

111TH CONGRESS  
1ST SESSION

# H. R. 321

To amend title XXI of the Social Security Act to expand coverage options under the State Children’s Health Insurance Program (SCHIP) through premium assistance.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 2009

Mr. FORTENBERRY (for himself, Mr. BURGESS, Mr. SESSIONS, Mr. TERRY, Mr. PRICE of Georgia, and Mr. SHADEGG) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XXI of the Social Security Act to expand coverage options under the State Children’s Health Insurance Program (SCHIP) through premium assistance.

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 “SCHIP Plus Act of  
5       2009”.

1 **SEC. 2. EXPANDING COVERAGE OPTIONS IN SCHIP**  
 2 **THROUGH PREMIUM ASSISTANCE.**

3 (a) **REQUIRING OFFERING OF ALTERNATIVE COV-**  
 4 **ERAGE OPTIONS.**—Section 2102 of the Social Security Act  
 5 (42 U.S.C. 1397b) is amended—

6 (1) in subsection (a)—

7 (A) in paragraph (6), by striking “and” at  
 8 the end;

9 (B) in paragraph (7), by striking the pe-  
 10 riod at the end and inserting “; and”; and

11 (C) by adding at the end the following new  
 12 paragraph:

13 “(8) effective for plan years beginning on or  
 14 after October 1, 2010, how the plan will provide for  
 15 child health assistance with respect to applicable tar-  
 16 geted low-income children through alternative cov-  
 17 erage options in accordance with subsection (d).”;  
 18 and

19 (2) by adding at the end the following new sub-  
 20 section:

21 “(d) **ALTERNATIVE COVERAGE OPTIONS.**—

22 “(1) **IN GENERAL.**—Effective October 1, 2010,  
 23 a State child health plan shall provide for the offer-  
 24 ing of any qualified alternative coverage that a  
 25 qualified entity seeks to offer to applicable targeted  
 26 low-income children through the plan in the State.

1           “(2) APPLICATION OF UNIFORM FINANCIAL  
2           LIMITATION FOR ALL ALTERNATIVE COVERAGE OP-  
3           TIONS.—With respect to all qualified alternative cov-  
4           erage offered in a State, the State child health plan  
5           shall establish a uniform dollar limitation on the per  
6           capita monthly amount that will be paid by the  
7           State to the qualified entity with respect to such  
8           coverage provided to a targeted low-income child.  
9           Such limitation may not be less than 90 percent of  
10          the per capita monthly payment made for coverage  
11          offered under the State child health plan that is not  
12          in the form of an alternative coverage option. Noth-  
13          ing in this paragraph shall be construed—

14                 “(A) as requiring a State to provide for  
15                 the full payment of premiums for qualified al-  
16                 ternative coverage;

17                 “(B) as preventing a State from charging  
18                 additional premiums to cover the difference be-  
19                 tween the cost of qualified alternative coverage  
20                 and the amount of such payment limitation;

21                 “(C) as preventing a State from using its  
22                 own funds to provide a dollar limitation that ex-  
23                 ceeds the Federal financial participation as lim-  
24                 ited under section 2105(c)(8).

1           “(3) QUALIFIED ALTERNATIVE COVERAGE DE-  
 2           FINED.—In this section, the term ‘qualified alter-  
 3           native coverage’ means health insurance coverage  
 4           that—

5                   “(A) meets the coverage requirements of  
 6                   section 2103 (other than cost-sharing require-  
 7                   ments of such section); and

8                   “(B) is offered by a qualified insurer, and  
 9                   not directly by the State.

10           “(4) QUALIFIED INSURER DEFINED.—In this  
 11           section, the term ‘qualified insurer’ means, with re-  
 12           spect to a State, an entity that is licensed to offer  
 13           health insurance coverage in the State.

14           “(5) APPLICABLE TARGETED LOW-INCOME  
 15           CHILDREN DEFINED.—In this title, the term ‘appli-  
 16           cable targeted low-income children’ means targeted  
 17           low-income children with family income that does  
 18           not exceed 200 percent of the poverty line applicable  
 19           to family of the size involved.”.

20           (b) FEDERAL FINANCIAL PARTICIPATION FOR  
 21           QUALIFIED ALTERNATIVE COVERAGE.—Section 2105 of  
 22           such Act (42 U.S.C. 1397d) is amended—

23                   (1) in subsection (a)(1)(C), by inserting before  
 24                   the semicolon at the end the following: “and, subject  
 25                   to paragraph (8)(C), in the form of payment of the

1 premiums for coverage for qualified alternative cov-  
2 erage”; and

3 (2) by adding at the end of subsection (c) the  
4 following new paragraph:

5 “(8) PURCHASE OF QUALIFIED ALTERNATIVE  
6 COVERAGE.—

7 “(A) IN GENERAL.—Payment may be  
8 made to a State under subsection (a)(1)(C),  
9 subject to the provisions of this paragraph, for  
10 the purchase of qualified alternative coverage  
11 for applicable targeted low-income children.

