

INTRODUCTION OF LEGISLATIVE PACKAGE HELPING SENIOR'S WITH THEIR PRESCRIPTION DRUG COSTS

MR. SMITH. Mr. President, today I am proud to join my colleague, Senator Bingaman, to introduce a package of four bills aimed at helping seniors get the assistance they need with their Medicare prescription drug costs. Thirty-one million individuals now have access to affordable prescription drug therapies through Medicare Part D, many for the very first time. But low-income beneficiaries still are experiencing difficulties taking full advantage of the program's benefits. I believe the bipartisan package of legislation we have developed will go a long way to removing programmatic barriers that are limiting seniors from getting the help we intended them to have when we created Medicare Part D Prescription Drug Program.

The low-income subsidy (LIS) is one of the best features of Medicare's new prescription drug benefit. Over the past few years, I have conducted extensive oversight of the program's implementation, especially through my work as Chairman and now Ranking Member of the Special Committee on Aging. Through hearings and staff-level investigations, I have identified a number of concerns with both the administration and the overall effectiveness of Medicare Part D's LIS. The Centers for Medicare and Medicaid Services (CMS) and the Social Security Administration (SSA) have made a great deal of progress to ensure that the benefit is working well for all beneficiaries. But their efforts can only go so far. Ultimately, it is Congress' responsibility to ensure that all low-income seniors who have difficulty paying their prescription drugs costs get the help they need.

Two of the four bills that Senator Bingaman and I are filing today are based upon initiatives that I introduced during the 109th Congress. The first is a measure that would create parity in the cost-sharing charged beneficiaries living in nursing homes and assisted living facilities. Under current law, dual-eligible Medicare beneficiaries, those who qualify for both Medicaid and Medicare coverage, receive a subsidy from the government to pay the benefit's required \$250 deductible. These individuals also qualify for reduced copayments for both generic and brand named drugs in the amount of one and three dollars respectively. If a dual-eligible beneficiary receives long-term care services in an institutional setting, such as a nursing home, he or she is exempt from paying the required copayment. Congress decided to provide this assistance because dual-eligible beneficiaries residing in nursing homes live off of very limited incomes. For instance, in Oregon the personal needs allowance beneficiaries receive each month for incidentals, including medications, is only \$30. As many institutionalized beneficiaries are on multiple medications, they would not be able to meet their share of drug costs.

This is the very reason Congress provided institutionalized dual-eligible beneficiaries with an exemption from all copayments under Medicare Part D. However, many dual-eligible beneficiaries choose to receive long-term care services in home or community-based settings, such as assisted living or resident care program facilities. Almost all states have chosen to establish Home and Community Based Services (HCS)

Medicaid demonstration projects that have expanded access to community based alternatives to an even greater number of low-income elderly Americans. The State of Oregon operates one of the nation's most successful HCS waivers, serving an average of 23,500 dual-eligible beneficiaries each year. My state has a thriving community based care industry that has provided many dual-eligible Oregonians the freedom to choose the care setting that best meets their own physical and social needs.

While dual-eligible beneficiaries are exempted from prescription drug copayments under Medicare Part D, those choosing community-based alternatives are required to pay them. This is despite the fact that beneficiaries choosing community based care options typically live off of the same limited incomes as those residing in nursing homes. While some states provide HCS beneficiaries a larger personal stipend each month, many may have greater financial demands. At the end of the day, they are in no better position to pay the costs of prescription drugs than those beneficiaries living in nursing homes.

I also should note that their less restrictive living environments may require them to take additional medications to support their daily routines. It is not uncommon for dual-eligible beneficiaries in community-based care settings to be on 8 to 10 medications at a given time. At that level, even minimal copayments create a significant financial burden to these individuals.

The current dual-eligible copayment exemption policy not only is creating inequity in Medicare Part D, it is potentially restricting access to life-saving medications. This is not what Congress intended. I believe we need to do everything possible to support choice in long-term care, and by applying the current institutional copayment exemption more uniformly, Congress will ensure the Medicare drug benefit does not adversely affect beneficiaries choices.

The second measure I am introducing today is based upon a bill I filed last year. That legislation sought to provide beneficiaries applying for LIS extra time to enroll into Part D if they had not received notification of their eligibility status by the time an open enrollment period ended. The bill also would have also waived the late enrollment penalty assessed to all beneficiaries who enroll outside of an enrollment period. Fortunately, CMS enacted an administrative solution to this problem, and allowed all LIS eligible beneficiaries to enroll into Medicare Part D at any point during 2006, and later extended that policy into 2007.

Now that Medicare Part D is fully implemented and policymakers have had an opportunity to assess how well the program is working, I believe that the administrative actions taken by CMS last year to create a special enrollment period for LIS beneficiaries should be made permanent. The Medicare Part D Outreach Enrollment Enhancement Act of 2007 does just that. It would create a 90-day special enrollment period for any beneficiary who applies and is approved for the LIS at any point during the year. It also would allow them to undergo a facilitated enrollment process overseen by CMS, so they get the help they need to select a prescription drug plan that best meets their needs.

Additionally, the bill exempts low-income beneficiaries from Medicare Part D's late enrollment penalty. While an enrollment penalty can be an effective means of helping drug plans better assess their risk in a given period, it is not fair to ask our low-income seniors—many who struggle with a number of challenging healthcare problems—to pay a higher cost simply because they need additional time to enroll in the program. Selecting a prescription drug plan can be a challenging feat, and it can be even more complicated if you are trying to make your limited income stretch as far as it can. We need to guarantee that beneficiaries have sufficient time to choose the most affordable plan that also meets all their prescription drug needs.

