

107TH CONGRESS
1ST SESSION

H. R. 1905

To amend title XVIII of the Social Security Act to assure access of Medicare beneficiaries to prescription drug coverage through the NICE drug benefit program.

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2001

Mr. MALONEY of Connecticut introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to assure access of Medicare beneficiaries to prescription drug coverage through the NICE drug benefit program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “New Insurance Coverage Equity (NICE) Act of 2001”.

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

Sec. 1. Short title; table of contents.

Sec. 2. NICE drug benefit program.

“PART D—NICE DRUG BENEFIT PROGRAM

“Sec. 1860A. Establishment of NICE drug benefit program.

“Sec. 1860B. Requirements for offering NICE drug benefit coverage.

“Sec. 1860C. Enrollment process for NICE drug benefit coverage.

“Sec. 1860D. Financial assistance to obtain NICE prescription drug coverage

“Sec. 1860E. NICE Board.

“Sec. 1860F. NICE Trust Fund.

Sec. 3. Conforming changes to medigap.

Sec. 4. Provision of information on NICE drug benefit program under health insurance information, counseling, and assistance grants.

1 SEC. 2. NICE DRUG BENEFIT PROGRAM.

2 Title XVIII of the Social Security Act (42 U.S.C.
3 1395 et seq.) is amended by redesignating part D as part
4 E and by inserting after part C the following new part:

5 “PART D—NICE DRUG BENEFIT PROGRAM

6 “ESTABLISHMENT OF NICE DRUG BENEFIT PROGRAM

7 “SEC. 1860A. (a) IN GENERAL.—Under this part,
8 the NICE Board (established under section 1860E) shall
9 provide for a NICE drug benefit program under which—

10 “(1) all eligible medicare beneficiaries shall be
11 provided access to NICE prescription drug coverage
12 (meeting the conditions of section 1860B) through
13 either enrollment in a Medicare+Choice plan, enroll-
14 ment in a NICE medicare supplemental policy, or
15 coverage under a group health plan; and

16 “(2) there is financial assistance provided under
17 section 1860D for beneficiaries who voluntarily ob-
18 tain such coverage, with such assistance varying de-
19 pending upon the income of such beneficiaries.

1 “(b) VOLUNTARY NATURE OF PROGRAM FOR ENTI-
 2 TIES AND BENEFICIARIES.—Nothing in this part shall be
 3 construed as requiring—

4 “(1) an eligible medicare beneficiary to obtain
 5 coverage under a plan or policy that provides NICE
 6 prescription drug coverage;

7 “(2) a Medicare+Choice organization to offer a
 8 Medicare+Choice plan that provides NICE prescrip-
 9 tion drug coverage; or

10 “(3) an issuer of a medicare supplemental pol-
 11 icy to issue a NICE medicare supplemental policy.

12 “(c) PROVIDING INFORMATION TO BENE-
 13 FICIARIES.—

14 “(1) IN GENERAL.—The NICE Board shall
 15 broadly disseminate information to eligible medicare
 16 beneficiaries on the NICE drug benefit program
 17 under this part, including information on the sanc-
 18 tions for delayed enrollment under section 1860D(e).

19 “(2) SIMILAR TO MEDICARE+CHOICE ACTIVI-
 20 TIES.—Such activities shall be similar to the activi-
 21 ties performed under section 1851(d) (including the
 22 approval of policy marketing materials).

23 “(3) ARRANGEMENTS.—The NICE Board shall,
 24 in cooperation with the Secretary, enter into such
 25 arrangements as may be appropriate to disseminate

1 widely to eligible medicare beneficiaries information
 2 about the NICE drug benefit program in connection
 3 with materials distributed by the Secretary to medi-
 4 care beneficiaries, including in the medicare hand-
 5 book under section 1804 and in materials distrib-
 6 uted under section 1851(d).

7 “(d) ELIGIBLE MEDICARE BENEFICIARY DE-
 8 FINED.—For purposes of this part, the term ‘eligible
 9 medicare beneficiary’ means an individual who is entitled
 10 to benefits under part A and enrolled under part B.

11 “REQUIREMENTS FOR OFFERING NICE DRUG BENEFIT
 12 COVERAGE

13 “SEC. 1860B. (a) REQUIREMENT FOR APPROVAL OF
 14 NAIC MODEL REVISIONS.—

15 “(1) IN GENERAL.—

16 “(A) CONDITION FOR OFFERING NICE
 17 MEDICARE SUPPLEMENTAL POLICY.—On or
 18 after the effective date of this provision, it is
 19 unlawful to issue or sell a medicare supple-
 20 mental policy (as defined in section 1882(g))
 21 that provides coverage of outpatient prescrip-
 22 tion drugs in a State unless—

23 “(i) the State has adopted the Na-
 24 tional Association of Insurance Commis-
 25 sioners revisions under section

1 1882(v)(1)(A) that have been approved by
2 the NICE Board under this section; and

3 “(ii) the coverage is offered consistent
4 with section 1860C.

