Suspend the Rules and Pass the Bill, H.R. 3173, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

117TH CONGRESS
2D SESSION

H. R. 3173

To amend title XVIII of the Social Security Act to establish requirements with respect to the use of prior authorization under Medicare Advantage plans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2021

Ms. DELBENE (for herself, Mr. KELLY of Pennsylvania, Mr. BERA, Mr. BUCSHON, Mr. RUSH, Mr. WENSTRUP, Mr. EVANS, Mr. BURGESS, Mr. MICHAEL F. DOYLE of Pennsylvania, Mr. SMUCKER, Mr. SUOZZI, Mr. DUNN, Ms. SCHRIER, Mr. ARRINGTON, Mr. PASCRELL, Mr. JOYCE of Pennsylvania, Ms. DEGETTE, Mr. FERGUSON, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. LONG, Mr. O'HALLERAN, Mr. LAHOOD, Mr. KILDEE, Mr. PENCE, Mr. SCHRADER, Mr. SMITH of Missouri, Ms. SEWELL, Mr. ARMSTRONG, Ms. KELLY of Illinois, Mr. RICE of South Carolina, Mr. HIGGINS of New York, Mr. HARRIS, Ms. BARRAGÁN, Mrs. MILLER of West Virginia, Ms. MOORE of Wisconsin, Mr. MURPHY of North Carolina, Mr. WELCH, Mr. SCHWEIKERT, Mr. THOMPSON of California, Mr. KELLER, Mr. BUTTERFIELD, Mrs. WALORSKI, Mr. LARSON of Connecticut, Mr. THOMPSON of Pennsylvania, Mr. SARBANES, Mr. KELLY of Mississippi, Mr. CARTWRIGHT, Mr. MEUSER, Ms. SCANLON, Mr. VAN DREW, Ms. WILD, Mr. FITZPATRICK, Mr. CICILLINE, Mr. GROTHMAN, Mr. LIEU, Mr. RESCHENTHALER, Mr. CONNOLLY, Ms. SALAZAR, Mr. MOULTON, Mr. FLEISCHMANN, Mrs. MCBATH, Mr. ALLEN, Mr. NADLER, Mr. BURCHETT, Mr. ALLRED, Mr. RUTHERFORD, Mr. RASKIN, Mr. POSEY, Mr. CLEAVER, Mr. JOHNSON of South Dakota, Mrs. AXNE, Mr. AUSTIN SCOTT of Georgia, Ms. LOIS FRANKEL of Florida, Mr. LAMBORN, Mr. LANGEVIN, Mr. NORMAN, Mr. KIM of New Jersey, Mr. MEIJER, Ms. PINGREE, Mr. LYNCH, Mr. PAPPAS, Ms. ROSS, Mr. SMITH of Washington, Ms. STRICKLAND, Ms. TENNEY, Ms. DEAN, Ms. HOULAHAN, Ms. MCCOLLUM, Mr. GIBBS, Ms. HERRERA BEUTLER, Mr. LAMB, and Mr. BUCHANAN) 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 Speak-

er, 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 establish requirements with respect to the use of prior authorization under Medicare Advantage plans, 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 ''Improving Seniors'
5 Timely Access to Care Act of 2022''.

6 **SEC. 2. ESTABLISHING REQUIREMENTS WITH RESPECT TO**
7 **THE USE OF PRIOR AUTHORIZATION UNDER**
8 **MEDICARE ADVANTAGE PLANS.**

9 (a) IN GENERAL.—Section 1852 of the Social Secu-
10 rity Act (42 U.S.C. 1395w–22) is amended by adding at
11 the end the following new subsection:

12 ''(o) PRIOR AUTHORIZATION REQUIREMENTS.—

13 ''(1) IN GENERAL.—In the case of a Medicare
14 Advantage plan that imposes any prior authorization
15 requirement with respect to any applicable item or
16 service (as defined in paragraph (5)) during a plan
17 year, such plan shall—

