

110TH CONGRESS
1ST SESSION

H. R. 3025

To amend title XVIII of the Social Security Act to provide comprehensive improvements to the Medicare Prescription Drug Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2007

Mr. DOGGETT (for himself, Mr. ACKERMAN, Mr. ALLEN, Mr. BECERRA, Mr. BERMAN, Mrs. CAPPS, Mr. COHEN, Mr. DAVIS of Illinois, Ms. DELAURO, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. ELLISON, Mr. EMANUEL, Mr. ENGEL, Mr. FRANK of Massachusetts, Mr. AL GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HINCHEY, Ms. JACKSON-LEE of Texas, Ms. KAPTUR, Mr. KENNEDY, Mr. LARSON of Connecticut, Mr. LEWIS of Georgia, Mrs. LOWEY, Mrs. MALONEY of New York, Ms. MATSUI, Ms. MCCOLLUM of Minnesota, Mr. McDERMOTT, Mr. MCGOVERN, Mr. McNULTY, Mr. MICHAUD, Ms. MOORE of Wisconsin, Mr. MORAN of Virginia, Mr. NADLER, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. ORTIZ, Mr. RUPPERSBERGER, Ms. SCHAKOWSKY, Mr. SCOTT of Virginia, Mr. STARK, Mr. WEINER, and Mr. WYNN) 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 title XVIII of the Social Security Act to provide comprehensive improvements to the Medicare Prescription Drug 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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
 3 “Medicare Prescription Drug Savings for Our Seniors
 4 (Medicare Prescription Drug SOS) Act of 2007”.

5 (b) TABLE OF CONTENTS.—The table of contents of
 6 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MEDICARE OPERATED PRESCRIPTION DRUG PLAN
OPTION

Sec. 101. Establishment of Medicare operated prescription drug plan option.

TITLE II—MEDICAID AND LOW-INCOME IMPROVEMENTS

Sec. 201. Change in base used in computing State clawback provision.

Sec. 202. Elimination of part D cost-sharing for certain non-institutionalized
full-benefit dual eligible individuals.

Sec. 203. Expediting low-income subsidies under the Medicare Prescription
Drug Program.

Sec. 204. Modification of resource standards for determination of eligibility for
low-income subsidy; simplification of income and asset rules.

Sec. 205. Indexing deductible and cost-sharing above annual out-of-pocket
threshold for individuals with income below 150 percent of pov-
erty line.

Sec. 206. No impact on eligibility for benefits under other programs.

Sec. 207. Screening by Commissioner of Social Security for eligibility under
Medicare savings programs.

Sec. 208. Special enrollment period for subsidy eligible individuals.

Sec. 209. Waiver of late enrollment penalty for subsidy eligible individuals.

TITLE III—FRAUD AND ABUSE PROVISIONS

Sec. 301. Criminal penalty for fraud in connection with enrollment under an
MA plan or prescription drug plan.

Sec. 302. Recourse for slamming practices.

Sec. 303. Protection from loss of employment-based retiree health coverage
upon enrollment for Medicare prescription drug benefit during
2007.

Sec. 304. Required application of intermediate sanctions to protect against
fraud and abuse.

Sec. 305. Repeal of special waiver authority for State licensure.

TITLE IV—RELATION TO SOCIAL SECURITY BENEFITS

Sec. 401. Protection of Social Security benefits against decrease due to part D
Medicare premium increases.

TITLE V—BENEFICIARY PROTECTION PROVISIONS

- Sec. 501. Suspension of late enrollment penalties; allowing one-time change in plan during first year of enrollment.
- Sec. 502. Counting expenditures under State drug assistance programs against true out-of-pocket costs.
- Sec. 503. Price disclosure.
- Sec. 504. Removal of covered part D drugs from the prescription drug plan formulary.
- Sec. 505. Special treatment under Medicare part D for drugs in 6 specified therapeutic categories.
- Sec. 506. Removal of exclusion of benzodiazepines from required coverage under the Medicare Prescription Drug Program.
- Sec. 507. Standardized forms and procedures for reconsiderations and appeals.
- Sec. 508. Elimination of MA Regional Stabilization Fund (Slush Fund); elimination of certain MA overpayments.
- Sec. 509. Beneficiary complaints.
- Sec. 510. Fill of drugs for dual eligibles.

TITLE W—FAIR AND SPEEDY TREATMENT OF MEDICARE
PRESCRIPTION DRUG CLAIMS

- Sec. 601. Prompt payment by Medicare prescription drug plans and MA–PD plans under part D.
- Sec. 602. Restriction on co-branding.
- Sec. 603. Provision of medication therapy management services under part D.

1 TITLE I—MEDICARE OPERATED
2 PRESCRIPTION DRUG PLAN
3 OPTION

4 SEC. 101. ESTABLISHMENT OF MEDICARE OPERATED PRE-
5 SCRIPTON DRUG PLAN OPTION.

6 (a) IN GENERAL.—Subpart 2 of part D of the Social
7 Security Act is amended by inserting after section 1860D–
8 11 the following new section:

9 “MEDICARE OPERATED PRESCRIPTION DRUG PLAN
10 OPTION

11 “SEC. 1860D–11A. (a) IN GENERAL.—Notwith-
12 standing any other provision of this part, for each year
13 (beginning with 2008), in addition to any plans offered
14 under section 1860D–11, the Secretary shall offer one or

1 more Medicare operated prescription drug plans (as de-
2 fined in subsection (c)) with a service area that consists
3 of the entire United States and shall enter into negotia-
4 tions with pharmaceutical manufacturers to reduce the
5 purchase cost of covered part D drugs for eligible part
6 D individuals in accordance with subsection (b).

7 “(b) NEGOTIATIONS.—

8 “(1) IN GENERAL.—Notwithstanding section
9 1860D–11(i), for purposes of offering a Medicare
10 operated prescription drug plan under this section,
11 the Secretary shall negotiate with pharmaceutical
12 manufacturers with respect to the purchase price
13 (including discounts, rebates, and other price conces-
14 sions) that of covered part D drugs and shall en-
15 courage the use of more affordable therapeutic
16 equivalents to the extent such practices do not over-
17 ride medical necessity as determined by the pre-
18 scribing physician. To the extent practicable and
19 consistent with the previous sentence, the Secretary
20 shall implement strategies similar to those used by
21 other Federal purchasers of prescription drugs, and
22 other strategies, to reduce the purchase cost of cov-
23 ered part D drugs.

24 “(2) PERMITTING APPLICATION OF SOME OR
25 ALL OF SAVINGS TO REDUCTION IN COVERAGE

1 GAP.—Notwithstanding any other provision of this
2 part, the Secretary may increase the initial coverage
3 limit under section 1860D–2(b)(3) for a year, but
4 only with respect to the Medicare operated prescrip-
5 tion drug plan, by an amount not to exceed the actu-
6 arial value of the reductions in expenditures during
7 such year resulting from the application of para-
8 graph (1).

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

18 “(d) MONTHLY BENEFICIARY PREMIUM.—

19 “(1) QUALIFIED PRESCRIPTION DRUG COV-
20 ERAGE.—The monthly beneficiary premium for
21 qualified prescription drug coverage and access to
22 negotiated prices described in section 1860D–
23 2(a)(1)(A) to be charged under a Medicare operated
24 prescription drug plan shall be uniform nationally.
25 Such premium for months in a year shall be based

1 on the average monthly per capita actuarial cost of
 2 offering the Medicare operated prescription drug
 3 plan for the year involved, including administrative
 4 expenses, as determined by the Secretary and as cer-
 5 tified by the chief actuary of the Centers for Medi-
 6 care & Medicaid Services.

7 “(2) SUPPLEMENTAL PRESCRIPTION DRUG COV-
 8 ERAGE.—Insofar as a Medicare operated prescrip-
 9 tion drug plan offers supplemental prescription drug
 10 coverage, the Secretary may adjust the amount of
 11 the premium charged under paragraph (1).”.

12 (b) AUTO-ENROLLMENT OF SUBSIDY ELIGIBLE IN-
 13 DIVIDUALS IN MEDICARE OPERATED PRESCRIPTION
 14 DRUG PLAN.—Section 1860D–1(b)(1)(C) of such Act (42
 15 U.S.C. 1395w–101(b)(1)(C)) is amended—

16 (1) by designating the matter beginning with
 17 “The process established” as a clause (i) with the
 18 heading “AUTO-ENROLLMENT FOR DUAL ELIGIBLES
 19 AND OTHER SUBSIDY ELIGIBLE INDIVIDUALS”;

20 (2) by inserting “or who is a subsidy eligible in-
 21 dividual” after “section 1935(c)(6))”;

22 (3) by striking “for the enrollment in” and all
 23 that follows through “in the PDP region.” and in-
 24 serting “for the enrollment in the Medicare operated

1 prescription drug plan (as defined in section 1860D–
2 11A(c)).”; and

3 (4) by adding at the end the following new
4 clauses:

5 “(ii) APPLICATION IN CASE OF PRE-
6 MIUM INCREASES OR PLAN DISCONTINU-
7 ATION.—The process under subparagraph
8 (A) shall also provide for enrollment de-
9 scribed in clause (i) in the case of such an
10 individual who is enrolled in a prescription
11 drug plan that has a monthly beneficiary
12 premium that does not exceed the premium
13 assistance available under section 1860D–
14 14(a)(1)(A)) if such plan is discontinued
15 or the premium under such plan is in-
16 creased so it exceeds such available pre-
17 mium assistance.

18 “(iii) NOTICE.—

19 “(I) IN GENERAL.—The Sec-
20 retary shall provide for notice to each
21 individual auto-enrolled under clause
22 (i) or (ii) that the individual has the
23 right and the opportunity to select an-
24 other prescription drug plan (or MA–

1 PD plan) through which to obtain
2 prescription drug coverage.

3 “(II) ADDITIONAL NOTICE.—In
4 the case of an individual described in
5 clause (ii), both the sponsor of the
6 plan in which the individual is en-
7 rolled and the Secretary shall provide
8 notice to the individual that enroll-
9 ment in the plan will be discontinued
10 or have a premium above the bench-
11 mark and, as a result, the individual
12 will be enrolled in the Medicare oper-
13 ated prescription drug plan for the
14 following year unless the individual af-
15 firmatively acts otherwise.”.

16 (c) APPLICATION OF MONTHLY PREMIUM FOR PRE-
17 MIUM SUBSIDY PURPOSES.—Section 1860D–14(b)(1) of
18 such Act (42 U.S.C. 1395ww–114(b)(1)) is amended by
19 striking “the amount specified in paragraph (3)” and in-
20 serting “the greater of the amount specified in paragraph
21 (3) or the monthly premium amount specified in section
22 1860D–11A(d)(1)”.

23 (d) CONFORMING AMENDMENTS, INCLUDING ELIMI-
24 NATION OF UNNECESSARY PLAN REQUIREMENT AND
25 FALLBACK PLAN PROVISIONS.—

1 (1) Section 1860D–3 of such Act (42 U.S.C.
2 1395w–103) is repealed.

3 (2) Section 1860D–11 of such Act (42 U.S.C.
4 1395w–111) is amended—

5 (A) by striking subsection (f), (g), and (h);
6 and

7 (B) in subsection (i), by inserting “except
8 as provided in section 1860D–11A(b),” after
9 “in carrying out this part,”.

10 (3) Section 1860D–12(b) of such Act (42
11 U.S.C. 1395w–112(b)) is amended by striking para-
12 graph (2).

