To amend the Employee Retirement Income Security Act of 1974 to ensure plan fiduciaries may access de-identified information relating to health claims, and for other purposes.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Health Data Access, Transparency, and Affordability Act” or the “Health DATA Act.”
SEC. 2. PLAN FIDUCIARY ACCESS TO INFORMATION.

(a) In General.—Paragraph (2) of section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new subparagraph:

“(C) No contract or arrangement for services between a group health plan and any other entity, such as a health care provider, network or association of providers, third-party administrator, or pharmacy benefit manager, is reasonable within the meaning of this paragraph unless such contract or agreement—

“(i) allows the responsible plan fiduciary to audit all de-identified claims and encounter information or data described in section 724(a)(1)(B) to—

“(I) ensure that such entity complies with the terms of the plan and any applicable law; and

“(II) determine the reasonableness of compensation paid by the plan; and

“(ii) does not—

“(I) unreasonably limit the number of audits permitted during a given period of time;
“(II) limit the number of de-identified claims and encounter information or data that the responsible plan fiduciary may access during an audit;

“(III) limit the disclosure of pricing terms for value based payment arrangements, including—

“(aa) payment calculations and formulas;

“(bb) quality measures;

“(cc) contract terms;

“(dd) payment amounts;

“(ee) measurement periods for all incentives; and

“(ff) other payment methodologies furnished by a health care provider, network or association of providers, third-party administrator, or pharmacy benefit manager;

“(IV) limit the disclosure of overpayments and overpayment recovery terms;

“(V) limit the right of the responsible plan fiduciary to select an auditor;

“(VI) otherwise limit or unduly delay by greater than 60 days the responsible
(b) CIVIL ENFORCEMENT.—

(1) In general.—Subsection (c) of section 502 of such Act (29 U.S.C. 1132) is amended by adding at the end the following new paragraph:

“(13) In the case of an agreement between a group health plan and a health care provider, network or association of providers, third-party administrator, pharmacy benefit manager, or other service provider that violates the provisions of section 724, the Secretary may assess a civil penalty against such provider, network or association, third-party administrator, pharmacy benefit manager, or other service provider in the amount of $10,000 for each day during which such violation continues. Such penalty shall be in addition to other penalties as may be prescribed by law.”.

(2) Conforming amendment.—Paragraph (6) of section 502(a) of such Act is amended by striking “or (9)” and inserting “(9), or (13)”.
(c) Existing Provisions Void.—Section 410 of such Act is amended by adding at the end the following new subsection:

“(c) Any provision in an agreement or instrument shall be void as against public policy if such provision—

“(1) unduly delays or limits a plan fiduciary from accessing the de-identified claims and encounter information or data described in section 724(a)(1)(B); or

“(2) violates the requirements of section 408(b)(2)(C).”.

(d) Technical Amendment.—Clause (i) of section 408(b)(2)(B) of such Act is amended by striking “this clause” and inserting “this paragraph”.

SEC. 3. UPDATED ATTESTATION FOR PRICE AND QUALITY INFORMATION.

Section 724(a)(3) of the Employee Retirement Income Security Act (29 U.S.C. 1185m(a)(3)) is amended to read as follows:

“(3) Attestation.—

“(A) In general.—Subject to subparagraph (C), the fiduciary of a group health plan or issuer offering group health insurance coverage shall annually submit to the Secretary an attestation that such plan or issuer of such cov-
verage is in compliance with the requirements of this subsection. Such attestation shall also include a statement verifying that—

“(i) the information or data described under subparagraphs (A) and (B) of paragraph (1) is available upon request and provided to the plan fiduciary, the plan administrator, or the issuer in a timely manner; and

“(ii) there are no terms in the agreement under such paragraph (1) that directly or indirectly restrict or unduly delay a plan fiduciary, the plan administrator, or the issuer from auditing, reviewing, or otherwise accessing such information.

“(B) LIMITATION ON SUBMISSION.—Subject to clause (ii), a group health plan or issuer offering group health insurance coverage may not enter into an agreement with a third-party administrator or other service provider to submit the attestation required under subparagraph (A).

“(C) EXCEPTION.—In the case of a group health plan or issuer offering group health insurance coverage that is unable to obtain the
information or data needed to submit the attestation required under subparagraph (A), such plan or issuer may submit a written statement in lieu of such attestation that includes—

“(i) an explanation of why such plan or issuer was unsuccessful in obtaining such information or data, including whether such plan or issuer was limited or prevented from auditing, reviewing, or otherwise accessing such information or data;

“(ii) a description of the efforts made by the plan fiduciary to remove any gag clause provisions from the agreement under paragraph (1); and

“(iii) a description of any response by the third-party administrator or other service provider with respect to efforts to comply with the attestation requirement under subparagraph (A).”.

SEC. 4. STUDY ON PLAN ASSETS.

Not later than 1 year after the date of enactment of this Act, the Secretary of Labor shall submit to the Committee on Education and the Workforce of the House of Representatives a report on the status of de-identified claims and encounter information or data described in sec-
tion 724(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185m), including information on the following:

(1) Circumstances under current law where such information or data could be deemed a group health plan asset (as defined under section 3(42) of such Act).

(2) Whether restrictions on the ability of a plan fiduciary to access such information or data violates a requirement of current law.

(3) The existing regulatory authority of the Secretary to clarify whether such information or data belongs to a group health plan, rather than a service provider.

(4) Legislative actions that may be taken to establish that such information or data related to a plan belongs to a group health plan and is handled in the best interests of plan participants and beneficiaries.