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115TH CONGRESS
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H. R. 6431

To amend title XVIII of the Social Security Act to provide for certain reforms with respect to medicare supplemental health insurance policies.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2018

Mr. LEVIN (for himself, Mr. NEAL, Mr. BLUMENAUER, Mr. HIGGINS of New York, Ms. JUDY CHU of California, Mr. DANNY K. DAVIS of Illinois, and Mr. LEWIS of Georgia) 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

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A BILL

To amend title XVIII of the Social Security Act to provide for certain reforms with respect to medicare supplemental health insurance policies.

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 ''Medigap Consumer Protection Act of 2018''.

SEC. 2. GUARANTEED ISSUE.

(a) GUARANTEED ISSUE OF MEDIGAP POLICIES TO ALL MEDIGAP-ELIGIBLE MEDICARE BENEFICIARIES.—

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

(A) in paragraph (2)(A), by striking ''65 years of age or older and is enrolled for benefits under part B'' and inserting ''entitled to, or enrolled for, benefits under part A and enrolled for benefits under part B'';

(B) in paragraph (2)(D), by striking ''who is 65 years of age or older as of the date of issuance and'';

(C) in paragraph (3)(B)(ii), by striking ''is 65 years of age or older and''; and

(D) in paragraph (3)(B)(vi), by striking ''at age 65''.

(2) EFFECTIVE DATE; PHASE-IN AUTHORITY.—

(A) EFFECTIVE DATE.—Subject to subparagraph (B), the amendments made by paragraph (1) shall apply to medicare supplemental policies effective on or after January 1, 2022.

(B) PHASE-IN AUTHORITY.—

(i) IN GENERAL.—Subject to clause (ii), the Secretary of Health and Human

Services may phase in the implementation of the amendments made under paragraph (1) (with such phase-in beginning on or after January 1, 2022) in such manner as the Secretary determines appropriate in order to minimize any adverse impact on individuals enrolled under a medicare supplemental policy.

(ii) PHASE-IN PERIOD MAY NOT EXCEED 5 YEARS.—The Secretary of Health and Human Services shall ensure that the amendments made by paragraph (1) are fully implemented by not later than January 1, 2027.

(3) ADDITIONAL ENROLLMENT PERIOD FOR CERTAIN INDIVIDUALS.—

(A) ONE-TIME ENROLLMENT PERIOD.—

(i) IN GENERAL.—In the case of an individual described in subparagraph (B), the Secretary shall establish a one-time enrollment period during which such an individual may enroll in any medicare supplemental policy of the individual's choosing.

(ii) PERIOD.—The enrollment period established under clause (i) shall begin on

the date on which the phase-in period under paragraph (2) is completed and end 6 months after such date.

(B) INDIVIDUAL DESCRIBED.—An individual described in this paragraph is an individual who—

(i) is entitled to hospital insurance benefits under part A under section 226(b) or section 226A of the Social Security Act (42 U.S.C. 426(b); 426–1);

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

(iii) would not, but for the provisions of and amendments made by paragraphs (1) and (2), be eligible for the guaranteed issue of a medicare supplemental policy under paragraph (2) or (3) of section 1882(s) of such Act (42 U.S.C. 1395ss(s)).

(C) OUTREACH PLAN.—

(i) IN GENERAL.—The Secretary shall develop an outreach plan to notify individuals described in subparagraph (B) of the one-time enrollment period established under subparagraph (A).

(ii) CONSULTATION.—In implementing the outreach plan developed under clause (i), the Secretary shall consult with consumer advocates, brokers, insurers, the National Association of Insurance Commissioners, and State Health Insurance Assistance Programs.

(b) GUARANTEED ISSUE OF MEDIGAP POLICIES FOR MEDICARE ADVANTAGE AND MEDICAID ENROLLEES; TREATMENT OF INDIVIDUALS WITH COBRA.—

(1) IN GENERAL.—Section 1882(s)(3) of the Social Security Act (42 U.S.C. 1395ss(s)(3)), as amended by subsection (a), is further amended—

(A) in subparagraph (B), by adding at the end the following new clauses:

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

''(viii) The individual—

''(I) is entitled to, or enrolled for, benefits under part A and enrolled for benefits under part B; and

''(II) either—

''(aa) is eligible for medical assistance under a State plan or waiver under title XIX based on a reduction of income of the individual based on costs incurred for medical or other remedial care and was enrolled in such plan or waiver; or

''(bb) was otherwise eligible for medical assistance under a State plan or waiver under title XIX and subsequently lost eligibility for such medical assistance.'';

(B) by striking subparagraph (C)(iii) and inserting the following:

''(iii) Subject to subsection (v)(1), for purposes of an individual described in clause (vi), (vii), or (viii) of subparagraph (B), a medicare supplemental policy described in this subparagraph shall include any medicare supplemental policy.''; and

(C) in subparagraph (E)—

(i) in clause (iv), by striking ''and'' at the end;

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

(iii) by adding at the end the following new clauses—

''(vi) in the case of an individual described in subparagraph (B)(vii), the annual, coordinated election period (as defined in section 1851(e)(3)(B)) or a continuous open enrollment period (as defined in section 1851(e)(2)) during which the individual disenrolls from a Medicare Advantage plan under part C;

''(vii) in the case of an individual described in subparagraph (B)(viii) who is eligible for medical assistance under a State plan or waiver under title XIX for a reason described in item (aa), such period as is specified by the Secretary;

''(viii) in the case of an individual described in subparagraph (B)(viii) who is eligible for medical assistance under a State plan or waiver under title XIX for a reason described in item (bb), the period beginning on the date that the individual receives a notice of cessation of such individual's eligibility for medical assistance under the State plan or waiver under title XIX and ending on the date that is four months after the individual receives such notice; and''.

