

109TH CONGRESS
2^D SESSION

H. R. 5116

To amend title XVIII of the Social Security Act to extend the 2006 initial enrollment period for the Medicare prescription drug benefit by six months, to suspend the late enrollment penalty for such benefit during 2006, to permit Medicare beneficiaries to change enrollment in a prescription drug plan once a year, and to prevent changes in formularies other than at the time of open enrollment periods and only with advance notice.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2006

Mrs. TAUSCHER (for herself, Mr. SMITH of Washington, Mr. DAVIS of Alabama, Mr. KIND, Mrs. MCCARTHY, Mr. INSLEE, Ms. HERSETH, Mr. CROWLEY, Mr. MEEKS of New York, Mr. EMANUEL, Ms. MILLENDER-MCDONALD, Mr. HIGGINS, Ms. HARMAN, Mr. PRICE of North Carolina, Mr. BAIRD, Ms. SCHWARTZ of Pennsylvania, Mr. MCINTYRE, Mr. ENGEL, Mr. ISRAEL, Mr. CHANDLER, Mr. BOSWELL, Ms. LORETTA SANCHEZ of California, Mr. LARSON of Connecticut, Mr. DAVIS of Florida, Mr. MOORE of Kansas, and Ms. HOOLEY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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 extend the 2006 initial enrollment period for the Medicare prescription drug benefit by six months, to suspend the late enrollment penalty for such benefit during 2006, to permit Medicare beneficiaries to change enrollment in a prescription drug plan once a year, and to prevent

changes in formularies other than at the time of open enrollment periods and only with advance notice.

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 “Choice for America’s
 5 Seniors Act of 2006”.

6 **SEC. 2. SIX-MONTH EXTENSION OF 2006 INITIAL ENROLL-**
 7 **MENT PERIOD FOR MEDICARE PRESCRIP-**
 8 **TION DRUG PLANS AND MA PLANS.**

9 (a) IN GENERAL.—Section 1851(e)(3)(B)(iii) of the
 10 Social Security Act (42 U.S.C. 1395w–21(e)(3)(B)(iii)) is
 11 amended by striking “May 15, 2006” and inserting “No-
 12 vember 14, 2006”.

13 (b) EFFECTIVE DATE.—The amendments made by
 14 this section shall take effect as if included in the enact-
 15 ment of the Medicare Prescription Drug, Improvement,
 16 and Modernization Act of 2003 (Public Law 108–173).

17 **SEC. 3. SUSPENSION OF MEDICARE PRESCRIPTION DRUG**
 18 **LATE ENROLLMENT PENALTY DURING 2006.**

19 (a) IN GENERAL.—Section 1860D–13(b)(3)(B) of
 20 the Social Security Act (42 U.S.C. 1395w–113(b)(3)(B))
 21 is amended by inserting “(after December 2006)” after
 22 “any month”.

23 (b) EFFECTIVE DATE.—The amendments made by
 24 this section shall take effect as if included in the enact-

1 ment of the Medicare Prescription Drug, Improvement,
2 and Modernization Act of 2003 (Public Law 108–173).

3 **SEC. 4. CHANGES OF ENROLLMENT IN PRESCRIPTION**
4 **DRUG PLANS AND MA PLANS ALLOWED**
5 **TWICE DURING YEAR.**

6 (a) **ADDITIONAL ELECTION PERMITTED ONCE EACH**
7 **YEAR OUTSIDE OF ANNUAL COORDINATED ELECTION**
8 **PERIOD.**—Section 1851(e)(4) of the Social Security Act
9 (42 U.S.C. 1395w–21(e)(4)) is amended by inserting
10 “once every year, and in addition,” after “make a new
11 election under this section”.

12 (b) **EFFECTIVE DATE.**—The amendment made by
13 subsection (a) shall take effect as of the date of the enact-
14 ment of this Act.

15 **SEC. 5. LIMITATION ON REMOVAL OR CHANGE OF COV-**
16 **ERED PART D DRUGS FROM THE PRESCRIP-**
17 **TION DRUG PLAN FORMULARY; NOTICE OF**
18 **CHANGES IN COVERAGE.**

19 (a) **LIMITATION ON REMOVAL OR CHANGE OF COV-**
20 **ERED PART D DRUGS FROM THE PRESCRIPTION DRUG**
21 **PLAN FORMULARY.**—Section 1860D–4(b)(3)(E) of the
22 Social Security Act (42 U.S.C. 1395w–104(b)(3)(E)) is
23 amended to read as follows:

1 “(E) REMOVING A DRUG FROM FOR-
2 MULARY OR IMPOSING A RESTRICTION OR LIM-
3 TATION ON COVERAGE.—

4 “(i) LIMITATION ON REMOVAL, LIM-
5 TATION, OR RESTRICTION.—

6 “(I) IN GENERAL.—Subject to
7 subclause (II) and clause (ii), begin-
8 ning with 2006, the PDP sponsor of
9 a prescription drug plan may not re-
10 move a covered part D drug from the
11 plan formulary or impose a restriction
12 or limitation on the coverage of such
13 a drug (such as through the applica-
14 tion of a preferred status, usage re-
15 striction, step therapy, prior author-
16 ization, or quantity limitation) other
17 than at the beginning of each plan
18 year except as the Secretary may per-
19 mit to take into account new thera-
20 peutic uses and newly covered part D
21 drugs.

