

109TH CONGRESS
2^D SESSION

H. R. 5182

To amend title XVIII of the Social Security Act to require the sponsor of a prescription drug plan or an organization offering an MA–PD plan to promptly pay claims submitted under part D, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2006

Mr. JONES of North Carolina (for himself, Mr. BERRY, Mr. RANGEL, Mr. MORAN of Kansas, Mr. WEINER, Mr. MARSHALL, Mr. TAYLOR of Mississippi, Mr. JEFFERSON, Mr. ETHERIDGE, Mr. WICKER, Mr. ROSS, Mr. WEXLER, Mr. HOLDEN, Mr. DOYLE, Mr. MOORE of Kansas, Mr. BROWN of Ohio, Mr. ABERCROMBIE, and Mr. ALLEN) 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 require the sponsor of a prescription drug plan or an organization offering an MA–PD plan to promptly pay claims submitted under part D, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fair and Speedy
3 Treatment (FAST) of Medicare Prescription Drug Claims
4 Act of 2006”.

5 **SEC. 2. PROMPT PAYMENT BY MEDICARE PRESCRIPTION**
6 **DRUG PLANS AND MA-PD PLANS UNDER**
7 **PART D.**

8 (a) APPLICATION TO PRESCRIPTION DRUG PLANS.—
9 Section 1860D–12(b) of the Social Security Act (42
10 U.S.C. 1395w–112 (b)) is amended by adding at the end
11 the following new paragraph:

12 “(4) PROMPT PAYMENT OF CLEAN CLAIMS.—
13 “(A) PROMPT PAYMENT.—Each contract
14 entered into with a PDP sponsor under this
15 subsection with respect to a prescription drug
16 plan offered by such sponsor shall provide that
17 payment shall be issued, mailed, or otherwise
18 transmitted with respect to all clean claims sub-
19 mitted under this part within the applicable
20 number of calendar days after the date on
21 which the claim is received.

22 “(B) DEFINITIONS.—In this paragraph:

23 “(i) CLEAN CLAIM.—The term ‘clean
24 claim’ means a claim, with respect to a
25 covered part D drug, that has no apparent
26 defect or impropriety (including any lack

1 of any required substantiating documenta-
2 tion) or particular circumstance requiring
3 special treatment that prevents timely pay-
4 ment from being made on the claim under
5 this part.

6 “(ii) APPLICABLE NUMBER OF CAL-
7 ENDAR DAYS.—The term ‘applicable num-
8 ber of calendar days’ means—

9 “(I) with respect to claims sub-
10 mitted electronically, 14 calendar
11 days; and

12 “(II) with respect to claims sub-
13 mitted otherwise, 30 calendar days.

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

25 “(D) PROCEDURES INVOLVING CLAIMS.—

1 “(i) CLAIMS DEEMED TO BE CLEAN
2 CLAIMS.—

3 “(I) IN GENERAL.—A claim for a
4 covered part D drug shall be deemed
5 to be a clean claim for purposes of
6 this paragraph if the PDP sponsor in-
7 volved does not provide a notification
8 of deficiency to the claimant by the
9 10th day that begins after the date on
10 which the claim is submitted.

11 “(II) NOTIFICATION OF DEFICI-
12 CIENCY.—For purposes of subclause
13 (II), the term ‘notification of defi-
14 ciency’ means a notification that
15 specifies all defects or improprieties in
16 the claim involved and that lists all
17 additional information or documents
18 necessary for the proper processing
19 and payment of the claim.

20 “(ii) PAYMENT OF CLEAN PORTIONS
21 OF CLAIMS.—A PDP sponsor shall, as ap-
22 propriate, pay any portion of a claim for a
23 covered part D drug that would be a clean
24 claim but for a defect or impropriety in a

1 separate portion of the claim in accordance
2 with subparagraph (A).

3 “(iii) OBLIGATION TO PAY.—A claim
4 for a covered part D drug submitted to a
5 PDP sponsor that is not paid or contested
6 by the provider within the applicable num-
7 ber of calendar days (as defined in sub-
8 paragraph (B)) shall be deemed to be a
9 clean claim and shall be paid by the PDP
10 sponsor in accordance with subparagraph
11 (A).

