

110TH CONGRESS  
1ST SESSION

# S. 1883

To amend title XVIII of the Social Security Act to provide for standardized marketing requirements under the Medicare Advantage program and the Medicare prescription drug program and to provide for State certification prior to waiver of licensure requirements under the Medicare prescription drug program, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 26, 2007

Mr. KOHL (for himself, Mr. DORGAN, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to provide for standardized marketing requirements under the Medicare Advantage program and the Medicare prescription drug program and to provide for State certification prior to waiver of licensure requirements under the Medicare prescription drug program, 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 “Accountability and  
5        Transparency in Medicare Marketing Act of 2007”.

1 **SEC. 2. STANDARDIZED MARKETING REQUIREMENTS**  
 2 **UNDER THE MEDICARE ADVANTAGE AND**  
 3 **MEDICARE PRESCRIPTION DRUG PROGRAMS.**

4 (a) **MEDICARE ADVANTAGE PROGRAM.—**

5 (1) **IN GENERAL.—**Section 1856 of the Social  
 6 Security Act (42 U.S.C. 1395w–26) is amended—

7 (A) in subsection (b)(1), by inserting “or  
 8 subsection (c)” after “subsection (a)”; and

9 (B) by adding at the end the following new  
 10 subsection:

11 “(c) **STANDARDIZED MARKETING REQUIREMENTS.—**

12 “(1) **DEVELOPMENT BY THE NAIC.—**

13 “(A) **REQUIREMENTS.—**The Secretary  
 14 shall request the National Association of Insur-  
 15 ance Commissioners (in this subsection referred  
 16 to as the ‘NAIC’) to—

17 “(i) develop standardized marketing  
 18 requirements for Medicare Advantage or-  
 19 ganizations with respect to Medicare Ad-  
 20 vantage plans and PDP sponsors with re-  
 21 spect to prescription drug plans under part  
 22 D; and

23 “(ii) submit a report containing such  
 24 requirements to the Secretary by not later  
 25 than the date that is 9 months after the  
 26 date of enactment of this subsection.

1           “(B) PROHIBITED ACTIVITIES.—Such re-  
2           quirements shall prohibit the following:

3                   “(i) Cross-selling of non-Medicare  
4                   products or services with products or serv-  
5                   ices offered by a Medicare Advantage plan  
6                   or a prescription drug plan under part D.

7                   “(ii) Up-selling from prescription drug  
8                   plans under part D to Medicare Advantage  
9                   plans.

10                  “(iii) Telemarketing (including cold  
11                  calling) conducted by an organization with  
12                  respect to a Medicare Advantage plan or a  
13                  PDP sponsor with respect to a prescription  
14                  drug plan under part D (or by an agent of  
15                  such an organization or sponsor).

16                  “(iv) A Medicare Advantage organiza-  
17                  tion or a PDP sponsor providing cash or  
18                  other monetary rebates as an inducement  
19                  for enrollment or otherwise.

20           “(C) ELECTION FORM.—Such require-  
21           ments may prohibit a Medicare Advantage or-  
22           ganization or a PDP sponsor (or an agent of  
23           such an organization or sponsor) from com-  
24           pleting any portion of any election form used to

1 carry out elections under section 1851 or  
2 1860D–1 on behalf of any individual.

3 “(D) AGENT AND BROKER COMMIS-  
4 SIONS.—Such requirements shall establish  
5 standards—

6 “(i) for fair and appropriate commis-  
7 sions for agents and brokers of Medicare  
8 Advantage organizations and PDP spon-  
9 sors, including a prohibition on extra bo-  
10 nuses or incentives; and

11 “(ii) for the disclosure of such com-  
12 missions.

13 “(E) CERTAIN CONDUCT OF AGENTS.—  
14 Such requirements shall address the conduct of  
15 agents engaged in on-site promotion at a facil-  
16 ity of an organization with which the Medicare  
17 Advantage organization or PDP sponsor has a  
18 co-branding relationship.

