

117TH CONGRESS
1ST SESSION

S. 826

To amend title XVIII of the Social Security Act to establish a Medicare payment option for patients and eligible professionals to freely contract, without penalty, for Medicare fee-for-service items and services, while allowing Medicare beneficiaries to use their Medicare benefits.

IN THE SENATE OF THE UNITED STATES

MARCH 18, 2021

Mr. PAUL (for himself and Ms. MURKOWSKI) 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 establish a Medicare payment option for patients and eligible professionals to freely contract, without penalty, for Medicare fee-for-service items and services, while allowing Medicare beneficiaries to use their Medicare benefits.

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 “Medicare Patient Em-
5 powerment Act of 2021”.

1 **SEC. 2. GUARANTEEING FREEDOM OF CHOICE AND CON-**
 2 **TRACTING FOR PATIENTS UNDER MEDICARE.**

3 (a) IN GENERAL.—Section 1802 of the Social Secu-
 4 rity Act (42 U.S.C. 1395a) is amended to read as follows:

5 “FREEDOM OF CHOICE AND CONTRACTING BY PATIENT
 6 GUARANTEED

7 “SEC. 1802. (a) BASIC FREEDOM OF CHOICE.—Any
 8 individual entitled to insurance benefits under this title
 9 may obtain health services from any institution, agency,
 10 or person qualified to participate under this title if such
 11 institution, agency, or person undertakes to provide that
 12 individual such services.

13 “(b) FREEDOM TO CONTRACT BY MEDICARE BENE-
 14 FICIARIES.—

15 “(1) IN GENERAL.—Subject to the provisions of
 16 this subsection, nothing in this title shall prohibit a
 17 Medicare beneficiary from entering into a contract
 18 with an eligible professional (whether or not the pro-
 19 fessional is a participating or non-participating phy-
 20 sician or practitioner) for any item or service cov-
 21 ered under this title.

22 “(2) SUBMISSION OF CLAIMS.—Any Medicare
 23 beneficiary that enters into a contract under this
 24 section with an eligible professional shall be per-
 25 mitted to submit a claim for payment under this
 26 title for services furnished by such professional, and

1 such payment shall be made in the amount that
2 would otherwise apply to such professional under
3 this title except that where such professional is con-
4 sidered to be non-participating, payment shall be
5 paid as if the professional were participating. Pay-
6 ment made under this title for any item or service
7 provided under the contract shall not render the pro-
8 fessional a participating or non-participating physi-
9 cian or practitioner, and as such, requirements of
10 this title that may otherwise apply to a participating
11 or non-participating physician or practitioner would
12 not apply with respect to any items or services fur-
13 nished under the contract.

14 “(3) BENEFICIARY PROTECTIONS.—

15 “(A) IN GENERAL.—Paragraph (1) shall
16 not apply to any contract unless—

17 “(i) the contract is in writing, is
18 signed by the Medicare beneficiary and the
19 eligible professional, and establishes all
20 terms of the contract (including specific
21 payment for items and services covered by
22 the contract) before any item or service is
23 provided pursuant to the contract, and the
24 beneficiary shall be held harmless for any
25 subsequent payment charged for an item

1 or service in excess of the amount estab-
2 lished under the contract during the period
3 the contract is in effect;

4 “(ii) the contract contains the items
5 described in subparagraph (B); and

6 “(iii) the contract is not entered into
7 at a time when the Medicare beneficiary is
8 facing an emergency medical condition or
9 urgent health care situation.

10 “(B) ITEMS REQUIRED TO BE INCLUDED
11 IN CONTRACT.—Any contract to provide items
12 and services to which paragraph (1) applies
13 shall clearly indicate to the Medicare beneficiary
14 that by signing such contract the beneficiary—

15 “(i) agrees to be responsible for pay-
16 ment to such eligible professional for such
17 items or services under the terms of and
18 amounts established under the contract;

19 “(ii) agrees to be responsible for sub-
20 mitting claims under this title to the Sec-
21 retary, and to any other supplemental in-
22 surance plan that may provide supple-
23 mental insurance, for such items or serv-
24 ices furnished under the contract if such
25 items or services are covered by this title,

1 unless otherwise provided in the contract
2 under subparagraph (C)(i); and

3 “(iii) acknowledges that no limits or
4 other payment incentives that may other-
5 wise apply under this title (such as the
6 limits under subsection (g) of section 1848
7 or incentives under subsection (a)(5), (m),
8 (q), and (p) of such section) shall apply to
9 amounts that may be charged, or paid to
10 a beneficiary for, such items or services.

