

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 2328
OFFERED BY M . _____**

After the subsection (e) of section 2719A of the Public Health Service Act proposed to be added by section 402(b), insert the following new subsection (and redesignate succeeding subsections accordingly):

1 “(f) INDEPENDENT DISPUTE RESOLUTION PROC-
2 ESS.—

3 “(1) ESTABLISHMENT.—

4 “(A) IN GENERAL.—Not later than 1 year
5 after the date of the enactment of this sub-
6 section, the Secretary, in consultation with the
7 Secretary of Labor, shall establish by regulation
8 an independent dispute resolution process (re-
9 ferred to in this subsection as the ‘IDR proc-
10 ess’) under which—

11 “(i) a nonparticipating provider (as
12 defined in subparagraph (G) of subsection
13 (b)(2)), nonparticipating emergency facility
14 (as defined in subparagraph (F) of such
15 subsection), or health plan (as defined in
16 subsection (e)(2)(A)) may submit a request

1 for resolution by an entity certified under
2 paragraph (2) (in this subsection referred
3 to as a ‘certified IDR entity’) of a specified
4 claim; and

5 “(ii) in the case a settlement de-
6 scribed in subparagraph (B) of paragraph
7 (4) is not reached with respect to such
8 claim, such entity so resolves such claim in
9 accordance with such paragraph.

10 “(B) DEFINITIONS.—In this subsection:

11 “(i) SPECIFIED CLAIM.—

12 “(I) IN GENERAL.—Subject to
13 subclause (II), the term ‘specified
14 claim’ means a claim by a nonpartici-
15 pating provider, a nonparticipating
16 emergency facility, or a health plan
17 with respect to qualifying items and
18 services (as defined in clause (ii)) fur-
19 nished by such provider or facility in
20 a State described in subparagraph
21 (H)(ii) of subsection (b) for which a
22 health plan is required to make pay-
23 ment pursuant to subsection (b)(1) or
24 subsection (e)(1)—

1 “(aa) that such payment
2 should be increased or decreased;
3 and

4 “(bb) that is made not later
5 than—

6 “(AA) in the case of
7 such a claim filed by such a
8 provider or facility, the date
9 on which the appeal with re-
10 spect to such items and
11 services described in clause
12 (ii)(I)(AA) has been resolved
13 (or the date that is 30 days
14 after such appeal is filed,
15 whichever is earlier); and

16 “(BB) in the case of
17 such a claim filed by such
18 plan, the date on which the
19 period described in clause
20 (ii)(I)(bb)(BB) with respect
21 to such items and services
22 elapses.

23 “(II) LIMITATION ON PACKAGING
24 OF ITEMS AND SERVICES IN A SPECI-
25 FIED CLAIM.—The term ‘specified

1 claim' shall not include, in the case
2 such claim is made by such provider,
3 facility, or plan with respect to mul-
4 tiple items and services, any claim
5 with respect to items and services fur-
6 nished by such provider or facility if—

7 “(aa) such items and serv-
8 ices were not furnished by the
9 same provider or facility;

10 “(bb) payment for such
11 items and services made pursu-
12 ant to subsection (b)(1) or sub-
13 section (e)(1) was made by mul-
14 tiple health plans;

15 “(cc) such items and serv-
16 ices are not related to the treat-
17 ment of the same condition; or

18 “(dd) such items and serv-
19 ices were not furnished within 30
20 days of the date of the earliest
21 item or service furnished that is
22 included in such claim.

