

109TH CONGRESS
2^D SESSION

S. 2664

To amend title XVIII of the Social Security Act to improve access to pharmacies under part D.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2006

Mr. BAUCUS (for himself, Mrs. LINCOLN, and Mr. CONRAD) 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 improve access to pharmacies under part D.

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 “Pharmacy Access Im-
5 provement (PhAIm) Act of 2006”.

6 **SEC. 2. STRENGTHENING STANDARDS FOR ACCESS TO**
7 **PHARMACIES.**

8 (a) IN GENERAL.—Section 1860D–4(b)(1)(C) of the
9 Social Security Act (42 U.S.C. 1395w–104(b)(1)(C)) is
10 amended—

1 (1) in clause (i)—

2 (A) by inserting “that are accessible to the
3 general public (not including closed pharmacies,
4 such as pharmacies that dispense drugs by mail
5 order only or are located in a hospital or nurs-
6 ing home, except that a closed pharmacy shall
7 be included if the pharmacy is operated by the
8 Indian Health Service, an Indian tribe or tribal
9 organization, or an urban Indian organization
10 (as defined in section 4 of the Indian Health
11 Care Improvement Act))” after “sufficient
12 number of pharmacies”; and

13 (B) by striking “(other than by mail
14 order)”; and

15 (2) in clause (ii), by adding at the end the fol-
16 lowing new sentence: “If the PDP sponsor of a pre-
17 scription drug plan designates in-network phar-
18 macies as either preferred or non-preferred phar-
19 macies (or any designation other than preferred or
20 any other distinction between or among pharmacies
21 with respect to participation status), only in-network
22 preferred pharmacies shall be counted in deter-
23 mining if the requirements of such rules are met.”.

1 (b) EXPANDING PARTICIPATION BY ANY WILLING
2 PHARMACY.—Section 1860D–4(b)(1)(A) of the Social Se-
3 curity Act (42 U.S.C. 1395w–104(b)(1)(A)) is amended—

4 (1) by striking “PHARMACY.—A prescription
5 drug plan” and inserting “PHARMACY.—

6 “(i) IN GENERAL.—Subject to clause

7 (ii), a prescription drug plan”;

8 (2) in clause (i), as added by paragraph (1), by
9 adding at the end the following new sentence: “A
10 previous refusal by a pharmacy of an offer to par-
11 ticipate, or the expiration of such an offer, shall not
12 be grounds to exclude a pharmacy from participation
13 under this subparagraph.”; and

14 (3) by adding at the end the following new
15 clause:

16 “(ii) PARTICIPATION OF 340B ENTI-
17 TIES.—

18 “(I) IN GENERAL.—A prescrip-
19 tion drug plan shall not exclude a
20 pharmacy from participation solely on
21 the basis that such pharmacy is a cov-
22 ered entity under section 340B of the
23 Public Health Service Act.

24 “(II) REASONABLE TERMS AND
25 CONDITIONS FOR 340B ENTITIES.—In

1 the case of a pharmacy that is a cov-
2 ered entity under such section 340B,
3 if such an entity requests that the
4 terms and conditions of the appro-
5 priate version (as determined by the
6 Secretary) of the Model Safety Net
7 Pharmacy Addendum to Pharmacy
8 Contract apply to a contract to dis-
9 pense covered part D drugs under
10 such plan, subject to subclause (III),
11 the terms and conditions of such Con-
12 tract shall be the terms and condi-
13 tions for participation of such phar-
14 macy under clause (i).

15 “(III) PERMITTING WAIVER OF
16 COST-SHARING.—In the case of a
17 pharmacy that is a covered entity
18 under such section 340B, if such an
19 entity requests that the terms and
20 conditions of a contract to dispense
21 covered part D drugs under such plan
22 permit the pharmacy to waive or re-
23 duce cost-sharing under this part,
24 consistent with the requirements of
25 section 1128B(b)(3)(G), such permis-

1 sion shall be included in the terms
2 and conditions for participation of
3 such pharmacy under clause (i).”.

