

108TH CONGRESS  
2D SESSION

# S. 2053

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

---

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2004

Ms. SNOWE (for herself, Mr. WYDEN, and Mrs. FEINSTEIN) introduced the  
following bill; which was read twice and referred to the Committee on Fi-  
nance

---

## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Enhance-  
5 ments for Needed Drugs Act of 2004”.

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

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

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

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

12           (3) REPORTS.—

13           (A) INITIAL REVIEW.—Not later than Sep-  
14 tember 1, 2004, the Comptroller General shall  
15 submit to Congress a report on the initial re-  
16 view conducted under paragraph (1).

17           (B) SUBSEQUENT REVIEW.—Not later  
18 than July 1, 2005, January 1, 2006, and July  
19 1, 2006, the Comptroller General shall submit  
20 to Congress a report on the subsequent review  
21 conducted under paragraph (2).

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

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

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

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

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

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

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

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

11           Section 1860D–1(c)(3) of the Social Security Act, as  
 12           added by section 101 of the Medicare Prescription Drug,  
 13           Improvement, and Modernization Act of 2003 (Public Law  
 14           108–173), is amended—

15           (1) in subparagraph (A)—

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

19                   (B) by adding at the end the following new  
 20                   clause:

21                           “(vi) AVERAGE AGGREGATE BENE-  
 22                           FICIARY COSTS AND SAVINGS.—With re-  
 23                           spect to plan years beginning on or after  
 24                           January 1, 2007, the average aggregate  
 25                           costs, including deductibles and other cost-

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

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

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

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

18 “(ii) a Medicare Advantage plan.”.

19 **SEC. 4. NEGOTIATING FAIR PRICES FOR MEDICARE PRE-**  
 20 **SCRIPTION DRUGS.**

21 (a) IN GENERAL.—Section 1860D–11 of the Social  
 22 Security Act, as added by section 101 of the Medicare Pre-  
 23 scription Drug, Improvement, and Modernization Act of  
 24 2003 (Public Law 108–173), is amended by striking sub-

1 section (i) (relating to noninterference) and by inserting  
 2 the following:

3       “(i) **AUTHORITY TO NEGOTIATE PRICES WITH MAN-**  
 4 **UFACTURERS.**—In order to ensure that beneficiaries en-  
 5 rolled under prescription drug plans and MA–PD plans  
 6 pay the lowest possible price, the Secretary shall have au-  
 7 thority similar to that of other Federal entities that pur-  
 8 chase prescription drugs in bulk to negotiate contracts  
 9 with manufacturers of covered part D drugs, consistent  
 10 with the requirements and in furtherance of the goals of  
 11 providing quality care and containing costs under this  
 12 part.”.

13       (b) **EFFECTIVE DATE.**—The amendment made by  
 14 this section shall take effect as if included in the enact-  
 15 ment of section 101 of the Medicare Prescription Drug,  
 16 Improvement, and Modernization Act of 2003 (Public Law  
 17 108–173).

18 **SEC. 5. DISALLOWANCE OF DEDUCTION FOR ADVERTISING**  
 19 **EXPENDITURES OF TAXPAYERS WHO DIS-**  
 20 **CRIMINATE AGAINST FOREIGN SELLERS OF**  
 21 **PRESCRIPTION DRUGS TO DOMESTIC CON-**  
 22 **SUMERS.**

23       (a) **GENERAL RULE.**—Part IX of subchapter B of  
 24 chapter 1 of the Internal Revenue Code of 1986 (relating

1 to items not deductible) is amended by adding at the end  
2 the following new section:

3 **“SEC. 280I. ADVERTISING EXPENDITURES OF TAXPAYERS**  
4 **WHO DISCRIMINATE AGAINST FOREIGN SELL-**  
5 **ERS OF PRESCRIPTION DRUGS TO DOMESTIC**  
6 **CONSUMERS.**

7 “(a) IN GENERAL.—No deduction otherwise allow-  
8 able under this chapter shall be allowed for any amount  
9 paid or incurred for advertising for the taxable year by  
10 any taxpayer who at any time during such taxable year  
11 discriminates against a qualified pharmacy or qualified  
12 wholesaler in the sale of prescription drugs.

13 “(b) ADVERTISING.—For purposes of this section,  
14 the term ‘advertising’ includes direct to consumer adver-  
15 tising and any activity designed to promote the use of a  
16 prescription drug directed to providers or others who may  
17 make decisions about the use of prescription drugs (other  
18 than the provision of free samples).

19 “(c) QUALIFIED PHARMACY; QUALIFIED WHOLE-  
20 SALER.—For purposes of this section—

21 “(1) QUALIFIED PHARMACY.—The term ‘quali-  
22 fied pharmacy’ means any pharmacy located outside  
23 the United States which sells prescription drugs to  
24 consumers living in the United States.

