

AMENDMENT TO H.R. 2563
OFFERED BY MR. NORWOOD OF GEORGIA

Amend section 402 to read as follows:

1 **SEC. 402. AVAILABILITY OF CIVIL REMEDIES.**

2 (a) IN GENERAL.—Section 502 of the Employee Re-
3 tirement Income Security Act of 1974 (29 U.S.C. 1132)
4 is amended by adding at the end the following:

5 “(n) CAUSE OF ACTION RELATING TO CLAIMS FOR
6 HEALTH BENEFITS.—

7 “(1) CAUSE OF ACTION.—

8 “(A) IN GENERAL.—With respect to an ac-
9 tion commenced by a participant or beneficiary
10 (or the estate of the participant or beneficiary)
11 in connection with a claim for benefits under a
12 group health plan, if—

13 “(i) a designated decisionmaker de-
14 scribed in paragraph (2) fails to exercise
15 ordinary care—

16 “(I) in making a determination
17 denying the claim for benefits under
18 section 503A (relating to an initial
19 claim for benefits),

20 “(II) in making a determination
21 denying the claim for benefits under



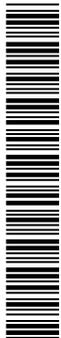
1 section 503B (relating to an internal
2 appeal), or

3 “(III) in failing to authorize cov-
4 erage in compliance with the written
5 determination of an independent med-
6 ical reviewer under section
7 503C(d)(3)(F) that reverses a deter-
8 mination denying the claim for bene-
9 fits, and

10 “(ii) the delay in receiving, or failure
11 to receive, benefits attributable to the fail-
12 ure described in clause (i) is the proximate
13 cause of personal injury to, or death of,
14 the participant or beneficiary,

15 such designated decisionmaker shall be liable to
16 the participant or beneficiary (or the estate) for
17 economic and noneconomic damages in connec-
18 tion with such failure and such injury or death
19 (subject to paragraph (4)).

20 “(B) REBUTTABLE PRESUMPTION.—In the
21 case of a cause of action under subparagraph
22 (A)(i)(I) or (A)(i)(II), if an independent med-
23 ical reviewer under section 503C(d) or
24 503C(e)(4)(B) upholds the determination deny-
25 ing the claim for benefits involved, there shall



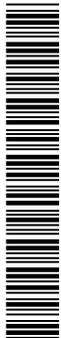
1 be a presumption (rebuttable by clear and con-
2 vincing evidence) that the designated decision-
3 maker exercised ordinary care in making such
4 determination.

5 “(2) DESIGNATED DECISIONMAKER.—

6 “(A) APPOINTMENT.—

7 “(i) IN GENERAL.—The plan sponsor
8 or named fiduciary of a group health plan
9 shall, in accordance with this paragraph
10 with respect to a participant or beneficiary,
11 designate a person that meets the require-
12 ments of subparagraph (B) to serve as a
13 designated decisionmaker with respect to
14 the cause of action described in paragraph
15 (1), except that—

16 “(I) with respect to health insur-
17 ance coverage offered in connection
18 with a group health plan, the health
19 insurance issuer shall be the des-
20 ignated decisionmaker unless the plan
21 sponsor and the issuer specifically
22 agree in writing (on a form to be pre-
23 scribed by the Secretary) to substitute
24 another person as the designated deci-
25 sionmaker; or



1 “(II) with respect to the designa-
2 tion of a person other than a plan
3 sponsor or health insurance issuer,
4 such person shall satisfy the require-
5 ments of subparagraph (D).

6 “(ii) PLAN DOCUMENTS.—The des-
7 ignated decisionmaker shall be specifically
8 designated as such in the written instru-
9 ments of the plan (under section 402(a))
10 and be identified as required under section
11 121(b)(15) of the Bipartisan Patient Pro-
12 tection Act.

