

106TH CONGRESS
2D SESSION

S. 2110

To amend title XVIII of the Social Security Act to provide for payment of claims by health care providers against insolvent Medicare+Choice organizations and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2000

Mr. KYL 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 provide for payment of claims by health care providers against insolvent Medicare+Choice organizations and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medicare+Choice Beneficiary Confidence Act of 2000”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Payment of claims against insolvent Medicare+Choice organizations.

“Sec. 1856A. Payment of claims against insolvent Medicare+Choice organizations.”.

Sec. 3. Improved communication regarding the solvency of Medicare+Choice organizations between HCFA and the States.

Sec. 4. Response by the Secretary to failure of Medicare+Choice organizations to provide prompt payment.

Sec. 5. Surety bond required of Medicare+Choice organizations.

1 SEC. 2. PAYMENT OF CLAIMS AGAINST INSOLVENT
2 MEDICARE+CHOICE ORGANIZATIONS.

3 (a) IN GENERAL.—Title XVIII of the Social Security
 4 Act (42 U.S.C. 1395 et seq.) is amended by inserting after
 5 section 1856 the following new section:

6 “PAYMENT OF CLAIMS AGAINST INSOLVENT
 7 MEDICARE+CHOICE ORGANIZATIONS

8 “SEC. 1856A. (a) PAYMENT OF CLAIMS.—

9 “(1) INSOLVENT MEDICARE+CHOICE ORGANI-
 10 ZATIONS.—

11 “(A) SUBMISSION OF UNPAID CLAIMS TO
 12 HCFA.—If a statutory successor is appointed
 13 for an insolvent Medicare+Choice organization,
 14 such statutory successor shall submit to the
 15 Secretary each valid unpaid clean claim (as de-
 16 fined in section 1842(c)(2)(B)(i)) by a health
 17 care provider for payment for any covered item
 18 or service furnished before the date on which
 19 such statutory successor was appointed to a
 20 Medicare+Choice eligible individual enrolled in
 21 a Medicare+Choice plan offered by such orga-
 22 nization.

“(B) PAYMENTS FROM TRUST FUNDS.—

Not later than 30 days after a clean claim is submitted under subparagraph (A), the Secretary shall pay to the health care provider the amount described in subparagraph (C) from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such proportion as the Secretary determines appropriate.

“(C) AMOUNT DESCRIBED.—The amount

described in this subparagraph is as follows:

“(i) CONTRACTING PROVIDERS.—In

the case of a health care provider having a written agreement with the insolvent Medicare+Choice organization, the amount that would have been paid to the health care provider under such agreement for the covered item or service.

“(ii) NONCONTRACTING PROVIDERS.—

In the case of a health care provider that did not have a written agreement with the insolvent Medicare+Choice organization, the reasonable cost of the covered item or service.

1 “(2) ENROLLEES IN MEDICARE+CHOICE PLANS
 2 OFFERED BY INSOLVENT MEDICARE+CHOICE ORGA-
 3 NIZATIONS.—

4 “(A) REIMBURSEMENT AND COLLEC-
 5 TION.—In the case of an individual enrolled in
 6 a Medicare+Choice plan offered by an insolvent
 7 Medicare+Choice organization, the Secretary
 8 shall provide for the following:

9 “(i) REIMBURSEMENT OF AMOUNTS
 10 PAID.—The reimbursement of such indi-
 11 vidual for any amount paid by such indi-
 12 vidual to a health care provider for each
 13 covered item or service that such organiza-
 14 tion would have paid, but for the insol-
 15 vency of such organization, to the health
 16 care provider under the plan in which the
 17 individual is enrolled.

18 “(ii) COLLECTION OF AMOUNTS
 19 DUE.—The collection from such individual
 20 of any amount that remains due and owing
 21 by such individual under such plan for
 22 each covered item or service for which pay-
 23 ment is made under paragraph (1)(B) as
 24 of the date of the notice of collection.

1 “(B) ENROLLEE PROTECTION AGAINST IN-
 2 SOLVENCY.—No Medicare+Choice eligible indi-
 3 vidual may be held liable to any health care
 4 provider for the debts of an insolvent
 5 Medicare+Choice organization.

6 “(b) HCFA A CREDITOR OF BANKRUPTCY OR RE-
 7 CEIVERSHIP ESTATE.—

8 “(1) IN GENERAL.—The Secretary shall be
 9 deemed to be a creditor of the estate of the insolvent
 10 Medicare+Choice organization for any amount paid
 11 under paragraph (1)(B) or (2)(A)(i) of subsection
 12 (a) and not collected from a beneficiary under para-
 13 graph (2)(A)(ii) of such subsection.

14 “(2) PRIORITY.—For purposes of applying
 15 paragraph (1), the Secretary shall be given the same
 16 priority that the health care provider paid under
 17 paragraph (1)(B) would have been given if the
 18 amount paid to such provider remained due and
 19 owing.

20 “(c) DEFINITIONS.—In this section:

21 “(1) INSOLVENT MEDICARE+CHOICE ORGANI-
 22 ZATION.—The term ‘insolvent Medicare+Choice or-
 23 ganization’ means a Medicare+Choice organization
 24 for which—

1 “(A) a petition for bankruptcy has been
2 filed under title 11, United States Code;

3 “(B) a petition for receivership has been
4 filed on account of insolvency under State law;
5 or

6 “(C) any similar proceeding has com-
7 menced under State law.

