I

118TH CONGRESS
1ST SESSION

H. R. 2940

To amend title III of the Public Health Service Act to establish a program to develop antimicrobial innovations targeting the most challenging pathogens and most threatening infections, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2023

Mr. FERGUSON (for himself, Mr. PETERS, Mr. LATURNER, and Mr. LEVIN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Oversight and Accountability, Ways and Means, and the Budget, 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 title III of the Public Health Service Act to establish a program to develop antimicrobial innovations targeting the most challenging pathogens and most threatening infections, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Pioneering Antimicrobial Subscriptions To End Upsurging Resistance Act of 2023'' or the ''PASTEUR Act of 2023''.

SEC. 2. DEVELOPING ANTIMICROBIAL INNOVATIONS.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end the following:

"PART W—DEVELOPING ANTIMICROBIAL INNOVATIONS

"SEC. 399OO. ESTABLISHMENT OF COMMITTEE; SUBSCRIPTION MODEL; ADVISORY GROUP.

''(a) IN GENERAL.—Not later than 60 days after the date of enactment of this part, the Secretary shall establish a Committee on Critical Need Antimicrobials and appoint members to the Committee.

''(b) MEMBERS.—

''(1) IN GENERAL.—The Committee shall consist of at least one representative from each of the National Institute of Allergy and Infectious Diseases, the Centers for Disease Control and Prevention, the Biomedical Advanced Research and Development Authority, the Food and Drug Administration, the Centers for Medicare & Medicaid Services, the Veterans Health Administration, and the Department of Defense.

''(2) CHAIR.—The Secretary shall appoint as the Chair of the Committee a non-voting, independent member who may not be a member of the

Committee or from an organization represented under paragraph (1).

''(3) CONSULTATION.—The Secretary shall consult with the Under Secretary of Veterans Affairs for Health and Secretary of Defense when appointing members from the Veterans Health Administration and the Department of Defense.

''(c) DUTIES.—Not later than 1 year after the appointment of all initial members of the Committee, the Secretary, in collaboration with the Committee, and in consultation with the Critical Need Antimicrobials Advisory Group established under subsection (g), shall do the following:

''(1) Develop a list of infections for which new antimicrobial drug development is needed, taking into account organisms, sites of infection, and type of infections for which there is an unmet medical need, findings from the most recent report entitled 'Antibiotic Resistance Threats in the United States' issued by the Centers for Disease Control and Prevention, or an anticipated unmet medical need, including a potential global health security threat. For the list developed under this paragraph, the Secretary, in collaboration with the Committee, may use the infection list in such most recent Antibiotic Re-

sistance Threats in the United States report for up to 3 years following the date of enactment of this part and subsequently update the list under this paragraph in accordance with subsection (e).

''(2) Develop regulations, for purposes of subsection (d), outlining favored characteristics of critical need antimicrobial drugs, that are evidence based, clinically focused, and designed to treat the infections described in paragraph (1), and establishing criteria for how each such characteristic or combinations of multiple characteristics will adjust the monetary value of a subscription contract awarded under subsection (f) or section 399OO–2. The favored characteristics shall be weighed for purposes of such monetary value of the subscription contract such that meeting certain characteristics, or meeting more than one such characteristic, increases the monetary value of the subscription contract. Such favored characteristics of an antimicrobial drug shall include—

''(A) treating infections on the list under paragraph (1);

''(B) improving clinical outcomes for patients with multi-drug-resistant infections;

"(C) being a first-approved antimicrobial drug that has the potential to address, or has the evidence of addressing, unmet medical needs for the treatment of a serious or life-threatening infection, and, to a lesser extent, second and third drugs that treat such infections;

"(D) route of administration, especially through oral administration;

"(E)(i) containing no active moiety (as defined by the Secretary in section 314.3 of title 21, Code of Federal Regulations (or any successor regulations)) that has been approved in any other application under section 505(b) of the Federal Food, Drug, and Cosmetic Act or intending to be the subject of a new biological product license application under section 351(a);

"(ii) being a member of a new class of drugs with a novel target or novel mode of action that are distinctly different from the target or mode of any antimicrobial drug approved under section 505 of such Act or licensed under section 351, including reduced toxicity; or

''(iii) not being affected by cross-resistance to any antimicrobial drug approved under such section 505 or licensed under such section 351;

''(F) addressing a multi-drug resistant infection through a novel chemical scaffold or mechanism of action;

''(G) having received a transitional subscription contract under subsection (f); and

''(H) any other characteristic the Committee or the Critical Need Antimicrobial Advisory Group established under subsection (g) determines necessary.

