H. R. 1650

To amend title XVIII of the Social Security Act to establish a Medicare payment option for patients and eligible professionals 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

MARCH 26, 2015

Mr. Tom Price of Georgia (for himself, Mr. Burgess, Mr. Tiberi, Mr. Harris, Mr. Sessions, Mr. Roe of Tennessee, and Mr. Bucshon) 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.

A BILL

To amend title XVIII of the Social Security Act to establish a Medicare payment option for patients and eligible professionals 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 of 2015”.

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

(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 PATIENTS 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 an eligible professional (whether or not the professional is 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 with an eligible professional shall be permitted to submit a claim for payment under this title for services furnished by such professional, and
such payment shall be made in the amount that would otherwise apply to such professional under this title except that where such professional is considered to be non-participating, payment shall be paid as if the professional were participating. Payment made under this title for any item or service provided under the contract shall not render the professional a participating or non-participating physician or practitioner, and as such, requirements of this title that may otherwise apply to a participating or non-participating physician or practitioner 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 eligible professional, and establishes all terms of the contract (including specific payment for items and 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 an item
or service in excess of the amount estab-
lished 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 pay-
ment to such eligible professional for such
items or services under the terms of and
amounts established under the contract;

“(ii) agrees to be responsible for sub-
mitting claims under this title to the Sec-
retary, and to any other supplemental in-
surance plan that may provide supple-
mental insurance, for such items or serv-
ices 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 eligible professional 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 eligible professional 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 eligible professional 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—

“(A) to prohibit any eligible professional from maintaining an election and acting as a participating or non-participating physician or practitioner with respect to any patient not cov-
erred under a contract established under this section; and

“(B) as changing the items and services for which an eligible professional may bill under this title.

“(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) Eligible professional.—The term ‘eligible professional’ has the meaning given such term in section 1848(k)(3)(B).

“(C) 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.

“(D) Participating; non-participating.—The terms ‘participating’ and ‘non-participating’ have the meanings given such terms under subsection (h) of section 1842 for purposes of such section.

“(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 SERVICES BY AN ELIGIBLE PROFESSIONAL.

(a) In General.—No State may impose a limit on the amount of charges for services, furnished by an eligible professional (as defined in subsection (k)(3)(B) of section 1848 of the Social Security Act, 42 U.S.C. 1395w–4), for which payment is made under such section, 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.