

118TH CONGRESS
1ST SESSION

H. R. 5584

To amend title XIX of the Social Security Act to provide clarification with respect to the liability of third party payers for medical assistance paid under the Medicaid program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2023

Mr. BURGESS introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend title XIX of the Social Security Act to provide clarification with respect to the liability of third party payers for medical assistance paid under the Medicaid program, 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 “Medicaid Third Party
5 Liability Act”.

6 **SEC. 2. MEDICAID THIRD PARTY LIABILITY.**

7 (a) REMOVAL OF SPECIAL TREATMENT OF CERTAIN
8 TYPES OF CARE AND PAYMENTS UNDER MEDICAID

1 THIRD PARTY LIABILITY RULES.—Section 1902(a)(25)
2 of the Social Security Act (42 U.S.C. 1396a(a)(25)) is
3 amended by striking subparagraphs (E) and (F) and re-
4 designating the subsequent subparagraphs accordingly.

5 (b) CLARIFICATION OF ROLE OF HEALTH INSURERS
6 WITH RESPECT TO THIRD PARTY LIABILITY.—Section
7 1902(a)(25) of the Social Security Act (42 U.S.C.
8 1396a(a)(25)), as amended by subsection (a), is further
9 amended—

10 (1) in subparagraph (F) (as so redesignated),
11 by striking at the end “and”;

12 (2) in subparagraph (G) (as so redesignated),
13 by striking the period at the end and inserting “;
14 and”;

15 (3) by adding at the end the following new sub-
16 paragraph:

17 “(H) that, in the case of a State after Jan-
18 uary 1, 2024, that provides medical assistance
19 under this title through a contract with a health
20 insurer (including a group health plan (as de-
21 fined in section 607(1) of the Employee Retirement
22 Income Security Act of 1974), a self-in-
23 sured plan, a fully insured plan, a service ben-
24 efit plan, a managed care organization, a phar-

1 macy benefit manager, or any other health plan
2 determined appropriate by the Secretary)—

3 “(i) such contract shall specify—

4 “(I) whether the State is dele-
5 gating to such insurer all or some of
6 its right of recovery from a respon-
7 sible third party for an item or service
8 for which payment has been made
9 under the State plan (or under a
10 waiver of the plan); and

11 “(II) whether the State is trans-
12 ferring to such insurer all or some of
13 the assignment to the State of any
14 right of an individual or other entity
15 to payment from a responsible third
16 party for an item or service for which
17 payment has been made under the
18 State plan (or under a waiver of the
19 plan); and

20 “(ii) in the case of a State that elects
21 an option described in subclause (I) or (I)
22 of clause (i) with respect to a health in-
23 surer (including a group health plan (as
24 defined in section 607(1) of the Employee
25 Retirement Income Security Act of 1974),

1 a self-insured plan, a fully insured plan, a
2 service benefit plan, a managed care orga-
3 nization, a pharmacy benefit manager, and
4 any other health plan determined appro-
5 priate by the Secretary), the State shall
6 provide assurances to the Secretary that
7 the State laws referred to in subparagraph
8 (G) confer to the health insurer the au-
9 thority of the State with respect to the re-
10 quirements specified in clauses (i) through
11 (iv) of such subparagraph.”.

12 (c) INCREASING STATE FLEXIBILITY WITH RESPECT
13 TO THIRD PARTY LIABILITY.—Section 1902(a)(25)(G)(ii)
14 of the Social Security Act (42 U.S.C.
15 1396a(a)(25)(G)(ii)), as so redesignated by subsection (a),
16 is amended to read as follows:

17 “(ii) accept—

18 “(I) the State’s right of recovery
19 and the assignment to the State of
20 any right of an individual or other en-
21 tity to payment from the party for an
22 item or service for which payment has
23 been made under the respective
24 State’s plan (or under a waiver of the
25 plan); and

1 “(II) after January 1, 2024, as a
2 valid authorization of the responsible
3 third party for the furnishing of an
4 item or service to an individual eligi-
5 ble to receive medical assistance under
6 this title, an authorization made on
7 behalf of such individual under the
8 State plan (or under a waiver of such
9 plan) for the furnishing of such item
10 or service to such individual;”.

11 (d) VERIFICATION OF INSURANCE STATUS RE-
12 QUIRED.—

13 (1) IN GENERAL.—Section 1902(a)(25)(A)(i) of
14 the Social Security Act (42 U.S.C.
15 1396a(a)(25)(A)(i)) is amended by inserting “, in-
16 cluding the collection of, with respect to an indi-
17 vidual seeking to receive medical assistance under
18 this title, information on whether the individual has
19 health insurance coverage provided through a third
20 party (as described in such paragraph) and the plan
21 of such insurer in which the individual is enrolled,”
22 after “in regulations”).

23 (2) FFP UNAVAILABLE WITHOUT INSURANCE
24 STATUS VERIFICATION.—Section 1903(i) of the So-
25 cial Security Act (42 U.S.C. 1396b(i)) is amended—

1 (A) in paragraph (26), by striking “; or”
2 and inserting “;”;

3 (B) in paragraph (27), by striking “of the
4 State.” and inserting “of the State; or”; and

5 (C) by inserting after paragraph (27) the
6 following:

7 “(28) with respect to any amounts after Janu-
8 ary 1, 2024, expended for medical assistance for in-
9 dividuals for whom the State has not obtained and
10 verified, in accordance with section
11 1902(a)(25)(A)(i), information on whether such an
12 individual has coverage provided through a third
13 party (as described in such paragraph) and the plan
14 of such coverage in which the individual is en-
15 rolled.”.

16 **SEC. 3. EFFECTIVE DATE.**

17 In the case of a State plan for medical assistance
18 under title XIX of the Social Security Act that the Sec-
19 retary of Health and Human Services determines requires
20 State legislation (other than legislation appropriating
21 funds) in order for the plan to meet the additional require-
22 ment imposed by the amendments made under this sec-
23 tion, the State plan shall not be regarded as failing to
24 comply with the requirements of such title solely on the
25 basis of its failure to meet this additional requirement be-

1 fore the first day of the first calendar quarter beginning
2 after the close of the first regular session of the State leg-
3 islature that begins after the date of enactment of this
4 Act. For purposes of the previous sentence, in the case
5 of a State that has a 2-year legislative session, each year
6 of such session shall be deemed to be a separate regular
7 session of the State legislature.

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