4 (c) STRENGTHENING CONVENIENT ACCESS STAND-
5 ARDS.—Section 1860D–4(b)(1)(C) of the Social Security
6 Act (42 U.S.C. 1395w–104(b)(1)(C)) is amended by strik-
7 ing clause (iv) and inserting the following new clauses:

8 “(iv) CONVENIENT ACCESS IN LONG-
9 TERM CARE FACILITIES.—Such rules shall
10 include standards with respect to access
11 for enrollees who are residing in long-term
12 care facilities to ensure that such enrollees
13 have access to a long-term care network
14 pharmacy.

15 “(v) CONVENIENT ACCESS TO PHAR-
16 MACIES SERVING INDIANS.—Such rules
17 may include standards with respect to ac-
18 cess for enrollees to pharmacies operated
19 by the Indian Health Service, Indian tribes
20 and tribal organizations, and urban Indian
21 organizations (as defined in section 4 of
22 the Indian Health Care Improvement
23 Act.”.

24 (d) REFERENCE TO PROVISIONS RELATING TO REA-
25 SONABLE DISPENSING FEES.—Section 1860D–4(b) of the

1 Social Security Act (42 U.S.C. 1395w–104(b)) is amended
 2 by adding at the end the following new paragraph:

3 “(4) REFERENCE TO REASONABLE DISPENSING
 4 FEE PROVISIONS.—For provisions relating to reason-
 5 able dispensing fees, see section 1860D–12(b)(7).”.

6 (e) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply to plan years beginning on or after
 8 January 1, 2007.

9 **SEC. 3. PROMPT PAYMENT BY PRESCRIPTION DRUG PLANS**
 10 **AND MA-PD PLANS UNDER PART D.**

11 (a) PROMPT PAYMENT BY PRESCRIPTION DRUG
 12 PLANS.—Section 1860D–12(b) of the Social Security Act
 13 (42 U.S.C. 1395w–112(b)) is amended by adding at the
 14 end the following new paragraph:

15 “(4) PROMPT PAYMENT OF CLEAN CLAIMS.—

16 “(A) PROMPT PAYMENT.—

17 “(i) IN GENERAL.—Each contract en-
 18 tered into with a PDP sponsor under this
 19 section with respect to a prescription drug
 20 plan offered by such sponsor shall provide
 21 that payment shall be issued, mailed, or
 22 otherwise transmitted with respect to all
 23 clean claims submitted by pharmacies
 24 (other than pharmacies that dispense
 25 drugs by mail order only or are located in,

1 or contract with, a long-term care facility)
2 under this part within the applicable num-
3 ber of calendar days after the date on
4 which the claim is received.

5 “(ii) CLEAN CLAIM DEFINED.—In this
6 paragraph, the term ‘clean claim’ means a
7 claim that has no defect or impropriety
8 (including any lack of any required sub-
9 stantiating documentation) or particular
10 circumstance requiring special treatment
11 that prevents timely payment from being
12 made on the claim under this part.

13 “(B) APPLICABLE NUMBER OF CALENDAR
14 DAYS DEFINED.—In this paragraph, the term
15 ‘applicable number of calendar days’ means—

16 “(i) with respect to claims submitted
17 electronically, 14 days; and

18 “(ii) with respect to claims submitted
19 otherwise, 30 days.

20 “(C) INTEREST PAYMENT.—If payment is
21 not issued, mailed, or otherwise transmitted
22 within the applicable number of calendar days
23 (as defined in subparagraph (B)) after a clean
24 claim is received, interest shall be paid at a rate
25 equal to the weighted average of interest on 3-

1 month marketable Treasury securities deter-
2 mined for such period, increased by 0.1 percent-
3 age point for the period beginning on the day
4 after the required payment date and ending on
5 the date on which payment is made. Interest
6 amounts paid under this subparagraph shall not
7 be counted against the administrative costs of a
8 prescription drug plan.

9 “(D) PROCEDURES INVOLVING CLAIMS.—

10 “(i) IN GENERAL.—A contract entered
11 into with a PDP sponsor under this sec-
12 tion with respect to a prescription drug
13 plan offered by such sponsor shall provide
14 that, not later than 10 days after the date
15 on which a clean claim is submitted, the
16 PDP sponsor shall provide the claimant
17 with a notice that acknowledges receipt of
18 the claim by such sponsor. Such notice
19 shall be considered to have been provided
20 on the date on which the notice is mailed
21 or electronically transferred.

