

109TH CONGRESS
1ST SESSION

H. R. 3056

To amend title I of the Employee Retirement Income Security Act of 1974 to provide for the establishment in the Department of Labor of a Small Employer Health Benefits Program.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2005

Mr. ANDREWS (for himself and Mr. KIND) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to provide for the establishment in the Department of Labor of a Small Employer Health Benefits Program.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Small Employer Health Act of 2005”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Establishment of Small Employer Health Benefits Program (SEHBP).

“PART 8—SMALL EMPLOYER HEALTH BENEFITS PROGRAM (SEHBP)

“Sec. 801. Establishment of program.

“Sec. 802. Contracts with qualifying insurers.

“Sec. 803. Additional conditions.

“Sec. 804. Dissemination of information.

“Sec. 805. Subsidies.

“Sec. 806. Authorization of appropriations.

1 **SEC. 2. ESTABLISHMENT OF SMALL EMPLOYER HEALTH**
 2 **BENEFITS PROGRAM (SEHBP).**

3 (a) IN GENERAL.—Subtitle B of title I of the Em-
 4 ployee Retirement Income Security Act of 1974 is amend-
 5 ed by adding after part 7 the following new part:

6 **“PART 8—SMALL EMPLOYER HEALTH BENEFITS**
 7 **PROGRAM (SEHBP)**

8 **“SEC. 801. ESTABLISHMENT OF PROGRAM.**

9 “(a) IN GENERAL.—The Secretary shall establish, in
 10 accordance with this part, a program under which—

11 “(1) qualifying small employers (as defined in
 12 subsection (b)) are provided access to qualifying
 13 health insurance coverage (as defined in subsection
 14 (c)) for their employees, and

15 “(2) such employees may elect alternative forms
 16 of coverage offered by various health insurance
 17 issuers.

18 “(b) QUALIFYING SMALL EMPLOYER DEFINED;
 19 OTHER DEFINITIONS.—For purposes of this part:

20 “(1) QUALIFYING SMALL EMPLOYER.—

1 “(A) IN GENERAL.—The term ‘qualifying
2 small employer’ means a small employer (as de-
3 fined in paragraph (2)) that—

4 “(i) elects to offer health insurance
5 coverage provided under this part to each
6 employee who has been employed by that
7 employer for 3 months or longer; and

8 “(ii) elects, with respect to an em-
9 ployee electing coverage under qualified
10 health insurance coverage, to pay at least
11 50 percent of the total premium for quali-
12 fying health insurance coverage provided
13 under this part.

14 “(B) ELECTIONS.—Elections under sub-
15 paragraph (A) may be filed with the Secretary
16 during the 180-day period beginning with the
17 first enrollment period occurring under section
18 803 and during open enrollment periods occur-
19 ring thereafter under such section. Such elec-
20 tions shall be filed in such form and manner as
21 shall be prescribed by the Secretary.

22 “(C) PART-TIME EMPLOYMENT.—Under
23 regulations of the Secretary, in the case of an
24 employee serving in a position in which service
25 is customarily less than 1,500 hours per year,

1 the reference in subparagraph (A)(ii) to ‘50
2 percent’ shall be deemed a percentage reduced
3 to a percentage that bears the same ratio to 50
4 percent as the number of hours of service per
5 year customarily in such position bears to
6 1,500.

7 “(2) SMALL EMPLOYER.—The term ‘small em-
8 ployer’ means, with respect to a year, an employer
9 who employed an average of fewer than 100 employ-
10 ees on business days during the preceding calendar
11 year and who employs at least 1 employee on the
12 first day of the year.

13 “(3) SEHBP.—The term ‘SEHBP’ means the
14 small employer health benefits program provided
15 under this part.

16 “(c) QUALIFYING HEALTH INSURANCE COVERAGE.—
17 For purposes of this part, the term ‘qualifying health in-
18 surance coverage’ means health insurance coverage that
19 meets the following requirements:

20 “(1) The coverage is offered by a health insur-
21 ance issuer.

22 “(2) The benefits under such coverage are
23 equivalent to or greater than the lower level of bene-
24 fits provided under the service benefit plan described
25 in section 8903(1) of title 5, United States Code.

1 “(3) The coverage includes, with respect to an
2 eligible individual that elects coverage, coverage of
3 the same dependents that would be covered if the
4 coverage were offered under FEHBP.

5 “(4)(A) Subject to subparagraph (B), there is
6 no underwriting, through a preexisting condition
7 limitation, differential benefits, or different premium
8 levels, or otherwise, with respect to such coverage for
9 covered individuals or their dependents.

10 “(B) The premiums charged for such coverage
11 are community-rated for individuals within any
12 State and may vary only—

13 “(i) by individual or family enrollment, and

14 “(ii) to the extent permitted under the
15 laws of such State relating to health insurance
16 coverage offered in the small group market, on
17 the basis of geography.

