

172

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3962
OFFERED BY MR. SHADEGG OF ARIZONA**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. COOPERATIVE GOVERNING OF INDIVIDUAL**
2 **HEALTH INSURANCE COVERAGE TO PERMIT**
3 **INDIVIDUALS TO PURCHASE HEALTH INSUR-**
4 **ANCE ACROSS STATE LINES.**

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

1 only designate one such State as its primary State
2 with respect to all such coverage it offers. Such an
3 issuer may not change the designated primary State
4 with respect to individual health insurance coverage
5 once the policy is issued, except that such a change
6 may be made upon renewal of the policy. With re-
7 spect to such designated State, the issuer is deemed
8 to be doing business in that State.

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

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

23 “(4) INDIVIDUAL HEALTH INSURANCE COV-
24 ERAGE.—The term ‘individual health insurance cov-
25 erage’ means health insurance coverage offered in

1 the individual market, as defined in section
2 2791(e)(1).

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

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

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

17 “(B) to pay other obligations in the normal
18 course of business.

19 “(7) COVERED LAWS.—

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

24 “(i) individual health insurance cov-
25 erage issued by a health insurance issuer;

1 “(ii) the offer, sale, rating (including
2 medical underwriting), renewal, and
3 issuance of individual health insurance cov-
4 erage to an individual;

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

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

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

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

1 adequacy, health care data collection, or quality
2 assurance.

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

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

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

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

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

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

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

24 “(F) Failing to affirm or deny coverage of
25 claims within a reasonable period of time after

1 having completed an investigation related to
2 those claims.

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

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

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

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

1 “(K) Attempting to cancel a policy in less
2 time than that prescribed in the policy or by the
3 law of the primary State.

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

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

15 “(i) An application for the issuance or
16 renewal of an insurance policy or reinsur-
17 ance contract.

18 “(ii) The rating of an insurance policy
19 or reinsurance contract.

20 “(iii) A claim for payment or benefit
21 pursuant to an insurance policy or reinsur-
22 ance contract.

23 “(iv) Premiums paid on an insurance
24 policy or reinsurance contract.

1 “(v) Payments made in accordance
2 with the terms of an insurance policy or
3 reinsurance contract.

4 “(vi) A document filed with the com-
5 missioner or the chief insurance regulatory
6 official of another jurisdiction.

7 “(vii) The financial condition of an in-
8 surer or reinsurer.

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

14 “(ix) The issuance of written evidence
15 of insurance.

16 “(x) The reinstatement of an insur-
17 ance policy.

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

1 “(C) Transaction of the business of insur-
2 ance in violation of laws requiring a license, cer-
3 tificate of authority or other legal authority for
4 the transaction of the business of insurance.

5 “(D) Attempt to commit, aiding or abet-
6 ting in the commission of, or conspiracy to com-
7 mit the acts or omissions specified in this para-
8 graph.

9 **“SEC. 2796. APPLICATION OF LAW.**

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

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

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

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

10 “(B) to register with and designate the
11 State insurance commissioner as its agent solely
12 for the purpose of receiving service of legal doc-
13 uments or process;

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

19 “(i) the State insurance commissioner
20 of the primary State has not done an ex-
21 amination within the period recommended
22 by the National Association of Insurance
23 Commissioners; and

24 “(ii) any such examination is con-
25 ducted in accordance with the examiners’

1 handbook of the National Association of
2 Insurance Commissioners and is coordi-
3 nated to avoid unjustified duplication and
4 unjustified repetition;

5 “(D) to comply with a lawful order
6 issued—

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

12 “(ii) in a voluntary dissolution pro-
13 ceeding;

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

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

24 “(G) to comply with any State law regard-
25 ing fraud and abuse (as defined in section

1 2795(10)), except that if the State seeks an in-
2 junction regarding the conduct described in this
3 subparagraph, such injunction must be obtained
4 from a court of competent jurisdiction;

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

8 “(I) to comply with the applicable require-
9 ments for independent review under section
10 2798 with respect to coverage offered in the
11 State;

12 “(2) require any individual health insurance
13 coverage issued by the issuer to be countersigned by
14 an insurance agent or broker residing in that Sec-
15 ondary State; or

16 “(3) otherwise discriminate against the issuer
17 issuing insurance in both the primary State and in
18 any secondary State.

