

115TH CONGRESS
1ST SESSION

H. R. 3168

To amend title XVIII of the Social Security Act to provide continued access to specialized Medicare Advantage plans for special needs individuals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 6, 2017

Mr. TIBERI (for himself and Mr. LEVIN) 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 provide continued access to specialized Medicare Advantage plans for special needs individuals, 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. SPECIALIZED MEDICARE ADVANTAGE PLANS**

4 **FOR SPECIAL NEEDS INDIVIDUALS.**

5 (a) EXTENSION.—Section 1859(f)(1) of the Social
6 Security Act (42 U.S.C. 1395w–28(f)(1)) is amended—

7 (1) by striking “and for periods before January
8 1, 2019”; and

1 (2) by adding at the end the following new sen-
2 tence: “In the case of a specialized MA plan for spe-
3 cial needs individuals described in clause (ii) or (iii)
4 of subsection (b)(6)(B), the previous sentence shall
5 apply for periods before January 1, 2024.”.

6 (b) INCREASED INTEGRATION OF DUAL SNPs.—

7 (1) IN GENERAL.—Section 1859(f) of the Social
8 Security Act (42 U.S.C. 1395w–28(f)) is amended—

9 (A) in paragraph (3), by adding at the end
10 the following new subparagraph:

11 “(F) The plan meets the requirements ap-
12 plicable under paragraph (8).”; and

13 (B) by adding at the end the following new
14 paragraph:

15 “(8) INCREASED INTEGRATION OF DUAL
16 SNPS.—

17 “(A) DESIGNATED CONTACT.—The Sec-
18 retary, acting through the Federal Coordinated
19 Health Care Office established under section
20 2602 of Public Law 111–148, shall serve as a
21 dedicated point of contact for States to address
22 misalignments that arise with the integration of
23 specialized MA plans for special needs individ-
24 uals described in subsection (b)(6)(B)(ii) under

1 this paragraph and, consistent with such role,
2 shall—

3 “(i) establish a uniform process for
4 disseminating to State Medicaid agencies
5 information under this title impacting con-
6 tracts between such agencies and such
7 plans under this subsection; and

8 “(ii) establish basic resources for
9 States interested in exploring such plans
10 as a platform for integration, such as a
11 model contract or other tools to achieve
12 those goals.

13 “(B) UNIFIED GRIEVANCES AND APPEALS
14 PROCESS.—

15 “(i) IN GENERAL.—Not later than
16 April 1, 2020, the Secretary shall establish
17 procedures, to the extent feasible as deter-
18 mined by the Secretary, unifying griev-
19 ances and appeals procedures under sec-
20 tions 1852(f), 1852(g), 1902(a)(3),
21 1902(a)(5), and 1932(b)(4) for items and
22 services provided by specialized MA plans
23 for special needs individuals described in
24 subsection (b)(6)(B)(ii) under this title
25 and title XIX. The Secretary shall solicit

1 comment in developing such procedures
2 from States, plans, beneficiaries and their
3 representatives, and other relevant stake-
4 holders. With respect to items and services
5 described in the previous sentence, appeals
6 procedures established under this clause
7 shall apply in place of otherwise applicable
8 appeals procedures.

9 “(ii) PROCEDURES.—The procedures
10 established under clause (i) shall be in-
11 cluded in the plan contract under para-
12 graph (3)(D) and shall—

13 “(I) adopt the provisions for the
14 enrollee that are most protective for
15 the enrollee and, to the extent feasible
16 as determined by the Secretary, are
17 compatible with unified timeframes
18 and consolidated access to external re-
19 view under an integrated process;

20 “(II) take into account dif-
21 ferences in State plans under title
22 XIX to the extent necessary;

23 “(III) be easily navigable by an
24 enrollee; and

1 “(IV) include the elements de-
2 scribed in clause (iii), as applicable.

3 “(iii) ELEMENTS DESCRIBED.—Both
4 unified appeals and unified grievance pro-
5 cedures shall include, as applicable, the fol-
6 lowing elements described in this clause:

7 “(I) Single written notification of
8 all applicable grievances and appeal
9 rights under this title and title XIX.
10 For purposes of this subparagraph,
11 the Secretary may waive the require-
12 ments under section 1852(g)(1)(B)
13 when the specialized MA plan covers
14 items or services under this part or
15 under title XIX.

