

107TH CONGRESS  
1ST SESSION

# S. 284

To amend the Internal Revenue Code of 1986 to provide incentives to expand health care coverage for individuals.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2001

Mr. MCCAIN (for himself, Mr. EDWARDS, Mr. KENNEDY, Mr. L. CHAFEE, Mr. GRAHAM, Mr. SPECTER, Mrs. LINCOLN, Mr. HARKIN, Mr. BAUCUS, Mr. TORRICELLI, Mr. DODD, Mr. NELSON of Florida, Mr. SCHUMER, and Mr. CORZINE) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide incentives to expand health care coverage for individuals.

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.**

4       This Act may be cited as the “Bipartisan Patient  
5 Protection Act of 2001—Part II”.

6 **SEC. 2. EXPANDED AVAILABILITY OF ARCHER MSAS.**

7       (a) EXTENSION OF PROGRAM.—Paragraphs (2) and  
8 (3)(B) of section 220(i) of the Internal Revenue Code of

1 1986 (defining cut-off year) are each amended by striking  
 2 “2002” each place it appears and inserting “2004”.

3 (b) INCREASE IN NUMBER OF PERMITTED ACCOUNT  
 4 PARTICIPANTS.—

5 (1) IN GENERAL.—Subsection (j) of section 220  
 6 of such Code is amended by redesignating para-  
 7 graphs (3), (4), and (5) as paragraphs (4), (5), and  
 8 (6) and by inserting after paragraph (2) the fol-  
 9 lowing new paragraph:

10 “(3) DETERMINATION OF WHETHER LIMIT EX-  
 11 CEDED FOR YEARS AFTER 2001.—

12 “(A) IN GENERAL.—The numerical limita-  
 13 tion for any year after 2001 is exceeded if the  
 14 sum of—

15 “(i) the number of Archer MSA re-  
 16 turns filed on or before April 15 of such  
 17 calendar year for taxable years ending with  
 18 or within the preceding calendar year, plus

19 “(ii) the Secretary’s estimate (deter-  
 20 mined on the basis of the returns described  
 21 in clause (i)) of the number of Archer  
 22 MSA returns for such taxable years which  
 23 will be filed after such date, exceeds  
 24 1,000,000. For purposes of the preceding  
 25 sentence, the term ‘Archer MSA return’

1 means any return on which any exclusion  
2 is claimed under section 106(b) or any de-  
3 duction is claimed under this section.

4 “(B) ALTERNATIVE COMPUTATION OF LIM-  
5 ITATION.—The numerical limitation for any  
6 year after 2001 is also exceeded if the sum of—

7 “(i) 90 percent of the sum determined  
8 under subparagraph (A) for such calendar  
9 year, plus

10 “(ii) the product of 2.5 and the num-  
11 ber of medical savings accounts established  
12 during the portion of such year preceding  
13 July 1 (based on the reports required  
14 under paragraph (5)) for taxable years be-  
15 ginning in such year,

16 exceeds 1,000,000.”

17 (2) CONFORMING AMENDMENTS.—

18 (A) Clause (ii) of section 220(j)(2)(B) of  
19 such Code is amended by striking “paragraph  
20 (4)” and inserting “paragraph (5)”.

21 (B) Subparagraph (A) of section 220(j)(4)  
22 of such Code is amended by striking “and  
23 2001” and inserting “2001, 2002, and 2003”.

24 (c) INCREASE IN SIZE OF ELIGIBLE EMPLOYERS.—  
25 Subparagraph (A) of section 220(e)(4) of such Code is

1 amended by striking “50 or fewer employees” and insert-  
 2 ing “100 or fewer employees”.

3 (d) EFFECTIVE DATE.—The amendments made by  
 4 this section shall take effect on the date of the enactment  
 5 of this Act.

