109TH CONGRESS
2D SESSION

S. 2664

To amend title XVIII of the Social Security Act to improve access to pharmacies under part D.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2006

Mr. BAUCUS (for himself, Mrs. LINCOLN, and Mr. CONRAD) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend title XVIII of the Social Security Act to improve access to pharmacies under part D.

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 ''Pharmacy Access Improvement (PhAIm) Act of 2006''.

SEC. 2. STRENGTHENING STANDARDS FOR ACCESS TO PHARMACIES.

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

(1) in clause (i)—

(A) by inserting ''that are accessible to the general public (not including closed pharmacies, such as pharmacies that dispense drugs by mail order only or are located in a hospital or nursing home, except that a closed pharmacy shall be included if the pharmacy is operated by the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization (as defined in section 4 of the Indian Health Care Improvement Act))'' after ''sufficient number of pharmacies''; and

(B) by striking ''(other than by mail order)''; and

(2) in clause (ii), by adding at the end the following new sentence: ''If the PDP sponsor of a prescription drug plan designates in-network pharmacies as either preferred or non-preferred pharmacies (or any designation other than preferred or any other distinction between or among pharmacies with respect to participation status), only in-network preferred pharmacies shall be counted in determining if the requirements of such rules are met.''.

(b) EXPANDING PARTICIPATION BY ANY WILLING PHARMACY.—Section 1860D–4(b)(1)(A) of the Social Security Act (42 U.S.C. 1395w–104(b)(1)(A)) is amended—

(1) by striking ''PHARMACY.—A prescription drug plan'' and inserting ''PHARMACY.—

''(i) IN GENERAL.—Subject to clause (ii), a prescription drug plan'';

(2) in clause (i), as added by paragraph (1), by adding at the end the following new sentence: ''A previous refusal by a pharmacy of an offer to participate, or the expiration of such an offer, shall not be grounds to exclude a pharmacy from participation under this subparagraph.''; and

(3) by adding at the end the following new clause:

''(ii) PARTICIPATION OF 340B ENTITIES.—

''(I) IN GENERAL.—A prescription drug plan shall not exclude a pharmacy from participation solely on the basis that such pharmacy is a covered entity under section 340B of the Public Health Service Act.

''(II) REASONABLE TERMS AND CONDITIONS FOR 340B ENTITIES.—In

the case of a pharmacy that is a covered entity under such section 340B, if such an entity requests that the terms and conditions of the appropriate version (as determined by the Secretary) of the Model Safety Net Pharmacy Addendum to Pharmacy Contract apply to a contract to dispense covered part D drugs under such plan, subject to subclause (III), the terms and conditions of such Contract shall be the terms and conditions for participation of such pharmacy under clause (i).

''(III) PERMITTING WAIVER OF COST-SHARING.—In the case of a pharmacy that is a covered entity under such section 340B, if such an entity requests that the terms and conditions of a contract to dispense covered part D drugs under such plan permit the pharmacy to waive or reduce cost-sharing under this part, consistent with the requirements of section 1128B(b)(3)(G), such permis-

sion shall be included in the terms and conditions for participation of such pharmacy under clause (i).''.

(c) STRENGTHENING CONVENIENT ACCESS STANDARDS.—Section 1860D–4(b)(1)(C) of the Social Security Act (42 U.S.C. 1395w–104(b)(1)(C)) is amended by striking clause (iv) and inserting the following new clauses:

''(iv) CONVENIENT ACCESS IN LONG-TERM CARE FACILITIES.—Such rules shall include standards with respect to access for enrollees who are residing in long-term care facilities to ensure that such enrollees have access to a long-term care network pharmacy.

''(v) CONVENIENT ACCESS TO PHARMACIES SERVING INDIANS.—Such rules may include standards with respect to access for enrollees to pharmacies operated by the Indian Health Service, Indian tribes and tribal organizations, and urban Indian organizations (as defined in section 4 of the Indian Health Care Improvement Act.''.

(d) REFERENCE TO PROVISIONS RELATING TO REASONABLE DISPENSING FEES.—Section 1860D–4(b) of the

Social Security Act (42 U.S.C. 1395w–104(b)) is amended by adding at the end the following new paragraph:

''(4) REFERENCE TO REASONABLE DISPENSING FEE PROVISIONS.—For provisions relating to reasonable dispensing fees, see section 1860D–12(b)(7).''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after January 1, 2007.

