

110TH CONGRESS
1ST SESSION

S. 137

To amend title XVIII of the Social Security Act to provide additional beneficiary protections.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 2007

Mr. CARDIN 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 provide additional beneficiary protections.

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 “Preserving Medicare for All Act of 2007”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Negotiation of prices for medicare prescription drugs.
- Sec. 3. Guaranteed prescription drug benefits.
- Sec. 4. Full reimbursement for qualified retiree prescription drug plans.
- Sec. 5. Repeal of comparative cost adjustment (cca) program.
- Sec. 6. Repeal of MA Regional Plan Stabilization Fund.
- Sec. 7. Repeal of cost containment provisions.

Sec. 8. Removal of exclusion of benzodiazepines from required coverage under the Medicare prescription drug program.

1 SEC. 2. NEGOTIATION OF PRICES FOR MEDICARE PRE-
2 SCRIPTON DRUGS.

3 Section 1860D–11 of the Social Security Act (42
 4 U.S.C. 1395w–111) is amended by striking subsection (i)
 5 (relating to noninterference) and inserting the following:

6 “(i) NEGOTIATION; NO NATIONAL FORMULARY OR
 7 PRICE STRUCTURE.—

8 “(1) NEGOTIATION OF PRICES WITH MANUFAC-
 9 TURERS.—In order to ensure that beneficiaries en-
 10 rolled under prescription drug plans and MA–PD
 11 plans pay the lowest possible price, the Secretary
 12 shall have and exercise authority similar to that of
 13 other Federal entities that purchase prescription
 14 drugs in bulk to negotiate contracts with manufac-
 15 turers of covered part D drugs, consistent with the
 16 requirements and in furtherance of the goals of pro-
 17 viding quality care and containing costs under this
 18 part.

19 “(2) NO NATIONAL FORMULARY OR PRICE
 20 STRUCTURE.—In order to promote competition
 21 under this part and in carrying out this part, the
 22 Secretary may not require a particular formulary or
 23 institute a price structure for the reimbursement of
 24 covered part D drugs.”.

1 **SEC. 3. GUARANTEED PRESCRIPTION DRUG BENEFITS.**

2 (a) IN GENERAL.—Section 1860D–3 of the Social
3 Security Act (42 U.S.C. 1395w–103) is amended to read
4 as follows:

5 “ACCESS TO A CHOICE OF QUALIFIED PRESCRIPTION
6 DRUG COVERAGE

7 “SEC. 1860D–3. (a) ASSURING ACCESS TO A CHOICE
8 OF COVERAGE.—

9 “(1) CHOICE OF AT LEAST THREE PLANS IN
10 EACH AREA.—Beginning on January 1, 2008, the
11 Secretary shall ensure that each part D eligible indi-
12 vidual has available, consistent with paragraph (2),
13 a choice of enrollment in—

14 “(A) a nationwide prescription drug plan
15 offered by the Secretary in accordance with
16 subsection (b); and

17 “(B) at least 2 qualifying plans (as defined
18 in paragraph (3)) in the area in which the indi-
19 vidual resides, at least one of which is a pre-
20 scription drug plan.

21 “(2) REQUIREMENT FOR DIFFERENT PLAN
22 SPONSORS.—The requirement in paragraph (1)(B) is
23 not satisfied with respect to an area if only one enti-
24 ty offers all the qualifying plans in the area.

1 “(3) QUALIFYING PLAN DEFINED.—For pur-
 2 poses of this section, the term ‘qualifying plan’
 3 means—

4 “(A) a prescription drug plan;

5 “(B) an MA–PD plan described in section
 6 1851(a)(2)(A)(i) that provides—

7 “(i) basic prescription drug coverage;

8 or

9 “(ii) qualified prescription drug cov-
 10 erage that provides supplemental prescrip-
 11 tion drug coverage so long as there is no
 12 MA monthly supplemental beneficiary pre-
 13 mium applied under the plan, due to the
 14 application of a credit against such pre-
 15 mium of a rebate under section
 16 1854(b)(1)(C); or

17 “(C) a nationwide prescription drug plan
 18 offered by the Secretary in accordance with
 19 subsection (b).

20 “(b) HHS AS PDP SPONSOR FOR A NATIONWIDE
 21 PRESCRIPTION DRUG PLAN.—

22 “(1) IN GENERAL.—The Secretary, acting
 23 through the Administrator of the Centers for Medi-
 24 care & Medicaid Services, shall take such steps as
 25 may be necessary to qualify and serve as a PDP

1 sponsor and to offer a prescription drug plan that
2 offers basic prescription drug coverage throughout
3 the United States. Such a plan shall be in addition
4 to, and not in lieu of, other prescription drug plans
5 offered under this part.

6 “(2) PREMIUM; SOLVENCY; AUTHORITIES.—In
7 carrying out paragraph (1), the Secretary—

8 “(A) shall establish a premium in the
9 amount of \$35 for months in 2008 and, for
10 months in subsequent years, in the amount
11 specified in this paragraph for months in the
12 previous year increased by the annual percent-
13 age increase described in section 1860D–
14 2(b)(6) (relating to growth in medicare pre-
15 scription drug costs per beneficiary) for the
16 year involved;

17 “(B) is deemed to have met any applicable
18 solvency and capital adequacy standards; and

19 “(C) shall exercise such authorities (includ-
20 ing the use of regional or other pharmaceutical
21 benefit managers) as the Secretary determines
22 necessary to offer the prescription drug plan in
23 the same or a comparable manner as is the case
24 for prescription drug plans offered by private
25 PDP sponsors.

