

108TH CONGRESS
2D SESSION

H. R. 4356

To amend the Internal Revenue Code of 1986 to provide tax subsidies to encourage small employers to offer affordable health coverage to their employees through qualified health pooling arrangements, to encourage the establishment and operation of these arrangements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2004

Mr. SANDLIN (for himself, Ms. PELOSI, Mr. RANGEL, Mr. DINGELL, Mr. STARK, Mr. BROWN of Ohio, Mr. PALLONE, Mr. WAXMAN, Mr. HOYER, Mr. MENENDEZ, Mr. BERRY, Mr. GEORGE MILLER of California, Mr. GEPHARDT, Mr. ROSS, Mr. MATSUI, Mr. STENHOLM, Mr. LAMPSON, Mr. HOEFFEL, Mrs. JONES of Ohio, Mr. KILDEE, Mr. GRIJALVA, Mr. RUPPERSBERGER, Mr. McDERMOTT, Mr. TOWNS, Ms. SLAUGHTER, Mr. GREEN of Texas, Mr. MARKEY, Mr. LYNCH, Mr. CROWLEY, Ms. MILLENDER-McDONALD, Mr. BOUCHER, Mrs. CHRISTENSEN, Mr. JACKSON of Illinois, Ms. ROYBAL-ALLARD, Mr. RODRIGUEZ, Mr. NADLER, Mr. CONYERS, Ms. DELAURO, Ms. KILPATRICK, Mr. SERRANO, Ms. LEE, Mr. EVANS, Mr. TIERNEY, Mr. ISRAEL, Ms. MCCOLLUM, Mr. LANTOS, Mr. GUTIERREZ, Ms. WATERS, Mr. ALEXANDER, Ms. WOOLSEY, Mrs. DAVIS of California, Ms. JACKSON-LEE of Texas, Mrs. MCCARTHY of New York, Mr. HINCHEY, Mr. ABERCROMBIE, Mr. VAN HOLLEN, Ms. LINDA T. SÁNCHEZ of California, Mr. TURNER of Texas, Mr. EMANUEL, Mr. MOORE, Ms. CARSON of Indiana, Mr. STUPAK, Mr. BISHOP of New York, Mr. CASE, Mr. WEINER, Ms. SCHAKOWSKY, Ms. SOLIS, Mr. FROST, Mr. WEXLER, Mr. HOLT, Mr. CUMMINGS, Mr. CARDOZA, Mr. BISHOP of Georgia, Mr. ENGEL, Mrs. CAPPs, Mr. HONDA, Mr. SCHIFF, Mr. MICHAUD, Mr. DELAHUNT, Mr. CHANDLER, Mr. CLAY, Mr. OLVER, Mr. REYES, Mr. SCOTT of Georgia, Mr. ORTIZ, Mr. CAPUANO, and Mr. ALLEN) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce and Education and the Workforce, 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

A BILL

To amend the Internal Revenue Code of 1986 to provide tax subsidies to encourage small employers to offer affordable health coverage to their employees through qualified health pooling arrangements, to encourage the establishment and operation of these arrangements, 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,*

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Small Business Health Insurance Promotion Act of
 6 2004”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Temporary tax credit for small employers offering health coverage through a qualified health pooling arrangement.
- Sec. 3. Qualified State health pooling arrangements.
- Sec. 4. Establishment of national health pooling arrangement.
- Sec. 5. Funding of pooling arrangements.
- Sec. 6. Institute of Medicine study and report.

9 **SEC. 2. TEMPORARY TAX CREDIT FOR SMALL EMPLOYERS**
 10 **OFFERING HEALTH COVERAGE THROUGH A**
 11 **QUALIFIED HEALTH POOLING ARRANGE-**
 12 **MENT.**

13 (a) **IN GENERAL.**—Subpart D of part IV of sub-
 14 chapter A of chapter 1 of the Internal Revenue Code of
 15 1986 (relating to business-related credits) is amended by
 16 adding at the end the following:

1 **“SEC. 45G. SMALL BUSINESS HEALTH POOL ARRANGE-**
2 **MENTS.**

3 “(a) GENERAL RULE.—For purposes of section 38,
4 in the case of an eligible small employer, the health pool
5 arrangement credit determined under this section for the
6 taxable year is an amount equal to 50 percent of amounts
7 paid or incurred by the employer during the taxable year
8 as premiums for self-only or family coverage for health
9 benefits under a qualified health pooling arrangement for
10 employees of such employer.

