

111TH CONGRESS
2D SESSION

H. R. 5844

To amend title XVIII of the Social Security Act to provide all Medicare beneficiaries with the right to guaranteed issue of a Medicare supplemental policy and annual open change-in-enrollment periods, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2010

Mr. ROTHMAN of New Jersey 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 all Medicare beneficiaries with the right to guaranteed issue of a Medicare supplemental policy and annual open change-in-enrollment periods, 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.**

4 This Act may be cited as the “Fairness in Medigap
5 Options Act of 2010”.

1 **SEC. 2. GUARANTEED ISSUE OF MEDIGAP POLICIES TO ALL**
2 **MEDICARE BENEFICIARIES.**

3 (a) IN GENERAL.—Section 1882(s) of the Social Se-
4 curity Act (42 U.S.C. 1395ss(s)) is amended—

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

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

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

15 (b) PHASE-IN AUTHORITY.—

16 (1) IN GENERAL.—Subject to paragraph (2),
17 the Secretary of Health and Human Services may
18 phase in the implementation of the amendments
19 made under subsection (a) in such manner as the
20 Secretary determines appropriate to minimize any
21 adverse impact on individuals enrolled under a Medi-
22 care supplemental policy prior to the effective date
23 of this Act.

24 (2) LIMIT.—The phase-in period under para-
25 graph (1) shall not exceed 5 years.

26 (c) SEPARATE PREMIUM CLASS.—

1 (1) IN GENERAL.—Subject to paragraph (2),
 2 any individuals enrolled under a Medicare supple-
 3 mental policy pursuant to the amendments made
 4 under subsection (a) shall be classified by the issuer
 5 as part of a separate premium class.

6 (2) LIMIT.—The provision in paragraph (1)
 7 shall apply to individuals that enroll under a Medi-
 8 care supplemental policy prior to January 1, 2015.

9 (d) ADDITIONAL ENROLLMENT PERIOD FOR CER-
 10 TAIN INDIVIDUALS.—

11 (1) ONE-TIME ENROLLMENT PERIOD.—

12 (A) IN GENERAL.—In the case of an indi-
 13 vidual described in paragraph (2), the Secretary
 14 shall establish a one-time enrollment period
 15 during which such an individual may enroll in
 16 any Medicare supplemental policy of the indi-
 17 vidual's choosing.

18 (B) PERIOD.—The enrollment period es-
 19 tablished under subparagraph (A) shall begin
 20 on the date on which the phase-in period under
 21 subsection (b) is completed and end 6 months
 22 after such date.

23 (2) INDIVIDUAL DESCRIBED.—An individual de-
 24 scribed in this paragraph is an individual who—

1 (A) is entitled to hospital insurance bene-
 2 fits under part A of title XVIII of the Social
 3 Security Act under section 226(b) or section
 4 226A of such Act (42 U.S.C. 426(b); 426–1);

5 (B) is enrolled for benefits under part B of
 6 title XVIII of such Act (42 U.S.C. 1395j et
 7 seq.); and

8 (C) would not, but for the provisions of
 9 and amendments made by this section, be eligi-
 10 ble for the guaranteed issue of a Medicare sup-
 11 plemental policy under section 1882(s)(2) of
 12 such Act (42 U.S.C. 1395ss(s)(2)).

13 (3) OUTREACH PLAN.—The Secretary shall de-
 14 velop an outreach plan to notify individuals de-
 15 scribed in paragraph (2) of the one-time enrollment
 16 period established under paragraph (1).

17 **SEC. 3. GUARANTEED ISSUE OF MEDIGAP POLICIES FOR**
 18 **MEDICARE ADVANTAGE AND MEDICAID EN-**
 19 **ROLLEES.**

20 (a) IN GENERAL.—Section 1882(s)(3) of the Social
 21 Security Act (42 U.S.C. 1395ss(s)(3)), as amended by sec-
 22 tion 2, is amended—

23 (1) in subparagraph (B), by adding at the end
 24 the following new clauses:

1 “(vii) The individual was enrolled in a Medicare
2 Advantage plan under part C for not less than 12
3 months and subsequently disenrolled from such plan
4 and elects to receive benefits under this title through
5 the original Medicare fee-for-service program under
6 parts A and B.

