

**AMENDMENT TO MR. TAUZIN'S AMENDMENT
OFFERED BY M.**

(Page & line nos. refer to Chairman's Mark of June 17, 2003)

Amend section 105 (page 77, line 13 through page 85, line 29) to read as follows:

1 **SEC. 105. MEDICARE PRESCRIPTION DRUG DISCOUNT**
2 **CARD AND ASSISTANCE PROGRAM.**

3 (a) IN GENERAL.—Title XVIII is amended by inserting
4 after section 1806 the following new sections:

5 “MEDICARE PRESCRIPTION DRUG DISCOUNT CARD
6 ENDORSEMENT AND ASSISTANCE PROGRAM

7 “SEC. 1807. (a) ESTABLISHMENT OF PROGRAM.—

8 “(1) IN GENERAL.—The Secretary (or the Medicare
9 Benefits Administrator pursuant to section 1809(c)(3)(C))
10 shall establish a program—

11 “(A) to endorse prescription drug discount card
12 programs (each such program referred to as an ‘en-
13 dorsed program’) that meet the requirements of this
14 section in order to provide access to prescription drug
15 discounts through an eligible entity for medicare bene-
16 ficiaries throughout the United States; and

17 “(B) a prescription drug account and a public con-
18 tribution into such an account.

19 The Secretary shall make available to medicare bene-
20 ficiaries information regarding endorsed programs and ac-
21 counts under this section.

22 “(2) LIMITED PERIOD OF OPERATION.—The Secretary
23 shall begin—

24 “(A) the card endorsement part of the program
25 under paragraph (1)(A) as soon as possible, but in no
26 case later than 90 days after the date of the enactment
27 of this section; and

1 “(B) the prescription drug account part of the
2 program under paragraph (1)(B) as soon as possible,
3 but in no case later than September 2004.

4 “(3) TRANSITION.—The program under this section
5 shall continue through 2005 throughout the United States.
6 The Secretary shall provide for an appropriate transition
7 and discontinuation of such program at the time medicare
8 prescription drug benefits become available under part D.

9 “(4) VOLUNTARY NATURE OF PROGRAM.—Nothing in
10 this section shall be construed as requiring an eligible bene-
11 ficiary to enroll in the program under this section.

12 “(b) ELIGIBLE BENEFICIARY; ELIGIBLE ENTITY; PRE-
13 SCRIPTION DRUG ACCOUNT.—For purposes of this section:

14 “(1) ELIGIBLE BENEFICIARY.—The term ‘eligible ben-
15 eficiary’ means an individual who is eligible for benefits
16 under part A or enrolled under part B and who is not en-
17 rolled in a prescription drug plan or MA-EFFS Rx plan,
18 but who may be enrolled in a Medicare Advantage plan
19 that does not offer qualified prescription drug coverage.

20 “(2) ELIGIBLE ENTITY.—The term ‘eligible entity’
21 means any entity that the Secretary determines to be ap-
22 propriate to provide the benefits under this section,
23 including—

24 “(A) pharmaceutical benefit management compa-
25 nies;

26 “(B) wholesale and retail pharmacy delivery sys-
27 tems;

28 “(C) insurers;

29 “(D) Medicare Advantage or EFFS organizations;

30 “(E) other entities; or

31 “(F) any combination of the entities described in
32 subparagraphs (A) through (E).

33 “(3) PRESCRIPTION DRUG ACCOUNT.—The term ‘pre-
34 scription drug account’ means, with respect to an eligible
35 beneficiary, an account established for the benefit of that
36 beneficiary under section 1807A.

37 “(c) ENROLLMENT IN ENDORSED PLAN.—

1 “(1) ESTABLISHMENT OF PROCESS.—

2 “(A) IN GENERAL.—The Secretary shall establish
3 a process through which an eligible beneficiary may
4 make an election to enroll under this section with an
5 endorsed program.

6 “(B) REQUIREMENT OF ENROLLMENT.—An eligi-
7 ble beneficiary must enroll under this section for a year
8 in order to be eligible to receive the benefits under this
9 section for that year.

10 “(C) LIMITATION ON ENROLLMENT.—

11 “(i) IN GENERAL.—Except as provided under
12 this subparagraph and under such exceptional cir-
13 cumstances as the Secretary may provide, an eligi-
14 ble individual shall have the opportunity to enroll
15 under this section during an initial, general enroll-
16 ment period as soon as possible after the date of
17 the enactment of this section and annually there-
18 after. The Secretary shall specify the form, man-
19 ner, and timing of such election but shall permit
20 the exercise of such election at the time the indi-
21 vidual is eligible to enroll. The annual open enroll-
22 ment periods shall be coordinated with those pro-
23 vided under the Medicare Advantage and EFFS
24 programs under parts C and E as well as under the
25 prescription drug program under part D.

26 “(ii) REELECTION AFTER TERMINATION OF
27 ENROLLMENT IN A MEDICARE ADVANTAGE PLAN.—
28 In the case of an individual who is enrolled under
29 this section and who subsequently enrolls in a
30 Medicare Advantage plan that provides qualified
31 prescription drug coverage under part C, the indi-
32 vidual shall be given the opportunity to reenroll
33 under this section at the time the individual discon-
34 tinues the enrollment under such part.

35 “(iii) LATE ENROLLMENT.—The Secretary
36 shall permit individuals to elect to enroll under this

1 section at times other than as permitted under the
2 previous provisions of this paragraph.

