

110TH CONGRESS
1ST SESSION

S. 2467

To amend the Social Security Act, the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act to ensure a sufficient supply of vaccines, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 13, 2007

Mr. KENNEDY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Social Security Act, the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act to ensure a sufficient supply of vaccines, and for other purposes.

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 “Vaccine Shortage Pre-
5 paredness Act of 2008”.

6 **SEC. 2. SALES FROM 6-MONTH SUPPLY.**

7 Section 1928(d)(6) of the Social Security Act (42
8 U.S.C. 1396s(d)(6)) is amended by inserting before the

1 last sentence the following: “The Secretary may sell such
 2 quantities of vaccines from such supply to public health
 3 departments or back to the vaccine manufacturers as the
 4 Secretary determines appropriate. Proceeds received from
 5 such sales shall be available to the Secretary only for the
 6 purposes of procuring pediatric vaccine stockpiles under
 7 this section and shall remain available until expended.”.

8 **SEC. 3. ONE-YEAR NOTICE ON DISCONTINUING MANUFAC-**
 9 **TURE OF VACCINE.**

10 Subchapter A of chapter V of the Federal Food,
 11 Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amend-
 12 ed by inserting after section 506C the following section:

13 **“SEC. 506D. DISCONTINUANCE OF VACCINE.**

14 **“(a) IN GENERAL.—**

15 **“(1) NOTICE TO SECRETARY.—**A manufacturer
 16 of a vaccine approved by the Secretary shall notify
 17 the Secretary of a discontinuance of the manufac-
 18 ture of the vaccine at least 12 months prior to the
 19 date of the discontinuance.

20 **“(2) DIRECTOR OF CENTERS FOR DISEASE**
 21 **CONTROL AND PREVENTION.—**Promptly after receiv-
 22 ing a notice under paragraph (1), the Secretary shall
 23 inform the Director of the Centers for Disease Con-
 24 trol and Prevention of the notice. Promptly after de-
 25 termining that a reduction under subsection (b) ap-

1 plies with respect to such a notice, the Secretary
2 shall inform such Director of the reduction.

3 “(3) RELATIONSHIP TO SEPARATE NOTICE PRO-
4 GRAM.—In the case of a vaccine that is approved by
5 the Secretary and is a drug described in section
6 506C(a), this section applies to the vaccine in lieu
7 of section 506C.

8 “(b) REDUCTION IN NOTIFICATION PERIOD.—The
9 notification period required under subsection (a) for a
10 manufacturer may be reduced if the manufacturer certifies
11 to the Secretary that good cause exists for the reduction,
12 such as a situation in which—

13 “(1) a public health problem may result from
14 continuation of the manufacturing for the 12-month
15 period;

16 “(2) a biomaterials shortage prevents the con-
17 tinuation of the manufacturing for the 12-month pe-
18 riod;

19 “(3) a liability problem may exist for the manu-
20 facturer if the manufacturing is continued for the
21 12-month period;

22 “(4) continuation of the manufacturing for the
23 12-month period may cause substantial economic
24 hardship for the manufacturer; or

1 “(5) the manufacturer has filed for bankruptcy
 2 under chapter 7 or 11 of title 11, United States
 3 Code.

4 “(c) DISTRIBUTION.—To the maximum extent prac-
 5 ticable, the Secretary shall distribute information on the
 6 discontinuation of the manufacture of vaccines to appro-
 7 priate physician and patient organizations.”.

8 **SEC. 4. CERTAIN AUTHORITIES REGARDING INFLUENZA**
 9 **AND OTHER VACCINES.**

10 (a) AUTHORITIES.—Part B of title III of the Public
 11 Health Service Act (42 U.S.C. 243 et seq.) is amended—

12 (1) by redesignating section 317A as section
 13 317A–1; and

14 (2) by inserting after section 317 the following
 15 section:

16 **“SEC. 317A. CERTAIN AUTHORITIES REGARDING INFLU-**
 17 **ENZA AND OTHER VACCINES.**

18 “(a) DECLARATION.—The Secretary may declare a
 19 public health emergency if—

20 “(1) there is a shortage of an approved vaccine
 21 for an infectious disease; and

22 “(2) there is a significant risk of a significant
 23 outbreak of such disease.

24 “(b) REQUIREMENT.—If the Secretary publishes in
 25 the Federal Register a declaration of a public health emer-

1 gency under subsection (a), each person who is a manufac-
 2 turer or distributor of such vaccine shall provide to the
 3 Secretary such information as the Secretary may require
 4 with respect to the location of supplies of the vaccine, in-
 5 cluding supplies in the possession of the person, supplies
 6 scheduled to be received by the person, and supplies sold
 7 by the person. Any such person who fails to comply with
 8 an order of the Secretary under the preceding sentence
 9 is liable to the United States for a civil penalty not exceed-
 10 ing \$1,000 for each day for which the person is in violation
 11 of the order.

12 “(c) AVAILABILITY TO STATES.—

13 “(1) IN GENERAL.—Subject to paragraph (2),
 14 the Secretary shall, at the request of a State, pro-
 15 vide to the State information collected by the Sec-
 16 retary under subsection (b).

17 “(2) RESTRICTION; CONFIDENTIALITY.—The
 18 Secretary may provide to a State information col-
 19 lected by the Secretary under subsection (b) only if
 20 the State agrees—

21 “(A) to restrict its use of the information
 22 to facilitating access to vaccines; and

23 “(B) to otherwise keep such information
 24 confidential.”.

1 (b) STUDY ON REALLOCATION OF VACCINE.—Not
2 later than 1 year after the date of the enactment of this
3 Act, the Secretary of Health and Human Services shall
4 complete a study and submit a report to the Congress on
5 successful models and alternatives for tracking and facili-
6 tating, in consultation with State and local health officials,
7 reallocation of vaccine at the local level in times of short-
8 age or emergency.

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