

110TH CONGRESS  
1ST SESSION

# S. 2408

To amend title XVIII of the Social Security Act to require physician utilization of the Medicare electronic prescription drug program.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2007

Mr. KERRY (for himself, Mr. ENSIGN, Ms. STABENOW, and Mr. MARTINEZ) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to require physician utilization of the Medicare electronic prescription drug 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 Electronic  
5 Medication and Safety Protection (E-MEDS) Act of  
6 2007”.

7 **SEC. 2. FINDINGS.**

8 Congress finds the following:

1           (1) Patient safety is an important issue and a  
2 priority among patients, providers, insurers, busi-  
3 nesses, and government entities alike.

4           (2) Adverse drug events are defined by the In-  
5 stitute of Medicine as “any injury due to medica-  
6 tion”.

7           (3) According to the Institute of Medicine, more  
8 than 1.5 million preventable adverse drug events  
9 occur every year in the United States.

10          (4) Studies indicate that at least 530,000 pre-  
11 ventable adverse drug events occur each year among  
12 the Medicare population, and cost the Federal Gov-  
13 ernment upwards of \$887,000,000, or \$1,983 per  
14 person.

15          (5) Electronic prescription drug programs, or e-  
16 prescribing, provide for the electronic transmittal of  
17 prescription information from the prescribing health  
18 care provider to the dispensing pharmacy and phar-  
19 macist.

20          (6) Electronic prescribing provides formulary  
21 and coverage information before a prescription is  
22 written to better inform the patient and prescriber  
23 of lower cost options, including generics.

24          (7) E-prescribing can help to eliminate medical  
25 errors, injuries, hospitalizations, and even death that

1 can result from illegible prescriptions and bad drug  
 2 interactions, in addition to reducing patient medica-  
 3 tion non-adherence.

4 (8) The Institute of Medicine recommends that  
 5 all physicians create a plan to implement and use e-  
 6 prescribing technology by 2010.

7 **SEC. 3. INCENTIVES FOR USE OF E-PRESCRIBING UNDER**  
 8 **MEDICARE.**

9 (a) BONUS PAYMENTS.—Section 1833 of the Social  
 10 Security Act (42 U.S.C. 1395l) is amended by adding at  
 11 the end the following new subsection:

12 “(v) INCENTIVE PAYMENTS FOR PHYSICIAN USE OF  
 13 E-PRESCRIBING.—

14 “(1) ONE-TIME BONUS FOR START-UP COSTS.—

15 “(A) IN GENERAL.—If the Secretary deter-  
 16 mines, based upon coding in claims submitted  
 17 under this part over a duration specified by the  
 18 Secretary, that a physician meets a threshold  
 19 volume or proportion (as specified by the Sec-  
 20 retary) of claims for physicians’ services for in-  
 21 dividuals enrolled under this part that—

22 “(i) are classified (under section  
 23 1848) as evaluation and management serv-  
 24 ices;

1           “(ii) include the making of a prescrip-  
2           tion that could under law be made using  
3           the electronic prescription drug program;  
4           and

5           “(iii) use the electronic prescription  
6           drug program for such prescription,  
7           the Secretary shall make a payment to the phy-  
8           sician, in addition to any other payment under  
9           this part, of the amount specified in subpara-  
10          graph (B). Not more than one payment may be  
11          made under this subsection with respect to any  
12          physician.

13          “(B) AMOUNT.—The payment amount  
14          under subparagraph (A) shall be, in the case of  
15          a physician that meets the conditions of sub-  
16          paragraph (A) for a period that begins dur-  
17          ing—

18                  “(i) 2008 or 2009, \$2,000;

19                  “(ii) 2010 or 2011, \$1,500; or

20                  “(iii) 2012 or a subsequent year,  
21                  \$1,000.

