

108TH CONGRESS  
1ST SESSION

# H. R. 2850

To amend title I of the Employee Retirement Income Security Act of 1974 to provide for the establishment in the Department of Labor of a Small Employer Health Benefits Program.

---

## IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2003

Mr. KIND (for himself, Mr. ANDREWS, Mr. HINCHEY, Mr. FROST, Mr. KILDEE, Mr. ABERCROMBIE, Mr. PAYNE, Ms. WOOLSEY, Mr. VAN HOLLEN, Mr. HOLT, Ms. MCCOLLUM, Mr. SERRANO, Mr. OBERSTAR, Mr. EMANUEL, Mr. FORD, Mr. PASTOR, Mr. GEORGE MILLER of California, and Mr. HINOJOSA) introduced the following bill; which was referred to the Committee on Education and the Workforce

---

## A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to provide for the establishment in the Department of Labor of a Small Employer Health Benefits Program.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Small Employer Health Benefits Program Act of 2003”.

1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 this Act is as follows:

Sec. 1. Short title.

Sec. 2. Establishment of Small Employer Health Benefits Program (SEHBP).

PART 8—SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Sec. 801. Establishment of program.

Sec. 802. Contracts with qualifying insurers.

Sec. 803. Additional conditions.

Sec. 804. Dissemination of information.

Sec. 805. Subsidies.

Sec. 806. Authorization of appropriations.

3 **SEC. 2. ESTABLISHMENT OF SMALL EMPLOYER HEALTH**  
 4 **BENEFITS PROGRAM (SEHBP).**

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

8 **“PART 8—SMALL EMPLOYER HEALTH BENEFITS**  
 9 **PROGRAM (SEHBP)**

10 **“SEC. 801. ESTABLISHMENT OF PROGRAM.**

11 “(a) IN GENERAL.—The Secretary shall establish, in  
 12 accordance with this part, a program under which—

13 “(1) qualifying small employers (as defined in  
 14 subsection (b)) are provided access to qualifying  
 15 health insurance coverage (as defined in subsection  
 16 (c)) for their employees, and

17 “(2) such employees may elect alternative forms  
 18 of coverage offered by various health insurance  
 19 issuers.

1       “(b) QUALIFYING SMALL EMPLOYER DEFINED;  
2 OTHER DEFINITIONS.—For purposes of this part:

3               “(1) QUALIFYING SMALL EMPLOYER.—

4                       “(A) IN GENERAL.—The term ‘qualifying  
5 small employer’ means a small employer (as de-  
6 fined in paragraph (2)) that—

7                               “(i) elects to offer health insurance  
8 coverage provided under this part to each  
9 employee who has been employed by that  
10 employer for 3 months or longer; and

11                               “(ii) elects, with respect to an em-  
12 ployee electing coverage under qualified  
13 health insurance coverage, to pay at least  
14 50 percent of the total premium for quali-  
15 fying health insurance coverage provided  
16 under this part.

17               “(B) ELECTIONS.—Elections under sub-  
18 paragraph (A) may be filed with the Secretary  
19 during the 180-day period beginning with the  
20 first enrollment period occurring under section  
21 803 and during open enrollment periods occur-  
22 ring thereafter under such section. Such elec-  
23 tions shall be filed in such form and manner as  
24 shall be prescribed by the Secretary.

1           “(C) PART-TIME EMPLOYMENT.—Under  
2           regulations of the Secretary, in the case of an  
3           employee serving in a position in which service  
4           is customarily less than 1,500 hours per year,  
5           the reference in subparagraph (A)(ii) to ‘50  
6           percent’ shall be deemed a percentage reduced  
7           to a percentage that bears the same ratio to 50  
8           percent as the number of hours of service per  
9           year customarily in such position bears to  
10          1,500.

11          “(2) SMALL EMPLOYER.—The term ‘small em-  
12          ployer’ means, with respect to a year, an employer  
13          who employed an average of fewer than 100 employ-  
14          ees on business days during the preceding calendar  
15          year and who employs at least 1 employee on the  
16          first day of the year.

