

107TH CONGRESS
1ST SESSION

S. 284

To amend the Internal Revenue Code of 1986 to provide incentives to expand health care coverage for individuals.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2001

Mr. MCCAIN (for himself, Mr. EDWARDS, Mr. KENNEDY, Mr. L. CHAFEE, Mr. GRAHAM, Mr. SPECTER, Mrs. LINCOLN, Mr. HARKIN, Mr. BAUCUS, Mr. TORRICELLI, Mr. DODD, Mr. NELSON of Florida, Mr. SCHUMER, and Mr. CORZINE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide incentives to expand health care coverage for individuals.

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 “Bipartisan Patient
5 Protection Act of 2001—Part II”.

6 **SEC. 2. EXPANDED AVAILABILITY OF ARCHER MSAS.**

7 (a) EXTENSION OF PROGRAM.—Paragraphs (2) and
8 (3)(B) of section 220(i) of the Internal Revenue Code of

1 1986 (defining cut-off year) are each amended by striking
 2 “2002” each place it appears and inserting “2004”.

3 (b) INCREASE IN NUMBER OF PERMITTED ACCOUNT
 4 PARTICIPANTS.—

5 (1) IN GENERAL.—Subsection (j) of section 220
 6 of such Code is amended by redesignating para-
 7 graphs (3), (4), and (5) as paragraphs (4), (5), and
 8 (6) and by inserting after paragraph (2) the fol-
 9 lowing new paragraph:

10 “(3) DETERMINATION OF WHETHER LIMIT EX-
 11 CEDED FOR YEARS AFTER 2001.—

12 “(A) IN GENERAL.—The numerical limita-
 13 tion for any year after 2001 is exceeded if the
 14 sum of—

15 “(i) the number of Archer MSA re-
 16 turns filed on or before April 15 of such
 17 calendar year for taxable years ending with
 18 or within the preceding calendar year, plus

19 “(ii) the Secretary’s estimate (deter-
 20 mined on the basis of the returns described
 21 in clause (i)) of the number of Archer
 22 MSA returns for such taxable years which
 23 will be filed after such date, exceeds
 24 1,000,000. For purposes of the preceding
 25 sentence, the term ‘Archer MSA return’

1 means any return on which any exclusion
 2 is claimed under section 106(b) or any de-
 3 duction is claimed under this section.

4 “(B) ALTERNATIVE COMPUTATION OF LIM-
 5 ITATION.—The numerical limitation for any
 6 year after 2001 is also exceeded if the sum of—

7 “(i) 90 percent of the sum determined
 8 under subparagraph (A) for such calendar
 9 year, plus

10 “(ii) the product of 2.5 and the num-
 11 ber of medical savings accounts established
 12 during the portion of such year preceding
 13 July 1 (based on the reports required
 14 under paragraph (5)) for taxable years be-
 15 ginning in such year,

16 exceeds 1,000,000.”

17 (2) CONFORMING AMENDMENTS.—

18 (A) Clause (ii) of section 220(j)(2)(B) of
 19 such Code is amended by striking “paragraph
 20 (4)” and inserting “paragraph (5)”.

21 (B) Subparagraph (A) of section 220(j)(4)
 22 of such Code is amended by striking “and
 23 2001” and inserting “2001, 2002, and 2003”.

24 (c) INCREASE IN SIZE OF ELIGIBLE EMPLOYERS.—
 25 Subparagraph (A) of section 220(c)(4) of such Code is

1 amended by striking “50 or fewer employees” and insert-
 2 ing “100 or fewer employees”.

3 (d) EFFECTIVE DATE.—The amendments made by
 4 this section shall take effect on the date of the enactment
 5 of this Act.

6 (e) GAO STUDY.—Not later than 1 year after the
 7 date of the enactment of this Act, the Comptroller General
 8 of the United States shall prepare and submit a report
 9 to the Committee on Ways and Means of the House of
 10 Representatives and the Committee on Finance of the
 11 Senate on the impact of Archer MSAs on the cost of con-
 12 ventional insurance (especially in those areas where there
 13 are higher numbers of such accounts) and on adverse se-
 14 lection and health care costs.

