

112TH CONGRESS
2D SESSION

H. R. 6498

To amend section 1932 of the Social Security Act to require independent audits and actuarial services under Medicaid managed care programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2012

Mrs. BACHMANN introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend section 1932 of the Social Security Act to require independent audits and actuarial services under Medicaid managed care programs, 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 Integrity Act
5 of 2012”.

1 **SEC. 2. INDEPENDENT AUDIT AND ACTUARY REQUIRE-**
2 **MENTS FOR STATE MEDICAID MANAGED**
3 **CARE PROGRAMS.**

4 (a) IN GENERAL.—Section 1932 of the Social Secu-
5 rity Act (42 U.S.C. 1396u–2) is amended by adding at
6 the end the following:

7 “(i) INDEPENDENT AUDIT REQUIREMENTS.—

8 “(1) IN GENERAL.—As a condition of receiving
9 a payment under section 1903(a) with respect to ex-
10 penditures under a contract with a managed care
11 entity under section 1903(m), a State, acting
12 through the State agency under the State plan or
13 another State entity, shall, in accordance with this
14 subsection, enter into a contract with an inde-
15 pendent auditor to—

16 “(A) conduct audits of such managed care
17 entity under such contract; and

18 “(B) report the results of such audits
19 under paragraph (7).

20 “(2) INDEPENDENT AUDITOR DEFINED.—In
21 this subsection, subject to subparagraph (B), the
22 term ‘independent auditor’ means, with respect to
23 the audit of a managed care entity in a State for a
24 period of time, an auditing entity that—

25 “(A) had no financial relationship with the
26 managed care entity or an affiliate of such

1 managed care entity for activities occurring
2 during the period for which the audit is con-
3 ducted;

4 “(B) has no such financial relationship
5 with the managed care entity or affiliate for the
6 period during which the audit is being con-
7 ducted; and

8 “(C) with respect to the initial audits
9 under paragraph (4) of a managed care entity,
10 has not had such a financial relationship with
11 the managed care entity or affiliate during the
12 2-year period ending on the date the auditing
13 entity and State enter into a contract under
14 paragraph (1).

15 “(3) STANDARDS FOR AUDITS.—

16 “(A) IN GENERAL.—The Secretary shall
17 set uniform standards for the audits required
18 under paragraph (4).

19 “(B) REQUIREMENTS FOR STANDARDS.—
20 The standards under subparagraph (A) shall—

21 “(i) be consistent with Federal Gov-
22 ernment auditing standards issued by the
23 Comptroller General of the United States;

“(ii) specify a uniform reporting format for the reporting of such audits under paragraph (7); and

“(iii) require that any report for an audit required under paragraph (7) include a certification by a certified public accountant.

“(4) TYPES OF AUDITS AND INFORMATION REQUIRED.—

“(A) IN GENERAL.—The independent auditor contracting with a State under paragraph (1) shall conduct and complete, for each managed care entity with a contract under section 1903(m) in such State the following:

“(i) A biannual financial audit described in paragraph (5).

“(ii) A biannual performance-compliance audit described in paragraph (6).

“(B) TIMING OF AUDITS.—

“(i) INITIAL, STAGGERED AUDITS.—For the purpose of establishing baseline data, with respect to each managed care entity with a contract under section 1903(m) with a State, the State shall complete—

1 “(I) an initial audit under sub-
2 paragraph (A)(i) not later than 6
3 months after the date of enactment of
4 the Medicaid Integrity Act of 2012;
5 and

6 “(II) an initial audit under sub-
7 paragraph (A)(ii) not later than 18
8 months after such date.

9 The initial audit of an entity under sub-
10 paragraph (A)(ii) shall be completed ap-
11 proximately 1 year after the initial audit of
12 the entity under subparagraph (A)(i).

13 “(ii) SUBSEQUENT, STAGGERED AU-
14 DITS.—Subsequent audits under each such
15 subparagraph shall be completed every two
16 years.

