjudica-
9 tion and reconciliation with pharmacies and
10 manufacturers are duplicate in nature, contrary
11 to other contractual clauses, or otherwise ineli-
12 gible (such as due to beneficiary disenrollment
13 or coordination of benefits).”.

14 (e) RULE OF CONSTRUCTION.—Nothing in the provi-
15 sions of, or amendments made by, this section shall be
16 construed as limiting the ability of the Secretary to in-
17 crease any limit otherwise applicable on the number of
18 prescription drug plans that a PDP sponsor may offer,
19 at the discretion of the PDP sponsor, in a PDP region
20 under part D of title XVIII of the Social Security Act (42
21 U.S.C. 1395w–101 et seq.).

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