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115TH CONGRESS
2D SESSION

H. R. 7340

To enhance beneficiary and provider protections and improve transparency in the Medicare Advantage market, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2018

Ms. DELAURO 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 enhance beneficiary and provider protections and improve transparency in the Medicare Advantage market, 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 Bill of Rights Act of 2018''.

SEC. 2. LIMITATION ON REMOVAL OF MEDICARE ADVANTAGE PROVIDERS BY MA ORGANIZATIONS.

(a) LIMITATION.—Section 1852(d) of the Social Security Act (42 U.S.C. 1395w–22(d)) is amended by adding at the end the following:

''(7) LIMITATION ON REMOVAL OF PROVIDERS FROM MA PLANS BY MA ORGANIZATIONS.—

''(A) REMOVAL OF PROVIDERS WITH CAUSE.—Beginning with plan year 2019, except as provided in subparagraph (C), an MA organization offering an MA plan may only remove a provider of services or a supplier from a network of such plan if the organization has cause to remove such provider or supplier.

''(B) CAUSE TO REMOVE PROVIDERS.—

''(i) IN GENERAL.—An MA organization offering an MA plan has cause to remove a provider of services or a supplier from a network of such plan if the Secretary determines that the provider or supplier is—

''(I) medically negligent;

''(II) in violation of any legal or contractual requirement applicable to the provider or supplier acting within the lawful scope of practice, including

any participation or other requirement applicable to such provider or supplier under this title or under any contractual term for such plan; or

''(III) otherwise unfit to furnish items and services in accordance with requirements of this title.

''(ii) CONSIDERATION OF COST TO MA ORGANIZATIONS.—For purposes of subparagraph (A), cost to an MA organization offering an MA plan due to the participation of a provider of services or supplier in a network of such plan does not constitute cause for the MA organization to remove such provider or supplier from the network mid-year, and such cost may not be considered as a factor in favor of a determination that such organization has cause to remove the provider.

''(C) EXCEPTION.—With respect to each upcoming plan year, beginning with plan year 2019, an MA organization offering an MA plan may only remove a provider of services or supplier from a network of such plan for reasons not specified in subparagraph (B)(i) before the

date that is 60 days before the first day of the annual coordinated election period for such plan year under section 1851(e)(3).

''(D) NOTICE AND APPEAL PROCESS.—

''(i) IN GENERAL.—Any removal of a provider of services or supplier from a network of an MA plan may occur only after the completion of a fair notice and appeal process that the Secretary shall establish by regulation. Such process shall require the MA organization to provide to such provider or supplier and to the Secretary an explanation of the reason or reasons for the removal.

''(ii) APPLICATION.—

''(I) APPLICATION OF NEW PROCESS.—In the case of a removal of a provider of services or supplier from a network of an MA plan occurring on or after the effective date published in a final rule for such fair notice and appeal process, such process shall apply in lieu of the process for the termination or suspension of a provider contract under section

422.202(a) of title 42, Code of Federal Regulations.

"(II) CONTINUATION OF OLD PROCESS.—In the case of a removal of a provider of services or supplier from a network of an MA plan occurring before such effective date, the process for the termination or suspension of a provider contract under section 422.202(a) of title 42, Code of Federal Regulations, shall apply.

"(E) PARTICIPANT NOTICE AND PROTECTION.—

"(i) NOTICE TO PARTICIPANTS OF PROVIDER REMOVAL.—Not less than 60 days before the date on which a provider of services or supplier is removed from a network of an MA plan, the MA organization offering such plan shall provide written notification of the removal to each individual enrolled in such plan receiving items or services from the provider or supplier during the plan year in effect on the date of removal or during the previous

plan year. Such notification shall include at the minimum—

"(I) the names and telephone numbers of available in-network providers of services and suppliers offering items and services that are the same or similar to the items and services offered by the removed provider or supplier;

"(II) information regarding the options available to an individual enrolled in such plan to request the continuation of medical treatment or therapy with the removed provider or supplier; and

"(III) one or more customer service telephone numbers that an individual enrolled in such plan may access to obtain information regarding changes to the network of the plan.

"(ii) ANNUAL NOTICE OF CHANGE.—In addition to providing the notification of removal as required under clause (i), the MA organization offering such MA plan shall include such notification in the an-

nual notice of change for the MA plan for the upcoming plan year.

''(iii) CONTINUITY OF CARE.—In any case in which a provider of services or supplier is removed from a network of an MA plan, such plan shall ensure that the removal satisfies the continuity of care requirements under paragraph (1)(A) with respect to each individual enrolled in such plan receiving items or services from the provider or supplier during the plan year in effect on the date of removal or during the previous plan year.

''(F) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the ability of a provider of services or supplier to decline to participate in a network of an MA plan.

''(8) TRANSPARENCY IN MEASURES USED BY MA ORGANIZATIONS TO ESTABLISH OR MODIFY PROVIDER NETWORKS.—

''(A) IN GENERAL.—Beginning with plan year 2019, an MA organization offering an MA plan shall include the information described in subparagraph (B)—

''(i) in the annual bid information submitted by the MA organization with respect to the MA plan under section 1854; and

''(ii) on the Internet Web Site for the MA plan.