15 **SEC. 3. DEDUCTION FOR 100 PERCENT OF HEALTH INSUR-**
 16 **ANCE COSTS OF SELF-EMPLOYED INDIVID-**
 17 **UALS.**

18 (a) IN GENERAL.—Paragraph (1) of section 162(l)
 19 of the Internal Revenue Code of 1986 is amended to read
 20 as follows:

21 “(1) ALLOWANCE OF DEDUCTION.—In the case
 22 of an individual who is an employee within the
 23 meaning of section 401(c)(1), there shall be allowed
 24 as a deduction under this section an amount equal
 25 to 100 percent of the amount paid during the tax-

1 able year for insurance which constitutes medical
 2 care for the taxpayer and the taxpayer’s spouse and
 3 dependents.”.

4 (b) EFFECTIVE DATE.—The amendment made by
 5 this section shall apply to taxable years beginning after
 6 December 31, 2001.

7 **SEC. 4. CREDIT FOR HEALTH INSURANCE EXPENSES OF**
 8 **SMALL BUSINESSES.**

9 (a) IN GENERAL.—Subpart D of part IV of sub-
 10 chapter A of chapter 1 of the Internal Revenue Code of
 11 1986 (relating to business-related credits) is amended by
 12 adding at the end the following:

13 **“SEC. 45E. SMALL BUSINESS HEALTH INSURANCE EX-**
 14 **PENSES.**

15 “(a) GENERAL RULE.—For purposes of section 38,
 16 in the case of a small employer, the health insurance credit
 17 determined under this section for the taxable year is an
 18 amount equal to the applicable percentage of the expenses
 19 paid by the taxpayer during the taxable year for health
 20 insurance coverage for such year provided under a new
 21 health plan for employees of such employer.

22 “(b) APPLICABLE PERCENTAGE.—For purposes of
 23 subsection (a), the applicable percentage is—

1 “(1) in the case of insurance purchased as a
 2 member of a qualified health benefit purchasing coa-
 3 lition (as defined in section 9841), 30 percent, and

4 “(2) in the case of insurance not described in
 5 paragraph (1), 20 percent.

6 “(c) LIMITATIONS.—

7 “(1) PER EMPLOYEE DOLLAR LIMITATION.—

8 The amount of expenses taken into account under
 9 subsection (a) with respect to any employee for any
 10 taxable year shall not exceed—

11 “(A) \$2,000 in the case of self-only cov-
 12 erage, and

13 “(B) \$5,000 in the case of family coverage.

14 In the case of an employee who is covered by a new
 15 health plan of the employer for only a portion of
 16 such taxable year, the limitation under the preceding
 17 sentence shall be an amount which bears the same
 18 ratio to such limitation (determined without regard
 19 to this sentence) as such portion bears to the entire
 20 taxable year.

21 “(2) PERIOD OF COVERAGE.—Expenses may be
 22 taken into account under subsection (a) only with
 23 respect to coverage for the 4-year period beginning
 24 on the date the employer establishes a new health
 25 plan.

1 “(d) DEFINITIONS.—For purposes of this section—

2 “(1) HEALTH INSURANCE COVERAGE.—The
3 term ‘health insurance coverage’ has the meaning
4 given such term by section 9832(b)(1).

5 “(2) NEW HEALTH PLAN.—

6 “(A) IN GENERAL.—The term ‘new health
7 plan’ means any arrangement of the employer
8 which provides health insurance coverage to em-
9 ployees if—

10 “(i) such employer (and any prede-
11 cessor employer) did not establish or main-
12 tain such arrangement (or any similar ar-
13 rangement) at any time during the 2 tax-
14 able years ending prior to the taxable year
15 in which the credit under this section is
16 first allowed, and

17 “(ii) such arrangement provides
18 health insurance coverage to at least 70
19 percent of the qualified employees of such
20 employer.

