

103^D CONGRESS
1ST SESSION

H. R. 1526

To limit discrimination in health insurance coverage based on health status or past claims experience and to reform the provision of health coverage to small employer groups.

IN THE HOUSE OF REPRESENTATIVES

Mr. DURBIN (for himself, Mr. REYNOLDS, Mr. SMITH of New Jersey, Mrs. BYRNE, Mr. HASTINGS, and Mr. PASTOR) introduced the following bill; which was referred jointly to the Committees on Ways and Means, and Energy and Commerce

A BILL

To limit discrimination in health insurance coverage based on health status or past claims experience and to reform the provision of health coverage to small employer groups.

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 “Health Insurance Fair-
5 ness Act of 1993”.

1 **SEC. 2. HEALTH PLAN STANDARDS.**

2 The Social Security Act is amended by adding at the
3 end the following new title:

4 “TITLE XXI—HEALTH PLAN STANDARDS

5 “PART A—INDIVIDUAL HEALTH PLANS

6 **“SEC. 2101. PROHIBITION OF DISCRIMINATION BASED ON**
7 **HEALTH STATUS FOR COVERAGE, BENEFITS,**
8 **AND PREMIUMS.**

9 “(a) IN GENERAL.—Except as provided under sub-
10 section (b), an individual health plan, and any person
11 which issues such a plan, may not deny, limit, or condition
12 the coverage under (or benefits of) the plan with respect
13 to health services, or vary the premiums charged for such
14 coverage, based on the health status, claims experience,
15 receipt of health care, medical history, or lack of evidence
16 of insurability, of an individual.

17 “(b) EXCEPTION FOR CERTAIN PRE-EXISTING CON-
18 DITIONS.—

19 “(1) IN GENERAL.—Subject to the succeeding
20 provisions of this subsection, individual health plans
21 may exclude coverage of services related to treat-
22 ment of a preexisting condition, but the period of
23 such exclusion may not exceed 24 months. The ex-
24 clusion of coverage shall not apply to services fur-
25 nished to newborns who are covered at the time of
26 birth.

1 “(2) CREDITING OF PREVIOUS COVERAGE.—

2 “(A) IN GENERAL.—An individual health
3 plan shall provide that if an individual under
4 such plan is in a period of continuous coverage
5 (as defined in subparagraph (B)(i)) with re-
6 spect to particular services as of the date of ap-
7 plication for coverage under such plan (deter-
8 mined without regard to any waiting period
9 under such plan), any period of exclusion of
10 coverage with respect to a preexisting condition
11 for such services or type of services shall be re-
12 duced by 1 month for each month in the period
13 of continuous coverage.

14 “(B) DEFINITIONS.—As used in this sub-
15 section:

16 “(i) PERIOD OF CONTINUOUS COV-
17 ERAGE.—The term ‘period of continuous
18 coverage’ means, with respect to particular
19 services, the period beginning on the date
20 an individual is enrolled under an individ-
21 ual or group health plan or under title
22 XVIII or XIX of the Social Security Act
23 which provides substantially the same or
24 similar benefits with respect to such serv-
25 ices and ends on the date the individual is

1 not so enrolled for a continuous period of
2 more than 3 months.

3 “(ii) PREEXISTING CONDITION.—The
4 term ‘preexisting condition’ means a condi-
5 tion which has been diagnosed or treated
6 during the 1-year period ending on the day
7 before the first date of such coverage.

8 “(3) EXCEPTION.—

9 “(A) IN GENERAL.—Subsection (a) shall
10 not affect an individual health plan’s variation
11 of premiums based only on the age, sex, or geo-
12 graphic area of residence of an individual.

13 “(B) WAITING PERIOD.—An individual
14 health plan may offer to an individual to waive
15 an exclusion of coverage with respect to a pre-
16 existing condition for which an exclusion could
17 otherwise be applied under this subsection in
18 exchange for an increase in the premium during
19 the period in which the exclusion could other-
20 wise be applied. If the individual rejects this
21 offer, the limitations on premiums and exclu-
22 sions that would apply in the absence of such
23 offer shall continue to apply.