''(B) INFORMATION DESCRIBED.—The information described in this subparagraph is the following:

''(i) Information regarding the measures used by the MA organization to establish or modify the provider network of the MA plan, including measures of the quality and efficiency of providers. Such information shall include the specifications, methodology, and sample size of such measures.

''(ii) Other information related to the establishment or modification of such provider network that the Secretary determines appropriate

''(C) LIMITATION.—The information described in subparagraph (B) shall not include any individually identifiable information of any provider or supplier of services.''.

(b) ENFORCEMENT.—

(1) SANCTIONS FOR NONCOMPLIANCE.—Section 1857(g)(1) of the Social Security Act (42 U.S.C. 1395w–27(g)(1)) is amended—

(A) in subparagraph (J), by striking ''or'';

(B) by redesignating subparagraph (K) as subparagraph (L);

(C) by inserting after subparagraph (J) the following new subparagraph:

''(K) fails to comply with sections 1852(d)(7) or 1852(d)(8); or''; and

(D) in subparagraph (L) (as so redesignated), by striking ''through (J)'' and inserting ''through (K)''.

(2) SANCTIONS NOT APPLICABLE TO PART D.—Title XVIII of the Social Security Act is amended—

(A) in section 1860D–12(b)(3)(E) (42 U.S.C. 1395w–112(b)(3)(E)), by striking ''paragraph (1)(F)'' and inserting ''paragraphs (1)(F) and (1)(K)''; and

(B) in section 1894(e)(6)(B) (42 U.S.C. 1395eee(e)(6)(B)), by inserting ''(other than paragraph (1)(K) of such section)'' after ''1857(g)(1)''.

(c) MEDICARE ADVANTAGE PLAN COMPARE TOOL.—Not later than one year after the date of enactment of

this Act, the Secretary of Health and Human Services shall take such measures as are necessary to ensure that the Medicare Advantage Compare Tool takes into account the preferences and utilization needs of such individuals.

SEC. 3. NETWORK ADEQUACY.

(a) IN GENERAL.—Section 1852(d) of the Social Security Act (42 U.S.C. 1395w–22(d)), as amended by section 2, is amended by adding at the end the following:

''(9) NETWORK ADEQUACY REQUIREMENTS.—Beginning in plan year 2019, notwithstanding any other provision of law, the following shall apply:

''(A) PROVIDER AVAILABILITY.—When establishing a plan network, a Medicare Advantage organization offering an MA plan shall, among other factors determined by the Secretary, consider the following:

''(i) The anticipated enrollment in the plan.

''(ii) The expected types of services provided and utilization of services by enrollees under the plan.

''(iii) The number and types of providers needed to provide such services.

''(iv) The number of network providers who are not accepting new patients.

''(v) The location of providers and enrollees.

''(vi) The full-time equivalent availability of a provider to provide such services.

''(B) PROVISION OF CARE IN A TIMELY MANNER.—A Medicare Advantage organization offering an MA plan shall ensure that providers are able to provide services in a timely manner, as defined by the Secretary, under the plan.

''(C) APPLICATION OF NETWORK ACCESS ADEQUACY STANDARDS.—In applying the network access adequacy standards pursuant to paragraph (1), the Secretary shall seek input from patient advocacy groups, providers of services and suppliers, and MA plans under this part.

''(D) CERTIFICATION.—Each plan year, a Medicare Advantage organization shall certify to the Secretary, with respect to each MA plan offered by the organization, that the providers, including specialists and subspecialists, in the plan network are able to provide the services required under the organization's contract with the Secretary under section 1857 with respect

to the offering of such plan and to meet the needs of the enrollees within the plan service area during the year.

''(E) ANNUAL REPORTING.—Each plan year, a Medicare Advantage organization shall report to the Secretary the following with respect to each MA plan offered by the organization:

''(i) AVERAGE WAIT TIME.—The average wait time for primary and specialty care for enrollees under the plan.

''(ii) UTILIZATION OF OUT OF NETWORK PROVIDERS.—The utilization of out-of-network providers under the plan.

''(iii) AVERAGE COST PER PATIENT.—The average annual spending per patient for primary and specialty care for enrollees under the plan.

''(F) CERTIFICATION.—In advance of the annual, coordinated election period under section 1851(e)(3), a Medicare Advantage organization shall certify to the Secretary the accuracy of provider directories for each plan offered by the organization.

"(G) NETWORK REVIEW.—The Secretary shall ensure that the network of each MA plan offered by a Medicare Advantage organization meets the network adequacy guidelines established under this paragraph and under section 422.112(a)(4) of title 42, Code of Federal Regulations (or any successor regulation to such section) at least once every 3 years or when a material change in network occurs.".

(b) ENFORCEMENT.—Section 1857(g)(1)(K) of the Social Security Act (42 U.S.C. 1395w–27(g)(1)(K)), as added by section 2(b), is amended by striking "or 1852(d)(8)" and inserting ", 1852(d)(8), or 1852(d)(9)".

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