

114TH CONGRESS
2D SESSION

S. 3236

To amend title XVIII of the Social Security Act to establish a system to educate individuals approaching Medicare eligibility, to simplify and modernize the eligibility enrollment process, and to provide for additional assistance for complaints and requests of Medicare beneficiaries that relate to their enrollment in the Medicare program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2016

Mr. CASEY (for himself and Mr. SCHUMER) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to establish a system to educate individuals approaching Medicare eligibility, to simplify and modernize the eligibility enrollment process, and to provide for additional assistance for complaints and requests of Medicare beneficiaries that relate to their enrollment in the Medicare program, and for other purposes.

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 “Beneficiary Enrollment
3 Notification and Eligibility Simplification Act of 2016” or
4 the “BENES Act of 2016”.

5 **SEC. 2. ELIGIBILITY AND ENROLLMENT NOTIFICATION.**

6 (a) NOTIFICATION REQUIREMENTS.—Section 1804
7 of the Social Security Act (42 U.S.C. 1395b–2) is amend-
8 ed by adding at the end the following new subsection:

9 “(d) ELIGIBILITY INFORMATION.—

10 “(1) COORDINATION OF NOTICE.—The Sec-
11 retary, in consultation with representatives of each
12 of the groups described in paragraph (2)(A), and in
13 coordination with the Commissioner of Social Secu-
14 rity and the Secretary of the Treasury, shall prepare
15 and distribute a notice, in accordance with this sub-
16 section, to potentially eligible Medicare individuals.

17 “(2) GROUPS FOR CONSULTATION.—

18 “(A) IN GENERAL.—For purposes of para-
19 graph (1), the groups described in this subpara-
20 graph include the following:

21 “(i) Individuals who are more than 60
22 years of age.

23 “(ii) Individuals with disabilities.

24 “(iii) Individuals with end stage renal
25 disease.

1 “(iv) Low-income individuals and fam-
2 ilies.

3 “(v) Employers (including human re-
4 sources professionals).

5 “(vi) States (including representatives
6 of State-run Health Insurance Exchanges,
7 Medicaid offices, and Departments of In-
8 surance).

9 “(vii) State Health Insurance Assist-
10 ance Programs.

11 “(viii) Health insurers.

12 “(ix) Such other groups as specified
13 by the Secretary.

14 “(B) NON-APPLICATION OF FACA.—The
15 Federal Advisory Committee Act shall not apply
16 to consultations made pursuant to paragraph
17 (1) with groups described in subparagraph (A).

18 “(3) CONTENTS OF NOTICE.—The notice re-
19 quired under paragraph (1) shall contain informa-
20 tion on (including a clear, simple explanation of)—

21 “(A)(i) eligibility for benefits under this
22 title, and in particular benefits under part B;

23 “(ii) the possibility of a late enrollment
24 penalty for failure to timely enroll (including
25 the availability of equitable relief); and

1 “(iii) how to access the Website described
2 in paragraph (5); and

3 “(B) the need for coordination of benefits
4 under part B (including secondary and primary
5 coverage scenarios) imposed under this title, in-
6 cluding the effects of enrollment in retiree
7 health coverage; group health coverage; cov-
8 erage under a group health plan provided by an
9 employer pursuant to title XXII of the Public
10 Health Service Act, section 4980B of the Inter-
11 nal Revenue Code of 1986, or title VI of the
12 Employee Retirement Income Security Act of
13 1974; coverage under a qualified health plan of-
14 fered through an Exchange established under
15 title I of the Patient Protection and Affordable
16 Care Act; and other widely available coverage
17 which may be available to potentially eligible
18 Medicare individuals.

19 “(4) TIMING OF NOTICE TO POTENTIAL EN-
20 ROLLEES.—Beginning one year after the date of the
21 enactment of this subsection, a notice required
22 under paragraph (1) shall be mailed (or, starting
23 after 2025, mailed or otherwise delivered) to each
24 potentially eligible Medicare individual no less than
25 two times in accordance with the following:

1 “(A) The notice shall be initially provided
2 to such individual no later than 6 months prior
3 to the date of such individual’s initial enroll-
4 ment period as provided under section 1837.

5 “(B) The notice shall subsequently be pro-
6 vided to such individual no later than one
7 month prior to such date.

