

111TH CONGRESS  
2D SESSION

# H. R. 4696

To expand the availability of health savings accounts, to eliminate restrictions on the deduction for medical expenses, and to provide for cooperative governing of individual health insurance coverage offered in interstate commerce.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 2010

Mrs. BACHMANN introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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

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## A BILL

To expand the availability of health savings accounts, to eliminate restrictions on the deduction for medical expenses, and 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. EXPANSION OF HEALTH SAVINGS ACCOUNTS.**

4 (a) REPEAL OF HEALTH INSURANCE REQUIREMENT  
5 AS CONDITION OF DEDUCTION FOR CONTRIBUTIONS TO  
6 HEALTH SAVINGS ACCOUNTS.—Subsection (a) of section

1 223 of the Internal Revenue Code of 1986 is amended by  
2 striking “who is an eligible individual for any month dur-  
3 ing the taxable year”.

4 (b) INCREASE IN LIMITATION.—Paragraph (1) of  
5 section 223(b) of such Code is amended to read as follows:

6 “(1) IN GENERAL.—The amount allowable as a  
7 deduction under subsection (a) to an individual for  
8 the taxable year shall not exceed—

9 “(A) in the case of an individual who is  
10 not married and does not have any qualifying  
11 children (within the meaning of section 152(c)),  
12 \$8,500, and

13 “(B) in the case of any other individual,  
14 \$17,000.”.

15 (c) DISTRIBUTIONS FOR HEALTH INSURANCE  
16 TREATED AS QUALIFIED DISTRIBUTIONS.—Paragraph  
17 (2) of section 223(d) of such Code is amended by striking  
18 subparagraphs (B) and (C).

19 (d) CONFORMING AMENDMENTS.—

20 (1) Subsection (b) of section 223 of such Code  
21 is amended by striking paragraphs (2) and (8) and  
22 by redesignating paragraphs (3) through (7) as  
23 paragraphs (2) through (6), respectively.

1           (2) Paragraph (4) of section 223(b) of such  
2 Code, as redesignated by paragraph (1), is amended  
3 to read as follows:

4           “(4) SPECIAL RULE FOR MARRIED INDIVID-  
5 UALS.—In the case of individuals who are married  
6 to each other, the limitation under paragraph (1)  
7 (without regard to any additional contribution  
8 amount under paragraph (2))—

9           “(A) shall be reduced by the aggregate  
10 amount paid to Archer MSAs (within the mean-  
11 ing of section 220) of such spouses for the tax-  
12 able year, and

13           “(B) after such reduction, shall be divided  
14 equally between them unless they agree on a  
15 different division.”.

16           (3)(A) Section 223 of such Code is amended by  
17 striking subsection (c).

18           (B) Subparagraph (A) of section 223(b)(3) of  
19 such Code, as redesignated by paragraph (1), is  
20 amended by inserting “(within the meaning of sec-  
21 tion 220)” after “Archer MSAs”.

22           (4) Section 223 of such Code is amended by  
23 striking subsection (g).

24           (e) EFFECTIVE DATE.—The amendments made by  
25 this section shall apply to taxable years beginning after

1 the calendar year which includes the date of the enactment  
2 of this Act.

3 **SEC. 2. TAX DEDUCTIBILITY OF MEDICAL EXPENSES FOR**  
4 **INDIVIDUALS.**

5 (a) IN GENERAL.—Section 213(a) of the Internal  
6 Revenue Code of 1986 (relating to the treatment of med-  
7 ical and dental expenses) is amended to read as follows:

8 “(a) ALLOWANCE OF DEDUCTION.—There shall be  
9 allowed as a deduction the expenses paid during the tax-  
10 able year, not compensated for by insurance or otherwise,  
11 for medical care of the taxpayer, the taxpayer’s spouse,  
12 or a dependent (as defined in section 152, determined  
13 without regard to subsections (b)(1), (b)(2), and (d)(1)(B)  
14 thereof).”.

15 (b) EFFECTIVE DATE.—The amendment made by  
16 subsection (a) shall apply to taxable years beginning after  
17 the calendar year which includes the date of the enactment  
18 of this Act.

