

Union Calendar No. 508

118TH CONGRESS
2D SESSION

H. R. 4758

[Report No. 118–610]

To amend title XIX of the Social Security Act to streamline enrollment under the Medicaid program of certain providers across State lines, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 19, 2023

Mrs. TRAHAN (for herself and Mrs. MILLER-MEEKS) introduced the following bill; which was referred to the Committee on Energy and Commerce

JULY 23, 2024

Additional sponsors: Ms. CASTOR of Florida, Mr. FITZPATRICK, Ms. KUSTER, Mrs. CAMMACK, Mr. TONKO, Mr. BACON, Mr. VAN DREW, Ms. BLUNT ROCHESTER, Ms. ROSS, Ms. WEXTON, Mr. MCCAUL, Mr. SMUCKER, Ms. BARRAGÁN, Mr. KEATING, Mr. CÁRDENAS, Ms. CRAIG, Ms. WASSERMAN SCHULTZ, Mrs. FLETCHER, Mr. HUDSON, Ms. CARAVEO, Mr. JOHNSON of Ohio, Mr. YAKYM, Ms. DELBENE, Mr. JOYCE of Pennsylvania, Ms. MALLIOTAKIS, Mr. VALADAO, Ms. PINGREE, Mrs. CHERFILUS-McCORMICK, Mr. COHEN, Mr. D'ESPOSITO, Mr. RUPPERSBERGER, Mr. BANKS, Mr. WITTMAN, Mr. PHILLIPS, Mr. CROW, Ms. MATSUI, Mr. BILIRAKIS, Mr. LIEU, Mr. CRENSHAW, Mrs. KIM of California, Ms. WILD, Mr. LANGWORTHY, Mr. NEGUSE, Mr. MEUSER, Mr. ALFORD, Mr. MOLINARO, Mr. CONNOLLY, Ms. NORTON, Mr. COSTA, Mr. CARTER of Georgia, Mr. FINSTAD, Mr. SWALWELL, Mr. DAVIS of North Carolina, Mr. BURGESS, Ms. LEE of Florida, Ms. TITUS, Mr. KELLY of Pennsylvania, Mr. SCHNEIDER, Mrs. SPARTZ, Mr. SOTO, Ms. SCHRIER, Mr. CAREY, Mr. BALDERSON, Mr. LAMBORN, Mr. JACKSON of Illinois, Mr. RASKIN, Mr. CLEAVER, Mrs. HARSHBARGER, Mr. TRONE, Mrs. GONZÁLEZ-COLÓN, Ms. KELLY of Illinois, Mr. DUNN of Florida, Mr. POCAN, Mr. WILSON of South Carolina, Mr. BAIRD, Ms. SCANLON, Mr. LAWLER, Mr. HORSFORD, Mr. LUETKEMEYER, Mr. ALLRED, Mr. EVANS, Mr. KEAN of New Jersey, Mr. GARBARINO, Mr. GOLDMAN of New York, Mr. NUNN of Iowa, Mr. MORELLE, Mr. JAMES, Ms. DAVIDS of Kansas, Mr. MAGAZINER, Mr. NADLER, Ms. PETTERSEN, Ms. SALINAS, Mr. MULLIN, Ms.

MOORE of Wisconsin, Mr. GRIJALVA, Mr. LEVIN, Ms. BUSH, Ms. BROWN, Ms. STANSBURY, Mr. HUFFMAN, Mr. MCGARVEY, Mr. MRVAN, Mr. HIMES, Mr. FROST, Ms. UNDERWOOD, Ms. TLAIB, Mr. OBERNOLTE, Ms. SHERRILL, Mr. THOMPSON of Pennsylvania, Mr. BUCSHON, Mr. NICKEL, Ms. BONAMICI, Mr. KIM of New Jersey, Mr. LYNCH, Ms. ADAMS, Mrs. MILLER of West Virginia, Mr. PANETTA, Mr. MANN, Ms. HOULAHAN, Mr. PAPPAS, Mr. PASCRELL, Mrs. WATSON COLEMAN, and Mr. GOMEZ

JULY 23, 2024

Reported with amendments, 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 *italie*]

[For text of introduced bill, see copy of bill as introduced on July 19, 2023]

