

Union Calendar No. 207

109TH CONGRESS
2^D SESSION

H. R. 2355

[Report No. 109-378]

To amend the Public Health Service Act to provide for cooperative governing of individual health insurance coverage offered in interstate commerce.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2005

Mr. SHADEGG (for himself, Mr. AKIN, Mr. BARTLETT of Maryland, Mr. CANNON, Mr. CARTER, Mr. COLE of Oklahoma, Mr. COX, Mrs. CUBIN, Mr. FEENEY, Mr. FLAKE, Mr. FRANKS of Arizona, Mr. GUTKNECHT, Mr. HENSARLING, Mr. HERGER, Mr. HOEKSTRA, Mr. HOSTETTLER, Mr. ISTOOK, Mr. JONES of North Carolina, Mr. KENNEDY of Minnesota, Mr. KING of Iowa, Mr. LINDER, Mr. MCHENRY, Mr. MILLER of Florida, Mrs. MUSGRAVE, Mrs. MYRICK, Mr. OTTER, Mr. PAUL, Mr. PENCE, Mr. PRICE of Georgia, Mr. RADANOVICH, Mr. RENZI, Mr. ROHRABACHER, Mr. RYAN of Wisconsin, Mr. RYUN of Kansas, Mr. SENSENBRENNER, Mr. SESSIONS, Mr. SOUDER, Mr. WAMP, Mr. WELDON of Florida, Mr. WICKER, Mr. WILSON of South Carolina, and Mr. GREEN of Wisconsin) introduced the following bill; which was referred to the Committee on Energy and Commerce

FEBRUARY 16, 2006

Additional sponsors: Mr. CHOCOLA, Mr. TANCREDO, Mr. INGLIS of South Carolina, Mr. SODREL, Miss MCMORRIS, Mr. STEARNS, Mr. MARCHANT, Mr. WHITFIELD, Mr. PUTNAM, Mr. BILIRAKIS, Mr. HALL, Mr. SHIMKUS, Mr. UPTON, Mr. MCCAUL of Texas, Mrs. BONO, Mrs. CAPITO, Mr. TOM DAVIS of Virginia, Mr. TIAHRT, Mrs. NORTHUP, Mr. BOUSTANY, Mr. SHAW, Mr. SIMMONS, Mr. KINGSTON, Mr. BURTON of Indiana, Mr. PETERSON of Pennsylvania, Ms. HART, Mrs. BLACKBURN, Mr. POMBO, Mr. CALVERT, and Mr. PLATTS

Deleted sponsor: Mr. TOWNS (added June 27, 2005; deleted June 30, 2005)

FEBRUARY 16, 2006

Reported from the Committee on Energy and Commerce with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 12, 2005]

A BILL

To amend the Public Health Service Act to provide for cooperative governing of individual health insurance coverage offered in interstate commerce.

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

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as “Health Care Choice Act of*
5 *2005”.*

6 **SEC. 2. SPECIFICATION OF CONSTITUTIONAL AUTHORITY**

7 **FOR ENACTMENT OF LAW.**

8 *This Act is enacted pursuant to the power granted*
9 *Congress under article I, section 8, clause 3, of the United*
10 *States Constitution.*

11 **SEC. 3. FINDINGS.**

12 *Congress finds the following:*

13 *(1) The application of numerous and significant*
14 *variations in State law impacts the ability of insur-*
15 *ers to offer, and individuals to obtain, affordable in-*
16 *dividual health insurance coverage, thereby impeding*
17 *commerce in individual health insurance coverage.*

1 (2) *Individual health insurance coverage is in-*
 2 *creasingly offered through the Internet, other elec-*
 3 *tronic means, and by mail, all of which are inher-*
 4 *ently part of interstate commerce.*

5 (3) *In response to these issues, it is appropriate*
 6 *to encourage increased efficiency in the offering of in-*
 7 *dividual health insurance coverage through a collabo-*
 8 *rative approach by the States in regulating this cov-*
 9 *erage.*

10 (4) *The establishment of risk-retention groups*
 11 *has provided a successful model for the sale of insur-*
 12 *ance across State lines, as the acts establishing those*
 13 *groups allow insurance to be sold in multiple States*
 14 *but regulated by a single State.*

15 **SEC. 4. COOPERATIVE GOVERNING OF INDIVIDUAL HEALTH**
 16 **INSURANCE COVERAGE.**

17 (a) *IN GENERAL.*—*Title XXVII of the Public Health*
 18 *Service Act (42 U.S.C. 300gg et seq.) is amended by adding*
 19 *at the end the following new part:*

