

111TH CONGRESS
1ST SESSION

S. 1630

To amend title XVIII of the Social Security Act to improve prescription drug coverage under Medicare part D and to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986, to improve prescription drug coverage under private health insurance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2009

Mr. ROCKEFELLER (for himself and Mr. FRANKEN) 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 improve prescription drug coverage under Medicare part D and to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986, to improve prescription drug coverage under private health insurance, and for other purposes.

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 “Affordable Access to
5 Prescription Medications Act of 2009”.

1 **SEC. 2. MEDICARE PART D PRESCRIPTION DRUG PLANS.**

2 (a) IN GENERAL.—Section 1860D–2(b)(4) of the So-
3 cial Security Act (42 U.S.C. 1395w–102(b)(4)) is amend-
4 ed by adding at the end the following new subparagraph:

5 “(E) ADDITIONAL PROTECTIONS.—

6 “(i) IN GENERAL.—Notwithstanding
7 any other provision of this part, effective
8 for plan years beginning on or after Janu-
9 ary 1, 2011, a PDP sponsor of a prescrip-
10 tion drug plan and an MA organization of-
11 fering an MA–PD plan shall, with respect
12 to any co-payment or coinsurance require-
13 ments applicable to covered part D drugs
14 under the plan, ensure that—

15 “(I) such required co-payment or
16 coinsurance does not exceed the base
17 cost of the covered part D drug (as
18 determined by the Secretary);

19 “(II) such required co-payment
20 or coinsurance does not exceed \$200
21 per month for any single covered part
22 D drug (30-day supply); and

23 “(III) such required co-payment
24 or coinsurance does not exceed, in the
25 aggregate for all covered part D
26 drugs, \$500 per month.

1 “(ii) ADJUSTMENTS.—The amounts
2 described in clauses (II) and (III) of clause
3 (i) shall be annually adjusted to reflect the
4 average of the percentage increase or de-
5 crease in the Consumer Price Index for all
6 urban consumers (U.S. city average) and
7 the percentage increase or decrease in the
8 medical care component of such Consumer
9 Price Index during the calendar year pre-
10 ceding the year for which the adjustment
11 is being made.”.

12 (b) EXPANSION OF EXCEPTIONS PROCESS.—Effec-
13 tive for plan years beginning on or after January 1, 2011,
14 the Secretary shall expand the formulary tier exception re-
15 quest process under sections 423.560 through 423.636 of
16 title 42, Code of Federal Regulations (as in effect on the
17 date of enactment of this Act), to allow individuals en-
18 rolled in a prescription drug plan under part D of title
19 XVIII of the Social Security Act or an MA–PD plan under
20 part C of such title to request an exception for a specialty
21 prescription drug to a plan’s designation of a covered part
22 D drug (as defined in section 1860D–2(e) of such Act (42
23 U.S.C. 1395w–102(e)) as a non-preferred prescription
24 drug.

25 (c) MEDPAC STUDIES AND REPORTS.—

1 (1) STUDY AND REPORT ON THE MEDICARE
2 PART D ANTI-DISCRIMINATION CLAUSE.—

3 (A) STUDY.—The Medicare Payment Advi-
4 sory Commission shall conduct a study on var-
5 ious aspects of the prescription drug program
6 under part D of title XVIII of the Social Secu-
7 rity Act and, to the greatest extent practicable,
8 the interaction of such program with Medicare
9 beneficiary access to covered drugs under part
10 B of such title. Such study shall include the fol-
11 lowing:

12 (i) An analysis of—

13 (I) the use of specialty tiers for
14 covered part D drugs under prescrip-
15 tion drug plans and MA–PD plans;
16 and

17 (II) the effect of such specialty
18 tiers on access to care for Medicare
19 beneficiaries.

20 (ii) Consideration of the mechanisms
21 described in subparagraph (B) in the con-
22 text of the provisions of section 1860D–
23 11(e)(2)(D) of the Social Security Act (42
24 U.S.C. 1395w–111(e)(2)(D)) (in this para-

1 graph referred to as the “Medicare part D
2 anti-discrimination clause”).

3 (B) MECHANISMS DESCRIBED.—The fol-
4 lowing mechanisms are described in this sub-
5 paragraph:

6 (i) The use of specialty tiers for cov-
7 ered part D drugs under prescription drug
8 plans and MA–PD plans.

9 (ii) The application of segmented co-
10 insurance or copayment structures to cov-
11 ered part D drugs based on certain cat-
12 egories of such drugs or diagnoses.

13 (iii) The utilization of other differen-
14 tial benefit structures based on certain
15 conditions and Medicare beneficiaries
16 under prescription drug plans and MA–PD
17 plans, including an analysis of the inter-
18 action between such utilization and the ef-
19 fects of such utilization with the Medicare
20 part D anti-discrimination clause.

21 (C) REPORT.—Not later than 1 year after
22 the date of enactment of this Act, the Medicare
23 Payment Advisory Commission shall submit to
24 Congress a report containing the results of the
25 study conducted under subparagraph (A), to-

1 together with recommendations for such legisla-
 2 tion and administrative action as the Commis-
 3 sion determines appropriate.

