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107TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 107–542
Part 1

MEDICARE MODERNIZATION AND PRESCRIPTION DRUG ACT OF 2002 (TITLE VII: MEDICARE BENEFITS ADMINISTRATION)

JUNE 26, 2002.—Ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4988]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4988) to amend title XVIII of the Social Security Act to establish the Medicare Benefits Administration within the Department of Health and Human Services, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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99–006

PURPOSE AND SUMMARY

The purpose of H.R. 4988 is to create the Medicare Benefits Administration (MBA) to allow the prescription drug benefit and Medicare+Choice program to be administered by an independent agency with the appropriate expertise to manage benefits delivered through competing private sector organizations. The MBA will set and enforce new standards for prescription drug plans, disseminate benefit information to beneficiaries, and handle grievances. The new agency will be headed by an Administrator, appointed for a 5-year term by the president, who will negotiate and enforce contracts with prescription drug plan sponsors under part D and Medicare+Choice plans under part C. The Secretary and the Administrator of the Centers for Medicare & Medicaid will establish a transition of responsibility for the administration of part C to the MBA. A Medicare Policy Advisory Board will be established to advise, consult with and make recommendations to the Administrator as well as submit reports to Congress on part C and D issues as they deem appropriate.

H.R. 4988 also creates a pharmacy grant program to be administered by the MBA. The grant program will facilitate the development of services that will reduce adverse drug reactions and medical errors.

BACKGROUND AND NEED FOR LEGISLATION

Historically, the Health Care Financing Administration, now the Centers for Medicare and Medicaid, has been a fee-for-service oriented agency with limited experience in managing benefits that rely on private sector competition. Creating the MBA allows for new employees with relevant experience to oversee both Medicare+Choice and the prescription drug benefit. The prescription drug card is also unlike other CMS programs in that it will require a significant degree of coordination with the private sector to implement successfully. Staff will have the technical background and the relevant work experience to develop and promulgate rules, educate beneficiaries about their rights and benefit options under parts C and D, and establish standards to ensure actuarial equivalence among qualified prescription drug plans.

The pharmacy grant program will address the needs of pharmacies, particularly those in rural and under-served areas, in complying with new requirements set forth in the prescription drug benefit for electronic prescribing and developing medication therapy management programs.

It is the intent of the committee that these grants will help enhance patient safety and improve medication compliance for beneficiaries participating in the new Medicare outpatient prescription drug benefit. Studies have shown that up front investment in disease management including medication therapies can reduce overall medical costs for some diseases by as much as 30 to 50 percent. The Committee also notes that a pharmacy or a network of common ownership or common affiliation of pharmacies should meet certain credentialing standards established by the Secretary of the Department of Health and Human Services. The committee intends that the Secretary will work with private entities regarding these standards.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On Friday, June 21, 2002, the Full Committee met in open mark-up session and favorably ordered reported a Committee Print on Medicare Benefits Administration by a roll call vote of 27 yeas and 15 nays, amended, a quorum being present. Chairman Tauzin then introduced H.R. 4988 to reflect the Committee's action.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following is the recorded vote taken on the motion by Mr. Tauzin to order H.R. 4988 reported to the House including the names of those members voting for and against.

COMMITTEE ON ENERGY AND COMMERCE -- 107TH CONGRESS
ROLL CALL VOTE # 60

BILL: H.R. 4988, Medicare Benefits Administration.

MOTION: Motion offered by Mr. Tauzin to order H.R. 4988 reported to the House, amended.

