

109TH CONGRESS
1ST SESSION

S. 1955

To amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 2005

Mr. ENZI (for himself, Mr. NELSON of Nebraska, and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace.

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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Health Insurance Marketplace Modernization and Af-
6 fordability Act of 2005”.

1 (b) TABLE OF CONTENTS.—The table of contents is
 2 as follows:

Sec. 1. Short title and table of contents.

TITLE I—SMALL BUSINESS HEALTH PLANS

Sec. 101. Rules governing small business health plans.

Sec. 102. Cooperation between Federal and State authorities.

Sec. 103. Effective date and transitional and other rules.

TITLE II—NEAR-TERM MARKET RELIEF

Sec. 201. Near-term market relief.

TITLE III—HARMONIZATION OF HEALTH INSURANCE LAWS

Sec. 301. Health Insurance Regulatory Harmonization.

3 **TITLE I—SMALL BUSINESS**
 4 **HEALTH PLANS**

5 **SEC. 101. RULES GOVERNING SMALL BUSINESS HEALTH**
 6 **PLANS.**

7 (a) IN GENERAL.—Subtitle B of title I of the Em-
 8 ployee Retirement Income Security Act of 1974 is amend-
 9 ed by adding after part 7 the following new part:

10 **“PART 8—RULES GOVERNING SMALL BUSINESS**
 11 **HEALTH PLANS**

12 **“SEC. 801. SMALL BUSINESS HEALTH PLANS.**

13 “(a) IN GENERAL.—For purposes of this part, the
 14 term ‘small business health plan’ means a fully insured
 15 group health plan whose sponsor is (or is deemed under
 16 this part to be) described in subsection (b).

17 “(b) SPONSORSHIP.—The sponsor of a group health
 18 plan is described in this subsection if such sponsor—

1 “(1) is organized and maintained in good faith,
2 with a constitution and bylaws specifically stating its
3 purpose and providing for periodic meetings on at
4 least an annual basis, as a bona fide trade associa-
5 tion, a bona fide industry association (including a
6 rural electric cooperative association or a rural tele-
7 phone cooperative association), a bona fide profes-
8 sional association, or a bona fide chamber of com-
9 merce (or similar bona fide business association, in-
10 cluding a corporation or similar organization that
11 operates on a cooperative basis (within the meaning
12 of section 1381 of the Internal Revenue Code of
13 1986)), for substantial purposes other than that of
14 obtaining or providing medical care;

15 “(2) is established as a permanent entity which
16 receives the active support of its members and re-
17 quires for membership payment on a periodic basis
18 of dues or payments necessary to maintain eligibility
19 for membership in the sponsor; and

20 “(3) does not condition membership, such dues
21 or payments, or coverage under the plan on the
22 basis of health status-related factors with respect to
23 the employees of its members (or affiliated mem-
24 bers), or the dependents of such employees, and does

1 not condition such dues or payments on the basis of
2 group health plan participation.

3 Any sponsor consisting of an association of entities which
4 meet the requirements of paragraphs (1), (2), and (3)
5 shall be deemed to be a sponsor described in this sub-
6 section.

7 **“SEC. 802. CERTIFICATION OF SMALL BUSINESS HEALTH**
8 **PLANS.**

9 “(a) IN GENERAL.—Not later than 6 months after
10 the date of enactment of this part, the applicable authority
11 shall prescribe by interim final rule a procedure under
12 which the applicable authority shall certify small business
13 health plans which apply for certification as meeting the
14 requirements of this part.

15 “(b) REQUIREMENTS APPLICABLE TO CERTIFIED
16 PLANS.—a small business health plan with respect to
17 which certification under this part is in effect shall meet
18 the applicable requirements of this part, effective on the
19 date of certification (or, if later, on the date on which the
20 plan is to commence operations).

21 “(c) REQUIREMENTS FOR CONTINUED CERTIFI-
22 CATION.—The applicable authority may provide by regula-
23 tion for continued certification of small business health
24 plans under this part. Such regulation shall provide for
25 the revocation of a certification if the applicable authority

1 finds that the small employer health plan involved is fail-
 2 ing to comply with the requirements of this part.

3 “(d) CLASS CERTIFICATION FOR FULLY INSURED
 4 PLANS.—The applicable authority shall establish a class
 5 certification procedure for small business health plans
 6 under which all benefits consist of health insurance cov-
 7 erage. Under such procedure, the applicable authority
 8 shall provide for the granting of certification under this
 9 part to the plans in each class of such small business
 10 health plans upon appropriate filing under such procedure
 11 in connection with plans in such class and payment of the
 12 prescribed fee under section 806(a).

13 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**
 14 **BOARDS OF TRUSTEES.**

15 “(a) SPONSOR.—The requirements of this subsection
 16 are met with respect to a small business health plan if
 17 the sponsor has met (or is deemed under this part to have
 18 met) the requirements of section 801(b) for a continuous
 19 period of not less than 3 years ending with the date of
 20 the application for certification under this part.

21 “(b) BOARD OF TRUSTEES.—The requirements of
 22 this subsection are met with respect to a small business
 23 health plan if the following requirements are met:

24 “(1) FISCAL CONTROL.—The plan is operated,
 25 pursuant to a plan document, by a board of trustees

1 which pursuant to a trust agreement has complete
2 fiscal control over the plan and which is responsible
3 for all operations of the plan.

4 “(2) RULES OF OPERATION AND FINANCIAL
5 CONTROLS.—The board of trustees has in effect
6 rules of operation and financial controls, based on a
7 3-year plan of operation, adequate to carry out the
8 terms of the plan and to meet all requirements of
9 this title applicable to the plan.

10 “(3) RULES GOVERNING RELATIONSHIP TO
11 PARTICIPATING EMPLOYERS AND TO CONTRAC-
12 TORS.—

13 “(A) BOARD MEMBERSHIP.—

14 “(i) IN GENERAL.—Except as pro-
15 vided in clauses (ii) and (iii), the members
16 of the board of trustees are individuals se-
17 lected from individuals who are the owners,
18 officers, directors, or employees of the par-
19 ticipating employers or who are partners in
20 the participating employers and actively
21 participate in the business.

22 “(ii) LIMITATION.—

23 “(I) GENERAL RULE.—Except as
24 provided in subclauses (II) and (III),
25 no such member is an owner, officer,

1 director, or employee of, or partner in,
2 a contract administrator or other
3 service provider to the plan.

4 “(II) LIMITED EXCEPTION FOR
5 PROVIDERS OF SERVICES SOLELY ON
6 BEHALF OF THE SPONSOR.—Officers
7 or employees of a sponsor which is a
8 service provider (other than a contract
9 administrator) to the plan may be
10 members of the board if they con-
11 stitute not more than 25 percent of
12 the membership of the board and they
13 do not provide services to the plan
14 other than on behalf of the sponsor.

15 “(III) TREATMENT OF PRO-
16 VIDERS OF MEDICAL CARE.—In the
17 case of a sponsor which is an associa-
18 tion whose membership consists pri-
19 marily of providers of medical care,
20 subclause (I) shall not apply in the
21 case of any service provider described
22 in subclause (I) who is a provider of
23 medical care under the plan.

24 “(iii) CERTAIN PLANS EXCLUDED.—
25 Clause (i) shall not apply to a small busi-

1 ness health plan which is in existence on
2 the date of the enactment of the Health
3 Insurance Marketplace Modernization and
4 Affordability Act of 2005.

5 “(B) SOLE AUTHORITY.—The board has
6 sole authority under the plan to approve appli-
7 cations for participation in the plan and to con-
8 tract with insurers and service providers.

9 “(c) TREATMENT OF FRANCHISE NETWORKS.—In
10 the case of a group health plan which is established and
11 maintained by a franchiser for a franchise network con-
12 sisting of its franchisees—

13 “(1) the requirements of subsection (a) and sec-
14 tion 801(a) shall be deemed met if such require-
15 ments would otherwise be met if the franchiser were
16 deemed to be the sponsor referred to in section
17 801(b), such network were deemed to be an associa-
18 tion described in section 801(b), and each franchisee
19 were deemed to be a member (of the association and
20 the sponsor) referred to in section 801(b); and

21 “(2) the requirements of section 804(a)(1) shall
22 be deemed met.

23 The Secretary may by regulation define for purposes of
24 this subsection the terms ‘franchiser’, ‘franchise network’,
25 and ‘franchisee’.