3 “(D) TERMINATION OF ENROLLMENT.—An en-
4 rollee under this section shall be disenrolled—

5 “(i) upon enrollment in a prescription drug
6 plan under part D or a Medicare Advantage or
7 EFFS plan under part C or E that provides quali-
8 fied prescription drug coverage;

9 “(ii) upon failure to pay the applicable enroll-
10 ment fee under subsection (f);

11 “(iii) upon termination of coverage under part
12 A or part B; or

13 “(iv) upon notice submitted to the Secretary in
14 such form, manner, and time as the Secretary shall
15 provide.

16 Terminations of enrollment under this subparagraph
17 shall be effective as specified by the Secretary in regu-
18 lations.

19 “(2) ENROLLMENT PERIODS.—

20 “(A) IN GENERAL.—Except as provided under this
21 paragraph, an eligible beneficiary may not enroll in the
22 program under this part during any period after the
23 beneficiary’s initial enrollment period under part B (as
24 determined under section 1837).

25 “(B) OPEN ENROLLMENT PERIOD FOR CURRENT
26 BENEFICIARIES.—The Secretary shall establish a pe-
27 riod, which shall begin on the date on which the Sec-
28 retary first begins to accept elections for enrollment
29 under this section and shall end not earlier than 3
30 months later, during which any eligible beneficiary may
31 enroll under this section.

32 “(C) SPECIAL ENROLLMENT PERIOD IN CASE OF
33 TERMINATION OF COVERAGE UNDER A GROUP HEALTH
34 PLAN.—The Secretary shall provide for a special enroll-
35 ment period under this section in the same manner as
36 is provided under section 1837(i) with respect to part
37 B, except that for purposes of this subparagraph any

1 reference to 'by reason of the individual's (or the indi-
2 vidual's spouse's) current employment status' shall be
3 treated as being deleted.

4 “(3) PERIOD OF COVERAGE.—

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

11 “(B) ENROLLMENT DURING OPEN AND SPECIAL
12 ENROLLMENT.—Subject to subparagraph (C), an eli-
13 gible beneficiary who enrolls under the program under
14 this section under subparagraph (B) or (C) of para-
15 graph (2) shall be entitled to the benefits under this
16 section beginning on the first day of the month fol-
17 lowing the month in which such enrollment occurs.

18 “(d) SELECTION OF AN ELIGIBLE ENTITY FOR ACCESS TO
19 NEGOTIATED PRICES.—

20 “(1) PROCESS.—

21 “(A) IN GENERAL.—The Secretary shall establish
22 a process through which an eligible beneficiary who is
23 enrolled under this section shall select any eligible enti-
24 ty, that has been awarded a contract under this section
25 and serves the State in which the beneficiary resides,
26 to provide access to negotiated prices under subsection
27 (i).

28 “(B) RULES.—In establishing the process under
29 subparagraph (A), the Secretary shall use rules similar
30 to the rules for enrollment and disenrollment with a
31 Medicare Advantage plan under section 1851 (including
32 the special election periods under subsection (e)(4) of
33 such section), including that—

34 “(i) an individual may not select more than
35 one eligible entity at any time; and

1 “(ii) an individual shall only be permitted (ex-
2 cept for unusual circumstances) to change the se-
3 lection of the entity once a year.

4 In carrying out clause (ii), the Secretary may consider
5 a change in residential setting (such as placement in a
6 nursing facility) to be an unusual circumstance.

7 “(C) DEFAULT SELECTION.—In establishing such
8 process, the Secretary shall provide an equitable meth-
9 od for selecting an eligible entity for individuals who
10 enroll under this section and fail to make such a selec-
11 tion.

12 “(2) COMPETITION.—Eligible entities with a contract
13 under this section shall compete for beneficiaries on the
14 basis of discounts, formularies, pharmacy networks, and
15 other services provided for under the contract.

16 “(e) PROVIDING ENROLLMENT, SELECTION, AND COV-
17 ERAGE INFORMATION TO BENEFICIARIES.—

18 “(1) ACTIVITIES.—The Secretary shall provide for ac-
19 tivities under this section to broadly disseminate informa-
20 tion to eligible beneficiaries (and prospective eligible bene-
21 ficiaries) regarding enrollment under this section, the selec-
22 tion of eligible entities, and the prescription drug coverage
23 made available by eligible entities with a contract under
24 this section.

25 “(2) SPECIAL RULE FOR FIRST ENROLLMENT UNDER
26 THE PROGRAM.—To the extent practicable, the activities
27 described in paragraph (1) shall ensure that eligible bene-
28 ficiaries are provided with such information at least 60
29 days prior to the first enrollment period described in sub-
30 section (c).

31 “(f) ENROLLMENT FEE.—

32 “(1) AMOUNT.—

33 “(A) IN GENERAL.—Except as provided in para-
34 graph (3), enrollment under the program under this
35 section is conditioned upon payment of an annual en-
36 rollment fee of \$30 for 2004 (including any portion of

1 2003 in which the program is implemented under this
2 section).

3 “(B) ANNUAL PERCENTAGE INCREASE IN ENROLL-
4 MENT FEE.—In the case of any calendar year begin-
5 ning after 2004, the dollar amount of the enrollment
6 fee in subparagraph (A) shall be the dollar amount of
7 such fee for the previous year increased by the annual
8 percentage increase in the consumer price index for all
9 urban consumers (U.S. city average; all items) as of
10 September before the beginning of the year involved. If
11 any increase determined under the previous sentence is
12 not a multiple of \$1, such increase shall be rounded to
13 the nearest multiple of \$1.

