

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2035

To provide for the establishment of health plan purchasing alliances.

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IN THE SENATE OF THE UNITED STATES

MARCH 20, 2002

Mr. JEFFORDS (for himself, Mrs. CLINTON, and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To provide for the establishment of health plan purchasing alliances.

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

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Health Plan Pur-  
5        chasing Alliance Act of 2002”.

6        **SEC. 2. DEFINITIONS.**

7        In this Act:

8            (1) HEALTH PLAN PURCHASING ALLIANCE.—

9        The term “health plan purchasing alliance” means  
10        employer groups that, on a voluntary basis and in

1 accordance with this section, form an alliance for the  
 2 purpose of purchasing insurance plans offered by  
 3 health insurance plan issuers.

4 (2) SECRETARY.—The term “Secretary” means  
 5 the Secretary of Health and Human Services.

6 (3) SMALL EMPLOYER GROUP.—The term  
 7 “small employer group” means all employees em-  
 8 ployed by the same employer. The maximum number  
 9 of employees in the small employer group shall be  
 10 defined by the health care purchasing alliance.

11 (4) STATE.—The term “State” means the 50  
 12 States, the District of Columbia, and the Common-  
 13 wealth of Puerto Rico.

14 **SEC. 3. GRANT PROGRAM FOR STATE-BASED ESTABLISH-**  
 15 **MENT OF ALLIANCES.**

16 (a) PROGRAM ESTABLISHMENT.—The Secretary may  
 17 establish a program to award grants to eligible entities,  
 18 including States, to facilitate the development and estab-  
 19 lishment, in accordance with this Act, of State-based or  
 20 State-directed health plan purchasing alliances to afford  
 21 greater access to, and lower costs of, health benefits for  
 22 small employer groups and individuals.

23 (b) ELIGIBLE ENTITIES.—To be eligible to receive a  
 24 grant under subsection (a), an entity shall—

25 (1) be—

1 (A) a State agency;

2 (B) a nonprofit entity organized for the  
3 purpose of establishing a health plan pur-  
4 chasing alliance; or

5 (C) a for-profit cooperative organization  
6 whose profits are shared on a pro-rata basis  
7 among the members of the cooperative;

8 (2) prepare and submit to the Secretary an ap-  
9 plication, at such time, in such manner, and con-  
10 taining such information and assurances as the Sec-  
11 retary may require (including evidence of compliance  
12 with applicable requirements of this Act);

13 (3) provide documentation to the Secretary of a  
14 determination by the Governor of the State involved  
15 that the proposed project is in the best interests of  
16 the State; and

17 (4) otherwise comply with the provisions of sub-  
18 sections (b) through (f) of section 5.

19 (c) USE OF FUNDS.—

20 (1) IN GENERAL.—Except as provided in para-  
21 graph (2), funds made available under a grant under  
22 this section may be used by the grantee to pay the  
23 costs associated with the development of a health  
24 plan purchasing alliance, the provision of technical

1 assistance concerning the alliance, and the capital-  
2 ization of the alliance.

3 (2) EXCEPTION.—Funds made available under  
4 a grant under this section may not be used for the  
5 operating costs of the health plan purchasing alli-  
6 ance after the date that is 6 months after the date  
7 on which the alliance began operations.

8 (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
9 authorized to be appropriated to carry out the program  
10 under subsection (a), \$50,000,000 for each of the fiscal  
11 years 2002 through 2006.

12 (e) DURATION.—The period of a grant under this  
13 section shall not exceed 30 months.

14 **SEC. 4. FEHBP ALLIANCES.**

15 (a) GOVERNORS' OPTION.—The Governor of a State  
16 that elects not to apply for a grant under section 3, or  
17 not to provide the documentation described in section  
18 3(b)(3), may, with respect to the entire State or to a geo-  
19 graphic region of the State, request that the Secretary es-  
20 tablish an FEHBP alliance in coordination with the Fed-  
21 eral Employees' Health Benefit Program under chapter  
22 89 of title 5, United States Code.

23 (b) OPERATION OF PROGRAM.—The Secretary, to the  
24 extent the Secretary considers appropriate, upon receipt  
25 of a request pursuant to subsection (a), and with the con-

1 currence of the Director of the Office of Personnel Man-  
2 agement (referred to in this section as the “Director”),  
3 may use funds available under this section to establish a  
4 State-based FEHBP alliance in accordance with the provi-  
5 sions of this Act and in coordination with the Federal Em-  
6 ployees’ Health Benefit Program.

