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**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 4281  
OFFERED BY MR. KIND OF WISCONSIN AND MR.  
ANDREWS OF NEW JERSEY  
(Small Employer Health Benefits Plan)**

Strike all after the enacting clause and insert the following:

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

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Small Employer Health Benefits Program Act of 2004”.

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

Sec. 1. Short title.

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

“PART 8—SMALL EMPLOYER HEALTH BENEFITS PROGRAM

“Sec. 801. Establishment of program.

“Sec. 802. Contracts with qualifying insurers.

“Sec. 803. Additional conditions.

“Sec. 804. Dissemination of information.

“Sec. 805. Subsidies.

“Sec. 806. Authorization of appropriations.

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

8 (a) IN GENERAL.—Subtitle B of title I of the Em-  
9 ployee Retirement Income Security Act of 1974 is amend-  
10 ed by adding after part 7 the following new part:



1 "PART 8—SMALL EMPLOYER HEALTH BENEFITS  
2 PROGRAM (SEHBP)

3 "SEC. 801. ESTABLISHMENT OF PROGRAM.

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

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

10 "(2) such employees may elect alternative forms  
11 of coverage offered by various health insurance  
12 issuers.

13 "(b) QUALIFYING SMALL EMPLOYER DEFINED;  
14 OTHER DEFINITIONS.—For purposes of this part:

15 "(1) QUALIFYING SMALL EMPLOYER.—

16 "(A) IN GENERAL.—The term 'qualifying  
17 small employer' means a small employer (as de-  
18 fined in paragraph (2)) that—

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

23 "(ii) elects, with respect to an em-  
24 ployee electing coverage under qualified  
25 health insurance coverage, to pay at least



1           50 percent of the total premium for quali-  
2           fying health insurance coverage provided  
3           under this part.

4           “(B) ELECTIONS.—Elections under sub-  
5           paragraph (A) may be filed with the Secretary  
6           during the 180-day period beginning with the  
7           first enrollment period occurring under section  
8           803 and during open enrollment periods occur-  
9           ring thereafter under such section. Such elec-  
10          tions shall be filed in such form and manner as  
11          shall be prescribed by the Secretary.

12          “(C) PART-TIME EMPLOYMENT.—Under  
13          regulations of the Secretary, in the case of an  
14          employee serving in a position in which service  
15          is customarily less than 1,500 hours per year,  
16          the reference in subparagraph (A)(ii) to ‘50  
17          percent’ shall be deemed a percentage reduced  
18          to a percentage that bears the same ratio to 50  
19          percent as the number of hours of service per  
20          year customarily in such position bears to  
21          1,500.

22          “(2) SMALL EMPLOYER.—The term ‘small em-  
23          ployer’ means, with respect to a year under the pro-  
24          gram, an employer who employed an average of  
25          fewer than 100 employees on business days during



1 the preceding calendar year and who employs at  
2 least 1 employee on the first day of such year under  
3 the program.

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

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

11 “(1) The coverage is offered by a health insur-  
12 ance issuer.

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

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

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



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

4                   “(i) by individual or family enrollment, and  
5                   “(ii) to the extent permitted under the  
6           laws of such State relating to health insurance  
7           coverage offered in the small group market, on  
8           the basis of geography.

9           “(d) OTHER TERMS.—

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

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

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

22                   “(e) TREATMENT OF PARTNERSHIPS AND SELF-EM-  
23           PLOYED INDIVIDUALS.—For purposes of this part, and for  
24           purposes of applying section 3 to this part and to part  
25           5 as it applies to this part, in any case in which qualifying



1 health insurance coverage is, or is to be, provided under  
2 a plan, fund, or program to individuals covered  
3 thereunder—

4           “(1) if such plan, fund, or program is main-  
5           tained by a partnership, the term ‘employer’ (as de-  
6           fined in section 3(5)) includes the partnership in re-  
7           lation to the partners, and the term ‘employee’ (as  
8           defined in section 3(6)) includes any partner in rela-  
9           tion to the partnership; and

10           “(2) if such plan, fund, or program is main-  
11           tained by a self-employed individual, the term ‘em-  
12           ployer’ (as defined in section 3(5)) and the term  
13           ‘employee’ (as defined in section 3(6)) shall include  
14           such individual.

