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117TH CONGRESS
1ST SESSION

H. R. 5388

To establish a strategic active pharmaceutical ingredient reserve to maintain a domestic supply of active pharmaceutical ingredients and key starting materials needed for the manufacturing of essential generic medicines, and to build a pipeline for domestic active pharmaceutical ingredient production.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2021

Ms. SPANBERGER (for herself and Mr. MCKINLEY) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To establish a strategic active pharmaceutical ingredient reserve to maintain a domestic supply of active pharmaceutical ingredients and key starting materials needed for the manufacturing of essential generic medicines, and to build a pipeline for domestic active pharmaceutical ingredient production.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Promoting Readiness and Ensuring Proper Active Pharmaceutical Ingredient

Reserves of Essential Medicines Act of 2021'' or the ''PREPARE ACT of 2021''.

SEC. 2. LISTING OF ESSENTIAL GENERIC MEDICINES.

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended by inserting after section 319M the following:

''SEC. 319N. LISTING OF ESSENTIAL GENERIC MEDICINES.

''(a) IN GENERAL.—The Secretary, in consultation with the Commissioner of Food and Drugs, the Assistant Secretary for Preparedness and Response, the Secretary of Defense, Secretary of Homeland Security, and other heads of agencies, as appropriate, shall establish and make public a list of essential generic medicines determined, in accordance with subsection (b), to be medically necessary to have available at all times.

''(b) REQUIREMENTS.—

''(1) INITIAL LIST.—The initial list of essential generic medicines under subsection (a) shall be the generic medicines included on the list of essential medicines, medical countermeasures, and critical inputs identified by the Commissioner of Food and Drugs as published on October 30, 2020, in accordance with section 3(c) of Executive Order 13944.

''(c) UPDATES.—

''(1) ANNUAL REVIEW.—Not less than once each year, the Secretary, after consultation with the Commissioner of Food and Drugs, the Assistant Secretary for Preparedness and Response, the Secretary of Defense, Secretary of Homeland Security, and other heads of agencies, as appropriate, shall review and update the list of essential generic medicines required under subsection (a).

''(2) RATIONALE.—In carrying out the annual review and update under paragraph (1), the Secretary shall provide a rationale for each essential generic medicine added to, or removed from, the list under subsection (a).

''(3) SPECIFIC POPULATIONS.—The Secretary shall consider including on the list under subsection (a), and, where appropriate, include on such list, essential generic medicines that are essential to specific subpopulations, including pediatric populations, in developing the list under such subsection.

''(4) THREAT ASSESSMENTS.—

''(A) IN GENERAL.—The Secretary, after consultation with the Public Health Emergency Medical Countermeasures Enterprise established under section 2811–1, shall conduct regular threat assessments, and take such assess-

ments into consideration in updating the list in accordance with paragraph (1).

"(B) THREAT ASSESSMENTS CONSIDERATIONS.—Each threat assessment under this paragraph shall include consideration of—

"(i) the lack of existing domestic capacity of essential generic medicines;

"(ii) the concentration of current supply of the essential generic medicine or active pharmaceutical ingredients of the essential generic medicine in one geographical region;

"(iii) whether there are less than 2 manufacturers of the essential generic medicine or active pharmaceutical ingredients of the essential generic medicine; and

"(iv) the potential for increased demand in a public health emergency.

"(5) DIRECTOR OF THE STRATEGIC ACTIVE PHARMACEUTICAL INGREDIENTS RESERVE.—The Secretary shall appoint a Director of the Strategic Active Pharmaceutical Ingredients Reserve who has experience in one or more of the following areas: supply chain management, disaster response, pharmaceutical or active pharmaceutical ingredient devel-

opment, or logistics. Such Director shall ensure a sufficient supply of the active pharmaceutical ingredients and critical components necessary to manufacture the essential generic medicines included on the list under subsection (a) in an amount adequate to serve the needs of patients living in the United States and in the appropriate dosage forms.

''(d) APPEAL PROCESS.—The Secretary shall establish a process by which stakeholders may appeal a determination by the Secretary not to include an essential generic medicine on the list under subsection (a).

