

109TH CONGRESS
2D SESSION

S. 2723

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 SENATE OF THE UNITED STATES

MAY 4, 2006

Mr. LAUTENBERG (for himself and Mrs. CLINTON) introduced the following bill; which was read twice and referred to the Committee on Finance

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.

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 “Pharmacists Medicare
5 Relief Act of 2006”.

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

3 (a) PROMPT PAYMENT BY PRESCRIPTION DRUG
 4 PLANS.—Section 1860D–12(b) of the Social Security Act
 5 (42 U.S.C. 1395w–112(b)) is amended by adding at the
 6 end the following new paragraph:

7 “(4) PROMPT PAYMENT OF CLEAN CLAIMS.—

8 “(A) PROMPT PAYMENT.—

9 “(i) IN GENERAL.—Each contract en-
 10 tered into with a PDP sponsor under this
 11 section with respect to a prescription drug
 12 plan offered by such sponsor shall provide
 13 that payment shall be issued, mailed, or
 14 otherwise transmitted with respect to all
 15 clean claims submitted under this part
 16 within the applicable number of calendar
 17 days after the date on which the claim is
 18 received.

19 “(ii) CLEAN CLAIM DEFINED.—In this
 20 paragraph, the term ‘clean claim’ means a
 21 claim that has no defect or impropriety
 22 (including any lack of any required sub-
 23 stantiating documentation) or particular
 24 circumstance requiring special treatment
 25 that prevents timely payment from being
 26 made on the claim under this part.

1 “(B) APPLICABLE NUMBER OF CALENDAR
2 DAYS DEFINED.—In this paragraph, the term
3 ‘applicable number of calendar days’ means—

4 “(i) with respect to claims submitted
5 electronically, 14 days; and

6 “(ii) with respect to claims submitted
7 otherwise, 30 days.

8 “(C) INTEREST PAYMENT.—If payment is
9 not issued, mailed, or otherwise transmitted
10 within the applicable number of calendar days
11 (as defined in subparagraph (B)) after a clean
12 claim is received, interest shall be paid at a rate
13 equal to the weighted average of interest on 3-
14 month marketable Treasury securities deter-
15 mined for such period, increased by 0.1 percent-
16 age point for the period beginning on the day
17 after the required payment date and ending on
18 the date on which payment is made.

19 “(D) PROCEDURES INVOLVING CLAIMS.—

20 “(i) IN GENERAL.—A contract entered
21 into with a PDP sponsor under this sec-
22 tion with respect to a prescription drug
23 plan offered by such sponsor shall provide
24 that, not later than 10 days after the date
25 on which a clean claim is submitted, the

1 PDP sponsor shall provide the claimant
2 with a notice that acknowledges receipt of
3 the claim by such sponsor. Such notice
4 shall be considered to have been provided
5 on the date on which the notice is mailed
6 or electronically transferred.

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

13 “(iii) CLAIM DETERMINED TO NOT BE
14 A CLEAN CLAIM.—

15 “(I) IN GENERAL.—If a PDP
16 sponsor determines that a submitted
17 claim is not a clean claim, the PDP
18 sponsor shall, not later than the end
19 of the period described in clause (ii),
20 notify the claimant of such determina-
21 tion. Such notification shall specify all
22 defects or improprieties in the claim
23 and shall list all additional informa-
24 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, 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

1 PDP sponsor in accordance with subpara-
 2 graph (A).

3 “(v) DATE OF PAYMENT OF CLAIM.—
 4 Payment of a clean claim under such sub-
 5 paragraph is considered to have been made
 6 on the date on which full payment is re-
 7 ceived by the provider.

8 “(E) PRIVATE RIGHT OF ACTION.—

9 “(i) IN GENERAL.—Nothing in this
 10 paragraph shall be construed to prohibit or
 11 limit a claim or action not covered by the
 12 subject matter of this section that any in-
 13 dividual or organization has against a pro-
 14 vider or a PDP sponsor.

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

20 (b) PROMPT PAYMENT BY MA–PD PLANS.—Section
 21 1857(f) of the Social Security Act (42 U.S.C. 1395w–27)
 22 is amended by adding at the end the following new para-
 23 graph:

24 “(3) INCORPORATION OF CERTAIN PRESCRIP-
 25 TION DRUG PLAN CONTRACT REQUIREMENTS.—The

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

6 (c) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply to contracts entered into or re-
 8 newed on or after the date of the enactment of this Act.

9 **SEC. 3. RESTRICTION ON CO-BRANDING.**

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

12 (1) in subsection (b)(2)(A), by striking “The
 13 PDP sponsor” and inserting “Subject to subsection
 14 (l), the PDP sponsor”; and

15 (2) by adding at the end the following new sub-
 16 section:

17 “(l) CO-BRANDING PROHIBITED.—A card that is
 18 issued under subsection (b)(2)(A) for use under a pre-
 19 scription drug plan offered by a PDP sponsor or an MA-
 20 PD plan offered by a Medicare Advantage organization
 21 and any marketing materials distributed with respect to
 22 such a plan shall not display the name or brand of any
 23 pharmacy.”.

1 (b) PENALTY.—Section 1128B of the Social Security
2 Act (42 U.S.C. 1320a–7b) is amended by adding at the
3 end the following new subsection:

4 “(g) Whoever knowingly and willfully engages in co-
5 branding prohibited under section 1860D–4(l) with re-
6 spect to a prescription drug plan offered by a PDP spon-
7 sor under part D of title XVIII or a Medicare Advantage
8 plan offered by a Medicare Advantage organization under
9 part C of such title, shall be guilty of a felony and upon
10 conviction thereof shall be fined not more than \$25,000
11 or imprisoned for not more than five years, or both.”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to cards and marketing materials
14 distributed on or after the date that is 90 days after the
15 date of the enactment of this Act.

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