

115TH CONGRESS
1ST SESSION

H. R. 938

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, 2017

Mr. BURGESS (for himself and Mr. FLORES) 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) CLARIFICATION OF DEFINITIONS APPLICABLE TO
8 THIRD PARTY LIABILITY.—

1 (1) IN GENERAL.—Section 1902 of the Social
2 Security Act (42 U.S.C. 1396a) is amended by add-
3 ing at the end the following new subsection:

4 “(nn) For purposes of subsection (a)(25) and section
5 1903(d)(2)(B), the term ‘responsible third party’ means
6 a health insurer (including a group health plan, as defined
7 in section 607(1) of the Employee Retirement Income Se-
8 curity Act of 1974, a self-insured plan, a fully-insured
9 plan, a service benefit plan, a managed care organization,
10 a pharmacy benefit manager, and any other health plan
11 determined appropriate by the Secretary), the TRICARE
12 program under chapter 55 of title 10, United States Code,
13 an accountable care organization, or any other party that
14 is, by statute, contract, or agreement, legally responsible
15 for payment of a claim for a health care item or service.”.

16 (2) CONFORMING AMENDMENTS.—Section
17 1902(a)(25) of the Social Security Act (42 U.S.C.
18 1396a(a)(25)) is amended—

19 (A) in subparagraph (A), in the matter
20 preceding clause (i), by striking “third parties”
21 and all that follows through “item or service)”
22 and inserting “responsible third parties”;

23 (B) in subparagraph (G), by striking
24 “health insurer” and all that follows through

1 “item or service)” and inserting “responsible
2 third party”;

3 (C) in subparagraph (I), in the matter pre-
4 ceding clause (i), by striking “health insurers”
5 and all that follows through “item or service”
6 and inserting “responsible third parties”; and

7 (D) by inserting “responsible” before
8 “third” each place it appears in subparagraphs
9 (A)(i), (A)(ii), (C), (D), and (H).

10 (b) REMOVAL OF SPECIAL TREATMENT OF CERTAIN
11 TYPES OF CARE AND PAYMENTS UNDER MEDICAID
12 THIRD PARTY LIABILITY RULES.—Section 1902(a)(25)
13 of the Social Security Act (42 U.S.C. 1396a(a)(25)) is
14 amended by striking subparagraphs (E) and (F).

15 (c) CLARIFICATION OF ROLE OF HEALTH INSURERS
16 WITH RESPECT TO THIRD PARTY LIABILITY.—

17 (1) IN GENERAL.—Section 1902(a)(25) of the
18 Social Security Act (42 U.S.C. 1396a(a)(25)), as
19 amended by subsection (b), is further amended by
20 inserting after subparagraph (D) the following new
21 subparagraphs:

22 “(E) that, in the case of a State that pro-
23 vides medical assistance under this title through
24 a contract with a health insurer (including a
25 group health plan, as defined in section 607(1)

1 of the Employee Retirement Income Security
2 Act of 1974, a self-insured plan, a fully-insured
3 plan, a service benefit plan, a managed care or-
4 ganization, a pharmacy benefit manager, and
5 any other health plan determined appropriate
6 by the Secretary), such contract shall specify
7 whether the State is—

8 “(i) delegating to such insurer all or
9 some of its right of recovery from a re-
10 sponsible third party for an item or service
11 for which payment has been made under
12 the State plan (or under a waiver of the
13 plan); and

14 “(ii) transferring to such insurer all
15 or some of the assignment to the State of
16 any right of an individual or other entity
17 to payment from a responsible third party
18 for an item or service for which payment
19 has been made under the State plan (or
20 under a waiver of the plan);

21 “(F) that, in the case of a State that elects
22 an option described in clause (i) or (ii) of sub-
23 paragraph (E) with respect to a health insurer
24 (including a group health plan, as defined in
25 section 607(1) of the Employee Retirement In-

1 come Security Act of 1974, a self-insured plan,
2 a fully-insured plan, a service benefit plan, a
3 managed care organization, a pharmacy benefit
4 manager, and any other health plan determined
5 appropriate by the Secretary), the State shall
6 provide assurances to the Secretary that the
7 State laws referred to in subparagraph (I) con-
8 fer to the health insurer the authority of the
9 State with respect to the requirements specified
10 in clauses (i) through (iv) of such subpara-
11 graph;”.

