

110TH CONGRESS
1ST SESSION

S. 1954

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

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2007

Mr. BAUCUS (for himself, Mr. GRASSLEY, Mrs. LINCOLN, Mr. ROBERTS, Mr. CONRAD, Mr. ENZI, Mr. SCHUMER, Mr. COCHRAN, Mr. SALAZAR, Mr. SMITH, Mr. BINGAMAN, and Ms. SNOWE) 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 improve access to pharmacies under part D.

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 “Pharmacy Access Im-
5 provement (PhAIm) Act of 2007”.

1 **SEC. 2. STRENGTHENING STANDARDS FOR ACCESS TO**
2 **PHARMACIES.**

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

6 (1) in clause (i)—

7 (A) by inserting “that are accessible to the
8 general public (not including closed pharmacies,
9 such as pharmacies that dispense drugs by mail
10 order only or are located in a hospital or nurs-
11 ing home, except that a closed pharmacy shall
12 be included if the pharmacy is operated by the
13 Indian Health Service, an Indian tribe or tribal
14 organization, or an urban Indian organization
15 (as defined in section 4 of the Indian Health
16 Care Improvement Act))” after “sufficient
17 number of pharmacies”; and

18 (B) by striking “(other than by mail
19 order)”; and

20 (2) in clause (ii), by adding at the end the fol-
21 lowing new sentence: “If the PDP sponsor of a pre-
22 scription drug plan designates in-network phar-
23 macies as either preferred or non-preferred phar-
24 macies (or any designation other than preferred or
25 any other distinction between or among pharmacies
26 with respect to participation status), only in-network

1 preferred pharmacies shall be counted in deter-
 2 mining if the requirements of such rules are met.”.

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

6 (1) by striking “PHARMACY.—A prescription
 7 drug plan” and inserting “PHARMACY.—

8 “(i) IN GENERAL.—Subject to clause
 9 (ii), a prescription drug plan”;

10 (2) in clause (i), as added by paragraph (1), by
 11 adding at the end the following new sentence: “A
 12 previous refusal by a pharmacy of an offer to par-
 13 ticipate, or the expiration of such an offer, shall not
 14 be grounds to exclude a pharmacy from participation
 15 under this subparagraph.”; and

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

18 “(ii) PARTICIPATION OF 340B ENTI-
 19 TIES.—

20 “(I) IN GENERAL.—A prescrip-
 21 tion drug plan shall not exclude a
 22 pharmacy from participation solely on
 23 the basis that such pharmacy is a cov-
 24 ered entity under section 340B of the
 25 Public Health Service Act.

1 “(II) REASONABLE TERMS AND
2 CONDITIONS FOR 340B ENTITIES.—In
3 the case of a pharmacy that is a cov-
4 ered entity under such section 340B,
5 if such an entity requests that the
6 terms and conditions of the appro-
7 priate version (as determined by the
8 Secretary) of the Model Safety Net
9 Pharmacy Addendum to Pharmacy
10 Contract apply to a contract to dis-
11 pense covered part D drugs under
12 such plan, subject to subclause (III),
13 the terms and conditions of such con-
14 tract shall be the terms and condi-
15 tions for participation of such phar-
16 macy under clause (i).

17 “(III) PERMITTING WAIVER OF
18 COST-SHARING.—In the case of a
19 pharmacy that is a covered entity
20 under such section 340B, if such an
21 entity requests that the terms and
22 conditions of a contract to dispense
23 covered part D drugs under such plan
24 permit the pharmacy to waive or re-
25 duce cost-sharing under this part,

1 consistent with the requirements of
 2 section 1128B(b)(3)(G), such permis-
 3 sion shall be included in the terms
 4 and conditions for participation of
 5 such pharmacy under clause (i).”.

