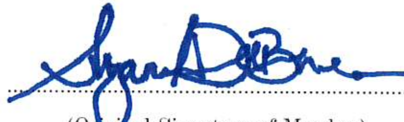

(Original Signature of Member)

117TH CONGRESS
2D SESSION

H. R. ______

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

Ms. DELBENE introduced the following bill; which was referred to the Committee on ______________________________

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".

1 **SEC. 2. ESTABLISHING REQUIREMENTS WITH RESPECT TO**
2 **THE USE OF PRIOR AUTHORIZATION UNDER**
3 **MEDICARE ADVANTAGE PLANS.**

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

7 "(o) PRIOR AUTHORIZATION REQUIREMENTS.—

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

13 "(A) beginning with the third plan year be-
14 ginning after the date of the enactment of this
15 subsection—

16 "(i) establish the electronic prior au-
17 thorization program described in para-
18 graph (2); and

19 "(ii) meet the enrollee protection
20 standards specified pursuant to paragraph
21 (4); and

22 "(B) beginning with the fourth plan year
23 beginning after the date of the enactment of
24 this subsection, meet the transparency require-
25 ments specified in paragraph (3).

1 "(2) ELECTRONIC PRIOR AUTHORIZATION PRO-
2 GRAM.—
3 "(A) IN GENERAL.—For purposes of para-
4 graph (1)(A), the electronic prior authorization
5 program described in this paragraph is a pro-
6 gram that provides for the secure electronic
7 transmission of—
8 "(i) a prior authorization request
9 from a provider of services or supplier to
10 a Medicare Advantage plan with respect to
11 an applicable item or service to be fur-
12 nished to an individual and a response, in
13 accordance with this paragraph, from such
14 plan to such provider or supplier; and
15 "(ii) any health claims attachment (as
16 defined for purposes of section
17 1173(a)(2)(B)) relating to such request or
18 response.
19 "(B) ELECTRONIC TRANSMISSION.—
20 "(i) EXCLUSIONS.—For purposes of
21 this paragraph, a facsimile, a proprietary
22 payer portal that does not meet standards
23 specified by the Secretary, or an electronic
24 form shall not be treated as an electronic

1 transmission described in subparagraph
2 (A).
3 "(ii) STANDARDS.—An electronic
4 transmission described in subparagraph
5 (A) shall comply with—
6 "(I) applicable technical stand-
7 ards adopted by the Secretary pursu-
8 ant to section 1173; and
9 "(II) any other requirements to
10 promote the standardization and
11 streamlining of electronic transactions
12 under this part specified by the Sec-
13 retary.
14 "(iii) DEADLINE FOR SPECIFICATION
15 OF ADDITIONAL REQUIREMENTS.—Not
16 later than July 1, 2023, the Secretary
17 shall finalize any requirements described in
18 clause (ii)(II).
19 "(C) REAL-TIME DECISIONS.—
20 "(i) IN GENERAL.—Subject to clause
21 (iv), the program described in subpara-
22 graph (A) shall provide for real-time deci-
23 sions (as defined by the Secretary in ac-
24 cordance with clause (v)) by a Medicare
25 Advantage plan with respect to prior au-

1 thorization requests for applicable items
2 and services identified by the Secretary
3 pursuant to clause (ii) if such requests are
4 submitted with all medical or other docu-
5 mentation required by such plan.
6 "(ii) IDENTIFICATION OF ITEMS AND
7 SERVICES.—
8 "(I) IN GENERAL.—For purposes
9 of clause (i), the Secretary shall iden-
10 tify, not later than the date on which
11 the initial announcement described in
12 section 1853(b)(1)(B)(i) for the third
13 plan year beginning after the date of
14 the enactment of this subsection is re-
15 quired to be announced, applicable
16 items and services for which prior au-
17 thorization requests are routinely ap-
18 proved.
19 "(II) UPDATES.—The Secretary
20 shall consider updating the applicable
21 items and services identified under
22 subclause (I) based on the information
23 described in paragraph (3)(A)(i) (if
24 available and determined practicable
25 to use by the Secretary) and any

1 other information determined appro-
2 priate by the Secretary not less fre-
3 quently than biennially. The Secretary
4 shall announce any such update that
5 is to apply with respect to a plan year
6 not later than the date on which the
7 initial announcement described in sec-
8 tion 1853(b)(1)(B)(i) for such plan
9 year is required to be announced.