22 “(ii) CLAIM DEEMED TO BE CLEAN.—

23 A claim is deemed to be a clean claim if
24 the PDP sponsor involved does not provide
25 notice to the claimant of any deficiency in

1 the claim within 10 days of the date on
2 which the claim is submitted.

3 “(iii) CLAIM DETERMINED TO NOT BE
4 A CLEAN CLAIM.—

5 “(I) IN GENERAL.—If a PDP
6 sponsor determines that a submitted
7 claim is not a clean claim, the PDP
8 sponsor shall, not later than the end
9 of the period described in clause (ii),
10 notify the claimant of such determina-
11 tion. Such notification shall specify all
12 defects or improprieties in the claim
13 and shall list all additional informa-
14 tion or documents necessary for the
15 proper processing and payment of the
16 claim.

17 “(II) DETERMINATION AFTER
18 SUBMISSION OF ADDITIONAL INFOR-
19 MATION.—A claim is deemed to be a
20 clean claim under this paragraph if
21 the PDP sponsor involved does not
22 provide notice to the claimant of any
23 defect or impropriety in the claim
24 within 10 days of the date on which

1 additional information is received
2 under subclause (I).

3 “(III) PAYMENT OF CLEAN POR-
4 TION OF A CLAIM.—A PDP sponsor
5 shall, as appropriate, pay any portion
6 of a claim that would be a clean claim
7 but for a defect or impropriety in a
8 separate portion of the claim in ac-
9 cordance with subparagraph (A).

10 “(iv) OBLIGATION TO PAY.—A claim
11 submitted to a PDP sponsor that is not
12 paid or contested by the provider within
13 the applicable number of days (as defined
14 in subparagraph (B)) shall be deemed to
15 be a clean claim and shall be paid by the
16 PDP sponsor in accordance with subpara-
17 graph (A).

18 “(v) DATE OF PAYMENT OF CLAIM.—
19 Payment of a clean claim under such sub-
20 paragraph is considered to have been made
21 on the date on which—

22 “(I) with respect to claims paid
23 electronically, the payment is trans-
24 ferred; and

1 “(II) with respect to claims paid
2 otherwise, the payment is submitted
3 to the United States Postal Service or
4 common carrier for delivery.

5 “(E) ELECTRONIC TRANSFER OF
6 FUNDS.—A PDP sponsor shall pay all clean
7 claims submitted electronically by electronic
8 transfer of funds if the pharmacy so requests or
9 has so requested previously.

10 “(F) PRIVATE RIGHT OF ACTION.—

11 “(i) IN GENERAL.—Nothing in this
12 paragraph shall be construed to prohibit or
13 limit a claim or action not covered by the
14 subject matter of this section that any in-
15 dividual or organization has against a pro-
16 vider or a PDP sponsor.

17 “(ii) ANTI-RETALIATION.—Consistent
18 with applicable Federal or State law, a
19 PDP sponsor shall not retaliate against an
20 individual or provider for exercising a right
21 of action under this subparagraph.”.

22 (b) PROMPT PAYMENT BY MA–PD PLANS.—Section
23 1857(f) of the Social Security Act (42 U.S.C. 1395w–27)
24 is amended by adding at the end the following new para-
25 graph:

1 “(3) INCORPORATION OF CERTAIN PRESCRIP-
 2 TION DRUG PLAN CONTRACT REQUIREMENTS.—The
 3 following provisions shall apply to contracts with a
 4 Medicare Advantage organization in the same man-
 5 ner as they apply to contracts with a PDP sponsor
 6 offering a prescription drug plan under part D:

7 “(A) PROMPT PAYMENT.—Section 1860D-
 8 12(b)(4).”.

9 (c) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to plan years beginning on or after
 11 January 1, 2007.

12 **SEC. 4. MEDICARE PART D INFORMATIONAL RESOURCES**
 13 **AND CUSTOMER SERVICE.**

14 (a) HEALTH AND HUMAN SERVICES PHARMACY
 15 HOTLINE.—The Secretary of Health and Human Services
 16 shall—

17 (1) establish a toll-free telephone number that
 18 is dedicated to providing information regarding the
 19 Medicare prescription drug benefit under part D of
 20 title XVIII of the Social Security Act to pharmacists
 21 and pharmacy staff; and

22 (2) staff such telephone number in order to en-
 23 sure that the toll-free number is available to answer
 24 calls 24-hours each day.

