

111TH CONGRESS
1ST SESSION

S. 565

To amend title XVIII of the Social Security Act to provide continued entitlement to coverage for immunosuppressive drugs furnished to beneficiaries under the Medicare Program that have received a kidney transplant and whose entitlement to coverage would otherwise expire, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2009

Mr. DURBIN (for himself, Mr. COCHRAN, Mr. LEVIN, and Mr. DORGAN) 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 provide continued entitlement to coverage for immunosuppressive drugs furnished to beneficiaries under the Medicare Program that have received a kidney transplant and whose entitlement to coverage would otherwise expire, 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 “Comprehensive Im-
3 munosuppressive Drug Coverage for Kidney Transplant
4 Patients Act of 2009”.

5 **SEC. 2. PROVISION OF APPROPRIATE COVERAGE OF IM-
6 MUNOSUPPRESSIVE DRUGS UNDER THE
7 MEDICARE PROGRAM FOR KIDNEY TRANS-
8 PLANT RECIPIENTS.**

9 (a) CONTINUED ENTITLEMENT TO IMMUNO-
10 SUPPRESSIVE DRUGS.—

11 (1) KIDNEY TRANSPLANT RECIPIENTS.—Sec-
12 tion 226A(b)(2) of the Social Security Act (42
13 U.S.C. 426–1(b)(2)) is amended by inserting “(ex-
14 cept for coverage of immunosuppressive drugs under
15 section 1861(s)(2)(J))” after “shall end”.

16 (2) APPLICATION.—Section 1836 of the Social
17 Security Act (42 U.S.C. 1395o) is amended—

18 (A) by striking “Every individual who”
19 and inserting “(a) IN GENERAL.—Every indi-
20 vidual who”; and

21 (B) by adding at the end the following new
22 subsection:

23 “(b) SPECIAL RULES APPLICABLE TO INDIVIDUALS
24 ELIGIBLE ONLY FOR COVERAGE OF IMMUNOSUPPRESSIVE
25 DRUGS.—

1 “(1) IN GENERAL.—In the case of an individual
2 whose eligibility for benefits under this title has
3 ended except for the coverage of immunosuppressive
4 drugs by reason of section 226A(b)(2), the following
5 rules shall apply:

6 “(A) The individual shall be deemed to be
7 enrolled under this part for purposes of receiv-
8 ing coverage of such drugs.

9 “(B) The individual shall be responsible
10 for the full amount of the premium under sec-
11 tion 1839 in order to receive such coverage.

12 “(C) The provision of such drugs shall be
13 subject to the application of—

14 “(i) the deductible under section
15 1833(b); and

16 “(ii) the coinsurance amount applica-
17 ble for such drugs (as determined under
18 this part).

19 “(D) If the individual is an inpatient of a
20 hospital or other entity, the individual is enti-
21 tled to receive coverage of such drugs under
22 this part.

23 “(2) ESTABLISHMENT OF PROCEDURES IN
24 ORDER TO IMPLEMENT COVERAGE.—The Secretary
25 shall establish procedures for—

1 “(A) identifying beneficiaries that are enti-
 2 tled to coverage of immunosuppressive drugs by
 3 reason of section 226A(b)(2); and

4 “(B) distinguishing such beneficiaries from
 5 beneficiaries that are enrolled under this part
 6 for the complete package of benefits under this
 7 part.”.

8 (3) TECHNICAL AMENDMENT.—Subsection (c)
 9 of section 226A of the Social Security Act (42
 10 U.S.C. 426–1), as added by section 201(a)(3)(D)(ii)
 11 of the Social Security Independence and Program
 12 Improvements Act of 1994 (Public Law 103–296;
 13 108 Stat. 1497), is redesignated as subsection (d).

14 (b) EXTENSION OF SECONDARY PAYER REQUIRE-
 15 MENTS FOR ESRD BENEFICIARIES.—Section
 16 1862(b)(1)(C) of the Social Security Act (42 U.S.C.
 17 1395y(b)(1)(C)) is amended by adding at the end the fol-
 18 lowing new sentence: “With regard to immunosuppressive
 19 drugs furnished on or after the date of enactment of the
 20 Comprehensive Immunosuppressive Drug Coverage for
 21 Kidney Transplant Patients Act of 2009, this subpara-
 22 graph shall be applied without regard to any time limita-
 23 tion.”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to drugs furnished on or after the
 3 date of enactment of this Act.