17 “(C) PERIOD COVERED BY AUDIT.—

18 “(i) IN GENERAL.—Each audit under
19 this paragraph shall cover a 2-calendar-
20 year period.

21 “(ii) INITIAL FINANCIAL AUDIT.—The
22 first biennial financial audit under sub-
23 paragraph (A)(i) shall cover the 2-cal-
24 endar-year period that ends on the last day
25 of the calendar year that ends 6 months

before the deadline for completion of such initial audit under (B)(i)(I).

“(iii) INITIAL PERFORMANCE-COMPLIANCE AUDIT.—The first biennial performance-compliance audit under subparagraph (A)(ii) shall cover the 2-calendar-year period that ends on the last day of the calendar year that ends 6 months before the deadline for completion of such initial audit under (B)(i)(II).

“(5) BIENNIAL FINANCIAL AUDIT.—A biennial financial audit under paragraph (4)(A)(i), with respect to a managed care entity with a contract under section 1903(m) in a State, is an audit of the finances of the managed care entity relating to such contract. Each such audit shall include an audit of at least the following information:

“(A) EXPENSES AND REVENUES.—With respect to services provided under such contract, the managed care entity’s—

“(i) administrative expenses;

“(ii) revenues, including investment income; and

“(iii) payments made by the managed care entity for nonadministrative services.

1 “(B) CLAIMS AND ENCOUNTER DATA.—

2 Subject to paragraph (7)(C)—

3 “(i) claims data related to services
4 provided by such managed care entity
5 under such contract; and

6 “(ii) encounter data that relate to
7 such services and support such claims.

8 “(C) EXPENDITURES ON PATIENT SERV-
9 ICES.—With respect to services provided under
10 such contract, the managed care entity’s pay-
11 ments to health care providers, that have been
12 issued a national provider identifier under title
13 XI, for items and services furnished on behalf
14 of beneficiaries based on the claims and encoun-
15 ter data described in subparagraph (B).

16 “(D) PROVIDER PAYMENT RATIO.—

17 “(i) IN GENERAL.—The ratio of the
18 payments to health care providers de-
19 scribed in subparagraph (C) to the aggre-
20 gate payments to the managed care entity
21 under the contract.

22 “(ii) CONSTRUCTION.—The ratio
23 under clause (i) is not a medical loss ratio
24 and is not comparable to a medical loss
25 ratio.

1 “(E) PROVIDER PAYMENT RATES AND
2 METHODOLOGIES.—Subject to paragraph
3 (7)(C)(ii), the managed care entity’s payment
4 rates and payment methodology for health care
5 services under such contract, by provider type
6 or service category, including a description of—

7 “(i) alternative payment arrangements
8 between the managed care entity and pro-
9 viders; and

10 “(ii) payments made by the managed
11 care entity to providers that are separate
12 from claims for services provided.

13 “(F) IDENTIFICATION OF ADMINISTRATIVE
14 VENDORS.—With respect to services provided
15 under such contract, identification of providers
16 and vendors for administrative services under
17 contract with the managed care entity.

18 “(G) RESERVE FUND CONTRIBUTIONS.—
19 Contributions that the managed care entity has
20 made to its reserve fund under such contract.

21 “(H) REINSURANCE.—Data on the amount
22 of reinsurance or transfer of risk that the man-
23 aged care entity has obtained with respect to
24 the risk assumed by such entity under such
25 contract.

1 “(I) CHARITABLE CONTRIBUTIONS AND
2 DONATIONS.—Contributions and donations that
3 the managed care entity has made to govern-
4 ment or non-profit entities, the identity of such
5 government or non-profit entities, and the
6 amount of the contributions and donations
7 made to each such entity.

