

109TH CONGRESS
1ST SESSION

H. R. 152

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.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2005

Mr. MENENDEZ 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

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 2005”.

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

6 (a) **ELIMINATION OF TRUE OUT-OF-POCKET LIMITATION.**—Section 1860D–2(b)(4)(C) of the Social Security Act (42 U.S.C. 1395w–102(b)(4)(C)) is amended to
8 read as follows:
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10 “(C) **APPLICATION.**—In applying subparagraph (A), incurred costs shall only include
11 costs incurred with respect to covered part D
12 drugs for the annual deductible described in
13 paragraph (1), for cost-sharing described in
14 paragraph (2), and for amounts for which benefits are not provided because of the application
15 of the initial coverage limit described in paragraph (3).”.

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19 (b) **EQUALIZATION OF SUBSIDIES.**—Notwithstanding
20 any other provision of law, the Secretary of Health and
21 Human Services shall provide for such increase in the special subsidy payment amounts under section 1860D–
22 22(a)(3) of the Social Security Act (42 U.S.C. 1395w–
23 132(a)(3)) as may be appropriate to provide for payments
24 in the aggregate equivalent to the payments that would
25 have been made under section 1860D–15 of such Act if
26

1 the individuals were not enrolled in a qualified retiree pre-
2 scription drug plan. In making such computation, the Sec-
3 retary shall not take into account the application of the
4 amendments made by section 1202 of the Medicare Pre-
5 scription Drug, Improvement, and Modernization Act of
6 2003 (Public Law 108–173; 117 Stat. 2480).

7 **SEC. 3. DIRECT SUBSIDY FOR CERTAIN STATE PHARMA-**
8 **CEUTICAL ASSISTANCE PROGRAMS.**

9 Part D of title XVIII of the Social Security Act (42
10 U.S.C. 1395w–101 et seq.) is amended by inserting after
11 section 1860D–23 the following new section:

12 “DIRECT SUBSIDIES FOR CERTAIN STATE
13 PHARMACEUTICAL ASSISTANCE PROGRAMS

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

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

23 “(2) AMOUNT OF PAYMENT.— The amount of
24 the payment under paragraph (1) shall be an
25 amount equal to the special subsidy payment
26 amount determined under section 1860D–22(a)(3)

1 for a qualifying covered retiree for a coverage year
2 enrolled with the sponsor of a qualified retiree pre-
3 scription drug plan.

4 “(b) ADDITIONAL SUBSIDY.—

5 “(1) IN GENERAL.—The Secretary shall provide
6 for the payment to a State offering a State pharma-
7 ceutical assistance program described in section
8 1860D–23(b)(1) for each applicable low-income indi-
9 vidual enrolled in the program for each month for
10 which such individual is so enrolled.

11 “(2) AMOUNT OF PAYMENT.—

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

19 “(B) MAXIMUM PAYMENTS.—In no case
20 may the amount of the payment determined
21 under subparagraph (A) with respect to an ap-
22 plicable low-income individual exceed, as esti-
23 mated by the Secretary, the average amount
24 paid in a year under section 1860D–14 on be-
25 half of a subsidy eligible individual (as defined

1 in section 1860D–14(a)(3)(A)) with income
2 that is the same as the income of the applicable
3 low-income individual.

4 “(3) APPLICABLE LOW-INCOME INDIVIDUAL.—
5 For purposes of this subsection, the term ‘applicable
6 low-income individual’ means an individual who—

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

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

15 “(c) PAYMENT METHODS.—

16 “(1) IN GENERAL.—Payments under this sec-
17 tion shall be based on such a method as the Sec-
18 retary determines. The Secretary may establish a
19 payment method by which interim payments of
20 amounts under this section are made during a year
21 based on the Secretary’s best estimate of amounts
22 that will be payable after obtaining all of the infor-
23 mation.

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

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

12 **SEC. 4. FACILITATION OF COORDINATION.**

13 Section 1860D–24(c)(1) of the Social Security Act
14 (42 U.S.C. 1395w–134(c)(1)) is amended by striking “all
15 methods of operation” and inserting “its own methods of
16 operation, except that a PDP sponsor or MA organization
17 may not require a State Pharmaceutical Assistance Pro-
18 gram or an RX plan described in subsection (b) to apply
19 such tools when coordinating benefits”.

20 **SEC. 5. ALLOWING MEDICAID WRAP.**

21 Section 1935 of the Social Security Act (42 U.S.C.
22 1396u–5) is amended by striking subsection (d).

1 **SEC. 6. REPEAL OF COMPARATIVE COST ADJUSTMENT**
2 **PROGRAM.**

3 Subtitle E of title II of of the Medicare Prescription
4 Drug, Improvement, and Modernization Act of 2003 (Pub-
5 lic Law 108–173) is repealed and any provisions of law
6 amended by such subtitle are restored as if such subtitle
7 had not been enacted.

8 **SEC. 7. PROVISION OF WRAP-AROUND PRESCRIPTION**
9 **DRUG COVERAGE THROUGH MEDIGAP.**

10 Section 1882(v) of the Social Security Act (42 U.S.C.
11 1395ss(v)) is amended as follows:

12 (1) In paragraph (1)(A), by inserting “, other
13 than such a policy that provides wrap-around pre-
14 scription drug coverage included within a range of
15 such coverage approved under subparagraph
16 (D)(ii),” after “paragraph (6)(A)”.

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

19 “(D) WRAP-AROUND PRESCRIPTION DRUG
20 COVERAGE.—

21 “(i) IN GENERAL.—Notwithstanding
22 any other provision of this subsection, a
23 medigap Rx policy that provides wrap-
24 around prescription drug coverage included
25 within a range of such coverage approved

1 by the Secretary under clause (ii) may be
2 offered to part D enrollees.

3 “(ii) DEVELOPMENT OF STAND-
4 ARDS.—The Secretary shall approve a
5 range of wrap-around prescription drug
6 coverage that may be offered under this
7 subparagraph to part D enrollees.”.

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

9 The amendments made by this Act, and the repeal
10 made by section 6, shall take effect as if included in the
11 enactment of the Medicare Prescription Drug, Improve-
12 ment, and Modernization Act of 2003 (Public Law 108–
13 173).

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