''(d) REGULATIONS.—

''(1) IN GENERAL.—Not later than 18 months after the appointment of the initial members of the Committee, the Secretary shall issue proposed regulations which shall include—

''(A) a process by which the sponsors can apply for an antimicrobial drug to become a critical need antimicrobial drug under section 399OO–1;

''(B) how subscription contracts under section 399OO–2 shall be established and paid;

''(C) the favored characteristics under subsection (c)(2), how such characteristics will be

weighed, and the minimum number and kind of favored characteristics needed for an antimicrobial drug to be designated a critical need antimicrobial drug; and

"(D) other elements of the subscription contract process, in accordance with this part.

"(2) DEVELOPMENT OF FINAL REGULATIONS.—Before finalizing the regulations under paragraph (1), the Secretary shall solicit public comment and hold public meetings for the period beginning on the date on which the proposed regulations are issued and ending on the date that is 150 days after such date of issuance. The Secretary shall finalize and publish such regulations not later than 150 days after the close of such period of public comment and meetings.

"(3) COMMITTEE RECOMMENDATIONS.—In issuing regulations under this subsection, the Secretary shall consider the recommendations of the Committee under subsection (c)(2).

"(e) LIST OF INFECTIONS.—The Secretary, in collaboration with the Committee, shall update the list of infections under subsection (c)(1) at least every 2 years following the development of the initial list under that subsection.

''(f) TRANSITIONAL SUBSCRIPTION CONTRACTS.—

''(1) IN GENERAL.—Not earlier than 30 days after the date of enactment of this part and ending on the date that the Secretary finalizes the regulations under subsection (d), the Secretary may use up to 10 percent of the amount appropriated under section 399OO–4(a) to engage in transitional subscription contracts of up to 5 years in length with antimicrobial developers, as determined by the Secretary, that have developed antimicrobial drugs treating infections listed in the most recent report entitled 'Antibiotic Resistance Threats in the United States' issued by the Centers for Disease Control and Prevention, and may include antimicrobial drugs that are qualified infectious disease products (as defined in section 505E(g) of the Federal Food, Drug, and Cosmetic Act), innovative biological products, or innovative drugs that achieve improved clinical outcomes. Such a contract may authorize the contractor to use funds made available under the contract for completion of postmarketing clinical studies, manufacturing, and other preclinical and clinical efforts.

''(2) REQUIREMENTS.—

''(A) IN GENERAL.—The Secretary, through the office described in paragraph (4),

may enter into a contract under paragraph (1)—

''(i) if the Secretary determines that the antimicrobial drug is intended to treat an infection for which there is an unmet clinical need, an anticipated clinical need, or drug resistance;

''(ii) subject to terms including—

''(I) that the Secretary shall cease any payment installments under a transitional subscription contract if the sponsor does not—

''(aa) ensure commercial availability of the antimicrobial drug within 30 days of receiving first payment under the contract;

''(bb) identify, track, and publicly report drug resistance data, and trends using available data related to the antimicrobial drug;

''(cc) develop and implement education and communications strategies, including communications for individuals with limited

English proficiency and individuals with disabilities, for health care professionals and patients about appropriate use of the antimicrobial drug;

''(dd) submit a plan for registering the antimicrobial drug in additional countries where an unmet medical need exists, which such plan may be consistent with the Stewardship and Access Plan (SAP) Development Guide (2021);

''(ee) subject to subparagraph (B), ensure a reliable drug supply chain, thus leading to an interruption of the supply of the antimicrobial drug in the United States for more than 60 days; or

''(ff) make meaningful progress toward completion of Food and Drug Administration-required postmarketing studies, including such studies that are evidence based; and

"(II) other terms as determined by the Secretary; and

"(iii) if—

"(I) a phase 3 clinical study has been initiated for the antimicrobial drug; or

"(II) the antimicrobial drug has been approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act or licensed under section 351(a).