12 “(B) WAIVER OF CERTAIN PROVISIONS.—  
13 With respect to coverage described in subpara-  
14 graph (A), no limitation on beneficiary cost-  
15 sharing otherwise applicable under this title or  
16 title XIX shall apply.

17 “(C) LIMITATION ON FFP.—The amount of  
18 the payment under paragraph (1)(C) for cov-  
19 erage described in subparagraph (A) during a  
20 fiscal year in the aggregate for all such cov-  
21 erage in the State may not exceed the product  
22 of—

23 “(i) the national per capita expendi-  
24 ture under this title (taking into account  
25 both Federal and State expenditures) for

1 the previous fiscal year (as determined by  
2 the Secretary using the best available  
3 data);

4 “(ii) the enhanced FMAP for the  
5 State and fiscal year involved; and

6 “(iii) the number of targeted low-in-  
7 come children for whom such coverage is  
8 provided.

9 “(D) VOLUNTARY ENROLLMENT.—A State  
10 child health plan—

11 “(i) may not require a targeted low-  
12 income child to enroll in coverage described  
13 in subparagraph (A) in order to obtain  
14 child health assistance under this title;

15 “(ii) before providing such child  
16 health assistance for such coverage of a  
17 child, shall make available (which may be  
18 through an Internet website or other  
19 means) to the parent or guardian of the  
20 child information on the coverage available  
21 under this title, including benefits and  
22 cost-sharing; and

23 “(iii) shall—

24 “(I) provide at least one oppor-  
25 tunity per fiscal year for beneficiaries

1 to switch coverage under this title  
2 from coverage described in subpara-  
3 graph (A) to the coverage that is oth-  
4 erwise made available under this title;  
5 and

6 “(II) permit beneficiaries to  
7 switch such coverage under such other  
8 circumstances, such as the change in  
9 employment, birth of a child, or  
10 change in households, as the Sec-  
11 retary specifies.

12 “(E) INFORMATION ON COVERAGE OP-  
13 TIONS.—A State child health plan shall—

14 “(i) describe how the State will notify  
15 potential beneficiaries of coverage de-  
16 scribed in subparagraph (A);

17 “(ii) provide such notification in writ-  
18 ing at least during the initial application  
19 for enrollment under this title and during  
20 redeterminations of eligibility if the indi-  
21 vidual was enrolled before October 1, 2010;  
22 and

23 “(iii) post a description of these cov-  
24 erage options on any official website that

1           may be established by the State in connec-  
2           tion with the plan.

3           “(F) RULE OF CONSTRUCTION.—Nothing  
4           in this section is to be construed to prohibit a  
5           State from—

6                   “(i) establishing limits on beneficiary  
7                   cost-sharing under such alternative cov-  
8                   erage;

9                   “(ii) paying all or part of a bene-  
10                  ficiary’s cost-sharing requirements under  
11                  such coverage;

12                  “(iii) paying less than the full cost of  
13                  a child’s share of the premium under such  
14                  coverage, insofar as the premium for such  
15                  coverage exceeds the limitation established  
16                  by the State under subparagraph (C);

17                  “(iv) using State funds to pay for  
18                  benefits above the Federal upper limit es-  
19                  tablished under subparagraph (C); or

20                  “(v) providing any guidance or infor-  
21                  mation it deems appropriate in order to  
22                  help beneficiaries make an informed deci-  
23                  sion regarding the option to enroll in cov-  
24                  erage described in subparagraph (A).”.

1 **SEC. 3. EASING ADMINISTRATIVE BARRIERS TO STATE CO-**  
2 **OPERATION WITH EMPLOYER-SPONSORED**  
3 **INSURANCE COVERAGE.**

4 (a) **REQUIRING SOME COVERAGE FOR EMPLOYER-**  
5 **SPONSORED INSURANCE.—**

6 (1) **IN GENERAL.**—Section 2102(a) of the So-  
7 cial Security Act (42 U.S.C. 1397b(a)), as amended  
8 by section 2(a), is amended—

9 (A) in paragraph (7), by striking “and” at  
10 the end;

11 (B) in paragraph (8), by striking the pe-  
12 riod at the end and inserting “; and”; and

13 (C) by adding at the end the following new  
14 paragraph:

15 “(9) effective for plan years beginning on or  
16 after October 1, 2010, how the plan will provide for  
17 child health assistance with respect to targeted low-  
18 income children covered under a group health  
19 plan.”.

