

108TH CONGRESS  
1ST SESSION

# S. 778

To amend title XVIII of the Social Security Act to provide medicare beneficiaries with a drug discount card that ensures access to affordable prescription drugs.

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## IN THE SENATE OF THE UNITED STATES

APRIL 3, 2003

Mr. HAGEL (for himself, Mr. ENSIGN, Mr. LUGAR, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to provide medicare beneficiaries with a drug discount card that ensures access to affordable prescription drugs.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Medicare Rx Drug Discount and Security Act of 2003”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Voluntary Medicare Prescription Drug Discount and Security Program.

“PART D—VOLUNTARY MEDICARE PRESCRIPTION DRUG DISCOUNT AND  
SECURITY PROGRAM

“Sec. 1860. Definitions.

“Sec. 1860A. Establishment of program.

“Sec. 1860B. Enrollment.

“Sec. 1860C. Providing enrollment and coverage information to beneficiaries.

“Sec. 1860D. Enrollee protections.

“Sec. 1860E. Annual enrollment fee.

“Sec. 1860F. Benefits under the program.

“Sec. 1860G. Requirements for entities to provide prescription drug coverage.

“Sec. 1860H. Payments to eligible entities for administering the catastrophic benefit.

“Sec. 1860I. Determination of income levels.

“Sec. 1860J. Appropriations.

“Sec. 1860K. Medicare Competition and Prescription Drug Advisory Board.”.

Sec. 3. Administration of Voluntary Medicare Prescription Drug Discount and Security Program.

Sec. 4. Exclusion of part D costs from determination of part B monthly premium.

Sec. 5. Medigap revisions.

**1 SEC. 2. VOLUNTARY MEDICARE PRESCRIPTION DRUG DIS-**  
**2 COUNT AND SECURITY PROGRAM.**

3 (a) ESTABLISHMENT OF PROGRAM.—Title XVIII of  
4 the Social Security Act (42 U.S.C. 1395 et seq.) is amend-  
5 ed—

6 (1) by redesignating part D as part E; and

7 (2) by inserting after part C the following new  
8 part:

9 “PART D—VOLUNTARY MEDICARE PRESCRIPTION DRUG  
10 DISCOUNT AND SECURITY PROGRAM

11 “DEFINITIONS

12 “SEC. 1860. In this part:

13 “(1) COVERED DRUG.—

1           “(A) IN GENERAL.—Except as provided in  
2 this paragraph, the term ‘covered drug’  
3 means—

4           “(i) a drug that may be dispensed  
5 only upon a prescription and that is de-  
6 scribed in subparagraph (A)(i) or (A)(ii) of  
7 section 1927(k)(2); or

8           “(ii) a biological product described in  
9 clauses (i) through (iii) of subparagraph  
10 (B) of such section or insulin described in  
11 subparagraph (C) of such section,

12 and such term includes a vaccine licensed under  
13 section 351 of the Public Health Service Act  
14 and any use of a covered drug for a medically  
15 accepted indication (as defined in section  
16 1927(k)(6)).

17           “(B) EXCLUSIONS.—

18           “(i) IN GENERAL.—Such term does  
19 not include drugs or classes of drugs, or  
20 their medical uses, which may be excluded  
21 from coverage or otherwise restricted  
22 under section 1927(d)(2), other than sub-  
23 paragraph (E) thereof (relating to smoking  
24 cessation agents), or under section  
25 1927(d)(3).

1                   “(ii) AVOIDANCE OF DUPLICATE COV-  
2 ERAGE.—A drug prescribed for an indi-  
3 vidual that would otherwise be a covered  
4 drug under this part shall not be so con-  
5 sidered if payment for such drug is avail-  
6 able under part A or B for an individual  
7 entitled to benefits under part A and en-  
8 rolled under part B.

9                   “(C) APPLICATION OF FORMULARY RE-  
10 STRICTIONS.—A drug prescribed for an indi-  
11 vidual that would otherwise be a covered drug  
12 under this part shall not be so considered under  
13 a plan if the plan excludes the drug under a  
14 formulary and such exclusion is not successfully  
15 appealed under section 1860D(a)(4)(B).

16                   “(D) APPLICATION OF GENERAL EXCLU-  
17 SION PROVISIONS.—A prescription drug dis-  
18 count card plan or Medicare+Choice plan may  
19 exclude from qualified prescription drug cov-  
20 erage any covered drug—

21                   “(i) for which payment would not be  
22 made if section 1862(a) applied to part D;  
23 or

24                   “(ii) which are not prescribed in ac-  
25 cordance with the plan or this part.

1           Such exclusions are determinations subject to  
2           reconsideration and appeal pursuant to section  
3           1860D(a)(4).

4           “(2) ELIGIBLE BENEFICIARY.—The term ‘eligi-  
5           ble beneficiary’ means an individual who is—

6                   “(A) eligible for benefits under part A or  
7                   enrolled under part B; and

8                   “(B) not eligible for prescription drug cov-  
9                   erage under a State plan under the medicaid  
10                  program under title XIX.

11          “(3) ELIGIBLE ENTITY.—The term ‘eligible en-  
12          tity’ means any—

13                   “(A) pharmaceutical benefit management  
14                   company;

15                   “(B) wholesale pharmacy delivery system;

16                   “(C) retail pharmacy delivery system;

17                   “(D) insurer (including any issuer of a  
18                   medicare supplemental policy under section  
19                   1882);

20                   “(E) Medicare+Choice organization;

21                   “(F) State (in conjunction with a pharma-  
22                   ceutical benefit management company);

23                   “(G) employer-sponsored plan;

1           “(H) other entity that the Secretary deter-  
2           mines to be appropriate to provide benefits  
3           under this part; or

4           “(I) combination of the entities described  
5           in subparagraphs (A) through (H).

6           “(4) POVERTY LINE.—The term ‘poverty line’  
7           means the income official poverty line (as defined by  
8           the Office of Management and Budget, and revised  
9           annually in accordance with section 673(2) of the  
10          Omnibus Budget Reconciliation Act of 1981) appli-  
11          cable to a family of the size involved.

12          “(5) SECRETARY.—The term ‘Secretary’ means  
13          the Secretary of Health and Human Services, acting  
14          through the Administrator of the Centers for Medi-  
15          care & Medicaid Services.

16                   “ESTABLISHMENT OF PROGRAM

17          “SEC. 1860A. (a) PROVISION OF BENEFIT.—The  
18          Secretary shall establish a Medicare Prescription Drug  
19          Discount and Security Program under which the Secretary  
20          endorses prescription drug card plans offered by eligible  
21          entities in which eligible beneficiaries may voluntarily en-  
22          roll and receive benefits under this part.

23          “(b) ENDORSEMENT OF PRESCRIPTION DRUG DIS-  
24          COUNT CARD PLANS.—

25                  “(1) IN GENERAL.—The Secretary shall en-  
26          dorse a prescription drug card plan offered by an eli-



1           “(B) REQUIREMENT OF ENROLLMENT.—  
2           An eligible beneficiary must enroll under this  
3           part in order to be eligible to receive the bene-  
4           fits under this part.

5           “(2) ENROLLMENT PERIODS.—

6           “(A) IN GENERAL.—Except as provided in  
7           this paragraph, an eligible beneficiary may not  
8           enroll in the program under this part during  
9           any period after the beneficiary’s initial enroll-  
10          ment period under part B (as determined under  
11          section 1837).

12          “(B) SPECIAL ENROLLMENT PERIOD.—In  
13          the case of eligible beneficiaries that have re-  
14          cently lost eligibility for prescription drug cov-  
15          erage under a State plan under the medicaid  
16          program under title XIX, the Secretary shall  
17          establish a special enrollment period in which  
18          such beneficiaries may enroll under this part.

19          “(C) OPEN ENROLLMENT PERIOD IN 2004  
20          FOR CURRENT BENEFICIARIES.—The Secretary  
21          shall establish a period, which shall begin on  
22          the date on which the Secretary first begins to  
23          accept elections for enrollment under this part,  
24          during which any eligible beneficiary may—

25                 “(i) enroll under this part; or

1                   “(ii) enroll or reenroll under this part  
2                   after having previously declined or termi-  
3                   nated such enrollment.

4                   “(3) PERIOD OF COVERAGE.—

5                   “(A) IN GENERAL.—Except as provided in  
6                   subparagraph (B) and subject to subparagraph  
7                   (C), an eligible beneficiary’s coverage under the  
8                   program under this part shall be effective for  
9                   the period provided under section 1838, as if  
10                  that section applied to the program under this  
11                  part.

12                  “(B) ENROLLMENT DURING OPEN AND  
13                  SPECIAL ENROLLMENT.—Subject to subpara-  
14                  graph (C), an eligible beneficiary who enrolls  
15                  under the program under this part under sub-  
16                  paragraph (B) or (C) of paragraph (2) shall be  
17                  entitled to the benefits under this part begin-  
18                  ning on the first day of the month following the  
19                  month in which such enrollment occurs.

