

110TH CONGRESS
2D SESSION

S. 2948

To provide quality, affordable health insurance for small employers and individuals.

IN THE SENATE OF THE UNITED STATES

APRIL 30, 2008

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

A BILL

To provide quality, affordable health insurance for small employers and individuals.

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 Em-
5 powerment Act”.

6 **SEC. 2. DEFINITIONS.**

7 (a) IN GENERAL.—In this Act, the terms “health
8 benefits plan”, “carrier”, and “dependent” have the
9 meanings given such terms in section 8901 of title 5,
10 United States Code.

1 (b) OTHER TERMS.—In this Act:

2 (1) ADMINISTRATOR.—The term “Adminis-
3 trator” means the entity that enters into the con-
4 tract under section 3(b).

5 (2) COMMISSION.—The term “Commission”
6 means the National Health Coverage Commission
7 established under section 8.

8 (3) EMPLOYEE.—The term “employee” has the
9 meaning given such term under section 3(6) of the
10 Employee Retirement Income Security Act of 1974
11 (29 U.S.C. 1002(6)). Such term shall not include an
12 employee of the Federal Government.

13 (4) EMPLOYER.—The term “employer” has the
14 meaning given such term under section 3(5) of the
15 Employee Retirement Income Security Act of 1974
16 (29 U.S.C. 1002(5)), except that such term shall in-
17 clude only employers who employed an average of at
18 least 1 but not more than 100 employees on busi-
19 ness days during the year preceding the date of ap-
20 plication. Such term shall not include the Federal
21 Government.

22 (5) HEALTH INSURANCE ISSUER.—The term
23 “health insurance issuer” has the meaning given
24 such term in section 2791(b)(2) of the Public Health
25 Service Act (42 U.S.C. 300gg–91(b)(2)), except that

1 such term shall include the sponsor of a group
2 health plan.

3 (6) OFFICE.—The term “Office” means the Of-
4 fice of Personnel Management.

5 (7) PARTICIPATING EMPLOYER.—The term
6 “participating employer” means an employer that—

7 (A) elects to provide health insurance cov-
8 erage under this Act to its employees;

9 (B) is not offering other comprehensive
10 health insurance coverage to such employees;
11 and

12 (C) agrees to provide the employer con-
13 tribution as required under section 6(a).

14 (8) SECRETARY.—The term “Secretary” means
15 the Secretary of Health and Human Services.

16 (c) APPLICATION OF CERTAIN RULES IN DETER-
17 MINATION OF EMPLOYER SIZE.—For purposes of sub-
18 section (b)(2):

19 (1) APPLICATION OF AGGREGATION RULE FOR
20 EMPLOYERS.—All persons treated as a single em-
21 ployer under subsection (b), (c), (m), or (o) of sec-
22 tion 414 of the Internal Revenue Code of 1986 shall
23 be treated as 1 employer.

24 (2) EMPLOYERS NOT IN EXISTENCE IN PRE-
25 CEDING YEAR.—In the case of an employer which

1 was not in existence for the full year prior to the
2 date on which the employer applies to participate,
3 the determination of whether such employer meets
4 the requirements of subsection (b)(2) shall be based
5 on the average number of employees that it is rea-
6 sonably expected such employer will employ on busi-
7 ness days in the employer's first full year.

8 (3) PREDECESSORS.—Any reference in this
9 subsection to an employer shall include a reference
10 to any predecessor of such employer.

11 (d) WAIVER AND CONTINUATION OF PARTICIPA-
12 TION.—

13 (1) WAIVER.—The Office may waive the limita-
14 tions relating to the size of an employer which may
15 participate in the health insurance program estab-
16 lished under this Act on a case by case basis if the
17 Office determines that such employer makes a com-
18 pelling case for such a waiver. In making determina-
19 tions under this paragraph, the Office may consider
20 the effects of the employment of temporary and sea-
21 sonal workers and other factors.

22 (2) CONTINUATION OF PARTICIPATION.—An
23 employer participating in the program under this
24 Act that experiences an increase in the number of
25 employees so that such employer has in excess of

1 100 employees, may not be excluded from participa-
2 tion solely as a result of such increase in employees.

