

110TH CONGRESS
1ST SESSION

H. R. 4460

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

DECEMBER 12, 2007

Mr. SHADEGG (for himself, Mrs. MUSGRAVE, Mr. AKIN, Mr. DAVID DAVIS of Tennessee, Mr. FEENEY, Mr. PENCE, Mr. GINGREY, Mr. FORTUÑO, Mr. RYAN of Wisconsin, Mr. WELDON of Florida, Mr. MARCHANT, Mr. CAMPBELL of California, Ms. FOXX, Mr. KINGSTON, Mr. WILSON of South Carolina, Ms. FALLIN, Mr. ISSA, Mr. FRANKS of Arizona, Mr. PITTS, Mr. BROWN of South Carolina, Mr. DANIEL E. LUNGREN of California, Mr. BARTLETT of Maryland, Mr. WAMP, Mrs. BLACKBURN, Mr. PRICE of Georgia, Mr. PUTNAM, Mr. SMITH of Nebraska, Mr. PAUL, Mr. BOUSTANY, Mrs. CUBIN, Mr. MILLER of Florida, Mr. SOUDER, Mr. RENZI, Mr. SESSIONS, Mr. HOEKSTRA, Mr. BURTON of Indiana, Mr. CANNON, Mr. HERGER, Mr. PLATTS, Mrs. McMORRIS RODGERS, Mr. HENSARLING, Mrs. BACHMANN, and Mr. FLAKE) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as “Health Care Choice Act
3 of 2007”.

4 **SEC. 2. SPECIFICATION OF CONSTITUTIONAL AUTHORITY**
5 **FOR ENACTMENT OF LAW.**

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

9 **SEC. 3. FINDINGS.**

10 Congress finds the following:

11 (1) The application of numerous and significant
12 variations in State law impacts the ability of insur-
13 ers to offer, and individuals to obtain, affordable in-
14 dividual health insurance coverage, thereby impeding
15 commerce in individual health insurance coverage.

16 (2) Individual health insurance coverage is in-
17 creasingly offered through the Internet, other elec-
18 tronic means, and by mail, all of which are inher-
19 ently part of interstate commerce.

20 (3) In response to these issues, it is appropriate
21 to encourage increased efficiency in the offering of
22 individual health insurance coverage through a col-
23 laborative approach by the States in regulating this
24 coverage.

25 (4) The establishment of risk-retention groups
26 has provided a successful model for the sale of insur-

1 ance across State lines, as the acts establishing
2 those groups allow insurance to be sold in multiple
3 States but regulated by a single State.

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

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

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

11 **“SEC. 2795. DEFINITIONS.**

12 “In this part:

13 “(1) PRIMARY STATE.—The term ‘primary
14 State’ means, with respect to individual health insur-
15 ance coverage offered by a health insurance issuer,
16 the State designated by the issuer as the State
17 whose covered laws shall govern the health insurance
18 issuer in the sale of such coverage under this part.
19 An issuer, with respect to a particular policy, may
20 only designate one such State as its primary State
21 with respect to all such coverage it offers. Such an
22 issuer may not change the designated primary State
23 with respect to individual health insurance coverage
24 once the policy is issued, except that such a change
25 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 2798 with respect to coverage offered in the
2 State;

3 “(2) require any individual health insurance
4 coverage issued by the issuer to be countersigned by
5 an insurance agent or broker residing in that Sec-
6 ondary State; or

7 “(3) otherwise discriminate against the issuer
8 issuing insurance in both the primary State and in
9 any secondary State.

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

20 **‘Notice**

21 **‘This policy is issued by _____ and is**
22 **governed by the laws and regulations of the**
23 **State of _____, and it has met all the laws**
24 **of that State as determined by that State’s De-**
25 **partment of Insurance. This policy may be**

1 less expensive than others because it is not
 2 subject to all of the insurance laws and regu-
 3 lations of the State of _____, including
 4 coverage of some services or benefits man-
 5 dated by the law of the State of _____. Ad-
 6 ditionally, this policy is not subject to all of
 7 the consumer protection laws or restrictions
 8 on rate changes of the State of _____. As
 9 with all insurance products, before pur-
 10 chasing this policy, you should carefully re-
 11 view the policy and determine what health
 12 care services the policy covers and what bene-
 13 fits it provides, including any exclusions, limi-
 14 tations, or conditions for such services or ben-
 15 efits.’

16 “(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS
 17 AND PREMIUM INCREASES.—

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

23 “(A) move or reclassify the individual in-
 24 sured under the health insurance coverage from
 25 the class such individual is in at the time of

1 issue of the contract based on the health-status
2 related factors of the individual; or

3 “(B) increase the premiums assessed the
4 individual for such coverage based on a health
5 status-related factor or change of a health sta-
6 tus-related factor or the past or prospective
7 claim experience of the insured individual.

