

109TH CONGRESS
2D SESSION

S. 2183

To provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program.

IN THE SENATE OF THE UNITED STATES

JANUARY 20, 2006

Mr. ROCKEFELLER (for himself, Mr. REID, Mrs. MURRAY, Mr. BINGAMAN, Mrs. LINCOLN, Mr. KENNEDY, Mrs. CLINTON, Mr. LAUTENBERG, Ms. STABENOW, Mr. DURBIN, Mr. KERRY, Mr. SCHUMER, Mr. PRYOR, Mr. LEAHY, Mr. DAYTON, Mr. JEFFORDS, Mr. HARKIN, Ms. MIKULSKI, Mr. JOHNSON, Ms. CANTWELL, Mr. AKAKA, Mr. LIEBERMAN, Mr. KOHL, Ms. LANDRIEU, Mr. SARBANES, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for necessary beneficiary protections in order to ensure access to coverage under the Medicare part D prescription drug program.

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 “Requiring Emergency Pharmaceutical Access for Indi-
6 vidual Relief (REPAIR) Act of 2006”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Transition requirements.
- Sec. 3. Federal fallback for full-benefit dual eligible individuals for 2006.
- Sec. 4. Identifying full-benefit dual eligible individuals in data records.
- Sec. 5. Prohibition on conditioning Medicaid eligibility for individuals enrolled
 in certain creditable prescription drug coverage on enrollment
 in the Medicare part D drug program.
- Sec. 6. Ensuring that full-benefit dual eligible individuals are not overcharged.
- Sec. 7. Reimbursement of States for 2006 transition costs.
- Sec. 8. Facilitation of identification and enrollment through pharmacies of full-
 benefit dual eligible individuals in the Medicare part D drug
 program.
- Sec. 9. State health insurance program assistance regarding the new Medicare
 prescription drug benefit.
- Sec. 10. Additional Medicare part D informational resources.
- Sec. 11. GAO study and report on the imposition of co-payments under part
 D for full-benefit dual eligible individuals residing in a long-
 term care facility.
- Sec. 12. State coverage of non-formulary prescription drugs for full-benefit dual
 eligible individuals during 2006.
- Sec. 13. Protection for full-benefit dual eligible individuals from plan termi-
 nation prior to receiving functioning access in a new part D
 plan.

3 **SEC. 2. TRANSITION REQUIREMENTS.**

4 (a) REQUIREMENT.—

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

9 “(4) FORMULARY TRANSITION.—The sponsor of
 10 a prescription drug plan is required to provide at
 11 least a 30-day supply of any drug that a new en-
 12 rollee in the plan was taking prior to enrolling in
 13 such plan. For individuals residing in a long-term
 14 care setting, the sponsor of a prescription drug plan

1 is required to provide at least a 90-day supply of
2 any drug such individual was taking prior to enroll-
3 ing in such plan. A formulary transition supply pro-
4 vided under this section shall be made by the spon-
5 sor of a prescription drug plan without imposing any
6 prior authorization requirements or other access re-
7 strictions for individuals stabilized on a course of
8 treatment and at the dosage previously prescribed by
9 a physician or recommended by a physician going
10 forward.

11 “(5) CUSTOMER SERVICE.—The sponsor of a
12 prescription drug plan is required to provide—

13 “(A) accessible and trained customer serv-
14 ice representatives available for full business
15 hours from coast to coast to provide knowledge-
16 able assistance to individuals seeking help with
17 Medicare Part D including, but not limited to,
18 beneficiaries, caseworkers, SHIP counselors,
19 pharmacists, doctors, and caregivers;

20 “(B) at least one dedicated phone line for
21 pharmacists with sufficient staff to reduce wait
22 times for pharmacists seeking Medicare Part D
23 assistance to no more than 20 minutes; and

1 “(C) sufficient staff to reduce wait times
2 for all Medicare Part D-related calls to plan
3 phone lines to no more than 20 minutes.”.

