

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

Strike all after the enacting clause and 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 the
4 “Health DATA Act of 2026”.

**5 SEC. 2. INCREASING GROUP HEALTH PLAN ACCESS TO
6 HEALTH DATA.**

7 (a) GROUP HEALTH PLAN ACCESS TO INFORMA-
8 TION.—

9 (1) DEFINITION.—Section 3 of the Employee
10 Retirement Income Security Act of 1974 (29 U.S.C.
11 1002) is amended by adding at the end the fol-
12 lowing:

13 “(46) NETWORK SERVICE PROVIDER.—

14 “(A) IN GENERAL.—The term ‘network
15 service provider’ means—

16 “(i) any person or entity that has an
17 arrangement or contract, direct or indirect,
18 to provide services to a group health plan

1 (as defined in section 733(a)), including a
2 health care provider, health care facility,
3 network or association of providers, service
4 provider offering access to a network of
5 providers, third party administrator, health
6 insurance issuer (as defined in section
7 733(b)), entity providing pharmacy benefit
8 management services, or any other service
9 provider; and

10 “(ii) any person or entity acting as an
11 intermediary between the group health
12 plan and a person or entity described in
13 subparagraph (A).

14 “(B) HEALTH CARE PROVIDER.—Notwith-
15 standing subparagraph (A), no health care pro-
16 vider shall be considered a network service pro-
17 vider solely in its capacity as a provider of
18 health care services.”.

19 (2) IN GENERAL.—Section 408(b)(2) of such
20 Act (29 U.S.C. 1108(b)(2)) is amended by adding at
21 the end the following:

22 “(D) No contract or arrangement for services,
23 whether direct or indirect, and no extension or re-
24 newal of such contract or arrangement, between a
25 group health plan (as defined in section 733(a)) and

1 any other person or entity, including a network serv-
2 ice provider, is reasonable within the meaning of this
3 paragraph unless such contract or arrangement—

4 “(i) allows the responsible plan fiduciary
5 (as that term is defined in subparagraph
6 (B)(ii)(I)) and the designated agent (which may
7 include the plan sponsor, the plan adminis-
8 trator, or a business associate (other than such
9 other party or entity (or its subsidiaries or af-
10 filiates)) of such fiduciary access to all claims
11 and encounter information described in section
12 724(a)(1)(B), and any documentation, includ-
13 ing medical records and policy documents, sup-
14 porting claim payments; and

15 “(ii) does not—

16 “(I) limit or delay access by the re-
17 sponsible plan fiduciary or designated
18 agent to claims and encounter information
19 or data for longer than 15 days or a period
20 determined appropriate by the Secretary,
21 whichever is shorter;

22 “(II) limit the amount of claims and
23 encounter information or data that the re-
24 sponsible plan fiduciary or designated

1 agent may access pursuant to any request
2 for such information or data;

3 “(III) limit access by the responsible
4 plan fiduciary or designated agent to pric-
5 ing terms for alternative payment arrange-
6 ments or capitated payment arrangements,
7 including—

8 “(aa) payment calculations and
9 formulas;

10 “(bb) quality measurements or
11 indicators;

12 “(cc) contract terms;

13 “(dd) payment amounts;

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

16 “(ff) other payment methodolo-
17 gies;

18 “(IV) limit access by the responsible
19 plan fiduciary or designated agent to infor-
20 mation regarding overpayments, including
21 terms for recovery of overpayments;

22 “(V) limit the ability of the group
23 health plan, the plan sponsor, or the plan
24 administrator of such plan to select an

1 auditor and define the scope and frequency
2 of audits;

3 “(VI) otherwise limit or delay the re-
4 sponsible plan fiduciary or designated
5 agent from accessing such claims and en-
6 counter information or data in a daily
7 batch or on a daily basis;

8 “(VII) limit the disclosure to the re-
9 sponsible plan fiduciary or designated
10 agent of fees charged to the group health
11 plan related to plan administration and
12 claims processing, including renegotiation
13 fees, access fees, repricing fees, or en-
14 hanced review fees;

15 “(VIII) limit the ability of the respon-
16 sible plan fiduciary or designated agent to
17 request action on any claims or claim pay-
18 ments that such fiduciary or agent identi-
19 fies as potentially erroneous or fraudulent;

20 “(IX) limit public disclosure of de-
21 identified or aggregated information; or

22 “(X) limit access by the responsible
23 plan fiduciary or designated agent to any
24 extra-contractual terms containing claims
25 payment calculations and formulas, pricing

1 methodologies, and other information used
2 to determine the dollar value of provider
3 reimbursement.