The measure also would create a new authorization to support the valuable work of State Health Insurance Programs (SHIPs). SHIPs provide a range of services to our nation's seniors, such as help choosing a quality prescription drug plan, applying for financial assistance with their drug costs and resolving general problems experienced with the drug benefit. Unfortunately, funding for SHIPs has not kept pace with the number of beneficiaries that age into Medicare each year. To remedy that, my bill creates a new authorization that increases funding in conjunction with growth in enrollment. The bill also provides funding for the new National Center of Senior Benefits and Outreach, created in the Older Americans Act last year. The Center is charged with developing ways to assist organizations like SHIPs to better target their efforts so that all seniors are fully aware of the benefits that might be available to them.

The next bill in the package we are filing today addresses a problem low-income seniors encounter if and when they enter into the drug benefit's coverage gap. While beneficiaries still have access to medications through their drug plans during the coverage gap, they may have to pay more for them. For those living on fixed incomes, this could present a serious problem as the out-of-pocket cost of many common prescription drugs can be quite steep. Fortunately, many safety-net programs, like community health centers and the AIDS Drug Assistance Program (ADAP), provide assistance to eligible low-income beneficiaries during the coverage gap. Effectively, they fill the role of the drug plan in providing beneficiaries access to their medications at a heavily subsidized cost.

This scenario presently works well for a number of low-income beneficiaries, but it is simply unsustainable in the long-run for two key reasons. First, from the perspective of beneficiaries, it is not right to ask them to continue paying premiums to their drug plans during the coverage gap when they are unable to generate sufficient out-of-pocket expenses to qualify for the program's catastrophic benefit. Many low-income beneficiaries who get "caught" in the coverage gap struggle with significant health problems, such as cancer or HIV/AIDS. These conditions often require costly treatment that a low-income beneficiary would likely have to forge without the assistance of a safety-net provider.

Second, the current scenario is placing a disadvantageous strain on the safety-net programs that assist low-income beneficiaries with their drug costs during the coverage gap. One of the primary reasons Medicare Part D was created was to provide relief to

states and other safety-net providers who bore a lion's share of the responsibility of providing access to drug therapies for the nation's seniors. While Part D has gone a long way to fulfill that intention, there is still much that can be done to help our safety-net providers. It is not right that service providers like community health centers and ADAP have been forced to provide discounted medications to low-income beneficiaries during the coverage gap, especially when the beneficiary has no way of accruing enough out-of-pocket costs for their Part D coverage to resume.

The bill Senator Bingaman and I are filing today resolves both these problems. It would allow safety net providers' drug costs to count toward a beneficiary's out-of-pocket costs so they are able to reach Medicare Part D's catastrophic benefit at some point. This will ensure that low-income beneficiaries have access to the full range of coverage under the program and will provide much needed fiscal relief to already strained safety net providers. Congress intended for all beneficiaries—especially those with limited incomes—to have full access to the benefits through Medicare Part D. This bill will guarantee that happens.

Despite the progress we have made in providing low-income seniors access to affordable prescription drugs, I find it troubling that recent estimates still show that there may be at least three million seniors eligible for the low-income subsidy who have yet to apply for it. While CMS, SSA and their community partners continue their vital outreach to capture these seniors, I believe the existing LIS application is too complex and is preventing seniors from getting the help they need. We need a simpler process that better reflects the true levels of assets and resources held by low-income seniors.

The last bill in the package I am filing today does just that. The Part D Equity for Low-Income Seniors Act is the product of months of bipartisan collaboration with representatives of groups like AARP, the National Council on Aging and Families USA. It aims to help SSA better target potentially eligible beneficiaries and make the application process much simpler to complete.

First, drawing from a recommendation from the Health and Human Services Office of Inspector General, SSA is given the authority to use select tax information to help determine which Medicare beneficiaries might be eligible for extra help with their drug costs. With this data, they would be able to more efficiently contact beneficiaries and prescreen them for potential eligibility. I realize that some of my colleagues might have privacy concerns with such an arrangement, but I want to make clear that my bill is not giving SSA access to any data that they already do not have. In order to implement the Part B subsidy adjustment, the Medicare Modernization Act requires that the Internal Revenue Service (IRS) send tax data to the SSA—they are legally prohibited from using it for any other purpose than Part B. We simply are establishing the same process for data exchange that already exists between the IRS and SSA so that SSA can more efficiently conduct its outreach work for Medicare Part D's low-income subsidy.

The bill also seeks to make the LIS application easier for seniors to complete. I have heard a number of complaints that the current form uses confusing verbiage and is

overly burdensome in its reporting requirements. As a remedy, we eliminate the reporting of retirement account balances, the face value of life savings policies and in-kind contributions. This not only will make the form easier to complete, it will prevent seniors from the pressure of having to determine whether they should sacrifice their retirement income or long-term risk protection in order to pay their healthcare bills. I believe we need to be encouraging seniors to save for their later years in life, not requiring them to liquidate their futures to fill their prescriptions.

