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**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 3200
OFFERED BY M. _____**

[Reference is to HR 3200]

At the end of division C, add the following new title:

1 **TITLE VI—HEALTH CARE**
2 **TRANSPARENCY COMMISSION**

3 **SEC. 601. SHORT TITLE OF TITLE.**

4 This title may be cited as the “Health Care Trans-
5 parency Commission Act of 2009”.

6 **SEC. 602. HEALTH CARE TRANSPARENCY COMMISSION.**

7 (a) ESTABLISHMENT.—

8 (1) IN GENERAL.—There is hereby established
9 a Health Care Transparency Commission (in this
10 section referred to as the “Commission”), which
11 shall be an entity in the Department of Health and
12 Human Services, to be composed of five commis-
13 sioners to be appointed by the President by and with
14 the advice and consent of the Senate. Not more than
15 three of such commissioners shall be members of the
16 same political party, and in making appointments
17 members of different political parties shall be ap-
18 pointed alternately as nearly as may be practicable.

1 (2) LIMITATION ON OUTSIDE ACTIVITIES.—No
2 commissioner shall engage in any other business, vo-
3 cation, or employment other than that of serving as
4 commissioner, nor shall any commissioner partici-
5 pate, directly or indirectly, in any operation of a
6 health care enterprise subject to regulation by the
7 Commission pursuant to this section.

8 (3) TERMS.—Each commissioner shall hold of-
9 fice for a term of five years and until the commis-
10 sioner's successor is appointed and has qualified, ex-
11 cept that such a commissioner shall not so continue
12 to serve beyond the expiration of the next session of
13 Congress subsequent to the expiration of said fixed
14 term of office, and except that—

15 (A) any commissioner appointed to fill a
16 vacancy occurring prior to the expiration of the
17 term for which the commissioner's predecessor
18 was appointed shall be appointed for the re-
19 mainder of such term (but may be reappointed
20 for subsequent terms); and

21 (B) the terms of office of the commis-
22 sioners first taking office after the date of the
23 enactment of this Act shall expire, as des-
24 ignated by the President at the time of nomina-
25 tion, one at the end of one year, one at the end

1 of two years, one at the end of three years, one
2 at the end of four years, and one at the end of
3 five years, after the date of the enactment of
4 this Act.

5 (4) CHAIRMAN.—The President shall designate
6 one of the commissioners to be the Chairman of the
7 Commission.

8 (b) STAFF.—

9 (1) IN GENERAL.—Section 4(b) of the Securi-
10 ties Exchange Act of 2934 (15 U.S.C. 78d(b)), and
11 section 4802 of title 5, United States Code, shall
12 apply to the Commission in the same manner as
13 they apply to the Securities and Exchange Commis-
14 sion except that any reference in such section 4802
15 to functions under the securities law shall be deemed
16 for purposes of this paragraph a reference to func-
17 tions of the Commission under this Act.

18 (2) EXPERTS AND CONSULTANTS; DETAIL-
19 ING.—The Commission may procure temporary and
20 intermittent services under section 3109(b) of title
21 5, United States Code, in the same manner as the
22 Securities and Exchange Commission is permitted.
23 The head of a Federal department or agency may
24 detail any of the personnel of that department or
25 agency to the Commission to assist it in carrying out

1 its duties under this title in the same manner and
2 to the same extent as such department or agency
3 may detail such personnel to the Securities and Ex-
4 change Commission.

5 (c) POWERS OF COMMISSION.—The Commission shall
6 have with respect to its duties under this title the same
7 powers as the Securities and Exchange Commission has
8 with respect to its duties under the Securities Exchange
9 Act of 1934, including the authority to do the following:

10 (1) HEARINGS AND SESSIONS.—To hold hear-
11 ings, take testimony, and receive evidence, including
12 administration of oaths or affirmations to witnesses
13 appearing before it.

14 (2) DELEGATION.—To delegate to members or
15 agents its authority to the extent authorized by the
16 Commission.

17 (3) OBTAINING OFFICIAL DATA.—To secure
18 necessary information from any department or agen-
19 cy of the United States.

