

107TH CONGRESS
1ST SESSION

H. R. 1387

To amend the Social Security Act to improve access to prescription drugs for low-income Medicare beneficiaries, the Internal Revenue Code and other Acts to improve access to health care coverage for seniors, the self-employed, and children, and to amend the Federal Food, Drug, and Cosmetic Act to improve meaningful access to reasonably priced prescription drugs.

IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2001

Mr. GANSKE (for himself, Mrs. EMERSON, Mr. FRANK, Mr. WYNN, Mr. HORN, Mr. GILCHREST, Mr. TRAFICANT, Mr. LEACH, Mr. JONES of North Carolina, Mr. JOHNSON of Illinois, Mr. SANDERS, Mr. GUTKNECHT, and Mr. TERRY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Social Security Act to improve access to prescription drugs for low-income Medicare beneficiaries, the Internal Revenue Code and other Acts to improve access to health care coverage for seniors, the self-employed, and children, and to amend the Federal Food, Drug, and Cosmetic Act to improve meaningful access to reasonably priced prescription drugs.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Drug Availability and Health Care Access Improvement
 6 Act of 2001”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
 8 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—MEDICAID PRESCRIPTION DRUG COVERAGE FOR LOW-
 INCOME MEDICARE BENEFICIARIES**

Sec. 101. Medicaid prescription drug coverage for low-income medicare bene-
 ficiaries.

**TITLE II—IMPROVED ACCESS OF MEDICARE BENEFICIARIES TO
 MEDICARE+CHOICE PLANS**

Sec. 201. Improved access to Medicare+Choice plans through an increase in
 the minimum Medicare+Choice capitation rate.

**TITLE III—IMPROVED ACCESS TO REASONABLY PRICED
 PRESCRIPTION DRUGS**

Sec. 301. Amendments to program for importation of certain prescription drugs
 by pharmacists and wholesalers.

9 **TITLE I—MEDICAID PRESCRIP-**
 10 **TION DRUG COVERAGE FOR**
 11 **LOW-INCOME MEDICARE**
 12 **BENEFICIARIES**

13 **SEC. 101. MEDICAID PRESCRIPTION DRUG COVERAGE FOR**
 14 **LOW-INCOME MEDICARE BENEFICIARIES.**

15 (a) **IN GENERAL.**—Section 1902(a)(10) of the Social
 16 Security Act (42 U.S.C. 1396a(a)(10)) is amended—

1 (1) by striking “and” at the end of subpara-
2 graph (F);

3 (2) by adding “and” at the end of subpara-
4 graph (G); and

5 (3) by inserting after subparagraph (G) the fol-
6 lowing new subparagraph:

7 “(H) for making medical assistance avail-
8 able for prescribed drugs (in the same amount,
9 duration, and scope as for individuals described
10 in subparagraph (A)) for qualified medicare
11 beneficiaries described in section 1905(p)(1)
12 and for individuals who would be such qualified
13 medicare beneficiaries but for the fact that
14 their income exceeds the income level estab-
15 lished by the State under section 1905(p)(2)
16 but is less than 175 percent of the official pov-
17 erty line (referred to in such section) for a fam-
18 ily of the size involved;”.

19 (b) 100 PERCENT FEDERAL FINANCING OF ADDI-
20 TIONAL COSTS.—Section 1903(a) of such Act (42 U.S.C.
21 1396b(a)) is amended—

22 (1) by redesignating paragraph (7) as para-
23 graph (8); and

24 (2) by adding after paragraph (6) the following
25 new paragraph:

1 “(7) an amount equal to 100 percent of
2 amounts as expended as medical assistance for pre-
3 scribed drugs described in section 1902(a)(10)(H) to
4 individuals who are eligible for such assistance only
5 on the basis of such section; and”.

