

109TH CONGRESS  
1ST SESSION

# S. 18

To amend title XVIII of the Social Security Act to make improvements to the medicare program for beneficiaries.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2005

Mr. DAYTON (for himself, Mr. REID, Ms. STABENOW, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. CORZINE, Mr. SCHUMER, Mrs. MURRAY, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. AKAKA, Mr. INOUYE, Mrs. CLINTON, Mr. LEVIN, Mr. KERRY, Mr. LEAHY, Mr. ROCKEFELLER, Mr. DODD, Mr. SARBANES, and Mr. DURBIN) 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 make improvements to the medicare program for beneficiaries.

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       “Meeting Our Responsibility to Medicare Beneficiaries Act

6       of 2005”.

7       (b) TABLE OF CONTENTS.—The table of contents of

8       this Act is as follows:

See. 1. Short title; table of contents.

## TITLE I—ELIMINATING SPECIAL INTEREST PREFERENCES

Sec. 101. Negotiating fair prices for medicare prescription drugs.  
 Sec. 102. Elimination of MA Regional Plan Stabilization Fund (Slush Fund).  
 Sec. 103. Application of risk adjustment reflecting characteristics for the entire medicare population in payments to Medicare Advantage organizations.

## TITLE II—IMPROVING THE MEDICARE PROGRAM FOR BENEFICIARIES

Sec. 201. Eliminating coverage gap.  
 Sec. 202. Requiring two prescription drug plans to avoid Federal fallback.  
 Sec. 203. Waiver of part D late enrollment penalty for transition period.  
 Sec. 204. Improving the transition of full-benefit dual eligible individuals to coverage under the medicare drug benefit.  
 Sec. 205. Part B premium reduction.  
 Sec. 206. Study and report on providing incentives to preserve retiree coverage.  
 Sec. 207. Promoting transparency in employer subsidy payments.

# 1     **TITLE I—ELIMINATING SPECIAL 2           INTEREST PREFERENCES**

## 3     **SEC. 101. NEGOTIATING FAIR PRICES FOR MEDICARE PRE- 4           SCRIPTION DRUGS.**

5       (a) IN GENERAL.—Section 1860D–11 of the Social  
 6     Security Act (42 U.S.C. 1395w–111) is amended by strik-  
 7     ing subsection (i) (relating to noninterference) and by in-  
 8     serting the following new subsection:

9       “(i) AUTHORITY TO NEGOTIATE PRICES WITH MAN-  
 10   UFACTURERS.—

11       “(1) IN GENERAL.—The Secretary shall have  
 12     authority similar to that of other Federal entities  
 13     that purchase prescription drugs in bulk to negotiate  
 14     contracts with manufacturers of covered part D  
 15     drugs, consistent with the requirements and in fur-

1       therance of the goals of providing quality care and  
2       containing costs under this part.

3       **“(2) REQUIRED USE OF AUTHORITY.—**

4               **“(A) FALBACK PLANS.—**The Secretary  
5       shall exercise the authority described in para-  
6       graph (1) with respect to covered part D drugs  
7       offered under each fallback prescription drug  
8       plan under subsection (g).

9               **“(B) PDPs AND MA–PD PLANS.—**In order  
10      to ensure that beneficiaries enrolled under pre-  
11      scription drug plans and MA–PD plans and  
12      taxpayers are getting fair and affordable prices  
13      for covered part D drugs that reflect the bulk  
14      purchasing power of such enrollees, the Sec-  
15      retary shall exercise the authority described in  
16      paragraph (1) with respect to such drugs of-  
17      fered under all such plans if the Secretary de-  
18      termines that the negotiated prices available  
19      under such plans for such drugs are not fair  
20      and affordable prices compared to the prices ob-  
21      tained by other Federal government programs  
22      for such drugs.”.

23       (b) **EFFECTIVE DATE.—**The amendment made by  
24      this section shall take effect as if included in the enact-  
25      ment of section 101(a) of the Medicare Prescription Drug,

1 Improvement, and Modernization Act of 2003 (Public Law  
2 108–173; 117 Stat. 2071).

3 **SEC. 102. ELIMINATION OF MA REGIONAL PLAN STABILIZA-**  
4 **TION FUND (SLUSH FUND).**

5 (a) IN GENERAL.—Subsection (e) of section 1858 of  
6 the Social Security Act (42 U.S.C. 1395w–27a) is re-  
7 pealed.

8 (b) CONFORMING AMENDMENT.—Section 1858(f)(1)  
9 of the Social Security Act (42 U.S.C. 1395w–27a(f)(1))  
10 is amended by striking “subject to subsection (e),”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall take effect as if included in the enact-  
13 ment of section 221(c) of the Medicare Prescription Drug,  
14 Improvement, and Modernization Act of 2003 (Public Law  
15 108–173; 117 Stat. 2181).

