

117TH CONGRESS  
2D SESSION

# H. R. 9019

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.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 2022

Ms. PORTER (for herself, Ms. DEGETTE, Mr. DOGGETT, Ms. SCHAKOWSKY, Mr. POCAN, Mr. GRIJALVA, Mr. TAKANO, Ms. CASTOR of Florida, Ms. DELAURO, and Ms. JAYAPAL) 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.

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.”.

○