

110TH CONGRESS  
2D SESSION

# H. R. 6699

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

JULY 31, 2008

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 2008”.

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. 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 XXX—HEALTH CARE INSURANCE MARKETPLACE  
 MODERNIZATION**

“Sec. 3001. General insurance definitions.

“Sec. 3002. Implementation and application authority by Secretary.

## “Subtitle A—Market Relief

## “PART I—RATING REQUIREMENTS

- “Sec. 3011. Definitions.
- “Sec. 3012. Rating rules.
- “Sec. 3013. Application and preemption.
- “Sec. 3014. Civil actions and jurisdiction.
- “Sec. 3015. Ongoing review.

## “PART II—AFFORDABLE PLANS

- “Sec. 3021. Definitions.
- “Sec. 3022. Offering affordable plans.
- “Sec. 3023. Application and preemption.
- “Sec. 3024. Civil actions and jurisdiction.
- “Sec. 3025. Rules of construction.

## Subtitle C—Harmonization of Health Insurance Standards

- Sec. 221. Health Insurance Standards Harmonization.

## “Subtitle B—Standards Harmonization

- “Sec. 3031. Definitions.
- “Sec. 3032. Harmonized standards.
- “Sec. 3033. Application and preemption.
- “Sec. 3034. Civil actions and jurisdiction.
- “Sec. 3035. 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. Additional capacity for R.N. students or graduate-level nursing students.

“PART F—ADDITIONAL CAPACITY FOR R.N. STUDENTS OR GRADUATE-  
LEVEL NURSING STUDENTS

“Sec. 781. Additional capacity for R.N. students or graduate-level nursing students.

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)), as amended by section 131(a)  
7 of the Medicare Improvements for Patients and Providers  
8 Act of 2008 (Public Law 110-275), is amended—

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

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

16                   (3) in paragraph (4)—

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

1 (B) in subparagraph (A), by inserting  
2 “and ending with 2003” after “beginning with  
3 2001”; and

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

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

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

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

19 **SEC. 102. MEDICARE GPCI FLOORS.**

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

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

24 (2) by adding at the end the following new sub-  
25 paragraphs:

1           “(H) FLOOR AT 1.0 FOR PRACTICE EX-  
2 PENSE INDEX.—After calculating the practice  
3 expense index in subparagraph (A)(ii), for pur-  
4 poses of payment for services furnished on or  
5 after January 1, 2009, the Secretary shall in-  
6 crease the practice expense geographic index to  
7 1.00 for any locality for which such practice ex-  
8 pense geographic index is less than 1.00.

9           “(I) FLOOR AT 1.0 FOR WORK EXPENSES  
10 INDEX.—After calculating the practice expense  
11 index in subparagraph (A)(ii), for purposes of  
12 payment for services furnished on or after Jan-  
13 uary 1, 2009, the Secretary shall increase the  
14 practice expense geographic index to 1.00 for  
15 any locality for which such practice expense ge-  
16 ographic index is less than 1.00.”.

17 **SEC. 103. ANNUAL PHYSICAL EXAMINATIONS UNDER MEDI-**  
18 **CARE.**

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

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

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

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

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

22          (b) MODIFICATION OF EXCLUSIONS.—Section  
23          1862(a) of such Act (42 U.S.C. 1395y(a)) is amended—

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

1           “(K) in the case of an annual preventive  
2           physical examination, which is performed for an  
3           individual more frequently than once in any 12-  
4           month period,”; and

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

8           (c) CONFORMING AMENDMENT.—Section 1833(b)(9)  
9           of such Act (42 U.S.C. 1395l(b)(9)), as inserted by section  
10          101(b)(2)(B) of the Medicare Improvements for Patients  
11          and Providers Act of 2008 (Public Law 110–275), is  
12          amended by striking “initial” and inserting “annual”.

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

17          **SEC. 104. MEDICARE OUTREACH CAMPAIGN ON AVAIL-**  
18                                 **ABILITY OF WELCOME TO MEDICARE**  
19                                 **PHYSICALS.**

20          (a) IN GENERAL.—The Secretary of Health and  
21          Human Services shall conduct a national campaign to pro-  
22          vide information to the public on the availability of an ini-  
23          tial preventive physical examination (as defined in section  
24          1861(ww) of the Social Security Act (42 U.S.C.  
25          1395x(ww))) for beneficiaries of the Medicare program



1 under title XVIII of the Social Security Act (42 U.S.C.  
2 1395 et seq.).

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There is  
4 authorized to be appropriated to carry out this section  
5 \$1,000,000 for each of fiscal years 2009 through 2013.

6 **SEC. 105. IMPROVEMENTS TO THE MEDICARE-DEPENDENT**  
7 **HOSPITAL (MDH) PROGRAM.**

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

12 “(v) In the case of discharges occurring on or after  
13 October 1, 2008, and before October 1, 2011, in deter-  
14 mining the amount under paragraph (1)(A)(iii) for pur-  
15 poses of clauses (i) and (ii)(II) of this subparagraph, such  
16 amount shall, if it results in greater payments to the hos-  
17 pital, be determined without regard to any adjustment for  
18 different area wage levels under paragraph (3)(E).”.

19 (b) ENHANCED PAYMENT FOR AMOUNT BY WHICH  
20 THE TARGET EXCEEDS THE PPS RATE.—Section  
21 1886(d)(5)(G)(ii)(II) of such Act (42 U.S.C.  
22 1395ww(d)(5)(G)(ii)(II)) is amended by inserting “and  
23 before October 1, 2008, or 85 percent in the case of dis-  
24 charges occurring on or after October 1, 2008, and before  
25 October 1, 2011” after “October 1, 2006”.

1 **SEC. 106. IMPROVEMENTS TO THE MEDICARE INPATIENT**  
2 **HOSPITAL PAYMENT ADJUSTMENT FOR LOW-**  
3 **VOLUME HOSPITALS.**

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

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

8 (2) in subparagraph (B), by adding at the end  
9 of the heading “FOR FISCAL YEARS 2005 THROUGH  
10 2008”;

11 (3) in subparagraph (B), in the matter pre-  
12 ceding clause (i), by striking “The Secretary” and  
13 inserting “For discharges occurring in fiscal years  
14 2005 through 2008, the Secretary”;

15 (4) in subparagraph (C)(i)—

16 (A) by inserting “(or, with respect to fiscal  
17 year 2009 and each subsequent fiscal year, 15  
18 road miles)” after “25 road miles”; and

19 (B) by inserting “(or, with respect to fiscal  
20 year 2009 and each subsequent fiscal year,  
21 2,000 discharges of individuals entitled to, or  
22 enrolled for, benefits under part A)” after “800  
23 discharges”; and

24 (5) by adding at the end the following new sub-  
25 paragraph:

1           “(D) APPLICABLE PERCENTAGE INCREASE  
2 BEGINNING IN FISCAL YEAR 2009.—For dis-  
3 charges occurring in fiscal year 2009 and each  
4 subsequent fiscal year, the Secretary shall de-  
5 termine an applicable percentage increase for  
6 purposes of subparagraph (A) using a linear  
7 sliding scale ranging from 25 percent for low-  
8 volume hospitals with fewer than an appro-  
9 priate number (as determined by the Secretary)  
10 of discharges of individuals entitled to, or en-  
11 rolled for, benefits under part A in the fiscal  
12 year to 0 percent for low-volume hospitals with  
13 greater than 2,000 discharges of such individ-  
14 uals in the fiscal year.”.

15 **SEC. 107. ENSURING PROPORTIONAL REPRESENTATION OF**  
16 **INTERESTS OF RURAL AREAS ON MEDPAC.**

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

19           (1) in subparagraph (A), by inserting “con-  
20 sistent with subparagraph (E)” after “rural rep-  
21 resentatives”; and

22           (2) by adding at the end the following new sub-  
23 paragraph:

24           “(E) PROPORTIONAL REPRESENTATION OF  
25 INTERESTS OF RURAL AREAS.—In order to pro-

1           vide a balance between urban and rural rep-  
2           representatives under subparagraph (A), the pro-  
3           portion of members of the Commission who rep-  
4           resent the interests of health care providers and  
5           Medicare beneficiaries located in rural areas  
6           shall be no less than the proportion of the total  
7           number of Medicare beneficiaries who reside in  
8           rural areas.”.

9           (b) **EFFECTIVE DATE.**—The amendments made by  
10          subsection (a) shall apply to appointments to the Medicare  
11          Payment Advisory Commission made after the date of en-  
12          actment of this Act.

13           **TITLE II—SMALL BUSINESS**  
14           **HEALTH PLANS**  
15           **Subtitle A—Enhanced Marketplace**  
16           **Pools**

17          **SEC. 201. RULES GOVERNING ENHANCED MARKETPLACE**  
18           **POOLS.**

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

1           **“PART 8—RULES GOVERNING ENHANCED**

2                           **MARKETPLACE POOLS**

3   **“SEC. 801. SMALL BUSINESS HEALTH PLANS.**

4           “(a) IN GENERAL.—For purposes of this part, the  
5 term ‘small business health plan’ means a fully insured  
6 group health plan whose sponsor is (or is deemed under  
7 this part to be) described in subsection (b).

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

10                   “(1) is organized and maintained in good faith,  
11 with a constitution and bylaws specifically stating its  
12 purpose and providing for periodic meetings on at  
13 least an annual basis, as a bona fide trade associa-  
14 tion, a bona fide industry association (including a  
15 rural electric cooperative association or a rural tele-  
16 phone cooperative association), a bona fide profes-  
17 sional association, or a bona fide chamber of com-  
18 merce (or similar bona fide business association, in-  
19 cluding a corporation or similar organization that  
20 operates on a cooperative basis (within the meaning  
21 of section 1381 of the Internal Revenue Code of  
22 1986)), for substantial purposes other than that of  
23 obtaining medical care;

24                   “(2) is established as a permanent entity which  
25 receives the active support of its members and re-  
26 quires for membership payment on a periodic basis

1 of dues or payments necessary to maintain eligibility  
2 for membership;

3 “(3) does not condition membership, such dues  
4 or payments, or coverage under the plan on the  
5 basis of health status-related factors with respect to  
6 the employees of its members (or affiliated mem-  
7 bers), or the dependents of such employees, and does  
8 not condition such dues or payments on the basis of  
9 group health plan participation; and

10 “(4) does not condition membership on the  
11 basis of a minimum group size.