17          “(3) SEHBP.—The term ‘SEHBP’ means the  
18          small employer health benefits program provided  
19          under this part.

20          “(c) QUALIFYING HEALTH INSURANCE COVERAGE.—  
21          For purposes of this part, the term ‘qualifying health in-  
22          surance coverage’ means health insurance coverage that  
23          meets the following requirements:

24                 “(1) The coverage is offered by a health insur-  
25                 ance issuer.

1           “(2) The benefits under such coverage are  
2           equivalent to or greater than the lower level of bene-  
3           fits provided under the service benefit plan described  
4           in section 8903(1) of title 5, United States Code.

5           “(3) The coverage includes, with respect to an  
6           eligible individual that elects coverage, coverage of  
7           the same dependents that would be covered if the  
8           coverage were offered under FEHBP.

9           “(4)(A) Subject to subparagraph (B), there is  
10          no underwriting, through a preexisting condition  
11          limitation, differential benefits, or different premium  
12          levels, or otherwise, with respect to such coverage for  
13          covered individuals or their dependents.

14          “(B) The premiums charged for such coverage  
15          are community-rated for individuals within any  
16          State and may vary only—

17                 “(i) by individual or family enrollment, and

18                 “(ii) to the extent permitted under the  
19          laws of such State relating to health insurance  
20          coverage offered in the small group market, on  
21          the basis of geography.

22          “(d) OTHER TERMS.—

23                 “(1) HEALTH INSURANCE COVERAGE; HEALTH  
24          INSURANCE ISSUER; HEALTH STATUS-RELATED FAC-  
25          TOR.—The terms ‘health insurance coverage’, ‘health

1 insurance issuer’, ‘health status-related factor’ have  
2 the meanings provided such terms in section 733.

3 “(2) SMALL GROUP MARKET.—The term ‘small  
4 group market’ has the meaning provided such term  
5 in section 2791(e)(5) of the Public Health Service  
6 Act (42 U.S.C. 300gg–91(e)(5)).

7 “(3) FEHBP.—The term ‘FEHBP’ means the  
8 Federal Employees Health Benefits Program under  
9 chapter 89 of title 5, United States Code.

10 “(e) TREATMENT OF PARTNERSHIPS AND SELF-EM-  
11 PLOYED INDIVIDUALS.—For purposes of this part, and for  
12 purposes of applying section 3 to this part and to part  
13 5 as it applies to this part, in any case in which qualifying  
14 health insurance coverage is, or is to be, provided under  
15 a plan, fund, or program to individuals covered there-  
16 under—

17 “(1) if such plan, fund, or program is main-  
18 tained by a partnership, the term ‘employer’ (as de-  
19 fined in section 3(5)) includes the partnership in re-  
20 lation to the partners, and the term ‘employee’ (as  
21 defined in section 3(6)) includes any partner in rela-  
22 tion to the partnership; and

23 “(2) if such plan, fund, or program is main-  
24 tained by a self-employed individual, the term ‘em-  
25 ployer’ (as defined in section 3(5)) and the term

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

3       **“SEC. 802. CONTRACTS WITH QUALIFYING INSURERS.**

4       “(a) IN GENERAL.—The Secretary shall enter into  
5       contracts with health insurance issuers for the offering of  
6       qualifying health insurance coverage under this part in the  
7       States in such manner as to offer coverage to employees  
8       of employers that elect to offer coverage under this part.  
9       Nothing in this part shall be construed as requiring the  
10      Secretary to enter into arrangements with all such issuers  
11      seeking to offer qualifying health insurance coverage in  
12      a State.

13      “(b) CONTINUED REGULATION.—Nothing in this  
14      part shall be construed as preempting State laws applica-  
15      ble to health insurance issuers that offer coverage under  
16      this part in such State.

