

111TH CONGRESS
1ST SESSION

S. 979

To amend the Public Health Service Act to establish a nationwide health insurance purchasing pool for small businesses and the self-employed that would offer a choice of private health plans and make health coverage more affordable, predictable, and accessible.

IN THE SENATE OF THE UNITED STATES

MAY 5, 2009

Mr. DURBIN (for himself, Ms. SNOWE, and Mrs. LINCOLN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Public Health Service Act to establish a nationwide health insurance purchasing pool for small businesses and the self-employed that would offer a choice of private health plans and make health coverage more affordable, predictable, and accessible.

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 Options Program Act of 2009” or the “SHOP Act”.

1 **SEC. 2. AMENDMENT TO THE PUBLIC HEALTH SERVICE**
 2 **ACT.**

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

5 **“TITLE XXXI—SMALL BUSINESS**
 6 **HEALTH OPTIONS PROGRAM**

7 **“SEC. 3101. DEFINITIONS.**

8 “(a) IN GENERAL.—In this title:

9 “(1) ADMINISTRATOR.—The term ‘Adminis-
 10 trator’ means the Administrator appointed under
 11 section 3102(a).

12 “(2) SMALL BUSINESS HEALTH BOARD.—The
 13 term ‘Small Business Health Board’ means the
 14 Board established under section 3102(d).

15 “(3) EMPLOYEE.—The term ‘employee’ has the
 16 meaning given such term under section 3(6) of the
 17 Employee Retirement Income Security Act of 1974
 18 (29 U.S.C. 1002(6)). Such term shall not include an
 19 employee of the Federal Government.

20 “(4) EMPLOYER.—The term ‘employer’ has the
 21 meaning given such term under section 3(5) of the
 22 Employee Retirement Income Security Act of 1974
 23 (29 U.S.C. 1002(5)), except that such term shall in-
 24 clude employers who employed an average of at least
 25 1 but not more than 100 employees (who worked an
 26 average of at least 35 hours per week) on business

1 days during the year preceding the date of applica-
 2 tion, and shall include self-employed individuals with
 3 either not less than \$5,000 in net earnings or not
 4 less than \$15,000 in gross earnings from self-em-
 5 ployment in the preceding taxable year. Such term
 6 shall not include the Federal Government.

7 “(5) HEALTH INSURANCE COVERAGE.—The
 8 term ‘health insurance coverage’ has the meaning
 9 given such term in section 2791.

10 “(6) HEALTH INSURANCE ISSUER.—The term
 11 ‘health insurance issuer’ has the meaning given such
 12 term in section 2791.

13 “(7) HEALTH STATUS-RELATED FACTOR.—The
 14 term ‘health status-related factor’ has the meaning
 15 given such term in section 2791(d)(9).

16 “(8) PARTICIPATING EMPLOYER.—The term
 17 ‘participating employer’ means an employer that—

18 “(A) elects to provide health insurance cov-
 19 erage under this title to its employees; and

20 “(B) is not offering other comprehensive
 21 health insurance coverage to such employees.

22 “(b) APPLICATION OF CERTAIN RULES IN DETER-
 23 MINATION OF EMPLOYER SIZE.—For purposes of sub-
 24 section (a)(3):

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

6 “(2) EMPLOYERS NOT IN EXISTENCE IN PRE-
 7 CEDING YEAR.—In the case of an employer which
 8 was not in existence for the full year prior to the
 9 date on which the employer applies to participate,
 10 the determination of whether such employer meets
 11 the requirements of subsection (a)(4) shall be based
 12 on the average number of employees that it is rea-
 13 sonably expected such employer will employ on busi-
 14 ness days in the employer’s first full year.

15 “(3) PREDECESSORS.—Any reference in this
 16 subsection to an employer shall include a reference
 17 to any predecessor of such employer.

18 “(c) WAIVER AND CONTINUATION OF PARTICIPA-
 19 TION.—

20 “(1) WAIVER.—The Administrator may waive
 21 the limitations relating to the size of an employer
 22 which may participate in the health insurance pro-
 23 gram established under this title on a case by case
 24 basis if the Administrator determines that such em-
 25 ployer makes a compelling case for such a waiver. In

1 making determinations under this paragraph, the
 2 Administrator may consider the effects of the em-
 3 ployment of temporary and seasonal workers and
 4 other factors.

5 “(2) CONTINUATION OF PARTICIPATION.—An
 6 employer participating in the program under this
 7 title that experiences an increase in the number of
 8 employees so that such employer has in excess of
 9 100 employees, may not be excluded from participa-
 10 tion solely as a result of such increase in employees.

11 “(d) TREATMENT OF HEALTH INSURANCE COV-
 12 ERAGE AS GROUP HEALTH PLAN.—Health insurance cov-
 13 erage offered under this title shall be treated as a group
 14 health plan for purposes of applying the Employee Retire-
 15 ment Income Security Act of 1974 (29 U.S.C. 1001 et
 16 seq.) except to the extent that a provision of this title ex-
 17 pressly provides otherwise.

18 “(e) APPLICATION OF HIPAA RULES.—Subject to
 19 the provisions of this title, parts A and C of title XXVII
 20 shall apply to health insurance coverage offered under this
 21 title by health insurance issuers. Subject to section 2723,
 22 a State may modify State law as appropriate to provide
 23 for the enforcement of such provisions for health insur-
 24 ance coverage offered in the State under this title. Part
 25 7 of subtitle B of title I of the Employee Retirement In-

1 come Security Act of 1974 (29 U.S.C. 1181 et seq.) shall
 2 continue to apply to group health plans offering coverage
 3 under this title. Subtitle K of the Internal Revenue Code
 4 of 1986 shall continue to apply to covered employers and
 5 group health plans offering coverage under this title.

6 **“SEC. 3102. ADMINISTRATION OF SMALL BUSINESS HEALTH**
 7 **INSURANCE POOL.**

8 “(a) OFFICE AND ADMINISTRATOR.—The Secretary
 9 shall designate an office within the Department of Health
 10 and Human Services to administer the program under this
 11 title. Such office shall be headed by an Administrator to
 12 be appointed by the Secretary.

13 “(b) QUALIFICATIONS.—The Secretary shall ensure
 14 that the individual appointed to serve as the Administrator
 15 under subsection (a) has an appropriate background with
 16 experience in health insurance, healthcare management, or
 17 health policy.

18 “(c) DUTIES.—The Administrator shall—

19 “(1) enter into contracts with health insurance
 20 issuers to provide health insurance coverage to indi-
 21 viduals and employees who enroll in health insurance
 22 coverage in accordance with this title;

23 “(2) maintain the contracts for health insur-
 24 ance policies when an employee elects which health

1 plan offered under this title to enroll in as permitted
2 under section 3107(d)(7);

3 “(3) ensure that health insurance issuers com-
4 ply with the requirements of this title;

5 “(4) ensure that employers meet eligibility re-
6 quirements for participation in the health insurance
7 pool established under this title;

8 “(5) enter into agreements with entities to
9 serve as navigators, as defined in section 3103;

10 “(6) collect premiums from employers and em-
11 ployees and make payments for health insurance
12 coverage;

13 “(7) collect other information needed to admin-
14 ister the program under this title;

15 “(8) compile, produce, and distribute informa-
16 tion (which shall not be subject to review or modi-
17 fication by the States) to employers and employees
18 (directly and through navigators) concerning the
19 open enrollment process, the health insurance cov-
20 erage available through the pool, and standardized
21 comparative information concerning such coverage,
22 which shall be available through an interactive Inter-
23 net website, including a description of the coverage
24 plans available in each State and comparative infor-

1 mation, about premiums, index rates, benefits, qual-
2 ity, and consumer satisfaction under such plans;

3 “(9) provide information to health insurance
4 issuers, including, at the discretion of the Adminis-
5 trator, notification when proposed rates are not in a
6 competitive range;

7 “(10) conduct public education activities (di-
8 rectly and through navigators) to raise the aware-
9 ness of the public of the program under this title
10 and the associated tax credit under the Internal
11 Revenue Code of 1986;

12 “(11) develop methods to facilitate enrollment
13 in health insurance coverage under this title, includ-
14 ing through the use of the Internet;

15 “(12) if appropriate, enter into contracts for
16 the performance of administrative functions under
17 this title as permitted under section 3109;

18 “(13) carefully consider benefit recommenda-
19 tions that are endorsed by at least two-thirds of the
20 members of the Small Business Health Board;

21 “(14) establish and administer a contingency
22 fund for risk corridors as provided for in section
23 3108;

1 “(15) coordinate with State insurance regu-
 2 lators to ensure timely and effective consideration of
 3 complaints, grievances, and appeals; and

4 “(16) carry out any other activities necessary to
 5 administer this title.

6 “(d) LIMITATIONS.—The Administrator shall not—

7 “(1) negotiate premiums with participating
 8 health insurance issuers; or

9 “(2) exclude health insurance issuers from par-
 10 ticipating in the program under this title except for
 11 violating contracts or the requirements of this title.

12 “(e) SMALL BUSINESS HEALTH BOARD.—

13 “(1) IN GENERAL.—There shall be established
 14 a Small Business Health Board to monitor the im-
 15 plementation of the program under this title and to
 16 make recommendations to the Administrator con-
 17 cerning improvements in the program.

18 “(2) APPOINTMENT.—The Comptroller General
 19 shall appoint 13 individuals who have expertise in
 20 healthcare benefits, financing, economics, actuarial
 21 science, or other related fields, to serve as members
 22 of the Small Business Health Board. In appointing
 23 members under the preceding sentence, the Comp-
 24 troller General shall ensure that such members in-
 25 clude—

1 “(A) a mix of different types of profes-
2 sionals;

3 “(B) a broad geographic representation;

4 “(C) not less than 3 individuals with an
5 employee perspective;

6 “(D) not less than 3 individuals with a
7 small business perspective, at least 1 of whom
8 shall have a self-employed perspective;

9 “(E) not less than 1 individual with a
10 background in insurance regulation; and

11 “(F) not less than 1 individual with a pa-
12 tient perspective.