13 “(B) REQUIREMENTS.—For purposes of
14 this paragraph, a designated decisionmaker
15 meets the requirements of this subparagraph
16 with respect to any participant or beneficiary
17 if—

18 “(i) such designation is in such form
19 as may be specified in regulations pre-
20 scribed by the Secretary,

21 “(ii) the designated decisionmaker—

22 “(I) meets the requirements of
23 subparagraph (C),

24 “(II) assumes unconditionally all
25 liability arising under this subsection



1 in connection with actions and failures
2 to act described in subparagraph (A)
3 (whether undertaken by the des-
4 ignated decisionmaker or the em-
5 ployer, plan, plan sponsor, or em-
6 ployee or agent thereof) during the
7 period in which the designation under
8 this paragraph is in effect relating to
9 such participant or beneficiary, and

10 “(III) where subparagraph
11 (C)(ii) applies, assumes uncondition-
12 ally the exclusive authority under the
13 group health plan to make determina-
14 tions on claims for benefits (irrespec-
15 tive of whether they constitute medi-
16 cally reviewable determinations) under
17 the plan with respect to such partici-
18 pant or beneficiary, and

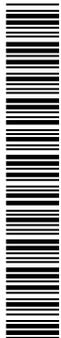
19 “(iii) the designated decisionmaker
20 and the participants and beneficiaries for
21 whom the decisionmaker has assumed li-
22 ability are identified in the written instru-
23 ment required under section 402(a) and as
24 required under section 121(b)(15) of the
25 Bipartisan Patient Protection Act.



1 Any liability assumed by a designated decision-
2 maker pursuant to this paragraph shall be in
3 addition to any liability that it may otherwise
4 have under applicable law.

5 “(C) QUALIFICATIONS FOR DESIGNATED
6 DECISIONMAKERS.—

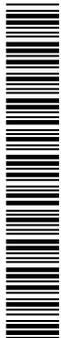
7 “(i) IN GENERAL.—Subject to clause
8 (ii), an entity is qualified under this sub-
9 paragraph to serve as a designated deci-
10 sionmaker with respect to a group health
11 plan if the entity has the ability to assume
12 the liability described in subparagraph (A)
13 with respect to participants and bene-
14 ficiaries under such plan, including re-
15 quirements relating to the financial obliga-
16 tion for timely satisfying the assumed li-
17 ability, and maintains with the plan spon-
18 sor certification of such ability. Such cer-
19 tification shall be provided to the plan
20 sponsor or named fiduciary upon designa-
21 tion under this paragraph and not less fre-
22 quently than annually thereafter, or if such
23 designation constitutes a multiyear ar-
24 rangement, in conjunction with the renewal
25 of the arrangement.



1 “(ii) SPECIAL QUALIFICATION IN THE
2 CASE OF CERTAIN REVIEWABLE DECI-
3 SIONS.—In the case of a group health plan
4 that provides benefits consisting of medical
5 care to a participant or beneficiary only
6 through health insurance coverage offered
7 by a health insurance issuer, such issuer is
8 the only entity that may be qualified under
9 this subparagraph to serve as a designated
10 decisionmaker with respect to such partici-
11 pant or beneficiary, and shall serve as the
12 designated decisionmaker unless the em-
13 ployer or other plan sponsor acts affirma-
14 tively to prevent such service.

15 “(D) REQUIREMENTS RELATING TO FI-
16 NANCIAL OBLIGATIONS.—For purposes of sub-
17 paragraphs (A)(i)(II) and (C)(i), the require-
18 ments relating to the financial obligation of an
19 entity for liability shall include—

20 “(i) coverage of such entity under an
21 insurance policy or other arrangement, se-
22 cured and maintained by such entity, to ef-
23 fectively insure such entity against losses
24 arising from professional liability claims,
25 including those arising from its service as



1 a designated decisionmaker under this sub-
2 section; or

3 “(ii) evidence of minimum capital and
4 surplus levels that are maintained by such
5 entity to cover any losses as a result of li-
6 ability arising from its service as a des-
7 igned decisionmaker under this sub-
8 section.

9 The appropriate amounts of liability insurance
10 and minimum capital and surplus levels for
11 purposes of clauses (i) and (ii) shall be deter-
12 mined by an actuary using sound actuarial
13 principles and accounting practices pursuant to
14 established guidelines of the American Academy
15 of Actuaries and in accordance with such regu-
16 lations as the Secretary may prescribe and shall
17 be maintained throughout the term for which
18 the designation is in effect. The provisions of
19 this subparagraph shall not apply in the case of
20 a designated decisionmaker that is a group
21 health plan, plan sponsor, or health insurance
22 issuer and that is regulated under Federal law
23 or a State financial solvency law.