In order to make the LIS benefit more accurately reflect the assets and resources low-income seniors possess, our bill also proposes raising the current asset test limit to \$27,500 for an individual and \$55,000 for a couple. According to data from the SSA, this increase should help capture almost 40 percent of the individuals who are ineligible for the LIS benefit due to excess resources, and 50 percent of the couples. I realize this can be a sensitive issue for some of my colleagues—especially on my side of the aisle. We want to ensure that only those beneficiaries who truly are in need of help with their drug are eligible for government assistance. But, I also believe that we can be too heavy handed and prevent those with legitimate need from getting it. The new asset/resource limits Senator Bingaman and I have proposed represent a good, bipartisan solution to the problem. I know many would like to see the full asset test repealed, but this year that may be a difficult feat to accomplish politically and financially. This is a reasonable step forward, one the advocates support. I hope my colleagues will as well.

I believe that the Medicare Prescription Drug Program is working for America's seniors and that we should not undertake a significant overhaul of the new benefit this Congress. However, there is room for improvement, especially in regard to making the program work better for America's low-income seniors. I firmly believe that if Congress does not address some of these lingering problems this year, Medicare's long-term public image could be severely tarnished in the eyes of the very people it was created to serve.

One can learn a great deal about the character of a society by looking at how well it cares for its poor and vulnerable citizens. I believe my four bills that improve upon how Medicare Part D serves low-income beneficiaries will help cement the United States as a country that looks out for its citizens in need. I hope my colleagues will join me in supporting the full package and assist me in moving it through the process.

Thank you.

110TH CONGRESS
1ST SESSION

S. 1107

To amend title XVIII of the Social Security Act to reduce cost-sharing under part D of such title for certain non-institutionalized full-benefit dual eligible individuals.

IN THE SENATE OF THE UNITED STATES

APRIL 12, 2007

Mr. SMITH (for himself, Mr. BINGAMAN, Mr. NELSON of Florida, Mrs. CLINTON, Ms. COLLINS, Mrs. LINCOLN, Mrs. BOXER, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to reduce cost-sharing under part D of such title for certain non-institutionalized full-benefit dual eligible individuals.

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 “Home and Community
5 Services Copayment Equity Act of 2007”.

1 **SEC. 2. ELIMINATION OF PART D COST-SHARING FOR CER-**
 2 **TAIN NON-INSTITUTIONALIZED FULL-BEN-**
 3 **EFIT DUAL ELIGIBLE INDIVIDUALS.**

4 (a) IN GENERAL.—Section 1860D–14(a)(1)(D)(i) of
 5 the Social Security Act (42 U.S.C. 1395w–
 6 114(a)(1)(D)(i)) is amended—

7 (1) in the heading, by striking “INSTITU-
 8 TIONALIZED INDIVIDUALS.—In” and inserting
 9 “ELIMINATION OF COST-SHARING FOR CERTAIN
 10 FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS.—

11 “(I) INSTITUTIONALIZED INDI-
 12 VIDUALS.—In”; and

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

15 “(II) CERTAIN OTHER INDIVID-
 16 UALS.—In the case of an individual
 17 who is a full-benefit dual eligible indi-
 18 vidual and who is a resident of a facil-
 19 ity described in subclause (III) or who
 20 is receiving home and community-
 21 based services in a home setting pro-
 22 vided under a home and community-
 23 based waiver approved for the State
 24 under section 1915 or 1115, the elimi-
 25 nation of any beneficiary coinsurance
 26 described in section 1860D–2(b)(2)

1 (for all amounts through the total
2 amount of expenditures at which ben-
3 efits are available under section
4 1860D-2(b)(4)).

5 “(III) FACILITY DESCRIBED.—
6 For purposes of subclause (II), a fa-
7 cility described in this subclause is—

8 “(aa) an assisted living facil-
9 ity or a resident care program fa-
10 cility (as such terms are defined
11 by the Secretary);

12 “(bb) a board and care facil-
13 ity (as defined in section
14 1903(q)(4)(B)); or

15 “(cc) any other facility that
16 is licensed or certified by the
17 State and is determined appro-
18 priate by the Secretary, such as a
19 community mental health center
20 that meets the requirements of
21 section 1913(c) of the Public
22 Health Service Act, a psychiatric
23 health facility, a mental health
24 rehabilitation center, and a men-

1 tal retardation developmental dis-
2 ability facility.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 subsection (a) shall apply to drugs dispensed on or after
5 the date of enactment of this Act.

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110TH CONGRESS
1ST SESSION

S. 1108

To amend title XVIII of the Social Security Act to provide a special enrollment period for individuals who qualify for an income-related subsidy under the Medicare prescription drug program and to provide funding for the conduct of outreach and education with respect to the premium and cost-sharing subsidies under such program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 12, 2007

Mr. SMITH (for himself, Mr. BINGAMAN, Ms. SNOWE, Mrs. LINCOLN, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to provide a special enrollment period for individuals who qualify for an income-related subsidy under the Medicare prescription drug program and to provide funding for the conduct of outreach and education with respect to the premium and cost-sharing subsidies under such program, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Medicare Part D Out-
3 reach and Enrollment Enhancement Act of 2007”.

