

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 9228
OFFERED BY MR. TAKANO**

In lieu of the matter proposed to be inserted, insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Health Data Access,
3 Transparency, and Affordability Act of 2026” or “Health
4 DATA Act of 2026”.

**5 SEC. 2. INCREASING TRANSPARENCY OF GROUP HEALTH
6 PLAN DATA.**

7 (a) GROUP HEALTH PLAN AUDIT RIGHTS.—

8 (1) IN GENERAL.—Section 408(b)(2) of the
9 Employee Retirement Income Security Act of 1974
10 (29 U.S.C. 1108(b)(2)) is amended by inserting
11 after subparagraph (C) the following:

12 “(D) No contract or arrangement for serv-
13 ices, and no extension or renewal of such a con-
14 tract or arrangement, between a group health
15 plan (as defined in section 733(a)) and any
16 other entity, including a health care provider
17 (including a health care facility), network or as-
18 sociation of providers, service provider offering

1 access to a network of providers, third-party ad-
2 ministrators, or entity providing pharmacy ben-
3 efit management services, is reasonable within
4 the meaning of this paragraph unless such con-
5 tract or arrangement—

6 “(i) allows the group health plan to
7 audit all de-identified claims and encounter
8 information or data described in section
9 724(a)(1)(B), provided that such informa-
10 tion or data has been deidentified in ac-
11 cordance with section 164.514 of title 45,
12 Code of Federal Regulations (or successor
13 regulations), to—

14 “(I) ensure that such entity com-
15 plies with the terms of the plan, the
16 terms of the contract or arrangement
17 for services, and the requirements of
18 this title; and

19 “(II) determine the reasonable-
20 ness of compensation received by such
21 entity; and

22 “(ii) does not—

23 “(I) unreasonably limit the num-
24 ber of audits permitted during a given
25 period of time;

1 “(II) limit the number of de-iden-
2 tified claims and encounter informa-
3 tion or data that the group health
4 plan may access during an audit;

5 “(III) limit the disclosure of prie-
6 ing terms for value-based payment ar-
7 rangements or capitated payment ar-
8 rangements, including—

9 “(aa) payment calculations
10 and formulas;

11 “(bb) quality measures;

12 “(cc) contract terms;

13 “(dd) payment amounts;

14 “(ee) measurement periods
15 for all incentives; and

16 “(ff) other payment meth-
17 odologies used by an entity, in-
18 cluding a health care provider
19 (including a health care facility),
20 network or association of pro-
21 viders, service provider offering
22 access to a network of providers,
23 third-party administrator, or en-
24 tity providing pharmacy benefit
25 management services;

1 “(IV) limit the disclosure of over-
2 payments and overpayment recovery
3 terms;

4 “(V) limit the right of the group
5 health plan to select an auditor;

6 “(VI) otherwise limit or unduly
7 delay by greater than 60 calendar
8 days after the date of request the
9 group health plan from auditing any
10 such de-identified claims and encoun-
11 ter information or data; or

12 “(VII) permit the entity to
13 charge a fee beyond the reasonable di-
14 rect costs to provide the required in-
15 formation and otherwise comply and
16 assist with an audit request.”.

17 (2) PRIVACY REQUIREMENTS.—

18 (A) IN GENERAL.—Section 408(b)(2) of
19 the Employee Retirement Income Security Act
20 of 1974 (29 U.S.C. 1108(b)(2)), as amended by
21 paragraph (1), is further amended by adding at
22 the end the following:

23 “(E) PRIVACY REQUIREMENTS.—

24 “(i) IN GENERAL.—An entity shall—

1 “(I) provide data or information
2 under subparagraph (D) in a manner
3 consistent with—

4 “(aa) the privacy regulations
5 promulgated under section
6 13402(a) of the Health Informa-
7 tion Technology for Clinical
8 Health Act (42 U.S.C.
9 17932(a)); and

10 “(bb) the privacy regulations
11 promulgated under the Health
12 Insurance Portability and Ac-
13 countability Act of 1996 in part
14 160 and subparts A and E of
15 part 164 of title 45, Code of
16 Federal Regulations (or successor
17 regulations); and

18 “(II) to the extent such data or
19 information constitutes protected
20 health information, restrict the use
21 and disclosure of such information for
22 purposes of such privacy regulations.

23 “(ii) RESTRICTION.—A group health
24 plan shall comply with section 164.504(f)
25 of title 45, Code of Federal Regulations (or

1 a successor regulation), and a plan sponsor
2 shall act in accordance with the terms of
3 the agreement described in such section.”.

4 (b) CIVIL ENFORCEMENT.—

5 (1) IN GENERAL.—Subsection (c) of section
6 502 of such Act (29 U.S.C. 1132) is amended by
7 adding at the end the following:

8 “(14) In the case of an agreement between a
9 group health plan and a health care provider (in-
10 cluding a health care facility), network or association
11 of providers, service provider offering access to a
12 network of providers, third-party administrator, enti-
13 ty providing pharmacy benefit management services,
14 or other service provider that violates the provisions
15 of section 724, the Secretary may assess a civil pen-
16 alty against such provider, network or association of
17 providers, service provider offering access to a net-
18 work of providers, third-party administrator, entity
19 providing pharmacy benefit management services, or
20 other service provider in the amount of \$10,000 for
21 each day during which such violation continues.
22 Such penalty shall be in addition to other penalties
23 as may be prescribed by law.”.