1 **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**
2 **MENTS.**

3 “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The
4 requirements of this subsection are met with respect to
5 a small business health plan if, under the terms of the
6 plan—

7 “(1) each participating employer must be—

8 “(A) a member of the sponsor;

9 “(B) the sponsor; or

10 “(C) an affiliated member of the sponsor
11 with respect to which the requirements of sub-
12 section (b) are met, except that, in the case of
13 a sponsor which is a professional association or
14 other individual-based association, if at least
15 one of the officers, directors, or employees of an
16 employer, or at least one of the individuals who
17 are partners in an employer and who actively
18 participates in the business, is a member or
19 such an affiliated member of the sponsor, par-
20 ticipating employers may also include such em-
21 ployer; and

22 “(2) all individuals commencing coverage under
23 the plan after certification under this part must
24 be—

25 “(A) active or retired owners (including
26 self-employed individuals), officers, directors, or

1 employees of, or partners in, participating em-
2 ployers; or

3 “(B) the beneficiaries of individuals de-
4 scribed in subparagraph (A).

5 “(b) COVERAGE OF PREVIOUSLY UNINSURED EM-
6 PLOYEES.—In the case of a small business health plan in
7 existence on the date of the enactment of the Health In-
8 surance Marketplace Modernization and Affordability Act
9 of 2005, an affiliated member of the sponsor of the plan
10 may be offered coverage under the plan as a participating
11 employer only if—

12 “(1) the affiliated member was an affiliated
13 member on the date of certification under this part;
14 or

15 “(2) during the 12-month period preceding the
16 date of the offering of such coverage, the affiliated
17 member has not maintained or contributed to a
18 group health plan with respect to any of its employ-
19 ees who would otherwise be eligible to participate in
20 such small business health plan.

21 “(c) INDIVIDUAL MARKET UNAFFECTED.—The re-
22 quirements of this subsection are met with respect to a
23 small business health plan if, under the terms of the plan,
24 no participating employer may provide health insurance
25 coverage in the individual market for any employee not

1 covered under the plan which is similar to the coverage
2 contemporaneously provided to employees of the employer
3 under the plan, if such exclusion of the employee from cov-
4 erage under the plan is based on a health status-related
5 factor with respect to the employee and such employee
6 would, but for such exclusion on such basis, be eligible
7 for coverage under the plan.

8 “(d) PROHIBITION OF DISCRIMINATION AGAINST
9 EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICI-
10 PATE.—The requirements of this subsection are met with
11 respect to a small business health plan if—

12 “(1) under the terms of the plan, all employers
13 meeting the preceding requirements of this section
14 are eligible to qualify as participating employers for
15 all geographically available coverage options, unless,
16 in the case of any such employer, participation or
17 contribution requirements of the type referred to in
18 section 2711 of the Public Health Service Act are
19 not met;

20 “(2) upon request, any employer eligible to par-
21 ticipate is furnished information regarding all cov-
22 erage options available under the plan; and

23 “(3) the applicable requirements of sections
24 701, 702, and 703 are met with respect to the plan.

1 **“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN**
2 **DOCUMENTS, CONTRIBUTION RATES, AND**
3 **BENEFIT OPTIONS.**

4 “(a) IN GENERAL.—The requirements of this section
5 are met with respect to a small business health plan if
6 the following requirements are met:

7 “(1) CONTENTS OF GOVERNING INSTRU-
8 MENTS.—

9 “(A) IN GENERAL.—The instruments gov-
10 erning the plan include a written instrument,
11 meeting the requirements of an instrument re-
12 quired under section 402(a)(1), which—

13 “(i) provides that the board of direc-
14 tors serves as the named fiduciary required
15 for plans under section 402(a)(1) and
16 serves in the capacity of a plan adminis-
17 trator (referred to in section 3(16)(A));
18 and

19 “(ii) provides that the sponsor of the
20 plan is to serve as plan sponsor (referred
21 to in section 3(16)(B)).

22 “(B) DESCRIPTION OF MATERIAL PROVI-
23 SIONS.—The terms of the health insurance cov-
24 erage (including the terms of any individual
25 certificates that may be offered to individuals in
26 connection with such coverage) describe the ma-

1 terial benefit and rating, and other provisions
2 set forth in this section and such material pro-
3 visions are included in the summary plan de-
4 scription.

5 “(2) CONTRIBUTION RATES MUST BE NON-
6 DISCRIMINATORY.—

7 “(A) IN GENERAL.—The contribution rates
8 for any participating small employer shall not
9 vary on the basis of any health status-related
10 factor in relation to employees of such employer
11 or their beneficiaries and shall not vary on the
12 basis of the type of business or industry in
13 which such employer is engaged.

14 “(B) EFFECT OF TITLE.—Nothing in this
15 title or any other provision of law shall be con-
16 strued to preclude a health insurance issuer of-
17 fering health insurance coverage in connection
18 with a small business health plan, and at the
19 request of such small business health plan,
20 from—

21 “(i) setting contribution rates for the
22 small business health plan based on the
23 claims experience of the plan so long as
24 any variation in such rates complies with
25 the requirements of clause (ii); or

1 “(ii) varying contribution rates for
2 participating employers in a small business
3 health plan in a State to the extent that
4 such rates could vary using the same
5 methodology employed in such State for
6 regulating premium rates, subject to the
7 terms of part I of subtitle A of title XXIX
8 of the Public Health Service Act (relating
9 to rating requirements), as added by title
10 II of the Health Insurance Marketplace
11 Modernization and Affordability Act of
12 2005.

13 “(3) REGULATORY REQUIREMENTS.—Such
14 other requirements as the applicable authority deter-
15 mines are necessary to carry out the purposes of this
16 part, which shall be prescribed by the applicable au-
17 thority by regulation.

18 “(b) ABILITY OF SMALL BUSINESS HEALTH PLANS
19 TO DESIGN BENEFIT OPTIONS.—Nothing in this part or
20 any provision of State law (as defined in section
21 514(c)(1)) shall be construed to preclude a small business
22 health plan or a health insurance issuer offering health
23 insurance coverage in connection with a small business
24 health plan, from exercising its sole discretion in selecting
25 the specific benefits and services consisting of medical care

1 to be included as benefits under such plan or coverage,
 2 except that such benefits and services must meet the terms
 3 and specifications of part II of subtitle A of title XXIX
 4 of the Public Health Service Act (relating to lower cost
 5 plans), as added by title II of the Health Insurance Mar-
 6 ketplace Modernization and Affordability Act of 2005,
 7 provided that, upon issuance by the Secretary of Health
 8 and Human Services of the List of Required Benefits as
 9 provided for in section 2922(a) of the Public Health Serv-
 10 ice Act, the required scope and application for each benefit
 11 or service listed in the List of Required Benefits shall be—

12 “(1) if the domicile State mandates such ben-
 13 efit or service, the scope and application required by
 14 the domicile State; or

15 “(2) if the domicile State does not mandate
 16 such benefit or service, the scope and application re-
 17 quired by the non-domicile State that does require
 18 such benefit or service in which the greatest number
 19 of the small business health plan’s participating em-
 20 ployers are located.

21 “(c) STATE LICENSURE AND INFORMATIONAL FIL-
 22 ING.—

23 “(1) DOMICILE STATE.—Coverage shall be
 24 issued to a small business health plan in the State

1 in which the sponsor's principal place of business is
2 located.

3 “(2) NON-DOMICILE STATES.—With respect to
4 a State (other than the domicile State) in which par-
5 ticipating employers of a small business health plan
6 are located, an insurer issuing coverage to such
7 small business health plan shall not be required to
8 obtain full licensure in such State, except that the
9 insurer shall provide each State insurance commis-
10 sioner (or applicable State authority) with an infor-
11 mational filing describing policies sold and other rel-
12 evant information as may be requested by the appli-
13 cable State authority.

14 **“SEC. 806. REQUIREMENTS FOR APPLICATION AND RE-**
15 **LATED REQUIREMENTS.**

16 “(a) FILING FEE.—Under the procedure prescribed
17 pursuant to section 802(a), a small business health plan
18 shall pay to the applicable authority at the time of filing
19 an application for certification under this part a filing fee
20 in the amount of \$5,000, which shall be available in the
21 case of the Secretary, to the extent provided in appropria-
22 tion Acts, for the sole purpose of administering the certifi-
23 cation procedures applicable with respect to small business
24 health plans.

1 “(b) INFORMATION TO BE INCLUDED IN APPLICA-
2 TION FOR CERTIFICATION.—An application for certifi-
3 cation under this part meets the requirements of this sec-
4 tion only if it includes, in a manner and form which shall
5 be prescribed by the applicable authority by regulation, at
6 least the following information:

7 “(1) IDENTIFYING INFORMATION.—The names
8 and addresses of—

9 “(A) the sponsor; and

10 “(B) the members of the board of trustees
11 of the plan.

12 “(2) STATES IN WHICH PLAN INTENDS TO DO
13 BUSINESS.—The States in which participants and
14 beneficiaries under the plan are to be located and
15 the number of them expected to be located in each
16 such State.

17 “(3) BONDING REQUIREMENTS.—Evidence pro-
18 vided by the board of trustees that the bonding re-
19 quirements of section 412 will be met as of the date
20 of the application or (if later) commencement of op-
21 erations.