20 (4) SUBPENA POWER.—To issue and enforce
21 subpoenas, including to grant immunity to witnesses
22 under part V of title 18, United States Code.

23 (5) CONTRACT AUTHORITY.—To contract with
24 and compensate government and private agencies or
25 persons.

1 (6) REGULATIONS.—To promulgate regulations
2 to carry out this title.

3 (d) ORGANIZATIONAL UNITS.—Except as the Com-
4 mission may otherwise provide by rule, the Commission
5 shall be organized and structured consistent with the fol-
6 lowing:

7 (1) DIVISION OF PRICING INFORMATION.—
8 There shall be a Division of Pricing Information
9 with the duty to assist the Commission in executing
10 its responsibility for collection, analysis, and dissemi-
11 nation of pricing information in a format that is
12 useful for the general public, academic researchers,
13 and organizations seeking to educate the public
14 through further analysis and dissemination of the in-
15 formation.

16 (2) DIVISION OF QUALITY INFORMATION.—
17 There shall be a Division of Quality Information
18 with the duty to assist the Commission in executing
19 its responsibility for collection, analysis, and dissemi-
20 nation of quality information in a format that is use-
21 ful for the general public, academic researchers, and
22 organizations seeking to educate the public through
23 further analysis, comparisons, and dissemination of
24 the information.

25 (3) DIVISION OF ENFORCEMENT.—

1 (A) IN GENERAL.—There shall be a Divi-
2 sion of Enforcement with the duty to assist the
3 Commission by recommending the commence-
4 ment of investigations of information disclosure
5 law and regulation violations, by recommending
6 that the Commission bring civil actions in fed-
7 eral court or before an administrative law
8 judge, and by prosecuting these cases on behalf
9 of the Commission and in the collection of civil
10 money penalties under section 603(d).

11 (B) CIVIL LITIGATING AUTHORITY.—The
12 Commission, acting through its Division of En-
13 forcement, shall have civil litigating authority,
14 independent of the Attorney General, over mat-
15 ters concerning the Commission.

16 (4) OFFICE OF THE GENERAL COUNSEL.—

17 (A) IN GENERAL.—There shall be a Gen-
18 eral Counsel to the Commission who is ap-
19 pointed by the Chairman as the chief legal offi-
20 cer of the Commission, with overall responsi-
21 bility for the establishment of Commission pol-
22 icy on legal matters.

23 (B) GENERAL DUTIES.—The General
24 Counsel shall serve as the chief legal advisor to
25 the Chairman regarding all legal matters and

1 services performed within, or involving, the
2 Commission, and provides legal advice to the
3 Commissioners, the Divisions, the Offices, and
4 other Commission components as appropriate.
5 The General Counsel shall represent the Com-
6 mission in civil, private, or appellate pro-
7 ceedings as appropriate, including appeals from
8 the decisions of the Federal district courts or
9 the Commission in enforcement matters, and
10 appeals from the denial of requests under sec-
11 tion 552 of title 5, United States Code (popu-
12 larly known as the Freedom of Information
13 Act). The General Counsel shall also be respon-
14 sible for determining the adherence by attor-
15 neys in the Commission to appropriate profes-
16 sional standards, as well as for providing advice
17 on standards of conduct to Commissioners and
18 staff, as appropriate. The General Counsel shall
19 be responsible for the final drafting of all pro-
20 posed legislation that the Chairman or the
21 Commission chooses to submit for consideration
22 to the Congress or the States, and for coordi-
23 nating the Commission staff positions on such
24 legislation.

1 (5) OFFICE OF COMPLIANCE INSPECTIONS AND
2 EXAMINATIONS.—

3 (A) IN GENERAL.—There shall be an Of-
4 fice of Compliance Inspections and Examina-
5 tions with the duty to administer the Commis-
6 sion's nationwide examination and inspection
7 program for registrants.

8 (B) INSPECTIONS.—The Office shall con-
9 duct inspections to foster compliance with the
10 information disclosure laws and regulations, to
11 detect violations of the law, and to keep the
12 Commission informed of developments in the
13 regulated community.

