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109TH CONGRESS
2^D 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, Mr. BURNS, Mr. BURR, Mr. ROBERTS, Mr. CRAIG, Mr. ALLARD, and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

APRIL 27, 2006

Reported by Mr. ENZI, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

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

5 (b) **TABLE OF CONTENTS.**—The table of contents is
 6 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.

7 **TITLE I—SMALL BUSINESS**
 8 **HEALTH PLANS**

9 **SEC. 101. RULES GOVERNING SMALL BUSINESS HEALTH**
 10 **PLANS.**

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

14 **“PART 8—RULES GOVERNING SMALL BUSINESS**
 15 **HEALTH PLANS**

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

17 “(a) **IN GENERAL.**—For purposes of this part, the
 18 term ‘small business health plan’ means a fully insured

1 group health plan whose sponsor is (or is deemed under
2 this part to be) described in subsection (b).

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

5 “(1) is organized and maintained in good faith,
6 with a constitution and bylaws specifically stating its
7 purpose and providing for periodic meetings on at
8 least an annual basis, as a bona fide trade associa-
9 tion, a bona fide industry association (including a
10 rural electric cooperative association or a rural tele-
11 phone cooperative association), a bona fide profes-
12 sional association, or a bona fide chamber of com-
13 merce (or similar bona fide business association, in-
14 cluding a corporation or similar organization that
15 operates on a cooperative basis (within the meaning
16 of section 1381 of the Internal Revenue Code of
17 1986)), for substantial purposes other than that of
18 obtaining or providing medical care;

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

24 “(3) does not condition membership, such dues
25 or payments, or coverage under the plan on the

1 basis of health status-related factors with respect to
 2 the employees of its members (or affiliated mem-
 3 bers); or the dependents of such employees; and does
 4 not condition such dues or payments on the basis of
 5 group health plan participation.

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

10 **“SEC. 802. CERTIFICATION OF SMALL BUSINESS HEALTH**
 11 **PLANS.**

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

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

24 “(c) REQUIREMENTS FOR CONTINUED CERTIFI-
 25 CATION.—The applicable authority may provide by regula-

1 tion for continued certification of small business health
2 plans under this part. Such regulation shall provide for
3 the revocation of a certification if the applicable authority
4 finds that the small employer health plan involved is fail-
5 ing to comply with the requirements of this part.

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

16 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**
17 **BOARDS OF TRUSTEES.**

18 “(a) **SPONSOR.**—The requirements of this subsection
19 are met with respect to a small business health plan if
20 the sponsor has met (or is deemed under this part to have
21 met) the requirements of section 801(b) for a continuous
22 period of not less than $\frac{3}{4}$ years ending with the date of
23 the application for certification under this part.

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

4 “(1) FISCAL CONTROL.—The plan is operated,
5 pursuant to a plan document, by a board of trustees
6 which pursuant to a trust agreement has complete
7 fiscal control over the plan and which is responsible
8 for all operations of the plan:

9 “(2) RULES OF OPERATION AND FINANCIAL
10 CONTROLS.—The board of trustees has in effect
11 rules of operation and financial controls, based on a
12 3-year plan of operation, adequate to carry out the
13 terms of the plan and to meet all requirements of
14 this title applicable to the plan:

15 “(3) RULES GOVERNING RELATIONSHIP TO
16 PARTICIPATING EMPLOYERS AND TO CONTRAC-
17 TORS.—

18 “(A) BOARD MEMBERSHIP.—

19 “(i) IN GENERAL.—Except as pro-
20 vided in clauses (ii) and (iii), the members
21 of the board of trustees are individuals se-
22 lected from individuals who are the owners,
23 officers, directors, or employees of the par-
24 ticipating employers or who are partners in

1 the participating employers and actively
2 participate in the business.

3 “(ii) LIMITATION.—

4 “(I) GENERAL RULE.—Except as
5 provided in subclauses (II) and (III),
6 no such member is an owner, officer,
7 director, or employee of, or partner in,
8 a contract administrator or other
9 service provider to the plan.

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

21 “(III) TREATMENT OF PRO-
22 VIDERS OF MEDICAL CARE.—In the
23 case of a sponsor which is an associa-
24 tion whose membership consists pri-
25 marily of providers of medical care,

1 subclause (I) shall not apply in the
 2 ease of any service provider described
 3 in subclause (I) who is a provider of
 4 medical care under the plan.

5 “(iii) CERTAIN PLANS EXCLUDED.—
 6 Clause (i) shall not apply to a small busi-
 7 ness health plan which is in existence on
 8 the date of the enactment of the Health
 9 Insurance Marketplace Modernization and
 10 Affordability Act of 2005.

11 “(B) SOLE AUTHORITY.—The board has
 12 sole authority under the plan to approve appli-
 13 cations for participation in the plan and to con-
 14 tract with insurers and service providers.

15 “(e) TREATMENT OF FRANCHISE NETWORKS.—In
 16 the case of a group health plan which is established and
 17 maintained by a franchiser for a franchise network con-
 18 sisting of its franchisees—

19 “(1) the requirements of subsection (a) and sec-
 20 tion 801(a) shall be deemed met if such require-
 21 ments would otherwise be met if the franchiser were
 22 deemed to be the sponsor referred to in section
 23 801(b), such network were deemed to be an associa-
 24 tion described in section 801(b), and each franchisee

1 were deemed to be a member (of the association and
2 the sponsor) referred to in section 801(b); and

3 ~~“(2) the requirements of section 804(a)(1) shall~~
4 ~~be deemed met.~~

5 The Secretary may by regulation define for purposes of
6 this subsection the terms ‘franchiser’, ‘franchise network’,
7 and ‘franchisee’.

8 **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**
9 **MENTS.**

10 ~~“(a) COVERED EMPLOYERS AND INDIVIDUALS.—The~~
11 ~~requirements of this subsection are met with respect to~~
12 ~~a small business health plan if, under the terms of the~~
13 ~~plan—~~

14 ~~“(1) each participating employer must be—~~

15 ~~“(A) a member of the sponsor;~~

16 ~~“(B) the sponsor; or~~

17 ~~“(C) an affiliated member of the sponsor~~
18 ~~with respect to which the requirements of sub-~~
19 ~~section (b) are met, except that, in the case of~~
20 ~~a sponsor which is a professional association or~~
21 ~~other individual-based association, if at least~~
22 ~~one of the officers, directors, or employees of an~~
23 ~~employer, or at least one of the individuals who~~
24 ~~are partners in an employer and who actively~~
25 ~~participates in the business, is a member or~~

1 such an affiliated member of the sponsor, par-
2 ticipating employers may also include such em-
3 ployer; and

4 “(2) all individuals commencing coverage under
5 the plan after certification under this part must
6 be—

7 “(A) active or retired owners (including
8 self-employed individuals), officers, directors, or
9 employees of, or partners in, participating em-
10 ployers; or

11 “(B) the beneficiaries of individuals de-
12 scribed in subparagraph (A).

13 “(b) COVERAGE OF PREVIOUSLY UNINSURED EM-
14 PLOYEES.—In the case of a small business health plan in
15 existence on the date of the enactment of the Health In-
16 surance Marketplace Modernization and Affordability Act
17 of 2005, an affiliated member of the sponsor of the plan
18 may be offered coverage under the plan as a participating
19 employer only if—

20 “(1) the affiliated member was an affiliated
21 member on the date of certification under this part;
22 or

23 “(2) during the 12-month period preceding the
24 date of the offering of such coverage, the affiliated
25 member has not maintained or contributed to a

1 group health plan with respect to any of its employ-
 2 ees who would otherwise be eligible to participate in
 3 such small business health plan.

4 “(c) **INDIVIDUAL MARKET UNAFFECTED.**—The re-
 5 quirements of this subsection are met with respect to a
 6 small business health plan if, under the terms of the plan,
 7 no participating employer may provide health insurance
 8 coverage in the individual market for any employee not
 9 covered under the plan which is similar to the coverage
 10 contemporaneously provided to employees of the employer
 11 under the plan; if such exclusion of the employee from cov-
 12 erage under the plan is based on a health status-related
 13 factor with respect to the employee and such employee
 14 would, but for such exclusion on such basis, be eligible
 15 for coverage under the plan.

16 “(d) **PROHIBITION OF DISCRIMINATION AGAINST**
 17 **EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICI-**
 18 **PATE.**—The requirements of this subsection are met with
 19 respect to a small business health plan if—

20 “(1) under the terms of the plan, all employers
 21 meeting the preceding requirements of this section
 22 are eligible to qualify as participating employers for
 23 all geographically available coverage options, unless,
 24 in the case of any such employer, participation or
 25 contribution requirements of the type referred to in

1 section 2711 of the Public Health Service Act are
2 not met;

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

6 “(3) the applicable requirements of sections
7 701, 702, and 703 are met with respect to the plan.

8 **“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN**
9 **DOCUMENTS, CONTRIBUTION RATES, AND**
10 **BENEFIT OPTIONS.**

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

14 “(1) CONTENTS OF GOVERNING INSTRU-
15 MENTS.—

16 “(A) IN GENERAL.—The instruments gov-
17 erning the plan include a written instrument,
18 meeting the requirements of an instrument re-
19 quired under section 402(a)(1), which—

20 “(i) provides that the board of direc-
21 tors serves as the named fiduciary required
22 for plans under section 402(a)(1) and
23 serves in the capacity of a plan adminis-
24 trator (referred to in section 3(16)(A));
25 and

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

4 “(B) DESCRIPTION OF MATERIAL PROVI-
5 SIONS.—The terms of the health insurance cov-
6 erage (including the terms of any individual
7 certificates that may be offered to individuals in
8 connection with such coverage) describe the ma-
9 terial benefit and rating, and other provisions
10 set forth in this section and such material pro-
11 visions are included in the summary plan de-
12 scription.

13 “(2) CONTRIBUTION RATES MUST BE NON-
14 DISCRIMINATORY.—

15 “(A) IN GENERAL.—The contribution rates
16 for any participating small employer shall not
17 vary on the basis of any health status-related
18 factor in relation to employees of such employer
19 or their beneficiaries and shall not vary on the
20 basis of the type of business or industry in
21 which such employer is engaged.

22 “(B) EFFECT OF TITLE.—Nothing in this
23 title or any other provision of law shall be con-
24 strued to preclude a health insurance issuer of-
25 fering health insurance coverage in connection

1 with a small business health plan, and at the
2 request of such small business health plan,
3 from—

4 “(i) setting contribution rates for the
5 small business health plan based on the
6 claims experience of the plan so long as
7 any variation in such rates complies with
8 the requirements of clause (ii); or

9 “(ii) varying contribution rates for
10 participating employers in a small business
11 health plan in a State to the extent that
12 such rates could vary using the same
13 methodology employed in such State for
14 regulating premium rates, subject to the
15 terms of part I of subtitle A of title ~~XXIX~~
16 of the Public Health Service Act (relating
17 to rating requirements), as added by title
18 II of the Health Insurance Marketplace
19 Modernization and Affordability Act of
20 2005.

21 “(3) REGULATORY REQUIREMENTS.—Such
22 other requirements as the applicable authority deter-
23 mines are necessary to carry out the purposes of this
24 part, which shall be prescribed by the applicable au-
25 thority by regulation.

1 “(b) ABILITY OF SMALL BUSINESS HEALTH PLANS
 2 TO DESIGN BENEFIT OPTIONS.—Nothing in this part or
 3 any provision of State law (as defined in section
 4 514(c)(1)) shall be construed to preclude a small business
 5 health plan or a health insurance issuer offering health
 6 insurance coverage in connection with a small business
 7 health plan, from exercising its sole discretion in selecting
 8 the specific benefits and services consisting of medical care
 9 to be included as benefits under such plan or coverage,
 10 except that such benefits and services must meet the terms
 11 and specifications of part II of subtitle A of title XXIX
 12 of the Public Health Service Act (relating to lower cost
 13 plans), as added by title II of the Health Insurance Mar-
 14 ketplace Modernization and Affordability Act of 2005,
 15 provided that, upon issuance by the Secretary of Health
 16 and Human Services of the List of Required Benefits as
 17 provided for in section 2922(a) of the Public Health Serv-
 18 ice Act, the required scope and application for each benefit
 19 or service listed in the List of Required Benefits shall be—

20 “(1) if the domicile State mandates such ben-
 21 efit or service, the scope and application required by
 22 the domicile State; or

23 “(2) if the domicile State does not mandate
 24 such benefit or service, the scope and application re-
 25 quired by the non-domicile State that does require

1 such benefit or service in which the greatest number
 2 of the small business health plan's participating em-
 3 ployers are located.

4 “(c) STATE LICENSURE AND INFORMATIONAL FIL-
 5 ING.—

6 “(1) DOMICILE STATE.—Coverage shall be
 7 issued to a small business health plan in the State
 8 in which the sponsor's principal place of business is
 9 located.

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

21 **“SEC. 806. REQUIREMENTS FOR APPLICATION AND RE-
 22 LATED REQUIREMENTS.**

23 “(a) FILING FEE.—Under the procedure prescribed
 24 pursuant to section 802(a), a small business health plan
 25 shall pay to the applicable authority at the time of filing

1 an application for certification under this part a filing fee
 2 in the amount of \$5,000, which shall be available in the
 3 case of the Secretary, to the extent provided in appropria-
 4 tion Acts, for the sole purpose of administering the certifi-
 5 cation procedures applicable with respect to small business
 6 health plans.

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

13 “(1) IDENTIFYING INFORMATION.—The names
 14 and addresses of—

15 “(A) the sponsor; and

16 “(B) the members of the board of trustees
 17 of the plan.

18 “(2) STATES IN WHICH PLAN INTENDS TO DO
 19 BUSINESS.—The States in which participants and
 20 beneficiaries under the plan are to be located and
 21 the number of them expected to be located in each
 22 such State.

23 “(3) BONDING REQUIREMENTS.—Evidence pro-
 24 vided by the board of trustees that the bonding re-
 25 quirements of section 412 will be met as of the date

1 of the application or (if later) commencement of op-
2 erations.

3 “(4) PLAN DOCUMENTS.—A copy of the docu-
4 ments governing the plan (including any bylaws and
5 trust agreements), the summary plan description,
6 and other material describing the benefits that will
7 be provided to participants and beneficiaries under
8 the plan.

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

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

23 “(d) NOTICE OF MATERIAL CHANGES.—In the case
24 of any small business health plan certified under this part,
25 descriptions of material changes in any information which

1 was required to be submitted with the application for the
2 certification under this part shall be filed in such form
3 and manner as shall be prescribed by the applicable au-
4 thority by regulation. The applicable authority may re-
5 quire by regulation prior notice of material changes with
6 respect to specified matters which might serve as the basis
7 for suspension or revocation of the certification.

8 **“SEC. 807. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**
9 **MINATION.**

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

15 “(1) provides to the participants and bene-
16 ficiaries a written notice of intent to terminate stat-
17 ing that such termination is intended and the pro-
18 posed termination date;

19 “(2) develops a plan for winding up the affairs
20 of the plan in connection with such termination in
21 a manner which will result in timely payment of all
22 benefits for which the plan is obligated; and

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

1 Actions required under this section shall be taken in such
2 form and manner as may be prescribed by the applicable
3 authority by regulation.

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

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

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

8 “(A) a person who is otherwise eligible to
9 be a member of the sponsor but who elects an
10 affiliated status with the sponsor;

11 “(B) in the case of a sponsor with mem-
12 bers which consist of associations, a person who
13 is a member of any such association and elects
14 an affiliated status with the sponsor; or

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

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

1 such term means the Secretary, in consultation with
2 such State.

3 “(3) APPLICABLE STATE AUTHORITY.—The
4 term ‘applicable State authority’ means, with respect
5 to a health insurance issuer in a State, the State in-
6 surance commissioner or official or officials des-
7 ignated by the State to enforce the requirements of
8 title XXVII of the Public Health Service Act for the
9 State involved with respect to such issuer.

10 “(4) GROUP HEALTH PLAN.—The term ‘group
11 health plan’ has the meaning provided in section
12 733(a)(1) (after applying subsection (b) of this sec-
13 tion).

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

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

20 “(7) INDIVIDUAL MARKET.—

21 “(A) IN GENERAL.—The term ‘individual
22 market’ means the market for health insurance
23 coverage offered to individuals other than in
24 connection with a group health plan.

1 “(B) TREATMENT OF VERY SMALL
2 GROUPS.—

3 “(i) IN GENERAL.—Subject to clause
4 (ii), such term includes coverage offered in
5 connection with a group health plan that
6 has fewer than 2 participants as current
7 employees or participants described in sec-
8 tion 732(d)(3) on the first day of the plan
9 year.