12 Any sponsor consisting of an association of entities which  
13 meet the requirements of paragraphs (1), (2), (3), and (4)  
14 shall be deemed to be a sponsor described in this sub-  
15 section.

16 **“SEC. 802. ALTERNATIVE MARKET POOLING ORGANIZA-**  
17 **TIONS.**

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

1       “(b) ADAPTION OF STANDARDS.—In developing and  
2 promulgating regulations pursuant to subsection (a), the  
3 Secretary, in consultation with the Secretary of Health  
4 and Human Services, small business health plans, small  
5 and large employers, large and small insurance issuers,  
6 consumer representatives, and state insurance commis-  
7 sioners, shall—

8               “(1) adapt the standards of this part, to the  
9 maximum degree practicable, to assure balanced and  
10 comparable oversight standards for both small busi-  
11 ness health plans and alternative market pooling or-  
12 ganizations;

13               “(2) permit the participation as alternative  
14 market pooling organizations unions, churches and  
15 other faith-based organizations, or other organiza-  
16 tions composed of individuals and groups which may  
17 have little or no association with employment, pro-  
18 vided however, that such alternative market pooling  
19 organizations meet, and continue meeting on an on-  
20 going basis, to satisfy standards, rules, and require-  
21 ments materially equivalent to those set forth in this  
22 part with respect to small business health plans;

23               “(3) conduct periodic verification of such com-  
24 pliance by alternative market pooling organizations,  
25 in consultation with the Secretary of Health and

1 Human Services and the National Association of In-  
2 surance Commissioners, except that such periodic  
3 verification shall not materially impede market entry  
4 or participation as pooling entities comparable to  
5 that of small business health plans;

6 “(4) assure that consistent, clear, and regularly  
7 monitored standards are applied with respect to al-  
8 ternative market pooling organizations to avert ma-  
9 terial risk-selection within or among the composition  
10 of such organizations;

11 “(5) the expedited and deemed certification pro-  
12 cedures provided in section 805(d) shall not apply to  
13 alternative market pooling organizations until sooner  
14 of the promulgation of regulations under this sub-  
15 section or the expiration of one year following enact-  
16 ment of this Act; and

17 “(6) make such other appropriate adjustments  
18 to the requirements of this part as the Secretary  
19 may reasonably deem appropriate to fit the cir-  
20 cumstances of an individual alternative market pool-  
21 ing organization or category of such organization,  
22 including but not limited to the application of the  
23 membership payment requirements of section  
24 801(b)(2) to alternative market pooling organiza-



1 tions composed primarily of church- or faith-based  
2 membership.

3 **“SEC. 803. CERTIFICATION OF SMALL BUSINESS HEALTH**  
4 **PLANS.**

5 “(a) IN GENERAL.—Not later than 6 months after  
6 the date of enactment of this part, the applicable authority  
7 shall prescribe by interim final rule a procedure under  
8 which the applicable authority shall certify small business  
9 health plans which apply for certification as meeting the  
10 requirements of this part.

11 “(b) REQUIREMENTS APPLICABLE TO CERTIFIED  
12 PLANS.—A small business health plan with respect to  
13 which certification under this part is in effect shall meet  
14 the applicable requirements of this part, effective on the  
15 date of certification (or, if later, on the date on which the  
16 plan is to commence operations).

17 “(c) REQUIREMENTS FOR CONTINUED CERTIFI-  
18 CATION.—The applicable authority may provide by regula-  
19 tion for continued certification of small business health  
20 plans under this part. Such regulation shall provide for  
21 the revocation of a certification if the applicable authority  
22 finds that the small business health plan involved is failing  
23 to comply with the requirements of this part.

24 “(d) EXPEDITED AND DEEMED CERTIFICATION.—

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

7           “(2) CIVIL PENALTY.—The Secretary may as-  
8           sess a civil penalty against the board of trustees and  
9           plan sponsor (jointly and severally) of a small busi-  
10          ness health plan that is deemed certified under para-  
11          graph (1) of up to \$500,000 in the event the Sec-  
12          retary determines that the application for certifi-  
13          cation of such small business health plan was will-  
14          fully or with gross negligence incomplete or inac-  
15          curate.

16 **“SEC. 804. REQUIREMENTS RELATING TO SPONSORS AND**  
17 **BOARDS OF TRUSTEES.**

18          “(a) SPONSOR.—The requirements of this subsection  
19          are met with respect to a small business health plan if  
20          the sponsor has met (or is deemed under this part to have  
21          met) the requirements of section 801(b) for a continuous  
22          period of not less than 3 years ending with the date of  
23          the application for certification under this part.

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

4           “(1) FISCAL CONTROL.—The plan is operated,  
5 pursuant to a plan document, by a board of trustees  
6 which pursuant to a trust agreement has complete  
7 fiscal control over the plan and which is responsible  
8 for all operations of the plan.

9           “(2) RULES OF OPERATION AND FINANCIAL  
10 CONTROLS.—The board of trustees has in effect  
11 rules of operation and financial controls, based on a  
12 3-year plan of operation, adequate to carry out the  
13 terms of the plan and to meet all requirements of  
14 this title applicable to the plan.

15           “(3) RULES GOVERNING RELATIONSHIP TO  
16 PARTICIPATING EMPLOYERS AND TO CONTRAC-  
17 TORS.—

18           “(A) BOARD MEMBERSHIP.—

19           “(i) IN GENERAL.—Except as pro-  
20 vided in clauses (ii) and (iii), the members  
21 of the board of trustees are individuals se-  
22 lected from individuals who are the owners,  
23 officers, directors, or employees of the par-  
24 ticipating employers or who are partners in

1 the participating employers and actively  
2 participate in the business.

3 “(ii) LIMITATION.—

4 “(I) GENERAL RULE.—Except as  
5 provided in subclauses (II) and (III),  
6 no such member is an owner, officer,  
7 director, or employee of, or partner in,  
8 a contract administrator or other  
9 service provider to the plan.

10 “(II) LIMITED EXCEPTION FOR  
11 PROVIDERS OF SERVICES SOLELY ON  
12 BEHALF OF THE SPONSOR.—Officers  
13 or employees of a sponsor which is a  
14 service provider (other than a contract  
15 administrator) to the plan may be  
16 members of the board if they con-  
17 stitute not more than 25 percent of  
18 the membership of the board and they  
19 do not provide services to the plan  
20 other than on behalf of the sponsor.

21 “(III) TREATMENT OF PRO-  
22 VIDERS OF MEDICAL CARE.—In the  
23 case of a sponsor which is an associa-  
24 tion whose membership consists pri-  
25 marily of providers of medical care,

1                   subclause (I) shall not apply in the  
2                   case of any service provider described  
3                   in subclause (I) who is a provider of  
4                   medical care under the plan.

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

9                   “(B) SOLE AUTHORITY.—The board has  
10                  sole authority under the plan to approve appli-  
11                  cations for participation in the plan and to con-  
12                  tract with insurers.

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

16                  “(1) the requirements of subsection (a) and sec-  
17                  tion 801(a) shall be deemed met if such require-  
18                  ments would otherwise be met if the franchisor were  
19                  deemed to be the sponsor referred to in section  
20                  801(b) and each franchisee were deemed to be a  
21                  member (of the sponsor) referred to in section  
22                  801(b); and

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

1 For purposes of this subsection the terms ‘franchisor’ and  
2 ‘franchisee’ shall have the meanings given such terms for  
3 purposes of sections 436.2(a) through 436.2(c) of title 16,  
4 Code of Federal Regulations (including any such amend-  
5 ments to such regulation after the date of enactment of  
6 this part).

7 **“SEC. 805. PARTICIPATION AND COVERAGE REQUIRE-**  
8 **MENTS.**

9 “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The  
10 requirements of this subsection are met with respect to  
11 a small business health plan if, under the terms of the  
12 plan—

13 “(1) each participating employer must be—

14 “(A) a member of the sponsor;

15 “(B) the sponsor; or

16 “(C) an affiliated member of the sponsor,  
17 except that, in the case of a sponsor which is  
18 a professional association or other individual-  
19 based association, if at least one of the officers,  
20 directors, or employees of an employer, or at  
21 least one of the individuals who are partners in  
22 an employer and who actively participates in  
23 the business, is a member or such an affiliated  
24 member of the sponsor, participating employers  
25 may also include such employer; and

1           “(2) all individuals commencing coverage under  
2           the plan after certification under this part must  
3           be—

4                   “(A) active or retired owners (including  
5                   self-employed individuals), officers, directors, or  
6                   employees of, or partners in, participating em-  
7                   ployers; or

8                   “(B) the dependents of individuals de-  
9                   scribed in subparagraph (A).

10          “(b) INDIVIDUAL MARKET UNAFFECTED.—The re-  
11          quirements of this subsection are met with respect to a  
12          small business health plan if, under the terms of the plan,  
13          no participating employer may provide health insurance  
14          coverage in the individual market for any employee not  
15          covered under the plan which is similar to the coverage  
16          contemporaneously provided to employees of the employer  
17          under the plan, if such exclusion of the employee from cov-  
18          erage under the plan is based on a health status-related  
19          factor with respect to the employee and such employee  
20          would, but for such exclusion on such basis, be eligible  
21          for coverage under the plan.

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

1           “(1) under the terms of the plan, all employers  
2 meeting the preceding requirements of this section  
3 are eligible to qualify as participating employers for  
4 all geographically available coverage options, unless,  
5 in the case of any such employer, participation or  
6 contribution requirements of the type referred to in  
7 section 2711 of the Public Health Service Act are  
8 not met;

9           “(2) information regarding all coverage options  
10 available under the plan is made readily available to  
11 any employer eligible to participate; and

12           “(3) the applicable requirements of sections  
13 701, 702, and 703 are met with respect to the plan.

14 **“SEC. 806. OTHER REQUIREMENTS RELATING TO PLAN**  
15 **DOCUMENTS, CONTRIBUTION RATES, AND**  
16 **BENEFIT OPTIONS.**

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

20           “(1) CONTENTS OF GOVERNING INSTRU-  
21 MENTS.—

22           “(A) IN GENERAL.—The instruments gov-  
23 erning the plan include a written instrument,  
24 meeting the requirements of an instrument re-  
25 quired under section 402(a)(1), which—



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

7           “(ii) provides that the sponsor of the  
8           plan is to serve as plan sponsor (referred  
9           to in section 3(16)(B)).