"(B) WAIVER.—The requirement under subparagraph (A)(ii)(I)(ee) may be waived in the case that an emergency prohibits access to a reliable drug supply chain.

"(3) TRANSITIONAL GUIDANCE.—Not later than 120 days after the appointment of the initial members of the Committee, the Secretary shall issue, in consultation with the Committee, transitional guidance outlining the characteristics of antimicrobial drugs that are eligible for transitional subscription contracts under paragraph (1), the requirements to enter into a transitional subscription contract under paragraph (2), and the process by which drug developers can enter into transitional subscrip-

tion contracts with the Secretary under this subsection.

''(4) PAYMENT OFFICE AND MECHANISM.—Not later than 30 days after the date of enactment of this part, the Secretary shall establish within the Administration for Strategic Preparedness and Response an office to manage the transitional subscription contracts, including eligibility, requirements, and contract amounts, during the period described in paragraph (1).

''(g) CRITICAL NEED ANTIMICROBIAL ADVISORY GROUP.—

''(1) IN GENERAL.—Not later than 30 days after the appointment of all initial members of the Committee, the Secretary, in collaboration with the Committee, shall establish a Critical Need Antimicrobial Advisory Group (referred to in this subsection as the 'Advisory Group') and appoint members to the Advisory Group.

''(2) MEMBERS.—The members of the Advisory Group shall include—

''(A) not fewer than 6 individuals who are—

''(i) infectious disease specialists; or

''(ii) other health experts with expertise in researching antimicrobial resistance, health economics, or commercializing antimicrobial drugs; and

''(B) not fewer than 5 patient advocates.

''(3) CHAIR.—The Secretary shall appoint as Chair of the Advisory Group a non-voting, independent member who may not be a member represented under paragraph (2).

''(4) CONFLICTS OF INTEREST.—In appointing members under paragraph (2) and a Chair under paragraph (3), the Secretary shall ensure that no member receives compensation in any manner from a commercial or for-profit entity that develops antimicrobials or that might benefit from antimicrobial development.

''(5) APPLICABILITY OF FACA.—Except as otherwise provided in this subsection, chapter 10 of title 5, United States Code, (commonly known as the Federal Advisory Committee Act) shall apply to the Advisory Group.

''SEC. 399OO–1. DESIGNATION OF ANTIMICROBIAL DRUG AS CRITICAL NEED ANTIMICROBIAL DRUG.

''(a) IN GENERAL.—

''(1) SUBMISSION OF REQUEST.—The sponsor of an application under section 505(b) of the Federal Food, Drug, and Cosmetic Act or section 351(a) for an antimicrobial drug may request that the Secretary designate the drug as a critical need antimicrobial. A request for such designation may be submitted after the Secretary grants for such drug an investigational new drug exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act or section 351(a)(3), and shall be submitted not later than 5 years after the date of approval under section 505(c) of the Federal Food, Drug, and Cosmetic Act or licensure under section 351(a).

''(2) CONTENT OF REQUEST.—A request under paragraph (1) shall include information, such as clinical, preclinical, and postmarketing data, a list of the favorable characteristics described in section 399OO(c)(2), and any other material that the Secretary in consultation with the Committee requires.

''(3) REVIEW BY SECRETARY.—The Secretary shall promptly review all requests for designation submitted under this subsection, assess all required application components, and determine if the antimicrobial drug is likely to meet the favorable characteristics identified in the application upon the com-

pletion of clinical development. After review, the Secretary shall approve or deny each request for designation not later than 90 days after receiving a request. If the Secretary approves a request, it shall publish the value of the contract that the critical need antimicrobial developer would be eligible to receive if such developer successfully demonstrates that the drug meets the maximum value of the favored characteristics listed in the application.

''(4) LENGTH OF DESIGNATION PERIOD.—A designation granted under this section shall be in effect for a period of 10 years after the date that the designation is approved, and shall remain in effect for such period even if the infection treated by such drug is later removed from the list of infections under section 399OO(c)(1).

''(5) SUBSEQUENT REVIEWS.—Not earlier than 2 years after a designation approval or denial under paragraph (3), the sponsor may request a subsequent review to re-evaluate the value of a contract to include any new information.

