

2019 Federal Drug Pricing Legislation

Newly Included Legislative and Procedural Updates

Legislative Updates

- January 31: Rep. Kurt Schrader (D-OR) introduced the Bringing Low-Cost Options and Competition While Keeping Incentives for New Generics (BLOCKING) Act of 2019 ([H.R. 938](#)), which prevents generic drug manufacturers from “parking” applications (i.e., holding onto 180-day exclusivity in order to block other generic drugs from entering the market).
- February 25: Rep. Bruce Westerman (R-AR) introduced the Fair Care Act of 2019 ([H.R. 1332](#)), which imposes certain transparency requirements on PBMs, among other things.
- March 5: Rep. Bobby Rush (D-IL) introduced the Protecting Consumer Access to Generic Drugs Act of 2019 ([H.R. 1499](#)), which prohibits brand-name and generic drug manufacturers from entering “pay-for-delay” agreements (i.e., agreements that delay the entry of less expensive, generic drugs into the market), among other things.
- March 5: Sen. Mike Braun (R-IN) introduced the Efficiency and Transparency in Petitions Act ([S. 660](#)), which amends the FDA’s petitioning process on a pending generic drug.
- March 5: Rep. Anna Eshoo (D-CA) introduced the Purple Book Continuity Act of 2019 ([H.R. 1520](#)), which requires HHS to: (1) publish and make publicly available certain information on licensed biological products; and (2) revise the list every 30 days to include newly licensed biological products, among other things.
- March 5: Rep. Robin Kelly (D-IL) introduced the Orange Book Transparency Act ([H.R. 1503](#)), which amends the FDA’s patent process and imposes certain transparency requirements on patents submitted by drug manufacturers, among other things.
- March 5: Sen. Susan Collins (R-ME) introduced the Biologic Patent Transparency Act ([S. 659](#)), which codifies the publication of the FDA’s “Purple Book” as a single, searchable list; requires additional information to be published in the Purple Book, and limits the enforceability of late-filed patents when a biosimilar application has already been filed with the FDA.
- March 5: Sen. Mike Braun (R-IN) introduced the Accelerated Drug Approval for Prescription Therapies (ADAPT) Act ([S. 658](#)), which allows the FDA to expedite applications for approval of certain drugs that are authorized to be lawfully marketed in specific countries (e.g., EU members, Israel, Australia, Canada, and Japan), among other things.
- March 5: Sen. Mike Braun (R-IN) introduced ([S. 657](#)), which extends the premise of HHS’ recently proposed rebating rule to the commercial insurance market, preventing PBMs from receiving rebates from drug manufacturers unless certain requirements are met.
- March 7: Sen. Bob Casey (D-PA) introduced the Prescription Drug Pricing Dashboard Act ([S. 709](#)), which requires HHS to establish, annually update, and make publicly available an internet website-based dashboard on the price and utilization of prescription drugs purchased by federal programs, among other things.
- April 1: Sen. Rick Scott (R-FL) introduced the Transparent Drug Pricing Act ([S. 977](#)), which imposes transparency requirements on pharmacists at the point-of-sale, among other things.

Procedural Updates (noted with bill summaries below)

- March 27: The House Energy and Commerce Subcommittee on Health approved—among others—six drug pricing-related bills for consideration by the full committee.
- April 3: The House Energy and Commerce Committee approved— among others—six drug pricing-related bills, which will now move to the House floor.

I. Single-Issue Legislation (116th Congress - 2019) (all legislation has been introduced; no further action has been taken, unless noted)

Drug Pricing Transparency Prescription Drug Importation

Price Gouging
PBM Transparency
Miscellaneous

Drug Pricing Transparency Legislation

Legislation	Overview	Characteristics of a Qualifying Prescription Drug	Importation Requirements and/or Restrictions	Notification/Reporting Requirements	Penalties	Miscellaneous
<p><i>Stopping the Pharmaceutical Industry from Keeping Drugs Expensive (SPIKE) Act of 2019 (S. 474)</i></p> <p>Sen. Ron Wyden (D-OR)</p>	<p>Requires manufacturers of certain drugs to publicly report/justify significant price increases and other attendant costs to HHS.</p>	<p>Imposes reporting obligations on manufacturers of FDA-approved, prescription, “applicable drugs”—as determined by HHS—that:</p> <ul style="list-style-type: none"> • Have a wholesale acquisition cost of at least \$10 per dose; <u>and</u> • Had an increase in the wholesale acquisition cost of the drug of at least 300% in the past 5 years or 100% over 1 year; <u>or</u> • Are in the top 50th percentile of net spending in Medicare or Medicaid in the past 5 years; <u>and</u> • Had an increased wholesale acquisition cost of at least 50% in the past 5 years or 15% over 1 year. <p>Allows HHS to identify a drug with a price increase within a <i>de minimis</i> range of the percentages listed.</p>	<p><i>HHS.</i> Requires HHS to notify the manufacturer within <u>60 days</u> of its determination that a drug is considered an “applicable drug” (and therefore is subject to reporting requirements).</p> <p><i>Manufacturers.</i> Requires manufacturers to submit a justification of the applicable drug’s price increase within <u>180 days</u> of HHS’ notification that the drug qualified as an applicable drug.</p> <p><i>Exceptions.</i> Does <u>not</u> require a manufacturer to submit a justification if a manufacturer reduces the wholesale acquisition cost of the drug so that it no longer qualifies as an applicable drug for at least a 6-month period.</p>	<p>Requires manufacturers’ reports to include all relevant information/supporting documentation necessary to justify the increase, which may include:</p> <ul style="list-style-type: none"> • The individual factors that have contributed to an increase in the drug’s wholesale acquisition cost; • An explanation of the role of each factor in contributing to the increase; • Total expenditures of the manufacturer (i.e., on the drug’s materials and manufacturing, acquiring patents and licensing for each drug, etc.); • The percentage of the manufacturer’s total expenditures for R&D that were derived from federal funds; • The manufacturer’s total R&D expenditures; • The total revenue and net profit generated from the applicable drug for each calendar year since its approval; • Total marketing and advertising costs; and • Additional information specific to the manufacturer of the applicable drug (e.g., total revenue/net profit of the manufacturer for the period of the increase, metrics used to determine executive compensation, any additional information related to the drug pricing decisions of the manufacturer, etc.). 	<p>Subjects a manufacturer of an applicable drug that fails to submit a report for the drug to a penalty of \$10,000 per day for each day that the report is not submitted.</p> <p>Subjects a manufacturer who knowingly provides false information to a penalty of up to \$100,000 for each piece of false information in the report.</p>	<p><i>Publication of Manufacturer Data.</i> Requires HHS to post the justification and an easily-understandable summary of the justification publicly on the CMS website within <u>30 days</u> of receiving the justification.</p>