1 “PART B—GROUP HEALTH PLANS
2 “Subpart 1—Prohibition of Discrimination Based on
3 Health Status

4 **“SEC. 2111. PROHIBITION OF DISCRIMINATION BASED ON**
5 **HEALTH STATUS FOR COVERAGE, BENEFITS,**
6 **AND PREMIUMS.**

7 “(a) IN GENERAL.—Except as provided under sub-
8 section (b), a group health plan, and any person which
9 issues such a plan, may not deny, limit, or condition the
10 coverage under (or benefits of) the plan with respect to
11 health services, or vary the premiums charged for such
12 coverage, based on the health status, claims experience,
13 receipt of health care, medical history, or lack of evidence
14 of insurability, of an individual.

15 “(b) EXCEPTION FOR CERTAIN PRE-EXISTING CON-
16 DITIONS.—

17 “(1) IN GENERAL.—Subject to the succeeding
18 provisions of this subsection, group health plans may
19 exclude coverage of services related to treatment of
20 a preexisting condition, but the period of such exclu-
21 sion may not exceed 6 months. The exclusion of cov-
22 erage shall not apply to services furnished to
23 newborns who are covered at the time of birth.

24 “(2) CREDITING OF PREVIOUS COVERAGE.—

1 “(A) IN GENERAL.—A group health plan
2 shall provide that if an individual under such
3 plan is in a period of continuous coverage (as
4 defined in subparagraph (B)(i)) with respect to
5 particular services as of the date of coverage
6 under such plan (determined without regard to
7 any waiting period under such plan), any period
8 of exclusion of coverage with respect to a pre-
9 existing condition for such services or type of
10 services shall be reduced by 1 month for each
11 month in the period of continuous coverage.

12 “(B) DEFINITIONS.—As used in this sub-
13 section:

14 “(i) PERIOD OF CONTINUOUS COV-
15 ERAGE.—The term ‘period of continuous
16 coverage’ means, with respect to particular
17 services, the period beginning on the date
18 an individual is enrolled under an individ-
19 ual or group health plan or title XVIII or
20 XIX of the Social Security Act which pro-
21 vides substantially the same or similar ben-
22 efits with respect to such services and ends
23 on the date the individual is not so en-
24 rolled for a continuous period of more than
25 3 months.

1 “(ii) **PREEXISTING CONDITION.**—The
2 term ‘preexisting condition’ means a condi-
3 tion which has been diagnosed or treated
4 during the 3-month period ending on the
5 day before the first date of such coverage.

6 **“SEC. 2112. PROHIBITION OF RATE VARIATION IN GROUP**
7 **HEALTH PLANS BASED ON HEALTH STATUS.**

8 “A person that issues a group health plan with re-
9 spect to a group may not vary premiums charged for cov-
10 erage with respect to health services based on the health
11 status, claims experience, receipt of health care, medical
12 history, or lack of evidence of insurability, of a member
13 of the group.

14 “Subpart 2—Requirements for Health Plans Issued to
15 Small Employers

16 **“SEC. 2121. GENERAL REQUIREMENTS FOR HEALTH PLANS**
17 **ISSUED TO SMALL EMPLOYERS.**

18 “(a) **REGISTRATION.**—Each insurer (as defined in
19 section 2133(b)(1)) shall register with the Secretary and
20 with any applicable regulatory authority for each State in
21 which it issues or offers a health plan to small employers.

22 “(b) **GUARANTEED ELIGIBILITY.**—

23 “(1) **IN GENERAL.**—No insurer may exclude
24 from coverage under a health plan any eligible em-
25 ployee, the spouse or any dependent child of the eli-

1 gible employee to whom coverage is made available
2 by a small employer.

3 “(2) WAITING PERIODS.—Paragraph (1) shall
4 not apply to any period an eligible employee is ex-
5 cluded from coverage under the health plan solely by
6 reason of a requirement applicable to all employees
7 that a minimum period of service with the small em-
8 ployer is required before the employee is eligible for
9 such coverage.

10 “(c) GUARANTEED ISSUE.—

11 “(1) IN GENERAL.—

12 “(A) IN GENERAL.—Subject to the suc-
13 ceeding provisions of this subsection, an insurer
14 that offers a health plan to small employers in
15 a geographic area in a community must offer
16 the same plan to any other small employer lo-
17 cated in the area. Such requirement shall apply
18 on a continuous, year-round basis.