1 "(A) beginning with the third plan year be-
2 ginning after the date of the enactment of this
3 subsection—
4 "(i) establish the electronic prior au-
5 thorization program described in para-
6 graph (2); and
7 "(ii) meet the enrollee protection
8 standards specified pursuant to paragraph
9 (4); and
10 "(B) beginning with the fourth plan year
11 beginning after the date of the enactment of
12 this subsection, meet the transparency require-
13 ments specified in paragraph (3).
14 "(2) ELECTRONIC PRIOR AUTHORIZATION PRO-
15 GRAM.—
16 "(A) IN GENERAL.—For purposes of para-
17 graph (1)(A), the electronic prior authorization
18 program described in this paragraph is a pro-
19 gram that provides for the secure electronic
20 transmission of—
21 "(i) a prior authorization request
22 from a provider of services or supplier to
23 a Medicare Advantage plan with respect to
24 an applicable item or service to be fur-
25 nished to an individual and a response, in

1 accordance with this paragraph, from such
2 plan to such provider or supplier; and
3 "(ii) any attachment relating to such
4 request or response.
5 "(B) ELECTRONIC TRANSMISSION.—
6 "(i) EXCLUSIONS.—For purposes of
7 this paragraph, a facsimile, a proprietary
8 payer portal that does not meet standards
9 specified by the Secretary, or an electronic
10 form shall not be treated as an electronic
11 transmission described in subparagraph
12 (A).
13 "(ii) STANDARDS.—An electronic
14 transmission described in subparagraph
15 (A) shall comply with—
16 "(I) applicable technical stand-
17 ards adopted by the Secretary pursu-
18 ant to section 1173; and
19 "(II) other requirements to pro-
20 mote the standardization and stream-
21 lining of electronic transactions under
22 this part specified by the Secretary.
23 "(iii) DEADLINE FOR SPECIFICATION
24 OF ADDITIONAL REQUIREMENTS.—Not
25 later than July 1, 2023, the Secretary

1 shall finalize requirements described in
2 clause (ii)(II).
3 "(C) REAL-TIME DECISIONS.—
4 "(i) IN GENERAL.—Subject to clause
5 (iv), the program described in subpara-
6 graph (A) shall provide for real-time deci-
7 sions (as defined by the Secretary in ac-
8 cordance with clause (v)) by a Medicare
9 Advantage plan with respect to prior au-
10 thorization requests for applicable items
11 and services identified by the Secretary
12 pursuant to clause (ii) if such requests are
13 submitted with all medical or other docu-
14 mentation required by such plan.
15 "(ii) IDENTIFICATION OF ITEMS AND
16 SERVICES.—
17 "(I) IN GENERAL.—For purposes
18 of clause (i), the Secretary shall iden-
19 tify, not later than the date on which
20 the initial announcement described in
21 section 1853(b)(1)(B)(i) for the third
22 plan year beginning after the date of
23 the enactment of this subsection is re-
24 quired to be announced, applicable
25 items and services for which prior au-

1 thorization requests are routinely ap-
2 proved.
3 "(II) UPDATES.—The Secretary
4 shall consider updating the applicable
5 items and services identified under
6 subclause (I) based on the information
7 described in paragraph (3)(A)(i) (if
8 available and determined practicable
9 to utilize by the Secretary) and any
10 other information determined appro-
11 priate by the Secretary not less fre-
12 quently than biennially. The Secretary
13 shall announce any such update that
14 is to apply with respect to a plan year
15 not later than the date on which the
16 initial announcement described in sec-
17 tion 1853(b)(1)(B)(i) for such plan
18 year is required to be announced.
19 "(iii) REQUEST FOR INFORMATION.—
20 The Secretary shall issue a request for in-
21 formation for purposes of initially identi-
22 fying applicable items and services under
23 clause (ii)(I).
24 "(iv) EXCEPTION FOR EXTENUATING
25 CIRCUMSTANCES.—In the case of a prior

1 authorization request submitted to a Medi-
2 care Advantage plan for an individual en-
3 rolled in such plan during a plan year with
4 respect to an item or service identified by
5 the Secretary pursuant to clause (ii) for
6 such plan year, such plan may, in lieu of
7 providing a real-time decision with respect
8 to such request in accordance with clause
9 (i), delay such decision under extenuating
10 circumstances (as specified by the Sec-
11 retary), provided that such decision is pro-
12 vided no later than 72 hours after receipt
13 of such request (or, in the case that the
14 provider of services or supplier submitting
15 such request has indicated that such delay
16 may seriously jeopardize such individual's
17 life, health, or ability to regain maximum
18 function, no later than 24 hours after re-
19 ceipt of such request).
20 "(v) DEFINITION OF REAL-TIME DECI-
21 SION.—In establishing the definition of a
22 real-time decision for purposes of clause
23 (i), the Secretary shall take into account
24 current medical practice, technology,
25 health care industry standards, and other

