

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3067

To amend title XVIII of the Social Security Act to reform Medicare payments to physicians and certain other providers and improve Medicare benefits, to encourage the offering of health coverage by small businesses, to provide tax incentives for the purchase of health insurance by individuals, to increase access to health care for veterans, to address the nursing shortage, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2009

Mr. LATHAM introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor, Ways and Means, Veterans' Affairs, and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to reform Medicare payments to physicians and certain other providers and improve Medicare benefits, to encourage the offering of health coverage by small businesses, to provide tax incentives for the purchase of health insurance by individuals, to increase access to health care for veterans, to address the nursing shortage, and for other purposes.

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

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

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Health Security for All Americans Act of 2009”.

4 (b) **TABLE OF CONTENTS.**—The table of contents of  
5 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—MEDICARE**

Sec. 101. Medicare physician payment update reform.

Sec. 102. Medicare GPCI floors.

Sec. 103. Annual physical examinations under Medicare.

Sec. 104. Medicare outreach campaign on availability of welcome to Medicare  
physicals.

Sec. 105. Improvements to the medicare-dependent hospital (MDH) program.

Sec. 106. Temporary improvements to the Medicare inpatient hospital payment  
adjustment for low-volume hospitals.

Sec. 107. Ensuring proportional representation of interests of rural areas on  
MedPAC.

**TITLE II—SMALL BUSINESS HEALTH PLANS**

**Subtitle A—Enhanced Marketplace Pools**

Sec. 201. Rules governing enhanced marketplace pools.

**“PART 8—RULES GOVERNING ENHANCED MARKETPLACE POOLS**

“Sec. 801. Small business health plans.

“Sec. 802. Alternative Market Pooling Organizations.

“Sec. 803. Certification of small business health plans.

“Sec. 804. Requirements relating to sponsors and boards of trustees.

“Sec. 805. Participation and coverage requirements.

“Sec. 806. Other requirements relating to plan documents, contribution  
rates, and benefit options.

“Sec. 807. Requirements for application and related requirements.

“Sec. 808. Notice requirements for voluntary termination.

“Sec. 809. Implementation and application authority by Secretary.

“Sec. 810. Definitions and rules of construction.

Sec. 202. Cooperation between Federal and State authorities.

Sec. 203. Effective date and transitional and other rules.

**Subtitle B—Market Relief**

Sec. 211. Market relief.

**“TITLE XXXI—HEALTH CARE INSURANCE MARKETPLACE  
MODERNIZATION**

“Sec. 3101. General insurance definitions.

“Sec. 3102. Implementation and application authority by Secretary.

## “Subtitle A—Market Relief

## “PART I—RATING REQUIREMENTS

- “Sec. 3111. Definitions.
- “Sec. 3112. Rating rules.
- “Sec. 3113. Application and preemption.
- “Sec. 3114. Civil actions and jurisdiction.
- “Sec. 3115. Ongoing review.

## “PART II—AFFORDABLE PLANS

- “Sec. 3121. Definitions.
- “Sec. 3122. Offering affordable plans.
- “Sec. 3123. Application and preemption.
- “Sec. 3124. Civil actions and jurisdiction.
- “Sec. 3125. Rules of construction.

## Subtitle C—Harmonization of Health Insurance Standards

- Sec. 221. Health Insurance Standards Harmonization.

## “Subtitle B—Standards Harmonization

- “Sec. 3131. Definitions.
- “Sec. 3132. Harmonized standards.
- “Sec. 3133. Application and preemption.
- “Sec. 3134. Civil actions and jurisdiction.
- “Sec. 3135. Authorization of appropriations; rule of construction.

## TITLE III—TAX-RELATED HEALTH INCENTIVES

- Sec. 301. SECA tax deduction for health insurance costs.
- Sec. 302. Deduction for qualified health insurance costs of individuals.

## TITLE IV—INCREASING ACCESS TO VA HEALTH CARE

- Sec. 401. Requirement for payments to facilities other than the Department of Veterans Affairs for covered health services.
- Sec. 402. Authority of Department of Veterans Affairs pharmacies to dispense medications to veterans on prescriptions written by private practitioners.

## TITLE V—NURSING SHORTAGE

- Sec. 501. Child care assistance for individuals pursuing advanced nursing degrees.
- Sec. 502. Nurse faculty program.

## “PART E—NURSE FACULTY PROJECT

- “Sec. 771. Purposes.
- “Sec. 772. Assistance authorized.
- “Sec. 773. Applications.
- “Sec. 774. Authorization of appropriations.
- “Sec. 775. Definition.
- Sec. 503. Nurse Faculty Loan Repayment Program.
- Sec. 504. Programs to increase the number of nurses within the Armed Forces.

## TITLE VI—RESERVE COMPONENTS OF THE ARMED FORCES

Sec. 601. Effective date of active duty for purposes of entitlement to active duty health care of members of the reserve components of the Armed Forces receiving alert order anticipating a call or order to active duty in support of a contingency operation.

1                   **TITLE I—MEDICARE**2   **SEC. 101. MEDICARE PHYSICIAN PAYMENT UPDATE RE-**  
3                   **FORM.**

4           (a) SUBSTITUTION OF MEI INCREASE FOR SGR AD-  
5 JUSTMENTS.—Section 1848(d) of the Social Security Act  
6 (42 U.S.C. 1395w–4(d)) is amended—

7                   (1) in paragraph (1)(A), by inserting “and be-  
8 fore 2010” after “beginning with 2001”;

9                   (2) in paragraph (1)(A), by inserting before the  
10 period at the end the following: “, and for years be-  
11 ginning with 2010, multiplied by the update estab-  
12 lished under paragraph (10) applicable to the year  
13 involved”; and

14                   (3) in paragraph (4)—

15                           (A) in the heading by striking “YEARS BE-  
16 GINNING WITH 2001” and inserting “2001, 2002,  
17 AND 2003”; and

18                           (B) in subparagraph (A), by inserting  
19 “and ending with 2003” after “beginning with  
20 2001”; and

21                   (4) by adding at the end the following new  
22 paragraph:

1           “(10) UPDATE BEGINNING WITH 2010.—The  
2           update to the single conversion factor established in  
3           paragraph (1)(C) for 2010 and each succeeding year  
4           shall be the percentage increase in the MEI (as de-  
5           fined in section 1842(i)(3)) for the year involved  
6           minus 1 percentage point.”.

7           (b) ENDING APPLICATION OF SUSTAINABLE  
8           GROWTH RATE (SGR).—Section 1848(f)(1)(B) of such  
9           Act (42 U.S.C. 1395w-4(f)(1)(B)) is amended by insert-  
10          ing “(and before 2009)” after “each succeeding year”.

11          (c) EFFECTIVE DATE.—The amendments made by  
12          this section shall apply to payment for services furnished  
13          on or after January 1, 2010.

14          **SEC. 102. MEDICARE GPCI FLOORS.**

15          Section 1848(e)(1) of the Social Security Act (42  
16          U.S.C. 1395w-4(e)(1)) is amended—

17                  (1) in subparagraph (A), by striking “and (G)”  
18                  and inserting “(G), (H), and (I)”; and

19                  (2) by adding at the end the following new sub-  
20                  paragraphs:

21                          “(H) FLOOR AT 1.0 FOR PRACTICE EX-  
22                          PENSE INDEX.—After calculating the practice  
23                          expense index in subparagraph (A)(ii), for pur-  
24                          poses of payment for services furnished on or  
25                          after January 1, 2010, the Secretary shall in-

1           crease the practice expense geographic index to  
 2           1.00 for any locality for which such practice ex-  
 3           pense geographic index is less than 1.00.

4                   “(I) FLOOR AT 1.0 FOR WORK EXPENSES  
 5           INDEX.—After calculating the practice expense  
 6           index in subparagraph (A)(ii), for purposes of  
 7           payment for services furnished on or after Jan-  
 8           uary 1, 2010, the Secretary shall increase the  
 9           practice expense geographic index to 1.00 for  
 10          any locality for which such practice expense ge-  
 11          ographic index is less than 1.00.”.

12 **SEC. 103. ANNUAL PHYSICAL EXAMINATIONS UNDER MEDI-**  
 13 **CARE.**

14          (a) IN GENERAL.—Section 1861 of the Social Secu-  
 15          rity Act (42 U.S.C. 1395x) is amended—

16               (1) in each of subparagraphs (W) and (AA)(i)  
 17               of subsection (s)(2), by striking “initial” and insert-  
 18               ing “annual”;

19               (2) in the heading of subsection (ww), by strik-  
 20               ing “Initial” and inserting “Annual”; and

21               (3) by amending paragraph (1) of subsection  
 22               (ww) to read as follows:

23                   “(1) The term ‘annual preventive physical ex-  
 24                   amination’ means professional services of a physi-  
 25                   cian, or of a nurse practitioner or physician assist-

1 ant which the practitioner or assistant is authorized  
2 to provide under State law, consisting of a physical  
3 examination (including, as medically appropriate,  
4 measurement of height, weight, body mass index,  
5 and blood pressure) with the goal of health pro-  
6 motion and disease detection and includes education,  
7 counseling, and referral with respect to screening  
8 and other preventive services described in paragraph  
9 (2) and end-of-life planning (as defined in paragraph  
10 (3)) upon the agreement with the individual, as well  
11 as related clinical laboratory tests and such other  
12 preventive services in connection with the same visit  
13 as the Secretary may provide (taking into account  
14 services typically included in an annual physical ex-  
15 amination covered under private health benefit  
16 plans).”.

17 (b) MODIFICATION OF EXCLUSIONS.—Section  
18 1862(a) of such Act (42 U.S.C. 1395y(a)) is amended—

19 (1) in paragraph (1), by amending subpara-  
20 graph (K) to read as follows:

21 “(K) in the case of an annual preventive  
22 physical examination, which is performed for an  
23 individual more frequently than once in any 12-  
24 month period,”; and

1           (2) in paragraph (7), by inserting “(other than  
2           annual preventive physical examinations)” after  
3           “routine physical checkups”.

4           (c) CONFORMING AMENDMENT.—Section 1833(b)(9)  
5 of such Act (42 U.S.C. 1395l(b)(9)) is amended by strik-  
6 ing “initial” and inserting “annual”.

7           (d) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to services furnished on or after  
9 January 1 of the first year beginning more than 60 days  
10 after the date of the enactment of this Act.

11 **SEC. 104. MEDICARE OUTREACH CAMPAIGN ON AVAIL-**  
12 **ABILITY OF WELCOME TO MEDICARE**  
13 **PHYSICALS.**

14           (a) IN GENERAL.—The Secretary of Health and  
15 Human Services shall conduct a national campaign to pro-  
16 vide information to the public on the availability of an ini-  
17 tial preventive physical examination (as defined in section  
18 1861(ww) of the Social Security Act (42 U.S.C.  
19 1395x(ww))) for beneficiaries of the Medicare program  
20 under title XVIII of the Social Security Act (42 U.S.C.  
21 1395 et seq.).

22           (b) AUTHORIZATION OF APPROPRIATIONS.—There is  
23 authorized to be appropriated to carry out this section  
24 \$1,000,000 for each of fiscal years 2010 through 2014.



1 **SEC. 105. IMPROVEMENTS TO THE MEDICARE-DEPENDENT**  
2 **HOSPITAL (MDH) PROGRAM.**

3 (a) USE OF NON-WAGE ADJUSTED PPS RATE.—  
4 Section 1886(d)(5)(G) of the Social Security Act (42  
5 U.S.C. 1395ww(d)(5)(G)) is amended by adding at the  
6 end the following new clause:

7 “(v) In the case of discharges occurring on or after  
8 October 1, 2010, and before October 1, 2012, in deter-  
9 mining the amount under paragraph (1)(A)(iii) for pur-  
10 poses of clauses (i) and (ii)(II), such amount shall, if it  
11 results in greater payments to the hospital, be determined  
12 without regard to any adjustment for different area wage  
13 levels under paragraph (3)(E).”.

14 (b) ENHANCED PAYMENT FOR AMOUNT BY WHICH  
15 THE TARGET EXCEEDS THE PPS RATE.—Section  
16 1886(d)(5)(G)(ii)(II) of the Social Security Act (42  
17 U.S.C. 1395ww(d)(5)(G)(ii)(II)) is amended by inserting  
18 “, and before October 1, 2010, or 85 percent in the case  
19 of discharges occurring on or after October 1, 2010, and  
20 before October 1, 2012” after “October 1, 2011”.

21 **SEC. 106. TEMPORARY IMPROVEMENTS TO THE MEDICARE**  
22 **INPATIENT HOSPITAL PAYMENT ADJUST-**  
23 **MENT FOR LOW-VOLUME HOSPITALS.**

24 Section 1886(d)(12) of the Social Security Act (42  
25 U.S.C. 1395ww(d)(12)) is amended—

1 (1) in subparagraph (A), by inserting “or (D)”  
2 after “subparagraph (B)”;

3 (2) in subparagraph (B), by striking “The Sec-  
4 retary” and inserting “For discharges occurring in  
5 fiscal years 2005 through 2010 and for discharges  
6 occurring in fiscal year 2013 and subsequent fiscal  
7 years, the Secretary”;

8 (3) in subparagraph (C)(i)—

9 (A) by inserting “(or, with respect to fiscal  
10 years 2011 and 2012, 15 road miles)” after  
11 “25 road miles”; and

12 (B) by inserting “(or, with respect to fiscal  
13 years 2011 and 2012, 2,000 discharges of indi-  
14 viduals entitled to, or enrolled for, benefits  
15 under part A)” after “800 discharges”; and

16 (4) by adding at the end the following new sub-  
17 paragraph:

18 “(D) TEMPORARY APPLICABLE PERCENT-  
19 AGE INCREASE.—For discharges occurring in  
20 fiscal years 2011 or 2012, the Secretary shall  
21 determine an applicable percentage increase for  
22 purposes of subparagraph (A) using a linear  
23 sliding scale ranging from 25 percent for low-  
24 volume hospitals with fewer than an appro-  
25 priate number (as determined by the Secretary)

1 of discharges of individuals entitled to, or en-  
2 rolled for, benefits under part A in the fiscal  
3 year to 0 percent for low-volume hospitals with  
4 greater than 2,000 discharges of such individ-  
5 uals in the fiscal year.”.

