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**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.R. 4872**

**OFFERED BY Mr. Shadegg, Ms. Blackburn, and Mr. Brown**

Add at the end of subtitle A of title I the following:

1 **SEC. 1006. INTERSTATE PURCHASING OF HEALTH INSUR-**  
2 **ANCE.**

3 (a) IN GENERAL.—Title XXVII of the Public Health  
4 Service Act (42 U.S.C. 300gg et seq.) is amended by add-  
5 ing at the end the following new part:

6 **“PART D—COOPERATIVE GOVERNING OF**  
7 **INDIVIDUAL HEALTH INSURANCE COVERAGE**

8 **“SEC. 2795. DEFINITIONS.**

9 “In this part:

10 “(1) PRIMARY STATE.—The term ‘primary  
11 State’ means, with respect to individual health insur-  
12 ance coverage offered by a health insurance issuer,  
13 the State designated by the issuer as the State  
14 whose covered laws shall govern the health insurance  
15 issuer in the sale of such coverage under this part.  
16 An issuer, with respect to a particular policy, may  
17 only designate one such State as its primary State  
18 with respect to all such coverage it offers. Such an  
19 issuer may not change the designated primary State

1 with respect to individual health insurance coverage  
2 once the policy is issued, except that such a change  
3 may be made upon renewal of the policy. With re-  
4 spect to such designated State, the issuer is deemed  
5 to be doing business in that State.

6 “(2) SECONDARY STATE.—The term ‘secondary  
7 State’ means, with respect to individual health insur-  
8 ance coverage offered by a health insurance issuer,  
9 any State that is not the primary State. In the case  
10 of a health insurance issuer that is selling a policy  
11 in, or to a resident of, a secondary State, the issuer  
12 is deemed to be doing business in that secondary  
13 State.

14 “(3) HEALTH INSURANCE ISSUER.—The term  
15 ‘health insurance issuer’ has the meaning given such  
16 term in section 2791(b)(2), except that such an  
17 issuer must be licensed in the primary State and be  
18 qualified to sell individual health insurance coverage  
19 in that State.

20 “(4) INDIVIDUAL HEALTH INSURANCE COV-  
21 ERAGE.—The term ‘individual health insurance cov-  
22 erage’ means health insurance coverage offered in  
23 the individual market, as defined in section  
24 2791(e)(1).

1           “(5) APPLICABLE STATE AUTHORITY.—The  
2 term ‘applicable State authority’ means, with respect  
3 to a health insurance issuer in a State, the State in-  
4 surance commissioner or official or officials des-  
5 ignated by the State to enforce the requirements of  
6 this title for the State with respect to the issuer.

7           “(6) HAZARDOUS FINANCIAL CONDITION.—The  
8 term ‘hazardous financial condition’ means that,  
9 based on its present or reasonably anticipated finan-  
10 cial condition, a health insurance issuer is unlikely  
11 to be able—

12                   “(A) to meet obligations to policyholders  
13 with respect to known claims and reasonably  
14 anticipated claims; or

15                   “(B) to pay other obligations in the normal  
16 course of business.

17           “(7) COVERED LAWS.—

18                   “(A) IN GENERAL.—The term ‘covered  
19 laws’ means the laws, rules, regulations, agree-  
20 ments, and orders governing the insurance busi-  
21 ness pertaining to—

22                           “(i) individual health insurance cov-  
23 erage issued by a health insurance issuer;

24                           “(ii) the offer, sale, rating (including  
25 medical underwriting), renewal, and

1 issuance of individual health insurance cov-  
2 erage to an individual;

3 “(iii) the provision to an individual in  
4 relation to individual health insurance cov-  
5 erage of health care and insurance related  
6 services;

7 “(iv) the provision to an individual in  
8 relation to individual health insurance cov-  
9 erage of management, operations, and in-  
10 vestment activities of a health insurance  
11 issuer; and

12 “(v) the provision to an individual in  
13 relation to individual health insurance cov-  
14 erage of loss control and claims adminis-  
15 tration for a health insurance issuer with  
16 respect to liability for which the issuer pro-  
17 vides insurance.