14 “(2) COLLECTION OF ENROLLMENT FEE.—The annual
15 enrollment fee shall be collected and credited to the Federal
16 Supplementary Medical Insurance Trust Fund in the same
17 manner as the monthly premium determined under section
18 1839 is collected and credited to such Trust Fund under
19 section 1840, except that it shall be collected only 1 time
20 per year.

21 “(3) PAYMENT OF ENROLLMENT FEE BY STATE FOR
22 CERTAIN BENEFICIARIES.—

23 “(A) IN GENERAL.—The Secretary shall establish
24 an arrangement under which a State may provide for
25 payment of some or all of the enrollment fee for some
26 or all low income enrollees in the State, as specified by
27 the State under the arrangement. Insofar as such a
28 payment arrangement is made with respect to an en-
29 rollee, the amount of the enrollment fee shall be paid
30 directly by the State and shall not be collected under
31 paragraph (2). In carrying out this paragraph, the Sec-
32 retary may apply procedures similar to that applied
33 under state agreements under section 1843.

34 “(B) NO FEDERAL MATCHING AVAILABLE UNDER
35 MEDICAID OR SCHIP.—Expenditures made by a State
36 described in subparagraph (A) shall not be treated as
37 State expenditures for purposes of Federal matching

1 payments under titles XIX and XXI insofar as such ex-
2 penditures are for an enrollment fee under this sub-
3 section.

4 “(4) DISTRIBUTION OF PORTION OF ENROLLMENT
5 FEE.—Of the enrollment fee collected by the Secretary
6 under this subsection with respect to a beneficiary, $\frac{2}{3}$ of
7 that fee shall be made available to the eligible entity se-
8 lected by the eligible beneficiary.

9 “(g) ISSUANCE OF CARD AND COORDINATION.—Each eli-
10 gible entity shall—

11 “(1) issue, in a uniform standard format specified
12 by the Secretary, to each enrolled beneficiary a card
13 and an enrollment number that establishes proof of en-
14 rollment and that can be used in a coordinated
15 manner—

16 “(A) to identify the eligible entity selected to pro-
17 vide access to negotiated prices under subsection (i);
18 and

19 “(B) to make deposits to and withdrawals from a
20 prescription drug account under section 1807A; and

21 “(2) provide for electronic methods to coordinate with
22 the accounts established under section 1807A.

23 “(h) ENROLLEE PROTECTIONS.—

24 “(1) GUARANTEED ISSUE AND NONDISCRIMINATION.—

25 “(A) GUARANTEED ISSUE.—

26 “(i) IN GENERAL.—An eligible beneficiary who
27 is eligible to select an eligible entity under sub-
28 section (b) for prescription drug coverage under
29 this section at a time during which selections are
30 accepted under this section with respect to the cov-
31 erage shall not be denied selection based on any
32 health status-related factor (described in section
33 2702(a)(1) of the Public Health Service Act) or
34 any other factor and may not be charged any selec-
35 tion or other fee as a condition of such acceptance.

36 “(ii) MEDICARE+ CHOICE LIMITATIONS PER-
37 MITTED.—The provisions of paragraphs (2) and

1 (3) (other than subparagraph (C)(i), relating to de-
2 fault enrollment) of section 1851(g) (relating to
3 priority and limitation on termination of election)
4 shall apply to selection of eligible entities under
5 this paragraph.

6 “(B) NONDISCRIMINATION.—An eligible entity of-
7 fering prescription drug coverage under this section
8 shall not establish a service area in a manner that
9 would discriminate based on health or economic status
10 of potential enrollees.

11 “(C) COVERAGE OF ALL PORTIONS OF A STATE.—
12 If an eligible entity with a contract under this section
13 serves any part of a State it shall serve the entire
14 State.

15 “(2) DISSEMINATION OF INFORMATION.—

16 “(A) GENERAL INFORMATION.—An eligible entity
17 with a contract under this section shall disclose, in a
18 clear, accurate, and standardized form to each eligible
19 beneficiary who has selected the entity to provide ac-
20 cess to negotiated prices under this section at the time
21 of selection and at least annually thereafter, the infor-
22 mation described in section 1852(c)(1) relating to such
23 prescription drug coverage. Such information includes
24 the following (in a manner designed to permit and pro-
25 mote competition among eligible entities):

26 “(i) Summary information regarding nego-
27 tiated prices (including discounts) for covered out-
28 patient drugs.

29 “(ii) Access to such prices through pharmacy
30 networks.

31 “(iii) How any formulary used by the eligible
32 entity functions.

33 “(B) DISCLOSURE UPON REQUEST OF GENERAL
34 COVERAGE, UTILIZATION, AND GRIEVANCE INFORMA-
35 TION.—Upon request of an eligible beneficiary, the eli-
36 gible entity shall provide the information described in

1 section 1852(c)(2) (other than subparagraph (D)) to
2 such beneficiary.

3 “(C) RESPONSE TO BENEFICIARY QUESTIONS.—
4 Each eligible entity offering prescription drug coverage
5 under this section shall have a mechanism (including a
6 toll-free telephone number) for providing upon request
7 specific information (such as negotiated prices, includ-
8 ing discounts) to individuals who have selected the enti-
9 ty. The entity shall make available, through an Internet
10 website and in writing upon request, information on
11 specific changes in its formulary.

12 “(D) COORDINATION WITH PRESCRIPTION DRUG
13 ACCOUNT BENEFITS.—Each such eligible entity shall
14 provide for coordination of such information as the Sec-
15 retary may specify to carry out section 1807A.

