

103^D CONGRESS
2^D SESSION

H. R. 4519

To increase access to health insurance for employees of small businesses,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 1994

Mr. MANZULLO introduced the following bill; which was referred jointly to the
Committees on Energy and Commerce, Education and Labor, Ways and
Means, and the Judiciary

A BILL

To increase access to health insurance for employees of small
businesses, and for other purposes.

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; FINDINGS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Small Business Health Insurance Choice Act”.

6 (b) **FINDINGS RELATING TO INTERSTATE COM-**
7 **MERCE.**—Congress finds that health insurance is a critical
8 part of the economy of the United States and interstate
9 commerce, consumes a significant percentage of public

1 and private spending, and affects all industries and indi-
2 viduals in the United States.

3 **SEC. 2. TABLE OF CONTENTS.**

4 The table of contents of this Act is as follows:

- Sec. 1. Short title; findings.
- Sec. 2. Table of contents.

TITLE I—IMPROVED ACCESS TO AFFORDABLE HEALTH CARE

Subtitle A—Increased Availability and Continuity of Health Coverage for
Employees and Their Families

**PART 1—PREEXISTING CONDITIONS AND CONTINUITY OF
COVERAGE; RENEWABILITY**

- Sec. 101. Limitation on pre-existing condition clauses.
- Sec. 102. Assurance of continuity of coverage through previous satisfaction of
pre-existing condition requirement.
- Sec. 103. Requirements relating to renewability generally.

PART 2—ENFORCEMENT; EFFECTIVE DATES; DEFINITIONS

- Sec. 111. Enforcement.
- Sec. 112. Effective dates.
- Sec. 113. Definitions.

Subtitle B—Preemption of Scope of State Regulation

- Sec. 121. Prohibition of State benefit mandates for group health plans.
- Sec. 122. Prohibition of provisions prohibiting employer groups from purchas-
ing health insurance.
- Sec. 123. Restrictions on managed care.
- Sec. 124. Definitions.

Subtitle C—Health Deduction Fairness

- Sec. 131. Permanent extension and increase in health insurance tax deduction
for self-employed individuals.
- Sec. 132. Deduction of health insurance premiums for certain previously unin-
sured individuals.

TITLE II—REMOVING ANTI-TRUST IMPEDIMENTS

- Sec. 201. Establishment of limited exemption program for health care joint
ventures.
- Sec. 202. Issuance of health care certificates of public advantage.
- Sec. 203. Interagency Advisory Committee on Competition, Antitrust Policy,
and Health Care.
- Sec. 204. Definitions.

1 **TITLE I—IMPROVED ACCESS TO**
2 **AFFORDABLE HEALTH CARE**
3 **Subtitle A—Increased Availability**
4 **and Continuity of Health Cov-**
5 **erage for Employees and Their**
6 **Families**

7 **PART 1—PREEXISTING CONDITIONS AND**
8 **CONTINUITY OF COVERAGE; RENEW-**
9 **ABILITY**

10 **SEC. 101. LIMITATION ON PRE-EXISTING CONDITION**
11 **CLAUSES.**

12 A group health plan may not impose (and an insurer
13 may not require an employer under a group health plan
14 to impose through a waiting period for coverage under a
15 plan or similar requirement) a limitation or exclusion of
16 benefits relating to treatment of a condition based on the
17 fact that the condition pre-existed the effective date of the
18 plan with respect to an individual if—

19 (1) the condition relates to a condition that was
20 not diagnosed or treated within 3 months before the
21 date of coverage under the plan;

22 (2) the limitation or exclusion extends over
23 more than 6 months after the date of coverage
24 under the plan;

1 (3) the limitation or exclusion applies to an in-
2 dividual who, as of the date of birth, was covered
3 under the plan; or

4 (4) the limitation or exclusion relates to preg-
5 nancy.

6 In the case of an individual who is eligible for coverage
7 under a plan but for a waiting period imposed by the em-
8 ployer, in applying paragraphs (1) and (2), the individual
9 shall be treated as having been covered under the plan
10 as of the earliest date of the beginning of the waiting pe-
11 riod.

12 **SEC. 102. ASSURANCE OF CONTINUITY OF COVERAGE**
13 **THROUGH PREVIOUS SATISFACTION OF PRE-**
14 **EXISTING CONDITION REQUIREMENT.**

15 (a) IN GENERAL.—Each group health plan shall
16 waive any period applicable to a preexisting condition for
17 similar benefits with respect to an individual to the extent
18 that the individual, prior to the date of such individual's
19 enrollment in such plan, was covered for the condition
20 under any other health plan that was in effect before such
21 date.

22 (b) CONTINUOUS COVERAGE REQUIRED.—

23 (1) IN GENERAL.—Subsection (a) shall no
24 longer apply if there is a continuous period of more
25 than 60 days (or, in the case of an individual de-

1 scribed in paragraph (3), 6 months) on which the in-
2 dividual was not covered under a group health plan.