16 “(II) Single pathways for resolu-
17 tion of any grievance or appeal related
18 to a particular item or service pro-
19 vided by specialized MA plans for spe-
20 cial needs individuals described in
21 subsection (b)(6)(B)(ii) under this
22 title and title XIX.

23 “(III) Notices written in plain
24 language and available in a language
25 and format that is accessible to the

1 enrollee, including in non-English lan-
2 guages that are prevalent in the serv-
3 ice area of the specialized MA plan.

4 “(IV) Unified timeframes for
5 grievances and appeals processes,
6 such as an individual’s filing of a
7 grievance or appeal, a plan’s acknowl-
8 edgment and resolution of a grievance
9 or appeal, and notification of decisions
10 with respect to a grievance or appeal.

11 “(V) Requirements for how the
12 plan must process, track, and resolve
13 grievances and appeals, to ensure
14 beneficiaries are notified on a timely
15 basis of decisions that are made
16 throughout the grievance or appeals
17 process and are able to easily deter-
18 mine the status of a grievance or ap-
19 peal.

20 “(iv) CONTINUATION OF BENEFITS
21 PENDING APPEAL.—The unified procedures
22 under clause (i) shall, with respect to all
23 benefits under parts A and B and title
24 XIX subject to appeal under such proce-
25 dures, incorporate provisions under current

1 law and implementing regulations that pro-
2 vide continuation of benefits pending ap-
3 peal under this title and title XIX.

4 “(C) REQUIREMENT FOR UNIFIED GRIEV-
5 ANCES AND APPEALS.—For 2022 and subse-
6 quent years, the contract of a specialized MA
7 plan for special needs individuals described in
8 subsection (b)(6)(B)(ii) with a State Medicaid
9 agency under paragraph (3)(D) shall require
10 the use of unified grievances and appeals proce-
11 dures as described in subparagraph (B).

12 “(D) REQUIREMENTS FOR FULL INTEGRA-
13 TION FOR CERTAIN DUAL SNPS.—

14 “(i) REQUIREMENT.—For 2022 and
15 subsequent years, a specialized MA plan
16 for special needs individuals described in
17 subsection (b)(6)(B)(ii) shall meet one or
18 more of the following requirements, to the
19 extent allowed by the State, for integration
20 of benefits under this title and title XIX:

21 “(I) Meet the requirements of a
22 fully integrated plan described in sec-
23 tion 1853(a)(1)(B)(iv)(II) (other than
24 the requirement that the plan have
25 similar average levels of frailty, as de-

1 terminated by the Secretary, as the
2 PACE program).

3 “(II) Enter into a capitated con-
4 tract with the State Medicaid agency
5 to provide long-term services and sup-
6 ports or behavioral health services, or
7 both.

8 “(III) Enter into any other type
9 of arrangement, as determined appro-
10 priate by the Secretary.

11 “(ii) SANCTIONS.—For 2022 and sub-
12 sequent years, if the Secretary determines
13 that a specialized MA plan fails to comply
14 with clause (i), the Secretary may provide
15 for the application against the Medicare
16 Advantage organization offering the plan
17 any of the remedies described in section
18 1857(g)(2).”.

19 (2) CONFORMING AMENDMENT TO RESPON-
20 SIBILITIES OF FEDERAL COORDINATED HEALTH
21 CARE OFFICE.—Section 2602(d) of Public Law 111–
22 148 (42 U.S.C. 1315b(d)) is amended by adding at
23 the end the following new paragraphs:

24 “(6) To act as a designated contact for States
25 under subsection (f)(8)(A) of section 1859 of the So-

1 cial Security Act (42 U.S.C. 1395w–28) with respect
2 to the integration of specialized MA plans for special
3 needs individuals described in subsection
4 (b)(6)(B)(ii) of such section.

