Bennet_S. 934_ Amendment #2

AMENDMENT NO._____ Calendar No._____

Purpose: To increase the development of new drugs to treat pediatric cancers.

IN THE SENATE OF THE UNITED STATES—115th Cong., 1st Sess.

S. 934

To amend the Federal Food, Drug, and Cosmetic Act to revise and extend the user-fee programs for prescription drugs, medical devices, generic drugs, and biosimilar biological products, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. BENNET

Viz:

At the end of title V, insert the following:

SEC. 505. DEVELOPMENT OF DRUGS AND BIOLOGICAL PRODUCTS FOR PEDIATRIC CANCERS.

(a) MOLECULAR TARGETS REGARDING CANCER DRUGS.—Section 505B of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355c) is amended—

(1) in subsection (a)—

(A) in paragraph (2)(A)(i) by striking "product for the claimed indications in all relevant pediatric subpopulations; and" and in-

serting "product in all relevant pediatric subpopulations—

"(I) for the claimed indications; or".

"(II) for one pediatric cancer indication, if the drug or biological product is—

"(aa) the subject of an original application that is submitted not less than 2 years after the date of enactment of the FDA Reauthorization Act of 2017;

"(bb) intended for the treatment of an adult cancer;

"(cc) determined by scientific evidence to be directed at a molecular target, on the basis of data the Secretary determines to be adequate, to be germane to the development or growth of such pediatric cancer; and

"(dd) on the list under subsection (m) at the time of submission of such original application; and"; and

(B) by adding at the end the following:

"(5) RULE OF CONSTRUCTION.—Paragraphs (3) and (4) (regarding deferrals and waivers) apply to the same extent and in the same manner to assessments described in each of subclauses (I) and (II) of paragraph (2)(A)(i).";

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by amending subparagraph (A)(i) to read as follows:

"(A)(i) the drug or biological product is used for a substantial number of pediatric patients—

"(I) for the labeled indications; or

"(II) for one pediatric cancer indication, if the drug or biological product is—

"(aa) the subject of an original application that is submitted not less than 2 years after the date of enactment of the FDA Reauthorization Act of 2017;

"(bb) intended for the treatment of an adult cancer; and

"(cc) determined by scientific evidence to be directed at a molecular

target, on the basis of data the Secretary determines to be adequate, to be germane to the development or growth of such pediatric cancer; and

"(dd) on the list under subsection (m) at the time of submission of such original application; and"; and

(ii) by amending subparagraph (B) to read as follows:

"(B) there is reason to believe that the drug or biological product would represent a meaningful therapeutic benefit over existing therapies for pediatric patients—

"(i) for 1 or more of the claimed indications; or

"(ii) for one pediatric cancer indication, if the drug or biological product is—

"(I) the subject of an original application that is submitted not less than 2 years after the date of enactment of the FDA Reauthorization Act of 2017;

"(II) intended for the treatment of an adult cancer;

"(III) determined by scientific evidence to be directed at a molecular target, on the basis of data the Secretary determines to be adequate, to be germane to the development or growth of such pediatric cancer; and

"(IV) on the list under subsection (m) at the time of submission of such original application; or"; and

(B) by adding at the end the following:

"(4) RULE OF CONSTRUCTION.—Paragraph (2) (regarding waivers) applies to the same extent and in the same manner to assessments required under each of subclauses (I) and (II) of paragraph (1)(A)(i) and assessments required under each of clauses (i) and (ii) of paragraph (1)(B), respectively.";

(3) by amending paragraph (2) of subsection (e) to read as follows:

"(2) the drug or biological product is in a class of products, is for an indication, or is directed at a specific molecular target in an adult cancer and such molecular target is germane to the growth or progression of cancer in a pediatric cancer, for which there is need for additional options."; and

(4) by adding at the end the following:

"(m) LIST OF PRIMARY MOLECULAR TARGETS.—

"(1) IN GENERAL.—Within one year of the date of enactment of the FDA Reauthorization Act of 2017, the Secretary shall establish and update regularly a list of molecular targets considered, on the basis of data the Secretary determines to be adequate, to be germane to the growth and progression of a pediatric cancer, and shall publish such list in the Federal Register.