Prescription Drug Importation Legislation

Legislation	Overview	Characteristics of a Qualifying Prescription Drug	Importation Requirements and/or Restrictions	Notification/Reporting Requirements	Penalties	Miscellaneous
<p><i>Affordable and Safe Prescription Drug Importation Act</i> (S. 97/H.R. 447)</p> <p>Sen. Bernie Sanders (I-VT)/Rep. Elijah Cummings (D-MD)</p> <p>Senate Summary</p>	<p>Requires HHS to issue regulations allowing wholesalers, licensed U.S. pharmacies, and individuals to import qualifying prescription drugs manufactured at FDA-inspected facilities from “certified foreign sellers” (possibly later</p>	<p>Allows the importation of drugs from Canada, provided they:</p> <ul style="list-style-type: none"> • Are approved for use in patients and marketed in Canada; • Are manufactured in an FDA-registered facility; • Have the same active ingredient(s), route of administration, and strength as an FDA-approved prescription drug; or is biosimilar (identical in makeup to a licensed drug) and has the same method of administration, and strength as the licensed drug; • Is labeled in accordance with the laws of Canada (or another country from which importation is permitted); <u>and</u> • Is labeled in English (and in accordance with all other requirements promulgated by HHS). <p>Does <u>not</u> include:</p>	<p><i>Certified Foreign Sellers.</i> Requires importers (or individuals who import prescription drugs into the U.S.) to purchase qualifying prescription drugs from a “certified foreign seller” who (1) is certified by HHS,¹ (2) has paid the registration fee, and (3) sells only qualifying prescription drugs.</p> <p><i>Individuals.</i> Allows individuals to import a qualifying prescription drug from Canada (or another country) if it is:</p> <ul style="list-style-type: none"> • Dispensed (including through an online pharmacy) by a certified foreign seller that is a licensed foreign pharmacy; • Purchased for personal use by the individual (i.e., not for 	<p><i>Importers.</i> Requires importers to submit biannual reports to HHS on each qualifying prescription drug imported into the U.S. that contains:</p> <ul style="list-style-type: none"> • The facility identifier of the drug’s registered manufacturer; • Transaction information (e.g., the name, strength, and dosage; the number of containers and container size; the lot number; the date of transaction and shipment, etc.) as required by HHS; and 	<p><i>Unfair and Discriminatory Acts and Practices.</i> Prohibits a manufacturer from:</p> <ul style="list-style-type: none"> • Charging a higher price for a prescription drug sold to a certified foreign seller than the price that is charged to another person that does not import such a drug into the U.S. • Denying, restricting, or delaying supplies of a prescription drug to a certified foreign seller due to his or her status as a certified foreign seller. • Causing there to be a difference between a prescription drug for distribution in the U.S. and the drug for distribution in Canada. • Engaging in other actions to restrict, prohibit, or delay the 	<p><i>Preemption.</i> Does not supplant or preempt state or other federal laws.</p> <p><i>Publication of Certified Foreign Sellers.</i> Requires HHS to publish online a list of certified foreign sellers, including web addresses, physical addresses, and telephone numbers of such sellers.</p> <p><i>Drug Testing Laboratories.</i> Authorizes HHS to approve laboratories</p>

¹ To qualify as a certified foreign seller (i.e., be eligible for certification), the seller must: (1) be a foreign wholesale distributor or licensed foreign pharmacy located in Canada; (2) be engaged in the distribution or dispensing of prescription drugs imported or offered for importation into the U.S.; (3) have been in existence for at least 5 years and have a purpose other than participation in the drug importation program; (4) if selling to an individual, do so only after receiving a valid prescription; (5) have processes to certify that the physical premises, data reporting procedures, and licenses are in compliance with all applicable laws and regulations in Canada, and have implemented policies to monitor compliance; (6) conduct ongoing and comprehensive quality assurance programs, including blind testing; (7) agree that laboratories approved by HHS will be used to test product samples/determine samples’ chemical authenticity; (8) agree to notify HHS, importers, and individuals of product recalls in Canada (and refrain from exporting such recalled products); (9) have a process for resolving grievances and be held accountable for violations of established rules; (10) not sell products to customers in the U.S. that the seller could not otherwise legally sell in Canada; and (11) meet any other criteria established by HHS.

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	expanded to include sellers in OECD member countries).	<ul style="list-style-type: none"> • A controlled substance. • An anesthetic drug inhaled during surgery. • A compounded drug. 	<p>resale) in quantities that do not exceed a 90-day supply; <u>and</u></p> <ul style="list-style-type: none"> • Filled only after providing to the licensed foreign pharmacy a valid prescription issued by a health care practitioner licensed to practice in the U.S. <p><i>Restrictions.</i> Currently limited to drugs being imported from Canada, <u>but</u> authorizes HHS (after reviewing the cost savings and increased access) to expand the program to include any country that:</p> <ul style="list-style-type: none"> • Is an OECD member; • Has standards for the approval and sale of prescription drugs that are comparable to U.S. standards; <u>and</u> • Meets certain other criteria (e.g., authorizes approval of a drug only if a drug is deemed safe and effective by government experts, etc.). 	<ul style="list-style-type: none"> • The price paid by the importer for the drug. <p><i>HHS.</i> Requires HHS to submit a report one year after the program’s effectuation (and every two years thereafter) on the importation of drugs into the U.S.</p> <p><i>GAO.</i> Requires the GAO to compile a report containing an analysis of the bill’s implementation, including a review of drug safety, expenses, and cost-savings (e.g., cost-savings to consumers, and trans-shipment and importation tracing processes, resulting from such implementation).</p>	<p>importation of a prescription drug.</p> <p><i>Suspension of Importation.</i> Grants HHS the authority to suspend or temporarily suspend importation of a product (or suspend all products from a certified foreign seller or importer) if there is an importation involving</p> <ul style="list-style-type: none"> • Counterfeit drugs, • Drugs that have been recalled/withdrawn, or • Drugs otherwise in violation of the bill <p>until an investigation is completed and it is determined that the drug, seller, or importer does not endanger the public health.</p> <p><i>Penalties.</i> Imposes penalties on online pharmacies selling adulterated or counterfeit products with the intent to defraud, or mislead, with reckless disregard for safety of the public, or knowingly dispensing drugs without a valid prescription. Such pharmacies will face a penalty of not more than 10 years imprisonment or a fine of not more than \$250,000.</p>	<p>to conduct random testing of prescription drugs sold by certified foreign sellers and assess the drugs’ chemical authenticity.</p> <p><i>Supply Chain Security.</i> (Generally) requires certified foreign sellers to purchase drugs from registered manufacturers or entities, <u>unless</u> HHS has entered into an MOU with Canada (or the permitted country).</p>
<i>Safe and Affordable Drugs from Canada Act of 2019</i> (S. 61/H.R. 478)	Requires HHS to promulgate regulations allowing individuals to import certain	Authorizes HHS to promulgate regulations allowing the importation of drugs from Canada, provided they: <ul style="list-style-type: none"> • Are purchased from an approved Canadian pharmacy; 	Authorizes the importation of drugs from Canada only if it is from an approved Canadian pharmacy and dispensed by a licensed pharmacist. To qualify, the pharmacy must be:			<i>Publication of Approved Canadian Pharmacies.</i> In conjunction with the regulations, requires HHS to publish on its

