

# SENATE BILL 437

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By: **Senators Conway, Astle, Benson, Currie, Ferguson, Guzzone, Kelley, King, Lee, Madaleno, Manno, Mathias, McFadden, Muse, Nathan-Pulliam, Peters, Pinsky, Ramirez, Robinson, Rosapepe, Smith, Young, and Zucker**

Introduced and read first time: January 30, 2017

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Expensive Drugs – Manufacturer Reporting and Drug Price**  
3 **Transparency Advisory Committee**

4 FOR the purpose of requiring, on or before a certain date each year, the manufacturer of  
5 an expensive drug sold or offered for sale in the State to file with the Secretary of  
6 Health and Mental Hygiene a certain annual report; requiring that the annual report  
7 include certain categories of information; requiring the manufacturer to identify the  
8 information in a certain manner, provide certain documentation, have the  
9 information audited by a certain auditor, and include information for a certain year;  
10 providing that a certain annual report constitutes public information; prohibiting a  
11 custodian from denying inspection under the Public Information Act of a certain  
12 annual report or part of the report, or a certain notice or part of the notice; requiring  
13 the Secretary to post each annual report on a certain Web site; requiring the  
14 Secretary, in consultation with the Drug Price Transparency Advisory Committee,  
15 to adopt certain regulations; requiring the Secretary to publish a certain report on  
16 or before a certain date in certain years; requiring the Secretary to provide a copy of  
17 a certain report to the Governor and the General Assembly and post a copy on a  
18 certain Web site; establishing certain penalties; authorizing the Attorney General,  
19 under certain circumstances, to seek a certain court order in a certain court;  
20 requiring the Attorney General to serve a certain notice on a certain manufacturer  
21 at least a certain number of days before seeking the order; providing that the  
22 Attorney General is entitled to recover certain fees and costs under certain  
23 circumstances; establishing the Drug Price Transparency Advisory Committee;  
24 providing for the composition and chair of the Committee; prohibiting a member of  
25 the Committee from being affiliated with a manufacturer of an expensive drug or  
26 having any other conflict of interest relating to the duties of the Committee;  
27 specifying the duties of the Committee; requiring the Secretary to adopt certain  
28 regulations regarding the Committee; providing for the application of certain  
29 provisions of this Act; requiring a manufacturer of an expensive drug to file a notice

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 with the Secretary before increasing a certain price or a certain cost by more than a  
2 certain percentage or amount during certain periods of time; requiring that the  
3 notice be filed at least a certain number of days before the increase takes effect, be  
4 in writing, and state certain information; requiring the Secretary, within a certain  
5 time period, to post the notice on a certain Web site and send certain electronic notice  
6 to certain purchasers and the State Board of Pharmacy; requiring the Secretary to  
7 establish a process through which a purchaser may request to receive a certain  
8 notice; defining certain terms; and generally relating to expensive drugs.

9 BY adding to

10 Article – Health – General  
11 Section 21–228, 21–229, and 21–229.1  
12 Annotated Code of Maryland  
13 (2015 Replacement Volume and 2016 Supplement)

14 Preamble

15 WHEREAS, Name brand and specialty drug costs rose over 12% in 2014, which is  
16 nearly double the cost increase in any other health care category; and

17 WHEREAS, Drug costs are a major cause of higher health insurance premiums each  
18 year; and

19 WHEREAS, In 2013, the U.S. health care system spent more than \$80 billion on  
20 specialty drugs alone, which cost on average 37 times more than traditional drugs and  
21 represent 31% of total drug spending, and these costs are projected to increase to 44% of  
22 overall drug spending by 2017; and

23 WHEREAS, Certain drug manufacturers, exploiting insufficient competition in the  
24 market for certain essential generic drugs that had long been available to consumers at an  
25 affordable price, have in recent years imposed unconscionable price increases, impeding  
26 access to these drugs and putting patients and public health at risk; and

27 WHEREAS, Disclosure of drug development costs and marketing expenditures by  
28 drug manufacturers will foster transparency for consumers and public and private health  
29 insurers and create accountability on the part of drug manufacturers to deliver a fair return  
30 on public investment in their products; and

31 WHEREAS, Consumers and policymakers deserve more information on drug costs  
32 and cost increases to inform solutions that may help lower health care costs to consumers;  
33 and