19 “(B) STATE ALTERNATIVE.—Subpara-
20 graph (A) shall not apply to a community in a
21 State if the Secretary certifies that the State
22 has implemented an alternative approach for
23 assuring the availability for all small employers
24 in the community of health insurance that pro-
25 vides the same benefits at the same premium as

1 would have applied if subparagraph (A) had
2 continued to apply.

3 “(2) TREATMENT OF HEALTH MAINTENANCE
4 ORGANIZATIONS.—

5 “(A) GEOGRAPHIC LIMITATIONS.—A
6 health maintenance organization may deny en-
7 rollment to employees (and family members) of
8 a small employer if the employees are located
9 outside the service area of the organization, but
10 only if such denial is applied uniformly without
11 regard to health status or insurability.

12 “(B) SIZE LIMITS.—A health maintenance
13 organization may apply to the Secretary to
14 cease enrolling new small employer groups in its
15 health plan (or in a geographic area served by
16 the plan) if—

17 “(i) it ceases to enroll any new em-
18 ployer groups, and

19 “(ii) it can demonstrate that its finan-
20 cial or administrative capacity to serve pre-
21 viously enrolled groups and individuals
22 (and additional individuals who will be ex-
23 pected to enroll because of affiliation with
24 such previously enrolled groups) will be im-

1 paired if it is required to enroll new em-
2 ployer groups.

3 “(3) GROUNDS FOR REFUSAL TO RENEW.—

4 “(A) IN GENERAL.—An insurer may refuse
5 to renew, or may terminate, a health plan
6 under this subpart only for—

7 “(i) nonpayment of premiums,

8 “(ii) fraud or misrepresentation,

9 “(iii) failure to maintain minimum
10 participation rates (consistent with sub-
11 paragraph (B)), or

12 “(iv) in the case of a managed care
13 plan, the employer leaves the geographic
14 service area of the plan.

15 “(B) MINIMUM PARTICIPATION RATES.—

16 An insurer may require, with respect to a
17 health plan issued to a small employer, that a
18 minimum percentage of eligible employees who
19 do not otherwise have health insurance are en-
20 rolled in such plan, so long as such percentage
21 is enforced uniformly for all plans offered to
22 employers of comparable size.

23 “(d) MINIMUM PLAN PERIOD.—An insurer may not
24 offer to, or issue with respect to, a small employer a health
25 plan with a term of less than 12 months.

1 “(e) NOTICES AND RENEWAL PERIODS.—

2 “(1) NOTICE ON EXPIRATION.—An insurer pro-
3 viding health plans to small employers shall provide
4 for notice, at least 60 days before the date of expira-
5 tion of the health plan, of the terms for renewal of
6 the plan. Except with respect to rates and adminis-
7 trative changes, the terms of renewal (including ben-
8 efits) shall be the same as the terms of issuance.

9 “(2) PERIOD OF RENEWAL.—The period of re-
10 newal of each small employer health plan shall be for
11 a period of not less than 12 months.

12 “(f) GUARANTEED RENEWABILITY.—

13 “(1) IN GENERAL.—

14 “(A) GENERAL RULE.—Subject to the suc-
15 ceeding provisions of this subsection, an insurer
16 shall ensure that a health plan issued to a small
17 employer be renewed, at the option of the small
18 employer, unless the plan is terminated for a
19 reason specified in subparagraph (B) or in sub-
20 section (c)(3)(A).

21 “(B) TERMINATION OF SMALL EMPLOYER
22 BUSINESS.—An insurer need not renew a health
23 plan with respect to a small employer if the in-
24 surer—

1 “(i) elects not to renew all of its
2 health plans issued to small employers in a
3 State; and

4 “(ii) provides notice to the Secretary,
5 any applicable regulatory authority in the
6 State, and to each small employer covered
7 under the plan of such termination at least
8 180 days before the date of expiration of
9 the plan.

10 In the case of such a termination, the insurer
11 may not provide for issuance of any health plan
12 to a small employer in the State during the 5-
13 year period beginning on the date of termi-
14 nation of the last plan not so renewed.

15 **“SEC. 2122. REQUIREMENTS RELATED TO RESTRICTIONS**
16 **ON RATING PRACTICES.**

17 “(a) LIMIT ON VARIATION OF REFERENCE PREMIUM
18 RATES BETWEEN BLOCKS OF BUSINESS.—

19 “(1) IN GENERAL.—The index rate for any
20 block of business of an insurer may not exceed the
21 index rate for any other block of business by more
22 than 20 percent.

