

116TH CONGRESS
2D SESSION

S. 3353

To amend title XVIII of the Social Security Act to provide for extended months of Medicare coverage of immunosuppressive drugs for kidney transplant patients, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2020

Mr. CASSIDY (for himself, Mr. DURBIN, Ms. ERNST, Mrs. SHAHEEN, Mr. WHITEHOUSE, and Mr. YOUNG) 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 provide for extended months of Medicare coverage of immunosuppressive drugs for kidney transplant patients, 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 “Comprehensive Im-
5 munosuppressive Drug Coverage for Kidney Transplant
6 Patients Act of 2020”.

1 **SEC. 2. EXTENDED MONTHS OF COVERAGE OF IMMUNO-**
 2 **SUPPRESSIVE DRUGS FOR KIDNEY TRANS-**
 3 **PLANT PATIENTS AND OTHER RENAL DIALY-**
 4 **SIS PROVISIONS.**

5 (a) MEDICARE ENTITLEMENT TO IMMUNO-
 6 SUPPRESSIVE DRUGS FOR KIDNEY TRANSPLANT RECIPI-
 7 ENTS.—

8 (1) IN GENERAL.—Section 226A(b)(2) of the
 9 Social Security Act (42 U.S.C. 426–1(b)(2)) is
 10 amended by inserting “(except for eligibility for en-
 11 rollment under part B solely for purposes of cov-
 12 erage of immunosuppressive drugs described in sec-
 13 tion 1861(s)(2)(J))” before “, with the thirty-sixth
 14 month”.

15 (2) INDIVIDUALS ELIGIBLE ONLY FOR COV-
 16 ERAGE OF IMMUNOSUPPRESSIVE DRUGS.—

17 (A) IN GENERAL.—Section 1836 of the So-
 18 cial Security Act (42 U.S.C. 1395o) is amend-
 19 ed—

20 (i) by striking “Every” and inserting
 21 “(a) IN GENERAL.—EVERY”; and

22 (ii) by adding at the end the following
 23 new subsection:

24 “(b) INDIVIDUALS ELIGIBLE FOR IMMUNO-
 25 SUPPRESSIVE DRUG COVERAGE.—

1 “(1) IN GENERAL.—Except as provided under
 2 paragraph (2), every individual whose entitlement to
 3 insurance benefits under part A ends (whether be-
 4 fore, on, or after January 1, 2022) by reason of sec-
 5 tion 226A(b)(2) is eligible to enroll in the insurance
 6 program established by this part solely for purposes
 7 of coverage of immunosuppressive drugs in accord-
 8 ance with section 1837(m).

9 “(2) EXCEPTION IF OTHER COVERAGE IS
 10 AVAILABLE.—

11 “(A) IN GENERAL.—An individual de-
 12 scribed in paragraph (1) shall not be eligible for
 13 enrollment in the program for purposes of cov-
 14 erage described in such paragraph with respect
 15 to any period in which the individual, as deter-
 16 mined in accordance with subparagraph (B)—

17 “(i) is enrolled in a group health plan
 18 or group or individual health insurance
 19 coverage, as such terms are defined in sec-
 20 tion 2791 of the Public Health Service
 21 Act;

22 “(ii) is enrolled for coverage under the
 23 TRICARE for Life program under section
 24 1086(d) of title 10, United States Code; or

1 “(iii)(I) is enrolled in the patient en-
2 rollment system of the Department of Vet-
3 erans Affairs established and operated
4 under section 1705 of title 38, United
5 States Code;

6 “(II) is not required to enroll under
7 section 1705 of such title to receive im-
8 munosuppressive drugs described in this
9 subsection; or

10 “(III) is otherwise eligible under a
11 provision of title 38, United States Code,
12 other than section 1710 of such title to re-
13 ceive immunosuppressive drugs described
14 in this subsection.

15 “(B) ELIGIBILITY DETERMINATIONS.—

16 “(i) IN GENERAL.—The Secretary, in
17 consultation with the Commissioner of So-
18 cial Security, shall establish a process for
19 determining whether an individual de-
20 scribed in paragraph (1) who is to be en-
21 rolled or deemed to be enrolled in the in-
22 surance program described in such para-
23 graph meets the requirements for such en-
24 rollment under this subsection, including
25 the requirement that the individual not be

1 enrolled in other coverage as described in
 2 subparagraph (A).