16 “(3) ACCESS TO COVERED BENEFITS.—

17 “(A) ENSURING PHARMACY ACCESS.—The provi-
18 sions of subsection (c)(1) of section 1860D-3 (other
19 than payment provisions under section 1860D-8 with
20 respect to sponsors under such subsection) shall apply
21 to an eligible entity under this section in the same
22 manner as they apply to a PDP sponsor under such
23 section.

24 “(B) ACCESS TO NEGOTIATED PRICES FOR PRE-
25 SCRIPTIION DRUGS.—For requirements relating to the
26 access of an eligible beneficiary to negotiated prices (in-
27 cluding applicable discounts), see subsection (i).

28 “(C) REQUIREMENTS ON DEVELOPMENT AND AP-
29 PPLICATION OF FORMULARIES.—Insofar as an eligible
30 entity with a contract under this part uses a formulary,
31 the entity shall comply with the requirements of section
32 1860D-3(c)(3), insofar as the Secretary determines
33 that such requirements can be implemented on a timely
34 basis.

35 “(4) COST AND UTILIZATION MANAGEMENT; QUALITY
36 ASSURANCE; MEDICATION THERAPY MANAGEMENT PRO-
37 GRAM.—

1 “(A) IN GENERAL.—For purposes of providing ac-
2 cess to negotiated benefits under subsection (i), the eli-
3 gible entity shall have in place the programs and meas-
4 ure described in section 1860D–3(d), including an ef-
5 fective cost and drug utilization management program,
6 quality assurance measures and systems, and a pro-
7 gram to control fraud, abuse, and waste, insofar as the
8 Secretary determines that such provisions can be imple-
9 mented on a timely basis.

10 “(B) TREATMENT OF ACCREDITATION.—Section
11 1852(e)(4) (relating to treatment of accreditation) shall
12 apply to the requirements for an endorsed program
13 under this section with respect to the following require-
14 ments, in the same manner as they apply to Medicare
15 Advantage plans under part C with respect to the re-
16 quirements described in a clause of section
17 1852(e)(4)(B):

18 “(i) Paragraph (3)(A) (relating to access to
19 covered benefits).

20 “(ii) Paragraph (7) (relating to confidentiality
21 and accuracy of enrollee records).

22 “(5) GRIEVANCE MECHANISM.—Each eligible entity
23 shall provide meaningful procedures for hearing and resolv-
24 ing grievances between the organization consistent with the
25 requirements of section 1860D–3(e) insofar as they relate
26 to PDP sponsors of prescription drug plans.

27 “(6) BENEFICIARY SERVICES.—An eligible entity shall
28 provide for its enrollees pharmaceutical support services,
29 such as education and counseling, and services to prevent
30 adverse drug interactions.

31 “(7) COVERAGE DETERMINATIONS AND RECONSIDER-
32 ATIONS.—An eligible entity shall meet the requirements of
33 section 1852(g) with respect to covered benefits under the
34 prescription drug coverage it offers under this section in
35 the same manner as such requirements apply to a Medicare
36 Advantage organization with respect to benefits it offers
37 under a Medicare Advantage plan under part C.

1 “(8) CONFIDENTIALITY AND ACCURACY OF ENROLLEE
2 RECORDS.—An eligible entity shall meet the requirements
3 of section 1852(h) with respect to enrollees under this sec-
4 tion in the same manner as such requirements apply to a
5 Medicare Advantage organization with respect to enrollees
6 under part C. The eligible entity shall implement policies
7 and procedures to safeguard the use and disclosure of en-
8 rollees’ individually identifiable health information in a
9 manner consistent with the Federal regulations (concerning
10 the privacy of individually identifiable health information)
11 promulgated under section 264(c) of the Health Insurance
12 Portability and Accountability Act of 1996. The eligible en-
13 tity shall be treated as a covered entity for purposes of the
14 provisions of subpart E of part 164 of title 45, Code of
15 Federal Regulations, adopted pursuant to the authority of
16 the Secretary under section 264(c) of the Health Insurance
17 Portability and Accountability Act of 1996 (42 U.S. C.
18 1320d-2 note).

19 “(9) PERIODIC REPORTS AND OVERSIGHT.—The eligi-
20 ble entity shall submit to the Secretary periodic reports on
21 performance, utilization, finances, and such other matters
22 as the Secretary may specify. The Secretary shall provide
23 appropriate oversight to ensure compliance of eligible enti-
24 ties with the requirements of this subsection, including ver-
25 ification of the discounts and services provided.

26 “(10) ADDITIONAL BENEFICIARY PROTECTIONS.—The
27 eligible entity meets such additional requirements as the
28 Secretary identifies to protect and promote the interest of
29 enrollees, including requirements that ensure that enrollees
30 are not charged more than the lower of the negotiated re-
31 tail price or the usual and customary price.

32 “(i) BENEFITS UNDER THE PROGRAM THROUGH SAVINGS
33 TO ENROLLEES THROUGH NEGOTIATED PRICES.—

34 “(1) IN GENERAL.—Subject to paragraph (2), each el-
35 igible entity with a contract under this section shall provide
36 each eligible beneficiary enrolled with the entity with access
37 to negotiated prices (including applicable discounts). For

1 purposes of this paragraph, the term ‘prescription drugs’ is
2 not limited to covered outpatient drugs, but does not in-
3 clude any over-the-counter drug that is not a covered out-
4 patient drug. The prices negotiated by an eligible entity
5 under this paragraph shall (notwithstanding any other pro-
6 vision of law) not be taken into account for the purposes
7 of establishing the best price under section 1927(c)(1)(C).

