

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.

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## 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

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## 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”.

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