

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 2581  
OFFERED BY M . \_\_\_\_\_**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Preservation of Access  
3 for Seniors in Medicare Advantage Act of 2015”.

**4 SEC. 2. DEMONSTRATION PROGRAM.**

5 (a) IN GENERAL.—The Secretary of Health and  
6 Human Services (in this section referred to as the “Sec-  
7 retary”) shall establish a 3-year demonstration program  
8 to test the use of value-based insurance design methodolo-  
9 gies (as defined in subsection (c)(1)) under eligible Medi-  
10 care Advantage plans offered by Medicare Advantage or-  
11 ganizations under part C of title XVIII of the Social Secu-  
12 rity Act (42 U.S.C. 1395w–21 et seq.). The Secretary may  
13 extend the program to a duration of 4 or 5 years, as deter-  
14 mined necessary by the Secretary in coordination with the  
15 Centers for Medicare and Medicaid Innovation.

16 (b) DEMONSTRATION PROGRAM DESIGN.—

17 (1) SELECTION OF MEDICARE ADVANTAGE  
18 SITES AND ELIGIBLE MEDICARE ADVANTAGE

1 PLANS.—Not later than two years after the date of  
2 the enactment of this Act, the Secretary shall—

3 (A) select at least two Medicare Advantage  
4 sites with respect to which to conduct the dem-  
5 onstration program under this section; and

6 (B) approve eligible Medicare Advantage  
7 plans to participate in such demonstration pro-  
8 gram.

9 In selecting Medicare Advantage sites under sub-  
10 paragraph (A), the Secretary shall take into account  
11 area differences as well as the availability of health  
12 maintenance organization plans and preferred pro-  
13 vider organization plans offered in such sites.

14 (2) START OF DEMONSTRATION.—The dem-  
15 onstration program shall begin not later than the  
16 third plan year beginning after the date of the en-  
17 actment of this Act.

18 (3) ELIGIBLE MEDICARE ADVANTAGE PLANS.—  
19 For purposes of this section, the term “eligible  
20 Medicare Advantage plan” means a Medicare Ad-  
21 vantage plan under part C of title XVIII of the So-  
22 cial Security Act (42 U.S.C. 1395w–21 et seq.) that  
23 meets the following requirements:

24 (A) The plan is an Medicare Advantage re-  
25 gional plan (as defined in paragraph (4) of sec-

1           tion 1859(b) of such Act (42 U.S.C. 1395w-  
2           28(b))) or Medicare Advantage local plan (as  
3           defined in paragraph (5) of such section) of-  
4           fered in the Medicare Advantage region selected  
5           under paragraph (1)(A).

6           (B) The plan has—

7           (i)(I) a quality rating under section  
8           1853(n)(4) of such Act (42 U.S.C. 1395w-  
9           23(n)(4)) of 4 stars or higher based on the  
10          most recent data available for such year,  
11          or (II) in the case of a specialized Medi-  
12          care Advantage plan for special needs indi-  
13          viduals, as defined in section  
14          1859(b)(6)(A) of such Act (42 U.S.C.  
15          1395w-28(b)(6)(A)), a quality rating  
16          under 1853(n)(4) of such Act (42 U.S.C.  
17          1395w-23(n)(4)) equal to or higher than  
18          the national average for special needs  
19          plans (excluding Institutional-Special needs  
20          plans) based on the most recent data avail-  
21          able for such year; and

22          (ii) at least 20 percent of the popu-  
23          lation to whom the plan is offered in a  
24          service area consists of subsidy eligible in-  
25          dividuals (as defined in section 1860D-

1                   14(a)(3)(A) of the Social Security Act (42  
2                   U.S.C. 1395w-114(a)(3)(A)).

3                   (4) DISCLOSURE TO BENEFICIARIES.—The Sec-  
4                   retary shall provide to each individual eligible to en-  
5                   roll under a Medicare Advantage plan approved to  
6                   participate under the demonstration program during  
7                   a plan year for which the plan is so selected—

8                   (A) notification that the plan is partici-  
9                   pating in such demonstration program;

10                  (B) background information on the dem-  
11                  onstration program;

12                  (C) clinical data derived from the studies  
13                  resulting from the demonstration program; and

14                  (D) notification of the potential benefits  
15                  that the individual will receive, and of the other  
16                  potential impacts that the individual will experi-  
17                  ence, on account of the participation of the plan  
18                  in the demonstration program.

19                  (c) VALUE-BASED INSURANCE DESIGN METHODOLO-  
20                  GIES.—

21                  (1) DEFINITION.—For purposes of this section,  
22                  the term “value-based insurance design method-  
23                  ology” means a methodology for identifying specific  
24                  prescription medications, and clinical services that  
25                  are payable under title XVIII of the Social Security

1 Act, for which the reduction of copayments, coinsur-  
2 ance, or both, would improve the management of  
3 specific chronic clinical conditions because of the  
4 high value and effectiveness of such medications and  
5 services for such specific chronic clinical conditions,  
6 as approved by the Secretary.