8 “(2) FORMULARY RESTRICTIONS.—Insofar as an eligi-
9 ble entity with a contract under this part uses a formulary,
10 the negotiated prices (including applicable discounts) for
11 prescription drugs shall only be available for drugs included
12 in such formulary.

13 “(3) PROHIBITION ON APPLICATION ONLY TO MAIL
14 ORDER.—The negotiated prices under this subsection shall
15 apply to prescription drugs that are available other than
16 solely through mail order.

17 “(4) PROHIBITION ON CHARGES FOR REQUIRED SERV-
18 ICES.—An eligible entity (and any pharmacy contracting
19 with such entity for the provision of a discount under this
20 section) may not charge a beneficiary any amount for any
21 services required to be provided by the entity under this
22 section.

23 “(5) DISCLOSURE.—The eligible entity offering the en-
24 dorsed program shall disclose to the Secretary (in a man-
25 ner specified by the Secretary) the extent to which dis-
26 counts or rebates or other remuneration or price conces-
27 sions made available to the entity by a manufacturer are
28 passed through to enrollees through pharmacies and other
29 dispensers or otherwise. The provisions of section
30 1927(b)(3)(D) shall apply to information disclosed to the
31 Administrator under this paragraph in the same manner as
32 such provisions apply to information disclosed under such
33 section.

34 “(6) PUBLIC DISCLOSURE OF PHARMACEUTICAL
35 PRICES FOR EQUIVALENT DRUGS.—Each eligible entity
36 shall provide that each pharmacy or other dispenser that
37 arranges for the dispensing of a covered outpatient drug in

1 connection with its endorsed program shall inform the en-
2 rollee in that program at the time of purchase of the drug
3 of any differential between the price of the prescribed drug
4 to the enrollee and the price of the lowest cost available ge-
5 neric drug covered under the program that is therapeuti-
6 cally equivalent and bioequivalent.

7 “(j) CONTRIBUTION INTO PRESCRIPTION DRUG AC-
8 COUNT.—

9 “(1) IN GENERAL.—In the case of an individual en-
10 rolled under this section—

11 “(A) the Secretary shall establish a prescription
12 drug account for the individual under section 1807A;
13 and

14 “(B) shall deposit into such account on a monthly
15 or other periodic basis an amount that, on an annual
16 basis, is equivalent to the annual Federal contribution
17 amount specified in paragraph (2) for the enrollee in-
18 volved.

19 “(2) ANNUAL FEDERAL CONTRIBUTION AMOUNT.—

20 “(A) IN 2004.—Subject to paragraphs (3) and (4),
21 in the case of an accountholder whose modified ad-
22 justed gross income is—

23 “(i) not more than 135 percent of the poverty
24 line, the annual Federal contribution amount for
25 2004 is \$800;

26 “(ii) more than 135 percent, but less than 150
27 percent, of the poverty line, the annual Federal
28 contribution amount for 2004 is \$500; and

29 “(iii) more than 150 percent of the poverty
30 line, the annual Federal contribution amount for
31 2004 is \$100.

32 “(B) THEREAFTER.—For periods after 2004, the
33 amounts applicable under subparagraph (A) shall be in-
34 creased by the annual percentage increase described in
35 section 1860D-2(b)(5) for the period involved.

36 “(C) ROUNDING.—If an annual Federal contribu-
37 tion amount determined under subparagraph (B) is not

1 a multiple of \$10, it shall be rounded to the nearest
2 multiple of \$10.

3 “(3) REQUIREMENT FOR INCOME VERIFICATION TO
4 OBTAIN INCREASED CONTRIBUTION AMOUNT.—

5 “(A) IN GENERAL.—The provisions of subsections
6 clauses (i) and (ii) of subparagraphs (A) and (B) of
7 paragraph (2) shall apply to an individual only if the
8 individual—

9 “(i) provides such information as the Sec-
10 retary may require in order to determine the appro-
11 priate category of benefits under the respective pro-
12 visions; and

13 “(ii) authorizes in a form and manner speci-
14 fied by the Secretary the verification of the individ-
15 ual’s modified adjusted gross income by the Sec-
16 retary through arrangements with States.

17 An arrangement with a State under clause (ii) shall
18 provide for the payment by the Secretary under this
19 section of the State’s reasonable costs of conducting in-
20 come verifications under such arrangement.

21 “(B) PENALTIES FOR UNDERSTATEMENT OF IN-
22 COME.—The provision of false information under sub-
23 paragraph (A)(i) is subject to criminal penalties under
24 section 1128B.

25 “(C) PROCEDURES FOR DETERMINING MODIFIED
26 ADJUSTED GROSS INCOME.—

27 “(i) IN GENERAL.—The Secretary shall estab-
28 lish procedures for determining the modified ad-
29 justed gross income of enrollees. The Secretary
30 shall consult with the Secretary of the Treasury in
31 making such determinations. Income determina-
32 tions under this subsection shall be valid for a pe-
33 riod (of not less than 1 year) specified by the Sec-
34 retary.

35 “(ii) DISCLOSURE OF INFORMATION.—The
36 Secretary of the Treasury may, upon written re-
37 quest from the Secretary, disclose to Secretary

1 such return information as is necessary to make
2 the determinations described in clause (i). Return
3 information disclosed under the preceding sentence
4 may be used by the Secretary only for the purposes
5 of, and to the extent necessary in, making such de-
6 terminations.