7 (c) POWERS OF FEHBP ALLIANCE.—A State-based  
8 FEHBP alliance established under this section may—

9 (1) use the name of the Federal Employees’  
10 Health Benefit Program plan in its marketing activi-  
11 ties;

12 (2) require that a health plan issuer that par-  
13 ticipates in the Federal Employees’ Health Benefit  
14 Program and that offers health benefit coverage to  
15 purchasers in the private sector also offer the same  
16 health benefit coverage to eligible individuals and to  
17 the small employer groups that are participating in  
18 the State-based FEHBP alliance, at prices that are  
19 negotiated with the alliance;

20 (3) request that the Director terminate the par-  
21 ticipation of any health plan issuer in the Federal  
22 Employees’ Health Benefit Program if the Director  
23 determines that such issuer has failed to comply  
24 with the requirements imposed on the issuer under

1 paragraph (2) (and the Director may consider such  
2 a failure sufficient grounds for termination); and

3 (4) negotiate with health plan issuers not par-  
4 ticipating in the Federal Employees' Health Benefit  
5 Program for the provision of health benefits cov-  
6 erage in the small group market.

7 (d) SEPARATE RATING.—Health plans offered  
8 through a State-based FEHBP alliance and individuals  
9 purchasing coverage through such an alliance shall be con-  
10 sidered as separate groups and be distinct from any group  
11 of plans or Federal employees participating in the Federal  
12 Employees' Health Benefit Program.

13 **SEC. 5. PRIVATE HEALTH PLAN PURCHASING ALLIANCES.**

14 (a) CERTIFICATION.—

15 (1) REQUIREMENT.—If small employer groups  
16 or a group of individuals and small employer groups,  
17 that desire to form, on a voluntary basis, a health  
18 plan purchasing alliance in accordance with this sec-  
19 tion, appropriately notifies the State and the Sec-  
20 retary of such desire, the State, upon a determina-  
21 tion that such group meets the requirements of this  
22 section and any other requirements established by  
23 State law, shall certify the group as a health plan  
24 purchasing alliance. The State shall make a deter-  
25 mination of whether such group meets the require-

1       ments of this section in a timely fashion and shall  
2       oversee the operations of such alliance in order to  
3       ensure continued compliance with the requirements  
4       of this section. Each such alliance shall be registered  
5       with the Secretary.

6               (2) STATE REFUSAL TO CERTIFY.—

7               (A) IN GENERAL.—If a State fails to im-  
8       plement a program for certifying health plan  
9       purchasing alliances in accordance with the  
10      standards under this section, the Secretary  
11      shall certify and oversee the operations of such  
12      alliances in such State.

13              (B) EXCEPTION.—The Secretary shall not  
14      certify a health plan purchasing alliance de-  
15      scribed in this section if, upon the submission  
16      of an application by the State to the Secretary,  
17      the Secretary determines that under a State  
18      law in effect on the date of enactment of this  
19      Act, all small employers or individuals have a  
20      means readily available that ensures—

21                      (i) that individuals and employees  
22                      have a choice of multiple, unaffiliated  
23                      health plan issuers;

24                      (ii) that health plan coverage is sub-  
25                      ject to State premium rating requirements

1           that are not based on the factors described  
2           in subsection (e)(3), that such require-  
3           ments ensure a fair rating in a manner so  
4           that premiums shall be reasonable relative  
5           to rates, and that such requirements con-  
6           tain a mandatory minimum loss ratio; and

7                   (iii) that comparative health plan ma-  
8           terials are disseminated consistent with  
9           subsection (d)(1)(D);

10           and that otherwise meets the objectives of this  
11           Act.

12           (3) INTERSTATE ALLIANCES.—For purposes of  
13           this section, a health plan purchasing alliance oper-  
14           ating in more than one State shall be certified by  
15           the State in which the alliance is domiciled. Each  
16           plan and alliance shall be qualified and certified in  
17           each State in which it operates. States may enter  
18           into alliance agreements for the purpose of over-  
19           seeing the operation of such alliances. For purposes  
20           of this subsection, an alliance shall be considered to  
21           be domiciled in the State in which most of the mem-  
22           bers of the alliance reside.

23           (b) BOARD OF DIRECTORS.—

24                   (1) IN GENERAL.—Each health plan purchasing  
25           alliance shall be governed by a Board of Directors



1 that shall be responsible for ensuring the perform-  
2 ance of the duties of the alliance under this section.  
3 The Board shall be composed of a broad cross-sec-  
4 tion of representatives of the employers, employees,  
5 and individuals participating in the alliance. Em-  
6 ployer groups participating in a health care pur-  
7 chasing alliance should be represented on the Board  
8 by both employers and employees.

9 (2) LIMITATION ON COMPENSATION.—A health  
10 plan purchasing alliance may not provide compensa-  
11 tion to members of the Board of Directors. The alli-  
12 ance may provide reimbursements to such members  
13 for the reasonable and necessary expenses incurred  
14 by the members in the performance of their duties  
15 as members of the Board.

