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118TH CONGRESS
1ST SESSION

H. R. 5854

To amend title XVIII of the Social Security Act to require complete and accurate data set submissions from Medicare Advantage organizations offering Medicare Advantage plans under part C of the Medicare program to improve transparency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2023

Ms. PORTER (for herself, Ms. DEGETTE, Mr. DOGGETT, and Ms. SCHAKOWSKY) 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

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A BILL

To amend title XVIII of the Social Security Act to require complete and accurate data set submissions from Medicare Advantage organizations offering Medicare Advantage plans under part C of the Medicare program to improve transparency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Advantage Consumer Protection and Transparency Act''.

SEC. 2. MEDICARE ADVANTAGE SUPPLEMENTAL BENEFITS DATA.

(a) IN GENERAL.—Section 1852(c) of the Social Security Act (42 U.S.C. 1395w–122(c)) is amended by adding at the end the following new paragraph:

''(3) SUPPLEMENTAL BENEFITS DATA.—

''(A) SUBMISSIONS TO SECRETARY.—For each plan year beginning on or after January 1 of the second year beginning on or after the date of enactment of this paragraph, a Medicare Advantage organization offering supplemental benefits described in subsection (a)(3) under a Medicare Advantage plan shall submit (or, in the case of such an organization that contracts with an entity (such as a third-party contractor) to provide supplemental benefits in connection with such plan, require under such contract for the entity to submit), not later than 6 months after the end of the plan year, to the Secretary, in a clear, accurate, and standardized form in accordance with subparagraph (B) complete and accurate (as specified by the Secretary pursuant to subparagraph (B)) information, at the plan level and presented by coverage, service, or benefit type (as applicable), on such benefits offered under such

plan during the plan year, including regarding the following:

"(i) The type and nature of each supplemental benefit so offered during such plan year.

"(ii) The number of Medicare Advantage eligible individuals enrolled under plan during such plan year with coverage that enables access to such benefits.

"(iii) The number of Medicare Advantage eligible individuals enrolled under the plan during such plan year who received a service with respect to each such supplemental benefit type so offered.

"(iv) The total plan and beneficiary expenditures made for such supplemental benefits, with respect to such plan year, excluding profits, administrative costs, and other overhead expenses.

"(v) The total beneficiary cost sharing for supplemental benefits, with respect to such plan year, reported in total beneficiary expenditure and as a percentage of total expenditure.

"(vi) All encounter data related to claims for supplemental benefits so offered, with respect to such plan year.

"(vii) All payment data, disaggregated by contributing payer, related to claims for supplemental benefits so offered, with respect to such plan year.

"(viii) Such other information as specified by the Secretary.

"(B) REGULATIONS.—Not later than July 1 of the first year beginning on or after the date of the enactment of this paragraph, for purposes of subparagraph (A), the Secretary shall, through rulemaking—

"(i) establish procedures to standardize the language used in describing supplemental benefits (including categories of such benefits) and metrics;

"(ii) establish procedures to standardize the collection and evaluation of data under such subparagraph;

"(iii) analyze and publicly report, in common language, the standardized language to be used by plans in describing supplemental benefits (including categories

of such benefits) in any materials intended for potential consumers, including marketing materials, plan comparison tools under section 1851(d), and any other materials the Secretary deems appropriate;

"(iv) specify metrics and methods for determining whether information submitted under subparagraph (A) is complete and accurate, including by requiring such information include at least comparisons of supplemental benefit information between encounter records submitted under 1852(c)(3)(A)(vi), aggregate data submitted under 1852(c)(3)(A)(i–v), spending data for types and categories of supplemental benefits submitted under 1857(e)(4), and supplemental benefit information submitted under 1854(a)(6)(A); and

"(v) determine categories or levels of incompleteness for plans that do not submit complete encounter data.

In carrying out clause (iv), a Medicare Advantage plan shall be treated as not submitting complete encounter data if the Secretary deter-

mines the plan has submitted less than 90 percent of encounter data, including with respect to the data sources identified in clause (ii).''.