14 (C) EXAMINATIONS PROGRAM.—The Office
15 shall seek the quick and informal correction of
16 compliance problems. When the Office finds de-
17 ficiencies, it shall issue a deficiency letter iden-
18 tifying the problems that need to be rectified
19 and monitor the situation until compliance is
20 achieved. The Office shall refer violations that
21 appear too serious for informal correction to the
22 Division of Enforcement.

23 (6) OFFICE OF INFORMATION TECHNOLOGY.—

24 (A) IN GENERAL.—There shall be an Of-
25 fice of Information Technology with the duty to

1 support the Commission and its staff in all as-
2 pects of information technology. The Office
3 shall have overall management responsibility for
4 the Commission's information technology pro-
5 gram including application development, infra-
6 structure operations and engineering, user sup-
7 port, IT program management, capital plan-
8 ning, security, and enterprise architecture.

9 (B) WEBSITE.—The Office shall maintain
10 a website that provides free, public access to
11 publicly available information on the Commis-
12 sion's activities.

13 (7) OFFICE OF LEGISLATIVE AFFAIRS AND
14 INTERGOVERNMENTAL RELATIONS.—There shall be
15 an Office of Legislative Affairs and Intergovern-
16 mental Relations with such duties relating to legisla-
17 tive affairs and intergovernmental relations as the
18 Commission may determine.

19 (8) OFFICE OF PUBLIC AFFAIRS.—There shall
20 be an Office of Public Affairs with such duties relat-
21 ing to public affairs as the Commission may deter-
22 mine, including assisting the Commission in making
23 the work of the Commission open to the public, un-
24 derstandable to health care providers and con-
25 sumers, and accountable to taxpayers.

1 (9) OFFICE OF THE SECRETARY .—

2 (A) IN GENERAL.—There shall be an Of-
3 fice of the Secretary headed by a Secretary who
4 is appointed by the Chairman. The Office has
5 the duty of being responsible for the procedural
6 administration of Commission meetings, rule-
7 making, practice, and procedure. Among the re-
8 sponsibilities of the Office are the following:

9 (i) The scheduling and recording of
10 public and non-public meetings of the
11 Commission.

12 (ii) The administration of the process
13 by which the Commission takes action
14 without a meeting.

15 (iii) The administration of the duty-
16 officer process (by which a single Commis-
17 sioner is designated to authorize emer-
18 gency action).

19 (iv) The maintenance of records of
20 Commission actions.

21 (v) The maintenance of records of fi-
22 nancial judgments in enforcement pro-
23 ceedings.

24 (B) ADDITIONAL RESPONSIBILITIES.—The
25 Office also shall provide advice to the Commis-

1 sion and the staff on questions of practice and
2 procedure. The Office shall review all Commis-
3 sion documents submitted by the staff to the
4 Commission, including rulemaking releases,
5 Commission enforcement orders and litigation
6 releases, rulemaking notices and orders, and ac-
7 tions taken by Commission staff pursuant to
8 delegated authority. In addition, the Office shall
9 receive and track documents filed in adminis-
10 trative proceedings, requests for confidential
11 treatment, and comment letters on rule pro-
12 posals. The Office shall be responsible for pub-
13 lishing official documents and releases of Com-
14 mission actions in the Federal Register and
15 posting them on the Commission's public Inter-
16 net website. The Office also shall monitor the
17 Commission's compliance with section 552b of
18 title 5, United States Code (popularly known as
19 the Government in the Sunshine Act).

20 (10) OFFICE OF THE INSPECTOR GENERAL.—

21 There shall be an Office of the Inspector General
22 with the duty of conducting internal audits and in-
23 vestigations of Commission programs and oper-
24 ations. Through these audits and investigations, the
25 Inspector General shall seek to identify and mitigate

1 operational risks, enhance government integrity, and
2 improve the efficiency and effectiveness of Commis-
3 sion programs. The Inspector General shall have the
4 same authorities and responsibilities with respect to
5 the Commission that the Inspector General of the
6 Securities and Exchange Commission has with re-
7 spect to such Commission.

