

113TH CONGRESS  
1ST SESSION

# H. R. 1239

To amend part D of title XVIII of the Social Security Act to count the negotiated price of drugs provided free or at nominal charge under compassionate treatment programs towards incurred out-of-pocket costs.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2013

Mr. CASSIDY (for himself and Ms. MATSUI) 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 part D of title XVIII of the Social Security Act to count the negotiated price of drugs provided free or at nominal charge under compassionate treatment programs towards incurred out-of-pocket costs.

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 “Accessing Medicare  
5 Therapies Act of 2013”.

1 **SEC. 2. COUNTING THE NEGOTIATED PRICE OF DRUGS**  
2 **PROVIDED FREE OR AT NOMINAL CHARGE**  
3 **UNDER COMPASSIONATE TREATMENT PRO-**  
4 **GRAMS TOWARDS INCURRED OUT-OF-POCK-**  
5 **ET COSTS.**

6 (a) IN GENERAL.—Section 1860D–2(b)(4) of the So-  
7 cial Security Act (42 U.S.C. 1395w–102(b)(4)) is amend-  
8 ed—

9 (1) in subparagraph (C), by striking “subpara-  
10 graph (E)” and inserting “subparagraphs (E) and  
11 (F)”; and

12 (2) by adding at the end the following new sub-  
13 paragraph:

14 “(F) INCLUSION OF NEGOTIATED PRICE  
15 OF DRUGS PROVIDED UNDER COMPASSIONATE  
16 TREATMENT PROGRAMS.—

17 “(i) IN GENERAL.—In applying sub-  
18 paragraph (A) with respect to an indi-  
19 vidual enrolled in a prescription drug plan,  
20 incurred costs shall include the negotiated  
21 price described in clause (ii) of a covered  
22 part D drug if—

23 “(I) the drug is classified, for  
24 purposes of applying tiered copay-  
25 ments consistent with section 1860D–  
26 2(b)(2)(B), in the highest copayment

1 tier (such as a tier 4 for specialty  
2 brand-name drugs);

3 “(II) the drug is furnished to the  
4 individual free or at nominal charge  
5 under a compassionate treatment pro-  
6 gram (as defined in clause (iii)); and

7 “(III) the drug, if furnished  
8 other than through such program, is  
9 covered under the formulary of the  
10 plan or is available through exception  
11 or appeal.

12 “(ii) NEGOTIATED PRICE.—The nego-  
13 tiated price described in this clause, for a  
14 covered part D drug which is dispensed to  
15 an enrollee—

16 “(I) by a pharmacy, is the nego-  
17 tiated price at such pharmacy; or

18 “(II) other than by a pharmacy,  
19 is the average negotiated price for the  
20 drug in the prescription drug plan in  
21 the zip code of the enrollee as of the  
22 date the drug is dispensed.

23 “(iii) COMPASSIONATE TREATMENT  
24 PROGRAM DEFINED.—In this subpara-  
25 graph, the term ‘compassionate treatment

1 program’ means, with respect to covered  
2 part D drugs, a program that—

3 “(I) is administered by an entity  
4 described in section 501(c)(3) of the  
5 Internal Revenue Code of 1986 that is  
6 exempt from tax under section 501(a)  
7 of such Code;

8 “(II) takes title to the drugs and  
9 distributes the drugs to eligible part  
10 D individuals free or at nominal  
11 charge on the basis of the entity’s as-  
12 sessment of financial need of such in-  
13 dividuals;

14 “(III) does not distribute the  
15 drugs to an individual unless the indi-  
16 vidual’s household income (as deter-  
17 mined under section 36B of the Inter-  
18 nal Revenue Code of 1986) is less  
19 than the maximum income level for  
20 the taxpayer in the household to be el-  
21 igible for a refundable credit under  
22 such section; and

23 “(IV) meets such additional re-  
24 quirements as the Inspector General  
25 of the Department of Health and

1 Human Services establishes, con-  
2 sistent with guidance and advisory  
3 opinions issued under section 1128D,  
4 to prevent fraud or abuse in the appli-  
5 cation of this subparagraph.”.

6 (b) EFFECTIVE DATE.—The amendments made by  
7 subsection (a) shall apply to drugs furnished in plan years  
8 beginning on or after January 1, 2014.

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