

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. \_\_\_\_\_  
OFFERED BY MR. NEAL OF MASSACHUSETTS**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Improving Seniors’  
3 Timely Access to Care Act of 2022”.

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

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

10 “(o) PRIOR AUTHORIZATION REQUIREMENTS.—

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

16 “(A) beginning with the third plan year be-  
17 ginning after the date of the enactment of this  
18 subsection—

1 “(i) establish the electronic prior au-  
2 thORIZATION program described in para-  
3 graph (2); and

4 “(ii) meet the enrollee protection  
5 standards specified pursuant to paragraph  
6 (4); and

7 “(B) beginning with the fourth plan year  
8 beginning after the date of the enactment of  
9 this subsection, meet the transparency require-  
10 ments specified in paragraph (3).

11 “(2) ELECTRONIC PRIOR AUTHORIZATION PRO-  
12 GRAM.—

13 “(A) IN GENERAL.—For purposes of para-  
14 graph (1)(A), the electronic prior authorization  
15 program described in this paragraph is a pro-  
16 gram that provides for the secure electronic  
17 transmission of—

18 “(i) a prior authorization request  
19 from a provider of services or supplier to  
20 a Medicare Advantage plan with respect to  
21 an applicable item or service to be fur-  
22 nished to an individual and a response, in  
23 accordance with this paragraph, from such  
24 plan to such provider or supplier; and

1 “(ii) any health claims attachment (as  
2 defined for purposes of section  
3 1173(a)(2)(B)) relating to such request or  
4 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) any other requirements to  
20 promote the standardization and  
21 streamlining of electronic transactions  
22 under this part specified by the Sec-  
23 retary.

24 “(iii) DEADLINE FOR SPECIFICATION  
25 OF ADDITIONAL REQUIREMENTS.—Not

1 later than July 1, 2023, the Secretary  
2 shall finalize any requirements described in  
3 clause (ii)(II) .

4 “(C) REAL-TIME DECISIONS.—

5 “(i) IN GENERAL.—Subject to clause  
6 (iv), the program described in subpara-  
7 graph (A) shall provide for real-time deci-  
8 sions (as defined by the Secretary in ac-  
9 cordance with clause (v)) by a Medicare  
10 Advantage plan with respect to prior au-  
11 thorization requests for applicable items  
12 and services identified by the Secretary  
13 pursuant to clause (ii) if such requests are  
14 submitted with all medical or other docu-  
15 mentation required by such plan.

16 “(ii) IDENTIFICATION OF ITEMS AND  
17 SERVICES.—

18 “(I) IN GENERAL.—For purposes  
19 of clause (i), the Secretary shall iden-  
20 tify, not later than the date on which  
21 the initial announcement described in  
22 section 1853(b)(1)(B)(i) for the third  
23 plan year beginning after the date of  
24 the enactment of this subsection is re-  
25 quired to be announced, applicable

1 items and services for which prior au-  
2 thORIZATION requests are routinely ap-  
3 proved.

4 “(II) UPDATES.—The Secretary  
5 shall consider updating the applicable  
6 items and services identified under  
7 subclause (I) based on the information  
8 described in paragraph (3)(A)(i) (if  
9 available and determined practicable  
10 to utilize by the Secretary) and any  
11 other information determined appro-  
12 priate by the Secretary not less fre-  
13 quently than biennially. The Secretary  
14 shall announce any such update that  
15 is to apply with respect to a plan year  
16 not later than the date on which the  
17 initial announcement described in sec-  
18 tion 1853(b)(1)(B)(i) for such plan  
19 year is required to be announced.

20 “(iii) REQUEST FOR INFORMATION.—  
21 The Secretary shall issue a request for in-  
22 formation for purposes of initially identi-  
23 fying applicable items and services under  
24 clause (ii)(I).

1                   “(iv) EXCEPTION FOR EXTENUATING  
2                   CIRCUMSTANCES.—In the case of a prior  
3                   authorization request submitted to a Medi-  
4                   care Advantage plan for an individual en-  
5                   rolled in such plan during a plan year with  
6                   respect to an item or service identified by  
7                   the Secretary pursuant to clause (ii) for  
8                   such plan year, such plan may, in lieu of  
9                   providing a real-time decision with respect  
10                  to such request in accordance with clause  
11                  (i), delay such decision under extenuating  
12                  circumstances (as specified by the Sec-  
13                  retary), provided that such decision is pro-  
14                  vided no later than 72 hours after receipt  
15                  of such request (or, in the case that the  
16                  provider of services or supplier submitting  
17                  such request has indicated that such delay  
18                  may seriously jeopardize such individual’s  
19                  life, health, or ability to regain maximum  
20                  function, no later than 24 hours after re-  
21                  ceipt of such request).

22                   “(v) DEFINITION OF REAL-TIME DECI-  
23                   SION.—In establishing the definition of a  
24                   real-time decision for purposes of clause  
25                   (i), the Secretary shall take into account

1 current medical practice, technology,  
2 health care industry standards, and other  
3 relevant information relating to how quick-  
4 ly a Medicare Advantage plan may provide  
5 responses with respect to prior authoriza-  
6 tion requests.

7 “(vi) IMPLEMENTATION.—The Sec-  
8 retary shall use notice and comment rule-  
9 making for each of the following:

10 “(I) Establishing the definition  
11 of a ‘real-time decision’ for purposes  
12 of clause (i).

13 “(II) Updating such definition.

14 “(III) Initially identifying appli-  
15 cable items or services pursuant to  
16 clause (ii)(I).

17 “(IV) Updating applicable items  
18 and services so identified as described  
19 in clause (ii)(II).

