

107TH CONGRESS
2D SESSION

S. 2747

To provide for substantial reductions in the price of prescription drugs for Medicare beneficiaries and for women diagnosed with breast cancer.

IN THE SENATE OF THE UNITED STATES

JULY 17, 2002

Mr. TORRICELLI introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for substantial reductions in the price of prescription drugs for Medicare beneficiaries and for women diagnosed with breast cancer.

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 “Breast Cancer Pre-
5 scription Drug Fairness Act of 2002”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds the following:

8 (1) All women are at risk for breast cancer and
9 that risk increases with age.

1 (2) Breast cancer is the most common cancer
2 among women.

3 (3) Annually, there are 180,200 new cases of
4 breast cancer in the United States, and 6,400 in
5 New Jersey alone.

6 (4) Manufacturers of prescription drugs engage
7 in price discrimination practices that compel many
8 older Americans and women to pay substantially
9 more for prescription drugs than the drug manufac-
10 turers' most favored customers, such as health in-
11 surers, health maintenance organizations, and the
12 Federal Government.

13 (5) On average, older Americans and women
14 who buy their own prescription drugs pay twice as
15 much for prescription drugs as the drug manufac-
16 turers' most favored customers. In some cases, older
17 Americans and women pay over 15 times more for
18 prescription drugs than the most favored customers.

19 (6) The discriminatory pricing by major drug
20 manufacturers sustains their annual profits of
21 \$20,000,000,000, but causes financial hardship and
22 impairs the health and well-being of millions of older
23 Americans and women. More than one in eight older
24 Americans and women are forced to choose between
25 buying their food and buying their medicines.

1 (7) Most federally funded health care programs,
2 including Medicaid, the Veterans Health Administra-
3 tion, the Public Health Service, and the Indian
4 Health Service, obtain prescription drugs for their
5 beneficiaries at low prices. Medicare beneficiaries are
6 denied this benefit and cannot obtain their prescrip-
7 tion drugs at the favorable prices available to other
8 federally funded health care programs.

9 (8) Implementation of the policy set forth in
10 this Act is estimated to reduce prescription drug
11 prices for Medicare beneficiaries by more than 40
12 percent.

13 (9) In addition to substantially lowering the
14 costs of prescription drugs for older Americans and
15 women, implementation of the policy set forth in this
16 Act will significantly improve the health and well-
17 being of older Americans and women and lower the
18 costs to the Federal taxpayer of the Medicare pro-
19 gram.

20 (10) Older Americans and women who are ter-
21 minally ill and receiving hospice care services rep-
22 resent some of the most vulnerable individuals in our
23 nation. Making prescription drugs available to Medi-
24 care beneficiaries under the care of Medicare-cer-
25 tified hospices will assist in extending the benefits of

1 lower prescription drug prices to those most vulner-
2 able and in need.

3 (b) PURPOSE.—The purpose of this Act is to protect
4 women diagnosed with breast cancer and Medicare bene-
5 ficiaries from discriminatory pricing by drug manufactur-
6 ers and to make prescription drugs available to Medicare
7 beneficiaries at substantially reduced prices.

8 **SEC. 3. PARTICIPATING MANUFACTURERS.**

9 (a) IN GENERAL.—Each participating manufacturer
10 of a covered outpatient drug shall make available for pur-
11 chase by each pharmacy such covered outpatient drug in
12 the amount described in subsection (b) at the price de-
13 scribed in subsection (c).

14 (b) DESCRIPTION OF AMOUNT OF DRUGS.—The
15 amount of a covered outpatient drug that a participating
16 manufacturer shall make available for purchase by a phar-
17 macy is an amount equal to the aggregate amount of the
18 covered outpatient drug sold or distributed by the phar-
19 macy to Medicare beneficiaries.

20 (c) DESCRIPTION OF PRICE.—The price at which a
21 participating manufacturer shall make a covered out-
22 patient drug available for purchase by a pharmacy is the
23 price equal to the lower of the following:

1 (1) The lowest price paid for the covered out-
2 patient drug by any agency or department of the
3 United States.