11 “(b) LIMITATIONS.—

12 “(1) EMPLOYER MUST BEAR 50 PERCENT OF
13 COST.—Expenses may be taken into account under
14 subsection (a) only if at least 50 percent of the pre-
15 miums under the qualified health pooling arrange-
16 ment are paid by the employer.

17 “(2) PERIOD OF COVERAGE.—Expenses may be
18 taken into account under subsection (a) only with
19 respect to coverage for the 4-year period beginning
20 on the date the employer first begins participating in
21 a qualified health pooling arrangement.

22 “(3) EMPLOYERS OFFERING OTHER HEALTH
23 BENEFITS.—In the case of an employer who paid or
24 incurred any expenses for health benefits for the em-
25 ployees of such employer during the first taxable
26 year ending on or after the date of the enactment

1 of this section, subsection (a) shall apply to such
2 employer only if such employer begins participating
3 in a qualified health pooling arrangement during the
4 2-year period beginning on the later of—

5 “(A) the date of the enactment of this sec-
6 tion, or

7 “(B) the first date that a qualified health
8 pooling arrangement exists which allows such
9 employer to participate.

10 “(4) NO EMPLOYEES EXCLUDED.—Subsection
11 (a) shall not apply to an employer for any period un-
12 less at all times during such period coverage for
13 health benefits under a qualified health pooling ar-
14 rangement is available to all employees of such em-
15 ployer under similar terms.

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

20 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
21 poses of this section—

22 “(1) ELIGIBLE SMALL EMPLOYER.—

23 “(A) IN GENERAL.—The term ‘eligible
24 small employer’ means an employer who em-
25 ployed, with respect to the calendar year in

1 which such employer first begins participating
2 in a qualified health pooling arrangement, an
3 average of not more than 50 employees on busi-
4 ness days during the preceding calendar year.

5 “(B) EMPLOYERS NOT IN EXISTENCE IN
6 PRECEDING YEAR.—In the case of an employer
7 which was not in existence throughout the pre-
8 ceding calendar year, the determination of
9 whether such employer is an eligible small em-
10 ployer shall be based on the average number of
11 employees that it is reasonably expected such
12 employer will employ on business days in the
13 current calendar year.

14 “(C) PERMANENT STATUS AS ELIGIBLE
15 SMALL EMPLOYER.—In the case of an employer
16 who meets the requirements of this subsection
17 with respect to the calendar year in which such
18 employer first begins participating in a quali-
19 fied health pooling arrangement, such employer
20 shall not fail to be treated as an eligible small
21 employer for any subsequent calendar year.

22 “(D) PREDECESSORS.—The Secretary may
23 prescribe regulations which provide for ref-
24 erences in this paragraph to an employer to be

1 treated as including references to predecessors
2 of such employer.

3 “(2) SELF-EMPLOYED INDIVIDUALS.—

4 “(A) TREATMENT AS EMPLOYEE.—The
5 term ‘employee’ includes an individual who is
6 an employee within the meaning of section
7 401(c)(1) (relating to self-employed individ-
8 uals).

9 “(B) TREATMENT AS EMPLOYER.—An in-
10 dividual who owns the entire interest in an un-
11 incorporated trade or business shall be treated
12 as his own employer. A partnership shall be
13 treated as the employer of each partner who is
14 an employee within the meaning of subpara-
15 graph (A).

16 “(3) FAMILY COVERAGE.—The term ‘family
17 coverage’ means coverage for health benefits of the
18 employee and qualified family members of the em-
19 ployee (as defined in section 35(d), but without re-
20 gard to the last sentence of paragraph (1) thereof).

