

110TH CONGRESS
2D SESSION

S. 2818

To amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to provide for enhanced health insurance marketplace pooling and relating market rating.

IN THE SENATE OF THE UNITED STATES

APRIL 3, 2008

Mr. ENZI (for himself, Mr. NELSON of Nebraska, and Mr. GREGG) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to provide for enhanced health insurance marketplace pooling and relating market rating.

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 the “Small Business Health
5 Plans Act of 2008”.

TITLE I—ENHANCED MARKETPLACE POOLS

SEC. 101. RULES GOVERNING ENHANCED MARKETPLACE POOLS.

(a) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after part 7 the following new part:

“PART 8—RULES GOVERNING ENHANCED MARKETPLACE POOLS

“SEC. 801. SMALL BUSINESS HEALTH PLANS.

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

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

“(1) is organized and maintained in good faith, with a constitution and bylaws specifically stating its purpose and providing for periodic meetings on at least an annual basis, as a bona fide trade association, a bona fide industry association (including a rural electric cooperative association or a rural telephone cooperative association), a bona fide professional association, or a bona fide chamber of commerce (or similar bona fide business association, in-

1 including a corporation or similar organization that
2 operates on a cooperative basis (within the meaning
3 of section 1381 of the Internal Revenue Code of
4 1986)), for substantial purposes other than that of
5 obtaining medical care;

6 “(2) is established as a permanent entity which
7 receives the active support of its members and re-
8 quires for membership payment on a periodic basis
9 of dues or payments necessary to maintain eligibility
10 for membership;

11 “(3) does not condition membership, such dues
12 or payments, or coverage under the plan on the
13 basis of health status-related factors with respect to
14 the employees of its members (or affiliated mem-
15 bers), or the dependents of such employees, and does
16 not condition such dues or payments on the basis of
17 group health plan participation; and

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

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

1 **“SEC. 802. ALTERNATIVE MARKET POOLING ORGANIZA-**
 2 **TIONS.**

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

11 “(b) ADAPTION OF STANDARDS.—In developing and
 12 promulgating regulations pursuant to subsection (a), the
 13 Secretary, in consultation with the Secretary of Health
 14 and Human Services, small business health plans, small
 15 and large employers, large and small insurance issuers,
 16 consumer representatives, and state insurance commis-
 17 sioners, shall—

18 “(1) adapt the standards of this part, to the
 19 maximum degree practicable, to assure balanced and
 20 comparable oversight standards for both small busi-
 21 ness health plans and alternative market pooling or-
 22 ganizations;

23 “(2) permit the participation as alternative
 24 market pooling organizations unions, churches and
 25 other faith-based organizations, or other organiza-
 26 tions composed of individuals and groups which may

1 have little or no association with employment, pro-
2 vided however, that such alternative market pooling
3 organizations meet, and continue meeting on an on-
4 going basis, to satisfy standards, rules, and require-
5 ments materially equivalent to those set forth in this
6 part with respect to small business health plans;

7 “(3) conduct periodic verification of such com-
8 pliance by alternative market pooling organizations,
9 in consultation with the Secretary of Health and
10 Human Services and the National Association of In-
11 surance Commissioners, except that such periodic
12 verification shall not materially impede market entry
13 or participation as pooling entities comparable to
14 that of small business health plans;

15 “(4) assure that consistent, clear, and regularly
16 monitored standards are applied with respect to al-
17 ternative market pooling organizations to avert ma-
18 terial risk-selection within or among the composition
19 of such organizations;

20 “(5) the expedited and deemed certification pro-
21 cedures provided in section 805(d) shall not apply to
22 alternative market pooling organizations until sooner
23 of the promulgation of regulations under this sub-
24 section or the expiration of one year following enact-
25 ment of this Act; and

1 “(6) make such other appropriate adjustments
 2 to the requirements of this part as the Secretary
 3 may reasonably deem appropriate to fit the cir-
 4 cumstances of an individual alternative market pool-
 5 ing organization or category of such organization,
 6 including but not limited to the application of the
 7 membership payment requirements of section
 8 801(b)(2) to alternative market pooling organiza-
 9 tions composed primarily of church- or faith-based
 10 membership.

11 **“SEC. 803. CERTIFICATION OF SMALL BUSINESS HEALTH**
 12 **PLANS.**

13 “(a) IN GENERAL.—Not later than 6 months after
 14 the date of enactment of this part, the applicable authority
 15 shall prescribe by interim final rule a procedure under
 16 which the applicable authority shall certify small business
 17 health plans which apply for certification as meeting the
 18 requirements of this part.

19 “(b) REQUIREMENTS APPLICABLE TO CERTIFIED
 20 PLANS.—A small business health plan with respect to
 21 which certification under this part is in effect shall meet
 22 the applicable requirements of this part, effective on the
 23 date of certification (or, if later, on the date on which the
 24 plan is to commence operations).

1 “(c) REQUIREMENTS FOR CONTINUED CERTIFI-
2 CATION.—The applicable authority may provide by regula-
3 tion for continued certification of small business health
4 plans under this part. Such regulation shall provide for
5 the revocation of a certification if the applicable authority
6 finds that the small business health plan involved is failing
7 to comply with the requirements of this part.

8 “(d) EXPEDITED AND DEEMED CERTIFICATION.—

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

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

1 **“SEC. 804. REQUIREMENTS RELATING TO SPONSORS AND**
 2 **BOARDS OF TRUSTEES.**

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

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

12 “(1) FISCAL CONTROL.—The plan is operated,
 13 pursuant to a plan document, by a board of trustees
 14 which pursuant to a trust agreement has complete
 15 fiscal control over the plan and which is responsible
 16 for all operations of the plan.

17 “(2) RULES OF OPERATION AND FINANCIAL
 18 CONTROLS.—The board of trustees has in effect
 19 rules of operation and financial controls, based on a
 20 3-year plan of operation, adequate to carry out the
 21 terms of the plan and to meet all requirements of
 22 this title applicable to the plan.

23 “(3) RULES GOVERNING RELATIONSHIP TO
 24 PARTICIPATING EMPLOYERS AND TO CONTRAC-
 25 TORS.—

26 “(A) BOARD MEMBERSHIP.—

1 “(i) IN GENERAL.—Except as pro-
 2 vided in clauses (ii) and (iii), the members
 3 of the board of trustees are individuals se-
 4 lected from individuals who are the owners,
 5 officers, directors, or employees of the par-
 6 ticipating employers or who are partners in
 7 the participating employers and actively
 8 participate in the business.

9 “(ii) LIMITATION.—

10 “(I) GENERAL RULE.—Except as
 11 provided in subclauses (II) and (III),
 12 no such member is an owner, officer,
 13 director, or employee of, or partner in,
 14 a contract administrator or other
 15 service provider to the plan.

16 “(II) LIMITED EXCEPTION FOR
 17 PROVIDERS OF SERVICES SOLELY ON
 18 BEHALF OF THE SPONSOR.—Officers
 19 or employees of a sponsor which is a
 20 service provider (other than a contract
 21 administrator) to the plan may be
 22 members of the board if they con-
 23 stitute not more than 25 percent of
 24 the membership of the board and they

1 do not provide services to the plan
 2 other than on behalf of the sponsor.

