

(A) in paragraph (2)(C), by inserting “, a nurse practitioner, a clinical nurse specialist, a certified nurse-midwife, or a physician assistant (as the case may be)” after “physician” each place it appears;

(B) in the second sentence, by inserting “certified nurse-midwife,” after “clinical nurse specialist;”;

(C) in the third sentence—

(i) by striking “physician certification” and inserting “certification”;

(ii) by inserting “(or on January 1, 2008, in the case of regulations to implement the amendments made by section 3115 of the Patient Protection and Affordable Care Act)” after “1981”; and

(iii) by striking “a physician who” and inserting “a physician, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant who”; and

(D) in the fourth sentence, by inserting “, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant” after “physician”.

(2) Section 1835(a) of the Social Security Act (42 U.S.C. 1395n(a)), as amended by section 6405, is amended—

(A) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by striking “or an eligible professional under section 1848(k)(3)(B)” and inserting “, an eligible professional under section 1848(k)(3)(B), or a nurse practitioner or clinical nurse specialist (as those terms are defined in 1861(aa)(5)) who is working in collaboration with a physician enrolled under section 1866(j) or such an eligible professional in accordance with State law, or a certified nurse-midwife (as defined in section 1861(gg)) as authorized by State law, or a physician assistant (as defined in section 1861(aa)(5)) under the supervision of a physician so enrolled or such an eligible professional”; and

(ii) in each of clauses (ii) and (iii) of subparagraph (A) by inserting “, a nurse practitioner, a clinical nurse specialist, a certified nurse-midwife, or a physician assistant (as the case may be)” after “physician”;

(B) in the third sentence, by inserting “, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant (as the case may be)” after physician;

(C) in the fourth sentence—

(i) by striking “physician certification” and inserting “certification”;

(ii) by inserting “(or on January 1, 2008, in the case of regulations to implement the amendments made by section 3115 of the Patient Protection and Affordable Care Act)” after “1981”; and

(iii) by striking “a physician who” and inserting “a physician, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant who”; and

(D) in the fifth sentence, by inserting “, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant” after “physician”.

(3) Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(A) in subsection (m)—

(i) in the matter preceding paragraph (1)—

(I) by inserting “a nurse practitioner or a clinical nurse specialist (as those terms are defined in subsection (aa)(5)), a certified nurse-midwife (as defined in section 1861(gg)), or a physician assistant (as defined in subsection (aa)(5))” after “physician” the first place it appears; and

(II) by inserting “a nurse practitioner, a clinical nurse specialist, a certified nurse-midwife, or a physician assistant” after “physician” the second place it appears; and

(ii) in paragraph (3), by inserting “a nurse practitioner, a clinical nurse specialist, a certified nurse-midwife, or a physician assistant” after “physician”; and

(B) in subsection (o)(2)—

(i) by inserting “, nurse practitioners or clinical nurse specialists (as those terms are defined in subsection (aa)(5)), certified nurse-midwives (as defined in section 1861(gg)), or physician assistants (as defined in subsection (aa)(5))” after “physicians”; and

(ii) by inserting “, nurse practitioner, clinical nurse specialist, certified nurse-midwife, physician assistant,” after “physician”.

(4) Section 1895 of the Social Security Act (42 U.S.C. 1395ff) is amended—

(A) in subsection (c)(1), by inserting “, the nurse practitioner or clinical nurse specialist (as those terms are defined in section 1861(aa)(5)), the certified nurse-midwife (as defined in section 1861(gg)), or the physician assistant (as defined in section 1861(aa)(5))” after “physician”; and

(B) in subsection (e)—

(i) in paragraph (1)(A), by inserting “, a nurse practitioner or clinical nurse specialist (as those terms are defined in section 1861(aa)(5)), a certified nurse-midwife (as defined in section 1861(gg)), or a physician assistant (as defined in section 1861(aa)(5))” after “physician”; and

(ii) in paragraph (2)—

(I) in the heading, by striking “PHYSICIAN CERTIFICATION” and inserting “RULE OF CONSTRUCTION REGARDING REQUIREMENT FOR CERTIFICATION”; and

(II) by striking “physician”.