20 “(3) TRANSPARENCY REQUIREMENTS.—

21 “(A) IN GENERAL.—For purposes of para-  
22 graph (1)(B), the transparency requirements  
23 specified in this paragraph are, with respect to  
24 a Medicare Advantage plan, the following:

1                   “(i) The plan, annually and in a man-  
2                   ner specified by the Secretary, shall submit  
3                   to the Secretary the following information:

4                                 “(I) A list of all applicable items  
5                                 and services that were subject to a  
6                                 prior authorization requirement under  
7                                 the plan during the previous plan  
8                                 year.

9                                 “(II) The percentage and number  
10                                of specified requests (as defined in  
11                                subparagraph (F)) approved during  
12                                the previous plan year by the plan in  
13                                an initial determination and the per-  
14                                centage and number of specified re-  
15                                quests denied during such plan year  
16                                by such plan in an initial determina-  
17                                tion (both in the aggregate and cat-  
18                                egorized by each item and service).

19                                “(III) The percentage and num-  
20                                ber of specified requests submitted  
21                                during the previous plan year that  
22                                were made with respect to an item or  
23                                service identified by the Secretary  
24                                pursuant to paragraph (2)(C)(ii) for  
25                                such plan year, and the percentage



1 and number of such requests that  
2 were subject to an exception under  
3 paragraph (2)(C)(iv) (categorized by  
4 each item and service).

5 “(IV) The percentage and num-  
6 ber of specified requests submitted  
7 during the previous plan year that  
8 were made with respect to an item or  
9 service identified by the Secretary  
10 pursuant to paragraph (2)(C)(ii) for  
11 such plan year that were approved  
12 (categorized by each item and serv-  
13 ice).

14 “(V) The percentage and number  
15 of specified requests that were denied  
16 during the previous plan year by the  
17 plan in an initial determination and  
18 that were subsequently appealed.

19 “(VI) The number of appeals of  
20 specified requests resolved during the  
21 preceding plan year, and the percent-  
22 age and number of such resolved ap-  
23 peals that resulted in approval of the  
24 furnishing of the item or service that  
25 was the subject of such request, bro-

1                   ken down by each applicable item and  
2                   service and broken down by each level  
3                   of appeal (including judicial review).

4                   “(VII) The percentage and num-  
5                   ber of specified requests that were de-  
6                   nied, and the percentage and number  
7                   of specified requests that were ap-  
8                   proved, by the plan during the pre-  
9                   vious plan year through the utilization  
10                  of decision support technology, artifi-  
11                  cial intelligence technology, machine-  
12                  learning technology, clinical decision-  
13                  making technology, or any other tech-  
14                  nology specified by the Secretary.

15                  “(VIII) The average and the me-  
16                  dian amount of time (in hours) that  
17                  elapsed during the previous plan year  
18                  between the submission of a specified  
19                  request to the plan and a determina-  
20                  tion by the plan with respect to such  
21                  request for each such item and serv-  
22                  ice, excluding any such requests that  
23                  were not submitted with the medical  
24                  or other documentation required to be  
25                  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 all 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 The Secretary of Health and Human Services shall,  
18 through notice and comment rulemaking, specify re-  
19 quirements with respect to the use of prior author-  
20 ization by Medicare Advantage plans for applicable  
21 items and services to ensure—

22 “(A) that such plans adopt transparent  
23 prior authorization programs developed in con-  
24 sultation with enrollees and with providers and  
25 suppliers with contracts in effect with such

1 plans for furnishing such items and services  
2 under such plans;

3 “(B) that such programs allow for the  
4 waiver or modification of prior authorization re-  
5 quirements based on the performance of such  
6 providers and suppliers in demonstrating com-  
7 pliance with such requirements, such as adher-  
8 ence to evidence-based medical guidelines and  
9 other quality criteria; and

10 “(C) that such plans conduct annual re-  
11 views of such items and services for which prior  
12 authorization requirements are imposed under  
13 such plans through a process that takes into ac-  
14 count input from enrollees and from providers  
15 and suppliers with such contracts in effect and  
16 is based on consideration of prior authorization  
17 data from previous plan years and analyses of  
18 current coverage criteria.

19 “(5) APPLICABLE ITEM OR SERVICE.—For pur-  
20 poses of this subsection, the term ‘applicable item or  
21 service’ means, with respect to a Medicare Advan-  
22 tage plan, any item or service for which benefits are  
23 available under such plan, other than a covered part  
24 D drug.

25 “(6) REPORTS TO CONGRESS.—



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

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

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

22           “(ii) in the case of a subsequent re-  
23 port, the 2 plan years preceding the year  
24 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 with respect to prior authorization requests sub-  
10 mitted on or after the first day of the third plan  
11 year beginning after the date of the enactment of  
12 the Improving Seniors’ Timely Access to Care Act of  
13 2022, not later than 24 hours)” after “72 hours”.

14 (3) by adding at the end the following new  
15 paragraph:

16 “(6) TIMEFRAME FOR RESPONSE TO PRIOR AU-  
17 THORIZATION REQUESTS.—Subject to paragraph (3)  
18 and subsection (o), in the case of an organization  
19 determination made with respect to a prior author-  
20 ization request for an item or service to be furnished  
21 to an individual submitted on or after the first day  
22 of the third plan year beginning after the date of the  
23 enactment of this paragraph, such determination  
24 shall be made no later than 7 days (or such shorter  
25 timeframe as the Secretary may specify through no-

1        tice and comment rulemaking, taking into account  
2        enrollee and stakeholder feedback) after receipt of  
3        such request.”.

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