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Sen. Chuck Grassley (R-IA)/Rep. Chellie Pingree (D-ME)	drugs from approved Canadian pharmacies.	<ul style="list-style-type: none"> • Are dispensed by a pharmacist licensed to practice pharmacy and dispense prescription drugs in Canada; • Are purchased for personal use by the individual, not for resale, in quantities that do not exceed a 90-day supply; • Are filled using a valid prescription issued by a physician licensed to practice in the U.S.; <u>and</u> • Have the same active ingredient(s), route of administration, dosage form, and strength as prescription drugs approved by the FDA. <p>Does <u>not</u> include:</p> <ul style="list-style-type: none"> • A controlled substance. • A biological product. • An infused drug (including a peritoneal dialysis solution). • An intravenously injected drug. • A drug inhaled during surgery. • A parenteral drug. • A drug manufactured through one or more biotechnology processes (e.g., a therapeutic DNA plasmid product, a therapeutic synthetic peptide product of not more than 40 amino acids, a monoclonal antibody product for in vivo use, a therapeutic recombinant DNA-derived product, etc.). 	<ul style="list-style-type: none"> • Located in Canada; • Certified by the Secretary that (1) the pharmacy is licensed to operate and dispense prescription drugs to individuals in Canada; and (2) certain additional criteria are met.² 			website a list of approved Canadian pharmacies, including the Internet Web site address of each such approved Canadian pharmacy, from which individuals may purchase prescription drugs.

² To be certified as an approved Canadian pharmacy, the pharmacy must: (1) have been in existence for at least 5 years and have a purpose other than to participate in the drug importation program; (2) operate in accordance with pharmacy standards set forth by the provincial pharmacy rules and regulations enacted in Canada; (3) have processes to certify that the physical premises, data reporting procedures, and licenses are in compliance with all applicable laws and regulations, and have implemented policies designed to monitor ongoing compliance; (4) conduct ongoing and comprehensive quality assurance programs and implement such quality assurance measures; (5) agree that laboratories approved by the FDA will be used to conduct product testing to determine the safety and efficacy of sample pharmaceutical products; (6) have established a process for resolving grievances; (7) not resell products from online pharmacies located outside Canada to customers in the U.S.; and (8) meet any other criteria established by FDA.

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		<ul style="list-style-type: none"> A drug required to be refrigerated at any time during manufacturing, packaging, processing, or holding. A photoreactive drug. 				

Price Gouging Legislation

Legislation	Overview	Report Requirements	Report Content	Taxes	Penalties	Miscellaneous
<p><i>Combating Unreasonable Rises and Excessively (CURE) High Drug Prices Act (S. 637)</i></p> <p>Sen. Richard Blumenthal (D-CT)</p> <p>Senate Summary</p>	<p>Requires prescription drug manufacturers to justify a price increase in “qualifying drugs” (i.e., prescription drugs covered by federal health care programs) that HHS deems to constitute “price gouging.”³</p>	<p><i>HHS.</i> Requires HHS to notify manufacturers—and request a statement of justification—if it determines that certain price increases within the last <u>2 years</u> constitute “price gouging.”</p> <p>If HHS determines—after a review of the statement of justification—that the manufacturer has engaged in price gouging, requires HHS to notify the manufacturer of the determination.</p> <p><i>Manufacturers.</i> If a notification is received by a manufacturer, requires the manufacturer to provide a statement of justification for the price</p>	<p><i>Manufacturers.</i> Provides that the required statement of justification for a price increase may include:</p> <ul style="list-style-type: none"> Itemizing the components of the cost of producing the qualifying drug; Identifying the circumstances and timing of: <ul style="list-style-type: none"> An increase in materials/manufacturing costs that caused the price increase within the 5-year period preceding the date of the price increase; Any expenditures made by the manufacturer to expand access to the qualifying drug and explaining any improvement in public health associated with those expenditures; Providing sales and price information for other qualifying drugs with similar therapeutic effects; and Providing any other information that the manufacturer deems relevant. 		<p><i>HHS.</i> Authorizes HHS to require a manufacturer found to have engaged in price gouging to:</p> <ul style="list-style-type: none"> Reimburse consumers and third-party payors; Return to the original price for up to one year; or If the price gouging is done knowingly, pay a civil penalty of up to 3 times the excessive amount the manufacturer received as a result of the price increase. <p><i>DOJ.</i> Authorizes the Attorney General to bring an action in a</p>	

³ In general, the bill defines “price gouging” as a price increase that (1) is in substantial excess of what could be reasonably justified; and (2) because of insufficient competition, consumers cannot reasonably avoid. Price gouging, however, will be presumed if the average manufacturer price has increased (1) 10% or more over the preceding year; (2) 20% or more over the preceding 3 years; or (3) 30% or more over the preceding 5 years.