21 “(4) QUALIFIED HEALTH POOLING ARRANGE-
22 MENT.—The term ‘qualified health pooling arrange-
23 ment’ means a qualified State health pooling ar-
24 rangement described in section 3 of Small Business
25 Health Insurance Promotion Act of 2004 or the na-

1 tional health pooling arrangement described in sec-
2 tion 4 of such Act.

3 “(5) CERTAIN RULES MADE APPLICABLE.—
4 Rules similar to the rules of section 52 shall apply
5 for purposes of this section.”.

6 (b) CREDIT TO BE PART OF GENERAL BUSINESS
7 CREDIT.—Section 38(b) of such Code (relating to current
8 year business credit) is amended by striking “plus” at the
9 end of paragraph (13), by striking the period at the end
10 of paragraph (14) and inserting “, plus”, and by adding
11 at the end the following:

12 “(15) in the case of an eligible small employer
13 (as defined in section 45G(c)), the health pool ar-
14 rangement credit determined under section
15 45G(a).”.

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

20 “(11) NO CARRYBACK OF SECTION 45G CREDIT
21 BEFORE EFFECTIVE DATE.—No portion of the un-
22 used business credit for any taxable year which is
23 attributable to the health pool arrangement credit
24 determined under section 45G may be carried back

1 to a taxable year beginning before January 1,
2 2004.”.

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

6 “(d) CREDIT FOR SMALL BUSINESS HEALTH POOL
7 ARRANGEMENTS.—

8 “(1) IN GENERAL.—No deduction shall be al-
9 lowed for that portion of the expenses (otherwise al-
10 lowable as a deduction) taken into account in deter-
11 mining the credit under section 45G for the taxable
12 year which is equal to the amount of the credit de-
13 termined for such taxable year under section
14 45G(a).

15 “(2) CONTROLLED GROUPS.—Persons treated
16 as a single employer under subsection (a) or (b) of
17 section 52 shall be treated as 1 person for purposes
18 of this section.”.

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

“Sec. 45G. Small business health pool arrangements.”.

23 (f) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to amounts paid or incurred in tax-
25 able years beginning after December 31, 2003, for ar-

1 rangements established after the date of the enactment
2 of this Act.

3 **SEC. 3. QUALIFIED STATE HEALTH POOLING ARRANGE-**
4 **MENTS.**

5 (a) DEFINED.—For purposes of this Act, the term
6 “qualified State health pooling arrangement” means an
7 arrangement established by a State which meets the fol-
8 lowing requirements:

9 (1) HEALTH BENEFITS COVERAGE.—The ar-
10 rangement provides health benefits coverage that the
11 Secretaries of Health and Human Services and
12 Labor jointly determine is substantially similar to
13 the health benefits coverage in any of the four larg-
14 est health benefits plans (determined by enrollment)
15 offered under chapter 89 of title 5, United States
16 Code.

17 (2) GROUP HEALTH PLAN REQUIREMENTS.—
18 The health benefits coverage provided under the ar-
19 rangement meets the requirements applicable to a
20 group health plan under chapter 100 of the Internal
21 Revenue Code of 1986, part 7 of subtitle B of title
22 I of the Employee Retirement Income Security Act
23 of 1974, and State law.

24 (3) GUARANTEED ISSUE AND RENEWABLE.—
25 The arrangement does not deny coverage (including

1 renewal of coverage) with respect to employees of
2 any eligible small employer or qualifying family
3 members of such employees on the basis of health
4 status of such employees or family members or any
5 other condition or requirement that the Secretaries
6 of Health and Human Services and Labor jointly de-
7 termine constitutes health underwriting.

8 (4) NO PREEXISTING CONDITION EXCLUSION.—
9 The arrangement does not permit a preexisting con-
10 dition exclusion as defined under section 9801(b)(1)
11 of the Internal Revenue Code of 1986 and under
12 section 701(b)(1) of the Employee Retirement In-
13 come Security Act of 1974 (29 U.S.C. 11(b)(1)).