6 **SEC. 107. ENSURING PROPORTIONAL REPRESENTATION OF**  
7 **INTERESTS OF RURAL AREAS ON MEDPAC.**

8 (a) IN GENERAL.—Section 1805(c)(2) of the Social  
9 Security Act (42 U.S.C. 1395b–6(c)(2)) is amended—

10 (1) in subparagraph (A), by inserting “con-  
11 sistent with subparagraph (E)” after “rural rep-  
12 resentatives”; and

13 (2) by adding at the end the following new sub-  
14 paragraph:

15 “(E) PROPORTIONAL REPRESENTATION OF  
16 INTERESTS OF RURAL AREAS.—In order to pro-  
17 vide a balance between urban and rural rep-  
18 resentatives under subparagraph (A), the pro-  
19 portion of members of the Commission who rep-  
20 resent the interests of health care providers and  
21 Medicare beneficiaries located in rural areas  
22 shall be no less than the proportion of the total  
23 number of Medicare beneficiaries who reside in  
24 rural areas.”.

1 (b) EFFECTIVE DATE.—The amendments made by  
 2 subsection (a) shall apply to appointments to the Medicare  
 3 Payment Advisory Commission made after the date of en-  
 4 actment of this Act.

5 **TITLE II—SMALL BUSINESS**  
 6 **HEALTH PLANS**

7 **Subtitle A—Enhanced Marketplace**  
 8 **Pools**

9 **SEC. 201. RULES GOVERNING ENHANCED MARKETPLACE**  
 10 **POOLS.**

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 ENHANCED**  
 15 **MARKETPLACE POOLS**

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

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

23 “(1) is organized and maintained in good faith,  
 24 with a constitution and bylaws specifically stating its  
 25 purpose and providing for periodic meetings on at

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

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

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

24 “(4) does not condition membership on the  
25 basis 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 sub-  
4 section.

5 **“SEC. 802. ALTERNATIVE MARKET POOLING ORGANIZA-**  
6 **TIONS.**

7 “(a) IN GENERAL.—The Secretary, not later than 1  
8 year after the date of enactment of this part, shall promul-  
9 gate regulations that apply the rules and standards of this  
10 part, as necessary, to circumstances in which a pooling  
11 entity other (hereinafter ‘Alternative Market Pooling Or-  
12 ganizations’) is not made up principally of employers and  
13 their employees, or not a professional organization or such  
14 small business health plan entity identified in section 801.

15 “(b) ADAPTION OF STANDARDS.—In developing and  
16 promulgating regulations pursuant to subsection (a), the  
17 Secretary, in consultation with the Secretary of Health  
18 and Human Services, small business health plans, small  
19 and large employers, large and small insurance issuers,  
20 consumer representatives, and state insurance commis-  
21 sioners, shall—

22 “(1) adapt the standards of this part, to the  
23 maximum degree practicable, to assure balanced and  
24 comparable oversight standards for both small busi-

1       ness health plans and alternative market pooling or-  
2       ganizations;

3               “(2) permit the participation as alternative  
4       market pooling organizations unions, churches and  
5       other faith-based organizations, or other organiza-  
6       tions composed of individuals and groups which may  
7       have little or no association with employment, pro-  
8       vided however, that such alternative market pooling  
9       organizations meet, and continue meeting on an on-  
10      going basis, to satisfy standards, rules, and require-  
11      ments materially equivalent to those set forth in this  
12      part with respect to small business health plans;

13              “(3) conduct periodic verification of such com-  
14      pliance by alternative market pooling organizations,  
15      in consultation with the Secretary of Health and  
16      Human Services and the National Association of In-  
17      surance Commissioners, except that such periodic  
18      verification shall not materially impede market entry  
19      or participation as pooling entities comparable to  
20      that of small business health plans;

21              “(4) assure that consistent, clear, and regularly  
22      monitored standards are applied with respect to al-  
23      ternative market pooling organizations to avert ma-  
24      terial risk-selection within or among the composition  
25      of such organizations;

1           “(5) the expedited and deemed certification pro-  
2           cedures provided in section 805(d) shall not apply to  
3           alternative market pooling organizations until sooner  
4           of the promulgation of regulations under this sub-  
5           section or the expiration of one year following enact-  
6           ment of this Act; and

7           “(6) make such other appropriate adjustments  
8           to the requirements of this part as the Secretary  
9           may reasonably deem appropriate to fit the cir-  
10          cumstances of an individual alternative market pool-  
11          ing organization or category of such organization,  
12          including but not limited to the application of the  
13          membership payment requirements of section  
14          801(b)(2) to alternative market pooling organiza-  
15          tions composed primarily of church- or faith-based  
16          membership.

17 **“SEC. 803. CERTIFICATION OF SMALL BUSINESS HEALTH**  
18 **PLANS.**

19          “(a) IN GENERAL.—Not later than 6 months after  
20          the date of enactment of this part, the applicable authority  
21          shall prescribe by interim final rule a procedure under  
22          which the applicable authority shall certify small business  
23          health plans which apply for certification as meeting the  
24          requirements of this part.



1       “(b) REQUIREMENTS APPLICABLE TO CERTIFIED  
2 PLANS.—A small business health plan with respect to  
3 which certification under this part is in effect shall meet  
4 the applicable requirements of this part, effective on the  
5 date of certification (or, if later, on the date on which the  
6 plan is to commence operations).

7       “(c) REQUIREMENTS FOR CONTINUED CERTIFI-  
8 CATION.—The applicable authority may provide by regula-  
9 tion for continued certification of small business health  
10 plans under this part. Such regulation shall provide for  
11 the revocation of a certification if the applicable authority  
12 finds that the small business health plan involved is failing  
13 to comply with the requirements of this part.

14       “(d) EXPEDITED AND DEEMED CERTIFICATION.—

15               “(1) IN GENERAL.—If the Secretary fails to act  
16 on an application for certification under this section  
17 within 90 days of receipt of such application, the ap-  
18 plying small business health plan shall be deemed  
19 certified until such time as the Secretary may deny  
20 for cause the application for certification.

21               “(2) CIVIL PENALTY.—The Secretary may as-  
22 sess a civil penalty against the board of trustees and  
23 plan sponsor (jointly and severally) of a small busi-  
24 ness health plan that is deemed certified under para-  
25 graph (1) of up to \$500,000 in the event the Sec-

1       retary determines that the application for certifi-  
2       cation of such small business health plan was will-  
3       fully or with gross negligence incomplete or inac-  
4       curate.

5       **“SEC. 804. REQUIREMENTS RELATING TO SPONSORS AND**  
6                                   **BOARDS OF TRUSTEES.**

7           “(a) SPONSOR.—The requirements of this subsection  
8       are met with respect to a small business health plan if  
9       the sponsor has met (or is deemed under this part to have  
10      met) the requirements of section 801(b) for a continuous  
11      period of not less than 3 years ending with the date of  
12      the application for certification under this part.

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

16           “(1) FISCAL CONTROL.—The plan is operated,  
17      pursuant to a plan document, by a board of trustees  
18      which pursuant to a trust agreement has complete  
19      fiscal control over the plan and which is responsible  
20      for all operations of the plan.

21           “(2) RULES OF OPERATION AND FINANCIAL  
22      CONTROLS.—The board of trustees has in effect  
23      rules of operation and financial controls, based on a  
24      3-year plan of operation, adequate to carry out the

1 terms of the plan and to meet all requirements of  
2 this title applicable to the plan.

3 “(3) RULES GOVERNING RELATIONSHIP TO  
4 PARTICIPATING EMPLOYERS AND TO CONTRAC-  
5 TORS.—

6 “(A) BOARD MEMBERSHIP.—

7 “(i) IN GENERAL.—Except as pro-  
8 vided in clauses (ii) and (iii), the members  
9 of the board of trustees are individuals se-  
10 lected from individuals who are the owners,  
11 officers, directors, or employees of the par-  
12 ticipating employers or who are partners in  
13 the participating employers and actively  
14 participate in the business.

15 “(ii) LIMITATION.—

16 “(I) GENERAL RULE.—Except as  
17 provided in subclauses (II) and (III),  
18 no such member is an owner, officer,  
19 director, or employee of, or partner in,  
20 a contract administrator or other  
21 service provider to the plan.

22 “(II) LIMITED EXCEPTION FOR  
23 PROVIDERS OF SERVICES SOLELY ON  
24 BEHALF OF THE SPONSOR.—Officers  
25 or employees of a sponsor which is a

1 service provider (other than a contract  
2 administrator) to the plan may be  
3 members of the board if they con-  
4 stitute not more than 25 percent of  
5 the membership of the board and they  
6 do not provide services to the plan  
7 other than on behalf of the sponsor.

8 “(III) TREATMENT OF PRO-  
9 VIDERS OF MEDICAL CARE.—In the  
10 case of a sponsor which is an associa-  
11 tion whose membership consists pri-  
12 marily of providers of medical care,  
13 subclause (I) shall not apply in the  
14 case of any service provider described  
15 in subclause (I) who is a provider of  
16 medical care under the plan.

17 “(iii) CERTAIN PLANS EXCLUDED.—  
18 Clause (i) shall not apply to a small busi-  
19 ness health plan which is in existence on  
20 the date of the enactment of this part.

21 “(B) SOLE AUTHORITY.—The board has  
22 sole authority under the plan to approve appli-  
23 cations for participation in the plan and to con-  
24 tract with insurers.

1       “(c) TREATMENT OF FRANCHISES.—In the case of  
2 a group health plan which is established and maintained  
3 by a franchiser for a franchisor or for its franchisees—

4               “(1) the requirements of subsection (a) and sec-  
5 tion 801(a) shall be deemed met if such require-  
6 ments would otherwise be met if the franchisor were  
7 deemed to be the sponsor referred to in section  
8 801(b) and each franchisee were deemed to be a  
9 member (of the sponsor) referred to in section  
10 801(b); and

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

13 For purposes of this subsection the terms ‘franchisor’ and  
14 ‘franchisee’ shall have the meanings given such terms for  
15 purposes of sections 436.2(a) through 436.2(c) of title 16,  
16 Code of Federal Regulations (including any such amend-  
17 ments to such regulation after the date of enactment of  
18 this part).

19 **“SEC. 805. PARTICIPATION AND COVERAGE REQUIRE-**  
20 **MENTS.**

21       “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The  
22 requirements of this subsection are met with respect to  
23 a small business health plan if, under the terms of the  
24 plan—

25               “(1) each participating employer must be—

1           “(A) a member of the sponsor;

2           “(B) the sponsor; or

3           “(C) an affiliated member of the sponsor,  
4           except that, in the case of a sponsor which is  
5           a professional association or other individual-  
6           based association, if at least one of the officers,  
7           directors, or employees of an employer, or at  
8           least one of the individuals who are partners in  
9           an employer and who actively participates in  
10          the business, is a member or such an affiliated  
11          member of the sponsor, participating employers  
12          may also include such employer; and

13          “(2) all individuals commencing coverage under  
14          the plan after certification under this part must  
15          be—

16                 “(A) active or retired owners (including  
17                 self-employed individuals), officers, directors, or  
18                 employees of, or partners in, participating em-  
19                 ployers; or

20                 “(B) the dependents of individuals de-  
21                 scribed in subparagraph (A).

22          “(b) **INDIVIDUAL MARKET UNAFFECTED.**—The re-  
23          quirements of this subsection are met with respect to a  
24          small business health plan if, under the terms of the plan,  
25          no participating employer may provide health insurance

1 coverage in the individual market for any employee not  
2 covered under the plan which is similar to the coverage  
3 contemporaneously provided to employees of the employer  
4 under the plan, if such exclusion of the employee from cov-  
5 erage under the plan is based on a health status-related  
6 factor with respect to the employee and such employee  
7 would, but for such exclusion on such basis, be eligible  
8 for coverage under the plan.

9       “(c) PROHIBITION OF DISCRIMINATION AGAINST EM-  
10 PLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.—  
11 The requirements of this subsection are met with respect  
12 to a small business health plan if—

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

21           “(2) information regarding all coverage options  
22 available under the plan is made readily available to  
23 any employer eligible to participate; and

24           “(3) the applicable requirements of sections  
25 701, 702, and 703 are met with respect to the plan.

1 **“SEC. 806. OTHER REQUIREMENTS RELATING TO PLAN**  
2 **DOCUMENTS, CONTRIBUTION RATES, AND**  
3 **BENEFIT OPTIONS.**

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

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

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

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

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

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



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

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

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

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

23                          “(i) setting contribution rates for the  
24                          small business health plan based on the  
25                          claims experience of the small business

1 health plan so long as any variation in  
2 such rates for participating small employ-  
3 ers complies with the requirements of  
4 clause (ii), except that small business  
5 health plans shall not be subject, in non-  
6 adopting States, to subparagraphs (A)(ii)  
7 and (C) of section 2912(a)(2) of the Public  
8 Health Service Act, and in adopting  
9 States, to any State law that would have  
10 the effect of imposing requirements as out-  
11 lined in such subparagraphs (A)(ii) and  
12 (C); or

13 “(ii) varying contribution rates for  
14 participating small employers in a small  
15 business health plan in a State to the ex-  
16 tent that such rates could vary using the  
17 same methodology employed in such State  
18 for regulating small group premium rates,  
19 subject to the terms of part I of subtitle A  
20 of title XXXI of the Public Health Service  
21 Act (relating to rating requirements), as  
22 added by subtitle B of title II of the  
23 Health Security for All Americans Act of  
24 2009.

1           “(3) EXCEPTIONS REGARDING SELF-EMPLOYED  
2           AND LARGE EMPLOYERS.—

3           “(A) SELF-EMPLOYED.—

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

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

21          “(B) LARGE EMPLOYERS.—Small business  
22          health plans with participating employers that  
23          are larger than small employers (as defined in  
24          section 808(a)(10)) shall enroll such large par-  
25          ticipating employers in accordance with rating

1 rules that do not violate the rating rules for  
2 large employers in the State in which such large  
3 participating employers are located.

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

9 “(b) ABILITY OF SMALL BUSINESS HEALTH PLANS  
10 TO DESIGN BENEFIT OPTIONS.—Nothing in this part or  
11 any provision of State law (as defined in section  
12 514(c)(1)) shall be construed to preclude a small business  
13 health plan or a health insurance issuer offering health  
14 insurance coverage in connection with a small business  
15 health plan from exercising its sole discretion in selecting  
16 the specific benefits and services consisting of medical care  
17 to be included as benefits under such plan or coverage,  
18 except that such benefits and services must meet the terms  
19 and specifications of part II of subtitle A of title XXXI  
20 of the Public Health Service Act (relating to lower cost  
21 plans), as added by subtitle B of title II of the Health  
22 Security for All Americans Act of 2009.