8 “(5) CREATION OF A CENTRALIZED ENROLL-
9 MENT WEBSITE.—The information contained in no-
10 tices required under this subsection shall be made
11 available through a new Website to be maintained by
12 the Secretary. Such Website shall include both So-
13 cial Security and Medicare online tools in a coordi-
14 nated and organized manner, and shall also contain,
15 or link to, such other eligibility tools, services, no-
16 tices (including with respect to the availability of eq-
17 uitable relief), and other information as determined
18 by the Secretary, in consultation with groups de-
19 scribed in paragraph (2) for the purposes of being
20 available to potentially eligible Medicare individuals.

21 “(6) INTERAGENCY COORDINATION.—Beginning
22 not later than 2 months after the date of the enact-
23 ment of this subsection, the Secretary, along with
24 the Secretary of the Treasury and the Commissioner
25 of the Social Security Administration, shall under-

1 take all necessary action and coordination to identify
2 potentially eligible individuals and in order to pro-
3 vide such individuals with notifications under this
4 subsection in accordance with paragraph (4).

5 “(7) NOTIFICATION IMPROVEMENT.—The Sec-
6 retary shall, no less than once every fiscal year, re-
7 view the content of the notices required under this
8 subsection and the practices of providing such no-
9 tices to individuals, and shall update and revise such
10 notices and practices as the Secretary deems appro-
11 priate.

12 “(8) POTENTIALLY ELIGIBLE MEDICARE INDI-
13 VIDUAL DEFINED.—For purposes of this subsection,
14 the term ‘potentially eligible Medicare individual’
15 means an individual, with respect to a month, who
16 is expected to satisfy the description in paragraph
17 (1) or (2) of section 1836 during such month or
18 during any of the subsequent 11 months.”

19 (b) DISCLOSURE AUTHORITY.—Section 6103(l) of
20 the Internal Revenue Code of 1986 is amended by adding
21 at the end the following new paragraph:

22 “(23) DISCLOSURE OF RETURN INFORMATION
23 TO CARRY OUT ELIGIBILITY NOTIFICATION REQUIRE-
24 MENTS FOR CERTAIN PROGRAMS.—

1 “(A) IN GENERAL.—The Secretary, upon
2 request from the Secretary of Health and
3 Human Services, shall disclose to officers, em-
4 ployees, and contractors of the Department of
5 Health and Human Services and the Social Se-
6 curity Administration return information of any
7 taxpayer who is a potentially eligible Medicare
8 individual (as defined in section 1804(d)(8) of
9 the Social Security Act). Such return informa-
10 tion shall be limited to—

11 “(i) taxpayer identity information
12 with respect to such taxpayer, including
13 the age and address or other location of
14 such taxpayer;

15 “(ii) the filing status of such tax-
16 payer;

17 “(iii) such other information as is pre-
18 scribed by the Secretary of Health and
19 Human Services by regulation as might in-
20 dicate whether the taxpayer is eligible for
21 coverage under such title; and

22 “(iv) the taxable year with respect to
23 which the preceding information relates or,
24 if applicable, the fact that such informa-
25 tion is not available.

1 “(B) RESTRICTION ON USE OF DISCLOSED
2 INFORMATION.—Return information disclosed
3 under subparagraph (A) may be used by offi-
4 cers, employees, and contractors of the Depart-
5 ment of Health and Human Services or the So-
6 cial Security Administration only for the pur-
7 poses of, and to the extent necessary in, estab-
8 lishing potential eligibility for benefits under
9 title XVIII of the Social Security Act.”.

10 (c) COMPUTER MATCHING AGREEMENT.—Not later
11 than 6 months after the date of the enactment of this Act,
12 the Secretary of Health and Human Services, the Sec-
13 retary of the Treasury, and the Commissioner of Social
14 Security shall enter into a computer matching agreement
15 pursuant to section 552a(o) of title 5 of the United States
16 Code for the purposes of implementing section 1804(d) of
17 the Social Security Act, as added by subsection (a), and
18 section 6103(l)(23) of the Internal Revenue Code of 1986,
19 as added by subsection (b).

