

110TH CONGRESS
1ST SESSION

S. 1827

To amend title XVIII of the Social Security Act to require prompt payment to pharmacies under part D, to restrict pharmacy co-branding on prescription drug cards issued under such part, and to provide guidelines for Medication Therapy Management Services programs offered by prescription drug plans and MA–PD plans under such part.

IN THE SENATE OF THE UNITED STATES

JULY 19, 2007

Mr. COCHRAN (for himself, Mr. PRYOR, and Mr. ENZI) 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 require prompt payment to pharmacies under part D, to restrict pharmacy co-branding on prescription drug cards issued under such part, and to provide guidelines for Medication Therapy Management Services programs offered by prescription drug plans and MA–PD plans under such part.

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 “Pharmacist Access and
5 Recognition in Medicare (PhARM) Act of 2007”.

1 **SEC. 2. PROMPT PAYMENT BY PRESCRIPTION DRUG PLANS**
2 **AND MA-PD PLANS UNDER PART D.**

3 (a) PROMPT PAYMENT BY PRESCRIPTION DRUG
4 PLANS.—Section 1860D–12(b) of the Social Security Act
5 (42 U.S.C. 1395w–112(b)) is amended by adding at the
6 end the following new paragraph:

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

8 “(A) PROMPT PAYMENT.—

9 “(i) IN GENERAL.—Each contract en-
10 tered into with a PDP sponsor under this
11 section with respect to a prescription drug
12 plan offered by such sponsor shall provide
13 that payment shall be issued, mailed, or
14 otherwise transmitted with respect to all
15 clean claims submitted under this part
16 within the applicable number of calendar
17 days after the date on which the claim is
18 received.

19 “(ii) CLEAN CLAIM DEFINED.—In this
20 paragraph, the term ‘clean claim’ means a
21 claim that has no apparent defect or im-
22 propriety (including any lack of any re-
23 quired substantiating documentation) or
24 particular circumstance requiring special
25 treatment that prevents timely payment

1 from being made on the claim under this
2 part.

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

6 “(i) with respect to claims submitted
7 electronically, 14 days; and

8 “(ii) with respect to claims submitted
9 otherwise, 30 days.

10 “(C) INTEREST PAYMENT.—If payment is
11 not issued, mailed, or otherwise transmitted
12 within the applicable number of calendar days
13 (as defined in subparagraph (B)) after a clean
14 claim is received, interest shall be paid at a rate
15 used for purposes of section 3902(a) of title 31,
16 United States Code (relating to interest pen-
17 alties for failure to make prompt payments), for
18 the period beginning on the day after the re-
19 quired payment date and ending on the date on
20 which payment is made.

21 “(D) PROCEDURES INVOLVING CLAIMS.—

22 “(i) IN GENERAL.—A contract entered
23 into with a PDP sponsor under this sec-
24 tion with respect to a prescription drug
25 plan offered by such sponsor shall provide

1 that, not later than 10 days after the date
2 on which a clean claim is submitted, the
3 PDP sponsor shall provide the claimant
4 with a notice that acknowledges receipt of
5 the claim by such sponsor. Such notice
6 shall be considered to have been provided
7 on the date on which the notice is mailed
8 or electronically transferred.

9 “(ii) CLAIM DEEMED TO BE CLEAN.—

10 A claim is deemed to be a clean claim if
11 the PDP sponsor involved does not provide
12 notice to the claimant of any deficiency in
13 the claim within 10 days of the date on
14 which the claim is submitted.

15 “(iii) CLAIM DETERMINED TO NOT BE

16 A CLEAN CLAIM.—

17 “(I) IN GENERAL.—If a PDP

18 sponsor determines that a submitted
19 claim is not a clean claim, the PDP
20 sponsor shall, not later than the end
21 of the period described in clause (ii),
22 notify the claimant of such determina-
23 tion. Such notification shall specify all
24 defects or improprieties in the claim
25 and shall list all additional informa-

1 tion or documents necessary for the
2 proper processing and payment of the
3 claim.

4 “(II) DETERMINATION AFTER
5 SUBMISSION OF ADDITIONAL INFOR-
6 MATION.—A claim is deemed to be a
7 clean claim under this paragraph if
8 the PDP sponsor involved does not
9 provide notice to the claimant of any
10 defect or impropriety in the claim
11 within 10 days of the date on which
12 additional information is received
13 under subclause (I).