20                  “(4) PART D COVERAGE TERMINATED BY TER-  
21                  MINATION OF COVERAGE UNDER PARTS A AND B OR  
22                  ELIGIBILITY FOR MEDICAL ASSISTANCE.—

23                  “(A) IN GENERAL.—In addition to the  
24                  causes of termination specified in section 1838,

1 the Secretary shall terminate an individual's  
2 coverage under this part if the individual is—

3 “(i) no longer enrolled in part A or B;

4 or

5 “(ii) eligible for prescription drug cov-  
6 erage under a State plan under the med-  
7 icaid program under title XIX.

8 “(B) EFFECTIVE DATE.—The termination  
9 described in subparagraph (A) shall be effective  
10 on the effective date of—

11 “(i) the termination of coverage under  
12 part A or (if later) under part B; or

13 “(ii) the coverage under title XIX.

14 “(b) ENROLLMENT WITH ELIGIBLE ENTITY.—

15 “(1) PROCESS.—The Secretary shall establish a  
16 process through which an eligible beneficiary who is  
17 enrolled under this part shall make an annual elec-  
18 tion to enroll in a prescription drug card plan of-  
19 fered by an eligible entity that has been awarded a  
20 contract under this part and serves the geographic  
21 area in which the beneficiary resides.

22 “(2) ELECTION PERIODS.—

23 “(A) IN GENERAL.—Except as provided in  
24 this paragraph, the election periods under this  
25 subsection shall be the same as the coverage

1 election periods under the Medicare+Choice  
2 program under section 1851(e), including—

3 “(i) annual coordinated election peri-  
4 ods; and

5 “(ii) special election periods.

6 In applying the last sentence of section  
7 1851(e)(4) (relating to discontinuance of a  
8 Medicare+Choice election during the first year  
9 of eligibility) under this subparagraph, in the  
10 case of an election described in such section in  
11 which the individual had elected or is provided  
12 qualified prescription drug coverage at the time  
13 of such first enrollment, the individual shall be  
14 permitted to enroll in a prescription drug card  
15 plan under this part at the time of the election  
16 of coverage under the original fee-for-service  
17 plan.

18 “(B) INITIAL ELECTION PERIODS.—

19 “(i) INDIVIDUALS CURRENTLY COV-  
20 ERED.—In the case of an individual who is  
21 entitled to benefits under part A or en-  
22 rolled under part B as of November 1,  
23 2004, there shall be an initial election pe-  
24 riod of 6 months beginning on that date.

1           “(ii) INDIVIDUAL COVERED IN FU-  
2           TURE.—In the case of an individual who is  
3           first entitled to benefits under part A or  
4           enrolled under part B after such date,  
5           there shall be an initial election period  
6           which is the same as the initial enrollment  
7           period under section 1837(d).

8           “(C) ADDITIONAL SPECIAL ELECTION PE-  
9           RIODS.—The Administrator shall establish spe-  
10          cial election periods—

11           “(i) in cases of individuals who have  
12           and involuntarily lose prescription drug  
13           coverage described in paragraph (3);

14           “(ii) in cases described in section  
15           1837(h) (relating to errors in enrollment),  
16           in the same manner as such section applies  
17           to part B; and

18           “(iii) in the case of an individual who  
19           meets such exceptional conditions (includ-  
20           ing conditions provided under section  
21           1851(e)(4)(D)) as the Secretary may pro-  
22           vide.

23           “(D) ENROLLMENT WITH ONE PLAN  
24           ONLY.—The rules established under subpara-  
25           graph (B) shall ensure that an eligible bene-

1            beneficiary may only enroll in 1 prescription drug  
2            card plan offered by an eligible entity per year.

3            “(3) **MEDICARE+CHOICE ENROLLEES.**—An eli-  
4            gible beneficiary who is enrolled under this part and  
5            enrolled in a Medicare+Choice plan offered by a  
6            Medicare+Choice organization must enroll in a pre-  
7            scription drug discount card plan offered by an eligi-  
8            ble entity in order to receive benefits under this  
9            part. The beneficiary may elect to receive such bene-  
10           fits through the Medicare+Choice organization in  
11           which the beneficiary is enrolled if the organization  
12           has been awarded a contract under this part.

13           “(4) **CONTINUOUS PRESCRIPTION DRUG COV-**  
14           **ERAGE.**—An individual is considered for purposes of  
15           this part to be maintaining continuous prescription  
16           drug coverage on and after the date the individual  
17           first qualifies to elect prescription drug coverage  
18           under this part if the individual establishes that as  
19           of such date the individual is covered under any of  
20           the following prescription drug coverage and before  
21           the date that is the last day of the 63-day period  
22           that begins on the date of termination of the par-  
23           ticular prescription drug coverage involved (regard-  
24           less of whether the individual subsequently obtains  
25           any of the following prescription drug coverage):

1           “(A) COVERAGE UNDER PRESCRIPTION  
2 DRUG CARD PLAN OR MEDICARE+CHOICE  
3 PLAN.—Prescription drug coverage under a pre-  
4 scription drug card plan under this part or  
5 under a Medicare+Choice plan.

6           “(B) MEDICAID PRESCRIPTION DRUG COV-  
7 ERAGE.—Prescription drug coverage under a  
8 medicaid plan under title XIX, including  
9 through the Program of All-inclusive Care for  
10 the Elderly (PACE) under section 1934,  
11 through a social health maintenance organiza-  
12 tion (referred to in section 4104(c) of the Bal-  
13 anced Budget Act of 1997), or through a  
14 Medicare+Choice project that demonstrates the  
15 application of capitation payment rates for frail  
16 elderly medicare beneficiaries through the use  
17 of a interdisciplinary team and through the pro-  
18 vision of primary care services to such bene-  
19 ficiaries by means of such a team at the nurs-  
20 ing facility involved.

21           “(C) PRESCRIPTION DRUG COVERAGE  
22 UNDER GROUP HEALTH PLAN.—Any prescrip-  
23 tion drug coverage under a group health plan,  
24 including a health benefits plan under the Fed-  
25 eral Employees Health Benefit Plan under

1 chapter 89 of title 5, United States Code, and  
2 a qualified retiree prescription drug plan (as de-  
3 fined by the Secretary), but only if (subject to  
4 subparagraph (E)(ii)) the coverage provides  
5 benefits at least equivalent to the benefits under  
6 a prescription drug card plan under this part.

7 “(D) PRESCRIPTION DRUG COVERAGE  
8 UNDER CERTAIN MEDIGAP POLICIES.—Coverage  
9 under a medicare supplemental policy under  
10 section 1882 that provides benefits for prescrip-  
11 tion drugs (whether or not such coverage con-  
12 forms to the standards for packages of benefits  
13 under section 1882(p)(1)) and if (subject to  
14 subparagraph (E)(ii)) the coverage provides  
15 benefits at least equivalent to the benefits under  
16 a prescription drug card plan under this part.

17 “(E) STATE PHARMACEUTICAL ASSIST-  
18 ANCE PROGRAM.—Coverage of prescription  
19 drugs under a State pharmaceutical assistance  
20 program, but only if (subject to subparagraph  
21 (E)(ii)) the coverage provides benefits at least  
22 equivalent to the benefits under a prescription  
23 drug card plan under this part.

24 “(F) VETERANS’ COVERAGE OF PRESCRIP-  
25 TION DRUGS.—Coverage of prescription drugs

1 for veterans under chapter 17 of title 38,  
2 United States Code, but only if (subject to sub-  
3 paragraph (E)(ii)) the coverage provides bene-  
4 fits at least equivalent to the benefits under a  
5 prescription drug card plan under this part.

6 For purposes of carrying out this paragraph, the  
7 certifications of the type described in sections  
8 2701(e) of the Public Health Service Act and in sec-  
9 tion 9801(e) of the Internal Revenue Code of 1986  
10 shall also include a statement for the period of cov-  
11 erage of whether the individual involved had pre-  
12 scription drug coverage described in this paragraph.

13 “(5) COMPETITION.—Each eligible entity with a  
14 contract under this part shall compete for the enroll-  
15 ment of beneficiaries in a prescription drug card  
16 plan offered by the entity on the basis of discounts,  
17 formularies, pharmacy networks, and other services  
18 provided for under the contract.

19 “PROVIDING ENROLLMENT AND COVERAGE INFORMATION  
20 TO BENEFICIARIES

21 “SEC. 1860C. (a) ACTIVITIES.—The Secretary shall  
22 provide for activities under this part to broadly dissemi-  
23 nate information to eligible beneficiaries (and prospective  
24 eligible beneficiaries) regarding enrollment under this part  
25 and the prescription drug card plans offered by eligible  
26 entities with a contract under this part.

1       “(b) SPECIAL RULE FOR FIRST ENROLLMENT  
 2 UNDER THE PROGRAM.—To the extent practicable, the  
 3 activities described in subsection (a) shall ensure that eli-  
 4 gible beneficiaries are provided with such information at  
 5 least 60 days prior to the first enrollment period described  
 6 in section 1860B(c).

