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

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. CURBIN, 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. 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

FEBRUARY 16, 2006

Additional sponsors: Mr. CHOCOLA, Mr. TANCREDO, Mr. INGLIS of South Carolina, Mr. SODREL, Miss McMORRIS, Mr. STEARNS, Mr. MARCHANT, Mr. WHITFIELD, Mr. PUTNAM, Mr. BILIRAKIS, Mr. HALL, Mr. SHIMKUS, Mr. UPTON, Mr. McCaul of Texas, Mrs. BONO, Mrs. CAPITO, Mr. Tom DAVIS of Virginia, Mr. TIAHRT, Mrs. NORTHUP, Mr. BOUSTANY, Mr. SHAW, Mr. SIMMONS, Mr. KINGSTON, Mr. BURTON of Indiana, Mr. PETERSON of Pennsylvania, Ms. HART, Mrs. BLACKBURN, Mr. POMBO, Mr. CALVERT, and Mr. PLATTS

Deleted sponsor: Mr. TOWNS (added June 27, 2005; deleted June 30, 2005)

FEBRUARY 16, 2006

Reported from the Committee on Energy and Commerce with an amendment
A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. SPECIFICATION OF CONSTITUTIONAL AUTHORITY FOR ENACTMENT OF LAW.

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

SEC. 3. FINDINGS.

Congress finds the following:

(1) The application of numerous and significant variations in State law impacts the ability of insurers to offer, and individuals to obtain, affordable individual health insurance coverage, thereby impeding commerce in individual health insurance coverage.
(2) Individual health insurance coverage is increasingly offered through the Internet, other electronic means, and by mail, all of which are inherently part of interstate commerce.

(3) In response to these issues, it is appropriate to encourage increased efficiency in the offering of individual health insurance coverage through a collaborative approach by the States in regulating this coverage.

(4) The establishment of risk-retention groups has provided a successful model for the sale of insurance across State lines, as the acts establishing those groups allow insurance to be sold in multiple States but regulated by a single State.

SEC. 4. COOPERATIVE GOVERNING OF INDIVIDUAL HEALTH INSURANCE COVERAGE.

(a) In General.—Title XXVII of the Public Health Service Act (42 U.S.C. 300gg et seq.) is amended by adding at the end the following new part:

“PART D—COOPERATIVE GOVERNING OF INDIVIDUAL HEALTH INSURANCE COVERAGE

“SEC. 2795. DEFINITIONS.

“In this part:

“(1) PRIMARY STATE.—The term ‘primary State’ means, with respect to individual health insurance
coverage offered by a health insurance issuer, the
State designated by the issuer as the State whose cov-
ered laws shall govern the health insurance issuer in
the sale of such coverage under this part. An issuer,
with respect to a particular policy, may only des-
ignate one such State as its primary State with re-
spect to all such coverage it offers. Such an issuer
may not change the designated primary State with
respect to individual health insurance coverage once
the policy is issued, except that such a change may
be made upon renewal of the policy. With respect to
such designated State, the issuer is deemed to be
doing business in that State.

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

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

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

“(5) APPLICABLE STATE AUTHORITY.—The term
‘applicable State authority’ means, with respect to a
health insurance issuer in a State, the State insur-
ance commissioner or official or officials designated
by the State to enforce the requirements of this title
for the State with respect to the issuer.

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

“(A) to meet obligations to policyholders
with respect to known claims and reasonably an-
ticipated claims; or

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

“(7) COVERED LAWS.—

“(A) IN GENERAL.—The term ‘covered laws’
means the laws, rules, regulations, agreements,
and orders governing the insurance business pertaining to—

“(i) individual health insurance coverage issued by a health insurance issuer;

“(ii) the offer, sale, rating (including medical underwriting), renewal, and issuance of individual health insurance coverage to an individual;

“(iii) the provision to an individual in relation to individual health insurance coverage of health care and insurance related services;

“(iv) the provision to an individual in relation to individual health insurance coverage of management, operations, and investment activities of a health insurance issuer; and

“(v) the provision to an individual in relation to individual health insurance coverage of loss control and claims administration for a health insurance issuer with respect to liability for which the issuer provides insurance.