8 (11) OFFICE OF ADMINISTRATIVE LAW
9 JUDGES.—There shall be an Office of Administrative
10 Law Judges that consists of independent judicial of-
11 ficers who conduct hearings and rule on allegations
12 of information disclosure law and regulation viola-
13 tions in cases initiated by the Commission. When the
14 Commission initiates a public administrative pro-
15 ceeding, it shall refer the cases to the Office, where
16 it is assigned to an individual Administrative Law
17 Judge who is responsible for conducting such pro-
18 ceeding, including the issuance of subpoenas, ruling
19 on motions, and applying rules on the admissibility
20 of evidence. At the conclusion of such a hearing, the
21 Judge shall prepare an initial decision that includes
22 factual findings and legal conclusions that are mat-
23 ters of public record. Parties may appeal an initial
24 decision of the Judge to the Commission, which can
25 affirm, reverse, modify, set aside or remand for fur-

1 ther proceedings. Appeals from Commission action
2 shall be made to a United States Court of Appeals.

3 (12) HEADQUARTERS AND REGIONAL OF-
4 FICES.—The Commission shall establish its head-
5 quarters in the Washington, D.C., metropolitan area
6 and shall have such regional offices as the Commis-
7 sion may determine.

8 (e) INDEPENDENCE OF THE COMMISSION.—

9 (1) RELATION TO DHHS.—The Commission
10 shall be subject to the general oversight of the Sec-
11 retary of Health and Human Services. No officer or
12 agency of the United States shall have any authority
13 to require the Commission, to submit legislative rec-
14 ommendations, or testimony, or comments on legis-
15 lation, to any officer or agency of the United States
16 for approval, comments, or review, prior to the sub-
17 mission of such recommendations, testimony, or
18 comments to the Congress if such recommendations,
19 testimony, or comments to the Congress include a
20 statement indicating that the views expressed there-
21 in are those of the Commission and do not nec-
22 essarily represent the views of the President.

23 (2) AUTHORITY TO PRESCRIBE REGULA-
24 TIONS.—The Commission may prescribe such regu-
25 lations and issue such orders as the Commission

1 may determine to be necessary for carrying out this
2 title.

3 (3) **AUTONOMY.**—The Secretary of Health and
4 Human Services may not intervene in any matter or
5 proceeding before the Commission (including agency
6 enforcement actions) unless otherwise specifically
7 provided by law.

8 (4) **RULEMAKING.**—The Secretary of Health
9 and Human Services may not delay or prevent the
10 issuance of any rule or the promulgation of any reg-
11 ulation by the Commission. The Secretary may not
12 delay or prevent the issuance of any rule or the pro-
13 mulgation of any regulation by the Commission.

14 **SEC. 603. REGISTRATION OF CLASSES OF REGISTRANTS.**

15 (a) **CLASSES OF REGISTRANTS.**—For purposes of
16 this title there shall be 3 classes of registrants (each in
17 this title referred to as a “class of registrant”) as follows:

18 (1) Hospitals, ambulatory surgical centers,
19 skilled nursing facilities, nursing facilities, group
20 practices, and other group health care providers (as
21 identified by the Commission).

22 (2) Health insurance issuers and group health
23 plans (as such terms are defined in section 2791 of
24 the Public Health Service Act), as well as those enti-
25 ties responsible for administration of Governmental

1 health plans (including the Centers for Medicare &
2 Medicaid Services with respect to the medicare pro-
3 gram under title XVIII of the Social Security Act,
4 State agencies responsible for administration of a
5 Medicaid program or a State children's health insur-
6 ance program under title XIX or XXI of such Act,
7 the Office of Personnel Management with respect to
8 the Federal Employees Health Benefits Program
9 under chapter 89 of title 5, United States Code).

10 (3) Individual health care practitioners.

11 (b) REGISTRATION.—Each entity within a class of
12 registrant described in paragraph (1) or (2) of subsection
13 (a) shall register, and each entity within the class of reg-
14 istrant described in subsection (a)(3) may register, with
15 the Commission, in a form and manner specified by the
16 Commission.

