

# Prescription Drug and Medicare Improvement Act of 2003/amendment nos.980 and 979

Senator Daniel K. Akaka Papers

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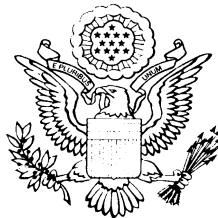
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# Congressional Record



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some seniors would like and some Members of this body would like, but still does a pretty good job and is a bit complex. Or, on the other hand, do we want to do nothing? Do we want to let senior citizens today, who do not have prescription drug coverage, remain without coverage? That is basically the question we are going to be facing later on this week.

To ask the question, I think, is to answer it. Namely, we should do a pretty good job, trying to get a pretty good bill passed, even though there is some complexity, even though there are some tradeoffs, rather than have nothing.

I suspect this body is always going to be somewhat split. I do not think one party is going to be totally in control at one time or the other party is going to be totally in control at another time. I think it is the nature of the American body politic that people want to hedge their bets, that they want to have both Democrats and Republicans working together. Certainly, our Founding Fathers set up our Government that way under our Constitution. They absolutely distrusted power. They distrusted it almost absolutely. That is why we have power dispersed by definition. That means in order to get something of consequence passed, there is going to have to be some compromise. In this bill there certainly is a lot of compromising.

A final point contained in that article—and I thought it was a pretty good article—is that when we, in this country, have passed other major social policy—let's say Medicare and Social Security—it has been based somewhat on faith, and we have worked to fix it, to make it even better after it has been passed. But you have to start somewhere. And I think, certainly, we have to start somewhere with respect to prescription drug benefits, and certainly, we should provide prescription drug benefits for seniors.

So I urge my colleagues to keep that in mind as we are working on amendments, which are designed to make this bill better. We can accept some amendments, but some in this body will not accept others. Nevertheless, all of us are generally working together toward the same goal.

In that vein, Mr. President, I ask unanimous consent that the pending amendments be temporarily set aside so the Senator from Hawaii may offer two amendments in sequence.

The PRESIDING OFFICER (Mr. SUNUNU). Is there objection?

Without objection, it is so ordered.

The Senator from Hawaii.

AMENDMENT NOS. 980 AND 979

Mr. AKAKA. Mr. President, I rise today to offer amendment No. 980 to restore Medicaid and State Children's Health Insurance Program eligibility for children and pregnant women who are citizens from the Freely Associated States and reside in the United States lawfully. The United States entered into a Compact of Free Association

with the Federated States of Micronesia and the Republic of the Marshall Islands in 1986, and with the Republic of Palau in 1994.

The political relationship between the United States and the FAS is based on mutual support. In exchange for the United States having strategic denial and a defense veto over the FAS, the United States provides military and economic assistance to the RMI, FSM and Palau with the goal of assisting these countries in achieving economic self-sufficiency following the termination of their status as U.N. Trust territories. Pursuant to the Compact, FAS citizens are allowed to freely enter the United States and are not considered immigrants.

Legal immigrants and FAS citizens lost many of their public benefits as a result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. I appreciate the work done by my colleague from Florida, Senator GRAHAM, to restore the eligibility for Medicaid and SCHIP for legal immigrants who are children and pregnant women.

The language that has been included in S. 1, the Prescription Drug and Medicare Improvement Act, would give States the option to provide this coverage and allow them to use Federal resources to do so.

However, the current text does not restore these benefits to citizens from the FAS lawfully residing in the United States. Arguably, FAS citizens have strong ties with the United States as they come from the countries that are perpetually bound to the United States in free association.

It is important for Congress to restore these benefits for FAS citizens that were taken away from a relatively small but important population. The Congressional Research Service estimates that 11,500 FAS citizens have migrated to the United States since the Compact was enacted. They have come to the United States to seek economic opportunity, education, and access health care.

The State of Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands have supported FAS citizens with necessary health care services, but not without significant and increasing costs. The Federal Government must provide matching resources to help States meet the health care needs of FAS citizens and to meet the obligations of the Federal commitment.

I urge my colleagues to support this amendment to restore a portion of the benefits that were taken away from FAS citizens in 1996.

Mr. President, I have another amendment, amendment No. 979, to offer to S. 1.

The PRESIDING OFFICER. Does the Senator wish to offer both amendments?

Mr. AKAKA. The amendments are at the desk.

The PRESIDING OFFICER. The Senator will be advised, neither amendment has been reported by the clerk.

Without objection, the clerk will report both amendments.

The legislative clerk read as follows: The Senator from Hawaii [Mr. AKAKA] proposes amendments numbered 980 and 979.

