

AMENDMENT TO H.R. 5659
OFFERED BY MR. BRADY OF TEXAS

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Expanding Seniors Re-
3 ceiving Dialysis Choice Act of 2016” or as the “ESRD
4 Choice Act of 2016”.

5 SEC. 2. EXPANDING MEDICARE ADVANTAGE COVERAGE
6 FOR INDIVIDUALS WITH END-STAGE RENAL
7 DISEASE (ESRD).

8 (a) EXPANDED MA ELIGIBILITY.—

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

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

13 (B) by striking “ELIGIBLE INDIVIDUAL”
14 and all that follows through “In this title, sub-
15 ject to subparagraph (B),” and inserting “ELI-
16 GIBLE INDIVIDUAL.—In this title,”.

17 (2) CONFORMING AMENDMENTS.—

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

4 (i) by striking subparagraph (B); and
5 (ii) by striking “BENEFICIARIES” and
6 all that follows through “A
7 Medicare+Choice organization” and in-
8 serting “BENEFICIARIES.—A Medicare Ad-
9 vantage organization.”.

10 (B) Section 1859(b)(6) of the Social Secu-
11 rity Act (42 U.S.C. 1395w-28(b)(6)) is amend-
12 ed by striking “may waive” and all that follows
13 through “subparagraph and”.

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

17 (1) in subsection (k)—

18 (A) in paragraph (1)—

19 (i) in the matter preceding subpara-
20 graph (A), by striking “paragraphs (2)
21 and (4)” and inserting “paragraphs (2),
22 (4), and (5)”; and

23 (ii) in subparagraph (B)(i), by strik-
24 ing “paragraphs (2) and (4)” and insert-
25 ing “paragraphs (2), (4), and (5)”; and

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

3 “(5) EXCLUSION OF COSTS FOR KIDNEY ACQUI-
4 SITIONS FROM CAPITATION RATES.—After deter-
5 mining the applicable amount for an area for a year
6 under paragraph (1) (beginning with 2019), the Sec-
7 retary shall adjust such applicable amount to ex-
8 clude from such applicable amount the Secretary’s
9 estimate of the standardized costs for payments for
10 organ acquisitions for kidney transplants covered
11 under this title (including expenses covered under
12 section 1881(d)) in the area for the year.”; and

13 (2) in subsection (n)(2)—

14 (A) in subparagraph (A)(i), by inserting
15 “and, for 2019 and subsequent years, the exclu-
16 sion of payments for organ acquisitions for kid-
17 ney transplants from the capitation rate as de-
18 scribed in subsection (k)(5)” before the semi-
19 colon at the end;

20 (B) in subparagraph (E), in the matter
21 preceding clause (i), by striking “subparagraph
22 (F)” and inserting “subparagraphs (F) and
23 (G)”; and

24 (C) by adding at the end the following new
25 subparagraph:

1 “(G) APPLICATION OF KIDNEY ACQUI-
2 TIONS ADJUSTMENT.—The base payment
3 amount specified in subparagraph (E) for a
4 year (beginning with 2019) shall be adjusted in
5 the same manner under paragraph (5) of sub-
6 section (k) as the applicable amount is adjusted
7 under such subsection.”.

8 (c) FFS COVERAGE OF KIDNEY ACQUISITIONS.—

9 (1) IN GENERAL.—Section 1852(a)(1)(B)(i) of
10 the Social Security Act (42 U.S.C. 1395w-
11 22(a)(1)(B)(i)) is amended by inserting “or coverage
12 for organ acquisitions for kidney transplants, includ-
13 ing as covered under section 1881(d),” after “hos-
14 pice care”.

15 (2) CONFORMING AMENDMENT.—Section
16 1851(i) of the Social Security Act (42 U.S.C.
17 1395w-21(i)) is amended by adding at the end the
18 following new paragraph:

19 “(3) FFS PAYMENT FOR EXPENSES FOR KID-
20 NEY ACQUISITIONS.—Paragraphs (1) and (2) do not
21 apply with respect to expenses for organ acquisitions
22 for kidney transplants described in section
23 1852(a)(1)(B)(i).”.

24 (d) SENSE OF CONGRESS REGARDING APPLICATION
25 OF APPROPRIATE MEDICARE ADVANTAGE RISK ADJUST-

1 MENT FOR PAYMENT FOR INCREASED ESRD ENROLL-
2 EES.—It is the sense of Congress that in implementing
3 the policies under this section, the Centers for Medicare
4 & Medicaid Services should provide, in an accurate and
5 transparent manner, for risk adjustment to payment
6 under the Medicare Advantage program to account for the
7 increased enrollment in Medicare Advantage plans of indi-
8 viduals with end-stage renal disease.

9 (e) EXPANDED MA EDUCATION.—Section
10 1851(d)(2)(A)(iii) of the Social Security Act (42 U.S.C.
11 1395w–21(d)(2)(A)(iii)) is amended by inserting before
12 the period at the end the following: “, including any addi-
13 tional information that individuals determined to have
14 end-stage renal disease may need to make informed deci-
15 sions with respect to such an election”.

16 (f) REPORT.—Not later than April 1, 2022, the Ad-
17 ministrator of the Centers for Medicare & Medicaid Serv-
18 ices shall submit to Congress a report on the impact of
19 the amendments made by this section on spending under
20 the traditional Medicare fee-for-service program under
21 parts A and B of title XVIII of the Social Security Act
22 as well as on spending under parts C and D of such title.
23 The report shall include an assessment of the risk adjust-
24 ment payment methodologies under such parts C and D
25 and their adequacy with respect to individuals with end-

1 stage renal disease and such recommendations as the Ad-
2 ministrator deems appropriate.

3 (g) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to plans years beginning on or
5 after January 1, 2020.

