

118TH CONGRESS
1ST SESSION

H. R. 4527

To amend the Employee Retirement Income Security Act of 1974 to ensure plan fiduciaries may access de-identified information relating to health claims, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2023

Mrs. CHAVEZ-DEREMER (for herself, Mr. TAKANO, and Ms. MANNING) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Employee Retirement Income Security Act of 1974 to ensure plan fiduciaries may access de-identified information relating to health claims, 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 “Health Data Access,
5 Transparency, and Affordability Act” or the “Health
6 DATA Act”.

1 **SEC. 2. PLAN FIDUCIARY ACCESS TO INFORMATION.**

2 (a) IN GENERAL.—Paragraph (2) of section 408(b)
3 of the Employee Retirement Income Security Act of 1974
4 (29 U.S.C. 1108(b)) is amended by adding at the end the
5 following new subparagraph:

6 “(C) No contract or arrangement for services
7 between a group health plan and any other entity,
8 such as a health care provider, network or associa-
9 tion of providers, third-party administrator, or phar-
10 macy benefit manager, is reasonable within the
11 meaning of this paragraph unless such contract or
12 agreement—

13 “(i) allows the responsible plan fiduciary to
14 audit all de-identified claims and encounter in-
15 formation or data described in section
16 724(a)(1)(B) to—

17 “(I) ensure that such entity complies
18 with the terms of the plan and any appli-
19 cable law; and

20 “(II) determine the reasonableness of
21 compensation paid by the plan; and

22 “(ii) does not—

23 “(I) unreasonably limit the number of
24 audits permitted during a given period of
25 time;

1 “(II) limit the number of de-identified
2 claims and encounter information or data
3 that the responsible plan fiduciary may ac-
4 cess during an audit;

5 “(III) limit the disclosure of pricing
6 terms for value based payment arrange-
7 ments, including—

8 “(aa) payment calculations and
9 formulas;

10 “(bb) quality measures;

11 “(cc) contract terms;

12 “(dd) payment amounts;

13 “(ee) measurement periods for all
14 incentives; and

15 “(ff) other payment methodolo-
16 gies furnished by a health care pro-
17 vider, network or association of pro-
18 viders, third-party administrator, or
19 pharmacy benefit manager;

20 “(IV) limit the disclosure of overpay-
21 ments and overpayment recovery terms;

22 “(V) limit the right of the responsible
23 plan fiduciary to select an auditor;

24 “(VI) otherwise limit or unduly delay
25 by greater than 60 days the responsible

1 plan fiduciary from auditing such informa-
2 tion or data; or

3 “(VII) charge a fee beyond the rea-
4 sonable direct costs to administer the oper-
5 ation of conducting such audits.”.

6 (b) CIVIL ENFORCEMENT.—

7 (1) IN GENERAL.—Subsection (c) of section
8 502 of such Act (29 U.S.C. 1132) is amended by
9 adding at the end the following new paragraph:

10 “(13) In the case of an agreement between a group
11 health plan and a health care provider, network or associa-
12 tion of providers, third-party administrator, pharmacy
13 benefit manager, or other service provider that violates the
14 provisions of section 724, the Secretary may assess a civil
15 penalty against such provider, network or association,
16 third-party administrator, pharmacy benefit manager, or
17 other service provider in the amount of \$10,000 for each
18 day during which such violation continues. Such penalty
19 shall be in addition to other penalties as may be prescribed
20 by law.”.

21 (2) CONFORMING AMENDMENT.—Paragraph (6)
22 of section 502(a) of such Act is amended by striking
23 “or (9)” and inserting “(9), or (13)”.

1 (c) EXISTING PROVISIONS VOID.—Section 410 of
2 such Act is amended by adding at the end the following
3 new subsection:

4 “(c) Any provision in an agreement or instrument
5 shall be void as against public policy if such provision—

6 “(1) unduly delays or limits a plan fiduciary
7 from accessing the de-identified claims and encoun-
8 ter information or data described in section
9 724(a)(1)(B); or

10 “(2) violates the requirements of section
11 408(b)(2)(C).”.

12 (d) TECHNICAL AMENDMENT.—Clause (i) of section
13 408(b)(2)(B) of such Act is amended by striking “this
14 clause” and inserting “this paragraph”.

15 **SEC. 3. UPDATED ATTESTATION FOR PRICE AND QUALITY**
16 **INFORMATION.**

17 Section 724(a)(3) of the Employee Retirement In-
18 come Security Act (29 U.S.C. 1185m(a)(3)) is amended
19 to read as follows:

20 “(3) ATTESTATION.—

21 “(A) IN GENERAL.—Subject to subpara-
22 graph (C), the fiduciary of a group health plan
23 or issuer offering group health insurance cov-
24 erage shall annually submit to the Secretary an
25 attestation that such plan or issuer of such cov-

1 erage is in compliance with the requirements of
2 this subsection. Such attestation shall also in-
3 clude a statement verifying that—

4 “(i) the information or data described
5 under subparagraphs (A) and (B) of para-
6 graph (1) is available upon request and
7 provided to the plan fiduciary, the plan ad-
8 ministrator, or the issuer in a timely man-
9 ner; and

10 “(ii) there are no terms in the agree-
11 ment under such paragraph (1) that di-
12 rectly or indirectly restrict or unduly delay
13 a plan fiduciary, the plan administrator, or
14 the issuer from auditing, reviewing, or oth-
15 erwise accessing such information.

16 “(B) LIMITATION ON SUBMISSION.—Sub-
17 ject to clause (ii), a group health plan or issuer
18 offering group health insurance coverage may
19 not enter into an agreement with a third-party
20 administrator or other service provider to sub-
21 mit the attestation required under subpara-
22 graph (A).

23 “(C) EXCEPTION.—In the case of a group
24 health plan or issuer offering group health in-
25 surance coverage that is unable to obtain the

1 information or data needed to submit the attes-
2 tation required under subparagraph (A), such
3 plan or issuer may submit a written statement
4 in lieu of such attestation that includes—

5 “(i) an explanation of why such plan
6 or issuer was unsuccessful in obtaining
7 such information or data, including wheth-
8 er such plan or issuer was limited or pre-
9 vented from auditing, reviewing, or other-
10 wise accessing such information or data;

11 “(ii) a description of the efforts made
12 by the plan fiduciary to remove any gag
13 clause provisions from the agreement
14 under paragraph (1); and

15 “(iii) a description of any response by
16 the third-party administrator or other serv-
17 ice provider with respect to efforts to com-
18 ply with the attestation requirement under
19 subparagraph (A).”.

20 **SEC. 4. STUDY ON PLAN ASSETS.**

21 Not later than 1 year after the date of enactment
22 of this Act, the Secretary of Labor shall submit to the
23 Committee on Education and the Workforce of the House
24 of Representatives a report on the status of de-identified
25 claims and encounter information or data described in sec-

1 tion 724(a)(1)(B) of the Employee Retirement Income Se-
2 curity Act of 1974 (29 U.S.C. 1185m), including informa-
3 tion on the following:

4 (1) Circumstances under current law where
5 such information or data could be deemed a group
6 health plan asset (as defined under section 3(42) of
7 such Act).

8 (2) Whether restrictions on the ability of a plan
9 fiduciary to access such information or data violates
10 a requirement of current law.

11 (3) The existing regulatory authority of the
12 Secretary to clarify whether such information or
13 data belongs to a group health plan, rather than a
14 service provider.

15 (4) Legislative actions that may be taken to es-
16 tablish that such information or data related to a
17 plan belongs to a group health plan and is handled
18 in the best interests of plan participants and bene-
19 ficiaries.

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