5 “(7) To be responsible for developing regula-
6 tions and guidance related to the implementation of
7 a unified grievance and appeals process as described
8 in subparagraphs (B) and (C) of section 1859(f)(8)
9 of the Social Security Act (42 U.S.C. 1395w–
10 28(f)(8)).

11 “(8) To be responsible for developing regula-
12 tions and guidance related to the integration or
13 alignment of policy and oversight under the Medi-
14 care program under title XVIII of such Act and
15 Medicaid program under title XIX of such Act re-
16 garding specialized MA plans for special needs indi-
17 viduals described in subsection (b)(6)(B)(ii) of such
18 section 1859.”.

19 (c) IMPROVEMENTS TO SEVERE OR DISABLING
20 CHRONIC CONDITION SNPs.—

21 (1) CARE MANAGEMENT REQUIREMENTS.—Sec-
22 tion 1859(f)(5) of the Social Security Act (42
23 U.S.C. 1395w–28(f)(5)) is amended—

1 (A) by redesignating subparagraphs (A)
2 and (B) as clauses (i) and (ii), respectively, and
3 indenting appropriately;

4 (B) in clause (ii), as redesignated by sub-
5 paragraph (B), by redesignating clauses (i)
6 through (iii) as subclauses (I) through (III), re-
7 spectively, and indenting appropriately;

8 (C) by striking “ALL SNPS.—The require-
9 ments” and inserting “ALL SNPS.—

10 “(A) IN GENERAL.—Subject to subpara-
11 graph (B), the requirements”; and

12 (D) by adding at the end the following new
13 subparagraph:

14 “(B) IMPROVEMENTS TO CARE MANAGE-
15 MENT REQUIREMENTS FOR SEVERE OR DIS-
16 ABLING CHRONIC CONDITION SNPS.—For 2020
17 and subsequent years, in the case of a special-
18 ized MA plan for special needs individuals de-
19 scribed in subsection (b)(6)(B)(iii), the require-
20 ments described in this paragraph include the
21 following:

22 “(i) The interdisciplinary team under
23 subparagraph (A)(ii)(III) includes a team
24 of providers with demonstrated expertise,
25 including training in an applicable spe-

1 cialty, in treating individuals similar to the
2 targeted population of the plan.

3 “(ii) Requirements developed by the
4 Secretary to provide face-to-face encoun-
5 ters with individuals enrolled in the plan
6 not less frequently than on an annual
7 basis.

8 “(iii) As part of the model of care
9 under clause (i) of subparagraph (A), the
10 results of the initial assessment and an-
11 nual reassessment under clause (ii)(I) of
12 such subparagraph of each individual en-
13 rolled in the plan are addressed in the indi-
14 vidual’s individualized care plan under
15 clause (ii)(II) of such subparagraph.

16 “(iv) As part of the annual evaluation
17 and approval of such model of care, the
18 Secretary shall take into account whether
19 the plan fulfilled the previous year’s goals
20 (as required under the model of care).

21 “(v) The Secretary shall establish a
22 minimum benchmark for each element of
23 the model of care of a plan. The Secretary
24 shall only approve a plan’s model of care
25 under this paragraph if each element of

1 the model of care meets the minimum
2 benchmark applicable under the preceding
3 sentence.”.

4 (2) REVISIONS TO THE DEFINITION OF A SE-
5 VERE OR DISABLING CHRONIC CONDITIONS SPECIAL-
6 IZED NEEDS INDIVIDUAL.—

7 (A) IN GENERAL.—Section
8 1859(b)(6)(B)(iii) of the Social Security Act
9 (42 U.S.C. 1395w–28(b)(6)(B)(iii)) is amend-
10 ed—

11 (i) by striking “who have” and insert-
12 ing “who—

13 “(I) before January 1, 2022,
14 have”;

15 (ii) in subclause (I), as added by
16 clause (i), by striking the period at the end
17 and inserting “; and”; and

18 (iii) by adding at the end the fol-
19 lowing new subclause:

20 “(II) on or after January 1,
21 2022, have one or more comorbid and
22 medically complex chronic conditions
23 that is life threatening or significantly
24 limits overall health or function, have
25 a high risk of hospitalization or other

1 adverse health outcomes, and require
2 intensive care coordination and that is
3 listed under subsection (f)(9)(A).”.

