

109TH CONGRESS
1ST SESSION

S. 778

To amend titles XVIII and XIX of the Social Security Act to require a pharmacy that receives payments or has contracts under the medicare and medicaid programs to ensure that all valid prescriptions are filled without unnecessary delay or interference.

IN THE SENATE OF THE UNITED STATES

APRIL 13, 2005

Mrs. BOXER (for herself and Mr. LAUTENBERG) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act to require a pharmacy that receives payments or has contracts under the medicare and medicaid programs to ensure that all valid prescriptions are filled without unnecessary delay or interference.

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 Consumer
5 Protection Act of 2005”.

1 **SEC. 2. MEDICARE PHARMACY REQUIREMENTS.**

2 (a) IN GENERAL.—Title XVIII of the Social Security
3 Act (42 U.S.C. 1395 et seq.) is amended by adding at
4 the end the following new section:

5 “PHARMACY REQUIREMENTS

6 “SEC. 1898. (a) REQUIREMENTS.—No payment (as
7 defined in subsection (b)(1)) may be made to a pharmacy
8 unless the pharmacy complies with the following require-
9 ments:

10 “(1) VALID PRESCRIPTIONS FILLED.—The
11 pharmacy ensures that each valid prescription is
12 filled without unnecessary delay or other inter-
13 ference, consistent with the normal timeframe for
14 filling prescriptions.

15 “(2) PRESCRIBED ITEM NOT IN STOCK.—The
16 pharmacy ensures that, if the prescribed item is not
17 in the pharmacy’s stock, the pharmacy will order
18 such item without unnecessary delay or, if the pa-
19 tient prefers, the pharmacy will transfer the pre-
20 scription to a local pharmacy of the patient’s choice
21 or return the prescription to the patient, at the pa-
22 tient’s request.

23 “(b) DEFINITIONS.—For purposes of this section:

24 “(1) PAYMENT.—For purposes of this section
25 the term ‘payment’ means either of the following:

26 “(A) Direct payment to a pharmacy.

1 “(B) Payment to a pharmacy through a
2 contract with a PDP sponsor offering a pre-
3 scription drug plan, an MA organization offer-
4 ing an MA–PD plan, or a fallback prescription
5 drug plan.

6 “(2) PRESCRIBED ITEM.—The term ‘prescribed
7 item’ means a drug or device approved by the Food
8 and Drug Administration under section 505 of the
9 Federal Food, Drug, and Cosmetic Act (21 U.S.C.
10 355), or a biological product licensed under section
11 351 of the Public Health Services Act (42 U.S.C.
12 238 et seq.).

13 “(3) VALID PRESCRIPTION.—The term ‘valid
14 prescription’ means a prescription issued by a li-
15 censed health care provider for a prescribed item (as
16 defined in paragraph (2)).

17 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-
18 tion shall prohibit a pharmacy from refusing to dispense
19 a prescribed item, in accordance with standard pharmacy
20 practice, if there is a valid medical concern that such pre-
21 scribed item will cause problems due to therapeutic dupli-
22 cations, drug-disease contraindications, drug interactions
23 (including serious interactions with prescription or over-
24 the-counter medications), incorrect dosage or duration of
25 drug treatment, drug-allergy interactions, or drug abuse

1 or misuse. Any refusal to dispense a prescribed item must
2 be based on generally accepted practice among health care
3 providers.”.

4 (b) CONFORMING AMENDMENT.—Section 1860D–
5 4(b)(1)(A) of the Social Security Act (42 U.S.C. 1395w–
6 104(b)(1)(A)) is amended by adding “, such terms and
7 conditions shall require that the pharmacy complies with
8 the requirements of section 1898” before the period at the
9 end.

10 **SEC. 3. MEDICAID PHARMACY REQUIREMENTS.**

11 Section 1902(a)(23) of the Social Security Act (42
12 U.S.C. 1396a(a)(23)) is amended—

13 (1) by striking “and (B)” and inserting “(B)”;

14 and

15 (2) by inserting the following before the semi-
16 colon at the end: “, and (C) any pharmacy that pro-
17 vides services to any individual eligible for medical
18 assistance shall comply with the requirements of sec-
19 tion 1898”.

20 **SEC. 4. EFFECTIVE DATE.**

21 The amendments made by this act shall apply to pre-
22 scriptions issued or filled on or after January 1, 2006.

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