12 “(iv) DATE OF PAYMENT OF CLAIM.—
13 Payment of a clean claim under subpara-
14 graph (A) is considered to have been made
15 on the date on which full payment is re-
16 ceived by the provider.

17 “(E) ELECTRONIC TRANSFER OF
18 FUNDS.—A PDP sponsor shall pay all clean
19 claims submitted electronically by an electronic
20 funds transfer mechanism.”.

21 (b) APPLICATION TO MA-PD PLANS.—Section
22 1857(f) of such Act (42 U.S.C. 1395w-27) is amended
23 by adding at the end the following new paragraph:

24 “(3) INCORPORATION OF CERTAIN PRESCRIP-
25 TION DRUG PLAN CONTRACT REQUIREMENTS.—The

1 provisions of section 1860D–12(b)(4) shall apply to
2 contracts with a Medicare Advantage organization in
3 the same manner as they apply to contracts with a
4 PDP sponsor offering a prescription drug plan
5 under part D.”.

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

9 **SEC. 3. RESTRICTION ON CO-BRANDING.**

10 (a) IN GENERAL.—Section 1860D–4(b)(2)(A) of the
11 Social Security Act (42 U.S.C. 1395w–104(b)(2)(A)) is
12 amended by adding at the end the following new sen-
13 tences: “It is unlawful for a PDP sponsor of a prescription
14 drug plan to display on such a card the name, brand, or
15 trademark of any pharmacy.”

16 (b) EFFECTIVE DATE.—With respect to cards dis-
17 pensed before, on, or after the date of the enactment of
18 this Act, the amendment made by this section shall apply
19 to such cards on and after the date that is 90 days after
20 such date of enactment. Any card dispensed before such
21 date that is 90 days after the date of enactment that vio-
22 lates the second sentence of section 1860D–4(b)(2)(A) of
23 the Social Security Act, as added by subsection (a), shall
24 be reissued by such 90-day date.

1 **SEC. 4. MINIMUM DISPENSING FEES FOR GENERIC COV-**
2 **ERED PART D DRUGS.**

3 (a) IN GENERAL.—Section 1860D–4(b)(1) of the So-
4 cial Security Act (42 U.S.C. 1395w–104(b)(1)) is amend-
5 ed by adding at the end the following new subparagraph:

6 “(F) MINIMUM DISPENSING FEES FOR GE-
7 NERIC COVERED PART D DRUGS.—

8 “(i) IN GENERAL.—Each PDP spon-
9 sor under this subsection with respect to a
10 prescription drug plan offered by such
11 sponsor shall provide that the amount of a
12 dispensing fee paid to a participating phar-
13 macy for a generic covered part D drug
14 that is therapeutically equivalent and bio-
15 equivalent to a brand name drug that is a
16 covered part D drug dispensed through the
17 pharmacy, shall be an amount that is not
18 less than the minimum generic drug dis-
19 pensing fee specified under clause (ii).

20 “(ii) MINIMUM GENERIC DRUG DIS-
21 PENSING FEE SPECIFIED.—The minimum
22 generic drug dispensing fee specified under
23 this clause for generic covered part D
24 drugs dispensed—

25 “(I) in calendar year 2006, is
26 \$14; and

1 “(II) in subsequent calendar
2 years, is the minimum generic drug
3 dispensing fee under this clause for
4 the previous year increased by the an-
5 nual percentage increase in the con-
6 sumer price index (all items; U.S. city
7 average) as of July of such previous
8 year.

9 Any amount established under subclause
10 (II), that is based on an increase of \$1 or
11 \$3, that is not a multiple of 5 cents or 10
12 cents, respectively, shall be rounded to the
13 nearest multiple of 5 cents or 10 cents, re-
14 spectively.”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 subsection (a) shall apply to prescriptions filled on or after
17 the date that is the first day of the first contract year
18 after the date of the enactment of this Act.

