

115TH CONGRESS  
1ST SESSION

# S. 1818

To provide health care options for small businesses.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 2017

Mr. ENZI introduced the following bill; which was read twice and referred to  
the Committee on Finance

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## A BILL

To provide health care options for small businesses.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Small Business Health  
5       Plans Act of 2017”.

6       **SEC. 2. SMALL BUSINESS HEALTH PLANS.**

7       (a) IN GENERAL.—Notwithstanding any other provi-  
8       sion of law, with respect to small business health plans—

9               (1) multiple, unaffiliated small employers may  
10       pool their employees for the purpose of purchasing  
11       health insurance coverage for such employees in the  
12       large group market;

1           (2) health insurance issuers may offer health  
2           plans in the large group market to employees of the  
3           small employers described in paragraph (1); and

4           (3) privately administered health insurance ex-  
5           changes may offer health plans in the large group  
6           market to a pool of employees of multiple, unaffili-  
7           ated small employers.

8           (b) MULTISTATE PARTICIPATION.—Notwithstanding  
9           any other provision of law, pools of employees described  
10          in subsection (a)(1) may include employers and employees  
11          from multiple States.

12          (c) TAX TREATMENT OF SMALL BUSINESS HEALTH  
13          PLANS.—A small business health plan (as defined in sec-  
14          tion 801(a) of the Employee Retirement Income Security  
15          Act of 1974) shall be treated—

16               (1) as a group health plan (as defined in sec-  
17               tion 2791 of the Public Health Service Act (42  
18               U.S.C. 300gg–91)) for purposes of applying title  
19               XXVII of the Public Health Service Act (42 U.S.C.  
20               300gg et seq.) and title XXII of such Act (42  
21               U.S.C. 300bb–1);

22               (2) as a group health plan (as defined in sec-  
23               tion 5000(b)(1) of the Internal Revenue Code of  
24               1986) for purposes of applying sections 4980B and

1 5000 and chapter 100 of the Internal Revenue Code  
2 of 1986; and

3 (3) as a group health plan (as defined in sec-  
4 tion 733(a)(1) of the Employee Retirement Income  
5 Security Act of 1974 (29 U.S.C. 1191b(a)(1))) for  
6 purposes of applying parts 6 and 7 of title I of the  
7 Employee Retirement Income Security Act of 1974  
8 (29 U.S.C. 1161 et seq.).

9 (d) SMALL BUSINESS HEALTH PLANS.—Subtitle B  
10 of title I of the Employee Retirement Income Security Act  
11 of 1974 is amended by adding at the end the following  
12 new part:

13 **“PART 8—RULES GOVERNING SMALL BUSINESS**  
14 **HEALTH PLANS**

15 **“SEC. 801. SMALL BUSINESS HEALTH PLANS.**

16 “(a) IN GENERAL.—For purposes of this part, the  
17 term ‘small business health plan’ means a fully insured  
18 group health plan whose sponsor is described in subsection  
19 (b).

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

22 “(1) receives certification by the Secretary as a  
23 qualified sponsor and files a notice of certification  
24 with the State in which it operates;

1 “(2) is organized and maintained in good faith,  
 2 with a constitution and bylaws specifically stating its  
 3 purpose and providing for periodic meetings on at  
 4 least an annual basis;

5 “(3) is established as a permanent entity;

6 “(4) is established for a purpose other than  
 7 providing health benefits to its members, such as a  
 8 bona fide trade association or a consortium of such  
 9 associations, a franchise, or a section 7705 profes-  
 10 sional employer organization; and

11 “(5) does not condition membership on the  
 12 basis of a minimum group size.

13 **“SEC. 802. CERTIFICATION OF SMALL BUSINESS HEALTH**  
 14 **PLANS.**

15 “(a) IN GENERAL.—Not later than 6 months after  
 16 the date of enactment of this part, the Secretary shall pre-  
 17 scribe by interim final rule a procedure under which the  
 18 Secretary will certify a qualified sponsor of a small busi-  
 19 ness health plan.