6 (c) STRENGTHENING CONVENIENT ACCESS STAND-
 7 ARDS.—

8 (1) ACCESS IN LONG-TERM CARE FACILITIES
 9 AND TO PHARMACIES SERVING INDIANS.—Section
 10 1860D–4(b)(1)(C) of the Social Security Act (42
 11 U.S.C. 1395w–104(b)(1)(C)) is amended by striking
 12 clause (iv) and inserting the following new clauses:

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

20 “(v) CONVENIENT ACCESS TO PHAR-
 21 MACIES SERVING INDIANS.—Such rules
 22 may include standards with respect to ac-
 23 cess for enrollees to pharmacies operated
 24 by the Indian Health Service, Indian tribes
 25 and tribal organizations, and urban Indian

1 organizations (as defined in section 4 of
 2 the Indian Health Care Improvement
 3 Act.”.

4 (2) CONVENIENT ACCESS TO EXTENDED SUP-
 5 PLIES AT RETAIL PHARMACIES.—Section 1860D-
 6 4(b)(1)(C) of the Social Security Act (42 U.S.C.
 7 1395w-104(b)(1)(C)), as amended by paragraph
 8 (1), is amended—

9 (A) in clause (ii), by striking “The Sec-
 10 retary” and inserting “Subject to clause (vi),
 11 the Secretary”; and

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

14 “(vi) The Secretary shall establish
 15 rules for convenient access to in-network
 16 pharmacies under this subparagraph that
 17 dispense extended supplies of covered part
 18 D drugs that are modeled after the rules
 19 for convenient access to pharmacies in-
 20 cluded in the statement of work described
 21 in clause (ii).”.

22 (d) DISCLOSURE OF MAXIMUM ALLOWABLE COST
 23 PRICING.—Section 1860D-4(b)(1) of the Social Security
 24 Act (42 U.S.C. 1395w-104(b)(1)) is amended by adding
 25 at the end the following new subparagraph:

“(F) DISCLOSURE OF MAXIMUM ALLOWABLE COST PRICING.—If a contract for a pharmacy to dispense covered part D drugs under a prescription drug plan references maximum allowable cost lists or pricing, the PDP sponsor of such plan shall disclose, through (at a minimum) an Internet website and a toll-free telephone number—

“(i) any such lists or pricing to the pharmacy at the time of offering such contract; and

“(ii) information updated not less frequently than every 7 days on such lists or pricing to pharmacies that have entered into such a contract.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 180 days after the date of enactment of this Act.

**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.—

1 “(A) PROMPT PAYMENT.—

2 “(i) IN GENERAL.—Each contract en-
 3 tered into with a PDP sponsor under this
 4 part with respect to a prescription drug
 5 plan offered by such sponsor shall provide
 6 that payment shall be issued, mailed, or
 7 otherwise transmitted with respect to all
 8 clean claims submitted by pharmacies
 9 (other than pharmacies that dispense
 10 drugs by mail order only or are located in,
 11 or contract with, a long-term care facility)
 12 under this part within the applicable num-
 13 ber of calendar days after the date on
 14 which the claim is received.

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

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

1 “(i) with respect to claims submitted
2 electronically, 14 days; and

3 “(ii) with respect to claims submitted
4 otherwise, 30 days.

5 “(C) INTEREST PAYMENT.—If payment is
6 not issued, mailed, or otherwise transmitted
7 within the applicable number of calendar days
8 (as defined in subparagraph (B)) after a clean
9 claim is received, the PDP sponsor shall pay in-
10 terest to the pharmacy that submitted the claim
11 at a rate equal to the weighted average of inter-
12 est on 3-month marketable Treasury securities
13 determined for such period, increased by 0.1
14 percentage point for the period beginning on
15 the day after the required payment date and
16 ending on the date on which payment is made
17 (as determined under subparagraph (D)(iv)).
18 Interest amounts paid under this subparagraph
19 shall not be counted against the administrative
20 costs of a prescription drug plan or treated as
21 allowable risk corridor costs under section
22 1860D–15(e).

23 “(D) PROCEDURES INVOLVING CLAIMS.—

24 “(i) CLAIM DEEMED TO BE CLEAN.—

25 A claim is deemed to be a clean claim if

1 the PDP sponsor involved does not provide
2 notice to the claimant of any deficiency in
3 the claim within 10 days of the date on
4 which the claim is submitted.