17      “(c) COORDINATION WITH STATE INSURANCE COM-  
18      MISSIONERS.—The Secretary shall coordinate with the in-  
19      surance commissioners for the various States in estab-  
20      lishing a process for handling and resolving any com-  
21      plaints relating to health insurance coverage offered under  
22      this part, to the extent necessary to augment processes  
23      otherwise available under State law.

1   **“SEC. 803. ADDITIONAL CONDITIONS.**

2           “(a) LIMITATION ON ENROLLMENT PERIODS.—The  
3   Secretary may limit the periods of times during which em-  
4   ployees may elect coverage offered under this part, but  
5   such election shall be consistent with the elections per-  
6   mitted for employees under FEHBP and shall provide for  
7   at least annual open enrollment periods and enrollment  
8   at the time of initial eligibility to enroll and upon appro-  
9   priate changes in family circumstances.

10          “(b) AUTHORIZING USE OF STATES IN MAKING AR-  
11   RANGEMENTS FOR COVERAGE.—In lieu of the coverage  
12   otherwise arranged by the Secretary under this part, the  
13   Secretary may enter an arrangement with a State under  
14   which a State arranges for the provision of qualifying  
15   health insurance coverage to qualifying small employers  
16   in such manner as the Secretary would otherwise arrange  
17   for such coverage.

18          “(c) USE OF FEHBP MODEL.—The Secretary shall  
19   carry out the SEHBP using the model of the FEHBP  
20   to the extent practicable and consistent with the provisions  
21   of this part, and, in carrying out such model, the Secretary  
22   shall, to the maximum extent practicable, negotiate the  
23   most affordable and substantial coverage possible for  
24   small employers.



1 **“SEC. 804. DISSEMINATION OF INFORMATION.**

2 “The Secretary shall widely disseminate information  
3 about SEHBP through the media, the Internet, public  
4 service announcements, and other employer and employee  
5 directed communications.

6 **“SEC. 805. SUBSIDIES.**

7 “(a) EMPLOYER SUBSIDIES.—

8 “(1) ENROLLMENT DISCOUNT.—

9 “(A) IN GENERAL.—In the case of a quali-  
10 fying small employer who is eligible under sub-  
11 paragraph (B), the portion of the total pre-  
12 mium for coverage otherwise payable by such  
13 employer under this part shall be reduced by 5  
14 percent. Such reduction shall not cause an in-  
15 crease in the portion of the total premium pay-  
16 able by employees.

17 “(B) EMPLOYERS ELIGIBLE FOR DIS-  
18 COUNTS.—A qualifying small employer is eligi-  
19 ble under this subparagraph if such employer  
20 employed an average of fewer than 25 employ-  
21 ees on business days during the preceding cal-  
22 endar year.

23 “(2) EMPLOYER PREMIUM SUBSIDY.—

24 “(A) IN GENERAL.—The Secretary shall  
25 provide to qualifying small employers who are  
26 eligible under subparagraph (C) and who elect

1 to offer health insurance coverage under this  
2 part a subsidy for premiums paid by the em-  
3 ployer for coverage of employees whose indi-  
4 vidual income (as determined by the Secretary)  
5 is at or below 200 percent of the poverty line  
6 (as defined in section 673(2) of the Community  
7 Services Block Grant Act (42 U.S.C. 9902(2)),  
8 including any revision required by such section)  
9 for an individual.

10 “(B) SUBSIDY SCALED ACCORDING TO  
11 SIZE OF EMPLOYER.—The subsidy provided  
12 under subparagraph (A) shall be designed so  
13 that the subsidy equals, for any calendar year—

14 “(i) 50 percent of the portion of the  
15 premium payable by the employer for the  
16 coverage, in the case of eligible qualifying  
17 small employers who employ an average of  
18 fewer than 11 employees on business days  
19 during the preceding calendar year;

20 “(ii) 35 percent of the portion of the  
21 premium payable by the employer for the  
22 coverage, in the case of eligible qualifying  
23 small employers who employ an average of  
24 more than 10 employees but fewer than 26

1 employees on business days during the pre-  
2 ceding calendar year; and

3 “(iii) 25 percent of the portion of the  
4 premium payable by the employer for the  
5 coverage, in the case of eligible qualifying  
6 small employers who employ an average of  
7 more than 25 employees but fewer than 51  
8 employees on business days during the pre-  
9 ceding calendar year.