10           “(B) DESCRIPTION OF MATERIAL PROVI-  
11           SIONS.—The terms of the health insurance cov-  
12           erage (including the terms of any individual  
13           certificates that may be offered to individuals in  
14           connection with such coverage) describe the ma-  
15           terial benefit and rating, and other provisions  
16           set forth in this section and such material pro-  
17           visions are included in the summary plan de-  
18           scription.

19           “(2) CONTRIBUTION RATES MUST BE NON-  
20           DISCRIMINATORY.—

21           “(A) IN GENERAL.—The contribution rates  
22           for any participating small employer shall not  
23           vary on the basis of any health status-related  
24           factor in relation to employees of such employer  
25           or their beneficiaries and shall not vary on the

1 basis of the type of business or industry in  
2 which such employer is engaged, subject to sub-  
3 paragraph (B) and the terms of this title.

4 “(B) EFFECT OF TITLE.—Nothing in this  
5 title or any other provision of law shall be con-  
6 strued to preclude a health insurance issuer of-  
7 fering health insurance coverage in connection  
8 with a small business health plan that meets  
9 the requirements of this part, and at the re-  
10 quest of such small business health plan,  
11 from—

12 “(i) setting contribution rates for the  
13 small business health plan based on the  
14 claims experience of the small business  
15 health plan so long as any variation in  
16 such rates for participating small employ-  
17 ers complies with the requirements of  
18 clause (ii), except that small business  
19 health plans shall not be subject, in non-  
20 adopting states, to subparagraphs (A)(ii)  
21 and (C) of section 2912(a)(2) of the Public  
22 Health Service Act, and in adopting states,  
23 to any State law that would have the effect  
24 of imposing requirements as outlined in  
25 such subparagraphs (A)(ii) and (C); or

1           “(ii) varying contribution rates for  
2 participating small employers in a small  
3 business health plan in a State to the ex-  
4 tent that such rates could vary using the  
5 same methodology employed in such State  
6 for regulating small group premium rates,  
7 subject to the terms of part I of subtitle A  
8 of title XXX of the Public Health Service  
9 Act (relating to rating requirements), as  
10 added by subtitle B of title II of the  
11 Health Security for All Americans Act of  
12 2008.

13           “(3) EXCEPTIONS REGARDING SELF-EMPLOYED  
14 AND LARGE EMPLOYERS.—

15           “(A) SELF-EMPLOYED.—

16           “(i) IN GENERAL.—Small business  
17 health plans with participating employers  
18 who are self-employed individuals (and  
19 their dependents) shall enroll such self-em-  
20 ployed participating employers in accord-  
21 ance with rating rules that do not violate  
22 the rating rules for self-employed individ-  
23 uals in the State in which such self-em-  
24 ployed participating employers are located.

1                   “(ii) GUARANTEE ISSUE.—Small busi-  
2                   ness health plans with participating em-  
3                   ployers who are self-employed individuals  
4                   (and their dependents) may decline to  
5                   guarantee issue to such participating em-  
6                   ployers in States in which guarantee issue  
7                   is not otherwise required for the self-em-  
8                   ployed in that State.

9                   “(B) LARGE EMPLOYERS.—Small business  
10                  health plans with participating employers that  
11                  are larger than small employers (as defined in  
12                  section 808(a)(10)) shall enroll such large par-  
13                  ticipating employers in accordance with rating  
14                  rules that do not violate the rating rules for  
15                  large employers in the State in which such large  
16                  participating employers are located.

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

22                  “(b) ABILITY OF SMALL BUSINESS HEALTH PLANS  
23                  TO DESIGN BENEFIT OPTIONS.—Nothing in this part or  
24                  any provision of State law (as defined in section  
25                  514(c)(1)) shall be construed to preclude a small business

1 health plan or a health insurance issuer offering health  
2 insurance coverage in connection with a small business  
3 health plan from exercising its sole discretion in selecting  
4 the specific benefits and services consisting of medical care  
5 to be included as benefits under such plan or coverage,  
6 except that such benefits and services must meet the terms  
7 and specifications of part II of subtitle A of title XXX  
8 of the Public Health Service Act (relating to lower cost  
9 plans), as added by subtitle B of title II of the Health  
10 Security for All Americans Act of 2008.

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

12 “(1) DOMICILE STATE.—Coverage shall be  
13 issued to a small business health plan in the State  
14 in which the sponsor’s principal place of business is  
15 located.

16 “(2) NON-DOMICILE STATES.—With respect to  
17 a State (other than the domicile State) in which par-  
18 ticipating employers of a small business health plan  
19 are located but in which the insurer of the small  
20 business health plan in the domicile State is not yet  
21 licensed, the following shall apply:

22 “(A) TEMPORARY PREEMPTION.—If, upon  
23 the expiration of the 90-day period following  
24 the submission of a licensure application by  
25 such insurer (that includes a certified copy of

1 an approved licensure application as submitted  
2 by such insurer in the domicile State) to such  
3 State, such State has not approved or denied  
4 such application, such State’s health insurance  
5 licensure laws shall be temporarily preempted  
6 and the insurer shall be permitted to operate in  
7 such State, subject to the following terms:

8 “(i) APPLICATION OF NON-DOMICILE  
9 STATE LAW.—Except with respect to licen-  
10 sure and with respect to the terms of sub-  
11 title A of title XXX of the Public Health  
12 Service Act (relating to rating and benefits  
13 as added by subtitle B of title II of the  
14 Health Security for All Americans Act of  
15 2008), the laws and authority of the non-  
16 domicile State shall remain in full force  
17 and effect.

18 “(ii) REVOCATION OF PREEMPTION.—  
19 The preemption of a non-domicile State’s  
20 health insurance licensure laws pursuant to  
21 this subparagraph, shall be terminated  
22 upon the occurrence of either of the fol-  
23 lowing:

24 “(I) APPROVAL OR DENIAL OF  
25 APPLICATION.—The approval of denial

1 of an insurer’s licensure application,  
2 following the laws and regulations of  
3 the non-domicile State with respect to  
4 licensure.

5 “(II) DETERMINATION OF MATE-  
6 RIAL VIOLATION.—A determination by  
7 a non-domicile State that an insurer  
8 operating in a non-domicile State pur-  
9 suant to the preemption provided for  
10 in this subparagraph is in material  
11 violation of the insurance laws (other  
12 than licensure and with respect to the  
13 terms of subtitle A of title XXX of  
14 the Public Health Service Act (relat-  
15 ing to rating and benefits added by  
16 subtitle B of title II of the Health Se-  
17 curity for All Americans Act of 2008))  
18 of such State.

19 “(B) NO PROHIBITION ON PROMOTION.—  
20 Nothing in this paragraph shall be construed to  
21 prohibit a small business health plan or an in-  
22 surer from promoting coverage prior to the ex-  
23 piration of the 90-day period provided for in  
24 subparagraph (A), except that no enrollment or

1 collection of contributions shall occur before the  
2 expiration of such 90-day period.

3 “(C) LICENSURE.—Except with respect to  
4 the application of the temporary preemption  
5 provision of this paragraph, nothing in this part  
6 shall be construed to limit the requirement that  
7 insurers issuing coverage to small business  
8 health plans shall be licensed in each State in  
9 which the small business health plans operate.

10 “(D) SERVICING BY LICENSED INSUR-  
11 ERS.—Notwithstanding subparagraph (C), the  
12 requirements of this subsection may also be sat-  
13 isfied if the participating employers of a small  
14 business health plan are serviced by a licensed  
15 insurer in that State, even where such insurer  
16 is not the insurer of such small business health  
17 plan in the State in which such small business  
18 health plan is domiciled.

19 **“SEC. 807. REQUIREMENTS FOR APPLICATION AND RE-**  
20 **LATED REQUIREMENTS.**

21 “(a) FILING FEE.—Under the procedure prescribed  
22 pursuant to section 802(a), a small business health plan  
23 shall pay to the applicable authority at the time of filing  
24 an application for certification under this part a filing fee  
25 in the amount of \$5,000, which shall be available in the



1 case of the Secretary, to the extent provided in appropria-  
2 tion Acts, for the sole purpose of administering the certifi-  
3 cation procedures applicable with respect to small business  
4 health plans.

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

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

13 “(A) the sponsor; and

14 “(B) the members of the board of trustees  
15 of the plan.

16 “(2) STATES IN WHICH PLAN INTENDS TO DO  
17 BUSINESS.—The States in which participants and  
18 beneficiaries under the plan are to be located and  
19 the number of them expected to be located in each  
20 such State.

21 “(3) BONDING REQUIREMENTS.—Evidence pro-  
22 vided by the board of trustees that the bonding re-  
23 quirements of section 412 will be met as of the date  
24 of the application or (if later) commencement of op-  
25 erations.

1           “(4) PLAN DOCUMENTS.—A copy of the docu-  
2           ments governing the plan (including any bylaws and  
3           trust agreements), the summary plan description,  
4           and other material describing the benefits that will  
5           be provided to participants and beneficiaries under  
6           the plan.

7           “(5) AGREEMENTS WITH SERVICE PRO-  
8           VIDERS.—A copy of any agreements between the  
9           plan, health insurance issuer, and contract adminis-  
10          trators and other service providers.

11          “(c) FILING NOTICE OF CERTIFICATION WITH  
12          STATES.—A certification granted under this part to a  
13          small business health plan shall not be effective unless  
14          written notice of such certification is filed with the appli-  
15          cable State authority of each State in which the small  
16          business health plans operate.

17          “(d) NOTICE OF MATERIAL CHANGES.—In the case  
18          of any small business health plan certified under this part,  
19          descriptions of material changes in any information which  
20          was required to be submitted with the application for the  
21          certification under this part shall be filed in such form  
22          and manner as shall be prescribed by the applicable au-  
23          thority by regulation. The applicable authority may re-  
24          quire by regulation prior notice of material changes with

1 respect to specified matters which might serve as the basis  
2 for suspension or revocation of the certification.