(C) REQUIREMENT OF FACE-TO-FACE ENCOUNTER.—

(1) PART A.—Section 1814(a)(2)(C) of the Social Security Act, as amended by subsection (b) and section 6407(a), is further amended by striking “, and, in the case of a certification made by a physician” and all that follows through “face-to-face encounter” and inserting “, and, in the case of a certification made by a physician after January 1, 2010, or by a nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant (as the case may be), prior to making such certification the physician, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant must document that the physician, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant himself or herself has had a face-to-face encounter”.

(2) PART B.—Section 1835(a)(2)(A)(iv) of the Social Security Act, as added by section 6407(a), is amended by striking “after January 1, 2010” and all that follows through “face-to-face encounter” and inserting “made by a physician after January 1, 2010, or by a nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant (as the case may be), prior to making such certification the physician, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant must document that the physician, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant has had a face-to-face encounter”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1, 2010.

SA 3109. Mr. AKAKA submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 974, between lines 9 and 10, insert the following:

SEC. 3316. PHARMACY ACCESS FOR CHRONIC CARE TARGETED INDIVIDUALS.

(a) PURPOSE.—The purpose of this section is to provide for the establishment of chronic care pharmacy programs under the Medicare prescription drug program under part D of title XVIII of the Social Security Act that utilize available technologies and efficiencies to improve the safety, convenience, and affordability of prescription drug coverage under such part with respect to long-term maintenance medication refills for enrollees with a chronic disease or condition.

(b) ESTABLISHMENT AND IMPLEMENTATION OF PROGRAM.—Section 1860D-4 of the Social Security Act (42 U.S.C. 1395w-104) is amended by adding at the end the following new subsection:

“(m) PHARMACY ACCESS FOR TARGETED BENEFICIARIES.—

“(1) IN GENERAL.—

“(A) ESTABLISHMENT AND IMPLEMENTATION OF PROGRAM.—The PDP sponsor of a prescription drug plan shall—

“(i) identify (not less frequently than on a quarterly basis) targeted beneficiaries who are enrolled in the prescription drug plan; and

“(ii) establish and maintain a chronic care pharmacy program that meets the requirements of this subsection.

“(B) DEFINITIONS.—In this subsection:

“(i) CHRONIC CARE PHARMACY PROGRAM.—The term ‘chronic care pharmacy program’ means the program established and maintained by a PDP sponsor under subparagraph (A)(ii).

“(ii) TARGETED BENEFICIARY.—The term ‘targeted beneficiary’ means a part D eligible individual who is identified by the PDP sponsor as taking at least 1 long-term maintenance medication.

“(iii) LONG-TERM MAINTENANCE MEDICATION.—The term ‘long-term maintenance medication’ means a covered part D drug that—

“(I) has a common indication (obtained from product labeling) for the treatment of a chronic disease or condition; and

“(II) is used for the treatment of a chronic disease or condition when the duration of continuous therapy can reasonably be expected to exceed 1 year.

“(2) ENROLLMENT.—

“(A) AUTOMATIC ENROLLMENT.—The PDP sponsor shall automatically enroll targeted beneficiaries identified under paragraph (1)(A)(i) in a chronic care pharmacy program.

“(B) WRITTEN NOTICE AND PROCESS TO OPT OUT OF PROGRAM.—

“(i) WRITTEN NOTICE.—The PDP sponsor shall provide written notice to targeted beneficiaries automatically enrolled in the chronic care pharmacy program under subparagraph (A).

“(ii) PROCESS TO DECLINE ENROLLMENT AND OPT OUT OF PROGRAM.—The written notice provided under clause (i) shall include procedures under which the targeted beneficiary may decline such automatic enrollment and opt-out of the chronic care pharmacy program.

“(3) CHRONIC CARE PHARMACY PROGRAM REQUIREMENTS.—The PDP sponsor shall establish and maintain procedures to ensure that each of the following requirements is met by a chronic care pharmacy program:

“(A) A targeted beneficiary is (not less frequently than on an annual basis) provided a claims-based comprehensive written summary of the targeted beneficiary’s drug therapy that includes an analysis of—

“(i) poly-pharmacy and other safety issues, including the identification of duplicative or excessive drug therapy in order to reduce

harmful adverse drug reactions and unnecessary hospitalizations; and

“(ii) clinically appropriate alternative formulary treatment options and lower cost alternatives, if any, for consideration by the treating physician of the targeted beneficiary.

