

111TH CONGRESS
1ST SESSION

H. R. 3799

To amend title XVIII of the Social Security Act to improve prescription drug coverage under Medicare part D and to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986, to improve prescription drug coverage under private health insurance, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 13, 2009

Mr. JOHNSON of Georgia (for himself, Ms. KILROY, Mr. CARNAHAN, Mr. RYAN of Ohio, Ms. LEE of California, Mr. ELLISON, Mr. DOGGETT, Ms. FUDGE, and Mr. KENNEDY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and Education and Labor, 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 improve prescription drug coverage under Medicare part D and to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986, to improve prescription drug coverage under private health insurance, 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 “Affordable Access to
3 Prescription Medications Act of 2009”.

4 **SEC. 2. MEDICARE PART D PRESCRIPTION DRUG PLANS.**

5 (a) IN GENERAL.—Section 1860D–2(b)(4) of the So-
6 cial Security Act (42 U.S.C. 1395w–102(b)(4)) is amend-
7 ed by adding at the end the following new subparagraph:

8 “(E) ADDITIONAL PROTECTIONS.—

9 “(i) IN GENERAL.—Notwithstanding
10 any other provision of this part, effective
11 for plan years beginning on or after Janu-
12 ary 1, 2011, a PDP sponsor of a prescrip-
13 tion drug plan and an MA organization of-
14 fering an MA–PD plan shall, with respect
15 to any co-payment or coinsurance require-
16 ments applicable to covered part D drugs
17 under the plan, ensure that—

18 “(I) such required co-payment or
19 coinsurance does not exceed the base
20 cost of the covered part D drug (as
21 determined by the Secretary);

22 “(II) such required co-payment
23 or coinsurance does not exceed \$200
24 per month for any single covered part
25 D drug (30-day supply); and

1 “(III) such required co-payment
2 or coinsurance does not exceed, in the
3 aggregate for all covered part D
4 drugs, \$500 per month.

5 “(ii) ADJUSTMENTS.—The amounts
6 described in clauses (II) and (III) of clause
7 (i) shall be annually adjusted to reflect the
8 average of the percentage increase or de-
9 crease in the Consumer Price Index for all
10 urban consumers (U.S. city average) and
11 the percentage increase or decrease in the
12 medical care component of such Consumer
13 Price Index during the calendar year pre-
14 ceding the year for which the adjustment
15 is being made.”.

16 (b) EXPANSION OF EXCEPTIONS PROCESS.—Effec-
17 tive for plan years beginning on or after January 1, 2011,
18 the Secretary shall expand the formulary tier exception re-
19 quest process under sections 423.560 through 423.636 of
20 title 42, Code of Federal Regulations (as in effect on the
21 date of enactment of this Act), to allow individuals en-
22 rolled in a prescription drug plan under part D of title
23 XVIII of the Social Security Act or an MA–PD plan under
24 part C of such title to request an exception for a specialty
25 prescription drug to a plan’s designation of a covered part

1 D drug (as defined in section 1860D–2(e) of such Act (42
 2 U.S.C. 1395w–102(e)) as a non-preferred prescription
 3 drug.

4 (c) MEDPAC STUDIES AND REPORTS.—

5 (1) STUDY AND REPORT ON THE MEDICARE
 6 PART D ANTI-DISCRIMINATION CLAUSE.—

7 (A) STUDY.—The Medicare Payment Advi-
 8 sory Commission shall conduct a study on var-
 9 ious aspects of the prescription drug program
 10 under part D of title XVIII of the Social Secu-
 11 rity Act and, to the greatest extent practicable,
 12 the interaction of such program with Medicare
 13 beneficiary access to covered drugs under part
 14 B of such title. Such study shall include the fol-
 15 lowing:

16 (i) An analysis of—

17 (I) the use of specialty tiers for
 18 covered part D drugs under prescrip-
 19 tion drug plans and MA–PD plans;
 20 and

21 (II) the effect of such specialty
 22 tiers on access to care for Medicare
 23 beneficiaries.

24 (ii) Consideration of the mechanisms
 25 described in subparagraph (B) in the con-

1 text of the provisions of section 1860D–
2 11(e)(2)(D) of the Social Security Act (42
3 U.S.C. 1395w–111(e)(2)(D)) (in this para-
4 graph referred to as the “Medicare part D
5 anti-discrimination clause”).

6 (B) MECHANISMS DESCRIBED.—The fol-
7 lowing mechanisms are described in this sub-
8 paragraph:

9 (i) The use of specialty tiers for cov-
10 ered part D drugs under prescription drug
11 plans and MA–PD plans.

12 (ii) The application of segmented co-
13 insurance or copayment structures to cov-
14 ered part D drugs based on certain cat-
15 egories of such drugs or diagnoses.

16 (iii) The utilization of other differen-
17 tial benefit structures based on certain
18 conditions and Medicare beneficiaries
19 under prescription drug plans and MA–PD
20 plans, including an analysis of the inter-
21 action between such utilization and the ef-
22 fects of such utilization with the Medicare
23 part D anti-discrimination clause.

