

116TH CONGRESS
1ST SESSION

H. R. 1394

To amend title XVIII of the Social Security Act to provide for certain reforms with respect to medicare supplemental health insurance policies.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2019

Mr. DOGGETT introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to provide for certain reforms with respect to medicare supplemental health insurance policies.

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 “Medigap Consumer
5 Protection Act of 2019”.

6 **SEC. 2. GUARANTEED ISSUE.**

7 (a) GUARANTEED ISSUE OF MEDIGAP POLICIES TO
8 ALL MEDIGAP-ELIGIBLE MEDICARE BENEFICIARIES.—

1 (1) IN GENERAL.—Section 1882(s) of the So-
2 cial Security Act (42 U.S.C. 1395ss(s)) is amend-
3 ed—

4 (A) in paragraph (2)(A), by striking “65
5 years of age or older and is enrolled for benefits
6 under part B” and inserting “entitled to, or en-
7 rolled for, benefits under part A and enrolled
8 for benefits under part B”;

9 (B) in paragraph (2)(D), by striking “who
10 is 65 years of age or older as of the date of
11 issuance and”;

12 (C) in paragraph (3)(B)(ii), by striking “is
13 65 years of age or older and”; and

14 (D) in paragraph (3)(B)(vi), by striking
15 “at age 65”.

16 (2) EFFECTIVE DATE; PHASE-IN AUTHORITY.—

17 (A) EFFECTIVE DATE.—Subject to sub-
18 paragraph (B), the amendments made by para-
19 graph (1) shall apply to medicare supplemental
20 policies effective on or after January 1, 2022.

21 (B) PHASE-IN AUTHORITY.—

22 (i) IN GENERAL.—Subject to clause
23 (ii), the Secretary of Health and Human
24 Services may phase in the implementation
25 of the amendments made under paragraph

1 (1) (with such phase-in beginning on or
2 after January 1, 2022) in such manner as
3 the Secretary determines appropriate in
4 order to minimize any adverse impact on
5 individuals enrolled under a medicare sup-
6 plemental policy.

7 (ii) PHASE-IN PERIOD MAY NOT EX-
8 CEED 5 YEARS.—The Secretary of Health
9 and Human Services shall ensure that the
10 amendments made by paragraph (1) are
11 fully implemented by not later than Janu-
12 ary 1, 2027.

13 (3) ADDITIONAL ENROLLMENT PERIOD FOR
14 CERTAIN INDIVIDUALS.—

15 (A) ONE-TIME ENROLLMENT PERIOD.—

16 (i) IN GENERAL.—In the case of an
17 individual described in subparagraph (B),
18 the Secretary shall establish a one-time en-
19 rollment period during which such an indi-
20 vidual may enroll in any medicare supple-
21 mental policy of the individual's choosing.

22 (ii) PERIOD.—The enrollment period
23 established under clause (i) shall begin on
24 the date on which the phase-in period

1 under paragraph (2) is completed and end
2 6 months after such date.

3 (B) INDIVIDUAL DESCRIBED.—An indi-
4 vidual described in this paragraph is an indi-
5 vidual who—

6 (i) is entitled to hospital insurance
7 benefits under part A under section 226(b)
8 or section 226A of the Social Security Act
9 (42 U.S.C. 426(b); 426–1);

10 (ii) is enrolled for benefits under part
11 B of such Act (42 U.S.C. 1395j et seq.);
12 and

13 (iii) would not, but for the provisions
14 of and amendments made by paragraphs
15 (1) and (2), be eligible for the guaranteed
16 issue of a medicare supplemental policy
17 under paragraph (2) or (3) of section
18 1882(s) of such Act (42 U.S.C. 1395ss(s)).

19 (C) OUTREACH PLAN.—

20 (i) IN GENERAL.—The Secretary shall
21 develop an outreach plan to notify individ-
22 uals described in subparagraph (B) of the
23 one-time enrollment period established
24 under subparagraph (A).

1 (ii) CONSULTATION.—In imple-
2 menting the outreach plan developed under
3 clause (i), the Secretary shall consult with
4 consumer advocates, brokers, insurers, the
5 National Association of Insurance Commis-
6 sioners, and State Health Insurance As-
7 sistance Programs.

8 (b) GUARANTEED ISSUE OF MEDIGAP POLICIES FOR
9 MEDICARE ADVANTAGE AND MEDICAID ENROLLEES;
10 TREATMENT OF INDIVIDUALS WITH COBRA.—

11 (1) IN GENERAL.—Section 1882(s)(3) of the
12 Social Security Act (42 U.S.C. 1395ss(s)(3)), as
13 amended by subsection (a), is further amended—

14 (A) in subparagraph (B), by adding at the
15 end the following new clauses:

16 “(vii) The individual was enrolled in a Medicare
17 Advantage plan under part C for not less than 12
18 months and subsequently disenrolled from such plan
19 and elects to receive benefits under this title through
20 the original Medicare fee-for-service program under
21 parts A and B.