16 (c) MEMBERSHIP AND MARKETING AREA.—

17 (1) MEMBERSHIP.—A health plan purchasing  
18 alliance shall establish limits on the maximum size  
19 of an employer, as determined by its number of em-  
20 ployees, that may become a member of the alliance,  
21 and may determine whether to permit individuals to  
22 become members. Upon the establishment of such  
23 membership criteria, the alliance shall, except as  
24 provided in paragraph (2), accept all employers, em-  
25 ployees, and individuals residing within the area

1 served by the alliance who meet such requirements  
2 as members on a first-come, first-served basis, or on  
3 another basis established by the State to ensure eq-  
4 uitable access to the alliance. The purchasing alli-  
5 ance shall not discriminate or deny membership on  
6 the basis of health status, age, race, sex, occupation,  
7 or insurability.

8 (2) **MARKETING AREA.**—A State may establish  
9 rules regarding the geographic area that must be  
10 served by health plan purchasing alliances to ensure  
11 that alliances do not discriminate on the basis of the  
12 health status or insurability of the populations that  
13 reside in the area served. A State may not use such  
14 rules to limit arbitrarily the number of health plan  
15 purchasing alliances.

16 (d) **DUTIES AND RESPONSIBILITIES.**—

17 (1) **IN GENERAL.**—A health plan purchasing al-  
18 liance shall—

19 (A) objectively evaluate potential health  
20 plan issuers and enter into agreements with  
21 multiple, unaffiliated health plan issuers, except  
22 that the requirement of this subparagraph shall  
23 not apply in regions (such as remote or frontier  
24 areas) in which compliance with such require-  
25 ment is not possible;

1 (B) enter into agreements with employers  
2 and individuals who become members of the al-  
3 liance;

4 (C) participate in any program of risk-ad-  
5 justment or reinsurance, or any similar pro-  
6 gram, that is established by the State;

7 (D) prepare and disseminate comparative  
8 health plan materials (including information  
9 about cost, quality, benefits, and other informa-  
10 tion determined necessary by the State to per-  
11 mit a comparison of all health plans offered  
12 through the alliance to small employers, em-  
13 ployees, and individuals);

14 (E) broadly solicit and actively market to  
15 all eligible employers and individuals residing  
16 within the service area;

17 (F) act as an ombudsman for group health  
18 plan or individual health plan enrollees; and

19 (G) offer to all employers, employees, and  
20 individuals participating in the health pur-  
21 chasing alliance an open enrollment period of at  
22 least 30 days per calendar year.

23 (2) PERMISSIBLE ACTIVITIES.—A health plan  
24 purchasing alliance may perform such other func-

1 tions as necessary to further the purposes of this  
2 Act, including—

3 (A) collecting and distributing premiums  
4 and performing other administrative functions;

5 (B) collecting and analyzing surveys of en-  
6 rollee satisfaction or grievances;

7 (C) charging membership fee to enrollees  
8 (such fees may not be based on health status)  
9 and charging participation fees to alliance  
10 health plan issuers; and

11 (D) negotiating with health care providers  
12 and health plan issuers.

13 (e) LIMITATIONS ON ALLIANCE ACTIVITIES.—A  
14 health plan purchasing alliance shall not—

15 (1) perform any activity relating to the licens-  
16 ing of health plan issuers;

17 (2) assume financial risk directly or indirectly  
18 on behalf of members of a health plan purchasing al-  
19 liance relating to any group health plan or individual  
20 health plan;

21 (3) establish eligibility, enrollment, or premium  
22 contribution requirements for participants or bene-  
23 ficiaries in all health plans based on health status,  
24 medical condition, claims experience, receipt of

1 health care, medical history, evidence of insurability,  
2 genetic information, or disability;

3 (4) operate on a for-profit or other basis where  
4 the legal structure of the alliance permits profits to  
5 be made and not returned to the members of the al-  
6 liance; or

7 (5) perform any other activities that conflict or  
8 are inconsistent with the performance of its duties  
9 under this Act.

10 (f) CONFLICT OF INTEREST.—

11 (1) PROHIBITION.—No individual, partnership,  
12 or corporation shall serve on the board of a health  
13 plan purchasing alliance, be employed by such an al-  
14 liance, receive compensation from such an alliance,  
15 or initiate or finance such an alliance if such indi-  
16 vidual, partnership, or corporation—

17 (A) fails to discharge the duties and re-  
18 sponsibilities of such individual, partnership or  
19 corporation in a manner that is solely in the in-  
20 terest of the alliance and the members of the al-  
21 liance; or

22 (B) derives personal financial benefit  
23 (other than in the form of ordinary compensa-  
24 tion received) from the sale of, or has a finan-  
25 cial interest in health plans or related financial

1 entities, services or products sold by or distrib-  
2 uted through that alliance.

