

114TH CONGRESS  
1ST SESSION

# S. 2104

To amend title XVIII of the Social Security Act to provide relief to Medicare Advantage plans with a significant number of dually eligible or low-income subsidy beneficiaries and to prevent the termination of two star plans.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 2015

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

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## A BILL

To amend title XVIII of the Social Security Act to provide relief to Medicare Advantage plans with a significant number of dually eligible or low-income subsidy beneficiaries and to prevent the termination of two star plans.

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 “Preserving Medicare  
5 Advantage for all Medicare Beneficiaries Act of 2015”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1           (1) In the IMPACT Act of 2014 (Public Law  
2           113–185), Congress recognized the potential effects  
3           of socioeconomic status and dual eligible populations  
4           on the Medicare Advantage STARS rating system  
5           by requesting the Assistant Secretary of Planning  
6           and Evaluation in the Department of Health and  
7           Human Services undertake studies on this popu-  
8           lation and the Medicare program.

9           (2) Studies published in the past year have  
10          shown the need for an interim policy until the com-  
11          prehensive results of the studies undertaken as part  
12          of the IMPACT Act of 2014 are published. An ad-  
13          justment for 2016 is necessary while Congress con-  
14          tinues to work to achieve an appropriate policy for  
15          a temporary bridge until the results from the studies  
16          undertaken by the Assistant Secretary of Planning  
17          and Evaluation in the Department of Health and  
18          Human Services under such Act are finalized.

19 **SEC. 3. DELAY IN AUTHORITY TO TERMINATE CONTRACTS**  
20                   **FOR CERTAIN MEDICARE ADVANTAGE PLANS**  
21                   **FAILING TO ACHIEVE MINIMUM QUALITY**  
22                   **RATINGS.**

23          Section 1857(h) of the Social Security Act (42 U.S.C.  
24          1395w–27(h)) is amended by adding at the end the fol-  
25          lowing new paragraph:

1           “(3) DELAY IN CONTRACT TERMINATION AU-  
 2           THORITY FOR CERTAIN PLANS FAILING TO ACHIEVE  
 3           MINIMUM QUALITY RATING.—

4           “(A) IN GENERAL.—Subject to subpara-  
 5           graph (B), the Secretary may not terminate a  
 6           contract under this section with respect to the  
 7           offering of an MA plan by a Medicare Advan-  
 8           tage organization solely because the MA plan  
 9           has failed to achieve a minimum quality rating  
 10          under the 5-star rating system established  
 11          under section 1853(o) during the period begin-  
 12          ning on the date of the enactment of this para-  
 13          graph and through the end of plan year 2018.

14          “(B) APPLICATION ONLY TO PLANS RE-  
 15          CEIVING A QUALITY RATING OF AT LEAST 2  
 16          STARS.—Subparagraph (A) shall only apply  
 17          with respect to a contract with respect to the  
 18          offering of an MA plan that has a quality rat-  
 19          ing under section 1853(o)(4) of at least 2 stars  
 20          for the most recent plan year.”.

21 **SEC. 4. DEMONSTRATION PROJECT TO DIRECT QUALITY**  
 22                   **IMPROVEMENT PROGRAMS TO ADDRESS SO-**  
 23                   **CIOECONOMIC STATUS DISPARITIES IN MEDI-**  
 24                   **CARE ADVANTAGE PLANS.**

25          (a) ESTABLISHMENT.—

1           (1) IN GENERAL.—The Secretary of Health and  
2           Human Services (in this section referred to as the  
3           “Secretary”) shall establish a demonstration project  
4           under this section to provide funds to MA organiza-  
5           tions offering one or more qualified MA plans for  
6           use in developing or expanding programs or services  
7           with respect to such plans that seek to improve  
8           health care delivery and outcomes of care for enroll-  
9           ees with low socioeconomic status.

10           (2) DURATION.—The demonstration project  
11           under this section shall be conducted for a period of  
12           1 year beginning in plan year 2016.

13           (b) DEFINITIONS.—In this section:

14           (1) MA ORGANIZATION; MA PLAN.—The terms  
15           “MA organization” and “MA plan” have the mean-  
16           ing given such terms in subsections (a)(1) and  
17           (b)(1), respectively, of section 1859 of the Social Se-  
18           curity Act (42 U.S.C. 1395w–28).

19           (2) QUALIFIED MA PLAN.—

20           (A) The term “qualified MA plan” means  
21           an MA plan described in subparagraph (B) or  
22           (C).