4 **SEC. 3. PLANS REQUIRED TO MAINTAIN COVERAGE OF IM-**
 5 **MUNOSUPPRESSIVE DRUGS FOR KIDNEY**
 6 **TRANSPLANT RECIPIENTS.**

7 (a) APPLICATION TO CERTAIN HEALTH INSURANCE
 8 COVERAGE.—

9 (1) IN GENERAL.—Subpart 2 of part A of title
 10 XXVII of the Public Health Service Act (42 U.S.C.
 11 300gg–4 et seq.) is amended by adding at the end
 12 the following:

13 **“SEC. 2708. COVERAGE OF IMMUNOSUPPRESSIVE DRUGS**
 14 **FOR KIDNEY TRANSPLANT RECIPIENTS.**

15 “A group health plan (and a health insurance issuer
 16 offering health insurance coverage in connection with a
 17 group health plan) shall provide coverage of immuno-
 18 suppressive drugs in connection with a kidney transplant
 19 that is at least as comprehensive as the coverage provided
 20 by such plan or issuer on the day before the date of enact-
 21 ment of the Comprehensive Immunosuppressive Drug
 22 Coverage for Kidney Transplant Patients Act of 2009,
 23 and such requirement shall be deemed to be incorporated
 24 into this section.”.

1 (2) CONFORMING AMENDMENT.—Section
 2 2721(b)(2)(A) of the Public Health Service Act (42
 3 U.S.C. 300gg–21(b)(2)(A)) is amended by inserting
 4 “(other than section 2708)” after “requirements of
 5 such subparts”.

6 (b) APPLICATION TO GROUP HEALTH PLANS AND
 7 GROUP HEALTH INSURANCE COVERAGE UNDER THE EM-
 8 PLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

9 (1) IN GENERAL.—Subpart B of part 7 of sub-
 10 title B of title I of the Employee Retirement Income
 11 Security Act of 1974 (29 U.S.C. 1185 et seq.) is
 12 amended by adding at the end the following new sec-
 13 tion:

14 **“SEC. 715. COVERAGE OF IMMUNOSUPPRESSIVE DRUGS**
 15 **FOR KIDNEY TRANSPLANT RECIPIENTS.**

16 “A group health plan (and a health insurance issuer
 17 offering health insurance coverage in connection with a
 18 group health plan) shall provide coverage of immuno-
 19 suppressive drugs in connection with a kidney transplant
 20 that is at least as comprehensive as the coverage provided
 21 by such plan or issuer on the day before the date of enact-
 22 ment of the Comprehensive Immunosuppressive Drug
 23 Coverage for Kidney Transplant Patients Act of 2009,
 24 and such requirement shall be deemed to be incorporated
 25 into this section.”.

1 (2) CONFORMING AMENDMENTS.—

2 (A) Section 732(a) of the Employee Retirement
3 Income Security Act of 1974 (29 U.S.C.
4 1191a(a)) is amended by striking “section 711”
5 and inserting “sections 711 and 715”.

6 (B) The table of contents in section 1 of
7 the Employee Retirement Income Security Act
8 of 1974 is amended by inserting after the item
9 relating to section 714 the following new item:

“Sec. 715. Coverage of immunosuppressive drugs.”.

10 (c) APPLICATION TO GROUP HEALTH PLANS UNDER
11 THE INTERNAL REVENUE CODE OF 1986.—Subchapter B
12 of chapter 100 of the Internal Revenue Code of 1986 is
13 amended—

14 (1) in the table of sections, by inserting after
15 the item relating to section 9813 the following new
16 item:

“Sec. 9814. Coverage of immunosuppressive drugs for kidney transplant recipients.”;

17 and

18 (2) by inserting after section 9813 the fol-
19 lowing:

20 **“SEC. 9814. COVERAGE OF IMMUNOSUPPRESSIVE DRUGS**
21 **FOR KIDNEY TRANSPLANT RECIPIENTS.**

22 “A group health plan shall provide coverage of im-
23 munosuppressive drugs in connection with a kidney trans-

1 plant that is at least as comprehensive as the coverage
2 provided by such plan on the day before the date of enact-
3 ment of the Comprehensive Immunosuppressive Drug
4 Coverage for Kidney Transplant Patients Act of 2009,
5 and such requirement shall be deemed to be incorporated
6 into this section.”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to plan years beginning on or after
9 January 1, 2010.

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