18 “(B) EXCEPTION.—Such term does not in-  
19 clude any law, rule, regulation, agreement, or  
20 order governing the use of care or cost manage-  
21 ment techniques, including any requirement re-  
22 lated to provider contracting, network access or  
23 adequacy, health care data collection, or quality  
24 assurance.

1           “(8) STATE.—The term ‘State’ means the 50  
2 States and includes the District of Columbia, Puerto  
3 Rico, the Virgin Islands, Guam, American Samoa,  
4 and the Northern Mariana Islands.

5           “(9) UNFAIR CLAIMS SETTLEMENT PRAC-  
6 TICES.—The term ‘unfair claims settlement prac-  
7 tices’ means only the following practices:

8                   “(A) Knowingly misrepresenting to claim-  
9 ants and insured individuals relevant facts or  
10 policy provisions relating to coverage at issue.

11                   “(B) Failing to acknowledge with reason-  
12 able promptness pertinent communications with  
13 respect to claims arising under policies.

14                   “(C) Failing to adopt and implement rea-  
15 sonable standards for the prompt investigation  
16 and settlement of claims arising under policies.

17                   “(D) Failing to effectuate prompt, fair,  
18 and equitable settlement of claims submitted in  
19 which liability has become reasonably clear.

20                   “(E) Refusing to pay claims without con-  
21 ducting a reasonable investigation.

22                   “(F) Failing to affirm or deny coverage of  
23 claims within a reasonable period of time after  
24 having completed an investigation related to  
25 those claims.

1           “(G) A pattern or practice of compelling  
2 insured individuals or their beneficiaries to in-  
3 stitute suits to recover amounts due under its  
4 policies by offering substantially less than the  
5 amounts ultimately recovered in suits brought  
6 by them.

7           “(H) A pattern or practice of attempting  
8 to settle or settling claims for less than the  
9 amount that a reasonable person would believe  
10 the insured individual or his or her beneficiary  
11 was entitled by reference to written or printed  
12 advertising material accompanying or made  
13 part of an application.

14           “(I) Attempting to settle or settling claims  
15 on the basis of an application that was materi-  
16 ally altered without notice to, or knowledge or  
17 consent of, the insured.

18           “(J) Failing to provide forms necessary to  
19 present claims within 15 calendar days of a re-  
20 quests with reasonable explanations regarding  
21 their use.

22           “(K) Attempting to cancel a policy in less  
23 time than that prescribed in the policy or by the  
24 law of the primary State.

1           “(10) FRAUD AND ABUSE.—The term ‘fraud  
2           and abuse’ means an act or omission committed by  
3           a person who, knowingly and with intent to defraud,  
4           commits, or conceals any material information con-  
5           cerning, one or more of the following:

6                   “(A) Presenting, causing to be presented  
7                   or preparing with knowledge or belief that it  
8                   will be presented to or by an insurer, a rein-  
9                   surer, broker or its agent, false information as  
10                  part of, in support of or concerning a fact ma-  
11                  terial to one or more of the following:

12                           “(i) An application for the issuance or  
13                           renewal of an insurance policy or reinsur-  
14                           ance contract.

15                           “(ii) The rating of an insurance policy  
16                           or reinsurance contract.

17                           “(iii) A claim for payment or benefit  
18                           pursuant to an insurance policy or reinsur-  
19                           ance contract.

20                           “(iv) Premiums paid on an insurance  
21                           policy or reinsurance contract.

22                           “(v) Payments made in accordance  
23                           with the terms of an insurance policy or  
24                           reinsurance contract.

1                   “(vi) A document filed with the com-  
2                   missioner or the chief insurance regulatory  
3                   official of another jurisdiction.

4                   “(vii) The financial condition of an in-  
5                   surer or reinsurer.