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

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

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

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

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

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

1 **“SEC. 809. IMPLEMENTATION AND APPLICATION AUTHOR-**  
2 **ITY BY SECRETARY.**

3 “The Secretary shall, through promulgation and im-  
4 plementation of such regulations as the Secretary may  
5 reasonably determine necessary or appropriate, and in  
6 consultation with a balanced spectrum of effected entities  
7 and persons, modify the implementation and application  
8 of this part to accommodate with minimum disruption  
9 such changes to State or Federal law provided in this part  
10 and the (and the amendments made by such Act) or in  
11 regulations issued thereto.

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

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

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

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

19 “(B) in the case of a sponsor with mem-  
20 bers which consist of associations, a person who  
21 is a member or employee of any such associa-  
22 tion and elects an affiliated status with the  
23 sponsor.

24 “(2) APPLICABLE AUTHORITY.—The term ‘ap-  
25 plicable authority’ means the Secretary of Labor, ex-  
26 cept that, in connection with any exercise of the Sec-

1       retary’s authority with respect to which the Sec-  
2       retary is required under section 506(d) to consult  
3       with a State, such term means the Secretary, in con-  
4       sultation with such State.

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

12              “(4) GROUP HEALTH PLAN.—The term ‘group  
13      health plan’ has the meaning provided in section  
14      733(a)(1) (after applying subsection (b) of this sec-  
15      tion).

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

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

24              “(7) INDIVIDUAL MARKET.—

1           “(A) IN GENERAL.—The term ‘individual  
2 market’ means the market for health insurance  
3 coverage offered to individuals other than in  
4 connection with a group health plan.

5           “(B) TREATMENT OF VERY SMALL  
6 GROUPS.—

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

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

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

1           “(9) PARTICIPATING EMPLOYER.—The term  
2           ‘participating employer’ means, in connection with a  
3           small business health plan, any employer, if any in-  
4           dividual who is an employee of such employer, a  
5           partner in such employer, or a self-employed indi-  
6           vidual who is such employer (or any dependent, as  
7           defined under the terms of the plan, of such indi-  
8           vidual) is or was covered under such plan in connec-  
9           tion with the status of such individual as such an  
10          employee, partner, or self-employed individual in re-  
11          lation to the plan.

12          “(10) SMALL EMPLOYER.—The term ‘small em-  
13          ployer’ means, in connection with a group health  
14          plan with respect to a plan year, a small employer  
15          as defined in section 2791(e)(4).

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

22          “(b) RULE OF CONSTRUCTION.—For purposes of de-  
23          termining whether a plan, fund, or program is an em-  
24          ployee welfare benefit plan which is a small business  
25          health plan, and for purposes of applying this title in con-

1 nection with such plan, fund, or program so determined  
2 to be such an employee welfare benefit plan—

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

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

12 “(c) RENEWAL.—Notwithstanding any provision of  
13 law to the contrary, a participating employer in a small  
14 business health plan shall not be deemed to be a plan  
15 sponsor in applying requirements relating to coverage re-  
16 newal.

17 “(d) HEALTH SAVINGS ACCOUNTS.—Nothing in this  
18 part shall be construed to create any mandates for cov-  
19 erage of benefits for HSA-qualified health plans that  
20 would require reimbursements in violation of section  
21 223(c)(2) of the Internal Revenue Code of 1986.”.

22 (b) CONFORMING AMENDMENTS TO PREEMPTION  
23 RULES.—



1           (1) Section 514(b)(6) of such Act (29 U.S.C.  
2           1144(b)(6)) is amended by adding at the end the  
3           following new subparagraph:

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

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

10                   (A) in subsection (b)(4), by striking “Sub-  
11                   section (a)” and inserting “Subsections (a) and  
12                   (d)”;

13                   (B) in subsection (b)(5), by striking “sub-  
14                   section (a)” in subparagraph (A) and inserting  
15                   “subsection (a) of this section and subsections  
16                   (a)(2)(B) and (b) of section 805”, and by strik-  
17                   ing “subsection (a)” in subparagraph (B) and  
18                   inserting “subsection (a) of this section or sub-  
19                   section (a)(2)(B) or (b) of section 805”;

20                   (C) by redesignating subsection (d) as sub-  
21                   section (e); and

22                   (D) by inserting after subsection (c) the  
23                   following new subsection:

24           “(d)(1) Except as provided in subsection (b)(4), the  
25           provisions of this title shall supersede any and all State

1 laws insofar as they may now or hereafter preclude a  
2 health insurance issuer from offering health insurance cov-  
3 erage in connection with a small business health plan  
4 which is certified under part 8.

5       “(2) In any case in which health insurance coverage  
6 of any policy type is offered under a small business health  
7 plan certified under part 8 to a participating employer op-  
8 erating in such State, the provisions of this title shall su-  
9 percede any and all laws of such State insofar as they may  
10 establish rating and benefit requirements that would oth-  
11 erwise apply to such coverage, provided the requirements  
12 of subtitle A of title XXX of the Public Health Service  
13 Act (as added by title II of the Health Security for All  
14 Americans Act of 2008) (concerning health plan rating  
15 and benefits) are met.”.

16       (c) PLAN SPONSOR.—Section 3(16)(B) of such Act  
17 (29 U.S.C. 102(16)(B)) is amended by adding at the end  
18 the following new sentence: “Such term also includes a  
19 person serving as the sponsor of a small business health  
20 plan under part 8.”.

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

23       (e) CLERICAL AMENDMENT.—The table of contents  
24 in section 1 of the Employee Retirement Income Security

1 Act of 1974 is amended by inserting after the item relat-  
 2 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.”.

3 **SEC. 202. COOPERATION BETWEEN FEDERAL AND STATE**  
 4 **AUTHORITIES.**

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

8 “(d) CONSULTATION WITH STATES WITH RESPECT  
 9 TO SMALL BUSINESS HEALTH PLANS.—

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

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

17 “(B) the Secretary’s authority to certify  
 18 small business health plans under part 8 in ac-

1 cordance with regulations of the Secretary ap-  
2 plicable to certification under part 8.

3 “(2) RECOGNITION OF DOMICILE STATE.—In  
4 carrying out paragraph (1), the Secretary shall en-  
5 sure that only one State will be recognized, with re-  
6 spect to any particular small business health plan,  
7 as the State with which consultation is required. In  
8 carrying out this paragraph such State shall be the  
9 domicile State, as defined in section 805(c).”.

10 **SEC. 203. EFFECTIVE DATE AND TRANSITIONAL AND**  
11 **OTHER RULES.**

12 (a) EFFECTIVE DATE.—The amendments made by  
13 this subtitle shall take effect 12 months after the date of  
14 the enactment of this Act. The Secretary of Labor shall  
15 first issue all regulations necessary to carry out the  
16 amendments made by this subtitle within 6 months after  
17 the date of the enactment of this Act.

18 (b) TREATMENT OF CERTAIN EXISTING HEALTH  
19 BENEFITS PROGRAMS.—

20 (1) IN GENERAL.—In any case in which, as of  
21 the date of the enactment of this Act, an arrange-  
22 ment is maintained in a State for the purpose of  
23 providing benefits consisting of medical care for the  
24 employees and beneficiaries of its participating em-  
25 ployers, at least 200 participating employers make

1 contributions to such arrangement, such arrange-  
2 ment has been in existence for at least 10 years, and  
3 such arrangement is licensed under the laws of one  
4 or more States to provide such benefits to its par-  
5 ticipating employers, upon the filing with the appli-  
6 cable authority (as defined in section 808(a)(2) of  
7 the Employee Retirement Income Security Act of  
8 1974 (as amended by this subtitle)) by the arrange-  
9 ment of an application for certification of the ar-  
10 rangement under part 8 of subtitle B of title I of  
11 such Act—

12 (A) such arrangement shall be deemed to  
13 be a group health plan for purposes of title I  
14 of such Act;

15 (B) the requirements of sections 801(a)  
16 and 803(a) of the Employee Retirement Income  
17 Security Act of 1974 shall be deemed met with  
18 respect to such arrangement;

19 (C) the requirements of section 803(b) of  
20 such Act shall be deemed met, if the arrange-  
21 ment is operated by a board of trustees which  
22 has control over the arrangement;

23 (D) the requirements of section 804(a) of  
24 such Act shall be deemed met with respect to  
25 such arrangement; and

1           (E) the arrangement may be certified by  
2           any applicable authority with respect to its op-  
3           erations in any State only if it operates in such  
4           State on the date of certification.

5           The provisions of this subsection shall cease to apply  
6           with respect to any such arrangement at such time  
7           after the date of the enactment of this Act as the  
8           applicable requirements of this subsection are not  
9           met with respect to such arrangement or at such  
10          time that the arrangement provides coverage to par-  
11          ticipants and beneficiaries in any State other than  
12          the States in which coverage is provided on such  
13          date of enactment.

14          (2) DEFINITIONS.—For purposes of this sub-  
15          section, the terms “group health plan”, “medical  
16          care”, and “participating employer” shall have the  
17          meanings provided in section 808 of the Employee  
18          Retirement Income Security Act of 1974, except  
19          that the reference in paragraph (7) of such section  
20          to an “small business health plan” shall be deemed  
21          a reference to an arrangement referred to in this  
22          subsection.

1           **Subtitle B—Market Relief**

2   **SEC. 211. MARKET RELIEF.**

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

5   **“TITLE XXX—HEALTH CARE IN-**  
6           **SURANCE           MARKETPLACE**  
7           **MODERNIZATION**

8   **“SEC. 3001. GENERAL INSURANCE DEFINITIONS.**

9           “In this title, the terms ‘health insurance coverage’,  
10 ‘health insurance issuer’, ‘group health plan’, and ‘indi-  
11 vidual health insurance’ shall have the meanings given  
12 such terms in section 2791.

13   **“SEC. 3002. IMPLEMENTATION AND APPLICATION AUTHOR-**  
14           **ITY BY SECRETARY.**

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

# “Subtitle A—Market Relief

## “PART I—RATING REQUIREMENTS

### “SEC. 3011. DEFINITIONS.

“In this part:

“(1) **ADOPTING STATE.**—The term ‘adopting State’ means a State that, with respect to the small group market, has enacted small group rating rules that meet the minimum standards set forth in section 3012(a)(1) or, as applicable, transitional small group rating rules set forth in section 3012(b).

“(2) **APPLICABLE STATE AUTHORITY.**—The term ‘applicable State authority’ means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the insurance laws of such State.

“(3) **BASE PREMIUM RATE.**—The term ‘base premium rate’ means, for each class of business with respect to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.



