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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.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 2017

Mr. PORTMAN introduced the following bill; which was read twice and referred to the Committee on Finance

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) CLARIFICATION OF DEFINITIONS APPLICABLE TO
8 THIRD PARTY LIABILITY.—

1 (1) IN GENERAL.—Section 1902 of the Social
 2 Security Act (42 U.S.C. 1396a) is amended by add-
 3 ing at the end the following new subsection:

4 “(nn) For purposes of subsection (a)(25) and section
 5 1903(d)(2)(B), the term ‘responsible third party’ means
 6 a health insurer (including a group health plan, as defined
 7 in section 607(1) of the Employee Retirement Income Se-
 8 curity Act of 1974, a self-insured plan, a fully-insured
 9 plan, a service benefit plan, a managed care organization,
 10 a pharmacy benefit manager, and any other health plan
 11 determined appropriate by the Secretary), the TRICARE
 12 program under chapter 55 of title 10, United States Code,
 13 an accountable care organization, or any other party that
 14 is, by statute, contract, or agreement, legally responsible
 15 for payment of a claim for a health care item or service.”.

16 (2) CONFORMING AMENDMENTS.—Section
 17 1902(a)(25) of the Social Security Act (42 U.S.C.
 18 1396a(a)(25)) is amended—

19 (A) in subparagraph (A), in the matter
 20 preceding clause (i), by striking “third parties”
 21 and all that follows through “item or service)”
 22 and inserting “responsible third parties”;

23 (B) in subparagraph (G), by striking
 24 “health insurer” and all that follows through

1 “item or service)” and inserting “responsible
2 third party”;

3 (C) in subparagraph (I), in the matter pre-
4 ceding clause (i), by striking “health insurers”
5 and all that follows through “item or service”
6 and inserting “responsible third parties”; and

7 (D) by inserting “responsible” before
8 “third” each place it appears in subparagraphs
9 (A)(i), (A)(ii), (C), (D), and (H).

10 (b) REMOVAL OF SPECIAL TREATMENT OF CERTAIN
11 TYPES OF CARE AND PAYMENTS UNDER MEDICAID
12 THIRD PARTY LIABILITY RULES.—Section 1902(a)(25)
13 of the Social Security Act (42 U.S.C. 1396a(a)(25)) is
14 amended by striking subparagraphs (E) and (F).

15 (c) CLARIFICATION OF ROLE OF HEALTH INSURERS
16 WITH RESPECT TO THIRD PARTY LIABILITY.—

17 (1) IN GENERAL.—Section 1902(a)(25) of the
18 Social Security Act (42 U.S.C. 1396a(a)(25)), as
19 amended by subsection (b), is further amended by
20 inserting after subparagraph (D) the following new
21 subparagraphs:

22 “(E) that, in the case of a State that pro-
23 vides medical assistance under this title through
24 a contract with a health insurer (including a
25 group health plan, as defined in section 607(1)

1 of the Employee Retirement Income Security
 2 Act of 1974, a self-insured plan, a fully-insured
 3 plan, a service benefit plan, a managed care or-
 4 ganization, a pharmacy benefit manager, and
 5 any other health plan determined appropriate
 6 by the Secretary), such contract shall specify
 7 whether the State is—

8 “(i) delegating to such insurer all or
 9 some of its right of recovery from a re-
 10 sponsible third party for an item or service
 11 for which payment has been made under
 12 the State plan (or under a waiver of the
 13 plan); and

14 “(ii) transferring to such insurer all
 15 or some of the assignment to the State of
 16 any right of an individual or other entity
 17 to payment from a responsible third party
 18 for an item or service for which payment
 19 has been made under the State plan (or
 20 under a waiver of the plan);

21 “(F) that, in the case of a State that elects
 22 an option described in clause (i) or (ii) of sub-
 23 paragraph (E) with respect to a health insurer
 24 (including a group health plan, as defined in
 25 section 607(1) of the Employee Retirement In-

1 come Security Act of 1974, a self-insured plan,
2 a fully-insured plan, a service benefit plan, a
3 managed care organization, a pharmacy benefit
4 manager, and any other health plan determined
5 appropriate by the Secretary), the State shall
6 provide assurances to the Secretary that the
7 State laws referred to in subparagraph (I) con-
8 fer to the health insurer the authority of the
9 State with respect to the requirements specified
10 in clauses (i) through (iv) of such subpara-
11 graph;”.

