

113TH CONGRESS  
2D SESSION

# H. R. 4998

To enhance beneficiary and provider protections and improve transparency  
in the Medicare Advantage market, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2014

Ms. DELAURO 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 enhance beneficiary and provider protections and improve  
transparency in the Medicare Advantage market, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Advantage  
5 Participant Bill of Rights Act of 2014”.

1 **SEC. 2. LIMITATION ON REMOVAL OF MEDICARE ADVAN-**  
2 **TAGE PROVIDERS BY MA ORGANIZATIONS.**

3 (a) LIMITATION.—Section 1852(d) of the Social Se-  
4 curity Act (42 U.S.C. 1395w-22(d)) is amended by adding  
5 at the end the following:

6 “(7) LIMITATION ON REMOVAL OF PROVIDERS  
7 FROM MA PLANS BY MA ORGANIZATIONS.—

8 “(A) REMOVAL OF PROVIDERS WITH  
9 CAUSE.—Beginning with plan year 2015, except  
10 as provided in subparagraph (C), an MA orga-  
11 nization offering an MA plan may only remove  
12 a provider of services or a supplier from a net-  
13 work of such plan if the organization has cause  
14 to remove such provider or supplier.

15 “(B) CAUSE TO REMOVE PROVIDERS.—

16 “(i) IN GENERAL.—An MA organiza-  
17 tion offering an MA plan has cause to re-  
18 move a provider of services or a supplier  
19 from a network of such plan if the Sec-  
20 retary determines that the provider or sup-  
21 plier is—

22 “(I) medically negligent;

23 “(II) in violation of any legal or  
24 contractual requirement applicable to  
25 the provider or supplier acting within  
26 the lawful scope of practice, including

1 any participation or other requirement  
2 applicable to such provider or supplier  
3 under this title or under any contrac-  
4 tual term for such plan; or

5 “(III) otherwise unfit to furnish  
6 items and services in accordance with  
7 requirements of this title.

8 “(ii) CONSIDERATION OF COST TO MA  
9 ORGANIZATIONS.—For purposes of sub-  
10 paragraph (A), cost to an MA organization  
11 offering an MA plan due to the participa-  
12 tion of a provider of services or supplier in  
13 a network of such plan does not constitute  
14 cause for the MA organization to remove  
15 such provider or supplier from the net-  
16 work, and such cost may not be considered  
17 as a factor in favor of a determination that  
18 such organization has cause to remove the  
19 provider.

20 “(C) EXCEPTION.—With respect to each  
21 upcoming plan year, beginning with plan year  
22 2015, an MA organization offering an MA plan  
23 may only remove a provider of services or sup-  
24 plier from a network of such plan for reasons  
25 not specified in subparagraph (B)(i) before the

1 date that is 60 days before the first day of the  
2 annual coordinated election period for such plan  
3 year under section 1851(e)(3).

4 “(D) NOTICE AND APPEAL PROCESS.—

5 “(i) IN GENERAL.—Any removal of a  
6 provider of services or supplier from a net-  
7 work of an MA plan may occur only after  
8 the completion of a fair notice and appeal  
9 process that the Secretary shall establish  
10 by regulation. Such process shall require  
11 the MA organization to provide to such  
12 provider or supplier and to the Secretary  
13 an explanation of the reason or reasons for  
14 the removal.

15 “(ii) APPLICATION.—

16 “(I) APPLICATION OF NEW PROC-  
17 ESS.—In the case of a removal of a  
18 provider of services or supplier from a  
19 network of an MA plan occurring on  
20 or after the effective date published in  
21 a final rule for such fair notice and  
22 appeal process, such process shall  
23 apply in lieu of the process for the  
24 termination or suspension of a pro-  
25 vider contract under section

1 422.202(a) of title 42, Code of Fed-  
2 eral Regulations.

3 “(II) CONTINUATION OF OLD  
4 PROCESS.—In the case of a removal of  
5 a provider of services or supplier from  
6 a network of an MA plan occurring  
7 before such effective date, the process  
8 for the termination or suspension of a  
9 provider contract under section  
10 422.202(a) of title 42, Code of Fed-  
11 eral Regulations, shall apply.

12 “(E) PARTICIPANT NOTICE AND PROTEC-  
13 TION.—

14 “(i) NOTICE TO PARTICIPANTS OF  
15 PROVIDER REMOVAL.—Not less than 60  
16 days before the date on which a provider  
17 of services or supplier is removed from a  
18 network of an MA plan, the MA organiza-  
19 tion offering such plan shall provide notifi-  
20 cation of the removal to each individual en-  
21 rolled in such plan receiving items or serv-  
22 ices from the provider or supplier during  
23 the plan year in effect on the date of re-  
24 moval or during the previous plan year.  
25 Such notification shall include—

1           “(I) the names and telephone  
2           numbers of in-network providers of  
3           services and suppliers offering items  
4           and services that are the same or  
5           similar to the items and services of-  
6           fered by the removed provider or sup-  
7           plier;

8           “(II) information regarding the  
9           options available to an individual en-  
10          rolled in such plan to request the con-  
11          tinuation of medical treatment or  
12          therapy with the removed provider or  
13          supplier; and

14          “(III) one or more customer serv-  
15          ice telephone numbers that an indi-  
16          vidual enrolled in such plan may ac-  
17          cess to obtain information regarding  
18          changes to the network of the plan.

