

108TH CONGRESS
1ST SESSION

S. 892

To provide for substantial reductions in the price of prescription drugs for
medicare beneficiaries.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2003

Mr. JOHNSON 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.

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 “Prescription Drug
5 Fairness for Seniors Act of 2003”.

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

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

8 (1) Manufacturers of prescription drugs engage
9 in price discrimination practices that compel many
10 older Americans to pay substantially more for pre-

1 prescription drugs than consumers in foreign nations
2 and the drug manufacturers' most favored cus-
3 tomers in the United States, such as health insurers,
4 health maintenance organizations, and the Federal
5 Government.

6 (2) Older Americans who buy their own pre-
7 scription drugs often pay twice as much for prescrip-
8 tion drugs as consumers in foreign nations and the
9 drug manufacturers' most favored customers in the
10 United States. In some cases, older Americans pay
11 10 times more for prescription drugs than such cus-
12 tomers.

13 (3) The discriminatory pricing by major drug
14 manufacturers sustains their high profits (for exam-
15 ple, \$27,300,000,000 in 1999), but causes financial
16 hardship and impairs the health and well-being of
17 millions of older Americans. Many older Americans
18 are forced to choose between buying their food and
19 buying their medicines.

20 (4) Foreign nations and federally funded health
21 care programs in the United States use purchasing
22 power to obtain prescription drugs at low prices.
23 Medicare beneficiaries are denied this benefit and
24 cannot obtain their prescription drugs at the lower
25 prices available to such nations and programs.

1 (5) Implementation of the policy set forth in
2 this Act is estimated to reduce prescription drug
3 prices for many medicare beneficiaries by an average
4 of 40 percent.

5 (6) In addition to substantially lowering the
6 costs of prescription drugs for older Americans, im-
7 plementation of the policy set forth in this Act will
8 significantly improve the health and well-being of
9 older Americans and lower the costs to the Federal
10 taxpayer of the medicare program.

11 (7) Older Americans who are terminally ill and
12 receiving hospice care services represent some of the
13 most vulnerable individuals in our Nation. Making
14 prescription drugs available to medicare beneficiaries
15 under the care of medicare-certified hospices will as-
16 sist in extending the benefits of lower prescription
17 drug prices to those most vulnerable and in need.

18 (b) PURPOSE.—The purpose of this Act is to protect
19 medicare beneficiaries from discriminatory pricing by drug
20 manufacturers and to make prescription drugs available
21 to medicare beneficiaries at substantially reduced prices.

22 **SEC. 3. PARTICIPATING MANUFACTURERS.**

23 (a) IN GENERAL.—Each participating manufacturer
24 of a covered outpatient drug shall make available for pur-
25 chase by each pharmacy such covered outpatient drug in

1 the amount described in subsection (b) at the price de-
2 scribed in subsection (c).

3 (b) DESCRIPTION OF AMOUNT OF DRUGS.—The
4 amount of a covered outpatient drug that a participating
5 manufacturer shall make available for purchase by a phar-
6 macy is an amount equal to the aggregate amount of the
7 covered outpatient drug sold or distributed by the phar-
8 macy to medicare beneficiaries.

9 (c) DESCRIPTION OF PRICE.—The price at which a
10 participating manufacturer shall make a covered out-
11 patient drug available for purchase by a pharmacy is a
12 price no greater than the manufacturer's average foreign
13 price.

14 (d) ENFORCEMENT.—The United States shall debar
15 a manufacturer of drugs or biologicals that does not com-
16 ply with the provisions of this Act.

17 **SEC. 4. SPECIAL PROVISION WITH RESPECT TO HOSPICE**
18 **PROGRAMS.**

19 For purposes of determining the amount of a covered
20 outpatient drug that a participating manufacturer shall
21 make available for purchase by a pharmacy under section
22 3, there shall be included in the calculation of such
23 amount the amount of the covered outpatient drug sold
24 or distributed by a pharmacy to a hospice program. In
25 calculating such amount, only amounts of the covered out-

1 patient drug furnished to a medicare beneficiary enrolled
2 in the hospice program shall be included.