20 (2) **EFFECTIVE DATE.**—The amendment made  
21 by paragraph (1) shall apply beginning with fiscal  
22 year 2011.

23 (b) **FEDERAL FINANCIAL PARTICIPATION FOR EM-**  
24 **PLOYER-SPONSORED INSURANCE.**—Section 2105 of such  
25 Act (42 U.S.C. 1397d) is amended—

1           (1) in subsection (a)(1)(C), as amended by sec-  
2           tion 3(b), by inserting before the semicolon at the  
3           end the following: “and, subject to paragraph  
4           (3)(C), in the form of payment of the premiums for  
5           coverage under a group health plan that includes  
6           coverage of targeted low-income children and bene-  
7           fits supplemental to such coverage”; and

8           (2) paragraph (3) of subsection (c) is amended  
9           to read as follows:

10           “(3) PURCHASE OF EMPLOYER-SPONSORED IN-  
11           SURANCE.—

12           “(A) IN GENERAL.—Payment may be  
13           made to a State under subsection (a)(1)(C),  
14           subject to the provisions of this paragraph, for  
15           the purchase of family coverage under a group  
16           health plan that includes coverage of targeted  
17           low-income children unless such coverage would  
18           otherwise substitute for coverage that would be  
19           provided to such children but for the purchase  
20           of family coverage.

21           “(B) WAIVER OF CERTAIN PROVISIONS.—  
22           With respect to coverage described in subpara-  
23           graph (A)—

24           “(i) notwithstanding section 2102, no  
25           minimum benefits requirement (other than

1           those otherwise applicable with respect to  
2           services referred to in section 2102(a)(7))  
3           under this title shall apply; and

4           “(ii) no limitation on beneficiary cost-  
5           sharing otherwise applicable under this  
6           title or title XIX shall apply.

7           “(C) REQUIRED PROVISION OF SUPPLE-  
8           MENTAL BENEFITS.—If the coverage described  
9           in subparagraph (A) does not provide coverage  
10          for the services referred to in section  
11          2102(a)(7), the State child health plan shall  
12          provide coverage of such services as supple-  
13          mental benefits.

14          “(D) LIMITATION ON FFP.—The amount  
15          of the payment under paragraph (1)(C) for cov-  
16          erage described in subparagraph (A) (and sup-  
17          plemental benefits under subparagraph (C) for  
18          individuals so covered) during a fiscal year may  
19          not exceed the product of—

20               “(i) the national per capita expendi-  
21               ture under this title (taking into account  
22               both Federal and State expenditures) for  
23               the previous fiscal year (as determined by  
24               the Secretary using the best available  
25               data);

1 “(ii) the enhanced FMAP for the  
2 State and fiscal year involved; and

3 “(iii) the number of targeted low-in-  
4 come children for whom such coverage is  
5 provided.

6 “(E) VOLUNTARY ENROLLMENT.—A State  
7 child health plan—

8 “(i) may not require a targeted low-  
9 income child to enroll in coverage described  
10 in subparagraph (A) in order to obtain  
11 child health assistance under this title;

12 “(ii) before providing such child  
13 health assistance for such coverage of a  
14 child, shall make available (which may be  
15 through an Internet website or other  
16 means) to the parent or guardian of the  
17 child information on the coverage available  
18 under this title, including benefits and  
19 cost-sharing; and

20 “(iii) shall—

21 “(I) provide at least one oppor-  
22 tunity per fiscal year for beneficiaries  
23 to switch coverage under this title  
24 from coverage described in subpara-  
25 graph (A) to the coverage that is oth-

1                   erwise made available under this title;  
2                   and

3                   “(II) permit beneficiaries to  
4                   switch such coverage under such other  
5                   circumstances, such as the change in  
6                   employment, birth of a child, or  
7                   change in households, as the Sec-  
8                   retary specifies.

9                   “(F) INFORMATION ON COVERAGE OP-  
10                  TIONS.—A State child health plan shall—

11                  “(i) describe how the State will notify  
12                  potential beneficiaries of coverage de-  
13                  scribed in subparagraph (A);

14                  “(ii) provide such notification in writ-  
15                  ing at least during the initial application  
16                  for enrollment under this title and during  
17                  redeterminations of eligibility if the indi-  
18                  vidual was enrolled before October 1, 2010;  
19                  and

20                  “(iii) post a description of these cov-  
21                  erage options on any official website that  
22                  may be established by the State in connec-  
23                  tion with the plan.

