

108TH CONGRESS  
2D SESSION

# H. R. 4919

To amend part D of title XVIII of the Social Security Act to provide for the offering of a Federal national prescription drug discount card program.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2004

Mr. ALLEN (for himself and Mr. MICHAUD) 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 provide for the offering of a Federal national prescription drug discount card 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; FINDINGS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “Medicare Drug Card Guaranteed Savings Act”.

6       (b) **FINDINGS.**—Congress finds the following:

7               (1) Americans who buy their own prescription  
8       drugs often pay twice as much for prescription drugs

1 as consumers in foreign nations or as the price the  
2 Department of Veterans Affairs obtains by negoti-  
3 ating directly with the pharmaceutical manufactur-  
4 ers. In some cases, older Americans pay 10 times  
5 more for prescription drugs than such customers.  
6 Prescription drug prices have increased 3.4 percent  
7 during the first quarter of 2004, nearly three times  
8 the rate of inflation.

9 (2) The Medicare Prescription Drug, Improve-  
10 ment, and Modernization Act of 2003 (Public Law  
11 No: 108–173) established a program for the en-  
12 dorsement of medicare drug discount card programs  
13 in order to provide for reduced prices for drugs for  
14 medicare beneficiaries and provide a subsidy for low-  
15 income medicare beneficiaries.

16 (3) There are currently more than 70 endorsed  
17 medicare drug discount card programs. Medicare  
18 drug discount card programs can change the drugs  
19 that they offer and the size of the discounts every  
20 seven days. Medicare beneficiaries are allowed to  
21 change their current medicare drug discount card  
22 program only once, during an annual enrollment pe-  
23 riod between November 15 and December 31, 2004.

24 (4) Enrollment in medicare drug discount card  
25 programs has been less than projected due to the

1 complexity of the programs, the limited number of  
2 drugs covered under most programs, the changing  
3 prescription drug needs of beneficiaries, and bene-  
4 ficiaries' concern that the programs do not guar-  
5 antee real savings on prescription drug purchases.  
6 As of July 19, 2004, fewer than 14 percent of low-  
7 income medicare beneficiaries who qualify for the  
8 \$600 subsidy under the law have enrolled in a medi-  
9 care drug discount card program.

10 (5) Currently, medicare discount drug card  
11 sponsors are required to pass on to enrollees only an  
12 undefined "share" of the rebates they secure from  
13 drug manufacturers and card sponsors can use the  
14 remaining savings for administrative costs and prof-  
15 it. The law does not require the sponsors to reveal  
16 to enrollees the size of the rebates secured from  
17 drug manufacturers or to disclose what portion of  
18 those rebates are kept by the sponsors and not  
19 passed on to enrollees.

20 (6) There is a need for a Federal national  
21 medicare prescription drug discount card program  
22 that offers guaranteed discounts on all prescription  
23 drugs and that aggregates the buying power of all  
24 medicare beneficiaries in order to negotiate signifi-  
25 cant reductions in price.

1 **SEC. 2. OFFERING OF FEDERAL NATIONAL PRESCRIPTION**  
2 **DRUG DISCOUNT CARD PROGRAM.**

3 (a) OFFERING OF PROGRAM.—

4 (1) IN GENERAL.—Subsection (a)(1) of section  
5 1860D–31 of the Social Security Act (42 U.S.C.  
6 1395w–141) is amended—

7 (A) by striking “and” at the end of sub-  
8 paragraph (A);

9 (B) by striking the period at the end of  
10 subparagraph (B) and inserting “; and”; and

11 (C) by adding at the end the following new  
12 subparagraph:

13 “(C) to provide for the offering of a Fed-  
14 eral national prescription drug discount card  
15 program that is available for discount card eli-  
16 gible individuals throughout the United States  
17 (including the territories) and that meets the  
18 requirements under subsection (l)(1) in addition  
19 to the requirements otherwise applicable to an  
20 endorsed discount card program.”.

21 (2) EXCLUSIVE PROGRAM IN 2005.—Subsection  
22 (c)(1)(C) of such section is amended—

23 (A) in clause (i), by striking “clauses (ii)  
24 and (iii)” and inserting “clauses (ii) through  
25 (iv)”; and

1 (B) by adding at the end the following new  
2 clause:

3 “(iv) LIMITATION TO ENROLLMENT IN  
4 FEDERAL NATIONAL PRESCRIPTION DRUG  
5 DISCOUNT CARD PROGRAM IN 2005.—Not-  
6 withstanding any other provision of this  
7 section, for periods beginning with January  
8 1, 2005, the only discount card program in  
9 which an individual may be enrolled under  
10 this section shall be the Federal national  
11 prescription drug discount card program  
12 described in subsection (l). Individuals en-  
13 rolled in another program as of December  
14 31, 2004, who do not affirmatively  
15 disenroll from all discount card programs  
16 under this section are deemed to be en-  
17 rolled in such Federal national prescription  
18 drug discount card program.”.

