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AMENDMENT
OFFERED BY MR. KIRK OF ILLINOIS
[Amendment to H.R. 3962]

Insert at the end of title I of division A the following:

1 **SEC. 116. MEDICAL RIGHTS.**

2 (a) PROHIBITION ON RESTRICTIONS ON THE PRAC-
3 TICE OF MEDICINE AND OTHER HEALTH CARE PROFES-
4 SIONS.—

5 (1) IN GENERAL.—Subject to paragraph (2), no
6 Federal funds shall be used to permit any Federal
7 officer or employee to exercise any supervision or
8 control over—

9 (A) the practice of medicine, the practice
10 of other health care professions, or the manner
11 in which health care services are provided;

12 (B) the provision, by a physician or a
13 health care practitioner, of advice to a patient
14 about the patient's health status or rec-
15 ommended treatment for a condition or disease;

16 (C) the selection, tenure, or compensation
17 of any officer, employee, or contractor of any

1 institution, business, non-Federal agency, or in-
2 dividual providing health care services; or

3 (D) the administration or operation of any
4 such institution, business, non-Federal agency,
5 or individual, with respect to the provision of
6 health care services to a patient.

7 (2) PRESERVING CERTAIN CURRENT PRO-
8 GRAMS.—Paragraph (1) shall not prohibit the Fed-
9 eral government from operating, managing, super-
10 vising employees of, or defining the scope of services
11 provided by Federal entities when directly providing
12 health care services and products, only with respect
13 to the following:

14 (A) The Veterans Health Administration—

15 (i) in the case of directly providing
16 health care services through its own facili-
17 ties and by its own employees; or

18 (ii) in the case of coordinating health
19 care services not described in clause (i)
20 and paid for with Federal funds under pro-
21 grams operated by the Veterans Health
22 Administration.

23 (B) The Department of Defense—

1 (i) in the case of directly providing
2 health care services through military treat-
3 ment facilities;

4 (ii) in the case of paying for health
5 care services for active-duty members of
6 the armed forces or members of the re-
7 serve component when called to active
8 duty;

9 (iii) in the case of directly providing
10 health care services to the public in the
11 event of emergency or under other lawful
12 circumstances; or

13 (iv) when necessary to determine
14 whether health care services provided to
15 those who are not active-duty members of
16 the armed forces are eligible for payment
17 with Federal funds or to coordinate health
18 care services for patients who are served
19 by both non-Federal entities and military
20 treatment facilities.

21 (C) The United States Public Health Serv-
22 ice—

23 (i) in the case of providing health care
24 services through its own facilities or by its
25 officers or civilian Federal employees;

1 (ii) in the case of providing or paying
2 for health care services to active-duty
3 members of uniformed services or to re-
4 serve members of such services when called
5 to active duty; or

6 (iii) when necessary to determine
7 whether health care services provided to
8 those who are not active-duty members of
9 uniformed services are eligible for payment
10 with Federal funds or to coordinate health
11 care services for patients who are served
12 by both non-Federal entities and Public
13 Health Service treatment facilities

14 (D) The Indian Health Service—

15 (i) in the case of directly providing
16 health care services through its own facili-
17 ties or Federal employees; or

18 (ii) in the case of providing care by
19 non-Federal entities, to the extent nec-
20 essary to administer contracts and grants
21 pursuant to the Indian Health Care Im-
22 provement Act;

23 (E) The National Institutes of Health—

24 (i) in the case of providing direct pa-
25 tient care incident to medical research; or

1 (ii) in the case of administering
2 grants for medical research, but in no case
3 shall a non-Federal entity be required or
4 requested to waive the protections of sub-
5 section (a) for health care services not inci-
6 dent to medical research funded by the
7 National Institutes of Health as a condi-
8 tion of receiving research grant funding
9 from the National Institutes of Health.

10 (F) The Health Resources and Services
11 Administration—

12 (i) in the case of certifying Federally-
13 qualified health centers, as defined by sec-
14 tion 1905(l)(2)(B) of the Social Security
15 Act (42 U.S.C. 1396d(l)(2)(B)), certifying
16 FQHC look-alike status, as defined in sec-
17 tion 413.65(n) of title 45 of the Code of
18 Federal Regulations, or providing grants
19 under section 330 of the Public Health
20 Service Act (42 U.S.C. 254b), but only to
21 the extent necessary to determine eligibility
22 for such certification and grant funding
23 and the appropriate amounts of such fund-
24 ing; or

1 (ii) in the case of operating the na-
2 tion's human organ, bone marrow, and
3 umbilical cord blood donation and trans-
4 plantation systems, as and to the extent
5 authorized by law and necessary for the
6 operation of those programs.

7 (b) RIGHT TO CONTRACT FOR HEALTH CARE SERV-
8 ICES AND HEALTH INSURANCE.—

9 (1) RECEIPT OF HEALTH SERVICES.—No Fed-
10 eral funds shall be used by any Federal officer or
11 employee to prohibit any individual from receiving
12 health care services from any provider of health care
13 services—

14 (A) under terms and conditions mutually
15 acceptable to the patient and the provider; or

16 (B) under terms and conditions mutually
17 acceptable to the patient, the provider, and any
18 group health plan or health insurance issuer
19 that is obligated to provide health insurance
20 coverage to the patient or any other entity in-
21 demnifying the patient's consumption of health
22 care services; provided that

23 provided that any such agreement shall be subject to
24 the requirements of section 1802(b) of the Social Se-

1 security Act (42 U.S.C. 1395a(b)), as amended by
2 subsection (e).