4 (D) REVISED GUIDANCE.—Based on the
 5 results of the study conducted under subpara-
 6 graph (A), the Secretary shall issue revised
 7 guidance regarding the use of mechanisms de-
 8 scribed in subparagraph (B) to all PDP spon-
 9 sors offering prescription drug plans under part
 10 D of title XVIII of the Social Security Act and
 11 Medicare Advantage organizations offering
 12 MA–PD plans under part C of such title.

13 (2) STUDY AND REPORT ON COST-SHARING FOR
 14 PRESCRIPTION DRUGS UNDER PARTS B AND D.—

15 (A) STUDY.—The Medicare Payment Advi-
 16 sory Commission shall conduct a study on cost-
 17 sharing for prescription drugs under parts B
 18 and D of title XVIII of the Social Security Act.
 19 Such study shall include an analysis of the im-
 20 pact of eliminating cost-sharing for covered part
 21 D drugs for Medicare beneficiaries who—

22 (i) incur annual out-of-pocket cost-
 23 sharing after the initial coverage limit
 24 under section 1860D–2(b)(3) of such Act
 25 (42 U.S.C. 1395w–102) that exceeds 5

1 percent of the income of the beneficiary (as
2 determined under section 1860D–
3 14(a)(3)(C) of such Act (42 U.S.C.
4 1395w–114(a)(3)(C)); and

5 (ii) do not otherwise qualify for an in-
6 come-related subsidy under section
7 1860D–14(a) of such Act (42 U.S.C.
8 1395w–114(a)) or other extra help or cost-
9 sharing relief.

10 (B) REPORT.—Not later than 6 months
11 after the date of enactment of this Act, the
12 Medicare Payment Advisory Commission shall
13 submit to Congress a report containing the re-
14 sults of the study conducted under subpara-
15 graph (A), together with recommendations for
16 such legislation and administrative action as the
17 Commission determines appropriate.

18 (3) DEFINITIONS.—In this section:

19 (A) COVERED PART D DRUG.—The term
20 “covered part D drug” has the meaning given
21 such term in section 1860D–2(e) of the Social
22 Security Act (42 U.S.C. 1395w–102(e)).

23 (B) MA–PD PLAN.—The term “MA–PD”
24 plan has the meaning given such term in para-

1 graph (9) of section 1860D–41(a) of such Act
2 (42 U.S.C. 1395w–151(a)).

3 (C) MEDICARE ADVANTAGE ORGANIZA-
4 TION.—The term “Medicare Advantage organi-
5 zation” has the meaning given such term in
6 section 1859(a)(1) of such Act (42 U.S.C.
7 1395w–28(a)(1)).

8 (D) PDP SPONSOR.—The term “PDP
9 sponsor” has the meaning given such term in
10 paragraph (13) of such section 1860D–41(a).

11 (E) PRESCRIPTION DRUG PLAN.—The
12 term “prescription drug plan” has the meaning
13 given such term in paragraph (14) of such sec-
14 tion.

15 **SEC. 3. PRIVATE HEALTH INSURANCE.**

16 (a) GROUP HEALTH PLANS.—

17 (1) PUBLIC HEALTH SERVICE ACT AMEND-
18 MENTS.—

19 (A) IN GENERAL.—Subpart 2 of part A of
20 title XXVII of the Public Health Service Act is
21 amended by adding at the end the following
22 new section:

1 **“SEC. 2708. PROVISIONS RELATING TO PRESCRIPTION**
2 **DRUGS.**

3 “(a) IN GENERAL.—A group health plan, and a
4 health insurance issuer offering group health insurance
5 coverage, that provides coverage for prescription drugs
6 shall, with respect to any co-payment or coinsurance re-
7 quirements applicable to such drug coverage, ensure
8 that—

9 “(1) such required co-payment or coinsurance
10 does not exceed the base cost of the prescription
11 drug (as determined by the Secretary);

12 “(2) such required co-payment or coinsurance
13 does not exceed \$200 per month for any single pre-
14 scription drug (30-day supply); and

15 “(3) such required co-payment or coinsurance
16 does not exceed, in the aggregate for all prescription
17 drugs, \$500 per month.

18 “(b) ADJUSTMENTS.—The amounts described in
19 paragraphs (2) and (3) of subsection (a) shall be annually
20 adjusted to reflect the average of the percentage increase
21 or decrease in the Consumer Price Index for all urban con-
22 sumers (U.S. city average) and the percentage increase
23 or decrease in the medical care component of such Con-
24 sumer Price Index during the calendar year preceding the
25 year for which the adjustment is being made.

1 “(c) NOTICE.—A group health plan under this part
2 shall comply with the notice requirement under section
3 714(b) of the Employee Retirement Income Security Act
4 of 1974 with respect to the requirements of this section
5 as if such section applied to such plan.”.