1 (b) CUSTOMER SERVICE PROVIDED BY PRESCRIP-
2 TION DRUG PLANS AND MA-PD PLANS.—

3 (1) IN GENERAL.—Section 1860D-4 of the So-
4 cial Security Act (42 U.S.C. 1395w-104) is amend-
5 ed by adding at the end the following new sub-
6 section:

7 “(1) CUSTOMER SERVICE.—

8 “(1) PHARMACY HOTLINE.—A PDP sponsor of
9 a prescription drug plan shall—

10 “(A) establish a toll-free telephone number
11 that is dedicated to providing information re-
12 garding the plan to pharmacists and pharmacy
13 staff; and

14 “(B) staff such telephone number in order
15 to ensure compliance with customer service
16 standards (as established by the Secretary).

17 “(2) PHYSICIAN AND PROVIDER HOTLINE.—A
18 PDP sponsor of a prescription drug plan shall—

19 “(A) establish a toll-free telephone number
20 that is dedicated to providing information re-
21 garding the plan to physicians and providers;
22 and

23 “(B) staff such telephone number in order
24 to ensure compliance with customer service
25 standards (as established by the Secretary).”.

1 (2) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to plan years begin-
3 ning on or after January 1, 2007.

4 **SEC. 5. TRANSACTION STANDARDS FOR PRESCRIPTION**
5 **DRUG PLANS AND MA-PD PLANS.**

6 (a) IN GENERAL.—Section 1860D-4(b)(2) of the So-
7 cial Security Act is amended—

8 (1) in subparagraph (A)—

9 (A) by striking “IN GENERAL.—The PDP”
10 and inserting “IN GENERAL.—

11 “(i) STANDARDIZED TECHNOLOGY
12 FOR BENEFIT ACCESS.—Subject to sub-
13 section (m), the PDP”; and

14 (B) by adding at the end the following new
15 clause:

16 “(ii) STANDARDIZED TECHNOLOGY
17 FOR COMMUNICATIONS AND TRANS-
18 ACTIONS.—The PDP sponsor of a pre-
19 scription drug plan shall utilize standard-
20 ized technology for any communication or
21 transaction (including a billing or coding
22 transaction) occurring between such plan
23 and a participating pharmacy.”; and

24 (2) by amending subparagraph (B) to read as
25 follows:

1 “(B) STANDARDS.—The card or tech-
2 nology required under subparagraph (A) shall
3 comply with the most recent standards adopted
4 by the Secretary under section 1173(c).”.

5 (b) EFFECTIVE DATE.—The amendments made by
6 subsection (a) shall apply to cards issued, and communica-
7 tions or transactions conducted, on or after the date that
8 is 60 days after the date of enactment of this Act.

9 **SEC. 6. RESTRICTIONS ON PHARMACY CO-BRANDING BY**
10 **PRESCRIPTION DRUG PLANS AND MA-PD**
11 **PLANS.**

12 (a) IN GENERAL.—Section 1860D–4 of the Social
13 Security Act (42 U.S.C. 1395w–104), as amended by sec-
14 tion 4(b), is amended by adding at the end the following
15 new subsection:

16 “(m) CO-BRANDING.—

17 “(1) PROHIBITION OF CO-BRANDING ON PRE-
18 SCRIPTION DRUG CARD.—A card that is issued
19 under subsection (b)(2)(A) for use under a prescrip-
20 tion drug plan offered by a PDP sponsor shall not
21 display the name, brand, logo, or trademark of any
22 pharmacy.

23 “(2) MARKETING MATERIALS.—Marketing ma-
24 terials distributed by a PDP sponsor that has a co-
25 branding relationship with a pharmacy with respect

1 to such a plan shall include a disclaimer in large,
 2 off-set, bold-face type of the following: Other phar-
 3 macies are also available in our network.”.

4 (b) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to cards and marketing materials
 6 distributed on or after the date that is 60 days after the
 7 date of enactment of this Act.