13 (4) Section 1860D–13(c) of such Act (42
14 U.S.C. 1395w–113(c)) is amended by striking para-
15 graph (3).

16 (5) Section 1860D–15 of such Act (42 U.S.C.
17 1395w–115) is amended by striking subsection (g).

18 (6) Section 1860D–16(b)(1) of such Act (42
19 U.S.C. 1395w–116(b)(1)) is amended by striking
20 subparagraph (B) and inserting the following:

21 “(B) payments for expenses incurred with
22 respect to the operation of Medicare operated
23 prescription drug plans under section 1860D–
24 11A.”.

1 (7) Section 1860D–41(a) of such Act (42
2 U.S.C. 1395ww–141(a)) is amended by striking
3 paragraph (5) and inserting the following:

4 “(5) MEDICARE OPERATED PRESCRIPTION
5 DRUG PLAN.—The term ‘Medicare operated prescrip-
6 tion drug plan’ has the meaning given such term in
7 section 1860D–11A(c).”.

8 (8) Section 1860D–42(a) of such Act (42
9 U.S.C. 1395w–142(a)) is amended by striking “, in-
10 cluding section 1860D–3(a)(1),”.

11 (e) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on the date of the enactment
13 of this Act and shall apply to enrollments effective for pe-
14 riods occurring on or after January 1, 2008.

15 **TITLE II—MEDICAID AND LOW-** 16 **INCOME IMPROVEMENTS**

17 **SEC. 201. CHANGE IN BASE USED IN COMPUTING STATE** 18 **CLAWBACK PROVISION.**

19 (a) IN GENERAL.—Section 1935(c) of the Social Se-
20 curity Act (42 U.S.C. 1936u–5(c)) is amended—

21 (1) in paragraph (2)(A)(ii), by inserting “, sub-
22 ject to paragraph (7),” after “increased for each
23 year (”;

24 (2) in paragraph (3), by inserting “Subject to
25 paragraph (7)—” after “DUAL ELIGIBLE INDIVID-

1 UALS.—” in the matter before subparagraph (A);
 2 and

3 (3) by adding at the end the following new
 4 paragraph:

5 “(7) USE OF 2005 AS BASE.—This subsection
 6 shall be applied by substituting ‘2005’ for ‘2003’
 7 each place it appears in paragraph (3) if such sub-
 8 stitution results in a reduced amount under para-
 9 graph (1)(A) of this subsection and, in the case of
 10 such substitution, the reference in paragraph
 11 (2)(A)(ii) to ‘2004’ is deemed a reference to
 12 ‘2006.’”.

13 (b) EFFECTIVE DATE.—The amendment made by
 14 subsection (a) shall apply to payments for calendar quar-
 15 ters beginning on or after January 1, 2008.

16 **SEC. 202. ELIMINATION OF PART D COST-SHARING FOR**
 17 **CERTAIN NON-INSTITUTIONALIZED FULL-**
 18 **BENEFIT DUAL ELIGIBLE INDIVIDUALS.**

19 (a) IN GENERAL.—Section 1860D–14(a)(1)(D)(i) of
 20 the Social Security Act (42 U.S.C. 1395w–
 21 114(a)(1)(D)(i)) is amended—

22 (1) in the heading, by striking “INSTITU-
 23 TIONALIZED INDIVIDUALS.—In” and inserting
 24 “ELIMINATION OF COST-SHARING FOR CERTAIN
 25 FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS.—

1 “(I) INSTITUTIONALIZED INDIVIDUALS.—In”; and
2

3 (2) by adding at the end the following new sub-
4 clauses:

5 “(II) CERTAIN OTHER INDIVIDUALS.—In the case of an individual
6 who is a full-benefit dual eligible individual and who is a resident of a facility
7 described in subclause (III) or who
8 is receiving home and community-
9 based services in a home setting provided under a home and community-
10 based waiver approved for the State
11 under section 1915 or 1115, the elimination of any beneficiary coinsurance
12 described in section 1860D–2(b)(2)
13 (for all amounts through the total
14 amount of expenditures at which benefits are available under section
15 1860D–2(b)(4)).

16 “(III) FACILITY DESCRIBED.—
17 For purposes of subclause (II), a facility described in this subclause is an
18 assisted living facility or a resident
19 care program facility (as such terms
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1 are defined by the Secretary), a board
 2 and care facility (as defined in section
 3 1903(q)(4)(B)), or any other facility
 4 that is licensed or certified by the
 5 State involved and is determined ap-
 6 propriate by the Secretary, such as a
 7 community mental health center that
 8 meets the requirements of section
 9 1913(c) of the Public Health Service
 10 Act, a psychiatric health facility, a
 11 mental health rehabilitation center,
 12 and a mental retardation develop-
 13 mental disability facility.”.

14 (b) EFFECTIVE DATE.—The amendments made by
 15 subsection (a) shall apply to drugs dispensed on or after
 16 the date of the enactment of this Act.

17 **SEC. 203. EXPEDITING LOW-INCOME SUBSIDIES UNDER THE**
 18 **MEDICARE PRESCRIPTION DRUG PROGRAM.**

19 (a) IN GENERAL.—Section 1860D–14 of the Social
 20 Security Act (42 U.S.C. 1395w–114) is amended by add-
 21 ing at the end the following new subsection:

22 “(e) EXPEDITED APPLICATION AND ELIGIBILITY
 23 PROCESS.—

24 “(1) EXPEDITED PROCESS.—

1 “(A) IN GENERAL.—The Secretary shall
2 provide for an expedited process under this sub-
3 section for the qualification for low-income as-
4 sistance under this section through a request to
5 the Secretary of the Treasury as provided in
6 subparagraphs (B) and (C) for information suf-
7 ficient to identify whether the individual in-
8 volved is likely eligible for subsidies under this
9 section based on such information and the
10 amount of premium and cost-sharing subsidies
11 for which they would qualify based on such in-
12 formation. Such process shall be conducted in
13 cooperation with the Commissioner of Social
14 Security.

15 “(B) OPT IN FOR NEWLY ELIGIBLE INDIVIDUALS.—Not later than 60 days after the
16 date of the enactment of this subsection, the
17 Secretary shall ensure that, as part of the
18 Medicare enrollment process, enrolling individ-
19 uals—
20

21 “(i) receive information describing the
22 low-income subsidy provided under this
23 section; and

24 “(ii) are provided the opportunity to
25 opt-in to the expedited process described in

1 this subsection by requesting that the
2 Commissioner of Social Security screen the
3 individual involved for eligibility for such
4 subsidy through a request to the Secretary
5 of the Treasury under section 6103(l)(21)
6 of the Internal Revenue Code of 1986.

7 “(C) TRANSITION FOR CURRENTLY ELIGI-
8 BLE INDIVIDUALS.—In the case of any part D
9 eligible individual to which subparagraph (B)
10 did not apply at the time of such individual’s
11 enrollment, the Secretary shall, not later than
12 60 days after the date of the implementation of
13 subparagraph (B), request that the Commis-
14 sioner of Social Security screen such individual
15 for eligibility for the low-income subsidy pro-
16 vided under this section through a request to
17 the Secretary of the Treasury under section
18 6103(l)(21) of the Internal Revenue Code of
19 1986.

20 “(2) NOTIFICATION OF POTENTIALLY ELIGIBLE
21 INDIVIDUALS.—Under such process, in the case of
22 each individual identified under paragraph (1) who
23 has not otherwise applied for, or been determined el-
24 igible for, benefits under this section (or who has ap-
25 plied for and been determined ineligible for such

benefits based only on excess resources), the Secretary shall send them a letter (using basic, uncomplicated language) containing the following:

“(A) ELIGIBILITY.—A statement that, based on the information obtained under paragraph (1), the individual is likely eligible for low-income subsidies under this section.

“(B) AMOUNT OF SUBSIDIES.—A description of the amount of premium and cost-sharing subsidies under this section for which the individual would likely be eligible based on such information.

“(C) ENROLLMENT OPPORTUNITY.—In case the individual is not enrolled in a prescription drug plan or MA–PD plan—

“(i) a statement that—

“(I) the individual has the opportunity to enroll in a prescription drug plan or MA–PD plan for benefits under this part, but is not required to be so enrolled; and

“(II) if the individual has creditable prescription drug coverage, the individual need not so enroll;

1 “(ii) a list of the prescription drug
2 plans and MA–PD plans in which the indi-
3 vidual is eligible to enroll;

4 “(iii) an enrollment form that may be
5 used to enroll in such a plan by mail and
6 that provides that if the individual wishes
7 to enroll but does not designate a plan, the
8 Secretary is authorized to enroll the indi-
9 vidual in such a prescription drug plan se-
10 lected by the Secretary; and

11 “(iv) a statement that the individual
12 may also enroll online or by telephone, but,
13 in order to qualify for low-income sub-
14 sidies, the individual must complete the at-
15 testation described in subparagraph (D) or
16 otherwise apply for such subsidies.

17 “(D) ATTESTATION.—A one-page applica-
18 tion form that provides for a signed attestation,
19 under penalty of law, as to the amount of in-
20 come and assets of the individual and con-
21 stitutes an application for the low-income sub-
22 sidies described in subparagraph (B). Such
23 form—

1 “(i) shall not require the submittal of
2 additional documentation regarding income
3 or assets;

4 “(ii) shall permit the appointment of
5 a personal representative described in
6 paragraph (5); and

7 “(iii) shall allow for the specification
8 of a language (other than English) that is
9 preferred by the individual for subsequent
10 communications with respect to the indi-
11 vidual under this part.

12 “(E) INFORMATION ON SHIP.—Information
13 on how the individual may contact the State
14 Health Insurance Assistance Program (SHIP)
15 for the State in which the individual is located
16 in order to obtain assistance regarding enroll-
17 ment and benefits under this part.

18 If a State is doing its own outreach to low-income
19 seniors regarding enrollment and low-income sub-
20 sidies under this part, such process shall be coordi-
21 nated with the State’s outreach effort.

22 “(3) FOLLOW-UP COMMUNICATIONS.—If the in-
23 dividual does not respond to the letter described in
24 paragraph (2) either by making an enrollment de-
25 scribed in paragraph (2)(C), completing an attesta-

1 tion described in paragraph (2)(D), or declining ei-
2 ther or both, the Secretary shall make additional at-
3 tempts to contact the individual to obtain such an
4 affirmative response.

5 “(4) HOLD-HARMLESS.—Under such process, if
6 an individual in good faith and in the absence of
7 fraud executes an attestation described in paragraph
8 (2)(D) and is provided low-income subsidies under
9 this section on the basis of such attestation, if the
10 individual is subsequently found not eligible for such
11 subsidies, there shall be no recovery made against
12 the individual because of such subsidies improperly
13 paid.

14 “(5) USE OF AUTHORIZED REPRESENTATIVE.—
15 Under such process, with proper authorization
16 (which may be part of the attestation form described
17 in paragraph (2)(D)), an individual may authorize
18 another individual to act as the individual’s personal
19 representative with respect to communications under
20 this part and the enrollment of the individual under
21 a prescription drug plan (or MA–PD plan) and for
22 low-income subsidies under this section.

23 “(6) USE OF PREFERRED LANGUAGE IN SUBSE-
24 QUENT COMMUNICATIONS.—In the case an attesta-
25 tion described in paragraph (2)(D) is completed and

1 in which a language other than English is specified
 2 under clause (iii) of such paragraph, the Secretary
 3 shall provide that subsequent communications to the
 4 individual under this part shall be in such language.

