115TH CONGRESS
1ST SESSION

S. ______

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

IN THE SENATE OF THE UNITED STATES

____________________ introduced the following bill; which was read twice and referred to the Committee on ____________________

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as ''Health Care Choice Act
5 of 2017''.

SEC. 2. SPECIFICATION OF CONSTITUTIONAL AUTHORITY FOR ENACTMENT OF LAW.

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

SEC. 3. FINDINGS.

Congress finds the following:

(1) The application of numerous and significant variations in State law and the implementation of the Patient Protection and Affordable Care Act impacts the ability of insurers to offer, and individuals to obtain, affordable individual health insurance coverage, thereby impeding commerce in individual health insurance coverage.

(2) Mandates for health care coverage established by title I of the Patient Protection and Affordable Care Act will significantly elevate health insurance costs beyond State and Federal ability to pay.

(3) Individual health insurance coverage is increasingly offered through the Internet, other electronic means, and by mail, all of which are inherently part of interstate commerce.

(4) In response to these issues, it is appropriate to encourage increased efficiency in the offering of individual health insurance coverage through a col-

1 laborative approach by the States in regulating this
2 coverage.
3 (5) The establishment of risk-retention groups
4 has provided a successful model for the sale of insur-
5 ance across State lines, as the acts establishing
6 those groups allow insurance to be sold in multiple
7 States but regulated by a single State.

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

9 Effective as of the enactment of the Patient Protec-
10 tion and Affordable Care Act (Public Law 111–148), title
11 I of such Act is repealed (and any amendments to such
12 title, or to amendments made by such title, made by the
13 Health Care and Education Reconciliation Act of 2010
14 (Public Law 111–152) are repealed), and the provisions
15 of law amended or repealed by such title (or amendments)
16 are restored or revived as if such title (and amendments)
17 had not been enacted.

18 **SEC. 5. COOPERATIVE GOVERNING OF INDIVIDUAL**
19 **HEALTH INSURANCE COVERAGE.**

20 (a) IN GENERAL.—Title XXVII of the Public Health
21 Service Act (42 U.S.C. 300gg et seq.) is amended by add-
22 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 .—
2 Except as provided in this section, a health insurance
3 issuer with respect to its offer, sale, rating (including med-
4 ical underwriting), renewal, and issuance of individual
5 health insurance coverage in any secondary State is ex-
6 empt from any covered laws of the secondary State (and
7 any rules, regulations, agreements, or orders sought or
8 issued by such State under or related to such covered
9 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 the pri-
11 mary State, the name of the secondary State, the name
12 of the secondary State, and the name of the secondary
13 State, respectively, for the coverage concerned:
14 “ ‘NOTICE
15 “ ‘This policy is issued by __________ and is gov-
16 erned by the laws and regulations of the State of
17 __________, and it has met all the laws of that State as
18 determined by that State’s Department of Insurance. This
19 policy may be less expensive than others because it is not
20 subject to all of the insurance laws and regulations of the
21 State of __________, including coverage of some services
22 or benefits mandated by the law of the State of
23 __________. Additionally, this policy is not subject to all
24 of the consumer protection laws or restrictions on rate
25 changes of the State of __________. As with all insurance

1 products, before purchasing this policy, you should care-
2 fully review the policy and determine what health care
3 services the policy covers and what benefits it provides,
4 including any exclusions, limitations, or conditions for
5 such services or benefits.'.
6 ''(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS
7 AND PREMIUM INCREASES.—
8 ''(1) IN GENERAL.—For purposes of this sec-
9 tion, a health insurance issuer that provides indi-
10 vidual health insurance coverage to an individual
11 under this part in a primary or secondary State may
12 not upon renewal—
13 ''(A) move or reclassify the individual in-
14 sured under the health insurance coverage from
15 the class such individual is in at the time of
16 issue of the contract based on the health-status
17 related factors of the individual; or
18 ''(B) increase the premiums assessed the
19 individual for such coverage based on a health
20 status-related factor or change of a health sta-
21 tus-related factor or the past or prospective
22 claim experience of the insured individual.
23 ''(2) CONSTRUCTION.—Nothing in paragraph
24 (1) shall be construed to prohibit a health insurance
25 issuer—