3 (2) TREATMENT OF WAITING PERIODS.—In ap-
4 plying paragraph (1), any waiting period imposed by
5 an employer before an employee is eligible to be cov-
6 ered under a plan shall be treated as a period in
7 which the employee was covered under a group
8 health plan.

9 (3) JOB TERMINATION.—An individual is de-
10 scribed in this paragraph if the individual loses cov-
11 erage under a group health plan due to termination
12 of employment.

13 (4) EXCLUSION OF CASH-ONLY AND DREAD
14 DISEASE PLANS.—In this subsection, the term
15 “group health plan” does not include any group
16 health plan which is offered primarily to provide—

17 (A) coverage for a specified disease or ill-
18 ness, or

19 (B) a hospital or fixed indemnity policy,
20 unless the Secretary determines that such a
21 plan provides sufficiently comprehensive cov-
22 erage of a benefit so that it should be treated
23 as a group health plan under this subsection.

1 **SEC. 103. REQUIREMENTS RELATING TO RENEWABILITY**

2 **GENERALLY.**

3 (a) **MULTIEMPLOYER PLANS AND EXEMPTED MUL-**
4 **TIPLE EMPLOYER HEALTH PLANS.**—A multiemployer
5 plan and an exempted multiple employer health plan may
6 not cancel coverage or deny renewal of coverage under
7 such a plan with respect to an employer other than—

8 (1) for nonpayment of contributions,

9 (2) for fraud or other misrepresentation by the
10 employer,

11 (3) for noncompliance with plan provisions,

12 (4) for misuse of a provider network provision,

13 or

14 (5) because the plan is ceasing to provide any
15 coverage in a geographic area.

16 (b) **INSURERS.**—

17 (1) **IN GENERAL.**—An insurer may not cancel a
18 health insurance plan or deny renewal of coverage
19 under such a plan other than—

20 (A) for nonpayment of premiums,

21 (B) for fraud or other misrepresentation
22 by the insured,

23 (C) for noncompliance with plan provi-
24 sions,

25 (D) for misuse of a provider network provi-
26 sion, or

1 (E) because the insurer is ceasing to pro-
2 vide any health insurance plan in a State, or,
3 in the case of a health maintenance organiza-
4 tion, in a geographic area.

5 (2) LIMITATION ON MARKET REENTRY.—If an
6 insurer terminates the offering of health insurance
7 plans in an area, the insurer may not offer such a
8 health insurance plan to any employer in the area
9 until 5 years after the date of the termination.

10 **PART 2—ENFORCEMENT; EFFECTIVE**
11 **DATES; DEFINITIONS**

12 **SEC. 111. ENFORCEMENT.**

13 (a) ENFORCEMENT BY DEPARTMENT OF LABOR FOR
14 EMPLOYERS AND GROUP HEALTH PLANS.—

15 (1) IN GENERAL.—For purposes of part 5 of
16 subtitle B of title I of the Employee Retirement In-
17 come Security Act of 1974, the provisions of part 1
18 of this subtitle shall be deemed to be provisions of
19 title I of such Act irrespective of exclusions under
20 section 4(b) of such Act.

21 (2) REGULATORY AUTHORITY.—With respect to
22 the regulatory authority of the Secretary of Labor
23 under this subtitle pursuant to subsection (a), sec-
24 tion 505 of the Employee Retirement Income Secu-
25 rity Act of 1974 (29 U.S.C. 1135) shall apply.

1 (b) ENFORCEMENT BY EXCISE TAX FOR INSUR-
2 ERS.—

3 (1) IN GENERAL.—Chapter 43 of the Internal
4 Revenue Code of 1986 (relating to qualified pension,
5 etc., plans) is amended by adding at the end thereof
6 the following new section:

7 **“SEC. 4980C. FAILURE OF INSURER TO COMPLY WITH**
8 **HEALTH INSURANCE STANDARDS.**

9 “(a) IMPOSITION OF TAX.—

10 “(1) IN GENERAL.—There is hereby imposed a
11 tax on the failure of an insurer to comply with the
12 requirements applicable to the insurer under part 1
13 of subtitle A of title I of the Small Business Health
14 Insurance Choice Act.

15 “(2) EXCEPTION.—Paragraph (1) shall not
16 apply to a failure by an insurer in a State if the Sec-
17 retary of Health and Human Services determines
18 that the State has in effect a regulatory enforcement
19 mechanism that provides adequate sanctions with re-
20 spect to such a failure by such an insurer.

21 “(b) AMOUNT OF TAX.—

22 “(1) IN GENERAL.—Subject to paragraph (2),
23 the amount of the tax imposed by subsection (a)
24 shall be \$100 for each day during which such failure
25 persists for each individual to which such failure re-

1 lates. A rule similar to the rule of section
2 4980B(b)(3) shall apply for purposes of this section.