4 “(E)(i) A person or entity shall provide infor-
5 mation or data under this paragraph in a manner
6 consistent with the privacy and security regulations
7 promulgated under the Health Insurance Portability
8 and Accountability Act (referred to in this para-
9 graph as ‘HIPAA’).

10 “(ii) A group health plan that receives a disclo-
11 sure pursuant to subparagraph (B) or (C) shall com-
12 ply with the privacy and security regulations promul-
13 gated under HIPAA.

14 “(iii) Nothing in this subparagraph shall be
15 construed to modify the requirements for the cre-
16 ation, receipt, maintenance, or transmission of pro-
17 tected health information under the HIPAA privacy
18 regulation (as defined in section 1180(b)(3) of the
19 Social Security Act) as they apply directly or indi-
20 rectly to a person or an entity pursuant to this para-
21 graph.

22 “(iv) This subparagraph shall not be read to
23 abridge or limit the disclosure requirements under
24 this paragraph or to impose additional privacy or se-

1 security requirements on network service providers or
2 plan sponsors.

3 “(F) A group health plan receiving information
4 or data under this paragraph may disclose such in-
5 formation only in a manner that is consistent with
6 HIPAA and the privacy and security regulations
7 promulgated thereunder, regardless of their direct or
8 indirect applicability to the plan or any persons or
9 entities that could be or are business associates.

10 “(G) Information made available under this
11 subparagraph shall conform to the following stand-
12 ards:

13 “(i) All claims from a healthcare provider
14 shall be provided to the group health plan in ac-
15 cordance with transaction standards adopted by
16 regulation under HIPAA, as follows:

17 “(I) Institutional, professional, and
18 dental claims shall be in ASC X12N 837
19 format or any subsequent standard ap-
20 proved by the Secretary.

21 “(II) Pharmacy claims shall be in the
22 National Council for Prescription Drug
23 Programs format or any subsequent stand-
24 ard approved by the Secretary.

1 “(III) The files shall contain unmodi-
2 fied data taken directly from the files sent
3 from the provider. In the event that paper
4 claims are sent by the provider, they shall
5 be converted to the appropriate standard
6 electronic format. The files shall be acces-
7 sible to the plan at no cost to the group
8 health plan.

9 “(ii) All claim payment (or electronic funds
10 transfer (EFT)) and electronic remittance ad-
11 vice (ERA) notices sent by a network service
12 provider shall be made available to the group
13 health plan as ASC X12N 835 files, or any
14 subsequent standard approved by the Secretary,
15 in accordance with standards adopted by regu-
16 lation under HIPAA. The files shall be unmodi-
17 fied copies of the files sent by the network serv-
18 ice provider to the healthcare provider. Files
19 shall be accessible at no cost to the group
20 health plan.

21 “(iii) All non-claim costs shall be itemized
22 and made available to the group health plan in
23 real time through a web-based portal, through
24 an Application Programming Interface and
25 through a downloadable Comma Separated

1 Value file, or any subsequent standards ap-
2 proved by the Secretary.

3 “(H) The Secretary shall have authority to im-
4 plement subparagraphs (C) through (F) through no-
5 tice and comment rulemaking in accordance with
6 section 553 of title 5, United States Code.”.

7 (3) CIVIL ENFORCEMENT.—Section 502(c) of
8 such Act (29 U.S.C. 1132(c)) is amended by adding
9 at the end the following:

10 “(14) In the case of an agreement between a group
11 health plan (as defined in section 733(a)), or the respon-
12 sible plan fiduciary, the plan sponsor, or the plan adminis-
13 trator of such plan, and any other person or entity, includ-
14 ing a network service provider that violates section 724,
15 the Secretary of Labor may assess a civil penalty against
16 such other person or entity in the amount of up to
17 \$10,000 for each day during which such violation con-
18 tinues. Such penalty shall be in addition to other penalties
19 as may be prescribed by law.”.

