

107TH CONGRESS
2^D SESSION

H. R. 4170

To amend the Public Health Service Act to provide for cooperative governing of health insurance policies by primary and secondary States and to provide assistance to States to promote the establishment of qualified high risk pools, to provide financial incentives to encourage health coverage for employees and individuals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 2002

Mr. FLETCHER introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Public Health Service Act to provide for cooperative governing of health insurance policies by primary and secondary States and to provide assistance to States to promote the establishment of qualified high risk pools, to provide financial incentives to encourage health coverage for employees and individuals, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “State Cooperative Health Care Access Plan Act of
4 2002”.

5 (b) TABLE OF CONTENTS.—The table of contents of
6 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—COOPERATIVE GOVERNING

Sec. 101. Cooperative governing of health insurance policies.

“TITLE XXVIII—COOPERATIVE GOVERNING OF HEALTH
INSURANCE POLICIES

“Sec. 2801. Primary State.

“Sec. 2802. Secondary States.

“Sec. 2803. Enforcement.

“Sec. 2804. Definitions.

Sec. 102. Development of process to assist cooperative governing of States.

Sec. 103. Findings; severability.

TITLE II—ASSISTANCE TO STATES TO PROMOTE THE
ESTABLISHMENT OF QUALIFIED HIGH RISK POOLS

Sec. 201. Funding States to promote qualified high risk pools.

TITLE III—CLARIFICATION OF DEFINITION OF GROUP HEALTH
PLAN UNDER HIPAA

Sec. 301. Clarification of definition of group health plan under HIPAA.

TITLE IV—TAX PROVISIONS

Sec. 401. Refundable credit for health coverage.

Sec. 402. Deduction for qualified health coverage costs of employees and other
individuals ineligible for health coverage refundable tax credit.

Sec. 403. Carryover of unused benefits from cafeteria plans, flexible spending
arrangements, and health flexible spending accounts.

Sec. 404. Exclusion of premium payments for qualified health coverage under
flexible spending arrangements.

1 **TITLE I—COOPERATIVE**
2 **GOVERNING**

3 **SEC. 101. COOPERATIVE GOVERNING OF HEALTH INSUR-**
4 **ANCE POLICIES.**

5 (a) IN GENERAL.—The Public Health Service Act is
6 amended by adding at the end the following new title:

7 **“TITLE XXVIII—COOPERATIVE**
8 **GOVERNING OF HEALTH IN-**
9 **SURANCE POLICIES**

10 **“SEC. 2801. PRIMARY STATE.**

11 “(a) IN GENERAL.—A health insurance issuer offer-
12 ing a health insurance policy in the individual or group
13 market shall abide by the product, rate, and form filing
14 laws of the primary State.

15 “(b) PRIMARY STATE DEFINED.—For purposes of
16 this title, the term ‘primary State’ means, with respect
17 to a health insurance policy offered by a health insurance
18 issuer, the State which includes the primary location for
19 the issuer’s health insurance business but only if the policy
20 is filed and approved with the applicable primary State
21 authority for that State.

22 **“SEC. 2802. SECONDARY STATES.**

23 “(a) IN GENERAL.—A health insurance issuer offer-
24 ing a health insurance policy that is approved by the appli-
25 cable primary State authority for the primary State—

1 “(1) may offer such policy type in a secondary
2 State;

3 “(2) is bound by the laws of the primary State
4 for such policy; and

5 “(3) must comply with the applicable provisions
6 of the mechanism developed by the National Associa-
7 tion of Insurance Commissioners under section
8 102(a)(2) of the State Cooperative Health Care Ac-
9 cess Plan Act of 2002.

10 “(b) APPLICATION OF LAWS OF PRIMARY STATE TO
11 SECONDARY STATE.—For purposes of subsection (a), the
12 product, rate, and form filing laws of the primary State
13 shall apply to the health insurance policy offered by health
14 insurance issuer in a secondary State. The product, rate,
15 and form filing laws of the secondary State shall not apply
16 to the health insurance issuer for such a policy that com-
17 plies with the product, rate, and form filing laws of the
18 primary State.

19 “(c) DEFINITION.—For purposes of this title, the
20 term ‘secondary State’ means any State that is not the
21 primary State.

22 “(d) CONSUMER FRAUD.—For purposes of enforce-
23 ment of an action consisting of consumer fraud in the case
24 of a policy that complies with the laws of the primary
25 State, the State insurance commission of a secondary

1 State shall treat the policy as if the policy was primarily
2 licensed in the secondary State.

3 **“SEC. 2803. ENFORCEMENT.**

4 “(a) ENFORCEMENT.—In the case of a health insur-
5 ance policy that is approved by the applicable primary
6 State authority for the primary State, a secondary State
7 may enforce the product, rate, and form filing laws of the
8 primary State.

9 “(b) GRANTS TO STATES.—

10 “(1) IN GENERAL.—The Secretary shall award
11 grants to the States for the purpose of carrying out
12 the provisions of this section.

13 “(2) AUTHORIZATION OF APPROPRIATIONS.—

14 There are authorized to be appropriated to the Sec-
15 retary for grants under paragraph (1), \$50,000,000
16 for each of fiscal years 2004 and 2005.