24 (C) REPORT.—Not later than 1 year after
25 the date of enactment of this Act, the Medicare

1 Payment Advisory Commission shall submit to
2 Congress a report containing the results of the
3 study conducted under subparagraph (A), to-
4 gether with recommendations for such legisla-
5 tion and administrative action as the Commis-
6 sion determines appropriate.

7 (D) REVISED GUIDANCE.—Based on the
8 results of the study conducted under subpara-
9 graph (A), the Secretary shall issue revised
10 guidance regarding the use of mechanisms de-
11 scribed in subparagraph (B) to all PDP spon-
12 sors offering prescription drug plans under part
13 D of title XVIII of the Social Security Act and
14 Medicare Advantage organizations offering
15 MA–PD plans under part C of such title.

16 (2) STUDY AND REPORT ON COST-SHARING FOR
17 PRESCRIPTION DRUGS UNDER PARTS B AND D.—

18 (A) STUDY.—The Medicare Payment Advi-
19 sory Commission shall conduct a study on cost-
20 sharing for prescription drugs under parts B
21 and D of title XVIII of the Social Security Act.
22 Such study shall include an analysis of the im-
23 pact of eliminating cost-sharing for covered part
24 D drugs for Medicare beneficiaries who—

1 (i) incur annual out-of-pocket cost-
2 sharing after the initial coverage limit
3 under section 1860D–2(b)(3) of such Act
4 (42 U.S.C. 1395w–102) that exceeds 5
5 percent of the income of the beneficiary (as
6 determined under section 1860D–
7 14(a)(3)(C) of such Act (42 U.S.C.
8 1395w–114(a)(3)(C)); and

9 (ii) do not otherwise qualify for an in-
10 come-related subsidy under section
11 1860D–14(a) of such Act (42 U.S.C.
12 1395w–114(a)) or other extra help or cost-
13 sharing relief.

14 (B) REPORT.—Not later than 6 months
15 after the date of enactment of this Act, the
16 Medicare Payment Advisory Commission shall
17 submit to Congress a report containing the re-
18 sults of the study conducted under subpara-
19 graph (A), together with recommendations for
20 such legislation and administrative action as the
21 Commission determines appropriate.

22 (3) DEFINITIONS.—In this section:

23 (A) COVERED PART D DRUG.—The term
24 “covered part D drug” has the meaning given

1 such term in section 1860D–2(e) of the Social
 2 Security Act (42 U.S.C. 1395w–102(e)).

3 (B) MA–PD PLAN.—The term “MA–PD”
 4 plan has the meaning given such term in para-
 5 graph (9) of section 1860D–41(a) of such Act
 6 (42 U.S.C. 1395w–151(a)).

7 (C) MEDICARE ADVANTAGE ORGANIZA-
 8 TION.—The term “Medicare Advantage organi-
 9 zation” has the meaning given such term in
 10 section 1859(a)(1) of such Act (42 U.S.C.
 11 1395w–28(a)(1)).

12 (D) PDP SPONSOR.—The term “PDP
 13 sponsor” has the meaning given such term in
 14 paragraph (13) of such section 1860D–41(a).

15 (E) PRESCRIPTION DRUG PLAN.—The
 16 term “prescription drug plan” has the meaning
 17 given such term in paragraph (14) of such sec-
 18 tion.

19 **SEC. 3. PRIVATE HEALTH INSURANCE.**

20 (a) GROUP HEALTH PLANS.—

21 (1) PUBLIC HEALTH SERVICE ACT AMEND-
 22 MENTS.—

23 (A) IN GENERAL.—Subpart 2 of part A of
 24 title XXVII of the Public Health Service Act is

1 amended by adding at the end the following
2 new section:

3 **“SEC. 2708. PROVISIONS RELATING TO PRESCRIPTION**
4 **DRUGS.**

5 “(a) IN GENERAL.—A group health plan, and a
6 health insurance issuer offering group health insurance
7 coverage, that provides coverage for prescription drugs
8 shall, with respect to any co-payment or coinsurance re-
9 quirements applicable to such drug coverage, ensure
10 that—

11 “(1) such required co-payment or coinsurance
12 does not exceed the base cost of the prescription
13 drug (as determined by the Secretary);

14 “(2) such required co-payment or coinsurance
15 does not exceed \$200 per month for any single pre-
16 scription drug (30-day supply); and

17 “(3) such required co-payment or coinsurance
18 does not exceed, in the aggregate for all prescription
19 drugs, \$500 per month.

20 “(b) ADJUSTMENTS.—The amounts described in
21 paragraphs (2) and (3) of subsection (a) shall be annually
22 adjusted to reflect the average of the percentage increase
23 or decrease in the Consumer Price Index for all urban con-
24 sumers (U.S. city average) and the percentage increase
25 or decrease in the medical care component of such Con-

sumer Price Index during the calendar year preceding the year for which the adjustment is being made.