22 “(viii) The individual—

23 “(I) is entitled to, or enrolled for, benefits
24 under part A and enrolled for benefits under
25 part B; and

1 “(II) either—

2 “(aa) is eligible for medical assistance
3 under a State plan or waiver under title
4 XIX based on a reduction of income of the
5 individual based on costs incurred for med-
6 ical or other remedial care and was en-
7 rolled in such plan or waiver; or

8 “(bb) was otherwise eligible for med-
9 ical assistance under a State plan or waiv-
10 er under title XIX and subsequently lost
11 eligibility for such medical assistance.”;

12 (B) by striking subparagraph (C)(iii) and
13 inserting the following:

14 “(iii) Subject to subsection (v)(1), for purposes
15 of an individual described in clause (vi), (vii), or
16 (viii) of subparagraph (B), a medicare supplemental
17 policy described in this subparagraph shall include
18 any medicare supplemental policy.”; and

19 (C) in subparagraph (E)—

20 (i) in clause (iv), by striking “and” at
21 the end;

22 (ii) in clause (v), by striking the pe-
23 riod at the end and inserting a semicolon;
24 and

1 (iii) by adding at the end the fol-
2 lowing new clauses—

3 “(vi) in the case of an individual described in
4 subparagraph (B)(vii), the annual, coordinated elec-
5 tion period (as defined in section 1851(e)(3)(B)) or
6 a continuous open enrollment period (as defined in
7 section 1851(e)(2)) during which the individual
8 disenrolls from a Medicare Advantage plan under
9 part C;

10 “(vii) in the case of an individual described in
11 subparagraph (B)(viii) who is eligible for medical as-
12 sistance under a State plan or waiver under title
13 XIX for a reason described in item (aa), such period
14 as is specified by the Secretary;

15 “(viii) in the case of an individual described in
16 subparagraph (B)(viii) who is eligible for medical as-
17 sistance under a State plan or waiver under title
18 XIX for a reason described in item (bb), the period
19 beginning on the date that the individual receives a
20 notice of cessation of such individual’s eligibility for
21 medical assistance under the State plan or waiver
22 under title XIX and ending on the date that is four
23 months after the individual receives such notice;
24 and”.

1 (2) TREATMENT OF INDIVIDUALS WITH
2 COBRA.—

3 (A) IN GENERAL.—Section 1882(s)(3) of
4 the Social Security Act (42 U.S.C.
5 1395ss(s)(3)), as amended by subsection (a)
6 and paragraph (1), is further amended—

7 (i) in subparagraph (B)(i) by insert-
8 ing “or, in the case of an individual en-
9 rolled in such an employee welfare benefit
10 plan pursuant to a COBRA continuation
11 provision (as defined in section 2791(d)(4)
12 of the Public Health Service Act), that the
13 individual disenrolls from such plan and
14 enrolls under part B” before the period at
15 the end; and

16 (ii) in subparagraph (E), as amended
17 by paragraph (1), by adding at the end the
18 following new clause:

19 “(ix) in the case of an individual described in
20 subparagraph (B)(i) who enrolled in an employee
21 welfare benefit plan described in such subparagraph
22 pursuant to a COBRA continuation provision (as de-
23 fined in section 2791(d)(4) of the Public Health
24 Service Act) and who disenrolls from such plan and
25 enrolls under part B, the period beginning on 60

1 days before the effective date of such disenrollment
2 and ending on the date that is 63 days after such
3 effective date.”.

4 (B) TECHNICAL CORRECTION.—Section
5 1882(s)(2)(D) of the Social Security Act (42
6 U.S.C. 1395ss(s)(2)(D)) is amended—

7 (i) by striking “2701(c)” and insert-
8 ing “2704(c)”; and

9 (ii) by striking “2701(a)(3)” and in-
10 sserting “2704(a)(3)”.

11 (3) EFFECTIVE DATE.—The amendments made
12 by paragraphs (1) and (2)(A) shall apply to medi-
13 care supplemental policies effective on or after Janu-
14 ary 1, 2022.

15 **SEC. 3. MEDICAL LOSS RATIO.**

16 Section 1882(r)(1)(A) of the Social Security Act (42
17 U.S.C. 1395ss(r)(1)(A)) is amended—

18 (1) by inserting “and periodically reviewed”
19 after “developed”; and

20 (2) by striking “policy, at least 75 percent of
21 the aggregate amount of premiums collected in the
22 case of group policies and at least 65 percent in the
23 case of individual policies; and” and inserting the
24 following: “policy—

1 “(i) with respect to periods beginning be-
2 fore January 1, 2022, at least 75 percent of the
3 aggregate amount of premiums collected in the
4 case of group policies and at least 65 percent
5 in the case of individual policies; and

6 “(ii) with respect to periods beginning on
7 or after January 1, 2022, a percent of the ag-
8 gregate amount of premiums collected that, in
9 the case of group policies or individual policies,
10 as applicable, is equal to or greater than both—

11 “(I) the applicable percent specified in
12 clause (i) with respect to such policies; and

13 “(II) such percent as the National As-
14 sociation of Insurance Commissioners may
15 recommend to the Secretary with respect
16 to such policies for purposes of this para-
17 graph; and”.

