

112TH CONGRESS
1ST SESSION

H. R. 371

To repeal title I of the Patient Protection and Affordable Care Act and to amend the Public Health Service Act to provide for cooperative governing of individual health insurance coverage offered in interstate commerce.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 20, 2011

Mrs. BLACKBURN (for herself, Mr. UPTON, Mr. PITTS, Mr. BARTON of Texas, Mr. BURGESS, Mrs. MYRICK, Mr. SHIMKUS, Mr. ROGERS of Michigan, Mr. STEARNS, Mr. SULLIVAN, Mr. MURPHY of Pennsylvania, Mr. GINGREY of Georgia, Mr. SCALISE, Mrs. BONO MACK, Mr. BASS of New Hampshire, Mr. BILBRAY, Mr. LATTA, Mrs. McMORRIS RODGERS, Mr. HARPER, Mr. LANCE, Mr. CASSIDY, Mr. GUTHRIE, Mr. OLSON, Mr. MCKINLEY, Mr. GARDNER, Mr. POMPEO, Mr. KINZINGER of Illinois, Mr. ROE of Tennessee, Mr. BROUN of Georgia, Mr. BOUSTANY, Mr. CONAWAY, Mr. FLEMING, Mr. ISSA, Mr. PRICE of Georgia, Mr. SESSIONS, Mr. AKIN, Mr. BARTLETT, Mr. BROOKS, Mr. BUCSHON, Mr. CHABOT, Mr. COLE, Mr. CRAWFORD, Mr. DESJARLAIS, Mr. FARENTHOLD, Mr. FLEISCHMANN, Mr. FLORES, Mr. FRANKS of Arizona, Mr. GOHMERT, Ms. GRANGER, Mr. GUINTA, Mr. HARRIS, Mrs. HARTZLER, Mr. KING of Iowa, Mr. LAMBORN, Mrs. LUMMIS, Mr. MACK, Mr. MARCHANT, Mr. McCLINTOCK, Mr. NEUGEBAUER, Mr. NUGENT, Mr. PEARCE, Mr. PAUL, Mr. POSEY, Mr. QUAYLE, Mrs. SCHMIDT, Mr. SCHWEIKERT, Mr. SOUTHERLAND, Mr. STUTZMAN, Mr. WALBERG, Mr. WALSH of Illinois, and Mr. WILSON of South Carolina) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To repeal title I of the Patient Protection and Affordable

Care Act and to amend the Public Health Service Act to provide for cooperative governing of individual health insurance coverage offered in interstate commerce.

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 “Health Care Choice Act
5 of 2011”.

6 **SEC. 2. SPECIFICATION OF CONSTITUTIONAL AUTHORITY**
7 **FOR ENACTMENT OF LAW.**

8 This Act is enacted pursuant to the power granted
9 Congress under article I, section 8, clause 3, of the United
10 States Constitution.

11 **SEC. 3. FINDINGS.**

12 Congress finds the following:

13 (1) The application of numerous and significant
14 variations in State law and the implementation of
15 the Patient Protection and Affordable Care Act im-
16 pacts the ability of insurers to offer, and individuals
17 to obtain, affordable individual health insurance cov-
18 erage, thereby impeding commerce in individual
19 health insurance coverage.

20 (2) Mandates for health care coverage estab-
21 lished by title I of the Patient Protection and Af-
22 fordable Care Act will significantly elevate health in-

1 insurance costs beyond State and Federal ability to
2 pay.

3 (3) Individual health insurance coverage is in-
4 creasingly offered through the Internet, other elec-
5 tronic means, and by mail, all of which are inher-
6 ently part of interstate commerce.

7 (4) In response to these issues, it is appropriate
8 to encourage increased efficiency in the offering of
9 individual health insurance coverage through a col-
10 laborative approach by the States in regulating this
11 coverage.

12 (5) The establishment of risk-retention groups
13 has provided a successful model for the sale of insur-
14 ance across State lines, as the acts establishing
15 those groups allow insurance to be sold in multiple
16 States but regulated by a single State.

