

108TH CONGRESS  
2D SESSION

# H. R. 3854

To contain the costs of the Medicare prescription drug program under part D of title XVIII of the Social Security Act, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2004

Mr. FLAKE (for himself, Mr. PENCE, Mr. SMITH of Michigan, Mr. KING of Iowa, Mr. AKIN, Mr. TANCREDI, Mr. NORWOOD, Mr. JONES of North Carolina, Mr. BARTLETT of Maryland, Mr. MILLER of Florida, Mr. FRANKS of Arizona, Mr. BRADY of Texas, Mr. HENSARLING, Mrs. MUSGRAVE, Mr. BARRETT of South Carolina, Mr. DEMINT, Mr. GUTKNECHT, and Mr. FEENEY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Rules, 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

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## A BILL

To contain the costs of the Medicare prescription drug program under part D of title XVIII of the Social Security Act, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Prescription  
5 Drug Cost Containment Act of 2004”.

1 **SEC. 2. INCLUSION IN ANNUAL REPORT OF MEDICARE**  
2 **TRUSTEES OF INFORMATION ON STATUS OF**  
3 **MEDICARE PRESCRIPTION DRUG ACCOUNT.**

4 (a) DETERMINATIONS OF EXCESS GENERAL REV-  
5 ENUE MEDICARE PRESCRIPTION DRUG FUNDING.—

6 (1) IN GENERAL.—On the same date on which  
7 the President submits a budget to Congress, the  
8 Secretary of Health and Human Services (in this  
9 Act referred to as the “Secretary”), shall submit to  
10 Congress a determination as to whether there is pro-  
11 jected to be excess general revenue medicare pre-  
12 scription drug funding (as defined in subsection (b))  
13 for the fiscal year for which the budget is submitted.

14 (2) MEDICARE PART D FUNDING WARNING.—  
15 For purposes of section 1105(i) of title 31, United  
16 States Code, and this Act, an affirmative determina-  
17 tion under paragraph (1) by the Secretary shall be  
18 treated as a medicare part D funding warning in the  
19 fiscal year beginning on October 1 of the year in  
20 which the determination is submitted to Congress.

21 (b) DEFINITIONS.—For purposes of this section:

22 (1) EXCESS GENERAL REVENUE MEDICARE  
23 PRESCRIPTION DRUG FUNDING.—The term “excess  
24 general revenue medicare prescription drug funding”  
25 means, with respect to a fiscal year during the pe-

1       riod beginning on the date of enactment of this Act  
2       and ending on September 30, 2013, that—

3               (A) the amounts deposited in the Medicare  
4       Prescription Drug Account under section  
5       1860D–16(c)(2) (42 U.S.C. 1395w–116(c)(2)),  
6       as added by section 101 of the Medicare Pre-  
7       scription Drug, Improvement, and Moderniza-  
8       tion Act of 2003 (Public Law 108–173); exceed

9               (B) the part D target amount (as defined  
10       in paragraph (2)).

11       (2) PART D TARGET AMOUNT.—The term “part  
12       D target amount” means for a year—

13               (A) for fiscal year 2005, \$800,000,000;  
14               (B) for fiscal year 2006, \$25,700,000,000;  
15               (C) for fiscal year 2007, \$39,000,000,000;  
16               (D) for fiscal year 2008, \$44,600,000,000;  
17               (E) for fiscal year 2009, \$48,700,000,000;  
18               (F) for fiscal year 2010, \$53,700,000,000;  
19               (G) for fiscal year 2011, \$58,600,000,000;  
20               (H) for fiscal year 2012, \$65,300,000,000;

21       and

22               (I) for fiscal year 2013, \$73,100,000,000.