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

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

21 “(9) PARTICIPATING EMPLOYER.—The term
22 ‘participating employer’ means, in connection with a
23 small business health plan, any employer, if any in-
24 dividual who is an employee of such employer, a
25 partner in such employer, or a self-employed indi-

1 vidual who is such employer (or any dependent, as
 2 defined under the terms of the plan, of such indi-
 3 vidual) is or was covered under such plan in connec-
 4 tion with the status of such individual as such an
 5 employee, partner, or self-employed individual in re-
 6 lation to the plan.

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

11 “(b) RULE OF CONSTRUCTION.—For purposes of de-
 12 termining whether a plan, fund, or program is an em-
 13 ployee welfare benefit plan which is a small business
 14 health plan, and for purposes of applying this title in con-
 15 nection with such plan, fund, or program so determined
 16 to be such an employee welfare benefit plan—

17 “(1) in the case of a partnership, the term ‘em-
 18 ployer’ (as defined in section 3(5)) includes the part-
 19 nership in relation to the partners, and the term
 20 ‘employee’ (as defined in section 3(6)) includes any
 21 partner in relation to the partnership; and

22 “(2) in the case of a self-employed individual,
 23 the term ‘employer’ (as defined in section 3(5)) and
 24 the term ‘employee’ (as defined in section 3(6)) shall
 25 include such individual.”.

1 (b) CONFORMING AMENDMENTS TO PREEMPTION
2 RULES.—

3 (1) Section 514(b)(6) of such Act (29 U.S.C.
4 1144(b)(6)) is amended by adding at the end the
5 following new subparagraph:

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

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

12 (A) in subsection (b)(4), by striking “Sub-
13 section (a)” and inserting “Subsections (a) and
14 (d)”;

15 (B) in subsection (b)(5), by striking “sub-
16 section (a)” in subparagraph (A) and inserting
17 “subsection (a) of this section and subsections
18 (a)(2)(B) and (b) of section 805”, and by strik-
19 ing “subsection (a)” in subparagraph (B) and
20 inserting “subsection (a) of this section or sub-
21 section (a)(2)(B) or (b) of section 805”;

22 (C) by redesignating subsection (d) as sub-
23 section (e); and

24 (D) by inserting after subsection (e) the
25 following new subsection:

1 “(d)(1) Except as provided in subsection (b)(4), the
 2 provisions of this title shall supersede any and all State
 3 laws insofar as they may now or hereafter preclude a
 4 health insurance issuer from offering health insurance cov-
 5 erage in connection with a small business health plan
 6 which is certified under part 8.

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

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

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

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

1 (C) by adding at the end the following new
2 clause:

3 “(iii) subject to subparagraph (E), in the case
4 of any other employee welfare benefit plan which is
5 a multiple employer welfare arrangement and which
6 provides medical care (within the meaning of section
7 733(a)(2)), any law of any State which regulates in-
8 surance may apply.”.

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

13 (e) PLAN SPONSOR.—Section 3(16)(B) of such Act
14 (29 U.S.C. 102(16)(B)) is amended by adding at the end
15 the following new sentence: “Such term also includes a
16 person serving as the sponsor of a small business health
17 plan under part 8.”.

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

20 (e) CLERICAL AMENDMENT.—The table of contents
21 in section 4 of the Employee Retirement Income Security
22 Act of 1974 is amended by inserting after the item relat-
23 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,

1 as the State with which consultation is required. In
 2 carrying out this paragraph such State shall be the
 3 domicile State, as defined in section 805(e).”.

4 **SEC. 103. EFFECTIVE DATE AND TRANSITIONAL AND**
 5 **OTHER RULES.**

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

12 (b) **TREATMENT OF CERTAIN EXISTING HEALTH**
 13 **BENEFITS PROGRAMS.**—

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

1 the Employee Retirement Income Security Act of
2 1974 (as amended by this subtitle)) by the arrange-
3 ment of an application for certification of the ar-
4 rangement under part 8 of subtitle B of title I of
5 such Act—

6 (A) such arrangement shall be deemed to
7 be a group health plan for purposes of title I
8 of such Act;

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

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

16 (i) is elected by the participating em-
17 ployers, with each employer having one
18 vote; and

19 (ii) has complete fiscal control over
20 the arrangement and which is responsible
21 for all operations of the arrangement;

22 (D) the requirements of section 804(a) of
23 such Act shall be deemed met with respect to
24 such arrangement; and

1 (~~E~~) the arrangement may be certified by
2 any applicable authority with respect to its op-
3 erations in any State only if it operates in such
4 State on the date of certification.

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

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

1 **TITLE II—NEAR-TERM MARKET**
 2 **RELIEF**

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

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

6 **“TITLE XXIX—HEALTH CARE IN-**
 7 **INSURANCE MARKETPLACE RE-**
 8 **FORM**

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

10 “In this title, the terms ‘health insurance coverage’,
 11 ‘health insurance issuer’, ‘group health plan’, and ‘indi-
 12 vidual health insurance’ shall have the meanings given
 13 such terms in section 2791.

14 **“Subtitle A—Near-Term Market**
 15 **Relief**

16 **“PART I—RATING REQUIREMENTS**

17 **“SEC. 2911. DEFINITIONS.**

18 “In this part:

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

1 “(2) COMMISSION.—The term ‘Commission’
2 means the Harmonized Standards Commission es-
3 tablished under section 2921.

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

7 “(A) notifies the Secretary, not later than
8 30 days prior to the offering of coverage de-
9 scribed in this subparagraph, that the issuer in-
10 tends to offer small group health insurance cov-
11 erage consistent with the National Interim
12 Model Rating Rules in a nonadopting State;

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

1 State (or other State agency) by the Secretary
2 in regulations; and

3 “(C) includes in the terms of the health in-
4 surance coverage offered in nonadopting States
5 (including in the terms of any individual certifi-
6 cates that may be offered to individuals in con-
7 nection with such group health coverage) and
8 filed with the State pursuant to subparagraph
9 (B); a description in the insurer’s contract of
10 the National Interim Model Rating Rules and
11 an affirmation that such Rules are included in
12 the terms of such contract.

13 “(4) HEALTH INSURANCE COVERAGE.—The
14 term ‘health insurance coverage’ means any coverage
15 issued in small group health insurance market.

16 “(5) NAIC MODEL RULES.—The term ‘NAIC
17 model rules’ means the rating rules provided for in
18 the 1992 Adopted Small Employer Health Insurance
19 Availability Model Act of the National Association of
20 Insurance Commissioners.

21 “(6) NATIONAL INTERIM MODEL RATING
22 RULES.—The term ‘National Interim Model Rating
23 Rules’ means the rules promulgated under section
24 2912(a).

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

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

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

12 **“SEC. 2912. RATING RULES.**

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

24 “(b) UTILIZATION OF NAIC MODEL RULES.—In
25 promulgating the National Interim Model Rating Rules

1 under subsection (a), the Secretary, except as otherwise
2 provided in this subtitle, shall utilize the NAIC model
3 rules regarding premium rating and premium variation.

4 “(c) TRANSITION IN CERTAIN STATES.—

5 “(1) IN GENERAL.—In promulgating the Na-
6 tional Interim Model Rating Rules under subsection
7 (a), the Secretary shall have discretion to modify the
8 NAIC model rules in accordance with this subsection
9 to the extent necessary to provide for a graduated
10 transition, of not to exceed 3 years following the
11 promulgation of such National Interim Rules, with
12 respect to the application of such Rules to States.

13 “(2) INITIAL PREMIUM VARIATION.—

14 “(A) IN GENERAL.—Under the modified
15 National Interim Model Rating Rules as pro-
16 vided for in paragraph (1), the premium vari-
17 ation provision of subparagraph (C) shall be ap-
18 plicable only with respect to small group poli-
19 cies issued in States which, on the date of en-
20 actment of this title, have in place premium rat-
21 ing band requirements that vary by less than
22 50 percent from the premium variation stand-
23 ards contained in subparagraph (C) with re-
24 spect to the standards provided for under the
25 NAIC model rules.

1 “(B) OTHER STATES.—Health insurance
 2 coverage offered in a State that, on the date of
 3 enactment of this title, has in place premium
 4 rating band requirements that vary by more
 5 than 50 percent from the premium variation
 6 standards contained in subparagraph (C) shall
 7 be subject to such graduated transition sched-
 8 ules as may be provided by the Secretary pursu-
 9 ant to paragraph (1).

10 “(C) AMOUNT OF VARIATION.—The
 11 amount of a premium rating variation from the
 12 base premium rate due to health conditions of
 13 covered individuals under this subparagraph
 14 shall not exceed a factor of—

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

17 “(ii) +/- 15 percent upon the renewal
 18 of the policy.

19 “(3) OTHER TRANSITIONAL AUTHORITY.—In
 20 developing the National Interim Model Rating Rules,
 21 the Secretary may also provide for the application of
 22 transitional standards in certain States with respect
 23 to the following:

24 “(A) Independent rating classes for old
 25 and new business.

1 “(B) Such additional transition standards
2 as the Secretary may determine necessary for
3 an effective transition.

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

5 “(a) SUPERCEDING OF STATE LAW.—

6 “(1) IN GENERAL.—This part shall supersede
7 any and all State laws insofar as such State laws
8 (whether enacted prior to or after the date of enact-
9 ment of this subtitle) relate to rating in the small
10 group insurance market as applied to an eligible in-
11 surer, or small group health insurance coverage
12 issued by an eligible insurer, in a nonadopting State.

13 “(2) NONADOPTING STATES.—This part shall
14 supersede any and all State laws of a nonadopting
15 State insofar as such State laws (whether enacted
16 prior to or after the date of enactment of this sub-
17 title)—

18 “(A) prohibit an eligible insurer from of-
19 fering coverage consistent with the National In-
20 terim Model Rating Rules in a nonadopting
21 State; or

22 “(B) discriminate against or among eligi-
23 ble insurers offering health insurance coverage
24 consistent with the National Interim Model
25 Rating Rules in a nonadopting state.

1 “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

2 “(1) NONAPPLICATION TO ADOPTING STATES.—

3 Subsection (a) shall not apply with respect to adopt-
4 ing states.

5 “(2) NONAPPLICATION TO CERTAIN INSUR-

6 ERS.—Subsection (a) shall not apply with respect to
7 insurers that do not qualify as eligible insurers that
8 offer small group health insurance coverage in a
9 nonadopting State.

10 “(3) NONAPPLICATION WHERE OBTAINING RE-

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

1 ~~“(4) NONAPPLICATION TO ENFORCE REQUIRE-~~
 2 ~~MENTS RELATING TO THE NATIONAL RULE.—Sub-~~
 3 ~~section (a)(1) shall not apply to any State law in a~~
 4 ~~nonadopting State to the extent necessary to provide~~
 5 ~~the insurance department of the State (or other~~
 6 ~~State agency) with the authority to enforce State~~
 7 ~~law requirements relating to the National Interim~~
 8 ~~Model Rating Rules that are not set forth in the~~
 9 ~~terms of the small group health insurance coverage~~
 10 ~~issued in a nonadopting State, in a manner that is~~
 11 ~~consistent with the National Interim Model Rating~~
 12 ~~Rules and that imposes no greater duties or obliga-~~
 13 ~~tions on health insurance issuers than the National~~
 14 ~~Interim Model Rating Rules.~~

15 ~~“(5) NONAPPLICATION TO SUBSECTION (A)(2).—~~
 16 ~~Paragraphs (3) and (4) shall not apply with respect~~
 17 ~~to subsection (a)(2).~~

18 ~~“(6) NO AFFECT ON PREEMPTION.—In no case~~
 19 ~~shall this subsection be construed to affect the scope~~
 20 ~~of the preemption provided for under the Employee~~
 21 ~~Retirement Income Security Act of 1974.~~

22 ~~“(c) EFFECTIVE DATE.—This section shall apply be-~~
 23 ~~ginning in the first plan year following the issuance of the~~
 24 ~~final rules by the Secretary under the National Interim~~
 25 ~~Model Rating Rules.~~

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

2 “(a) **IN GENERAL.**—The district courts of the United
3 States shall have exclusive jurisdiction over civil actions
4 involving the interpretation of this part.

5 “(b) **ACTIONS.**—A health insurance issuer may bring
6 an action in the district courts of the United States for
7 injunctive or other equitable relief against a nonadopting
8 State in connection with the application of a state law that
9 violates this part.

10 “(c) **VIOLATIONS OF SECTION 2913.**—In the case of
11 a nonadopting State that is in violation of section
12 2913(a)(2), a health insurance issuer may bring an action
13 in the district courts of the United States for damages
14 against the nonadopting State and, if the health insurance
15 issuer prevails in such action, the district court shall
16 award the health insurance issuer its reasonable attorneys
17 fees and costs.

18 **“SEC. 2915. SUNSET.**

19 “The National Interim Model Rating Rules shall re-
20 main in effect in a non-adopting State until such time as
21 the harmonized national rating rules are promulgated and
22 effective pursuant to part II. Upon such effective date,
23 such harmonized rules shall supersede the National Rules.

24 **“PART II—LOWER COST PLANS**

25 **“SEC. 2921. DEFINITIONS.**

26 “In this part:

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

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

10 “(A) notifies the Secretary, not later than
11 30 days prior to the offering of coverage de-
12 scribed in this subparagraph, that the issuer in-
13 tends to offer group health insurance coverage
14 consistent with the State Benefit Compendium
15 in a nonadopting State;

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

1 other information required to be filed with the
2 insurance department of the State (or other
3 State agency) by the Secretary in regulations;
4 and

5 “(C) includes in the terms of the health in-
6 surance coverage offered in nonadopting States
7 (including in the terms of any individual certifi-
8 cates that may be offered to individuals in con-
9 nection with such group health coverage) and
10 filed with the State pursuant to subparagraph
11 (B); a description in the insurer’s contract of
12 the State Benefit Compendium and that adher-
13 ence to the Compendium is included as a term
14 of such contract.

15 “(3) HEALTH INSURANCE COVERAGE.—The
16 term ‘health insurance coverage’ means any coverage
17 issued in the group or individual health insurance
18 markets.

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

22 “(5) STATE BENEFIT COMPENDIUM.—The term
23 ‘State Benefit Compendium’ means the Compendium
24 issued under section 2922.

1 “(6) 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. 2922. OFFERING LOWER COST PLANS.**

6 “(a) LIST OF REQUIRED BENEFITS.—Not later than
7 3 months after the date of enactment of this title, the Sec-
8 retary shall issue by interim final rule a list (to be known
9 as the ‘List of Required Benefits’) of the benefit, service,
10 and provider mandates that are required to be provided
11 by health insurance issuers in at least 45 States as a re-
12 sult of the application of State benefit, service, and pro-
13 vider mandate laws.

14 “(b) STATE BENEFIT COMPENDIUM.—

15 “(1) VARIANCE.—Not later than 12 months
16 after the date of enactment of this title, the Sec-
17 retary shall issue by interim final rule a compen-
18 dium (to be known as the ‘State Benefit Compen-
19 dium’) of harmonized descriptions of the benefit,
20 service, and provider mandates identified under sub-
21 section (a). In developing the Compendium, with re-
22 spect to differences in State mandate laws identified
23 under subsection (a) relating to similar benefits,
24 services, or providers, the Secretary shall review and
25 define the scope and application of such State laws

1 so that a common approach shall be applicable
2 under such Compendium in a uniform manner. In
3 making such determination, the Secretary shall
4 adopt an approach reflective of the approach used by
5 a plurality of the States requiring such benefit, serv-
6 ice, or provider mandate.

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

13 “(3) IMPLEMENTATION.—The effective date of
14 the State Benefit Compendium shall be the later
15 of—

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

18 “(B) such subsequent date on which the
19 interim final rule for the State Benefit Compen-
20 dium shall be issued.

21 “(c) NON-ASSOCIATION COVERAGE.—With respect to
22 health insurers selling insurance to small employers (as
23 defined in section 808(a)(10) of the Employee Retirement
24 Income Security Act of 1974), in the event the Secretary
25 fails to issue the State Benefit Compendium within 12

1 months of the date of enactment of this title, the required
 2 scope and application for each benefit or service listed in
 3 the List of Required Benefits shall, other than with re-
 4 spect to insurance issued to a Small Business Health
 5 Plan, be—

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

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

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

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

2 “(a) SUPERCEDING OF STATE LAW.—

3 “(1) IN GENERAL.—This part shall supersede
4 any and all State laws (whether enacted prior to or
5 after the date of enactment of this title) insofar as
6 such laws relate to benefit, service, or provider man-
7 dates in the health insurance market as applied to
8 an eligible insurer, or health insurance coverage
9 issued by an eligible insurer, in a nonadopting State.

