

PROVIDING FOR CONSIDERATION OF H.R. 660, SMALL  
BUSINESS HEALTH FAIRNESS ACT OF 2003

---

JUNE 18, 2003.—Referred to the House Calendar and ordered to be printed

---

Mr. LINCOLN DIAZ-BALART of Florida, from the Committee on  
Rules, submitted the following

R E P O R T

[To accompany H. Res. 283]

The Committee on Rules, having had under consideration House Resolution 283, by a record vote of 6 to 3, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 660, the Small Business Health Fairness Act of 2003, under a modified closed rule. The rule provides one hour of debate in the House equally divided and controlled by the chairman and ranking minority member of the Committee on Education and the Workforce. The rule waives all points of order against consideration of the bill.

The rule provides that the amendment recommended by the Committee on Education and the Workforce now printed in the bill shall be considered as adopted. The rule makes in order the amendment printed in this report, if offered by Representative Kind of Wisconsin or his designee, which shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment printed in this report.

Finally, the rule provides one motion to recommit with or without instructions.

The waiver of all points of order against consideration of the bill in the rule includes a waiver of clause 4(a) of rule XIII (requiring three-day availability of the committee report), which is necessary because the Committee on Education and the Workforce filed its report (H. Rept. 108-156) on Monday, June 16, 2003, but was not available until Wednesday, June 18, 2003, and the bill may be considered by the House as early as Thursday, June 19, 2003.

## COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

*Rules Committee record vote No. 114*

Date: June 18, 2003.

Measure: H.R. 660, Small Business Health Fairness Act of 2003.

Motion by: Mr. Frost.

Summary of motion: To report an open rule.

Results: Defeated 3 to 6.

Vote by Members: Linder—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 115*

Date: June 18, 2003.

Measure: H.R. 660, Small Business Health Fairness Act of 2003.

Motion by: Mr. Frost.

Summary of motion: To make in order the amendment offered by Representative Andrews which prevents a Multiple Employer Welfare Arrangement (MEWA) from operating as an AHP.

Results: Defeated 3 to 6.

Vote by Members: Linder—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 116*

Date: June 18, 2003.

Measure: H.R. 660, Small Business Health Fairness Act of 2003.

Motion by: Mr. Frost.

Summary of motion: To make in order the amendment offered by Representative Andrews which prohibits AHPs from varying the employer contributions or premiums of a small employer based upon the race, color, national origin, or age of an employer's workforce.

Results: Defeated 3 to 6.

Vote by Members: Linder—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 117*

Date: June 18, 2003.

Measure: H.R. 660, Small Business Health Fairness Act of 2003.

Motion by: Mr. Frost.

Summary of motion: To make in order the amendment offered by Representative Andrews which prohibits AHPs from increasing the premium of a small employer based upon the fact that the firm's employees have a different gender composition than other small employers. Provides that gender could not be used by the AHP to set premiums for small firms.

Results: Defeated 3 to 6.

Vote by Members: Linder—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 118*

Date: June 18, 2003.

Measure: H.R. 660, Small Business Health Fairness Act of 2003.

Motion by: Mr. Frost.

Summary of motion: To make in order the amendment offered by Representative Kildee which prohibits association health plans (AHPs) from being exempt from state laws that require insurance companies to cover diabetic supplies and education.

Results: Defeated 3 to 6.

Vote by Members: Linder—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 119*

Date: June 18, 2003.

Measure: H.R. 660, Small Business Health Fairness Act of 2003.

Motion by: Mr. Frost.

Summary of motion: To make in order the amendment offered by Representative Kind which prohibits that AHP shall not be exempt from already existing state insurance laws mandating autism treatment and coverage.

Results: Defeated 3 to 6.

Vote by Members: Linder—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 120*

Date: June 18, 2003.

Measure: H.R. 660, Small Business Health Fairness Act of 2003.

Motion by: Mr. McGovern.

Summary of motion: To make in order the amendment offered by Representative McCarthy of New York which prohibits AHPs from being exempt from the state law that requires insurance companies to cover prostate cancer screening.

Results: Defeated 3 to 6.

Vote by Members: Linder—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 121*

Date: June 18, 2003.

Measure: H.R. 660, Small Business Health Fairness Act of 2003.

Motion by: Mr. McGovern.

Summary of motion: To make in order the amendment offered by Representative McCarthy of New York which prohibits AHPs from being exempt from the state law that requires insurance companies to cover mammography screening.

Results: Defeated 3 to 6.

Vote by Members: Linder—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 122*

Date: June 18, 2003.

Measure: H.R. 660, Small Business Health Fairness Act of 2003.

Motion by: Mr. McGovern.

Summary of motion: To make in order the amendment offered by Representative McCollum which requires AHPs formed under the bill covering maternity and well-child benefits in states that currently mandate this coverage. Requires that AHPs must provide such benefits in the states that have mandated this type of coverage for women and children.

Results: Defeated 3 to 6.

Vote by Members: Linder—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 123*

Date: June 18, 2003.

Measure: H.R. 660, Small Business Health Fairness Act of 2003.

Motion by: Mr. McGovern.