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

1 State, the name of the secondary State, the name of the
2 secondary State, and the name of the secondary State, re-
3 spectively, for the coverage concerned:

4 **'Notice This policy is issued by _____ and is**
5 **governed by the laws and regulations of the**
6 **State of _____, and it has met all the laws of**
7 **that State as determined by that State's De-**
8 **partment of Insurance. This policy may be**
9 **less expensive than others because it is not**
10 **subject to all of the insurance laws and regu-**
11 **lations of the State of _____, including cov-**
12 **erage of some services or benefits mandated**
13 **by the law of the State of _____. Additionally,**
14 **this policy is not subject to all of the con-**
15 **sumer protection laws or restrictions on rate**
16 **changes of the State of _____. As with all in-**
17 **surance products, before purchasing this pol-**
18 **icy, you should carefully review the policy**
19 **and determine what health care services the**
20 **policy covers and what benefits it provides,**
21 **including any exclusions, limitations, or con-**
22 **ditions for such services or benefits.'"**

23 “(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS
24 AND PREMIUM INCREASES.—

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

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

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

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

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

22 “(B) from raising premium rates for all
23 policy holders within a class based on claims ex-
24 perience;

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

6 “(i) are disclosed to the consumer in
7 the insurance contract;

8 “(ii) are based on specific wellness ac-
9 tivities that are not applicable to all indi-
10 viduals; and

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

13 “(D) from reinstating lapsed coverage; or

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

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

23 “(f) LICENSING OF AGENTS OR BROKERS FOR
24 HEALTH INSURANCE ISSUERS.—Any State may require
25 that a person acting, or offering to act, as an agent or

1 broker for a health insurance issuer with respect to the
2 offering of individual health insurance coverage obtain a
3 license from that State, with commissions or other com-
4 pensation subject to the provisions of the laws of that
5 State, except that a State may not impose any qualifica-
6 tion or requirement which discriminates against a non-
7 resident agent or broker.

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

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

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

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

23 “(C) written notice from the issuer of the
24 issuer’s compliance with all the laws of the pri-
25 mary State; and

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

9 “(A) a member of the American Academy
10 of Actuaries; or

11 “(B) a qualified loss reserve specialist.

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

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

19 “(2) the solicitation or sale of individual health
20 insurance coverage that violates the requirements of
21 the law of a secondary State which are described in
22 subparagraphs (A) through (H) of section
23 2796(b)(1).

24 “(i) POWER OF SECONDARY STATES TO TAKE AD-
25 MINISTRATIVE ACTION.—Nothing in this section shall be

1 construed to affect the authority of any State to enjoin
2 conduct in violation of that State's laws described in sec-
3 tion 2796(b)(1).

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

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

12 “(2) COURTS OF COMPETENT JURISDICTION.—

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

17 “(k) STATES' AUTHORITY TO SUE.—Nothing in this
18 section shall affect the authority of any State to bring ac-
19 tion in any Federal or State court.

20 “(l) GENERALLY APPLICABLE LAWS.—Nothing in
21 this section shall be construed to affect the applicability
22 of State laws generally applicable to persons or corpora-
23 tions.

24 “(m) GUARANTEED AVAILABILITY OF COVERAGE TO
25 HIPAA ELIGIBLE INDIVIDUALS.—To the extent that a

1 health insurance issuer is offering coverage in a primary
2 State that does not accommodate residents of secondary
3 States or does not provide a working mechanism for resi-
4 dents of a secondary State, and the issuer is offering cov-
5 erage under this part in such secondary State which has
6 not adopted a qualified high risk pool as its acceptable
7 alternative mechanism (as defined in section 2744(c)(2)),
8 the issuer shall, with respect to any individual health in-
9 surance coverage offered in a secondary State under this
10 part, comply with the guaranteed availability requirements
11 for eligible individuals in section 2741.

12 **“SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR**
13 **BEFORE ISSUER MAY SELL INTO SECONDARY**
14 **STATES.**

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

21 **“SEC. 2798. INDEPENDENT EXTERNAL APPEALS PROCE-**
22 **DURES.**

23 “(a) **RIGHT TO EXTERNAL APPEAL.**—A health insur-
24 ance issuer may not offer, sell, or issue individual health

1 insurance coverage in a secondary State under the provi-
2 sions of this title unless—

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

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

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

24 “(1) IN GENERAL.—In referring a denial of a
25 claim to an independent medical reviewer, or to any

1 panel of such reviewers, to conduct independent
2 medical review, the issuer shall ensure that—

3 “(A) each independent medical reviewer
4 meets the qualifications described in paragraphs
5 (2) and (3);

6 “(B) with respect to each review, each re-
7 viewer meets the requirements of paragraph (4)
8 and the reviewer, or at least 1 reviewer on the
9 panel, meets the requirements described in
10 paragraph (5); and

11 “(C) compensation provided by the issuer
12 to each reviewer is consistent with paragraph
13 (6).

