

109TH CONGRESS
1ST SESSION

H. R. 709

To amend title XVIII of the Social Security Act to clarify the right of Medicare beneficiaries to enter into private contracts with physicians and other health care professionals for the provision of health services for which no payment is sought under the Medicare Program.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 2005

Mr. SAM JOHNSON of Texas (for himself, Mr. HERGER, and Mr. NORWOOD) 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 clarify the right of Medicare beneficiaries to enter into private contracts with physicians and other health care professionals for the provision of health services for which no payment is sought under the Medicare Program.

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 Beneficiary
5 Freedom To Contract Act of 2005”.

1 **SEC. 2. USE OF PRIVATE CONTRACTS BY MEDICARE BENE-**
2 **FICIARIES FOR PROFESSIONAL SERVICES.**

3 (a) IN GENERAL.—Section 1802(b) of the Social Se-
4 curity Act (42 U.S.C. 1395a) is amended to read as fol-
5 lows:

6 “(b) CLARIFICATION OF USE OF PRIVATE CON-
7 TRACTS BY MEDICARE BENEFICIARIES FOR PROFES-
8 SIONAL SERVICES.—

9 “(1) IN GENERAL.—Nothing in this title shall
10 prohibit a medicare beneficiary from entering into a
11 private contract with a physician or health care
12 practitioner for the provision of medicare covered
13 professional services (as defined in paragraph
14 (5)(C)) if—

15 “(A) the services are covered under a pri-
16 vate contract that is between the beneficiary
17 and the physician or practitioner and meets the
18 requirements of paragraph (2);

19 “(B) under the private contract no claim
20 for payment for services covered under the con-
21 tract is to be submitted (and no payment made)
22 under part A or B, under a contract under sec-
23 tion 1876, or under an MA plan (other than an
24 MSA plan); and

25 “(C)(i) the Secretary has been provided
26 with the minimum information necessary to

1 avoid any payment under part A or B for serv-
2 ices covered under the contract, or

3 “(ii) in the case of an individual enrolled
4 under a contract under section 1876 or an MA
5 plan (other than an MSA plan) under part C,
6 the eligible organization under the contract or
7 the MA organization offering the plan has been
8 provided the minimum information necessary to
9 avoid any payment under such contract or plan
10 for services covered under the contract.

11 “(2) REQUIREMENTS FOR PRIVATE CON-
12 TRACTS.—The requirements in this paragraph for a
13 private contract between a medicare beneficiary and
14 a physician or health care practitioner are as fol-
15 lows:

16 “(A) GENERAL FORM OF CONTRACT.—The
17 contract is in writing and is signed by the medi-
18 care beneficiary.

19 “(B) NO CLAIMS TO BE SUBMITTED FOR
20 COVERED SERVICES.—The contract provides
21 that no party to the contract (and no entity on
22 behalf of any party to the contract) shall sub-
23 mit any claim for (or request) payment for
24 services covered under the contract under part
25 A or B, under a contract under section 1876,

1 or under an MA plan (other than an MSA
2 plan).

3 “(C) SCOPE OF SERVICES.—The contract
4 identifies the medicare covered professional
5 services and the period (if any) to be covered
6 under the contract, but does not cover any serv-
7 ices furnished—

8 “(i) before the contract is entered
9 into; or

10 “(ii) for the treatment of an emer-
11 gency medical condition (as defined in sec-
12 tion 1867(e)(1)(A)), unless the contract
13 was entered into before the onset of the
14 emergency medical condition.

15 “(D) CLEAR DISCLOSURE OF TERMS.—The
16 contract clearly indicates that by signing the
17 contract the medicare beneficiary—

18 “(i) agrees not to submit a claim (or
19 to request that anyone submit a claim)
20 under part A or B (or under section 1876
21 or under an MA plan, other than an MSA
22 plan) for services covered under the con-
23 tract;

24 “(ii) agrees to be responsible, whether
25 through insurance or otherwise, for pay-

1 ment for such services and understands
2 that no reimbursement will be provided
3 under such part, contract, or plan for such
4 services;

5 “(iii) acknowledges that no limits
6 under this title (including limits under
7 paragraph (1) and (3) of section 1848(g))
8 will apply to amounts that may be charged
9 for such services;

10 “(iv) acknowledges that medicare sup-
11 plemental policies under section 1882 do
12 not, and other supplemental health plans
13 and policies may elect not to, make pay-
14 ments for such services because payment is
15 not made under this title; and

16 “(v) acknowledges that the beneficiary
17 has the right to have such services pro-
18 vided by (or under the supervision of)
19 other physicians or health care practi-
20 tioners for whom payment would be made
21 under such part, contract, or plan.

22 Such contract shall also clearly indicate whether
23 the physician or practitioner involved is ex-
24 cluded from participation under this title.