Legislation	Overview	Report Requirements	Report Content	Taxes	Penalties	Miscellaneous
		increase within <u>45 days</u> of receiving the notification.			district court for relief in certain circumstances.	
<p><i>Prescription Drug Price Relief Act of 2018</i> (S. 102/H.R. 465)</p> <p>Sen. Bernie Sanders (I-VT)/Rep. Ro Khanna (D-CA)</p> <p>Senate Summary</p>	<p>Requires HHS to annually identify “excessively priced” patented, brand name drugs⁴ that are being sold at prices higher than the median price in so-called “reference countries” (i.e., Canada, the U.K., Germany, France, and Japan).</p> <p>Authorizes HHS to approve cheaper generic versions of those drugs, if manufacturers refuse to lower the price of</p>	<p><i>Manufacturers.</i> Requires manufacturers to submit annual reports (January 15) on pricing information for each brand name drug (and as compared to prices in reference countries).</p> <p><i>HHS.</i> Requires HHS to annually report to Congress on its excessive drug price review for the preceding calendar year.</p> <p>Requires such reports to be made publicly available on the FDA website in a manner that is easy to find and understand.</p>	<p><i>Manufacturers.</i> Requires manufacturers to submit annual reports containing the following information on brand name drugs:</p> <ul style="list-style-type: none"> • The average manufacturer price of the drug in the U.S. and in the reference countries; • The wholesale acquisition cost of the drug in the U.S. and in the reference countries; • Cumulative global revenues generated by the drug; • Annual net sales revenue generated by the drug in the U.S. and in the reference countries; • Total expenditures on domestic and foreign drug R&D related to the drug; • Total expenditures on domestic and foreign marketing and advertising related to the drug; • Investments in human clinical trials related to the drug; • The estimated size of the affected patient population; • Additional information the manufacturer chooses to provide related to drug pricing decisions; and • Additional information required by HHS. <p><i>HHS.</i> Requires HHS’ annual report to contain summary data regarding:</p> <ul style="list-style-type: none"> • The total number of drugs that were reviewed; 		<p><i>Manufacturers.</i> Subjects manufacturers that fail to submit their annual reports to a civil penalty that is equal to the product of:</p> <ul style="list-style-type: none"> • An amount determined by HHS that is (1) not less than 0.5% of the gross revenues from sales of the drug for the calendar year; <u>and</u> (2) not greater than 1% of the gross revenues from sales of the drug for the calendar year; <u>and</u> • The number of days in the period between (1) the annual submission deadline <u>and</u> (2) the date on which HHS receives the late report. <p><i>Civil Action.</i> Authorizes HHS to bring civil actions against manufacturers of excessively priced drugs in certain circumstances.</p>	<p><i>Generic Drugs.</i> If HHS identifies an excessively priced drug, HHS will:</p> <ul style="list-style-type: none"> • Waive/void any government-granted exclusivities to the drug’s manufacturer with respect to that drug; and • Grant open, non-exclusive licenses allowing generic drug manufacturers to make more affordable versions of the drug, to be sold at a price below the “excessive price” as determined by HHS. <p>Requires HHS to prioritize review of such generic drug applications (i.e., must be acted upon within 8 months of submission).</p> <p>Requires an entity accepting a license to make a generic version of an excessively priced brand name drug to pay a</p>

⁴ In general, HHS will find an excessive price when the domestic average manufacturing price for any brand name drug exceeds the median price charged for such drug in the 5 reference countries. In assessing the extent to which the price is excessive (or if there is insufficient data to determine the median price of the drug in other countries, the drug is otherwise deemed unaffordable, or an individual petitions for such a determination), HHS will consider the following factors: (1) the size of the affected patient population; (2) the value of the drug to patients (i.e., whether the price impacts access to the drug); (3) federal government subsidies and investments related to the drug; (4) the costs associated with developing the drug; (5) whether the drug provided significant improvement in health outcomes when it was approved; (6) the cumulative global revenues generated by the drug; (7) whether the domestic average manufacturer price of the drug increased during any annual quarter by more than CPI-U; and (8) any other factors HHS deems appropriate.

Legislation	Overview	Report Requirements	Report Content	Taxes	Penalties	Miscellaneous
	drugs to the median price.		<ul style="list-style-type: none"> • The total number of drugs found to be excessively priced (and the name/manufacturer of such drugs); • The total number of drugs found to be excessively priced (listed by manufacturer); • The extent to which the prices of the drugs were higher than reasonable, on average; • The total number of drugs for which an open, non-exclusive license has been granted; • The total number of generic drug applications received/approved that reference an excessively priced drug; • The median approval time for generic drug applications in such circumstances; • The total number of petitions HHS received to make excessive price determinations; • A list of any manufacturers who failed to report information, as required; and • Any other information HHS deems appropriate. 			<p>“reasonable royalty”—as set by HHS—to the holder(s) of the original drug patent.</p> <p><i>Publication in HHS Database.</i> Requires HHS to establish/maintain a comprehensive database of brand name drugs and their excessive price determinations.</p> <p><i>Anticompetitive Behavior.</i> Prohibits manufacturers from engaging in “anticompetitive behavior” (i.e., violating Section 5 of the FTC Act).</p>
<p><i>Stop Price Gouging Act</i> (S. 378/H.R. 1093)</p> <p>Sen. Sherrod Brown (D-OH)/Rep. Mark Pocan (D-WI)</p>	<p>Requires prescription drug manufacturers to report an increase in drug prices/justify such an increase.</p> <p>Imposes an excise tax on (or otherwise penalizes) manufacturers that are deemed</p>	<p><i>Manufacturer.</i> Requires manufacturers of prescription drugs to submit a quarterly report (January 17, April 18, June 15, September 15) to the HHS OIG.</p> <p><i>HHS OIG.</i> Requires the HHS OIG to annually (February 28/29):</p> <ul style="list-style-type: none"> • Complete an assessment of the information submitted by manufacturers; and • Transmit to the IRS a report on its findings (along with its assessment). 	<p><i>Manufacturers.</i> Requires manufacturers to submit quarterly reports containing the following information:</p> <ul style="list-style-type: none"> • The total number of units of each prescription, FDA-approved drug that were sold in the last quarter; • The average and median price per unit of each prescription drug sold in the last quarter, broken down by month; • The gross revenues from sales of each prescription drug in the last quarter; and • Any additional information related to anticipated or increased input costs, or public health considerations that the manufacturer may want the HHS OIG to consider in its assessment. 	<p>Imposes an excise tax on each prescription drug deemed to have undergone an unnecessary price spike (i.e., a taxable prescription drug) sold by a manufacturer equal to the greater of:</p> <ul style="list-style-type: none"> • The annual price spike tax for the prescription drug; <u>or</u> 	<p>Subjects manufacturers who fail to submit the required reports to the HHS OIG to a civil penalty that is equal to the product of:</p> <ul style="list-style-type: none"> • An amount determined by the HHS OIG that is (1) not less than 0.5% of the gross revenues from sales of the drug for the calendar year; <u>and</u> (2) not greater than 1% of the gross revenues from sales of the drug for the calendar year; <u>and</u> 	<p><i>Exemption Reporting.</i> Directs the HHS Inspector General to submit a recommendation to HHS on each drug that is exempt from the imposition of the excise tax.</p> <p><i>Publication of Data.</i> Requires the HHS OIG to make its report to the IRS available to the public on its website.</p> <p><i>Notice Requirements.</i> Requires HHS to notify the manufacturer no later than <u>30 days</u> after the completion of the HHS OIG’s</p>