“(B) EXCEPTION.—Such term does not include any law, rule, regulation, agreement, or
order governing the use of care or cost management techniques, including any requirement related to provider contracting, network access or adequacy, health care data collection, or quality assurance.

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

“(9) UNFAIR CLAIMS SETTLEMENT PRACTICES.—The term ‘unfair claims settlement practices’ means only the following practices:

“(A) Knowingly misrepresenting to claimants and insured individuals relevant facts or policy provisions relating to coverage at issue.

“(B) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under policies.

“(C) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under policies.

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

“(E) Refusing to pay claims without conducting a reasonable investigation.
“(F) Failing to affirm or deny coverage of claims within a reasonable period of time after having completed an investigation related to those claims.

“(G) A pattern or practice of compelling insured individuals or their beneficiaries to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.

“(H) A pattern or practice of attempting to settle or settling claims for less than the amount that a reasonable person would believe the insured individual or his or her beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application.

“(I) Attempting to settle or settling claims on the basis of an application that was materially altered without notice to, or knowledge or consent of, the insured.

“(J) Failing to provide forms necessary to present claims within 15 calendar days of a requests with reasonable explanations regarding their use.
“(K) Attempting to cancel a policy in less time than that prescribed in the policy or by the law of the primary State.

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

“(A) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by an insurer, a reinsurer, broker or its agent, false information as part of, in support of or concerning a fact material to one or more of the following:

“(i) An application for the issuance or renewal of an insurance policy or reinsurance contract.

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

“(iii) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract.

“(iv) Premiums paid on an insurance policy or reinsurance contract.
“(v) Payments made in accordance with the terms of an insurance policy or reinsurance contract.

“(vi) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction.

“(vii) The financial condition of an insurer or reinsurer.

“(viii) The formation, acquisition, merger, reconsolidation, dissolution or withdrawal from one or more lines of insurance or reinsurance in all or part of a State by an insurer or reinsurer.

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

“(x) The reinstatement of an insurance policy.

“(B) Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer reinsurer or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction.
“(C) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of insurance.

“(D) Attempt to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this paragraph.

“SEC. 2796. APPLICATION OF LAW.

“(a) IN GENERAL.—The covered laws of the primary State shall apply to individual health insurance coverage offered by a health insurance issuer in the primary State and in any secondary State, but only if the coverage and issuer comply with the conditions of this section with respect to the offering of coverage in any secondary State.

“(b) EXEMPTIONS FROM COVERED LAWS IN A SECONDARY STATE.—Except as provided in this section, a health insurance issuer with respect to its offer, sale, rating (including medical underwriting), renewal, and issuance of individual health insurance coverage in any secondary State is exempt from any covered laws of the secondary State (and any rules, regulations, agreements, or orders sought or issued by such State under or related to such covered laws) to the extent that such laws would—

“(1) make unlawful, or regulate, directly or indirectly, the operation of the health insurance issuer op-
erating in the secondary State, except that any sec-
ondary State may require such an issuer—

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

“(B) to register with and designate the
State insurance commissioner as its agent solely
for the purpose of receiving service of legal docu-
ments or process;

“(C) to submit to an examination of its fi-
nancial condition by the State insurance com-
mmissioner in any State in which the issuer is
doing business to determine the issuer’s financial
condition, if—

“(i) the State insurance commissioner
of the primary State has not done an exam-
ination within the period recommended by
the National Association of Insurance Com-
mmissioners; and

“(ii) any such examination is con-
ducted in accordance with the examiners’
handbook of the National Association of In-
surance Commissioners and is coordinated
to avoid unjustified duplication and unjustified repetition;

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

“(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (C); or

“(ii) in a voluntary dissolution proceeding;

“(E) to comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the issuer is in hazardous financial condition;

“(F) to participate, on a nondiscriminatory basis, in any insurance insolvency guaranty association or similar association to which a health insurance issuer in the State is required to belong;

“(G) to comply with any State law regarding fraud and abuse (as defined in section 2795(10)), except that if the State seeks an injunction regarding the conduct described in this
subparagraph, such injunction must be obtained from a court of competent jurisdiction;

