

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. _____
OFFERED BY MRS. CHAVEZ-DE REMER OF
OREGON

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Health Data Access,
3 Transparency, and Affordability Act of 2023” or the
4 “Health DATA Act of 2023”.

5 SEC. 2. PLAN FIDUCIARY ACCESS TO INFORMATION.

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

10 “(C) No contract or arrangement for services
11 between a group health plan and any other entity,
12 such as a health care provider, network or associa-
13 tion of providers, third-party administrator, or phar-
14 macy benefit manager, is reasonable within the
15 meaning of this paragraph unless such contract or
16 agreement—

1 “(i) allows the responsible plan fiduciary to
2 audit all de-identified claims and encounter in-
3 formation or data described in section
4 724(a)(1)(B) to—

5 “(I) ensure that such entity complies
6 with the terms of the plan and any appli-
7 cable law; and

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

10 “(ii) does not—

11 “(I) unreasonably limit the number of
12 audits permitted during a given period of
13 time;

14 “(II) limit the number of de-identified
15 claims and encounter information or data
16 that the responsible plan fiduciary may ac-
17 cess during an audit;

18 “(III) limit the disclosure of pricing
19 terms for value based payment arrange-
20 ments, including—

21 “(aa) payment calculations and
22 formulas;

23 “(bb) quality measures;

24 “(cc) contract terms;

25 “(dd) payment amounts;

1 “(ee) measurement periods for all
2 incentives; and

3 “(ff) other payment methodolo-
4 gies furnished by a health care pro-
5 vider, network or association of pro-
6 viders, third-party administrator, or
7 pharmacy benefit manager;

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

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

12 “(VI) otherwise limit or unduly delay
13 by greater than 60 days the responsible
14 plan fiduciary from auditing such informa-
15 tion or data; or

16 “(VII) charge a fee beyond the rea-
17 sonable direct costs to administer the oper-
18 ation of conducting such audits.”.

19 (b) CIVIL ENFORCEMENT.—

20 (1) IN GENERAL.—Subsection (c) of section
21 502 of such Act (29 U.S.C. 1132) is amended by
22 adding at the end the following new paragraph:

23 “(13) In the case of an agreement between a group
24 health plan and a health care provider, network or associa-
25 tion of providers, third-party administrator, pharmacy

1 benefit manager, or other service provider that violates the
2 provisions of section 724, the Secretary may assess a civil
3 penalty against such provider, network or association,
4 third-party administrator, pharmacy benefit manager, or
5 other service provider in the amount of \$10,000 for each
6 day during which such violation continues. Such penalty
7 shall be in addition to other penalties as may be prescribed
8 by law.”.

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

12 (c) EXISTING PROVISIONS VOID.—Section 410 of
13 such Act is amended by adding at the end the following
14 new subsection:

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

17 “(1) unduly delays or limits a plan fiduciary
18 from accessing the de-identified claims and encoun-
19 ter information or data described in section
20 724(a)(1)(B); or

21 “(2) violates the requirements of section
22 408(b)(2)(C).”.

23 (d) TECHNICAL AMENDMENT.—Clause (i) of section
24 408(b)(2)(B) of such Act is amended by striking “this
25 clause” and inserting “this paragraph”.

1 **SEC. 3. UPDATED ATTESTATION FOR PRICE AND QUALITY**
2 **INFORMATION.**

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

6 “(3) ATTESTATION.—

7 “(A) IN GENERAL.—Subject to subpara-
8 graph (C), the fiduciary of a group health plan
9 or issuer offering group health insurance cov-
10 erage shall annually submit to the Secretary an
11 attestation that such plan or issuer of such cov-
12 erage is in compliance with the requirements of
13 this subsection. Such attestation shall also in-
14 clude a statement verifying that—

15 “(i) the information or data described
16 under subparagraphs (A) and (B) of para-
17 graph (1) is available upon request and
18 provided to the plan fiduciary, the plan ad-
19 ministrator, or the issuer in a timely man-
20 ner; and

21 “(ii) there are no terms in the agree-
22 ment under such paragraph (1) that di-
23 rectly or indirectly restrict or unduly delay
24 a plan fiduciary, the plan administrator, or
25 the issuer from auditing, reviewing, or oth-
26 erwise accessing such information.

1 “(B) LIMITATION ON SUBMISSION.—Sub-
2 ject to clause (ii), a group health plan or issuer
3 offering group health insurance coverage may
4 not enter into an agreement with a third-party
5 administrator or other service provider to sub-
6 mit the attestation required under subpara-
7 graph (A).

8 “(C) EXCEPTION.—In the case of a group
9 health plan or issuer offering group health in-
10 surance coverage that is unable to obtain the
11 information or data needed to submit the attes-
12 tation required under subparagraph (A), such
13 plan or issuer may submit a written statement
14 in lieu of such attestation that includes—

15 “(i) an explanation of why such plan
16 or issuer was unsuccessful in obtaining
17 such information or data, including wheth-
18 er such plan or issuer was limited or pre-
19 vented from auditing, reviewing, or other-
20 wise accessing such information or data;

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

1 “(iii) a description of any response by
2 the third-party administrator or other serv-
3 ice provider with respect to efforts to com-
4 ply with the attestation requirement under
5 subparagraph (A).”.

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

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

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

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

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

1 (4) Legislative actions that may be taken to es-
2 tablish that such information or data related to a
3 plan belongs to a group health plan and is handled
4 in the best interests of plan participants and bene-
5 ficiaries.