23 “(2) EXCEPTIONS.—Paragraph (1) shall not
24 apply to a block of business if—

1 “(A) the block is one for which the insurer
2 does not reject, and never has rejected, small
3 employers included within the definition of em-
4 ployers eligible for the block of business or oth-
5 erwise eligible employees and dependents who
6 enroll on a timely basis, based upon their claims
7 experience, health status, industry, or occupa-
8 tion,

9 “(B) the insurer does not transfer, and
10 never has transferred, a health plan involuntar-
11 ily into or out of the block of business, and

12 “(C) the block of business is currently
13 available for purchase at the time an exception
14 to paragraph (1) is sought by the insurer.

15 “(b) USE OF COMMUNITY RATING IN PREMIUM
16 RATES WITHIN A BLOCK OF BUSINESS.—

17 “(1) LIMITING VARIATIONS ON PREMIUM TO
18 AGE AND SEX.—Subject to paragraph (5), the ref-
19 erence premium rate charged for a health plan of-
20 fered to small employers within a community (as de-
21 fined under the plan consistent with paragraph (3))
22 with similar benefits for a type of family enrollment
23 (described in paragraph (4)) shall be the same for
24 all small employers in the same block of business in
25 the community.

1 “(2) AGE AND SEX ADJUSTMENT TO COMMU-
2 NITY-RATING.—

3 “(A) IN GENERAL.—Subject to subpara-
4 graph (B), a health plan offered to a small em-
5 ployer may provide for an adjustment to the
6 reference premium rate based on age and
7 gender of covered individuals. Any such adjust-
8 ment shall be applied consistently to all small
9 employers.

10 “(B) LIMITATION ON ADJUSTMENT.—The
11 adjustment under subparagraph (A) may not
12 result, with respect to health plans with similar
13 benefits in a community in a block of business,
14 in premium rates that vary from the index rate
15 by more than 25 percent of the index rate.

16 “(3) SPECIFICATION OF COMMUNITY.—For pur-
17 poses of paragraph (1), no insurer may use a geo-
18 graphic area that is smaller than a metropolitan sta-
19 tistical area as a community.

20 “(4) TYPES OF FAMILY ENROLLMENT.—Each
21 health plan offered to a small employer shall permit
22 enrollment of (and shall compute premiums sepa-
23 rately for) individuals based on each of the following
24 beneficiary classes:

25 “(A) 1 adult.

1 “(B) A married couple without children.

2 “(C) A married couple with 1 or more chil-
3 dren, or 1 adult with 1 or more children.

4 “(5) ADDITIONAL VARIATIONS.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B), a health plan offered to a small em-
7 ployer may provide for an adjustment to pre-
8 mium rates based on features of the plan that
9 involve the use of managed care, the pursuit of
10 healthy lifestyles, and other factors within the
11 control of plan beneficiaries that cut costs by
12 reducing the need for health care services and
13 not by reducing the benefits associated with
14 such services. Any such adjustment shall be ap-
15 plied consistently to all small employers.

16 “(B) LIMITATION ON ADJUSTMENT.—The
17 adjustment under subparagraph (A) may not
18 result, with respect to health plans with similar
19 benefits in a community in a block of business
20 with respect to an age and gender class of cov-
21 ered individuals, in premium rates that vary
22 from the rate described in subparagraph (C) by
23 more than 25 percent of such rate.

24 “(C) RATE.—For purposes of subpara-
25 graph (B), the rate described in this paragraph,

1 for an age and gender class of covered individ-
2 uals within a block of business for each rating
3 period in a community, is 133 $\frac{1}{3}$ percent of the
4 lowest premium rate charged or which could
5 have been charged for individuals in such class
6 by the insurer under a rating system for that
7 block of business to small employers in the com-
8 munity for health plans with the same or simi-
9 lar coverage.

10 “(c) LIMIT ON TRANSFER OF EMPLOYERS AMONG
11 BLOCKS OF BUSINESS.—

12 “(1) An insurer may not transfer a small em-
13 ployer from one block of business to another without
14 the consent of the employer.

