109TH CONGRESS 2D SESSION	S.	
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To amend title XVIII of the Social Security Act to improve access to pharmacies under part D.

## IN THE SENATE OF THE UNITED STATES

Mr. Baucus (for himself, Mrs. Lincoln, and Mr. Conrad) introduced the following bill; which was read twice and referred to the Committee on

## A BILL

To amend title XVIII of the Social Security Act to improve access to pharmacies under part D.

- 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 "Pharmacy Access Im-
- 5 provement (PhAIm) Act of 2006".
- 6 SEC. 2. STRENGTHENING STANDARDS FOR ACCESS TO
- 7 PHARMACIES.
- 8 (a) In General.—Section 1860D-4(b)(1)(C) of the
- 9 Social Security Act (42 U.S.C. 1395w-104(b)(1)(C)) is
- 10 amended—

## (1) in clause (i)—

(A) by inserting "that are accessible to the general public (not including closed pharmacies, such as pharmacies that dispense drugs by mail order only or are located in a hospital or nursing home, except that a closed pharmacy shall be included if the pharmacy is operated by the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization (as defined in section 4 of the Indian Health Care Improvement Act))" after "sufficient number of pharmacies"; and

- (B) by striking "(other than by mail order)"; and
- (2) in clause (ii), by adding at the end the following new sentence: "If the PDP sponsor of a prescription drug plan designates in-network pharmacies as either preferred or non-preferred pharmacies (or any designation other than preferred or any other distinction between or among pharmacies with respect to participation status), only in-network preferred pharmacies shall be counted in determining if the requirements of such rules are met.".

1	(b) EXPANDING PARTICIPATION BY ANY WILLING
2	Pharmacy.—Section 1860D-4(b)(1)(A) of the Social Se-
3	curity Act (42 U.S.C. 1395w–104(b)(1)(A)) is amended—
4	(1) by striking "Pharmacy.—A prescription
5	drug plan" and inserting "PHARMACY.—
6	"(i) In general.—Subject to clause
7	(ii), a prescription drug plan';
8	(2) in clause (i), as added by paragraph (1), by
9	adding at the end the following new sentence: "A
10	previous refusal by a pharmacy of an offer to par-
11	ticipate, or the expiration of such an offer, shall not
12	be grounds to exclude a pharmacy from participation
13	under this subparagraph."; and
14	(3) by adding at the end the following new
15	clause:
16	"(ii) Participation of 340b enti-
17	TIES.—
18	"(I) In General.—A prescrip-
19	tion drug plan shall not exclude a
20	pharmacy from participation solely on
21	the basis that such pharmacy is a cov-
22	ered entity under section 340B of the
23	Public Health Service Act.
24	"(II) Reasonable terms and
25	CONDITIONS FOR 340B ENTITIES.—In

1	the case of a pharmacy that is a cov-
2	ered entity under such section 340B,
3	if such an entity requests that the
4	terms and conditions of the appro-
5	priate version (as determined by the
6	Secretary) of the Model Safety Net
7	Pharmacy Addendum to Pharmacy
8	Contract apply to a contract to dis-
9	pense covered part D drugs under
10	such plan, subject to subclause (III),
11	the terms and conditions of such Con-
12	tract shall be the terms and condi-
13	tions for participation of such phar-
14	macy under clause (i).
15	"(III) PERMITTING WAIVER OF
16	COST-SHARING.—In the case of a
17	pharmacy that is a covered entity
18	under such section 340B, if such an
19	entity requests that the terms and
20	conditions of a contract to dispense
21	covered part D drugs under such plan
22	permit the pharmacy to waive or re-
23	duce cost-sharing under this part,
24	consistent with the requirements of
25	section 1128B(b)(3)(G), such permis-