4 **SEC. 2. SPECIAL ENROLLMENT PERIOD FOR INDIVIDUALS**
5 **ELIGIBLE FOR AN INCOME-RELATED SUB-**
6 **SIDY.**

7 (a) SPECIAL ENROLLMENT PERIOD.—Section
8 1860D–1(b)(3) of the Social Security Act (42 U.S.C.
9 1395w–101(b)(3)) is amended by adding at the end the
10 following new subparagraph:

11 “(F) ELIGIBILITY FOR LOW-INCOME SUB-
12 SIDY.—

13 “(i) IN GENERAL.—Subject to clause
14 (iii), in the case of an applicable individual
15 (as defined in clause (ii)).

16 “(ii) APPLICABLE INDIVIDUAL DE-
17 FINED.—For purposes of this subpara-
18 graph, the term ‘applicable individual’
19 means a part D eligible individual who is
20 determined to be a subsidy-eligible indi-
21 vidual (as defined in section 1860D–
22 14(a)(3)), including such an individual who
23 was enrolled in a prescription drug plan or
24 an MA–PD plan on the date of such deter-
25 mination.

1 “(iii) TIMING OF SPECIAL ENROLL-
2 MENT PERIOD.—The special enrollment pe-
3 riod established under this subparagraph
4 shall be for a 90-day period beginning on
5 the date the applicable individual receives
6 notification of such determination.”.

7 (b) ENROLLMENT PROCESS FOR SUBSIDY-ELIGIBLE
8 INDIVIDUALS ELIGIBLE FOR SPECIAL ENROLLMENT PE-
9 RIOD.—Section 1860D–1(b)(1) is amended by adding at
10 the end the following new subparagraph:

11 “(D) SPECIAL RULE FOR SUBSIDY-ELIGI-
12 BLE INDIVIDUALS ELIGIBLE FOR SPECIAL EN-
13 ROLLMENT PERIOD.—The process established
14 under subparagraph (A) shall include, in the
15 case of an applicable individual (as defined in
16 clause (ii) of paragraph (3)(F)) the following:

17 “(i) FACILITATED ENROLLMENT.—
18 During the 90-day period described in
19 clause (iii) of such paragraph, a process
20 for the facilitated enrollment of the indi-
21 vidual in the prescription drug plan or
22 MA–PD plan that is most appropriate for
23 such individual (as determined by the Sec-
24 retary). At the end of such 90-day period,
25 the individual shall be enrolled in such

1 plan unless the individual declines enroll-
2 ment in the plan or in the program under
3 this part, or chooses to enroll in another
4 plan selected by the individual prior to the
5 end of such 90-day period.

6 “(ii) ONE-TIME CHANGE OF ENROLL-
7 MENT.—The opportunity to change enroll-
8 ment with a prescription drug plan or an
9 MA–PD plan not less than once during a
10 plan year. Nothing in the previous sen-
11 tence shall limit the ability of a part D eli-
12 gible individual who is a full-benefit dual
13 eligible individual (as defined in section
14 1935(e)(6)) to change enrollment under
15 subparagraph (C)”.

16 (c) WAIVER OF LATE ENROLLMENT PENALTY.—Sec-
17 tion 1860D–13(b) of the Social Security Act (42 U.S.C.
18 1395w–113(b)) is amended by adding at the end the fol-
19 lowing new paragraph:

20 “(8) WAIVER OF PENALTY FOR SUBSIDY-ELIGI-
21 BLE INDIVIDUALS.—In no case shall a part D eligi-
22 ble individual who is determined to be a subsidy-eli-
23 gible individual (as defined in section 1860D–
24 14(a)(3)) be subject to an increase in the monthly

1 beneficiary premium established under subsection
2 (a).”.

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

5 **SEC. 3. OUTREACH AND EDUCATION FOR PREMIUM AND**
6 **COST-SHARING SUBSIDIES UNDER PART D.**

7 (a) ADDITIONAL FUNDING FOR OUTREACH AND AS-
8 SISTANCE.—

9 (1) STATE HEALTH INSURANCE ASSISTANCE
10 PROGRAMS.—There are authorized to be appro-
11 priated for each of fiscal years 2008, 2009, 2010,
12 and 2011, an amount equal to \$1 multiplied by the
13 total number of individuals entitled to benefits, or
14 enrolled, under part A of title XVIII of the Social
15 Security Act, or enrolled under part B of such title
16 during the fiscal year (as determined by the Sec-
17 retary of Health and Human Services, based on the
18 most recent available data before the beginning of
19 the fiscal year) to be used to provide additional
20 grants to State Health Insurance Assistance Pro-
21 grams (SHIPs) to conduct outreach and education
22 related to the Medicare program under such title.

23 (2) NATIONAL CENTER ON SENIOR BENEFITS
24 OUTREACH AND ENROLLMENT.—

1 (A) IN GENERAL.—There are appropriated
2 \$4,000,000 to the National Center on Senior
3 Benefits Outreach and Enrollment established
4 under section 202(a)(20)(B) of the Older Amer-
5 icans Act of 1965 (42 U.S.C. 3012(a)(20)(B))
6 to be used to provide outreach and enrollment
7 assistance with respect to premium and cost-
8 sharing subsidies under the Medicare prescrip-
9 tion drug program under part D of title XVIII
10 of the Social Security Act (42 U.S.C. 1395w-
11 101 et seq.).

12 (B) COORDINATION.—The National Center
13 on Senior Benefits Outreach and Enrollment
14 shall coordinate outreach and enrollment assist-
15 ance conducted under subparagraph (A) with
16 activities conducted by State Health Insurance
17 Assistance Programs (SHIPs) and other appro-
18 priate entities that conduct outreach and edu-
19 cation related to such premium and cost-shar-
20 ing subsidies.

