



U.S. Food and Drug Administration

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One Hundred Seventh Congress of the United States of America

Begun and held at the City of Washington on Wednesday,

the third day of January, two thousand and one

An Act

To amend the Federal Food, Drug, and Cosmetic Act to improve the safety and efficacy of pharmaceuticals for children.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Best Pharmaceuticals for Children Act'.

SEC. 2. PEDIATRIC STUDIES OF ALREADY-MARKETED DRUGS.

Section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) is amended--

(1) by striking subsection (b); and

(2) in subsection (c)--

(A) by inserting after 'the Secretary' the following: 'determines that information relating to the use of an approved drug in the pediatric population may produce health benefits in that population and'; and

(B) by striking 'concerning a drug identified in the list described in subsection (b)'.

SEC. 3. RESEARCH FUND FOR THE STUDY OF DRUGS.

Part B of title IV of the Public Health Service Act (42 U.S.C. 284 et seq.) is amended--

(1) by redesignating the second section 409C, relating to clinical research (42 U.S.C. 284k), as section 409G;

(2) by redesignating the second section 409D, relating to enhancement awards (42 U.S.C. 284l), as section 409H; and

(3) by adding at the end the following:

'SEC. 409I. PROGRAM FOR PEDIATRIC STUDIES OF DRUGS.

'(a) LIST OF DRUGS FOR WHICH PEDIATRIC STUDIES ARE NEEDED--

(1) IN GENERAL- Not later than one year after the date of enactment of this section, the Secretary, acting through the Director of the National Institutes of Health and in consultation with the Commissioner of Food and Drugs and experts in pediatric research, shall develop, prioritize, and publish an annual list of approved drugs for which--

(A)(i) there is an approved application under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j));

(ii) there is a submitted application that could be approved under the criteria of section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j));

(iii) there is no patent protection or market exclusivity protection under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); or

(iv) there is a referral for inclusion on the list under section 505A(d)(4)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(d)(4)(C)); and

(B) in the case of a drug referred to in clause (i), (ii), or (iii) of subparagraph (A), additional studies are needed to assess the safety and effectiveness of the use of the drug in the pediatric population.

(2) CONSIDERATION OF AVAILABLE INFORMATION- In developing and prioritizing the list under paragraph (1), the Secretary shall consider, for each drug on the list--

(A) the availability of information concerning the safe and effective use of the drug in the pediatric population;

(B) whether additional information is needed;

(C) whether new pediatric studies concerning the drug may produce health benefits in the pediatric population; and

(D) whether reformulation of the drug is necessary.

(b) CONTRACTS FOR PEDIATRIC STUDIES- The Secretary shall award contracts to entities that have the expertise to conduct pediatric clinical trials (including qualified universities, hospitals, laboratories, contract research organizations, federally funded programs such as pediatric pharmacology research units, other public or private institutions, or individuals) to enable the entities to conduct pediatric studies concerning one or more drugs identified in the list described in subsection (a).

(c) PROCESS FOR CONTRACTS AND LABELING CHANGES-

(1) WRITTEN REQUEST TO HOLDERS OF APPROVED APPLICATIONS FOR DRUGS LACKING EXCLUSIVITY- The Commissioner of Food and Drugs, in consultation with the Director of the National Institutes of Health, may issue a written request (which shall include a timeframe for negotiations for an agreement) for pediatric studies concerning a drug identified in the list described in subsection (a)(1)(A) (except clause (iv)) to all holders of an approved application for the drug under section 505 of the Federal Food, Drug, and Cosmetic Act. Such a written request shall be made in a manner equivalent to the manner in which a written request is made under subsection (a) or (b) of section 505A of the Federal Food, Drug, and Cosmetic Act, including with respect to information provided on the pediatric studies to be conducted pursuant to the request.

(2) REQUESTS FOR CONTRACT PROPOSALS- If the Commissioner of Food and Drugs does not receive a response to a written request issued under paragraph (1) within 30 days of the date on which a request was issued, or if a referral described in subsection (a)(1)(A)(iv) is made, the Secretary, acting through the Director of the National Institutes of Health and in consultation with the Commissioner of Food and Drugs, shall publish a request for contract proposals to conduct the pediatric studies described in the written request.

(3) DISQUALIFICATION- A holder that receives a first right of refusal shall not be entitled to respond to a request for contract proposals under paragraph (2).

(4) GUIDANCE- Not later than 270 days after the date of enactment of this section, the Commissioner of Food and Drugs shall promulgate guidance to establish the process for the submission of responses to written requests under paragraph (1).

(5) CONTRACTS- A contract under this section may be awarded only if a proposal for the contract is submitted to the Secretary in such form and manner, and containing such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(6) REPORTING OF STUDIES-

(A) IN GENERAL- On completion of a pediatric study in accordance with a contract awarded under this section, a report concerning the study shall be submitted to the Director of the National Institutes of Health and the Commissioner of Food and Drugs. The report shall include all data generated in connection with the study.

(B) AVAILABILITY OF REPORTS- Each report submitted under subparagraph (A) shall be considered to be in the public domain (subject to section 505A(d)(4)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(d)(4)(D)) and shall be assigned a docket number by the Commissioner of Food and Drugs. An interested person may submit written comments concerning such pediatric studies to the Commissioner of Food and Drugs, and the written comments shall become part of the docket file with respect to each of the drugs.

(C) ACTION BY COMMISSIONER- The Commissioner of Food and Drugs shall take appropriate action in response to the reports submitted under subparagraph (A) in accordance with paragraph (7).

(7) REQUESTS FOR LABELING CHANGE- During the 180-day period after the date on which a report is submitted under paragraph (6)(A), the Commissioner of Food and Drugs shall--

(A) review the report and such other data as are available concerning the safe and effective use in the pediatric population of the drug studied;

(B) negotiate with the holders of approved applications for the drug studied for any labeling changes that the Commissioner of Food and Drugs determines to be appropriate and requests the holders to make; and

(C)(i) place in the public docket file a copy of the report and of any requested labeling changes; and

(ii) publish in the Federal Register a summary of the report and a copy of any requested labeling changes.

(8) DISPUTE RESOLUTION-

(A) REFERRAL TO PEDIATRIC ADVISORY SUBCOMMITTEE OF THE ANTI-INFECTIVE DRUGS ADVISORY COMMITTEE- If, not later than the end of the 180-day period specified in paragraph (7), the holder of an approved application for the drug involved does not agree to any labeling change requested by the Commissioner of Food and Drugs under that paragraph, the Commissioner of Food and Drugs shall refer the request to the Pediatric Advisory Subcommittee of the Anti-Infective Drugs Advisory Committee.