34 WHEREAS, Requiring drug corporations to disclose the basis for the prices of their  
35 prescription drugs and to notify the public about substantial increases in prices would  
36 create accountability on the part of drug manufacturers and help to stem the increase in  
37 health care costs, which is harming individual consumers and the entire national economy;  
38 and

1 WHEREAS, The entire national health care system is at risk if drug costs are not  
2 stabilized; now, therefore,

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
4 That the Laws of Maryland read as follows:

5 **Article – Health – General**

6 **21–228.**

7 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**  
8 **INDICATED.**

9 **(2) “AVERAGE WHOLESAL PRICE” MEANS THE MEDI–SPAN AVERAGE**  
10 **WHOLESAL COST BASED ON THE ACTUAL ELEVEN–DIGIT NATIONAL DRUG CODE**  
11 **DISPENSED AS OF THE FILL DATE OF THE EXPENSIVE DRUG THAT:**

12 **(I) IS SUBMITTED BY THE DISPENSING PHARMACY; AND**

13 **(II) IS USED TO FILL THE PRESCRIPTION FOR THE EXPENSIVE**  
14 **DRUG.**

15 **(3) “EXPENSIVE DRUG” MEANS A PRESCRIPTION DRUG THAT:**

16 **(I) A MANUFACTURER MAKES AVAILABLE IN THE STATE; AND**

17 **(II) HAS A WHOLESAL ACQUISITION COST OF \$2,500 OR MORE**  
18 **ANNUALLY OR PER COURSE OF TREATMENT.**

19 **(4) “FDA” MEANS THE FEDERAL FOOD AND DRUG ADMINISTRATION.**

20 **(5) “MANUFACTURER” MEANS A PERSON THAT:**

21 **(I) IS AUTHORIZED BY THE FDA TO MARKET AND SELL AN**  
22 **EXPENSIVE DRUG IN THE UNITED STATES AS AN ORIGINATOR OR A LICENSEE; OR**

23 **(II) DIRECTLY OR INDIRECTLY, THROUGH ONE OR MORE**  
24 **INTERMEDIARIES, CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL**  
25 **WITH A PERSON DESCRIBED IN ITEM (I) OF THIS PARAGRAPH.**

26 **(6) “THERAPEUTIC CLASS” MEANS A THERAPEUTIC CATEGORY OR**  
27 **CLASS OF DRUGS ESTABLISHED BY THE UNITED STATES PHARMACOPEIA THAT**

1 REFLECTS THERAPEUTIC USES OF DRUGS BASED ON THE INTERNATIONAL  
2 CLASSIFICATION OF DISEASES DIAGNOSTIC CODES.

3 (7) "WHOLESALE ACQUISITION COST" HAS THE MEANING STATED IN  
4 42 U.S.C. § 1395W-3A.

5 (B) ON OR BEFORE MARCH 31 EACH YEAR, THE MANUFACTURER OF AN  
6 EXPENSIVE DRUG SOLD OR OFFERED FOR SALE IN THE STATE SHALL FILE WITH THE  
7 SECRETARY AN ANNUAL REPORT IN ACCORDANCE WITH THIS SECTION.

8 (C) THE ANNUAL REPORT SHALL INCLUDE THE FOLLOWING CATEGORIES  
9 OF INFORMATION REGARDING THE EXPENSIVE DRUG:

10 (1) RESEARCH AND DEVELOPMENT COSTS, INCLUDING THE TOTAL  
11 RESEARCH AND DEVELOPMENT COSTS FOR THE EXPENSIVE DRUG:

12 (I) INCURRED BY THE MANUFACTURER;

13 (II) INCURRED BY ANY PREDECESSOR TO THE MANUFACTURER;

14 (III) INCURRED BY ANY OTHER PERSON; AND

15 (IV) PAID BY OR THROUGH GOVERNMENTAL GRANTS OR OTHER  
16 GOVERNMENT FINANCIAL ASSISTANCE;

17 (2) INTELLECTUAL PROPERTY RIGHTS, APPROVALS, AND  
18 ASSOCIATED REGULATORY COSTS, INCLUDING:

19 (I) A LIST OF ALL PRODUCT AND PROCESS PATENTS AND ALL  
20 DATA MARKET AND EXCLUSIVITY AWARDED BY THE U.S. PATENT AND TRADEMARK  
21 OFFICE FOR THE EXPENSIVE DRUG;

