

108TH CONGRESS
2D SESSION

H. R. 4903

To amend title XVIII of the Social Security Act to provide for improved accountability in the Medicare Advantage and prescription drug programs.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2004

Mr. BROWN of Ohio (for himself, Mr. DINGELL, Mr. RANGEL, Mr. STARK, and Mr. WAXMAN) 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 provide for improved accountability in the Medicare Advantage and prescription drug programs.

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 “Medicare Advantage and Prescription Drug Account-
6 ability Act of 2004”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Requirement for reasonable return of benefits.
- Sec. 3. Financial transparency.
- Sec. 4. Beneficiary sign-off.
- Sec. 5. Annual accountability reports.
- Sec. 6. Auditing of actuarial equivalency.
- Sec. 7. Report comparing costs and benefits under Medicare Advantage plans, medicare supplemental policies, and fee-for-service medicare.

1 SEC. 2. REQUIREMENT FOR REASONABLE RETURN OF BEN-
2 EFITS.

3 (a) MEDICARE ADVANTAGE PLANS.—Section
4 1857(e) of the Social Security Act (42 U.S.C. 1395w–
5 27(e)) is amended by adding at the end the following new
6 paragraph:

7 “(4) NEGOTIATION FOR LOSS AND ADMINISTRA-
8 TIVE COST RATIOS.—

9 “(A) IN GENERAL.—The contract with an
10 MA organization under this part shall provide
11 for the following:

12 “(i) MINIMUM LOSS RATIO.—Aggre-
13 gate average benefits that are at least a
14 minimum ratio of the aggregate average
15 revenues collected under the contract.

16 “(ii) MAXIMUM ADMINISTRATIVE COST
17 RATIO.—Aggregate average administrative
18 costs that do not exceed a maximum ratio
19 of the aggregate average revenues collected
20 under the contract.

1 “(B) ESTABLISHMENT OF RATIOS.—The
 2 ratios under clauses (i) and (ii) of subpara-
 3 graph (A) shall be established by the Secretary.
 4 In establishing such ratios, the Secretary shall
 5 take into account, at a minimum, ratios typical
 6 of those—

7 “(i) under private health insurance
 8 plans;

9 “(ii) under parts A and B of this title;
 10 and

11 “(iii) under health benefits plans of-
 12 fered under chapter 89 of title 5, United
 13 States Code (relating to the Federal Em-
 14 ployees Health Benefits Program).”.

15 (b) AUDIT OF ADMINISTRATIVE COSTS AND COMPLI-
 16 ANCE WITH THE FEDERAL ACQUISITION REGULATION.—
 17 Section 1857(d)(2)(B) of such Act (42 U.S.C. 1395w-
 18 27(d)(2)(B)) is amended—

19 (1) by striking “or (ii)” and inserting “(ii)”;
 20 and

21 (2) by inserting before the period at the end the
 22 following: “, or (iii) to compliance with the require-
 23 ments of subsection (e)(4)(A) and the extent to
 24 which administrative costs comply with the applica-

1 ble requirements for such costs under the Federal
2 Acquisition Regulation”.

3 (c) APPLICATION TO PRESCRIPTION DRUG PLANS.—

4 The amendments made by subsections (a) and (b) apply,
5 pursuant to section 1860D–12(b)(3) of the Social Security
6 Act (42 U.S.C. 1395w–112(b)(3)), to contracts with pre-
7 scription drug sponsors under part D of title XVIII of
8 such Act.

9 (d) EFFECTIVE DATE.—The amendments made by
10 this section shall apply for contract years beginning after
11 the date of the enactment of this Act.