6 (e) GAO STUDY.—Not later than 1 year after the  
 7 date of the enactment of this Act, the Comptroller General  
 8 of the United States shall prepare and submit a report  
 9 to the Committee on Ways and Means of the House of  
 10 Representatives and the Committee on Finance of the  
 11 Senate on the impact of Archer MSAs on the cost of con-  
 12 ventional insurance (especially in those areas where there  
 13 are higher numbers of such accounts) and on adverse se-  
 14 lection and health care costs.

15 **SEC. 3. DEDUCTION FOR 100 PERCENT OF HEALTH INSUR-**  
 16 **ANCE COSTS OF SELF-EMPLOYED INDIVID-**  
 17 **UALS.**

18 (a) IN GENERAL.—Paragraph (1) of section 162(l)  
 19 of the Internal Revenue Code of 1986 is amended to read  
 20 as follows:

21 “(1) ALLOWANCE OF DEDUCTION.—In the case  
 22 of an individual who is an employee within the  
 23 meaning of section 401(c)(1), there shall be allowed  
 24 as a deduction under this section an amount equal  
 25 to 100 percent of the amount paid during the tax-



1           “(1) in the case of insurance purchased as a  
2 member of a qualified health benefit purchasing coa-  
3 lition (as defined in section 9841), 30 percent, and

4           “(2) in the case of insurance not described in  
5 paragraph (1), 20 percent.

6           “(c) LIMITATIONS.—

7           “(1) PER EMPLOYEE DOLLAR LIMITATION.—

8 The amount of expenses taken into account under  
9 subsection (a) with respect to any employee for any  
10 taxable year shall not exceed—

11           “(A) \$2,000 in the case of self-only cov-  
12 erage, and

13           “(B) \$5,000 in the case of family coverage.

14 In the case of an employee who is covered by a new  
15 health plan of the employer for only a portion of  
16 such taxable year, the limitation under the preceding  
17 sentence shall be an amount which bears the same  
18 ratio to such limitation (determined without regard  
19 to this sentence) as such portion bears to the entire  
20 taxable year.

21           “(2) PERIOD OF COVERAGE.—Expenses may be  
22 taken into account under subsection (a) only with  
23 respect to coverage for the 4-year period beginning  
24 on the date the employer establishes a new health  
25 plan.

1 “(d) DEFINITIONS.—For purposes of this section—

2 “(1) HEALTH INSURANCE COVERAGE.—The  
3 term ‘health insurance coverage’ has the meaning  
4 given such term by section 9832(b)(1).

5 “(2) NEW HEALTH PLAN.—

6 “(A) IN GENERAL.—The term ‘new health  
7 plan’ means any arrangement of the employer  
8 which provides health insurance coverage to em-  
9 ployees if—

10 “(i) such employer (and any prede-  
11 cessor employer) did not establish or main-  
12 tain such arrangement (or any similar ar-  
13 rangement) at any time during the 2 tax-  
14 able years ending prior to the taxable year  
15 in which the credit under this section is  
16 first allowed, and

17 “(ii) such arrangement provides  
18 health insurance coverage to at least 70  
19 percent of the qualified employees of such  
20 employer.

21 “(B) QUALIFIED EMPLOYEE.—

22 “(i) IN GENERAL.—The term ‘quali-  
23 fied employee’ means any employee of an  
24 employer if the annual rate of such em-

1           employee’s compensation (as defined in sec-  
2           tion 414(s)) exceeds \$10,000.

3           “(ii) TREATMENT OF CERTAIN EM-  
4           PLOYEES.—The term ‘employee’ shall in-  
5           clude a leased employee within the mean-  
6           ing of section 414(n).

7           “(3) SMALL EMPLOYER.—The term ‘small em-  
8           ployer’ has the meaning given to such term by sec-  
9           tion 4980D(d)(2); except that only qualified employ-  
10          ees shall be taken into account.

11          “(e) SPECIAL RULES.—

12           “(1) CERTAIN RULES MADE APPLICABLE.—For  
13          purposes of this section, rules similar to the rules of  
14          section 52 shall apply.