22 (II) ALL REVERSE PAYMENT PATENT SETTLEMENTS INVOLVING  
23 THE EXPENSIVE DRUG; AND

24 (III) ALL REGULATORY COSTS PAID BY THE MANUFACTURER OR  
25 ITS PREDECESSORS IN OBTAINING THE RIGHTS AND APPROVALS, INCLUDING FDA  
26 USER AND FILING FEES AND FEES RELATED TO THE FILING OF PATENTS;

27 (3) MANUFACTURING, PRODUCTION, MARKETING, AND ADVERTISING  
28 COSTS, INCLUDING:

1           **(I) THE TOTAL ANNUAL AND CUMULATIVE ITEMIZED COSTS**  
2 **FOR THE MANUFACTURER TO PRODUCE THE EXPENSIVE DRUG SINCE THE**  
3 **MANUFACTURER BEGAN PRODUCING THE EXPENSIVE DRUG;**

4           **(II) THE MANUFACTURER'S TOTAL DIRECT COSTS FOR**  
5 **MATERIALS, MANUFACTURING, AND ADMINISTRATION ATTRIBUTABLE TO THE**  
6 **EXPENSIVE DRUG; AND**

7           **(III) ALL MARKETING AND ADVERTISING COSTS FOR THE**  
8 **PROMOTION OF THE EXPENSIVE DRUG DIRECTLY TO CONSUMERS, INCLUDING:**

9                   **1. COSTS ASSOCIATED WITH CONSUMER CO-PAY**  
10 **COUPONS AND AMOUNTS REDEEMED; AND**

11                   **2. MARKETING AND ADVERTISING COSTS FOR THE**  
12 **PROMOTION OF THE EXPENSIVE DRUG DIRECTLY OR INDIRECTLY TO PRESCRIBERS;**

13           **(4) PRICES OF THE EXPENSIVE DRUG AND RETURNS FROM SALES,**  
14 **INCLUDING:**

15           **(I) THE TOTAL REVENUES FROM SALES IN THE STATE AND IN**  
16 **THE UNITED STATES, LISTED SEPARATELY, FOR EACH OF THE IMMEDIATELY**  
17 **PRECEDING 5 CALENDAR YEARS; AND**

18           **(II) A CUMULATIVE MONTHLY HISTORY OF INCREASES IN THE**  
19 **AVERAGE WHOLESALE PRICE OR WHOLESALE ACQUISITION COST OF THE**  
20 **EXPENSIVE DRUG FOR THE IMMEDIATELY PRECEDING 5 CALENDAR YEARS,**  
21 **INCLUDING EACH MONTH IN WHICH AN INCREASE IN AVERAGE WHOLESALE PRICE**  
22 **OR WHOLESALE ACQUISITION COST TOOK EFFECT;**

23           **(5) THE MANUFACTURER'S FEDERAL, STATE, AND LOCAL INCOME**  
24 **TAX RATES, GOVERNMENTAL BENEFITS, AND CREDITS, INCLUDING:**

25                   **(I) THE FEDERAL, STATE, AND ANY APPLICABLE LOCAL**  
26 **INCOME TAX RATE PAID BY THE MANUFACTURER;**

27                   **(II) THE TOTAL AMOUNT PAID BY ANY PERSON OTHER THAN**  
28 **THE MANUFACTURER FOR MATERIALS, MANUFACTURING, MARKETING,**  
29 **ADVERTISING, ADMINISTRATION, AND OTHER COSTS ATTRIBUTABLE TO THE**  
30 **EXPENSIVE DRUG, INCLUDING ANY FEDERAL, STATE, AND LOCAL TAX CREDITS OR**  
31 **SUBSIDIES, TAX DEDUCTIONS, GRANTS, OR OTHER SUPPORT RECEIVED OR**  
32 **DEFERRED; AND**

1 (III) ALL INCOME FROM ANY SOURCE FROM ANY OF THE  
2 FOLLOWING ACTIVITIES UNDERTAKEN IN A FOREIGN COUNTRY BY OR ON BEHALF  
3 OF THE MANUFACTURER OF AN EXPENSIVE DRUG:

4 1. RESEARCHING, DEVELOPING, MANUFACTURING, OR  
5 PRODUCING THE EXPENSIVE DRUG;

6 2. THE SALE, EXCHANGE, OR OTHER DISPOSITION OF  
7 THE EXPENSIVE DRUG; OR

8 3. THE LEASE, RENTAL, OR LICENSING OF THE  
9 EXPENSIVE DRUG;