3 **SEC. 3. NATIONAL SMALL EMPLOYER AND INDIVIDUALS**
4 **RISK POOL.**

5 (a) ESTABLISHMENT.—The Secretary, in consulta-
6 tion with the Director of the Office, shall established a
7 national program to make quality, affordable health insur-
8 ance available to small employers and self-employed indi-
9 viduals in a manner that will spread risk on a national
10 basis. The program shall be modeled on the Federal em-
11 ployees health benefit program under chapter 89 of title
12 5, United States Code.

13 (b) CONTRACT FOR ADMINISTRATION.—

14 (1) IN GENERAL.—The Secretary, in consulta-
15 tion with the Director of the Office, shall enter into
16 a contract with an eligible entity for the administra-
17 tion of the program established under subsection (a).

18 (2) ELIGIBLE ENTITY.—The program under
19 subsection (a) shall be administered by a private en-
20 tity under a contract entered into with the Depart-
21 ment of Health and Human Services. An entity shall
22 be eligible to enter into such contract if such enti-
23 ty—

24 (A) is a medicare fiscal intermediary, a
25 health insurance issuer, a health care provider

1 organization, a third party administrator, or
2 any other entity determined appropriate by the
3 Secretary; and

4 (B) can demonstrate the ability to admin-
5 ister the insurance program under this Act, for
6 a population significantly larger than that pop-
7 ulations served under the Federal Employees
8 Health Benefits Program under chapter 89 of
9 title 5, United States Code.

10 (c) LIMITATIONS.—In no event shall the enactment
11 of this Act result in—

12 (1) any increase in the level of individual or
13 Federal Government contributions required under
14 chapter 89 of title 5, United States Code, including
15 copayments or deductibles;

16 (2) any decrease in the types of benefits offered
17 under such chapter 89; or

18 (3) any other change that would adversely af-
19 fect the coverage afforded under such chapter 89 to
20 employees and annuitants and members of family
21 under that chapter.

22 **SEC. 4. CONTRACT REQUIREMENT.**

23 (a) IN GENERAL.—The Administrator may enter into
24 contracts with qualified carriers offering health benefits
25 plans of the type described in section 8903 or 8903a of

1 title 5, United States Code, without regard to section 5
2 of title 41, United States Code, or other statutes requiring
3 competitive bidding, to provide health insurance coverage
4 to employees of participating employers and individuals
5 under this Act. Each contract shall be for a uniform term
6 of at least 1 year, but may be made automatically renew-
7 able from term to term in the absence of notice of termi-
8 nation by either party. In entering into such contracts,
9 the Administrator shall ensure that health benefits cov-
10 erage is provided for individuals only, individuals with one
11 or more children, married individuals without children,
12 and married individuals with one or more children. As a
13 condition of entering into such a contract, a qualified car-
14 rier shall agree to pay the monthly assessment required
15 under section 11(e).

16 (b) ELIGIBILITY.—A carrier shall be eligible to enter
17 into a contract under subsection (a) if such carrier—

18 (1) is licensed to offer health benefits plan cov-
19 erage in each State in which the plan is offered; and

20 (2) meets such other requirements as deter-
21 mined appropriate by the Secretary.

22 (c) BENEFITS.—

23 (1) PILOT PROGRAM.—

24 (A) IN GENERAL.—The Administrator
25 shall establish a pilot program to provide for

1 the offering, by carriers, of a model health ben-
2 efits plan that is developed using the model pro-
3 vided for under section 8(c)(1).

4 (B) ASSESSMENT.—Not later than 5 years
5 after the date on which the pilot program is es-
6 tablished under subparagraph (A), the Adminis-
7 trator shall contract with the Institute of Medi-
8 cine for the conduct of an assessment on the
9 impact of the pilot program on health care cov-
10 erage costs and access.

11 (2) STATEMENT OF BENEFITS.—Each contract
12 under this Act shall contain a detailed statement of
13 benefits offered and shall include information con-
14 cerning such maximums, limitations, exclusions, and
15 other definitions of benefits as the Administrator
16 considers necessary or desirable.

17 (3) ENSURING A RANGE OF PLANS.—The Ad-
18 ministrator shall ensure that a range of health bene-
19 fits plans are available to participating employers
20 under this Act.