A BILL

To amend title XIX of the Social Security Act to streamline enrollment under the Medicaid program of certain providers across State lines, 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 “Accelerating Kids’ Ac-*
 5 *cess to Care Act”.*

6 **SEC. 2. STREAMLINED ENROLLMENT PROCESS FOR ELIGI-**
 7 **BLE OUT-OF-STATE PROVIDERS UNDER MED-**
 8 **ICAID AND CHIP.**

9 *(a) IN GENERAL.—Section 1902(kk) of the Social Se-*
 10 *curity Act (42 U.S.C. 1396a(kk)) is amended by adding at*
 11 *the end the following new paragraph:*

12 “(10) **STREAMLINED ENROLLMENT PROCESS FOR**
 13 **ELIGIBLE OUT-OF-STATE PROVIDERS.—**

14 “(A) **IN GENERAL.—***If the State does not*
 15 *have a standard agreement with other States*
 16 *governing coverage and payment for services fur-*
 17 *nished to Medicaid-eligible children with medi-*
 18 *cally complex conditions that was developed con-*
 19 *sistent with guidance issued by the Secretary*
 20 *under section 1945A, the State—*

21 “(i) *adopts and implements a process*
 22 *to allow an eligible out-of-State provider to*
 23 *enroll under the State plan (or a waiver of*
 24 *such plan) to furnish items and services to,*
 25 *or order, prescribe, refer, or certify eligi-*

bility for, items and services for qualifying individuals without the imposition of screening or enrollment requirements in addition to those imposed by the State in which the eligible out-of-State provider is located; and

“(ii) provides that an eligible out-of-State provider that enrolls as a participating provider in the State plan (or a waiver of such plan) through such process shall be so enrolled for a 5-year period, unless the provider is terminated or excluded from participation during such period.

“(B) DEFINITIONS.—In this paragraph:

“(i) ELIGIBLE OUT-OF-STATE PROVIDER.—The term ‘eligible out-of-State provider’ means, with respect to a State, a provider—

“(I) that is located in any other State;

“(II) that—

“(aa) was determined by the Secretary to have a limited risk of fraud, waste, and abuse for purposes of determining the level of

1 screening to be conducted under
2 section 1866(j)(2), has been so
3 screened under such section
4 1866(j)(2), and is enrolled in the
5 Medicare program under title
6 XVIII; or

7 “(bb) was determined by the
8 State agency administering or su-
9 pervising the administration of
10 the State plan (or a waiver of
11 such plan) of such other State to
12 have a limited risk of fraud,
13 waste, and abuse for purposes of
14 determining the level of screening
15 to be conducted under paragraph
16 (1) of this subsection, has been so
17 screened under such paragraph
18 (1), and is enrolled under such
19 State plan (or a waiver of such
20 plan); and

21 “(III) that has not been—

22 “(aa) excluded from partici-
23 pation in any Federal health care
24 program pursuant to section 1128
25 or 1128A;

1 “(bb) *excluded from partici-*
 2 *pation in the State plan (or a*
 3 *waiver of such plan) pursuant to*
 4 *part 1002 of title 42, Code of Fed-*
 5 *eral Regulations (or any successor*
 6 *regulation), or State law; or*

7 “(cc) *terminated from par-*
 8 *ticipating in a Federal health*
 9 *care program or the State plan*
 10 *(or a waiver of such plan) for a*
 11 *reason described in paragraph*
 12 *(8)(A).*

13 “(ii) *QUALIFYING INDIVIDUAL.—The*
 14 *term ‘qualifying individual’ means an indi-*
 15 *vidual under 21 years of age who is enrolled*
 16 *under the State plan (or waiver of such*
 17 *plan).*

18 “(iii) *STATE.—The term ‘State’ means*
 19 *1 of the 50 States or the District of Colum-*
 20 *bia.”.*

21 *(b) CONFORMING AMENDMENTS.—*

22 *(1) Section 1902(a)(77) of the Social Security*
 23 *Act (42 U.S.C. 1396a(a)(77)) is amended by inserting*
 24 *“enrollment,” after “screening,”.*

1 (2) *The subsection heading for section 1902(kk)*
 2 *of such Act (42 U.S.C. 1396a(kk)) is amended by in-*
 3 *serting “ENROLLMENT,” after “SCREENING,”.*