10 (6) FINANCIAL ASSISTANCE PROVIDED TO PATIENTS, INCLUDING:

11 (I) THE TOTAL AMOUNT OF FINANCIAL ASSISTANCE TO  
12 PATIENTS THAT THE MANUFACTURER HAS PROVIDED FOR THE EXPENSIVE DRUG,  
13 FOR EACH OF THE IMMEDIATELY PRECEDING 5 CALENDAR YEARS, INCLUDING:

14 1. DISCOUNTS;

15 2. REBATES AND PATIENT PRESCRIPTION ASSISTANCE  
16 PROGRAMS;

17 3. CO-PAY ASSISTANCE COSTS; AND

18 4. TOTAL DONATIONS TO PATIENT ASSISTANCE  
19 NONPROFITS AND THE RELATED TAX DEDUCTIONS; AND

20 (II) THE NUMBER OF PATIENTS WHO HAVE BENEFITED FROM  
21 THE MANUFACTURER'S FINANCIAL ASSISTANCE FOR EACH OF THE IMMEDIATELY  
22 PRECEDING 5 CALENDAR YEARS;

23 (7) THE COMPARATIVE EFFECTIVENESS OF THE EXPENSIVE DRUG,  
24 INCLUDING:

25 (I) THE THERAPEUTIC CLASS OF THE EXPENSIVE DRUG;

26 (II) THE NAMES OF ANY OTHER BRAND NAME OR GENERIC  
27 DRUGS APPROVED BY THE FDA IN THE SAME THERAPEUTIC CLASS; AND

28 (III) ANY CLINICAL OR PHARMACOECONOMIC EVIDENCE  
29 INDICATING THE EXPENSIVE DRUG'S IMPROVED EFFICACY COMPARED TO ALL

1 OTHER BRAND NAME OR GENERIC DRUGS APPROVED BY THE FDA IN THE SAME  
2 THERAPEUTIC CLASS; AND

3 (8) ANY OTHER CATEGORY OF INFORMATION REQUIRED TO BE  
4 INCLUDED UNDER REGULATIONS ADOPTED UNDER SUBSECTION (F) OF THIS  
5 SECTION.

6 (D) THE MANUFACTURER SHALL:

7 (1) SEPARATELY IDENTIFY BY LINE ITEM THE INFORMATION  
8 INCLUDED IN THE ANNUAL REPORT TO THE MAXIMUM EXTENT POSSIBLE TO  
9 PROMOTE PUBLIC TRANSPARENCY AND UNDERSTANDING OF THE INFORMATION;

10 (2) PROVIDE DOCUMENTATION FOR THE INFORMATION INCLUDED IN  
11 THE ANNUAL REPORT;

12 (3) HAVE THE INFORMATION IN THE ANNUAL REPORT AUDITED BY AN  
13 INDEPENDENT THIRD-PARTY AUDITOR BEFORE THE REPORT IS FILED WITH THE  
14 SECRETARY; AND

15 (4) INCLUDE INFORMATION FOR THE IMMEDIATELY PRECEDING  
16 CALENDAR YEAR, UNLESS ANOTHER REPORTING PERIOD IS REQUIRED UNDER  
17 SUBSECTION (C) OF THIS SECTION.

18 (E) (1) AN ANNUAL REPORT FILED UNDER SUBSECTION (B) OF THIS  
19 SECTION SHALL CONSTITUTE PUBLIC INFORMATION.

20 (2) A CUSTODIAN MAY NOT DENY INSPECTION UNDER THE PUBLIC  
21 INFORMATION ACT OF AN ANNUAL REPORT FILED UNDER SUBSECTION (B) OF THIS  
22 SECTION, OR ANY PART OF THE REPORT.

23 (3) THE SECRETARY SHALL POST EACH ANNUAL REPORT FILED  
24 UNDER SUBSECTION (B) OF THIS SECTION ON THE DEPARTMENT'S WEB SITE.