23 “(ii) QUALIFYING ITEMS AND SERV-
24 ICES.—

1 “(I) IN GENERAL.—Subject to
2 subclause (II), the term ‘qualifying
3 items and services’ means—

4 “(aa) with respect to a spec-
5 ified claim made by a nonpartici-
6 pating provider or nonpartici-
7 pating emergency facility, items
8 and services furnished by such
9 provider or facility for which a
10 health plan is required to make
11 payment pursuant to subsection
12 (b)(1) or subsection (e)(1), but
13 only if—

14 “(AA) such items and
15 services are included in an
16 appeal filed under such
17 plan’s internal appeals proc-
18 ess not later than 30 days
19 after such payment is re-
20 ceived; and

21 “(BB) such appeal
22 under such plan’s internal
23 appeals process has been re-
24 solved, or a 30-day period

1 has elapsed since such ap-
2 peal was so filed; and

3 “(bb) with respect to a spec-
4 ified claim made by a health
5 plan, items and services fur-
6 nished by such a provider or fa-
7 cility for which such health plan
8 is required to make payment pur-
9 suant to subsection (b)(1) or sub-
10 section (e)(1), but only if—

11 “(AA) such plan sub-
12 mits a notice to such pro-
13 vider or facility not later
14 than 30 days after such pro-
15 vider or facility receives such
16 payment that such plan dis-
17 putes the amount of such
18 payment with respect to
19 such items and services; and

20 “(BB) a 30-day period
21 has elapsed since the sub-
22 mission of such notice.

23 “(II) LIMITATION.—The term
24 ‘qualifying items and services’ shall
25 not include an item or service fur-

1 nished in a geographic area during a
2 year by such provider or facility for
3 which a health plan is required to
4 make payment pursuant to subsection
5 (b)(1) or subsection (e)(1) if the me-
6 dian contracted rate (as defined in
7 subsection (b)(3)(E)) under such plan
8 for such year with respect to such
9 item or service furnished by such a
10 provider or such a facility in such
11 area does not exceed—

12 “(aa) with respect to an
13 item or service furnished during
14 2021, \$1,250; and

15 “(bb) with respect to an
16 item or service furnished during
17 a subsequent year, the amount
18 specified under this subclause for
19 the previous year, increased by
20 the percentage increase in the
21 consumer price index for all
22 urban consumers (United States
23 city average) over such previous
24 year.

25 “(2) CERTIFICATION OF ENTITIES.—

1 “(A) PROCESS OF CERTIFICATION.—The
2 process described in paragraph (1) shall include
3 a certification process under which eligible enti-
4 ties may be certified to carry out the IDR proc-
5 ess.

6 “(B) ELIGIBILITY.—

7 “(i) IN GENERAL.—For purposes of
8 subparagraph (A), an eligible entity is an
9 entity that is a nongovernmental entity
10 that agrees to comply with the fee limita-
11 tions described in clause (ii).

12 “(ii) FEE LIMITATION.—For purposes
13 of clause (i), the fee limitations described
14 in this clause are limitations established by
15 the Secretary on the amount a certified
16 IDR entity may charge a nonparticipating
17 provider, nonparticipating emergency facil-
18 ity, or health plan for services furnished by
19 such entity with respect to the resolution
20 of a specified claim of such provider, facil-
21 ity, or plan under the process described in
22 paragraph (1).

23 “(3) SELECTION OF CERTIFIED IDR ENTITY
24 FOR A SPECIFIED CLAIM.—With respect to the reso-
25 lution of a specified claim under the IDR process,

1 the health plan and the nonparticipating provider or
2 the nonparticipating emergency facility (as applica-
3 ble) involved shall agree on a certified IDR entity to
4 resolve such claim. In the case that such plan and
5 such provider or facility (as applicable) cannot so
6 agree, such an entity shall be selected by the Sec-
7 retary at random.

8 “(4) PAYMENT DETERMINATION.—

9 “(A) TIMING.—A certified IDR entity se-
10 lected under paragraph (3) by a health plan
11 and a nonparticipating provider or a nonpartici-
12 pating emergency facility (as applicable) with
13 respect to a specified claim shall, subject to
14 subparagraph (B), not later than 30 days after
15 being so selected, determine the total reim-
16 bursement that should have been made for
17 items and services included in such claim in ac-
18 cordance with subparagraph (C).