3 (2) CONTRACTS WITH THIRD PARTIES.—Noth-  
4 ing in paragraph (1) shall be construed to prohibit  
5 the board of directors of a health plan purchasing  
6 alliance, or its officers, at the initiative and under  
7 this direction of the board, from contracting with  
8 third parties to provide administrative, marketing,  
9 consultive, or other services to the alliance.

10 (g) LIMITED PREEMPTION OF CERTAIN STATE  
11 LAWS.—

12 (1) IN GENERAL.—With respect to a health  
13 plan purchasing alliance that meets the require-  
14 ments of this section (including an alliance under  
15 section 3), any State law that sets restrictions on  
16 the organization of groups for the purpose of pur-  
17 chasing health insurance, or that prohibits groups  
18 from combining for that purpose, is preempted with  
19 respect to an alliance that meets the requirements of  
20 this Act.

21 (2) HEALTH PLAN ISSUERS.—

22 (A) RATING.—Except as provided in sub-  
23 paragraph (B), a health plan issuer offering a  
24 group health plan or individual health plan  
25 through a health plan purchasing alliance that

1 meets the requirements of this section (includ-  
2 ing an alliance under section 3) shall comply  
3 with all State rating requirements that would  
4 otherwise apply if the health plan were offered  
5 outside of the alliance.

6 (B) PREMIUM RATE EXCEPTION.—A State  
7 law that imposes premium rate requirements is  
8 preempted to the extent that it would prohibit  
9 a health plan issuer from reducing premium  
10 rates under an agreement with a health plan  
11 purchasing alliance that meets the requirements  
12 of this section (including an alliance under sec-  
13 tion 3) to reflect savings derived from adminis-  
14 trative costs, marketing costs, profit margins,  
15 economies of scale, or other factors, except that  
16 any such reduction in premium rates may not  
17 be based on the health status, demographic fac-  
18 tors, industry type, duration, or other indicators  
19 of health risk of the members of the alliance.

20 (C) BENEFITS.—Except as provided in  
21 subparagraph (D), a health plan issuer offering  
22 a health plan through a health plan purchasing  
23 alliance (including an alliance under section 3)  
24 shall comply with all State mandated benefit  
25 laws that require the offering of any services,

1 category of care, or services of any class or type  
2 of provider.

3 (D) ALTERNATIVE BENEFIT PLAN EXCEP-  
4 TION.—In those States that have enacted laws  
5 authorizing the issuance of alternative benefit  
6 plans to small employers, health plan issuers  
7 may offer such alternative benefit plans through  
8 a health plan purchasing alliance that meets the  
9 requirements of this section (including an alli-  
10 ance under section 3).

11 (3) RULE OF CONSTRUCTION.—Nothing in this  
12 Act shall be construed to preempt a State law if  
13 such law prohibits the variance of premium rates of  
14 employers, employees, or individuals participating as  
15 members in a health purchasing alliance in excess of  
16 the amount of such variations that would be per-  
17 mitted under such State laws among individuals,  
18 employers, and employees that are not participating  
19 in the health purchasing alliance.

20 **SEC. 6. RULES OF CONSTRUCTION.**

21 Nothing in this Act shall be construed to—

22 (1) require that a State organize, operate, or  
23 otherwise create health plan purchasing alliances;

24 (2) otherwise require the establishment of  
25 health plan purchasing alliances;



1           (3) require individuals, plan sponsors, or em-  
2           ployers to purchase health insurance plans through  
3           a health plan purchasing alliance;

4           (4) preempt a State from requiring licensure  
5           for individuals who are involved in directly supplying  
6           advice or selling health plans on behalf of a pur-  
7           chasing alliance;

8           (5) require that a health plan purchasing alli-  
9           ance be the only type of purchasing arrangement  
10          permitted to operate in a State;

11          (6) confer authority upon a State that the State  
12          would not otherwise have to regulate health plan  
13          issuers or employee health benefits plans;

14          (7) confer authority upon a State (or the Fed-  
15          eral Government) that the State (or Federal Govern-  
16          ment) would not otherwise have to regulate group  
17          purchasing arrangements, coalitions, association  
18          plans, or other similar entities that do not desire to  
19          become a health plan purchasing alliance in accord-  
20          ance with this section; or

21          (8) except as specifically provided otherwise in  
22          this subsection, prevent the application of State laws  
23          and regulations otherwise applicable to health plan  
24          issuers offering group health plans or individual

1 health plans through a health plan purchasing alli-  
2 ance.

3 **SEC. 7. ENFORCEMENT.**

4 For purposes of enforcement only, the requirements  
5 of parts 4 and 5 of subtitle B of title I of the Employee  
6 Retirement Income Security Act of 1974 (29 U.S.C. 1101  
7 et seq.) shall apply to a health plan purchasing alliance  
8 certified by the Secretary under section 5(a)(2) of this Act  
9 as if such alliance were an employee welfare benefit plan.

○