1 relevant information relating to how quick-
2 ly a Medicare Advantage plan may provide
3 responses with respect to prior authoriza-
4 tion requests.
5 ''(vi) IMPLEMENTATION.—The Sec-
6 retary shall use notice and comment rule-
7 making for each of the following:
8 ''(I) Establishing the definition
9 of a 'real-time decision' for purposes
10 of clause (i).
11 ''(II) Updating such definition.
12 ''(III) Initially identifying appli-
13 cable items or services pursuant to
14 clause (ii)(I).
15 ''(IV) Updating applicable items
16 and services so identified as described
17 in clause (ii)(II).
18 ''(3) TRANSPARENCY REQUIREMENTS.—
19 ''(A) IN GENERAL.—For purposes of para-
20 graph (1)(B), the transparency requirements
21 specified in this paragraph are, with respect to
22 a Medicare Advantage plan, the following:
23 ''(i) The plan, annually and in a man-
24 ner specified by the Secretary, shall submit
25 to the Secretary the following information:

1 "(I) A list of all applicable items
2 and services that were subject to a
3 prior authorization requirement under
4 the plan during the previous plan
5 year.
6 "(II) The percentage and number
7 of specified requests (as defined in
8 subparagraph (F)) approved during
9 the previous plan year by the plan in
10 an initial determination and the per-
11 centage and number of specified re-
12 quests denied during such plan year
13 by such plan in an initial determina-
14 tion (both in the aggregate and cat-
15 egorized by each item and service).
16 "(III) The percentage and num-
17 ber of specified requests submitted
18 during the previous plan year that
19 were made with respect to an item or
20 service identified by the Secretary
21 pursuant to paragraph (2)(C)(ii) for
22 such plan year, and the percentage
23 and number of such requests that
24 were subject to an exception under

1 paragraph (2)(C)(iv) (categorized by
2 each item and service).
3 "(IV) The percentage and num-
4 ber of specified requests submitted
5 during the previous plan year that
6 were made with respect to an item or
7 service identified by the Secretary
8 pursuant to paragraph (2)(C)(ii) for
9 such plan year that were approved
10 (categorized by each item and serv-
11 ice).
12 "(V) The percentage and number
13 of specified requests that were denied
14 during the previous plan year by the
15 plan in an initial determination and
16 that were subsequently appealed.
17 "(VI) The number of appeals of
18 specified requests resolved during the
19 preceding plan year, and the percent-
20 age and number of such resolved ap-
21 peals that resulted in approval of the
22 furnishing of the item or service that
23 was the subject of such request, cat-
24 egorized by each applicable item and

1 service and categorized by each level
2 of appeal (including judicial review).
3 "(VII) The percentage and num-
4 ber of specified requests that were de-
5 nied, and the percentage and number
6 of specified requests that were ap-
7 proved, by the plan during the pre-
8 vious plan year through the utilization
9 of decision support technology, artifi-
10 cial intelligence technology, machine-
11 learning technology, clinical decision-
12 making technology, or any other tech-
13 nology specified by the Secretary.
14 "(VIII) The average and the me-
15 dian amount of time (in hours) that
16 elapsed during the previous plan year
17 between the submission of a specified
18 request to the plan and a determina-
19 tion by the plan with respect to such
20 request for each such item and serv-
21 ice, excluding any such requests that
22 were not submitted with the medical
23 or other documentation required to be
24 submitted by the plan.