17 (c) REQUIRING REPORTING OF INFORMATION AS
18 CONDITION OF REGISTRATION.—The Commission shall
19 not register an entity within a class of registrant under
20 this section unless the entity provides, in a form and man-
21 ner specified by the Commission, for the collection and re-
22 porting to the Commission of pricing and quality informa-
23 tion specified under section 604.

24 (d) SANCTIONS.—

1 (1) IN GENERAL.—In the case of an entity that
2 is required to be registered under this section and is
3 not registered, that is so registered but fails to re-
4 port information in accordance with this title, or
5 that is so registered and reports such information,
6 but such information is not accurate or otherwise
7 materially false, the Commission may impose a civil
8 money penalty of at least \$100, but not more than
9 \$100,000, for each day of such noncompliance, but
10 in no case more than \$100,000 in the aggregate for
11 a registrant for any day with respect to violations by
12 the registrant under this section. In imposing such
13 penalties, the Commission shall vary such penalties
14 based on classes of registrants, the size of such reg-
15 istrants, and the severity of the violations involved.

16 (2) APPEALS PROCESS.—The Commission shall
17 establish a process whereby an entity for which a
18 penalty is proposed to be imposed under this sub-
19 section may have the opportunity to present evidence
20 and arguments on the entity's behalf.

21 (3) COLLECTION THROUGH MEDICARE AND
22 MEDICAID RECOUPMENT.—In the case of a reg-
23 istrant that fails to pay a civil money penalty im-
24 posed under this subsection, the Secretary of Health
25 and Human Services may—

1 (A) reduce amounts otherwise payable to
2 the registrant under title XVIII of the Social
3 Security Act; and

4 (B) disallow payments to a State under
5 title XIX of such Act for the amount of pay-
6 ments otherwise payable under a State plan
7 under such title to the registrant.

8 (e) REGISTRATION FEES.—

9 (1) IN GENERAL.—As a condition of registra-
10 tion of a non-governmental registrant within the
11 class of registrants described in subsection (a)(2),
12 the Commission may require payment of a reason-
13 able fee, which may vary based on the size of such
14 registrants.

15 (2) LIMITATION.—Such fees shall only be in
16 amounts that the Commission determines to be nec-
17 essary to defray reasonable costs of the Commission
18 in carrying out this title.

19 (3) BY RULE.—Such fees shall be established
20 by rule promulgated not later than 24 months after
21 the date of the enactment of this Act and the Com-
22 mission shall impose such fees not later than 30
23 months after such date. The Commission, by rule,
24 may change the amount of such fees consistent with
25 paragraph (2).

1 (4) AVAILABILITY.—Such fees shall available to
2 the Commission, without further appropriation, only
3 for purposes of carrying out this title.

4 **SEC. 604. PRICING AND QUALITY INFORMATION TO BE RE-**
5 **PORTED AND DISCLOSED.**

6 (a) REPORTING OF INFORMATION TO COMMISSION.—
7 The Commission shall, by rule and consistent with this
8 section, specify the specific information relating to pricing
9 and quality that a class of registrant is required to report
10 to the Commission under this title. The Commission shall
11 ensure that information concerning quality is risk-ad-
12 justed to the extent practical. The Commission shall seek
13 over time to expand the scope of such information in order
14 to provide for the maximum feasible reporting of pricing
15 and quality information to meet the needs of consumers
16 and providers in making determinations with regard to
17 health care items and services. The Commission is encour-
18 aged to work with providers, including through qualified
19 consensus-based entities, such as the Physician Consor-
20 tium for Performance Improvement, and is encouraged to
21 consider measures agreed upon by each physician specialty
22 group.

23 (b) SPECIFIC PROVIDER INFORMATION TO BE RE-
24 PORTED ON SELF-PAY PRICES.—

1 (1) IN GENERAL.—The information under sub-
2 section (a) shall include, with respect to each reg-
3 istrant within a class of registrant specified under
4 paragraph (1) or (3) of section 603(a), with respect
5 to each calendar quarter with the name of the reg-
6 istrant, the self-pay price (as defined in paragraph
7 (3)) charged by the registrant for each item and
8 service as generally furnished (or offered to be fur-
9 nished) by such registrant to any individual during
10 the previous 12-month period.