''(b) DEVELOPMENT OF DESIGNATED DRUGS.—If a critical need antimicrobial designation is granted during clinical development of an antimicrobial drug, the Secretary may work with the sponsor to maximize the oppor-

tunity for the sponsor to successfully demonstrate that the antimicrobial drug possesses the favored characteristics identified under section 399OO(c)(2).

''(c) APPROPRIATE USE OF CRITICAL NEED ANTIMICROBIAL.—

''(1) IN GENERAL.—The sponsor of an antimicrobial drug that receives designation under subsection (a) shall, within 90 days of such designation, submit to the Secretary a plan for appropriate use of diagnostics, in order for the Secretary and Committee to consider such plan in developing clinical guidelines. An appropriate use plan—

''(A) shall include—

''(i) the appropriate use of the drug; and

''(ii) the appropriate use of diagnostic tools, where available, or a plan to coordinate development of diagnostic tools as necessary; and

''(B) may be developed in partnership with the Secretary, infectious disease experts, diagnostic experts or developers, laboratory experts, or another entity.

''(2) CONSULTATION.—The Secretary shall consult with relevant professional societies and the Crit-

ical Need Antimicrobial Advisory Group established under section 399OO(g) to ensure that clinical guidelines issued by the Secretary under paragraph (3), with respect to an antimicrobial drug designated under subsection (a), includes the use of appropriate diagnostic approaches, taking into consideration the diagnostic plan submitted by a sponsor under paragraph (1).

"SEC. 399OO–2. ESTABLISHMENT OF SUBSCRIPTION CONTRACT OFFICE; SUBSCRIPTION CONTRACTS.

''(a) SUBSCRIPTION CONTRACT OFFICE.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this part, the Secretary shall establish within the Administration for Strategic Preparedness and Response an office, to be known as the 'Subscription Contract Office', the head of which shall be the Director (referred to in this section as the 'Director').

''(2) PURPOSE.—The purpose of the Office established under paragraph (1) shall be to manage the establishment and payment of subscription contracts awarded under this section, including eligibility, requirements, and contract amounts.

''(b) APPLICATION FOR A SUBSCRIPTION CONTRACT.—

''(1) SUBMISSION OF APPLICATIONS.—After approval under section 505(c) of the Federal Food, Drug, and Cosmetic Act or licensure under section 351(a), the sponsor of an antimicrobial drug designated as a critical need antimicrobial under section 399OO–1 may submit an application for a subscription contract to the Director, under a procedure established by the Director.

''(2) REVIEW OF APPLICATIONS.—The Director, in consultation with the Committee, shall—

''(A) review all applications for subscription contracts under paragraph (1) and assess all required application components;

''(B) determine the extent to which the critical need antimicrobial drug covered by the application meets the favored characteristics identified under section 399OO(c)(2); and

''(C) deny any application for a drug that does not meet the minimum number and kind of favored characteristics needed for the drug to be designated as a critical need antimicrobial based on the regulations issue under section 399OO(d).

''(c) REQUIREMENTS.—As a condition of entering into a subscription contract under this section, the sponsor

of the critical need antimicrobial drug covered by the application shall agree to—

''(1) ensure commercial availability of the antimicrobial drug within 30 days of receiving first payment under the contract, and sufficient supply for susceptibility device manufacturers;

''(2) identify, track, and publicly report drug resistance data, and trends using available data related to the antimicrobial drug;

''(3) develop and implement education and communications strategies, including communications for individuals with limited English proficiency and individuals with disabilities, for health care professionals and patients about appropriate use of the antimicrobial drug;

''(4) submit an appropriate use assessment to the Secretary, the Committee, the Administrator of the Food and Drug Administration, and the Director of the Centers for Disease Control and Prevention every 2 years regarding use of the antimicrobial drug, including how the drug is being marketed;

''(5) submit a plan for registering the drug in additional countries where an unmet medical need exists;

''(6) ensure a reliable drug supply chain, where any interruption to the supply chain will not last for more than 60 days in the United States;

''(7) complete any postmarketing studies required by the Food and Drug Administration in a timely manner;

''(8) produce the drug at a reasonable volume determined with the Director to ensure patient access to the drug;

''(9) abide by the manufacturing and environmental best practices in the supply chain for the control of discharge of antimicrobial active pharmaceutical ingredients to ensure minimal discharge into, or contamination of, the environment by antimicrobial agents or products as a result of the manufacturing process; and

''(10) abide by such other terms as the Director may require.

