

112TH CONGRESS  
1ST SESSION

# S. 1042

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.

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IN THE SENATE OF THE UNITED STATES

MAY 23, 2011

Ms. MURKOWSKI 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 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.

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”.

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 a participating or non-participating physician  
 19 or practitioner for any item or service covered under  
 20 this title.

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

1        participating physician or practitioner (as defined in  
2        section 1842(i)(2)) in the payment area where the  
3        physician or practitioner covered by the contract re-  
4        sides. Payment made under this title for any item or  
5        service provided under the contract shall not render  
6        the physician a participating or non-participating  
7        physician, and as such, requirements of this title  
8        that may otherwise apply to a participating or non-  
9        participating physician would not apply with respect  
10       to any items or services furnished under the con-  
11       tract.

12            “(3) BENEFICIARY PROTECTIONS.—

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

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

1 the contract during the period the contract  
2 is in effect;

3 “(ii) the contract contains the items  
4 described in subparagraph (B); and

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

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

14 “(i) agrees to be responsible for pay-  
15 ment to such physician or practitioner for  
16 such items or services under the terms of  
17 and amounts established under the con-  
18 tract;

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

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

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

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

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

20 “(i) the physician or practitioner shall  
21 file claims on behalf of the beneficiary with  
22 the Secretary and any supplemental insur-  
23 ance plan for items or services furnished  
24 under the contract if such items or services

1           are covered under this title or under the  
2           plan; and

3           “(ii) the beneficiary assigns payment  
4           to the physician for any claims filed by, or  
5           on behalf of, the beneficiary with the Sec-  
6           retary and any supplemental insurance  
7           plan for items or services furnished under  
8           the contract.

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

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

19          “(5) CONSTRUCTION.—Nothing in this section  
20          shall be construed to prohibit any physician or prac-  
21          titioner from maintaining an election and acting as  
22          a participating or non-participating physician or  
23          practitioner with respect to any patient not covered  
24          under a contract established under this section.

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

1           “(A) MEDICARE BENEFICIARY.—The term  
2           ‘Medicare beneficiary’ means an individual who  
3           is entitled to benefits under part A or enrolled  
4           under part B.

5           “(B) PHYSICIAN.—The term ‘physician’  
6           has the meaning given such term by paragraphs  
7           (1), (2), (3), and (4) of section 1861(r).

8           “(C) PRACTITIONER.—The term ‘practi-  
9           tioner’ means a practitioner described in section  
10          1842(b)(18)(C).

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

19                 “(i) serious jeopardy to the health of  
20                 the individual or, in the case of a pregnant  
21                 woman, the health of the woman or her  
22                 unborn child;

23                 “(ii) serious impairment to bodily  
24                 functions; or

1                   “(iii) serious dysfunction of any bodily  
2                   organ or part.

3                   “(E) URGENT HEALTH CARE SITUA-  
4                   TION.—The term ‘urgent health care situation’  
5                   means services furnished to an individual who  
6                   requires services to be furnished within 12  
7                   hours in order to avoid the likely onset of an  
8                   emergency medical condition.”.

9 **SEC. 3. PREEMPTION OF STATE LAWS LIMITING CHARGES**  
10                   **FOR PHYSICIAN AND PRACTITIONER SERV-**  
11                   **ICES.**

12           (a) IN GENERAL.—No State may impose a limit on  
13 the amount of charges for services, furnished by a physi-  
14 cian or practitioner, for which payment is made under sec-  
15 tion 1848 of the Social Security Act (42 U.S.C. 1395w-  
16 4), and any such limit is hereby preempted.

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

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