

109TH CONGRESS
1ST SESSION

S. 566

To continue State coverage of medicaid prescription drug coverage to medicare dual eligible beneficiaries for 6 months while still allowing the medicare part D benefit to be implemented as scheduled.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2005

Mr. ROCKEFELLER (for himself, Mr. KENNEDY, Mr. CORZINE, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To continue State coverage of medicaid prescription drug coverage to medicare dual eligible beneficiaries for 6 months while still allowing the medicare part D benefit to be implemented as scheduled.

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 Dual Eligible
5 Prescription Drug Coverage Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 The Senate finds the following:

1 (1) Individuals who are dually eligible for bene-
2 fits under the medicare program and full benefits
3 under the medicaid program—

4 (A) are among the most vulnerable popu-
5 lations in our society; and

6 (B) require adequate outreach, education,
7 and timing in order to adjust to changes in our
8 health care delivery system.

9 (2) The transition of 6,400,000 dual eligibles
10 from prescription drug coverage under the medicaid
11 program to prescription drug coverage under part D
12 of the medicare program is the largest transition
13 ever of individuals from one insurance program to
14 another.

15 (3) In its June 2004 report to Congress, the
16 Medicare Payment Advisory Commission (MedPAC)
17 suggested that large, private employers with 75,000
18 employees or less need at least 6 months to transi-
19 tion their employees' drug coverage from one phar-
20 macy benefit management company to another such
21 company. The States and the Federal Government
22 are taking on a far more complex task with
23 6,400,000 dual eligibles having to make the transi-
24 tion described in paragraph (2).

1 (4) Timely access to prescription drugs leads to
2 higher quality of life and prevents avoidable emer-
3 gency room visits, hospitalizations, and premature
4 nursing home placements.

5 (5) Since even a short-term gap in prescription
6 drug coverage could have serious health con-
7 sequences for dual eligibles, Congress must work to
8 guarantee as smooth a transition as possible for dual
9 eligibles so that no dual eligible is without prescrip-
10 tion drug coverage even for one day.

11 **SEC. 3. CONTINUING STATE COVERAGE OF MEDICAID PRE-**
12 **SCRIPTION DRUG COVERAGE TO MEDICARE**
13 **DUAL ELIGIBLE BENEFICIARIES FOR 6**
14 **MONTHS.**

15 (a) SIX-MONTH TRANSITION.—For prescriptions
16 filled during the period beginning on January 1, 2006,
17 and ending on June 30, 2006, section 1935(d) of the So-
18 cial Security Act (42 U.S.C. 1396u–5(d)) shall not apply
19 and, notwithstanding any other provision of law, a State
20 (as defined for purposes of title XIX of such Act) shall
21 continue to provide (and receive Federal financial partici-
22 pation for) medical assistance under such title with re-
23 spect to prescription drugs as if such section 1935(d) had
24 not been enacted.

25 (b) APPLICATION.—

1 (1) **MEDICARE AS PRIMARY PAYER.**—Nothing in
 2 subsection (a) shall be construed as changing or af-
 3 fecting the primary payer status of a prescription
 4 drug plan or an MA–PD plan under part D of title
 5 XVIII of the Social Security Act with respect to pre-
 6 scription drugs furnished to any full-benefit dual eli-
 7 gible individual (as defined in section 1935(c)(6) of
 8 such Act (42 U.S.C. 1396u–5(c)(6)) during the 6-
 9 month period described in such subsection.

10 (2) **THIRD PARTY LIABILITY.**—Nothing in sub-
 11 section (a) shall be construed as limiting the author-
 12 ity or responsibility of a State under section
 13 1902(a)(25) of the Social Security Act (42 U.S.C.
 14 1396a(a)(25)) to seek reimbursement from a pre-
 15 scription drug plan, an MA–PD plan, or any other
 16 third party, of the costs incurred by the State in
 17 providing prescription drug coverage described in
 18 such subsection.

