

109TH CONGRESS  
1ST SESSION

# S. 239

To reduce the costs of prescription drugs for medicare beneficiaries, and  
for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 2005

Ms. SNOWE (for herself, Mr. WYDEN, Mr. McCAIN, Mrs. FEINSTEIN, and Mr.  
FEINGOLD) introduced the following bill; which was read twice and re-  
ferred to the Committee on Finance

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## A BILL

To reduce the costs of prescription drugs for medicare  
beneficiaries, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Enhance-  
5 ments for Needed Drugs Act of 2005”.

6 **SEC. 2. GAO STUDIES AND REPORTS ON PRICES OF PRE-**  
7 **SCRIPTION DRUGS.**

8 (a) REVIEW AND REPORTS ON RETAIL PRICES OF  
9 PRESCRIPTION DRUGS.—

1           (1) INITIAL REVIEW.—The Comptroller General  
2 of the United States shall conduct a review of the  
3 retail cost of prescription drugs in the United States  
4 during 2000 through 2003, with an emphasis on the  
5 prescription drugs most utilized for individuals age  
6 65 or older.

7           (2) SUBSEQUENT REVIEW.—After conducting  
8 the review under paragraph (1), the Comptroller  
9 General shall continuously review the retail cost of  
10 such drugs through April 1, 2006, to determine the  
11 changes in such costs.

12           (3) REPORTS.—

13           (A) INITIAL REVIEW.—Not later than Sep-  
14 tember 1, 2005, the Comptroller General shall  
15 submit to Congress a report on the initial re-  
16 view conducted under paragraph (1).

17           (B) SUBSEQUENT REVIEW.—Not later  
18 than July 1, 2006, January 1, 2007, and July  
19 1, 2007, the Comptroller General shall submit  
20 to Congress a report on the subsequent review  
21 conducted under paragraph (2).

22           (b) ANNUAL GAO STUDY AND REPORT ON RETAIL  
23 AND ACQUISITION PRICES OF CERTAIN PRESCRIPTION  
24 DRUGS.—

1           (1) ONGOING STUDY.—The Comptroller Gen-  
2           eral of the United States shall conduct an ongoing  
3           study that compares the average retail cost in the  
4           United States for each of the 20 most utilized pre-  
5           scription drugs for individuals age 65 or older  
6           with—

7                   (A) the average price at which private  
8                   health plans acquire each such drug;

9                   (B) the average price at which the Depart-  
10                  ment of Defense under the Defense Health Pro-  
11                  gram acquires each such drug;

12                  (C) the average price at which the Depart-  
13                  ment of Veterans Affairs under the laws admin-  
14                  istered by the Secretary of Veterans Affairs ac-  
15                  quires each such drug; and

16                  (D) the average negotiated price for each  
17                  such drug that eligible beneficiaries enrolled in  
18                  a prescription drug plan under part D of title  
19                  XVIII of the Social Security Act, as added by  
20                  section 101 of the Medicare Prescription Drug,  
21                  Improvement, and Modernization Act of 2003  
22                  (Public Law 108–173), that provides only basic  
23                  prescription drug coverage have access to under  
24                  such plans.

1           (2) ANNUAL REPORT.—Not later than Decem-  
 2           ber 1, 2007, and annually thereafter, the Comp-  
 3           troller General shall submit to Congress a report on  
 4           the study conducted under paragraph (1), together  
 5           with such recommendations as the Comptroller Gen-  
 6           eral determines appropriate.

7   **SEC. 3. INCLUSION OF AVERAGE AGGREGATE BENEFICIARY**  
 8                   **COSTS AND SAVINGS IN COMPARATIVE IN-**  
 9                   **FORMATION FOR BASIC MEDICARE PRE-**  
 10                  **SCRIPTION DRUG PLANS.**

11           Section 1860D–1(c)(3) of the Social Security Act (42  
 12   U.S.C. 1395w–101(c)(3)) is amended—

13           (1) in subparagraph (A)—

14                   (A) in the matter preceding clause (i), by  
 15                   striking “subparagraph (B)” and inserting  
 16                   “subparagraphs (B) and (C)”; and

17                   (B) by adding at the end the following new  
 18                   clause:

19                           “(vi) AVERAGE AGGREGATE BENE-  
 20                           FICIARY COSTS AND SAVINGS.—With re-  
 21                           spect to plan years beginning on or after  
 22                           January 1, 2007, the average aggregate  
 23                           costs, including deductibles and other cost-  
 24                           sharing, that a beneficiary will incur for  
 25                           covered part D drugs in the year under the

1 plan compared to the average aggregate  
 2 costs that an eligible beneficiary with no  
 3 prescription drug coverage will incur for  
 4 covered part D drugs in the year.”; and

5 (2) by adding at the end the following new sub-  
 6 paragraph:

7 “(C) AVERAGE AGGREGATE BENEFICIARY  
 8 COSTS AND SAVINGS INFORMATION ONLY FOR  
 9 BASIC PRESCRIPTION DRUG PLANS.—The Sec-  
 10 retary shall not provide comparative informa-  
 11 tion under subparagraph (A)(vi) with respect  
 12 to—

13 “(i) a prescription drug plan that pro-  
 14 vides supplemental prescription drug cov-  
 15 erage; or

16 “(ii) a Medicare Advantage plan.”.

17 **SEC. 4. NEGOTIATING FAIR PRICES FOR MEDICARE PRE-**  
 18 **SCRIPTION DRUGS.**

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

23 “(i) AUTHORITY TO NEGOTIATE PRICES WITH MAN-  
 24 UFACTURERS.—

1           “(1) IN GENERAL.—In order to ensure that  
2 beneficiaries enrolled under prescription drug plans  
3 and MA–PD plans pay the lowest possible price, the  
4 Secretary shall have authority similar to that of  
5 other Federal entities that purchase prescription  
6 drugs in bulk to negotiate contracts with manufac-  
7 turers of covered part D drugs, consistent with the  
8 requirements and in furtherance of the goals of pro-  
9 viding quality care and containing costs under this  
10 part.

11           “(2) MANDATORY RESPONSIBILITIES.—The  
12 Secretary shall be required to—

13           “(A) negotiate contracts with manufactur-  
14 ers of covered part D drugs for each fallback  
15 prescription drug plan under subsection (g);  
16 and

17           “(B) participate in negotiation of contracts  
18 of any covered part D drug upon request of an  
19 approved prescription drug plan or MA–PD  
20 plan.

21           “(3) RULE OF CONSTRUCTION.—Nothing in  
22 paragraph (2) shall be construed to limit the author-  
23 ity of the Secretary under paragraph (1) to the man-  
24 datory responsibilities under paragraph (2).”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall take effect as if included in the enact-  
3 ment of section 101 of the Medicare Prescription Drug,  
4 Improvement, and Modernization Act of 2003 (Public Law  
5 108–173).

6 **SEC. 5. NAIC REVIEW AND REPORT ON CHANGES IN**  
7 **MEDIGAP POLICIES THAT PROVIDE COV-**  
8 **ERAGE OF PRESCRIPTION DRUGS CON-**  
9 **TAINED IN THE MEDICARE PRESCRIPTION**  
10 **DRUG, IMPROVEMENT, AND MODERNIZATION**  
11 **ACT OF 2003.**

12 (a) IN GENERAL.—The Secretary of Health and  
13 Human Services shall request the National Association of  
14 Insurance Commissioners to conduct a review of the  
15 changes to the rules relating to medicare supplemental  
16 policies that provide prescription drug coverage contained  
17 in subsection (v) of section 1882 of the Social Security  
18 Act (42 U.S.C. 1395ss), as added by section 104(a) of  
19 the Medicare Prescription Drug, Improvement, and Mod-  
20 ernization Act of 2003 (Public Law 108–173).

21 (b) IMPACT ON MEDICARE BENEFICIARIES.—The re-  
22 view conducted pursuant to subsection (a) should focus  
23 on the impact the changes described in such subsection  
24 will have on medicare beneficiaries.

1       (c) REPORT.—The Secretary shall request the Na-  
2 tional Association of Insurance Commissioners to submit  
3 to Congress, by not later than January 1, 2006, a report  
4 on the review conducted pursuant to subsection (a), to-  
5 gether with such recommendations as the National Asso-  
6 ciation of Insurance Commissioners determines appro-  
7 priate.

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