14 “(III) PAYMENT OF CLEAN POR-
15 TION OF A CLAIM.—A PDP sponsor
16 shall pay any portion of a claim that
17 would be a clean claim but for a de-
18 fect or impropriety in a separate por-
19 tion of the claim in accordance with
20 subparagraph (A).

21 “(iv) OBLIGATION TO PAY.—A claim
22 submitted to a PDP sponsor that is not
23 paid or contested by the provider within
24 the applicable number of days (as defined
25 in subparagraph (B)) shall be deemed to

1 be a clean claim and shall be paid by the
2 PDP sponsor in accordance with subpara-
3 graph (A).

4 “(v) DATE OF PAYMENT OF CLAIM.—
5 Payment of a clean claim under such sub-
6 paragraph is considered to have been made
7 on the date on which full payment is re-
8 ceived by the provider.

9 “(E) ELECTRONIC TRANSFER OF
10 FUNDS.—A PDP sponsor shall pay all clean
11 claims submitted electronically by electronic
12 transfer of funds.”.

13 (b) PROMPT PAYMENT BY MA–PD PLANS.—Section
14 1857(f) of the Social Security Act (42 U.S.C. 1395w–
15 27(f)) is amended by adding at the end the following new
16 paragraph:

17 “(3) INCORPORATION OF CERTAIN PRESCRIP-
18 TION DRUG PLAN CONTRACT REQUIREMENTS.—The
19 provisions of section 1860D–12(b)(4) shall apply to
20 contracts with a Medicare Advantage organization in
21 the same manner as they apply to contracts with a
22 PDP sponsor offering a prescription drug plan
23 under part D.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to contracts entered into or re-
3 newed on or after the date of enactment of this Act.

4 **SEC. 3. RESTRICTION ON PHARMACY CO-BRANDING ON**
5 **MEDICARE PRESCRIPTION DRUG CARDS**
6 **ISSUED BY PRESCRIPTION DRUG PLANS AND**
7 **MA-PD PLANS.**

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

10 (1) in subsection (b)(2)(A), by striking “The
11 PDP sponsor” and inserting “Subject to subsection
12 (l), the PDP sponsor”; and

13 (2) by adding at the end the following new sub-
14 section:

15 “(l) CO-BRANDING PROHIBITED.—A card that is
16 issued under subsection (b)(2)(A) for use under a pre-
17 scription drug plan offered by a PDP sponsor shall not
18 display the name, brand, or trademark of any pharmacy.”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 this section shall take effect on the date of enactment of
21 this Act and shall apply to all cards regardless of when
22 the card was issued.

1 **SEC. 4. PROVISION OF MEDICATION THERAPY MANAGE-**
2 **MENT SERVICES UNDER PART D.**

3 (a) **PROVISION OF MEDICATION THERAPY MANAGE-**
4 **MENT SERVICES UNDER PART D.—**

5 (1) **IN GENERAL.**—Section 1860D–4(c)(2) of
6 the Social Security Act (42 U.S.C. 1395w–
7 104(c)(2)) is amended—

8 (A) in subparagraph (A)—

9 (i) in clause (i)—

10 (I) by inserting “or other health
11 care provider with advanced training
12 in medication management” after
13 “furnished by a pharmacist”; and

14 (II) by striking “targeted bene-
15 ficiaries described in clause (ii)” and
16 inserting “targeted beneficiaries speci-
17 fied under clause (ii)”; and

18 (ii) by striking clause (ii) and insert-
19 ing the following:

20 “(ii) **TARGETED BENEFICIARIES.**—

21 The Secretary shall specify the population
22 of part D eligible individuals appropriate
23 for services under a medication therapy
24 management program based on the fol-
25 lowing characteristics:

1 “(I) Having a disease state in
2 which evidence-based medicine has
3 demonstrated the benefit of medica-
4 tion therapy management intervention
5 based on objective outcome measures.

6 “(II) Taking multiple covered
7 part D drugs or having a disease state
8 in which a complex combination medi-
9 cation regimen is utilized.