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

14 “(A) prohibit an eligible insurer from of-
15 fering coverage consistent with the State Ben-
16 efit Compendium, as provided for in section
17 2922(a), in a nonadopting State; or

18 “(B) discriminate against or among eligi-
19 ble insurers offering or seeking to offer health
20 insurance coverage consistent with the State
21 Benefit Compendium in a nonadopting State.

22 “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

23 “(1) NONAPPLICATION TO ADOPTING STATES.—
24 Subsection (a) shall not apply with respect to adopt-
25 ing States.

1 “(2) NONAPPLICATION TO CERTAIN INSUR-
2 ERS.—Subsection (a) shall not apply with respect to
3 insurers that do not qualify as eligible insurers who
4 offer health insurance coverage in a nonadopting
5 State.

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

22 “(4) NONAPPLICATION TO ENFORCE REQUIRE-
23 MENTS RELATING TO THE COMPENDIUM.—Sub-
24 section (a)(1) shall not apply to any State law in a
25 nonadopting State to the extent necessary to provide

1 the insurance department of the State (or other
 2 state agency) authority to enforce State law require-
 3 ments relating to the State Benefit Compendium
 4 that are not set forth in the terms of the group
 5 health insurance coverage issued in a nonadopting
 6 State, in a manner that is consistent with the State
 7 Benefit Compendium and imposes no greater duties
 8 or obligations on health insurance issuers than the
 9 State Benefit Compendium.

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

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

17 ~~“(e) EFFECTIVE DATE.—This section shall apply~~
 18 ~~upon the first plan year following final issuance by the~~
 19 ~~Secretary of the State Benefit Compendium.~~

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

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

24 ~~“(b) ACTIONS.—A health insurance issuer may bring~~
 25 ~~an action in the district courts of the United States for~~

1 injunctive or other equitable relief against a nonadopting
 2 State in connection with the application of a State law
 3 that violates this part.

4 “(c) VIOLATIONS OF SECTION 2923.—In the case of
 5 a nonadopting State that is in violation of section
 6 2923(a)(2), a health insurance issuer may bring an action
 7 in the district courts of the United States for damages
 8 against the nonadopting State and, if the health insurance
 9 issuer prevails in such action, the district court shall
 10 award the health insurance issuer its reasonable attorneys
 11 fees and costs.”.

12 **TITLE III—HARMONIZATION OF** 13 **HEALTH INSURANCE LAWS**

14 **SEC. 301. HEALTH INSURANCE REGULATORY HARMONI-** 15 **ZATION.**

16 Title XXIX of the Public Health Service Act (as
 17 added by section 201) is amended by adding at the end
 18 the following:

19 **“Subtitle B—Regulatory** 20 **Harmonization**

21 **“SEC. 2931. DEFINITIONS.**

22 “In this subtitle:

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

1 “(A) Renewability of coverage.

2 “(B) Guaranteed issuance as provided for
3 in title XXVII.

4 “(C) Guaranteed issue for individuals not
5 eligible under subparagraph (B).

6 “(D) High risk pools.

7 “(E) Pre-existing conditions limitations.

8 “(2) ADOPTING STATE.—The term ‘adopting
9 State’ means a State that has enacted the har-
10 monized standards adopted under this subtitle in
11 their entirety and as the exclusive laws of the State
12 that relate to the harmonized standards.

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

16 “(A) notifies the Secretary, not later than
17 30 days prior to the offering of coverage de-
18 scribed in this subparagraph, that the issuer in-
19 tends to offer health insurance coverage con-
20 sistent with the harmonized standards in a non-
21 adopting State;

22 “(B) notifies the insurance department of
23 a nonadopting State (or other State agency),
24 not later than 30 days prior to the offering of
25 coverage described in this subparagraph, that

1 the issuer intends to offer group health insur-
2 ance coverage in that State consistent with the
3 State Benefit Compendium; and provides with
4 such notice a copy of any insurance policy that
5 it intends to offer in the State; its most recent
6 annual and quarterly financial reports; and any
7 other information required to be filed with the
8 insurance department of the State (or other
9 State agency) by the Secretary in regulations;
10 and

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

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

1 “(5) HEALTH INSURANCE COVERAGE.—The
2 term ‘health insurance coverage’ means any coverage
3 issued in the health insurance market.

4 “(6) NONADOPTING STATE.—The term ‘non-
5 adopting State’ means a State that fails to enact,
6 within 2 years of the date in which final regulations
7 are issued by the Secretary adopting the harmonized
8 standards under this subtitle, the harmonized stand-
9 ards in their entirety and as the exclusive laws of
10 the State that relate to the harmonized standards.

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

15 “(A) Internal appeals.

16 “(B) External appeals.

17 “(C) Direct access to providers.

18 “(D) Prompt payment of claims.

19 “(E) Utilization review.

20 “(F) Marketing standards.

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

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

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

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

8 “(C) Limits on the types of variations in
9 rates based on geography, industry and group
10 size.

11 “(D) Periods of time during which rates
12 are guaranteed.

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

14 “(F) The establishment of classes or
15 blocks of business.

16 “(G) The use of actuarial justifications for
17 rate variations.

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

22 “(11) SUBSTANTIALLY SIMILAR.—The term
23 ‘substantially similar’ means a requirement of State
24 law applicable to an element of an area identified in
25 section 2932 that is similar in most material re-

1 spect. Where the most common State action with
 2 respect to an element is to adopt no requirement for
 3 an element of an area identified in such section
 4 2932, the plurality requirement shall be deemed to
 5 impose no requirements for such element.

6 **“SEC. 2932. HARMONIZED STANDARDS.**

7 “~~(a)~~ COMMISSION.—

8 “~~(1)~~ ESTABLISHMENT.—The Secretary, in con-
 9 sultation with the NAIC, shall establish the Commis-
 10 sion on Health Insurance Standards Harmonization
 11 (referred to in this subtitle as the ‘Commission’) to
 12 develop recommendations that harmonize incon-
 13 sistent State health insurance laws in accordance
 14 with the laws adopted in a plurality of the States.

15 “~~(2)~~ COMPOSITION.—The Commission shall be
 16 composed of the following individuals to be ap-
 17 pointed by the Secretary:

18 “~~(A)~~ Two State insurance commissioners,
 19 of which one shall be a Democrat and one shall
 20 be a Republican, and of which one shall be des-
 21 ignated as the chairperson and one shall be des-
 22 ignated as the vice chairperson.

23 “~~(B)~~ Two representatives of State govern-
 24 ment, one of which shall be a governor of a
 25 State and one of which shall be a State legis-

1 lator, and one of which shall be a Democrat and
2 one of which shall be a Republican.

3 “(C) Two representatives of employers, of
4 which one shall represent small employers and
5 one shall represent large employers.

6 “(D) Two representatives of health insur-
7 ers, of which one shall represent insurers that
8 offer coverage in all markets (including indi-
9 vidual, small, and large markets), and one shall
10 represent insurers that offer coverage in the
11 small market.

12 “(E) Two representatives of consumer or-
13 ganizations.

14 “(F) Two representatives of insurance
15 agents and brokers.

16 “(G) Two representatives of healthcare
17 providers.

18 “(H) Two independent representatives of
19 the American Academy of Actuaries who have
20 familiarity with the actuarial methods applica-
21 ble to health insurance.

22 “(I) One administrator of a qualified high
23 risk pool.

24 “(3) TERMS.—The members of the Commission
25 shall serve for the duration of the Commission. The

1 Secretary shall fill vacancies in the Commission as
2 needed and in a manner consistent with the com-
3 position described in paragraph (2).

4 “(b) DEVELOPMENT OF HARMONIZED STAND-
5 ARDS.—

6 “(1) IN GENERAL.—In accordance with the
7 process described in subsection (c), the Commission
8 shall identify and recommend nationally harmonized
9 standards for the small group health insurance mar-
10 ket, the individual health insurance market, and the
11 large group health insurance market that relate to
12 the following areas:

13 “(A) Rating.

14 “(B) Access to coverage.

15 “(C) Patient protections.

16 “(2) RECOMMENDATIONS.—The Commission
17 shall recommend separate harmonized standards
18 with respect to each of the three insurance markets
19 described in paragraph (1) and separate standards
20 for each element of the areas described in subpara-
21 graph (A) through (C) of such paragraph within
22 each such market. Notwithstanding the previous sen-
23 tence, the Commission shall not recommend any har-
24 monized standards that disrupt, expand, or duplicate
25 the benefit, service, or provider mandate standards

1 provided in the State Benefit Compendium pursuant
2 to section 2922(a).

3 “(c) PROCESS FOR IDENTIFYING HARMONIZED
4 STANDARDS.—

5 “(1) IN GENERAL.—The Commission shall de-
6 velop recommendations to harmonize inconsistent
7 State insurance laws with the laws adopted in a plu-
8 rality of the States. In carrying out the previous
9 sentence, the Commission shall review all State laws
10 that regulate insurance in each of the insurance
11 markets and areas described in subsection (b)(1)
12 and identify the plurality requirement within each
13 element of such areas. Such plurality requirement
14 shall be the harmonized standard for such area in
15 each such market.

16 “(2) CONSULTATION.—The Commission shall
17 consult with the National Association of Insurance
18 Commissioners in identifying the plurality require-
19 ments for each element within the area and in rec-
20 ommending the harmonized standards.

21 “(3) REVIEW OF FEDERAL LAWS.—The Com-
22 mission shall review whether any Federal law im-
23 poses a requirement relating to the markets and
24 areas described in subsection (b)(1). In such case,
25 such Federal requirement shall be deemed the plu-

1 rality requirement and the Commission shall rec-
2 ommend the Federal requirement as the harmonized
3 standard for such elements.

4 “(d) RECOMMENDATIONS AND ADOPTION BY SEC-
5 RETARY.—

6 “(1) RECOMMENDATIONS.—Not later than 1
7 year after the date of enactment of this title, the
8 Commission shall recommend to the Secretary the
9 adoption of the harmonized standards identified pur-
10 suant to subsection (c).

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

23 “(3) EFFECTIVE DATE.—The regulations issued
24 by the Secretary under paragraph (2) shall be effec-

1 tive on the date that is 2 years after the date on
2 which such regulations were issued.

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

6 “(f) UPDATED HARMONIZED STANDARDS.—

7 “(1) IN GENERAL.—Not later than 2 years
8 after the termination of the Commission under sub-
9 section (e), and every 2 years thereafter, the Sec-
10 retary shall update the harmonized standards. Such
11 updated standards shall be adopted in accordance
12 with paragraph (2).

13 “(2) UPDATING OF STANDARDS.—

14 “(A) IN GENERAL.—The Secretary shall
15 review all State laws that regulate insurance in
16 each of the markets and elements of areas set
17 forth in subsection (b)(1) and identify whether
18 a plurality of States have adopted substantially
19 similar requirements that differ from the har-
20 monized standards adopted by the Secretary
21 pursuant to subsection (d). In such case, the
22 Secretary shall consider State laws that have
23 been enacted with effective dates that are con-
24 tingent upon adoption as a harmonized stand-
25 ard by the Secretary. Substantially similar re-

1 requirements for each element within such area
2 shall be considered to be an updated har-
3 monized standard for such an area.

4 “(B) REPORT.—The Secretary shall re-
5 quest the National Association of Insurance
6 Commissioners to issue a report to the Sec-
7 retary every 2 years to assist the Secretary in
8 identifying the updated harmonized standards
9 under this paragraph. Nothing in this subpara-
10 graph shall be construed to prohibit the Sec-
11 retary from issuing updated harmonized stand-
12 ards in the absence of such a report.

13 “(C) REGULATIONS.—The Secretary shall
14 issue regulations adopting updated harmonized
15 standards under this paragraph within 90 days
16 of identifying such standards. Such regulations
17 shall be effective beginning on the date that is
18 2 years after the date on which such regula-
19 tions are issued.

20 “(g) PUBLICATION.—

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

1 “(2) **SAMPLE CONTRACT LANGUAGE.**—The Sec-
2 retary shall publish on the Internet website of the
3 Department of Health and Human Services sample
4 contract language that incorporates the harmonized
5 standards adopted under this section, which may be
6 used by insurers seeking to qualify as an eligible in-
7 surer. The types of harmonized standards that shall
8 be included in sample contract language are the
9 standards that are relevant to the contractual bar-
10 gain between the insurer and insured.

11 “(h) **STATE ADOPTION AND ENFORCEMENT.**—Not
12 later than 2 years after the issuance by the Secretary of
13 final regulations adopting harmonized standards under
14 this section, the States may adopt such harmonized stand-
15 ards (and become an adopting State) and, in which case,
16 shall enforce the harmonized standards pursuant to State
17 law.

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

19 “(a) **SUPERCEDING OF STATE LAW.**—

20 “(1) **IN GENERAL.**—The harmonized standards
21 adopted under this subtitle shall supersede any and
22 all State laws (whether enacted prior to or after the
23 date of enactment of this title) insofar as such State
24 laws relate to the areas of harmonized standards as
25 applied to an eligible insurer, or health insurance

1 coverage issued by a eligible insurer, in a non-
2 adopting State.

3 “(2) NONADOPTING STATES.—This subtitle
4 shall supersede any and all State laws of a non-
5 adopting State (whether enacted prior to or after the
6 date of enactment of this title) insofar as they
7 may—

8 “(A) prohibit an eligible insurer from of-
9 fering coverage consistent with the harmonized
10 standards in the nonadopting State; or

11 “(B) discriminate against or among eligi-
12 ble insurers offering or seeking to offer health
13 insurance coverage consistent with the har-
14 monized standards in the nonadopting State.

15 “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

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

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

24 “(3) NONAPPLICATION WHERE OBTAINING RE-
25 LIEF UNDER STATE LAW.—Subsection (a)(1) shall

1 not apply to any State law of a nonadopting State
2 to the extent necessary to permit individuals or the
3 insurance department of the State (or other State
4 agency) to obtain relief under State law to require
5 an eligible insurer to comply with the terms of the
6 health insurance coverage issued in a nonadopting
7 State. In no case shall this paragraph, or any other
8 provision of this subtitle, be construed to permit a
9 cause of action on behalf of an individual or any
10 other person under State law in connection with a
11 group health plan that is subject to the Employee
12 Retirement Income Security Act of 1974 or health
13 insurance coverage issued in connection with such
14 plan.

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

1 health insurance issuers than the harmonized stand-
2 ards.

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

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

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

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

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

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

23 ~~“(c) VIOLATIONS OF SECTION 2933.—In the case of~~
24 ~~a nonadopting State that is in violation of section~~
25 ~~2933(a)(2), a health insurance issuer may bring an action~~

1 in the district courts of the United States for damages
 2 against the nonadopting State and, if the health insurance
 3 issuer prevails in such action, the district court shall
 4 award the health insurance issuer its reasonable attorneys
 5 fees and costs.

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

7 “There are authorized to be appropriated such sums
 8 as may be necessary to carry out this subtitle.”.

9 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; PURPOSE.**

10 (a) *SHORT TITLE.*—*This Act may be cited as the*
 11 *“Health Insurance Marketplace Modernization and Afford-*
 12 *ability Act of 2006”.*

13 (b) *TABLE OF CONTENTS.*—*The table of contents is as*
 14 *follows:*

Sec. 1. Short title; table of contents; purposes.

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—MARKET RELIEF

Sec. 201. Market relief.

TITLE III—HARMONIZATION OF HEALTH INSURANCE STANDARDS

Sec. 301. Health Insurance Standards Harmonization.

15 (c) *PURPOSES.*—*It is the purpose of this Act to—*

16 (1) *make more affordable health insurance op-*
 17 *tions available to small businesses, working families,*
 18 *and all Americans;*

1 (2) assure effective State regulatory protection of
2 the interests of health insurance consumers; and

3 (3) create a more efficient and affordable health
4 insurance marketplace through collaborative develop-
5 ment of uniform regulatory standards.