(b) PENALTY FOR NOT SUBMITTING INFORMATION.—Section 1853(a)(1) of the Social Security Act (42 U.S.C. 1395w–23(a)(1)) is amended—

(1) in subparagraph (B)—

(A) in clause (i), by striking ''subparagraphs (F) and (G)'' and inserting ''subparagraphs (F), (G), and (J)'';

(B) in clause (ii), by striking ''subparagraphs (F) and (G)'' and inserting ''subparagraphs (F), (G), and (J)''; and

(C) in clause (iii), by inserting ''and (if applicable) under subparagraph (J)'' after ''subparagraph (C)''; and

(2) by adding at the end the following new subparagraph:

''(J) ADJUSTMENT FOR NOT SUBMITTING SUPPLEMENTAL BENEFIT INFORMATION.—In the case of a Medicare Advantage plan offered by a Medicare Advantage organization that, with respect to a plan year (beginning on or after January 1 of the second year beginning on or after the date of the enactment of this

subparagraph), has not submitted complete and accurate information, as required under section 1852(c)(3), for each month during such plan year (until such month, if any, during such plan year during which the organization submits such complete and accurate information (as determined in accordance with the metrics and methods specified pursuant to section 1852(c)(3)(B))), the monthly payment amount specified in clauses (i), (ii), and (iii) of subparagraph (B), as applicable, shall be reduced by 5 percent of the amount that would otherwise apply.''.

SEC. 3. MEDICARE ADVANTAGE ENCOUNTER DATA ACCOUNTABILITY.

(a) IN GENERAL.—Section 1852(c) of the Social Security Act (42 U.S.C. 1395w–122(c)), as amended by section 2, is further amended by adding at the end the following new paragraph:

''(4) ENCOUNTER DATA ACCOUNTABILITY.—

''(A) SUBMISSIONS TO SECRETARY.—For each plan year beginning on or after January 1 of the second year beginning on or after the date of the enactment of this paragraph, a Medicare Advantage organization offering a

Medicare Advantage plan shall, in accordance with the regulations promulgated pursuant to subparagraph (B), submit to the Secretary, not later than 6 months after the end of the plan year, complete and accurate (as specified by the Secretary pursuant to such regulations) payment data, disaggregated by plan and beneficiary expenditure, and encounter data for all encounters covered through benefits under the original fee-for-service program defined under subsection (a)(1)(B) occurring during the plan year with respect to Medicare Advantage eligible individuals enrolled under such plan during such plan year.

''(B) REGULATIONS.—Not later than July 1 of the first year beginning on or after the date of the enactment of this paragraph, for purposes of subparagraph (A), the Secretary shall, through rulemaking—

''(i) specify metrics and methods for determining whether information submitted under subparagraph (A) is complete and accurate, which shall include, as applicable, at least comparisons between—

''(I) encounter records submitted under this section;

''(II) patient assessment forms for home health (using information submitted through the Outcome and Assessment Information Set instrument or a successor instrument), skilled nursing (using information submitted through the Minimum Data Set tool (or a successor tool)), and inpatient rehabilitation services (using information submitted through the Inpatient Rehabilitation Facility Patient Assessment Instrument (or a successor instrument));

''(III) monthly dialysis indicators used for risk adjustment;

''(IV) Medicare Provider and Analysis Review data;

''(V) service utilization data submitted under section 1854(a)(6)(A); and

''(VI) any other data source or method as specified by the Secretary; and

"(ii) determine categories or levels of incompleteness for Medicare Advantage plans that do not submit complete encounter data.

In carrying out clause (ii), a Medicare Advantage plan shall be treated as not submitting complete encounter data if the Secretary determines the plan has submitted less than 90 percent of encounter data, including with respect to the data sources identified in clause (i).

"(C) PUBLIC REPORTING.—Beginning not later than July 1 of the second year beginning on or after the date of the enactment of this paragraph, the Secretary shall publicly report the data submitted pursuant to subparagraph (A).".