24 “(E) LIMITATION ON APPOINTMENT OF
25 TREATING PHYSICIANS.—A treating physician



1 who directly delivered the care or treatment or
2 provided services which is the subject of a cause
3 of action by a participant or beneficiary under
4 paragraph (1) may not be appointed (or deemed
5 to be appointed) as a designated decisionmaker
6 under this paragraph with respect to such par-
7 ticipant or beneficiary.

8 “(F) FAILURE TO APPOINT.—With respect
9 to any cause of action under paragraph (1) re-
10 lating to a denial of a claim for benefits where
11 a designated decisionmaker has not been ap-
12 pointed in accordance with this paragraph, the
13 plan sponsor or named fiduciary responsible for
14 determinations under section 503 shall be
15 deemed to be the designated decisionmaker.

16 “(G) EFFECT OF APPOINTMENT.—The ap-
17 pointment of a designated decisionmaker in ac-
18 cordance with this paragraph shall not affect
19 the liability of the appointing plan sponsor or
20 named fiduciary for the failure of the plan
21 sponsor or named fiduciary to comply with any
22 other requirement of this title.

23 “(H) TREATMENT OF CERTAIN TRUST
24 FUNDS.—For purposes of this subsection, the
25 terms ‘employer’ and ‘plan sponsor’, in connec-



1 tion with the assumption by a designated deci-
2 sionmaker of the liability of employer or other
3 plan sponsor pursuant to this paragraph, shall
4 be construed to include a trust fund maintained
5 pursuant to section 302 of the Labor Manage-
6 ment Relations Act, 1947 (29 U.S.C. 186) or
7 the Railway Labor Act (45 U.S.C. 151 et seq.).

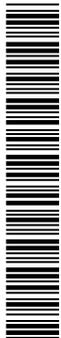
8 “(3) REQUIREMENT OF EXHAUSTION OF INDE-
9 PENDENT MEDICAL REVIEW.—

10 “(A) IN GENERAL.—Paragraph (1) shall
11 apply only if—

12 “(i) a final determination denying a
13 claim for benefits under section 503B has
14 been referred for independent medical re-
15 view under section 503C(d) and a written
16 determination by an independent medical
17 reviewer has been issued with respect to
18 such review, or

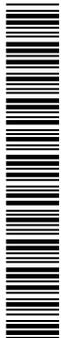
19 “(ii) the qualified external review enti-
20 ty has determined under section
21 503C(c)(3) that a referral to an inde-
22 pendent medical reviewer is not required.

23 “(B) INJUNCTIVE RELIEF FOR IRREP-
24 ARABLE HARM.—A participant or beneficiary
25 may seek relief under subsection (a)(1)(B) prior



1 to the exhaustion of administrative remedies
2 under section 503B or 503C (as required under
3 subparagraph (A)) if it is demonstrated to the
4 court, by a preponderance of the evidence, that
5 the exhaustion of such remedies would cause ir-
6 reparable harm to the health of the participant
7 or beneficiary. Any determinations that already
8 have been made under section 503A, 503B, or
9 503C in such case, or that are made in such
10 case while an action under this subparagraph is
11 pending, shall be given due consideration by the
12 court in any action under subsection (a)(1)(B)
13 in such case. Notwithstanding the awarding of
14 such relief under subsection (a)(1)(B) pursuant
15 to this subparagraph, no relief shall be available
16 under paragraph (1), with respect to a partici-
17 pant or beneficiary, unless the requirements of
18 subparagraph (A) are met.

19 “(C) RECEIPT OF BENEFITS DURING AP-
20 PEALS PROCESS.—Receipt by the participant or
21 beneficiary of the benefits involved in the claim
22 for benefits during the pendency of any admin-
23 istrative processes referred to in subparagraph
24 (A) or of any action commenced under this
25 subsection—



1 “(i) shall not preclude continuation of
 2 all such administrative processes to their
 3 conclusion if so moved by any party, and

4 “(ii) shall not preclude any liability
 5 under subsection (a)(1)(C) and this sub-
 6 section in connection with such claim.

