

111TH CONGRESS
1ST SESSION

H. R. 2860

To amend title XVIII of the Social Security Act to provide for a Medicare operated prescription drug plan option to deliver a meaningful drug benefit and lower prescription drug prices under the Medicare Program.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 2009

Mr. MURPHY of Connecticut (for himself and Mr. COURTNEY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to provide for a Medicare operated prescription drug plan option to deliver a meaningful drug benefit and lower prescription drug prices under the Medicare Program.

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 “Medicare Drug Savings
5 Through Choice Act of 2009”.

1 **SEC. 2. ESTABLISHMENT OF MEDICARE OPERATED PRE-**
2 **SCRIPTION DRUG PLAN OPTION.**

3 (a) IN GENERAL.—Subpart 2 of part D of the Social
4 Security Act is amended by inserting after section 1860D–
5 11 (42 U.S.C. 1395w–111) the following new section:

6 “MEDICARE OPERATED PRESCRIPTION DRUG PLAN
7 OPTION

8 “SEC. 1860D–11A. (a) IN GENERAL.—Notwith-
9 standing any other provision of this part, for each year
10 (beginning with 2010), in addition to any plans offered
11 under section 1860D–11, the Secretary shall offer a Medi-
12 care operated prescription drug plan (as defined in sub-
13 section (b)) with a service area that consists of the entire
14 United States.

15 “(b) MEDICARE OPERATED PRESCRIPTION DRUG
16 PLAN DEFINED.—For purposes of this part, the term
17 ‘Medicare operated prescription drug plan’ means a pre-
18 scription drug plan that offers qualified prescription drug
19 coverage and access described in section 1860D–2(d) to
20 the prices negotiated under subsection (c)(1). Such plan
21 may offer supplemental prescription drug coverage in the
22 same manner as other qualified prescription drug coverage
23 offered by other prescription drug plans.

24 “(c) ENHANCED AFFORDABILITY THROUGH NEGO-
25 TIATIONS.—

1 “(1) IN GENERAL.—Notwithstanding section
2 1860D–11(i), for purposes of offering the Medicare
3 operated prescription drug plan under this section,
4 the Secretary shall negotiate with pharmaceutical
5 manufacturers with respect to the purchase price of
6 such covered part D drugs and shall encourage the
7 use of more affordable therapeutic equivalents to the
8 extent such practices do not override medical neces-
9 sity as determined by the prescribing physician.

10 “(2) IMPLEMENTATION OF OTHER COST SAV-
11 INGS STRATEGIES.—To the extent practicable and
12 consistent with paragraph (1), the Secretary shall
13 implement strategies similar to those used by the
14 Department of Veterans Affairs or other Federal
15 purchasers of prescription drugs, and other strate-
16 gies, to reduce the purchase cost of covered part D
17 drugs.

18 “(3) CONDITIONING USE OF FORMULARIES.—
19 Insofar as the Medicare operated prescription drug
20 plan uses a formulary, such plan shall inform, con-
21 sistent with section 1860D–4(a)(3)(B), enrollees of
22 changes in such formulary, including changes in cov-
23 ered drugs and the prices of such drugs.

24 “(4) SAVINGS USED TO FILL GAPS IN PRE-
25 SCRIPTION DRUG COVERAGE.—Any savings to the

1 Medicare operated prescription drug plan resulting
2 from actions take under this subsection shall be used
3 by the plan to extend coverage under the plan to in-
4 dividuals who have reached the initial coverage limit
5 applicable under the plan but who have not reached
6 the annual out-of-pocket threshold specified in sec-
7 tion 1860D–2(b)(4)(B).

8 “(d) MONTHLY PREMIUMS.—

9 “(1) FOR QUALIFIED PRESCRIPTION DRUG COV-
10 ERAGE.—

11 “(A) NATIONALLY UNIFORM MONTHLY
12 BENEFICIARY PREMIUM.—The monthly bene-
13 ficiary premium for qualified prescription drug
14 coverage and access to negotiated prices de-
15 scribed in section 1860D–2(a)(1)(A) to be
16 charged under the Medicare operated prescrip-
17 tion drug plan shall be uniform nationally.

18 “(B) BID BASED ON COSTS.—The bid sub-
19 mitted under section 1860D–11(b)(2)(C) for
20 the Medicare operated prescription drug plan
21 shall be based on the average monthly per cap-
22 ita actuarial cost of offering such plan for the
23 year involved, including administrative ex-
24 penses.

