

[sic] is hereby restored or revived as if such section had not been enacted into law.”

#### CONSTRUCTION

Pub. L. 109-91, title I, §103(b), Oct. 20, 2005, 119 Stat. 2092, provided that: “Nothing in this section [amending this section and enacting provisions set out as a note under this section] shall be construed as preventing a prescription drug plan or an MA-PD plan from providing coverage of drugs for the treatment of sexual or erectile dysfunction as supplemental prescription drug coverage under section 1860D-2(a)(2)(A)(ii) of the Social Security Act (42 U.S.C. 1395w-102(a)(2)(A)(ii)).”

#### PAYMENT FOR ADMINISTRATION OF PART D VACCINES IN 2007

Pub. L. 109-432, div. B, title II, §202(a), Dec. 20, 2006, 120 Stat. 2986, provided that: “Notwithstanding any other provision of law, in the case of a vaccine that is a covered part D drug under section 1860D-2(e) of the Social Security Act (42 U.S.C. 1395w-102(e)) and that is administered during 2007, the administration of such vaccine shall be paid under part B of title XVIII of such Act [42 U.S.C. 1395j et seq.] as if it were the administration of a vaccine described in section 1861(s)(10)(B) of such Act (42 U.S.C. 1395w(s)(10)(B) [probably should be 1395x(s)(10)(B)]).”

#### § 1395w-103. Access to a choice of qualified prescription drug coverage

##### (a) Assuring access to a choice of coverage

###### (1) Choice of at least two plans in each area

The Secretary shall ensure that each part D eligible individual has available, consistent with paragraph (2), a choice of enrollment in at least 2 qualifying plans (as defined in paragraph (3)) in the area in which the individual resides, at least one of which is a prescription drug plan. In any such case in which such plans are not available, the part D eligible individual shall be given the opportunity to enroll in a fallback prescription drug plan.

###### (2) Requirement for different plan sponsors

The requirement in paragraph (1) is not satisfied with respect to an area if only one entity offers all the qualifying plans in the area.

###### (3) Qualifying plan defined

For purposes of this section, the term “qualifying plan” means—

- (A) a prescription drug plan; or
- (B) an MA-PD plan described in section 1395w-21(a)(2)(A)(i) of this title that provides—
  - (i) basic prescription drug coverage; or
  - (ii) qualified prescription drug coverage that provides supplemental prescription drug coverage so long as there is no MA monthly supplemental beneficiary premium applied under the plan, due to the application of a credit against such premium of a rebate under section 1395w-24(b)(1)(C) of this title.

##### (b) Flexibility in risk assumed and application of fallback plan

In order to ensure access pursuant to subsection (a) in an area—

- (1) the Secretary may approve limited risk plans under section 1395w-111(f) of this title for the area; and
- (2) only if such access is still not provided in the area after applying paragraph (1), the Sec-

retary shall provide for the offering of a fallback prescription drug plan for that area under section 1395w-111(g) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D-3, as added Pub. L. 108-173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2081.)

#### § 1395w-104. Beneficiary protections for qualified prescription drug coverage

##### (a) Dissemination of information

###### (1) General information

###### (A) Application of MA information

A PDP sponsor shall disclose, in a clear, accurate, and standardized form to each enrollee with a prescription drug plan offered by the sponsor under this part at the time of enrollment and at least annually thereafter, the information described in section 1395w-22(c)(1) of this title relating to such plan, insofar as the Secretary determines appropriate with respect to benefits provided under this part, and, subject to subparagraph (C), including the information described in subparagraph (B).

###### (B) Drug specific information

The information described in this subparagraph is information concerning the following:

- (i) Access to specific covered part D drugs, including access through pharmacy networks.
- (ii) How any formulary (including any tiered formulary structure) used by the sponsor functions, including a description of how a part D eligible individual may obtain information on the formulary consistent with paragraph (3).
- (iii) Beneficiary cost-sharing requirements and how a part D eligible individual may obtain information on such requirements, including tiered or other copayment level applicable to each drug (or class of drugs), consistent with paragraph (3).
- (iv) The medication therapy management program required under subsection (c).
- (v) The drug management program for at-risk beneficiaries under subsection (c)(5).
- (vi) For plan year 2021 and each subsequent plan year, subject to subparagraph (C), with respect to the treatment of pain—

(I) the risks associated with prolonged opioid use; and

(II) coverage of nonpharmacological therapies, devices, and nonopioid medications—

(aa) in the case of an MA-PD plan under part C, under such plan; and

(bb) in the case of a prescription drug plan, under such plan and under parts A and B.

###### (C) Targeted provision of information

A PDP sponsor of a prescription drug plan may, in lieu of disclosing the information described in subparagraph (B)(vi) to each en-