

114TH CONGRESS
1ST SESSION

H. R. 4227

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 10, 2015

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

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 Bill of Rights Act of 2015”.

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 2017, 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 network
16 mid-year, and such cost may not be consid-
17 ered as a factor in favor of a determination
18 that such organization has cause to remove
19 the provider.

20 “(C) EXCEPTION.—With respect to each
21 upcoming plan year, beginning with plan year
22 2017, 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 writ-
20 ten notification of the removal to each in-
21 dividual enrolled in such plan receiving
22 items or services from the provider or sup-
23 plier during the plan year in effect on the
24 date of removal or during the previous

1 plan year. Such notification shall include
2 at the minimum—

3 “(I) the names and telephone
4 numbers of available in-network pro-
5 viders of services and suppliers offer-
6 ing items and services that are the
7 same or similar to the items and serv-
8 ices offered by the removed provider
9 or supplier;

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

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

21 “(ii) ANNUAL NOTICE OF CHANGE.—

22 In addition to providing the notification of
23 removal as required under clause (i), the
24 MA organization offering such MA plan
25 shall include such notification in the an-

1 nual notice of change for the MA plan for
2 the upcoming plan year.

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

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

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

22 “(A) IN GENERAL.—Beginning with plan
23 year 2017, an MA organization offering an MA
24 plan shall include the information described in
25 subparagraph (B)—

1 “(i) in the annual bid information
2 submitted by the MA organization with re-
3 spect to the MA plan under section 1854;
4 and

5 “(ii) on the Internet Web Site for the
6 MA plan.

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

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

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

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

25 (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) MEDICARE ADVANTAGE PLAN COMPARE TOOL.—

25 Not later than one year after the date of enactment of

1 this Act, the Secretary of Health and Human Services
 2 shall take such measures as are necessary to ensure that
 3 the Medicare Advantage Compare Tool takes into account
 4 the preferences and utilization needs of such individuals.

5 **SEC. 3. NETWORK ADEQUACY.**

6 (a) IN GENERAL.—Section 1852(d) of the Social Se-
 7 curity Act (42 U.S.C. 1395w–22(d)), as amended by sec-
 8 tion 2, is amended by adding at the end the following:

9 “(9) NETWORK ADEQUACY REQUIREMENTS.—
 10 Beginning in plan year 2017, notwithstanding any
 11 other provision of law, the following shall apply:

12 “(A) PROVIDER AVAILABILITY.—When es-
 13 tablishing a plan network, a Medicare Advan-
 14 tage organization offering an MA plan shall,
 15 among other factors determined by the Sec-
 16 retary, consider the following:

17 “(i) The anticipated enrollment in the
 18 plan.

19 “(ii) The expected types of services
 20 provided and utilization of services by en-
 21 rollees under the plan.

22 “(iii) The number and types of pro-
 23 viders needed to provide such services.

24 “(iv) The number of network pro-
 25 viders who are not accepting new patients.

1 “(v) The location of providers and en-
2 rollees.

3 “(vi) The full-time equivalent avail-
4 ability of a provider to provide such serv-
5 ices.

6 “(B) PROVISION OF CARE IN A TIMELY
7 MANNER.—A Medicare Advantage organization
8 offering an MA plan shall ensure that providers
9 are able to provide services in a timely manner,
10 as defined by the Secretary, under the plan.

11 “(C) APPLICATION OF NETWORK ACCESS
12 ADEQUACY STANDARDS.—In applying the net-
13 work access adequacy standards pursuant to
14 paragraph (1), the Secretary shall seek input
15 from patient advocacy groups, providers of serv-
16 ices and suppliers, and MA plans under this
17 part.

18 “(D) CERTIFICATION.—Each plan year, a
19 Medicare Advantage organization shall certify
20 to the Secretary, with respect to each MA plan
21 offered by the organization, that the providers,
22 including specialists and subspecialists, in the
23 plan network are able to provide the services re-
24 quired under the organization’s contract with
25 the Secretary under section 1857 with respect

1 to the offering of such plan and to meet the
2 needs of the enrollees within the plan service
3 area during the year.

4 “(E) ANNUAL REPORTING.—Each plan
5 year, a Medicare Advantage organization shall
6 report to the Secretary the following with re-
7 spect to each MA plan offered by the organiza-
8 tion:

9 “(i) AVERAGE WAIT TIME.—The aver-
10 age wait time for primary and specialty
11 care for enrollees under the plan.

12 “(ii) UTILIZATION OF OUT OF NET-
13 WORK PROVIDERS.—The utilization of out-
14 of-network providers under the plan.

15 “(iii) AVERAGE COST PER PATIENT.—
16 The average annual spending per patient
17 for primary and specialty care for enrollees
18 under the plan.

19 “(F) CERTIFICATION.—In advance of the
20 annual, coordinated election period under sec-
21 tion 1851(e)(3), a Medicare Advantage organi-
22 zation shall certify to the Secretary the accu-
23 racy of provider directories for each plan of-
24 fered by the organization.

1 “(G) NETWORK REVIEW.—The Secretary
2 shall ensure that the network of each MA plan
3 offered by a Medicare Advantage organization
4 meets the network adequacy guidelines estab-
5 lished under this paragraph and under section
6 422.112(a)(4) of title 42, Code of Federal Reg-
7 ulations (or any successor regulation to such
8 section) at least once every 3 years or when a
9 material change in network occurs.”.

10 (b) ENFORCEMENT.—Section 1857(g)(1)(K) of the
11 Social Security Act (42 U.S.C. 1395w–27(g)(1)(K)), as
12 added by section 2(b), is amended by striking “or
13 1852(d)(8)” and inserting “, 1852(d)(8), or 1852(d)(9)”.

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