12 (2) TREATMENT OF COLLECTED AMOUNTS.—

13 Section 1903(d)(2)(B) of the Social Security Act (42
14 U.S.C. 1396b(d)(2)(B)) is amended by adding at the
15 end the following: “For purposes of this subpara-
16 graph, reimbursements made by a responsible third
17 party to health insurers (including group health
18 plans, as defined in section 607(1) of the Employee
19 Retirement Income Security Act of 1974, self-in-
20 sured plans, fully-insured plans, service benefit
21 plans, managed care organizations, pharmacy benefit
22 managers, and any other health plan determined ap-
23 propriate by the Secretary) pursuant to section
24 1902(a)(25)(E) shall be treated in the same manner

1 as reimbursements made to a State under the pre-
2 vious sentence.”.

3 (3) EFFECTIVE DATE.—The amendments made
4 by this subsection shall take effect on October 1,
5 2017.

6 (d) INCREASING STATE FLEXIBILITY WITH RESPECT
7 TO THIRD PARTY LIABILITY.—Section 1902(a)(25)(I) of
8 the Social Security Act (42 U.S.C. 1396a(a)(25)(I)) is
9 amended—

10 (1) in clause (i), by striking “medical assistance
11 under the State plan” and inserting “medical assist-
12 ance under a State plan (or under a waiver of the
13 plan)”;

14 (2) by striking clause (ii) and inserting the fol-
15 lowing new clause:

16 “(ii) accept—

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

1 “(II) as a valid authorization of
 2 the responsible third party for the fur-
 3 nishing of an item or service to an in-
 4 dividual eligible to receive medical as-
 5 sistance under this title, an authoriza-
 6 tion made on behalf of such individual
 7 under the State plan (or under a
 8 waiver of such plan) for the fur-
 9 nishing of such item or service to such
 10 individual;”;

11 (3) in clause (iii)—

12 (A) by striking “respond to” and inserting
 13 “not later than 60 days after receiving”; and

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

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

18 (e) STATE INCENTIVE TO PURSUE THIRD PARTY LI-
 19 ABILITY FOR NEWLY ELIGIBLES.—Section 1903(d)(2)(B)
 20 of the Social Security Act (42 U.S.C. 1396b(d)(2)(B)), as
 21 amended by subsection (c)(2), is amended by adding at
 22 the end the following: “In the case of expenditures for
 23 medical assistance provided during 2017 and subsequent
 24 years for individuals described in subclause (VIII) of sec-
 25 tion 1902(a)(10)(A)(i), in determining the amount, if any,

1 of overpayment under this subparagraph with respect to
 2 such medical assistance, the Secretary shall apply the Fed-
 3 eral medical assistance percentage for the State under sec-
 4 tion 1905(b), notwithstanding the application of section
 5 1905(y).”.

6 **SEC. 3. COMPLIANCE WITH THIRD PARTY INSURANCE RE-**
 7 **PORTING.**

8 (a) IN GENERAL.—Section 1903 of the Social Secu-
 9 rity Act (42 U.S.C. 1396b) is amended by inserting after
 10 subsection (m) the following new subsection:

11 “(n)(1) For any year beginning after 2020 (except
 12 as provided in paragraph (2)), unless a State complies
 13 with the requirements of section 1902(a)(25) with respect
 14 to each calendar quarter in such year, the Federal medical
 15 assistance percentage shall be reduced by 1 percentage
 16 point for calendar quarters in each subsequent year in
 17 which the State fails to so comply (and cumulatively for
 18 a failure to so comply for a period of consecutive years).

19 “(2) Notwithstanding paragraph (1), the reduction in
 20 the Federal medical assistance percentage shall apply—

21 “(A) in the case of a failure of the State to
 22 comply with the requirements of section 1902(a)(25)
 23 with respect to payment for items and services fur-
 24 nished to individuals described in subclause (VIII) of

1 section 1902(a)(10)(A)(i), for any year beginning
 2 after 2018; and

3 “(B) in the case of a failure of the State to
 4 comply with the requirements of section 1902(a)(25)
 5 with respect to payment for items and services fur-
 6 nished to individuals described in subdivision (i),
 7 (iii), or (iv) of section 1905(a), for any year begin-
 8 ning after 2019.”.

9 (b) VERIFICATION OF INSURANCE STATUS RE-
 10 QUIRED.—

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

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

1 (A) by striking “with respect to” and in-
 2 serting “(A) with respect to”; and

3 (B) by inserting before the semicolon at
 4 the end the following: “and (B) with respect to
 5 any amounts expended for medical assistance
 6 for individuals for whom the State has not ob-
 7 tained and verified, in accordance with section
 8 1902(a)(25)(A)(i), information on whether such
 9 an individual has health insurance coverage
 10 provided through a health insurer (as described
 11 in section 1902(nn)) and the plan of such in-
 12 surer in which the individual is enrolled”.

