

117TH CONGRESS
2D SESSION

S. 4446

To modernize the process of accelerated approval of a drug for a serious or life-threatening disease or condition.

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2022

Ms. COLLINS (for herself and Mr. KAINE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To modernize the process of accelerated approval of a drug for a serious or life-threatening disease or condition.

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 “Modernizing the Accel-
5 erated Approval Pathway Act of 2022”.

6 **SEC. 2. MODERNIZING ACCELERATED APPROVAL.**

7 (a) IN GENERAL.—Section 506(c) of the Federal
8 Food, Drug, and Cosmetic Act (21 U.S.C. 356(c)) is
9 amended—

10 (1) in paragraph (2)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the margins accordingly;

(B) by striking “Approval of a product” and inserting the following:

“(A) IN GENERAL.—Approval of a product”;

(C) in clause (i) of such subparagraph (A), as so redesignated, by striking “appropriate postapproval studies” and inserting “an appropriate postapproval study or studies (which may be augmented or supported by real world evidence)”; and

(D) by adding at the end the following:

“(B) STUDIES NOT REQUIRED.—If the Secretary does not require that the sponsor of a product approved under accelerated approval conduct a postapproval study under this paragraph, the Secretary shall publish on the website of the Food and Drug Administration the rationale for why such study is not appropriate or necessary.

“(C) POSTAPPROVAL STUDY CONDITIONS.—Not later than the time of approval of a product under accelerated approval, the Sec-

retary shall specify the conditions for a post-approval study or studies required to be conducted under this paragraph with respect to such product, which may include enrollment targets, the study protocol, and milestones, including the target date of study completion.

“(D) STUDIES BEGUN BEFORE APPROVAL.—The Secretary may require such study or studies to be underway prior to approval.”; and

(2) in paragraph (3)—

(A) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the margins accordingly;

(B) by striking “The Secretary may” and inserting the following:

“(A) IN GENERAL.—The Secretary may”;

(C) in clause (i) of such subparagraph (A), as so redesignated, by striking “drug with due diligence” and inserting “product with due diligence, including with respect to conditions specified by the Secretary under paragraph (2)(C)”;

(D) in clause (iii) of such subparagraph (A), as so redesignated, by inserting “shown to be” after “product is not”; and

1 (E) by adding at the end the following:

2 “(B) EXPEDITED PROCEDURES DE-
3 SCRIBED.—Expedited procedures described in
4 this subparagraph shall consist of, prior to the
5 withdrawal of accelerated approval—

6 “(i) providing the sponsor with—

7 “(I) due notice;

8 “(II) an explanation for the pro-
9 posed withdrawal;

10 “(III) an opportunity for a meet-
11 ing with the Commissioner or the
12 Commissioner’s designee; and

13 “(IV) an opportunity for written
14 appeal to—

15 “(aa) the Commissioner; or

16 “(bb) a designee of the
17 Commissioner who has not par-
18 ticipated in the proposal with-
19 drawal of approval (other than a
20 meeting pursuant to subclause
21 (III)) and is not subordinate of
22 an individual (other than the
23 Commissioner) who participated
24 in such proposed withdrawal;

1 “(ii) providing an opportunity for
2 public comment on the proposing to with-
3 drawal approval;

4 “(iii) the publication of a summary of
5 the public comments received, and the Sec-
6 retary’s response to such comments, on the
7 website of the Food and Drug Administra-
8 tion; and

9 “(iv) convening and consulting an ad-
10 visory committee on issues related to the
11 proposed withdrawal, if requested by the
12 sponsor and if no such advisory committee
13 has previously advised the Secretary on
14 such issues with respect to the withdrawal
15 of the product prior to the sponsor’s re-
16 quest.”.

17 (b) REPORTS OF POSTMARKETING STUDIES.—Sec-
18 tion 506B(a) of the Federal Food, Drug, and Cosmetic
19 Act (21 U.S.C. 356b(a)) is amended—

20 (1) by redesignating paragraph (2) as para-
21 graph (3); and

22 (2) by inserting after paragraph (1) the fol-
23 lowing:

24 “(2) ACCELERATED APPROVAL.—Notwith-
25 standing paragraph (1), a sponsor of a drug ap-

1 proved under accelerated approval shall submit to
2 the Secretary a report of the progress of any study
3 required under section 506(c), including progress to-
4 ward enrollment targets, milestones, and other infor-
5 mation as required by the Secretary, not later than
6 180 days after the approval of such drug and not
7 less frequently than every 180 days thereafter, until
8 the study is completed or terminated. The Secretary
9 shall promptly publish on the website of the Food
10 and Drug Administration the information so re-
11 ported, in an easily searchable format.”.

12 (c) ENFORCEMENT.—Section 301 of the Federal
13 Food, Drug, and Cosmetic Act (21 U.S.C. 331), is amend-
14 ed by adding at the end the following:

15 “(fff) The failure of a sponsor of a product approved
16 under accelerated approval pursuant to section 506(c)—

17 “(1) to conduct with due diligence any post-
18 approval study required under section 506(c) with
19 respect to such product; or

20 “(2) to submit timely reports with respect to
21 such product in accordance with section
22 506B(a)(2).”.

