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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SPECIALIZED MEDICARE ADVANTAGE PLANS FOR SPECIAL NEEDS INDIVIDUALS.

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

(1) by striking “and for periods before January 1, 2019”; and
(2) by adding at the end the following new sentence: “In the case of a specialized MA plan for special needs individuals described in clause (ii) or (iii) of subsection (b)(6)(B), the previous sentence shall apply for periods before January 1, 2024.”.

(b) INCREASED INTEGRATION OF DUAL SNPS.—

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

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

“(F) The plan meets the requirements applicable under paragraph (8).”; and

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

“(8) INCREASED INTEGRATION OF DUAL SNPS.—

“(A) DESIGNATED CONTACT.—The Secretary, acting through the Federal Coordinated Health Care Office established under section 2602 of Public Law 111–148, shall serve as a dedicated point of contact for States to address misalignments that arise with the integration of specialized MA plans for special needs individuals described in subsection (b)(6)(B)(ii) under
this paragraph and, consistent with such role, shall—

“(i) establish a uniform process for disseminating to State Medicaid agencies information under this title impacting contracts between such agencies and such plans under this subsection; and

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

“(B) UNIFIED GRIEVANCES AND APPEALS PROCESS.—

“(i) IN GENERAL.—Not later than April 1, 2020, the Secretary shall establish procedures, to the extent feasible as determined by the Secretary, unifying grievances and appeals procedures under sections 1852(f), 1852(g), 1902(a)(3), 1902(a)(5), and 1932(b)(4) for items and services provided by specialized MA plans for special needs individuals described in subsection (b)(6)(B)(ii) under this title and title XIX. The Secretary shall solicit
comment in developing such procedures from States, plans, beneficiaries and their representatives, and other relevant stakeholders. With respect to items and services described in the previous sentence, appeals procedures established under this clause shall apply in place of otherwise applicable appeals procedures.

“(ii) PROCEDURES.—The procedures established under clause (i) shall be included in the plan contract under paragraph (3)(D) and shall—

“(I) adopt the provisions for the enrollee that are most protective for the enrollee and, to the extent feasible as determined by the Secretary, are compatible with unified timeframes and consolidated access to external review under an integrated process;

“(II) take into account differences in State plans under title XIX to the extent necessary;

“(III) be easily navigable by an enrollee; and
“(IV) include the elements described in clause (iii), as applicable.

“(iii) Elements described.—Both unified appeals and unified grievance procedures shall include, as applicable, the following elements described in this clause:

“(I) Single written notification of all applicable grievances and appeal rights under this title and title XIX. For purposes of this subparagraph, the Secretary may waive the requirements under section 1852(g)(1)(B) when the specialized MA plan covers items or services under this part or under title XIX.

“(II) Single pathways for resolution of any grievance or appeal related to a particular item or service provided by specialized MA plans for special needs individuals described in subsection (b)(6)(B)(ii) under this title and title XIX.

“(III) Notices written in plain language and available in a language and format that is accessible to the
enrollee, including in non-English languages that are prevalent in the service area of the specialized MA plan.

“(IV) Unified timeframes for grievances and appeals processes, such as an individual’s filing of a grievance or appeal, a plan’s acknowledgment and resolution of a grievance or appeal, and notification of decisions with respect to a grievance or appeal.

“(V) Requirements for how the plan must process, track, and resolve grievances and appeals, to ensure beneficiaries are notified on a timely basis of decisions that are made throughout the grievance or appeals process and are able to easily determine the status of a grievance or appeal.

“(iv) Continuation of benefits pending appeal.—The unified procedures under clause (i) shall, with respect to all benefits under parts A and B and title XIX subject to appeal under such procedures, incorporate provisions under current
law and implementing regulations that provide continuation of benefits pending appeal under this title and title XIX.

“(C) **Requirement for Unified Grievances and Appeals.**—For 2022 and subsequent years, the contract of a specialized MA plan for special needs individuals described in subsection (b)(6)(B)(ii) with a State Medicaid agency under paragraph (3)(D) shall require the use of unified grievances and appeals procedures as described in subparagraph (B).

“(D) **Requirements for Full Integration for Certain Dual SNPs.**—

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

“(I) Meet the requirements of a fully integrated plan described in section 1853(a)(1)(B)(iv)(II) (other than the requirement that the plan have similar average levels of frailty, as de-
terminated by the Secretary, as the PACE program).

“(II) Enter into a capitated contract with the State Medicaid agency to provide long-term services and supports or behavioral health services, or both.

“(III) Enter into any other type of arrangement, as determined appropriate by the Secretary.

“(ii) SANCTIONS.—For 2022 and subsequent years, if the Secretary determines that a specialized MA plan fails to comply with clause (i), the Secretary may provide for the application against the Medicare Advantage organization offering the plan any of the remedies described in section 1857(g)(2).”.

