S. 476

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

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

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) in subsection (c), in the matter preceding paragraph (1), by striking "this section" and inserting "subsection (b)(1)"; and

(2) by adding at the end the following new subsection:

"(e) Public Availability of Certain Information.—In order to allow patients and employers to compare PBMs' ability to negotiate rebates, discounts, and price concessions and the amount of such rebates, discounts, and price concessions that are passed through to plan sponsors, beginning January 1, 2020, the Secretary shall make available on the Internet website of the Department of Health and Human Services the information provided to the Secretary under paragraphs (2) and (3) of subsection (b) with respect to each PBM. The Secretary shall ensure that such information is displayed in a manner that prevents the disclosure of information on rebates, discounts, and price concessions with respect to an individual drug or an individual plan."

(b) Effective Date.—The amendments made by subsection (a) shall take effect on January 1, 2020.
SEC. 3. MINIMUM DRUG DISCOUNTS REQUIRED TO BE PASSED THROUGH TO THE PLAN SPONSOR.

(a) IN GENERAL.—Section 1150A of the Social Security Act (42 U.S.C. 1320b–23), as amended by section 2(a)(2), is amended—

(1) in the heading, by inserting “; MINIMUM DRUG DISCOUNTS REQUIRED TO BE PASSED THROUGH TO THE PLAN SPONSOR” before the period at the end; and

(2) by adding at the end the following new subsection:

“(f) MINIMUM DRUG DISCOUNTS REQUIRED TO BE PASSED THROUGH TO THE PLAN SPONSOR.—

“(1) REQUIREMENT.—Beginning January 1, 2022, a PBM that manages prescription drug coverage under a contract with a PDP sponsor or MA organization described in subsection (b)(1) or a qualified health benefits plan described in subsection (b)(2), shall, with respect to the plan sponsor of a health benefits plan, pass through to the plan sponsor a minimum percent (as established by the Secretary) of the aggregate amount of the rebates, discounts, or price concessions that the PBM negotiates that are attributable to patient utilization under the plan.
“(2) ESTABLISHMENT.—The Secretary shall est-

establish the minimum percent described in paragraph

(1) in such a manner as will ensure that patients re-

ceive the maximum benefit of rebates, discounts, or

price concessions while taking into account the costs

of negotiating such rebates, discounts, and price

concessions.

“(3) ENFORCEMENT.—A PDP sponsor of a

prescription drug plan or an MA organization offer-

ing an MA–PD plan under part D of title XVIII

may not contract with a PBM that is not in compli-

ance with the requirement under paragraph (1).”.

(b) EFFECTIVE DATE.—The amendments made by

subsection (a) shall take effect on January 1, 2022.

SEC. 4. PART D NEGOTIATED PRICES REQUIRED TO TAKE

INTO ACCOUNT ALL PRICE CONCESSIONS AT

THE POINT-OF-SALE.

(a) IN GENERAL.—Section 1860D–2(d)(1)(B) of the

Social Security Act (42 U.S.C. 1395w–102(d)(1)(B)) is

amended—

(1) by striking “PRICES.—For purposes” and

inserting “PRICES.—

“(i) IN GENERAL.—For purposes”;
(2) by adding at the end the following new clause:

“(ii) Negotiated prices at point-of-sale.—

“(I) In general.—Negotiated prices for covered part D drugs described in clause (i), including all price negotiated concessions, shall be provided at the point-of-sale of the covered part D drug. If the negotiated price, including all negotiated price concessions, is not possible to calculate at the point-of-sale, an approximate negotiated price (as established by the Secretary) shall be used under the prescription drug plan or MA–PD plan.

“(II) Approximate negotiated price.—In determining an approximate negotiated price for a covered part D drug under subclause (I), the Secretary shall ensure that—

“(aa) such price reflects the estimated negotiated price that is based on the previous year’s ne-
negotiated price concessions negotiated under the plan for all or similar covered part D drugs or is based on such other factors as the Secretary may determine appropriate; and

“(bb) the use of such price does not prevent the use of value-based contracts between drug manufacturers, PDP sponsors, MA organizations, and pharmacies.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to plan years beginning on or after January 1, 2021.