23       (c) TECHNICAL AMENDMENT.—Section 1860D–  
24       16(c)(3) of the Social Security Act (42 U.S.C. 1395w–  
25       116(c)(3)), as added by section 101 of the Medicare Pre-

1 scription Drug, Improvement, and Modernization Act of  
 2 2003 (Public Law 108–173), is amended by striking  
 3 “under paragraph (1) or subsection (a)(2)” and inserting  
 4 “under paragraph (1), (2), or (4), gifts and bequests as  
 5 may be made as provided in section 201(i)(1), or accrued  
 6 interest on balances in the Account”.

7 **SEC. 3. PRESIDENTIAL SUBMISSION OF LEGISLATION.**

8 (a) IN GENERAL.—Section 1105 of title 31, United  
 9 States Code, as amended by section 802(a) of the Medi-  
 10 care Prescription Drug, Improvement, and Modernization  
 11 Act of 2003 (Public Law 108–173), is amended by adding  
 12 at the end the following new subsection:

13 “(i)(1) If there is a medicare part D funding warning  
 14 under section 2(a)(2) of the Medicare Prescription Drug  
 15 Cost Containment Act of 2004 made in a year, the Presi-  
 16 dent shall submit to Congress, within the 15-day period  
 17 beginning on the date of the budget submission to Con-  
 18 gress under subsection (a) for the succeeding year, pro-  
 19 posed legislation to respond to such warning.

20 “(2) Paragraph (1) does not apply if, during the year  
 21 in which the warning is made, legislation is enacted which  
 22 eliminates excess general revenue medicare funding (as de-  
 23 fined in section 2(b) of the Medicare Prescription Drug  
 24 Cost Containment Act of 2004) for the period beginning  
 25 with the fiscal year for which the determination is made

1 and ending on September 30, 2013, as certified by the  
2 Board of Trustees of the Federal Supplementary Medicare  
3 Insurance Trust Fund not later than 30 days after the  
4 date of the enactment of such legislation.”.

5 (b) SENSE OF CONGRESS.—It is the sense of Con-  
6 gress that legislation submitted pursuant to section  
7 1105(i) of title 31, United States Code, in a year should  
8 be designed to eliminate excess general revenue medicare  
9 funding (as defined in section 2(b)) for the period that  
10 begins with the fiscal year for which the determination is  
11 made and ends on September 30, 2013.

12 **SEC. 4. PROCEDURES IN THE HOUSE OF REPRESENTA-**  
13 **TIVES.**

14 (a) INTRODUCTION AND REFERRAL OF PRESIDENT’S  
15 LEGISLATIVE PROPOSAL.—

16 (1) INTRODUCTION.—In the case of a legislative  
17 proposal submitted by the President pursuant to sec-  
18 tion 1105(i) of title 31, United States Code, as  
19 added by section 3(a), within the 15-day period  
20 specified in paragraph (1) of such section, the ma-  
21 jority leader of the House of Representatives (or his  
22 designee) and the minority leader of the House of  
23 Representatives (or his designee) shall introduce  
24 such proposal (by request), the title of which is as  
25 follows: “A bill to respond to a medicare part D

1 funding warning.” Such bill shall be introduced  
2 within 3 legislative days after Congress receives such  
3 proposal.

4 (2) REFERRAL.—Any legislation introduced  
5 pursuant to paragraph (1) shall be referred to the  
6 appropriate committees of the House of Representa-  
7 tives.

8 (b) DIRECTION TO THE APPROPRIATE HOUSE COM-  
9 MITTEES.—

10 (1) IN GENERAL.—In the House, in any year  
11 during which the President is required to submit  
12 proposed legislation to Congress under section  
13 1105(i) of title 31, United States Code, the appro-  
14 priate committees shall report medicare funding leg-  
15 islation by not later than June 30 of such year.

16 (2) MEDICARE FUNDING LEGISLATION.—For  
17 purposes of this section, the term “medicare funding  
18 legislation” means—

19 (A) legislation introduced pursuant to sub-  
20 section (a)(1), but only if the legislative pro-  
21 posal upon which the legislation is based was  
22 submitted within the 15-day period referred to  
23 in such subsection; or

1 (B) any bill the title of which is as follows:

2 “A bill to respond to a medicare part D funding  
3 warning.”.

