

112TH CONGRESS  
2D SESSION

# S. 3271

To provide all Medicare beneficiaries with the right to guaranteed issue of a Medicare supplemental policy.

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IN THE SENATE OF THE UNITED STATES

JUNE 7, 2012

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide all Medicare beneficiaries with the right to guaranteed issue of a Medicare supplemental policy.

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 “Equal Access to Medi-  
5 care Options Act of 2012”.

6 **SEC. 2. GUARANTEED ISSUE OF MEDIGAP POLICIES TO ALL**

7 **MEDICARE BENEFICIARIES.**

8 (a) IN GENERAL.—Section 1882(s) of the Social Se-  
9 curity Act (42 U.S.C. 1395ss(s)) is amended—

1 (1) in paragraph (2)(A), by striking “65 years  
2 of age or older and is enrolled for benefits under  
3 part B” and inserting “entitled to, or enrolled for,  
4 benefits under part A and enrolled for benefits  
5 under part B”;

6 (2) in paragraph (2)(D), by striking “who is 65  
7 years of age or older as of the date of issuance and”;  
8 and

9 (3) in paragraph (3)(B)(vi), by striking “at age  
10 65”.

11 (b) EFFECTIVE DATE; PHASE-IN AUTHORITY.—

12 (1) EFFECTIVE DATE.—Subject to paragraph  
13 (2), the amendments made by subsection (a) shall  
14 apply to Medicare supplemental policies effective on  
15 or after January 1, 2014.

16 (2) PHASE-IN AUTHORITY.—

17 (A) IN GENERAL.—Subject to subpara-  
18 graph (B), the Secretary of Health and Human  
19 Services may phase in the implementation of  
20 the amendments made under subsection (a) in  
21 such manner as the Secretary determines ap-  
22 propriate in order to minimize any adverse im-  
23 pact on individuals enrolled under a Medicare  
24 supplemental policy prior to January 1, 2014.

1 (B) PHASE-IN PERIOD MAY NOT EXCEED 5  
2 YEARS.—The Secretary of Health and Human  
3 Services shall ensure that the amendments  
4 made by subsection (a) are fully implemented  
5 by not later than January 1, 2019.

6 (c) SEPARATE PREMIUM CLASS.—

7 (1) IN GENERAL.—Subject to paragraph (2),  
8 any individuals enrolled under a Medicare supple-  
9 mental policy pursuant to the amendments made  
10 under subsection (a) shall be classified by the issuer  
11 as part of a separate premium class.

12 (2) LIMIT.—The provision in paragraph (1)  
13 shall apply to individuals that enroll under a Medi-  
14 care supplemental policy prior to January 1, 2019.

15 (d) ADDITIONAL ENROLLMENT PERIOD FOR CER-  
16 TAIN INDIVIDUALS.—

17 (1) ONE-TIME ENROLLMENT PERIOD.—

18 (A) IN GENERAL.—In the case of an indi-  
19 vidual described in paragraph (2), the Secretary  
20 shall establish a one-time enrollment period  
21 during which such an individual may enroll in  
22 any Medicare supplemental policy of the indi-  
23 vidual's choosing.

24 (B) PERIOD.—The enrollment period es-  
25 tablished under subparagraph (A) shall begin

1           on the date on which the phase-in period under  
2           subsection (b) is completed and end 6 months  
3           after such date.

4           (2) INDIVIDUAL DESCRIBED.—An individual de-  
5           scribed in this paragraph is an individual who—

6                   (A) is entitled to hospital insurance bene-  
7                   fits under part A under section 226(b) or sec-  
8                   tion 226A of the Social Security Act (42 U.S.C.  
9                   426(b); 426–1);

10                   (B) is enrolled for benefits under part B of  
11                   such Act (42 U.S.C. 1395j et seq.); and

12                   (C) would not, but for the provisions of  
13                   and amendments made by this section, be eligi-  
14                   ble for the guaranteed issue of a Medicare sup-  
15                   plemental policy under section 1882(s)(2) of  
16                   such Act (42 U.S.C. 1395ss(s)(2)).

17           (3) OUTREACH PLAN.—The Secretary shall de-  
18           velop an outreach plan to notify individuals de-  
19           scribed in paragraph (2) of the one-time enrollment  
20           period established under paragraph (1).

