

REPEAL OF MEDICARE AND MEDICAID COVERAGE DATA
 BANK

DECEMBER 11, 1995.—Ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means,
 submitted the following

REPORT

[To accompany H.R. 2685]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2685) to repeal the Medicare and Medicaid Coverage Data Bank, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. INTRODUCTION

A. PURPOSE AND SUMMARY

H.R. 2685 would repeal the Medicare and Medicaid Coverage Data Bank.

B. BACKGROUND AND NEED FOR LEGISLATION

Under the Medicare secondary payer (MSP) program, the individual's employer-based group health insurance, liability insurance, or no-fault insurance may be the primary payer in certain cases. The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) provided for the establishment of a Medicare and Medicaid Coverage Data Bank by the Secretary of the Department of Health and Human Services (DHHS). OBRA 93 required employers having or contributing to a group health insurance plan to submit employee health insurance information to the Secretary, on an annual basis, for calendar years 1994–1997. The 1994 submission was due by February 1995. The information was intended to facilitate the identification of both Medicare secondary payer cases and those circumstances in which employer-based insurance should be the primary payer.

Employers raised legitimate questions about the appropriateness of the implementation of the requirement of the Data Bank. One of the principal concerns was that employers would be required to report information which they did not routinely collect. In response to these concerns, the Conference agreement accompanying the FY 1995 Labor, DHHS, and Education appropriations bill (P.L. 103–333) contained specific language relating to the Data Bank. It directed that no DHHS funds should be used for the implementation of or planning for implementation of the Bank.

In addition, the General Accounting Office (GAO) issued a report on May, 1994 which found that the data bank would create burdensome and unnecessary paperwork for both HCFA and employers and would achieve little or no savings. It is also believed that the Data Bank would cost a significant amount of money in added administrative activities for HCFA and employers.

C. LEGISLATIVE HISTORY

Committee bill

H.R. 2685 was introduced on November 27, 1995, by Mr. Thomas of California, et al., and referred to the Committee on Ways and Means and the Committee on Commerce. The bill as introduced, contained a provision to repeal the Medicare and Medicaid Coverage Data Bank.

The Committee on Ways and Means considered the bill on November 30, 1995, and ordered the bill favorably reported, without amendment, by voice vote, with a quorum present.

Legislative hearing

The Subcommittee on Health of the Committee on Ways and Means held a public hearing on February 23, 1995, on Medicare Provisions Contained in the President's Budget, which focused on the Medicare Secondary Payer provisions, including the Data Bank, as well as other programs.

II. EXPLANATION OF THE BILL

A. REPEAL OF THE MEDICARE AND MEDICAID COVERAGE DATA BANK (SEC. 1 OF THE BILL AND SEC. 13581(A) OF OBRA 1993)

Present law

Under the Medicare secondary payer (MSP) program, the individual's employer-based group health insurance, liability insurance, or no-fault insurance may be the primary payer in certain cases. OBRA 93 provided for the establishment of a Medicare and Medicaid Coverage Data Bank by the Secretary of the DHHS. OBRA 93 required employers having or contributing to a group health insurance plan to submit employee health insurance information to the Secretary, on an annual basis, for calendar years 1994–1997. The 1994 submission was due by February 1995. The information was intended to facilitate the identification of both Medicare secondary payer cases and those circumstances in which employer-based insurance should be the primary payer.

The Conference agreement accompanying the FY 1995 Labor, DHHS, and Education appropriations bill (P.L. 103–333) contained specific language relating to the Data Bank. It directed that no DHHS funds should be used for the implementation of or planning for implementation of the Bank.

Explanation of provision

The provision would repeal the Medicare and Medicaid Coverage Data Bank.

Reasons for change

A number of employers voiced strong opposition to the Data Bank requirements. One of the principal concerns was that employers would be required to report information which they did not routinely collect.

In addition, the GAO issued a report on May 6, 1994 which found that the Data Bank would create burdensome and unnecessary paperwork for both HCFA and employers and would achieve little or no savings while costing millions of dollars in administrative expense.

As a result of these concerns, the Data Bank has never been funded.

Effective date

The provision is effective upon enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee in its consideration of the bill, H.R. 2685:

MOTION TO REPORT THE BILL

The bill, H.R. 2685, was ordered favorably reported by voice vote on November 30, 1995, with a quorum present.

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of this bill, H.R. 2685, as reported:

The Committee agrees with the estimate prepared by CBO, which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with subdivision (B) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of H.R. 2685 do not involve any new budget authority, or any increase or decrease in revenues or tax expenditures.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with subdivision (C) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 5, 1995.

