

109TH CONGRESS
2^D SESSION

H. R. 6281

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

SEPTEMBER 29, 2006

Mr. DOGGETT (for himself, Mr. RANGEL, Mr. STARK, Mr. McDERMOTT, Mr. LEWIS of Georgia, Mr. NEAL of Massachusetts, Mr. McNULTY, Mr. BECERRA, Mrs. JONES of Ohio, Mr. LARSON of Connecticut, Mr. EMANUEL, Mr. ALLEN, Mrs. CAPPs, Mrs. DAVIS of California, Ms. DELAURO, Mr. FRANK of Massachusetts, Mr. AL GREEN of Texas, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. HINCHEY, Ms. JACKSON-LEE of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. KAPTUR, Mr. KENNEDY of Rhode Island, Ms. KILPATRICK of Michigan, Mr. LANGEVIN, Mrs. LOWEY, Mrs. MALONEY, Ms. MCCOLLUM of Minnesota, Mr. MCGOVERN, Mr. MEEHAN, Ms. MOORE of Wisconsin, Mr. MORAN of Virginia, Mr. NADLER, Mr. OBERSTAR, Mr. ORTIZ, Mr. REYES, Ms. SCHAKOWSKY, Mr. WAXMAN, Mr. WEINER, and Ms. WOOLSEY) 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 2006”.

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 cost-sharing for certain full-benefit dual eligibles.

Sec. 203. Elimination of the indexing on the price-sharing for dual-eligibles and
 qualifying low income beneficiaries.

Sec. 204. Expediting low-income subsidies under the Medicare prescription
 drug program.

Sec. 205. Increase in permitted resources to obtain low-income subsidies.

Sec. 206. Waiver of late enrollment penalty for subsidy eligible individuals for
 first 24 months of non-enrollment.

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
 2006.

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. Extension of open enrollment period; 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. Codification of requirement for coverage of all or substantially all of drugs within six categories of drugs.
- 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.

TITLE VI—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. Minimum dispensing fees for generic covered part D drugs.
- Sec. 604. 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 **SCRIPTION 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 2007), in addition to any plans offered
14 under section 1860D–11, the Secretary shall offer one or
15 more medicare operated prescription drug plans (as de-
16 fined in subsection (c)) with a service area that consists
17 of the entire United States and shall enter into negotia-

1 tions with pharmaceutical manufacturers to reduce the
2 purchase cost of covered part D drugs for eligible part
3 D individuals in accordance with subsection (b).

4 “(b) NEGOTIATIONS.—

5 “(1) IN GENERAL.—Notwithstanding section
6 1860D–11(i), for purposes of offering a medicare
7 operated prescription drug plan under this section,
8 the Secretary shall negotiate with pharmaceutical
9 manufacturers with respect to the purchase price of
10 covered part D drugs and shall encourage the use of
11 more affordable therapeutic equivalents to the extent
12 such practices do not override medical necessity as
13 determined by the prescribing physician. To the ex-
14 tent practicable and consistent with the previous
15 sentence, the Secretary shall implement strategies
16 similar to those used by other Federal purchasers of
17 prescription drugs, and other strategies, to reduce
18 the purchase cost of covered part D drugs.

19 “(2) PERMITTING APPLICATION OF SOME OR
20 ALL OF SAVINGS TO REDUCTION IN COVERAGE
21 GAP.—Notwithstanding any other provision of this
22 part, the Secretary may increase the initial coverage
23 limit under section 1860D–2(b)(3) for a year, but
24 only with respect to the medicare operated prescrip-
25 tion drug plan, by an amount not to exceed the actu-

1 arial value of the reductions in expenditures during
2 such year resulting from the application of para-
3 graph (1).

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

13 “(d) MONTHLY BENEFICIARY PREMIUM.—

14 “(1) QUALIFIED PRESCRIPTION DRUG COV-
15 ERAGE.—The monthly beneficiary premium for
16 qualified prescription drug coverage and access to
17 negotiated prices described in section 1860D–
18 2(a)(1)(A) to be charged under a medicare operated
19 prescription drug plan shall be uniform nationally.
20 Such premium for months in a year shall be based
21 on the average monthly per capita actuarial cost of
22 offering the medicare operated prescription drug
23 plan for the year involved, including administrative
24 expenses, as determined by the Secretary and as cer-

1 tified by the chief actuary of the Centers for Medi-
2 care & Medicaid Services.

3 “(2) SUPPLEMENTAL PRESCRIPTION DRUG COV-
4 ERAGE.—Insofar as a medicare operated prescrip-
5 tion drug plan offers supplemental prescription drug
6 coverage, the Secretary may adjust the amount of
7 the premium charged under paragraph (1).”.

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

12 (1) by designating the matter beginning with
13 “‘The process established’” as a clause (i) with the
14 heading “‘AUTO-ENROLLMENT FOR DUAL ELIGIBLES
15 AND CERTAIN OTHER SUBSIDY ELIGIBLE INDIVID-
16 UALS’”;

17 (2) by inserting “‘or who is a subsidy eligible in-
18 dividual described in section 1860D–14(a)(1)’” after
19 “‘section 1935(c)(6)’”;

20 (3) by striking “‘for the enrollment in’” and all
21 that follows through “‘in the PDP region.’” and in-
22 serting “‘for the enrollment in the medicare operated
23 prescription drug plan (as defined in section 1860D–
24 11A(c)).’”; and

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

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

16 “(iii) NOTICE.—

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

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

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

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

24 (1) Section 1860D–3 of such Act (42 U.S.C.
25 1395w–103) is repealed.