6                   “(viii) The formation, acquisition,  
7                   merger, reconsolidation, dissolution or  
8                   withdrawal from one or more lines of in-  
9                   surance or reinsurance in all or part of a  
10                  State by an insurer or reinsurer.

11                  “(ix) The issuance of written evidence  
12                  of insurance.

13                  “(x) The reinstatement of an insur-  
14                  ance policy.

15                  “(B) Solicitation or acceptance of new or  
16                  renewal insurance risks on behalf of an insurer  
17                  reinsurer or other person engaged in the busi-  
18                  ness of insurance by a person who knows or  
19                  should know that the insurer or other person  
20                  responsible for the risk is insolvent at the time  
21                  of the transaction.

22                  “(C) Transaction of the business of insur-  
23                  ance in violation of laws requiring a license, cer-  
24                  tificate of authority or other legal authority for  
25                  the transaction of the business of insurance.

1           “(D) Attempt to commit, aiding or abet-  
2           ting in the commission of, or conspiracy to com-  
3           mit the acts or omissions specified in this para-  
4           graph.

5   **“SEC. 2796. APPLICATION OF LAW.**

6           “(a) IN GENERAL.—The covered laws of the primary  
7 State shall apply to individual health insurance coverage  
8 offered by a health insurance issuer in the primary State  
9 and in any secondary State, but only if the coverage and  
10 issuer comply with the conditions of this section with re-  
11 spect to the offering of coverage in any secondary State.

12           “(b) EXEMPTIONS FROM COVERED LAWS IN A SEC-  
13 ONDARY STATE.—Except as provided in this section, a  
14 health insurance issuer with respect to its offer, sale, rat-  
15 ing (including medical underwriting), renewal, and  
16 issuance of individual health insurance coverage in any  
17 secondary State is exempt from any covered laws of the  
18 secondary State (and any rules, regulations, agreements,  
19 or orders sought or issued by such State under or related  
20 to such covered laws) to the extent that such laws would—

21           “(1) make unlawful, or regulate, directly or in-  
22           directly, the operation of the health insurance issuer  
23           operating in the secondary State, except that any  
24           secondary State may require such an issuer—

1           “(A) to pay, on a nondiscriminatory basis,  
2           applicable premium and other taxes (including  
3           high risk pool assessments) which are levied on  
4           insurers and surplus lines insurers, brokers, or  
5           policyholders under the laws of the State;

6           “(B) to register with and designate the  
7           State insurance commissioner as its agent solely  
8           for the purpose of receiving service of legal doc-  
9           uments or process;

10           “(C) to submit to an examination of its fi-  
11           nancial condition by the State insurance com-  
12           missioner in any State in which the issuer is  
13           doing business to determine the issuer’s finan-  
14           cial condition, if—

15           “(i) the State insurance commissioner  
16           of the primary State has not done an ex-  
17           amination within the period recommended  
18           by the National Association of Insurance  
19           Commissioners; and

20           “(ii) any such examination is con-  
21           ducted in accordance with the examiners’  
22           handbook of the National Association of  
23           Insurance Commissioners and is coordi-  
24           nated to avoid unjustified duplication and  
25           unjustified repetition;

1           “(D) to comply with a lawful order  
2 issued—

3           “(i) in a delinquency proceeding com-  
4 menced by the State insurance commis-  
5 sioner if there has been a finding of finan-  
6 cial impairment under subparagraph (C);  
7 or

8           “(ii) in a voluntary dissolution pro-  
9 ceeding;

10          “(E) to comply with an injunction issued  
11 by a court of competent jurisdiction, upon a pe-  
12 tition by the State insurance commissioner al-  
13 leging that the issuer is in hazardous financial  
14 condition;

15          “(F) to participate, on a nondiscriminatory  
16 basis, in any insurance insolvency guaranty as-  
17 sociation or similar association to which a  
18 health insurance issuer in the State is required  
19 to belong;

