

111TH CONGRESS  
1ST SESSION

# H. R. 3089

To amend title XVIII of the Social Security Act to provide for standardized marketing requirements under the Medicare Advantage program and the Medicare Prescription Drug program and to provide for State certification prior to waiver of licensure requirements under the Medicare Prescription Drug program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2009

Ms. CASTOR of Florida (for herself and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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

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## A BILL

To amend title XVIII of the Social Security Act to provide for standardized marketing requirements under the Medicare Advantage program and the Medicare Prescription Drug program and to provide for State certification prior to waiver of licensure requirements under the Medicare Prescription Drug program, 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,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Accountability and  
3 Transparency in Medicare Marketing Act of 2009”.

4 **SEC. 2. STANDARDIZED MARKETING REQUIREMENTS**  
5 **UNDER THE MEDICARE ADVANTAGE AND**  
6 **MEDICARE PRESCRIPTION DRUG PROGRAMS.**

7 (a) MEDICARE ADVANTAGE PROGRAM.—

8       (1) IN GENERAL.—Section 1856 of the Social  
9 Security Act (42 U.S.C. 1395w–26) is amended—

10               (A) in subsection (b)(1), by inserting “or  
11 subsection (c)” after “subsection (a)”; and

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

14       “(c) STANDARDIZED MARKETING REQUIREMENTS.—

15               “(1) DEVELOPMENT BY THE NAIC.—

16                       “(A) REQUIREMENTS.—The Secretary  
17 shall request the National Association of Insur-  
18 ance Commissioners (in this subsection referred  
19 to as the ‘NAIC’) to—

20                               “(i) develop standardized marketing  
21 requirements for Medicare Advantage or-  
22 ganizations with respect to Medicare Ad-  
23 vantage plans and PDP sponsors with re-  
24 spect to prescription drug plans under part  
25 D; and

1 “(ii) submit a report containing such  
2 requirements to the Secretary by not later  
3 than the date that is 9 months after the  
4 date of enactment of this subsection.

5 “(B) PROHIBITED ACTIVITIES.—Such re-  
6 quirements shall include prohibitions on the  
7 prohibited activities described in section  
8 1851(j)(1).

9 “(C) LIMITATIONS.—Such requirements  
10 shall establish limitations that include at least  
11 the limitations described in section 1851(j)(2),  
12 except for those relating to compensation.

13 “(D) ELECTION FORM.—Such require-  
14 ments may prohibit a Medicare Advantage or-  
15 ganization or a PDP sponsor (or an agent of  
16 such an organization or sponsor) from com-  
17 pleting any portion of any election form used to  
18 carry out elections under section 1851 or  
19 1860D–1 on behalf of any individual.

20 “(E) AGENT AND BROKER COMMISSIONS  
21 AND COMPENSATION.—Such requirements shall  
22 establish standards—

23 “(i) for fair and appropriate commis-  
24 sions for agents and brokers of Medicare  
25 Advantage organizations and PDP spon-

sors, including a prohibition on extra bonuses or incentives;

“(ii) for the disclosure of such commissions; and

“(iii) for the use of compensation for agents and brokers other than such commissions.

Such standards shall ensure that the use of compensation creates incentives for agents and brokers to enroll individuals in the Medicare Advantage plan that is intended to best meet their health care needs.

“(F) CERTAIN CONDUCT OF AGENTS.—

Such requirements shall address the conduct of agents engaged in on-site promotion at a facility of an organization with which the Medicare Advantage organization or PDP sponsor has a co-branding relationship.

“(G) OTHER STANDARDS.—Such require-

ments may establish such other standards relating to unfair trade practices and marketing under Medicare Advantage plans and prescription drug plans under part D as the NAIC determines appropriate.

“(2) IMPLEMENTATION OF REQUIREMENTS.—

1           “(A) ADOPTION OF NAIC DEVELOPED RE-  
2           QUIREMENTS.—If the NAIC develops standard-  
3           ized marketing requirements and submits the  
4           report pursuant to paragraph (1), the Secretary  
5           shall promulgate regulations for the adoption of  
6           such requirements. The Secretary shall ensure  
7           that such regulations take effect beginning with  
8           the first open enrollment period beginning 12  
9           months after the date of enactment of this sub-  
10          section.

11          “(B) REQUIREMENTS IF NAIC DOES NOT  
12          SUBMIT REPORT.—If the NAIC does not de-  
13          velop standardized marketing requirements and  
14          submit the report pursuant to paragraph (1),  
15          the Secretary shall promulgate regulations for  
16          standardized marketing requirements for Medi-  
17          care Advantage organizations with respect to  
18          Medicare Advantage plans and PDP sponsors  
19          with respect to prescription drug plans under  
20          part D. Such regulations shall meet the require-  
21          ments of subparagraphs (B) through (F) of  
22          paragraph (1), and may establish such other  
23          standards relating to marketing under Medicare  
24          Advantage plans and prescription drug plans as  
25          the Secretary determines appropriate. The Sec-

1           retary shall ensure that such regulations take  
2           effect beginning with the first open enrollment  
3           period beginning 12 months after the date of  
4           enactment of this subsection.

5           “(C) CONSULTATION.—In establishing re-  
6           quirements under this subsection, the NAIC or  
7           Secretary (as the case may be) shall consult  
8           with a working group composed of representa-  
9           tives of Medicare Advantage organizations and  
10          PDP sponsors, consumer groups, and other  
11          qualified individuals. Such representatives shall  
12          be selected in a manner so as to insure bal-  
13          anced representation among the interested  
14          groups.

