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(Original Signature of Member)

119TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To amend the Employee Retirement Income Security Act of 1974 to increase transparency of group health plan data, prevent discrimination, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. TAKANO introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend the Employee Retirement Income Security Act of 1974 to increase transparency of group health plan data, prevent discrimination, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. INCREASING TRANSPARENCY OF GROUP HEALTH**  
2 **PLAN DATA.**

3 (a) GROUP HEALTH PLAN AUDIT RIGHTS.—

4 (1) IN GENERAL.—Section 408(b)(2) of the  
5 Employee Retirement Income Security Act of 1974  
6 (29 U.S.C. 1108(b)(2)) is amended by inserting  
7 after subparagraph (C) the following:

8 “(D) No contract or arrangement for serv-  
9 ices, and no extension or renewal of such a con-  
10 tract or arrangement, between a group health  
11 plan (as defined in section 733(a)) and any  
12 other entity, including a health care provider  
13 (including a health care facility), network or as-  
14 sociation of providers, service provider offering  
15 access to a network of providers, third-party ad-  
16 ministrators, or entity providing pharmacy ben-  
17 efit management services, is reasonable within  
18 the meaning of this paragraph unless such con-  
19 tract or arrangement—

20 “(i) allows the group health plan to  
21 audit all de-identified claims and encounter  
22 information or data described in section  
23 724(a)(1)(B), provided that such informa-  
24 tion or data has been deidentified in ac-  
25 cordance with section 164.514 of title 45,

1 Code of Federal Regulations (or successor  
2 regulations), to—

3 “(I) ensure that such entity com-  
4 plies with the terms of the plan, the  
5 terms of the contract or arrangement  
6 for services, and the requirements of  
7 this title; and

8 “(II) determine the reasonable-  
9 ness of compensation received by such  
10 entity; and

11 “(ii) does not—

12 “(I) unreasonably limit the num-  
13 ber of audits permitted during a given  
14 period of time;

15 “(II) limit the number of de-iden-  
16 tified claims and encounter informa-  
17 tion or data that the group health  
18 plan may access during an audit;

19 “(III) limit the disclosure of pric-  
20 ing terms for value-based payment ar-  
21 rangements or capitated payment ar-  
22 rangements, including—

23 “(aa) payment calculations  
24 and formulas;

25 “(bb) quality measures;

1 “(cc) contract terms;  
2 “(dd) payment amounts;  
3 “(ee) measurement periods  
4 for all incentives; and  
5 “(ff) other payment meth-  
6 odologies used by an entity, in-  
7 cluding a health care provider  
8 (including a health care facility),  
9 network or association of pro-  
10 viders, service provider offering  
11 access to a network of providers,  
12 third-party administrator, or en-  
13 tity providing pharmacy benefit  
14 management services;  
15 “(IV) limit the disclosure of over-  
16 payments and overpayment recovery  
17 terms;  
18 “(V) limit the right of the group  
19 health plan to select an auditor;  
20 “(VI) otherwise limit or unduly  
21 delay by greater than 60 calendar  
22 days after the date of request the  
23 group health plan from auditing any  
24 such de-identified claims and encoun-  
25 ter information or data; or

1                   “(VII) permit the entity to  
2                   charge a fee beyond the reasonable di-  
3                   rect costs to provide the required in-  
4                   formation and otherwise comply and  
5                   assist with an audit request.”.

6                   (2) PRIVACY REQUIREMENTS.—

7                   (A) IN GENERAL.—Section 408(b)(2) of  
8                   the Employee Retirement Income Security Act  
9                   of 1974 (29 U.S.C. 1108(b)(2)), as amended by  
10                  paragraph (1), is further amended by adding at  
11                  the end the following:

12                  “(E) PRIVACY REQUIREMENTS.—

13                  “(i) IN GENERAL.—An entity shall—

14                         “(I) provide data or information  
15                         under subparagraph (D) in a manner  
16                         consistent with—

17                                 “(aa) the privacy regulations  
18                                 promulgated under section  
19                                 13402(a) of the Health Informa-  
20                                 tion Technology for Clinical  
21                                 Health Act (42 U.S.C.  
22                                 17932(a)); and

23                                 “(bb) the privacy regulations  
24                                 promulgated under the Health  
25                                 Insurance Portability and Ac-

1 countability Act of 1996 in part  
2 160 and subparts A and E of  
3 part 164 of title 45, Code of  
4 Federal Regulations (or successor  
5 regulations); and

6 “(II) to the extent such data or  
7 information constitutes protected  
8 health information, restrict the use  
9 and disclosure of such information for  
10 purposes of such privacy regulations.

11 “(ii) RESTRICTION.—A group health  
12 plan shall comply with section 164.504(f)  
13 of title 45, Code of Federal Regulations (or  
14 a successor regulation), and a plan sponsor  
15 shall act in accordance with the terms of  
16 the agreement described in such section.”.

