

111TH CONGRESS
1ST SESSION

H. R. 3356

To amend title XVIII of the Social Security Act to clarify the use of private contracts by Medicare beneficiaries for professional services and to allow individuals to choose to opt out of the Medicare part A benefits.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2009

Mr. SAM JOHNSON of Texas (for himself, Mr. BRADY of Texas, and Mr. REICHERT) 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

A BILL

To amend title XVIII of the Social Security Act to clarify the use of private contracts by Medicare beneficiaries for professional services and to allow individuals to choose to opt out of the Medicare part A 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 Beneficiary
5 Freedom to Choose Act of 2009”.

1 **SEC. 2. USE OF PRIVATE CONTRACTS BY MEDICARE BENE-**
2 **FICIARIES FOR PROFESSIONAL SERVICES.**

3 (a) IN GENERAL.—Section 1802(b) of the Social Se-
4 curity Act (42 U.S.C. 1395a) is amended to read as fol-
5 lows:

6 “(b) CLARIFICATION OF USE OF PRIVATE CON-
7 TRACTS BY MEDICARE BENEFICIARIES FOR PROFES-
8 SIONAL SERVICES.—

9 “(1) IN GENERAL.—Nothing in this title shall
10 prohibit a medicare beneficiary from entering into a
11 private contract with a physician or health care
12 practitioner for the provision of medicare covered
13 professional services (as defined in paragraph
14 (5)(C)) if—

15 “(A) the services are covered under a pri-
16 vate contract that is between the beneficiary
17 and the physician or practitioner and meets the
18 requirements of paragraph (2);

19 “(B) under the private contract no claim
20 for payment for services covered under the con-
21 tract is to be submitted (and no payment made)
22 under part A or B, under a contract under sec-
23 tion 1876, or under an MA plan (other than an
24 MSA plan); and

25 “(C)(i) the Secretary has been provided
26 with the minimum information necessary to

1 avoid any payment under part A or B for serv-
2 ices covered under the contract, or

3 “(ii) in the case of an individual en-
4 rolled under a contract under section 1876
5 or an MA plan (other than an MSA plan)
6 under part C, the eligible organization
7 under the contract or the MA organization
8 offering the plan has been provided the
9 minimum information necessary to avoid
10 any payment under such contract or plan
11 for services covered under the contract.

12 “(2) REQUIREMENTS FOR PRIVATE CON-
13 TRACTS.—The requirements in this paragraph for a
14 private contract between a medicare beneficiary and
15 a physician or health care practitioner are as fol-
16 lows:

17 “(A) GENERAL FORM OF CONTRACT.—The
18 contract is in writing and is signed by the medi-
19 care beneficiary.

20 “(B) NO CLAIMS TO BE SUBMITTED FOR
21 COVERED SERVICES.—The contract provides
22 that no party to the contract (and no entity on
23 behalf of any party to the contract) shall sub-
24 mit any claim for (or request) payment for
25 services covered under the contract under part

1 A or B, under a contract under section 1876,
2 or under an MA plan (other than an MSA
3 plan).

4 “(C) SCOPE OF SERVICES.—The contract
5 identifies the medicare covered professional
6 services and the period (if any) to be covered
7 under the contract, but does not cover any serv-
8 ices furnished—

9 “(i) before the contract is entered
10 into; or

11 “(ii) for the treatment of an emer-
12 gency medical condition (as defined in sec-
13 tion 1867(e)(1)(A)), unless the contract
14 was entered into before the onset of the
15 emergency medical condition.

16 “(D) CLEAR DISCLOSURE OF TERMS.—The
17 contract clearly indicates that by signing the
18 contract the medicare beneficiary—

19 “(i) agrees not to submit a claim (or
20 to request that anyone submit a claim)
21 under part A or B (or under section 1876
22 or under an MA plan, other than an MSA
23 plan) for services covered under the con-
24 tract;

1 “(ii) agrees to be responsible, whether
2 through insurance or otherwise, for pay-
3 ment for such services and understands
4 that no reimbursement will be provided
5 under such part, contract, or plan for such
6 services;

7 “(iii) acknowledges that no limits
8 under this title (including limits under
9 paragraphs (1) and (3) of section 1848(g))
10 will apply to amounts that may be charged
11 for such services;

12 “(iv) acknowledges that medicare sup-
13 plemental policies under section 1882 do
14 not, and other supplemental health plans
15 and policies may elect not to, make pay-
16 ments for such services because payment is
17 not made under this title; and

18 “(v) acknowledges that the beneficiary
19 has the right to have such services pro-
20 vided by (or under the supervision of)
21 other physicians or health care practi-
22 tioners for whom payment would be made
23 under such part, contract, or plan.

1 Such contract shall also clearly indicate whether
2 the physician or practitioner involved is ex-
3 cluded from participation under this title.

4 “(3) MODIFICATIONS.—The parties to a private
5 contract may mutually agree at any time to modify
6 or terminate the contract on a prospective basis,
7 consistent with the provisions of paragraphs (1) and
8 (2).

9 “(4) NO REQUIREMENTS FOR SERVICES FUR-
10 NISHED TO MSA PLAN ENROLLEES.—The require-
11 ments of paragraphs (1) and (2) do not apply to any
12 contract or arrangement for the provision of services
13 to a medicare beneficiary enrolled in an MSA plan
14 under part C.

