

109TH CONGRESS
2D SESSION

H. R. 5166

To amend title XVIII of the Social Security Act to improve payments made by prescription drug plans and MA–PD plans to pharmacies for covered part D drugs dispensed through such pharmacies.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2006

Mr. WICKER (for himself, Mr. LOBIONDO, Mr. PICKERING, Mr. BONNER, Mr. BROWN of Ohio, Mr. PETERSON of Pennsylvania, Mrs. CUBIN, Mr. EVERETT, Mr. BACHUS, Mr. DAVIS of Kentucky, Mr. BOUSTANY, Mr. SODREL, Mr. CONAWAY, Mr. FORTENBERRY, Ms. HARRIS, Mr. WHITFIELD, Mr. BILIRAKIS, Mrs. EMERSON, Ms. PRYCE of Ohio, Mr. SCHWARZ of Michigan, Mr. FOLEY, Mr. LEACH, Mr. GERLACH, Mr. WALDEN of Oregon, Mrs. JO ANN DAVIS of Virginia, Mr. SHERWOOD, Mr. BOOZMAN, Mr. OSBORNE, Mr. DOOLITTLE, Mr. TIAHRT, Mr. BURGESS, Mr. AKIN, Mr. ADERHOLT, Mr. BLUNT, Mr. MCHENRY, Ms. FOXX, Mr. PENCE, Mr. BISHOP of Utah, Mr. GARRETT of New Jersey, Mr. HOEKSTRA, Mr. FITZPATRICK of Pennsylvania, Ms. KAPTUR, Mr. GUTKNECHT, Ms. WASSERMAN SCHULTZ, and Mr. VAN HOLLEN) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 improve payments made by prescription drug plans and MA–PD plans to pharmacies for covered part D drugs dispensed through such pharmacies.

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 “Independent Pharmacy
 5 Protection Act of 2006”.

6 **SEC. 2. IMPROVING MEDICARE PRESCRIPTION DRUG PLAN**
 7 **PAYMENTS TO PHARMACIES.**

8 (a) IN GENERAL.—Section 1860D–12(b) of the So-
 9 cial Security Act (42 U.S.C. 1395w–112(b)) is amended
 10 by adding at the end the following new paragraph:

11 “(4) PAYMENTS TO PHARMACIES.—

12 “(A) IN GENERAL.—Each contract entered
 13 into with a PDP sponsor under this section
 14 with respect to a prescription drug plan offered
 15 by such sponsor shall provide for the following:

16 “(i) AVAILABILITY OF DIRECT DE-
 17 POSIT PAYMENTS.—The option for any
 18 participating pharmacy to elect for the
 19 plan to make payments by direct deposits
 20 to the pharmacy for covered part D drugs
 21 dispensed through the pharmacy.

22 “(ii) INCREASED DISPENSING FEE
 23 FOR GENERIC DRUGS.—The payment of
 24 dispensing fees by the plan to each partici-
 25 pating pharmacy for covered part D drugs

1 dispensed through the participating phar-
2 macy, in accordance with subparagraph
3 (B).

4 “(iii) PAYMENTS WITHIN 10 DAYS FOR
5 CERTAIN PHARMACIES.—In the case of a
6 participating pharmacy that is not part of
7 a chain of pharmacies that consists of
8 more than three pharmacies at different lo-
9 cations, payment with respect to any non-
10 disputed claim (as defined in subparagraph
11 (C)) for a covered part D drug dispensed
12 through the pharmacy to be made by the
13 plan to the pharmacy in full by a date that
14 is not more than 10 days after the date on
15 which the claim is received by the plan.

16 “(B) PAYMENT OF DISPENSING FEES TO
17 ENCOURAGE USE OF GENERIC DRUGS.—

18 “(i) IN GENERAL.—For purposes of
19 subparagraph (A)(ii) and subject to clauses
20 (ii) and (iii), with respect to a generic cov-
21 ered part D drug that is therapeutically
22 equivalent and bioequivalent to a brand
23 name drug that is a covered part D drug
24 dispensed through a participating phar-
25 macy, the amount of the dispensing fee

1 paid to the pharmacy for the generic cov-
2 ered part D drug shall be an amount that
3 is at least 50 percent greater than the
4 amount of the dispensing fee for the brand
5 name drug.

6 “(ii) CAP ON AMOUNT OF DISPENSING
7 FEES FOR GENERIC DRUGS.—For purposes
8 of subclause (i), the amount of the dis-
9 pensing fee paid to a participating phar-
10 macy for a generic covered part D drug
11 shall not be more than \$10.

12 “(iii) SAFE HARBOR FOR BRAND
13 NAME DRUG DISPENSING FEE AMOUNTS.—

14 “(I) IN GENERAL.—For purposes
15 of clause (i) and subject to subclause
16 (II), a prescription drug plan under
17 this section shall not decrease the
18 amount of the dispensing fee paid by
19 the plan to a participating pharmacy
20 for a brand name drug described in
21 such clause to an amount that is less
22 than the amount of the dispensing fee
23 paid by such plan to such pharmacy
24 for such drug on the date of the en-

1 actment of the ‘Independent Phar-
2 macy Protection Act of 2006’.

3 “(II) EXCEPTION.—The Sec-
4 retary may waive the prohibition
5 under subclause (I) with respect to a
6 dispensing fee paid by a prescription
7 drug plan for a brand name drug, as
8 the Secretary determines appropriate.

9 “(C) NON-DISPUTED CLAIM DEFINED.—
10 For purposes of subparagraph (A)(iii), a ‘non-
11 disputed claim’ means a claim that has no de-
12 fect or impropriety or particular circumstance
13 requiring special treatment that prevents timely
14 payment from being made under this part.”.

15 (b) APPLICATION TO MA–PD PLANS.—Section
16 1857(e) of such Act (42 U.S.C. 1395w–27(e)) is amended
17 by adding at the end the following new paragraph:

18 “(4) INCORPORATION OF PRESCRIPTION DRUG
19 PLAN CONTRACT REQUIREMENTS FOR PHARMACY
20 PAYMENTS.—The provisions of section 1860D–
21 12(b)(4) shall apply to contracts with a Medicare
22 Advantage organization in the same manner as they
23 apply to contracts with a PDP sponsor offering a
24 prescription drug plan under part D.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this Act shall apply to plan years beginning on or after
3 the date of the enactment of this Act.