8 “(6) BIENNIAL PERFORMANCE-COMPLIANCE
9 AUDIT.—A biennial audit under this paragraph
10 (4)(A)(ii), with respect to a managed care entity
11 with a contract under section 1903(m) in a State, is
12 an audit of the performance of such managed care
13 entity under such contract (including with respect to
14 the performance of risk assessment under the con-
15 tract) and the compliance of such managed care en-
16 tity, during the period covered by the audit, with—

17 “(A) the terms of the contract; and

18 “(B) applicable State and Federal laws,
19 regulations, and guidance, including provisions
20 of such laws, regulations, and guidance related
21 to allowable costs under such contracts.

22 “(7) REPORTING AND PUBLIC AVAILABILITY OF
23 AUDIT RESULTS.—

24 “(A) NOTICE AND OPPORTUNITY FOR COM-
25 MENT.—

1 “(i) IN GENERAL.—With respect to an
2 audit of a managed care entity conducted
3 by an independent auditor under this sub-
4 section, such auditor shall—

5 “(I) submit a report on the re-
6 sults of the audit to the managed care
7 entity; and

8 “(II) provide the managed care
9 entity with the opportunity to submit
10 comments on such audit to the audi-
11 tor during a 30-day period.

12 “(ii) REVIEW OF COMMENTS AND RE-
13 VISION OF REPORT.—The independent
14 auditor shall review the comments sub-
15 mitted under clause (i)(II) and may revise
16 such report based on such comments.

17 “(B) PUBLIC REPORT.—

18 “(i) IN GENERAL.—Not later than 45
19 days after the end of the 30-day comment
20 period provided under subparagraph
21 (A)(i)(II), the independent auditor shall
22 submit to the Secretary, the State, and the
23 managed care entity a report containing
24 the results of such audit (including, in the
25 case of an annual financial audit under

1 paragraph (4)(A)(i), the information de-
2 scribed in paragraph (5)(D)), any com-
3 ments received under subparagraph
4 (A)(i)(II), and an executive summary of
5 the audit report. The Secretary for good
6 cause may extend by not more than 30
7 days the deadline for submitting a report
8 under the previous sentence.

9 “(ii) POSTING ON PUBLIC WEB
10 SITE.—Subject to subparagraph (C), not
11 later than 30 days after the date that the
12 State receives a report under clause (i), the
13 State shall post such report (including the
14 executive summary of the report) on a Web
15 site maintained by the State in connection
16 with administration of this title and avail-
17 able to the public.

18 “(C) PRIVACY AND CONFIDENTIALITY PRO-
19 TECTION.—

20 “(i) PATIENT PROTECTIONS.—Noth-
21 ing in this subsection shall be construed as
22 modifying the application of the HIPAA
23 privacy regulations (as defined in section
24 1180(b)(3)).

1 “(ii) PROTECTION OF CERTAIN PRO-
2 PRIETARY INFORMATION.—Nothing in this
3 subsection shall be construed as author-
4 izing the public disclosure of the payment
5 rates that a managed care entity uses to
6 pay any health care provider or the meth-
7 odology that the managed care entity uses
8 to develop such rates.

9 “(iii) PROTECTION OF ENCOUNTER
10 DATA.—Subject to clause (i), an inde-
11 pendent auditor, when submitting a report
12 under subparagraph (A), may submit en-
13 counter data to a State. An independent
14 auditor, or a State, shall not submit to the
15 Federal Government any encounter data
16 that are collected for purposes of the au-
17 dits under this subsection.

18 “(D) WITHHOLDING OF PAYMENT FOR
19 FAILURE TO REPORT.—

20 “(i) IN GENERAL.—If a report re-
21 quired under this paragraph is not sub-
22 mitted to the Secretary as required under
23 subparagraph (B)(i) by an independent
24 auditor with respect to a managed care en-
25 tity in a State, the Secretary shall with-

1 hold, by the withholding percentage under
2 clause (ii), the payment to the State under
3 section 1903(a) for expenditures under a
4 contract under section 1903(m) for the
5 managed care entity for the period during
6 which the report is due but not submitted.