21 “(B) QUALIFIED EMPLOYEE.—

22 “(i) IN GENERAL.—The term ‘quali-
23 fied employee’ means any employee of an
24 employer if the annual rate of such em-

1 employee’s compensation (as defined in sec-
2 tion 414(s)) exceeds \$10,000.

3 “(ii) TREATMENT OF CERTAIN EM-
4 PLOYEES.—The term ‘employee’ shall in-
5 clude a leased employee within the mean-
6 ing of section 414(n).

7 “(3) SMALL EMPLOYER.—The term ‘small em-
8 ployer’ has the meaning given to such term by sec-
9 tion 4980D(d)(2); except that only qualified employ-
10 ees shall be taken into account.

11 “(e) SPECIAL RULES.—

12 “(1) CERTAIN RULES MADE APPLICABLE.—For
13 purposes of this section, rules similar to the rules of
14 section 52 shall apply.

15 “(2) AMOUNTS PAID UNDER SALARY REDUC-
16 TION ARRANGEMENTS.—No amount paid or incurred
17 pursuant to a salary reduction arrangement shall be
18 taken into account under subsection (a).

19 “(f) TERMINATION.—This section shall not apply to
20 expenses paid or incurred by an employer with respect to
21 any arrangement established on or after January 1,
22 2010.”.

23 (b) CREDIT TO BE PART OF GENERAL BUSINESS
24 CREDIT.—Section 38(b) of such Code (relating to current
25 year business credit) is amended by striking “plus” at the

1 end of paragraph (12), by striking the period at the end
 2 of paragraph (13) and inserting “, plus”, and by adding
 3 at the end the following:

4 “(14) in the case of a small employer (as de-
 5 fined in section 45E(d)(3)), the health insurance
 6 credit determined under section 45E(a).”

7 (c) NO CARRYBACKS.—Subsection (d) of section 39
 8 of such Code (relating to carryback and carryforward of
 9 unused credits) is amended by adding at the end the fol-
 10 lowing:

11 “(10) NO CARRYBACK OF SECTION 45E CREDIT
 12 BEFORE EFFECTIVE DATE.—No portion of the un-
 13 used business credit for any taxable year which is
 14 attributable to the employee health insurance ex-
 15 penses credit determined under section 45E may be
 16 carried back to a taxable year ending before the date
 17 of the enactment of section 45E.”

18 (d) DENIAL OF DOUBLE BENEFIT.—Section 280C of
 19 such Code is amended by adding at the end the following
 20 new subsection:

21 “(d) CREDIT FOR SMALL BUSINESS HEALTH INSUR-
 22 ANCE EXPENSES.—

23 “(1) IN GENERAL.—No deduction shall be al-
 24 lowed for that portion of the expenses (otherwise al-
 25 lowable as a deduction) taken into account in deter-

1 mining the credit under section 45E for the taxable
 2 year which is equal to the amount of the credit de-
 3 termined for such taxable year under section
 4 45E(a).

5 “(2) CONTROLLED GROUPS.—Persons treated
 6 as a single employer under subsection (a) or (b) of
 7 section 52 shall be treated as 1 person for purposes
 8 of this section.”

9 (e) CLERICAL AMENDMENT.—The table of sections
 10 for subpart D of part IV of subchapter A of chapter 1
 11 of such Code is amended by adding at the end the fol-
 12 lowing:

“Sec. 45E. Small business health insurance expenses.”

13 (f) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to amounts paid or incurred in tax-
 15 able years beginning after December 31, 2001, for ar-
 16 rangements established after the date of the enactment
 17 of this Act.