5 “(7) CONSTRUCTION.—Nothing in this sub-
 6 section shall be construed as precluding the Sec-
 7 retary from taking additional outreach efforts to en-
 8 roll eligible individuals under this part and to pro-
 9 vide low-income subsidies to eligible individuals.”.

10 (b) PRESCRIPTION DRUG PLANS REQUIRED TO PRO-
 11 VIDE EXPEDITED LOW-INCOME SUBSIDY OPT-IN AS PART
 12 OF APPLICATIONS.—

13 (1) IN GENERAL.—Section 1860D–
 14 1(b)(1)(B)(vi) of such Act (42 U.S.C. 1395w–
 15 101(b)(1)(B)(vi)) is amended by inserting before the
 16 period at the end the following: “, except that any
 17 application form distributed by a sponsor of a pre-
 18 scription drug plan, or an organization offering an
 19 MA–PD plan, shall contain an option for a part D
 20 eligible individual to opt-in to the expedited process
 21 under section 1860D–14(e) for low-income assist-
 22 ance subsidies under such section by requesting that
 23 the individual be screened for eligibility for such
 24 subsidy through a request to the Secretary of the

1 Treasury under section 6103(l)(21) of the Internal
2 Revenue Code of 1986”.

3 (2) EFFECTIVE DATE.—The amendment made
4 by paragraph (1) shall apply to application forms for
5 plan years beginning with 2008.

6 (c) DISCLOSURE OF RETURN INFORMATION FOR
7 PURPOSES OF SCREENING INDIVIDUALS FOR ELIGIBILITY
8 FOR LOW-INCOME SUBSIDIES UNDER MEDICARE.—

9 (1) IN GENERAL.—Subsection (l) of section
10 6103 of the Internal Revenue Code of 1986 is
11 amended by adding at the end the following new
12 paragraph:

13 “(21) DISCLOSURE OF RETURN INFORMATION
14 FOR PURPOSES OF PROVIDING LOW-INCOME SUB-
15 SIDIES UNDER MEDICARE.—

16 “(A) RETURN INFORMATION FROM INTER-
17 NAL REVENUE SERVICE TO SOCIAL SECURITY
18 ADMINISTRATION.—The Secretary, upon writ-
19 ten request from the Commissioner of Social
20 Security under section 1860D–14(e)(1) of the
21 Social Security Act, shall disclose to the Com-
22 missioner with respect to any taxpayer identi-
23 fied by the Commissioner—

24 “(i)(I) whether the adjusted gross in-
25 come, as modified in accordance with spec-

ifications of the Secretary of Health and Human Services for purposes of carrying out such section, of such taxpayer and, if applicable, such taxpayer's spouse, for the applicable year, exceeds the amounts specified by the Secretary of Health and Human Services in order to apply the 135 and 150 percent poverty lines under such section,

“(II) the adjusted gross income (as determined under subclause (I)), in the case of a taxpayer with respect to which such adjusted gross income exceeds the amount so specified for applying the 135 percent poverty line and does not exceed the amount so specified for applying the 150 percent poverty line,

“(III) whether the return was a joint return for the applicable year, and

“(IV) the applicable year, or

“(ii) if applicable, the fact that there is no return filed for such taxpayer for the applicable year.

“(B) DEFINITION OF APPLICABLE YEAR.—

For the purposes of this paragraph, the term

1 ‘applicable year’ means the most recent taxable
2 year for which information is available in the
3 Internal Revenue Service’s taxpayer data infor-
4 mation systems, or, if there is no return filed
5 for such taxpayer for such year, the prior tax-
6 able year.

7 “(C) RESTRICTION ON INDIVIDUALS FOR
8 WHOM DISCLOSURE IS REQUESTED.—The Com-
9 missioner of Social Security shall only request
10 information under this paragraph with respect
11 to individuals who are described in subpara-
12 graph (C) of section 1860D–14(e)(1) of the So-
13 cial Security Act or who have requested that
14 such request be made under subparagraph (B)
15 of such section.

16 “(D) RETURN INFORMATION FROM SOCIAL
17 SECURITY ADMINISTRATION TO DEPARTMENT
18 OF HEALTH AND HUMAN SERVICES.—The Com-
19 missioner of Social Security shall, upon written
20 request from the Secretary of Health and
21 Human Services, disclose to the Secretary of
22 Health and Human Services the information
23 described in clauses (i) and (ii) of subparagraph
24 (A).

1 “(E) PERMISSIVE DISCLOSURE TO OFFI-
2 CERS, EMPLOYEES, AND CONTRACTORS.—The
3 information described in clauses (i) and (ii) of
4 subparagraph (A) may be disclosed among offi-
5 cers, employees, and contractors of the Social
6 Security Administration and the Department of
7 Health and Human Services for the purposes
8 described in subparagraph (F).

9 “(F) RESTRICTION ON USE OF DISCLOSED
10 INFORMATION.—Return information disclosed
11 under this paragraph may be used only for the
12 purposes of identifying eligible individuals for,
13 and administering—

14 “(i) low-income subsidies under sec-
15 tion 1860D–14 of the Social Security Act,
16 and

17 “(ii) the Medicare Savings Program
18 implemented under clauses (i), (iii), and
19 (iv) of section 1902(a)(10)(E) of such Act.

20 “(G) TERMINATION OF DISCLOSURES FOR
21 CERTAIN ELIGIBILITY DETERMINATIONS.—With
22 respect to individuals who are described in sub-
23 paragraph (C) of section 1860D–14(e)(1) of the
24 Social Security Act, return information may not
25 be disclosed under this paragraph after the date

1 that is one year after the date of the enactment
2 of this paragraph.”.

3 (2) CONFIDENTIALITY.—Paragraph (3) of sec-
4 tion 6103(a) of such Code is amended by striking
5 “or (20)” and inserting “(20), or (21)”.

6 (3) PROCEDURES AND RECORDKEEPING RE-
7 LATED TO DISCLOSURES.—Paragraph (4) of section
8 6103(p) of such Code is amended by striking “or
9 (20)” each place it appears and inserting “(20), or
10 (21)”.

11 (4) UNAUTHORIZED DISCLOSURE OR INSPEC-
12 TION.—Paragraph (2) of section 7213(a) of such
13 Code is amended by striking “or (20)” and inserting
14 “(20), or (21)”.

15 **SEC. 204. MODIFICATION OF RESOURCE STANDARDS FOR**
16 **DETERMINATION OF ELIGIBILITY FOR LOW-**
17 **INCOME SUBSIDY; SIMPLIFICATION OF IN-**
18 **COME AND ASSET RULES.**

19 (a) INCREASING THE RESOURCE STANDARD AP-
20 PLIED TO FULL LOW-INCOME SUBSIDY.—Subparagraph
21 (D) of section 1860D–14(a)(3)(D) of the Social Security
22 Act (42 U.S.C. 1395w–114(a)(3)) is amended—

- 23 (1) in the heading, by striking “THREE TIMES”;
- 24 (2) in clause (i), by striking “and” at the end;
- 25 (3) in clause (ii)—

1 (A) by striking “a subsequent year” and
2 inserting “2007”;

3 (B) by striking “this clause for the pre-
4 vious year” and inserting “clause (i) for 2006”;
5 and

6 (C) by inserting “(or clause (i))” after
7 “this clause”; and

8 (D) by striking the period at the end and
9 inserting a semicolon;

10 (4) by adding at the end the following new
11 clauses:

12 “(iii) for 2008, six times the max-
13 imum amount of resources that an indi-
14 vidual may have and obtain benefits under
15 such supplemental security income pro-
16 gram; and

17 “(iv) for a subsequent year the re-
18 source limitation established under this
19 clause (or clause (iii)) for the previous year
20 increased by the annual percentage in-
21 crease in the consumer price index (all
22 items; U.S. city average) as of September
23 of such previous year.”; and

24 (5) in the last sentence, by inserting “or (iv)”
25 after “clause (ii)”.

1 (b) INCREASING THE ALTERNATE RESOURCE
2 STANDARD.—Subparagraph (E)(i) of such section is
3 amended—

4 (1) by striking “and” at the end of subclause
5 (I);

6 (2) in subclause (II)—

7 (A) by striking “a subsequent year” and
8 inserting “2007”;

9 (B) by striking “in this subclause (or sub-
10 clause (I)) for the previous year” and inserting
11 “in subclause (I) for 2006”; and

12 (C) by striking the period at the end and
13 inserting a semicolon;

14 (3) by inserting after subclause (II) the fol-
15 lowing new subclauses:

16 “(III) for 2008, \$27,500 (or
17 \$55,000 in the case of the combined
18 value of the individual’s assets or re-
19 sources and the assets or resources of
20 the individual’s spouse); and

21 “(IV) for a subsequent year the
22 dollar amounts specified in this sub-
23 clause (or subclause (III)) for the pre-
24 vious year increased by the annual
25 percentage increase in the consumer

1 price index (all items; U.S. city aver-
 2 age) as of September of such previous
 3 year.”; and

4 (4) in the last sentence, by inserting “or (IV)”
 5 after “subclause (II)”.

6 (c) EXEMPTIONS FROM RESOURCES.—Such section
 7 is further amended—

8 (1) in subparagraphs (D) and (E), by inserting
 9 “, except as provided in subparagraph (G)” after
 10 “supplemental security income program”; and

11 (2) by adding at the end the following new sub-
 12 paragraph:

13 “(G) ADDITIONAL EXCLUSIONS.—In deter-
 14 mining the resources of an individual (and their
 15 eligible spouse, if any) under section 1613 for
 16 purposes of subparagraphs (D) and (E), the
 17 following additional exclusions shall apply for
 18 months beginning after the date of the enact-
 19 ment of this subparagraph:

20 “(i) LIFE INSURANCE POLICY.—No
 21 part of the value of any life insurance pol-
 22 icy shall be taken into account.

23 “(ii) PENSION OR RETIREMENT
 24 PLAN.—No balance in any pension or re-

1 tirement plan shall be taken into ac-
2 count.”.

3 (d) NOT COUNTING IN-KIND SUPPORT AND MAINTENANCE AS INCOME.—Such section is further amended in
4 subparagraph (C)(i), by inserting “and except that sup-
5 port and maintenance furnished in kind shall not be count-
6 ed as income for months beginning after the date of the
7 enactment of the Prescription Coverage Now Act of 2007”
8 after “section 1902(r)(2)”.

10 **SEC. 205. INDEXING DEDUCTIBLE AND COST-SHARING**
11 **ABOVE ANNUAL OUT-OF-POCKET THRESHOLD**
12 **FOR INDIVIDUALS WITH INCOME BELOW 150**
13 **PERCENT OF POVERTY LINE.**

14 (a) INDEXING DEDUCTIBLE.—Section 1860D–
15 14(a)(4)(B) of the Social Security Act (42 U.S.C. 1395w–
16 114(a)(4)(B)) is amended—

17 (1) in clause (i), by striking “or”;

18 (2) in clause (ii)—

19 (A) by striking “a subsequent year” and
20 inserting “2008”;

21 (B) by striking “this clause (or clause (i))
22 for the previous year” and inserting “clause (i)
23 for 2007”; and

24 (C) by striking the period at the end and
25 inserting “; and”;

1 (3) by adding after clause (ii) the following new
2 clause:

3 “(iii) for 2009 and each succeeding
4 year, the amount determined under this
5 subparagraph for the previous year in-
6 creased by the annual percentage increase
7 in the consumer price index (all items;
8 U.S. city average) as of September of such
9 previous year.”; and

10 (4) in the last sentence, by striking “clause (i)
11 or (ii)” and inserting “clause (i), (ii), or (iii)”.

