

110TH CONGRESS
2D SESSION

H. R. 6359

To amend title XVIII of the Social Security Act to enhance beneficiary protections under parts C and D of the Medicare Program.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2008

Mrs. BIGGERT introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 enhance beneficiary protections under parts C and D of the Medicare Program.

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 “Medicare Beneficiary
5 Protection Act of 2008”.

6 **SEC. 2. MEDICARE PLAN COMPLAINT SYSTEM.**

7 (a) SYSTEM.—Section 1808 of the Social Security
8 Act (42 U.S.C. 1395b–9) is amended—

1 (1) in subsection (c)(2)—

2 (A) in subparagraph (B)(iii), by striking
3 “adjustment; and” and inserting “adjust-
4 ment);”;

5 (B) in subparagraph (C), by striking the
6 period at the end and inserting “; and”; and

7 (C) by adding at the end the following new
8 subparagraph:

9 “(D) develop and maintain the plan com-
10 plaint system under subsection (d).”; and

11 (2) by adding at the end the following new sub-
12 section:

13 “(d) PLAN COMPLAINT SYSTEM.—

14 “(1) SYSTEM.—

15 “(A) IN GENERAL.—The Secretary shall
16 develop and maintain a plan complaint system,
17 (in this subsection referred to as the ‘system’)
18 to—

19 “(i) collect and maintain information
20 on plan complaints;

21 “(ii) track plan complaints from the
22 date the complaint is logged into the sys-
23 tem through the date the complaint is re-
24 solved; and

1 “(iii) otherwise improve the process
2 for reporting plan complaints.

3 “(B) TIMEFRAME.—The Secretary shall
4 have the system in place by not later than the
5 date that is 6 months after the date of enact-
6 ment of this subsection.

7 “(C) PLAN COMPLAINT DEFINED.—In this
8 subsection, the term ‘plan complaint’ means a
9 complaint that is received (including by tele-
10 phone, letter, e-mail, or any other means) by
11 the Secretary (including by a regional office or
12 the Medicare Beneficiary Ombudsman) from a
13 Medicare Advantage eligible individual or a
14 Part D eligible individual (or an individual rep-
15 resenting such an individual) regarding Medi-
16 care Advantage organizations, Medicare Advan-
17 tage plans, prescription drug plan sponsors, or
18 prescription drug plans, including complaints
19 relating to marketing, enrollment, covered
20 drugs, premiums and cost-sharing, and partici-
21 pating providers.

22 “(2) PROCESS CRITERIA.—In developing the
23 system, the Secretary shall establish a process for
24 reporting plan complaints. Such process shall meet
25 the following criteria:

1 “(A) ACCESSIBLE.—The process is widely
2 known and easy to use.

3 “(B) INVESTIGATIVE CAPACITY.—The
4 process involves the appropriate experts, re-
5 sources, and methods to assess complaints and
6 determine whether they reflect an underlying
7 pattern.

8 “(C) INTERVENTION AND FOLLOW-
9 THROUGH.—The process triggers appropriate
10 interventions and monitoring based on substan-
11 tiated complaints.

12 “(D) QUALITY IMPROVEMENT ORIENTA-
13 TION.—The process guides quality improve-
14 ment.

15 “(E) RESPONSIVENESS.—The process rou-
16 tinely provides consistent, clear, and substantive
17 responses to complaints.

18 “(F) TIMELINES.—Each process step is
19 completed within a reasonable, established time
20 frame, and mechanisms exist to deal quickly
21 with complaints of an emergency nature requir-
22 ing immediate attention.

23 “(G) OBJECTIVE.—The process is unbi-
24 ased, balancing the rights of each party.

1 “(H) PUBLIC ACCOUNTABILITY.—The
2 process makes complaint information available
3 to the public.

4 “(3) STANDARD DATA REPORTING REQUIRE-
5 MENTS.—

6 “(A) IN GENERAL.—The Secretary shall
7 establish standard data reporting requirements
8 for reporting plan complaints under the system.

