

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. SCHA-KOWSKY) 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 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.

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 Consumer Protection and Transparency Act”.

1 **SEC. 2. MEDICARE ADVANTAGE SUPPLEMENTAL BENEFITS**

2 **DATA.**

3 (a) IN GENERAL.—Section 1852(c) of the Social Se-
4 curity Act (42 U.S.C. 1395w–122(c)) is amended by add-
5 ing at the end the following new paragraph:

6 “(3) SUPPLEMENTAL BENEFITS DATA.—

7 “(A) SUBMISSIONS TO SECRETARY.—For
8 each plan year beginning on or after January 1
9 of the second year beginning on or after the
10 date of enactment of this paragraph, a Medi-
11 care Advantage organization offering supple-
12 mental benefits described in subsection (a)(3)
13 under a Medicare Advantage plan shall submit
14 (or, in the case of such an organization that
15 contracts with an entity (such as a third-party
16 contractor) to provide supplemental benefits in
17 connection with such plan, require under such
18 contract for the entity to submit), not later
19 than 6 months after the end of the plan year,
20 to the Secretary, in a clear, accurate, and
21 standardized form in accordance with subpara-
22 graph (B) complete and accurate (as specified
23 by the Secretary pursuant to subparagraph
24 (B)) information, at the plan level and pre-
25 sented by coverage, service, or benefit type (as
26 applicable), on such benefits offered under such

1 plan during the plan year, including regarding
2 the following:

3 “(i) The type and nature of each sup-
4 plemental benefit so offered during such
5 plan year.

6 “(ii) The number of Medicare Advan-
7 tage eligible individuals enrolled under plan
8 during such plan year with coverage that
9 enables access to such benefits.

10 “(iii) The number of Medicare Advan-
11 tage eligible individuals enrolled under the
12 plan during such plan year who received a
13 service with respect to each such supple-
14 mental benefit type so offered.

15 “(iv) The total plan and beneficiary
16 expenditures made for such supplemental
17 benefits, with respect to such plan year,
18 excluding profits, administrative costs, and
19 other overhead expenses.

20 “(v) The total beneficiary cost sharing
21 for supplemental benefits, with respect to
22 such plan year, reported in total bene-
23 ficiary expenditure and as a percentage of
24 total expenditure.

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

4 “(vii) All payment data, disaggregated
5 by contributing payer, related to claims for
6 supplemental benefits so offered, with re-
7 spect to such plan year.

8 “(viii) Such other information as spec-
9 ified by the Secretary.

10 “(B) REGULATIONS.—Not later than July
11 1 of the first year beginning on or after the
12 date of the enactment of this paragraph, for
13 purposes of subparagraph (A), the Secretary
14 shall, through rulemaking—

15 “(i) establish procedures to stand-
16 ardize the language used in describing sup-
17 plemental benefits (including categories of
18 such benefits) and metrics;

19 “(ii) establish procedures to stand-
20 ardize the collection and evaluation of data
21 under such subparagraph;

22 “(iii) analyze and publicly report, in
23 common language, the standardized lan-
24 guage to be used by plans in describing
25 supplemental benefits (including categories

1 of such benefits) in any materials intended
2 for potential consumers, including mar-
3 keting materials, plan comparison tools
4 under section 1851(d), and any other ma-
5 terials the Secretary deems appropriate;

6 “(iv) specify metrics and methods for
7 determining whether information sub-
8 mitted under subparagraph (A) is complete
9 and accurate, including by requiring such
10 information include at least comparisons of
11 supplemental benefit information between
12 encounter records submitted under
13 1852(c)(3)(A)(vi), aggregate data sub-
14 mitted under 1852(c)(3)(A)(i–v), spending
15 data for types and categories of supple-
16 mental benefits submitted under
17 1857(e)(4), and supplemental benefit infor-
18 mation submitted under 1854(a)(6)(A);
19 and

20 “(v) determine categories or levels of
21 incompleteness for plans that do not sub-
22 mit complete encounter data.

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

1 mines the plan has submitted less than 90 per-
2 cent of encounter data, including with respect
3 to the data sources identified in clause (ii).”.