11 (2) INFORMATION ON VARIATION IN SELF-PAY
12 PRICES.—Insofar as an individual registrant varies
13 self-pay prices charged for such items and services
14 based on family income or other needs based factors,
15 the information submitted under this subsection
16 shall include the self-pay prices charged for individ-
17 uals within different tiers of family income or such
18 other needs, respectively. To the extent practicable,
19 such self-pay prices shall be specified based on fam-
20 ily income tiers representing individuals with family
21 income not exceeding 100 percent of the Federal
22 poverty line and individuals in succeeding income
23 tiers each representing an additional 100 percent of
24 the Federal poverty line with a final tier rep-

1 resenting individuals with family income exceeding
2 500 percent of the Federal poverty line.

3 (3) SELF-PAY PRICE.—In this subsection, the
4 term “self-pay price” means, with respect to an item
5 or service furnished by a registrant, for a calendar
6 quarter, the price charged by the registrant to indi-
7 viduals for such item or service as of a date (speci-
8 fied by the Commission) during the quarter in cases
9 where such price is not established or negotiated
10 through a health care program or third party (such
11 as the program under title XVIII, XIX, or XXI or
12 a health insurance issuer or group health plan)
13 through which the individuals obtain health benefits
14 with respect to items and services furnished by such
15 registrant.

16 (c) GOALS FOR REPORTING AND DISCLOSURE.—To
17 the extent practicable, the Commission shall carry out this
18 section in a manner so as to achieve the following goals:

19 (1) Allow a health care consumer to search for
20 health care providers based on the out-of-pocket ex-
21 pense that such consumer would be responsible for
22 related to a particular item or service furnished by
23 such provider.

24 (2) Allow a health care provider to learn the
25 rate of payment that a particular insurance plan or

1 coverage provides with respect to the furnishing of
2 a particular item or service by such provider to a
3 particular individual.

4 (3) Allow individuals and health care providers
5 to learn the amount of cost-sharing (including
6 deductibles, copayments, and coinsurance) under the
7 individual's plan or coverage that the individual
8 would be responsible for paying with respect to the
9 furnishing of such items and services by such pro-
10 vider to such individual.

11 (d) COMMISSION DISCLOSURE OF INFORMATION.—

12 (1) AVAILABILITY.—Except as provided in
13 paragraph (3), information reported to the Commis-
14 sion under this section shall be made publicly avail-
15 able consistent with this subsection, in a manner
16 specified by the Commission by rule, such as
17 through one or more appropriate Internet websites.

18 (2) PROGRAM DESIGN AND IMPLEMENTA-
19 TION.—The Commission shall, by rule, specify the
20 information to be made available in a manner that—

21 (A) ensures that the information made
22 available is in a format that is easily accessible,
23 useable, and understandable to individuals;

1 (B) ensures that the information made
2 available is as current as deemed appropriate
3 by the Commission;

4 (C) to the extent feasible, makes such in-
5 formation available in a manner that permits
6 an individual to search by geographic area and
7 by family income the self-pay prices charged for
8 items and services reported under subsection
9 (b)(2);

10 (D) periodically solicits comments from a
11 sampling of such individuals that access the in-
12 formation on how to best improve the utility of
13 such information; and

14 (E) to the extent that such information is
15 with respect to a patient, such information has
16 been de-identified in accordance with regula-
17 tions promulgated pursuant to section 264(c) of
18 the Health Insurance Portability and Account-
19 ability Act of 1996.

20 (e) GENERAL PROVISIONS.—

21 (1) TIMELY REPORTING OF INFORMATION.—In
22 requiring the reporting of information under this
23 section, Commission shall require that the informa-
24 tion reported is as current as deemed appropriate by
25 the Commission.

1 (2) GUIDANCE.—Not later than 24 months
2 after the date of the enactment of this section, the
3 Commission shall issue guidance to registrants on
4 the reporting of information under this section.

5 **SEC. 605. IMPLEMENTATION.**

6 The Commission shall first require the registration
7 and reporting of information under this title not later than
8 3 years after the date of the enactment of this Act.