20          “(G) to comply with any State law regard-  
21 ing fraud and abuse (as defined in section  
22 2795(10)), except that if the State seeks an in-  
23 junction regarding the conduct described in this  
24 subparagraph, such injunction must be obtained  
25 from a court of competent jurisdiction;

1           “(H) to comply with any State law regard-  
2           ing unfair claims settlement practices (as de-  
3           fined in section 2795(9)); or

4           “(I) to comply with the applicable require-  
5           ments for independent review under section  
6           2798 with respect to coverage offered in the  
7           State;

8           “(2) require any individual health insurance  
9           coverage issued by the issuer to be countersigned by  
10          an insurance agent or broker residing in that Sec-  
11          ondary State; or

12          “(3) otherwise discriminate against the issuer  
13          issuing insurance in both the primary State and in  
14          any secondary State.

15          “(c) CLEAR AND CONSPICUOUS DISCLOSURE.—A  
16          health insurance issuer shall provide the following notice,  
17          in 12-point bold type, in any insurance coverage offered  
18          in a secondary State under this part by such a health in-  
19          surance issuer and at renewal of the policy, with the 5  
20          blank spaces therein being appropriately filled with the  
21          name of the health insurance issuer, the name of primary  
22          State, the name of the secondary State, the name of the  
23          secondary State, and the name of the secondary State, re-  
24          spectively, for the coverage concerned:

1 THIS POLICY IS ISSUED BY \_\_\_\_\_ AND IS GOV-  
2 ERNED BY THE LAWS AND REGULATIONS  
3 OF THE STATE OF \_\_\_\_\_, AND IT HAS  
4 MET ALL THE LAWS OF THAT STATE AS DE-  
5 TERMINED BY THAT STATE'S DEPART-  
6 MENT OF INSURANCE. THIS POLICY MAY  
7 BE LESS EXPENSIVE THAN OTHERS BE-  
8 CAUSE IT IS NOT SUBJECT TO ALL OF THE  
9 INSURANCE LAWS AND REGULATIONS OF  
10 THE STATE OF \_\_\_\_\_, INCLUDING COV-  
11 ERAGE OF SOME SERVICES OR BENEFITS  
12 MANDATED BY THE LAW OF THE STATE OF  
13 \_\_\_\_\_. ADDITIONALLY, THIS POLICY IS  
14 NOT SUBJECT TO ALL OF THE CONSUMER  
15 PROTECTION LAWS OR RESTRICTIONS ON  
16 RATE CHANGES OF THE STATE OF  
17 \_\_\_\_\_. AS WITH ALL INSURANCE PROD-  
18 UCTS, BEFORE PURCHASING THIS POLICY,  
19 YOU SHOULD CAREFULLY REVIEW THE  
20 POLICY AND DETERMINE WHAT HEALTH  
21 CARE SERVICES THE POLICY COVERS AND  
22 WHAT BENEFITS IT PROVIDES, INCLUDING  
23 ANY EXCLUSIONS, LIMITATIONS, OR CON-  
24 DITIONS FOR SUCH SERVICES OR BENE-  
25 FITS.”.

1       “(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS  
2 AND PREMIUM INCREASES.—

3           “(1) IN GENERAL.—For purposes of this sec-  
4 tion, a health insurance issuer that provides indi-  
5 vidual health insurance coverage to an individual  
6 under this part in a primary or secondary State may  
7 not upon renewal—

8           “(A) move or reclassify the individual in-  
9 sured under the health insurance coverage from  
10 the class such individual is in at the time of  
11 issue of the contract based on the health-status  
12 related factors of the individual; or

13           “(B) increase the premiums assessed the  
14 individual for such coverage based on a health  
15 status-related factor or change of a health sta-  
16 tus-related factor or the past or prospective  
17 claim experience of the insured individual.