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

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

8       “(d) OVERSIGHT OF CERTIFIED PLANS.—The Sec-  
 9       retary shall determine whether any person has violated,  
 10      or is about to violate, any provision of this part, including  
 11      by conducting periodic reviews of certified small business  
 12      health plans in accordance with section 504, and applying  
 13      the requirements of sections 518, 519, and 520.

14      “(e) EXPEDITED AND DEEMED CERTIFICATION.—

15           “(1) IN GENERAL.—If the Secretary fails to act  
 16      on an application for certification under this section  
 17      within 180 days of receipt of such application, the  
 18      applying small business health plan shall be deemed  
 19      certified until such time as the Secretary may deny  
 20      for cause the application for certification.

21           “(2) CIVIL PENALTY.—The Secretary may as-  
 22      sess a civil penalty against the board of trustees,  
 23      plan administrator, and plan sponsor (jointly and  
 24      severally) of a small business health plan that is  
 25      deemed certified under paragraph (1) of up to

1       \$500,000 in the event the Secretary determines that  
 2       the application for certification of such small busi-  
 3       ness health plan was willfully or with gross neg-  
 4       ligence incomplete or inaccurate.

5       **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**  
 6               **BOARDS OF TRUSTEES.**

7       “(a) SPONSOR.—The requirements of this subsection  
 8       are met with respect to a small business health plan if  
 9       the sponsor has met (or is deemed under this part to have  
 10      met) the requirements of section 801(b).

11      “(b) BOARD OF TRUSTEES OR PLAN ADMINIS-  
 12      TRATOR.—The requirements of this subsection with re-  
 13      spect to a small business health plan are as follows:

14              “(1) FISCAL CONTROL.—The plan is operated,  
 15              pursuant to a plan document, by a board of trustees  
 16              or plan administrator which has complete fiscal con-  
 17              trol over the plan and which is responsible for all op-  
 18              erations of the plan.

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

1           “(3) RULES GOVERNING RELATIONSHIP TO  
2 PARTICIPATING EMPLOYERS AND TO CONTRAC-  
3 TORS.—

4           “(A) BOARD MEMBERSHIP.—

5           “(i) IN GENERAL.—With respect to a  
6 plan operated by a board of trustees, ex-  
7 cept as provided in clauses (ii) and (iii),  
8 the members of the board of trustees are  
9 individuals selected from individuals who  
10 are the owners, officers, directors, or em-  
11 ployees of the participating employers or  
12 who are partners in the participating em-  
13 ployers and actively participate in the busi-  
14 ness.

15           “(ii) LIMITATION.—

16           “(I) GENERAL RULE.—Except as  
17 provided in subclauses (II) and (III),  
18 no such member is an owner, officer,  
19 director, or employee of, or partner in,  
20 a contract administrator or other  
21 service provider to the plan.

22           “(II) LIMITED EXCEPTION FOR  
23 PROVIDERS OF SERVICES SOLELY ON  
24 BEHALF OF THE SPONSOR.—Officers  
25 or employees of a sponsor which is a

1 service provider (other than a contract  
 2 administrator) to the plan may be  
 3 members of the board if they con-  
 4 stitute not more than 25 percent of  
 5 the membership of the board and they  
 6 do not provide services to the plan  
 7 other than on behalf of the sponsor.

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

17 “(iii) CERTAIN PLANS EXCLUDED.—  
 18 Clause (i) shall not apply to a small busi-  
 19 ness health plan that is in existence on the  
 20 date of the enactment of this Act.

21 “(B) PLAN ADMINISTRATOR.—The require-  
 22 ments of this section are met with respect to  
 23 section 7705 professional employer organiza-  
 24 tions if the requirements of subsections (a) and  
 25 (b) of section 804 have been met.



1                   “(C) SOLE AUTHORITY.—The board or  
2                   plan administrator has sole authority under the  
3                   plan to approve applications for participation in  
4                   the plan and to contract with insurers.