1           “(4) ELIGIBLE INSURER.—The term ‘eligible  
2 insurer’ means a health insurance issuer that is li-  
3 censed in a State and that—

4           “(A) notifies the Secretary, not later than  
5 30 days prior to the offering of coverage de-  
6 scribed in this subparagraph, that the issuer in-  
7 tends to offer health insurance coverage con-  
8 sistent with the Model Small Group Rating  
9 Rules or, as applicable, transitional small group  
10 rating rules in a State;

11           “(B) notifies the insurance department of  
12 a nonadopting State (or other State agency),  
13 not later than 30 days prior to the offering of  
14 coverage described in this subparagraph, that  
15 the issuer intends to offer small group health  
16 insurance coverage in that State consistent with  
17 the Model Small Group Rating Rules, and pro-  
18 vides with such notice a copy of any insurance  
19 policy that it intends to offer in the State, its  
20 most recent annual and quarterly financial re-  
21 ports, and any other information required to be  
22 filed with the insurance department of the State  
23 (or other State agency); and

24           “(C) includes in the terms of the health in-  
25 surance coverage offered in nonadopting States

1 (including in the terms of any individual certifi-  
2 cates that may be offered to individuals in con-  
3 nection with such group health coverage) and  
4 filed with the State pursuant to subparagraph  
5 (B), a description in the insurer’s contract of  
6 the Model Small Group Rating Rules and an af-  
7 firmation that such Rules are included in the  
8 terms of such contract.

9 “(5) HEALTH INSURANCE COVERAGE.—The  
10 term ‘health insurance coverage’ means any coverage  
11 issued in the small group health insurance market,  
12 except that such term shall not include excepted  
13 benefits (as defined in section 2791(c)).

14 “(6) INDEX RATE.—The term ‘index rate’  
15 means for each class of business with respect to the  
16 rating period for small employers with similar case  
17 characteristics, the arithmetic average of the appli-  
18 cable base premium rate and the corresponding  
19 highest premium rate.

20 “(7) MODEL SMALL GROUP RATING RULES.—  
21 The term ‘Model Small Group Rating Rules’ means  
22 the rules set forth in section 3012(a)(2).

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

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

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

9           “(11) VARIATION LIMITS.—

10           “(A) COMPOSITE VARIATION LIMIT.—

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

18           “(I) Age.

19           “(II) Duration of coverage.

20           “(III) Claims experience.

21           “(IV) Health status.

22           “(ii) USE OF FACTORS.—With respect  
23 to the use of the factors described in  
24 clause (i) in setting premium rates, a  
25 health insurance issuer shall use one or

1           both of the factors described in subclauses  
2           (I) or (IV) of such clause and may use the  
3           factors described in subclauses (II) or (III)  
4           of such clause.

5           “(B) TOTAL VARIATION LIMIT.—The term  
6           ‘total variation limit’ means the total variation  
7           in premium rates charged by a health insurance  
8           issuer in the small group market as permitted  
9           under applicable State law based on all factors  
10          and case characteristics (as described in section  
11          3012(a)(1)).

12 **“SEC. 3012. RATING RULES.**

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

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

21                         “(A) COMPOSITE VARIATION LIMIT.—The  
22                         composite variation limit shall not be less than  
23                         3:1.

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

1           “(C) PROHIBITION ON USE OF CERTAIN  
2 CASE CHARACTERISTICS.—For purposes of this  
3 paragraph, in calculating the total variation  
4 limit, the State shall not use case characteris-  
5 tics other than those used in calculating the  
6 composite variation limit and industry, geo-  
7 graphic area, group size, participation rate,  
8 class of business, and participation in wellness  
9 programs.

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

13           “(A) PREMIUM RATES.—Premium rates  
14 for small group health benefit plans to which  
15 this title applies shall comply with the following  
16 provisions relating to premiums, except as pro-  
17 vided for under subsection (b):

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

22           “(ii) INDEX RATE.—The index rate  
23 for a rating period for any class of busi-  
24 ness shall not exceed the index rate for any  
25 other class of business by more than 20

1 percent, excluding those classes of business  
2 related to association groups under this  
3 title.

4 “(iii) CLASS OF BUSINESSES.—With  
5 respect to a class of business, the premium  
6 rates charged during a rating period to  
7 small employers with similar case charac-  
8 teristics for the same or similar coverage  
9 or the rates that could be charged to such  
10 employers under the rating system for that  
11 class of business, shall not vary from the  
12 index rate by more than 25 percent of the  
13 index rate under clause (ii).

14 “(iv) INCREASES FOR NEW RATING  
15 PERIODS.—The percentage increase in the  
16 premium rate charged to a small employer  
17 for a new rating period may not exceed the  
18 sum of the following:

19 “(I) The percentage change in  
20 the new business premium rate meas-  
21 ured from the first day of the prior  
22 rating period to the first day of the  
23 new rating period. In the case of a  
24 health benefit plan into which the  
25 small employer carrier is no longer en-

1 rolling new small employers, the small  
2 employer carrier shall use the percent-  
3 age change in the base premium rate,  
4 except that such change shall not ex-  
5 ceed, on a percentage basis, the  
6 change in the new business premium  
7 rate for the most similar health ben-  
8 efit plan into which the small em-  
9 ployer carrier is actively enrolling new  
10 small employers.

11 “(II) Any adjustment, not to ex-  
12 ceed 15 percent annually and adjusted  
13 pro rata for rating periods of less  
14 than 1 year, due to the claim experi-  
15 ence, health status or duration of cov-  
16 erage of the employees or dependents  
17 of the small employer as determined  
18 from the small employer carrier’s rate  
19 manual for the class of business in-  
20 volved.

21 “(III) Any adjustment due to  
22 change in coverage or change in the  
23 case characteristics of the small em-  
24 ployer as determined from the small

1 employer carrier's rate manual for the  
2 class of business.

3 “(v) UNIFORM APPLICATION OF AD-  
4 JUSTMENTS.—Adjustments in premium  
5 rates for claim experience, health status, or  
6 duration of coverage shall not be charged  
7 to individual employees or dependents. Any  
8 such adjustment shall be applied uniformly  
9 to the rates charged for all employees and  
10 dependents of the small employer.

11 “(vi) PROHIBITION ON USE OF CER-  
12 TAIN CASE CHARACTERISTIC.—A small em-  
13 ployer carrier shall not utilize case charac-  
14 teristics, other than those permitted under  
15 paragraph (1)(C), without the prior ap-  
16 proval of the applicable State authority.

17 “(vii) CONSISTENT APPLICATION OF  
18 FACTORS.—Small employer carriers shall  
19 apply rating factors, including case charac-  
20 teristics, consistently with respect to all  
21 small employers in a class of business.  
22 Rating factors shall produce premiums for  
23 identical groups which differ only by the  
24 amounts attributable to plan design and do  
25 not reflect differences due to the nature of



1 the groups assumed to select particular  
2 health benefit plans.

3 “(viii) TREATMENT OF PLANS AS HAV-  
4 ING SAME RATING PERIOD.—A small em-  
5 ployer carrier shall treat all health benefit  
6 plans issued or renewed in the same cal-  
7 endar month as having the same rating pe-  
8 riod.

9 “(ix) REQUIRE COMPLIANCE.—Pre-  
10 mium rates for small business health ben-  
11 efit plans shall comply with the require-  
12 ments of this subsection notwithstanding  
13 any assessments paid or payable by a small  
14 employer carrier as required by a State’s  
15 small employer carrier reinsurance pro-  
16 gram.

17 “(B) ESTABLISHMENT OF SEPARATE  
18 CLASS OF BUSINESS.—Subject to subparagraph  
19 (C), a small employer carrier may establish a  
20 separate class of business only to reflect sub-  
21 stantial differences in expected claims experi-  
22 ence or administrative costs related to the fol-  
23 lowing:

24 “(i) The small employer carrier uses  
25 more than one type of system for the mar-

1           keting and sale of health benefit plans to  
2           small employers.

3           “(ii) The small employer carrier has  
4           acquired a class of business from another  
5           small employer carrier.

6           “(iii) The small employer carrier pro-  
7           vides coverage to one or more association  
8           groups that meet the requirements of this  
9           title.

10          “(C) LIMITATION.—A small employer car-  
11          rier may establish up to 9 separate classes of  
12          business under subparagraph (B), excluding  
13          those classes of business related to association  
14          groups under this title.

15          “(D) LIMITATION ON TRANSFERS.—A  
16          small employer carrier shall not transfer a  
17          small employer involuntarily into or out of a  
18          class of business. A small employer carrier shall  
19          not offer to transfer a small employer into or  
20          out of a class of business unless such offer is  
21          made to transfer all small employers in the  
22          class of business without regard to case charac-  
23          teristics, claim experience, health status or du-  
24          ration of coverage since issue.

1       “(b) TRANSITIONAL MODEL SMALL GROUP RATING  
2 RULES.—

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

17           “(2) COMPLIANCE WITH TRANSITIONAL MODEL  
18 SMALL GROUP RATING RULES.—During the transi-  
19 tion period described in paragraph (1), a State that,  
20 on the date of enactment of this title, has in effect  
21 a small group rating rules methodology that allows  
22 for a variation that is less than the variation pro-  
23 vided for under subsection (a)(1) (concerning min-  
24 imum standards for premium variation), shall be  
25 deemed to be an adopting State if the State complies

1 with the transitional small group rating rules as pro-  
2 mulgated by the Secretary pursuant to paragraph  
3 (1).

4 “(3) TRANSITIONING OF OLD BUSINESS.—

5 “(A) IN GENERAL.—In developing the  
6 transitional small group rating rules under  
7 paragraph (1), the Secretary shall, after con-  
8 sultation with the National Association of In-  
9 surance Commissioners and representatives of  
10 insurers operating in the small group health in-  
11 surance market in non-adopting States, promul-  
12 gate special transition standards with respect to  
13 independent rating classes for old and new busi-  
14 ness, to the extent reasonably necessary to pro-  
15 tect health insurance consumers and to ensure  
16 a stable and fair transition for old and new  
17 market entrants.