12 (b) INDEXING COST-SHARING.—Section 1860D–
13 14(a) of the Social Security Act (42 U.S.C. 1395w–
14 114(a)) is amended—

15 (1) in paragraph (1)(D)(iii), by striking “exceed
16 the copayment amount” and all that follows through
17 the period at the end and inserting “exceed—

18 “(I) for 2006 and 2007, the co-
19 payment amount specified under sec-
20 tion 1860D–2(b)(4)(A)(i)(I) for the
21 drug and year involved; and

22 “(II) for 2008 and each suc-
23 ceeding year, the amount determined
24 under this subparagraph for the pre-
25 vious year increased by the annual

1 percentage increase in the consumer
 2 price index (all items; U.S. city aver-
 3 age) as of September of such previous
 4 year.”; and

5 (2) in paragraph (2)(E), by striking “exceed
 6 the copayment or coinsurance amount” and all that
 7 follows through the period at the end and inserting
 8 “exceed—

9 “(i) for 2006 and 2007, the copay-
 10 ment or coinsurance amount specified
 11 under section 1860D–2(b)(4)(A)(i)(I) for
 12 the drug and year involved; and

13 “(ii) for 2008 and each succeeding
 14 year, the amount determined under this
 15 clause for the previous year increased by
 16 the annual percentage increase in the con-
 17 sumer price index (all items; U.S. city av-
 18 erage) as of September of such previous
 19 year.”.

20 **SEC. 206. NO IMPACT ON ELIGIBILITY FOR BENEFITS**
 21 **UNDER OTHER PROGRAMS.**

22 (a) IN GENERAL.—Section 1860D–14(a)(3) of the
 23 Social Security Act (42 U.S.C. 1395w–114(a)(3)), as
 24 amended by section 204(c)(2), is amended—

1 (1) in subparagraph (A), in the matter pre-
 2 ceding clause (i), by striking “subparagraph (F)”
 3 and inserting “subparagraphs (F) and (H)”; and

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

6 “(H) NO IMPACT ON ELIGIBILITY FOR
 7 BENEFITS UNDER OTHER PROGRAMS.—The
 8 availability of premium and cost-sharing sub-
 9 sidies under this section shall not be treated as
 10 benefits or otherwise taken into account in de-
 11 termining an individual’s eligibility for, or the
 12 amount of benefits under, any other Federal
 13 program.”.

14 (b) EFFECTIVE DATE.—The amendments made by
 15 subsection (a) shall apply to premium and cost-sharing
 16 subsidies for months beginning after the date of the enact-
 17 ment of this Act.

18 **SEC. 207. SCREENING BY COMMISSIONER OF SOCIAL SECU-**
 19 **RITY FOR ELIGIBILITY UNDER MEDICARE**
 20 **SAVINGS PROGRAMS.**

21 (a) IN GENERAL.—Section 1860D–14(a)(3)(B)(i) of
 22 the Social Security Act (42 U.S.C. 1395w–
 23 114(a)(3)(B)(i)) is amended by inserting after the first
 24 sentence the following: “As part of making an eligibility
 25 determination under the preceding sentence for an indi-

vidual, the Commissioner shall make a determination of the individual’s eligibility for medical assistance for any Medicare cost-sharing described in section 1905(p)(3) and, if the individual is eligible for any such Medicare cost-sharing, transmit the data necessary to verify such eligibility to the appropriate State Medicaid agency.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to determinations made for months beginning after the date of the enactment of this Act.

SEC. 208. SPECIAL ENROLLMENT PERIOD FOR SUBSIDY ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—Section 1860D–1(b)(3) of the Social Security Act (42 U.S.C. 1395w–101(b)(3)) is amended by adding at the end the following new subparagraph:

“(F) ELIGIBILITY FOR LOW-INCOME SUBSIDY.—

“(i) IN GENERAL.—In the case of an applicable subsidy eligible individual (as defined in clause (ii)), the special enrollment period described in clause (iii).

“(ii) APPLICABLE SUBSIDY ELIGIBLE INDIVIDUAL DEFINED.—For purposes of this subparagraph, the term ‘applicable subsidy eligible individual’ means a part D

1 eligible individual who is determined under
 2 subparagraph (B) of section 1860D–
 3 14(a)(3) to be a subsidy eligible individual
 4 (as defined in subparagraph (A) of such
 5 section), and includes such an individual
 6 who was enrolled in a prescription drug
 7 plan or an MA–PD plan on the date of
 8 such determination.

9 “(iii) SPECIAL ENROLLMENT PERIOD
 10 DESCRIBED.—The special enrollment pe-
 11 riod described in this clause, with respect
 12 to an applicable subsidy eligible individual,
 13 is the 90-day period beginning on the date
 14 the individual receives notification that
 15 such individual has been determined under
 16 section 1860D–14(a)(3)(B) to be a subsidy
 17 eligible individual (as so defined).”.

18 (b) AUTOMATIC ENROLLMENT PROCESS FOR CER-
 19 TAIN SUBSIDY ELIGIBLE INDIVIDUALS.—Section 1860D–
 20 1(b)(1) is amended by adding at the end the following new
 21 subparagraph:

22 “(D) SPECIAL RULE FOR SUBSIDY ELIGI-
 23 BLE INDIVIDUALS.—The process established
 24 under subparagraph (A) shall include, in the
 25 case of an applicable subsidy eligible individual

1 (as defined in clause (ii) of paragraph (3)(F))
 2 who fails to enroll in a prescription drug plan
 3 or an MA–PD plan during the special enroll-
 4 ment period described in clause (iii) of such
 5 paragraph applicable to such individual, a proc-
 6 ess for the facilitated enrollment of the indi-
 7 vidual in the prescription drug plan or MA–PD
 8 plan that is most appropriate for such indi-
 9 vidual (as determined by the Secretary). Noth-
 10 ing in the previous sentence shall prevent an in-
 11 dividual described in such sentence from declin-
 12 ing enrollment in a plan determined appropriate
 13 by the Secretary (or in the program under this
 14 part) or from changing such enrollment.”.

15 (c) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to subsidy determinations made
 17 for months beginning with January 2008.

18 **SEC. 209. WAIVER OF LATE ENROLLMENT PENALTY FOR**
 19 **SUBSIDY ELIGIBLE INDIVIDUALS.**

20 (a) IN GENERAL.—Section 1860D–13(b) of the So-
 21 cial Security Act (42 U.S.C. 1395w–113(b)) is amended
 22 by adding at the end the following new paragraph:

23 “(8) WAIVER OF LATE ENROLLMENT PENALTY
 24 FOR SUBSIDY ELIGIBLE INDIVIDUALS.—In the case
 25 of a subsidy eligible individual (as defined in para-

1 graph (3)(A) of section 1860D–14(a)) who is deter-
2 mined to be entitled to a subsidy in accordance with
3 paragraph (1) or (2) of such section, there shall not
4 be an increase under paragraph (1) in the monthly
5 premium of such individual for any month in which
6 such individual is determined to be so entitled.”.

7 (b) CONFORMING AMENDMENT.—Section 1860D–
8 14(a)(1)(A) of such Act (42 U.S.C. 1395w–114(a)(1)(A))
9 is amended—

10 (1) by striking “equal to—” and all that follows
11 through “(i) 100 percent” and inserting “equal to
12 100 percent”;

13 (2) by striking “; plus” and inserting a period;
14 and

15 (3) by striking clause (ii).

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to premiums and subsidies for
18 months beginning with January 2008. Nothing in this sec-
19 tion shall be construed as affecting the waiver of any late
20 enrollment penalties for subsidy eligible individuals that
21 may have been effected by administrative action for
22 months before such month.

1 **TITLE III—FRAUD AND ABUSE**
2 **PROVISIONS**

3 **SEC. 301. CRIMINAL PENALTY FOR FRAUD IN CONNECTION**
4 **WITH ENROLLMENT UNDER AN MA PLAN OR**
5 **PRESCRIPTION DRUG PLAN.**

6 (a) IN GENERAL.—Section 1857 of the Social Secu-
7 rity Act (42 U.S.C. 1395w–27) is amended by adding at
8 the end the following new subsection:

9 “(j) CRIMINAL PENALTY FOR FRAUD IN CONNEC-
10 TION WITH ENROLLMENT UNDER AN MA PLAN OR PRE-
11 SCRIPTION DRUG PLAN.—Whoever knowingly and will-
12 fully—

13 “(1) defrauds an individual in connection with
14 the enrollment (or nonenrollment) of the individual
15 with a Medicare Advantage plan under this part or
16 a prescription drug plan under part D; or

17 “(2) fraudulently or falsely represents an entity
18 to be such a plan for purposes of inducing enroll-
19 ment in such entity;

20 shall be fined under title 18, United States Code, or im-
21 prisoned not less than 3 years and not more than 10 years,
22 or both.”.

23 (b) CONFORMING REFERENCE IN PART D.—Section
24 1860D–12(b) of such Act (42 U.S.C. 1395w–112(b)) is

1 amended by adding at the end the following new para-
2 graph:

3 “(4) REFERENCE TO PENALTY FOR FRAUD IN
4 CONNECTION WITH ENROLLMENT UNDER A PRE-
5 SCRIPTION DRUG PLAN.—For provision imposing a
6 criminal penalty for defrauding an individual in con-
7 nection with the enrollment of such individual under
8 a prescription drug plan, see section 1857(j).”.

9 (c) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall apply to fraudulent acts and to fraud-
11 ulent or false representations made on or after the date
12 of the enactment of this Act.

13 **SEC. 302. RECOURSE FOR SLAMMING PRACTICES.**

14 Section 1851 of the Social Security Act (42 U.S.C.
15 1395w–21) is amended by adding at the end the following
16 new subsection:

17 “(j) SANCTIONS AGAINST SLAMMING PRACTICES.—

18 “(1) IN GENERAL.—The Secretary shall estab-
19 lish procedures, consistent with this subsection and
20 the complaint processes otherwise available, under
21 which Medicare Advantage eligible individuals who
22 have been enrolled into an MA–PD plan without
23 their informed consent may file a complaint with the
24 Secretary regarding such enrollment. Such a com-
25 plaint shall be signed and shall attest, under penalty

1 of perjury, as to the accuracy of the statements
2 therein.

3 “(2) RESPONSE TO THE COMPLAINT.—If the
4 Secretary finds that the complaint is justified by the
5 facts in the case, the Secretary shall permit the indi-
6 vidual to be enrolled under the original Medicare fee-
7 for-service program and the Medicare operated pre-
8 scription drug plan or under another MA plan in
9 which the individual was previously enrolled. An in-
10 dividual who is dissatisfied with the Secretary’s deci-
11 sion on the complaint may have a hearing on the
12 complaint before an administrative law judge in a
13 manner similar to the manner in which such a hear-
14 ing is permitted under this title with respect to other
15 determinations under this title.”.

