

118TH CONGRESS  
1ST SESSION

# S. 1139

To amend title XVIII of the Social Security Act to apply prescription drug inflation rebates to drugs furnished in the commercial market and to change the base year for rebate calculations.

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## IN THE SENATE OF THE UNITED STATES

MARCH 30, 2023

Ms. CORTEZ MASTO (for herself, Ms. KLOBUCHAR, Mr. REED, Ms. BALDWIN, Mr. BROWN, Ms. STABENOW, Ms. SMITH, Mr. WELCH, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to apply prescription drug inflation rebates to drugs furnished in the commercial market and to change the base year for rebate calculations.

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 “Lower Drug Costs for  
5 Families Act”.

1 **SEC. 2. APPLICATION OF PRESCRIPTION DRUG INFLATION**  
2 **REBATES TO DRUGS FURNISHED IN THE**  
3 **COMMERCIAL MARKET; CHANGE OF BASE**  
4 **YEAR FOR REBATE CALCULATIONS.**

5 (a) PART B DRUGS.—

6 (1) APPLICATION OF PRESCRIPTION DRUG IN-  
7 FLATION REBATES TO DRUGS FURNISHED IN THE  
8 COMMERCIAL MARKET.—Section 1847A(i) of the So-  
9 cial Security Act (42 U.S.C. 1395w–3a(i)) is amend-  
10 ed—

11 (A) in paragraph (1)(A)(i), by striking  
12 “units” and inserting “billing units”;

13 (B) in paragraph (2)(A), by striking “for  
14 which payment is made under this part” and  
15 inserting “that would be payable under this  
16 part if such drug were furnished to an indi-  
17 vidual enrolled under this part”; and

18 (C) in paragraph (3)—

19 (i) in subparagraph (A)(i), by striking  
20 “units” and inserting “billing units”; and

21 (ii) by striking subparagraph (B) and  
22 inserting the following:

23 “(B) TOTAL NUMBER OF BILLING  
24 UNITS.—For purposes of subparagraph (A)(i),  
25 the total number of billing units with respect to

1 a part B rebatable drug is determined as fol-  
2 lows:

3 “(i) Determine the total number of  
4 units equal to—

5 “(I) the total number of units, as  
6 reported under subsection (c)(1)(B)  
7 for each National Drug Code of such  
8 drug during the calendar quarter that  
9 is two calendar quarters prior to the  
10 calendar quarter as described in sub-  
11 paragraph (A), minus

12 “(II) the total number of units  
13 with respect to each National Drug  
14 Code of such drug for which payment  
15 was made under a State plan under  
16 title XIX (or waiver of such plan), as  
17 reported by States under section  
18 1927(b)(2)(A) for the rebate period  
19 that is the same calendar quarter as  
20 described in subclause (I).

21 “(ii) Convert the units determined  
22 under clause (i) to billing units for the bill-  
23 ing and payment code of such drug, using  
24 a methodology similar to the methodology  
25 used under this section, by dividing the

1 units determined under clause (i) for each  
 2 National Drug Code of such drug by the  
 3 billing unit for the billing and payment  
 4 code of such drug.

5 “(iii) Compute the sum of the billing  
 6 units for each National Drug Code of such  
 7 drug in clause (ii).”.

8 (2) CHANGE OF BASE YEAR FOR REBATE CAL-  
 9 CULATION.—Section 1847A(i) of the Social Security  
 10 Act (42 U.S.C. 1395w–3a(i)) is amended—

11 (A) in paragraph (3)—

12 (i) in subparagraph (D), by striking  
 13 “July 1, 2021” and inserting “July 1,  
 14 2016”; and

15 (ii) in subparagraph (E), by striking  
 16 “January 2021” and inserting “January  
 17 2016”; and

18 (B) in paragraph (4)—

19 (i) in subparagraph (A)—

20 (I) by striking “December 1,  
 21 2020” and inserting “December 31,  
 22 2015”; and

23 (II) by striking “January 2021”  
 24 and inserting “January 2016”;

1 (ii) in subparagraph (B), by striking  
2 “December 1, 2020” and inserting “De-  
3 cember 31, 2015”; and

4 (iii) in subparagraph (C), by striking  
5 “January 2021” and inserting “January  
6 2016”.