15 “(2) An insurer may not offer to transfer a
16 small employer from one block of business to an-
17 other unless—

18 “(A) the offer is made without regard to
19 age, sex, geography, claims experience, health
20 status, industry, occupation or the date on
21 which the policy was issued, and

22 “(B) the same offer is made to all other
23 small employers in the same block of business.

24 “(d) LIMITS ON VARIATION IN PREMIUM IN-
25 CREASES.—The percentage increase in the premium rate

1 charged to a small employer for a new rating period (de-
2 termined on an annual basis) may not exceed the sum of
3 the percentage change in the base premium rate plus 5
4 percentage points.

5 “(e) DEFINITIONS.—In this section:

6 “(1) BLOCK OF BUSINESS.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), the term ‘block of business’
9 means, with respect to an insurer, all of the
10 small employers with a health plan issued by
11 the insurer (as shown on the records of the in-
12 surer).

13 “(B) DISTINCT GROUPS.—A distinct group
14 of small employers with health plans issued by
15 an insurer may be treated as a block of busi-
16 ness by such insurer if all of the plans in such
17 group—

18 “(i) are marketed primarily by direct
19 mail or are not marketed primarily by di-
20 rect mail,

21 “(ii) have been acquired from another
22 insurer as a distinct group, or

23 “(iii) are provided through an associa-
24 tion with membership of not less than 25
25 small employers that has been formed for

1 purposes other than obtaining health in-
2 surance.

3 “(2) INDEX RATE.—The term ‘index rate’
4 means, with respect to a block of business, 133⅓
5 percent of the reference premium rate for the block
6 of business.

7 “(3) REFERENCE PREMIUM RATE.—The term
8 ‘reference premium rate’ means, for each block of
9 business for each rating period in a community, the
10 lowest premium rate charged or which could have
11 been charged, for the most favorable actuarial class,
12 by the insurer under a rating system for that block
13 of business to small employers in the community for
14 health plans with the same or similar coverage. Such
15 a rate shall be determined without regard to an ad-
16 justment under subsection (b)(5).

17 “(f) FULL DISCLOSURE OF RATING PRACTICES.—

18 “(1) IN GENERAL.—At the time an insurer of-
19 fers a health plan to a small employer, the insurer
20 shall fully disclose to the employer all of the follow-
21 ing:

22 “(A) Rating practices for small employer
23 health plans, including rating practices for dif-
24 ferent populations and benefit designs.

1 “(B) The extent to which premium rates
2 for the small employer are established or ad-
3 justed based upon the actual or expected vari-
4 ation in claims costs or health condition of the
5 employees and of such small employer and their
6 dependents.

7 “(C) The provisions concerning the insur-
8 er’s right to change premium rates, the extent
9 to which premiums can be modified, and the
10 factors which affect changes in premium rates.

11 “(2) NOTICE ON EXPIRATION.—An insurer pro-
12 viding health plans to small employers shall provide
13 for notice, at least 60 days before the date of expira-
14 tion of the health plan, of the terms for renewal of
15 the plan.

16 “(g) ACTUARIAL CERTIFICATION.—Each insurer
17 shall file annually with the Secretary and any applicable
18 regulatory authority a written statement by a member of
19 the American Academy of Actuaries (or other individual
20 acceptable to such authority) that, based upon an exam-
21 ination by the individual which includes a review of the
22 appropriate records and of the actuarial assumptions of
23 the insurer and methods used by the insurer in establish-
24 ing premium rates for small employer health plans—

1 uals not enrolled as of the date of the determination
2 and the plan may not be continued for plan years
3 beginning after the date of such determination until
4 the Secretary determines that such plan is in compli-
5 ance with such standards.

6 “(b) CERTIFIED BY STATE APPROVED PROGRAMS.—

7 “(1) IN GENERAL.—If the Secretary determines
8 that a State has in effect an effective regulatory pro-
9 gram for the application of the standards established
10 under section 2132 to health plans, the Secretary
11 may approve such program for purposes of certifi-
12 cation of health plans under this part.

13 “(2) ANNUAL REPORTS.—As a condition for the
14 continued approval of such a regulatory program,
15 the State shall report to the Secretary annually such
16 information as the Secretary may require with re-
17 spect to the performance of the program. Such infor-
18 mation shall include the health plans certified under
19 the program, the compliance of such plans with the
20 standards established under section 2132, and en-
21 forcement actions taken to ensure such compliance.