13 “(3) TERMS.—Members of the Small Business
14 Health Board shall serve for a term of 3 years, such
15 terms to end on March 15 of the applicable year, ex-
16 cept as provided in paragraph (4). The Comptroller
17 General shall stagger the terms for members first
18 appointed. A member may be reappointed after the
19 expiration of a term. A member may serve after ex-
20 piration of a term until a successor has been ap-
21 pointed.

22 “(4) SMALL BUSINESS REPRESENTATIVES.—
23 Beginning on March 16, 2013, 3 of the individuals
24 the Comptroller General appoints to the Small Busi-
25 ness Health Board shall be representatives of the 3

1 navigators through which the largest number of indi-
2 viduals have enrolled for health insurance coverage
3 over the previous 2-year period. Such appointees
4 shall serve for 1 year. The Comptroller General shall
5 consider for appointment in years prior to the date
6 specified in this paragraph, individuals who are rep-
7 resentatives of entities that may serve as navigators.

8 “(5) CHAIRPERSON; VICE CHAIRPERSON.—The
9 Comptroller General shall designate a member of the
10 Small Business Health Board, at the time of ap-
11 pointment of such member, to serve as Chairperson
12 and a member to serve as Vice Chairperson for the
13 term of the appointment, except that in the case of
14 a vacancy of either such position, the Comptroller
15 General may designate another member to serve in
16 such position for the remainder of such member’s
17 term.

18 “(6) COMPENSATION.—While serving on the
19 business of the Small Business Health Board (in-
20 cluding travel time), a member of the Small Busi-
21 ness Health Board shall be entitled to compensation
22 at the per diem equivalent of the rate provided for
23 level IV of the Executive Schedule under section
24 5315 of title 5, United States Code, and while so
25 serving away from home and the member’s regular

1 place of business, a member may be allowed travel
2 expenses, as authorized by the Chairperson of the
3 Small Business Health Board.

4 “(7) DISCLOSURE.—The Comptroller General
5 shall establish a system for the public disclosure, by
6 members of the Small Business Health Board, of fi-
7 nancial and other potential conflicts of interest.

8 “(8) MEETINGS.—The Small Business Health
9 Board shall meet at the call of the Chairperson.
10 Each such meeting shall be open to the public.

11 “(9) DUTIES.—The Small Business Health
12 Board shall—

13 “(A) provide general oversight of the pro-
14 gram under this title and make recommenda-
15 tions to the Administrator;

16 “(B) monitor, review, seek public input on,
17 and make recommendations to the Adminis-
18 trator on the benefit requirements for nation-
19 wide plans in this title;

20 “(C) make recommendations concerning
21 information that the Administrator, health
22 plans, and navigators should distribute to em-
23 ployers and employees participating in the pro-
24 gram under this title; and

1 “(D) monitor and make recommendations
 2 to the Administrator on adverse selection within
 3 the program under this title and between the
 4 coverage provided under the program and the
 5 State-regulated health insurance market.

6 “(10) APPROVAL OF RECOMMENDATIONS.—A
 7 recommendation shall require approval by not less
 8 than two-thirds of the members of the Board.

9 “(11) PUBLIC NOTICE AND COMMENT ON REC-
 10 OMMENDATIONS.—The Administrator shall—

11 “(A) publish recommendations by the
 12 Small Business Health Board in the Federal
 13 Register;

14 “(B) solicit written comments concerning
 15 such recommendations; and

16 “(C) provide an opportunity for the pres-
 17 entation of oral comments concerning such rec-
 18 ommendations at a public meeting.

19 **“SEC. 3103. NAVIGATORS.**

20 “(a) IN GENERAL.—The Administrator shall enter
 21 into agreements with private and public entities, beginning
 22 a reasonable period prior to the beginning of the first cal-
 23 endar year in which health insurance coverage is offered
 24 under this title, under which such entities will serve as
 25 navigators.

1 “(b) ELIGIBILITY.—To be eligible to enter into an
2 agreement under subsection (a), an entity shall dem-
3 onstrate to the Administrator that the entity has existing
4 relationships with, or could readily establish relationships
5 with, employers or employees and self-employed individ-
6 uals, likely to be eligible to participate in the program
7 under this title. Such entities may include trade, industry
8 and professional associations, chambers of commerce,
9 unions, small business development centers, and other en-
10 tities that the Administrator determines to be capable of
11 carrying out the duties described in subsection (c).

12 “(c) DUTIES.—An entity that serves as a navigator
13 under an agreement under subsection (a) shall—

14 “(1) coordinate with the Administrator on pub-
15 lic education activities to raise awareness of the pro-
16 gram under this title;

17 “(2) distribute information developed by the
18 Administrator on the open enrollment process, pri-
19 vate health plans available through the program
20 under this title, and standardized comparative infor-
21 mation about the health insurance coverage under
22 the program;

23 “(3) distribute information about the avail-
24 ability of the tax credit under section 36 of the In-

1 ternal Revenue Code of 1986 as added by the Small
2 Business Health Options Program Act of 2009;

3 “(4) provide referrals to the applicable State
4 agency or agencies for any enrollee with a grievance,
5 complaint, or question regarding their health insur-
6 ance issuer, their coverage or plan, or a determina-
7 tion under such coverage or plan;

8 “(5) assist employers and employees in enroll-
9 ing in the program under this title; and

10 “(6) respond to questions about the program
11 under this title and participating plans.

12 “(d) SUPPLEMENTAL MATERIALS.—In addition to
13 information developed by the Administrator under sub-
14 section (c)(2), a navigator may develop and distribute
15 other information that is related to the health insurance
16 program established under this title, subject to review and
17 approval by the Administrator and filing in each State in
18 which the navigator operates.

19 “(e) STANDARDS.—

20 “(1) IN GENERAL.—The Administrator shall es-
21 tablish standards for navigators under this section,
22 including provisions to avoid conflicts of interest.
23 Under such standards, a navigator may not—

24 “(A) be a health insurance issuer; or

1 “(B) receive any consideration directly or
2 indirectly from any health insurance issuer in
3 connection with the participation of any em-
4 ployer in the program under this title or the en-
5 rollment of any eligible employee in health in-
6 surance coverage under this title.

7 “(2) FAIR AND IMPARTIAL INFORMATION AND
8 SERVICES.—The Administrator shall consult with
9 the Small Business Health Board concerning the
10 standards necessary to ensure that a navigator will
11 provide fair and impartial information and services.
12 An agreement between the Administrator and a nav-
13 igator may include specific provisions with respect to
14 such navigator to ensure that such navigator will
15 provide fair and impartial information and services.
16 If a navigator, or entity seeking to become a navi-
17 gator, is a party to any arrangement with any health
18 insurance issuer to receive compensation related to
19 other healthcare programs not covered under this
20 title, the entity shall disclose the terms of such com-
21 pensation arrangements to the Administrator, and
22 the Administrator shall take such information into
23 account in determining the appropriate standards
24 and agreement terms for such navigator.

1 **“SEC. 3104. CONTRACTS WITH HEALTH INSURANCE**
2 **ISSUERS.**

3 “(a) IN GENERAL.—The Administrator may enter
4 into contracts with qualified health insurance issuers,
5 without regard to section 5 of title 41, United States Code,
6 or other statutes requiring competitive bidding, to provide
7 health benefits plans to employees of participating employ-
8 ers and self-employed individuals under this title. Each
9 contract shall be for a uniform term of at least 1 year,
10 but may be made automatically renewable from term to
11 term in the absence of notice of termination by either
12 party. In entering into such contracts, the Administrator
13 shall ensure that health benefits coverage is provided for
14 an individual only, 2 adults in a household, 1 adult and
15 1 or more children, and a family.

16 “(b) ELIGIBILITY.—A health insurance issuer shall
17 be eligible to enter into a contract under subsection (a)
18 if such issuer—

19 “(1) is licensed to offer health benefits plan
20 coverage in each State in which the plan is offered;
21 and

22 “(2) meets such other reasonable requirements
23 as determined appropriate by the Administrator,
24 after an opportunity for public comment and publi-
25 cation in the Federal Register.

1 “(c) COST-SHARING AND NETWORKS.—The Adminis-
 2 trator shall ensure that health benefits plans with a range
 3 of cost-sharing and network arrangements are available
 4 under this title.

5 “(d) REVOCATION.—Approval of a health benefits
 6 plan participating in the program under this title may be
 7 withdrawn or revoked by the Administrator only after no-
 8 tice to the health insurance issuer involved and an oppor-
 9 tunity for a hearing without regard to subchapter II of
 10 chapter 5 and chapter 7 of title 5, United States Code.

11 “(e) CONVERSION.—

12 “(1) IN GENERAL.—Except as provided in para-
 13 graph (2), a contract may not be made or a plan ap-
 14 proved under this section if the health insurance
 15 issuer under such contract or plan does not provide
 16 to each enrollee whose coverage under the plan is
 17 terminated, including a termination due to dis-
 18 continuance of the contract or plan, the option to
 19 have issued to that individual a nongroup policy
 20 without evidence of insurability. A health insurance
 21 issuer shall provide a notice of such option to indi-
 22 viduals who enroll in the plan. An enrollee who exer-
 23 cises such conversion option shall pay the full peri-
 24 odic charges for the nongroup policy.