(B) ACTION BY THE PEDIATRIC ADVISORY SUBCOMMITTEE OF THE ANTI-INFECTIVE DRUGS ADVISORY COMMITTEE- Not later than 90 days after receiving a referral under subparagraph (A), the Pediatric Advisory Subcommittee of the Anti-Infective Drugs Advisory Committee shall--

(i) review the available information on the safe and effective use of the drug in the pediatric population, including study reports submitted under this section; and

(ii) make a recommendation to the Commissioner of Food and Drugs as to appropriate labeling changes, if any.

(9) FDA DETERMINATION- Not later than 30 days after receiving a recommendation from the Pediatric Advisory Subcommittee of the Anti-Infective Drugs Advisory Committee under paragraph (8)(B)(ii) with respect to a drug, the Commissioner of Food and Drugs shall consider the recommendation and, if appropriate, make a request to the holders of approved applications for the drug to make any labeling change that the Commissioner of Food and Drugs determines to be appropriate.

(10) FAILURE TO AGREE- If a holder of an approved application for a drug, within 30 days after receiving a request to make a labeling change under paragraph (9), does not agree to make a requested labeling change, the Commissioner may deem the drug to be misbranded under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(11) NO EFFECT ON AUTHORITY- Nothing in this subsection limits the authority of the United States to bring an enforcement action under the Federal Food, Drug, and Cosmetic Act when a drug lacks appropriate pediatric labeling. Neither course of action (the Pediatric Advisory Subcommittee of the Anti-Infective Drugs Advisory Committee process or an enforcement action referred to in the preceding sentence) shall preclude, delay, or serve as the basis to stay the other course of action.

(12) RECOMMENDATION FOR FORMULATION CHANGES- If a pediatric study completed under public contract indicates that a formulation change is necessary and the Secretary agrees, the Secretary shall send a nonbinding letter of recommendation regarding that change to each holder of an approved application.

(d) AUTHORIZATION OF APPROPRIATIONS-

(1) IN GENERAL- There are authorized to be appropriated to carry out this

section--

(A) \$200,000,000 for fiscal year 2002; and

(B) such sums as are necessary for each of the five succeeding fiscal years.

(2) AVAILABILITY- Any amount appropriated under paragraph (1) shall remain available to carry out this section until expended.'

SEC. 4. WRITTEN REQUEST TO HOLDERS OF APPROVED APPLICATIONS FOR DRUGS THAT HAVE MARKET EXCLUSIVITY.

Section 505A(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(d)) is amended by adding at the end the following:

(4) WRITTEN REQUEST TO HOLDERS OF APPROVED APPLICATIONS FOR DRUGS THAT HAVE MARKET EXCLUSIVITY-

(A) REQUEST AND RESPONSE- If the Secretary makes a written request for pediatric studies (including neonates, as appropriate) under subsection (c) to the holder of an application approved under section 505(b)(1), the holder, not later than 180 days after receiving the written request, shall respond to the Secretary as to the intention of the holder to act on the request by--

(i) indicating when the pediatric studies will be initiated, if the holder agrees to the request; or

(ii) indicating that the holder does not agree to the request.

(B) NO AGREEMENT TO REQUEST-

(i) REFERRAL- If the holder does not agree to a written request within the time period specified in subparagraph (A), and if the Secretary determines that there is a continuing need for information relating to the use of the drug in the pediatric population (including neonates, as appropriate), the Secretary shall refer the drug to the Foundation for the National Institutes of Health established under section 499 of the Public Health Service Act (42 U.S.C. 290b) (referred to in this paragraph as the 'Foundation') for the conduct of the pediatric studies described in the written request.

(ii) PUBLIC NOTICE- The Secretary shall give public notice of the name of the drug, the name of the manufacturer, and the indications to be studied made in a referral under clause (i).

(C) LACK OF FUNDS- On referral of a drug under subparagraph (B)(i), the Foundation shall issue a proposal to award a grant to conduct the requested studies unless the Foundation certifies to the Secretary, within a timeframe that the Secretary determines is appropriate through guidance, that the Foundation does not have funds available under section 499(j)(9)(B)(i) to conduct the requested studies. If the Foundation so certifies, the Secretary shall refer the drug for

inclusion on the list established under section 409I of the Public Health Service Act for the conduct of the studies.

(D) EFFECT OF SUBSECTION- Nothing in this subsection (including with respect to referrals from the Secretary to the Foundation) alters or amends section 301(j) of this Act or section 552 of title 5 or section 1905 of title 18, United States Code.

(E) NO REQUIREMENT TO REFER- Nothing in this subsection shall be construed to require that every declined written request shall be referred to the Foundation.

(F) WRITTEN REQUESTS UNDER SUBSECTION (b)- For drugs under subsection (b) for which written requests have not been accepted, if the Secretary determines that there is a continuing need for information relating to the use of the drug in the pediatric population (including neonates, as appropriate), the Secretary shall issue a written request under subsection (c) after the date of approval of the drug.

SEC. 5. TIMELY LABELING CHANGES FOR DRUGS GRANTED EXCLUSIVITY; DRUG FEES.

(a) ELIMINATION OF USER FEE WAIVER FOR PEDIATRIC SUPPLEMENTS- Section 736(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379h(a)(1)) is amended--

(1) by striking subparagraph (F); and

(2) by redesignating subparagraph (G) as subparagraph (F).

(b) LABELING CHANGES-

(1) DEFINITION OF PRIORITY SUPPLEMENT- Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

(kk) PRIORITY SUPPLEMENT- The term 'priority supplement' means a drug application referred to in section 101(4) of the Food and Drug Administration Modernization Act of 1997 (111 Stat. 2298).

(2) TREATMENT AS PRIORITY SUPPLEMENTS- Section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) is amended by adding at the end the following:

(l) LABELING SUPPLEMENTS-

(1) PRIORITY STATUS FOR PEDIATRIC SUPPLEMENTS- Any supplement to an application under section 505 proposing a labeling change pursuant to a report on a pediatric study under this section--

(A) shall be considered to be a priority supplement; and

(B) shall be subject to the performance goals established by the Commissioner for priority drugs.

(2) DISPUTE RESOLUTION-

(A) REQUEST FOR LABELING CHANGE AND FAILURE TO AGREE- If the Commissioner determines that an application with respect to which a pediatric study is conducted under this section is approvable and that the only open issue for final action on the application is the reaching of an agreement between the sponsor of the application and the Commissioner on appropriate changes to the labeling for the drug that is the subject of the application, not later than 180 days after the date of submission of the application--

(i) the Commissioner shall request that the sponsor of the application make any labeling change that the Commissioner determines to be appropriate; and

(ii) if the sponsor of the application does not agree to make a labeling change requested by the Commissioner, the Commissioner shall refer the matter to the Pediatric Advisory Subcommittee of the Anti-Infective Drugs Advisory Committee.

(B) ACTION BY THE PEDIATRIC ADVISORY SUBCOMMITTEE OF THE ANTI-INFECTIVE DRUGS ADVISORY COMMITTEE- Not later than 90 days after receiving a referral under subparagraph (A)(ii), the Pediatric Advisory Subcommittee of the Anti-Infective Drugs Advisory Committee shall--

(i) review the pediatric study reports; and

(ii) make a recommendation to the Commissioner concerning appropriate labeling changes, if any.

