

111TH CONGRESS  
1ST SESSION

# S. 1630

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.

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IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2009

Mr. ROCKEFELLER (for himself and Mr. FRANKEN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Affordable Access to  
5 Prescription Medications Act of 2009”.

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

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

5 “(E) ADDITIONAL PROTECTIONS.—

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

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

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

23 “(III) such required co-payment  
24 or coinsurance does not exceed, in the  
25 aggregate for all covered part D  
26 drugs, \$500 per month.

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

12               (b) EXPANSION OF EXCEPTIONS PROCESS.—Effec-  
13               tive for plan years beginning on or after January 1, 2011,  
14               the Secretary shall expand the formulary tier exception re-  
15               quest process under sections 423.560 through 423.636 of  
16               title 42, Code of Federal Regulations (as in effect on the  
17               date of enactment of this Act), to allow individuals en-  
18               rolled in a prescription drug plan under part D of title  
19               XVIII of the Social Security Act or an MA–PD plan under  
20               part C of such title to request an exception for a specialty  
21               prescription drug to a plan’s designation of a covered part  
22               D drug (as defined in section 1860D–2(e) of such Act (42  
23               U.S.C. 1395w–102(e)) as a non-preferred prescription  
24               drug.

25               (c) MEDPAC STUDIES AND REPORTS.—

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

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

12           (i) An analysis of—

13           (I) the use of specialty tiers for  
14 covered part D drugs under prescrip-  
15 tion drug plans and MA–PD plans;  
16 and

17           (II) the effect of such specialty  
18 tiers on access to care for Medicare  
19 beneficiaries.

20           (ii) Consideration of the mechanisms  
21 described in subparagraph (B) in the con-  
22 text of the provisions of section 1860D–  
23 11(e)(2)(D) of the Social Security Act (42  
24 U.S.C. 1395w–111(e)(2)(D)) (in this para-

1 graph referred to as the “Medicare part D  
2 anti-discrimination clause”).

3 (B) MECHANISMS DESCRIBED.—The fol-  
4 lowing mechanisms are described in this sub-  
5 paragraph:

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

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

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

21 (C) REPORT.—Not later than 1 year after  
22 the date of enactment of this Act, the Medicare  
23 Payment Advisory Commission shall submit to  
24 Congress a report containing the results of the  
25 study conducted under subparagraph (A), to-

1           together with recommendations for such legisla-  
2           tion and administrative action as the Commis-  
3           sion determines appropriate.

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

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

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

22                  (i) incur annual out-of-pocket cost-  
23                  sharing after the initial coverage limit  
24                  under section 1860D–2(b)(3) of such Act  
25                  (42 U.S.C. 1395w–102) that exceeds 5

1 percent of the income of the beneficiary (as  
2 determined under section 1860D–  
3 14(a)(3)(C) of such Act (42 U.S.C.  
4 1395w–114(a)(3)(C)); and

5 (ii) do not otherwise qualify for an in-  
6 come-related subsidy under section  
7 1860D–14(a) of such Act (42 U.S.C.  
8 1395w–114(a)) or other extra help or cost-  
9 sharing relief.

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

18 (3) DEFINITIONS.—In this section:

19 (A) COVERED PART D DRUG.—The term  
20 “covered part D drug” has the meaning given  
21 such term in section 1860D–2(e) of the Social  
22 Security Act (42 U.S.C. 1395w–102(e)).

23 (B) MA–PD PLAN.—The term “MA–PD”  
24 plan has the meaning given such term in para-

1 graph (9) of section 1860D–41(a) of such Act  
 2 (42 U.S.C. 1395w–151(a)).

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

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

11 (E) PRESCRIPTION DRUG PLAN.—The  
 12 term “prescription drug plan” has the meaning  
 13 given such term in paragraph (14) of such sec-  
 14 tion.

15 **SEC. 3. PRIVATE HEALTH INSURANCE.**

16 (a) GROUP HEALTH PLANS.—

17 (1) PUBLIC HEALTH SERVICE ACT AMEND-  
 18 MENTS.—

19 (A) IN GENERAL.—Subpart 2 of part A of  
 20 title XXVII of the Public Health Service Act is  
 21 amended by adding at the end the following  
 22 new section:

1 **“SEC. 2708. PROVISIONS RELATING TO PRESCRIPTION**  
2 **DRUGS.**

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

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

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

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

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

1       “(c) NOTICE.—A group health plan under this part  
2 shall comply with the notice requirement under section  
3 714(b) of the Employee Retirement Income Security Act  
4 of 1974 with respect to the requirements of this section  
5 as if such section applied to such plan.”.

6               (B) CONFORMING AMENDMENT.—Section  
7       2723(c) of such Act (42 U.S.C. 300gg-23(c)) is  
8       amended by striking “section 2704” and insert-  
9       ing “sections 2704 and 2708”.

10       (2) ERISA AMENDMENTS.—

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

15       **“SEC. 715. PROVISIONS RELATING TO PRESCRIPTION**  
16               **DRUGS.**

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

23               “(1) such required co-payment or coinsurance  
24       does not exceed the base cost of the prescription

1 drug (as determined by the Secretary of Health and  
2 Human Services);

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

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

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

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

21 (B) TABLE OF CONTENTS.—The table of  
22 contents in section 1 of such Act is amended by  
23 inserting after the item relating to section 714  
24 the following new item:

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

1           (3) INTERNAL REVENUE CODE AMEND-  
2           MENTS.—

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

7           **“SEC. 9813. PROVISIONS RELATING TO PRESCRIPTION**  
8           **DRUGS.**

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

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

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

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

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

9       “(c) NOTICE.—A group health plan under this part  
 10 shall comply with the notice requirement under section  
 11 714(b) of the Employee Retirement Income Security Act  
 12 of 1974 with respect to the requirements of this section  
 13 as if such section applied to such plan.”.

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

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

17       (b) INDIVIDUAL HEALTH INSURANCE.—

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

21 **“SEC. 2754. PROVISIONS RELATING TO PRESCRIPTION**  
 22 **DRUGS.**

23       “The provisions of section 2708 shall apply to health  
 24 insurance coverage offered by a health insurance issuer  
 25 in the individual market in the same manner as they apply

1 to health insurance coverage offered by a health insurance  
2 issuer in connection with a group health plan in the small  
3 or large group market.”.

4           (2) CONFORMING AMENDMENT.—Section  
5           2762(b)(2) of such Act (42 U.S.C. 300gg–62(b)(2))  
6           is amended by striking “section 2751” and inserting  
7           “sections 2751 and 2754”.

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

○