20 (4) EXISTING PROVISIONS VOID.—Section 410
21 of such Act (29 U.S.C. 1110) is amended by adding
22 at the end the following:

23 “(c) Any provision in an agreement or instrument
24 shall be void as against public policy if such provision—

1 “(1) delays or limits a group health plan (as de-
2 fined in section 733(a)), or the responsible plan fidu-
3 ciary, the plan sponsor, or the plan administrator of
4 such plan, from accessing the claims and encounter
5 information or data described in section
6 724(a)(1)(B); or

7 “(2) violates the requirements of section
8 408(b)(2).”.

9 (5) PROHIBITION ON INDEMNIFICATION OF
10 SERVICE PROVIDERS FOR CIVIL PENALTIES.—Sec-
11 tion 410(a) of such Act (29 U.S.C. 1110(a)) is
12 amended—

13 (A) by striking “Except” and inserting
14 “(1) Except”; and

15 (B) by adding at the end the following:

16 “(2) Except as provided in subsection
17 410(b)(2), no person or entity subject to a civil en-
18 forcement penalty under section 502(c)(13) or
19 502(c)(14) may be indemnified, directly or indi-
20 rectly, or otherwise relieved from liability for any
21 penalty, responsibility, obligation, or duty of such
22 person or entity under this title.

23 “(3) Any provision of a contract or agreement
24 in violation of paragraph (2) shall be void as against
25 public policy.”.

1 (b) UPDATED ATTESTATION FOR PRICE AND QUAL-
2 ITY INFORMATION.—Section 724(a)(3) of such Act (29
3 U.S.C. 1185m(a)(3)) is amended to read as follows:

4 “(3) ATTESTATION.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (C), a group health plan or health insur-
7 ance issuer offering group health insurance cov-
8 erage shall annually submit to the Secretary an
9 attestation that such plan or issuer of such cov-
10 erage is in compliance with the requirements of
11 this subsection. Such attestation shall also in-
12 clude a statement verifying that—

13 “(i) the information or data described
14 under subparagraphs (A) and (B) of para-
15 graph (1) is available upon request and
16 provided to the group health plan, the plan
17 sponsor, the plan administrator, or the
18 business associate (other than the con-
19 tracting party or entity or its subsidiaries
20 or affiliates) of such plan, or the issuer in
21 a timely manner; and

22 “(ii) there are no terms in the agree-
23 ment under such paragraph (1) that di-
24 rectly or indirectly restrict or unduly delay
25 a group health plan, the plan sponsor, the

1 plan administrator, a business associate
2 (other than the contracting party or entity
3 or its subsidiaries or affiliates) of such
4 plan, or the issuer from auditing, review-
5 ing, or otherwise accessing such informa-
6 tion.

7 “(B) LIMITATION ON SUBMISSION.—A
8 group health plan or issuer offering group
9 health insurance coverage may not enter into an
10 agreement with a third-party administrator or
11 other service provider to submit the attestation
12 required under subparagraph (A).

13 “(C) EXCEPTION.—In the case of a group
14 health plan or issuer offering group health in-
15 surance coverage that is unable to obtain the
16 information or data needed to submit the attes-
17 tation required under subparagraph (A), such
18 plan or issuer may submit a written statement
19 in lieu of such attestation that includes—

20 “(i) an explanation of why such plan
21 or issuer was unsuccessful in obtaining
22 such information or data, including wheth-
23 er such plan, the plan sponsor, or the plan
24 administrator or issuer was limited or pre-

1 vented from auditing, reviewing, or other-
2 wise accessing such information or data;

3 “ (ii) a description of the efforts made
4 by the group health plan, the plan sponsor,
5 or the plan administrator to remove any
6 gag clause provisions from the agreement
7 under paragraph (1); and

8 “ (iii) a description of any response by
9 the third-party administrator or other serv-
10 ice provider with respect to efforts to com-
11 ply with the attestation requirement under
12 subparagraph (A), including the name of
13 the third-party administrator or other serv-
14 ice provider.”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 subsections (a) and (b) shall apply with respect to a plan
17 beginning with the first plan year that begins on or after
18 the date that is 1 year after the date of enactment of this
19 Act regardless of the date of execution of any contract with
20 a network service provider.