19 **SEC. 4. DELAY IN IMPLEMENTATION OF MEDICAID**
 20 **CLAWBACK PAYMENTS.**

21 Notwithstanding section 1935(c) of the Social Secu-
 22 rity Act (42 U.S.C. 1396u–5(c)), a State or the District
 23 of Columbia shall not be required to provide for a payment
 24 under such section to the Secretary of Health and human
 25 Services for any month prior to July 1, 2006.

1 **SEC. 5. EDUCATION AND OUTREACH TO DUAL ELIGIBLES**
2 **REGARDING PRESCRIPTION DRUG COV-**
3 **ERAGE AND MONITORING OF THE TRANSI-**
4 **TION OF DUAL ELIGIBLES TO PRESCRIPTION**
5 **DRUG COVERAGE UNDER MEDICARE.**

6 (a) MMA AMOUNTS.—Notwithstanding any other
7 provision of law, of the amounts appropriated for the Cen-
8 ters for Medicare & Medicaid Services under section
9 1015(a)(1) of the Medicare Prescription Drug, Improve-
10 ment, and Modernization Act of 2003 (Public Law 108–
11 173; 117 Stat. 2446), the following rules shall apply:

12 (1) EDUCATION AND OUTREACH TO DUALS.—
13 \$100,000,000 shall be used to provide education and
14 outreach, including through one-on-one counseling
15 and application assistance, to full-benefit dual eligi-
16 ble individuals (as defined in section 1935(e)(6) of
17 the Social Security Act (42 U.S.C. 1396u–5(e)(6)))
18 regarding prescription drug coverage under part D
19 of title XVIII of such Act. Of such amount—

20 (A) at least \$20,000,000 (but in no case
21 more than \$50,000,000) shall be used to award
22 grants to States under section 4360 of the Om-
23 nibus Budget Reconciliation Act of 1990 (42
24 U.S.C. 1395b–4) to provide such education and
25 outreach; and

1 (B) the remaining amount shall be used to
2 provide funding to community-based organiza-
3 tions that work with full-benefit dual eligible in-
4 dividuals (as so defined) in order to provide
5 such education and outreach.

6 (2) MONITORING IMPACT ON DUALS.—

7 (A) IN GENERAL.—\$50,000,000 shall be
8 used by the Centers for Medicare & Medicaid
9 Services, in consultation with the Centers for
10 Disease Control and Prevention, the Adminis-
11 tration on Aging, and the Social Security Ad-
12 ministration, to develop and implement a stand-
13 ardized protocol to collect data from health de-
14 partments and other sources in 10 representa-
15 tive urban and rural communities on the impact
16 of the transition of full benefit dual eligible in-
17 dividuals (as so defined) from prescription drug
18 coverage under the medicaid program to pre-
19 scription drug coverage under part D of the
20 medicare program. Such protocol shall be im-
21 plemented by not later than July 1, 2005.

22 (B) MONITORING.—The protocol developed
23 under subparagraph (A) shall include for the
24 monitoring of the following information with re-

1 spect to such full benefit dual eligible individ-
2 uals:

- 3 (i) Emergency room visit rates.
- 4 (ii) Hospitalization rates.
- 5 (iii) Nursing home placement rates.
- 6 (iv) Deaths.

7 (C) COLLECTION BY PDPS AND MA-PDS.—
8 The protocol developed under subparagraph (A)
9 shall require that such data be collected by the
10 prescription drug plans and the MA-PDs in
11 which the individuals are enrolled and include
12 information on race and ethnicity.

13 (D) REPORTS.—Not later than January 1,
14 2006, and July 1, 2006, the Administrator of
15 the Centers for Medicare & Medicaid Services,
16 in consultation with the Centers for Disease
17 Control and Prevention, the Administration on
18 Aging, and the Social Security Administration,
19 shall submit a report to Congress on the imple-
20 mentation of the protocol under subparagraph
21 (A).