5                   “(c) TREATMENT OF FRANCHISES.—In the case of  
6 a group health plan that is established and maintained  
7 by a franchisor for the benefit of the employees of the  
8 franchisor and its franchisees, by multiple franchisors for  
9 the benefit of the employees of such franchisors and their  
10 franchisees, or by multiple franchisees for the benefit of  
11 the employees of such franchisees—

12                   “(1) the requirements of subsection (a) and sec-  
13 tion 801(a) shall be deemed met if such require-  
14 ments would otherwise be met if all franchisors or  
15 franchisees establishing and maintaining such plan,  
16 as applicable, were deemed to be the sponsor de-  
17 scribed in section 801(b) and each employee of such  
18 franchisors or franchisees, as applicable, were  
19 deemed to be a member of the sponsor described in  
20 section 801(b);

21                   “(2) the requirements of section 804(a)(1) shall  
22 be deemed met; and

23                   “(3) the establishment and maintenance of such  
24 a group health plan shall not cause any one or more  
25 franchisor or franchisee employers participating in

1       such a group health plan to be treated as the em-  
2       ployer, co-employer, or joint employer of the employ-  
3       ees of another participating franchisor or franchisee  
4       employer for any purpose.

5       **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**  
6       **MENTS.**

7       “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The  
8       requirements of this subsection are met with respect to  
9       a small business health plan if, under the terms of the  
10      plan—

11               “(1) each participating employer must be—

12                       “(A) a member of the sponsor;

13                       “(B) the sponsor; or

14                       “(C) an affiliated member of the sponsor,  
15              except that, in the case of a sponsor which is  
16              a professional association or other individual-  
17              based association, if at least one of the officers,  
18              directors, or employees of an employer, or at  
19              least one of the individuals who are partners in  
20              an employer and who actively participates in  
21              the business, is a member or such an affiliated  
22              member of the sponsor, participating employers  
23              may also include such employer; and

1           “(2) all individuals commencing coverage under  
2       the plan after certification under this part must  
3       be—

4           “(A) active or retired owners (including  
5       self-employed individuals), officers, directors, or  
6       employees of, or partners in, participating em-  
7       ployers; or

8           “(B) the dependents of individuals de-  
9       scribed in subparagraph (A).

10       “(b) INDIVIDUAL MARKET UNAFFECTED.—The re-  
11       quirements of this subsection are met with respect to a  
12       small business health plan if, under the terms of the plan,  
13       no participating employer may provide health insurance  
14       coverage in the individual market for any employee not  
15       covered under the plan, if such exclusion of the employee  
16       from coverage under the plan is based on a health status-  
17       related factor with respect to the employee and such em-  
18       ployee would, but for such exclusion on such basis, be eligi-  
19       ble for coverage under the plan.

20       “(c) PROHIBITION OF DISCRIMINATION AGAINST EM-  
21       PLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.—  
22       The requirements of this subsection are met with respect  
23       to a small business health plan if—

24           “(1) under the terms of the plan, all employers  
25       meeting the requirements of subsections (a) and (b)

1 are eligible to qualify as participating employers for  
 2 all geographically available coverage options, unless,  
 3 in the case of any such employer, participation or  
 4 contribution requirements of the type referred to in  
 5 section 2705 of the Public Health Service Act are  
 6 not met;

7 “(2) information regarding all coverage options  
 8 available under the plan is made readily available to  
 9 any employer eligible to participate; and

10 “(3) the applicable requirements of sections  
 11 701, 702, and 703 are met with respect to the plan.

12 **“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN**  
 13 **DOCUMENTS, CONTRIBUTION RATES, AND**  
 14 **BENEFIT OPTIONS.**

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

18 “(1) CONTENTS OF GOVERNING INSTRU-  
 19 MENTS.—

20 “(A) IN GENERAL.—The instruments gov-  
 21 erning the plan include a written instrument  
 22 which—

23 “(i) provides that the board of trust-  
 24 ees or plan administrator serves as the  
 25 named fiduciary required for plans under

1 section 402(a)(1) and serves in the capac-  
2 ity of a plan administrator (referred to in  
3 section 3(16)(A)); and

4 “(ii) provides that the sponsor of the  
5 plan is to serve as plan sponsor (referred  
6 to in section 3(16)(B)).