18 **SEC. 4. LIMITATIONS ON PRICING DISCRIMINATION.**

19 (a) IN GENERAL.—Section 1882 of the Social Secu-
20 rity Act (42 U.S.C. 1395ss), as amended by section 6, is
21 further amended by adding at the end the following new
22 subsection:

23 “(aa) DEVELOPMENT OF NEW STANDARDS RELAT-
24 ING TO PRICING DISCRIMINATION.—

1 “(1) IN GENERAL.—The Secretary shall request
2 the National Association of Insurance Commis-
3 sioners to review and revise the standards for all
4 benefit packages under subsection (p)(1), including
5 the core benefit package, in order to provide cov-
6 erage consistent with paragraph (2). Such revisions
7 shall be made consistent with the rules applicable
8 under subsection (p)(1)(E) (with the reference to the
9 ‘1991 NAIC Model Regulation’ deemed a reference
10 to the NAIC Model Regulation as most recently up-
11 dated by the National Association of Insurance
12 Commissioners to reflect previous changes in law
13 and the reference to ‘date of enactment of this sub-
14 section’ deemed a reference to the date of enactment
15 of this subsection).

16 “(2) CHANGES IN COST-SHARING DESCRIBED.—
17 Under the revised standards, coverage shall not be
18 available under a Medicare supplemental insurance
19 policy unless the issuer of the policy, in addition to
20 conforming to the other applicable requirements of
21 this section—

22 “(A) does not discriminate in the pricing
23 of the policy because of the age of the indi-
24 vidual to whom the policy is issued;

1 “(B) does not, to an extent that jeopard-
2 izes the access to such policy for individuals
3 who are eligible to participate in the program
4 under this title because the individuals are indi-
5 viduals described in paragraph (2) or (3) of sec-
6 tion 1811, discriminate in the pricing of the
7 policy because the individual to whom the policy
8 is issued is so eligible to participate in such
9 program because the individual is an individual
10 so described in such a paragraph; and

11 “(C) does not establish premiums applica-
12 ble under such policy on a basis that would
13 apply to a portion of, but not the entirety of,
14 a county or equivalent area specified by the
15 Secretary.

16 “(3) APPLICATION DATE.—The revised stand-
17 ards shall apply to benefit packages sold, issued, or
18 renewed under this section to individuals who first
19 become entitled to benefits under part A or first en-
20 rolls in part B on or after January 1, 2022.”.

21 (b) CONFORMING AMENDMENT.—Section 1882(o)(1)
22 of such Act (42 U.S.C. 1395ss(o)(1)) is amended by strik-
23 ing “, and (y)” and inserting “(y), and (aa)”.

1 **SEC. 5. CLARIFYING BENEFICIARY OPTIONS ON THE MEDI-**
2 **CARE PLAN FINDER WEBSITE.**

3 Section 1804 of the Social Security Act (42 U.S.C.
4 1395b–2) is amended by adding at the end the following
5 new subsections:

6 “(d) In the case that the Secretary provides for a
7 Medicare plan finder internet website of the Centers for
8 Medicare & Medicaid Services (or a successor website), the
9 Secretary shall, with respect to such website and in ac-
10 cordance with subsection (f)—

11 “(1) make available on such website—

12 “(A) access to provider networks in order
13 to provide to individuals entitled to benefits
14 under part A or enrolled under part B informa-
15 tion to assist such individuals in understanding
16 the restrictions on providers and potential costs
17 entailed by their decisions regarding enrollment
18 under parts A and B, under part C, and in
19 medicare supplemental policies under section
20 1882;

21 “(B) a review of out-of-pocket expendi-
22 tures, including deductibles, copayments, coin-
23 surance, monthly premiums, and estimated an-
24 nual out-of-pocket costs, displayed overall and
25 by components, based on the best available in-
26 formation as determined by the Secretary; and

1 “(C) during the period prior to January 1,
2 2025, information regarding the rules that, in
3 each State, pertain to guaranteed issue of medi-
4 care supplemental health insurance policies
5 prior to implementation of the provisions of the
6 Medigap Consumer Protection Act of 2019 and,
7 in the case that a State has no such rules per-
8 taining to guaranteed issue of such policies,
9 clear language explaining the implications of
10 such lack of rules for individuals with pre-exist-
11 ing conditions;