4 (B) PANEL OF CLINICAL ADVISORS.—Sec-
5 tion 1859(f) of the Social Security Act (42
6 U.S.C. 1395w–28(f)), as amended by subsection
7 (b), is amended by adding at the end the fol-
8 lowing new paragraph:

9 “(9) LIST OF CONDITIONS FOR CLARIFICATION
10 OF THE DEFINITION OF A SEVERE OR DISABLING
11 CHRONIC CONDITIONS SPECIALIZED NEEDS INDI-
12 VIDUAL.—

13 “(A) IN GENERAL.—Not later than De-
14 cember 31, 2020, and every 5 years thereafter,
15 the Secretary shall convene a panel of clinical
16 advisors to establish and update a list of condi-
17 tions that meet each of the following criteria:

18 “(i) Conditions that meet the defini-
19 tion of a severe or disabling chronic condi-
20 tion under subsection (b)(6)(B)(iii) on or
21 after January 1, 2022.

22 “(ii) Conditions that require prescrip-
23 tion drugs, providers, and models of care
24 that are unique to the specific population
25 of enrollees in a specialized MA plan for

1 special needs individuals described in such
2 subsection on or after such date and—

3 “(I) as a result of such special
4 needs individuals with such a condi-
5 tion having access to and being en-
6 rolled in such a plan, as compared to
7 access to and enrollment in other
8 Medicare Advantage plans under this
9 part, it is projected that such individ-
10 uals would improve health outcomes
11 with respect to such condition, that
12 such individuals would have reduced
13 overall costs under this title, and that
14 there would not be any increase in ex-
15 penditures under this title for such in-
16 dividuals; or

17 “(II) have a low prevalence in the
18 general population of beneficiaries
19 under this title or a disproportionately
20 high per-beneficiary cost under this
21 title.

22 “(B) GAO STUDY ON HEALTH OUTCOMES
23 OF INDIVIDUALS ENROLLED IN SPECIALIZED
24 MA PLANS.—Not later than the date that is 3
25 years after the date of the enactment of this

1 paragraph, the Comptroller General of the
 2 United States shall conduct a study and submit
 3 to Congress a report on the extent to which
 4 health outcomes can be compared across spe-
 5 cialized MA plans for special needs individuals
 6 (as defined in section 1859(b)(6)) and other
 7 Medicare Advantage plans under this part
 8 across similar populations, using existing meas-
 9 ures and that identifies any potential limita-
 10 tions where new measures may need to be de-
 11 veloped for such population.”.

12 (d) QUALITY MEASUREMENT AT THE PLAN LEVEL
 13 FOR SNPS AND DETERMINATION OF FEASIBILITY OF
 14 QUALITY MEASUREMENT AT THE PLAN LEVEL FOR ALL
 15 MA PLANS.—Section 1853(o) of the Social Security Act
 16 (42 U.S.C. 1395w–23(o)) is amended by adding at the end
 17 the following new paragraphs:

18 “(6) QUALITY MEASUREMENT AT THE PLAN
 19 LEVEL FOR SNPS.—

20 “(A) IN GENERAL.—Subject to subpara-
 21 graph (B), the Secretary may require reporting
 22 of data under section 1852(e) for, and apply
 23 under this subsection, quality measures at the
 24 plan level for specialized MA plans for special

1 needs individuals instead of at the contract
2 level.

3 “(B) CONSIDERATIONS.—Prior to applying
4 quality measurement at the plan level under
5 this paragraph, the Secretary shall—

6 “(i) take into consideration the min-
7 imum number of enrollees in a specialized
8 MA plan for special needs individuals in
9 order to determine if a statistically signifi-
10 cant or valid measurement of quality at
11 the plan level is possible under this para-
12 graph;

13 “(ii) if quality measures are reported
14 at the plan level, ensure that MA plans are
15 not required to provide duplicative infor-
16 mation; and

17 “(iii) ensure that such reporting does
18 not interfere with the collection of encoun-
19 ter data submitted by MA organizations or
20 the administration of any changes to the
21 program under this part as a result of the
22 collection of such data.