23 “(c) DOMICILE AND NON-DOMICILE STATES.—

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

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

3 “(2) NON-DOMICILE STATES.—With respect to  
4 a State (other than the domicile State) in which par-  
5 ticipating employers of a small business health plan  
6 are located but in which the insurer of the small  
7 business health plan in the domicile State is not yet  
8 licensed, the following shall apply:

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

20 “(i) APPLICATION OF NON-DOMICILE  
21 STATE LAW.—Except with respect to licen-  
22 sure and with respect to the terms of sub-  
23 title A of title XXXI of the Public Health  
24 Service Act (relating to rating and benefits  
25 as added by subtitle B of title II of the

1 Health Security for All Americans Act of  
2 2009), the laws and authority of the non-  
3 domicile State shall remain in full force  
4 and effect.

5 “(ii) REVOCATION OF PREEMPTION.—  
6 The preemption of a non-domicile State’s  
7 health insurance licensure laws pursuant to  
8 this subparagraph, shall be terminated  
9 upon the occurrence of either of the fol-  
10 lowing:

11 “(I) APPROVAL OR DENIAL OF  
12 APPLICATION.—The approval of denial  
13 of an insurer’s licensure application,  
14 following the laws and regulations of  
15 the non-domicile State with respect to  
16 licensure.

17 “(II) DETERMINATION OF MATE-  
18 RIAL VIOLATION.—A determination by  
19 a non-domicile State that an insurer  
20 operating in a non-domicile State pur-  
21 suant to the preemption provided for  
22 in this subparagraph is in material  
23 violation of the insurance laws (other  
24 than licensure and with respect to the  
25 terms of subtitle A of title XXXI of

1 the Public Health Service Act (relat-  
2 ing to rating and benefits added by  
3 subtitle B of title II of the Health Se-  
4 curity for All Americans Act of 2009))  
5 of such State.

6 “(B) NO PROHIBITION ON PROMOTION.—  
7 Nothing in this paragraph shall be construed to  
8 prohibit a small business health plan or an in-  
9 surer from promoting coverage prior to the ex-  
10 piration of the 90-day period provided for in  
11 subparagraph (A), except that no enrollment or  
12 collection of contributions shall occur before the  
13 expiration of such 90-day period.

14 “(C) LICENSURE.—Except with respect to  
15 the application of the temporary preemption  
16 provision of this paragraph, nothing in this part  
17 shall be construed to limit the requirement that  
18 insurers issuing coverage to small business  
19 health plans shall be licensed in each State in  
20 which the small business health plans operate.

21 “(D) SERVICING BY LICENSED INSUR-  
22 ERS.—Notwithstanding subparagraph (C), the  
23 requirements of this subsection may also be sat-  
24 isfied if the participating employers of a small  
25 business health plan are serviced by a licensed

1 insurer in that State, even where such insurer  
2 is not the insurer of such small business health  
3 plan in the State in which such small business  
4 health plan is domiciled.

5 **“SEC. 807. REQUIREMENTS FOR APPLICATION AND RE-**  
6 **LATED REQUIREMENTS.**

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

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

22 “(1) **IDENTIFYING INFORMATION.**—The names  
23 and addresses of—

24 “(A) the sponsor; and



1           “(B) the members of the board of trustees  
2           of the plan.

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

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

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

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

23          “(c) FILING NOTICE OF CERTIFICATION WITH  
24          STATES.—A certification granted under this part to a  
25          small business health plan shall not be effective unless

1 written notice of such certification is filed with the appli-  
2 cable State authority of each State in which the small  
3 business health plans operate.

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

14 **“SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**  
15 **MINATION.**

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

21 “(1) provides to the participants and bene-  
22 ficiaries a written notice of intent to terminate stat-  
23 ing that such termination is intended and the pro-  
24 posed termination date;

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

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

7           Actions required under this section shall be taken in such  
8           form and manner as may be prescribed by the applicable  
9           authority by regulation.

10   **“SEC. 809. IMPLEMENTATION AND APPLICATION AUTHOR-**  
11                           **ITY BY SECRETARY.**

12           “The Secretary shall, through promulgation and im-  
13           plementation of such regulations as the Secretary may  
14           reasonably determine necessary or appropriate, and in  
15           consultation with a balanced spectrum of effected entities  
16           and persons, modify the implementation and application  
17           of this part to accommodate with minimum disruption  
18           such changes to State or Federal law provided in this part  
19           and the (and the amendments made by such Act) or in  
20           regulations issued thereto.

21   **“SEC. 810. DEFINITIONS AND RULES OF CONSTRUCTION.**

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

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

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

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

9           “(2) APPLICABLE AUTHORITY.—The term ‘ap-  
10          plicable authority’ means the Secretary of Labor, ex-  
11          cept that, in connection with any exercise of the Sec-  
12          retary’s authority with respect to which the Sec-  
13          retary is required under section 506(d) to consult  
14          with a State, such term means the Secretary, in con-  
15          sultation with such State.

16          “(3) APPLICABLE STATE AUTHORITY.—The  
17          term ‘applicable State authority’ means, with respect  
18          to a health insurance issuer in a State, the State in-  
19          surance commissioner or official or officials des-  
20          ignated by the State to enforce the requirements of  
21          title XXVII of the Public Health Service Act for the  
22          State involved with respect to such issuer.

23          “(4) GROUP HEALTH PLAN.—The term ‘group  
24          health plan’ has the meaning provided in section

1 733(a)(1) (after applying subsection (b) of this sec-  
2 tion).

3 “(5) HEALTH INSURANCE COVERAGE.—The  
4 term ‘health insurance coverage’ has the meaning  
5 provided in section 733(b)(1), except that such term  
6 shall not include excepted benefits (as defined in sec-  
7 tion 733(c)).

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

11 “(7) INDIVIDUAL MARKET.—

12 “(A) IN GENERAL.—The term ‘individual  
13 market’ means the market for health insurance  
14 coverage offered to individuals other than in  
15 connection with a group health plan.

16 “(B) TREATMENT OF VERY SMALL  
17 GROUPS.—

18 “(i) IN GENERAL.—Subject to clause  
19 (ii), such term includes coverage offered in  
20 connection with a group health plan that  
21 has fewer than 2 participants as current  
22 employees or participants described in sec-  
23 tion 732(d)(3) on the first day of the plan  
24 year.

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

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

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

23                   “(10) SMALL EMPLOYER.—The term ‘small em-  
24                   ployer’ means, in connection with a group health

1 plan with respect to a plan year, a small employer  
2 as defined in section 2791(e)(4).

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

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

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

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

24 “(c) RENEWAL.—Notwithstanding any provision of  
25 law to the contrary, a participating employer in a small

1 business health plan shall not be deemed to be a plan  
2 sponsor in applying requirements relating to coverage re-  
3 newal.

4 “(d) HEALTH SAVINGS ACCOUNTS.—Nothing in this  
5 part shall be construed to create any mandates for cov-  
6 erage of benefits for HSA-qualified health plans that  
7 would require reimbursements in violation of section  
8 223(c)(2) of the Internal Revenue Code of 1986.”.

9 (b) CONFORMING AMENDMENTS TO PREEMPTION  
10 RULES.—

11 (1) Section 514(b)(6) of such Act (29 U.S.C.  
12 1144(b)(6)) is amended by adding at the end the  
13 following new subparagraph:

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

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

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

23 (B) in subsection (b)(5), by striking “sub-  
24 section (a)” in subparagraph (A) and inserting  
25 “subsection (a) of this section and subsections



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

5 (C) by redesignating subsection (d) as sub-  
6 section (e); and

7 (D) by inserting after subsection (c) the  
8 following new subsection:

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

15 “(2) In any case in which health insurance coverage  
16 of any policy type is offered under a small business health  
17 plan certified under part 8 to a participating employer op-  
18 erating in such State, the provisions of this title shall su-  
19 persede any and all laws of such State insofar as they may  
20 establish rating and benefit requirements that would oth-  
21 erwise apply to such coverage, provided the requirements  
22 of subtitle A of title XXXI of the Public Health Service  
23 Act (as added by title II of the Health Security for All  
24 Americans Act of 2009) (concerning health plan rating  
25 and benefits) are met.”.

1 (c) PLAN SPONSOR.—Section 3(16)(B) of such Act  
 2 (29 U.S.C. 102(16)(B)) is amended by adding at the end  
 3 the following new sentence: “Such term also includes a  
 4 person serving as the sponsor of a small business health  
 5 plan under part 8.”.

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

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

“PART 8—RULES GOVERNING SMALL BUSINESS HEALTH PLANS

“801. Small business health plans.

“802. Alternative market pooling organizations.

“803. Certification of small business health plans.

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

“805. Participation and coverage requirements.

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

“807. Requirements for application and related requirements.

“808. Notice requirements for voluntary termination.

“809. Implementation and application authority by Secretary.

“810. Definitions and rules of construction.”.

12 **SEC. 202. COOPERATION BETWEEN FEDERAL AND STATE**  
 13 **AUTHORITIES.**

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

17 “(d) CONSULTATION WITH STATES WITH RESPECT  
 18 TO SMALL BUSINESS HEALTH PLANS.—

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

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

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

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

19 **SEC. 203. EFFECTIVE DATE AND TRANSITIONAL AND**  
20 **OTHER RULES.**

21           (a) EFFECTIVE DATE.—The amendments made by  
22           this subtitle shall take effect 12 months after the date of  
23           the enactment of this Act. The Secretary of Labor shall  
24           first issue all regulations necessary to carry out the

1 amendments made by this subtitle within 6 months after  
2 the date 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 808(a)(2) 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 trustees which  
8           has control over the arrangement;

9           (D) the requirements of section 804(a) of  
10          such Act shall be deemed met with respect to  
11          such arrangement; and

12          (E) the arrangement may be certified by  
13          any applicable authority with respect to its op-  
14          erations in any State only if it operates in such  
15          State on the date of certification.

16          The provisions of this subsection shall cease to apply  
17          with respect to any such arrangement at such time  
18          after the date of the enactment of this Act as the  
19          applicable requirements of this subsection are not  
20          met with respect to such arrangement or at such  
21          time that the arrangement provides coverage to par-  
22          ticipants and beneficiaries in any State other than  
23          the States in which coverage is provided on such  
24          date of enactment.

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

## 10           **Subtitle B—Market Relief**

### 11   **SEC. 211. MARKET RELIEF.**

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

## 14   **“TITLE XXXI—HEALTH CARE IN-** 15           **SURANCE           MARKETPLACE** 16           **MODERNIZATION**

### 17   **“SEC. 3101. GENERAL INSURANCE DEFINITIONS.**

18           “In this title, the terms ‘health insurance coverage’,  
 19           ‘health insurance issuer’, ‘group health plan’, and ‘indi-  
 20           vidual health insurance’ shall have the meanings given  
 21           such terms in section 2791.

### 22   **“SEC. 3102. IMPLEMENTATION AND APPLICATION AUTHOR-** 23           **ITY BY SECRETARY.**

24           “The Secretary shall, through promulgation and im-  
 25           plementation of such regulations as the Secretary may

1 reasonably determine necessary or appropriate, and in  
2 consultation with a balanced spectrum of effected entities  
3 and persons, modify the implementation and application  
4 of this title to accommodate with minimum disruption  
5 such changes to State or Federal law provided in this title  
6 and the (and the amendments made by such Act) or in  
7 regulations issued thereto.

## 8 **“Subtitle A—Market Relief**

### 9 **“PART I—RATING REQUIREMENTS**

#### 10 **“SEC. 3111. DEFINITIONS.**

11 “In this part:

12 “(1) **ADOPTING STATE.**—The term ‘adopting  
13 State’ means a State that, with respect to the small  
14 group market, has enacted small group rating rules  
15 that meet the minimum standards set forth in sec-  
16 tion 3112(a)(1) or, as applicable, transitional small  
17 group rating rules set forth in section 3112(b).

18 “(2) **APPLICABLE STATE AUTHORITY.**—The  
19 term ‘applicable State authority’ means, with respect  
20 to a health insurance issuer in a State, the State in-  
21 surance commissioner or official or officials des-  
22 ignated by the State to enforce the insurance laws  
23 of such State.

24 “(3) **BASE PREMIUM RATE.**—The term ‘base  
25 premium rate’ means, for each class of business with

1 respect to a rating period, the lowest premium rate  
2 charged or that could have been charged under a  
3 rating system for that class of business by the small  
4 employer carrier to small employers with similar  
5 case characteristics for health benefit plans with the  
6 same or similar coverage.

7 “(4) ELIGIBLE INSURER.—The term ‘eligible  
8 insurer’ means a health insurance issuer that is li-  
9 censed in a 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 health insurance coverage con-  
14 sistent with the Model Small Group Rating  
15 Rules or, as applicable, transitional small group  
16 rating rules in a State;

17 “(B) notifies the insurance department of  
18 a nonadopting State (or other State agency),  
19 not later than 30 days prior to the offering of  
20 coverage described in this subparagraph, that  
21 the issuer intends to offer small group health  
22 insurance coverage in that State consistent with  
23 the Model Small Group Rating Rules, and pro-  
24 vides with such notice a copy of any insurance  
25 policy that it intends to offer in the State, its



1 most recent annual and quarterly financial re-  
2 ports, and any other information required to be  
3 filed with the insurance department of the State  
4 (or other State agency); 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 Model Small Group Rating Rules and an af-  
13 firmation that such Rules are included in the  
14 terms of such contract.

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

20 “(6) INDEX RATE.—The term ‘index rate’  
21 means for each class of business with respect to the  
22 rating period for small employers with similar case  
23 characteristics, the arithmetic average of the appli-  
24 cable base premium rate and the corresponding  
25 highest premium rate.

1           “(7) MODEL SMALL GROUP RATING RULES.—  
2           The term ‘Model Small Group Rating Rules’ means  
3           the rules set forth in section 3112(a)(2).

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

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

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

15          “(11) VARIATION LIMITS.—

16                 “(A) COMPOSITE VARIATION LIMIT.—

17                         “(i) IN GENERAL.—The term ‘com-  
18                         posite variation limit’ means the total vari-  
19                         ation in premium rates charged by a  
20                         health insurance issuer in the small group  
21                         market as permitted under applicable State  
22                         law based on the following factors or case  
23                         characteristics:

24                                 “(I) Age.

25                                 “(II) Duration of coverage.

1 “(III) Claims experience.

2 “(IV) Health status.

