

109TH CONGRESS
1ST SESSION

S. 406

To amend title I of the Employee Retirement Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2005

Ms. SNOWE (for herself, Mr. TALENT, Mr. BOND, Mr. BYRD, Mrs. DOLE, Mr. MCCAIN, Mrs. HUTCHISON, Mr. COLEMAN, Mr. VITTER, and Mr. MARTINEZ) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title I of the Employee Retirement Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Small Business Health Fairness Act of 2005”.

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

- Sec. 1. Short title and table of contents.
 Sec. 2. Rules governing association health plans.
 Sec. 3. Clarification of treatment of single employer arrangements.
 Sec. 4. Enforcement provisions relating to association health plans.
 Sec. 5. Cooperation between Federal and State authorities.
 Sec. 6. Effective date and transitional and other rules.

1 **SEC. 2. RULES GOVERNING ASSOCIATION HEALTH PLANS.**

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

5 **“PART 8—RULES GOVERNING ASSOCIATION**
 6 **HEALTH PLANS**

7 **“SEC. 801. ASSOCIATION HEALTH PLANS.**

8 “(a) IN GENERAL.—For purposes of this part, the
 9 term ‘association health plan’ means a group health plan
 10 whose sponsor is (or is deemed under this part to be) de-
 11 scribed in subsection (b).

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

14 “(1) is organized and maintained in good faith,
 15 with a constitution and bylaws specifically stating its
 16 purpose and providing for periodic meetings on at
 17 least an annual basis, as a bona fide trade associa-
 18 tion, a bona fide industry association (including a
 19 rural electric cooperative association or a rural tele-
 20 phone cooperative association), a bona fide profes-
 21 sional association, or a bona fide chamber of com-
 22 merce (or similar bona fide business association, in-

1 including a corporation or similar organization that
2 operates on a cooperative basis (within the meaning
3 of section 1381 of the Internal Revenue Code of
4 1986)), for substantial purposes other than that of
5 obtaining or providing medical care;

6 “(2) is established as a permanent entity which
7 receives the active support of its members and re-
8 quires for membership payment on a periodic basis
9 of dues or payments necessary to maintain eligibility
10 for membership in the sponsor; and

11 “(3) does not condition membership, such dues
12 or payments, or coverage under the plan on the
13 basis of health status-related factors with respect to
14 the employees of its members (or affiliated mem-
15 bers), or the dependents of such employees, and does
16 not condition such dues or payments on the basis of
17 group health plan participation.

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

22 **“SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH**
23 **PLANS.**

24 “(a) IN GENERAL.—The applicable authority shall
25 prescribe by regulation a procedure under which, subject

1 to subsection (b), the applicable authority shall certify as-
2 sociation health plans which apply for certification as
3 meeting the requirements of this part.

4 “(b) STANDARDS.—Under the procedure prescribed
5 pursuant to subsection (a), in the case of an association
6 health plan that provides at least one benefit option which
7 does not consist of health insurance coverage, the applica-
8 ble authority shall certify such plan as meeting the re-
9 quirements of this part only if the applicable authority is
10 satisfied that the applicable requirements of this part are
11 met (or, upon the date on which the plan is to commence
12 operations, will be met) with respect to the plan.

13 “(c) REQUIREMENTS APPLICABLE TO CERTIFIED
14 PLANS.—An association health plan with respect to which
15 certification under this part is in effect shall meet the ap-
16 plicable requirements of this part, effective on the date
17 of certification (or, if later, on the date on which the plan
18 is to commence operations).

19 “(d) REQUIREMENTS FOR CONTINUED CERTIFI-
20 CATION.—The applicable authority may provide by regula-
21 tion for continued certification of association health plans
22 under this part.

23 “(e) CLASS CERTIFICATION FOR FULLY INSURED
24 PLANS.—The applicable authority shall establish a class
25 certification procedure for association health plans under

1 which all benefits consist of health insurance coverage.
2 Under such procedure, the applicable authority shall pro-
3 vide for the granting of certification under this part to
4 the plans in each class of such association health plans
5 upon appropriate filing under such procedure in connec-
6 tion with plans in such class and payment of the pre-
7 scribed fee under section 807(a).

8 “(f) CERTIFICATION OF SELF-INSURED ASSOCIATION
9 HEALTH PLANS.—An association health plan which offers
10 one or more benefit options which do not consist of health
11 insurance coverage may be certified under this part only
12 if such plan consists of any of the following:

13 “(1) A plan which offered such coverage on the
14 date of the enactment of the Small Business Health
15 Fairness Act of 2005.

16 “(2) A plan under which the sponsor does not
17 restrict membership to one or more trades and busi-
18 nesses or industries and whose eligible participating
19 employers represent a broad cross-section of trades
20 and businesses or industries.

21 “(3) A plan whose eligible participating employ-
22 ers represent one or more trades or businesses, or
23 one or more industries, consisting of any of the fol-
24 lowing: agriculture; equipment and automobile deal-
25 erships; barbering and cosmetology; certified public

1 accounting practices; child care; construction; dance,
2 theatrical and orchestra productions; disinfecting
3 and pest control; financial services; fishing;
4 foodservice establishments; hospitals; labor organiza-
5 tions; logging; manufacturing (metals); mining; med-
6 ical and dental practices; medical laboratories; pro-
7 fessional consulting services; sanitary services; trans-
8 portation (local and freight); warehousing; whole-
9 saling/distributing; or any other trade or business or
10 industry which has been indicated as having average
11 or above-average risk or health claims experience by
12 reason of State rate filings, denials of coverage, pro-
13 posed premium rate levels, or other means dem-
14 onstrated by such plan in accordance with regula-
15 tions.

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 an association health plan if the
20 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 3 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 an association
3 health plan if the following requirements are met:

4 “(1) FISCAL CONTROL.—The plan is operated,
5 pursuant to a trust agreement, by a board of trust-
6 ees which has complete fiscal control over the plan
7 and which is responsible for all operations of the
8 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 case 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 an association
 7 health plan which is in existence on the
 8 date of the enactment of the Small Busi-
 9 ness Health Fairness Act of 2005.

10 “(B) SOLE AUTHORITY.—The board has
 11 sole authority under the plan to approve appli-
 12 cations for participation in the plan and to con-
 13 tract with a service provider to administer the
 14 day-to-day affairs of the plan.

15 “(c) 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 an association 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 an association health plan in
15 existence on the date of the enactment of the Small Busi-
16 ness Health Fairness Act of 2005, an affiliated member
17 of the sponsor of the plan may be offered coverage under
18 the plan as a participating employer only if—

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

22 “(2) during the 12-month period preceding the
23 date of the offering of such coverage, the affiliated
24 member has not maintained or contributed to a
25 group health plan with respect to any of its employ-

1 ees who would otherwise be eligible to participate in
2 such association health plan.