6 (c) PERMITTING CHARGING OF SLIDING SCALE PRE-
7 MIUMS FOR QUALIFYING INDIVIDUALS WITH INCOMES
8 ABOVE 135 PERCENT OF POVERTY LINE.—Section 1916
9 of such Act Social Security Act is amended—

10 (1) in subsection (b), by striking “or (E)” and
11 inserting “, (E), or (H)”; and

12 (2) in subsection (d)—

13 (A) by inserting “(1)” after “(d)”, and

14 (B) by adding at the end the following new
15 paragraph:

16 “(2)(A) With respect to an individual described in
17 section 1902(a)(10)(H) whose income (as determined
18 under section 1905(p)(1)(B)) exceeds 135 percent of the
19 official poverty line referred to in that section, the State
20 plan of a State shall provide for the charging of a premium
21 (expressed as a percentage of the average actuarial cost
22 of the benefits described in section 1902(a)(10)(H) pro-
23 vided with respect to individuals described in such section)
24 according to a sliding scale under which such percentage
25 increases from 0 percent to 100 percent, in reasonable in-

1 crements (as determined by the Secretary), as the individ-
2 ual's income increases from 135 percent of such poverty
3 line to 175 percent of such poverty line.

4 “(B) A State shall not require prepayment of a pre-
5 mium imposed pursuant to subparagraph (A) and shall
6 not terminate eligibility of an individual for medical assist-
7 ance under this title on the basis of failure to pay any
8 such premium until such failure continues for a period of
9 not less than 60 days. The State may waive payment of
10 any such premium in any case where the State determines
11 that requiring such payment would create an undue hard-
12 ship.

13 “(C) A State may permit State or local funds avail-
14 able under other programs to be used for payment of a
15 premium imposed under subparagraph (A). Payment of
16 a premium with such funds shall not be counted as income
17 to the individual with respect to whom such payment is
18 made.”.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section take effect on the first day of the first year
21 that begins more than 6 months after the date of the en-
22 actment of this Act.

1 **TITLE II—IMPROVED ACCESS OF**
2 **MEDICARE BENEFICIARIES**
3 **TO MEDICARE+CHOICE**
4 **PLANS**

5 **SEC. 201. IMPROVED ACCESS TO MEDICARE+CHOICE PLANS**
6 **THROUGH AN INCREASE IN THE MINIMUM**
7 **MEDICARE+CHOICE CAPITATION RATE.**

8 (a) IN GENERAL.—Section 1853(c)(1)(B) of the So-
9 cial Security Act (42 U.S.C. 1395w-23(c)(1)(B)), as
10 amended by section 601(a) of Medicare, Medicaid, and
11 SCHIP Benefits Improvement and Protection Act of 2000
12 (as enacted into law by section 1(a)(6) of Public Law 106-
13 554), is amended—

14 (1) by redesignating clause (iv) as clause (v);

15 (2) by inserting after clause (iii) the following
16 new clause:

17 “(iv) For 2002—

18 “(I) for any area in the 50
19 States and the District of Columbia,
20 \$600; and

21 “(II) for any other area, the min-
22 imum amount specified in clause (iii)
23 for that area for 2001 increased by
24 the national per capita
25 Medicare+Choice growth percentage,

1 described in paragraph (6)(A) for
2 2002.”; and

3 (3) in clause (v), as so redesignated—

4 (A) by striking “2002” and inserting
5 “2003”; and

6 (B) by striking “or clause (iii)” and insert-
7 ing “or clause (iv)”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 subsection (a) apply to years beginning with 2002.