20 “*PART D—COOPERATIVE GOVERNING OF INDIVIDUAL*
 21 *HEALTH INSURANCE COVERAGE*

22 “**SEC. 2795. DEFINITIONS.**

23 “*In this part:*

24 “(1) *PRIMARY STATE.*—*The term ‘primary State’*
 25 *means, with respect to individual health insurance*

1 coverage offered by a health insurance issuer, the
2 State designated by the issuer as the State whose cov-
3 ered laws shall govern the health insurance issuer in
4 the sale of such coverage under this part. An issuer,
5 with respect to a particular policy, may only des-
6 ignate one such State as its primary State with re-
7 spect to all such coverage it offers. Such an issuer
8 may not change the designated primary State with
9 respect to individual health insurance coverage once
10 the policy is issued, except that such a change may
11 be made upon renewal of the policy. With respect to
12 such designated State, the issuer is deemed to be
13 doing business in that State.

14 “(2) *SECONDARY STATE*.—The term ‘secondary
15 State’ means, with respect to individual health insur-
16 ance coverage offered by a health insurance issuer,
17 any State that is not the primary State. In the case
18 of a health insurance issuer that is selling a policy
19 in, or to a resident of, a secondary State, the issuer
20 is deemed to be doing business in that secondary
21 State.

22 “(3) *HEALTH INSURANCE ISSUER*.—The term
23 ‘health insurance issuer’ has the meaning given such
24 term in section 2791(b)(2), except that such an issuer
25 must be licensed in the primary State and be quali-

1 *fied to sell individual health insurance coverage in*
2 *that State.*

3 “(4) *INDIVIDUAL HEALTH INSURANCE COV-*
4 *ERAGE.*—*The term ‘individual health insurance cov-*
5 *erage’ means health insurance coverage offered in the*
6 *individual market, as defined in section 2791(e)(1).*

7 “(5) *APPLICABLE STATE AUTHORITY.*—*The term*
8 *‘applicable State authority’ means, with respect to a*
9 *health insurance issuer in a State, the State insur-*
10 *ance commissioner or official or officials designated*
11 *by the State to enforce the requirements of this title*
12 *for the State with respect to the issuer.*

13 “(6) *HAZARDOUS FINANCIAL CONDITION.*—*The*
14 *term ‘hazardous financial condition’ means that,*
15 *based on its present or reasonably anticipated finan-*
16 *cial condition, a health insurance issuer is unlikely to*
17 *be able—*

18 “(A) *to meet obligations to policyholders*
19 *with respect to known claims and reasonably an-*
20 *ticipated claims; or*

21 “(B) *to pay other obligations in the normal*
22 *course of business.*

23 “(7) *COVERED LAWS.*—

24 “(A) *IN GENERAL.*—*The term ‘covered laws’*
25 *means the laws, rules, regulations, agreements,*

1 *and orders governing the insurance business per-*
2 *taining to—*

3 “(i) *individual health insurance cov-*
4 *erage issued by a health insurance issuer;*

5 “(ii) *the offer, sale, rating (including*
6 *medical underwriting), renewal, and*
7 *issuance of individual health insurance cov-*
8 *erage to an individual;*

9 “(iii) *the provision to an individual in*
10 *relation to individual health insurance cov-*
11 *erage of health care and insurance related*
12 *services;*

13 “(iv) *the provision to an individual in*
14 *relation to individual health insurance cov-*
15 *erage of management, operations, and in-*
16 *vestment activities of a health insurance*
17 *issuer; and*

18 “(v) *the provision to an individual in*
19 *relation to individual health insurance cov-*
20 *erage of loss control and claims administra-*
21 *tion for a health insurance issuer with re-*
22 *spect to liability for which the issuer pro-*
23 *vides insurance.*

24 “(B) *EXCEPTION.—Such term does not in-*
25 *clude any law, rule, regulation, agreement, or*

1 *order governing the use of care or cost manage-*
2 *ment techniques, including any requirement re-*
3 *lated to provider contracting, network access or*
4 *adequacy, health care data collection, or quality*
5 *assurance.*

6 “(8) *STATE.*—*The term ‘State’ means only the*
7 *50 States and the District of Columbia.*

8 “(9) *UNFAIR CLAIMS SETTLEMENT PRACTICES.*—
9 *The term ‘unfair claims settlement practices’ means*
10 *only the following practices:*

11 “(A) *Knowingly misrepresenting to claim-*
12 *ants and insured individuals relevant facts or*
13 *policy provisions relating to coverage at issue.*

