

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1015

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

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IN THE SENATE OF THE UNITED STATES

MAY 12, 2005

Mr. DEMINT introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## 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  
5 of 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.

1 **SEC. 3. FINDINGS.**

2 Congress finds the following:

3 (1) The application of numerous and significant  
4 variations in State law impacts the ability of insur-  
5 ers to offer, and individuals to obtain, affordable in-  
6 dividual health insurance coverage, thereby impeding  
7 commerce in individual health insurance coverage.

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

12 (3) In response to these issues, it is appropriate  
13 to encourage increased efficiency in the offering of  
14 individual health insurance coverage through a col-  
15 laborative approach by the States in regulating this  
16 coverage.

17 (4) The establishment of risk-retention groups  
18 has provided a successful model for the sale of insur-  
19 ance across State lines, as the acts establishing  
20 those groups allow insurance to be sold in multiple  
21 States but regulated by a single State.

22 **SEC. 4. COOPERATIVE GOVERNING OF INDIVIDUAL**  
23 **HEALTH INSURANCE COVERAGE.**

24 (a) IN GENERAL.—Title XXVII of the Public Health  
25 Service Act (42 U.S.C. 300gg et seq.) is amended by add-  
26 ing at the end the following new part:

1           **“PART D—COOPERATIVE GOVERNING OF**  
2           **INDIVIDUAL HEALTH INSURANCE COVERAGE**

3           **“SEC. 2795. DEFINITIONS.**

4           “In this part:

5                   “(1) PRIMARY STATE.—The term ‘primary  
6           State’ means, with respect to individual health insur-  
7           ance coverage offered by a health insurance issuer,  
8           the State designated by the issuer as the State  
9           whose covered laws shall govern the health insurance  
10          issuer in the sale of such coverage under this part.  
11          An issuer, with respect to a particular policy, may  
12          only designate one such State as its primary State  
13          with respect to all such coverage it offers. Such an  
14          issuer may not change the designated primary State  
15          with respect to individual health insurance coverage  
16          once the policy is issued, except that such a change  
17          may be made upon renewal of the policy. With re-  
18          spect to such designated State, the issuer is deemed  
19          to be doing business in that State.

20                   “(2) SECONDARY STATE.—The term ‘secondary  
21          State’ means, with respect to individual health insur-  
22          ance coverage offered by a health insurance issuer,  
23          any State that is not the primary State. In the case  
24          of a health insurance issuer that is selling a policy  
25          in, or to a resident of, a secondary State, the issuer

1 is deemed to be doing business in that secondary  
2 State.

3 “(3) HEALTH INSURANCE ISSUER.—The term  
4 ‘health insurance issuer’ has the meaning given such  
5 term in section 2791(b)(2), except that such an  
6 issuer must be licensed in the primary State and be  
7 qualified to sell individual health insurance coverage  
8 in that State.

9 “(4) INDIVIDUAL HEALTH INSURANCE COV-  
10 ERAGE.—The term ‘individual health insurance cov-  
11 erage’ means health insurance coverage offered in  
12 the individual market, as defined in section  
13 2791(e)(1).

14 “(5) APPLICABLE STATE AUTHORITY.—The  
15 term ‘applicable State authority’ means, with respect  
16 to a health insurance issuer in a State, the State in-  
17 surance commissioner or official or officials des-  
18 ignated by the State to enforce the requirements of  
19 this title for the State with respect to the issuer.

20 “(6) HAZARDOUS FINANCIAL CONDITION.—The  
21 term ‘hazardous financial condition’ means that,  
22 based on its present or reasonably anticipated finan-  
23 cial condition, a health insurance issuer is unlikely  
24 to be able—

1           “(A) to meet obligations to policyholders  
2           with respect to known claims and reasonably  
3           anticipated claims; or

4           “(B) to pay other obligations in the normal  
5           course of business.

6           “(7) COVERED LAWS.—The term ‘covered laws’  
7           means the laws, rules, regulations, agreements, and  
8           orders governing the insurance business pertaining  
9           to—

10           “(A) individual health insurance coverage  
11           issued by a health insurance issuer;

12           “(B) the offer, sale, and issuance of indi-  
13           vidual health insurance coverage to an indi-  
14           vidual; and

15           “(C) the provision to an individual in rela-  
16           tion to individual health insurance coverage  
17           of—

18           “(i) health care and insurance related  
19           services;

20           “(ii) management, operations, and in-  
21           vestment activities of a health insurance  
22           issuer; and

23           “(iii) loss control and claims adminis-  
24           tration for a health insurance issuer with

1           respect to liability for which the issuer pro-  
2           vides insurance.

3           “(8) STATE.—The term ‘State’ means only the  
4           50 States and the District of Columbia.