8 “(2) CONSTRUCTION.—Nothing in paragraph
9 (1) shall be construed to prohibit a health insurance
10 issuer—

11 “(A) from terminating or discontinuing
12 coverage or a class of coverage in accordance
13 with subsections (b) and (c) of section 2742;

14 “(B) from raising premium rates for all
15 policy holders within a class based on claims ex-
16 perience;

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

22 “(i) are disclosed to the consumer in
23 the insurance contract;

1 “(ii) are based on specific wellness ac-
2 tivities that are not applicable to all indi-
3 viduals; and

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

6 “(D) from reinstating lapsed coverage; or

7 “(E) from retroactively adjusting the rates
8 charged an insured individual if the initial rates
9 were set based on material misrepresentation by
10 the individual at the time of issue.

11 “(e) PRIOR OFFERING OF POLICY IN PRIMARY
12 STATE.—A health insurance issuer may not offer for sale
13 individual health insurance coverage in a secondary State
14 unless that coverage is currently offered for sale in the
15 primary State.

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

1 “(g) DOCUMENTS FOR SUBMISSION TO STATE IN-
2 SURANCE COMMISSIONER.—Each health insurance issuer
3 issuing individual health insurance coverage in both pri-
4 mary and secondary States shall submit—

5 “(1) to the insurance commissioner of each
6 State in which it intends to offer such coverage, be-
7 fore it may offer individual health insurance cov-
8 erage in such State—

9 “(A) a copy of the plan of operation or fea-
10 sibility study or any similar statement of the
11 policy being offered and its coverage (which
12 shall include the name of its primary State and
13 its principal place of business);

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

16 “(C) written notice from the issuer of the
17 issuer’s compliance with all the laws of the pri-
18 mary State; and

19 “(2) to the insurance commissioner of each sec-
20 ondary State in which it offers individual health in-
21 surance coverage, a copy of the issuer’s quarterly fi-
22 nancial statement submitted to the primary State,
23 which statement shall be certified by an independent
24 public accountant and contain a statement of opin-

1 ion on loss and loss adjustment expense reserves
2 made by—

3 “(A) a member of the American Academy
4 of Actuaries; or

5 “(B) a qualified loss reserve specialist.

6 “(h) POWER OF COURTS TO ENJOIN CONDUCT.—

7 Nothing in this section shall be construed to affect the
8 authority of any Federal or State court to enjoin—

9 “(1) the solicitation or sale of individual health
10 insurance coverage by a health insurance issuer to
11 any person or group who is not eligible for such in-
12 surance; or

13 “(2) the solicitation or sale of individual health
14 insurance coverage that violates the requirements of
15 the law of a secondary State which are described in
16 subparagraphs (A) through (H) of section
17 2796(b)(1).

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

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

24 “(1) IN GENERAL.—Subject to the provisions of
25 subsection (b)(1)(G) (relating to injunctions) and

1 paragraph (2), nothing in this section shall be con-
2 strued to affect the authority of any State to make
3 use of any of its powers to enforce the laws of such
4 State with respect to which a health insurance issuer
5 is not exempt under subsection (b).

6 “(2) COURTS OF COMPETENT JURISDICTION.—
7 If a State seeks an injunction regarding the conduct
8 described in paragraphs (1) and (2) of subsection
9 (h), such injunction must be obtained from a Fed-
10 eral or State court of competent jurisdiction.

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

14 “(l) GENERALLY APPLICABLE LAWS.—Nothing in
15 this section shall be construed to affect the applicability
16 of State laws generally applicable to persons or corpora-
17 tions.

18 “(m) GUARANTEED AVAILABILITY OF COVERAGE TO
19 HIPAA ELIGIBLE INDIVIDUALS.—To the extent that a
20 health insurance issuer is offering coverage in a primary
21 State that does not accommodate residents of secondary
22 States or does not provide a working mechanism for resi-
23 dents of a secondary State, and the issuer is offering cov-
24 erage under this part in such secondary State which has
25 not adopted a qualified high risk pool as its acceptable

1 alternative mechanism (as defined in section 2744(c)(2)),
2 the issuer shall, with respect to any individual health in-
3 surance coverage offered in a secondary State under this
4 part, comply with the guaranteed availability requirements
5 for eligible individuals in section 2741.

6 **“SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR**
7 **BEFORE ISSUER MAY SELL INTO SECONDARY**
8 **STATES.**

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

15 **“SEC. 2798. INDEPENDENT EXTERNAL APPEALS PROCE-**
16 **DURES.**

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

21 “(1) both the secondary State and the primary
22 State have legislation or regulations in place estab-
23 lishing an independent review process for individuals
24 who are covered by individual health insurance cov-
25 erage, or

1 “(2) in any case in which the requirements of
2 subparagraph (A) are not met with respect to the ei-
3 ther of such States, the issuer provides an inde-
4 pendent review mechanism substantially identical (as
5 determined by the applicable State authority of such
6 State) to that prescribed in the ‘Health Carrier Ex-
7 ternal Review Model Act’ of the National Association
8 of Insurance Commissioners for all individuals who
9 purchase insurance coverage under the terms of this
10 part, except that, under such mechanism, the review
11 is conducted by an independent medical reviewer, or
12 a panel of such reviewers, with respect to whom the
13 requirements of subsection (b) are met.

