

113TH CONGRESS
1ST SESSION

H. R. 3659

To amend title XIX of the Social Security Act to clarify policy with respect to collecting reimbursement from third-party payers for medical assistance paid under the Medicaid program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 2013

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

A BILL

To amend title XIX of the Social Security Act to clarify policy with respect to collecting reimbursement from 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. REMOVAL OF SPECIAL TREATMENT OF CER-**
4 **TAIN TYPES OF CARE AND PAYMENTS UNDER**
5 **MEDICAID THIRD-PARTY LIABILITY RULES.**

6 Section 1902(a)(25) of the Social Security Act (42
7 U.S.C. 1396a(a)(25)) is amended by striking subpara-
8 graphs (E) and (F).

1 **SEC. 2. CLARIFICATION OF ROLE OF MCOS WITH RESPECT**
2 **TO THIRD-PARTY LIABILITY.**

3 (a) IN GENERAL.—Section 1902(a)(25) of the Social
4 Security Act (42 U.S.C. 1396a(a)(25)), as amended by
5 section 1, is further amended by inserting, after subpara-
6 graph (D), the following:

7 “(E) that, if the State contracts with a
8 managed care entity pursuant to section 1932
9 for the purpose of providing items and services
10 under this title—

11 “(i) such contract shall specify wheth-
12 er—

13 “(I) the State is delegating to the
14 managed care entity all or some of its
15 right of recovery for an item or serv-
16 ice for which payment has been made
17 under the State plan; and

18 “(II) the State is transferring to
19 the managed care entity all or some of
20 the assignment to the State of any
21 right of an individual or other entity
22 to payment from a health insurer (in-
23 cluding self-insured plans, group
24 health plans (as defined in section
25 607(1) of the Employee Retirement
26 Income Security Act of 1974), service

1 benefit plans, managed care organiza-
2 tions, pharmacy benefit managers, or
3 other parties that are, by statute, con-
4 tract, or agreement, legally respon-
5 sible for payment of a claim for a
6 health care item or service) for an
7 item or service for which payment has
8 been made under the State plan; and
9 “(ii) if the State delegates its rights
10 under clause (i)(I) or transfers assignment
11 of rights under clause (i)(II), the State
12 shall have in effect laws requiring such
13 health insurers, as a condition of doing
14 business in the State—

15 “(I) to provide to such managed
16 care entity, upon the request of such
17 entity, the information described in
18 subparagraph (I)(i);

19 “(II) if a right of recovery was
20 delegated under clause (i)(I), accept
21 the authority of the managed care en-
22 tity to exercise such right;

23 “(III) if an assignment of rights
24 was transferred under clause (i)(II),

1 accept such transfer of assignment of
2 rights;

3 “(IV) respond to an inquiry
4 made by such entity in the same man-
5 ner that the insurer would respond to
6 an inquiry by a State under subpara-
7 graph (I)(iii); and

8 “(V) agree not to deny a claim
9 submitted by a managed care entity
10 for which the State has delegated or
11 transferred rights under clause (i) in
12 the same manner that the insurer
13 may not deny a claim submitted by a
14 State under subparagraph (I)(iv);”.

15 (b) TREATMENT OF COLLECTED AMOUNTS.—Section
16 1903(d)(2)(B) of the Social Security Act (42 U.S.C.
17 1396b(d)(2)(B)) is amended by adding at the end the fol-
18 lowing: “For purposes of this subparagraph, reimburse-
19 ments made by a third party to managed care entities pur-
20 suant to section 1902(a)(25)(E) shall be treated in the
21 same manner as reimbursements made to a State under
22 the previous sentence.”.

1 **SEC. 3. REQUIRING COORDINATION OF BENEFICIARY IN-**
2 **FORMATION WITH RESPECT TO THIRD-PARTY**
3 **LIABILITY.**

4 Section 1902(a)(25) of the Social Security Act (42
5 U.S.C. 1396a(a)(25)), as amended by section 2, is further
6 amended by inserting, after subparagraph (E), the fol-
7 lowing:

8 “(F) that, if the State contracts with a
9 health insurer (as defined for purposes of sub-
10 paragraph (E)) for the purposes of providing
11 items and services under this title such contract
12 shall require that—

13 “(i) if such insurer contracts with a
14 pharmacy benefit manager to manage ben-
15 efits under the health plan offered by such
16 insurer, such contract shall require that
17 the pharmacy benefit manager regularly
18 report to the State (or, as applicable, to an
19 authorized contractor or agent of the
20 State) any data obtained by the pharmacy
21 benefit manager that is relevant, as deter-
22 mined by the State, to assisting the State
23 in determining whether such a health in-
24 surer is, by statute, contract, or agree-
25 ment, legally responsible for payment of a