18 **SEC. 5. CERTAIN GRANTS BY PRIVATE FOUNDATIONS TO**
 19 **QUALIFIED HEALTH BENEFIT PURCHASING**
 20 **COALITIONS.**

21 (a) IN GENERAL.—Section 4942 of the Internal Rev-
 22 enue Code of 1986 (relating to taxes on failure to dis-
 23 tribute income) is amended by adding at the end the fol-
 24 lowing:

1 “(k) CERTAIN QUALIFIED HEALTH BENEFIT PUR-
2 CHASING COALITION DISTRIBUTIONS.—

3 “(1) IN GENERAL.—For purposes of subsection
4 (g), sections 170, 501, 507, 509, and 2522, and this
5 chapter, a qualified health benefit purchasing coali-
6 tion distribution by a private foundation shall be
7 considered to be a distribution for a charitable pur-
8 pose.

9 “(2) QUALIFIED HEALTH BENEFIT PUR-
10 CHASING COALITION DISTRIBUTION.—For purposes
11 of paragraph (1)—

12 “(A) IN GENERAL.—The term ‘qualified
13 health benefit purchasing coalition distribution’
14 means any amount paid or incurred by a pri-
15 vate foundation to or on behalf of a qualified
16 health benefit purchasing coalition (as defined
17 in section 9841) for purposes of payment or re-
18 imbursement of amounts paid or incurred in
19 connection with the establishment and mainte-
20 nance of such coalition.

21 “(B) EXCLUSIONS.—Such term shall not
22 include any amount used by a qualified health
23 benefit purchasing coalition (as so defined)—

24 “(i) for the purchase of real property,

1 “(ii) as payment to, or for the benefit
 2 of, members (or employees or affiliates of
 3 such members) of such coalition, or

4 “(iii) for any expense paid or incurred
 5 more than 48 months after the date of es-
 6 tablishment of such coalition.

7 “(3) TERMINATION.—This subsection shall not
 8 apply—

9 “(A) to qualified health benefit purchasing
 10 coalition distributions paid or incurred after
 11 December 31, 2009, and

12 “(B) with respect to start-up costs of a co-
 13 alition which are paid or incurred after Decem-
 14 ber 31, 2010.”.

15 (b) QUALIFIED HEALTH BENEFIT PURCHASING CO-
 16 ALITION.—

17 (1) IN GENERAL.—Chapter 100 of such Code
 18 (relating to group health plan requirements) is
 19 amended by adding at the end the following new
 20 subchapter:

21 **“Subchapter D—Qualified Health Benefit**
 22 **Purchasing Coalition**

“Sec. 9841. Qualified health benefit purchasing coalition.

1 **“SEC. 9841. QUALIFIED HEALTH BENEFIT PURCHASING CO-**
2 **ALITION.**

3 “(a) IN GENERAL.—A qualified health benefit pur-
4 chasing coalition is a private not-for-profit corporation
5 which—

6 “(1) sells health insurance through State li-
7 censed health insurance issuers in the State in which
8 the employers to which such coalition is providing
9 insurance are located, and

10 “(2) establishes to the Secretary, under State
11 certification procedures or other procedures as the
12 Secretary may provide by regulation, that such coali-
13 tion meets the requirements of this section.

14 “(b) BOARD OF DIRECTORS.—

15 “(1) IN GENERAL.—Each purchasing coalition
16 under this section shall be governed by a Board of
17 Directors.

18 “(2) ELECTION.—The Secretary shall establish
19 procedures governing election of such Board.

20 “(3) MEMBERSHIP.—The Board of Directors
21 shall—

22 “(A) be composed of representatives of the
23 members of the coalition, in equal number, in-
24 cluding small employers and employee rep-
25 resentatives of such employers, but

1 “(B) not include other interested parties,
 2 such as service providers, health insurers, or in-
 3 surance agents or brokers which may have a
 4 conflict of interest with the purposes of the coa-
 5 lition.

6 “(c) MEMBERSHIP OF COALITION.—

7 “(1) IN GENERAL.—A purchasing coalition
 8 shall accept all small employers residing within the
 9 area served by the coalition as members if such em-
 10 ployers request such membership.

11 “(2) OTHER MEMBERS.—The coalition, at the
 12 discretion of its Board of Directors, may be open to
 13 individuals and large employers.