1	sion shall be included in the terms
2	and conditions for participation of
3	such pharmacy under clause (i).".
4	(c) Strengthening Convenient Access Stand-
5	ARDS.—Section 1860D–4(b)(1)(C) of the Social Security
6	Act (42 U.S.C. 1395w–104(b)(1)(C)) is amended by strik-
7	ing clause (iv) and inserting the following new clauses:
8	"(iv) Convenient access in long-
9	TERM CARE FACILITIES.—Such rules shall
10	include standards with respect to access
11	for enrollees who are residing in long-term
12	care facilities to ensure that such enrollees
13	have access to a long-term care network
14	pharmacy.
15	"(v) Convenient access to Phar-
16	MACIES SERVING INDIANS.—Such rules
17	may include standards with respect to ac-
18	cess for enrollees to pharmacies operated
19	by the Indian Health Service, Indian tribes
20	and tribal organizations, and urban Indian
21	organizations (as defined in section 4 of
22	the Indian Health Care Improvement
23	Act.".
24	(d) Reference to Provisions Relating to Rea-
25	SONABLE DISPENSING FEES.—Section 1860D-4(b) of the

1	Social Security Act (42 U.S.C. 1395w–104(b)) is amended
2	by adding at the end the following new paragraph:
3	"(4) Reference to reasonable dispensing
4	FEE PROVISIONS.—For provisions relating to reason-
5	able dispensing fees, see section 1860D–12(b)(7).".
6	(e) Effective Date.—The amendments made by
7	this section shall apply to plan years beginning on or after
8	January 1, 2007.
9	SEC. 3. PROMPT PAYMENT BY PRESCRIPTION DRUG PLANS
10	AND MA-PD PLANS UNDER PART D.
11	(a) Prompt Payment by Prescription Drug
12	Plans.—Section 1860D–12(b) of the Social Security Act
13	(42 U.S.C. 1395w-112(b)) is amended by adding at the
14	end the following new paragraph:
15	"(4) Prompt payment of clean claims.—
16	"(A) Prompt payment.—
17	"(i) In general.—Each contract en-
18	tered into with a PDP sponsor under this
19	section with respect to a prescription drug
20	plan offered by such sponsor shall provide
21	that payment shall be issued, mailed, or
22	otherwise transmitted with respect to all
23	clean claims submitted by pharmacies
24	(other than pharmacies that dispense
25	drugs by mail order only or are located in.

1	or contract with, a long-term care facility)
2	under this part within the applicable num-
3	ber of calendar days after the date on
4	which the claim is received.
5	"(ii) CLEAN CLAIM DEFINED.—In this
6	paragraph, the term 'clean claim' means a
7	claim that has no defect or impropriety
8	(including any lack of any required sub-
9	stantiating documentation) or particular
10	circumstance requiring special treatment
11	that prevents timely payment from being
12	made on the claim under this part.
13	"(B) APPLICABLE NUMBER OF CALENDAR
14	DAYS DEFINED.—In this paragraph, the term
15	'applicable number of calendar days' means—
16	"(i) with respect to claims submitted
17	electronically, 14 days; and
18	"(ii) with respect to claims submitted
19	otherwise, 30 days.
20	"(C) Interest payment.—If payment is
21	not issued, mailed, or otherwise transmitted
22	within the applicable number of calendar days
23	(as defined in subparagraph (B)) after a clean
24	claim is received, interest shall be paid at a rate
25	equal to the weighted average of interest on 3-

month marketable Treasury securities determined for such period, increased by 0.1 percentage point for the period beginning on the day after the required payment date and ending on the date on which payment is made. Interest amounts paid under this subparagraph shall not be counted against the administrative costs of a prescription drug plan.

## "(D) Procedures involving claims.—

"(i) IN GENERAL.—A contract entered into with a PDP sponsor under this section with respect to a prescription drug plan offered by such sponsor shall provide that, not later than 10 days after the date on which a clean claim is submitted, the PDP sponsor shall provide the claimant with a notice that acknowledges receipt of the claim by such sponsor. Such notice shall be considered to have been provided on the date on which the notice is mailed or electronically transferred.

