

113TH CONGRESS
2D SESSION

S. 2552

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

IN THE SENATE OF THE UNITED STATES

JUNE 26, 2014

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

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”.

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

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

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

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

10 “(B) CAUSE TO REMOVE PROVIDERS.—

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

17 “(I) medically negligent;

18 “(II) in violation of any legal or
19 contractual requirement applicable to
20 the provider or supplier acting within
21 the lawful scope of practice, including
22 any participation or other requirement
23 applicable to such provider or supplier
24 under this title or under any contrac-
25 tual term for such plan; or

1 “(III) otherwise unfit to furnish
2 items and services in accordance with
3 requirements of this title.

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

16 “(C) EXCEPTION.—With respect to each
17 upcoming plan year, beginning with plan year
18 2015, an MA organization offering an MA plan
19 may only remove a provider of services or sup-
20 plier from a network of such plan for reasons
21 not specified in subparagraph (B)(i) before the
22 date that is 60 days before the first day of the
23 annual coordinated election period for such plan
24 year under section 1851(e)(3).

25 “(D) NOTICE AND APPEAL PROCESS.—

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

11 “(ii) APPLICATION.—

12 “(I) APPLICATION OF NEW PROC-
13 ESS.—In the case of a removal of a
14 provider of services or supplier from a
15 network of an MA plan occurring on
16 or after the effective date published in
17 a final rule for such fair notice and
18 appeal process, such process shall
19 apply in lieu of the process for the
20 termination or suspension of a pro-
21 vider contract under section
22 422.202(a) of title 42, Code of Fed-
23 eral Regulations.

24 “(II) CONTINUATION OF OLD
25 PROCESS.—In the case of a removal of

1 a provider of services or supplier from
2 a network of an MA plan occurring
3 before such effective date, the process
4 for the termination or suspension of a
5 provider contract under section
6 422.202(a) of title 42, Code of Fed-
7 eral Regulations, shall apply.

8 “(E) PARTICIPANT NOTICE AND PROTEC-
9 TION.—

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

22 “(I) the names and telephone
23 numbers of in-network providers of
24 services and suppliers offering items
25 and services that are the same or

1 similar to the items and services of-
 2 fered by the removed provider or sup-
 3 plier;

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

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

15 “(ii) ANNUAL NOTICE OF CHANGE.—

16 In addition to providing the notification of
 17 removal as required under clause (i), the
 18 MA organization offering such MA plan
 19 shall include such notification in the an-
 20 nual notice of change for the MA plan for
 21 the upcoming plan year.

22 “(iii) CONTINUITY OF CARE.—In any
 23 case in which a provider of services or sup-
 24 plier is removed from a network of an MA
 25 plan, such plan shall ensure that the re-

1 removal satisfies the continuity of care re-
 2 quirements under paragraph (1)(A) with
 3 respect to each individual enrolled in such
 4 plan receiving items or services from the
 5 provider or supplier during the plan year
 6 in effect on the date of removal or during
 7 the previous plan year.

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

13 “(8) TRANSPARENCY IN MEASURES USED BY
 14 MA ORGANIZATIONS TO ESTABLISH OR MODIFY PRO-
 15 VIDER NETWORKS.—

16 “(A) IN GENERAL.—Beginning with plan
 17 year 2016, an MA organization offering an MA
 18 plan shall include the information described in
 19 subparagraph (B)—

20 “(i) in the annual bid information
 21 submitted by the MA organization with re-
 22 spect to the MA plan under section 1854;
 23 and

24 “(ii) on the Internet Web Site for the
 25 MA plan.

“(B) INFORMATION DESCRIBED.—The information described in this subparagraph is the following:

“(i) Information regarding the measures used by the MA organization to establish or modify the provider network of the MA plan, including measures of the quality and efficiency of providers. Such information shall include the specifications, methodology, and sample size of such measures.

“(ii) Other information related to the establishment or modification of such provider network that the Secretary determines appropriate.

“(C) LIMITATION.—The information described in subparagraph (B) shall not include any individually identifiable information of any provider or supplier of services.”.

(b) ENFORCEMENT.—

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

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

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

1 (C) by inserting after subparagraph (J)
 2 the following new subparagraph:

3 “(K) fails to comply with sections
 4 1852(d)(7) or 1852(d)(8); or”; and

5 (D) in subparagraph (L) (as so redesign-
 6 nated), by striking “through (J)” and inserting
 7 “through (K)”.

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

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

14 (B) in section 1894(e)(6)(B) (42 U.S.C.
 15 1395eee(e)(6)(B)), by inserting “(other than
 16 paragraph (1)(K) of such section)” after
 17 “1857(g)(1)”.

18 (c) NETWORK ACCESS ADEQUACY STANDARDS.—Be-
 19 ginning with plan year 2015, in applying the network ac-
 20 cess adequacy standards pursuant to section 1852(d)(1)
 21 of the Social Security Act (42 U.S.C. 1395w–22(d)(1)),
 22 the Secretary of Health and Human Services shall seek
 23 input from patient advocacy groups, providers of services
 24 and suppliers, and MA plans under part C of title XVIII
 25 of such Act.

1 (d) MEDICARE ADVANTAGE PLAN COMPARE TOOL.—
2 Not later than September 30, 2015, the Secretary of
3 Health and Human Services shall take such measures as
4 are necessary to ensure that the Medicare Advantage
5 Compare Tool takes into account the preferences and utili-
6 zation needs of such individuals.

○