5           “(9) UNFAIR CLAIMS SETTLEMENT PRAC-  
6           TICES.—The term ‘unfair claims settlement prac-  
7           tices’ means only the following practices:

8                   “(A) Knowingly misrepresenting to claim-  
9                   ants and insured individuals relevant facts or  
10                  policy provisions relating to coverage at issue.

11                  “(B) Failing to acknowledge with reason-  
12                  able promptness pertinent communications with  
13                  respect to claims arising under policies.

14                  “(C) Failing to adopt and implement rea-  
15                  sonable standards for the prompt investigation  
16                  and settlement of claims arising under policies.

17                  “(D) Failing to effectuate prompt, fair,  
18                  and equitable settlement of claims submitted in  
19                  which liability has become reasonably clear.

20                  “(E) Refusing to pay claims without con-  
21                  ducting a reasonable investigation.

22                  “(F) Failing to affirm or deny coverage of  
23                  claims within a reasonable period of time after  
24                  having completed an investigation related to  
25                  those claims.

1           “(10) FRAUD AND ABUSE.—The term ‘fraud  
2           and abuse’ means an act or omission committed by  
3           a person who, knowingly and with intent to defraud,  
4           commits, or conceals any material information con-  
5           cerning, one or more of the following:

6                   “(A) Presenting, causing to be presented  
7                   or preparing with knowledge or belief that it  
8                   will be presented to or by an insurer, a rein-  
9                   surer, broker or its agent, false information as  
10                  part of, in support of or concerning a fact ma-  
11                  terial to one or more of the following:

12                           “(i) An application for the issuance or  
13                           renewal of an insurance policy or reinsur-  
14                           ance contract.

15                           “(ii) The rating of an insurance policy  
16                           or reinsurance contract.

17                           “(iii) A claim for payment or benefit  
18                           pursuant to an insurance policy or reinsur-  
19                           ance contract.

20                           “(iv) Premiums paid on an insurance  
21                           policy or reinsurance contract.

22                           “(v) Payments made in accordance  
23                           with the terms of an insurance policy or  
24                           reinsurance contract.

1                   “(vi) A document filed with the com-  
2                   missioner or the chief insurance regulatory  
3                   official of another jurisdiction.

4                   “(vii) The financial condition of an in-  
5                   surer or reinsurer.

6                   “(viii) The formation, acquisition,  
7                   merger, reconsolidation, dissolution or  
8                   withdrawal from one or more lines of in-  
9                   surance or reinsurance in all or part of a  
10                  State by an insurer or reinsurer.

11                  “(ix) The issuance of written evidence  
12                  of insurance.

13                  “(x) The reinstatement of an insur-  
14                  ance policy.

15                  “(B) Solicitation or acceptance of new or  
16                  renewal insurance risks on behalf of an insurer  
17                  reinsurer or other person engaged in the busi-  
18                  ness of insurance by a person who knows or  
19                  should know that the insurer or other person  
20                  responsible for the risk is insolvent at the time  
21                  of the transaction.

22                  “(C) Transaction of the business of insur-  
23                  ance in violation of laws requiring a license, cer-  
24                  tificate of authority or other legal authority for  
25                  the transaction of the business of insurance.

1           “(D) Attempt to commit, aiding or abet-  
2           ting in the commission of, or conspiracy to com-  
3           mit the acts or omissions specified in this para-  
4           graph.

5   **“SEC. 2796. APPLICATION OF LAW.**

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

12          “(b) EXEMPTIONS FROM COVERED LAWS IN A SEC-  
13   ONDARY STATE.—Except as provided in this section, a  
14   health insurance issuer with respect to its offer, sale, re-  
15   newal, and issuance of individual health insurance cov-  
16   erage in any secondary State is exempt from any covered  
17   laws of the secondary State (and any rules, regulations,  
18   agreements, or orders sought or issued by such State  
19   under or related to such covered laws) to the extent that  
20   such laws would—

21           “(1) make unlawful, or regulate, directly or in-  
22   directly, the operation of the health insurance issuer  
23   operating in the secondary State, except that any  
24   secondary State may require such an issuer—

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

6           “(B) to register with and designate the  
7           State insurance commissioner as its agent solely  
8           for the purpose of receiving service of legal doc-  
9           uments or process;

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

15                   “(i) the State insurance commissioner  
16                   of the primary State has not done an ex-  
17                   amination within the period recommended  
18                   by the National Association of Insurance  
19                   Commissioners; and

20                   “(ii) any such examination is con-  
21                   ducted in accordance with the examiners’  
22                   handbook of the National Association of  
23                   Insurance Commissioners and is coordi-  
24                   nated to avoid unjustified duplication and  
25                   unjustified repetition;