22 (b) NEW AMOUNTS.—There are appropriated to the
23 Secretary of Health and Human Services, to be trans-
24 ferred from the Federal Hospital Insurance Trust Fund
25 and the Federal Supplementary Medical Insurance Trust

1 Fund, for fiscal year 2005 and each subsequent fiscal
 2 year, an amount not to exceed \$50,000,000 (or if greater,
 3 an amount equal to \$1 multiplied by the number of indi-
 4 viduals entitled to benefits under part A of title XVIII
 5 of the Social Security Act or enrolled under part B of such
 6 title for the year) in order award grants to States under
 7 section 4360 of the Omnibus Budget Reconciliation Act
 8 of 1990 (42 U.S.C. 1395b-4).

9 (c) EXTENSION OF AVAILABILITY OF AMOUNTS AP-
 10 PROPRIATED UNDER MMA.—Section 1015(b) of the
 11 Medicare Prescription Drug, Improvement, and Mod-
 12 ernization Act of 2003 (Public Law 108-173; 117 Stat.
 13 2446) is amended by striking “September 30, 2005” and
 14 inserting “September 30, 2006”.

15 **SEC. 6. COLLECTION AND SHARING OF DUAL ELIGIBLE**
 16 **DRUG UTILIZATION DATA.**

17 (a) IN GENERAL.—Section 1860D-42 of the Social
 18 Security Act (42 U.S.C. 1395w-152) is amended by add-
 19 ing at the end the following new subsection:

20 “(c) COLLECTION AND SHARING OF DUAL ELIGIBLE
 21 DRUG UTILIZATION DATA.—

22 “(1) PLAN REQUIREMENT.—A PDP sponsor of
 23 a prescription drug plan and an MA organization of-
 24 fering an MA-PD plan shall submit to the Secretary
 25 such information regarding the drug utilization of

1 enrollees in such plans who are full-benefit dual eli-
2 gible individuals (as defined in section 1935(c)(6))
3 as the Secretary determines appropriate to carry out
4 paragraph (2).

5 “(2) COLLECTION AND SHARING OF DATA.—
6 The Secretary shall collect data on the drug utiliza-
7 tion of full-benefit dual eligible individuals (as so de-
8 fined). The Secretary shall share such data with the
9 States and the District of Columbia in as close to
10 a real-time basis as possible.”.

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

16 **SEC. 7. GAO STUDY ON THE CLAWBACK FORMULA.**

17 (a) STUDY.—

18 (1) IN GENERAL.—The Comptroller General of
19 the United States shall conduct a study on the
20 clawback formula contained in section 1935(c) of the
21 Social Security Act (42 U.S.C. 1396u–5(c)), as
22 added by section 103(b) of the Medicare Prescrip-
23 tion Drug, Improvement, and Modernization Act of
24 2003 (Public Law 108–173; 117 Stat. 2155).

1 (2) REQUIREMENTS.—The study conducted
2 under paragraph (1) shall include a full examination
3 of—

4 (A) disincentives for States to enroll full-
5 benefit dual eligible individuals (as defined in
6 section 1935(c)(6) of the Social Security Act
7 (42 U.S.C. 1396u–5(c)(6))) in the medicaid
8 program or part D of title XVIII of the Social
9 Security Act;

10 (B) the 6-month delay in States receiving
11 rebate data;

12 (C) the prescription drug cost containment
13 measures implemented by States after 2003;
14 and

15 (D) issues relating to States having to pay
16 more for prescription drug coverage for full
17 benefit dual eligible individuals (as so defined)
18 than they otherwise would have if the Medicare
19 Prescription Drug, Improvement, and Mod-
20 ernization Act of 2003 (Public Law 108–173;
21 117 Stat. 2066 et seq.) had not been enacted.

22 (b) REPORT.—Not later than April 1, 2006, the
23 Comptroller General of the United States shall submit to
24 Congress a report on the study conducted under sub-

- 1 section (a) together with such recommendations as the
- 2 Comptroller General determines appropriate.

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