

110TH CONGRESS  
1ST SESSION

# S. 250

To reduce the costs of prescription drugs for Medicare beneficiaries and to guarantee access to comprehensive prescription drug coverage under part D of the Medicare program, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 10, 2007

Ms. SNOWE (for herself and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To reduce the costs of prescription drugs for Medicare beneficiaries and to guarantee access to comprehensive prescription drug coverage under part D of the Medicare program, and for other purposes.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Medicare Enhance-  
5       ments for Needed Drugs Act of 2007”.

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

3 (a) REVIEW AND REPORTS ON RETAIL PRICES OF  
4 PRESCRIPTION DRUGS.—

5 (1) INITIAL REVIEW.—The Comptroller General  
6 of the United States shall conduct a review of the  
7 retail cost of prescription drugs in the United States  
8 during 2000 through 2006, with an emphasis on the  
9 prescription drugs most utilized for individuals age  
10 65 or older.

11 (2) SUBSEQUENT REVIEW.—After conducting  
12 the review under paragraph (1), the Comptroller  
13 General shall continuously review the retail cost of  
14 such drugs through December 31, 2010, to deter-  
15 mine the changes in such costs.

16 (3) REPORTS.—

17 (A) INITIAL REVIEW.—Not later than 90  
18 days after the date of enactment of this Act,  
19 the Comptroller General shall submit to Con-  
20 gress a report on the initial review conducted  
21 under paragraph (1).

22 (B) SUBSEQUENT REVIEW.—Not later  
23 than April 1 of 2008, 2009, 2010, and 2011,  
24 the Comptroller General shall submit to Con-  
25 gress a report on the subsequent review con-  
26 ducted under paragraph (2).

1 (b) ANNUAL GAO STUDY AND REPORT ON RETAIL  
2 AND ACQUISITION PRICES OF CERTAIN PRESCRIPTION  
3 DRUGS.—

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

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

12 (B) the average price at which the Depart-  
13 ment of Defense under the Defense Health Pro-  
14 gram acquires each such drug;

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

19 (D) the average negotiated price for each  
20 such drug that eligible beneficiaries enrolled in  
21 a prescription drug plan under part D of title  
22 XVIII of the Social Security Act that provides  
23 only basic prescription drug coverage have ac-  
24 cess to under such plans.

1           (2) ANNUAL REPORT.—Not later than October  
 2           1, 2007, and annually thereafter, the Comptroller  
 3           General shall submit to Congress a report on the  
 4           study conducted under paragraph (1), together with  
 5           such recommendations as the Comptroller General  
 6           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 (42  
 12   U.S.C. 1395w–101(c)(3)) is amended—

13           (1) in subparagraph (A)—

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

17                   (B) by adding at the end the following new  
 18                   clause:

19                           “(vi) AVERAGE AGGREGATE BENE-  
 20                           FICIARY COSTS AND SAVINGS.—With re-  
 21                           spect to plan years beginning on or after  
 22                           January 1, 2008, the average aggregate  
 23                           costs, including deductibles and other cost-  
 24                           sharing, that a beneficiary will incur for  
 25                           covered part D drugs in the year under the

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

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

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

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

16 “(ii) a Medicare Advantage plan.”.

17 **SEC. 4. NEGOTIATING FAIR PRICES FOR MEDICARE PRE-**  
 18 **SCRIPTION DRUGS.**

19 (a) IN GENERAL.—Section 1860D–11 of the Social  
 20 Security Act (42 U.S.C. 1395w–111) is amended by strik-  
 21 ing subsection (i) (relating to noninterference) and by in-  
 22 serting the following:

23 “(i) AUTHORITY TO NEGOTIATE PRICES WITH MAN-  
 24 UFACTURERS.—

1           “(1) IN GENERAL.—In order to ensure that  
2 beneficiaries enrolled under prescription drug plans  
3 and MA–PD plans pay the lowest possible price, the  
4 Secretary shall have authority similar to that of  
5 other Federal entities that purchase prescription  
6 drugs in bulk to negotiate contracts with manufac-  
7 turers of covered part D drugs, consistent with the  
8 requirements and in furtherance of the goals of pro-  
9 viding quality care and containing costs under this  
10 part.