23 “(C) APPLICATION.—If the Secretary ap-
24 plies quality measurement at the plan level
25 under this paragraph—

1 “(i) such quality measurement may
2 include Medicare Health Outcomes Survey
3 (HOS), Healthcare Effectiveness Data and
4 Information Set (HEDIS), Consumer As-
5 sessment of Healthcare Providers and Sys-
6 tems (CAHPS) measures and quality
7 measures under part D; and

8 “(ii) the Secretary shall consider ap-
9 plying administrative actions, such as rem-
10 edies described in section 1857(g)(2), to
11 the plan level.

12 “(7) DETERMINATION OF FEASIBILITY OF
13 QUALITY MEASUREMENT AT THE PLAN LEVEL FOR
14 ALL MA PLANS.—

15 “(A) DETERMINATION OF FEASIBILITY.—
16 The Secretary shall determine the feasibility of
17 requiring reporting of data under section
18 1852(e) for, and applying under this subsection,
19 quality measures at the plan level for all MA
20 plans under this part.

21 “(B) CONSIDERATION OF CHANGE.—After
22 making a determination under subparagraph
23 (A), the Secretary shall consider requiring such
24 reporting and applying such quality measures

1 at the plan level as described in such subpara-
2 graph.”.

3 (e) GAO STUDY AND REPORT ON STATE-LEVEL IN-
4 TEGRATION BETWEEN DUAL SNPs AND MEDICAID.—

5 (1) STUDY.—The Comptroller General of the
6 United States (in this paragraph referred to as the
7 “Comptroller General”) shall conduct a study on
8 State-level integration between specialized MA plans
9 for special needs individuals described in subsection
10 (b)(6)(B)(ii) of section 1859 of the Social Security
11 Act (42 U.S.C. 1395w–28) and the Medicaid pro-
12 gram under title XIX of such Act (42 U.S.C. 1396
13 et seq.). Such study shall include an analysis of the
14 following:

15 (A) The characteristics of States in which
16 the State agency responsible for administering
17 the State plan under such title XIX has a con-
18 tract with such a specialized MA plan and that
19 delivers long-term services and supports under
20 the State plan under such title XIX through a
21 managed care program, including the require-
22 ments under such State plan with respect to
23 long-term services and supports.

24 (B) The types of such specialized MA
25 plans, which may include the following:

1 (i) A plan described in section
2 1853(a)(1)(B)(iv)(II) of such Act (42
3 U.S.C. 1395w-23(a)(1)(B)(iv)(II)).

4 (ii) A plan that meets the require-
5 ments described in subsection (f)(3)(D) of
6 such section 1859.

7 (iii) A plan described in clause (ii)
8 that also meets additional requirements es-
9 tablished by the State.

10 (C) The characteristics of individuals en-
11 rolled in such specialized MA plans.

12 (D) As practicable, the following with re-
13 spect to State programs for the delivery of long-
14 term services and supports under such title
15 XIX through a managed care program:

16 (i) Which populations of individuals
17 are eligible to receive such services and
18 supports.

19 (ii) Whether all such services and sup-
20 ports are provided on a capitated basis or
21 if any of such services and supports are
22 carved out and provided through fee-for-
23 service.

24 (E) As, practicable, how the availability
25 and variation of integration arrangements of

1 such specialized MA plans offered in States af-
2 fects spending, service delivery options, access
3 to community-based care, and utilization of
4 care.

5 (F) Barriers and opportunities for making
6 further progress on dual integration, as well as
7 recommend legislation to expedite or refine
8 pathways toward fully integrated care.

9 (2) REPORT.—Not later than 2 years after the
10 date of the enactment of this Act, the Comptroller
11 General shall submit to Congress a report containing
12 the results of the study conducted under paragraph
13 (1), together with recommendations for such legisla-
14 tion and administrative action as the Comptroller
15 General determines appropriate.

