

Union Calendar No. 210

118TH CONGRESS
1ST SESSION

H. R. 4527

[Report No. 118-260]

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

NOVEMBER 1, 2023

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on July 11, 2023]

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 of 2023” or the*
6 *“Health DATA Act of 2023”.*

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

8 *(a) IN GENERAL.—Paragraph (2) of section 408(b) of*
9 *the Employee Retirement Income Security Act of 1974 (29*
10 *U.S.C. 1108(b)) is amended by adding at the end the fol-*
11 *lowing new subparagraph:*

12 *“(C) No contract or arrangement for services be-*
13 *tween a group health plan and any other entity, such*
14 *as a health care provider, network or association of*
15 *providers, third-party administrator, or pharmacy*
16 *benefit manager, is reasonable within the meaning of*
17 *this paragraph unless such contract or agreement—*

18 *“(i) allows the responsible plan fiduciary to*
19 *audit all de-identified claims and encounter in-*
20 *formation or data described in section*
21 *724(a)(1)(B) to—*

22 *“(I) ensure that such entity complies*
23 *with the terms of the plan and any applica-*
24 *ble law; and*

1 “(II) determine the reasonableness of
2 compensation paid by the plan; and

3 “(ii) does not—

4 “(I) unreasonably limit the number of
5 audits permitted during a given period of
6 time;

7 “(II) limit the number of de-identified
8 claims and encounter information or data
9 that the responsible plan fiduciary may ac-
10 cess during an audit;

11 “(III) limit the disclosure of pricing
12 terms for value based payment arrange-
13 ments, including—

14 “(aa) payment calculations and
15 formulas;

16 “(bb) quality measures;

17 “(cc) contract terms;

18 “(dd) payment amounts;

19 “(ee) measurement periods for all
20 incentives; and

21 “(ff) other payment methodologies
22 furnished by a health care provider,
23 network or association of providers,
24 third-party administrator, or phar-
25 macy benefit manager;

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

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

5 “(VI) otherwise limit or unduly delay
6 by greater than 60 days the responsible
7 plan fiduciary from auditing such informa-
8 tion or data; or

9 “(VII) charge a fee beyond the reason-
10 able direct costs to administer the operation
11 of conducting such audits.”.

12 (b) *CIVIL ENFORCEMENT.*—

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

16 “(13) In the case of an agreement between a group
17 health plan and a health care provider, network or associa-
18 tion of providers, third-party administrator, pharmacy
19 benefit manager, or other service provider that violates the
20 provisions of section 724, the Secretary may assess a civil
21 penalty against such provider, network or association,
22 third-party administrator, pharmacy benefit manager, or
23 other service provider in the amount of \$10,000 for each
24 day during which such violation continues. Such penalty

1 *shall be in addition to other penalties as may be prescribed*
2 *by law.”.*

3 (2) *CONFORMING AMENDMENT.—Paragraph (6)*
4 *of section 502(a) of such Act is amended by striking*
5 *“or (9)” and inserting “(9), or (13)”;* and

6 (c) *EXISTING PROVISIONS VOID.—Section 410 of such*
7 *Act is amended by adding at the end the following new sub-*
8 *section:*

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

11 “(1) *unduly delays or limits a plan fiduciary*
12 *from accessing the de-identified claims and encounter*
13 *information or data described in section*
14 *724(a)(1)(B); or*

15 “(2) *violates the requirements of section*
16 *408(b)(2)(C).”.*

17 (d) *TECHNICAL AMENDMENT.—Clause (i) of section*
18 *408(b)(2)(B) of such Act is amended by striking “this*
19 *clause” and inserting “this paragraph”.*

20 **SEC. 3. UPDATED ATTESTATION FOR PRICE AND QUALITY**
21 **INFORMATION.**

22 *Section 724(a)(3) of the Employee Retirement Income*
23 *Security Act of 1974 (29 U.S.C. 1185m(a)(3)) is amended*
24 *to read as follows:*

25 “(3) *ATTESTATION.—*

1 “(A) *IN GENERAL.*—Subject to subpara-
2 graph (C), the fiduciary of a group health plan
3 or issuer offering group health insurance cov-
4 erage shall annually submit to the Secretary an
5 attestation that such plan or issuer of such cov-
6 erage is in compliance with the requirements of
7 this subsection. Such attestation shall also in-
8 clude a statement verifying that—

9 “(i) the information or data described
10 under subparagraphs (A) and (B) of para-
11 graph (1) is available upon request and
12 provided to the plan fiduciary, the plan ad-
13 ministrator, or the issuer in a timely man-
14 ner; and

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

21 “(B) *LIMITATION ON SUBMISSION.*—Subject
22 to clause (ii), a group health plan or issuer offer-
23 ing group health insurance coverage may not
24 enter into an agreement with a third-party ad-

1 *administrator or other service provider to submit*
2 *the attestation required under subparagraph (A).*

3 “(C) *EXCEPTION.—In the case of a group*
4 *health plan or issuer offering group health insur-*
5 *ance coverage that is unable to obtain the infor-*
6 *mation or data needed to submit the attestation*
7 *required under subparagraph (A), such plan or*
8 *issuer may submit a written statement in lieu of*
9 *such attestation that includes—*

10 “(i) *an explanation of why such plan*
11 *or issuer was unsuccessful in obtaining such*
12 *information or data, including whether such*
13 *plan or issuer was limited or prevented*
14 *from auditing, reviewing, or otherwise ac-*
15 *cessing such information or data;*

16 “(ii) *a description of the efforts made*
17 *by the plan fiduciary to remove any gag*
18 *clause provisions from the agreement under*
19 *paragraph (1); and*

20 “(iii) *a description of any response by*
21 *the third-party administrator or other serv-*
22 *ice provider with respect to efforts to com-*
23 *ply with the attestation requirement under*
24 *subparagraph (A).”.*

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

2 *Not later than 1 year after the date of enactment of*
3 *this Act, the Secretary of Labor shall submit to the Com-*
4 *mittee on Education and the Workforce of the House of Rep-*
5 *resentatives a report on the status of de-identified claims*
6 *and encounter information or data described in section*
7 *724(a)(1)(B) of the Employee Retirement Income Security*
8 *Act of 1974 (29 U.S.C. 1185m), including information on*
9 *the following:*

10 *(1) Circumstances under current law where such*
11 *information or data could be deemed a group health*
12 *plan asset (as defined under section 3(42) of such*
13 *Act).*

14 *(2) Whether restrictions on the ability of a plan*
15 *fiduciary to access such information or data violates*
16 *a requirement of current law.*

17 *(3) The existing regulatory authority of the Sec-*
18 *retary to clarify whether such information or data be-*
19 *longs to a group health plan, rather than a service*
20 *provider.*

21 *(4) Legislative actions that may be taken to es-*
22 *tablish that such information or data related to a*
23 *plan belongs to a group health plan and is handled*
24 *in the best interests of plan participants and bene-*
25 *ficiaries.*

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