7 “(B) DESCRIPTION OF MATERIAL PROVI-  
8 SIONS.—The terms of the health insurance cov-  
9 erage (including the terms of any individual  
10 certificates that may be offered to individuals in  
11 connection with such coverage), if any, describe  
12 the material benefit and rating, and other pro-  
13 visions set forth in this section and such mate-  
14 rial provisions are included in the summary  
15 plan description.

16 “(2) CONTRIBUTION RATES MUST BE NON-  
17 DISCRIMINATORY.—The contribution rates for any  
18 participating small employer shall not vary on the  
19 basis of any health status-related factor in relation  
20 to employees of such employer or their beneficiaries  
21 and shall not vary on the basis of the type of busi-  
22 ness or industry in which such employer is engaged,  
23 subject to the terms of this title.

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

1           “(A) SELF-EMPLOYED.—Small business  
2 health plans with participating employers who  
3 are self-employed individuals (and their depend-  
4 ents) shall enroll such self-employed partici-  
5 pating employers in accordance with rating  
6 rules that do not violate the rating rules for  
7 self-employed individuals in the State in which  
8 such self-employed participating employers are  
9 located.

10           “(B) LARGE EMPLOYERS.—Small business  
11 health plans with participating employers that  
12 are larger than small employers (as defined in  
13 section 809(a)) shall enroll such large partici-  
14 pating employers in accordance with rating  
15 rules that do not violate the rating rules for  
16 large employers in the State in which such large  
17 participating employers are located.

18           “(4) REGULATORY REQUIREMENTS.—Such  
19 other requirements as the Secretary determines are  
20 necessary to carry out the purposes of this part,  
21 which shall be prescribed by the Secretary by regula-  
22 tion.

23           “(b) DOMICILE AND NON-DOMICILE STATES.—

24           “(1) DOMICILE STATE.—Coverage shall be  
25 issued by a health insurance issuer to a small busi-

1       ness health plan in the State in which the sponsor's  
2       principal place of business is located.

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

9               “(A) TEMPORARY PREEMPTION.—If, upon  
10       the expiration of the 180-day period following  
11       the submission of a licensure application by  
12       such insurer (that includes a certified copy of  
13       an approved licensure application as submitted  
14       by such insurer in the domicile State) to such  
15       State, such State has not approved or denied  
16       such application, such State's health insurance  
17       licensure laws shall be temporarily preempted  
18       and the insurer shall be permitted to operate in  
19       such State, subject to the following terms:

20               “(i) APPLICATION OF NON-DOMICILE  
21       STATE LAW.—Except with respect to licen-  
22       sure, the laws and authority of the non-  
23       domicile State shall remain in full force  
24       and effect.

1 “(ii) REVOCATION OF PREEMPTION.—

2 The preemption of a non-domicile State’s  
3 health insurance licensure laws pursuant to  
4 this subparagraph, shall be terminated  
5 upon the occurrence of either of the fol-  
6 lowing:

7 “(I) APPROVAL OR DENIAL OF  
8 APPLICATION.—The approval or de-  
9 nial of an insurer’s licensure applica-  
10 tion, following the laws and regula-  
11 tions of the non-domicile State with  
12 respect to licensure.

13 “(II) DETERMINATION OF MATE-  
14 RIAL VIOLATION.—A determination by  
15 a non-domicile State that an insurer  
16 operating in a non-domicile State pur-  
17 suant to the preemption provided for  
18 in this subparagraph is in material  
19 violation of the insurance laws (other  
20 than licensure of such State).

21 “(B) NO PROHIBITION ON PROMOTION.—

22 Nothing in this paragraph shall be construed to  
23 prohibit a small business health plan or an in-  
24 surer from promoting coverage prior to the ex-  
25 piration of the 180-day period provided for in



1           subparagraph (A), except that no enrollment or  
 2           collection of contributions shall occur before the  
 3           expiration of such 180-day period.

4           “(C) LICENSURE.—Except with respect to  
 5           the application of the temporary preemption  
 6           provision of this paragraph, nothing in this part  
 7           shall be construed to limit the requirement that  
 8           insurers issuing coverage to small business  
 9           health plans shall be licensed in each State in  
 10          which the small business health plans operate.

