114TH CONGRESS
2D SESSION

# S. 3236

To amend title XVIII of the Social Security Act to establish a system to educate individuals approaching Medicare eligibility, to simplify and modernize the eligibility enrollment process, and to provide for additional assistance for complaints and requests of Medicare beneficiaries that relate to their enrollment in the Medicare program, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 14, 2016

Mr. CASEY (for himself and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Finance

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# A BILL

To amend title XVIII of the Social Security Act to establish a system to educate individuals approaching Medicare eligibility, to simplify and modernize the eligibility enrollment process, and to provide for additional assistance for complaints and requests of Medicare beneficiaries that relate to their enrollment in the Medicare program, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Beneficiary Enrollment Notification and Eligibility Simplification Act of 2016'' or the ''BENES Act of 2016''.

**SEC. 2. ELIGIBILITY AND ENROLLMENT NOTIFICATION.**

(a) NOTIFICATION REQUIREMENTS.—Section 1804 of the Social Security Act (42 U.S.C. 1395b–2) is amended by adding at the end the following new subsection:

''(d) ELIGIBILITY INFORMATION.—

''(1) COORDINATION OF NOTICE.—The Secretary, in consultation with representatives of each of the groups described in paragraph (2)(A), and in coordination with the Commissioner of Social Security and the Secretary of the Treasury, shall prepare and distribute a notice, in accordance with this subsection, to potentially eligible Medicare individuals.

''(2) GROUPS FOR CONSULTATION.—

''(A) IN GENERAL.—For purposes of paragraph (1), the groups described in this subparagraph include the following:

''(i) Individuals who are more than 60 years of age.

''(ii) Individuals with disabilities.

''(iii) Individuals with end stage renal disease.

''(iv) Low-income individuals and families.

''(v) Employers (including human resources professionals).

''(vi) States (including representatives of State-run Health Insurance Exchanges, Medicaid offices, and Departments of Insurance).

''(vii) State Health Insurance Assistance Programs.

''(viii) Health insurers.

''(ix) Such other groups as specified by the Secretary.

''(B) NON-APPLICATION OF FACA.—The Federal Advisory Committee Act shall not apply to consultations made pursuant to paragraph (1) with groups described in subparagraph (A).

''(3) CONTENTS OF NOTICE.—The notice required under paragraph (1) shall contain information on (including a clear, simple explanation of)—

''(A)(i) eligibility for benefits under this title, and in particular benefits under part B;

''(ii) the possibility of a late enrollment penalty for failure to timely enroll (including the availability of equitable relief); and

"(iii) how to access the Website described in paragraph (5); and

"(B) the need for coordination of benefits under part B (including secondary and primary coverage scenarios) imposed under this title, including the effects of enrollment in retiree health coverage; group health coverage; coverage under a group health plan provided by an employer pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986, or title VI of the Employee Retirement Income Security Act of 1974; coverage under a qualified health plan offered through an Exchange established under title I of the Patient Protection and Affordable Care Act; and other widely available coverage which may be available to potentially eligible Medicare individuals.

"(4) TIMING OF NOTICE TO POTENTIAL ENROLLEES.—Beginning one year after the date of the enactment of this subsection, a notice required under paragraph (1) shall be mailed (or, starting after 2025, mailed or otherwise delivered) to each potentially eligible Medicare individual no less than two times in accordance with the following:

"(A) The notice shall be initially provided to such individual no later than 6 months prior to the date of such individual's initial enrollment period as provided under section 1837.

"(B) The notice shall subsequently be provided to such individual no later than one month prior to such date.

"(5) CREATION OF A CENTRALIZED ENROLLMENT WEBSITE.—The information contained in notices required under this subsection shall be made available through a new Website to be maintained by the Secretary. Such Website shall include both Social Security and Medicare online tools in a coordinated and organized manner, and shall also contain, or link to, such other eligibility tools, services, notices (including with respect to the availability of equitable relief), and other information as determined by the Secretary, in consultation with groups described in paragraph (2) for the purposes of being available to potentially eligible Medicare individuals.

"(6) INTERAGENCY COORDINATION.—Beginning not later than 2 months after the date of the enactment of this subsection, the Secretary, along with the Secretary of the Treasury and the Commissioner of the Social Security Administration, shall under-

take all necessary action and coordination to identify potentially eligible individuals and in order to provide such individuals with notifications under this subsection in accordance with paragraph (4).

''(7) NOTIFICATION IMPROVEMENT.—The Secretary shall, no less than once every fiscal year, review the content of the notices required under this subsection and the practices of providing such notices to individuals, and shall update and revise such notices and practices as the Secretary deems appropriate.