7 “(ii) WITHHOLDING PERCENTAGE.—
8 The withholding percentage specified in
9 this clause is—

10 “(I) 5 percentage points; plus

11 “(II) if the failure to report con-
12 tinued beyond 30 days after the date
13 on which such report was due under
14 subparagraph (B)(i), 5 additional per-
15 centage points for each subsequent
16 30-day period until such report is sub-
17 mitted.

18 “(iii) RESTORATION OF PAYMENT.—
19 Any amounts withheld under this subpara-
20 graph due to the failure to submit a report
21 shall be paid to a State not later than 10
22 days after the date such report is sub-
23 mitted.

24 “(8) RESPONSE TO DEFICIENCIES.—

1 “(A) REPORT.—If a report submitted
2 under paragraph (7) indicates a deficiency with
3 respect to the financial reporting, performance,
4 or compliance (as applicable) with respect to a
5 managed care entity with a contract under sec-
6 tion 1903(m) with a State, not later than 30
7 days after the date of submission of such report
8 the State shall submit to the Secretary (and
9 post on the Web site referred to in paragraph
10 (7)(B)(ii)) documentation of any action that the
11 State has taken or intends to take in response
12 to a reported deficiency. Such documentation
13 shall include documentation of any of the fol-
14 lowing:

15 “(i) Adjustments to the terms of new
16 or renewed contracts with such managed
17 care entity.

18 “(ii) A corrective action plan entered
19 into by the managed care entity with such
20 State.

21 “(iii) Any intermediate sanction under
22 subsection (e) against the managed care
23 entity.

24 “(iv) Termination of the contract with
25 the managed care entity.

1 “(B) OIG REPORT TO CONGRESS.—The
2 Secretary, acting through the Inspector General
3 in the Department of Health and Human Serv-
4 ices, shall annually submit to Congress and
5 make available to the public a report on the au-
6 dits conducted under this subsection and the re-
7 sponses of States to reports of deficiencies in
8 such audits. Such report shall contain such rec-
9 ommendations for changes in law or regulation
10 as may be appropriate to ensure the prudent
11 expenditure of funds for items and services fur-
12 nished through managed care entities.

13 “(9) ACCESS TO INFORMATION REQUIRED
14 UNDER CONTRACT; SANCTIONS FOR MISREPRESENT-
15 TATION OR FALSIFICATION OF RECORDS.—

16 “(A) ACCESS.—If a State enters into or
17 renews a contract under section 1903(m) after
18 the date of the enactment of the Medicaid In-
19 tegrity Act of 2012, such contract shall provide
20 that the managed care entity, as a condition of
21 receiving payment under such contract, shall
22 provide the independent auditor with access to
23 all information necessary for purposes of the
24 audits under paragraph (4).

1 “(B) SANCTIONS FOR MISREPRESENTA-
2 TION OR FALSIFICATION.—The misrepresenta-
3 tion or falsification of information that is fur-
4 nished for purposes of such an audit shall be
5 subject to a civil monetary penalty under sub-
6 paragraph (B)(i) of section 1903(m)(5) in the
7 same manner as a misrepresentation or fal-
8 sification described in subparagraph (A)(iv)(I)
9 of such section.

10 “(10) APPLICATION TO WAIVER STATES.—In
11 the case of any State which is providing medical as-
12 sistance to its residents under a waiver granted
13 under section 1115, the Secretary shall require the
14 State to meet the requirements of this subsection
15 and subsection (j) in the same manner as the State
16 would be required to meet such requirement if the
17 State had in effect a plan approved under this title.

18 “(11) REDUCING DUPLICATE AUDITS.—Not-
19 withstanding any other provision of this title, insofar
20 as the Secretary determines that the performance of
21 an audit under this subsection duplicates the per-
22 formance of an audit required under another provi-
23 sion of this title, the completion of the audit under
24 this subsection shall satisfy such requirement.