14 (5) NO UNDERWRITING; COMMUNITY-RATED
15 PREMIUMS.—(A) Subject to subparagraph (B), the
16 arrangement does not permit underwriting, through
17 a preexisting condition limitation, differential bene-
18 fits, or different premium levels, or otherwise, with
19 respect to such coverage for employees or their
20 qualifying family members.

21 (B) The premiums charged for such coverage
22 are community-rated for individuals without regard
23 to health status.

24 (6) NO RIDERS.—The arrangement does not
25 permit riders to the health benefits coverage.

1 (7) ACCESSIBILITY TO ELIGIBLE SMALL EM-
2 PLOYERS.—The arrangement makes such coverage
3 available to an eligible small employer without re-
4 gard to whether a credit is available under section
5 45G of the Internal Revenue Code of 1986 with re-
6 spect to such employer.

7 (8) MINIMUM OF TWO PLANS OFFERED UNDER
8 THE ARRANGEMENT.—The arrangement makes
9 available at least two plans for health benefits cov-
10 erage.

11 (b) ELIGIBLE SMALL EMPLOYER; SELF-EMPLOYED
12 INDIVIDUAL.—For purposes of this Act, the terms “eligi-
13 ble small employer” and “employee” have the same mean-
14 ings as when such terms are used in section 45G of the
15 Internal Revenue Code of 1986 and rules similar to the
16 rules of subsection (c) of such section shall apply for pur-
17 poses of this Act.

18 (c) QUALIFYING FAMILY MEMBER.—For purposes of
19 this Act, the term “qualifying family member” has the
20 meaning given such term in section 35(d) of the Internal
21 Revenue Code of 1986, applied without regard to the last
22 sentence of paragraph (1) thereof.

23 (d) STATE DEFINED.—For purposes of this Act, the
24 term “State” includes the District of Columbia, Puerto

1 Rico, the Virgin Islands of the United States, Guam,
2 American Samoa, and the Northern Mariana Islands.

3 (e) CONSTRUCTION.—Nothing in this section shall be
4 construed as requiring a State to establish or maintain
5 a qualified State health pooling arrangement.

6 (f) CREDITABLE COVERAGE FOR PURPOSES OF
7 HIPAA.—Health benefits coverage provided under a
8 qualified State health pooling arrangement under this sec-
9 tion (and coverage provided under a National Pooling Ar-
10 rangement under section 4 of this title) shall be treated
11 as creditable coverage for purposes of part 7 of subtitle
12 B of title I of the Employee Retirement Income Security
13 Act of 1974 (29 U.S.C. 1181 et seq.), title XXVII of the
14 Public Health Service Act (42 U.S.C. 300gg et seq.), and
15 subtitle K of the Internal Revenue Code of 1986.

16 (g) OVERSIGHT AND ACCOUNTABILITY.—

17 (1) OVERSIGHT.—The Secretaries of Health
18 and Human Services and Labor shall jointly oversee
19 the offering of health benefits coverage under quali-
20 fied State health pooling arrangements to eligible
21 small employers.

22 (2) ANNUAL REPORTS.—

23 (A) IN GENERAL.—Each State that offers
24 a qualified State health pooling arrangement
25 under this section in a year shall submit, in a

1 form and manner specified jointly by the Secre-
2 taries of Health and Human Services and
3 Labor, a report on the operation of the ar-
4 rangement in that year.

5 (B) CONTENTS OF REPORT.—Reports re-
6 quired under subparagraph (A) shall include
7 the following:

8 (i) A description of the health benefits
9 coverage offered under the arrangement.

10 (ii) The number of employers that
11 participated in the arrangement.

12 (iii) The number of employees and
13 qualifying family members of employees
14 who received health benefits coverage
15 under the arrangement.

16 (iv) The premiums charged for the
17 health benefits coverage under the arrange-
18 ment.

19 (3) CERTIFICATION.—Each State that offers a
20 qualified State health pooling arrangement under
21 this section in a year shall submit, in a form and
22 manner specified jointly by the Secretaries of Health
23 and Human Services and Labor, a certification that
24 the arrangement meets the requirements of this Act.

