

118TH CONGRESS  
1ST SESSION

# H. R. 35

To amend title XVIII of the Social Security Act to provide for certain reforms with respect to medicare supplemental health insurance policies.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2023

Mr. DOGGETT (for himself, Mr. BISHOP of Georgia, Mr. BLUMENAUER, Mr. BOWMAN, Mr. CARTWRIGHT, Mr. CASAR, Mr. CASTEN, Ms. CHU, Mr. CLEAVER, Mr. COHEN, Ms. DELAURO, Mrs. DINGELL, Mr. EVANS, Mr. GARAMENDI, Mr. GARCÍA of Illinois, Mr. GRIJALVA, Mrs. HAYES, Ms. JAYAPAL, Ms. KAPTUR, Mr. KHANNA, Ms. LEE of California, Mr. MFUME, Mr. NADLER, Ms. NORTON, Ms. OCASIO-CORTEZ, Ms. PORTER, Ms. SCHAKOWSKY, Mr. SHERMAN, Mr. TAKANO, Mr. THOMPSON of California, Ms. TITUS, Mr. TONKO, Mr. TRONE, Mrs. WATSON COLEMAN, and Ms. WILLIAMS of Georgia) 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 provide for certain reforms with respect to medicare supplemental health insurance policies.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Close the Medigap Act  
3 of 2023”.

4 **SEC. 2. GUARANTEED ISSUE.**

5 (a) IN GENERAL.—Section 1882(s) of the Social Se-  
6 curity Act (42 U.S.C. 1395ss(s)) is amended to read as  
7 follows:

8 “(s)(1) Subject to paragraph (2), the issuer of a  
9 medicare supplemental policy may not, in the case of an  
10 individual entitled to benefits under part A and enrolled  
11 under part B—

12 “(A) deny or condition the issuance or effective-  
13 ness of a medicare supplemental policy, or discrimi-  
14 nate in the pricing of the policy, because of health  
15 status, claims experience, receipt of health care, or  
16 medical condition;

17 “(B) exclude benefits based on a preexisting  
18 condition;

19 “(C) provide any time period applicable to pre-  
20 existing conditions, waiting periods, elimination peri-  
21 ods, and probationary periods for any benefit;

22 “(D) deny or condition the issuance or effec-  
23 tiveness of the policy (including the imposition of  
24 any exclusion of benefits under the policy based on  
25 a preexisting condition) or discriminate in the pric-  
26 ing of the policy (including the adjustment of pre-

1       mium rates) of an individual on the basis of the ge-  
2       netic information with respect to such individual;

3               “(E) deny or condition the issuance or effective-  
4       ness of a medicare supplemental policy that is of-  
5       fered and is available for issuance to new enrollees  
6       by such issuer; or

7               “(F) establish any period limiting enrollment  
8       under a medicare supplemental policy to such period  
9       for any individual.

10       “(2) Paragraph (1) shall not apply to an individual  
11       entitled to benefits under part A solely by reason of section  
12       226A.

13       “(3) Nothing in this subsection or in subparagraph  
14       (A) or (B) of subsection (x)(2) shall be construed to limit  
15       the ability of an issuer of a medicare supplemental policy  
16       from, to the extent otherwise permitted under this title—

17               “(A) denying or conditioning the issuance or ef-  
18       fectiveness of the policy or increasing the premium  
19       for an employer based on the manifestation of a dis-  
20       ease or disorder of an individual who is covered  
21       under the policy; or

22               “(B) increasing the premium for any policy  
23       issued to an individual based on the manifestation of  
24       a disease or disorder of an individual who is covered  
25       under the policy (in such case, the manifestation of

1 a disease or disorder in one individual cannot also  
2 be used as genetic information about other group  
3 members.”.

4 (b) OUTREACH PLAN.—

5 (1) IN GENERAL.—The Secretary of Health and  
6 Human Services shall develop an outreach plan to  
7 notify individuals entitled to benefits under part A  
8 or enrolled under part B of title XVIII of the Social  
9 Security Act (42 U.S.C. 1395 et seq.) of the effects  
10 of the amendment made by subsection (a).

11 (2) CONSULTATION.—In implementing the out-  
12 reach plan developed under paragraph (1), the Sec-  
13 retary shall consult with consumer advocates, bro-  
14 kers, insurers, the National Association of Insurance  
15 Commissioners, and State Health Insurance Assist-  
16 ance Programs.

17 (c) EFFECTIVE DATE; PHASE-IN AUTHORITY.—

18 (1) EFFECTIVE DATE.—Subject to paragraph  
19 (2), the amendment made by subsection (a) shall  
20 apply to medicare supplemental policies effective on  
21 or after January 1, 2024.

22 (2) PHASE-IN AUTHORITY.—

23 (A) IN GENERAL.—Subject to subpara-  
24 graph (B), the Secretary of Health and Human  
25 Services may phase in the implementation of

1 the amendment made under subsection (a)  
2 (with such phase-in beginning on or after Janu-  
3 ary 1, 2024) in such manner as the Secretary  
4 determines appropriate in order to minimize  
5 any adverse impact on individuals enrolled  
6 under a medicare supplemental policy.