5 The penalties described in clause (ii) of section
6 1882(d)(3)(A) shall apply to whoever violates
7 this subparagraph in the same manner as they
8 apply to whoever violates such section.

9 “(B) CONDITION FOR RECEIPT OF NICE
10 FINANCIAL ASSISTANCE.—No payment of finan-
11 cial assistance with respect to coverage of an el-
12 igible medicare beneficiary under NICE pre-
13 scription drug coverage which is offered either
14 as a NICE medicare supplemental policy, as
15 part of the benefits under a Medicare+Choice
16 plan, or as part of the benefits under a group
17 health plan, shall be made unless—

18 “(i) an application with respect to
19 such coverage has been approved by the
20 NICE Board under this section; and

21 “(ii) in the case of a NICE medicare
22 supplemental policy or a Medicare+Choice
23 plan, the coverage is offered consistent
24 with section 1860C.

1 “(2) ESTABLISHMENT OF APPLICATION PROC-
2 ESS.—

3 “(A) IN GENERAL.—The NICE Board
4 shall establish—

5 “(i) procedures regarding the informa-
6 tion to be included in applications under
7 this section and for the time and manner
8 in which such applications should be sub-
9 mitted;

10 “(ii) conditions (consistent with this
11 part) for the approval of such applications;
12 and

13 “(iii) the period (in no case less than
14 1 year) for which approval of such an ap-
15 plication is valid.

16 “(B) DISAPPROVAL.—The NICE Board
17 may disapprove (or revoke the approval) of such
18 an application if the Board finds that, in the
19 case of a NICE medicare supplemental policy or
20 Medicare+Choice plan, that the entity offering
21 the NICE prescription drug coverage is pur-
22 posefully engaged in activities intended to result
23 in favorable selection of those eligible medicare
24 beneficiaries obtaining coverage through the
25 policy or plan.

1 “(b) NICE PRESCRIPTION DRUG COVERAGE DE-
2 FINED.—For purposes of this title, the term ‘NICE pre-
3 scription drug coverage’ means coverage of outpatient pre-
4 scription drugs that the NICE Board determines meets
5 the following requirements:

6 “(1) BENEFIT LEVEL.—The benefits
7 provided—

8 “(A) are limited to outpatient prescription
9 drugs;

10 “(B) include at least the threshold benefits
11 specified under subsection (c); and

12 “(C) do not include benefits for prescrip-
13 tion drugs for which benefits are otherwise
14 available (directly or when furnished as part of,
15 or as an incident to, another item or service)
16 under part A or B.

17 “(2) ACCESSIBILITY.—The benefits are acces-
18 sible and convenient to all eligible medicare bene-
19 ficiaries who have such coverage and provide for ac-
20 cess on a timely basis to new outpatient prescription
21 drugs and they become available.

22 “(3) NO PRE-EXISTING CONDITION EXCLU-
23 SIONS.—There are no pre-existing condition exclu-
24 sions or similar exclusions applied with respect to
25 the coverage.

1 “(4) LIMITS ON FORMULARIES.—If the cov-
 2 erage uses a formulary, the formulary meets the re-
 3 quirements of subsection (d).

4 “(c) THRESHOLD BENEFIT LEVEL.—

5 “(1) IN GENERAL.—The NICE Board shall re-
 6 quest the National Association of Insurance Com-
 7 missioners to revise the model standards for medi-
 8 care supplemental policies pursuant to section
 9 1882(v) for the purpose of—

10 “(A) defining the term ‘outpatient pre-
 11 scription drugs’; and

12 “(B) specifying a threshold level of benefits
 13 for NICE prescription drug coverage.

14 “(2) CONSIDERATIONS.—

15 “(A) DEFINITION.—In establishing a defi-
 16 nition under paragraph (1)(A), the Board shall
 17 request that the National Association of Insur-
 18 ance Commissioners take into account the defi-
 19 nition of covered outpatient drugs under section
 20 1927(k)(2) (which includes biological products
 21 and insulin).

22 “(B) THRESHOLD.—In specifying the
 23 threshold level under paragraph (1)(B), the
 24 Board shall request that the National Associa-
 25 tion of Insurance Commissioners—

1 “(i) take into account the level of such
2 coverage (including deductibles and other
3 cost-sharing) applied under health plans
4 offered under the Federal Employees
5 Health Benefits Program (under chapter
6 89 of title 5, United States Code) and
7 under other large group health plans; and

8 “(ii) permit (if determined appro-
9 priate) optional coverage of drugs (except
10 for agents used to promote smoking ces-
11 sation) for which coverage may be excluded
12 or restricted under section 1927(d)(2).