17 **“SEC. 2804. DEFINITIONS.**

18 “(a) IN GENERAL.—For purposes of this title, the
19 terms ‘State’, ‘health insurance coverage’, ‘health insur-
20 ance issuer’, ‘individual market’, and ‘group market’ have
21 the meanings given such terms in section 2791.

22 “(b) APPLICABLE PRIMARY STATE AUTHORITY.—

23 The term ‘applicable primary State authority’ means, with
24 respect to a health insurance issuer in a State, the State
25 insurance commissioner or official or officials designated

1 by the State to enforce requirements of this title for the
2 State involved with respect to such issuer.

3 “(c) HEALTH INSURANCE POLICY.—The term
4 ‘health insurance policy’ means a policy, certificate, or
5 contract that constitutes health insurance coverage.”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 subsection (a) shall take effect 24 months after the date
8 of the enactment of this Act, except that the authorization
9 of appropriations provided in such amendment is effective
10 on the date of the enactment of this Act.

11 **SEC. 102. DEVELOPMENT OF PROCESS TO ASSIST COOPER-**
12 **ATIVE GOVERNING OF STATES.**

13 (a) NAIC DEVELOPMENT OF COOPERATIVE GOV-
14 ERNING PROCESS.—

15 (1) IN GENERAL.—The Secretary of Health and
16 Human Services shall provide the funds necessary to
17 enable the National Association of Insurance Com-
18 missioners to develop a mechanism to assist States
19 in meeting the requirements of title XXVIII of the
20 Public Health Service Act (as added by section
21 101(a)).

22 (2) STATE ENFORCEMENT AND INFORMATION
23 EXCHANGE ASSISTANCE.—Such mechanism shall
24 include—

1 (A) implementation of an enforcement
2 process;

3 (B) information exchange of applicability
4 of the laws of a primary State to a policy of-
5 fered in a secondary State; and

6 (C) establishment of a process for purposes
7 of consumer fraud enforcement, pursuant to
8 section 2802(e) of the Public Health Service
9 Act, for an individual who purchases a health
10 insurance policy in a State other than the State
11 of residence of such individual.

12 (3) INTERIM REPORT.—Not later than 6
13 months after the date of the enactment of this Act,
14 the National Association of Insurance Commis-
15 sioners shall provide an interim report to the States
16 and Congress on such mechanism.

17 (4) FINAL REPORT.—Not later than 18 months
18 after the date of the enactment of this Act, the Na-
19 tional Association of Insurance Commissioners shall
20 provide a final report to the States and Congress on
21 such mechanism to assist the States in meeting the
22 requirements of title XXVIII of the Public Health
23 Service Act.

24 (b) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated \$10,000,000 to carry

1 out the provisions of this section for each of fiscal years
2 2003 and 2004.

3 **SEC. 103. FINDINGS; SEVERABILITY.**

4 (a) FINDINGS RELATING TO EXERCISE OF COM-
5 MERCE CLAUSE AUTHORITY.—Congress finds the fol-
6 lowing in relation to the provisions of this title:

7 (1) Health insurance products are increasingly
8 provided through the Internet and the application of
9 multiple variations in State law impact the ability to
10 provide access to affordable health coverage to indi-
11 viduals and employees seeking employment in inter-
12 state commerce, thereby impeding such commerce.

13 (2) Health insurance coverage is commercial in
14 nature and is in and affects interstate commerce.

15 (3) Congress, however, intends to defer to
16 States, to the maximum extent practicable, in car-
17 rying out such requirements with respect to insurers
18 and health maintenance organizations that are sub-
19 ject to State regulation.

20 (b) SEVERABILITY.—If any provision of this title or
21 the application of such provision to any person or cir-
22 cumstance is held to be unconstitutional, the remainder
23 of this title and the application of the provisions of such
24 to any person or circumstance shall not be affected there-
25 by.

1 **TITLE II—ASSISTANCE TO**
2 **STATES TO PROMOTE THE ES-**
3 **TABLISHMENT OF QUALIFIED**
4 **HIGH RISK POOLS**

5 **SEC. 201. FUNDING STATES TO PROMOTE QUALIFIED HIGH**
6 **RISK POOLS.**

7 (a) IN GENERAL.—Title XXVII of the Public Health
8 Service Act is amended by inserting after section 2744 the
9 following new section:

10 **“SEC. 2745. PROMOTION OF QUALIFIED HIGH RISK POOLS.**

11 “(a) SEED GRANTS TO STATES.—The Secretary shall
12 provide from the funds appropriated under subsection
13 (d)(1) a grant of up to \$1,000,000 to each State that has
14 not created a qualified high risk pool as of the date of
15 the enactment of this section for the State’s costs of cre-
16 ation and initial operation of such a pool.

17 “(b) MATCHING FUNDS FOR OPERATION OF
18 POOLS.—

19 “(1) IN GENERAL.—In the case of a State that
20 has established a qualified high risk pool that re-
21 stricts premiums charged under the pool to no more
22 than 200 percent of the premium for applicable
23 standard risk rates, that has been in operation for
24 at least 1 year, and that offers a choice of two or
25 more coverage options through the pool, from the

1 funds appropriated under subsection (c)(2) and al-
2 lotted to the State under paragraph (2), the Sec-
3 retary shall provide a grant for a percentage of the
4 losses incurred by the State risk pool in connection
5 with the operation of the pool as follows:

6 “(A) 25 percent (multiplied by the poverty
7 adjustment factor) of the losses for risk pools
8 with premiums that exceed 150 percent, but are
9 less than 200 percent, of the premium for appli-
10 cable standard risk rates, but not to exceed an
11 aggregate amount under the grant of 50 cents
12 per capita based upon the State’s population.