22 “(4) PLAN DOCUMENTS.—A copy of the docu-
23 ments governing the plan (including any bylaws and
24 trust agreements), the summary plan description,
25 and other material describing the benefits that will

1 be provided to participants and beneficiaries under
2 the plan.

3 “(5) AGREEMENTS WITH SERVICE PRO-
4 VIDERS.—A copy of any agreements between the
5 plan, health insurance issuer, and contract adminis-
6 trators and other service providers.

7 “(c) FILING NOTICE OF CERTIFICATION WITH
8 STATES.—A certification granted under this part to a
9 small business health plan shall not be effective unless
10 written notice of such certification is filed with the appli-
11 cable State authority of each State in which at least 25
12 percent of the participants and beneficiaries under the
13 plan are located. For purposes of this subsection, an indi-
14 vidual shall be considered to be located in the State in
15 which a known address of such individual is located or
16 in which such individual is employed.

17 “(d) NOTICE OF MATERIAL CHANGES.—In the case
18 of any small business health plan certified under this part,
19 descriptions of material changes in any information which
20 was required to be submitted with the application for the
21 certification under this part shall be filed in such form
22 and manner as shall be prescribed by the applicable au-
23 thority by regulation. The applicable authority may re-
24 quire by regulation prior notice of material changes with

1 respect to specified matters which might serve as the basis
2 for suspension or revocation of the certification.

3 **“SEC. 807. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**
4 **MINATION.**

5 “A small business health plan which is or has been
6 certified under this part may terminate (upon or at any
7 time after cessation of accruals in benefit liabilities) only
8 if the board of trustees, not less than 60 days before the
9 proposed termination date—

10 “(1) provides to the participants and bene-
11 ficiaries a written notice of intent to terminate stat-
12 ing that such termination is intended and the pro-
13 posed termination date;

14 “(2) develops a plan for winding up the affairs
15 of the plan in connection with such termination in
16 a manner which will result in timely payment of all
17 benefits for which the plan is obligated; and

18 “(3) submits such plan in writing to the appli-
19 cable authority.

20 Actions required under this section shall be taken in such
21 form and manner as may be prescribed by the applicable
22 authority by regulation.

23 **“SEC. 808. DEFINITIONS AND RULES OF CONSTRUCTION.**

24 “(a) DEFINITIONS.—For purposes of this part—

1 “(1) AFFILIATED MEMBER.—The term ‘affili-
2 ated member’ means, in connection with a sponsor—

3 “(A) a person who is otherwise eligible to
4 be a member of the sponsor but who elects an
5 affiliated status with the sponsor,

6 “(B) in the case of a sponsor with mem-
7 bers which consist of associations, a person who
8 is a member of any such association and elects
9 an affiliated status with the sponsor, or

10 “(C) in the case of a small business health
11 plan in existence on the date of the enactment
12 of the Health Insurance Marketplace Mod-
13 ernization and Affordability Act of 2005, a per-
14 son eligible to be a member of the sponsor or
15 one of its member associations.

16 “(2) APPLICABLE AUTHORITY.—The term ‘ap-
17 plicable authority’ means the Secretary, except that,
18 in connection with any exercise of the Secretary’s
19 authority with respect to which the Secretary is re-
20 quired under section 506(d) to consult with a State,
21 such term means the Secretary, in consultation with
22 such State.

23 “(3) APPLICABLE STATE AUTHORITY.—The
24 term ‘applicable State authority’ means, with respect
25 to a health insurance issuer in a State, the State in-

1 insurance commissioner or official or officials des-
2 ignated by the State to enforce the requirements of
3 title XXVII of the Public Health Service Act for the
4 State involved with respect to such issuer.

5 “(4) GROUP HEALTH PLAN.—The term ‘group
6 health plan’ has the meaning provided in section
7 733(a)(1) (after applying subsection (b) of this sec-
8 tion).

9 “(5) HEALTH INSURANCE COVERAGE.—The
10 term ‘health insurance coverage’ has the meaning
11 provided in section 733(b)(1).

12 “(6) HEALTH INSURANCE ISSUER.—The term
13 ‘health insurance issuer’ has the meaning provided
14 in section 733(b)(2).

15 “(7) INDIVIDUAL MARKET.—

16 “(A) IN GENERAL.—The term ‘individual
17 market’ means the market for health insurance
18 coverage offered to individuals other than in
19 connection with a group health plan.

20 “(B) TREATMENT OF VERY SMALL
21 GROUPS.—

22 “(i) IN GENERAL.—Subject to clause
23 (ii), such term includes coverage offered in
24 connection with a group health plan that
25 has fewer than 2 participants as current

1 employees or participants described in sec-
2 tion 732(d)(3) on the first day of the plan
3 year.

4 “(ii) STATE EXCEPTION.—Clause (i)
5 shall not apply in the case of health insur-
6 ance coverage offered in a State if such
7 State regulates the coverage described in
8 such clause in the same manner and to the
9 same extent as coverage in the small group
10 market (as defined in section 2791(e)(5) of
11 the Public Health Service Act) is regulated
12 by such State.

13 “(8) MEDICAL CARE.—The term ‘medical care’
14 has the meaning provided in section 733(a)(2).

15 “(9) PARTICIPATING EMPLOYER.—The term
16 ‘participating employer’ means, in connection with a
17 small business health plan, any employer, if any in-
18 dividual who is an employee of such employer, a
19 partner in such employer, or a self-employed indi-
20 vidual who is such employer (or any dependent, as
21 defined under the terms of the plan, of such indi-
22 vidual) is or was covered under such plan in connec-
23 tion with the status of such individual as such an
24 employee, partner, or self-employed individual in re-
25 lation to the plan.

1 “(10) SMALL EMPLOYER.—The term ‘small em-
2 ployer’ means, in connection with a group health
3 plan with respect to a plan year, a small employer
4 as defined in section 2791(e)(4).

5 “(b) RULE OF CONSTRUCTION.—For purposes of de-
6 termining whether a plan, fund, or program is an em-
7 ployee welfare benefit plan which is a small business
8 health plan, and for purposes of applying this title in con-
9 nection with such plan, fund, or program so determined
10 to be such an employee welfare benefit plan—

11 “(1) in the case of a partnership, the term ‘em-
12 ployer’ (as defined in section 3(5)) includes the part-
13 nership in relation to the partners, and the term
14 ‘employee’ (as defined in section 3(6)) includes any
15 partner in relation to the partnership; and

16 “(2) in the case of a self-employed individual,
17 the term ‘employer’ (as defined in section 3(5)) and
18 the term ‘employee’ (as defined in section 3(6)) shall
19 include such individual.”.

20 (b) CONFORMING AMENDMENTS TO PREEMPTION
21 RULES.—

22 (1) Section 514(b)(6) of such Act (29 U.S.C.
23 1144(b)(6)) is amended by adding at the end the
24 following new subparagraph:

1 “(E) The preceding subparagraphs of this paragraph
2 do not apply with respect to any State law in the case
3 of a small business health plan which is certified under
4 part 8.”.

5 (2) Section 514 of such Act (29 U.S.C. 1144)
6 is amended—

7 (A) in subsection (b)(4), by striking “Sub-
8 section (a)” and inserting “Subsections (a) and
9 (d)”;

10 (B) in subsection (b)(5), by striking “sub-
11 section (a)” in subparagraph (A) and inserting
12 “subsection (a) of this section and subsections
13 (a)(2)(B) and (b) of section 805”, and by strik-
14 ing “subsection (a)” in subparagraph (B) and
15 inserting “subsection (a) of this section or sub-
16 section (a)(2)(B) or (b) of section 805”;

17 (C) by redesignating subsection (d) as sub-
18 section (e); and

19 (D) by inserting after subsection (c) the
20 following new subsection:

21 “(d)(1) Except as provided in subsection (b)(4), the
22 provisions of this title shall supersede any and all State
23 laws insofar as they may now or hereafter preclude a
24 health insurance issuer from offering health insurance cov-

1 erage in connection with a small business health plan
2 which is certified under part 8.

3 “(2) In any case in which health insurance coverage
4 of any policy type is offered under a small business health
5 plan certified under part 8 to a participating employer op-
6 erating in such State, the provisions of this title shall su-
7 percede any and all laws of such State insofar as they may
8 establish rating and benefit requirements that would oth-
9 erwise apply to such coverage, provided the requirements
10 of section 805(a)(2)(B) and (b) (concerning small business
11 health plan rating and benefits) are met.”.

12 (3) Section 514(b)(6)(A) of such Act (29
13 U.S.C. 1144(b)(6)(A)) is amended—

14 (A) in clause (i)(II), by striking “and” at
15 the end;

16 (B) in clause (ii), by inserting “and which
17 does not provide medical care (within the mean-
18 ing of section 733(a)(2)),” after “arrange-
19 ment,”, and by striking “title.” and inserting
20 “title, and”; and

21 (C) by adding at the end the following new
22 clause:

23 “(iii) subject to subparagraph (E), in the case
24 of any other employee welfare benefit plan which is
25 a multiple employer welfare arrangement and which

1 provides medical care (within the meaning of section
2 733(a)(2)), any law of any State which regulates in-
3 surance may apply.”.