3 “(2) LIMITATION.—The amount of the tax im-
4 posed by subsection (a) for an insurer with respect
5 to a health insurance plan shall not exceed 25 per-
6 cent of the amounts received under the plan for cov-
7 erage during the period such failure persists.

8 “(c) LIABILITY FOR TAX.—The tax imposed by this
9 section shall be paid by the insurer.

10 “(d) EXCEPTIONS.—

11 “(1) CORRECTIONS WITHIN 30 DAYS.—No tax
12 shall be imposed by subsection (a) by reason of any
13 failure if—

14 “(A) such failure was due to reasonable
15 cause and not to willful neglect, and

16 “(B) such failure is corrected within the
17 30-day period beginning on earliest date the in-
18 surer knew, or exercising reasonable diligence
19 would have known, that such failure existed.

20 “(2) WAIVER BY SECRETARY.—In the case of a
21 failure which is due to reasonable cause and not to
22 willful neglect, the Secretary may waive part or all
23 of the tax imposed by subsection (a) to the extent
24 that payment of such tax would be excessive relative
25 to the failure involved.

1 rangement treated as an employee welfare benefit
2 plan by reason of an exemption under part 7 of sub-
3 title B of title I of the Employee Retirement Income
4 Security Act of 1974 (as added by part 2 of subtitle
5 C of this title).

6 (3) GROUP HEALTH PLAN; PLAN.—(A) The
7 term “group health plan” means an employee wel-
8 fare benefit plan providing medical care (as defined
9 in section 213(d) of the Internal Revenue Code of
10 1986) to participants or beneficiaries directly or
11 through insurance, reimbursement, or otherwise, but
12 does not include any type of coverage excluded from
13 the definition of a health insurance plan under sec-
14 tion 1107(4)(B).

15 (B) The term “plan” means, unless used with
16 a modifying term or the context specifically indicates
17 otherwise, a group health plan (including any such
18 plan which is a multiemployer plan), an exempted
19 multiple employer health plan, or an insured mul-
20 tiple employer health plan.

21 (4) HEALTH INSURANCE PLAN.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), the term “health insurance
24 plan” means any hospital or medical service
25 policy or certificate, hospital or medical service

1 plan contract, or health maintenance organiza-
2 tion group contract offered by an insurer.

3 (B) EXCEPTION.—Such term does not in-
4 clude any of the following—

5 (i) coverage only for accident, dental,
6 vision, disability income, or long-term care
7 insurance, or any combination thereof,

8 (ii) medicare supplemental health in-
9 surance,

10 (iii) coverage issued as a supplement
11 to liability insurance,

12 (iv) worker’s compensation or similar
13 insurance, or

14 (v) automobile medical-payment insur-
15 ance,

16 or any combination thereof.

17 (5) INSURED MULTIPLE EMPLOYER HEALTH
18 PLAN.—The term “insured multiple employer health
19 plan” means a fully insured multiple employer wel-
20 fare arrangement under which benefits consist solely
21 of medical care described in section 607(1) of the
22 Employee Retirement Income Security Act of 1974
23 (disregarding such incidental benefits as the Sec-
24 retary of Health and Human Services shall specify
25 by regulations).

1 (6) INSURER.—The term “insurer” means a li-
2 censed insurance company, a prepaid hospital or
3 medical service plan, and a health maintenance orga-
4 nization offering such a plan to an employer, and in-
5 cludes a similar organization regulated under State
6 law for solvency.

7 (7) STATE.—The term “State” means the 50
8 States, the District of Columbia, Puerto Rico, the
9 Virgin Islands, Guam, and American Samoa.

10 **Subtitle B—Preemption of Scope of** 11 **State Regulation**

12 **SEC. 121. PROHIBITION OF STATE BENEFIT MANDATES FOR** 13 **GROUP HEALTH PLANS.**

14 In the case of a group health plan, no provision of
15 State or local law shall apply that requires the coverage
16 of one or more specific benefits, services, or categories of
17 health care, or services of any class or type of provider
18 of health care.

19 **SEC. 122. PROHIBITION OF PROVISIONS PROHIBITING EM-** 20 **PLOYER GROUPS FROM PURCHASING** 21 **HEALTH INSURANCE.**

22 No provision of State or local law shall apply that
23 prohibits 2 or more employers from obtaining coverage
24 under an insured multiple employer health plan.

1 **SEC. 123. RESTRICTIONS ON MANAGED CARE.**

2 (a) PREEMPTION OF STATE LAW PROVISIONS.—Sub-
3 ject to subsection (c), the following provisions of State law
4 are preempted and may not be enforced:

5 (1) RESTRICTIONS ON REIMBURSEMENT RATES
6 OR SELECTIVE CONTRACTING.—Any law that re-
7 stricts the ability of a group health plan to negotiate
8 reimbursement rates with providers or to contract
9 selectively with one provider or a limited number of
10 providers.