Legislation	Overview	Report Requirements	Report Content	Taxes	Penalties	Miscellaneous
	by HHS to have engaged in unnecessary price spikes.	<p><i>Exemptions.</i> Allows HHS to exempt any prescription drug that was the subject of a price spike during the previous calendar year from the excise tax if the following requirements are met:</p> <ul style="list-style-type: none"> • HHS determines that a for-cause price increase exemption should apply; <u>or</u> • The prescription drug that was subject to a price spike has an average manufacturer price of not greater than \$10 for a 30-day supply; <u>and</u> • The drug is marketed by at least three other drug companies and used by the companies as a reference drug. 	<p><i>HHS OIG Assessment.</i> Requires the annual assessment performed by the HHS OIG to include:</p> <ul style="list-style-type: none"> • Identification of each price spike relating to a prescription drug; • A determination of the price spike revenue; • A determination of the accuracy of the information submitted by the manufacturer regarding increased input costs; and • An assessment of the manufacturer’s rationale for the price spike. <p><i>HHS OIG Report to the IRS.</i> Requires the annual HHS OIG report to the IRS to include:</p> <ul style="list-style-type: none"> • The information received from manufacturers; • The price spike identified; • The price spike revenue determinations; and • Other determinations and assessments completed by the HHS OIG. 	<ul style="list-style-type: none"> • The cumulative price spike tax for the prescription drug. <p>Subjects manufacturers to a graduated excise tax that depends on the size of the price increase, if it is determined that the manufacturer increased the price of the drug beyond medical inflation over a one year period or cumulatively.⁵</p>	<ul style="list-style-type: none"> • The number of days in the period between (1) the quarterly submission deadline <u>and</u> (2) the date on which the HHS OIG receives the late report. 	<p>assessment regarding any drug that has been found to have been subject to a price spike.</p> <p><i>Hearing Opportunity.</i> Allows a manufacturer to request a hearing (only once within a 5 year period) before HHS within <u>30 days</u> of receiving notice of the price spike determination.</p> <p><i>Study on Monopoly of Medical Products.</i> Requires GAO to conduct a study examining how drug manufacturers establish initial launch prices and suggest best practices for monitoring new drug prices.</p>

PBM Transparency Legislation

Legislation	Overview	Transparency Measures	Miscellaneous
<i>Prescription Drug Price Transparency</i>	Requires PBMs to adhere to certain standards when entering into	<p><i>PBMs.</i> Prohibits PBMs that enter into a contract with a Prescription Drug Plan (“PDP”) sponsor or with a Medicare Advantage (“MA”) organization from doing either of the following:</p> <ul style="list-style-type: none"> • Requiring the plan enrollee use any pharmacy providing pharmacy services in which the PBM has an ownership interest, or ownership interest in; and 	

⁵ Prior to enforcement of the tax, the HHS OIG and the FTC would work with manufacturers to assess the extent to which an increase in price was due to changes in a drug’s supply chain or for other justifiable reasons.

Legislation	Overview	Transparency Measures	Miscellaneous
<p>Act (H.R. 1035)</p> <p>Rep. Doug Collins (R-GA)</p>	<p>contracts and ensure the transparency of their drug pricing standards for reimbursement.</p>	<ul style="list-style-type: none"> • Providing an incentive (including reduced copayment or coinsurance) to a plan enrollee to use any pharmacy providing pharmacy services in which the PBM has an ownership interest, if the incentive is applicable only to such pharmacies. <p>Requires PBMs to do the following with respect to their drug pricing standards for reimbursement (e.g., their maximum allowable cost lists) for Medicare Part D and FEHBP:</p> <ul style="list-style-type: none"> • Update the standard at least once every 7 days, beginning January 1 of each year, to accurately reflect the market price of acquiring the drug; • Disclose to applicable pharmacies and the respective contracting entities thereof the sources used for making any update to the standard immediately “without requirement of request;” • If the source for the standard is not publicly available, disclose to the applicable pharmacies and respective contracting entities thereof all updated, individual drug prices in advance of using such prices for reimbursement of claims; • Establish a process for applicable pharmacies to appeal, investigate, and resolve disputes regarding individual drug prices that are less than the pharmacy acquisition price; and • Provide to applicable pharmacies and respective contracting entities all such pricing data in a spreadsheet and easily accessible format. 	
<p><i>Creating Transparency to Have Drug Rebates Unlocked (C-THRU) Act of 2019</i> (S. 476)</p> <p>Sen. Ron Wyden (D-OR)</p> <p>Senate Summary</p>	<p>Requires public disclosure of the total amount of rebates provided by manufacturers to PBMs and the proportion of those rebates that are passed on to health plans.</p>	<p>Requires HHS to make publicly available on CMS’ website certain information regarding a PBM’s ability to negotiate rebates, discounts, and price concessions and the amount of such rebates, discounts, and price concessions, beginning in January 2018. Such information includes:</p> <ul style="list-style-type: none"> • The aggregate amount/type of rebates, discounts, or price concessions that the PBM negotiations that are attributable to the patient utilization under the plan; • The aggregate amount of the rebates, discounts, or price concessions that are passed through to the plan sponsor; • The aggregate amount of the difference between the amount the health benefits plan pays the PBM and the amount the PBM pays retail pharmacies (i.e., spread pricing); and • The total number of prescriptions that were dispensed. 	<p><i>Rebating Limits.</i> Beginning in 2020, requires a PBM that manages prescription drug coverage under a contract with a PDP sponsor, MA organization, or qualified health benefits plan to pass through to the plan sponsor a minimum percent (established by HHS) of the aggregate amount of the rebates, discounts, or price concessions that the PBM negotiates that are attributable to patient utilization under the plan.</p> <p>Requires HHS to establish the minimum percent to ensure that patients receive the maximum benefits of rebates, discounts, or price concessions while taking into account the costs of negotiating such rebates, discounts, and price concessions.</p> <p><i>Medicare Part D.</i> Prohibits a PDP sponsor or an MA organization under Medicare Part D from contracting with a PBM that is not in compliance with the rebating limits established by HHS.</p>