''(8) POTENTIALLY ELIGIBLE MEDICARE INDIVIDUAL DEFINED.—For purposes of this subsection, the term 'potentially eligible Medicare individual' means an individual, with respect to a month, who is expected to satisfy the description in paragraph (1) or (2) of section 1836 during such month or during any of the subsequent 11 months.''.

(b) DISCLOSURE AUTHORITY.—Section 6103(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(23) DISCLOSURE OF RETURN INFORMATION TO CARRY OUT ELIGIBILITY NOTIFICATION REQUIREMENTS FOR CERTAIN PROGRAMS.—

"(A) IN GENERAL.—The Secretary, upon request from the Secretary of Health and Human Services, shall disclose to officers, employees, and contractors of the Department of Health and Human Services and the Social Security Administration return information of any taxpayer who is a potentially eligible Medicare individual (as defined in section 1804(d)(8) of the Social Security Act). Such return information shall be limited to—

"(i) taxpayer identity information with respect to such taxpayer, including the age and address or other location of such taxpayer;

"(ii) the filing status of such taxpayer;

"(iii) such other information as is prescribed by the Secretary of Health and Human Services by regulation as might indicate whether the taxpayer is eligible for coverage under such title; and

"(iv) the taxable year with respect to which the preceding information relates or, if applicable, the fact that such information is not available.

''(B) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Return information disclosed under subparagraph (A) may be used by officers, employees, and contractors of the Department of Health and Human Services or the Social Security Administration only for the purposes of, and to the extent necessary in, establishing potential eligibility for benefits under title XVIII of the Social Security Act.''.

(c) COMPUTER MATCHING AGREEMENT.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services, the Secretary of the Treasury, and the Commissioner of Social Security shall enter into a computer matching agreement pursuant to section 552a(o) of title 5 of the United States Code for the purposes of implementing section 1804(d) of the Social Security Act, as added by subsection (a), and section 6103(l)(23) of the Internal Revenue Code of 1986, as added by subsection (b).

(d) REPORT TO CONGRESS.—Not later than 4 years after the date of the enactment of this Act, the Secretary of Health and Human Services, Secretary of the Treasury, and the Commissioner of Social Security shall submit to Congress a report on the process taken by the relevant agencies in implementing the notice requirement under

subsection (d) of section 1804 of the Social Security Act (42 U.S.C. 1395b–2), as added by subsection (a) of this section, the status of notices created pursuant to such section, and an evaluation of the effect of such notices on enrollment under title XVIII of the Social Security Act. Such report shall be made publicly available.

**SEC. 3. BENEFICIARY MEDICARE PART B ENROLLMENT PERIODS AND EFFECTIVE DATE OF COVERAGE.**

(a) EFFECTIVE DATES.—Section 1838(a) of the Social Security Act (42 U.S.C. 1395q(a)) is amended—

(1) by amending paragraph (2) to read as follows:

''(2)(A) in the case of an individual who enrolls pursuant to subsection (d) of section 1837 before the month in which he first satisfies paragraph (1) or (2) of section 1836, the first day of such month;

''(B) in the case of an individual not described in subparagraph (A) who first satisfies such paragraph in a month beginning before January 2018 and who enrolls—

''(i) pursuant to such subsection (d) in such month in which he first satisfies such paragraph, the first day of the month following the month in which he so enrolls, or

''(ii) pursuant to such subsection (d) in the month following such month in which he first satisfies such paragraph, the first day of the second month following the month in which he so enrolls, or

''(iii) pursuant to such subsection (d) more than one month following such month in which he satisfies such paragraph, the first day of the third month following the month in which he so enrolls;

''(C) in the case of an individual not described in subparagraph (A) who enrolls pursuant to subsection (e) of section 1837 in a month beginning before January 2018, the July 1 following the month in which he so enrolls;

''(D) in the case of an individual not described in subparagraph (A) who first satisfies such paragraph in a month beginning on or after January 1, 2018, and who enrolls pursuant to such subsection (d) in such month in which he first satisfies such paragraph or in any subsequent month, the first day of the month following the month in which he so enrolls; or

''(E) in the case of an individual not described in subparagraph (A) who enrolls pursuant to sub-

section (e) of section 1837 in a month beginning on or after October 15, 2017, the first day of the month following the month in which he so enrolls.''; and

(2) by amending paragraph (3) to read as follows:

''(3)(A) in the case of an individual who is deemed to have enrolled on or before the last day of the third month of his initial enrollment period beginning before January 1, 2018, the first day of the month in which he first meets the applicable requirements of section 1836 or July 1, 1973, whichever is later, or

''(B) in the case of an individual who is deemed to have enrolled on or after the first day of the fourth month of his initial enrollment period beginning before January 1, 2018, as prescribed under subparagraphs (B)(i), (B)(ii), (B)(iii), and (C) of paragraph (2) of this subsection.''.