17 **SEC. 4. REPEAL OF TITLE I OF PPACA.**

18 Effective as of the enactment of the Patient Protec-
19 tion and Affordable Care Act (Public Law 111–148), title
20 I of such Act is repealed (and any amendments to such
21 title, or to amendments made by such title, made by the
22 Health Care and Education Reconciliation Act of 2010
23 (Public Law 111–152) are repealed, and the provisions of
24 law amended or repealed by such title (or amendments)

1 are restored or revived as if such title (and amendments)
2 had not been enacted.

3 **SEC. 5. COOPERATIVE GOVERNING OF INDIVIDUAL**
4 **HEALTH INSURANCE COVERAGE.**

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

8 **“PART D—COOPERATIVE GOVERNING OF**
9 **INDIVIDUAL HEALTH INSURANCE COVERAGE**

10 **“SEC. 2795. DEFINITIONS.**

11 “In this part:

12 “(1) PRIMARY STATE.—The term ‘primary
13 State’ means, with respect to individual health insur-
14 ance coverage offered by a health insurance issuer,
15 the State designated by the issuer as the State
16 whose covered laws shall govern the health insurance
17 issuer in the sale of such coverage under this part.
18 An issuer, with respect to a particular policy, may
19 only designate one such State as its primary State
20 with respect to all such coverage it offers. Such an
21 issuer may not change the designated primary State
22 with respect to individual health insurance coverage
23 once the policy is issued, except that such a change
24 may be made upon renewal of the policy. With re-

1 spect to such designated State, the issuer is deemed
2 to be doing business in that State.

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

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

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

22 “(5) APPLICABLE STATE AUTHORITY.—The
23 term ‘applicable State authority’ means, with respect
24 to a health insurance issuer in a State, the State in-
25 surance commissioner or official or officials des-

1 ignated by the State to enforce the requirements of
2 this title for the State with respect to the issuer.

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

8 “(A) to meet obligations to policyholders
9 with respect to known claims and reasonably
10 anticipated claims; or

11 “(B) to pay other obligations in the normal
12 course of business.

13 “(7) COVERED LAWS.—

14 “(A) IN GENERAL.—The term ‘covered
15 laws’ means the laws, rules, regulations, agree-
16 ments, and orders governing the insurance busi-
17 ness pertaining to—

18 “(i) individual health insurance cov-
19 erage issued by a health insurance issuer;

20 “(ii) the offer, sale, rating (including
21 medical underwriting), renewal, and
22 issuance of individual health insurance cov-
23 erage to an individual;

24 “(iii) the provision to an individual in
25 relation to individual health insurance cov-

1 erage of health care and insurance related
2 services;

3 “(iv) the provision to an individual in
4 relation to individual health insurance cov-
5 erage of management, operations, and in-
6 vestment activities of a health insurance
7 issuer; and

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

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

21 “(8) STATE.—The term ‘State’ means the 50
22 States and includes the District of Columbia, Puerto
23 Rico, the Virgin Islands, Guam, American Samoa,
24 and the Northern Mariana Islands.

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

4 “(A) Knowingly misrepresenting to claim-
5 ants and insured individuals relevant facts or
6 policy provisions relating to coverage at issue.

7 “(B) Failing to acknowledge with reason-
8 able promptness pertinent communications with
9 respect to claims arising under policies.

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

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

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

18 “(F) Failing to affirm or deny coverage of
19 claims within a reasonable period of time after
20 having completed an investigation related to
21 those claims.

22 “(G) A pattern or practice of compelling
23 insured individuals or their beneficiaries to in-
24 stitute suits to recover amounts due under its
25 policies by offering substantially less than the

1 amounts ultimately recovered in suits brought
2 by them.

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

10 “(I) Attempting to settle or settling claims
11 on the basis of an application that was materi-
12 ally altered without notice to, or knowledge or
13 consent of, the insured.

14 “(J) Failing to provide forms necessary to
15 present claims within 15 calendar days of a re-
16 quests with reasonable explanations regarding
17 their use.

18 “(K) Attempting to cancel a policy in less
19 time than that prescribed in the policy or by the
20 law of the primary State.