3 “(III) TREATMENT OF PRO-
 4 VIDERS OF MEDICAL CARE.—In the
 5 case of a sponsor which is an associa-
 6 tion whose membership consists pri-
 7 marily of providers of medical care,
 8 subclause (I) shall not apply in the
 9 case of any service provider described
 10 in subclause (I) who is a provider of
 11 medical care under the plan.

12 “(iii) CERTAIN PLANS EXCLUDED.—
 13 Clause (i) shall not apply to a small busi-
 14 ness health plan which is in existence on
 15 the date of the enactment of the Small
 16 Business Health Plans Act of 2008.

17 “(B) SOLE AUTHORITY.—The board has
 18 sole authority under the plan to approve appli-
 19 cations for participation in the plan and to con-
 20 tract with insurers.

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

24 “(1) the requirements of subsection (a) and sec-
 25 tion 801(a) shall be deemed met if such require-

1 ments would otherwise be met if the franchisor were
 2 deemed to be the sponsor referred to in section
 3 801(b) and each franchisee were deemed to be a
 4 member (of the sponsor) referred to in section
 5 801(b); and

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

8 For purposes of this subsection the terms ‘franchisor’ and
 9 ‘franchisee’ shall have the meanings given such terms for
 10 purposes of sections 436.2(a) through 436.2(c) of title 16,
 11 Code of Federal Regulations (including any such amend-
 12 ments to such regulation after the date of enactment of
 13 this part).

14 **“SEC. 805. PARTICIPATION AND COVERAGE REQUIRE-**
 15 **MENTS.**

16 “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The
 17 requirements of this subsection are met with respect to
 18 a small business health plan if, under the terms of the
 19 plan—

20 “(1) each participating employer must be—

21 “(A) a member of the sponsor;

22 “(B) the sponsor; or

23 “(C) an affiliated member of the sponsor,
 24 except that, in the case of a sponsor which is
 25 a professional association or other individual-

1 based association, if at least one of the officers,
2 directors, or employees of an employer, or at
3 least one of the individuals who are partners in
4 an employer and who actively participates in
5 the business, is a member or such an affiliated
6 member of the sponsor, participating employers
7 may also include such employer; and

8 “(2) all individuals commencing coverage under
9 the plan after certification under this part must
10 be—

11 “(A) active or retired owners (including
12 self-employed individuals), officers, directors, or
13 employees of, or partners in, participating em-
14 ployers; or

15 “(B) the dependents of individuals de-
16 scribed in subparagraph (A).

17 “(b) INDIVIDUAL MARKET UNAFFECTED.—The re-
18 quirements of this subsection are met with respect to a
19 small business health plan if, under the terms of the plan,
20 no participating employer may provide health insurance
21 coverage in the individual market for any employee not
22 covered under the plan which is similar to the coverage
23 contemporaneously provided to employees of the employer
24 under the plan, if such exclusion of the employee from cov-
25 erage under the plan is based on a health status-related

1 factor with respect to the employee and such employee
2 would, but for such exclusion on such basis, be eligible
3 for coverage under the plan.

4 “(c) PROHIBITION OF DISCRIMINATION AGAINST EM-
5 PLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.—

6 The requirements of this subsection are met with respect
7 to a small business health plan if—

8 “(1) under the terms of the plan, all employers
9 meeting the preceding requirements of this section
10 are eligible to qualify as participating employers for
11 all geographically available coverage options, unless,
12 in the case of any such employer, participation or
13 contribution requirements of the type referred to in
14 section 2711 of the Public Health Service Act are
15 not met;

16 “(2) information regarding all coverage options
17 available under the plan is made readily available to
18 any employer eligible to participate; and

19 “(3) the applicable requirements of sections
20 701, 702, and 703 are met with respect to the plan.

1 **“SEC. 806. OTHER REQUIREMENTS RELATING TO PLAN**
 2 **DOCUMENTS, CONTRIBUTION RATES, AND**
 3 **BENEFIT OPTIONS.**

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

7 “(1) CONTENTS OF GOVERNING INSTRU-
 8 MENTS.—

9 “(A) IN GENERAL.—The instruments gov-
 10 erning the plan include a written instrument,
 11 meeting the requirements of an instrument re-
 12 quired under section 402(a)(1), which—

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

19 “(ii) provides that the sponsor of the
 20 plan is to serve as plan sponsor (referred
 21 to in section 3(16)(B)).

22 “(B) DESCRIPTION OF MATERIAL PROVI-
 23 SIONS.—The terms of the health insurance cov-
 24 erage (including the terms of any individual
 25 certificates that may be offered to individuals in
 26 connection with such coverage) describe the ma-

1 terial benefit and rating, and other provisions
 2 set forth in this section and such material pro-
 3 visions are included in the summary plan de-
 4 scription.

5 “(2) CONTRIBUTION RATES MUST BE NON-
 6 DISCRIMINATORY.—

7 “(A) IN GENERAL.—The contribution rates
 8 for any participating small employer shall not
 9 vary on the basis of any health status-related
 10 factor in relation to employees of such employer
 11 or their beneficiaries and shall not vary on the
 12 basis of the type of business or industry in
 13 which such employer is engaged, subject to sub-
 14 paragraph (B) and the terms of this title.

15 “(B) EFFECT OF TITLE.—Nothing in this
 16 title or any other provision of law shall be con-
 17 strued to preclude a health insurance issuer of-
 18 fering health insurance coverage in connection
 19 with a small business health plan that meets
 20 the requirements of this part, and at the re-
 21 quest of such small business health plan,
 22 from—

23 “(i) setting contribution rates for the
 24 small business health plan based on the
 25 claims experience of the small business

1 health plan so long as any variation in
 2 such rates for participating small employ-
 3 ers complies with the requirements of
 4 clause (ii), except that small business
 5 health plans shall not be subject, in non-
 6 adopting states, to subparagraphs (A)(ii)
 7 and (C) of section 2912(a)(2) of the Public
 8 Health Service Act, and in adopting states,
 9 to any State law that would have the effect
 10 of imposing requirements as outlined in
 11 such subparagraphs (A)(ii) and (C); or

12 “(ii) varying contribution rates for
 13 participating small employers in a small
 14 business health plan in a State to the ex-
 15 tent that such rates could vary using the
 16 same methodology employed in such State
 17 for regulating small group premium rates,
 18 subject to the terms of part I of subtitle A
 19 of title XXIX of the Public Health Service
 20 Act (relating to rating requirements), as
 21 added by title II of the Small Business
 22 Health Plans Act of 2008.

23 “(3) EXCEPTIONS REGARDING SELF-EMPLOYED
 24 AND LARGE EMPLOYERS.—

25 “(A) SELF EMPLOYED.—

1 “(i) IN GENERAL.—Small business
2 health plans with participating employers
3 who are self-employed individuals (and
4 their dependents) shall enroll such self-em-
5 ployed participating employers in accord-
6 ance with rating rules that do not violate
7 the rating rules for self-employed individ-
8 uals in the State in which such self-em-
9 ployed participating employers are located.