"(ii) CLAIM DEEMED TO BE CLEAN.—
A claim is deemed to be a clean claim if
the PDP sponsor involved does not provide
notice to the claimant of any deficiency in

1	the claim within 10 days of the date on
2	which the claim is submitted.
3	"(iii) Claim determined to not be
4	A CLEAN CLAIM.—
5	"(I) In general.—If a PDP
6	sponsor determines that a submitted
7	claim is not a clean claim, the PDP
8	sponsor shall, not later than the end
9	of the period described in clause (ii),
10	notify the claimant of such determina-
11	tion. Such notification shall specify all
12	defects or improprieties in the claim
13	and shall list all additional informa-
14	tion or documents necessary for the
15	proper processing and payment of the
16	claim.
17	"(II) DETERMINATION AFTER
18	SUBMISSION OF ADDITIONAL INFOR-
19	MATION.—A claim is deemed to be a
20	clean claim under this paragraph if
21	the PDP sponsor involved does not
22	provide notice to the claimant of any
23	defect or impropriety in the claim
24	within 10 days of the date on which

I	additional information is received
2	under subclause (I).
3	"(III) PAYMENT OF CLEAN POR-
4	TION OF A CLAIM.—A PDP sponsor
5	shall, as appropriate, pay any portion
6	of a claim that would be a clean claim
7	but for a defect or impropriety in a
8	separate portion of the claim in ac-
9	cordance with subparagraph (A).
10	"(iv) Obligation to Pay.—A claim
11	submitted to a PDP sponsor that is not
12	paid or contested by the provider within
13	the applicable number of days (as defined
14	in subparagraph (B)) shall be deemed to
15	be a clean claim and shall be paid by the
16	PDP sponsor in accordance with subpara-
17	graph (A).
18	"(v) Date of payment of claim.—
19	Payment of a clean claim under such sub-
20	paragraph is considered to have been made
21	on the date on which—
22	"(I) with respect to claims paid
23	electronically, the payment is trans-
24	ferred; and

1	"(II) with respect to claims paid
2	otherwise, the payment is submitted
3	to the United States Postal Service or
4	common carrier for delivery.
5	"(E) ELECTRONIC TRANSFER OF
6	FUNDS.—A PDP sponsor shall pay all clean
7	claims submitted electronically by electronic
8	transfer of funds if the pharmacy so requests or
9	has so requested previously.
10	"(F) Private right of action.—
11	"(i) In general.—Nothing in this
12	paragraph shall be construed to prohibit or
13	limit a claim or action not covered by the
14	subject matter of this section that any in-
15	dividual or organization has against a pro-
16	vider or a PDP sponsor.
17	"(ii) Anti-retaliation.—Consistent
18	with applicable Federal or State law, a
19	PDP sponsor shall not retaliate against an
20	individual or provider for exercising a right
21	of action under this subparagraph.".
22	(b) Prompt Payment by MA-PD Plans.—Section
23	1857(f) of the Social Security Act (42 U.S.C. 1395w–27)
24	is amended by adding at the end the following new para-
25	graph:

1	"(3) Incorporation of Certain Prescrip-
2	TION DRUG PLAN CONTRACT REQUIREMENTS.—The
3	following provisions shall apply to contracts with a
4	Medicare Advantage organization in the same man-
5	ner as they apply to contracts with a PDP sponsor
6	offering a prescription drug plan under part D:
7	"(A) Prompt payment.—Section 1860D—
8	12(b)(4).".
9	(c) Effective Date.—The amendments made by
10	this section shall apply to plan years beginning on or after
11	January 1, 2007.
12	SEC. 4. MEDICARE PART D INFORMATIONAL RESOURCES
13	AND CUSTOMER SERVICE.
13 14	AND CUSTOMER SERVICE.  (a) HEALTH AND HUMAN SERVICES PHARMACY
14	(a) Health and Human Services Pharmacy
14 15	(a) Health and Human Services Pharmacy Hotline.—The Secretary of Health and Human Services
<ul><li>14</li><li>15</li><li>16</li></ul>	(a) Health and Human Services Pharmacy Hotline.—The Secretary of Health and Human Services shall—
<ul><li>14</li><li>15</li><li>16</li><li>17</li></ul>	(a) Health and Human Services Pharmacy Hotline.—The Secretary of Health and Human Services shall—  (1) establish a toll-free telephone number that
14 15 16 17 18	(a) Health and Human Services Pharmacy Hotline.—The Secretary of Health and Human Services shall—  (1) establish a toll-free telephone number that is dedicated to providing information regarding the
<ul><li>14</li><li>15</li><li>16</li><li>17</li><li>18</li><li>19</li></ul>	(a) Health and Human Services Pharmacy Hotline.—The Secretary of Health and Human Services shall—  (1) establish a toll-free telephone number that is dedicated to providing information regarding the Medicare prescription drug benefit under part D of
14 15 16 17 18 19 20	(a) Health and Human Services Pharmacy Hotline.—The Secretary of Health and Human Services shall—  (1) establish a toll-free telephone number that is dedicated to providing information regarding the Medicare prescription drug benefit under part D of title XVIII of the Social Security Act to pharmacists
14 15 16 17 18 19 20 21	(a) Health and Human Services Pharmacy Hotline.—The Secretary of Health and Human Services shall—  (1) establish a toll-free telephone number that is dedicated to providing information regarding the Medicare prescription drug benefit under part D of title XVIII of the Social Security Act to pharmacists and pharmacy staff; and