10 “(C) EMPLOYERS ELIGIBLE FOR PREMIUM  
11 SUBSIDY.—A qualifying small employer is eligi-  
12 ble under this subparagraph if such employer  
13 employed an average of fewer than 50 employ-  
14 ees on business days during the preceding cal-  
15 endar year.

16 “(b) EMPLOYEE SUBSIDIES.—

17 “(1) IN GENERAL.—The Secretary shall provide  
18 subsidies to employees whose family income (as de-  
19 termined by the Secretary) is at or below 200 per-  
20 cent of the poverty line (as defined in section 673(2)  
21 of the Community Services Block Grant Act (42  
22 U.S.C. 9902(2)), including any revision required by  
23 such section) for a family of the size involved.

24 “(2) AMOUNT OF SUBSIDY.—Such subsidies  
25 shall be in an amount equal to the excess of the por-

1       tion of the total premium for coverage otherwise  
2       payable by the employee under this part for any pe-  
3       riod, over 5 percent of the family income (as deter-  
4       mined under paragraph (1)(A)) of the employee for  
5       such period.

6               “(3) COORDINATION OF SUBSIDIES.—Notwith-  
7       standing paragraph (1), under regulations of the  
8       Secretary, an employee may be entitled to subsidies  
9       under this subsection for any period only if such em-  
10      ployee is not eligible for subsidies for such period  
11      under any Federal or State health insurance subsidy  
12      program (including a program under title V, XIX, or  
13      XXI of the Social Security Act). For purposes of  
14      this paragraph, an employee is ‘eligible’ for a sub-  
15      sidy under a program if such employee is entitled to  
16      such subsidy or would, upon filing application there-  
17      fore, be entitled to such subsidy.

18              “(4) AUTHORITY TO EXPAND ELIGIBILITY.—  
19      The Secretary may, to the extent of available fund-  
20      ing, provide for expansion of the subsidy program  
21      under this subsection to employees whose family in-  
22      come (as defined by the Secretary) is at or below  
23      300 percent of the poverty line (as determined under  
24      paragraph (1)).

1       “(c) PROCEDURES.—The Secretary shall establish by  
 2 regulation applications, methods, and procedures for car-  
 3 rying out this section, including measures to ascertain or  
 4 confirm levels of income.

5       **“SEC. 806. AUTHORIZATION OF APPROPRIATIONS.**

6       “There are authorized to be appropriated, for the pe-  
 7 riod beginning with fiscal year 2004 and ending with fiscal  
 8 year 2013, \$50,000,000,000 to carry out this part, includ-  
 9 ing the establishment of subsidies under section 805.”.

10       (b) REPORT ON OFFERING NATIONAL HEALTH  
 11 PLANS.—Not later than 18 months after the date of the  
 12 enactment of this Act, the Secretary of Labor shall report  
 13 to Congress the Secretary’s recommendations regarding  
 14 the feasibility of offering national health plans under part  
 15 8 of subtitle B of title I of the Employee Retirement In-  
 16 come Security Act of 1974, as added by subsection (a).

17       (c) CLERICAL AMENDMENT.—The table of contents  
 18 in section 1 of the Employee Retirement Income Security  
 19 Act of 1974 is amended by inserting after the item relat-  
 20 ing to section 734 the following new items:

“PART 8—SMALL EMPLOYER HEALTH BENEFITS PROGRAM (SEHBP)

- “801. Establishment of program.
- “802. Contracts with qualifying insurers.
- “803. Additional conditions.
- “804. Dissemination of information.
- “805. Subsidies.
- “806. Authorization of appropriations.”.