13 “(B) 50 percent (multiplied by the poverty
14 adjustment factor under paragraph (3)) of the
15 losses for risk pools with premiums which ex-
16 ceed 125 percent, but are less than 150 per-
17 cent, of the premium for applicable standard
18 risk rates, but not to exceed an aggregate
19 amount under the grant of 50 cents per capita
20 based upon the State’s population.

21 “(C) 60 percent (multiplied by the poverty
22 adjustment factor) of the losses for risk pools
23 with premiums which do not exceed 125 percent
24 of the premium for applicable standard risk
25 rates, but not to exceed an aggregate amount

1 under the grant of \$1 per capita based upon
2 the State's population.

3 “(2) ALLOTMENT.—The amounts appropriated
4 under subsection (d)(1)(B) for a fiscal year shall be
5 made available to the States in accordance with a
6 formula established by the Secretary that is based
7 upon the number of uninsured individuals in the
8 States and only to States that provide for matching
9 funds.

10 “(3) POVERTY ADJUSTMENT FACTOR.—

11 “(A) IN GENERAL.—For purposes of this
12 subsection, subject to subparagraph (B), the
13 ‘poverty adjustment factor’ for a State for a fis-
14 cal year is equal to the ratio of—

15 “(i) the Federal medical assistance
16 percentage for that State for that fiscal
17 year (as determined under section 1905(b)
18 of the Social Security Act), to

19 “(ii) the weighted average of the Fed-
20 eral medical assistance percentages for the
21 50 States and the District of Columbia for
22 that fiscal year.

23 “(B) SPECIAL RULE FOR SMALL
24 STATES.—The poverty adjustment factor shall

1 not be less than 1.0 for a State with a popu-
2 lation of under 2,000,000.

3 “(4) CONSTRUCTION.—Nothing in this sub-
4 section shall be construed as preventing a State
5 from supplementing the funds made available under
6 this subsection for the support and operation of
7 qualified high risk pools.

8 “(c) ASSISTANCE FOR LOW-INCOME INDIVIDUALS.—

9 “(1) IN GENERAL.—The Secretary shall estab-
10 lish a program of grants to States to enable States
11 to provide financial assistance to low-income individ-
12 uals who are receiving the health coverage tax credit
13 under section 35 of the Internal Revenue Code of
14 1986, who obtain coverage through enrollment in a
15 qualified high risk pool, and who, because of the in-
16 creased premium of coverage available through such
17 pool, would be otherwise unable to afford such cov-
18 erage.

19 “(2) APPLICATION.—No grant may be made to
20 a State under this subsection except upon applica-
21 tion by the State to the Secretary. Such application
22 shall include a description of the individuals who
23 qualify for assistance and the amount of such assist-
24 ance.

1 “(3) REQUIREMENTS.—A grant under this sub-
2 section may only be provided to a State if the State
3 provides the Secretary with satisfactory assurances
4 that—

5 “(A) the State will provide for the expendi-
6 ture of State funds towards financial assistance
7 described in paragraph (1) an amount equal to
8 at least 10 percent of the amount of the grant;
9 and

10 “(B) the funds under the grant will only
11 be used to reduce the premiums otherwise ap-
12 plicable to low-income individuals and will not
13 be diverted or otherwise transferred to the gen-
14 eral fund of the State.

15 “(d) FUNDING.—

16 “(1) SEED GRANTS AND OPERATIONS SUP-
17 PORT.—Out of any money in the Treasury of the
18 United States not otherwise appropriated, there are
19 appropriated—

20 “(A) such sums as may be required for fis-
21 cal year 2003 to carry out subsection (a); and

22 “(B) \$100,000,000 for each of fiscal years
23 2003 through 2007 to carry out subsection (b).

24 “(2) LOW-INCOME ASSISTANCE.—There are au-
25 thorized to be appropriated \$64,000,000 for each of

1 fiscal years 2003 and 2004 to carry out subsection
2 (c).

3 “(3) AVAILABILITY OF APPROPRIATIONS.—
4 Funds appropriated under this subsection for a fis-
5 cal year shall remain available for obligation through
6 the end of the following fiscal year.

7 “(4) NO ENTITLEMENT.—Nothing in this sec-
8 tion shall be construed as providing a State with an
9 entitlement to a grant under this section.

10 “(e) DEFINITIONS.—For purposes of this section:

11 “(1) QUALIFIED HIGH RISK POOL.—The term
12 ‘qualified high risk pool’ means such a pool as de-
13 fined in section 2744(c)(2) but only if the pool—

14 “(A) is open continuously;

15 “(B) does not have any cap on enrollment;

16 “(C) offers a choice of two or more cov-
17 erage options;

18 “(D) is the State alternative mechanism
19 used by State under section 2744 of the Public
20 Health Service Act; and

21 “(E) has a mechanism for continual fund-
22 ing (in addition to any funding provided under
23 this section).