7 The court in any action commenced under this
 8 subsection shall take into account any receipt of
 9 benefits during such administrative processes or
 10 such action in determining the amount of the
 11 damages awarded.

12 “(4) LIMITATIONS ON RECOVERY OF DAM-
 13 AGES.—

14 “(A) MAXIMUM AWARD OF NONECONOMIC
 15 DAMAGES.—The aggregate amount of liability
 16 for noneconomic loss in an action under para-
 17 graph (1) may not exceed \$1,500,000.

18 “(B) LIMITATION ON AWARD OF PUNITIVE
 19 DAMAGES.—In the case of any action com-
 20 menced pursuant to paragraph (1), the court
 21 may not award any punitive, exemplary, or
 22 similar damages against a defendant, except
 23 that the court may award punitive, exemplary,
 24 or similar damages (in addition to damages de-



1 scribed in subparagraph (A)), in an aggregate
2 amount not to exceed \$1,500,000, if—

3 “(i) the denial of a claim for benefits
4 involved in the case was reversed by a writ-
5 ten determination by an independent med-
6 ical reviewer under section 503C(d)(3)(F);
7 and

8 “(ii) there has been a failure to au-
9 thorize coverage in compliance with such
10 written determination.

11 “(C) PERMITTING APPLICATION OF LOWER
12 STATE DAMAGE LIMITS.—A State may limit
13 damages for noneconomic loss or punitive, ex-
14 emplary, or similar damages in an action under
15 paragraph (1) to amounts less than the
16 amounts permitted under this paragraph.

17 “(5) ADMISSIBILITY.—In an action described in
18 subclause (I) or (II) of paragraph (1)(A) relating to
19 a denial of a claim for benefits, any determination
20 by an independent medical reviewer under section
21 503C(d) or 503C(e)(4)(B) relating to such denial is
22 admissible.

23 “(6) WAIVER OF INTERNAL REVIEW.—In the
24 case of any cause of action under paragraph (1), the
25 waiver or nonwaiver of internal review under section



1 503B(a)(4) by the group health plan, or health in-
2 surance issuer that offers health insurance coverage
3 in connection with a group health plan, shall not be
4 used in determining liability.

5 “(7) LIMITATIONS ON ACTIONS.—Paragraph
6 (1) shall not apply in connection with any action
7 that is commenced more than 5 years after the date
8 on which the failure described in such paragraph oc-
9 curred or, if earlier, not later than 2 years after the
10 first date the participant or beneficiary became
11 aware of the personal injury or death referred to in
12 such paragraph.

13 “(8) EXCLUSION OF DIRECTED RECORD-
14 KEEPERS.—

15 “(A) IN GENERAL.—Paragraph (1) shall
16 not apply with respect to a directed record
17 keeper in connection with a group health plan.

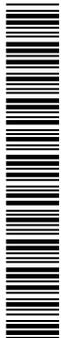
18 “(B) DIRECTED RECORDKEEPER.—For
19 purposes of this paragraph, the term ‘directed
20 record keeper’ means, in connection with a
21 group health plan, a person engaged in directed
22 recordkeeping activities pursuant to the specific
23 instructions of the plan, the employer, or an-
24 other plan sponsor, including the distribution of
25 enrollment information and distribution of dis-



1 closure materials under this Act or title I of the
2 Bipartisan Patient Protection Act and whose
3 duties do not include making determinations on
4 claims for benefits.

5 “(C) LIMITATION.—Subparagraph (A)
6 does not apply in connection with any directed
7 recordkeeper to the extent that the directed rec-
8 ordkeeper fails to follow the specific instruction
9 of the plan or the employer or other plan spon-
10 sor.

11 “(9) PROTECTION OF THE REGULATION OF
12 QUALITY OF MEDICAL CARE UNDER STATE LAW.—
13 Nothing in this subsection shall be construed to pre-
14 clude any action under State law against a person
15 or entity for liability or vicarious liability with re-
16 spect to the delivery of medical care. A cause of ac-
17 tion that is based on or otherwise relates to a group
18 health plan’s determination on a claim for benefits
19 shall not be deemed to be the delivery of medical
20 care under any State law for purposes of this para-
21 graph. Any such cause of action shall be maintained
22 exclusively under this section. Nothing in this para-
23 graph shall be construed to alter, amend, modify, in-
24 validate, impair, or supersede section 514.