10 “(III) Being identified as likely
11 to incur annual costs for covered part
12 D drugs that exceed a level specified
13 by the Secretary or where acute or
14 chronic decompensation of disease
15 would likely increase expenditures
16 under the Federal Hospital Insurance
17 Trust Fund or the Federal Supple-
18 mentary Medical Insurance Trust
19 Fund under sections 1817 and 1841,
20 respectively, such as through the re-
21 quirement of emergency care or acute
22 hospitalization.”;

23 (B) by striking subparagraph (B) and in-
24 serting the following:

25 “(B) ELEMENTS.—

1 “(i) MINIMUM DEFINED PACKAGE OF
2 SERVICES.—The Secretary shall specify a
3 minimum defined package of medication
4 therapy management services that shall be
5 provided to each enrollee. Such package
6 shall be based on the following consider-
7 ations:

8 “(I) Performing necessary assess-
9 ments of the health status of each en-
10 rollee.

11 “(II) Providing medication ther-
12 apy review to identify, resolve, and
13 prevent medication-related problems,
14 including adverse events.

15 “(III) Increasing enrollee under-
16 standing to promote the appropriate
17 use of medications by enrollees and to
18 reduce the risk of potential adverse
19 events associated with medications,
20 through beneficiary and family edu-
21 cation, counseling, and other appro-
22 priate means.

23 “(IV) Increasing enrollee adher-
24 ence with prescription medication
25 regimens through medication refill re-

1 minders, special packaging, and other
2 compliance programs and other appro-
3 priate means.

4 “(V) Promoting detection of ad-
5 verse drug events and patterns of
6 overuse and underuse of prescription
7 drugs.

8 “(VI) Developing a medication
9 action plan which may alter the medi-
10 cation regimen, when permitted by the
11 State licensing authority. This infor-
12 mation should be provided to, or ac-
13 cessible by, the primary health care
14 provider of the enrollee.

15 “(VII) Monitoring and evaluating
16 the response to therapy and evalu-
17 ating the safety and effectiveness of
18 the therapy, which may include lab-
19 oratory assessment.

20 “(VIII) Providing disease-specific
21 medication therapy management serv-
22 ices when appropriate.

23 “(IX) Coordinating and inte-
24 grating medication therapy manage-
25 ment services within the broader scope

1 of health care management services
2 being provided to each enrollee.

3 “(ii) DELIVERY OF SERVICES.—

4 “(I) PERSONAL DELIVERY.—To
5 the extent feasible, face-to-face inter-
6 action shall be the preferred method
7 of delivery of medication therapy man-
8 agement services.

9 “(II) INDIVIDUALIZED.—Such
10 services shall be patient-specific and
11 individualized and shall be provided
12 directly to the patient by a pharmacist
13 or other health care provider with ad-
14 vanced training in medication man-
15 agement.

16 “(III) DISTINCT FROM OTHER
17 ACTIVITIES.—Such services shall be
18 distinct from any activities related to
19 formulary development and use, gen-
20 eralized patient education and infor-
21 mation activities, and any population-
22 focused quality assurance measures
23 for medication use.

24 “(iii) OPPORTUNITY TO IDENTIFY PA-
25 TIENTS IN NEED OF MEDICATION THERAPY

1 MANAGEMENT SERVICES.—The program
2 shall provide opportunities for health care
3 providers to identify patients who should
4 receive medication therapy management
5 services.”;

6 (C) by striking subparagraph (E) and in-
7 serting the following:

8 “(E) PHARMACY FEES.—

9 “(i) IN GENERAL.—The PDP sponsor
10 of a prescription drug plan shall pay phar-
11 macists and others providing services
12 under the medication therapy management
13 program under this paragraph based on
14 the time and intensity of services provided
15 to enrollees.

16 “(ii) SUBMISSION ALONG WITH PLAN
17 INFORMATION.—Each such sponsor shall
18 disclose to the Secretary upon request the
19 amount of any such payments and shall
20 submit a description of how such payments
21 are calculated along with the information
22 submitted under section 1860D–11(b).
23 Such description shall be submitted at the
24 same time and in a similar manner to the
25 manner in which the information described

1 in paragraph (2) of such section is sub-
2 mitted.”; and

3 (D) by adding at the end the following new
4 subparagraph:

5 “(F) PHARMACY ACCESS REQUIRE-
6 MENTS.—The PDP sponsor of a prescription
7 drug plan shall secure the participation in its
8 network of a sufficient number of retail phar-
9 macies to assure that enrollees have the option
10 of obtaining services under the medication ther-
11 apy management program under this paragraph
12 directly from community-based retail phar-
13 macies.”.