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

3 (A) by striking subsection (f), (g), and (h);
4 and

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

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

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

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

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

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

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

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

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

8 (e) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect as if included in the enact-
10 ment of section 101 of the Medicare Prescription Drug,
11 Improvement, and Modernization Act of 2003 (Public Law
12 108–173; 117 Stat. 2071).

13 **TITLE II—MEDICAID AND LOW-** 14 **INCOME IMPROVEMENTS**

15 **SEC. 201. CHANGE IN BASE USED IN COMPUTING STATE** 16 **CLAWBACK PROVISION.**

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

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

22 (2) in paragraph (3), by inserting “Subject to
23 paragraph (7)—” after “DUAL ELIGIBLE INDIVID-
24 UALS.—” in the matter before subparagraph (A);
25 and

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

3 “(II) CERTAIN OTHER INDIVID-
4 UALS.—In the case of an individual
5 who is a full-benefit dual eligible indi-
6 vidual and who receives services from
7 a facility or program described in sub-
8 clause (III), the elimination of any
9 beneficiary coinsurance described in
10 section 1860D–2(b)(2) (for all
11 amounts through the total amount of
12 expenditures at which benefits are
13 available under section 1860D–
14 2(b)(4)).

15 “(III) FACILITY DESCRIBED.—
16 For purposes of subclause (II), a fa-
17 cility or program described in this
18 subclause is a custodial care facility or
19 group home (as such terms are de-
20 fined by the Secretary) or any other
21 facility or program that the Secretary
22 determines provides services without
23 which the individual would require
24 long-term care in a medical or mental
25 health institution or nursing facility.”.

1 (b) EFFECTIVE DATE.—

2 (1) IN GENERAL.—The amendments made by
3 subsection (a) shall take effect as if included in the
4 enactment of section 101 of the Medicare Prescrip-
5 tion Drug, Improvement, and Modernization Act of
6 2003 (Public Law 108–173).

7 (2) REIMBURSEMENT OF COST-SHARING PAY-
8 MENTS.—The Secretary shall provide for reimburse-
9 ment of any beneficiary coinsurance described in sec-
10 tion 1860D–2(b)(2) of the Social Security Act (42
11 U.S.C. 1395w–102(b)(2)) paid by or on behalf of an
12 individual described in section 1860D–
13 14(a)(1)(D)(i)(II) of such Act, as added by sub-
14 section (a), during the period beginning on January
15 1, 2006, and ending on the date of enactment of this
16 Act.

17 **SEC. 203. ELIMINATION OF THE INDEXING ON THE PRICE-**
18 **SHARING FOR DUAL-ELIGIBLES AND QUALI-**
19 **FYING LOW INCOME BENEFICIARIES.**

20 (a) IN GENERAL.—Section 1860D–14(a) of the So-
21 cial Security Act (42 U.S.C. 1395w–114(a)) is amended
22 by striking paragraph (4).

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall take effect on enactment and apply
25 to cost-sharing incurred on or after January 1, 2007.

1 **SEC. 204. EXPEDITING LOW-INCOME SUBSIDIES UNDER THE**
2 **MEDICARE PRESCRIPTION DRUG PROGRAM.**

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

6 “(e) EXPEDITED APPLICATION AND ELIGIBILITY
7 PROCESS.—

8 “(1) EXPEDITED PROCESS.—

9 “(A) IN GENERAL.—The Secretary shall
10 provide for an expedited process under this sub-
11 section for the qualification for low-income as-
12 sistance under this section through a request by
13 the Secretary to the Secretary of the Treasury
14 as provided in subparagraphs (B) and (C) for
15 information sufficient to identify whether the
16 individual involved is likely eligible for subsidies
17 under this section based on such information
18 and the amount of premium and cost-sharing
19 subsidies for which they would qualify based on
20 such information. Such process shall be con-
21 ducted in cooperation with the Commissioner of
22 Social Security.

23 “(B) OPT IN FOR NEWLY ELIGIBLE INDI-
24 VIDUALS.—Not later than 60 days after the
25 date of the enactment of this subsection, the
26 Secretary shall ensure that, as part of the

1 Medicare enrollment process, enrolling individ-
2 uals—

3 “(i) receive information describing the
4 low-income subsidy provided under this
5 section; and

6 “(ii) are provided the opportunity to
7 opt-in to the expedited process described in
8 this subsection by giving consent for the
9 Secretary to screen the beneficiary for eli-
10 gibility for such subsidy through a request
11 to the Secretary of the Treasury under sec-
12 tion 6103(l)(7) of the Internal Revenue
13 Code of 1986.

14 “(C) TRANSITION FOR CURRENTLY ELIGI-
15 BLE INDIVIDUALS.—In the case of any part D
16 eligible individual to which subparagraph (B)
17 did not apply at the time of such individual’s
18 enrollment, the Secretary shall, as soon as prac-
19 ticable after implementation of subparagraph
20 (B), request in writing that the Secretary of the
21 Treasury disclose, pursuant to section
22 6103(l)(21) of the Internal Revenue Code of
23 1986, whether such individual has either filed
24 no income tax return or whether such individ-
25 ual’s income tax return indicates likely eligi-

1 bility for the low-income subsidy provided under
2 this section.

