

AMENDMENT TO H.R. 3962

OFFERED BY MR. JOHNSON OF GEORGIA

Add at the end of title I of division A the following
(and conform the table of contents accordingly):

1 **SEC. 116. PRESCRIPTION DRUG COVERAGE IMPROVE-**
2 **MENTS IN PRIVATE HEALTH INSURANCE.**

3 (a) **GROUP HEALTH PLANS.—**

4 (1) **PUBLIC HEALTH SERVICE ACT AMEND-**
5 **MENTS.—**

6 (A) **IN GENERAL.—**Subpart 2 of part A of
7 title XXVII of the Public Health Service Act,
8 as previously amended, is further amended by
9 adding at the end the following new section:

10 **“SEC. 2710. PROVISIONS RELATING TO PRESCRIPTION**
11 **DRUGS.**

12 **“(a) IN GENERAL.—**A group health plan, and a
13 health insurance issuer offering group health insurance
14 coverage, that provides coverage for prescription drugs
15 shall, with respect to any co-payment or coinsurance re-
16 quirements applicable to such drug coverage, ensure
17 that—

1 “(1) such required co-payment or coinsurance
2 does not exceed the base cost of the prescription
3 drug (as determined by the Secretary);

4 “(2) such required co-payment or coinsurance
5 does not exceed \$200 per month for any single pre-
6 scription drug (30-day supply); and

7 “(3) such required co-payment or coinsurance
8 does not exceed, in the aggregate for all prescription
9 drugs, \$500 per month.

10 “(b) ADJUSTMENTS.—The amounts described in
11 paragraphs (2) and (3) of subsection (a) shall be annually
12 adjusted to reflect the average of the percentage increase
13 or decrease in the Consumer Price Index for all urban con-
14 sumers (U.S. city average) and the percentage increase
15 or decrease in the medical care component of such Con-
16 sumer Price Index during the calendar year preceding the
17 year for which the adjustment is being made.

18 “(c) NOTICE.—A group health plan under this part
19 shall comply with the notice requirement under section
20 714(b) of the Employee Retirement Income Security Act
21 of 1974 with respect to the requirements of this section
22 as if such section applied to such plan.”.

23 (B) CONFORMING AMENDMENT.—Section
24 2723(e) of such Act (42 U.S.C. 300gg-23(e)) is

1 amended by striking “section 2704” and insert-
2 ing “sections 2704 and 2708”.

3 (2) ERISA AMENDMENTS.—

4 (A) IN GENERAL.—Subpart B of part 7 of
5 subtitle B of title I of the Employee Retirement
6 Income Security Act of 1974, as previously
7 amended, is further amended by adding at the
8 end the following new section:

9 **“SEC. 718. PROVISIONS RELATING TO PRESCRIPTION**
10 **DRUGS.**

11 “(a) IN GENERAL.—A group health plan, and a
12 health insurance issuer offering group health insurance
13 coverage, that provides coverage for prescription drugs
14 shall, with respect to any co-payment or coinsurance re-
15 quirements applicable to such drug coverage, ensure
16 that—

17 “(1) such required co-payment or coinsurance
18 does not exceed the base cost of the prescription
19 drug (as determined by the Secretary of Health and
20 Human Services);

21 “(2) such required co-payment or coinsurance
22 does not exceed \$200 per month for any single pre-
23 scription drug (30-day supply); and

1 “(3) such required co-payment or coinsurance
2 does not exceed, in the aggregate for all prescription
3 drugs, \$500 per month.

4 “(b) ADJUSTMENTS.—The amounts described in
5 paragraphs (2) and (3) of subsection (a) shall be annually
6 adjusted to reflect the average of the percentage increase
7 or decrease in the Consumer Price Index for all urban con-
8 sumers (U.S. city average) and the percentage increase
9 or decrease in the medical care component of such Con-
10 sumer Price Index during the calendar year preceding the
11 year for which the adjustment is being made.

12 “(c) NOTICE.—A group health plan under this part
13 shall comply with the notice requirement under section
14 714(b) with respect to the requirements of this section as
15 if such section applied to such plan.”.

16 (B) TABLE OF CONTENTS.—The table of
17 contents in section 1 of such Act is amended by
18 inserting after the item relating to section 714
19 the following new item:

 “Sec. 718. Provisions relating to prescription drugs.”.

20 (3) INTERNAL REVENUE CODE AMEND-
21 MENTS.—

22 (A) IN GENERAL.—Subchapter B of chap-
23 ter 100 of the Internal Revenue Code of 1986,
24 as previously amended, is further amended by
25 adding at the end the following new section:

1 **“SEC. 9816. PROVISIONS RELATING TO PRESCRIPTION**
2 **DRUGS.**

3 “(a) IN GENERAL.—A group health plan, and a
4 health insurance issuer offering group health insurance
5 coverage, that provides coverage for prescription drugs
6 shall, with respect to any co-payment or coinsurance re-
7 quirements applicable to such drug coverage, ensure
8 that—

9 “(1) such required co-payment or coinsurance
10 does not exceed the base cost of the prescription
11 drug (as determined by the Secretary of Health and
12 Human Services);

13 “(2) such required co-payment or coinsurance
14 does not exceed \$200 per month for any single pre-
15 scription drug (30-day supply); and

16 “(3) such required co-payment or coinsurance
17 does not exceed, in the aggregate for all prescription
18 drugs, \$500 per month.

