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112TH CONGRESS
1ST SESSION

H. R. 1700

To amend title XVIII of the Social Security Act to establish a Medicare payment option for patients and physicians or practitioners 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

MAY 3, 2011

Mr. PRICE of Georgia (for himself and Mr. SESSIONS) 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

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A BILL

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

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 ''Medicare Patient Empowerment Act''.

SEC. 2. GUARANTEEING FREEDOM OF CHOICE AND CONTRACTING FOR PATIENTS.

(a) IN GENERAL.—Section 1802 of the Social Security Act (42 U.S.C. 1395a) is amended to read as follows:

"FREEDOM OF CHOICE AND CONTRACTING BY PATIENT GUARANTEED

"SEC. 1802. (a) BASIC FREEDOM OF CHOICE.—Any individual entitled to insurance benefits under this title may obtain health services from any institution, agency, or person qualified to participate under this title if such institution, agency, or person undertakes to provide that individual such services.

"(b) FREEDOM TO CONTRACT BY MEDICARE BENEFICIARIES.—

"(1) IN GENERAL.—Subject to the provisions of this subsection, nothing in this title shall prohibit a Medicare beneficiary from entering into a contract with a participating or non-participating physician or practitioner for any item or service covered under this title.

"(2) SUBMISSION OF CLAIMS.—Any Medicare beneficiary that enters into a contract under this section shall be permitted to submit a claim for payment under this title, and such payment shall be made in the amount that would otherwise apply under this title if such claim had been filed by a par-

ticipating physician or practitioner (as defined in section 1842(i)(2)) in the payment area where the physician or practitioner covered by the contract resides. Payment made under this title for any item or service provided under the contract shall not render the physician a participating or non-participating physician, and as such, requirements of this title that may otherwise apply to a participating or non-participating physician would not apply with respect to any items or services furnished under the contract.

"(3) BENEFICIARY PROTECTIONS.—

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

"(i) the contract is in writing, is signed by the Medicare beneficiary and the physician or practitioner, and establishes all terms of the contract (including specific payment for physicians' services covered by the contract) before any item or service is provided pursuant to the contract, and the beneficiary shall be held harmless for any subsequent payment charged for a service in excess of the amount established under

the contract during the period the contract is in effect;

"(ii) the contract contains the items described in subparagraph (B); and

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

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

"(i) agrees to be responsible for payment to such physician or practitioner for such items or services under the terms of and amounts established under the contract;

"(ii) agrees to be responsible for submitting claims under this title to the Secretary, and to any other supplemental insurance plan that may provide supplemental insurance, for such items or services furnished under the contract if such items or services are covered by this title,

unless otherwise provided in the contract under subparagraph (C)(i); and

"(iii) acknowledges that no limits or other payment incentives that may otherwise apply under this title (such as the limits under subsection (g) of section 1848 or incentives under subsection (a)(5), (m), (q), and (p) of such section) shall apply to amounts that may be charged, or paid to a beneficiary for, such items or services.

Such contract shall also clearly indicate whether the physician or practitioner is excluded from participation under the Medicare program under section 1128.

"(C) BENEFICIARY ELECTIONS UNDER THE CONTRACT.—Any Medicare beneficiary that enters into a contract under this section may elect to negotiate, as a term of the contract, a provision under which—

"(i) the physician or practitioner shall file claims on behalf of the beneficiary with the Secretary and any supplemental insurance plan for items or services furnished under the contract if such items or services

are covered under this title or under the plan; and

"(ii) the beneficiary assigns payment to the physician for any claims filed by, or on behalf of, the beneficiary with the Secretary and any supplemental insurance plan for items or services furnished under the contract.

"(D) EXCLUSION OF DUAL ELIGIBLE INDIVIDUALS.—Paragraph (1) shall not apply to any contract if a beneficiary who is eligible for medical assistance under title XIX is a party to the contract.

"(4) LIMITATION ON ACTUAL CHARGE AND CLAIM SUBMISSION REQUIREMENT NOT APPLICABLE.—Section 1848(g) shall not apply with respect to any item or service provided to a Medicare beneficiary under a contract described in paragraph (1).

"(5) CONSTRUCTION.—Nothing in this section shall be construed to prohibit any physician or practitioner from maintaining an election and acting as a participating or non-participating physician or practitioner with respect to any patient not covered under a contract established under this section.

"(6) DEFINITIONS.—In this subsection:

"(A) MEDICARE BENEFICIARY.—The term 'Medicare beneficiary' means an individual who is entitled to benefits under part A or enrolled under part B.

"(B) PHYSICIAN.—The term 'physician' has the meaning given such term by paragraphs (1), (2), (3), and (4) of section 1861(r).

"(C) PRACTITIONER.—The term 'practitioner' means a practitioner described in section 1842(b)(18)(C).

"(D) EMERGENCY MEDICAL CONDITION.—The term 'emergency medical condition' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

"(i) serious jeopardy to the health of the individual or, in the case of a pregnant woman, the health of the woman or her unborn child;

"(ii) serious impairment to bodily functions; or

"(iii) serious dysfunction of any bodily organ or part.

"(E) URGENT HEALTH CARE SITUATION.—The term 'urgent health care situation' means services furnished to an individual who requires services to be furnished within 12 hours in order to avoid the likely onset of an emergency medical condition.".

SEC. 3. PREEMPTION OF STATE LAWS LIMITING CHARGES FOR PHYSICIAN AND PRACTITIONER SERVICES.

(a) IN GENERAL.—No State may impose a limit on the amount of charges for services, furnished by a physician or practitioner, for which payment is made under section 1848 of the Social Security Act (42 U.S.C. 1395w–4), and any such limit is hereby preempted.

(b) STATE.—In this section, the term "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

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