23 (d) GUIDANCE.—

24 (1) IN GENERAL.—The Secretary of Health and
25 Human Services shall issue guidance describing—

1 (A) how sponsor questions related to the
2 identification of novel surrogate or intermediate
3 clinical endpoints may be addressed in early-
4 stage development meetings with the Food and
5 Drug Administration;

6 (B) the use of novel clinical trial designs
7 that may be used to conduct appropriate post-
8 approval studies as may be required under sec-
9 tion 506(c)(2)(A) of the Federal Food, Drug,
10 and Cosmetic Act, as amended by subsection
11 (a);

12 (C) the expedited procedures described in
13 section 506(c)(3)(B) of the Federal Food,
14 Drug, and Cosmetic Act; and

15 (D) considerations related to the use of
16 surrogate or intermediate clinical endpoints
17 that may support the accelerated approval of an
18 application under 506(c)(1)(A), including con-
19 siderations in evaluating the evidence related to
20 any such endpoints.

21 (2) FINAL GUIDANCE.—The Secretary shall
22 issue—

23 (A) draft guidance under paragraph (1)
24 not later than 18 months after the date of en-
25 actment of this Act; and

1 (B) final guidance not later than 1 year
2 after the close of the public comment period on
3 such draft guidance.

4 (e) RARE DISEASE ENDPOINT ADVANCEMENT
5 PILOT.—

6 (1) IN GENERAL.—The Secretary of Health and
7 Human Services shall establish a pilot program
8 under which the Secretary will establish procedures
9 to provide increased interaction with sponsors of
10 rare disease drug development programs for pur-
11 poses of advancing the development of efficacy
12 endpoints, including surrogate and intermediate
13 endpoints, for drugs intended to treat rare diseases,
14 including through—

15 (A) determining eligibility of participants
16 for such program; and

17 (B) developing and implementing a process
18 for applying to, and participating in, such a
19 program.

20 (2) PUBLIC WORKSHOPS.—The Secretary shall
21 conduct up to 3 public workshops, which shall be
22 completed not later than September 30, 2026, to
23 discuss topics relevant to the development of
24 endpoints for rare diseases, which may include dis-
25 cussions about—

1 (A) novel endpoints developed through the
2 pilot program established under this subsection;
3 and

4 (B) as appropriate, the use of real world
5 evidence and real work data to support the vali-
6 dation of efficacy endpoints, including surrogate
7 and intermediate endpoints, for rare diseases.

8 (3) REPORT.—Not later than September 30,
9 2027, the Secretary shall submit to the Committee
10 on Energy and Commerce of the House of Rep-
11 resentatives and the Committee on Health, Edu-
12 cation, Labor, and Pensions of the Senate a report
13 describing the outcomes of the pilot program estab-
14 lished under this subsection.

15 (4) GUIDANCE.—Not later than September 30,
16 2027, the Secretary shall issue guidance describing
17 best practices and strategies for development of effi-
18 cacy endpoints, including surrogate and intermediate
19 endpoints, for rare diseases.

20 (5) SUNSET.—The Secretary may not accept
21 any new application or request to participate in the
22 program established by this subsection on or after
23 October 1, 2027.

24 (f) ACCELERATED APPROVAL COUNCIL.—

1 (1) GENERAL.—Not later than 180 days after
2 the date of enactment of this Act, the Secretary of
3 Health and Human Services shall establish an intra-
4 agency coordinating council within the Food and
5 Drug Administration to ensure the consistent and
6 appropriate use of accelerated approval across the
7 Food and Drug Administration, pursuant to section
8 506(c) of the Federal Food, Drug, and Cosmetic Act
9 (21 U.S.C. 356(c)).

10 (2) MEMBERSHIP.—The members of the Coun-
11 cil shall consist of the following senior officials, or
12 a designee of such official, from the Food and Drug
13 Administration and relevant Centers:

14 (A) The Director of the Center for Drug
15 Evaluation and Research.

16 (B) The Director of the Center for Bio-
17 logics Evaluation and Research.

18 (C) The Director of the Oncology Center
19 of Excellence.

20 (D) The Director of the Office of New
21 Drugs.

22 (E) The Director of the Office of Orphan
23 Products Development.

24 (F) The Director of the Office of Tissues
25 and Advanced Therapies.

1 (G) The Director of the Office of Medical
2 Policy.

3 (H) At least 3 directors of review division
4 overseeing products approved under accelerated
5 approval, including at least one director of a re-
6 view division within the Office of Neuroscience.

7 (3) DUTIES OF THE COUNCIL.—

8 (A) MEETINGS.—The Council shall con-
9 vene not fewer than 3 times per calendar year
10 to discuss issues related to accelerated approval,
11 including any relevant cross-disciplinary ap-
12 proaches related to product review with respect
13 to accelerated approval.

14 (B) POLICY DEVELOPMENT.—The Council
15 shall directly engage with product review teams
16 to support the consistent and appropriate use of
17 accelerated approval across the Food and Drug
18 Administration. Such activities may include—

19 (i) developing guidance for Food and
20 Drug Administration staff and best prac-
21 tices for, and across, product review teams,
22 including with respect to communication
23 between sponsors and the Food and Drug
24 Administration and the review of products
25 under accelerated approval;

- 1 (ii) providing training for product re-
2 view teams; and
3 (iii) advising review divisions on prod-
4 uct-specific development, review, and with-
5 drawal of products under accelerated ap-
6 proval.

7 (4) PUBLICATION OF A REPORT.—Not later
8 than 1 year after the date of enactment of this Act,
9 and annually thereafter, the council shall publish on
10 the public website of the Food and Drug Adminis-
11 tration a report on the activities of the council.

12 (g) RULE OF CONSTRUCTION.—Nothing in this sec-
13 tion (including the amendments made by this section)
14 shall be construed to affect products approved pursuant
15 to 506(c) of the Federal Food, Drug, and Cosmetic Act
16 (21 U.S.C. 356(c)) prior to the date of enactment of this
17 Act.