11 (2) RESTRICTIONS ON DIFFERENTIAL FINAN-
12 CIAL INCENTIVES.—Any law that limits the financial
13 incentives that a group health plan may require a
14 beneficiary to pay when a non-plan provider is used
15 on a non-emergency basis.

16 (b) GAO STUDY.—

17 (1) IN GENERAL.—The Comptroller General
18 shall conduct a study of the benefits and cost effec-
19 tiveness of the use of managed care in the delivery
20 of health services.

21 (2) REPORT.—By not later than 4 years after
22 the date of the enactment of this Act, the Comptrol-
23 ler General shall submit a report to Congress on the
24 study conducted under paragraph (1) and shall in-
25 clude in the report such recommendations (including

1 whether the provisions of subsection (a) should be
2 extended) as may be appropriate.

3 (c) SUNSET.—Unless otherwise provided, subsection
4 (a) shall not apply 5 years after the date of the enactment
5 of this Act.

6 **SEC. 124. DEFINITIONS.**

7 For purposes of this subtitle, the terms “employee”,
8 “employer”, “group health plan”, “health insurance
9 plan”, “insured multiple employer health plan”, and
10 “State” have the meanings given such terms in section
11 113.

12 **Subtitle C—Health Deduction**
13 **Fairness**

14 **SEC. 131. PERMANENT EXTENSION AND INCREASE IN**
15 **HEALTH INSURANCE TAX DEDUCTION FOR**
16 **SELF-EMPLOYED INDIVIDUALS.**

17 (a) PERMANENT EXTENSION OF DEDUCTION.—

18 (1) IN GENERAL.—Subsection (l) of section 162
19 of the Internal Revenue Code of 1986 (relating to
20 special rules for health insurance costs of self-em-
21 ployed individuals) is amended by striking paragraph
22 (6).

23 (2) EFFECTIVE DATE.—The amendment made
24 by this subsection shall apply to taxable years begin-
25 ning after December 31, 1994.

1 (b) INCREASE IN AMOUNT OF DEDUCTION.—

2 (1) IN GENERAL.—Paragraph (1) of section
3 162(l) of such Code is amended by striking “25 per-
4 cent of” and inserting “100 percent (50 percent in
5 the case of taxable years beginning in 1996 or 1997)
6 of”.

7 (2) EFFECTIVE DATE.—The amendments made
8 by this subsection shall apply to taxable years begin-
9 ning after December 31, 1994.

10 **SEC. 132. DEDUCTION OF HEALTH INSURANCE PREMIUMS**

11 **FOR CERTAIN PREVIOUSLY UNINSURED INDIVIDUALS.**

12 **VIDUALS.**

13 (a) IN GENERAL.—Section 213 of the Internal Reve-
14 nue Code of 1986 (relating to medical, dental, etc., ex-
15 penses) is amended by adding at the end thereof the fol-
16 lowing new subsection:

17 “(f) DEDUCTION FOR HEALTH INSURANCE COSTS
18 DETERMINED WITHOUT REGARD TO ADJUSTED GROSS
19 INCOME THRESHOLD.—

20 “(1) IN GENERAL.—Subsection (a) shall be ap-
21 plied without regard to the limitation based on ad-
22 justed gross income in the case of the applicable per-
23 centage of the amounts paid for insurance which
24 constitutes medical care for the taxpayer, his spouse,
25 and dependents.

1 “(2) APPLICABLE PERCENTAGE.—For purposes
2 of paragraph (1), the term ‘applicable percentage’
3 means—

4 “(A) 25 percent for taxable years begin-
5 ning in 1995 or 1996,

6 “(B) 50 percent for taxable years begin-
7 ning in 1997 or 1998, and

8 “(C) 100 percent for taxable years begin-
9 ning after 1999.

10 “(3) DEDUCTION NOT ALLOWED TO INDIVID-
11 UALS ELIGIBLE FOR EMPLOYER-SUBSIDIZED COV-
12 ERAGE.—

13 “(A) IN GENERAL.—Paragraph (1) shall
14 not apply to any individual—

15 “(i) who is eligible to participate in
16 any subsidized health plan maintained by
17 an employer of such individual or the
18 spouse of such individual, or

19 “(ii) who is (or whose spouse is) a
20 member of a subsidized class of employees
21 of an employer.

22 “(B) SUBSIDIZED CLASS.—For purposes of
23 subparagraph (A), an individual is a member of
24 a subsidized class of employees of an employer
25 if, at any time during the 3 calendar years end-

1 ing with or within the taxable year, any mem-
2 ber of such class was eligible to participate in
3 any subsidized health plan maintained by such
4 employer.