“(H) to comply with any State law regarding unfair claims settlement practices (as defined in section 2795(9)); or

“(I) to comply with the applicable requirements for independent review under section 2798 with respect to coverage offered in the State;

“(2) require any individual health insurance coverage issued by the issuer to be countersigned by an insurance agent or broker residing in that Secondary State; or

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

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

This policy is issued by _______ and is governed by the laws and regulations of the State of ________, and it has met all the laws of that State as determined by that State’s Department of Insurance. This policy may be less expensive than others because it is not subject to all of the insurance laws and regulations of the State of ________, including coverage of some services or benefits mandated by the law of the State of ________. Additionally, this policy is not subject to all of the consumer protection laws or restrictions on rate changes of the State of ________. As with all insurance products, before purchasing this policy, you should carefully review the policy and determine what health care services the policy covers and what benefits it provides, including any exclusions, limitations, or conditions for such services or benefits.

“(d) Prohibition on Certain Reclassifications and Premium Increases.—

“(1) In general.—For purposes of this section, a health insurance issuer that provides individual health insurance coverage to an individual under this

•HR 2355 RH
part in a primary or secondary State may not upon
renewal—

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

“(B) increase the premiums assessed the in-
dividual for such coverage based on a health sta-
tus-related factor or change of a health status-re-
lated factor or the past or prospective claim ex-
perience of the insured individual.

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

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

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

“(C) from changing premiums or offering
discounted premiums to individuals who engage
in wellness activities at intervals prescribed by
the issuer, if such premium changes or incentives—

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

“(ii) are based on specific wellness activities that are not applicable to all individuals; and

“(iii) are not obtainable by all individuals to whom coverage is offered;

“(D) from reinstating lapsed coverage; or

“(E) from retroactively adjusting the rates charged an insured individual if the initial rates were set based on material misrepresentation by the individual at the time of issue.

“(e) Prior Offering of Policy in Primary State.—A health insurance issuer may not offer for sale individual health insurance coverage in a secondary State unless that coverage is currently offered for sale in the primary State.

“(f) Licensing of Agents or Brokers for Health Insurance Issuers.—Any State may require that a person acting, or offering to act, as an agent or broker for a health insurance issuer with respect to the offering of individual health insurance coverage obtain a license from that State, with commissions or other compensation subject to
the provisions of the laws of that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

“(g) DOCUMENTS FOR SUBMISSION TO STATE INSURANCE COMMISSIONER.—Each health insurance issuer issuing individual health insurance coverage in both primary and secondary States shall submit—

“(1) to the insurance commissioner of each State in which it intends to offer such coverage, before it may offer individual health insurance coverage in such State—

“(A) a copy of the plan of operation or feasibility study or any similar statement of the policy being offered and its coverage (which shall include the name of its primary State and its principal place of business);

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

“(C) written notice from the issuer of the issuer’s compliance with all the laws of the primary State; and

“(2) to the insurance commissioner of each secondary State in which it offers individual health insurance coverage, a copy of the issuer’s quarterly financial statement submitted to the primary State,
which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

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

“(B) a qualified loss reserve specialist.

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

“(1) the solicitation or sale of individual health insurance coverage by a health insurance issuer to any person or group who is not eligible for such insurance; or

“(2) the solicitation or sale of individual health insurance coverage that violates the requirements of the law of a secondary State which are described in subparagraphs (A) through (H) of section 2796(b)(1).

“(i) POWER OF SECONDARY STATES TO TAKE ADMINISTRATIVE ACTION.—Nothing in this section shall be construed to affect the authority of any State to enjoin conduct in violation of that State’s laws described in section 2796(b)(1).

“(j) STATE POWERS TO ENFORCE STATE LAWS.—
“(1) IN GENERAL.—Subject to the provisions of subsection (b)(1)(G) (relating to injunctions) and paragraph (2), nothing in this section shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a health insurance issuer is not exempt under subsection (b).

“(2) COURTS OF COMPETENT JURISDICTION.—If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (h), such injunction must be obtained from a Federal or State court of competent jurisdiction.

“(k) STATES’ AUTHORITY TO SUE.—Nothing in this section shall affect the authority of any State to bring action in any Federal or State court.