“(B) Any chronic care pharmacy under the program is accredited by a private accrediting organization as meeting standards appropriate for pharmacies that dispense long-term maintenance medications, including a process for quality and safety improvement.

“(C) The program makes available, 24 hours a day, 7 days a week, to a targeted beneficiary confidential pharmacist counseling, based on the targeted beneficiary's drug therapy.

“(D) The program delivers to the address specified by the targeted beneficiary an extended supply (such as 90-days) of long-term maintenance medications where permitted by law and when indicated to be clinically appropriate.

“(E) The program provides, after filling a prescription for a targeted beneficiary for 2 consecutive months, only an extended supply of a long-term maintenance medication, except that a 1-time 30-day supply of such a medication may be provided to the targeted beneficiary at a retail pharmacy in order to transition a targeted beneficiary into the program.

“(4) ACCESS TO COVERED PART D DRUGS.—The requirements of subsection (b)(1) shall apply to a chronic care pharmacy program, except that the requirements of subparagraphs (A) and (D) of such subsection shall apply only in the case of an individual who opts out of the chronic care pharmacy program under paragraph (2)(A)(ii).

“(5) FACILITATING AFFORDABLE PAYMENT ARRANGEMENTS.—With respect to an extended supply of part D covered drugs for a targeted beneficiary under the chronic care pharmacy program, the PDP sponsor shall offer to the targeted beneficiary an option to arrange for the payment of any required cost-sharing by a targeted beneficiary on an alternative basis (including more affordable payments in installments) over the period of the extended supply.

“(6) CONTINUITY OF ELECTION.—In the case where a targeted beneficiary changes enrollment to a different prescription drug plan (including a prescription drug plan offered by a different sponsor)—

“(A) the PDP sponsor of the plan from which the targeted beneficiary disenrolls shall notify the Secretary (as part of the disenrollment process)—

“(i) that the individual is a targeted beneficiary to whom the requirements of this subsection apply; and

“(ii) whether the targeted beneficiary elected to opt out of the chronic care pharmacy program under paragraph (2)(A)(ii); and

“(B) the Secretary shall ensure that, in the case where the targeted beneficiary has not elected to opt out as described in subparagraph (A)(ii), the continuation of the enrollment of the targeted beneficiary in the chronic care pharmacy program of the PDP sponsor offering the prescription drug plan in which the targeted beneficiary has enrolled.

“(7) PROVIDING INFORMATION TO BENEFICIARIES.—The Secretary shall include information regarding chronic care pharmacy programs in the activities required under section 1860D-1(c) (relating to the provision of information to beneficiaries with respect to informed choice, and other information), including any consumer satisfaction surveys under subsection (d).

“(8) EXCEPTION FOR LONG-TERM CARE FACILITIES.—This subsection shall not apply to a

long-term care facility or a pharmacy located in, or having a contract with, a long-term care facility.”

“(c) EFFECTIVE DATE.—The amendment made by this section shall apply for contract years beginning with 2011.

SA 3110. Mr. MENENDEZ submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 974, between lines 9 and 10, insert the following:

SEC. 3316. PERFORMANCE BASED PHARMACY REIMBURSEMENT PROGRAM.

(a) IN GENERAL.—Section 1860D-4 of the Social Security Act (42 U.S.C. 1395w-104) is amended by adding at the end the following new subsection:

“(m) PERFORMANCE BASED PHARMACY REIMBURSEMENT PROGRAM.—

“(1) IN GENERAL.—The PDP sponsor shall have in place a program that identifies omission gaps and adherence gaps (as defined in paragraph (2)) for specified beneficiaries (as described in paragraph (3)) and makes payments to participating pharmacies (as described in paragraph (4)) that close such gaps through clinical counseling.

“(2) OMISSION AND ADHERENCE GAPS DEFINED.—In this subsection:

“(A) OMISSION GAPS.—The term ‘omission gaps’ refers to cases when the patient is not receiving a medication that evidenced-based protocols or clinical practice standards indicate is a best practice for treatment of their disease.

“(B) ADHERENCE GAPS.—The term ‘adherence gaps’ refers to cases when a patient is not taking their medication the way it was prescribed, including failure to fill, failure to renew, stopping or not starting medications, or not taking a medication the way it was intended.