1           “(D) to comply with a lawful order  
2 issued—

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

8           “(ii) in a voluntary dissolution pro-  
9 ceeding;

10          “(E) to comply with an injunction issued  
11 by a court of competent jurisdiction, upon a pe-  
12 tition by the State insurance commissioner al-  
13 leging that the issuer is in hazardous financial  
14 condition;

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

20          “(G) to comply with any State law regard-  
21 ing fraud and abuse (as defined in section  
22 2795(10)), except that if the State seeks an in-  
23 junction regarding the conduct described in this  
24 subparagraph, such injunction must be obtained  
25 from a court of competent jurisdiction; or

1           “(H) to comply with any State law regard-  
2           ing unfair claims settlement practices (as de-  
3           fined in section 2795(9));

4           “(2) require any individual health insurance  
5           coverage issued by the issuer to be countersigned by  
6           an insurance agent or broker residing in that Sec-  
7           ondary State; or

8           “(3) otherwise discriminate against the issuer  
9           issuing insurance in both the primary State and in  
10          any secondary State.

11          “(c) CLEAR AND CONSPICUOUS DISCLOSURE.—A  
12          health insurance issuer shall provide the following notice,  
13          in 12-point bold type, in any insurance coverage offered  
14          in a secondary State under this part by such a health in-  
15          surance issuer and at renewal of the policy, with the 5  
16          blank spaces therein being appropriately filled with the  
17          name of the health insurance issuer, the name of primary  
18          State, the name of the secondary State, the name of the  
19          secondary State, and the name of the secondary State, re-  
20          spectively, for the coverage concerned:

21          ‘This policy is issued by \_\_\_\_\_ and is governed by  
22          the laws and regulations of the State of \_\_\_\_\_, and  
23          it has met all the laws of that State as determined by  
24          that State’s Department of Insurance. This policy may be  
25          less expensive than others because it is not subject to all

1 of the insurance laws and regulations of the State of  
 2 \_\_\_\_\_, including coverage of some services or bene-  
 3 fits mandated by the law of the State of \_\_\_\_\_. Ad-  
 4 ditionally, this policy is not subject to all of the consumer  
 5 protection laws or restrictions on rate changes of the State  
 6 of \_\_\_\_\_. As with all insurance products, before pur-  
 7 chasing this policy, you should carefully review the policy  
 8 and determine what health care services the policy covers  
 9 and what benefits it provides, including any exclusions,  
 10 limitations, or conditions for such services or benefits.’.

11       “(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS  
 12 AND PREMIUM INCREASES.—

13               “(1) IN GENERAL.—For purposes of this sec-  
 14 tion, a health insurance issuer that provides indi-  
 15 vidual health insurance coverage to an individual  
 16 under this part in a primary or secondary State may  
 17 not upon renewal—

18                       “(A) move or reclassify the individual in-  
 19 sured under the health insurance coverage from  
 20 the class such individual is in at the time of  
 21 issue of the contract based on the health-status  
 22 related factors of the individual; or

23                       “(B) increase the premiums assessed the  
 24 individual for such coverage based on a health  
 25 status-related factor or change of a health sta-

1           tus-related factor or the past or prospective  
2           claim experience of the insured individual.

3           “(2) CONSTRUCTION.—Nothing in paragraph  
4           (1) shall be construed to prohibit a health insurance  
5           issuer—

6                   “(A) from terminating or discontinuing  
7                   coverage or a class of coverage in accordance  
8                   with subsections (b) and (c) of section 2742;

9                   “(B) from raising premium rates for all  
10                  policy holders within a class based on claims ex-  
11                  perience;

12                  “(C) from changing premiums or offering  
13                  discounted premiums to individuals who engage  
14                  in wellness activities at intervals prescribed by  
15                  the issuer, if such premium changes or incen-  
16                  tives—

17                           “(i) are disclosed to the consumer in  
18                           the insurance contract;

19                           “(ii) are based on specific wellness ac-  
20                           tivities that are not applicable to all indi-  
21                           viduals; and

22                           “(iii) are not obtainable by all individ-  
23                           uals to whom coverage is offered;

24                  “(D) from reinstating lapsed coverage; or

1           “(E) from retroactively adjusting the rates  
2           charged an individual insured individual if the  
3           initial rates were set based on material mis-  
4           representation by the individual at the time of  
5           issue.

6           “(e) PRIOR OFFERING OF POLICY IN PRIMARY  
7 STATE.—A health insurance issuer may not offer for sale  
8 individual health insurance coverage in a secondary State  
9 unless that coverage is currently offered for sale in the  
10 primary State.

