

113TH CONGRESS
1ST SESSION

H. R. 1310

To amend title XVIII of the Social Security Act to establish a Medicare payment option for patients and eligible professionals to freely contract, without penalty, for Medicare fee-for-service items and services, while allowing Medicare beneficiaries to use their Medicare benefits.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 2013

Mr. PRICE of Georgia (for himself, Mr. ROE of Tennessee, Mr. TIBERI, Mr. HARRIS, Mr. POE of Texas, and Mr. BONNER) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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 establish a Medicare payment option for patients and eligible professionals 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 of 2013”.

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 an eligible professional for any item or service
19 covered under this title.

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

1 1842(h)(1)) in the payment area where the eligible
2 professional covered by the contract resides. Pay-
3 ment made under this title for any item or service
4 provided under the contract shall not render the eli-
5 gible professional a participating or non-partici-
6 pating physician or supplier, and as such, require-
7 ments of this title that may otherwise apply to a
8 participating or non-participating physician or sup-
9 plier would not apply with respect to any items or
10 services furnished under the contract.

11 “(3) BENEFICIARY PROTECTIONS.—

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

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

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

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

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

12 “(i) agrees to be responsible for pay-
13 ment to such eligible professional for such
14 items or services under the terms of and
15 amounts established under the contract;

16 “(ii) agrees to be responsible for sub-
17 mitting claims under this title to the Sec-
18 retary, and to any other supplemental in-
19 surance plan that may provide supple-
20 mental insurance, for such items or serv-
21 ices furnished under the contract if such
22 items or services are covered by this title,
23 unless otherwise provided in the contract
24 under subparagraph (C)(i); and

1 “(iii) acknowledges that no limits or
2 other payment incentives that may other-
3 wise apply under this title (such as the
4 limits under subsection (g) of section 1848
5 or incentives under subsection (a)(5), (m),
6 (q), and (p) of such section) shall apply to
7 amounts that may be charged, or paid to
8 a beneficiary for, such items or services.

9 Such contract shall also clearly indicate whether
10 the eligible professional is excluded from par-
11 ticipation under the Medicare program under
12 section 1128.

13 “(C) BENEFICIARY ELECTIONS UNDER
14 THE CONTRACT.—Any Medicare beneficiary
15 that enters into a contract under this section
16 may elect to negotiate, as a term of the con-
17 tract, a provision under which—

18 “(i) the eligible professional shall file
19 claims on behalf of the beneficiary with the
20 Secretary and any supplemental insurance
21 plan for items or services furnished under
22 the contract if such items or services are
23 covered under this title or under the plan;
24 and

1 “(ii) the beneficiary assigns payment
2 to the eligible professional for any claims
3 filed by, or on behalf of, the beneficiary
4 with the Secretary and any supplemental
5 insurance plan for items or services fur-
6 nished under the contract.

7 “(D) EXCLUSION OF DUAL ELIGIBLE INDI-
8 VIDUALS.—Paragraph (1) shall not apply to
9 any contract if a beneficiary who is eligible for
10 medical assistance under title XIX is a party to
11 the contract.

12 “(4) LIMITATION ON ACTUAL CHARGE AND
13 CLAIM SUBMISSION REQUIREMENT NOT APPLICA-
14 BLE.—Section 1848(g) shall not apply with respect
15 to any item or service provided to a Medicare bene-
16 ficiary under a contract described in paragraph (1).

17 “(5) CONSTRUCTION.—Nothing in this section
18 shall be construed to prohibit any eligible profes-
19 sional from maintaining an election and acting as a
20 participating or non-participating physician or sup-
21 plier with respect to any patient not covered under
22 a contract established under this section.

23 “(6) DEFINITIONS.—In this subsection:

24 “(A) MEDICARE BENEFICIARY.—The term
25 ‘Medicare beneficiary’ means an individual who

1 is entitled to benefits under part A or enrolled
2 under part B.

3 “(B) ELIGIBLE PROFESSIONAL.—The term
4 ‘eligible professional’ has the meaning given
5 such term in section 1848(k)(3)(B).

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

14 “(i) serious jeopardy to the health of
15 the individual or, in the case of a pregnant
16 woman, the health of the woman or her
17 unborn child;

18 “(ii) serious impairment to bodily
19 functions; or

20 “(iii) serious dysfunction of any bodily
21 organ or part.

22 “(D) URGENT HEALTH CARE SITUA-
23 TION.—The term ‘urgent health care situation’
24 means services furnished to an individual who
25 requires services to be furnished within 12

1 hours in order to avoid the likely onset of an
2 emergency medical condition.”.

3 **SEC. 3. PREEMPTION OF STATE LAWS LIMITING CHARGES**
4 **FOR SERVICES BY AN ELIGIBLE PROFES-**
5 **SIONAL.**

6 (a) **IN GENERAL.**—No State may impose a limit on
7 the amount of charges for services, furnished by an eligible
8 professional, for which payment is made under section
9 1848 of the Social Security Act (42 U.S.C. 1395w–4), and
10 any such limit is hereby preempted.

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

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