1 "(A) from terminating or discontinuing
2 coverage or a class of coverage in accordance
3 with subsections (b) and (c) of section 2742;
4 "(B) from raising premium rates for all
5 policy holders within a class based on claims ex-
6 perience;
7 "(C) from changing premiums or offering
8 discounted premiums to individuals who engage
9 in wellness activities at intervals prescribed by
10 the issuer, if such premium changes or incen-
11 tives—
12 "(i) are disclosed to the consumer in
13 the insurance contract;
14 "(ii) are based on specific wellness ac-
15 tivities that are not applicable to all indi-
16 viduals; and
17 "(iii) are not obtainable by all individ-
18 uals to whom coverage is offered;
19 "(D) from reinstating lapsed coverage; or
20 "(E) from retroactively adjusting the rates
21 charged an insured individual if the initial rates
22 were set based on material misrepresentation by
23 the individual at the time of issue.
24 "(e) PRIOR OFFERING OF POLICY IN PRIMARY
25 STATE.—A health insurance issuer may not offer for sale

1 individual health insurance coverage in a secondary State
2 unless that coverage is currently offered for sale in the
3 primary State.

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

14 "(g) DOCUMENTS FOR SUBMISSION TO STATE IN-
15 SURANCE COMMISSIONER.—Each health insurance issuer
16 issuing individual health insurance coverage in both pri-
17 mary and secondary States shall submit—

18 "(1) to the insurance commissioner of each
19 State in which it intends to offer such coverage, be-
20 fore it may offer individual health insurance cov-
21 erage in such State—

22 "(A) a copy of the plan of operation or fea-
23 sibility study or any similar statement of the
24 policy being offered and its coverage (which

1 shall include the name of its primary State and
2 its principal place of business);
3 ''(B) written notice of any change in its
4 designation of its primary State; and
5 ''(C) written notice from the issuer of the
6 issuer's compliance with all the laws of the pri-
7 mary State; and
8 ''(2) to the insurance commissioner of each sec-
9 ondary State in which it offers individual health in-
10 surance coverage, a copy of the issuer's quarterly fi-
11 nancial statement submitted to the primary State,
12 which statement shall be certified by an independent
13 public accountant and contain a statement of opin-
14 ion on loss and loss adjustment expense reserves
15 made by—
16 ''(A) a member of the American Academy
17 of Actuaries; or
18 ''(B) a qualified loss reserve specialist.
19 ''(h) POWER OF COURTS TO ENJOIN CONDUCT.—
20 Nothing in this section shall be construed to affect the
21 authority of any Federal or State court to enjoin—
22 ''(1) the solicitation or sale of individual health
23 insurance coverage by a health insurance issuer to
24 any person or group who is not eligible for such in-
25 surance; or

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

6 "(i) POWER OF SECONDARY STATES TO TAKE AD-
7 MINISTRATIVE ACTION.—Nothing in this section shall be
8 construed to affect the authority of any State to enjoin
9 conduct in violation of that State's laws described in sec-
10 tion 2796(b)(1).

11 "(j) STATE POWERS TO ENFORCE STATE LAWS.—

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

19 "(2) COURTS OF COMPETENT JURISDICTION.—
20 If a State seeks an injunction regarding the conduct
21 described in paragraphs (1) and (2) of subsection
22 (h), such injunction must be obtained from a Fed-
23 eral or State court of competent jurisdiction.

1 "(k) STATES' AUTHORITY TO SUE.—Nothing in this
2 section shall affect the authority of any State to bring ac-
3 tion in any Federal or State court.

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

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

21 **"SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR**
22 **BEFORE ISSUER MAY SELL INTO SECONDARY**
23 **STATES.**

24 "A health insurance issuer may not offer, sell, or
25 issue individual health insurance coverage in a secondary

1 State if the State insurance commissioner does not use
2 a risk-based capital formula for the determination of cap-
3 ital and surplus requirements for all health insurance
4 issuers.

5 **"SEC. 2798. INDEPENDENT EXTERNAL APPEALS PROCE-**
6 **DURES.**

7 ''(a) RIGHT TO EXTERNAL APPEAL.—A health insur-
8 ance issuer may not offer, sell, or issue individual health
9 insurance coverage in a secondary State under the provi-
10 sions of this title unless—

11 ''(1) both the secondary State and the primary
12 State have legislation or regulations in place estab-
13 lishing an independent review process for individuals
14 who are covered by individual health insurance cov-
15 erage, or