DISPOSITION: AGREED TO, by a roll call vote of 27 yeas to 15 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin	X			Mr. Dingell		X	
Mr. Bilirakis	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Markey		X	
Mr. Upton	X			Mr. Hall			
Mr. Stearns	X			Mr. Boucher			
Mr. Gillmor				Mr. Towns			
Mr. Greenwood	X			Mr. Pallone		X	
Mr. Cox	X			Mr. Brown		X	
Mr. Deal	X			Mr. Gordon			
Mr. Burr	X			Mr. Deutsch			
Mr. Whitfield	X			Mr. Rush		X	
Mr. Ganske	X			Ms. Eshoo			
Mr. Norwood	X			Mr. Stupak		X	
Mrs. Cubin	X			Mr. Engel			
Mr. Shimkus	X			Mr. Sawyer		X	
Mrs. Wilson	X			Mr. Wynn			
Mr. Shadegg	X			Mr. Green			
Mr. Pickering	X			Ms. McCarthy		X	
Mr. Fossella	X			Mr. Strickland		X	
Mr. Blunt				Ms. DeGette		X	
Mr. Davis				Mr. Barrett		X	
Mr. Bryant				Mr. Luther		X	
Mr. Ehrlich	X			Ms. Capps		X	
Mr. Buyer	X			Mr. Doyle		X	
Mr. Radanovich	X			Mr. John			
Mr. Bass	X			Ms. Harman			
Mr. Pitts	X						
Ms. Bono	X						
Mr. Walden	X						
Mr. Terry	X						
Mr. Fletcher	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 4988 is to establish a new agency with the specific responsibility to administer parts C and D of the Medicare program.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4988, to amend title XVIII of the Social Security Act to establish the Medicare Benefits Administration within the Department of Health and Human Services, and for other purposes, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974, which is included in the report to accompany H.R. 4984.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 is included in the report to accompany H.R. 4984.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. The estimate is included in the report to accompany H.R. 4984.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION–BY–SECTION ANALYSIS OF THE LEGISLATION

Sec. 701. Establishment of Medicare Benefits Administration

Section 701 establishes a new agency, the Medicare Benefits Administration (MBA), within the Department of Health and Human Services. The Administrator of this agency will be appointed for a term of 5 years by the President, with Senate confirmation, and will report directly to the Secretary. The Administrator will have the authority to develop and implement new rules and regulations pertaining to the Administration and delegate responsibilities to officers and employees of the Administration. A Deputy Administrator will also be appointed by the President, with Senate confirmation, for a term of 5 years. The position of Chief Actuary will also be established. The Chief Actuary will be appointed by and report directly to the Administrator. The Secretary will be responsible for coordination between the Administrator for the MBA and the Administrator for the Centers for Medicare & Medicaid Services (CMS) in carrying out the Part C and Part D programs.

This section states that the Administrator will negotiate, enter into, and enforce contracts with PDP sponsors under Part D and Medicare+Choice plans under Part C, including those offering qualified prescription drug coverage. In carrying out duties related to the prescription drug benefit, the Administrator will not be allowed to require a particular formulary or pricing structure for the reimbursement of drugs or interfere with the competitive nature of the PDPs and their sponsors. The Administrator will also carry out demonstration projects under Parts C and D, implement the prescription drug discount card program, and submit annual reports to Congress and the President. With the approval of the Secretary, the MBA will employ officers and employees that are necessary to administer Parts C and D. For functions of CMS that are transferred to MBA, new staff will be employed at numbers not to exceed the number of full time employees that previously handled those functions at CMS. The Secretary and the CMS and MBA Administrator will determine an appropriate transition of responsibility for Part C, which will include the transfer of relevant data and information.

This office will coordinate functions relating to outreach and education of Medicare beneficiaries. It will disseminate benefit information to beneficiaries via the Internet, mail, and phone, and disseminate information on appeals rights to beneficiaries.