11          “(D) SERVICING BY LICENSED INSUR-  
 12          ERS.—Notwithstanding subparagraph (C), the  
 13          requirements of this subsection may also be sat-  
 14          isfied if the participating employers of a small  
 15          business health plan are serviced by a licensed  
 16          insurer in that State, even where such insurer  
 17          is not the insurer of such small business health  
 18          plan in the State in which such small business  
 19          health plan is domiciled.

20   **“SEC. 806. REQUIREMENTS FOR APPLICATION AND RE-**  
 21           **LATED REQUIREMENTS.**

22          “(a) FILING FEE.—Under the procedure prescribed  
 23          pursuant to section 802(a), a small business health plan  
 24          shall pay to the Secretary at the time of filing an applica-  
 25          tion for certification under this part a filing fee in the

1 amount of \$5,000 which shall be made available to the  
 2 Secretary, for the sole purpose of administering the certifi-  
 3 cation procedures applicable with respect to small business  
 4 health plans.

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

11 “(1) IDENTIFYING INFORMATION.—The names  
 12 and addresses of—

13 “(A) the sponsor; and

14 “(B) the members of the board of trustees  
 15 or the plan administrator of the plan.

16 “(2) STATES IN WHICH PLAN INTENDS TO DO  
 17 BUSINESS.—The States in which participants and  
 18 beneficiaries under the plan are to be located and  
 19 the number of participants and beneficiaries ex-  
 20 pected to be located in each such State.

21 “(3) BONDING REQUIREMENTS.—Evidence pro-  
 22 vided by the board of trustees that the bonding re-  
 23 quirements of section 412 will be met as of the date  
 24 of the application or (if later) commencement of op-  
 25 erations.

1           “(4) PLAN DOCUMENTS.—A copy of the docu-  
2           ments governing the plan (including any bylaws and  
3           trust agreements), the summary plan description,  
4           and other material describing the benefits that will  
5           be provided to participants and beneficiaries under  
6           the plan.

7           “(5) AGREEMENTS WITH SERVICE PRO-  
8           VIDERS.—A copy of any agreements between the  
9           plan, health insurance issuer, and contract adminis-  
10          trators and other service providers.

11          “(c) FILING NOTICE OF CERTIFICATION WITH  
12          STATES.—A certification granted under this part to a  
13          small business health plan shall not be effective unless  
14          written notice of such certification is filed with the appli-  
15          cable State authority of each State in which the small  
16          business health plans operate.

17          “(d) NOTICE OF MATERIAL CHANGES.—In the case  
18          of any small business health plan certified under this part,  
19          descriptions of material changes in any information which  
20          was required to be submitted with the application for the  
21          certification under this part shall be filed in such form  
22          and manner as shall be prescribed by the applicable au-  
23          thority by regulation. The applicable authority may re-  
24          quire by regulation prior notice of material changes with

1 respect to specified matters which might serve as the basis  
 2 for suspension or revocation of the certification.

3 **“SEC. 807. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**  
 4 **MINATION.**

5 “(a) IN GENERAL.—A small business health plan  
 6 which is or has been certified under this part may termi-  
 7 nate (upon or at any time after cessation of accruals in  
 8 benefit liabilities) only if the board of trustees, or the plan  
 9 administrator, not less than 60 days before the proposed  
 10 termination date—

11 “(1) provides to the participants and bene-  
 12 ficiaries a written notice of intent to terminate stat-  
 13 ing that such termination is intended and the pro-  
 14 posed termination date;

15 “(2) develops a plan for winding up the affairs  
 16 of the plan in connection with such termination in  
 17 a manner which will result in timely payment of all  
 18 benefits for which the plan is obligated; and

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

21 “(b) REGULATIONS.—Actions required under this  
 22 section shall be taken in such form and manner as may  
 23 be prescribed by the applicable authority by regulation.

1 **“SEC. 808. IMPLEMENTATION AND APPLICATION AUTHOR-**  
 2 **ITY BY SECRETARY.**

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

12 **“SEC. 809. DEFINITIONS AND RULES OF CONSTRUCTION.**

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

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

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

19 “(B) in the case of a sponsor with mem-  
 20 bers which consist of associations, a person who  
 21 is a member or employee of any such associa-  
 22 tion and elects an affiliated status with the  
 23 sponsor.