16 **SEC. 103. APPLICATION OF RISK ADJUSTMENT REFLECT-**  
17 **ING CHARACTERISTICS FOR THE ENTIRE**  
18 **MEDICARE POPULATION IN PAYMENTS TO**  
19 **MEDICARE ADVANTAGE ORGANIZATIONS.**

20 Effective January 1, 2006, in applying risk adjust-  
21 ment factors to payments to organizations under section  
22 1853 of the Social Security Act (42 U.S.C. 1395w–23),  
23 the Secretary of Health and Human Services shall ensure  
24 that payments to such organizations are adjusted based  
25 on such factors to ensure that the health status of the

1 enrollee is reflected in such adjusted payments, including  
2 adjusting for the difference between the health status of  
3 the enrollee and individuals enrolled under the original  
4 medicare fee-for-service program under parts A and B of  
5 title XVIII of such Act. Payments to such organizations  
6 must, in aggregate, reflect such differences.

7 **TITLE II—IMPROVING THE MEDI-  
8 CARE PROGRAM FOR BENE-  
9 FICIARIES**

10 **SEC. 201. ELIMINATING COVERAGE GAP.**

11 (a) IN GENERAL.—Section 1860D–2(b)(4)(B) of the  
12 Social Security Act (42 U.S.C. 1395w–102(b)(4)(B)) is  
13 amended to read as follows:

14 “(B) ANNUAL OUT-OF-POCKET THRESH-  
15 OLD.—For purposes of this part, the ‘annual  
16 out-of-pocket threshold’ specified in this sub-  
17 paragraph for a year is equal to the greater  
18 of—

19 “(i) \$3,600; or  
20 “(ii) the initial coverage limit for the  
21 year specified in paragraph (3).”.

22 (b) CONFORMING AMENDMENT.—Section 1860D–  
23 22(a)(3)(B)(ii) of the Social Security Act (42 U.S.C.  
24 1395w–132(b)(4)(B)(ii)) is amended by striking “and the  
25 annual out-of-pocket threshold, respectively, are annually

1 adjusted under paragraphs (1) and (4)(B) of section  
2 1860D–2(b)” and inserting “is annually adjusted under  
3 paragraph (1) of section 1860D–2(b) (using the percent-  
4 age increase specified in paragraph (6) of such section”).

5 (c) EFFECTIVE DATE.—The amendments made by  
6 this section shall take effect as if included in the enact-  
7 ment of section 101(a) of the Medicare Prescription Drug,  
8 Improvement, and Modernization Act of 2003 (Public Law  
9 108–173; 117 Stat. 2071).

10 **SEC. 202. REQUIRING TWO PRESCRIPTION DRUG PLANS TO**  
11 **AVOID FEDERAL FALBACK.**

12 (a) IN GENERAL.—Section 1860D–3(a) of the Social  
13 Security Act (42 U.S.C. 1395w–103(a)) is amended—

14 (1) in paragraph (1)—

15 (A) by striking “qualifying plans (as de-  
16 fined in paragraph (3))” and inserting “pre-  
17 scription drug plans”; and

18 (B) by striking “, at least one of which is  
19 a prescription drug plan”;

20 (2) in paragraph (2), by striking “qualifying  
21 plans” and inserting “prescription drug plans”; and

22 (3) by striking paragraph (3).

23 (b) EFFECTIVE DATE.—The amendments made by  
24 this section shall take effect as if included in the enact-  
25 ment of section 101(a) of the Medicare Prescription Drug,

1 Improvement, and Modernization Act of 2003 (Public Law  
2 108–173; 117 Stat. 2071).

3 **SEC. 203. WAIVER OF PART D LATE ENROLLMENT PENALTY**  
4 **FOR TRANSITION PERIOD.**

5 (a) IN GENERAL.—Section 1860D–13(b) of the So-  
6 cial Security Act (42 U.S.C. 1895w–113(b)) is amended  
7 by adding at the end the following new paragraph:

8       “(8) WAIVER OF PENALTY FOR MONTHS PRIOR  
9 TO 2008.—A part D eligible individual who enrolls  
10 for the first time in a prescription drug plan or an  
11 MA–PD plan under this part prior to January 1,  
12 2008, shall not be subject an increase in the month-  
13 ly beneficiary premium established under subsection  
14 (a) with respect to months occurring prior to such  
15 date.”.

16 (b) EFFECTIVE DATE.—The amendment made by  
17 this section shall take effect as if included in the enact-  
18 ment of section 101(a) of the Medicare Prescription Drug,  
19 Improvement, and Modernization Act of 2003 (117 Stat.  
20 2071).