4 (b) PENALTY FOR NOT SUBMITTING INFORMA-
5 TION.—Section 1853(a)(1) of the Social Security Act (42
6 U.S.C. 1395w-23(a)(1)) is amended—

7 (1) in subparagraph (B)—

8 (A) in clause (i), by striking “subpara-
9 graphs (F) and (G)” and inserting “subpara-
10 graphs (F), (G), and (J)”;

11 (B) in clause (ii), by striking “subpara-
12 graphs (F) and (G)” and inserting “subpara-
13 graphs (F), (G), and (J)”;

14 (C) in clause (iii), by inserting “and (if ap-
15 plicable) under subparagraph (J)” after “sub-
16 paragraph (C)”;

17 (2) by adding at the end the following new sub-
18 paragraph:

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

1 subparagraph), has not submitted complete and
2 accurate information, as required under section
3 1852(c)(3), for each month during such plan
4 year (until such month, if any, during such plan
5 year during which the organization submits
6 such complete and accurate information (as de-
7 termined in accordance with the metrics and
8 methods specified pursuant to section
9 1852(c)(3)(B))), the monthly payment amount
10 specified in clauses (i), (ii), and (iii) of subpara-
11 graph (B), as applicable, shall be reduced by 5
12 percent of the amount that would otherwise
13 apply.”.

14 **SEC. 3. MEDICARE ADVANTAGE ENCOUNTER DATA AC-**
15 **COUNTABILITY.**

16 (a) IN GENERAL.—Section 1852(c) of the Social Se-
17 curity Act (42 U.S.C. 1395w–122(c)), as amended by sec-
18 tion 2, is further amended by adding at the end the fol-
19 lowing new paragraph:

20 “(4) ENCOUNTER DATA ACCOUNTABILITY.—

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

1 Medicare Advantage plan shall, in accordance
2 with the regulations promulgated pursuant to
3 subparagraph (B), submit to the Secretary, not
4 later than 6 months after the end of the plan
5 year, complete and accurate (as specified by the
6 Secretary pursuant to such regulations) pay-
7 ment data, disaggregated by plan and bene-
8 ficiary expenditure, and encounter data for all
9 encounters covered through benefits under the
10 original fee-for-service program defined under
11 subsection (a)(1)(B) occurring during the plan
12 year with respect to Medicare Advantage eligi-
13 ble individuals enrolled under such plan during
14 such plan year.

15 “(B) REGULATIONS.—Not later than July
16 1 of the first year beginning on or after the
17 date of the enactment of this paragraph, for
18 purposes of subparagraph (A), the Secretary
19 shall, through rulemaking—

20 “(i) specify metrics and methods for
21 determining whether information sub-
22 mitted under subparagraph (A) is complete
23 and accurate, which shall include, as appli-
24 cable, at least comparisons between—

1 “(I) encounter records submitted
2 under this section;

3 “(II) patient assessment forms
4 for home health (using information
5 submitted through the Outcome and
6 Assessment Information Set instru-
7 ment or a successor instrument),
8 skilled nursing (using information
9 submitted through the Minimum Data
10 Set tool (or a successor tool)), and in-
11 patient rehabilitation services (using
12 information submitted through the In-
13 patient Rehabilitation Facility Patient
14 Assessment Instrument (or a suc-
15 cessor instrument));

16 “(III) monthly dialysis indicators
17 used for risk adjustment;

18 “(IV) Medicare Provider and
19 Analysis Review data;

20 “(V) service utilization data sub-
21 mitted under section 1854(a)(6)(A);
22 and

23 “(VI) any other data source or
24 method as specified by the Secretary;
25 and

1 “(ii) determine categories or levels of
2 incompleteness for Medicare Advantage
3 plans that do not submit complete encoun-
4 ter data.

5 In carrying out clause (ii), a Medicare Advan-
6 tage plan shall be treated as not submitting
7 complete encounter data if the Secretary deter-
8 mines the plan has submitted less than 90 per-
9 cent of encounter data, including with respect
10 to the data sources identified in clause (i).

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

17 (b) PENALTY FOR NOT SUBMITTING INFORMA-
18 TION.—Section 1853(a)(1) of the Social Security Act (42
19 U.S.C. 1395w-23(a)(1)), as amended by section 2, is fur-
20 ther amended—

21 (1) in subparagraph (B)—

22 (A) in clause (i), by striking “(G), and
23 (J)” and inserting “(G), (J), and (K)”;

24 (B) in clause (ii), by striking “(G), and
25 (J)” and inserting “(G), (J), and (K)”;

1 (C) in clause (iii), by striking “subpara-
2 graph (J)” and inserting “subparagraphs (J)
3 and (K)”; and

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

6 “(J) ADJUSTMENT FOR NOT SUBMITTING
7 ENCOUNTER DATA.—

8 “(i) IN GENERAL.—In the case of a
9 Medicare Advantage plan offered by a
10 Medicare Advantage organization that,
11 with respect to a plan year (beginning on
12 or after January 1 of the second year be-
13 ginning on or after the date of the enact-
14 ment of this subparagraph), has not sub-
15 mitted any encounter information under
16 section 1852(c)(4), for each month during
17 such plan year (until such month, if any,
18 during such plan year during which the or-
19 ganization submits such information), the
20 monthly payment amount specified in
21 clauses (i) and (ii) of subparagraph (B)
22 shall be reduced by 10 percent of the
23 amount that would otherwise apply.