8 **SEC. 7. SUBMISSION OF CLAIMS BY PHARMACIES LOCATED**
 9 **IN OR CONTRACTING WITH LONG-TERM CARE**
 10 **FACILITIES.**

11 (a) SUBMISSION OF CLAIMS BY PHARMACIES LO-
 12 CATED IN OR CONTRACTING WITH LONG-TERM CARE FA-
 13 CILITIES.—

14 (1) SUBMISSION OF CLAIMS TO PRESCRIPTION
 15 DRUG PLANS.—Section 1860D–12(b) of the Social
 16 Security Act (42 U.S.C. 1395w–112(b)), as amend-
 17 ed by section 3(a), is amended by adding at the end
 18 the following new paragraph:

19 “(5) SUBMISSION OF CLAIMS BY PHARMACIES
 20 LOCATED IN OR CONTRACTING WITH LONG-TERM
 21 CARE FACILITIES.—Each contract entered into with
 22 a PDP sponsor under this section with respect to a
 23 prescription drug plan offered by such sponsor shall
 24 provide that a pharmacy located in, or having a con-
 25 tract with, a long-term care facility shall have not

1 less than 30 days (but not more than 90 days) to
 2 submit claims to the sponsor for reimbursement
 3 under the plan.”.

4 (2) SUBMISSION OF CLAIMS TO MA-PD
 5 PLANS.—Section 1857(f)(3) of the Social Security
 6 Act, as added by section 3(b), is amended by adding
 7 at the end the following new subparagraph:

8 “(B) SUBMISSION OF CLAIMS BY PHAR-
 9 MACIES LOCATED IN OR CONTRACTING WITH
 10 LONG-TERM CARE FACILITIES.—Section
 11 1860D-12(b)(5).”.

12 (b) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to plan years beginning on or after
 14 January 1, 2007.

15 **SEC. 8. ASSURING PHARMACY ACCESS BY REQUIRING REA-**
 16 **SONABLE PAYMENT OF PHARMACIES.**

17 (a) REASONABLE DISPENSING FEES REQUIRED.—

18 (1) REQUIREMENT FOR PRESCRIPTION DRUG
 19 PLANS.—Section 1860D-12(b) of the Social Secu-
 20 rity Act (42 U.S.C. 1395w-104(b)(1)), as amended
 21 by section 7(a)(1), is amended by adding at the end
 22 the following new paragraph:

23 “(6) REASONABLE DISPENSING FEES RE-
 24 QUIRED.—

1 “(A) REASONABLE DISPENSING FEE RE-
2 QUIRED.—In the case of plan years beginning
3 on or after January 1, 2009, subject to sub-
4 paragraph (E), each contract entered into with
5 a PDP sponsor under this section with respect
6 to a prescription drug plan offered by such
7 sponsor shall provide that such sponsor shall
8 pay a reasonable dispensing fee (as determined
9 under subparagraph (B)) for covered part D
10 drugs dispensed through a participating phar-
11 macy (other than such a pharmacy that dis-
12 penses drugs by mail order only or is located in,
13 or contracts with, a long-term care facility).

14 “(B) ESTABLISHMENT OF REASONABLE
15 DISPENSING FEES FOR PRESCRIPTION DRUG
16 PLANS.—

17 “(i) IN GENERAL.—The Secretary
18 shall establish, on an expedited basis and
19 using a negotiated rulemaking process
20 under subchapter III of chapter 5 of title
21 5, United States Code, reasonable dis-
22 pensing fees for covered part D drugs dis-
23 pensed through participating pharmacies.

24 “(ii) CONSIDERATION OF OIG REC-
25 COMMENDATIONS.—In establishing such

1 reasonable dispensing fees, the Secretary
2 shall consider the recommendations in-
3 cluded in the report submitted under sec-
4 tion 8(b)(2) of the Pharmacy Access Im-
5 provement (PhAIm) Act of 2006 with re-
6 spect to the geographic area in which a
7 prescription drug plan is offered, including
8 any adjustment recommended in such re-
9 port for dispensing an extended supply of
10 a covered part D drug.

