

109TH CONGRESS
1ST SESSION

H. R. 4103

To amend title XVIII of the Social Security Act to provide for improved accountability in the Medicare Advantage and prescription drug programs.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 2005

Mr. BROWN of Ohio (for himself, Mr. DINGELL, Mr. RANGEL, Mr. WAXMAN, Mr. STARK, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to provide for improved accountability in the Medicare Advantage and prescription drug programs.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medicare Advantage and Prescription Drug Account-
6 ability Act of 2005”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Requirement for reasonable return of benefits.
- Sec. 3. Financial transparency.
- Sec. 4. Beneficiary sign-off.
- Sec. 5. Annual accountability reports.
- Sec. 6. Auditing of actuarial equivalency.
- Sec. 7. Report comparing costs and benefits under Medicare Advantage plans, medicare supplemental policies, and fee-for-service medicare.
- Sec. 8. Annual report on drug claim denials.
- Sec. 9. Medicare Prescription Drug Ombudsman.

1 **SEC. 2. REQUIREMENT FOR REASONABLE RETURN OF BEN-**
2 **EFITS.**

3 (a) MEDICARE ADVANTAGE PLANS.—Section
4 1857(e) of the Social Security Act (42 U.S.C. 1395w–
5 27(e)) is amended by adding at the end the following new
6 paragraph:

7 “(4) NEGOTIATION FOR LOSS AND ADMINISTRA-
8 TIVE COST RATIOS.—

9 “(A) IN GENERAL.—The contract with an
10 MA organization under this part shall provide
11 for the following:

12 “(i) MINIMUM LOSS RATIO.—Aggre-
13 gate average benefits that are at least a
14 minimum ratio of the aggregate average
15 revenues collected under the contract.

16 “(ii) MAXIMUM ADMINISTRATIVE COST
17 RATIO.—Aggregate average administrative
18 costs that do not exceed a maximum ratio
19 of the aggregate average revenues collected
20 under the contract.

1 “(B) ESTABLISHMENT OF RATIOS.—The
 2 ratios under clauses (i) and (ii) of subpara-
 3 graph (A) shall be established by the Secretary.
 4 In establishing such ratios, the Secretary shall
 5 take into account, at a minimum, ratios typical
 6 of those—

7 “(i) under private health insurance
 8 plans;

9 “(ii) under parts A and B of this title;
 10 and

11 “(ii) under health benefits plans of-
 12 fered under chapter 89 of title 5, United
 13 States Code (relating to the Federal Em-
 14 ployees Health Benefits Program).”.

15 (b) AUDIT OF ADMINISTRATIVE COSTS AND COMPLI-
 16 ANCE WITH THE FEDERAL ACQUISITION REGULATION.—
 17 Section 1857(d)(2)(B) of such Act (42 U.S.C. 1395w-
 18 27(d)(2)(B)) is amended—

19 (1) by striking “or (ii)” and inserting “(ii)”;
 20 and

21 (2) by inserting before the period at the end the
 22 following: “, or (iii) to compliance with the require-
 23 ments of subsection (e)(4)(A) and the extent to
 24 which administrative costs comply with the applica-

1 ble requirements for such costs under the Federal
 2 Acquisition Regulation”.

3 (c) APPLICATION TO PRESCRIPTION DRUG PLANS.—

4 The amendments made by subsections (a) and (b) apply,
 5 pursuant to section 1860D–12(b)(3) of the Social Security
 6 Act (42 U.S.C. 1395w–112(b)(3)), to contracts with pre-
 7 scription drug sponsors under part D of title XVIII of
 8 such Act.

9 (d) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply for contract years beginning after
 11 the date of the enactment of this Act.

12 **SEC. 3. FINANCIAL TRANSPARENCY.**

13 (a) MEDICARE ADVANTAGE PLANS.—Section
 14 1851(d) of the Social Security Act (42 U.S.C. 1395w–
 15 21(d)) is amended by adding at the end the following new
 16 paragraph:

17 “(8) FINANCIAL TRANSPARENCY.—

18 “(A) IN GENERAL.—Each MA organization
 19 shall provide annually to the Secretary (in a
 20 form and manner specified by the Secretary),
 21 with respect to each MA plan it offers and not
 22 later than 3 months after the end of each con-
 23 tract year, information describing the organiza-
 24 tion’s compliance with the requirements of sec-
 25 tion 1857(e)(4) and a functional listing of the

1 organization’s administrative costs (by category
 2 of such costs, including, at a minimum, mar-
 3 keting costs and claims processing costs), prof-
 4 its, and investment income (as defined by the
 5 Secretary), as a ratio of aggregate average reve-
 6 nues collected under the contract for that year.

7 “(B) PUBLICATION.—The Secretary shall
 8 publish the information provided under sub-
 9 paragraph (A) for each MA plan.”.