22 “(3) PERIODIC SECRETARIAL REVIEW OF STATE
23 REGULATORY PROGRAMS.—The Secretary annually
24 shall review State regulatory programs approved
25 under paragraph (1) to determine if they continue to

1 meet and enforce the standards for approval. If the
2 Secretary initially determines that a State regulatory
3 program no longer meets such standards, the Sec-
4 retary shall provide the State an opportunity to
5 adopt such a plan of correction that would bring
6 such program into compliance with such standards.
7 If the Secretary makes a final determination that
8 the State regulatory program fails to meet and en-
9 force such standards after such an opportunity, the
10 Secretary shall disapprove such program and
11 reassume responsibility for certification of all health
12 plans in that State.

13 “(4) GAO AUDITS.—The Comptroller General
14 shall conduct periodic reviews on a sample of State
15 regulatory programs approved under paragraph (1)
16 to determine their compliance with the requirements
17 of such paragraph. The Comptroller General shall
18 report to the Secretary and Congress on the findings
19 of such reviews.

20 “(c) EXCISE TAX SANCTIONS.—For application of
21 excise tax in the case of a nonconforming plan, see section
22 5000A of the Internal Revenue Code of 1986.

23 “(d) EFFECTIVE DATE.—The effective date specified
24 in this subsection is—

1 “(1) January 1, 1994, with respect to the
2 standards established to carry out section 2111,

3 “(2) January 1, 1995, with respect to the
4 standards established to carry out part A, section
5 2112, and section 2121, and

6 “(3) January 1, 1996, with respect to the
7 standards established to carry out section 2122, ap-
8 plicable to premiums for months beginning with
9 January 1996.

10 **“SEC. 2132. ESTABLISHMENT OF STANDARDS.**

11 “(a) ESTABLISHMENT OF STANDARDS.—The Sec-
12 retary shall develop, establish, and publish, by not later
13 than 3 months before the respective effective date speci-
14 fied under section 2131(d), specific standards to imple-
15 ment the requirements of parts A and B and to be applied
16 under section 5000A of the Internal Revenue Code of
17 1986.

18 “(b) MORE STRINGENT STATE STANDARDS PER-
19 MITTED.—A State may implement standards that are
20 more stringent than the standards established under this
21 section to meet the requirements under parts A and B.

22 “(c) TELEPHONE INFORMATION SYSTEM.—The Sec-
23 retary shall provide for the establishment of a toll-free
24 telephone information and complaint system which pro-
25 vides for—

1 “(1) a system for the receipt and disposition of
2 consumer complaints or inquiries regarding compli-
3 ance of health plans with the standards, and

4 “(2) information to small employers about in-
5 surers in the area of the employers that offer health
6 plans that meet the standards.

7 **“SEC. 2133. DEFINITIONS.**

8 “(a) HEALTH PLAN; GROUP HEALTH PLAN; INDI-
9 VIDUAL HEALTH PLAN.—As used in this title:

10 “(1) HEALTH PLAN.—The term ‘health plan’
11 means any hospital or medical service policy or cer-
12 tificate, hospital or medical service plan contract,
13 health maintenance organization group contract, or
14 a multiple employer welfare arrangement, but—

15 “(A) does not include any of the following
16 offered by an insurer—

17 “(i) accident only, vision only, dental
18 only, disability only, or long-term care only
19 insurance,

20 “(ii) coverage issued as a supplement
21 to liability insurance,

22 “(iii) workmen’s compensation or
23 similar insurance,

24 “(iv) automobile medical-payment in-
25 surance, or

1 “(v) a medicare supplemental policy;
2 and

3 “(B) for purposes of subpart 2 of part B
4 only, does not include a qualified health mainte-
5 nance organization (as defined in section
6 1310(d) of the Public Health Service Act).

7 “(2) GROUP HEALTH PLAN.—The term ‘group
8 health plan’ has the meaning given such term by
9 section 5000(b)(1) of the Internal Revenue Code of
10 1986.

11 “(3) INDIVIDUAL HEALTH PLAN.—The term
12 ‘individual health plan’ means a health plan which is
13 not a group health plan.

