

113TH CONGRESS
1ST SESSION

S. 236

To amend title XVIII of the Social Security Act to establish a Medicare payment option for patients and physicians or practitioners 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

FEBRUARY 7, 2013

Ms. MURKOWSKI (for herself, Mr. COBURN, Mr. PAUL, and Mr. BARRASSO) 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 physicians or practitioners 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”.

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

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 a participating or non-participating physician
 19 or practitioner for any item or service covered under
 20 this title.

21 “(2) SUBMISSION OF CLAIMS.—Any Medicare
 22 beneficiary that enters into a contract under this
 23 section shall be permitted to submit a claim for pay-
 24 ment under this title, and such payment shall be
 25 made in the amount that would otherwise apply
 26 under this title if such claim had been filed by a par-

1 ticipating physician or practitioner (as defined in
 2 section 1842(i)(2)) in the payment area where the
 3 physician or practitioner covered by the contract re-
 4 sides. Payment made under this title for any item or
 5 service provided under the contract shall not render
 6 the physician a participating or non-participating
 7 physician, and as such, requirements of this title
 8 that may otherwise apply to a participating or non-
 9 participating physician would not apply with respect
 10 to any items or services furnished under the con-
 11 tract.

12 “(3) BENEFICIARY PROTECTIONS.—

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

15 “(i) the contract is in writing, is
 16 signed by the Medicare beneficiary and the
 17 physician or practitioner, and establishes
 18 all terms of the contract (including specific
 19 payment for physicians’ services covered by
 20 the contract) before any item or service is
 21 provided pursuant to the contract, and the
 22 beneficiary shall be held harmless for any
 23 subsequent payment charged for a service
 24 in excess of the amount established under

the contract during the period the contract
is in effect;

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

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

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

“(i) agrees to be responsible for pay-
ment to such physician or practitioner for
such items or services under the terms of
and amounts established under the con-
tract;

“(ii) agrees to be responsible for sub-
mitting claims under this title to the Sec-
retary, and to any other supplemental in-
surance plan that may provide supple-
mental insurance, for such items or serv-
ices furnished under the contract if such
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 physician or practitioner is excluded from
 13 participation under the Medicare program
 14 under 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 physician or practitioner shall
 21 file claims on behalf of the beneficiary with
 22 the Secretary and any supplemental insur-
 23 ance plan for items or services furnished
 24 under the contract if such items or services

are covered under this title or under the plan; and

“(ii) the beneficiary assigns payment to the physician for any claims filed by, or on behalf of, the beneficiary with the Secretary and any supplemental insurance plan for items or services furnished under the contract.

“(D) EXCLUSION OF DUAL ELIGIBLE INDIVIDUALS.—Paragraph (1) shall not apply to any contract if a beneficiary who is eligible for medical assistance under title XIX is a party to the contract.

“(4) LIMITATION ON ACTUAL CHARGE AND CLAIM SUBMISSION REQUIREMENT NOT APPLICABLE.—Section 1848(g) shall not apply with respect to any item or service provided to a Medicare beneficiary under a contract described in paragraph (1).

“(5) CONSTRUCTION.—Nothing in this section shall be construed to prohibit any physician or practitioner from maintaining an election and acting as a participating or non-participating physician or practitioner with respect to any patient not covered under a contract established under this section.

“(6) DEFINITIONS.—In this subsection:

1 “(A) MEDICARE BENEFICIARY.—The term
 2 ‘Medicare beneficiary’ means an individual who
 3 is entitled to benefits under part A or enrolled
 4 under part B.

5 “(B) PHYSICIAN.—The term ‘physician’
 6 has the meaning given such term by paragraphs
 7 (1), (2), (3), and (4) of section 1861(r).

8 “(C) PRACTITIONER.—The term ‘practi-
 9 tioner’ means a practitioner described in section
 10 1842(b)(18)(C).

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

19 “(i) serious jeopardy to the health of
 20 the individual or, in the case of a pregnant
 21 woman, the health of the woman or her
 22 unborn child;

23 “(ii) serious impairment to bodily
 24 functions; or

1 “(iii) serious dysfunction of any bodily
2 organ or part.

3 “(E) URGENT HEALTH CARE SITUA-
4 TION.—The term ‘urgent health care situation’
5 means services furnished to an individual who
6 requires services to be furnished within 12
7 hours in order to avoid the likely onset of an
8 emergency medical condition.”.

9 **SEC. 3. PREEMPTION OF STATE LAWS LIMITING CHARGES**
10 **FOR PHYSICIAN AND PRACTITIONER SERV-**
11 **ICES.**

12 (a) IN GENERAL.—No State may impose a limit on
13 the amount of charges for services, furnished by a physi-
14 cian or practitioner, for which payment is made under sec-
15 tion 1848 of the Social Security Act (42 U.S.C. 1395w-
16 4), and any such limit is hereby preempted.

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

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