3 **SEC. 5. ADMINISTRATION.**

4 The Secretary shall issue such regulations as may be
5 necessary to implement this Act.

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

8 (a) IN GENERAL.—Not later than 2 years after the
9 date of enactment of this Act, and annually thereafter,
10 the Secretary shall report to Congress regarding the effec-
11 tiveness of this Act in—

12 (1) protecting medicare beneficiaries from dis-
13 criminatory pricing by drug manufacturers; and

14 (2) making prescription drugs available to
15 medicare beneficiaries at substantially reduced
16 prices.

17 (b) CONSULTATION.—In preparing such reports, the
18 Secretary shall consult with public health experts, affected
19 industries, organizations representing consumers and
20 older Americans, and other interested persons.

21 (c) RECOMMENDATIONS.—The Secretary shall in-
22 clude in such reports any recommendations the Secretary
23 considers appropriate for changes in this Act to further
24 reduce the cost of covered outpatient drugs to medicare
25 beneficiaries.

1 **SEC. 7. DEFINITIONS.**

2 In this Act:

3 (1) AVERAGE FOREIGN PRICE.—

4 (A) IN GENERAL.—The term “average for-
5 eign price” means, with respect to a covered
6 outpatient drug, the average price that the
7 manufacturer of the drug realizes on the sale of
8 drugs with the same active ingredient or ingre-
9 dients that are consumed in covered foreign na-
10 tions, taking into account—

11 (i) any rebate, contract term or condi-
12 tion, or other arrangement (whether with
13 the purchaser or other persons) that has
14 the effect of reducing the amount realized
15 by the manufacturer on the sale of the
16 drugs; and

17 (ii) adjustments for any differences in
18 dosage, formulation, or other relevant
19 characteristics of the drugs.

20 (B) EXEMPT TRANSACTIONS.—The Sec-
21 retary may, by regulation, exempt from the cal-
22 culation of the average foreign price of a drug
23 those prices realized by a manufacturer in
24 transactions that are entered into for charitable
25 purposes, for research purposes, or under other
26 unusual circumstances, if the Secretary deter-

1 mines that the exemption is in the public inter-
2 est and is consistent with the purposes of this
3 Act.

4 (2) COVERED FOREIGN NATION.—The term
5 “covered foreign nation” means Canada, France,
6 Germany, Italy, Japan, and the United Kingdom.

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

11 (4) DEBAR.—The term “debar” means to ex-
12 clude, pursuant to established administrative proce-
13 dures, from Government contracting and subcon-
14 tracting for a specified period of time commensurate
15 with the seriousness of the failure or offense or the
16 inadequacy of performance.

17 (5) HOSPICE PROGRAM.—The term “hospice
18 program” has the meaning given that term under
19 section 1861(dd)(2) of the Social Security Act (42
20 U.S.C. 1395x(dd)(2)).

21 (6) MEDICARE BENEFICIARY.—The term
22 “medicare beneficiary” means an individual entitled
23 to benefits under part A of title XVIII of the Social
24 Security Act or enrolled under part B of such title,
25 or both.

1 (7) PARTICIPATING MANUFACTURER.—The
2 term “participating manufacturer” means any man-
3 ufacturer of drugs or biologicals that, on or after the
4 date of enactment of this Act, enters into a contract
5 or agreement with the United States for the sale or
6 distribution of covered outpatient drugs to the
7 United States.

8 (8) SECRETARY.—The term “Secretary” means
9 the Secretary of Health and Human Services.

10 **SEC. 8. EFFECTIVE DATE.**

11 The Secretary shall implement this Act as expedi-
12 tiously as practicable and in a manner consistent with the
13 obligations of the United States.

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