(C) CONSIDERATION OF RECOMMENDATIONS- The Commissioner shall consider the recommendations of the Pediatric Advisory Subcommittee of the Anti-Infective Drugs Advisory Committee and, if appropriate, not later than 30 days after receiving the recommendation, make a request to the sponsor of the application to make any labeling change that the Commissioner determines to be appropriate.

(D) MISBRANDING- If the sponsor of the application, within 30 days after receiving a request under subparagraph (C), does not agree to make a labeling change requested by the Commissioner, the Commissioner may deem the drug that is the subject of the application to be misbranded.

(E) NO EFFECT ON AUTHORITY- Nothing in this subsection limits the authority of the United States to bring an enforcement action under this Act when a drug lacks appropriate pediatric labeling. Neither course of action (the Pediatric Advisory Subcommittee of the Anti-Infective Drugs Advisory Committee process or an enforcement action referred to in the preceding sentence) shall preclude, delay, or serve as the basis to stay the other

course of action.'

SEC. 6. OFFICE OF PEDIATRIC THERAPEUTICS.

(a) ESTABLISHMENT- The Secretary of Health and Human Services shall establish an Office of Pediatric Therapeutics within the Food and Drug Administration.

(b) DUTIES- The Office of Pediatric Therapeutics shall be responsible for coordination and facilitation of all activities of the Food and Drug Administration that may have any effect on a pediatric population or the practice of pediatrics or may in any other way involve pediatric issues.

(c) STAFF- The staff of the Office of Pediatric Therapeutics shall coordinate with employees of the Department of Health and Human Services who exercise responsibilities relating to pediatric therapeutics and shall include--

(1) one or more additional individuals with expertise concerning ethical issues presented by the conduct of clinical research in the pediatric population; and

(2) one or more additional individuals with expertise in pediatrics as may be necessary to perform the activities described in subsection (b).

SEC. 7. NEONATES.

Section 505A(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(g)) is amended by inserting '(including neonates in appropriate cases)' after 'pediatric age groups'.

SEC. 8. SUNSET.

Section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) is amended by striking subsection (j) and inserting the following:

(j) SUNSET- A drug may not receive any 6-month period under subsection (a) or (c) unless--

(1) on or before October 1, 2007, the Secretary makes a written request for pediatric studies of the drug;

(2) on or before October 1, 2007, an application for the drug is accepted for filing under section 505(b); and

(3) all requirements of this section are met.'

SEC. 9. DISSEMINATION OF PEDIATRIC INFORMATION.

Section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) (as amended by section 5(b)(2)) is amended by adding at the end the following:

(m) DISSEMINATION OF PEDIATRIC INFORMATION-

(1) IN GENERAL- Not later than 180 days after the date of submission of a report on a pediatric study under this section, the Commissioner shall make available to the public a summary of the medical and clinical pharmacology reviews of pediatric studies conducted for the supplement, including by publication in the Federal Register.

(2) EFFECT OF SUBSECTION- Nothing in this subsection alters or amends section 301(j) of this Act or section 552 of title 5 or section 1905 of title 18, United States Code.'

SEC. 10. CLARIFICATION OF INTERACTION OF PEDIATRIC EXCLUSIVITY UNDER SECTION 505A

OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND 180-DAY EXCLUSIVITY AWARDED TO AN APPLICANT FOR APPROVAL OF A DRUG UNDER SECTION 505(j) OF THAT ACT.

Section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) (as amended by section 9) is amended by adding at the end the following:

“(n) CLARIFICATION OF INTERACTION OF MARKET EXCLUSIVITY UNDER THIS SECTION AND MARKET EXCLUSIVITY AWARDED TO AN APPLICANT FOR APPROVAL OF A DRUG UNDER SECTION 505(j)- If a 180-day period under section 505(j)(5)(B)(iv) overlaps with a 6-month exclusivity period under this section, so that the applicant for approval of a drug under section 505(j) entitled to the 180-day period under that section loses a portion of the 180-day period to which the applicant is entitled for the drug, the 180-day period shall be extended from--

“(1) the date on which the 180-day period would have expired by the number of days of the overlap, if the 180-day period would, but for the application of this subsection, expire after the 6-month exclusivity period; or

“(2) the date on which the 6-month exclusivity period expires, by the number of days of the overlap if the 180-day period would, but for the application of this subsection, expire during the six-month exclusivity period.”

SEC. 11. PROMPT APPROVAL OF DRUGS UNDER SECTION 505(j) WHEN PEDIATRIC INFORMATION IS ADDED TO LABELING.

(a) IN GENERAL- Section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) (as amended by section 10) is amended by adding at the end the following:

“(b) PROMPT APPROVAL OF DRUGS UNDER SECTION 505(j) WHEN PEDIATRIC INFORMATION IS ADDED TO LABELING-

“(1) GENERAL RULE- A drug for which an application has been submitted or approved under section 505(j) shall not be considered ineligible for approval under that section or misbranded under section 502 on the basis that the labeling of the drug omits a pediatric indication or any other aspect of labeling pertaining to pediatric use when the omitted indication or other aspect is protected by patent or by exclusivity under clause (iii) or (iv) of section 505(j)(5)(D).

“(2) LABELING- Notwithstanding clauses (iii) and (iv) of section 505(j)(5)(D), the Secretary may require that the labeling of a drug approved under section 505(j) that omits a pediatric indication or other aspect of labeling as described in paragraph (1) include--

“(A) a statement that, because of marketing exclusivity for a manufacturer--

“(i) the drug is not labeled for pediatric use; or

“(ii) in the case of a drug for which there is an additional pediatric use not referred to in paragraph (1), the drug is not labeled for the pediatric use under paragraph (1); and

“(B) a statement of any appropriate pediatric contraindications, warnings, or precautions that the Secretary considers necessary.

“(3) PRESERVATION OF PEDIATRIC EXCLUSIVITY AND OTHER PROVISIONS- This subsection does not affect--

“(A) the availability or scope of exclusivity under this section;

(B) the availability or scope of exclusivity under section 505 for pediatric formulations;

(C) the question of the eligibility for approval of any application under section 505(j) that omits any other conditions of approval entitled to exclusivity under clause (iii) or (iv) of section 505(j) (5)(D); or

(D) except as expressly provided in paragraphs (1) and (2), the operation of section 505.

(b) **EFFECTIVE DATE-** The amendment made by subsection (a) takes effect on the date of enactment of this Act, including with respect to applications under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)) that are approved or pending on that date.

SEC. 12. STUDY CONCERNING RESEARCH INVOLVING CHILDREN.