19 **SEC. 3. COOPERATIVE GOVERNING OF INDIVIDUAL**  
20 **HEALTH INSURANCE COVERAGE.**

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

1           **“PART D—COOPERATIVE GOVERNING OF**  
2           **INDIVIDUAL HEALTH INSURANCE COVERAGE**

3           **“SEC. 2795. DEFINITIONS.**

4           “In this part:

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

20                   “(2) SECONDARY STATE.—The term ‘secondary  
21          State’ means, with respect to individual health insur-  
22          ance coverage offered by a health insurance issuer,  
23          any State that is not the primary State. In the case  
24          of a health insurance issuer that is selling a policy  
25          in, or to a resident of, a secondary State, the issuer

1 is deemed to be doing business in that secondary  
2 State.

3 “(3) HEALTH INSURANCE ISSUER.—The term  
4 ‘health insurance issuer’ has the meaning given such  
5 term in section 2791(b)(2), except that such an  
6 issuer must be licensed in the primary State and be  
7 qualified to sell individual health insurance coverage  
8 in that State.

9 “(4) INDIVIDUAL HEALTH INSURANCE COV-  
10 ERAGE.—The term ‘individual health insurance cov-  
11 erage’ means health insurance coverage offered in  
12 the individual market, as defined in section  
13 2791(e)(1).

14 “(5) APPLICABLE STATE AUTHORITY.—The  
15 term ‘applicable State authority’ means, with respect  
16 to a health insurance issuer in a State, the State in-  
17 surance commissioner or official or officials des-  
18 ignated by the State to enforce the requirements of  
19 this title for the State with respect to the issuer.

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

1           “(A) to meet obligations to policyholders  
2 with respect to known claims and reasonably  
3 anticipated claims; or

4           “(B) to pay other obligations in the normal  
5 course of business.

6           “(7) COVERED LAWS.—

7           “(A) IN GENERAL.—The term ‘covered  
8 laws’ means the laws, rules, regulations, agree-  
9 ments, and orders governing the insurance busi-  
10 ness pertaining to—

11           “(i) individual health insurance cov-  
12 erage issued by a health insurance issuer;

13           “(ii) the offer, sale, rating (including  
14 medical underwriting), renewal, and  
15 issuance of individual health insurance cov-  
16 erage to an individual;

17           “(iii) the provision to an individual in  
18 relation to individual health insurance cov-  
19 erage of health care and insurance related  
20 services;

21           “(iv) the provision to an individual in  
22 relation to individual health insurance cov-  
23 erage of management, operations, and in-  
24 vestment activities of a health insurance  
25 issuer; and

1           “(v) the provision to an individual in  
2           relation to individual health insurance cov-  
3           erage of loss control and claims adminis-  
4           tration for a health insurance issuer with  
5           respect to liability for which the issuer pro-  
6           vides insurance.

7           “(B) EXCEPTION.—Such term does not in-  
8           clude any law, rule, regulation, agreement, or  
9           order governing the use of care or cost manage-  
10          ment techniques, including any requirement re-  
11          lated to provider contracting, network access or  
12          adequacy, health care data collection, or quality  
13          assurance.

14          “(8) STATE.—The term ‘State’ means the 50  
15          States and includes the District of Columbia, Puerto  
16          Rico, the Virgin Islands, Guam, American Samoa,  
17          and the Northern Mariana Islands.

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

21                 “(A) Knowingly misrepresenting to claim-  
22                 ants and insured individuals relevant facts or  
23                 policy provisions relating to coverage at issue.



1           “(B) Failing to acknowledge with reason-  
2           able promptness pertinent communications with  
3           respect to claims arising under policies.

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

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

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

12          “(F) Failing to affirm or deny coverage of  
13          claims within a reasonable period of time after  
14          having completed an investigation related to  
15          those claims.

16          “(G) A pattern or practice of compelling  
17          insured individuals or their beneficiaries to in-  
18          stitute suits to recover amounts due under its  
19          policies by offering substantially less than the  
20          amounts ultimately recovered in suits brought  
21          by them.

22          “(H) A pattern or practice of attempting  
23          to settle or settling claims for less than the  
24          amount that a reasonable person would believe  
25          the insured individual or his or her beneficiary

1 was entitled by reference to written or printed  
2 advertising material accompanying or made  
3 part of an application.