19 **SEC. 5. PROVISION OF MEDICATION THERAPY MANAGE-**
20 **MENT SERVICES UNDER PART D.**

21 (a) PROVISION OF MEDICATION THERAPY MANAGE-
22 MENT SERVICES UNDER PART D.—

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

1 (A) in subparagraph (A)—

2 (i) in clause (i)—

3 (I) by inserting “or other health
4 care provider with advanced training
5 in medication management” after
6 “furnished by a pharmacist”; and

7 (II) by striking “targeted bene-
8 ficiaries described in clause (ii)” and
9 inserting “targeted beneficiaries speci-
10 fied under clause (ii)”

11 (ii) by striking clause (ii) and insert-
12 ing the following:

13 “(ii) TARGETED BENEFICIARIES.—
14 The Secretary shall specify the population
15 of part D eligible individuals appropriate
16 for services under a medication therapy
17 management program based on the fol-
18 lowing characteristics:

19 “(I) Having a disease state in
20 which evidence-based medicine has
21 demonstrated the benefit of medica-
22 tion therapy management intervention
23 based on objective outcome measures.

24 “(II) Taking multiple covered
25 part D drugs or having a disease state

1 in which a complex combination medi-
2 cation regimen is utilized.

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

16 (B) by striking subparagraph (B) and in-
17 serting the following:

18 “(B) ELEMENTS.—

19 “(i) MINIMUM DEFINED PACKAGE OF
20 SERVICES.—The Secretary shall specify a
21 minimum defined package of medication
22 therapy management services that shall be
23 provided to each enrollee. Such package
24 shall be based on the following consider-
25 ations:

1 “(I) Performing necessary assess-
2 ments of the health status of each en-
3 rollee.

4 “(II) Providing medication ther-
5 apy review to identify, resolve, and
6 prevent medication-related problems,
7 including adverse events.

8 “(III) Increasing enrollee under-
9 standing to promote the appropriate
10 use of medications by enrollees and to
11 reduce the risk of potential adverse
12 events associated with medications,
13 through beneficiary and family edu-
14 cation, counseling, and other appro-
15 priate means.

16 “(IV) Increasing enrollee adher-
17 ence with prescription medication
18 regimens through medication refill re-
19 minders, special packaging, and other
20 compliance programs and other appro-
21 priate means.

22 “(V) Promoting detection of ad-
23 verse drug events and patterns of
24 overuse and underuse of prescription
25 drugs.

1 “(VI) Developing a medication
2 action plan which may alter the medi-
3 cation regimen, when permitted by the
4 State licensing authority. This infor-
5 mation should be provided to, or ac-
6 cessible by, the primary health care
7 provider of the enrollee.

8 “(VII) Monitoring and evaluating
9 the response to therapy and evalu-
10 ating the safety and effectiveness of
11 the therapy, which may include lab-
12 oratory assessment.

13 “(VIII) Providing disease-specific
14 medication therapy management serv-
15 ices when appropriate.

16 “(IX) Coordinating and inte-
17 grating medication therapy manage-
18 ment services within the broader scope
19 of health care management services
20 being provided to each enrollee.

21 “(ii) DELIVERY OF SERVICES.—

22 “(I) PERSONAL DELIVERY.—To
23 the extent feasible, face-to-face inter-
24 action shall be the preferred method

1 of delivery of medication therapy man-
2 agement services.

3 “(II) INDIVIDUALIZED.—Such
4 services shall be patient-specific and
5 individualized and shall be provided
6 directly to the patient by a pharmacist
7 or other health care provider with ad-
8 vanced training in medication man-
9 agement.

10 “(III) DISTINCT FROM OTHER
11 ACTIVITIES.—Such services shall be
12 distinct from any activities related to
13 formulary development and use, gen-
14 eralized patient education and infor-
15 mation activities, and any population-
16 focused quality assurance measures
17 for medication use.