"(2) CONSULTATION.—In establishing the list described in paragraph (1), the Secretary shall—

"(A) consult members of the internal committee under section 505C and the Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; and

"(B) convene a public meeting not later than 1 year after the date of enactment of the FDA Reauthorization Act of 2017 to solicit stakeholder comment on the appropriate contents of such list and the data necessary to determine that there is scientific evidence that a drug or biological product is directed at a molecular target that is considered, on the basis of data the Secretary determines to be adequate,

to be germane to the growth or progression of a pediatric cancer.".

(b) ORPHAN DRUGS.—Section 505B(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355c(k)) is amended to read as follows:

"(k) RELATION TO ORPHAN DRUGS.—

"(1) IN GENERAL; EXEMPTION FOR ORPHAN INDICATIONS.—Unless the Secretary requires otherwise by regulation, except as provided under paragraph (2), this section does not apply to any drug for an indication for which orphan designation has been granted under section 526.

"(2) APPLICABILITY DESPITE ORPHAN DESIGNATION OF CERTAIN CANCER INDICATIONS.—This section shall apply to a drug or biological product has been designated under section 526 for an indication for a pediatric or adult cancer if such drug or biological product is intended for the treatment of an adult cancer and is determined by scientific evidence to be directed at a molecular target that is considered, on the basis of data the Secretary determines to be adequate, to be germane to the growth or progression of a pediatric cancer.".

(c) GUIDANCE.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and

Human Services (referred to in this subsection as the "Secretary"), acting through the Commissioner of Food and Drugs and in consultation with the Pediatric Oncology Advisory Committee of the Food and Drug Administration, the Director of the National Cancer Institute, and other appropriately identified pediatric oncology experts from both the public and private sectors (including industry and academia), shall hold a public meeting, obtain public comment, and issue guidance on the implementation of the amendments to section 505B of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355c) made by this section, including—

(1) the scientific criteria and regulatory considerations for determining by scientific evidence whether a drug or biological product indicated for the treatment of an adult cancer is directed at a molecular target germane to the growth or progression of a pediatric cancer;

(2) the scientific data, including clinical and preclinical evidence, needed to determine whether a molecular target is germane to the growth or progression of a pediatric cancer;

(3) the process the Secretary will use to make a determination described in paragraph (2);

(4) how the Secretary will collaborate with pediatric networks, academic centers, and experts in pediatric oncology to conduct pediatric cancer studies;

(5) processes to ensure requirements and timelines are aligned for assessments under sections 505A and 505B of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a, 355c);

(6) scientific and regulatory considerations for study designs, including the applicability of innovative regulatory science techniques for pediatric drug developments under such sections 505A and 505B; and

(7) considerations for implementation of such section 505B, as so amended, and waivers of the requirements of such section 505B with regard to molecular targets for which several drugs or biological products may be under investigation.

(d) REPORT TO CONGRESS.—Section 508(b) of the Food and Drug Administration Safety and Innovation Act (21 U.S.C. 355c–1(b)) is amended—

(1) in paragraph (10), by striking "; and" and inserting ";"; and

(2) by striking paragraph (11) and inserting the following:

"(11) an assessment of the impact of the amendments to such section 505B made by the on pediatric labeling of drugs and biological products and pediatric labeling of molecularly targeted drugs for the treatment of cancer;

"(12) an assessment of the efforts of the Secretary to implement the plan developed under section 505C–1 of the Federal Food, Drug, and Cosmetic Act, regarding earlier submission of pediatric studies under sections 505A and 505B of such Act and section 351(m) of the Public Health Service Act, including—

"(A) the average length of time after the approval of an application under section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)(1)) or section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)) before studies conducted pursuant to such section 505A, 505B, or section 351(m) are completed, submitted, and incorporated into labeling;

"(B) the average length of time after the receipt of a proposed pediatric study request before the Secretary responds to such request;