7                               “ENROLLEE PROTECTIONS

8       “SEC. 1860D. (a) REQUIREMENTS FOR ALL ELIGI-  
 9 BLE ENTITIES.—Each eligible entity shall meet the fol-  
 10 lowing requirements:

11                   “(1) GUARANTEED ISSUANCE AND NON-  
 12 DISCRIMINATION.—

13                               “(A) GUARANTEED ISSUANCE.—

14                                       “(i) IN GENERAL.—An eligible bene-  
 15 ficiary who is eligible to enroll in a pre-  
 16 scription drug card plan offered by an eli-  
 17 gible entity under section 1860B(b) for  
 18 prescription drug coverage under this part  
 19 at a time during which elections are ac-  
 20 cepted under this part with respect to the  
 21 coverage shall not be denied enrollment  
 22 based on any health status-related factor  
 23 (described in section 2702(a)(1) of the  
 24 Public Health Service Act) or any other  
 25 factor.

1           “(ii) MEDICARE+CHOICE LIMITA-  
2           TIONS PERMITTED.—The provisions of  
3           paragraphs (2) and (3) (other than sub-  
4           paragraph (C)(i), relating to default enroll-  
5           ment) of section 1851(g) (relating to pri-  
6           ority and limitation on termination of elec-  
7           tion) shall apply to eligible entities under  
8           this subsection.

9           “(B) NONDISCRIMINATION.—An eligible  
10          entity offering prescription drug coverage under  
11          this part shall not establish a service area in a  
12          manner that would discriminate based on health  
13          or economic status of potential enrollees.

14          “(2) DISCLOSURE OF INFORMATION.—

15                 “(A) INFORMATION.—

16                         “(i) GENERAL INFORMATION.—Each  
17                         eligible entity with a contract under this  
18                         part to provide a prescription drug card  
19                         plan shall disclose, in a clear, accurate,  
20                         and standardized form to each eligible ben-  
21                         eficiary enrolled in a prescription drug dis-  
22                         count card program offered by such entity  
23                         under this part at the time of enrollment  
24                         and at least annually thereafter, the infor-

1           mation described in section 1852(c)(1) re-  
2           lating to such prescription drug coverage.

3           “(ii) SPECIFIC INFORMATION.—In ad-  
4           dition to the information described in  
5           clause (i), each eligible entity with a con-  
6           tract under this part shall disclose the fol-  
7           lowing:

8                   “(I) How enrollees will have ac-  
9                   cess to covered drugs, including access  
10                  to such drugs through pharmacy net-  
11                  works.

12                  “(II) How any formulary used by  
13                  the eligible entity functions.

14                  “(III) Information on grievance  
15                  and appeals procedures.

16                  “(IV) Information on enrollment  
17                  fees and prices charged to the enrollee  
18                  for covered drugs.

19                  “(V) Any other information that  
20                  the Secretary determines is necessary  
21                  to promote informed choices by eligi-  
22                  ble beneficiaries among eligible enti-  
23                  ties.

24           “(B) DISCLOSURE UPON REQUEST OF  
25           GENERAL COVERAGE, UTILIZATION, AND GRIEV-

1 ANCE INFORMATION.—Upon request of an eligi-  
2 ble beneficiary, the eligible entity shall provide  
3 the information described in paragraph (3) to  
4 such beneficiary.

5 “(C) RESPONSE TO BENEFICIARY QUES-  
6 TIONS.—Each eligible entity offering a prescrip-  
7 tion drug discount card plan under this part  
8 shall have a mechanism for providing specific  
9 information to enrollees upon request. The enti-  
10 ty shall make available, through an Internet  
11 website and, upon request, in writing, informa-  
12 tion on specific changes in its formulary.

13 “(3) GRIEVANCE MECHANISM, COVERAGE DE-  
14 TERMINATIONS, AND RECONSIDERATIONS.—

15 “(A) IN GENERAL.—With respect to the  
16 benefit under this part, each eligible entity of-  
17 fering a prescription drug discount card plan  
18 shall provide meaningful procedures for hearing  
19 and resolving grievances between the organiza-  
20 tion (including any entity or individual through  
21 which the eligible entity provides covered bene-  
22 fits) and enrollees with prescription drug card  
23 plans of the eligible entity under this part in ac-  
24 cordance with section 1852(f).

1           “(B) APPLICATION OF COVERAGE DETER-  
2           MINATION AND RECONSIDERATION PROVI-  
3           SIONS.—Each eligible entity shall meet the re-  
4           quirements of paragraphs (1) through (3) of  
5           section 1852(g) with respect to covered benefits  
6           under the prescription drug card plan it offers  
7           under this part in the same manner as such re-  
8           quirements apply to a Medicare+Choice organi-  
9           zation with respect to benefits it offers under a  
10          Medicare+Choice plan under part C.

11          “(C) REQUEST FOR REVIEW OF TIERED  
12          FORMULARY DETERMINATIONS.—In the case of  
13          a prescription drug card plan offered by an eli-  
14          gible entity that provides for tiered cost-sharing  
15          for drugs included within a formulary and pro-  
16          vides lower cost-sharing for preferred drugs in-  
17          cluded within the formulary, an individual who  
18          is enrolled in the plan may request coverage of  
19          a nonpreferred drug under the terms applicable  
20          for preferred drugs if the prescribing physician  
21          determines that the preferred drug for treat-  
22          ment of the same condition is not as effective  
23          for the individual or has adverse effects for the  
24          individual.

25          “(4) APPEALS.—

1           “(A) IN GENERAL.—Subject to subpara-  
2 graph (B), each eligible entity offering a pre-  
3 scription drug card plan shall meet the require-  
4 ments of paragraphs (4) and (5) of section  
5 1852(g) with respect to drugs not included on  
6 any formulary in the same manner as such re-  
7 quirements apply to a Medicare+Choice organi-  
8 zation with respect to benefits it offers under a  
9 Medicare+Choice plan under part C.

10           “(B) FORMULARY DETERMINATIONS.—An  
11 individual who is enrolled in a prescription drug  
12 card plan offered by an eligible entity may ap-  
13 peal to obtain coverage under this part for a  
14 covered drug that is not on a formulary of the  
15 eligible entity if the prescribing physician deter-  
16 mines that the formulary drug for treatment of  
17 the same condition is not as effective for the in-  
18 dividual or has adverse effects for the indi-  
19 vidual.

20           “(5) CONFIDENTIALITY AND ACCURACY OF EN-  
21 ROLLEE RECORDS.—Each eligible entity offering a  
22 prescription drug discount card plan shall meet the  
23 requirements of the Health Insurance Portability  
24 and Accountability Act of 1996.

1       “(b) ELIGIBLE ENTITIES OFFERING A DISCOUNT  
2 CARD PROGRAM.—If an eligible entity offers a discount  
3 card program under this part, in addition to the require-  
4 ments under subsection (a), the entity shall meet the fol-  
5 lowing requirements:

6               “(1) ACCESS TO COVERED BENEFITS.—

7                       “(A) ASSURING PHARMACY ACCESS.—

8                               “(i) IN GENERAL.—The eligible entity  
9 offering the prescription drug discount  
10 card plan shall secure the participation in  
11 its network of a sufficient number of phar-  
12 macies that dispense (other than by mail  
13 order) drugs directly to patients to ensure  
14 convenient access (as determined by the  
15 Secretary and including adequate emer-  
16 gency access) for enrolled beneficiaries, in  
17 accordance with standards established  
18 under section 1860D(a)(3) that ensure  
19 such convenient access.

20                               “(ii) USE OF POINT-OF-SERVICE SYS-  
21 TEM.—Each eligible entity offering a pre-  
22 scription drug discount card plan shall es-  
23 tablish an optional point-of-service method  
24 of operation under which—

1                   “(I) the plan provides access to  
2                   any or all pharmacies that are not  
3                   participating pharmacies in its net-  
4                   work; and

5                   “(II) discounts under the plan  
6                   may not be available.

7                   The additional copayments so charged  
8                   shall not be counted as out-of-pocket ex-  
9                   penses for purposes of section 1860F(b).

10                   “(B) USE OF STANDARDIZED TECH-  
11                   NOLOGY.—

12                   “(i) IN GENERAL.—Each eligible enti-  
13                   ty offering a prescription drug discount  
14                   card plan shall issue (and reissue, as ap-  
15                   propriate) such a card (or other tech-  
16                   nology) that may be used by an enrolled  
17                   beneficiary to assure access to negotiated  
18                   prices under section 1860F(a) for the pur-  
19                   chase of prescription drugs for which cov-  
20                   erage is not otherwise provided under the  
21                   prescription drug discount card plan.

22                   “(ii) STANDARDS.—The Secretary  
23                   shall provide for the development of na-  
24                   tional standards relating to a standardized  
25                   format for the card or other technology re-

1           ferred to in clause (i). Such standards  
2           shall be compatible with standards estab-  
3           lished under part C of title XI.

4           “(C) REQUIREMENTS ON DEVELOPMENT  
5           AND APPLICATION OF FORMULARIES.—If an eli-  
6           gible entity that offers a prescription drug dis-  
7           count card plan uses a formulary, the following  
8           requirements must be met:

9                   “(i) PHARMACY AND THERAPEUTIC  
10                   (P&T) COMMITTEE.—The eligible entity  
11                   must establish a pharmacy and therapeutic  
12                   committee that develops and reviews the  
13                   formulary. Such committee shall include at  
14                   least 1 physician and at least 1 pharmacist  
15                   both with expertise in the care of elderly or  
16                   disabled persons and a majority of its  
17                   members shall consist of individuals who  
18                   are a physician or a practicing pharmacist  
19                   (or both).