3 “(ii) USE OF FACTORS.—With respect  
4 to the use of the factors described in  
5 clause (i) in setting premium rates, a  
6 health insurance issuer shall use one or  
7 both of the factors described in subclauses  
8 (I) or (IV) of such clause and may use the  
9 factors described in subclauses (II) or (III)  
10 of such clause.

11 “(B) TOTAL VARIATION LIMIT.—The term  
12 ‘total variation limit’ means the total variation  
13 in premium rates charged by a health insurance  
14 issuer in the small group market as permitted  
15 under applicable State law based on all factors  
16 and case characteristics (as described in section  
17 3112(a)(1)).

18 **“SEC. 3112. RATING RULES.**

19 “(a) ESTABLISHMENT OF MINIMUM STANDARDS FOR  
20 PREMIUM VARIATIONS AND MODEL SMALL GROUP RAT-  
21 ING RULES.—Not later than 6 months after the date of  
22 enactment of this title, the Secretary shall promulgate reg-  
23 ulations establishing the following Minimum Standards  
24 and Model Small Group Rating Rules:

1           “(1) MINIMUM STANDARDS FOR PREMIUM VARI-  
2           ATIONS.—

3           “(A) COMPOSITE VARIATION LIMIT.—The  
4           composite variation limit shall not be less than  
5           3:1.

6           “(B) TOTAL VARIATION LIMIT.—The total  
7           variation limit shall not be less than 5:1.

8           “(C) PROHIBITION ON USE OF CERTAIN  
9           CASE CHARACTERISTICS.—For purposes of this  
10          paragraph, in calculating the total variation  
11          limit, the State shall not use case characteris-  
12          tics other than those used in calculating the  
13          composite variation limit and industry, geo-  
14          graphic area, group size, participation rate,  
15          class of business, and participation in wellness  
16          programs.

17          “(2) MODEL SMALL GROUP RATING RULES.—  
18          The following apply to an eligible insurer in a non-  
19          adopting State:

20          “(A) PREMIUM RATES.—Premium rates  
21          for small group health benefit plans to which  
22          this title applies shall comply with the following  
23          provisions relating to premiums, except as pro-  
24          vided for under subsection (b):

1                   “(i) VARIATION IN PREMIUM  
2 RATES.—The plan may not vary premium  
3 rates by more than the minimum stand-  
4 ards provided for under paragraph (1).

5                   “(ii) INDEX RATE.—The index rate  
6 for a rating period for any class of busi-  
7 ness shall not exceed the index rate for any  
8 other class of business by more than 20  
9 percent, excluding those classes of business  
10 related to association groups under this  
11 title.

12                   “(iii) CLASS OF BUSINESSES.—With  
13 respect to a class of business, the premium  
14 rates charged during a rating period to  
15 small employers with similar case charac-  
16 teristics for the same or similar coverage  
17 or the rates that could be charged to such  
18 employers under the rating system for that  
19 class of business, shall not vary from the  
20 index rate by more than 25 percent of the  
21 index rate under clause (ii).

22                   “(iv) INCREASES FOR NEW RATING  
23 PERIODS.—The percentage increase in the  
24 premium rate charged to a small employer

1 for a new rating period may not exceed the  
2 sum of the following:

3 “(I) The percentage change in  
4 the new business premium rate meas-  
5 ured from the first day of the prior  
6 rating period to the first day of the  
7 new rating period. In the case of a  
8 health benefit plan into which the  
9 small employer carrier is no longer en-  
10 rolling new small employers, the small  
11 employer carrier shall use the percent-  
12 age change in the base premium rate,  
13 except that such change shall not ex-  
14 ceed, on a percentage basis, the  
15 change in the new business premium  
16 rate for the most similar health ben-  
17 efit plan into which the small em-  
18 ployer carrier is actively enrolling new  
19 small employers.

20 “(II) Any adjustment, not to ex-  
21 ceed 15 percent annually and adjusted  
22 pro rata for rating periods of less  
23 than 1 year, due to the claim experi-  
24 ence, health status or duration of cov-  
25 erage of the employees or dependents

1 of the small employer as determined  
2 from the small employer carrier's rate  
3 manual for the class of business in-  
4 volved.

5 “(III) Any adjustment due to  
6 change in coverage or change in the  
7 case characteristics of the small em-  
8 ployer as determined from the small  
9 employer carrier's rate manual for the  
10 class of business.

11 “(v) UNIFORM APPLICATION OF AD-  
12 JUSTMENTS.—Adjustments in premium  
13 rates for claim experience, health status, or  
14 duration of coverage shall not be charged  
15 to individual employees or dependents. Any  
16 such adjustment shall be applied uniformly  
17 to the rates charged for all employees and  
18 dependents of the small employer.

19 “(vi) PROHIBITION ON USE OF CER-  
20 TAIN CASE CHARACTERISTIC.—A small em-  
21 ployer carrier shall not utilize case charac-  
22 teristics, other than those permitted under  
23 paragraph (1)(C), without the prior ap-  
24 proval of the applicable State authority.

1           “(vii) CONSISTENT APPLICATION OF  
2 FACTORS.—Small employer carriers shall  
3 apply rating factors, including case charac-  
4 teristics, consistently with respect to all  
5 small employers in a class of business.  
6 Rating factors shall produce premiums for  
7 identical groups which differ only by the  
8 amounts attributable to plan design and do  
9 not reflect differences due to the nature of  
10 the groups assumed to select particular  
11 health benefit plans.

12           “(viii) TREATMENT OF PLANS AS HAV-  
13 ING SAME RATING PERIOD.—A small em-  
14 ployer carrier shall treat all health benefit  
15 plans issued or renewed in the same cal-  
16 endar month as having the same rating pe-  
17 riod.

18           “(ix) REQUIRE COMPLIANCE.—Pre-  
19 mium rates for small business health ben-  
20 efit plans shall comply with the require-  
21 ments of this subsection notwithstanding  
22 any assessments paid or payable by a small  
23 employer carrier as required by a State’s  
24 small employer carrier reinsurance pro-  
25 gram.



1           “(B) ESTABLISHMENT OF SEPARATE  
2 CLASS OF BUSINESS.—Subject to subparagraph  
3 (C), a small employer carrier may establish a  
4 separate class of business only to reflect sub-  
5 stantial differences in expected claims experi-  
6 ence or administrative costs related to the fol-  
7 lowing:

8           “(i) The small employer carrier uses  
9 more than one type of system for the mar-  
10 keting and sale of health benefit plans to  
11 small employers.

12           “(ii) The small employer carrier has  
13 acquired a class of business from another  
14 small employer carrier.

15           “(iii) The small employer carrier pro-  
16 vides coverage to one or more association  
17 groups that meet the requirements of this  
18 title.

19           “(C) LIMITATION.—A small employer car-  
20 rier may establish up to 9 separate classes of  
21 business under subparagraph (B), excluding  
22 those classes of business related to association  
23 groups under this title.

24           “(D) LIMITATION ON TRANSFERS.—A  
25 small employer carrier shall not transfer a

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

9 “(b) TRANSITIONAL MODEL SMALL GROUP RATING  
10 RULES.—

11 “(1) IN GENERAL.—Not later than 6 months  
12 after the date of enactment of this title and to the  
13 extent necessary to provide for a graduated transi-  
14 tion to the minimum standards for premium vari-  
15 ation as provided for in subsection (a)(1), the Sec-  
16 retary, in consultation with the National Association  
17 of Insurance Commissioners (NAIC), shall promul-  
18 gate State-specific transitional small group rating  
19 rules in accordance with this subsection, which shall  
20 be applicable with respect to nonadopting States and  
21 eligible insurers operating in such States for a pe-  
22 riod of not to exceed 3 years from the date of the  
23 promulgation of the minimum standards for pre-  
24 mium variation pursuant to subsection (a).

1           “(2) COMPLIANCE WITH TRANSITIONAL MODEL  
2           SMALL GROUP RATING RULES.—During the transi-  
3           tion period described in paragraph (1), a State that,  
4           on the date of enactment of this title, has in effect  
5           a small group rating rules methodology that allows  
6           for a variation that is less than the variation pro-  
7           vided for under subsection (a)(1) (concerning min-  
8           imum standards for premium variation), shall be  
9           deemed to be an adopting State if the State complies  
10          with the transitional small group rating rules as pro-  
11          mulgated by the Secretary pursuant to paragraph  
12          (1).

13           “(3) TRANSITIONING OF OLD BUSINESS.—

14           “(A) IN GENERAL.—In developing the  
15           transitional small group rating rules under  
16           paragraph (1), the Secretary shall, after con-  
17           sultation with the National Association of In-  
18           surance Commissioners and representatives of  
19           insurers operating in the small group health in-  
20           surance market in nonadopting States, promul-  
21           gate special transition standards with respect to  
22           independent rating classes for old and new busi-  
23           ness, to the extent reasonably necessary to pro-  
24           tect health insurance consumers and to ensure

1 a stable and fair transition for old and new  
2 market entrants.

3 “(B) PERIOD FOR OPERATION OF INDE-  
4 PENDENT RATING CLASSES.—In developing the  
5 special transition standards pursuant to sub-  
6 paragraph (A), the Secretary shall permit a  
7 carrier in a nonadopting State, at its option, to  
8 maintain independent rating classes for old and  
9 new business for a period of up to 5 years, with  
10 the commencement of such 5-year period to  
11 begin at such time, but not later than the date  
12 that is 3 years after the date of enactment of  
13 this title, as the carrier offers a book of busi-  
14 ness meeting the minimum standards for pre-  
15 mium variation provided for in subsection  
16 (a)(1) or the transitional small group rating  
17 rules under paragraph (1).

18 “(4) OTHER TRANSITIONAL AUTHORITY.—In  
19 developing the transitional small group rating rules  
20 under paragraph (1), the Secretary shall provide for  
21 the application of the transitional small group rating  
22 rules in transition States as the Secretary may de-  
23 termine necessary for a an effective transition.

24 “(c) MARKET RE-ENTRY.—

1           “(1) IN GENERAL.—Notwithstanding any other  
2           provision of law, a health insurance issuer that has  
3           voluntarily withdrawn from providing coverage in the  
4           small group market prior to the date of enactment  
5           of this title shall not be excluded from re-entering  
6           such market on a date that is more than 180 days  
7           after such date of enactment.

8           “(2) TERMINATION.—The provision of this sub-  
9           section shall terminate on the date that is 24  
10          months after the date of enactment of this title.

11 **“SEC. 3113. APPLICATION AND PREEMPTION.**

12          “(a) SUPERSEDING OF STATE LAW.—

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

23           “(2) NONADOPTING STATES.—This part shall  
24           supersede any and all State laws of a nonadopting  
25           State insofar as such State laws (whether enacted

1 prior to or after the date of enactment of this sub-  
2 title)—

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

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

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 that  
22 offer small group health insurance coverage in a  
23 nonadopting State.

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

1 not supercede any State law in 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 Model Small  
6 Group Rating Rules or transitional model small  
7 group rating rules.

8 “(4) NO EFFECT ON PREEMPTION.—In no case  
9 shall this part be construed to limit or affect in any  
10 manner the preemptive scope of sections 502 and  
11 514 of the Employee Retirement Income Security  
12 Act of 1974. In no case shall this part be construed  
13 to create any cause of action under Federal or State  
14 law or enlarge or affect any remedy available under  
15 the Employee Retirement Income Security Act of  
16 1974.

17 “(5) PREEMPTION LIMITED TO RATING.—Sub-  
18 section (a) shall not preempt any State law that  
19 does not have a reference to or a connection with  
20 State rating rules that would otherwise apply to eli-  
21 gible insurers.

22 “(c) EFFECTIVE DATE.—This section shall apply, at  
23 the election of the eligible insurer, beginning in the first  
24 plan year or the first calendar year following the issuance  
25 of the final rules by the Secretary under the Model Small

1 Group Rating Rules or, as applicable, the Transitional  
2 Model Small Group Rating Rules, but in no event earlier  
3 than the date that is 12 months after the date of enact-  
4 ment of this title.

5 **“SEC. 3114. CIVIL ACTIONS AND JURISDICTION.**

6       “(a) IN GENERAL.—The courts of the United States  
7 shall have exclusive jurisdiction over civil actions involving  
8 the interpretation of this part.

9       “(b) ACTIONS.—An eligible insurer may bring an ac-  
10 tion in the district courts of the United States for injunc-  
11 tive or other equitable relief against any officials or agents  
12 of a nonadopting State in connection with any conduct or  
13 action, or proposed conduct or action, by such officials or  
14 agents which violates, or which would if undertaken vio-  
15 late, section 3113.

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

22       “(d) EXPEDITED REVIEW.—

23               “(1) DISTRICT COURT.—In the case of an ac-  
24 tion brought in a district court of the United States  
25 under subsection (b), such court shall complete such



1 action, including the issuance of a judgment, prior  
2 to the end of the 120-day period beginning on the  
3 date on which such action is filed, unless all parties  
4 to such proceeding agree to an extension of such pe-  
5 riod.

6 “(2) COURT OF APPEALS.—In the case of an  
7 action brought directly in a United States Court of  
8 Appeal under subsection (c), or in the case of an ap-  
9 peal of an action brought in a district court under  
10 subsection (b), such Court shall complete all action  
11 on the petition, including the issuance of a judg-  
12 ment, prior to the end of the 60-day period begin-  
13 ning on the date on which such petition is filed with  
14 the Court, unless all parties to such proceeding  
15 agree to an extension of such period.

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

21 **“SEC. 3115. ONGOING REVIEW.**

22 “Not later than 5 years after the date on which the  
23 Model Small Group Rating Rules are issued under this  
24 part, and every 5 years thereafter, the Secretary, in con-  
25 sultation with the National Association of Insurance Com-

1 missioners, shall prepare and submit to the appropriate  
2 committees of Congress a report that assesses the effect  
3 of the Model Small Group Rating Rules on access, cost,  
4 and market functioning in the small group market. Such  
5 report may, if the Secretary, in consultation with the Na-  
6 tional Association of Insurance Commissioners, deter-  
7 mines such is appropriate for improving access, costs, and  
8 market functioning, contain legislative proposals for rec-  
9 ommended modification to such Model Small Group Rat-  
10 ing Rules.

11 **“PART II—AFFORDABLE PLANS**

12 **“SEC. 3121. DEFINITIONS.**

13 “In this part:

14 “(1) **ADOPTING STATE.**—The term ‘adopting  
15 State’ means a State that has enacted a law pro-  
16 viding that small group, individual, and large group  
17 health insurers in such State may offer and sell  
18 products in accordance with the List of Required  
19 Benefits and the Terms of Application as provided  
20 for in section 3122(b).