10 "(iii) REQUEST FOR INFORMATION.—
11 The Secretary shall issue a request for in-
12 formation for purposes of initially identi-
13 fying applicable items and services under
14 clause (ii)(I).

15 "(iv) EXCEPTION FOR EXTENUATING
16 CIRCUMSTANCES.—In the case of a prior
17 authorization request submitted to a Medi-
18 care Advantage plan for an individual en-
19 rolled in such plan during a plan year with
20 respect to an item or service identified by
21 the Secretary pursuant to clause (ii) for
22 such plan year, such plan may, in lieu of
23 providing a real-time decision with respect
24 to such request in accordance with clause
25 (i), delay such decision under extenuating

1 circumstances (as specified by the Sec-
2 retary), provided that such decision is pro-
3 vided no later than 72 hours after receipt
4 of such request (or, in the case that the
5 provider of services or supplier submitting
6 such request has indicated that such delay
7 may seriously jeopardize such individual's
8 life, health, or ability to regain maximum
9 function, no later than 24 hours after re-
10 ceipt of such request).

11 "(v) DEFINITION OF REAL-TIME DECI-
12 SION.—In establishing the definition of a
13 real-time decision for purposes of clause
14 (i), the Secretary shall take into account
15 current medical practice, technology,
16 health care industry standards, and other
17 relevant information relating to how quick-
18 ly a Medicare Advantage plan may provide
19 responses with respect to prior authoriza-
20 tion requests.

21 "(vi) IMPLEMENTATION.—The Sec-
22 retary shall use notice and comment rule-
23 making for each of the following:

1 "(I) Establishing the definition
2 of a 'real-time decision' for purposes
3 of clause (i).
4 "(II) Updating such definition.
5 "(III) Initially identifying appli-
6 cable items or services pursuant to
7 clause (ii)(I).
8 "(IV) Updating applicable items
9 and services so identified as described
10 in clause (ii)(II).
11 "(3) TRANSPARENCY REQUIREMENTS.—
12 "(A) IN GENERAL.—For purposes of para-
13 graph (1)(B), the transparency requirements
14 specified in this paragraph are, with respect to
15 a Medicare Advantage plan, the following:
16 "(i) The plan, annually and in a man-
17 ner specified by the Secretary, shall submit
18 to the Secretary the following information:
19 "(I) A list of all applicable items
20 and services that were subject to a
21 prior authorization requirement under
22 the plan during the previous plan
23 year.
24 "(II) The percentage and number
25 of specified requests (as defined in

1 subparagraph (F)) approved during
2 the previous plan year by the plan in
3 an initial determination and the per-
4 centage and number of specified re-
5 quests denied during such plan year
6 by such plan in an initial determina-
7 tion (both in the aggregate and cat-
8 egorized by each item and service).

9 "(III) The percentage and num-
10 ber of specified requests submitted
11 during the previous plan year that
12 were made with respect to an item or
13 service identified by the Secretary
14 pursuant to paragraph (2)(C)(ii) for
15 such plan year, and the percentage
16 and number of such requests that
17 were subject to an exception under
18 paragraph (2)(C)(iv) (categorized by
19 each item and service).

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

1 such plan year that were approved
2 (categorized by each item and serv-
3 ice).

4 "(V) The percentage and number
5 of specified requests that were denied
6 during the previous plan year by the
7 plan in an initial determination and
8 that were subsequently appealed.

9 "(VI) The number of appeals of
10 specified requests resolved during the
11 preceding plan year, and the percent-
12 age and number of such resolved ap-
13 peals that resulted in approval of the
14 furnishing of the item or service that
15 was the subject of such request, bro-
16 ken down by each applicable item and
17 service and broken down by each level
18 of appeal (including judicial review).

19 "(VII) The percentage and num-
20 ber of specified requests that were de-
21 nied, and the percentage and number
22 of specified requests that were ap-
23 proved, by the plan during the pre-
24 vious plan year through the utilization
25 of decision support technology, artifi-

1 cial intelligence technology, machine-
2 learning technology, clinical decision-
3 making technology, or any other tech-
4 nology specified by the Secretary.