10 “(ii) GUARANTEE ISSUE.—Small busi-
11 ness health plans with participating em-
12 ployers who are self-employed individuals
13 (and their dependents) may decline to
14 guarantee issue to such participating em-
15 ployers in States in which guarantee issue
16 is not otherwise required for the self-em-
17 ployed in that State.

18 “(B) LARGE EMPLOYERS.—Small business
19 health plans with participating employers that
20 are larger than small employers (as defined in
21 section 808(a)(10)) shall enroll such large par-
22 ticipating employers in accordance with rating
23 rules that do not violate the rating rules for
24 large employers in the State in which such large
25 participating employers are located.

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

6 “(b) ABILITY OF SMALL BUSINESS HEALTH PLANS
 7 TO DESIGN BENEFIT OPTIONS.—Nothing in this part or
 8 any provision of State law (as defined in section
 9 514(c)(1)) shall be construed to preclude a small business
 10 health plan or a health insurance issuer offering health
 11 insurance coverage in connection with a small business
 12 health plan from exercising its sole discretion in selecting
 13 the specific benefits and services consisting of medical care
 14 to be included as benefits under such plan or coverage,
 15 except that such benefits and services must meet the terms
 16 and specifications of part II of subtitle A of title XXIX
 17 of the Public Health Service Act (relating to lower cost
 18 plans), as added by title II of the Small Business Health
 19 Plans Act of 2008.

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

21 “(1) DOMICILE STATE.—Coverage shall be
 22 issued to a small business health plan in the State
 23 in which the sponsor’s principal place of business is
 24 located.

1 “(2) NON-DOMICILE STATES.—With respect to
 2 a State (other than the domicile State) in which par-
 3 ticipating employers of a small business health plan
 4 are located but in which the insurer of the small
 5 business health plan in the domicile State is not yet
 6 licensed, the following shall apply:

7 “(A) TEMPORARY PREEMPTION.—If, upon
 8 the expiration of the 90-day period following
 9 the submission of a licensure application by
 10 such insurer (that includes a certified copy of
 11 an approved licensure application as submitted
 12 by such insurer in the domicile State) to such
 13 State, such State has not approved or denied
 14 such application, such State’s health insurance
 15 licensure laws shall be temporarily preempted
 16 and the insurer shall be permitted to operate in
 17 such State, subject to the following terms:

18 “(i) APPLICATION OF NON-DOMICILE
 19 STATE LAW.—Except with respect to licen-
 20 sure and with respect to the terms of sub-
 21 title A of title XXIX of the Public Health
 22 Service Act (relating to rating and benefits
 23 as added by the Small Business Health
 24 Plans Act of 2008), the laws and authority

1 of the non-domicile State shall remain in
2 full force and effect.

3 “(ii) REVOCATION OF PREEMPTION.—
4 The preemption of a non-domicile State’s
5 health insurance licensure laws pursuant to
6 this subparagraph, shall be terminated
7 upon the occurrence of either of the fol-
8 lowing:

9 “(I) APPROVAL OR DENIAL OF
10 APPLICATION.—The approval or denial
11 of an insurer’s licensure application,
12 following the laws and regulations of
13 the non-domicile State with respect to
14 licensure.

15 “(II) DETERMINATION OF MATE-
16 RIAL VIOLATION.—A determination by
17 a non-domicile State that an insurer
18 operating in a non-domicile State pur-
19 suant to the preemption provided for
20 in this subparagraph is in material
21 violation of the insurance laws (other
22 than licensure and with respect to the
23 terms of subtitle A of title XXIX of
24 the Public Health Service Act (relat-
25 ing to rating and benefits added by

1 the Small Business Health Plans Act
2 of 2008)) of such State.

3 “(B) NO PROHIBITION ON PROMOTION.—
4 Nothing in this paragraph shall be construed to
5 prohibit a small business health plan or an in-
6 surer from promoting coverage prior to the ex-
7 piration of the 90-day period provided for in
8 subparagraph (A), except that no enrollment or
9 collection of contributions shall occur before the
10 expiration of such 90-day period.

11 “(C) LICENSURE.—Except with respect to
12 the application of the temporary preemption
13 provision of this paragraph, nothing in this part
14 shall be construed to limit the requirement that
15 insurers issuing coverage to small business
16 health plans shall be licensed in each State in
17 which the small business health plans operate.

18 “(D) SERVICING BY LICENSED INSUR-
19 ERS.—Notwithstanding subparagraph (C), the
20 requirements of this subsection may also be sat-
21 isfied if the participating employers of a small
22 business health plan are serviced by a licensed
23 insurer in that State, even where such insurer
24 is not the insurer of such small business health

1 plan in the State in which such small business
2 health plan is domiciled.

3 **“SEC. 807. REQUIREMENTS FOR APPLICATION AND RE-**
4 **LATED REQUIREMENTS.**

5 “(a) FILING FEE.—Under the procedure prescribed
6 pursuant to section 802(a), a small business health plan
7 shall pay to the applicable authority at the time of filing
8 an application for certification under this part a filing fee
9 in the amount of \$5,000, which shall be available in the
10 case of the Secretary, to the extent provided in appropria-
11 tion Acts, for the sole purpose of administering the certifi-
12 cation procedures applicable with respect to small business
13 health plans.

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

20 “(1) IDENTIFYING INFORMATION.—The names
21 and addresses of—

22 “(A) the sponsor; and

23 “(B) the members of the board of trustees
24 of the plan.

1 “(2) STATES IN WHICH PLAN INTENDS TO DO
2 BUSINESS.—The States in which participants and
3 beneficiaries under the plan are to be located and
4 the number of them expected to be located in each
5 such State.

6 “(3) BONDING REQUIREMENTS.—Evidence pro-
7 vided by the board of trustees that the bonding re-
8 quirements of section 412 will be met as of the date
9 of the application or (if later) commencement of op-
10 erations.

11 “(4) PLAN DOCUMENTS.—A copy of the docu-
12 ments governing the plan (including any bylaws and
13 trust agreements), the summary plan description,
14 and other material describing the benefits that will
15 be provided to participants and beneficiaries under
16 the plan.

17 “(5) AGREEMENTS WITH SERVICE PRO-
18 VIDERS.—A copy of any agreements between the
19 plan, health insurance issuer, and contract adminis-
20 trators and other service providers.

21 “(c) FILING NOTICE OF CERTIFICATION WITH
22 STATES.—A certification granted under this part to a
23 small business health plan shall not be effective unless
24 written notice of such certification is filed with the appli-

1 cable State authority of each State in which the small
2 business health plans operate.

3 “(d) NOTICE OF MATERIAL CHANGES.—In the case
4 of any small business health plan certified under this part,
5 descriptions of material changes in any information which
6 was required to be submitted with the application for the
7 certification under this part shall be filed in such form
8 and manner as shall be prescribed by the applicable au-
9 thority by regulation. The applicable authority may re-
10 quire by regulation prior notice of material changes with
11 respect to specified matters which might serve as the basis
12 for suspension or revocation of the certification.