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

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

7 “(i) An application for the issuance or
8 renewal of an insurance policy or reinsur-
9 ance contract.

10 “(ii) The rating of an insurance policy
11 or reinsurance contract.

12 “(iii) A claim for payment or benefit
13 pursuant to an insurance policy or reinsur-
14 ance contract.

15 “(iv) Premiums paid on an insurance
16 policy or reinsurance contract.

17 “(v) Payments made in accordance
18 with the terms of an insurance policy or
19 reinsurance contract.

20 “(vi) A document filed with the com-
21 missioner or the chief insurance regulatory
22 official of another jurisdiction.

23 “(vii) The financial condition of an in-
24 surer or reinsurer.

1 “(viii) The formation, acquisition,
2 merger, reconsolidation, dissolution or
3 withdrawal from one or more lines of in-
4 surance or reinsurance in all or part of a
5 State by an insurer or reinsurer.

6 “(ix) The issuance of written evidence
7 of insurance.

8 “(x) The reinstatement of an insur-
9 ance policy.

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

17 “(C) Transaction of the business of insur-
18 ance in violation of laws requiring a license, cer-
19 tificate of authority or other legal authority for
20 the transaction of the business of insurance.

21 “(D) Attempt to commit, aiding or abet-
22 ting in the commission of, or conspiracy to com-
23 mit the acts or omissions specified in this para-
24 graph.

1 **“SEC. 2796. APPLICATION OF LAW.**

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

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

17 “(1) make unlawful, or regulate, directly or in-
18 directly, the operation of the health insurance issuer
19 operating in the secondary State, except that any
20 secondary State may require such an issuer—

21 “(A) to pay, on a nondiscriminatory basis,
22 applicable premium and other taxes (including
23 high risk pool assessments) which are levied on
24 insurers and surplus lines insurers, brokers, or
25 policyholders under the laws of the State;

1 “(B) to register with and designate the
2 State insurance commissioner as its agent solely
3 for the purpose of receiving service of legal doc-
4 uments or process;

5 “(C) to submit to an examination of its fi-
6 nancial condition by the State insurance com-
7 missioner in any State in which the issuer is
8 doing business to determine the issuer’s finan-
9 cial condition, if—

10 “(i) the State insurance commissioner
11 of the primary State has not done an ex-
12 amination within the period recommended
13 by the National Association of Insurance
14 Commissioners; and

15 “(ii) any such examination is con-
16 ducted in accordance with the examiners’
17 handbook of the National Association of
18 Insurance Commissioners and is coordi-
19 nated to avoid unjustified duplication and
20 unjustified repetition;

21 “(D) to comply with a lawful order
22 issued—

23 “(i) in a delinquency proceeding com-
24 menced by the State insurance commis-
25 sioner if there has been a finding of finan-

1 cial impairment under subparagraph (C);

2 or

3 “(ii) in a voluntary dissolution pro-
4 ceeding;

5 “(E) to comply with an injunction issued
6 by a court of competent jurisdiction, upon a pe-
7 tition by the State insurance commissioner al-
8 leging that the issuer is in hazardous financial
9 condition;

10 “(F) to participate, on a nondiscriminatory
11 basis, in any insurance insolvency guaranty as-
12 sociation or similar association to which a
13 health insurance issuer in the State is required
14 to belong;

15 “(G) to comply with any State law regard-
16 ing fraud and abuse (as defined in section
17 2795(10)), except that if the State seeks an in-
18 junction regarding the conduct described in this
19 subparagraph, such injunction must be obtained
20 from a court of competent jurisdiction;

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

24 “(I) to comply with the applicable require-
25 ments for independent review under section

1 subject to all of the insurance laws and regulations of the
 2 State of _____, including coverage of some services
 3 or benefits mandated by the law of the State of
 4 _____. Additionally, this policy is not subject to all
 5 of the consumer protection laws or restrictions on rate
 6 changes of the State of _____. As with all insurance
 7 products, before purchasing this policy, you should care-
 8 fully review the policy and determine what health care
 9 services the policy covers and what benefits it provides,
 10 including any exclusions, limitations, or conditions for
 11 such services or benefits.’”.