(a) **CONTRACT WITH INSTITUTE OF MEDICINE-** The Secretary of Health and Human Services shall enter into a contract with the Institute of Medicine for--

(1) the conduct, in accordance with subsection (b), of a review of--

(A) Federal regulations in effect on the date of the enactment of this Act relating to research involving children;

(B) federally prepared or supported reports relating to research involving children; and

(C) federally supported evidence-based research involving children; and

(2) the submission to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, not later than two years after the date of enactment of this Act, of a report concerning the review conducted under paragraph (1) that includes recommendations on best practices relating to research involving children.

(b) **AREAS OF REVIEW-** In conducting the review under subsection (a)(1), the Institute of Medicine shall consider the following:

(1) The written and oral process of obtaining and defining 'assent', 'permission' and 'informed consent' with respect to child clinical research participants and the parents, guardians, and the individuals who may serve as the legally authorized representatives of such children (as defined in subpart A of part 46 of title 45, Code of Federal Regulations).

(2) The expectations and comprehension of child research participants and the parents, guardians, or legally authorized representatives of such children, for the direct benefits and risks of the child's research involvement, particularly in terms of research versus therapeutic treatment.

(3) The definition of 'minimal risk' with respect to a healthy child or a child with an illness.

(4) The appropriateness of the regulations applicable to children of differing ages and maturity levels, including regulations relating to legal status.

(5) Whether payment (financial or otherwise) may be provided to a child or his or her parent, guardian, or legally authorized representative for the participation of the child in research, and if so, the amount and type of payment that may be made.

(6) Compliance with the regulations referred to in subsection (a)(1)(A), the monitoring of such compliance (including the role of institutional review boards), and the enforcement

actions taken for violations of such regulations.

(7) The unique roles and responsibilities of institutional review boards in reviewing research involving children, including composition of membership on institutional review boards.

(c) **REQUIREMENTS OF EXPERTISE-** The Institute of Medicine shall conduct the review under subsection (a)(1) and make recommendations under subsection (a)(2) in conjunction with experts in pediatric medicine, pediatric research, and the ethical conduct of research involving children.

SEC. 13. FOUNDATION FOR THE NATIONAL INSTITUTES OF HEALTH.

Section 499 of the Public Health Service Act (42 U.S.C. 290b) is amended--

(1) in subsection (b), by inserting '(including collection of funds for pediatric pharmacologic research)' after 'mission';

(2) in subsection (c)(1)--

(A) by redesignating subparagraph (C) as subparagraph (D); and

(B) by inserting after subparagraph (B) the following:

'(C) A program to collect funds for pediatric pharmacologic research and studies listed by the Secretary pursuant to section 409I(a)(1)(A) of this Act and referred under section 505A (d)(4)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(d)(4)(C)).';

(3) in subsection (d)--

(A) in paragraph (1)--

(i) in subparagraph (B)--

(I) in clause (ii), by striking 'and' at the end;

(II) in clause (iii), by striking the period and inserting '; and'; and

(III) by adding at the end the following:

'(iv) the Commissioner of Food and Drugs.'; and

(ii) by striking subparagraph (C) and inserting the following:

'(C) The ex officio members of the Board under subparagraph (B) shall appoint to the Board individuals from among a list of candidates to be provided by the National Academy of Science. Such appointed members shall include--

'(i) representatives of the general biomedical field;

'(ii) representatives of experts in pediatric medicine and research;

'(iii) representatives of the general biobehavioral field, which may include experts in biomedical ethics; and

'(iv) representatives of the general public, which may include representatives of affected industries.'; and

(B) in paragraph (2), by realigning the margin of subparagraph (B) to align with subparagraph (A);

(4) in subsection (k)(9)--

(A) by striking 'The Foundation' and inserting the following:

'(A) IN GENERAL- The Foundation'; and

(B) by adding at the end the following:

'(B) GIFTS, GRANTS, AND OTHER DONATIONS-

'(i) IN GENERAL- Gifts, grants, and other donations to the Foundation may be designated for pediatric research and studies on drugs, and funds so designated shall be used solely for grants for research and studies under subsection (c)(1)(C).

'(ii) OTHER GIFTS- Other gifts, grants, or donations received by the Foundation and not described in clause (i) may also be used to support such pediatric research and studies.

'(iii) REPORT- The recipient of a grant for research and studies shall agree to provide the Director of the National Institutes of Health and the Commissioner of Food and Drugs, at the conclusion of the research and studies--

'(I) a report describing the results of the research and studies; and

'(II) all data generated in connection with the research and studies.

'(iv) ACTION BY THE COMMISSIONER OF FOOD AND DRUGS- The Commissioner of Food and Drugs shall take appropriate action in response to a report received under clause (iii) in accordance with paragraphs (7) through (12) of section 409I(c), including negotiating with the holders of approved applications for the drugs studied for any labeling changes that the Commissioner determines to be appropriate and requests the holders to make.

'(C) APPLICABILITY- Subparagraph (A) does not apply to the program described in subsection (c)(1)(C).';

(5) by redesignating subsections (f) through (m) as subsections (e) through (l), respectively;

(6) in subsection (h)(11) (as so redesignated), by striking 'solicit' and inserting 'solicit,'; and

(7) in paragraphs (1) and (2) of subsection (j) (as so redesignated), by striking '(including those developed under subsection (d)(2)(B)(i)(II))' each place it appears.

SEC. 14. PEDIATRIC PHARMACOLOGY ADVISORY COMMITTEE.

(a) IN GENERAL- The Secretary of Health and Human Services shall, under section 222 of the Public Health Service Act (42 U.S.C. 217a), convene and consult an advisory committee on pediatric pharmacology (referred to in this section as the 'advisory committee').

(b) PURPOSE-

(1) IN GENERAL- The advisory committee shall advise and make recommendations to the Secretary, through the Commissioner of Food and Drugs and in consultation with the Director of the National Institutes of Health, on matters relating to pediatric pharmacology.

(2) MATTERS INCLUDED- The matters referred to in paragraph (1) include--

(A) pediatric research conducted under sections 351, 409I, and 499 of the Public Health Service Act and sections 501, 502, 505, and 505A of the Federal Food, Drug, and Cosmetic Act;

(B) identification of research priorities related to pediatric pharmacology and the need for additional treatments of specific pediatric diseases or conditions; and

(C) the ethics, design, and analysis of clinical trials related to pediatric pharmacology.

(c) COMPOSITION- The advisory committee shall include representatives of pediatric health organizations, pediatric researchers, relevant patient and patient-family organizations, and other experts selected by the Secretary.

SEC. 15. PEDIATRIC SUBCOMMITTEE OF THE ONCOLOGIC DRUGS ADVISORY COMMITTEE.