11 “(iii) PUBLICATION OF NOTICE.—In
12 carrying out the rulemaking process under
13 this subparagraph, the Secretary, after
14 consultation with pharmacists, pharmacies
15 (including long-term care, independent,
16 chain, and mass market retail pharmacies),
17 part D eligible individuals, beneficiary ad-
18 vocates, PDP sponsors of prescription drug
19 plans, Medicare Advantage organizations
20 offering MA–PD plans, and any other in-
21 terested parties the Secretary determines
22 appropriate, shall publish the notice pro-
23 vided under section 564(a) of title 5,
24 United States Code, by not later than 60
25 days after the date of enactment of the

1 Pharmacy Access Improvement (PhAIIm)
2 Act of 2006.

3 “(iv) TARGET DATE FOR PUBLICA-
4 TION OF RULE.—As part of the notice pro-
5 vided under clause (iii), and for purposes
6 of this subparagraph, the ‘target date for
7 publication’ (referred to in section
8 564(a)(5) of such title) shall be March 1,
9 2008.

10 “(v) ABBREVIATED PERIOD FOR SUB-
11 MISSION OF COMMENTS.—In applying sec-
12 tion 564(e) of such title under this sub-
13 paragraph, ‘15 days’ shall be substituted
14 for ‘30 days’.

15 “(vi) APPOINTMENT OF NEGOTIATED
16 RULEMAKING COMMITTEE AND
17 FACILITATOR.—The Secretary shall pro-
18 vide for—

19 “(I) the appointment of a nego-
20 tiated rulemaking committee under
21 section 565(a) of such title by not
22 later than 20 days after the end of
23 the comment period provided for
24 under section 564(e) of such title (as
25 shortened under clause (v)); and

1 “(II) the nomination of a
2 facilitator under section 566(c) of
3 such title by not later than 10 days
4 after the date of appointment of the
5 committee.

6 “(vii) PRELIMINARY COMMITTEE RE-
7 PORT.—The negotiated rulemaking com-
8 mittee appointed under clause (vi)(I) shall
9 report to the Secretary, by not later than
10 December 1, 2007, regarding the commit-
11 tee’s progress on achieving a consensus
12 with regard to the rulemaking proceeding
13 and whether such consensus is likely to
14 occur before 1 month before the target
15 date for publication of the rule. If the com-
16 mittee reports that the committee has
17 failed to make significant progress towards
18 such consensus or is unlikely to reach such
19 consensus by the target date, the Secretary
20 may terminate such process and provide
21 for the publication of a rule under this
22 subsection through such other methods as
23 the Secretary may provide.

24 “(viii) FINAL COMMITTEE REPORT.—
25 If the committee is not terminated under

1 clause (vii), the rulemaking committee
2 shall submit a report containing a pro-
3 posed rule by not later than 1 month be-
4 fore the target date of publication.

5 “(ix) INTERIM, FINAL EFFECT.—The
6 Secretary shall publish a rule under this
7 subparagraph in the Federal Register by
8 not later than the target date of publica-
9 tion. Such rule shall be effective and final
10 immediately on an interim basis, but is
11 subject to a change and revision after pub-
12 lic notice and opportunity for a period (of
13 not less than 60 days) for public comment.
14 In connection with such rule, the Secretary
15 shall specify the process for the timely re-
16 view and approval of contracts with PDP
17 sponsors of prescription drug plans to be
18 certified as paying reasonable dispensing
19 fees for covered part D drugs dispensed
20 through participating pharmacies pursuant
21 to such rules and consistent with this sub-
22 paragraph.

23 “(x) PUBLICATION OF RULE AFTER
24 PUBLIC COMMENT.—The Secretary shall
25 provide for consideration of such comments

1 and republication of such rule by not later
2 than 1 year after the target date of publi-
3 cation.

4 “(C) ANNUAL REVIEW.—The Secretary
5 shall annually review the rule published under
6 subparagraph (C) and revise such rule as ap-
7 propriate based on the following considerations:

8 “(i) Any reasonable costs associated
9 with a pharmacist’s time in—

10 “(I) checking for information
11 about an individual’s coverage; and

12 “(II) performing necessary clin-
13 ical review and quality assurance ac-
14 tivities.