12 (2) TREATMENT OF COLLECTED AMOUNTS.—

13 Section 1903(d)(2)(B) of the Social Security Act (42
14 U.S.C. 1396b(d)(2)(B)) is amended by adding at the
15 end the following: “For purposes of this subpara-
16 graph, reimbursements made by a responsible third
17 party to health insurers (including group health
18 plans, as defined in section 607(1) of the Employee
19 Retirement Income Security Act of 1974, self-in-
20 sured plans, fully-insured plans, service benefit
21 plans, managed care organizations, pharmacy benefit
22 managers, and any other health plan determined ap-
23 propriate by the Secretary) pursuant to section
24 1902(a)(25)(E) shall be treated in the same manner

1 as reimbursements made to a State under the pre-
 2 vious sentence.”.

3 (3) EFFECTIVE DATE.—The amendments made
 4 by this subsection shall take effect as if enacted on
 5 October 1, 2017.

6 (d) INCREASING STATE FLEXIBILITY WITH RESPECT
 7 TO THIRD PARTY LIABILITY.—Section 1902(a)(25)(I) of
 8 the Social Security Act (42 U.S.C. 1396a(a)(25)(I)) is
 9 amended—

10 (1) in clause (i), by striking “medical assistance
 11 under the State plan” and inserting “medical assist-
 12 ance under a State plan (or under a waiver of the
 13 plan)”;

14 (2) by striking clause (ii) and inserting the fol-
 15 lowing new clause:

16 “(ii) accept—

17 “(I) any State’s right of recovery
 18 and the assignment to any State of
 19 any right of an individual or other en-
 20 tity to payment from the party for an
 21 item or service for which payment has
 22 been made under the respective
 23 State’s plan (or under a waiver of the
 24 plan); and

1 “(II) as a valid authorization of
 2 the responsible third party for the fur-
 3 nishing of an item or service to an in-
 4 dividual eligible to receive medical as-
 5 sistance under this title, an authoriza-
 6 tion made on behalf of such individual
 7 under the State plan (or under a
 8 waiver of such plan) for the fur-
 9 nishing of such item or service to such
 10 individual;”;

11 (3) in clause (iii)—

12 (A) by striking “respond to” and inserting
 13 “not later than 60 days after receiving”; and

14 (B) by striking “; and” at the end and in-
 15 serting “, respond to such inquiry; and”; and

16 (4) in clause (iv), by inserting “a failure to ob-
 17 tain a prior authorization,” after “claim form,”.

18 (e) STATE INCENTIVE TO PURSUE THIRD PARTY LI-
 19 ABILITY FOR NEWLY ELIGIBLES.—Section 1903(d)(2)(B)
 20 of the Social Security Act (42 U.S.C. 1396b(d)(2)(B)), as
 21 amended by subsection (c)(2), is amended by adding at
 22 the end the following: “In the case of expenditures for
 23 medical assistance provided during fiscal year 2018 and
 24 subsequent fiscal years for individuals described in sub-
 25 clause (VIII) of section 1902(a)(10)(A)(i), in determining

1 the amount, if any, of overpayment under this subpara-
 2 graph with respect to such medical assistance, the Sec-
 3 retary shall apply the Federal medical assistance percent-
 4 age for the State under section 1905(b), notwithstanding
 5 the application of section 1905(y).”.

6 **SEC. 3. COMPLIANCE WITH THIRD PARTY INSURANCE RE-**
 7 **PORTING.**

8 (a) IN GENERAL.—Section 1903 of the Social Secu-
 9 rity Act (42 U.S.C. 1396b) is amended by inserting after
 10 subsection (m) the following new subsection:

11 “(n)(1) For any fiscal year beginning after fiscal year
 12 2020 (except as provided in paragraph (2)), unless a State
 13 complies with the requirements of section 1902(a)(25)
 14 with respect to each calendar quarter in such fiscal year,
 15 the Federal medical assistance percentage shall be reduced
 16 by 0.25 percentage points for calendar quarters in each
 17 subsequent fiscal year in which the State fails to so comply
 18 (and cumulatively for a failure to so comply for a period
 19 of consecutive fiscal years).

20 “(2) Notwithstanding paragraph (1), the reduction in
 21 the Federal medical assistance percentage shall apply—

22 “(A) in the case of a failure of the State to
 23 comply with the requirements of section 1902(a)(25)
 24 with respect to payment for items and services fur-
 25 nished to individuals described in subclause (VIII) of

1 section 1902(a)(10)(A)(i), for any fiscal year begin-
 2 ning after fiscal year 2018; and

3 “(B) in the case of a failure of the State to
 4 comply with the requirements of section 1902(a)(25)
 5 with respect to payment for items and services fur-
 6 nished to individuals described in subdivision (i),
 7 (iii), or (iv) of section 1905(a), for any fiscal year
 8 beginning after fiscal year 2019.”.