Summary of motion: To make in order the amendment offered by Representative Millender-McDonald which increases the minimum surplus requirement for AHPs to \$1 million or such greater amount (but not greater than \$4 million) as may be set forth in regulations prescribed by the applicable authority through negotiated rule-making, based on the level of aggregate and specific excess/stop loss insurance provided with respect to such plan.

Results: Defeated 3 to 6.

Vote by Members: Linder—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 124*

Date: June 18, 2003.

Measure: H.R. 660, Small Business Health Fairness Act of 2003.

Motion by: Mr. Hastings of Florida.

Summary of motion: To make in order the amendment offered by Representative Tierney which requires AHPs to comply with state consumer protection laws that: require prompt payment of claims by the insurer; requires right to independent external review of coverage decisions; requires direct access to OB/GYN and pediatricians without a referral; requires prudent layperson decision making standards; requires coverage of non-formulary prescription drugs in certain situations; require access to hospital emergency room treatment; and prohibits provider gag rules.

Results: Defeated 3 to 6.

Vote by Members: Linder—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 125*

Date: June 18, 2003.

Measure: H.R. 660, Small Business Health Fairness Act of 2003.

Motion by: Mr. Hastings of Florida.

Summary of motion: To make in order the amendment offered by Representative George Miller of California which prohibits AHPs

from accepting employees as members if they provided health insurance coverage during the one year period prior to the effective date of the Act and if doing so would reduce the quality of coverage offered to employees and their families.

Results: Defeated 3 to 6.

Vote by Members: Linder—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 126*

Date: June 18, 2003.

Measure: H.R. 660, Small Business Health Fairness Act of 2003.

Motion by: Mr. Linder.

Summary of motion: To report the resolution.

Results: Agreed to 6 to 3.

Vote by Members: Linder—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Reynolds—Yea; Frost—Nay; McGovern—Nay; Hastings (FL)—Nay; Dreier—Yea.

SUMMARY OF AMENDMENT MADE IN ORDER UNDER THE RULE

Kind/Andrews: Amendment in the Nature of a Substitute. Requires the Department of Labor to establish a Small Employer Health Benefits Plan (SEHB) similar to the Federal Employees Health Benefits Plan (FEHB). Requires the Secretary to widely disseminate information about SEHB through the media, internet, public service announcements, and other employer and employee directed communications. All employers with fewer than 100 employees during the previous calendar year shall be eligible to apply for coverage under SEHB. Employers must offer coverage to all employees who have completed 3 months of service. Employees working fewer than 30 hours a week are eligible for pro rata coverage. Requires the Secretary to establish an initial open enrollment period and thereafter an annual enrollment period. Requires the Department of Labor to annually contract with state licensed health insurers to offer health insurance coverage in a state. Participating insurers shall remain subject to state law applicable to the states in which they cover residents. Requires all participating insurers to offer benefits equivalent to or greater than the options offered to federal employees. Requires employers joining SEHB to contribute at least 50% of premium costs. Employers with fewer than 25 employees shall be eligible for a coverage incentive discount of 5% to employers joining SEHB. Small employers with fewer than 50 employees shall be eligible for a sliding scale premium subsidy for employees earning less than 200% of the poverty level (50% for firms under 10 employees; 35% for firms under 25 employees; and 25% for firms under 50 employees). Employee premiums for employees earning under 200% of the poverty level, adjusted for family size, shall be eligible for 100% subsidies for premium contribution over 5% of salary if not covered by another federal or state health insurance program. Authorizes up to \$50 billion for the Department to provide small employer health coverage subsidies in fiscal years 2004–2014 (in accordance with the fiscal year 2004 Budget Resolution).

## TEXT OF AMENDMENT MADE IN ORDER UNDER THE RULE

Strike all after the enacting clause and insert the following:

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

(a) **SHORT TITLE.**—This Act may be cited as the “Small Employer Health Benefits Program Act of 2003”.

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

Sec. 1. Short title.

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

## “PART 8—SMALL EMPLOYER HEALTH BENEFITS PROGRAM

“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.

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

(a) **IN GENERAL.**—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after part 7 the following new part:

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

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

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

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

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

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

“(1) **QUALIFYING SMALL EMPLOYER.**—

“(A) **IN GENERAL.**—The term ‘qualifying small employer’ means a small employer (as defined in paragraph (2)) that—

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

“(ii) elects, with respect to an employee electing coverage under qualified health insurance coverage, to pay at least 50 percent of the total premium for qualifying health insurance coverage provided under this part.

“(B) **ELECTIONS.**—Elections under subparagraph (A) may be filed with the Secretary during the 180-day period beginning with the first enrollment period occurring under section 803 and during open enrollment periods occurring thereafter under such section. Such elections shall be filed in such form and manner as shall be prescribed by the Secretary.

“(C) PART-TIME EMPLOYMENT.—Under regulations of the Secretary, in the case of an employee serving in a position in which service is customarily less than 1,500 hours per year, the reference in subparagraph (A)(ii) to ‘50 percent’ shall be deemed a percentage reduced to a percentage that bears the same ratio to 50 percent as the number of hours of service per year customarily in such position bears to 1,500.