20                   “(ii) FORMULARY DEVELOPMENT.—In  
21                   developing and reviewing the formulary,  
22                   the committee shall base clinical decisions  
23                   on the strength of scientific evidence and  
24                   standards of practice, including assessing  
25                   peer-reviewed medical literature, such as

1 randomized clinical trials,  
2 pharmacoeconomic studies, outcomes re-  
3 search data, and such other information as  
4 the committee determines to be appro-  
5 priate.

6 “(iii) INCLUSION OF DRUGS IN ALL  
7 THERAPEUTIC CATEGORIES.—The for-  
8 mulary must include drugs within each  
9 therapeutic category and class of covered  
10 drugs (although not necessarily for all  
11 drugs within such categories and classes).

12 “(iv) PROVIDER EDUCATION.—The  
13 committee shall establish policies and pro-  
14 cedures to educate and inform health care  
15 providers concerning the formulary.

16 “(v) NOTICE BEFORE REMOVING  
17 DRUGS FROM FORMULARY.—Any removal  
18 of a drug from a formulary shall take ef-  
19 fect only after appropriate notice is made  
20 available to beneficiaries and physicians.

21 “(vi) GRIEVANCES AND APPEALS RE-  
22 LATING TO APPLICATION OF  
23 FORMULARIES.—For provisions relating to  
24 grievances and appeals of coverage, see

1 paragraphs (3) and (4) of section  
2 1860D(a).

3 “(2) COST AND UTILIZATION MANAGEMENT;  
4 QUALITY ASSURANCE; MEDICATION THERAPY MAN-  
5 AGEMENT PROGRAM.—

6 “(A) IN GENERAL.—Each eligible entity  
7 offering a prescription drug discount card plan  
8 shall have in place with respect to covered  
9 drugs—

10 “(i) an effective cost and drug utiliza-  
11 tion management program, including medi-  
12 cally appropriate incentives to use generic  
13 drugs and therapeutic interchange, when  
14 appropriate;

15 “(ii) quality assurance measures and  
16 systems to reduce medical errors and ad-  
17 verse drug interactions, including a medi-  
18 cation therapy management program de-  
19 scribed in subparagraph (B); and

20 “(iii) a program to control fraud,  
21 abuse, and waste.

22 Nothing in this section shall be construed as  
23 impairing an eligible entity from applying cost  
24 management tools (including differential pay-  
25 ments) under all methods of operation.

1                   “(B) MEDICATION THERAPY MANAGEMENT  
2 PROGRAM.—

3                   “(i) IN GENERAL.—A medication  
4 therapy management program described in  
5 this paragraph is a program of drug ther-  
6 apy management and medication adminis-  
7 tration that is designed to ensure, with re-  
8 spect to beneficiaries with chronic diseases  
9 (such as diabetes, asthma, hypertension,  
10 and congestive heart failure) or multiple  
11 prescriptions, that covered drugs under the  
12 prescription drug discount card plan are  
13 appropriately used to achieve therapeutic  
14 goals and reduce the risk of adverse  
15 events, including adverse drug interactions.

16                   “(ii) ELEMENTS.—Such program may  
17 include—

18                   “(I) enhanced beneficiary under-  
19 standing of such appropriate use  
20 through beneficiary education, coun-  
21 seling, and other appropriate means;

22                   “(II) increased beneficiary adher-  
23 ence with prescription medication  
24 regimens through medication refill re-

1                    minders, special packaging, and other  
2                    appropriate means; and

3                    “(III) detection of patterns of  
4                    overuse and underuse of prescription  
5                    drugs.

6                    “(iii) DEVELOPMENT OF PROGRAM IN  
7                    COOPERATION WITH LICENSED PHAR-  
8                    MACISTS.—The program shall be developed  
9                    in cooperation with licensed pharmacists  
10                    and physicians.

11                    “(iv) CONSIDERATIONS IN PHARMACY  
12                    FEES.—Each eligible entity offering a pre-  
13                    scription drug discount card plan shall  
14                    take into account, in establishing fees for  
15                    pharmacists and others providing services  
16                    under the medication therapy management  
17                    program, the resources and time used in  
18                    implementing the program.

19                    “(C) TREATMENT OF ACCREDITATION.—  
20                    Section 1852(e)(4) (relating to treatment of ac-  
21                    creditation) shall apply to prescription drug dis-  
22                    count card plans under this part with respect to  
23                    the following requirements, in the same manner  
24                    as they apply to Medicare+Choice plans under

1 part C with respect to the requirements de-  
 2 scribed in a clause of section 1852(e)(4)(B):

3 “(i) Paragraph (1) (including quality  
 4 assurance), including any medication ther-  
 5 apy management program under para-  
 6 graph (2).

7 “(ii) Subsection (c)(1) (relating to ac-  
 8 cess to covered benefits).

9 “(iii) Subsection (g) (relating to con-  
 10 fidentiality and accuracy of enrollee  
 11 records).

12 “(D) PUBLIC DISCLOSURE OF PHARMA-  
 13 CEUTICAL PRICES FOR EQUIVALENT DRUGS.—  
 14 Each eligible entity offering a prescription drug  
 15 discount card plan shall provide that each phar-  
 16 macy or other dispenser that arranges for the  
 17 dispensing of a covered drug shall inform the  
 18 beneficiary at the time of purchase of the drug  
 19 of any differential between the price of the pre-  
 20 scribed drug to the enrollee and the price of the  
 21 lowest cost drug covered under the plan that is  
 22 therapeutically equivalent and bioequivalent.

23 “ANNUAL ENROLLMENT FEE

24 “SEC. 1860E. (a) AMOUNT.—

25 “(1) IN GENERAL.—Except as provided in sub-  
 26 section (c), enrollment under the program under this

1 part is conditioned upon payment of an annual en-  
2 rollment fee of \$25.

3 “(2) ANNUAL PERCENTAGE INCREASE.—

4 “(A) IN GENERAL.—In the case of any cal-  
5 endar year beginning after 2005, the dollar  
6 amount in paragraph (1) shall be increased by  
7 an amount equal to—

8 “(i) such dollar amount; multiplied by

9 “(ii) the inflation adjustment.

10 “(B) INFLATION ADJUSTMENT.—For pur-  
11 poses of subparagraph (A)(ii), the inflation ad-  
12 justment for any calendar year is the percent-  
13 age (if any) by which—

14 “(i) the average per capita aggregate  
15 expenditures for covered drugs in the  
16 United States for medicare beneficiaries,  
17 as determined by the Secretary for the 12-  
18 month period ending in July of the pre-  
19 vious year; exceeds

20 “(ii) such aggregate expenditures for  
21 the 12-month period ending with July  
22 2004.

23 “(C) ROUNDING.—If any increase deter-  
24 mined under clause (ii) is not a multiple of \$1,

1           such increase shall be rounded to the nearest  
2           multiple of \$1.

3           “(b) COLLECTION OF ANNUAL ENROLLMENT FEE.—

4           “(1) IN GENERAL.—Unless the eligible bene-  
5           ficiary makes an election under paragraph (2), the  
6           annual enrollment fee described in subsection (a)  
7           shall be collected and credited to the Federal Sup-  
8           plementary Medical Insurance Trust Fund in the  
9           same manner as the monthly premium determined  
10          under section 1839 is collected and credited to such  
11          Trust Fund under section 1840.

12          “(2) DIRECT PAYMENT.—An eligible beneficiary  
13          may elect to pay the annual enrollment fee directly  
14          or in any other manner approved by the Secretary.  
15          The Secretary shall establish procedures for making  
16          such an election.

17          “(c) WAIVER.—The Secretary shall waive the enroll-  
18          ment fee described in subsection (a) in the case of an eligi-  
19          ble beneficiary whose income is below 200 percent of the  
20          poverty line.

21                        “BENEFITS UNDER THE PROGRAM

22          “SEC. 1860F. (a) ACCESS TO NEGOTIATED  
23          PRICES.—

24                        “(1) NEGOTIATED PRICES.—

25                               “(A) IN GENERAL.—Subject to subpara-  
26                               graph (B), each prescription drug card plan of-

1           fering a discount card program by an eligible  
2           entity with a contract under this part shall pro-  
3           vide each eligible beneficiary enrolled in such  
4           plan with access to negotiated prices (including  
5           applicable discounts) for such prescription  
6           drugs as the eligible entity determines appro-  
7           priate. Such discounts may include discounts  
8           for nonformulary drugs. If such a beneficiary  
9           becomes eligible for the catastrophic benefit  
10          under subsection (b), the negotiated prices (in-  
11          cluding applicable discounts) shall continue to  
12          be available to the beneficiary for those pre-  
13          scription drugs for which payment may not be  
14          made under section 1860H(b). For purposes of  
15          this subparagraph, the term ‘prescription drugs’  
16          is not limited to covered drugs, but does not in-  
17          clude any over-the-counter drug that is not a  
18          covered drug.