19 “(F) OTHER STANDARDS.—Such require-  
20 ments may establish such other standards relat-  
21 ing to marketing under Medicare Advantage  
22 plans and prescription drug plans under part D  
23 as the NAIC determines appropriate.

24 “(2) IMPLEMENTATION OF REQUIREMENTS.—

1           “(A) ADOPTION OF NAIC DEVELOPED RE-  
2           QUIREMENTS.—If the NAIC develops standard-  
3           ized marketing requirements and submits the  
4           report pursuant to paragraph (1), the Secretary  
5           shall promulgate regulations for the adoption of  
6           such requirements. The Secretary shall ensure  
7           that such regulations take effect not later than  
8           the date that is 10 months after the date of en-  
9           actment of this subsection.

10           “(B) REQUIREMENTS IF NAIC DOES NOT  
11           SUBMIT REPORT.—If the NAIC does not de-  
12           velop standardized marketing requirements and  
13           submit the report pursuant to paragraph (1),  
14           the Secretary shall promulgate regulations for  
15           standardized marketing requirements for Medi-  
16           care Advantage organizations with respect to  
17           Medicare Advantage plans and PDP sponsors  
18           with respect to prescription drug plans under  
19           part D. Such regulations shall prohibit the con-  
20           duct described in paragraph (1)(B), may pro-  
21           hibit the conduct described in paragraph (1)(C),  
22           shall establish the standards described in para-  
23           graph (1)(D), shall address the conduct de-  
24           scribed in paragraph (1)(E), and may establish  
25           such other standards relating to marketing

1 under Medicare Advantage plans and prescrip-  
2 tion drug plans as the Secretary determines ap-  
3 propriate. The Secretary shall ensure that such  
4 regulations take effect not later than the date  
5 that is 10 months after the date of enactment  
6 of this subsection.

7 “(C) CONSULTATION.—In establishing re-  
8 quirements under this subsection, the NAIC or  
9 Secretary (as the case may be) shall consult  
10 with a working group composed of representa-  
11 tives of Medicare Advantage organizations and  
12 PDP sponsors, consumer groups, and other  
13 qualified individuals. Such representatives shall  
14 be selected in a manner so as to insure bal-  
15 anced representation among the interested  
16 groups.

17 “(3) STATE REPORTING OF VIOLATIONS OF  
18 STANDARDIZED MARKETING REQUIREMENTS.—The  
19 Secretary shall request that States report any viola-  
20 tions of the standardized marketing requirements  
21 under the regulations under subparagraph (A) or  
22 (B) of paragraph (2) to national and regional offices  
23 of the Centers for Medicare & Medicaid Services.

24 “(4) REPORT.—The Secretary shall submit an  
25 annual report to Congress on the enforcement of the

1 standardized marketing requirements under the reg-  
 2 ulations under subparagraph (A) or (B) of para-  
 3 graph (2), together with such recommendations as  
 4 the Secretary determines appropriate. Such report  
 5 shall include—

6 “(A) a list of any alleged violations of such  
 7 requirements reported to the Secretary by a  
 8 State, a Medicare Advantage organization, or a  
 9 PDP sponsor; and

10 “(B) the disposition of such reported viola-  
 11 tions.”.

12 (2) STATE AUTHORITY TO ENFORCE STAND-  
 13 ARDIZED MARKETING REQUIREMENTS.—

14 (A) IN GENERAL.—Section 1856(b)(3) of  
 15 the Social Security Act (42 U.S.C. 1395w-  
 16 26(b)(3)) is amended—

17 (i) by striking “or State” and insert-  
 18 ing “, State”; and

19 (ii) by inserting “, or State laws or  
 20 regulations enacting the standardized mar-  
 21 keting requirements under subsection (c)”  
 22 after “plan solvency”.