16 **SEC. 303. PROTECTION FROM LOSS OF EMPLOYMENT-**
17 **BASED RETIREE HEALTH COVERAGE UPON**
18 **ENROLLMENT FOR MEDICARE PRESCRIP-**
19 **TION DRUG BENEFIT DURING 2007.**

20 Section 1860D–22(a)(2) of the Social Security Act
21 (42 U.S.C. 1395w–132(a)(2)) is amended by adding at the
22 end the following new subparagraph:

23 “(D) PROTECTION FROM LOSS OF EM-
24 PLOYMENT-BASED COVERAGE.—The sponsor of
25 the plan may not involuntarily discontinue cov-

1 erage of an individual under a group health
 2 plan before January 1, 2008, based upon the
 3 individual’s decision to enroll in a prescription
 4 drug plan or an MA–PD plan under this part.”.

5 **SEC. 304. REQUIRED APPLICATION OF INTERMEDIATE**
 6 **SANCTIONS TO PROTECT AGAINST FRAUD**
 7 **AND ABUSE.**

8 (a) IN GENERAL.—Section 1860D–12(b)(3)(E) of
 9 the Social Security Act (42 U.S.C. 1395w–112(b)(3)(E))
 10 is amended by inserting “and the reference to ‘may pro-
 11 vide’ in section 1857(g)(1) is deemed a reference to ‘shall
 12 provide’ ” after “this part”.

13 (b) APPLICATION TO MA–PD PLANS.—Section
 14 1857(g)(1) of such Act (42 U.S.C. 1395w–27(g)(1)) is
 15 amended by inserting “(or in the case of an MA–PD plan
 16 or a prescription drug plan under part D, the Secretary
 17 shall provide)” after “may provide”.

18 **SEC. 305. REPEAL OF SPECIAL WAIVER AUTHORITY FOR**
 19 **STATE LICENSURE.**

20 Subsection (d) of section 423.410 of title 42, Code
 21 of Federal Regulations, is repealed, and the Secretary of
 22 Health and Human Services has no authority to provide
 23 for a waiver of a State licensure requirement described
 24 in such subsection except pursuant to section

1 1855(a)(2)(B) of the Social Security Act (42 U.S.C.
2 1395w-25(a)(2)(B)).

3 **TITLE IV—RELATION TO SOCIAL** 4 **SECURITY BENEFITS**

5 **SEC. 401. PROTECTION OF SOCIAL SECURITY BENEFITS** 6 **AGAINST DECREASE DUE TO PART D MEDI-** 7 **CARE PREMIUM INCREASES.**

8 (a) PROTECTION AGAINST DECREASE IN SOCIAL SE-
9 CURITY BENEFITS.—

10 (1) APPLICATION TO ENROLLEES IN PRESCRIP-
11 TION DRUG PLANS.—Section 1860D-13(a)(1) of the
12 Social Security Act (42 U.S.C. 1395ww-113(a)(1))
13 is amended—

14 (A) in subparagraph (F), by striking “(D)
15 and (E),” and inserting “(D), (E), and (F),”;

16 (B) by redesignating subparagraph (F) as
17 subparagraph (G); and

18 (C) by inserting after subparagraph (E)
19 the following new subparagraph:

20 “(F) PROTECTION OF SOCIAL SECURITY
21 BENEFITS.—For any calendar year, if an indi-
22 vidual is entitled to monthly benefits under sec-
23 tion 202 or 223 or to a monthly annuity under
24 section 3(a), 4(a), or 4(f) of the Railroad Re-
25 tirement Act of 1974 for November and Decem-

ber of the preceding year and was enrolled under a prescription drug plan or MA–PD plan for such months, the base beneficiary premium otherwise applied under this paragraph for the individual for months in that year shall be decreased by the amount (if any) by which the sum of the amounts described in the following clauses (i) and (ii) exceeds the amount of the increase in such monthly benefits for that individual attributable to section 215(i):

“(i) PART D PREMIUM INCREASE FACTOR.—

“(I) IN GENERAL.—Except as provided in this clause, the amount of the increase (if any) in the adjusted national average monthly bid amount (as determined under subparagraph (B)(iii)) for a month in the year over such amount for a month in the preceding year.

“(II) NO APPLICATION TO FULL PREMIUM SUBSIDY INDIVIDUALS.—In the case of an individual enrolled for a premium subsidy under section 1860D–14(a)(1), zero.

1 “(III) SPECIAL RULE FOR PAR-
2 TIAL PREMIUM SUBSIDY INDIVID-
3 UALS.—In the case of an individual
4 enrolled for a premium subsidy under
5 section 1860D–14(a)(2), a percent of
6 the increase described in subclause (I)
7 equal to 100 percent minus the per-
8 cent applied based on the linear scale
9 under such section.

10 “(ii) PART B PREMIUM INCREASE
11 FACTOR.—If the individual is enrolled for
12 such months under part B—

13 “(I) IN GENERAL.—Except as
14 provided in subclause (II), the amount
15 of the annual increase in premium ef-
16 fective for such year resulting from
17 the application of section 1839(a)(3),
18 as reduced (if any) under section
19 1839(f).

20 “(II) NO APPLICATION TO INDIVIDUALS PARTICIPATING IN MEDICARE
21 SAVINGS PROGRAM.—In the case of an
22 individual who is enrolled for medical
23 assistance under title XIX for Medi-
24

1 care cost-sharing described in section
2 1905(p)(3)(A)(ii), zero.”.

3 (2) APPLICATION UNDER MEDICARE ADVAN-
4 TAGE PROGRAM.—Section 1854(b)(2)(B) of such Act
5 (42 U.S.C. 1395w–24(b)(2)(B)), as in effect as of
6 January 1, 2006, relating to MA monthly prescrip-
7 tion drug beneficiary premium, is amended by in-
8 serting after “as adjusted under section 1860D–
9 13(a)(1)(B)” the following: “and section 1860D–
10 13(a)(1)(F)”.

11 (3) PAYMENT FROM MEDICARE PRESCRIPTION
12 DRUG ACCOUNT.—Section 1860D–16(b) of such Act
13 (42 U.S.C. 1395w–116(b)) is amended—

14 (A) in paragraph (1), as amended by sec-
15 tion 101(c)(5)—

16 (i) by striking “and” at the end of
17 subparagraph (D);

18 (ii) by striking the period at the end
19 of subparagraph (E) and inserting “;
20 and”; and

21 (iii) by adding at the end the fol-
22 lowing new subparagraph:

23 “(F) payment under paragraph (5) of pre-
24 mium reductions effected under section 1860D–
25 13(a)(1)(F).”; and

1 (B) by adding at the end the following new
 2 paragraph:

3 “(5) PAYMENT FOR SOCIAL SECURITY BENEFIT
 4 PROTECTION PREMIUM REDUCTIONS.—

5 “(A) IN GENERAL.—In addition to pay-
 6 ments provided under section 1860D–15 to a
 7 PDP sponsor or an MA organization, in the
 8 case of each part D eligible individual who is
 9 enrolled in a prescription drug plan offered by
 10 such sponsor or an MA–PD plan offered by
 11 such organization and who has a premium re-
 12 duced under section 1860D–13(a)(1)(F), the
 13 Secretary shall provide for payment to such
 14 sponsor or organization of an amount equiva-
 15 lent to the amount of such premium reduction.

16 “(B) APPLICATION OF PROVISIONS.—The
 17 provisions of subsections (d) and (f) of section
 18 1860D–15 (relating to payment methods and
 19 disclosure of information) shall apply to pay-
 20 ment under subparagraph (A) in the same man-
 21 ner as they apply to payments under such sec-
 22 tion.”.

23 (b) DISREGARD OF PREMIUM REDUCTIONS IN DE-
 24 TERMINING DEDICATED REVENUES UNDER MMA COST
 25 CONTAINMENT.—Section 801(c)(3)(D) of the Medicare

1 Prescription Drug, Improvement, and Modernization Act
 2 of 2003 (Public Law 108–173) is amended by adding at
 3 the end the following: “Such premiums shall also be deter-
 4 mined without regard to any reductions effected under
 5 section 1839(f) or 1860D–13(a)(1)(F) of such title.”.

6 (c) EFFECTIVE DATES.—

7 (1) PART D PREMIUM.—The amendments made
 8 by subsection (a) apply to premiums for months be-
 9 ginning with January 2008.

10 (2) MMA PROVISION.—The amendment made
 11 by subsection (b) shall take effect on the date of the
 12 enactment of this Act.

13 **TITLE V—BENEFICIARY** 14 **PROTECTION PROVISIONS**

15 **SEC. 501. SUSPENSION OF LATE ENROLLMENT PENALTIES;** 16 **ALLOWING ONE-TIME CHANGE IN PLAN DUR-** 17 **ING FIRST YEAR OF ENROLLMENT.**

18 (a) NO LATE ENROLLMENT PENALTIES FOR
 19 MONTHS BEFORE JANUARY 2008.—Section 1860D–
 20 13(b)(3)(B) of the Social Security Act (42 U.S.C. 1395w–
 21 113(b)(3)(B)) is amended by inserting “(after December
 22 2007)” after “any month”.

23 (b) CHANGE IN PLAN DURING FIRST YEAR OF EN-
 24 ROLLMENT AND DURING FIRST 3 MONTHS OF SUBSE-
 25 QUENT YEARS OF ENROLLMENT.—Section 1860D–

1 1(b)(1) of such Act (42 U.S.C. 1395w-101(b)(1)), as
 2 amended by section 208(b), is further amended—

3 (1) in subparagraph (B)(iii)—

4 (A) by inserting “and subparagraph (F) of
 5 this paragraph” after “of this subsection”; and

6 (B) by striking “subparagraphs (B) and
 7 (C) of paragraph (2)” and inserting “paragraph
 8 (2)(B)”; and

9 (2) by adding at the end the following new sub-
 10 paragraphs:

11 “(E) CHANGE IN PRESCRIPTION DRUG
 12 PLAN ALLOWED DURING FIRST YEAR OF EN-
 13 ROLLMENT.—

14 “(i) IN GENERAL.—Subject to clause
 15 (ii), at any time during the 12-month pe-
 16 riod beginning with the first month in
 17 which a part D eligible individual is en-
 18 rolled in a prescription drug plan under
 19 this part, the individual may change the
 20 prescription drug plan in which the indi-
 21 vidual is enrolled.

22 “(ii) LIMITATION OF ONE CHANGE
 23 DURING PERIOD.—An individual may exer-
 24 cise the right under clause (i) only once
 25 during such 12-month period and the exer-

1 cise of such right shall be in addition to
 2 the exercise of any other rights to change
 3 such an enrollment during such period.

4 “(F) CHANGE IN PRESCRIPTION DRUG
 5 PLAN ALLOWED DURING FIRST 3 MONTHS OF
 6 SUBSEQUENT YEARS OF ENROLLMENT.—In ap-
 7 plying section 1851(e)(2)(C) under subpara-
 8 graph (B)(iii), the change of election described
 9 in such section may only be a change in the
 10 prescription drug plan in which the individual is
 11 enrolled.”.

12 **SEC. 502. COUNTING EXPENDITURES UNDER STATE DRUG**
 13 **ASSISTANCE PROGRAMS AGAINST TRUE OUT-**
 14 **OF-POCKET COSTS.**

15 Section 1860D–2(b)(4)(C)(ii) of the Social Security
 16 Act (42 U.S.C. 1395w–102(b)(4)(C)(ii)) is amended by in-
 17 serting “, AIDS Drug Assistance Program, or other State
 18 drug assistance program” after “State Pharmaceutical
 19 Assistance Program”.