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

24 “(A) notifies the Secretary, not later than  
25 30 days prior to the offering of coverage de-

1           scribed in this subparagraph, that the issuer in-  
2           tends to offer health insurance coverage con-  
3           sistent with the List of Required Benefits and  
4           Terms of Application in a nonadopting State;

5           “(B) notifies the insurance department of  
6           a nonadopting State (or other applicable State  
7           agency), not later than 30 days prior to the of-  
8           fering of coverage described in this subpara-  
9           graph, that the issuer intends to offer health in-  
10          surance coverage in that State consistent with  
11          the List of Required Benefits and Terms of Ap-  
12          plication, and provides with such notice a copy  
13          of any insurance policy that it intends to offer  
14          in the State, its most recent annual and quar-  
15          terly financial reports, and any other informa-  
16          tion required to be filed with the insurance de-  
17          partment of the State (or other State agency)  
18          by the Secretary in regulations; and

19          “(C) includes in the terms of the health in-  
20          surance coverage offered in nonadopting States  
21          (including in the terms of any individual certifi-  
22          cates that may be offered to individuals in con-  
23          nection with such group health coverage) and  
24          filed with the State pursuant to subparagraph  
25          (B), a description in the insurer’s contract of

1 the List of Required Benefits and a description  
2 of the Terms of Application, including a de-  
3 scription of the benefits to be provided, and  
4 that adherence to such standards is included as  
5 a term of such contract.

6 “(3) HEALTH INSURANCE COVERAGE.—The  
7 term ‘health insurance coverage’ means any coverage  
8 issued in the small group, individual, or large group  
9 health insurance markets, including with respect to  
10 small business health plans, except that such term  
11 shall not include excepted benefits (as defined in sec-  
12 tion 2791(c)).

13 “(4) LIST OF REQUIRED BENEFITS.—The term  
14 ‘List of Required Benefits’ means the list issued  
15 under section 3122(a).

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

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

23 “(7) STATE PROVIDER FREEDOM OF CHOICE  
24 LAW.—The term ‘State Provider Freedom of Choice  
25 Law’ means a State law requiring that a health in-

1 insurance issuer, with respect to health insurance cov-  
2 erage, not discriminate with respect to participation,  
3 reimbursement, or indemnification as to any pro-  
4 vider who is acting within the scope of the provider’s  
5 license or certification under applicable State law.

6 “(8) TERMS OF APPLICATION.—The term  
7 ‘Terms of Application’ means terms provided under  
8 section 3122(a).

9 **“SEC. 3122. OFFERING AFFORDABLE PLANS.**

10 “(a) LIST OF REQUIRED BENEFITS.—Not later than  
11 3 months after the date of enactment of this title, the Sec-  
12 retary, in consultation with the National Association of In-  
13 surance Commissioners, shall issue by interim final rule  
14 a list (to be known as the ‘List of Required Benefits’) of  
15 covered benefits, services, or categories of providers that  
16 are required to be provided by health insurance issuers,  
17 in each of the small group, individual, and large group  
18 markets, in at least 26 States as a result of the application  
19 of State covered benefit, service, and category of provider  
20 mandate laws. With respect to plans sold to or through  
21 small business health plans, the List of Required Benefits  
22 applicable to the small group market shall apply.

23 “(b) TERMS OF APPLICATION.—

24 “(1) STATE WITH MANDATES.—With respect to  
25 a State that has a covered benefit, service, or cat-

1       egory of provider mandate in effect that is covered  
2       under the List of Required Benefits under sub-  
3       section (a), such State mandate shall, subject to  
4       paragraph (3) (concerning uniform application),  
5       apply to a coverage plan or plan in, as applicable,  
6       the small group, individual, or large group market or  
7       through a small business health plan in such State.

8           “(2) STATES WITHOUT MANDATES.—With re-  
9       spect to a State that does not have a covered ben-  
10      efit, service, or category of provider mandate in ef-  
11      fect that is covered under the List of Required Ben-  
12      efits under subsection (a), such mandate shall not  
13      apply, as applicable, to a coverage plan or plan in  
14      the small group, individual, or large group market or  
15      through a small business health plan in such State.

16           “(3) UNIFORM APPLICATION OF LAWS.—

17           “(A) IN GENERAL.—With respect to a  
18      State described in paragraph (1), in applying a  
19      covered benefit, service, or category of provider  
20      mandate that is on the List of Required Bene-  
21      fits under subsection (a) the State shall permit  
22      a coverage plan or plan offered in the small  
23      group, individual, or large group market or  
24      through a small business health plan in such  
25      State to apply such benefit, service, or category

1 of provider coverage in a manner consistent  
2 with the manner in which such coverage is ap-  
3 plied under one of the three most heavily sub-  
4 scribed national health plans offered under the  
5 Federal Employee Health Benefits Program  
6 under chapter 89 of title 5, United States Code  
7 (as determined by the Secretary in consultation  
8 with the Director of the Office of Personnel  
9 Management), and consistent with the Publica-  
10 tion of Benefit Applications under subsection  
11 (c). In the event a covered benefit, service, or  
12 category of provider appearing in the List of  
13 Required Benefits is not offered in one of the  
14 three most heavily subscribed national health  
15 plans offered under the Federal Employees  
16 Health Benefits Program, such covered benefit,  
17 service, or category of provider requirement  
18 shall be applied in a manner consistent with the  
19 manner in which such coverage is offered in the  
20 remaining most heavily subscribed plan of the  
21 remaining Federal Employees Health Benefits  
22 Program plans, as determined by the Secretary,  
23 in consultation with the Director of the Office  
24 of Personnel Management.

1           “(B) EXCEPTION REGARDING STATE PRO-  
2           VIDER FREEDOM OF CHOICE LAWS.—Notwith-  
3           standing subparagraph (A), in the event a cat-  
4           egory of provider mandate is included in the  
5           List of Covered Benefits, any State Provider  
6           Freedom of Choice Law (as defined in section  
7           3121(7)) that is in effect in any State in which  
8           such category of provider mandate is in effect  
9           shall not be preempted, with respect to that cat-  
10          egory of provider, by this part.

11          “(c) PUBLICATION OF BENEFIT APPLICATIONS.—  
12          Not later than 3 months after the date of enactment of  
13          this title, and on the first day of every calendar year there-  
14          after, the Secretary, in consultation with the Director of  
15          the Office of Personnel Management, shall publish in the  
16          Federal Register a description of such covered benefits,  
17          services, and categories of providers covered in that cal-  
18          endar year by each of the three most heavily subscribed  
19          nationally available Federal Employee Health Benefits  
20          Plan options which are also included on the List of Re-  
21          quired Benefits.

22          “(d) EFFECTIVE DATES.—

23                 “(1) SMALL BUSINESS HEALTH PLANS.—With  
24                 respect to health insurance provided to participating  
25                 employers of small business health plans, the re-



1        requirements of this part (concerning lower cost plans)  
2        shall apply beginning on the date that is 12 months  
3        after the date of enactment of this title.

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

10        “(e) UPDATING OF LIST OF REQUIRED BENEFITS.—  
11        Not later than 2 years after the date on which the List  
12        of Required Benefits is issued under subsection (a), and  
13        every 2 years thereafter, the Secretary, in consultation  
14        with the National Association of Insurance Commis-  
15        sioners, shall update the list based on changes in the laws  
16        and regulations of the States. The Secretary shall issue  
17        the updated list by regulation, and such updated list shall  
18        be effective upon the first plan year following the issuance  
19        of such regulation.

20        **“SEC. 3123. APPLICATION AND PREEMPTION.**

21        “(a) SUPERCEDING OF STATE LAW.—

22            “(1) IN GENERAL.—This part shall supersede  
23        any and all State laws insofar as such laws relate to  
24        mandates relating to covered benefits, services, or  
25        categories of provider in the health insurance market

1 as applied to an eligible insurer, or health insurance  
2 coverage issued by an eligible insurer, including with  
3 respect to coverage issued to a small business health  
4 plan, in a nonadopting State.

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

9 “(A) prohibit an eligible insurer from of-  
10 fering, marketing, or implementing health in-  
11 surance coverage consistent with the Benefit  
12 Choice Standards, as provided for in section  
13 3122(a); or

14 “(B) have the effect of retaliating against  
15 or otherwise punishing in any respect an eligible  
16 insurer for offering, marketing, or imple-  
17 menting health insurance coverage consistent  
18 with the Benefit Choice Standards.

19 “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

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

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

1 offer health insurance coverage in a nonadopting  
2 State.

3 “(3) NONAPPLICATION WHERE OBTAINING RE-  
4 LIEF UNDER STATE LAW.—Subsection (a)(1) shall  
5 not supercede any State law of a nonadopting State  
6 to the extent necessary to permit individuals or the  
7 insurance department of the State (or other State  
8 agency) to obtain relief under State law to require  
9 an eligible insurer to comply with the Benefit Choice  
10 Standards.

11 “(4) NO EFFECT ON PREEMPTION.—In no case  
12 shall this part be construed to limit or affect in any  
13 manner the preemptive scope of sections 502 and  
14 514 of the Employee Retirement Income Security  
15 Act of 1974. In no case shall this part be construed  
16 to create any cause of action under Federal or State  
17 law or enlarge or affect any remedy available under  
18 the Employee Retirement Income Security Act of  
19 1974.

20 “(5) PREEMPTION LIMITED TO BENEFITS.—  
21 Subsection (a) shall not preempt any State law that  
22 does not have a reference to or a connection with  
23 State mandates regarding covered benefits, services,  
24 or categories of providers that would otherwise apply  
25 to eligible insurers.

1 **“SEC. 3124. CIVIL ACTIONS AND JURISDICTION.**

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

5       “(b) ACTIONS.—An eligible insurer may bring an ac-  
6 tion in the district courts of the United States for injunc-  
7 tive or other equitable relief against any officials or agents  
8 of a nonadopting State in connection with any conduct or  
9 action, or proposed conduct or action, by such officials or  
10 agents which violates, or which would if undertaken vio-  
11 late, section 3123.

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

18       “(d) EXPEDITED REVIEW.—

19               “(1) DISTRICT COURT.—In the case of an ac-  
20 tion brought in a district court of the United States  
21 under subsection (b), such court shall complete such  
22 action, including the issuance of a judgment, prior  
23 to the end of the 120-day period beginning on the  
24 date on which such action is filed, unless all parties  
25 to such proceeding agree to an extension of such pe-  
26 riod.

1           “(2) COURT OF APPEALS.—In the case of an  
2           action brought directly in a United States Court of  
3           Appeal under subsection (c), or in the case of an ap-  
4           peal of an action brought in a district court under  
5           subsection (b), such Court shall complete all action  
6           on the petition, including the issuance of a judg-  
7           ment, prior to the end of the 60-day period begin-  
8           ning on the date on which such petition is filed with  
9           the Court, unless all parties to such proceeding  
10          agree to an extension of such period.

11          “(e) STANDARD OF REVIEW.—A court in an action  
12          filed under this section, shall render a judgment based on  
13          a review of the merits of all questions presented in such  
14          action and shall not defer to any conduct or action, or  
15          proposed conduct or action, of a nonadopting State.

16          **“SEC. 3125. RULES OF CONSTRUCTION.**

17          “(a) IN GENERAL.—Notwithstanding any other pro-  
18          vision of Federal or State law, a health insurance issuer  
19          in an adopting State or an eligible insurer in a non-  
20          adopting State may amend its existing policies to be con-  
21          sistent with the terms of this subtitle (concerning rating  
22          and benefits).

23          “(b) HEALTH SAVINGS ACCOUNTS.—Nothing in this  
24          subtitle shall be construed to create any mandates for cov-  
25          erage of benefits for HSA-qualified health plans that

1 would require reimbursements in violation of section  
 2 223(c)(2) of the Internal Revenue Code of 1986.”.

3           **Subtitle C—Harmonization of**  
 4           **Health Insurance Standards**

5 **SEC. 221. HEALTH INSURANCE STANDARDS HARMONI-**  
 6           **ZATION.**

7           Title XXXI of the Public Health Service Act (as  
 8 added by section 211) is amended by adding at the end  
 9 the following:

10                   **“Subtitle B—Standards**  
 11                   **Harmonization**

12 **“SEC. 3131. DEFINITIONS.**

13           “In this subtitle:

14                   “(1) **ADOPTING STATE.**—The term ‘adopting  
 15 State’ means a State that has enacted the har-  
 16 monized standards adopted under this subtitle in  
 17 their entirety and as the exclusive laws of the State  
 18 that relate to the harmonized standards.

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

22                           “(A) notifies the Secretary, not later than  
 23                           30 days prior to the offering of coverage de-  
 24                           scribed in this subparagraph, that the issuer in-  
 25                           tends to offer health insurance coverage con-

1           sistent with the harmonized standards in a non-  
2           adopting State;

3           “(B) notifies the insurance department of  
4           a nonadopting State (or other State agency),  
5           not later than 30 days prior to the offering of  
6           coverage described in this subparagraph, that  
7           the issuer intends to offer health insurance cov-  
8           erage in that State consistent with the har-  
9           monized standards published pursuant to sec-  
10          tion 3133(d), and provides with such notice a  
11          copy of any insurance policy that it intends to  
12          offer in the State, its most recent annual and  
13          quarterly financial reports, and any other infor-  
14          mation required to be filed with the insurance  
15          department of the State (or other State agency)  
16          by the Secretary in regulations; and

17          “(C) includes in the terms of the health in-  
18          surance coverage offered in nonadopting States  
19          (including in the terms of any individual certifi-  
20          cates that may be offered to individuals in con-  
21          nection with such health coverage) and filed  
22          with the State pursuant to subparagraph (B), a  
23          description of the harmonized standards pub-  
24          lished pursuant to section 3133(g)(2) and an

1           affirmation that such standards are a term of  
2           the contract.

3           “(3) HARMONIZED STANDARDS.—The term  
4           ‘harmonized standards’ means the standards cer-  
5           tified by the Secretary under section 3133(d).

6           “(4) HEALTH INSURANCE COVERAGE.—The  
7           term ‘health insurance coverage’ means any coverage  
8           issued in the health insurance market, except that  
9           such term shall not include excepted benefits (as de-  
10          fined in section 2791(c).

11          “(5) NONADOPTING STATE.—The term ‘non-  
12          adopting State’ means a State that fails to enact,  
13          within 18 months of the date on which the Secretary  
14          certifies the harmonized standards under this sub-  
15          title, the harmonized standards in their entirety and  
16          as the exclusive laws of the State that relate to the  
17          harmonized standards.