“(l) GENERALLY APPLICABLE LAWS.—Nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

“(m) GUARANTEED AVAILABILITY OF COVERAGE TO HIPAA ELIGIBLE INDIVIDUALS.—To the extent that a health insurance issuer is offering coverage in a primary State that does not accommodate residents of secondary States or does not provide a working mechanism for residents of a secondary State, and the issuer is offering coverage under this part in such secondary State which has...
not adopted a qualified high risk pool as its acceptable alter-
native mechanism (as defined in section 2744(c)(2)), the
issuer shall, with respect to any individual health insurance
coverage offered in a secondary State under this part, com-
ply with the guaranteed availability requirements for eligi-
ble individuals in section 2741.

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

“A health insurance issuer may not offer, sell, or issue
individual health insurance coverage in a secondary State
if the State insurance commissioner does not use a risk-
based capital formula for the determination of capital and
surplus requirements for all health insurance issuers.

“SEC. 2798. INDEPENDENT EXTERNAL APPEALS PROCED-
URES.

“(a) RIGHT TO EXTERNAL APPEAL.—A health insur-
ance issuer may not offer, sell, or issue individual health
insurance coverage in a secondary State under the provi-
sions of this title unless——

“(1) both the secondary State and the primary
State have legislation or regulations in place estab-
lishing an independent review process for individuals
who are covered by individual health insurance cov-
erce, or
“(2) in any case in which the requirements of subparagraph (A) are not met with respect to the either of such States, the issuer provides an independent review mechanism substantially identical (as determined by the applicable State authority of such State) to that prescribed in the ‘Health Carrier External Review Model Act’ of the National Association of Insurance Commissioners for all individuals who purchase insurance coverage under the terms of this part, except that, under such mechanism, the review is conducted by an independent medical reviewer, or a panel of such reviewers, with respect to whom the requirements of subsection (b) are met.

“(b) QUALIFICATIONS OF INDEPENDENT MEDICAL REVIEWERS.—In the case of any independent review mechanism referred to in subsection (a)(2)—

“(1) IN GENERAL.—In referring a denial of a claim to an independent medical reviewer, or to any panel of such reviewers, to conduct independent medical review, the issuer shall ensure that—

“(A) each independent medical reviewer meets the qualifications described in paragraphs (2) and (3);

“(B) with respect to each review, each reviewer meets the requirements of paragraph (4)
and the reviewer, or at least 1 reviewer on the
panel, meets the requirements described in para-
graph (5); and

“(C) compensation provided by the issuer to
each reviewer is consistent with paragraph (6).

“(2) LICENSURE AND EXPERTISE.—Each inde-
pendent medical reviewer shall be a physician
(allopathic or osteopathic) or health care professional
who—

“(A) is appropriately credentialed or li-
censed in 1 or more States to deliver health care
services; and

“(B) typically treats the condition, makes
the diagnosis, or provides the type of treatment
under review.

“(3) INDEPENDENCE.—

“(A) IN GENERAL.—Subject to subpara-
graph (B), each independent medical reviewer in
a case shall—

“(i) not be a related party (as defined
in paragraph (7));

“(ii) not have a material familial, fi-
nancial, or professional relationship with
such a party; and
“(iii) not otherwise have a conflict of interest with such a party (as determined under regulations).

“(B) EXCEPTION.—Nothing in subparagraph (A) shall be construed to—

“(i) prohibit an individual, solely on the basis of affiliation with the issuer, from serving as an independent medical reviewer if—

“(I) a non-affiliated individual is not reasonably available;

“(II) the affiliated individual is not involved in the provision of items or services in the case under review;

“(III) the fact of such an affiliation is disclosed to the issuer and the enrollee (or authorized representative) and neither party objects; and

“(IV) the affiliated individual is not an employee of the issuer and does not provide services exclusively or primarily to or on behalf of the issuer;

“(ii) prohibit an individual who has staff privileges at the institution where the treatment involved takes place from serving
as an independent medical reviewer merely
on the basis of such affiliation if the affili-
ation is disclosed to the issuer and the en-
rollee (or authorized representative), and
neither party objects; or

“(iii) prohibit receipt of compensation
by an independent medical reviewer from
an entity if the compensation is provided
consistent with paragraph (6).