1 “(10) COORDINATION WITH FIDUCIARY RE-
2 QUIREMENTS.—A fiduciary shall not be treated as
3 failing to meet any requirement of part 4 solely by
4 reason of any action taken by a fiduciary which con-
5 sists of full compliance with the reversal under sec-
6 tion 503C (relating to independent external appeals
7 procedures for group health plans) of a denial of
8 claim for benefits (within the meaning of section
9 503C(i)(2)).

10 “(11) CONSTRUCTION.—Nothing in this sub-
11 section shall be construed as authorizing a cause of
12 action under paragraph (1) for the failure of a
13 group health plan or health insurance issuer to pro-
14 vide an item or service that is specifically excluded
15 under the plan or coverage.

16 “(12) LIMITATION ON CLASS ACTION LITIGA-
17 TION.—A claim or cause of action under this sub-
18 section may not be maintained as a class action, as
19 a derivative action, or as an action on behalf of any
20 group of 2 or more claimants.

21 “(13) PURCHASE OF INSURANCE TO COVER LI-
22 ABILITY.—Nothing in section 410 shall be construed
23 to preclude the purchase by a group health plan of
24 insurance to cover any liability or losses arising



1 under a cause of action under subsection (a)(1)(C)
2 and this subsection.

3 “(14) RETROSPECTIVE CLAIMS FOR BENE-
4 FITS.—A cause of action shall not arise under para-
5 graph (1) where the claim for benefits relates to an
6 item or service that has already been provided to the
7 participant or beneficiary under the plan or coverage
8 and the claim relates solely to the subsequent denial
9 of payment for the provision of such item or service.

10 “(15) EXEMPTION FROM PERSONAL LIABILITY
11 FOR INDIVIDUAL MEMBERS OF BOARDS OF DIREC-
12 TORS, JOINT BOARDS OF TRUSTEES, ETC.—Any indi-
13 vidual who is—

14 “(A) a member of a board of directors of
15 an employer or plan sponsor; or

16 “(B) a member of an association, com-
17 mittee, employee organization, joint board of
18 trustees, or other similar group of representa-
19 tives of the entities that are the plan sponsor
20 of plan maintained by two or more employers
21 and one or more employee organizations;

22 shall not be personally liable under this subsection
23 for conduct that is within the scope of employment
24 or of plan-related duties of the individuals unless the



1 individual acts in a fraudulent manner for personal
2 enrichment.

3 “(16) DEFINITIONS AND RELATED RULES.—

4 For purposes of this subsection:

5 “(A) CLAIM FOR BENEFITS.—The term
6 ‘claim for benefits’ shall have the meaning given
7 such term in section 503A(e).

8 “(B) GROUP HEALTH PLAN.—The term
9 ‘group health plan’ shall have the meaning
10 given such term in section 733(a).

11 “(C) HEALTH INSURANCE COVERAGE.—
12 The term ‘health insurance coverage’ has the
13 meaning given such term in section 733(b)(1).

14 “(D) HEALTH INSURANCE ISSUER.—The
15 term ‘health insurance issuer’ has the meaning
16 given such term in section 733(b)(2).

17 “(E) ORDINARY CARE.—The term ‘ordi-
18 nary care’ means, with respect to a determina-
19 tion on a claim for benefits, that degree of care,
20 skill, and diligence that a reasonable and pru-
21 dent individual would exercise in making a fair
22 determination on a claim for benefits of like
23 kind to the claims involved.

24 “(F) PERSONAL INJURY.—The term ‘per-
25 sonal injury’ means a physical injury and in-



1 cludes an injury arising out of the treatment
2 (or failure to treat) a mental illness or disease.