20 (d) REPORT TO CONGRESS.—Not later than 4 years
21 after the date of the enactment of this Act, the Secretary
22 of Health and Human Services, Secretary of the Treasury,
23 and the Commissioner of Social Security shall submit to
24 Congress a report on the process taken by the relevant
25 agencies in implementing the notice requirement under

1 subsection (d) of section 1804 of the Social Security Act
2 (42 U.S.C. 1395b–2), as added by subsection (a) of this
3 section, the status of notices created pursuant to such sec-
4 tion, and an evaluation of the effect of such notices on
5 enrollment under title XVIII of the Social Security Act.
6 Such report shall be made publicly available.

7 **SEC. 3. BENEFICIARY MEDICARE PART B ENROLLMENT PE-**
8 **RIODS AND EFFECTIVE DATE OF COVERAGE.**

9 (a) **EFFECTIVE DATES.**—Section 1838(a) of the So-
10 cial Security Act (42 U.S.C. 1395q(a)) is amended—

11 (1) by amending paragraph (2) to read as fol-
12 lows:

13 “(2)(A) in the case of an individual who enrolls
14 pursuant to subsection (d) of section 1837 before
15 the month in which he first satisfies paragraph (1)
16 or (2) of section 1836, the first day of such month;

17 “(B) in the case of an individual not described
18 in subparagraph (A) who first satisfies such para-
19 graph in a month beginning before January 2018
20 and who enrolls—

21 “(i) pursuant to such subsection (d) in
22 such month in which he first satisfies such
23 paragraph, the first day of the month following
24 the month in which he so enrolls, or

1 “(ii) pursuant to such subsection (d) in the
2 month following such month in which he first
3 satisfies such paragraph, the first day of the
4 second month following the month in which he
5 so enrolls, or

6 “(iii) pursuant to such subsection (d) more
7 than one month following such month in which
8 he satisfies such paragraph, the first day of the
9 third month following the month in which he so
10 enrolls;

11 “(C) in the case of an individual not described
12 in subparagraph (A) who enrolls pursuant to sub-
13 section (e) of section 1837 in a month beginning be-
14 fore January 2018, the July 1 following the month
15 in which he so enrolls;

16 “(D) in the case of an individual not described
17 in subparagraph (A) who first satisfies such para-
18 graph in a month beginning on or after January 1,
19 2018, and who enrolls pursuant to such subsection
20 (d) in such month in which he first satisfies such
21 paragraph or in any subsequent month, the first day
22 of the month following the month in which he so en-
23 rolls; or

24 “(E) in the case of an individual not described
25 in subparagraph (A) who enrolls pursuant to sub-

1 section (e) of section 1837 in a month beginning on
 2 or after October 15, 2017, the first day of the
 3 month following the month in which he so enrolls.”;
 4 and

5 (2) by amending paragraph (3) to read as fol-
 6 lows:

7 “(3)(A) in the case of an individual who is
 8 deemed to have enrolled on or before the last day of
 9 the third month of his initial enrollment period be-
 10 ginning before January 1, 2018, the first day of the
 11 month in which he first meets the applicable require-
 12 ments of section 1836 or July 1, 1973, whichever is
 13 later, or

14 “(B) in the case of an individual who is deemed
 15 to have enrolled on or after the first day of the
 16 fourth month of his initial enrollment period begin-
 17 ning before January 1, 2018, as prescribed under
 18 subparagraphs (B)(i), (B)(ii), (B)(iii), and (C) of
 19 paragraph (2) of this subsection.”.

20 (b) GENERAL AND SPECIAL ENROLLMENT PERI-
 21 ODS.—Section 1837(e) of the Social Security Act (42
 22 U.S.C. 1395p(e)) is amended to read as follows:

23 “(e) ENROLLMENT PERIODS.—

24 “(1) FOR COVERAGE DURING YEARS BEFORE
 25 2018.—There shall be a general enrollment period

1 during the period beginning on January 1 and end-
 2 ing on March 31 of each year before 2018.

3 “(2) FOR COVERAGE DURING YEARS BEGINNING
 4 WITH 2018.—For 2018 and each subsequent year:

5 “(A) IN GENERAL.—Subject to subpara-
 6 graph (B), there shall be a general enrollment
 7 period beginning on October 15 of the previous
 8 year through December 31 of such previous
 9 year.

10 “(B) EXCEPTIONAL CIRCUMSTANCES.—
 11 The Secretary shall establish special enrollment
 12 periods in the case of a potentially eligible
 13 Medicare individual (as defined in section
 14 1804(d)(8)) who meet such exceptional condi-
 15 tions as the Secretary may provide.”.