24 “(2) APPLICABLE STATE AUTHORITY.—The  
 25 term ‘applicable State authority’ means, with respect  
 26 to a health insurance issuer in a State, the State in-

1 insurance commissioner or official or officials des-  
2 ignated by the State to enforce the requirements of  
3 title XXVII of the Public Health Service Act for the  
4 State involved with respect to such issuer.

5 “(3) FRANCHISOR; FRANCHISEE.—The terms  
6 ‘franchisor’ and ‘franchisee’ have the meanings given  
7 such terms for purposes of sections 436.2(a)  
8 through 436.2(c) of title 16, Code of Federal Regu-  
9 lations (including any such amendments to such reg-  
10 ulation after the date of enactment of this part).

11 “(4) GROUP HEALTH PLAN.—The term ‘group  
12 health plan’ has the meaning provided in section  
13 733(a)(1).

14 “(5) HEALTH INSURANCE COVERAGE.—The  
15 term ‘health insurance coverage’ has the meaning  
16 provided in section 733(b)(1), except that such term  
17 shall not include excepted benefits (as defined in sec-  
18 tion 733(c)).

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

22 “(7) INDIVIDUAL MARKET.—

23 “(A) IN GENERAL.—The term ‘individual  
24 market’ means the market for health insurance

1 coverage offered to individuals other than in  
 2 connection with a group health plan.

3 “(B) TREATMENT OF VERY SMALL  
 4 GROUPS.—

5 “(i) IN GENERAL.—Subject to clause  
 6 (ii), the term ‘individual market’ includes  
 7 coverage offered in connection with a  
 8 group health plan that has fewer than 2  
 9 participants as current employees or par-  
 10 ticipants described in section 732(d)(3) on  
 11 the first day of the plan year.

12 “(ii) STATE EXCEPTION.—Clause (i)  
 13 shall not apply in the case of health insur-  
 14 ance coverage offered in a State if such  
 15 State regulates the coverage described in  
 16 such clause in the same manner and to the  
 17 same extent as coverage in the small group  
 18 market (as defined in section 2791(e)(5) of  
 19 the Public Health Service Act) is regulated  
 20 by such State.

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

23 “(9) PARTICIPATING EMPLOYER.—The term  
 24 ‘participating employer’ means, in connection with a  
 25 small business health plan, any employer, if any in-

1       dividual who is an employee of such employer, a  
2       partner in such employer, or a self-employed indi-  
3       vidual who is such employer (or any dependent, as  
4       defined under the terms of the plan, of such indi-  
5       vidual) is or was covered under such plan in connec-  
6       tion with the status of such individual as such an  
7       employee, partner, or self-employed individual in re-  
8       lation to the plan.

9               “(10) SECTION 7705 PROFESSIONAL EMPLOYER  
10       ORGANIZATION.—The term ‘section 7705 profes-  
11       sional employer organization’ means an organization  
12       providing services for a customer pursuant to a con-  
13       tract meeting the conditions of subparagraphs (A)  
14       through (E) of subsection (e)(2) of section 7705 of  
15       the Internal Revenue Code of 1986, without regard  
16       to subsection (a) of such section. Such term includes  
17       an entity that is part of a controlled group or is  
18       under common control with respect to a section  
19       7705 professional employer organization (within the  
20       meaning of section 414 of such Code). Solely for  
21       purposes of this part, references in this part to  
22       ‘member’ shall include such a customer of a section  
23       7705 professional employer organization except as  
24       applied to references to ‘member’ or ‘members’ in



1 paragraph (1) of this subsection (relating to the def-  
2 inition of affiliated member).

3 “(11) SMALL EMPLOYER.—The term ‘small em-  
4 ployer’, in connection with a group health plan with  
5 respect to a plan year, has the meaning given the  
6 term ‘small business concern’ in the Small Business  
7 Act.