13 **“SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**
14 **MINATION.**

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

20 “(1) provides to the participants and bene-
21 ficiaries a written notice of intent to terminate stat-
22 ing that such termination is intended and the pro-
23 posed termination date;

24 “(2) develops a plan for winding up the affairs
25 of the plan in connection with such termination in

1 a manner which will result in timely payment of all
 2 benefits for which the plan is obligated; and

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

5 Actions required under this section shall be taken in such
 6 form and manner as may be prescribed by the applicable
 7 authority by regulation.

8 **“SEC. 809. IMPLEMENTATION AND APPLICATION AUTHOR-**
 9 **ITY BY SECRETARY.**

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

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

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

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

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

1 “(B) in the case of a sponsor with mem-
 2 bers which consist of associations, a person who
 3 is a member or employee of any such associa-
 4 tion and elects an affiliated status with the
 5 sponsor.

6 “(2) APPLICABLE AUTHORITY.—The term ‘ap-
 7 plicable authority’ means the Secretary of Labor, ex-
 8 cept that, in connection with any exercise of the Sec-
 9 retary’s authority with respect to which the Sec-
 10 retary is required under section 506(d) to consult
 11 with a State, such term means the Secretary, in con-
 12 sultation with such State.

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

20 “(4) GROUP HEALTH PLAN.—The term ‘group
 21 health plan’ has the meaning provided in section
 22 733(a)(1) (after applying subsection (b) of this sec-
 23 tion).

24 “(5) HEALTH INSURANCE COVERAGE.—The
 25 term ‘health insurance coverage’ has the meaning

provided in section 733(b)(1), except that such term shall not include excepted benefits (as defined in section 733(c)).

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

“(7) INDIVIDUAL MARKET.—

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

“(B) TREATMENT OF VERY SMALL GROUPS.—

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

“(ii) STATE EXCEPTION.—Clause (i) shall not apply in the case of health insurance coverage offered in a State if such State regulates the coverage described in such clause in the same manner and to the

1 same extent as coverage in the small group
 2 market (as defined in section 2791(e)(5) of
 3 the Public Health Service Act) is regulated
 4 by such State.

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

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

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

22 “(11) TRADE ASSOCIATION AND PROFESSIONAL
 23 ASSOCIATION.—The terms ‘trade association’ and
 24 ‘professional association’ mean an entity that meets
 25 the requirements of section 1.501(c)(6)–1 of title 26,

1 Code of Federal Regulations (as in effect on the
2 date of enactment of this Act).

3 “(b) RULE OF CONSTRUCTION.—For purposes of de-
4 termining whether a plan, fund, or program is an em-
5 ployee welfare benefit plan which is a small business
6 health plan, and for purposes of applying this title in con-
7 nection with such plan, fund, or program so determined
8 to be such an employee welfare benefit plan—

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

14 “(2) in the case of a self-employed individual,
15 the term ‘employer’ (as defined in section 3(5)) and
16 the term ‘employee’ (as defined in section 3(6)) shall
17 include such individual.

18 “(c) RENEWAL.—Notwithstanding any provision of
19 law to the contrary, a participating employer in a small
20 business health plan shall not be deemed to be a plan
21 sponsor in applying requirements relating to coverage re-
22 newal.

23 “(d) HEALTH SAVINGS ACCOUNTS.—Nothing in this
24 part shall be construed to create any mandates for cov-
25 erage of benefits for HSA-qualified health plans that

1 would require reimbursements in violation of section
 2 223(c)(2) of the Internal Revenue Code of 1986.”.

3 (b) CONFORMING AMENDMENTS TO PREEMPTION
 4 RULES.—

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

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

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

14 (A) in subsection (b)(4), by striking “Sub-
 15 section (a)” and inserting “Subsections (a) and
 16 (d)”;

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

24 (C) by redesignating subsection (d) as sub-
 25 section (e); and

1 (D) by inserting after subsection (c) the
 2 following new subsection:

3 “(d)(1) Except as provided in subsection (b)(4), the
 4 provisions of this title shall supersede any and all State
 5 laws insofar as they may now or hereafter preclude a
 6 health insurance issuer from offering health insurance cov-
 7 erage in connection with a small business health plan
 8 which is certified under part 8.

9 “(2) In any case in which health insurance coverage
 10 of any policy type is offered under a small business health
 11 plan certified under part 8 to a participating employer op-
 12 erating in such State, the provisions of this title shall su-
 13 persede any and all laws of such State insofar as they may
 14 establish rating and benefit requirements that would oth-
 15 erwise apply to such coverage, provided the requirements
 16 of subtitle A of title XXIX of the Public Health Service
 17 Act (as added by title II of the Health Insurance Market-
 18 place Modernization and Affordability Act of 2007) (con-
 19 cerning health plan rating and benefits) are met.”.

20 (c) PLAN SPONSOR.—Section 3(16)(B) of such Act
 21 (29 U.S.C. 102(16)(B)) is amended by adding at the end
 22 the following new sentence: “Such term also includes a
 23 person serving as the sponsor of a small business health
 24 plan under part 8.”.

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

3 (e) CLERICAL AMENDMENT.—The table of contents
 4 in section 1 of the Employee Retirement Income Security
 5 Act of 1974 is amended by inserting after the item relat-
 6 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.”.

7 **SEC. 102. COOPERATION BETWEEN FEDERAL AND STATE**
 8 **AUTHORITIES.**

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

12 “(d) CONSULTATION WITH STATES WITH RESPECT
 13 TO SMALL BUSINESS HEALTH PLANS.—

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

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

4 “(B) the Secretary’s authority to certify
 5 small business health plans under part 8 in ac-
 6 cordance with regulations of the Secretary ap-
 7 plicable to certification under part 8.

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

15 **SEC. 103. EFFECTIVE DATE AND TRANSITIONAL AND**
 16 **OTHER RULES.**

17 (a) EFFECTIVE DATE.—The amendments made by
 18 this title shall take effect 12 months after the date of the
 19 enactment of this Act. The Secretary of Labor shall first
 20 issue all regulations necessary to carry out the amend-
 21 ments made by this title within 6 months after the date
 22 of the enactment of this Act.

23 (b) TREATMENT OF CERTAIN EXISTING HEALTH
 24 BENEFITS PROGRAMS.—

1 (1) IN GENERAL.—In any case in which, as of
2 the date of the enactment of this Act, an arrange-
3 ment is maintained in a State for the purpose of
4 providing benefits consisting of medical care for the
5 employees and beneficiaries of its participating em-
6 ployers, at least 200 participating employers make
7 contributions to such arrangement, such arrange-
8 ment has been in existence for at least 10 years, and
9 such arrangement is licensed under the laws of one
10 or more States to provide such benefits to its par-
11 ticipating employers, upon the filing with the appli-
12 cable authority (as defined in section 808(a)(2) of
13 the Employee Retirement Income Security Act of
14 1974 (as amended by this subtitle)) by the arrange-
15 ment of an application for certification of the ar-
16 rangement under part 8 of subtitle B of title I of
17 such Act—

18 (A) such arrangement shall be deemed to
19 be a group health plan for purposes of title I
20 of such Act;

21 (B) the requirements of sections 801(a)
22 and 803(a) of the Employee Retirement Income
23 Security Act of 1974 shall be deemed met with
24 respect to such arrangement;

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

5 (D) the requirements of section 804(a) of
6 such Act shall be deemed met with respect to
7 such arrangement; and

8 (E) the arrangement may be certified by
9 any applicable authority with respect to its op-
10 erations in any State only if it operates in such
11 State on the date of certification.