21 (b) ENCOURAGING STATES TO DIRECT SUBSIDY-EL-
22 IGIBLE INDIVIDUALS TO ORGANIZATIONS PROVIDING AS-
23 SISTANCE.—

24 (1) IN GENERAL.—The Secretary of Health and
25 Human Services shall encourage States to direct ap-

1 applicable individuals to appropriate organizations and
 2 entities that provide assistance with respect to—

3 (A) applying for premium and cost-sharing
 4 subsidies under section 1860D–14 of the Social
 5 Security Act (42 U.S.C. 1395w–114); and

6 (B) enrolling in a prescription drug plan or
 7 an MA–PD plan under part D of title XVIII of
 8 the Social Security Act (42 U.S.C. 1395w–101
 9 et seq.).

10 (2) APPLICABLE INDIVIDUALS DEFINED.—In
 11 this subsection, the term “applicable individual”
 12 means an individual the State believes to be, or de-
 13 termines to be, eligible for premium and cost-sharing
 14 subsidies under section 1860D–14 of the Social Se-
 15 curity Act (42 U.S.C. 1395w–114).

16 **SEC. 4. SCREENING BY COMMISSIONER OF SOCIAL SECU-**
 17 **RITY FOR ELIGIBILITY UNDER MEDICARE**
 18 **SAVINGS PROGRAMS.**

19 (a) IN GENERAL.—Section 1860D–14(a)(3)(B)(i) of
 20 the Social Security Act (42 U.S.C. 1395w–
 21 114(a)(3)(B)(i)) is amended by inserting after the first
 22 sentence the following: “As part of making an eligibility
 23 determination under the preceding sentence for an indi-
 24 vidual, the Commissioner shall screen for the individual’s
 25 eligibility for medical assistance for any medicare cost-

1 sharing described in section 1905(p)(3) and, if the screen-
 2 ing indicates the individual is likely eligible for any such
 3 medicare cost-sharing, transmit the pertinent information
 4 to the appropriate State Medicaid agency for the deter-
 5 mination of eligibility and enrollment of the individual for
 6 such medicare cost-sharing under the State plan (or under
 7 a waiver of such plan).”.

8 (b) EFFECTIVE DATE.—The amendment made by
 9 this section shall take effect on the date of enactment of
 10 this Act.

11 **SEC. 5. ADMINISTRATION ON AGING STUDY AND REPORT**
 12 **ON SCREENING PROCESSES USED BY GOV-**
 13 **ERNMENT NEEDS-BASED PROGRAMS.**

14 (a) STUDY.—

15 (1) IN GENERAL.—The Assistant Secretary of
 16 the Administration on Aging (in this section referred
 17 to as the “Assistant Secretary”) shall conduct a
 18 comprehensive study of screening processes used by
 19 government needs-based programs.

20 (2) MATTERS STUDIED.—In conducting the
 21 study under paragraph (1), the Assistant Secretary
 22 shall—

23 (A) assess any duplications of effort under
 24 existing screening processes used by govern-
 25 ment needs-based programs;

1 (B) determine the feasibility of creating a
2 uniform screening process for such needs-based
3 programs;

4 (C) determine how the Federal govern-
5 ment, State governments, and community-based
6 organizations can better coordinate existing
7 screening processes in order to facilitate the en-
8 rollment of seniors into need-based programs;

9 (D) include a cost-benefit analysis with re-
10 spect to creating a uniform screening process or
11 better streamlining existing screening processes;
12 and

13 (E) determine the feasibility of using the
14 Internet to administer screening processes, as
15 well as the costs and benefits of migrating to an
16 online system.

17 (b) REPORT.—Not later than 1 year after the date
18 of enactment of this Act, the Assistant Secretary shall
19 submit a report to Congress containing the results of the
20 study conducted under subsection (a), together with rec-
21 ommendations—

22 (1) to streamline and improve the effectiveness
23 of screening processes used by government needs-
24 based programs; and

1 (2) for such legislation or administrative action
2 as the Assistant Secretary determines appropriate.

3 (c) AUTHORIZATION.—There are authorized to be ap-
4 propriated such sums as are necessary to carry out this
5 section.

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110TH CONGRESS
1ST SESSION

S. 1103

To amend title XVIII of the Social Security Act to include costs incurred by the Indian Health Service, a Federally qualified health center, an AIDS drug assistance program, certain hospitals, or a pharmaceutical manufacturer patient assistance program in providing prescription drugs toward the annual out of pocket threshold under part D of the Medicare program.

IN THE SENATE OF THE UNITED STATES

APRIL 12, 2007

Mr. BINGAMAN (for himself, Mr. SMITH, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to include costs incurred by the Indian Health Service, a Federally qualified health center, an AIDS drug assistance program, certain hospitals, or a pharmaceutical manufacturer patient assistance program in providing prescription drugs toward the annual out of pocket threshold under part D of the Medicare program.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Helping Fill the Medi-
3 care Rx Gap Act of 2007”.

