

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

# H. R. 5307

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.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 4, 2006

Mr. PALLONE introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pharmacists Medicare  
5 Relief Act of 2006”.

1 **SEC. 2. PROMPT PAYMENT BY PRESCRIPTION DRUG PLANS**  
2 **AND MA-PD PLANS UNDER PART D.**

3 (a) PROMPT PAYMENT BY PRESCRIPTION DRUG  
4 PLANS.—Section 1860D–12(b) of the Social Security Act  
5 (42 U.S.C. 1395w–112(b)) is amended by adding at the  
6 end the following new paragraph:

7 “(4) PROMPT PAYMENT OF CLEAN CLAIMS.—

8 “(A) PROMPT PAYMENT.—

9 “(i) IN GENERAL.—Each contract en-  
10 tered into with a PDP sponsor under this  
11 section with respect to a prescription drug  
12 plan offered by such sponsor shall provide  
13 that payment shall be issued, mailed, or  
14 otherwise transmitted with respect to all  
15 clean claims submitted under this part  
16 within the applicable number of calendar  
17 days after the date on which the claim is  
18 received.

19 “(ii) CLEAN CLAIM DEFINED.—In this  
20 paragraph, the term ‘clean claim’ means a  
21 claim that has no defect or impropriety  
22 (including any lack of any required sub-  
23 stantiating documentation) or particular  
24 circumstance requiring special treatment  
25 that prevents timely payment from being  
26 made on the claim under this part.

1           “(B) APPLICABLE NUMBER OF CALENDAR  
2 DAYS DEFINED.—In this paragraph, the term  
3 ‘applicable number of calendar days’ means—

4                   “(i) with respect to claims submitted  
5 electronically, 14 days; and

6                   “(ii) with respect to claims submitted  
7 otherwise, 30 days.

8           “(C) INTEREST PAYMENT.—If payment is  
9 not issued, mailed, or otherwise transmitted  
10 within the applicable number of calendar days  
11 (as defined in subparagraph (B)) after a clean  
12 claim is received, interest shall be paid at a rate  
13 equal to the weighted average of interest on 3-  
14 month marketable Treasury securities deter-  
15 mined for such period, increased by 0.1 percent-  
16 age point for the period beginning on the day  
17 after the required payment date and ending on  
18 the date on which payment is made.

19           “(D) PROCEDURES INVOLVING CLAIMS.—

20                   “(i) IN GENERAL.—A contract entered  
21 into with a PDP sponsor under this sec-  
22 tion with respect to a prescription drug  
23 plan offered by such sponsor shall provide  
24 that, not later than 10 days after the date  
25 on which a clean claim is submitted, the

1 PDP sponsor shall provide the claimant  
2 with a notice that acknowledges receipt of  
3 the claim by such sponsor. Such notice  
4 shall be considered to have been provided  
5 on the date on which the notice is mailed  
6 or electronically transferred.

7 “(ii) CLAIM DEEMED TO BE CLEAN.—  
8 A claim is deemed to be a clean claim if  
9 the PDP sponsor involved does not provide  
10 notice to the claimant of any deficiency in  
11 the claim within 10 days of the date on  
12 which the claim is submitted.

13 “(iii) CLAIM DETERMINED TO NOT BE  
14 A CLEAN CLAIM.—

15 “(I) IN GENERAL.—If a PDP  
16 sponsor determines that a submitted  
17 claim is not a clean claim, the PDP  
18 sponsor shall, not later than the end  
19 of the period described in clause (ii),  
20 notify the claimant of such determina-  
21 tion. Such notification shall specify all  
22 defects or improprieties in the claim  
23 and shall list all additional informa-  
24 tion or documents necessary for the

1 proper processing and payment of the  
2 claim.

3 “(II) DETERMINATION AFTER  
4 SUBMISSION OF ADDITIONAL INFOR-  
5 MATION.—A claim is deemed to be a  
6 clean claim under this paragraph if  
7 the PDP sponsor involved does not  
8 provide notice to the claimant of any  
9 defect or impropriety in the claim  
10 within 10 days of the date on which  
11 additional information is received  
12 under subclause (I).

13 “(III) PAYMENT OF CLEAN POR-  
14 TION OF A CLAIM.—A PDP sponsor  
15 shall, as appropriate, pay any portion  
16 of a claim that would be a clean claim  
17 but for a defect or impropriety in a  
18 separate portion of the claim in ac-  
19 cordance with subparagraph (A).

20 “(iv) OBLIGATION TO PAY.—A claim  
21 submitted to a PDP sponsor that is not  
22 paid or contested by the provider within  
23 the applicable number of days (as defined  
24 in subparagraph (B)) shall be deemed to  
25 be a clean claim and shall be paid by the

1 PDP sponsor in accordance with subpara-  
2 graph (A).

3 “(v) DATE OF PAYMENT OF CLAIM.—  
4 Payment of a clean claim under such sub-  
5 paragraph is considered to have been made  
6 on the date on which full payment is re-  
7 ceived by the provider.

8 “(E) PRIVATE RIGHT OF ACTION.—

9 “(i) IN GENERAL.—Nothing in this  
10 paragraph shall be construed to prohibit or  
11 limit a claim or action not covered by the  
12 subject matter of this section that any in-  
13 dividual or organization has against a pro-  
14 vider or a PDP sponsor.

15 “(ii) ANTI-RETALIATION.—Consistent  
16 with applicable Federal or State law, a  
17 PDP sponsor shall not retaliate against an  
18 individual or provider for exercising a right  
19 of action under this subparagraph.”.

20 (b) PROMPT PAYMENT BY MA–PD PLANS.—Section  
21 1857(f) of the Social Security Act (42 U.S.C. 1395w–  
22 27(f)) is amended by adding at the end the following new  
23 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 of the Social  
11 Security Act (42 U.S.C. 1395w–104) is amended—

12 (1) in subsection (b)(2)(A), by striking “The  
13 PDP sponsor” and inserting “Subject to subsection  
14 (l), the PDP sponsor”; and

15 (2) by adding at the end the following new sub-  
16 section:

17 “(l) CO-BRANDING PROHIBITED.—A card that is  
18 issued under subsection (b)(2)(A) for use under a pre-  
19 scription drug plan offered by a PDP sponsor or an MA-  
20 PD plan offered by a Medicare Advantage organization  
21 and any marketing materials distributed with respect to  
22 such a plan shall not display the name or brand of any  
23 pharmacy.”.

1           (b) PENALTY.—Section 1128B of the Social Security  
2 Act (42 U.S.C. 1320a–7b) is amended by adding at the  
3 end the following new subsection:

4           “(g) Whoever knowingly and willfully engages in co-  
5 branding prohibited under section 1860D–4(l) with re-  
6 spect to a prescription drug plan offered by a PDP spon-  
7 sor under part D of title XVIII or a Medicare Advantage  
8 plan offered by a Medicare Advantage organization under  
9 part C of such title, shall be guilty of a felony and upon  
10 conviction thereof shall be fined not more than \$25,000  
11 or imprisoned for not more than five years, or both.”.

12           (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to cards and marketing materials  
14 distributed on or after the date that is 90 days after the  
15 date of the enactment of this Act.

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