4 “(I) Attempting to settle or settling claims  
5 on the basis of an application that was materi-  
6 ally altered without notice to, or knowledge or  
7 consent of, the insured.

8 “(J) Failing to provide forms necessary to  
9 present claims within 15 calendar days of a re-  
10 quests with reasonable explanations regarding  
11 their use.

12 “(K) Attempting to cancel a policy in less  
13 time than that prescribed in the policy or by the  
14 law of the primary State.

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

20 “(A) Presenting, causing to be presented  
21 or preparing with knowledge or belief that it  
22 will be presented to or by an insurer, a rein-  
23 surer, broker or its agent, false information as  
24 part of, in support of or concerning a fact ma-  
25 terial to one or more of the following:

1           “(i) An application for the issuance or  
2 renewal of an insurance policy or reinsur-  
3 ance contract.

4           “(ii) The rating of an insurance policy  
5 or reinsurance contract.

6           “(iii) A claim for payment or benefit  
7 pursuant to an insurance policy or reinsur-  
8 ance contract.

9           “(iv) Premiums paid on an insurance  
10 policy or reinsurance contract.

11           “(v) Payments made in accordance  
12 with the terms of an insurance policy or  
13 reinsurance contract.

14           “(vi) A document filed with the com-  
15 missioner or the chief insurance regulatory  
16 official of another jurisdiction.

17           “(vii) The financial condition of an in-  
18 surer or reinsurer.

19           “(viii) The formation, acquisition,  
20 merger, reconsolidation, dissolution or  
21 withdrawal from one or more lines of in-  
22 surance or reinsurance in all or part of a  
23 State by an insurer or reinsurer.

24           “(ix) The issuance of written evidence  
25 of insurance.

1           “(x) The reinstatement of an insur-  
2           ance policy.

3           “(B) Solicitation or acceptance of new or  
4           renewal insurance risks on behalf of an insurer  
5           reinsurer or other person engaged in the busi-  
6           ness of insurance by a person who knows or  
7           should know that the insurer or other person  
8           responsible for the risk is insolvent at the time  
9           of the transaction.

10           “(C) Transaction of the business of insur-  
11           ance in violation of laws requiring a license, cer-  
12           tificate of authority or other legal authority for  
13           the transaction of the business of insurance.

14           “(D) Attempt to commit, aiding or abet-  
15           ting in the commission of, or conspiracy to com-  
16           mit the acts or omissions specified in this para-  
17           graph.

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

19           “(a) IN GENERAL.—The covered laws of the primary  
20           State shall apply to individual health insurance coverage  
21           offered by a health insurance issuer in the primary State  
22           and in any secondary State, but only if the coverage and  
23           issuer comply with the conditions of this section with re-  
24           spect to the offering of coverage in any secondary State.

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

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

14                       “(A) to pay, on a nondiscriminatory basis,  
15                       applicable premium and other taxes (including  
16                       high risk pool assessments) which are levied on  
17                       insurers and surplus lines insurers, brokers, or  
18                       policyholders under the laws of the State;

19                       “(B) to register with and designate the  
20                       State insurance commissioner as its agent solely  
21                       for the purpose of receiving service of legal doc-  
22                       uments or process;

23                       “(C) to submit to an examination of its fi-  
24                       nancial condition by the State insurance com-  
25                       missioner in any State in which the issuer is

1 doing business to determine the issuer’s finan-  
2 cial condition, if—

3 “(i) the State insurance commissioner  
4 of the primary State has not done an ex-  
5 amination within the period recommended  
6 by the National Association of Insurance  
7 Commissioners; and

8 “(ii) any such examination is con-  
9 ducted in accordance with the examiners’  
10 handbook of the National Association of  
11 Insurance Commissioners and is coordi-  
12 nated to avoid unjustified duplication and  
13 unjustified repetition;

14 “(D) to comply with a lawful order  
15 issued—

16 “(i) in a delinquency proceeding com-  
17 menced by the State insurance commis-  
18 sioner if there has been a finding of finan-  
19 cial impairment under subparagraph (C);  
20 or

21 “(ii) in a voluntary dissolution pro-  
22 ceeding;

23 “(E) to comply with an injunction issued  
24 by a court of competent jurisdiction, upon a pe-  
25 tition by the State insurance commissioner al-

1           leging that the issuer is in hazardous financial  
2           condition;