18           “(2) CONSTRUCTION.—Nothing in paragraph  
19 (1) shall be construed to prohibit a health insurance  
20 issuer—

21           “(A) from terminating or discontinuing  
22 coverage or a class of coverage in accordance  
23 with subsections (b) and (c) of section 2742;

1           “(B) from raising premium rates for all  
2           policy holders within a class based on claims ex-  
3           perience;

4           “(C) from changing premiums or offering  
5           discounted premiums to individuals who engage  
6           in wellness activities at intervals prescribed by  
7           the issuer, if such premium changes or incen-  
8           tives—

9                   “(i) are disclosed to the consumer in  
10                   the insurance contract;

11                   “(ii) are based on specific wellness ac-  
12                   tivities that are not applicable to all indi-  
13                   viduals; and

14                   “(iii) are not obtainable by all individ-  
15                   uals to whom coverage is offered;

16           “(D) from reinstating lapsed coverage; or

17           “(E) from retroactively adjusting the rates  
18           charged an insured individual if the initial rates  
19           were set based on material misrepresentation by  
20           the individual at the time of issue.

21           “(e) PRIOR OFFERING OF POLICY IN PRIMARY  
22           STATE.—A health insurance issuer may not offer for sale  
23           individual health insurance coverage in a secondary State  
24           unless that coverage is currently offered for sale in the  
25           primary State.

1       “(f) LICENSING OF AGENTS OR BROKERS FOR  
2 HEALTH INSURANCE ISSUERS.—Any State may require  
3 that a person acting, or offering to act, as an agent or  
4 broker for a health insurance issuer with respect to the  
5 offering of individual health insurance coverage obtain a  
6 license from that State, with commissions or other com-  
7 pensation subject to the provisions of the laws of that  
8 State, except that a State may not impose any qualifica-  
9 tion or requirement which discriminates against a non-  
10 resident agent or broker.

11       “(g) DOCUMENTS FOR SUBMISSION TO STATE IN-  
12 SURANCE COMMISSIONER.—Each health insurance issuer  
13 issuing individual health insurance coverage in both pri-  
14 mary and secondary States shall submit—

15               “(1) to the insurance commissioner of each  
16 State in which it intends to offer such coverage, be-  
17 fore it may offer individual health insurance cov-  
18 erage in such State—

19                       “(A) a copy of the plan of operation or fea-  
20 sibility study or any similar statement of the  
21 policy being offered and its coverage (which  
22 shall include the name of its primary State and  
23 its principal place of business);

24                       “(B) written notice of any change in its  
25 designation of its primary State; and

1                   “(C) written notice from the issuer of the  
2                   issuer’s compliance with all the laws of the pri-  
3                   mary State; and

4                   “(2) to the insurance commissioner of each sec-  
5                   ondary State in which it offers individual health in-  
6                   surance coverage, a copy of the issuer’s quarterly fi-  
7                   nancial statement submitted to the primary State,  
8                   which statement shall be certified by an independent  
9                   public accountant and contain a statement of opin-  
10                  ion on loss and loss adjustment expense reserves  
11                  made by—

12                  “(A) a member of the American Academy  
13                  of Actuaries; or

14                  “(B) a qualified loss reserve specialist.

15                  “(h) POWER OF COURTS TO ENJOIN CONDUCT.—  
16                  Nothing in this section shall be construed to affect the  
17                  authority of any Federal or State court to enjoin—

18                  “(1) the solicitation or sale of individual health  
19                  insurance coverage by a health insurance issuer to  
20                  any person or group who is not eligible for such in-  
21                  surance; or

22                  “(2) the solicitation or sale of individual health  
23                  insurance coverage that violates the requirements of  
24                  the law of a secondary State which are described in

1       subparagraphs (A) through (H) of section  
2       2796(b)(1).

3       “(i) POWER OF SECONDARY STATES TO TAKE AD-  
4       MINISTRATIVE ACTION.—Nothing in this section shall be  
5       construed to affect the authority of any State to enjoin  
6       conduct in violation of that State’s laws described in sec-  
7       tion 2796(b)(1).