This section creates an advisory board to advise, consult with, and make recommendations to the Administrator of the MBA regarding the administration of Parts C and D. The Board will submit to Congress and the Administrator reports on Parts C and D issues they deem appropriate. Each report will include legislative or administrative changes to improve the administration of the benefits under Parts C and D. Topics may include fostering competition, education and enrollment, implementation of risk-adjust-

ment, disease management programs, and rural access. The Board will be independent and will not be required to seek comment or approval of reports from an officer or agency prior to submission to Congress. The Board will consist of 7 members: 3 appointed by the President, 2 appointed by the Speaker of the House with advice from the chairmen and minority ranking members of the Committees on Ways and Means and on Energy and Commerce, and 2 appointed by the President pro tempore of the Senate taking advice from the chairman and ranking minority member of the Senate Finance Committee. The members will be chosen based on their integrity, impartiality, and good judgment and will have education or experience related to health care benefits management. No federal employee will serve on the Board. In general, appointees will serve for a term of 3 years; however, the initial appointees will serve from 1 to 3 years. The Chair of the Board will be elected by the members and will also serve for 3 years. The Board will also have a Director appointed by the Chair. The Board will meet at least three times each year.

The funding necessary to carry out this section will be appropriated in part from the Hospital Insurance Trust Fund and from the Supplementary Medical Insurance Trust Fund.

This section states that the Administrator will serve as a member of the Board of Trustees of the Medicare Trust Funds, and that the Administrator and Deputy will not be appointed until March 1, 2003. Until the appointment of an Administrator, the Secretary will handle the responsibilities of the position.

Section. 702. Pharmacy Grant Program

Section 702 requires the MBA Administrator to establish a pharmacy grant program that will provide funding for independent pharmacies to comply with electronic prescribing requirements, prospectively review drug utilization, and develop innovative medication therapy management programs. The administrator will give priority to small pharmacies in rural or underserved areas. Appropriations for the grant program as authorized in the amount of $150,000,000 starting in 2004 and ending in 2007.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * * * *

TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

* * * * * * *

MEDICARE BENEFITS ADMINISTRATION

SEC. 1808. (a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an agency to be known as the Medicare Benefits Administration.

(b) ADMINISTRATOR; DEPUTY ADMINISTRATOR; CHIEF ACTUARY.—

(1) ADMINISTRATOR.—

(A) IN GENERAL.—The Medicare Benefits Administration shall be headed by an administrator to be known as the "Medicare Benefits Administrator" (in this section referred to as the "Administrator") who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall be in direct line of authority to the Secretary.

(B) COMPENSATION.—The Administrator shall be paid at the rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(C) TERM OF OFFICE.—The Administrator shall be appointed for a term of 5 years. In any case in which a successor does not take office at the end of an Administrator's term of office, that Administrator may continue in office until the entry upon office of such a successor. An Administrator appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term.

(D) GENERAL AUTHORITY.—The Administrator shall be responsible for the exercise of all powers and the discharge of all duties of the Administration, and shall have authority and control over all personnel and activities thereof.

(E) RULEMAKING AUTHORITY.—The Administrator may prescribe such rules and regulations as the Administrator determines necessary or appropriate to carry out the functions of the Administration. The regulations prescribed by the Administrator shall be subject to the rulemaking procedures established under section 553 of title 5, United States Code.

(F) AUTHORITY TO ESTABLISH ORGANIZATIONAL UNITS.—The Administrator may establish, alter, consolidate, or discontinue such organizational units or components within the Administration as the Administrator considers necessary or appropriate, except as specified in this section.

(G) AUTHORITY TO DELEGATE.—The Administrator may assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, to such officers and employees of the Administration as the Administrator may find necessary. Within the limitations of such delegations, redelegations, or assignments, all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Administrator.

(2) DEPUTY ADMINISTRATOR.—

(A) IN GENERAL.—There shall be a Deputy Administrator of the Medicare Benefits Administration who shall be appointed by the President, by and with the advice and consent of the Senate.

(B) COMPENSATION.—The Deputy Administrator shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(C) TERM OF OFFICE.—The Deputy Administrator shall be appointed for a term of 5 years. In any case in which a successor does not take office at the end of a Deputy Administrator's term of office, such Deputy Administrator may continue in office until the entry upon office of such a successor. A Deputy Administrator appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term.