Legislation	Overview	Transparency Measures	Miscellaneous
			Requires cost-sharing for Medicare Part D enrollees to be based off the negotiated price of the drug as agreed to by the drug manufacturer and the PBM.
<p>S. 657 Sen. Mike Braun (R-IN)</p>	Prohibits PBMs from receiving rebates unless certain transparency requirements are met	<p>Prohibits PBMs from receiving rebates/reductions in price from drug manufacturers unless:</p> <ul style="list-style-type: none"> • The rebates/reductions in price are reflected at the point-of-sale (e.g., the pharmacy counter); and • Any other rebates/reductions in price are flat fee-based service fees that the manufacturer pays to the PBM for services related to the provision of PBM services to a health plan/insurer (i.e., requires fees to be transparent to the health plan or health insurance issuer). 	
<p><i>Fair Care Act of 2019</i> (H.R. 1332) (<i>excerpts</i>) Rep. Bruce Westerman (R-AR) House Summary</p>	Requires PBMs to adhere to certain standards when entering into contracts and ensure the transparency of their drug pricing standards for reimbursement, among other things.	<p><i>PBMs.</i> Requires PBMs that enter into a contract with a Prescription Drug Plan (“PDP”) sponsor, a Medicare Advantage (“MA”) organization, or are part of an FEHBP contract to adhere to the following criteria when handling personally identifiable utilization and claims data, and other sensitive patient data:</p> <ul style="list-style-type: none"> • Not transmit any personally identifiable utilization, PHI, or claims data with respect to a plan enrollee to a pharmacy owned by a PBM if the plan enrollee has not voluntarily elected <u>in writing or via secure electronic means</u> to fill that particular prescription at the PBM-owned pharmacy. • Not require that a plan enrollee use any pharmacy providing pharmacy services in which the PBM has an ownership interest. • Not provide an incentive to a plan enrollee to use any pharmacy providing pharmacy services in which the PBM has an ownership interest, if the incentive is applicable only to such pharmacies. <p>Requires PBMs to do the following with respect to their drug pricing standards for reimbursement (e.g., their maximum allowable cost lists) for PDP sponsors, TRICARE, and FEHBP:</p> <ul style="list-style-type: none"> • Update the standard at least once every 7 days, beginning January 1 of each year, to accurately reflect the market price of acquiring the drug; • Disclose to applicable pharmacies and the respective contracting entities thereof the sources used for making any update to the standard immediately “without requirement of request”; • If the source for the standard is not publicly available, disclose to the applicable pharmacies and respective contracting entities thereof all updated, individual drug prices in advance of using such prices for reimbursement of claims; • Establish a process for applicable pharmacies to appeal, investigate, and resolve disputes regarding individual drug prices that are less than the pharmacy acquisition price; and 	<p>Incorporates other provisions to promote market competition, including:</p> <ul style="list-style-type: none"> • Targeting delay tactics related to sample-sharing and shared safety protocols that prevent entry of generic drugs into the market (<i>largely mirrors the CREATES Act</i>). • Establishing a program to expedite the development of/provide priority review for “generic complex drug products.” • Preempting state laws that prohibit a pharmacy from dispensing an FDA-approved biosimilar. • Limiting the exclusivity periods for drugs treating rare diseases and conditions. • Allowing HHS to alter the reimbursement mechanism for drugs provided through the Medicare Part B program. • Prohibiting Medicare prescription drug plan sponsors from retroactively reducing payment on “clean claims” (i.e., those without defects like incomplete documentation) submitted by pharmacies (<i>mirrors the Improving Transparency and Accuracy in Medicare Part D Spending Act</i>). • Sunsetting the current maximum rebate amount (100%) for outpatient Medicaid drugs so that they apply only for

Legislation	Overview	Transparency Measures	Miscellaneous
		<ul style="list-style-type: none"> Provide to applicable pharmacies and respective contracting entities all such pricing data in a spreadsheet and easily accessible format (<i>largely mirrors the prior version of the</i> Prescription Drug Price Transparency Act). 	<p>rebate periods that begin between 2009 and 2025 (<i>mirrors H.R. 107</i>).</p> <ul style="list-style-type: none"> Permitting HHS to establish a (1) mechanism prohibiting drug manufacturers from contributing financially to patient copays and (2) system of penalizing such behavior. Enacting transparency provisions specific to the 340B program. Requiring Congress to vote on all major actions (with an economic impact of \$100 million+) proposed by FDA, among other things

Miscellaneous Legislation

Legislation	Issue Area	Overview
<p><i>Biologic Patent Transparency Act</i> (S. 659) Sen. Susan Collins (R-ME) Senate Summary</p>	<p><i>FDA Process Reform</i></p>	<p>Codifies the publication of the FDA’s “Purple Book” as a single, searchable list; requires additional information to be published in the Purple Book (e.g., patents that claim/relate to FDA-approved biological products, information related to biosimilarity and interchangeability, information related to exclusivities, and approved indications); and limits the enforceability of late-filed patents when a biosimilar application has already been filed with the FDA.</p>
<p><i>Efficiency and Transparency in Petitions Act</i> (S. 660) Sen. Mike Braun (R-IN)</p>	<p><i>FDA Process Reform</i></p>	<p>Requires any petition on a pending generic drug submitted to the FDA within 1 year of when the petitioner/drug manufacturer discovers the issue that is the basis for the petition; authorizes HHS to amend this 1 year deadline for certain petitions.</p>
<p><i>Purple Book Continuity Act of 2019</i> (H.R. 1520) Rep. Anna Eshoo (D-CA)</p>	<p><i>FDA Process Reform</i></p>	<p>Requires HHS to (1) publish and make publicly available certain information on licensed biological products; and (2) revise the information, every 30 days, to include newly licensed biological products among other things.</p> <p><i>March 27 – Approved by the Energy and Commerce Subcommittee on Health—as amended—by voice vote.</i></p> <p><i>April 3 – Approved by the Energy and Commerce Committee—as amended—by voice vote.</i></p>

