

109TH CONGRESS  
1ST SESSION

# H. R. 2355

To amend the Public Health Service Act to provide for cooperative governing of individual health insurance coverage offered in interstate commerce.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2005

Mr. SHADEGG (for himself, Mr. AKIN, Mr. BARTLETT of Maryland, Mr. CANNON, Mr. CARTER, Mr. COLE of Oklahoma, Mr. COX, Mrs. CUBIN, Mr. FEENEY, Mr. FLAKE, Mr. FRANKS of Arizona, Mr. GUTKNECHT, Mr. HENSARLING, Mr. HERGER, Mr. HOEKSTRA, Mr. HOSTETTLER, Mr. ISTOOK, Mr. JONES of North Carolina, Mr. KENNEDY of Minnesota, Mr. KING of Iowa, Mr. LINDER, Mr. MCHENRY, Mr. MILLER of Florida, Mrs. MUSGRAVE, Mrs. MYRICK, Mr. OTTER, Mr. PAUL, Mr. PENCE, Mr. PRICE of Georgia, Mr. RADANOVICH, Mr. RENZI, Mr. ROHRABACHER, Mr. RYAN of Wisconsin, Mr. RYUN of Kansas, Mr. SENSENBRENNER, Mr. SESSIONS, Mr. SOUDER, Mr. WAMP, Mr. WELDON of Florida, Mr. WICKER, Mr. WILSON of South Carolina, and Mr. GREEN of Wisconsin) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Public Health Service Act to provide for cooperative governing of individual health insurance coverage offered in interstate commerce.

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.**

2 This Act may be cited as “Health Care Choice Act  
3 of 2005”.

4 **SEC. 2. SPECIFICATION OF CONSTITUTIONAL AUTHORITY**  
5 **FOR ENACTMENT OF LAW.**

6 This Act is enacted pursuant to the power granted  
7 Congress under article I, section 8, clause 3, of the United  
8 States Constitution.

9 **SEC. 3. FINDINGS.**

10 Congress finds the following:

11 (1) The application of numerous and significant  
12 variations in State law impacts the ability of insur-  
13 ers to offer, and individuals to obtain, affordable in-  
14 dividual health insurance coverage, thereby impeding  
15 commerce in individual health insurance coverage.

16 (2) Individual health insurance coverage is in-  
17 creasingly offered through the Internet, other elec-  
18 tronic means, and by mail, all of which are inher-  
19 ently part of interstate commerce.

20 (3) In response to these issues, it is appropriate  
21 to encourage increased efficiency in the offering of  
22 individual health insurance coverage through a col-  
23 laborative approach by the States in regulating this  
24 coverage.

25 (4) The establishment of risk-retention groups  
26 has provided a successful model for the sale of insur-



1 spect to such designated State, the issuer is deemed  
2 to be doing business in that State.

3 “(2) SECONDARY STATE.—The term ‘secondary  
4 State’ means, with respect to individual health insur-  
5 ance coverage offered by a health insurance issuer,  
6 any State that is not the primary State. In the case  
7 of a health insurance issuer that is selling a policy  
8 in, or to a resident of, a secondary State, the issuer  
9 is deemed to be doing business in that secondary  
10 State.

11 “(3) HEALTH INSURANCE ISSUER.—The term  
12 ‘health insurance issuer’ has the meaning given such  
13 term in section 2791(b)(2), except that such an  
14 issuer must be licensed in the primary State and be  
15 qualified to sell individual health insurance coverage  
16 in that State.

17 “(4) INDIVIDUAL HEALTH INSURANCE COV-  
18 ERAGE.—The term ‘individual health insurance cov-  
19 erage’ means health insurance coverage offered in  
20 the individual market, as defined in section  
21 2791(e)(1).

22 “(5) APPLICABLE STATE AUTHORITY.—The  
23 term ‘applicable State authority’ means, with respect  
24 to a health insurance issuer in a State, the State in-  
25 surance commissioner or official or officials des-

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

3               “(6) HAZARDOUS FINANCIAL CONDITION.—The  
4       term ‘hazardous financial condition’ means that,  
5       based on its present or reasonably anticipated finan-  
6       cial condition, a health insurance issuer is unlikely  
7       to be able—

8                       “(A) to meet obligations to policyholders  
9                       with respect to known claims and reasonably  
10                      anticipated claims; or

11                     “(B) to pay other obligations in the normal  
12                     course of business.