7 “(iii) PENALTY FOR UNAUTHORIZED DISCLO-
8 SURE.—The provisions of section 1860D-
9 2(b)(4)(F)(ii) shall apply to an unauthorized disclo-
10 sure of information under clause (ii) in the same
11 manner as those provisions apply to an unauthor-
12 ized disclosure of information under such section.

13 “(4) PARTIAL YEAR.—Insofar as the provisions of this
14 subsection and section 1807A are not implemented for all
15 months in 2004, the annual contribution amount under this
16 subsection for 2004 shall be prorated to reflect the portion
17 of that year in which such provisions are in effect.

18 “(5) APPROPRIATION TO COVER NET PROGRAM EX-
19 PENDITURES.—There are authorized to be appropriated
20 from time to time, out of any moneys in the Treasury not
21 otherwise appropriated, to the Federal Supplementary Med-
22 ical Insurance Trust Fund established under section 1841,
23 an amount equal to the amount by which the benefits and
24 administrative costs of providing the benefits under this
25 section exceed the sum of the portion of the enrollment fees
26 retained by the Secretary.

27 “(k) DEFINITIONS.—In this part and section 1807A:

28 “(1) COVERED OUTPATIENT DRUG.—

29 “(A) IN GENERAL.—Except as provided in this
30 paragraph, for purposes of this section, the term ‘cov-
31 ered outpatient drug’ means—

32 “(i) a drug that may be dispensed only upon
33 a prescription and that is described in subpara-
34 graph (A)(i) or (A)(ii) of section 1927(k)(2); or

35 “(ii) a biological product described in clauses
36 (i) through (iii) of subparagraph (B) of such sec-
37 tion or insulin described in subparagraph (C) of

1 such section and medical supplies associated with
2 the injection of insulin (as defined in regulations of
3 the Secretary),
4 and such term includes a vaccine licensed under section
5 351 of the Public Health Service Act and any use of
6 a covered outpatient drug for a medically accepted indi-
7 cation (as defined in section 1927(k)(6)).

8 “(B) EXCLUSIONS.—

9 “(i) IN GENERAL.—Such term does not in-
10 clude drugs or classes of drugs, or their medical
11 uses, which may be excluded from coverage or oth-
12 erwise restricted under section 1927(d)(2), other
13 than subparagraph (E) thereof (relating to smok-
14 ing cessation agents), or under section 1927(d)(3).

15 “(ii) AVOIDANCE OF DUPLICATE COVERAGE.—
16 A drug prescribed for an individual that would oth-
17 erwise be a covered outpatient drug under this sec-
18 tion shall not be so considered if payment for such
19 drug is available under part A or B for an indi-
20 vidual entitled to benefits under part A and en-
21 rolled under part B.

22 “(C) APPLICATION OF FORMULARY RESTRIC-
23 TIONS.—A drug prescribed for an individual that would
24 otherwise be a covered outpatient drug under this sec-
25 tion shall not be so considered under an endorsed pro-
26 gram if the eligible entity offering the program ex-
27 cludes the drug under a formulary and a review of such
28 exclusion is not successfully resolved under subsection
29 (h)(5).

30 “(D) APPLICATION OF GENERAL EXCLUSION PRO-
31 VISIONS.—An eligible entity offering an endorsed pro-
32 gram may exclude from qualified prescription drug cov-
33 erage any covered outpatient drug—

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

36 “(ii) which are not prescribed in accordance
37 with the program or this section.

1 Such exclusions are determinations subject to review
2 pursuant to subsection (h)(5).

3 “(2) INCOME.—

4 “(A) IN GENERAL.—The term ‘income’ means,
5 with respect to benefits under this section in a year,
6 the modified adjusted gross income of the individual for
7 the taxable year ending in the previous year.

8 “(B) TREATMENT OF JOINT RETURNS.—In the
9 case of a individual who files a joint return (as defined
10 for purposes of the Internal Revenue Code of 1986),
11 the income of the modified adjusted gross income of
12 both individuals shall be treated as the income of each
13 individual.

14 “(C) TREATMENT OF SEPARATE RETURNS.—In
15 the case of an individual who is married and who does
16 not file a joint return and who is not living separate
17 and apart from the individual’s spouse during at least
18 6 months of the taxable year shall be treated for pur-
19 poses of this section as having income that exceeds 150
20 percent of the poverty line.

21 “(3) DEFINITION OF MODIFIED ADJUSTED GROSS IN-
22 COME.—The term ‘modified adjusted gross income’ means
23 adjusted gross income (as defined in section 62 of the In-
24 ternal Revenue Code of 1986)—

25 “(A) determined without regard to sections 911,
26 931, and 933 of such Code; and

27 “(B) increased by—

28 “(i) the amount of interest received or accrued
29 by the taxpayer during the taxable year which is
30 exempt from tax under such Code, and

31 “(ii) the amount of social security benefits not
32 includible in gross income under section 86 of such
33 Code.

34 “(4) POVERTY LINE.—The term ‘poverty line’ means
35 the income official poverty line (as defined by the Office of
36 Management and Budget, and revised annually in accord-
37 ance with section 673(2) of the Omnibus Budget Reconcili-

1 ation Act of 1981) applicable to a family of the size in-
2 volved.

3 “(l) AUTHORIZATION OF APPROPRIATIONS.—There are au-
4 thorized to be appropriated such sums as may be necessary to
5 carry out this section and section 1807A.