8       “(j) STATE POWERS TO ENFORCE STATE LAWS.—

9               “(1) IN GENERAL.—Subject to the provisions of  
10       subsection (b)(1)(G) (relating to injunctions) and  
11       paragraph (2), nothing in this section shall be con-  
12       strued to affect the authority of any State to make  
13       use of any of its powers to enforce the laws of such  
14       State with respect to which a health insurance issuer  
15       is not exempt under subsection (b).

16       “(2) COURTS OF COMPETENT JURISDICTION.—

17       If a State seeks an injunction regarding the conduct  
18       described in paragraphs (1) and (2) of subsection  
19       (h), such injunction must be obtained from a Fed-  
20       eral or State court of competent jurisdiction.

21       “(k) STATES’ AUTHORITY TO SUE.—Nothing in this  
22       section shall affect the authority of any State to bring ac-  
23       tion in any Federal or State court.

24       “(l) GENERALLY APPLICABLE LAWS.—Nothing in  
25       this section shall be construed to affect the applicability

1 of State laws generally applicable to persons or corpora-  
2 tions.

3       “(m) GUARANTEED AVAILABILITY OF COVERAGE TO  
4 HIPAA ELIGIBLE INDIVIDUALS.—To the extent that a  
5 health insurance issuer is offering coverage in a primary  
6 State that does not accommodate residents of secondary  
7 States or does not provide a working mechanism for resi-  
8 dents of a secondary State, and the issuer is offering cov-  
9 erage under this part in such secondary State which has  
10 not adopted a qualified high risk pool as its acceptable  
11 alternative mechanism (as defined in section 2744(e)(2)),  
12 the issuer shall, with respect to any individual health in-  
13 surance coverage offered in a secondary State under this  
14 part, comply with the guaranteed availability requirements  
15 for eligible individuals in section 2741.

16 **“SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR**  
17 **BEFORE ISSUER MAY SELL INTO SECONDARY**  
18 **STATES.**

19       “A health insurance issuer may not offer, sell, or  
20 issue individual health insurance coverage in a secondary  
21 State if the State insurance commissioner does not use  
22 a risk-based capital formula for the determination of cap-  
23 ital and surplus requirements for all health insurance  
24 issuers.

1 **“SEC. 2798. INDEPENDENT EXTERNAL APPEALS PROCE-**  
2 **DURES.**

3 “(a) **RIGHT TO EXTERNAL APPEAL.**—A health insur-  
4 ance issuer may not offer, sell, or issue individual health  
5 insurance coverage in a secondary State under the provi-  
6 sions of this title unless—

7 “(1) both the secondary State and the primary  
8 State have legislation or regulations in place estab-  
9 lishing an independent review process for individuals  
10 who are covered by individual health insurance cov-  
11 erage, or

12 “(2) in any case in which the requirements of  
13 subparagraph (A) are not met with respect to the ei-  
14 ther of such States, the issuer provides an inde-  
15 pendent review mechanism substantially identical (as  
16 determined by the applicable State authority of such  
17 State) to that prescribed in the ‘Health Carrier Ex-  
18 ternal Review Model Act’ of the National Association  
19 of Insurance Commissioners for all individuals who  
20 purchase insurance coverage under the terms of this  
21 part, except that, under such mechanism, the review  
22 is conducted by an independent medical reviewer, or  
23 a panel of such reviewers, with respect to whom the  
24 requirements of subsection (b) are met.

1       “(b) QUALIFICATIONS OF INDEPENDENT MEDICAL  
2 REVIEWERS.—In the case of any independent review  
3 mechanism referred to in subsection (a)(2)—

4           “(1) IN GENERAL.—In referring a denial of a  
5 claim to an independent medical reviewer, or to any  
6 panel of such reviewers, to conduct independent  
7 medical review, the issuer shall ensure that—

8           “(A) each independent medical reviewer  
9 meets the qualifications described in paragraphs  
10 (2) and (3);

11           “(B) with respect to each review, each re-  
12 viewer meets the requirements of paragraph (4)  
13 and the reviewer, or at least 1 reviewer on the  
14 panel, meets the requirements described in  
15 paragraph (5); and

16           “(C) compensation provided by the issuer  
17 to each reviewer is consistent with paragraph  
18 (6).