7 (2) USE OF METHODOLOGIES TO REDUCE CO-  
8 PAYMENTS AND COINSURANCE.—A Medicare Advan-  
9 tage organization offering an eligible Medicare Ad-  
10 vantage plan approved to participate under the dem-  
11 onstration program, for each plan year for which the  
12 plan is so selected and using value-based insurance  
13 design methodologies—

14 (A) shall identify each prescription medica-  
15 tion and clinical service covered under such  
16 plan for which the plan proposes to reduce or  
17 eliminate the copayment or coinsurance, with  
18 respect to the management of specific chronic  
19 clinical conditions (as specified by the Sec-  
20 retary) of Medicare Advantage eligible individ-  
21 uals (as defined in section 1851(a)(3) of the  
22 Social Security Act (42 U.S.C. 1395w-  
23 21(a)(3))) enrolled under such plans, for such  
24 plan year;

1 (B) may, for such plan year, reduce or  
2 eliminate copayments, coinsurance, or both for  
3 such prescription medication and clinical serv-  
4 ices so identified with respect to the manage-  
5 ment of such conditions of such individuals—

6 (i) if such reduction or elimination is  
7 evidence-based and for the purpose of en-  
8 couraging such individuals in such plan to  
9 use such prescription medications and clin-  
10 ical services (such as preventive care, pri-  
11 mary care, specialty visits, diagnostic tests,  
12 procedures, and durable medical equip-  
13 ment) with respect to such conditions; and

14 (ii) for the purpose of encouraging  
15 such individuals in such plan to use health  
16 care providers that such organization has  
17 identified with respect to such plan year as  
18 being high value providers; and

19 (C) if a reduction or elimination is applied  
20 pursuant to subparagraph (B), with respect to  
21 such medication and clinical services, shall, for  
22 such plan year, count toward the deductible ap-  
23 plicable to such individual under such plan  
24 amounts that would have been payable by the  
25 individual as copayment or coinsurance for such

1 medication and services if the reduction or  
2 elimination had not been applied.

3 (3) PROHIBITION OF INCREASES OF COPAY-  
4 MENTS AND COINSURANCE.—In no case may any  
5 Medicare Advantage plan participating in the dem-  
6 onstration program increase, for any plan year for  
7 which the plan is so participating, the amount of co-  
8 payments or coinsurance for any item or service cov-  
9 ered under such plan for purposes of discouraging  
10 the use of such item or service.

11 (d) REPORT ON IMPLEMENTATION.—

12 (1) IN GENERAL.—Not later than 1 year after  
13 the date on which the demonstration program under  
14 this section begins under subsection (b)(2), the Sec-  
15 retary shall submit to Congress a report on the sta-  
16 tus of the implementation of the demonstration pro-  
17 gram.

18 (2) ELEMENTS.—The report required by para-  
19 graph (1) shall, with respect to eligible Medicare Ad-  
20 vantage plans participating in the demonstration  
21 program for the first plan year of such program, in-  
22 clude the following:

23 (A) A list of each medication and service  
24 identified pursuant to subsection (c)(2)(A) for  
25 such plan with respect to such plan year.

1 (B) For each such medication or service so  
2 identified, the amount of the copayment or co-  
3 insurance required under such plan with respect  
4 to such plan year for such medication or service  
5 and the amount of the reduction of such copay-  
6 ment or coinsurance from a previous plan year.

7 (C) For each provider identified pursuant  
8 to subsection (c)(2)(B)(ii) for such plan with  
9 respect to such plan year, a statement of the  
10 amount of the copayment or coinsurance re-  
11 quired under such plan with respect to such  
12 plan year and the amount of the reduction of  
13 such copayment or coinsurance from the pre-  
14 vious plan year.

15 (e) REVIEW AND ASSESSMENT OF UTILIZATION OF  
16 VALUE-BASED INSURANCE DESIGN METHODOLOGIES.—

17 (1) IN GENERAL.—The Secretary shall enter  
18 into a contract or agreement with an independent  
19 entity to review and assess the implementation of  
20 the demonstration program under this section. The  
21 review and assessment shall include the following:

22 (A) An assessment of the utilization of  
23 value-based insurance design methodologies by  
24 Medicare Advantage plans participating under  
25 such program.



1           (B) An analysis of whether reducing or  
2 eliminating the copayment or coinsurance for  
3 each medication and clinical service identified  
4 pursuant to subsection (c)(2)(A) resulted in in-  
5 creased adherence to medication regimens, in-  
6 creased service utilization, improvement in qual-  
7 ity metrics, better health outcomes, and en-  
8 hanced beneficiary experience.

