

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5263

To amend part D of title XVIII of the Social Security Act to extend the 2006 and 2007 initial enrollment periods for the Medicare prescription drug benefit and suspend the late enrollment penalty through December 31, 2007, to permit Medicare beneficiaries to change enrollment in a prescription drug plan during the first 12 months of enrollment, and to prevent changes in formularies other than at the time of open enrollment periods and only with advance notice.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2006

Mrs. CHRISTENSEN (for herself, Mr. WATT, Ms. LEE, Mr. OWENS, Ms. MILLENDER-MCDONALD, Mr. TOWNS, Mr. CONYERS, Ms. NORTON, Ms. CARSON, Mr. CLEAVER, Mr. FATTAH, Mr. PAYNE, Ms. KILPATRICK of Michigan, Ms. CORRINE BROWN of Florida, Ms. MOORE of Wisconsin, Mr. MEEKS of New York, Mr. CLAY, Mr. WYNN, Mr. AL GREEN of Texas, Ms. JACKSON-LEE of Texas, Mr. RUSH, Mr. JACKSON of Illinois, Mr. THOMPSON of Mississippi, Mr. SCOTT of Virginia, Mr. BISHOP of Georgia, Mr. LEWIS of Georgia, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. HASTINGS of Florida, Mr. DAVIS of Alabama, Mr. RANGEL, Mrs. JONES of Ohio, Mr. BUTTERFIELD, Mr. JEFFERSON, Mr. CLYBURN, Ms. WATSON, Mr. CUMMINGS, Ms. WATERS, Mr. DAVIS of Illinois, Mr. SCOTT of Georgia, Ms. MCKINNEY, Mr. MEEK of Florida, and Mr. FORD) 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

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## A BILL

To amend part D of title XVIII of the Social Security Act to extend the 2006 and 2007 initial enrollment periods for the Medicare prescription drug benefit and sus-

pend the late enrollment penalty through December 31, 2007, to permit Medicare beneficiaries to change enrollment in a prescription drug plan during the first 12 months of enrollment, 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. EXTENSION OF MEDICARE PRESCRIPTION**  
 4 **DRUG INITIAL ENROLLMENT PERIODS FOR**  
 5 **2006 AND 2007; SUSPENSION OF LATE EN-**  
 6 **ROLLMENT PENALTY THROUGH DECEMBER**  
 7 **31, 2007.**

8        (a) EXTENSION OF MEDICARE PRESCRIPTION DRUG  
 9 INITIAL ENROLLMENT PERIODS FOR 2006 AND 2007.—  
 10 Section 1860D–1(b)(1) of the Social Security Act (42  
 11 U.S.C. 1395w–101(b)(1)) is amended—

12            (1) in subparagraph (B)(iii), by inserting “sub-  
 13            paragraph (D) and” after “Subject to”; and

14            (2) by adding at the end the following new sub-  
 15            paragraph:

16            “(D) EXTENSION OF INITIAL ENROLLMENT PE-  
 17            RIODS.—For purposes of subparagraph (B)(iii), in  
 18            applying section 1851(e)(1), with respect to the an-  
 19            nual, coordinated election period—

1           “(i) for 2006, such period shall begin on  
2           November 15, 2005, and end on November 14,  
3           2006; and

4           “(ii) for 2007, such period shall begin on  
5           November 15, 2006, and end on November 14,  
6           2007.”.

7           (b) **SUSPENSION OF LATE ENROLLMENT PENALTY**  
8 **THROUGH DECEMBER 31, 2007.**—Section 1860D–  
9 13(b)(3)(B) of such Act (42 U.S.C. 1395w–113(b)(3)(B))  
10 is amended by inserting “(after December 2007)” after  
11 “any month”.

12 **SEC. 2. OPEN ENROLLMENT AND DISENROLLMENT IN PRE-**  
13 **SCRIPTION DRUG PLANS ALLOWED DURING**  
14 **FIRST 12 MONTHS OF ENROLLMENT.**

15           Section 1860D–1(b)(1) of the Social Security Act (42  
16 U.S.C. 1395w–101(b)(1)) is amended by adding at the  
17 end the following new subparagraph:

18           “(D)       OPEN       ENROLLMENT       AND  
19           DISENROLLMENT PERIOD FOR FIRST 12  
20           MONTHS OF ENROLLMENT.—In establishing the  
21           process under subparagraph (A), in the case of  
22           a part D eligible individual who initially enrolls  
23           under section 1860D–1(a) in a prescription  
24           drug plan on or after the date of enactment of  
25           this paragraph, the Secretary shall permit such

1 individual to change such enrollment into an-  
 2 other prescription drug plan once at any time  
 3 during the first 12 months of such initial en-  
 4 rollment (other than during an annual, coordi-  
 5 nated election period referred to in section  
 6 1860D–1(b)(1)(B)(iii)).”.