14 “(B) *Failing to acknowledge with reason-*
15 *able promptness pertinent communications with*
16 *respect to claims arising under policies.*

17 “(C) *Failing to adopt and implement rea-*
18 *sonable standards for the prompt investigation*
19 *and settlement of claims arising under policies.*

20 “(D) *Failing to effectuate prompt, fair, and*
21 *equitable settlement of claims submitted in which*
22 *liability has become reasonably clear.*

23 “(E) *Refusing to pay claims without con-*
24 *ducting a reasonable investigation.*

1 “(F) Failing to affirm or deny coverage of
2 claims within a reasonable period of time after
3 having completed an investigation related to
4 those claims.

5 “(G) A pattern or practice of compelling in-
6 sured individuals or their beneficiaries to insti-
7 tute suits to recover amounts due under its poli-
8 cies by offering substantially less than the
9 amounts ultimately recovered in suits brought by
10 them.

11 “(H) A pattern or practice of attempting to
12 settle or settling claims for less than the amount
13 that a reasonable person would believe the in-
14 sured individual or his or her beneficiary was
15 entitled by reference to written or printed adver-
16 tising material accompanying or made part of
17 an application.

18 “(I) Attempting to settle or settling claims
19 on the basis of an application that was materi-
20 ally altered without notice to, or knowledge or
21 consent of, the insured.

22 “(J) Failing to provide forms necessary to
23 present claims within 15 calendar days of a re-
24 quests with reasonable explanations regarding
25 their use.

1 “(K) Attempting to cancel a policy in less
2 time than that prescribed in the policy or by the
3 law of the primary State.

4 “(10) FRAUD AND ABUSE.—The term ‘fraud and
5 abuse’ means an act or omission committed by a per-
6 son who, knowingly and with intent to defraud, com-
7 mits, or conceals any material information con-
8 cerning, one or more of the following:

9 “(A) Presenting, causing to be presented or
10 preparing with knowledge or belief that it will be
11 presented to or by an insurer, a reinsurer, broker
12 or its agent, false information as part of, in sup-
13 port of or concerning a fact material to one or
14 more of the following:

15 “(i) An application for the issuance or
16 renewal of an insurance policy or reinsur-
17 ance contract.

18 “(ii) The rating of an insurance policy
19 or reinsurance contract.

20 “(iii) A claim for payment or benefit
21 pursuant to an insurance policy or reinsur-
22 ance contract.

23 “(iv) Premiums paid on an insurance
24 policy or reinsurance contract.

1 “(v) *Payments made in accordance*
2 *with the terms of an insurance policy or re-*
3 *insurance contract.*

4 “(vi) *A document filed with the com-*
5 *missioner or the chief insurance regulatory*
6 *official of another jurisdiction.*

7 “(vii) *The financial condition of an*
8 *insurer or reinsurer.*

9 “(viii) *The formation, acquisition,*
10 *merger, reconsolidation, dissolution or with-*
11 *drawal from one or more lines of insurance*
12 *or reinsurance in all or part of a State by*
13 *an insurer or reinsurer.*

14 “(ix) *The issuance of written evidence*
15 *of insurance.*

16 “(x) *The reinstatement of an insurance*
17 *policy.*

18 “(B) *Solicitation or acceptance of new or*
19 *renewal insurance risks on behalf of an insurer*
20 *reinsurer or other person engaged in the business*
21 *of insurance by a person who knows or should*
22 *know that the insurer or other person responsible*
23 *for the risk is insolvent at the time of the trans-*
24 *action.*

1 “(C) *Transaction of the business of insur-*
2 *ance in violation of laws requiring a license, cer-*
3 *tificate of authority or other legal authority for*
4 *the transaction of the business of insurance.*

5 “(D) *Attempt to commit, aiding or abetting*
6 *in the commission of, or conspiracy to commit*
7 *the acts or omissions specified in this paragraph.*

8 **“SEC. 2796. APPLICATION OF LAW.**

9 “(a) *IN GENERAL.—The covered laws of the primary*
10 *State shall apply to individual health insurance coverage*
11 *offered by a health insurance issuer in the primary State*
12 *and in any secondary State, but only if the coverage and*
13 *issuer comply with the conditions of this section with re-*
14 *spect to the offering of coverage in any secondary State.*