1 “(2) EXCEPTIONS.—A health insurance issuer
 2 shall not be required to offer a nongroup policy
 3 under paragraph (1) if the termination under the
 4 plan occurred because—

5 “(A) the enrollee failed to pay any required
 6 monthly premiums under the plan;

7 “(B) the enrollee performed an act or
 8 practice that constitutes fraud in connection
 9 with the coverage under the plan;

10 “(C) the enrollee made an intentional mis-
 11 representation of a material fact under the
 12 terms of coverage of the plan; or

13 “(D) the terminated coverage under the
 14 plan was replaced by similar coverage within 31
 15 days after the effective date of such termi-
 16 nation.

17 “(f) PAYMENT OF PREMIUMS.—

18 “(1) IN GENERAL.—Employers shall collect pre-
 19 mium payments from their employees through pay-
 20 roll deductions or other payments from employees
 21 and shall forward such payments and the contribu-
 22 tion of the employer (if any) to the Administrator.
 23 The Administrator shall develop procedures through
 24 which such payments shall be received and for-
 25 warded to the health insurance issuer involved.

1 “(2) FAILURE TO PAY.—The Administrator
2 shall establish—

3 “(A) procedures for the termination of em-
4 ployers that fail for a consecutive 2-month pe-
5 riod (or such other time period as determined
6 appropriate by the Administrator) to make pre-
7 mium payments in a timely manner; and

8 “(B) other procedures regarding unpaid
9 and uncollected premiums.

10 **“SEC. 3105. EMPLOYER PARTICIPATION.**

11 “(a) PARTICIPATION PROCEDURE.—The Adminis-
12 trator shall develop a procedure for employers and self-
13 employed individuals to participate in the program under
14 this title, including procedures relating to the offering of
15 health benefits plans to employees and the payment of pre-
16 miums for health insurance coverage under this title. For
17 the purpose of premium payments, a self-employed indi-
18 vidual shall be considered an employer that is making a
19 100 percent contribution toward the premium amount.

20 “(b) ENROLLMENT AND OFFERING OF OTHER COV-
21 ERAGE.—

22 “(1) ENROLLMENT.—A participating employer
23 shall ensure that each eligible employee has an op-
24 portunity to enroll in a plan of the employer’s choice

1 or a plan of the employee’s choice in accordance with
 2 section 3107(d)(7).

3 “(2) PROHIBITION ON OFFERING OTHER COM-
 4 PREHENSIVE HEALTH BENEFIT COVERAGE.—A par-
 5 ticipating employer may not offer a health insurance
 6 plan providing comprehensive health benefit coverage
 7 to employees other than a health benefits plan of-
 8 fered under this title.

9 “(3) PROHIBITION ON COERCION.—An em-
 10 ployer shall not pressure, coerce, or offer induce-
 11 ments to an employee to elect not to enroll in cov-
 12 erage under the program under this title or to select
 13 a particular health benefits plan.

14 “(4) OFFER OF SUPPLEMENTAL COVERAGE OP-
 15 TIONS.—

16 “(A) IN GENERAL.—A participating em-
 17 ployer may offer supplementary coverage op-
 18 tions to employees.

19 “(B) DEFINITION.—In subparagraph (A),
 20 the term ‘supplementary coverage’ means bene-
 21 fits described as ‘excepted benefits’ under sec-
 22 tion 2791(c).

23 “(c) REGULATORY FLEXIBILITY.—In developing the
 24 procedure under subsection (a), the Administrator shall
 25 comply with the requirements specified under the Regu-

1 latory Flexibility Act under chapter 6 of title 5, United
 2 States Code, consider the economic impacts that the regu-
 3 lation will have on small businesses, and consider regu-
 4 latory alternatives that would mitigate such impact. The
 5 Administrator shall publish and publicly disseminate a
 6 small business compliance guide, pursuant to section 212
 7 of the Small Business Regulatory Enforcement Fairness
 8 Act, that explains the compliance requirements for em-
 9 ployer participation. Such compliance guide shall be pub-
 10 lished not later than the date of the publication of the
 11 final rule under this title, or the effective date of such
 12 rules, whichever is later.

13 “(d) RULE OF CONSTRUCTION.—Except as provided
 14 in section 3104(f), nothing in this title shall be construed
 15 to require that an employer make premium contributions
 16 on behalf of employees.

17 **“SEC. 3106. ELIGIBILITY AND ENROLLMENT.**

18 “(a) IN GENERAL.—An individual shall be eligible to
 19 enroll in health insurance coverage under this title for cov-
 20 erage beginning in 2012 if such individual is an employee
 21 of a participating employer described in section
 22 3101(a)(4) or is a self-employed individual as defined in
 23 section 401(c)(1)(B) of the Internal Revenue Code of
 24 1986 and meets the definition of a participating employer

1 in section 3101(a)(8). An employer may allow employees
 2 who average fewer than 35 hours per week to enroll.

3 “(b) LIMITATION.—A health insurance issuer may
 4 not refuse to provide coverage to any eligible individual
 5 under subsection (a) who selects a health benefits plan of-
 6 fered by such issuer under this title.

7 “(c) TYPE OF ENROLLMENT.—An eligible individual
 8 may enroll as an individual or as an adult with 1 or more
 9 children regardless of whether another adult is present in
 10 the enrollee’s household or family.

11 “(d) OPEN ENROLLMENT.—

12 “(1) IN GENERAL.—The Administrator shall es-
 13 tablish an annual open enrollment period during
 14 which an employer may elect to become a partici-
 15 pating employer and an employee may enroll in a
 16 health benefits plan under this title for the following
 17 calendar year.

18 “(2) OPEN ENROLLMENT PERIOD.—For pur-
 19 poses of this title, the term ‘open enrollment period’
 20 means, with respect to calendar year 2012 and each
 21 succeeding calendar year, the period beginning on
 22 October 1, 2011, and ending December 1, 2011, and
 23 each succeeding period beginning October 1 and
 24 ending December 1. Coverage in a health benefits
 25 plan selected during such an open enrollment period

1 shall begin on January 1 of the calendar year fol-
2 lowing the selection.

3 “(3) NEWLY ELIGIBLE EMPLOYERS AND EM-
4 PLOYEES.—Notwithstanding the open enrollment pe-
5 riod provided for under paragraph (2), the Adminis-
6 trator shall establish an enrollment process to enable
7 a newly eligible employer or an employer with an ex-
8 isting health benefits plan whose term is ending to
9 become a participating employer and for an em-
10 ployee of such employer, or a new employee of a par-
11 ticipating employer, to enroll in a health benefits
12 plan under this title outside of an open enrollment
13 period subject to 2701(f). The Administrator may
14 establish a process for setting the renewal date for
15 the participation of an employer that initially be-
16 comes a participating employer outside of the open
17 enrollment period to coincide with a subsequent open
18 enrollment period.

19 “(4) LIMITATION OF CHANGING ENROLL-
20 MENT.—An employer or employee (as the case may
21 be) may elect to change the health benefits plan that
22 the employee is enrolled in only during an open en-
23 rollment period.

24 “(5) EFFECTIVENESS OF ELECTION AND
25 CHANGE OF ELECTION.—An election to change a

1 health benefits plan that is made during the open
 2 enrollment period under paragraph (2) shall take ef-
 3 fect as of the first day of the following calendar
 4 year.

5 “(6) CONTINUATION OF ENROLLMENT.—An
 6 employee who has enrolled in a health benefits plan
 7 under this title is considered to have been continu-
 8 ously enrolled in that health benefits plan until such
 9 time as—

10 “(A) the employer or employee (as the case
 11 may be) elects to change health benefits plans;
 12 or

13 “(B) the health benefits plan is termi-
 14 nated.

15 “(e) PROVIDING INFORMATION TO PROMOTE IN-
 16 FORMED CHOICE.—The Administrator shall compile,
 17 produce, and disseminate information to employers, em-
 18 ployees, and navigators under section 3102(c)(8) to pro-
 19 mote informed choice that shall be made available at least
 20 30 days prior to the beginning of each open enrollment
 21 period.

22 “(f) TERMINATION OF EMPLOYMENT.—

23 “(1) IN GENERAL.—With respect to an em-
 24 ployee who is enrolled in a health plan through the
 25 program under this title and who is terminated or

1 separated from employment, such employee may re-
 2 main enrolled in such health plan for the period de-
 3 scribed in paragraph (2) if the employee pays 102
 4 percent of the monthly premium for such plan for
 5 such period as provided for under paragraph (3).

6 “(2) PERIOD DESCRIBED.—The period de-
 7 scribed in this paragraph is the longer of—

8 “(A) the period provided for in the
 9 COBRA continuation provisions (as such term
 10 is defined in section 3001(a)(10)(B) of division
 11 B of the American Recovery and Reinvestment
 12 Act of 2009) beginning on the date of the ter-
 13 mination or separation involved; or

14 “(B) the period permitted under any appli-
 15 cable continuation of coverage provisions of the
 16 State in which the employee resides.

17 “(3) ADMINISTRATION.—The Administrator
 18 shall develop guidelines for administering the provi-
 19 sion of health plan coverage for employees under
 20 this subsection. Such guidelines shall address the
 21 rating rules for such continuation coverage in the
 22 calendar years prior to 2014 and shall provide for
 23 the administration of this section in a manner simi-
 24 lar to the manner in which the COBRA continuation
 25 provisions (as such term is defined in section

1 3001(a)(10)(B) of division B of the American Re-
 2 covery and Reinvestment Act of 2009) are adminis-
 3 tered, including the collection of premiums by the
 4 Administrator.

5 “(4) NONAPPLICATION OF PROVISIONS.—The
 6 COBRA continuation provisions (as such term is de-
 7 fined in section 3001(a)(10)(B) of division B of the
 8 American Recovery and Reinvestment Act of 2009)
 9 shall not apply to an employee to which this sub-
 10 section applies.