16 **SEC. 2. EXPANDING SUPPLEMENTAL BENEFITS TO MEET**
17 **THE NEEDS OF CHRONICALLY ILL MEDICARE**
18 **ADVANTAGE ENROLLEES.**

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

21 (1) in subparagraph (A), by striking “Each”
22 and inserting “Subject to subparagraph (D), each”;
23 and

24 (2) by adding at the end the following new sub-
25 paragraph:

1 “(D) EXPANDING SUPPLEMENTAL BENE-
2 FITS TO MEET THE NEEDS OF CHRONICALLY
3 ILL ENROLLEES.—

4 “(i) IN GENERAL.—For plan year
5 2020 and subsequent plan years, in addi-
6 tion to any supplemental health care bene-
7 fits otherwise provided under this para-
8 graph, an MA plan, including a specialized
9 MA plan for special needs individuals de-
10 scribed in subsection (b)(6) of section
11 1859, may provide supplemental benefits
12 described in clause (ii) to a chronically ill
13 enrollee (as defined in clause (iii)).

14 “(ii) SUPPLEMENTAL BENEFITS DE-
15 SCRIBED.—

16 “(I) IN GENERAL.—Supplemental
17 benefits described in this clause are
18 supplemental benefits that, with re-
19 spect to a chronically ill enrollee, have
20 a reasonable expectation of improving
21 or maintaining the health or overall
22 function of the chronically ill enrollee
23 and may not be limited to being pri-
24 marily health related benefits.

1 “(II) AUTHORITY TO WAIVE UNI-
2 FORMITY REQUIREMENTS.—The Sec-
3 retary may, with respect to supple-
4 mental benefits provided to a chron-
5 ically ill enrollee under this subpara-
6 graph, waive the uniformity require-
7 ment, as determined appropriate by
8 the Secretary.

9 “(iii) CHRONICALLY ILL ENROLLEE
10 DEFINED.—In this subparagraph, the term
11 ‘chronically ill enrollee’ means an enrollee
12 in an MA plan that the Secretary deter-
13 mines—

14 “(I) has one or more comorbid
15 and medically complex chronic condi-
16 tions that is life threatening or signifi-
17 cantly limits the overall health or
18 function of the enrollee;

19 “(II) has a high risk of hos-
20 pitalization or other adverse health
21 outcomes; or

22 “(III) requires intensive care co-
23 ordination.”.

24 (b) GAO STUDY AND REPORT.—

1 (1) STUDY.—The Comptroller General of the
2 United States (in this subsection referred to as the
3 “Comptroller General”) shall conduct a study on
4 supplemental benefits provided to enrollees in Medi-
5 care Advantage plans under part C of title XVIII of
6 the Social Security Act, including specialized MA
7 plans for special needs individuals described in sec-
8 tion 1859(b)(6) of such Act (42 U.S.C. 1395w-
9 28(b)(6)). Such study shall be conducted in con-
10 sultation with the Centers for Medicare & Medicaid
11 Services and Medicare Advantage plans as necessary
12 and, to the extent data is available, shall include an
13 analysis of the following:

14 (A) The type of supplemental benefits pro-
15 vided to such enrollees, the total number of en-
16 rollees receiving each supplemental benefit, and
17 whether the supplemental benefit is covered by
18 the standard benchmark cost of the benefit or
19 with an additional premium.

20 (B) The frequency in which supplemental
21 benefits are utilized by such enrollees.

22 (C) The impact supplemental benefits have
23 on—

1 (i) indicators of the quality of care re-
2 ceived by such enrollees, including overall
3 health and function of the enrollees;

4 (ii) the utilization of items and serv-
5 ices for which benefits are available under
6 the original Medicare fee-for-service pro-
7 gram option under parts A and B of such
8 title XVIII by such enrollees; and

9 (iii) the amount of the bids submitted
10 by Medicare Advantage Organizations for
11 Medicare Advantage plans under such part
12 C.

13 (2) REPORT.—Not later than 5 years after the
14 date of the enactment of this Act, the Comptroller
15 General shall submit to Congress a report containing
16 the results of the study conducted under paragraph
17 (1), together with recommendations for such legisla-
18 tion and administrative action as the Comptroller
19 General determines appropriate.

○