6 **TITLE I—SMALL BUSINESS**
7 **HEALTH PLANS**

8 **SEC. 101. RULES GOVERNING SMALL BUSINESS HEALTH**
9 **PLANS.**

10 (a) *IN GENERAL.*—Subtitle B of title I of the Employee
11 Retirement Income Security Act of 1974 is amended by
12 adding after part 7 the following new part:

13 **“PART 8—RULES GOVERNING SMALL BUSINESS**
14 **HEALTH PLANS**

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

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

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

22 “(1) is organized and maintained in good faith,
23 with a constitution and bylaws specifically stating its
24 purpose and providing for periodic meetings on at
25 least an annual basis, as a bona fide trade associa-

1 *tion, a bona fide industry association (including a*
2 *rural electric cooperative association or a rural tele-*
3 *phone cooperative association), a bona fide profes-*
4 *sional association, or a bona fide chamber of com-*
5 *merce (or similar bona fide business association, in-*
6 *cluding a corporation or similar organization that*
7 *operates on a cooperative basis (within the meaning*
8 *of section 1381 of the Internal Revenue Code of*
9 *1986)), for substantial purposes other than that of ob-*
10 *taining medical care;*

11 *“(2) is established as a permanent entity which*
12 *receives the active support of its members and re-*
13 *quires for membership payment on a periodic basis of*
14 *dues or payments necessary to maintain eligibility*
15 *for membership;*

16 *“(3) does not condition membership, such dues or*
17 *payments, or coverage under the plan on the basis of*
18 *health status-related factors with respect to the em-*
19 *ployees of its members (or affiliated members), or the*
20 *dependents of such employees, and does not condition*
21 *such dues or payments on the basis of group health*
22 *plan participation; and*

23 *“(4) does not condition membership on the basis*
24 *of a minimum group size.*

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

4 **“SEC. 802. CERTIFICATION OF SMALL BUSINESS HEALTH**
 5 **PLANS.**

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

12 *“(b) REQUIREMENTS APPLICABLE TO CERTIFIED*
 13 *PLANS.—A small business health plan with respect to which*
 14 *certification under this part is in effect shall meet the appli-*
 15 *cable requirements of this part, effective on the date of cer-*
 16 *tification (or, if later, on the date on which the plan is*
 17 *to commence operations).*

18 *“(c) REQUIREMENTS FOR CONTINUED CERTIFI-*
 19 *CATION.—The applicable authority may provide by regula-*
 20 *tion for continued certification of small business health*
 21 *plans under this part. Such regulation shall provide for the*
 22 *revocation of a certification if the applicable authority finds*
 23 *that the small business health plan involved is failing to*
 24 *comply with the requirements of this part.*

25 *“(d) EXPEDITED AND DEEMED CERTIFICATION.—*

1 “(1) *IN GENERAL.*—*If the Secretary fails to act*
2 *on an application for certification under this section*
3 *within 90 days of receipt of such application, the ap-*
4 *plying small business health plan shall be deemed cer-*
5 *tified until such time as the Secretary may deny for*
6 *cause the application for certification.*

7 “(2) *CIVIL PENALTY.*—*The Secretary may assess*
8 *a civil penalty against the board of trustees and plan*
9 *sponsor (jointly and severally) of a small business*
10 *health plan that is deemed certified under paragraph*
11 *(1) of up to \$500,000 in the event the Secretary deter-*
12 *mines that the application for certification of such*
13 *small business health plan was willfully or with gross*
14 *negligence incomplete or inaccurate.*

15 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**
16 **BOARDS OF TRUSTEES.**

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

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

1 “(1) *FISCAL CONTROL.*—*The plan is operated,*
2 *pursuant to a plan document, by a board of trustees*
3 *which pursuant to a trust agreement has complete fis-*
4 *cal control over the plan and which is responsible for*
5 *all operations of the plan.*

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

12 “(3) *RULES GOVERNING RELATIONSHIP TO PAR-*
13 *TICIPATING EMPLOYERS AND TO CONTRACTORS.*—

14 “(A) *BOARD MEMBERSHIP.*—

15 “(i) *IN GENERAL.*—*Except as provided*
16 *in clauses (ii) and (iii), the members of the*
17 *board of trustees are individuals selected*
18 *from individuals who are the owners, offi-*
19 *cers, directors, or employees of the partici-*
20 *pating employers or who are partners in the*
21 *participating employers and actively par-*
22 *ticipate in the business.*

23 “(ii) *LIMITATION.*—

24 “(I) *GENERAL RULE.*—*Except as*
25 *provided in subclauses (II) and (III),*

1 no such member is an owner, officer,
2 director, or employee of, or partner in,
3 a contract administrator or other serv-
4 ice provider to the plan.

5 “(II) LIMITED EXCEPTION FOR
6 PROVIDERS OF SERVICES SOLELY ON
7 BEHALF OF THE SPONSOR.—Officers or
8 employees of a sponsor which is a serv-
9 ice provider (other than a contract ad-
10 ministrator) to the plan may be mem-
11 bers of the board if they constitute not
12 more than 25 percent of the member-
13 ship of the board and they do not pro-
14 vide services to the plan other than on
15 behalf of the sponsor.

16 “(III) TREATMENT OF PROVIDERS
17 OF MEDICAL CARE.—In the case of a
18 sponsor which is an association whose
19 membership consists primarily of pro-
20 viders of medical care, subclause (I)
21 shall not apply in the case of any serv-
22 ice provider described in subclause (I)
23 who is a provider of medical care
24 under the plan.

1 “(iii) *CERTAIN PLANS EXCLUDED.*—
2 *Clause (i) shall not apply to a small busi-*
3 *ness health plan which is in existence on the*
4 *date of the enactment of the Health Insur-*
5 *ance Marketplace Modernization and Af-*
6 *fordability Act of 2006.*

7 “(B) *SOLE AUTHORITY.*—*The board has sole*
8 *authority under the plan to approve applications*
9 *for participation in the plan and to contract*
10 *with insurers.*

11 “(c) *TREATMENT OF FRANCHISE NETWORKS.*—*In the*
12 *case of a group health plan which is established and main-*
13 *tained by a franchiser for a franchise network consisting*
14 *of its franchisees—*

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

23 “(2) *the requirements of section 804(a)(1) shall*
24 *be deemed met.*

1 *The Secretary may by regulation define for purposes of this*
2 *subsection the terms ‘franchiser’, ‘franchise network’, and*
3 *‘franchisee’.*

4 **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**
5 **MENTS.**

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

9 *“(1) each participating employer must be—*

10 *“(A) a member of the sponsor;*

11 *“(B) the sponsor; or*

12 *“(C) an affiliated member of the sponsor,*
13 *except that, in the case of a sponsor which is a*
14 *professional association or other individual-based*
15 *association, if at least one of the officers, direc-*
16 *tors, or employees of an employer, or at least one*
17 *of the individuals who are partners in an em-*
18 *ployer and who actively participates in the busi-*
19 *ness, is a member or such an affiliated member*
20 *of the sponsor, participating employers may also*
21 *include such employer; and*

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

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

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

3 *“(B) the dependents of individuals described*
4 *in subparagraph (A).*

5 *“(b) INDIVIDUAL MARKET UNAFFECTED.—The re-*
6 *quirements of this subsection are met with respect to a small*
7 *business health plan if, under the terms of the plan, no par-*
8 *ticipating employer may provide health insurance coverage*
9 *in the individual market for any employee not covered*
10 *under the plan which is similar to the coverage contempora-*
11 *neously provided to employees of the employer under the*
12 *plan, if such exclusion of the employee from coverage under*
13 *the plan is based on a health status-related factor with re-*
14 *spect to the employee and such employee would, but for such*
15 *exclusion on such basis, be eligible for coverage under the*
16 *plan.*

17 *“(c) PROHIBITION OF DISCRIMINATION AGAINST EM-*
18 *PLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.—*
19 *The requirements of this subsection are met with respect to*
20 *a small business health plan if—*

21 *“(1) under the terms of the plan, all employers*
22 *meeting the preceding requirements of this section are*
23 *eligible to qualify as participating employers for all*
24 *geographically available coverage options, unless, in*
25 *the case of any such employer, participation or con-*

1 *tribution requirements of the type referred to in sec-*
 2 *tion 2711 of the Public Health Service Act are not*
 3 *met;*

4 *“(2) information regarding all coverage options*
 5 *available under the plan is made readily available to*
 6 *any employer eligible to participate; and*

7 *“(3) the applicable requirements of sections 701,*
 8 *702, and 703 are met with respect to the plan.*

9 **“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN DOC-**
 10 **UMENTS, CONTRIBUTION RATES, AND BEN-**
 11 **EFIT OPTIONS.**

12 *“(a) IN GENERAL.—The requirements of this section*
 13 *are met with respect to a small business health plan if the*
 14 *following requirements are met:*

15 *“(1) CONTENTS OF GOVERNING INSTRUMENTS.—*

16 *“(A) IN GENERAL.—The instruments gov-*
 17 *erning the plan include a written instrument,*
 18 *meeting the requirements of an instrument re-*
 19 *quired under section 402(a)(1), which—*

20 *“(i) provides that the board of trustees*
 21 *serves as the named fiduciary required for*
 22 *plans under section 402(a)(1) and serves in*
 23 *the capacity of a plan administrator (re-*
 24 *ferred to in section 3(16)(A)); and*

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

4 “(B) DESCRIPTION OF MATERIAL PROVI-
5 SIONS.—The terms of the health insurance cov-
6 erage (including the terms of any individual cer-
7 tificates that may be offered to individuals in
8 connection with such coverage) describe the mate-
9 rial benefit and rating, and other provisions set
10 forth in this section and such material provi-
11 sions are included in the summary plan descrip-
12 tion.

13 “(2) CONTRIBUTION RATES MUST BE NON-
14 DISCRIMINATORY.—

15 “(A) IN GENERAL.—The contribution rates
16 for any participating small employer shall not
17 vary on the basis of any health status-related
18 factor in relation to employees of such employer
19 or their beneficiaries and shall not vary on the
20 basis of the type of business or industry in which
21 such employer is engaged.

22 “(B) EFFECT OF TITLE.—Nothing in this
23 title or any other provision of law shall be con-
24 strued to preclude a health insurance issuer of-
25 fering health insurance coverage in connection

1 with a small business health plan, and at the re-
2 quest of such small business health plan, from—

3 “(i) setting contribution rates for the
4 small business health plan based on the
5 claims experience of the plan so long as any
6 variation in such rates complies with the
7 requirements of clause (ii), except that
8 small business health plans shall not be sub-
9 ject to paragraphs (1)(A) and (3) of section
10 2911(b) of the Public Health Service Act; or

11 “(ii) varying contribution rates for
12 participating employers in a small business
13 health plan in a State to the extent that
14 such rates could vary using the same meth-
15 odology employed in such State for regu-
16 lating small group premium rates, subject
17 to the terms of part I of subtitle A of title
18 XXIX of the Public Health Service Act (re-
19 lating to rating requirements), as added by
20 title II of the Health Insurance Marketplace
21 Modernization and Affordability Act of
22 2006.

23 “(3) EXCEPTIONS REGARDING SELF-EMPLOYED
24 AND LARGE EMPLOYERS.—

25 “(A) SELF EMPLOYED.—

1 “(i) *IN GENERAL.*—*Small business*
2 *health plans with participating employers*
3 *who are self-employed individuals (and*
4 *their dependents) shall enroll such self-em-*
5 *ployed participating employers in accord-*
6 *ance with rating rules that do not violate*
7 *the rating rules for self-employed individ-*
8 *uals in the State in which such self-em-*
9 *ployed participating employers are located.*

10 “(ii) *GUARANTEE ISSUE.*—*Small busi-*
11 *ness health plans with participating em-*
12 *ployers who are self-employed individuals*
13 *(and their dependents) may decline to guar-*
14 *antee issue to such participating employers*
15 *in States in which guarantee issue is not*
16 *otherwise required for the self-employed in*
17 *that State.*

18 “(B) *LARGE EMPLOYERS.*—*Small business*
19 *health plans with participating employers that*
20 *are larger than small employers (as defined in*
21 *section 808(a)(10)) shall enroll such large par-*
22 *ticipating employers in accordance with rating*
23 *rules that do not violate the rating rules for large*
24 *employers in the State in which such large par-*
25 *ticipating employers are located.*

1 “(4) *REGULATORY REQUIREMENTS.*—Such other
2 requirements as the applicable authority determines
3 are necessary to carry out the purposes of this part,
4 which shall be prescribed by the applicable authority
5 by regulation.

6 “(b) *ABILITY OF SMALL BUSINESS HEALTH PLANS TO*
7 *DESIGN BENEFIT OPTIONS.*—Nothing in this part or any
8 provision of State law (as defined in section 514(c)(1)) shall
9 be construed to preclude a small business health plan or
10 a health insurance issuer offering health insurance coverage
11 in connection with a small business health plan from exer-
12 cising its sole discretion in selecting the specific benefits and
13 services consisting of medical care to be included as benefits
14 under such plan or coverage, except that such benefits and
15 services must meet the terms and specifications of part II
16 of subtitle A of title XXIX of the Public Health Service Act
17 (relating to lower cost plans), as added by title II of the
18 Health Insurance Marketplace Modernization and Afford-
19 ability Act of 2006.

20 “(c) *DOMICILE AND NON-DOMICILE STATES.*—

21 “(1) *DOMICILE STATE.*—Coverage shall be issued
22 to a small business health plan in the State in which
23 the sponsor’s principal place of business is located.

24 “(2) *NON-DOMICILE STATES.*—With respect to a
25 State (other than the domicile State) in which par-

1 *ticipating employers of a small business health plan*
2 *are located but in which the insurer of the small busi-*
3 *ness health plan in the domicile State is not yet li-*
4 *censed, the following shall apply:*

5 *“(A) TEMPORARY PREEMPTION.—If, upon*
6 *the expiration of the 90-day period following the*
7 *submission of a licensure application by such in-*
8 *surer (that includes a certified copy of an ap-*
9 *proved licensure application as submitted by*
10 *such insurer in the domicile State) to such State,*
11 *such State has not approved or denied such ap-*
12 *plication, such State’s health insurance licensure*
13 *laws shall be temporarily preempted and the in-*
14 *surer shall be permitted to operate in such State,*
15 *subject to the following terms:*

16 *“(i) APPLICATION OF NON-DOMICILE*
17 *STATE LAW.—Except with respect to licen-*
18 *sure and with respect to the terms of sub-*
19 *title A of title XXIX of the Public Health*
20 *Service Act (relating to rating and benefits*
21 *as added by the Health Insurance Market-*
22 *place Modernization and Affordability Act*
23 *of 2006), the laws and authority of the non-*
24 *domicile State shall remain in full force*
25 *and effect.*

1 “(i) *REVOCATION OF PREEMPTION.*—
2 *The preemption of a non-domicile State’s*
3 *health insurance licensure laws pursuant to*
4 *this subparagraph, shall be terminated upon*
5 *the occurrence of either of the following:*

6 “(I) *APPROVAL OR DENIAL OF AP-*
7 *PLICATION.*—*The approval of denial of*
8 *an insurer’s licensure application, fol-*
9 *lowing the laws and regulations of the*
10 *non-domicile State with respect to li-*
11 *cence.*

12 “(II) *DETERMINATION OF MATE-*
13 *RIAL VIOLATION.*—*A determination by*
14 *a non-domicile State that an insurer*
15 *operating in a non-domicile State pur-*
16 *suant to the preemption provided for*
17 *in this subparagraph is in material*
18 *violation of the insurance laws (other*
19 *than licensure and with respect to the*
20 *terms of subtitle A of title XXIX of the*
21 *Public Health Service Act (relating to*
22 *rating and benefits added by the*
23 *Health Insurance Marketplace Mod-*
24 *ernization and Affordability Act of*
25 *2006)) of such State.*

1 “(B) *NO PROHIBITION ON PROMOTION.*—
2 *Nothing in this paragraph shall be construed to*
3 *prohibit a small business health plan or an in-*
4 *surer from promoting coverage prior to the expi-*
5 *ration of the 90-day period provided for in sub-*
6 *paragraph (A), except that no enrollment or col-*
7 *lection of contributions shall occur before the ex-*
8 *piration of such 90-day period.*

9 “(C) *LICENSURE.*—*Except with respect to*
10 *the application of the temporary preemption*
11 *provision of this paragraph, nothing in this part*
12 *shall be construed to limit the requirement that*
13 *insurers issuing coverage to small business health*
14 *plans shall be licensed in each State in which the*
15 *small business health plans operate.*

16 “(D) *SERVICING BY LICENSED INSURERS.*—
17 *Notwithstanding subparagraph (C), the require-*
18 *ments of this subsection may also be satisfied if*
19 *the participating employers of a small business*
20 *health plan are serviced by a licensed insurer in*
21 *that State, even where such insurer is not the in-*
22 *surer of such small business health plan in the*
23 *State in which such small business health plan*
24 *is domiciled.*

1 **“SEC. 806. REQUIREMENTS FOR APPLICATION AND RE-**
2 **LATED REQUIREMENTS.**

3 “(a) *FILING FEE.*—Under the procedure prescribed
4 pursuant to section 802(a), a small business health plan
5 shall pay to the applicable authority at the time of filing
6 an application for certification under this part a filing fee
7 in the amount of \$5,000, which shall be available in the
8 case of the Secretary, to the extent provided in appropria-
9 tion Acts, for the sole purpose of administering the certifi-
10 cation procedures applicable with respect to small business
11 health plans.