23 (B) NO PREEMPTION OF STATE SANC-  
 24 TIONS.—Nothing in title XVIII of the Social  
 25 Security Act or the provisions of, or amend-

1           ments made by, this Act, shall be construed to  
2           prohibit a State from imposing sanctions  
3           against Medicare Advantage organizations,  
4           PDP sponsors, or agents or brokers of such or-  
5           ganizations or sponsors for violations of the  
6           standardized marketing requirements under  
7           subsection (c) of section 1856 of the Social Se-  
8           curity Act (as added by paragraph (1)) as en-  
9           acted by that State.

10           (3)    CONFORMING    AMENDMENT.—Section  
11           1851(h)(4) of the Social Security Act (42 U.S.C.  
12           1395w–21(h)(4)) is amended by adding at the end  
13           the following flush sentence:

14           “Beginning on the effective date of the implementa-  
15           tion of the regulations under subparagraph (A) or  
16           (B) of section 1856(c)(2), each Medicare Advantage  
17           organization with respect to a Medicare Advantage  
18           plan offered by the organization (and agents of such  
19           organization) shall comply with the standardized  
20           marketing requirements under section 1856(c).”.

21           (b)    MEDICARE    PRESCRIPTION    DRUG    PROGRAM.—  
22           Section 1860D–4 of the Social Security Act (42 U.S.C.  
23           1395w–104) is amended by adding at the end the fol-  
24           lowing new subsection:

1 “(1) STANDARDIZED MARKETING REQUIREMENTS.—  
 2 A PDP sponsor with respect to a prescription drug plan  
 3 offered by the sponsor (and agents of such sponsor) shall  
 4 comply with the standardized marketing requirements  
 5 under section 1856(c).”.

6 **SEC. 3. STATE CERTIFICATION PRIOR TO WAIVER OF LI-**  
 7 **CENSURE REQUIREMENTS UNDER MEDICARE**  
 8 **PRESCRIPTION DRUG PROGRAM.**

9 (a) IN GENERAL.—Section 1860D–12(c) of the So-  
 10 cial Security Act (42 U.S.C. 1395w–112(c)) is amended—

11 (1) in paragraph (1)(A), by striking “In the  
 12 case” and inserting “Subject to paragraph (5), in  
 13 the case”; and

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

16 “(5) STATE CERTIFICATION REQUIRED.—

17 “(A) IN GENERAL.—The Secretary may  
 18 only grant a waiver under paragraph (1)(A) if  
 19 the Secretary has received a certification from  
 20 the State insurance commissioner that the pre-  
 21 scription drug plan has a substantially complete  
 22 application pending in the State.

23 “(B) REVOCATION OF WAIVER UPON FIND-  
 24 ING OF FRAUD AND ABUSE.—The Secretary  
 25 shall revoke a waiver granted under paragraph

1 (1)(A) if the State insurance commissioner sub-  
 2 mits a certification to the Secretary that the re-  
 3 cipient of such a waiver—

4 “(i) has committed fraud or abuse  
 5 with respect to such waiver;

6 “(ii) has failed to make a good faith  
 7 effort to satisfy State licensing require-  
 8 ments; or

9 “(iii) was determined ineligible for li-  
 10 censure by the State.”.

11 (b) EFFECTIVE DATE.—The amendments made by  
 12 paragraph (1) shall apply with respect to plan years begin-  
 13 ning on or after January 1, 2008.

14 **SEC. 4. NAIC RECOMMENDATIONS ON THE ESTABLISH-**  
 15 **MENT OF STANDARDIZED BENEFIT PACK-**  
 16 **AGES FOR MEDICARE ADVANTAGE PLANS**  
 17 **AND PRESCRIPTION DRUG PLANS.**

18 Not later than 30 days after the date of enactment  
 19 of this Act, the Secretary of Health and Human Services  
 20 shall request the National Association of Insurance Com-  
 21 missioners to establish a committee to study and make  
 22 recommendations to the Secretary and Congress on—

23 (1) the establishment of standardized benefit  
 24 packages for Medicare Advantage plans under part  
 25 C of title XVIII of the Social Security Act and for

1 prescription drug plans under part D of such Act;

2 and

3 (2) the regulation of such plans.

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