SEC. 3. 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 by pharmacies (other than pharmacies that dispense drugs by mail order only or are located in,

or contract with, a long-term care facility) 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 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 equal to the weighted average of interest on 3-

month marketable Treasury securities determined for such period, increased by 0.1 percentage point for the period beginning on the day after the required payment date and ending on the date on which payment is made. Interest amounts paid under this subparagraph shall not be counted against the administrative costs of a prescription drug plan.

''(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 information 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, as appropriate, 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—

"(I) with respect to claims paid electronically, the payment is transferred; and

''(II) with respect to claims paid otherwise, the payment is submitted to the United States Postal Service or common carrier for delivery.

''(E) ELECTRONIC TRANSFER OF FUNDS.—A PDP sponsor shall pay all clean claims submitted electronically by electronic transfer of funds if the pharmacy so requests or has so requested previously.

''(F) PRIVATE RIGHT OF ACTION.—

''(i) IN GENERAL.—Nothing in this paragraph shall be construed to prohibit or limit a claim or action not covered by the subject matter of this section that any individual or organization has against a provider or a PDP sponsor.

''(ii) ANTI-RETALIATION.—Consistent with applicable Federal or State law, a PDP sponsor shall not retaliate against an individual or provider for exercising a right of action under this subparagraph.''.

(b) PROMPT PAYMENT BY MA–PD PLANS.—Section 1857(f) of the Social Security 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 following provisions 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:

''(A) PROMPT PAYMENT.—Section 1860D–12(b)(4).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after January 1, 2007.

SEC. 4. MEDICARE PART D INFORMATIONAL RESOURCES AND CUSTOMER SERVICE.

(a) HEALTH AND HUMAN SERVICES PHARMACY HOTLINE.—The Secretary of Health and Human Services shall—

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

(2) staff such telephone number in order to ensure that the toll-free number is available to answer calls 24-hours each day.

(b) CUSTOMER SERVICE PROVIDED BY PRESCRIPTION DRUG PLANS AND MA–PD PLANS.—

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

''(l) CUSTOMER SERVICE.—

''(1) PHARMACY HOTLINE.—A PDP sponsor of a prescription drug plan shall—

''(A) establish a toll-free telephone number that is dedicated to providing information regarding the plan to pharmacists and pharmacy staff; and

''(B) staff such telephone number in order to ensure compliance with customer service standards (as established by the Secretary).

''(2) PHYSICIAN AND PROVIDER HOTLINE.—A PDP sponsor of a prescription drug plan shall—

''(A) establish a toll-free telephone number that is dedicated to providing information regarding the plan to physicians and providers; and

''(B) staff such telephone number in order to ensure compliance with customer service standards (as established by the Secretary).''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning on or after January 1, 2007.

SEC. 5. TRANSACTION STANDARDS FOR PRESCRIPTION DRUG PLANS AND MA–PD PLANS.

(a) IN GENERAL.—Section 1860D–4(b)(2) of the Social Security Act is amended—

(1) in subparagraph (A)—

(A) by striking ''IN GENERAL.—The PDP'' and inserting ''IN GENERAL.—

''(i) STANDARDIZED TECHNOLOGY FOR BENEFIT ACCESS.—Subject to subsection (m), the PDP''; and

(B) by adding at the end the following new clause:

''(ii) STANDARDIZED TECHNOLOGY FOR COMMUNICATIONS AND TRANSACTIONS.—The PDP sponsor of a prescription drug plan shall utilize standardized technology for any communication or transaction (including a billing or coding transaction) occurring between such plan and a participating pharmacy.''; and

(2) by amending subparagraph (B) to read as follows:

''(B) STANDARDS.—The card or technology required under subparagraph (A) shall comply with the most recent standards adopted by the Secretary under section 1173(e).''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to cards issued, and communications or transactions conducted, on or after the date that is 60 days after the date of enactment of this Act.

SEC. 6. RESTRICTIONS ON PHARMACY CO-BRANDING 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), as amended by section 4(b), is amended by adding at the end the following new subsection:

''(m) CO-BRANDING.—

''(1) PROHIBITION OF CO-BRANDING ON PRESCRIPTION DRUG CARD.—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, logo, or trademark of any pharmacy.

''(2) MARKETING MATERIALS.—Marketing materials distributed by a PDP sponsor that has a co-branding relationship with a pharmacy with respect

to such a plan shall include a disclaimer in large, off-set, bold-face type of the following: Other pharmacies are also available in our network.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to cards and marketing materials distributed on or after the date that is 60 days after the date of enactment of this Act.

