

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.

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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

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## 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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