(a) CLARIFICATION OF AUTHORITIES-

(1) IN GENERAL- The Pediatric Subcommittee of the Oncologic Drugs Advisory Committee (referred to in this section as the 'Subcommittee'), in carrying out the mission of reviewing and evaluating the data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of pediatric cancers, shall--

(A) evaluate and, to the extent practicable, prioritize new and emerging therapeutic alternatives available to treat pediatric cancer;

(B) provide recommendations and guidance to help ensure that children with cancer have timely access to the most promising new cancer therapies; and

(C) advise on ways to improve consistency in the availability of new therapeutic agents.

(2) MEMBERSHIP-

(A) IN GENERAL- The Secretary shall appoint not more than 11 voting members to the Pediatric Subcommittee from the membership of the Pediatric Pharmacology Advisory Committee and the Oncologic Drugs Advisory Committee.

(B) REQUEST FOR PARTICIPATION- The Subcommittee shall request participation of the following members in the scientific and ethical consideration of topics of pediatric cancer, as necessary:

(i) At least two pediatric oncology specialists from the National Cancer Institute.

(ii) At least four pediatric oncology specialists from--

(I) the Children's Oncology Group;

(II) other pediatric experts with an established history of conducting clinical trials in children; or

(III) consortia sponsored by the National Cancer Institute, such as the Pediatric Brain Tumor Consortium, the New Approaches to Neuroblastoma Therapy or other

pediatric oncology consortia.

(iii) At least two representatives of the pediatric cancer patient and patient-family community.

(iv) One representative of the nursing community.

(v) At least one statistician.

(vi) At least one representative of the pharmaceutical industry.

(b) PRE-CLINICAL MODELS TO EVALUATE PROMISING PEDIATRIC CANCER THERAPIES- Section 413 of the Public Health Service Act (42 U.S.C. 285a-2) is amended by adding at the end the following:

(c) PRE-CLINICAL MODELS TO EVALUATE PROMISING PEDIATRIC CANCER THERAPIES-

(1) EXPANSION AND COORDINATION OF ACTIVITIES- The Director of the National Cancer Institute shall expand, intensify, and coordinate the activities of the Institute with respect to research on the development of preclinical models to evaluate which therapies are likely to be effective for treating pediatric cancer.

(2) COORDINATION WITH OTHER INSTITUTES- The Director of the Institute shall coordinate the activities under paragraph (1) with similar activities conducted by other national research institutes and agencies of the National Institutes of Health to the extent that those institutes and agencies have responsibilities that are related to pediatric cancer.

(c) CLARIFICATION OF AVAILABILITY OF INVESTIGATIONAL NEW DRUGS FOR PEDIATRIC STUDY AND USE-

(1) AMENDMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT- Section 505(i)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)(1)) is amended--

(A) in subparagraph (B), by striking 'and' at the end;

(B) in subparagraph (C), by striking the period at the end and inserting '; and'; and

(C) by adding at the end the following:

(D) the submission to the Secretary by the manufacturer or the sponsor of the investigation of a new drug of a statement of intent regarding whether the manufacturer or sponsor has plans for assessing pediatric safety and efficacy.

(2) AMENDMENT OF THE PUBLIC HEALTH SERVICE ACT- Section 402(j)(3)(A) of the Public Health Service Act (42 U.S.C. 282(j)(3)(A)) is amended in the first sentence--

(A) by striking 'trial sites, and' and inserting 'trial sites,'; and

(B) by striking 'in the trial,' and inserting 'in the trial, and a description of whether, and through what procedure, the manufacturer or sponsor of the investigation of a new drug will respond to requests for protocol exception, with appropriate safeguards, for single-patient and expanded protocol use of the new drug, particularly in children,'.

(d) REPORT- Not later than January 31, 2003, the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs and in consultation with the Director of the National Institutes of Health, shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on patient access to new therapeutic agents for pediatric cancer, including access to single patient use of new therapeutic agents.

SEC. 16. REPORT ON PEDIATRIC EXCLUSIVITY PROGRAM.

Not later than October 1, 2006, the Comptroller General of the United States, in consultation with the Secretary of Health and Human Services, shall submit to Congress a report that addresses the following issues, using publicly available data or data otherwise available to the Government that may be used and disclosed under applicable law:

(1) The effectiveness of section 505A of the Federal Food, Drug, and Cosmetic Act and section 409I of the Public Health Service Act (as added by this Act) in ensuring that medicines used by children are tested and properly labeled, including--

(A) the number and importance of drugs for children that are being tested as a result of this legislation and the importance for children, health care providers, parents, and others of labeling changes made as a result of such testing;

(B) the number and importance of drugs for children that are not being tested for their use notwithstanding the provisions of this legislation, and possible reasons for the lack of testing; and

(C) the number of drugs for which testing is being done, exclusivity granted, and labeling changes required, including the date pediatric exclusivity is granted and the date labeling changes are made and which labeling changes required the use of the dispute resolution process established pursuant to the amendments made by this Act, together with a description of the outcomes of such process, including a description of the disputes and the recommendations of the Pediatric Advisory Subcommittee of the Anti-Infective Drugs Advisory Committee.

(2) The economic impact of section 505A of the Federal Food, Drug, and Cosmetic Act and section 409I of the Public Health Service Act (as added by this Act), including an estimate of--

(A) the costs to taxpayers in the form of higher expenditures by medicaid and other Government programs;

(B) sales for each drug during the 6-month period for which exclusivity is granted, as attributable to such exclusivity;

(C) costs to consumers and private insurers as a result of any delay in the availability of lower cost generic equivalents of drugs tested and granted exclusivity under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), and loss of revenue by the generic drug industry and retail pharmacies as a result of any such delay; and

(D) the benefits to the government, to private insurers, and to consumers resulting from decreased health care costs, including--

(i) decreased hospitalizations and fewer medical errors, due to more appropriate and more effective use of medications in children as a result of

testing and re-labeling because of the amendments made by this Act;

(ii) direct and indirect benefits associated with fewer physician visits not related to hospitalization;

(iii) benefits to children from missing less time at school and being less affected by chronic illnesses, thereby allowing a better quality of life;

(iv) benefits to consumers from lower health insurance premiums due to lower treatment costs and hospitalization rates; and

(v) benefits to employers from reduced need for employees to care for family members.

(3) The nature and type of studies in children for each drug granted exclusivity under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), including--

(A) a description of the complexity of the studies;

(B) the number of study sites necessary to obtain appropriate data;

(C) the number of children involved in any clinical studies; and

(D) the estimated cost of each of the studies.

(4) Any recommendations for modifications to the programs established under section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) and section 409I of the Public Health Service Act (as added by section 3) that the Secretary determines to be appropriate, including a detailed rationale for each recommendation.

(5) The increased private and Government-funded pediatric research capability associated with this Act and the amendments made by this Act.

(6) The number of written requests and additional letters of recommendation that the Secretary issues.

(7) The prioritized list of off-patent drugs for which the Secretary issues written requests.

(8)(A) The efforts made by the Secretary to increase the number of studies conducted in the neonate population; and

(B) the results of those efforts, including efforts made to encourage the conduct of appropriate studies in neonates by companies with products that have sufficient safety and other information to make the conduct of studies ethical and safe.