19               “(B) LIMITATIONS.—

20                   “(i) FORMULARY RESTRICTIONS.—In-  
21                   sofar as an eligible entity with a contract  
22                   under this part uses a formulary, the nego-  
23                   tiated prices (including applicable dis-  
24                   counts) for nonformulary drugs may differ.

1                   “(ii) AVOIDANCE OF DUPLICATE COV-  
2                   ERAGE.—The negotiated prices (including  
3                   applicable discounts) for prescription drugs  
4                   shall not be available for any drug pre-  
5                   scribed for an eligible beneficiary if pay-  
6                   ment for the drug is available under part  
7                   A or B (but such negotiated prices shall be  
8                   available if payment under part A or B is  
9                   not available because the beneficiary has  
10                  not met the deductible or has exhausted  
11                  benefits under part A or B).

12                  “(2) DISCOUNT CARD.—The Secretary shall de-  
13                  velop a uniform standard card format to be issued  
14                  by each eligible entity offering a prescription drug  
15                  discount card plan that shall be used by an enrolled  
16                  beneficiary to ensure the access of such beneficiary  
17                  to negotiated prices under paragraph (1).

18                  “(3) ENSURING DISCOUNTS IN ALL AREAS.—  
19                  The Secretary shall develop procedures that ensure  
20                  that each eligible beneficiary that resides in an area  
21                  where no prescription drug discount card plans are  
22                  available is provided with access to negotiated prices  
23                  for prescription drugs (including applicable dis-  
24                  counts).

25                  “(b) CATASTROPHIC BENEFIT.—

1           “(1) TEN PERCENT COST-SHARING.—Subject to  
2           any formulary used by the prescription drug dis-  
3           count card program in which the eligible beneficiary  
4           is enrolled, the catastrophic benefit shall provide  
5           benefits with cost-sharing that is equal to 10 percent  
6           of the negotiated price (taking into account any ap-  
7           plicable discounts) of each drug dispensed to such  
8           beneficiary after the beneficiary has incurred costs  
9           (as described in paragraph (3)) for covered drugs in  
10          a year equal to the applicable annual out-of-pocket  
11          limit specified in paragraph (2).

12          “(2) ANNUAL OUT-OF-POCKET LIMITS.—For  
13          purposes of this part, the annual out-of-pocket limits  
14          specified in this paragraph are as follows:

15                 “(A) BENEFICIARIES WITH ANNUAL IN-  
16                 COMES BELOW 200 PERCENT OF THE POVERTY  
17                 LINE.—In the case of an eligible beneficiary  
18                 whose income (as determined under section  
19                 1860I) is below 200 percent of the poverty line,  
20                 the annual out-of-pocket limit is equal to  
21                 \$1,500.

22                 “(B) BENEFICIARIES WITH ANNUAL IN-  
23                 COMES BETWEEN 200 AND 400 PERCENT OF THE  
24                 POVERTY LINE.—In the case of an eligible ben-  
25                 eficiary whose income (as so determined) equals

1 or exceeds 200 percent, but does not exceed  
2 400 percent, of the poverty line, the annual out-  
3 of-pocket limit is equal to \$3,500.

4 “(C) BENEFICIARIES WITH ANNUAL IN-  
5 COMES BETWEEN 400 AND 600 PERCENT OF THE  
6 POVERTY LINE.—In the case of an eligible ben-  
7 eficiary whose income (as so determined) equals  
8 or exceeds 400 percent, but does not exceed  
9 600 percent, of the poverty line, the annual out-  
10 of-pocket limit is equal to \$5,500.

11 “(D) BENEFICIARIES WITH ANNUAL IN-  
12 COMES THAT EXCEED 600 PERCENT OF THE  
13 POVERTY LINE.—In the case of an eligible ben-  
14 eficiary whose income (as so determined) equals  
15 or exceeds 600 percent of the poverty line, the  
16 annual out-of-pocket limit is an amount equal  
17 to 20 percent of that beneficiary’s income for  
18 that year (rounded to the nearest multiple of  
19 \$1).

20 “(3) APPLICATION.—In applying paragraph (2),  
21 incurred costs shall only include those expenses for  
22 covered drugs that are incurred by the eligible bene-  
23 ficiary using a card approved by the Secretary under  
24 this part that are paid by that beneficiary and for

1 which the beneficiary is not reimbursed (through in-  
2 surance or otherwise) by another person.

3 “(4) ANNUAL PERCENTAGE INCREASE.—

4 “(A) IN GENERAL.—In the case of any cal-  
5 endar year after 2005, the dollar amounts in  
6 subparagraphs (A), (B), and (C) of paragraph  
7 (2) shall be increased by an amount equal to—

8 “(i) such dollar amount; multiplied by

9 “(ii) the inflation adjustment deter-  
10 mined under section 1860E(a)(2)(B) for  
11 such calendar year.

12 “(B) ROUNDING.—If any increase deter-  
13 mined under subparagraph (A) is not a multiple  
14 of \$1, such increase shall be rounded to the  
15 nearest multiple of \$1.

16 “(5) ELIGIBLE ENTITY NOT AT FINANCIAL RISK  
17 FOR CATASTROPHIC BENEFIT.—

18 “(A) IN GENERAL.—The Secretary, and  
19 not the eligible entity, shall be at financial risk  
20 for the provision of the catastrophic benefit  
21 under this subsection.

22 “(B) PROVISIONS RELATING TO PAYMENTS  
23 TO ELIGIBLE ENTITIES.—For provisions relat-  
24 ing to payments to eligible entities for admin-

1           istering the catastrophic benefit under this sub-  
2           section, see section 1860H.

3           “(6) ENSURING CATASTROPHIC BENEFIT IN  
4           ALL AREAS.—The Secretary shall develop procedures  
5           for the provision of the catastrophic benefit under  
6           this subsection to each eligible beneficiary that re-  
7           sides in an area where there are no prescription  
8           drug discount card plans offered that have been  
9           awarded a contract under this part.

10           “REQUIREMENTS FOR ENTITIES TO PROVIDE  
11           PRESCRIPTION DRUG COVERAGE

12           “SEC. 1860G. (a) ESTABLISHMENT OF BIDDING  
13           PROCESS.—The Secretary shall establish a process under  
14           which the Secretary accepts bids from eligible entities and  
15           awards contracts to the entities to provide the benefits  
16           under this part to eligible beneficiaries in an area.

17           “(b) SUBMISSION OF BIDS.—Each eligible entity de-  
18           siring to enter into a contract under this part shall submit  
19           a bid to the Secretary at such time, in such manner, and  
20           accompanied by such information as the Secretary may  
21           require.

22           “(c) ADMINISTRATIVE FEE BID.—

23           “(1) SUBMISSION.—For the bid described in  
24           subsection (b), each entity shall submit to the Sec-  
25           retary information regarding administration of the

1 discount card and catastrophic benefit under this  
2 part.

3 “(2) BID SUBMISSION REQUIREMENTS.—

4 “(A) ADMINISTRATIVE FEE BID SUBMIS-  
5 SION.—In submitting bids, the entities shall in-  
6 clude separate costs for administering the dis-  
7 count card component, if applicable, and the  
8 catastrophic benefit. The entity shall submit the  
9 administrative fee bid in a form and manner  
10 specified by the Secretary, and shall include a  
11 statement of projected enrollment and a sepa-  
12 rate statement of the projected administrative  
13 costs for at least the following functions:

14 “(i) Enrollment, including income eli-  
15 gibility determination.

16 “(ii) Claims processing.

17 “(iii) Quality assurance, including  
18 drug utilization review.

19 “(iv) Beneficiary and pharmacy cus-  
20 tomer service.

21 “(v) Coordination of benefits.

22 “(vi) Fraud and abuse prevention.

23 “(B) NEGOTIATED ADMINISTRATIVE FEE  
24 BID AMOUNTS.—The Secretary has the author-  
25 ity to negotiate regarding the bid amounts sub-

1           mitted. The Secretary may reject a bid if the  
2           Secretary determines it is not supported by the  
3           administrative cost information provided in the  
4           bid as specified in subparagraph (A).

5           “(C) PAYMENT TO PLANS BASED ON AD-  
6           MINISTRATIVE FEE BID AMOUNTS.—The Sec-  
7           retary shall use the bid amounts to calculate a  
8           benchmark amount consisting of the enroll-  
9           ment-weighted average of all bids for each func-  
10          tion and each class of entity. The class of entity  
11          is either a regional or national entity, or such  
12          other classes as the Secretary may determine to  
13          be appropriate. The functions are the discount  
14          card and catastrophic components. If an eligible  
15          entity’s combined bid for both functions is  
16          above the combined benchmark within the enti-  
17          ty’s class for the functions, the eligible entity  
18          shall collect additional necessary revenue  
19          through 1 or both of the following:

20                   “(i) Additional fees charged to the  
21                   beneficiary, not to exceed \$25 annually.

22                   “(ii) Use of rebate amounts from drug  
23                   manufacturers to defray administrative  
24                   costs.