15 “(ii) Costs incurred by the pharmacist
16 that are associated with—

17 “(I) the measurement or mixing
18 of a covered part D drug;

19 “(II) filling the container for
20 such a drug;

21 “(III) physically providing the
22 completed prescription to an indi-
23 vidual enrolled in such a plan;

24 “(IV) delivery;

25 “(V) special packaging;

1 “(VI) overhead related to the fa-
2 cility and its maintenance, and the
3 equipment necessary to operate the
4 pharmacy, including the salaries of
5 pharmacists and other pharmacy
6 workers; and

7 “(VII) geographic factors that
8 impact operational costs.

9 “(iii) The reasonable variation in
10 costs described in clause (ii) based on
11 whether the pharmacist is dispensing a
12 standard or extended supply of a covered
13 part D drug.

14 “(iv) The annual National Industry-
15 Specific Occupational Employment and
16 Wage Estimates published by the Bureau
17 of Labor Statistics of the Department of
18 Labor, as determined with respect to phar-
19 macists.

20 “(D) SPECIAL RULE FOR PLAN YEAR
21 2008.—In the case of the plan year beginning on
22 January 1, 2008, subject to subparagraph (E),
23 each contract entered into with a PDP sponsor
24 under this section with respect to a prescription
25 drug plan offered by such sponsor shall provide

1 that such sponsor shall pay a reasonable dis-
2 pensing fee for covered part D drugs dispensed
3 through a participating pharmacy (other than
4 such a pharmacy that dispenses drugs by mail
5 order only or is located in, or contracts with, a
6 long-term care facility) based on the following
7 considerations:

8 “(i) Any reasonable costs associated
9 with a pharmacist’s time in—

10 “(I) checking for information
11 about an individual’s coverage; and

12 “(II) performing necessary clin-
13 ical review and quality assurance ac-
14 tivities.

15 “(ii) Costs incurred by the pharmacist
16 that are associated with—

17 “(I) the measurement or mixing
18 of a covered part D drug;

19 “(II) filling the container for
20 such a drug;

21 “(III) physically providing the
22 completed prescription to an indi-
23 vidual enrolled in such a plan;

24 “(IV) delivery;

25 “(V) special packaging;

1 “(VI) overhead related to the fa-
2 cility and its maintenance, and the
3 equipment necessary to operate the
4 pharmacy, including the salaries of
5 pharmacists and other pharmacy
6 workers; and

7 “(VII) geographic factors that
8 impact operational costs.

9 “(iii) The reasonable variation in
10 costs described in clause (ii) based on
11 whether the pharmacist is dispensing a
12 standard or extended supply of a covered
13 part D drug.

14 “(E) MINIMUM DISPENSING FEES FOR
15 PARTICIPATING PHARMACIES.—In the case of a
16 PDP sponsor of a prescription drug plan that
17 sets separate rates for in-network pharmacies
18 based on whether the pharmacy is a preferred
19 or non-preferred pharmacy (or any designation
20 other than preferred or any other distinction
21 between or among pharmacies with respect to
22 participation status), the dispensing fee estab-
23 lished by such sponsor for a participating phar-
24 macy that is not so designated as a preferred
25 or non-preferred pharmacy shall be at a rate

1 that is not less than the rate at which the PDP
2 sponsor reimburses such non-preferred phar-
3 macies.”.

4 (2) REQUIREMENT FOR MA-PD PLANS.—Sec-
5 tion 1857(f)(3) of the Social Security Act, as
6 amended by section 7(a)(2), is amended by adding
7 at the end the following new subparagraph:

8 “(C) REASONABLE DISPENSING FEES RE-
9 QUIRED.—Section 1860D-12(b)(6).”.

10 (b) OIG STUDY AND REPORT ON REASONABLE DIS-
11 PENSING FEES.—

12 (1) STUDY.—The Inspector General of the De-
13 partment of Health and Human Services shall con-
14 duct an analysis of the cost of dispensing covered
15 part D drugs (as defined in section 1860D-2(e) of
16 the Social Security Act (42 U.S.C. 1395w-102(e))
17 under a prescription drug plan under part D of title
18 XVIII or an MA-PD plan under part C of such title
19 that takes into consideration the following:

20 (A) Any reasonable costs associated with a
21 pharmacist’s time in—

22 (i) checking for information about an
23 individual’s coverage; and

24 (ii) performing necessary clinical re-
25 view and quality assurance activities.