Mr. AKAKA. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT 980

(Purpose: To expand assistance with coverage for legal immigrants under the Medicaid program and SCHIP to include citizens of the Freely Associated States]

On page 636, line 16, insert "and citizens of the Freely Associated States, which include the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, lawfully residing in the United States" after "Act".

AMENDMENT 979

(Purpose: To ensure that current prescription drug benefits to medicare-eligible enrollees in the Federal Employees Health Benefits Program will not be diminished)

At the appropriate place, insert the following:

SEC. . NEGOTIATIONS BY THE OFFICE OF PERSONNEL MANAGEMENT.

The Office of Personnel Management may not negotiate a prescription drug benefit for any health benefits plan under chapter 89 of title 5, United States Code, that would provide a prescription drug benefit to a medicare eligible enrollee in that plan that is of lesser actuarial value, based on 2003 constant dollars, than the prescription drug benefit available to a medicare eligible enrollee of such plan on the date of enactment of this Act.

Mr. AKAKA. Mr. President, amendment No. 979 would ensure that the Federal Employees Health Benefits Program could not reduce the level of prescription drug coverage available to Medicare-covered Federal civilian annuitants. I thank my colleague from Maryland, Senator MIKULSKI, for co-sponsoring the amendment.

I strongly support the creation of a prescription drug benefit for Medicare beneficiaries. Thirty-eight percent of Medicare beneficiaries report that they do not have prescription drug coverage. Far too many seniors are unable to afford the medications that they need, and the establishment of a prescription drug benefit will provide much needed access to medications that our seniors desperately need.

However, the Congressional Budget Office believes that Medicare drug coverage authorized by this bill is likely to act as an incentive for employers to drop their employer-sponsored drug benefits. An estimated 37 percent of retired workers with employer-sponsored drug benefits could lose their coverage under this bill according to CBO. I am troubled that older Americans who already have earned coverage through an employer-sponsored plan could lose their existing benefits. We have seen over the past few years that there has been a disturbing trend of reducing benefits for retirees. Creating this voluntary benefit could only accelerate this trend.

The intent of the legislation is to expand prescription drug coverage for seniors, not merely to shift the financial burden of existing coverage to the Federal Government. If Medicare beneficiaries lose their employer-based coverage, they may have to pay more for a Medicare drug benefit that provides less comprehensive coverage.

We must encourage employers to maintain their current coverage, and I will support efforts to do so. We should not shift the existing costs of prescription drug coverage to the Medicare program. If this occurs, there will be fewer resources available to pay for the medications of those who currently need insurance.

My amendment will ensure that present and future Federal retirees retain their current level of prescription drug coverage. They should not face a situation in which they must rely on Medicare. My amendment requires the FEHBP to preserve current-level drug coverage for Federal retirees and survivors. The Government health care plan stands as a model employer-sponsored health care plan, and my amendment protects the Nation's Federal annuitants and their survivors. Accepting this amendment sends a message to other employer-sponsored plans that the Federal Government stands behind its commitment to retired workers.

I ask unanimous consent that letters from the National Association of Retired Federal Employees and the National Treasury Employees Union in support of my amendment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE NATIONAL  
TREASURY EMPLOYEES UNION,  
June 23, 2003.

RE: S.1, Medicare Drug Proposal

DEAR SENATOR: On behalf of the more than 150,000 federal employees and retirees represented by the National Treasury Employees Union (NTEU), I am writing concerning S.1, legislation to provide prescription drug coverage under Medicare.

NTEU believes legislation to provide prescription drug coverage for Medicare beneficiaries is long overdue, however, we have serious reservations concerning the way that this benefit has been structured. The proposed new benefit would provide a substantially less valuable benefit to Medicare beneficiaries than many private sector employers already provide for their retirees. Employers must not be permitted to diminish the prescription drug coverage they provide to former employees as a result of passage of this new Medicare benefit. Although we do not believe that is the intent of this legislation, steps must be taken to prevent this unintended consequence from occurring.

The federal government provides health insurance benefits, including prescription drug coverage, to its employees and retirees through the Federal Employees Health Benefits Program (FEHBP). Any proposal that would encourage, or result in, the federal government moving away from its commitment to its employees and retirees in this area would be strongly opposed. The fact that the Congressional Budget Office has reported that as many as 37 percent of retired workers would lose their employer-provided

drug coverage as a result of passage of S.1 provides serious cause for concern.