13 “(3) CONSTRUCTION.—Nothing in this part
14 shall be construed as preventing NICE prescription
15 drug coverage from providing benefits for outpatient
16 prescription drugs in excess of the threshold speci-
17 fied under this subsection.

18 “(d) FORMULARY REQUIREMENTS.—

19 “(1) IN GENERAL.—A formulary meets the re-
20 quirements of this subsection only if—

21 “(A) such formulary is based on the med-
22 ical needs of eligible medicare beneficiaries;

23 “(B) the entity offering the coverage has
24 in place an appeals process for any eligible
25 medicare beneficiary to receive any medically

1 necessary outpatient prescription drug that is
2 not on the formulary;

3 “(C) such procedures do not impose a sig-
4 nificant financial burden on an eligible medicare
5 beneficiary or delay the provision of medically
6 necessary outpatient prescription drugs to such
7 a beneficiary; and

8 “(D) the entity offering the coverage pro-
9 vides notification to enrollees of any change in
10 the formulary and such notification is provided
11 at least 60 days prior to such change.

12 “(2) APPEAL PROCESS.—The appeals process
13 established under paragraph (1)(B) shall provide for
14 at least a level of protection that is similar to or bet-
15 ter than the level of protection provided with respect
16 to benefits under Medicare+Choice plans under
17 part C.

18 “(e) USE OF COST CONTAINMENT MECHANISMS.—
19 Nothing in this part shall be construed as preventing an
20 entity offering NICE prescription drug coverage from
21 using reasonable cost containment methods, such as
22 formularies, mail order services, and generic drug substi-
23 tution, consistent with the specific requirements of this
24 part and applicable law.

10 “(b) CONSIDERATIONS.—In establishing such proce-
11 dures, the NICE Board shall—

“(2) permit special enrollment periods in cases in which an eligible medicare beneficiary, who is enrolled under a Medicare+Choice plan or group health plan that provides NICE prescription drug coverage—

24 “(B) experiences a significant adverse in-
25 come level change (as defined by the NICE

1 Board) which changes the level of financial as-
 2 sistance available under section 1860D; and

3 “(3) provide for coordination with the Secretary
 4 with respect to such enrollment, disenrollment, and
 5 changes in enrollment under part C.

6 “FINANCIAL ASSISTANCE TO OBTAIN NICE PRESCRIPTION
 7 DRUG COVERAGE

8 “SEC. 1860D. (a) IN GENERAL.—The NICE Board
 9 shall provide financial assistance, in accordance with this
 10 section, with respect to eligible medicare beneficiaries who
 11 have NICE prescription drug coverage through enrollment
 12 in a NICE medicare supplemental policy, in a
 13 Medicare+Choice plan that includes such coverage, or in
 14 a group health plan that includes such coverage.

15 “(b) AMOUNT OF ASSISTANCE.—

16 “(1) IN GENERAL.—Subject to subsections (e)
 17 and (f) and paragraph (2), the amount of financial
 18 assistance with respect to an eligible medicare bene-
 19 ficiary is equal to the following percentage of the ap-
 20 plicable cost (as defined in subsection (g)(1)) of the
 21 NICE prescription drug coverage:

22 “(A) 100 PERCENT IF INCOME BELOW 150
 23 PERCENT OF POVERTY.—In the case of an eligi-
 24 ble medicare beneficiary who applies for en-
 25 hanced financial assistance under subsection (c)
 26 and whose income (as verified under such sub-

1 section) does not exceed 150 percent of the pov-
2 erty line, the percentage is 100 percent.

3 “(B) OTHER PERCENT IF INCOME BE-
4 TWEEN 150 AND 175 PERCENT OF POVERTY.—

5 In the case of an eligible medicare beneficiary
6 who applies for enhanced financial assistance
7 under subsection (c) and whose income (as
8 verified under such subsection) is greater than
9 150 percent, but does not exceed 175 percent,
10 of the poverty line, the NICE Board shall speci-
11 fy the percentage consistent with the following
12 rules:

13 “(i) RANGE.—The percentage may
14 not exceed 100 percent nor be less than
15 the percentage specified under subpara-
16 graph (C).

17 “(ii) SLIDING SCALE.—The percent-
18 age may not be higher for eligible medicare
19 beneficiaries whose income is higher.

20 “(iii) WITHIN AVAILABLE FUNDS.—
21 The percentage is established in a manner
22 that is consistent with the amount of funds
23 available for financial assistance under this
24 section.

1 “(C) 25 PERCENT FOR OTHER BENE-
2 FICIARIES.—In the case of any other eligible
3 medicare beneficiary, the percentage is 25 per-
4 cent.