6 (B) CONFORMING AMENDMENT.—Section
7 2723(c) of such Act (42 U.S.C. 300gg-23(c)) is
8 amended by striking “section 2704” and insert-
9 ing “sections 2704 and 2708”.

10 (2) ERISA AMENDMENTS.—

11 (A) IN GENERAL.—Subpart B of part 7 of
12 subtitle B of title I of the Employee Retirement
13 Income Security Act of 1974 is amended by
14 adding at the end the following new section:

15 **“SEC. 715. PROVISIONS RELATING TO PRESCRIPTION**
16 **DRUGS.**

17 “(a) IN GENERAL.—A group health plan, and a
18 health insurance issuer offering group health insurance
19 coverage, that provides coverage for prescription drugs
20 shall, with respect to any co-payment or coinsurance re-
21 quirements applicable to such drug coverage, ensure
22 that—

23 “(1) such required co-payment or coinsurance
24 does not exceed the base cost of the prescription

1 drug (as determined by the Secretary of Health and
2 Human Services);

3 “(2) such required co-payment or coinsurance
4 does not exceed \$200 per month for any single pre-
5 scription drug (30-day supply); and

6 “(3) such required co-payment or coinsurance
7 does not exceed, in the aggregate for all prescription
8 drugs, \$500 per month.

9 “(b) ADJUSTMENTS.—The amounts described in
10 paragraphs (2) and (3) of subsection (a) shall be annually
11 adjusted to reflect the average of the percentage increase
12 or decrease in the Consumer Price Index for all urban con-
13 sumers (U.S. city average) and the percentage increase
14 or decrease in the medical care component of such Con-
15 sumer Price Index during the calendar year preceding the
16 year for which the adjustment is being made.

17 “(c) NOTICE.—A group health plan under this part
18 shall comply with the notice requirement under section
19 714(b) with respect to the requirements of this section as
20 if such section applied to such plan.”.

21 (B) TABLE OF CONTENTS.—The table of
22 contents in section 1 of such Act is amended by
23 inserting after the item relating to section 714
24 the following new item:

“Sec. 715. Provisions relating to prescription drugs.”.

1 (3) INTERNAL REVENUE CODE AMEND-
2 MENTS.—

3 (A) IN GENERAL.—Subchapter B of chap-
4 ter 100 of the Internal Revenue Code of 1986
5 is amended by adding at the end the following
6 new section:

7 **“SEC. 9813. PROVISIONS RELATING TO PRESCRIPTION**
8 **DRUGS.**

9 “(a) IN GENERAL.—A group health plan, and a
10 health insurance issuer offering group health insurance
11 coverage, that provides coverage for prescription drugs
12 shall, with respect to any co-payment or coinsurance re-
13 quirements applicable to such drug coverage, ensure
14 that—

15 “(1) such required co-payment or coinsurance
16 does not exceed the base cost of the prescription
17 drug (as determined by the Secretary of Health and
18 Human Services);

19 “(2) such required co-payment or coinsurance
20 does not exceed \$200 per month for any single pre-
21 scription drug (30-day supply); and

22 “(3) such required co-payment or coinsurance
23 does not exceed, in the aggregate for all prescription
24 drugs, \$500 per month.

1 “(b) ADJUSTMENTS.—The amounts described in
 2 paragraphs (2) and (3) of subsection (a) shall be annually
 3 adjusted to reflect the average of the percentage increase
 4 or decrease in the Consumer Price Index for all urban con-
 5 sumers (U.S. city average) and the percentage increase
 6 or decrease in the medical care component of such Con-
 7 sumer Price Index during the calendar year preceding the
 8 year for which the adjustment is being made.

9 “(c) NOTICE.—A group health plan under this part
 10 shall comply with the notice requirement under section
 11 714(b) of the Employee Retirement Income Security Act
 12 of 1974 with respect to the requirements of this section
 13 as if such section applied to such plan.”.

14 (B) CLERICAL AMENDMENT.—The table of
 15 sections for such subchapter is amended by
 16 adding at the end the following new item:

“Sec. 9813. Provisions relating to prescription drugs.”.

17 (b) INDIVIDUAL HEALTH INSURANCE.—

18 (1) IN GENERAL.—Part B of title XXVII of the
 19 Public Health Service Act is amended by inserting
 20 after section 2752 the following new section:

21 **“SEC. 2754. PROVISIONS RELATING TO PRESCRIPTION**
 22 **DRUGS.**

23 “The provisions of section 2708 shall apply to health
 24 insurance coverage offered by a health insurance issuer
 25 in the individual market in the same manner as they apply

1 to health insurance coverage offered by a health insurance
2 issuer in connection with a group health plan in the small
3 or large group market.”.

4 (2) CONFORMING AMENDMENT.—Section
5 2762(b)(2) of such Act (42 U.S.C. 300gg–62(b)(2))
6 is amended by striking “section 2751” and inserting
7 “sections 2751 and 2754”.

8 (c) APPLICATION TO FEHBP.—The amendments
9 made by this section shall apply to the administration of
10 chapter 89 of title 5, United States Code.

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