11 “(g) RULE OF CONSTRUCTION.—Nothing in this title
 12 shall be construed to prohibit a health insurance issuer
 13 providing coverage through the program under this title
 14 from using the services of a licensed agent or broker.

15 **“SEC. 3107. HEALTH COVERAGE AVAILABLE WITHIN THE**
 16 **SMALL BUSINESS POOL.**

17 “(a) PREEXISTING CONDITION EXCLUSIONS.—Sec-
 18 tion 2701 shall apply to coverage under this title, except
 19 that with respect to such coverage, the reference to ‘12
 20 months (or 18 months in the case of a late enrollee)’ in
 21 subsection (a)(2) of each such section shall be deemed to
 22 be ‘6 months’. The period involved shall be reduced by
 23 the aggregate of 1 day for each day that the individual
 24 was covered under creditable health insurance coverage
 25 (as defined for purposes of section 2701(c)) immediately

1 preceding the date the individual submitted an application
 2 for coverage under this title.

3 “(b) RATES AND PREMIUMS; STATE LAWS.—

4 “(1) IN GENERAL.—Rates charged and pre-
 5 miums paid for a health benefits plan under this
 6 title—

7 “(A) shall be determined in accordance
 8 with subsection (d);

9 “(B) may be annually adjusted; and

10 “(C) shall be adjusted to cover the admin-
 11 istrative costs of the Administrator under this
 12 title and the office established under section
 13 3102.

14 “(2) BENEFIT MANDATE LAWS.—With respect
 15 to a contract entered into under this title under
 16 which a health insurance issuer will offer health ben-
 17 efits plan coverage, State mandated benefit laws in
 18 effect in the State in which the plan is offered shall
 19 continue to apply, except in the case of a nationwide
 20 plan.

21 “(3) LIMITATION.—Nothing in this subsection
 22 shall be construed to preempt any State or local law
 23 (including any State grievance, claims, and appeals
 24 procedure laws, State provider mandate laws, and
 25 State network adequacy laws) except those laws and

1 regulations described in subsection (b)(2), (d)(2)(B),
 2 and (d)(5).

3 “(c) TERMINATION AND REENROLLMENT.—If an in-
 4 dividual who is enrolled in a health benefits plan under
 5 this title voluntarily terminates the enrollment, except in
 6 the case of an individual who has lost or changes employ-
 7 ment or whose employer is terminated for failure to pay
 8 premiums, the individual shall not be eligible for reenroll-
 9 ment until the first open enrollment period following the
 10 expiration of 6 months after the date of such termination.

11 “(d) RATING RULES AND TRANSITIONAL APPLICA-
 12 TION OF STATE LAW.—

13 “(1) YEARS 2012 AND 2013.—With respect to
 14 calendar years 2012 and 2013 (open enrollment pe-
 15 riod beginning October 1, 2011, and October 1,
 16 2012), the following shall apply:

17 “(A) In the case of an employer that elects
 18 to participate in the program under this title,
 19 the State rating requirements applicable to em-
 20 ployers purchasing health insurance coverage in
 21 the small group market in the State in which
 22 the employer is located shall apply with respect
 23 to such coverage, except that premium rates for
 24 such coverage shall not vary based on health-
 25 status related factors.

1 “(B) State rating requirements shall apply
2 to health insurance coverage purchased in the
3 small group market in the State, except that a
4 State shall be prohibited from allowing pre-
5 mium rates to vary based on health-status re-
6 lated factors.

7 “(2) SUBSEQUENT YEARS.—

8 “(A) NAIC RECOMMENDATIONS.—

9 “(i) STUDY.—Beginning in 2010, the
10 Administrator shall contract with the Na-
11 tional Association of Insurance Commis-
12 sioners to conduct a study of the rating re-
13 quirements utilized in the program under
14 this title and the rating requirements that
15 apply to health insurance purchased in the
16 small group markets in the States, and to
17 develop recommendations concerning rat-
18 ing requirements. Such recommendations
19 shall be submitted to the appropriate com-
20 mittees of Congress during calendar year
21 2012.

22 “(ii) STATE LAW HARMONIZATION.—
23 Beginning in calendar year 2011, the Ad-
24 ministrator shall contract with the Na-
25 tional Association of Insurance Commis-

1 sioners to conduct a study of administra-
 2 tive procedures, including rate and form
 3 filing, standards of external review, and
 4 standards of internal review, that apply to
 5 the program under this title and to health
 6 insurance purchased in the small group
 7 markets in the States.

8 “(iii) CONSULTATION.—In conducting
 9 the study under clause (i), the National
 10 Association of Insurance Commissioners
 11 shall consult with key stakeholders (includ-
 12 ing small businesses, self-employed individ-
 13 uals, employees of small businesses, health
 14 insurance issuers, healthcare providers,
 15 and patient advocates).

16 “(iv) RECOMMENDATIONS.—During
 17 calendar year 2012, the recommendations
 18 of the National Association of Insurance
 19 Commissioners shall be submitted to Con-
 20 gress (in the form of a legislative pro-
 21 posal), and shall concern—

22 “(I) rating requirements for
 23 health insurance coverage under this
 24 title for calendar year 2014 and sub-
 25 sequent calendar years; and

1 “(II) a maximum permissible
2 variance between State rating require-
3 ments and the rating requirements for
4 coverage under this title that will
5 allow State flexibility without causing
6 significant adverse selection for health
7 insurance coverage under this title.

8 “(B) APPLICATION OF REQUIREMENTS.—
9 If, pursuant to this subsection, an Act is en-
10 acted to implement rating requirements pursu-
11 ant to the recommendations submitted under
12 subparagraph (A), or alternative rating require-
13 ments developed by Congress, such rating re-
14 quirements shall apply to the program under
15 this title beginning in calendar year 2014 (open
16 enrollment periods beginning October 1, 2013,
17 and thereafter).

18 “(3) FAILURE TO ENACT LEGISLATION.—If an
19 Act is not enacted as provided for in paragraph
20 (2)(B), the fallback rating rules under paragraph
21 (5) shall apply beginning in calendar year 2014
22 (open enrollment periods beginning October 1, 2013,
23 and thereafter).

24 “(4) EXPEDITED CONGRESSIONAL CONSIDER-
25 ATION.—

1 “(A) INTRODUCTION AND COMMITTEE
2 CONSIDERATION.—

3 “(i) INTRODUCTION.—A legislative
4 proposal submitted to Congress pursuant
5 to paragraph (2) shall be introduced in the
6 House of Representatives by the Speaker,
7 and in the Senate by the majority leader,
8 immediately upon receipt of the language
9 and shall be referred to the appropriate
10 committees of Congress. If the proposal is
11 not introduced in accordance with the pre-
12 ceding sentence, legislation may be intro-
13 duced in either House of Congress by any
14 member thereof.

15 “(ii) COMMITTEE CONSIDERATION.—
16 Legislation introduced in the House of
17 Representatives and the Senate under
18 clause (i) shall be referred to the appro-
19 priate committees of jurisdiction of the
20 House of Representatives and the Senate.
21 Not later than 45 calendar days after the
22 introduction of the legislation or February
23 15, 2013, whichever is later, the committee
24 of Congress to which the legislation was
25 referred shall report the legislation or a

1 committee amendment thereto. If the com-
2 mittee has not reported such legislation (or
3 identical legislation) at the end of 45 cal-
4 endar days after its introduction, or Feb-
5 ruary 15, 2013, whichever is later, such
6 committee shall be deemed to be dis-
7 charged from further consideration of such
8 legislation and such legislation shall be
9 placed on the appropriate calendar of the
10 House involved.

11 “(B) EXPEDITED PROCEDURE.—

12 “(i) CONSIDERATION.—Not later than
13 15 calendar days after the date on which
14 a committee has been or could have been
15 discharged from consideration of legislation
16 under this paragraph, the Speaker of the
17 House of Representatives, or the Speaker’s
18 designee, or the majority leader of the Sen-
19 ate, or the leader’s designee, shall move to
20 proceed to the consideration of the com-
21 mittee amendment to the legislation, and if
22 there is no such amendment, to the legisla-
23 tion. It shall also be in order for any mem-
24 ber of the House of Representatives or the
25 Senate, respectively, to move to proceed to

1 the consideration of the legislation at any
2 time after the conclusion of such 15-day
3 period. All points of order against the leg-
4 islation (and against consideration of the
5 legislation) with the exception of points of
6 order under the Congressional Budget Act
7 of 1974 are waived. A motion to proceed to
8 the consideration of the legislation is high-
9 ly privileged in the House of Representa-
10 tives and is privileged in the Senate and is
11 not debatable. The motion is not subject to
12 amendment, to a motion to postpone con-
13 sideration of the legislation, or to a motion
14 to proceed to the consideration of other
15 business. A motion to reconsider the vote
16 by which the motion to proceed is agreed
17 to or not agreed to shall not be in order.
18 If the motion to proceed is agreed to, the
19 House of Representatives or the Senate, as
20 the case may be, shall immediately proceed
21 to consideration of the legislation in ac-
22 cordance with the Standing Rules of the
23 House of Representatives or the Senate, as
24 the case may be, without intervening mo-
25 tion, order, or other business, and the reso-

lution shall remain the unfinished business of the House of Representatives or the Senate, as the case may be, until disposed of, except as provided in clause (iii).

“(ii) CONSIDERATION BY OTHER HOUSE.—If, before the passage by one House of the legislation that was introduced in such House, such House receives from the other House legislation as passed by such other House—

“(I) the legislation of the other House shall not be referred to a committee and shall immediately displace the legislation that was introduced in the House in receipt of the legislation of the other House; and

“(II) the legislation of the other House shall immediately be considered by the receiving House under the same procedures applicable to legislation reported by or discharged from a committee under this paragraph.