21 (d) STANDARDS.—The minimum standards pre-
22 scribed for health benefits plans under section 8902(e) of
23 title 5, United States Code, and for carriers offering plans,
24 shall apply to plans and carriers under this Act. Approval
25 of a plan may be withdrawn by the Administrator only

1 after notice and opportunity for hearing to the carrier con-
2 cerned without regard to subchapter II of chapter 5 and
3 chapter 7 of title 5, United States Code.

4 (e) CONVERSION.—

5 (1) IN GENERAL.—A contract may not be made
6 or a plan approved under this section if the carrier
7 under such contract or plan does not offer to each
8 enrollee whose enrollment in the plan is ended, ex-
9 cept by a cancellation of enrollment, a temporary ex-
10 tension of coverage during which the individual may
11 exercise the option to convert, without evidence of
12 good health, to a nongroup contract providing health
13 benefits. An enrollee who exercises this option shall
14 pay the full periodic charges of the nongroup con-
15 tract.

16 (2) NONCANCELLABLE.—The benefits and cov-
17 erage made available under paragraph (1) may not
18 be canceled by the carrier except for fraud, over-in-
19 surance, or nonpayment of periodic charges.

20 (f) REQUIREMENT OF PAYMENT FOR OR PROVISION
21 OF HEALTH SERVICE.—Each contract entered into under
22 this Act shall require the carrier to agree to pay for or
23 provide a health service or supply in an individual case
24 if the Administrator finds that the employee, annuitant,
25 family member, former spouse, or person having continued

1 coverage under section 8905a of title 5, United States
2 Code, is entitled thereto under the terms of the contract.

3 **SEC. 5. ELIGIBILITY.**

4 An individual shall be eligible to enroll in a plan
5 under this Act if such individual—

6 (1) is an employee of a small employer de-
7 scribed in section 2(b)(2), or is a self-employed indi-
8 vidual as defined in section 401(c)(1)(B) of the In-
9 ternal Revenue Code of 1986, that elects to provide
10 coverage for its employees under this Act; or

11 (2) is not otherwise enrolled or eligible for en-
12 rollment or coverage of the type described in section
13 2701(e)(1) of the Public Health Service Act.

14 **SEC. 6. APPLICATION OF PROVISIONS.**

15 (a) FEHBP.—Except as provided in this section, the
16 provisions of chapter 89 of title 5, United States Code,
17 relating to employer contributions for coverage, require-
18 ments for rating, guaranteed issue and renewability, and
19 other provisions determined appropriate by the Secretary
20 (in consultation with the Director of the Office) shall
21 apply with respect to health coverage provided under this
22 Act.

23 (b) RATING AND LOSS-RATIO.—

24 (1) RATING.—With respect to the determina-
25 tion of premium amounts for health benefits plans

1 under this Act, the only rating factor permitted shall
2 be an age-related factor.

3 (2) LOSS-RATIO.—A qualified carrier shall en-
4 sure that the loss-ratio of any health benefits plan
5 offered by such carrier under this Act not be less
6 than 85 percent with respect to the amount of pre-
7 miums expended for patient care.

8 (c) CONTINUED APPLICABILITY OF STATE LAW.—

9 (1) HEALTH INSURANCE OR PLANS.—

10 (A) PLANS.—With respect to a contract
11 entered into under this Act under which a car-
12 rier will offer health benefits plan coverage,
13 State mandated benefit laws in effect in the
14 State in which the plan is offered shall continue
15 to apply.

16 (B) RATING RULES.—The rating and other
17 requirements described in subsections (a) and
18 (b) shall supercede State rating rules for quali-
19 fied plans under this Act.

20 (2) LIMITATION.—Nothing in this subsection
21 shall be construed to preempt—

22 (A) any State or local law or regulation ex-
23 cept those laws and regulations described in
24 subparagraph (B) of paragraph (1);

1 (B) any State grievance, claims, and ap-
2 peals procedure law, except to the extent that
3 such law is preempted under section 514 of the
4 Employee Retirement Income Security Act of
5 1974; and

6 (C) State network adequacy laws.

7 **SEC. 7. EMPLOYER PARTICIPATION.**

8 (a) REGULATIONS.—The Secretary, in consultation
9 with the Director of the Office, shall prescribe regulations
10 providing for employer participation under this Act, in-
11 cluding the offering of health benefits plans under this Act
12 to employees.

