

114TH CONGRESS
2D SESSION

H. R. 5659

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2016

Received; read twice and referred to the Committee on Finance

AN ACT

To amend title XVIII of the Social Security Act with respect to expanding Medicare Advantage coverage for individuals with end-stage renal disease (ESRD).

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 “Expanding Seniors Re-
3 ceiving Dialysis Choice Act of 2016” or as the “ESRD
4 Choice Act of 2016”.

5 **SEC. 2. EXPANDING MEDICARE ADVANTAGE COVERAGE**
6 **FOR INDIVIDUALS WITH END-STAGE RENAL**
7 **DISEASE (ESRD).**

8 (a) EXPANDED MA ELIGIBILITY.—

9 (1) IN GENERAL.—Section 1851(a)(3) of the
10 Social Security Act (42 U.S.C. 1395w–21(a)(3)) is
11 amended—

12 (A) by striking subparagraph (B); and

13 (B) by striking “ELIGIBLE INDIVIDUAL”
14 and all that follows through “In this title, sub-
15 ject to subparagraph (B),” and inserting “ELI-
16 GIBLE INDIVIDUAL.—In this title,”.

17 (2) CONFORMING AMENDMENTS.—

18 (A) Section 1852(b)(1) of the Social Secu-
19 rity Act (42 U.S.C. 1395w–22(b)(1)) is amend-
20 ed—

21 (i) by striking subparagraph (B); and

22 (ii) by striking “BENEFICIARIES” and
23 all that follows through “A
24 Medicare+Choice organization” and in-
25 serting “BENEFICIARIES.—A Medicare Ad-
26 vantage organization”.

1 (B) Section 1859(b)(6) of the Social Secu-
2 rity Act (42 U.S.C. 1395w-28(b)(6)) is amend-
3 ed by striking “may waive” and all that follows
4 through “subparagraph and”.

5 (b) EXCLUDING COSTS FOR KIDNEY ACQUISITIONS
6 FROM MA BENCHMARK.—Section 1853 of the Social Se-
7 curity Act (42 U.S.C. 1395w-23) is amended—

8 (1) in subsection (k)—

9 (A) in paragraph (1)—

10 (i) in the matter preceding subpara-
11 graph (A), by striking “paragraphs (2)
12 and (4)” and inserting “paragraphs (2),
13 (4), and (5)”; and

14 (ii) in subparagraph (B)(i), by strik-
15 ing “paragraphs (2) and (4)” and insert-
16 ing “paragraphs (2), (4), and (5)”; and

17 (B) by adding at the end the following new
18 paragraph:

19 “(5) EXCLUSION OF COSTS FOR KIDNEY ACQUI-
20 SITIONS FROM CAPITATION RATES.—After deter-
21 mining the applicable amount for an area for a year
22 under paragraph (1) (beginning with 2019), the Sec-
23 retary shall adjust such applicable amount to ex-
24 clude from such applicable amount the Secretary’s
25 estimate of the standardized costs for payments for

1 organ acquisitions for kidney transplants covered
2 under this title (including expenses covered under
3 section 1881(d)) in the area for the year.”; and

4 (2) in subsection (n)(2)—

5 (A) in subparagraph (A)(i), by inserting
6 “and, for 2019 and subsequent years, the exclu-
7 sion of payments for organ acquisitions for kid-
8 ney transplants from the capitation rate as de-
9 scribed in subsection (k)(5)” before the semi-
10 colon at the end;

11 (B) in subparagraph (E), in the matter
12 preceding clause (i), by striking “subparagraph
13 (F)” and inserting “subparagraphs (F) and
14 (G)”; and

15 (C) by adding at the end the following new
16 subparagraph:

17 “(G) APPLICATION OF KIDNEY ACQUISSI-
18 TIONS ADJUSTMENT.—The base payment
19 amount specified in subparagraph (E) for a
20 year (beginning with 2019) shall be adjusted in
21 the same manner under paragraph (5) of sub-
22 section (k) as the applicable amount is adjusted
23 under such subsection.”.

24 (c) FFS COVERAGE OF KIDNEY ACQUISITIONS.—

1 (1) IN GENERAL.—Section 1852(a)(1)(B)(i) of
2 the Social Security Act (42 U.S.C. 1395w–
3 22(a)(1)(B)(i)) is amended by inserting “or coverage
4 for organ acquisitions for kidney transplants, includ-
5 ing as covered under section 1881(d)” after “hospice
6 care”.

7 (2) CONFORMING AMENDMENT.—Section
8 1851(i) of the Social Security Act (42 U.S.C.
9 1395w–21(i)) is amended by adding at the end the
10 following new paragraph:

11 “(3) FFS PAYMENT FOR EXPENSES FOR KID-
12 NEY ACQUISITIONS.—Paragraphs (1) and (2) do not
13 apply with respect to expenses for organ acquisitions
14 for kidney transplants described in section
15 1852(a)(1)(B)(i).”.

16 (d) SENSE OF CONGRESS REGARDING APPLICATION
17 OF APPROPRIATE MEDICARE ADVANTAGE RISK ADJUST-
18 MENT FOR PAYMENT FOR INCREASED ESRD ENROLL-
19 EES.—It is the sense of Congress that in implementing
20 the policies under this section, the Centers for Medicare
21 & Medicaid Services should provide, in an accurate and
22 transparent manner, for risk adjustment to payment
23 under the Medicare Advantage program to account for the
24 increased enrollment in Medicare Advantage plans of indi-
25 viduals with end-stage renal disease.

1 (e) EXPANDED MA EDUCATION.—Section
2 1851(d)(2)(A)(iii) of the Social Security Act (42 U.S.C.
3 1395w–21(d)(2)(A)(iii)) is amended by inserting before
4 the period at the end the following: “, including any addi-
5 tional information that individuals determined to have
6 end-stage renal disease may need to make informed deci-
7 sions with respect to such an election”.

8 (f) REPORT.—Not later than April 1, 2022, the Ad-
9 ministrators of the Centers for Medicare & Medicaid Serv-
10 ices shall submit to Congress a report on the impact of
11 the amendments made by this section on spending under
12 the traditional Medicare fee-for-service program under
13 parts A and B of title XVIII of the Social Security Act
14 as well as on spending under parts C and D of such title.
15 The report shall include an assessment of the risk adjust-
16 ment payment methodologies under such parts C and D
17 and their adequacy with respect to individuals with end-
18 stage renal disease and such recommendations as the Ad-
19 ministrators deem appropriate.

1 (g) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plans years beginning on or
3 after January 1, 2020.

Passed the House of Representatives September 21,
2016.

Attest:

KAREN L. HAAS,
Clerk.