Upon disposition of legislation that is received by one House from the other House, it shall no longer be in order to consider

1 consider the legislation that was introduced
2 in the receiving House.

3 “(iii) SENATE VOTE REQUIREMENT.—
4 Legislation under this paragraph shall only
5 be approved in the Senate if affirmed by
6 the votes of $\frac{3}{5}$ of the Senators duly chosen
7 and sworn. If legislation in the Senate has
8 not reached final passage within 10 days
9 after the motion to proceed is agreed to
10 (excluding periods in which the Senate is
11 in recess) it shall be in order for the ma-
12 jority leader to file a cloture petition on
13 the legislation or amendments thereto, in
14 accordance with rule XXII of the Standing
15 Rules of the Senate. If such a cloture mo-
16 tion on the legislation fails, it shall be in
17 order for the majority leader to proceed to
18 other business and the legislation shall be
19 returned to or placed on the Senate cal-
20 endar.

21 “(iv) CONSIDERATION IN CON-
22 FERENCE.—Immediately upon a final pas-
23 sage of the legislation that results in a dis-
24 agreement between the two Houses of Con-
25 gress with respect to the legislation, con-

1 ferees shall be appointed and a conference
2 convened. Not later than 15 days after the
3 date on which conferees are appointed (ex-
4 cluding periods in which one or both
5 Houses are in recess), the conferees shall
6 file a report with the House of Representa-
7 tives and the Senate resolving the dif-
8 ferences between the Houses on the legisla-
9 tion. Notwithstanding any other rule of the
10 House of Representatives or the Senate, it
11 shall be in order to immediately consider a
12 report of a committee of conference on the
13 legislation filed in accordance with this
14 subclause. Debate in the House of Rep-
15 resentatives and the Senate on the con-
16 ference report shall be limited to 10 hours,
17 equally divided and controlled by the
18 Speaker of the House of Representatives
19 and the minority leader of the House of
20 Representatives or their designees and the
21 majority and minority leaders of the Sen-
22 ate or their designees. A vote on final pas-
23 sage of the conference report shall occur
24 immediately at the conclusion or yielding
25 back of all time for debate on the con-

1 ference report. The conference report shall
 2 be approved in the Senate only if affirmed
 3 by the votes of $\frac{3}{5}$ of the Senators duly
 4 chosen and sworn.

5 “(C) RULES OF THE SENATE AND HOUSE
 6 OF REPRESENTATIVES.—This paragraph is en-
 7 acted by Congress—

8 “(i) as an exercise of the rulemaking
 9 power of the Senate and House of Rep-
 10 resentatives, respectively, and is deemed to
 11 be part of the rules of each House, respec-
 12 tively, but applicable only with respect to
 13 the procedure to be followed in that House
 14 in the case of legislation under this para-
 15 graph, and it supersedes other rules only
 16 to the extent that it is inconsistent with
 17 such rules; and

18 “(ii) with full recognition of the con-
 19 stitutional right of either House to change
 20 the rules (so far as they relate to the pro-
 21 cedure of that House) at any time, in the
 22 same manner, and to the same extent as in
 23 the case of any other rule of that House.

1 “(5) FALLBACK RATING RULES.—For purposes
2 of paragraph (3), the fallback rating rules are as fol-
3 lows:

4 “(A) PROGRAM.—

5 “(i) RATING RULES.—A health insur-
6 ance issuer that enters into a contract
7 under the program under this title shall
8 determine the amount of premiums to as-
9 sess for coverage under a health benefits
10 plan based on a community rate that may
11 be annually adjusted only—

12 “(I) based on the age of covered
13 individuals (subject to clause (iii));

14 “(II) based on the geographic
15 area involved if the adjustment is
16 based on geographical divisions that
17 are not smaller than a metropolitan
18 statistical area and the issuer provides
19 evidence of geographic variation in
20 cost of services;

21 “(III) based on industry (subject
22 to clause (iv));

23 “(IV) based on tobacco use; and

24 “(V) based on whether such cov-
25 erage is for an individual, 2 adults in

1 a household, 1 adult and 1 or more
2 children, or a family.

3 “(ii) LIMITATION.—Premium rates
4 charged for coverage under the program
5 under this title shall not vary based on
6 health-status related factors, gender, class
7 of business, or claims experience or any
8 other factor not described in clause (i).

9 “(iii) AGE ADJUSTMENTS.—

10 “(I) IN GENERAL.—With respect
11 to clause (i)(I), in making adjust-
12 ments based on age, the Adminis-
13 trator shall establish not more than 5
14 age brackets to be used by a health
15 insurance issuer in establishing rates
16 for individuals under the age of 65.
17 The rates for any age bracket shall
18 not exceed 300 percent of the rate for
19 the lowest age bracket. Age-related
20 premiums may not vary within age
21 brackets.

22 “(II) AGES 65 AND OLDER.—
23 With respect to clause (i)(I), a health
24 insurance issuer may develop separate
25 rates for covered individuals who are

1 65 years of age or older for whom the
2 primary payor for health benefits cov-
3 erage is the Medicare program under
4 title XVIII of the Social Security Act,
5 for the coverage of health benefits
6 that are not otherwise covered under
7 Medicare.

8 “(iv) INDUSTRY ADJUSTMENT.—With
9 respect to clause (i)(III), in making adjust-
10 ments based on industry, the rates for any
11 industry shall not exceed 115 percent of
12 the rate for the lowest industry and shall
13 be based on evidence of industry variation
14 in cost of services.

15 “(B) STATE RATING RULES.—State rating
16 requirements shall apply to health insurance
17 coverage purchased in the small group market,
18 except that a State shall not permit premium
19 rates to vary based on health-status related fac-
20 tors.

21 “(6) STATE WITH LESS PREMIUM VARIATION.—
22 Effective beginning in calendar year 2014, in the
23 case of a State that provides a rating variance with
24 respect to age that is less than the Federal limit es-
25 tablished under paragraph (2)(B) or (3) or that pro-

1 vides for some form of community rating, or that
 2 provides a rating variance with respect to industry
 3 that is less than the Federal limit established under
 4 paragraph (2)(B) or (3), or that provides a rating
 5 variance with respect to the geographic area involved
 6 that is less than the Federal limit established in
 7 paragraph (2)(B) or (3), premium rates charged for
 8 health insurance coverage under this title in such
 9 State with respect to such factor shall reflect the
 10 rating requirements of such State.

11 “(7) EMPLOYEE CHOICE.—

12 “(A) CALENDAR YEARS 2012 AND 2013.—

13 With respect to calendar years 2012 and 2013
 14 (open enrollment periods beginning October 1,
 15 2011, and October 1, 2012), in the case of a
 16 State that applies community rating or adjusted
 17 community rating where any age bracket does
 18 not exceed 300 percent of the lowest age brack-
 19 et, employees of an employer located in that
 20 State may elect to enroll in any health plan of-
 21 fered under this title.

22 “(B) SUBSEQUENT YEARS.—Beginning in
 23 calendar year 2014 (open enrollment periods
 24 beginning October 1, 2013, and thereafter), em-
 25 ployees of an employer that participates in the

1 program under this title may elect to enroll in
2 any health plan offered under this title.

3 “(C) EXCEPTION.—In any State or year in
4 which an employee is not able to select a health
5 plan as provided for in subparagraph (A) or
6 (B), the employer shall select the health plan or
7 plans that shall be made available to the em-
8 ployees of such employer.

9 “(8) STATE APPROVAL OF RATES.—State laws
10 requiring the approval of rates with respect to health
11 insurance shall continue to apply to health insurance
12 coverage under this title in such State unless the
13 State fails to enforce the application of rates that
14 would otherwise apply to health insurance issuers
15 under the program under this title.

16 “(e) BENEFITS.—

17 “(1) STATEMENT OF BENEFITS.—Each con-
18 tract under this title shall contain a detailed state-
19 ment of benefits offered and shall include informa-
20 tion concerning such maximums, limitations, exclu-
21 sions, and other definitions of benefits as the Ad-
22 ministrators considers necessary or reasonable.

23 “(2) NATIONWIDE PLANS.—

24 “(A) IN GENERAL.—In the case of con-
25 tracts with health insurance issuers that offer a

1 health benefit plan on a nationwide basis, the
2 benefit package shall include benefits estab-
3 lished by the Administrator.

4 “(B) PROCESS FOR ESTABLISHING BENE-
5 FITS FOR NATIONWIDE PLANS.—The benefits
6 provided for under subparagraph (A) shall be
7 determined as follows:

8 “(i) Not later than 30 days after the
9 date of enactment of this title, the Sec-
10 retary shall enter into a contract with the
11 Institute of Medicine to develop a min-
12 imum set of benefits to be offered by na-
13 tionwide plans.

14 “(ii) In developing such minimum set
15 of benefits, the Institute of Medicine shall
16 convene public forums to allow input from
17 key stakeholders (including small busi-
18 nesses, self-employed individuals, employ-
19 ees of small businesses, health insurance
20 issuers, insurance regulators, healthcare
21 providers, and patient advocates) and shall
22 consult with the Small Business Health
23 Board.

24 “(iii) The Institute of Medicine shall
25 consider—

1 “(I) the clinical appropriateness
 2 and effectiveness of the benefits cov-
 3 ered;

4 “(II) the affordability of the ben-
 5 efits covered;

6 “(III) the financial protection of
 7 enrollees against high healthcare ex-
 8 penses;

9 “(IV) access to necessary
 10 healthcare services, including preven-
 11 tive health services; and

12 “(V) benefits similar to those
 13 available in the small group market
 14 on the date of enactment of this title.

15 “(iv) The benefits package shall not
 16 be discriminatory or be likely to promote
 17 or induce adverse selection.