24 “(2) STATE.—The term ‘State’ means any of
25 the 50 States and the District of Columbia.”.

1 (b) CONSTRUCTION.—Nothing in this section shall be
2 construed as affecting the ability of a State to use mecha-
3 nisms, described in sections 2741(c) and 2744 of the Pub-
4 lic Health Service Act, as an alternative to applying the
5 guaranteed availability provisions of section 2741(a) of
6 such Act.

7 **TITLE III—CLARIFICATION OF**
8 **DEFINITION OF GROUP**
9 **HEALTH PLAN UNDER HIPAA**

10 **SEC. 301. CLARIFICATION OF DEFINITION OF GROUP**
11 **HEALTH PLAN UNDER HIPAA.**

12 (a) AMENDMENT TO ERISA.—Section 733(a)(1) of
13 the Employee Retirement Income Security Act of 1974
14 (29 U.S.C. 1191b(a)(1)) is amended by adding at the end
15 the following new sentence: “Such term does not include
16 an arrangement maintained by a small employer (as de-
17 fined in section 712(c)(1)(B)) the sole effect of which is
18 to provide reimbursement to employees for the purchase
19 by such employees of health insurance coverage offered in
20 the individual market (as defined in section 2791(e)(1) of
21 the Public Health Service Act).”.

22 (b) AMENDMENT TO PHSA.—Section 2791(a)(1) of
23 the Public Health Service Act (42 U.S.C. 300gg-91(a)(1))
24 is amended by adding at the end the following new sen-
25 tence: “Such term does not include an arrangement main-

1 tained by a small employer the sole effect of which is to
2 provide reimbursement to employees for the purchase by
3 such employees of health insurance coverage offered in the
4 individual market.”.

5 (c) AMENDMENT TO IRC.—Section 9832(a) of the
6 Internal Revenue Code of 1986 (relating to definitions)
7 is amended by inserting before the period at the end the
8 following: “, except that such term does not include an
9 arrangement maintained by a small employer (as defined
10 in section 4980D(d)(2)(A)) the sole effect of which is to
11 provide reimbursement to employees for the purchase by
12 such employees of health insurance coverage offered in the
13 individual market (as defined in section 2791(e)(1) of the
14 Public Health Service Act)”.

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to plan years beginning after the
17 date of the enactment of this Act.

18 **TITLE IV—TAX PROVISIONS**

19 **SEC. 401. REFUNDABLE CREDIT FOR HEALTH COVERAGE.**

20 (a) IN GENERAL.—Subpart C of part IV of sub-
21 chapter A of chapter 1 of the Internal Revenue Code of
22 1986 (relating to refundable credits) is amended by redес-
23 ignating section 35 as section 36 and by inserting after
24 section 34 the following new section:

1 **“SEC. 35. HEALTH COVERAGE CREDIT.**

2 “(a) IN GENERAL.—In the case of an individual,
3 there shall be allowed as a credit against the tax imposed
4 by this chapter for the taxable year an amount equal to
5 the amount paid by the taxpayer during the taxable year
6 for qualified health coverage for the taxpayer and his
7 spouse and dependents.

8 “(b) MONTHLY LIMITATIONS.—

9 “(1) IN GENERAL.—The amount allowed as a
10 credit under subsection (a) to the taxpayer for the
11 taxable year shall not exceed the sum of the monthly
12 limitations during such taxable year.

13 “(2) MONTHLY LIMITATION DEFINED.—The
14 monthly limitation for any eligible month is the
15 amount equal to $\frac{1}{12}$ of—

16 “(A) \$1,000 if, as of the first day of such
17 month, the taxpayer has self-only coverage
18 under qualified health coverage, and

19 “(B) \$2,000 if, as of the first day of such
20 month, the taxpayer has family coverage under
21 qualified health coverage.

22 “(3) AMOUNT OF EMPLOYEE CONTRIBUTION.—

23 In the case of any calendar month for which the tax-
24 payer is eligible to participate in any subsidized
25 health plan maintained by any employer of the tax-
26 payer or of the spouse of the taxpayer, the amount

1 allowed as a credit under subsection (a) for such
2 month shall not exceed the amount paid by the tax-
3 payer for coverage under such plan for such month.

4 “(4) CERTAIN OTHER COVERAGE.—Amounts
5 paid for coverage of an individual for any month
6 shall not be taken into account under subsection (a)
7 if, as of the first day of such month, such
8 individual—

9 “(A) is eligible for health care benefits
10 under title XVIII of the Social Security Act (re-
11 lating to medicare),

12 “(B) is covered under a medical care pro-
13 gram described in title XIX or XXI of the So-
14 cial Security Act (relating to medicaid and
15 State children’s health insurance program, re-
16 spectively),

17 “(C) is eligible for health care benefits
18 under chapter 55 of title 10, United States
19 Code (relating to Armed Forces medical and
20 dental care),

21 “(D) is covered under a medical care pro-
22 gram described in chapter 17 of title 38, United
23 States Code (relating to veterans’ hospital,
24 nursing home, domiciliary, and medical care),
25 or

1 “(E) is covered under a medical care pro-
2 gram described in the Indian Health Care Im-
3 provement Act.