16 ''(2) in any case in which the requirements of
17 subparagraph (A) are not met with respect to the ei-
18 ther of such States, the issuer provides an inde-
19 pendent review mechanism substantially identical (as
20 determined by the applicable State authority of such
21 State) to that prescribed in the 'Health Carrier Ex-
22 ternal Review Model Act' of the National Association
23 of Insurance Commissioners for all individuals who
24 purchase insurance coverage under the terms of this
25 part, except that, under such mechanism, the review

1 is conducted by an independent medical reviewer, or
2 a panel of such reviewers, with respect to whom the
3 requirements of subsection (b) are met.
4 "(b) QUALIFICATIONS OF INDEPENDENT MEDICAL
5 REVIEWERS.—In the case of any independent review
6 mechanism referred to in subsection (a)(2)—
7 "(1) IN GENERAL.—In referring a denial of a
8 claim to an independent medical reviewer, or to any
9 panel of such reviewers, to conduct independent
10 medical review, the issuer shall ensure that—
11 "(A) each independent medical reviewer
12 meets the qualifications described in paragraphs
13 (2) and (3);
14 "(B) with respect to each review, each re-
15 viewer meets the requirements of paragraph (4)
16 and the reviewer, or at least 1 reviewer on the
17 panel, meets the requirements described in
18 paragraph (5); and
19 "(C) compensation provided by the issuer
20 to each reviewer is consistent with paragraph
21 (6).
22 "(2) LICENSURE AND EXPERTISE.—Each inde-
23 pendent medical reviewer shall be a physician
24 (allopathic or osteopathic) or health care profes-
25 sional who—

1 "(A) is appropriately credentialed or li-
2 censed in 1 or more States to deliver health
3 care services; and
4 "(B) typically treats the condition, makes
5 the diagnosis, or provides the type of treatment
6 under review.
7 "(3) INDEPENDENCE.—
8 "(A) IN GENERAL.—Subject to subpara-
9 graph (B), each independent medical reviewer
10 in a case shall—
11 "(i) not be a related party (as defined
12 in paragraph (7));
13 "(ii) not have a material familial, fi-
14 nancial, or professional relationship with
15 such a party; and
16 "(iii) not otherwise have a conflict of
17 interest with such a party (as determined
18 under regulations).
19 "(B) EXCEPTION.—Nothing in subpara-
20 graph (A) shall be construed to—
21 "(i) prohibit an individual, solely on
22 the basis of affiliation with the issuer,
23 from serving as an independent medical re-
24 viewer if—

1 "(I) a non-affiliated individual is
2 not reasonably available;
3 "(II) the affiliated individual is
4 not involved in the provision of items
5 or services in the case under review;
6 "(III) the fact of such an affili-
7 ation is disclosed to the issuer and the
8 enrollee (or authorized representative)
9 and neither party objects; and
10 "(IV) the affiliated individual is
11 not an employee of the issuer and
12 does not provide services exclusively or
13 primarily to or on behalf of the issuer;
14 "(ii) prohibit an individual who has
15 staff privileges at the institution where the
16 treatment involved takes place from serv-
17 ing as an independent medical reviewer
18 merely on the basis of such affiliation if
19 the affiliation is disclosed to the issuer and
20 the enrollee (or authorized representative),
21 and neither party objects; or
22 "(iii) prohibit receipt of compensation
23 by an independent medical reviewer from
24 an entity if the compensation is provided
25 consistent with paragraph (6).

1 "(4) PRACTICING HEALTH CARE PROFESSIONAL
2 IN SAME FIELD.—
3 "(A) IN GENERAL.—In a case involving
4 treatment, or the provision of items or serv-
5 ices—
6 "(i) by a physician, a reviewer shall be
7 a practicing physician (allopathic or osteo-
8 pathic) of the same or similar specialty, as
9 a physician who, acting within the appro-
10 priate scope of practice within the State in
11 which the service is provided or rendered,
12 typically treats the condition, makes the
13 diagnosis, or provides the type of treat-
14 ment under review; or
15 "(ii) by a non-physician health care
16 professional, the reviewer, or at least 1
17 member of the review panel, shall be a
18 practicing non-physician health care pro-
19 fessional of the same or similar specialty
20 as the non-physician health care profes-
21 sional who, acting within the appropriate
22 scope of practice within the State in which
23 the service is provided or rendered, typi-
24 cally treats the condition, makes the diag-