1 (B) Costs incurred by the pharmacist that
2 are associated with—

3 (i) the measurement or mixing of a
4 covered part D drug;

5 (ii) filling the container for such a
6 drug;

7 (iii) physically providing the com-
8 pleted prescription to an individual en-
9 rolled in such a plan;

10 (iv) delivery;

11 (v) special packaging;

12 (vi) overhead related to the facility
13 and its maintenance, and the equipment
14 necessary to operate the pharmacy, includ-
15 ing the salaries of pharmacists and other
16 pharmacy workers; and

17 (vii) geographic factors that impact
18 operational costs.

19 (C) The reasonable variation in costs de-
20 scribed in subparagraph (B) based on whether
21 the pharmacist is dispensing a standard or ex-
22 tended supply of a covered part D drug.

23 (D) The reasonable variation in dispensing
24 fees, taking into consideration the costs de-
25 scribed in subparagraphs (A), (B), and (C),

1 that is sufficient to encourage the use of cov-
2 ered generic alternative therapies.

3 (2) REPORT.—By not later than March 1,
4 2007, the Inspector General of the Department of
5 Health and Human Services shall submit a report to
6 the Secretary of Health and Human Services on the
7 study conducted under paragraph (1). The report
8 shall include recommendations on the following:

9 (A) What the minimum reasonable dis-
10 pensing fee should be with respect to a pre-
11 scription drug plan under part D of title XVIII
12 or an MA–PD plan under part C of such title
13 determined with respect to the area in which
14 such plan is offered, including with respect to
15 each PDP region (as determined under section
16 1860D–11(a)(2) of the Social Security Act (42
17 U.S.C. 1395w–111(a)(2)) and each MA region
18 (as determined under section 1858(a) of such
19 Act (42 U.S.C. 1395w–27(a))).

20 (i) The extent to which the dispensing
21 fee described in subparagraph (A) can rea-
22 sonably be increased when an extended
23 supply of a covered part D drug (as so de-
24 fined) is dispensed (depending on the num-

1 ber of days worth of such a drug being
2 supplied to the beneficiary).

3 (c) ENCOURAGING UTILIZATION OF GENERIC
4 DRUGS.—Section 1860D–4(b) of the Social Security Act
5 (42 U.S.C. 1395w–104(b)), as amended by section 2(d),
6 is amended by adding at the end the following new para-
7 graph:

8 “(5) ENCOURAGING UTILIZATION OF GENERIC
9 DRUGS.—With respect to prescriptions filled on or
10 after January 1, 2008, the PDP sponsor of a pre-
11 scription drug plan shall encourage generic utiliza-
12 tion by paying an increased dispensing fee for ge-
13 neric drugs.”.

14 (d) REGULAR UPDATE OF PRESCRIPTION DRUG
15 PRICING STANDARD REQUIRED.—

16 (1) REQUIREMENT FOR PRESCRIPTION DRUG
17 PLANS.—Section 1860D–12(b) of the Social Secu-
18 rity Act (42 U.S.C. 1395w–104(b)(1)), as amended
19 by subsection (a), is amended by adding at the end
20 the following new paragraph:

21 “(7) REGULAR UPDATE OF PRESCRIPTION
22 DRUG PRICING STANDARD.—If the PDP sponsor of
23 a prescription drug plan uses a standard for reim-
24 bursement of pharmacies based on the cost of a
25 drug, each contract entered into with such sponsor

1 under this section with respect to the plan shall pro-
2 vide that the sponsor shall update such standard not
3 less frequently than every 7 days, beginning with an
4 initial update on January 1 of each year, to accu-
5 rately reflect the market price of acquiring the
6 drug.”.

7 (2) REQUIREMENT FOR MA-PD PLANS.—Sec-
8 tion 1857(f)(3) of the Social Security Act, as
9 amended by subsection (a)(2), is amended by adding
10 at the end the following new subparagraph:

11 “(D) REGULAR UPDATE OF PRESCRIPTION
12 DRUG PRICING STANDARD.—Section 1860D-
13 12(b)(7).”.

14 (3) EFFECTIVE DATE.—The amendments made
15 by this subsection shall apply to plan years begin-
16 ning on or after January 1, 2007.

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