''(e) DEFINITIONS.—In this section:

''(1) DRUG.—The term 'drug' has the meaning given such term in section 201(g) of the Federal Food, Drug, and Cosmetic Act, and includes a biological product (as defined in section 351(i) of this Act). Such term includes prescription and nonprescription drugs, or active pharmaceutical ingredients of drugs.

''(2) ESSENTIAL GENERIC MEDICINE.—The term 'essential generic medicine' means a drug for which a generic is approved, that is medically necessary to have available at all times because the drug is—

''(A) commonly used to prevent, mitigate, or treat a common disease or condition, or used in a common procedure;

''(B) an antibiotic or antifungal used to treat an infectious diseases;

''(C) necessary to prevent or mitigate a public health emergency; or

''(D) life-supporting, life-sustaining, or intended for use in the prevention or treatment of a debilitating disease or condition.''.

SEC. 3. ESTABLISHMENT OF THE STRATEGIC ACTIVE PHARMACEUTICAL INGREDIENT RESERVE.

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.), as amended by section 2, is further amended by inserting after section 319N the following:

''SEC. 319N–1. STRATEGIC ACTIVE PHARMACEUTICAL INGREDIENT RESERVE.

''(a) STRATEGIC ACTIVE PHARMACEUTICAL INGREDIENT RESERVE PLAN.—

''(1) IN GENERAL.—Not later than 90 days after the date of enactment of the Promoting Readiness and Ensuring Proper Active Pharmaceutical Ingredient Reserves of Essential Medicines Act of 2021, the Secretary, in consultation with the Assist-

ant Secretary for Preparedness and Response, the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, and the Director of the Biomedical Advanced Research and Development Authority, shall prepare and submit to Congress a Strategic Active Pharmaceutical Ingredient Reserve Plan (referred to in this section as the 'Plan') in accordance with subsection (b), which shall be used by the Secretary in establishing and maintaining the Strategic Active Pharmaceutical Ingredient Reserve described in subsection (c).

''(2) ANNUAL UPDATES.—The Secretary shall update the plan annually and, by not later than June 1 of each year, submit the updated plan to the applicable committees of Congress.

''(3) NATIONAL SECURITY CONSIDERATIONS.—

''(A) SUBMISSIONS.—The Secretary shall ensure that any submission of the plan (including any update to the plan) to the applicable committees of Congress is in a manner that does not compromise national security.

''(B) EXEMPTION FROM DISCLOSURE.—Information in the plan that, in the judgment of the Secretary, would reveal public health vulnerabilities shall be exempt from disclosure

under section 552(b)(3) of title 5, United States Code.

''(b) PLAN REQUIREMENTS.—

''(1) IN GENERAL.—The Plan required under subsection (a) shall—

''(A) detail the design, construction, and filling of the storage and related facilities comprising the Strategic Active Pharmaceutical Ingredient Reserve described in subsection (c) (referred to in this section as the 'Reserve');

''(B) detail the requirements for maintaining the Reserve described in subsection (c), including—

''(i) storage and testing requirements, consistent with parts 210 and 211 of title 21, Code of Federal Regulations, or any successor regulation; and

''(ii) any specific criteria agreed to by the Secretary and the manufacturer of the essential generic medicine using the active pharmaceutical ingredient or key starting material;

''(C) be designed to minimize the impact of any interruption or reduction in imports of—

''(i) active pharmaceutical ingredients and other key starting materials that the Secretary determines are, or are likely to become, dependent upon such imports for a substantial portion of finished essential generic medicines; and

''(ii) finished dosage forms of essential generic medicines for which active pharmaceutical ingredients and other key starting materials are not imported;

''(D) include provisions to strengthen domestic capacity for active pharmaceutical ingredient production, storage, and conversion; and

''(E) outline plans and processes for coordinating and consulting, as appropriate, with the Assistant Secretary for Preparedness and Response regarding relevant issues of interest pertaining to the maintenance and stocking of the strategic national stockpile.