4 (3) CERTIFICATION.—With respect to any  
5 medicare funding legislation or any amendment to  
6 such legislation to respond to a medicare part D  
7 funding warning, the chairman of the Committee on  
8 the Budget of the House shall certify—

9 (A) whether or not such legislation elimi-  
10 nates excess general revenue medicare funding  
11 (as defined in section 2(c)) for each fiscal year  
12 during the period beginning with the fiscal year  
13 for which the determination is made and ending  
14 on September 30, 2013; and

15 (B) with respect to such an amendment,  
16 whether the legislation, as amended, would  
17 eliminate excess general revenue medicare fund-  
18 ing (as defined in section 2(c)) for each fiscal  
19 year in such period.

20 (c) FALLBACK PROCEDURE FOR FLOOR CONSIDER-  
21 ATION IF THE HOUSE FAILS TO VOTE ON FINAL PASSAGE  
22 BY JULY 30.—

23 (1) After July 30 of any year during which the  
24 President is required to submit proposed legislation  
25 to Congress under section 1105(i) of title 31, United

1 States Code, unless the House of Representatives  
2 has voted on final passage of any medicare funding  
3 legislation for which there is an affirmative certifi-  
4 cation under subsection (b)(3)(A), then, after the ex-  
5 piration of not less than 30 calendar days (and con-  
6 currently 5 legislative days), it is in order to move  
7 to discharge any committee to which medicare fund-  
8 ing legislation which has such a certification and  
9 which has been referred to such committee for 30  
10 calendar days from further consideration of the leg-  
11 islation.

12 (2) A motion to discharge may be made only by  
13 an individual favoring the legislation, may be made  
14 only if supported by  $\frac{1}{5}$  of the total membership of  
15 the House of Representatives (a quorum being  
16 present), and is highly privileged in the House of  
17 Representatives. Debate thereon shall be limited to  
18 not more than 1 hour, the time to be divided in the  
19 House of Representatives equally between those fa-  
20 voring and those opposing the motion. An amend-  
21 ment to the motion is not in order, and it is not in  
22 order to move to reconsider the vote by which the  
23 motion is agreed to or disagreed to.



1           (3) Only 1 motion to discharge a particular  
2       committee may be adopted under this subsection in  
3       any session of Congress.

4           (4) Notwithstanding paragraph (1), it shall not  
5       be in order to move to discharge a committee from  
6       further consideration of medicare funding legislation  
7       pursuant to this subsection during a session of Con-  
8       gress if, during the previous session of the Congress,  
9       the House of Representatives passed medicare fund-  
10      ing legislation for which there is an affirmative cer-  
11      tification under subsection (b)(3)(A).

12       (d) FLOOR CONSIDERATION IN THE HOUSE OF DIS-  
13      CHARGED LEGISLATION.—

14           (1) In the House, not later than 3 legislative  
15      days after any committee has been discharged from  
16      further consideration of legislation under subsection  
17      (c), the Speaker shall resolve the House into the  
18      Committee of the Whole for consideration of the leg-  
19      islation.

20           (2) The first reading of the legislation shall be  
21      dispensed with. All points of order against consider-  
22      ation of the legislation are waived. General debate  
23      shall be confined to the legislation and shall not ex-  
24      ceed 5 hours, which shall be divided equally between  
25      those favoring and those opposing the legislation.