(2) TREATMENT OF INDIVIDUALS WITH COBRA.—

(A) IN GENERAL.—Section 1882(s)(3) of the Social Security Act (42 U.S.C. 1395ss(s)(3)), as amended by subsection (a) and paragraph (1), is further amended—

(i) in subparagraph (B)(i) by inserting ''or, in the case of an individual enrolled in such an employee welfare benefit plan pursuant to a COBRA continuation provision (as defined in section 2791(d)(4) of the Public Health Service Act), that the individual disenrolls from such plan and enrolls under part B'' before the period at the end; and

(ii) in subparagraph (E), as amended by paragraph (1), by adding at the end the following new clause:

''(ix) in the case of an individual described in subparagraph (B)(i) who enrolled in an employee welfare benefit plan described in such subparagraph pursuant to a COBRA continuation provision (as defined in section 2791(d)(4) of the Public Health Service Act) and who disenrolls from such plan and enrolls under part B, the period beginning on 60

days before the effective date of such disenrollment and ending on the date that is 63 days after such effective date.''.

(B) TECHNICAL CORRECTION.—Section 1882(s)(2)(D) of the Social Security Act (42 U.S.C. 1395ss(s)(2)(D)) is amended—

(i) by striking ''2701(c)'' and inserting ''2704(c)''; and

(ii) by striking ''2701(a)(3)'' and inserting ''2704(a)(3)''.

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2)(A) shall apply to medicare supplemental policies effective on or after January 1, 2022.

SEC. 3. MEDICAL LOSS RATIO.

Section 1882(r)(1)(A) of the Social Security Act (42 U.S.C. 1395ss(r)(1)(A)) is amended—

(1) by inserting ''and periodically reviewed'' after ''developed''; and

(2) by striking ''policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 65 percent in the case of individual policies; and'' and inserting the following: ''policy—

''(i) with respect to periods beginning before January 1, 2022, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 65 percent in the case of individual policies; and

''(ii) with respect to periods beginning on or after January 1, 2022, a percent of the aggregate amount of premiums collected that, in the case of group policies or individual policies, as applicable, is equal to or greater than both—

''(I) the applicable percent specified in clause (i) with respect to such policies; and

''(II) such percent as the National Association of Insurance Commissioners may recommend to the Secretary with respect to such policies for purposes of this paragraph; and''.

SEC. 4. LIMITATIONS ON PRICING DISCRIMINATION.

(a) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss), as amended by section 6, is further amended by adding at the end the following new subsection:

''(aa) DEVELOPMENT OF NEW STANDARDS RELATING TO PRICING DISCRIMINATION.—

''(1) IN GENERAL.—The Secretary shall request the National Association of Insurance Commissioners to review and revise the standards for all benefit packages under subsection (p)(1), including the core benefit package, in order to provide coverage consistent with paragraph (2). Such revisions shall be made consistent with the rules applicable under subsection (p)(1)(E) (with the reference to the '1991 NAIC Model Regulation' deemed a reference to the NAIC Model Regulation as most recently updated by the National Association of Insurance Commissioners to reflect previous changes in law and the reference to 'date of enactment of this subsection' deemed a reference to the date of enactment of this subsection).

''(2) CHANGES IN COST-SHARING DESCRIBED.—Under the revised standards, coverage shall not be available under a Medicare supplemental insurance policy unless the issuer of the policy, in addition to conforming to the other applicable requirements of this section—

''(A) does not discriminate in the pricing of the policy because of the age of the individual to whom the policy is issued;

"(B) does not, to an extent that jeopardizes the access to such policy for individuals who are eligible to participate in the program under this title because the individuals are individuals described in paragraph (2) or (3) of section 1811, discriminate in the pricing of the policy because the individual to whom the policy is issued is so eligible to participate in such program because the individual is an individual so described in such a paragraph; and

"(C) does not establish premiums applicable under such policy on a basis that would apply to a portion of, but not the entirety of, a county or equivalent area specified by the Secretary.

"(3) APPLICATION DATE.—The revised standards shall apply to benefit packages sold, issued, or renewed under this section to individuals who first become entitled to benefits under part A or first enrolls in part B on or after January 1, 2022.".

(b) CONFORMING AMENDMENT.—Section 1882(o)(1) of such Act (42 U.S.C. 1395ss(o)(1)) is amended by striking ", and (y)" and inserting "(y), and (aa)".