19       “(2) LICENSURE AND EXPERTISE.—Each inde-  
20 pendent medical reviewer shall be a physician  
21 (allopathic or osteopathic) or health care profes-  
22 sional who—

23           “(A) is appropriately credentialed or li-  
24 censed in 1 or more States to deliver health  
25 care services; and

1           “(B) typically treats the condition, makes  
2           the diagnosis, or provides the type of treatment  
3           under review.

4           “(3) INDEPENDENCE.—

5           “(A) IN GENERAL.—Subject to subpara-  
6           graph (B), each independent medical reviewer  
7           in a case shall—

8                   “(i) not be a related party (as defined  
9                   in paragraph (7));

10                   “(ii) not have a material familial, fi-  
11                   nancial, or professional relationship with  
12                   such a party; and

13                   “(iii) not otherwise have a conflict of  
14                   interest with such a party (as determined  
15                   under regulations).

16           “(B) EXCEPTION.—Nothing in subpara-  
17           graph (A) shall be construed to—

18                   “(i) prohibit an individual, solely on  
19                   the basis of affiliation with the issuer,  
20                   from serving as an independent medical re-  
21                   viewer if—

22                           “(I) a non-affiliated individual is  
23                           not reasonably available;

1           “(II) the affiliated individual is  
2 not involved in the provision of items  
3 or services in the case under review;

4           “(III) the fact of such an affli-  
5 ation is disclosed to the issuer and the  
6 enrollee (or authorized representative)  
7 and neither party objects; and

8           “(IV) the affiliated individual is  
9 not an employee of the issuer and  
10 does not provide services exclusively or  
11 primarily to or on behalf of the issuer;

12           “(ii) prohibit an individual who has  
13 staff privileges at the institution where the  
14 treatment involved takes place from serv-  
15 ing as an independent medical reviewer  
16 merely on the basis of such affiliation if  
17 the affiliation is disclosed to the issuer and  
18 the enrollee (or authorized representative),  
19 and neither party objects; or

20           “(iii) prohibit receipt of compensation  
21 by an independent medical reviewer from  
22 an entity if the compensation is provided  
23 consistent with paragraph (6).

24           “(4) PRACTICING HEALTH CARE PROFESSIONAL  
25 IN SAME FIELD.—

1           “(A) IN GENERAL.—In a case involving  
2           treatment, or the provision of items or serv-  
3           ices—

4                   “(i) by a physician, a reviewer shall be  
5                   a practicing physician (allopathic or osteo-  
6                   pathic) of the same or similar specialty, as  
7                   a physician who, acting within the appro-  
8                   priate scope of practice within the State in  
9                   which the service is provided or rendered,  
10                  typically treats the condition, makes the  
11                  diagnosis, or provides the type of treat-  
12                  ment under review; or

13                   “(ii) by a non-physician health care  
14                   professional, the reviewer, or at least 1  
15                   member of the review panel, shall be a  
16                   practicing non-physician health care pro-  
17                   fessional of the same or similar specialty  
18                   as the non-physician health care profes-  
19                   sional who, acting within the appropriate  
20                   scope of practice within the State in which  
21                   the service is provided or rendered, typi-  
22                   cally treats the condition, makes the diag-  
23                   nosis, or provides the type of treatment  
24                   under review.

1           “(B) PRACTICING DEFINED.—For pur-  
2           poses of this paragraph, the term ‘practicing’  
3           means, with respect to an individual who is a  
4           physician or other health care professional, that  
5           the individual provides health care services to  
6           individual patients on average at least 2 days  
7           per week.

8           “(5) PEDIATRIC EXPERTISE.—In the case of an  
9           external review relating to a child, a reviewer shall  
10          have expertise under paragraph (2) in pediatrics.