9           (C) An analysis of the extent to which  
10 costs to Medicare Advantage plans under part  
11 C of title XVIII of the Social Security Act par-  
12 ticipating in the demonstration program is less  
13 than costs to Medicare Advantage plans under  
14 such part that are not participating in the dem-  
15 onstration program.

16           (D) An analysis of whether reducing or  
17 eliminating the copayment or coinsurance for  
18 providers identified pursuant to subsection  
19 (c)(2)(B)(ii) resulted in improvement in quality  
20 metrics, better health outcomes, and enhanced  
21 beneficiary experience.

22           (E) An analysis, for each provider so iden-  
23 tified, the extent to which costs to Medicare Ad-  
24 vantage plans under part C of title XVIII of the  
25 Social Security Act participating in the dem-

1           onstration program is less than costs to Medi-  
2           care Advantage plans under such part that are  
3           not participating in the demonstration program.

4           (F) Such other matters as the Secretary  
5           considers appropriate.

6           (2) REPORT.—The contract or agreement en-  
7           tered into under paragraph (1) shall require such  
8           entity to submit to the Secretary a report on the re-  
9           view and assessment conducted by the entity under  
10          such paragraph in time for the inclusion of the re-  
11          sults of such report in the report required by para-  
12          graph (3). Such report shall include a description, in  
13          clear language, of the manner in which the entity  
14          conducted the review and assessment.

15          (3) REPORT TO CONGRESS.—Not later than 4  
16          years after the date on which the demonstration pro-  
17          gram begins under subsection (b)(2), the Secretary  
18          shall submit to Congress a report on the review and  
19          assessment of the demonstration program conducted  
20          under this subsection. The report shall include the  
21          following:

22                  (A) A description of the results of the re-  
23                  view and assessment included in the report sub-  
24                  mitted pursuant to paragraph (2).

1           (B) Such recommendations as the Sec-  
2           retary considers appropriate for enhancing the  
3           utilization of the methodologies applied under  
4           the demonstration program to all Medicare Ad-  
5           vantage plans under part C of title XVIII of the  
6           Social Security Act so as to reduce copayments  
7           and coinsurance under such plans paid by  
8           Medicare beneficiaries for high-value prescrip-  
9           tion medications and clinical services for which  
10          coverage is provided under such plans and to  
11          otherwise improve the quality of health care  
12          provided under such plans.

13          (4) OVERSIGHT REPORT.—Not later than three  
14          years after the date of the enactment of this Act, the  
15          Comptroller General of the United States shall sub-  
16          mit to Congress a report on the demonstration pro-  
17          gram that includes an assessment, with respect to  
18          individuals enrolled under Medicare Advantage plans  
19          approved to participate under the demonstration  
20          program, of the impact that the age, co-morbidities,  
21          and geographic regions of such individuals had upon  
22          the implementation of the demonstration program by  
23          the plans with respect to such individuals.

24          (f) SAVINGS.—In no case may any reduction in bene-  
25          ficiary copayments or coinsurance resulting from the im-

1 plementation of the demonstration program under this  
2 section result in expenditures under parts A, B, and D  
3 of the title XVIII of the Social Security Act that are great-  
4 er than such expenditures without application of this sec-  
5 tion.

6 (g) EXPANSION OF DEMONSTRATION PROGRAM.—  
7 Taking into account the review and assessment conducted  
8 under subsection (e), the Secretary may, through notice  
9 and comment rulemaking, expand (including implementa-  
10 tion on a nationwide basis) the duration and scope of the  
11 demonstration program under title XVIII of the Social Se-  
12 curity Act, other than under the original medicare fee-for-  
13 service program under parts A and B of such title, to the  
14 extent determined appropriate by the Secretary, if the re-  
15 quirements of paragraphs (1), (2) and (3) of subsection  
16 (c) of section 1115A of the Social Security Act (42 U.S.C.  
17 1315a), as applied to the testing of a model under sub-  
18 section (b) of such section, applied to the demonstration  
19 under this section.

20 (h) WAIVER AUTHORITY.—The Secretary may waive  
21 such provisions of titles XI and XVIII of the Social Secu-  
22 rity Act as may be necessary to carry out the demonstra-  
23 tion program under this section.

24 (i) IMPLEMENTATION FUNDING.—For purposes of  
25 carrying out the demonstration program under this sec-

1 tion, the Secretary shall provide for the transfer from the  
2 Federal Hospital Insurance Trust Fund under section  
3 1817 of the Social Security Act (42 U.S.C. 1395i) and  
4 the Federal Supplementary Insurance Trust Fund under  
5 section 1841 of the Social Security Act (42 U.S.C. 1395t),  
6 including the Medicare Prescription Drug Account in such  
7 Trust Fund, in such proportion as determined appropriate  
8 by the Secretary, of such sums as may be necessary.