14 “(2) LICENSURE AND EXPERTISE.—Each inde-
15 pendent medical reviewer shall be a physician
16 (allopathic or osteopathic) or health care profes-
17 sional who—

18 “(A) is appropriately credentialed or li-
19 censed in 1 or more States to deliver health
20 care services; and

21 “(B) typically treats the condition, makes
22 the diagnosis, or provides the type of treatment
23 under review.

24 “(3) INDEPENDENCE.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), each independent medical reviewer
3 in a case shall—

4 “(i) not be a related party (as defined
5 in paragraph (7));

6 “(ii) not have a material familial, fi-
7 nancial, or professional relationship with
8 such a party; and

9 “(iii) not otherwise have a conflict of
10 interest with such a party (as determined
11 under regulations).

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

14 “(i) prohibit an individual, solely on
15 the basis of affiliation with the issuer,
16 from serving as an independent medical re-
17 viewer if—

18 “(I) a non-affiliated individual is
19 not reasonably available;

20 “(II) the affiliated individual is
21 not involved in the provision of items
22 or services in the case under review;

23 “(III) the fact of such an affli-
24 ation is disclosed to the issuer and the

1 enrollee (or authorized representative)
2 and neither party objects; and

3 “(IV) the affiliated individual is
4 not an employee of the issuer and
5 does not provide services exclusively or
6 primarily to or on behalf of the issuer;

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

15 “(iii) prohibit receipt of compensation
16 by an independent medical reviewer from
17 an entity if the compensation is provided
18 consistent with paragraph (6).

19 “(4) PRACTICING HEALTH CARE PROFESSIONAL
20 IN SAME FIELD.—

21 “(A) IN GENERAL.—In a case involving
22 treatment, or the provision of items or serv-
23 ices—

24 “(i) by a physician, a reviewer shall be
25 a practicing physician (allopathic or osteo-

1 pathic) of the same or similar specialty, as
2 a physician who, acting within the appro-
3 priate scope of practice within the State in
4 which the service is provided or rendered,
5 typically treats the condition, makes the
6 diagnosis, or provides the type of treat-
7 ment under review; or

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

20 “(B) PRACTICING DEFINED.—For pur-
21 poses of this paragraph, the term ‘practicing’
22 means, with respect to an individual who is a
23 physician or other health care professional, that
24 the individual provides health care services to

1 individual patients on average at least 2 days
2 per week.

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

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

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

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

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

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

19 “(B) The enrollee (or authorized represent-
20 ative).

21 “(C) The health care professional that pro-
22 vides the items or services involved in the de-
23 nial.

1 “(D) The institution at which the items or
2 services (or treatment) involved in the denial
3 are provided.

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

7 “(F) Any other party determined under
8 any regulations to have a substantial interest in
9 the denial involved.

10 “(8) DEFINITIONS.—For purposes of this sub-
11 section:

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

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

23 “SEC. 2799. ENFORCEMENT.

24 “(a) IN GENERAL.—Subject to subsection (b), with
25 respect to specific individual health insurance coverage the

1 primary State for such coverage has sole jurisdiction to
2 enforce the primary State's covered laws in the primary
3 State and any secondary State.

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

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

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

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

22 (c) GAO ONGOING STUDY AND REPORTS.—

23 (1) STUDY.—The Comptroller General of the
24 United States shall conduct an ongoing study con-

1 cerning the effect of the amendment made by sub-
2 section (a) on—

3 (A) the number of uninsured and under-in-
4 sured;

5 (B) the availability and cost of health in-
6 surance policies for individuals with pre-existing
7 medical conditions;

8 (C) the availability and cost of health in-
9 surance policies generally;

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

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

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

21 (d) USE OF SAVINGS.—Any savings generated as a
22 result of the amendment made by subsection (a) shall be
23 utilized by the Secretary of Health and Human Services

- 1 to create a voucher program to assist individuals with the
- 2 purchase of health care insurance.