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

“(6) To act as a designated contact for States under subsection (f)(8)(A) of section 1859 of the So-
Social Security Act (42 U.S.C. 1395w–28) with respect
to the integration of specialized MA plans for special
needs individuals described in subsection
(b)(6)(B)(ii) of such section.

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

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

(c) Improvements to Severe or Disabling
Chronic Condition SNPs.—

(1) Care management requirements.—Sec-
tion 1859(f)(5) of the Social Security Act (42
U.S.C. 1395w–28(f)(5)) is amended—
(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and indenting appropriately;

(B) in clause (ii), as redesignated by subparagraph (B), by redesignating clauses (i) through (iii) as subclauses (I) through (III), respectively, and indenting appropriately;

(C) by striking “ALL SNPS.—The requirements” and inserting “ALL SNPS.—

“(A) IN GENERAL.—Subject to subparagraph (B), the requirements”; and

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

“(B) IMPROVEMENTS TO CARE MANAGEMENT REQUIREMENTS FOR SEVERE OR DISABLING CHRONIC CONDITION SNPS.—For 2020 and subsequent years, in the case of a specialized MA plan for special needs individuals described in subsection (b)(6)(B)(iii), the requirements described in this paragraph include the following:

“(i) The interdisciplinary team under subparagraph (A)(ii)(III) includes a team of providers with demonstrated expertise, including training in an applicable spe-
cialty, in treating individuals similar to the targeted population of the plan.

“(ii) Requirements developed by the Secretary to provide face-to-face encounters with individuals enrolled in the plan not less frequently than on an annual basis.

“(iii) As part of the model of care under clause (i) of subparagraph (A), the results of the initial assessment and annual reassessment under clause (ii)(I) of such subparagraph of each individual enrolled in the plan are addressed in the individual’s individualized care plan under clause (ii)(II) of such subparagraph.

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

“(v) The Secretary shall establish a minimum benchmark for each element of the model of care of a plan. The Secretary shall only approve a plan’s model of care under this paragraph if each element of
the model of care meets the minimum benchmark applicable under the preceding sentence.”.

(2) Revisions to the definition of a severe or disabling chronic conditions specialized needs individual.—

(A) In general.—Section 1859(b)(6)(B)(iii) of the Social Security Act (42 U.S.C. 1395w–28(b)(6)(B)(iii)) is amended—

(i) by striking “who have” and inserting “who—

“(I) before January 1, 2022, have”;

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

(iii) by adding at the end the following new subclause:

“(II) on or after January 1, 2022, have one or more comorbid and medically complex chronic conditions that is life threatening or significantly limits overall health or function, have a high risk of hospitalization or other
adverse health outcomes, and require
intensive care coordination and that is
listed under subsection (f)(9)(A).”.

(B) PANEL OF CLINICAL ADVISORS.—Sec-
tion 1859(f) of the Social Security Act (42
U.S.C. 1395w–28(f)), as amended by subsection
(b), is amended by adding at the end the fol-
lowing new paragraph:
“(9) LIST OF CONDITIONS FOR CLARIFICATION
OF THE DEFINITION OF A SEVERE OR DISABLING
CHRONIC CONDITIONS SPECIALIZED NEEDS INDIVI-
DUAL.—
“(A) IN GENERAL.—Not later than De-
cember 31, 2020, and every 5 years thereafter,
the Secretary shall convene a panel of clinical
advisors to establish and update a list of condi-
tions that meet each of the following criteria:
“(i) Conditions that meet the defini-
tion of a severe or disabling chronic condi-
tion under subsection (b)(6)(B)(iii) on or
after January 1, 2022.
“(ii) Conditions that require prescrip-
tion drugs, providers, and models of care
that are unique to the specific population
of enrollees in a specialized MA plan for
special needs individuals described in such subsection on or after such date and—

“(I) as a result of such special needs individuals with such a condition having access to and being enrolled in such a plan, as compared to access to and enrollment in other Medicare Advantage plans under this part, it is projected that such individuals would improve health outcomes with respect to such condition, that such individuals would have reduced overall costs under this title, and that there would not be any increase in expenditures under this title for such individuals; or

“(II) have a low prevalence in the general population of beneficiaries under this title or a disproportionally high per-beneficiary cost under this title.

“(B) GAO STUDY ON HEALTH OUTCOMES OF INDIVIDUALS ENROLLED IN SPECIALIZED MA PLANS.—Not later than the date that is 3 years after the date of the enactment of this
paragraph, the Comptroller General of the United States shall conduct a study and submit to Congress a report on the extent to which health outcomes can be compared across specialized MA plans for special needs individuals (as defined in section 1859(b)(6)) and other Medicare Advantage plans under this part across similar populations, using existing measures and that identifies any potential limitations where new measures may need to be developed for such population.”.