4 (4) Section 514(e) of such Act (as redesignated
5 by paragraph (2)(C)) is amended by striking “Noth-
6 ing” and inserting “(1) Except as provided in para-
7 graph (2), nothing”.

8 (c) PLAN SPONSOR.—Section 3(16)(B) of such Act
9 (29 U.S.C. 102(16)(B)) is amended by adding at the end
10 the following new sentence: “Such term also includes a
11 person serving as the sponsor of a small business health
12 plan under part 8.”.

13 (d) SAVINGS CLAUSE.—Section 731(e) of such Act
14 is amended by inserting “or part 8” after “this part”.

15 (e) CLERICAL AMENDMENT.—The table of contents
16 in section 1 of the Employee Retirement Income Security
17 Act of 1974 is amended by inserting after the item relat-
18 ing to section 734 the following new items:

“PART 8—RULES GOVERNING SMALL BUSINESS HEALTH PLANS

“801. Small business health plans.

“802. Certification of small business health plans.

“803. Requirements relating to sponsors and boards of trustees.

“804. Participation and coverage requirements.

“805. Other requirements relating to plan documents, contribution rates, and
benefit options.

“806. Requirements for application and related requirements.

“807. Notice requirements for voluntary termination.

“808. Definitions and rules of construction.”.

1 **SEC. 102. COOPERATION BETWEEN FEDERAL AND STATE**
2 **AUTHORITIES.**

3 Section 506 of the Employee Retirement Income Se-
4 curity Act of 1974 (29 U.S.C. 1136) is amended by adding
5 at the end the following new subsection:

6 “(d) CONSULTATION WITH STATES WITH RESPECT
7 TO SMALL BUSINESS HEALTH PLANS.—

8 “(1) AGREEMENTS WITH STATES.—The Sec-
9 retary shall consult with the State recognized under
10 paragraph (2) with respect to a small business
11 health plan regarding the exercise of—

12 “(A) the Secretary’s authority under sec-
13 tions 502 and 504 to enforce the requirements
14 for certification under part 8; and

15 “(B) the Secretary’s authority to certify
16 small business health plans under part 8 in ac-
17 cordance with regulations of the Secretary ap-
18 plicable to certification under part 8.

19 “(2) RECOGNITION OF DOMICILE STATE.—In
20 carrying out paragraph (1), the Secretary shall en-
21 sure that only one State will be recognized, with re-
22 spect to any particular small business health plan,
23 as the State with which consultation is required. In
24 carrying out this paragraph such State shall be the
25 domicile State, as defined in section 805(c).”.

1 **SEC. 103. EFFECTIVE DATE AND TRANSITIONAL AND**
2 **OTHER RULES.**

3 (a) **EFFECTIVE DATE.**—The amendments made by
4 this title shall take effect 1 year after the date of the en-
5 actment of this Act. The Secretary of Labor shall first
6 issue all regulations necessary to carry out the amend-
7 ments made by this title within 1 year after the date of
8 the enactment of this Act.

9 (b) **TREATMENT OF CERTAIN EXISTING HEALTH**
10 **BENEFITS PROGRAMS.**—

11 (1) **IN GENERAL.**—In any case in which, as of
12 the date of the enactment of this Act, an arrange-
13 ment is maintained in a State for the purpose of
14 providing benefits consisting of medical care for the
15 employees and beneficiaries of its participating em-
16 ployers, at least 200 participating employers make
17 contributions to such arrangement, such arrange-
18 ment has been in existence for at least 10 years, and
19 such arrangement is licensed under the laws of one
20 or more States to provide such benefits to its par-
21 ticipating employers, upon the filing with the appli-
22 cable authority (as defined in section 808(a)(2) of
23 the Employee Retirement Income Security Act of
24 1974 (as amended by this subtitle)) by the arrange-
25 ment of an application for certification of the ar-

1 rangement under part 8 of subtitle B of title I of
2 such Act—

3 (A) such arrangement shall be deemed to
4 be a group health plan for purposes of title I
5 of such Act;

6 (B) the requirements of sections 801(a)
7 and 803(a) of the Employee Retirement Income
8 Security Act of 1974 shall be deemed met with
9 respect to such arrangement;

10 (C) the requirements of section 803(b) of
11 such Act shall be deemed met, if the arrange-
12 ment is operated by a board of trustees which—

13 (i) is elected by the participating em-
14 ployers, with each employer having one
15 vote; and

16 (ii) has complete fiscal control over
17 the arrangement and which is responsible
18 for all operations of the arrangement;

19 (D) the requirements of section 804(a) of
20 such Act shall be deemed met with respect to
21 such arrangement; and

22 (E) the arrangement may be certified by
23 any applicable authority with respect to its op-
24 erations in any State only if it operates in such
25 State on the date of certification.

1 The provisions of this subsection shall cease to apply
2 with respect to any such arrangement at such time
3 after the date of the enactment of this Act as the
4 applicable requirements of this subsection are not
5 met with respect to such arrangement or at such
6 time that the arrangement provides coverage to par-
7 ticipants and beneficiaries in any State other than
8 the States in which coverage is provided on such
9 date of enactment.

10 (2) DEFINITIONS.—For purposes of this sub-
11 section, the terms “group health plan”, “medical
12 care”, and “participating employer” shall have the
13 meanings provided in section 808 of the Employee
14 Retirement Income Security Act of 1974, except
15 that the reference in paragraph (7) of such section
16 to an “small business health plan” shall be deemed
17 a reference to an arrangement referred to in this
18 subsection.

19 **TITLE II—NEAR-TERM MARKET** 20 **RELIEF**

21 **SEC. 201. NEAR-TERM MARKET RELIEF.**

22 The Public Health Service Act (42 U.S.C. 201 et
23 seq.) is amended by adding at the end the following:

1 **“TITLE XXIX—HEALTH CARE IN-**
 2 **SURANCE MARKETPLACE RE-**
 3 **FORM**

4 **“SEC. 2901. GENERAL INSURANCE DEFINITIONS.**

5 “In this title, the terms ‘health insurance coverage’,
 6 ‘health insurance issuer’, ‘group health plan’, and ‘indi-
 7 vidual health insurance’ shall have the meanings given
 8 such terms in section 2791.

9 **“Subtitle A—Near-Term Market**
 10 **Relief**

11 **“PART I—RATING REQUIREMENTS**

12 **“SEC. 2911. DEFINITIONS.**

13 “In this part:

14 “(1) **ADOPTING STATE.**—The term ‘adopting
 15 State’ means a State that has enacted either the
 16 NAIC model rules or the National Interim Model
 17 Rating Rules in their entirety and as the exclusive
 18 laws of the State that relate to rating in the small
 19 group insurance market.

20 “(2) **COMMISSION.**—The term ‘Commission’
 21 means the Harmonized Standards Commission es-
 22 tablished under section 2921.

23 “(3) **ELIGIBLE INSURER.**—The term ‘eligible
 24 insurer’ means a health insurance issuer that is li-
 25 censed in a nonadopting State and that—

1 “(A) notifies the Secretary, not later than
2 30 days prior to the offering of coverage de-
3 scribed in this subparagraph, that the issuer in-
4 tends to offer small group health insurance cov-
5 erage consistent with the National Interim
6 Model Rating Rules in a nonadopting State;

7 “(B) notifies the insurance department of
8 a nonadopting State (or other State agency),
9 not later than 30 days prior to the offering of
10 coverage described in this subparagraph, that
11 the issuer intends to offer small group health
12 insurance coverage in that State consistent with
13 the National Interim Model Rating Rules, and
14 provides with such notice a copy of any insur-
15 ance policy that it intends to offer in the State,
16 its most recent annual and quarterly financial
17 reports, and any other information required to
18 be filed with the insurance department of the
19 State (or other State agency) by the Secretary
20 in regulations; and

21 “(C) includes in the terms of the health in-
22 surance coverage offered in nonadopting States
23 (including in the terms of any individual certifi-
24 cates that may be offered to individuals in con-
25 nection with such group health coverage) and

1 filed with the State pursuant to subparagraph
2 (B), a description in the insurer’s contract of
3 the National Interim Model Rating Rules and
4 an affirmation that such Rules are included in
5 the terms of such contract.

6 “(4) HEALTH INSURANCE COVERAGE.—The
7 term ‘health insurance coverage’ means any coverage
8 issued in small group health insurance market.

9 “(5) NAIC MODEL RULES.—The term ‘NAIC
10 model rules’ means the rating rules provided for in
11 the 1992 Adopted Small Employer Health Insurance
12 Availability Model Act of the National Association of
13 Insurance Commissioners.