1 "(IX) The percentage and num-
2 ber of specified requests that were ex-
3 cluded from the calculation described
4 in subclause (VIII) based on the
5 plan's determination that such re-
6 quests were not submitted with the
7 medical or other documentation re-
8 quired to be submitted by the plan.
9 "(X) Information on each occur-
10 rence during the previous plan year in
11 which, during a surgical or medical
12 procedure involving the furnishing of
13 an applicable item or service with re-
14 spect to which such plan had ap-
15 proved a prior authorization request,
16 the provider of services or supplier
17 furnishing such item or service deter-
18 mined that a different or additional
19 item or service was medically nec-
20 essary, including a specification of
21 whether such plan subsequently ap-
22 proved the furnishing of such dif-
23 ferent or additional item or service.
24 "(XI) A disclosure and descrip-
25 tion of any technology described in

1 subclause (VII) that the plan utilized
2 during the previous plan year in mak-
3 ing determinations with respect to
4 specified requests.
5 "(XII) The number of grievances
6 (as described in subsection (f)) re-
7 ceived by such plan during the pre-
8 vious plan year that were related to a
9 prior authorization requirement.
10 "(XIII) Such other information
11 as the Secretary determines appro-
12 priate.
13 "(ii) The plan shall provide—
14 "(I) to each provider or supplier
15 who seeks to enter into a contract
16 with such plan to furnish applicable
17 items and services under such plan,
18 the list described in clause (i)(I) and
19 any policies or procedures used by the
20 plan for making determinations with
21 respect to prior authorization re-
22 quests;
23 "(II) to each such provider and
24 supplier that enters into such a con-
25 tract, access to the criteria used by

1 the plan for making such determina-
2 tions and an itemization of the med-
3 ical or other documentation required
4 to be submitted by a provider or sup-
5 plier with respect to such a request;
6 and

7 "(III) to an enrollee of the plan,
8 upon request, access to the criteria
9 used by the plan for making deter-
10 minations with respect to prior au-
11 thorization requests for an item or
12 service.

13 "(B) OPTION FOR PLAN TO PROVIDE CER-
14 TAIN ADDITIONAL INFORMATION.—As part of
15 the information described in subparagraph
16 (A)(i) provided to the Secretary during a plan
17 year, a Medicare Advantage plan may elect to
18 include information regarding the percentage
19 and number of specified requests made with re-
20 spect to an individual and an item or service
21 that were denied by the plan during the pre-
22 ceding plan year in an initial determination
23 based on such requests failing to demonstrate
24 that such individuals met the clinical criteria

1 established by such plan to receive such items
2 or services.
3 "(C) REGULATIONS.—The Secretary shall,
4 through notice and comment rulemaking, estab-
5 lish requirements for Medicare Advantage plans
6 regarding the provision of—
7 "(i) access to criteria described in
8 subparagraph (A)(ii)(II) to providers of
9 services and suppliers in accordance with
10 such subparagraph; and
11 "(ii) access to such criteria to enroll-
12 ees in accordance with subparagraph
13 (A)(ii)(III).
14 "(D) PUBLICATION OF INFORMATION.—
15 The Secretary shall publish information de-
16 scribed in subparagraph (A)(i) and subpara-
17 graph (B) on a public website of the Centers
18 for Medicare & Medicaid Services. Such infor-
19 mation shall be so published on an individual
20 plan level and may in addition be aggregated in
21 such manner as determined appropriate by the
22 Secretary.
23 "(E) MEDPAC REPORT.—Not later than 3
24 years after the date information is first sub-
25 mitted under subparagraph (A)(i), the Medicare

1 Payment Advisory Commission shall submit to
2 Congress a report on such information that in-
3 cludes a descriptive analysis of the use of prior
4 authorization. As appropriate, the Commission
5 should report on statistics including the fre-
6 quency of appeals and overturned decisions.
7 The Commission shall provide recommenda-
8 tions, as appropriate, on any improvement that
9 should be made to the electronic prior author-
10 ization programs of Medicare Advantage plans.

11 ''(F) SPECIFIED REQUEST DEFINED.—For
12 purposes of this paragraph, the term 'specified
13 request' means a prior authorization request
14 made with respect to an applicable item or serv-
15 ice.