18 “(B) PERIOD FOR OPERATION OF INDE-  
19 PENDENT RATING CLASSES.—In developing the  
20 special transition standards pursuant to sub-  
21 paragraph (A), the Secretary shall permit a  
22 carrier in a non-adopting State, at its option, to  
23 maintain independent rating classes for old and  
24 new business for a period of up to 5 years, with  
25 the commencement of such 5-year period to

1           begin at such time, but not later than the date  
2           that is 3 years after the date of enactment of  
3           this title, as the carrier offers a book of busi-  
4           ness meeting the minimum standards for pre-  
5           mium variation provided for in subsection  
6           (a)(1) or the transitional small group rating  
7           rules under paragraph (1).

8           “(4) OTHER TRANSITIONAL AUTHORITY.—In  
9           developing the transitional small group rating rules  
10          under paragraph (1), the Secretary shall provide for  
11          the application of the transitional small group rating  
12          rules in transition States as the Secretary may de-  
13          termine necessary for a an effective transition.

14          “(c) MARKET RE-ENTRY.—

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

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

1 **“SEC. 3013. APPLICATION AND PREEMPTION.**

2 “(a) SUPERSEDING OF STATE LAW.—

3 “(1) IN GENERAL.—This part shall supersede  
4 any and all State laws of a non-adopting State inso-  
5 far as such State laws (whether enacted prior to or  
6 after the date of enactment of this subtitle) relate to  
7 rating in the small group insurance market as ap-  
8 plied to an eligible insurer, or small group health in-  
9 surance coverage issued by an eligible insurer, in-  
10 cluding with respect to coverage issued to a small  
11 employer through a small business health plan, in a  
12 State.

13 “(2) NONADOPTING STATES.—This part shall  
14 supersede any and all State laws of a nonadopting  
15 State insofar as such State laws (whether enacted  
16 prior to or after the date of enactment of this sub-  
17 title)—

18 “(A) prohibit an eligible insurer from of-  
19 fering, marketing, or implementing small group  
20 health insurance coverage consistent with the  
21 Model Small Group Rating Rules or transitional  
22 model small group rating rules; or

23 “(B) have the effect of retaliating against  
24 or otherwise punishing in any respect an eligible  
25 insurer for offering, marketing, or imple-  
26 menting small group health insurance coverage

1           consistent with the Model Small Group Rating  
2           Rules or transitional model small group rating  
3           rules.

4           “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

5           “(1) NONAPPLICATION TO ADOPTING STATES.—

6           Subsection (a) shall not apply with respect to adopt-  
7           ing states.

8           “(2) NONAPPLICATION TO CERTAIN INSUR-

9           ERS.—Subsection (a) shall not apply with respect to  
10          insurers that do not qualify as eligible insurers that  
11          offer small group health insurance coverage in a  
12          nonadopting State.

13          “(3) NONAPPLICATION WHERE OBTAINING RE-

14          LIEF UNDER STATE LAW.—Subsection (a)(1) shall  
15          not supercede any State law in a nonadopting State  
16          to the extent necessary to permit individuals or the  
17          insurance department of the State (or other State  
18          agency) to obtain relief under State law to require  
19          an eligible insurer to comply with the Model Small  
20          Group Rating Rules or transitional model small  
21          group rating rules.

22          “(4) NO EFFECT ON PREEMPTION.—In no case

23          shall this part be construed to limit or affect in any  
24          manner the preemptive scope of sections 502 and  
25          514 of the Employee Retirement Income Security

1 Act of 1974. In no case shall this part be construed  
2 to create any cause of action under Federal or State  
3 law or enlarge or affect any remedy available under  
4 the Employee Retirement Income Security Act of  
5 1974.

6 “(5) PREEMPTION LIMITED TO RATING.—Sub-  
7 section (a) shall not preempt any State law that  
8 does not have a reference to or a connection with  
9 State rating rules that would otherwise apply to eli-  
10 gible insurers.

11 “(c) EFFECTIVE DATE.—This section shall apply, at  
12 the election of the eligible insurer, beginning in the first  
13 plan year or the first calendar year following the issuance  
14 of the final rules by the Secretary under the Model Small  
15 Group Rating Rules or, as applicable, the Transitional  
16 Model Small Group Rating Rules, but in no event earlier  
17 than the date that is 12 months after the date of enact-  
18 ment of this title.

19 **“SEC. 3014. CIVIL ACTIONS AND JURISDICTION.**

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

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 3013.

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. 3015. ONGOING REVIEW.**

11       “Not later than 5 years after the date on which the  
12       Model Small Group Rating Rules are issued under this  
13       part, and every 5 years thereafter, the Secretary, in con-  
14       sultation with the National Association of Insurance Com-  
15       missioners, shall prepare and submit to the appropriate  
16       committees of Congress a report that assesses the effect  
17       of the Model Small Group Rating Rules on access, cost,  
18       and market functioning in the small group market. Such  
19       report may, if the Secretary, in consultation with the Na-  
20       tional Association of Insurance Commissioners, deter-  
21       mines such is appropriate for improving access, costs, and  
22       market functioning, contain legislative proposals for rec-  
23       ommended modification to such Model Small Group Rat-  
24       ing Rules.

1                   **“PART II—AFFORDABLE PLANS**

2   **“SEC. 3021. DEFINITIONS.**

3            “In this part:

4                   “(1) **ADOPTING STATE.**—The term ‘adopting  
5           State’ means a State that has enacted a law pro-  
6           viding that small group, individual, and large group  
7           health insurers in such State may offer and sell  
8           products in accordance with the List of Required  
9           Benefits and the Terms of Application as provided  
10          for in section 3022(b).

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

14                           “(A) notifies the Secretary, not later than  
15                           30 days prior to the offering of coverage de-  
16                           scribed in this subparagraph, that the issuer in-  
17                           tends to offer health insurance coverage con-  
18                           sistent with the List of Required Benefits and  
19                           Terms of Application in a nonadopting State;

20                           “(B) notifies the insurance department of  
21                           a nonadopting State (or other applicable State  
22                           agency), not later than 30 days prior to the of-  
23                           fering of coverage described in this subpara-  
24                           graph, that the issuer intends to offer health in-  
25                           surance coverage in that State consistent with  
26                           the List of Required Benefits and Terms of Ap-

1           plication, and provides with such notice a copy  
2           of any insurance policy that it intends to offer  
3           in the State, its most recent annual and quar-  
4           terly financial reports, and any other informa-  
5           tion required to be filed with the insurance de-  
6           partment of the State (or other State agency)  
7           by the Secretary in regulations; and

8           “(C) includes in the terms of the health in-  
9           surance coverage offered in nonadopting States  
10          (including in the terms of any individual certifi-  
11          cates that may be offered to individuals in con-  
12          nection with such group health coverage) and  
13          filed with the State pursuant to subparagraph  
14          (B), a description in the insurer’s contract of  
15          the List of Required Benefits and a description  
16          of the Terms of Application, including a de-  
17          scription of the benefits to be provided, and  
18          that adherence to such standards is included as  
19          a term of such contract.

20          “(3) HEALTH INSURANCE COVERAGE.—The  
21          term ‘health insurance coverage’ means any coverage  
22          issued in the small group, individual, or large group  
23          health insurance markets, including with respect to  
24          small business health plans, except that such term

1 shall not include excepted benefits (as defined in sec-  
2 tion 2791(c)).

3 “(4) LIST OF REQUIRED BENEFITS.—The term  
4 ‘List of Required Benefits’ means the List issued  
5 under section 3022(a).

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

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

13 “(7) STATE PROVIDER FREEDOM OF CHOICE  
14 LAW.—The term ‘State Provider Freedom of Choice  
15 Law’ means a State law requiring that a health in-  
16 surance issuer, with respect to health insurance cov-  
17 erage, not discriminate with respect to participation,  
18 reimbursement, or indemnification as to any pro-  
19 vider who is acting within the scope of the provider’s  
20 license or certification under applicable State law.

21 “(8) TERMS OF APPLICATION.—The term  
22 ‘Terms of Application’ means terms provided under  
23 section 3022(a).

1 **“SEC. 3022. OFFERING AFFORDABLE PLANS.**

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

15       “(b) TERMS OF APPLICATION.—

16               “(1) STATE WITH MANDATES.—With respect to  
17 a State that has a covered benefit, service, or cat-  
18 egory of provider mandate in effect that is covered  
19 under the List of Required Benefits under sub-  
20 section (a), such State mandate shall, subject to  
21 paragraph (3) (concerning uniform application),  
22 apply to a coverage plan or plan in, as applicable,  
23 the small group, individual, or large group market or  
24 through a small business health plan in such State.

25               “(2) STATES WITHOUT MANDATES.—With re-  
26 spect to a State that does not have a covered ben-

1       efit, service, or category of provider mandate in ef-  
2       fect that is covered under the List of Required Ben-  
3       efits under subsection (a), such mandate shall not  
4       apply, as applicable, to a coverage plan or plan in  
5       the small group, individual, or large group market or  
6       through a small business health plan in such State.

7               “(3) UNIFORM APPLICATION OF LAWS.—

8               “(A) IN GENERAL.—With respect to a  
9       State described in paragraph (1), in applying a  
10      covered benefit, service, or category of provider  
11      mandate that is on the List of Required Bene-  
12      fits under subsection (a) the State shall permit  
13      a coverage plan or plan offered in the small  
14      group, individual, or large group market or  
15      through a small business health plan in such  
16      State to apply such benefit, service, or category  
17      of provider coverage in a manner consistent  
18      with the manner in which such coverage is ap-  
19      plied under one of the three most heavily sub-  
20      scribed national health plans offered under the  
21      Federal Employee Health Benefits Program  
22      under chapter 89 of title 5, United States Code  
23      (as determined by the Secretary in consultation  
24      with the Director of the Office of Personnel  
25      Management), and consistent with the Publica-

1           tion of Benefit Applications under subsection  
2           (c). In the event a covered benefit, service, or  
3           category of provider appearing in the List of  
4           Required Benefits is not offered in one of the  
5           three most heavily subscribed national health  
6           plans offered under the Federal Employees  
7           Health Benefits Program, such covered benefit,  
8           service, or category of provider requirement  
9           shall be applied in a manner consistent with the  
10          manner in which such coverage is offered in the  
11          remaining most heavily subscribed plan of the  
12          remaining Federal Employees Health Benefits  
13          Program plans, as determined by the Secretary,  
14          in consultation with the Director of the Office  
15          of Personnel Management.