14 “(b) INSURER AND HEALTH MAINTENANCE ORGANI-
15 ZATION.—As used in this title:

16 “(1) INSURER.—The term ‘insurer’ means any
17 person that offers to provide coverage under a health
18 plan to a small employer.

19 “(2) HEALTH MAINTENANCE ORGANIZATION.—
20 The term ‘health maintenance organization’ has the
21 meaning given the term ‘eligible organization’ in sec-
22 tion 1876(b).

23 “(c) GENERAL DEFINITIONS.—As used in this title:

24 “(1) APPLICABLE REGULATORY AUTHORITY.—
25 The term ‘applicable regulatory authority’ means,

1 with respect to a health plan in a State with a regu-
2 latory program approved under section 2131(b), the
3 State commissioner or superintendent of insurance
4 or other State authority responsible for regulation of
5 health insurance.

6 “(2) SMALL EMPLOYER.—The term ‘small em-
7 ployer’ means, with respect to a calendar year, an
8 employer that normally employs more than 1 but
9 less than 51 eligible employees on a typical business
10 day. For the purposes of this paragraph, the term
11 ‘employee’ includes a self-employed individual. Sec-
12 tion 5000A(b)(3) of the Internal Revenue Code of
13 1986 shall apply for purposes of the preceding
14 sentence.

15 “(3) ELIGIBLE EMPLOYEE.—The term ‘eligible
16 employee’ means, with respect to an employer, an
17 employee who normally performs on a monthly basis
18 at least 17½ hours of service per week for that em-
19 ployer.”.

20 **SEC. 3. EXCISE TAX ON PREMIUMS RECEIVED ON HEALTH**
21 **PLANS WHICH DO NOT MEET CERTAIN RE-**
22 **QUIREMENTS.**

23 (a) IN GENERAL.—Chapter 47 of the Internal Reve-
24 nue Code of 1986 (relating to taxes on group health plans)

1 is amended by adding at the end thereof the following new
2 section:

3 **“SEC. 5000A. FAILURE TO SATISFY CERTAIN STANDARDS**
4 **FOR HEALTH PLANS.**

5 “(a) GENERAL RULE.—

6 “(1) TITLE XXI STANDARDS.—

7 “(A) TAX.—In the case of any health plan,
8 there is hereby imposed a tax on the failure of
9 the plan (or the person issuing the plan) to
10 meet at any time during any taxable year the
11 applicable standards established under section
12 2131 of title XXI of the Social Security Act.

13 “(B) DETERMINATION OF VIOLATIONS.—
14 The Secretary of Health and Human Services
15 shall determine whether a plan or person meets
16 the standards requirements of such title.

17 “(2) SMALL EMPLOYER SELF-INSURING FOR
18 HEALTH BENEFITS.—In the case of a small em-
19 ployer, there is hereby imposed a tax on expendi-
20 tures for a health plan that is not an insured health
21 plan.

22 “(b) AMOUNT OF TAX.—

23 “(1) IN GENERAL.—

24 “(A) TITLE XXI STANDARDS.—The
25 amount of tax imposed by subsection (a)(1) by

1 reason of 1 or more failures during a taxable
2 year shall be equal to 25 percent of the gross
3 premiums received during such taxable year
4 with respect to all health plans issued by the
5 person on whom such tax is imposed (or in the
6 case of a violation of a standard established
7 with respect to a requirement of subpart 2 of
8 part B of title XXI of the Social Security Act
9 issued by the person to small employers).

10 “(B) SMALL EMPLOYER SELF-INSUR-
11 ANCE.—The amount of tax imposed by sub-
12 section (a)(2) by reason of 1 or more failures
13 during a taxable year shall be equal to 25 per-
14 cent of the expenditures under any uninsured
15 health plan during such taxable year.

16 “(2) GROSS PREMIUMS.—For purposes of para-
17 graph (1), gross premiums shall include any consid-
18 eration received with respect to any health plan.

19 “(3) CONTROLLED GROUPS.—For purposes of
20 paragraph (1)—

21 “(A) CONTROLLED GROUP OF CORPORA-
22 TIONS.—All corporations which are members of
23 the same controlled group of corporations shall
24 be treated as 1 person. For purposes of the pre-
25 ceding sentence, the term ‘controlled group of

1 corporations' has the meaning given to such
2 term by section 1563(a), except that—

3 “(i) ‘more than 50 percent’ shall be
4 substituted for ‘at least 80 percent’ each
5 place it appears in section 1563(a)(1), and

6 “(ii) the determination shall be made
7 without regard to subsections (a)(4) and
8 (e)(3)(C) of section 1563.