15           “(2) AMOUNTS PAID UNDER SALARY REDUC-  
16          TION ARRANGEMENTS.—No amount paid or incurred  
17          pursuant to a salary reduction arrangement shall be  
18          taken into account under subsection (a).

19          “(f) TERMINATION.—This section shall not apply to  
20          expenses paid or incurred by an employer with respect to  
21          any arrangement established on or after January 1,  
22          2010.”.

23          (b) CREDIT TO BE PART OF GENERAL BUSINESS  
24          CREDIT.—Section 38(b) of such Code (relating to current  
25          year business credit) is amended by striking “plus” at the

1 end of paragraph (12), by striking the period at the end  
 2 of paragraph (13) and inserting “, plus”, and by adding  
 3 at the end the following:

4 “(14) in the case of a small employer (as de-  
 5 fined in section 45E(d)(3)), the health insurance  
 6 credit determined under section 45E(a).”

7 (c) NO CARRYBACKS.—Subsection (d) of section 39  
 8 of such Code (relating to carryback and carryforward of  
 9 unused credits) is amended by adding at the end the fol-  
 10 lowing:

11 “(10) NO CARRYBACK OF SECTION 45E CREDIT  
 12 BEFORE EFFECTIVE DATE.—No portion of the un-  
 13 used business credit for any taxable year which is  
 14 attributable to the employee health insurance ex-  
 15 penses credit determined under section 45E may be  
 16 carried back to a taxable year ending before the date  
 17 of the enactment of section 45E.”

18 (d) DENIAL OF DOUBLE BENEFIT.—Section 280C of  
 19 such Code is amended by adding at the end the following  
 20 new subsection:

21 “(d) CREDIT FOR SMALL BUSINESS HEALTH INSUR-  
 22 ANCE EXPENSES.—

23 “(1) IN GENERAL.—No deduction shall be al-  
 24 lowed for that portion of the expenses (otherwise al-  
 25 lowable as a deduction) taken into account in deter-

1 mining the credit under section 45E for the taxable  
 2 year which is equal to the amount of the credit de-  
 3 termined for such taxable year under section  
 4 45E(a).

5 “(2) CONTROLLED GROUPS.—Persons treated  
 6 as a single employer under subsection (a) or (b) of  
 7 section 52 shall be treated as 1 person for purposes  
 8 of this section.”

9 (e) CLERICAL AMENDMENT.—The table of sections  
 10 for subpart D of part IV of subchapter A of chapter 1  
 11 of such Code is amended by adding at the end the fol-  
 12 lowing:

“Sec. 45E. Small business health insurance expenses.”

13 (f) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply to amounts paid or incurred in tax-  
 15 able years beginning after December 31, 2001, for ar-  
 16 rangements established after the date of the enactment  
 17 of this Act.

18 **SEC. 5. CERTAIN GRANTS BY PRIVATE FOUNDATIONS TO**  
 19 **QUALIFIED HEALTH BENEFIT PURCHASING**  
 20 **COALITIONS.**

21 (a) IN GENERAL.—Section 4942 of the Internal Rev-  
 22 enue Code of 1986 (relating to taxes on failure to dis-  
 23 tribute income) is amended by adding at the end the fol-  
 24 lowing:

1       “(k) CERTAIN QUALIFIED HEALTH BENEFIT PUR-  
2 CHASING COALITION DISTRIBUTIONS.—

3           “(1) IN GENERAL.—For purposes of subsection  
4 (g), sections 170, 501, 507, 509, and 2522, and this  
5 chapter, a qualified health benefit purchasing coalition  
6 distribution by a private foundation shall be  
7 considered to be a distribution for a charitable pur-  
8 pose.

