

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.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2022

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

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## 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-

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

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

14 (1) in clause (i), by striking “medical assistance  
15 under the State plan” and inserting “medical assist-  
16 ance under a State plan (or under a waiver of the  
17 plan)”;

18 (2) by striking clause (ii) and inserting the fol-  
19 lowing new clause:

20 “(ii) accept—

21 “(I) the State’s right of recovery  
22 and the assignment to the State of  
23 any right of an individual or other en-  
24 tity to payment from the party for an  
25 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-

1 including the collection of, with respect to an indi-  
2 vidual seeking to receive medical assistance under  
3 this title, information on whether the individual has  
4 health insurance coverage provided through a third  
5 party (as described in such paragraph) and the plan  
6 of such insurer in which the individual is enrolled”  
7 after “sufficient information”.

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

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

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

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

17 “(28) with respect to any amounts after Janu-  
18 ary 1, 2023, expended for medical assistance for in-  
19 dividuals for whom the State has not obtained and  
20 verified, in accordance with section  
21 1902(a)(25)(A)(i), information on whether such an  
22 individual has coverage provided through a third  
23 party (as described in such paragraph) and the plan  
24 of such coverage in which the individual is en-  
25 rolled.”.

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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