''(d) MONETARY VALUE.—

''(1) IN GENERAL.—The Director, in consultation with the Committee, shall assign a monetary value to each subscription contract under this section based on the regulations developed under section 399OO(d).

''(2) CONSIDERATIONS.—In assigning a monetary value to a subscription contract under paragraph (1), the Director shall take into account the favored characteristic or combination of favored characteristics of the drug covered by the contract, as determined by the Director, in consultation with the Committee, under subsection (b)(2)(B).

''(e) AMOUNT OF CONTRACTS.—

''(1) IN GENERAL.—A subscription contract under this section shall be for the sale to the Secretary of any quantity of the antimicrobial drug covered by the contract needed over the term of the contract, at a price agreed on by the sponsor and the Director, based on the monetary value assigned to the contract under subsection (d).

''(2) MINIMUM AND MAXIMUM AMOUNT.—The total projected amount to be paid by the Director under a subscription contract under this section shall be not less than $750,000,000 and not more than $3,000,000,000, adjusted for inflation.

''(f) TERM.—

''(1) INITIAL TERM.—The initial term of a subscription contract under this section shall be—

''(A) not less than 5 years; and

''(B) not greater than the greater of—

''(i) 10 years; and

''(ii) the remaining period of time during which the sponsor has patent protections or a remaining exclusivity period with respect to the antimicrobial drug in the United States, as listed in the publication of the Food and Drug Administration entitled 'Approved Drug Products with Therapeutic Equivalence Evaluations'.

''(2) EFFECT.—A subscription contract shall remain in effect for the period described in paragraph (1) even if the infection treated by the antimicrobial drug covered by the subscription contract is later removed from the list of infections under section 399OO(c)(1).

''(3) EXTENSION OF CONTRACTS.—The Director may extend a subscription contract with a sponsor under this subsection beyond the initial contract period. A single contract extension may be in effect not later than the date on which all periods of exclusivity granted by the Food and Drug Administration expire and shall be in an amount not to exceed $25,000,000 per year. All other terms of an extended contract shall be the same as the terms of the initial contract. The total amount of funding

used on such contract extensions shall be no more than $1,000,000,000, and shall be allocated from the amount made available under section 399OO–4(a).

''(4) MODIFICATION OF CONTRACTS.—The Director or sponsor, 1 year after the start of the contract period under this subsection and every 2 years thereafter, may request a modification of the amount of the contract based on information that adjusts favored characteristics in section 399OO(c)(2).

''(g) PAYMENTS.—

''(1) IN GENERAL.—Not later than 180 days after the date on which a subscription contract is granted under subsection (a), the Director shall provide payments for drugs purchased under the contract in installments established by the Director, in consultation with the sponsor of the antimicrobial drug and in accordance with subsection (j).

''(2) TIMING OF PAYMENTS.—The Director—

''(A) may make payments under paragraph (1) in equal annual installments; and

''(B) shall not make such payments more frequently than twice per year.

''(3) OPTION.—The sponsor shall have the option to receive 50 percent of the payment amount due in the last year of the contract during the first year of the contract in order to offset costs of establishing manufacturing capacity.

''(4) FUNDING.—Payments under this subsection shall be allocated from the amount made available under section 399OO–4(a).

''(5) ADJUSTMENT.—In the case of an antimicrobial drug that received a transitional subscription contract under section 399OO(f), the amount of a subscription contract for such drug under this section shall be reduced by the amount of the transitional subscription contract under such section 399OO(f) for such drug.

''(h) USE OF CONTRACT FUNDS.—Funds received by the sponsor under a subscription contract under this section shall be used—

''(1) to meet the requirements described in subsection (c); and

''(2) to support the completion of postmarketing clinical studies, manufacturing, other preclinical and clinical activities, or other activities agreed to by the Director and sponsor in the contract.

