109TH CONGRESS
2D SESSION

# S. 2563

To amend title XVIII of the Social Security Act to require prompt payment to pharmacies under part D, to restrict pharmacy co-branding on prescription drug cards issued under such part, and to provide guidelines for Medication Therapy Management Services programs offered by prescription drug plans and MA–PD plans under such part.

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IN THE SENATE OF THE UNITED STATES

APRIL 6, 2006

Mr. COCHRAN (for himself, Mr. ENZI, and Mr. TALENT) introduced the following bill; which was read twice and referred to the Committee on Finance

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# A BILL

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*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 ''Pharmacist Access and Recognition in Medicare (PhARM) Act of 2006''.

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

(a) PROMPT PAYMENT BY 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.—

''(i) IN GENERAL.—Each contract entered into with a PDP sponsor under this section 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.

''(ii) CLEAN CLAIM DEFINED.—In this paragraph, the term 'clean claim' means a claim 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.

''(B) APPLICABLE NUMBER OF CALENDAR DAYS DEFINED.—In this paragraph, the term 'applicable number of calendar days' means—

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

''(ii) with respect to claims submitted otherwise, 30 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) IN GENERAL.—A contract entered into with a PDP sponsor under this section with respect to a prescription drug plan offered by such sponsor shall provide

that, not later than 10 days after the date on which a clean claim is submitted, the PDP sponsor shall provide the claimant with a notice that acknowledges receipt of the claim by such sponsor. Such notice shall be considered to have been provided on the date on which the notice is mailed or electronically transferred.

''(ii) CLAIM DEEMED TO BE CLEAN.—A claim is deemed to be a clean claim if the PDP sponsor involved does not provide notice to the claimant of any deficiency in the claim within 10 days of the date on which the claim is submitted.

''(iii) CLAIM DETERMINED TO NOT BE A CLEAN CLAIM.—

''(I) IN GENERAL.—If a PDP sponsor determines that a submitted claim is not a clean claim, the PDP sponsor shall, not later than the end of the period described in clause (ii), notify the claimant of such determination. Such notification shall specify all defects or improprieties in the claim and shall list all additional informa-

tion or documents necessary for the proper processing and payment of the claim.

''(II) DETERMINATION AFTER SUBMISSION OF ADDITIONAL INFORMATION.—A claim is deemed to be a clean claim under this paragraph if the PDP sponsor involved does not provide notice to the claimant of any defect or impropriety in the claim within 10 days of the date on which additional information is received under subclause (I).

''(III) PAYMENT OF CLEAN PORTION OF A CLAIM.—A PDP sponsor shall pay any portion of a claim that would be a clean claim but for a defect or impropriety in a separate portion of the claim in accordance with subparagraph (A).

''(iv) OBLIGATION TO PAY.—A claim submitted to a PDP sponsor that is not paid or contested by the provider within the applicable number of 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).

''(v) DATE OF PAYMENT OF CLAIM.—Payment of a clean claim under such subparagraph 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 electronic transfer of funds.''.

(b) PROMPT PAYMENT BY MA–PD PLANS.—Section 1857(f) of the Social Security Act (42 U.S.C. 1395w–27(f)) 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 re-

newed on or after the date that is 90 days after the date of the enactment of this Act.

**SEC. 3. RESTRICTION ON PHARMACY CO-BRANDING ON MEDICARE PRESCRIPTION DRUG CARDS ISSUED BY PRESCRIPTION DRUG PLANS AND MA–PD PLANS.**

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

(1) in subsection (b)(2)(A), by striking ''The PDP sponsor'' and inserting ''Subject to subsection (l), the PDP sponsor''; and

(2) by adding at the end the following new subsection:

''(l) CO-BRANDING PROHIBITED.—A card that is issued under subsection (b)(2)(A) for use under a prescription drug plan offered by a PDP sponsor shall not display the name, brand, or trademark of any pharmacy.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to cards distributed on or after the date that is 90 days after the date of enactment of this Act.

**SEC. 4. 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 medica-

tion 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 designation 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 ther-

apy 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 action 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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