SEC. 17. ADVERSE-EVENT REPORTING.

(a) **TOLL-FREE NUMBER IN LABELING-** Not later than one year after the date of the enactment of this Act, the Secretary of Health and Human Services shall promulgate a final rule requiring that the labeling of each drug for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act (regardless of the date on which approved) include the toll-free number maintained by the Secretary for the purpose of receiving reports of adverse events regarding drugs and a statement that such number is to be used for reporting purposes only, not to receive medical advice. With respect to the final rule:

(1) The rule shall provide for the implementation of such labeling requirement in a manner that the Secretary considers to be most likely to reach the broadest consumer audience.

(2) In promulgating the rule, the Secretary shall seek to minimize the cost of the rule on the pharmacy profession.

(3) The rule shall take effect not later than 60 days after the date on which the rule is promulgated.

(b) DRUGS WITH PEDIATRIC MARKET EXCLUSIVITY-

(1) **IN GENERAL-** During the one year beginning on the date on which a drug receives a period of market exclusivity under 505A of the Federal Food, Drug, and Cosmetic Act, any report of an adverse event regarding the drug that the Secretary of Health and Human Services receives shall be referred to the Office of Pediatric Therapeutics established under section 6 of this Act. In considering the report, the Director of such Office shall provide for the review of the report by the Pediatric Advisory Subcommittee of the Anti-Infective Drugs Advisory Committee, including obtaining any recommendations of such subcommittee regarding whether the Secretary should take action under the Federal Food, Drug, and Cosmetic Act in response to the report.

(2) **RULE OF CONSTRUCTION-** Paragraph (1) may not be construed as restricting the authority of the Secretary of Health and Human Services to continue carrying out the activities described in such paragraph regarding a drug after the one-year period described in such paragraph regarding the drug has expired.

SEC. 18. MINORITY CHILDREN AND PEDIATRIC-EXCLUSIVITY PROGRAM.

(a) **PROTOCOLS FOR PEDIATRIC STUDIES-** Section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) is amended in subsection (d)(2) by inserting after the first sentence the following: 'In reaching an agreement regarding written protocols, the Secretary shall take into account adequate representation of children of ethnic and racial minorities.'

(b) STUDY BY GENERAL ACCOUNTING OFFICE-

(1) **IN GENERAL-** The Comptroller General of the United States shall conduct a study for the purpose of determining the following:

(A) The extent to which children of ethnic and racial minorities are adequately represented in studies under section 505A of the Federal Food, Drug, and Cosmetic Act; and to the extent ethnic and racial minorities are not adequately represented, the reasons for such under representation and recommendations to increase such representation.

(B) Whether the Food and Drug Administration has appropriate management systems to monitor the representation of the children of ethnic and racial minorities in such studies.

(C) Whether drugs used to address diseases that disproportionately affect racial and ethnic minorities are being studied for their safety and effectiveness under section 505A of the Federal Food, Drug, and Cosmetic Act.

(2) **DATE CERTAIN FOR COMPLETING STUDY-** Not later than January 10, 2003, the Comptroller General shall complete the study required in paragraph (1) and submit to the Congress a report describing the findings of the study.

SEC. 19. TECHNICAL AND CONFORMING AMENDMENTS.

Section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) (as amended by sections 2 (1), 5(b)(2), 9, 10, 11, and 17) is amended--

(1)(A) by striking '(j)(4)(D)(ii)' each place it appears and inserting '(j)(5)(D)(ii)';

(B) by striking '(j)(4)(D)' each place it appears and inserting '(j)(5)(D)'; and

(C) by striking '505(j)(4)(D)' each place it appears and inserting '505(j)(5)(D)';

(2) by redesignating subsections (a), (g), (h), (i), (j), (k), (l), (m), (n), and (o) as subsections (b), (a), (g), (h), (n), (m), (i), (j), (k), and (l) respectively;

(3) by moving the subsections so as to appear in alphabetical order;

(4) in paragraphs (1), (2), and (3) of subsection (d), subsection (e), and subsection (m) (as redesignated by paragraph (2)), by striking `subsection (a) or (c)' and inserting `subsection (b) or (c)'; and

(5) in subsection (g) (as redesignated by paragraph (2)), by striking `subsection (a) or (b)' and inserting `subsection (b) or (c)'.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

END

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One Hundred Eighth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,
the seventh day of January, two thousand and three*

An Act

To amend the Federal Food, Drug, and Cosmetic Act to authorize the Food and Drug Administration to require certain research into drugs used in pediatric patients.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Pediatric Research Equity Act of 2003".

SEC. 2. RESEARCH INTO PEDIATRIC USES FOR DRUGS AND BIOLOGICAL PRODUCTS.

(a) **IN GENERAL.**—Subchapter A of chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 505A the following:

"SEC. 505B. RESEARCH INTO PEDIATRIC USES FOR DRUGS AND BIOLOGICAL PRODUCTS.

"(a) NEW DRUGS AND BIOLOGICAL PRODUCTS.—

"(1) IN GENERAL.—A person that submits an application (or supplement to an application)—

"(A) under section 505 for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration; or

"(B) under section 351 of the Public Health Service Act (42 U.S.C. 262) for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration;

shall submit with the application the assessments described in paragraph (2).

"(2) ASSESSMENTS.—

"(A) IN GENERAL.—The assessments referred to in paragraph (1) shall contain data, gathered using appropriate formulations for each age group for which the assessment is required, that are adequate—

"(i) to assess the safety and effectiveness of the drug or the biological product for the claimed indications in all relevant pediatric subpopulations; and

"(ii) to support dosing and administration for each pediatric subpopulation for which the drug or the biological product is safe and effective.

"(B) SIMILAR COURSE OF DISEASE OR SIMILAR EFFECT OF DRUG OR BIOLOGICAL PRODUCT.—

"(i) IN GENERAL.—If the course of the disease and the effects of the drug are sufficiently similar in adults

and pediatric patients, the Secretary may conclude that pediatric effectiveness can be extrapolated from adequate and well-controlled studies in adults, usually supplemented with other information obtained in pediatric patients, such as pharmacokinetic studies.

“(ii) **EXTRAPOLATION BETWEEN AGE GROUPS.**—A study may not be needed in each pediatric age group if data from one age group can be extrapolated to another age group.

“(3) **DEFERRAL.**—On the initiative of the Secretary or at the request of the applicant, the Secretary may defer submission of some or all assessments required under paragraph (1) until a specified date after approval of the drug or issuance of the license for a biological product if—

“(A) the Secretary finds that—

“(i) the drug or biological product is ready for approval for use in adults before pediatric studies are complete;

“(ii) pediatric studies should be delayed until additional safety or effectiveness data have been collected; or

“(iii) there is another appropriate reason for deferral; and

“(B) the applicant submits to the Secretary—

“(i) certification of the grounds for deferring the assessments;

“(ii) a description of the planned or ongoing studies; and

“(iii) evidence that the studies are being conducted or will be conducted with due diligence and at the earliest possible time.