“(3) SPECIFIED BENEFICIARIES DESCRIBED.—Beneficiaries described in this paragraph are part D eligible individuals taking medications for one of the following conditions:

- “(A) Diabetes.
- “(B) Cardiovascular disease.
- “(C) Pulmonary disease.

“(4) PARTICIPATING PHARMACIES.—The PDP sponsor shall contract with any pharmacy that is willing to participate in such program and meet the standard terms and conditions of the PDP sponsor. To the extent practicable, the PDP sponsor shall use a specified beneficiary's primary pharmacy to close gaps in care. If such pharmacy does not participate in such program or is unable to close a gap in care, the PDP sponsor may use other participating pharmacies. The primary pharmacy selected by the PDP sponsor shall advise the specified beneficiary of his or her right to select another participating pharmacy.

“(5) GAPS IN MEDICATION ADHERENCE.—The Secretary shall require PDP sponsors to follow uniform standards in identifying gaps in medication adherence. The Secretary shall develop such standards based on current treatment protocols for the conditions described in paragraph (2).

“(6) PAYMENTS TO PDP SPONSORS.—

“(A) IN GENERAL.—The Secretary shall pay each PDP sponsor a per member monthly amount to administer such program. Such payments shall be for operational and ad-

ministrative activities only and shall not include the cost of any covered part D drug. The per member monthly payment to a PDP sponsor may not exceed an amount that equals \$0.85 in 2012, increased in subsequent years by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of the previous year.

“(B) SPECIAL RULE.—The Secretary shall ensure that PDP sponsors use greater than 50 percent of the aggregate amount paid to the PDP sponsor under subparagraph (A) to compensate pharmacies for counseling activities under such program.

“(C) NOT IN BIDS.—PDP sponsors shall not include the payments described in subparagraph (A) in the bids submitted by the PDP sponsor under section 1860D-11.

“(D) SOURCE.—The payment described in subparagraph (A) shall be made from the Federal Hospital Insurance Trust Fund under section 1817 and the Federal Supplementary Medical Insurance Trust Fund under section 1841, in such proportion as the Secretary determines appropriate.

“(7) PAYMENTS TO PARTICIPATING PHARMACIES FROM PDP SPONSORS.—Under such program, PDP sponsors shall negotiate payment structures with pharmacies, and pharmacists shall receive remuneration based on success in closings gaps in care. Payments under paragraph (6)(A) shall be made when it is determined that the adherence and omission gaps have been closed, or when billable activity by the pharmacy occurs, by contract.

“(8) BONUSES AND PENALTIES FOR PDP SPONSORS BASED ON ESTIMATED CHANGES IN MEDICAL COSTS.—

“(A) PROJECTED COSTS.—Beginning in 2012, the Secretary shall, on an annual basis, project the anticipated costs for individuals enrolled in the program under parts A and B for the current year and the succeeding 2 years, based on risk-adjusted historical costs under such parts.

“(B) COMPARISON.—

“(i) IN GENERAL.—At the end of each 3-year period described in subparagraph (A), for each PDP sponsor under the program, the Secretary shall compare the actual spending for such individuals to the costs projected under subparagraph (A).

“(ii) INCENTIVE PAYMENT.—For each year during the 3-year period described in clause (i), to the extent the actual costs are lower than the costs projected under subparagraph (A), the Secretary will pay to the PDP sponsor an incentive based on a graduated scale, under which the PDP sponsor receives an incremental 10 percent of the per member monthly amount paid to the PDP sponsor under paragraph (6) for every 10 percent of savings above the projection, not to exceed 50 percent of the aggregate amounts paid to the PDP sponsor under such paragraph for the initial year of the 3-year period.

“(iii) PENALTIES.—For each year during the 3-year period described in clause (i), to the extent the actual costs are higher than the costs projected under subparagraph (A), the PDP sponsor shall make a payment to the Secretary in an amount based on a graduated scale, under which the PDP sponsor pays to the Secretary 10 percent of the per member monthly amount paid to the PDP sponsor under paragraph (6) for every 10 percent of costs above the projection, not to exceed 50 percent of the aggregate amounts paid to the PDP sponsor under such paragraph for the initial year of the 3-year period.

“(C) GUIDANCE ON METHODOLOGY USED.—The Secretary shall issue guidance on the methodology that the Secretary uses to project costs as described in subparagraph (A), measure actual costs for purposes of the comparison under subparagraph (B), and calculate