8 “(2) HEALTH CARE PROVIDER.—The term
9 ‘health care provider’ means a provider or other per-
10 son that meets the applicable requirements of this
11 title and part A of title XI.”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall—

14 (1) take effect on the date of enactment of this
15 Act; and

16 (2) apply with respect to Medicare+Choice or-
17 ganizations for which a statutory successor is ap-
18 pointed on or after November 1, 1999.

19 **SEC. 3. IMPROVED COMMUNICATION REGARDING THE SOL-**
20 **VENCY OF MEDICARE+CHOICE ORGANIZA-**
21 **TIONS BETWEEN HCFA AND THE STATES.**

22 (a) IN GENERAL.—Section 1857(d) of the Social Se-
23 curity Act (42 U.S.C. 1395w-27(d)) is amended by adding
24 at the end the following new paragraph:

1 “(6) NOTIFICATION OF STATES.—Each contract
 2 under this section shall provide that in the case that
 3 the Secretary determines, based on any information
 4 obtained under this subsection, that a
 5 Medicare+Choice organization may not be able to
 6 bear the risk of potential financial losses (as de-
 7 scribed in paragraph (2)(B)(i)), the Secretary shall,
 8 within a reasonable period of time—

9 “(A) notify each State in which the
 10 Medicare+Choice organization provides any
 11 covered item or service of such determination;
 12 and

13 “(B) provide each such State with the in-
 14 formation obtained under this subsection on
 15 which the determination is based.”.

16 (b) EFFECTIVE DATE.—The amendment made by
 17 subsection (a) shall—

18 (1) take effect on the date of enactment of this
 19 Act; and

20 (2) apply with respect to contracts entered into
 21 or renewed on or after the date of enactment of this
 22 Act.

1 **SEC. 4. RESPONSE BY THE SECRETARY TO FAILURE OF**
 2 **MEDICARE+CHOICE ORGANIZATIONS TO PRO-**
 3 **VIDE PROMPT PAYMENT.**

4 (a) IN GENERAL.—Section 1857(f) of the Social Se-
 5 curity Act (42 U.S.C. 1395w–27(f)) is amended by adding
 6 at the end the following new paragraph:

7 “(3) SECRETARY REQUIRED TO BYPASS NON-
 8 COMPLYING ORGANIZATION.—

9 “(A) IN GENERAL.—In the case of a
 10 Medicare+Choice eligible organization which
 11 the Secretary determines, after notice and op-
 12 portunity for a hearing, that—

13 “(i) such organization has failed to
 14 make payments of amounts in compliance
 15 with paragraph (1); and

16 “(ii) such payments are more than 60
 17 days overdue;

18 the Secretary shall provide for direct payment
 19 of the amounts owed to providers and suppliers
 20 (or, in the case of a Medicare+Choice private
 21 fee-for-service plan, amounts owed to the enroll-
 22 ees) for covered services and supplies furnished
 23 to individuals enrolled under this part under the
 24 contract.

25 “(B) OFFSET.—If the Secretary provides
 26 for direct payments under subparagraph (A),

1 the Secretary shall provide for an appropriate
 2 reduction in the amount of payments otherwise
 3 made to the organization under this part to re-
 4 flect the amount of the Secretary's payments
 5 (and the Secretary's costs in making the pay-
 6 ments).”.

7 (b) EFFECTIVE DATE.—The amendment made by
 8 subsection (a) shall—

9 (1) take effect on the date of enactment of this
 10 Act; and

11 (2) apply with respect to contracts entered into
 12 or renewed on or after the date of enactment of this
 13 Act.

14 **SEC. 5. SURETY BOND REQUIRED OF MEDICARE+CHOICE**
 15 **ORGANIZATIONS.**

16 (a) IN GENERAL.—Section 1857(e) of the Social Se-
 17 curity Act (42 U.S.C. 1395w-27(e)) is amended by adding
 18 at the end the following new paragraph:

19 “(3) SURETY BOND.—

20 “(A) IN GENERAL.—Each Medicare+Choice
 21 organization shall provide the Secretary with a
 22 surety bond—

23 “(i) effective for a period of 4 years
 24 (as specified by the Secretary) or in the
 25 case of a change in the ownership or con-

1 trol of the agency (as determined by the
2 Secretary) during or after such 4-year pe-
3 riod, an additional period of time that the
4 Secretary determines appropriate, such ad-
5 ditional period not to exceed 4 years from
6 the date of such change in ownership or
7 control;

8 “(ii) in a form specified by the Sec-
9 retary; and

10 “(iii) for a year in the period de-
11 scribed in subparagraph (A) in an amount
12 that is equal to the lesser of \$500,000 or
13 10 percent of the aggregate amount of
14 payments to the agency under this title
15 and title XIX for that year, as estimated
16 by the Secretary.

17 “(B) ADDITIONAL REQUIREMENTS.—Each
18 Medicare+Choice organization shall meet such
19 additional requirements (including conditions
20 relating to bonding or establishing of escrow ac-
21 counts as the Secretary finds necessary for the
22 financial security of the program) as the Sec-
23 retary finds necessary for the effective and effi-
24 cient operation of the program.

1 “(C) WAIVER.—The Secretary may waive
2 the requirement of a surety bond under sub-
3 paragraph (A) in the case of an organization
4 that provides a comparable surety bond under
5 State law.

6 “(D) FORFEITURE.—If a Medicare+Choice
7 organization forfeits a surety bond provided
8 under subparagraph (A), the Secretary shall
9 use the proceeds from such forfeiture for the
10 benefit of beneficiaries, providers, and suppliers
11 under this title.”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall—

14 (1) take effect on the date of enactment of this
15 Act; and

16 (2) apply with respect to contracts entered into
17 or renewed on or after the date of enactment of this
18 Act.

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