3 “(2) NOTIFICATION OF POTENTIALLY ELIGIBLE
4 INDIVIDUALS.—Under such process, in the case of
5 each individual identified under paragraph (1) who
6 has not otherwise applied for, or been determined el-
7 igible for, benefits under this section (or who has ap-
8 plied for and been determined ineligible for such
9 benefits based only on excess resources), the Sec-
10 retary shall send them a letter (using basic, uncom-
11 plicated language) containing the following:

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

16 “(B) AMOUNT OF SUBSIDIES.—A descrip-
17 tion of the amount of premium and cost-sharing
18 subsidies under this section for which the indi-
19 vidual would likely be eligible based on such in-
20 formation.

21 “(C) ENROLLMENT OPPORTUNITY.—In
22 case the individual is not enrolled in a prescrip-
23 tion drug plan or MA–PD plan—

24 “(i) a statement that—

1 “(I) the individual has the oppor-
2 tunity to enroll in a prescription drug
3 plan or MA–PD plan for benefits
4 under this part, but is not required to
5 be so enrolled; and

6 “(II) if the individual has cred-
7 itable prescription drug coverage, the
8 individual need not so enroll;

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

12 “(iii) an enrollment form that may be
13 used to enroll in such a plan by mail and
14 that provides that if the individual wishes
15 to enroll but does not designate a plan, the
16 Secretary is authorized to enroll the indi-
17 vidual in the medicare operated prescrip-
18 tion drug plan in accordance with section
19 1860D–1(b)(1)(C); and

20 “(iv) a statement that the individual
21 may also enroll online or by telephone, but,
22 in order to qualify for low-income sub-
23 sidies, the individual must complete the at-
24 testation described in subparagraph (D) or
25 otherwise apply for such subsidies.

1 “(D) ATTESTATION.—A one-page applica-
2 tion form that provides for a signed attestation,
3 under penalty of law, as to the amount of in-
4 come and assets of the individual and con-
5 stitutes an application for the low-income sub-
6 sidies described in subparagraph (B). Such
7 form—

8 “(i) shall not require the submittal of
9 additional documentation regarding income
10 or assets;

11 “(ii) shall permit the appointment of
12 a personal representative described in
13 paragraph (6); and

14 “(iii) may provide for the specification
15 of a language (other than English) that is
16 preferred for subsequent communications
17 with respect to the individual under this
18 part.

19 “(E) INFORMATION ON SHIP.—Information
20 on how the individual may contact the State
21 Health Insurance Assistance Program (SHIP)
22 for the State in which the individual is located
23 in order to obtain assistance regarding enroll-
24 ment and benefits under this part.

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

5 “(3) FOLLOW-UP COMMUNICATIONS.—If the in-
6 dividual does not respond to the letter described in
7 paragraph (2) either by making an enrollment de-
8 scribed in paragraph (2)(C), completing an attesta-
9 tion described in paragraph (2)(D), or declining ei-
10 ther or both, the Secretary shall make additional at-
11 tempts to contact the individual to obtain such an
12 affirmative response.

13 “(4) HOLD-HARMLESS.—Under such process, if
14 an individual in good faith and the absence of fraud
15 executes an attestation described in paragraph
16 (2)(D) and is provided low-income subsidies under
17 this section on the basis of such attestation, if the
18 individual is subsequently found not eligible for such
19 subsidies, there shall be no recovery made against
20 the individual because of such subsidies improperly
21 paid.

22 “(5) USE OF AUTHORIZED REPRESENTATIVE.—
23 Under such process, with proper authorization
24 (which may be part of the attestation form described
25 in paragraph (2)(D)), an individual may authorize

1 another individual to act as the individual’s personal
2 representative with respect to communications under
3 this part and the enrollment of the individual under
4 a prescription drug plan (or MA–PD plan) and for
5 low-income subsidies under this section.

6 “(6) USE OF PREFERRED LANGUAGE IN SUBSE-
7 QUENT COMMUNICATIONS.—In the case an attesta-
8 tion described in paragraph (2)(D) is completed and
9 in which a language other than English is specified
10 under clause (iii) of such paragraph, the Secretary
11 shall provide that subsequent communications to the
12 individual under this part shall be in such language.

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

18 (b) TRANSITIONAL DISCLOSURE OF RETURN INFOR-
19 MATION FOR PURPOSES OF PROVIDING LOW-INCOME
20 SUBSIDIES UNDER MEDICARE.—

21 (1) IN GENERAL.—Subsection (l) of section
22 6103 of the Internal Revenue Code of 1986 is
23 amended by adding at the end the following new
24 paragraph:

1 “(21) TRANSITIONAL DISCLOSURE OF RETURN
2 INFORMATION FOR PURPOSES OF PROVIDING LOW-
3 INCOME SUBSIDIES UNDER MEDICARE.—

4 “(A) IN GENERAL.—The Secretary, upon
5 written request from the Secretary of Health
6 and Human Services under section 1860D-
7 14(e)(1) of the Social Security Act for an indi-
8 vidual described in subparagraph (C) of such
9 section, shall disclose to officers and employees
10 of the Department of Health and Human Serv-
11 ices and the Social Security Administration
12 with respect to a taxpayer for the applicable
13 year—