Legislation	Issue Area	Overview
<p><i>Orange Book Transparency Act</i> (H.R. 1503)</p> <p>Rep. Robin Kelly (D-IL)</p>	<p><i>FDA Process Reform</i></p>	<p>Authorizes FDA to remove or add patents from the “Orange Book” (i.e., list of FDA approved drug products, etc.); imposes transparency requirements related to patents (i.e., requires drug application holders to promptly submit a patent withdrawal or removal to FDA for patents found to be invalid, etc.).</p> <p><i>March 27 – Approved by the Energy and Commerce Health Subcommittee by voice vote.</i></p> <p><i>April 3 – Approved by the Energy and Commerce Committee—as amended—by voice vote.</i></p>
<p><i>Accelerated Drug Approval for Prescription Therapies (ADAPT) Act</i> (S. 658)</p> <p>Sen. Mike Braun (R-IN)</p>	<p><i>FDA Process Reform</i></p>	<p>Permits FDA to expedite applications for approval of certain drugs if there is evidence that:</p> <ul style="list-style-type: none"> • The drug is authorized to be marketed in specific countries (e.g., European Union members, Israel, Australia, Canada, and Japan) • The drug is safe and clinically effective and a satisfactory history of clinical trials and data • The manufacturer is capable of manufacturing the drug safely and consistently, and can assure the safety of the supply chain outside the United States • All relevant United States patents or legal exclusivities are expired • The drug is not approved for marketing in the United States • HHS has not rescinded or withdrawn any such approval • There is a public health or unmet medical need for the drug in the United States <p>Requires FDA to make a determination on a drug application no later than 180 days after submission.</p>
<p><i>Bringing Low-Cost Options and Competition While Keeping Incentives for New Generics (BLOCKING) Act of 2019</i> (H.R. 938)</p> <p>Rep. Kurt Schrader (D-OR)</p>	<p><i>Market Competition</i></p>	<p>Amends the FDA’s market exclusivity rules by preventing generic drug manufacturers from “parking” applications (i.e., holding onto 180-day exclusivity in order to block other generic drugs from entering the market) and delaying the start of their exclusivity.</p> <p><i>March 27 – Approved by the Energy and Commerce Subcommittee on Health by voice vote.</i></p> <p><i>April 3 – Approved by the Energy and Commerce Committee by voice vote.</i></p>
<p><i>Competitive Deals Resulting in Unleashed Generics and Savings (DRUGS) Act of 2019</i> (H.R. 1344)</p> <p>Rep. Lloyd Doggett (D-TX)</p>	<p><i>Market Competition</i></p>	<p>Eliminates tax benefits and deductions for prescription drug manufacturers of newly-approved, brand-name drugs that engage in pay-for-delay deals (i.e., agreements that delay the entry of less expensive, generic drugs into the market).</p>

Legislation	Issue Area	Overview
<p><i>Creating and Restoring Equal Access to Equivalent Samples (CREATES) Act of 2019</i> (S. 340/H.R. 965)</p> <p>Sen. Patrick Leahy (D-VT)/Rep. David Cicilline (D-RI)</p> <p>Senate Summary</p>	<p>Market Competition</p>	<p>Aims to promote competition in the pharmaceutical drug market by (1) requiring brand name drug manufacturers to sell “sufficient quantities” at “commercially reasonable” prices to generic competitors who need samples for bioequivalency testing as part of the Abbreviated New Drug Applications; (2) creating a legal framework to provide generics with the ability to get injunctive relief faster from the courts; and (3) allowing judges to award payments to generics to deter anticompetitive behavior by brand name drug companies, among other things.</p> <p><i>March 27 – H.R. 965 was approved by the Energy and Commerce Subcommittee on Health by voice vote.</i></p> <p><i>April 3 – H.R. 965 was approved by the Energy and Commerce Committee—as amended—by a vote of 51-0.</i></p>
<p><i>Fair Access for Safe and Timely (FAST) Generics Act of 2019</i> (H.R. 985)</p> <p>Rep. Peter Welch (D-VT)</p>	<p>Market Competition</p>	<p>Prohibits drug manufacturers from restricting access to reference products (i.e., products that are necessary to demonstrate a drug’s sameness, biosimilarity or interchangeability) to develop drugs, generic drugs, or biosimilars, among other things.</p>
<p><i>Forcing Limits on Abusive and Tumultuous (FLAT) Prices Act</i> (S. 366/H.R. 1188)</p> <p>Sen. Richard Durbin (D-IL)/Rep. Jared Golden (D-ME)</p>	<p>Market Competition</p>	<p>Reduces a prescription drug’s market exclusivity by 180 days if a drug manufacturer increases the wholesale acquisition cost of the drug by more than: (1) 10% over 1 year, (2) 18% over 2 years, or (3) 25% over 3 years; reduces the market exclusivity by an additional 30 days for every additional 5% increase; requires a drug manufacturer that increases the wholesale acquisition cost by such percentages to report the increase to HHS within 30 days; reduces a manufacturer’s market exclusivity by 30 days each day that the manufacturer fails to report to HHS, among other things.</p>
<p><i>Preserve Access to Affordable Generics and Biosimilars Act</i> (S. 64)</p> <p>Sen. Amy Klobuchar (D-MN)</p>	<p>Market Competition</p>	<p>Prohibits drug and biologics manufacturers from engaging in “pay-for-delay” deals (i.e., agreements that delay the entry of less expensive, generic drugs into the market)/“reverse-payment” settlement (i.e., agreements in which branded companies pay generic companies not to compete as part of a patent settlement); grants the FTC authority to initiate enforcement proceedings against parties engaging in such agreements, among other things.</p>
<p><i>Protecting Consumer Access to Generic Drugs Act of 2019</i> (H.R. 1499)</p> <p>Rep. Bobby Rush (D-IL)</p>	<p>Market Competition</p>	<p>Prohibits drug and biologics manufacturers from engaging in “pay-for-delay” deals (i.e., agreements that delay the entry of less expensive, generic drugs into the market); retroactively penalizes manufacturers that engage in such deals, among other things.</p> <p><i>April 3 – Approved by the Energy and Commerce Committee—as amended—by voice vote.</i></p>

