

114TH CONGRESS  
1ST SESSION

# S. 2392

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

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IN THE SENATE OF THE UNITED STATES

DECEMBER 10, 2015

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

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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 Bill of Rights Act of 2015”.

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 2017, 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 network  
12                  mid-year, and such cost may not be consid-  
13                  ered as a factor in favor of a determination  
14                  that such organization has cause to remove  
15                  the provider.

16                  “(C) EXCEPTION.—With respect to each  
17                  upcoming plan year, beginning with plan year  
18                  2017, 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 writ-  
16 ten notification of the removal to each in-  
17 dividual enrolled in such plan receiving  
18 items or services from the provider or sup-  
19 plier during the plan year in effect on the  
20 date of removal or during the previous  
21 plan year. Such notification shall include  
22 at the minimum—

23 “(I) the names and telephone  
24 numbers of available in-network pro-  
25 viders of services and suppliers offer-

1 ing items and services that are the  
2 same or similar to the items and serv-  
3 ices offered by the removed provider  
4 or supplier;

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

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

16 “(ii) ANNUAL NOTICE OF CHANGE.—

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

23 “(iii) CONTINUITY OF CARE.—In any  
24 case in which a provider of services or sup-  
25 plier is removed from a network of an MA

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

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

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

17 “(A) IN GENERAL.—Beginning with plan  
18 year 2017, an MA organization offering an MA  
19 plan shall include the information described in  
20 subparagraph (B)—

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

1                   “(ii) on the Internet Web site for the  
2                   MA plan.

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

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

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

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

21                  (b) ENFORCEMENT.—

22                   (1) SANCTIONS FOR NONCOMPLIANCE.—Section  
23                   1857(g)(1) of the Social Security Act (42 U.S.C.  
24                   1395w-27(g)(1)) is amended—

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



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

3 (C) by inserting after subparagraph (J)  
4 the following new subparagraph:

5 “(K) fails to comply with section  
6 1852(d)(7) or 1852(d)(8); or”; and

7 (D) in subparagraph (L) (as so redesign-  
8 dated), by striking “through (J)” and inserting  
9 “through (K)”.

10 (2) SANCTIONS NOT APPLICABLE TO PART D.—

11 Title XVIII of the Social Security Act is amended—

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

16 (B) in section 1894(e)(6)(B) (42 U.S.C.  
17 1395eee(e)(6)(B)), by inserting “(other than  
18 paragraph (1)(K) of such section)” after  
19 “1857(g)(1)”.

20 (c) MEDICARE ADVANTAGE PLAN COMPARE TOOL.—

21 Not later than one year after the date of enactment of  
22 this Act, the Secretary of Health and Human Services  
23 shall take such measures as are necessary to ensure that  
24 the Medicare Advantage Compare Tool takes into account  
25 the preferences and utilization needs of such individuals.

1 **SEC. 3. NETWORK ADEQUACY.**

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

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

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

13 “(i) The anticipated enrollment in the  
14 plan.

15 “(ii) The expected types of services  
16 provided and utilization of services by en-  
17 rollees under the plan.

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

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

22 “(v) The location of providers and en-  
23 rollees.

24 “(vi) The full time equivalent avail-  
25 ability of a provider to provide such serv-  
26 ices.

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

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

13           “(D) CERTIFICATION.—Each plan year, a  
14 Medicare Advantage organization shall certify  
15 to the Secretary, with respect to each MA plan  
16 offered by the organization, that the providers,  
17 including specialists and subspecialists, in the  
18 plan network are able to provide the services re-  
19 quired under the organization’s contract with  
20 the Secretary under section 1857 with respect  
21 to the offering of such plan and to meet the  
22 needs of the enrollees within the plan service  
23 area during the year.

24           “(E) ANNUAL REPORTING.—Each plan  
25 year, a Medicare Advantage organization shall

1 report to the Secretary the following with re-  
2 spect to each MA plan offered by the organiza-  
3 tion:

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

7 “(ii) UTILIZATION OF OUT-OF-NET-  
8 WORK PROVIDERS.—The utilization of out-  
9 of-network providers under the plan.

10 “(iii) AVERAGE COST PER PATIENT.—  
11 The average annual spending per patient  
12 for primary and specialty care for enrollees  
13 under the plan.

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

20 “(G) NETWORK REVIEW.—The Secretary  
21 shall ensure that the network of each MA plan  
22 offered by a Medicare Advantage organization  
23 meets the network adequacy guidelines estab-  
24 lished under this paragraph and under section  
25 422.112(a)(4) of title 42, Code of Federal Reg-

1           ulations (or any successor regulation to such  
2           section), at least once every 3 years or when a  
3           material change in network occurs.”.

4           (b) ENFORCEMENT.—Section 1857(g)(1)(K) of the  
5 Social Security Act (42 U.S.C. 1395w-27(g)(1)(K)), as  
6 added by section 2(b), is amended by striking “or  
7 1852(d)(8)” and inserting “, 1852(d)(8), or 1852(d)(9)”.

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