5 "(VIII) The average and the me-
6 dian amount of time (in hours) that
7 elapsed during the previous plan year
8 between the submission of a specified
9 request to the plan and a determina-
10 tion by the plan with respect to such
11 request for each such item and serv-
12 ice, excluding any such requests that
13 were not submitted with the medical
14 or other documentation required to be
15 submitted by the plan.

16 "(IX) The percentage and num-
17 ber of specified requests that were ex-
18 cluded from the calculation described
19 in subclause (VIII) based on the
20 plan's determination that such re-
21 quests were not submitted with the
22 medical or other documentation re-
23 quired to be submitted by the plan.

24 "(X) Information on each occur-
25 rence during the previous plan year in

1 which, during a surgical or medical
2 procedure involving the furnishing of
3 an applicable item or service with re-
4 spect to which such plan had ap-
5 proved a prior authorization request,
6 the provider of services or supplier
7 furnishing such item or service deter-
8 mined that a different or additional
9 item or service was medically nec-
10 essary, including a specification of
11 whether such plan subsequently ap-
12 proved the furnishing of such dif-
13 ferent or additional item or service.

14 "(XI) A disclosure and descrip-
15 tion of any technology described in
16 subclause (VII) that the plan utilized
17 during the previous plan year in mak-
18 ing determinations with respect to
19 specified requests.

20 "(XII) The number of grievances
21 (as described in subsection (f)) re-
22 ceived by such plan during the pre-
23 vious plan year that were related to a
24 prior authorization requirement.

1 "(XIII) Such other information
2 as the Secretary determines appro-
3 priate.
4 "(ii) The plan shall provide—
5 "(I) to each provider or supplier
6 who seeks to enter into a contract
7 with such plan to furnish applicable
8 items and services under such plan,
9 the list described in clause (i)(I) and
10 any policies or procedures used by the
11 plan for making determinations with
12 respect to prior authorization re-
13 quests;
14 "(II) to each such provider and
15 supplier that enters into such a con-
16 tract, access to the criteria used by
17 the plan for making such determina-
18 tions and an itemization of the med-
19 ical or other documentation required
20 to be submitted by a provider or sup-
21 plier with respect to such a request;
22 and
23 "(III) to an enrollee of the plan
24 upon request, access to the criteria
25 used by the plan for making deter-

1 minations with respect to prior au-
2 thorization requests for an item or
3 service.

4 "(B) OPTION FOR PLAN TO PROVIDE CER-
5 TAIN ADDITIONAL INFORMATION.—As part of
6 the information described in subparagraph
7 (A)(i) provided to the Secretary during a plan
8 year, a Medicare Advantage plan may elect to
9 include information regarding the percentage
10 and number of specified requests made with re-
11 spect to an individual and an item or service
12 that were denied by the plan during the pre-
13 ceding plan year in an initial determination
14 based on such requests failing to demonstrate
15 that such individuals met the clinical criteria
16 established by such plan to receive such items
17 or services.

18 "(C) REGULATIONS.—The Secretary shall,
19 through notice and comment rulemaking, estab-
20 lish requirements for Medicare Advantage plans
21 regarding the provision of—

22 "(i) access to criteria described in
23 subparagraph (A)(ii)(II) to providers of
24 services and suppliers in accordance with
25 such subparagraph; and

1 "(ii) access to such criteria to enroll-
2 ees in accordance with subparagraph
3 (A)(ii)(III).
4 "(D) PUBLICATION OF INFORMATION.—
5 The Secretary shall publish all information de-
6 scribed in subparagraph (A)(i) and subpara-
7 graph (B) on a public website of the Centers
8 for Medicare & Medicaid Services. Such infor-
9 mation shall be so published on an individual
10 plan level and may in addition be aggregated in
11 such manner as determined appropriate by the
12 Secretary.
13 "(E) MEDPAC REPORT.—Not later than 3
14 years after the date information is first sub-
15 mitted under subparagraph (A)(i), the Medicare
16 Payment Advisory Commission shall submit to
17 Congress a report on such information that in-
18 cludes a descriptive analysis of the use of prior
19 authorization. As appropriate, the Commission
20 should report on statistics including the fre-
21 quency of appeals and overturned decisions.
22 The Commission shall provide recommenda-
23 tions, as appropriate, on any improvement that
24 should be made to the electronic prior author-
25 ization programs of Medicare Advantage plans.

1 "(F) SPECIFIED REQUEST DEFINED.—For
2 purposes of this paragraph, the term 'specified
3 request' means a prior authorization request
4 made with respect to an applicable item or serv-
5 ice.

