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109TH CONGRESS
2D SESSION

H. R. 5182

To amend title XVIII of the Social Security Act to require the sponsor of a prescription drug plan or an organization offering an MA–PD plan to promptly pay claims submitted under part D, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2006

Mr. JONES of North Carolina (for himself, Mr. BERRY, Mr. RANGEL, Mr. MORAN of Kansas, Mr. WEINER, Mr. MARSHALL, Mr. TAYLOR of Mississippi, Mr. JEFFERSON, Mr. ETHERIDGE, Mr. WICKER, Mr. ROSS, Mr. WEXLER, Mr. HOLDEN, Mr. DOYLE, Mr. MOORE of Kansas, Mr. BROWN of Ohio, Mr. ABERCROMBIE, and Mr. ALLEN) 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

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A BILL

To amend title XVIII of the Social Security Act to require the sponsor of a prescription drug plan or an organization offering an MA–PD plan to promptly pay claims submitted under part D, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fair and Speedy Treatment (FAST) of Medicare Prescription Drug Claims Act of 2006''.

SEC. 2. PROMPT PAYMENT BY MEDICARE PRESCRIPTION DRUG PLANS AND MA–PD PLANS UNDER PART D.

(a) APPLICATION TO PRESCRIPTION DRUG PLANS.—Section 1860D–12(b) of the Social Security Act (42 U.S.C. 1395w–112 (b)) is amended by adding at the end the following new paragraph:

''(4) PROMPT PAYMENT OF CLEAN CLAIMS.—

''(A) PROMPT PAYMENT.—Each contract entered into with a PDP sponsor under this subsection with respect to a prescription drug plan offered by such sponsor shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to all clean claims submitted under this part within the applicable number of calendar days after the date on which the claim is received.

''(B) DEFINITIONS.—In this paragraph:

''(i) CLEAN CLAIM.—The term 'clean claim' means a claim, with respect to a covered part D drug, that has no apparent defect or impropriety (including any lack

of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.

''(ii) APPLICABLE NUMBER OF CALENDAR DAYS.—The term 'applicable number of calendar days' means—

''(I) with respect to claims submitted electronically, 14 calendar days; and

''(II) with respect to claims submitted otherwise, 30 calendar days.

''(C) INTEREST PAYMENT.—If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in subparagraph (B)) after a clean claim is received, interest shall be paid at a rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments), for the period beginning on the day after the required payment date and ending on the date on which payment is made.

''(D) PROCEDURES INVOLVING CLAIMS.—

"(i) CLAIMS DEEMED TO BE CLEAN CLAIMS.—

"(I) IN GENERAL.—A claim for a covered part D drug shall be deemed to be a clean claim for purposes of this paragraph if the PDP sponsor involved does not provide a notification of deficiency to the claimant by the 10th day that begins after the date on which the claim is submitted.

"(II) NOTIFICATION OF DEFICIENCY.—For purposes of subclause (II), the term 'notification of deficiency' means a notification that specifies all defects or improprieties in the claim involved and that lists all additional information or documents necessary for the proper processing and payment of the claim.

"(ii) PAYMENT OF CLEAN PORTIONS OF CLAIMS.—A PDP sponsor shall, as appropriate, pay any portion of a claim for a covered part D drug that would be a clean claim but for a defect or impropriety in a

separate portion of the claim in accordance with subparagraph (A).

''(iii) OBLIGATION TO PAY.—A claim for a covered part D drug submitted to a PDP sponsor that is not paid or contested by the provider within the applicable number of calendar days (as defined in subparagraph (B)) shall be deemed to be a clean claim and shall be paid by the PDP sponsor in accordance with subparagraph (A).

''(iv) DATE OF PAYMENT OF CLAIM.—Payment of a clean claim under subparagraph (A) is considered to have been made on the date on which full payment is received by the provider.

''(E) ELECTRONIC TRANSFER OF FUNDS.—A PDP sponsor shall pay all clean claims submitted electronically by an electronic funds transfer mechanism.''.

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

''(3) INCORPORATION OF CERTAIN PRESCRIPTION DRUG PLAN CONTRACT REQUIREMENTS.—The

provisions of section 1860D–12(b)(4) shall apply to contracts with a Medicare Advantage organization in the same manner as they apply to contracts with a PDP sponsor offering a prescription drug plan under part D.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts entered into or renewed on or after the date of the enactment of this Act.

SEC. 3. RESTRICTION ON CO-BRANDING.

(a) IN GENERAL.—Section 1860D–4(b)(2)(A) of the Social Security Act (42 U.S.C. 1395w–104(b)(2)(A)) is amended by adding at the end the following new sentences: ''It is unlawful for a PDP sponsor of a prescription drug plan to display on such a card the name, brand, or trademark of any pharmacy.''