''(2) REQUIRED COMPONENTS.—

''(A) IN GENERAL.—The Plan shall include the following:

''(i) Identification and prioritization of the essential generic medicines included on

the most recent list under section 319N(a)—

"(I) that the Secretary determines are essential for health care needs in the United States; and

"(II) for which the Secretary determines that there is the greatest need to maintain a reserve of the active pharmaceutical ingredients and key starting materials for the essential generic medicines—

"(aa) taking into account factors including the extent to which the United States is, or is at risk of becoming, dependent on foreign sources for a substantial portion of the domestic need; and

"(bb) giving special consideration to the essential generic medicines at risk of supply interruption as a result of the factors described in section 319N(c)(4)(B).

''(ii) An evaluation of the utilization levels of the essential generic medicines identified under clause (i) to inform how much of the active pharmaceutical ingredients of such medicines is required to cover the projected health care needs for one year of the United States population.

''(iii) A comprehensive assessment of the essential generic medicines identified under clause (i), including the existing manufacturing bases for each such medicine (including identification and location of ownership of such facilities) and whether the active pharmaceutical ingredients of such ingredients are manufactured domestically or abroad, and whether finished dosage conversion steps for such essential generic medicines are performed domestically or abroad.

''(iv) The types of facilities, equipment, and technology required to appropriately store, track, test, and convert all forms of active pharmaceutical ingredients that are critical inputs of drugs that are essential generic medicines, preliminary

proposed locations for such public and privately owned facilities in multiple locations in the United States, the capacity required of the facilities used, and the estimated cost of acquisition and storage of the active pharmaceutical ingredients and management and operation of the facilities.

''(v) An evaluation of the impact that the establishment and ongoing maintenance of the Reserve may have, including on availability and pricing of active pharmaceutical ingredients and finished drug dosages.

''(vi) A distribution plan for the active pharmaceutical ingredients held in the Reserve, which shall include—

''(I) protocols for the method of conversion of active pharmaceutical ingredients into finished drugs, including conversion of key starting materials into active pharmaceutical ingredients and distribution from the Reserve into the strategic national stockpile and other government and

commercial pharmaceutical distribution networks; and

''(II) benchmarks for the Secretary to initiate conversion of drug products that are essential generic medicines using the active pharmaceutical ingredients stored in the Reserve for transfer to the strategic national stockpile or other government or commercial pharmaceutical distribution networks, based on changes in the supply chain for the top essential generic medicines or a determination by the Secretary regarding a threat to public health.

''(vii) A mechanism through which private sector manufacturers of active pharmaceutical ingredients or finished dosage forms may, through contracts with existing Reserve facilities, store and withdraw such ingredients in the Reserve to enhance resilience and reduce shortages and disruptions in the supply chain.

''(viii) A mechanism through which the Federal Government may purchase, via

manufacturing partners, reserve capacity for finished drug manufacturing to convert active pharmaceutical ingredients into finished drugs for essential generic medicines.

"(B) NUMBER OF DRUGS.—

"(i) IN GENERAL.—Pursuant to subparagraph (A)(i), the Secretary shall ensure that for the first year after the date of enactment of the Promoting Readiness and Ensuring Proper Active Pharmaceutical Ingredient Reserves of Essential Medicines Act of 2021, the Plan includes not less than 25 essential generic medicines, and that 25 additional essential generic medicines are included in such Plan for each year thereafter until the active pharmaceutical ingredients necessary to support the full list of essential generic medicines identified under section 319N(a) are covered.

"(ii) PRIORITIZATION.—The Secretary shall prioritize essential generic medicines needed immediately in the event of an emergency.

''(3) QUANTITIES OF APIS AND KEY STARTING MATERIALS.—

''(A) IN GENERAL.—To the maximum extent practicable, the Plan should include a plan to ensure that, for each essential generic medicine included in the Plan, the active pharmaceutical ingredients used in the production of such medicine that are stored in the Reserve are available in the minimum quantities as follows:

''(i) By the date that is 18 months after the date of enactment of the Promoting Readiness and Ensuring Proper Active Pharmaceutical Ingredient Reserves of Essential Medicines Act of 2021, not less than 10 percent of the total amount of such ingredients needed to produce sufficient quantities of the essential generic medicines for the treatment of individuals living in the United States.