(d) Quality Measurement at the Plan Level for SNPs and Determination of Feasability of Quality Measurement at the Plan Level for All MA Plans.—Section 1853(o) of the Social Security Act (42 U.S.C. 1395w–23(o)) is amended by adding at the end the following new paragraphs:

“(6) Quality Measurement at the Plan Level for SNPs.—

“(A) In general.—Subject to subparagraph (B), the Secretary may require reporting of data under section 1852(e) for, and apply under this subsection, quality measures at the plan level for specialized MA plans for special
needs individuals instead of at the contract level.

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

“(i) take into consideration the minimum number of enrollees in a specialized MA plan for special needs individuals in order to determine if a statistically significant or valid measurement of quality at the plan level is possible under this paragraph;

“(ii) if quality measures are reported at the plan level, ensure that MA plans are not required to provide duplicative information; and

“(iii) ensure that such reporting does not interfere with the collection of encounter data submitted by MA organizations or the administration of any changes to the program under this part as a result of the collection of such data.

“(C) APPLICATION.—If the Secretary applies quality measurement at the plan level under this paragraph—
“(i) such quality measurement may include Medicare Health Outcomes Survey (HOS), Healthcare Effectiveness Data and Information Set (HEDIS), Consumer Assessment of Healthcare Providers and Systems (CAHPS) measures and quality measures under part D; and

“(ii) the Secretary shall consider applying administrative actions, such as remedies described in section 1857(g)(2), to the plan level.

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

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

“(B) CONSIDERATION OF CHANGE.—After making a determination under subparagraph (A), the Secretary shall consider requiring such reporting and applying such quality measures
at the plan level as described in such subpara-
graph.”.

(c) GAO Study and Report on State-Level In-
tegration Between Dual SNPs and Medicaid.—

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

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

(B) The types of such specialized MA
plans, which may include the following:
(i) A plan described in section 1853(a)(1)(B)(iv)(II) of such Act (42 U.S.C. 1395w–23(a)(1)(B)(iv)(II)).

(ii) A plan that meets the requirements described in subsection (f)(3)(D) of such section 1859.

(iii) A plan described in clause (ii) that also meets additional requirements established by the State.

(C) The characteristics of individuals enrolled in such specialized MA plans.

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

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

(ii) Whether all such services and supports are provided on a capitated basis or if any of such services and supports are carved out and provided through fee-for-service.

(E) As, practicable, how the availability and variation of integration arrangements of
such specialized MA plans offered in States affects spending, service delivery options, access to community-based care, and utilization of care.

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

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

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

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

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

and

(2) by adding at the end the following new sub-

paragraph:
“(D) EXPANDING SUPPLEMENTAL BENEFITS TO MEET THE NEEDS OF CHRONICALLY ILL ENROLLEES.—

“(i) IN GENERAL.—For plan year 2020 and subsequent plan years, in addition to any supplemental health care benefits otherwise provided under this paragraph, an MA plan, including a specialized MA plan for special needs individuals described in subsection (b)(6) of section 1859, may provide supplemental benefits described in clause (ii) to a chronically ill enrollee (as defined in clause (iii)).

“(ii) SUPPLEMENTAL BENEFITS DESCRIBED.—

“(I) IN GENERAL.—Supplemental benefits described in this clause are supplemental benefits that, with respect to a chronically ill enrollee, have a reasonable expectation of improving or maintaining the health or overall function of the chronically ill enrollee and may not be limited to being primarily health related benefits.
“(II) Authority to waive uniformity requirements.—The Secretary may, with respect to supplemental benefits provided to a chronically ill enrollee under this subparagraph, waive the uniformity requirement, as determined appropriate by the Secretary.

“(iii) Chronically ill enrollee defined.—In this subparagraph, the term ‘chronically ill enrollee’ means an enrollee in an MA plan that the Secretary determines—

“(I) has one or more comorbid and medically complex chronic conditions that is life threatening or significantly limits the overall health or function of the enrollee;

“(II) has a high risk of hospitalization or other adverse health outcomes; or

“(III) requires intensive care coordination.”.

(b) GAO study and report.—
(1) **STUDY.**—The Comptroller General of the United States (in this subsection referred to as the “Comptroller General”) shall conduct a study on supplemental benefits provided to enrollees in Medicare Advantage plans under part C of title XVIII of the Social Security Act, including specialized MA plans for special needs individuals described in section 1859(b)(6) of such Act (42 U.S.C. 1395w–28(b)(6)). Such study shall be conducted in consultation with the Centers for Medicare & Medicaid Services and Medicare Advantage plans as necessary and, to the extent data is available, shall include an analysis of the following:

(A) The type of supplemental benefits provided to such enrollees, the total number of enrollees receiving each supplemental benefit, and whether the supplemental benefit is covered by the standard benchmark cost of the benefit or with an additional premium.

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

(C) The impact supplemental benefits have on—
(i) indicators of the quality of care received by such enrollees, including overall health and function of the enrollees;

(ii) the utilization of items and services for which benefits are available under the original Medicare fee-for-service program option under parts A and B of such title XVIII by such enrollees; and

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

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