

117TH CONGRESS
2D SESSION

H. R. 6622

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

FEBRUARY 7, 2022

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 (b)—

9 (1) in subparagraph (F), by striking at the end
 10 “and”;

11 (2) in subparagraph (G), by striking the period
 12 at the end and inserting “; and”; and

13 (3) by adding at the end the following new sub-
 14 paragraph:

15 “(H) that, in the case of a State after Jan-
 16 uary 1, 2023, that provides medical assistance
 17 under this title through a contract with a health
 18 insurer (including a group health plan, as de-
 19 fined in section 607(1) of the Employee Retire-
 20 ment Income Security Act of 1974, a self-in-
 21 sured plan, a fully insured plan, a service ben-
 22 efit plan, a managed care organization, a phar-
 23 macy benefit manager, and any other health
 24 plan determined appropriate by the Sec-
 25 retary)—

1 “(i) such contract shall specify—

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

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

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

nization, a pharmacy benefit manager, and any other health plan determined appropriate by the Secretary), the State shall provide assurances to the Secretary that the State laws referred to in subparagraph (G) confer to the health insurer the authority of the State with respect to the requirements specified in clauses (i) through (iv) of such subparagraph.”.

(c) INCREASING STATE FLEXIBILITY WITH RESPECT TO THIRD PARTY LIABILITY.—Section 1902(a)(25)(G) of the Social Security Act (42 U.S.C. 1396a(a)(25)(I)), as redesignated by subsection (a), is amended—

(1) in clause (i), by striking “medical assistance under the State plan” and inserting “medical assistance under a State plan (or under a waiver of the plan)”;

(2) by striking clause (ii) and inserting the following new clause:

“(ii) accept—

“(I) the State’s right of recovery and the assignment to the State of any right of an individual or other entity to payment from the party for an item or service for which payment has

1 been made under the respective
 2 State’s plan (or under a waiver of the
 3 plan); and

4 “(II) after January 1, 2023, as a
 5 valid authorization of the responsible
 6 third party for the furnishing of an
 7 item or service to an individual eligi-
 8 ble to receive medical assistance under
 9 this title, an authorization made on
 10 behalf of such individual under the
 11 State plan (or under a waiver of such
 12 plan) for the furnishing of such item
 13 or service to such individual;”;

14 (3) in clause (iii)—

15 (A) by inserting “not later than 60 days
 16 after receiving” before “respond to”; and

17 (B) by striking “; and” at the end and in-
 18 serting “, respond to such inquiry; and”; and

19 (4) in clause (iv), by inserting “a failure to ob-
 20 tain a prior authorization,” after “claim form,”.

21 (d) VERIFICATION OF INSURANCE STATUS RE-
 22 QUIRED.—

23 (1) IN GENERAL.—Section 1902(a)(25)(A)(i) of
 24 the Social Security Act (42 U.S.C.
 25 1396a(a)(25)(A)(i)) is amended by inserting “, in-

cluding the collection of, with respect to an individual seeking to receive medical assistance under this title, information on whether the individual has health insurance coverage provided through a third party (as described in such paragraph) and the plan of such insurer in which the individual is enrolled” after “sufficient information”.

(2) FFP UNAVAILABLE WITHOUT INSURANCE STATUS VERIFICATION.—Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended—

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

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

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

“(28) with respect to any amounts after January 1, 2023, expended for medical assistance for individuals for whom the State has not obtained and verified, in accordance with section 1902(a)(25)(A)(i), information on whether such an individual has coverage provided through a third party (as described in such paragraph) and the plan of such coverage in which the individual is enrolled.”.

1 **SEC. 3. EFFECTIVE DATE.**

2 In the case of a State plan for medical assistance
3 under title XIX of the Social Security Act that the Sec-
4 retary of Health and Human Services determines requires
5 State legislation (other than legislation appropriating
6 funds) in order for the plan to meet the additional require-
7 ment imposed by the amendments made under this sec-
8 tion, the State plan shall not be regarded as failing to
9 comply with the requirements of such title solely on the
10 basis of its failure to meet this additional requirement be-
11 fore the first day of the first calendar quarter beginning
12 after the close of the first regular session of the State leg-
13 islature that begins after the date of the enactment of this
14 Act. For purposes of the previous sentence, in the case
15 of a State that has a 2-year legislative session, each year
16 of such session shall be deemed to be a separate regular
17 session of the State legislature.

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