10 (b) CONFORMING APPLICATION TO PRESCRIPTION
 11 DRUG PLANS.—Section 1860D–11(b)(2) of the Social Se-
 12 curity Act 1395w–111(b)(2)) is amended by redesignating
 13 subparagraph (F) as subparagraph (G) and by inserting
 14 after subparagraph (E) the following new subparagraph:

15 “(F) PERIODIC AUDITING.—Information
 16 with respect to the prescription drug plan of the
 17 type described in section 1851(d)(8) with re-
 18 spect to an MA plan.”.

19 (c) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to reporting of information for con-
 21 tract years to which the amendments made by section 2
 22 apply.

23 **SEC. 4. BENEFICIARY SIGN-OFF.**

24 (a) MEDICARE ADVANTAGE PLANS.—Section
 25 1851(c)(2) of the Social Security Act (42 U.S.C. 1395w–

1 21(c)(2)) is amended by adding at the end the following
 2 new subparagraph:

3 “(C) BENEFICIARY SIGN-OFF IN ELECTION
 4 PROCESS.—An election to enroll with an MA
 5 plan shall not be effective unless the election
 6 form is signed by the individual and specifically
 7 acknowledges each of the following:

8 “(i) The premiums, cost-sharing re-
 9 quirements, and benefits under the plan
 10 may change at the beginning of each 12-
 11 month contract period.

12 “(ii) The individual may lose coverage
 13 of the individual’s physician or other pro-
 14 vider at the beginning of each such period.

15 “(iii) The plan may be terminated at
 16 the beginning of any such period.

17 “(iv) Premiums and benefits under
 18 the plan may vary based on the county or
 19 other MA area in which the plan is of-
 20 fered.”.

21 (b) APPLICATION TO PRESCRIPTION DRUG PLANS.—
 22 The amendment made by subsection (a) applies, pursuant
 23 to section 1860D–1(b)(1)(B)(ii) of the Social Security Act
 24 (42 U.S.C. 1395w–101(b)(1)(B)(ii)), to prescription drug
 25 plans under part D of title XVIII of such Act.

1 (c) EFFECTIVE DATE.—The amendment made by
 2 subsection (a) shall apply to elections made on or after
 3 the date specified by the Secretary of Health and Human
 4 Services, but in no case later than 60 days after the date
 5 of the enactment of this Act.

6 **SEC. 5. ANNUAL ACCOUNTABILITY REPORTS.**

7 (a) MEDICARE ADVANTAGE ACCOUNTABILITY RE-
 8 PORT.—Section 1856 of the Social Security Act (42
 9 U.S.C. 1395w–26) is amended—

10 (1) by amending the heading to read as follows:

11 “ESTABLISHMENT OF STANDARDS; ANNUAL
 12 ACCOUNTABILITY REPORT”; AND

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

15 “(c) ANNUAL ACCOUNTABILITY REPORT.—

16 “(1) IN GENERAL.—The Secretary shall com-
 17 pile, and transmit to Congress, at the end of each
 18 year (beginning with 2005), an annual Medicare Ad-
 19 vantage accountability report.

20 “(2) CONTENTS.—Each annual accountability
 21 report shall include the following:

22 “(A) A detailed analysis of geographic var-
 23 iation in cost-sharing and premiums among MA
 24 plans.

25 “(B) A comparison of the use of amounts
 26 paid to MA plans for benefit payments, admin-

1 istrative costs, and profits with the amounts ex-
 2 pended under the fee-for-service programs
 3 under parts A and B for benefit payments and
 4 administrative expenses.

5 “(C) Recommendations for legislative
 6 changes to the Medicare Advantage program, or
 7 the fee-for-service programs under parts A and
 8 B, to assure that medicare beneficiaries under
 9 both programs have access to comparable bene-
 10 fits at comparable cost and that Government
 11 subsidies under the two programs are equiva-
 12 lent.

13 “(D) The results of audits conducted
 14 under section 1857(d) and enforcement actions
 15 taken in response to findings of inappropriate
 16 expenditures of funds under this part.”.

17 (b) PRESCRIPTION DRUG ACCOUNTABILITY RE-
 18 PORT.—Section 1860D–12 of such Act (42 U.S.C.
 19 1395w–112) is amended by adding at the end the fol-
 20 lowing new subsection:

21 “(h) ANNUAL ACCOUNTABILITY REPORT.—

22 “(1) IN GENERAL.—The Secretary shall com-
 23 pile, and transmit to Congress, at the end of each
 24 year (beginning with 2006), an annual prescription
 25 drug accountability report.

1 “(2) CONTENTS.—Each annual accountability
 2 report shall include the same types of information
 3 (as specified by the Secretary) with respect to pre-
 4 scription drug plans as are provided under subpara-
 5 graphs (A), (B), and (D) of section 1856(c)(2) with
 6 respect to MA plans.”.