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

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

19 “(1) under the terms of the plan, all employers
20 meeting the preceding requirements of this section
21 are eligible to qualify as participating employers for
22 all geographically available coverage options, unless,
23 in the case of any such employer, participation or
24 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 an association health plan if the
13 following requirements are met:

14 “(1) CONTENTS OF GOVERNING INSTRU-
15 MENTS.—The instruments governing the plan in-
16 clude a written instrument, meeting the require-
17 ments of an instrument required under section
18 402(a)(1), which—

19 “(A) provides that the board of trustees
20 serves as the named fiduciary required for plans
21 under section 402(a)(1) and serves in the ca-
22 pacity of a plan administrator (referred to in
23 section 3(16)(A));

1 “(B) provides that the sponsor of the plan
2 is to serve as plan sponsor (referred to in sec-
3 tion 3(16)(B)); and

4 “(C) incorporates the requirements of sec-
5 tion 806.

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

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

15 “(B) EFFECT OF TITLE.—Nothing in this
16 title or any other provision of law shall be con-
17 strued to preclude an association health plan, or
18 a health insurance issuer offering health insur-
19 ance coverage in connection with an association
20 health plan, from—

21 “(i) setting contribution rates based
22 on the claims experience of the plan; or

23 “(ii) varying contribution rates for
24 small employers in a State to the extent
25 that such rates could vary using the same

1 methodology employed in such State for
2 regulating premium rates in the small
3 group market with respect to health insur-
4 ance coverage offered in connection with
5 bona fide associations (within the meaning
6 of section 2791(d)(3) of the Public Health
7 Service Act), subject to the requirements
8 of section 702(b) relating to contribution
9 rates.

10 “(3) FLOOR FOR NUMBER OF COVERED INDI-
11 VIDUALS WITH RESPECT TO CERTAIN PLANS.—If
12 any benefit option under the plan does not consist
13 of health insurance coverage, the plan has as of the
14 beginning of the plan year not fewer than 1,000 par-
15 ticipants and beneficiaries.

16 “(4) MARKETING REQUIREMENTS.—

17 “(A) IN GENERAL.—If a benefit option
18 which consists of health insurance coverage is
19 offered under the plan, State-licensed insurance
20 agents shall be used to distribute to small em-
21 ployers coverage which does not consist of
22 health insurance coverage in a manner com-
23 parable to the manner in which such agents are
24 used to distribute health insurance coverage.

1 “(B) STATE-LICENSED INSURANCE
2 AGENTS.—For purposes of subparagraph (A),
3 the term ‘State-licensed insurance agents’
4 means one or more agents who are licensed in
5 a State and are subject to the laws of such
6 State relating to licensure, qualification, test-
7 ing, examination, and continuing education of
8 persons authorized to offer, sell, or solicit
9 health insurance coverage in such State.

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

15 “(b) ABILITY OF ASSOCIATION HEALTH PLANS TO
16 DESIGN BENEFIT OPTIONS.—Subject to section 514(d),
17 nothing in this part or any provision of State law (as de-
18 fined in section 514(c)(1)) shall be construed to preclude
19 an association health plan, or a health insurance issuer
20 offering health insurance coverage in connection with an
21 association health plan, from exercising its sole discretion
22 in selecting the specific items and services consisting of
23 medical care to be included as benefits under such plan
24 or coverage, except (subject to section 514) in the case
25 of (1) any law to the extent that it is not preempted under

1 section 731(a)(1) with respect to matters governed by sec-
 2 tion 711, 712, or 713, or (2) any law of the State with
 3 which filing and approval of a policy type offered by the
 4 plan was initially obtained to the extent that such law pro-
 5 hibits an exclusion of a specific disease from such cov-
 6 erage.

7 **“SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS**
 8 **FOR SOLVENCY FOR PLANS PROVIDING**
 9 **HEALTH BENEFITS IN ADDITION TO HEALTH**
 10 **INSURANCE COVERAGE.**

11 “(a) IN GENERAL.—The requirements of this section
 12 are met with respect to an association health plan if—

13 “(1) the benefits under the plan consist solely
 14 of health insurance coverage; or

15 “(2) the plan provides any additional benefit
 16 options which do not consist of health insurance cov-
 17 erage, the plan—

18 “(A) establishes and maintains reserves
 19 with respect to such additional benefit options,
 20 in amounts recommended by the qualified actu-
 21 ary, consisting of—

22 “(i) a reserve sufficient for unearned
 23 contributions;

24 “(ii) a reserve sufficient for benefit li-
 25 abilities which have been incurred, which

1 have not been satisfied, and for which risk
2 of loss has not yet been transferred, and
3 for expected administrative costs with re-
4 spect to such benefit liabilities;

5 “(iii) a reserve sufficient for any other
6 obligations of the plan; and

7 “(iv) a reserve sufficient for a margin
8 of error and other fluctuations, taking into
9 account the specific circumstances of the
10 plan; and

11 “(B) establishes and maintains aggregate
12 and specific excess/stop loss insurance and sol-
13 vency indemnification, with respect to such ad-
14 ditional benefit options for which risk of loss
15 has not yet been transferred, as follows:

16 “(i) The plan shall secure aggregate
17 excess/stop loss insurance for the plan with
18 an attachment point which is not greater
19 than 125 percent of expected gross annual
20 claims. The applicable authority may by
21 regulation provide for upward adjustments
22 in the amount of such percentage in speci-
23 fied circumstances in which the plan spe-
24 cifically provides for and maintains re-

1 serves in excess of the amounts required
2 under subparagraph (A).

3 “(ii) The plan shall secure specific ex-
4 cess/stop loss insurance for the plan with
5 an attachment point which is at least equal
6 to an amount recommended by the plan’s
7 qualified actuary. The applicable authority
8 may by regulation provide for adjustments
9 in the amount of such insurance in speci-
10 fied circumstances in which the plan spe-
11 cifically provides for and maintains re-
12 serves in excess of the amounts required
13 under subparagraph (A).

14 “(iii) The plan shall secure indem-
15 nification insurance for any claims which
16 the plan is unable to satisfy by reason of
17 a plan termination.

18 Any person issuing to a plan insurance described in clause
19 (i), (ii), or (iii) of subparagraph (B) shall notify the Sec-
20 retary of any failure of premium payment meriting can-
21 cellation of the policy prior to undertaking such a cancella-
22 tion. Any regulations prescribed by the applicable author-
23 ity pursuant to clause (i) or (ii) of subparagraph (B) may
24 allow for such adjustments in the required levels of excess/
25 stop loss insurance as the qualified actuary may rec-

1 commend, taking into account the specific circumstances
2 of the plan.

3 “(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS
4 RESERVES.—In the case of any association health plan de-
5 scribed in subsection (a)(2), the requirements of this sub-
6 section are met if the plan establishes and maintains sur-
7 plus in an amount at least equal to—

8 “(1) \$500,000, or

9 “(2) such greater amount (but not greater than
10 \$2,000,000) as may be set forth in regulations pre-
11 scribed by the applicable authority, considering the
12 level of aggregate and specific excess/stop loss insur-
13 ance provided with respect to such plan and other
14 factors related to solvency risk, such as the plan’s
15 projected levels of participation or claims, the nature
16 of the plan’s liabilities, and the types of assets avail-
17 able to assure that such liabilities are met.

18 “(c) ADDITIONAL REQUIREMENTS.—In the case of
19 any association health plan described in subsection (a)(2),
20 the applicable authority may provide such additional re-
21 quirements relating to reserves, excess/stop loss insurance,
22 and indemnification insurance as the applicable authority
23 considers appropriate. Such requirements may be provided
24 by regulation with respect to any such plan or any class
25 of such plans.