19          “(ii) ANNUAL NOTICE OF CHANGE.—  
20          In addition to providing the notification of  
21          removal as required under clause (i), the  
22          MA organization offering such MA plan  
23          shall include such notification in the an-  
24          nual notice of change for the MA plan for  
25          the upcoming plan year.

1 “(iii) CONTINUITY OF CARE.—In any  
2 case in which a provider of services or sup-  
3 plier is removed from a network of an MA  
4 plan, such plan shall ensure that the re-  
5 moval satisfies the continuity of care re-  
6 quirements under paragraph (1)(A) with  
7 respect to each individual enrolled in such  
8 plan receiving items or services from the  
9 provider or supplier during the plan year  
10 in effect on the date of removal or during  
11 the previous plan year.

12 “(F) RULE OF CONSTRUCTION.—Nothing  
13 in this paragraph shall be construed as affect-  
14 ing the ability of a provider of services or sup-  
15 plier to decline to participate in a network of an  
16 MA plan.

17 “(8) TRANSPARENCY IN MEASURES USED BY  
18 MA ORGANIZATIONS TO ESTABLISH OR MODIFY PRO-  
19 VIDER NETWORKS.—

20 “(A) IN GENERAL.—Beginning with plan  
21 year 2016, an MA organization offering an MA  
22 plan shall include the information described in  
23 subparagraph (B)—

24 “(i) in the annual bid information  
25 submitted by the MA organization with re-

1           spect to the MA plan under section 1854;  
2           and

3           “(ii) on the Internet Web site for the  
4           MA plan.

5           “(B) INFORMATION DESCRIBED.—The in-  
6           formation described in this subparagraph is the  
7           following:

8           “(i) Information regarding the meas-  
9           ures used by the MA organization to estab-  
10          lish or modify the provider network of the  
11          MA plan, including measures of the quality  
12          and efficiency of providers. Such informa-  
13          tion shall include the specifications, meth-  
14          odology, and sample size of such measures.

15          “(ii) Other information related to the  
16          establishment or modification of such pro-  
17          vider network that the Secretary deter-  
18          mines appropriate.

19          “(C) LIMITATION.—The information de-  
20          scribed in subparagraph (B) shall not include  
21          any individually identifiable information of any  
22          provider or supplier of services.”.

23       (b) ENFORCEMENT.—

1 (1) SANCTIONS FOR NONCOMPLIANCE.—Section  
 2 1857(g)(1) of the Social Security Act (42 U.S.C.  
 3 1395w–27(g)(1)) is amended—

4 (A) in subparagraph (J), by striking “or”;

5 (B) by redesignating subparagraph (K) as  
 6 subparagraph (L);

7 (C) by inserting after subparagraph (J)  
 8 the following new subparagraph:

9 “(K) fails to comply with sections  
 10 1852(d)(7) or 1852(d)(8); or”; and

11 (D) in subparagraph (L) (as so redesign-  
 12 ated), by striking “through (J)” and inserting  
 13 “through (K)”.

14 (2) SANCTIONS NOT APPLICABLE TO PART D.—  
 15 Title XVIII of the Social Security Act is amended—

16 (A) in section 1860D–12(b)(3)(E) (42  
 17 U.S.C. 1395w–112(b)(3)(E)), by striking  
 18 “paragraph (1)(F)” and inserting “paragraphs  
 19 (1)(F) and (1)(K)”; and

20 (B) in section 1894(e)(6)(B) (42 U.S.C.  
 21 1395eee(e)(6)(B)), by inserting “(other than  
 22 paragraph (1)(K) of such section)” after  
 23 “1857(g)(1)”.

24 (c) NETWORK ACCESS ADEQUACY STANDARDS.—Be-  
 25 ginning with plan year 2015, in applying the network ac-

1 cess adequacy standards pursuant to section 1852(d)(1)  
2 of the Social Security Act (42 U.S.C. 1395w–22(d)(1)),  
3 the Secretary of Health and Human Services shall seek  
4 input from patient advocacy groups, providers of services  
5 and suppliers, and MA plans under part C of title XVIII  
6 of such Act.

7 (d) MEDICARE ADVANTAGE PLAN COMPARE TOOL.—  
8 Not later than September 30, 2015, the Secretary of  
9 Health and Human Services shall take such measures as  
10 are necessary to ensure that the Medicare Advantage  
11 Compare Tool takes into account the preferences and utili-  
12 zation needs of such individuals.

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