

116TH CONGRESS  
1ST SESSION

# H. R. 2087

To amend title XVIII of the Social Security Act to require certain manufacturers to report drug pricing information with respect to drugs under the Medicare program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2019

Mr. DOGGETT (for himself and Mr. BUCHANAN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to require certain manufacturers to report drug pricing information with respect to drugs under the Medicare program, and for other purposes.

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 Act”.

1 **SEC. 2. REQUIRING CERTAIN MANUFACTURERS TO REPORT**  
2 **DRUG PRICING INFORMATION WITH RE-**  
3 **SPECT TO DRUGS UNDER THE MEDICARE**  
4 **PROGRAM.**

5 (a) IN GENERAL.—Section 1847A of the Social Secu-  
6 rity Act (42 U.S.C. 1395w–3a) is amended—

7 (1) in subsection (b)—

8 (A) in paragraph (2)(A), by inserting “or  
9 subsection (f)(2), as applicable” before the pe-  
10 riod at the end;

11 (B) in paragraph (3), in the matter pre-  
12 ceding subparagraph (A), by inserting “or sub-  
13 section (f)(2), as applicable,” before “deter-  
14 mined by”; and

15 (C) in paragraph (6)(A), in the matter  
16 preceding clause (i), by inserting “or subsection  
17 (f)(2), as applicable,” before “determined by”;  
18 and

19 (2) in subsection (f)—

20 (A) by striking “For requirements” and  
21 inserting the following:

22 “(1) IN GENERAL.—For requirements”; and

23 (B) by adding at the end the following new  
24 paragraph:

25 “(2) MANUFACTURERS WITHOUT A REBATE  
26 AGREEMENT UNDER TITLE XIX.—

1           “(A) IN GENERAL.—In the case of a man-  
2           ufacturer of a drug or biological described in  
3           subparagraph (C), (E), or (G) of section  
4           1842(o)(1) or in clause (ii) or (iii) of section  
5           1881(b)(14)(B) that does not have a rebate  
6           agreement in effect under section 1927, for cal-  
7           endar quarters beginning on or after January  
8           1, 2020, such manufacturer shall report to the  
9           Secretary the information described in sub-  
10          section (b)(3)(A)(iii) of such section 1927 with  
11          respect to such drug or biological in a time and  
12          manner specified by the Secretary.

13          “(B) AUDIT.—Information reported under  
14          subparagraph (A) is subject to audit by the In-  
15          spector General of the Department of Health  
16          and Human Services.

17          “(C) VERIFICATION.—The Secretary may  
18          survey wholesalers and manufacturers that di-  
19          rectly distribute drugs described in subpara-  
20          graph (A), when necessary, to verify manufac-  
21          turer prices and manufacturer’s average sales  
22          prices (including wholesale acquisition cost) if  
23          required to make payment reported under sub-  
24          paragraph (A). The Secretary may impose a  
25          civil monetary penalty in an amount not to ex-

1           ceed \$100,000 on a wholesaler, manufacturer,  
2           or direct seller, if the wholesaler, manufacturer,  
3           or direct seller of such a drug refuses a request  
4           for information about charges or prices by the  
5           Secretary in connection with a survey under  
6           this subparagraph or knowingly provides false  
7           information. The provisions of section 1128A  
8           (other than subsections (a) (with respect to  
9           amounts of penalties or additional assessments)  
10          and (b)) shall apply to a civil money penalty  
11          under this subparagraph in the same manner as  
12          such provisions apply to a penalty or proceeding  
13          under section 1128A(a).

14                 “(D)   CONFIDENTIALITY.—Notwithstand-  
15                 ing any other provision of law, information dis-  
16                 closed by manufacturers or wholesalers under  
17                 this paragraph (other than the wholesale acqui-  
18                 sition cost for purposes of carrying out this sec-  
19                 tion) is confidential and shall not be disclosed  
20                 by the Secretary in a form which discloses the  
21                 identity of a specific manufacturer or whole-  
22                 saler or prices charged for drugs by such manu-  
23                 facturer or wholesaler, except—

24                         “(i) as the Secretary determines to be  
25                         necessary to carry out this section (includ-

1 ing the determination and implementation  
2 of the payment amount), or to carry out  
3 section 1847B;

4 “(ii) to permit the Comptroller Gen-  
5 eral to review the information provided;  
6 and

7 “(iii) to permit the Director of the  
8 Congressional Budget Office to review the  
9 information provided.”.

10 (b) ENFORCEMENT.—

11 (1) IN GENERAL.—Section 1847A such Act (42  
12 U.S.C. 1395w-3a) is further amended—

13 (A) in subsection (d)(4)—

14 (i) in subparagraph (A), by striking  
15 “IN GENERAL” and inserting “MISREPRE-  
16 SENTATION”;

17 (ii) in subparagraph (B), by striking  
18 “subparagraph (B)” and inserting “sub-  
19 paragraph (A), (B), or (C)”;

20 (iii) by redesignating subparagraph  
21 (B) as subparagraph (D); and

22 (iv) by inserting after subparagraph  
23 (A) the following new subparagraphs:

24 “(B) FAILURE TO PROVIDE TIMELY INFOR-  
25 MATION.—If the Secretary determines that a

1 manufacturer described in subsection (f)(2) has  
2 failed to report on information described in sec-  
3 tion 1927(b)(3)(A)(iii) with respect to a drug or  
4 biological in accordance with such subsection,  
5 the Secretary shall apply a civil money penalty  
6 in an amount of \$25,000 for each day the man-  
7 ufacturer has failed to report such information  
8 and such amount shall be paid to the Treasury.

9 “(C) FALSE INFORMATION.—Any manu-  
10 facturer required to submit information under  
11 subsection (f)(2) that knowingly provides false  
12 information is subject to a civil money penalty  
13 in an amount not to exceed \$100,000 for each  
14 item of false information. Such civil money pen-  
15 alties are in addition to other penalties as may  
16 be prescribed by law.”; and

17 (B) in subsection (e)(6)(A), by striking the  
18 period at the end and inserting “, except that,  
19 for purposes of subsection (f)(2), the Secretary  
20 may, if the Secretary determines appropriate,  
21 exclude repackagers of a drug or biological from  
22 such term.”.

23 (2) CONFORMING EXISTING MANUFACTURER  
24 REPORTING PENALTIES.—Section 1927(b)(3)(C)(i)  
25 of such Act (42 U.S.C. 1396r-8(b)(3)(C)(i)) is

1 amended by inserting “(or, for such failures occur-  
2 ring on or after January 1, 2020, \$25,000)” after  
3 “\$10,000”.

4 (c) REPORT.—Not later than January 1, 2021, the  
5 Inspector General of the Department of Health and  
6 Human Services shall assess and submit to Congress a  
7 report on the accuracy of average sales price information  
8 submitted by manufacturers under section 1847A of the  
9 Social Security Act (42 U.S.C. 1395w–3a). Such report  
10 shall include any recommendations on how to improve the  
11 accuracy of such information.

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