Hon. BILL ARCHER,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2685, a bill to repeal the Medicare and Medicaid Coverage Data Bank, as ordered reported by the Committee on Ways and Means on November 30, 1995.

H.R. 2685 would repeal Section 1144 of the Social Security Act. This section directs the Secretary of the Health and Human Services (HHS) to establish a data bank that would assist in identifying third parties responsible for payments for items and services provided to Medicare beneficiaries or for costs incurred under State plans with respect to Medicare beneficiaries.

At the time the legislation authorizing the data bank was enacted, CBO estimates that it would reduce spending for Medicare and Medicaid. However, HHS has not established the data bank (and no funds were appropriated for its implementation in 1995), and authority to collect information from employers with respect to the health insurance coverage of their workers expires in 1998. As a result, CBO estimates that repeal of this section would have no budgetary or pay-as-you-go impact for the federal government. The bill would not affect the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Murray Ross.

Sincerely,

JUNE E. O'NEILL,
Director.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to subdivision (A) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's oversight activities concerning the repeal of the Medicare and Medicaid Coverage Data Bank that the Committee concluded that it is appropriate to enact the provisions contained in the bill.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

With respect to subdivision (D) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in this bill.

C. INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of the bill are not expected to have an overall inflationary impact on prices and costs in the operation of the national economy. As is indicated above (in Part IV of this report), the bill is projected to be deficit neutral over fiscal years 1995–2000.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule III of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, as shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * *

TITLE XI—GENERAL PROVISIONS AND PEER REVIEW

PART A—GENERAL PROVISIONS

* * * * *

[SEC. 1144. (a) ESTABLISHMENT OF DATA BANK.—The Secretary shall establish a Medicare and Medicaid Coverage Data Bank (hereafter in this section referred to as the “Data Bank”) to—

[(1) further the purposes of section 1862(b) in the identification of, and collection from, third parties responsible for payment for health care items and services furnished to medicare beneficiaries, and

[(2) assist in the identification of, and the collection from, third parties responsible for the reimbursement of costs incurred by any State plan under title XIX with respect to medic-

aid beneficiaries, upon request by the State agency described in section 1902(a)(5) administering, such plan.

[(b) INFORMATION IN DATA BANK.—

[(1) IN GENERAL.—The Data Bank shall contain information obtained pursuant to section 6103(l)(12) of the Internal Revenue Code of 1986) and subsection (c).

[(2) DISCLOSURE OF INFORMATION IN DATA BANK.—The Secretary is authorized until September 30, 1998—

[(A) (subject to the restriction in subparagraph (D)i) of section 6103(l)(12) of the Internal revenue Code of 1986) to disclose any information in the Data Bank obtained pursuant to such section solely for the purposes of such section, and

[(B) (subject to the restriction in subsection (c)(7)) to disclose any other information in the Data Bank to any State agency described in section 1902(a)(5), employer, or group health plan solely for the purposes described in subsection (a).

[(c) REQUIREMENT THAT EMPLOYERS REPORT INFORMATION.—

[(1) REPORTING REQUIREMENT.—

[(A) IN GENERAL.—Any employer described in paragraph (2) shall report to the Secretary (in such form and manner as the Secretary determines will minimize the burden of such reporting) with respect to each electing individual the information required under paragraph (5) for each calendar year beginning on or after January 1, 1994, and before January 1, 1998.

[(B) SPECIAL RULE.—To the extent a group health plan provides information required under paragraph (5) in a form and manner specified by the Secretary (in consultation with the Secretary of Labor) on behalf of an employer in accordance with section 101(f) of the Employee Retirement Income Security Act of 1974, the employer has complied with the reporting requirement under subparagraph (A) with respect to the reporting of such information.

[(2) EMPLOYER DESCRIBED.—An employer is described in this paragraph if such employer has, or contributes to, a group health plan, with respect to which at least 1 employee of such employer is an electing individual.

[(3) ELECTING INDIVIDUAL.—For purposes of this subsection, the term “electing individual” means an individual associated or formerly associated with the employer in a business relationship who elects coverage under the employer’s group health plan.

[(4) CERTAIN INDIVIDUALS EXCLUDED.—For purposes of this subsection, an individual providing service referred to in section 3121(a)(7)(B) of the Internal Revenue Code of 1986 shall not be considered an employee or electing individual with respect to an employer.

[(5) INFORMATION REQUIRED.—For purposes of paragraph (1), each employer shall provide the following information:

[(A) The name and TIN of the electing individual.