“(4) PRACTICING HEALTH CARE PROFESSIONAL
IN SAME FIELD.—

“(A) IN GENERAL.—In a case involving
treatment, or the provision of items or services—

“(i) by a physician, a reviewer shall be
a practicing physician (allopathic or osteo-
pathic) of the same or similar specialty, as
a physician who, acting within the appro-
priate scope of practice within the State in
which the service is provided or rendered,
typically treats the condition, makes the di-
agnosis, or provides the type of treatment
under review; or

“(ii) by a non-physician health care
professional, the reviewer, or at least 1
member of the review panel, shall be a prac-
ticing non-physician health care professional of the same or similar specialty as
the non-physician health care professional who, acting within the appropriate scope of
practice within the State in which the service is provided or rendered, typically treats
the condition, makes the diagnosis, or provides the type of treatment under review.

“(B) Practicing Defined.—For purposes of this paragraph, the term ‘practicing’ means,
with respect to an individual who is a physician or other health care professional, that the individual provides health care services to individual patients on average at least 2 days per week.

“(5) Pediatric Expertise.—In the case of an external review relating to a child, a reviewer shall have expertise under paragraph (2) in pediatrics.

“(6) Limitations on Reviewer Compensation.—Compensation provided by the issuer to an independent medical reviewer in connection with a review under this section shall—

“(A) not exceed a reasonable level; and

“(B) not be contingent on the decision rendered by the reviewer.
“(7) RELATED PARTY DEFINED.—For purposes of this section, the term ‘related party’ means, with respect to a denial of a claim under a coverage relating to an enrollee, any of the following:

“(A) The issuer involved, or any fiduciary, officer, director, or employee of the issuer.

“(B) The enrollee (or authorized representative).

“(C) The health care professional that provides the items or services involved in the denial.

“(D) The institution at which the items or services (or treatment) involved in the denial are provided.

“(E) The manufacturer of any drug or other item that is included in the items or services involved in the denial.

“(F) Any other party determined under any regulations to have a substantial interest in the denial involved.

“(8) DEFINITIONS.—For purposes of this subsection:

“(A) ENROLLEE.—The term ‘enrollee’ means, with respect to health insurance coverage offered by a health insurance issuer, an indi-
individual enrolled with the issuer to receive such coverage.

“(B) HEALTH CARE PROFESSIONAL.—The term ‘health care professional’ means an individual who is licensed, accredited, or certified under State law to provide specified health care services and who is operating within the scope of such licensure, accreditation, or certification.

“SEC. 2799. ENFORCEMENT.

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

“(b) SECONDARY STATE’S AUTHORITY.—Nothing in subsection (a) shall be construed to affect the authority of a secondary State to enforce its laws as set forth in the exception specified in section 2796(b)(1).

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

“(d) NOTICE OF COMPLIANCE FAILURE.—In the case of individual health insurance coverage offered in a secondary State that fails to comply with the covered laws of
the primary State, the applicable State authority of the second State may notify the applicable State authority of the primary State.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individual health insurance coverage offered, issued, or sold after the date that is one year after the date of the enactment of this Act.

(c) GAO ONGOING STUDY AND REPORTS.—

(1) STUDY.—The Comptroller General of the United States shall conduct an ongoing study concerning the effect of the amendment made by subsection (a) on—

(A) the number of uninsured and under-insured;

(B) the availability and cost of health insurance policies for individuals with pre-existing medical conditions;

(C) the availability and cost of health insurance policies generally;

(D) the elimination or reduction of different types of benefits under health insurance policies offered in different States; and

(E) cases of fraud or abuse relating to health insurance coverage offered under such amendment and the resolution of such cases.
(2) ANNUAL REPORTS.—The Comptroller General shall submit to Congress an annual report, after the end of each of the 5 years following the effective date of the amendment made by subsection (a), on the ongoing study conducted under paragraph (1).

SEC. 5. SEVERABILITY.

If any provision of the Act or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provisions of such to any other person or circumstance shall not be affected.
A BILL

[Report No. 109-378]

H. R. 2355

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