4 (2) APPLICATION.—The requirements under
5 paragraphs (4) and (5) of section 1860D–4(b) of the
6 Social Security Act (42 U.S.C. 1395w–104(b)), as
7 added by subsection (a), shall apply to the plan serv-
8 ing as the national point of sale contractor under
9 part D of title XVIII of such Act.

10 (b) EFFECTIVE DATE AND ENFORCEMENT.—

11 (1) EFFECTIVE DATE.—The amendment made
12 by subsection (a) shall take effect on the date of en-
13 actment of this Act.

14 (2) ENFORCEMENT.—The Secretary may im-
15 pose a civil monetary penalty in an amount not to
16 exceed \$15,000 for conduct that a sponsor of a pre-
17 scription drug plan or an organization offering an
18 MA–PD plan knows or should know is a violation of
19 the provisions of paragraph (4) or (5) of section
20 1860D–4(b) of the Social Security Act (42 U.S.C.
21 1395w–104(b)), as added by subsection (a). The
22 provisions of section 1128A of the Social Security
23 Act (42 U.S.C. a–7a), other than subsections (a)
24 and (b) and the second sentence of subsection (f),
25 shall apply to a civil monetary penalty under the

1 previous sentence in the same manner as such provi-
 2 sions apply to a penalty or proceeding under sub-
 3 section (a) of such section 1128A(a).

4 **SEC. 3. FEDERAL FALLBACK FOR FULL-BENEFIT DUAL ELI-**
 5 **GIBLE INDIVIDUALS FOR 2006.**

6 (a) IN GENERAL.—

7 (1) IN GENERAL.—If a full-benefit dual eligible
 8 individual (as defined in section 1935(c)(6) of the
 9 Social Security Act (42 U.S.C. 1396u–5(c)(6))), or
 10 an individual who is presumed to be such an indi-
 11 vidual pursuant to subsection (b), presents a pre-
 12 scription for a covered part D drug (as defined in
 13 section 1860D–2(e) of such Act (42 U.S.C. 1395w–
 14 102(e))) at a pharmacy in 2006 and the pharmacy
 15 is unable to locate or verify the individual’s enroll-
 16 ment through a reasonable effort, including the use
 17 of the pharmacy billing system or by calling an offi-
 18 cial Medicare hotline, or to bill for the prescription
 19 through the plan serving as the national point of
 20 sale contractor, the pharmacy may provide a 30-day
 21 supply of the drug to the individual.

22 (2) REFILL.—The pharmacy may provide an
 23 additional 30-day supply of a drug if the pharmacy
 24 continues to be unable to locate the individual’s en-
 25 rollment through such reasonable efforts or to bill

1 for the prescription through the plan serving as the
2 national point of sale contractor when a prescription
3 is presented on or after the date that a prescription
4 refill is appropriate, but in no case after December
5 31, 2006.

6 (3) COST-SHARING.—The cost-sharing for a
7 prescription filled pursuant to this subsection shall
8 be cost-sharing provided for under section 1860D–
9 14(a) of the Social Security Act (42 U.S.C. 1395w–
10 114(a)).

11 (b) PRESUMPTIVE ELIGIBILITY.—An individual shall
12 be presumed to be a full-benefit dual eligible individual
13 (as so defined) if the individual presents at the pharmacy
14 with—

15 (1) a government issued picture identification
16 card;

17 (2) reliable evidence of Medicaid enrollment,
18 such as a Medicaid card, recent history of Medicaid
19 billing in the pharmacy patient profile, or a copy of
20 a current Medicaid award letter; and

21 (3) reliable evidence of Medicare enrollment,
22 such as a Medicare identification card, a Medicare
23 enrollment approval letter, a Medicare Summary No-
24 tice, or confirmation from an official Medicare hot-
25 line.

1 (c) PAYMENTS TO PHARMACISTS.—

2 (1) IN GENERAL.—The Secretary of Health and
 3 Human Services shall reimburse pharmacists, to the
 4 extent that such pharmacists are not otherwise reim-
 5 bursed by States or plans, for the costs incurred in
 6 complying with the requirements under subsection
 7 (a), including acquisition costs, dispensing costs, and
 8 other overhead costs. Such payments shall be made
 9 in a timely manner from the Medicare Prescription
 10 Drug Account under section 1860D–16 of the Social
 11 Security Act (42 U.S.C. 1395w–116) and shall be
 12 deemed to be payments from such Account under
 13 subsection (b) of such section.