(b) EFFECTIVE DATE.—With respect to cards dispensed before, on, or after the date of the enactment of this Act, the amendment made by this section shall apply to such cards on and after the date that is 90 days after such date of enactment. Any card dispensed before such date that is 90 days after the date of enactment that violates the second sentence of section 1860D–4(b)(2)(A) of the Social Security Act, as added by subsection (a), shall be reissued by such 90-day date.

SEC. 4. MINIMUM DISPENSING FEES FOR GENERIC COVERED PART D DRUGS.

(a) IN GENERAL.—Section 1860D–4(b)(1) of the Social Security Act (42 U.S.C. 1395w–104(b)(1)) is amended by adding at the end the following new subparagraph:

"(F) MINIMUM DISPENSING FEES FOR GENERIC COVERED PART D DRUGS.—

"(i) IN GENERAL.—Each PDP sponsor under this subsection with respect to a prescription drug plan offered by such sponsor shall provide that the amount of a dispensing fee paid to a participating pharmacy for a generic covered part D drug that is therapeutically equivalent and bioequivalent to a brand name drug that is a covered part D drug dispensed through the pharmacy, shall be an amount that is not less than the minimum generic drug dispensing fee specified under clause (ii).

"(ii) MINIMUM GENERIC DRUG DISPENSING FEE SPECIFIED.—The minimum generic drug dispensing fee specified under this clause for generic covered part D drugs dispensed—

"(I) in calendar year 2006, is $14; and

''(II) in subsequent calendar years, is the minimum generic drug dispensing fee under this clause for the previous year increased by the annual percentage increase in the consumer price index (all items; U.S. city average) as of July of such previous year.

Any amount established under subclause (II), that is based on an increase of $1 or $3, that is not a multiple of 5 cents or 10 cents, respectively, shall be rounded to the nearest multiple of 5 cents or 10 cents, respectively.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to prescriptions filled on or after the date that is the first day of the first contract year after the date of the enactment of this Act.

SEC. 5. PROVISION OF MEDICATION THERAPY MANAGEMENT SERVICES UNDER PART D.

(a) PROVISION OF MEDICATION THERAPY MANAGEMENT SERVICES UNDER PART D.—

(1) IN GENERAL.—Section 1860D–4(c)(2) of the Social Security Act (42 U.S.C.1395w–104(c)(2)) is amended—

(A) in subparagraph (A)—

(i) in clause (i)—

(I) by inserting ''or other health care provider with advanced training in medication management'' after ''furnished by a pharmacist''; and

(II) by striking ''targeted beneficiaries described in clause (ii)'' and inserting ''targeted beneficiaries specified under clause (ii)''

(ii) by striking clause (ii) and inserting the following:

''(ii) TARGETED BENEFICIARIES.—The Secretary shall specify the population of part D eligible individuals appropriate for services under a medication therapy management program based on the following characteristics:

''(I) Having a disease state in which evidence-based medicine has demonstrated the benefit of medication therapy management intervention based on objective outcome measures.

''(II) Taking multiple covered part D drugs or having a disease state

in which a complex combination medication regimen is utilized.

"(III) Being identified as likely to incur annual costs for covered part D drugs that exceed a level specified by the Secretary or where acute or chronic decompensation of disease would likely increase expenditures under the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund under sections 1817 and 1841, respectively, such as through the requirement of emergency care or acute hospitalization.";

(B) by striking subparagraph (B) and inserting the following:

"(B) ELEMENTS.—

"(i) MINIMUM DEFINED PACKAGE OF SERVICES.—The Secretary shall specify a minimum defined package of medication therapy management services that shall be provided to each enrollee. Such package shall be based on the following considerations:

''(I) Performing necessary assessments of the health status of each enrollee.

''(II) Providing medication therapy review to identify, resolve, and prevent medication-related problems, including adverse events.

''(III) Increasing enrollee understanding to promote the appropriate use of medications by enrollees and to reduce the risk of potential adverse events associated with medications, through beneficiary and family education, counseling, and other appropriate means.

''(IV) Increasing enrollee adherence with prescription medication regimens through medication refill reminders, special packaging, and other compliance programs and other appropriate means.

''(V) Promoting detection of adverse drug events and patterns of overuse and underuse of prescription drugs.

''(VI) Developing a medication action plan which may alter the medication regimen, when permitted by the State licensing authority. This information should be provided to, or accessible by, the primary health care provider of the enrollee.

''(VII) Monitoring and evaluating the response to therapy and evaluating the safety and effectiveness of the therapy, which may include laboratory assessment.

''(VIII) Providing disease-specific medication therapy management services when appropriate.

''(IX) Coordinating and integrating medication therapy management services within the broader scope of health care management services being provided to each enrollee.

