

Union Calendar No.

118TH CONGRESS
1ST SESSION

H. R. 4527

[Report No. 118-]

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.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2023

Mrs. CHAVEZ-DEREMER (for herself, Mr. TAKANO, and Ms. MANNING) introduced the following bill; which was referred to the Committee on Education and the Workforce

JULY --, 2023

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on July 11, 2023]

A BILL

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.

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 “Health Data Access,*
5 *Transparency, and Affordability Act of 2023” or the*
6 *“Health DATA Act of 2023”.*

7 **SEC. 2. PLAN FIDUCIARY ACCESS TO INFORMATION.**

8 *(a) IN GENERAL.—Paragraph (2) of section 408(b) of*
9 *the Employee Retirement Income Security Act of 1974 (29*
10 *U.S.C. 1108(b)) is amended by adding at the end the fol-*
11 *lowing new subparagraph:*

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

18 *“(i) allows the responsible plan fiduciary to*
19 *audit all de-identified claims and encounter in-*
20 *formation or data described in section*
21 *724(a)(1)(B) to—*

22 *“(I) ensure that such entity complies*
23 *with the terms of the plan and any applica-*
24 *ble law; and*

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

3 “(i) does not—

4 “(I) unreasonably limit the number of
5 audits permitted during a given period of
6 time;

7 “(II) limit the number of de-identified
8 claims and encounter information or data
9 that the responsible plan fiduciary may ac-
10 cess during an audit;

11 “(III) limit the disclosure of pricing
12 terms for value based payment arrange-
13 ments, including—

14 “(aa) payment calculations and
15 formulas;

16 “(bb) quality measures;

17 “(cc) contract terms;

18 “(dd) payment amounts;

19 “(ee) measurement periods for all
20 incentives; and

21 “(ff) other payment methodologies
22 furnished by a health care provider,
23 network or association of providers,
24 third-party administrator, or phar-
25 macy benefit manager;

1 “(IV) limit the disclosure of overpay-
2 ments and overpayment recovery terms;

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

5 “(VI) otherwise limit or unduly delay
6 by greater than 60 days the responsible
7 plan fiduciary from auditing such informa-
8 tion or data; or

9 “(VII) charge a fee beyond the reason-
10 able direct costs to administer the operation
11 of conducting such audits.”.

12 (b) *CIVIL ENFORCEMENT.*—

13 (1) *IN GENERAL.*—Subsection (c) of section 502
14 of such Act (29 U.S.C. 1132) is amended by adding
15 at the end the following new paragraph:

16 “(13) In the case of an agreement between a group
17 health plan and a health care provider, network or associa-
18 tion of providers, third-party administrator, pharmacy
19 benefit manager, or other service provider that violates the
20 provisions of section 724, the Secretary may assess a civil
21 penalty against such provider, network or association,
22 third-party administrator, pharmacy benefit manager, or
23 other service provider in the amount of \$10,000 for each
24 day during which such violation continues. Such penalty

1 *shall be in addition to other penalties as may be prescribed*
2 *by law.”.*

3 (2) *CONFORMING AMENDMENT.—Paragraph (6)*
4 *of section 502(a) of such Act is amended by striking*
5 *“or (9)” and inserting “(9), or (13)”;* and

6 (c) *EXISTING PROVISIONS VOID.—Section 410 of such*
7 *Act is amended by adding at the end the following new sub-*
8 *section:*

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

11 “(1) *unduly delays or limits a plan fiduciary*
12 *from accessing the de-identified claims and encounter*
13 *information or data described in section*
14 *724(a)(1)(B); or*

15 “(2) *violates the requirements of section*
16 *408(b)(2)(C).”.*

17 (d) *TECHNICAL AMENDMENT.—Clause (i) of section*
18 *408(b)(2)(B) of such Act is amended by striking “this*
19 *clause” and inserting “this paragraph”.*

20 **SEC. 3. UPDATED ATTESTATION FOR PRICE AND QUALITY**
21 **INFORMATION.**

22 *Section 724(a)(3) of the Employee Retirement Income*
23 *Security Act of 1974 (29 U.S.C. 1185m(a)(3)) is amended*
24 *to read as follows:*

25 “(3) *ATTESTATION.—*

1 “(A) *IN GENERAL.*—Subject to subpara-
2 graph (C), the fiduciary of a group health plan
3 or issuer offering group health insurance cov-
4 erage shall annually submit to the Secretary an
5 attestation that such plan or issuer of such cov-
6 erage is in compliance with the requirements of
7 this subsection. Such attestation shall also in-
8 clude a statement verifying that—

9 “(i) the information or data described
10 under subparagraphs (A) and (B) of para-
11 graph (1) is available upon request and
12 provided to the plan fiduciary, the plan ad-
13 ministrator, or the issuer in a timely man-
14 ner; and

15 “(ii) there are no terms in the agree-
16 ment under such paragraph (1) that di-
17 rectly or indirectly restrict or unduly delay
18 a plan fiduciary, the plan administrator, or
19 the issuer from auditing, reviewing, or oth-
20 erwise accessing such information.

21 “(B) *LIMITATION ON SUBMISSION.*—Subject
22 to clause (ii), a group health plan or issuer offer-
23 ing group health insurance coverage may not
24 enter into an agreement with a third-party ad-

1 *administrator or other service provider to submit*
2 *the attestation required under subparagraph (A).*

3 “(C) *EXCEPTION.—In the case of a group*
4 *health plan or issuer offering group health insur-*
5 *ance coverage that is unable to obtain the infor-*
6 *mation or data needed to submit the attestation*
7 *required under subparagraph (A), such plan or*
8 *issuer may submit a written statement in lieu of*
9 *such attestation that includes—*

10 “(i) *an explanation of why such plan*
11 *or issuer was unsuccessful in obtaining such*
12 *information or data, including whether such*
13 *plan or issuer was limited or prevented*
14 *from auditing, reviewing, or otherwise ac-*
15 *cessing such information or data;*

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

20 “(iii) *a description of any response by*
21 *the third-party administrator or other serv-*
22 *ice provider with respect to efforts to com-*
23 *ply with the attestation requirement under*
24 *subparagraph (A).”.*

1 **SEC. 4. STUDY ON PLAN ASSETS.**

2 *Not later than 1 year after the date of enactment of*
3 *this Act, the Secretary of Labor shall submit to the Com-*
4 *mittee on Education and the Workforce of the House of Rep-*
5 *resentatives a report on the status of de-identified claims*
6 *and encounter information or data described in section*
7 *724(a)(1)(B) of the Employee Retirement Income Security*
8 *Act of 1974 (29 U.S.C. 1185m), including information on*
9 *the following:*

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

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

17 (3) *The existing regulatory authority of the Sec-*
18 *retary to clarify whether such information or data be-*
19 *longs to a group health plan, rather than a service*
20 *provider.*

21 (4) *Legislative actions that may be taken to es-*
22 *tablish that such information or data related to a*
23 *plan belongs to a group health plan and is handled*
24 *in the best interests of plan participants and bene-*
25 *ficiaries.*