(b) GENERAL AND SPECIAL ENROLLMENT PERIODS.—Section 1837(e) of the Social Security Act (42 U.S.C. 1395p(e)) is amended to read as follows:

''(e) ENROLLMENT PERIODS.—

''(1) FOR COVERAGE DURING YEARS BEFORE 2018.—There shall be a general enrollment period

during the period beginning on January 1 and ending on March 31 of each year before 2018.

''(2) FOR COVERAGE DURING YEARS BEGINNING WITH 2018.—For 2018 and each subsequent year:

''(A) IN GENERAL.—Subject to subparagraph (B), there shall be a general enrollment period beginning on October 15 of the previous year through December 31 of such previous year.

''(B) EXCEPTIONAL CIRCUMSTANCES.—The Secretary shall establish special enrollment periods in the case of a potentially eligible Medicare individual (as defined in section 1804(d)(8)) who meet such exceptional conditions as the Secretary may provide.''.

(c) TECHNICAL CORRECTION.—Section 1839(b) of the Social Security Act (42 U.S.C. 1395r(b)) is amended striking ''close of the enrollment period'' each place it appears and inserting ''close of the month''.

**SEC. 4. REVISING BENEFICIARY APPEAL RIGHTS FOR GOOD FAITH ENROLLMENT MISTAKES.**

(a) IN GENERAL.—Subsection (h) of section 1837 of the Social Security Act (42 U.S.C. 1395p) is amended to read as follows:

''(h)(1) In any case in which the Secretary finds that an individual's enrollment or nonenrollment in the insurance program established by this part or part A pursuant to section 1818 is unintentional, inadvertent, or erroneous, whether the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Federal Government or its instrumentalities, an employer, a representative of a group health plan, a State, or for any other good faith reason on the part of such individual, the Secretary shall take such action (including the designation for such individual of a special initial or subsequent enrollment period, including retroactive enrollment, with a coverage period determined on the basis thereof and with appropriate adjustments of premiums) as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction. The failure of an individual to enroll in the insurance program established by this part or part A pursuant to section 1818 due to enrollment under a group health plan; coverage pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986, title VI of the Employee Retirement Income Security Act of 1974, or title XIX; or enrollment under a qualified health plan offered through an Exchange established under title I of the Patient Protection and Affordable Care Act shall under this subsection ab-

sent exceptional circumstances, as determined by the Secretary.

''(2) The Secretary, in consultation with the Commissioner of Social Security, shall develop and publish a formal application for requesting an action of the Secretary under paragraph (1) to correct or eliminate the effects of an error, misrepresentation, or inaction described in such paragraph and determine and publish specific timelines for timely resolution of such a request.

''(3) The Secretary shall also require that all such determinations with respect to such requests shall be reached within 15 business days of the submission of such application. All determinations shall be in writing through a standard decision notice which shall include an explanation of the reasons for the determination.

''(4)(A) The Commissioner of Social Security shall enter into contracts with independent review organizations in accordance with this subsection for the purpose of reviewing and determining individual appeals of determinations under paragraph (3) with respect to an application submitted pursuant to paragraph (2) relating to enrollment under part A or part B.

''(B) An individual who receives an adverse determination under paragraph (3) with respect to an application submitted pursuant to paragraph (2) may appeal to

an independent review organization designated by the Commission. Any such appeal must be sent to the independent review organization within 90 days of the date the individual received the determination to be eligible for review. The independent review organization shall review and reach a determination of the review in writing within 45 days of the receipt of any such appeal.

''(C) The Secretary of the Treasury may not enter into a contract under subparagraph (A) with an independent review organization—

''(i) unless the organization has staff that has the appropriate knowledge of, and experience with, the eligibility and coordination of benefits rules and regulations under this title; and

''(ii) to the extent the organization is a fiscal intermediary under section 1816, a carrier under section 1842, or a Medicare administrative contractor under section 1874A.

''(D) The Secretary of Health and Human Services shall provide for access by independent review organizations conducting appeal determinations under this subsection, to the database of the Coordination of Benefits Contractor of the Centers for Medicare & Medicaid Services as necessary in order to conduct the duties of such

organizations to determine appeals pursuant to this subsection.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect beginning on the date that is 6 months after the date of the enactment of this Act.

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