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

22   **“SEC. 3132. HARMONIZED STANDARDS.**

23          “(a) BOARD.—

24                  “(1) ESTABLISHMENT.—Not later than 3  
25                  months after the date of enactment of this title, the



1 Secretary, in consultation with the NAIC, shall es-  
2 tablish the Health Insurance Consensus Standards  
3 Board (referred to in this subtitle as the ‘Board’) to  
4 develop recommendations that harmonize incon-  
5 sistent State health insurance laws in accordance  
6 with the procedures described in subsection (b).

7 “(2) COMPOSITION.—

8 “(A) IN GENERAL.—The Board shall be  
9 composed of the following voting members to be  
10 appointed by the Secretary after considering the  
11 recommendations of professional organizations  
12 representing the entities and constituencies de-  
13 scribed in this paragraph:

14 “(i) Four State insurance commis-  
15 sioners as recommended by the National  
16 Association of Insurance Commissioners, of  
17 which two shall be Democrats and two  
18 shall be Republicans, and of which one  
19 shall be designated as the chairperson and  
20 one shall be designated as the vice chair-  
21 person.

22 “(ii) Four representatives of State  
23 government, two of which shall be gov-  
24 ernors of States and two of which shall be  
25 State legislators, and two of which shall be

1 Democrats and two of which shall be Re-  
2 publicans.

3 “(iii) Four representatives of health  
4 insurers, of which one shall represent in-  
5 surers that offer coverage in the small  
6 group market, one shall represent insurers  
7 that offer coverage in the large group mar-  
8 ket, one shall represent insurers that offer  
9 coverage in the individual market, and one  
10 shall represent carriers operating in a re-  
11 gional market.

12 “(iv) Two representatives of insurance  
13 agents and brokers.

14 “(v) Two independent representatives  
15 of the American Academy of Actuaries who  
16 have familiarity with the actuarial methods  
17 applicable to health insurance.

18 “(B) EX OFFICIO MEMBER.—A representa-  
19 tive of the Secretary shall serve as an ex officio  
20 member of the Board.

21 “(3) ADVISORY PANEL.—The Secretary shall  
22 establish an advisory panel to provide advice to the  
23 Board, and shall appoint its members after consid-  
24 ering the recommendations of professional organiza-

1 tions representing the entities and constituencies  
2 identified in this paragraph:

3 “(A) Two representatives of small business  
4 health plans.

5 “(B) Two representatives of employers, of  
6 which one shall represent small employers and  
7 one shall represent large employers.

8 “(C) Two representatives of consumer or-  
9 ganizations.

10 “(D) Two representatives of health care  
11 providers.

12 “(4) QUALIFICATIONS.—The membership of the  
13 Board shall include individuals with national rec-  
14 ognition for their expertise in health finance and ec-  
15 onomics, actuarial science, health plans, providers of  
16 health services, and other related fields, who provide  
17 a mix of different professionals, broad geographic  
18 representation, and a balance between urban and  
19 rural representatives.

20 “(5) ETHICAL DISCLOSURE.—The Secretary  
21 shall establish a system for public disclosure by  
22 members of the Board of financial and other poten-  
23 tial conflicts of interest relating to such members.  
24 Members of the Board shall be treated as employees  
25 of Congress for purposes of applying title I of the

1 Ethics in Government Act of 1978 (Public Law 95–  
2 521).

3 “(6) DIRECTOR AND STAFF.—Subject to such  
4 review as the Secretary deems necessary to assure  
5 the efficient administration of the Board, the chair  
6 and vice-chair of the Board may—

7 “(A) employ and fix the compensation of  
8 an Executive Director (subject to the approval  
9 of the Comptroller General) and such other per-  
10 sonnel as may be necessary to carry out its du-  
11 ties (without regard to the provisions of title 5,  
12 United States Code, governing appointments in  
13 the competitive service);

14 “(B) seek such assistance and support as  
15 may be required in the performance of its du-  
16 ties from appropriate Federal departments and  
17 agencies;

18 “(C) enter into contracts or make other ar-  
19 rangements, as may be necessary for the con-  
20 duct of the work of the Board (without regard  
21 to section 3709 of the Revised Statutes (41  
22 U.S.C. 5));

23 “(D) make advance, progress, and other  
24 payments which relate to the work of the  
25 Board;

1           “(E) provide transportation and subsist-  
2           ence for persons serving without compensation;  
3           and

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

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

12          “(b) DEVELOPMENT OF HARMONIZED STAND-  
13          ARDS.—

14                 “(1) IN GENERAL.—In accordance with the  
15                 process described in subsection (c), the Board shall  
16                 identify and recommend nationally harmonized  
17                 standards for each of the following process cat-  
18                 egories:

19                         “(A) FORM FILING AND RATE FILING.—  
20                         Form and rate filing standards shall be estab-  
21                         lished which promote speed to market and in-  
22                         clude the following defined areas for States that  
23                         require such filings:

1           “(i) Procedures for form and rate fil-  
2           ing pursuant to a streamlined administra-  
3           tive filing process.

4           “(ii) Timeframes for filings to be re-  
5           viewed by a State if review is required be-  
6           fore they are deemed approved.

7           “(iii) Timeframes for an eligible in-  
8           surer to respond to State requests fol-  
9           lowing its review.

10          “(iv) A process for an eligible insurer  
11          to self-certify.

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

17          “(vi) Procedures for the resubmission  
18          of forms and rates.

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

24          “(viii) For States that may require a  
25          hearing, a rationale for hearings based on

1 violations of non-preempted State law or  
2 insurer requests.

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

6 “(i) Mandatory participation in na-  
7 tional databases.

8 “(ii) The confidentiality of examina-  
9 tion materials.

10 “(iii) The identification of the State  
11 agency with primary responsibility for ex-  
12 aminations.

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

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

19 “(vi) Examinations that seek to cor-  
20 rect material errors and harmful business  
21 practices rather than infrequent errors.

22 “(vii) Transparency and publishing of  
23 the State’s examination standards.

24 “(viii) Coordination of market conduct  
25 analysis.

1                   “(ix) Coordination and nonduplication  
2                   between State examinations of the same el-  
3                   igible insurer.

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

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

9                   “(xii) Consideration of methods to  
10                  limit examiners’ fees such as caps, com-  
11                  petitive 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 stand-  
17                  ards for eligible insurers based on standards  
18                  similar to those applicable to the Social Secu-  
19                  rity Act as set forth in section 1842(c)(2) of  
20                  such Act (42 U.S.C. 1395u(c)(2)). Such prompt  
21                  payment standards shall be consistent with the  
22                  timing and notice requirements of the claims  
23                  procedure rules to be specified under subpara-  
24                  graph (D), and shall include appropriate excep-



1           tions such as for fraud, nonpayment of pre-  
2           miums, or late submission of claims.

3           “(D) INTERNAL REVIEW.—The Board  
4           shall establish standards for claims procedures  
5           for eligible insurers that are consistent with the  
6           requirements relating to initial claims for bene-  
7           fits and appeals of claims for benefits under the  
8           Employee Retirement Income Security Act of  
9           1974 as set forth in section 503 of such Act  
10          (29 U.S.C. 1133) and the regulations there-  
11          under.

12          “(2) RECOMMENDATIONS.—The Board shall  
13          recommend harmonized standards for each element  
14          of the categories described in subparagraph (A)  
15          through (D) of paragraph (1) within each such mar-  
16          ket. Notwithstanding the previous sentence, the  
17          Board shall not recommend any harmonized stand-  
18          ards that disrupt, expand, or duplicate the benefit,  
19          service, or provider mandate standards provided in  
20          the Benefit Choice Standards pursuant to section  
21          3122(a).

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

24          “(1) IN GENERAL.—The Board shall develop  
25          recommendations to harmonize inconsistent State in-

1       surance laws with respect to each of the process cat-  
2       egories described in subparagraphs (A) through (D)  
3       of subsection (b)(1).

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

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

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

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

21              “(D) In the case of the adoption of any  
22      standard that differs substantially from those  
23      referred to in subparagraphs (A), (B), or (C),  
24      the Board shall provide evidence to the Sec-  
25      retary that such standard is necessary to pro-

1 tect health insurance consumers or promote  
2 speed to market or administrative efficiency.

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

5 “(d) RECOMMENDATIONS AND CERTIFICATION BY  
6 SECRETARY.—

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

13 “(2) CERTIFICATION.—

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

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

1           “(i) ensure that the certified stand-  
2           ards for a particular process area achieve  
3           regulatory harmonization with respect to  
4           health plans on a national basis;

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

11          “(iii) ensure that the approved stand-  
12          ards will not limit the range of group  
13          health plan designs and insurance prod-  
14          ucts, such as catastrophic coverage only  
15          plans, health savings accounts, and health  
16          maintenance organizations, that might oth-  
17          erwise be available to consumers.

18          “(3) APPLICATION AND EFFECTIVE DATE.—  
19          The standards certified by the Secretary under para-  
20          graph (2) shall apply and become effective on the  
21          date that is 18 months after the date on which the  
22          Secretary certifies the harmonized standards.

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

1       “(f) ONGOING REVIEW.—Not earlier than 3 years  
2 after the termination of the Board under subsection (e),  
3 and not earlier than every 3 years thereafter, the Sec-  
4 retary, in consultation with the National Association of In-  
5 surance Commissioners and the entities and constituencies  
6 represented on the Board and the Advisory Panel, shall  
7 prepare and submit to the appropriate committees of Con-  
8 gress a report that assesses the effect of the harmonized  
9 standards applied under this section on access, cost, and  
10 health insurance market functioning. The Secretary may,  
11 based on such report and applying the process established  
12 for certification under subsection (d)(2)(B), in consulta-  
13 tion with the National Association of Insurance Commis-  
14 sioners and the entities and constituencies represented on  
15 the Board and the Advisory Panel, update the harmonized  
16 standards through notice and comment rulemaking.

17       “(g) PUBLICATION.—

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

22               “(2) SAMPLE CONTRACT LANGUAGE.—The Sec-  
23 retary shall publish on the Internet website of the  
24 Department of Health and Human Services sample  
25 contract language that incorporates the harmonized

1 standards certified under this section, which may be  
2 used by insurers seeking to qualify as an eligible in-  
3 surer. The types of harmonized standards that shall  
4 be included in sample contract language are the  
5 standards that are relevant to the contractual bar-  
6 gain between the insurer and insured.

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

13 **“SEC. 3133. APPLICATION AND PREEMPTION.**

14 “(a) SUPERCEDING OF STATE LAW.—

15 “(1) IN GENERAL.—The harmonized standards  
16 certified under this subtitle and applied as provided  
17 for in section 3133(d)(3), shall supersede any and  
18 all State laws of a nonadopting State insofar as such  
19 State laws relate to the areas of harmonized stand-  
20 ards as applied to an eligible insurer, or health in-  
21 surance coverage issued by a eligible insurer, includ-  
22 ing with respect to coverage issued to a small busi-  
23 ness health plan, in a nonadopting State.

24 “(2) NONADOPTING STATES.—This subtitle  
25 shall supersede any and all State laws of a non-

1 adopting State (whether enacted prior to or after the  
2 date of enactment of this title) insofar as they  
3 may—

4 “(A) prohibit an eligible insurer from of-  
5 fering, marketing, or implementing health in-  
6 surance coverage consistent with the har-  
7 monized standards; or

8 “(B) have the effect of retaliating against  
9 or otherwise punishing in any respect an eligible  
10 insurer for offering, marketing, or imple-  
11 menting health insurance coverage consistent  
12 with the harmonized standards under this sub-  
13 title.

14 “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

15 “(1) NONAPPLICATION TO ADOPTING STATES.—

16 Subsection (a) shall not apply with respect to adopt-  
17 ing States.

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

23 “(3) NONAPPLICATION WHERE OBTAINING RE-  
24 LIEF UNDER STATE LAW.—Subsection (a)(1) shall  
25 not supercede any State law of a nonadopting State

1 to the extent necessary to permit individuals or the  
2 insurance department of the State (or other State  
3 agency) to obtain relief under State law to require  
4 an eligible insurer to comply with the harmonized  
5 standards under this subtitle.

6 “(4) NO EFFECT ON PREEMPTION.—In no case  
7 shall this subtitle be construed to limit or affect in  
8 any manner the preemptive scope of sections 502  
9 and 514 of the Employee Retirement Income Secu-  
10 rity Act of 1974. In no case shall this subtitle be  
11 construed to create any cause of action under Fed-  
12 eral or State law or enlarge or affect any remedy  
13 available under the Employee Retirement Income  
14 Security Act of 1974.

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

19 **“SEC. 3134. CIVIL ACTIONS AND JURISDICTION.**

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

23 “(b) ACTIONS.—An eligible insurer may bring an ac-  
24 tion in the district courts of the United States for injunc-  
25 tive or other equitable relief against any officials or agents



1 of a nonadopting State in connection with any conduct or  
2 action, or proposed conduct or action, by such officials or  
3 agents which violates, or which would if undertaken vio-  
4 late, section 3133.

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

11 “(d) EXPEDITED REVIEW.—

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

20 “(2) COURT OF APPEALS.—In the case of an  
21 action brought directly in a United States Court of  
22 Appeal under subsection (c), or in the case of an ap-  
23 peal of an action brought in a district court under  
24 subsection (b), such Court shall complete all action  
25 on the petition, including the issuance of a judg-

1       ment, prior to the end of the 60-day period begin-  
 2       ning on the date on which such petition is filed with  
 3       the Court, unless all parties to such proceeding  
 4       agree to an extension of such period.

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

10       **“SEC. 3135. AUTHORIZATION OF APPROPRIATIONS; RULE**  
 11   **OF CONSTRUCTION.**

12       “(a) AUTHORIZATION OF APPROPRIATIONS.—There  
 13       are authorized to be appropriated such sums as may be  
 14       necessary to carry out this subtitle.

15       “(b) HEALTH SAVINGS ACCOUNTS.—Nothing in this  
 16       subtitle shall be construed to create any mandates for cov-  
 17       erage of any benefits below the deductible levels set for  
 18       any health savings account-qualified health plan pursuant  
 19       to section 223 of the Internal Revenue Code of 1986.”.