11          “(6) LIMITATIONS ON REVIEWER COMPENSA-  
12          TION.—Compensation provided by the issuer to an  
13          independent medical reviewer in connection with a  
14          review under this section shall—

15                 “(A) not exceed a reasonable level; and

16                 “(B) not be contingent on the decision ren-  
17                 dered by the reviewer.

18          “(7) RELATED PARTY DEFINED.—For purposes  
19          of this section, the term ‘related party’ means, with  
20          respect to a denial of a claim under a coverage relat-  
21          ing to an enrollee, any of the following:

22                 “(A) The issuer involved, or any fiduciary,  
23                 officer, director, or employee of the issuer.

24                 “(B) The enrollee (or authorized represent-  
25                 ative).

1           “(C) The health care professional that pro-  
2           vides the items or services involved in the de-  
3           nial.

4           “(D) The institution at which the items or  
5           services (or treatment) involved in the denial  
6           are provided.

7           “(E) The manufacturer of any drug or  
8           other item that is included in the items or serv-  
9           ices involved in the denial.

10          “(F) Any other party determined under  
11          any regulations to have a substantial interest in  
12          the denial involved.

13          “(8) DEFINITIONS.—For purposes of this sub-  
14          section:

15               “(A) ENROLLEE.—The term ‘enrollee’  
16               means, with respect to health insurance cov-  
17               erage offered by a health insurance issuer, an  
18               individual enrolled with the issuer to receive  
19               such coverage.

20               “(B) HEALTH CARE PROFESSIONAL.—The  
21               term ‘health care professional’ means an indi-  
22               vidual who is licensed, accredited, or certified  
23               under State law to provide specified health care  
24               services and who is operating within the scope  
25               of such licensure, accreditation, or certification.

1 **“SEC. 2799. ENFORCEMENT.**

2 “(a) IN GENERAL.—Subject to subsection (b), with  
3 respect to specific individual health insurance coverage the  
4 primary State for such coverage has sole jurisdiction to  
5 enforce the primary State’s covered laws in the primary  
6 State and any secondary State.

7 “(b) SECONDARY STATE’S AUTHORITY.—Nothing in  
8 subsection (a) shall be construed to affect the authority  
9 of a secondary State to enforce its laws as set forth in  
10 the exception specified in section 2796(b)(1).

11 “(c) COURT INTERPRETATION.—In reviewing action  
12 initiated by the applicable secondary State authority, the  
13 court of competent jurisdiction shall apply the covered  
14 laws of the primary State.

15 “(d) NOTICE OF COMPLIANCE FAILURE.—In the case  
16 of individual health insurance coverage offered in a sec-  
17 ondary State that fails to comply with the covered laws  
18 of the primary State, the applicable State authority of the  
19 secondary State may notify the applicable State authority  
20 of the primary State.”.

21 (b) EFFECTIVE DATE.—The amendment made by  
22 subsection (a) shall apply to individual health insurance  
23 coverage offered, issued, or sold after the date that is one  
24 year after the date of the enactment of this Act.

25 (c) GAO ONGOING STUDY AND REPORTS.—

1           (1) STUDY.—The Comptroller General of the  
2           United States shall conduct an ongoing study con-  
3           cerning the effect of the amendment made by sub-  
4           section (a) on—

5                   (A) the number of uninsured and under-in-  
6                   sured;

7                   (B) the availability and cost of health in-  
8                   surance policies for individuals with preexisting  
9                   medical conditions;

10                  (C) the availability and cost of health in-  
11                  surance policies generally;

12                  (D) the elimination or reduction of dif-  
13                  ferent types of benefits under health insurance  
14                  policies offered in different States; and

15                  (E) cases of fraud or abuse relating to  
16                  health insurance coverage offered under such  
17                  amendment and the resolution of such cases.

18           (2) ANNUAL REPORTS.—The Comptroller Gen-  
19           eral shall submit to Congress an annual report, after  
20           the end of each of the 5 years following the effective  
21           date of the amendment made by subsection (a), on  
22           the ongoing study conducted under paragraph (1).