16 ''(4) ENROLLEE PROTECTION STANDARDS.—
17 For purposes of paragraph (1)(A)(ii), the Secretary
18 shall, through notice and comment rulemaking,
19 specify the following enrollee protection standards
20 with respect to the use of prior authorization by
21 Medicare Advantage plans for applicable items and
22 services:

23 ''(A) Adoption of transparent prior author-
24 ization programs developed in consultation with
25 enrollees and with providers and suppliers with

1 contracts in effect with such plans for fur-
2 nishing such items and services under such
3 plans;
4 "(B) Allowing for the waiver or modifica-
5 tion of prior authorization requirements based
6 on the performance of such providers and sup-
7 pliers in demonstrating compliance with such
8 requirements, such as adherence to evidence-
9 based medical guidelines and other quality cri-
10 teria; and
11 "(C) Conducting annual reviews of such
12 items and services for which prior authorization
13 requirements are imposed under such plans
14 through a process that takes into account input
15 from enrollees and from providers and suppliers
16 with such contracts in effect and is based on
17 consideration of prior authorization data from
18 previous plan years and analyses of current cov-
19 erage criteria.
20 "(5) APPLICABLE ITEM OR SERVICE.—For pur-
21 poses of this subsection, the term 'applicable item or
22 service' means, with respect to a Medicare Advan-
23 tage plan, any item or service for which benefits are
24 available under such plan, other than a covered part
25 D drug.

1 "(6) REPORTS TO CONGRESS.—

2 "(A) GAO.—Not later than the end of the
3 fourth plan year beginning on or after the date
4 of the enactment of this subsection, the Comp-
5 troller General of the United States shall sub-
6 mit to Congress a report containing an evalua-
7 tion of the implementation of the requirements
8 of this subsection and an analysis of issues in
9 implementing such requirements faced by Medi-
10 care Advantage plans.

11 "(B) HHS.—Not later than the end of the
12 fifth plan year beginning after the date of the
13 enactment of this subsection, and biennially
14 thereafter through the date that is 10 years
15 after such date of enactment, the Secretary
16 shall submit to Congress a report containing a
17 description of the information submitted under
18 paragraph (3)(A)(i) during—

19 "(i) in the case of the first such re-
20 port, the fourth plan year beginning after
21 the date of the enactment of this sub-
22 section; and

23 "(ii) in the case of a subsequent re-
24 port, the 2 plan years preceding the year
25 of the submission of such report.".

1 (b) ENSURING TIMELY RESPONSES FOR ALL PRIOR
2 AUTHORIZATION REQUESTS SUBMITTED UNDER PART
3 C.—Section 1852(g) of the Social Security Act (42 U.S.C.
4 1395w–22(g)) is amended—
5 (1) in paragraph (1)(A), by inserting ‘‘and in
6 accordance with paragraph (6)’’ after ‘‘paragraph
7 (3)’’;
8 (2) in paragraph (3)(B)(iii), by inserting ‘‘(or,
9 subject to subsection (o), with respect to prior au-
10 thorization requests submitted on or after the first
11 day of the third plan year beginning after the date
12 of the enactment of the Improving Seniors' Timely
13 Access to Care Act of 2022, not later than 24
14 hours)’’ after ‘‘72 hours’’.
15 (3) by adding at the end the following new
16 paragraph:
17 ‘‘(6) TIMEFRAME FOR RESPONSE TO PRIOR AU-
18 THORIZATION REQUESTS.—Subject to paragraph (3)
19 and subsection (o), in the case of an organization
20 determination made with respect to a prior author-
21 ization request for an item or service to be furnished
22 to an individual submitted on or after the first day
23 of the third plan year beginning after the date of the
24 enactment of this paragraph, the organization shall
25 notify the enrollee (and the physician involved, as

1 appropriate) of such determination no later than 7
2 days (or such shorter timeframe as the Secretary
3 may specify through notice and comment rule-
4 making, taking into account enrollee and stakeholder
5 feedback) after receipt of such request.''.

6 **SEC. 3. FUNDING.**

7 The Secretary of Health and Human Services shall
8 provide for the transfer, from the Federal Hospital Insur-
9 ance Trust Fund established under section 1817 of the
10 Social Security Act (42 U.S.C. 1395i) and the Federal
11 Supplementary Medical Insurance Trust Fund established
12 under section 1841 of such Act (42 U.S.C. 1395t) (in such
13 proportion as determined appropriate by the Secretary) to
14 the Centers for Medicare & Medicaid Services Program
15 Management Account, of $25,000,000 for fiscal year
16 2022, to remain available until expended, for purposes of
17 carrying out the amendments made by this Act.