5 “(2) LIMITATION IN CASE OF COVERAGE PRO-
6 VIDED THROUGH A MEDICARE+CHOICE PLAN.—In
7 the case of financial assistance provided under this
8 section with respect to NICE prescription drug cov-
9 erage provided through a Medicare+Choice plan, the
10 amount of the financial assistance may not exceed
11 the amount of the portion of the premium charged
12 for enrollment in the plan that is related to out-
13 patient prescription drugs.

14 “(c) APPLICATION FOR ENHANCED FINANCIAL AS-
15 SISTANCE.—

16 “(1) IN GENERAL.—The NICE Board shall es-
17 tablish procedures under which an individual who
18 desires enhanced financial assistance under this sec-
19 tion may voluntarily apply for an income determina-
20 tion.

21 “(2) INCOME VERIFICATION.—

22 “(A) IN GENERAL.—Under the procedures
23 established under paragraph (1), if an indi-
24 vidual voluntarily applies for an income deter-
25 mination under this subsection, the individual is

1 deemed to have consented to the NICE Board
2 seeking and using income-related information
3 from other Government agencies in order to
4 verify the individual's income.

5 “(B) RESTRICTION ON USE OF INFORMA-
6 TION.—Information obtained under subpara-
7 graph (A) may be used by officers and employ-
8 ees of the NICE Board only for the purposes
9 of, and to the extent necessary in, carrying out
10 their responsibilities under this part.

11 “(3) PERIODIC REDETERMINATIONS.—Such in-
12 come determinations shall be valid for a period (of
13 not less than 1 year) specified by the NICE Board.

14 “(d) FORM OF ASSISTANCE.—

15 “(1) IN GENERAL.—Financial assistance under
16 this section shall be provided in the form of a pay-
17 ment to the issuer of the NICE medicare supple-
18 mental policy involved, the Medicare+Choice organi-
19 zation offering the Medicare+Choice plan involved,
20 or the sponsor of the group health plan involved, of
21 the amount of the subsidy. Such payment shall be
22 in a manner and time provided for by the NICE
23 Board.

24 “(2) ADDITIONAL REQUIREMENT.—No financial
25 assistance shall be made available with respect to

1 NICE prescription drug coverage provided by an en-
2 tity to an eligible medicare beneficiary unless the en-
3 tity provides assurances satisfactory to the NICE
4 Board that the entity shall reduce the amount other-
5 wise charged the beneficiary for such coverage by an
6 amount equal to the amount of such assistance.

7 “(3) SPECIAL RULE WHERE NO OR LOW PRE-
8 MIUM CHARGED.—The NICE Board shall establish
9 appropriate procedures to assure that eligible medi-
10 care beneficiaries who obtain NICE prescription
11 drug coverage through enrollment in a group health
12 plan which does not impose a premium or imposes
13 a premium that is less than the amount of the finan-
14 cial assistance otherwise provided, are provided the
15 benefit of some of such financial assistance.

16 “(e) LATE ENROLLMENT PENALTY.—

17 “(1) IN GENERAL.—Subject to paragraph (2),
18 the NICE Board shall establish procedures for re-
19 ducing the amount of financial assistance provided
20 under this section on behalf of an eligible medicare
21 beneficiary if the beneficiary fails to obtain and
22 maintain NICE prescription drug coverage during
23 periods in which the beneficiary is eligible to obtain
24 such coverage. Such procedures may be similar to
25 the part B late enrollment penalty provisions under

1 section 1839(b) and shall not take into account peri-
2 ods before the first period in which financial assist-
3 ance is made available under this section.

4 “(2) EXCEPTION.—The late enrollment proce-
5 dures established pursuant to paragraph (1) shall
6 not apply to an eligible medicare beneficiary who is
7 enrolled under Medicare+Choice plan or a group
8 health plan that provides outpatient prescription
9 drug coverage and the plan terminates or ceases to
10 provide such coverage to the beneficiary, but only
11 if—

12 “(A) the beneficiary seeks to enroll under
13 a plan or policy that offers NICE prescription
14 drug coverage at the next opportunity that is
15 available to the beneficiary after the effective
16 date of the termination of such coverage; and

17 “(B) submits evidence of the effective date
18 of the termination of such coverage.

19 “(f) ADJUSTMENT OF FINANCIAL ASSISTANCE IF IN-
20 SUFFICIENT FUNDING.—

21 “(1) LIMITATION OF ASSISTANCE TO FUNDS
22 AVAILABLE.—In no case shall the amount of finan-
23 cial assistance provided under this section exceed the
24 amount of funds available for such assistance under
25 the NICE Trust Fund.