7 (3) EFFECTIVE DATE.—The amendments made  
8 by this subsection shall take effect as if included in  
9 the enactment of section 11101 of Public Law 117–  
10 169.

11 (b) COVERED PART D DRUGS.—

12 (1) APPLICATION OF PRESCRIPTION DRUG IN-  
13 FLATION REBATES TO DRUGS FURNISHED IN THE  
14 COMMERCIAL MARKET.—Section 1860D–14B of the  
15 Social Security Act (42 U.S.C. 1395w–114b) is  
16 amended—

17 (A) in subsection (b)—

18 (i) in paragraph (1)—

19 (I) in subparagraph (A)(i), by  
20 striking “the total number of units”  
21 and all that follows through the semi-  
22 colon and inserting the following: “the  
23 total number of units that are used to  
24 calculate the average manufacturer  
25 price of such dosage form and

1 strength with respect to such part D  
2 rebatable drug, as reported by the  
3 manufacturer of such drug under sec-  
4 tion 1927 for each month, with re-  
5 spect to such period;” and

6 (II) by striking subparagraph (B)  
7 and inserting the following:

8 “(B) EXCLUDED UNITS.—For purposes of  
9 subparagraph (A)(i), the Secretary shall exclude  
10 from the total number of units for a dosage  
11 form and strength with respect to a part D  
12 rebatable drug, with respect to an applicable pe-  
13 riod, the following:

14 “(i) Units of each dosage form and  
15 strength of such part D rebatable drug for  
16 which payment was made under a State  
17 plan under title XIX (or waiver of such  
18 plan), as reported by States under section  
19 1927(b)(2)(A).

20 “(ii) Units of each dosage form and  
21 strength of such part D rebatable drug for  
22 which a rebate is paid under section  
23 1847A(i).

24 “(iii) Beginning with plan year 2026,  
25 units of each dosage form and strength of

1 such part D rebatable drug for which the  
 2 manufacturer provides a discount under  
 3 the program under section 340B of the  
 4 Public Health Service Act.”; and

5 (ii) in paragraph (6), by striking “IN-  
 6 FORMATION.—The Secretary” and all that  
 7 follows through “rebatable covered part D  
 8 drug dispensed” and inserting the fol-  
 9 lowing: “AMP REPORTS.—The Secretary  
 10 shall provide for a method and process  
 11 under which, in the case of a manufacturer  
 12 of a part D rebatable drug that submits  
 13 revisions to information submitted under  
 14 section 1927 by the manufacturer with re-  
 15 spect to such drug”; and

16 (B) by striking subsection (d) and insert-  
 17 ing the following:

18 “(d) INFORMATION.—For purposes of carrying out  
 19 this section, the Secretary shall use information submitted  
 20 by manufacturers under section 1927(b)(3) and informa-  
 21 tion submitted by States under section 1927(b)(2)(A).”.

22 (2) CHANGE OF BASE YEAR FOR REBATE CAL-  
 23 CULATION.—Section 1860D–14B of the Social Secu-  
 24 rity Act (42 U.S.C. 1395w–114b) is amended—

25 (A) in subsection (b)(5)—

- 1 (i) in subparagraph (A)—  
2 (I) by striking “October 1, 2021”  
3 and inserting “October 1, 2016”; and  
4 (II) by striking “January 2021”  
5 and inserting “January 2016”; and  
6 (ii) in subparagraph (C), by striking  
7 “January 2021” and inserting “January  
8 2016”; and  
9 (B) in subsection (g)—  
10 (i) in paragraph (3)—  
11 (I) by striking “January 1,  
12 2021” and inserting “January 1,  
13 2016”; and  
14 (II) by striking “October 1,  
15 2021” and inserting “October 1,  
16 2016”; and  
17 (ii) in paragraph (4), by striking  
18 “January 2021” and inserting “January  
19 2016”.
- 20 (3) EFFECTIVE DATE.—The amendments made  
21 by this subsection shall take effect as if included in  
22 the enactment of section 11102 of Public Law 117–  
23 169.

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