18 “(v) The Administrator shall publish
 19 the benefits recommended by the Institute
 20 of Medicine for public comment.

21 “(vi) Based on the comments received,
 22 the Administrator may make changes only
 23 to the extent that the recommendation
 24 from the Institute of Medicine is not con-
 25 sistent with the criteria contained in clause

(iii) or there is a compelling need for the changes to ensure the effective functioning of the program.

“(vii) The Administrator shall submit a report to Congress on the benefits included in the nationwide package.

“(C) CHANGES TO BENEFITS.—

“(i) IN GENERAL.—By a vote of a two-thirds majority, the Small Business Health Board may recommend to the Administrator changes to the benefit package for nationwide plans under this paragraph for years subsequent to the first year in which such benefits are in effect.

“(ii) REDUCTION IN BENEFITS.—The Administrator may reduce benefits that were previously covered under this paragraph only if—

“(I) two-thirds of the Small Business Health Board recommend such change; or

“(II) there is a compelling need for the change to prevent a substantial reduction in participation in the program under this title.

1 “(f) ADDITIONAL PREMIUM FOR DELAYED ENROLL-
2 MENT.—

3 “(1) IN GENERAL.—A self-employed individual
4 who is eligible to participate in the program under
5 this title, who does not reside in a State where a
6 self-employed individual is eligible for coverage in
7 the small group market, and who does not elect to
8 enroll in coverage under such program in the first
9 year in which the self-employed individual is eligible
10 to so enroll, shall be subject to an additional pre-
11 mium for delayed enrollment.

12 “(2) AMOUNT.—The Administrator shall estab-
13 lish the amount of the additional premium under
14 paragraph (1), which shall be the amount deter-
15 mined by the Administrator to be actuarially appro-
16 priate, to encourage enrollment, and to reduce ad-
17 verse selection. The amount of the additional pre-
18 mium shall be calculated by the Administrator based
19 on the number of years specified in paragraph (4).

20 “(3) PAYMENT.—A self-employed individual
21 shall pay the additional premium under this sub-
22 section, if any, for a period of time equal to the
23 number of years specified in paragraph (4). After
24 the expiration of such period the additional premium
25 for delayed enrollment shall be terminated.

1 “(4) YEARS.—The number of years specified in
 2 this paragraph is the number of years that the self-
 3 employed individual involved was eligible to partici-
 4 pate in the program under this title but did not en-
 5 roll in coverage under such program and did not
 6 otherwise have creditable coverage (as defined for
 7 purposes of section 2701(c)).

8 “(g) STATE ENFORCEMENT.—

9 “(1) STATE AUTHORITY.—With respect to the
 10 enforcement of provisions in this title that supersede
 11 State law (as described in paragraph (2)), a State
 12 may require that health insurance issuers that issue,
 13 sell, renew, or offer health insurance coverage in the
 14 State in the small group market or through the pro-
 15 gram under this title, comply with the requirements
 16 of this title with respect to such issuers.

17 “(2) PROVISIONS DESCRIBED.—The provisions
 18 described in this paragraph shall include the fol-
 19 lowing:

20 “(A) Prohibitions on varying premium
 21 rates based on health-status related factors
 22 (subsections (d)(1) (A) and (B) of section
 23 3107).

24 “(B) The implementation of rating re-
 25 quirements that shall apply to the program

1 under this title beginning in calendar year 2014
 2 (subsections (d)(2)(B) and (d)(3) of section
 3 3107).

4 “(C) Benefit requirements for nationwide
 5 plans available in the program under this title
 6 (subsection (e)).

7 “(3) FAILURE TO IMPLEMENT OR ENFORCE
 8 PROVISIONS.—In the case of a determination by the
 9 Secretary that a State has failed to substantially en-
 10 force a provision (or provisions) described in para-
 11 graph (2) with respect to health insurance issuers in
 12 the State, the Secretary shall enforce such provision
 13 (or provisions).

14 “(4) SECRETARIAL ENFORCEMENT AUTHOR-
 15 ITY.—The Secretary shall have the same authority
 16 in relation to the enforcement of the provisions of
 17 this title with respect to issuers of health insurance
 18 coverage in a State as the Secretary has under sec-
 19 tion 2722(b)(2) in relation to the enforcement of the
 20 provisions of part A of title XXVII with respect to
 21 issuers of health insurance coverage in the small
 22 group market in the State.

23 “(h) STATE OPT OUT.—A State may prohibit small
 24 employers and self-employed individuals in the State from

1 participating in the program under this title if the Admin-
2 istrator finds that the State—

3 “(1) defines its small group market to include
4 groups of 1 (so that self-employed individuals are el-
5 igible for coverage in such market);

6 “(2) prohibits the use of health-status related
7 factors and other factors described in subsection
8 (d)(5)(A);

9 “(3) has in effect rating rules that—

10 “(A) in calendar years 2012 and 2013,
11 comply with subsection (d)(5)(A); and

12 “(B) in calendar year 2014 and thereafter,
13 comply with subsection (d)(2)(B) or (d)(3),
14 whichever is in effect for such calendar year;

15 except that such rules may impose limits on rating
16 variation in addition to those provided for in such
17 subsection;

18 “(4) maintains a Statewide purchasing pool
19 that provides purchasers in the small group market
20 a choice of health benefits plans, with comparative
21 information provided concerning such plans and the
22 premiums charged for such plans made available
23 through the Internet; and

24 “(5) enacts a law to request an opt out under
25 this subsection.

1 **“SEC. 3108. ENCOURAGING PARTICIPATION BY HEALTH IN-**
 2 **SURANCE ISSUERS THROUGH ADJUSTMENTS**
 3 **FOR RISK.**

4 “(a) APPLICATION OF RISK CORRIDORS.—

5 “(1) IN GENERAL.—This section shall only
 6 apply to health insurance issuers with respect to
 7 health benefits plans offered under this Act during
 8 any of calendar years 2012 through 2014.

9 “(2) NOTIFICATION OF COSTS UNDER THE
 10 PLAN.—In the case of a health insurance issuer that
 11 offers a health benefits plan under this title in any
 12 of calendar years 2012 through 2014, the issuer
 13 shall notify the Administrator, before such date in
 14 the succeeding year as the Administrator specifies,
 15 of the total amount of costs incurred in providing
 16 benefits under the health benefits plan for the year
 17 involved and the portion of such costs that is attrib-
 18 utable to administrative expenses.

19 “(3) ALLOWABLE COSTS DEFINED.—For pur-
 20 poses of this section, the term ‘allowable costs’
 21 means, with respect to a health benefits plan offered
 22 by a health insurance issuer under this title, for a
 23 year, the total amount of costs described in para-
 24 graph (2) for the plan and year, reduced by the por-
 25 tion of such costs attributable to administrative ex-

1 penses incurred in providing the benefits described
2 in such paragraph.

3 “(b) ADJUSTMENT OF PAYMENT.—

4 “(1) NO ADJUSTMENT IF ALLOWABLE COSTS
5 WITHIN 3 PERCENT OF TARGET AMOUNT.—If the al-
6 lowable costs for the health insurance issuer with re-
7 spect to the health benefits plan involved for a cal-
8 endar year are at least 97 percent, but do not exceed
9 103 percent, of the target amount for the plan and
10 year involved, there shall be no payment adjustment
11 under this section for the plan and year.

12 “(2) INCREASE IN PAYMENT IF ALLOWABLE
13 COSTS ABOVE 103 PERCENT OF TARGET AMOUNT.—

14 “(A) COSTS BETWEEN 103 AND 108 PER-
15 CENT OF TARGET AMOUNT.—If the allowable
16 costs for the health insurance issuer with re-
17 spect to the health benefits plan involved for
18 the year are greater than 103 percent, but not
19 greater than 108 percent, of the target amount
20 for the plan and year, the Administrator shall
21 reimburse the issuer for such excess costs
22 through payment to the issuer of an amount
23 equal to 75 percent of the difference between
24 such allowable costs and 103 percent of such
25 target amount.

“(B) COSTS ABOVE 108 PERCENT OF TARGET AMOUNT.—If the allowable costs for the health insurance issuer with respect to the health benefits plan involved for the year are greater than 108 percent of the target amount for the plan and year, the Administrator shall reimburse the issuer for such excess costs through payment to the issuer in an amount equal to the sum of—

“(i) 3.75 percent of such target amount; and

“(ii) 90 percent of the difference between such allowable costs and 108 percent of such target amount.

“(3) REDUCTION IN PAYMENT IF ALLOWABLE COSTS BELOW 97 PERCENT OF TARGET AMOUNT.—

“(A) COSTS BETWEEN 92 AND 97 PERCENT OF TARGET AMOUNT.—If the allowable costs for the health insurance issuer with respect to the health benefits plan involved for the year are less than 97 percent, but greater than or equal to 92 percent, of the target amount for the plan and year, the issuer shall be required to pay into a contingency reserve fund established and maintained by the Administrator, an amount

1 equal to 75 percent of the difference between
 2 97 percent of the target amount and such al-
 3 lowable costs.

4 “(B) COSTS BELOW 92 PERCENT OF TAR-
 5 GET AMOUNT.—If the allowable costs for the
 6 health insurance issuer with respect to the
 7 health benefits plan involved for the year are
 8 less than 92 percent of the target amount for
 9 the plan and year, the issuer shall be required
 10 to pay into the contingency fund established
 11 under subparagraph (A), an amount equal to
 12 the sum of—

13 “(i) 3.75 percent of such target
 14 amount; and

15 “(ii) 90 percent of the difference be-
 16 tween 92 percent of such target amount
 17 and such allowable costs.