14 (2) RETROACTIVE APPLICATION TO BEGINNING
 15 OF 2006.—The costs incurred by a pharmacy which
 16 may be reimbursed under paragraph (1) shall in-
 17 clude costs incurred during the period beginning on
 18 January 1, 2006, and before the date of enactment
 19 of this Act.

20 (d) RECOVERY OF COSTS FROM PLANS BY SEC-
 21 RETARY NOT PHARMACIES.—The Secretary of Health and
 22 Human Services shall establish a process for recovering
 23 the costs described in subsection (c)(1) from prescription
 24 drug plans (as defined in section 1860D–1(a)(3)(C) of the
 25 Social Security Act (42 U.S.C. 1394w–101(a)(3)(C))) and

1 MA–PD plans (as defined in section 1860D–41(a)(14) of
 2 such Act (42 U.S.C. 1395w–151(a)(14))) if the Secretary
 3 determines that such plans should have incurred such
 4 costs. Amounts recovered pursuant to the preceding sen-
 5 tence shall be deposited in the Medicare Prescription Drug
 6 Account described in subsection (c)(1).

7 **SEC. 4. IDENTIFYING FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS IN DATA RECORDS.**

8
 9 (a) IN GENERAL.—The Secretary of Health and
 10 Human Services and a prescription drug plan or an MA–
 11 PD plan shall clearly identify all full-benefit dual eligible
 12 individuals (as defined in section 1935(c)(6) of the Social
 13 Security Act (42 U.S.C. 1396u–5(c)(6))) and reflect the
 14 low-income subsidy status of such individual for each cal-
 15 ender year (beginning with 2006) in every data record file
 16 used to enroll or adjudicate claims for such individuals.

17 (b) ENROLLMENT.—For each calendar year (begin-
 18 ning with 2006) and for each Medicaid beneficiary who
 19 is a full-benefit dual eligible individual (as so defined), the
 20 Secretary of Health and Human Services shall—

21 (1) identify in the Medicare enrollment data-
 22 base that such individual has dual eligible status
 23 that has been verified with a State or the District
 24 of Columbia; and

1 (2) ensure that such dual eligible status is re-
 2 flected in each data file necessary to ensure that
 3 such status is transmitted to a prescription drug
 4 plan or an MA–PD plan when the Secretary certifies
 5 the enrollment of such an individual in a plan.

6 (c) DEFINITION OF MA–PD PLAN AND PRESCRIP-
 7 TION DRUG PLAN.—For purposes of this section, the
 8 terms “MA–PD plan” and “prescription drug plan” have
 9 the meaning given such terms in sections 1860D–
 10 1(a)(3)(C) and 1860D–41(a)(14) of the Social Security
 11 Act (42 U.S.C. 1395w–101(a)(3)(C); 1395w–151(a)(14)),
 12 respectively.

13 **SEC. 5. PROHIBITION ON CONDITIONING MEDICAID ELIGI-**
 14 **BILITY FOR INDIVIDUALS ENROLLED IN CER-**
 15 **TAIN CREDITABLE PRESCRIPTION DRUG**
 16 **COVERAGE ON ENROLLMENT IN THE MEDI-**
 17 **CARE PART D DRUG PROGRAM.**

18 (a) IN GENERAL.—Section 1935 of the Social Secu-
 19 rity Act (42 U.S.C. 1396v) is amended by adding at the
 20 end the following:

21 “(f) PROHIBITION ON CONDITIONING ELIGIBILITY
 22 FOR MEDICAL ASSISTANCE FOR INDIVIDUALS ENROLLED
 23 IN CERTAIN CREDITABLE PRESCRIPTION DRUG COV-
 24 ERAGE ON ENROLLMENT IN MEDICARE PRESCRIPTION
 25 DRUG BENEFIT.—

1 “(1) IN GENERAL.—A State shall not condition
2 eligibility for medical assistance under the State
3 plan for a part D eligible individual (as defined in
4 section 1860D–1(a)(3)(A)) who is enrolled in cred-
5 itable prescription drug coverage described in any of
6 subparagraphs (C) through (H) of section 1860D–
7 13(b)(4) on the individual’s enrollment in a prescrip-
8 tion drug plan under part D of title XVIII or an
9 MA–PD plan under part C of such title.