14 “(3) VOTING.—Members of a purchasing coali-
 15 tion shall have voting rights consistent with the rules
 16 established by the State.

17 “(d) DUTIES OF PURCHASING COALITIONS.—Each
 18 purchasing coalition shall—

19 “(1) enter into agreements with small employ-
 20 ers (and, at the discretion of its Board, with individ-
 21 uals and other employers) to provide health insur-
 22 ance benefits to employees and retirees of such em-
 23 ployers,

1 “(2) where feasible, enter into agreements with
 2 3 or more unaffiliated, qualified licensed health
 3 plans, to offer benefits to members,

4 “(3) offer to members at least 1 open enroll-
 5 ment period of at least 30 days per calendar year,

6 “(4) serve a significant geographical area and
 7 market to all eligible members in that area, and

8 “(5) carry out other functions provided for
 9 under this section.

10 “(e) LIMITATION ON ACTIVITIES.—A purchasing coa-
 11 lition shall not—

12 “(1) perform any activity (including certifi-
 13 cation or enforcement) relating to compliance or li-
 14 censing of health plans,

15 “(2) assume insurance or financial risk in rela-
 16 tion to any health plan, or

17 “(3) perform other activities identified by the
 18 State as being inconsistent with the performance of
 19 its duties under this section.

20 “(f) ADDITIONAL REQUIREMENTS FOR PURCHASING
 21 COALITIONS.—As provided by the Secretary in regula-
 22 tions, a purchasing coalition shall be subject to require-
 23 ments similar to the requirements of a group health plan
 24 under this chapter.

25 “(g) RELATION TO OTHER LAWS.—

1 “(1) PREEMPTION OF STATE FICTITIOUS
 2 GROUP LAWS.—Requirements (commonly referred to
 3 as fictitious group laws) relating to grouping and
 4 similar requirements for health insurance coverage
 5 are preempted to the extent such requirements im-
 6 pede the establishment and operation of qualified
 7 health benefit purchasing coalitions.

8 “(2) ALLOWING SAVINGS TO BE PASSED
 9 THROUGH.—Any State law that prohibits health in-
 10 surance issuers from reducing premiums on health
 11 insurance coverage sold through a qualified health
 12 benefit purchasing coalition to reflect administrative
 13 savings is preempted. This paragraph shall not be
 14 construed to preempt State laws that impose restric-
 15 tions on premiums based on health status, claims
 16 history, industry, age, gender, or other underwriting
 17 factors.

18 “(3) NO WAIVER OF HIPAA REQUIREMENTS.—
 19 Nothing in this section shall be construed to change
 20 the obligation of health insurance issuers to comply
 21 with the requirements of title XXVII of the Public
 22 Health Service Act with respect to health insurance
 23 coverage offered to small employers in the small
 24 group market through a qualified health benefit pur-
 25 chasing coalition.

1 “(h) DEFINITION OF SMALL EMPLOYER.—For pur-
2 poses of this section—

3 “(1) IN GENERAL.—The term ‘small employer’
4 means, with respect to any calendar year, any em-
5 ployer if such employer employed an average of at
6 least 2 and not more than 50 qualified employees on
7 business days during either of the 2 preceding cal-
8 endar years. For purposes of the preceding sentence,
9 a preceding calendar year may be taken into account
10 only if the employer was in existence throughout
11 such year.

12 “(2) EMPLOYERS NOT IN EXISTENCE IN PRE-
13 CEDING YEAR.—In the case of an employer which
14 was not in existence throughout the 1st preceding
15 calendar year, the determination under paragraph
16 (1) shall be based on the average number of quali-
17 fied employees that it is reasonably expected such
18 employer will employ on business days in the current
19 calendar year.”.

20 (2) CONFORMING AMENDMENT.—The table of
21 subchapters for chapter 100 of such Code is amend-
22 ed by adding at the end the following item:

“Subchapter D. Qualified health benefit purchasing coalition.”.

23 (c) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall apply to taxable years beginning after
25 December 31, 2001.