19 “(b) ADJUSTMENTS.—The amounts described in
20 paragraphs (2) and (3) of subsection (a) shall be annually
21 adjusted to reflect the average of the percentage increase
22 or decrease in the Consumer Price Index for all urban con-
23 sumers (U.S. city average) and the percentage increase
24 or decrease in the medical care component of such Con-
25 sumer Price Index during the calendar year preceding the
26 year for which the adjustment is being made.

1 “(e) NOTICE.—A group health plan under this part
2 shall comply with the notice requirement under section
3 714(b) of the Employee Retirement Income Security Act
4 of 1974 with respect to the requirements of this section
5 as if such section applied to such plan.”.

6 (B) CLERICAL AMENDMENT.—The table of
7 sections for such subchapter is amended by
8 adding at the end the following new item:

“Sec. 9816. Provisions relating to prescription drugs.”.

9 (b) INDIVIDUAL HEALTH INSURANCE.—

10 (1) IN GENERAL.—Part B of title XXVII of the
11 Public Health Service Act, as previously amended, is
12 further amended by inserting after section 2756 the
13 following new section:

14 **“SEC. 2757. PROVISIONS RELATING TO PRESCRIPTION**
15 **DRUGS.**

16 “The provisions of section 2710 shall apply to health
17 insurance coverage offered by a health insurance issuer
18 in the individual market in the same manner as they apply
19 to health insurance coverage offered by a health insurance
20 issuer in connection with a group health plan in the small
21 or large group market.”.

22 (2) CONFORMING AMENDMENT.—Section
23 2762(b)(2) of such Act (42 U.S.C. 300gg-62(b)(2))
24 is amended by striking “section 2751” and inserting
25 “sections 2751 and 2757”.

1 (e) APPLICATION TO FEHBP.—The amendments
2 made by this section shall apply to the administration of
3 chapter 89 of title 5, United States Code.

 Add at the end of subtitle E of title I of division B
the following (and conform the table of contents of such
division accordingly):

4 **SEC. 1190. ADDITIONAL PROTECTIONS FOR MEDICARE**
5 **PART D PRESCRIPTION DRUG PLANS.**

6 (a) IN GENERAL.—Section 1860D–2(b)(4) of the So-
7 cial Security Act (42 U.S.C. 1395w–102(b)(4)) is amend-
8 ed by adding at the end the following new subparagraph:

9 “(E) ADDITIONAL PROTECTIONS.—

10 “(i) IN GENERAL.—Notwithstanding
11 any other provision of this part, effective
12 for plan years beginning on or after Janu-
13 ary 1, 2011, a PDP sponsor of a prescrip-
14 tion drug plan and an MA organization of-
15 fering an MA–PD plan shall, with respect
16 to any co-payment or coinsurance require-
17 ments applicable to covered part D drugs
18 under the plan, ensure that—

19 “(I) such required co-payment or
20 coinsurance does not exceed the base
21 cost of the covered part D drug (as
22 determined by the Secretary);

1 “(II) such required co-payment
2 or coinsurance does not exceed \$200
3 per month for any single covered part
4 D drug (30-day supply); and

5 “(III) such required co-payment
6 or coinsurance does not exceed, in the
7 aggregate for all covered part D
8 drugs, \$500 per month.

9 “(ii) ADJUSTMENTS.—The amounts
10 described in clauses (II) and (III) of clause
11 (i) shall be annually adjusted to reflect the
12 average of the percentage increase or de-
13 crease in the Consumer Price Index for all
14 urban consumers (U.S. city average) and
15 the percentage increase or decrease in the
16 medical care component of such Consumer
17 Price Index during the calendar year pre-
18 ceding the year for which the adjustment
19 is being made.”

20 (b) EXPANSION OF EXCEPTIONS PROCESS.—Effec-
21 tive for plan years beginning on or after January 1, 2011,
22 the Secretary shall expand the formulary tier exception re-
23 quest process under sections 423.560 through 423.636 of
24 title 42, Code of Federal Regulations (as in effect on the
25 date of enactment of this Act), to allow individuals en-

1 rolled in a prescription drug plan under part D of title
2 XVIII of the Social Security Act or an MA-PD plan under
3 part C of such title to request an exception for a specialty
4 prescription drug to a plan's designation of a covered part
5 D drug (as defined in section 1860D-2(e) of such Act (42
6 U.S.C. 1395w-102(e)) as a non-preferred prescription
7 drug.

8 (c) MEDPAC STUDIES AND REPORTS.—

9 (1) STUDY AND REPORT ON THE MEDICARE
10 PART D ANTI-DISCRIMINATION CLAUSE.—

11 (A) STUDY.—The Medicare Payment Advi-
12 sory Commission shall conduct a study on var-
13 ious aspects of the prescription drug program
14 under part D of title XVIII of the Social Secu-
15 rity Act and, to the greatest extent practicable,
16 the interaction of such program with Medicare
17 beneficiary access to covered drugs under part
18 B of such title. Such study shall include the fol-
19 lowing:

20 (i) An analysis of—

21 (I) the use of specialty tiers for
22 covered part D drugs under prescrip-
23 tion drug plans and MA-PD plans;
24 and

1 (II) the effect of such specialty
2 tiers on access to care for Medicare
3 beneficiaries.

4 (ii) Consideration of the mechanisms
5 described in subparagraph (B) in the con-
6 text of the provisions of section 1860D-
7 11(e)(2)(D) of the Social Security Act (42
8 U.S.C. 1395w-111(e)(2)(D)) (in this para-
9 graph referred to as the “Medicare part D
10 anti-discrimination clause”).

11 (B) MECHANISMS DESCRIBED.—The fol-
12 lowing mechanisms are described in this sub-
13 paragraph:

14 (i) The use of specialty tiers for cov-
15 ered part D drugs under prescription drug
16 plans and MA-PD plans.

17 (ii) The application of segmented co-
18 insurance or copayment structures to cov-
19 ered part D drugs based on certain cat-
20 egories of such drugs or diagnoses.

21 (iii) The utilization of other differen-
22 tial benefit structures based on certain
23 conditions and Medicare beneficiaries
24 under prescription drug plans and MA-PD
25 plans, including an analysis of the inter-

1 action between such utilization and the ef-
2 fects of such utilization with the Medicare
3 part D anti-discrimination clause.

4 (C) REPORT.—Not later than 1 year after
5 the date of enactment of this Act, the Medicare
6 Payment Advisory Commission shall submit to
7 Congress a report containing the results of the
8 study conducted under subparagraph (A), to-
9 gether with recommendations for such legisla-
10 tion and administrative action as the Commis-
11 sion determines appropriate.

12 (D) REVISED GUIDANCE.—Based on the
13 results of the study conducted under subpara-
14 graph (A), the Secretary shall issue revised
15 guidance regarding the use of mechanisms de-
16 scribed in subparagraph (B) to all PDP spon-
17 sors offering prescription drug plans under part
18 D of title XVIII of the Social Security Act and
19 Medicare Advantage organizations offering
20 MA–PD plans under part C of such title.

21 (2) STUDY AND REPORT ON COST-SHARING FOR
22 PRESCRIPTION DRUGS UNDER PARTS B AND D.—

23 (A) STUDY.—The Medicare Payment Advi-
24 sory Commission shall conduct a study on cost-
25 sharing for prescription drugs under parts B

1 and D of title XVIII of the Social Security Act.
2 Such study shall include an analysis of the im-
3 pact of eliminating cost-sharing for covered part
4 D drugs for Medicare beneficiaries who—

5 (i) incur annual out-of-pocket cost-
6 sharing after the initial coverage limit
7 under section 1860D-2(b)(3) of such Act
8 (42 U.S.C. 1395w-102) that exceeds 5
9 percent of the income of the beneficiary (as
10 determined under section 1860D-
11 14(a)(3)(C) of such Act (42 U.S.C.
12 1395w-114(a)(3)(C)); and

13 (ii) do not otherwise qualify for an in-
14 come-related subsidy under section
15 1860D-14(a) of such Act (42 U.S.C.
16 1395w-114(a)) or other extra help or cost-
17 sharing relief.

18 (B) REPORT.—Not later than 6 months
19 after the date of enactment of this Act, the
20 Medicare Payment Advisory Commission shall
21 submit to Congress a report containing the re-
22 sults of the study conducted under subpara-
23 graph (A), together with recommendations for
24 such legislation and administrative action as the
25 Commission determines appropriate.

1 (3) DEFINITIONS.—In this section:

2 (A) COVERED PART D DRUG.—The term
3 “covered part D drug” has the meaning given
4 such term in section 1860D-2(e) of the Social
5 Security Act (42 U.S.C. 1395w-102(e)).

6 (B) MA-PD PLAN.—The term “MA-PD”
7 plan has the meaning given such term in para-
8 graph (9) of section 1860D-41(a) of such Act
9 (42 U.S.C. 1395w-151(a)).

10 (C) MEDICARE ADVANTAGE ORGANIZA-
11 TION.—The term “Medicare Advantage organi-
12 zation” has the meaning given such term in
13 section 1859(a)(1) of such Act (42 U.S.C.
14 1395w-28(a)(1)).

15 (D) PDP SPONSOR.—The term “PDP
16 sponsor” has the meaning given such term in
17 paragraph (13) of such section 1860D-41(a).

18 (E) PRESCRIPTION DRUG PLAN.—The
19 term “prescription drug plan” has the meaning
20 given such term in paragraph (14) of such sec-
21 tion.