SEC. 7. SUBMISSION OF CLAIMS BY PHARMACIES LOCATED IN OR CONTRACTING WITH LONG-TERM CARE FACILITIES.

(a) SUBMISSION OF CLAIMS BY PHARMACIES LOCATED IN OR CONTRACTING WITH LONG-TERM CARE FACILITIES.—

(1) SUBMISSION OF CLAIMS TO PRESCRIPTION DRUG PLANS.—Section 1860D–12(b) of the Social Security Act (42 U.S.C. 1395w–112(b)), as amended by section 3(a), is amended by adding at the end the following new paragraph:

''(5) SUBMISSION OF CLAIMS BY PHARMACIES LOCATED IN OR CONTRACTING WITH LONG-TERM CARE FACILITIES.—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 a pharmacy located in, or having a contract with, a long-term care facility shall have not

less than 30 days (but not more than 90 days) to submit claims to the sponsor for reimbursement under the plan.''.

(2) SUBMISSION OF CLAIMS TO MA–PD PLANS.—Section 1857(f)(3) of the Social Security Act, as added by section 3(b), is amended by adding at the end the following new subparagraph:

''(B) SUBMISSION OF CLAIMS BY PHARMACIES LOCATED IN OR CONTRACTING WITH LONG-TERM CARE FACILITIES.—Section 1860D–12(b)(5).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after January 1, 2007.

SEC. 8. ASSURING PHARMACY ACCESS BY REQUIRING REASONABLE PAYMENT OF PHARMACIES.

(a) REASONABLE DISPENSING FEES REQUIRED.—

(1) REQUIREMENT FOR PRESCRIPTION DRUG PLANS.—Section 1860D–12(b) of the Social Security Act (42 U.S.C. 1395w–104(b)(1)), as amended by section 7(a)(1), is amended by adding at the end the following new paragraph:

''(6) REASONABLE DISPENSING FEES REQUIRED.—

''(A) REASONABLE DISPENSING FEE REQUIRED.—In the case of plan years beginning on or after January 1, 2009, subject to subparagraph (E), 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 such sponsor shall pay a reasonable dispensing fee (as determined under subparagraph (B)) for covered part D drugs dispensed through a participating pharmacy (other than such a pharmacy that dispenses drugs by mail order only or is located in, or contracts with, a long-term care facility).

''(B) ESTABLISHMENT OF REASONABLE DISPENSING FEES FOR PRESCRIPTION DRUG PLANS.—

''(i) IN GENERAL.—The Secretary shall establish, on an expedited basis and using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, United States Code, reasonable dispensing fees for covered part D drugs dispensed through participating pharmacies.

''(ii) CONSIDERATION OF OIG RECOMMENDATIONS.—In establishing such

reasonable dispensing fees, the Secretary shall consider the recommendations included in the report submitted under section 8(b)(2) of the Pharmacy Access Improvement (PhAIm) Act of 2006 with respect to the geographic area in which a prescription drug plan is offered, including any adjustment recommended in such report for dispensing an extended supply of a covered part D drug.

''(iii) PUBLICATION OF NOTICE.—In carrying out the rulemaking process under this subparagraph, the Secretary, after consultation with pharmacists, pharmacies (including long-term care, independent, chain, and mass market retail pharmacies), part D eligible individuals, beneficiary advocates, PDP sponsors of prescription drug plans, Medicare Advantage organizations offering MA–PD plans, and any other interested parties the Secretary determines appropriate, shall publish the notice provided under section 564(a) of title 5, United States Code, by not later than 60 days after the date of enactment of the

Pharmacy Access Improvement (PhAIm) Act of 2006.

''(iv) TARGET DATE FOR PUBLICATION OF RULE.—As part of the notice provided under clause (iii), and for purposes of this subparagraph, the 'target date for publication' (referred to in section 564(a)(5) of such title) shall be March 1, 2008.

''(v) ABBREVIATED PERIOD FOR SUBMISSION OF COMMENTS.—In applying section 564(c) of such title under this subparagraph, '15 days' shall be substituted for '30 days'.

''(vi) APPOINTMENT OF NEGOTIATED RULEMAKING COMMITTEE AND FACILITATOR.—The Secretary shall provide for—

''(I) the appointment of a negotiated rulemaking committee under section 565(a) of such title by not later than 20 days after the end of the comment period provided for under section 564(c) of such title (as shortened under clause (v)); and

"(II) the nomination of a facilitator under section 566(c) of such title by not later than 10 days after the date of appointment of the committee.