19 “(B) SETTLEMENT.—

20 “(i) IN GENERAL.—If such entity de-
21 termines that a settlement between the
22 health plan and the provider or facility is
23 likely with respect to a specified claim, the
24 entity may direct the parties to attempt,
25 for a period not to exceed 10 days, a good

1 faith negotiation for a settlement of such
2 claim.

3 “(ii) TIMING.—The period for a set-
4 tlement described in clause (i) shall accrue
5 towards the 30-day period described in
6 subparagraph (A).

7 “(C) DETERMINATION OF AMOUNT.—

8 “(i) IN GENERAL.—The health plan
9 and the nonparticipating provider or non-
10 participating emergency facility (as appli-
11 cable) shall, with respect to a specified
12 claim, each submit to the certified IDR en-
13 tity a final offer of payment or reimburse-
14 ment (as applicable) with respect to items
15 and services which are the subject of the
16 specified claim. Such entity shall determine
17 which such offer is the most reasonable in
18 accordance with clause (ii).

19 “(ii) CONSIDERATIONS IN DETER-
20 MINATION.—

21 “(I) IN GENERAL.—In deter-
22 mining which final offer is the most
23 reasonable under clause (i), the cer-
24 tified IDR entity shall consider—

1 “(aa) the median contracted
2 rates (as defined in subsection
3 (b)(3)(E)) for items or services
4 that are comparable to the items
5 and services included in the spec-
6 ified claim and that are furnished
7 in the same geographic area (as
8 defined by the Secretary for pur-
9 poses of such subsection) as such
10 items and services (not including
11 any facility fees with respect to
12 such rates); and

13 “(bb) the circumstances de-
14 scribed in subclause (II), if any
15 information with respect to such
16 circumstances is submitted by ei-
17 ther party.

18 “(II) ADDITIONAL CIR-
19 CUMSTANCES.—For purposes of sub-
20 clause (I)(bb), the circumstances de-
21 scribed in this subclause are, with re-
22 spect to items and services included in
23 the specified claim of a nonpartici-
24 pating provider, nonparticipating

1 emergency facility, or health plan, the
2 following:

3 “(aa) The level of training,
4 education, experience, and quality
5 and outcomes measurements of
6 the provider or facility that fur-
7 nished such items and services;
8 and

9 “(bb) any other extenuating
10 circumstances with respect to the
11 furnishing of such items and
12 services that relate to the acuity
13 of the individual receiving such
14 items and services or the com-
15 plexity of furnishing such items
16 and services to such individual.

17 “(III) PROHIBITION ON CONSID-
18 ERATION OF BILLED CHARGES.—In
19 determining which final offer is the
20 most reasonable under clause (i) with
21 respect to items and services fur-
22 nished by a provider or facility and in-
23 cluded in a specified claim, the cer-
24 tified IDR entity may not consider the
25 amount that would have been billed by

1 such provider or facility with respect
2 to such items and services had the
3 provisions of section 2799 or 2799A
4 (as applicable) not applied.

5 “(iii) EFFECT OF DECISION.—A de-
6 termination of a certified IDR entity under
7 clause (i)—

8 “(I) shall be binding; and

9 “(II) shall not be subject to judi-
10 cial review, except in a case described
11 in any of paragraphs (1) through (4)
12 of section 10(a) of title 9, United
13 States Code.

14 “(iv) COSTS OF INDEPENDENT DIS-
15 PUTE RESOLUTION PROCESS.—In the case
16 of a specified claim made by a nonpartici-
17 pating provider, nonparticipating emer-
18 gency facility, or health plan and sub-
19 mitted to a certified IDR entity—

20 “(I) if such entity makes a deter-
21 mination with respect to such claim
22 under clause (i), the party whose offer
23 is not chosen under such clause shall
24 be responsible for paying all fees
25 charged by such entity; and

1 “(II) if the parties reach a settle-
2 ment with respect to such claim prior
3 to such a determination, such fees
4 shall be divided equally between the
5 parties, unless the parties otherwise
6 agree.