24                  “(G) SEMIANNUAL VERIFICATION OF COV-  
25                  ERAGE.—If coverage described in subparagraph

1 (A) is provided under a group health plan with  
2 respect to a targeted low-income child, the  
3 State child health plan shall provide for the col-  
4 lection, at least once every six months, of proof  
5 from the plan that the child is enrolled in such  
6 coverage.

7 “(H) RULE OF CONSTRUCTION.—Nothing  
8 in this section is to be construed to prohibit a  
9 State from—

10 “(i) offering wrap around benefits in  
11 order for a group health plan to meet any  
12 State-established minimum benefit require-  
13 ments;

14 “(ii) establishing a cost-effectiveness  
15 test to qualify for coverage under such a  
16 plan;

17 “(iii) establishing limits on beneficiary  
18 cost-sharing under such a plan;

19 “(iv) paying all or part of a bene-  
20 ficiary’s cost-sharing requirements under  
21 such a plan;

22 “(v) paying less than the full cost of  
23 the employee’s share of the premium under  
24 such a plan, including prorating the cost of  
25 the premium to pay for only what the

1 State determines is the portion of the pre-  
 2 mium that covers targeted low-income chil-  
 3 dren;

4 “(vi) using State funds to pay for  
 5 benefits above the Federal upper limit es-  
 6 tablished under subparagraph (C);

7 “(vii) allowing beneficiaries enrolled in  
 8 group health plans from changing plans to  
 9 another coverage option available under  
 10 this title at any time; or

11 “(viii) providing any guidance or in-  
 12 formation it deems appropriate in order to  
 13 help beneficiaries make an informed deci-  
 14 sion regarding the option to enroll in cov-  
 15 erage described in subparagraph (A).

16 “(I) GROUP HEALTH PLAN DEFINED.—In  
 17 this paragraph, the term ‘group health plan’  
 18 has the meaning given such term in section  
 19 2791(a)(1) of the Public Health Service Act (42  
 20 U.S.C. 300gg–91(a)(1)).”.

21 **SEC. 4. EMPLOYEE NOTIFICATION OF PREMIUM ASSIST-**  
 22 **ANCE OPPORTUNITIES.**

23 (a) AMENDMENT TO INTERNAL REVENUE CODE OF  
 24 1986.—Section 9801(f) of the Internal Revenue Code of

1 1986 (relating to special enrollment periods) is amended  
2 by adding at the end the following new paragraph:

3 “(3) OUTREACH TO EMPLOYEES REGARDING  
4 AVAILABILITY OF SCHIP COVERAGE.—

5 “(A) IN GENERAL.—Each employer that  
6 maintains a group health plan in a State that  
7 provides child health assistance under a State  
8 child health plan under title XXI of the Social  
9 Security Act, in the form of premium assistance  
10 for the purchase of coverage under a group  
11 health plan, shall provide to each employee a  
12 written notice informing the employee of poten-  
13 tial opportunities then currently available in the  
14 State in which the employee resides for pre-  
15 mium assistance under such plans for health  
16 coverage of the employee’s dependents. For pur-  
17 poses of compliance with this clause, the em-  
18 ployer may use any State-specific model notice  
19 developed in accordance with section  
20 701(f)(3)(B) of the Employee Retirement In-  
21 come Security Act of 1974 (29 U.S.C.  
22 1181(f)(3)(B)).

23 “(B) OPTION TO PROVIDE CONCURRENT  
24 WITH PROVISION OF PLAN MATERIALS TO EM-  
25 PLOYEE.—An employer may provide the model

1 notice applicable to the State in which an em-  
 2 ployee resides concurrent with the furnishing of  
 3 materials notifying the employee of health plan  
 4 eligibility, concurrent with materials provided to  
 5 the employee in connection with an open season  
 6 or election process conducted under the plan, or  
 7 concurrent with the furnishing of the summary  
 8 plan description as provided in section 104(b)  
 9 of the Employee Retirement Income Security  
 10 Act of 1974 (29 U.S.C. 1024).”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) AMENDMENTS TO EMPLOYEE RETIREMENT  
 13 INCOME SECURITY ACT.—

14 (A) IN GENERAL.—Section 701(f) of the  
 15 Employee Retirement Income Security Act of  
 16 1974 (29 U.S.C. 1181(f)) is amended by adding  
 17 at the end the following new paragraph:

18 “(3) OUTREACH TO EMPLOYEES REGARDING  
 19 AVAILABILITY OF SCHIP COVERAGE.—

20 “(A) IN GENERAL.—Each employer that  
 21 maintains a group health plan in a State that  
 22 provides child health assistance under a State  
 23 child health plan under title XXI of such Act,  
 24 in the form of premium assistance for the pur-  
 25 chase of coverage under a group health plan,

1 shall provide to each employee a written notice  
2 informing the employee of potential opportuni-  
3 ties then currently available in the State in  
4 which the employee resides for premium assist-  
5 ance under such plans for health coverage of  
6 the employee or the employee's dependents.

