

**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.R. 3200  
OFFERED BY MS. CASTOR OF FLORIDA**

[AINS-EC\_\_001]

In part 2 of subtitle D of title I of division B, add  
at the end the following new section:

1 **SEC. 1176. STATE CERTIFICATION PRIOR TO WAIVER OF LI-**  
2 **CENSURE REQUIREMENTS UNDER MEDICARE**  
3 **PRESCRIPTION DRUG PROGRAM.**

4 (a) IN GENERAL.—Section 1860D–12(c) of the So-  
5 cial Security Act (42 U.S.C. 1395w–112(c)) is amended—

6 (1) in paragraph (1)(A), by striking “In the  
7 case” and inserting “Subject to paragraph (5), in  
8 the case”; and

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

11 “(5) STATE CERTIFICATION REQUIRED.—

12 “(A) IN GENERAL.—The Secretary may  
13 only grant a waiver under paragraph (1)(A) if  
14 the Secretary has received a certification from  
15 the State insurance commissioner that the pre-  
16 scription drug plan has a substantially complete  
17 application pending in the State.

1                   “(B) REVOCATION OF WAIVER UPON FIND-  
2                   ING OF FRAUD AND ABUSE.—The Secretary  
3                   shall revoke a waiver granted under paragraph  
4                   (1)(A) if the State insurance commissioner sub-  
5                   mits a certification to the Secretary that the re-  
6                   cipient of such a waiver—

7                               “(i) has committed fraud or abuse  
8                               with respect to such waiver;

9                               “(ii) has failed to make a good faith  
10                              effort to satisfy State licensing require-  
11                              ments; or

12                             “(iii) was determined ineligible for li-  
13                             censure by the State.”.

14           (b) EFFECTIVE DATE.—The amendments made by  
15           subsection (a) shall apply with respect to plan years begin-  
16           ning on or after January 1, 2010.

          In title IX of division B, add at the end the fol-  
          lowing new sections:

17   **SEC. 1906. STANDARDIZED MARKETING REQUIREMENTS**  
18                               **UNDER THE MEDICARE ADVANTAGE AND**  
19                               **MEDICARE PRESCRIPTION DRUG PROGRAMS.**

20           (a) MEDICARE ADVANTAGE PROGRAM.—

21                   (1) IN GENERAL.—Section 1856 of the Social  
22                   Security Act (42 U.S.C. 1395w-26) is amended—

1 (A) in subsection (b)(1), by inserting “or  
2 subsection (c)” after “subsection (a)”; and

3 (B) by adding at the end the following new  
4 subsection:

5 “(c) STANDARDIZED MARKETING REQUIREMENTS.—

6 “(1) DEVELOPMENT BY THE NAIC.—

7 “(A) REQUIREMENTS.—The Secretary  
8 shall request the National Association of Insur-  
9 ance Commissioners (in this subsection referred  
10 to as the ‘NAIC’) to—

11 “(i) develop standardized marketing  
12 requirements for Medicare Advantage or-  
13 ganizations with respect to Medicare Ad-  
14 vantage plans and PDP sponsors with re-  
15 spect to prescription drug plans under part  
16 D; and

17 “(ii) submit a report containing such  
18 requirements to the Secretary by not later  
19 than the date that is 9 months after the  
20 date of the enactment of this subsection.

21 “(B) PROHIBITED ACTIVITIES.—Such re-  
22 quirements shall include prohibitions on the  
23 prohibited activities described in section  
24 1851(j)(1).

1           “(C) LIMITATIONS.—Such requirements  
2           shall establish limitations that include at least  
3           the limitations described in section 1851(j)(2),  
4           except for those relating to compensation.

5           “(D) ELECTION FORM.—Such require-  
6           ments may prohibit a Medicare Advantage or-  
7           ganization or a PDP sponsor (or an agent of  
8           such an organization or sponsor) from com-  
9           pleting any portion of any election form used to  
10          carry out elections under section 1851 or  
11          1860D–1 on behalf of any individual.

12          “(E) AGENT AND BROKER COMMISSIONS  
13          AND COMPENSATION.—Such requirements shall  
14          establish standards—

15                 “(i) for fair and appropriate commis-  
16                 sions for agents and brokers of Medicare  
17                 Advantage organizations and PDP spon-  
18                 sors, including a prohibition on extra bo-  
19                 nuses or incentives;

20                 “(ii) for the disclosure of such com-  
21                 missions; and

22                 “(iii) for the use of compensation for  
23                 agents and brokers other than such com-  
24                 missions.

1           Such standards shall ensure that the use of  
2           compensation creates incentives for agents and  
3           brokers to enroll individuals in the Medicare  
4           Advantage plan that is intended to best meet  
5           their health care needs.

6           “(F) CERTAIN CONDUCT OF AGENTS.—  
7           Such requirements shall address the conduct of  
8           agents engaged in on-site promotion at a facil-  
9           ity of an organization with which the Medicare  
10          Advantage organization or PDP sponsor has a  
11          co-branding relationship.

12          “(G) OTHER STANDARDS.—Such require-  
13          ments may establish such other standards relat-  
14          ing to unfair trade practices and marketing  
15          under Medicare Advantage plans and prescrip-  
16          tion drug plans under part D as the NAIC de-  
17          termines appropriate.

18          “(2) IMPLEMENTATION OF REQUIREMENTS.—

19                 “(A) ADOPTION OF NAIC DEVELOPED RE-  
20                 QUIREMENTS.—If the NAIC develops standard-  
21                 ized marketing requirements and submits the  
22                 report pursuant to paragraph (1), the Secretary  
23                 shall promulgate regulations for the adoption of  
24                 such requirements. The Secretary shall ensure  
25                 that such regulations take effect beginning with

1 the first open enrollment period beginning 12  
2 months after the date of the enactment of this  
3 subsection.