1	(b) Customer Service Provided by Prescrip-
2	TION DRUG PLANS AND MA-PD PLANS.—
3	(1) In general.—Section 1860D-4 of the So-
4	cial Security Act (42 U.S.C. 1395w-104) is amend-
5	ed by adding at the end the following new sub-
6	section:
7	"(1) Customer Service.—
8	"(1) Pharmacy Hotline.—A PDP sponsor of
9	a prescription drug plan shall—
10	"(A) establish a toll-free telephone number
11	that is dedicated to providing information re-
12	garding the plan to pharmacists and pharmacy
13	staff; and
14	"(B) staff such telephone number in order
15	to ensure compliance with customer service
16	standards (as established by the Secretary).
17	"(2) Physician and provider hotline.—A
18	PDP sponsor of a prescription drug plan shall—
19	"(A) establish a toll-free telephone number
20	that is dedicated to providing information re-
21	garding the plan to physicians and providers;
22	and
23	"(B) staff such telephone number in order
24	to ensure compliance with customer service
25	standards (as established by the Secretary).".

1	(2) Effective date.—The amendments made
2	by this subsection shall apply to plan years begin-
3	ning on or after January 1, 2007.
4	SEC. 5. TRANSACTION STANDARDS FOR PRESCRIPTION
5	DRUG PLANS AND MA-PD PLANS.
6	(a) In General.—Section 1860D-4(b)(2) of the So-
7	cial Security Act is amended—
8	(1) in subparagraph (A)—
9	(A) by striking "In general.—The PDP"
10	and inserting "In General.—
11	"(i) Standardized technology
12	FOR BENEFIT ACCESS.—Subject to sub-
13	section (m), the PDP"; and
14	(B) by adding at the end the following new
15	clause:
16	"(ii) Standardized technology
17	FOR COMMUNICATIONS AND TRANS-
18	ACTIONS.—The PDP sponsor of a pre-
19	scription drug plan shall utilize standard-
20	ized technology for any communication or
21	transaction (including a billing or coding
22	transaction) occurring between such plan
23	and a participating pharmacy."; and
24	(2) by amending subparagraph (B) to read as
25	follows:

1	"(B) STANDARDS.—The card or tech-
2	nology required under subparagraph (A) shall
3	comply with the most recent standards adopted
4	by the Secretary under section 1173(c).".
5	(b) Effective Date.—The amendments made by
6	subsection (a) shall apply to cards issued, and communica-
7	tions or transactions conducted, on or after the date that
8	is 60 days after the date of enactment of this Act.
9	SEC. 6. RESTRICTIONS ON PHARMACY CO-BRANDING BY
10	PRESCRIPTION DRUG PLANS AND MA-PD
11	PLANS.
12	(a) In General.—Section 1860D-4 of the Social
13	Security Act (42 U.S.C. 1395w-104), as amended by sec-
14	tion 4(b), is amended by adding at the end the following
15	new subsection:
16	"(m) Co-Branding.—
17	"(1) Prohibition of Co-branding on pre-
18	SCRIPTION DRUG CARD.—A card that is issued
19	under subsection (b)(2)(A) for use under a prescrip-
20	tion drug plan offered by a PDP sponsor shall not
21	display the name, brand, logo, or trademark of any
22	pharmacy.
23	"(2) Marketing materials.—Marketing ma-
24	terials distributed by a PDP sponsor that has a co-
25	branding relationship with a pharmacy with respect