6 “(e) INTERIM, FINAL REGULATORY AUTHORITY.—In
7 order to carry out this section and section 1807A in a timely
8 manner, the Secretary may promulgate regulations that take
9 effect on an interim basis, after notice and pending opportunity
10 for public comment.

11 “PRESCRIPTION DRUG ACCOUNTS

12 “SEC. 1807A. “(a) ESTABLISHMENT OF ACCOUNTS.—

13 “(1) IN GENERAL.—The Secretary shall establish and
14 maintain for each eligible beneficiary who is enrolled under
15 section 1807 at the time of enrollment a prescription drug
16 account (in this section and section 1807 referred to as an
17 ‘account’).

18 “(2) RESERVE ACCOUNTS.—In cases described in sub-
19 sections (b)(3)(A), (b)(3)(B)(i), and (b)(3)(B)(ii)(I), the
20 Secretary shall establish and maintain for each surviving
21 spouse who is not enrolled under section 1807 a reserve
22 prescription drug account (in this section referred to as an
23 ‘reserve account’).

24 “(3) ACCOUNTHOLDER DEFINED.—In this section and
25 section 1807A, the term ‘accountholder’ means an indi-
26 vidual for whom an account or reserve account has been es-
27 tablished under this section.

28 “(4) EXPENDITURES FROM ACCOUNT.—Nothing in
29 this section shall be construed as requiring the Federal
30 Government to obligate funds for amounts in any account
31 until such time as a withdrawal from such account is au-
32 thorized under this section.

33 “(b) USE OF ACCOUNTS.—

34 “(1) APPLICATION OF ACCOUNT.—Except as provided
35 in this subsection, amounts credited to an account shall
36 only be used for the purchase of covered outpatient drugs
37 for the accountholder. Any amounts remaining at the end

1 of a year remain available for expenditures in succeeding
2 years.

3 “(2) ACCOUNT RULES FOR PUBLIC AND PRIVATE CON-
4 TRIBUTIONS.—The Secretary shall establish a ongoing
5 process for the determination of the amount in each ac-
6 count that is attributable to public and private contribu-
7 tions (including spousal rollover contributions) based on the
8 following rules:

9 “(A) TREATMENT OF EXPENDITURES.—Expendi-
10 tures from the account shall—

11 “(i) first be counted against any public con-
12 tribution; and

13 “(ii) next be counted against private contribu-
14 tions.

15 “(B) TREATMENT OF SPOUSAL ROLLOVER CON-
16 TRIBUTIONS.—With respect to any spousal rollover
17 contribution, the portions of such contribution that
18 were attributable to public and private contributions at
19 the time of its distribution under subsection (b)(3)
20 shall be treated under this paragraph as if it were a
21 direct public or private contribution, respectively, into
22 the account of the spouse.

23 “(3) DEATH OF ACCOUNTHOLDER.—In the case of the
24 death of an accountholder, the balance in any account (tak-
25 ing into account liabilities accrued before the time of death)
26 shall be distributed as follows:

27 “(A) TREATMENT OF PUBLIC CONTRIBUTIONS.—If
28 the accountholder is married at the time of death, the
29 amount in the account that is attributable to public
30 contributions shall be credited to the account (if any)
31 of the surviving spouse of the accountholder (or, if the
32 surviving spouse is not an eligible beneficiary, into a re-
33 serve account to be held for when that spouse becomes
34 an eligible beneficiary).

35 “(B) TREATMENT OF PRIVATE CONTRIBUTIONS.—
36 The amount in the account that is attributable to pri-
37 vate contributions shall be distributed as follows:

1 “(i) DESIGNATION OF DISTRIBUTE.—If the
2 accountholder has made a designation, in a form
3 and manner specified by the Secretary, for the dis-
4 tribution of some or all of such amount, such
5 amount shall be distributed in accordance with the
6 designation. Such designation may provide for the
7 distribution into an account (including a reserve ac-
8 count) of a surviving spouse.

9 “(ii) ABSENCE OF DESIGNATION.—Insofar as
10 the accountholder has not made such a
11 designation—

12 “(I) SURVIVING SPOUSE.—If the
13 accountholder was married at the time of
14 death, the remainder shall be credited to an ac-
15 count (including a reserve account) of the
16 accountholder’s surviving spouse.

17 “(II) NO SURVIVING SPOUSE.—If the
18 accountholder was not so married, the remain-
19 der shall be distributed to the estate of the
20 accountholder and distributed as provided by
21 law.

22 “(4) USE OF ACCOUNT FOR PREMIUMS FOR ENROLL-
23 MENT IN A MEDICARE ADVANTAGE OR EFFS PLAN.—Dur-
24 ing any period in which an accountholder is enrolled in a
25 Medicare Advantage plan under part C or an EFFS plan
26 under part E, the balance in the account may be used and
27 applied only to reimburse the amount of the premium (if
28 any) established for enrollment under the plan.

29 “(5) APPLICATION TO MEDICAID EXPENSES IN CER-
30 TAIN CASES.—

31 “(A) IN GENERAL.—Except as provided in this
32 paragraph, an account shall be treated as an asset for
33 purposes of establishing eligibility for medical assist-
34 ance under title XIX.

35 “(B) APPLICATION TOWARDS SPENDDOWN.—In
36 the case of an accountholder who is applying for such
37 medical assistance and who would, but for the applica-

1 tion of subparagraph (A), be eligible for such
2 assistance—

3 “(i) subparagraph (A) shall not apply; and

4 “(ii) the account shall be available (in accord-
5 ance with a procedure established by the Secretary)
6 to the State to reimburse the State for any expend-
7 itures made under the plan for such medical assist-
8 ance.