18 “(d) OTHER TERMS.—

19 “(1) HEALTH INSURANCE COVERAGE; HEALTH
20 INSURANCE ISSUER; HEALTH STATUS-RELATED FAC-
21 TOR.—The terms ‘health insurance coverage’, ‘health
22 insurance issuer’, ‘health status-related factor’ have
23 the meanings provided such terms in section 733.

24 “(2) SMALL GROUP MARKET.—The term ‘small
25 group market’ has the meaning provided such term

1 in section 2791(e)(5) of the Public Health Service
2 Act (42 U.S.C. 300gg-91(e)(5)).

3 “(3) FEHBP.—The term ‘FEHBP’ means the
4 Federal Employees Health Benefits Program under
5 chapter 89 of title 5, United States Code.

6 “(e) TREATMENT OF PARTNERSHIPS AND SELF-EM-
7 PLOYED INDIVIDUALS.—For purposes of this part, and for
8 purposes of applying section 3 to this part and to part
9 5 as it applies to this part, in any case in which qualifying
10 health insurance coverage is, or is to be, provided under
11 a plan, fund, or program to individuals covered there-
12 under—

13 “(1) if such plan, fund, or program is main-
14 tained by a partnership, the term ‘employer’ (as de-
15 fined in section 3(5)) includes the partnership in re-
16 lation to the partners, and the term ‘employee’ (as
17 defined in section 3(6)) includes any partner in rela-
18 tion to the partnership; and

19 “(2) if such plan, fund, or program is main-
20 tained by a self-employed individual, the term ‘em-
21 ployer’ (as defined in section 3(5)) and the term
22 ‘employee’ (as defined in section 3(6)) shall include
23 such individual.

1 **“SEC. 802. CONTRACTS WITH QUALIFYING INSURERS.**

2 “(a) IN GENERAL.—The Secretary shall enter into
3 contracts with health insurance issuers for the offering of
4 qualifying health insurance coverage under this part in the
5 States in such manner as to offer coverage to employees
6 of employers that elect to offer coverage under this part.
7 Nothing in this part shall be construed as requiring the
8 Secretary to enter into arrangements with all such issuers
9 seeking to offer qualifying health insurance coverage in
10 a State.

11 “(b) CONTINUED REGULATION.—Nothing in this
12 part shall be construed as preempting State laws applica-
13 ble to health insurance issuers that offer coverage under
14 this part in such State.

15 “(c) COORDINATION WITH STATE INSURANCE COM-
16 MISSIONERS.—The Secretary shall coordinate with the in-
17 surance commissioners for the various States in estab-
18 lishing a process for handling and resolving any com-
19 plaints relating to health insurance coverage offered under
20 this part, to the extent necessary to augment processes
21 otherwise available under State law.

22 **“SEC. 803. ADDITIONAL CONDITIONS.**

23 “(a) LIMITATION ON ENROLLMENT PERIODS.—The
24 Secretary may limit the periods of times during which em-
25 ployees may elect coverage offered under this part, but
26 such election shall be consistent with the elections per-

1 mitted for employees under FEHBP and shall provide for
2 at least annual open enrollment periods and enrollment
3 at the time of initial eligibility to enroll and upon appro-
4 priate changes in family circumstances.

5 “(b) AUTHORIZING USE OF STATES IN MAKING AR-
6 RANGEMENTS FOR COVERAGE.—In lieu of the coverage
7 otherwise arranged by the Secretary under this part, the
8 Secretary may enter an arrangement with a State under
9 which a State arranges for the provision of qualifying
10 health insurance coverage to qualifying small employers
11 in such manner as the Secretary would otherwise arrange
12 for such coverage.

13 “(c) USE OF FEHBP MODEL.—The Secretary shall
14 carry out the SEHBP using the model of the FEHBP
15 to the extent practicable and consistent with the provisions
16 of this part, and, in carrying out such model, the Secretary
17 shall, to the maximum extent practicable, negotiate the
18 most affordable and substantial coverage possible for
19 small employers.

20 **“SEC. 804. DISSEMINATION OF INFORMATION.**

21 “The Secretary shall widely disseminate information
22 about SEHBP through the media, the Internet, public
23 service announcements, and other employer and employee
24 directed communications.

1 **“SEC. 805. SUBSIDIES.**

2 “(a) EMPLOYER SUBSIDIES.—

3 “(1) ENROLLMENT DISCOUNT.—

4 “(A) IN GENERAL.—In the case of a quali-
5 fying small employer who is eligible under sub-
6 paragraph (B), the portion of the total pre-
7 mium for coverage otherwise payable by such
8 employer under this part shall be reduced by 5
9 percent. Such reduction shall not cause an in-
10 crease in the portion of the total premium pay-
11 able by employees.

12 “(B) EMPLOYERS ELIGIBLE FOR DIS-
13 COUNTS.—A qualifying small employer is eligi-
14 ble under this subparagraph if such employer
15 employed an average of fewer than 25 employ-
16 ees on business days during the preceding cal-
17 endar year.