Senator Akaka plans to offer an amendment that seeks to address this issue. His amendment would prohibit the Office of Personnel Management (OPM) from negotiating a prescription drug benefit for Medicare-eligible FEHBP enrollees that is less valuable than the benefit available to those enrollees on the date of enactment of the pending Medicare drug proposal. The Akaka amendment makes sense and is consistent with the intent of the Medicare legislation—that employers already providing prescription drug benefits to their retirees continue to offer their existing benefits packages.

Our goal is two fold: to provide Medicare beneficiaries with the best possible drug benefit while at the same time ensuring that retirees who enjoy prescription drug coverage through employer-sponsored plans retain that coverage. I urge your support for the Akaka amendment.

Sincerely,

COLLEEN M. KELLEY,  
National President.

NATIONAL ASSOCIATION OF  
RETIRED FEDERAL EMPLOYEES,  
Alexandria, VA, June 24, 2003.

Hon. DANIEL K. AKAKA,  
Senate Office Building,  
Washington, DC.

DEAR SENATOR AKAKA: On behalf of the 400,000 member National Association of Retired Federal Employees (NARFE), I am writing to endorse your amendment to S. 1, the Prescription Drug and Medicare Improvement Act of 2003, that would ensure that the Office of Personnel Management (OPM) could not reduce the level of Federal Employees Health Benefits Program (FEHBP) prescription drug coverage currently available to Medicare-covered Federal civilian annuitants through negotiations with participating carriers.

NARFE strongly supports the creation of a Medicare drug benefit for our senior citizens who have no drug coverage. But at the same time, we want to ensure that no harm is done to older Americans who already have earned such coverage through an employer-sponsored plan. As you know, the Congressional Budget Office estimates that 37 percent of retired workers with employer sponsored drug benefits could lose it under S. 1.

The CBO believes that Medicare drug coverage authorized by this bill could act as an incentive to employers to drop their employer-sponsored drug benefits. If that occurred, retirees would be forced to pay an additional monthly premium for a Medicare drug benefit that would be limited and more costly than what is currently available through many employer-sponsored health plans, including the FEHBP. The last thing Medicare reform should do is encourage employers to break promises made to their retirees regarding their earned health security.

While the Medicare reform bill that is eventually enacted may provide subsidies and tax credits to private employers who retain existing drug benefits for their retirees, such incentives would not apply to the Federal government, and thus provides no guarantee of the FEHBP drug benefit for the government's own annuitants. If FEHBP is the model for this reform, the Federal government itself must not drop or reduce drug benefits for FEHBP enrollees. Your amendment recognizes this principle of fairness and would help to ensure that S. 1 does no harm to those men and women who have served and continue to do so much for our nation. NARFE commends you for valuing the importance of the earned health security of the more than 4 million Federal workers and an-

nuitants and we give our strongest endorsement to your amendment.

Sincerely,

CHARLES L. FALLIS,  
President.

Mr. AKAKA. Mr. President, I urge my colleagues to support my amendment and look forward to working with them to ensure drug coverage for retirees under other plans.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that all pending amendments be temporarily set aside so the Senator from Arkansas may offer an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Arkansas.

AMENDMENT NO. 981

Mr. PRYOR. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: The Senator from Arkansas [Mr. PRYOR] proposes an amendment numbered 981.

Mr. PRYOR. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide equal access to competitive global prescription medicine prices for American purchasers)

At the appropriate place, add the following:

SEC. — EQUAL ACCESS TO COMPETITIVE GLOBAL PRESCRIPTION MEDICINE PRICES FOR AMERICAN PURCHASERS.

(a) DEFINITION OF COVERED PRODUCT.—In this section, the term "covered product" has the meaning given the term in section 804 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384).

(b) PROHIBITION.—It shall be unlawful for the manufacturer of a covered product or any other person that sells a covered product to refuse to sell to any wholesaler or retailer (or other purchaser representing a group of wholesalers or retailers) of covered products in the United States on terms (including such terms as prompt payment, cash payment, volume purchase, single-site delivery, the use of formularies by purchasers, and any other term that effectively reduces the cost to the manufacturer of supplying the drug) that are not substantially the same as the most favorable (to the purchaser) terms on which the person has sold or has agreed to sell the covered product to any purchaser in Canada.

(c) ENFORCEMENT.—The Secretary of Health and Human Services, or any wholesaler or retailer in the United States aggrieved by a violation of subsection (b), may bring a civil action in United States district court against a person that violates subsection (b) for an order—

(1) enjoining the violation; and

(2) awarding damages in the amount that is equal to 3 times the amount of the value of the difference between—

(A) the terms on which the person sold a covered product to the wholesaler or retailer; and

(B) the terms on which the person sold the covered product to a person in Canada.

(d) EFFECTIVENESS OF SECTION.—This section takes effect on the date that is 2 years