11           “(2) MANDATORY RESPONSIBILITIES.—The  
12 Secretary shall be required to—

13           “(A) negotiate contracts with manufactur-  
14 ers of covered part D drugs when the drug is  
15 a single source drug without a therapeutic  
16 equivalent;

17           “(B) participate in the negotiation of con-  
18 tracts with respect to any covered part D drug  
19 upon the request of an approved prescription  
20 drug plan or MA–PD plan;

21           “(C) participate in the negotiation of con-  
22 tracts for any covered part D drugs for which  
23 there is a substantial amount of Federal re-  
24 search funding in the development of the drug;  
25 and

1           “(D) negotiate contracts with manufactur-  
2           ers of covered part D drugs for each standard  
3           fallback prescription drug plan under subsection  
4           (g) and each comprehensive fallback prescrip-  
5           tion drug plan under subsection (k).

6           “(3) RULE OF CONSTRUCTION.—Nothing in  
7           paragraph (2) shall be construed to limit the author-  
8           ity of the Secretary under paragraph (1) to the man-  
9           datory responsibilities under paragraph (2).

10          “(4) NO PARTICULAR FORMULARY OR PRICE  
11          STRUCTURE.—In order to promote competition  
12          under this part and in carrying out this part, the  
13          Secretary may not require a particular formulary or  
14          institute a price structure for the reimbursement of  
15          covered part D drugs.

16          “(5) USE OF SAVINGS.—The savings to the  
17          Medicare Prescription Drug Account through the  
18          use of the authority provided under this subsection  
19          (including the mandatory responsibilities under  
20          paragraph (2)) shall be used to strengthen the pro-  
21          gram under this part and to reduce the Federal def-  
22          icit.”.

23          (b) EFFECTIVE DATE.—The amendment made by  
24          this section shall take effect on the date of enactment of  
25          this Act.

1 **SEC. 5. ACCESS TO A COMPREHENSIVE MEDICARE PRE-**  
 2 **SCRIPTION DRUG PLAN.**

3 (a) REQUIREMENT FOR ACCESS.—Section 1860D–  
 4 3(a) of the Social Security Act (42 U.S.C. 1395w–103(a))  
 5 is amended—

6 (1) in paragraph (1)—

7 (A) by striking “CHOICE OF AT LEAST  
 8 TWO PLANS IN EACH AREA.—The Secretary”  
 9 and inserting “CHOICE

10 “(A) CHOICE OF AT LEAST TWO PLANS IN  
 11 EACH AREA.—The Secretary”; and

12 (B) by adding at the end the following new  
 13 subparagraph:

14 “(B) CHOICE OF A COMPREHENSIVE PRE-  
 15 SCRIPTION DRUG PLAN.—In addition to the re-  
 16 quirement under subparagraph (A), the Sec-  
 17 retary shall ensure that each part D eligible in-  
 18 dividual has available a choice of enrollment in  
 19 a comprehensive prescription drug plan (as de-  
 20 fined in paragraph (4)) in the area in which the  
 21 individual resides. In any such case in which  
 22 such a plan is not available, the part D eligible  
 23 individual shall be given the opportunity to en-  
 24 roll in a comprehensive fallback prescription  
 25 drug plan.”; and

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

3           “(4) COMPREHENSIVE PRESCRIPTION DRUG  
4 PLAN.—For purposes of this section, the term ‘com-  
5 prehensive prescription drug plan’ means a prescrip-  
6 tion drug plan that provides coverage of covered part  
7 D drugs after an individual has reached the initial  
8 coverage limit under paragraph (3) of section  
9 1860D–2(b) but has not reached the annual out-of-  
10 pocket threshold under paragraph (4)(B) of such  
11 section that is the same as the coverage for such  
12 drugs that is provided under the plan after the indi-  
13 vidual has met the deductible under paragraph (1)  
14 of such section but has not reached such initial cov-  
15 erage limit.”.