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

1 care Advantage plan offered by a Medicare
2 Advantage organization that, with respect
3 to a plan year (beginning on or after Janu-
4 ary 1 of the second year beginning on or
5 after the date of the enactment of this sub-
6 paragraph), has submitted encounter infor-
7 mation, as required under section
8 1852(c)(4), but such information is not
9 complete or is not accurate, as required
10 under such section, for each month during
11 such plan year (until such month, if any,
12 during such plan year during which the or-
13 ganization submits such complete and ac-
14 curate information), the monthly payment
15 amount specified in clauses (i), (ii), and
16 (iii) of subparagraph (B), as applicable,
17 shall be reduced by a percent specified by
18 the Secretary (not to exceed 5 percent) of
19 the amount that would otherwise apply.
20 Such percent specified by the Secretary
21 shall be based on the percentage of infor-
22 mation missing in the submission and de-
23 termined pursuant to rulemaking.

1 “(iii) PROCESS.—In applying the re-
2 ductions under this subparagraph, the Sec-
3 retary—

4 “(I) shall provide public justifica-
5 tion for any percent reduction applied
6 pursuant to clause (ii), including data
7 used to arrive at the determination of
8 the percent so applied;

9 “(II) may authorize an internal
10 entity or contract with an external en-
11 tity to assist with carrying out sub-
12 clause (I) and determining any per-
13 cent reduction to be applied under
14 clause (ii); and

15 “(III) shall establish a mecha-
16 nism for Medicare Advantage organi-
17 zations to appeal determinations
18 under this subparagraph, with respect
19 to such organization.

20 “(iv) COLLECTION OF DATA THROUGH
21 MEDICARE ADMINISTRATIVE CONTRAC-
22 TORS.—The Secretary shall implement a
23 mechanism requiring direct submission of
24 provider claims to Medicare Administrative
25 Contractors—

1 “(I) for Medicare Advantage
2 plans that submit incomplete or inac-
3 curate encounter information under
4 this subparagraph for 2 consecutive
5 years; and

6 “(II) in the case that the Sec-
7 retary finds that more than 5 percent
8 of Medicare Advantage plans sub-
9 mitted incomplete or inaccurate infor-
10 mation for three consecutive years, be-
11 ginning with the subsequent year, for
12 all Medicare Advantage plans.”.

13 (c) MEDPAC REPORT.—Not later than 3 years after
14 the date on which information is first required to be sub-
15 mitted pursuant to paragraph (3) of section 1852(c) of
16 the Social Security Act (42 U.S.C. 1395w–122(c)), as
17 added by section 2 (a), and paragraph (4) of such section
18 1852(c), as added by subsection (a), the Medicare Pay-
19 ment Advisory Commission shall submit to Congress a re-
20 port on such information that includes a descriptive anal-
21 ysis of any information reported pursuant to such para-
22 graph.

1 **SEC. 4. DATA ON COVERAGE DENIALS AND PRIOR AUTHOR-**
2 **IZATION REQUIREMENTS.**

3 (a) IN GENERAL.—Section 1852(c) of the Social Se-
4 curity Act (42 U.S.C. 1395w–22(c)), as amended by sec-
5 tions 2 and 3, is further amended by adding at the end
6 the following new paragraph:

7 “(5) DATA ON COVERAGE DENIALS AND PRIOR
8 AUTHORIZATION REQUIREMENTS.—

9 “(A) IN GENERAL.—For each plan year
10 beginning on or after January 1 of the second
11 year beginning on or after the date of the en-
12 actment of this paragraph, with respect to ap-
13 plicable benefits described in subsection (a)(1),
14 subsection (a)(3), and section 1860D–2, a
15 Medicare Advantage organization offering a
16 Medicare Advantage plan shall, in addition to
17 any applicable information described in a pre-
18 vious paragraph, submit, not later than 6
19 months after the end of the plan year, to the
20 Secretary the following data, at the plan level
21 and presented by coverage, service, or benefit
22 type (as applicable), with respect Medicare Ad-
23 vantage eligible individuals enrolled under such
24 plan during such plan year:

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

1 “(ii) The number and type of claims
2 requiring prior authorization or
3 precertification.