12 “(b) *INFORMATION TO BE INCLUDED IN APPLICATION*
13 *FOR CERTIFICATION.*—An application for certification
14 under this part meets the requirements of this section only
15 if it includes, in a manner and form which shall be pre-
16 scribed by the applicable authority by regulation, at least
17 the following information:

18 “(1) *IDENTIFYING INFORMATION.*—The names
19 and addresses of—

20 “(A) the sponsor; and

21 “(B) the members of the board of trustees of
22 the plan.

23 “(2) *STATES IN WHICH PLAN INTENDS TO DO*
24 *BUSINESS.*—The States in which participants and
25 beneficiaries under the plan are to be located and the

1 *number of them expected to be located in each such*
2 *State.*

3 “(3) *BONDING REQUIREMENTS.*—*Evidence pro-*
4 *vided by the board of trustees that the bonding re-*
5 *quirements of section 412 will be met as of the date*
6 *of the application or (if later) commencement of oper-*
7 *ations.*

8 “(4) *PLAN DOCUMENTS.*—*A copy of the docu-*
9 *ments governing the plan (including any bylaws and*
10 *trust agreements), the summary plan description, and*
11 *other material describing the benefits that will be pro-*
12 *vided to participants and beneficiaries under the*
13 *plan.*

14 “(5) *AGREEMENTS WITH SERVICE PROVIDERS.*—
15 *A copy of any agreements between the plan, health in-*
16 *surance issuer, and contract administrators and other*
17 *service providers.*

18 “(c) *FILING NOTICE OF CERTIFICATION WITH*
19 *STATES.*—*A certification granted under this part to a*
20 *small business health plan shall not be effective unless writ-*
21 *ten notice of such certification is filed with the applicable*
22 *State authority of each State in which the small business*
23 *health plans operate.*

24 “(d) *NOTICE OF MATERIAL CHANGES.*—*In the case of*
25 *any small business health plan certified under this part,*

1 *descriptions of material changes in any information which*
2 *was required to be submitted with the application for the*
3 *certification under this part shall be filed in such form and*
4 *manner as shall be prescribed by the applicable authority*
5 *by regulation. The applicable authority may require by reg-*
6 *ulation prior notice of material changes with respect to*
7 *specified matters which might serve as the basis for suspen-*
8 *sion or revocation of the certification.*

9 **“SEC. 807. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**
10 **MINATION.**

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

16 *“(1) provides to the participants and bene-*
17 *ficiaries a written notice of intent to terminate stat-*
18 *ing that such termination is intended and the pro-*
19 *posed termination date;*

20 *“(2) develops a plan for winding up the affairs*
21 *of the plan in connection with such termination in a*
22 *manner which will result in timely payment of all*
23 *benefits for which the plan is obligated; and*

24 *“(3) submits such plan in writing to the appli-*
25 *cable authority.*

1 *Actions required under this section shall be taken in such*
2 *form and manner as may be prescribed by the applicable*
3 *authority by regulation.*

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

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

6 *“(1) AFFILIATED MEMBER.—The term ‘affiliated*
7 *member’ means, in connection with a sponsor—*

8 *“(A) a person who is otherwise eligible to be*
9 *a member of the sponsor but who elects an affili-*
10 *ated status with the sponsor, or*

11 *“(B) in the case of a sponsor with members*
12 *which consist of associations, a person who is a*
13 *member or employee of any such association and*
14 *elects an affiliated status with the sponsor.*

15 *“(2) APPLICABLE AUTHORITY.—The term ‘appli-*
16 *cable authority’ means the Secretary of Labor, except*
17 *that, in connection with any exercise of the Sec-*
18 *retary’s authority with respect to which the Secretary*
19 *is required under section 506(d) to consult with a*
20 *State, such term means the Secretary, in consultation*
21 *with such State.*

22 *“(3) APPLICABLE STATE AUTHORITY.—The term*
23 *‘applicable State authority’ means, with respect to a*
24 *health insurance issuer in a State, the State insur-*
25 *ance commissioner or official or officials designated*

1 *by the State to enforce the requirements of title XXVII*
 2 *of the Public Health Service Act for the State involved*
 3 *with respect to such issuer.*

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

8 “(5) *HEALTH INSURANCE COVERAGE.*—*The term*
 9 *‘health insurance coverage’ has the meaning provided*
 10 *in section 733(b)(1), except that such term shall not*
 11 *include excepted benefits (as defined in section*
 12 *733(c)).*

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

16 “(7) *INDIVIDUAL MARKET.*—

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

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

23 “(i) *IN GENERAL.*—*Subject to clause*
 24 *(ii), such term includes coverage offered in*
 25 *connection with a group health plan that*

1 *has fewer than 2 participants as current*
2 *employees or participants described in sec-*
3 *tion 732(d)(3) on the first day of the plan*
4 *year.*

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

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

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

1 *ployee, partner, or self-employed individual in rela-*
2 *tion to the plan.*

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

7 “(11) *TRADE ASSOCIATION AND PROFESSIONAL*
8 *ASSOCIATION.*—*The terms ‘trade association’ and*
9 *‘professional association’ mean an entity that meets*
10 *the requirements of section 1.501(c)(6)-1 of title 26,*
11 *Code of Federal Regulations (as in effect on the date*
12 *of enactment of this Act).*

13 “(b) *RULE OF CONSTRUCTION.*—*For purposes of deter-*
14 *mining whether a plan, fund, or program is an employee*
15 *welfare benefit plan which is a small business health plan,*
16 *and for purposes of applying this title in connection with*
17 *such plan, fund, or program so determined to be such an*
18 *employee welfare benefit plan—*

19 “(1) *in the case of a partnership, the term ‘em-*
20 *ployer’ (as defined in section 3(5)) includes the part-*
21 *nership in relation to the partners, and the term ‘em-*
22 *ployee’ (as defined in section 3(6)) includes any part-*
23 *ner in relation to the partnership; and*

24 “(2) *in the case of a self-employed individual,*
25 *the term ‘employer’ (as defined in section 3(5)) and*

1 *the term ‘employee’ (as defined in section 3(6)) shall*
2 *include such individual.*

3 “(c) *RENEWAL.—Notwithstanding any provision of*
4 *law to the contrary, a participating employer in a small*
5 *business health plan shall not be deemed to be a plan spon-*
6 *sor in applying requirements relating to coverage renewal.*

7 “(d) *HEALTH SAVINGS ACCOUNTS.—Nothing in this*
8 *part shall be construed to inhibit the development of health*
9 *savings accounts pursuant to section 223 of the Internal*
10 *Revenue Code of 1986.”.*

11 (b) *CONFORMING AMENDMENTS TO PREEMPTION*
12 *RULES.—*

13 (1) *Section 514(b)(6) of such Act (29 U.S.C.*
14 *1144(b)(6)) is amended by adding at the end the fol-*
15 *lowing new subparagraph:*

16 “(E) *The preceding subparagraphs of this paragraph*
17 *do not apply with respect to any State law in the case of*
18 *a small business health plan which is certified under part*
19 *8.”.*

20 (2) *Section 514 of such Act (29 U.S.C. 1144) is*
21 *amended—*

22 (A) *in subsection (b)(4), by striking “Sub-*
23 *section (a)” and inserting “Subsections (a) and*
24 *(d)”;*

1 (B) in subsection (b)(5), by striking “sub-
2 section (a)” in subparagraph (A) and inserting
3 “subsection (a) of this section and subsections
4 (a)(2)(B) and (b) of section 805”, and by strik-
5 ing “subsection (a)” in subparagraph (B) and
6 inserting “subsection (a) of this section or sub-
7 section (a)(2)(B) or (b) of section 805”;

8 (C) by redesignating subsection (d) as sub-
9 section (e); and

10 (D) by inserting after subsection (c) the fol-
11 lowing new subsection:

12 “(d)(1) Except as provided in subsection (b)(4), the
13 provisions of this title shall supersede any and all State
14 laws insofar as they may now or hereafter preclude a health
15 insurance issuer from offering health insurance coverage in
16 connection with a small business health plan which is cer-
17 tified under part 8.

18 “(2) In any case in which health insurance coverage
19 of any policy type is offered under a small business health
20 plan certified under part 8 to a participating employer op-
21 erating in such State, the provisions of this title shall super-
22 sede any and all laws of such State insofar as they may
23 establish rating and benefit requirements that would other-
24 wise apply to such coverage, provided the requirements of
25 subtitle A of title XXIX of the Public Health Service Act

1 *(as added by title II of the Health Insurance Marketplace*
 2 *Modernization and Affordability Act of 2006) (concerning*
 3 *health plan rating and benefits) are met.”.*

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

9 *(d) SAVINGS CLAUSE.—Section 731(c) of such Act is*
 10 *amended by inserting “or part 8” after “this part”.*

11 *(e) CLERICAL AMENDMENT.—The table of contents in*
 12 *section 1 of the Employee Retirement Income Security Act*
 13 *of 1974 is amended by inserting after the item relating to*
 14 *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 ben-
 efit options.*

“806. Requirements for application and related requirements.

“807. Notice requirements for voluntary termination.

“808. Definitions and rules of construction.”.

15 **SEC. 102. COOPERATION BETWEEN FEDERAL AND STATE**
 16 **AUTHORITIES.**

17 *Section 506 of the Employee Retirement Income Secu-*
 18 *rity Act of 1974 (29 U.S.C. 1136) is amended by adding*
 19 *at the end the following new subsection:*

1 “(d) *CONSULTATION WITH STATES WITH RESPECT TO*
2 *SMALL BUSINESS HEALTH PLANS.*—

3 “(1) *AGREEMENTS WITH STATES.*—*The Sec-*
4 *retary shall consult with the State recognized under*
5 *paragraph (2) with respect to a small business health*
6 *plan regarding the exercise of—*

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

10 “(B) *the Secretary’s authority to certify*
11 *small business health plans under part 8 in ac-*
12 *cordance with regulations of the Secretary appli-*
13 *cable to certification under part 8.*

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

21 **SEC. 103. EFFECTIVE DATE AND TRANSITIONAL AND OTHER**
22 **RULES.**

23 “(a) *EFFECTIVE DATE.*—*The amendments made by this*
24 *title shall take effect 12 months after the date of the enact-*
25 *ment of this Act. The Secretary of Labor shall first issue*

1 *all regulations necessary to carry out the amendments made*
2 *by this title within 6 months after the date of the enactment*
3 *of this Act.*

4 *(b) TREATMENT OF CERTAIN EXISTING HEALTH BEN-*
5 *EFITS PROGRAMS.—*

6 *(1) IN GENERAL.—In any case in which, as of*
7 *the date of the enactment of this Act, an arrangement*
8 *is maintained in a State for the purpose of providing*
9 *benefits consisting of medical care for the employees*
10 *and beneficiaries of its participating employers, at*
11 *least 200 participating employers make contributions*
12 *to such arrangement, such arrangement has been in*
13 *existence for at least 10 years, and such arrangement*
14 *is licensed under the laws of one or more States to*
15 *provide such benefits to its participating employers,*
16 *upon the filing with the applicable authority (as de-*
17 *fined in section 808(a)(2) of the Employee Retirement*
18 *Income Security Act of 1974 (as amended by this sub-*
19 *title)) by the arrangement of an application for cer-*
20 *tification of the arrangement under part 8 of subtitle*
21 *B of title I of such Act—*

22 *(A) such arrangement shall be deemed to be*
23 *a group health plan for purposes of title I of*
24 *such Act;*

1 (B) the requirements of sections 801(a) and
2 803(a) of the Employee Retirement Income Secu-
3 rity Act of 1974 shall be deemed met with respect
4 to such arrangement;

5 (C) the requirements of section 803(b) of
6 such Act shall be deemed met, if the arrangement
7 is operated by a board of trustees which—

8 (i) is elected by the participating em-
9 ployers, with each employer having one
10 vote; and

11 (ii) has complete fiscal control over the
12 arrangement and which is responsible for
13 all operations of the arrangement;

14 (D) the requirements of section 804(a) of
15 such Act shall be deemed met with respect to
16 such arrangement; and

17 (E) the arrangement may be certified by
18 any applicable authority with respect to its oper-
19 ations in any State only if it operates in such
20 State on the date of certification.

21 The provisions of this subsection shall cease to apply
22 with respect to any such arrangement at such time
23 after the date of the enactment of this Act as the ap-
24 plicable requirements of this subsection are not met
25 with respect to such arrangement or at such time that

1 *the arrangement provides coverage to participants*
 2 *and beneficiaries in any State other than the States*
 3 *in which coverage is provided on such date of enact-*
 4 *ment.*

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

14 **TITLE II—MARKET RELIEF**

15 **SEC. 201. MARKET RELIEF.**

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

18 **“TITLE XXIX—HEALTH CARE IN-**
 19 **SURANCE MARKETPLACE**
 20 **MODERNIZATION**

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

22 *“In this title, the terms ‘health insurance coverage’,*
 23 *‘health insurance issuer’, ‘group health plan’, and ‘indi-*
 24 *vidual health insurance’ shall have the meanings given such*
 25 *terms in section 2791.*

“Subtitle A—Market Relief**“PART I—RATING REQUIREMENTS****“SEC. 2911. DEFINITIONS.**

“(a) *GENERAL DEFINITIONS.*—*In this part:*

“(1) *ADOPTING STATE.*—*The term ‘adopting State’ means a State that, with respect to the small group market, has enacted either the Model Small Group Rating Rules or, if applicable to such State, the Transitional Model Small Group Rating Rules, each in their entirety and as the exclusive laws of the State that relate to rating in the small group insurance market.*

“(2) *APPLICABLE STATE AUTHORITY.*—*The term ‘applicable State authority’ means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the insurance laws of such State.*

“(3) *BASE PREMIUM RATE.*—*The term ‘base premium rate’ means, for each class of business with respect to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the small employer carrier to small employers with similar case*

1 *characteristics for health benefit plans with the same*
2 *or similar coverage*

3 “(4) *ELIGIBLE INSURER.*—*The term ‘eligible in-*
4 *surer’ means a health insurance issuer that is licensed*
5 *in a State and that—*

6 “(A) *notifies the Secretary, not later than*
7 *30 days prior to the offering of coverage de-*
8 *scribed in this subparagraph, that the issuer in-*
9 *tends to offer health insurance coverage con-*
10 *sistent with the Model Small Group Rating*
11 *Rules or, as applicable, transitional small group*
12 *rating rules in a State;*

13 “(B) *notifies the insurance department of a*
14 *nonadopting State (or other State agency), not*
15 *later than 30 days prior to the offering of cov-*
16 *erage described in this subparagraph, that the*
17 *issuer intends to offer small group health insur-*
18 *ance coverage in that State consistent with the*
19 *Model Small Group Rating Rules, and provides*
20 *with such notice a copy of any insurance policy*
21 *that it intends to offer in the State, its most re-*
22 *cent annual and quarterly financial reports, and*
23 *any other information required to be filed with*
24 *the insurance department of the State (or other*
25 *State agency); and*

1 “(C) includes in the terms of the health in-
2 surance coverage offered in nonadopting States
3 (including in the terms of any individual certifi-
4 cates that may be offered to individuals in con-
5 nection with such group health coverage) and
6 filed with the State pursuant to subparagraph
7 (B), a description in the insurer’s contract of the
8 Model Small Group Rating Rules and an affir-
9 mation that such Rules are included in the terms
10 of such contract.

11 “(5) HEALTH INSURANCE COVERAGE.—The term
12 ‘health insurance coverage’ means any coverage issued
13 in the small group health insurance market, except
14 that such term shall not include excepted benefits (as
15 defined in section 2791(c)).

16 “(6) INDEX RATE.—The term ‘index rate’ means
17 for each class of business with respect to the rating
18 period for small employers with similar case charac-
19 teristics, the arithmetic average of the applicable base
20 premium rate and the corresponding highest premium
21 rate.

22 “(7) MODEL SMALL GROUP RATING RULES.—The
23 term ‘Model Small Group Rating Rules’ means the
24 rules set forth in subsection (b).