10 “(2) COORDINATION OF BENEFITS WITH PART
11 D FOR OTHER INDIVIDUALS.—Nothing in this sub-
12 section shall be construed as prohibiting a State
13 from coordinating medical assistance under the
14 State plan with benefits under part D of title XVIII
15 for individuals not described in paragraph (1).”.

16 (b) NULLIFICATION OF STATE PLAN AMENDMENTS,
17 REDETERMINATION OF ELIGIBILITY.—In the case of a
18 State that, as of the date of enactment of this Act, has
19 an approved amendment to its State plan under title XIX
20 of the Social Security Act with a provision that conflicts
21 with section 1935(f) of such Act (as added by subsection
22 (a)), such provision is, as of such date of enactment, null
23 and void. The State shall redetermine any applications for
24 medical assistance that have been denied solely on the
25 basis of the application of such a State plan amendment

1 not later than 90 days after the date of enactment of this
 2 Act.

3 **SEC. 6. ENSURING THAT FULL-BENEFIT DUAL ELIGIBLE IN-**
 4 **DIVIDUALS ARE NOT OVERCHARGED.**

5 (a) IN GENERAL.—Section 1860D–14 of the Social
 6 Security Act (42 U.S.C. 1395w–114) is amended—

7 (1) by redesignating subsection (d) as sub-
 8 section (e); and

9 (2) by inserting after subsection (c) the fol-
 10 lowing new subsection:

11 “(d) ENSURING FULL-BENEFIT DUAL ELIGIBLE IN-
 12 DIVIDUALS ARE NOT OVERCHARGED.—

13 “(1) IN GENERAL.—The Secretary shall, as
 14 soon a possible after the date of enactment of this
 15 subsection, establish processes for the following:

16 “(A) TRACKING INAPPROPRIATE PAY-
 17 MENTS.—The Secretary shall track full-benefit
 18 dual eligible individuals enrolled in a prescrip-
 19 tion drug plan or an MA–PD plan to determine
 20 whether such individuals were inappropriately
 21 subject under the plan to a deductible or cost-
 22 sharing that is greater than is required under
 23 section 1860D–14.

24 “(B) REDUCTION IN PAYMENTS TO PLANS
 25 AND REFUNDS TO INDIVIDUALS.—If the Sec-

1 retary determines under subparagraph (A) that
2 an individual was overcharged, the Secretary
3 shall—

4 “(i) reduce payments to the sponsor
5 of the prescription drug plan under section
6 1860D–15 or to the organization offering
7 the MA–PD plan under section 1853 that
8 inappropriately charged the individual by
9 an amount equal to the inappropriate
10 charges; and

11 “(ii) refund such amount to the indi-
12 vidual within 60 days of the determination
13 that the individual was inappropriately
14 charged.

15 If the Secretary does not provide for the refund
16 under clause (i) within the 60 days provided for
17 under such clause, interest at the rate estab-
18 lished under section 6621(a)(1) of the Internal
19 Revenue Code of 1986 shall be payable from
20 the end of such 60-day period until the date of
21 the refund.

22 “(2) REQUIREMENT.—The processes estab-
23 lished under paragraph (1) shall provide for the abil-
24 ity of an individual to notify the Secretary if the in-
25 dividual believes that they were inappropriately sub-

1 ject under the plan to a deductible or cost-sharing
 2 that is greater than is required under section
 3 1860D–14.”.