1 “(d) ADJUSTMENTS FOR EXCESS/STOP LOSS INSUR-
2 ANCE.—The applicable authority may provide for adjust-
3 ments to the levels of reserves otherwise required under
4 subsections (a) and (b) with respect to any plan or class
5 of plans to take into account excess/stop loss insurance
6 provided with respect to such plan or plans.

7 “(e) ALTERNATIVE MEANS OF COMPLIANCE.—The
8 applicable authority may permit an association health plan
9 described in subsection (a)(2) to substitute, for all or part
10 of the requirements of this section (except subsection
11 (a)(2)(B)(iii)), such security, guarantee, hold-harmless ar-
12 rangement, or other financial arrangement as the applica-
13 ble authority determines to be adequate to enable the plan
14 to fully meet all its financial obligations on a timely basis
15 and is otherwise no less protective of the interests of par-
16 ticipants and beneficiaries than the requirements for
17 which it is substituted. The applicable authority may take
18 into account, for purposes of this subsection, evidence pro-
19 vided by the plan or sponsor which demonstrates an as-
20 sumption of liability with respect to the plan. Such evi-
21 dence may be in the form of a contract of indemnification,
22 lien, bonding, insurance, letter of credit, recourse under
23 applicable terms of the plan in the form of assessments
24 of participating employers, security, or other financial ar-
25 rangement.

1 “(f) MEASURES TO ENSURE CONTINUED PAYMENT
2 OF BENEFITS BY CERTAIN PLANS IN DISTRESS.—

3 “(1) PAYMENTS BY CERTAIN PLANS TO ASSO-
4 CIATION HEALTH PLAN FUND.—

5 “(A) IN GENERAL.—In the case of an as-
6 sociation health plan described in subsection
7 (a)(2), the requirements of this subsection are
8 met if the plan makes payments into the Asso-
9 ciation Health Plan Fund under this subpara-
10 graph when they are due. Such payments shall
11 consist of annual payments in the amount of
12 \$5,000, and, in addition to such annual pay-
13 ments, such supplemental payments as the Sec-
14 retary may determine to be necessary under
15 paragraph (2). Payments under this paragraph
16 are payable to the Fund at the time determined
17 by the Secretary. Initial payments are due in
18 advance of certification under this part. Pay-
19 ments shall continue to accrue until a plan’s as-
20 sets are distributed pursuant to a termination
21 procedure.

22 “(B) PENALTIES FOR FAILURE TO MAKE
23 PAYMENTS.—If any payment is not made by a
24 plan when it is due, a late payment charge of
25 not more than 100 percent of the payment

1 which was not timely paid shall be payable by
2 the plan to the Fund.

3 “(C) CONTINUED DUTY OF THE SEC-
4 RETARY.—The Secretary shall not cease to
5 carry out the provisions of paragraph (2) on ac-
6 count of the failure of a plan to pay any pay-
7 ment when due.

8 “(2) PAYMENTS BY SECRETARY TO CONTINUE
9 EXCESS/STOP LOSS INSURANCE COVERAGE AND IN-
10 DEMNFICATION INSURANCE COVERAGE FOR CER-
11 TAIN PLANS.—In any case in which the applicable
12 authority determines that there is, or that there is
13 reason to believe that there will be—

14 “(A) a failure to take necessary corrective
15 actions under section 809(a) with respect to an
16 association health plan described in subsection
17 (a)(2); or

18 “(B) a termination of such a plan under
19 section 809(b) or 810(b)(8) (and, if the applica-
20 ble authority is not the Secretary, certifies such
21 determination to the Secretary),

22 the Secretary shall determine the amounts necessary
23 to make payments to an insurer (designated by the
24 Secretary) to maintain in force excess/stop loss in-
25 surance coverage or indemnification insurance cov-

1 erage for such plan, if the Secretary determines that
2 there is a reasonable expectation that, without such
3 payments, claims would not be satisfied by reason of
4 termination of such coverage. The Secretary shall, to
5 the extent provided in advance in appropriation
6 Acts, pay such amounts so determined to the insurer
7 designated by the Secretary.

8 “(3) ASSOCIATION HEALTH PLAN FUND.—

9 “(A) IN GENERAL.—There is established
10 on the books of the Treasury a fund to be
11 known as the ‘Association Health Plan Fund’.
12 The Fund shall be available for making pay-
13 ments pursuant to paragraph (2). The Fund
14 shall be credited with payments received pursu-
15 ant to paragraph (1)(A), penalties received pur-
16 suant to paragraph (1)(B); and earnings on in-
17 vestments of amounts of the Fund under sub-
18 paragraph (B).

19 “(B) INVESTMENT.—Whenever the Sec-
20 retary determines that the moneys of the fund
21 are in excess of current needs, the Secretary
22 may request the investment of such amounts as
23 the Secretary determines advisable by the Sec-
24 retary of the Treasury in obligations issued or
25 guaranteed by the United States.

1 “(g) EXCESS/STOP LOSS INSURANCE.—For purposes
2 of this section—

3 “(1) AGGREGATE EXCESS/STOP LOSS INSUR-
4 ANCE.—The term ‘aggregate excess/stop loss insur-
5 ance’ means, in connection with an association
6 health plan, a contract—

7 “(A) under which an insurer (meeting such
8 minimum standards as the applicable authority
9 may prescribe by regulation) provides for pay-
10 ment to the plan with respect to aggregate
11 claims under the plan in excess of an amount
12 or amounts specified in such contract;

13 “(B) which is guaranteed renewable; and

14 “(C) which allows for payment of pre-
15 miums by any third party on behalf of the in-
16 sured plan.

17 “(2) SPECIFIC EXCESS/STOP LOSS INSUR-
18 ANCE.—The term ‘specific excess/stop loss insur-
19 ance’ means, in connection with an association
20 health plan, a contract—

21 “(A) under which an insurer (meeting such
22 minimum standards as the applicable authority
23 may prescribe by regulation) provides for pay-
24 ment to the plan with respect to claims under
25 the plan in connection with a covered individual

1 in excess of an amount or amounts specified in
2 such contract in connection with such covered
3 individual;

4 “(B) which is guaranteed renewable; and

5 “(C) which allows for payment of pre-
6 miums by any third party on behalf of the in-
7 sured plan.

8 “(h) INDEMNIFICATION INSURANCE.—For purposes
9 of this section, the term ‘indemnification insurance’
10 means, in connection with an association health plan, a
11 contract—

12 “(1) under which an insurer (meeting such min-
13 imum standards as the applicable authority may pre-
14 scribe by regulation) provides for payment to the
15 plan with respect to claims under the plan which the
16 plan is unable to satisfy by reason of a termination
17 pursuant to section 809(b) (relating to mandatory
18 termination);

19 “(2) which is guaranteed renewable and
20 noncancellable for any reason (except as the applica-
21 ble authority may prescribe by regulation); and

22 “(3) which allows for payment of premiums by
23 any third party on behalf of the insured plan.

24 “(i) RESERVES.—For purposes of this section, the
25 term ‘reserves’ means, in connection with an association

1 health plan, plan assets which meet the fiduciary stand-
2 ards under part 4 and such additional requirements re-
3 garding liquidity as the applicable authority may prescribe
4 by regulation.