5 “(C) SPECIAL RULES.—

6 “(i) CONTROLLED GROUPS.—All per-
7 sons treated as a single employer under
8 subsection (a) or (b) of section 52 or sub-
9 section (m) or (o) of section 414 shall be
10 treated as a single employer for purposes
11 of subparagraph (B).

12 “(ii) CLASSES.—Classes of employees
13 shall be determined under regulations pre-
14 scribed by the Secretary based on such fac-
15 tors as the Secretary determines appro-
16 priate to carry out the purposes of this
17 subsection.

18 “(4) COORDINATION WITH DEDUCTION FOR
19 OTHER AMOUNTS.—Amounts allowable as a deduc-
20 tion under subsection (a) by reason of this sub-
21 section shall not be taken into account in determin-
22 ing the deduction under subsection (a) for other
23 amounts.

24 “(5) SUBSECTION NOT TO APPLY TO INDIVID-
25 UALS ELIGIBLE FOR MEDICARE.—This subsection

1 shall not apply to amount paid for insurance cover-
2 ing an individual who is eligible for benefits under
3 title XVIII of the Social Security Act.”

4 (b) DEDUCTION ALLOWED WHETHER OR NOT INDI-
5 VIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a)
6 of section 62 of such Code is amended by inserting after
7 paragraph (15) the following new paragraph:

8 “(16) COSTS OF CERTAIN HEALTH INSUR-
9 ANCE.—The deduction allowed by section 213 to the
10 extent allowable by reason of section 213(f).”

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to taxable years beginning after
13 December 31, 1994.

14 **TITLE II—REMOVING ANTI-**
15 **TRUST IMPEDIMENTS**

16 **SEC. 201. ESTABLISHMENT OF LIMITED EXEMPTION PRO-**
17 **GRAM FOR HEALTH CARE JOINT VENTURES.**

18 (a) ESTABLISHMENT.—

19 (1) IN GENERAL.—Not later than 6 months
20 after the date of the enactment of this Act, the At-
21 torney General, after consultation with the Secretary
22 of Health and Human Services and the Interagency
23 Advisory Committee on Competition, Antitrust Pol-
24 icy, and Health Care, shall promulgate specific
25 guidelines under which a health care joint venture

1 may submit an application requesting that the At-
2 torney General provide the entities participating in
3 the joint venture with an exemption under which
4 (notwithstanding any other provision of law)—

5 (A) monetary recovery on a claim under
6 the antitrust laws shall be limited to actual
7 damages if the claim results from conduct with-
8 in the scope of the joint venture that occurs
9 while the exemption is in effect; and

10 (B) the conduct of the entity in making or
11 performing a contract to carry out the joint
12 venture shall not be deemed illegal per se under
13 the antitrust laws but shall be judged on the
14 basis of its reasonableness, taking into account
15 all relevant factors affecting competition, in-
16 cluding (but not limited to) effects on competi-
17 tion in properly defined, relevant research, de-
18 velopment, product, process, and service mar-
19 kets (taking into consideration worldwide capac-
20 ity to the extent that it may be appropriate in
21 the circumstances).

22 (2) DEADLINE FOR RESPONSE.—The Attorney
23 General, after consultation with the Secretary and
24 the Advisory Committee, shall approve or disapprove
25 the application of a health care joint venture for an

1 exemption under this subsection not later than 30
2 days after the Attorney General receives the joint
3 venture's application.

4 (3) PROVIDING REASONS FOR DISAPPROVAL.—

5 If the Attorney General disapproves the application
6 of a health care joint venture for an exemption
7 under this subsection, the Attorney General shall
8 provide the joint venture with a statement explaining
9 the reasons for the Attorney General's disapproval.

10 (b) REQUIREMENTS FOR APPROVAL.—For purposes
11 of subsection (a), the Attorney General shall approve the
12 application of a health care joint venture for an exemption
13 under subsection (a) if an entity participating in the joint
14 venture submits to the Attorney General an application
15 not later than 30 days after the entity has entered into
16 a written agreement to participate in the joint venture (or
17 not later than 30 days after the date of the enactment
18 of this Act in the case of a joint venture in effect as of
19 such date) that contains the following information and as-
20 surances:

21 (1) The identities of the parties to the joint
22 venture.

23 (2) The nature, objectives, and planned activi-
24 ties of the joint venture.

1 (3) Assurances that the entities participating in
2 the joint venture shall notify the Attorney General
3 of any changes in the information described in para-
4 graphs (1) and (2) during the period for which the
5 exemption is in effect.

6 (c) REVOCATION OF EXEMPTION.—

7 (1) IN GENERAL.—The Attorney General, after
8 consultation with the Secretary, may revoke an ex-
9 emption provided to a health care joint venture
10 under this section if, at any time during which the
11 exemption is in effect, the Attorney General finds
12 that the joint venture no longer meets the applicable
13 requirements for approval under subsection (b), ex-
14 cept that the Attorney General may not revoke such
15 an exemption if the failure of the health care joint
16 venture to meet such requirements is merely tech-
17 nical in nature.