(D) DUTIES.—The Deputy Administrator shall perform such duties and exercise such powers as the Administrator shall from time to time assign or delegate. The Deputy Administrator shall be Acting Administrator of the Administration during the absence or disability of the Administrator and, unless the President designates another officer of the Government as Acting Administrator, in the event of a vacancy in the office of the Administrator.

(3) CHIEF ACTUARY.—

(A) IN GENERAL.—There is established in the Administration the position of Chief Actuary. The Chief Actuary shall be appointed by, and in direct line of authority to, the Administrator of such Administration. The Chief Actuary shall be appointed from among individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary may be removed only for cause.

(B) COMPENSATION.—The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.

(C) DUTIES.—The Chief Actuary shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence.

(4) SECRETARIAL COORDINATION OF PROGRAM ADMINISTRATION.—The Secretary shall ensure appropriate coordination between the Administrator and the Administrator of the Centers for Medicare & Medicaid Services in carrying out the programs under this title.

(c) DUTIES; ADMINISTRATIVE PROVISIONS.—

(1) DUTIES.—

(A) GENERAL DUTIES.—The Administrator shall carry out parts C and D, including—

(i) negotiating, entering into, and enforcing, contracts with plans for the offering of Medicare+Choice plans under part C, including the offering of qualified prescription drug coverage under such plans; and

(ii) negotiating, entering into, and enforcing, contracts with PDP sponsors for the offering of prescription drug plans under part D.

(B) OTHER DUTIES.—The Administrator shall carry out any duty provided for under part C or part D, including

demonstration projects carried out in part or in whole under such parts, the programs of all-inclusive care for the elderly (PACE program) under section 1894, the social health maintenance organization (SHMO) demonstration projects (referred to in section 4104(c) of the Balanced Budget Act of 1997), and through a Medicare+Choice project that demonstrates the application of capitation payment rates for frail elderly medicare beneficiaries through the use of a interdisciplinary team and through the provision of primary care services to such beneficiaries by means of such a team at the nursing facility involved).

(C) PRESCRIPTION DRUG CARD.—The Administrator shall carry out section 1807 (relating to the medicare prescription drug discount card endorsement program).

(D) NONINTERFERENCE.—In carrying out its duties with respect to the provision of qualified prescription drug coverage to beneficiaries under this title, the Administrator may not—

(i) require a particular formulary or institute a price structure for the reimbursement of covered outpatient drugs;

(ii) interfere in any way with negotiations between PDP sponsors and Medicare+Choice organizations and drug manufacturers, wholesalers, or other suppliers of covered outpatient drugs; and

(iii) otherwise interfere with the competitive nature of providing such coverage through such sponsors and organizations.

(E) ANNUAL REPORTS.—Not later March 31 of each year, the Administrator shall submit to Congress and the President a report on the administration of parts C and D during the previous fiscal year.

(2) STAFF.—

(A) IN GENERAL.—The Administrator, with the approval of the Secretary, may employ, without regard to chapter 31 of title 5, United States Code, other than sections 3110 and 3112, such officers and employees as are necessary to administer the activities to be carried out through the Medicare Benefits Administration. The Administrator shall employ staff with appropriate and necessary expertise in negotiating contracts in the private sector.

(B) FLEXIBILITY WITH RESPECT TO COMPENSATION.—

(i) IN GENERAL.—The staff of the Medicare Benefits Administration shall, subject to clause (ii), be paid without regard to the provisions of chapter 51 (other than section 5101) and chapter 53 (other than section 5301) of such title (relating to classification and schedule pay rates).

(ii) MAXIMUM RATE.—In no case may the rate of compensation determined under clause (i) exceed the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(C) LIMITATION ON FULL-TIME EQUIVALENT STAFFING FOR CURRENT CMS FUNCTIONS BEING TRANSFERRED.—The Administrator may not employ under this paragraph a num-

ber of full-time equivalent employees, to carry out functions that were previously conducted by the Centers for Medicare & Medicaid Services and that are conducted by the Administrator by reason of this section, that exceeds the number of such full-time equivalent employees authorized to be employed by the Centers for Medicare & Medicaid Services to conduct such functions as of the date of the enactment of this Act.