4 **SEC. 2. INCLUDING COSTS INCURRED BY THE INDIAN**
5 **HEALTH SERVICE, A FEDERALLY QUALIFIED**
6 **HEALTH CENTER, AN AIDS DRUG ASSISTANCE**
7 **PROGRAM, CERTAIN HOSPITALS, OR A PHAR-**
8 **MACEUTICAL MANUFACTURER PATIENT AS-**
9 **SISTANCE PROGRAM IN PROVIDING PRE-**
10 **SCRIPTION DRUGS TOWARD THE ANNUAL**
11 **OUT OF POCKET THRESHOLD UNDER PART D.**

12 (a) IN GENERAL.—Section 1860D–2(b)(4)(C) of the
13 Social Security Act (42 U.S.C. 1395w–102(b)(4)(C)) is
14 amended—

15 (1) in clause (i), by striking “and” at the end;

16 (2) in clause (ii)—

17 (A) by striking “such costs shall be treated
18 as incurred only if” and inserting “subject to
19 clause (iii), such costs shall be treated as in-
20 curred if”;

21 (B) by striking “, under section 1860D–
22 14, or under a State Pharmaceutical Assistance
23 Program”;

24 (C) by striking “(other than under such
25 section or such a Program)”; and

1 (D) by striking the period at the end and
2 inserting “; and”; and

3 (3) by inserting after clause (ii) the following
4 new clause:

5 “(iii) such costs shall be treated as in-
6 curred and shall not be considered to be
7 reimbursed under clause (ii) if such costs
8 are borne or paid—

9 “(I) under section 1860D–14;

10 “(II) under a State Pharma-
11 ceutical Assistance Program;

12 “(III) by the Indian Health Serv-
13 ice, an Indian tribe or tribal organiza-
14 tion, or an urban Indian organization
15 (as defined in section 4 of the Indian
16 Health Care Improvement Act);

17 “(IV) by a Federally qualified
18 health center (as defined in section
19 1861(aa)(4));

20 “(V) under an AIDS Drug As-
21 sistance Program under part B of
22 title XXVI of the Public Health Serv-
23 ice Act;

24 “(VI) by a subsection (d) hos-
25 pital (as defined in section

1 1886(d)(1)(B)) that meets the re-
2 quirements of clauses (i) and (ii) of
3 section 340B(a)(4)(L) of the Public
4 Health Service Act; or

5 “(VII) by a pharmaceutical man-
6 ufacturer patient assistance program,
7 either directly or through the distribu-
8 tion or donation of covered part D
9 drugs, which shall be valued at the
10 negotiated price of such covered part
11 D drug under the enrollee’s prescrip-
12 tion drug plan or MA-PD plan as of
13 the date that the drug was distributed
14 or donated.”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 subsection (a) shall apply to costs incurred on or after
17 January 1, 2008.

○

110TH CONGRESS
1ST SESSION

S. 1102

To amend title XVIII of the Social Security Act to expedite the application and eligibility process for low-income subsidies under the Medicare prescription drug program and to revise the resource standards used to determine eligibility for an income-related subsidy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 12, 2007

Mr. BINGAMAN (for himself, Mr. SMITH, Mr. KOHL, Ms. SNOWE, Mrs. LINCOLN, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to expedite the application and eligibility process for low-income subsidies under the Medicare prescription drug program and to revise the resource standards used to determine eligibility for an income-related subsidy, 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 “Part D Equity for
5 Low-Income Seniors Act of 2007”.

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

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

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

8 “(1) EXPEDITED PROCESS.—

9 “(A) IN GENERAL.—The Commissioner of
10 Social Security shall provide for an expedited
11 process under this subsection for the qualifica-
12 tion for low-income assistance under this sec-
13 tion through a request to the Secretary of the
14 Treasury as provided in subparagraph (B) for
15 information described in section 6103(l)(21) of
16 the Internal Revenue Code of 1986. Such proc-
17 ess shall be conducted in cooperation with the
18 Secretary.

19 “(B) CURRENTLY ELIGIBLE INDIVID-
20 UALS.—The Commissioner of Social Security
21 shall, as soon as practicable after implementa-
22 tion of subparagraph (A), screen such indi-
23 vidual for eligibility for the low-income subsidy
24 provided under this section through such a re-
25 quest to the Secretary of the Treasury.

1 “(2) NOTIFICATION OF POTENTIALLY ELIGIBLE
2 INDIVIDUALS.—Under such process, in the case of
3 each individual identified under paragraph (1) who
4 has not otherwise applied for, or been determined el-
5 ible for, benefits under this section (or who has ap-
6 plied for and been determined ineligible for such
7 benefits based only on excess resources), the Com-
8 missioner of Social Security shall send a notification
9 that the individual is likely eligible for low-income
10 subsidies under this section. Such notification shall
11 include the following:

12 “(A) APPLICATION INFORMATION.—Infor-
13 mation on how to apply for such low-income
14 subsidies.

15 “(B) DESCRIPTION OF THE LIS BEN-
16 EFIT.—A description of the low-income sub-
17 sidies available under this section.

18 “(C) INFORMATION ON STATE HEALTH IN-
19 SURANCE PROGRAMS.—Information on—

20 “(i) the State Health Insurance As-
21 sistance Program for the State in which
22 the individual is located; and

23 “(ii) how the individual may contact
24 such Program in order to obtain assistance

1 regarding enrollment and benefits under
2 this part.

3 “(D) ATTESTATION.—An application form
4 that provides for a signed attestation, under
5 penalty of law, as to the amount of income and
6 assets of the individual and constitutes an ap-
7 plication for the low-income subsidies under this
8 section. Such form—

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

12 “(ii) shall permit the appointment of
13 a personal representative described in
14 paragraph (4); and

15 “(iii) shall allow for the specification
16 of a language (other than English) that is
17 preferred by the individual for subsequent
18 communications with respect to the indi-
19 vidual under this part.