1 “(2) REQUIRED ADJUSTMENT.—If the NICE
2 Board determines under section 1860E(b)(3)(C)
3 that the amount in the NICE Trust Fund in the
4 next year will be insufficient to cover the costs of
5 providing financial assistance under this section in
6 such year—

7 “(A) the NICE Board shall first reduce
8 the percentage specified in subsection (b)(3) to
9 such lower percentage (but not below 10 per-
10 cent) as may be required, and to adjust the per-
11 centage specified under subsection (b)(2) to re-
12 flect such reduction;

13 “(B) if such percentage reductions are not
14 sufficient to reduce the costs to comply with
15 paragraph (1), the NICE Board shall next re-
16 duce the income thresholds (as a percentage of
17 the poverty line) under subsection (b) as may
18 be further required; and

19 “(C) if such previous reductions are still
20 not sufficient to reduce the costs to comply with
21 paragraph (1), the NICE Board shall imme-
22 diately report to Congress and suspend the pro-
23 vision of financial assistance under this section
24 during such year.

25 “(g) DEFINITIONS.—For purposes of this section:

1 “(1) APPLICABLE COST.—The term ‘applicable
2 cost’ means, with respect to NICE prescription drug
3 coverage provided under—

4 “(A) a NICE medicare supplemental pol-
5 icy, is the premium charged for the policy;

6 “(B) a Medicare+Choice plan, is the actu-
7 arial value of the portion of the adjusted com-
8 munity rate for the plan that is related to pro-
9 viding such coverage, as determined by the
10 NICE Board in consultation with the Secretary;
11 or

12 “(C) a group health plan, is the actuarial
13 value of the portion of the applicable premium
14 for the plan that is related to providing such
15 coverage, as determined by the NICE Board
16 taking into account the applicable premium for
17 such plan (as defined in section 604(1) of the
18 Employee Retirement Income Security Act of
19 1974).

20 “(2) POVERTY LINE.—The term ‘poverty line’
21 means the income official poverty line (as defined by
22 the Office of Management and Budget, and revised
23 annually in accordance with section 673(2) of the
24 Omnibus Budget Reconciliation Act of 1981) appli-
25 cable to a family of the size involved.

1 “NICE BOARD

2 “SEC. 1860E. (a) ESTABLISHMENT.—There is estab-
3 lished within the Department of Health and Human Serv-
4 ices a New Insurance Coverage Equity Office, which shall
5 be—

6 “(1) outside of the Health Care Financing Ad-
7 ministration; and

8 “(2) run by a board to be known as the NICE
9 Board.

10 “(b) DUTIES.—

11 “(1) IN GENERAL.—The NICE Board shall ad-
12 minister the NICE drug benefit program under this
13 part.

14 “(2) ONGOING STUDIES.—The NICE Board
15 shall conduct ongoing studies of the following issues:

16 “(A) The administration of this part.

17 “(B) The provision of information about
18 the program under the health insurance infor-
19 mation, counseling, and assistance grants under
20 section 4360 of the Omnibus Budget Reconcili-
21 ation Act of 1990.

22 “(C) Ways in which drug utilization can be
23 used to provide better overall care for eligible
24 medicare beneficiaries.

1 “(D) Savings and potential savings in Fed-
2 eral health care programs which may occur, or
3 can be attributed to, eligible medicare bene-
4 ficiary access to, and utilization of, outpatient
5 prescription drugs.

6 “(E) Trends in premium increases and fac-
7 tors that contribute to changes in premiums.

8 “(F) Integration of the NICE drug benefit
9 program into a reformed medicare program.

10 “(G) The ability of eligible medicare bene-
11 ficiaries to afford NICE prescription drug cov-
12 erage.

13 “(H) The impact of the program on the
14 prescription drug benefits offered under
15 Medicare+Choice plans and group health plans.

16 “(I) The appropriateness of the levels of fi-
17 nancial assistance provided in the case of eligi-
18 ble medicare beneficiaries who obtain assistance
19 through NICE prescription drug coverage pro-
20 vided under Medicare+Choice plans or group
21 health plans.

22 “(3) ANNUAL REPORT.—

23 “(A) IN GENERAL.—Not later than June 1
24 of each year (beginning with 2003), the NICE

1 Board shall submit an annual report to Con-
2 gress on the program under this part.

3 “(B) INFORMATION ON STUDIES.—Such
4 report shall include a detailed statement on the
5 issues studied under paragraph (2).

6 “(C) DETAILED FINANCIAL PROJECTIONS
7 AND REQUIRED ADJUSTMENTS IN FINANCIAL
8 ASSISTANCE.—Such report shall include—

9 “(i) the report on the financial status
10 of the NICE Trust Fund under section
11 1860F; and

12 “(ii) a statement if, based on such
13 status, a reduction in financial assistance
14 for the subsequent year is required under
15 section 1860D(f) and, if so, the manner in
16 which such reductions will be made.

17 Such report may include recommendations re-
18 garding increases in financial assistance that
19 should be made in a subsequent year, to the ex-
20 tent they may be made consistent with section
21 1860D(f)(1).