5 “(ii) CLAIM DETERMINED TO NOT BE
6 A CLEAN CLAIM.—

7 “(I) IN GENERAL.—If a PDP
8 sponsor determines that a submitted
9 claim is not a clean claim, the PDP
10 sponsor shall, not later than the end
11 of the period described in clause (i),
12 notify the claimant of such determina-
13 tion. Such notification shall specify all
14 defects or improprieties in the claim
15 and shall list all additional informa-
16 tion or documents necessary for the
17 proper processing and payment of the
18 claim.

19 “(II) DETERMINATION AFTER
20 SUBMISSION OF ADDITIONAL INFOR-
21 MATION.—A claim is deemed to be a
22 clean claim under this paragraph if
23 the PDP sponsor involved does not
24 provide notice to the claimant of any
25 defect or impropriety in the claim

1 within 10 days of the date on which
2 additional information is received
3 under subclause (I).

4 “(III) PAYMENT OF CLEAN POR-
5 TION OF A CLAIM.—A PDP sponsor
6 shall, as appropriate, pay any portion
7 of a claim that would be a clean claim
8 but for a defect or impropriety in a
9 separate portion of the claim in ac-
10 cordance with subparagraph (A).

11 “(iii) OBLIGATION TO PAY.—A claim
12 submitted to a PDP sponsor that is not
13 paid or contested by the sponsor within the
14 applicable number of days (as defined in
15 subparagraph (B)) shall be deemed to be a
16 clean claim and shall be paid by the PDP
17 sponsor in accordance with subparagraph
18 (A).

19 “(iv) DATE OF PAYMENT OF CLAIM.—
20 Payment of a clean claim under such sub-
21 paragraph is considered to have been made
22 on the date on which—

23 “(I) with respect to claims paid
24 electronically, the payment is trans-
25 ferred; and

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

5 “(E) ELECTRONIC TRANSFER OF
6 FUNDS.—A PDP sponsor shall pay all clean
7 claims submitted electronically by electronic
8 transfer of funds if the pharmacy so requests or
9 has so requested previously. In the case where
10 such payment is made electronically, remittance
11 may be made by the PDP sponsor electronically
12 as well.

13 “(F) PROTECTING THE RIGHTS OF CLAIM-
14 ANTS.—

15 “(i) IN GENERAL.—Nothing in this
16 paragraph shall be construed to prohibit or
17 limit a claim or action not covered by the
18 subject matter of this section that any in-
19 dividual or organization has against a pro-
20 vider or a PDP sponsor.

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

1 “(G) RULE OF CONSTRUCTION.—A deter-
 2 mination under this paragraph that a claim
 3 submitted by a pharmacy is a clean claim shall
 4 not be construed as a positive determination re-
 5 garding eligibility for payment under this title,
 6 nor is it an indication of government approval
 7 of, or acquiescence regarding, the claim sub-
 8 mitted. The determination shall not relieve any
 9 party of civil or criminal liability with respect to
 10 the claim, nor does it offer a defense to any ad-
 11 ministrative, civil, or criminal action with re-
 12 spect to the claim.”.

13 (b) PROMPT PAYMENT BY MA–PD PLANS.—Section
 14 1857(f) of the Social Security Act (42 U.S.C. 1395w–27)
 15 is amended by adding at the end the following new para-
 16 graph:

17 “(3) INCORPORATION OF CERTAIN PRESCRIP-
 18 TION DRUG PLAN CONTRACT REQUIREMENTS.—The
 19 following provisions shall apply to contracts with a
 20 Medicare Advantage organization in the same man-
 21 ner as they apply to contracts with a PDP sponsor
 22 offering a prescription drug plan under part D:

23 “(A) PROMPT PAYMENT.—Section 1860D–
 24 12(b)(4).”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall take effect on the date that is 1 year
 3 after the date of enactment of this Act.