4 (3) *Section 2107(e)(1)(G) of such Act (42 U.S.C.*
 5 *1397gg(e)(1)(G)) is amended by inserting “enroll-*
 6 *ment,” after “screening,”.*

7 (c) *EFFECTIVE DATE.—The amendments made by this*
 8 *section shall take effect on the date that is 3 years after*
 9 *the date of enactment of this section.*

10 **SEC. 3. PREVENTING THE USE OF ABUSIVE SPREAD PRIC-**
 11 **ING IN MEDICAID.**

12 (a) *IN GENERAL.—Section 1927(e) of the Social Secu-*
 13 *rity Act (42 U.S.C. 1396r–8(e)) is amended by adding at*
 14 *the end the following:*

15 “(6) *TRANSPARENT PRESCRIPTION DRUG PASS-*
 16 *THROUGH PRICING REQUIRED.—*

17 “(A) *IN GENERAL.—A contract between the*
 18 *State and a pharmacy benefit manager (referred*
 19 *to in this paragraph as a ‘PBM’), or a contract*
 20 *between the State and a managed care entity or*
 21 *other specified entity (as such terms are defined*
 22 *in section 1903(m)(9)(D) and collectively re-*
 23 *ferred to in this paragraph as the ‘entity’) that*
 24 *includes provisions making the entity responsible*
 25 *for coverage of covered outpatient drugs dis-*

1 *pensed to individuals enrolled with the entity,*
2 *shall require that payment for such drugs and*
3 *related administrative services (as applicable),*
4 *including payments made by a PBM on behalf*
5 *of the State or entity, is based on a transparent*
6 *prescription drug pass-through pricing model*
7 *under which—*

8 *“(i) any payment made by the entity*
9 *or the PBM (as applicable) for such a*
10 *drug—*

11 *“(I) is limited to—*

12 *“(aa) ingredient cost; and*

13 *“(bb) a professional dis-*
14 *pensing fee that is not less than*
15 *the professional dispensing fee*
16 *that the State plan or waiver*
17 *would pay if the plan or waiver*
18 *was making the payment directly;*

19 *“(II) is passed through in its en-*
20 *tirety (except as reduced under Federal*
21 *or State laws and regulations in re-*
22 *sponse to instances of waste, fraud, or*
23 *abuse) by the entity or PBM to the*
24 *pharmacy or provider that dispenses*
25 *the drug; and*

1 “(III) is made in a manner that
2 is consistent with sections 447.502,
3 447.512, 447.514, and 447.518 of title
4 42, Code of Federal Regulations (or
5 any successor regulation) as if such re-
6 quirements applied directly to the enti-
7 ty or the PBM, except that any pay-
8 ment by the entity or the PBM for the
9 ingredient cost of such drug purchased
10 by a covered entity (as defined in sub-
11 section (a)(5)(B)) may exceed the ac-
12 tual acquisition cost (as defined in
13 447.502 of title 42, Code of Federal
14 Regulations, or any successor regula-
15 tion) for such drug if—

16 “(aa) such drug was subject
17 to an agreement under section
18 340B of the Public Health Service
19 Act;

20 “(bb) such payment for the
21 ingredient cost of such drug does
22 not exceed the maximum payment
23 that would have been made by the
24 entity or the PBM for the ingre-
25 dient cost of such drug if such

1 *drug had not been purchased by*
2 *such covered entity; and*

3 “(cc) *such covered entity re-*
4 *ports to the Secretary (in a form*
5 *and manner specified by the Sec-*
6 *retary), on an annual basis and*
7 *with respect to payments for the*
8 *ingredient costs of such drugs so*
9 *purchased by such covered entity*
10 *that are in excess of the actual ac-*
11 *quisition costs for such drugs, the*
12 *aggregate amount of such excess;*

13 “(ii) *payment to the entity or the PBM*
14 *(as applicable) for administrative services*
15 *performed by the entity or PBM is limited*
16 *to an administrative fee that reflects the*
17 *fair market value of such services;*