22 “(D) RECOMMENDATIONS.—Such report
23 shall include such other recommendations for
24 legislation and administrative actions as the
25 NICE Board considers appropriate.

1 “(4) STUDY AND REPORT REGARDING EXPAN-
2 SION.—

3 “(A) STUDY.—The NICE Board, in con-
4 sultation with the National Association of In-
5 surance Commissioners, shall conduct a study
6 on—

7 “(i) permitting a benefit package
8 under section 1882 of the Social Security
9 Act (other than the outpatient prescription
10 drug only package established under sub-
11 section (v)(1)(A) of such section) to offer
12 outpatient prescription drugs; and

13 “(ii) providing financial assistance
14 under this part on behalf of eligible medi-
15 care beneficiaries receiving coverage under
16 such a benefit package.

17 “(B) REPORT.—Not later than 1 year
18 after all of the members of the NICE Board are
19 appointed under subsection (c), the NICE
20 Board shall submit a detailed report to Con-
21 gress on the study conducted pursuant to sub-
22 paragraph (A), together with any recommenda-
23 tions as determined appropriate by the NICE
24 Board.

1 “(5) RECOMMENDATIONS REGARDING GRANT
2 PROGRAM.—The NICE Board shall provide rec-
3 ommendations and necessary information regarding
4 the NICE drug benefit program to the Secretary in
5 order for the Secretary to provide health insurance
6 information, counseling, and assistance grants under
7 section 4360 of the Omnibus Budget Reconciliation
8 Act of 1990.

9 “(c) MEMBERSHIP OF NICE BOARD.—

10 “(1) NUMBER AND APPOINTMENT.—

11 “(A) IN GENERAL.—The NICE Board
12 shall be composed of 7 members appointed by
13 the President, by and with the advice and con-
14 sent of the Senate.

15 “(B) SPECIFIC REPRESENTATIVES.—In
16 making appointments under subparagraph (A),
17 the President shall ensure that the following
18 groups are represented on the NICE Board:

19 “(i) Consumers.

20 “(ii) Private health plan insurers (in-
21 cluding insurers that offer fee-for-service
22 and managed care plans) with expertise in
23 the quality, scope, and marketing of health
24 care services.

1 “(iii) The Health Care Financing Ad-
2 ministration.

3 “(iv) State insurance commissioners.

4 “(C) SECRETARY OF HHS.—The Secretary
5 shall be a nonvoting, ex officio member of the
6 NICE Board.

7 “(2) DEADLINE FOR INITIAL APPOINTMENT.—
8 The initial members of the NICE Board shall be ap-
9 pointed by not later than 6 months after the date
10 of enactment of this section.

11 “(3) TERMS.—

12 “(A) IN GENERAL.—The terms of the
13 members of the NICE Board shall be for 6
14 years, except that of the members first
15 appointed—

16 “(i) three shall be appointed for terms
17 of 6 years;

18 “(ii) two shall be appointed for terms
19 of 4 years; and

20 “(iii) two shall be appointed for terms
21 of 2 years.

22 “(B) VACANCIES.—Any member appointed
23 to fill a vacancy occurring before the expiration
24 of the term for which the member’s predecessor
25 was appointed shall be appointed only for the

1 remainder of that term. A member may serve
2 after the expiration of that member's term until
3 a successor has taken office.

4 “(4) CHAIRPERSON.—The President shall des-
5 ignate the chairperson of the NICE Board, except
6 that the representative from the Health Care Fi-
7 nancing Administration may not be designated as
8 chairperson.

9 “(d) OPERATION OF THE BOARD.—

10 “(1) MEETINGS.—The NICE Board shall meet
11 at the call of the chairperson or upon written re-
12 quest of a majority of its members.

13 “(2) QUORUM.—A majority of the members of
14 the NICE Board shall constitute a quorum, but a
15 lesser number of members may hold hearings.

16 “(e) POWERS OF THE NICE BOARD.—

17 “(1) HEARINGS.—The NICE Board may hold
18 such hearings, sit and act at such times and places,
19 take such testimony, and receive such evidence as
20 the NICE Board considers advisable to carry out the
21 purposes of this part.

22 “(2) INFORMATION FROM FEDERAL AGEN-
23 CIES.—Upon request of the chairperson of the NICE
24 Board, the head of any Federal department or agen-
25 cy shall furnish such information to the NICE

1 Board as is necessary to carry out the functions of
2 the NICE Board under this part.

3 “(3) POSTAL SERVICES.—The NICE Board
4 may use the United States mails in the same man-
5 ner and under the same conditions as other depart-
6 ments and agencies of the Federal Government.

7 “(4) GIFTS.—The NICE Board may accept,
8 use, and dispose of gifts or donations of services or
9 property.