12 The provisions of this subsection shall cease to apply
13 with respect to any such arrangement at such time
14 after the date of the enactment of this Act as the
15 applicable requirements of this subsection are not
16 met with respect to such arrangement or at such
17 time that the arrangement provides coverage to par-
18 ticipants and beneficiaries in any State other than
19 the States in which coverage is provided on such
20 date of enactment.

21 (2) DEFINITIONS.—For purposes of this sub-
22 section, the terms “group health plan”, “medical
23 care”, and “participating employer” shall have the
24 meanings provided in section 808 of the Employee
25 Retirement Income Security Act of 1974, except

1 that the reference in paragraph (7) of such section
 2 to an “small business health plan” shall be deemed
 3 a reference to an arrangement referred to in this
 4 subsection.

5 **TITLE II—MARKET RELIEF**

6 **SEC. 301. MARKET RELIEF.**

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

9 **“TITLE XXIX—HEALTH CARE IN-** 10 **SURANCE MARKETPLACE** 11 **MODERNIZATION**

12 **“SEC. 2901. GENERAL INSURANCE DEFINITIONS.**

13 “In this title, the terms ‘health insurance coverage’,
 14 ‘health insurance issuer’, ‘group health plan’, and ‘indi-
 15 vidual health insurance’ shall have the meanings given
 16 such terms in section 2791.

17 **“SEC. 2902. IMPLEMENTATION AND APPLICATION AUTHOR-** 18 **ITY BY SECRETARY.**

19 “The Secretary shall, through promulgation and im-
 20 plementation of such regulations as the Secretary may
 21 reasonably determine necessary or appropriate, and in
 22 consultation with a balanced spectrum of effected entities
 23 and persons, modify the implementation and application
 24 of this title to accommodate with minimum disruption
 25 such changes to State or Federal law provided in this title

1 and the (and the amendments made by such Act) or in
 2 regulations issued thereto.

3 **“Subtitle A—Market Relief**

4 **“PART I—RATING REQUIREMENTS**

5 **“SEC. 2911. DEFINITIONS.**

6 “In this part:

7 “(1) **ADOPTING STATE.**—The term ‘adopting
 8 State’ means a State that, with respect to the small
 9 group market, has enacted small group rating rules
 10 that meet the minimum standards set forth in sec-
 11 tion 2912(a)(1) or, as applicable, transitional small
 12 group rating rules set forth in section 2912(b).

13 “(2) **APPLICABLE STATE AUTHORITY.**—The
 14 term ‘applicable State authority’ means, with respect
 15 to a health insurance issuer in a State, the State in-
 16 surance commissioner or official or officials des-
 17 ignated by the State to enforce the insurance laws
 18 of such State.

19 “(3) **BASE PREMIUM RATE.**—The term ‘base
 20 premium rate’ means, for each class of business with
 21 respect to a rating period, the lowest premium rate
 22 charged or that could have been charged under a
 23 rating system for that class of business by the small
 24 employer carrier to small employers with similar

1 case characteristics for health benefit plans with the
2 same or similar coverage.

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

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

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

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

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

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

22 “(7) MODEL SMALL GROUP RATING RULES.—
 23 The term ‘Model Small Group Rating Rules’ means
 24 the rules set forth in section 2912(a)(2).

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

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

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

12 “(11) VARIATION LIMITS.—

13 “(A) COMPOSITE VARIATION LIMIT.—

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

21 “(I) Age.

22 “(II) Duration of coverage.

23 “(III) Claims experience.

24 “(IV) Health status.

1 “(ii) USE OF FACTORS.—With respect
 2 to the use of the factors described in
 3 clause (i) in setting premium rates, a
 4 health insurance issuer shall use one or
 5 both of the factors described in subclauses
 6 (I) or (IV) of such clause and may use the
 7 factors described in subclauses (II) or (III)
 8 of such clause.

9 “(B) TOTAL VARIATION LIMIT.—The term
 10 ‘total variation limit’ means the total variation
 11 in premium rates charged by a health insurance
 12 issuer in the small group market as permitted
 13 under applicable State law based on all factors
 14 and case characteristics (as described in section
 15 2912(a)(1)).

16 **“SEC. 2912. RATING RULES.**

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

23 “(1) MINIMUM STANDARDS FOR PREMIUM VARI-
 24 ATIONS.—

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

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

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

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

18 “(A) PREMIUM RATES.—Premium rates
 19 for small group health benefit plans to which
 20 this title applies shall comply with the following
 21 provisions relating to premiums, except as pro-
 22 vided for under subsection (b):

23 “(i) VARIATION IN PREMIUM
 24 RATES.—The plan may not vary premium

1 rates by more than the minimum stand-
2 ards provided for under paragraph (1).

3 “(ii) INDEX RATE.—The index rate
4 for a rating period for any class of busi-
5 ness shall not exceed the index rate for any
6 other class of business by more than 20
7 percent, excluding those classes of business
8 related to association groups under this
9 title.

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

20 “(iv) INCREASES FOR NEW RATING
21 PERIODS.—The percentage increase in the
22 premium rate charged to a small employer
23 for a new rating period may not exceed the
24 sum of the following:

1 “(I) The percentage change in
2 the new business premium rate meas-
3 ured from the first day of the prior
4 rating period to the first day of the
5 new rating period. In the case of a
6 health benefit plan into which the
7 small employer carrier is no longer en-
8 rolling new small employers, the small
9 employer carrier shall use the percent-
10 age change in the base premium rate,
11 except that such change shall not ex-
12 ceed, on a percentage basis, the
13 change in the new business premium
14 rate for the most similar health ben-
15 efit plan into which the small em-
16 ployer carrier is actively enrolling new
17 small employers.

18 “(II) Any adjustment, not to ex-
19 ceed 15 percent annually and adjusted
20 pro rata for rating periods of less
21 than 1 year, due to the claim experi-
22 ence, health status or duration of cov-
23 erage of the employees or dependents
24 of the small employer as determined
25 from the small employer carrier’s rate

1 manual for the class of business in-
2 volved.

3 “(III) Any adjustment due to
4 change in coverage or change in the
5 case characteristics of the small em-
6 ployer as determined from the small
7 employer carrier’s rate manual for the
8 class of business.

9 “(v) UNIFORM APPLICATION OF AD-
10 JUSTMENTS.—Adjustments in premium
11 rates for claim experience, health status, or
12 duration of coverage shall not be charged
13 to individual employees or dependents. Any
14 such adjustment shall be applied uniformly
15 to the rates charged for all employees and
16 dependents of the small employer.

17 “(vi) PROHIBITION ON USE OF CER-
18 TAIN CASE CHARACTERISTIC.—A small em-
19 ployer carrier shall not utilize case charac-
20 teristics, other than those permitted under
21 paragraph (1)(C), without the prior ap-
22 proval of the applicable State authority.