12 “(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS
 13 AND PREMIUM INCREASES.—

14 “(1) IN GENERAL.—For purposes of this sec-
 15 tion, a health insurance issuer that provides indi-
 16 vidual health insurance coverage to an individual
 17 under this part in a primary or secondary State may
 18 not upon renewal—

19 “(A) move or reclassify the individual in-
 20 sured under the health insurance coverage from
 21 the class such individual is in at the time of
 22 issue of the contract based on the health-status
 23 related factors of the individual; or

24 “(B) increase the premiums assessed the
 25 individual for such coverage based on a health

1 status-related factor or change of a health sta-
2 tus-related factor or the past or prospective
3 claim experience of the insured individual.

4 “(2) CONSTRUCTION.—Nothing in paragraph
5 (1) shall be construed to prohibit a health insurance
6 issuer—

7 “(A) from terminating or discontinuing
8 coverage or a class of coverage in accordance
9 with subsections (b) and (c) of section 2742;

10 “(B) from raising premium rates for all
11 policy holders within a class based on claims ex-
12 perience;

13 “(C) from changing premiums or offering
14 discounted premiums to individuals who engage
15 in wellness activities at intervals prescribed by
16 the issuer, if such premium changes or incen-
17 tives—

18 “(i) are disclosed to the consumer in
19 the insurance contract;

20 “(ii) are based on specific wellness ac-
21 tivities that are not applicable to all indi-
22 viduals; and

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

25 “(D) from reinstating lapsed coverage; or

1 “(E) from retroactively adjusting the rates
2 charged an insured individual if the initial rates
3 were set based on material misrepresentation by
4 the individual at the time of issue.

5 “(e) PRIOR OFFERING OF POLICY IN PRIMARY
6 STATE.—A health insurance issuer may not offer for sale
7 individual health insurance coverage in a secondary State
8 unless that coverage is currently offered for sale in the
9 primary State.

10 “(f) LICENSING OF AGENTS OR BROKERS FOR
11 HEALTH INSURANCE ISSUERS.—Any State may require
12 that a person acting, or offering to act, as an agent or
13 broker for a health insurance issuer with respect to the
14 offering of individual health insurance coverage obtain a
15 license from that State, with commissions or other com-
16 pensation subject to the provisions of the laws of that
17 State, except that a State may not impose any qualifica-
18 tion or requirement which discriminates against a non-
19 resident agent or broker.

20 “(g) DOCUMENTS FOR SUBMISSION TO STATE IN-
21 SURANCE COMMISSIONER.—Each health insurance issuer
22 issuing individual health insurance coverage in both pri-
23 mary and secondary States shall submit—

24 “(1) to the insurance commissioner of each
25 State in which it intends to offer such coverage, be-

1 fore it may offer individual health insurance cov-
2 erage in such State—

3 “(A) a copy of the plan of operation or fea-
4 sibility study or any similar statement of the
5 policy being offered and its coverage (which
6 shall include the name of its primary State and
7 its principal place of business);

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

10 “(C) written notice from the issuer of the
11 issuer’s compliance with all the laws of the pri-
12 mary State; and

13 “(2) to the insurance commissioner of each sec-
14 ondary State in which it offers individual health in-
15 surance coverage, a copy of the issuer’s quarterly fi-
16 nancial statement submitted to the primary State,
17 which statement shall be certified by an independent
18 public accountant and contain a statement of opin-
19 ion on loss and loss adjustment expense reserves
20 made by—

21 “(A) a member of the American Academy
22 of Actuaries; or

23 “(B) a qualified loss reserve specialist.

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

4 “(1) the solicitation or sale of individual health
5 insurance coverage by a health insurance issuer to
6 any person or group who is not eligible for such in-
7 surance; or

8 “(2) the solicitation or sale of individual health
9 insurance coverage that violates the requirements of
10 the law of a secondary State which are described in
11 subparagraphs (A) through (H) of section
12 2796(b)(1).