1 “(3) MODIFICATIONS.—The parties to a private
2 contract may mutually agree at any time to modify
3 or terminate the contract on a prospective basis,
4 consistent with the provisions of paragraphs (1) and
5 (2).

6 “(4) NO REQUIREMENTS FOR SERVICES FUR-
7 NISHED TO MSA PLAN ENROLLEES.—The require-
8 ments of paragraphs (1) and (2) do not apply to any
9 contract or arrangement for the provision of services
10 to a medicare beneficiary enrolled in an MA plan
11 under part C.

12 “(5) DEFINITIONS.—In this subsection:

13 “(A) HEALTH CARE PRACTITIONER.—The
14 term ‘health care practitioner’ means a practi-
15 tioner described in section 1842(b)(18)(C).

16 “(B) MEDICARE BENEFICIARY.—The term
17 ‘medicare beneficiary’ means an individual who
18 is enrolled under part B.

19 “(C) MEDICARE COVERED PROFESSIONAL
20 SERVICES.—The term ‘medicare covered profes-
21 sional services’ means—

22 “(i) physicians’ services (as defined in
23 section 1861(q), and including services de-
24 scribed in section 1861(s)(2)(A)), and

1 “(ii) professional services of health
2 care practitioners, including services de-
3 scribed in section 1842(b)(18)(D),
4 for which payment may be made under part A
5 or B, under a contract under section 1876, or
6 under a Medicare+Choice plan but for the pro-
7 visions of a private contract that meets the re-
8 quirements of paragraph (2).

9 “(D) MA PLAN; MSA PLAN.—The terms
10 ‘MA plan’ and ‘MSA plan’ have the meanings
11 given such terms in section 1859.

12 “(E) PHYSICIAN.—The term ‘physician’
13 has the meaning given such term in section
14 1861(r).”.

15 (b) CONFORMING AMENDMENTS CLARIFYING EX-
16 EMPTION FROM LIMITING CHARGE AND FROM REQUIRE-
17 MENT FOR SUBMISSION OF CLAIMS.—Section 1848(g) of
18 the Social Security Act (42 U.S.C. 1395w-4(g)) is amend-
19 ed—

20 (1) in paragraph (1)(A), by striking “In” and
21 inserting “Subject to paragraph (8), in”;

22 (2) in paragraph (3)(A), by striking “Payment”
23 and inserting “Subject to paragraph (8), payment”;

24 (3) in paragraph (4)(A), by striking “For” and
25 inserting “Subject to paragraph (8), for”; and

1 (4) by adding at the end the following new
2 paragraph:

3 “(8) EXEMPTION FROM REQUIREMENTS FOR
4 SERVICES FURNISHED UNDER PRIVATE CON-
5 TRACTS.—

6 “(A) IN GENERAL.—Pursuant to section
7 1802(b)(1), paragraphs (1), (3), and (4) do not
8 apply with respect to physicians’ services (and
9 services described in section 1861(s)(2)(A)) fur-
10 nished to an individual by (or under the super-
11 vision of) a physician if the conditions described
12 in section 1802(b)(1) are met with respect to
13 the services.

14 “(B) NO RESTRICTIONS FOR ENROLLEES
15 IN MSA PLANS.—Such paragraphs do not apply
16 with respect to services furnished to individuals
17 enrolled with MSA plans under part C, without
18 regard to whether the conditions described in
19 subparagraphs (A) through (C) of section
20 1802(b)(1) are met.

21 “(C) APPLICATION TO ENROLLEES IN
22 OTHER PLANS.—Subject to subparagraph (B)
23 and section 1852(k)(2), the provisions of sub-
24 paragraph (A) shall apply in the case of an in-
25 dividual enrolled under a contract under section

1 1876 or under an MA plan (other than an MSA
2 plan) under part C, in the same manner as they
3 apply to individuals not enrolled under such a
4 contract or plan.”.

5 (c) CONFORMING AMENDMENTS.—(1) Section
6 1842(b)(18) of the Social Security Act (42 U.S.C.
7 1395u(b)(18)) is amended by adding at the end the fol-
8 lowing:

9 “(E) The provisions of section 1848(g)(8) shall apply
10 with respect to exemption from limitations on charges and
11 from billing requirements for services of health care prac-
12 titioners described in this paragraph in the same manner
13 as such provisions apply to exemption from the require-
14 ments referred to in section 1848(g)(8)(A) for physicians’
15 services.”.

16 (2) Section 1866(a)(1)(O) of such Act (42 U.S.C.
17 1395cc(a)(1)(O)) is amended by striking “enrolled with a
18 Medicare+Choice organization under part C” and insert-
19 ing “enrolled with an MA organization under part C
20 (other than under an MSA plan)”.

21 (d) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the date that is 6 months
23 after the date of the enactment of this Act and apply to
24 contracts entered into on or after that date.

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