7 **SEC. 6. AUDITING OF ACTUARIAL EQUIVALENCY.**

8 (a) MEDICARE ADVANTAGE PLANS.—Section
 9 1854(a)(5) of the Social Security Act (42 U.S.C. 1395w–
 10 24(a)(5)) is amended by adding at the end the following
 11 new subparagraph:

12 “(B) PERIODIC AUDITS OF ACTUARIAL
 13 EQUIVALENCY DETERMINATIONS.—In the case
 14 of MA plans that provide for an actuarially
 15 equivalent level of benefits under this part, the
 16 Inspector General of the Department of Health
 17 and Human Services shall periodically audit a
 18 representative sample of the determinations
 19 made by the Secretary regarding such actuarial
 20 equivalency to ensure that the Secretary is only
 21 approving plans with benefits that are actuari-
 22 ally equivalent.”.

23 (b) APPLICATION TO PRESCRIPTION DRUG PLANS.—
 24 Section 1860D–11(e) of the Social Security Act (42

1 U.S.C. 1395w–111(e)) is amended by adding at the end
2 the following new paragraph:

3 “(3) PERIODIC AUDITING OF ACTUARIAL
4 EQUIVALENCY DETERMINATIONS.—The provisions of
5 section 1854(a)(5)(B) shall apply with respect to de-
6 terminations of actuarial equivalence of benefits
7 under prescription drug plans in the same manner
8 as they apply to determinations of actuarial equiva-
9 lence of benefits under MA plans.”.

10 **SEC. 7. REPORT COMPARING COSTS AND BENEFITS UNDER**
11 **MEDICARE ADVANTAGE PLANS, MEDICARE**
12 **SUPPLEMENTAL POLICIES, AND FEE-FOR-**
13 **SERVICE MEDICARE.**

14 Not later than 1 year after the date of the enactment
15 of this Act, the Secretary of Health and Human Services
16 shall submit to Congress a report that compares the aver-
17 age benefit payments, administrative costs, profits, and in-
18 vestment income (expressed as a percentage of revenues
19 collected) for MA plans with such average for the fee-for-
20 service programs under parts A and B and for group and
21 individual medicare supplemental policies.

22 **SEC. 8. ANNUAL REPORT ON DRUG CLAIM DENIALS.**

23 Section 1860D–4(h) of the Social Security Act (42
24 U.S.C. 1395w–104(h)) is amended by adding at the end
25 the following new paragraph:

1 “(4) ANNUAL REPORT ON DRUG CLAIMS REJEC-
2 TIONS AND REVERSALS ON APPEAL.—Each PDP
3 sponsor with respect to a prescription drug plan,
4 and each MA organization with respect to an MA-
5 PD plan, shall annually report to the Inspector Gen-
6 eral of the Department of Health and Human Serv-
7 ices on the following:

8 “(A)(i) The percentage of claims for pre-
9 scription drugs under the plan that are initially
10 denied.

11 “(ii) The percentage of such claim denials
12 that are appealed.

13 “(iii) The percentage of such appealed
14 claim denials that are reversed upon appeal.

15 “(B) The volume of such claims denials
16 that are based on—

17 “(i) a medical necessity determination;

18 “(ii) the drug not being on a for-
19 mulary; and

20 “(iii) other reasons.”.

21 **SEC. 9. MEDICARE PRESCRIPTION DRUG OMBUDSMAN.**

22 Section 1808 of the Social Security Act (42 U.S.C.
23 1395b–9) is amended by adding at the end the following
24 new subsection:

1 “(d) MEDICARE PRESCRIPTION DRUG OMBUDS-
2 MAN.—

3 “(1) IN GENERAL.—The Secretary shall appoint
4 within the Department of Health and Human Serv-
5 ices a Medicare Prescription Drug Ombudsman who
6 shall have expertise and experience in the fields of
7 health care and education of (and assistance to) in-
8 dividuals entitled to benefits under this title with re-
9 spect to prescription drug coverage under part D of
10 this title.

11 “(2) DUTIES.—The Medicare Prescription
12 Drug Ombudsman shall—

13 “(A) receive complaints, grievances, and
14 requests for information submitted by individ-
15 uals entitled to benefits under part D;

16 “(B) provide assistance with respect to
17 complaints, grievances, and requests referred to
18 in subparagraph (A), including—

19 “(i) assistance in collecting relevant
20 information for such individuals, to seek
21 an appeal of a decision or determination
22 made by a PDP sponsor or MA organiza-
23 tion;

24 “(ii) assistance to such individuals
25 with any problems arising from

1 disenrollment from a PDP under part C or
2 an MA–PD plan under part D;

3 “(C) provide assistance to beneficiaries in
4 relation to State medicaid programs under title
5 XIX and drug manufacturers in accessing
6 medically necessary drugs that are excluded
7 from coverage under part D; and

8 “(D) submit annual reports to Congress
9 and the Secretary that describe the activities of
10 the Office and that include such recommenda-
11 tions for improvement in the administration of
12 part D of this title as the Ombudsman deter-
13 mines appropriate.

14 The annual report under subparagraph (D) in 2007
15 and 2009 shall include information on the number
16 of cases described in subparagraph (C) that are han-
17 dled and the success rates in finding alternative
18 sources of coverage.”.

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