10 **TITLE III—IMPROVED ACCESS**
11 **TO REASONABLY PRICED**
12 **PRESCRIPTION DRUGS**

13 **SEC. 301. AMENDMENTS TO PROGRAM FOR IMPORTATION**
14 **OF CERTAIN PRESCRIPTION DRUGS BY PHAR-**
15 **MACISTS AND WHOLESALERS.**

16 Section 804 of the Federal Food, Drug, and Cosmetic
17 Act (as added by section 745(e)(2) of Public Law 106–
18 387) is amended—

19 (1) by striking subsections (e) and (f) and in-
20 serting the following subsections:

21 “(e) TESTING; APPROVED LABELING.—

22 “(1) TESTING.—Regulations under subsection
23 (a)—

24 “(A) shall require that testing referred to
25 in paragraphs (6) through (8) of subsection (d)

1 be conducted by the importer of the covered
2 product pursuant to subsection (a), or the man-
3 ufacturer of the product;

4 “(B) shall require that, if such tests are
5 conducted by the importer, information needed
6 to authenticate the product being tested be sup-
7 plied by the manufacturer of such product to
8 the importer; and

9 “(C) shall provide for the protection of any
10 information supplied by the manufacturer
11 under subparagraph (B) that is a trade secret
12 or commercial or financial information that is
13 privileged or confidential.

14 “(2) APPROVED LABELING.—For purposes of
15 importing a covered product pursuant to subsection
16 (a), the importer involved may use the labeling ap-
17 proved for the product under section 505, notwith-
18 standing any other provision of law.

19 “(f) DISCRETION OF SECRETARY REGARDING TEST-
20 ING.—The Secretary may waive or modify testing require-
21 ments described in subsection (d) if, with respect to spe-
22 cific countries or specific distribution chains, the Secretary
23 has entered into agreements or otherwise approved ar-
24 rangements that the Secretary determines ensure that the

1 covered products involved are not adulterated or in viola-
2 tion of section 505.”;

3 (2) by striking subsections (h) and (i) and in-
4 serting the following subsections:

5 “(h) PROHIBITED AGREEMENTS; NONDISCRIMINA-
6 TION.—

7 “(1) PROHIBITED AGREEMENTS.—No manufac-
8 turer of a covered product may enter into a contract
9 or agreement that includes a provision to prevent
10 the sale or distribution of covered products imported
11 pursuant to subsection (a).

12 “(2) NONDISCRIMINATION.—No manufacturer
13 of a covered product may take actions that discrimi-
14 nate against, or cause other persons to discriminate
15 against, United States pharmacists, wholesalers, or
16 consumers regarding the sale or distribution of cov-
17 ered products.

18 “(i) STUDY AND REPORT.—

19 “(1) STUDY.—The Comptroller General of the
20 United States shall conduct a study on the imports
21 permitted under this section, taking into consider-
22 ation the information received under subsection (a).
23 In conducting such study, the Comptroller General
24 shall—

1 “(A) evaluate importers’ compliance with
2 regulations, determine the number of ship-
3 ments, if any, permitted under this section that
4 have been determined to be counterfeit, mis-
5 branded, or adulterated; and

6 “(B) consult with the United States Trade
7 Representative and United States Patent and
8 Trademark Office to evaluate the effect of im-
9 portations permitted under this section on trade
10 and patent rights under Federal law.

11 “(2) REPORT.—Not later than 5 years after the
12 effective date of final regulations issued pursuant to
13 this section, the Comptroller General of the United
14 States shall prepare and submit to Congress a re-
15 port containing the study described in paragraph
16 (1).”;

17 (3) in subsection (k)(2)—

18 (A) by redesignating subparagraphs (A)
19 through (E) as subparagraphs (B) through (F),
20 respectively; and

21 (B) by inserting before subparagraph (B)
22 (as so redesignated) the following subpara-
23 graph:

24 “(A) The term ‘discrimination’ includes a
25 contract provision, a limitation on supply, or

1 other measure which has the effect of providing
2 United States pharmacists, wholesalers, or con-
3 sumers access to covered products on terms or
4 conditions that are less favorable than the
5 terms or conditions provided to any foreign pur-
6 chaser of such products.”;

7 (4) by striking subsection (m); and

8 (5) by inserting after subsection (l) the fol-
9 lowing subsection:

10 “(m) FUNDING.—For the purpose of carrying out
11 this section, there are authorized to be appropriated such
12 sums as may be necessary for fiscal year 2002 and each
13 subsequent fiscal year.”.

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