20 **SEC. 503. PRICE DISCLOSURE.**

21 (a) IN GENERAL.—Section 1860D–2(d)(2) of the So-
 22 cial Security Act (42 U.S.C. 1395w–102(d)(2)) is amend-
 23 ed—

1 (1) in the first sentence, by striking “which are
 2 passed through” and all that follows through “other
 3 dispensers”;

4 (2) in the second sentence, by inserting “do
 5 not” before “apply”; and

6 (3) in the second sentence, by inserting before
 7 the period at the end the following: “and the Sec-
 8 retary shall make the information described in the
 9 previous sentence available to the public”.

10 (b) CONFORMING AMENDMENT.—Section
 11 1927(b)(3)(D) of such Act (42 U.S.C. 1396r–8(b)(3)(D))
 12 is amended by striking the last sentence.

13 **SEC. 504. REMOVAL OF COVERED PART D DRUGS FROM**
 14 **THE PRESCRIPTION DRUG PLAN FOR-**
 15 **MULARY.**

16 Section 1860D–4(b)(3)(E) of the Social Security Act
 17 (42 U.S.C. 1395w–104(b)(3)(E)) is amended to read as
 18 follows:

19 “(E) REMOVING DRUG FROM FORMULARY
 20 OR CHANGING PREFERRED OR TIER STATUS OF
 21 DRUG.—

22 “(i) LIMITATION ON REMOVAL OR
 23 CHANGE.—Beginning with 2008, except as
 24 provided in clause (iii), the PDP sponsor
 25 of a prescription drug plan may not—

1 “(I) remove a covered part D
2 drug from the plan formulary;

3 “(II) change the preferred or
4 tiered cost-sharing status of such a
5 drug to a status less favorable to an
6 enrollee; or

7 “(III) introduce a barrier, such
8 as step therapy, prior authorization,
9 or quantity limitation, to access to
10 covered part D drugs,

11 unless advance notice under clause (ii) of
12 such removal, change, or introduction has
13 been provided and unless such removal,
14 change, or introduction is only effective be-
15 ginning on January 1 of the year following
16 the year in which such notice is provided.

17 “(ii) NOTICE.—The notice under this
18 clause is an appropriate notice (such as
19 under subsection (a)(3)) to the Secretary,
20 affected enrollees, physicians, pharmacies,
21 and pharmacists during the period begin-
22 ning on September 1 and ending on Octo-
23 ber 31 of a year. Such notice shall ensure
24 that such information is made available
25 prior to the annual, coordinated open elec-

tion period described in section
1851(e)(3)(B)(iii), as applied under section
1860D–1(b)(1)(B)(iii).

“(iii) EXCEPTION.—Clause (i) shall
not apply to a covered part D drug—

“(I) if it has been determined to
be unsafe by the Food and Drug Ad-
ministration; and

“(II) if, during a plan year, the
drug changes from being a single
source drug to a multiple source drug
(as defined in section 1927(k)), and
the prescription drug plan covers an-
other bioequivalent multiple source
drug at the same or lower cost-shar-
ing to enrolled individuals.”.

**SEC. 505. SPECIAL TREATMENT UNDER MEDICARE PART D
FOR DRUGS IN 6 SPECIFIED THERAPEUTIC
CATEGORIES.**

(a) MEDICARE PART D FORMULARIES REQUIRED TO
COVER ALL DRUGS IN 6 SPECIFIED THERAPEUTIC CAT-
EGORIES.—

(1) IN GENERAL.—Section 1860D–4(b)(3) of
the Social Security Act (42 U.S.C. 1395w–
104(b)(3)) is amended—

(A) in subparagraph (C)(i), by inserting “, except as provided in subparagraph (G),” after “although”; and

(B) by inserting after subparagraph (F) the following new subparagraph:

“(G) REQUIRED INCLUSION OF DRUGS IN CERTAIN THERAPEUTIC CATEGORIES AND CLASSES.—

“(i) REQUIREMENT.—The formulary must include, subject to clause (iii), all or substantially all drugs in each of the following therapeutic categories of covered part D drugs:

“(I) Immunosuppressants.

“(II) Antidepressants.

“(III) Antipsychotics.

“(IV) Anticonvulsants.

“(V) Antiretrovirals.

“(VI) Antineoplastics.

“(ii) COVERAGE OF ALL UNIQUE DOSAGE FORMS.—To meet the requirement under clause (i), the formulary must include all covered part D drugs and unique dosages and forms of such drugs in the

categories specified in such clause, except
for—

“(I) multi-source brands of the
identical molecular structure;

“(II) extended release products
in the case that the immediate release
product involved is included on the
formulary;

“(III) products that have the
same active ingredient; and

“(IV) dosage forms that do not
provide a unique route of administra-
tion, such as tablets and capsules.

“(iii) APPLICATION TO NEW FDA-AP-
PROVED DRUGS.—In the case of a drug
that becomes a covered part D drug and
that is included in a category specified in
clause (i), clause (i) shall apply to such
drug 30 days after the drug has been
placed on the market. Nothing in the pre-
vious sentence shall be construed as pre-
venting a pharmacy and therapeutic com-
mittee from advising a PDP sponsor of a
prescription drug plan on the clinical ap-
propriateness of formulary management

1 practices and policies related to new drugs
2 in such categories.

3 “(iv) UTILIZATION MANAGEMENT
4 TOOLS NOT PERMITTED.—A PDP sponsor
5 of a prescription drug plan may not apply
6 a utilization management tool, such as
7 prior authorization or step therapy, to a
8 drug required under clause (i) to be in-
9 cluded on the formulary.

10 “(v) RULES OF CONSTRUCTION.—

11 “(I) ISSUANCE OF GUIDANCE OR
12 REGULATIONS TO ESTABLISH FOR-
13 MULARY OR UTILIZATION MANAGE-
14 MENT REQUIREMENTS PERMITTED.—

15 Nothing in this subparagraph shall be
16 construed as prohibiting the Secretary
17 from issuing guidance or regulations
18 to establish formulary or utilization
19 management requirements under this
20 section for any category or class of
21 covered part D drugs if such guidance
22 or regulations are consistent with the
23 requirements of this subparagraph.

24 “(II) ADDITIONAL THERAPEUTIC
25 CATEGORIES PERMITTED.—Nothing in

1 this subparagraph shall be construed
2 as prohibiting the Secretary from in-
3 cluding any additional therapeutic cat-
4 egory or class of covered part D drugs
5 under clause (i) for purposes of this
6 subparagraph.”.

7 (2) EFFECTIVE DATE.—The amendments made
8 by paragraph (1) shall apply to plan years beginning
9 on or after January 1, 2008.

10 (b) SPECIAL REQUIREMENTS FOR COVERAGE DE-
11 TERMINATIONS, RECONSIDERATIONS, AND APPEALS FOR
12 DRUGS INCLUDED IN SPECIFIED THERAPEUTIC CAT-
13 EGORIES.—

14 (1) IN GENERAL.—Section 1860D–4(g) of the
15 Social Security Act (42 U.S.C. 1395w–104(g)) is
16 amended by adding at the end the following new
17 paragraph:

18 “(3) RECONSIDERATION OF DETERMINATIONS
19 RELATED TO DRUGS INCLUDED IN SPECIFIED
20 THERAPEUTIC CATEGORIES CONDUCTED BY INDE-
21 PENDENT REVIEW ENTITY.—With respect to a part
22 D eligible individual enrolled in a prescription drug
23 plan, in the case of a determination under this sub-
24 section that denies such individual coverage (in
25 whole or in part) of a drug in a category specified

1 in subsection (b)(3)(G)(i), the individual may re-
2 quest that the reconsideration of such determination
3 authorized under section 1852(g)(2) (as applied by
4 paragraph (1)) be conducted by the independent,
5 outside entity described in paragraph (4) of section
6 1852(g) in accordance with the procedures for an
7 expedited reconsideration under paragraph (3) of
8 such section.

9 “(4) REQUIRED COVERAGE OF DRUGS IN-
10 CLUDED IN SPECIFIED THERAPEUTIC CATEGORIES
11 DURING DETERMINATIONS, RECONSIDERATIONS,
12 AND APPEALS.—If a part D eligible individual en-
13 rolled in a prescription drug plan offered by a PDP
14 sponsor requests a redetermination or reconsider-
15 ation under this subsection (or an appeal under sub-
16 section (h)) with respect to an utilization manage-
17 ment requirement or denial of coverage (in whole or
18 in part) of a drug in a category specified in sub-
19 section (b)(3)(G)(i), such sponsor shall provide such
20 individual with coverage of such drug as prescribed
21 during the pendency of such redetermination, recon-
22 sideration, or appeal until 60 days after the date of
23 receipt of a written notification of—

1 “(A) in the case that the individual does
2 not request a reconsideration or appeal, the de-
3 termination on such redetermination;

4 “(B) in the case that the individual re-
5 quests a reconsideration but not an appeal, the
6 determination on such reconsideration; or

7 “(C) in the case that the individual re-
8 quests an appeal, the determination on such ap-
9 peal or the dismissal of the appeal;
10 except that in no case shall such coverage end before
11 the end of the period in which an individual may file
12 an appeal with respect to the determination in-
13 volved.”.

14 (2) EFFECTIVE DATE.—The amendment made
15 by paragraph (1) shall apply to requests for redeter-
16 minations, reconsiderations, and appeal hearings
17 made on or after the effective date described in sub-
18 section (a)(2).

19 (c) REPORTING REQUIREMENTS FOR DRUGS IN-
20 CLUDED IN SPECIFIED THERAPEUTIC CATEGORIES.—

21 (1) IN GENERAL.—Section 1860D–4(b) of the
22 Social Security Act (42 U.S.C. 1395w–104(b)) is
23 amended by adding at the end the following new
24 paragraph:

1 “(4) REPORTING REQUIREMENTS FOR DRUGS
2 INCLUDED IN SPECIFIED THERAPEUTIC CAT-
3 EGORIES.—

4 “(A) REPORTS BY PDP SPONSORS.—A
5 PDP sponsor offering a prescription drug plan
6 shall submit to the Secretary (in a form and
7 manner specified by the Secretary), with respect
8 to drugs in a category of covered part D drugs
9 specified in subsection (b)(3)(G)(i), information
10 on the number of favorable and unfavorable de-
11 cisions under the plan relating to coverage de-
12 terminations, redeterminations, reconsider-
13 ations, appeals, and enrollee requests for excep-
14 tions to formulary policies for such drugs.

15 “(B) REPORT TO CONGRESS.—The Sec-
16 retary shall submit an annual report to Con-
17 gress summarizing the information submitted
18 under subparagraph (A) and shall publish each
19 report in the Federal Register.”.

20 “(2) EFFECTIVE DATE.—The amendment made
21 by paragraph (1) shall apply to prescription drug
22 plans and MA plans for plan years beginning on or
23 after the effective date described in subsection
24 (a)(2).

1 **SEC. 506. REMOVAL OF EXCLUSION OF BENZODIAZEPINES**
2 **FROM REQUIRED COVERAGE UNDER THE**
3 **MEDICARE PRESCRIPTION DRUG PROGRAM.**

4 (a) IN GENERAL.—Section 1860D–2(e)(2) of the So-
5 cial Security Act (42 U.S.C. 1395w–102(e)(2)) is amend-
6 ed—

7 (1) by striking “subparagraph (E)” and insert-
8 ing “subparagraphs (E) and (J)”; and

9 (2) by inserting “and benzodiazepines” after
10 “smoking cessation agents”.