5 “(j) SOLVENCY STANDARDS WORKING GROUP.—

6 “(1) IN GENERAL.—Within 90 days after the
7 date of the enactment of the Small Business Health
8 Fairness Act of 2005, the applicable authority shall
9 establish a Solvency Standards Working Group. In
10 prescribing the initial regulations under this section,
11 the applicable authority shall take into account the
12 recommendations of such Working Group.

13 “(2) MEMBERSHIP.—The Working Group shall
14 consist of not more than 15 members appointed by
15 the applicable authority. The applicable authority
16 shall include among persons invited to membership
17 on the Working Group at least one of each of the
18 following:

19 “(A) A representative of the National As-
20 sociation of Insurance Commissioners.

21 “(B) A representative of the American
22 Academy of Actuaries.

23 “(C) A representative of the State govern-
24 ments, or their interests.

1 “(D) A representative of existing self-in-
2 sured arrangements, or their interests.

3 “(E) A representative of associations of
4 the type referred to in section 801(b)(1), or
5 their interests.

6 “(F) A representative of multiemployer
7 plans that are group health plans, or their in-
8 terests.

9 **“SEC. 807. REQUIREMENTS FOR APPLICATION AND RE-**
10 **LATED REQUIREMENTS.**

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

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

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

3 “(A) the sponsor; and

4 “(B) the members of the board of trustees
5 of the plan.

6 “(2) STATES IN WHICH PLAN INTENDS TO DO
7 BUSINESS.—The States in which participants and
8 beneficiaries under the plan are to be located and
9 the number of them expected to be located in each
10 such State.

11 “(3) BONDING REQUIREMENTS.—Evidence pro-
12 vided by the board of trustees that the bonding re-
13 quirements of section 412 will be met as of the date
14 of the application or (if later) commencement of op-
15 erations.

16 “(4) PLAN DOCUMENTS.—A copy of the docu-
17 ments governing the plan (including any bylaws and
18 trust agreements), the summary plan description,
19 and other material describing the benefits that will
20 be provided to participants and beneficiaries under
21 the plan.

22 “(5) AGREEMENTS WITH SERVICE PRO-
23 VIDERS.—A copy of any agreements between the
24 plan and contract administrators and other service
25 providers.

1 “(6) FUNDING REPORT.—In the case of asso-
2 ciation health plans providing benefits options in ad-
3 dition to health insurance coverage, a report setting
4 forth information with respect to such additional
5 benefit options determined as of a date within the
6 120-day period ending with the date of the applica-
7 tion, including the following:

8 “(A) RESERVES.—A statement, certified
9 by the board of trustees of the plan, and a
10 statement of actuarial opinion, signed by a
11 qualified actuary, that all applicable require-
12 ments of section 806 are or will be met in ac-
13 cordance with regulations which the applicable
14 authority shall prescribe.

15 “(B) ADEQUACY OF CONTRIBUTION
16 RATES.—A statement of actuarial opinion,
17 signed by a qualified actuary, which sets forth
18 a description of the extent to which contribution
19 rates are adequate to provide for the payment
20 of all obligations and the maintenance of re-
21 quired reserves under the plan for the 12-
22 month period beginning with such date within
23 such 120-day period, taking into account the
24 expected coverage and experience of the plan. If
25 the contribution rates are not fully adequate,

1 the statement of actuarial opinion shall indicate
2 the extent to which the rates are inadequate
3 and the changes needed to ensure adequacy.

4 “(C) CURRENT AND PROJECTED VALUE OF
5 ASSETS AND LIABILITIES.—A statement of ac-
6 tuarial opinion signed by a qualified actuary,
7 which sets forth the current value of the assets
8 and liabilities accumulated under the plan and
9 a projection of the assets, liabilities, income,
10 and expenses of the plan for the 12-month pe-
11 riod referred to in subparagraph (B). The in-
12 come statement shall identify separately the
13 plan’s administrative expenses and claims.

14 “(D) COSTS OF COVERAGE TO BE
15 CHARGED AND OTHER EXPENSES.—A state-
16 ment of the costs of coverage to be charged, in-
17 cluding an itemization of amounts for adminis-
18 tration, reserves, and other expenses associated
19 with the operation of the plan.

20 “(E) OTHER INFORMATION.—Any other
21 information as may be determined by the appli-
22 cable authority, by regulation, as necessary to
23 carry out the purposes of this part.

24 “(c) FILING NOTICE OF CERTIFICATION WITH
25 STATES.—A certification granted under this part to an

1 association health plan shall not be effective unless written
2 notice of such certification is filed with the applicable
3 State authority of each State in which at least 25 percent
4 of the participants and beneficiaries under the plan are
5 located. For purposes of this subsection, an individual
6 shall be considered to be located in the State in which a
7 known address of such individual is located or in which
8 such individual is employed.

9 “(d) NOTICE OF MATERIAL CHANGES.—In the case
10 of any association health plan certified under this part,
11 descriptions of material changes in any information which
12 was required to be submitted with the application for the
13 certification under this part shall be filed in such form
14 and manner as shall be prescribed by the applicable au-
15 thority by regulation. The applicable authority may re-
16 quire by regulation prior notice of material changes with
17 respect to specified matters which might serve as the basis
18 for suspension or revocation of the certification.

19 “(e) REPORTING REQUIREMENTS FOR CERTAIN AS-
20 SOCIATION HEALTH PLANS.—An association health plan
21 certified under this part which provides benefit options in
22 addition to health insurance coverage for such plan year
23 shall meet the requirements of section 103 by filing an
24 annual report under such section which shall include infor-
25 mation described in subsection (b)(6) with respect to the

1 plan year and, notwithstanding section 104(a)(1)(A), shall
2 be filed with the applicable authority not later than 90
3 days after the close of the plan year (or on such later date
4 as may be prescribed by the applicable authority). The ap-
5 plicable authority may require by regulation such interim
6 reports as it considers appropriate.

7 “(f) ENGAGEMENT OF QUALIFIED ACTUARY.—The
8 board of trustees of each association health plan which
9 provides benefits options in addition to health insurance
10 coverage and which is applying for certification under this
11 part or is certified under this part shall engage, on behalf
12 of all participants and beneficiaries, a qualified actuary
13 who shall be responsible for the preparation of the mate-
14 rials comprising information necessary to be submitted by
15 a qualified actuary under this part. The qualified actuary
16 shall utilize such assumptions and techniques as are nec-
17 essary to enable such actuary to form an opinion as to
18 whether the contents of the matters reported under this
19 part—

20 “(1) are in the aggregate reasonably related to
21 the experience of the plan and to reasonable expecta-
22 tions; and

23 “(2) represent such actuary’s best estimate of
24 anticipated experience under the plan.