14 “(6) NATIONAL INTERIM MODEL RATING
15 RULES.—The term ‘National Interim Model Rating
16 Rules’ means the rules promulgated under section
17 2912(a).

18 “(7) NONADOPTING STATE.—The term ‘non-
19 adopting State’ means a State that is not an adopt-
20 ing State.

21 “(8) SMALL GROUP INSURANCE MARKET.—The
22 term ‘small group insurance market’ shall have the
23 meaning given the term ‘small group market’ in sec-
24 tion 2791(e)(5).

1 “(9) STATE LAW.—The term ‘State law’ means
2 all laws, decisions, rules, regulations, or other State
3 actions (including actions by a State agency) having
4 the effect of law, of any State.

5 **“SEC. 2912. RATING RULES.**

6 “(a) NATIONAL INTERIM MODEL RATING RULES.—
7 Not later than 6 months after the date of enactment of
8 this title, the Secretary, in consultation with the National
9 Association of Insurance Commissioners, shall, through
10 expedited rulemaking procedures, promulgate National In-
11 terim Model Rating Rules that shall be applicable to the
12 small group insurance market in certain States until such
13 time as the provisions of subtitle B become effective. Such
14 Model Rules shall apply in States as provided for in this
15 section beginning with the first plan year after the such
16 Rules are promulgated.

17 “(b) UTILIZATION OF NAIC MODEL RULES.—In
18 promulgating the National Interim Model Rating Rules
19 under subsection (a), the Secretary, except as otherwise
20 provided in this subtitle, shall utilize the NAIC model
21 rules regarding premium rating and premium variation.

22 “(c) TRANSITION IN CERTAIN STATES.—

23 “(1) IN GENERAL.—In promulgating the Na-
24 tional Interim Model Rating Rules under subsection
25 (a), the Secretary shall have discretion to modify the

1 NAIC model rules in accordance with this subsection
2 to the extent necessary to provide for a graduated
3 transition, of not to exceed 3 years following the
4 promulgation of such National Interim Rules, with
5 respect to the application of such Rules to States.

6 “(2) INITIAL PREMIUM VARIATION.—

7 “(A) IN GENERAL.—Under the modified
8 National Interim Model Rating Rules as pro-
9 vided for in paragraph (1), the premium vari-
10 ation provision of subparagraph (C) shall be ap-
11 plicable only with respect to small group poli-
12 cies issued in States which, on the date of en-
13 actment of this title, have in place premium rat-
14 ing band requirements that vary by less than
15 50 percent from the premium variation stand-
16 ards contained in subparagraph (C) with re-
17 spect to the standards provided for under the
18 NAIC model rules.

19 “(B) OTHER STATES.—Health insurance
20 coverage offered in a State that, on the date of
21 enactment of this title, has in place premium
22 rating band requirements that vary by more
23 than 50 percent from the premium variation
24 standards contained in subparagraph (C) shall
25 be subject to such graduated transition sched-

1 ules as may be provided by the Secretary pursu-
2 ant to paragraph (1).

3 “(C) AMOUNT OF VARIATION.—The
4 amount of a premium rating variation from the
5 base premium rate due to health conditions of
6 covered individuals under this subparagraph
7 shall not exceed a factor of—

8 “(i) +/- 25 percent upon the issuance
9 of the policy involved; and

10 “(ii) +/- 15 percent upon the renewal
11 of the policy.

12 “(3) OTHER TRANSITIONAL AUTHORITY.—In
13 developing the National Interim Model Rating Rules,
14 the Secretary may also provide for the application of
15 transitional standards in certain States with respect
16 to the following:

17 “(A) Independent rating classes for old
18 and new business.

19 “(B) Such additional transition standards
20 as the Secretary may determine necessary for
21 an effective transition.

22 **“SEC. 2913. APPLICATION AND PREEMPTION.**

23 “(a) SUPERCEDING OF STATE LAW.—

24 “(1) IN GENERAL.—This part shall supersede
25 any and all State laws insofar as such State laws

1 (whether enacted prior to or after the date of enact-
2 ment of this subtitle) relate to rating in the small
3 group insurance market as applied to an eligible in-
4 surer, or small group health insurance coverage
5 issued by an eligible insurer, in a nonadopting State.

6 “(2) NONADOPTING STATES.—This part shall
7 supersede any and all State laws of a nonadopting
8 State insofar as such State laws (whether enacted
9 prior to or after the date of enactment of this sub-
10 title)—

11 “(A) prohibit an eligible insurer from of-
12 fering coverage consistent with the National In-
13 terim Model Rating Rules in a nonadopting
14 State; or

15 “(B) discriminate against or among eligi-
16 ble insurers offering health insurance coverage
17 consistent with the National Interim Model
18 Rating Rules in a nonadopting state.

19 “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

20 “(1) NONAPPLICATION TO ADOPTING STATES.—
21 Subsection (a) shall not apply with respect to adopt-
22 ing states.

23 “(2) NONAPPLICATION TO CERTAIN INSUR-
24 ERS.—Subsection (a) shall not apply with respect to
25 insurers that do not qualify as eligible insurers that

1 offer small group health insurance coverage in a
2 nonadopting State.

3 “(3) NONAPPLICATION WHERE OBTAINING RE-
4 LIEF UNDER STATE LAW.—Subsection (a)(1) shall
5 not apply to any State law in a nonadopting State
6 to the extent necessary to permit individuals or the
7 insurance department of the State (or other State
8 agency) to obtain relief under State law to require
9 an eligible insurer to comply with the terms of the
10 small group health insurance coverage issued in the
11 nonadopting State. In no case shall this paragraph,
12 or any other provision of this title, be construed to
13 create a cause of action on behalf of an individual
14 or any other person under State law in connection
15 with a group health plan that is subject to the Em-
16 ployee Retirement Income Security Act of 1974 or
17 health insurance coverage issued in connection with
18 such a plan.

19 “(4) NONAPPLICATION TO ENFORCE REQUIRE-
20 MENTS RELATING TO THE NATIONAL RULE.—Sub-
21 section (a)(1) shall not apply to any State law in a
22 nonadopting State to the extent necessary to provide
23 the insurance department of the State (or other
24 State agency) with the authority to enforce State
25 law requirements relating to the National Interim

1 Model Rating Rules that are not set forth in the
2 terms of the small group health insurance coverage
3 issued in a nonadopting State, in a manner that is
4 consistent with the National Interim Model Rating
5 Rules and that imposes no greater duties or obliga-
6 tions on health insurance issuers than the National
7 Interim Model Rating Rules.

8 “(5) NONAPPLICATION TO SUBSECTION (A)(2).—
9 Paragraphs (3) and (4) shall not apply with respect
10 to subsection (a)(2).

11 “(6) NO AFFECT ON PREEMPTION.—In no case
12 shall this subsection be construed to affect the scope
13 of the preemption provided for under the Employee
14 Retirement Income Security Act of 1974.

15 “(c) EFFECTIVE DATE.—This section shall apply be-
16 ginning in the first plan year following the issuance of the
17 final rules by the Secretary under the National Interim
18 Model Rating Rules.

19 **“SEC. 2914. CIVIL ACTIONS AND JURISDICTION.**

20 “(a) IN GENERAL.—The district courts of the United
21 States shall have exclusive jurisdiction over civil actions
22 involving the interpretation of this part.

23 “(b) ACTIONS.—A health insurance issuer may bring
24 an action in the district courts of the United States for
25 injunctive or other equitable relief against a nonadopting

1 State in connection with the application of a state law that
 2 violates this part.

3 “(c) VIOLATIONS OF SECTION 2913.—In the case of
 4 a nonadopting State that is in violation of section
 5 2913(a)(2), a health insurance issuer may bring an action
 6 in the district courts of the United States for damages
 7 against the nonadopting State and, if the health insurance
 8 issuer prevails in such action, the district court shall
 9 award the health insurance issuer its reasonable attorneys
 10 fees and costs.

11 **“SEC. 2915. SUNSET.**

12 “The National Interim Model Rating Rules shall re-
 13 main in effect in a non-adopting State until such time as
 14 the harmonized national rating rules are promulgated and
 15 effective pursuant to part II. Upon such effective date,
 16 such harmonized rules shall supersede the National Rules.

17 **“PART II—LOWER COST PLANS**

18 **“SEC. 2921. DEFINITIONS.**

19 “In this part:

20 “(1) ADOPTING STATE.—The term ‘adopting
 21 State’ means a State that has enacted the State
 22 Benefit Compendium in its entirety and as the ex-
 23 clusive laws of the State that relate to benefit, serv-
 24 ice, and provider mandates in the group and indi-
 25 vidual insurance markets.