20                                   **TITLE III—TAX-RELATED**  
 21                                   **HEALTH INCENTIVES**

22       **SEC. 301. SECA TAX DEDUCTION FOR HEALTH INSURANCE**  
 23                                   **COSTS.**

24       (a) IN GENERAL.—Subsection (l) of section 162 of  
 25       the Internal Revenue Code of 1986 (relating to special

1 rules for health insurance costs of self-employed individ-  
2 uals) is amended by striking paragraph (4) and by redes-  
3 ignating paragraph (5) as paragraph (4).

4 (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall apply to taxable years beginning after  
6 December 31, 2009.

7 **SEC. 302. DEDUCTION FOR QUALIFIED HEALTH INSURANCE**  
8 **COSTS OF INDIVIDUALS.**

9 (a) IN GENERAL.—Part VII of subchapter B of chap-  
10 ter 1 of the Internal Revenue Code of 1986 (relating to  
11 additional itemized deductions for individuals) is amended  
12 by redesignating section 224 as section 225 and by insert-  
13 ing after section 223 the following new section:

14 **“SEC. 224. COSTS OF QUALIFIED HEALTH INSURANCE.**

15 “(a) IN GENERAL.—In the case of an individual,  
16 there shall be allowed as a deduction an amount equal to  
17 the amount paid during the taxable year for coverage for  
18 the taxpayer, his spouse, and dependents under qualified  
19 health insurance.

20 “(b) QUALIFIED HEALTH INSURANCE.—For pur-  
21 poses of this section, the term ‘qualified health insurance’  
22 means insurance which constitutes medical care, other  
23 than insurance substantially all of the coverage of which  
24 is of excepted benefits described in section 9832(c).

25 “(c) SPECIAL RULES.—

1           “(1) COORDINATION WITH MEDICAL DEDUC-  
2           TION, ETC.—Any amount paid by a taxpayer for in-  
3           surance to which subsection (a) applies shall not be  
4           taken into account in computing the amount allow-  
5           able to the taxpayer as a deduction under section  
6           162(l) or 213(a). Any amount taken into account in  
7           determining the credit allowed under section 35 shall  
8           not be taken into account for purposes of this sec-  
9           tion.

10           “(2) DEDUCTION NOT ALLOWED FOR SELF-EM-  
11           PLOYMENT TAX PURPOSES.—The deduction allow-  
12           able by reason of this section shall not be taken into  
13           account in determining an individual’s net earnings  
14           from self-employment (within the meaning of section  
15           1402(a)) for purposes of chapter 2.”.

16           (b) DEDUCTION ALLOWED IN COMPUTING AD-  
17           JUSTED GROSS INCOME.—Subsection (a) of section 62 of  
18           such Code is amended by inserting before the last sentence  
19           the following new paragraph:

20           “(22) COSTS OF QUALIFIED HEALTH INSUR-  
21           ANCE.—The deduction allowed by section 224.”.

22           (c) CLERICAL AMENDMENT.—The table of sections  
23           for part VII of subchapter B of chapter 1 of such Code  
24           is amended by redesignating the item relating to section

1 224 as an item relating to section 225 and inserting before  
2 such item the following new item:

“Sec. 224. Costs of qualified health insurance.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 December 31, 2009.

6 **TITLE IV—INCREASING ACCESS**  
7 **TO VA HEALTH CARE**

8 **SEC. 401. REQUIREMENT FOR PAYMENTS TO FACILITIES**  
9 **OTHER THAN THE DEPARTMENT OF VET-**  
10 **ERANS AFFAIRS FOR COVERED HEALTH**  
11 **SERVICES.**

12 (a) **REQUIREMENT TO AUTHORIZE RECEIPT OF COV-**  
13 **ERED HEALTH SERVICES AT NON-DEPARTMENT FACILI-**  
14 **TIES PURSUANT TO CONTRACTS WITH SUCH FACILI-**  
15 **TIES.**—Subsection (a) of section 1703 of title 38, United  
16 States Code, is amended to read as follows:

17 “(a) An enrolled veteran may elect to receive covered  
18 health services through a non-Department facility. Such  
19 an election shall be made by submission to the Secretary  
20 of an application in accordance with such regulations as  
21 the Secretary prescribes. The Secretary shall authorize  
22 such services to be furnished to such veteran pursuant to  
23 contracting with such a facility to furnish such services  
24 to such a veteran, as authorized in section 1710 of this  
25 title.”.

1 (b) DESCRIPTIONS OF COVERED HEALTH SERVICES  
2 AND ENROLLED VETERANS.—Such section is further  
3 amended by adding at the end the following new sub-  
4 section:

5 “(e) For purposes of subsection (a)—

6 “(1) a covered health service is any hospital  
7 care, medical service, rehabilitative service, or pre-  
8 ventative health service for which the veteran de-  
9 scribed in such subsection is eligible under this title;  
10 and

11 “(2) an enrolled veteran is a veteran who is en-  
12 rolled in the system of patient enrollment established  
13 under section 1705(a) of this title.”.

14 (c) EFFECTIVE DATE.—The Secretary of Veterans  
15 Affairs shall implement the amendments made by sub-  
16 sections (a) and (b) in order for enrolled veterans de-  
17 scribed in section 1703(e)(2) of title 38, United States  
18 Code, as added by subsection (b), to receive covered health  
19 services in accordance with section 1703(a) of such title,  
20 as amended by subsection (a), not later than 180 days  
21 after the date of the enactment of this Act.

1 **SEC. 402. AUTHORITY OF DEPARTMENT OF VETERANS AF-**  
 2 **FAIRS PHARMACIES TO DISPENSE MEDICA-**  
 3 **TIONS TO VETERANS ON PRESCRIPTIONS**  
 4 **WRITTEN BY PRIVATE PRACTITIONERS.**

5 Section 1712 of title 38, United States Code, is  
 6 amended by adding at the end the following new sub-  
 7 section:

8 “(f) Subject to section 1722A of this title, the Sec-  
 9 retary shall furnish to a veteran, through a Department  
 10 health care facility, such drugs and medicines as may be  
 11 ordered on prescription of a duly licensed physician in the  
 12 treatment of any illness or injury of the veteran provided  
 13 pursuant to the authority to contract with a non-Depart-  
 14 ment facility for such treatment under section 1703 of this  
 15 title.”.

16 **TITLE V—NURSING SHORTAGE**

17 **SEC. 501. CHILD CARE ASSISTANCE FOR INDIVIDUALS PUR-**  
 18 **SUING ADVANCED NURSING DEGREES.**

19 Part E of title VIII of the Public Health Service Act  
 20 (42 U.S.C. 297a et seq.) is amended—

21 (1) by redesignating section 810 (relating to a  
 22 prohibition against discrimination by schools) as sec-  
 23 tion 846B; and

24 (2) by adding at the end the following:

1 **“SEC. 846C. CHILD CARE ASSISTANCE FOR INDIVIDUALS**  
2 **PURSUING ADVANCED NURSING DEGREES.**

3 “(a) IN GENERAL.—The Secretary may carry out a  
4 program of entering into contracts with eligible individuals  
5 under which—

6 “(1) the Secretary agrees to provide child care  
7 vouchers to the eligible individual for each month  
8 during which the individual is a student in an ad-  
9 vanced nursing degree program; and

10 “(2) the eligible individual agrees to serve, at  
11 the completion of such program, as a faculty mem-  
12 ber at a school of nursing for a period of 4 years.

13 “(b) VOUCHERS.—Vouchers provided to an eligible  
14 individual under this section—

15 “(1) shall be for child care expenses; and

16 “(2) shall be for not more than \$500 per  
17 month.

18 “(c) DEFINITION.—In this section, the term ‘eligible  
19 individual’ means an individual who is enrolled or accepted  
20 for enrollment as a full-time student in an advanced nurs-  
21 ing degree program.

22 “(d) AUTHORIZATION OF APPROPRIATIONS.—To  
23 carry out this section, there are authorized to be appro-  
24 priated such sums as may be necessary for each of fiscal  
25 years 2010 through 2014.”.



1 **SEC. 502. NURSE FACULTY PROGRAM.**

2 Title VII of the Higher Education Act of 1965 (20  
3 U.S.C. 1133 et seq.) is amended by adding at the end  
4 the following new part:

5 **“PART E—NURSE FACULTY PROJECT**

6 **“SEC. 771. PURPOSES.**

7 “The purposes of this part are to create a program—

8 “(1) to provide scholarships to qualified nurses  
9 in pursuit of an advanced degree with the goal of be-  
10 coming faculty members in an accredited nursing  
11 program; and

12 “(2) to provide grants to partnerships between  
13 accredited schools of nursing and hospitals or health  
14 facilities to fund release time for qualified nurse em-  
15 ployees, so that those employees can earn a salary  
16 while obtaining an advanced degree in nursing with  
17 the goal of becoming nurse faculty.

18 **“SEC. 772. ASSISTANCE AUTHORIZED.**

19 “(a) COMPETITIVE GRANTS AUTHORIZED.—The Sec-  
20 retary may, on a competitive basis, award grants to, and  
21 enter into contracts and cooperative agreements with,  
22 partnerships composed of an accredited school of nursing  
23 at an institution of higher education and a hospital or  
24 health facility to establish projects to enable such hospital  
25 or health facility to retain its staff of experienced nurses  
26 while providing a mechanism to have these individuals be-

1 come, through an accelerated nursing education program,  
2 faculty members of an accredited school of nursing.

3 “(b) DURATION; EVALUATION AND DISSEMINA-  
4 TION.—

5 “(1) DURATION.—Grants under this part shall  
6 be awarded for a period of 3 to 5 years.

7 “(2) MANDATORY EVALUATION AND DISSEMI-  
8 NATION.—Grants under this part shall be primarily  
9 used for evaluation, and dissemination to other insti-  
10 tutions of higher education, of the information ob-  
11 tained through the activities described in section  
12 771(2).

13 “(c) CONSIDERATIONS IN MAKING AWARDS.—In  
14 awarding grants and entering into contracts and coopera-  
15 tive agreements under this section, the Secretary shall  
16 consider the following:

17 “(1) GEOGRAPHIC DISTRIBUTION.—Providing  
18 an equitable geographic distribution of such grants.

19 “(2) RURAL AND URBAN AREAS.—Distributing  
20 such grants to urban and rural areas.

21 “(3) RANGE AND TYPE OF INSTITUTION.—En-  
22 suring that the activities to be assisted are developed  
23 for a range of types and sizes of institutions of high-  
24 er education.

1           “(4) PRIOR EXPERIENCE OR EXCEPTIONAL  
2 PROGRAMS.—Institutions of higher education with  
3 demonstrated prior experience in providing advanced  
4 nursing education programs to prepare nurses inter-  
5 ested in pursuing a faculty role.

6           “(d) USES OF FUNDS.—Funds made available by  
7 grant, contract, or cooperative agreement under this part  
8 may be used—

9           “(1) to develop a new national demonstration  
10 initiative to align nursing education with the emerg-  
11 ing challenges of health care delivery; and

12           “(2) for any one or more of the following inno-  
13 vations in educational programs:

14           “(A) to develop a clinical simulation lab-  
15 oratory in a hospital, health facility, or accred-  
16 ited school of nursing;

17           “(B) to purchase distance learning tech-  
18 nologies;

19           “(C) to fund release time for qualified  
20 nurses enrolled in the graduate nursing pro-  
21 gram;

22           “(D) to provide for faculty salaries; and

23           “(E) to collect and analyze data on edu-  
24 cational outcomes.

1 **“SEC. 773. APPLICATIONS.**

2       “Each partnership desiring to receive a grant, con-  
3 tract, or cooperative agreement under this part shall sub-  
4 mit an application to the Secretary at such time, in such  
5 manner, and accompanied by such information as the Sec-  
6 retary may require. Each application shall include assur-  
7 ances that—

8           “(1) the individuals enrolled in the program will  
9 be qualified nurses in pursuit of a master’s or doc-  
10 toral degree in nursing and have a contractual obli-  
11 gation with the hospital or health facility that is in  
12 partnership with the institution of higher education;

13           “(2) the hospital or health facility of employ-  
14 ment would be the clinical site for the accredited  
15 school of nursing program;

16           “(3) individuals will also maintain their employ-  
17 ment on a part-time basis to the hospital or health  
18 facility that allowed them to participate in the pro-  
19 gram, and will receive an income from the hospital  
20 or health facility, as a part-time employee, and re-  
21 lease times or flexible schedules to accommodate  
22 their class schedule; and

23           “(4) upon completion of the program, individ-  
24 uals agree to teach for 2 years in an accredited  
25 school of nursing for each year of support the indi-  
26 vidual received under this program.

1 **“SEC. 774. AUTHORIZATION OF APPROPRIATIONS.**

2 “There are authorized to be appropriated for this  
3 part not more than \$10,000,000 for fiscal year 2009 and  
4 such sums as may be necessary for each of the 4 suc-  
5 ceeding fiscal years.

6 **“SEC. 775. DEFINITION.**

7 “For purposes of this part, the term ‘health facility’  
8 means an Indian Health Service health service center, a  
9 Native Hawaiian health center, a hospital, a federally  
10 qualified health center, a rural health clinic, a nursing  
11 home, a home health agency, a hospice program, a public  
12 health clinic, a State or local department of public health,  
13 a skilled nursing facility, or ambulatory surgical center.”.

14 **SEC. 503. NURSE FACULTY LOAN REPAYMENT PROGRAM.**

15 Part E of title VIII of the Public Health Service Act  
16 (42 U.S.C. 297a et seq.) is amended by inserting after  
17 section 846C, as added by section 501, the following new  
18 section:

19 **“SEC. 846D. NURSE FACULTY LOAN REPAYMENT PROGRAM.**

20 “(a) ESTABLISHMENT.—The Secretary, acting  
21 through the Administrator of the Health Resources and  
22 Services Administration, may enter into an agreement  
23 with eligible individuals for the repayment of education  
24 loans, in accordance with this section, to increase the num-  
25 ber of qualified nursing faculty.

1       “(b) AGREEMENTS.—Each agreement entered into  
2 under subsection (a) shall require that the eligible indi-  
3 vidual shall serve as a full-time member of the faculty of  
4 an accredited school of nursing for a total period, in the  
5 aggregate, of at least four years during the six-year period  
6 beginning on the later of—

7               “(1) the date on which the individual receives  
8 a master’s or doctorate nursing degree from an ac-  
9 credited school of nursing; or

10              “(2) the date on which the individual enters  
11 into an agreement under subsection (a).