18 (2) TIMING.—The revocation of an exemption
19 under paragraph (1) shall apply only to conduct of
20 the health care joint venture occurring after the ex-
21 emption is no longer in effect.

22 (d) WITHDRAWAL OF APPLICATION.—Any party that
23 submits an application under this section may withdraw
24 such application at any time before the Attorney General's
25 response to the application.

1 (e) REQUIREMENTS RELATING TO NOTICE AND PUB-
2 LICATION OF EXEMPTIONS AND RELATED INFORMA-
3 TION.—

4 (1) PUBLICATION OF APPROVED APPLICATIONS
5 FOR EXEMPTIONS IN FEDERAL REGISTER.—

6 (A) IN GENERAL.—With respect to each
7 exemption for a health care joint venture pro-
8 vided under subsection (a), the Attorney Gen-
9 eral (acting jointly with the Secretary) shall—

10 (i) prepare a notice with respect to
11 the joint venture that identifies the parties
12 to the venture and that describes the
13 planned activities of the venture;

14 (ii) submit the notice to the entities
15 participating in the joint venture; and

16 (iii) after submitting the notice to
17 such entities (but not later than 30 days
18 after approving the application for the ex-
19 emption for the joint venture), publish the
20 notice in the Federal Register.

21 (B) EFFECT OF PUBLICATION.—An ex-
22 emption provided by the Attorney General
23 under subsection (a) shall take effect as of the
24 date of the publication in the Federal Register

1 of the notice with respect to the exemption pur-
2 suant to subparagraph (A).

3 (2) WAIVER OF DISCLOSURE REQUIREMENTS
4 FOR INFORMATION RELATING TO APPLICATIONS FOR
5 EXEMPTIONS.—

6 (A) IN GENERAL.—All information and
7 documentary material submitted as part of an
8 application of a health care joint venture for an
9 exemption under subsection (a), together with
10 any other information obtained by the Attorney
11 General, the Secretary, or the Advisory Com-
12 mittee in the course of any investigation, ad-
13 ministrative proceeding, or case with respect to
14 a potential violation of the antitrust laws by the
15 joint venture with respect to which the exemp-
16 tion applies, shall be exempt from disclosure
17 under section 552 of title 5, United States
18 Code, and shall not be made publicly available
19 by any agency of the United States to which
20 such section applies, except as relevant to a law
21 enforcement investigation or in a judicial or ad-
22 ministrative proceeding in which such informa-
23 tion and material is subject to any protective
24 order.

1 (B) EXCEPTION FOR INFORMATION IN-
2 CLUDED IN FEDERAL REGISTER NOTICE.—Sub-
3 paragraph (A) shall not apply with respect to
4 information contained in a notice published in
5 the Federal Register pursuant to paragraph
6 (1).

7 (3) USE OF INFORMATION TO SUPPORT OR AN-
8 SWER CLAIMS UNDER ANTITRUST LAWS.—

9 (A) IN GENERAL.—Except as provided in
10 subparagraph (B), the fact of disclosure of con-
11 duct under an application for an exemption
12 under subsection (a) and the fact of publication
13 of a notice in the Federal Register under para-
14 graph (1) shall be admissible into evidence in
15 any judicial or administrative proceeding for the
16 sole purpose of establishing that a person is en-
17 titled to the protections provided by an exemp-
18 tion granted under subsection (a).

19 (B) EFFECT OF REJECTED APPLICA-
20 TION.—If the Attorney General denies, in whole
21 or in part, an application for an exemption
22 under subsection (a), or revokes an exemption
23 under such section, neither the negative deter-
24 mination nor the statement of reasons therefore
25 shall be admissible into evidence in any admin-

1 istrative or judicial proceeding for the purpose
2 of supporting or answering any claim under the
3 antitrust laws.

4 **SEC. 202. ISSUANCE OF HEALTH CARE CERTIFICATES OF**
5 **PUBLIC ADVANTAGE.**

6 (a) ISSUANCE AND EFFECT OF CERTIFICATE.—The
7 Attorney General, after consultation with the Secretary
8 and the Advisory Committee, shall issue in accordance
9 with this section a certificate of public advantage to each
10 eligible health care joint venture that complies with the
11 requirements in effect under this section on or after the
12 expiration of the 1-year period that begins on the date
13 of the enactment of this Act (without regard to whether
14 or not the Attorney General has promulgated regulations
15 to carry out this section by such date). Such venture, and
16 the parties to such venture, shall not be liable under any
17 of the antitrust laws for conduct described in such certifi-
18 cate and engaged in by such venture if such conduct oc-
19 curs while such certificate is in effect.