“(2) SMALL EMPLOYER.—The term ‘small employer’ means, with respect to a year, an employer who employed an average of fewer than 100 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the year.

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

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

“(1) The coverage is offered by a health insurance issuer.

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

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

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

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

“(i) by individual or family enrollment, and

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

“(d) OTHER TERMS.—

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

“(2) SMALL GROUP MARKET.—The term ‘small group market’ has the meaning provided such term in section 2791(e)(5) of the Public Health Service Act (42 U.S.C. 300gg-91(e)(5)).

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

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

“(a) IN GENERAL.—The Secretary shall enter into contracts with health insurance issuers for the offering of qualifying health insurance coverage under this part in the States in such manner as to offer coverage to employees of employers that elect to offer coverage under this part. Nothing in this part shall be construed as requir-

ing the Secretary to enter into arrangements with all such issuers seeking to offer qualifying health insurance coverage in a State.

“(b) CONTINUED REGULATION.—Nothing in this part shall be construed as preempting State laws applicable to health insurance issuers that offer coverage under this part in such State.

“(c) COORDINATION WITH STATE INSURANCE COMMISSIONERS.—The Secretary shall coordinate with the insurance commissioners for the various States in establishing a process for handling and resolving any complaints relating to health insurance coverage offered under this part, to the extent necessary to augment processes otherwise available under State law.

**“SEC. 803. ADDITIONAL CONDITIONS.**

“(a) LIMITATION ON ENROLLMENT PERIODS.—The Secretary may limit the periods of times during which employees may elect coverage offered under this part, but such election shall be consistent with the elections permitted for employees under FEHBP and shall provide for at least annual open enrollment periods and enrollment at the time of initial eligibility to enroll and upon appropriate changes in family circumstances.

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

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

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

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

**“SEC. 805. SUBSIDIES.**

“(a) EMPLOYER SUBSIDIES.—

“(1) ENROLLMENT DISCOUNT.—

“(A) IN GENERAL.—In the case of a qualifying small employer who is eligible under subparagraph (B), the portion of the total premium for coverage otherwise payable by such employer under this part shall be reduced by 5 percent. Such reduction shall not cause an increase in the portion of the total premium payable by employees.

“(B) EMPLOYERS ELIGIBLE FOR DISCOUNTS.—A qualifying small employer is eligible under this subparagraph if such employer employed an average of fewer than 25 employees on business days during the preceding calendar year.

“(2) EMPLOYER PREMIUM SUBSIDY.—

“(A) IN GENERAL.—The Secretary shall provide to qualifying small employers who are eligible under subparagraph (C) and who elect to offer health insurance coverage under this part a subsidy for premiums paid by the em-

ployer for coverage of employees whose individual income (as determined by the Secretary) is at or below 200 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section) for an individual.

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

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

“(ii) 35 percent of the portion of the premium payable by the employer for the coverage, in the case of eligible qualifying small employers who employ an average of more than 10 employees but fewer than 26 employees on business days during the preceding calendar year; and

“(iii) 25 percent of the portion of the premium payable by the employer for the coverage, in the case of eligible qualifying small employers who employ an average of more than 25 employees but fewer than 51 employees on business days during the preceding calendar year.

“(C) EMPLOYERS ELIGIBLE FOR PREMIUM SUBSIDY.—A qualifying small employer is eligible under this subparagraph if such employer employed an average of fewer than 50 employees on business days during the preceding calendar year.

“(b) EMPLOYEE SUBSIDIES.—

“(1) IN GENERAL.—The Secretary shall provide subsidies to employees whose family income (as determined by the Secretary) is at or below 200 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section) for a family of the size involved.

“(2) AMOUNT OF SUBSIDY.—Such subsidies shall be in an amount equal to the excess of the portion of the total premium for coverage otherwise payable by the employee under this part for any period, over 5 percent of the family income (as determined under paragraph (1)(A)) of the employee for such period.

“(3) COORDINATION OF SUBSIDIES.—Notwithstanding paragraph (1), under regulations of the Secretary, an employee may be entitled to subsidies under this subsection for any period only if such employee is not eligible for subsidies for such period under any Federal or State health insurance subsidy program (including a program under title V, XIX, or XXI of the Social Security Act). For purposes of this paragraph, an employee is ‘eligible’ for a subsidy under a program if such employee is entitled to such subsidy or would, upon filing application therefore, be entitled to such subsidy.

“(4) AUTHORITY TO EXPAND ELIGIBILITY.—The Secretary may, to the extent of available funding, provide for expansion of the

subsidy program under this subsection to employees whose family income (as defined by the Secretary) is at or below 300 percent of the poverty line (as determined under paragraph (1)).

“(c) PROCEDURES.—The Secretary shall establish by regulation applications, methods, and procedures for carrying out this section, including measures to ascertain or confirm levels of income.

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

“There are authorized to be appropriated, for the period beginning with fiscal year 2004 and ending with fiscal year 2014, \$50,000,000,000 to carry out this part, including the establishment of subsidies under section 805.”

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

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

“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.”.

Amend the title so as to read: “A Bill to provide for the establishment in the Department of Labor of a Small Employer Health Benefits Program.”.

