

[DISCUSSION DRAFT]

119<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R.** \_\_\_\_\_

To amend title XXVII of the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require out-of-pocket expenditures for drugs to count towards an individual's deductible and out-of-pocket maximum.

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IN THE HOUSE OF REPRESENTATIVES

Mr. MURPHY introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend title XXVII of the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require out-of-pocket expenditures for drugs to count towards an individual's deductible and out-of-pocket maximum.

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 “\_\_\_\_\_ Act  
5 of 2026”.

1 **SEC. 2. REQUIRING OUT-OF-POCKET EXPENDITURES FOR**  
2 **DRUGS TO COUNT TOWARDS AN INDIVID-**  
3 **UAL'S DEDUCTIBLE AND OUT-OF-POCKET**  
4 **MAXIMUM.**

5 (a) PHSA.—Part D of title XXVII of the Public  
6 Health Service Act (42 U.S.C. 300gg–111 et seq.) is  
7 amended by adding at the end the following new section:

8 **“SEC. 2799A-11. COUNTING OUT-OF-POCKET EXPENDITURES**  
9 **FOR CERTAIN DRUGS TOWARDS A DEDUCT-**  
10 **IBLE AND OUT-OF-POCKET MAXIMUM.**

11 “A group health plan and a health insurance issuer  
12 offering group or individual health insurance coverage  
13 shall, in the case of an individual enrolled under such plan  
14 or coverage who elects to purchase a drug for which bene-  
15 fits are available under such plan or coverage without ap-  
16 plying such benefits, count any out-of-pocket expenditures  
17 incurred by such individual with respect to such drug to-  
18 wards any deductible and out-of-pocket maximum that  
19 would have applied had such individual applied such bene-  
20 fits.”.

21 (b) ERISA.—

22 (1) IN GENERAL.—Subpart B of part 7 of sub-  
23 title B of title I of the Employee Retirement Income  
24 Security Act of 1974 (29 U.S.C. 1185 et seq.) is  
25 amended by adding at the end the following new sec-  
26 tion:

1 **“SEC. 726. COUNTING OUT-OF-POCKET EXPENDITURES FOR**  
2 **CERTAIN DRUGS TOWARDS A DEDUCTIBLE**  
3 **AND OUT-OF-POCKET MAXIMUM.**

4 “A group health plan and a health insurance issuer  
5 offering group health insurance coverage shall, in the case  
6 of a participant or beneficiary enrolled under such plan  
7 or coverage who elects to purchase a drug for which bene-  
8 fits are available under such plan or coverage without ap-  
9 plying such benefits, count any out-of-pocket expenditures  
10 incurred by such participant or beneficiary with respect  
11 to such drug towards any deductible and out-of-pocket  
12 maximum that would have applied had such participant  
13 or beneficiary applied such benefits.”.

14 (2) CLERICAL AMENDMENT.—The table of con-  
15 tents in section 1 of the Employee Retirement In-  
16 come Security Act of 1974 (29 U.S.C. 1001 note) is  
17 amended by inserting after the item relating to sec-  
18 tion 725 the following new item:

“Sec. 726. Counting out-of-pocket expenditures for certain drugs towards a de-  
ductible and out-of-pocket maximum.”.

19 (c) IRC.—

20 (1) IN GENERAL.—Subchapter B of chapter  
21 100 of the Internal Revenue Code of 1986 is amend-  
22 ed by adding at the end the following new section:

1 **“SEC. 9826. COUNTING OUT-OF-POCKET EXPENDITURES**  
2 **FOR CERTAIN DRUGS TOWARDS A DEDUCT-**  
3 **IBLE AND OUT-OF-POCKET MAXIMUM.**

4 “A group health plan shall, in the case of an indi-  
5 vidual enrolled under such plan who elects to purchase a  
6 drug for which benefits are available under such plan with-  
7 out applying such benefits, count any out-of-pocket ex-  
8 penditures incurred by such individual with respect to  
9 such drug towards any deductible and out-of-pocket max-  
10 imum that would have applied had such individual applied  
11 such benefits.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-  
13 tions for subchapter B of chapter 100 of the Inter-  
14 nal Revenue Code of 1986 is amended by adding at  
15 the end the following new item:

“Sec. 9826. Counting out-of-pocket expenditures for certain drugs towards a deductible and out-of-pocket maximum.”.

16 (d) CONFORMING AMENDMENTS.—

17 (1) BEST PRICE.—Section 1927(c)(1)(C)(ii) of  
18 the Social Security Act (42 U.S.C. 1396r-  
19 8(c)(1)(C)(ii)) is amended—

20 (A) in subclause (IV), by striking “and” at  
21 the end;

22 (B) in subclause (V), by striking the period  
23 at the end and inserting “; and”; and

1 (C) by adding at the end the following new  
2 subclause:

3 “(VI) shall exclude any reduction  
4 in price with respect to an individual  
5 purchasing such drug without apply-  
6 ing any benefits under a group health  
7 plan (as defined in section 2791 of  
8 the Public Health Service Act), group  
9 or individual health insurance cov-  
10 erage (as so defined), or a Federal  
11 health care program (as defined in  
12 section 1128B but including the pro-  
13 gram established under chapter 89 of  
14 title 5, United States Code).”.

15 (2) AVERAGE MANUFACTURER PRICE.—Section  
16 1927(k)(1)(B)(i) of the Social Security Act (42  
17 U.S.C. 1396r–8(k)(1)(B)(i)) is amended—

18 (A) in subclause (VII), by striking “and”  
19 at the end;

20 (B) in subclause (VIII), by striking the pe-  
21 riod at the end and inserting “; and”; and

22 (C) by adding at the end the following new  
23 subclause:

24 “(IX) any reduction in price with  
25 respect to an individual purchasing

1           such drug without applying any bene-  
2           fits under a group health plan (as de-  
3           fined in section 2791 of the Public  
4           Health Service Act), group or indi-  
5           vidual health insurance coverage (as  
6           so defined), or a Federal health care  
7           program (as defined in section 1128B  
8           but including the program established  
9           under chapter 89 of title 5, United  
10          States Code).”.

11          (e) EFFECTIVE DATE.—The amendments made by  
12          subsections (a) through (c) shall apply with respect to plan  
13          years beginning on or after January 1,                     ].