11 (b) REVIEW OF BENZODIAZEPINE PRESCRIPTION
12 POLICIES TO ASSURE APPROPRIATENESS AND TO AVOID
13 ABUSE.—The Secretary of Health and Human Services
14 shall review the policies of Medicare prescription drug
15 plans (and MA–PD plans) under parts C and D of title
16 XVIII of the Social Security Act regarding the filling of
17 prescriptions for benzodiazepine to ensure that these poli-
18 cies are consistent with accepted clinical guidelines, are
19 appropriate to individual health histories, and are de-
20 signed to minimize long term use, guard against over-pre-
21 scribing, and prevent patient abuse.

22 (c) DEVELOPMENT BY MEDICARE QUALITY IM-
23 PROVEMENT ORGANIZATIONS OF EDUCATIONAL GUIDE-
24 LINES FOR PHYSICIANS REGARDING PRESCRIBING OF
25 BENZODIAZEPINES.—The Secretary of Health and
26 Human Services shall provide, in contracts entered into

1 with Medicare quality improvement organizations under
2 part B of title XI of the Social Security Act, for the devel-
3 opment by such organizations of appropriate educational
4 guidelines for physicians regarding the prescribing of
5 benzodiazepines.

6 (d) EFFECTIVE DATE.—The amendments made by
7 subsection (a) shall apply to contract years beginning on
8 or after January 1, 2008.

9 **SEC. 507. STANDARDIZED FORMS AND PROCEDURES FOR**
10 **RECONSIDERATIONS AND APPEALS.**

11 (a) IN GENERAL.—Section 1860D–4 of the Social
12 Security Act (42 U.S.C. 1395w–104) is amended by add-
13 ing at the end the following new subsection:

14 “(1) STANDARDIZED FORMS AND PROCEDURES FOR
15 RECONSIDERATIONS AND APPEALS.—

16 “(1) STANDARD ENROLLEE NOTICE.—The Sec-
17 retary shall develop a standard notice to be distrib-
18 uted by a prescription drug plan (or an MA–PD
19 plan) to an enrollee when a covered part D drug pre-
20 scribed for the enrollee is not covered, or the cov-
21 erage of such drug is otherwise restricted, by the
22 plan.

23 “(2) STANDARDIZED PROCESS FOR RECONSID-
24 ERATIONS AND APPEALS.—The Secretary shall re-
25 quire prescription drug plans and MA–PD plans to

1 follow the same standardized process for reconsider-
 2 ations and redeterminations under subsections (g)
 3 and (h). Such process shall require that determina-
 4 tions regarding medical necessity are based on pro-
 5 fessional medical judgement, the medical condition
 6 of the enrollee, the treating physician’s recommenda-
 7 tion, and other medical evidence.”.

8 (b) EFFECTIVE DATE.—The Secretary of Health and
 9 Human Services shall provide for the standard notice and
 10 the standardized process, and the application of such no-
 11 tice and process, under the amendment made by sub-
 12 section (a) by not later than January 1, 2008.

13 **SEC. 508. ELIMINATION OF MA REGIONAL STABILIZATION**
 14 **FUND (SLUSH FUND); ELIMINATION OF CER-**
 15 **TAIN MA OVERPAYMENTS.**

16 (a) ELIMINATION OF SLUSH FUND.—

17 (1) IN GENERAL.—Subsection (e) of section
 18 1858 of the Social Security Act (42 U.S.C. 1395w–
 19 27a) is repealed.

20 (2) CONFORMING AMENDMENT.—Section
 21 1858(f)(1) of the Social Security Act (42 U.S.C.
 22 1395w–27a(f)(1)) is amended by striking “subject to
 23 subsection (e),”.

24 (3) EFFECTIVE DATE.—The amendments made
 25 by this subsection shall take effect as if included in

1 the enactment of section 221(c) of the Medicare Pre-
 2 scription Drug, Improvement, and Modernization
 3 Act of 2003 (Public Law 108–173; 117 Stat. 2181).

4 (b) ELIMINATION OF CERTAIN MEDICARE ADVAN-
 5 TAGE OVERPAYMENTS.—

6 (1) IN GENERAL.—Section 1853(a)(1)(C)(ii) of
 7 the Social Security Act (42 U.S.C. 1395w–
 8 23(a)(1)(C)(ii)), as added by section 5301 of the
 9 Deficit Reduction Act of 2005, is amended—

10 (A) in the heading, by striking “DURING
 11 PHASE-OUT OF BUDGET NEUTRALITY FACTOR”;

12 (B) in the matter preceding subclause (I),
 13 by striking “through 2010” and inserting “and
 14 subsequent years”; and

15 (C) in subclause (II), by striking “only for
 16 2008, 2009, and 2010” and inserting “for 2008
 17 and subsequent years”.

18 (2) EFFECTIVE DATE.—The amendments made
 19 by this subsection shall take effect as if included in
 20 the enactment of section 5301 of the Deficit Reduc-
 21 tion Act of 2005.

22 **SEC. 509. BENEFICIARY COMPLAINTS.**

23 (a) IN GENERAL.—Section 1860D–4(a) of the Social
 24 Security Act (42 U.S.C. 1395w–104(a)) is amended by
 25 adding at the end the following new paragraph:

1 “(5) BENEFICIARY COMPLAINTS.—

2 “(A) COMPLAINT LOG.—The Secretary
3 shall keep record of all complaints received at
4 1-800-MEDICARE and at any regional office
5 of the Centers for Medicare & Medicaid Serv-
6 ices from (or on behalf of) a beneficiary con-
7 cerning prescription drug plans and MA-PD
8 plans. Complaints shall be recorded even if the
9 beneficiary does not explicitly identify the con-
10 cern (or concerns) as a complaint, and even if
11 the beneficiary is subsequently referred to the
12 plan for complaint resolution. The Secretary
13 shall publicly report statistical data on such
14 complaints, including the type of complaint,
15 whether the complaint was resolved, and the
16 time taken to resolve the complaint.

17 “(B) PLAN RESPONSE TO COMPLAINTS.—
18 If the Secretary receives such a beneficiary
19 complaint regarding such a plan and refers the
20 complaint to such plan for investigation and
21 resolution by the plan, the plan shall report
22 back to the Secretary on a timely basis on the
23 resolution of the complaint. The Secretary shall
24 record such information in the beneficiary’s

1 record and include data on timeliness of plan's
2 response in public reports.

3 “(C) REPORT TO CONGRESS.—The Sec-
4 retary shall annually report to Congress regard-
5 ing complaints compiled under this para-
6 graph.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall apply to contract years beginning on
9 or after the date of the enactment of this Act.

10 **SEC. 510. FILL OF DRUGS FOR DUAL ELIGIBLES.**

11 (a) IN GENERAL.—Section 1860D–4(g) of the Social
12 Security Act (42 U.S.C. 1395w–104(g)) is amended by
13 adding at the end the following new paragraph:

14 “(3) FILL OF DRUGS FOR FULL-BENEFIT DUAL
15 ELIGIBLE INDIVIDUALS.—In the case of a reconsid-
16 eration under paragraph (1) or an exception under
17 paragraph (2) sought with respect to a covered part
18 D drug on behalf of a full-benefit dual eligible indi-
19 vidual (as defined in section 1935(c)(6)), the PDP
20 sponsor shall provide for coverage of the drug (or
21 treatment of the drug as a preferred drug under a
22 tiered formulary) pending disposition of the recon-
23 sideration or exception.”.

1 (b) EFFECTIVE DATE.—The amendment made by
 2 subsection (a) shall apply to contract years beginning on
 3 or after the date of the enactment of this Act.

4 **TITLE W—FAIR AND SPEEDY**
 5 **TREATMENT OF MEDICARE**
 6 **PRESCRIPTION DRUG CLAIMS**

7 **SEC. 601. PROMPT PAYMENT BY MEDICARE PRESCRIPTION**
 8 **DRUG PLANS AND MA-PD PLANS UNDER**
 9 **PART D.**

10 (a) APPLICATION TO PRESCRIPTION DRUG PLANS.—
 11 Section 1860D–12(b) of the Social Security Act (42
 12 U.S.C. 1395w–112 (b)), as amended by section 301(b),
 13 is amended by adding at the end the following new para-
 14 graph:

15 “(5) PROMPT PAYMENT OF CLEAN CLAIMS.—

16 “(A) PROMPT PAYMENT.—Each contract
 17 entered into with a PDP sponsor under this
 18 subsection with respect to a prescription drug
 19 plan offered by such sponsor shall provide that
 20 payment shall be issued, mailed, or otherwise
 21 transmitted with respect to all clean claims sub-
 22 mitted under this part within the applicable
 23 number of calendar days after the date on
 24 which the claim is received.

25 “(B) DEFINITIONS.—In this paragraph:

1 “(i) CLEAN CLAIM.—The term ‘clean
2 claim’ means a claim, with respect to a
3 covered part D drug, that has no apparent
4 defect or impropriety (including any lack
5 of any required substantiating documenta-
6 tion) or particular circumstance requiring
7 special treatment that prevents timely pay-
8 ment from being made on the claim under
9 this part.

10 “(ii) APPLICABLE NUMBER OF CAL-
11 ENDAR DAYS.—The term ‘applicable num-
12 ber of calendar days’ means—

13 “(I) with respect to claims sub-
14 mitted electronically, 14 calendar
15 days; and

16 “(II) with respect to claims sub-
17 mitted otherwise, 30 calendar days.

18 “(C) INTEREST PAYMENT.—If payment is
19 not issued, mailed, or otherwise transmitted
20 within the applicable number of calendar days
21 (as defined in subparagraph (B)) after a clean
22 claim is received, interest shall be paid at a rate
23 used for purposes of section 3902(a) of title 31,
24 United States Code (relating to interest pen-
25 alties for failure to make prompt payments), for

1 the period beginning on the day after the re-
2 quired payment date and ending on the date on
3 which payment is made.

4 “(D) PROCEDURES INVOLVING CLAIMS.—

5 “(i) CLAIMS DEEMED TO BE CLEAN
6 CLAIMS.—

7 “(I) IN GENERAL.—A claim for a
8 covered part D drug shall be deemed
9 to be a clean claim for purposes of
10 this paragraph if the PDP sponsor in-
11 volved does not provide a notification
12 of deficiency to the claimant by the
13 10th day that begins after the date on
14 which the claim is submitted.

15 “(II) NOTIFICATION OF DEFICI-
16 CIENCY.—For purposes of subclause
17 (II), the term ‘notification of defi-
18 ciency’ means a notification that
19 specifies all defects or improprieties in
20 the claim involved and that lists all
21 additional information or documents
22 necessary for the proper processing
23 and payment of the claim.

24 “(ii) PAYMENT OF CLEAN PORTIONS
25 OF CLAIMS.—A PDP sponsor shall, as ap-

1 appropriate, pay any portion of a claim for a
2 covered part D drug that would be a clean
3 claim but for a defect or impropriety in a
4 separate portion of the claim in accordance
5 with subparagraph (A).

6 “(iii) OBLIGATION TO PAY.—A claim
7 for a covered part D drug submitted to a
8 PDP sponsor that is not paid or contested
9 by the provider within the applicable num-
10 ber of calendar days (as defined in sub-
11 paragraph (B)) shall be deemed to be a
12 clean claim and shall be paid by the PDP
13 sponsor in accordance with subparagraph
14 (A).

15 “(iv) DATE OF PAYMENT OF CLAIM.—
16 Payment of a clean claim under subpara-
17 graph (A) is considered to have been made
18 on the date on which full payment is re-
19 ceived by the provider.

