

108TH CONGRESS  
2ND SESSION

# S. 2339

To amend part D of title XVIII of the Social Security Act to improve the coordination of prescription drug coverage provided under retiree plans and State pharmaceutical assistance programs with the prescription drug benefit provided under the medicare program, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 22, 2004

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

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## A BILL

To amend part D of title XVIII of the Social Security Act to improve the coordination of prescription drug coverage provided under retiree plans and State pharmaceutical assistance programs with the prescription drug benefit provided under the medicare program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preserving Access to  
5 Affordable Drugs Act of 2004”.

1 **SEC. 2. ELIMINATION OF DISCRIMINATORY TREATMENT OF**  
2 **EMPLOYER PLANS.**

3 (a) **ELIMINATION OF TRUE OUT-OF-POCKET LIMITA-**  
4 **TION.**—Section 1860D–2(b)(4)(C) of the Social Security  
5 Act, as added by section 101(a) of the Medicare Prescrip-  
6 tion Drug, Improvement, and Modernization Act of 2003,  
7 is amended to read as follows:

8 “(C) **APPLICATION.**—In applying subpara-  
9 graph (A), incurred costs shall only include  
10 costs incurred with respect to covered part D  
11 drugs for the annual deductible described in  
12 paragraph (1), for cost-sharing described in  
13 paragraph (2), and for amounts for which bene-  
14 fits are not provided because of the application  
15 of the initial coverage limit described in para-  
16 graph (3).”.

17 (b) **EQUALIZATION OF SUBSIDIES.**—Notwithstanding  
18 any other provision of law, the Secretary of Health and  
19 Human Services shall provide for such increase in the spe-  
20 cial subsidy payment amounts under section 1860D–  
21 22(a)(3) of the Social Security Act, as added by section  
22 101(a) of the Medicare Prescription Drug, Improvement,  
23 and Modernization Act of 2003, as may be appropriate  
24 to provide for payments in the aggregate equivalent to the  
25 payments that would have been made under section  
26 1860D–15 of such Act if the individuals were not enrolled

1 in a qualified retiree prescription drug plan. In making  
 2 such computation, the Secretary shall not take into ac-  
 3 count the application of the amendments made by section  
 4 1202 of the Medicare Prescription Drug, Improvement,  
 5 and Modernization Act of 2003.

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

8 Part D of title XVIII of the Social Security Act (as  
 9 so added) is amended by inserting after section 1860D-  
 10 23 the following:

11 “DIRECT SUBSIDIES FOR CERTAIN STATE  
 12 PHARMACEUTICAL ASSISTANCE PROGRAMS

13 “SEC. 1860D-23A. (a) DIRECT SUBSIDY.—

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

22 “(2) AMOUNT OF PAYMENT.—

23 “(A) IN GENERAL.—The amount of the  
 24 payment under paragraph (1) shall be an  
 25 amount equal to the special subsidy payment  
 26 amount determined under section 1860D-

1           22(a)(3) for a qualifying covered retiree for a  
2           coverage year enrolled with the sponsor of a  
3           qualified retiree prescription drug plan.

4           “(b) ADDITIONAL SUBSIDY.—

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

11               “(2) AMOUNT OF PAYMENT.—

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

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

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

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

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

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

15 “(c) PAYMENT METHODS.—

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

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

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

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

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

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

21          Section 1935(d) of the Social Security Act, as added  
22          by section 103(c) of the Medicare Prescription Drug, Im-  
23          provement, and Modernization Act of 2003, is repealed.

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

3 Effective as if included in the enactment of the Medi-  
 4 care Prescription Drug, Improvement, and Modernization  
 5 Act of 2003, subtitle E of title II of such Act is repealed  
 6 and any provisions of law amended by such subtitle are  
 7 restored as if such subtitle had not been enacted.

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

10 Section 1882(v) of the Social Security Act (42 U.S.C.  
 11 1395ss(v)), as added by section 104(a) of the Medicare  
 12 Prescription Drug, Improvement, and Modernization Act  
 13 of 2003, is amended as follows:

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

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

21 “(D) WRAP-AROUND PRESCRIPTION DRUG  
 22 COVERAGE.—

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

1           within a range of such coverage approved  
2           by the Secretary under clause (ii) may be  
3           offered to part D enrollees.

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

9   **SEC. 8. EFFECTIVE DATE.**

10          The amendments made by this Act shall take effect  
11          as if included in the enactment of the Medicare Prescrip-  
12          tion Drug, Improvement, and Modernization Act of 2003.

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