9           “(2) QUALIFIED HEALTH BENEFIT PUR-  
10 CHASING COALITION DISTRIBUTION.—For purposes  
11 of paragraph (1)—

12           “(A) IN GENERAL.—The term ‘qualified  
13 health benefit purchasing coalition distribution’  
14 means any amount paid or incurred by a pri-  
15 vate foundation to or on behalf of a qualified  
16 health benefit purchasing coalition (as defined  
17 in section 9841) for purposes of payment or re-  
18 imbursement of amounts paid or incurred in  
19 connection with the establishment and mainte-  
20 nance of such coalition.

21           “(B) EXCLUSIONS.—Such term shall not  
22 include any amount used by a qualified health  
23 benefit purchasing coalition (as so defined)—

24           “(i) for the purchase of real property,

1           “(ii) as payment to, or for the benefit  
2           of, members (or employees or affiliates of  
3           such members) of such coalition, or

4           “(iii) for any expense paid or incurred  
5           more than 48 months after the date of es-  
6           tablishment of such coalition.

7           “(3) TERMINATION.—This subsection shall not  
8           apply—

9           “(A) to qualified health benefit purchasing  
10          coalition distributions paid or incurred after  
11          December 31, 2009, and

12          “(B) with respect to start-up costs of a co-  
13          alition which are paid or incurred after Decem-  
14          ber 31, 2010.”.

15          (b) QUALIFIED HEALTH BENEFIT PURCHASING CO-  
16          ALITION.—

17           (1) IN GENERAL.—Chapter 100 of such Code  
18          (relating to group health plan requirements) is  
19          amended by adding at the end the following new  
20          subchapter:

21           **“Subchapter D—Qualified Health Benefit**  
22           **Purchasing Coalition**

          “Sec. 9841. Qualified health benefit purchasing coalition.

1 **“SEC. 9841. QUALIFIED HEALTH BENEFIT PURCHASING CO-**  
2 **ALITION.**

3 “(a) IN GENERAL.—A qualified health benefit pur-  
4 chasing coalition is a private not-for-profit corporation  
5 which—

6 “(1) sells health insurance through State li-  
7 censed health insurance issuers in the State in which  
8 the employers to which such coalition is providing  
9 insurance are located, and

10 “(2) establishes to the Secretary, under State  
11 certification procedures or other procedures as the  
12 Secretary may provide by regulation, that such coali-  
13 tion meets the requirements of this section.

14 “(b) BOARD OF DIRECTORS.—

15 “(1) IN GENERAL.—Each purchasing coalition  
16 under this section shall be governed by a Board of  
17 Directors.

18 “(2) ELECTION.—The Secretary shall establish  
19 procedures governing election of such Board.

20 “(3) MEMBERSHIP.—The Board of Directors  
21 shall—

22 “(A) be composed of representatives of the  
23 members of the coalition, in equal number, in-  
24 cluding small employers and employee rep-  
25 resentatives of such employers, but

1           “(B) not include other interested parties,  
2           such as service providers, health insurers, or in-  
3           surance agents or brokers which may have a  
4           conflict of interest with the purposes of the coa-  
5           lition.

6           “(c) MEMBERSHIP OF COALITION.—

7           “(1) IN GENERAL.—A purchasing coalition  
8           shall accept all small employers residing within the  
9           area served by the coalition as members if such em-  
10          ployers request such membership.

11          “(2) OTHER MEMBERS.—The coalition, at the  
12          discretion of its Board of Directors, may be open to  
13          individuals and large employers.

14          “(3) VOTING.—Members of a purchasing coali-  
15          tion shall have voting rights consistent with the rules  
16          established by the State.