23 “(vii) CONSISTENT APPLICATION OF
24 FACTORS.—Small employer carriers shall
25 apply rating factors, including case charac-

1 teristics, consistently with respect to all
 2 small employers in a class of business.
 3 Rating factors shall produce premiums for
 4 identical groups which differ only by the
 5 amounts attributable to plan design and do
 6 not reflect differences due to the nature of
 7 the groups assumed to select particular
 8 health benefit plans.

9 “(viii) TREATMENT OF PLANS AS HAV-
 10 ING SAME RATING PERIOD.—A small em-
 11 ployer carrier shall treat all health benefit
 12 plans issued or renewed in the same cal-
 13 endar month as having the same rating pe-
 14 riod.

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

23 “(B) ESTABLISHMENT OF SEPARATE
 24 CLASS OF BUSINESS.—Subject to subparagraph
 25 (C), a small employer carrier may establish a

1 separate class of business only to reflect sub-
2 stantial differences in expected claims experi-
3 ence or administrative costs related to the fol-
4 lowing:

5 “(i) The small employer carrier uses
6 more than one type of system for the mar-
7 keting and sale of health benefit plans to
8 small employers.

9 “(ii) The small employer carrier has
10 acquired a class of business from another
11 small employer carrier.

12 “(iii) The small employer carrier pro-
13 vides coverage to one or more association
14 groups that meet the requirements of this
15 title.

16 “(C) LIMITATION.—A small employer car-
17 rier may establish up to 9 separate classes of
18 business under subparagraph (B), excluding
19 those classes of business related to association
20 groups under this title.

21 “(D) LIMITATION ON TRANSFERS.—A
22 small employer carrier shall not transfer a
23 small employer involuntarily into or out of a
24 class of business. A small employer carrier shall
25 not offer to transfer a small employer into or

1 out of a class of business unless such offer is
 2 made to transfer all small employers in the
 3 class of business without regard to case charac-
 4 teristics, claim experience, health status or du-
 5 ration of coverage since issue.

6 “(b) TRANSITIONAL MODEL SMALL GROUP RATING
 7 RULES.—

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

22 “(2) COMPLIANCE WITH TRANSITIONAL MODEL
 23 SMALL GROUP RATING RULES.—During the transi-
 24 tion period described in paragraph (1), a State that,
 25 on the date of enactment of this title, has in effect

1 a small group rating rules methodology that allows
 2 for a variation that is less than the variation pro-
 3 vided for under subsection (a)(1) (concerning min-
 4 imum standards for premium variation), shall be
 5 deemed to be an adopting State if the State complies
 6 with the transitional small group rating rules as pro-
 7 mulgated by the Secretary pursuant to paragraph
 8 (1).

9 “(3) TRANSITIONING OF OLD BUSINESS.—

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

23 “(B) PERIOD FOR OPERATION OF INDE-
 24 PENDENT RATING CLASSES.—In developing the
 25 special transition standards pursuant to sub-

1 paragraph (A), the Secretary shall permit a
 2 carrier in a non-adopting State, at its option, to
 3 maintain independent rating classes for old and
 4 new business for a period of up to 5 years, with
 5 the commencement of such 5-year period to
 6 begin at such time, but not later than the date
 7 that is 3 years after the date of enactment of
 8 this title, as the carrier offers a book of busi-
 9 ness meeting the minimum standards for pre-
 10 mium variation provided for in subsection
 11 (a)(1) or the transitional small group rating
 12 rules under paragraph (1).

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

19 “(c) MARKET RE-ENTRY.—

20 “(1) IN GENERAL.—Notwithstanding any other
 21 provision of law, a health insurance issuer that has
 22 voluntarily withdrawn from providing coverage in the
 23 small group market prior to the date of enactment
 24 of the Small Business Health Plans Act of 2008
 25 shall not be excluded from re-entering such market

1 on a date that is more than 180 days after such
2 date of enactment.

3 “(2) TERMINATION.—The provision of this sub-
4 section shall terminate on the date that is 24
5 months after the date of enactment of the Small
6 Business Health Plans Act of 2008.

7 **“SEC. 2913. APPLICATION AND PREEMPTION.**

8 “(a) SUPERSEDING OF STATE LAW.—

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

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

24 “(A) prohibit an eligible insurer from of-
25 fering, marketing, or implementing small group

1 health insurance coverage consistent with the
 2 Model Small Group Rating Rules or transitional
 3 model small group rating rules; or

4 “(B) have the effect of retaliating against
 5 or otherwise punishing in any respect an eligible
 6 insurer for offering, marketing, or imple-
 7 menting small group health insurance coverage
 8 consistent with the Model Small Group Rating
 9 Rules or transitional model small group rating
 10 rules.

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 that
 18 offer small group health insurance coverage in a
 19 nonadopting State.

20 “(3) NONAPPLICATION WHERE OBTAINING RE-
 21 LIEF UNDER STATE LAW.—Subsection (a)(1) shall
 22 not supercede any State law in 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 Model Small
2 Group Rating Rules or transitional model small
3 group rating rules.

4 “(4) NO EFFECT ON PREEMPTION.—In no case
5 shall this part be construed to limit or affect in any
6 manner the preemptive scope of sections 502 and
7 514 of the Employee Retirement Income Security
8 Act of 1974. In no case shall this part be construed
9 to create any cause of action under Federal or State
10 law or enlarge or affect any remedy available under
11 the Employee Retirement Income Security Act of
12 1974.

13 “(5) PREEMPTION LIMITED TO RATING.—Sub-
14 section (a) shall not preempt any State law that
15 does not have a reference to or a connection with
16 State rating rules that would otherwise apply to eli-
17 gible insurers.

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

1 **“SEC. 2914. CIVIL ACTIONS AND JURISDICTION.**

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

5 “(b) ACTIONS.—An eligible insurer may bring an ac-
6 tion in the district courts of the United States for injunc-
7 tive or other equitable relief against any officials or agents
8 of a nonadopting State in connection with any conduct or
9 action, or proposed conduct or action, by such officials or
10 agents which violates, or which would if undertaken vio-
11 late, section 2913.

12 “(c) DIRECT FILING IN COURT OF APPEALS.—At the
13 election of the eligible insurer, an action may be brought
14 under subsection (b) directly in the United States Court
15 of Appeals for the circuit in which the nonadopting State
16 is located by the filing of a petition for review in such
17 Court.

18 “(d) EXPEDITED REVIEW.—

19 “(1) DISTRICT COURT.—In the case of an ac-
20 tion brought in a district court of the United States
21 under subsection (b), such court shall complete such
22 action, including the issuance of a judgment, prior
23 to the end of the 120-day period beginning on the
24 date on which such action is filed, unless all parties
25 to such proceeding agree to an extension of such pe-
26 riod.

1 “(2) COURT OF APPEALS.—In the case of an
 2 action brought directly in a United States Court of
 3 Appeal under subsection (c), or in the case of an ap-
 4 peal of an action brought in a district court under
 5 subsection (b), such Court shall complete all action
 6 on the petition, including the issuance of a judg-
 7 ment, prior to the end of the 60-day period begin-
 8 ning on the date on which such petition is filed with
 9 the Court, unless all parties to such proceeding
 10 agree to an extension of such period.