7 (B) PHASE-IN PERIOD MAY NOT EXCEED 5  
8 YEARS.—The Secretary of Health and Human  
9 Services shall ensure that the amendment made  
10 by subsection (a) is fully implemented by not  
11 later than January 1, 2029.

12 **SEC. 3. MEDICAL LOSS RATIO.**

13 Section 1882(r)(1)(A) of the Social Security Act (42  
14 U.S.C. 1395ss(r)(1)(A)) is amended—

15 (1) by inserting “and periodically reviewed”  
16 after “developed”; and

17 (2) by striking “policy, at least 75 percent of  
18 the aggregate amount of premiums collected in the  
19 case of group policies and at least 65 percent in the  
20 case of individual policies; and” and inserting the  
21 following: “policy—

22 “(i) with respect to periods beginning be-  
23 fore January 1, 2024, at least 75 percent of the  
24 aggregate amount of premiums collected in the

1 case of group policies and at least 65 percent  
 2 in the case of individual policies; and

3 “(ii) with respect to periods beginning on  
 4 or after January 1, 2024, a percent of the ag-  
 5 gregate amount of premiums collected that, in  
 6 the case of group policies or individual policies,  
 7 as applicable, is equal to or greater than both—

8 “(I) the applicable percent specified in  
 9 clause (i) with respect to such policies; and

10 “(II) such percent as the National As-  
 11 sociation of Insurance Commissioners may  
 12 recommend to the Secretary with respect  
 13 to such policies for purposes of this para-  
 14 graph; and”.

15 **SEC. 4. LIMITATIONS ON PRICING DISCRIMINATION.**

16 (a) IN GENERAL.—Section 1882 of the Social Secu-  
 17 rity Act (42 U.S.C. 1395ss), as amended by section 6, is  
 18 further amended by adding at the end the following new  
 19 subsection:

20 “(aa) DEVELOPMENT OF NEW STANDARDS RELAT-  
 21 ING TO PRICING DISCRIMINATION.—

22 “(1) IN GENERAL.—The Secretary shall request  
 23 the National Association of Insurance Commis-  
 24 sioners to review and revise the standards for all  
 25 benefit packages under subsection (p)(1), including

1 the core benefit package, in order to provide cov-  
2 erage consistent with paragraph (2). Such revisions  
3 shall be made consistent with the rules applicable  
4 under subsection (p)(1)(E) (with the reference to the  
5 ‘1991 NAIC Model Regulation’ deemed a reference  
6 to the NAIC Model Regulation as most recently up-  
7 dated by the National Association of Insurance  
8 Commissioners to reflect previous changes in law  
9 and the reference to ‘date of enactment of this sub-  
10 section’ deemed a reference to the date of enactment  
11 of this subsection).

12 “(2) CHANGES IN COST-SHARING DESCRIBED.—  
13 Under the revised standards, coverage shall not be  
14 available under a Medicare supplemental insurance  
15 policy unless the issuer of the policy, in addition to  
16 conforming to the other applicable requirements of  
17 this section—

18 “(A) does not discriminate in the pricing  
19 of the policy because of the age of the indi-  
20 vidual to whom the policy is issued;

21 “(B) does not, to an extent that jeopard-  
22 izes the access to such policy for individuals  
23 who are eligible to participate in the program  
24 under this title because the individuals are indi-  
25 viduals described in paragraph (2) or (3) of sec-





1 Medicare & Medicaid Services (or a successor website), the  
2 Secretary shall, with respect to such website and in ac-  
3 cordance with subsection (f)—

4 “(1) make available on such website—

5 “(A) access to provider networks in order  
6 to provide to individuals entitled to benefits  
7 under part A or enrolled under part B informa-  
8 tion to assist such individuals in understanding  
9 the restrictions on providers and potential costs  
10 entailed by their decisions regarding enrollment  
11 under parts A and B, under part C, and in  
12 medicare supplemental policies under section  
13 1882;

14 “(B) a review of out-of-pocket expendi-  
15 tures, including deductibles, copayments, coin-  
16 surance, monthly premiums, and estimated an-  
17 nual out-of-pocket costs, displayed overall and  
18 by components, based on the best available in-  
19 formation as determined by the Secretary; and

20 “(C) during the period prior to January 1,  
21 2024, information regarding the rules that, in  
22 each State, pertain to guaranteed issue of medi-  
23 care supplemental health insurance policies  
24 prior to implementation of the provisions of the  
25 Close the Medigap Act of 2023 and, in the case

1           that a State has no such rules pertaining to  
2           guaranteed issue of such policies, clear lan-  
3           guage explaining the implications of such lack  
4           of rules for individuals with pre-existing condi-  
5           tions;