12       “(c) AGREEMENT PROVISIONS.—Agreements entered  
13 into pursuant to subsection (a) shall be entered into on  
14 such terms and conditions as the Secretary may deter-  
15 mine, except that—

16              “(1) not more than ten months after the date  
17 on which the six-year period described under sub-  
18 section (b) begins, but in no case before the indi-  
19 vidual starts as a full-time member of the faculty of  
20 an accredited school of nursing, the Secretary shall  
21 begin making payments, for and on behalf of that  
22 individual, on the outstanding principal of, and in-  
23 terest on, any loan of that individual obtained to pay  
24 for such degree;

1           “(2) for an individual who has completed a  
2 master’s degree in nursing—

3           “(A) payments may not exceed \$10,000  
4 per calendar year; and

5           “(B) total payments may not exceed  
6 \$40,000; and

7           “(3) for an individual who has completed a doc-  
8 torate degree in nursing—

9           “(A) payments may not exceed \$20,000  
10 per calendar year; and

11           “(B) total payments may not exceed  
12 \$80,000.

13           “(d) BREACH OF AGREEMENT.—

14           “(1) IN GENERAL.—In the case of any agree-  
15 ment made under subsection (a), the individual is  
16 liable to the Federal Government for the total  
17 amount paid by the Secretary under such agree-  
18 ment, and for interest on such amount at the max-  
19 imum legal prevailing rate, if the individual fails to  
20 meet the agreement terms required under subsection  
21 (b).

22           “(2) WAIVER OR SUSPENSION OF LIABILITY.—

23 In the case of an individual making an agreement  
24 for purposes of paragraph (1), the Secretary shall  
25 provide for the waiver or suspension of liability

1 under such paragraph if compliance by the indi-  
2 vidual with the agreement involved is impossible or  
3 would involve extreme hardship to the individual or  
4 if enforcement of the agreement with respect to the  
5 individual would be unconscionable.

6 “(3) DATE CERTAIN FOR RECOVERY.—Subject  
7 to paragraph (2), any amount that the Federal Gov-  
8 ernment is entitled to recover under paragraph (1)  
9 shall be paid to the United States not later than the  
10 expiration of the 3-year period beginning on the date  
11 the United States becomes so entitled.

12 “(4) AVAILABILITY.—Amounts recovered under  
13 paragraph (1) shall be available to the Secretary for  
14 making loan repayments under this section and shall  
15 remain available for such purpose until expended.

16 “(e) ELIGIBLE INDIVIDUAL DEFINED.—For pur-  
17 poses of this section, the term ‘eligible individual’ means  
18 an individual who—

19 “(1) is a United States citizen, national, or law-  
20 ful permanent resident;

21 “(2) holds an unencumbered license as a reg-  
22 istered nurse; and

23 “(3) has either already completed a master’s or  
24 doctorate nursing program at an accredited school of



1 nursing or is currently enrolled on a full-time or  
2 part-time basis in such a program.

3 “(f) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated to the Secretary such  
5 sums as may be necessary for each of fiscal years 2010  
6 through 2014 to carry out this Act. Such sums shall re-  
7 main available until expended.”.

8 **SEC. 504. PROGRAMS TO INCREASE THE NUMBER OF**  
9 **NURSES WITHIN THE ARMED FORCES.**

10 (a) IN GENERAL.—The Secretary of Defense may  
11 provide for the carrying out of each of the programs de-  
12 scribed in subsections (b) through (f).

13 (b) SERVICE OF NURSE OFFICERS AS FACULTY IN  
14 EXCHANGE FOR COMMITMENT TO ADDITIONAL SERVICE  
15 IN THE ARMED FORCES.—

16 (1) IN GENERAL.—One of the programs under  
17 this section may be a program in which covered com-  
18 missioned officers with a graduate degree in nursing  
19 or a related field who are in the nurse corps of the  
20 Armed Force concerned serve a tour of duty of two  
21 years as a full-time faculty member of an accredited  
22 school of nursing.

23 (2) COVERED OFFICERS.—A commissioned offi-  
24 cer of the nurse corps of the Armed Forces de-  
25 scribed in this paragraph is a nurse officer on active

1 duty who has served for more than nine years on ac-  
2 tive duty in the Armed Forces as an officer of the  
3 nurse corps at the time of the commencement of the  
4 tour of duty described in paragraph (1).

5 (3) BENEFITS AND PRIVILEGES.—An officer  
6 serving on the faculty of an accredited school or  
7 nursing under this subsection shall be accorded all  
8 the benefits, privileges, and responsibilities (other  
9 than compensation and compensation-related bene-  
10 fits) of any other comparably situated individual  
11 serving a full-time faculty member of such school.

12 (4) AGREEMENT FOR ADDITIONAL SERVICE.—  
13 Each officer who serves a tour of duty on the faculty  
14 of a school of nursing under this subsection shall  
15 enter into an agreement with the Secretary to serve  
16 upon the completion of such tour of duty for a pe-  
17 riod of four years for such tour of duty as a member  
18 of the nurse corps of the Armed Force concerned.  
19 Any service agreed to by an officer under this para-  
20 graph is in addition to any other service required of  
21 the officer under law.

22 (c) SERVICE OF NURSE OFFICERS AS FACULTY IN  
23 EXCHANGE FOR SCHOLARSHIPS FOR NURSE OFFICER  
24 CANDIDATES.—

1           (1) IN GENERAL.—One of the programs under  
2 this section may be a program in which commis-  
3 sioned officers with a graduate degree in nursing or  
4 a related field who are in the nurse corps of the  
5 Armed Force concerned serve while on active duty a  
6 tour of duty of two years as a full-time faculty mem-  
7 ber of an accredited school of nursing.

8           (2) BENEFITS AND PRIVILEGES.—An officer  
9 serving on the faculty of an accredited school of  
10 nursing under this subsection shall be accorded all  
11 the benefits, privileges, and responsibilities (other  
12 than compensation and compensation-related bene-  
13 fits) of any other comparably situated individual  
14 serving as a full-time faculty member of such school.

15           (3) SCHOLARSHIPS FOR NURSE OFFICER CAN-  
16 DIDATES.—(A) Each accredited school of nursing at  
17 which an officer serves on the faculty under this  
18 subsection shall provide scholarships to individuals  
19 undertaking an educational program at such school  
20 leading to a degree in nursing who agree, upon com-  
21 pletion of such program, to accept a commission as  
22 an officer in the nurse corps of the Armed Forces.

23           (B) The total amount of funds made available  
24 for scholarships by an accredited school of nursing  
25 under subparagraph (A) for each officer serving on

1 the faculty of that school under this subsection shall  
2 be not less than the amount equal to an entry-level  
3 full-time faculty member of that school for each year  
4 that such officer so serves on the faculty of that  
5 school.

6 (C) The total number of scholarships provided  
7 by an accredited school of nursing under subpara-  
8 graph (A) for each officer serving on the faculty of  
9 that school under this subsection shall be such num-  
10 ber as the Secretary of Defense shall specify for pur-  
11 poses of this subsection.

12 (d) SCHOLARSHIPS FOR CERTAIN NURSE OFFICERS  
13 FOR EDUCATION AS NURSES.—

14 (1) IN GENERAL.—One of the programs under  
15 this section may be a program in which the Sec-  
16 retary provides scholarships to commissioned officers  
17 of the nurse corps of the Armed Force concerned de-  
18 scribed in paragraph (2) who enter into an agree-  
19 ment described in paragraph (4) for the participa-  
20 tion of such officers in an educational program of an  
21 accredited school of nursing leading to a graduate  
22 degree in nursing.

23 (2) COVERED NURSE OFFICERS.—A commis-  
24 sioned officer of the nurse corps of the Armed  
25 Forces described in this paragraph is a nurse officer

1 who has served not less than 20 years on active duty  
2 in the Armed Forces and is otherwise eligible for re-  
3 tirement from the Armed Forces.

4 (3) SCOPE OF SCHOLARSHIPS.—Amounts in a  
5 scholarship provided a nurse officer under this sub-  
6 section may be utilized by the officer to pay the  
7 costs of tuition, fees, and other educational expenses  
8 of the officer in participating in an educational pro-  
9 gram described in paragraph (1).

10 (4) AGREEMENT.—An agreement of a nurse of-  
11 ficer described in this paragraph is the agreement of  
12 the officer—

13 (A) to participate in an educational pro-  
14 gram described in paragraph (1); and

15 (B) upon graduation from such educational  
16 program—

17 (i) to serve not less than two years as  
18 a full-time faculty member of an accredited  
19 school of nursing; and

20 (ii) to undertake such activities as the  
21 Secretary considers appropriate to encour-  
22 age current and prospective nurses to pur-  
23 sue service in the nurse corps of the  
24 Armed Forces.

1 (e) TRANSITION ASSISTANCE FOR RETIRING NURSE  
2 OFFICERS QUALIFIED AS FACULTY.—

3 (1) IN GENERAL.—One of the programs under  
4 this section may be a program in which the Sec-  
5 retary provides to commissioned officers of the nurse  
6 corps of the Armed Force concerned described in  
7 paragraph (2) the assistance described in paragraph  
8 (3) to assist such officers in obtaining and fulfilling  
9 positions as full-time faculty members of an accred-  
10 ited school of nursing after retirement from the  
11 Armed Forces.

12 (2) COVERED NURSE OFFICERS.—A commis-  
13 sioned officer of the nurse corps of the Armed  
14 Forces described in this paragraph is a nurse officer  
15 who—

16 (A) has served an aggregate of at least 20  
17 years on active duty or in reserve active status  
18 in the Armed Forces;

19 (B) is eligible for retirement from the  
20 Armed Forces; and

21 (C) possesses a doctoral or master degree  
22 in nursing or a related field which qualifies the  
23 nurse officer to discharge the position of nurse  
24 instructor at an accredited school of nursing.

1           (3) ASSISTANCE.—The assistance described in  
2 this paragraph is assistance as follows:

3           (A) Career placement assistance.

4           (B) Continuing education.

5           (C) Stipends (in an amount specified by  
6 the Secretary).

7           (4) AGREEMENT.—A nurse officer provided as-  
8 sistance under this subsection shall enter into an  
9 agreement with the Secretary to serve as a full-time  
10 faculty member of an accredited school of nursing  
11 for such period as the Secretary shall provide in the  
12 agreement.

13           (f) BENEFITS FOR RETIRED NURSE OFFICERS AC-  
14 CEPTING APPOINTMENT AS FACULTY.—

15           (1) IN GENERAL.—One of the programs under  
16 this section may be a program in which the Sec-  
17 retary provides to any individual described in para-  
18 graph (2) the benefits specified in paragraph (3).

19           (2) COVERED INDIVIDUALS.—An individual de-  
20 scribed in this paragraph is an individual who—

21           (A) is retired from the Armed Forces after  
22 service as a commissioned officer in the nurse  
23 corps of the Armed Forces;

24           (B) holds a graduate degree in nursing;  
25 and

1 (C) serves as a full-time faculty member of  
2 an accredited school of nursing.

3 (3) BENEFITS.—The benefits specified in this  
4 paragraph shall include the following:

5 (A) Payment of retired or retirement pay  
6 without reduction based on receipt of pay or  
7 other compensation from the institution of  
8 higher education concerned.

9 (B) Payment by the institution of higher  
10 education concerned of a salary and other com-  
11 pensation to which other similarly situated fac-  
12 ulty members of the institution of higher edu-  
13 cation would be entitled.

14 (C) If the amount of pay and other com-  
15 pensation payable by the institution of higher  
16 education concerned for service as an associate  
17 full-time faculty member is less than the basic  
18 pay to which the individual was entitled imme-  
19 diately before retirement from the Armed  
20 Forces, payment of an amount equal to the dif-  
21 ference between such basic pay and such pay-  
22 ment and other compensation.

23 (g) ADMINISTRATION AND DURATION OF PRO-  
24 GRAMS.—



1           (1) IN GENERAL.—The Secretary shall establish  
2 requirements and procedures for the administration  
3 of the programs authorized by this section. Such re-  
4 quirements and procedures shall include procedures  
5 for selecting participating schools of nursing.

6           (2) DURATION.—Any program carried out  
7 under this section shall continue for not less than  
8 two years.

9           (3) ASSESSMENT.—Not later than two years  
10 after commencing any program under this section,  
11 the Secretary shall assess the results of such pro-  
12 gram and determine whether or not to continue such  
13 program. The assessment of any program shall be  
14 based on measurable criteria, information concerning  
15 results, and such other matters as the Secretary  
16 considers appropriate.

17           (4) CONTINUATION.—The Secretary may con-  
18 tinue carrying out any program under this section  
19 that the Secretary determines, pursuant to an as-  
20 sessment under paragraph (3), to continue to carry  
21 out. In continuing to carry out a program, the Sec-  
22 retary may modify the terms of the program within  
23 the scope of this section. The continuation of any  
24 program may include its expansion to include addi-  
25 tional participating schools of nursing.

1 (h) DEFINITIONS.—In this section, the terms “school  
2 of nursing” and “accredited” have the meaning given  
3 those terms in section 801 of the Public Health Service  
4 Act (42 U.S.C. 296).

5 **TITLE VI—RESERVE COMPO-**  
6 **NENTS OF THE ARMED**  
7 **FORCES**

8 **SEC. 601. EFFECTIVE DATE OF ACTIVE DUTY FOR PUR-**  
9 **POSES OF ENTITLEMENT TO ACTIVE DUTY**  
10 **HEALTH CARE OF MEMBERS OF THE RE-**  
11 **SERVE COMPONENTS OF THE ARMED**  
12 **FORCES RECEIVING ALERT ORDER ANTICI-**  
13 **PATING A CALL OR ORDER TO ACTIVE DUTY**  
14 **IN SUPPORT OF A CONTINGENCY OPER-**  
15 **ATION.**

16 Subsection (d) of section 1074 of title 10, United  
17 States Code, is amended to read as follows:

18 “(d)(1) For purposes of this chapter, a member of  
19 a reserve component of the Armed Forces shall be treated  
20 as a member of the Armed Forces on active duty as fol-  
21 lows:

22 “(A) On the date of the issuance of the alert  
23 order for the member’s unit in anticipation of the  
24 mobilization of the unit for service for a period of

1 more than 30 days in support of a contingency oper-  
2 ation.

3 “(B) On the date of the issuance of the order  
4 providing for the assignment or attachment of the  
5 member to a unit subject to an alert order described  
6 in paragraph (1).

7 “(2) If the alert order for a member’s unit (or the  
8 unit to which the member is assigned or attached) is re-  
9 scinded, the member shall cease to be treated on active  
10 duty for purposes of this chapter as of the date of the  
11 issuance of the order rescinding such alert order.”.

○