(3) REDELEGATION OF CERTAIN FUNCTIONS OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES.—

(A) IN GENERAL.—The Secretary, the Administrator, and the Administrator of the Centers for Medicare & Medicaid Services shall establish an appropriate transition of responsibility in order to redelegate the administration of part C from the Secretary and the Administrator of the Centers for Medicare & Medicaid Services to the Administrator as is appropriate to carry out the purposes of this section.

(B) TRANSFER OF DATA AND INFORMATION.—The Secretary shall ensure that the Administrator of the Centers for Medicare & Medicaid Services transfers to the Administrator of the Medicare Benefits Administration such information and data in the possession of the Administrator of the Centers for Medicare & Medicaid Services as the Administrator of the Medicare Benefits Administration requires to carry out the duties described in paragraph (1).

(C) CONSTRUCTION.—Insofar as a responsibility of the Secretary or the Administrator of the Centers for Medicare & Medicaid Services is redelegated to the Administrator under this section, any reference to the Secretary or the Administrator of the Centers for Medicare & Medicaid Services in this title or title XI with respect to such responsibility is deemed to be a reference to the Administrator.

(d) OFFICE OF BENEFICIARY ASSISTANCE.—

(1) ESTABLISHMENT.—The Secretary shall establish within the Medicare Benefits Administration an Office of Beneficiary Assistance to coordinate functions relating to outreach and education of medicare beneficiaries under this title, including the functions described in paragraph (2). The Office shall be separate operating division within the Administration.

(2) DISSEMINATION OF INFORMATION ON BENEFITS AND APPEALS RIGHTS.—

(A) DISSEMINATION OF BENEFITS INFORMATION.—The Office of Beneficiary Assistance shall disseminate, directly or through contract, to medicare beneficiaries, by mail, by posting on the Internet site of the Medicare Benefits Administration and through a toll-free telephone number, information with respect to the following:

(i) Benefits, and limitations on payment (including cost-sharing, stop-loss provisions, and formulary restrictions) under parts C and D.

(ii) Benefits, and limitations on payment under parts A and B, including information on medicare supplemental policies under section 1882.

Such information shall be presented in a manner so that medicare beneficiaries may compare benefits under parts A,

B, D, and medicare supplemental policies with benefits under Medicare+Choice plans under part C.

(B) DISSEMINATION OF APPEALS RIGHTS INFORMATION.—The Office of Beneficiary Assistance shall disseminate to medicare beneficiaries in the manner provided under subparagraph (A) a description of procedural rights (including grievance and appeals procedures) of beneficiaries under the original medicare fee-for-service program under parts A and B, the Medicare+Choice program under part C, and the Voluntary Prescription Drug Benefit Program under part D.

(e) MEDICARE POLICY ADVISORY BOARD.—

(1) ESTABLISHMENT.—There is established within the Medicare Benefits Administration the Medicare Policy Advisory Board (in this section referred to the "Board"). The Board shall advise, consult with, and make recommendations to the Administrator of the Medicare Benefits Administration with respect to the administration of parts C and D, including the review of payment policies under such parts.

(2) REPORTS.—

(A) IN GENERAL.—With respect to matters of the administration of parts C and D, the Board shall submit to Congress and to the Administrator of the Medicare Benefits Administration such reports as the Board determines appropriate. Each such report may contain such recommendations as the Board determines appropriate for legislative or administrative changes to improve the administration of such parts, including the topics described in subparagraph (B). Each such report shall be published in the Federal Register.

(B) TOPICS DESCRIBED.—Reports required under subparagraph (A) may include the following topics:

(i) FOSTERING COMPETITION.—Recommendations or proposals to increase competition under parts C and D for services furnished to medicare beneficiaries.

(ii) EDUCATION AND ENROLLMENT.—Recommendations for the improvement to efforts to provide medicare beneficiaries information and education on the program under this title, and specifically parts C and D, and the program for enrollment under the title.