14 “(i)(I) whether the adjusted gross in-
15 come, as modified in accordance with spec-
16 ifications of the Secretary of Health and
17 Human Services for purposes of carrying
18 out such section, of such taxpayer and, if
19 applicable, such taxpayer’s spouse, for the
20 applicable year, exceeds the amounts speci-
21 fied by the Secretary of Health and
22 Human Services as indicating likely eligi-
23 bility for the low-income subsidy provided
24 under section 1860D-14 of such Act,

1 “(II) whether the return was a joint
2 return, and

3 “(III) the applicable year, or

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

7 “(B) DEFINITION OF APPLICABLE YEAR.—

8 For the purposes of this paragraph, the term
9 ‘applicable year’ means the most recent taxable
10 year for which information is available in the
11 Internal Revenue Service’s taxpayer data infor-
12 mation systems, or, if there is no return filed
13 for such taxpayer for such year, the prior tax-
14 able year.

15 “(C) RESTRICTION ON USE OF DISCLOSED

16 INFORMATION.—Return information disclosed
17 under this paragraph may be used only for the
18 purposes of identifying eligible individuals for,
19 and administering—

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

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

1 “(D) TERMINATION.—Return information
2 may not be disclosed under this paragraph after
3 the date that is one year after the date of the
4 enactment of this paragraph.”.

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

8 (3) PROCEDURES AND RECORDKEEPING RE-
9 LATED TO DISCLOSURES.—Paragraph (4) of section
10 6103(p) of such Code is amended by striking “or
11 (20)” each place it appears and inserting “(20), or
12 (21)”.

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

17 **SEC. 205. INCREASE IN PERMITTED RESOURCES TO OBTAIN**
18 **LOW-INCOME SUBSIDIES.**

19 (a) INCREASE IN RESOURCE LIMITS.—Subparagraph
20 (E)(i) of section 1860D–14(a)(3) of the Social Security
21 Act (42 U.S.C. 1395ww–114(a)(3)) is amended—

22 (1) in subclause (I), by striking “for 2006” and
23 inserting “for months in 2006 before the first day
24 of the first month beginning after the date of the en-
25 actment of the Medicare Prescription Drug Savings

1 for Our Seniors (Medicare Prescription Drug SOS)
2 Act of 2006” and by striking “and” at the end;

3 (2) by redesignating subclause (II) as subclause
4 (III);

5 (3) by inserting after subclause (I) the fol-
6 lowing new subclause:

7 “(II) for months in 2006 begin-
8 ning with the first month that begins
9 after the date of the enactment of the
10 Medicare Prescription Drug Savings
11 for Our Seniors (Medicare Prescrip-
12 tion Drug SOS) Act of 2006, \$50,000
13 (or \$100,000 in the case of the com-
14 bined value of the individual’s assets
15 or resources and the assets or re-
16 sources of the individual’s spouse);
17 and”;

18 (4) in the last sentence, by striking “subclause
19 (II)” and inserting “subclause (III)”.

20 (b) NOT COUNTING VALUE OF LIFE INSURANCE AS
21 RESOURCE.—Such section is further amended—

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

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

3 “(G) EXCLUSION OF LIFE INSURANCE IN
4 RESOURCES.—For purposes of subparagraphs
5 (D) and (E), the value of a life insurance policy
6 shall not be counted as a resource for months
7 beginning after the date of the enactment of
8 this subparagraph.”.

9 **SEC. 206. WAIVER OF LATE ENROLLMENT PENALTY FOR**
10 **SUBSIDY ELIGIBLE INDIVIDUALS FOR FIRST**
11 **24 MONTHS OF NON-ENROLLMENT.**

12 Section 1860D–13(b)(3)(B) of the Social Security
13 Act (42 U.S.C. 1395w–113(b)(3)(B)) is amended by in-
14 serting before the period at the end the following: “, except
15 that in the case of a subsidy eligible individual (as defined
16 in section 1860D–14(a)(3)(A)) the first 24 uncovered
17 months shall not be counted”.

18 **TITLE III—FRAUD AND ABUSE**
19 **PROVISIONS**

20 **SEC. 301. CRIMINAL PENALTY FOR FRAUD IN CONNECTION**
21 **WITH ENROLLMENT UNDER AN MA PLAN OR**
22 **PRESCRIPTION DRUG PLAN.**

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

1 “(j) CRIMINAL PENALTY FOR FRAUD IN CONNEC-
2 TION WITH ENROLLMENT UNDER AN MA PLAN OR PRE-
3 SCRIPTION DRUG PLAN.—Whoever knowingly and will-
4 fully—

5 “(1) defrauds an individual in connection with
6 the enrollment (or nonenrollment) of the individual
7 with a Medicare Advantage plan under this part or
8 a prescription drug plan under part D; or

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

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

15 (b) CONFORMING REFERENCE IN PART D.—Section
16 1860D–12(b) of such Act (42 U.S.C. 1395w–112(b)) is
17 amended by adding at the end the following new para-
18 graph:

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

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

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

6 Section 1851 of the Social Security Act (42 U.S.C.
7 1395w–21) is amended by adding at the end the following
8 new subsection:

9 “(j) SANCTIONS AGAINST SLAMMING PRACTICES.—

10 “(1) IN GENERAL.—The Secretary shall estab-
11 lish procedures, consistent with this subsection and
12 the complaint processes otherwise available, under
13 which Medicare Advantage eligible individuals who
14 have been enrolled into an MA–PD plan without
15 their informed consent may file a complaint with the
16 Secretary regarding such enrollment. Such a com-
17 plaint shall be signed and shall attest, under penalty
18 of perjury, as to the accuracy of the statements
19 therein.