1 “(c) FLEXIBILITY IN RISK ASSUMED.—In order to
 2 ensure access pursuant to subsection (a) in an area the
 3 Secretary may approve limited risk plans under section
 4 1860D–11(f) for the area.”.

5 (b) CONFORMING AMENDMENT.—Section 1860D–
 6 11(g) of the Social Security Act (42 U.S.C. 1395w–
 7 111(g)) is amended by adding at the end the following
 8 new paragraph:

9 “(8) APPLICATION.—This subsection shall not
 10 apply on or after January 1, 2008.”.

11 **SEC. 4. FULL REIMBURSEMENT FOR QUALIFIED RETIREE**
 12 **PRESCRIPTION DRUG PLANS.**

13 (a) ELIMINATION OF TRUE OUT-OF-POCKET LIMITA-
 14 TION.—Section 1860D–2(b)(4)(C)(ii) of the Social Secu-
 15 rity Act (42 U.S.C. 1395w–102(b)(4)(C)(ii) is amended—

16 (1) by inserting “under a qualified retiree pre-
 17 scription drug plan (as defined in section 1860D–
 18 22(a)(2)),” after “under section 1860D–14,”; and

19 (2) by inserting “, under such a qualified re-
 20 tiree prescription drug plan,” after “(other than
 21 under such section”.

22 (b) EQUALIZATION OF SUBSIDIES.—Notwithstanding
 23 any other provision of law, the Secretary of Health and
 24 Human Services shall provide for such increase in the spe-
 25 cial subsidy payment amounts under section 1860D–

1 22(a)(3) of the Social Security Act (42 U.S.C. 1395w–
 2 132(a)(3)) as may be appropriate to provide for payments
 3 in the aggregate equivalent to the payments that would
 4 have been made under section 1860D–15 of such Act (42
 5 U.S.C. 1395w–115) if the individuals were not enrolled
 6 in a qualified retiree prescription drug plan. In making
 7 such computation, the Secretary shall not take into ac-
 8 count the application of the amendments made by section
 9 1202 of the Medicare Prescription Drug, Improvement,
 10 and Modernization Act of 2003 (Public Law 108–173; 117
 11 Stat. 2480).

12 (c) EFFECTIVE DATE.—This section, and the amend-
 13 ments made by this section, shall take effect on January
 14 1, 2008.

15 **SEC. 5. REPEAL OF COMPARATIVE COST ADJUSTMENT**
 16 **(CCA) PROGRAM.**

17 Subtitle E of title II of the Medicare Prescription
 18 Drug, Improvement, and Modernization Act of 2003 (Pub-
 19 lic Law 108–173; 117 Stat. 2214), and the amendments
 20 made by such subtitle, are repealed.

21 **SEC. 6. REPEAL OF MA REGIONAL PLAN STABILIZATION**
 22 **FUND.**

23 (a) IN GENERAL.—Subsection (e) of section 1858 of
 24 the Social Security Act (42 U.S.C. 1395w–27a) is re-
 25 pealed.

(b) CONFORMING AMENDMENT.—Section 1858(f)(1) of the Social Security Act (42 U.S.C. 1395w–27a(f)(1)) is amended by striking “subject to subsection (e),”.

SEC. 7. REPEAL OF COST CONTAINMENT PROVISIONS.

Subtitle A of title VIII of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2357) is repealed and any provisions of law amended by such subtitle are restored as if such subtitle had not been enacted.

SEC. 8. REMOVAL OF EXCLUSION OF BENZODIAZEPINES FROM REQUIRED COVERAGE UNDER THE MEDICARE PRESCRIPTION DRUG PROGRAM.

(a) REMOVAL OF EXCLUSION.—

(1) IN GENERAL.—Section 1860D–2(e)(2) of the Social Security Act (42 U.S.C. 1395w–102(e)(2)) is amended—

(A) by striking “subparagraph (E)” and inserting “subparagraphs (E) and (J)”; and

(B) by inserting “and benzodiazepines” after “smoking cessation agents”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to prescriptions dispensed on or after January 1, 2008.

(b) REVIEW OF BENZODIAZEPINE PRESCRIPTION POLICIES TO ASSURE APPROPRIATENESS AND TO AVOID

1 ABUSE.—The Secretary of Health and Human Services
 2 shall review the policies of Medicare prescription drug
 3 plans (and MA–PD plans) under parts C and D of title
 4 XVIII of the Social Security Act regarding the filling of
 5 prescriptions for benzodiazepine to ensure that these poli-
 6 cies are consistent with accepted clinical guidelines, are
 7 appropriate to individual health histories, and are de-
 8 signed to minimize long term use, guard against over-pre-
 9 scribing, and prevent patient abuse.

10 (c) DEVELOPMENT BY MEDICARE QUALITY IM-
 11 PROVEMENT ORGANIZATIONS OF EDUCATIONAL GUIDE-
 12 LINES FOR PHYSICIANS REGARDING PRESCRIBING OF
 13 BENZODIAZEPINES.—The Secretary of Health and
 14 Human Services shall provide, in contracts entered into
 15 with Medicare quality improvement organizations under
 16 part B of title XI of the Social Security Act, for the devel-
 17 opment by such organizations of appropriate educational
 18 guidelines for physicians regarding the prescribing of
 19 benzodiazepines.

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