1           “(2) QUALIFIED WHOLESALER.—The term  
2           ‘qualified wholesaler’ means any wholesaler located  
3           outside the United States which sells prescription  
4           drugs to entities selling prescription drugs to con-  
5           sumers living in the United States.

6           “(d) DISCRIMINATION.—For purposes of subsection  
7 (a), a taxpayer shall be treated as discriminating against  
8 a qualified pharmacy or qualified wholesaler in the sale  
9 of prescription drugs if such taxpayer publicly, privately  
10 or otherwise refuses to do business with a person or entity  
11 on the basis that the person or entity will pass along dis-  
12 counts offered to the person or entity to consumers living  
13 in the United States.”.

14           (b) CLERICAL AMENDMENT.—The table of sections  
15 for part IX of subchapter B of chapter 1 of such Code  
16 is amended by adding at the end thereof the following new  
17 item:

“Sec. 280I. Advertising expenditures of taxpayers who discrimi-  
nate against foreign sellers of prescription drugs to  
domestic consumers.”.

18           (c) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to taxable years beginning after  
20 the date of the enactment of this Act.

21 **SEC. 6. COST CONTAINMENT INCENTIVES.**

22           (a) IN GENERAL.—Section 1860D–42 of the Social  
23 Security Act, as added by section 101 of the Medicare Pre-  
24 scription Drug, Improvement, and Modernization Act of



1 2003 (Public Law 108–173), is amended by adding at the  
2 end the following new subsection:

3 “(c) INCENTIVES TO PDP SPONSORS TO NEGOTIATE  
4 LOWER PRICES.—

5 “(1) AUTHORITY.—The Secretary is authorized  
6 to provide incentive payments to PDP sponsors of-  
7 fering prescription drug plans that provide enrollees  
8 with access to negotiated prices used for payment of  
9 covered part D drugs under the plans that on aver-  
10 age are not more than 10 percent greater than the  
11 lesser of—

12 “(A) the average price at which the De-  
13 partment of Defense under the Defense Health  
14 Program acquires such drugs; or

15 “(B) the average price at which the De-  
16 partment of Veterans Affairs under the laws  
17 administered by the Secretary of Veterans Af-  
18 fairs acquires such drugs.

19 “(2) INFORMATION FROM VA AND DOD.—Upon  
20 request of the Secretary of Health and Human Serv-  
21 ices, the Secretary of Defense and the Secretary of  
22 Veterans Affairs shall make available to the Sec-  
23 retary of Health and Human Services such informa-  
24 tion regarding acquisition prices of prescription  
25 drugs as the Secretary of Health and Human Serv-

1        ices determines is necessary to conduct the incentive  
2        payment program under this subsection.

3            “(3) APPLICATION.—No incentive payments  
4        may be made under this subsection except pursuant  
5        to an application that is submitted and approved in  
6        a time, manner, and form specified by the Secretary.

7            “(4) FUNDING.—There shall be available to the  
8        Secretary from the MA Regional Plan Stabilization  
9        Fund under section 1858(e) during the period begin-  
10       ning on January 1, 2007, and ending on December  
11       31, 2013, a total of \$500,000,000 for making incen-  
12       tive payments under this subsection.

13           “(5) ANNUAL REPORTS.—For each year in  
14       which an incentive payment is awarded under this  
15       subsection, the Secretary shall submit a report to  
16       Congress containing a description of the operation of  
17       the incentive payment program.”.

18        (b) STABILIZATION FUND AMENDMENTS.—Section  
19       1858(e)(1) of the Social Security Act, as added by section  
20       221(e) of the Medicare Prescription Drug, Improvement,  
21       and Modernization Act of 2003 (Public Law 108–173),  
22       is amended—

23            (1) in the matter preceding subparagraph (A),  
24       by striking “2” and inserting “3”; and

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

3           “(C) PDP INCENTIVE PAYMENTS.—To  
4 provide incentive payments to PDP sponsors  
5 pursuant to section 1860D–42(c).”.

6           (c) EFFECTIVE DATE.—The amendments made by  
7 this section shall take effect as if included in the enact-  
8 ment of the Medicare Prescription Drug, Improvement,  
9 and Modernization Act of 2003 (Public Law 108–173).

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

16           (a) IN GENERAL.—The Secretary shall request the  
17 National Association of Insurance Commissioners to con-  
18 duct a review of the changes to the rules relating to medi-  
19 care supplemental policies that provide prescription drug  
20 coverage contained in subsection (v) of section 1882 of the  
21 Social Security Act (42 U.S.C. 1395ss), as added by sec-  
22 tion 104(a) of the Medicare Prescription Drug, Improve-  
23 ment, and Modernization Act of 2003 (Public Law 108–  
24 173).

1       (b) IMPACT ON MEDICARE BENEFICIARIES.—The re-  
2 view conducted pursuant to subsection (a) should focus  
3 on the impact the changes described in such subsection  
4 will have on medicare beneficiaries.

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

○