(iii) IMPLEMENTATION OF RISK-ADJUSTMENT.—Evaluation of the implementation under section 1853(a)(3)(C) of the risk adjustment methodology to payment rates under that section to Medicare+Choice organizations offering Medicare+Choice plans that accounts for variations in per capita costs based on health status and other demographic factors.

(iv) DISEASE MANAGEMENT PROGRAMS.—Recommendations on the incorporation of disease management programs under parts C and D.

(v) RURAL ACCESS.—Recommendations to improve competition and access to plans under parts C and D in rural areas.

(C) MAINTAINING INDEPENDENCE OF BOARD.—The Board shall directly submit to Congress reports required under

subparagraph (A). No officer or agency of the United States may require the Board to submit to any officer or agency of the United States for approval, comments, or review, prior to the submission to Congress of such reports.

(3) DUTY OF ADMINISTRATOR OF MEDICARE BENEFITS ADMINISTRATION.—With respect to any report submitted by the Board under paragraph (2)(A), not later than 90 days after the report is submitted, the Administrator of the Medicare Benefits Administration shall submit to Congress and the President an analysis of recommendations made by the Board in such report. Each such analysis shall be published in the Federal Register.

(4) MEMBERSHIP.—

(A) APPOINTMENT.—Subject to the succeeding provisions of this paragraph, the Board shall consist of seven members to be appointed as follows:

(i) Three members shall be appointed by the President.

(ii) Two members shall be appointed by the Speaker of the House of Representatives, with the advice of the chairmen and the ranking minority members of the Committees on Ways and Means and on Energy and Commerce of the House of Representatives.

(iii) Two members shall be appointed by the President pro tempore of the Senate with the advice of the chairman and the ranking minority member of the Senate Committee on Finance.

(B) QUALIFICATIONS.—The members shall be chosen on the basis of their integrity, impartiality, and good judgment, and shall be individuals who are, by reason of their education and experience in health care benefits management, exceptionally qualified to perform the duties of members of the Board.

(C) PROHIBITION ON INCLUSION OF FEDERAL EMPLOYEES.—No officer or employee of the United States may serve as a member of the Board.

(5) COMPENSATION.—Members of the Board shall receive, for each day (including travel time) they are engaged in the performance of the functions of the board, compensation at rates not to exceed the daily equivalent to the annual rate in effect for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(6) TERMS OF OFFICE.—

(A) IN GENERAL.—The term of office of members of the Board shall be 3 years.

(B) TERMS OF INITIAL APPOINTEES.—As designated by the President at the time of appointment, of the members first appointed—

(i) one shall be appointed for a term of 1 year;

(ii) three shall be appointed for terms of 2 years; and

(iii) three shall be appointed for terms of 3 years.

(C) REAPPOINTMENTS.—Any person appointed as a member of the Board may not serve for more than 8 years.

(D) VACANCY.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed

only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Board shall be filled in the manner in which the original appointment was made.

(7) CHAIR.—The Chair of the Board shall be elected by the members. The term of office of the Chair shall be 3 years.

(8) MEETINGS.—The Board shall meet at the call of the Chair, but in no event less than three times during each fiscal year.

(9) DIRECTOR AND STAFF.—

(A) APPOINTMENT OF DIRECTOR.—The Board shall have a Director who shall be appointed by the Chair.

(B) IN GENERAL.—With the approval of the Board, the Director may appoint, without regard to chapter 31 of title 5, United States Code, such additional personnel as the Director considers appropriate.

(C) FLEXIBILITY WITH RESPECT TO COMPENSATION.—

(i) IN GENERAL.—The Director and staff of the Board shall, subject to clause (ii), be paid without regard to the provisions of chapter 51 and chapter 53 of such title (relating to classification and schedule pay rates).