SEC. 5. CLARIFYING BENEFICIARY OPTIONS ON THE MEDICARE PLAN FINDER WEBSITE.

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

''(d) In the case that the Secretary provides for a Medicare plan finder Internet website of the Centers for Medicare & Medicaid Services (or a successor website), the Secretary shall, with respect to such website and in accordance with subsection (f)—

''(1) make available on such website—

''(A) access to provider networks in order to provide to individuals entitled to benefits under part A or enrolled under part B information to assist such individuals in understanding the restrictions on providers and potential costs entailed by their decisions regarding enrollment under parts A and B, under part C, and in medicare supplemental policies under section 1882;

''(B) a review of out-of-pocket expenditures, including deductibles, copayments, coinsurance, monthly premiums, and estimated annual out-of-pocket costs, displayed overall and by components, based on the best available information as determined by the Secretary; and

''(C) during the period prior to January 1, 2025, information regarding the rules that, in each State, pertain to guaranteed issue of medicare supplemental health insurance policies prior to implementation of the provisions of the Medigap Consumer Protection Act of 2018 and, in the case that a State has no such rules pertaining to guaranteed issue of such policies, clear language explaining the implications of such lack of rules for individuals with pre-existing conditions;

''(2) not later than January 1, 2020, and periodically thereafter, perform a review of such website in order to ensure that such website makes available to individuals entitled to benefits under part A or enrolled under part B the information that the Secretary determines is necessary for such individuals to make informed choices regarding their options under the program under this title; and

''(3) not later than 12 months after the last day of each period for the request for information under subsection (e), update such website, taking into consideration the information collected pursuant to such subsection, to clarify the presentation of consumer options for medicare supplemental health in-

surance policy options, including by presenting such information in a manner calculated to be understood by the average consumer and in a manner that—

"(A) improves consumer access to information regarding the applicable premiums under such policy options as of the date on which such website is so updated;

"(B) facilitates consumers' ability to compare and sort policy options and premium information across plan offerings in a given location;

"(C) clarifies and explains differences in policy value;

"(D) rates and explains the financial stability of issuers of such policies;

"(E) provides data on the inflation rate of different policies;

"(F) provides information regarding the guaranteed issue requirements that apply to medicare supplemental health insurance policies under section 1882(s)(3); and

"(G) includes such general information as is determined by the Secretary to be necessary for individuals entitled to benefits under part A or enrolled under part B to understand costs under MA plans available pursuant to part C

and prescription drug plans available pursuant to part D.

''(e) Not later than 6 months after the date of the enactment of this subsection and beginning on December 7 of each year thereafter, the Secretary of Health and Human Services shall provide an opportunity for public comment during which the Secretary requests information, including recommendations, from stakeholders regarding potential improvements to the presentation of medicare supplemental health insurance policy options under section 1882 on the Medicare plan finder Internet website of the Centers for Medicare & Medicaid Services (or a successor website).

''(f) With respect to any information that the Secretary makes available on the Medicare plan finder Internet website of the Centers for Medicare & Medicaid Services (or a successor website) pursuant to subsection (d), the Secretary shall, prior to making such information available—

''(1) provide, in consultation with the National Association of Insurance Commissioners, an opportunity for consumer testing of such information;

''(2) share the results of such consumer testing of such information with interested stakeholders; and

''(3) provide a 60-day public comment period with respect to such information.''.

SEC. 6. RESTORING ACCESS TO FIRST-DOLLAR MEDIGAP COVERAGE.

Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by striking subsection (z).

SEC. 7. BROKER TRANSPARENCY.

Section 1128G of the Social Security Act (42 U.S.C. 1320a–7h) is amended—

(1) in subsection (c)(1)(A), by striking ''2011,'' and inserting ''2011 (or, with respect to information required to be submitted under subsection (f)(1), not later than six months after the date of the enactment of such subsection),''; and

(2) by adding at the end the following new subsection:

''(f) APPLICATION TO MEDIGAP INSURANCE BROKERS.—

''(1) IN GENERAL.—Beginning not later than 12 months after the date of enactment of this subsection, each issuer of a medicare supplemental health insurance policy shall annually submit to the Secretary a report regarding payments or other transfers of value made during the previous year to agents, brokers, and other third parties representing

such policy. Each such report shall include the following information, with respect to such a payment or other transfer of value:

''(A) The name of the recipient of the payment or other transfer of value.

''(B) The business address of the recipient.

''(C) The amount of the payment or other transfer of value.

''(D) The dates on which the payment or transfer of value was provided.

''(E) A description of the form of the payment or transfer of value.

''(F) Any other categories of information the Secretary determines appropriate.

''(2) APPLICATION OF TRANSPARENCY SYSTEM.—The provisions of subsections (b) through (d) shall apply to an issuer described in paragraph (1), information required to be reported under such paragraph, and agents, brokers, and other third parties described in such paragraph in the same manner and to the same extent as such provisions apply to an applicable manufacturer, information required to be reported under subsection (a), and a covered recipient.''.

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