1 “(8) *NONADOPTING STATE.*—*The term ‘non-*
2 *adopting State’ means a State that is not an adopt-*
3 *ing State.*

4 “(9) *SMALL GROUP INSURANCE MARKET.*—*The*
5 *term ‘small group insurance market’ shall have the*
6 *meaning given the term ‘small group market’ in sec-*
7 *tion 2791(e)(5).*

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

12 “(b) *DEFINITION RELATING TO MODEL SMALL GROUP*
13 *RATING RULES.*—*The term ‘Model Small Group Rating*
14 *Rules’ means adapted rating rules drawn from the Adopted*
15 *Small Employer Health Insurance Availability Model Act*
16 *of 1993 of the National Association of Insurance Commis-*
17 *sioners consisting of the following:*

18 “(1) *PREMIUM RATES.*—*Premium rates for*
19 *health benefit plans to which this title applies shall*
20 *be subject to the following provisions relating to pre-*
21 *miums:*

22 “(A) *INDEX RATE.*—*The index rate for a*
23 *rating period for any class of business shall not*
24 *exceed the index rate for any other class of busi-*
25 *ness by more than 20 percent.*

1 “(B) *CLASS OF BUSINESSES.*—*With respect*
2 *to a class of business, the premium rates charged*
3 *during a rating period to small employers with*
4 *similar case characteristics for the same or simi-*
5 *lar coverage or the rates that could be charged to*
6 *such employers under the rating system for that*
7 *class of business, shall not vary from the index*
8 *rate by more than 25 percent of the index rate*
9 *under subparagraph (A).*

10 “(C) *INCREASES FOR NEW RATING PERI-*
11 *ODS.*—*The percentage increase in the premium*
12 *rate charged to a small employer for a new rat-*
13 *ing period may not exceed the sum of the fol-*
14 *lowing:*

15 “(i) *The percentage change in the new*
16 *business premium rate measured from the*
17 *first day of the prior rating period to the*
18 *first day of the new rating period. In the*
19 *case of a health benefit plan into which the*
20 *small employer carrier is no longer enroll-*
21 *ing new small employers, the small em-*
22 *ployer carrier shall use the percentage*
23 *change in the base premium rate, except*
24 *that such change shall not exceed, on a per-*
25 *centage basis, the change in the new busi-*

1 *ness premium rate for the most similar*
2 *health benefit plan into which the small em-*
3 *ployer carrier is actively enrolling new*
4 *small employers.*

5 *“(ii) Any adjustment, not to exceed 15*
6 *percent annually and adjusted pro rata for*
7 *rating periods of less than 1 year, due to the*
8 *claim experience, health status or duration*
9 *of coverage of the employees or dependents*
10 *of the small employer as determined from*
11 *the small employer carrier’s rate manual*
12 *for the class of business involved.*

13 *“(iii) Any adjustment due to change in*
14 *coverage or change in the case characteris-*
15 *tics of the small employer as determined*
16 *from the small employer carrier’s rate man-*
17 *ual for the class of business.*

18 *“(D) UNIFORM APPLICATION OF ADJUST-*
19 *MENTS.—Adjustments in premium rates for*
20 *claim experience, health status, or duration of*
21 *coverage shall not be charged to individual em-*
22 *ployees or dependents. Any such adjustment shall*
23 *be applied uniformly to the rates charged for all*
24 *employees and dependents of the small employer.*

1 “(E) *USE OF INDUSTRY AS A CASE CHAR-*
2 *ACTERISTIC.*—*A small employer carrier may uti-*
3 *lize industry as a case characteristic in estab-*
4 *lishing premium rates, so long as the highest*
5 *rate factor associated with any industry classi-*
6 *fication does not exceed the lowest rate factor as-*
7 *sociated with any industry classification by*
8 *more than 15 percent.*

9 “(F) *CONSISTENT APPLICATION OF FAC-*
10 *TORS.*—*Small employer carriers shall apply rat-*
11 *ing factors, including case characteristics, con-*
12 *sistently with respect to all small employers in*
13 *a class of business. Rating factors shall produce*
14 *premiums for identical groups which differ only*
15 *by the amounts attributable to plan design and*
16 *do not reflect differences due to the nature of the*
17 *groups assumed to select particular health benefit*
18 *plans.*

19 “(G) *TREATMENT OF PLANS AS HAVING*
20 *SAME RATING PERIOD.*—*A small employer car-*
21 *rier shall treat all health benefit plans issued or*
22 *renewed in the same calendar month as having*
23 *the same rating period.*

24 “(H) *RESTRICTED NETWORK PROVISIONS.*—
25 *For purposes of this subsection, a health benefit*

1 *plan that contains a restricted network provision*
2 *shall not be considered similar coverage to a*
3 *health benefit plan that does not contain a simi-*
4 *lar provision if the restriction of benefits to net-*
5 *work providers results in substantial differences*
6 *in claims costs.*

7 “(I) *PROHIBITION ON USE OF CERTAIN*
8 *CASE CHARACTERISTICS.—The small employer*
9 *carrier shall not use case characteristics other*
10 *than age, gender, industry, geographic area,*
11 *family composition, group size, and participa-*
12 *tion in wellness programs without prior ap-*
13 *proval of the applicable State authority.*

14 “(J) *REQUIRE COMPLIANCE.—Premium*
15 *rates for small business health benefit plans shall*
16 *comply with the requirements of this subsection*
17 *notwithstanding any assessments paid or pay-*
18 *able by a small employer carrier as required by*
19 *a State’s small employer carrier reinsurance*
20 *program.*

21 “(2) *ESTABLISHMENT OF SEPARATE CLASS OF*
22 *BUSINESS.—Subject to paragraph (3), a small em-*
23 *ployer carrier may establish a separate class of busi-*
24 *ness only to reflect substantial differences in expected*

1 *claims experience or administrative costs related to*
2 *the following:*

3 *“(A) The small employer carrier uses more*
4 *than one type of system for the marketing and*
5 *sale of health benefit plans to small employers.*

6 *“(B) The small employer carrier has ac-*
7 *quired a class of business from another small em-*
8 *ployer carrier.*

9 *“(C) The small employer carrier provides*
10 *coverage to one or more association groups that*
11 *meet the requirements of this title.*

12 *“(3) LIMITATION.—A small employer carrier*
13 *may establish up to 9 separate classes of business*
14 *under paragraph (2), excluding those classes of busi-*
15 *ness related to association groups under this title.*

16 *“(4) ADDITIONAL GROUPINGS.—The applicable*
17 *State authority may approve the establishment of ad-*
18 *ditional distinct groupings by small employer car-*
19 *riers upon the submission of an application to the ap-*
20 *plicable State authority and a finding by the applica-*
21 *ble State authority that such action would enhance*
22 *the efficiency and fairness of the small employer in-*
23 *surance marketplace.*

24 *“(5) LIMITATION ON TRANSFERS.—A small em-*
25 *ployer carrier shall not transfer a small employer in-*

1 *voluntarily into or out of a class of business. A small*
2 *employer carrier shall not offer to transfer a small*
3 *employer into or out of a class of business unless such*
4 *offer is made to transfer all small employers in the*
5 *class of business without regard to case characteris-*
6 *tics, claim experience, health status or duration of*
7 *coverage since issue.*

8 “(6) *SUSPENSION OF THE RULES.*—*The applica-*
9 *ble State authority may suspend, for a specified pe-*
10 *riod, the application of paragraph (1) to the pre-*
11 *mium rates applicable to one or more small employ-*
12 *ers included within a class of business of a small em-*
13 *ployer carrier for one or more rating periods upon a*
14 *filing by the small employer carrier and a finding by*
15 *the applicable State authority either that the suspen-*
16 *sion is reasonable when considering the financial con-*
17 *dition of the small employer carrier or that the sus-*
18 *pension would enhance the efficiency and fairness of*
19 *the marketplace for small employer health insurance.*

20 **“SEC. 2912. RATING RULES.**

21 “(a) *IMPLEMENTATION OF MODEL SMALL GROUP RAT-*
22 *ING RULES.*—*Not later than 6 months after the enactment*
23 *of this title, the Secretary shall promulgate regulations im-*
24 *plementing the Model Small Group Rating Rules pursuant*
25 *to section 2911(b).*

1 “(b) *TRANSITIONAL MODEL SMALL GROUP RATING*
2 *RULES.*—

3 “(1) *IN GENERAL.*—Not later than 6 months
4 after the date of enactment of this title and to the ex-
5 tent necessary to provide for a graduated transition
6 to the Model Small Group Rating Rules, the Sec-
7 retary, in consultation with the NAIC, shall promul-
8 gate Transitional Model Small Group Rating Rules
9 in accordance with this subsection, which shall be ap-
10 plicable with respect to certain non-adopting States
11 for a period of not to exceed 5 years from the date
12 of the promulgation of the Model Small Group Rating
13 Rules pursuant to subsection (a). After the expiration
14 of such 5-year period, the transitional model small
15 group rating rules shall expire, and the Model Small
16 Group Rating Rules shall then apply with respect to
17 all non-adopting States pursuant to the provisions of
18 this part.

19 “(2) *PREMIUM VARIATION DURING TRANSI-*
20 *TION.*—

21 “(A) *TRANSITION STATES.*—During the
22 transition period described in paragraph (1),
23 small group health insurance coverage offered in
24 a non-adopting State that had in place premium
25 rating band requirements or premium limits

1 *that varied by less than 12.5 percent from the*
2 *index rate within a class of business on the date*
3 *of enactment of this title, shall not be subject to*
4 *the premium variation provision of section*
5 *2911(b)(1) of the Model Small Group Rating*
6 *Rules and shall instead be subject to the Transi-*
7 *tional Model Small Group Rating Rules as pro-*
8 *mulgated by the Secretary pursuant to para-*
9 *graph (1).*

10 “(B) *NON-TRANSITION STATES.*—*During the*
11 *transition period described in paragraph (1),*
12 *and thereafter, small group health insurance cov-*
13 *erage offered in a non-adopting State that had*
14 *in place premium rating band requirements or*
15 *premium limits that varied by more than 12.5*
16 *percent from the index rate within a class of*
17 *business on the date of enactment of this title,*
18 *shall not be subject to the Transitional Model*
19 *Small Group Rating Rules as promulgated by*
20 *the Secretary pursuant to paragraph (1), and*
21 *instead shall be subject to the Model Small*
22 *Group Rating Rules effective beginning with the*
23 *first plan year or calendar year following the*
24 *promulgation of such Rules, at the election of the*
25 *eligible insurer.*

1 “(3) *TRANSITIONING OF OLD BUSINESS.*—*In de-*
2 *veloping the transitional model small group rating*
3 *rules under paragraph (1), the Secretary shall, after*
4 *consultation with the National Association of Insur-*
5 *ance Commissioners and representatives of insurers*
6 *operating in the small group health insurance market,*
7 *promulgate special transition standards and*
8 *timelines with respect to independent rating classes*
9 *for old and new business, to the extent reasonably nec-*
10 *essary to protect health insurance consumers and to*
11 *ensure a stable and fair transition for old and new*
12 *market entrants.*

13 “(4) *OTHER TRANSITIONAL AUTHORITY.*—*In de-*
14 *veloping the Transitional Model Small Group Rating*
15 *Rules under paragraph (1), the Secretary shall pro-*
16 *vide for the application of the Transitional Model*
17 *Small Group Rating Rules in transition States as the*
18 *Secretary may determine necessary for a an effective*
19 *transition.*

20 “(c) *MARKET RE-ENTRY.*—

21 “(1) *IN GENERAL.*—*Notwithstanding any other*
22 *provision of law, a health insurance issuer that has*
23 *voluntarily withdrawn from providing coverage in the*
24 *small group market prior to the date of enactment of*
25 *the Health Insurance Marketplace Modernization and*

1 *Affordability Act of 2006 shall not be excluded from*
 2 *re-entering such market on a date that is more than*
 3 *180 days after such date of enactment.*

4 “(2) *TERMINATION.*—*The provision of this sub-*
 5 *section shall terminate on the date that is 24 months*
 6 *after the date of enactment of the Health Insurance*
 7 *Marketplace Modernization and Affordability Act of*
 8 *2006.*

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

10 “(a) *SUPERSEDING OF STATE LAW.*—

11 “(1) *IN GENERAL.*—*This part shall supersede*
 12 *any and all State laws of a non-adopting State inso-*
 13 *far as such State laws (whether enacted prior to or*
 14 *after the date of enactment of this subtitle) relate to*
 15 *rating in the small group insurance market as ap-*
 16 *plied to an eligible insurer, or small group health in-*
 17 *surance coverage issued by an eligible insurer, includ-*
 18 *ing with respect to coverage issued to a small em-*
 19 *ployer through a small business health plan, in a*
 20 *State.*

21 “(2) *NONADOPTING STATES.*—*This part shall su-*
 22 *persede any and all State laws of a nonadopting*
 23 *State insofar as such State laws (whether enacted*
 24 *prior to or after the date of enactment of this sub-*
 25 *title)—*

1 “(A) prohibit an eligible insurer from offer-
2 ing, marketing, or implementing small group
3 health insurance coverage consistent with the
4 Model Small Group Rating Rules or transitional
5 model small group rating rules; or

6 “(B) have the effect of retaliating against or
7 otherwise punishing in any respect an eligible
8 insurer for offering, marketing, or implementing
9 small group health insurance coverage consistent
10 with the Model Small Group Rating Rules or
11 transitional model small group rating rules.

12 “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

13 “(1) NONAPPLICATION TO ADOPTING STATES.—
14 Subsection (a) shall not apply with respect to adopt-
15 ing states.

16 “(2) NONAPPLICATION TO CERTAIN INSURERS.—
17 Subsection (a) shall not apply with respect to insur-
18 ers that do not qualify as eligible insurers that offer
19 small group health insurance coverage in a non-
20 adopting State.

21 “(3) NONAPPLICATION WHERE OBTAINING RE-
22 LIEF UNDER STATE LAW.—Subsection (a)(1) shall not
23 supersede any State law in a nonadopting State to
24 the extent necessary to permit individuals or the in-
25 surance department of the State (or other State agen-

1 *cy) to obtain relief under State law to require an eli-*
2 *gible insurer to comply with the Model Small Group*
3 *Rating Rules or transitional model small group rat-*
4 *ing rules.*

5 *“(4) NO EFFECT ON PREEMPTION.—In no case*
6 *shall this part be construed to limit or affect in any*
7 *manner the preemptive scope of sections 502 and 514*
8 *of the Employee Retirement Income Security Act of*
9 *1974. In no case shall this part be construed to create*
10 *any cause of action under Federal or State law or en-*
11 *large or affect any remedy available under the Em-*
12 *ployee Retirement Income Security Act of 1974*

13 *“(c) EFFECTIVE DATE.—This section shall apply, at*
14 *the election of the eligible insurer, beginning in the first*
15 *plan year or the first calendar year following the issuance*
16 *of the final rules by the Secretary under the Model Small*
17 *Group Rating Rules or, as applicable, the Transitional*
18 *Model Small Group Rating Rules, but in no event earlier*
19 *than the date that is 12 months after the date of enactment*
20 *of this title.*

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

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

1 “(b) *ACTIONS*.—*An eligible insurer may bring an ac-*
2 *tion in the district courts of the United States for injunctive*
3 *or other equitable relief against any officials or agents of*
4 *a nonadopting State in connection with any conduct or ac-*
5 *tion, or proposed conduct or action, by such officials or*
6 *agents which violates, or which would if undertaken violate,*
7 *section 2913.*

8 “(c) *DIRECT FILING IN COURT OF APPEALS*.—*At the*
9 *election of the eligible insurer, an action may be brought*
10 *under subsection (b) directly in the United States Court of*
11 *Appeals for the circuit in which the nonadopting State is*
12 *located by the filing of a petition for review in such Court.*

13 “(d) *EXPEDITED REVIEW*.—

14 “(1) *DISTRICT COURT*.—*In the case of an action*
15 *brought in a district court of the United States under*
16 *subsection (b), such court shall complete such action,*
17 *including the issuance of a judgment, prior to the end*
18 *of the 120-day period beginning on the date on which*
19 *such action is filed, unless all parties to such pro-*
20 *ceeding agree to an extension of such period.*

21 “(2) *COURT OF APPEALS*.—*In the case of an ac-*
22 *tion brought directly in a United States Court of Ap-*
23 *peal under subsection (c), or in the case of an appeal*
24 *of an action brought in a district court under sub-*
25 *section (b), such Court shall complete all action on the*

1 *petition, including the issuance of a judgment, prior*
2 *to the end of the 60-day period beginning on the date*
3 *on which such petition is filed with the Court, unless*
4 *all parties to such proceeding agree to an extension*
5 *of such period.*

6 *“(e) STANDARD OF REVIEW.—A court in an action*
7 *filed under this section, shall render a judgment based on*
8 *a review of the merits of all questions presented in such*
9 *action and shall not defer to any conduct or action, or pro-*
10 *posed conduct or action, of a nonadopting State.*

11 **“SEC. 2915. ONGOING REVIEW.**

12 *“Not later than 5 years after the date on which the*
13 *Model Small Group Rating Rules are issued under this*
14 *part, and every 5 years thereafter, the Secretary, in con-*
15 *sultation with the National Association of Insurance Com-*
16 *missioners, shall prepare and submit to the appropriate*
17 *committees of Congress a report that assesses the effect of*
18 *the Model Small Group Rating Rules on access, cost, and*
19 *market functioning in the small group market. Such report*
20 *may, if the Secretary, in consultation with the National*
21 *Association of Insurance Commissioners, determines such is*
22 *appropriate for improving access, costs, and market func-*
23 *tioning, contain legislative proposals for recommended*
24 *modification to such Model Small Group Rating Rules.*

“PART II—AFFORDABLE PLANS**“SEC. 2921. DEFINITIONS.**

“In this part:

“(1) ADOPTING STATE.—The term ‘adopting State’ means a State that has enacted the Benefit Choice Standards in their entirety and as the exclusive laws of the State that relate to benefit, service, and provider mandates in the group and individual insurance markets.