12 “(2) not later than January 1, 2020, and peri-
13 odically thereafter, perform a review of such website
14 in order to ensure that such website makes available
15 to individuals entitled to benefits under part A or
16 enrolled under part B the information that the Sec-
17 retary determines is necessary for such individuals
18 to make informed choices regarding their options
19 under the program under this title; and

20 “(3) not later than 12 months after the last
21 day of each period for the request for information
22 under subsection (e), update such website, taking
23 into consideration the information collected pursuant
24 to such subsection, to clarify the presentation of con-
25 sumer options for medicare supplemental health in-

1 surance policy options, including by presenting such
2 information in a manner calculated to be understood
3 by the average consumer and in a manner that—

4 “(A) improves consumer access to informa-
5 tion regarding the applicable premiums under
6 such policy options as of the date on which such
7 website is so updated;

8 “(B) facilitates consumers’ ability to com-
9 pare and sort policy options and premium infor-
10 mation across plan offerings in a given location;

11 “(C) clarifies and explains differences in
12 policy value;

13 “(D) rates and explains the financial sta-
14 bility of issuers of such policies;

15 “(E) provides data on the inflation rate of
16 different policies;

17 “(F) provides information regarding the
18 guaranteed issue requirements that apply to
19 medicare supplemental health insurance policies
20 under section 1882(s)(3); and

21 “(G) includes such general information as
22 is determined by the Secretary to be necessary
23 for individuals entitled to benefits under part A
24 or enrolled under part B to understand costs
25 under MA plans available pursuant to part C

1 and prescription drug plans available pursuant
2 to part D.

3 “(e) Not later than 6 months after the date of the
4 enactment of this subsection and beginning on December
5 7 of each year thereafter, the Secretary of Health and
6 Human Services shall provide an opportunity for public
7 comment during which the Secretary requests informa-
8 tion, including recommendations, from stakeholders re-
9 garding potential improvements to the presentation of
10 medicare supplemental health insurance policy options
11 under section 1882 on the Medicare plan finder internet
12 website of the Centers for Medicare & Medicaid Services
13 (or a successor website).

14 “(f) With respect to any information that the Sec-
15 retary makes available on the Medicare plan finder inter-
16 net website of the Centers for Medicare & Medicaid Serv-
17 ices (or a successor website) pursuant to subsection (d),
18 the Secretary shall, prior to making such information
19 available—

20 “(1) provide, in consultation with the National
21 Association of Insurance Commissioners, an oppor-
22 tunity for consumer testing of such information;

23 “(2) share the results of such consumer testing
24 of such information with interested stakeholders;
25 and

1 “(3) provide a 60-day public comment period
2 with respect to such information.”.

3 **SEC. 6. RESTORING ACCESS TO FIRST-DOLLAR MEDIGAP**
4 **COVERAGE.**

5 Section 1882 of the Social Security Act (42 U.S.C.
6 1395ss) is amended by striking subsection (z).

7 **SEC. 7. BROKER TRANSPARENCY.**

8 Section 1128G of the Social Security Act (42 U.S.C.
9 1320a–7h) is amended—

10 (1) in subsection (e)(1)(A), by striking “2011,”
11 and inserting “2011 (or, with respect to information
12 required to be submitted under subsection (f)(1), not
13 later than six months after the date of the enact-
14 ment of such subsection),”; and

15 (2) by adding at the end the following new sub-
16 section:

17 “(f) APPLICATION TO MEDIGAP INSURANCE BRO-
18 KERS.—

19 “(1) IN GENERAL.—Beginning not later than
20 12 months after the date of enactment of this sub-
21 section, each issuer of a medicare supplemental
22 health insurance policy shall annually submit to the
23 Secretary a report regarding payments or other
24 transfers of value made during the previous year to
25 agents, brokers, and other third parties representing

1 such policy. Each such report shall include the fol-
2 lowing information, with respect to such a payment
3 or other transfer of value:

4 “(A) The name of the recipient of the pay-
5 ment or other transfer of value.

6 “(B) The business address of the recipient.

7 “(C) The amount of the payment or other
8 transfer of value.

9 “(D) The dates on which the payment or
10 transfer of value was provided.

11 “(E) A description of the form of the pay-
12 ment or transfer of value.

13 “(F) Any other categories of information
14 the Secretary determines appropriate.

15 “(2) APPLICATION OF TRANSPARENCY SYS-
16 TEM.—The provisions of subsections (b) through (d)
17 shall apply to an issuer described in paragraph (1),
18 information required to be reported under such
19 paragraph, and agents, brokers, and other third par-
20 ties described in such paragraph in the same manner
21 and to the same extent as such provisions apply to
22 an applicable manufacturer, information required to
23 be reported under subsection (a), and a covered re-
24 cipient.”.

○