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

24 “(3) HOLD-HARMLESS.—Under such process, if
25 an individual in good faith and in the absence of

1 fraud executes an attestation described in paragraph
2 (2)(D) and is provided low-income subsidies under
3 this section on the basis of such attestation, if the
4 individual is subsequently found not eligible for such
5 subsidies, there shall be no recovery made against
6 the individual because of such subsidies improperly
7 paid.

8 “(4) USE OF AUTHORIZED REPRESENTATIVE.—
9 Under such process, with proper authorization
10 (which may be part of the attestation form described
11 in paragraph (2)(D)), an individual may authorize
12 another individual to act as the individual’s personal
13 representative with respect to communications under
14 this part and the enrollment of the individual under
15 a prescription drug plan (or MA–PD plan) and for
16 low-income subsidies under this section.

17 “(5) USE OF PREFERRED LANGUAGE IN SUBSE-
18 QUENT COMMUNICATIONS.—In the case an attesta-
19 tion described in paragraph (2)(D) is completed and
20 in which a language other than English is specified
21 under clause (iii) of such paragraph, the Commis-
22 sioner of Social Security shall provide that subse-
23 quent communications to the individual under this
24 part shall be in such language.

1 “(6) CONSTRUCTION.—Nothing in this sub-
2 section shall be construed as precluding the Commis-
3 sioner of Social Security or the Secretary from tak-
4 ing additional outreach efforts to enroll eligible indi-
5 viduals under this part and to provide low-income
6 subsidies to eligible individuals.”.

7 (b) DISCLOSURE OF RETURN INFORMATION FOR
8 PURPOSES OF DETERMINING INDIVIDUALS ELIGIBLE FOR
9 SUBSIDIES UNDER MEDICARE PART D.—

10 (1) IN GENERAL.—Subsection (1) of section
11 6103 of the Internal Revenue Code of 1986 is
12 amended by adding at the end the following new
13 paragraph:

14 “(21) DISCLOSURE OF RETURN INFORMATION
15 TO CARRY OUT MEDICARE PART D SUBSIDIES.—

16 “(A) IN GENERAL.—The Secretary shall,
17 upon written request from the Commissioner of
18 Social Security under section 1860D–14(e)(1)
19 of the Social Security Act, disclose to officers
20 and employees of the Social Security Adminis-
21 tration return information of a taxpayer who
22 (according to the records of the Secretary) may
23 be eligible for a subsidy under section 1860D–
24 14 of the Social Security Act. Such return in-
25 formation shall be limited to—

1 “(i) taxpayer identity information
2 with respect to such taxpayer,

3 “(ii) the filing status of such tax-
4 payer,

5 “(iii) the gross income of such tax-
6 payer,

7 “(iv) such other information relating
8 to the liability of the taxpayer as is pre-
9 scribed by the Secretary by regulation as
10 might indicate the eligibility of such tax-
11 payer for a subsidy under section 1860D-
12 14 of the Social Security Act, and

13 “(v) the taxable year with respect to
14 which the preceding information relates.

15 “(B) RESTRICTION ON USE OF DISCLOSED
16 INFORMATION.—Return information disclosed
17 under this paragraph may be used by officers
18 and employees of the Social Security Adminis-
19 tration only for the purposes of identifying eli-
20 gible individuals for, and, if applicable, admin-
21 istering—

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

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

4 “(C) TERMINATION.—Return information
5 may not be disclosed under this paragraph after
6 the date that is one year after the date of the
7 enactment of this paragraph.”.

8 (2) CONFORMING AMENDMENTS.—Paragraph
9 (4) of section 6103(p) of the Internal Revenue Code
10 of 1986 is amended—

11 (A) by striking “(14) or (17)” in the mat-
12 ter preceding subparagraph (A) and inserting
13 “(14), (17), or (21)”;

14 (B) by striking “(15) or (17)” in subpara-
15 graph (F)(ii) and inserting “(15), (17), or
16 (21)”.

17 **SEC. 3. MODIFICATION OF RESOURCE STANDARDS FOR DE-**
18 **TERMINATION OF ELIGIBILITY FOR LOW-IN-**
19 **COME SUBSIDY.**

20 (a) INCREASING THE ALTERNATIVE RESOURCE
21 STANDARD.—Section 1860D–14(a)(3)(E)(i) of the Social
22 Security Act (42 U.S.C. 1395w–114(a)(3)(E)(i)) is
23 amended—

24 (1) in subclause (I), by striking “and” at the
25 end;

1 (2) in subclause (II)—

2 (A) by striking “a subsequent year” and
3 inserting “2007”;

4 (B) by striking “in this subclause (or sub-
5 clause (I)) for the previous year” and inserting
6 “in subclause (I) for 2006”;

7 (C) by striking the period at the end and
8 inserting a semicolon; and

9 (D) by inserting before the flush sentence
10 at the end the following new subclauses:

11 “(III) for 2008, \$27,500 (or
12 \$55,000 in the case of the combined
13 value of the individual’s assets or re-
14 sources and the assets or resources of
15 the individual’s spouse); and

16 “(IV) for a subsequent year the
17 dollar amounts specified in this sub-
18 clause (or subclause (III)) for the pre-
19 vious year increased by the annual
20 percentage increase in the consumer
21 price index (all items; U.S. city aver-
22 age) as of September of such previous
23 year.”; and

24 (3) in the flush sentence at the end, by insert-
25 ing “or (IV)” after “subclause (II)”.