1 (2) PENALTY COLLECTION.—Paragraph (6) of
2 section 502(a) of such Act, is amended to read as
3 follows:

4 “(6) by the Secretary to collect any civil penalty
5 that the Secretary has imposed or assessed pursuant
6 to this title;”.

7 (c) IMPROVING COLLECTION OF GAG CLAUSE ATTES-
8 TATIONS.—

9 (1) IN GENERAL.—Section 506 of such Act (29
10 U.S.C. 1136) is amended by adding at the end the
11 following:

12 “(d) ATTESTATIONS RELATING TO GROUP HEALTH
13 PLAN DATA.—Notwithstanding subsection (a) of this sec-
14 tion, the Secretary shall collect the attestations required
15 to be submitted under section 724(a)(3). The Secretary
16 shall ensure that any service provider submitting such an
17 attestation on behalf of a group health plan does not have
18 any conflicts of interest with regard to such attestation.”.

19 (2) CONFORMING AMENDMENT.—Section
20 506(a) of such Act (29 U.S.C. 1136(a)) is amended
21 by striking “In order” and inserting “Subject to
22 subsection (d), in order”.

23 **SEC. 3. FIDUCIARY DUTY WITH RESPECT TO PLAN DATA.**

24 Section 3(21)(A)(iii) of the Employee Retirement In-
25 come Security Act (29 U.S.C. 1002(21)(A)(iii)) is amend-

1 ed by striking “such plan.” and inserting the following:
2 “such plan, including any authority over the use, manage-
3 ment, disposition, or safeguarding of data generated, used,
4 or maintained by the plan or a service provider to the plan
5 in connection with the administration of benefits or man-
6 agement of plan assets.”.

7 **SEC. 4. PREVENTING DISCRIMINATION BASED ON PLAN**
8 **DATA.**

9 (a) IN GENERAL.—Part 5 of subtitle B of title I of
10 the Employee Retirement Income Security Act of 1974
11 (29 U.S.C. 1131 et seq.) is amended by adding at the end
12 the following:

13 **“SEC. 524. PREVENTING DISCRIMINATION BASED ON PLAN**
14 **DATA.**

15 “(a) IN GENERAL.—It shall be unlawful for a person
16 specified in subsection (c) to discharge, fine, suspend,
17 expel, discipline, or discriminate against, including by fail-
18 ing to meet the requirements of subsection (a) or (b) of
19 section 702 (related to discrimination in eligibility and
20 premiums for participation in group health plans), a par-
21 ticipant or beneficiary on the basis of information or data
22 described in section 724.

23 “(b) ENFORCEMENT.—

24 “(1) IN GENERAL.—The provisions of section
25 502 shall be applicable in the enforcement of this

1 section, except that in any action brought under sub-
2 section (a)(1)(B) of such section in relation to data
3 or information described in section 724, a partici-
4 pant or beneficiary may not be required to exhaust
5 administrative remedies prior to bringing such ac-
6 tion.

7 “(2) **EQUITABLE RELIEF.**—In applying section
8 502 for the purposes of this section, the term ‘equi-
9 table relief’ shall include any relief necessary to re-
10 store a participant or beneficiary to the position they
11 would have occupied but for a violation of subsection
12 (a).

13 “(3) **CIVIL MONETARY PENALTY.**—

14 “(A) **IN GENERAL.**—In the case of a viola-
15 tion of subsection (a) by a person, the Secretary
16 may assess a civil monetary penalty against
17 such person.

18 “(B) **AMOUNT.**—The amount of the civil
19 monetary penalty imposed by subparagraph (A)
20 shall be \$100 for each day in the noncompli-
21 ance period with respect to each participant or
22 beneficiary to whom such violation of subsection
23 (a) relates.

24 “(C) **NONCOMPLIANCE PERIOD.**—For the
25 purposes of this subparagraph, the term ‘non-

1 compliance period’ means, with respect to any
2 violation of subsection (a), the period—

3 “(i) beginning on the date such viola-
4 tion occurs; and

5 “(ii) ending on the date such violation
6 is corrected.

7 “(c) SPECIFIED PERSON.—A person specified in this
8 subsection is any of the following:

9 “(1) An employer.

10 “(2) A plan sponsor.

11 “(3) A plan administrator.

12 “(4) A plan fiduciary.”.

13 (b) RULE OF CONSTRUCTION.—Nothing in this Act,
14 or the amendments made by this Act, shall be construed
15 to limit the application of any Federal or State privacy
16 or civil rights law, including the HIPAA privacy regula-
17 tions, the Genetic Information Nondiscrimination Act of
18 2008 (Public Law 110–233) (including the amendments
19 made by such Act), the Americans with Disabilities Act
20 of 1990 (42 U.S.C. 12101 et seq.), section 504 of the Re-
21 habilitation Act of 1973 (29 U.S.C. 794), section 1557
22 of the Patient Protection and Affordable Care Act (42
23 U.S.C. 18116), title VI of the Civil Rights Act of 1964
24 (42 U.S.C. 2000d), and title VII of the Civil Rights Act
25 of 1964 (42 U.S.C. 2000e).

1 (c) CLERICAL AMENDMENT.—The table of contents
2 in section 1 of the Employee Retirement Income Security
3 Act of 1974 (29 U.S.C. 1001 et seq.) is amended by in-
4 serting after the item relating to section 523 the following:

“Sec. 524. Preventing discrimination based on plan data.”.