(b) PENALTY FOR NOT SUBMITTING INFORMATION.—Section 1853(a)(1) of the Social Security Act (42 U.S.C. 1395w–23(a)(1)), as amended by section 2, is further amended—

(1) in subparagraph (B)—

(A) in clause (i), by striking "(G), and (J)" and inserting "(G), (J), and (K)";

(B) in clause (ii), by striking "(G), and (J)" and inserting "(G), (J), and (K)"; and

(C) in clause (iii), by striking ''subparagraph (J)'' and inserting ''subparagraphs (J) and (K)''; and

(2) by adding at the end the following new subparagraph:

''(J) ADJUSTMENT FOR NOT SUBMITTING ENCOUNTER DATA.—

''(i) IN GENERAL.—In the case of a Medicare Advantage plan offered by a Medicare Advantage organization that, with respect to a plan year (beginning on or after January 1 of the second year beginning on or after the date of the enactment of this subparagraph), has not submitted any encounter information under section 1852(c)(4), for each month during such plan year (until such month, if any, during such plan year during which the organization submits such information), the monthly payment amount specified in clauses (i) and (ii) of subparagraph (B) shall be reduced by 10 percent of the amount that would otherwise apply.

''(ii) REDUCTION FOR INCOMPLETE DATA SUBMITTED.—In the case of a Medi-

care Advantage plan offered by a Medicare Advantage organization that, with respect to a plan year (beginning on or after January 1 of the second year beginning on or after the date of the enactment of this subparagraph), has submitted encounter information, as required under section 1852(c)(4), but such information is not complete or is not accurate, as required under such section, for each month during such plan year (until such month, if any, during such plan year during which the organization submits such complete and accurate information), the monthly payment amount specified in clauses (i), (ii), and (iii) of subparagraph (B), as applicable, shall be reduced by a percent specified by the Secretary (not to exceed 5 percent) of the amount that would otherwise apply. Such percent specified by the Secretary shall be based on the percentage of information missing in the submission and determined pursuant to rulemaking.

''(iii) PROCESS.—In applying the reductions under this subparagraph, the Secretary—

''(I) shall provide public justification for any percent reduction applied pursuant to clause (ii), including data used to arrive at the determination of the percent so applied;

''(II) may authorize an internal entity or contract with an external entity to assist with carrying out subclause (I) and determining any percent reduction to be applied under clause (ii); and

''(III) shall establish a mechanism for Medicare Advantage organizations to appeal determinations under this subparagraph, with respect to such organization.

''(iv) COLLECTION OF DATA THROUGH MEDICARE ADMINISTRATIVE CONTRACTORS.—The Secretary shall implement a mechanism requiring direct submission of provider claims to Medicare Administrative Contractors—

"(I) for Medicare Advantage plans that submit incomplete or inaccurate encounter information under this subparagraph for 2 consecutive years; and

"(II) in the case that the Secretary finds that more than 5 percent of Medicare Advantage plans submitted incomplete or inaccurate information for three consecutive years, beginning with the subsequent year, for all Medicare Advantage plans.".

(c) MEDPAC REPORT.—Not later than 3 years after the date on which information is first required to be submitted pursuant to paragraph (3) of section 1852(c) of the Social Security Act (42 U.S.C. 1395w–122(c)), as added by section 2 (a), and paragraph (4) of such section 1852(c), as added by subsection (a), the Medicare Payment Advisory Commission shall submit to Congress a report on such information that includes a descriptive analysis of any information reported pursuant to such paragraph.

SEC. 4. DATA ON COVERAGE DENIALS AND PRIOR AUTHORIZATION REQUIREMENTS.

(a) IN GENERAL.—Section 1852(c) of the Social Security Act (42 U.S.C. 1395w–22(c)), as amended by sections 2 and 3, is further amended by adding at the end the following new paragraph:

''(5) DATA ON COVERAGE DENIALS AND PRIOR AUTHORIZATION REQUIREMENTS.—

''(A) IN GENERAL.—For each plan year beginning on or after January 1 of the second year beginning on or after the date of the enactment of this paragraph, with respect to applicable benefits described in subsection (a)(1), subsection (a)(3), and section 1860D–2, a Medicare Advantage organization offering a Medicare Advantage plan shall, in addition to any applicable information described in a previous paragraph, submit, not later than 6 months after the end of the plan year, to the Secretary the following data, at the plan level and presented by coverage, service, or benefit type (as applicable), with respect Medicare Advantage eligible individuals enrolled under such plan during such plan year:

''(i) The number of claims denied, presented by reason for the denial.

