115TH CONGRESS
1ST SESSION

S. _____

To provide for the regulation of over-the-counter hearing aids.

IN THE SENATE OF THE UNITED STATES

Ms. WARREN (for herself, Mr. GRASSLEY, Ms. HASSAN, and Mr. ISAKSON) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To provide for the regulation of over-the-counter hearing aids.

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 ''Over-the-Counter Hearing Aid Act of 2017''.

SEC. 2. REGULATION OF OVER-THE-COUNTER HEARING AIDS.

(a) IN GENERAL.—Section 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j) is amended by adding at the end the following:

"(p) REGULATION OF OVER-THE-COUNTER HEARING AIDS.—

"(1) DEFINITION.—In this subsection, the term 'over-the-counter hearing aid' means a device—

"(A) that uses the same fundamental scientific technology as air conduction hearing aids (as defined in section 874.3300 of title 21, Code of Federal Regulations) (or any successor regulation) or wireless air conduction hearing aids (as defined in section 874.3305 of title 21, Code of Federal Regulations) (or any successor regulation);

"(B) that is intended to be used by adults over the age of 18 to compensate for perceived mild to moderate hearing impairment;

"(C) that, through tools, tests, or software, allows the user to control the over-the-counter hearing aid and customize it to the user's hearing needs;

"(D) that may—

"(i) use wireless technology; or

"(ii) include tests for self-assessment of hearing loss; and

"(E) that is available over-the-counter, without the supervision, prescription, or other

order, involvement, or intervention of a licensed person, to consumers through in-person transactions, by mail, or online.

''(2) REGULATION.—An over-the-counter hearing aid shall be subject to the regulations promulgated in accordance with section 2(b) of the Over-the-Counter Hearing Aid Act of 2017 and shall be exempt from sections 801.420 and 801.421 of title 21, Code of Federal Regulations (or any successor regulations).''.

(b) REGULATIONS TO ESTABLISH CATEGORY.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary''), not later than 3 years after the date of enactment of this Act, shall promulgate proposed regulations to establish a category of over-the-counter hearing aids, as defined in subsection (p) of section 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j) as amended by subsection (a), and, not later than 180 days after the date on which the public comment period on the proposed regulations closes, shall issue such final regulations.

(2) REQUIREMENTS.—In promulgating the regulations under paragraph (1), the Secretary shall—

(A) include requirements that provide reasonable assurances of the safety and efficacy of over-the-counter hearing aids;

(B) include requirements that establish or adopt output limits appropriate for over-the-counter hearing aids;

(C) include requirements for appropriate labeling of the over-the-counter hearing aid, including how consumers may report adverse events, any conditions or contraindications, and any advisements to consult promptly with a licensed physician; and

(D) describe the requirements under which the sale of over-the-counter hearing aids is permitted, without the supervision, prescription, or other order, involvement, or intervention of a licensed person, to consumers through in-person transactions, by mail, or online.

(3) PREMARKET NOTIFICATION.—The Secretary shall make findings under section 510(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(m)) to determine whether over-the-counter hearing aids (as defined in section 520(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j), as amended by subsection (a)) require

a report under section 510(k) to provide reasonable assurance of safety and effectiveness.

(4) EFFECT ON STATE LAW.—No State or local government shall establish or continue in effect any law, regulation, order, or other requirement specifically applicable to hearing products that would restrict or interfere with the servicing, marketing, sale, dispensing, use, customer support, or distribution of over-the-counter hearing aids (as defined in section 520(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j), as amended by subsection (a)) through in-person transactions, by mail, or online, that is different from, in addition to, or otherwise not identical to, the regulations promulgated under this subsection, including any State or local requirement for the supervision, prescription, or other order, involvement, or intervention of a licensed person for consumers to access over-the-counter hearing aids.

(c) NEW GUIDANCE ISSUED.—Not later than the date on which final regulations are issued under subsection (b), the Secretary shall update and finalize the draft guidance of the Department of Health and Human Services entitled, ''Regulatory Requirements for Hearing Aid Devices and Personal Sound Amplification Products'',

issued on November 7, 2013. Such updated and finalized guidance shall clarify which products, on the basis of claims or other marketing, advertising, or labeling material, meet the definition of a device in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and which products meet the definition of a personal sound amplification product, as set forth in such guidance.