3 “(ii) ATTESTATION REGARDING
 4 OTHER COVERAGE.—The process estab-
 5 lished under clause (i) shall include, at a
 6 minimum, a requirement that—

7 “(I) the individual provide to the
 8 Commissioner an attestation that the
 9 individual is not enrolled in such other
 10 coverage; and

11 “(II) the individual notify the
 12 Secretary within 60 days of any
 13 change in the insurance coverage of
 14 the individual.”.

15 (B) CONFORMING AMENDMENT.—Sections
 16 1837, 1838, and 1839 of the Social Security
 17 Act (42 U.S.C. 1395p, 42 U.S.C. 1395q, 42
 18 U.S.C. 1395r) are each amended by striking
 19 “1836” and inserting “1836(a)” each place it
 20 appears.

21 (b) ENROLLMENT FOR INDIVIDUALS ONLY ELIGIBLE
 22 FOR COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.—Sec-
 23 tion 1837 of the Social Security Act (42 U.S.C. 1395p)
 24 is amended by adding at the end the following new sub-
 25 section:

1 “(m)(1) Any individual who is eligible under section
2 1836(b) to enroll in the medical insurance program estab-
3 lished under this part for purposes of coverage of immuno-
4 suppressive drugs may enroll only in such manner and
5 form as may be prescribed by regulations, and only during
6 an enrollment period described in this subsection.

7 “(2) An individual described in paragraph (1) whose
8 entitlement for hospital insurance benefits under part A
9 ends by reason of section 226A(b)(2) prior to January 1,
10 2022, may enroll beginning on the first day of the third
11 month before the month in which the individual first satis-
12 fies section 1836(b).

13 “(3) An individual described in paragraph (1) whose
14 entitlement for hospital insurance benefits under part A
15 ends by reason of section 226A(b)(2) on or after January
16 1, 2022, shall be deemed to have enrolled in the medical
17 insurance program established by this part for purposes
18 of coverage of immunosuppressive drugs.

19 “(4) The Secretary shall establish a process under
20 which an individual described in paragraph (1) whose
21 other coverage described in section 1836(b)(2)(A), or cov-
22 erage under this part (including the medical insurance
23 program established under this part for purposes of cov-
24 erage of immunosuppressive drugs) is terminated volun-
25 tarily or involuntary may enroll or reenroll, if applicable,

1 in the medical insurance program established under this
 2 part for purposes of coverage of immunosuppressive
 3 drugs.”.

4 (c) COVERAGE PERIOD FOR INDIVIDUALS ONLY ELI-
 5 GIBLE FOR COVERAGE OF IMMUNOSUPPRESSIVE
 6 DRUGS.—

7 (1) IN GENERAL.—Section 1838 of the Social
 8 Security Act (42 U.S.C. 1395q) is amended by add-
 9 ing at the end the following new subsection:

10 “(g) In the case of an individual described in section
 11 1836(b)(1), the following rules shall apply:

12 “(1) In the case of such an individual who is
 13 deemed to have enrolled in part B for coverage of
 14 immunosuppressive drugs under section 1837(m)(3),
 15 such individual’s coverage period shall begin on the
 16 first day of the month in which the individual first
 17 satisfies section 1836(b).

18 “(2) In the case of such an individual who en-
 19 rolls (or reenrolls, if applicable) in part B for cov-
 20 erage of immunosuppressive drugs under paragraph
 21 (2) or (4) of section 1837(m), such individual’s cov-
 22 erage period shall begin on January 1, 2022, or the
 23 month following the month in which the individual
 24 so enrolls (or reenrolls), whichever is later.

1 “(3) The provisions of subsections (b) and (d)
2 shall apply with respect to an individual described in
3 paragraph (1) or (2).

4 “(4) In addition to the reasons for termination
5 under subsection (b), the coverage period of an indi-
6 vidual described in paragraph (1) or (2) shall end
7 when the individual becomes entitled to benefits
8 under this title under section 226(a) or 226A or is
9 no longer eligible for such coverage as a result of the
10 application of section 1836(b)(2).

11 “(5) The Secretary may conduct public edu-
12 cation activities to raise awareness of the availability
13 of more comprehensive, qualified health plans for
14 beneficiaries eligible under this subsection.”.