“(4) **WAIVERS.**—

“(A) **FULL WAIVER.**—On the initiative of the Secretary or at the request of an applicant, the Secretary shall grant a full waiver, as appropriate, of the requirement to submit assessments for a drug or biological product under this subsection if the applicant certifies and the Secretary finds that—

“(i) necessary studies are impossible or highly impracticable (because, for example, the number of patients is so small or the patients are geographically dispersed);

“(ii) there is evidence strongly suggesting that the drug or biological product would be ineffective or unsafe in all pediatric age groups; or

“(iii) the drug or biological product—

“(I) does not represent a meaningful therapeutic benefit over existing therapies for pediatric patients; and

“(II) is not likely to be used in a substantial number of pediatric patients.

“(B) **PARTIAL WAIVER.**—On the initiative of the Secretary or at the request of an applicant, the Secretary shall grant a partial waiver, as appropriate, of the requirement to submit assessments for a drug or biological product under this subsection with respect to a specific pediatric

age group if the applicant certifies and the Secretary finds that—

“(i) necessary studies are impossible or highly impracticable (because, for example, the number of patients in that age group is so small or patients in that age group are geographically dispersed);

“(ii) there is evidence strongly suggesting that the drug or biological product would be ineffective or unsafe in that age group;

“(iii) the drug or biological product—

“(I) does not represent a meaningful therapeutic benefit over existing therapies for pediatric patients in that age group; and

“(II) is not likely to be used by a substantial number of pediatric patients in that age group;

or

“(iv) the applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

“(C) PEDIATRIC FORMULATION NOT POSSIBLE.—If a waiver is granted on the ground that it is not possible to develop a pediatric formulation, the waiver shall cover only the pediatric groups requiring that formulation.

“(D) LABELING REQUIREMENT.—If the Secretary grants a full or partial waiver because there is evidence that a drug or biological product would be ineffective or unsafe in pediatric populations, the information shall be included in the labeling for the drug or biological product.

“(b) MARKETED DRUGS AND BIOLOGICAL PRODUCTS.—

“(1) IN GENERAL.—After providing notice in the form of a letter and an opportunity for written response and a meeting, which may include an advisory committee meeting, the Secretary may (by order in the form of a letter) require the holder of an approved application for a drug under section 505 or the holder of a license for a biological product under section 351 of the Public Health Service Act (42 U.S.C. 262) to submit by a specified date the assessments described in subsection (a)(2) if the Secretary finds that—

“(A)(i) the drug or biological product is used for a substantial number of pediatric patients for the labeled indications; and

“(ii) the absence of adequate labeling could pose significant risks to pediatric patients; or

“(B)(i) there is reason to believe that the drug or biological product would represent a meaningful therapeutic benefit over existing therapies for pediatric patients for one or more of the claimed indications; and

“(ii) the absence of adequate labeling could pose significant risks to pediatric patients.

“(2) WAIVERS.—

“(A) FULL WAIVER.—At the request of an applicant, the Secretary shall grant a full waiver, as appropriate, of the requirement to submit assessments under this subsection if the applicant certifies and the Secretary finds that—

“(i) necessary studies are impossible or highly impracticable (because, for example, the number of

patients in that age group is so small or patients in that age group are geographically dispersed); or

"(ii) there is evidence strongly suggesting that the drug or biological product would be ineffective or unsafe in all pediatric age groups.

"(B) PARTIAL WAIVER.—At the request of an applicant, the Secretary shall grant a partial waiver, as appropriate, of the requirement to submit assessments under this subsection with respect to a specific pediatric age group if the applicant certifies and the Secretary finds that—

"(i) necessary studies are impossible or highly impracticable (because, for example, the number of patients in that age group is so small or patients in that age group are geographically dispersed);

"(ii) there is evidence strongly suggesting that the drug or biological product would be ineffective or unsafe in that age group;

"(iii)(I) the drug or biological product—

"(aa) does not represent a meaningful therapeutic benefit over existing therapies for pediatric patients in that age group; and

"(bb) is not likely to be used in a substantial number of pediatric patients in that age group; and

"(II) the absence of adequate labeling could not pose significant risks to pediatric patients; or

"(iv) the applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

"(C) PEDIATRIC FORMULATION NOT POSSIBLE.—If a waiver is granted on the ground that it is not possible to develop a pediatric formulation, the waiver shall cover only the pediatric groups requiring that formulation.

"(D) LABELING REQUIREMENT.—If the Secretary grants a full or partial waiver because there is evidence that a drug or biological product would be ineffective or unsafe in pediatric populations, the information shall be included in the labeling for the drug or biological product.

"(3) RELATIONSHIP TO OTHER PEDIATRIC PROVISIONS.—

"(A) NO ASSESSMENT WITHOUT WRITTEN REQUEST.—No assessment may be required under paragraph (1) for a drug subject to an approved application under section 505 unless—

"(i) the Secretary has issued a written request for a related pediatric study under section 505A(c) of this Act or section 409I of the Public Health Service Act (42 U.S.C. 284m);

"(ii)(I) if the request was made under section 505A(c)—

"(aa) the recipient of the written request does not agree to the request; or

"(bb) the Secretary does not receive a response as specified under section 505A(d)(4)(A); or

"(II) if the request was made under section 409I of the Public Health Service Act (42 U.S.C. 284m)—

"(aa) the recipient of the written request does not agree to the request; or

"(bb) the Secretary does not receive a response as specified under section 409I(c)(2) of that Act; and

"(iii)(I) the Secretary certifies under subparagraph (B) that there are insufficient funds under sections 409I and 499 of the Public Health Service Act (42 U.S.C. 284m, 290b) to conduct the study; or

"(II) the Secretary publishes in the Federal Register a certification that certifies that—

"(aa) no contract or grant has been awarded under section 409I or 499 of the Public Health Service Act (42 U.S.C. 284m, 290b); and

"(bb) not less than 270 days have passed since the date of a certification under subparagraph (B) that there are sufficient funds to conduct the study.

"(B) NO AGREEMENT TO REQUEST.—Not later than 60 days after determining that no holder will agree to the written request (including a determination that the Secretary has not received a response specified under section 505A(d) of this Act or section 409I of the Public Health Service Act (42 U.S.C. 284m), the Secretary shall certify whether the Secretary has sufficient funds to conduct the study under section 409I or 499 of the Public Health Service Act (42 U.S.C. 284m, 290b), taking into account the prioritization under section 409I.