15 “(b) *EXEMPTIONS FROM COVERED LAWS IN A SEC-*
16 *ONDARY STATE.—Except as provided in this section, a*
17 *health insurance issuer with respect to its offer, sale, rating*
18 *(including medical underwriting), renewal, and issuance of*
19 *individual health insurance coverage in any secondary*
20 *State is exempt from any covered laws of the secondary*
21 *State (and any rules, regulations, agreements, or orders*
22 *sought or issued by such State under or related to such cov-*
23 *ered laws) to the extent that such laws would—*

24 “(1) *make unlawful, or regulate, directly or indi-*
25 *rectly, the operation of the health insurance issuer op-*

1 *erating in the secondary State, except that any sec-*
2 *ondary State may require such an issuer—*

3 *“(A) to pay, on a nondiscriminatory basis,*
4 *applicable premium and other taxes (including*
5 *high risk pool assessments) which are levied on*
6 *insurers and surplus lines insurers, brokers, or*
7 *policyholders under the laws of the State;*

8 *“(B) to register with and designate the*
9 *State insurance commissioner as its agent solely*
10 *for the purpose of receiving service of legal docu-*
11 *ments or process;*

12 *“(C) to submit to an examination of its fi-*
13 *nancial condition by the State insurance com-*
14 *missioner in any State in which the issuer is*
15 *doing business to determine the issuer’s financial*
16 *condition, if—*

17 *“(i) the State insurance commissioner*
18 *of the primary State has not done an exam-*
19 *ination within the period recommended by*
20 *the National Association of Insurance Com-*
21 *missioners; and*

22 *“(ii) any such examination is con-*
23 *ducted in accordance with the examiners’*
24 *handbook of the National Association of In-*
25 *surance Commissioners and is coordinated*

1 to avoid unjustified duplication and un-
2 justified repetition;

3 “(D) to comply with a lawful order
4 issued—

5 “(i) in a delinquency proceeding com-
6 menced by the State insurance commis-
7 sioner if there has been a finding of finan-
8 cial impairment under subparagraph (C);
9 or

10 “(ii) in a voluntary dissolution pro-
11 ceeding;

12 “(E) to comply with an injunction issued
13 by a court of competent jurisdiction, upon a pe-
14 tition by the State insurance commissioner alleg-
15 ing that the issuer is in hazardous financial con-
16 dition;

17 “(F) to participate, on a nondiscriminatory
18 basis, in any insurance insolvency guaranty as-
19 sociation or similar association to which a
20 health insurance issuer in the State is required
21 to belong;

22 “(G) to comply with any State law regard-
23 ing fraud and abuse (as defined in section
24 2795(10)), except that if the State seeks an in-
25 junction regarding the conduct described in this

1 *subparagraph, such injunction must be obtained*
2 *from a court of competent jurisdiction;*

3 “(H) *to comply with any State law regard-*
4 *ing unfair claims settlement practices (as de-*
5 *fin ed in section 2795(9)); or*

6 “(I) *to comply with the applicable require-*
7 *ments for independent review under section 2798*
8 *with respect to coverage offered in the State;*

9 “(2) *require any individual health insurance*
10 *coverage issued by the issuer to be countersigned by*
11 *an insurance agent or broker residing in that Sec-*
12 *ondary State; or*

13 “(3) *otherwise discriminate against the issuer*
14 *issuing insurance in both the primary State and in*
15 *any secondary State.*

16 “(c) *CLEAR AND CONSPICUOUS DISCLOSURE.—A*
17 *health insurance issuer shall provide the following notice,*
18 *in 12-point bold type, in any insurance coverage offered*
19 *in a secondary State under this part by such a health insur-*
20 *ance issuer and at renewal of the policy, with the 5 blank*
21 *spaces therein being appropriately filled with the name of*
22 *the health insurance issuer, the name of primary State, the*
23 *name of the secondary State, the name of the secondary*
24 *State, and the name of the secondary State, respectively,*
25 *for the coverage concerned:*

‘Notice

1
2 ***‘This policy is issued by _____ and is***
3 ***governed by the laws and regulations of the***
4 ***State of _____, and it has met all the laws***
5 ***of that State as determined by that State’s De-***
6 ***partment of Insurance. This policy may be less***
7 ***expensive than others because it is not subject***
8 ***to all of the insurance laws and regulations of***
9 ***the State of _____, including coverage of***
10 ***some services or benefits mandated by the law***
11 ***of the State of _____.*** ***Additionally, this***
12 ***policy is not subject to all of the consumer pro-***
13 ***tection laws or restrictions on rate changes of***
14 ***the State of _____.*** ***As with all insurance***
15 ***products, before purchasing this policy, you***
16 ***should carefully review the policy and deter-***
17 ***mine what health care services the policy cov-***
18 ***ers and what benefits it provides, including***
19 ***any exclusions, limitations, or conditions for***
20 ***such services or benefits.’.***

