

105TH CONGRESS  
1ST SESSION

# S. 1194

To amend title XVIII of the Social Security Act to clarify the right of medicare beneficiaries to enter into private contracts with physicians and other health care professionals for the provision of health services for which no payment is sought under the medicare program.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 1997

Mr. KYL (for himself, Mr. BOND, Mr. GRAMM, and Mr. NICKLES) 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 clarify the right of medicare beneficiaries to enter into private contracts with physicians and other health care professionals for the provision of health services for which no payment is sought under the medicare program.

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 Contract Act of 1997”.

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

3 (a) IN GENERAL.—Section 1802 of the Social Secu-  
4 rity Act (42 U.S.C. 1395a) is amended by striking sub-  
5 section (b), as added by section 4507(a) of the Balanced  
6 Budget Act of 1997 (Public Law 105–33), and inserting  
7 the following:

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

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

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

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

1           “(C)(i) the Secretary has been provided  
2 with the minimum information necessary to  
3 avoid any payment under part A or B for serv-  
4 ices covered under the contract, or

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

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

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

22           “(B) NO CLAIMS TO BE SUBMITTED FOR  
23 COVERED SERVICES.—The contract provides  
24 that no party to the contract (and no entity on  
25 behalf of any party to the contract) shall sub-

1 mit any claim for (or request) payment for  
2 services covered under the contract under part  
3 A or B, under a contract under section 1876,  
4 or under a Medicare+Choice plan (other than  
5 an MSA plan).

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

11 “(i) before the contract is entered  
12 into; or

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

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

21 “(i) agrees not to submit a claim (or  
22 to request that anyone submit a claim)  
23 under part A or B (or under section 1876  
24 or under a Medicare+Choice plan, other

1 than an MSA plan) for services covered  
2 under the contract;

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

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

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

20 “(v) acknowledges that the beneficiary  
21 has the right to have such services pro-  
22 vided by (or under the supervision of)  
23 other physicians or health care practition-  
24 ers for whom payment would be made  
25 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+Choice plan but for the pro-  
10 visions of a private contract that meets the re-  
11 quirements of paragraph (2).

12 “(D) MEDICARE+CHOICE PLAN; MSA  
13 PLAN.—The terms ‘Medicare+Choice plan’ and  
14 ‘MSA plan’ have the meanings given such terms  
15 in section 1859.

16 “(E) PHYSICIAN.—The term ‘physician’  
17 has the meaning given such term in section  
18 1861(r).”.

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

24 (1) in paragraph (1)(A), by striking “In” and  
25 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 a Medicare+Choice plan (other  
7           than an MSA plan) under part C, in the same  
8           manner as they apply to individuals not enrolled  
9           under such a contract or plan.”.

10       (c) CONFORMING AMENDMENTS.—

11           (1) Section 1842(b)(18) of the Social Security  
12       Act (42 U.S.C. 1395u(b)(18)) is amended by adding  
13       at the end the following:

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

21           (2) Section 1866(a)(1)(O) of such Act (42  
22       U.S.C. 1395cc(a)(1)(O)), as amended by section  
23       4002(e) of the Balanced Budget Act of 1997, is  
24       amended by inserting “(other than under an MSA

1 plan)” after “Medicare+Choice organization under  
2 part C”.

3 (3) Section 4507(b) of the Balanced Budget  
4 Act of 1997 (Public Law 105–33; 111 Stat. 441) is  
5 amended—

6 (A) in the matter before paragraph (1), by  
7 striking “on the program under this title of pri-  
8 vate contracts entered into under the amend-  
9 ment made by subsection (a)” and inserting  
10 “on title XVIII of the Social Security Act of  
11 private contracts permitted under section  
12 1802(b) of such Act”; and

13 (B) in paragraph (2), by striking “section  
14 1802(b) of such Act (as added by subsection  
15 (a))” and inserting “such section”.

16 (d) EFFECTIVE DATE.—The amendments made by  
17 this section shall be effective as if included in the enact-  
18 ment of section 4507 of the Balanced Budget Act of 1997.

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