18 “(4) TARGET AMOUNT DESCRIBED.—

19 “(A) IN GENERAL.—For purposes of this
 20 subsection, the term ‘target amount’ means,
 21 with respect to a health benefits plan offered by
 22 an issuer under this title in any of calendar
 23 years 2012 through 2014, an amount equal
 24 to—

1 “(i) the total of the monthly pre-
 2 miums estimated by the health insurance
 3 issuer and accepted by the Administrator
 4 to be paid for enrollees in the plan under
 5 this title for the calendar year involved; re-
 6 duced by

7 “(ii) the amount of administrative ex-
 8 penses that the issuer estimates, and the
 9 Administrator accepts, will be incurred by
 10 the issuer with respect to the plan for such
 11 calendar year.

12 “(B) SUBMISSION OF TARGET AMOUNT.—
 13 Not later than December 31, 2011, and each
 14 December 31 thereafter through calendar year
 15 2013, an issuer shall submit to the Adminis-
 16 trator a description of the target amount for
 17 such issuer with respect to health benefits plans
 18 provided by the issuer under this title.

19 “(c) DISCLOSURE OF INFORMATION.—

20 “(1) IN GENERAL.—Each contract under this
 21 title shall provide—

22 “(A) that a health insurance issuer offer-
 23 ing a health benefits plan under this title shall
 24 provide the Administrator with such informa-
 25 tion as the Administrator determines is nec-

1 essary to carry out this subsection including the
 2 notification of costs under subsection (a)(2) and
 3 the target amount under subsection (b)(4)(B);
 4 and

5 “(B) that the Administrator has the right
 6 to inspect and audit any books and records of
 7 the issuer that pertain to the information re-
 8 garding costs provided to the Administrator
 9 under such subsections.

10 “(2) RESTRICTION ON USE OF INFORMATION.—
 11 Information disclosed or obtained pursuant to the
 12 provisions of this subsection may be used by the of-
 13 fice designated under section 3102(a) and its em-
 14 ployees and contractors only for the purposes of, and
 15 to the extent necessary in, carrying out this section.

16 **“SEC. 3109. ADMINISTRATION THROUGH REGIONAL OR**
 17 **OTHER ADMINISTRATIVE ENTITIES.**

18 “(a) IN GENERAL.—In order to provide for the ad-
 19 ministration of the benefits under this title with maximum
 20 efficiency and convenience for participating employers and
 21 healthcare providers and other individuals and entities
 22 providing services to such employers, the Administrator—

23 “(1) shall enter into contracts with eligible enti-
 24 ties, to the extent appropriate, to perform, on a re-
 25 gional or other basis, activities to receive, disburse,

1 and account for payments of premiums to partici-
2 pating employers by individuals, and for payments
3 by participating employers and employees to health
4 insurance issuers; and

5 “(2) may enter into contracts with eligible enti-
6 ties, to the extent appropriate, to perform, on a re-
7 gional or other basis, 1 or more of the following:

8 “(A) Collect and maintain all information
9 relating to individuals, families, and employers
10 participating in the program under this title.

11 “(B) Serve as a channel of communication
12 between health insurance issuers, participating
13 employers, and individuals relating to the ad-
14 ministration of this title.

15 “(C) Otherwise carry out such activities
16 for the administration of this title, in such
17 manner, as may be provided for in the contract
18 entered into under this section.

19 “(b) APPLICATION.—To be eligible to receive a con-
20 tract under subsection (a), an entity shall prepare and
21 submit to the Administrator an application at such time,
22 in such manner, and containing such information as the
23 Administration may require.

24 “(c) PROCESS.—

1 “(1) COMPETITIVE BIDDING.—All contracts
2 under this section shall be awarded through a com-
3 petitive bidding process on a biennial basis.

4 “(2) REQUIREMENT.—No contract shall be en-
5 tered into with any entity under this section unless
6 the Administrator finds that such entity will perform
7 its obligations under the contract efficiently and ef-
8 fectively and will meet such requirements as to fi-
9 nancial responsibility, legal authority, and other
10 matters as the Administrator finds pertinent.

11 “(3) PUBLICATION OF STANDARDS AND CRI-
12 TERIA.—If the Administrator enters into contracts
13 under subsection (a), the Administrator shall publish
14 in the Federal Register standards and criteria for
15 the efficient and effective performance of contract
16 obligations under this section, and opportunity shall
17 be provided for public comment prior to implementa-
18 tion. In establishing such standards and criteria, the
19 Administrator shall provide for a system to measure
20 an entity’s performance of responsibilities.

21 “(4) TERM.—Each contract under this section
22 shall be for a term of at least 2 years, and may be
23 made automatically renewable from term to term in
24 the absence of notice by either party of intention to
25 terminate at the end of the current term, except that

1 the Administrator may terminate any such contract
2 at any time (after such reasonable notice and oppor-
3 tunity for hearing to the entity involved as the Ad-
4 ministrator may provide in regulations) if the Ad-
5 ministrator finds that the entity has failed substan-
6 tially to carry out the contract or is carrying out the
7 contract in a manner inconsistent with the efficient
8 and effective administration of the program estab-
9 lished by this title.

10 “(d) TERMS OF CONTRACT.—A contract entered into
11 under this section shall include—

12 “(1) a description of the duties of the con-
13 tracting entity;

14 “(2) an assurance that the entity will furnish to
15 the Administrator such timely information and re-
16 ports as the Administrator determines appropriate;

17 “(3) an assurance that the entity will maintain
18 such records and afford such access thereto as the
19 Administrator finds necessary to assure the correct-
20 ness and verification of the information and reports
21 under paragraph (2) and otherwise to carry out the
22 purposes of this title;

23 “(4) an assurance that the entity shall comply
24 with such confidentiality and privacy protection

1 guidelines and procedures as the Administrator may
2 require;

3 “(5) an assurance that the entity does not have,
4 and will continue to avoid, any conflicts of interest
5 relative to any functions it will perform; and

6 “(6) such other terms and conditions not incon-
7 sistent with this section as the Administrator may
8 find necessary or appropriate.

9 **“SEC. 3110. PUBLIC EDUCATION CAMPAIGN AND REPORT.**

10 “(a) IN GENERAL.—In carrying out this title, the Ad-
11 ministrator shall develop and implement an educational
12 campaign with interagency participation (including at a
13 minimum the Small Business Administration, the Depart-
14 ment of Labor, and employees of the office established
15 under section 3102 who oversee the provision of informa-
16 tion through navigators) to provide information to employ-
17 ers and the general public concerning the health insurance
18 program developed under this title, including the contact
19 information relating to an individual or individuals who
20 will be available to resolve various types of problems with
21 health insurance coverage provided under this title.

22 “(b) PUBLIC EDUCATION CAMPAIGN.—There is au-
23 thorized to be appropriated to carry out this section, such
24 sums as may be necessary for each of fiscal years 2009
25 through 2011.

1 “(c) REPORTS TO CONGRESS.—Not later than 1 year
 2 and 2 years after the implementation of the campaign
 3 under subsection (a), the Administrator shall submit to
 4 the appropriate committees of Congress a report that de-
 5 scribes the activities of the Administrator under sub-
 6 section (a), including a determination by the Adminis-
 7 trator of the percentage of employers with knowledge of
 8 the health benefits program under this title.

9 **“SEC. 3111. APPROPRIATIONS.**

10 “There are authorized to be appropriated to the Ad-
 11 ministrator such sums as may be necessary in each fiscal
 12 year for the development and administration of the pro-
 13 gram under this title.

14 **“SEC. 3112. EFFECTIVE DATE.**

15 “This title shall take effect on the date of enactment
 16 of this title.”.

17 **SEC. 3. AMENDMENT TO ERISA.**

18 Section 514(b)(2) of the Employee Retirement In-
 19 come Security Act of 1974 (29 U.S.C. 1144(b)(2)) is
 20 amended by adding at the end the following:

21 “(C) Notwithstanding subparagraph (A), the provi-
 22 sions of subsections (d)(1)(B) and (g)(2)(A) of section
 23 3107 of the Public Health Service Act (relating to the pro-
 24 hibition on health-status related rating and the Federal

1 enforcement of such provisions) shall supercede any State
 2 law that conflicts with such provisions.”.

3 **SEC. 4. CREDIT FOR SMALL BUSINESS EMPLOYEE HEALTH**
 4 **INSURANCE EXPENSES.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-
 6 chapter A of chapter 1 of the Internal Revenue Code of
 7 1986 (relating to credits) is amended by inserting after
 8 section 45N the following new section:

9 **“SEC. 45O. SMALL BUSINESS EMPLOYEE HEALTH INSUR-**
 10 **ANCE CREDIT.**

11 “(a) DETERMINATION OF CREDIT.—In the case of a
 12 qualified small employer, there shall be allowed as a credit
 13 against the tax imposed by this chapter for the taxable
 14 year an amount equal to the credit amount described in
 15 subsection (b).

16 “(b) GENERAL CREDIT AMOUNT.—For purposes of
 17 this section—

18 “(1) IN GENERAL.—The credit amount de-
 19 scribed in this subsection is the product of—

20 “(A) the amount specified in paragraph
 21 (2),

22 “(B) the employer size factor specified in
 23 paragraph (3), and

24 “(C) the percentage of year factor specified
 25 in paragraph (4).

1 “(2) APPLICABLE AMOUNT.—For purposes of
2 paragraph (1)—

3 “(A) IN GENERAL.—The applicable
4 amount is equal to—

5 “(i) \$1,000 for each employee of the
6 employer who receives self-only health in-
7 surance coverage through the employer,

8 “(ii) \$2,000 for each employee of the
9 employer who receives family health insur-
10 ance coverage through the employer, and

11 “(iii) \$1,500 for each employee of the
12 employer who receives health insurance
13 coverage for 2 adults or 1 adult and 1 or
14 more children through the employer.