18 “(iii) *the entity or the PBM (as appli-*
19 *cable) makes available to the State, and the*
20 *Secretary upon request, all costs and pay-*
21 *ments related to covered outpatient drugs*
22 *and accompanying administrative services*
23 *incurred, received, or made by the entity or*
24 *the PBM, including ingredient costs, profes-*
25 *sional dispensing fees, administrative fees,*

1 *post-sale and post-invoice fees, discounts, or*
2 *related adjustments such as direct and indi-*
3 *rect remuneration fees, and any and all*
4 *other remuneration; and*

5 *“(iv) any form of spread pricing*
6 *whereby any amount charged or claimed by*
7 *the entity or the PBM (as applicable) that*
8 *exceeds the amount paid to the pharmacies*
9 *or providers on behalf of the State or entity,*
10 *including any post-sale or post-invoice fees,*
11 *discounts, or related adjustments such as di-*
12 *rect and indirect remuneration fees or as-*
13 *sessments (after allowing for an administra-*
14 *tive fee as described in clause (ii)) is not al-*
15 *lowable for purposes of claiming Federal*
16 *matching payments under this title.*

17 *“(B) MAKING CERTAIN INFORMATION AVAIL-*
18 *ABLE.—The Secretary shall publish, not less fre-*
19 *quently than on an annual basis, information*
20 *received by the Secretary pursuant to subpara-*
21 *graph (A)(i)(III)(cc). Such information shall be*
22 *so published in an electronic and searchable for-*
23 *mat, such as through the 340B Office of Phar-*
24 *macy Affairs Information System (or a successor*
25 *system).”.*

1 (b) *CONFORMING AMENDMENTS.*—Section 1903(m) of
 2 such Act (42 U.S.C. 1396b(m)) is amended—

3 (1) in paragraph (2)(A)(xiii)—

4 (A) by striking “and (III)” and inserting
 5 “(III)”;

6 (B) by inserting before the period at the end
 7 the following: “, and (IV) if the contract includes
 8 provisions making the entity responsible for cov-
 9 erage of covered outpatient drugs, the entity shall
 10 comply with the requirements of section
 11 1927(e)(6)”;

12 (C) by moving the left margin 4 ems to the
 13 left; and

14 (2) by adding at the end the following new para-
 15 graph:

16 “(10) No payment shall be made under this title to
 17 a State with respect to expenditures incurred by the State
 18 for payment for services provided by an other specified enti-
 19 ty (as defined in paragraph (9)(D)(iii)) unless such services
 20 are provided in accordance with a contract between the
 21 State and such entity which satisfies the requirements of
 22 paragraph (2)(A)(xiii).”.

23 (c) *EFFECTIVE DATE.*—The amendments made by this
 24 section shall apply to contracts between States and man-
 25 aged care entities, other specified entities, or pharmacy ben-

1 *efit managers that have an effective date beginning on or*
 2 *after the date that is 18 months after the date of enactment*
 3 *of this Act.*

4 (d) *IMPLEMENTATION.—*

5 (1) *IN GENERAL.—Notwithstanding any other*
 6 *provision of law, the Secretary of Health and Human*
 7 *Services may implement the amendments made by*
 8 *this section by program instruction or otherwise.*

9 (2) *NONAPPLICATION OF ADMINISTRATIVE PRO-*
 10 *CEDURE ACT.—Implementation of the amendments*
 11 *made by this section shall be exempt from the require-*
 12 *ments of section 553 of title 5, United States Code.*

13 (e) *NONAPPLICATION OF PAPERWORK REDUCTION*
 14 *ACT.—Chapter 35 of title 44, United States Code, shall not*
 15 *apply to any data collection undertaken by the Secretary*
 16 *of Health and Human Services under section 1927(f) of the*
 17 *Social Security Act (42 U.S.C. 1396r–8(f)), as amended by*
 18 *this section.*

19 **SEC. 4. MEDICAID IMPROVEMENT FUND.**

20 *Section 1941(b)(3)(A) of the Social Security Act (42*
 21 *U.S.C. 1396w–1(b)(3)(A)) is amended by striking “\$0” and*
 22 *inserting “\$88,000,000”.*

Amend the title so as to read: “A bill to amend title XIX of the Social Security Act to streamline enrollment under the Medicaid program of certain providers across

State lines, and to prevent the use of abusive spread pricing in Medicaid.”.

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