3 “(G) TREATMENT OF EXCEPTED BENE-
4 FITS.—The provisions of this subsection (and
5 subsection (a)(1)(C)) shall not apply to ex-
6 cepted benefits (as defined in section 733(c)),
7 other than benefits described in section
8 733(c)(2)(A), in the same manner as the provi-
9 sions of part 7 do not apply to such benefits
10 under subsections (b) and (c) of section 732.

11 (2) CONFORMING AMENDMENT.—Section
12 502(a)(1) of such Act (29 U.S.C. 1132(a)(1)) is
13 amended—

14 (A) by striking “or” at the end of subpara-
15 graph (A);

16 (B) in subparagraph (B), by striking
17 “plan;” and inserting “plan, or”; and

18 (C) by adding at the end the following new
19 subparagraph:

20 “(C) for the relief provided for in sub-
21 section (n) of this section.”.

22 (b) AVAILABILITY OF ACTIONS IN STATE COURT.—

23 (1) JURISDICTION OF STATE COURTS.—Section
24 502(e)(1) of such Act (29 U.S.C. 1132(e)) is
25 amended—



1 (A) in the first sentence, by striking “sub-
2 section (a)(1)(B)” and inserting “paragraphs
3 (1)(B), (1)(C), and (7) of subsection (a)”;

4 (B) in the second sentence, by striking
5 “paragraphs (1)(B) and (7)” and inserting
6 “paragraphs (1)(B), (1)(C), and (7)”;

7 (C) by adding at the end the following new
8 sentence: “State courts of competent jurisdic-
9 tion in the State in which the plaintiff resides
10 and district courts of the United States shall
11 have concurrent jurisdiction over actions under
12 subsections (a)(1)(C) and (n).”.

13 (2) LIMITATION ON REMOVABILITY OF CERTAIN
14 ACTIONS IN STATE COURT.—Section 1445 of title
15 28, United States Code, is amended by adding at
16 the end the following new subsection:

17 “(e)(1) A civil action brought in any State court
18 under subsections (a)(1)(C) and (n) of section 502 of the
19 Employee Retirement Income Security Act of 1974
20 against any party (other than the employer, plan, plan
21 sponsor, or other entity treated under section 502(n) of
22 such Act as such) arising from a medically reviewable de-
23 termination may not be removed to any district court of
24 the United States.



1 “(2) For purposes of paragraph (1), the term ‘medi-
2 cally reviewable decision’ means a denial of a claim for
3 benefits under the plan which is described in section
4 503C(d)(2) of the Employee Retirement Income Security
5 Act of 1974.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to acts and omissions, from which
8 a cause of action arises, occurring on or after the applica-
9 ble effective date under section 601.

Amend section 403 to read as follows:

10 **SEC. 403. LIMITATION ON CERTAIN CLASS ACTION LITIGA-**
11 **TION.**

12 (a) IN GENERAL.—Section 502 of the Employee Re-
13 tirement Income Security Act of 1974 (29 U.S.C. 1132),
14 as amended by section 402, is further amended by adding
15 at the end the following:

16 “(o) LIMITATION ON CLASS ACTION LITIGATION.—
17 Any claim or cause of action that is maintained under this
18 section (other than under subsection (n)) or under section
19 1962 or 1964(e) of title 18, United States Code, in con-
20 nection with a group health plan, or health insurance cov-
21 erage issued in connection with a group health plan, as
22 a class action, derivative action, or as an action on behalf
23 of any group of 2 or more claimants, may be maintained
24 only if the class, the derivative claimant, or the group of



1 claimants is limited to the participants or beneficiaries of
2 a group health plan established by only 1 plan sponsor.
3 No action maintained by such class, such derivative claim-
4 ant, or such group of claimants may be joined in the same
5 proceeding with any action maintained by another class,
6 derivative claimant, or group of claimants or consolidated
7 for any purpose with any other proceeding. In this para-
8 graph, the terms ‘group health plan’ and ‘health insurance
9 coverage’ have the meanings given such terms in section
10 733.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall apply with respect to actions com-
13 menced on or after August 2, 2001. Notwithstanding the
14 preceding sentence, with respect to class actions, the
15 amendment made by subsection (a) shall apply with re-
16 spect to civil actions which are pending on such date in
17 which a class action has not been certified as of such date.