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

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

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

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

17 (b) CUSTOMER SERVICE PROVIDED BY PRESCRIP-
 18 TION DRUG PLANS AND MA-PD PLANS.—

19 (1) IN GENERAL.—Section 1860D–4 of the So-
 20 cial Security Act (42 U.S.C. 1395w–104) is amend-
 21 ed by adding at the end the following new sub-
 22 section:

23 “(1) CUSTOMER SERVICE.—

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

1 “(A) establish a toll-free telephone number
 2 that is dedicated to providing information re-
 3 garding the plan to pharmacists and pharmacy
 4 staff; and

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

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

10 “(A) establish a toll-free telephone number
 11 that is dedicated to providing information re-
 12 garding the plan to physicians and providers;
 13 and

14 “(B) staff such telephone number in order
 15 to ensure compliance with customer service
 16 standards (as established by the Secretary).”.

17 (2) EFFECTIVE DATE.—The amendments made
 18 by this subsection shall apply to plan years begin-
 19 ning on or after January 1, 2008.

20 **SEC. 5. RESTRICTIONS ON PHARMACY CO-BRANDING BY**
 21 **PRESCRIPTION DRUG PLANS AND MA-PD**
 22 **PLANS.**

23 (a) IN GENERAL.—Section 1860D–4 of the Social
 24 Security Act (42 U.S.C. 1395w–104), as amended by sec-

tion 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. 6. 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 (1) SUBMISSION OF CLAIMS TO PRESCRIPTION
 2 DRUG PLANS.—Section 1860D–12(b) of the Social
 3 Security Act (42 U.S.C. 1395w–112(b)), as amend-
 4 ed by section 3(a), is amended by adding at the end
 5 the following new paragraph:

6 “(5) SUBMISSION OF CLAIMS BY PHARMACIES
 7 LOCATED IN OR CONTRACTING WITH LONG-TERM
 8 CARE FACILITIES.—Each contract entered into with
 9 a PDP sponsor under this part with respect to a
 10 prescription drug plan offered by such sponsor shall
 11 provide that a pharmacy located in, or having a con-
 12 tract with, a long-term care facility shall have not
 13 less than 30 days (but not more than 90 days) to
 14 submit claims to the sponsor for reimbursement
 15 under the plan.”.

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

20 “(B) SUBMISSION OF CLAIMS BY PHAR-
 21 MACIES LOCATED IN OR CONTRACTING WITH
 22 LONG-TERM CARE FACILITIES.—Section
 23 1860D–12(b)(5).”.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to plan years beginning on or after
 3 January 1, 2008.

4 **SEC. 7. OIG STUDY AND REPORT ON DISPENSING FEES.**

5 (a) STUDY.—The Inspector General of the Depart-
 6 ment of Health and Human Services shall conduct an
 7 analysis of the cost of dispensing covered part D drugs
 8 (as defined in section 1860D–2(e) of the Social Security
 9 Act (42 U.S.C. 1395w–102(e)) under a prescription drug
 10 plan under part D of title XVIII of such Act or an MA–
 11 PD plan under part C of such title that takes into consid-
 12 eration the following:

13 (1) Any reasonable costs associated with a
 14 pharmacist’s time in—

15 (A) checking for information about an in-
 16 dividual’s coverage; and

17 (B) performing necessary clinical review
 18 and quality assurance activities, such as activi-
 19 ties to identify and reduce the frequency of pat-
 20 terns of fraud, abuse, gross overuse, or inappro-
 21 priate or medically unnecessary care, among
 22 physicians, pharmacists, and patients, or associ-
 23 ated with specific drugs or groups of drugs, as
 24 well as potential and actual severe adverse reac-
 25 tions to drugs including education on thera-

1 peutic appropriateness, overutilization and un-
 2 derutilization, appropriate use of generic prod-
 3 ucts, therapeutic duplication, drug-disease con-
 4 traindications, drug-drug interactions, incorrect
 5 drug dosage or duration of drug treatment,
 6 drug-allergy interactions, and clinical abuse/
 7 misuse, and any other clinical review and qual-
 8 ity assurance activities required under Federal
 9 or State law.