''(i) CONTRACTS FOR GENERIC AND BIOSIMILAR VERSIONS.—Notwithstanding any other provision of this part, the Director may award a subscription contract under this section to a manufacturer of a generic or biosimilar version of an antimicrobial drug for which a subscription contract has been awarded under this section. Such contracts shall be awarded in accordance with a procedure, including for determining the terms and amounts of such contracts, established by the Director.

''(j) ANTIMICROBIAL DRUG SPONSOR REVENUE LIMITATIONS.—

''(1) REQUIREMENT.—

''(A) IN GENERAL.—With respect to a payment installment under a subscription contract entered into under this section, the net revenue from sales of the applicable antimicrobial drug for beneficiaries or enrollees in Federal health care programs during the period covered by the payment installment shall be subtracted from the payment installment.

''(B) PAYMENT.—The amount calculated under subparagraph (A) shall be paid by the Secretary to the relevant Federal health care program (or its trust fund) at the time of the applicable installment payment.

''(C) COORDINATION.—The Director shall coordinate with the relevant agencies of the Federal Government, including the Centers for Medicare and Medicaid Services, to carry out this subsection in a manner that ensures minimal disruption to how a health care provider currently acquires applicable antimicrobial drugs.

''(2) REGULATIONS.—

''(A) IN GENERAL.—To carry out this subsection, the Secretary shall promulgate regulations to identify the Federal health care programs applicable under this section, including Medicare part A and Medicaid, and to establish the methodology and data collection requirements necessary to calculate the amount under paragraph (1)(A).

''(B) METHODOLOGY.—Any methodology established for the collection of data and calculation of the amount under paragraph (1)(A) shall take into account any legally mandated or voluntary discounts and rebates provided by the manufacturer of the applicable antimicrobial drug to the Federal health care programs that pay for such drug, on the condition that the

Secretary may presume that discounts not described in subclauses (I) and (II) of subparagraph (C)(ii) are captured in the price determined under subparagraph (C)(i)(II).

''(C) ESTIMATING ANNUAL NET REVENUE.—

''(i) IN GENERAL.—In determining the net revenue from sales of the applicable antimicrobial drug for beneficiaries or enrollees in Federal health care programs for the purpose of calculating the amount under paragraph (1)(A), the Secretary shall determine such net revenue amount by multiplying—

''(I) the total number of billing units of such antimicrobial drugs reported under the process described in subparagraph (D)(ii) for the applicable payment installment period; by

''(II) the average sales price (as defined in section 1847A(c) of the Social Security Act), the average manufacturer price (as defined in section 1927(k)(1) of the Social Security Act), or another pricing metric used

in Federal health care programs, for such antimicrobial drugs.

''(ii) REQUIREMENT.—The Secretary shall adjust the amount determined under clause (i)(II) to account for—

''(I) rebates, discounts, add-on payments, or other adjustments provided under—

''(aa) section 340B; or

''(bb) section 1927 of the Social Security Act; or

''(II) negotiated price concessions described in section 1860D–2(d)(1)(B) of the Social Security Act that are not captured in the applicable price.

''(D) CODING.—

''(i) IN GENERAL.—In promulgating regulations under subparagraph (A), the Secretary shall, as appropriate, establish and assign codes, under existing or new coding systems, to identify units of the applicable antimicrobial drug for beneficiaries or enrollees in Federal health care programs.

"(ii) CODING USE REQUIREMENTS.—In promulgating regulations under subparagraph (A), the Secretary shall require hospitals (or other providers or suppliers) that administer applicable antimicrobial drugs in the inpatient or outpatient setting to report on their claims to such Federal health care programs the billing units of such antimicrobial drugs used in the care of beneficiaries or enrollees in each Federal health care program, regardless of whether payment for those units are separately reimbursed.

"(3) DEFINITIONS.—In this subsection:

"(A) APPLICABLE ANTIMICROBIAL DRUG.—The term 'applicable antimicrobial drug' means an antimicrobial drug for which the sponsor of such drug receives a subscription contract under subsection (a).

"(B) FEDERAL HEALTH CARE PROGRAM.—The term 'Federal health care program' has the meaning given such term in section 1128B(f) of the Social Security Act, except that, for purposes of this subsection, such term includes the

health insurance program under chapter 89 of title 5, United States Code.