(ii) MAXIMUM RATE.—In no case may the rate of compensation determined under clause (i) exceed the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(D) ASSISTANCE FROM THE ADMINISTRATOR OF THE MEDICARE BENEFITS ADMINISTRATION.—The Administrator of the Medicare Benefits Administration shall make available to the Board such information and other assistance as it may require to carry out its functions.

(10) CONTRACT AUTHORITY.—The Board may contract with and compensate government and private agencies or persons to carry out its duties under this subsection, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

(f) FUNDING.—There is authorized to be appropriated, in appropriate part from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund (including the Medicare Prescription Drug Account), such sums as are necessary to carry out this section.

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PART A—HOSPITAL INSURANCE BENEFITS FOR THE AGED AND DISABLED

* * * * * * *

FEDERAL HOSPITAL INSURANCE TRUST FUND

SEC. 1817. (a) * * *

(b) With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Commissioner of Social Security, the Secretary of the Treasury, the Secretary of Labor, [and the Secretary of Health and Human Services, all ex officio,] *the Secretary of Health and Human Services, and the Administrator of the Medicare Benefits Adminis-*

tration, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Administrator of the Health Care Financing Administration shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) * * *

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PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR THE AGED AND DISABLED

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FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND

SEC. 1841. (a) * * *

(b) With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Commissioner of Social Security, Secretary of the Treasury, the Secretary of Labor, [and the Secretary of Health and Human Services, all ex officio,] *the Secretary of Health and Human Services, and the Administrator of the Medicare Benefits Administration, all ex officio,* and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Administrator of the Health Care Financing Administration shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) * * *

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TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart D—Pay and Allowances

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CHAPTER 53—PAY RATES AND SYSTEMS

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SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

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§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

Under Secretary of Commerce, Under Secretary of Commerce for Economic Affairs, Under Secretary of Commerce for Export Administration and Under Secretary of Commerce for Travel and Tourism.

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Administrator of the Centers for Medicare & Medicaid Services .

Administrator of the Medicare Benefits Administration.

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

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[Administrator of the Health Care Financing Administration.**]**

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DISSENTING VIEWS

H.R. 4988 creates a separate "Medicare Benefits Administration" to oversee the Medicare+Choice program and the new Part D prescription drug benefit. This entirely duplicative entity would administer the pieces of the Medicare program that are run by private, risk-bearing insurance companies and managed care plans. The only conceivable purpose of creating such an Administrator would be to prepare for phase-out of the traditional Medicare fee-for-service program, administered by the Center for Medicare and Medicaid Services, and a transfer of the Medicare program to the private sector.

While the Medicare program has always relied on private sector providers, there is a difference between the current structure and the one envisioned under the Committee bill. Since Medicare was enacted, private sector entities have delivered benefits to seniors and processed the program's claims. The Medicare program itself, however, has always assumed the ultimate responsibility—and the ultimate financial risk—of caring for our Nation's seniors. The private sector entities overseen by the Medicare Benefits Administration would not only deliver and manage the program's benefits and process the program's claims, but would assume financial risk as well.

The Medicare program was originally created because the private sector did not offer affordable and reliable health insurance to the elderly and disabled. We see little evidence that the elderly and disabled have become more attractive populations to insure, and we have serious doubts about the wisdom of the approach established in H.R. 4988. We do not object to private insurance companies or managed care organizations participating in Medicare, but we fear that if these companies assume the financial risk of providing care, the health and well-being of seniors and the disabled will no longer be the first priority of the Medicare program.

JOHN D. DINGELL.
SHERROD BROWN.
HENRY A. WAXMAN.
RICK BOUCHER.
EDOLPHUS TOWNS.
GENE GREEN.
FRANK PALLONE, Jr.
MICHAEL F. DOYLE.
KAREN MCCARTHY.
TOM BARRETT.
CHRIS JOHN.
BOBBY L. RUSH.
TED STRICKLAND.
ANNA G. ESHOO.
LOIS CAPPS.
PETER DEUTSCH.
ELIOT L. ENGEL.
TOM SAWYER.
DIANA DEGETTE.
BART GORDON.

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