4 “(B) REQUIREMENTS IF NAIC DOES NOT  
5 SUBMIT REPORT.—If the NAIC does not de-  
6 velop standardized marketing requirements and  
7 submit the report pursuant to paragraph (1),  
8 the Secretary shall promulgate regulations for  
9 standardized marketing requirements for Medi-  
10 care Advantage organizations with respect to  
11 Medicare Advantage plans and PDP sponsors  
12 with respect to prescription drug plans under  
13 part D. Such regulations shall meet the require-  
14 ments of subparagraphs (B) through (F) of  
15 paragraph (1), and may establish such other  
16 standards relating to marketing under Medicare  
17 Advantage plans and prescription drug plans as  
18 the Secretary determines appropriate. The Sec-  
19 retary shall ensure that such regulations take  
20 effect beginning with the first open enrollment  
21 period beginning 12 months after the date of  
22 the enactment of this subsection.

23 “(C) CONSULTATION.—In establishing re-  
24 quirements under this subsection, the NAIC or  
25 Secretary (as the case may be) shall consult

1 with a working group composed of representa-  
2 tives of Medicare Advantage organizations and  
3 PDP sponsors, consumer groups, and other  
4 qualified individuals. Such representatives shall  
5 be selected in a manner so as to insure bal-  
6 anced representation among the interested  
7 groups.

8 “(3) STATE REPORTING OF VIOLATIONS OF  
9 STANDARDIZED MARKETING REQUIREMENTS.—The  
10 Secretary shall request that States report any viola-  
11 tions of the standardized marketing requirements  
12 under the regulations under subparagraph (A) or  
13 (B) of paragraph (2) to national and regional offices  
14 of the Centers for Medicare & Medicaid Services.

15 “(4) REPORT.—The Secretary shall submit an  
16 annual report to Congress on the enforcement of the  
17 standardized marketing requirements under the reg-  
18 ulations under subparagraph (A) or (B) of para-  
19 graph (2), together with such recommendations as  
20 the Secretary determines appropriate. Such report  
21 shall include—

22 “(A) a list of any alleged violations of such  
23 requirements reported to the Secretary by a  
24 State, a Medicare Advantage organization, or a  
25 PDP sponsor; and

1           “(B) the disposition of such reported viola-  
2           tions.”.

3           (2) STATE AUTHORITY TO ENFORCE STAND-  
4           ARDIZED MARKETING REQUIREMENTS.—

5           (A) IN GENERAL.—Section 1856(b)(3) of  
6           the Social Security Act (42 U.S.C. 1395w-  
7           26(b)(3)) is amended—

8                   (i) by striking “or State” and insert-  
9                   ing “, State”; and

10                   (ii) by inserting “, or State laws or  
11                   regulations enacting the standardized mar-  
12                   keting requirements under subsection (c)”  
13                   after “plan solvency”.

14           (B) NO PREEMPTION OF STATE SANC-  
15           TIONS.—Nothing in title XVIII of the Social  
16           Security Act or the provisions of, or amend-  
17           ments made by, this Act, shall be construed to  
18           prohibit a State from conducting a market con-  
19           duct examination or from imposing sanctions  
20           against Medicare Advantage organizations,  
21           PDP sponsors, or agents or brokers of such or-  
22           ganizations or sponsors for violations of the  
23           standardized marketing requirements under  
24           subsection (c) of section 1856 of the Social Se-

1 security Act (as added by paragraph (1)) as en-  
2 acted by that State.

3 (3) CONFORMING AMENDMENT.—Section  
4 1851(h)(4) of the Social Security Act (42 U.S.C.  
5 1395w–21(h)(4)) is amended by adding at the end  
6 the following flush sentence:

7 “Beginning on the effective date of the implementa-  
8 tion of the regulations under subparagraph (A) or  
9 (B) of section 1856(c)(2), each Medicare Advantage  
10 organization with respect to a Medicare Advantage  
11 plan offered by the organization (and agents of such  
12 organization) shall comply with the standardized  
13 marketing requirements under section 1856(c).”

14 (b) MEDICARE PRESCRIPTION DRUG PROGRAM.—  
15 Section 1860D–4 of the Social Security Act (42 U.S.C.  
16 1395w–104) is amended by adding at the end the fol-  
17 lowing new subsection:

18 “(m) STANDARDIZED MARKETING REQUIRE-  
19 MENTS.—A PDP sponsor with respect to a prescription  
20 drug plan offered by the sponsor (and agents of such spon-  
21 sor) shall comply with the standardized marketing require-  
22 ments under section 1856(c).”

1 **SEC. 1907. NAIC RECOMMENDATIONS ON THE ESTABLISH-**  
2 **MENT OF STANDARDIZED BENEFIT PACK-**  
3 **AGES FOR MEDICARE ADVANTAGE PLANS**  
4 **AND PRESCRIPTION DRUG PLANS.**

5 Not later than 30 days after the date of the enact-  
6 ment of this Act, the Secretary of Health and Human  
7 Services shall request the National Association of Insur-  
8 ance Commissioners to establish a committee to study and  
9 make recommendations to the Secretary and Congress  
10 on—

11 (1) the establishment of standardized benefit  
12 packages for Medicare Advantage plans under part  
13 C of title XVIII of the Social Security Act and for  
14 prescription drug plans under part D of such Act;  
15 and

16 (2) the regulation of such plans.

