

114TH CONGRESS  
2D SESSION

# H. R. 5659

To amend title XVIII of the Social Security Act with respect to expanding Medicare Advantage coverage for individuals with end-stage renal disease (ESRD).

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## IN THE HOUSE OF REPRESENTATIVES

JULY 7, 2016

Mr. SMITH of Missouri (for himself, Mr. LEWIS, Mr. BILIRAKIS, Mr. SCHRAMMER, and Mr. MARINO) 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 amend title XVIII of the Social Security Act with respect to expanding Medicare Advantage coverage for individuals with end-stage renal disease (ESRD).

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 “Expanding Seniors Re-  
5 ceiving Dialysis Choice Act of 2016” or as the “ESRD  
6 Choice Act of 2016”.

1 **SEC. 2. EXPANDING MEDICARE ADVANTAGE COVERAGE**  
2 **FOR INDIVIDUALS WITH END-STAGE RENAL**  
3 **DISEASE (ESRD).**

4 (a) EXPANDED MA ELIGIBILITY.—

5 (1) IN GENERAL.—Section 1851(a)(3) of the  
6 Social Security Act (42 U.S.C. 1395w–21(a)(3)) is  
7 amended—

8 (A) by striking subparagraph (B); and

9 (B) by striking “ELIGIBLE INDIVIDUAL”  
10 and all that follows through “In this title, sub-  
11 ject to subparagraph (B),” and inserting “ELI-  
12 GIBLE INDIVIDUAL.—In this title,”.

13 (2) CONFORMING AMENDMENTS.—

14 (A) Section 1852(b)(1) of the Social Secu-  
15 rity Act (42 U.S.C. 1395w–22(b)(1)) is amend-  
16 ed—

17 (i) by striking subparagraph (B); and

18 (ii) by striking “BENEFICIARIES” and  
19 all that follows through “A  
20 Medicare+Choice organization” and in-  
21 sserting “BENEFICIARIES.—A Medicare Ad-  
22 vantage organization.”.

23 (B) The flush sentence at the end of sec-  
24 tion 1859(b)(6) of the Social Security Act (42  
25 U.S.C. 1395w–28(b)(6)) is amended by striking

1 “may waive” and all that follows through “sub-  
2 paragraph and”.

3 (b) EXCLUDING COSTS FOR KIDNEY ACQUISITIONS  
4 FROM MA BENCHMARK.—Section 1853 of the Social Se-  
5 curity Act (42 U.S.C. 1395w-23) is amended—

6 (1) in subsection (k)—

7 (A) in paragraph (1)—

8 (i) in the matter preceding subpara-  
9 graph (A), by striking “paragraphs (2)  
10 and (4)” and inserting “paragraphs (2),  
11 (4), and (5)”; and

12 (ii) in subparagraph (B)(i), by strik-  
13 ing “paragraphs (2) and (4)” and insert-  
14 ing “paragraphs (2), (4), and (5)”; and

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

17 “(5) EXCLUSION OF COSTS FOR KIDNEY ACQUI-  
18 SITIONS FROM CAPITATION RATES.—After deter-  
19 mining the applicable amount for an area for a year  
20 under paragraph (1) (beginning with 2019), the Sec-  
21 retary shall adjust such applicable amount to ex-  
22 clude from such applicable amount the Secretary’s  
23 estimate of the standardized costs for payments for  
24 organ acquisitions for kidney transplants covered

1 under this title (including expenses covered under  
2 section 1881(d)) in the area for the year.”; and

3 (2) in subsection (n)(2)—

4 (A) in subparagraph (A)(i), by inserting  
5 “and, for 2019 and subsequent years, the exclu-  
6 sion of payments for organ acquisitions for kid-  
7 ney transplants from the capitation rate as de-  
8 scribed in subsection (k)(5)” before the semi-  
9 colon at the end;

10 (B) in subparagraph (E), in the matter  
11 preceding clause (i), by striking “subparagraph  
12 (F)” and inserting “subparagraphs (F) and  
13 (G)”; and

14 (C) by adding at the end the following new  
15 subparagraph:

16 “(G) APPLICATION OF KIDNEY ACQUISSI-  
17 TIONS ADJUSTMENT.—The base payment  
18 amount specified in subparagraph (E) for a  
19 year (beginning with 2019) shall be adjusted in  
20 the same manner under paragraph (5) of sub-  
21 section (k) as the applicable amount is adjusted  
22 under such subsection.”.

23 (c) FFS COVERAGE OF KIDNEY ACQUISITIONS.—

24 (1) IN GENERAL.—Section 1852(a)(1)(B)(i) of  
25 the Social Security Act (42 U.S.C. 1395w-

1 22(a)(1)(B)(i) is amended by inserting “or coverage  
2 for organ acquisitions for kidney transplants, includ-  
3 ing as covered under section 1881(d),” after “hos-  
4 pice care”.

5 (2) CONFORMING AMENDMENT.—Section  
6 1851(i) of the Social Security Act (42 U.S.C.  
7 1395w–21(i)) is amended by adding at the end the  
8 following new paragraph:

9 “(3) FFS PAYMENT FOR EXPENSES FOR KID-  
10 NEY ACQUISITIONS.—Paragraphs (1) and (2) do not  
11 apply with respect to expenses for organ acquisitions  
12 for kidney transplants described in section  
13 1852(a)(1)(B)(i).”.

14 (d) EXPANDED MA EDUCATION.—Section  
15 1851(d)(2)(A)(iii) of the Social Security Act (42 U.S.C.  
16 1395w–21(d)(2)(A)(iii)) is amended by inserting before  
17 the period at the end the following: “, including any addi-  
18 tional information that individuals determined to have  
19 end-stage renal disease may need to make informed deci-  
20 sions with respect to such an election”.

21 (e) REPORT.—Not later than April 1, 2022, the Ad-  
22 ministrator of the Centers for Medicare & Medicaid Serv-  
23 ices shall submit to Congress a report on the impact of  
24 the amendments made by this section on spending under  
25 the traditional Medicare fee-for-service program under

1 parts A and B of title XVIII of the Social Security Act  
2 as well as on spending under parts C and D of such title.  
3 The report shall include an assessment of the risk adjust-  
4 ment payment methodologies under such parts C and D  
5 and their adequacy with respect to individuals with end-  
6 stage renal disease and such recommendations as the Ad-  
7 ministrator deems appropriate.

8 (f) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to plan years beginning on or after  
10 January 1, 2020.

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