9 “(c) AMOUNTS CREDITED IN ACCOUNT.—The Secretary
10 shall credit to a prescription drug account of an eligible bene-
11 ficiary the following amounts:

12 “(1) PUBLIC CONTRIBUTIONS.—The following con-
13 tributions (each referred to in this section as a ‘public con-
14 tribution’):

15 “(A) FEDERAL CONTRIBUTIONS.—Federal con-
16 tributions provided under subsection (d).

17 “(B) STATE CONTRIBUTIONS.—Contributions
18 made by a State under subsection (f).

19 “(2) SPOUSAL ROLLOVER CONTRIBUTION.—A distribu-
20 tion from a deceased spouse under subsection (b)(3) (re-
21 ferred to in this section as a ‘spousal rollover contribu-
22 tion’).

23 “(3) PRIVATE CONTRIBUTIONS.—The following con-
24 tributions (each referred to in this section as a ‘private con-
25 tribution’):

26 “(A) EMPLOYER AND INDIVIDUAL CONTRIBU-
27 TIONS.—Contributions made under subsection (e).

28 “(B) OTHER INDIVIDUAL CONTRIBUTIONS.—Con-
29 tributions made by accountholder other than under
30 subsection (e).

31 “(C) CONTRIBUTIONS BY NONPROFIT ORGANIZA-
32 TIONS.—Contributions made by a charitable, not-for-
33 profit organization (that may be a religious organiza-
34 tion).

35 Except as provided in this subsection, no amounts may be con-
36 tributed to, or credited to, a prescription drug account.

1 “(d) FEDERAL CONTRIBUTION.—For Federal contribu-
2 tions in the case of accountholders, see section 1807(j).

3 “(e) EMPLOYER AND INDIVIDUAL CONTRIBUTIONS.—

4 “(1) EMPLOYMENT-RELATED CONTRIBUTION.—

5 “(A) IN GENERAL.—In the case of any
6 accountholder who is a beneficiary or participant in a
7 group health plan (including a multi-employer plan),
8 whether as an employee, former employee or otherwise,
9 including as a dependent of an employee or former em-
10 ployee, the plan may make a contribution into the
11 accountholder’s account (but not into a reserve account
12 of the accountholder).

13 “(B) LIMITATION.—The total amount that may be
14 contributed under subparagraph (A) under a plan to an
15 account during any year may not exceed \$5,000.

16 “(C) CONDITION.—A group health plan may con-
17 dition a contribution with respect to an accountholder
18 under this paragraph on the accountholder’s enrollment
19 under section 1807 with an eligible entity that is recog-
20 nized or approved by that plan.

21 “(2) OTHER INDIVIDUALS.—

22 “(A) IN GENERAL.—Any individual may also con-
23 tribute to the account of that individual or the account
24 of any other individual under this subsection.

25 “(B) LIMITATION.—The total amount that may be
26 contributed to an account under subparagraph (A) dur-
27 ing any year may not exceed \$5,000, regardless of who
28 makes such contribution.

29 “(3) NO CONTRIBUTION PERMITTED TO RESERVE AC-
30 COUNT.—No contribution may be made under this sub-
31 section to a reserve account.

32 “(4) FORM AND MANNER OF CONTRIBUTION.—The
33 Secretary shall specify the form and manner of contribu-
34 tions under this subsection.

35 “(5) INDEXING OF DOLLAR AMOUNTS.—The dollar
36 amounts of the limitation amounts specified in paragraphs
37 (1)(B) and (2)(B) shall be subject to annual increases for

1 each year after 2004 in the same manner as the annual de-
2 ductible is subject to an annual increase under subpara-
3 graph (B) and the last sentence of section 1860D-2(b)(1).

4 “(f) STATE CONTRIBUTIONS.—

5 “(1) IN GENERAL.—A State may enter into arrange-
6 ments with the Secretary for the crediting of amounts for
7 accountholders.

8 “(2) FORM AND MANNER OF CONTRIBUTION.—The
9 Secretary shall specify the form and manner of contribu-
10 tions under this subsection.

11 “(3) MEDICAID TREATMENT.—Amounts credited
12 under this subsection shall not be treated as medical assist-
13 ance for purposes of title XIX or child health assistance for
14 purposes of title XXI for individuals who are not qualifying
15 low income enrollees.”.

16 (b) EXCLUSION OF COSTS FROM DETERMINATION OF
17 PART B MONTHLY PREMIUM.—Section 1839(g) (42 U.S.C.
18 1395r(g)) is amended—

19 (1) by striking “attributable to the application of sec-
20 tion” and inserting “attributable to—

21 “(1) the application of section”;

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

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

24 “(2) the Voluntary Medicare Outpatient Prescription
25 Drug Discount and Security Program under sections 1807
26 and 1807A.”.

27 (c) MEDICAID AMENDMENTS.—

28 (1) VERIFICATION OF ELIGIBILITY FOR IMPROVED AC-
29 COUNT CONTRIBUTIONS.—

30 (A) REQUIREMENT.—Section 1902(a) (42 U.S.C.
31 1396a(a)) is amended—

32 (i) by striking “and” at the end of paragraph
33 (64);

34 (ii) by striking the period at the end of para-
35 graph (65) and inserting “; and”; and

36 (iii) by inserting after paragraph (65) the fol-
37 lowing new paragraph:

