

117TH CONGRESS
2D SESSION

S. 5106

To amend title XVIII of the Social Security Act to ensure Medicare-only PACE program enrollees have a choice of prescription drug plans under Medicare part D.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 2022

Mr. CARPER (for himself and Mr. CASSIDY) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to ensure Medicare-only PACE program enrollees have a choice of prescription drug plans under Medicare 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 “PACE Part D Choice
5 Act of 2022”.

1 **SEC. 2. ENSURING MEDICARE-ONLY PACE PROGRAM EN-**
 2 **ROLLEES HAVE A CHOICE OF PRESCRIPTION**
 3 **DRUG PLANS UNDER MEDICARE PART D.**

4 Section 1860D–21(f) of the Social Security Act (42
 5 U.S.C. 1395w–131(f)) is amended—

6 (1) in paragraph (1), by striking “and (3)” and
 7 inserting “(3), and (4)”; and

8 (2) by adding at the end the following new
 9 paragraph:

10 “(4) ENSURING CHOICE OF PRESCRIPTION
 11 DRUG PLANS.—

12 “(A) IN GENERAL.—For plan years begin-
 13 ning on or after January 1, 2023, subject to
 14 the succeeding provisions of this paragraph, an
 15 applicable PACE program enrollee may elect to
 16 enroll in a qualified standalone prescription
 17 drug plan, in accordance with rules established
 18 by the Secretary pursuant to this paragraph,
 19 while enrolled under a PACE program.

20 “(B) DEFINITION OF APPLICABLE PACE
 21 PROGRAM ENROLLEE; QUALIFIED STANDALONE
 22 PRESCRIPTION DRUG PLAN.—In this paragraph:

23 “(i) APPLICABLE PACE PROGRAM EN-
 24 ROLLEE.—The term ‘applicable PACE pro-
 25 gram enrollee’ means a part D eligible in-
 26 dividual who—

1 “(I) is not entitled to medical as-
2 sistance under title XIX; and

3 “(II) is enrolled under a PACE
4 program offered by a PACE provider.

5 “(ii) QUALIFIED STANDALONE PRE-
6SCRIPTION DRUG PLAN.—The term ‘quali-
7fied standalone prescription drug plan’
8means, with respect to an applicable PACE
9program enrollee, a prescription drug
10plan—

11 “(I) that is not an MA–PD plan;

12 “(II) that is not operated by the
13 PACE program under which the indi-
14vidual is enrolled; and

15 “(III) for which the Secretary de-
16termines, with respect to the applica-
17ble PACE program enrollees enrolled
18in a PACE program offered by such
19PACE provider, that—

20 “(aa) the estimated bene-
21ficiary out-of-pocket costs (as de-
22fined in clause (iii)) for the plan
23year for qualified prescription
24drug coverage under the plan is
25equal to or less than the esti-

1 mated out-of-pocket costs for
2 such coverage under the prescrip-
3 tion drug plan offered by the
4 PACE program in which the ap-
5 plicable PACE program enrollee
6 is enrolled; and

7 “(bb) the estimated total
8 amount of Federal subsidies for
9 the plan year for qualified pre-
10 scription drug coverage under the
11 plan (which may be estimated
12 using data from the previous
13 plan year) is equal to or less than
14 the estimated subsidy amount for
15 such coverage under the prescrip-
16 tion drug plan offered by the
17 PACE program in which the ap-
18 plicable PACE program enrollee
19 is enrolled.

20 “(iii) OUT-OF-POCKET COSTS DE-
21 FINED.—In this paragraph, the term ‘out-
22 of-pocket costs’ includes premiums imposed
23 under a prescription drug plan and, in the
24 case of coverage under a qualified stand-
25 alone prescription drug plan, deductibles,

1 copayments, coinsurance, and other cost-
2 sharing.

3 “(C) OUT-OF-POCKET COSTS.—In the case
4 where an applicable PACE program enrollee
5 elects to enroll in a qualified standalone pre-
6 scription drug plan pursuant to this paragraph,
7 the individual shall be responsible for any out-
8 of-pocket costs imposed under the plan (includ-
9 ing costs for nonformulary drugs) after the ap-
10 plication of any subsidies under section 1860D–
11 14 for an applicable PACE program enrollee
12 who is a subsidy eligible individual (as defined
13 in section 1860D–14(a)(3)).

14 “(D) REQUIREMENTS FOR PACE PRO-
15 GRAMS.—

16 “(i) EDUCATING AND HELPING EN-
17 ROLL BENEFICIARIES INTO A PART D PLAN
18 OPTION.—A PACE program shall be re-
19 quired to provide—

20 “(I) information to all applicable
21 PACE program enrollees who are en-
22 rolled under the PACE program re-
23 garding the option to enroll in a quali-
24 fied standalone prescription drug plan
25 under this paragraph; and

1 “(II) upon request of an applica-
2 ble PACE program enrollee, coun-
3 seling and coordination to assist appli-
4 cable PACE program enrollees in
5 making decisions regarding the selec-
6 tion of qualified standalone prescrip-
7 tion drug plans available to them.

8 “(ii) MONITORING DRUG UTILIZATION,
9 ADHERENCE, AND SPEND.—A PACE pro-
10 gram shall be required to monitor drug
11 utilization, medication adherence, and drug
12 spending (through claims data shared pur-
13 suant to subparagraph (F) and otherwise)
14 throughout the year with respect to any
15 applicable PACE program enrollee who
16 elects to enroll in a qualified standalone
17 prescription drug plan under this para-
18 graph in order to coordinate with the PDP
19 sponsor of such plan regarding the drug
20 benefits offered by the plan, including
21 upon request of an applicable PACE pro-
22 gram enrollee the filing of any grievances
23 or appeals with the plan on behalf of the
24 applicable PACE program enrollee.

1 “(E) DISENROLLMENT.—An applicable
2 PACE program enrollee may disenroll from the
3 qualified standalone prescription drug plan
4 elected by such applicable PACE program en-
5 rollee under subparagraph (A) if the enrollee
6 changes medication during the plan year or can
7 demonstrate an unexpected increase in out-of-
8 pocket costs post enrollment.

9 “(F) CLAIMS SHARING.—In the case where
10 an applicable PACE program enrollee enrolls in
11 a qualified standalone prescription drug plan,
12 the PACE program in which the individual is
13 enrolled and the PDP sponsor of the qualified
14 standalone prescription drug plan shall share
15 claims data with each other with respect to the
16 applicable PACE program enrollee as needed to
17 support care management for the applicable
18 PACE program enrollee (including for purposes
19 of monitoring and coordination required under
20 subparagraph (D)(ii)) and for purposes of com-
21 prehensive risk adjustment under section
22 1894(d). Such data shall be shared without the
23 need for any formal or informal request of the
24 PACE program in which the individual is en-
25 rolled or the PDP sponsor of the qualified

standalone prescription drug plan in which the applicable PACE program enrollee is enrolled.

“(G) RULE OF CONSTRUCTION.—The authority established under this paragraph for an applicable PACE program enrollee to elect to enroll in a qualified standalone prescription drug plan shall not be construed as permitting an applicable PACE program enrollee to enroll in a prescription drug plan that is not a qualified standalone prescription drug plan.

“(H) RELATION TO PACE STATUTES.—

“(i) IN GENERAL.—The authority provided under this paragraph for an applicable PACE program enrollee to elect to enroll in a qualified standalone prescription drug plan shall apply notwithstanding subsection (a)(1)(B)(1) of section 1894 and such other provisions of sections 1894 and 1934 as the Secretary determines may conflict with the authority provided for under this paragraph, including subsections (a)(2)(B), (b)(1)(A)(i), (b)(1)(C), (f)(2)(B)(ii), and (f)(2)(B)(v) of such sections.

1 “(ii) CLARIFICATION ON PAYMENT
2 FOR PART D DRUG COVERAGE.—Insofar as
3 an applicable PACE program enrollee is
4 enrolled in a qualified standalone prescrip-
5 tion drug plan under this paragraph, the
6 PACE program shall not be entitled to
7 payment under section 1894(d) for the
8 provision of qualified prescription drug
9 coverage under such standalone prescrip-
10 tion drug plan with respect to such appli-
11 cable PACE program enrollee.”.

○