17          “(d) DUTIES OF PURCHASING COALITIONS.—Each  
18          purchasing coalition shall—

19          “(1) enter into agreements with small employ-  
20          ers (and, at the discretion of its Board, with individ-  
21          uals and other employers) to provide health insur-  
22          ance benefits to employees and retirees of such em-  
23          ployers,

1           “(2) where feasible, enter into agreements with  
2           3 or more unaffiliated, qualified licensed health  
3           plans, to offer benefits to members,

4           “(3) offer to members at least 1 open enroll-  
5           ment period of at least 30 days per calendar year,

6           “(4) serve a significant geographical area and  
7           market to all eligible members in that area, and

8           “(5) carry out other functions provided for  
9           under this section.

10          “(e) LIMITATION ON ACTIVITIES.—A purchasing coa-  
11          lition shall not—

12           “(1) perform any activity (including certifi-  
13           cation or enforcement) relating to compliance or li-  
14           censing of health plans,

15           “(2) assume insurance or financial risk in rela-  
16           tion to any health plan, or

17           “(3) perform other activities identified by the  
18           State as being inconsistent with the performance of  
19           its duties under this section.

20          “(f) ADDITIONAL REQUIREMENTS FOR PURCHASING  
21          COALITIONS.—As provided by the Secretary in regula-  
22          tions, a purchasing coalition shall be subject to require-  
23          ments similar to the requirements of a group health plan  
24          under this chapter.

25          “(g) RELATION TO OTHER LAWS.—

1           “(1) PREEMPTION OF STATE FICTITIOUS  
2           GROUP LAWS.—Requirements (commonly referred to  
3           as fictitious group laws) relating to grouping and  
4           similar requirements for health insurance coverage  
5           are preempted to the extent such requirements im-  
6           pede the establishment and operation of qualified  
7           health benefit purchasing coalitions.

8           “(2) ALLOWING SAVINGS TO BE PASSED  
9           THROUGH.—Any State law that prohibits health in-  
10          surance issuers from reducing premiums on health  
11          insurance coverage sold through a qualified health  
12          benefit purchasing coalition to reflect administrative  
13          savings is preempted. This paragraph shall not be  
14          construed to preempt State laws that impose restric-  
15          tions on premiums based on health status, claims  
16          history, industry, age, gender, or other underwriting  
17          factors.

18          “(3) NO WAIVER OF HIPAA REQUIREMENTS.—  
19          Nothing in this section shall be construed to change  
20          the obligation of health insurance issuers to comply  
21          with the requirements of title XXVII of the Public  
22          Health Service Act with respect to health insurance  
23          coverage offered to small employers in the small  
24          group market through a qualified health benefit pur-  
25          chasing coalition.

1       “(h) DEFINITION OF SMALL EMPLOYER.—For pur-  
2 poses of this section—

3           “(1) IN GENERAL.—The term ‘small employer’  
4 means, with respect to any calendar year, any em-  
5 ployer if such employer employed an average of at  
6 least 2 and not more than 50 qualified employees on  
7 business days during either of the 2 preceding cal-  
8 endar years. For purposes of the preceding sentence,  
9 a preceding calendar year may be taken into account  
10 only if the employer was in existence throughout  
11 such year.

12           “(2) EMPLOYERS NOT IN EXISTENCE IN PRE-  
13 CEDING YEAR.—In the case of an employer which  
14 was not in existence throughout the 1st preceding  
15 calendar year, the determination under paragraph  
16 (1) shall be based on the average number of quali-  
17 fied employees that it is reasonably expected such  
18 employer will employ on business days in the current  
19 calendar year.”.

20           “(2) CONFORMING AMENDMENT.—The table of  
21 subchapters for chapter 100 of such Code is amend-  
22 ed by adding at the end the following item:

          “Subchapter D. Qualified health benefit purchasing coalition.”.

23           “(c) EFFECTIVE DATE.—The amendment made by  
24 subsection (a) shall apply to taxable years beginning after  
25 December 31, 2001.