25 (F) (1) THE SECRETARY, IN CONSULTATION WITH THE DRUG PRICE  
26 TRANSPARENCY ADVISORY COMMITTEE ESTABLISHED UNDER § 21-229(B) OF THIS  
27 SUBTITLE, SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

28 (2) THE REGULATIONS SHALL:

29 (I) FACILITATE PUBLIC TRANSPARENCY REGARDING:

30 1. THE PRICING OF EXPENSIVE DRUGS;

1                   **2. THE RETURN REALIZED BY MANUFACTURERS FROM**  
2 **THE SALE OF EXPENSIVE DRUGS; AND**

3                   **3. THE RETURN ON PUBLIC INVESTMENT IN THE**  
4 **DEVELOPMENT OF EXPENSIVE DRUGS MADE THROUGH FEDERAL, STATE, OR LOCAL**  
5 **GRANTS OR OTHER GOVERNMENT FINANCIAL ASSISTANCE;**

6                   **(II) IDENTIFY ANY ADDITIONAL INFORMATION WITHIN EACH OF**  
7 **THE CATEGORIES LISTED IN SUBSECTION (C) OF THIS SECTION THAT THE**  
8 **MANUFACTURER MUST INCLUDE IN AN ANNUAL REPORT; AND**

9                   **(III) INCLUDE A UNIFORM REPORTING FORM THAT THE**  
10 **MANUFACTURER MUST USE TO FACILITATE:**

11                   **1. THE DISCLOSURE OF THE INFORMATION REQUIRED**  
12 **TO BE REPORTED UNDER SUBSECTION (C) OF THIS SECTION; AND**

13                   **2. THE SECRETARY'S PREPARATION OF THE REPORT**  
14 **REQUIRED UNDER SUBSECTION (G) OF THIS SECTION.**

15                   **(G) (1) ON OR BEFORE DECEMBER 31, 2018, AND ON OR BEFORE**  
16 **DECEMBER 31 EACH YEAR THEREAFTER, THE SECRETARY SHALL PUBLISH A**  
17 **REPORT THAT SUMMARIZES THE REPORTS FILED BY MANUFACTURERS UNDER**  
18 **SUBSECTION (B) OF THIS SECTION SINCE THE LAST REPORT PUBLISHED BY THE**  
19 **SECRETARY.**

20                   **(2) THE SECRETARY SHALL:**

21                   **(I) PROVIDE A COPY OF EACH REPORT PUBLISHED UNDER**  
22 **PARAGRAPH (1) OF THIS SUBSECTION TO THE GOVERNOR AND, IN ACCORDANCE**  
23 **WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY;**  
24 **AND**

25                   **(II) POST A COPY OF THE REPORT ON THE DEPARTMENT'S WEB**  
26 **SITE.**

27                   **(H) IF A MANUFACTURER FAILS TO FILE AN ANNUAL REPORT AS REQUIRED**  
28 **UNDER SUBSECTION (B) OF THIS SECTION OR FILES AN INACCURATE ANNUAL**  
29 **REPORT, THE SECRETARY SHALL IMPOSE A CIVIL PENALTY NOT TO EXCEED \$10,000**  
30 **FOR EACH DAY THE VIOLATION CONTINUES.**



1           **(1) (1) IF A MANUFACTURER FAILS TO FILE AN ANNUAL REPORT AS**  
2 **REQUIRED UNDER SUBSECTION (B) OF THIS SECTION, THE ATTORNEY GENERAL**  
3 **MAY SEEK A COURT ORDER IN A COURT OF COMPETENT JURISDICTION REQUIRING**  
4 **THE MANUFACTURER TO FILE THE REQUIRED REPORT.**

5           **(2) THE ATTORNEY GENERAL SHALL SERVE NOTICE ON THE**  
6 **MANUFACTURER OF THE INTENT TO SEEK AN ORDER UNDER PARAGRAPH (1) OF**  
7 **THIS SUBSECTION AT LEAST 7 DAYS BEFORE SEEKING THE ORDER.**

8           **(3) IF THE ATTORNEY GENERAL IS GRANTED AN ORDER REQUIRING**  
9 **THE MANUFACTURER TO FILE A REQUIRED REPORT, THE ATTORNEY GENERAL**  
10 **SHALL BE ENTITLED TO RECOVER REASONABLE ATTORNEY’S FEES AND COSTS.**

11 **21–229.**

12           **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**  
13 **INDICATED.**