20 (b) REQUIREMENTS APPLICABLE TO ISSUANCE OF
21 CERTIFICATES.—

22 (1) STANDARDS TO BE MET.—The Attorney
23 General shall issue a certificate to an eligible health
24 care joint venture if the Attorney General finds
25 that—

1 (A) the benefits that are likely to result
2 from carrying out the venture outweigh the re-
3 duction in competition (if any) that is likely to
4 result from the venture, and

5 (B) such reduction in competition is rea-
6 sonably necessary to obtain such benefits.

7 (2) FACTORS TO BE CONSIDERED.—

8 (A) WEIGHING OF BENEFITS AGAINST RE-
9 Duction IN COMPETITION.—For purposes of
10 making the finding described in paragraph
11 (1)(A), the Attorney General shall consider
12 whether the venture is likely —

13 (i) to maintain or to increase the
14 quality of health care,

15 (ii) to increase access to health care,

16 (iii) to achieve cost efficiencies that
17 will be passed on to health care consumers,
18 such as economies of scale, reduced trans-
19 action costs, and reduced administrative
20 costs,

21 (iv) to preserve the operation of
22 health care facilities located in underserved
23 geographical areas,

24 (v) to improve utilization of health
25 care resources, and

1 (vi) to reduce inefficient health care
2 resource duplication.

3 (B) NECESSITY OF REDUCTION IN COM-
4 PETITION.—For purposes of making the finding
5 described in paragraph (1)(B), the Attorney
6 General shall consider—

7 (i) the ability of the providers of
8 health care services that are (or likely to
9 be) affected by the health care joint ven-
10 ture and the entities responsible for mak-
11 ing payments to such providers to nego-
12 tiate societally optimal payment and serv-
13 ice arrangements,

14 (ii) the effects of the health care joint
15 venture on premiums and other charges
16 imposed by the entities described in clause
17 (i), and

18 (iii) the availability of equally effi-
19 cient, less restrictive alternatives to achieve
20 the benefits that are intended to be
21 achieved by carrying out the venture.

22 (C) ESTABLISHMENT OF CRITERIA AND PROCE-
23 DURES.—Subject to subsections (d) and (e), not later than
24 1 year after the date of the enactment of this Act, the
25 Attorney General and the Secretary shall establish jointly

1 by rule the criteria and procedures applicable to the issu-
2 ance of certificates under subsection (a). The rules shall
3 specify the form and content of the application to be sub-
4 mitted to the Attorney General to request a certificate,
5 the information required to be submitted in support of
6 such application, the procedures applicable to denying and
7 to revoking a certificate, and the procedures applicable to
8 the administrative appeal (if such appeal is authorized by
9 rule) of the denial and the revocation of a certificate. Such
10 information may include the terms of the health care joint
11 venture (in the case of a venture in existence as of the
12 time of the application) and implementation plan for the
13 joint venture.

14 (d) ELIGIBLE HEALTH CARE JOINT VENTURE.—To
15 be an eligible health care joint venture for purposes of this
16 section, a health care joint venture shall submit to the At-
17 torney General an application that complies with the rules
18 in effect under subsection (c) and that includes—

19 (1) an agreement by the parties to the venture
20 that the venture will not foreclose competition by en-
21 tering into contracts that prevent health care provid-
22 ers from providing health care in competition with
23 the venture,

24 (2) an agreement that the venture will submit
25 to the Attorney General annually a report that de-

1 scribes the operations of the venture and informa-
2 tion regarding the impact of the venture on health
3 care and on competition in health care, and

4 (3) an agreement that the parties to the ven-
5 ture will notify the Attorney General and the Sec-
6 retary of the termination of the venture not later
7 than 30 days after such termination occurs.

8 (e) REVIEW OF APPLICATIONS FOR CERTIFICATES.—

9 Not later than 30 days after an eligible health care joint
10 venture submits to the Attorney General an application
11 that complies with the rules in effect under subsection (c)
12 and with subsection (d), the Attorney General shall issue
13 or deny the issuance of such certificate. If, before the expi-
14 ration of such 30-day period, the Attorney General fails
15 to issue or deny the issuance of such certificate, the Attor-
16 ney General shall be deemed to have issued such certifi-
17 cate.

18 (f) REVOCATION OF CERTIFICATE.—Whenever the
19 Attorney General finds that a health care joint venture
20 with respect to which a certificate is in effect does not
21 meet the standards specified in subsection (b), the Attor-
22 ney General shall revoke such certificate.

23 (g) WRITTEN REASONS; JUDICIAL REVIEW.—

24 (1) DENIAL AND REVOCATION OF CERTIFI-
25 CATES.—If the Attorney General denies an applica-

1 tion for a certificate or revokes a certificate, the At-
2 torney General shall include in the notice of denial
3 or revocation a statement of the reasons relied upon
4 for the denial or revocation of such certificate.