21 “(d) *PROHIBITION ON CERTAIN RECLASSIFICATIONS*
22 *AND PREMIUM INCREASES.—*

23 “(1) *IN GENERAL.—*For purposes of this section,
24 *a health insurance issuer that provides individual*
25 *health insurance coverage to an individual under this*

1 *part in a primary or secondary State may not upon*
2 *renewal—*

3 “(A) *move or reclassify the individual in-*
4 *ured under the health insurance coverage from*
5 *the class such individual is in at the time of*
6 *issue of the contract based on the health-status*
7 *related factors of the individual; or*

8 “(B) *increase the premiums assessed the in-*
9 *dividual for such coverage based on a health sta-*
10 *tus-related factor or change of a health status-re-*
11 *lated factor or the past or prospective claim ex-*
12 *perience of the insured individual.*

13 “(2) *CONSTRUCTION.—Nothing in paragraph (1)*
14 *shall be construed to prohibit a health insurance*
15 *issuer—*

16 “(A) *from terminating or discontinuing*
17 *coverage or a class of coverage in accordance*
18 *with subsections (b) and (c) of section 2742;*

19 “(B) *from raising premium rates for all*
20 *policy holders within a class based on claims ex-*
21 *perience;*

22 “(C) *from changing premiums or offering*
23 *discounted premiums to individuals who engage*
24 *in wellness activities at intervals prescribed by*

1 *the issuer, if such premium changes or incen-*
2 *tives—*

3 *“(i) are disclosed to the consumer in*
4 *the insurance contract;*

5 *“(ii) are based on specific wellness ac-*
6 *tivities that are not applicable to all indi-*
7 *viduals; and*

8 *“(iii) are not obtainable by all indi-*
9 *viduals to whom coverage is offered;*

10 *“(D) from reinstating lapsed coverage; or*

11 *“(E) from retroactively adjusting the rates*
12 *charged an insured individual if the initial rates*
13 *were set based on material misrepresentation by*
14 *the individual at the time of issue.*

15 *“(e) PRIOR OFFERING OF POLICY IN PRIMARY*
16 *STATE.—A health insurance issuer may not offer for sale*
17 *individual health insurance coverage in a secondary State*
18 *unless that coverage is currently offered for sale in the pri-*
19 *mary State.*

20 *“(f) LICENSING OF AGENTS OR BROKERS FOR HEALTH*
21 *INSURANCE ISSUERS.—Any State may require that a per-*
22 *son acting, or offering to act, as an agent or broker for a*
23 *health insurance issuer with respect to the offering of indi-*
24 *vidual health insurance coverage obtain a license from that*
25 *State, with commissions or other compensation subject to*

1 *the provisions of the laws of that State, except that a State*
2 *may not impose any qualification or requirement which*
3 *discriminates against a nonresident agent or broker.*

4 “(g) *DOCUMENTS FOR SUBMISSION TO STATE INSUR-*
5 *ANCE COMMISSIONER.—Each health insurance issuer*
6 *issuing individual health insurance coverage in both pri-*
7 *mary and secondary States shall submit—*

8 “(1) *to the insurance commissioner of each State*
9 *in which it intends to offer such coverage, before it*
10 *may offer individual health insurance coverage in*
11 *such State—*

12 “(A) *a copy of the plan of operation or fea-*
13 *sibility study or any similar statement of the*
14 *policy being offered and its coverage (which shall*
15 *include the name of its primary State and its*
16 *principal place of business);*

17 “(B) *written notice of any change in its*
18 *designation of its primary State; and*

19 “(C) *written notice from the issuer of the*
20 *issuer’s compliance with all the laws of the pri-*
21 *mary State; and*

22 “(2) *to the insurance commissioner of each sec-*
23 *ondary State in which it offers individual health in-*
24 *surance coverage, a copy of the issuer’s quarterly fi-*
25 *nancial statement submitted to the primary State,*

1 *which statement shall be certified by an independent*
2 *public accountant and contain a statement of opinion*
3 *on loss and loss adjustment expense reserves made*
4 *by—*

5 “(A) *a member of the American Academy of*
6 *Actuaries; or*

7 “(B) *a qualified loss reserve specialist.*

8 “(h) *POWER OF COURTS TO ENJOIN CONDUCT.—Nothing*
9 *in this section shall be construed to affect the authority*
10 *of any Federal or State court to enjoin—*