16           (b) COMPREHENSIVE FALLBACK PRESCRIPTION  
17 DRUG PLAN.—Section 1860D–11 of the Social Security  
18 Act (42 U.S.C. 1395w–111) is amended by adding at the  
19 end the following new subsection:

20           “(k) GUARANTEEING ACCESS TO COMPREHENSIVE  
21 COVERAGE.—

22           “(1) SOLICITATION OF BIDS.—Separate from  
23 the bidding process under subsections (b) and (g),  
24 the Secretary shall provide for a process for the so-  
25 licitation of bids from eligible comprehensive fallback

1 entities (as defined in paragraph (2)) for the offer-  
2 ing in all comprehensive fallback service areas (as  
3 defined in paragraph (3)) in one or more PDP re-  
4 gions of a comprehensive fallback prescription drug  
5 plan (as defined in paragraph (4)) during the con-  
6 tract period specified in subsection (g)(5) (as made  
7 applicable to this subsection under paragraph (6)).

8 “(2) ELIGIBLE COMPREHENSIVE FALLBACK EN-  
9 TITY.—For purposes of this section, the term ‘eligi-  
10 ble comprehensive fallback entity’ means, with re-  
11 spect to all comprehensive fallback service areas in  
12 a PDP region for a contract period, an entity that—

13 “(A) meets the requirements to be a PDP  
14 sponsor (or would meet such requirements but  
15 for the fact that the entity is not a risk-bearing  
16 entity); and

17 “(B) does not submit a bid under section  
18 1860D–11(b) for any prescription drug plan for  
19 any PDP region for the first year of such con-  
20 tract period.

21 For purposes of subparagraph (B), an entity shall  
22 be treated as submitting a bid with respect to a pre-  
23 scription drug plan if the entity is acting as a sub-  
24 contractor of a PDP sponsor that is offering such a  
25 plan. The previous sentence shall not apply to enti-

1 ties that are subcontractors of an MA organization  
2 except insofar as such organization is acting as a  
3 PDP sponsor with respect to a prescription drug  
4 plan.

5 “(3) FALLBACK SERVICE AREA.—For purposes  
6 of this subsection, the term ‘comprehensive fallback  
7 service area’ means, for a PDP region with respect  
8 to a year, any area within such region for which the  
9 Secretary determines before the beginning of the  
10 year that the access requirements of the first sen-  
11 tence of section 1860D–3(a)(1)(B) will not be met  
12 for part D eligible individuals residing in the area  
13 for the year.

14 “(4) COMPREHENSIVE FALLBACK PRESCRIP-  
15 TION DRUG PLAN.—For purposes of this part, the  
16 term ‘comprehensive fallback prescription drug plan’  
17 means a prescription drug plan that—

18 “(A) offers the standard prescription drug  
19 coverage and access to negotiated prices de-  
20 scribed in section 1860D–2(a)(1)(A);

21 “(B) offers coverage of covered part D  
22 drugs after an individual has reached the initial  
23 coverage limit under paragraph (3) of section  
24 1860D–2(b) but has not reached the annual  
25 out-of-pocket threshold under paragraph (4)(B)

1 of such section that is the same as the coverage  
2 for such drugs that is offered after the indi-  
3 vidual has met the deductible under paragraph  
4 (1) of such section but has not reached such  
5 initial coverage limit; and

6 “(C) meets such other requirements as the  
7 Secretary may specify.