7 “(v) PAYMENT.—Not later than 30
8 days after a determination described in
9 clause (i) is made with respect to a speci-
10 fied claim of a nonparticipating provider,
11 nonparticipating emergency facility, or
12 health plan—

13 “(I) in the case that such deter-
14 mination finds that the amount paid
15 with respect to such specified claim by
16 the health plan should have been
17 greater than the amount so paid, such
18 plan shall pay directly to the provider
19 or facility (as applicable) the dif-
20 ference between the amount so paid
21 and the amount so determined; and

22 “(II) in the case that such deter-
23 mination finds that the amount paid
24 with respect to such specified claim by
25 the health plan should have been less

1 than the amount so paid, the provider
2 or facility (as applicable) shall pay di-
3 rectly to the plan the difference be-
4 tween the amount so paid and the
5 amount so determined.

6 “(5) PUBLICATION OF INFORMATION RELATING
7 TO DISPUTES.—

8 “(A) IN GENERAL.—For 2021 and each
9 subsequent year, the Secretary and the Sec-
10 retary of Labor shall publish on the public
11 website of the Department of Health and
12 Human Services and the Department of Labor,
13 respectively—

14 “(i) the number of specified claims
15 filed during such year;

16 “(ii) the number of such claims with
17 respect to which a final determination was
18 made under paragraph (4)(C)(i); and

19 “(iii) the information described in
20 subparagraph (B) with respect to each
21 specified claim with respect to which such
22 a decision was so made.

23 “(B) INFORMATION WITH RESPECT TO
24 SPECIFIED CLAIMS.—For purposes of subpara-
25 graph (A), the information described in this

1 subparagraph is, with respect to a specified
2 claim of a nonparticipating provider, nonpartici-
3 pating emergency facility, or health plan—

4 “(i) a description of each item and
5 service included in such claim;

6 “(ii) the amount of the offer sub-
7 mitted under paragraph (4)(C)(i) by the
8 health plan and by the nonparticipating
9 provider or nonparticipating emergency fa-
10 cility (as applicable);

11 “(iii) whether the offer selected by the
12 certified IDR entity under such paragraph
13 was the offer submitted by such plan or by
14 such provider or facility (as applicable) and
15 the amount of such offer so selected; and

16 “(iv) the category and practice spe-
17 cialty of each such provider or facility in-
18 volved in furnishing such items and serv-
19 ices.

20 “(C) CONFIDENTIALITY OF PARTIES.—
21 None of the information published under this
22 paragraph may specify the identity of a health
23 plan, provider, facility, or individual with re-
24 spect to a specified claim.”.

In the section 2799B of the Public Health Service Act proposed to be added by section 402(d), strike “2719A(f)(6)” and insert “2719A(g)(6)”.

In the section 2799D of the Public Health Service Act proposed to be added by section 402(d)—

(1) in subsection (a)(1) of such section 2799D, insert “2719A(f),” after “sections”;

(2) in subsection (a)(2) of such section—

(A) strike “set forth in this part” and insert “specified in paragraph (1)”;

(B) strike “requirements of this part” and insert “such requirements”; and

(C) strike “actions prohibited under this part” and insert “violations of such requirements”;

(3) in subsection (b) of such section—

(A) in paragraph (1), strike “of this part” and insert “specified in subsection (a)(1)”;

(B) in paragraph (2), strike “of this part” and insert “specified in subsection (a)(1)”;

(C) in paragraph (3), strike “of this part” and insert “of such provisions”; and

(D) in paragraph (4), strike “a provision of this part” and insert “section 2799 or 2799A”; and

(4) in subsection (c) of such section, strike “this part” and insert “the sections specified in subsection (a)(1)”.

