

111TH CONGRESS
1ST SESSION

S. 1669

To provide all Medicare beneficiaries with the right to guaranteed issue of a Medicare supplemental policy.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 2009

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide all Medicare beneficiaries with the right to guaranteed issue of a Medicare supplemental policy.

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 “Equal Access to Medi-
5 care Options Act of 2009”.

6 **SEC. 2. GUARANTEED ISSUE OF MEDIGAP POLICIES TO ALL**

7 **MEDICARE BENEFICIARIES.**

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

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

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

9 (3) in paragraph (3)(B)(vi), by striking “at age
10 65”.

11 (b) PHASE-IN AUTHORITY.—

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

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

22 (c) SEPARATE PREMIUM CLASS.—

23 (1) IN GENERAL.—Subject to paragraph (2),
24 any individuals enrolled under a Medicare supple-
25 mental policy pursuant to the amendments made

1 under subsection (a) shall be classified by the issuer
 2 as part of a separate premium class.

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

6 (d) ADDITIONAL ENROLLMENT PERIOD FOR CER-
 7 TAIN INDIVIDUALS.—

8 (1) ONE-TIME ENROLLMENT PERIOD.—

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

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

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

22 (A) is entitled to hospital insurance bene-
 23 fits under part A under section 226(b) or sec-
 24 tion 226A of the Social Security Act (42 U.S.C.
 25 426(b); 426–1);

1 (B) is enrolled for benefits under part B of
2 such Act (42 U.S.C. 1395j et seq.); and

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

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

12 **SEC. 3. GUARANTEED ISSUE OF MEDIGAP POLICIES FOR**
13 **MEDICARE ADVANTAGE AND MEDICAID EN-**
14 **ROLLEES.**

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

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

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

1 “(viii) The individual—

2 “(I) is entitled to, or enrolled for, benefits
3 under part A and enrolled for benefits under
4 part B;

5 “(II) was eligible for medical assistance
6 under a State plan or waiver under title XIX
7 and was enrolled in such plan or waiver; and

8 “(III) subsequently lost eligibility for such
9 medical assistance.”; and

10 (2) by striking subparagraph (C)(iii) and in-
11 serting the following:

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

17 (3) in subparagraph (E)—

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

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

22 (C) by adding at the end the following new
23 clauses:

24 “(vi) in the case of an individual described in
25 subparagraph (B)(vii), the annual, coordinated elec-

1 tion period (as defined in section 1851(e)(3)(B)) or
 2 a continuous open enrollment period (as defined in
 3 section 1851(e)(2)) during which the individual
 4 disenrolls from a Medicare Advantage plan under
 5 part C; and

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

13 (b) EFFECTIVE DATE.—The amendments made by
 14 subsection (a) shall apply to Medicare supplemental poli-
 15 cies effective on or after January 1, 2010.

16 **SEC. 4. ENROLLMENT OF INDIVIDUALS WITH END STAGE**
 17 **RENAL DISEASE IN MEDICARE ADVANTAGE.**

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

21 “(3) MEDICARE+CHOICE ELIGIBLE INDIVIDUAL.—
 22 In this title, the term ‘Medicare+Choice eligible indi-
 23 vidual’ means an individual who is entitled to benefits
 24 under part A and enrolled under part B.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 1852(b) of the Social Security Act
2 (42 U.S.C. 1395w-22(b)) is amended by striking
3 paragraph (1) and inserting the following:

4 “(1) BENEFICIARIES.—A Medicare+Choice organi-
5 zation may not deny, limit, or condition the coverage or
6 provision of benefits under this part, for individuals per-
7 mitted to be enrolled with the organization under this
8 part, based on any health status-related factor described
9 in section 2702(a)(1) of the Public Health Service Act.
10 The Secretary shall not approve a plan of an organization
11 if the Secretary determines that the design of the plan
12 and its benefits are likely to substantially discourage en-
13 rollment by certain MA eligible individuals with the orga-
14 nization.”.

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

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to plan years beginning on or after
23 January 1, 2010.

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