[(B) The type of group health plan coverage (single or family) elected by the electing individual.

[(C) The name, address, and identifying number of the group health plan elected by such electing individual.

[(D) The name and TIN of each other individual covered under the group health plan pursuant to such election.

[(E) The period during which such coverage is elected.

[(F) The name, address, and TIN of the employer.

[(6) TIME OF FILING.—For purposes of determining the date for filing the report under paragraph (1), such report shall be treated as a statement described in section 6051(d) of the Internal Revenue Code of 1986.

[(7) LIMITS ON DISCLOSURE OF INFORMATION REPORTED.—

[(A) IN GENERAL.—The disclosure of the information reported under paragraph (1) shall be restricted by the Secretary under rules similar to the rules of subsections (a) and (p) of section 6103 of the Internal Revenue Code of 1986.

[(B) PENALTY FOR UNAUTHORIZED WILLFUL DISCLOSURE OF INFORMATION.—The unauthorized disclosure of any information reported under paragraph (1) shall be subject to the penalty described in paragraph (1), (2), (3), or (4) of section 7213(a) of such Code.

[(9) PENALTY FOR FAILURE TO REPORT.—In the case of the failure of an employer (other than a Federal or other governmental entity) to report under paragraph (1)(A) with respect to each electing individual, the Secretary shall impose a penalty as described in part II of subchapter B of chapter 68 of the Internal Revenue Code of 1986.

[(d) FEES FOR DATA BANK SERVICES.—The Secretary shall establish fees for services provided under this section which shall remain available, without fiscal year limitation, to the Secretary to cover the administrative costs to the Data Bank of providing such services.

[(f) DEFINITIONS.—In this section:

[(1) MEDICARE BENEFICIARY.—The term “medicare beneficiary” means an individual entitled to benefits under part A, or enrolled under part B, of title XVIII, but does not include such an individual enrolled in part A under section 1818.

[(2) MEDICAID BENEFICIARY.—The term “medicaid beneficiary” means an individual entitled to benefits under a State plan for medical assistance under title XIX (including a State plan operating under a statewide waiver under section 1115).

[(3) GROUP HEALTH PLAN.—The term “group health plan” shall have the meaning given to such term by section 5000(b)(1) of the Internal Revenue Code of 1986.

[(4) TIN.—The term “TIN” shall have the meaning given to such term by section 7701(a)(41) of such Code.]

* * * * *

TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

* * * * *

PART C—MISCELLANEOUS PROVISIONS

* * * * *

EXCLUSIONS FROM COVERAGE AND MEDICARE AS SECONDARY PAYER

SEC. 1862. (a) * * *

(b) MEDICARE AS SECONDARY PAYER.—

(1) * * *

* * * * *

(5) IDENTIFICATION OF SECONDARY PAYER SITUATIONS.—

(A) * * *

(B) DISCLOSURE TO FISCAL INTERMEDIARIES AND CARRIERS.—

In addition to any other information provided under this title to fiscal intermediaries and carriers, the Administrator shall disclose to such intermediaries and carriers (or to such a single intermediary or carrier as the Secretary may designate) the information received under [—

[(i) subparagraph (A), and

[(ii) section 1144,

for purposes of carrying out this subsection.] *subparagraph (A) for purposes of carrying out this subsection.*

(C) CONTACTING EMPLOYERS.—

(i) IN GENERAL.—With respect to each individual (in this subparagraph referred to as an “employee”) who was furnished a written statement under section

TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

* * * * *

STATE PLANS FOR MEDICAL ASSISTANCE

SEC. 1902. (a) A State plan for medical assistance must—

(1) * * *

* * * * *

(25) provide—

(A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties (including health insurers, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, and health maintenance organizations) to pay for care and services available under the plan, including—

(i) the collection of sufficient information ([including the use of information collected by the Medicare and Medicaid Coverage Data Bank under section 1144 and any additional measures] as specified by the Secretary in regulations) to enable the State to pursue claims against such third parties, with such information

being collected at the time of any determination or re-determination of eligibility for medical assistance, and

* * * * *

SECTION 552a OF TITLE 5, UNITED STATES CODE

§ 552a. Records maintained on individuals

(a) DEFINITIONS.—For purposes of this section—

(1) * * *

* * * * *

(8) the term “matching program”—

(A) * * *

(B) but does not include—

(i) * * *

* * * * *

(v) matches—

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel *or*

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel; **[or]**

[(vii) matches performed pursuant to section 6103(l)(12) of the Internal Revenue Code of 1986 and section 1144 of the Social Security Act;]

* * * * *