1 **SEC. 6. STATE GRANT PROGRAM FOR MARKET INNOVA-**
 2 **TION.**

3 (a) IN GENERAL.—The Secretary of Health and
 4 Human Services (in this section referred to as the “Sec-
 5 retary”) shall establish a program (in this section referred
 6 to as the “program”) to award demonstration grants
 7 under this section to States to allow States to demonstrate
 8 the effectiveness of innovative ways to increase access to
 9 health insurance through market reforms and other inno-
 10 vative means. Such innovative means may include (and are
 11 not limited to) any of the following:

12 (1) Alternative group purchasing or pooling ar-
 13 rangements, such as a purchasing cooperatives for
 14 small businesses, reinsurance pools, or high risk
 15 pools.

16 (2) Individual or small group market reforms.

17 (3) Consumer education and outreach.

18 (4) Subsidies to individuals, employers, or both,
 19 in obtaining health insurance.

20 (b) SCOPE; DURATION.—The program shall be lim-
 21 ited to not more than 10 States and to a total period of
 22 5 years, beginning on the date the first demonstration
 23 grant is made.

24 (c) CONDITIONS FOR DEMONSTRATION GRANTS.—

25 (1) IN GENERAL.—The Secretary may not pro-
 26 vide for a demonstration grant to a State under the

1 program unless the Secretary finds that under the
2 proposed demonstration grant—

3 (A) the State will provide for demonstrated
4 increase of access for some portion of the exist-
5 ing uninsured population through a market in-
6 novation (other than merely through a financial
7 expansion of a program initiated before the
8 date of the enactment of this Act);

9 (B) the State will comply with applicable
10 Federal laws;

11 (C) the State will not discriminate among
12 participants on the basis of any health status-
13 related factor (as defined in section 2791(d)(9)
14 of the Public Health Service Act), except to the
15 extent a State wishes to focus on populations
16 that otherwise would not obtain health insur-
17 ance because of such factors; and

18 (D) the State will provide for such evalua-
19 tion, in coordination with the evaluation re-
20 quired under subsection (d), as the Secretary
21 may specify.

22 (2) APPLICATION.—The Secretary shall not
23 provide a demonstration grant under the program to
24 a State unless—

1 (A) the State submits to the Secretary
 2 such an application, in such a form and man-
 3 ner, as the Secretary specifies;

4 (B) the application includes information
 5 regarding how the demonstration grant will ad-
 6 dress issues such as governance, targeted popu-
 7 lation, expected cost, and the continuation after
 8 the completion of the demonstration grant pe-
 9 riod; and

10 (C) the Secretary determines that the dem-
 11 onstration grant will be used consistent with
 12 this section.

13 (3) FOCUS.—A demonstration grant proposal
 14 under section need not cover all uninsured individ-
 15 uals in a State or all health care benefits with re-
 16 spect to such individuals.

17 (d) EVALUATION.—The Secretary shall enter into a
 18 contract with an appropriate entity outside the Depart-
 19 ment of Health and Human Services to conduct an overall
 20 evaluation of the program at the end of the program pe-
 21 riod. Such evaluation shall include an analysis of improve-
 22 ments in access, costs, quality of care, or choice of cov-
 23 erage, under different demonstration grants.

24 (e) OPTION TO PROVIDE FOR INITIAL PLANNING
 25 GRANTS.—Notwithstanding the previous provisions of this

1 section, under the program the Secretary may provide for
2 a portion of the amounts appropriated under subsection
3 (f) (not to exceed \$5,000,000) to be made available to any
4 State for initial planning grants to permit States to de-
5 velop demonstration grant proposals under the previous
6 provisions of this section.

7 (f) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated \$100,000,000 for each
9 fiscal year to carry out this section. Amounts appropriated
10 under this subsection shall remain available until ex-
11 pended.

12 (g) STATE DEFINED.—For purposes of this section,
13 the term “State” has the meaning given such term for
14 purposes of title XIX of the Social Security Act.

○