22 “(II) SPECIAL RULE FOR NEWLY
23 ENROLLED INDIVIDUALS.—Subject to
24 clause (ii), in the case of an individual
25 who enrolls in a prescription drug

1 plan on or after the date of enactment
2 of this subparagraph, the PDP spon-
3 sor of such plan may not remove a
4 covered part D drug from the plan
5 formulary or impose a restriction or
6 limitation on the coverage of such a
7 drug (such as through the application
8 of a preferred status, usage restric-
9 tion, step therapy, prior authorization,
10 or quantity limitation) during the pe-
11 riod beginning on the date of such en-
12 rollment and ending on December 31
13 of the immediately succeeding plan
14 year except as the Secretary may per-
15 mit to take into account new thera-
16 peutic uses and newly covered part D
17 drugs.

18 “(ii) EXCEPTIONS TO LIMITATION ON
19 REMOVAL.—Clause (i) shall not apply with
20 respect to a covered part D drug that—

21 “(I) is a brand name drug for
22 which there is a generic drug ap-
23 proved under section 505(j) of the
24 Food and Drug Cosmetic Act (21
25 U.S.C. 355(j)) that is placed on the

1 market during the period in which
2 there are limitations on removal or
3 change in the formulary under sub-
4 clause (I) or (II) of clause (i) if such
5 generic drug is included in the for-
6 mulary without any restriction or limi-
7 tation placed on the coverage of such
8 generic drug other than a restriction
9 or limitation that would be placed on
10 the coverage of the brand name drug
11 during such period without the appli-
12 cation of this clause;

13 “(II) is a brand name drug that
14 goes off-patent during such period;

15 “(III) is a drug for which the
16 Commissioner of Food and Drugs
17 issues a clinical warning that imposes
18 a restriction or limitation on the drug
19 during such period;

20 “(IV) is a drug that the appro-
21 priate pharmacy and therapeutic com-
22 mittee determines, based on evidence
23 from peer-reviewed medical research,
24 to be unsafe or ineffective during such
25 period; or

1 “(V) is any other drug that satis-
2 fies any other requirement determined
3 appropriate by the Secretary.

4 “(iii) NOTICE OF REMOVAL UNDER
5 APPLICATION OF EXCEPTION TO LIMITA-
6 TION.—Not later than 90 days before a
7 PDP sponsor of a prescription drug plan
8 removes a covered part D drug from the
9 plan formulary (or restricts or limits such
10 coverage) under clause (ii), the sponsor
11 shall provide appropriate notice (such as
12 under subsection (a)(3)) of such removal
13 (or restriction or limitation) to the Sec-
14 retary, affected enrollees, physicians, phar-
15 macies, and pharmacists.”.

16 (a) ADVANCE NOTICE REQUIRED FOR CHANGE IN
17 FORMULARY AND OTHER RESTRICTIONS OR LIMITATIONS
18 ON COVERAGE.—

19 (1) IN GENERAL.—Section 1860D–4(a) of the
20 Social Security Act (42 U.S.C. 1395w–104(a)) is
21 amended by adding at the end the following new
22 paragraph:

23 “(5) ANNUAL NOTICE OF CHANGES IN FOR-
24 MULARY AND OTHER RESTRICTIONS OR LIMITATIONS
25 ON COVERAGE.—Each PDP sponsor offering a pre-

1 scription drug plan shall furnish to each enrollee 90
2 days before the time of each annual coordinated
3 election period (referred to in section 1860D–
4 1(b)(1)(B)(iii)) for a plan year a notice of any
5 changes in the formulary or other restrictions or
6 limitations on coverage of a covered part D drug
7 under the plan that will take effect for the plan
8 year.”.

9 (2) EFFECTIVE DATE.—The amendment made
10 by paragraph (1) shall apply to annual coordinated
11 election periods beginning after the date of the en-
12 actment of this Act, except that if this Act is en-
13 acted after September 15, 2006, and before January
14 1, 2007, the notice required under such section shall
15 apply with respect to the annual coordinated election
16 period that begins on November 15, 2006, as of
17 such date (as soon as possible after such date of en-
18 actment) as the Secretary of Health and Human
19 Services shall specify.

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