25          “(d) AWARDING OF CONTRACTS.—

1           “(1) IN GENERAL.—The Secretary shall, con-  
2           sistent with the requirements of this part and the  
3           goal of containing medicare program costs, award at  
4           least 2 contracts in each area, unless only 1 bidding  
5           entity meets the terms and conditions specified by  
6           the Secretary under paragraph (2).

7           “(2) TERMS AND CONDITIONS.—The Secretary  
8           shall not award a contract to an eligible entity under  
9           this section unless the Secretary finds that the eligi-  
10          ble entity is in compliance with such terms and con-  
11          ditions as the Secretary shall specify.

12          “(3) REQUIREMENTS FOR ELIGIBLE ENTITIES  
13          PROVIDING DISCOUNT CARD PROGRAM.—Except as  
14          provided in subsection (e), in determining which of  
15          the eligible entities that submitted bids that meet  
16          the terms and conditions specified by the Secretary  
17          under paragraph (2) to award a contract, the Sec-  
18          retary shall consider whether the bid submitted by  
19          the entity meets at least the following requirements:

20                 “(A) LEVEL OF SAVINGS TO MEDICARE  
21                 BENEFICIARIES.—The program passes on to  
22                 medicare beneficiaries who enroll in the pro-  
23                 gram discounts on prescription drugs, including  
24                 discounts negotiated with manufacturers.

1           “(B) PROHIBITION ON APPLICATION ONLY  
2 TO MAIL ORDER.—The program applies to  
3 drugs that are available other than solely  
4 through mail order and provides convenient ac-  
5 cess to retail pharmacies.

6           “(C) LEVEL OF BENEFICIARY SERVICES.—  
7 The program provides pharmaceutical support  
8 services, such as education and services to pre-  
9 vent adverse drug interactions.

10          “(D) ADEQUACY OF INFORMATION.—The  
11 program makes available to medicare bene-  
12 ficiaries through the Internet and otherwise in-  
13 formation, including information on enrollment  
14 fees, prices charged to beneficiaries, and serv-  
15 ices offered under the program, that the Sec-  
16 retary identifies as being necessary to provide  
17 for informed choice by beneficiaries among en-  
18 dorsed programs.

19          “(E) EXTENT OF DEMONSTRATED EXPERI-  
20 ENCE.—The entity operating the program has  
21 demonstrated experience and expertise in oper-  
22 ating such a program or a similar program.

23          “(F) EXTENT OF QUALITY ASSURANCE.—  
24 The entity has in place adequate procedures for  
25 assuring quality service under the program.

1           “(G) OPERATION OF ASSISTANCE PRO-  
2           GRAM.—The entity meets such requirements re-  
3           lating to solvency, compliance with financial re-  
4           porting requirements, audit compliance, and  
5           contractual guarantees as specified by the Sec-  
6           retary.

7           “(H) PRIVACY COMPLIANCE.—The entity  
8           implements policies and procedures to safe-  
9           guard the use and disclosure of program bene-  
10          ficiaries’ individually identifiable health infor-  
11          mation in a manner consistent with the Federal  
12          regulations (concerning the privacy of individ-  
13          ually identifiable health information) promul-  
14          gated under section 264(c) of the Health Insur-  
15          ance Portability and Accountability Act of  
16          1996.

17          “(I) ADDITIONAL BENEFICIARY PROTEC-  
18          TIONS.—The program meets such additional re-  
19          quirements as the Secretary identifies to protect  
20          and promote the interest of medicare bene-  
21          ficiaries, including requirements that ensure  
22          that beneficiaries are not charged more than  
23          the lower of the negotiated retail price or the  
24          usual and customary price.

1 The prices negotiated by a prescription drug dis-  
2 count card program endorsed under this section  
3 shall (notwithstanding any other provision of law)  
4 not be taken into account for the purposes of estab-  
5 lishing the best price under section 1927(c)(1)(C).

6 “(4) BENEFICIARY ACCESS TO SAVINGS AND  
7 REBATES.—The Secretary shall require eligible enti-  
8 ties offering a discount card program to pass on sav-  
9 ings and rebates negotiated with manufacturers to  
10 eligible beneficiaries enrolled with the entity.

11 “(5) NEGOTIATED AGREEMENTS WITH EM-  
12 PLOYER-SPONSORED PLANS.—Notwithstanding any  
13 other provision of this part, the Secretary may nego-  
14 tiate agreements with employer-sponsored plans  
15 under which eligible beneficiaries are provided with  
16 a benefit for prescription drug coverage that is more  
17 generous than the benefit that would otherwise have  
18 been available under this part if such an agreement  
19 results in cost savings to the Federal Government.

20 “(e) REQUIREMENTS FOR OTHER ELIGIBLE ENTI-  
21 TIES.—An eligible entity that is licensed under State law  
22 to provide the health insurance benefits under this section  
23 shall be required to meet the requirements of subsection  
24 (d)(3). If an eligible entity offers a national plan, such  
25 entity shall not be required to meet the requirements of

1 subsection (d)(3), but shall meet the requirements of Em-  
2 ployee Retirement Income Security Act of 1974 that apply  
3 with respect to such plan.

4 “PAYMENTS TO ELIGIBLE ENTITIES FOR ADMINISTERING  
5 THE CATASTROPHIC BENEFIT

6 “SEC. 1860H. (a) IN GENERAL.—The Secretary may  
7 establish procedures for making payments to an eligible  
8 entity under a contract entered into under this part for—

9 “(1) the costs of providing covered drugs to  
10 beneficiaries eligible for the benefit under this part  
11 in accordance with subsection (b) minus the amount  
12 of any cost-sharing collected by the eligible entity  
13 under section 1860F(b); and

14 “(2) costs incurred by the entity in admin-  
15 istering the catastrophic benefit in accordance with  
16 section 1860G.

17 “(b) PAYMENT FOR COVERED DRUGS.—

18 “(1) IN GENERAL.—Except as provided in sub-  
19 section (c) and subject to paragraph (2), the Sec-  
20 retary may only pay an eligible entity for covered  
21 drugs furnished by the eligible entity to an eligible  
22 beneficiary enrolled with such entity under this part  
23 that is eligible for the catastrophic benefit under sec-  
24 tion 1860F(b).

25 “(2) LIMITATIONS.—

1           “(A) FORMULARY RESTRICTIONS.—Insofar  
2 as an eligible entity with a contract under this  
3 part uses a formulary, the Secretary may not  
4 make any payment for a covered drug that is  
5 not included in such formulary, except to the  
6 extent provided under section 1860D(a)(4)(B).

7           “(B) NEGOTIATED PRICES.—The Sec-  
8 retary may not pay an amount for a covered  
9 drug furnished to an eligible beneficiary that  
10 exceeds the negotiated price (including applica-  
11 ble discounts) that the beneficiary would have  
12 been responsible for under section 1860F(a) or  
13 the price negotiated for insurance coverage  
14 under the Medicare+Choice program under  
15 part C, a medicare supplemental policy, em-  
16 ployer-sponsored coverage, or a State plan.

17           “(C) COST-SHARING LIMITATIONS.—An el-  
18 igible entity may not charge an individual en-  
19 rolled with such entity who is eligible for the  
20 catastrophic benefit under this part any copay-  
21 ment, tiered copayment, coinsurance, or other  
22 cost-sharing that exceeds 10 percent of the cost  
23 of the drug that is dispensed to the individual.

24           “(3) PAYMENT IN COMPETITIVE AREAS.—In a  
25 geographic area in which 2 or more eligible entities

1 offer a plan under this part, the Secretary may ne-  
2 gotiate an agreement with the entity to reimburse  
3 the entity for costs incurred in providing the benefit  
4 under this part on a capitated basis.

5 “(c) SECONDARY PAYER PROVISIONS.—The provi-  
6 sions of section 1862(b) shall apply to the benefits pro-  
7 vided under this part.

8 “DETERMINATION OF INCOME LEVELS

9 “SEC. 1860I. (a) DETERMINATION OF INCOME LEV-  
10 ELS.—

11 “(1) IN GENERAL.—The Secretary shall estab-  
12 lish procedures under which each eligible entity  
13 awarded a contract under this part determines the  
14 income levels of eligible beneficiaries enrolled in a  
15 prescription drug card plan offered by that entity at  
16 least annually for purposes of sections 1860E(c) and  
17 1860F(b).

18 “(2) PROCEDURES.—The procedures estab-  
19 lished under paragraph (1) shall require each eligible  
20 beneficiary to submit such information as the eligible  
21 entity requires to make the determination described  
22 in paragraph (1).

23 “(b) ENFORCEMENT OF INCOME DETERMINA-  
24 TIONS.—The Secretary shall—

1           “(1) establish procedures that ensure that eligi-  
2           ble beneficiaries comply with sections 1860E(c) and  
3           1860F(b); and

4           “(2) require, if the Secretary determines that  
5           payments were made under this part to which an eli-  
6           gible beneficiary was not entitled, the repayment of  
7           any excess payments with interest and a penalty.