''(k) FAILURE TO ADHERE TO TERMS.—The Secretary shall cease any payment installments under a contract under this section if—

''(1) the sponsor—

''(A) permanently withdraws the antimicrobial drug from the market in the United States;

''(B) fails to meet the requirements described in subsection (c); or

''(C) does not complete a postmarket study required by the Food and Drug Administration during the term of the contract;

''(2) the annual international and private insurance market revenues with respect to an antimicrobial drug (not counting any subscription revenues from any source pursuant to a contract under this section or other international or private entities) exceed 5 times the average annual amount of the subscription contract paid by the Secretary as certified by the sponsor annually; or

''(3) if the total revenue of the sponsor from government programs that pay for drugs subject to a contract agreement entered into pursuant to this

section for a year exceeds the amount of the subscription contract paid by the Secretary for that year.

''(l) PRIVATE PAYER AND INTERNATIONAL PAYER PARTICIPATION.—The Secretary shall make efforts to increase the participation of domestic private payors and international payors in subscription contracts or other types of value-based arrangements that are similar to the subscription contracts authorized under this section.

''(m) EFFECT.—Nothing in this section permits the Secretary to use evidence from comparative clinical effectiveness research in a manner that treats extending the life of an elderly, disabled, or terminally ill individual as of lower value than extending the life of an individual who is younger, nondisabled, or not terminally ill in determining the value of an antimicrobial drug or a subscription contract (or a transitional subscription contract), including in such a way that would limit patient access.

''SEC. 399OO–3. ENCOURAGING APPROPRIATE USE OF ANTIMICROBIALS AND COMBATING RESISTANCE.

''(a) ESTABLISHMENT OF HEALTH FACILITY GRANT PROGRAM.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this part, the Secretary

shall establish a grant program under the Centers for Disease Control and Prevention to support hospital, skilled nursing facility, and other health care facility efforts—

"(A) to judiciously use antimicrobial drugs, such as by establishing or implementing appropriate use programs, including infectious disease telehealth programs, using appropriate diagnostic tools, partnering with academic hospitals, increasing health care-associated infection reporting and prevention efforts, and monitoring antimicrobial resistance; and

"(B) to participate in the National Healthcare Safety Network Antimicrobial Use and Resistance Module or the Emerging Infections Program Healthcare-Associated Infections Community Interface activity of the Centers for Disease Control and Prevention or a similar reporting program, as specified by the Secretary, relating to antimicrobial drugs.

"(2) PRIORITIZATION.—In awarding grants under paragraph (1), the Secretary shall prioritize health care facilities without an existing program to judiciously use antimicrobial drugs, subsection (d) hospitals (as defined in subparagraph (B) of section

1886(d)(2) of the Social Security Act that are located in rural areas (as defined in subparagraph (D) of such section), critical access hospitals (as defined in section 1861(mm)(1) of such Act), hospitals serving Tribal-populations, and safety-net hospitals.

''(b) SURVEILLANCE AND REPORTING OF ANTIMICROBIAL USE AND RESISTANCE.—

''(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall use the National Healthcare Safety Network and other appropriate surveillance systems to assess trends in antimicrobial resistance and antibiotic and antifungal use, such as—

''(A) appropriate conditions and measures causally related to antimicrobial resistance, including types of infections, the source or body sites of infections, the demographic information of patients with infections, and infection onset in a community or hospital setting, increased lengths of hospital stay, increased costs, and rates of mortality; and

''(B) changes in bacterial and fungal resistance to antimicrobial drugs, including changes in percent resistance, prevalence of

antimicrobial-resistant infections, rates of mortality, and other such changes.

''(2) ANTIMICROBIAL USE DATA.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall obtain reliable and comparable human antibiotic and antifungal drug consumption data (including, as available and appropriate, volume antimicrobial distribution data and antibiotic and antifungal use data, including prescription data) by State or metropolitan areas. To accomplish this, the Centers for Disease Control and Prevention may work with, as appropriate, Federal departments and agencies (including the Department of Veterans Affairs, the Department of Defense, the Department of Homeland Security, the Bureau of Prisons, the Indian Health Service, and the Centers for Medicare & Medicaid Services), private vendors, health care organizations, pharmacy benefit managers, and other entities.