1 “(2) SUPPLEMENTAL PRESCRIPTION DRUG COV-
2 ERAGE.—Insofar as the Medicare operated prescrip-
3 tion drug plan offers supplemental prescription drug
4 coverage, the Secretary shall adjust the amount of
5 the bid submitted under section 1860D–11(b)(2)(C)
6 (and the premium charged under paragraph (1)) to
7 reflect the additional benefits offered under such
8 coverage.

9 “(e) OPEN ENROLLMENT.—A part D eligible indi-
10 vidual may enroll in the Medicare operated prescription
11 drug plan at any time.”.

12 (b) NO LATE ENROLLMENT PENALTY FOR INDIVID-
13 UALS ENROLLED IN MEDICARE OPERATED PRESCRIP-
14 TION DRUG PLAN.—Section 1860D–13(b)(2) of such Act
15 (42 U.S.C. 1395w–113(b)(2)) is amended by adding at
16 the end the following new sentence: “A part D eligible in-
17 dividual described in this paragraph does not include an
18 individual enrolled in the Medicare operated prescription
19 drug plan during the period in which the individual is so
20 enrolled.”.

21 (c) CONFORMING AMENDMENTS.—

22 (1) Section 1860D–1(b)(1)(B)(iii) of the Social
23 Security Act (42 U.S.C. 1395w–101(b)(1)(B)(iii)) is
24 amended by inserting “and section 1860D–11A(e)”
25 after “paragraphs (2) and (3) of this subsection”.

1 (2) Section 1860D–2(b)(3)(A) of such Act (42
2 U.S.C. 1395w–102(b)(3)(A)) is amended by insert-
3 ing “and section 1860D–11A(c)(4)” after “para-
4 graph (4)”.

5 (3) Section 1860D–3(a) of such Act (42 U.S.C.
6 1395w–103(a)) is amended by adding at the end the
7 following new paragraph:

8 “(4) AVAILABILITY OF THE MEDICARE OPER-
9 ATED PRESCRIPTION DRUG PLAN.—

10 “(A) IN GENERAL.—The Medicare oper-
11 ated prescription drug plan shall be offered na-
12 tionally in accordance with section 1860D–11A.

13 “(B) RELATIONSHIP TO OTHER PLANS.—

14 “(i) IN GENERAL.—Subject to clause
15 (ii), the Medicare operated prescription
16 drug plan shall be offered in addition to
17 any qualifying plan or fallback prescription
18 drug plan offered in a PDP region and
19 shall not be considered to be such a plan
20 for purposes of meeting the requirements
21 of this subsection.

22 “(ii) DESIGNATION AS A FALLBACK
23 PLAN.—Notwithstanding any other provi-
24 sion of this part, the Secretary may des-
25 ignate the Medicare operated prescription

1 drug plan as the fallback prescription drug
2 plan for any fallback service area (as de-
3 fined in section 1860D–11(g)(3)) deter-
4 mined to be appropriate by the Sec-
5 retary.”.

6 (4) Section 1860D–13(c)(3) of such Act (42
7 U.S.C. 1395w–113(c)(3)) is amended—

8 (A) in the heading, by inserting “AND THE
9 MEDICARE OPERATED PRESCRIPTION DRUG
10 PLAN” after “FALLBACK PLANS”; and

11 (B) by inserting “or the Medicare operated
12 prescription drug plan” after “a fallback pre-
13 scription drug plan”.

14 (5) Section 1860D–16(b)(1) of such Act (42
15 U.S.C.1395w–116(b)(1)) is amended—

16 (A) in subparagraph (C), by striking
17 “and” after the semicolon at the end;

18 (B) in subparagraph (D), by striking the
19 period at the end and inserting “; and”; and

20 (C) by adding at the end the following new
21 subparagraph:

22 “(E) payments for expenses incurred with
23 respect to the operation of the Medicare oper-
24 ated prescription drug plan under section
25 1860D–11A.”.

1 (6) Section 1860D–41(a) of such Act (42
2 U.S.C. 1395w–151(a)) is amended by adding at the
3 end the following new paragraph:

4 “(19) MEDICARE OPERATED PRESCRIPTION
5 DRUG PLAN.—The term ‘Medicare operated prescrip-
6 tion drug plan’ has the meaning given such term in
7 section 1860D–11A(b).”.

○