"(vii) PRELIMINARY COMMITTEE REPORT.—The negotiated rulemaking committee appointed under clause (vi)(I) shall report to the Secretary, by not later than December 1, 2007, regarding the committee's progress on achieving a consensus with regard to the rulemaking proceeding and whether such consensus is likely to occur before 1 month before the target date for publication of the rule. If the committee reports that the committee has failed to make significant progress towards such consensus or is unlikely to reach such consensus by the target date, the Secretary may terminate such process and provide for the publication of a rule under this subsection through such other methods as the Secretary may provide.

"(viii) FINAL COMMITTEE REPORT.—If the committee is not terminated under

clause (vii), the rulemaking committee shall submit a report containing a proposed rule by not later than 1 month before the target date of publication.

''(ix) INTERIM, FINAL EFFECT.—The Secretary shall publish a rule under this subparagraph in the Federal Register by not later than the target date of publication. Such rule shall be effective and final immediately on an interim basis, but is subject to a change and revision after public notice and opportunity for a period (of not less than 60 days) for public comment. In connection with such rule, the Secretary shall specify the process for the timely review and approval of contracts with PDP sponsors of prescription drug plans to be certified as paying reasonable dispensing fees for covered part D drugs dispensed through participating pharmacies pursuant to such rules and consistent with this subparagraph.

''(x) PUBLICATION OF RULE AFTER PUBLIC COMMENT.—The Secretary shall provide for consideration of such comments

and republication of such rule by not later than 1 year after the target date of publication.

''(C) ANNUAL REVIEW.—The Secretary shall annually review the rule published under subparagraph (C) and revise such rule as appropriate based on the following considerations:

''(i) Any reasonable costs associated with a pharmacist's time in—

''(I) checking for information about an individual's coverage; and

''(II) performing necessary clinical review and quality assurance activities.

''(ii) Costs incurred by the pharmacist that are associated with—

''(I) the measurement or mixing of a covered part D drug;

''(II) filling the container for such a drug;

''(III) physically providing the completed prescription to an individual enrolled in such a plan;

''(IV) delivery;

''(V) special packaging;

''(VI) overhead related to the facility and its maintenance, and the equipment necessary to operate the pharmacy, including the salaries of pharmacists and other pharmacy workers; and

''(VII) geographic factors that impact operational costs.

''(iii) The reasonable variation in costs described in clause (ii) based on whether the pharmacist is dispensing a standard or extended supply of a covered part D drug.

''(iv) The annual National Industry-Specific Occupational Employment and Wage Estimates published by the Bureau of Labor Statistics of the Department of Labor, as determined with respect to pharmacists.

''(D) SPECIAL RULE FOR PLAN YEAR 2008.—In the case of the plan year beginning on January 1, 2008, subject to subparagraph (E), 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 such sponsor shall pay a reasonable dispensing fee for covered part D drugs dispensed through a participating pharmacy (other than such a pharmacy that dispenses drugs by mail order only or is located in, or contracts with, a long-term care facility) based on the following considerations:

''(i) Any reasonable costs associated with a pharmacist's time in—

''(I) checking for information about an individual's coverage; and

''(II) performing necessary clinical review and quality assurance activities.

''(ii) Costs incurred by the pharmacist that are associated with—

''(I) the measurement or mixing of a covered part D drug;

''(II) filling the container for such a drug;

''(III) physically providing the completed prescription to an individual enrolled in such a plan;

''(IV) delivery;

''(V) special packaging;

''(VI) overhead related to the facility and its maintenance, and the equipment necessary to operate the pharmacy, including the salaries of pharmacists and other pharmacy workers; and

''(VII) geographic factors that impact operational costs.

''(iii) The reasonable variation in costs described in clause (ii) based on whether the pharmacist is dispensing a standard or extended supply of a covered part D drug.

''(E) MINIMUM DISPENSING FEES FOR PARTICIPATING PHARMACIES.—In the case of a PDP sponsor of a prescription drug plan that sets separate rates for in-network pharmacies based on whether the pharmacy is a preferred or non-preferred pharmacy (or any designation other than preferred or any other distinction between or among pharmacies with respect to participation status), the dispensing fee established by such sponsor for a participating pharmacy that is not so designated as a preferred or non-preferred pharmacy shall be at a rate

that is not less than the rate at which the PDP sponsor reimburses such non-preferred pharmacies.''.