11          “(f) LICENSING OF AGENTS OR BROKERS FOR  
12 HEALTH INSURANCE ISSUERS.—Any State may require  
13 that a person acting, or offering to act, as an agent or  
14 broker for a health insurance issuer with respect to the  
15 offering of individual health insurance coverage obtain a  
16 license from that State, except that a State may not im-  
17 pose any qualification or requirement which discriminates  
18 against a nonresident agent or broker.

19          “(g) DOCUMENTS FOR SUBMISSION TO STATE IN-  
20 SURANCE COMMISSIONER.—Each health insurance issuer  
21 issuing individual health insurance coverage in both pri-  
22 mary and secondary States shall submit—

23           “(1) to the insurance commissioner of each  
24           State in which it intends to offer such coverage, be-

1 fore it may offer individual health insurance cov-  
2 erage in such State—

3 “(A) a copy of the plan of operation or fea-  
4 sibility study or any similar statement of the  
5 policy being offered and its coverage (which  
6 shall include the name of its primary State and  
7 its principal place of business);

8 “(B) written notice of any change in its  
9 designation of its primary State; and

10 “(C) written notice from the issuer of the  
11 issuer’s compliance with all the laws of the pri-  
12 mary State; and

13 “(2) to the insurance commissioner of each sec-  
14 ondary State in which it offers individual health in-  
15 surance coverage, a copy of the issuer’s quarterly fi-  
16 nancial statement submitted to the primary State,  
17 which statement shall be certified by an independent  
18 public accountant and contain a statement of opin-  
19 ion on loss and loss adjustment expense reserves  
20 made by—

21 “(A) a member of the American Academy  
22 of Actuaries; or

23 “(B) a qualified loss reserve specialist.

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

4           “(1) the solicitation or sale of individual health  
5 insurance coverage by a health insurance issuer to  
6 any person or group who is not eligible for such in-  
7 surance; or

8           “(2) the solicitation or sale of individual health  
9 insurance coverage by, or operation of, a health in-  
10 surance issuer that is in hazardous financial condi-  
11 tion.

12       “(i) STATE POWERS TO ENFORCE STATE LAWS.—

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

20           “(2) COURTS OF COMPETENT JURISDICTION.—

21 If a State seeks an injunction regarding the conduct  
22 described in paragraphs (1) and (2) of subsection  
23 (h), such injunction must be obtained from a Fed-  
24 eral or State court of competent jurisdiction.

1       “(j) STATES’ AUTHORITY TO SUE.—Nothing in this  
2 section shall affect the authority of any State to bring ac-  
3 tion in any Federal or State court.

4       “(k) GENERALLY APPLICABLE LAWS.—Nothing in  
5 this section shall be construed to affect the applicability  
6 of State laws generally applicable to persons or corpora-  
7 tions.

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

11       “A health insurance issuer may not offer, sell, or  
12 issue individual health insurance coverage in a secondary  
13 State if the primary State does not meet the following re-  
14 quirements:

15               “(1) The State insurance commissioner must  
16 use a risk-based capital formula for the determina-  
17 tion of capital and surplus requirements for all  
18 health insurance issuers.

19               “(2) The State must have legislation or regula-  
20 tions in place establishing an independent review  
21 process for individuals who are covered by individual  
22 health insurance coverage unless the issuer provides  
23 an independent review mechanism functionally equiv-  
24 alent (as determined by the primary State insurance  
25 commissioner or official) to that prescribed in the

1 ‘Health Carrier External Review Model Act’ of the  
2 National Association of Insurance Commissioners for  
3 all individuals who purchase insurance coverage  
4 under the terms of this part.

5 **“SEC. 2798. ENFORCEMENT.**

6 “(a) IN GENERAL.—Subject to subsection (b), with  
7 respect to specific individual health insurance coverage the  
8 primary State for such coverage has sole jurisdiction to  
9 enforce the primary State’s covered laws in the primary  
10 State and any secondary State.

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

15 “(c) COURT INTERPRETATION.—In reviewing action  
16 initiated by the applicable secondary State authority, the  
17 court of competent jurisdiction shall apply the covered  
18 laws of the primary State.

19 “(d) NOTICE OF COMPLIANCE FAILURE.—In the case  
20 of individual health insurance coverage offered in a sec-  
21 ondary State that fails to comply with the covered laws  
22 of the primary State, the applicable State authority of the  
23 secondary State may notify the applicable State authority  
24 of the primary State.”.

1       (b) **EFFECTIVE DATE.**—The amendment made by  
2 subsection (a) shall apply to individual health insurance  
3 coverage offered, issued, or sold after the date of the en-  
4 actment of this Act.

5 **SEC. 5. SEVERABILITY.**

6       If any provision of the Act or the application of such  
7 provision to any person or circumstance is held to be un-  
8 constitutional, the remainder of this Act and the applica-  
9 tion of the provisions of such to any other person or cir-  
10 cumstance shall not be affected.

○