4 “(5) PRISONERS.—Amounts paid for coverage
5 of an individual for any month shall not be taken
6 into account under subsection (a) if, as of the first
7 day of such month, such individual is incarcerated
8 under Federal, State, or local authority pursuant to
9 a conviction for crime.

10 “(c) LIMITATION BASED ON MODIFIED ADJUSTED
11 GROSS INCOME.—

12 “(1) IN GENERAL.—The aggregate amount
13 which would (but for this subsection) be allowed as
14 a credit under this section shall be reduced (but not
15 below zero) by the amount determined under para-
16 graph (2).

17 “(2) AMOUNT OF REDUCTION.—

18 “(A) IN GENERAL.—The amount deter-
19 mined under this paragraph shall be the
20 amount which bears the same ratio to such ag-
21 gregate amount as—

22 “(i) the excess of—

23 “(I) the taxpayer’s modified ad-
24 justed gross income for such taxable
25 year, over

1 “(II) the applicable dollar
2 amount, bears to

3 “(ii) \$15,000 (\$30,000 in the case of
4 a joint return, surviving spouse, or head of
5 household).

6 “(B) ROUNDING.—Any amount determined
7 under subparagraph (A) which is not a multiple
8 of \$10 shall be rounded to the next lowest \$10.

9 “(3) MODIFIED ADJUSTED GROSS INCOME.—
10 For purposes of this section, the term ‘modified ad-
11 justed gross income’ means adjusted gross income
12 increased by any amount excluded from gross in-
13 come under section 911, 931, or 933.

14 “(4) APPLICABLE DOLLAR AMOUNT.—For pur-
15 poses of paragraph (2), the term ‘applicable dollar
16 amount’ means—

17 “(A) \$35,000 in the case of a taxpayer
18 whose qualified health coverage covers more
19 than 1 individual referred to in subsection (a)
20 and who files a joint return or a surviving
21 spouse,

22 “(B) \$30,000 in the case of a taxpayer
23 whose qualified health coverage covers more
24 than 1 individual referred to in subsection (a)

1 and who files a return as head of household,
2 and

3 “(C) \$20,000—

4 “(i) in any case not described in sub-
5 paragraph (A) or (B), and

6 “(ii) in the case of a married indi-
7 vidual filing a separate return.

8 For purposes of this paragraph, marital status shall
9 be determined under section 7703, and the terms
10 ‘surviving spouse’ and ‘head of household’ shall have
11 the meanings given such terms by section 2.

12 “(d) QUALIFIED HEALTH COVERAGE.—For purposes
13 of this section, the term ‘qualified health coverage’ means
14 health insurance coverage (as defined in section
15 9832(b)(1)) and coverage under a high deductible plan (as
16 defined in section 220(c)(2)), under a COBRA continu-
17 ation provision (as defined in section 9832(d)(1)), under
18 a group health plan (as defined in section 5000(b)(1)) pro-
19 viding medical care (as defined in section 9832(d)(3)), and
20 under a qualified high risk pool (as defined in section
21 2744(c)(2) of the Public Health Service Act).

22 “(e) COORDINATION WITH ADVANCE PAYMENTS OF
23 CREDIT.—

24 “(1) RECAPTURE OF EXCESS ADVANCE PAY-
25 MENTS.—If any payment is made by the Secretary

1 under section 7527 during any calendar year to a
2 person furnishing qualified health coverage for an
3 individual, then the tax imposed by this chapter for
4 the individual's last taxable year beginning in such
5 calendar year shall be increased by the aggregate
6 amount of such payments.

7 “(2) RECONCILIATION OF PAYMENTS AD-
8 VANCED AND CREDIT ALLOWED.—Any increase in
9 tax under paragraph (1) shall not be treated as tax
10 imposed by this chapter for purposes of determining
11 the amount of any credit (other than the credit al-
12 lowed by subsection (a)(1)) allowable under this
13 part.

14 “(f) ARCHER MSA CONTRIBUTIONS.—

15 “(1) IN GENERAL.—If a deduction would (but
16 for paragraph (2)) be allowed under section 220 to
17 the taxpayer for a payment for the taxable year to
18 the Archer MSA of an individual, subsection (a)
19 shall be applied by treating such payment as a pay-
20 ment for qualified health coverage for such indi-
21 vidual.

22 “(2) DENIAL OF DOUBLE BENEFIT.—No deduc-
23 tion shall be allowed under section 220 for that por-
24 tion of the payments otherwise allowable as a deduc-
25 tion under section 220 for the taxable year which is

1 equal to the amount of taken into account under
2 subsection (a) for such taxable year by reason of
3 this subsection.

4 “(g) SPECIAL RULES.—

5 “(1) EXCLUSION IF PARTICIPANT IN CAFETERIA
6 PLAN OR FLEXIBLE SPENDING ARRANGEMENT.—

7 Subsection (a) shall not apply to a taxpayer for a
8 taxable year if any amount is not includible in the
9 gross income of the taxpayer for such taxable year
10 by reason of section 106 with respect to—

11 “(A) a benefit consisting of qualified
12 health coverage under a cafeteria plan (as de-
13 fined in section 125(d)), or

14 “(B) a benefit consisting of qualified
15 health coverage under a flexible spending or
16 similar arrangement.

17 “(2) COORDINATION WITH MEDICAL EXPENSE
18 DEDUCTION.—The amount which would (but for this
19 paragraph) be taken into account by the taxpayer
20 under section 213 for the taxable year shall be re-
21 duced by the amount taken into account under this
22 section for such year.