9 **SEC. 3. PRESERVATION OF MEDICARE BENEFICIARY**  
10 **CHOICE UNDER MEDICARE ADVANTAGE.**

11 Section 1851(e)(2) of the Social Security Act (42  
12 U.S.C. 1395w-21(e)(2)) is amended—

13 (1) in subparagraph (C)—

14 (A) in the heading, by inserting “FROM  
15 2011 THROUGH 2015” after “45-DAY PERIOD”;  
16 and

17 (B) by inserting “and ending with 2015”  
18 after “beginning with 2011”; and

19 (2) by adding at the end the following new sub-  
20 paragraph:

21 “(G) CONTINUOUS OPEN ENROLLMENT  
22 AND DISENROLLMENT FOR FIRST 3 MONTHS IN  
23 2016 AND SUBSEQUENT YEARS.—

24 “(i) IN GENERAL.—Subject to clause

25 (ii) and subparagraph (D), at any time

1 during the first 3 months of a year (begin-  
2 ning with 2016), or, if the individual first  
3 becomes a Medicare eligible individual (and  
4 does not have coverage under the original  
5 medicare fee-for-service program under  
6 parts A and B) during a year (beginning  
7 with 2016), during the first 3 months of  
8 such year in which the individual is a  
9 Medicare Advantage eligible individual, a  
10 Medicare Advantage eligible individual may  
11 change the election under subsection  
12 (a)(1).

13 “(ii) LIMITATION OF ONE CHANGE  
14 DURING OPEN ENROLLMENT PERIOD EACH  
15 YEAR.—An individual may change the elec-  
16 tion pursuant to clause (i) only once dur-  
17 ing the applicable 3-month period de-  
18 scribed in such clause in each year. The  
19 limitation under this clause shall not apply  
20 to changes in elections effected during an  
21 annual, coordinated election period under  
22 paragraph (3) or during a special enroll-  
23 ment period under paragraph (4).

24 “(iii) LIMITED APPLICATION TO PART  
25 D.—Clauses (i) and (ii) of this subpara-

1 graph shall only apply with respect to  
2 changes in enrollment in a prescription  
3 drug plan under part D in the case of an  
4 individual who, previous to such change in  
5 enrollment, is enrolled in a Medicare Ad-  
6 vantage plan.

7 “(iv) LIMITATIONS ON MARKETING.—  
8 Pursuant to subsection (j), no unsolicited  
9 marketing or marketing materials may be  
10 sent to an individual described in clause (i)  
11 during the continuous open enrollment and  
12 disenrollment period established for the in-  
13 dividual under such clause, notwith-  
14 standing marketing guidelines established  
15 by the Centers for Medicare & Medicaid  
16 Services.”.

17 **SEC. 4. TREATMENT OF INFUSION DRUGS FURNISHED**  
18 **THROUGH DURABLE MEDICAL EQUIPMENT.**

19 Section 1842(o)(1) of the Social Security Act (42  
20 U.S.C. 1395u(o)(1)) is amended—

21 (1) in subparagraph (C), by inserting “(and in-  
22 cluding a drug or biological described in subpara-  
23 graph (D)(i) furnished on or after January 1,  
24 2017)” after “2005”; and

25 (2) in subparagraph (D)—

1 (A) by striking “infusion drugs” and in-  
2 serting “infusion drugs or biologicals” each  
3 place it appears; and

4 (B) in clause (i)—

5 (i) by striking “2004” and inserting  
6 “2004, and before January 1, 2017”; and

7 (ii) by striking “for such drug”.

8 **SEC. 5. SENSE OF CONGRESS REGARDING THE IMPLEMEN-**  
9 **TATION AND DISTRIBUTION OF QUALITY IN-**  
10 **CENTIVE PAYMENTS TO MEDICARE ADVAN-**  
11 **TAGE PLANS.**

12 It is the sense of Congress that—

13 (1) the Secretary of Health and Human Serv-  
14 ices has incorrectly interpreted subsection (n) of sec-  
15 tion 1853 of the Social Security Act (42 U.S.C.  
16 1395w–23) as prohibiting the provision of any Medi-  
17 care quality incentive payments under subsection (o)  
18 of such section with respect to Medicare Advantage  
19 plans that exceed the payment benchmark cap under  
20 such subsection (n) for the area served by such  
21 plans; and

22 (2) the Secretary should immediately apply  
23 quality incentive payments under such subsection (o)  
24 with respect to such Medicare Advantage plans with-



- 1 out regard to the limits set forth in such subsection
- 2 (n).