13 (b) ENROLLMENT AND OFFERING OF OTHER COV-
14 ERAGE.—

15 (1) ENROLLMENT.—A participating employer
16 shall ensure that each eligible employee has an op-
17 portunity to enroll in a plan under this Act.

18 (2) PROHIBITION ON OFFERING OTHER COM-
19 PREHENSIVE HEALTH BENEFIT COVERAGE.—A par-
20 ticipating employer may not offer a health insurance
21 plan providing comprehensive health benefits cov-
22 erage to employees participating in the program
23 under this Act other than a health benefits plan
24 that—

1 (A) meets the requirements described in
2 section 4(a); and

3 (B) is offered only through the enrollment
4 process established by the Administrator under
5 section 3.

6 (3) OFFER OF SUPPLEMENTAL COVERAGE OP-
7 TIONS.—

8 (A) IN GENERAL.—A participating em-
9 ployer may offer supplementary coverage op-
10 tions to employees.

11 (B) DEFINITION.—In subparagraph (A),
12 the term “supplementary coverage” means ben-
13 efits described as “excepted benefits” under
14 section 2791(c) of the Public Health Service
15 Act (42 U.S.C. 300gg–91(c)).

16 **SEC. 8. NATIONAL HEALTH COVERAGE COMMISSION.**

17 (a) ESTABLISHMENT.—There is established a com-
18 mission to be known as the “National Health Coverage
19 Commission” to carry out the duties activities described
20 in subsection (c).

21 (b) COMPOSITION.—

22 (1) APPOINTMENT.—The Commission shall be
23 composed of 15 members to be appointed by the
24 President, after consultation with and recommenda-
25 tions from the Institute of Medicine of the National

1 Academy of Sciences, from among representatives of
2 employers, employees, health care providers, health
3 services researchers, economists, and other health
4 care stakeholders and experts determined appro-
5 priate by the Institute of Medicine.

6 (2) CHAIRPERSON, VICE-CHAIRPERSON, AND
7 MEETINGS.—Not later than 30 days after the date
8 on which all members of the Commission are ap-
9 pointed under paragraph (1), such members shall
10 meet to elect a Chairperson and Vice Chairperson
11 from among such members and shall determine a
12 schedule of Commission meetings.

13 (3) TERMS, VACANCIES, AND QUORUM.—

14 (A) TERMS.—An individual appointed
15 under paragraph (1) shall serve a term of 3
16 years.

17 (B) VACANCY.—Any vacancy in the Com-
18 mission shall not affect its powers and shall be
19 filled in the same manner in which the original
20 appointment was made.

21 (C) QUORUM.—A majority of the members
22 of the Commission shall constitute a quorum,
23 but a lesser number of members may hold hear-
24 ings.

1 (c) DUTIES AND ACTIVITIES.—The Commission
2 shall—

3 (1) develop a model that ensures adequate cov-
4 erage for medically necessary services, promotes dis-
5 ease and chronic disease management, provides in-
6 centives for health provider compliance with best
7 practices protocols, and that does not discriminate
8 against individuals based on the nature of their
9 medically necessary condition, but provides appro-
10 priate coverage limits based on scientifically deter-
11 mined models of care;

12 (2) as part of the model under paragraph (1),
13 establish a standardized benefit package for health
14 benefit plans provided under contracts entered into
15 under this Act;

16 (3) develop model cost sharing mechanisms that
17 do not discriminate and that accommodate lower in-
18 come individuals;

19 (4) establish a systematic means of ensuring
20 that the health care system adopts best practices;

21 (5) provide for the establishment of a partner-
22 ship between health care providers, manufacturers of
23 health products, health care economists, and policy
24 experts in the areas of health financing and delivery,
25 to—

1 (A) develop a systematic means of ensur-
 2 ing that the health care system adopts best
 3 practices;

4 (B) develop procedures to combat price
 5 gouging by the manufacturers of new health
 6 products; and

7 (C) determine cost sharing mechanisms
 8 that do not discriminate and that accommodate
 9 low income individuals; and

10 (6) carry out any other activities determined
 11 appropriate by the Secretary to assist in carrying
 12 out this Act.