20 “(2) RESPONSE TO THE COMPLAINT.—If the
21 Secretary finds that the complaint is justified by the
22 facts in the case, the Secretary shall permit the indi-
23 vidual to be enrolled under the original medicare fee-
24 for-service program and the medicare operated pre-
25 scription drug plan or under another MA plan in

1 which the individual was previously enrolled. An in-
2 dividual who is dissatisfied with the Secretary’s deci-
3 sion on the complaint may have a hearing on the
4 complaint before an administrative law judge in a
5 manner similar to the manner in which such a hear-
6 ing is permitted under this title with respect to other
7 determinations under this title.”.

8 **SEC. 303. PROTECTION FROM LOSS OF EMPLOYMENT-**
9 **BASED RETIREE HEALTH COVERAGE UPON**
10 **ENROLLMENT FOR MEDICARE PRESCRIP-**
11 **TION DRUG BENEFIT DURING 2006.**

12 Section 1860D–22(a)(2) of the Social Security Act
13 (42 U.S.C. 1395w–132(a)(2)) is amended by adding at the
14 end the following new subparagraph:

15 “(D) PROTECTION FROM LOSS OF EM-
16 PLOYMENT-BASED COVERAGE.—The sponsor of
17 the plan may not involuntarily discontinue cov-
18 erage of an individual under a group health
19 plan before January 1, 2008, based upon the
20 individual’s decision to enroll in a prescription
21 drug plan or an MA–PD plan under this part.”.

1 **SEC. 304. REQUIRED APPLICATION OF INTERMEDIATE**
2 **SANCTIONS TO PROTECT AGAINST FRAUD**
3 **AND ABUSE.**

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

9 (b) APPLICATION TO MA–PD PLANS.—Section
10 1857(g)(1) of such Act (42 U.S.C. 1395w–27(g)(1)) is
11 amended by inserting “(or in the case of an MA–PD plan
12 or a prescription drug plan under part D, the Secretary
13 shall provide)” after “may provide”.

14 **SEC. 305. REPEAL OF SPECIAL WAIVER AUTHORITY FOR**
15 **STATE LICENSURE.**

16 Subsection (d) of section 423.410 of title 42, Code
17 of Federal Regulations, is repealed, and the Secretary of
18 Health and Human Services has no authority to provide
19 for a waiver of a State licensure requirement described
20 in such subsection except pursuant to section
21 1855(a)(2)(B) of the Social Security Act (42 U.S.C.
22 1395w–25(a)(2)(B)).

1 **TITLE IV—RELATION TO SOCIAL**
 2 **SECURITY BENEFITS**

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

6 (a) PROTECTION AGAINST DECREASE IN SOCIAL SE-
 7 CURITY BENEFITS.—

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

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

14 (B) by redesignating subparagraph (F) as
 15 subparagraph (G); and

16 (C) by inserting after subparagraph (E)
 17 the following new subparagraph:

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

1 for such months, the base beneficiary premium
2 otherwise applied under this paragraph for the
3 individual for months in that year shall be de-
4 creased by the amount (if any) by which the
5 sum of the amounts described in the following
6 clauses (i) and (ii) exceeds the amount of the
7 increase in such monthly benefits for that indi-
8 vidual attributable to section 215(i):

9 “(i) PART D PREMIUM INCREASE FAC-
10 TOR.—

11 “(I) IN GENERAL.—Except as
12 provided in this clause, the amount of
13 the increase (if any) in the adjusted
14 national average monthly bid amount
15 (as determined under subparagraph
16 (B)(iii)) for a month in the year over
17 such amount for a month in the pre-
18 ceding year.

19 “(II) NO APPLICATION TO FULL
20 PREMIUM SUBSIDY INDIVIDUALS.—In
21 the case of an individual enrolled for
22 a premium subsidy under section
23 1860D–14(a)(1), zero.

24 “(III) SPECIAL RULE FOR PAR-
25 TIAL PREMIUM SUBSIDY INDIVID-

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

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

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

18 “(II) NO APPLICATION TO INDI-
19 VIDUALS PARTICIPATING IN MEDICARE
20 SAVINGS PROGRAM.—In the case of an
21 individual who is enrolled for medical
22 assistance under title XIX for medi-
23 care cost-sharing described in section
24 1905(p)(3)(A)(ii), zero.”.

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

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

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

14 (i) by striking “and” at the end of
15 subparagraph (D);

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

19 (iii) by adding at the end the fol-
20 lowing new subparagraph:

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

24 (B) by adding at the end the following new
25 paragraph:

1 “(5) PAYMENT FOR SOCIAL SECURITY BENEFIT
2 PROTECTION PREMIUM REDUCTIONS.—

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

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

21 (b) DISREGARD OF PREMIUM REDUCTIONS IN DE-
22 TERMINING DEDICATED REVENUES UNDER MMA COST
23 CONTAINMENT.—Section 801(c)(3)(D) of the Medicare
24 Prescription Drug, Improvement, and Modernization Act
25 of 2003 (Public Law 108–173) is amended by adding at

1 the end the following: “Such premiums shall also be deter-
 2 mined without regard to any reductions effected under
 3 section 1839(f) or 1860D–13(a)(1)(F) of such title.”.

