

108TH CONGRESS  
2D SESSION

# H. R. 4195

To amend part D of title XVIII of the Social Security Act to improve the coordination of prescription drug coverage provided under retiree plans and State pharmaceutical assistance programs with the prescription drug benefit provided under the Medicare Program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 2004

Mr. MENENDEZ (for himself, Mr. HOLT, Mr. PALLONE, Mr. ANDREWS, Mr. PASCRELL, Mr. ROTHMAN, and Mr. PAYNE) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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 amend part D of title XVIII of the Social Security Act to improve the coordination of prescription drug coverage provided under retiree plans and State pharmaceutical assistance programs with the prescription drug benefit provided under the Medicare Program, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Preserving Access to  
3 Affordable Drugs Act of 2004”.

4 **SEC. 2. ELIMINATION OF DISCRIMINATORY TREATMENT OF**  
5 **EMPLOYER PLANS.**

6 (a) **ELIMINATION OF TRUE OUT-OF-POCKET LIMITA-**  
7 **TION.**—Section 1860D–2(b)(4)(C) of the Social Security  
8 Act, as added by section 101(a) of the Medicare Prescrip-  
9 tion Drug, Improvement, and Modernization Act of 2003  
10 (Public Law 108–173), is amended to read as follows:

11 “(C) **APPLICATION.**—In applying subpara-  
12 graph (A), incurred costs shall only include  
13 costs incurred with respect to covered part D  
14 drugs for the annual deductible described in  
15 paragraph (1), for cost-sharing described in  
16 paragraph (2), and for amounts for which bene-  
17 fits are not provided because of the application  
18 of the initial coverage limit described in para-  
19 graph (3).”.

20 (b) **EQUALIZATION OF SUBSIDIES.**—Notwithstanding  
21 any other provision of law, the Secretary of Health and  
22 Human Services shall provide for such increase in the spe-  
23 cial subsidy payment amounts under section 1860D–  
24 22(a)(3) of the Social Security Act, as added by section  
25 101(a) of the Medicare Prescription Drug, Improvement,  
26 and Modernization Act of 2003 (Public Law 108–173),

1 as may be appropriate to provide for payments in the ag-  
 2 gregate equivalent to the payments that would have been  
 3 made under section 1860D–15 of such Act if the individ-  
 4 uals were not enrolled in a qualified retiree prescription  
 5 drug plan. In making such computation, the Secretary  
 6 shall not take into account the application of the amend-  
 7 ments made by section 1202 of the Medicare Prescription  
 8 Drug, Improvement, and Modernization Act of 2003.

9 **SEC. 3. DIRECT SUBSIDY FOR CERTAIN STATE PHARMA-**  
 10 **CEUTICAL ASSISTANCE PROGRAMS**

11 Part D of title XVIII of the Social Security Act (as  
 12 so added) is amended by inserting after section 1860D–  
 13 23 the following:

14 “DIRECT SUBSIDIES FOR CERTAIN STATE  
 15 PHARMACEUTICAL ASSISTANCE PROGRAMS

16 “SEC. 1860D–23A. (a) DIRECT SUBSIDY.—

17 “(1) IN GENERAL.—The Secretary shall provide  
 18 for the payment to a State offering a State pharma-  
 19 ceutical assistance program described in section  
 20 1860D–23(b)(1) for each individual who is eligible  
 21 for, but not enrolled in, a prescription drug plan or  
 22 MA–PD plan under this part, and who is enrolled in  
 23 such program for each month for which such indi-  
 24 vidual is so enrolled.

25 “(2) AMOUNT OF PAYMENT.—

1           “(A) IN GENERAL.—The amount of the  
2           payment under paragraph (1) shall be an  
3           amount equal to the special subsidy payment  
4           amount determined under section 1860D–  
5           22(a)(3) for a qualifying covered retiree for a  
6           coverage year enrolled with the sponsor of a  
7           qualified retiree prescription drug plan.

8           “(b) ADDITIONAL SUBSIDY.—

9           “(1) IN GENERAL.—The Secretary shall provide  
10          for the payment to a State offering a State pharma-  
11          ceutical assistance program described in section  
12          1860D–23(b)(1) for each applicable low-income indi-  
13          vidual enrolled in the program for each month for  
14          which such individual is so enrolled.

15          “(2) AMOUNT OF PAYMENT.—

16               “(A) IN GENERAL.—The amount of the  
17               payment under paragraph (1) shall be the  
18               amount the Secretary estimates would have  
19               been made to a prescription drug plan or MA–  
20               PD plan under section 1860D–14 with respect  
21               to the applicable low-income individual if such  
22               individual was enrolled in such a plan.