13 (d) POWERS OF COMMISSION.—

14 (1) HEARINGS.—The Commission may hold
 15 such hearings, meet and act at such times and
 16 places, and receive such evidence as may be nec-
 17 essary to carry out the functions of the Commission.

18 (2) INFORMATION FROM FEDERAL AGENCIES.—

19 (A) IN GENERAL.—The Commission may
 20 access, to the extent authorized by law, from
 21 any executive department, bureau, agency,
 22 board, commission, office, independent estab-
 23 lishment, or instrumentality of the Federal Gov-
 24 ernment such information, suggestions, esti-

1 mates, and statistics as the Commission con-
2 siders necessary to carry out this Act.

3 (B) PROVISION OF INFORMATION.—On
4 written request of the Chairperson of the Com-
5 mission, each department, bureau, agency,
6 board, commission, office, independent estab-
7 lishment, or instrumentality shall, to the extent
8 authorized by law, provide the requested infor-
9 mation to the Commission

10 (C) RECEIPT, HANDLING, STORAGE, AND
11 DISSEMINATION.—Information shall only be re-
12 ceived, handled, stored, and disseminated by
13 members of the Commission and its staff con-
14 sistent with all applicable statutes, regulations,
15 and Executive orders.

16 (3) ASSISTANCE FROM FEDERAL AGENCIES.—

17 (A) GENERAL SERVICES ADMINISTRA-
18 TION.—On request of the Chairperson of the
19 Commission, the Administrator of General
20 Services shall provide to the Commission, on a
21 reimbursable basis, administrative support and
22 other assistance necessary for the Commission
23 to carry out its duties.

24 (B) OTHER DEPARTMENTS AND AGEN-
25 CIES.—In addition to the assistance provided

1 for under subparagraph (A), departments and
2 agencies of the United States may provide to
3 the Commission such assistance as they may
4 determine advisable and as authorized by law.

5 (4) CONTRACTING.—The Commission may
6 enter into contracts to enable the Commission to dis-
7 charge its duties under this Act.

8 (5) DONATIONS.—The Commission may accept,
9 use, and dispose of donations of services or property.

10 (6) POSTAL SERVICES.—The Commission may
11 use the United States mails in the same manner and
12 under the same conditions as a department or agen-
13 cy of the United States.

14 (e) STAFF OF COMMISSION.—

15 (1) IN GENERAL.—The Chairperson of the
16 Commission, in consultation with the Vice Chair-
17 person, in accordance with rules agreed upon by the
18 Commission, may appoint and fix the compensation
19 of a staff director and such other personnel as may
20 be necessary to enable the Commission to carry out
21 its functions, in accordance with the provisions of
22 title 5, United States Code, except that no rate of
23 pay fixed under this subsection may exceed the
24 equivalent of that payable for a position at level V

1 of the Executive Schedule under section 5316 of title
2 5, United States Code.

3 (2) STAFF OF FEDERAL AGENCIES.—Upon re-
4 quest of the Chairperson of the Commission, the
5 head of any executive department, bureau, agency,
6 board, commission, office, independent establish-
7 ment, or instrumentality of the Federal Government
8 may detail, without reimbursement, any of its per-
9 sonnel to the Commission to assist it in carrying out
10 its duties under this Act. Any detail of an employee
11 shall be without interruption or loss of civil service
12 status or privilege.

13 (3) CONSULTANT SERVICES.—The Commission
14 is authorized to procure the services of experts and
15 consultants in accordance with section 3109 of title
16 5, United States Code, but at rates not to exceed the
17 daily rate paid a person occupying a position at level
18 IV of the Executive Schedule under section 5315 of
19 title 5, United States Code.

20 (f) REPORT AND TERMINATION.—

21 (1) REPORT.—Not later than 3 years after the
22 date on which all of the members of the Commission
23 are appointed under subsection (b), the Commission
24 shall submit to the appropriate committees of Con-
25 gress a report concerning the activities of the Com-

1 mission which shall include recommendations for
2 coverage and benefits under the program under this
3 Act.

4 (2) TERMINATION.—The Commission shall ter-
5minate on the date on which the report is submitted
6 under paragraph (1).