“(c) NOTICE.—A group health plan under this part shall comply with the notice requirement under section 714(b) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this section as if such section applied to such plan.”.

(B) CONFORMING AMENDMENT.—Section 2723(c) of such Act (42 U.S.C. 300gg–23(c)) is amended by striking “section 2704” and inserting “sections 2704 and 2708”.

(2) ERISA AMENDMENTS.—

(A) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new section:

“SEC. 715. PROVISIONS RELATING TO PRESCRIPTION DRUGS.

“(a) IN GENERAL.—A group health plan, and a health insurance issuer offering group health insurance coverage, that provides coverage for prescription drugs shall, with respect to any co-payment or coinsurance requirements applicable to such drug coverage, ensure that—

1 “(1) such required co-payment or coinsurance
2 does not exceed the base cost of the prescription
3 drug (as determined by the Secretary of Health and
4 Human Services);

5 “(2) such required co-payment or coinsurance
6 does not exceed \$200 per month for any single pre-
7 scription drug (30-day supply); and

8 “(3) such required co-payment or coinsurance
9 does not exceed, in the aggregate for all prescription
10 drugs, \$500 per month.

11 “(b) ADJUSTMENTS.—The amounts described in
12 paragraphs (2) and (3) of subsection (a) shall be annually
13 adjusted to reflect the average of the percentage increase
14 or decrease in the Consumer Price Index for all urban con-
15 sumers (U.S. city average) and the percentage increase
16 or decrease in the medical care component of such Con-
17 sumer Price Index during the calendar year preceding the
18 year for which the adjustment is being made.

19 “(c) NOTICE.—A group health plan under this part
20 shall comply with the notice requirement under section
21 714(b) with respect to the requirements of this section as
22 if such section applied to such plan.”.

23 (B) TABLE OF CONTENTS.—The table of
24 contents in section 1 of such Act is amended by

1 inserting after the item relating to section 714
 2 the following new item:

“Sec. 715. Provisions relating to prescription drugs.”.

3 (3) INTERNAL REVENUE CODE AMEND-
 4 MENTS.—

5 (A) IN GENERAL.—Subchapter B of chap-
 6 ter 100 of the Internal Revenue Code of 1986
 7 is amended by adding at the end the following
 8 new section:

9 **“SEC. 9813. PROVISIONS RELATING TO PRESCRIPTION**
 10 **DRUGS.**

11 “(a) IN GENERAL.—A group health plan, and a
 12 health insurance issuer offering group health insurance
 13 coverage, that provides coverage for prescription drugs
 14 shall, with respect to any co-payment or coinsurance re-
 15 quirements applicable to such drug coverage, ensure
 16 that—

17 “(1) such required co-payment or coinsurance
 18 does not exceed the base cost of the prescription
 19 drug (as determined by the Secretary of Health and
 20 Human Services);

21 “(2) such required co-payment or coinsurance
 22 does not exceed \$200 per month for any single pre-
 23 scription drug (30-day supply); and

1 “(3) such required co-payment or coinsurance
 2 does not exceed, in the aggregate for all prescription
 3 drugs, \$500 per month.

4 “(b) ADJUSTMENTS.—The amounts described in
 5 paragraphs (2) and (3) of subsection (a) shall be annually
 6 adjusted to reflect the average of the percentage increase
 7 or decrease in the Consumer Price Index for all urban con-
 8 sumers (U.S. city average) and the percentage increase
 9 or decrease in the medical care component of such Con-
 10 sumer Price Index during the calendar year preceding the
 11 year for which the adjustment is being made.

12 “(c) NOTICE.—A group health plan under this part
 13 shall comply with the notice requirement under section
 14 714(b) of the Employee Retirement Income Security Act
 15 of 1974 with respect to the requirements of this section
 16 as if such section applied to such plan.”.

17 (B) CLERICAL AMENDMENT.—The table of
 18 sections for such subchapter is amended by
 19 adding at the end the following new item:

“Sec. 9813. Provisions relating to prescription drugs.”.

20 (b) INDIVIDUAL HEALTH INSURANCE.—

21 (1) IN GENERAL.—Part B of title XXVII of the
 22 Public Health Service Act is amended by inserting
 23 after section 2752 the following new section:

1 **“SEC. 2754. PROVISIONS RELATING TO PRESCRIPTION**
2 **DRUGS.**

3 “The provisions of section 2708 shall apply to health
4 insurance coverage offered by a health insurance issuer
5 in the individual market in the same manner as they apply
6 to health insurance coverage offered by a health insurance
7 issuer in connection with a group health plan in the small
8 or large group market.”.

9 (2) CONFORMING AMENDMENT.—Section
10 2762(b)(2) of such Act (42 U.S.C. 300gg–62(b)(2))
11 is amended by striking “section 2751” and inserting
12 “sections 2751 and 2754”.

13 (c) APPLICATION TO FEHBP.—The amendments
14 made by this section shall apply to the administration of
15 chapter 89 of title 5, United States Code.

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