1 “(2) ELIGIBLE INSURER.—The term ‘eligible
2 insurer’ means a health insurance issuer that is li-
3 censed in a nonadopting State and that—

4 “(A) notifies the Secretary, not later than
5 30 days prior to the offering of coverage de-
6 scribed in this subparagraph, that the issuer in-
7 tends to offer group health insurance coverage
8 consistent with the State Benefit Compendium
9 in a nonadopting State;

10 “(B) notifies the insurance department of
11 a nonadopting State (or other State agency),
12 not later than 30 days prior to the offering of
13 coverage described in this subparagraph, that
14 the issuer intends to offer group health insur-
15 ance coverage in that State consistent with the
16 State Benefit Compendium, and provides with
17 such notice a copy of any insurance policy that
18 it intends to offer in the State, its most recent
19 annual and quarterly financial reports, and any
20 other information required to be filed with the
21 insurance department of the State (or other
22 State agency) by the Secretary in regulations;
23 and

24 “(C) includes in the terms of the health in-
25 surance coverage offered in nonadopting States

1 (including in the terms of any individual certifi-
 2 cates that may be offered to individuals in con-
 3 nection with such group health coverage) and
 4 filed with the State pursuant to subparagraph
 5 (B), a description in the insurer’s contract of
 6 the State Benefit Compendium and that adher-
 7 ence to the Compendium is included as a term
 8 of such contract.

9 “(3) HEALTH INSURANCE COVERAGE.—The
 10 term ‘health insurance coverage’ means any coverage
 11 issued in the group or individual health insurance
 12 markets.

13 “(4) NONADOPTING STATE.—The term ‘non-
 14 adopting State’ means a State that is not an adopt-
 15 ing State.

16 “(5) STATE BENEFIT COMPENDIUM.—The term
 17 ‘State Benefit Compendium’ means the Compendium
 18 issued under section 2922.

19 “(6) STATE LAW.—The term ‘State law’ means
 20 all laws, decisions, rules, regulations, or other State
 21 actions (including actions by a State agency) having
 22 the effect of law, of any State.

23 **“SEC. 2922. OFFERING LOWER COST PLANS.**

24 “(a) LIST OF REQUIRED BENEFITS.—Not later than
 25 3 months after the date of enactment of this title, the Sec-

1 retary shall issue by interim final rule a list (to be known
2 as the ‘List of Required Benefits’) of the benefit, service,
3 and provider mandates that are required to be provided
4 by health insurance issuers in at least 45 States as a re-
5 sult of the application of State benefit, service, and pro-
6 vider mandate laws.

7 “(b) STATE BENEFIT COMPENDIUM.—

8 “(1) VARIANCE.—Not later than 12 months
9 after the date of enactment of this title, the Sec-
10 retary shall issue by interim final rule a compen-
11 dium (to be known as the ‘State Benefit Compen-
12 dium’) of harmonized descriptions of the benefit,
13 service, and provider mandates identified under sub-
14 section (a). In developing the Compendium, with re-
15 spect to differences in State mandate laws identified
16 under subsection (a) relating to similar benefits,
17 services, or providers, the Secretary shall review and
18 define the scope and application of such State laws
19 so that a common approach shall be applicable
20 under such Compendium in a uniform manner. In
21 making such determination, the Secretary shall
22 adopt an approach reflective of the approach used by
23 a plurality of the States requiring such benefit, serv-
24 ice, or provider mandate.

1 “(2) EFFECT.—The State Benefit Compendium
2 shall provide that any State benefit, service, and
3 provider mandate law (enacted prior to or after the
4 date of enactment of this title) other than those de-
5 scribed in the Compendium shall not be binding on
6 health insurance issuers in an adopting State.

7 “(3) IMPLEMENTATION.—The effective date of
8 the State Benefit Compendium shall be the later
9 of—

10 “(A) the date that is 12 months from the
11 date of enactment of this title; or

12 “(B) such subsequent date on which the
13 interim final rule for the State Benefit Compen-
14 dium shall be issued.

15 “(c) NON-ASSOCIATION COVERAGE.—With respect to
16 health insurers selling insurance to small employers (as
17 defined in section 808(a)(10) of the Employee Retirement
18 Income Security Act of 1974), in the event the Secretary
19 fails to issue the State Benefit Compendium within 12
20 months of the date of enactment of this title, the required
21 scope and application for each benefit or service listed in
22 the List of Required Benefits shall, other than with re-
23 spect to insurance issued to a Small Business Health
24 Plan, be—

1 “(1) if the State in which the insurer issues a
2 policy mandates such benefit or service, the scope
3 and application required by such State; or

4 “(2) if the State in which the insurer issues a
5 policy does not mandate such benefit or service, the
6 scope and application required by such other State
7 that does require such benefit or service in which the
8 greatest number of the insurer’s small employer pol-
9 icyholders are located.

10 “(d) UPDATING OF STATE BENEFIT COMPEN-
11 DIUM.—Not later than 2 years after the date on which
12 the Compendium is issued under subsection (b)(1), and
13 every 2 years thereafter, the Secretary, applying the same
14 methodology provided for in subsections (a) and (b)(1),
15 in consultation with the National Association of Insurance
16 Commissioners, shall update the Compendium. The Sec-
17 retary shall issue the updated Compendium by regulation,
18 and such updated Compendium shall be effective upon the
19 first plan year following the issuance of such regulation.

20 **“SEC. 2923. APPLICATION AND PREEMPTION.**

21 “(a) SUPERCEDING OF STATE LAW.—

22 “(1) IN GENERAL.—This part shall supersede
23 any and all State laws (whether enacted prior to or
24 after the date of enactment of this title) insofar as
25 such laws relate to benefit, service, or provider man-

1 dates in the health insurance market as applied to
2 an eligible insurer, or health insurance coverage
3 issued by an eligible insurer, in a nonadopting State.

4 “(2) NONADOPTING STATES.—This part shall
5 supersede any and all State laws of a nonadopting
6 State (whether enacted prior to or after the date of
7 enactment of this title) insofar as such laws—

8 “(A) prohibit an eligible insurer from of-
9 fering coverage consistent with the State Ben-
10 efit Compendium, as provided for in section
11 2922(a), in a nonadopting State; or

12 “(B) discriminate against or among eligi-
13 ble insurers offering or seeking to offer health
14 insurance coverage consistent with the State
15 Benefit Compendium in a nonadopting State.

16 “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

17 “(1) NONAPPLICATION TO ADOPTING STATES.—
18 Subsection (a) shall not apply with respect to adopt-
19 ing States.

20 “(2) NONAPPLICATION TO CERTAIN INSUR-
21 ERS.—Subsection (a) shall not apply with respect to
22 insurers that do not qualify as eligible insurers who
23 offer health insurance coverage in a nonadopting
24 State.

1 “(3) NONAPPLICATION WHERE OBTAINING RE-
2 LIEF UNDER STATE LAW.—Subsection (a)(1) shall
3 not apply to any State law of a nonadopting State
4 to the extent necessary to permit individuals or the
5 insurance department of the State (or other State
6 agency) to obtain relief under State law to require
7 an eligible insurer to comply with the terms of the
8 group health insurance coverage issued in a non-
9 adopting State. In no case shall this paragraph, or
10 any other provision of this title, be construed to cre-
11 ate a cause of action on behalf of an individual or
12 any other person under State law in connection with
13 a group health plan that is subject to the Employee
14 Retirement Income Security Act of 1974 or health
15 insurance coverage issued in connection with such
16 plan.

17 “(4) NONAPPLICATION TO ENFORCE REQUIRE-
18 MENTS RELATING TO THE COMPENDIUM.—Sub-
19 section (a)(1) shall not apply to any State law in a
20 nonadopting State to the extent necessary to provide
21 the insurance department of the State (or other
22 state agency) authority to enforce State law require-
23 ments relating to the State Benefit Compendium
24 that are not set forth in the terms of the group
25 health insurance coverage issued in a nonadopting

1 State, in a manner that is consistent with the State
2 Benefit Compendium and imposes no greater duties
3 or obligations on health insurance issuers than the
4 State Benefit Compendium.

5 “(5) NONAPPLICATION TO SUBSECTION (A)(2).—
6 Paragraphs (3) and (4) shall not apply with respect
7 to subsection (a)(2).

8 “(6) NO AFFECT ON PREEMPTION.—In no case
9 shall this subsection be construed to affect the scope
10 of the preemption provided for under the Employee
11 Retirement Income Security Act of 1974.

12 “(c) EFFECTIVE DATE.—This section shall apply
13 upon the first plan year following final issuance by the
14 Secretary of the State Benefit Compendium.

15 **“SEC. 2924. CIVIL ACTIONS AND JURISDICTION.**

16 “(a) IN GENERAL.—The district courts of the United
17 States shall have exclusive jurisdiction over civil actions
18 involving the interpretation of this part.

19 “(b) ACTIONS.—A health insurance issuer may bring
20 an action in the district courts of the United States for
21 injunctive or other equitable relief against a nonadopting
22 State in connection with the application of a State law
23 that violates this part.