1 **SEC. 3. GUARANTEED ISSUE OF MEDIGAP POLICIES FOR**  
 2 **MEDICARE ADVANTAGE AND MEDICAID EN-**  
 3 **ROLLEES.**

4 (a) IN GENERAL.—Section 1882(s)(3) of the Social  
 5 Security Act (42 U.S.C. 1395ss(s)(3)), as amended by sec-  
 6 tion 2, is amended—

7 (1) in subparagraph (B), by adding at the end  
 8 the following new clauses:

9 “(vii) The individual was enrolled in a Medicare  
 10 Advantage plan under part C for not less than 12  
 11 months and subsequently disenrolled from such plan  
 12 and elects to receive benefits under this title through  
 13 the original Medicare fee-for-service program under  
 14 parts A and B.

15 “(viii) The individual—

16 “(I) is entitled to, or enrolled for, benefits  
 17 under part A and enrolled for benefits under  
 18 part B;

19 “(II) was eligible for medical assistance  
 20 under a State plan or waiver under title XIX  
 21 and was enrolled in such plan or waiver; and

22 “(III) subsequently lost eligibility for such  
 23 medical assistance.”;

24 (2) by striking subparagraph (C)(iii) and in-  
 25 serting the following:

1           “(iii) Subject to subsection (v)(1), for purposes  
2 of an individual described in clause (vi), (vii), or  
3 (viii) of subparagraph (B), a Medicare supplemental  
4 policy described in this subparagraph shall include  
5 any Medicare supplemental policy.”; and

6           (3) in subparagraph (E)—

7           (A) in clause (iv), by striking “and” at the  
8 end;

9           (B) in clause (v), by striking the period at  
10 the end and inserting a semicolon; and

11           (C) by adding at the end the following new  
12 clauses—

13           “(vi) in the case of an individual described in  
14 subparagraph (B)(vii), the annual, coordinated elec-  
15 tion period (as defined in section 1851(e)(3)(B)) or  
16 a continuous open enrollment period (as defined in  
17 section 1851(e)(2)) during which the individual  
18 disenrolls from a Medicare Advantage plan under  
19 part C; and

20           “(vii) in the case of an individual described in  
21 subparagraph (B)(viii), the period beginning on the  
22 date that the individual receives a notice of cessation  
23 of such individual’s eligibility for medical assistance  
24 under the State plan or waiver under title XIX and

1 ending on the date that is 123 days after the indi-  
2 vidual receives such notice.”.

3 (b) EFFECTIVE DATE.—The amendments made by  
4 subsection (a) shall apply to Medicare supplemental poli-  
5 cies effective on or after January 1, 2014.

6 **SEC. 4. ENROLLMENT OF INDIVIDUALS WITH END STAGE**  
7 **RENAL DISEASE IN MEDICARE ADVANTAGE.**

8 (a) IN GENERAL.—Section 1851(a) of the Social Se-  
9 curity Act (42 U.S.C. 1395w–21(a)) is amended by strik-  
10 ing paragraph (3) and inserting the following:

11 “(3) MEDICARE ADVANTAGE ELIGIBLE INDI-  
12 VIDUAL.—In this title, the term ‘Medicare Advan-  
13 tage eligible individual’ means an individual who is  
14 entitled to benefits under part A and enrolled under  
15 part B.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 1852(b) of the Social Security Act  
18 (42 U.S.C. 1395w–22(b)) is amended by striking  
19 paragraph (1) and inserting the following:

20 “(1) BENEFICIARIES.—A Medicare Advantage  
21 organization may not deny, limit, or condition the  
22 coverage or provision of benefits under this part, for  
23 individuals permitted to be enrolled with the organi-  
24 zation under this part, based on any health status-  
25 related factor described in section 2702(a)(1) of the

1 Public Health Service Act. The Secretary shall not  
2 approve a plan of an organization if the Secretary  
3 determines that the design of the plan and its bene-  
4 fits are likely to substantially discourage enrollment  
5 by certain MA eligible individuals with the organiza-  
6 tion.”.

7 (2) Section 1859(b)(6)(B) of such Act (42  
8 U.S.C. 1395w-28(b)(6)(B)) is amended in the sec-  
9 ond sentence by striking “may waive application of  
10 section 1851(a)(3)(B) in the case of an individual  
11 described in clause (i), (ii), or (iii) of this subpara-  
12 graph and”.

13 (c) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to plan years beginning on or after  
15 January 1, 2014.

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