17 (b) CIVIL ENFORCEMENT.—

18 (1) IN GENERAL.—Subsection (c) of section  
19 502 of such Act (29 U.S.C. 1132) is amended by  
20 adding at the end the following:

21 “(14) In the case of an agreement between a  
22 group health plan and a health care provider (in-  
23 cluding a health care facility), network or association  
24 of providers, service provider offering access to a  
25 network of providers, third-party administrator, enti-

1 ty providing pharmacy benefit management services,  
2 or other service provider that violates the provisions  
3 of section 724, the Secretary may assess a civil pen-  
4 alty against such provider, network or association of  
5 providers, service provider offering access to a net-  
6 work of providers, third-party administrator, entity  
7 providing pharmacy benefit management services, or  
8 other service provider in the amount of \$10,000 for  
9 each day during which such violation continues.  
10 Such penalty shall be in addition to other penalties  
11 as may be prescribed by law.”.

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

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

18 (c) IMPROVING COLLECTION OF GAG CLAUSE ATTES-  
19 TATIONS.—

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

23 “(d) ATTESTATIONS RELATING TO GROUP HEALTH  
24 PLAN DATA.—Notwithstanding subsection (a) of this sec-  
25 tion, the Secretary shall collect the attestations required

1 to be submitted under section 724(a)(3). The Secretary  
2 shall ensure that any service provider submitting such an  
3 attestation on behalf of a group health plan does not have  
4 any conflicts of interest with regard to such attestation.”.

5 (2) CONFORMING AMENDMENT.—Section  
6 506(a) of such Act (29 U.S.C. 1136(a)) is amended  
7 by striking “In order” and inserting “Subject to  
8 subsection (d), in order”.

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

10 Section 3(21)(A)(iii) of the Employee Retirement In-  
11 come Security Act (29 U.S.C. 1002(21)(A)(iii)) is amend-  
12 ed by striking “such plan.” and inserting the following:  
13 “such plan, including any authority over the use, manage-  
14 ment, disposition, or safeguarding of data generated, used,  
15 or maintained by the plan or a service provider to the plan  
16 in connection with the administration of benefits or man-  
17 agement of plan assets.”.

18 **SEC. 4. PREVENTING DISCRIMINATION BASED ON PLAN**  
19 **DATA.**

20 (a) IN GENERAL.—Part 5 of subtitle B of title I of  
21 the Employee Retirement Income Security Act of 1974  
22 (29 U.S.C. 1131 et seq.) is amended by adding at the end  
23 the following:

1 **“SEC. 524. PREVENTING DISCRIMINATION BASED ON PLAN**  
2 **DATA.**

3 “(a) IN GENERAL.—It shall be unlawful for a person  
4 specified in subsection (c) to discharge, fine, suspend,  
5 expel, discipline, or discriminate against, including by fail-  
6 ing to meet the requirements of subsection (a) or (b) of  
7 section 702 (related to discrimination in eligibility and  
8 premiums for participation in group health plans), a par-  
9 ticipant or beneficiary on the basis of information or data  
10 described in section 724.

11 “(b) ENFORCEMENT.—

12 “(1) IN GENERAL.—The provisions of section  
13 502 shall be applicable in the enforcement of this  
14 section, except that in any action brought under sub-  
15 section (a)(1)(B) of such section in relation to data  
16 or information described in section 724, a partici-  
17 pant or beneficiary may not be required to exhaust  
18 administrative remedies prior to bringing such ac-  
19 tion.

20 “(2) EQUITABLE RELIEF.—In applying section  
21 502 for the purposes of this section, the term ‘equi-  
22 table relief’ shall include any relief necessary to re-  
23 store a participant or beneficiary to the position they  
24 would have occupied but for a violation of subsection  
25 (a).

26 “(3) CIVIL MONETARY PENALTY.—

1           “(A) IN GENERAL.—In the case of a viola-  
2           tion of subsection (a) by a person, the Secretary  
3           may assess a civil monetary penalty against  
4           such person.

5           “(B) AMOUNT.—The amount of the civil  
6           monetary penalty imposed by subparagraph (A)  
7           shall be \$100 for each day in the noncompli-  
8           ance period with respect to each participant or  
9           beneficiary to whom such violation of subsection  
10          (a) relates.

11          “(C) NONCOMPLIANCE PERIOD.—For the  
12          purposes of this subparagraph, the term ‘non-  
13          compliance period’ means, with respect to any  
14          violation of subsection (a), the period—

15                 “(i) beginning on the date such viola-  
16                 tion occurs; and

17                 “(ii) ending on the date such violation  
18                 is corrected.

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

21                 “(1) An employer.

22                 “(2) A plan sponsor.

23                 “(3) A plan administrator.

24                 “(4) A plan fiduciary.”.

1 (b) RULE OF CONSTRUCTION.—Nothing in this Act,  
2 or the amendments made by this Act, shall be construed  
3 to limit the application of any Federal or State privacy  
4 or civil rights law, including the HIPAA privacy regula-  
5 tions, the Genetic Information Nondiscrimination Act of  
6 2008 (Public Law 110–233) (including the amendments  
7 made by such Act), the Americans with Disabilities Act  
8 of 1990 (42 U.S.C. 12101 et seq.), section 504 of the Re-  
9 habilitation Act of 1973 (29 U.S.C. 794), section 1557  
10 of the Patient Protection and Affordable Care Act (42  
11 U.S.C. 18116), title VI of the Civil Rights Act of 1964  
12 (42 U.S.C. 2000d), and title VII of the Civil Rights Act  
13 of 1964 (42 U.S.C. 2000e).

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

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