

To the office of U.S. Senator Jeanne Shaheen

Re: S 4189 (119th Congress), INSULIN Act of 2026 • Latest action (2026-08-07): Placed on Senate Legislative Calendar under General Orders. Calendar No. 552.

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Office of record (Congress.gov): 506 Hart Senate Office Building Washington, DC 20510, Washington, DC • (202) 224-2841

INSULIN Fair Pricing Act of 2026

The measure, as described from the official record: To reduce the out-of-pocket cost of insulin for consumers by capping prices or otherwise regulating the pricing of insulin products.

THE PROPOSAL

This Act regulates the price of insulin sold in interstate commerce to ensure affordability for consumers while respecting state authority over intrastate health care and insurance.

Section 1. Findings: Congress finds that insulin is a life-saving drug sold in a national market, and that excessive pricing substantially burdens interstate commerce by reducing access and increasing federal healthcare costs.

Section 2. Price Cap on Interstate Sales: No manufacturer or distributor may sell insulin in interstate commerce at a price exceeding the highest price charged for that insulin product on January 1, 2025, adjusted annually for inflation (CPI-U). This cap applies to all sales that cross state lines or are delivered through channels of interstate commerce, including mail-order and internet sales.

Section 3. Enforcement: The Secretary of Health and Human Services (HHS) shall enforce this section. Any manufacturer or distributor that violates the price cap shall be liable for a civil penalty of up to 10% of the excess revenue from noncompliant sales, plus treble damages to any affected purchaser.

Section 4. No State Mandate: Nothing in this Act requires any state to enact or enforce any law, or to alter its Medicaid or insurance regulatory programs. States retain full authority over intrastate insulin sales not substantially affecting interstate commerce.

Section 5. Reporting and Oversight: HHS shall annually report to Congress on insulin pricing trends, compliance, and the impact on access. The oversight body is the HHS Office of Inspector General.

Section 6. Funding: The costs of enforcement shall be funded by a per-unit fee on insulin manufacturers, set to recover the costs of administration and oversight, not to exceed \$50 million annually.

Section 7. Sunset: This Act expires 5 years after enactment, unless renewed by Congress.

Section 8. Effective Date: This Act takes effect 180 days after enactment.

OPERATIVE PROVISIONS (VFA PROPOSAL)

Funding Source	Per-unit fee on insulin manufacturers, collected by HHS
Funding Amount	Up to \$50 million annually, sufficient to cover enforcement and oversight
Sunset Years	5 years
Oversight Body	HHS Office of Inspector General
Enforcement Mechanism	Civil penalties (10% of excess revenue plus treble damages) imposed by HHS after notice and hearing; judicial review available under the Administrative Procedure Act
Effective Date	180 days after enactment

CONSTITUTIONAL BASIS

- Article I, Section 8, Clause 3 (Commerce Clause)
- Article I, Section 8, Clause 18 (Necessary and Proper Clause)
- Tenth Amendment (reserving powers to states)
- Fifth Amendment Due Process Clause (penalties subject to fair notice and hearing)

Concerns with the measure as written:

- The original bill may regulate intrastate insulin sales that do not substantially affect interstate commerce, exceeding Commerce Clause authority.
 - If the bill mandates state insurance regulators or state Medicaid programs to enforce federal price controls, it may violate the Tenth Amendment by commandeering state governments.
 - Price controls on manufacturers without a clear nexus to interstate commerce could be challenged as an overreach of federal power.
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WHY BOTH SIDES CAN BACK IT (VFA'S ASSESSMENT)

Democratic priorities honored: The bill caps insulin prices for consumers in interstate commerce, directly addressing affordability and access. Republican priorities honored: The bill is narrowly tailored to interstate commerce, avoids commandeering states, uses market-based penalties rather than price controls on intrastate sales, includes a sunset for periodic review, and funds enforcement via a manufacturer fee rather than general taxation.

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