	10
1	to such a plan shall include a disclaimer in large,
2	off-set, bold-face type of the following: Other phar-
3	macies are also available in our network.".
4	(b) Effective Date.—The amendments made by
5	this section shall apply to cards and marketing materials
6	distributed on or after the date that is 60 days after the
7	date of enactment of this Act.
8	SEC. 7. SUBMISSION OF CLAIMS BY PHARMACIES LOCATED
9	IN OR CONTRACTING WITH LONG-TERM CARE
10	FACILITIES.
11	(a) Submission of Claims by Pharmacies Lo-
12	CATED IN OR CONTRACTING WITH LONG-TERM CARE FA-
13	CILITIES.—
14	(1) Submission of claims to prescription
15	DRUG PLANS.—Section 1860D-12(b) of the Social
16	Security Act (42 U.S.C. 1395w-112(b)), as amend-
17	ed by section 3(a), is amended by adding at the end
18	the following new paragraph:
19	"(5) Submission of claims by pharmacies
20	LOCATED IN OR CONTRACTING WITH LONG-TERM
21	CARE FACILITIES.—Each contract entered into with
22	a PDP sponsor under this section with respect to a
23	prescription drug plan offered by such sponsor shall
24	provide that a pharmacy located in, or having a con-

tract with, a long-term care facility shall have not

1	less than 30 days (but not more than 90 days) to
2	submit claims to the sponsor for reimbursement
3	under the plan.".
4	(2) Submission of claims to ma-pd
5	PLANS.—Section 1857(f)(3) of the Social Security
6	Act, as added by section 3(b), is amended by adding
7	at the end the following new subparagraph:
8	"(B) Submission of claims by Phar-
9	MACIES LOCATED IN OR CONTRACTING WITH
10	LONG-TERM CARE FACILITIES.—Section
11	1860D–12(b)(5).".
12	(b) Effective Date.—The amendments made by
13	this section shall apply to plan years beginning on or after
14	January 1, 2007.
15	SEC. 8. ASSURING PHARMACY ACCESS BY REQUIRING REA-
16	SONABLE PAYMENT OF PHARMACIES.
17	(a) Reasonable Dispensing Fees Required.—
18	(1) REQUIREMENT FOR PRESCRIPTION DRUG
19	PLANS.—Section 1860D-12(b) of the Social Secu-
20	rity Act (42 U.S.C. 1395w-104(b)(1)), as amended
	They Act (42 0.8.0. 1333w-104(0)(1)), as amended
21	by section $7(a)(1)$ , is amended by adding at the end
<ul><li>21</li><li>22</li></ul>	
	by section 7(a)(1), is amended by adding at the end

1	"(A) Reasonable dispensing fee re-
2	QUIRED.—In the case of plan years beginning
3	on or after January 1, 2009, subject to sub-
4	paragraph (E), each contract entered into with
5	a PDP sponsor under this section with respect
6	to a prescription drug plan offered by such
7	sponsor shall provide that such sponsor shall
8	pay a reasonable dispensing fee (as determined
9	under subparagraph (B)) for covered part D
10	drugs dispensed through a participating phar-
11	macy (other than such a pharmacy that dis-
12	penses drugs by mail order only or is located in,
13	or contracts with, a long-term care facility).
14	"(B) Establishment of reasonable
15	DISPENSING FEES FOR PRESCRIPTION DRUG
16	PLANS.—
17	"(i) In General.—The Secretary
18	shall establish, on an expedited basis and
19	using a negotiated rulemaking process
20	under subchapter III of chapter 5 of title
21	5, United States Code, reasonable dis-
22	pensing fees for covered part D drugs dis-
23	pensed through participating pharmacies.
24	"(ii) Consideration of oig rec-
25	OMMENDATIONS.—In establishing such

reasonable dispensing fees, the Secretary shall consider the recommendations included in the report submitted under section 8(b)(2) of the Pharmacy Access Improvement (PhAIm) Act of 2006 with respect to the geographic area in which a prescription drug plan is offered, including any adjustment recommended in such report for dispensing an extended supply of a covered part D drug.