''(3) ANTIMICROBIAL RESISTANCE TREND DATA.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall intensify and expand efforts to collect antimicrobial resistance data and encourage adoption of the Antibiotic Use and Resistance Module within the

National Healthcare Safety Network among all health care facilities across the continuum of care, including, as appropriate, acute care hospitals, dialysis facilities, nursing homes, ambulatory surgical centers, and other ambulatory health care settings in which antimicrobial drugs are routinely prescribed. The Secretary shall seek to collect such data from electronic medication administration reports and laboratory systems to produce the reports described in paragraph (4).

''(4) PUBLIC AVAILABILITY OF DATA.—Beginning on the date that is 2 years after the date of enactment of this part, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall, for the purposes of improving the monitoring of important trends in antimicrobial use and resistance, and, as appropriate, patient outcomes in relation to antimicrobial resistance—

''(A) make the data described under this subsection publicly available through reports and web updates issued on a regular basis that is not less than annually; and

''(B) examine opportunities to make such data available in near real time.

''(c) PUBLICATION OF CLINICAL GUIDELINES.—Not later than 1 year after the date the Secretary makes the first designation under section 399OO–1(a), and not less than every 3 years thereafter, the Secretary shall publish at least one update to clinical guidelines in consultation with relevant professional societies. As appropriate, guideline updates shall include each antimicrobial drug that has been approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act or licensed under section 351(a) and that has been designated under section 399OO–1(a), which guidelines shall set forth the evidence-based recommendations for prescribing the drug for the relevant infection time, in accordance with the available evidence after consultation under section 399OO–1(c)(2), as appropriate.

''(d) FUNDING.—The Secretary may use not more than 5 percent of the amounts appropriated under section 399OO–4(a) to carry out this section.

''SEC. 399OO–4. APPROPRIATIONS.

''(a) IN GENERAL.—To carry out this part, there are hereby appropriated to the Secretary, out of amounts in the Treasury not otherwise appropriated, $6,000,000,000 for fiscal year 2024, to remain available until expended.

''(b) EMERGENCY DESIGNATION.—

''(1) IN GENERAL.—The amounts provided by this section are designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010.

''(2) DESIGNATION IN SENATE.—In the Senate, this section is designated as an emergency requirement pursuant to section 4112(a) of H. Con. Res. 71 (115th Congress), the concurrent resolution on the budget for fiscal year 2018.

''SEC. 399OO–5. STUDIES AND REPORTS.

''(a) IN GENERAL.—Not later than 6 years after the date of enactment of this part, the Comptroller General of the United States shall complete a study on the effectiveness of this part in developing priority antimicrobial drugs. Such study shall examine the indications for, usage of, development of resistance with respect to, and private and societal value of critical need antimicrobial drugs, and the impact of the programs under this part on markets of critical need antimicrobial drugs. The Comptroller General shall report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives on the findings of such study.

''(b) ANTIBIOTIC USE IN THE UNITED STATES; ANNUAL REPORTS.—The Director of the Centers for Disease

Control and Prevention shall, each year, update the report entitled 'Antibiotic Use in the United States' to include updated information on progress and opportunities with respect to data, programs, and resources for prescribers to promote appropriate use of antimicrobial drugs.

''(c) REPORT ON ANTIMICROBIAL PROPHYLACTICS.—Not later than 3 years after the date of enactment of this part, the Director of the Centers for Disease Control and Prevention shall publish a report on antimicrobial prophylactics.

''SEC. 399OO–6. DEFINITIONS.

''In this part—

''(1) the term 'antimicrobial drug'—

''(A) means, subject to subparagraph (B), a product that is—

''(i) a drug that directly inhibits replication of or kills bacteria or fungi, or acts on the substances produced by such bacteria or fungi, relevant to the proposed indication at concentrations likely to be attainable in humans to achieve the intended therapeutic effect; or

''(ii) a biological product that acts directly on bacteria or fungi or on the sub-

stances produced by such bacteria or fungi; and

"(B) does not include—

"(i) a drug that achieves the effect described by subparagraph (A)(i) only at a concentration that cannot reasonably be studied in humans because of its anticipated toxicity; or

"(ii) a vaccine; and

"(2) the term 'Committee' means the Committee on Critical Need Antimicrobials established under section 399OO(a).".

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