23               “(B) MAXIMUM PAYMENTS.—In no case  
24               may the amount of the payment determined  
25               under subparagraph (A) with respect to an ap-

1           plicable low-income individual exceed, as esti-  
 2           mated by the Secretary, the average amount  
 3           paid in a year under section 1860D–14 on be-  
 4           half of a subsidy eligible individual (as defined  
 5           in section 1860D–14(a)(3)(A)) with income  
 6           that is the same as the income of the applicable  
 7           low-income individual.

8           “(3) APPLICABLE LOW-INCOME INDIVIDUAL.—

9           For purposes of this subsection, the term ‘applicable  
 10          low-income individual’ means an individual who—

11           “(A) is eligible for, but not enrolled in, a  
 12           prescription drug plan or MA–PD plan under  
 13           this part, and who is enrolled in a State phar-  
 14           maceutical assistance program described in sec-  
 15           tion 1860D–23(b)(1); and

16           “(B) would be a subsidy eligible individual  
 17           (as defined in section 1860D–14(a)(3)(A)) if  
 18           the individual were enrolled in such a plan.

19          “(c) PAYMENT METHODS.—

20           “(1) IN GENERAL.—Payments under this sec-  
 21           tion shall be based on such a method as the Sec-  
 22           retary determines. The Secretary may establish a  
 23           payment method by which interim payments of  
 24           amounts under this section are made during a year  
 25           based on the Secretary’s best estimate of amounts

1       that will be payable after obtaining all of the infor-  
2       mation.

3               “(2) SOURCE OF PAYMENTS.—Payments under  
4       this section shall be made from the Medicare Pre-  
5       scription Drug Account.

6               “(d) CONSTRUCTION.—Nothing in this section, sec-  
7       tion 1860D–23, or section 1860D–24 shall be construed  
8       as requiring a prescription drug plan or MA–PD plan to  
9       coordinate coverage provided under such plan with cov-  
10      erage provided under a State pharmaceutical assistance  
11      program described in section 1860D–23(b)(1) that is op-  
12      erated by a State which receives a payment under this sec-  
13      tion.”.

14   **SEC. 4. FACILITATION OF COORDINATION.**

15       Section 1860D–24(c)(1) of the Social Security Act  
16      (as so added) is amended by striking “all methods of oper-  
17      ation” and inserting “its own methods of operation, except  
18      that a PDP sponsor or MA organization may not require  
19      a State Pharmaceutical Assistance Program or an RX  
20      plan described in subsection (b) to apply such tools when  
21      coordinating benefits”.

22   **SEC. 5. ALLOWING MEDICAID WRAP.**

23       Section 1935(d) of the Social Security Act, as added  
24      by section 103(c) of the Medicare Prescription Drug, Im-

1 provement, and Modernization Act of 2003 (Public Law  
2 108–173), is repealed.

3 **SEC. 6. REPEAL OF COMPARATIVE COST ADJUSTMENT**  
4 **PROGRAM.**

5 Effective as if included in the enactment of the Medi-  
6 care Prescription Drug, Improvement, and Modernization  
7 Act of 2003 (Public Law 108–173), subtitle E of title II  
8 of such Act is repealed and any provisions of law amended  
9 by such subtitle are restored as if such subtitle had not  
10 been enacted.

11 **SEC. 7. PROVISION OF WRAP-AROUND PRESCRIPTION**  
12 **DRUG COVERAGE THROUGH MEDIGAP.**

13 Section 1882(v) of the Social Security Act (42 U.S.C.  
14 1395ss(v)), as added by section 104(a) of the Medicare  
15 Prescription Drug, Improvement, and Modernization Act  
16 of 2003 (Public Law 108–173), is amended as follows:

17 (1) In paragraph (1)(A), by inserting “, other  
18 than such a policy that provides wrap-around pre-  
19 scription drug coverage included within a range of  
20 such coverage approved under subparagraph  
21 (D)(ii),” after “paragraph (6)(A))”.

22 (2) Add at the end of paragraph (1) the fol-  
23 lowing new subparagraph:

24 “(D) WRAP-AROUND PRESCRIPTION DRUG  
25 COVERAGE.—

1 “(i) IN GENERAL.—Notwithstanding  
2 any other provision of this subsection, a  
3 medigap Rx policy that provides wrap-  
4 around prescription drug coverage included  
5 within a range of such coverage approved  
6 by the Secretary under clause (ii) may be  
7 offered to part D enrollees.

8 “(ii) DEVELOPMENT OF STAND-  
9 ARDS.—The Secretary shall approve a  
10 range of wrap-around prescription drug  
11 coverage that may be offered under this  
12 subparagraph to part D enrollees.”.

13 **SEC. 8. EFFECTIVE DATE.**

14 The amendments made by this Act shall take effect  
15 as if included in the enactment of the Medicare Prescrip-  
16 tion Drug, Improvement, and Modernization Act of 2003  
17 (Public Law 108–173).

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