10 “(f) BOARD PERSONNEL MATTERS.—

11 “(1) MEMBERS.—

12 “(A) COMPENSATION.—Each member of
13 the NICE Board who is not an officer or em-
14 ployee of the Federal Government shall be com-
15 pensated at a rate equal to the daily equivalent
16 of the annual rate of basic pay prescribed for
17 level IV of the Executive Schedule under section
18 5315 of title 5, United States Code, for each
19 day (including travel time) during which such
20 member is engaged in the performance of the
21 duties of the NICE Board. All members of the
22 NICE Board who are officers or employees of
23 the United States shall serve without compensa-
24 tion in addition to that received for their serv-

1 ices as officers or employees of the United
2 States.

3 “(B) TRAVEL EXPENSES.—The members
4 of the NICE Board shall be allowed travel ex-
5 penses, including per diem in lieu of subsist-
6 ence, at rates authorized for employees of agen-
7 cies under subchapter I of chapter 57 of title 5,
8 United States Code, while away from their
9 homes or regular places of business in the per-
10 formance of services for the NICE Board.

11 “(C) REMOVAL.—The President may re-
12 move a member of the NICE Board only for ne-
13 glect of duty or malfeasance in office.

14 “(2) STAFF.—

15 “(A) IN GENERAL.—The chairperson of
16 the NICE Board may, without regard to the
17 civil service laws and regulations, appoint and
18 terminate an executive director and such other
19 additional personnel as may be necessary to en-
20 able the NICE Board to perform its duties. The
21 employment of an executive director shall be
22 subject to confirmation by the NICE Board.

23 “(B) COMPENSATION.—The chairperson of
24 the NICE Board may fix the compensation of
25 the executive director and other personnel with-

1 out regard to the provisions of chapter 51 and
2 subchapter III of chapter 53 of title 5, United
3 States Code, relating to classification of posi-
4 tions and General Schedule pay rates, except
5 that the rate of pay for the executive director
6 and other personnel may not exceed the rate
7 payable for level V of the Executive Schedule
8 under section 5316 of such title.

9 “(C) DETAIL OF GOVERNMENT EMPLOY-
10 EES.—Any Federal Government employee may
11 be detailed to the NICE Board without further
12 reimbursement, and such detail shall be without
13 interruption or loss of civil service status or
14 privilege.

15 “(D) PROCUREMENT OF TEMPORARY AND
16 INTERMITTENT SERVICES.—The chairperson of
17 the NICE Board may procure temporary and
18 intermittent services under section 3109(b) of
19 title 5, United States Code, at rates for individ-
20 uals which do not exceed the daily equivalent of
21 the annual rate of basic pay prescribed for level
22 V of the Executive Schedule under section 5316
23 of such title.

24 “NICE TRUST FUND

25 “SEC. 1860F. (a) CREATION OF TRUST FUND.—

26 There is established in the Treasury of the United States

1 a trust fund to be known as the ‘NICE Trust Fund’, con-
 2 sisting of such amounts as may be appropriated or cred-
 3 ited to the NICE Trust Fund as provided in this section.

4 “(b) AMOUNTS IN NICE TRUST FUND.—

5 “(1) IN GENERAL.—The NICE Trust Fund
 6 shall consist of the following amounts:

7 “(A) Amounts deposited in, or appro-
 8 priated to, the NICE Trust Fund as provided
 9 in this section.

10 “(B) Any gifts and bequests made to such
 11 Trust Fund.

12 “(2) APPROPRIATION.—There are hereby au-
 13 thorized to be appropriated to the NICE Trust
 14 Fund amounts from the on-budget surplus.

15 “(3) TRANSFER.—The amounts appropriated
 16 pursuant to paragraph (2) shall be transferred by
 17 the Secretary of the Treasury from time to time
 18 from the general fund in the Treasury to the NICE
 19 Trust Fund.

20 “(c) EXPENDITURES FROM TRUST FUND.—Amounts
 21 in the NICE Trust Fund shall only be available for mak-
 22 ing expenditures to carry out this part, including adminis-
 23 trative expenses of the NICE Board.

24 “(d) APPLICATION OF HI TRUST FUND PROVI-
 25 SIONS.—The provisions of subsections (b) through (e) of

1 section 1817 shall apply to the NICE Board, this part,
 2 and the NICE Trust Fund in the same manner as they
 3 apply to the Board of Trustees (and the Secretary and
 4 the Health Care Financing Administration), part A, and
 5 the Federal Hospital Insurance Trust Fund, respectively,
 6 except that—

7 “(1) the Board of Trustees shall be composed
 8 of the NICE Board and the Secretary of the Treas-
 9 ury; and

10 “(2) the annual report shall be submitted as
 11 part of the annual report provided under section
 12 1860E(b)(3).”.