Legislation	Issue Area	Overview
<p><u>H.R. 107</u> Rep. Michael Burgess (R-TX)</p>	<p>Medicaid Rebate</p>	<p>Sunsets the current maximum rebate amount (100%) for outpatient Medicaid drugs by so that they apply only for rebate periods that begin between 2009 and 2020.</p>
<p>Right Rebate Act of 2019 (<u>S. 205/H.R. 937</u>) Sen. Ron Wyden (D-OR)/Rep. Kurt Schrader (D-OR) <u>Senate Summary</u></p>	<p>Medicaid Rebate</p>	<p>Aims to prevent the misclassification of drugs under the Medicaid drug rebate program by:</p> <ul style="list-style-type: none"> • Providing HHS with the authority to reclassify drugs/correct misclassifications, impose civil monetary penalties on manufacturers that misclassify drugs, and recover incorrect/underpaid rebate payments; and • Creating oversight mechanisms for the program (e.g., manufacturer reports to HHS, HHS reports to Congress, etc.), among other things.
<p>Keeping Health Insurance Affordable Act of 2019 (<u>S. 3</u>) Sen. Ben Cardin (D-MD)</p>	<p>Medicare Part D & Medicare Rebate</p>	<p>Requires drug manufacturers to provide rebates to Medicare in a specific amount (i.e., equal to total number of units for form and strength of drug, etc.) to HHS for covered Medicare Part D drugs; authorizes HHS to negotiate drug prices with manufacturers, among other things.</p>
<p>Payment Commission Data Act of 2019 (<u>S. 801/H.R. 1264/H.R. 1781</u>) Sen. Catherine Cortez Masto (D-NV), Rep. Lloyd Doggett (D-TX), and Rep. Buddy Carter (R-GA)</p>	<p>Medicare Part D & Medicaid Rebate</p>	<p>Provides the Medicare Payment Advisory Commission and the Medicaid and CHIP Payment and Access Commission with access to certain drug payment information for outpatient Medicare Part D & Medicaid drugs, including certain rebate information, among other things.</p> <p><i>April 3 – H.R. 1781 was approved by the Energy and Commerce Committee—as amended—by voice vote.</i></p>
<p>Empowering Medicare Seniors to Negotiate Drug Prices Act (<u>S. 62</u>) Sen. Amy Klobuchar (D-MN)</p>	<p>Medicare Part D</p>	<p>Allows HHS to negotiate Medicare Part D prescription drug prices with drug manufacturers, PDP sponsors, and pharmacies.</p>
<p>Medicare Drug Price Negotiation Act (<u>S. 99/H.R. 448</u>) Sen. Bernie Sanders (D-VT)/Rep. Elijah Cummings (D-MD) <i>See</i> <u>Senate Summary</u></p>	<p>Medicare Part D</p>	<p>Directs HHS to negotiate Medicare Part D prescription drug prices; establishes “fallback prices” for drugs if HHS is unsuccessful in negotiating an appropriate price with the manufacturer; allows HHS to establish one national drug formulary for use by all PDP sponsors, among other things.</p>

Legislation	Issue Area	Overview
<p><i>Medicare Negotiation and Competitive Licensing Act of 2019</i> (S. 377/H.R. 1046)</p> <p>Sen. Sherrod Brown (D-OH)/Rep. Lloyd Doggett (D-TX)</p>	<p><i>Medicare Part D</i></p>	<p>Aims to lower Medicare Part D drug prices by:</p> <ul style="list-style-type: none"> • Requiring HHS to negotiate Medicare Part D prescription drug prices with drug manufacturers; and • If the drug manufacturers refuse to negotiate in good faith, authorizing HHS to issue any patent, clinical trial data, or other competitive license to another entity who agrees to manufacture a generic version of the drug.
<p><i>Medicare Prescription Drug Negotiation Act of 2019</i> (H.R. 275)</p> <p>Rep. Peter Welch (D-VT)</p>	<p><i>Medicare Part D</i></p>	<p>Directs HHS to negotiate drug prices (including discounts, rebates and other price concessions) with manufacturers for covered Medicare Part D drugs, while maintaining the same rule for formularies; requires HHS to submit a report to Congress on the prices negotiated.</p>
<p><i>Reducing Existing Costs Associated with Pharmaceuticals for Seniors (RxCap) Act of 2019</i> (S. 475)</p> <p>Sen. Ron Wyden (D-OR)</p>	<p><i>Medicare Part D</i></p>	<p>Eliminates the prescription drug cost-sharing requirement for seniors eligible under Medicare Part D.</p>
<p><i>Prescription Drug Pricing Dashboard Act</i> (S. 709)</p> <p>Sen. Bob Casey (D-PA)</p>	<p><i>Transparency</i></p>	<p>Requires HHS to establish, annually update, and make publicly available an internet website-based dashboard on the price and utilization of prescription drugs purchased by federal programs, among other things.</p>
<p><i>Transparent Drug Pricing Act</i> (S. 977)</p> <p>Sen. Rick Scott (R-FL)</p>	<p><i>Transparency</i></p>	<p>Requires pharmacists to disclose to customers, at the point of sale of any prescription drug:</p> <ul style="list-style-type: none"> • The customer’s out-of-pocket cost with respect to such drug under the customer’s health plan; and • The cost of the drug without using the health plan. <p>Requires insurers to credit the full amount of out-of-pocket costs for prescription drugs towards deductibles; requires insurers publish a list of copayment amounts 60 days before each annual enrollment period; prohibits insurers from changing the copayment amounts until the next plan year; requires insurers to provide a mechanism enabling enrollees to determine their projected total out-of-pockets costs for each prescription drug covered; and prohibits the retail list price of an FDA-approved drug from exceeding the lowest retain price for the same drug in Canada, France, the United Kingdom, Japan, or Germany (this requirement would sunset after 5 years).</p>