12 **SEC. 3. FINANCIAL TRANSPARENCY.**

13 (a) MEDICARE ADVANTAGE PLANS.—Section
14 1851(d) of the Social Security Act (42 U.S.C. 1395w–
15 21(d)) is amended by adding at the end the following new
16 paragraph:

17 “(8) FINANCIAL TRANSPARENCY.—

18 “(A) IN GENERAL.—Each MA organization
19 shall provide annually to the Secretary (in a
20 form and manner specified by the Secretary),
21 with respect to each MA plan it offers and not
22 later than 6 months after the end of each con-
23 tract year, information describing the organiza-
24 tion’s compliance with the requirements of sec-
25 tion 1857(e)(4) and a functional listing of the

1 organization’s administrative costs (by category
2 of such costs, including, at a minimum, mar-
3 keting costs and claims processing costs), prof-
4 its, and investment income (as defined by the
5 Secretary), as a ratio of aggregate average reve-
6 nues collected under the contract for that year.

7 “(B) PUBLICATION.—The Secretary shall
8 publish the information provided under sub-
9 paragraph (A) for each MA plan.”.

10 (b) CONFORMING APPLICATION TO PRESCRIPTION
11 DRUG PLANS.—Section 1860D–11(b)(2) of the Social Se-
12 curity Act (42 U.S.C. 1395w–111(b)(2)) is amended by
13 redesignating subparagraph (F) as subparagraph (G) and
14 by inserting after subparagraph (E) the following new
15 subparagraph:

16 “(F) PERIODIC AUDITING.—Information
17 with respect to the prescription drug plan of the
18 type described in section 1851(d)(8) with re-
19 spect to an MA plan.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to reporting of information for con-
22 tract years to which the amendments made by section 2
23 apply.

1 **SEC. 4. BENEFICIARY SIGN-OFF.**

2 (a) MEDICARE ADVANTAGE PLANS.—Section
3 1851(c)(2) of the Social Security Act (42 U.S.C. 1395w–
4 21(c)(2)) is amended by adding at the end the following
5 new subparagraph:

6 “(C) BENEFICIARY SIGN-OFF IN ELECTION
7 PROCESS.—An election to enroll with an MA
8 plan shall not be effective unless the election
9 form is signed by the individual and specifically
10 acknowledges each of the following:

11 “(i) The premiums, cost-sharing re-
12 quirements, and benefits under the plan
13 may change at the beginning of each 12-
14 month contract period.

15 “(ii) The individual may lose coverage
16 of the individual’s physician or other pro-
17 vider at the beginning of each such period.

18 “(iii) The plan may be terminated at
19 the beginning of any such period.

20 “(iv) Premiums and benefits under
21 the plan may vary based on the county or
22 other MA area in which the plan is of-
23 fered.”.

24 (b) APPLICATION TO PRESCRIPTION DRUG PLANS.—
25 The amendment made by subsection (a) applies, pursuant
26 to section 1860D–1(b)(1)(B)(ii) of the Social Security Act

1 (42 U.S.C. 1395w–101(b)(1)(B)(ii)), to prescription drug
 2 plans under part D of title XVIII of such Act.

3 (c) EFFECTIVE DATE.—The amendment made by
 4 subsection (a) shall apply to elections made on or after
 5 the date specified by the Secretary of Health and Human
 6 Services, but in no case later than 60 days after the date
 7 of the enactment of this Act.

8 **SEC. 5. ANNUAL ACCOUNTABILITY REPORTS.**

9 (a) MEDICARE ADVANTAGE ACCOUNTABILITY RE-
 10 PORT.—Section 1856 of the Social Security Act (42
 11 U.S.C. 1395w–26) is amended—

12 (1) by amending the heading to read as follows:

13 “ESTABLISHMENT OF STANDARDS; ANNUAL
 14 ACCOUNTABILITY REPORT”;

15 and

16 (2) by adding at the end the following new sub-
 17 section:

18 “(c) ANNUAL ACCOUNTABILITY REPORT.—

19 “(1) IN GENERAL.—The Secretary shall com-
 20 pile, and transmit to Congress, at the end of each
 21 year (beginning with 2004), an annual Medicare Ad-
 22 vantage accountability report.