7 “(viii) The individual—

8 “(I) is entitled to, or enrolled for, benefits
9 under part A and enrolled for benefits under
10 part B;

11 “(II) was eligible for medical assistance
12 under a State plan or waiver under title XIX
13 and was enrolled in such plan or waiver; and

14 “(III) subsequently lost eligibility for such
15 medical assistance.”;

16 (2) by striking subparagraph (C)(iii) and in-
17 serting the following:

18 “(iii) Subject to subsection (v)(1), for purposes of an
19 individual described in clause (vi), (vii), or (viii) of sub-
20 paragraph (B), a Medicare supplemental policy described
21 in this subparagraph shall include any Medicare supple-
22 mental policy.”; and

23 (3) in subparagraph (E)—

24 (A) in clause (iv), by striking “and” at the
25 end;

1 (B) in clause (v), by striking the period at
2 the end and inserting a semicolon; and

3 (C) by adding at the end the following new
4 clauses:

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

12 “(vii) in the case of an individual described in
13 subparagraph (B)(viii), the period beginning on the
14 date that the individual receives a notice of cessation
15 of such individual’s eligibility for medical assistance
16 under the State plan or waiver under title XIX and
17 ending on the date that is 123 days after the indi-
18 vidual receives such notice.”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 subsection (a) shall apply to Medicare supplemental poli-
21 cies effective on or after January 1, 2011.

1 **SEC. 4. ENROLLMENT OF INDIVIDUALS WITH END STAGE**
2 **RENAL DISEASE IN MEDICARE ADVANTAGE.**

3 (a) IN GENERAL.—Section 1851(a) of the Social Se-
4 curity Act (42 U.S.C. 1395w–21(a)) is amended by strik-
5 ing paragraph (3) and inserting the following:

6 “(3) **MEDICARE+CHOICE ELIGIBLE INDIV-**
7 **VIDUAL.**—In this title, the term ‘Medicare+Choice
8 eligible individual’ means an individual who is enti-
9 tled to benefits under part A and enrolled under
10 part B.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 1852(b) of the Social Security Act
13 (42 U.S.C. 1395w–22(b)) is amended by striking
14 paragraph (1) and inserting the following:

15 “(1) **BENEFICIARIES.**—A Medicare Advantage
16 organization may not deny, limit, or condition the
17 coverage or provision of benefits under this part, for
18 individuals permitted to be enrolled with the organi-
19 zation under this part, based on any health status-
20 related factor described in section 2705(a)(1) of the
21 Public Health Service Act (as amended by section
22 1201(4) of the Patient Protection and Affordable
23 Care Act). The Secretary shall not approve a plan
24 of an organization if the Secretary determines that
25 the design of the plan and its benefits are likely to

1 substantially discourage enrollment by certain MA
 2 eligible individuals with the organization.”.

3 (2) Section 1859(b)(6)(B) of such Act (42
 4 U.S.C. 1395w-28(b)(6)(B)) is amended in the sec-
 5 ond sentence by striking “may waive application of
 6 section 1851(a)(3)(B) in the case of an individual
 7 described in clause (i), (ii), or (iii) of this subpara-
 8 graph and”.

9 (c) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to plan years beginning on or after
 11 January 1, 2011.

12 **SEC. 5. PROVIDING FOR ANNUAL GUARANTEED-ISSUE**
 13 **CHANGES IN ENROLLMENT UNDER MEDIGAP**
 14 **POLICIES.**

15 Section 1882(s) of the Social Security Act (42 U.S.C.
 16 1395ss(s)) is amended—

17 (1) by redesignating paragraph (4) as para-
 18 graph (5); and

19 (2) by inserting after paragraph (3) the fol-
 20 lowing new paragraph:

21 “(4)(A) The Secretary shall specify an annual period
 22 (with the first such period occurring during 2011) during
 23 which individuals enrolled in a Medicare supplemental pol-
 24 icy with a particular benefit package may change to an-
 25 other such policy if such other policy is offered by a dif-

1 ferent issuer and available for issuance to new enrollees
2 by such issuer and if such other policy has the same ben-
3 efit package or a benefit package with lesser benefits (as
4 determined by the Secretary). Such annual period shall,
5 to the extent feasible, coincide with annual open enroll-
6 ment periods under parts C and D. A change in enroll-
7 ment during such a period in a year shall become effective
8 as of the first day of the following year.

9 “(B) In the case of an individual who seeks to change
10 enrollment to a Medicare supplemental policy issued by
11 a different issuer during an annual period pursuant to
12 subparagraph (A), subject to subparagraph (C), the issuer
13 of such policy—

14 “(i) may not deny or condition the issuance or
15 effectiveness of the policy a Medicare supplemental
16 policy described in subparagraph (A);

17 “(ii) may not discriminate in the pricing of
18 such policy, because of health status, claims experi-
19 ence, receipt of health care, or medical condition;
20 and

21 “(iii) may not impose an exclusion of benefits
22 based on a preexisting condition under such policy.

23 “(C) In the case of a change of enrollment under this
24 paragraph and in order to prevent adverse selection under
25 this paragraph from disrupting the orderly marketing of

1 Medicare supplemental policies, the Secretary may permit
2 the new issuer of the Medicare supplemental policy to
3 apply such limited pre-existing conditions and such pre-
4 mium rating rules as may be appropriate.”.

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