3           “(F) to participate, on a nondiscriminatory  
4           basis, in any insurance insolvency guaranty as-  
5           sociation or similar association to which a  
6           health insurance issuer in the State is required  
7           to belong;

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

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

17          “(I) to comply with the applicable require-  
18          ments for independent review under section  
19          2798 with respect to coverage offered in the  
20          State;

21          “(2) require any individual health insurance  
22          coverage issued by the issuer to be countersigned by  
23          an insurance agent or broker residing in that Sec-  
24          ondary State; or

1           “(3) otherwise discriminate against the issuer  
2           issuing insurance in both the primary State and in  
3           any secondary State.

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

14 **‘Notice: This policy is issued by \_\_\_\_\_ and**  
15 **is governed by the laws and regulations of the**  
16 **State of \_\_\_\_\_, and it has met all the laws**  
17 **of that State as determined by that State’s De-**  
18 **partment of Insurance. This policy may be**  
19 **less expensive than others because it is not**  
20 **subject to all of the insurance laws and regu-**  
21 **lations of the State of \_\_\_\_\_, including**  
22 **coverage of some services or benefits man-**  
23 **dated by the law of the State of \_\_\_\_\_ . Ad-**  
24 **ditionally, this policy is not subject to all of**  
25 **the consumer protection laws or restrictions**



1 **on rate changes of the State of \_\_\_\_\_ . As**  
2 **with all insurance products, before pur-**  
3 **chasing this policy, you should carefully re-**  
4 **view the policy and determine what health**  
5 **care services the policy covers and what bene-**  
6 **fits it provides, including any exclusions, limi-**  
7 **tations, or conditions for such services or ben-**  
8 **efits.’**

9 “(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS  
10 AND PREMIUM INCREASES.—

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

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

21 “(B) increase the premiums assessed the  
22 individual for such coverage based on a health  
23 status-related factor or change of a health sta-  
24 tus-related factor or the past or prospective  
25 claim experience of the insured individual.

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

4           “(A) from terminating or discontinuing  
5 coverage or a class of coverage in accordance  
6 with subsections (b) and (c) of section 2742;

7           “(B) from raising premium rates for all  
8 policy holders within a class based on claims ex-  
9 perience;

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

15           “(i) are disclosed to the consumer in  
16 the insurance contract;

17           “(ii) are based on specific wellness ac-  
18 tivities that are not applicable to all indi-  
19 viduals; and

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

22           “(D) from reinstating lapsed coverage; or

23           “(E) from retroactively adjusting the rates  
24 charged an insured individual if the initial rates

1           were set based on material misrepresentation by  
2           the individual at the time of issue.

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

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

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

22           “(1) to the insurance commissioner of each  
23 State in which it intends to offer such coverage, be-  
24 fore it may offer individual health insurance cov-  
25 erage in such State—

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

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

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

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

19                 “(A) a member of the American Academy  
20                 of Actuaries; or

21                 “(B) a qualified loss reserve specialist.

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

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

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

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

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

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

23           “(2) COURTS OF COMPETENT JURISDICTION.—

24          If a State seeks an injunction regarding the conduct  
25 described in paragraphs (1) and (2) of subsection

1 (h), such injunction must be obtained from a Fed-  
2 eral or State court of competent jurisdiction.

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

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

10 “(m) GUARANTEED AVAILABILITY OF COVERAGE TO  
11 HIPAA ELIGIBLE INDIVIDUALS.—To the extent that a  
12 health insurance issuer is offering coverage in a primary  
13 State that does not accommodate residents of secondary  
14 States or does not provide a working mechanism for resi-  
15 dents of a secondary State, and the issuer is offering cov-  
16 erage under this part in such secondary State which has  
17 not adopted a qualified high risk pool as its acceptable  
18 alternative mechanism (as defined in section 2744(c)(2)),  
19 the issuer shall, with respect to any individual health in-  
20 surance coverage offered in a secondary State under this  
21 part, comply with the guaranteed availability requirements  
22 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           (d) SEVERABILITY.—If any provision of this section  
7           or the application of such provision to any person or cir-  
8           cumstance is held to be unconstitutional, the remainder  
9           of this section and the application of the provisions of such  
10          to any other person or circumstance shall not be affected.

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