11 “(1) *the solicitation or sale of individual health*
12 *insurance coverage by a health insurance issuer to*
13 *any person or group who is not eligible for such in-*
14 *surance; or*

15 “(2) *the solicitation or sale of individual health*
16 *insurance coverage that violates the requirements of*
17 *the law of a secondary State which are described in*
18 *subparagraphs (A) through (H) of section 2796(b)(1).*

19 “(i) *POWER OF SECONDARY STATES TO TAKE ADMIN-*
20 *ISTRATIVE ACTION.—Nothing in this section shall be con-*
21 *strued to affect the authority of any State to enjoin conduct*
22 *in violation of that State’s laws described in section*
23 *2796(b)(1).*

24 “(j) *STATE POWERS TO ENFORCE STATE LAWS.—*

1 “(1) *IN GENERAL.*—Subject to the provisions of
2 subsection (b)(1)(G) (relating to injunctions) and
3 paragraph (2), nothing in this section shall be con-
4 strued to affect the authority of any State to make use
5 of any of its powers to enforce the laws of such State
6 with respect to which a health insurance issuer is not
7 exempt under subsection (b).

8 “(2) *COURTS OF COMPETENT JURISDICTION.*—If
9 a State seeks an injunction regarding the conduct de-
10 scribed in paragraphs (1) and (2) of subsection (h),
11 such injunction must be obtained from a Federal or
12 State court of competent jurisdiction.

13 “(k) *STATES’ AUTHORITY TO SUE.*—Nothing in this
14 section shall affect the authority of any State to bring ac-
15 tion in any Federal or State court.

16 “(l) *GENERALLY APPLICABLE LAWS.*—Nothing in this
17 section shall be construed to affect the applicability of State
18 laws generally applicable to persons or corporations.

19 “(m) *GUARANTEED AVAILABILITY OF COVERAGE TO*
20 *HIPAA ELIGIBLE INDIVIDUALS.*—To the extent that a
21 health insurance issuer is offering coverage in a primary
22 State that does not accommodate residents of secondary
23 States or does not provide a working mechanism for resi-
24 dents of a secondary State, and the issuer is offering cov-
25 erage under this part in such secondary State which has

1 *not adopted a qualified high risk pool as its acceptable al-*
2 *ternative mechanism (as defined in section 2744(c)(2)), the*
3 *issuer shall, with respect to any individual health insurance*
4 *coverage offered in a secondary State under this part, com-*
5 *ply with the guaranteed availability requirements for eligi-*
6 *ble individuals in section 2741.*

7 **“SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR**
8 **BEFORE ISSUER MAY SELL INTO SECONDARY**
9 **STATES.**

10 *“A health insurance issuer may not offer, sell, or issue*
11 *individual health insurance coverage in a secondary State*
12 *if the State insurance commissioner does not use a risk-*
13 *based capital formula for the determination of capital and*
14 *surplus requirements for all health insurance issuers.*

15 **“SEC. 2798. INDEPENDENT EXTERNAL APPEALS PROCE-**
16 **DURES.**

17 *“(a) RIGHT TO EXTERNAL APPEAL.—A health insur-*
18 *ance issuer may not offer, sell, or issue individual health*
19 *insurance coverage in a secondary State under the provi-*
20 *sions of this title unless—*

21 *“(1) both the secondary State and the primary*
22 *State have legislation or regulations in place estab-*
23 *lishing an independent review process for individuals*
24 *who are covered by individual health insurance cov-*
25 *erage, or*

1 “(2) in any case in which the requirements of
2 subparagraph (A) are not met with respect to the ei-
3 ther of such States, the issuer provides an inde-
4 pendent review mechanism substantially identical (as
5 determined by the applicable State authority of such
6 State) to that prescribed in the ‘Health Carrier Exter-
7 nal Review Model Act’ of the National Association of
8 Insurance Commissioners for all individuals who
9 purchase insurance coverage under the terms of this
10 part, except that, under such mechanism, the review
11 is conducted by an independent medical reviewer, or
12 a panel of such reviewers, with respect to whom the
13 requirements of subsection (b) are met.