1 nosis, or provides the type of treatment
2 under review.
3 ''(B) PRACTICING DEFINED.—For pur-
4 poses of this paragraph, the term 'practicing'
5 means, with respect to an individual who is a
6 physician or other health care professional, that
7 the individual provides health care services to
8 individual patients on average at least 2 days
9 per week.
10 ''(5) PEDIATRIC EXPERTISE.—In the case of an
11 external review relating to a child, a reviewer shall
12 have expertise under paragraph (2) in pediatrics.
13 ''(6) LIMITATIONS ON REVIEWER COMPENSA-
14 TION.—Compensation provided by the issuer to an
15 independent medical reviewer in connection with a
16 review under this section shall—
17 ''(A) not exceed a reasonable level; and
18 ''(B) not be contingent on the decision ren-
19 dered by the reviewer.
20 ''(7) RELATED PARTY DEFINED.—For purposes
21 of this section, the term 'related party' means, with
22 respect to a denial of a claim under a coverage relat-
23 ing to an enrollee, any of the following:
24 ''(A) The issuer involved, or any fiduciary,
25 officer, director, or employee of the issuer.

1 "(B) The enrollee (or authorized represent-
2 ative).
3 "(C) The health care professional that pro-
4 vides the items or services involved in the de-
5 nial.
6 "(D) The institution at which the items or
7 services (or treatment) involved in the denial
8 are provided.
9 "(E) The manufacturer of any drug or
10 other item that is included in the items or serv-
11 ices involved in the denial.
12 "(F) Any other party determined under
13 any regulations to have a substantial interest in
14 the denial involved.
15 "(8) DEFINITIONS.—For purposes of this sub-
16 section—
17 "(A) ENROLLEE.—The term 'enrollee'
18 means, with respect to health insurance cov-
19 erage offered by a health insurance issuer, an
20 individual enrolled with the issuer to receive
21 such coverage.
22 "(B) HEALTH CARE PROFESSIONAL.—The
23 term 'health care professional' means an indi-
24 vidual who is licensed, accredited, or certified
25 under State law to provide specified health care

1 services and who is operating within the scope
2 of such licensure, accreditation, or certification.
3 **"SEC. 2799. ENFORCEMENT.**
4 "(a) IN GENERAL.—Subject to subsection (b), with
5 respect to specific individual health insurance coverage the
6 primary State for such coverage has sole jurisdiction to
7 enforce the primary State's covered laws in the primary
8 State and any secondary State.
9 "(b) SECONDARY STATE'S AUTHORITY.—Nothing in
10 subsection (a) shall be construed to affect the authority
11 of a secondary State to enforce its laws as set forth in
12 the exception specified in section 2796(b)(1).
13 "(c) COURT INTERPRETATION.—In reviewing action
14 initiated by the applicable secondary State authority, the
15 court of competent jurisdiction shall apply the covered
16 laws of the primary State.
17 "(d) NOTICE OF COMPLIANCE FAILURE.—In the case
18 of individual health insurance coverage offered in a sec-
19 ondary State that fails to comply with the covered laws
20 of the primary State, the applicable State authority of the
21 secondary State may notify the applicable State authority
22 of the primary State.".
23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall apply to individual health insurance

1 coverage offered, issued, or sold after the date that is one
2 year after the date of the enactment of this Act.
3 (c) GAO ONGOING STUDY AND REPORTS.—
4 (1) STUDY.—The Comptroller General of the
5 United States shall conduct an ongoing study con-
6 cerning the effect of the amendment made by sub-
7 section (a) on—
8 (A) the number of uninsured and under-
9 insured;
10 (B) the availability and cost of health in-
11 surance policies for individuals with pre-existing
12 medical conditions;
13 (C) the availability and cost of health in-
14 surance policies generally;
15 (D) the elimination or reduction of dif-
16 ferent types of benefits under health insurance
17 policies offered in different States; and
18 (E) cases of fraud or abuse relating to
19 health insurance coverage offered under such
20 amendment and the resolution of such cases.
21 (2) ANNUAL REPORTS.—The Comptroller Gen-
22 eral shall submit to Congress an annual report, after
23 the end of each of the 5 years following the effective
24 date of the amendment made by subsection (a), on
25 the ongoing study conducted under paragraph (1).

1 **SEC. 6. SEVERABILITY.**

2 If any provision of the Act or the application of such
3 provision to any person or circumstance is held to be un-
4 constitutional, the remainder of this Act and the applica-
5 tion of the provisions of such to any other person or cir-
6 cumstance shall not be affected.