4 (b) REPORT TO CONGRESS.—Not later than January
 5 1, 2007, the Secretary of Health and Human Services
 6 shall submit a report to Congress on the implementation
 7 of the processes established under subsection (d) of section
 8 1860D–14 of the Social Security Act (42 U.S.C. 1395w–
 9 114), as added by subsection (a).

10 **SEC. 7. REIMBURSEMENT OF STATES FOR 2006 TRANSITION**
 11 **COSTS.**

12 (a) REIMBURSEMENT.—

13 (1) IN GENERAL.—Notwithstanding section
 14 1935(d) of the Social Security Act (42 U.S.C.
 15 1396u–5(d) or any other provision of law, the Sec-
 16 retary of Health and Human Services shall reim-
 17 burse States for 100 percent of the costs incurred by
 18 the State during 2006 for covered part D drugs (as
 19 defined in section 1860D–2(e) of such Act (42
 20 U.S.C. 1395w–102(e))) for part D eligible individ-
 21 uals (as defined in section 1860D–1(a)(3)(A) of the
 22 Social Security Act (42 U.S.C. 1394w–
 23 101(a)(3)(A))) which the State reasonably expected
 24 would have been covered under such part but were
 25 not because the individual was unable to access on

1 a timely basis prescription drug benefits to which
2 they were entitled under such part. Such payments
3 shall be made from the Medicare Prescription Drug
4 Account under section 1860D–16 of the Social Secu-
5 rity Act (42 U.S.C. 1395w–116) and shall be
6 deemed to be payments from such Account under
7 subsection (b) of such section.

8 (2) RETROACTIVE APPLICATION TO BEGINNING
9 OF 2006.—The costs incurred by a State which may
10 be reimbursed under paragraph (1) shall include
11 costs incurred during the period beginning on Janu-
12 ary 1, 2006, and before the date of enactment of
13 this Act.

14 (b) RECOVERY OF COSTS FROM PLANS BY SEC-
15 RETARY NOT STATES.—The Secretary of Health and
16 Human Services shall establish a process for recovering
17 the costs described in subsection (a)(1) from prescription
18 drug plans (as defined in section 1860D–1(a)(3)(C) of the
19 Social Security Act (42 U.S.C. 1394w–101(a)(3)(C))) and
20 MA–PD plans (as defined in section 1860D–41(a)(14) of
21 such Act (42 U.S.C. 1395w–151(a)(14))) if the Secretary
22 determines that such plans should have incurred such
23 costs. Amounts recovered pursuant to the preceding sen-
24 tence shall be deposited in the Medicare Prescription Drug
25 Account described in subsection (a)(1).

1 (c) STATE.—For purposes of this section, the term
 2 “State” includes the District of Columbia.

3 **SEC. 8. FACILITATION OF IDENTIFICATION AND ENROLL-**
 4 **MENT THROUGH PHARMACIES OF FULL-BEN-**
 5 **EFIT DUAL ELIGIBLE INDIVIDUALS IN THE**
 6 **MEDICARE PART D DRUG PROGRAM.**

7 (a) IN GENERAL.—The Secretary of Health and
 8 Human Services shall provide for outreach and education
 9 to every pharmacy that has participated in the Medicaid
 10 program under title XIV of the Social Security Act, par-
 11 ticularly independent pharmacies, on the following:

12 (1) The needs of full-benefit dual eligible indi-
 13 viduals and the challenges of meeting those needs.

14 (2) The processes for the transition from Med-
 15 icaid prescription drug coverage to coverage under
 16 such part D for such individuals.

17 (3) The processes established by the Secretary
 18 to facilitate, at point of sale, identification of drug
 19 plan assignment of such population or enrollment of
 20 previously unidentified or new full-benefit dual eligi-
 21 ble individuals into Medicare part D prescription
 22 drug coverage, including how pharmacies can use
 23 such processes to help ensure that such population
 24 makes a successful transition to Medicare part D
 25 without a lapse in prescription drug coverage.