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

16 **“SEC. 2915. ONGOING REVIEW.**

17 “Not later than 5 years after the date on which the
 18 Model Small Group Rating Rules are issued under this
 19 part, and every 5 years thereafter, the Secretary, in con-
 20 sultation with the National Association of Insurance Com-
 21 missioners, shall prepare and submit to the appropriate
 22 committees of Congress a report that assesses the effect
 23 of the Model Small Group Rating Rules on access, cost,
 24 and market functioning in the small group market. Such
 25 report may, if the Secretary, in consultation with the Na-

1 tional Association of Insurance Commissioners, deter-
 2 mines such is appropriate for improving access, costs, and
 3 market functioning, contain legislative proposals for rec-
 4 ommended modification to such Model Small Group Rat-
 5 ing Rules.

6 **“PART II—AFFORDABLE PLANS**

7 **“SEC. 2921. DEFINITIONS.**

8 “In this part:

9 “(1) ADOPTING STATE.—The term ‘adopting
 10 State’ means a State that has enacted a law pro-
 11 viding that small group, individual, and large group
 12 health insurers in such State may offer and sell
 13 products in accordance with the List of Required
 14 Benefits and the Terms of Application as provided
 15 for in section 2922(b).

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

19 “(A) notifies the Secretary, not later than
 20 30 days prior to the offering of coverage de-
 21 scribed in this subparagraph, that the issuer in-
 22 tends to offer health insurance coverage con-
 23 sistent with the List of Required Benefits and
 24 Terms of Application in a nonadopting State;

1 “(B) notifies the insurance department of
2 a nonadopting State (or other applicable State
3 agency), not later than 30 days prior to the of-
4 fering of coverage described in this subpara-
5 graph, that the issuer intends to offer health in-
6 surance coverage in that State consistent with
7 the List of Required Benefits and Terms of Ap-
8 plication, and provides with such notice a copy
9 of any insurance policy that it intends to offer
10 in the State, its most recent annual and quar-
11 terly financial reports, and any other informa-
12 tion required to be filed with the insurance de-
13 partment 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 group health coverage) and
20 filed with the State pursuant to subparagraph
21 (B), a description in the insurer’s contract of
22 the List of Required Benefits and a description
23 of the Terms of Application, including a de-
24 scription of the benefits to be provided, and

1 that adherence to such standards is included as
2 a term of such contract.

3 “(3) HEALTH INSURANCE COVERAGE.—The
4 term ‘health insurance coverage’ means any coverage
5 issued in the small group, individual, or large group
6 health insurance markets, including with respect to
7 small business health plans, except that such term
8 shall not include excepted benefits (as defined in sec-
9 tion 2791(c)).

10 “(4) LIST OF REQUIRED BENEFITS.—The term
11 ‘List of Required Benefits’ means the List issued
12 under section 2922(a).

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

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 “(7) STATE PROVIDER FREEDOM OF CHOICE
21 LAW.—The term ‘State Provider Freedom of Choice
22 Law’ means a State law requiring that a health in-
23 surance issuer, with respect to health insurance cov-
24 erage, not discriminate with respect to participation,
25 reimbursement, or indemnification as to any pro-

1 vider who is acting within the scope of the provider’s
 2 license or certification under applicable State law.

3 “(8) TERMS OF APPLICATION.—The term
 4 ‘Terms of Application’ means terms provided under
 5 section 2922(a).

6 **“SEC. 2922. OFFERING AFFORDABLE PLANS.**

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

20 “(b) TERMS OF APPLICATION.—

21 “(1) STATE WITH MANDATES.—With respect to
 22 a State that has a covered benefit, service, or cat-
 23 egory of provider mandate in effect that is covered
 24 under the List of Required Benefits under sub-
 25 section (a), such State mandate shall, subject to

1 paragraph (3) (concerning uniform application),
 2 apply to a coverage plan or plan in, as applicable,
 3 the small group, individual, or large group market or
 4 through a small business health plan in such State.

5 “(2) STATES WITHOUT MANDATES.—With re-
 6 spect to a State that does not have a covered ben-
 7 efit, service, or category of provider mandate in ef-
 8 fect that is covered under the List of Required Ben-
 9 efits under subsection (a), such mandate shall not
 10 apply, as applicable, to a coverage plan or plan in
 11 the small group, individual, or large group market or
 12 through a small business health plan in such State.

13 “(3) UNIFORM APPLICATION OF LAWS.—

14 “(A) IN GENERAL.—With respect to a
 15 State described in paragraph (1), in applying a
 16 covered benefit, service, or category of provider
 17 mandate that is on the List of Required Bene-
 18 fits under subsection (a) the State shall permit
 19 a coverage plan or plan offered in the small
 20 group, individual, or large group market or
 21 through a small business health plan in such
 22 State to apply such benefit, service, or category
 23 of provider coverage in a manner consistent
 24 with the manner in which such coverage is ap-
 25 plied under one of the three most heavily sub-

1 scribed national health plans offered under the
2 Federal Employee Health Benefits Program
3 under chapter 89 of title 5, United States Code
4 (as determined by the Secretary in consultation
5 with the Director of the Office of Personnel
6 Management), and consistent with the Publica-
7 tion of Benefit Applications under subsection
8 (c). In the event a covered benefit, service, or
9 category of provider appearing in the List of
10 Required Benefits is not offered in one of the
11 three most heavily subscribed national health
12 plans offered under the Federal Employees
13 Health Benefits Program, such covered benefit,
14 service, or category of provider requirement
15 shall be applied in a manner consistent with the
16 manner in which such coverage is offered in the
17 remaining most heavily subscribed plan of the
18 remaining Federal Employees Health Benefits
19 Program plans, as determined by the Secretary,
20 in consultation with the Director of the Office
21 of Personnel Management.

22 “(B) EXCEPTION REGARDING STATE PRO-
23 VIDER FREEDOM OF CHOICE LAWS.—Notwith-
24 standing subparagraph (A), in the event a cat-
25 egory of provider mandate is included in the

1 List of Covered Benefits, any State Provider
 2 Freedom of Choice Law (as defined in section
 3 2921(7)) that is in effect in any State in which
 4 such category of provider mandate is in effect
 5 shall not be preempted, with respect to that cat-
 6 egory of provider, by this part.

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

18 “(d) EFFECTIVE DATES.—

19 “(1) SMALL BUSINESS HEALTH PLANS.—With
 20 respect to health insurance provided to participating
 21 employers of small business health plans, the re-
 22 quirements of this part (concerning lower cost plans)
 23 shall apply beginning on the date that is 12 months
 24 after the date of enactment of this title.

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

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

17 **“SEC. 2923. APPLICATION AND PREEMPTION.**

18 “(a) SUPERCEDING OF STATE LAW.—

19 “(1) IN GENERAL.—This part shall supersede
 20 any and all State laws insofar as such laws relate to
 21 mandates relating to covered benefits, services, or
 22 categories of provider in the health insurance market
 23 as applied to an eligible insurer, or health insurance
 24 coverage issued by an eligible insurer, including with

1 respect to coverage issued to a small business health
2 plan, in a nonadopting State.