14           **(2) “ADVISORY COMMITTEE” MEANS THE DRUG PRICE**  
15 **TRANSPARENCY ADVISORY COMMITTEE.**

16           **(3) “MANUFACTURER” HAS THE MEANING STATED IN § 21–228 OF**  
17 **THIS SUBTITLE.**

18           **(B) THERE IS A DRUG PRICE TRANSPARENCY ADVISORY COMMITTEE.**

19           **(C) THE ADVISORY COMMITTEE SHALL CONSIST OF THE FOLLOWING**  
20 **MEMBERS:**

21           **(1) THE SECRETARY, OR THE SECRETARY’S DESIGNEE; AND**

22           **(2) THE FOLLOWING MEMBERS, APPOINTED BY THE SECRETARY:**

23           **(I) TWO ACADEMIC PUBLIC HEALTH RESEARCHERS;**

24           **(II) ONE ECONOMIST;**

25           **(III) ONE CERTIFIED PUBLIC ACCOUNTANT;**

26           **(IV) ONE LICENSED PHYSICIAN WHO PRACTICES IN THE STATE;**

27           **(V) ONE LICENSED PHARMACIST WHO PRACTICES IN THE**  
28 **STATE; AND**

1 (VI) TWO CONSUMER REPRESENTATIVES.

2 (D) A MEMBER OF THE ADVISORY COMMITTEE MAY NOT BE AFFILIATED  
3 WITH A MANUFACTURER OR HAVE ANY OTHER CONFLICT OF INTEREST RELATING TO  
4 THE DUTIES OF THE ADVISORY COMMITTEE.

5 (E) THE ADVISORY COMMITTEE SHALL ADVISE THE SECRETARY  
6 REGARDING:

7 (1) THE DEVELOPMENT OF THE REGULATIONS REQUIRED UNDER §  
8 21-228(F) OF THIS SUBTITLE;

9 (2) THE REVIEW OF THE ANNUAL REPORTS FILED BY  
10 MANUFACTURERS UNDER § 21-228(B) OF THIS SUBTITLE; AND

11 (3) THE PREPARATION OF THE REPORTS THE SECRETARY IS  
12 REQUIRED TO PUBLISH UNDER § 21-228(G) OF THIS SUBTITLE.

13 (F) THE SECRETARY, OR THE SECRETARY'S DESIGNEE, SHALL CHAIR THE  
14 ADVISORY COMMITTEE.

15 (G) (1) THE SECRETARY SHALL ADOPT REGULATIONS TO CARRY OUT  
16 THIS SECTION.

17 (2) THE REGULATIONS ADOPTED UNDER PARAGRAPH (1) OF THIS  
18 SUBSECTION SHALL INCLUDE REGULATIONS GOVERNING:

19 (I) THE MINIMUM NUMBER OF TIMES THE ADVISORY  
20 COMMITTEE MUST MEET EACH YEAR;

21 (II) ANY COMPENSATION FOR AND REIMBURSEMENT OF  
22 EXPENSES INCURRED BY ADVISORY COMMITTEE MEMBERS; AND

23 (III) THE TERMS OF ADVISORY COMMITTEE MEMBERS.

24 21-229.1.

25 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
26 INDICATED.

27 (2) "AVERAGE WHOLESAL PRICE" HAS THE MEANING STATED IN §  
28 21-228 OF THIS SUBTITLE.

1           (3)    “EXPENSIVE DRUG” HAS THE MEANING STATED IN § 21–228 OF  
2 THIS SUBTITLE.

3           (4)    “MANUFACTURER” HAS THE MEANING STATED IN § 21–228 OF  
4 THIS SUBTITLE.

5           (5)    “PURCHASER” MEANS:

6                   (I)    THE STATE, INCLUDING:

7                           1.    THE STATE EMPLOYEE AND RETIREE HEALTH AND  
8 WELFARE BENEFITS PROGRAM;

9                           2.    THE MARYLAND MEDICAL ASSISTANCE PROGRAM;

10                          3.    THE    MARYLAND    PHARMACY    ASSISTANCE  
11 PRESCRIPTION DRUG PROGRAM;

12                          4.    THE MARYLAND MEDBANK PROGRAM;

13                          5.    THE    MEDICARE    OPTION    PRESCRIPTION    DRUG  
14 PROGRAM; AND

15                          6.    THE MARYLAND CHILDREN’S HEALTH PROGRAM;

16                   (II)   A LOCAL GOVERNMENT;

17                   (III)  A MANAGED CARE ORGANIZATION AS DEFINED IN § 15–101  
18 OF THIS ARTICLE;

19                   (IV)  AN AUTHORIZED INSURER THAT PROVIDES HEALTH  
20 INSURANCE IN THE STATE;

21                   (V)   A NONPROFIT HEALTH SERVICE PLAN;

22                   (VI)  A HEALTH MAINTENANCE ORGANIZATION;

23                   (VII) A DENTAL PLAN ORGANIZATION;

24                   (VIII) A PHARMACY BENEFITS MANAGER REGULATED UNDER  
25 TITLE 15, SUBTITLE 16 OF THE INSURANCE ARTICLE; AND

1 (IX) ANY OTHER PERSON THAT PROVIDES HEALTH BENEFIT  
2 PLANS SUBJECT TO REGULATION BY THE STATE.