''(ii) DELIVERY OF SERVICES.—

''(I) PERSONAL DELIVERY.—To the extent feasible, face-to-face interaction shall be the preferred method

of delivery of medication therapy management services.

''(II) INDIVIDUALIZED.—Such services shall be patient-specific and individualized and shall be provided directly to the patient by a pharmacist or other health care provider with advanced training in medication management.

''(III) DISTINCT FROM OTHER ACTIVITIES.—Such services shall be distinct from any activities related to formulary development and use, generalized patient education and information activities, and any population-focused quality assurance measures for medication use.

''(iii) OPPORTUNITY TO IDENTIFY PATIENTS IN NEED OF MEDICATION THERAPY MANAGEMENT SERVICES.—The program shall provide opportunities for health care providers to identify patients who should receive medication therapy management services.'';

(C) by striking subparagraph (E) and inserting the following:

''(E) PHARMACY FEES.—

''(i) IN GENERAL.—The PDP sponsor of a prescription drug plan shall pay pharmacists and others providing services under the medication therapy management program under this paragraph based on the time and intensity of services provided to enrollees.

''(ii) SUBMISSION ALONG WITH PLAN INFORMATION.—Each such sponsor shall disclose to the Secretary upon request the amount of any such payments and shall submit a description of how such payments are calculated along with the information submitted under section 1860D–11(b). Such description shall be submitted at the same time and in a similar manner to the manner in which the information described in paragraph (2) of such section is submitted.''; and

(D) by adding at the end the following new subparagraph:

''(F) PHARMACY ACCESS REQUIREMENTS.—The PDP sponsor of a prescription drug plan shall secure the participation in its network of a sufficient number of retail pharmacies to assure that enrollees have the option of obtaining services under the medication therapy management program under this paragraph directly from community-based retail pharmacies.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to medication therapy management services provided on or after January 1, 2008.

(b) MEDICATION THERAPY MANAGEMENT DEMONSTRATION PROGRAM.—Section 1860D–4(c) of the Social Security Act (42 U.S.C.1395w–104(c)) is amended by adding at the end the following new paragraph:

''(3) COMMUNITY-BASED MEDICATION THERAPY MANAGEMENT DEMONSTRATION PROGRAM.—

''(A) ESTABLISHMENT.—

''(i) IN GENERAL.—By not later than January 1, 2008, the Secretary shall establish a 2-year demonstration program, based on the recommendations of the Best Practices Commission established under

subparagraph (B), with both PDP sponsors of prescription drug plans and Medicare Advantage Organizations offering MA–PD plans, to examine the impact of medication therapy management furnished by a pharmacist in a community-based or ambulatory-based setting on quality of care, spending under this part, and patient health.

''(ii) SITES.—

''(I) IN GENERAL.—Subject to subclause (II), the Secretary shall designate not less than 10 PDP sponsors of prescription drug plans or Medicare Advantage organizations offering MA–PD plans, none of which provide prescription drug coverage under such plans in the same PDP or MA region, respectively, to conduct the demonstration program under this paragraph.

''(II) DESIGNATION CONSISTENT WITH RECOMMENDATIONS OF BEST PRACTICES COMMISSION.—The Secretary shall ensure that the designa-

tion of sites under subclause (I) is consistent with the recommendations of the Best Practices Commission under subparagraph (B)(ii).

''(B) BEST PRACTICES COMMISSION.—

''(i) ESTABLISHMENT.—The Secretary shall establish a Best Practices Commission composed of representatives from pharmacy organizations, health care organizations, beneficiary advocates, chronic disease groups, and other stakeholders (as determined appropriate by the Secretary) for the purpose of developing a best practices model for medication therapy management.

''(ii) RECOMMENDATIONS.—The Commission shall submit to the Secretary recommendations on the following:

''(I) The minimum number of enrollees that should be included in the demonstration program, and at each demonstration program site, to determine the impact of medication therapy management furnished by a pharmacist in a community-based setting

on quality of care, spending under this part, and patient health.

''(II) The number of urban and rural sites that should be included in the demonstration program to ensure that prescription drug plans and MA–PD plans offered in urban and rural areas are adequately represented.

''(III) A best practices model for medication therapy management to be implemented under the demonstration program under this paragraph.

''(C) REPORTS.—

''(i) INTERIM REPORT.—Not later than 1 year after the commencement of the demonstration program, the Secretary shall submit to Congress an interim report on such program.

''(ii) FINAL REPORT.—Not later than 6 months after the completion of the demonstration program, the Secretary shall submit to Congress a final report on such program, together with recommendations for such legislation and administrative ac-

tion as the Secretary determines appropriate.

''(D) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII as may be necessary for the purpose of carrying out the demonstration program under this paragraph.''.

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