8           “(c) QUALITY CONTROL SYSTEM.—

9           “(1) ESTABLISHMENT.—The Secretary shall es-  
10          tablish a quality control system to monitor income  
11          determinations made by eligible entities under this  
12          section and to produce appropriate and comprehen-  
13          sive measures of error rates.

14          “(2) PERIODIC AUDITS.—The Inspector General  
15          of the Department of Health and Human Services  
16          shall conduct periodic audits to ensure that the sys-  
17          tem established under paragraph (1) is functioning  
18          appropriately.

19                                   “APPROPRIATIONS

20          “SEC. 1860J. There are authorized to be appro-  
21          priated from time to time, out of any moneys in the Treas-  
22          ury not otherwise appropriated, to the Federal Supple-  
23          mentary Medical Insurance Trust Fund established under  
24          section 1841, an amount equal to the amount by which  
25          the benefits and administrative costs of providing the ben-

1 efits under this part exceed the enrollment fees collected  
2 under section 1860E.

3 “MEDICARE COMPETITION AND PRESCRIPTION DRUG  
4 ADVISORY BOARD

5 “SEC. 1860K. (a) ESTABLISHMENT OF BOARD.—  
6 There is established a Medicare Prescription Drug Advi-  
7 sory Board (in this section referred to as the ‘Board’).

8 “(b) ADVICE ON POLICIES; REPORTS.—

9 “(1) ADVICE ON POLICIES.—The Board shall  
10 advise the Secretary on policies relating to the Vol-  
11 untary Medicare Prescription Drug Discount and  
12 Security Program under this part.

13 “(2) REPORTS.—

14 “(A) IN GENERAL.—With respect to mat-  
15 ters of the administration of the program under  
16 this part, the Board shall submit to Congress  
17 and to the Secretary such reports as the Board  
18 determines appropriate. Each such report may  
19 contain such recommendations as the Board de-  
20 termines appropriate for legislative or adminis-  
21 trative changes to improve the administration of  
22 the program under this part. Each such report  
23 shall be published in the Federal Register.

24 “(B) MAINTAINING INDEPENDENCE OF  
25 BOARD.—The Board shall directly submit to  
26 Congress reports required under subparagraph

1 (A). No officer or agency of the United States  
2 may require the Board to submit to any officer  
3 or agency of the United States for approval,  
4 comments, or review, prior to the submission to  
5 Congress of such reports.

6 “(c) STRUCTURE AND MEMBERSHIP OF THE  
7 BOARD.—

8 “(1) MEMBERSHIP.—The Board shall be com-  
9 posed of 7 members who shall be appointed as fol-  
10 lows:

11 “(A) PRESIDENTIAL APPOINTMENTS.—

12 “(i) IN GENERAL.—Three members  
13 shall be appointed by the President, by and  
14 with the advice and consent of the Senate.

15 “(ii) LIMITATION.—Not more than 2  
16 such members may be from the same polit-  
17 ical party.

18 “(B) SENATORIAL APPOINTMENTS.—Two  
19 members (each member from a different polit-  
20 ical party) shall be appointed by the President  
21 pro tempore of the Senate with the advice of  
22 the Chairman and the Ranking Minority Mem-  
23 ber of the Committee on Finance of the Senate.

24 “(C) CONGRESSIONAL APPOINTMENTS.—  
25 Two members (each member from a different

1 political party) shall be appointed by the Speak-  
2 er of the House of Representatives, with the ad-  
3 vice of the Chairman and the Ranking Minority  
4 Member of the Committee on Ways and Means  
5 of the House of Representatives.

6 “(2) QUALIFICATIONS.—The members shall be  
7 chosen on the basis of their integrity, impartiality,  
8 and good judgment, and shall be individuals who  
9 are, by reason of their education, experience, and at-  
10 tainments, exceptionally qualified to perform the du-  
11 ties of members of the Board.

12 “(3) COMPOSITION.—Of the members appointed  
13 under paragraph (1)—

14 “(A) at least 1 shall represent the pharma-  
15 ceutical industry;

16 “(B) at least 1 shall represent physicians;

17 “(C) at least 1 shall represent medicare  
18 beneficiaries;

19 “(D) at least 1 shall represent practicing  
20 pharmacists; and

21 “(E) at least 1 shall represent eligible enti-  
22 ties.

23 “(d) TERMS OF APPOINTMENT.—

1           “(1) IN GENERAL.—Subject to paragraph (2),  
2 each member of the Board shall serve for a term of  
3 6 years.

4           “(2) CONTINUANCE IN OFFICE AND STAGGERED  
5 TERMS.—

6           “(A) CONTINUANCE IN OFFICE.—A mem-  
7 ber appointed to a term of office after the com-  
8 mencement of such term may serve under such  
9 appointment only for the remainder of such  
10 term.

11           “(B) STAGGERED TERMS.—The terms of  
12 service of the members initially appointed under  
13 this section shall begin on January 1, 2005,  
14 and expire as follows:

15           “(i) PRESIDENTIAL APPOINTMENTS.—  
16 The terms of service of the members ini-  
17 tially appointed by the President shall ex-  
18 pire as designated by the President at the  
19 time of nomination, 1 each at the end of—

20                   “(I) 2 years;

21                   “(II) 4 years; and

22                   “(III) 6 years.

23           “(ii) SENATORIAL APPOINTMENTS.—  
24 The terms of service of members initially  
25 appointed by the President pro tempore of

1 the Senate shall expire as designated by  
2 the President pro tempore of the Senate at  
3 the time of nomination, 1 each at the end  
4 of—

5 “(I) 3 years; and

6 “(II) 6 years.

7 “(iii) CONGRESSIONAL APPOINT-  
8 MENTS.—The terms of service of members  
9 initially appointed by the Speaker of the  
10 House of Representatives shall expire as  
11 designated by the Speaker of the House of  
12 Representatives at the time of nomination,  
13 1 each at the end of—

14 “(I) 4 years; and

15 “(II) 5 years.

16 “(C) REAPPOINTMENTS.—Any person ap-  
17 pointed as a member of the Board may not  
18 serve for more than 8 years.

19 “(D) VACANCIES.—Any member appointed  
20 to fill a vacancy occurring before the expiration  
21 of the term for which the member’s predecessor  
22 was appointed shall be appointed only for the  
23 remainder of that term. A member may serve  
24 after the expiration of that member’s term until  
25 a successor has taken office. A vacancy in the

1 Board shall be filled in the manner in which the  
2 original appointment was made.

3 “(e) CHAIRPERSON.—A member of the Board shall  
4 be designated by the President to serve as Chairperson  
5 for a term of 4 years or, if the remainder of such mem-  
6 ber’s term is less than 4 years, for such remainder.

7 “(f) EXPENSES AND PER DIEM.—Members of the  
8 Board shall serve without compensation, except that, while  
9 serving on business of the Board away from their homes  
10 or regular places of business, members may be allowed  
11 travel expenses, including per diem in lieu of subsistence,  
12 as authorized by section 5703 of title 5, United States  
13 Code, for persons in the Government employed intermit-  
14 tently.

15 “(g) MEETINGS.—

16 “(1) IN GENERAL.—The Board shall meet at  
17 the call of the Chairperson (in consultation with the  
18 other members of the Board) not less than 4 times  
19 each year to consider a specific agenda of issues, as  
20 determined by the Chairperson in consultation with  
21 the other members of the Board.

22 “(2) QUORUM.—Four members of the Board  
23 (not more than 3 of whom may be of the same polit-  
24 ical party) shall constitute a quorum for purposes of  
25 conducting business.

1       “(h) FEDERAL ADVISORY COMMITTEE ACT.—The  
2 Board shall be exempt from the provisions of the Federal  
3 Advisory Committee Act (5 U.S.C. App.).

4       “(i) PERSONNEL.—

5           “(1) STAFF DIRECTOR.—The Board shall, with-  
6 out regard to the provisions of title 5, United States  
7 Code, relating to the competitive service, appoint a  
8 Staff Director who shall be paid at a rate equivalent  
9 to a rate established for the Senior Executive Serv-  
10 ice under section 5382 of title 5, United States  
11 Code.

12       “(2) STAFF.—

13           “(A) IN GENERAL.—The Board may em-  
14 ploy, without regard to chapter 31 of title 5,  
15 United States Code, such officers and employ-  
16 ees as are necessary to administer the activities  
17 to be carried out by the Board.

18           “(B) FLEXIBILITY WITH RESPECT TO  
19 CIVIL SERVICE LAWS.—

20           “(i) IN GENERAL.—The staff of the  
21 Board shall be appointed without regard to  
22 the provisions of title 5, United States  
23 Code, governing appointments in the com-  
24 petitive service, and, subject to clause (ii),  
25 shall be paid without regard to the provi-

1           sions of chapters 51 and 53 of such title  
2           (relating to classification and schedule pay  
3           rates).

4           “(ii) MAXIMUM RATE.—In no case  
5           may the rate of compensation determined  
6           under clause (i) exceed the rate of basic  
7           pay payable for level IV of the Executive  
8           Schedule under section 5315 of title 5,  
9           United States Code.