14 “(b) *QUALIFICATIONS OF INDEPENDENT MEDICAL RE-*
15 *VIEWERS.—In the case of any independent review mecha-*
16 *nism referred to in subsection (a)(2)—*

17 “(1) *IN GENERAL.—In referring a denial of a*
18 *claim to an independent medical reviewer, or to any*
19 *panel of such reviewers, to conduct independent med-*
20 *ical review, the issuer shall ensure that—*

21 “(A) each independent medical reviewer
22 meets the qualifications described in paragraphs
23 (2) and (3);

24 “(B) with respect to each review, each re-
25 viewer meets the requirements of paragraph (4)

1 *and the reviewer, or at least 1 reviewer on the*
2 *panel, meets the requirements described in para-*
3 *graph (5); and*

4 *“(C) compensation provided by the issuer to*
5 *each reviewer is consistent with paragraph (6).*

6 “(2) *LICENSURE AND EXPERTISE.—Each inde-*
7 *pendent medical reviewer shall be a physician*
8 *(allopathic or osteopathic) or health care professional*
9 *who—*

10 *“(A) is appropriately credentialed or li-*
11 *censed in 1 or more States to deliver health care*
12 *services; and*

13 *“(B) typically treats the condition, makes*
14 *the diagnosis, or provides the type of treatment*
15 *under review.*

16 “(3) *INDEPENDENCE.—*

17 *“(A) IN GENERAL.—Subject to subpara-*
18 *graph (B), each independent medical reviewer in*
19 *a case shall—*

20 *“(i) not be a related party (as defined*
21 *in paragraph (7));*

22 *“(ii) not have a material familial, fi-*
23 *nancial, or professional relationship with*
24 *such a party; and*

1 “(iii) not otherwise have a conflict of
2 interest with such a party (as determined
3 under regulations).

4 “(B) *EXCEPTION.*—Nothing in subpara-
5 graph (A) shall be construed to—

6 “(i) prohibit an individual, solely on
7 the basis of affiliation with the issuer, from
8 serving as an independent medical reviewer
9 if—

10 “(I) a non-affiliated individual is
11 not reasonably available;

12 “(II) the affiliated individual is
13 not involved in the provision of items
14 or services in the case under review;

15 “(III) the fact of such an affili-
16 ation is disclosed to the issuer and the
17 enrollee (or authorized representative)
18 and neither party objects; and

19 “(IV) the affiliated individual is
20 not an employee of the issuer and does
21 not provide services exclusively or pri-
22 marily to or on behalf of the issuer;

23 “(ii) prohibit an individual who has
24 staff privileges at the institution where the
25 treatment involved takes place from serving

1 *as an independent medical reviewer merely*
2 *on the basis of such affiliation if the affili-*
3 *ation is disclosed to the issuer and the en-*
4 *rollee (or authorized representative), and*
5 *neither party objects; or*

6 *“(iii) prohibit receipt of compensation*
7 *by an independent medical reviewer from*
8 *an entity if the compensation is provided*
9 *consistent with paragraph (6).*

10 “(4) *PRACTICING HEALTH CARE PROFESSIONAL*
11 *IN SAME FIELD.—*

12 “(A) *IN GENERAL.—In a case involving*
13 *treatment, or the provision of items or services—*

14 “(i) *by a physician, a reviewer shall be*
15 *a practicing physician (allopathic or osteo-*
16 *pathic) of the same or similar specialty, as*
17 *a physician who, acting within the appro-*
18 *priate scope of practice within the State in*
19 *which the service is provided or rendered,*
20 *typically treats the condition, makes the di-*
21 *agnosis, or provides the type of treatment*
22 *under review; or*

23 “(ii) *by a non-physician health care*
24 *professional, the reviewer, or at least 1*
25 *member of the review panel, shall be a prac-*

1 *ticing non-physician health care profes-*
2 *sional of the same or similar specialty as*
3 *the non-physician health care professional*
4 *who, acting within the appropriate scope of*
5 *practice within the State in which the serv-*
6 *ice is provided or rendered, typically treats*
7 *the condition, makes the diagnosis, or pro-*
8 *vides the type of treatment under review.*

9 *“(B) PRACTICING DEFINED.—For purposes*
10 *of this paragraph, the term ‘practicing’ means,*
11 *with respect to an individual who is a physician*
12 *or other health care professional, that the indi-*
13 *vidual provides health care services to individual*
14 *patients on average at least 2 days per week.*

15 *“(5) PEDIATRIC EXPERTISE.—In the case of an*
16 *external review relating to a child, a reviewer shall*
17 *have expertise under paragraph (2) in pediatrics.*

18 *“(6) LIMITATIONS ON REVIEWER COMPENSA-*
19 *TION.—Compensation provided by the issuer to an*
20 *independent medical reviewer in connection with a*
21 *review under this section shall—*