8 “(5) MONTHLY BENEFICIARY PREMIUM.—Ex-  
9 cept as provided in section 1860D–13(b) (relating to  
10 late enrollment penalty) and subject to section  
11 1860D–14 (relating to low-income assistance), the  
12 monthly beneficiary premium to be charged under a  
13 comprehensive fallback prescription drug plan of-  
14 fered in all comprehensive fallback service areas in  
15 a PDP region shall be uniform and shall be an  
16 amount equal to—

17 “(A) 25.5 percent of an amount equal to  
18 the Secretary’s estimate of the average monthly  
19 per capita actuarial cost, including administra-  
20 tive expenses, under the comprehensive fallback  
21 prescription drug plan of providing the coverage  
22 described in paragraph (4)(A) in the region, as  
23 calculated by the Chief Actuary of the Centers  
24 for Medicare & Medicaid Services; and

1           “(B) 100 percent of an amount equal to  
2           the Secretary’s estimate of the average monthly  
3           per capita actuarial cost, including administra-  
4           tive expenses, under the comprehensive fallback  
5           prescription drug plan of providing the coverage  
6           described in paragraph (4)(B) in the region, as  
7           calculated by the Chief Actuary of the Centers  
8           for Medicare & Medicaid Services.

9           In calculating such administrative expenses, the  
10          Chief Actuary shall use a factor that is based on  
11          similar expenses of prescription drug plans that are  
12          not standard or comprehensive fallback prescription  
13          drug plans.

14          “(6) INCORPORATION OF STANDARD FALLBACK  
15          PRESCRIPTION DRUG PLAN PROVISIONS.—The provi-  
16          sions of paragraphs (1)(B), (5), and (7) of sub-  
17          section (g) shall apply to comprehensive fallback pre-  
18          scription drug plans and entities offering such plans  
19          in the same manner as such provisions apply to  
20          standard fallback prescription drug plans and enti-  
21          ties offering such plans.

22          “(7) SAME ENTITY MAY OFFER BOTH FALL-  
23          BACK PRESCRIPTION DRUG PLANS IN AN AREA.—  
24          The Secretary may award a contract to an entity  
25          under this subsection with respect to an area and

1 period and a contract under subsection (g) with re-  
2 spect to the same area and period.”.

3 (c) CONFORMING AMENDMENTS.—

4 (1) ACCESS.—Section 1860D–3 of the Social  
5 Security Act (42 U.S.C. 1395w–103) is amended—

6 (A) in subsection (a)—

7 (i) in paragraph (1)(A) of subsection  
8 (a), as redesignated by subsection (a), by  
9 inserting “standard” before “fallback”;

10 (ii) in paragraph (2), by striking  
11 “paragraph (1)” and inserting “paragraph  
12 (1)(A)”; and

13 (B) in subsection (b)(2), by striking “fall-  
14 back prescription drug plan for that area under  
15 section 1860D–11(g)” and inserting “standard  
16 or comprehensive fallback prescription drug  
17 plan for that area under subsections (g) and (k)  
18 of section 1860D–11, as applicable”.

19 (2) LIMITED RISK PLANS.—Section 1860D–  
20 11(f) of the Social Security Act (42 U.S.C. 1395w–  
21 111(f)) is amended—

22 (A) in paragraph (1)—

23 (i) by striking “1860D–3(a)” and in-  
24 serting “1860D–3(a)(1)(A)”; and

1 (ii) by inserting “standard” before  
2 “fallback”; and

3 (B) in paragraph (2)(A), by striking  
4 “1860D–3(a)” and inserting “1860D–  
5 3(a)(1)(A)”; and

6 (C) in each of subparagraphs (A) and (B)  
7 of paragraph (4), by striking “a fallback” and  
8 inserting “a standard or comprehensive fall-  
9 back”.

10 (3) STANDARD FALLBACK PRESCRIPTION DRUG  
11 PLAN.—Section 1860D–11(g) of the Social Security  
12 Act (42 U.S.C. 1395w–111(g)) is amended—

13 (A) in the heading, by inserting “STAND-  
14 ARD PRESCRIPTION DRUG” after “ACCESS TO”;

15 (B) by inserting “STANDARD” before  
16 “FALLBACK” each place it appears;

17 (C) by striking “FALLBACK” each place it  
18 appears and inserting “STANDARD FALLBACK”;

19 (D) by inserting “standard” before “fall-  
20 back” each place it appears; and

21 (E) in paragraph (3), by striking “1860D–  
22 3(a)” and inserting “1860D–3(a)(1)(A)”.