Amend section 603 to read as follows:

18 **SEC. 603. SEVERABILITY.**

19 (a) IN GENERAL.—Except as provided in subsections
20 (b) and (c), if any provision of this Act, an amendment
21 made by this Act, or the application of such provision or
22 amendment to any person or circumstance is held to be
23 unconstitutional, the remainder of this Act, the amend-
24 ments made by this Act, and the application of the provi-



1 sions of such to any person or circumstance shall not be
2 affected thereby.

3 (b) DEPENDENCE OF REMEDIES ON APPEALS.—If
4 any provision of section 503A, 503B, or 503C of the Em-
5 ployee Retirement Income Security Act of 1974 (as in-
6 serted by section 131) or the application of either such
7 section to any person or circumstance is held to be uncon-
8 stitutional, section 502(n) of such Act (as inserted by sec-
9 tion 402) shall be deemed to be null and void and shall
10 be given no force or effect.

11 (c) REMEDIES.—If any provision of section 502(n)
12 of the Employee Retirement Income Security Act of 1974
13 (as inserted by section 402), or the application of such
14 section to any person or circumstance, is held to be uncon-
15 stitutional, the remainder of such section shall be deemed
16 to be null and void and shall be given no force or effect.



Page 16, line 10, strike “on a timely basis” and insert “in accordance with the applicable deadlines established under this section and section 503B”.

Page 29, line 14, strike “or modify”.

Page 36, line 12, strike “upheld, reversed, or modified” and insert “upheld or reversed”.

Page 39, line 23, strike “uphold, reverse, or modify” and insert “uphold or reverse”.

Page 40, line 8, and page 44, line 9, strike “or modify”.

Page 23, line 18; page 41, line 19; page 43, line 2; , , strike “reviewer (or reviewers)” and insert “a review panel”.

Page 33, line 7, strike “reviewer” and insert “review panel”.

Page 34, line 25, strike “reviewer” and insert “review panel composed of 3 independent medical reviewers”.

Page 34, lines 8 and 13; page 36, line 8; page 37, line 3; page 38, lines 6 and 20; page 39, line 4, 20, and 21; page 40, lines 1, 2 and 14; page 41, line 6; page 43, lines 6, 17, and 20; page 44, lines 5, 9, and 14; page 45, line 24; page 61, line 5; page 67, line 3; page 68, line 25; , strike “reviewer” and insert “review panel”.



Page 36, line 14; page 43, line 21; page 44, line 12;
, strike “reviewer’s” and insert “review panel’s”.

Page 41, line 4, strike “reviewer (or reviewers)” and
insert “review panel”.

Page 47, line 15, strike “independent external re-
viewer” and insert “independent medical review panel”.

Page 50, line 20, strike “1 or more individuals” and
insert “an independent medical review panel”.

Page 51, amend lines 4 through 6 to read as follows:

1 “(B) with respect to each review, the re-
2 view panel meets the requirements of paragraph
3 (4) and at least 1 reviewer on the panel meets
4 the requirements described in paragraph (5);
5 and

Page 51, line 8, strike “the reviewer” and insert
“each reviewer”.

Page 53, line 21, strike “a reviewer” and insert
“each reviewer”.

Page 54, line 6, strike “a reviewer (or reviewers)”
and insert “the independent medical review panel”.

Page 61, line 5, insert “or any independent medical
review panel” after “reviewer”.

Page 64, lines 1 and 5, strike “reviewers” and insert
“review panel”.



Page 64, line 14; page 69, lines 16 and 19, strike “reviewers” and insert “review panels”.