6 "(4) ENROLLEE PROTECTION STANDARDS.—
7 The Secretary of Health and Human Services shall,
8 through notice and comment rulemaking, specify re-
9 quirements with respect to the use of prior author-
10 ization by Medicare Advantage plans for applicable
11 items and services to ensure—

12 "(A) that such plans adopt transparent
13 prior authorization programs developed in con-
14 sultation with enrollees and with providers and
15 suppliers with contracts in effect with such
16 plans for furnishing such items and services
17 under such plans;

18 "(B) that such programs allow for the
19 waiver or modification of prior authorization re-
20 quirements based on the performance of such
21 providers and suppliers in demonstrating com-
22 pliance with such requirements, such as adher-
23 ence to evidence-based medical guidelines and
24 other quality criteria; and

1 "(C) that such plans conduct annual reviews of such items and services for which prior authorization requirements are imposed under such plans through a process that takes into account input from enrollees and from providers and suppliers with such contracts in effect and is based on consideration of prior authorization data from previous plan years and analyses of current coverage criteria.

10 "(5) APPLICABLE ITEM OR SERVICE.—For purposes of this subsection, the term 'applicable item or service' means, with respect to a Medicare Advantage plan, any item or service for which benefits are available under such plan, other than a covered part D drug.

16 "(6) REPORTS TO CONGRESS.—

17 "(A) GAO.—Not later than the end of the fourth plan year beginning on or after the date of the enactment of this subsection, the Comptroller General of the United States shall submit to Congress a report containing an evaluation of the implementation of the requirements of this subsection and an analysis of issues in implementing such requirements faced by Medicare Advantage plans.

1 "(B) HHS.—Not later than the end of the
2 fifth plan year beginning after the date of the
3 enactment of this subsection, and biennially
4 thereafter through the date that is 10 years
5 after such date of enactment, the Secretary
6 shall submit to Congress a report containing a
7 description of the information submitted under
8 paragraph (3)(A)(i) during—
9 "(i) in the case of the first such re-
10 port, the fourth plan year beginning after
11 the date of the enactment of this sub-
12 section; and
13 "(ii) in the case of a subsequent re-
14 port, the 2 plan years preceding the year
15 of the submission of such report.".
16 (b) ENSURING TIMELY RESPONSES FOR ALL PRIOR
17 AUTHORIZATION REQUESTS SUBMITTED UNDER PART
18 C.—Section 1852(g) of the Social Security Act (42 U.S.C.
19 1395w–22(g)) is amended—
20 (1) in paragraph (1)(A), by inserting "and in
21 accordance with paragraph (6)" after "paragraph
22 (3)";
23 (2) in paragraph (3)(B)(iii), by inserting "(or,
24 with respect to prior authorization requests sub-
25 mitted on or after the first day of the third plan

1 year beginning after the date of the enactment of
2 the Improving Seniors' Timely Access to Care Act of
3 2022, not later than 24 hours)" after "72 hours".
4 (3) by adding at the end the following new
5 paragraph:
6 "(6) TIMEFRAME FOR RESPONSE TO PRIOR AU-
7 THORIZATION REQUESTS.—Subject to paragraph (3)
8 and subsection (o), in the case of an organization
9 determination made with respect to a prior author-
10 ization request for an item or service to be furnished
11 to an individual submitted on or after the first day
12 of the third plan year beginning after the date of the
13 enactment of this paragraph, such determination
14 shall be made no later than 7 days (or such shorter
15 timeframe as the Secretary may specify through no-
16 tice and comment rulemaking, taking into account
17 enrollee and stakeholder feedback) after receipt of
18 such request.".
19 (c) FUNDING.—The Secretary of Health and Human
20 Services shall provide for the transfer, from the Federal
21 Hospital Insurance Trust Fund established under section
22 1817 of the Social Security Act (42 U.S.C. 1395i) and
23 the Federal Supplementary Medical Insurance Trust
24 Fund established under section 1841 of such Act (42
25 U.S.C. 1395t) (in such proportion as determined appro-

1 priate by the Secretary) to the Centers for Medicare &
2 Medicaid Services Program Management Account, of
3 $15,000,000 for fiscal year 2022, to remain available until
4 expended, for purposes of carrying out the amendments
5 made by this Act.