23 “(3) COORDINATION WITH DEDUCTION FOR
24 QUALIFIED HEALTH COVERAGE COSTS.—No credit
25 shall be allowed under this section for the taxable

1 year if any amount paid for qualified health cov-
2 erage is taken into account in determining the de-
3 duction allowed for such year under section 223.

4 “(4) DENIAL OF CREDIT TO DEPENDENTS.—No
5 credit shall be allowed under this section to any indi-
6 vidual with respect to whom a deduction under sec-
7 tion 151 is allowable to another taxpayer for a tax-
8 able year beginning in the calendar year in which
9 such individual’s taxable year begins.

10 “(5) MARRIED COUPLES MUST FILE JOINT RE-
11 TURN.—If the taxpayer is married at the close of
12 the taxable year, the credit shall be allowed under
13 subsection (a) only if the taxpayer and his spouse
14 file a joint return for the taxable year.

15 “(6) MARITAL STATUS.—An individual legally
16 separated from his spouse under a decree of divorce
17 or of separate maintenance shall not be considered
18 as married.

19 “(7) INFLATION ADJUSTMENT.—

20 “(A) IN GENERAL.—In the case of a tax-
21 able year beginning after 2003, each dollar
22 amount in subsection (d)(4) shall be increased
23 by an amount equal to—

24 “(i) such dollar amount, multiplied by

1 “(ii) the cost-of-living adjustment de-
2 termined under section 1(f)(3) for the cal-
3 endar year in which the taxable year be-
4 gins, determined by substituting ‘calendar
5 year 2002’ for ‘calendar year 1992’ in sub-
6 paragraph (B) thereof.

7 “(B) ROUNDING.—If any amount as ad-
8 justed under subparagraph (A) is not a multiple
9 of \$100, such amount shall be rounded to the
10 next lowest multiple of \$100.

11 “(h) RESTRICTIONS ON TAXPAYERS WHO IMPROP-
12 ERLY CLAIMED CREDIT IN PRIOR YEAR.—For purposes of
13 this section, rules similar to the rules of section 32(k) shall
14 apply.”.

15 (b) INFORMATION REPORTING.—

16 (1) IN GENERAL.—Subpart B of part III of
17 subchapter A of chapter 61 of such Code (relating
18 to information concerning transactions with other
19 persons) is amended by inserting after section
20 6050S the following new section:

21 **“SEC. 6050T. RETURNS RELATING TO HEALTH COVERAGE**
22 **CREDIT.**

23 “(a) REQUIREMENT OF REPORTING.—Every
24 person—

1 “(1) who, in connection with a trade or busi-
2 ness conducted by such person, receives payments
3 during any calendar year from any individual for
4 qualified health coverage (as defined in section
5 35(d)) of such individual or any other individual,
6 and

7 “(2) who claims a reimbursement for an ad-
8 vance credit amount,
9 shall, at such time as the Secretary may prescribe, make
10 the return described in subsection (b) with respect to each
11 individual from whom such payments were received or for
12 whom such a reimbursement is claimed.

13 “(b) FORM AND MANNER OF RETURNS.—A return
14 is described in this subsection if such return—

15 “(1) is in such form as the Secretary may pre-
16 scribe, and

17 “(2) contains—

18 “(A) the name, address, and TIN of each
19 individual referred to in subsection (a),

20 “(B) the aggregate of the advance credit
21 amounts provided to such individual and for
22 which reimbursement is claimed,

23 “(C) the number of months for which such
24 advance credit amounts are so provided, and

1 “(D) such other information as the Sec-
2 retary may prescribe.

3 “(c) STATEMENTS TO BE FURNISHED TO INDIVID-
4 UALS WITH RESPECT TO WHOM INFORMATION IS RE-
5 QUIRED.—Every person required to make a return under
6 subsection (a) shall furnish to each individual whose name
7 is required to be set forth in such return a written state-
8 ment showing—

9 “(1) the name and address of the person re-
10 quired to make such return and the phone number
11 of the information contact for such person, and

12 “(2) the information required to be shown on
13 the return with respect to such individual.

14 The written statement required under the preceding sen-
15 tence shall be furnished on or before January 31 of the
16 year following the calendar year for which the return
17 under subsection (a) is required to be made.

18 “(d) ADVANCE CREDIT AMOUNT.—For purposes of
19 this section, the term ‘advance credit amount’ means an
20 amount for which the person can claim a reimbursement
21 pursuant to a program established by the Secretary under
22 section 7527.”

23 (2) ASSESSABLE PENALTIES.—

24 (A) Subparagraph (B) of section
25 6724(d)(1) of such Code (relating to defini-

1 tions) is amended by redesignating clauses (xi)
2 through (xvii) as clauses (xii) through (xviii),
3 respectively, and by inserting after clause (x)
4 the following new clause:

5 “(xi) section 6050T (relating to re-
6 turns relating to health coverage credit),”.

7 (B) Paragraph (2) of section 6724(d) of
8 such Code is amended by striking “or” at the
9 end of subparagraph (Z), by striking the period
10 at the end of subparagraph (AA) and inserting
11 “, or”, and by adding after subparagraph (AA)
12 the following new subparagraph:

13 “(BB) section 6050T (relating to returns
14 relating to health coverage credit).”