“(2) BENEFIT CHOICE STANDARDS.—The term ‘Benefit Choice Standards’ means the Standards issued under section 2922.

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

“(A) notifies the Secretary, not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage consistent with the Benefit Choice Standards in a nonadopting State;

“(B) notifies the insurance department of a nonadopting State (or other State agency), not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage

1 *in that State consistent with the Benefit Choice*
2 *Standards, and provides with such notice a copy*
3 *of any insurance policy that it intends to offer*
4 *in the State, its most recent annual and quar-*
5 *terly financial reports, and any other informa-*
6 *tion required to be filed with the insurance de-*
7 *partment of the State (or other State agency) by*
8 *the Secretary in regulations; and*

9 “(C) *includes in the terms of the health in-*
10 *surance coverage offered in nonadopting States*
11 *(including in the terms of any individual certifi-*
12 *cates that may be offered to individuals in con-*
13 *nection with such group health coverage) and*
14 *filed with the State pursuant to subparagraph*
15 *(B), a description in the insurer’s contract of the*
16 *Benefit Choice Standards and that adherence to*
17 *such Standards is included as a term of such*
18 *contract.*

19 “(4) *HEALTH INSURANCE COVERAGE.—The term*
20 *‘health insurance coverage’ means any coverage issued*
21 *in the group or individual health insurance markets,*
22 *except that such term shall not include excepted bene-*
23 *fits (as defined in section 2791(c)).*

1 “(5) *NONADOPTING STATE*.—*The term ‘non-*
2 *adopting State’ means a State that is not an adopt-*
3 *ing State.*

4 “(6) *SMALL GROUP INSURANCE MARKET*.—*The*
5 *term ‘small group insurance market’ shall have the*
6 *meaning given the term ‘small group market’ in sec-*
7 *tion 2791(e)(5).*

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

12 **“SEC. 2922. OFFERING AFFORDABLE PLANS.**

13 “(a) *BENEFIT CHOICE OPTIONS*.—

14 “(1) *DEVELOPMENT*.—*Not later than 6 months*
15 *after the date of enactment of this title, the Secretary*
16 *shall issue, by interim final rule, Benefit Choice*
17 *Standards that implement the standards provided for*
18 *in this part.*

19 “(2) *BASIC OPTIONS*.—*The Benefit Choice*
20 *Standards shall provide that a health insurance*
21 *issuer in a State, may offer a coverage plan or plan*
22 *in the small group market, individual market, large*
23 *group market, or through a small business health*
24 *plan, that does not comply with one or more man-*
25 *dates regarding covered benefits, services, or category*

1 of provider as may be in effect in such State with re-
2 spect to such market or markets (either prior to or fol-
3 lowing the date of enactment of this title), if such
4 issuer also offers in such market or markets an en-
5 hanced option as provided for in paragraph (3).

6 “(3) *ENHANCED OPTION.*—A health insurance
7 issuer issuing a basic option as provided for in para-
8 graph (2) shall also offer to purchasers (including,
9 with respect to a small business health plan, the par-
10 ticipating employers of such plan) an enhanced op-
11 tion, which shall at a minimum include such covered
12 benefits, services, and categories of providers as are
13 covered by a State employee coverage plan in one of
14 the 5 most populous States as are in effect in the cal-
15 endar year in which such enhanced option is offered.

16 “(4) *PUBLICATION OF BENEFITS.*—Not later
17 than 3 months after the date of enactment of this title,
18 and on the first day of every calendar year thereafter,
19 the Secretary shall publish in the Federal Register
20 such covered benefits, services, and categories of pro-
21 viders covered in that calendar year by the State em-
22 ployee coverage plans in the 5 most populous States.

23 “(b) *EFFECTIVE DATES.*—

24 “(1) *SMALL BUSINESS HEALTH PLANS.*—With
25 respect to health insurance provided to participating

1 *employers of small business health plans, the require-*
 2 *ments of this part (concerning lower cost plans) shall*
 3 *apply beginning on the date that is 12 months after*
 4 *the date of enactment of this title.*

5 *“(2) NON-ASSOCIATION COVERAGE.—With respect*
 6 *to health insurance provided to groups or individuals*
 7 *other than participating employers of small business*
 8 *health plans, the requirements of this part shall apply*
 9 *beginning on the date that is 15 months after the date*
 10 *of enactment of this title.*

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

12 *“(a) SUPERCEDING OF STATE LAW.—*

13 *“(1) IN GENERAL.—This part shall supersede*
 14 *any and all State laws insofar as such laws relate to*
 15 *mandates relating to covered benefits, services, or cat-*
 16 *egories of provider in the health insurance market as*
 17 *applied to an eligible insurer, or health insurance*
 18 *coverage issued by an eligible insurer, including with*
 19 *respect to coverage issued to a small business health*
 20 *plan, in a nonadopting State.*

21 *“(2) NONADOPTING STATES.—This part shall su-*
 22 *persede any and all State laws of a nonadopting*
 23 *State (whether enacted prior to or after the date of*
 24 *enactment of this title) insofar as such laws—*

1 “(A) prohibit an eligible insurer from offer-
2 ing, marketing, or implementing health insur-
3 ance coverage consistent with the Benefit Choice
4 Standards, as provided for in section 2922(a); or

5 “(B) have the effect of retaliating against or
6 otherwise punishing in any respect an eligible
7 insurer for offering, marketing, or implementing
8 health insurance coverage consistent with the
9 Benefit Choice Standards.

10 “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

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

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

18 “(3) NONAPPLICATION WHERE OBTAINING RE-
19 LIEF UNDER STATE LAW.—Subsection (a)(1) shall not
20 supersede any State law of a nonadopting State to
21 the extent necessary to permit individuals or the in-
22 surance department of the State (or other State agen-
23 cy) to obtain relief under State law to require an eli-
24 gible insurer to comply with the Benefit Choice
25 Standards.

1 “(4) *NO EFFECT ON PREEMPTION.*—*In no case*
2 *shall this part be construed to limit or affect in any*
3 *manner the preemptive scope of sections 502 and 514*
4 *of the Employee Retirement Income Security Act of*
5 *1974. In no case shall this part be construed to create*
6 *any cause of action under Federal or State law or en-*
7 *large or affect any remedy available under the Em-*
8 *ployee Retirement Income Security Act of 1974*

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

10 “(a) *IN GENERAL.*—*The courts of the United States*
11 *shall have exclusive jurisdiction over civil actions involving*
12 *the interpretation of this part.*

13 “(b) *ACTIONS.*—*An eligible insurer may bring an ac-*
14 *tion in the district courts of the United States for injunctive*
15 *or other equitable relief against any officials or agents of*
16 *a nonadopting State in connection with any conduct or ac-*
17 *tion, or proposed conduct or action, by such officials or*
18 *agents which violates, or which would if undertaken violate,*
19 *section 2923.*

20 “(c) *DIRECT FILING IN COURT OF APPEALS.*—*At the*
21 *election of the eligible insurer, an action may be brought*
22 *under subsection (b) directly in the United States Court of*
23 *Appeals for the circuit in which the nonadopting State is*
24 *located by the filing of a petition for review in such Court.*

25 “(d) *EXPEDITED REVIEW.*—

1 “(1) *DISTRICT COURT.*—*In the case of an action*
2 *brought in a district court of the United States under*
3 *subsection (b), such court shall complete such action,*
4 *including the issuance of a judgment, prior to the end*
5 *of the 120-day period beginning on the date on which*
6 *such action is filed, unless all parties to such pro-*
7 *ceeding agree to an extension of such period.*

8 “(2) *COURT OF APPEALS.*—*In the case of an ac-*
9 *tion brought directly in a United States Court of Ap-*
10 *peal under subsection (c), or in the case of an appeal*
11 *of an action brought in a district court under sub-*
12 *section (b), such Court shall complete all action on the*
13 *petition, including the issuance of a judgment, prior*
14 *to the end of the 60-day period beginning on the date*
15 *on which such petition is filed with the Court, unless*
16 *all parties to such proceeding agree to an extension*
17 *of such period.*

18 “(e) *STANDARD OF REVIEW.*—*A court in an action*
19 *filed under this section, shall render a judgment based on*
20 *a review of the merits of all questions presented in such*
21 *action and shall not defer to any conduct or action, or pro-*
22 *posed conduct or action, of a nonadopting State.*

23 **“SEC. 2925. RULES OF CONSTRUCTION.**

24 “(a) *IN GENERAL.*—*Notwithstanding any other provi-*
25 *sion of Federal or State law, a health insurance issuer in*

1 *an adopting State or an eligible insurer in a non-adopting*
 2 *State may amend its existing policies to be consistent with*
 3 *the terms of this subtitle (concerning rating and benefits).*

4 “(b) *HEALTH SAVINGS ACCOUNTS.*—*Nothing in this*
 5 *subtitle shall be construed to inhibit the development of*
 6 *health savings accounts pursuant to section 223 of the Inter-*
 7 *nal Revenue Code of 1986.”.*

8 **TITLE III—HARMONIZATION OF**
 9 **HEALTH INSURANCE STAND-**
 10 **ARDS**

11 **SEC. 301. HEALTH INSURANCE STANDARDS HARMONI-**
 12 **ZATION.**

13 *Title XXIX of the Public Health Service Act (as added*
 14 *by section 201) is amended by adding at the end the fol-*
 15 *lowing:*

16 **“Subtitle B—Standards**
 17 **Harmonization**

18 **“SEC. 2931. DEFINITIONS.**

19 *“In this subtitle:*

20 *“(1) ADOPTING STATE.—The term ‘adopting*
 21 *State’ means a State that has enacted the harmonized*
 22 *standards adopted under this subtitle in their entirety*
 23 *and as the exclusive laws of the State that relate to*
 24 *the harmonized standards.*

1 “(2) *ELIGIBLE INSURER.*—*The term ‘eligible in-*
2 *surer’ means a health insurance issuer that is licensed*
3 *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 health insurance coverage con-*
8 *sistent with the harmonized standards in a non-*
9 *adopting State;*

10 “(B) *notifies the insurance department of a*
11 *nonadopting State (or other State agency), not*
12 *later than 30 days prior to the offering of cov-*
13 *erage described in this subparagraph, that the*
14 *issuer intends to offer health insurance coverage*
15 *in that State consistent with the harmonized*
16 *standards published pursuant to section 2932(d),*
17 *and provides with such notice a copy of any in-*
18 *surance policy that it intends to offer in the*
19 *State, its most recent annual and quarterly fi-*
20 *nancial reports, and any other information re-*
21 *quired to be filed with the insurance department*
22 *of the State (or other State agency) by the Sec-*
23 *retary in regulations; 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 health coverage) and filed with*
4 *the State pursuant to subparagraph (B), a de-*
5 *scription of the harmonized standards published*
6 *pursuant to section 2932(g)(2) and an affirma-*
7 *tion that such standards are a term of the con-*
8 *tract.*

9 “(3) *HARMONIZED STANDARDS.*—*The term ‘har-*
10 *monized standards’ means the standards certified by*
11 *the Secretary under section 2932(d).*

12 “(4) *HEALTH INSURANCE COVERAGE.*—*The term*
13 *‘health insurance coverage’ means any coverage issued*
14 *in the health insurance market, except that such term*
15 *shall not include excepted benefits (as defined in sec-*
16 *tion 2791(c).*

17 “(5) *NONADOPTING STATE.*—*The term ‘non-*
18 *adopting State’ means a State that fails to enact,*
19 *within 18 months of the date on which the Secretary*
20 *certifies the harmonized standards under this subtitle,*
21 *the harmonized standards in their entirety and as the*
22 *exclusive laws of the State that relate to the har-*
23 *monized standards.*

24 “(6) *STATE LAW.*—*The term ‘State law’ means*
25 *all laws, decisions, rules, regulations, or other State*

1 *actions (including actions by a State agency) having*
2 *the effect of law, of any State.*

3 **“SEC. 2932. HARMONIZED STANDARDS.**

4 *“(a) BOARD.—*

5 *“(1) ESTABLISHMENT.—Not later than 3 months*
6 *after the date of enactment of this title, the Secretary,*
7 *in consultation with the NAIC, shall establish the*
8 *Health Insurance Consensus Standards Board (re-*
9 *ferred to in this subtitle as the ‘Board’) to develop*
10 *recommendations that harmonize inconsistent State*
11 *health insurance laws in accordance with the proce-*
12 *dures described in subsection (b).*

13 *“(2) COMPOSITION.—*

14 *“(A) IN GENERAL.—The Board shall be*
15 *composed of the following voting members to be*
16 *appointed by the Secretary after considering the*
17 *recommendations of professional organizations*
18 *representing the entities and constituencies de-*
19 *scribed in this paragraph:*

20 *“(i) Four State insurance commis-*
21 *sioners as recommended by the National As-*
22 *sociation of Insurance Commissioners, of*
23 *which 2 shall be Democrats and 2 shall be*
24 *Republicans, and of which one shall be des-*

1 *ignated as the chairperson and one shall be*
2 *designated as the vice chairperson.*

3 “(ii) *Four representatives of State gov-*
4 *ernment, two of which shall be governors of*
5 *States and two of which shall be State legis-*
6 *lators, and two of which shall be Democrats*
7 *and two of which shall be Republicans.*

8 “(iii) *Four representatives of health in-*
9 *surers, of which one shall represent insurers*
10 *that offer coverage in the small group mar-*
11 *ket, one shall represent insurers that offer*
12 *coverage in the large group market, one*
13 *shall represent insurers that offer coverage*
14 *in the individual market, and one shall rep-*
15 *resent carriers operating in a regional mar-*
16 *ket.*

17 “(iv) *Two representatives of insurance*
18 *agents and brokers.*

19 “(v) *Two independent representatives*
20 *of the American Academy of Actuaries who*
21 *have familiarity with the actuarial methods*
22 *applicable to health insurance.*

23 “(B) *EX OFFICIO MEMBER.—A representa-*
24 *tive of the Secretary shall serve as an ex officio*
25 *member of the Board.*

1 “(3) *ADVISORY PANEL.*—*The Secretary shall es-*
2 *tablish an advisory panel to provide advice to the*
3 *Board, and shall appoint its members after consid-*
4 *ering the recommendations of professional organiza-*
5 *tions representing the entities and constituencies*
6 *identified in this paragraph:*

7 “(A) *Two representatives of small business*
8 *health plans.*

9 “(B) *Two representatives of employers, of*
10 *which one shall represent small employers and*
11 *one shall represent large employers.*

12 “(C) *Two representatives of consumer orga-*
13 *nizations.*

14 “(D) *Two representatives of health care pro-*
15 *viders.*

16 “(4) *QUALIFICATIONS.*—*The membership of the*
17 *Board shall include individuals with national rec-*
18 *ognition for their expertise in health finance and eco-*
19 *nomics, actuarial science, health plans, providers of*
20 *health services, and other related fields, who provide*
21 *a mix of different professionals, broad geographic rep-*
22 *resentation, and a balance between urban and rural*
23 *representatives.*

24 “(5) *ETHICAL DISCLOSURE.*—*The Secretary shall*
25 *establish a system for public disclosure by members of*

1 *the Board of financial and other potential conflicts of*
2 *interest relating to such members. Members of the*
3 *Board shall be treated as employees of Congress for*
4 *purposes of applying title I of the Ethics in Govern-*
5 *ment Act of 1978 (Public Law 95–521).*

6 “(6) *DIRECTOR AND STAFF.*—*Subject to such re-*
7 *view as the Secretary deems necessary to assure the*
8 *efficient administration of the Board, the chair and*
9 *vice-chair of the Board may—*

10 “(A) *employ and fix the compensation of an*
11 *Executive Director (subject to the approval of the*
12 *Comptroller General) and such other personnel*
13 *as may be necessary to carry out its duties*
14 *(without regard to the provisions of title 5,*
15 *United States Code, governing appointments in*
16 *the competitive service);*

17 “(B) *seek such assistance and support as*
18 *may be required in the performance of its duties*
19 *from appropriate Federal departments and agen-*
20 *cies;*

21 “(C) *enter into contracts or make other ar-*
22 *rangements, as may be necessary for the conduct*
23 *of the work of the Board (without regard to sec-*
24 *tion 3709 of the Revised Statutes (41 U.S.C. 5));*

1 “(D) make advance, progress, and other
2 payments which relate to the work of the Board;

3 “(E) provide transportation and subsistence
4 for persons serving without compensation; and

5 “(F) prescribe such rules as it deems nec-
6 essary with respect to the internal organization
7 and operation of the Board.