7 “(B) MODEL NOTICE.—Not later than 1  
8 year after the date of enactment of this para-  
9 graph, the Secretary and the Secretary of  
10 Health and Human Services, in consultation  
11 with Directors of State SCHIP agencies under  
12 title XXI of such Act, shall jointly develop na-  
13 tional and State-specific model notices for pur-  
14 poses of subparagraph (A). The Secretary shall  
15 provide employers with such model notices so as  
16 to enable employers to timely comply with the  
17 requirements of subparagraph (A). Such model  
18 notices shall include information regarding how  
19 an employee may contact the State in which the  
20 employee resides for additional information re-  
21 garding potential opportunities for such pre-  
22 mium assistance, including how to apply for  
23 such assistance.

24 “(C) OPTION TO PROVIDE CONCURRENT  
25 WITH PROVISION OF PLAN MATERIALS TO EM-

1           PLOYEE.—An employer may provide the model  
2           notice applicable to the State in which an em-  
3           ployee resides concurrent with the furnishing of  
4           materials notifying the employee of health plan  
5           eligibility, concurrent with materials provided to  
6           the employee in connection with an open season  
7           or election process conducted under the plan, or  
8           concurrent with the furnishing of the summary  
9           plan description as provided in section 104(b).”.

10           (B) CONFORMING AMENDMENT.—Section  
11           102(b) of the Employee Retirement Income Se-  
12           curity Act of 1974 (29 U.S.C. 1022(b)) is  
13           amended—

14                   (i) by striking “and the remedies”  
15                   and inserting “, the remedies”; and

16                   (ii) by inserting before the period the  
17                   following: “, and if the employer so elects  
18                   for purposes of complying with section  
19                   701(f)(3)(B)(i), the model notice applicable  
20                   to the State in which the participants and  
21                   beneficiaries reside”.

22           (C) EFFECTIVE DATES.—The Secretary of  
23           Labor and the Secretary of Health and Human  
24           Services shall develop the initial model notices  
25           under section 701(f)(3)(B) of the Employee Re-

1           tirement Income Security Act of 1974, and the  
 2           Secretary of Labor shall provide such notices to  
 3           employers, not later than the date that is 1  
 4           year after the date of enactment of this Act,  
 5           and each employer shall provide the initial an-  
 6           nual notices to such employer’s employees be-  
 7           ginning with the first plan year that begins  
 8           after the date on which such initial model no-  
 9           tices are first issued.

10           (2) AMENDMENTS TO PUBLIC HEALTH SERVICE  
 11           ACT.—Section 2701(f) of the Public Health Service  
 12           Act (42 U.S.C. 300gg(f)) is amended by adding at  
 13           the end the following new paragraph:

14           “(3) OUTREACH TO EMPLOYEES REGARDING  
 15           AVAILABILITY OF SCHIP COVERAGE.—

16           “(A) IN GENERAL.—Each employer that  
 17           maintains a group health plan in a State that  
 18           provides child health assistance under a State  
 19           child health plan under title XXI of such Act,  
 20           in the form of premium assistance for the pur-  
 21           chase of coverage under a group health plan,  
 22           shall provide to each employee a written notice  
 23           informing the employee of potential opportuni-  
 24           ties then currently available in the State in  
 25           which the employee resides for premium assist-

1           ance under such plans for health coverage of  
2           the employee or the employee’s dependents. For  
3           purposes of compliance with this subclause, the  
4           employer may use any State-specific model no-  
5           tice developed in accordance with section  
6           701(f)(3)(B) of the Employee Retirement In-  
7           come Security Act of 1974 (29 U.S.C.  
8           1181(f)(3)(B)).

9           “(B) OPTION TO PROVIDE CONCURRENT  
10          WITH PROVISION OF PLAN MATERIALS TO EM-  
11          PLOYEE.—An employer may provide the model  
12          notice applicable to the State in which an em-  
13          ployee resides concurrent with the furnishing of  
14          materials notifying the employee of health plan  
15          eligibility, concurrent with materials provided to  
16          the employee in connection with an open season  
17          or election process conducted under the plan, or  
18          concurrent with the furnishing of the summary  
19          plan description as provided in section 104(b)  
20          of the Employee Retirement Income Security  
21          Act of 1974.”.

○