115TH CONGRESS
1ST SESSION

# S. 1681

To require persons who undertake Federally funded research and development of drugs to enter into reasonable pricing agreements with the Secretary of Health and Human Services.

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IN THE SENATE OF THE UNITED STATES

JULY 31, 2017

Mr. SANDERS introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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# A BILL

To require persons who undertake Federally funded research and development of drugs to enter into reasonable pricing agreements with the Secretary of Health and Human Services.

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

**SECTION 1. REASONABLE PRICE AGREEMENT.**

(a) IN GENERAL.—If any Federal agency or any nonprofit entity undertakes Federally funded health care research and development and is to convey or provide a patent for a drug, biologic, or other health care technology developed through such research, such agency or entity

shall not make such conveyance or provide such patent until the entity (including a non-profit entity) that will receive such patent first agrees to a reasonable pricing agreement with the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') or the Secretary makes a determination that the public interest is served by a waiver of the reasonable pricing agreement provided in accordance with subsection (c).

(b) PROHIBITION OF DISCRIMINATION.—

(1) IN GENERAL.—For purposes of subsection (a), any reasonable pricing formula that is utilized shall not result in discriminatory pricing for the drug, biologic, or other health care technology involved regardless of the number of bidders involved. In carrying out this subparagraph, the Secretary shall ensure that the Federal Government, with respect to the drug, biologic, or other health care technology involved, is charged an amount that is not more than the lowest amount charged to countries in the Organization for Economic Co-Operation and Development for the same drug, biologic, or technology, that have the largest gross domestic product with a per capita income that is not less than half the per capita income of the United States.

(2) DISCRIMINATORY PRICING.—For the purposes of paragraph (1), a cost based reasonable pricing formula that is utilized shall be considered to result in discriminatory pricing if the contract for sale of the drug, biologic, or other health care technology places a limit on supply, or employs any other measure, that has the effect of—

(A) providing access to such drug, biologic, or technology on terms or conditions that are less favorable than the terms or conditions provided to a foreign purchaser (other than a charitable or humanitarian organization) of the drug, biologic, or technology; or

(B) restricting access to the drug, biologic, or technology under this section.

(c) WAIVER.—No waiver shall take effect under subsection (a) before the public is given notice of the proposed waiver and provided a reasonable opportunity to comment on the proposed waiver. A decision to grant a waiver shall set out the Secretary's finding that such a waiver is in the public interest.

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