11 Such contract shall also clearly indicate whether
12 the eligible professional is excluded from par-
13 ticipation under the Medicare program under
14 section 1128.

15 “(C) BENEFICIARY ELECTIONS UNDER
16 THE CONTRACT.—Any Medicare beneficiary
17 that enters into a contract under this section
18 may elect to negotiate, as a term of the con-
19 tract, a provision under which—

20 “(i) the eligible professional shall file
21 claims on behalf of the beneficiary with the
22 Secretary and any supplemental insurance
23 plan for items or services furnished under
24 the contract if such items or services are

1 covered under this title or under the plan;
2 and

3 “(ii) the beneficiary assigns payment
4 to the eligible professional for any claims
5 filed by, or on behalf of, the beneficiary
6 with the Secretary and any supplemental
7 insurance plan for items or services fur-
8 nished under the contract.

9 “(D) EXCLUSION OF DUAL ELIGIBLE INDI-
10 VIDUALS.—Paragraph (1) shall not apply to
11 any contract if a beneficiary who is eligible for
12 medical assistance under title XIX is a party to
13 the contract.

14 “(4) LIMITATION ON ACTUAL CHARGE AND
15 CLAIM SUBMISSION REQUIREMENT NOT APPLICA-
16 BLE.—Section 1848(g) shall not apply with respect
17 to any item or service provided to a Medicare bene-
18 ficiary under a contract described in paragraph (1).

19 “(5) CONSTRUCTION.—Nothing in this section
20 shall be construed—

21 “(A) to prohibit any eligible professional
22 from maintaining an election and acting as a
23 participating or non-participating physician or
24 practitioner with respect to any patient not cov-

1 ered under a contract established under this
2 section; and

3 “(B) as changing the items and services
4 for which an eligible professional may bill under
5 this title.

6 “(6) DEFINITIONS.—In this subsection:

7 “(A) MEDICARE BENEFICIARY.—The term
8 ‘Medicare beneficiary’ means an individual who
9 is entitled to benefits under part A or enrolled
10 under part B.

11 “(B) ELIGIBLE PROFESSIONAL.—The term
12 ‘eligible professional’ has the meaning given
13 such term in section 1848(k)(3)(B).

14 “(C) EMERGENCY MEDICAL CONDITION.—
15 The term ‘emergency medical condition’ means
16 a medical condition manifesting itself by acute
17 symptoms of sufficient severity (including se-
18 vere pain) such that a prudent layperson, with
19 an average knowledge of health and medicine,
20 could reasonably expect the absence of imme-
21 diate medical attention to result in—

22 “(i) serious jeopardy to the health of
23 the individual or, in the case of a pregnant
24 woman, the health of the woman or her
25 unborn child;

1 “(ii) serious impairment to bodily
2 functions; or

3 “(iii) serious dysfunction of any bodily
4 organ or part.

5 “(D) PARTICIPATING; NON-PARTICI-
6 PATING.—The terms ‘participating’ and ‘non-
7 participating’ have the meanings given such
8 terms under subsection (h) of section 1842 for
9 purposes of such section.

10 “(E) URGENT HEALTH CARE SITUA-
11 TION.—The term ‘urgent health care situation’
12 means services furnished to an individual who
13 requires services to be furnished within 12
14 hours in order to avoid the likely onset of an
15 emergency medical condition.”

16 **SEC. 3. PREEMPTION OF STATE LAWS LIMITING CHARGES**
17 **FOR SERVICES BY AN ELIGIBLE PROFES-**
18 **SIONAL.**

19 (a) IN GENERAL.—No State may impose a limit on
20 the amount of charges for services, furnished by an eligible
21 professional (as defined in subsection (k)(3)(B) of section
22 1848 of the Social Security Act, 42 U.S.C. 1395w-4), for
23 which payment is made under such section, and any such
24 limit is hereby preempted.

1 (b) STATE.—In this section, the term “State” in-
2 cludes the District of Columbia, Puerto Rico, the Virgin
3 Islands, Guam, and American Samoa.

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