4 (c) EFFECTIVE DATES.—

5 (1) PART D PREMIUM.—The amendments made
 6 by subsection (a) apply to premiums for months be-
 7 ginning with January 2007.

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

11 **TITLE V—BENEFICIARY** 12 **PROTECTION PROVISIONS**

13 **SEC. 501. EXTENSION OF OPEN ENROLLMENT PERIOD; SUS-** 14 **PENSION OF LATE ENROLLMENT PENALTIES;** 15 **ALLOWING ONE-TIME CHANGE IN PLAN DUR-** 16 **ING FIRST YEAR OF ENROLLMENT.**

17 (a) EXTENSION OF OPEN ENROLLMENT PERIOD FOR
 18 2006.—Section 1851(e)(3)(B) of the Social Security Act
 19 (42 U.S.C. 1395w–21(e)(3)(B)) is amended in clause (iii)
 20 by striking “May 15, 2006” and inserting “November 14,
 21 2006”.

22 (b) NO LATE ENROLLMENT PENALTIES FOR
 23 MONTHS BEFORE JANUARY 2008.—Section 1860D–
 24 13(b)(3)(B) of such Act (42 U.S.C. 1395w–113(b)(3)(B))

1 is amended by inserting “(after December 2007)” after
2 “any month”.

3 (c) CHANGE IN PLAN DURING FIRST YEAR OF EN-
4 ROLLMENT.—Section 1860D–1(b)(1) of such Act (42
5 U.S.C. 1395w–101(b)(1)) is amended by adding at the
6 end the following new subparagraph:

7 “(D) CHANGE IN PRESCRIPTION DRUG
8 PLAN ALLOWED DURING FIRST YEAR OF EN-
9 ROLLMENT.—

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

18 “(ii) LIMITATION OF ONE CHANGE
19 DURING PERIOD.—An individual may exer-
20 cise the right under clause (i) only once
21 during such 12-month period and the exer-
22 cise of such right shall be in addition to
23 the exercise of any other rights to change
24 such an enrollment during such period.”.

1 **SEC. 502. COUNTING EXPENDITURES UNDER STATE DRUG**
2 **ASSISTANCE PROGRAMS AGAINST TRUE OUT-**
3 **OF-POCKET COSTS.**

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

9 **SEC. 503. PRICE DISCLOSURE.**

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

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

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

18 (3) in the second sentence, by inserting before
19 the period at the end the following: “and the Sec-
20 retary shall make the information described in the
21 previous sentence available to the public”.

22 (b) **CONFORMING AMENDMENT.**—Section
23 1927(b)(3)(D) of such Act (42 U.S.C. 1396r–8(b)(3)(D))
24 is amended by striking the last sentence.

1 **SEC. 504. REMOVAL OF COVERED PART D DRUGS FROM**
2 **THE PRESCRIPTION DRUG PLAN FOR-**
3 **MULARY.**

4 Section 1860D-4(b)(3)(E) of the Social Security Act
5 (42 U.S.C. 1395w-104(b)(3)(E)) is amended to read as
6 follows:

7 “(E) REMOVING DRUG FROM FORMULARY
8 OR CHANGING PREFERRED OR TIER STATUS OF
9 DRUG.—

10 “(i) LIMITATION ON REMOVAL OR
11 CHANGE.—Beginning with 2006, except as
12 provided in clause (iii), the PDP sponsor
13 of a prescription drug plan may not—

14 “(I) remove a covered part D
15 drug from the plan formulary;

16 “(II) change the preferred or
17 tiered cost-sharing status of such a
18 drug to a status less favorable to an
19 enrollee; or

20 “(III) introduce a barrier, such
21 as step therapy, prior authorization,
22 or quantity limitation, to access to
23 covered part D drugs,

24 unless advance notice under clause (ii) of
25 such removal, change, or introduction has
26 been provided and unless such removal,

1 change, or introduction is only effective be-
2 ginning on January 1 of the year following
3 the year in which such notice is provided.

4 “(ii) NOTICE.—The notice under this
5 clause is an appropriate notice (such as
6 under subsection (a)(3)) to the Secretary,
7 affected enrollees, physicians, pharmacies,
8 and pharmacists during the period begin-
9 ning on September 1 and ending on Octo-
10 ber 31 of a year. Such notice shall ensure
11 that such information is made available
12 prior to the annual, coordinated open elec-
13 tion period described in section
14 1851(e)(3)(B)(iii), as applied under section
15 1860D–1(b)(1)(B)(iii).

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

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

21 “(II) if, during a plan year, the
22 drug changes from being a single
23 source drug to a multiple source drug
24 (as defined in section 1927(k)), and
25 the prescription drug plan covers an-

1 other bioequivalent multiple source
2 drug at the same or lower cost-shar-
3 ing to enrolled individuals.”.