8 “(7) TERMS.—The members of the Board shall
9 serve for the duration of the Board. Vacancies in the
10 Board shall be filled as needed in a manner consistent
11 with the composition described in paragraph (2).

12 “(b) DEVELOPMENT OF HARMONIZED STANDARDS.—

13 “(1) IN GENERAL.—In accordance with the proc-
14 ess described in subsection (c), the Board shall iden-
15 tify and recommend nationally harmonized standards
16 for each of the following process categories:

17 “(A) FORM FILING AND RATE FILING.—

18 Form and rate filing standards shall be estab-
19 lished which promote speed to market and in-
20 clude the following defined areas for States that
21 require such filings:

22 “(i) Procedures for form and rate fil-
23 ing pursuant to a streamlined administra-
24 tive filing process.

1 “(ii) *Timeframes for filings to be re-*
2 *viewed by a State if review is required be-*
3 *fore they are deemed approved.*

4 “(iii) *Timeframes for an eligible in-*
5 *surer to respond to State requests following*
6 *its review.*

7 “(iv) *A process for an eligible insurer*
8 *to self-certify.*

9 “(v) *State development of form and*
10 *rate filing templates that include only non-*
11 *preempted State law and Federal law re-*
12 *quirements for eligible insurers with timely*
13 *updates.*

14 “(vi) *Procedures for the resubmission*
15 *of forms and rates.*

16 “(vii) *Disapproval rationale of a form*
17 *or rate filing based on material omissions*
18 *or violations of non-preempted State law or*
19 *Federal law with violations cited and ex-*
20 *plained.*

21 “(viii) *For States that may require a*
22 *hearing, a rationale for hearings based on*
23 *violations of non-preempted State law or*
24 *insurer requests.*

1 “(B) *MARKET CONDUCT REVIEW.*—*Market*
2 *conduct review standards shall be developed*
3 *which provide for the following:*

4 “(i) *Mandatory participation in na-*
5 *tional databases.*

6 “(ii) *The confidentiality of examina-*
7 *tion materials.*

8 “(iii) *The identification of the State*
9 *agency with primary responsibility for ex-*
10 *aminations.*

11 “(iv) *Consultation and verification of*
12 *complaint data with the eligible insurer*
13 *prior to State actions.*

14 “(v) *Consistency of reporting require-*
15 *ments with the recordkeeping and adminis-*
16 *trative practices of the eligible insurer.*

17 “(vi) *Examinations that seek to correct*
18 *material errors and harmful business prac-*
19 *tices rather than infrequent errors.*

20 “(vii) *Transparency and publishing of*
21 *the State’s examination standards.*

22 “(viii) *Coordination of market conduct*
23 *analysis.*

1 “(ix) *Coordination and nonduplication*
2 *between State examinations of the same eli-*
3 *gible insurer.*

4 “(x) *Rationale and protocols to be met*
5 *before a full examination is conducted.*

6 “(xi) *Requirements on examiners prior*
7 *to beginning examinations such as budget*
8 *planning and work plans.*

9 “(xii) *Consideration of methods to*
10 *limit examiners’ fees such as caps, competi-*
11 *tive bidding, or other alternatives.*

12 “(xiii) *Reasonable fines and penalties*
13 *for material errors and harmful business*
14 *practices.*

15 “(C) *PROMPT PAYMENT OF CLAIMS.—The*
16 *Board shall establish prompt payment standards*
17 *for eligible insurers based on standards similar*
18 *to those applicable to the Social Security Act as*
19 *set forth in section 1842(c)(2) of such Act (42*
20 *U.S.C. 1395u(c)(2)). Such prompt payment*
21 *standards shall be consistent with the timing*
22 *and notice requirements of the claims procedure*
23 *rules to be specified under subparagraph (D),*
24 *and shall include appropriate exceptions such as*

1 *for fraud, nonpayment of premiums, or late sub-*
2 *mission of claims.*

3 “(D) *INTERNAL REVIEW.*—*The Board shall*
4 *establish standards for claims procedures for eli-*
5 *gible insurers that are consistent with the re-*
6 *quirements relating to initial claims for benefits*
7 *and appeals of claims for benefits under the Em-*
8 *ployee Retirement Income Security Act of 1974*
9 *as set forth in section 503 of such Act (29 U.S.C.*
10 *1133) and the regulations thereunder.*

11 “(2) *RECOMMENDATIONS.*—*The Board shall rec-*
12 *ommend harmonized standards for each element of the*
13 *categories described in subparagraph (A) through (D)*
14 *of paragraph (1) within each such market. Notwith-*
15 *standing the previous sentence, the Board shall not*
16 *recommend any harmonized standards that disrupt,*
17 *expand, or duplicate the benefit, service, or provider*
18 *mandate standards provided in the Benefit Choice*
19 *Standards pursuant to section 2922(a).*

20 “(c) *PROCESS FOR IDENTIFYING HARMONIZED STAND-*
21 *ARDS.*—

22 “(1) *IN GENERAL.*—*The Board shall develop rec-*
23 *ommendations to harmonize inconsistent State insur-*
24 *ance laws with respect to each of the process cat-*

1 *egories described in subparagraphs (A) through (D) of*
2 *subsection (b)(1).*

3 “(2) *REQUIREMENTS.*—*In adopting standards*
4 *under this section, the Board shall consider the fol-*
5 *lowing:*

6 “(A) *Any model acts or regulations of the*
7 *National Association of Insurance Commis-*
8 *sioners in each of the process categories described*
9 *in subparagraphs (A) through (D) of subsection*
10 *(b)(1).*

11 “(B) *Substantially similar standards fol-*
12 *lowed by a plurality of States, as reflected in ex-*
13 *isting State laws, relating to the specific process*
14 *categories described in subparagraphs (A)*
15 *through (D) of subsection (b)(1).*

16 “(C) *Any Federal law requirement related*
17 *to specific process categories described in sub-*
18 *paragraphs (A) through (D) of subsection (b)(1).*

19 “(D) *In the case of the adoption of any*
20 *standard that differs substantially from those re-*
21 *ferred to in subparagraphs (A), (B), or (C), the*
22 *Board shall provide evidence to the Secretary*
23 *that such standard is necessary to protect health*
24 *insurance consumers or promote speed to market*
25 *or administrative efficiency.*

1 “(E) *The criteria specified in clauses (i)*
2 *through (iii) of subsection (d)(2)(B).*

3 “(d) *RECOMMENDATIONS AND CERTIFICATION BY SEC-*
4 *RETARY.—*

5 “(1) *RECOMMENDATIONS.—Not later than 18*
6 *months after the date on which all members of the*
7 *Board are selected under subsection (a), the Board*
8 *shall recommend to the Secretary the certification of*
9 *the harmonized standards identified pursuant to sub-*
10 *section (c).*

11 “(2) *CERTIFICATION.—*

12 “(A) *IN GENERAL.—Not later than 120*
13 *days after receipt of the Board’s recommenda-*
14 *tions under paragraph (1), the Secretary shall*
15 *certify the recommended harmonized standards*
16 *as provided for in subparagraph (B), and issue*
17 *such standards in the form of an interim final*
18 *regulation.*

19 “(B) *CERTIFICATION PROCESS.—The Sec-*
20 *retary shall establish a process for certifying the*
21 *recommended harmonized standard, by category,*
22 *as recommended by the Board under this section.*
23 *Such process shall—*

24 “(i) *ensure that the certified standards*
25 *for a particular process area achieve regu-*

1 *latory harmonization with respect to health*
2 *plans on a national basis;*

3 *“(ii) ensure that the approved stand-*
4 *ards are the minimum necessary, with re-*
5 *gard to substance and quantity of require-*
6 *ments, to protect health insurance con-*
7 *sumers and maintain a competitive regu-*
8 *latory environment; and*

9 *“(iii) ensure that the approved stand-*
10 *ards will not limit the range of group*
11 *health plan designs and insurance products,*
12 *such as catastrophic coverage only plans,*
13 *health savings accounts, and health mainte-*
14 *nance organizations, that might otherwise*
15 *be available to consumers.*

16 *“(3) EFFECTIVE DATE.—The standards certified*
17 *by the Secretary under paragraph (2) shall be effec-*
18 *tive on the date that is 18 months after the date on*
19 *which the Secretary certifies the harmonized stand-*
20 *ards.*

21 *“(e) TERMINATION.—The Board shall terminate and*
22 *be dissolved after making the recommendations to the Sec-*
23 *retary pursuant to subsection (d)(1).*

24 *“(f) ONGOING REVIEW.—Not earlier than 3 years after*
25 *the termination of the Board under subsection (e), and not*

1 *earlier than every 3 years thereafter, the Secretary, in con-*
2 *sultation with the National Association of Insurance Com-*
3 *missioners and the entities and constituencies represented*
4 *on the Board and the Advisory Panel, shall prepare and*
5 *submit to the appropriate committees of Congress a report*
6 *that assesses the effect of the harmonized standards on ac-*
7 *cess, cost, and health insurance market functioning. The*
8 *Secretary may, based on such report and applying the proc-*
9 *ess established for certification under subsection (d)(2)(B),*
10 *in consultation with the National Association of Insurance*
11 *Commissioners and the entities and constituencies rep-*
12 *resented on the Board and the Advisory Panel, update the*
13 *harmonized standards through notice and comment rule-*
14 *making.*

15 “(g) *PUBLICATION.*—

16 “(1) *LISTING.*—*The Secretary shall maintain an*
17 *up to date listing of all harmonized standards cer-*
18 *tified under this section on the Internet website of the*
19 *Department of Health and Human Services.*

20 “(2) *SAMPLE CONTRACT LANGUAGE.*—*The Sec-*
21 *retary shall publish on the Internet website of the De-*
22 *partment of Health and Human Services sample con-*
23 *tract language that incorporates the harmonized*
24 *standards certified under this section, which may be*
25 *used by insurers seeking to qualify as an eligible in-*

1 *surer. The types of harmonized standards that shall*
 2 *be included in sample contract language are the*
 3 *standards that are relevant to the contractual bargain*
 4 *between the insurer and insured.*

5 *“(h) STATE ADOPTION AND ENFORCEMENT.—Not later*
 6 *than 18 months after the certification by the Secretary of*
 7 *harmonized standards under this section, the States may*
 8 *adopt such harmonized standards (and become an adopting*
 9 *State) and, in which case, shall enforce the harmonized*
 10 *standards pursuant to State law.*

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

12 *“(a) SUPERCEDING OF STATE LAW.—*

13 *“(1) IN GENERAL.—The harmonized standards*
 14 *certified under this subtitle shall supersede any and*
 15 *all State laws of a non-adopting State insofar as such*
 16 *State laws relate to the areas of harmonized stand-*
 17 *ards as applied to an eligible insurer, or health insur-*
 18 *ance coverage issued by a eligible insurer, including*
 19 *with respect to coverage issued to a small business*
 20 *health plan, in a nonadopting State.*

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

1 “(A) prohibit an eligible insurer from offer-
2 ing, marketing, or implementing health insur-
3 ance coverage consistent with the harmonized
4 standards; or

5 “(B) have the effect of retaliating against or
6 otherwise punishing in any respect an eligible
7 insurer for offering, marketing, or implementing
8 health insurance coverage consistent with the
9 harmonized standards under this subtitle.

10 “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

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

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

18 “(3) NONAPPLICATION WHERE OBTAINING RE-
19 LIEF UNDER STATE LAW.—Subsection (a)(1) shall not
20 supersede any State law of a nonadopting State to
21 the extent necessary to permit individuals or the in-
22 surance department of the State (or other State agen-
23 cy) to obtain relief under State law to require an eli-
24 gible insurer to comply with the harmonized stand-
25 ards under this subtitle.

1 “(4) *NO EFFECT ON PREEMPTION.*—*In no case*
2 *shall this subtitle be construed to limit or affect in*
3 *any manner the preemptive scope of sections 502 and*
4 *514 of the Employee Retirement Income Security Act*
5 *of 1974. In no case shall this subtitle be construed to*
6 *create any cause of action under Federal or State law*
7 *or enlarge or affect any remedy available under the*
8 *Employee Retirement Income Security Act of 1974.*

9 “(c) *EFFECTIVE DATE.*—*This section shall apply be-*
10 *ginning on the date that is 18 months after the date on*
11 *harmonized standards are certified by the Secretary under*
12 *this subtitle.*

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

14 “(a) *IN GENERAL.*—*The district courts of the United*
15 *States shall have exclusive jurisdiction over civil actions in-*
16 *volving the interpretation of this subtitle.*

17 “(b) *ACTIONS.*—*An eligible insurer may bring an ac-*
18 *tion in the district courts of the United States for injunctive*
19 *or other equitable relief against any officials or agents of*
20 *a nonadopting State in connection with any conduct or ac-*
21 *tion, or proposed conduct or action, by such officials or*
22 *agents which violates, or which would if undertaken violate,*
23 *section 2933.*

24 “(c) *DIRECT FILING IN COURT OF APPEALS.*—*At the*
25 *election of the eligible insurer, an action may be brought*

1 *under subsection (b) directly in the United States Court of*
2 *Appeals for the circuit in which the nonadopting State is*
3 *located by the filing of a petition for review in such Court.*

4 “(d) *EXPEDITED REVIEW.*—

5 “(1) *DISTRICT COURT.*—*In the case of an action*
6 *brought in a district court of the United States under*
7 *subsection (b), such court shall complete such action,*
8 *including the issuance of a judgment, prior to the end*
9 *of the 120-day period beginning on the date on which*
10 *such action is filed, unless all parties to such pro-*
11 *ceeding agree to an extension of such period.*

12 “(2) *COURT OF APPEALS.*—*In the case of an ac-*
13 *tion brought directly in a United States Court of Ap-*
14 *peal under subsection (c), or in the case of an appeal*
15 *of an action brought in a district court under sub-*
16 *section (b), such Court shall complete all action on the*
17 *petition, including the issuance of a judgment, prior*
18 *to the end of the 60-day period beginning on the date*
19 *on which such petition is filed with the Court, unless*
20 *all parties to such proceeding agree to an extension*
21 *of such period.*

22 “(e) *STANDARD OF REVIEW.*—*A court in an action*
23 *filed under this section, shall render a judgment based on*
24 *a review of the merits of all questions presented in such*

1 *action and shall not defer to any conduct or action, or pro-*
2 *posed conduct or action, of a nonadopting State.*

3 **“SEC. 2935. AUTHORIZATION OF APPROPRIATIONS; RULE**
4 **OF CONSTRUCTION.**

5 *“(a) AUTHORIZATION OF APPROPRIATIONS.—There*
6 *are authorized to be appropriated such sums as may be nec-*
7 *essary to carry out this subtitle.*

8 *“(b) HEALTH SAVINGS ACCOUNTS.—Nothing in this*
9 *subtitle shall be construed to inhibit the development of*
10 *health savings accounts pursuant to section 223 of the Inter-*
11 *nal Revenue Code of 1986.”.*

Calendar No. 417

109TH CONGRESS
2^D SESSION

S. 1955

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.

APRIL 27, 2006

Reported with an amendment