23           (B) An MA plan is described in this sub-  
24           paragraph if the MA plan meets each of the fol-  
25           lowing criteria:

1 (i) The plan has a quality rating  
2 under section 1853(o)(4) of the Social Se-  
3 curity Act (42 U.S.C. 1395w–23(o)(4)) of  
4 at least 3.25 stars but not more than 4  
5 stars for the most recent plan year.

6 (ii) Not less than 45 percent of enroll-  
7 ees in the plan are one or both of the fol-  
8 lowing:

9 (I) Eligible for a low income sub-  
10 sidy under section 1860D–14 of such  
11 Act (42 U.S.C. 1395w–114).

12 (II) Dually eligible for benefits  
13 under the Medicare program under  
14 title XVIII of such Act (42 U.S.C.  
15 1395 et seq.) and the Medicaid pro-  
16 gram under title XIX of such Act (42  
17 U.S.C. 1396 et seq.).

18 (C) An MA plan is described in this sub-  
19 paragraph if the MA plan meets each of the fol-  
20 lowing criteria:

21 (i) The plan has a quality rating  
22 under section 1853(o)(4) of the Social Se-  
23 curity Act (42 U.S.C. 1395w–23(o)(4)) of  
24 at least 3.0 stars but not more than 4  
25 stars for the most recent plan year.

1 (ii) Not less than 60 percent of enroll-  
2 ees in the plan are one or both of the fol-  
3 lowing:

4 (I) Eligible for a low income sub-  
5 sidy under section 1860D–14 of such  
6 Act (42 U.S.C. 1395w–114).

7 (II) Dually eligible for benefits  
8 under the Medicare program under  
9 title XVIII of such Act (42 U.S.C.  
10 1395 et seq.) and the Medicaid pro-  
11 gram under title XIX of such Act (42  
12 U.S.C. 1396 et seq.).

13 (c) USE OF FUNDS.—

14 (1) IN GENERAL.—Subject to paragraph (2),  
15 funds received under the demonstration project by  
16 an MA organization with respect to a qualified MA  
17 plan shall be used under the Quality Improvement  
18 Program of the organization under section 1852(e)  
19 of the Social Security Act (42 U.S.C. 1395w–22(e))  
20 to target improvement by the qualified MA plan with  
21 respect to two or more triple-weighted measures  
22 under the 5-star rating system under section  
23 1853(o)(4) of such Act (42 U.S.C. 1395w–23(o)(4)).

24 (2) FOCUS ON OUTCOME MEASURE.—

1           (A) IN GENERAL.—Except as provided in  
2           subparagraph (B), at least one of the measures  
3           targeted under paragraph (1) shall be an out-  
4           come measure.

5           (B) EXCEPTION.—An MA organization  
6           may apply to the Secretary for an exception to  
7           subparagraph (A) in order to focus on only  
8           process measures under this subsection.

9           (d) INCLUSION IN ANNUAL QUALITY IMPROVEMENT  
10          PROGRAM REPORT.—An MA organization receiving funds  
11          under the demonstration project shall include, as part of  
12          the annual report to the Secretary on the Quality Improve-  
13          ment Program of the organization under such section  
14          1852(e) for each year of the demonstration project, with  
15          respect to each qualified MA plan offered by the organiza-  
16          tion, the results of the targeting of plan improvement on  
17          measures under subsection (c) during the preceding year.

18          (e) FUNDING.—

19               (1) IN GENERAL.—For purposes of carrying out  
20               the demonstration project under this section, subject  
21               to paragraph (2), the Secretary shall provide for the  
22               transfer from the Federal Hospital Insurance Trust  
23               Fund under section 1817 of the Social Security Act  
24               (42 U.S.C. 1395i) and the Federal Supplementary  
25               Medical Insurance Trust Fund under section 1841

1 of such Act (42 U.S.C. 1395t), in such proportion  
2 as the Secretary determines appropriate, of an  
3 amount equal to the amount the Secretary deter-  
4 mines is equal to the estimated total savings to the  
5 Medicare program as a result of the implementation  
6 of the amendment made by section 2 to the Centers  
7 for Medicare & Medicaid Services Program Manage-  
8 ment Account.

9 (2) ADMINISTRATION.—The Secretary may re-  
10 tain up to 10 percent of the funds transferred under  
11 paragraph (1) to administer the demonstration  
12 project under this section and the remainder of such  
13 funds shall be distributed in accordance with this  
14 section to MA organizations offering qualified MA  
15 plans based on the enrollment in such plans of indi-  
16 viduals described in each of subclauses (I) and (II)  
17 of subsections (b)(2)(B)(ii) and (b)(2)(C)(ii).

18 (3) AVAILABILITY.—Amounts transferred under  
19 paragraph (1) shall remain available until expended.

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