1 The opinion by the qualified actuary shall be made with
2 respect to, and shall be made a part of, the annual report.

3 **“SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**
4 **MINATION.**

5 “Except as provided in section 809(b), an association
6 health plan which is or has been certified under this part
7 may terminate (upon or at any time after cessation of ac-
8 cruals in benefit liabilities) only if the board of trustees,
9 not less than 60 days before the proposed termination
10 date—

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

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

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

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

1 **“SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMI-**
2 **NATION.**

3 “(a) ACTIONS TO AVOID DEPLETION OF RE-
4 SERVES.—An association health plan which is certified
5 under this part and which provides benefits other than
6 health insurance coverage shall continue to meet the re-
7 quirements of section 806, irrespective of whether such
8 certification continues in effect. The board of trustees of
9 such plan shall determine quarterly whether the require-
10 ments of section 806 are met. In any case in which the
11 board determines that there is reason to believe that there
12 is or will be a failure to meet such requirements, or the
13 applicable authority makes such a determination and so
14 notifies the board, the board shall immediately notify the
15 qualified actuary engaged by the plan, and such actuary
16 shall, not later than the end of the next following month,
17 make such recommendations to the board for corrective
18 action as the actuary determines necessary to ensure com-
19 pliance with section 806. Not later than 30 days after re-
20 ceiving from the actuary recommendations for corrective
21 actions, the board shall notify the applicable authority (in
22 such form and manner as the applicable authority may
23 prescribe by regulation) of such recommendations of the
24 actuary for corrective action, together with a description
25 of the actions (if any) that the board has taken or plans
26 to take in response to such recommendations. The board

1 shall thereafter report to the applicable authority, in such
2 form and frequency as the applicable authority may speci-
3 fy to the board, regarding corrective action taken by the
4 board until the requirements of section 806 are met.

5 “(b) MANDATORY TERMINATION.—In any case in
6 which—

7 “(1) the applicable authority has been notified
8 under subsection (a) (or by an issuer of excess/stop
9 loss insurance or indemnity insurance pursuant to
10 section 806(a)) of a failure of an association health
11 plan which is or has been certified under this part
12 and is described in section 806(a)(2) to meet the re-
13 quirements of section 806 and has not been notified
14 by the board of trustees of the plan that corrective
15 action has restored compliance with such require-
16 ments; and

17 “(2) the applicable authority determines that
18 there is a reasonable expectation that the plan will
19 continue to fail to meet the requirements of section
20 806, the board of trustees of the plan shall, at the
21 direction of the applicable authority, terminate the
22 plan and, in the course of the termination, take such
23 actions as the applicable authority may require, in-
24 cluding satisfying any claims referred to in section
25 806(a)(2)(B)(iii) and recovering for the plan any li-

1 ability under subsection (a)(2)(B)(iii) or (e) of sec-
2 tion 806, as necessary to ensure that the affairs of
3 the plan will be, to the maximum extent possible,
4 wound up in a manner which will result in timely
5 provision of all benefits for which the plan is obli-
6 gated.

7 **“SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOL-**
8 **VENT ASSOCIATION HEALTH PLANS PRO-**
9 **VIDING HEALTH BENEFITS IN ADDITION TO**
10 **HEALTH INSURANCE COVERAGE.**

11 “(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR
12 INSOLVENT PLANS.—Whenever the Secretary determines
13 that an association health plan which is or has been cer-
14 tified under this part and which is described in section
15 806(a)(2) will be unable to provide benefits when due or
16 is otherwise in a financially hazardous condition, as shall
17 be defined by the Secretary by regulation, the Secretary
18 shall, upon notice to the plan, apply to the appropriate
19 United States district court for appointment of the Sec-
20 retary as trustee to administer the plan for the duration
21 of the insolvency. The plan may appear as a party and
22 other interested persons may intervene in the proceedings
23 at the discretion of the court. The court shall appoint such
24 Secretary trustee if the court determines that the trustee-
25 ship is necessary to protect the interests of the partici-

1 pants and beneficiaries or providers of medical care or to
2 avoid any unreasonable deterioration of the financial con-
3 dition of the plan. The trusteeship of such Secretary shall
4 continue until the conditions described in the first sen-
5 tence of this subsection are remedied or the plan is termi-
6 nated.

7 “(b) POWERS AS TRUSTEE.—The Secretary, upon
8 appointment as trustee under subsection (a), shall have
9 the power—

10 “(1) to do any act authorized by the plan, this
11 title, or other applicable provisions of law to be done
12 by the plan administrator or any trustee of the plan;

13 “(2) to require the transfer of all (or any part)
14 of the assets and records of the plan to the Sec-
15 retary as trustee;

16 “(3) to invest any assets of the plan which the
17 Secretary holds in accordance with the provisions of
18 the plan, regulations prescribed by the Secretary,
19 and applicable provisions of law;

20 “(4) to require the sponsor, the plan adminis-
21 trator, any participating employer, and any employee
22 organization representing plan participants to fur-
23 nish any information with respect to the plan which
24 the Secretary as trustee may reasonably need in
25 order to administer the plan;

1 “(5) to collect for the plan any amounts due the
2 plan and to recover reasonable expenses of the trust-
3 eeship;

4 “(6) to commence, prosecute, or defend on be-
5 half of the plan any suit or proceeding involving the
6 plan;

7 “(7) to issue, publish, or file such notices, state-
8 ments, and reports as may be required by the Sec-
9 retary by regulation or required by any order of the
10 court;

11 “(8) to terminate the plan (or provide for its
12 termination in accordance with section 809(b)) and
13 liquidate the plan assets, to restore the plan to the
14 responsibility of the sponsor, or to continue the
15 trusteeship;

16 “(9) to provide for the enrollment of plan par-
17 ticipants and beneficiaries under appropriate cov-
18 erage options; and

19 “(10) to do such other acts as may be nec-
20 essary to comply with this title or any order of the
21 court and to protect the interests of plan partici-
22 pants and beneficiaries and providers of medical
23 care.

1 “(c) NOTICE OF APPOINTMENT.—As soon as prac-
2 ticable after the Secretary’s appointment as trustee, the
3 Secretary shall give notice of such appointment to—

4 “(1) the sponsor and plan administrator;

5 “(2) each participant;

6 “(3) each participating employer; and

7 “(4) if applicable, each employee organization
8 which, for purposes of collective bargaining, rep-
9 resents plan participants.

10 “(d) ADDITIONAL DUTIES.—Except to the extent in-
11 consistent with the provisions of this title, or as may be
12 otherwise ordered by the court, the Secretary, upon ap-
13 pointment as trustee under this section, shall be subject
14 to the same duties as those of a trustee under section 704
15 of title 11, United States Code, and shall have the duties
16 of a fiduciary for purposes of this title.

17 “(e) OTHER PROCEEDINGS.—An application by the
18 Secretary under this subsection may be filed notwith-
19 standing the pendency in the same or any other court of
20 any bankruptcy, mortgage foreclosure, or equity receiver-
21 ship proceeding, or any proceeding to reorganize, conserve,
22 or liquidate such plan or its property, or any proceeding
23 to enforce a lien against property of the plan.