(2) REQUIREMENT FOR MA–PD PLANS.—Section 1857(f)(3) of the Social Security Act, as amended by section 7(a)(2), is amended by adding at the end the following new subparagraph:

''(C) REASONABLE DISPENSING FEES REQUIRED.—Section 1860D–12(b)(6).''.

(b) OIG STUDY AND REPORT ON REASONABLE DISPENSING FEES.—

(1) STUDY.—The Inspector General of the Department of Health and Human Services shall conduct an analysis of the cost of dispensing covered part D drugs (as defined in section 1860D–2(e) of the Social Security Act (42 U.S.C. 1395w–102(e)) under a prescription drug plan under part D of title XVIII or an MA–PD plan under part C of such title that takes into consideration the following:

(A) Any reasonable costs associated with a pharmacist's time in—

(i) checking for information about an individual's coverage; and

(ii) performing necessary clinical review and quality assurance activities.

(B) Costs incurred by the pharmacist that are associated with—

(i) the measurement or mixing of a covered part D drug;

(ii) filling the container for such a drug;

(iii) physically providing the completed prescription to an individual enrolled in such a plan;

(iv) delivery;

(v) special packaging;

(vi) overhead related to the facility and its maintenance, and the equipment necessary to operate the pharmacy, including the salaries of pharmacists and other pharmacy workers; and

(vii) geographic factors that impact operational costs.

(C) The reasonable variation in costs described in subparagraph (B) based on whether the pharmacist is dispensing a standard or extended supply of a covered part D drug.

(D) The reasonable variation in dispensing fees, taking into consideration the costs described in subparagraphs (A), (B), and (C),

that is sufficient to encourage the use of covered generic alternative therapies.

(2) REPORT.—By not later than March 1, 2007, the Inspector General of the Department of Health and Human Services shall submit a report to the Secretary of Health and Human Services on the study conducted under paragraph (1). The report shall include recommendations on the following:

(A) What the minimum reasonable dispensing fee should be with respect to a prescription drug plan under part D of title XVIII or an MA–PD plan under part C of such title determined with respect to the area in which such plan is offered, including with respect to each PDP region (as determined under section 1860D–11(a)(2) of the Social Security Act (42 U.S.C. 1395w–111(a)(2)) and each MA region (as determined under section 1858(a) of such Act (42 U.S.C. 1395w–27(a)).

(i) The extent to which the dispensing fee described in subparagraph (A) can reasonably be increased when an extended supply of a covered part D drug (as so defined) is dispensed (depending on the num-

ber of days worth of such a drug being supplied to the beneficiary).

(c) ENCOURAGING UTILIZATION OF GENERIC DRUGS.—Section 1860D–4(b) of the Social Security Act (42 U.S.C. 1395w–104(b)), as amended by section 2(d), is amended by adding at the end the following new paragraph:

''(5) ENCOURAGING UTILIZATION OF GENERIC DRUGS.—With respect to prescriptions filled on or after January 1, 2008, the PDP sponsor of a prescription drug plan shall encourage generic utilization by paying an increased dispensing fee for generic drugs.''.

(d) REGULAR UPDATE OF PRESCRIPTION DRUG PRICING STANDARD REQUIRED.—

(1) REQUIREMENT FOR PRESCRIPTION DRUG PLANS.—Section 1860D–12(b) of the Social Security Act (42 U.S.C. 1395w–104(b)(1)), as amended by subsection (a), is amended by adding at the end the following new paragraph:

''(7) REGULAR UPDATE OF PRESCRIPTION DRUG PRICING STANDARD.—If the PDP sponsor of a prescription drug plan uses a standard for reimbursement of pharmacies based on the cost of a drug, each contract entered into with such sponsor

under this section with respect to the plan shall provide that the sponsor shall update such standard not less frequently than every 7 days, beginning with an initial update on January 1 of each year, to accurately reflect the market price of acquiring the drug.''.

(2) REQUIREMENT FOR MA–PD PLANS.—Section 1857(f)(3) of the Social Security Act, as amended by subsection (a)(2), is amended by adding at the end the following new subparagraph:

''(D) REGULAR UPDATE OF PRESCRIPTION DRUG PRICING STANDARD.—Section 1860D–12(b)(7).''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning on or after January 1, 2007.

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