

# New Medicare Reform Act:

## BEWARE OF THE "DOUGHNUT HOLE"

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**H**ERALDING THE MOST SIGNIFICANT expansion of the Medicare program since its creation in 1965, President Bush signed into law on December 8, 2003 H.R. 1, the "Medicare Prescription Drug, Improvement, and Modernization Act of 2003" (the Act),<sup>1</sup> which includes prescription drug coverage for senior citizens and millions of people with disabilities.<sup>2</sup> Implementation of this new Medicare "Part D" program begins January 1, 2006. Costs are estimated to reach \$400 billion, at a minimum.<sup>3</sup>

The Act also includes numerous regulatory reforms, including incentives for private health plans, an experiment in competition between private health plans and Medicare, a limited form of means testing, and provisions regarding health savings accounts. Unquestionably, however, the Act's hallmark is its voluntary prescription drug benefit provision. But what is missing from this new benefit is equally important, if not more significant, than what is there.

Essentially, after paying an annual deductible of \$250, approximately 75% of enrolled Medicare beneficiaries' drug costs would be covered, up to a cap of \$2500. Thereafter, eligible seniors would have no coverage of their drug costs, until costs reach \$3600 in out-of-pocket expenses - the so-called "doughnut hole" - whereupon catastrophic coverage would commence. This means that many, if not most, of our nation's elderly population will be responsible for paying all out-of-pocket expenditures between \$2501 and \$3599 for their prescription drugs: a fact that is glaringly omitted, or poorly explained in Administration press releases. Beneficiaries with annual incomes that fall below a set threshold (namely, 150% of poverty) will receive additional assistance.

Beneficiaries will be able to obtain drug coverage either through prescription drug plans ("PDPs") or through the new Medicare Advantage program that replaces Medicare+Choice. These entities will be allowed to offer either the standard benefit or its actuarial equivalent, and will bear some of the financial risk for drug costs. A bidding process will determine monthly premium amounts for Part D.

Finally, the Act authorizes a host of provider-related anti-fraud and payment provisions, including:

- Quality ratings for hospitals - 0.4% decrease in reimbursement to those hospitals that do not submit quality of care information to CMS;
- Patient referrals to "specialty" hospitals - 18 month moratorium on exception to physician self-referral prohibition, that allowed physician investors to refer their patients to specialty hospitals in which they have an ownership interest. Specialty hospitals in operation or

under development as of November 18, 2003 would be exempt from this provision;

- Payment changes for durable medical equipment-imposition of a competitive bidding process for high - cost, high utilization DME items, as well as a payment freeze for three years;
- Physician fees - 1.5% increase in the update to the physician fee schedules for 2004 and 2005; and
- Numerous Medicare regulatory relief provisions and contractor corrections regarding overpayments, appeals, extrapolations, responses to providers, and retroactivity of policy applications, all of which have the potential of easing health care providers' administrative burdens if adequately implemented.

The Act took a tortured path from its initial bill introduction to enactment. Policy "wonks," legislative specialists, and attorneys continue to find its provisions highly complicated and controversial, notwithstanding the Act's modest benefits. In fact, liberal groups have commenced a yearlong campaign to seek changes in the new prescription drug law they claim benefits pharmaceutical companies over seniors. Despite AARP's enthusiastic endorsement, what remains to be seen is how our nation's senior citizens will react to what their increased premiums actually are purchasing. Once seniors begin to glean a more complete understanding of the prescription drug benefit's grants and loopholes, their initial enthusiasm likely will dissipate.

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## ENDNOTES: Corrine Parver

1 Pub. L. No. 108-173.

2 Between April 2004 and 2006, Medicare beneficiaries will be entitled to sign up for and use a transitional "prescription drug discount card." Estimated savings of this program are between 15 and 25 % per prescription. Low-income beneficiaries will be eligible for up to \$600 per year in prescription drug assistance, both in 2004 and 2005.

3 Federal budget experts and many Democratic members of Congress disagree with this estimate; some have projected costs to rise to the trillions of dollars, depending on the number of Medicare beneficiaries participating in the program.