Page 8, after line 17, insert the following (and place the text from page 8, line 18, through page 16, line 20 in quotation marks):

1 Part 5 of subtitle B of title I of the Employee Retirement
2 Income Security Act of 1974 is amended by inserting
3 after section 503 (29 U.S.C. 1133) the following:

4 **“SEC. 503A. PROCEDURES FOR INITIAL CLAIMS FOR BENEFITS AND PRIOR AUTHORIZATION DETERMINATIONS.**

Page 16, after line 21, insert the following (and place the text from page 16, line 22, through page 25, line 13 in quotation marks):

7 Part 5 of subtitle B of title I of the Employee Retirement
8 Income Security Act of 1974 (as amended by section
9 102) is amended further by inserting after section 503A
10 (29 U.S.C. 1133) the following:

11 **“SEC. 503B. INTERNAL APPEALS OF CLAIMS DENIALS.**

Page 25, after line 15, insert the following (and place the text from page 25, line 16, through page 69, line 22 in quotation marks):

12 Part 5 of subtitle B of title I of the Employee Retirement
13 Income Security Act of 1974 (as amended by sec-



1 tions 102 and 103) is amended further by inserting after
2 section 503B (29 U.S.C. 1133) the following:

3 **“SEC. 503C. INDEPENDENT EXTERNAL APPEALS PROCE-**
4 **DURES.**

Page 119, line 1, insert after “treatment.” the following: “The name of the designated decisionmaker (or decisionmakers) appointed under paragraph (2) of section 502(n) of the Employee Retirement Income Security Act of 1974 for purposes of such section.”.

Page 138, line 21, insert after “plan” the following: “and only with respect to patient protection requirements under section 101 and subtitles B, C, and D and this subtitle”.

Page 145, line 12, strike “and the provisions of sections 502(a)(1)(C), 502(n), and 514(d) of the Employee Retirement Income Security Act of 1974 (added by section 402)”.

Page 148, line 15, after “Act” insert the following: “and sections 503A through 503C of the Employee Retirement Income Security Act of 1974”.

Page 149, line 9, after “Act” insert the following: “and sections 503A through 503C of the Employee Retirement Income Security Act of 1974 (with respect to enrollees under individual health insurance coverage in



the same manner as they apply to participants and beneficiaries under group health insurance coverage)”).

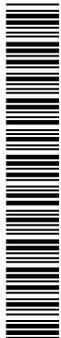
Page 152, line 16, insert “section 101 and subtitles B, C, D, and E of” before “title I”.

Page 155, strike lines 1 through 19 (and redesignate the subsequent paragraphs accordingly).

Page 158, strike lines 19 through 25 and insert the following:

1 “(b)(1)(A) Subject to subparagraphs (B) and (C), a
2 group health plan (and a health insurance issuer offering
3 group health insurance coverage in connection with such
4 a plan) shall comply with the requirements of sections
5 503A, 503B, and 503C, and such requirements shall be
6 deemed to be incorporated into this subsection.

7 “(B) With respect to the internal appeals process re-
8 quired to be established under section 503B, in the case
9 of a group health plan that provides benefits in the form
10 of health insurance coverage through a health insurance
11 issuer, the Secretary shall determine the circumstances
12 under which the plan is not required to provide for such
13 process and system (and is not liable for the issuer’s fail-
14 ure to provide for such process and system), if the issuer
15 is obligated to provide for (and provides for) such process
16 and system.



1 “(C) Pursuant to rules of the Secretary, insofar as
2 a group health plan enters into a contract with a qualified
3 external review entity for the conduct of external appeal
4 activities in accordance with section 503C, the plan shall
5 be treated as meeting the requirement of such section and
6 is not liable for the entity’s failure to meet any require-
7 ments under such section.

8 “(2) In the case of a group health plan, compliance
9 with the requirements of sections 503A, 503B, and 503C,
10 and compliance with regulations promulgated by the Sec-
11 retary, in connection with a denial of a claim under a
12 group health plan shall be deemed compliance with sub-
13 section (a) with respect to such claim denial.

14 “(3) Terms used in this subsection which are defined
15 in section 733 shall have the meanings provided such
16 terms in such section.”.

Page 210, line 19, after “Act” insert the following:
“and sections 503A through 503C of the Employee Re-
tirement Income Security Act of 1974”.

Make such additional technical and conforming
changes to the text of the bill as are necessary to do the
following:

- (1) Replace references to sections 102, 103, and
104 of the bill with references to sections 503A,



503B, and 503C of the Employee Retirement Income Security Act of 1974, as amended by the bill.

(2) In sections 102, 103, and 104, strike any reference to “enrollee” or “enrollees” and insert “in connection with the group health plan” after “health insurance coverage”, and make necessary conforming grammatical changes.