14 (2) EFFECTIVE DATE.—The amendments made
15 by this subsection shall apply to medication therapy
16 management services provided on or after January
17 1, 2009.

18 (b) MEDICATION THERAPY MANAGEMENT DEM-
19 ONSTRATION PROGRAM.—Section 1860D–4(c) of the So-
20 cial Security Act (42 U.S.C. 1395w–104(c)) is amended
21 by adding at the end the following new paragraph:

22 “(3) COMMUNITY-BASED MEDICATION THERAPY
23 MANAGEMENT DEMONSTRATION PROGRAM.—

24 “(A) ESTABLISHMENT.—

1 “(i) IN GENERAL.—By not later than
2 January 1, 2009, the Secretary shall es-
3 tablish a 2-year demonstration program,
4 based on the recommendations of the Best
5 Practices Commission established under
6 subparagraph (B), with both PDP spon-
7 sors of prescription drug plans and Medi-
8 care Advantage Organizations offering
9 MA–PD plans, to examine the impact of
10 medication therapy management furnished
11 by a pharmacist in a community-based or
12 ambulatory-based setting on quality of
13 care, spending under this part, and patient
14 health.

15 “(ii) SITES.—

16 “(I) IN GENERAL.—Subject to
17 subclause (II), the Secretary shall
18 designate not less than 10 PDP spon-
19 sors of prescription drug plans or
20 Medicare Advantage Organizations of-
21 fering MA–PD plans, none of which
22 provide prescription drug coverage
23 under such plans in the same PDP or
24 MA region, respectively, to conduct

1 the demonstration program under this
2 paragraph.

3 “(II) DESIGNATION CONSISTENT
4 WITH RECOMMENDATIONS OF BEST
5 PRACTICES COMMISSION.—The Sec-
6 retary shall ensure that the designa-
7 tion of sites under subclause (I) is
8 consistent with the recommendations
9 of the Best Practices Commission
10 under subparagraph (B)(ii).

11 “(B) BEST PRACTICES COMMISSION.—

12 “(i) ESTABLISHMENT.—The Secretary
13 shall establish a Best Practices Commis-
14 sion composed of representatives from
15 pharmacy organizations, health care orga-
16 nizations, beneficiary advocates, chronic
17 disease groups, and other stakeholders (as
18 determined appropriate by the Secretary)
19 for the purpose of developing a best prac-
20 tices model for medication therapy man-
21 agement.

22 “(ii) RECOMMENDATIONS.—The Com-
23 mission shall submit to the Secretary rec-
24 ommendations on the following:

1 “(I) The minimum number of en-
2 rollees that should be included in the
3 demonstration program, and at each
4 demonstration program site, to deter-
5 mine the impact of medication ther-
6 apy management furnished by a phar-
7 macist in a community-based setting
8 on quality of care, spending under
9 this part, and patient health.

10 “(II) The number of urban and
11 rural sites that should be included in
12 the demonstration program to ensure
13 that prescription drug plans and MA-
14 PD plans offered in urban and rural
15 areas are adequately represented.

16 “(III) A best practices model for
17 medication therapy management to be
18 implemented under the demonstration
19 program under this paragraph.

20 “(C) REPORTS.—

21 “(i) INTERIM REPORT.—Not later
22 than 1 year after the commencement of the
23 demonstration program, the Secretary
24 shall submit to Congress an interim report
25 on such program.

1 “(ii) FINAL REPORT.—Not later than
2 6 months after the completion of the dem-
3 onstration program, the Secretary shall
4 submit to Congress a final report on such
5 program, together with recommendations
6 for such legislation and administrative ac-
7 tion as the Secretary determines appro-
8 priate.

9 “(D) WAIVER AUTHORITY.—The Secretary
10 may waive such requirements of titles XI and
11 XVIII as may be necessary for the purpose of
12 carrying out the demonstration program under
13 this paragraph.”.

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