4 **SEC. 505. CODIFICATION OF REQUIREMENT FOR COV-**
5 **ERAGE OF ALL OR SUBSTANTIALLY ALL OF**
6 **DRUGS WITHIN SIX CATEGORIES OF DRUGS.**

7 (a) IN GENERAL.—Section 1860D–4(b)(3) of the So-
8 cial Security Act (42 U.S.C. 1395w–104(b)(3)) is amend-
9 ed—

10 (1) in subparagraph (C)(i), by striking “The
11 formulary” and inserting “Subject to subparagraph
12 (G), the formulary”; and

13 (2) by inserting after subparagraph (F) the fol-
14 lowing new subparagraph:

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

17 “(i) IN GENERAL.—The formulary
18 must include all or substantially all drugs
19 in the following categories that are avail-
20 able as of April 17 of the prior year and
21 shall include at least some drugs from each
22 category without restrictions or limitations
23 on coverage (such as through the applica-
24 tion of a less-preferred cost-sharing tier or
25 status, usage restriction, step therapy,

1 prior authorization, or a quantity limita-
2 tion):

3 “(I) Immunosuppressant.

4 “(II) Antidepressant.

5 “(III) Antipsychotic.

6 “(IV) Anticonvulsant.

7 “(V) Antiretroviral.

8 “(VI) Antineoplastic.

9 “(ii) SUBSTANTIALLY ALL DE-
10 FINED.—For purposes of clause (i), the
11 term ‘substantially all’ means all drugs
12 and unique dosage forms in the categories
13 described in such clause, except for—

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

16 “(II) extended release products
17 when the immediate-release product is
18 included on the formulary;

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

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

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall apply to contract years beginning on
3 or after January 1, 2007.

4 **SEC. 506. REMOVAL OF EXCLUSION OF BENZODIAZEPINES**
5 **FROM REQUIRED COVERAGE UNDER THE**
6 **MEDICARE PRESCRIPTION DRUG PROGRAM.**

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

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

12 (2) by inserting “and benzodiazepines” after
13 “smoking cessation agents”.

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

1 (c) DEVELOPMENT BY MEDICARE QUALITY IM-
2 PROVEDMENT ORGANIZATIONS OF EDUCATIONAL GUIDE-
3 LINES FOR PHYSICIANS REGARDING PRESCRIBING OF
4 BENZODIAZEPINES.—The Secretary of Health and
5 Human Services shall provide, in contracts entered into
6 with medicare quality improvement organizations under
7 part B of title XI of the Social Security Act, for the devel-
8 opment by such organizations of appropriate educational
9 guidelines for physicians regarding the prescribing of
10 benzodiazepines.

11 (d) EFFECTIVE DATE.—The amendments made by
12 this section shall be effective as if included in the enact-
13 ment of the Medicare Prescription Drug, Improvement,
14 and Modernization Act of 2003 (Public Law 108–173).

15 **SEC. 507. STANDARDIZED FORMS AND PROCEDURES FOR**
16 **RECONSIDERATIONS AND APPEALS.**

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

20 “(1) STANDARDIZED FORMS AND PROCEDURES FOR
21 RECONSIDERATIONS AND APPEALS.—

22 “(1) STANDARD ENROLLEE NOTICE.—The Sec-
23 retary shall develop a standard notice to be distrib-
24 uted by a prescription drug plan (or an MA–PD
25 plan) to an enrollee when a covered part D drug pre-

1 scribed for the enrollee is not covered, or the cov-
2 erage of such drug is otherwise restricted, by the
3 plan.

4 “(2) STANDARDIZED PROCESS FOR RECONSID-
5 ERATIONS AND APPEALS.—The Secretary shall re-
6 quire prescription drug plans and MA–PD plans to
7 follow the same standardized process for reconsider-
8 ations and redeterminations under subsections (g)
9 and (h). Such process shall require that determina-
10 tions regarding medical necessity are based on pro-
11 fessional medical judgement, the medical condition
12 of the enrollee, the treating physician’s recommenda-
13 tion, and other medical evidence.”

14 (b) EFFECTIVE DATE.—The Secretary of Health and
15 Human Services shall provide for the standard notice and
16 the standardized process, and the application of such no-
17 tice and process, under the amendment made by sub-
18 section (a) by not later than January 1, 2007.

19 **SEC. 508. ELIMINATION OF MA REGIONAL STABILIZATION**
20 **FUND (SLUSH FUND); ELIMINATION OF CER-**
21 **TAIN MA OVERPAYMENTS.**

22 (a) ELIMINATION OF SLUSH FUND.—

23 (1) IN GENERAL.—Subsection (e) of section
24 1858 of the Social Security Act (42 U.S.C. 1395w-
25 27a) is repealed.

1 (2) CONFORMING AMENDMENT.—Section
2 1858(f)(1) of the Social Security Act (42 U.S.C.
3 1395w–27a(f)(1)) is amended by striking “subject to
4 subsection (e),”.

5 (3) EFFECTIVE DATE.—The amendments made
6 by this subsection shall take effect as if included in
7 the enactment of section 221(c) of the Medicare Pre-
8 scription Drug, Improvement, and Modernization
9 Act of 2003 (Public Law 108–173; 117 Stat. 2181).

