

110TH CONGRESS
2D SESSION

S. 2687

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

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2008

Ms. SNOWE (for herself and Mr. ROCKEFELLER) 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 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—

9 (1) in subsection (c)(2)—

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

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

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

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

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

12 “(d) PLAN COMPLAINT SYSTEM.—

13 “(1) SYSTEM.—

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

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

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

24 “(iii) otherwise improve the process
25 for reporting plan complaints.

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

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

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

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

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

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

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

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

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

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

23 “(H) PUBLIC ACCOUNTABILITY.—The
24 process makes complaint information available
25 to the public.

1 “(3) STANDARD DATA REPORTING REQUIRE-
2 MENTS.—

3 “(A) IN GENERAL.—The Secretary shall
4 establish standard data reporting requirements
5 for reporting plan complaints under the system.

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

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

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

21 “(6) MEDICARE BENEFICIARY OMBUDSMAN.—
22 The Secretary shall carry out this subsection acting
23 through the Medicare Beneficiary Ombudsman.”.

24 (b) FUNDING.—There are authorized to be appro-
25 priated such sums as may be necessary for the costs of

1 carrying out section 1808(d) of the Social Security Act,
2 as added by subsection (a).

3 (c) REPORTS.—

4 (1) SECRETARY.—

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

14 (i) the numbers and types of com-
15 plaints reported under the system;

16 (ii) geographic variations in such com-
17 plaints;

18 (iii) the timeliness of agency or plan
19 responses to such complaints; and

20 (iv) the resolution of such complaints.

21 (B) QUARTERLY REPORTS.—Not later
22 than 6 months after the implementation of the
23 system, and every 3 months thereafter, the Sec-
24 retary of Health and Human Services shall sub-
25 mit to Congress a report on the study con-

1 ducted under subparagraph (A), together with
2 recommendations for such legislation and ad-
3 ministrative actions as the Secretary determines
4 appropriate.

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

14 **SEC. 3. REQUIREMENT FOR NON-NETWORK MEDICARE AD-**
15 **VANTAGE PRIVATE FEE-FOR-SERVICE PLANS**
16 **TO DISCLOSE PROVIDERS THAT REFUSE TO**
17 **ACCEPT ENROLLEES IN THE PLAN.**

18 (a) IN GENERAL.—Section 1852(c)(1) of the Social
19 Security Act (42 U.S.C. 1395w-22(c)(1)) is amended is
20 amended by adding at the end the following new subpara-
21 graph:

22 “(J) In the case of a Medicare Advantage
23 private fee-for-service plan that meets the ac-
24 cess standards under subsection (d)(4), in
25 whole or in part, through the establishment of

1 payment rates meeting the requirements under
2 subparagraph (A) of such subsection rather
3 than through entering into written contracts as
4 provided for under subparagraph (B) of such
5 subsection, a list of providers in the service area
6 of the plan who, during the previous 12
7 months, have refused to accept enrollees in the
8 plan pursuant to the deeming provisions under
9 subsection (j)(6).”.

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

13 **SEC. 4. PROHIBITION ON PROVIDING CERTAIN INDUCE-**
14 **MENTS AND ON COLD-CALLING, CROSS-SELL-**
15 **ING, AND UP-SELLING IN THE MARKETING OF**
16 **MA PLANS AND PRESCRIPTION DRUG PLANS.**

17 (a) MEDICARE ADVANTAGE PROGRAM.—Section
18 1851(h)(4) of the Social Security Act (42 U.S.C. 1395w-
19 21(h)(4)) is amended—

20 (1) in subparagraph (A)—

21 (A) by inserting “or provide for meals or
22 other items of monetary value” after “rebates”;
23 and

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

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

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

5 “(C) shall not permit a Medicare Advan-
6 tage organization to—

7 “(i) market enrollment in a Medicare
8 Advantage plan by telemarketing or in-
9 home solicitation,

10 “(ii) engage in the cross-selling of
11 non-Medicare products or services with
12 products or services offered by a Medicare
13 Advantage plan; or

14 “(iii) engage in up-selling from pre-
15 scription drug plans under part D to Medi-
16 care Advantage plans,

17 except that in no case shall the prohibitions
18 under this subparagraph be construed as pro-
19 hibiting such telemarketing, in-home solicita-
20 tion, cross-selling, or up-selling that is con-
21 ducted at the request of the individual.”.

22 (b) MEDICARE PRESCRIPTION DRUG PROGRAM.—
23 Section 1860D–4 of the Social Security Act (42 U.S.C.
24 1395w–104) is amended by adding at the end the fol-
25 lowing new subsection:

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

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

10 **SEC. 5. ENROLLMENT IMPROVEMENTS UNDER MEDICARE**

11 **PARTS C AND D.**

12 (a) SPECIAL ELECTION PERIOD DURING FIRST 60
 13 DAYS OF ENROLLMENT IN A NEW PLAN.—

14 (1) IN GENERAL.—Section 1851(e)(4) of the
 15 Social Security Act (42 U.S.C. 1395w(e)(4)) is
 16 amended—

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

19 (B) by redesignating subparagraph (D) as
 20 subparagraph (E); and

21 (C) by inserting after subparagraph (C)
 22 the following new subparagraph:

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

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

4 (b) EXTENSION OF THE ANNUAL, COORDINATED
5 ELECTION PERIOD.—

6 (1) IN GENERAL.—Section 1851(e)(3)(B)(iv) of
7 the Social Security Act (42 U.S.C. 1395w–
8 1(e)(3)(B)(iv)) is amended by striking “November
9 15” and inserting “October 1”.

10 (2) EFFECTIVE DATE.—The amendment made
11 by paragraph (1) shall apply to annual, coordinated
12 election periods beginning after the date of enact-
13 ment of this Act.

14 (c) COORDINATION UNDER PARTS C AND D OF THE
15 CONTINUOUS OPEN ENROLLMENT AND DISENROLLMENT
16 PERIOD FOR THE FIRST 3 MONTHS OF THE YEAR.—

17 (1) IN GENERAL.—Section 1860D–
18 1(b)(1)(B)(iii) of the Social Security Act (42 U.S.C.
19 1395w–101(b)(1)(B)(iii)) is amended by striking “,
20 (C),”.

21 (2) EFFECTIVE DATE.—The amendment made
22 by paragraph (1) shall take effect on January 1,
23 2009.

○