13               “(7) COVERED LAWS.—The term ‘covered laws’  
14       means the laws, rules, regulations, agreements, and  
15       orders governing the insurance business pertaining  
16       to—

17                     “(A) individual health insurance coverage  
18                     issued by a health insurance issuer;

19                     “(B) the offer, sale, and issuance of indi-  
20                     vidual health insurance coverage to an indi-  
21                     vidual; and

22                     “(C) the provision to an individual in rela-  
23                     tion to individual health insurance coverage  
24                     of—

1                   “(i) health care and insurance related  
2                   services;

3                   “(ii) management, operations, and in-  
4                   vestment activities of a health insurance  
5                   issuer; and

6                   “(iii) loss control and claims adminis-  
7                   tration for a health insurance issuer with  
8                   respect to liability for which the issuer pro-  
9                   vides insurance.

10                  “(8) STATE.—The term ‘State’ means only the  
11                  50 States and the District of Columbia.

12                  “(9) UNFAIR CLAIMS SETTLEMENT PRAC-  
13                  TICES.—The term ‘unfair claims settlement prac-  
14                  tices’ means only the following practices:

15                         “(A) Knowingly misrepresenting to claim-  
16                         ants and insured individuals relevant facts or  
17                         policy provisions relating to coverage at issue.

18                         “(B) Failing to acknowledge with reason-  
19                         able promptness pertinent communications with  
20                         respect to claims arising under policies.

21                         “(C) Failing to adopt and implement rea-  
22                         sonable standards for the prompt investigation  
23                         and settlement of claims arising under policies.

1           “(D) Failing to effectuate prompt, fair,  
2           and equitable settlement of claims submitted in  
3           which liability has become reasonably clear.

4           “(E) Refusing to pay claims without con-  
5           ducting a reasonable investigation.

6           “(F) Failing to affirm or deny coverage of  
7           claims within a reasonable period of time after  
8           having completed an investigation related to  
9           those claims.

10          “(10) FRAUD AND ABUSE.—The term ‘fraud  
11          and abuse’ means an act or omission committed by  
12          a person who, knowingly and with intent to defraud,  
13          commits, or conceals any material information con-  
14          cerning, one or more of the following:

15                 “(A) Presenting, causing to be presented  
16                 or preparing with knowledge or belief that it  
17                 will be presented to or by an insurer, a rein-  
18                 surer, broker or its agent, false information as  
19                 part of, in support of or concerning a fact ma-  
20                 terial to one or more of the following:

21                         “(i) An application for the issuance or  
22                         renewal of an insurance policy or reinsur-  
23                         ance contract.

24                         “(ii) The rating of an insurance policy  
25                         or reinsurance contract.

1           “(iii) A claim for payment or benefit  
2           pursuant to an insurance policy or reinsur-  
3           ance contract.

4           “(iv) Premiums paid on an insurance  
5           policy or reinsurance contract.

6           “(v) Payments made in accordance  
7           with the terms of an insurance policy or  
8           reinsurance contract.

9           “(vi) A document filed with the com-  
10          missioner or the chief insurance regulatory  
11          official of another jurisdiction.

12          “(vii) The financial condition of an in-  
13          surer or reinsurer.

14          “(viii) The formation, acquisition,  
15          merger, reconsolidation, dissolution or  
16          withdrawal from one or more lines of in-  
17          surance or reinsurance in all or part of a  
18          State by an insurer or reinsurer.

19          “(ix) The issuance of written evidence  
20          of insurance.

21          “(x) The reinstatement of an insur-  
22          ance policy.

23          “(B) Solicitation or acceptance of new or  
24          renewal insurance risks on behalf of an insurer  
25          reinsurer or other person engaged in the busi-

1           ness of insurance by a person who knows or  
2           should know that the insurer or other person  
3           responsible for the risk is insolvent at the time  
4           of the transaction.

5           “(C) Transaction of the business of insur-  
6           ance in violation of laws requiring a license, cer-  
7           tificate of authority or other legal authority for  
8           the transaction of the business of insurance.

9           “(D) Attempt to commit, aiding or abet-  
10          ting in the commission of, or conspiracy to com-  
11          mit the acts or omissions specified in this para-  
12          graph.