1 “(12) RESERVATION OF STATE POWERS.—

2 Nothing in this subsection shall be construed to limit
3 the power of a State, including the power of a State
4 to pursue civil and criminal penalties under State
5 law against any individual or entity that misuses, or
6 engages in fraud or abuse related to, the funds pro-
7 vided to a State under this title.

8 “(13) CONSTRUCTION.—Nothing in this sub-
9 section shall be construed to prevent the Secretary
10 from taking any action, including disallowances of
11 payment, with respect to violations of this title re-
12 lated to a contract with a managed care entity.

13 “(14) DEFINITIONS.—

14 “(A) AFFILIATE OF THE MANAGED CARE
15 ENTITY.—For purposes of this subsection and
16 subsection (j), the term ‘affiliate of the man-
17 aged care entity’ means an entity that, to a sig-
18 nificant extent, is associated or affiliated with,
19 or has control of or is controlled by, the man-
20 aged care entity or that is related to such man-
21 aged care entity by common ownership. For
22 purposes of this definition—

23 “(i) common ownership exists if an in-
24 dividual or individuals possess significant
25 ownership or equity in the managed care

1 entity and the affiliate of the managed
2 care entity; and

3 “(ii) control exists if an entity has the
4 power, directly or indirectly, to signifi-
5 cantly influence or direct the actions or
6 policies of another entity.

7 “(B) CONTRACT YEAR.—For purposes of
8 this subsection, the term ‘contract year’ means,
9 with respect to a managed care entity and a
10 State, the 12-month period that begins on the
11 effective date of a contract under section
12 1903(m) between the managed care entity and
13 the State, and each subsequent 12-month pe-
14 riod while such contract is effective.”.

15 (b) INDEPENDENT ACTUARY.—Section 1932 of the
16 Social Security Act (42 U.S.C. 1396u–2), as amended by
17 section 2, is further amended by adding at the end the
18 following:

19 “(j) INDEPENDENT ACTUARY.—As a condition of re-
20 ceiving a payment under section 1903(a) with respect to
21 expenditures under a contract between a State and a man-
22 aged care entity under section 1903(m), a State may not
23 enter into an agreement with an entity (referred to in this
24 subsection as an ‘actuary’) to provide actuarial services

1 related to the State’s administration of such contract un-
2 less the following requirements are met:

3 “(1) NO ACTUARIAL SERVICES OR FINANCIAL
4 RELATIONSHIP FOR CONTRACT PERIOD.—The actu-
5 ary has not provided actuarial services to the man-
6 aged care entity for, or otherwise had any financial
7 relationship with the managed care entity during,
8 any period of the contract (between such managed
9 care entity and the State) with respect to which the
10 actuarial services under the agreement (between the
11 actuary and the State) are to be provided.

12 “(2) NO FINANCIAL RELATIONSHIP DURING
13 TERM OF AGREEMENT WITH STATE.—The actuary
14 agrees not to have such a financial relationship with
15 the managed care entity or affiliate during any part
16 of the period of the agreement (between the State
17 and the actuary).

18 “(3) SPECIAL RULE FOR FIRST CONTRACT
19 YEAR.—For the first contract year in which this
20 subsection applies, the actuary has not had such a
21 financial relationship with the managed care entity
22 or affiliate during the 2-year period ending on the
23 date the actuary and State enter into an agreement
24 subject to this subsection.”.

1 (c) TRANSITIONAL FINANCIAL INCENTIVES TO
2 STATES.—Section 1903(a)(3) of the Social Security Act
3 (42 U.S.C. 1396b(a)(3)) is amended by inserting after
4 subparagraph (F) the following:

5 “(G) 75 percent of so much of the sums
6 expended as are attributable to expenditures for
7 the first 3 biannual financial audits conducted
8 under section 1932(i)(4)(A)(i) after the date of
9 enactment of the Medicaid Integrity Act of
10 2012, and for the first 2 biannual performance-
11 compliance audits conducted under section
12 1932(i)(4)(A)(ii) after such date; plus”.

○