15 (c) **ADVANCE PAYMENT OF HEALTH COVERAGE**
16 **CREDIT.**—Chapter 77 of such Code (relating to miscella-
17 neous provisions) is amended by adding at the end the
18 following new section:

19 **“SEC. 7527. ADVANCE PAYMENT OF HEALTH COVERAGE**
20 **CREDIT.**

21 “(a) **GENERAL RULE.**—The Secretary shall establish
22 a program for making payments on behalf of eligible indi-
23 viduals to persons furnishing qualified health coverage for
24 such individuals.

1 “(b) ELIGIBLE INDIVIDUAL.—For purposes of this
2 section—

3 “(1) IN GENERAL.—The term ‘eligible indi-
4 vidual’ means any individual for whom a qualified
5 health coverage credit eligibility certificate is in ef-
6 fect.

7 “(2) CERTIFICATE IN EFFECT.—A qualified
8 health coverage credit eligibility certificate shall take
9 effect on the first day of a coverage month and shall
10 remain in effect with respect to the individual until
11 the earlier of revocation by the individual, another
12 such certificate takes effect under this section with
13 respect to the individual, or cancellation of the quali-
14 fied health coverage by the person furnishing such
15 coverage.

16 “(3) COVERAGE MONTH.—For purposes of
17 paragraph (2), the term ‘coverage month’ means any
18 month in which the eligible individual has coverage
19 under qualified health coverage (as defined in sec-
20 tion 35(d)) unless on the first day of such month
21 such individual is eligible for benefits or covered
22 under a program, as the case may be, described in
23 section 35(b)(4) or is described in section 35(b)(5).

24 “(c) QUALIFIED HEALTH COVERAGE CREDIT ELIGI-
25 BILITY CERTIFICATE.—

1 “(1) IN GENERAL.—For purposes of this sec-
2 tion, a qualified health coverage credit eligibility cer-
3 tificate is a statement certified by the person fur-
4 nishing qualified health coverage for an eligible indi-
5 vidual which—

6 “(A) certifies that the individual is covered
7 by qualified health coverage as of the first day
8 of any month, and

9 “(B) provides such other information as
10 the Secretary may require for purposes of this
11 section.

12 “(2) RELIANCE ON INFORMATION PROVIDED BY
13 INDIVIDUALS.—In preparing the statement required
14 by paragraph (1), the such person may rely on any
15 representation made by the eligible individual with
16 respect to such statement unless such person has ac-
17 tual notice or knowledge (within the meaning of sec-
18 tion 6323(i)(1)) that any such representation is
19 false.

20 “(3) DUTY TO PROVIDE UPDATED INFORMA-
21 TION.—If any information provided with respect to
22 the statement required by paragraph (1) is no longer
23 accurate, the person providing such statement shall
24 inform the person furnishing qualified health cov-
25 erage within 30 days of any change of information.

1 “(d) QUALIFIED HEALTH COVERAGE.—For purposes
2 of this section, the term ‘qualified health coverage’ has the
3 meaning given such term by section 35(d).”.

4 (d) TECHNICAL AMENDMENTS.—

5 (1) Paragraph (2) of section 1324(b) of title
6 31, United States Code, is amended by inserting “or
7 from section 35 of such Code” before the period at
8 the end.

9 (2) The table of sections for subpart C of part
10 IV of subchapter A of chapter 1 of the Internal Rev-
11 enue Code of 1986 is amended by striking the item
12 relating to section 35 and inserting the following
13 new items:

 “Sec. 35. Health coverage credit.
 “Sec. 36. Overpayments of tax.”.

14 (3) The table of sections for subpart B of part
15 III of subchapter A of chapter 61 of such Code is
16 amended by inserting after the item relating to sec-
17 tion 6050S the following new item:

 “Sec. 6050T. Returns relating to health coverage credit.”.

18 (4) The table of sections for chapter 77 of such
19 Code is amended by adding at the end the following
20 new item:

 “Sec. 7527. Advance payment of health coverage credit.”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2002.

4 **SEC. 402. DEDUCTION FOR QUALIFIED HEALTH COVERAGE**
5 **COSTS OF EMPLOYEES AND OTHER INDIVID-**
6 **UALS INELIGIBLE FOR HEALTH COVERAGE**
7 **REFUNDABLE TAX CREDIT.**

8 (a) IN GENERAL.—Part VII of subchapter B of chap-
9 ter 1 of the Internal Revenue Code of 1986 (relating to
10 additional itemized deductions) is amended by redesignig-
11 nating section 223 as section 224 and by inserting after
12 section 222 the following new section:

13 **“SEC. 223. COSTS OF QUALIFIED HEALTH COVERAGE.**

14 “(a) IN GENERAL.—In the case of an individual,
15 there shall be allowed as a deduction an amount equal to
16 the amount paid during the taxable year for qualified
17 health coverage for the taxpayer and his spouse and de-
18 pendants.