15 “(B) BONUS FOR PAYMENT OF GREATER
16 PERCENTAGE OF PREMIUMS.—The applicable
17 amount otherwise specified in subparagraph (A)
18 shall be increased by \$200 in the case of sub-
19 paragraph (A)(i), \$400 in the case of subpara-
20 graph (A)(ii), and \$300 in the case of subpara-
21 graph (A)(iii), for each additional 10 percent of
22 the qualified employee health insurance ex-
23 penses exceeding 60 percent which are paid by
24 the qualified small employer.

1 “(3) EMPLOYER SIZE FACTOR.—For purposes
 2 of paragraph (1), the employer size factor is the per-
 3 centage determined in accordance with the following
 4 table:

“If the employer size is:	The percentage is:
10 or fewer full-time employees	100%
More than 10 but not more than 20 full-time employees	80%
More than 20 but not more than 30 full-time employees	60%
More than 30 but not more than 40 full-time employees	40%
More than 40 but not more than 50 full-time employees	20%
More than 50 full-time employees	0%.

5 “(4) PERCENTAGE OF YEAR FACTOR.—For pur-
 6 poses of paragraph (1), the percentage of year factor
 7 is equal to the ratio of—

8 “(A) the number of months during the tax-
 9 able year for which the employer paid or in-
 10 curred qualified employee health insurance ex-
 11 penses, and

12 “(B) 12.

13 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
 14 poses of this section—

15 “(1) QUALIFIED SMALL EMPLOYER.—

16 “(A) IN GENERAL.—The term ‘qualified
 17 small employer’ means any employer (as defined
 18 in section 3101(a)(4) of the Public Health
 19 Service Act) which—

20 “(i) either—

1 “(I) purchases health insurance
2 coverage for its employees in a small
3 group market in a State which meets
4 the requirements under subparagraph
5 (B), or

6 “(II) with respect to any taxable
7 year beginning after 2011, is a par-
8 ticipating employer (as defined in sec-
9 tion 3101(a)(8) of such Act) in the
10 program under title XXX of such Act,

11 “(ii) pays or incurs at least 60 per-
12 cent of the qualified employee health insur-
13 ance expenses of such employer or is self-
14 employed, and

15 “(iii) employed an average of 50 or
16 fewer full-time employees during the pre-
17 ceding taxable year or was a self-employed
18 individual with either not less than \$5,000
19 in net earnings or not less than \$15,000 in
20 gross earnings from self-employment in the
21 preceding taxable year.

22 “(B) STATE SMALL GROUP MARKET RE-
23 QUIREMENTS.—A State meets the requirements
24 of this subparagraph if—

1 “(i) during calendar years 2010 and
2 2011, the State—

3 “(I) defines its small group mar-
4 ket to include groups of one (so that
5 self-employed individuals are eligible
6 for coverage in such market),

7 “(II) prohibits the use of health-
8 status related factors and other fac-
9 tors described in section
10 3107(d)(5)(A) of such Act, and

11 “(III) has in effect rating rules
12 that comply with section
13 3107(d)(5)(A) of such Act (except
14 that such rules may impose limits on
15 rating variation in addition to those
16 provided for in such section),

17 “(ii) during calendar years 2012 and
18 2013, the State—

19 “(I) meets the requirements
20 under clause (i), and

21 “(II) maintains a Statewide pur-
22 chasing pool that provides purchasers
23 in the small group market a choice of
24 health benefit plans, with comparative
25 information provided concerning such

1 plans and the premiums charged for
 2 such plans made available through the
 3 Internet, and

4 “(iii) for calendar years after 2013,
 5 the State—

6 “(I) meets the requirements
 7 under clauses (i)(I), (i)(II), and
 8 (ii)(II), and

9 “(II) has in effect rating rules
 10 that comply with paragraph (2)(B) or
 11 (3) of section 3107(d) of such Act,
 12 whichever is in effect for such cal-
 13 endar year (except that such rules
 14 may impose limits on rating variation
 15 in addition to those provided for in
 16 such section).

17 “(2) QUALIFIED EMPLOYEE HEALTH INSUR-
 18 ANCE EXPENSES.—

19 “(A) IN GENERAL.—The term ‘qualified
 20 employee health insurance expenses’ means any
 21 amount paid by an employer or an employee of
 22 such employer for health insurance coverage
 23 under such Act to the extent such amount is at-
 24 tributable to coverage—

1 “(i) provided to any employee (as de-
 2 fined in subsection 3101(a)(3) of such
 3 Act), or

4 “(ii) for the employer, in the case of
 5 a self-employed individual.

6 “(B) EXCEPTION FOR AMOUNTS PAID
 7 UNDER SALARY REDUCTION ARRANGEMENTS.—
 8 No amount paid or incurred for health insur-
 9 ance coverage pursuant to a salary reduction
 10 arrangement shall be taken into account under
 11 subparagraph (A).

12 “(3) FULL-TIME EMPLOYEE.—The term ‘full-
 13 time employee’ means, with respect to any period, an
 14 employee (as defined in section 3101(a)(3) of such
 15 Act) of an employer if the average number of hours
 16 worked by such employee in the preceding taxable
 17 year for such employer was at least 35 hours per
 18 week.

19 “(d) INFLATION ADJUSTMENT.—

20 “(1) IN GENERAL.—For each taxable year after
 21 2010, the dollar amounts specified in subsections
 22 (b)(2)(A), (b)(2)(B), and (c)(1)(A)(iii) (after the ap-
 23 plication of this paragraph) shall be the amounts in
 24 effect in the preceding taxable year or, if greater,
 25 the product of—

1 “(A) the corresponding dollar amount
2 specified in such subsection, and

3 “(B) the ratio of the index of wage infla-
4 tion (as determined by the Bureau of Labor
5 Statistics) for August of the preceding calendar
6 year to such index of wage inflation for August
7 of 2009.

8 “(2) ROUNDING.—If any amount determined
9 under paragraph (1) is not a multiple of \$100, such
10 amount shall be rounded to the next lowest multiple
11 of \$100.

12 “(e) APPLICATION OF CERTAIN RULES IN DETER-
13 MINATION OF EMPLOYER SIZE.—For purposes of this sec-
14 tion—

15 “(1) APPLICATION OF AGGREGATION RULE FOR
16 EMPLOYERS.—All persons treated as a single em-
17 ployer under subsection (b), (c), (m), or (o) of sec-
18 tion 414 shall be treated as 1 employer.

19 “(2) EMPLOYERS NOT IN EXISTENCE IN PRE-
20 CEDING YEAR.—In the case of an employer which
21 was not in existence for the full preceding taxable
22 year, the determination of whether such employer
23 meets the requirements of this section shall be based
24 on the average number of full-time employees that it
25 is reasonably expected such employer will employ on

1 business days in the employer's first full taxable
2 year.

3 “(3) PREDECESSORS.—Any reference in this
4 subsection to an employer shall include a reference
5 to any predecessor of such employer.

6 “(f) COORDINATION WITH ADVANCE PAYMENTS OF
7 CREDIT.—With respect to any taxable year, the amount
8 which would (but for this subsection) be allowed as a cred-
9 it to the taxpayer under subsection (a) shall be reduced
10 by the aggregate amount paid on behalf of such taxpayer
11 under section 7527A for months beginning in such taxable
12 year. If the amount determined under this subsection is
13 less than zero, the taxpayer shall owe additional tax in
14 such amount under this chapter.

15 “(g) CREDITS FOR NONPROFIT ORGANIZATIONS.—
16 Any credit which would be allowable under subsection (a)
17 with respect to a qualified small business if such qualified
18 small business were not exempt from tax under this chap-
19 ter shall be treated as a credit allowable under this sub-
20 part to such qualified small business.”.

21 (b) ADVANCE PAYMENTS OF CREDIT.—Chapter 77
22 of the Internal Revenue Code of 1986 is amended by in-
23 serting after section 7527 the following new section:

1 **“SEC. 7527A. ADVANCE PAYMENT OF CREDIT FOR HEALTH**
 2 **INSURANCE COSTS FOR QUALIFIED SMALL**
 3 **EMPLOYERS.**

4 “(a) GENERAL RULE.—Not later than December 31,
 5 2009, the Secretary shall establish a program for making
 6 monthly payments on behalf of qualified small employers
 7 to the program established under title XXX of the Public
 8 Health Service Act. The amount of the monthly payment
 9 for a qualified small employer shall be one-twelfth of the
 10 amount of the credit for the tax year to which the qualified
 11 small employer is entitled under section 36. If a monthly
 12 payment is made by the Secretary for which the employer
 13 is not entitled to a corresponding credit, the employer shall
 14 owe additional tax in such amount under this chapter.

15 “(b) QUALIFIED SMALL EMPLOYER.—For purposes
 16 of this section, the term ‘qualified small employer’ has the
 17 meaning given such term in section 36(c)(1).”.

18 (c) CONFORMING AMENDMENTS.—

19 (1) The table of sections for subpart D of part
 20 IV of subchapter A of chapter 1 of the Internal Rev-
 21 enue Code of 1986 is amended by adding at the end
 22 the following new items:

“Sec. 45O. Small business employee health insurance credit.”.

23 (2) The table of sections for chapter 77 of such
 24 Code is amended by inserting after the item relating
 25 to section 7527 the following new item:

“Sec. 7527A. Advance payment of credit for health insurance costs for qualified small employers.”.

1 (d) DEDUCTIBILITY.—The payment of premiums by
2 a participating employer under this Act shall be consid-
3 ered to be an ordinary and necessary expense in carrying
4 on a trade or business for purposes of the Internal Rev-
5 enue Code of 1986 and shall be deductible.

6 (e) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to amounts paid or incurred in tax-
8 able years beginning after December 31, 2009.

○