AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 2328

OFFERED BY Mr. Ruiz
with Mr. Buchanan

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

1 "(f) INDEPENDENT DISPUTE RESOLUTION PROC-
2 ESS.—
3
4 "(1) ESTABLISHMENT.—
5 "(A) In general.—Not later than 1 year
6 after the date of the enactment of this sub-
7 section, the Secretary, in consultation with the
8 Secretary of Labor, shall establish by regulation
9 an independent dispute resolution process (re-
10 ferred to in this subsection as the ‘IDR proc-
11 ess’) under which—
12
13 "(i) a nonparticipating provider (as
14 defined in subparagraph (G) of subsection
15 (b)(2)), nonparticipating emergency facility
16 (as defined in subparagraph (F) of such
17 subsection), or health plan (as defined in
18 subsection (e)(2)(A)) may submit a request
for resolution by an entity certified under paragraph (2) (in this subsection referred to as a 'certified IDR entity') of a specified claim; and

(ii) in the case a settlement described in subparagraph (B) of paragraph (4) is not reached with respect to such claim, such entity so resolves such claim in accordance with such paragraph.

"(B) DEFINITIONS.—In this subsection:

"(i) SPECIFIED CLAIM.—

"(I) IN GENERAL.—Subject to subclause (II), the term ‘specified claim’ means a claim by a nonparticipating provider, a nonparticipating emergency facility, or a health plan with respect to qualifying items and services (as defined in clause (ii)) furnished by such provider or facility in a State described in subparagraph (II)(ii) of subsection (b) for which a health plan is required to make payment pursuant to subsection (b)(1) or subsection (e)(1)—
“(aa) that such payment should be increased or decreased; and

“(bb) that is made not later than—

“(AA) in the case of such a claim filed by such a provider or facility, the date on which the appeal with respect to such items and services described in clause (ii)(I)(AA) has been resolved (or the date that is 30 days after such appeal is filed, whichever is earlier); and

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

“(II) LIMITATION ON PACKAGING OF ITEMS AND SERVICES IN A SPECIFIED CLAIM.—The term 'specified
claim' shall not include, in the case such claim is made by such provider, facility, or plan with respect to multiple items and services, any claim with respect to items and services furnished by such provider or facility if—

"(aa) such items and services were not furnished by the same provider or facility;

"(bb) payment for such items and services made pursuant to subsection (b)(1) or subsection (e)(1) was made by multiple health plans;

"(cc) such items and services are not related to the treatment of the same condition; or

"(dd) such items and services were not furnished within 30 days of the date of the earliest item or service furnished that is included in such claim.

"(ii) QUALIFYING ITEMS AND SERVICES.—
“(I) In general.—Subject to subclause (II), the term ‘qualifying items and services’ means—

“(aa) with respect to a specified claim made by a nonparticipating provider or nonparticipating emergency facility, items and services furnished by such provider or facility for which a health plan is required to make payment pursuant to subsection (b)(1) or subsection (e)(1), but only if—

“(AA) such items and services are included in an appeal filed under such plan’s internal appeals process not later than 30 days after such payment is received; and

“(BB) such appeal under such plan’s internal appeals process has been resolved, or a 30-day period
has elapsed since such appeal was so filed; and

“(bb) with respect to a specified claim made by a health plan, items and services furnished by such a provider or facility for which such health plan is required to make payment pursuant to subsection (b)(1) or subsection (e)(1), but only if—

“(AA) such plan submits a notice to such provider or facility not later than 30 days after such provider or facility receives such payment that such plan disputes the amount of such payment with respect to such items and services; and

“(BB) a 30-day period has elapsed since the submission of such notice.

“(II) LIMITATION.—The term ‘qualifying items and services’ shall not include an item or service fur-
lished in a geographic area during a year by such provider or facility for which a health plan is required to make payment pursuant to subsection (b)(1) or subsection (e)(1) if the median contracted rate (as defined in subsection (b)(3)(E)) under such plan for such year with respect to such item or service furnished by such a provider or such a facility in such area does not exceed—

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

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

“(2) Certification of Entities.—
"(A) Process of Certification.—The process described in paragraph (1) shall include a certification process under which eligible entities may be certified to carry out the IDR process.

"(B) Eligibility.—

"(i) In general.—For purposes of subparagraph (A), an eligible entity is an entity that is a nongovernmental entity that agrees to comply with the fee limitations described in clause (ii).

"(ii) Fee limitation.—For purposes of clause (i), the fee limitations described in this clause are limitations established by the Secretary on the amount a certified IDR entity may charge a nonparticipating provider, nonparticipating emergency facility, or health plan for services furnished by such entity with respect to the resolution of a specified claim of such provider, facility, or plan under the process described in paragraph (1).