19 “(b) LIMITATIONS.—

20 “(1) AMOUNT OF EMPLOYEE CONTRIBUTION TO
21 SUBSIDIZED PLAN.—In the case of any year for
22 which the taxpayer is eligible to participate in any
23 subsidized health plan maintained by any employer
24 of the taxpayer or of the spouse of the taxpayer, the
25 amount allowed as a deduction under subsection (a)

1 for such year shall not exceed the amount paid by
2 the taxpayer for coverage under such plan for such
3 year. For purposes of the preceding sentence, all
4 health plans of persons treated as a single employer
5 under subsection (b), (c), or (m) of section 414 shall
6 be treated as 1 health plan.

7 “(2) EMPLOYER CONTRIBUTIONS TO CAFETERIA PLANS,
8 FLEXIBLE SPENDING ARRANGEMENTS,
9 AND ARCHER MSAS.—Amounts contributed to a
10 cafeteria plan, a flexible spending or similar arrange-
11 ment, or an Archer MSA which are excluded from
12 gross income under section 106 shall be treated as
13 paid by the employer and not by the individual.

14 “(3) DENIAL OF DOUBLE BENEFIT.—No deduc-
15 tion shall be allowed under subsection (a) for a tax-
16 able year to any taxpayer allowed a credit under sec-
17 tion 35 for such taxable year.

18 “(4) CERTAIN OTHER COVERAGE; PRIS-
19 ONERS.—Amounts paid for coverage of an individual
20 for any month shall not be taken into account under
21 subsection (a) if, as of the first day of such month,
22 such individual is eligible for benefits or covered
23 under a program, as the case may be, described in
24 section 35(b)(4) or is described in section 35(b)(5).

1 “(5) ANCILLARY COVERAGE PREMIUMS.—
2 Amounts paid for coverage of an individual for ex-
3 cepted benefits (as defined in section 9832(c)) shall
4 not be taken into account under subsection (a).

5 “(c) QUALIFIED HEALTH COVERAGE.—For purposes
6 of this section, the term ‘qualified health coverage’ has the
7 meaning given such term by section 35(d).

8 “(d) COORDINATION WITH OTHER DEDUCTIONS.—
9 Amounts taken into account by the taxpayer in computing
10 the deduction under section 162(l) and in computing the
11 deduction under section 213 shall not be taken into ac-
12 count under subsection (a).

13 “(e) ELECTION NOT TO HAVE SECTION APPLY.—A
14 taxpayer may elect not to have this section apply with re-
15 spect to amounts paid for qualified health coverage for any
16 taxable year.”.

17 (b) DEDUCTION ALLOWED WHETHER OR NOT TAX-
18 PAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a)
19 of section 62 of such Code is amended by inserting after
20 paragraph (18) the following new item:

21 “(19) QUALIFIED HEALTH COVERAGE COSTS.—
22 The deduction allowed by section 223.”.

23 (c) CONFORMING AMENDMENTS.—The table of sec-
24 tions for part VII of subchapter B of chapter 1 of such

1 Code is amended by striking the last item and inserting
 2 the following new items:

“Sec. 223. Costs of qualified health coverage.
 “Sec. 224. Cross reference.”

3 (d) **EFFECTIVE DATE.**—The amendments made by
 4 this section shall apply to taxable years beginning after
 5 December 31, 2002.

6 **SEC. 403. CARRYOVER OF UNUSED BENEFITS FROM CAFETERIA PLANS, FLEXIBLE SPENDING ARRANGEMENTS, AND HEALTH FLEXIBLE SPENDING ACCOUNTS.**

7
 8
 9
 10 (a) **IN GENERAL.**—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended
 11 by redesignating subsections (h) and (i) as subsections (i)
 12 and (j) and by inserting after subsection (g) the following
 13 new subsection:
 14

15 “(h) **ALLOWANCE OF CARRYOVERS OF UNUSED BENEFITS TO LATER TAXABLE YEARS.**—

16
 17 “(1) **IN GENERAL.**—For purposes of this title—

18 “(A) notwithstanding subsection (d)(2), a
 19 plan or other arrangement shall not fail to be
 20 treated as a cafeteria plan or flexible spending
 21 or similar arrangement, and

22 “(B) no amount shall be required to be in-
 23 cluded in gross income by reason of this section
 24 or any other provision of this chapter,

1 solely because under such plan or other arrangement
2 any nontaxable benefit which is unused as of the
3 close of a taxable year may be carried forward to 1
4 or more succeeding taxable years.

5 “(2) LIMITATION.—Paragraph (1) shall not
6 apply to amounts carried forward from a plan to the
7 extent such amounts exceed \$500.”

8 (b) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 2001.

11 **SEC. 404. EXCLUSION OF PREMIUM PAYMENTS FOR QUALI-**
12 **FIED HEALTH COVERAGE UNDER FLEXIBLE**
13 **SPENDING ARRANGEMENTS.**

14 (a) IN GENERAL.—Section 106 of the Internal Rev-
15 enue Code of 1986 (relating to contributions by employer
16 to accident and health plans) is amended by adding at the
17 end the following new subsection:

18 “(d) QUALIFIED HEALTH COVERAGE UNDER FLEXI-
19 BLE SPENDING ARRANGEMENT.—For purposes of sub-
20 section (a), amounts paid under a flexible spending or
21 similar arrangement (as defined in subsection (c)(2)) for
22 qualified health coverage (as defined in section 35(d))
23 shall be treated as employer-provided coverage under an
24 accident or health plan.”

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2001.

○