6           “(2) not later than January 1, 2024, and peri-  
7           odically thereafter, perform a review of such website  
8           in order to ensure that such website makes available  
9           to individuals entitled to benefits under part A or  
10          enrolled under part B the information that the Sec-  
11          retary determines is necessary for such individuals  
12          to make informed choices regarding their options  
13          under the program under this title; and

14          “(3) not later than 12 months after the last  
15          day of each period for the request for information  
16          under subsection (e), update such website, taking  
17          into consideration the information collected pursuant  
18          to such subsection, to clarify the presentation of con-  
19          sumer options for medicare supplemental health in-  
20          surance policy options, including by presenting such  
21          information in a manner calculated to be understood  
22          by the average consumer and in a manner that—

23                  “(A) improves consumer access to informa-  
24                  tion regarding the applicable premiums under

1 such policy options as of the date on which such  
2 website is so updated;

3 “(B) facilitates consumers’ ability to com-  
4 pare and sort policy options and premium infor-  
5 mation across plan offerings in a given location;

6 “(C) clarifies and explains differences in  
7 policy value;

8 “(D) rates and explains the financial sta-  
9 bility of issuers of such policies;

10 “(E) provides data on the inflation rate of  
11 different policies;

12 “(F) provides information regarding the  
13 guaranteed issue requirements that apply to  
14 medicare supplemental health insurance policies  
15 under section 1882(s)(3); and

16 “(G) includes such general information as  
17 is determined by the Secretary to be necessary  
18 for individuals entitled to benefits under part A  
19 or enrolled under part B to understand costs  
20 under MA plans available pursuant to part C  
21 and prescription drug plans available pursuant  
22 to part D.

23 “(e) Not later than 6 months after the date of the  
24 enactment of this subsection and beginning on December  
25 7 of each year thereafter, the Secretary of Health and

1 Human Services shall provide an opportunity for public  
2 comment during which the Secretary requests informa-  
3 tion, including recommendations, from stakeholders re-  
4 garding potential improvements to the presentation of  
5 medicare supplemental health insurance policy options  
6 under section 1882 on the Medicare plan finder internet  
7 website of the Centers for Medicare & Medicaid Services  
8 (or a successor website).

9 “(f) With respect to any information that the Sec-  
10 retary makes available on the Medicare plan finder inter-  
11 net website of the Centers for Medicare & Medicaid Serv-  
12 ices (or a successor website) pursuant to subsection (d),  
13 the Secretary shall, prior to making such information  
14 available—

15 “(1) provide, in consultation with the National  
16 Association of Insurance Commissioners, an oppor-  
17 tunity for consumer testing of such information;

18 “(2) share the results of such consumer testing  
19 of such information with interested stakeholders;  
20 and

21 “(3) provide a 60-day public comment period  
22 with respect to such information.”.

1 **SEC. 6. RESTORING ACCESS TO FIRST-DOLLAR MEDIGAP**  
2 **COVERAGE.**

3 Section 1882 of the Social Security Act (42 U.S.C.  
4 1395ss) is amended by striking subsection (z).

5 **SEC. 7. BROKER TRANSPARENCY.**

6 Section 1128G of the Social Security Act (42 U.S.C.  
7 1320a–7h) is amended—

8 (1) in subsection (e)(1)(A), by striking “2011,”  
9 and inserting “2011 (or, with respect to information  
10 required to be submitted under subsection (f)(1), not  
11 later than six months after the date of the enact-  
12 ment of such subsection),”; and

13 (2) by adding at the end the following new sub-  
14 section:

15 “(f) APPLICATION TO MEDIGAP INSURANCE BRO-  
16 KERS.—

17 “(1) IN GENERAL.—Beginning not later than  
18 12 months after the date of enactment of this sub-  
19 section, each issuer of a medicare supplemental  
20 health insurance policy shall annually submit to the  
21 Secretary a report regarding payments or other  
22 transfers of value made during the previous year to  
23 agents, brokers, and other third parties representing  
24 such policy. Each such report shall include the fol-  
25 lowing information, with respect to such a payment  
26 or other transfer of value:

1           “(A) The name of the recipient of the pay-  
2           ment or other transfer of value.

3           “(B) The business address of the recipient.

4           “(C) The amount of the payment or other  
5           transfer of value.

6           “(D) The dates on which the payment or  
7           transfer of value was provided.

8           “(E) A description of the form of the pay-  
9           ment or transfer of value.

10          “(F) Any other categories of information  
11          the Secretary determines appropriate.

12          “(2) APPLICATION OF TRANSPARENCY SYS-  
13          TEM.—The provisions of subsections (b) through (d)  
14          shall apply to an issuer described in paragraph (1),  
15          information required to be reported under such  
16          paragraph, and agents, brokers, and other third par-  
17          ties described in such paragraph in the same manner  
18          and to the same extent as such provisions apply to  
19          an applicable manufacturer, information required to  
20          be reported under subsection (a), and a covered re-  
21          cipient.”.

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