1 **SEC. 6. STATE GRANT PROGRAM FOR MARKET INNOVA-**  
2 **TION.**

3 (a) IN GENERAL.—The Secretary of Health and  
4 Human Services (in this section referred to as the “Sec-  
5 retary”) shall establish a program (in this section referred  
6 to as the “program”) to award demonstration grants  
7 under this section to States to allow States to demonstrate  
8 the effectiveness of innovative ways to increase access to  
9 health insurance through market reforms and other inno-  
10 vative means. Such innovative means may include (and are  
11 not limited to) any of the following:

12 (1) Alternative group purchasing or pooling ar-  
13 rangements, such as a purchasing cooperatives for  
14 small businesses, reinsurance pools, or high risk  
15 pools.

16 (2) Individual or small group market reforms.

17 (3) Consumer education and outreach.

18 (4) Subsidies to individuals, employers, or both,  
19 in obtaining health insurance.

20 (b) SCOPE; DURATION.—The program shall be lim-  
21 ited to not more than 10 States and to a total period of  
22 5 years, beginning on the date the first demonstration  
23 grant is made.

24 (c) CONDITIONS FOR DEMONSTRATION GRANTS.—

25 (1) IN GENERAL.—The Secretary may not pro-  
26 vide for a demonstration grant to a State under the

1 program unless the Secretary finds that under the  
2 proposed demonstration grant—

3 (A) the State will provide for demonstrated  
4 increase of access for some portion of the exist-  
5 ing uninsured population through a market in-  
6 novation (other than merely through a financial  
7 expansion of a program initiated before the  
8 date of the enactment of this Act);

9 (B) the State will comply with applicable  
10 Federal laws;

11 (C) the State will not discriminate among  
12 participants on the basis of any health status-  
13 related factor (as defined in section 2791(d)(9)  
14 of the Public Health Service Act), except to the  
15 extent a State wishes to focus on populations  
16 that otherwise would not obtain health insur-  
17 ance because of such factors; and

18 (D) the State will provide for such evalua-  
19 tion, in coordination with the evaluation re-  
20 quired under subsection (d), as the Secretary  
21 may specify.

22 (2) APPLICATION.—The Secretary shall not  
23 provide a demonstration grant under the program to  
24 a State unless—

1 (A) the State submits to the Secretary  
2 such an application, in such a form and man-  
3 ner, as the Secretary specifies;

4 (B) the application includes information  
5 regarding how the demonstration grant will ad-  
6 dress issues such as governance, targeted popu-  
7 lation, expected cost, and the continuation after  
8 the completion of the demonstration grant pe-  
9 riod; and

10 (C) the Secretary determines that the dem-  
11 onstration grant will be used consistent with  
12 this section.

13 (3) FOCUS.—A demonstration grant proposal  
14 under section need not cover all uninsured individ-  
15 uals in a State or all health care benefits with re-  
16 spect to such individuals.

17 (d) EVALUATION.—The Secretary shall enter into a  
18 contract with an appropriate entity outside the Depart-  
19 ment of Health and Human Services to conduct an overall  
20 evaluation of the program at the end of the program pe-  
21 riod. Such evaluation shall include an analysis of improve-  
22 ments in access, costs, quality of care, or choice of cov-  
23 erage, under different demonstration grants.

24 (e) OPTION TO PROVIDE FOR INITIAL PLANNING  
25 GRANTS.—Notwithstanding the previous provisions of this

1 section, under the program the Secretary may provide for  
2 a portion of the amounts appropriated under subsection  
3 (f) (not to exceed \$5,000,000) to be made available to any  
4 State for initial planning grants to permit States to de-  
5 velop demonstration grant proposals under the previous  
6 provisions of this section.

7 (f) AUTHORIZATION OF APPROPRIATIONS.—There  
8 are authorized to be appropriated \$100,000,000 for each  
9 fiscal year to carry out this section. Amounts appropriated  
10 under this subsection shall remain available until ex-  
11 pended.

12 (g) STATE DEFINED.—For purposes of this section,  
13 the term “State” has the meaning given such term for  
14 purposes of title XIX of the Social Security Act.

○