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

14 “(1) in the case of a partnership, the term ‘em-  
15 ployer’ (as defined in section 3(5)) includes the part-  
16 nership in relation to the partners, and the term  
17 ‘employee’ (as defined in section 3(6)) includes any  
18 partner in relation to the partnership; and

19 “(2) in the case of a self-employed individual,  
20 the term ‘employer’ (as defined in section 3(5)) and  
21 the term ‘employee’ (as defined in section 3(6)) shall  
22 include such individual.

23 “(c) RENEWAL.—Notwithstanding any provision of  
24 law to the contrary, a participating employer in a small  
25 business health plan shall not be deemed to be a plan

1 sponsor in applying requirements relating to coverage re-  
 2 newal.”.

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

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

8 “(E) Subparagraphs (A) through (D) do not apply  
 9 with respect to any State law in the case of a small busi-  
 10 ness health plan which is certified under part 8.”.

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

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

16 (B) in subsection (b)(5)—

17 (i) in subparagraph (A), by striking  
 18 “subsection (a)” and inserting “subsection  
 19 (a) of this section and subsections  
 20 (a)(2)(B) and (b) of section 804”; and

21 (ii) in subparagraph (B), by striking  
 22 “subsection (a)” and inserting “subsection  
 23 (a) of this section or subsection (a)(2)(B)  
 24 or (b) of section 805”;

1 (C) by redesignating subsection (d) as sub-  
 2 section (e); and

3 (D) by inserting after subsection (c) the  
 4 following new subsection:

5 “(d) Except as provided in subsection (b)(4), the pro-  
 6 visions of this title shall supersede any and all State laws  
 7 insofar as they may now or hereafter preclude a health  
 8 insurance issuer from offering health insurance coverage  
 9 to a small business health plan sponsor that is certified  
 10 under part 8.”.

11 (f) PLAN SPONSOR.—Section 3(16)(B) of such Act  
 12 (29 U.S.C. 102(16)(B)) is amended by adding at the end  
 13 the following new sentence: “Such term also includes a  
 14 person serving as the sponsor of a small business health  
 15 plan under part 8.”.

16 (g) SAVINGS CLAUSE.—Section 731(c) of such Act  
 17 is amended by inserting “or part 8” after “this part”.

18 (h) CLERICAL AMENDMENT.—The table of contents  
 19 in section 1 of the Employee Retirement Income Security  
 20 Act of 1974 is amended by inserting after the item relat-  
 21 ing to section 734 the following new items:

“PART 8—RULES GOVERNING SMALL BUSINESS HEALTH PLANS

“801. Small business health plans.

“802. Certification of small business health plans.

“803. Requirements relating to sponsors and boards of trustees.

“804. Participation and coverage requirements.

“805. Other requirements relating to plan documents, contribution rates, and  
 benefit options.

“806. Requirements for application and related requirements.

“807. Notice requirements for voluntary termination.

“808. Implementation and application authority by Secretary.

“809. Definitions and rules of construction.”.

1 **SEC. 3. COOPERATION BETWEEN FEDERAL AND STATE AU-**  
 2 **THORITIES.**

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

6 “(d) CONSULTATION WITH STATES WITH RESPECT  
 7 TO SMALL BUSINESS HEALTH PLANS.—

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

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

15 “(B) the Secretary’s authority to certify  
 16 small business health plans under part 8 in ac-  
 17 cordance with regulations of the Secretary ap-  
 18 plicable to certification under part 8.

19 “(2) RECOGNITION OF DOMICILE STATE.—In  
 20 carrying out paragraph (1), the Secretary shall en-  
 21 sure that only one State will be recognized, with re-  
 22 spect to any particular small business health plan,  
 23 as the State with which consultation is required. In

1 carrying out this paragraph such State shall be the  
2 domicile State, as defined in section 805(b).”.

3 **SEC. 4. EFFECTIVE DATE AND TRANSITIONAL AND OTHER**  
4 **RULES.**

5 (a) **EFFECTIVE DATE.**—The amendments made by  
6 this Act shall take effect 1 year after the date of the enact-  
7 ment of this Act. The Secretary of Labor shall first issue  
8 all regulations necessary to carry out the amendments  
9 made by this Act within 6 months after the date of the  
10 enactment of this Act.

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