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

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

21 “(A) each independent medical reviewer
22 meets the qualifications described in paragraphs
23 (2) and (3);

24 “(B) with respect to each review, each re-
25 viewer meets the requirements of paragraph (4)

1 and the reviewer, or at least 1 reviewer on the
2 panel, meets the requirements described in
3 paragraph (5); and

4 “(C) compensation provided by the issuer
5 to each reviewer is consistent with paragraph
6 (6).

7 “(2) LICENSURE AND EXPERTISE.—Each inde-
8 pendent medical reviewer shall be a physician
9 (allopathic or osteopathic) or health care profes-
10 sional who—

11 “(A) is appropriately credentialed or li-
12 censed in 1 or more States to deliver health
13 care services; and

14 “(B) typically treats the condition, makes
15 the diagnosis, or provides the type of treatment
16 under review.

17 “(3) INDEPENDENCE.—

18 “(A) IN GENERAL.—Subject to subpara-
19 graph (B), each independent medical reviewer
20 in a case shall—

21 “(i) not be a related party (as defined
22 in paragraph (7));

23 “(ii) not have a material familial, fi-
24 nancial, or professional relationship with
25 such a party; and

1 “(iii) not otherwise have a conflict of
2 interest with such a party (as determined
3 under regulations).

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

6 “(i) prohibit an individual, solely on
7 the basis of affiliation with the issuer,
8 from serving as an independent medical re-
9 viewer if—

10 “(I) a non-affiliated individual is
11 not reasonably available;

12 “(II) the affiliated individual is
13 not involved in the provision of items
14 or services in the case under review;

15 “(III) the fact of such an affili-
16 ation is disclosed to the issuer and the
17 enrollee (or authorized representative)
18 and neither party objects; and

19 “(IV) the affiliated individual is
20 not an employee of the issuer and
21 does not provide services exclusively or
22 primarily to or on behalf of the issuer;

23 “(ii) prohibit an individual who has
24 staff privileges at the institution where the
25 treatment involved takes place from serv-

1 ing as an independent medical reviewer
2 merely on the basis of such affiliation if
3 the affiliation is disclosed to the issuer and
4 the enrollee (or authorized representative),
5 and neither party objects; or

6 “(iii) prohibit receipt of compensation
7 by an independent medical reviewer from
8 an entity if the compensation is provided
9 consistent with paragraph (6).

10 “(4) PRACTICING HEALTH CARE PROFESSIONAL
11 IN SAME FIELD.—

12 “(A) IN GENERAL.—In a case involving
13 treatment, or the provision of items or serv-
14 ices—

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

24 “(ii) by a non-physician health care
25 professional, the reviewer, or at least 1

1 member of the review panel, shall be a
2 practicing non-physician health care pro-
3 fessional of the same or similar specialty
4 as the non-physician health care profes-
5 sional who, acting within the appropriate
6 scope of practice within the State in which
7 the service is provided or rendered, typi-
8 cally treats the condition, makes the diag-
9 nosis, or provides the type of treatment
10 under review.

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

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

21 “(6) LIMITATIONS ON REVIEWER COMPENSA-
22 TION.—Compensation provided by the issuer to an
23 independent medical reviewer in connection with a
24 review under this section shall—

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

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

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

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

9 “(B) The enrollee (or authorized represent-
10 ative).

11 “(C) The health care professional that pro-
12 vides the items or services involved in the de-
13 nial.

14 “(D) The institution at which the items or
15 services (or treatment) involved in the denial
16 are provided.

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

20 “(F) Any other party determined under
21 any regulations to have a substantial interest in
22 the denial involved.

23 “(8) DEFINITIONS.—For purposes of this sub-
24 section:

1 “(A) ENROLLEE.—The term ‘enrollee’
2 means, with respect to health insurance cov-
3 erage offered by a health insurance issuer, an
4 individual enrolled with the issuer to receive
5 such coverage.

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

12 **“SEC. 2799. ENFORCEMENT.**

13 “(a) IN GENERAL.—Subject to subsection (b), with
14 respect to specific individual health insurance coverage the
15 primary State for such coverage has sole jurisdiction to
16 enforce the primary State’s covered laws in the primary
17 State and any secondary State.

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

22 “(c) COURT INTERPRETATION.—In reviewing action
23 initiated by the applicable secondary State authority, the
24 court of competent jurisdiction shall apply the covered
25 laws of the primary State.

1 “(d) NOTICE OF COMPLIANCE FAILURE.—In the case
2 of individual health insurance coverage offered in a sec-
3 ondary State that fails to comply with the covered laws
4 of the primary State, the applicable State authority of the
5 secondary State may notify the applicable State authority
6 of the primary State.”.

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

11 (c) GAO ONGOING STUDY AND REPORTS.—

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

16 (A) the number of uninsured and under-in-
17 sured;

18 (B) the availability and cost of health in-
19 surance policies for individuals with pre-existing
20 medical conditions;

21 (C) the availability and cost of health in-
22 surance policies generally;

23 (D) the elimination or reduction of dif-
24 ferent types of benefits under health insurance
25 policies offered in different States; and

1 (E) cases of fraud or abuse relating to
2 health insurance coverage offered under such
3 amendment and the resolution of such cases.

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

9 **SEC. 5. SEVERABILITY.**

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

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