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

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

19 “(1) IN GENERAL.—Subject to the provisions of
20 subsection (b)(1)(G) (relating to injunctions) and
21 paragraph (2), nothing in this section shall be con-
22 strued to affect the authority of any State to make
23 use of any of its powers to enforce the laws of such
24 State with respect to which a health insurance issuer
25 is not exempt under subsection (b).

1 “(2) COURTS OF COMPETENT JURISDICTION.—

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

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

9 “(l) GENERALLY APPLICABLE LAWS.—Nothing in
10 this section shall be construed to affect the applicability
11 of State laws generally applicable to persons or corpora-
12 tions.

13 “(m) GUARANTEED AVAILABILITY OF COVERAGE TO
14 HIPAA ELIGIBLE INDIVIDUALS.—To the extent that a
15 health insurance issuer is offering coverage in a primary
16 State that does not accommodate residents of secondary
17 States or does not provide a working mechanism for resi-
18 dents of a secondary State, and the issuer is offering cov-
19 erage under this part in such secondary State which has
20 not adopted a qualified high risk pool as its acceptable
21 alternative mechanism (as defined in section 2744(c)(2)),
22 the issuer shall, with respect to any individual health in-
23 surance coverage offered in a secondary State under this
24 part, comply with the guaranteed availability requirements
25 for eligible individuals in section 2741.

1 **“SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR**
2 **BEFORE ISSUER MAY SELL INTO SECONDARY**
3 **STATES.**

4 “A health insurance issuer may not offer, sell, or
5 issue individual health insurance coverage in a secondary
6 State if the State insurance commissioner does not use
7 a risk-based capital formula for the determination of cap-
8 ital and surplus requirements for all health insurance
9 issuers.

10 **“SEC. 2798. INDEPENDENT EXTERNAL APPEALS PROCE-**
11 **DURES.**

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

16 “(1) both the secondary State and the primary
17 State have legislation or regulations in place estab-
18 lishing an independent review process for individuals
19 who are covered by individual health insurance cov-
20 erage, or

21 “(2) in any case in which the requirements of
22 subparagraph (A) are not met with respect to the ei-
23 ther of such States, the issuer provides an inde-
24 pendent review mechanism substantially identical (as
25 determined by the applicable State authority of such
26 State) to that prescribed in the ‘Health Carrier Ex-

1 ternal Review Model Act’ of the National Association
2 of Insurance Commissioners for all individuals who
3 purchase insurance coverage under the terms of this
4 part, except that, under such mechanism, the review
5 is conducted by an independent medical reviewer, or
6 a panel of such reviewers, with respect to whom the
7 requirements of subsection (b) are met.

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

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

15 “(A) each independent medical reviewer
16 meets the qualifications described in paragraphs
17 (2) and (3);

18 “(B) with respect to each review, each re-
19 viewer meets the requirements of paragraph (4)
20 and the reviewer, or at least 1 reviewer on the
21 panel, meets the requirements described in
22 paragraph (5); and

23 “(C) compensation provided by the issuer
24 to each reviewer is consistent with paragraph
25 (6).

1 “(2) LICENSURE AND EXPERTISE.—Each inde-
2 pendent medical reviewer shall be a physician
3 (allopathic or osteopathic) or health care profes-
4 sional who—

5 “(A) is appropriately credentialed or li-
6 censed in 1 or more States to deliver health
7 care services; and

8 “(B) typically treats the condition, makes
9 the diagnosis, or provides the type of treatment
10 under review.

11 “(3) INDEPENDENCE.—

12 “(A) IN GENERAL.—Subject to subpara-
13 graph (B), each independent medical reviewer
14 in a case shall—

15 “(i) not be a related party (as defined
16 in paragraph (7));

17 “(ii) not have a material familial, fi-
18 nancial, or professional relationship with
19 such a party; and

20 “(iii) not otherwise have a conflict of
21 interest with such a party (as determined
22 under regulations).