24 “(c) VIOLATIONS OF SECTION 2923.—In the case of
25 a nonadopting State that is in violation of section

1 2923(a)(2), a health insurance issuer may bring an action
 2 in the district courts of the United States for damages
 3 against the nonadopting State and, if the health insurance
 4 issuer prevails in such action, the district court shall
 5 award the health insurance issuer its reasonable attorneys
 6 fees and costs.”.

7 **TITLE III—HARMONIZATION OF**
 8 **HEALTH INSURANCE LAWS**

9 **SEC. 301. HEALTH INSURANCE REGULATORY HARMONI-**
 10 **ZATION.**

11 Title XXIX of the Public Health Service Act (as
 12 added by section 201) is amended by adding at the end
 13 the following:

14 **“Subtitle B—Regulatory**
 15 **Harmonization**

16 **“SEC. 2931. DEFINITIONS.**

17 “In this subtitle:

18 “(1) ACCESS.—The term ‘access’ means any re-
 19 quirements of State law that regulate the following
 20 elements of access:

21 “(A) Renewability of coverage.

22 “(B) Guaranteed issuance as provided for
 23 in title XXVII.

24 “(C) Guaranteed issue for individuals not
 25 eligible under subparagraph (B).

1 “(D) High risk pools.

2 “(E) Pre-existing conditions limitations.

3 “(2) ADOPTING STATE.—The term ‘adopting
4 State’ means a State that has enacted the har-
5 monized standards adopted under this subtitle in
6 their entirety and as the exclusive laws of the State
7 that relate to the harmonized standards.

8 “(3) ELIGIBLE INSURER.—The term ‘eligible
9 insurer’ means a health insurance issuer that is li-
10 censed in a nonadopting State and that—

11 “(A) notifies the Secretary, not later than
12 30 days prior to the offering of coverage de-
13 scribed in this subparagraph, that the issuer in-
14 tends to offer health insurance coverage con-
15 sistent with the harmonized standards in a non-
16 adopting State;

17 “(B) notifies the insurance department of
18 a nonadopting State (or other State agency),
19 not later than 30 days prior to the offering of
20 coverage described in this subparagraph, that
21 the issuer intends to offer group health insur-
22 ance coverage in that State consistent with the
23 State Benefit Compendium, and provides with
24 such notice a copy of any insurance policy that
25 it intends to offer in the State, its most recent

1 annual and quarterly financial reports, and any
2 other information required to be filed with the
3 insurance department of the State (or other
4 State agency) by the Secretary in regulations;
5 and

6 “(C) includes in the terms of the health in-
7 surance coverage offered in nonadopting States
8 (including in the terms of any individual certifi-
9 cates that may be offered to individuals in con-
10 nection with such group health coverage) and
11 filed with the State pursuant to subparagraph
12 (B), a description of the harmonized standards
13 published pursuant to section 2932(g)(2) and
14 an affirmation that such standards are a term
15 of the contract.

16 “(4) HARMONIZED STANDARDS.—The term
17 ‘harmonized standards’ means the standards adopt-
18 ed by the Secretary under section 2932(d).

19 “(5) HEALTH INSURANCE COVERAGE.—The
20 term ‘health insurance coverage’ means any coverage
21 issued in the health insurance market.

22 “(6) NONADOPTING STATE.—The term ‘non-
23 adopting State’ means a State that fails to enact,
24 within 2 years of the date in which final regulations
25 are issued by the Secretary adopting the harmonized

1 standards under this subtitle, the harmonized stand-
2 ards in their entirety and as the exclusive laws of
3 the State that relate to the harmonized standards.

4 “(7) PATIENT PROTECTIONS.—The term ‘pa-
5 tient protections’ means any requirement of State
6 law that regulate the following elements of patient
7 protections:

8 “(A) Internal appeals.

9 “(B) External appeals.

10 “(C) Direct access to providers.

11 “(D) Prompt payment of claims.

12 “(E) Utilization review.

13 “(F) Marketing standards.

14 “(8) PLURALITY REQUIREMENT.—The term
15 ‘plurality requirement’ means the most common sub-
16 stantially similar requirements for elements within
17 each area described in section 2932(b)(1).

18 “(9) RATING.—The term ‘rating’ means, at the
19 time of issuance or renewal, requirements of State
20 law the regulate the following elements of rating:

21 “(A) Limits on the types of variations in
22 rates based on health status.

23 “(B) Limits on the types of variations in
24 rates based on age and gender.

1 “(C) Limits on the types of variations in
2 rates based on geography, industry and group
3 size.

4 “(D) Periods of time during which rates
5 are guaranteed.

6 “(E) The review and approval of rates.

7 “(F) The establishment of classes or
8 blocks of business.

9 “(G) The use of actuarial justifications for
10 rate variations.

11 “(10) STATE LAW.—The term ‘State law’
12 means all laws, decisions, rules, regulations, or other
13 State actions (including actions by a State agency)
14 having the effect of law, of any State.

15 “(11) SUBSTANTIALLY SIMILAR.—The term
16 ‘substantially similar’ means a requirement of State
17 law applicable to an element of an area identified in
18 section 2932 that is similar in most material re-
19 spects. Where the most common State action with
20 respect to an element is to adopt no requirement for
21 an element of an area identified in such section
22 2932, the plurality requirement shall be deemed to
23 impose no requirements for such element.

24 **“SEC. 2932. HARMONIZED STANDARDS.**

25 “(a) COMMISSION.—

1 “(1) ESTABLISHMENT.—The Secretary, in con-
2 sultation with the NAIC, shall establish the Commis-
3 sion on Health Insurance Standards Harmonization
4 (referred to in this subtitle as the ‘Commission’) to
5 develop recommendations that harmonize incon-
6 sistent State health insurance laws in accordance
7 with the laws adopted in a plurality of the States.

8 “(2) COMPOSITION.—The Commission shall be
9 composed of the following individuals to be ap-
10 pointed by the Secretary:

11 “(A) Two State insurance commissioners,
12 of which one shall be a Democrat and one shall
13 be a Republican, and of which one shall be des-
14 ignated as the chairperson and one shall be des-
15 ignated as the vice chairperson.

16 “(B) Two representatives of State govern-
17 ment, one of which shall be a governor of a
18 State and one of which shall be a State legis-
19 lator, and one of which shall be a Democrat and
20 one of which shall be a Republican.

21 “(C) Two representatives of employers, of
22 which one shall represent small employers and
23 one shall represent large employers.

24 “(D) Two representatives of health insur-
25 ers, of which one shall represent insurers that

1 offer coverage in all markets (including indi-
2 vidual, small, and large markets), and one shall
3 represent insurers that offer coverage in the
4 small market.

5 “(E) Two representatives of consumer or-
6 ganizations.

7 “(F) Two representatives of insurance
8 agents and brokers.

9 “(G) Two representatives of healthcare
10 providers.

11 “(H) Two independent representatives of
12 the American Academy of Actuaries who have
13 familiarity with the actuarial methods applica-
14 ble to health insurance.

15 “(I) One administrator of a qualified high
16 risk pool.

17 “(3) TERMS.—The members of the Commission
18 shall serve for the duration of the Commission. The
19 Secretary shall fill vacancies in the Commission as
20 needed and in a manner consistent with the com-
21 position described in paragraph (2).

22 “(b) DEVELOPMENT OF HARMONIZED STAND-
23 ARDS.—

24 “(1) IN GENERAL.—In accordance with the
25 process described in subsection (c), the Commission

1 shall identify and recommend nationally harmonized
2 standards for the small group health insurance mar-
3 ket, the individual health insurance market, and the
4 large group health insurance market that relate to
5 the following areas:

6 “(A) Rating.

7 “(B) Access to coverage.

8 “(C) Patient protections.

9 “(2) RECOMMENDATIONS.—The Commission
10 shall recommend separate harmonized standards
11 with respect to each of the three insurance markets
12 described in paragraph (1) and separate standards
13 for each element of the areas described in subpara-
14 graph (A) through (C) of such paragraph within
15 each such market. Notwithstanding the previous sen-
16 tence, the Commission shall not recommend any har-
17 monized standards that disrupt, expand, or duplicate
18 the benefit, service, or provider mandate standards
19 provided in the State Benefit Compendium pursuant
20 to section 2922(a).

21 “(c) PROCESS FOR IDENTIFYING HARMONIZED
22 STANDARDS.—

23 “(1) IN GENERAL.—The Commission shall de-
24 velop recommendations to harmonize inconsistent
25 State insurance laws with the laws adopted in a plu-

1 rality of the States. In carrying out the previous
2 sentence, the Commission shall review all State laws
3 that regulate insurance in each of the insurance
4 markets and areas described in subsection (b)(1)
5 and identify the plurality requirement within each
6 element of such areas. Such plurality requirement
7 shall be the harmonized standard for such area in
8 each such market.