4 (2) The manufacturer's best price for the cov-
5 ered outpatient drug, as defined in section
6 1927(c)(1)(C) of the Social Security Act (42 U.S.C.
7 1396r-8(c)(1)(C)).

8 **SEC. 4. SPECIAL PROVISION WITH RESPECT TO HOSPICE**
9 **PROGRAMS.**

10 For purposes of determining the amount of a covered
11 outpatient drug that a participating manufacturer shall
12 make available for purchase by a pharmacy under section
13 3, there shall be included in the calculation of such
14 amount the amount of the covered outpatient drug sold
15 or distributed by a pharmacy to a hospice program. In
16 calculating such amount, only amounts of the covered out-
17 patient drug furnished to a Medicare beneficiary enrolled
18 in the hospice program shall be included.

19 **SEC. 5. ADMINISTRATION.**

20 The Secretary shall issue such regulations as may be
21 necessary to implement this Act.

22 **SEC. 6. REPORTS TO CONGRESS REGARDING EFFECTIVE-**
23 **NESS OF ACT.**

24 (a) IN GENERAL.—Not later than 2 years after the
25 date of the enactment of this Act, and annually thereafter,

1 the Secretary shall report to the Congress regarding the
2 effectiveness of this Act in—

3 (1) protecting Medicare beneficiaries from dis-
4 criminatory pricing by drug manufacturers, and

5 (2) making prescription drugs available to
6 Medicare beneficiaries at substantially reduced
7 prices.

8 (b) CONSULTATION.—In preparing such reports, the
9 Secretary shall consult with public health experts, affected
10 industries, organizations representing consumers and
11 older Americans and women, and other interested persons.

12 (c) RECOMMENDATIONS.—The Secretary shall in-
13 clude in such reports any recommendations they consider
14 appropriate for changes in this Act to further reduce the
15 cost of covered outpatient drugs to Medicare beneficiaries.

16 **SEC. 7. DEFINITIONS.**

17 In this Act:

18 (1) PARTICIPATING MANUFACTURER.—The
19 term “participating manufacturer” means any man-
20 ufacturer of drugs or biologicals that, on or after the
21 date of the enactment of this Act, enters into a con-
22 tract or agreement with the United States for the
23 sale or distribution of covered outpatient drugs to
24 the United States.

1 (2) COVERED OUTPATIENT DRUG.—The term
2 “covered outpatient drug” has the meaning given
3 that term in section 1927(k)(2) of the Social Secu-
4 rity Act (42 U.S.C. 1396r–8(k)(2)).

5 (3) MEDICARE BENEFICIARY.—The term
6 “Medicare beneficiary” means an individual entitled
7 to benefits under part A of title XVIII of the Social
8 Security Act or enrolled under part B of such title,
9 or both, and includes individuals who are not so en-
10 titled or enrolled but who have been diagnosed with
11 breast cancer.

12 (4) HOSPICE PROGRAM.—The term “hospice
13 program” has the meaning given that term under
14 section 1861(dd)(2) of the Social Security Act (42
15 U.S.C. 1395x(dd)(2)).

16 (5) SECRETARY.—The term “Secretary” means
17 the Secretary of Health and Human Services.

18 **SEC. 8. EFFECTIVE DATE.**

19 The Secretary shall implement this Act as expedi-
20 tiously as practicable and in a manner consistent with the
21 obligations of the United States.

1 **SEC. 9. STUDY ON LIFE EXPECTANCY OF WOMEN DIAG-**
2 **NOSED WITH BREAST CANCER WHO LACK**
3 **PRESCRIPTION DRUG COVERAGE.**

4 (a) STUDY.—The Secretary of Health and Human
5 Services, acting through the Director of the Center for
6 Disease Control and Prevention, shall conduct a study on
7 women diagnosed with breast cancer and analyze the ef-
8 fect, if any, that the lack of prescription drug coverage
9 has on the life expectancy of such women.

10 (b) REPORT.—By not later than one year after the
11 date of the enactment of this Act, the Secretary shall sub-
12 mit to Congress a report on the study conducted under
13 subsection (a).

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