"(iii) Publication of notice.—In

"(iii) Publication of notice.—In carrying out the rulemaking process under this subparagraph, the Secretary, after consultation with pharmacists, pharmacies (including long-term care, independent, chain, and mass market retail pharmacies), part D eligible individuals, beneficiary advocates, PDP sponsors of prescription drug plans, Medicare Advantage organizations offering MA-PD plans, and any other interested parties the Secretary determines appropriate, shall publish the notice provided under section 564(a) of title 5, United States Code, by not later than 60 days after the date of enactment of the

1	Pharmacy Access Improvement (PhAIm)
2	Act of 2006.
3	"(iv) Target date for publica-
4	TION OF RULE.—As part of the notice pro-
5	vided under clause (iii), and for purposes
6	of this subparagraph, the 'target date for
7	publication' (referred to in section
8	564(a)(5) of such title) shall be March 1,
9	2008.
10	"(v) Abbreviated period for sub-
11	MISSION OF COMMENTS.—In applying sec-
12	tion 564(c) of such title under this sub-
13	paragraph, '15 days' shall be substituted
14	for '30 days'.
15	"(vi) Appointment of negotiated
16	RULEMAKING COMMITTEE AND
17	FACILITATOR.—The Secretary shall pro-
18	vide for—
19	"(I) the appointment of a nego-
20	tiated rulemaking committee under
21	section 565(a) of such title by not
22	later than 20 days after the end of
23	the comment period provided for
24	under section 564(c) of such title (as
25	shortened under clause (v)); and

1	$(\Pi)$ the nomination of a
2	facilitator under section 566(c) of
3	such title by not later than 10 days
4	after the date of appointment of the
5	committee.
6	"(vii) Preliminary committee re-
7	PORT.—The negotiated rulemaking com-
8	mittee appointed under clause (vi)(I) shall
9	report to the Secretary, by not later than
10	December 1, 2007, regarding the commit-
11	tee's progress on achieving a consensus
12	with regard to the rulemaking proceeding
13	and whether such consensus is likely to
14	occur before 1 month before the target
15	date for publication of the rule. If the com-
16	mittee reports that the committee has
17	failed to make significant progress towards
18	such consensus or is unlikely to reach such
19	consensus by the target date, the Secretary
20	may terminate such process and provide
21	for the publication of a rule under this
22	subsection through such other methods as
23	the Secretary may provide.
24	"(viii) Final committee report.—
25	If the committee is not terminated under

1	clause (VII), the rulemaking committee
2	shall submit a report containing a pro-
3	posed rule by not later than 1 month be-
4	fore the target date of publication.
5	"(ix) Interim, final effect.—The
6	Secretary shall publish a rule under this
7	subparagraph in the Federal Register by
8	not later than the target date of publica-
9	tion. Such rule shall be effective and final
10	immediately on an interim basis, but is
11	subject to a change and revision after pub-
12	lic notice and opportunity for a period (of
13	not less than 60 days) for public comment.
14	In connection with such rule, the Secretary
15	shall specify the process for the timely re-
16	view and approval of contracts with PDF
17	sponsors of prescription drug plans to be
18	certified as paying reasonable dispensing
19	fees for covered part D drugs dispensed
20	through participating pharmacies pursuant
21	to such rules and consistent with this sub-
22	paragraph.
23	"(x) Publication of rule after
24	PUBLIC COMMENT.—The Secretary shall
25	provide for consideration of such comments

1	and republication of such rule by not later
2	than 1 year after the target date of publi-
3	cation.
4	"(C) Annual Review.—The Secretary
5	shall annually review the rule published under
6	subparagraph (C) and revise such rule as ap-
7	propriate based on the following considerations:
8	"(i) Any reasonable costs associated
9	with a pharmacist's time in—
10	"(I) checking for information
11	about an individual's coverage; and
12	"(II) performing necessary clin-
13	ical review and quality assurance ac-
14	tivities.
15	"(ii) Costs incurred by the pharmacist
16	that are associated with—
17	"(I) the measurement or mixing
18	of a covered part D drug;
19	"(II) filling the container for
20	such a drug;
21	"(III) physically providing the
22	completed prescription to an indi-
23	vidual enrolled in such a plan;
24	"(IV) delivery;
25	"(V) special packaging;