13   **“SEC. 2796. APPLICATION OF LAW.**

14          “(a) IN GENERAL.—The covered laws of the primary  
15          State shall apply to individual health insurance coverage  
16          offered by a health insurance issuer in the primary State  
17          and in any secondary State, but only if the coverage and  
18          issuer comply with the conditions of this section with re-  
19          spect to the offering of coverage in any secondary State.

20          “(b) EXEMPTIONS FROM COVERED LAWS IN A SEC-  
21          ONDARY STATE.—Except as provided in this section, a  
22          health insurance issuer with respect to its offer, sale, re-  
23          newal, and issuance of individual health insurance cov-  
24          erage in any secondary State is exempt from any covered  
25          laws of the secondary State (and any rules, regulations,

1 agreements, or orders sought or issued by such State  
2 under or related to such covered laws) to the extent that  
3 such laws would—

4           “(1) make unlawful, or regulate, directly or in-  
5 directly, the operation of the health insurance issuer  
6 operating in the secondary State, except that any  
7 secondary State may require such an issuer—

8           “(A) to pay, on a nondiscriminatory basis,  
9 applicable premium and other taxes (including  
10 high risk pool assessments) which are levied on  
11 insurers and surplus lines insurers, brokers, or  
12 policyholders under the laws of the State;

13           “(B) to register with and designate the  
14 State insurance commissioner as its agent solely  
15 for the purpose of receiving service of legal doc-  
16 uments or process;

17           “(C) to submit to an examination of its fi-  
18 nancial condition by the State insurance com-  
19 missioner in any State in which the issuer is  
20 doing business to determine the issuer’s finan-  
21 cial condition, if—

22           “(i) the State insurance commissioner  
23 of the primary State has not done an ex-  
24 amination within the period recommended

1 by the National Association of Insurance  
2 Commissioners; and

3 “(ii) any such examination is con-  
4 ducted in accordance with the examiners’  
5 handbook of the National Association of  
6 Insurance Commissioners and is coordi-  
7 nated to avoid unjustified duplication and  
8 unjustified repetition;

9 “(D) to comply with a lawful order  
10 issued—

11 “(i) in a delinquency proceeding com-  
12 menced by the State insurance commis-  
13 sioner if there has been a finding of finan-  
14 cial impairment under subparagraph (C);  
15 or

16 “(ii) in a voluntary dissolution pro-  
17 ceeding;

18 “(E) to comply with an injunction issued  
19 by a court of competent jurisdiction, upon a pe-  
20 tition by the State insurance commissioner al-  
21 leging that the issuer is in hazardous financial  
22 condition;

23 “(F) to participate, on a nondiscriminatory  
24 basis, in any insurance insolvency guaranty as-  
25 sociation or similar association to which a

1 health insurance issuer in the State is required  
2 to belong;

3 “(G) to comply with any State law regard-  
4 ing fraud and abuse (as defined in section  
5 2795(10)), except that if the State seeks an in-  
6 junction regarding the conduct described in this  
7 subparagraph, such injunction must be obtained  
8 from a court of competent jurisdiction; or

9 “(H) to comply with any State law regard-  
10 ing unfair claims settlement practices (as de-  
11 fined in section 2795(9));

12 “(2) require any individual health insurance  
13 coverage issued by the issuer to be countersigned by  
14 an insurance agent or broker residing in that Sec-  
15 ondary State; or

16 “(3) otherwise discriminate against the issuer  
17 issuing insurance in both the primary State and in  
18 any secondary State.

19 “(c) CLEAR AND CONSPICUOUS DISCLOSURE.—A  
20 health insurance issuer shall provide the following notice,  
21 in 12-point bold type, in any insurance coverage offered  
22 in a secondary State under this part by such a health in-  
23 surance issuer and at renewal of the policy, with the 5  
24 blank spaces therein being appropriately filled with the  
25 name of the health insurance issuer, the name of primary

1 State, the name of the secondary State, the name of the  
2 secondary State, and the name of the secondary State, re-  
3 spectively, for the coverage concerned:

4 **‘Notice**

5 **‘This policy is issued by \_\_\_\_\_ and is**  
6 **governed by the laws and regulations of the**  
7 **State of \_\_\_\_\_, and it has met all the laws**  
8 **of that State as determined by that State’s De-**  
9 **partment of Insurance. This policy may be**  
10 **less expensive than others because it is not**  
11 **subject to all of the insurance laws and regu-**  
12 **lations of the State of \_\_\_\_\_, including**  
13 **coverage of some services or benefits man-**  
14 **dated by the law of the State of \_\_\_\_\_. Ad-**  
15 **ditionally, this policy is not subject to all of**  
16 **the consumer protection laws or restrictions**  
17 **on rate changes of the State of \_\_\_\_\_. As**  
18 **with all insurance products, before pur-**  
19 **chasing this policy, you should carefully re-**  
20 **view the policy and determine what health**  
21 **care services the policy covers and what bene-**  
22 **fits it provides, including any exclusions, limi-**  
23 **tations, or conditions for such services or ben-**  
24 **efits.’.**

1       “(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS  
2 AND PREMIUM INCREASES.—

3           “(1) IN GENERAL.—For purposes of this sec-  
4 tion, a health insurance issuer that provides indi-  
5 vidual health insurance coverage to an individual  
6 under this part in a primary or secondary State may  
7 not upon renewal—

8           “(A) move or reclassify the individual in-  
9 sured under the health insurance coverage from  
10 the class such individual is in at the time of  
11 issue of the contract based on the health-status  
12 related factors of the individual; or

13           “(B) increase the premiums assessed the  
14 individual for such coverage based on a health  
15 status-related factor or change of a health sta-  
16 tus-related factor or the past or prospective  
17 claim experience of the insured individual.

18           “(2) CONSTRUCTION.—Nothing in paragraph  
19 (1) shall be construed to prohibit a health insurance  
20 issuer—

21           “(A) from terminating or discontinuing  
22 coverage or a class of coverage in accordance  
23 with subsections (b) and (c) of section 2742;

1           “(B) from raising premium rates for all  
2 policy holders within a class based on claims ex-  
3 perience;

4           “(C) from changing premiums or offering  
5 discounted premiums to individuals who engage  
6 in wellness activities at intervals prescribed by  
7 the issuer, if such premium changes or incen-  
8 tives—

9                   “(i) are disclosed to the consumer in  
10 the insurance contract;

11                   “(ii) are based on specific wellness ac-  
12 tivities that are not applicable to all indi-  
13 viduals; and

14                   “(iii) are not obtainable by all individ-  
15 uals to whom coverage is offered;

16           “(D) from reinstating lapsed coverage; or

17           “(E) from retroactively adjusting the rates  
18 charged an individual insured individual if the  
19 initial rates were set based on material mis-  
20 representation by the individual at the time of  
21 issue.

22           “(e) PRIOR OFFERING OF POLICY IN PRIMARY  
23 STATE.—A health insurance issuer may not offer for sale  
24 individual health insurance coverage in a secondary State

1 unless that coverage is currently offered for sale in the  
2 primary State.

3 “(f) LICENSING OF AGENTS OR BROKERS FOR  
4 HEALTH INSURANCE ISSUERS.—Any State may require  
5 that a person acting, or offering to act, as an agent or  
6 broker for a health insurance issuer with respect to the  
7 offering of individual health insurance coverage obtain a  
8 license from that State, except that a State may not im-  
9 pose any qualification or requirement which discriminates  
10 against a nonresident agent or broker.

11 “(g) DOCUMENTS FOR SUBMISSION TO STATE IN-  
12 SURANCE COMMISSIONER.—Each health insurance issuer  
13 issuing individual health insurance coverage in both pri-  
14 mary and secondary States shall submit—

15 “(1) to the insurance commissioner of each  
16 State in which it intends to offer such coverage, be-  
17 fore it may offer individual health insurance cov-  
18 erage in such State—

19 “(A) a copy of the plan of operation or fea-  
20 sibility study or any similar statement of the  
21 policy being offered and its coverage (which  
22 shall include the name of its primary State and  
23 its principal place of business);

24 “(B) written notice of any change in its  
25 designation of its primary State; and

1           “(C) written notice from the issuer of the  
2           issuer’s compliance with all the laws of the pri-  
3           mary State; and

4           “(2) to the insurance commissioner of each sec-  
5           ondary State in which it offers individual health in-  
6           surance coverage, a copy of the issuer’s quarterly fi-  
7           nancial statement submitted to the primary State,  
8           which statement shall be certified by an independent  
9           public accountant and contain a statement of opin-  
10          ion on loss and loss adjustment expense reserves  
11          made by—

12                   “(A) a member of the American Academy  
13                   of Actuaries; or

14                   “(B) a qualified loss reserve specialist.