1 (h) COORDINATION OF COMPLAINTS WITH STATE
2 INSURANCE COMMISSIONERS.—The Secretaries of Health
3 and Human Services and Labor shall coordinate with the
4 insurance commissioners for the various States in estab-
5 lishing a process for handling and resolving any com-
6 plaints relating to health benefits coverage offered under
7 this Act, to the extent necessary to augment processes oth-
8 erwise available under State law.

9 (i) NO PREEMPTION OF STATE LAW.—Nothing in
10 this section shall be construed as preempting provisions
11 of State law that provide protections in excess of the pro-
12 tections required under this section.

13 **SEC. 4. ESTABLISHMENT OF NATIONAL HEALTH POOLING**
14 **ARRANGEMENT.**

15 (a) IN GENERAL.—The Secretaries of Health and
16 Human Services and Labor, jointly in consultation with
17 the Director of the Office of Personnel Management, shall
18 provide for the offering and oversight of a national health
19 pooling arrangement to eligible small employers.

20 (b) NATIONAL HEALTH POOLING ARRANGEMENT
21 DEFINED.— For purposes of this section, the term “na-
22 tional health pooling arrangement” means an arrange-
23 ment under which health plans are offered under terms
24 and conditions that meet the requirements of section 3(a).

1 (c) USE OF FEHBP MODEL.—The Secretaries of
2 Health and Human Services and Labor shall jointly pro-
3 vide for the national health pooling arrangement using the
4 model of the Federal employees health benefits program
5 under chapter 89 of title 5, United States Code, to the
6 extent practicable and consistent with the provisions of
7 this Act. In carrying out such model, the Secretaries shall,
8 to the maximum extent practicable, negotiate the most af-
9 fordable and substantial coverage possible for small em-
10 ployers.

11 **SEC. 5. FUNDING OF POOLING ARRANGEMENTS.**

12 (a) FUNDING OF STATES TO ESTABLISH AND OPER-
13 ATE QUALIFIED STATE HEALTH POOLING ARRANGE-
14 MENTS.—There are authorized to be appropriated to the
15 Secretaries of Health and Human Services and Labor
16 such sums as may be necessary to provide grants to States
17 to establish and operate qualified State health pooling ar-
18 rangements described in section 3.

19 (b) FUNDING OF NATIONAL HEALTH POOLING AR-
20 RANGEMENT.—There are authorized to be appropriated to
21 the Secretaries of Health and Human Services and Labor
22 such sums as may be necessary to provide for the offering
23 and operation of the national health pooling arrangement
24 under section 4.

1 **SEC. 6. INSTITUTE OF MEDICINE STUDY AND REPORT.**

2 (a) STUDY.—The Secretaries of Health and Human
3 Services and Labor shall jointly enter into an arrangement
4 under which the Institute of Medicine of the National
5 Academy of Sciences shall conduct a study on the oper-
6 ation of qualified State health pooling arrangements under
7 section 3 and the national health pooling arrangement
8 under section 4.

9 (b) MATTERS STUDIED.—The study conducted under
10 subsection (a) shall include the following:

11 (1) An assessment of the success of the ar-
12 rangements.

13 (2) A determination of the affordability of
14 health benefits coverage under the arrangements for
15 employers and employees.

16 (3) A determination of the access of small em-
17 ployers to health benefits coverage.

18 (4) A determination of the extent to which the
19 tax credit under section 45G of the Internal Revenue
20 Code of 1986 provides a subsidy for eligible small
21 employers that provided (or would have provided)
22 health benefits coverage in the absence of such cred-
23 it.

24 (5) Recommendations with respect to—

25 (A) extension of the period for which the
26 tax credit under section 45G of the Internal

1 Revenue Code of 1986 is available to employers
2 or an appropriate phase-out of such credit over
3 time;

4 (B) expansion of categories of persons eli-
5 gible for such tax credit;

6 (C) expansion of persons eligible for health
7 benefits coverage under the arrangements; and

8 (D) such other matters as the Institute de-
9 termines appropriate.

10 (c) REPORT.—Not later than January 1, 2009, the
11 Comptroller General shall submit to Congress a report on
12 the study conducted under subsection (a).

○