1	"(VI) overhead related to the fa-
2	cility and its maintenance, and the
3	equipment necessary to operate the
4	pharmacy, including the salaries of
5	pharmacists and other pharmacy
6	workers; and
7	"(VII) geographic factors that
8	impact operational costs.
9	"(iii) The reasonable variation in
10	costs described in clause (ii) based on
11	whether the pharmacist is dispensing a
12	standard or extended supply of a covered
13	part D drug.
14	"(iv) The annual National Industry-
15	Specific Occupational Employment and
16	Wage Estimates published by the Bureau
17	of Labor Statistics of the Department of
18	Labor, as determined with respect to phar-
19	macists.
20	"(D) Special rule for plan year
21	2008.—In the case of the plan year beginning on
22	January 1, 2008, subject to subparagraph (E),
23	each contract entered into with a PDP sponsor
24	under this section with respect to a prescription
25	drug plan offered by such sponsor shall provide

1	that such sponsor shall pay a reasonable dis-
2	pensing fee for covered part D drugs dispensed
3	through a participating pharmacy (other than
4	such a pharmacy that dispenses drugs by mail
5	order only or is located in, or contracts with, a
6	long-term care facility) based on the following
7	considerations:
8	"(i) Any reasonable costs associated
9	with a pharmacist's time in—
10	"(I) checking for information
11	about an individual's coverage; and
12	"(II) performing necessary clin-
13	ical review and quality assurance ac-
14	tivities.
15	"(ii) Costs incurred by the pharmacist
16	that are associated with—
17	"(I) the measurement or mixing
18	of a covered part D drug;
19	"(II) filling the container for
20	such a drug;
21	"(III) physically providing the
22	completed prescription to an indi-
23	vidual enrolled in such a plan;
24	"(IV) delivery;
25	"(V) special packaging;

1	"(VI) overhead related to the fa-
2	cility and its maintenance, and the
3	equipment necessary to operate the
4	pharmacy, including the salaries of
5	pharmacists and other pharmacy
6	workers; and
7	"(VII) geographic factors that
8	impact operational costs.
9	"(iii) The reasonable variation in
10	costs described in clause (ii) based on
11	whether the pharmacist is dispensing a
12	standard or extended supply of a covered
13	part D drug.
14	"(E) Minimum dispensing fees for
15	PARTICIPATING PHARMACIES.—In the case of a
16	PDP sponsor of a prescription drug plan that
17	sets separate rates for in-network pharmacies
18	based on whether the pharmacy is a preferred
19	or non-preferred pharmacy (or any designation
20	other than preferred or any other distinction
21	between or among pharmacies with respect to
22	participation status), the dispensing fee estab-
23	lished by such sponsor for a participating phar-
24	macy that is not so designated as a preferred
25	or non-preferred pharmacy shall be at a rate

1	that is not less than the rate at which the PDF
2	sponsor reimburses such non-preferred phar-
3	macies.".
4	(2) Requirement for Ma-PD Plans.—Sec-
5	tion 1857(f)(3) of the Social Security Act, as
6	amended by section 7(a)(2), is amended by adding
7	at the end the following new subparagraph:
8	"(C) Reasonable dispensing fees re-
9	QUIRED.—Section 1860D-12(b)(6).".
10	(b) OIG STUDY AND REPORT ON REASONABLE DIS-
11	PENSING FEES.—
12	(1) Study.—The Inspector General of the De-
13	partment of Health and Human Services shall con-
14	duct an analysis of the cost of dispensing covered
15	part D drugs (as defined in section 1860D-2(e) of
16	the Social Security Act (42 U.S.C. 1395w-102(e))
17	under a prescription drug plan under part D of title
18	XVIII or an MA-PD plan under part C of such title
19	that takes into consideration the following:
20	(A) Any reasonable costs associated with a
21	pharmacist's time in—
22	(i) checking for information about an
23	individual's coverage; and
24	(ii) performing necessary clinical re-
25	view and quality assurance activities.