16 (c) TECHNICAL CORRECTION.—Section 1839(b) of
 17 the Social Security Act (42 U.S.C. 1395r(b)) is amended
 18 striking “close of the enrollment period” each place it ap-
 19 pears and inserting “close of the month”.

20 **SEC. 4. REVISING BENEFICIARY APPEAL RIGHTS FOR GOOD**
 21 **FAITH ENROLLMENT MISTAKES.**

22 (a) IN GENERAL.—Subsection (h) of section 1837 of
 23 the Social Security Act (42 U.S.C. 1395p) is amended to
 24 read as follows:

1 “(h)(1) In any case in which the Secretary finds that
2 an individual’s enrollment or nonenrollment in the insur-
3 ance program established by this part or part A pursuant
4 to section 1818 is unintentional, inadvertent, or erroneous,
5 whether the result of the error, misrepresentation, or inac-
6 tion of an officer, employee, or agent of the Federal Gov-
7 ernment or its instrumentalities, an employer, a represent-
8 ative of a group health plan, a State, or for any other
9 good faith reason on the part of such individual, the Sec-
10 retary shall take such action (including the designation for
11 such individual of a special initial or subsequent enroll-
12 ment period, including retroactive enrollment, with a cov-
13 erage period determined on the basis thereof and with ap-
14 propriate adjustments of premiums) as may be necessary
15 to correct or eliminate the effects of such error, misrepre-
16 sentation, or inaction. The failure of an individual to enroll
17 in the insurance program established by this part or part
18 A pursuant to section 1818 due to enrollment under a
19 group health plan; coverage pursuant to title XXII of the
20 Public Health Service Act, section 4980B of the Internal
21 Revenue Code of 1986, title VI of the Employee Retire-
22 ment Income Security Act of 1974, or title XIX; or enroll-
23 ment under a qualified health plan offered through an Ex-
24 change established under title I of the Patient Protection
25 and Affordable Care Act shall under this subsection ab-

1 sent exceptional circumstances, as determined by the Sec-
2 retary.

3 “(2) The Secretary, in consultation with the Commis-
4 sioner of Social Security, shall develop and publish a for-
5 mal application for requesting an action of the Secretary
6 under paragraph (1) to correct or eliminate the effects of
7 an error, misrepresentation, or inaction described in such
8 paragraph and determine and publish specific timelines
9 for timely resolution of such a request.

10 “(3) The Secretary shall also require that all such
11 determinations with respect to such requests shall be
12 reached within 15 business days of the submission of such
13 application. All determinations shall be in writing through
14 a standard decision notice which shall include an expla-
15 nation of the reasons for the determination.

16 “(4)(A) The Commissioner of Social Security shall
17 enter into contracts with independent review organizations
18 in accordance with this subsection for the purpose of re-
19 viewing and determining individual appeals of determina-
20 tions under paragraph (3) with respect to an application
21 submitted pursuant to paragraph (2) relating to enroll-
22 ment under part A or part B.

23 “(B) An individual who receives an adverse deter-
24 mination under paragraph (3) with respect to an applica-
25 tion submitted pursuant to paragraph (2) may appeal to

1 an independent review organization designated by the
2 Commission. Any such appeal must be sent to the inde-
3 pendent review organization within 90 days of the date
4 the individual received the determination to be eligible for
5 review. The independent review organization shall review
6 and reach a determination of the review in writing within
7 45 days of the receipt of any such appeal.

8 “(C) The Secretary of the Treasury may not enter
9 into a contract under subparagraph (A) with an inde-
10 pendent review organization—

11 “(i) unless the organization has staff that has
12 the appropriate knowledge of, and experience with,
13 the eligibility and coordination of benefits rules and
14 regulations under this title; and

15 “(ii) to the extent the organization is a fiscal
16 intermediary under section 1816, a carrier under
17 section 1842, or a Medicare administrative con-
18 tractor under section 1874A.

19 “(D) The Secretary of Health and Human Services
20 shall provide for access by independent review organiza-
21 tions conducting appeal determinations under this sub-
22 section, to the database of the Coordination of Benefits
23 Contractor of the Centers for Medicare & Medicaid Serv-
24 ices as necessary in order to conduct the duties of such

1 organizations to determine appeals pursuant to this sub-
2 section.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall take effect beginning on the date that
5 is 6 months after the date of the enactment of this Act.

○