1 After general debate the legislation shall be consid-  
2 ered for amendment under the 5-minute rule. Dur-  
3 ing consideration of the legislation, no amendments  
4 shall be in order in the House of Representatives or  
5 in the Committee of the Whole except those for  
6 which there has been an affirmative certification  
7 under subsection (b)(3)(B). All points of order  
8 against consideration of any such amendment in the  
9 Committee of the Whole are waived. The legislation,  
10 together with any amendments which shall be in  
11 order, shall be considered as read. During the con-  
12 sideration of the bill for amendment, the Chairman  
13 of the Committee of the Whole may accord priority  
14 in recognition on the basis of whether the Member  
15 offering an amendment has caused it to be printed  
16 in the portion of the Congressional Record des-  
17 ignated for that purpose in clause 8 of Rule XVIII  
18 of the Rules of the House of Representatives. De-  
19 bate on any amendment shall not exceed 1 hour,  
20 which shall be divided equally between those favoring  
21 and those opposing the amendment, and no pro  
22 forma amendments shall be offered during the de-  
23 bate. The total time for debate on all amendments  
24 shall not exceed 10 hours. At the conclusion of con-  
25 sideration of the legislation for amendment, the

1 Committee shall rise and report the legislation to the  
2 House of Representatives with such amendments as  
3 may have been adopted. The previous question shall  
4 be considered as ordered on the legislation and  
5 amendments thereto to final passage without inter-  
6 vening motion except one motion to recommit with  
7 or without instructions. If the Committee of the  
8 Whole rises and reports that it has come to no reso-  
9 lution on the bill, then on the next legislative day the  
10 House of Representatives shall, immediately after  
11 the third daily order of business under clause 1 of  
12 Rule XIV of the Rules of the House of Representa-  
13 tives, resolve into the Committee of the Whole for  
14 further consideration of the bill.

15 (3) All appeals from the decisions of the Chair  
16 relating to the application of the Rules of the House  
17 of Representatives to the procedure relating to any  
18 such legislation shall be decided without debate.

19 (4) Except to the extent specifically provided in  
20 the preceding provisions of this subsection, consider-  
21 ation of any such legislation and amendments there-  
22 to (or any conference report thereon) shall be gov-  
23 erned by the Rules of the House of Representatives  
24 applicable to other bills and resolutions, amend-

1       ments, and conference reports in similar cir-  
2       cumstances.

3       (e) LEGISLATIVE DAY DEFINED.—As used in this  
4       section, the term “legislative day” means a day on which  
5       the House of Representatives is in session.

6       (f) RESTRICTION ON WAIVER.—In the House of Rep-  
7       resentatives, the provisions of this section may be waived  
8       only by a rule or order proposing only to waive such provi-  
9       sions.

10      (g) RULEMAKING POWER.—The provisions of this  
11      section are enacted by the Congress—

12           (1) as an exercise of the rulemaking power of  
13      the House of Representatives and, as such, shall be  
14      considered as part of the rules of that House of  
15      Representatives and shall supersede other rules only  
16      to the extent that they are inconsistent therewith;  
17      and

18           (2) with full recognition of the constitutional  
19      right of that House to change the rules (so far as  
20      they relate to the procedures of that House) at any  
21      time, in the same manner, and to the same extent  
22      as in the case of any other rule of that House.

23   **SEC. 5. PROCEDURES IN THE SENATE.**

24      (a) INTRODUCTION AND REFERRAL OF PRESIDENT’S  
25      LEGISLATIVE PROPOSAL.—

1           (1) INTRODUCTION.—In the case of a legislative  
2       proposal submitted by the President pursuant to sec-  
3       tion 1105(i) of title 31, United States Code, within  
4       the 15-day period specified in paragraph (1) of such  
5       section, the majority leader and minority leader of  
6       the Senate (or their designees) shall introduce such  
7       proposal (by request), the title of which is as follows:  
8       “A bill to respond to a medicare part D funding  
9       warning.” Such bill shall be introduced within 3  
10      days of session after Congress receives such pro-  
11      posal.

12           (2) REFERRAL.—Any legislation introduced  
13      pursuant to paragraph (1) shall be referred to the  
14      Committee on Finance.

15           (b) MEDICARE FUNDING LEGISLATION.—For pur-  
16      poses of this section, the term “medicare funding legisla-  
17      tion” means—

18           (1) legislation introduced pursuant to sub-  
19      section (a)(1), but only if the legislative proposal  
20      upon which the legislation is based was submitted  
21      within the 15-day period referred to in such sub-  
22      section; or

23           (2) any bill the title of which is as follows: “A  
24      bill to respond to a medicare part D funding warn-  
25      ing.”.