24 “(f) JURISDICTION OF COURT.—

1 “(1) IN GENERAL.—Upon the filing of an appli-
2 cation for the appointment as trustee or the issuance
3 of a decree under this section, the court to which the
4 application is made shall have exclusive jurisdiction
5 of the plan involved and its property wherever lo-
6 cated with the powers, to the extent consistent with
7 the purposes of this section, of a court of the United
8 States having jurisdiction over cases under chapter
9 11 of title 11, United States Code. Pending an adju-
10 dication under this section such court shall stay, and
11 upon appointment by it of the Secretary as trustee,
12 such court shall continue the stay of, any pending
13 mortgage foreclosure, equity receivership, or other
14 proceeding to reorganize, conserve, or liquidate the
15 plan, the sponsor, or property of such plan or spon-
16 sor, and any other suit against any receiver, conser-
17 vator, or trustee of the plan, the sponsor, or prop-
18 erty of the plan or sponsor. Pending such adjudica-
19 tion and upon the appointment by it of the Sec-
20 retary as trustee, the court may stay any proceeding
21 to enforce a lien against property of the plan or the
22 sponsor or any other suit against the plan or the
23 sponsor.

24 “(2) VENUE.—An action under this section
25 may be brought in the judicial district where the

1 sponsor or the plan administrator resides or does
2 business or where any asset of the plan is situated.
3 A district court in which such action is brought may
4 issue process with respect to such action in any
5 other judicial district.

6 “(g) PERSONNEL.—In accordance with regulations
7 which shall be prescribed by the Secretary, the Secretary
8 shall appoint, retain, and compensate accountants, actu-
9 aries, and other professional service personnel as may be
10 necessary in connection with the Secretary’s service as
11 trustee under this section.

12 **“SEC. 811. STATE ASSESSMENT AUTHORITY.**

13 “(a) IN GENERAL.—Notwithstanding section 514, a
14 State may impose by law a contribution tax on an associa-
15 tion health plan described in section 806(a)(2), if the plan
16 commenced operations in such State after the date of the
17 enactment of the Small Business Health Fairness Act of
18 2005.

19 “(b) CONTRIBUTION TAX.—For purposes of this sec-
20 tion, the term ‘contribution tax’ imposed by a State on
21 an association health plan means any tax imposed by such
22 State if—

23 “(1) such tax is computed by applying a rate to
24 the amount of premiums or contributions, with re-
25 spect to individuals covered under the plan who are

1 residents of such State, which are received by the
2 plan from participating employers located in such
3 State or from such individuals;

4 “(2) the rate of such tax does not exceed the
5 rate of any tax imposed by such State on premiums
6 or contributions received by insurers or health main-
7 tenance organizations for health insurance coverage
8 offered in such State in connection with a group
9 health plan;

10 “(3) such tax is otherwise nondiscriminatory;
11 and

12 “(4) the amount of any such tax assessed on
13 the plan is reduced by the amount of any tax or as-
14 sessment otherwise imposed by the State on pre-
15 miums, contributions, or both received by insurers or
16 health maintenance organizations for health insur-
17 ance coverage, aggregate excess/stop loss insurance
18 (as defined in section 806(g)(1)), specific excess/stop
19 loss insurance (as defined in section 806(g)(2)),
20 other insurance related to the provision of medical
21 care under the plan, or any combination thereof pro-
22 vided by such insurers or health maintenance organi-
23 zations in such State in connection with such plan.

24 **“SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.**

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

1 “(1) GROUP HEALTH PLAN.—The term ‘group
2 health plan’ has the meaning provided in section
3 733(a)(1) (after applying subsection (b) of this sec-
4 tion).

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

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

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

13 “(5) APPLICABLE AUTHORITY.—The term ‘ap-
14 plicable authority’ means the Secretary, except that,
15 in connection with any exercise of the Secretary’s
16 authority regarding which the Secretary is required
17 under section 506(d) to consult with a State, such
18 term means the Secretary, in consultation with such
19 State.

20 “(6) HEALTH STATUS-RELATED FACTOR.—The
21 term ‘health status-related factor’ has the meaning
22 provided in section 733(d)(2).

23 “(7) INDIVIDUAL MARKET.—

24 “(A) IN GENERAL.—The term ‘individual
25 market’ means the market for health insurance

1 coverage offered to individuals other than in
2 connection with a group health plan.

3 “(B) TREATMENT OF VERY SMALL
4 GROUPS.—

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

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

21 “(8) PARTICIPATING EMPLOYER.—The term
22 ‘participating employer’ means, in connection with
23 an association health plan, any employer, if any indi-
24 vidual who is an employee of such employer, a part-
25 ner in such employer, or a self-employed individual

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

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

14 “(10) QUALIFIED ACTUARY.—The term ‘quali-
15 fied actuary’ means an individual who is a member
16 of the American Academy of Actuaries.

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

19 “(A) a person who is otherwise eligible to
20 be a member of the sponsor but who elects an
21 affiliated status with the sponsor,

22 “(B) in the case of a sponsor with mem-
23 bers which consist of associations, a person who
24 is a member of any such association and elects
25 an affiliated status with the sponsor, or

1 “(C) in the case of an association health
2 plan in existence on the date of the enactment
3 of the Small Business Health Fairness Act of
4 2005, a person eligible to be a member of the
5 sponsor or one of its member associations.

6 “(12) LARGE EMPLOYER.—The term ‘large em-
7 ployer’ means, in connection with a group health
8 plan with respect to a plan year, an employer who
9 employed an average of at least 51 employees on
10 business days during the preceding calendar year
11 and who employs at least 2 employees on the first
12 day of the plan year.

13 “(13) SMALL EMPLOYER.—The term ‘small em-
14 ployer’ means, in connection with a group health
15 plan with respect to a plan year, an employer who
16 is not a large employer.

17 “(b) RULES OF CONSTRUCTION.—

18 “(1) EMPLOYERS AND EMPLOYEES.—For pur-
19 poses of determining whether a plan, fund, or pro-
20 gram is an employee welfare benefit plan which is an
21 association health plan, and for purposes of applying
22 this title in connection with such plan, fund, or pro-
23 gram so determined to be such an employee welfare
24 benefit plan—

1 “(A) in the case of a partnership, the term
2 ‘employer’ (as defined in section 3(5)) includes
3 the partnership in relation to the partners, and
4 the term ‘employee’ (as defined in section 3(6))
5 includes any partner in relation to the partner-
6 ship; and

7 “(B) in the case of a self-employed indi-
8 vidual, the term ‘employer’ (as defined in sec-
9 tion 3(5)) and the term ‘employee’ (as defined
10 in section 3(6)) shall include such individual.

11 “(2) PLANS, FUNDS, AND PROGRAMS TREATED
12 AS EMPLOYEE WELFARE BENEFIT PLANS.—In the
13 case of any plan, fund, or program which was estab-
14 lished or is maintained for the purpose of providing
15 medical care (through the purchase of insurance or
16 otherwise) for employees (or their dependents) cov-
17 ered thereunder and which demonstrates to the Sec-
18 retary that all requirements for certification under
19 this part would be met with respect to such plan,
20 fund, or program if such plan, fund, or program
21 were a group health plan, such plan, fund, or pro-
22 gram shall be treated for purposes of this title as an
23 employee welfare benefit plan on and after the date
24 of such demonstration.”.

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 an association health plan which is certified under part
9 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 (c) 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, or
4 have the effect of precluding, a health insurance issuer
5 from offering health insurance coverage in connection with
6 an association health plan which is certified under part
7 8.