15          “(3) STATE REPORTING OF VIOLATIONS OF  
16          STANDARDIZED MARKETING REQUIREMENTS.—The  
17          Secretary shall request that States report any viola-  
18          tions of the standardized marketing requirements  
19          under the regulations under subparagraph (A) or  
20          (B) of paragraph (2) to national and regional offices  
21          of the Centers for Medicare & Medicaid Services.

22          “(4) REPORT.—The Secretary shall submit an  
23          annual report to Congress on the enforcement of the  
24          standardized marketing requirements under the reg-  
25          ulations under subparagraph (A) or (B) of para-

graph (2), together with such recommendations as the Secretary determines appropriate. Such report shall include—

“(A) a list of any alleged violations of such requirements reported to the Secretary by a State, a Medicare Advantage organization, or a PDP sponsor; and

“(B) the disposition of such reported violations.”.

(2) STATE AUTHORITY TO ENFORCE STANDARDIZED MARKETING REQUIREMENTS.—

(A) IN GENERAL.—Section 1856(b)(3) of the Social Security Act (42 U.S.C. 1395w-26(b)(3)) is amended—

(i) by striking “or State” and inserting “, State”; and

(ii) by inserting “, or State laws or regulations enacting the standardized marketing requirements under subsection (c)” after “plan solvency”.

(B) NO PREEMPTION OF STATE SANCTIONS.—Nothing in title XVIII of the Social Security Act or the provisions of, or amendments made by, this Act, shall be construed to prohibit a State from conducting a market con-

duct examination or from imposing sanctions against Medicare Advantage organizations, PDP sponsors, or agents or brokers of such organizations or sponsors for violations of the standardized marketing requirements under subsection (c) of section 1856 of the Social Security Act (as added by paragraph (1)) as enacted by that State.

(3) CONFORMING AMENDMENT.—Section 1851(h)(4) of the Social Security Act (42 U.S.C. 1395w–21(h)(4)) is amended by adding at the end the following flush sentence:

“Beginning on the effective date of the implementation of the regulations under subparagraph (A) or (B) of section 1856(c)(2), each Medicare Advantage organization with respect to a Medicare Advantage plan offered by the organization (and agents of such organization) shall comply with the standardized marketing requirements under section 1856(c).”.

(b) MEDICARE PRESCRIPTION DRUG PROGRAM.—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:

“(m) STANDARDIZED MARKETING REQUIREMENTS.—A PDP sponsor with respect to a prescription



1 drug plan offered by the sponsor (and agents of such spon-  
 2 sor) shall comply with the standardized marketing require-  
 3 ments under section 1856(c).”.

4 **SEC. 3. STATE CERTIFICATION PRIOR TO WAIVER OF LI-**  
 5 **CENSURE REQUIREMENTS UNDER MEDICARE**  
 6 **PRESCRIPTION DRUG PROGRAM.**

7 (a) IN GENERAL.—Section 1860D–12(c) of the So-  
 8 cial Security Act (42 U.S.C. 1395w–112(c)) is amended—

9 (1) in paragraph (1)(A), by striking “In the  
 10 case” and inserting “Subject to paragraph (5), in  
 11 the case”; and

12 (2) by adding at the end the following new  
 13 paragraph:

14 “(5) STATE CERTIFICATION REQUIRED.—

15 “(A) IN GENERAL.—The Secretary may  
 16 only grant a waiver under paragraph (1)(A) if  
 17 the Secretary has received a certification from  
 18 the State insurance commissioner that the pre-  
 19 scription drug plan has a substantially complete  
 20 application pending in the State.

21 “(B) REVOCATION OF WAIVER UPON FIND-  
 22 ING OF FRAUD AND ABUSE.—The Secretary  
 23 shall revoke a waiver granted under paragraph  
 24 (1)(A) if the State insurance commissioner sub-

1 mits a certification to the Secretary that the re-  
 2 cipient of such a waiver—

3 “(i) has committed fraud or abuse  
 4 with respect to such waiver;

5 “(ii) has failed to make a good faith  
 6 effort to satisfy State licensing require-  
 7 ments; or

8 “(iii) was determined ineligible for li-  
 9 censure by the State.”.

10 (b) EFFECTIVE DATE.—The amendments made by  
 11 subsection (a) shall apply with respect to plan years begin-  
 12 ning on or after January 1, 2010.

13 **SEC. 4. NAIC RECOMMENDATIONS ON THE ESTABLISH-**  
 14 **MENT OF STANDARDIZED BENEFIT PACK-**  
 15 **AGES FOR MEDICARE ADVANTAGE PLANS**  
 16 **AND PRESCRIPTION DRUG PLANS.**

17 Not later than 30 days after the date of enactment  
 18 of this Act, the Secretary of Health and Human Services  
 19 shall request the National Association of Insurance Com-  
 20 missioners to establish a committee to study and make  
 21 recommendations to the Secretary and Congress on—

22 (1) the establishment of standardized benefit  
 23 packages for Medicare Advantage plans under part  
 24 C of title XVIII of the Social Security Act and for

- 1       prescription drug plans under part D of such Act;
- 2       and
- 3       (2) the regulation of such plans.

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