19 (b) ADDITIONAL PROGRAM REQUIREMENTS.—Such  
20 section is further amended by adding at the end the fol-  
21 lowing new subsection:

22 “(l) PROVISIONS RELATING TO FEDERAL NATIONAL  
23 PRESCRIPTION DRUG DISCOUNT CARD PROGRAM.—

24 “(1) ADDITIONAL REQUIREMENTS.—The Fed-  
25 eral national prescription drug discount card pro-

1       gram described in subsection (a)(1)(C) shall also  
2       meet the following requirements:

3               “(A) DISCOUNTED PRICES.—Through di-  
4       rect negotiations with prescription drug manu-  
5       facturers, the discounted prices offered under  
6       the program shall be less than prices otherwise  
7       available in the retail market. Through such ne-  
8       gotiations, the Secretary shall obtain discounted  
9       prices that are at least as low as the manufac-  
10      turer’s average foreign price (as defined in  
11      paragraph (3)) for the drug involved.

12              “(B) PASSING THROUGH ALL SAVINGS.—  
13      The full amount of discounted savings are  
14      passed through to enrollees.

15              “(C) FEE FOR CARD.—The annual fee for  
16      enrollment in the program shall be \$30 (except  
17      as provided under subparagraphs (E) through  
18      (G) of subsection (c)(1)), which fees shall be  
19      available to the Secretary for administrative ex-  
20      penses in offering such program.

21              “(D) NATIONAL AVAILABILITY.—The pro-  
22      gram shall be made available to individuals re-  
23      siding anywhere in the United States.

24              “(E) HANDLING FEE FOR PHAR-  
25      MACISTS.—The program shall be designed to

1 provide for a reasonable handling fee for phar-  
2 macists in connection with the provision of  
3 drugs obtained under the program and shall be  
4 approximately equal to the average handling fee  
5 for pharmacists of other large insurance plans  
6 that administer drug benefits.

7 “(2) OVERSIGHT.—The oversight authority of  
8 the Secretary under subsection (i)(2) with respect to  
9 such Federal national prescription drug discount  
10 card program shall be exercised by the Inspector  
11 General of the Department of Health and Human  
12 Services.

13 “(3) AVERAGE FOREIGN PRICE DEFINED.—

14 “(A) IN GENERAL.—For purposes of this  
15 subsection, the term ‘average foreign price’  
16 means, with respect to a covered discount card  
17 drug, the average price that the manufacturer  
18 of the drug realizes on the sale of drugs with  
19 the same active ingredient or ingredients that  
20 are consumed in Canada, France, Germany,  
21 Italy, Japan, and the United Kingdom, taking  
22 into account—

23 “(i) any rebate, contract term or con-  
24 dition, or other arrangement (whether with  
25 the purchaser or other persons) that has

1 the effect of reducing the amount realized  
2 by the manufacturer on the sale of the  
3 drugs;

4 “(ii) adjustments for any differences  
5 in dosage, formulation, or other relevant  
6 characteristics of the drugs; and

7 “(iii) any other contract or side agree-  
8 ment that has the effect of adjusting the  
9 effective price of the drug, including agree-  
10 ments to purchase non-drug products.

11 “(B) EXEMPT TRANSACTIONS.—The Sec-  
12 retary may, by regulation, exempt from the cal-  
13 culation of the average foreign price of a drug  
14 those prices realized by a manufacturer in  
15 transactions that are entered into for charitable  
16 purposes, for research purposes, or under other  
17 unusual circumstances, if the Secretary deter-  
18 mines that the exemption is in the public inter-  
19 est and is consistent with the purposes of this  
20 section.”.

21 (c) CONFORMING AMENDMENTS.—Such section is  
22 further amended—

23 (1) in subsection (h)(1)(A), by adding after and  
24 below clause (v) the following new sentence:



1           “Such term also includes the Secretary with re-  
2           spect to the offering of the Federal national  
3           prescription drug discount card program de-  
4           scribed in subsection (a)(1)(C).”;

5           (2) in subsection (h)(2)(A), by adding at the  
6           end the following: “The Secretary shall establish a  
7           separate procedure for the qualification of the Fed-  
8           eral national prescription drug discount card pro-  
9           gram described in subsection (a)(1)(C).”; and

10          (3) in subsection (k)(6), by inserting before the  
11          period at the end the following: “, except in the case  
12          of the Federal national prescription drug discount  
13          card program described in subsection (a)(1)(C)”.

14          (d) IMPLEMENTATION.—

15          (1) AVAILABILITY OF FUNDS.—Notwith-  
16          standing any other provision of law, funds provided  
17          under section 1015 of the Medicare Prescription  
18          Drug, Improvement, and Modernization Act of 2003  
19          (Public Law 108–173) shall be available to the Sec-  
20          retary of Health and Human Services for reasonable  
21          administrative costs in offering the Federal national  
22          prescription drug discount card program described  
23          in section 1860D–31(a)(1)(C) of the Social Security  
24          Act, as added by subsection (a).

1           (2) TIMELY IMPLEMENTATION.—The Secretary  
2       shall take such steps as may be required to provide  
3       for the offering of such program during the annual  
4       open enrollment period occurring in November,  
5       2004.

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