1 (b) HOLDING PHARMACIES HARMLESS FOR CERTAIN
2 COSTS.—

3 (1) IN GENERAL.—The Secretary of Health and
4 Human Services shall provide for such payments to
5 pharmacies as may be necessary to reimburse phar-
6 macies fully for—

7 (A) transaction fees associated with the
8 point-of-sale facilitated identification and enroll-
9 ment processes referred to in subsection (a)(3);
10 and

11 (B) costs associated with technology or
12 software upgrades necessary to make any iden-
13 tification and enrollment inquiries as part of
14 the processes under subsection (a)(3).

15 (2) TIME.—Payments under paragraph (1)
16 shall be made with respect to fees and costs incurred
17 during the period beginning on December 1, 2005,
18 and ending on June 1, 2006.

19 (3) PAYMENTS FROM ACCOUNT.—Payments
20 under paragraph (1) shall be made from the Medi-
21 care Prescription Drug Account under section
22 1860D–16 of the Social Security Act (42 U.S.C.
23 1395w–116) and shall be deemed to be payments
24 from such Account under subsection (b) of such sec-
25 tion.

1 **SEC. 9. STATE HEALTH INSURANCE PROGRAM ASSISTANCE**
 2 **REGARDING THE NEW MEDICARE PRESCRIP-**
 3 **TION DRUG BENEFIT.**

4 During the period beginning on the date that is 7
 5 days after the date of enactment of this Act and ending
 6 on May 15, 2006 (or a later date if determined appro-
 7 priate by the Secretary of Health and Human Services),
 8 the Secretary shall ensure that an employee of the Centers
 9 for Medicare & Medicaid Services is stationed at each
 10 State health insurance counseling program (receiving
 11 funding under section 4360 of the Omnibus Budget Rec-
 12 onciliation Act of 1990) in order to—

13 (1) assist Medicare beneficiaries and counselors
 14 under such program in better understanding the
 15 Medicare prescription drug benefit under part D of
 16 title XVIII of the Social Security Act; and

17 (2) act as a liaison to the Secretary and the Ad-
 18 ministrator of the Centers for Medicare & Medicaid
 19 Services regarding issues related to oversight and
 20 enforcement of provisions under the Medicare pre-
 21 scription drug benefit.

22 **SEC. 10. ADDITIONAL MEDICARE PART D INFORMATIONAL**
 23 **RESOURCES.**

24 (a) 1-800-MEDICARE.—The Secretary of Health
 25 and Human Services shall increase the number of trained
 26 employees staffing the toll-free telephone number 1-800—

1 MEDICARE in order to ensure that the average wait time
2 for a caller does not exceed 20 minutes.

3 (b) PHARMACY HOTLINE.—The Secretary of Health
4 and Human Services shall—

5 (1) establish a toll-free telephone number that
6 is dedicated to providing information regarding the
7 Medicare prescription drug benefit under title XVIII
8 of the Social Security Act to pharmacists; and

9 (2) staff such telephone number in order to en-
10 sure that the average wait time for a caller does not
11 exceed 20 minutes.

12 (c) STATE HEALTH INSURANCE PROGRAM HOT-
13 LINE.—The Secretary of Health and Human Services
14 shall—

15 (1) establish a toll-free telephone number that
16 is dedicated to providing information regarding the
17 Medicare prescription drug benefit under title XVIII
18 of the Social Security Act to counselors working in
19 State health insurance counseling programs (receiv-
20 ing funding under section 4360 of the Omnibus
21 Budget Reconciliation Act of 1990); and

22 (2) staff such telephone number in order to en-
23 sure that the average wait time for a caller does not
24 exceed 20 minutes.

1 **SEC. 11. GAO STUDY AND REPORT ON THE IMPOSITION OF**
 2 **CO-PAYMENTS UNDER PART D FOR FULL-**
 3 **BENEFIT DUAL ELIGIBLE INDIVIDUALS RE-**
 4 **SIDING IN A LONG-TERM CARE FACILITY.**

5 (a) STUDY.—The Comptroller General of the United
 6 States shall conduct a study on how mental health pa-
 7 tients who are full-benefit dual eligible individuals (as de-
 8 fined in section 1935(c)(6) of the Social Security Act (42
 9 U.S.C. 1396u–5(c)(6))) and who reside in long-term care
 10 facilities, including licensed assisted living facilities, will
 11 be affected by the imposition of co-payments for covered
 12 part D drugs under part D of title XVIII of such Act.
 13 Such study shall include a review of issues that relate to
 14 the potential harm of displacement due to an inability to
 15 access needed medications because of such co-payments.