"(3) Selection of Certified IDR Entity for a Specified Claim.—With respect to the resolution of a specified claim under the IDR process,
the health plan and the nonparticipating provider or
the nonparticipating emergency facility (as applicable) involved shall agree on a certified IDR entity to
resolve such claim. In the case that such plan and
such provider or facility (as applicable) cannot so
agree, such an entity shall be selected by the Sec-
retary at random.

"(4) PAYMENT DETERMINATION.—

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

"(B) SETTLEMENT.—

"(i) IN GENERAL.—If such entity de-
termines that a settlement between the
health plan and the provider or facility is
likely with respect to a specified claim, the
entity may direct the parties to attempt,
for a period not to exceed 10 days, a good
faith negotiation for a settlement of such claim.

"(ii) TIMING.—The period for a settlement described in clause (i) shall accrue towards the 30-day period described in subparagraph (A).

"(C) DETERMINATION OF AMOUNT.—

"(i) IN GENERAL.—The health plan and the nonparticipating provider or nonparticipating emergency facility (as applicable) shall, with respect to a specified claim, each submit to the certified IDR entity a final offer of payment or reimbursement (as applicable) with respect to items and services which are the subject of the specified claim. Such entity shall determine which such offer is the most reasonable in accordance with clause (ii).

"(ii) CONSIDERATIONS IN DETERMINATION.—

"(I) IN GENERAL.—In determining which final offer is the most reasonable under clause (i), the certified IDR entity shall consider—
"(aa) the median contracted rates (as defined in subsection (b)(3)(E)) for items or services that are comparable to the items and services included in the specified claim and that are furnished in the same geographic area (as defined by the Secretary for purposes of such subsection) as such items and services (not including any facility fees with respect to such rates); and

"(bb) the circumstances described in subclause (II), if any information with respect to such circumstances is submitted by either party.

"(II) ADDITIONAL CIRCUMSTANCES.—For purposes of subclause (I)(bb), the circumstances described in this subclause are, with respect to items and services included in the specified claim of a nonparticipating provider, nonparticipating
emergency facility, or health plan, the
following:

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

“(bb) any other extenuating
circumstances with respect to the
furnishing of such items and
services that relate to the acuity
of the individual receiving such
items and services or the com-
plexity of furnishing such items
and services to such individual.

“(III) PROHIBITION ON CONSID-
ERATION OF BILLED CHARGES.—In
determining which final offer is the
most reasonable under clause (i) with
respect to items and services fur-
nished by a provider or facility and in-
cluded in a specified claim, the cer-
tified IDR entity may not consider the
amount that would have been billed by
such provider or facility with respect to such items and services had the provisions of section 2799 or 2799A (as applicable) not applied.

"(iii) EFFECT OF DECISION.—A determination of a certified IDR entity under clause (i)—

"(I) shall be binding; and

"(II) shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9, United States Code.

"(iv) COSTS OF INDEPENDENT DISPUTE RESOLUTION PROCESS.—In the case of a specified claim made by a nonparticipating provider, nonparticipating emergency facility, or health plan and submitted to a certified IDR entity—

"(I) if such entity makes a determination with respect to such claim under clause (i), the party whose offer is not chosen under such clause shall be responsible for paying all fees charged by such entity; and
“(II) if the parties reach a settlement with respect to such claim prior to such a determination, such fees shall be divided equally between the parties, unless the parties otherwise agree.

“(v) Payment.—Not later than 30 days after a determination described in clause (i) is made with respect to a specified claim of a nonparticipating provider, nonparticipating emergency facility, or health plan—

“(I) in the case that such determination finds that the amount paid with respect to such specified claim by the health plan should have been greater than the amount so paid, such plan shall pay directly to the provider or facility (as applicable) the difference between the amount so paid and the amount so determined; and

“(II) in the case that such determination finds that the amount paid with respect to such specified claim by the health plan should have been less
than the amount so paid, the provider
or facility (as applicable) shall pay di-
rectly to the plan the difference be-
tween the amount so paid and the
amount so determined.

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

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

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

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

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

“(B) INFORMATION WITH RESPECT TO
SPECIFIED CLAIMS.—For purposes of subpara-
graph (A), the information described in this
subparagraph is, with respect to a specified
claim of a nonparticipating provider, nonparticip-
ating emergency facility, or health plan—

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

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

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

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

“(C) CONFIDENTIALITY OF PARTIES.—
None of the information published under this
paragraph may specify the identity of a health
plan, provider, facility, or individual with re-
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)".