4 “(iii) The average period between the
5 initial submission of a claim for approval
6 and the delivery of care.

7 “(iv) The number and percentage of
8 coverage denials appealed by service type.

9 “(v) The number and percentage of
10 prior authorizations or precertifications ap-
11 pealed.

12 “(vi) The number of favorable deci-
13 sions that overturned the initial coverage
14 determination upon appeal.

15 “(vii) The average period between the
16 formal initiation of appeal proceedings and
17 final determination.

18 “(viii) Total number and percentage
19 of conversions of inpatient stays to out-
20 patient and observation status.

21 “(ix) Information on each prior au-
22 thorization or precertification episode, in-
23 cluding the Medicare Advantage contract
24 number, beneficiary Medicare ID, national
25 provider identifier, provider tax identifica-

1 tion number, Healthcare Common Proce-
2 dure Coding System codes and modifiers,
3 initial date of receipt, date of initial deci-
4 sion, action taken by the plan, denial code
5 (if applicable), initial appeal date (if appli-
6 cable), and final appeal decision date (if
7 applicable).

8 “(x) Such other information as speci-
9 fied by the Secretary.

10 “(B) DENIAL CODES AND ADDITIONAL
11 DATA ELEMENTS.—Not later than January 1 of
12 the second year beginning on or after the date
13 of the enactment of this paragraph, for pur-
14 poses of subparagraph (A)(ix), the Secretary
15 shall establish—

16 “(i) denial code categories and defini-
17 tions and provide to Medicare Advantage
18 plans guidance on such categories and defi-
19 nitions; and

20 “(ii) additional standardized data ele-
21 ments, as appropriate.”.

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

1 “(F) COVERAGE DENIALS AND PRIOR AU-
2 THORIZATIONS.—Information submitted by the
3 plan under section 1852(e)(5), with respect to
4 such year.”.

5 **SEC. 5. QUALITY MEASURES.**

6 (a) IN GENERAL.—Section 1852(e)(3)(A) of the So-
7 cial Security Act (42 U.S.C. 1395w-22(e)(3)(A)) is
8 amended—

9 (1) in clause (i), by striking “and subject to
10 subparagraph (B)” and inserting “and subject to
11 clause (v) and subparagraph (B)”;

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

14 “(v) PLAN LEVEL DATA.—For each
15 plan year beginning on or after January 1
16 of the second year beginning on or after
17 the date of the enactment of this clause,
18 subject to section 1853(o)(6), data sub-
19 mitted under this subparagraph shall be at
20 the plan level in addition to the contract
21 level.”.

22 (b) APPLICATION TO STAR RATING SYSTEM.—Sec-
23 tion 1853(o)(4)(A) of the Social Security Act (42 U.S.C.
24 1395w-23(o)(4)(A)) is amended by adding at the end the
25 following new sentence: “For each plan year beginning on

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

8 **SEC. 6. PROVIDER NETWORK INFORMATION.**

9 (a) IN GENERAL.—Section 1851(d)(5) of the Social
10 Security Act (42 U.S.C. 1395w–21(d)(5)) is amended by
11 adding at the end the following: “For each plan year be-
12 ginning on or after January 1 of the second year begin-
13 ning on or after the date of the enactment of the Medicare
14 Advantage Consumer Protection and Transparency Act,
15 the Secretary shall ensure such Internet site includes com-
16 plete and accurate information (to be updated at least
17 quarterly) on providers of services and suppliers partici-
18 pating in the networks of Medicare Advantage plans and
19 a portal that enables plans to update information on such
20 site on the providers of services and suppliers participating
21 in the networks of such plans, including any changes in
22 such networks and whether such providers and suppliers
23 are accepting new patients.”.

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

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

3 “(G) PROVIDER NETWORK INFORMA-
4 TION.—For each plan year beginning on or
5 after January 1 of the second year beginning
6 on or after the date of the enactment of this
7 subparagraph, accurate information that is sub-
8 mitted in a machine readable format and that
9 identifies all providers of services and suppliers
10 participating in the network of the plan, includ-
11 ing all changes to such network that occur dur-
12 ing the plan year, and whether such providers
13 and suppliers are accepting new patients.”.

○