7 **SEC. 3. LIMITATIONS ON CHANGING PRESCRIPTION DRUG**  
 8 **PLAN FORMULARIES; NOTICE OF CHANGE IN**  
 9 **FORMULARY.**

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

15 “(E) **REMOVING A DRUG FROM FOR-**  
 16 **MULARY OR IMPOSING A RESTRICTION OR LIM-**  
 17 **TATION ON COVERAGE.**—

18 “(i) **LIMITATION ON REMOVAL, LIM-**  
 19 **TATION, OR RESTRICTION.**—

20 “(I) **IN GENERAL.**—Subject to  
 21 subclause (II) and clause (ii), begin-  
 22 ning with 2006, the PDP sponsor of  
 23 a prescription drug plan may not re-  
 24 move a covered part D drug from the  
 25 plan formulary or impose a restriction

1 or limitation on the coverage of such  
2 a drug (such as through the applica-  
3 tion of a preferred status, usage re-  
4 striction, step therapy, prior author-  
5 ization, or quantity limitation) other  
6 than at the beginning of each plan  
7 year except as the Secretary may per-  
8 mit to take into account new thera-  
9 peutic uses and newly covered part D  
10 drugs.

11 “(II) SPECIAL RULE FOR NEWLY  
12 ENROLLED INDIVIDUALS.—Subject to  
13 clause (ii), in the case of an individual  
14 who enrolls in a prescription drug  
15 plan on or after the date of enactment  
16 of this subparagraph, the PDP spon-  
17 sor of such plan may not remove a  
18 covered part D drug from the plan  
19 formulary or impose a restriction or  
20 limitation on the coverage of such a  
21 drug (such as through the application  
22 of a preferred status, usage restric-  
23 tion, step therapy, prior authorization,  
24 or quantity limitation) during the pe-  
25 riod beginning on the date of such en-

1 rollment and ending on December 31  
2 of the immediately succeeding plan  
3 year except as the Secretary may per-  
4 mit to take into account new thera-  
5 peutic uses and newly covered part D  
6 drugs.

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

10 “(I) is a brand name drug for  
11 which there is a generic drug ap-  
12 proved under section 505(j) of the  
13 Food and Drug Cosmetic Act (21  
14 U.S.C. 355(j)) that is placed on the  
15 market during the period in which  
16 there are limitations on removal or  
17 change in the formulary under sub-  
18 clause (I) or (II) of clause (i);

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

21 “(III) is a drug for which the  
22 Commissioner of Food and Drugs  
23 issues a clinical warning that imposes  
24 a restriction or limitation on the drug  
25 during such period; or

1                   “(IV) has been determined to be  
2                   ineffective during such period.

3                   “(iii) NOTICE OF REMOVAL UNDER  
4                   APPLICATION OF EXCEPTION TO LIMITA-  
5                   TION.—The PDP sponsor of a prescription  
6                   drug plan shall provide appropriate notice  
7                   (such as under subsection (a)(3)) of any  
8                   removal or change under clause (ii) to the  
9                   Secretary, affected enrollees, physicians,  
10                  pharmacies, and pharmacists.”.

11                  (b) NOTICE OF CHANGE IN FORMULARY AND OTHER  
12                  RESTRICTIONS OR LIMITATIONS ON COVERAGE.—

13                  (1) IN GENERAL.—Section 1860D–4(a) of such  
14                  Act (42 U.S.C. 1395w–104(a)) is amended by add-  
15                  ing at the end the following new paragraph:

16                  “(5) ANNUAL NOTICE OF CHANGES IN FOR-  
17                  MULARY AND OTHER RESTRICTIONS OR LIMITATIONS  
18                  ON COVERAGE.—Each PDP sponsor offering a pre-  
19                  scription drug plan shall furnish to each enrollee at  
20                  the time of each annual coordinated election period  
21                  (referred to in section 1860D–1(b)(1)(B)(iii)) for a  
22                  plan year a notice of any changes in the formulary  
23                  or other restrictions or limitations on coverage of a  
24                  covered part D drug under the plan that will take  
25                  effect for the plan year.”.

1           (2) EFFECTIVE DATE.—The amendment made  
2           by paragraph (1) shall apply to annual coordinated  
3           election periods beginning after the date of the en-  
4           actment of this Act.

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