15          “(h) POWER OF COURTS TO ENJOIN CONDUCT.—  
16          Nothing in this section shall be construed to affect the  
17          authority of any Federal or State court to enjoin—

18                   “(1) the solicitation or sale of individual health  
19                   insurance coverage by a health insurance issuer to  
20                   any person or group who is not eligible for such in-  
21                   surance; or

22                   “(2) the solicitation or sale of individual health  
23                   insurance coverage by, or operation of, a health in-  
24                   surance issuer that is in hazardous financial condi-  
25                   tion.

1 “(i) STATE POWERS TO ENFORCE STATE LAWS.—

2 “(1) IN GENERAL.—Subject to the provisions of  
3 subsection (b)(1)(G) (relating to injunctions) and  
4 paragraph (2), nothing in this section shall be con-  
5 strued to affect the authority of any State to make  
6 use of any of its powers to enforce the laws of such  
7 State with respect to which a health insurance issuer  
8 is not exempt under subsection (b).

9 “(2) COURTS OF COMPETENT JURISDICTION.—

10 If a State seeks an injunction regarding the conduct  
11 described in paragraphs (1) and (2) of subsection  
12 (h), such injunction must be obtained from a Fed-  
13 eral or State court of competent jurisdiction.

14 “(j) STATES’ AUTHORITY TO SUE.—Nothing in this  
15 section shall affect the authority of any State to bring ac-  
16 tion in any Federal or State court.

17 “(k) GENERALLY APPLICABLE LAWS.—Nothing in  
18 this section shall be construed to affect the applicability  
19 of State laws generally applicable to persons or corpora-  
20 tions.

21 **“SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR**  
22 **BEFORE ISSUER MAY SELL INTO SECONDARY**  
23 **STATES.**

24 “A health insurance issuer may not offer, sell, or  
25 issue individual health insurance coverage in a secondary

1 State if the primary State does not meet the following re-  
2 quirements:

3 “(1) The State insurance commissioner must  
4 use a risk-based capital formula for the determina-  
5 tion of capital and surplus requirements for all  
6 health insurance issuers.

7 “(2) The State must have legislation or regula-  
8 tions in place establishing an independent review  
9 process for individuals who are covered by individual  
10 health insurance coverage unless the issuer provides  
11 an independent review mechanism functionally equiv-  
12 alent (as determined by the primary State insurance  
13 commissioner or official) to that prescribed in the  
14 ‘Health Carrier External Review Model Act’ of the  
15 National Association of Insurance Commissioners for  
16 all individuals who purchase insurance coverage  
17 under the terms of this part.

18 **“SEC. 2798. ENFORCEMENT.**

19 “(a) IN GENERAL.—Subject to subsection (b), with  
20 respect to specific individual health insurance coverage the  
21 primary State for such coverage has sole jurisdiction to  
22 enforce the primary State’s covered laws in the primary  
23 State and any secondary State.

24 “(b) SECONDARY STATE’S AUTHORITY.—Nothing in  
25 subsection (a) shall be construed to affect the authority

1 of a secondary State to enforce its laws as set forth in  
2 the exception specified in section 2796(b)(1).

3 “(c) COURT INTERPRETATION.—In reviewing action  
4 initiated by the applicable secondary State authority, the  
5 court of competent jurisdiction shall apply the covered  
6 laws of the primary State.

7 “(d) NOTICE OF COMPLIANCE FAILURE.—In the case  
8 of individual health insurance coverage offered in a sec-  
9 ondary State that fails to comply with the covered laws  
10 of the primary State, the applicable State authority of the  
11 secondary State may notify the applicable State authority  
12 of the primary State.”.

13 (b) EFFECTIVE DATE.—The amendment made by  
14 subsection (a) shall apply to individual health insurance  
15 coverage offered, issued, or sold after the date of the en-  
16 actment of this Act.

17 **SEC. 5. SEVERABILITY.**

18 If any provision of the Act or the application of such  
19 provision to any person or circumstance is held to be un-  
20 constitutional, the remainder of this Act and the applica-  
21 tion of the provisions of such to any other person or cir-  
22 cumstance shall not be affected.

○