16 (b) REPORT.—Not later than 6 months after the date
 17 of enactment of this Act, the Comptroller General of the
 18 United States shall submit a report to Congress on the
 19 study conducted under subsection (a) together with rec-
 20 ommendations for such legislation as the Comptroller Gen-
 21 eral determines is appropriate.

22 **SEC. 12. STATE COVERAGE OF NON-FORMULARY PRESCRIP-**
 23 **TION DRUGS FOR FULL-BENEFIT DUAL ELIGI-**
 24 **BLE INDIVIDUALS DURING 2006.**

25 (a) STATE COVERAGE OF NON-FORMULARY PRE-
 26 SCRIPTIION DRUGS FOR FULL-BENEFIT DUAL ELIGIBLE

1 INDIVIDUALS DURING 2006.—For prescriptions filled
 2 during 2006, notwithstanding section 1935(d) of the So-
 3 cial Security Act (42 U.S.C. 1396v(d)), a State (as de-
 4 fined for purposes of title XIX of such Act) may provide
 5 (and receive Federal financial participation for) medical
 6 assistance under such title with respect to prescription
 7 drugs provided to a full-benefit dual eligible individual (as
 8 defined in section 1935(c)(6) of such Act (42 U.S.C.
 9 1396v(c)(6)) that are not on the formulary of the prescrip-
 10 tion drug plan under part D or the MA–PD plan under
 11 part C of title XVIII of such Act in which such individual
 12 is enrolled.

13 (b) APPLICATION.—

14 (1) MEDICARE AS PRIMARY PAYER.—Nothing in
 15 subsection (a) shall be construed as changing or af-
 16 fecting the primary payer status of a prescription
 17 drug plan under part D or an MA–PD plan under
 18 part C of title XVIII of the Social Security Act with
 19 respect to prescription drugs furnished to any full-
 20 benefit dual eligible individual (as defined in section
 21 1935(c)(6) of such Act (42 U.S.C. 1396v(c)(6)) dur-
 22 ing 2006.

23 (2) THIRD PARTY LIABILITY.—Nothing in sub-
 24 section (a) shall be construed as limiting the author-
 25 ity or responsibility of a State under section

1 1902(a)(25) of the Social Security Act (42 U.S.C.
 2 1396a(a)(25)) to seek reimbursement from a pre-
 3 scription drug plan, an MA–PD plan, or any other
 4 third party, of the costs incurred by the State in
 5 providing prescription drug coverage during 2006.

6 **SEC. 13. PROTECTION FOR FULL-BENEFIT DUAL ELIGIBLE**
 7 **INDIVIDUALS FROM PLAN TERMINATION**
 8 **PRIOR TO RECEIVING FUNCTIONING ACCESS**
 9 **IN A NEW PART D PLAN.**

10 (a) IN GENERAL.—Notwithstanding any other provi-
 11 sion of law, the Secretary of Health and Human Services
 12 shall not terminate coverage of a full-benefit dual eligible
 13 individual (as defined in section 1935(c)(6) of the Social
 14 Security Act (42 U.S.C. 1396v(c)(6)) unless such indi-
 15 vidual has functioning access to a prescription drug plan
 16 under part D or an MA–PD plan under part C of title
 17 XVIII of such Act. Such access shall include entry of the
 18 individual into the computer system of such plan and an
 19 acknowledgment by the plan that the individual is eligible
 20 for a full premium subsidy under section 1860D–14 of
 21 such Act (42 U.S.C. 1395w–114).

22 (b) EFFECTIVE DATE.—This section shall take effect
 23 on the date of enactment of this Act.

○