18 “(iii) OPPORTUNITY TO IDENTIFY PA-
19 TIENTS IN NEED OF MEDICATION THERAPY
20 MANAGEMENT SERVICES.—The program
21 shall provide opportunities for health care
22 providers to identify patients who should
23 receive medication therapy management
24 services.”;

1 (C) by striking subparagraph (E) and in-
2 serting the following:

3 “(E) PHARMACY FEES.—

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

11 “(ii) SUBMISSION ALONG WITH PLAN
12 INFORMATION.—Each such sponsor shall
13 disclose to the Secretary upon request the
14 amount of any such payments and shall
15 submit a description of how such payments
16 are calculated along with the information
17 submitted under section 1860D–11(b).
18 Such description shall be submitted at the
19 same time and in a similar manner to the
20 manner in which the information described
21 in paragraph (2) of such section is sub-
22 mitted.”; and

23 (D) by adding at the end the following new
24 subparagraph:

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

10 (2) EFFECTIVE DATE.—The amendments made
11 by this subsection shall apply to medication therapy
12 management services provided on or after January
13 1, 2008.

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

18 “(3) COMMUNITY-BASED MEDICATION THERAPY
19 MANAGEMENT DEMONSTRATION PROGRAM.—

20 “(A) ESTABLISHMENT.—

21 “(i) IN GENERAL.—By not later than
22 January 1, 2008, the Secretary shall es-
23 tablish a 2-year demonstration program,
24 based on the recommendations of the Best
25 Practices Commission established under

1 subparagraph (B), with both PDP spon-
2 sors of prescription drug plans and Medi-
3 care Advantage Organizations offering
4 MA–PD plans, to examine the impact of
5 medication therapy management furnished
6 by a pharmacist in a community-based or
7 ambulatory-based setting on quality of
8 care, spending under this part, and patient
9 health.

10 “(ii) SITES.—

11 “(I) IN GENERAL.—Subject to
12 subclause (II), the Secretary shall
13 designate not less than 10 PDP spon-
14 sors of prescription drug plans or
15 Medicare Advantage organizations of-
16 fering MA–PD plans, none of which
17 provide prescription drug coverage
18 under such plans in the same PDP or
19 MA region, respectively, to conduct
20 the demonstration program under this
21 paragraph.

22 “(II) DESIGNATION CONSISTENT
23 WITH RECOMMENDATIONS OF BEST
24 PRACTICES COMMISSION.—The Sec-
25 retary shall ensure that the designa-

1 tion of sites under subclause (I) is
2 consistent with the recommendations
3 of the Best Practices Commission
4 under subparagraph (B)(ii).

5 “(B) BEST PRACTICES COMMISSION.—

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

16 “(ii) RECOMMENDATIONS.—The Com-
17 mission shall submit to the Secretary rec-
18 ommendations on the following:

19 “(I) The minimum number of en-
20 rollees that should be included in the
21 demonstration program, and at each
22 demonstration program site, to deter-
23 mine the impact of medication ther-
24 apy management furnished by a phar-
25 macist in a community-based setting

1 on quality of care, spending under
2 this part, and patient health.

3 “(II) The number of urban and
4 rural sites that should be included in
5 the demonstration program to ensure
6 that prescription drug plans and MA-
7 PD plans offered in urban and rural
8 areas are adequately represented.

9 “(III) A best practices model for
10 medication therapy management to be
11 implemented under the demonstration
12 program under this paragraph.

13 “(C) REPORTS.—

14 “(i) INTERIM REPORT.—Not later
15 than 1 year after the commencement of the
16 demonstration program, the Secretary
17 shall submit to Congress an interim report
18 on such program.

19 “(ii) FINAL REPORT.—Not later than
20 6 months after the completion of the dem-
21 onstration program, the Secretary shall
22 submit to Congress a final report on such
23 program, together with recommendations
24 for such legislation and administrative ac-

1 tion as the Secretary determines appro-
2 priate.

3 “(D) WAIVER AUTHORITY.—The Secretary
4 may waive such requirements of titles XI and
5 XVIII as may be necessary for the purpose of
6 carrying out the demonstration program under
7 this paragraph.”.

○