22 *“(A) not exceed a reasonable level; and*

23 *“(B) not be contingent on the decision ren-*
24 *dered by the reviewer.*

1 “(7) *RELATED PARTY DEFINED.*—For purposes
2 of this section, the term ‘related party’ means, with
3 respect to a denial of a claim under a coverage relat-
4 ing to an enrollee, any of the following:

5 “(A) *The issuer involved, or any fiduciary,*
6 *officer, director, or employee of the issuer.*

7 “(B) *The enrollee (or authorized representa-*
8 *tive).*

9 “(C) *The health care professional that pro-*
10 *vides the items or services involved in the denial.*

11 “(D) *The institution at which the items or*
12 *services (or treatment) involved in the denial are*
13 *provided.*

14 “(E) *The manufacturer of any drug or*
15 *other item that is included in the items or serv-*
16 *ices involved in the denial.*

17 “(F) *Any other party determined under any*
18 *regulations to have a substantial interest in the*
19 *denial involved.*

20 “(8) *DEFINITIONS.*—For purposes of this sub-
21 *section:*

22 “(A) *ENROLLEE.*—The term ‘enrollee’
23 *means, with respect to health insurance coverage*
24 *offered by a health insurance issuer, an indi-*

1 *vidual enrolled with the issuer to receive such*
2 *coverage.*

3 “(B) *HEALTH CARE PROFESSIONAL.*—*The*
4 *term ‘health care professional’ means an indi-*
5 *vidual who is licensed, accredited, or certified*
6 *under State law to provide specified health care*
7 *services and who is operating within the scope of*
8 *such licensure, accreditation, or certification.*

9 **“SEC. 2799. ENFORCEMENT.**

10 “(a) *IN GENERAL.*—*Subject to subsection (b), with re-*
11 *spect to specific individual health insurance coverage the*
12 *primary State for such coverage has sole jurisdiction to en-*
13 *force the primary State’s covered laws in the primary State*
14 *and any secondary State.*

15 “(b) *SECONDARY STATE’S AUTHORITY.*—*Nothing in*
16 *subsection (a) shall be construed to affect the authority of*
17 *a secondary State to enforce its laws as set forth in the*
18 *exception specified in section 2796(b)(1).*

19 “(c) *COURT INTERPRETATION.*—*In reviewing action*
20 *initiated by the applicable secondary State authority, the*
21 *court of competent jurisdiction shall apply the covered laws*
22 *of the primary State.*

23 “(d) *NOTICE OF COMPLIANCE FAILURE.*—*In the case*
24 *of individual health insurance coverage offered in a sec-*
25 *ondary State that fails to comply with the covered laws of*

1 *the primary State, the applicable State authority of the sec-*
2 *ondary State may notify the applicable State authority of*
3 *the primary State.”.*

4 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
5 *section (a) shall apply to individual health insurance cov-*
6 *erage offered, issued, or sold after the date that is one year*
7 *after the date of the enactment of this Act.*

8 (c) *GAO ONGOING STUDY AND REPORTS.*—

9 (1) *STUDY.*—*The Comptroller General of the*
10 *United States shall conduct an ongoing study con-*
11 *cerning the effect of the amendment made by sub-*
12 *section (a) on—*

13 (A) *the number of uninsured and under-in-*
14 *sured;*

15 (B) *the availability and cost of health in-*
16 *surance policies for individuals with pre-existing*
17 *medical conditions;*

18 (C) *the availability and cost of health in-*
19 *surance policies generally;*

20 (D) *the elimination or reduction of different*
21 *types of benefits under health insurance policies*
22 *offered in different States; and*

23 (E) *cases of fraud or abuse relating to*
24 *health insurance coverage offered under such*
25 *amendment and the resolution of such cases.*

1 (2) *ANNUAL REPORTS.*—*The Comptroller General*
2 *shall submit to Congress an annual report, after the*
3 *end of each of the 5 years following the effective date*
4 *of the amendment made by subsection (a), on the on-*
5 *going study conducted under paragraph (1).*

6 **SEC. 5. SEVERABILITY.**

7 *If any provision of the Act or the application of such*
8 *provision to any person or circumstance is held to be uncon-*
9 *stitutional, the remainder of this Act and the application*
10 *of the provisions of such to any other person or cir-*
11 *cumstance shall not be affected.*

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109TH CONGRESS
2D Session

H. R. 2355

[Report No. 109-378]

A BILL

To amend the Public Health Service Act to provide for cooperative governing of individual health insurance coverage offered in interstate commerce.

FEBRUARY 16, 2006

Reported from the Committee on Energy and Commerce
with an amendment