''(ii) By the date that is 3 years after such date of enactment, not less than 25 percent of the total amount of such ingredients needed to produce sufficient quantities of the essential generic medicines for

the treatment of individuals living in the United States.

''(iii) By the date that is 5 years after such date of enactment, not less than 50 percent of the total amount of such ingredients needed to produce sufficient quantities of the essential generic medicines for the treatment of individuals living in the United States.

''(iv) By the date that is 10 years after such date of enactment, not less than 90 percent of the total amount of such ingredients needed to produce sufficient quantities of the essential generic medicines for the treatment of individuals living in the United States.

''(B) CALCULATION OF QUANTITY OF API.—In calculating the quantities of active pharmaceutical ingredients needed for purposes of subparagraph (A), the Secretary shall determine the quantity of each essential generic medicine required to cover the projected health care needs, over a 1-year period, of people living in the United States, based on average annual demand during the 3-year period preceding the

date of enactment of the Promoting Readiness and Ensuring Proper Active Pharmaceutical Ingredient Reserves of Essential Medicines Act of 2021.

''(c) ADMINISTERING THE STRATEGIC ACTIVE PHARMACEUTICAL INGREDIENT RESERVE.—

''(1) IN GENERAL.—With respect to each active pharmaceutical ingredient and key starting material that is included in the Plan, the Secretary shall place in storage, transport, track, and exchange quantities of the substance that are—

''(A) produced in conformance with all quality requirements under this Act and the Federal Food, Drug, and Cosmetic Act, including the associated regulations of such Acts;

''(B) stored in compliance with—

''(i) the requirements of parts 210 and 211 of title 21, Code of Federal Regulations, or any successor regulation; and

''(C) any specific criteria agreed to by the Secretary and the manufacturer of the essential generic medicine using the active pharmaceutical ingredient or key starting material.

''(2) REQUIREMENTS.—To the greatest extent practicable, in carrying out paragraph (1), the Sec-

retary shall acquire active pharmaceutical ingredients and key starting materials in a manner that minimizes cost, minimizes vulnerability of the United States to severe shortages or disruptions for essential generic medicines, minimizes the impact of acquisition of such ingredients and materials to the marketplace, gives preference to domestic manufacturers, and encourages competition in the marketplace.

''(3) DRAWDOWN OF THE RESERVE.—

''(A) IN GENERAL.—The Secretary may distribute active pharmaceutical ingredients and key starting materials in the Reserve in order to initiate conversion of active pharmaceutical ingredients and finished dosage form, in accordance with the Plan developed under subsection (b).

''(B) DEVIATIONS FROM PLAN.—In distributing active pharmaceutical ingredients and key starting materials under subparagraph (A), the Secretary, in consultation with the Commissioner of Food and Drugs and the Assistant Secretary for Preparedness and Response, may deviate from the Plan developed under subsection (b) only after certifying that the dis-

tribution from the Reserve is required in response to a significant drug supply interruption.

''(d) CONSULTATION.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall consult with—

''(A) the Commissioner of Food and Drugs, with respect to identifying essential generic medicines;

''(B) the Administrator of the Centers for Medicare & Medicaid Services, with respect to determining the volume of essential generic medicines needed domestically; and

''(C) the Assistant Secretary for Preparedness and Response, and, as appropriate, the Director of the Centers for Disease Control and Prevention, regarding coordination with the strategic national stockpile.

''(2) REPORTING BY FDA.—The Commissioner of Food and Drugs shall provide to the Secretary the information collected under section 510(j)(3) of the Federal Food, Drug, and Cosmetic Act, for purposes of carrying out this section.