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

1 “(i) prohibit an individual, solely on
2 the basis of affiliation with the issuer,
3 from serving as an independent medical re-
4 viewer if—

5 “(I) a non-affiliated individual is
6 not reasonably available;

7 “(II) the affiliated individual is
8 not involved in the provision of items
9 or services in the case under review;

10 “(III) the fact of such an affili-
11 ation is disclosed to the issuer and the
12 enrollee (or authorized representative)
13 and neither party objects; and

14 “(IV) the affiliated individual is
15 not an employee of the issuer and
16 does not provide services exclusively or
17 primarily to or on behalf of the issuer;

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

1 “(iii) prohibit receipt of compensation
2 by an independent medical reviewer from
3 an entity if the compensation is provided
4 consistent with paragraph (6).

5 “(4) PRACTICING HEALTH CARE PROFESSIONAL
6 IN SAME FIELD.—

7 “(A) IN GENERAL.—In a case involving
8 treatment, or the provision of items or serv-
9 ices—

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

19 “(ii) by a non-physician health care
20 professional, the reviewer, or at least 1
21 member of the review panel, shall be a
22 practicing non-physician health care pro-
23 fessional of the same or similar specialty
24 as the non-physician health care profes-
25 sional who, acting within the appropriate

1 scope of practice within the State in which
2 the service is provided or rendered, typi-
3 cally treats the condition, makes the diag-
4 nosis, or provides the type of treatment
5 under review.

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

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

16 “(6) LIMITATIONS ON REVIEWER COMPENSA-
17 TION.—Compensation provided by the issuer to an
18 independent medical reviewer in connection with a
19 review under this section shall—

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

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

23 “(7) RELATED PARTY DEFINED.—For purposes
24 of this section, the term ‘related party’ means, with

1 respect to a denial of a claim under a coverage relat-
2 ing to an enrollee, any of the following:

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

5 “(B) The enrollee (or authorized represent-
6 ative).

7 “(C) The health care professional that pro-
8 vides the items or services involved in the de-
9 nial.

10 “(D) The institution at which the items or
11 services (or treatment) involved in the denial
12 are provided.

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

16 “(F) Any other party determined under
17 any regulations to have a substantial interest in
18 the denial involved.

19 “(8) DEFINITIONS.—For purposes of this sub-
20 section:

21 “(A) ENROLLEE.—The term ‘enrollee’
22 means, with respect to health insurance cov-
23 erage offered by a health insurance issuer, an
24 individual enrolled with the issuer to receive
25 such coverage.

1 “(B) HEALTH CARE PROFESSIONAL.—The
2 term ‘health care professional’ means an indi-
3 vidual who is licensed, accredited, or certified
4 under State law to provide specified health care
5 services and who is operating within the scope
6 of such licensure, accreditation, or certification.

7 **“SEC. 2799. ENFORCEMENT.**

8 “(a) IN GENERAL.—Subject to subsection (b), with
9 respect to specific individual health insurance coverage the
10 primary State for such coverage has sole jurisdiction to
11 enforce the primary State’s covered laws in the primary
12 State and any secondary State.

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

17 “(c) COURT INTERPRETATION.—In reviewing action
18 initiated by the applicable secondary State authority, the
19 court of competent jurisdiction shall apply the covered
20 laws of the primary State.

21 “(d) NOTICE OF COMPLIANCE FAILURE.—In the case
22 of individual health insurance coverage offered in a sec-
23 ondary State that fails to comply with the covered laws
24 of the primary State, the applicable State authority of the

1 secondary State may notify the applicable State authority
2 of the primary State.”.

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

7 (c) GAO ONGOING STUDY AND REPORTS.—

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

12 (A) the number of uninsured and under-in-
13 sured;

14 (B) the availability and cost of health in-
15 surance policies for individuals with pre-existing
16 medical conditions;

17 (C) the availability and cost of health in-
18 surance policies generally;

19 (D) the elimination or reduction of dif-
20 ferent types of benefits under health insurance
21 policies offered in different States; and

22 (E) cases of fraud or abuse relating to
23 health insurance coverage offered under such
24 amendment and the resolution of such cases.

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

6 **SEC. 6. SEVERABILITY.**

7 If any provision of the Act or the application of such
8 provision to any person or circumstance is held to be un-
9 constitutional, the remainder of this Act and the applica-
10 tion of the provisions of such to any other person or cir-
11 cumstance shall not be affected.

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