15 “(5) DEFINITIONS.—In this subsection:

16 “(A) HEALTH CARE PRACTITIONER.—The
17 term ‘health care practitioner’ means a practi-
18 tioner described in section 1842(b)(18)(C).

19 “(B) MEDICARE BENEFICIARY.—The term
20 ‘medicare beneficiary’ means an individual who
21 is enrolled under part B.

22 “(C) MEDICARE COVERED PROFESSIONAL
23 SERVICES.—The term ‘medicare covered profes-
24 sional services’ means—

1 “(i) physicians’ services (as defined in
2 section 1861(q), and including services de-
3 scribed in section 1861(s)(2)(A)), and

4 “(ii) professional services of health
5 care practitioners, including services de-
6 scribed in section 1842(b)(18)(D),

7 for which payment may be made under part A
8 or B, under a contract under section 1876, or
9 under a Medicare Advantage plan but for the
10 provisions of a private contract that meets the
11 requirements of paragraph (2).

12 “(D) MA PLAN; MSA PLAN.—The terms
13 ‘MA plan’ and ‘MSA plan’ have the meanings
14 given such terms in section 1859.

15 “(E) PHYSICIAN.—The term ‘physician’
16 has the meaning given such term in section
17 1861(r).”.

18 (b) CONFORMING AMENDMENTS CLARIFYING EX-
19 EMPTION FROM LIMITING CHARGE AND FROM REQUIRE-
20 MENT FOR SUBMISSION OF CLAIMS.—Section 1848(g) of
21 the Social Security Act (42 U.S.C. 1395w-4(g)) is amend-
22 ed—

23 (1) in paragraph (1)(A), by striking “In” and
24 inserting “Subject to paragraph (8), in”;

1 (2) in paragraph (3)(A), by striking “Payment”
2 and inserting “Subject to paragraph (8), payment”;

3 (3) in paragraph (4)(A), by striking “For” and
4 inserting “Subject to paragraph (8), for”; and

5 (4) by adding at the end the following new
6 paragraph:

7 “(8) EXEMPTION FROM REQUIREMENTS FOR
8 SERVICES FURNISHED UNDER PRIVATE CON-
9 TRACTS.—

10 “(A) IN GENERAL.—Pursuant to section
11 1802(b)(1), paragraphs (1), (3), and (4) do not
12 apply with respect to physicians’ services (and
13 services described in section 1861(s)(2)(A)) fur-
14 nished to an individual by (or under the super-
15 vision of) a physician if the conditions described
16 in section 1802(b)(1) are met with respect to
17 the services.

18 “(B) NO RESTRICTIONS FOR ENROLLEES
19 IN MSA PLANS.—Such paragraphs do not apply
20 with respect to services furnished to individuals
21 enrolled with MSA plans under part C, without
22 regard to whether the conditions described in
23 subparagraphs (A) through (C) of section
24 1802(b)(1) are met.

1 “(C) APPLICATION TO ENROLLEES IN
2 OTHER PLANS.—Subject to subparagraph (B)
3 and section 1852(k)(2), the provisions of sub-
4 paragraph (A) shall apply in the case of an in-
5 dividual enrolled under a contract under section
6 1876 or under an MA plan (other than an MSA
7 plan) under part C, in the same manner as they
8 apply to individuals not enrolled under such a
9 contract or plan.”.

10 (c) CONFORMING AMENDMENTS.—(1) Section
11 1842(b)(18) of the Social Security Act (42 U.S.C.
12 1395u(b)(18)) is amended by adding at the end the fol-
13 lowing:

14 “(E) The provisions of section 1848(g)(8)
15 shall apply with respect to exemption from limi-
16 tations on charges and from billing require-
17 ments for services of health care practitioners
18 described in this paragraph in the same manner
19 as such provisions apply to exemption from the
20 requirements referred to in section
21 1848(g)(8)(A) for physicians’ services.”.

22 (2) Section 1866(a)(1)(O) of such Act (42 U.S.C.
23 1395cc(a)(1)(O)) is amended by striking “enrolled with a
24 Medicare Advantage organization under part C” and in-

1 serting “enrolled with an MA organization under part C
2 (other than under an MSA plan)”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the date that is 6 months
5 after the date of the enactment of this Act and apply to
6 contracts entered into on or after that date.

7 **SEC. 3. ALLOWING INDIVIDUALS TO CHOOSE TO OPT OUT**
8 **OF THE MEDICARE PART A BENEFIT.**

9 (a) IN GENERAL.—Any individual who is otherwise
10 entitled to benefits under part A of title XVIII of the So-
11 cial Security Act may elect (in such form and manner as
12 may be specified by the Secretary of Health and Human
13 Services) to waive such entitlement.

14 (b) INDIVIDUALS OPTING OUT OF MEDICARE PART
15 A ELIGIBLE FOR HEALTH SAVINGS ACCOUNTS.—Section
16 223 of the Internal Revenue Code of 1986 is amended—

17 (1) in subsection (b), by striking paragraph (7),
18 and

19 (2) in subsection (d)(2)(C)(iv), by inserting
20 “and who has not waived the rights to benefits
21 under part A of title XVIII of such Act” after “So-
22 cial Security Act”.

○