9 “(B) MODEL ELECTRONIC COMPLAINT
10 FORM.—The Secretary shall develop a model
11 electronic complaint form to be used for report-
12 ing plan complaints under the system. Such
13 form shall be prominently displayed on the
14 front page of the Medicare.gov Internet website
15 and on the Internet website of the Medicare
16 Beneficiary Ombudsman.

17 “(4) ALL COMPLAINTS REQUIRED TO BE
18 LOGGED INTO THE SYSTEM.—Every plan complaint
19 shall be logged into the system.

20 “(5) CASEWORK NOTATIONS.—The system shall
21 provide for the inclusion of any casework notations
22 throughout the complaint process on the record of a
23 plan complaint.

1 “(6) MEDICARE BENEFICIARY OMBUDSMAN.—
2 The Secretary shall carry out this subsection acting
3 through the Medicare Beneficiary Ombudsman.”.

4 (b) FUNDING.—There are authorized to be appro-
5 priated such sums as may be necessary for the costs of
6 carrying out section 1808(d) of the Social Security Act,
7 as added by subsection (a).

8 (c) REPORTS.—

9 (1) SECRETARY.—

10 (A) ONGOING STUDY.—The Medicare Ben-
11 eficiary Ombudsman (under subsection (c) of
12 section 1808) of the Social Security Act (42
13 U.S.C. 1395b–9) shall conduct an ongoing
14 study of the plan complaint system established
15 under subsection (d) of such section (as added
16 by subsection (a)), in this subsection referred to
17 as the “system”. Such study shall include an
18 analysis of—

19 (i) the numbers and types of com-
20 plaints reported under the system;

21 (ii) geographic variations in such com-
22 plaints;

23 (iii) the timeliness of agency or plan
24 responses to such complaints; and

25 (iv) the resolution of such complaints.

1 (B) QUARTERLY REPORTS.—Not later
2 than 6 months after the implementation of the
3 system, and every 3 months thereafter, the Sec-
4 retary of Health and Human Services shall sub-
5 mit to Congress a report on the study con-
6 ducted under subparagraph (A), together with
7 recommendations for such legislation and ad-
8 ministrative actions as the Secretary determines
9 appropriate.

10 (2) INSPECTOR GENERAL.—The Inspector Gen-
11 eral of the Department of Health and Human Serv-
12 ices shall conduct an evaluation of the system. Not
13 later than 1 year after the implementation of the
14 system, the Inspector General shall submit to Con-
15 gress a report on such evaluation, together with rec-
16 ommendations for such legislation and administra-
17 tive actions as the Inspector General determines ap-
18 propriate.

19 **SEC. 3. REQUIREMENT FOR NON-NETWORK MEDICARE AD-**
20 **VANTAGE PRIVATE FEE-FOR-SERVICE PLANS**
21 **TO DISCLOSE PROVIDERS THAT REFUSE TO**
22 **ACCEPT ENROLLEES IN THE PLAN.**

23 (a) IN GENERAL.—Section 1852(c)(1) of the Social
24 Security Act (42 U.S.C. 1395w-22(c)(1)) is amended is

1 amended by adding at the end the following new subpara-
2 graph:

3 “(J) In the case of a Medicare Advantage
4 private fee-for-service plan that meets the ac-
5 cess standards under subsection (d)(4), in
6 whole or in part, through the establishment of
7 payment rates meeting the requirements under
8 subparagraph (A) of such subsection rather
9 than through entering into written contracts as
10 provided for under subparagraph (B) of such
11 subsection, a list of providers in the service area
12 of the plan who, during the previous 12
13 months, have refused to accept enrollees in the
14 plan pursuant to the deeming provisions under
15 subsection (j)(6).”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 subsection (a) shall take effect on the date that is 90 days
18 after the date of enactment of this Act.