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

7 “(A) prohibit an eligible insurer from of-
8 fering, marketing, or implementing health in-
9 surance coverage consistent with the Benefit
10 Choice Standards, as provided for in section
11 2922(a); or

12 “(B) have the effect of retaliating against
13 or otherwise punishing in any respect an eligible
14 insurer for offering, marketing, or imple-
15 menting health insurance coverage consistent
16 with the Benefit Choice Standards.

17 “(b) SAVINGS CLAUSE AND CONSTRUCTION.—

18 “(1) NONAPPLICATION TO ADOPTING STATES.—
19 Subsection (a) shall not apply with respect to adopt-
20 ing States.

21 “(2) NONAPPLICATION TO CERTAIN INSUR-
22 ERS.—Subsection (a) shall not apply with respect to
23 insurers that do not qualify as eligible insurers who
24 offer health insurance coverage in a nonadopting
25 State.

1 “(3) NONAPPLICATION WHERE OBTAINING RE-
2 LIEF UNDER STATE LAW.—Subsection (a)(1) shall
3 not supercede any State law of a nonadopting State
4 to the extent necessary to permit individuals or the
5 insurance department of the State (or other State
6 agency) to obtain relief under State law to require
7 an eligible insurer to comply with the Benefit Choice
8 Standards.

9 “(4) NO EFFECT ON PREEMPTION.—In no case
10 shall this part be construed to limit or affect in any
11 manner the preemptive scope of sections 502 and
12 514 of the Employee Retirement Income Security
13 Act of 1974. In no case shall this part be construed
14 to create any cause of action under Federal or State
15 law or enlarge or affect any remedy available under
16 the Employee Retirement Income Security Act of
17 1974.

18 “(5) PREEMPTION LIMITED TO BENEFITS.—
19 Subsection (a) shall not preempt any State law that
20 does not have a reference to or a connection with
21 State mandates regarding covered benefits, services,
22 or categories of providers that would otherwise apply
23 to eligible insurers.

1 **“SEC. 2924. CIVIL ACTIONS AND JURISDICTION.**

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

5 “(b) ACTIONS.—An eligible insurer may bring an ac-
6 tion in the district courts of the United States for injunc-
7 tive or other equitable relief against any officials or agents
8 of a nonadopting State in connection with any conduct or
9 action, or proposed conduct or action, by such officials or
10 agents which violates, or which would if undertaken vio-
11 late, section 2923.

12 “(c) DIRECT FILING IN COURT OF APPEALS.—At the
13 election of the eligible insurer, an action may be brought
14 under subsection (b) directly in the United States Court
15 of Appeals for the circuit in which the nonadopting State
16 is located by the filing of a petition for review in such
17 Court.

18 “(d) EXPEDITED REVIEW.—

19 “(1) DISTRICT COURT.—In the case of an ac-
20 tion brought in a district court of the United States
21 under subsection (b), such court shall complete such
22 action, including the issuance of a judgment, prior
23 to the end of the 120-day period beginning on the
24 date on which such action is filed, unless all parties
25 to such proceeding agree to an extension of such pe-
26 riod.

1 “(2) COURT OF APPEALS.—In the case of an
 2 action brought directly in a United States Court of
 3 Appeal under subsection (c), or in the case of an ap-
 4 peal of an action brought in a district court under
 5 subsection (b), such Court shall complete all action
 6 on the petition, including the issuance of a judg-
 7 ment, prior to the end of the 60-day period begin-
 8 ning on the date on which such petition is filed with
 9 the Court, unless all parties to such proceeding
 10 agree to an extension of such period.

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

16 **“SEC. 2925. RULES OF CONSTRUCTION.**

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

23 “(b) HEALTH SAVINGS ACCOUNTS.—Nothing in this
 24 subtitle shall be construed to create any mandates for cov-
 25 erage of benefits for HSA-qualified health plans that

1 would require reimbursements in violation of section
 2 223(c)(2) of the Internal Revenue Code of 1986.”.

3 **TITLE III—HARMONIZATION OF**
 4 **HEALTH INSURANCE STAND-**
 5 **ARDS**

6 **SEC. 301. HEALTH INSURANCE STANDARDS HARMONI-**
 7 **ZATION.**

8 Title XXIX of the Public Health Service Act (as
 9 added by section 201) is amended by adding at the end
 10 the following:

11 **“Subtitle B—Standards**
 12 **Harmonization**

13 **“SEC. 2931. DEFINITIONS.**

14 “In this subtitle:

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

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

23 “(A) notifies the Secretary, not later than
 24 30 days prior to the offering of coverage de-
 25 scribed in this subparagraph, that the issuer in-

1 tends to offer health insurance coverage con-
2 sistent with the harmonized standards in a non-
3 adopting State;

4 “(B) notifies the insurance department of
5 a nonadopting State (or other State agency),
6 not later than 30 days prior to the offering of
7 coverage described in this subparagraph, that
8 the issuer intends to offer health insurance cov-
9 erage in that State consistent with the har-
10 monized standards published pursuant to sec-
11 tion 2933(d), and provides with such notice a
12 copy of any insurance policy that it intends to
13 offer in the State, its most recent annual and
14 quarterly financial reports, and any other infor-
15 mation required to be filed with the insurance
16 department of the State (or other State agency)
17 by the Secretary in regulations; and

18 “(C) includes in the terms of the health in-
19 surance coverage offered in nonadopting States
20 (including in the terms of any individual certifi-
21 cates that may be offered to individuals in con-
22 nection with such health coverage) and filed
23 with the State pursuant to subparagraph (B), a
24 description of the harmonized standards pub-
25 lished pursuant to section 2933(g)(2) and an

1 affirmation that such standards are a term of
2 the contract.

3 “(3) HARMONIZED STANDARDS.—The term
4 ‘harmonized standards’ means the standards cer-
5 tified by the Secretary under section 2933(d).

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

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

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

22 **“SEC. 2932. HARMONIZED STANDARDS.**

23 “(a) BOARD.—

24 “(1) ESTABLISHMENT.—Not later than 3
25 months after the date of enactment of this title, the

1 Secretary, in consultation with the NAIC, shall es-
 2 tablish the Health Insurance Consensus Standards
 3 Board (referred to in this subtitle as the ‘Board’) to
 4 develop recommendations that harmonize incon-
 5 sistent State health insurance laws in accordance
 6 with the procedures described in subsection (b).

7 “(2) COMPOSITION.—

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

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

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

1 Democrats and two of which shall be Re-
2 publicans.

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

12 “(iv) Two representatives of insurance
13 agents and brokers.

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

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

21 “(3) ADVISORY PANEL.—The Secretary shall
22 establish an advisory panel to provide advice to the
23 Board, and shall appoint its members after consid-
24 ering the recommendations of professional organiza-

1 tions representing the entities and constituencies
2 identified in this paragraph:

3 “(A) Two representatives of small business
4 health plans.

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

8 “(C) Two representatives of consumer or-
9 ganizations.

10 “(D) Two representatives of health care
11 providers.

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

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

1 Ethics in Government Act of 1978 (Public Law 95–
2 521).

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

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

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

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

23 “(D) make advance, progress, and other
24 payments which relate to the work of the
25 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 2922(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. 2933. 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 2933(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. 2934. 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 2933.

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. 2935. 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.”.

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