1	(B) Costs incurred by the pharmacist that
2	are associated with—
3	(i) the measurement or mixing of a
4	covered part D drug;
5	(ii) filling the container for such a
6	drug;
7	(iii) physically providing the com-
8	pleted prescription to an individual en-
9	rolled in such a plan;
10	(iv) delivery;
11	(v) special packaging;
12	(vi) overhead related to the facility
13	and its maintenance, and the equipment
14	necessary to operate the pharmacy, includ-
15	ing the salaries of pharmacists and other
16	pharmacy workers; and
17	(vii) geographic factors that impact
18	operational costs.
19	(C) The reasonable variation in costs de-
20	scribed in subparagraph (B) based on whether
21	the pharmacist is dispensing a standard or ex-
22	tended supply of a covered part D drug.
23	(D) The reasonable variation in dispensing
24	fees, taking into consideration the costs de-
25	scribed in subparagraphs (A), (B), and (C),

1	that is sufficient to encourage the use of cov-
2	ered generic alternative therapies.
3	(2) Report.—By not later than March 1,
4	2007, the Inspector General of the Department of
5	Health and Human Services shall submit a report to
6	the Secretary of Health and Human Services on the
7	study conducted under paragraph (1). The report
8	shall include recommendations on the following:
9	(A) What the minimum reasonable dis-
10	pensing fee should be with respect to a pre-
11	scription drug plan under part D of title XVIII
12	or an MA-PD plan under part C of such title
13	determined with respect to the area in which
14	such plan is offered, including with respect to
15	each PDP region (as determined under section
16	1860D–11(a)(2) of the Social Security Act (42
17	U.S.C. $1395w-111(a)(2)$ ) and each MA region
18	(as determined under section 1858(a) of such
19	Act (42 U.S.C. 1395w-27(a)).
20	(i) The extent to which the dispensing
21	fee described in subparagraph (A) can rea-
22	sonably be increased when an extended
23	supply of a covered part D drug (as so de-
24	fined) is dispensed (depending on the num-

1	ber of days worth of such a drug being
2	supplied to the beneficiary).
3	(c) Encouraging Utilization of Generic
4	DRUGS.—Section 1860D-4(b) of the Social Security Act
5	(42 U.S.C. 1395w-104(b)), as amended by section 2(d),
6	is amended by adding at the end the following new para-
7	graph:
8	"(5) Encouraging utilization of generic
9	DRUGS.—With respect to prescriptions filled on or
10	after January 1, 2008, the PDP sponsor of a pre-
11	scription drug plan shall encourage generic utiliza-
12	tion by paying an increased dispensing fee for ge-
13	neric drugs.".
14	(d) REGULAR UPDATE OF PRESCRIPTION DRUG
15	PRICING STANDARD REQUIRED.—
16	(1) REQUIREMENT FOR PRESCRIPTION DRUG
17	PLANS.—Section 1860D-12(b) of the Social Secu-
18	rity Act (42 U.S.C. 1395w-104(b)(1)), as amended
19	by subsection (a), is amended by adding at the end
20	the following new paragraph:
21	"(7) REGULAR UPDATE OF PRESCRIPTION
22	DRUG PRICING STANDARD.—If the PDP sponsor of
23	a prescription drug plan uses a standard for reim-
24	bursement of pharmacies based on the cost of a
25	drug, each contract entered into with such sponsor

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1	under this section with respect to the plan shall pro-
2	vide that the sponsor shall update such standard not
3	less frequently than every 7 days, beginning with an
4	initial update on January 1 of each year, to accu-
5	rately reflect the market price of acquiring the
6	drug.".
7	(2) Requirement for Ma-PD plans.—Sec-

- (2) REQUIREMENT FOR MA-PD PLANS.—Section 1857(f)(3) of the Social Security Act, as amended by subsection (a)(2), is amended by adding at the end the following new subparagraph:
- 11 "(D) REGULAR UPDATE OF PRESCRIPTION
  12 DRUG PRICING STANDARD.—Section 1860D—
  13 12(b)(7).".
  - (3) Effective date.—The amendments made by this subsection shall apply to plan years beginning on or after January 1, 2007.