

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 266

To amend title XVIII of the Social Security Act to reduce the coverage gap in prescription drug coverage under part D of such title based on savings to the Medicare program resulting from the negotiation of prescription drug prices.

---

## IN THE SENATE OF THE UNITED STATES

JANUARY 15, 2009

Mr. NELSON of Florida (for himself, Ms. COLLINS, Mr. WHITEHOUSE, Mr. KOHL, Mr. KERRY, Mr. JOHNSON, and Mrs. BOXER) 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 the coverage gap in prescription drug coverage under part D of such title based on savings to the Medicare program resulting from the negotiation of prescription drug prices.

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 Prescription  
5 Drug Gap Reduction Act of 2009”.

1 **SEC. 2. REDUCING COVERAGE GAP.**

2 Section 1860D–2(b) of the Social Security Act (42  
3 U.S.C. 1395w–102(b)) is amended—

4 (1) in paragraph (3)(A), by striking “paragraph  
5 (4)” and inserting “paragraph (4), subject to the in-  
6 crease described in paragraph (7)”; and

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

9 “(7) INCREASE OF INITIAL COVERAGE LIMIT  
10 BASED ON MEDICARE SAVINGS DUE TO NEGOTIA-  
11 TION OF DRUG PRICES.—For each year (beginning  
12 with 2010), the Secretary shall increase the initial  
13 coverage limit for the year specified in paragraph (3)  
14 so that the aggregate amount of increased expendi-  
15 tures from the Medicare Prescription Drug Account  
16 as a result of such increase under this paragraph in  
17 the year (as estimated by the Office of the Actuary  
18 of the Centers for Medicare & Medicaid Services) is  
19 equal to the aggregate amount of reduced expendi-  
20 tures from such Account that the Office of the Actu-  
21 ary estimates will result in the year as a result of  
22 the application of the amendment made by section  
23 3(a) of the Medicare Prescription Drug Gap Reduc-  
24 tion Act of 2009.”.

1 **SEC. 3. NEGOTIATING FAIR PRICES FOR MEDICARE PRE-**  
2 **SCRIPTION DRUGS.**

3 (a) IN GENERAL.—Section 1860D–11 of the Social  
4 Security Act (42 U.S.C. 1395w–111) is amended by strik-  
5 ing subsection (i) (relating to noninterference) and insert-  
6 ing the following:

7 “(i) AUTHORITY TO NEGOTIATE PRICES WITH MAN-  
8 UFACTURERS.—

9 “(1) IN GENERAL.—Subject to paragraph (4),  
10 in order to ensure that beneficiaries enrolled under  
11 prescription drug plans and MA–PD plans pay the  
12 lowest possible price, the Secretary shall have au-  
13 thority similar to that of other Federal entities that  
14 purchase prescription drugs in bulk to negotiate con-  
15 tracts with manufacturers of covered part D drugs,  
16 consistent with the requirements and in furtherance  
17 of the goals of providing quality care and containing  
18 costs under this part.

19 “(2) MANDATORY RESPONSIBILITIES.—The  
20 Secretary shall be required to—

21 “(A) negotiate contracts with manufactur-  
22 ers of covered part D drugs for each fallback  
23 prescription drug plan under subsection (g);  
24 and

25 “(B) participate in negotiation of contracts  
26 of any covered part D drug upon request of an

1 approved prescription drug plan or MA–PD  
2 plan.

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

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

13 “(5) USE OF SAVINGS.—The savings to the  
14 Medicare Prescription Drug Account through the  
15 use of the authority provided under this subsection  
16 (including the mandatory responsibilities under  
17 paragraph (2)) shall be used to increase the initial  
18 coverage limit for the year in accordance with sec-  
19 tion 1860D–2(b)(7).”.

20 (b) EFFECTIVE DATE.—The amendment made by  
21 subsection (a) shall take effect on the date of enactment  
22 of this Act.

○