8 “(2) Except as provided in paragraphs (4) and (5)
9 of subsection (b) of this section—

10 “(A) In any case in which health insurance cov-
11 erage of any policy type is offered under an associa-
12 tion health plan certified under part 8 to a partici-
13 pating employer operating in such State, the provi-
14 sions of this title shall supersede any and all laws
15 of such State insofar as they may preclude a health
16 insurance issuer from offering health insurance cov-
17 erage of the same policy type to other employers op-
18 erating in the State which are eligible for coverage
19 under such association health plan, whether or not
20 such other employers are participating employers in
21 such plan.

22 “(B) In any case in which health insurance cov-
23 erage of any policy type is offered in a State under
24 an association health plan certified under part 8 and
25 the filing, with the applicable State authority (as de-

1 fined in section 812(a)(9)), of the policy form in
2 connection with such policy type is approved by such
3 State authority, the provisions of this title shall su-
4 percede any and all laws of any other State in which
5 health insurance coverage of such type is offered, in-
6 sofar as they may preclude, upon the filing in the
7 same form and manner of such policy form with the
8 applicable State authority in such other State, the
9 approval of the filing in such other State.

10 “(3) Nothing in subsection (b)(6)(E) or the preceding
11 provisions of this subsection shall be construed, with re-
12 spect to health insurance issuers or health insurance cov-
13 erage, to supersede or impair the law of any State—

14 “(A) providing solvency standards or similar
15 standards regarding the adequacy of insurer capital,
16 surplus, reserves, or contributions, or

17 “(B) relating to prompt payment of claims.

18 “(4) For additional provisions relating to association
19 health plans, see subsections (a)(2)(B) and (b) of section
20 805.

21 “(5) For purposes of this subsection, the term ‘asso-
22 ciation health plan’ has the meaning provided in section
23 801(a), and the terms ‘health insurance coverage’, ‘par-
24 ticipating employer’, and ‘health insurance issuer’ have

1 the meanings provided such terms in section 812, respec-
2 tively.”.

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

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

7 (B) in clause (ii), by inserting “and which
8 does not provide medical care (within the mean-
9 ing of section 733(a)(2)),” after “arrange-
10 ment,”, and by striking “title.” and inserting
11 “title, and”; and

12 (C) by adding at the end the following new
13 clause:

14 “(iii) subject to subparagraph (E), in the case
15 of any other employee welfare benefit plan which is
16 a multiple employer welfare arrangement and which
17 provides medical care (within the meaning of section
18 733(a)(2)), any law of any State which regulates in-
19 surance may apply.”.

20 (4) Section 514(e) of such Act (as redesignated
21 by paragraph (2)(C)) is amended—

22 (A) by striking “Nothing” and inserting
23 “(1) Except as provided in paragraph (2), noth-
24 ing”; and

1 (B) by adding at the end the following new
2 paragraph:

3 “(2) Nothing in any other provision of law enacted
4 on or after the date of the enactment of the Small Busi-
5 ness Health Fairness Act of 2005 shall be construed to
6 alter, amend, modify, invalidate, impair, or supersede any
7 provision of this title, except by specific cross-reference to
8 the affected section.”.

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

14 (d) DISCLOSURE OF SOLVENCY PROTECTIONS RE-
15 LATED TO SELF-INSURED AND FULLY INSURED OPTIONS
16 UNDER ASSOCIATION HEALTH PLANS.—Section 102(b)
17 of such Act (29 U.S.C. 102(b)) is amended by adding at
18 the end the following: “An association health plan shall
19 include in its summary plan description, in connection
20 with each benefit option, a description of the form of sol-
21 vency or guarantee fund protection secured pursuant to
22 this Act or applicable State law, if any.”.

23 (e) SAVINGS CLAUSE.—Section 731(c) of such Act is
24 amended by inserting “or part 8” after “this part”.

1 (f) REPORT TO CONGRESS REGARDING CERTIFI-
 2 CATION OF SELF-INSURED ASSOCIATION HEALTH
 3 PLANS.—Not later than January 1, 2010, the Secretary
 4 of Labor shall report to the Committee on Health, Edu-
 5 cation, Labor, and Pensions of the Senate and the Com-
 6 mittee on Education and the Workforce of the House of
 7 Representatives the effect association health plans have
 8 had, if any, on reducing the number of uninsured individ-
 9 uals.

10 (g) CLERICAL AMENDMENT.—The table of contents
 11 in section 1 of the Employee Retirement Income Security
 12 Act of 1974 is amended by inserting after the item relat-
 13 ing to section 734 the following new items:

“PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

- “801. Association health plans.
- “802. Certification of association 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. Maintenance of reserves and provisions for solvency for plans providing health benefits in addition to health insurance coverage.
- “807. Requirements for application and related requirements.
- “808. Notice requirements for voluntary termination.
- “809. Corrective actions and mandatory termination.
- “810. Trusteeship by the Secretary of insolvent association health plans providing health benefits in addition to health insurance coverage.
- “811. State assessment authority.
- “812. Definitions and rules of construction.”.

1 **SEC. 3. CLARIFICATION OF TREATMENT OF SINGLE EM-**
2 **PLOYER ARRANGEMENTS.**

3 Section 3(40)(B) of the Employee Retirement Income
4 Security Act of 1974 (29 U.S.C. 1002(40)(B)) is amend-
5 ed—

6 (1) in clause (i), by inserting after “control
7 group,” the following: “except that, in any case in
8 which the benefit referred to in subparagraph (A)
9 consists of medical care (as defined in section
10 812(a)(2)), 2 or more trades or businesses, whether
11 or not incorporated, shall be deemed a single em-
12 ployer for any plan year of such plan, or any fiscal
13 year of such other arrangement, if such trades or
14 businesses are within the same control group during
15 such year or at any time during the preceding 1-year
16 period,”;

17 (2) in clause (iii), by striking “(iii) the deter-
18 mination” and inserting the following:

19 “(iii)(I) in any case in which the benefit re-
20 ferred to in subparagraph (A) consists of medical
21 care (as defined in section 812(a)(2)), the deter-
22 mination of whether a trade or business is under
23 ‘common control’ with another trade or business
24 shall be determined under regulations of the Sec-
25 retary applying principles consistent and coextensive
26 with the principles applied in determining whether

1 employees of 2 or more trades or businesses are
2 treated as employed by a single employer under sec-
3 tion 4001(b), except that, for purposes of this para-
4 graph, an interest of greater than 25 percent may
5 not be required as the minimum interest necessary
6 for common control, or

7 “(II) in any other case, the determination”;

8 (3) by redesignating clauses (iv) and (v) as
9 clauses (v) and (vi), respectively; and

10 (4) by inserting after clause (iii) the following
11 new clause:

12 “(iv) in any case in which the benefit referred
13 to in subparagraph (A) consists of medical care (as
14 defined in section 812(a)(2)), in determining, after
15 the application of clause (i), whether benefits are
16 provided to employees of 2 or more employers, the
17 arrangement shall be treated as having only one par-
18 ticipating employer if, after the application of clause
19 (i), the number of individuals who are employees and
20 former employees of any one participating employer
21 and who are covered under the arrangement is
22 greater than 75 percent of the aggregate number of
23 all individuals who are employees or former employ-
24 ees of participating employers and who are covered
25 under the arrangement.”.