23 (4) ANNUAL REPORT.—Section 1860D–11(h) of  
24 the Social Security Act (42 U.S.C. 1395w–111(h)) is

1 amended by striking “(f) and (g)” and inserting  
2 “(f), (g), and (k)”.

3 (5) LIMITATION ON ENTITIES OFFERING FALL-  
4 BACK PRESCRIPTION DRUG PLANS.—Section 1860D-  
5 12(b)(2) of the Social Security Act (42 U.S.C.  
6 1395w-112(b)(2)) is amended—

7 (A) in the matter preceding subparagraph  
8 (A), by striking “a fallback” and inserting “a  
9 standard or comprehensive fallback”;

10 (B) in subparagraph (A)—

11 (i) by striking “section 1860D-11(g)”  
12 and inserting “subsection (g) or (k) of sec-  
13 tion 1860D-11”;

14 (ii) by striking “such section” and in-  
15 serting “such subsections, as applicable”;  
16 and

17 (iii) by striking “a fallback” and in-  
18 serting “a standard or comprehensive fall-  
19 back”;

20 (C) in subparagraph (B), by striking “a  
21 fallback” and inserting “a standard or com-  
22 prehensive fallback”;

23 (D) in subparagraph (C), by striking “a  
24 fallback” and inserting “a standard or com-  
25 prehensive fallback” and

1 (E) in the flush matter following subpara-  
2 graph (C), by striking “a fallback” and insert-  
3 ing “a standard or comprehensive fallback”.

4 (6) COLLECTION OF PREMIUM.—Section  
5 1860D–13(c)(3) of the Social Security Act (42  
6 U.S.C. 1395w–113(c)(3)) is amended by striking “a  
7 fallback” and inserting “a standard or comprehen-  
8 sive fallback”.

9 (7) PAYMENT.—Section 1860D–15(g) of the  
10 Social Security Act (42 U.S.C. 1395w–115(g)) is  
11 amended by striking “offering” and all that follows  
12 and inserting the following: “offering.—

13 “(1) a standard prescription drug plan (as de-  
14 fined in paragraph (4) of section 1860D–11(g)), the  
15 amount payable shall be the amounts determined  
16 under the contract for such plan pursuant to para-  
17 graph (5) of such section; and

18 “(2) a comprehensive prescription drug plan (as  
19 defined in paragraph (4) of section 1860D–11(k)),  
20 the amount payable shall be the amounts determined  
21 under the contract for such plan pursuant to such  
22 paragraph (5) (as made applicable to section  
23 1860D–11(k) under paragraph (6) of such sec-  
24 tion).”.

1           (8) PAYMENT FROM ACCOUNT.—Section  
2           1860D–16(b)(1)(B) of the Social Security Act (42  
3           U.S.C. 1395w–116(b)(1)(B)) is amended by insert-  
4           ing “standard and comprehensive” before “fall-  
5           back”.

6           (9) DEFINITION.—Section 1860D–41(a)(5) of  
7           the Social Security Act (42 U.S.C. 1395w–  
8           151(a)(5)) is amended to read as follows:

9           “(5) STANDARD FALLBACK PRESCRIPTION  
10          DRUG PLAN; COMPREHENSIVE FALLBACK PRESCRIP-  
11          TION DRUG PLAN.—The terms ‘standard fallback  
12          prescription drug plan’ and ‘comprehensive fallback  
13          prescription drug plan’ have the meaning given those  
14          terms in subsection (g)(4) and (k)(4), respectively,  
15          of section 1860D–11.”.

16          (d) EFFECTIVE DATE.—The amendments made by  
17          this section shall take effect on January 1, 2008.

○