5 (2) JUDICIAL REVIEW.—

6 (A) AFTER ADMINISTRATIVE PROCEED-
7 ING.—(i) If the Attorney General denies an ap-
8 plication submitted or revokes a certificate is-
9 sued under this section after an opportunity for
10 hearing on the record, then any party to the
11 health care joint venture involved may com-
12 mence a civil action, not later than 60 days
13 after receiving notice of the denial or revoca-
14 tion, in an appropriate district court of the
15 United States for review of the record of such
16 denial or revocation.

17 (ii) As part of the Attorney General's an-
18 swer, the Attorney General shall file in such
19 court a certified copy of the record on which
20 such denial or revocation is based. The findings
21 of fact of the Attorney General may be set aside
22 only if found to be unsupported by substantial
23 evidence in such record taken as a whole.

24 (B) DENIAL OR REVOCATION WITHOUT AD-
25 MINISTRATIVE PROCEEDING.—If the Attorney

1 General denies an application submitted or re-
2 vokes a certificate issued under this section
3 without an opportunity for hearing on the
4 record, then any party to the health care joint
5 venture involved may commence a civil action,
6 not later than 60 days after receiving notice of
7 the denial or revocation, in an appropriate dis-
8 trict court of the United States for de novo re-
9 view of such denial or revocation.

10 (h) EXEMPTION.—A person shall not be liable under
11 any of the antitrust laws for conduct necessary—

12 (1) to prepare, agree to prepare, or attempt to
13 agree to prepare an application to request a certifi-
14 cate under this section, or

15 (2) to attempt to enter into any health care
16 joint venture with respect to which such a certificate
17 is in effect.

18 **SEC. 203. INTERAGENCY ADVISORY COMMITTEE ON COM-**
19 **PETITION, ANTITRUST POLICY, AND HEALTH**
20 **CARE.**

21 (a) ESTABLISHMENT.—There is hereby established
22 the Interagency Advisory Committee on Competition,
23 Antitrust Policy, and Health Care. The Advisory Commit-
24 tee shall be composed of—

1 (1) the Secretary of Health and Human Serv-
2 ices (or the designee of the Secretary);

3 (2) the Attorney General (or the designee of the
4 Attorney General);

5 (3) the Director of the Office of Management
6 and Budget (or the designee of the Director); and

7 (4) a representative of the Federal Trade Com-
8 mission.

9 (b) DUTIES.—The duties of the Advisory Committee
10 are—

11 (1) to discuss and evaluate competition and
12 antitrust policy, and their implications with respect
13 to the performance of health care markets;

14 (2) to analyze the effectiveness of health care
15 joint ventures receiving exemptions under the pro-
16 gram established under section 201(a) or certificates
17 under section 202 in reducing the costs of and ex-
18 panding access to the health care services that are
19 the subject of such ventures; and

20 (3) to make such recommendations to Congress
21 not later than 2 years after the date of the enact-
22 ment of this Act (and at such subsequent periods as
23 the Advisory Committee considers appropriate) re-
24 garding modifications to the program established
25 under section 201(a) or to section 202 as the Advi-

1 sory Committee considers appropriate, including
2 modifications relating to the costs to health care
3 providers of obtaining an exemption for a joint ven-
4 ture under such program.

5 **SEC. 204. DEFINITIONS.**

6 For purposes of this title:

7 (1) The term “Advisory Committee” means the
8 Interagency Advisory Committee on Competition,
9 Antitrust Policy, and Health Care established under
10 section 203.

11 (2) The term “antitrust laws”—

12 (A) has the meaning given it in subsection
13 (a) of the first section of the Clayton Act (15
14 U.S.C. 12(a)), except that such term includes
15 section 5 of the Federal Trade Commission Act
16 (15 U.S.C. 45) to the extent such section ap-
17 plies to unfair methods of competition; and

18 (B) includes any State law similar to the
19 laws referred to in subparagraph (A).

20 (3) The term “certificate” means a certificate
21 of public advantage authorized to be issued under
22 section 202(a).

23 (4) The term “health care joint venture” means
24 an agreement (whether existing or proposed) be-
25 tween 2 or more providers of health care services

1 that is entered into solely for the purpose of sharing
2 in the provision of health care services and that in-
3 volves substantial integration or financial risk-shar-
4 ing between the parties, but does not include the ex-
5 changing of information, the entering into of any
6 agreement, or the engagement in any other conduct
7 that is not reasonably required to carry out such
8 agreement.

9 (5) The term “health care services” includes
10 services related to the delivery or administration of
11 health care services.

12 (6) The term “liable” means liable for any civil
13 or criminal violation of the antitrust laws.

14 (7) The term “provider of health care services”
15 means any individual or entity that is engaged in the
16 delivery of health care services in a State and that
17 is required by State law or regulation to be licensed
18 or certified by the State to engage in the delivery of
19 such services in the State.

20 (8) The term “Secretary” means the Secretary
21 of Health and Human Services.

○

HR 4519 IH—2

HR 4519 IH—3