1 claim for a health care item or service
2 available under the plan; and

3 “(ii) such insurer cooperates (includ-
4 ing by granting requests of the State for
5 information, or for permission to utilize in-
6 formation, that is relevant to determining
7 whether such a health insurer is, by stat-
8 ute, contract, or agreement, legally respon-
9 sible for payment of a claim for a health
10 care item or service available under the
11 plan, regardless of the State in which the
12 insurer is licensed) with the State Medicaid
13 plan (including any State Medicaid agency
14 or authorized agent or contractor of such
15 program or entity) for the proper coordina-
16 tion of benefits offered through the plan of
17 such insurer and medical assistance under
18 the State plan to effectuate the principle of
19 the program under this title being the
20 payer of last resort;”.

21 **SEC. 4. DEVELOPMENT OF MODEL UNIFORM FIELDS FOR**
22 **STATES TO REPORT THIRD-PARTY INFORMA-**
23 **TION.**

24 Not later than January 1, 2015, the Secretary of
25 Health and Human Services shall, in consultation with the

1 States, develop and make available to the States a model
2 uniform reporting field that States may use for purposes
3 of reporting to the Secretary within CMS Form 64 (or
4 any successor form) information identifying third-party
5 health insurers (including self-insured plans, group health
6 plans (as defined in section 607(1) of the Employee Re-
7 tirement Income Security Act of 1974), service benefit
8 plans, managed care organizations, pharmacy benefit
9 managers, or other parties that are, by statute, contract,
10 or agreement, legally responsible for payment of a claim
11 for a health care item or service) and other relevant infor-
12 mation for ascertaining the legal responsibility of such
13 third parties to pay for care and services available under
14 the State plan under title XIX of the Social Security Act
15 (42 U.S.C. 1396 et seq.).

16 **SEC. 5. STATE INCENTIVE TO PURSUE THIRD-PARTY LI-**
17 **ABILITY FOR NEWLY ELIGIBLES.**

18 Section 1903(d)(2)(B) of the Social Security Act (42
19 U.S.C. 1396b(d)(2)(B)), as amended by section 2, is
20 amended by adding at the end the following: “In the case
21 of expenditures for medical assistance provided during
22 2014 and subsequent years for newly eligible individuals
23 (as such term is defined in section 1905(y)) described in
24 subclause (VIII) of section 1902(a)(10)(A)(i), in deter-
25 mining the amount, if any, of overpayment under this sub-

1 paragraph with respect to such services, the Secretary
2 shall apply the Federal medical assistance percentage for
3 the State under section 1905(b), notwithstanding the ap-
4 plication of section 1905(y).”.

5 **SEC. 6. PENALTY FOR NON-COMPLIANCE.**

6 Subject to section 6(b), for any fiscal year beginning
7 on or after the date that is 1 year after the effective date
8 under section 6, in the case of a State that fails to comply
9 with the additional requirements for the State plan for
10 medical assistance under title XIX of the Social Security
11 Act that are imposed by the amendments made by this
12 Act, the Secretary of Health and Human Services shall
13 reduce the Federal medical assistance percentage (as de-
14 fined in section 1905(b) of the Social Security Act (42
15 U.S.C. 1396d(b)) for such State by a percentage point for
16 such fiscal year during which such requirements are not
17 met. To the extent that a State fails to comply with such
18 additional requirements for consecutive fiscal years, the
19 reductions under the previous sentence shall be cumulative
20 for each such subsequent fiscal year.

21 **SEC. 7. EFFECTIVE DATE.**

22 (a) IN GENERAL.—Except as provided in subsection
23 (b), this Act (other than section 4) and the amendments
24 made by this Act shall take effect on the date of enactment

1 of this Act and shall apply to medical assistance provided
2 on or after such date.

3 (b) EXCEPTION IF STATE LEGISLATION RE-
4 QUIRED.—In the case of a State plan for medical assist-
5 ance under title XIX of the Social Security Act that the
6 Secretary of Health and Human Services determines re-
7 quires State legislation (other than legislation appro-
8 priating funds) in order for the plan to meet the additional
9 requirement imposed by the amendments made under this
10 section, the State plan shall not be regarded as failing to
11 comply with the requirements of such title solely on the
12 basis of its failure to meet this additional requirement be-
13 fore the first day of the first calendar quarter beginning
14 after the close of the first regular session of the State leg-
15 islature that begins after the date of the enactment of this
16 Act. For purposes of the previous sentence, in the case
17 of a State that has a 2-year legislative session, each year
18 of such session shall be deemed to be a separate regular
19 session of the State legislature.

○