18 “(2) EMPLOYER PREMIUM SUBSIDY.—

19 “(A) IN GENERAL.—The Secretary shall
20 provide to qualifying small employers who are
21 eligible under subparagraph (C) and who elect
22 to offer health insurance coverage under this
23 part a subsidy for premiums paid by the em-
24 ployer for coverage of employees whose indi-
25 vidual income (as determined by the Secretary)
26 is at or below 200 percent of the poverty line

1 (as defined in section 673(2) of the Community
2 Services Block Grant Act (42 U.S.C. 9902(2)),
3 including any revision required by such section)
4 for an individual.

5 “(B) SUBSIDY SCALED ACCORDING TO
6 SIZE OF EMPLOYER.—The subsidy provided
7 under subparagraph (A) shall be designed so
8 that the subsidy equals, for any calendar year—

9 “(i) 50 percent of the portion of the
10 premium payable by the employer for the
11 coverage, in the case of eligible qualifying
12 small employers who employ an average of
13 fewer than 11 employees on business days
14 during the preceding calendar year;

15 “(ii) 35 percent of the portion of the
16 premium payable by the employer for the
17 coverage, in the case of eligible qualifying
18 small employers who employ an average of
19 more than 10 employees but fewer than 26
20 employees on business days during the pre-
21 ceding calendar year; and

22 “(iii) 25 percent of the portion of the
23 premium payable by the employer for the
24 coverage, in the case of eligible qualifying
25 small employers who employ an average of

1 more than 25 employees but fewer than 51
2 employees on business days during the pre-
3 ceding calendar year.

4 “(C) EMPLOYERS ELIGIBLE FOR PREMIUM
5 SUBSIDY.—A qualifying small employer is eligi-
6 ble under this subparagraph if such employer
7 employed an average of fewer than 50 employ-
8 ees on business days during the preceding cal-
9 endar year.

10 “(b) EMPLOYEE SUBSIDIES.—

11 “(1) IN GENERAL.—The Secretary shall provide
12 subsidies to employees whose family income (as de-
13 termined by the Secretary) is at or below 200 per-
14 cent of the poverty line (as defined in section 673(2)
15 of the Community Services Block Grant Act (42
16 U.S.C. 9902(2)), including any revision required by
17 such section) for a family of the size involved.

18 “(2) AMOUNT OF SUBSIDY.—Such subsidies
19 shall be in an amount equal to the excess of the por-
20 tion of the total premium for coverage otherwise
21 payable by the employee under this part for any pe-
22 riod, over 5 percent of the family income (as deter-
23 mined under paragraph (1)(A)) of the employee for
24 such period.

1 “(3) COORDINATION OF SUBSIDIES.—Notwith-
2 standing paragraph (1), under regulations of the
3 Secretary, an employee may be entitled to subsidies
4 under this subsection for any period only if such em-
5 ployee is not eligible for subsidies for such period
6 under any Federal or State health insurance subsidy
7 program (including a program under title V, XIX, or
8 XXI of the Social Security Act). For purposes of
9 this paragraph, an employee is ‘eligible’ for a sub-
10 sidy under a program if such employee is entitled to
11 such subsidy or would, upon filing application there-
12 fore, be entitled to such subsidy.

13 “(4) AUTHORITY TO EXPAND ELIGIBILITY.—
14 The Secretary may, to the extent of available fund-
15 ing, provide for expansion of the subsidy program
16 under this subsection to employees whose family in-
17 come (as defined by the Secretary) is at or below
18 300 percent of the poverty line (as determined under
19 paragraph (1)).

20 “(c) PROCEDURES.—The Secretary shall establish by
21 regulation applications, methods, and procedures for car-
22 rying out this section, including measures to ascertain or
23 confirm levels of income.

1 **“SEC. 806. AUTHORIZATION OF APPROPRIATIONS.**

2 “There are authorized to be appropriated, for the pe-
 3 riod beginning with fiscal year 2006 and ending with fiscal
 4 year 2015, \$50,000,000,000 to carry out this part, includ-
 5 ing the establishment of subsidies under section 805.”.

6 (b) REPORT ON OFFERING NATIONAL HEALTH
 7 PLANS.—Not later than 18 months after the date of the
 8 enactment of this Act, the Secretary of Labor shall report
 9 to Congress the Secretary’s recommendations regarding
 10 the feasibility of offering national health plans under part
 11 8 of subtitle B of title I of the Employee Retirement In-
 12 come Security Act of 1974, as added by subsection (a).

13 (c) CLERICAL AMENDMENT.—The table of contents
 14 in section 1 of the Employee Retirement Income Security
 15 Act of 1974 is amended by inserting after the item relat-
 16 ing to section 734 the following new items:

“PART 8—SMALL EMPLOYER HEALTH BENEFITS PROGRAM (SEHBP)

- “801. Establishment of program.
- “802. Contracts with qualifying insurers.
- “803. Additional conditions.
- “804. Dissemination of information.
- “805. Subsidies.
- “806. Authorization of appropriations.”.

○