''(ii) The number and type of claims requiring prior authorization or precertification.

''(iii) The average period between the initial submission of a claim for approval and the delivery of care.

''(iv) The number and percentage of coverage denials appealed by service type.

''(v) The number and percentage of prior authorizations or precertifications appealed.

''(vi) The number of favorable decisions that overturned the initial coverage determination upon appeal.

''(vii) The average period between the formal initiation of appeal proceedings and final determination.

''(viii) Total number and percentage of conversions of inpatient stays to outpatient and observation status.

''(ix) Information on each prior authorization or precertification episode, including the Medicare Advantage contract number, beneficiary Medicare ID, national provider identifier, provider tax identifica-

tion number, Healthcare Common Procedure Coding System codes and modifiers, initial date of receipt, date of initial decision, action taken by the plan, denial code (if applicable), initial appeal date (if applicable), and final appeal decision date (if applicable).

''(x) Such other information as specified by the Secretary.

''(B) DENIAL CODES AND ADDITIONAL DATA ELEMENTS.—Not later than January 1 of the second year beginning on or after the date of the enactment of this paragraph, for purposes of subparagraph (A)(ix), the Secretary shall establish—

''(i) denial code categories and definitions and provide to Medicare Advantage plans guidance on such categories and definitions; and

''(ii) additional standardized data elements, as appropriate.''.

(b) FURTHER DISCLOSURES.—Section 1851(d)(4) of the Social Security Act (42 U.S.C. 1395w–21(d)(4)) is amended by adding at the end the following new subparagraph:

''(F) COVERAGE DENIALS AND PRIOR AUTHORIZATIONS.—Information submitted by the plan under section 1852(c)(5), with respect to such year.''.

SEC. 5. QUALITY MEASURES.

(a) IN GENERAL.—Section 1852(e)(3)(A) of the Social Security Act (42 U.S.C. 1395w–22(e)(3)(A)) is amended—

(1) in clause (i), by striking ''and subject to subparagraph (B)'' and inserting ''and subject to clause (v) and subparagraph (B)''; and

(2) by adding at the end the following new clause:

''(v) PLAN LEVEL DATA.—For each plan year beginning on or after January 1 of the second year beginning on or after the date of the enactment of this clause, subject to section 1853(o)(6), data submitted under this subparagraph shall be at the plan level in addition to the contract level.''.

(b) APPLICATION TO STAR RATING SYSTEM.—Section 1853(o)(4)(A) of the Social Security Act (42 U.S.C. 1395w–23(o)(4)(A)) is amended by adding at the end the following new sentence: ''For each plan year beginning on

or after January 1 of the second year beginning on or after the date of the enactment of the Medicare Advantage Consumer Protection and Transparency Act, subject to paragraph (6), the Secretary shall require reporting of data under section 1852(e) for, and apply under this subsection, quality measures at the plan level in addition to at the contract level.''.

SEC. 6. PROVIDER NETWORK INFORMATION.

(a) IN GENERAL.—Section 1851(d)(5) of the Social Security Act (42 U.S.C. 1395w–21(d)(5)) is amended by adding at the end the following: ''For each plan year beginning on or after January 1 of the second year beginning on or after the date of the enactment of the Medicare Advantage Consumer Protection and Transparency Act, the Secretary shall ensure such Internet site includes complete and accurate information (to be updated at least quarterly) on providers of services and suppliers participating in the networks of Medicare Advantage plans and a portal that enables plans to update information on such site on the providers of services and suppliers participating in the networks of such plans, including any changes in such networks and whether such providers and suppliers are accepting new patients.''.

(b) DISCLOSURE BY PLANS.—Section 1851(d)(4) of the Social Security Act (42 U.S.C. 1395w–21(d)(4)), as

amended by section 4(b), is further amended by adding at the end the following new subparagraph:

"(G) PROVIDER NETWORK INFORMATION.—For each plan year beginning on or after January 1 of the second year beginning on or after the date of the enactment of this subparagraph, accurate information that is submitted in a machine readable format and that identifies all providers of services and suppliers participating in the network of the plan, including all changes to such network that occur during the plan year, and whether such providers and suppliers are accepting new patients.".

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