

108TH CONGRESS  
2D SESSION

# S. 2257

To amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the medicare program.

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IN THE SENATE OF THE UNITED STATES

MARCH 30, 2004

Mr. DURBIN (for himself, Mr. DAYTON, and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the medicare 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.**

4       This Act may be cited as the “Medicare Prescription  
5       Drug Savings and Choice Act of 2004”.

6       **SEC. 2. ESTABLISHMENT OF MEDICARE OPERATED PRE-**  
7       **SCRIPTION DRUG PLAN OPTION.**

8       (a) IN GENERAL.—Subpart 2 of part D of the Social  
9       Security Act, as added by section 101 of the Medicare Pre-  
10      scription Drug, Improvement, and Modernization Act of

1 2003 (Public Law 108–173, 117 Stat. 2071), is amended  
2 by inserting after section 1860D–11 the following new sec-  
3 tion:

4 “MEDICARE OPERATED PRESCRIPTION DRUG PLAN  
5 OPTION

6 “SEC. 1860D–11A. (a) IN GENERAL.—Notwith-  
7 standing any other provision of this part, for each year  
8 (beginning with 2006), in addition to any plans offered  
9 under section 1860D–11, the Secretary shall offer one or  
10 more medicare operated prescription drug plans (as de-  
11 fined in subsection (c)) with a service area that consists  
12 of the entire United States and shall enter into negotia-  
13 tions with pharmaceutical manufacturers to reduce the  
14 purchase cost of covered part D drugs for eligible part  
15 D individuals in accordance with subsection (b).

16 “(b) NEGOTIATIONS.—Notwithstanding section  
17 1860D–11(i), for purposes of offering a medicare operated  
18 prescription drug plan under this section, the Secretary  
19 shall negotiate with pharmaceutical manufacturers with  
20 respect to the purchase price of covered part D drugs and  
21 shall encourage the use of more affordable therapeutic  
22 equivalents to the extent such practices do not override  
23 medical necessity as determined by the prescribing physi-  
24 cian. To the extent practicable and consistent with the  
25 previous sentence, the Secretary shall implement strate-  
26 gies similar to those used by other Federal purchasers of

1 prescription drugs, and other strategies, to reduce the pur-  
 2 chase cost of covered part D drugs.

3 “(c) MEDICARE OPERATED PRESCRIPTION DRUG  
 4 PLAN DEFINED.—For purposes of this part, the term  
 5 ‘medicare operated prescription drug plan’ means a pre-  
 6 scription drug plan that offers qualified prescription drug  
 7 coverage and access to negotiated prices described in sec-  
 8 tion 1860D–2(a)(1)(A). Such a plan may offer supple-  
 9 mental prescription drug coverage in the same manner as  
 10 other qualified prescription drug coverage offered by other  
 11 prescription drug plans.

12 “(d) MONTHLY BENEFICIARY PREMIUM.—

13 “(1) QUALIFIED PRESCRIPTION DRUG COV-  
 14 ERAGE.—The monthly beneficiary premium for  
 15 qualified prescription drug coverage and access to  
 16 negotiated prices described in section 1860D–  
 17 2(a)(1)(A) to be charged under a medicare operated  
 18 prescription drug plan shall be uniform nationally.  
 19 Such premium for months in 2006 shall be \$35 and  
 20 for months in succeeding years shall be based on the  
 21 average monthly per capita actuarial cost of offering  
 22 the medicare operated prescription drug plan for the  
 23 year involved, including administrative expenses.

24 “(2) SUPPLEMENTAL PRESCRIPTION DRUG COV-  
 25 ERAGE.—Insofar as a medicare operated prescrip-

tion drug plan offers supplemental prescription drug coverage, the Secretary may adjust the amount of the premium charged under paragraph (1).

“(3) REQUIREMENT FOR AT LEAST ONE PLAN WITH A \$35 PREMIUM IN 2006.—The Secretary shall ensure that at least one medicare operated prescription drug plan offered in 2006 has a monthly premium of \$35.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 1860D–3(a) of the Social Security Act (42 U.S.C. 1395w–103(a)) is amended by adding at the end the following new paragraph:

“(4) AVAILABILITY OF THE MEDICARE OPERATED PRESCRIPTION DRUG PLAN.—

“(A) IN GENERAL.—A medicare operated prescription drug plan (as defined in section 1860D–11A(c)) shall be offered nationally in accordance with section 1860D–11A.

“(B) RELATIONSHIP TO OTHER PLANS.—

“(i) IN GENERAL.—Subject to clause (ii), a medicare operated prescription drug plan shall be offered in addition to any qualifying plan or fallback prescription drug plan offered in a PDP region and shall not be considered to be such a plan

for purposes of meeting the requirements  
of this subsection.

“(ii) DESIGNATION AS A FALLBACK  
PLAN.—Notwithstanding any other provi-  
sion of this part, the Secretary may des-  
ignate the medicare operated prescription  
drug plan as the fallback prescription drug  
plan for any fallback service area (as de-  
fined in section 1860D–11(g)(3)) deter-  
mined to be appropriate by the Sec-  
retary.”.

(2) Section 1860D–13(c)(3) of such Act (42  
U.S.C. 1395w–113(c)(3)) is amended—

(A) in the heading, by inserting “and  
medicare operated prescription drug plans”  
after “Fallback plans”; and

(B) by inserting “or a medicare operated  
prescription drug plan” after “a fallback pre-  
scription drug plan”.

(3) Section 1860D–16(b)(1) of such Act (42  
U.S.C. 1395w–116(b)(1)) is amended—

(A) in subparagraph (C), by striking  
“and” after the semicolon at the end;

(B) in subparagraph (D), by striking the  
period at the end and inserting “; and”; and

1           “(E) payments for expenses incurred with  
 2           respect to the operation of medicare operated  
 3           prescription drug plans under section 1860D–  
 4           11A.”.

5           (4) Section 1860D–41(a) of such Act (42  
 6           U.S.C. 141(a)) is amended by adding at the end the  
 7           following new paragraph:

8           “(19) MEDICARE OPERATED PRESCRIPTION  
 9           DRUG PLAN.—The term ‘medicare operated prescrip-  
 10          tion drug plan’ has the meaning given such term in  
 11          section 1860D–11A(c).”.

12          (c) EFFECTIVE DATE.—The amendments made by  
 13          this section shall take effect as if included in the enact-  
 14          ment of section 101 of the Medicare Prescription Drug,  
 15          Improvement, and Modernization Act of 2003 (Public Law  
 16          108–173; 117 Stat. 2071).

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