3 (2) HEALTH INSURANCE COVERAGE.—No Fed-
4 eral funds shall be used by any Federal officer or
5 employee to prohibit any person from entering into
6 a contract with any group health plan, health insur-
7 ance issuer, or other business, for the provision of,
8 or payment to other parties for, health care services
9 to be determined and provided subsequent to the ef-
10 fective date of the contract, according to terms, con-
11 ditions, and procedures specified in such contract.

12 (3) ELIGIBILITY FOR FEDERAL BENEFITS.—No
13 person's eligibility for benefits under any program
14 operated by or funded wholly or partly by the Fed-
15 eral government shall be adversely affected as a re-
16 sult of having received services in a manner de-
17 scribed by paragraph (1) or having entered into a
18 contract described in paragraph (2).

19 (4) FEDERAL PROGRAM PARTICIPATION.—No
20 provider of health care services—

21 (A) shall be denied participation in a Fed-
22 eral program for which it would otherwise be el-
23 igible as a result of having provided services in
24 a manner described in paragraph (1); or

1 (B) shall be denied payment for services
2 otherwise eligible for payment under a Federal
3 program as a result of having provided services
4 in a manner described in paragraph (1), except
5 to the extent required by paragraph (1)(A).

6 (c) PROHIBITION ON MANDATING STATE RESTRIC-
7 TIONS.—

8 (1) IN GENERAL.—No Federal funds shall be
9 used by any Federal officer or employee to induce or
10 encourage any State or other jurisdiction of the
11 United States to enact any restriction or prohibition
12 prohibited to the Federal Government by this sec-
13 tion.

14 (2) PROTECTING STATE ELIGIBILITY FOR FED-
15 ERAL FUNDS.—No State's eligibility for participa-
16 tion in any program operated by or funded wholly or
17 partly by the Federal government, or for receiving
18 funds from the Federal government shall be condi-
19 tioned on that State enacting any restriction or pro-
20 hibition prohibited to the Federal Government by
21 this Act, nor adversely affected by that State's fail-
22 ure to enact any restriction or prohibition prohibited
23 to the Federal Government by this section.

1 (d) CLARIFICATION.—Nothing in this section shall be
2 construed to permit the expenditure of funds otherwise
3 prohibited by law.

4 (e) CONFORMING AMENDMENT.—Section 1802(b)(3)
5 of the Social Security Act (42 U.S.C. 1395(2)(B)) is here-
6 by repealed.

7 (f) DEFINITIONS.—For purposes of this section:

8 (1) HEALTH CARE SERVICES.—The term
9 “health care services” means any lawful service in-
10 tended to diagnose, cure, prevent, or mitigate the
11 adverse effects of any disease, injury, infirmity, or
12 physical or mental disability, including the provision
13 of any lawful product the use of which is so in-
14 tended.

15 (2) PHYSICIAN.—The term “physician”
16 means—

17 (A) a doctor of medicine or osteopathy le-
18 gally authorized to practice medicine and sur-
19 gery by the State in which he performs such
20 practice and surgery;

21 (B) a doctor of dental surgery or of dental
22 medicine who is legally authorized to practice
23 dentistry by the State in which he performs
24 such function and who is acting within the

1 scope of his license when he performs such
2 functions;

3 (C) a doctor of podiatric medicine but only
4 with respect to functions which he is legally au-
5 thorized to perform as such by the State in
6 which he performs them;

7 (D) a doctor of optometry with respect to
8 the provision of items or services which he is le-
9 gally authorized to perform as a doctor of op-
10 tometry by the State in which he performs
11 them; or

12 (E) a chiropractor who is licensed as such
13 by the State (or in a State which does not li-
14 cense chiropractors as such, is legally author-
15 ized to perform the services of a chiropractor in
16 the jurisdiction in which he performs such serv-
17 ices), but only with respect to treatment which
18 he is legally authorized to perform by the State
19 or jurisdiction in which such treatment is pro-
20 vided.

21 (3) PRACTICE OF MEDICINE.—The term “prac-
22 tice of medicine” means—

23 (A) health care services that are performed
24 by physicians; and

1 (B) services and supplies furnished as an
2 incident to a physician's professional service.

3 (4) HEALTH CARE PRACTITIONER.—The term
4 “health care practitioner” means a physician assist-
5 ant, registered nurse, nurse practitioner, psycholo-
6 gist, clinical social worker, midwife, or other indi-
7 vidual (other than a physician) licensed or legally
8 authorized to perform health care services in the
9 State in which the individual performs such services.

10 (5) PRACTICE OF OTHER HEALTH CARE PRO-
11 FESSIONS.—The term “practice of other health care
12 professions” means—

13 (A) health care services performed by a
14 health care practitioner; and

15 (B) services and supplies furnished as an
16 incident to a health care practitioner's profes-
17 sional service.

18 (6) GROUP HEALTH PLAN.—The term “group
19 health plan” has the meaning given such term in
20 section 733(a)(1) of the Employee Retirement In-
21 come Security Act of 1974 (29 U.S.C. 1191b(a)(1)).

22 (7) HEALTH INSURANCE ISSUER.—The term
23 “health insurance issuer” has the meaning given
24 such term in section 733(b)(2) of the Employee Re-

1 tirement Income Security Act of 1974 (29 U.S.C.
2 1191b(b)(2)).

3 (8) BUSINESS.—The term “business” means
4 any sole proprietorship, partnership, for-profit cor-
5 poration, or not-for-profit corporation.

6 (9) STATE.—The term “State” means any of
7 the United States, the Commonwealth of Puerto
8 Rico, the Commonwealth of the Northern Mariana
9 Islands, the United States Virgin Islands, Guam,
10 American Samoa, or the District of Columbia.

11 (g) EFFECTIVE DATE.—The provisions of this sec-
12 tion shall apply to Federal entities, including employees
13 and officials of such entities, beginning on January 1,
14 2009.