10          “(j) AUTHORIZATION OF APPROPRIATIONS.—There  
11         are authorized to be appropriated, out of the Federal Sup-  
12         plemental Medical Insurance Trust Fund established  
13         under section 1841, and the general fund of the Treasury,  
14         such sums as are necessary to carry out the purposes of  
15         this section.”.

16          (b) CONFORMING REFERENCES TO PREVIOUS PART  
17         D.—

18                 (1) IN GENERAL.—Any reference in law (in ef-  
19                 fect before the date of enactment of this Act) to part  
20                 D of title XVIII of the Social Security Act is deemed  
21                 a reference to part E of such title (as in effect after  
22                 such date).

23                 (2) SECRETARIAL SUBMISSION OF LEGISLATIVE  
24                 PROPOSAL.—Not later than 6 months after the date  
25                 of enactment of this section, the Secretary of Health

1 and Human Services shall submit to the appropriate  
2 committees of Congress a legislative proposal pro-  
3 viding for such technical and conforming amend-  
4 ments in the law as are required by the provisions  
5 of this section.

6 (c) EFFECTIVE DATE.—

7 (1) IN GENERAL.—The amendment made by  
8 subsection (a) shall take effect on the date of enact-  
9 ment of this Act.

10 (2) IMPLEMENTATION.—Notwithstanding any  
11 provision of part D of title XVIII of the Social Secu-  
12 rity Act (as added by subsection (a)), the Secretary  
13 of Health and Human Services shall implement the  
14 Voluntary Medicare Prescription Drug Discount and  
15 Security Program established under such part in a  
16 manner such that—

17 (A) benefits under such part for eligible  
18 beneficiaries (as defined in section 1860 of such  
19 Act, as added by such subsection) with annual  
20 incomes below 200 percent of the poverty line  
21 (as defined in such section) are available to  
22 such beneficiaries not later than the date that  
23 is 6 months after the date of enactment of this  
24 Act; and

1 (B) benefits under such part for other eli-  
 2 gible beneficiaries are available to such bene-  
 3 ficiaries not later than the date that is 1 year  
 4 after the date of enactment of this Act.

5 **SEC. 3. ADMINISTRATION OF VOLUNTARY MEDICARE PRE-**  
 6 **SCRIPTION DRUG DISCOUNT AND SECURITY**  
 7 **PROGRAM.**

8 (a) ESTABLISHMENT OF CENTER FOR MEDICARE  
 9 PRESCRIPTION DRUGS.—There is established, within the  
 10 Centers for Medicare & Medicaid Services of the Depart-  
 11 ment of Health and Human Services, a Center for Medi-  
 12 care Prescription Drugs. Such Center shall be separate  
 13 from the Center for Beneficiary Choices, the Center for  
 14 Medicare Management, and the Center for Medicaid and  
 15 State Operations.

16 (b) DUTIES.—It shall be the duty of the Center for  
 17 Medicare Prescription Drugs to administer the Voluntary  
 18 Medicare Prescription Drug Discount and Security Pro-  
 19 gram established under part D of title XVIII of the Social  
 20 Security Act (as added by section 2).

21 (c) DIRECTOR.—

22 (1) APPOINTMENT.—There shall be in the Cen-  
 23 ter for Medicare Prescription Drugs a Director of  
 24 Medicare Prescription Drugs, who shall be appointed

1 by the President, by and with the advice and consent  
2 of the Senate.

3 (2) RESPONSIBILITIES.—The Director shall be  
4 responsible for the exercise of all powers and the dis-  
5 charge of all duties of the Center for Medicare Pre-  
6 scription Drugs and shall have authority and control  
7 over all personnel and activities thereof.

8 (d) PERSONNEL.—The Director of the Center for  
9 Medicare Prescription Drugs may appoint and terminate  
10 such personnel as may be necessary to enable the Center  
11 for Medicare Prescription Drugs to perform its duties.

12 **SEC. 4. EXCLUSION OF PART D COSTS FROM DETERMINA-**  
13 **TION OF PART B MONTHLY PREMIUM.**

14 Section 1839(g) of the Social Security Act (42 U.S.C.  
15 1395r(g)) is amended—

16 (1) by striking “attributable to the application  
17 of section” and inserting “attributable to—

18 “(1) the application of section”;

19 (2) by striking the period and inserting “;  
20 and”; and

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

23 “(2) the Voluntary Medicare Prescription Drug  
24 Discount and Security Program under part D.”.

1 **SEC. 5. MEDIGAP REVISIONS.**

2 Section 1882 of the Social Security Act (42 U.S.C.  
3 1395ss) is amended by adding at the end the following  
4 new subsection:

5 “(v) MODERNIZATION OF MEDICARE SUPPLEMENTAL  
6 POLICIES.—

7 “(1) PROMULGATION OF MODEL REGULA-  
8 TION.—

9 “(A) NAIC MODEL REGULATION.—If,  
10 within 9 months after the date of enactment of  
11 the Medicare Rx Drug Discount and Security  
12 Act of 2003, the National Association of Insur-  
13 ance Commissioners (in this subsection referred  
14 to as the ‘NAIC’) changes the 1991 NAIC  
15 Model Regulation (described in subsection (p))  
16 to revise the benefit package classified as ‘J’  
17 under the standards established by subsection  
18 (p)(2) (including the benefit package classified  
19 as ‘J’ with a high deductible feature, as de-  
20 scribed in subsection (p)(11)) so that—

21 “(i) the coverage for prescription  
22 drugs available under such benefit package  
23 is replaced with coverage for prescription  
24 drugs that complements but does not du-  
25 plicate the benefits for prescription drugs

1           that beneficiaries are otherwise entitled to  
2           under this title;

3           “(ii) a uniform format is used in the  
4           policy with respect to such revised benefits;  
5           and

6           “(iii) such revised standards meet any  
7           additional requirements imposed by the  
8           Medicare Rx Drug Discount and Security  
9           Act of 2003;

10          subsection (g)(2)(A) shall be applied in each  
11          State, effective for policies issued to policy hold-  
12          ers on and after January 1, 2005, as if the ref-  
13          erence to the Model Regulation adopted on  
14          June 6, 1979, were a reference to the 1991  
15          NAIC Model Regulation as changed under this  
16          subparagraph (such changed regulation referred  
17          to in this section as the ‘2005 NAIC Model  
18          Regulation’).

19          “(B) REGULATION BY THE SECRETARY.—  
20          If the NAIC does not make the changes in the  
21          1991 NAIC Model Regulation within the 9-  
22          month period specified in subparagraph (A), the  
23          Secretary shall promulgate, not later than 9  
24          months after the end of such period, a regula-  
25          tion and subsection (g)(2)(A) shall be applied in

1 each State, effective for policies issued to policy  
2 holders on and after January 1, 2005, as if the  
3 reference to the Model Regulation adopted on  
4 June 6, 1979, were a reference to the 1991  
5 NAIC Model Regulation as changed by the Sec-  
6 retary under this subparagraph (such changed  
7 regulation referred to in this section as the  
8 ‘2005 Federal Regulation’).

9 “(C) CONSULTATION WITH WORKING  
10 GROUP.—In promulgating standards under this  
11 paragraph, the NAIC or Secretary shall consult  
12 with a working group similar to the working  
13 group described in subsection (p)(1)(D).

14 “(D) MODIFICATION OF STANDARDS IF  
15 MEDICARE BENEFITS CHANGE.—If benefits  
16 under part D of this title are changed and the  
17 Secretary determines, in consultation with the  
18 NAIC, that changes in the 2005 NAIC Model  
19 Regulation or 2005 Federal Regulation are  
20 needed to reflect such changes, the preceding  
21 provisions of this paragraph shall apply to the  
22 modification of standards previously established  
23 in the same manner as they applied to the  
24 original establishment of such standards.

1           “(2) CONSTRUCTION OF BENEFITS IN OTHER  
2 MEDICARE SUPPLEMENTAL POLICIES.—Nothing in  
3 the benefit packages classified as ‘A’ through ‘I’  
4 under the standards established by subsection (p)(2)  
5 (including the benefit package classified as ‘F’ with  
6 a high deductible feature, as described in subsection  
7 (p)(11)) shall be construed as providing coverage for  
8 benefits for which payment may be made under part  
9 D.

10           “(3) APPLICATION OF PROVISIONS AND CON-  
11 FORMING REFERENCES.—

12           “(A) APPLICATION OF PROVISIONS.—The  
13 provisions of paragraphs (4) through (10) of  
14 subsection (p) shall apply under this section,  
15 except that—

16           “(i) any reference to the model regu-  
17 lation applicable under that subsection  
18 shall be deemed to be a reference to the  
19 applicable 2005 NAIC Model Regulation or  
20 2005 Federal Regulation; and

21           “(ii) any reference to a date under  
22 such paragraphs of subsection (p) shall be  
23 deemed to be a reference to the appro-  
24 priate date under this subsection.

1           “(B) OTHER REFERENCES.—Any reference  
2           to a provision of subsection (p) or a date appli-  
3           cable under such subsection shall also be con-  
4           sidered to be a reference to the appropriate pro-  
5           vision or date under this subsection.”.

○