"(C) the average length of time after the submission of a proposed pediatric study request before the Secretary issues a written request for such studies;

"(D) the number of written requests issued for each investigational new drug or biological product prior to the submission of an application under section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act or section 351(a) of the Public Health Service Act; and

"(E) the average number, and range of numbers, of amendments to written requests issued;

"(13) a list of sponsors of applications or holders of approved applications who received exclusivity under such section 505A or such section 351(m) after receiving a letter issued under such section 505B(d)(1) and before the studies referred to in such letter were completed and submitted;

"(14) a list of assessments required under subsection (a)(2)(A)(i)(II), (b)(1)(A)(i)(II), and (b)(1)(B)(ii) of such section 505B; and

"(15) the Secretary's assessment of the overall impact of the amendments made by section 505 of the FDA Reauthorization Act of 2017 on the con-

duct and effectiveness of pediatric cancer research and the Secretary's subsequent recommendations, taking into account the report described in section 505(g) of the FDA Reauthorization Act of 2017.".

(e) RULE OF CONSTRUCTION.—Nothing in this section, including the amendments made by this section, shall limit the authority of the Secretary of Health and Human Services to issue written requests under section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) or section 351(m) of the Public Health Service Act (42 U.S.C. 262(m)).

(f) PROVIDING CERTAINTY REGARDING PEDIATRIC STUDY PLANS.—Section 505B(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355c(e)) is amended—

(1) in paragraph (3)—

(A) by striking "Not later" and inserting the following:

"(A) IN GENERAL.—Not later"; and

(B) by adding at the end the following:

"(B) CHANGES TO AGREEMENT.—An agreement documented and confirmed as described in subparagraph (A) shall not be changed with respect to a specific agreed study after such study begins, except—

"(i) with the written agreement of the applicant; or

"(ii) pursuant to a written decision by the director of the reviewing division, that a substantial scientific issue essential to determining the adequacy of the pediatric assessments has been identified after such specific agreed study has begun, provided that the Secretary provides the applicant an opportunity for a meeting at which the director and the applicant will be present and at which the director will document the scientific issue involved."; and

(2) in paragraph (5), by striking the first sentence and inserting "Subject to paragraph (3), at the initiative of the Secretary or the applicant, the agreed initial pediatric study plan may be amended."; and

(3) in paragraph (6), by inserting "under paragraph (5)" before the period at the end.

(g) GAO REPORT.—

(1) IN GENERAL.—Beginning on the date that is 5 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of the effectiveness of requiring pe-

diatric assessments described in subsections (a)(2)(A)(i)(II), (b)(1)(A)(i)(II) and (b)(1)(B)(ii) of section 505B of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355c), as amended by this section, in the development of drugs and biological products for pediatric cancer indications. The Comptroller General shall examine—

(A) the indications studied in pediatric assessments required for drugs or biological products intended for the treatment of an adult cancer;

(B) the number of pediatric cancer indications for which assessments have been required under subsections (a)(2)(A)(i)(II), (b)(1)(A)(i)(II), and (b)(1)(B)(ii) of such section 505B;

(C) the number of requests for deferral and waiver of pediatric assessments required under such subsections and the number of such deferral and waiver requests granted and denied;

(D) the number of orphan-designated indications for drugs and biological products for which assessments were required under such subsections;

(E) the number of drugs and biological products approved for the treatment of cancer in the pediatric population for which the supportive studies were required to be conducted under such subsections; and

(F) any additional considerations by the Secretary regarding the effectiveness of requiring pediatric assessments described in subsections (a)(2)(A)(i)(II), (b)(1)(A)(i)(II) and (b)(1)(B)(ii) of such section 505B of the in the development of drugs and biological products for pediatric cancer indications.

(2) REPORT.—Not later than the date that is 6 years after the date of enactment of this Act, the Comptroller General of the United States shall submit a report containing the results of the study under paragraph (1) to the Secretary of Health and Human Services, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Energy and Commerce of the House of Representatives.