9 “(2) CONSULTATION.—The Commission shall
10 consult with the National Association of Insurance
11 Commissioners in identifying the plurality require-
12 ments for each element within the area and in rec-
13 ommending the harmonized standards.

14 “(3) REVIEW OF FEDERAL LAWS.—The Com-
15 mission shall review whether any Federal law im-
16 poses a requirement relating to the markets and
17 areas described in subsection (b)(1). In such case,
18 such Federal requirement shall be deemed the plu-
19 rality requirement and the Commission shall rec-
20 ommend the Federal requirement as the harmonized
21 standard for such elements.

22 “(d) RECOMMENDATIONS AND ADOPTION BY SEC-
23 RETARY.—

24 “(1) RECOMMENDATIONS.—Not later than 1
25 year after the date of enactment of this title, the

1 Commission shall recommend to the Secretary the
2 adoption of the harmonized standards identified pur-
3 suant to subsection (c).

4 “(2) REGULATIONS.—Not later than 120 days
5 after receipt of the Commission’s recommendations
6 under paragraph (1), the Secretary shall issue final
7 regulations adopting the recommended harmonized
8 standards. If the Secretary finds the recommended
9 standards for an element of an area to be arbitrary
10 and inconsistent with the plurality requirements of
11 this section, the Secretary may issue a unique har-
12 monized standard only for such element through the
13 application of a process similar to the process set
14 forth in subsection (c) and through the issuance of
15 proposed and final regulations.

16 “(3) EFFECTIVE DATE.—The regulations issued
17 by the Secretary under paragraph (2) shall be effec-
18 tive on the date that is 2 years after the date on
19 which such regulations were issued.

20 “(e) TERMINATION.—The Commission shall termi-
21 nate and be dissolved after making the recommendations
22 to the Secretary pursuant to subsection (d)(1).

23 “(f) UPDATED HARMONIZED STANDARDS.—

24 “(1) IN GENERAL.—Not later than 2 years
25 after the termination of the Commission under sub-

1 section (e), and every 2 years thereafter, the Sec-
2 retary shall update the harmonized standards. Such
3 updated standards shall be adopted in accordance
4 with paragraph (2).

5 “(2) UPDATING OF STANDARDS.—

6 “(A) IN GENERAL.—The Secretary shall
7 review all State laws that regulate insurance in
8 each of the markets and elements of areas set
9 forth in subsection (b)(1) and identify whether
10 a plurality of States have adopted substantially
11 similar requirements that differ from the har-
12 monized standards adopted by the Secretary
13 pursuant to subsection (d). In such case, the
14 Secretary shall consider State laws that have
15 been enacted with effective dates that are con-
16 tingent upon adoption as a harmonized stand-
17 ard by the Secretary. Substantially similar re-
18 quirements for each element within such area
19 shall be considered to be an updated har-
20 monized standard for such an area.

21 “(B) REPORT.—The Secretary shall re-
22 quest the National Association of Insurance
23 Commissioners to issue a report to the Sec-
24 retary every 2 years to assist the Secretary in
25 identifying the updated harmonized standards

1 under this paragraph. Nothing in this subpara-
2 graph shall be construed to prohibit the Sec-
3 retary from issuing updated harmonized stand-
4 ards in the absence of such a report.

5 “(C) REGULATIONS.—The Secretary shall
6 issue regulations adopting updated harmonized
7 standards under this paragraph within 90 days
8 of identifying such standards. Such regulations
9 shall be effective beginning on the date that is
10 2 years after the date on which such regula-
11 tions are issued.

12 “(g) PUBLICATION.—

13 “(1) LISTING.—The Secretary shall maintain
14 an up to date listing of all harmonized standards
15 adopted under this section on the Internet website of
16 the Department of Health and Human Services.

17 “(2) SAMPLE CONTRACT LANGUAGE.—The Sec-
18 retary shall publish on the Internet website of the
19 Department of Health and Human Services sample
20 contract language that incorporates the harmonized
21 standards adopted under this section, which may be
22 used by insurers seeking to qualify as an eligible in-
23 surer. The types of harmonized standards that shall
24 be included in sample contract language are the

1 standards that are relevant to the contractual bar-
2 gain between the insurer and insured.

3 “(h) STATE ADOPTION AND ENFORCEMENT.—Not
4 later than 2 years after the issuance by the Secretary of
5 final regulations adopting harmonized standards under
6 this section, the States may adopt such harmonized stand-
7 ards (and become an adopting State) and, in which case,
8 shall enforce the harmonized standards pursuant to State
9 law.

10 **“SEC. 2933. APPLICATION AND PREEMPTION.**

11 “(a) SUPERCEDING OF STATE LAW.—

12 “(1) IN GENERAL.—The harmonized standards
13 adopted under this subtitle shall supersede any and
14 all State laws (whether enacted prior to or after the
15 date of enactment of this title) insofar as such State
16 laws relate to the areas of harmonized standards as
17 applied to an eligible insurer, or health insurance
18 coverage issued by a eligible insurer, in a non-
19 adopting State.

20 “(2) NONADOPTING STATES.—This subtitle
21 shall supersede any and all State laws of a non-
22 adopting State (whether enacted prior to or after the
23 date of enactment of this title) insofar as they
24 may—

1 “(A) prohibit an eligible insurer from of-
2 fering coverage consistent with the harmonized
3 standards in the nonadopting State; or

4 “(B) discriminate against or among eligi-
5 ble insurers offering or seeking to offer health
6 insurance coverage consistent with the har-
7 monized standards in the nonadopting State.

8 “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

9 “(1) NONAPPLICATION TO ADOPTING STATES.—
10 Subsection (a) shall not apply with respect to adopt-
11 ing States.

12 “(2) NONAPPLICATION TO CERTAIN INSUR-
13 ERS.—Subsection (a) shall not apply with respect to
14 insurers that do not qualify as eligible insurers who
15 offer health insurance coverage in a nonadopting
16 State.

17 “(3) NONAPPLICATION WHERE OBTAINING RE-
18 LIEF UNDER STATE LAW.—Subsection (a)(1) shall
19 not apply to any State law of a nonadopting State
20 to the extent necessary to permit individuals or the
21 insurance department of the State (or other State
22 agency) to obtain relief under State law to require
23 an eligible insurer to comply with the terms of the
24 health insurance coverage issued in a nonadopting
25 State. In no case shall this paragraph, or any other

1 provision of this subtitle, be construed to permit a
2 cause of action on behalf of an individual or any
3 other person under State law in connection with a
4 group health plan that is subject to the Employee
5 Retirement Income Security Act of 1974 or health
6 insurance coverage issued in connection with such
7 plan.

8 “(4) NONAPPLICATION TO ENFORCE REQUIRE-
9 MENTS RELATING TO THE COMPENDIUM.—Sub-
10 section (a)(1) shall not apply to any State law in a
11 nonadopting State to the extent necessary to provide
12 the insurance department of the State (or other
13 state agency) authority to enforce State law require-
14 ments relating to the harmonized standards that are
15 not set forth in the terms of the health insurance
16 coverage issued in a nonadopting State, in a manner
17 that is consistent with the harmonized standards
18 and imposes no greater duties or obligations on
19 health insurance issuers than the harmonized stand-
20 ards.

21 “(5) NONAPPLICATION TO SUBSECTION
22 (a)(2).—Paragraphs (3) and (4) shall not apply with
23 respect to subsection (a)(2).

24 “(6) NO AFFECT ON PREEMPTION.—In no case
25 shall this subsection be construed to affect the scope

1 of the preemption provided for under the Employee
2 Retirement Income Security Act of 1974.

3 “(c) EFFECTIVE DATE.—This section shall apply be-
4 ginning on the date that is 2 years after the date on which
5 final regulations are issued by the Secretary under this
6 subtitle adopting the harmonized standards.

7 **“SEC. 2934. CIVIL ACTIONS AND JURISDICTION.**

8 “(a) IN GENERAL.—The district courts of the United
9 States shall have exclusive jurisdiction over civil actions
10 involving the interpretation of this subtitle.

11 “(b) ACTIONS.—A health insurance issuer may bring
12 an action in the district courts of the United States for
13 injunctive or other equitable relief against a nonadopting
14 State in connection with the application of a State law
15 that violates this subtitle.

16 “(c) VIOLATIONS OF SECTION 2933.—In the case of
17 a nonadopting State that is in violation of section
18 2933(a)(2), a health insurance issuer may bring an action
19 in the district courts of the United States for damages
20 against the nonadopting State and, if the health insurance
21 issuer prevails in such action, the district court shall
22 award the health insurance issuer its reasonable attorneys
23 fees and costs.

1 **“SEC. 2935. AUTHORIZATION OF APPROPRIATIONS.**

2 “There are authorized to be appropriated such sums

3 as may be necessary to carry out this subtitle.”.

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