22          “(2) ON-GOING BONUS FOR USE OF E-PRE-  
23          SCRIBING.—

24                  “(A) IN GENERAL.—If the Secretary deter-  
25          mines, based upon coding in claims submitted

1 under this part over a period specified by the  
2 Secretary, that a physician uses the electronic  
3 prescription drug program for prescribing at  
4 least a threshold volume or proportion (as spec-  
5 ified by the Secretary) of claims for physicians'  
6 services for individuals enrolled under this part,  
7 in addition to the amount of payment that  
8 would otherwise be made under this part for  
9 physicians' services by the physician that are  
10 classified as evaluation and management serv-  
11 ices under section 1848, there also shall be paid  
12 to the physician an amount equal to 1 percent  
13 of the allowed charges for such services. In ap-  
14 plying the previous sentence, there shall not be  
15 taken into account claims for prescriptions writ-  
16 ten for controlled substances which may not  
17 under law be prescribed using the electronic  
18 prescription drug program.

19 “(B) APPLICATION TO PHYSICIAN SHORT-  
20 AGE BONUSES.—The additional payment under  
21 this paragraph shall be taken into account in  
22 applying subsections (m) and (u).

23 “(3) AUDITING.—Provisions applicable to the  
24 auditing of claims for payment and enforcement of

1 false claims under this part shall apply to claims for  
 2 payment under this subsection.

3 “(4) ELECTRONIC PRESCRIPTION DRUG PRO-  
 4 GRAM DEFINED.—In this subsection, the term ‘elec-  
 5 tronic prescription drug program’ means the pro-  
 6 gram established under section 1860D–4(e).”.

7 (b) REQUIREMENT FOR USE OF E-PRESCRIBING.—  
 8 Section 1848(a) of such Act (42 U.S.C. 1395w–8(a)) is  
 9 amended by adding at the end the following new para-  
 10 graph:

11 “(5) ADJUSTMENT IN FEE SCHEDULE FOR  
 12 FAILURE TO USE E-PRESCRIBING.—

13 “(A) IN GENERAL.—Subject to subpara-  
 14 graph (B), effective for physicians’ services fur-  
 15 nished on or after January 1, 2011, in the case  
 16 of such services—

17 “(i) that are classified as evaluation  
 18 and management services under this sec-  
 19 tion; and

20 “(ii) in connection with which there  
 21 was one or more prescriptions made that  
 22 could have been made, but were not all  
 23 made, under the electronic prescription  
 24 drug program,

1 the fee schedule amount otherwise applicable  
2 under this section shall be reduced by 10 per-  
3 cent.

4 “(B) WAIVER.—The Secretary may waive  
5 the application of subparagraph (A) until Janu-  
6 ary 1, 2012, or January 1, 2013, as specified  
7 by the Secretary, in cases of demonstrated  
8 hardship or unforeseen circumstances specified  
9 by the Secretary.”.

10 **SEC. 4. REPORTS ON E-PRESCRIBING.**

11 (a) CMS REPORT.—

12 (1) IN GENERAL.—Not later than 2 years after  
13 the date of the enactment of this Act, the Adminis-  
14 trator of the Centers for Medicare & Medicaid Serv-  
15 ices shall submit to Congress a report on progress  
16 on implementing e-prescribing under the Medicare  
17 electronic prescription drug program under section  
18 1860D–4(e) of the Social Security Act (42 U.S.C.  
19 1395w–104(e)).

20 (2) ITEMS INCLUDED.—Such report shall in-  
21 clude information on—

22 (A) the percentage of Medicare physicians  
23 that utilize the electronic prescription drug pro-  
24 gram;

1 (B) the estimated savings resulting from  
2 the use of e-prescribing; and

3 (C) progress on reducing avoidable medical  
4 errors resulting from the use of e-prescribing.

5 (b) GAO REPORT.—

6 (1) IN GENERAL.—Not later than 2 years after  
7 the date of the enactment of this Act, the Comp-  
8 troller General of the United States shall submit to  
9 Congress a report on the impact of implementation  
10 of such program on physicians.

11 (2) ITEMS INCLUDED.—Such report shall in-  
12 clude information on—

13 (A) factors influencing the adopting of e-  
14 prescribing by physicians; and

15 (B) the impact of this Act on physicians  
16 practicing in individual or small group practices  
17 and on physicians practicing in rural areas.

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