16                 “(B) EXCEPTION REGARDING STATE PRO-  
17          VIDER FREEDOM OF CHOICE LAWS.—Notwith-  
18          standing subparagraph (A), in the event a cat-  
19          egory of provider mandate is included in the  
20          List of Covered Benefits, any State Provider  
21          Freedom of Choice Law (as defined in section  
22          3021(7)) that is in effect in any State in which  
23          such category of provider mandate is in effect  
24          shall not be preempted, with respect to that cat-  
25          egory of provider, by this part.



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

12       “(d) EFFECTIVE DATES.—

13               “(1) SMALL BUSINESS HEALTH PLANS.—With  
14 respect to health insurance provided to participating  
15 employers of small business health plans, the re-  
16 quirements of this part (concerning lower cost plans)  
17 shall apply beginning on the date that is 12 months  
18 after the date of enactment of this title.

19               “(2) NON-ASSOCIATION COVERAGE.—With re-  
20 spect to health insurance provided to groups or indi-  
21 viduals other than participating employers of small  
22 business health plans, the requirements of this part  
23 shall apply beginning on the date that is 15 months  
24 after the date of enactment of this title.

1       “(e) UPDATING OF LIST OF REQUIRED BENEFITS.—  
2 Not later than 2 years after the date on which the list  
3 of required benefits is issued under subsection (a), and  
4 every 2 years thereafter, the Secretary, in consultation  
5 with the National Association of Insurance Commis-  
6 sioners, shall update the list based on changes in the laws  
7 and regulations of the States. The Secretary shall issue  
8 the updated list by regulation, and such updated list shall  
9 be effective upon the first plan year following the issuance  
10 of such regulation.

11 **“SEC. 3023. APPLICATION AND PREEMPTION.**

12       “(a) SUPERCEDING OF STATE LAW.—

13               “(1) IN GENERAL.—This part shall supersede  
14 any and all State laws insofar as such laws relate to  
15 mandates relating to covered benefits, services, or  
16 categories of provider in the health insurance market  
17 as applied to an eligible insurer, or health insurance  
18 coverage issued by an eligible insurer, including with  
19 respect to coverage issued to a small business health  
20 plan, in a nonadopting State.

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

1           “(A) prohibit an eligible insurer from of-  
2           fering, marketing, or implementing health in-  
3           surance coverage consistent with the Benefit  
4           Choice Standards, as provided for in section  
5           3022(a); or

6           “(B) have the effect of retaliating against  
7           or otherwise punishing in any respect an eligible  
8           insurer for offering, marketing, or imple-  
9           menting health insurance coverage consistent  
10          with the Benefit Choice Standards.

11          “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

12           “(1) NONAPPLICATION TO ADOPTING STATES.—  
13          Subsection (a) shall not apply with respect to adopt-  
14          ing States.

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

20           “(3) NONAPPLICATION WHERE OBTAINING RE-  
21          LIEF UNDER STATE LAW.—Subsection (a)(1) shall  
22          not supercede any State law of a nonadopting State  
23          to the extent necessary to permit individuals or the  
24          insurance department of the State (or other State  
25          agency) to obtain relief under State law to require

1 an eligible insurer to comply with the Benefit Choice  
2 Standards.

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

12 “(5) PREEMPTION LIMITED TO BENEFITS.—  
13 Subsection (a) shall not preempt any State law that  
14 does not have a reference to or a connection with  
15 State mandates regarding covered benefits, services,  
16 or categories of providers that would otherwise apply  
17 to eligible insurers.

18 **“SEC. 3024. CIVIL ACTIONS AND JURISDICTION.**

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

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

1 action, or proposed conduct or action, by such officials or  
2 agents which violates, or which would if undertaken vio-  
3 late, section 3023.

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

10 “(d) EXPEDITED REVIEW.—

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

19 “(2) COURT OF APPEALS.—In the case of an  
20 action brought directly in a United States Court of  
21 Appeal under subsection (c), or in the case of an ap-  
22 peal of an action brought in a district court under  
23 subsection (b), such Court shall complete all action  
24 on the petition, including the issuance of a judg-  
25 ment, prior to the end of the 60-day period begin-

1       ning on the date on which such petition is filed with  
2       the Court, unless all parties to such proceeding  
3       agree to an extension of such period.

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

9       **“SEC. 3025. RULES OF CONSTRUCTION.**

10       “(a) IN GENERAL.—Notwithstanding any other pro-  
11       vision of Federal or State law, a health insurance issuer  
12       in an adopting State or an eligible insurer in a non-adopt-  
13       ing State may amend its existing policies to be consistent  
14       with the terms of this subtitle (concerning rating and ben-  
15       efits).

16       “(b) HEALTH SAVINGS ACCOUNTS.—Nothing in this  
17       subtitle shall be construed to create any mandates for cov-  
18       erage of benefits for HSA-qualified health plans that  
19       would require reimbursements in violation of section  
20       223(c)(2) of the Internal Revenue Code of 1986.”.

1           **Subtitle C—Harmonization of**  
2           **Health Insurance Standards**

3   **SEC. 221. HEALTH INSURANCE STANDARDS HARMONI-**  
4                           **ZATION.**

5           Title XXX of the Public Health Service Act (as added  
6 by section 211) is amended by adding at the end the fol-  
7 lowing:

8                           **“Subtitle B—Standards**  
9                           **Harmonization**

10   **“SEC. 3031. DEFINITIONS.**

11           “In this subtitle:

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

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

20                           “(A) notifies the Secretary, not later than  
21 30 days prior to the offering of coverage de-  
22 scribed in this subparagraph, that the issuer in-  
23 tends to offer health insurance coverage con-  
24 sistent with the harmonized standards in a non-  
25 adopting State;

1           “(B) notifies the insurance department of  
2           a nonadopting State (or other State agency),  
3           not later than 30 days prior to the offering of  
4           coverage described in this subparagraph, that  
5           the issuer intends to offer health insurance cov-  
6           erage in that State consistent with the har-  
7           monized standards published pursuant to sec-  
8           tion 3033(d), and provides with such notice a  
9           copy of any insurance policy that it intends to  
10          offer in the State, its most recent annual and  
11          quarterly financial reports, and any other infor-  
12          mation required to be filed with the insurance  
13          department of the State (or other State agency)  
14          by the Secretary in regulations; and

15          “(C) includes in the terms of the health in-  
16          surance coverage offered in nonadopting States  
17          (including in the terms of any individual certifi-  
18          cates that may be offered to individuals in con-  
19          nection with such health coverage) and filed  
20          with the State pursuant to subparagraph (B), a  
21          description of the harmonized standards pub-  
22          lished pursuant to section 3033(g)(2) and an  
23          affirmation that such standards are a term of  
24          the contract.



1           “(3) HARMONIZED STANDARDS.—The term  
2 ‘harmonized standards’ means the standards cer-  
3 tified by the Secretary under section 3033(d).

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

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

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

20 **“SEC. 3032. HARMONIZED STANDARDS.**

21           “(a) BOARD.—

22           “(1) ESTABLISHMENT.—Not later than 3  
23 months after the date of enactment of this title, the  
24 Secretary, in consultation with the NAIC, shall es-  
25 tablish the Health Insurance Consensus Standards

1 Board (referred to in this subtitle as the ‘Board’) to  
2 develop recommendations that harmonize incon-  
3 sistent State health insurance laws in accordance  
4 with the procedures described in subsection (b).

5 “(2) COMPOSITION.—

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

12 “(i) Four State insurance commis-  
13 sioners as recommended by the National  
14 Association of Insurance Commissioners, of  
15 which 2 shall be Democrats and 2 shall be  
16 Republicans, and of which one shall be des-  
17 ignated as the chairperson and one shall be  
18 designated as the vice chairperson.

19 “(ii) Four representatives of State  
20 government, two of which shall be gov-  
21 ernors of States and two of which shall be  
22 State legislators, and two of which shall be  
23 Democrats and two of which shall be Re-  
24 publicans.

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

10           “(iv) Two representatives of insurance  
11           agents and brokers.

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

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

19           “(3) ADVISORY PANEL.—The Secretary shall  
20           establish an advisory panel to provide advice to the  
21           Board, and shall appoint its members after consid-  
22           ering the recommendations of professional organiza-  
23           tions representing the entities and constituencies  
24           identified in this paragraph:

1           “(A) Two representatives of small business  
2 health plans.

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

6           “(C) Two representatives of consumer or-  
7 ganizations.

8           “(D) Two representatives of health care  
9 providers.

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

18          “(5) ETHICAL DISCLOSURE.—The Secretary  
19 shall establish a system for public disclosure by  
20 members of the Board of financial and other poten-  
21 tial conflicts of interest relating to such members.  
22 Members of the Board shall be treated as employees  
23 of Congress for purposes of applying title I of the  
24 Ethics in Government Act of 1978 (Public Law 95–  
25 521).

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

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

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

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

21           “(D) make advance, progress, and other  
22 payments which relate to the work of the  
23 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          3022(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. 3033. 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 3033(d)(3), shall supersede any and  
18 all State laws of a non-adopting State insofar as  
19 such State laws relate to the areas of harmonized  
20 standards as applied to an eligible insurer, or health  
21 insurance coverage issued by a eligible insurer, in-  
22 cluding with respect to coverage issued to a small  
23 business 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. 3034. 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 3033.

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. 3035. 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, 2008.

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, 2008.

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 2009 through 2013.”.

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 healthcare 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. ADDITIONAL CAPACITY FOR R.N. STUDENTS OR**  
15 **GRADUATE-LEVEL NURSING STUDENTS.**

16 Title VII of the Higher Education Act of 1965 (20  
17 U.S.C. 1133 et seq.), as amended by section 502, is fur-  
18 ther amended by adding at the end the following new part:

19 **“PART F—ADDITIONAL CAPACITY FOR R.N. STU-**  
20 **DENTS OR GRADUATE-LEVEL NURSING STU-**  
21 **DENTS**

22 **“SEC. 781. ADDITIONAL CAPACITY FOR R.N. STUDENTS OR**  
23 **GRADUATE-LEVEL NURSING STUDENTS.**

24 “(a) **AUTHORIZATION.**—The Secretary shall award  
25 grants to institutions of higher education that offer—

1           “(1) a R.N. nursing program at the bacca-  
2           laureate or associate degree level to enable such pro-  
3           gram to expand the faculty and facilities of such  
4           program to accommodate additional R.N. nursing  
5           program students; or

6           “(2) a graduate-level nursing program to ac-  
7           commodate advanced practice degrees for R.N.s or  
8           to accommodate students enrolled in a graduate-level  
9           nursing program to provide teachers of nursing stu-  
10          dents.