1 **SEC. 4. ENFORCEMENT PROVISIONS RELATING TO ASSO-**
2 **CIATION HEALTH PLANS.**

3 (a) CRIMINAL PENALTIES FOR CERTAIN WILLFUL
4 MISREPRESENTATIONS.—Section 501 of the Employee
5 Retirement Income Security Act of 1974 (29 U.S.C. 1131)
6 is amended—

7 (1) by inserting “(a)” after “Sec. 501.”; and

8 (2) by adding at the end the following new sub-
9 section:

10 “(b) Any person who willfully falsely represents, to
11 any employee, any employee’s beneficiary, any employer,
12 the Secretary, or any State, a plan or other arrangement
13 established or maintained for the purpose of offering or
14 providing any benefit described in section 3(1) to employ-
15 ees or their beneficiaries as—

16 “(1) being an association health plan which has
17 been certified under part 8;

18 “(2) having been established or maintained
19 under or pursuant to one or more collective bar-
20 gaining agreements which are reached pursuant to
21 collective bargaining described in section 8(d) of the
22 National Labor Relations Act (29 U.S.C. 158(d)) or
23 paragraph Fourth of section 2 of the Railway Labor
24 Act (45 U.S.C. 152, paragraph Fourth) or which are
25 reached pursuant to labor-management negotiations

1 under similar provisions of State public employee re-
 2 lations laws; or

3 “(3) being a plan or arrangement described in
 4 section 3(40)(A)(i), shall, upon conviction, be im-
 5 prisoned not more than 5 years, be fined under title
 6 18, United States Code, or both.”.

7 (b) CEASE ACTIVITIES ORDERS.—Section 502 of
 8 such Act (29 U.S.C. 1132) is amended by adding at the
 9 end the following new subsection:

10 “(n) ASSOCIATION HEALTH PLAN CEASE AND DE-
 11 SIST ORDERS.—

12 “(1) IN GENERAL.—Subject to paragraph (2),
 13 upon application by the Secretary showing the oper-
 14 ation, promotion, or marketing of an association
 15 health plan (or similar arrangement providing bene-
 16 fits consisting of medical care (as defined in section
 17 733(a)(2))) that—

18 “(A) is not certified under part 8, is sub-
 19 ject under section 514(b)(6) to the insurance
 20 laws of any State in which the plan or arrange-
 21 ment offers or provides benefits, and is not li-
 22 censed, registered, or otherwise approved under
 23 the insurance laws of such State; or

24 “(B) is an association health plan certified
 25 under part 8 and is not operating in accordance

1 with the requirements under part 8 for such
2 certification, a district court of the United
3 States shall enter an order requiring that the
4 plan or arrangement cease activities.

5 “(2) EXCEPTION.—Paragraph (1) shall not
6 apply in the case of an association health plan or
7 other arrangement if the plan or arrangement shows
8 that—

9 “(A) all benefits under it referred to in
10 paragraph (1) consist of health insurance cov-
11 erage; and

12 “(B) with respect to each State in which
13 the plan or arrangement offers or provides ben-
14 efits, the plan or arrangement is operating in
15 accordance with applicable State laws that are
16 not superseded under section 514.

17 “(3) ADDITIONAL EQUITABLE RELIEF.—The
18 court may grant such additional equitable relief, in-
19 cluding any relief available under this title, as it
20 deems necessary to protect the interests of the pub-
21 lic and of persons having claims for benefits against
22 the plan.”.

23 (c) RESPONSIBILITY FOR CLAIMS PROCEDURE.—
24 Section 503 of such Act (29 U.S.C. 1133) is amended by

1 inserting “(a) IN GENERAL.—” before “In accordance”,
 2 and by adding at the end the following new subsection:

3 “(b) ASSOCIATION HEALTH PLANS.—The terms of
 4 each association health plan which is or has been certified
 5 under part 8 shall require the board of trustees or the
 6 named fiduciary (as applicable) to ensure that the require-
 7 ments of this section are met in connection with claims
 8 filed under the plan.”.

9 **SEC. 5. COOPERATION BETWEEN FEDERAL AND STATE AU-**
 10 **THORITIES.**

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

14 “(d) CONSULTATION WITH STATES WITH RESPECT
 15 TO ASSOCIATION HEALTH PLANS.—

16 “(1) AGREEMENTS WITH STATES.—The Sec-
 17 retary shall consult with the State recognized under
 18 paragraph (2) with respect to an association health
 19 plan regarding the exercise of—

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

23 “(B) the Secretary’s authority to certify
 24 association health plans under part 8 in accord-

1 ance with regulations of the Secretary applica-
2 ble to certification under part 8.

3 “(2) RECOGNITION OF PRIMARY DOMICILE
4 STATE.—In carrying out paragraph (1), the Sec-
5 retary shall ensure that only one State will be recog-
6 nized, with respect to any particular association
7 health plan, as the State with which consultation is
8 required. In carrying out this paragraph—

9 “(A) in the case of a plan which provides
10 health insurance coverage (as defined in section
11 812(a)(3)), such State shall be the State with
12 which filing and approval of a policy type of-
13 fered by the plan was initially obtained, and

14 “(B) in any other case, the Secretary shall
15 take into account the places of residence of the
16 participants and beneficiaries under the plan
17 and the State in which the trust is main-
18 tained.”.

19 **SEC. 6. EFFECTIVE DATE AND TRANSITIONAL AND OTHER**
20 **RULES.**

21 (a) EFFECTIVE DATE.—The amendments made by
22 this Act shall take effect one year after the date of the
23 enactment of this Act. The Secretary of Labor shall first
24 issue all regulations necessary to carry out the amend-

1 ments made by this Act within one year after the date
2 of the enactment of this Act.

3 (b) TREATMENT OF CERTAIN EXISTING HEALTH
4 BENEFITS PROGRAMS.—

5 (1) IN GENERAL.—In any case in which, as of
6 the date of the enactment of this Act, an arrange-
7 ment is maintained in a State for the purpose of
8 providing benefits consisting of medical care for the
9 employees and beneficiaries of its participating em-
10 ployers, at least 200 participating employers make
11 contributions to such arrangement, such arrange-
12 ment has been in existence for at least 10 years, and
13 such arrangement is licensed under the laws of one
14 or more States to provide such benefits to its par-
15 ticipating employers, upon the filing with the appli-
16 cable authority (as defined in section 812(a)(5) of
17 the Employee Retirement Income Security Act of
18 1974 (as amended by this subtitle)) by the arrange-
19 ment of an application for certification of the ar-
20 rangement under part 8 of subtitle B of title I of
21 such Act—

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

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

5 (C) the requirements of section 803(b) of
6 such Act shall be deemed met, if the arrange-
7 ment is operated by a board of directors
8 which—

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

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

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

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

22 The provisions of this subsection shall cease to apply
23 with respect to any such arrangement at such time
24 after the date of the enactment of this Act as the

1 applicable requirements of this subsection are not
2 met with respect to such arrangement.

3 (2) DEFINITIONS.—For purposes of this sub-
4 section, the terms “group health plan”, “medical
5 care”, and “participating employer” shall have the
6 meanings provided in section 812 of the Employee
7 Retirement Income Security Act of 1974, except
8 that the reference in paragraph (7) of such section
9 to an “association health plan” shall be deemed a
10 reference to an arrangement referred to in this sub-
11 section.

○