13 **SEC. 4. APPLICATION TO CHIP.**

14 (a) IN GENERAL.—Section 2107(e)(1) of the Social
 15 Security Act (42 U.S.C. 1397gg(e)(1)) is amended—

16 (1) by redesignating subparagraphs (B)
 17 through (R) as subparagraphs (C) through (S), re-
 18 spectively; and

19 (2) by inserting after subparagraph (A) the fol-
 20 lowing new subparagraph:

21 “(B) Section 1902(a)(25) (relating to third
 22 party liability).”.

23 (b) MANDATORY REPORTING.—Section
 24 1902(a)(25)(I)(i) of the Social Security Act (42 U.S.C.

1 1396a(a)(25)(I)(i)), as amended by section 1(d), is further
2 amended—

3 (1) by striking “(and, at State option, child”
4 and inserting “and child”; and

5 (2) by striking “title XXI)” and inserting “title
6 XXI”.

7 **SEC. 5. TRAINING ON THIRD PARTY LIABILITY.**

8 Section 1936 of the Social Security Act (42 U.S.C.
9 1396u–6) is amended—

10 (1) in subsection (b)(4), by striking “and qual-
11 ity of care” and inserting “, quality of care, and the
12 liability of responsible third parties (as defined in
13 section 1902(nn))”; and

14 (2) by adding at the end the following new sub-
15 section:

16 “(f) **THIRD PARTY LIABILITY TRAINING.**—With re-
17 spect to education or training activities carried out pursu-
18 ant to subsection (b)(4) with respect to the liability of re-
19 sponsible third parties (as defined in section 1902(nn) for
20 payment for items and services furnished under State
21 plans (or under waivers of such plans)) under this title,
22 the Secretary shall—

23 “(1) publish (and update on an annual basis)
24 on the public Internet website of the Centers for
25 Medicare & Medicaid Services a dedicated Internet

1 page containing best practices to be used in assess-
 2 ing such liability;

3 “(2) monitor efforts to assess such liability and
 4 analyze the challenges posed by that assessment;

5 “(3) distribute to State agencies administering
 6 the State plan under this title information related to
 7 such efforts and challenges; and

8 “(4) provide guidance to such State agencies
 9 with respect to State oversight of efforts by medicaid
 10 managed care organizations (as defined in section
 11 1903(m)(1)) to assess such liability.”.

12 **SEC. 6. DEVELOPMENT OF MODEL UNIFORM FIELDS FOR**
 13 **STATES TO REPORT THIRD PARTY INFORMA-**
 14 **TION.**

15 Not later than January 1, 2018, the Secretary of
 16 Health and Human Services shall, in consultation with the
 17 States, develop and make available to the States a model
 18 uniform reporting field that States may use for purposes
 19 of reporting to the Secretary within CMS Form 64 (or
 20 any successor form) information identifying responsible
 21 third parties (as defined in subsection (nn) of section 1902
 22 of the Social Security Act (42 U.S.C. 1396a)) and other
 23 relevant information for ascertaining the legal responsi-
 24 bility of such third parties to pay for care and services
 25 available under the State plan (or under a waiver of the

1 plan) under title XIX of the Social Security Act (42
2 U.S.C. 1396 et seq.).

3 **SEC. 7. EFFECTIVE DATE.**

4 (a) IN GENERAL.—Except as provided in subsection
5 (b), this Act and the amendments made by this Act (other
6 than as specified in the preceding provisions of this Act)
7 shall take effect on the date of enactment of this Act and
8 shall apply to medical assistance provided on or after such
9 date.

10 (b) EXCEPTION IF STATE LEGISLATION RE-
11 QUIRED.—In the case of a State plan for medical assist-
12 ance under title XIX of the Social Security Act that the
13 Secretary of Health and Human Services determines re-
14 quires State legislation (other than legislation appro-
15 priating funds) in order for the plan to meet the additional
16 requirement imposed by the amendments made under this
17 section, the State plan shall not be regarded as failing to
18 comply with the requirements of such title solely on the
19 basis of its failure to meet this additional requirement be-
20 fore the first day of the first calendar quarter beginning
21 after the close of the first regular session of the State leg-
22 islature that begins after the date of the enactment of this
23 Act. For purposes of the previous sentence, in the case
24 of a State that has a 2-year legislative session, each year

- 1 of such session shall be deemed to be a separate regular
- 2 session of the State legislature.