20 “(E) ELECTRONIC TRANSFER OF
21 FUNDS.—A PDP sponsor shall pay all clean
22 claims submitted electronically by an electronic
23 funds transfer mechanism.”.

1 (b) APPLICATION TO MA-PD PLANS.—Section
 2 1857(f) of such Act (42 U.S.C. 1395w–27) is amended
 3 by adding at the end the following new paragraph:

4 “(3) INCORPORATION OF CERTAIN PRESCRIP-
 5 TION DRUG PLAN CONTRACT REQUIREMENTS.—The
 6 provisions of section 1860D–12(b)(5) shall apply to
 7 contracts with a Medicare Advantage Organization
 8 in the same manner as they apply to contracts with
 9 a PDP sponsor offering a prescription drug plan
 10 under part D.”.

11 (c) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to contracts entered into or re-
 13 newed on or after the date of the enactment of this Act.

14 **SEC. 602. RESTRICTION ON CO-BRANDING.**

15 (a) IN GENERAL.—Section 1860D–4(b)(2)(A) of the
 16 Social Security Act (42 U.S.C. 1395w–104(b)(2)(A)) is
 17 amended by adding at the end the following new sen-
 18 tences: “It is unlawful for a PDP sponsor of a prescription
 19 drug plan to display on such a card the name, brand, or
 20 trademark of any pharmacy.”

21 (b) EFFECTIVE DATE.—With respect to cards dis-
 22 pensed before, on, or after the date of the enactment of
 23 this Act, the amendment made by this section shall apply
 24 to such cards on and after the date that is 90 days after
 25 such date of enactment. Any card dispensed before such

1 date that is 90 days after the date of enactment that vio-
 2 lates the second sentence of section 1860D–4(b)(2)(A) of
 3 the Social Security Act, as added by subsection (a), shall
 4 be reissued by such 90-day date.

5 **SEC. 603. PROVISION OF MEDICATION THERAPY MANAGE-**
 6 **MENT SERVICES UNDER PART D.**

7 (a) PROVISION OF MEDICATION THERAPY MANAGE-
 8 MENT SERVICES UNDER PART D.—

9 (1) IN GENERAL.—Section 1860D–4(c)(2) of
 10 the Social Security Act (42 U.S.C. 1395w–
 11 104(c)(2)) is amended—

12 (A) in subparagraph (A)—

13 (i) in clause (i)—

14 (I) by inserting “or other health
 15 care provider with advanced training
 16 in medication management” after
 17 “furnished by a pharmacist”; and

18 (II) by striking “targeted bene-
 19 ficiaries described in clause (ii)” and
 20 inserting “targeted beneficiaries speci-
 21 fied under clause (ii)”

22 (ii) by striking clause (ii) and insert-
 23 ing the following:

24 “(ii) TARGETED BENEFICIARIES.—

25 The Secretary shall specify the population

1 of part D eligible individuals appropriate
2 for services under a medication therapy
3 management program based on the fol-
4 lowing characteristics:

5 “(I) Having a disease state in
6 which evidence-based medicine has
7 demonstrated the benefit of medica-
8 tion therapy management intervention
9 based on objective outcome measures.

10 “(II) Taking multiple covered
11 part D drugs or having a disease state
12 in which a complex combination medi-
13 cation regimen is utilized.

14 “(III) Being identified as likely
15 to incur annual costs for covered part
16 D drugs that exceed a level specified
17 by the Secretary or where acute or
18 chronic decompensation of disease
19 would likely increase expenditures
20 under the Federal Hospital Insurance
21 Trust Fund or the Federal Supple-
22 mentary Medical Insurance Trust
23 Fund under sections 1817 and 1841,
24 respectively, such as through the re-

1 requirement of emergency care or acute
2 hospitalization.”;

3 (B) by striking subparagraph (B) and in-
4 serting the following:

5 “(B) ELEMENTS.—

6 “(i) MINIMUM DEFINED PACKAGE OF
7 SERVICES.—The Secretary shall specify a
8 minimum defined package of medication
9 therapy management services that shall be
10 provided to each enrollee. Such package
11 shall be based on the following consider-
12 ations:

13 “(I) Performing necessary assess-
14 ments of the health status of each en-
15 rollee.

16 “(II) Providing medication ther-
17 apy review to identify, resolve, and
18 prevent medication-related problems,
19 including adverse events.

20 “(III) Increasing enrollee under-
21 standing to promote the appropriate
22 use of medications by enrollees and to
23 reduce the risk of potential adverse
24 events associated with medications,
25 through beneficiary and family edu-

1 cation, counseling, and other appro-
2 priate means.

3 “(IV) Increasing enrollee adher-
4 ence with prescription medication
5 regimens through medication refill re-
6 minders, special packaging, and other
7 compliance programs and other appro-
8 priate means.

9 “(V) Promoting detection of ad-
10 verse drug events and patterns of
11 overuse and underuse of prescription
12 drugs.

13 “(VI) Developing a medication
14 action plan which may alter the medi-
15 cation regimen, when permitted by the
16 State licensing authority. This infor-
17 mation should be provided to, or ac-
18 cessible by, the primary health care
19 provider of the enrollee.

20 “(VII) Monitoring and evaluating
21 the response to therapy and evalu-
22 ating the safety and effectiveness of
23 the therapy, which may include lab-
24 oratory assessment.

1 “(VIII) Providing disease-specific
2 medication therapy management serv-
3 ices when appropriate.

4 “(IX) Coordinating and inte-
5 grating medication therapy manage-
6 ment services within the broader scope
7 of health care management services
8 being provided to each enrollee.

9 “(ii) DELIVERY OF SERVICES.—

10 “(I) PERSONAL DELIVERY.—To
11 the extent feasible, face-to-face inter-
12 action shall be the preferred method
13 of delivery of medication therapy man-
14 agement services.

15 “(II) INDIVIDUALIZED.—Such
16 services shall be patient-specific and
17 individualized and shall be provided
18 directly to the patient by a pharmacist
19 or other health care provider with ad-
20 vanced training in medication man-
21 agement.

22 “(III) DISTINCT FROM OTHER
23 ACTIVITIES.—Such services shall be
24 distinct from any activities related to
25 formulary development and use, gen-

1 eralized patient education and infor-
2 mation activities, and any population-
3 focused quality assurance measures
4 for medication use.

5 “(iii) OPPORTUNITY TO IDENTIFY PA-
6 TIENTS IN NEED OF MEDICATION THERAPY
7 MANAGEMENT SERVICES.—The program
8 shall provide opportunities for health care
9 providers to identify patients who should
10 receive medication therapy management
11 services.”;

12 (C) by striking subparagraph (E) and in-
13 serting the following:

14 “(E) PHARMACY FEES.—

15 “(i) IN GENERAL.—The PDP sponsor
16 of a prescription drug plan shall pay phar-
17 macists and others providing services
18 under the medication therapy management
19 program under this paragraph based on
20 the time and intensity of services provided
21 to enrollees.

22 “(ii) SUBMISSION ALONG WITH PLAN
23 INFORMATION.—Each such sponsor shall
24 disclose to the Secretary upon request the
25 amount of any such payments and shall

1 submit a description of how such payments
2 are calculated along with the information
3 submitted under section 1860D–11(b).
4 Such description shall be submitted at the
5 same time and in a similar manner to the
6 manner in which the information described
7 in paragraph (2) of such section is sub-
8 mitted.”; and

9 (D) by adding at the end the following new
10 subparagraph:

11 “(F) PHARMACY ACCESS REQUIRE-
12 MENTS.—The PDP sponsor of a prescription
13 drug plan shall secure the participation in its
14 network of a sufficient number of retail phar-
15 macies to assure that enrollees have the option
16 of obtaining services under the medication ther-
17 apy management program under this paragraph
18 directly from community-based retail phar-
19 macies.”.

20 (2) EFFECTIVE DATE.—The amendments made
21 by this subsection shall apply to medication therapy
22 management services provided on or after January
23 1, 2008.

24 (b) MEDICATION THERAPY MANAGEMENT DEM-
25 ONSTRATION PROGRAM.—Section 1860D–4(c) of the So-

1 cial Security Act (42 U.S.C. 1395w–104(c)) is amended
2 by adding at the end the following new paragraph:

3 “(3) COMMUNITY-BASED MEDICATION THERAPY
4 MANAGEMENT DEMONSTRATION PROGRAM.—

5 “(A) ESTABLISHMENT.—

6 “(i) IN GENERAL.—By not later than
7 January 1, 2008, the Secretary shall es-
8 tablish a 2-year demonstration program,
9 based on the recommendations of the Best
10 Practices Commission established under
11 subparagraph (B), with both PDP spon-
12 sors of prescription drug plans and Medi-
13 care Advantage Organizations offering
14 MA–PD plans, to examine the impact of
15 medication therapy management furnished
16 by a pharmacist in a community-based or
17 ambulatory-based setting on quality of
18 care, spending under this part, and patient
19 health.

20 “(ii) SITES.—

21 “(I) IN GENERAL.—Subject to
22 subclause (II), the Secretary shall
23 designate not less than 10 PDP spon-
24 sors of prescription drug plans or
25 Medicare Advantage Organizations of-

1 fering MA–PD plans, none of which
2 provide prescription drug coverage
3 under such plans in the same PDP or
4 MA region, respectively, to conduct
5 the demonstration program under this
6 paragraph.

7 “(II) DESIGNATION CONSISTENT
8 WITH RECOMMENDATIONS OF BEST
9 PRACTICES COMMISSION.—The Sec-
10 retary shall ensure that the designa-
11 tion of sites under subclause (I) is
12 consistent with the recommendations
13 of the Best Practices Commission
14 under subparagraph (B)(ii).

15 “(B) BEST PRACTICES COMMISSION.—

16 “(i) ESTABLISHMENT.—The Secretary
17 shall establish a Best Practices Commis-
18 sion composed of representatives from
19 pharmacy organizations, health care orga-
20 nizations, beneficiary advocates, chronic
21 disease groups, and other stakeholders (as
22 determined appropriate by the Secretary)
23 for the purpose of developing a best prac-
24 tices model for medication therapy man-
25 agement.

1 “(ii) RECOMMENDATIONS.—The Com-
2 mission shall submit to the Secretary rec-
3 ommendations on the following:

4 “(I) The minimum number of en-
5 rollees that should be included in the
6 demonstration program, and at each
7 demonstration program site, to deter-
8 mine the impact of medication ther-
9 apy management furnished by a phar-
10 macist in a community-based setting
11 on quality of care, spending under
12 this part, and patient health.

13 “(II) The number of urban and
14 rural sites that should be included in
15 the demonstration program to ensure
16 that prescription drug plans and MA-
17 PD plans offered in urban and rural
18 areas are adequately represented.

19 “(III) A best practices model for
20 medication therapy management to be
21 implemented under the demonstration
22 program under this paragraph.

23 “(C) REPORTS.—

24 “(i) INTERIM REPORT.—Not later
25 than 1 year after the commencement of the

1 demonstration program, the Secretary
2 shall submit to Congress an interim report
3 on such program.

4 “(ii) FINAL REPORT.—Not later than
5 6 months after the completion of the dem-
6 onstration program, the Secretary shall
7 submit to Congress a final report on such
8 program, together with recommendations
9 for such legislation and administrative ac-
10 tion as the Secretary determines appro-
11 priate.

12 “(D) WAIVER AUTHORITY.—The Secretary
13 may waive such requirements of titles XI and
14 XVIII as may be necessary for the purpose of
15 carrying out the demonstration program under
16 this paragraph.”.

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