13 **SEC. 3. CONFORMING CHANGES TO MEDIGAP.**

14 Section 1882 of the Social Security Act (42 U.S.C.
 15 1395ss) is amended by adding at the end the following:

16 “(v)(1) Notwithstanding subsection (p), the benefit
 17 packages established under such subsection shall be re-
 18 vised (in the manner described in subsection (p)(1)(E))
 19 so that—

20 “(A) there is established a benefit package con-
 21 sisting of only outpatient prescription drug benefits
 22 that are consistent with NICE prescription drug cov-
 23 erage (as defined in section 1860B(b)) and that are
 24 offered only through the NICE Board and in accord-
 25 ance with part D;

1 “(B) such package shall permit coverage of out-
2 patient prescription drugs that exceeds the thresh-
3 olds established under such section;

4 “(C) no package (except the package estab-
5 lished under subparagraph (A)) includes coverage of
6 outpatient prescription drugs provided under part D;
7 and

8 “(D) other benefit packages that do not include
9 prescription drug coverage may be substituted for
10 the packages eliminated under subparagraph (C).

11 In this title, a medicare supplemental policy which has the
12 benefit package described in subparagraph (A) is referred
13 to as a ‘NICE medicare supplemental policy’. The revi-
14 sions of benefit packages under this paragraph shall not
15 effect the renewal of medicare supplemental policies under
16 this section that are in existence on the effective date of
17 such revisions, and shall be designed to avoid adverse se-
18 lection and to be affordable.

19 “(2) Notwithstanding subsection (d), nothing in this
20 section shall be construed as prohibiting or making
21 unlawful—

22 “(A) the sale or issuance of a NICE medicare
23 supplemental policy to an individual who has a medi-
24 care supplemental policy that does not provide cov-
25 erage of outpatient prescription drugs;

1 “(B) the sale or issuance of a medicare supple-
2 mental policy that does not provide coverage of out-
3 patient prescription drugs to an individual who has
4 a NICE medicare supplemental policy; or

5 “(C) the sale or issuance of such a NICE medi-
6 care supplemental policy to an individual who is en-
7 rolled in a Medicare+Choice plan that does not pro-
8 vide coverage of outpatient prescription drugs (not
9 including coverage required to be provided under
10 part A or B).

11 The sale or issuance of policies under the circumstances
12 described in this paragraph shall be treated as not ‘dupli-
13 cative’ under this section.

14 “(3)(A) No medicare supplemental policy of the in-
15 surer that is in effect on the effective date of the revision
16 under paragraph (1) and that has a benefit package classi-
17 fied as ‘H’, ‘I’, or ‘J’ under the standards established by
18 subsection (p)(2) shall be deemed to meet the standards
19 in subsection (c) unless the insurer—

20 “(i) provides written notice, within a 60-day pe-
21 riod specified by the revisions, to the policyholder or
22 certificate holder (at the most recent available ad-
23 dress) of the offer described in clause (ii) and of the
24 fact that, so long as they retain coverage under such

1 policy, they are unable to purchase a NICE medi-
2 care supplemental policy; and

3 “(ii) offers the individual under the terms de-
4 scribed in subparagraph (B), during a period of at
5 least 180 days beginning on the date specified in
6 subparagraph (C), institution of coverage effective
7 as of a date specified by the revisions, a non-NICE
8 medicare supplemental policy that the Secretary de-
9 termines is most comparable to the policy in which
10 the individual is enrolled (but for coverage of pre-
11 scription drugs).

12 “(B) The terms described under this subparagraph
13 are terms which do not—

14 “(i) deny or condition the issuance or effective-
15 ness of a medicare supplemental policy described in
16 subparagraph (A)(ii) that is offered and is available
17 for issuance to new enrollees by such issuer;

18 “(ii) discriminate in the pricing of such policy
19 because of health status, claims experience, receipt
20 of health care, or medical condition; or

21 “(iii) impose an exclusion of benefits based on
22 a pre-existing condition under such policy.

23 “(C) The date specified in this subparagraph for a
24 policy issued in a State is such date as specified by the
25 revisions (taking into account the method used under sub-

1 section (n)(4) for establishing a date under that sub-
2 section).

3 “(4) In applying this section with respect to NICE
4 medicare supplemental policies, any reference to the ‘Sec-
5 retary’ is deemed a reference to the NICE Board.”.

6 **SEC. 4. PROVISION OF INFORMATION ON NICE DRUG BEN-**
7 **EFIT PROGRAM UNDER HEALTH INSURANCE**
8 **INFORMATION, COUNSELING, AND ASSIST-**
9 **ANCE GRANTS.**

10 Section 4360(b)(2)(A)(ii) of the Omnibus Budget
11 Reconciliation Act of 1990 (42 U.S.C. 1395b-
12 4(b)(2)(A)(ii)) is amended by striking “and information”
13 and inserting “, information regarding the NICE drug
14 benefit program under part D of title XVIII of the Social
15 Security Act, and information”.

○