11          “(b) DETERMINATION OF NUMBER OF STUDENTS  
12          AND APPLICATION.—Each institution of higher education  
13          that offers a program described in subsection (a) that de-  
14          sires to receive a grant under this section shall—

15                 “(1) determine for the 4 academic years pre-  
16                 ceding the academic year for which the determina-  
17                 tion is made the average number of matriculated  
18                 nursing program students at such institution for  
19                 such academic years; and

20                 “(2) submit an application to the Secretary at  
21                 such time, in such manner, and accompanied by  
22                 such information as the Secretary may require, in-  
23                 cluding the average number determined under para-  
24                 graph (1).

25          “(c) GRANT AMOUNT; AWARD BASIS.—

1           “(1) GRANT AMOUNT.—For each academic year  
2 after academic year 2006–2007, the Secretary shall  
3 provide to each institution of higher education  
4 awarded a grant under this section an amount that  
5 is equal to \$3,000 multiplied by the number of ma-  
6 triculated nursing program students at such institu-  
7 tion for such academic year that is more than the  
8 average number determined with respect to such in-  
9 stitution under subsection (b)(1). Such amount shall  
10 be used for the purposes described in subsection (a).

11           “(2) DISTRIBUTION OF GRANTS AMONG DIF-  
12 FERENT DEGREE PROGRAMS.—

13           “(A) IN GENERAL.—Subject to subpara-  
14 graph (B), from the funds available to award  
15 grants under this section for each fiscal year,  
16 the Secretary shall—

17           “(i) use 20 percent of such funds to  
18 award grants under this section to institu-  
19 tions of higher education for the purpose  
20 of accommodating advanced practice de-  
21 grees or students in graduate-level nursing  
22 programs;

23           “(ii) use 40 percent of such funds to  
24 award grants under this section to institu-  
25 tions of higher education for the purpose



1 of expanding R.N. nursing programs at the  
2 baccalaureate degree level; and

3 “(iii) use 40 percent of such funds to  
4 award grants under this section to institu-  
5 tions of higher education for the purpose  
6 of expanding R.N. nursing programs at the  
7 associate degree level.

8 “(B) DISTRIBUTION OF EXCESS FUNDS.—  
9 If, for a fiscal year, funds described in clause  
10 (i), (ii), or (iii) of subparagraph (A) remain  
11 after the Secretary awards grants under this  
12 section to all applicants for the particular cat-  
13 egory of nursing programs described in such  
14 clause, the Secretary shall use equal amounts of  
15 the remaining funds to award grants under this  
16 section to applicants for the remaining cat-  
17 egories of nursing programs.

18 “(C) EQUITABLE DISTRIBUTION.—In  
19 awarding grants under this section, the Sec-  
20 retary shall, to the extent practicable, ensure—

21 “(i) an equitable geographic distribu-  
22 tion of the grants among the States; and

23 “(ii) an equitable distribution of the  
24 grants among different types of institu-  
25 tions of higher education.

1 “(d) PROHIBITION.—

2 “(1) IN GENERAL.—Funds provided under this  
3 section may not be used for the construction of new  
4 facilities.

5 “(2) RULE OF CONSTRUCTION.—Nothing in  
6 paragraph (1) shall be construed to prohibit funds  
7 provided under this section from being used for the  
8 repair or renovation of facilities.

9 “(e) AUTHORIZATION OF APPROPRIATIONS.—There  
10 are authorized to be appropriated to carry out this section  
11 such sums as may be necessary.”.

12 **SEC. 504. PROGRAMS TO INCREASE THE NUMBER OF**  
13 **NURSES WITHIN THE ARMED FORCES.**

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

17 (b) SERVICE OF NURSE OFFICERS AS FACULTY IN  
18 EXCHANGE FOR COMMITMENT TO ADDITIONAL SERVICE  
19 IN THE ARMED FORCES.—

20 (1) IN GENERAL.—One of the programs under  
21 this section may be a program in which covered com-  
22 missioned officers with a graduate degree in nursing  
23 or a related field who are in the nurse corps of the  
24 Armed Force concerned serve a tour of duty of two

1 years as a full-time faculty member of an accredited  
2 school of nursing.

3 (2) COVERED OFFICERS.—A commissioned offi-  
4 cer of the nurse corps of the Armed Forces de-  
5 scribed in this paragraph is a nurse officer on active  
6 duty who has served for more than nine years on ac-  
7 tive duty in the Armed Forces as an officer of the  
8 nurse corps at the time of the commencement of the  
9 tour of duty described in paragraph (1).

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

17 (4) AGREEMENT FOR ADDITIONAL SERVICE.—  
18 Each officer who serves a tour of duty on the faculty  
19 of a school of nursing under this subsection shall  
20 enter into an agreement with the Secretary to serve  
21 upon the completion of such tour of duty for a pe-  
22 riod of four years for such tour of duty as a member  
23 of the nurse corps of the Armed Force concerned.  
24 Any service agreed to by an officer under this para-

1 graph is in addition to any other service required of  
2 the officer under law.

3 (c) SERVICE OF NURSE OFFICERS AS FACULTY IN  
4 EXCHANGE FOR SCHOLARSHIPS FOR NURSE OFFICER  
5 CANDIDATES.—

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

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

20 (3) SCHOLARSHIPS FOR NURSE OFFICER CAN-  
21 DIDATES.—(A) Each accredited school of nursing at  
22 which an officer serves on the faculty under this  
23 subsection shall provide scholarships to individuals  
24 undertaking an educational program at such school  
25 leading to a degree in nursing who agree, upon com-

1       pletion of such program, to accept a commission as  
2       an officer in the nurse corps of the Armed Forces.

3           (B) The total amount of funds made available  
4       for scholarships by an accredited school of nursing  
5       under subparagraph (A) for each officer serving on  
6       the faculty of that school under this subsection shall  
7       be not less than the amount equal to an entry-level  
8       full-time faculty member of that school for each year  
9       that such officer so serves on the faculty of that  
10      school.

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

17      (d) SCHOLARSHIPS FOR CERTAIN NURSE OFFICERS  
18      FOR EDUCATION AS NURSES.—

19          (1) IN GENERAL.—One of the programs under  
20      this section may be a program in which the Sec-  
21      retary provides scholarships to commissioned officers  
22      of the nurse corps of the Armed Force concerned de-  
23      scribed in paragraph (2) who enter into an agree-  
24      ment described in paragraph (4) for the participa-  
25      tion of such officers in an educational program of an

1 accredited school of nursing leading to a graduate  
2 degree in nursing.

3 (2) COVERED NURSE OFFICERS.—A commis-  
4 sioned officer of the nurse corps of the Armed  
5 Forces described in this paragraph is a nurse officer  
6 who has served not less than 20 years on active duty  
7 in the Armed Forces and is otherwise eligible for re-  
8 tirement from the Armed Forces.

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

15 (4) AGREEMENT.—An agreement of a nurse of-  
16 ficer described in this paragraph is the agreement of  
17 the officer—

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

20 (B) upon graduation from such educational  
21 program—

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

1                   (ii) to undertake such activities as the  
2                   Secretary considers appropriate to encour-  
3                   age current and prospective nurses to pur-  
4                   sue service in the nurse corps of the  
5                   Armed Forces.

6           (e) TRANSITION ASSISTANCE FOR RETIRING NURSE  
7 OFFICERS QUALIFIED AS FACULTY.—

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

17          (2) COVERED NURSE OFFICERS.—A commis-  
18          sioned officer of the nurse corps of the Armed  
19          Forces described in this paragraph is a nurse officer  
20          who—

21                   (A) has served an aggregate of at least 20  
22                   years on active duty or in reserve active status  
23                   in the Armed Forces;

24                   (B) is eligible for retirement from the  
25                   Armed Forces; and

1           (C) possesses a doctoral or master degree  
2           in nursing or a related field which qualifies the  
3           nurse officer to discharge the position of nurse  
4           instructor at an accredited school of nursing.

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

7                   (A) Career placement assistance.

8                   (B) Continuing education.

9                   (C) Stipends (in an amount specified by  
10           the Secretary).

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

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

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

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



1 (A) is retired from the Armed Forces after  
2 service as a commissioned officer in the nurse  
3 corps of the Armed Forces;

4 (B) holds a graduate degree in nursing;  
5 and

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

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

10 (A) Payment of retired or retirement pay  
11 without reduction based on receipt of pay or  
12 other compensation from the institution of  
13 higher education concerned.

14 (B) Payment by the institution of higher  
15 education concerned of a salary and other com-  
16 pensation to which other similarly situated fac-  
17 ulty members of the institution of higher edu-  
18 cation would be entitled.

19 (C) If the amount of pay and other com-  
20 pensation payable by the institution of higher  
21 education concerned for service as an associate  
22 full-time faculty member is less than the basic  
23 pay to which the individual was entitled imme-  
24 diately before retirement from the Armed  
25 Forces, payment of an amount equal to the dif-

1           ference between such basic pay and such pay-  
2           ment and other compensation.

3           (g) ADMINISTRATION AND DURATION OF PRO-  
4 GRAMS.—

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

10          (2) DURATION.—Any program carried out  
11          under this section shall continue for not less than  
12          two years.

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

21          (4) CONTINUATION.—The Secretary may con-  
22          tinue carrying out any program under this section  
23          that the Secretary determines, pursuant to an as-  
24          sessment under paragraph (3), to continue to carry  
25          out. In continuing to carry out a program, the Sec-

1       retary may modify the terms of the program within  
 2       the scope of this section. The continuation of any  
 3       program may include its expansion to include addi-  
 4       tional participating schools of nursing.

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

9       **TITLE VI—RESERVE COMPONENTS OF THE ARMED**  
 10       **FORCES**

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

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

22       “(d)(1) For purposes of this chapter, a member of  
 23 a reserve component of the armed forces shall be treated  
 24 as a member of the armed forces on active duty as follows:

1           “(A) On the date of the issuance of the alert  
2           order for the member’s unit in anticipation of the  
3           mobilization of the unit for service for a period of  
4           more than 30 days in support of a contingency oper-  
5           ation.

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

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

○