7 **SEC. 9. PUBLIC EDUCATION CAMPAIGN.**

8 (a) IN GENERAL.—In carrying out this Act, the Sec-
9retary, in consultation with the Director of the Office,
10 shall develop, and the Administrator shall implement, an
11 educational campaign to provide information to employers
12 and the general public concerning the health insurance
13 program developed under this Act.

14 (b) ANNUAL PROGRESS REPORTS.—Not later than 1
15 year and 2 years after the implementation of the campaign
16 under subsection (a), the Administrator shall submit to
17 the appropriate committees of Congress a report that de-
18scribes the activities of the Administrator under sub-
19section (a), including a determination by the Adminis-
20trator of the percentage of employers with knowledge of
21 the health benefits programs provided for under this Act.

22 (c) PUBLIC EDUCATION CAMPAIGN.—There is au-
23thorized to be appropriated to carry out this section, such
24 sums as may be necessary for each of fiscal years 2009
25 and 2010.

1 **SEC. 10. TRANSITION PERIOD.**

2 During the period prior to the date on which assess-
3 ments begin under section 11(c), the Administrator shall
4 adjust the annual premium amount assessed for coverage
5 under a health benefits plan to reflect the median pre-
6 mium amount that is assessed for coverage under the Blue
7 Cross/Blue Shield Standard Plan provided under the Fed-
8 eral Employees Health Benefit Program under chapter 89
9 of title 5, United States Code for the year involved.

10 **SEC. 11. REINSURANCE PROGRAM.**

11 (a) ESTABLISHMENT OF PROGRAM.—Not later than
12 1 year after the date of enactment of this Act, the Sec-
13 retary shall establish a program to provide reinsurance to
14 qualified carriers offering health benefit plans under this
15 Act.

16 (b) AMOUNT OF REINSURANCE PAYMENTS.—

17 (1) IN GENERAL.—Under the program estab-
18 lished under subsection (a), the Secretary shall,
19 using amounts in the trust fund established under
20 subsection (d), pay to a qualified carrier an amount
21 determined under paragraph (2) for each large claim
22 paid by such carrier under a health benefits plan
23 under this Act.

24 (2) PAYMENT.—The amount of a payment
25 under paragraph (1) shall be equal to 90 percent of

1 the amount of the large claim paid by the carrier
2 under this Act.

3 (3) LARGE CLAIM.—In this subsection, the term
4 “large claim” means a claim paid by a qualified car-
5 rier on behalf of a enrollee under a health benefits
6 plan under this Act that is excess of \$5,000, but less
7 than \$75,000.

8 (4) ANNUAL PAYMENT.—The Secretary shall
9 develop procedures to provide for the annual pay-
10 ment of amounts to qualified carriers under the pro-
11 gram under this section.

12 (c) ASSESSMENTS.—

13 (1) IN GENERAL.—The Secretary shall require
14 the payment of monthly assessments by each health
15 insurance issuer offering health insurance coverage.

16 (2) AMOUNT OF ASSESSMENT.—

17 (A) ESTABLISHMENT OF BASE AMOUNT BY
18 SECRETARY.—Not later than 1 year after the
19 date of enactment of this Act, the Secretary
20 shall determine the base amount of the assess-
21 ment under paragraph (1).

22 (B) AMOUNT PER CARRIER.—With respect
23 to a health insurance issuer, the amount of the
24 monthly assessment under this subsection shall
25 be the product of the base amount under sub-

1 paragraph (A) and the number of lives covered
2 under the health benefits plans offered by the
3 issuer during the month involved.

4 (d) TRUST FUND.—

5 (1) ESTABLISHMENT.—There is established in
6 the Treasury of the United States a trust fund to
7 be known as the “Small Business Health Coverage
8 Trust Fund”, consisting of such amounts as may be
9 appropriated or credited to such Trust Fund as pro-
10 vided in this subsection.

11 (2) TRANSFERS TO TRUST FUND.—There are
12 hereby appropriated to the Small Business Health
13 Coverage Trust Fund amounts equivalent to the net
14 revenues received in the Treasury from the assess-
15 ments paid under subsection (c).

16 **SEC. 12. APPROPRIATIONS.**

17 There are authorized to be appropriated, such sums
18 as may be necessary in each fiscal year for the develop-
19 ment and administration of the program under this Act.

○