

THE HEALTH CARE CHOICE ACT—HR 2355

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This Act may be cited as the “Health Care Choice Act.”

Section 2. Constitutional Authority

Congress may enact this law pursuant to its ability to “regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes.”

Section 3. Findings

(1) Variations in State laws impact health insurance issues and their ability to provide access to affordable health insurance. (2) Health insurance is increasingly offered through the Internet, email, direct mail, and other means. (3) Collaboration between the States in the offering of insurance could result in increased efficiency. (4) The establishment of risk-retention groups has provided a successful model for the sale of insurance across State lines.

Section 4. Cooperative Governing of Individual Health Insurance Coverage

(a) Amends the Public Health Service Act by adding the following new part (Part D) at the end.

Part D – Cooperative Governing of Individual Health Insurance Coverage

Section 2795. Definitions

This section sets forth definitions of key terms that occur during application. The terms defined are (1) “primary State;” (2) “secondary State;” (3) “health insurance issuer;” (4) “individual health insurance coverage;” (5) “applicable State authority;” (6) “hazardous financial condition;” (7) “covered laws;” (8) “state;” (9) “unfair claims settlement practices;” and (10) “fraud and abuse.”

Section 2796. Application of Law

Subsection (a) establishes that, in general, the laws of the primary State shall apply to individual health insurance coverage offered in the primary State or in any secondary State.

Subsection (b) exempts a health insurance issuer, with respect to its offer, sale, renewal, and issuance of individual health insurance coverage, from a secondary State’s laws to the extent that such laws would:

- (1) make unlawful or regulate the operation of the health insurance issuer in the secondary State. However, the secondary State may require issuer to:
 - (a) pay, on a nondiscriminatory, basis any tax levied on insurers;
 - (b) register with the State insurance commissioner;
 - (c) submit to an examination of its financial condition;
 - (d) comply with a lawful order issued in a delinquency proceeding commenced under (c) or a voluntary dissolution proceeding;
 - (e) comply with an injunction issued by a court that the issuer is in hazardous financial condition;
 - (f) participate, on a nondiscriminatory basis, in any insurance insolvency guaranty association;
 - (g) comply with any State law regarding fraud and abuse;
 - (h) comply with any State law regarding unfair claims settlement practices.
- (2) require health insurance coverage to be countersigned by an agent living in the secondary State.
- (3) otherwise discriminate against a health insurance issuer operating in both primary and secondary States.

Subsection (c) requires that a clear and conspicuous disclosure be provided in any insurance coverage offered and in any renewal policy. It also provides the specific language to be used in the disclosure.

Subsection (d) prohibits insurers, upon renewal, from moving or reclassifying an individual based on health-status related factors or increasing the premiums charged an individual because of a health status-related factor or the past or prospective claims experience of that individual.

Subsection (e) provides that a health insurance issuer may not offer for sale health insurance coverage in a secondary State unless that coverage is currently offered for sale in the primary State.

Subsection (f) allows any State to require that a person acting as an agent or broker for a health insurance issuer to obtain a license from that State.

Subsection (g) requires each health insurance issuer providing coverage in both primary and secondary States to submit:

- (1) to the insurance commission of each State in which it offers coverage a plan of operation or feasibility study, written notice of any change in its designation of its primary State, and written notice from the issuer of the issuer's compliance with all the laws of the primary state;
- (2) a copy of the issuer's annual financial statement to the primary State and the insurance commissioner of each secondary State in which it offers coverage;

Subsection (h) allows a Federal or State court to enjoin the solicitation or sale of individual health insurance coverage by a health insurance issuer to any person or group who is not eligible or by an issuer that is in hazardous financial condition.

Subsection (i) provides that nothing in this section shall be construed to affect the authority of any State to enforce its laws not exempt in this section. If a State seeks an injunction regarding conduct described in subsection (f), the injunction must be obtained from a court of competent jurisdiction.

Subsection (j) permits States to bring action in any Federal or State court.

Subsection (k) states that this section does not affect the applicability of State laws generally applicable to persons or corporations.

Section 2797. Primary State Must Meet Federal Floor

A health insurance issuer may not offer, sell, or issue individual health insurance coverage in a secondary State if the primary State does not meet the following:

- (1) The State insurance commissioner must use a risk-based capital formula for the determination of capital and surplus requirements for all issuers.
- (2) The State must have legislation or regulation in place establishing an independent review process for individual health insurance coverage unless the issuer provides an independent review mechanism functionally equivalent to the 'Health Carrier External Review Model Act' of the National Association of Insurance Commissioners.

Section 2798. Enforcement

Subsection (a) provides that, subject to subsection (b), the primary State has sole jurisdiction to enforce the primary State's covered laws in the primary and any secondary States.

Subsection (b) states that subsection (a) does not affect the authority of a secondary State to enforce its laws as set forth in the exceptions specified in section 2796(b)(1).

Subsection (c) directs the court of appropriate jurisdiction to apply the covered laws of the primary State in reviewing action initiated by the secondary State.

Subsection (d) allows the secondary State to notify the applicable State authority of the primary State of any suspected compliance failures.

(b) Establishes that the effective date is the date of enactment of this Act.

Section 5. Severability

If any provision of the Act is found unconstitutional, the remainder of this Act is not affected.