''(e) CONTRACTING.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall—

''(A) prioritize the purchase of active pharmaceutical ingredients and other key starting materials manufactured in the United States by domestic manufacturers to the maximum extent possible;

''(B) contract with domestic entities for the—

''(i) distribution of active pharmaceutical ingredients and finished drug products;

''(ii) storage, withdrawal, testing, and conversion of active pharmaceutical ingredients and other key starting materials;

''(iii) tracking and coordinating the storage, testing, and sale of active pharmaceutical ingredients and other key starting materials;

''(iv) sale of active pharmaceutical ingredients in advance of their expiration dates; and

''(v) manufacturing, including continuous manufacturing as appropriate, of an active pharmaceutical ingredient or other

key starting material of an essential generic medicine that is anticipated to be in shortage, as defined by the Secretary for purposes of this section;

"(C) give preference to domestic nonprofit and public-private partnerships, as appropriate;

"(D) ensure geographic diversity of the physical storage of active pharmaceutical ingredients and other key starting materials;

"(E) support domestic manufacturers of active pharmaceuticals and other key starting materials and facilitate long-term domestic capacity for essential generic medicines in the United States; and

"(F) prioritize contracts that facilitate the conversation of active pharmaceutical ingredients and other key starting materials into finished dosage form.

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the Secretary's ability to enter into other types of contracts to facilitate the implementation of this section.

"(f) REPORTS TO CONGRESS.—The Secretary shall report to the applicable committees of Congress on supply chain resiliency with respect to active pharmaceutical in-

gredients for essential generic medicines, the status of the Reserve, and other relevant information in a manner that does not compromise national security.

''(g) DEFINITIONS.—In this section:

''(1) APPLICABLE COMMITTEES OF CONGRESS.—The term 'applicable committees of Congress' means—

''(A) the Committee on Health, Education, Labor, and Pensions and the Committee on Intelligence of the Senate; and

''(B) the Committee on Energy and Commerce of the House of Representatives.

''(2) ESSENTIAL GENERIC MEDICINE.—The term 'essential generic medicine' means a drug included on the most current list under section 319N(a).

''(3) KEY STARTING MATERIAL.—The term 'key starting material' means an active pharmaceutical ingredient or critical input used in the manufacturing of an essential generic medicine, as well as ingredients or components that possess unique attributes essential in assessing the safety and effectiveness of such essential generic medicines, including excipients and inactive ingredients.

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.''.

SEC. 4. WAIVER OF CERTAIN FDA ANDA REQUIREMENTS.

Section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)) is amended by adding at the end the following:

''(14) Notwithstanding any other provision of this section, the holder of an approved application under this subsection that changes the source of an active pharmaceutical ingredient of the drug that is the subject of such application to a source available through the Strategic Active Pharmaceutical Ingredient Reserve established under section 319N–1 of the Public Health Service Act—

''(A) shall not be required to update the approved application with respect to such change before changing the source; and

''(B) shall inform the Secretary of the change, through an update to the approved application or other manner determined appropriate by the Secretary, prior to commercial distribution of the drug.''.

SEC. 5. GAO REPORT.

By not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall prepare and submit a report to Congress that includes—

(1) an assessment of what is known about active pharmaceutical ingredient manufacturing, including—

(A) the time needed to develop and implement domestic manufacturing capabilities;

(B) projected costs of developing new manufacturing capabilities for active pharmaceutical ingredients not currently available domestically, as of the date of the report; and

(C) projected costs of expanding existing domestic capabilities and policies, as of the date of the report, that may help establish or strengthen domestic manufacturing capacity for active pharmaceutical ingredients, excipients, key starting materials, components, functional ingredients, and finished dosage manufacturing facilities; and

(2) an assessment of incentives already offered or being considered for the development or improvement of domestic capacity to manufacture active

pharmaceutical ingredients, their intermediates, and their excipients, including—

(A) contractual arrangements for existing domestic storage and manufacturing of active pharmaceutical ingredients;

(B) guaranteed contracts for initial purchase and replenishment of essential generic medicines; and

(C) other policies designed to help incentivize the relocation of manufacturing facilities to the United States or provide economic incentives for domestic production.

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