"(c) MEANINGFUL THERAPEUTIC BENEFIT.—For the purposes of paragraph (4)(A)(iii)(I) and (4)(B)(iii)(I) of subsection (a) and paragraphs (1)(B)(i) and (2)(B)(iii)(I)(aa) of subsection (b), a drug or biological product shall be considered to represent a meaningful therapeutic benefit over existing therapies if the Secretary estimates that—

"(1) if approved, the drug or biological product would represent a significant improvement in the treatment, diagnosis, or prevention of a disease, compared with marketed products adequately labeled for that use in the relevant pediatric population; or

"(2) the drug or biological product is in a class of products or for an indication for which there is a need for additional options.

"(d) SUBMISSION OF ASSESSMENTS.—If a person fails to submit an assessment described in subsection (a)(2), or a request for approval of a pediatric formulation described in subsection (a) or (b), in accordance with applicable provisions of subsections (a) and (b)—

"(1) the drug or biological product that is the subject of the assessment or request may be considered misbranded solely because of that failure and subject to relevant enforcement action (except that the drug or biological product shall not be subject to action under section 303); but

"(2) the failure to submit the assessment or request shall not be the basis for a proceeding—

"(A) to withdraw approval for a drug under section 505(e); or

"(B) to revoke the license for a biological product under section 351 of the Public Health Service Act (42 U.S.C. 262).

"(e) MEETINGS.—Before and during the investigational process for a new drug or biological product, the Secretary shall meet at appropriate times with the sponsor of the new drug or biological product to discuss—

"(1) information that the sponsor submits on plans and timelines for pediatric studies; or

"(2) any planned request by the sponsor for waiver or deferral of pediatric studies.

"(f) SCOPE OF AUTHORITY.—Nothing in this section provides to the Secretary any authority to require a pediatric assessment of any drug or biological product, or any assessment regarding other populations or uses of a drug or biological product, other than the pediatric assessments described in this section.

"(g) ORPHAN DRUGS.—Unless the Secretary requires otherwise by regulation, this section does not apply to any drug for an indication for which orphan designation has been granted under section 526.

"(h) INTEGRATION WITH OTHER PEDIATRIC STUDIES.—The authority under this section shall remain in effect so long as an application subject to this section may be accepted for filing by the Secretary on or before the date specified in section 505A(n)."

(b) CONFORMING AMENDMENTS.—(1) Section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)(1)) is amended in the second sentence—

(A) by striking "and (F)" and inserting "(F)"; and

" and (G) any assessments required under section 505B."

(2) Section 505A(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(h)) is amended—

(A) in the subsection heading, by striking "REGULATIONS" and inserting "PEDIATRIC RESEARCH REQUIREMENTS"; and

(B) by striking "pursuant to regulations promulgated by the Secretary" and inserting "by a provision of law (including a regulation) other than this section".

(3) Section 351(a)(2) of the Public Health Service Act (42 U.S.C. 262(a)(2)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (C); and

(B) by inserting after subparagraph (A) the following:

"(B) PEDIATRIC STUDIES.—A person that submits an application for a license under this paragraph shall submit to the Secretary as part of the application any assessments required under section 505B of the Federal Food, Drug, and Cosmetic Act."

SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.

(a) ABBREVIATED NEW DRUG APPLICATION.—Section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) is amended in subparagraphs (A) and (B) of subsection (b)(2) and subparagraphs (A) and (B) of subsection (c)(2) by striking "505(j)(4)(B)" and inserting "505(j)(5)(B)".

(b) PEDIATRIC ADVISORY COMMITTEE.—(1) Section 505A(i)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(i)(2)) is amended by striking "Advisory Subcommittee of the Anti-Infective Drugs" each place it appears.

(2) Section 14 of the Best Pharmaceuticals for Children Act (42 U.S.C. 284m note; Public Law 107-109) is amended—

(A) in the section heading, by striking "PHARMACOLOGY";
(B) in subsection (a), by striking "(42 U.S.C. 217a)," and inserting "(42 U.S.C. 217a) or other appropriate authority,";
(C) in subsection (b)—

(i) in paragraph (1), by striking "and in consultation with the Director of the National Institutes of Health"; and

(ii) in paragraph (2), by striking "and 505A" and inserting "505A, and 505B"; and

(D) by striking "pharmacology" each place it appears and inserting "therapeutics".

(3) Section 15(a)(2)(A) of the Best Pharmaceuticals for Children Act (115 Stat. 1419) is amended by striking "Pharmacology".

(4) Section 16(1)(C) of the Best Pharmaceuticals for Children Act (21 U.S.C. 355a note; Public Law 107-109) is amended by striking "Advisory Subcommittee of the Anti-Infective Drugs".

(5) Section 17(b)(1) of the Best Pharmaceuticals for Children Act (21 U.S.C. 355b(b)(1)) is amended in the second sentence by striking "Advisory Subcommittee of the Anti-Infective Drugs".

(6) Paragraphs (8), (9), and (11) of section 409I(c) of the Public Health Service Act (42 U.S.C. 284m(c)) are amended by striking "Advisory Subcommittee of the Anti-Infective Drugs" each place it appears.

SEC. 4. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), this Act and the amendments made by this Act take effect on the date of enactment of this Act.

(b) APPLICABILITY TO NEW DRUGS AND BIOLOGICAL PRODUCTS.—

(1) IN GENERAL.—Subsection (a) of section 505B of the Federal Food, Drug, and Cosmetic Act (as added by section 2) shall apply to an application described in paragraph (1) of that subsection submitted to the Secretary of Health and Human Services on or after April 1, 1999.

(2) WAIVERS AND DEFERRALS.—

(A) WAIVER OR DEFERRAL GRANTED.—If, with respect to an application submitted to the Secretary of Health and Human Services between April 1, 1999, and the date of enactment of this Act, a waiver or deferral of pediatric assessments was granted under regulations of the Secretary then in effect, the waiver or deferral shall be a waiver or deferral under subsection (a) of section 505B of the Federal Food, Drug, and Cosmetic Act, except that any date specified in such a deferral shall be extended by the number of days that is equal to the number of days between October 17, 2002, and the date of enactment of this Act.

(B) WAIVER AND DEFERRAL NOT GRANTED.—If, with respect to an application submitted to the Secretary of Health and Human Services between April 1, 1999, and the date of enactment of this Act, neither a waiver nor deferral of pediatric assessments was granted under regulations of the Secretary then in effect, the person that submitted the application shall be required to submit assessments under subsection (a)(2) of section 505B of the Federal Food, Drug, and Cosmetic Act on the date that is the later of—

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(i) the date that is 1 year after the date of enactment of this Act; or

(ii) such date as the Secretary may specify under subsection (a)(3) of that section;

unless the Secretary grants a waiver under subsection (a)(4) of that section.

(c) NO LIMITATION OF AUTHORITY.—Neither the lack of guidance or regulations to implement this Act or the amendments made by this Act nor the pendency of the process for issuing guidance or regulations shall limit the authority of the Secretary of Health and Human Services under, or defer any requirement under, this Act or those amendments.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*