21 **SEC. 204. IMPROVING THE TRANSITION OF FULL-BENEFIT**  
22 **DUAL ELIGIBLE INDIVIDUALS TO COVERAGE**  
23 **UNDER THE MEDICARE DRUG BENEFIT.**

24 (a) IN GENERAL.—Notwithstanding subsection  
25 (d)(1) of section 1935 of the Social Security Act (42

1 U.S.C. 1396u-5), beginning on January 1, 2006, the Sec-  
2 retary of Health and Human Services shall administer a  
3 12-month period during which full-benefit dual eligible in-  
4 dividuals (as defined in section 1935(c)(6) of the Social  
5 Security Act) shall gradually transition from receiving  
6 medical assistance for prescribed drugs under the med-  
7 icaid program under title XIX of such Act to obtaining  
8 coverage of covered part D drugs (as defined in section  
9 1860D-2(e) (42 U.S.C. 1395w-102(e)) under title XVIII  
10 of such Act in order to assure that such individuals con-  
11 tinue to receive the outpatient prescription drugs they  
12 need.

13 (b) ADJUSTMENTS TO PHASED-DOWN STATE CON-  
14 TRIBUTION.—The Secretary of Health and Human Serv-  
15 ices shall make appropriate adjustments to the amount of  
16 payments required to be made by a State or the District  
17 of Columbia under section 1935(c) of the Social Security  
18 Act (42 U.S.C. 1396u-5(c)) for months occurring during  
19 the period described in subsection (a) in order to account  
20 for increased costs for the provision of medical assistance  
21 incurred by the State or the District of Columbia by rea-  
22 son of the application of the transition period required  
23 under this section.

## 1 SEC. 205. PART B PREMIUM REDUCTION.

2 Section 1839(a) of the Social Security Act (42 U.S.C.

3 1395r(a)) is amended—

4 (1) in paragraph (3), in the first sentence, by  
5 striking “The Secretary” and inserting “Subject to  
6 paragraph (5), the Secretary”; and

7 (2) by adding at the end the following new  
8 paragraph:

“(5) For each year (beginning with 2006), the Secretary shall reduce the monthly premium rate determined under paragraph (3) for each month in the year for each individual enrolled under this part (including such an individual subject to an increased premium under subsection (b) or (i)) so that the aggregate amount of such reductions in the year is equal to the aggregate amount of reduced expenditures from the Federal Supplementary Medicare Insurance Trust Fund in the year that the Secretary estimates will result from the provisions of section 103 of the Meeting Our Responsibility to Medicare Beneficiaries Act of 2005.”.

21 SEC. 206. STUDY AND REPORT ON PROVIDING INCENTIVES  
22 TO PRESERVE RETIREE COVERAGE.

23 (a) STUDY.—The Secretary of Health and Human  
24 Services shall conduct a study to determine what addi-  
25 tional incentives should be provided to employers in order  
26 for such employers to continue to provide retirees with

1 prescription drug coverage. Such study shall include an  
2 assessment of permitting costs incurred by an employer  
3 for covered part D drugs on behalf of a retiree to be treat-  
4 ed as incurred costs for purposes of reaching the annual  
5 out-of-pocket threshold under section 1860D-2(b)(4) of  
6 the Social Security Act (42 U.S.C. 1395w-102(b)(4)).

7 (b) REPORT.—Not later than January 1, 2006, the  
8 Secretary of Health and Human Services shall submit to  
9 Congress a report on the study under subsection (a) to-  
10 gether with such recommendations for legislation as the  
11 Secretary deems appropriate.

12 **SEC. 207. PROMOTING TRANSPARENCY IN EMPLOYER SUB-**  
13 **SIDY PAYMENTS.**

14 (a) IN GENERAL.—Section 1860D-22(a) of the So-  
15 cial Security Act (42 U.S.C. 1395w-132(a)) is amended  
16 by adding at the end the following new paragraph:

17 “(7) DISCLOSURE OF CERTAIN INFORMATION.—The Secretary shall make the following in-  
18 formation regarding the sponsor of a qualified pre-  
19 scription drug plan receiving a subsidy under this  
20 section available to the public through the Internet  
21 website of the Centers for Medicare & Medicaid  
22 Services and other appropriate means:

24 “(A) The information used by the Sec-  
25 retary to ensure that the prescription drug cov-

1           erage offered under the plan meets the require-  
2           ments for subsidy payments under this section.

3           “(B) The total amount of the subsidy pay-  
4           ments made to the sponsor under this section.”.

5           (b) EFFECTIVE DATE.—The amendment made by  
6 this section shall take effect as if included in the enact-  
7 ment of section 101(a) of the Medicare Prescription Drug,  
8 Improvement, and Modernization Act of 2003 (Public Law  
9 108–173; 117 Stat. 2071).

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