19 **SEC. 4. PROHIBITION ON PROVIDING CERTAIN INDUCE-**
20 **MENTS AND ON COLD-CALLING, CROSS-SELL-**
21 **ING, AND UP-SELLING IN THE MARKETING OF**
22 **MA PLANS AND PRESCRIPTION DRUG PLANS.**

23 (a) MEDICARE ADVANTAGE PROGRAM.—Section
24 1851(h)(4) of the Social Security Act (42 U.S.C. 1395w-
25 21(h)(4)) is amended—

1 (1) in subparagraph (A)—

2 (A) by inserting “or provide for meals or
3 other items of monetary value” after “rebates”;
4 and

5 (B) by striking “, and” at the end and in-
6 serting a semicolon;

7 (2) in subparagraph (B), by striking the period
8 at the end and inserting “; and”; and

9 (3) by adding at the end the following new sub-
10 paragraph:

11 “(C) shall not permit a Medicare Advan-
12 tage organization to—

13 “(i) market enrollment in a Medicare
14 Advantage plan by telemarketing or in-
15 home solicitation;

16 “(ii) engage in the cross-selling of
17 non-Medicare products or services with
18 products or services offered by a Medicare
19 Advantage plan; or

20 “(iii) engage in up-selling from pre-
21 scription drug plans under part D to Medi-
22 care Advantage plans,

23 except that in no case shall the prohibitions
24 under this subparagraph be construed as pro-
25 hibiting such telemarketing, in-home sollicita-

1 tion, cross-selling, or up-selling that is con-
2 ducted at the request of the individual.”.

3 (b) **MEDICARE PRESCRIPTION DRUG PROGRAM.**—
4 Section 1860D–4 of the Social Security Act (42 U.S.C.
5 1395w–104) is amended by adding at the end the fol-
6 lowing new subsection:

7 “(1) **PROHIBITION ON CERTAIN MARKETING PRAC-**
8 **TICES.**—The limitations on marketing practices under sec-
9 tion 1851(h)(4)(C) shall apply to a PDP sponsor and a
10 prescription drug plan in the same manner as such limita-
11 tions apply to Medicare Advantage organizations and
12 Medicare Advantage plans.”.

13 (c) **EFFECTIVE DATE.**—The amendments made by
14 this section shall take effect on the date that is 90 days
15 after the date of enactment of this Act.

16 **SEC. 5. ENROLLMENT IMPROVEMENTS UNDER MEDICARE**
17 **PARTS C AND D.**

18 (a) **SPECIAL ELECTION PERIOD DURING FIRST 60**
19 **DAYS OF ENROLLMENT IN A NEW PLAN.**—

20 (1) **IN GENERAL.**—Section 1851(e)(4) of the
21 Social Security Act (42 U.S.C. 1395w(e)(4)) is
22 amended—

23 (A) in subparagraph (C), by striking “or”
24 at the end;

1 (B) by redesignating subparagraph (D) as
2 subparagraph (E); and

3 (C) by inserting after subparagraph (C)
4 the following new subparagraph:

5 “(D) the individual has been enrolled in
6 such plan for fewer than 60 days; or”.

7 (2) EFFECTIVE DATE.—The amendments made
8 by paragraph (1) shall take effect on the date that
9 is 90 days after the date of enactment of this Act.

10 (b) EXTENSION OF THE ANNUAL, COORDINATED
11 ELECTION PERIOD.—

12 (1) IN GENERAL.—Section 1851(e)(3)(B)(iv) of
13 the Social Security Act (42 U.S.C. 1395w–
14 1(e)(3)(B)(iv)) is amended by striking “November
15 15” and inserting “October 1”.

16 (2) EFFECTIVE DATE.—The amendment made
17 by paragraph (1) shall apply to annual, coordinated
18 election periods beginning after the date of enact-
19 ment of this Act.

20 (c) COORDINATION UNDER PARTS C AND D OF THE
21 CONTINUOUS OPEN ENROLLMENT AND DISENROLLMENT
22 PERIOD FOR THE FIRST 3 MONTHS OF THE YEAR.—

23 (1) IN GENERAL.—Section 1860D–
24 1(b)(1)(B)(iii) of the Social Security Act (42 U.S.C.

1 1395w-101(b)(1)(B)(iii)) is amended by striking “,
2 (C),”.

3 (2) EFFECTIVE DATE.—The amendment made
4 by paragraph (1) shall take effect on January 1,
5 2009.

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