10 (b) ELIMINATION OF CERTAIN MEDICARE ADVAN-
11 TAGE OVERPAYMENTS.—

12 (1) IN GENERAL.—Section 1853(a)(1)(C)(ii) of
13 the Social Security Act (42 U.S.C. 1395w–
14 23(a)(1)(C)(ii)), as added by section 5301 of the
15 Deficit Reduction Act of 2005, is amended—

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

18 (B) in the matter preceding subclause (I),
19 by striking “through 2010” and inserting “and
20 subsequent years”; and

21 (C) in subclause (II), by striking “only for
22 2008, 2009, and 2010” and inserting “for 2008
23 and subsequent years”.

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

1 the enactment of section 5301 of the Deficit Reduc-
2 tion Act of 2005.

3 **TITLE VI—FAIR AND SPEEDY**
4 **TREATMENT OF MEDICARE**
5 **PRESCRIPTION DRUG CLAIMS**

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

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

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

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

24 “(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 in
8 the same manner as they apply to contracts with a
9 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. MINIMUM DISPENSING FEES FOR GENERIC COV-**
6 **ERED PART D DRUGS.**

7 (a) IN GENERAL.—Section 1860D-4(b)(1) of the So-
8 cial Security Act (42 U.S.C. 1395w-104(b)(1)) is amend-
9 ed by adding at the end the following new subparagraph:

10 “(F) PAYMENT OF MINIMUM DISPENSING
11 FEES TO ENCOURAGE USE OF GENERIC
12 DRUGS.—

13 “(i) IN GENERAL.—Subject to clauses
14 (ii) and (iii), with respect to a generic cov-
15 ered part D drug that is therapeutically
16 equivalent and bioequivalent to a brand
17 name drug that is a covered part D drug
18 dispensed through a participating phar-
19 macy, the amount of the dispensing fee
20 paid to the pharmacy for the generic cov-
21 ered part D drug shall be an amount that
22 is at least the greater of—

23 “(I) 50 percent greater than the
24 amount of the dispensing fee for the
25 brand name drug; or

1 “(II) \$10.

2 “(ii) SAFE HARBOR FOR BRAND NAME
3 DRUG DISPENSING FEE AMOUNTS.—

4 “(I) IN GENERAL.—For purposes
5 of clause (i) and subject to subclause
6 (II), a prescription drug plan under
7 this section shall not decrease the
8 amount of the dispensing fee paid by
9 the plan to a participating pharmacy
10 for a brand name drug described in
11 such clause to an amount that is less
12 than the amount of the dispensing fee
13 paid by such plan to such pharmacy
14 for such drug on the date of the en-
15 actment of this subparagraph.

16 “(II) EXCEPTION.—The Sec-
17 retary may waive the prohibition
18 under subclause (I) with respect to a
19 dispensing fee paid by a prescription
20 drug plan for a brand name drug, as
21 the Secretary determines appro-
22 priate.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall apply to prescriptions filled on or after

1 the date that is the first day of the first contract year
2 after the date of the enactment of this Act.

3 **SEC. 604. PROVISION OF MEDICATION THERAPY MANAGE-**
4 **MENT SERVICES UNDER PART D.**

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

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

10 (A) in subparagraph (A)—

11 (i) in clause (i)—

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

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

20 (ii) by striking clause (ii) and insert-
21 ing the following:

22 “(ii) TARGETED BENEFICIARIES.—
23 The Secretary shall specify the population
24 of part D eligible individuals appropriate
25 for services under a medication therapy

1 management program based on the fol-
2 lowing characteristics:

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

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

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

1 (B) by striking subparagraph (B) and in-
2 serting the following:

3 “(B) ELEMENTS.—

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

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

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

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

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

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

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

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

23 “(VIII) Providing disease-specific
24 medication therapy management serv-
25 ices when appropriate.

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

6 “(ii) DELIVERY OF SERVICES.—

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

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

19 “(III) DISTINCT FROM OTHER
20 ACTIVITIES.—Such services shall be
21 distinct from any activities related to
22 formulary development and use, gen-
23 eralized patient education and infor-
24 mation activities, and any population-

1 focused quality assurance measures
2 for medication use.

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

10 (C) by striking subparagraph (E) and in-
11 serting the following:

12 “(E) PHARMACY FEES.—

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

20 “(ii) SUBMISSION ALONG WITH PLAN
21 INFORMATION.—Each such sponsor shall
22 disclose to the Secretary upon request the
23 amount of any such payments and shall
24 submit a description of how such payments
25 are calculated along with the information

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

7 (D) by adding at the end the following new
8 subparagraph:

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

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

22 (b) MEDICATION THERAPY MANAGEMENT DEM-
23 ONSTRATION PROGRAM.—Section 1860D–4(c) of the So-
24 cial Security Act (42 U.S.C.1395w–104(c)) is amended by
25 adding at the end the following new paragraph:

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

3 “(A) ESTABLISHMENT.—

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

18 “(ii) SITES.—

19 “(I) IN GENERAL.—Subject to
20 subclause (II), the Secretary shall
21 designate not less than 10 PDP spon-
22 sors of prescription drug plans or
23 Medicare Advantage organizations of-
24 fering MA–PD plans, none of which
25 provide prescription drug coverage

1 under such plans in the same PDP or
2 MA region, respectively, to conduct
3 the demonstration program under this
4 paragraph.

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

13 “(B) BEST PRACTICES COMMISSION.—

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