1 (b) EXEMPTIONS FROM RESOURCES.—Section
2 1860D–14(a)(3) of the Social Security Act (42 U.S.C.
3 1395w–114(a)(3)) is amended—

4 (1) in subparagraph (D), in the matter pre-
5 ceding clause (i), by inserting “subject to the addi-
6 tional exclusions provided under subparagraph (G)”
7 before “”;

8 (2) in subparagraph (E)(i), in the matter pre-
9 ceding subclause (I), by inserting “subject to the ad-
10 ditional exclusions provided under subparagraph
11 (G)” before “”;

12 (3) by adding at the end the following new sub-
13 paragraph:

14 “(G) ADDITIONAL EXCLUSIONS.—In deter-
15 mining the resources of an individual (and their
16 eligible spouse, if any) under section 1613 for
17 purposes of subparagraphs (D) and (E) the fol-
18 lowing additional exclusions shall apply:

19 “(i) LIFE INSURANCE POLICY.—No
20 part of the value of any life insurance pol-
21 icy shall be taken into account.

22 “(ii) IN-KIND CONTRIBUTIONS.—No
23 in-kind contribution shall be taken into ac-
24 count.

1 “(iii) PENSION OR RETIREMENT
2 PLAN.—No balance in any pension or re-
3 tirement plan shall be taken into ac-
4 count.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect on the date of enactment of
7 this Act.

8 **SEC. 4. INDEXING DEDUCTIBLE AND COST-SHARING ABOVE**
9 **ANNUAL OUT-OF-POCKET THRESHOLD FOR**
10 **INDIVIDUALS WITH INCOME BELOW 150 PER-**
11 **CENT OF POVERTY LINE.**

12 (a) INDEXING DEDUCTIBLE.—Section 1860D-
13 14(a)(4)(B) of the Social Security Act (42 U.S.C. 1395w-
14 114(a)(4)(B)) is amended—

15 (1) in clause (i), by striking “or”;

16 (2) in clause (ii)—

17 (A) by striking “a subsequent year” and
18 inserting “2008”;

19 (B) by striking “this clause (or clause (i))
20 for the previous year” and inserting “clause (i)
21 for 2007”; and

22 (C) by striking “involved.” and inserting
23 “involved; and”;

24 (3) by adding after clause (ii) the following new
25 clause:

1 “(iii) for 2008 and each succeeding
 2 year, the amount determined under this
 3 subparagraph for the previous year in-
 4 creased by the annual percentage increase
 5 in the consumer price index (all items;
 6 U.S. city average) as of September of such
 7 previous year.”; and

8 (4) in the flush sentence at the end, by striking
 9 “clause (i) or (ii)” and inserting “clause (i), (ii), or
 10 (iii)”.

11 (b) INDEXING COST-SHARING.—Section 1860D-
 12 14(a) of the Social Security Act (42 U.S.C. 1395w-
 13 114(a)) is amended—

14 (1) in paragraph (1)(D)(iii), by striking “exceed
 15 the copayment amount” and all that follows through
 16 the period at the end and inserting “exceed—

17 “(I) for 2006 and 2007, the co-
 18 payment amount specified under sec-
 19 tion 1860D-2(b)(4)(A)(i)(I) for the
 20 drug and year involved; and

21 “(II) for 2008 and each suc-
 22 ceeding year, the amount determined
 23 under this subparagraph for the pre-
 24 vious year increased by the annual
 25 percentage increase in the consumer

1 price index (all items; U.S. city aver-
2 age) as of September of such previous
3 year.”; and

4 (2) in paragraph (2)(E), by striking “exceed
5 the copayment or coinsurance amount” and all that
6 follows through the period at the end and inserting
7 “exceed—

8 “(i) for 2006 and 2007, the copay-
9 ment or coinsurance amount specified
10 under section 1860D–2(b)(4)(A)(i)(I) for
11 the drug and year involved; and

12 “(ii) for 2008 and each succeeding
13 year, the amount determined under this
14 clause for the previous year increased by
15 the annual percentage increase in the con-
16 sumer price index (all items; U.S. city av-
17 erage) as of September of such previous
18 year.”.

19 **SEC. 5. NO IMPACT ON ELIGIBILITY FOR BENEFITS UNDER**
20 **OTHER PROGRAMS.**

21 (a) IN GENERAL.—Section 1860D–14(a)(3) of the
22 Social Security Act (42 U.S.C. 1395w–114(a)(3)), as
23 amended by section 3(c)(3), is amended—

1 (1) in subparagraph (A), in the matter pre-
2 ceding clause (i), by striking “subparagraph (F)”
3 and inserting “subparagraphs (F) and (H)”; and

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

6 “(H) NO IMPACT ON ELIGIBILITY FOR
7 BENEFITS UNDER OTHER PROGRAMS.—The
8 availability of premium and cost-sharing sub-
9 sidies under this section shall not be treated as
10 benefits or otherwise taken into account in de-
11 termining an individual’s eligibility for, or the
12 amount of benefits under, any other Federal
13 program.”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect on the date of enactment of
16 this Act.

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