23 “(2) CONTENTS.—Each annual accountability
 24 report shall include the following:

1 “(A) A detailed analysis of geographic var-
2 iation in cost-sharing and premiums among MA
3 plans.

4 “(B) A comparison of the use of amounts
5 paid to MA plans for benefit payments, admin-
6 istrative costs, and profits with the amounts ex-
7 pended under the fee-for-service programs
8 under parts A and B for benefit payments and
9 administrative expenses.

10 “(C) Recommendations for legislative
11 changes to the Medicare Advantage program, or
12 the fee-for-service programs under parts A and
13 B, to assure that medicare beneficiaries under
14 both programs have access to comparable bene-
15 fits at comparable cost and that Government
16 subsidies under the two programs are equiva-
17 lent.

18 “(D) The results of audits conducted
19 under section 1857(d) and enforcement actions
20 taken in response to findings of inappropriate
21 expenditures of funds under this part.”.

22 (b) PRESCRIPTION DRUG ACCOUNTABILITY RE-
23 PORT.—Section 1860D–12 of such Act (42 U.S.C.
24 1395w–112) is amended by adding at the end the fol-
25 lowing new subsection:

1 “(h) ANNUAL ACCOUNTABILITY REPORT.—

2 “(1) IN GENERAL.—The Secretary shall com-
3 pile, and transmit to Congress, at the end of each
4 year (beginning with 2006), an annual prescription
5 drug accountability report.

6 “(2) CONTENTS.—Each annual accountability
7 report shall include the same types of information
8 (as specified by the Secretary) with respect to pre-
9 scription drug plans as are provided under subpara-
10 graphs (A), (B), and (D) of section 1856(c)(2) with
11 respect to MA plans.”.

12 **SEC. 6. AUDITING OF ACTUARIAL EQUIVALENCY.**

13 (a) MEDICARE ADVANTAGE PLANS.—Section
14 1854(a)(5) of the Social Security Act (42 U.S.C. 1395w-
15 24(a)(5)) is amended by adding at the end the following
16 new subparagraph:

17 “(B) PERIODIC AUDITS OF ACTUARIAL
18 EQUIVALENCY DETERMINATIONS.—In the case
19 of MA plans that provide for an actuarially
20 equivalent level of benefits under this part, the
21 Inspector General of the Department of Health
22 and Human Services shall periodically audit a
23 representative sample of the determinations
24 made by the Secretary regarding such actuarial
25 equivalency to ensure that the Secretary is only

1 approving plans with benefits that are actuari-
2 ally equivalent.”.

3 (b) APPLICATION TO PRESCRIPTION DRUG PLANS.—
4 Section 1860D–11(e) of the Social Security Act (42
5 U.S.C. 1395w–111(e)) is amended by adding at the end
6 the following new paragraph:

7 “(3) PERIODIC AUDITING OF ACTUARIAL
8 EQUIVALENCY DETERMINATIONS.—The provisions of
9 section 1854(a)(5)(B) shall apply with respect to de-
10 terminations of actuarial equivalence of benefits
11 under prescription drug plans in the same manner
12 as they apply to determinations of actuarial equiva-
13 lence of benefits under MA plans.”.

14 **SEC. 7. REPORT COMPARING COSTS AND BENEFITS UNDER**
15 **MEDICARE ADVANTAGE PLANS, MEDICARE**
16 **SUPPLEMENTAL POLICIES, AND FEE-FOR-**
17 **SERVICE MEDICARE.**

18 Not later than 1 year after the date of the enactment
19 of this Act, the Secretary of Health and Human Services
20 shall submit to Congress a report that compares the aver-
21 age benefit payments, administrative costs, profits, and in-
22 vestment income (expressed as a percentage of revenues
23 collected) for MA plans with such average for the fee-for-

- 1 service programs under parts A and B and for group and
- 2 individual medicare supplemental policies.