15 (2) CONFORMING AMENDMENTS.—Section
16 1838(b) of the Social Security Act (42 U.S.C.
17 1395q(b)) is amended, in the matter following para-
18 graph (2), by inserting “or section 1837(m)(3)”
19 after “section 1837(f)” each place it appears.

20 (d) PREMIUMS FOR INDIVIDUALS ONLY ELIGIBLE
21 FOR COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.—Sec-
22 tion 1839 of the Social Security Act (42 U.S.C. 1395r)
23 is amended—

24 (1) in subsection (b), by adding at the end the
25 following new sentence: “No increase in the pre-

1 mium shall be effected for individuals who are en-
 2 rolled pursuant to section 1836(b) for coverage only
 3 of immunosuppressive drugs.”; and

4 (2) by adding at the end the following new sub-
 5 section:

6 “(j) DETERMINATION OF PREMIUM FOR INDIVID-
 7 UALS ONLY ELIGIBLE FOR COVERAGE OF IMMUNO-
 8 SUPPRESSIVE DRUGS.—The Secretary shall, during Sep-
 9 tember of each year (beginning with 2021), determine and
 10 promulgate a monthly premium rate for the succeeding
 11 calendar year for individuals who enroll only for the pur-
 12 pose of coverage of immunosuppressive drugs under sec-
 13 tion 1836(b). Such premium shall be equal to 35 percent
 14 of the monthly actuarial rate for enrollees age 65 and over,
 15 determined according to paragraph (1), for that suc-
 16 ceeding calendar year. The monthly premium of each indi-
 17 vidual enrolled for coverage of immunosuppressive drugs
 18 under section 1836(b) for each month shall be the amount
 19 promulgated in this subsection. Such amount shall be ad-
 20 justed in accordance with subsections (c), (f), and (i), but
 21 shall not be adjusted under subsection (b).”.

22 (e) GOVERNMENT CONTRIBUTION.—Section 1844(a)
 23 of the Social Security Act (42 U.S.C. 1395w(a)) is amend-
 24 ed—

1 (1) in paragraph (3), by striking the period at
2 the end and inserting “; plus”;

3 (2) by inserting after paragraph (3) the fol-
4 lowing new paragraph:

5 “(4) a Government contribution equal to the es-
6 timated aggregate reduction in premiums payable
7 under part B that results from establishing the pre-
8 mium at 35 percent of the actuarial rate under sec-
9 tion 1839(j) instead of 50 percent of the actuarial
10 rate for individuals who enroll only for the purpose
11 of coverage of immunosuppressive drugs under sec-
12 tion 1836(b).”; and

13 (3) by adding the following sentence at the end
14 of the flush matter following paragraph (4), as
15 added by paragraph (2) of this subsection:

16 “The Government contribution under paragraph (4)
17 shall be treated as premiums payable and deposited
18 for purposes of subparagraphs (A) and (B) of para-
19 graph (1).”.

20 (f) ENSURING COVERAGE UNDER THE MEDICARE
21 SAVINGS PROGRAM.—Section 1905(p)(1)(A) of the Social
22 Security Act (42 U.S.C. 1396d(p)(1)(A)) is amended by
23 inserting “or an individual who is enrolled under part B
24 for the purpose of coverage of immunosuppressive drugs
25 under section 1836(b)” after “section 1818”.

1 (g) PART D.—Section 1860D–1(a)(3)(A) of the So-
2 cial Security Act (42 U.S.C. 1395w–101(a)(3)(A)) is
3 amended by inserting “(but not including an individual en-
4 rolled solely for coverage of immunosuppressive drugs
5 under section 1836(b))” before the period at the end.

6 **SEC. 3. GAO STUDY AND REPORT.**

7 (a) STUDY.—The Comptroller General of the United
8 States (in this section referred to as the “Comptroller
9 General”) shall conduct a study on the implementation of
10 coverage of immunosuppressive drugs for kidney trans-
11 plant patients under the Medicare program pursuant to
12 the provisions of, and amendments made by this Act. Such
13 study shall include the identification, after implementation
14 of such coverage, of any leakage in the eligibility, enroll-
15 ment, and coverage processes relating to such coverage in
16 order to address program integrity issues.

17 (b) REPORT.—Not later than January 1, 2024, the
18 Comptroller General shall submit to Congress a report on
19 the study conducted under subsection (a), together with
20 recommendations for such legislation and administrative
21 action as the Comptroller General determines appropriate.

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