3 (6) "WHOLESALE ACQUISITION COST" HAS THE MEANING STATED IN  
4 § 21-228 OF THIS SUBTITLE.

5 (B) THIS SECTION APPLIES ONLY TO A MANUFACTURER OF AN EXPENSIVE  
6 DRUG THAT IS SOLD OR OFFERED FOR SALE IN THE STATE.

7 (C) A MANUFACTURER OF AN EXPENSIVE DRUG SHALL FILE A NOTICE WITH  
8 THE SECRETARY BEFORE INCREASING THE AVERAGE WHOLESALE PRICE OR  
9 WHOLESALE ACQUISITION COST OF THE EXPENSIVE DRUG BY MORE THAN:

10 (1) 10% OR \$2,500, WHICHEVER IS LESS, DURING A 12-MONTH  
11 PERIOD; OR

12 (2) 15% CUMULATIVELY DURING ANY 24-MONTH PERIOD.

13 (D) THE NOTICE REQUIRED UNDER SUBSECTION (C) OF THIS SECTION  
14 SHALL:

15 (1) BE FILED AT LEAST 60 DAYS BEFORE THE INCREASE TAKES  
16 EFFECT;

17 (2) BE IN WRITING; AND

18 (3) STATE:

19 (I) THE JUSTIFICATION FOR THE PRICE INCREASE;

20 (II) THE MARKETING BUDGET FOR THE EXPENSIVE DRUG IN  
21 THE IMMEDIATELY PRECEDING CALENDAR YEAR;

22 (III) IF THE EXPENSIVE DRUG WAS NOT DEVELOPED BY THE  
23 MANUFACTURER, THE DATE THE EXPENSIVE DRUG WAS ACQUIRED BY THE  
24 MANUFACTURER AND THE PRICE OF THE ACQUISITION; AND

25 (IV) THE HISTORY OF ALL PRICE INCREASES FOR THE  
26 EXPENSIVE DRUG THAT TOOK EFFECT DURING THE IMMEDIATELY PRECEDING 5  
27 CALENDAR YEARS.

28 (E) (1) WITHIN 15 DAYS AFTER A NOTICE IS FILED UNDER SUBSECTION  
29 (C) OF THIS SECTION, THE SECRETARY SHALL:

1                   **(I) POST THE NOTICE ON THE DEPARTMENT'S WEB SITE; AND**

2                   **(II) SEND ELECTRONIC NOTICE OF THE FILING TO:**

3                   **1. PURCHASERS THAT HAVE REQUESTED TO RECEIVE**  
4 **NOTIFICATION; AND**

5                   **2. THE STATE BOARD OF PHARMACY.**

6                   **(2) A CUSTODIAN MAY NOT DENY INSPECTION UNDER THE PUBLIC**  
7 **INFORMATION ACT OF A NOTICE, OR ANY PART OF A NOTICE, FILED UNDER**  
8 **SUBSECTION (C) OF THIS SECTION.**

9                   **(F) THE SECRETARY SHALL ESTABLISH A PROCESS THROUGH WHICH A**  
10 **PURCHASER MAY REQUEST TO RECEIVE NOTICE OF FILINGS MADE UNDER**  
11 **SUBSECTION (C) OF THIS SECTION.**

12                   **(G) IF A MANUFACTURER FAILS TO FILE A NOTICE AS REQUIRED UNDER**  
13 **SUBSECTION (C) OF THIS SECTION OR FILES AN INACCURATE NOTICE, THE**  
14 **SECRETARY SHALL IMPOSE A CIVIL PENALTY NOT TO EXCEED \$10,000 FOR EACH**  
15 **DAY THE VIOLATION CONTINUES.**

16                   **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**  
17 **October 1, 2017.**