9 “(B) PARTNERSHIPS, PROPRIETORSHIPS,
10 ETC., WHICH ARE UNDER COMMON CONTROL.—
11 Under regulations prescribed by the Secretary,
12 all trades or business (whether or not incor-
13 porated) which are under common control shall
14 be treated as 1 person. The regulations pre-
15 scribed under this subparagraph shall be based
16 on principles similar to the principles which
17 apply in the case of subparagraph (A).

18 “(c) LIMITATION ON TAX.—

19 “(1) TAX NOT TO APPLY WHERE FAILURE NOT
20 DISCOVERED EXERCISING REASONABLE DILI-
21 GENCE.—No tax shall be imposed by subsection (a)
22 with respect to any failure for which it is established
23 to the satisfaction of the Secretary that the person
24 on whom the tax is imposed did not know, and exer-

1 cising reasonable diligence would not have known,
2 that such failure existed.

3 “(2) TAX NOT TO APPLY WHERE FAILURES
4 CORRECTED WITHIN 30 DAYS.—No tax shall be im-
5 posed by subsection (a) with respect to any failure
6 if—

7 “(A) such failure was due to reasonable
8 cause and not to willful neglect, and

9 “(B) such failure is corrected during the
10 30-day period beginning on the 1st date any of
11 the persons on whom the tax is imposed knew,
12 or exercising reasonable diligence would have
13 known, that such failure existed.

14 “(3) WAIVER BY SECRETARY.—In the case of a
15 failure which is due to reasonable cause and not to
16 willful neglect, the Secretary may waive part or all
17 of the tax imposed by subsection (a) to the extent
18 that the payment of such tax would be excessive rel-
19 ative to the failure involved.

20 “(d) DEFINITIONS.—For purposes of this section:

21 “(1) HEALTH PLAN.—The term ‘health plan’
22 has the meaning given such term in section
23 2133(a)(1) of the Social Security Act.

24 “(2) SMALL EMPLOYER.—The term ‘small em-
25 ployer’ means, with respect to a calendar year, an

1 employer that normally employs more than 1 but
2 less than 51 eligible employees on a typical business
3 day. For the purposes of this paragraph, the term
4 ‘employee’ includes a self-employed individual. Sub-
5 section (b)(3) shall also apply for purposes of the
6 preceding sentence.

7 “(3) ELIGIBLE EMPLOYEE.—The term ‘eligible
8 employee’ means, with respect to an employer, an
9 employee who normally performs on a monthly basis
10 at least 17½ hours of service per week for that em-
11 ployer.”

12 (b) NONDEDUCTIBILITY OF TAX.—Paragraph (6) of
13 section 275(a) of such Code (relating to nondeductibility
14 of certain taxes) is amended by inserting “47,” after
15 “46,”.

16 (c) CLERICAL AMENDMENTS.—The table of sections
17 for such chapter 47 is amended by adding at the end
18 thereof the following new item:

“Sec. 5000A. Failure to satisfy certain standards for health insur-
ance.”.

19 (d) EFFECTIVE DATES.—

20 (1) IN GENERAL.—The amendments made by
21 subsections (a) and (c) shall take effect on the date
22 of the enactment of this Act.

1 (2) NONDEDUCTIBILITY OF TAX.—The amend-
2 ment made by subsection (b) shall apply to taxable
3 years beginning after December 31, 1992.

4 **SEC. 4. GAO STUDY AND REPORT ON RATING REQUIRE-**
5 **MENTS FOR SMALL GROUP HEALTH INSUR-**
6 **ANCE.**

7 The Comptroller General of the United States shall
8 study and report to the Congress by no later than January
9 1, 1996, on the impact of the standards for rating prac-
10 tices for small group health insurance established under
11 section 2122 of the Social Security Act on the availability
12 and price of insurance offered to small employers. The
13 study shall also include the Comptroller General's rec-
14 ommendations for adjusting the rating standards to elimi-
15 nate variation in premiums associated with demographic
16 factors.

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