1 (c) QUALIFICATION FOR SPECIAL PROCEDURES.—

2 (1) IN GENERAL.—The special procedures set  
3 forth in subsections (d) and (e) shall apply to medi-  
4 care funding legislation, as described in subsection  
5 (b), only if the legislation—

6 (A) is medicare funding legislation that is  
7 passed by the House of Representatives; or

8 (B) contains matter within the jurisdiction  
9 of the Committee on Finance in the Senate.

10 (2) FAILURE TO QUALIFY FOR SPECIAL PROCE-  
11 DURES.—If the medicare funding legislation does  
12 not satisfy paragraph (1), then the legislation shall  
13 be considered under the ordinary procedures of the  
14 Standing Rules of the Senate.

15 (d) DISCHARGE.—

16 (1) IN GENERAL.—If the Committee on Fi-  
17 nance of the Senate has not reported medicare fund-  
18 ing legislation described in subsection (c)(1) by June  
19 30 of a year in which the President is required to  
20 submit medicare funding legislation to Congress  
21 under section 1105(i) of title 31, United States  
22 Code, then any Senator may move to discharge the  
23 Committee of any single medicare funding legislation  
24 measure. Only 1 such motion shall be in order in  
25 any session of Congress.

1           (2) DEBATE LIMITS.—Debate in the Senate on  
2           any such motion to discharge, and all appeals in  
3           connection therewith, shall be limited to not more  
4           than 2 hours. The time shall be equally divided be-  
5           tween, and controlled by, the maker of the motion  
6           and the majority leader, or their designees, except  
7           that in the event the majority leader is in favor of  
8           such motion, the time in opposition thereto shall be  
9           controlled by the minority leader or the minority  
10          leader’s designee. A point of order under this sub-  
11          section may be made at any time. It is not in order  
12          to move to proceed to another measure or matter  
13          while such motion (or the motion to reconsider such  
14          motion) is pending.

15          (3) AMENDMENTS.—No amendment to the mo-  
16          tion to discharge shall be in order.

17          (4) EXCEPTION IF CERTIFIED LEGISLATION EN-  
18          ACTED.—Notwithstanding paragraph (1), it shall  
19          not be in order to discharge the Committee from  
20          further consideration of medicare funding legislation  
21          pursuant to this subsection during a session of a  
22          Congress if the chairman of the Committee on the  
23          Budget of the Senate certifies that medicare funding  
24          legislation has been enacted that eliminates excess  
25          general revenue medicare funding (as defined in sec-

1       tion 2(c)) for each fiscal year in the period begin-  
2       ning with the fiscal year for which the determination  
3       is made and ending on September 30, 2013.

4       (e) CONSIDERATION.—After the date on which the  
5       Committee on Finance of the Senate has reported medi-  
6       care funding legislation described in subsection (c)(1), or  
7       has been discharged (under subsection (d)) from further  
8       consideration of, such legislation, it is in order (even  
9       though a previous motion to the same effect has been dis-  
10      agreed to) for any Member of the Senate to move to pro-  
11      ceed to the consideration of such legislation.

12      (f) RULES OF THE SENATE.—This section is enacted  
13      by the Senate—

14           (1) as an exercise of the rulemaking power of  
15      the Senate and as such it is deemed a part of the  
16      rules of the Senate, but applicable only with respect  
17      to the procedure to be followed in the Senate in the  
18      case of a bill described in this paragraph, and it su-  
19      persedes other rules only to the extent that it is in-  
20      consistent with such rules; and

21           (2) with full recognition of the constitutional  
22      right of the Senate to change the rules (so far as re-  
23      lating to the procedure of the Senate) at any time,



- 1 in the same manner, and to the same extent as in
- 2 the case of any other rule of the Senate.