10 (2) Costs incurred by the pharmacist that are
 11 associated with—

12 (A) the measurement or mixing of a cov-
 13 ered part D drug;

14 (B) filling the container for such a drug;

15 (C) physically providing the completed pre-
 16 scription to an individual enrolled in such a
 17 plan;

18 (D) delivery;

19 (E) special packaging;

20 (F) overhead related to the pharmacy, or
 21 the section of the facility that is devoted to a
 22 pharmacy, and its maintenance (including the
 23 equipment necessary to operate such pharmacy
 24 or such section and the salaries of pharmacists
 25 and other pharmacy workers); and

1 (G) geographic factors that impact oper-
2 ational costs.

3 (3) The variation in costs described in para-
4 graph (2) based on—

5 (A) whether the pharmacist is dispensing a
6 standard or extended supply of a covered part
7 D drug;

8 (B) whether the pharmacy is an inde-
9 pendent or chain pharmacy;

10 (C) whether a product dispensed is a spe-
11 cialty pharmacy product; and

12 (D) whether the pharmacy is located in, or
13 contracts with, a long-term care facility.

14 (4) The increase in dispensing fees, taking into
15 consideration the costs described in paragraphs (1),
16 (2), and (3), that is sufficient to create an incentive
17 for a pharmacist to promote the substitution of cov-
18 ered general alternative therapies.

19 (b) REPORT.—Not later than December 1, 2008, the
20 Inspector General of the Department of Health and
21 Human Services shall submit a report to the Secretary
22 of Health and Human Services on the study conducted
23 under subsection (a). The report shall include the fol-
24 lowing:

1 (1) The average cost to dispense a prescription
 2 drug under part D of title XVIII of the Social Secu-
 3 rity Act determined with respect to the area in
 4 which a prescription drug plan or an MA–PD plan
 5 is offered, including with respect to each PDP re-
 6 gion (as determined under section 1860D–11(a)(2)
 7 of such Act (42 U.S.C. 1395w–111(a)(2)) and each
 8 MA region (as determined under section 1858(a) of
 9 such Act (42 U.S.C. 1395w–27(a))).

10 (2) The findings of the study conducted under
 11 subsection (a) with respect to—

12 (A) the variation in costs studied under
 13 subparagraphs (A) through (D) of paragraph
 14 (3) of such subsection; and

15 (B) the increase in dispensing fees studied
 16 under paragraph (4) of such subsection.

17 **SEC. 8. REGULAR UPDATE OF PRESCRIPTION DRUG PRIC-**
 18 **ING STANDARD REQUIRED.**

19 (a) REQUIREMENT FOR PRESCRIPTION DRUG
 20 PLANS.—Section 1860D–12(b) of the Social Security Act
 21 (42 U.S.C. 1395w–112(b)), as amended by section
 22 6(a)(1), is amended by adding at the end the following
 23 new paragraph:

24 “(6) REGULAR UPDATE OF PRESCRIPTION
 25 DRUG PRICING STANDARD.—If the PDP sponsor of

1 a prescription drug plan uses a standard for reim-
 2 bursement of pharmacies based on the cost of a
 3 drug, each contract entered into with such sponsor
 4 under this part with respect to the plan shall provide
 5 that the sponsor shall update such standard not less
 6 frequently than once every 7 days, beginning with an
 7 initial update on January 1 of each year, to accu-
 8 rately reflect the market price of acquiring the
 9 drug.”.

10 (b) REQUIREMENT FOR MA–PD PLANS.—Section
 11 1857(f)(3) of the Social Security Act, as amended by sec-
 12 tion 6(a)(2), is amended by adding at the end the fol-
 13 lowing new subparagraph:

14 “(C) REGULAR UPDATE OF PRESCRIPTION
 15 DRUG PRICING STANDARD.—Section 1860D–
 16 12(b)(6).”.

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to plan years beginning on or after
 19 January 1, 2008.

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