9 (b) VERIFICATION OF INSURANCE STATUS RE-
 10 QUIRED.—Section 1902(a)(25)(A)(i) of the Social Secu-
 11 rity Act (42 U.S.C. 1396a(a)(25)(A)(i)) is amended by in-
 12 serting “, including the collection of, with respect to an
 13 individual seeking to receive medical assistance under this
 14 title, information on whether the individual has health in-
 15 surance coverage provided through a health insurer (as de-
 16 scribed in section 1902(nn)) and the plan of such insurer
 17 in which the individual is enrolled” after “sufficient infor-
 18 mation”.

19 **SEC. 4. APPLICATION TO CHIP.**

20 (a) IN GENERAL.—Section 2107(e)(1) of the Social
 21 Security Act (42 U.S.C. 1397gg(e)(1)) is amended—

22 (1) by redesignating subparagraphs (B)
 23 through (R) as subparagraphs (C) through (S), re-
 24 spectively; and

1 (2) by inserting after subparagraph (A) the fol-
 2 lowing new subparagraph:

3 “(B) Section 1902(a)(25) (relating to third
 4 party liability).”.

5 (b) MANDATORY REPORTING.—Section
 6 1902(a)(25)(I)(i) of the Social Security Act (42 U.S.C.
 7 1396a(a)(25)(I)(i)), as amended by section 1(d), is further
 8 amended—

9 (1) by striking “(and, at State option, child”
 10 and inserting “and child”; and

11 (2) by striking “title XXI)” and inserting “title
 12 XXI”.

13 **SEC. 5. TRAINING ON THIRD PARTY LIABILITY.**

14 Section 1936 of the Social Security Act (42 U.S.C.
 15 1396u–6) is amended—

16 (1) in subsection (b)(4), by striking “and qual-
 17 ity of care” and inserting “, quality of care, and the
 18 liability of responsible third parties (as defined in
 19 section 1902(nn))”; and

20 (2) by adding at the end the following new sub-
 21 section:

22 “(f) THIRD PARTY LIABILITY TRAINING.—With re-
 23 spect to education or training activities carried out pursu-
 24 ant to subsection (b)(4) with respect to the liability of re-
 25 sponsible third parties (as defined in section 1902(nn) for

1 payment for items and services furnished under State
2 plans (or under waivers of such plans)) under this title,
3 the Secretary shall—

4 “(1) publish (and update on an annual basis)
5 on the public Internet website of the Centers for
6 Medicare & Medicaid Services a dedicated Internet
7 page containing best practices to be used in assess-
8 ing such liability;

9 “(2) monitor efforts to assess such liability and
10 analyze the challenges posed by that assessment;

11 “(3) distribute to State agencies administering
12 the State plan under this title information related to
13 such efforts and challenges; and

14 “(4) provide guidance to such State agencies
15 with respect to State oversight of efforts by medicaid
16 managed care organizations (as defined in section
17 1903(m)(1)) to assess such liability.”.

18 **SEC. 6. DEVELOPMENT OF MODEL UNIFORM FIELDS FOR**
19 **STATES TO REPORT THIRD PARTY INFORMA-**
20 **TION.**

21 Not later than January 1, 2018, the Secretary of
22 Health and Human Services shall, in consultation with the
23 States, develop and make available to the States a model
24 uniform reporting field that States may use for purposes
25 of reporting to the Secretary through the Transformed

1 Medicaid Statistical Information System (T-MSIS) (or a
 2 successor system) information identifying responsible
 3 third parties (as defined in subsection (nn) of section 1902
 4 of the Social Security Act (42 U.S.C. 1396a)) and other
 5 relevant information for ascertaining the legal responsi-
 6 bility of such third parties to pay for care and services
 7 available under the State plan (or under a waiver of the
 8 plan) under title XIX of the Social Security Act (42
 9 U.S.C. 1396 et seq.).

10 **SEC. 7. EFFECTIVE DATE.**

11 (a) IN GENERAL.—Except as provided in subsection
 12 (b) and section 2(c)(3), this Act and the amendments
 13 made by this Act (other than as specified in the preceding
 14 provisions of this Act) shall take effect on the date of en-
 15 actment of this Act and shall apply to medical assistance
 16 provided on or after such date.

17 (b) EXCEPTION IF STATE LEGISLATION RE-
 18 QUIRED.—In the case of a State plan for medical assist-
 19 ance under title XIX of the Social Security Act that the
 20 Secretary of Health and Human Services determines re-
 21 quires State legislation (other than legislation appro-
 22 priating funds) in order for the plan to meet the additional
 23 requirement imposed by the amendments made under this
 24 section, the State plan shall not be regarded as failing to
 25 comply with the requirements of such title solely on the

1 basis of its failure to meet this additional requirement be-
2 fore the first day of the first calendar quarter beginning
3 after the close of the first regular session of the State leg-
4 islature that begins after the date of the enactment of this
5 Act. For purposes of the previous sentence, in the case
6 of a State that has a 2-year legislative session, each year
7 of such session shall be deemed to be a separate regular
8 session of the State legislature.

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