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

16           “(a) IN GENERAL.—The Secretary shall enter into  
17 contracts with health insurance issuers for the offering of  
18 qualifying health insurance coverage under this part in the  
19 States in such manner as to offer coverage to employees  
20 of employers that elect to offer coverage under this part.  
21 Nothing in this part shall be construed as requiring the  
22 Secretary to enter into arrangements with all such issuers  
23 seeking to offer qualifying health insurance coverage in  
24 a State.



1       “(b) CONTINUED REGULATION.—Nothing in this  
2 part shall be construed as preempting State laws applica-  
3 ble to health insurance issuers that offer coverage under  
4 this part in such State.

5       “(c) COORDINATION WITH STATE INSURANCE COM-  
6 MISSIONERS.—The Secretary shall coordinate with the in-  
7 surance commissioners for the various States in estab-  
8 lishing a process for handling and resolving any com-  
9 plaints relating to health insurance coverage offered under  
10 this part, to the extent necessary to augment processes  
11 otherwise available under State law.

12 **“SEC. 803. ADDITIONAL CONDITIONS.**

13       “(a) LIMITATION ON ENROLLMENT PERIODS.—The  
14 Secretary may limit the periods of times during which em-  
15 ployees may elect coverage offered under this part, but  
16 such election shall be consistent with the elections per-  
17 mitted for employees under FEHBP and shall provide for  
18 at least annual open enrollment periods and enrollment  
19 at the time of initial eligibility to enroll and upon appro-  
20 priate changes in family circumstances.

21       “(b) AUTHORIZING USE OF STATES IN MAKING AR-  
22 RANGEMENTS FOR COVERAGE.—In lieu of the coverage  
23 otherwise arranged by the Secretary under this part, the  
24 Secretary may enter an arrangement with a State under  
25 which a State arranges for the provision of qualifying



1 health insurance coverage to qualifying small employers  
2 in such manner as the Secretary would otherwise arrange  
3 for such coverage.

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

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

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

16 **“SEC. 805. SUBSIDIES.**

17       “(a) EMPLOYER SUBSIDIES.—

18               “(1) ENROLLMENT DISCOUNT.—

19                       “(A) IN GENERAL.—In the case of a quali-  
20 fying small employer who is eligible under sub-  
21 paragraph (B), the portion of the total pre-  
22 mium for coverage otherwise payable by such  
23 employer under this part shall be reduced by 5  
24 percent. Such reduction shall not cause an in-





1           crease in the portion of the total premium pay-  
2           able by employees.

3           “(B) EMPLOYERS ELIGIBLE FOR DIS-  
4           COUNTS.—A qualifying small employer is eligi-  
5           ble under this subparagraph if such employer  
6           employed an average of fewer than 25 employ-  
7           ees on business days during the preceding cal-  
8           endar year.

9           “(2) EMPLOYER PREMIUM SUBSIDY.—

10           “(A) IN GENERAL.—The Secretary shall  
11           provide to qualifying small employers who are  
12           eligible under subparagraph (C) and who elect  
13           to offer health insurance coverage under this  
14           part a subsidy for premiums paid by the em-  
15           ployer for coverage of employees whose indi-  
16           vidual income (as determined by the Secretary)  
17           is at or below 200 percent of the poverty line  
18           (as defined in section 673(2) of the Community  
19           Services Block Grant Act (42 U.S.C. 9902(2)),  
20           including any revision required by such section)  
21           for an individual.

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



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

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

14                  “(iii) 25 percent of the portion of the  
15                  premium payable by the employer for the  
16                  coverage, in the case of eligible qualifying  
17                  small employers who employ an average of  
18                  more than 25 employees but fewer than 51  
19                  employees on business days during the pre-  
20                  ceding calendar year.

21                  “(C) EMPLOYERS ELIGIBLE FOR PREMIUM  
22                  SUBSIDY.—A qualifying small employer is eligi-  
23                  ble under this subparagraph if such employer  
24                  employed an average of fewer than 50 employ-



1           ees on business days during the preceding cal-  
2           endar year.

3           “(b) EMPLOYEE SUBSIDIES.—

4           “(1) IN GENERAL.—The Secretary shall provide  
5           subsidies to employees of qualifying small employers  
6           in any case in which the family income of the em-  
7           ployee (as determined by the Secretary) is at or  
8           below 200 percent of the poverty line (as defined in  
9           section 673(2) of the Community Services Block  
10          Grant Act (42 U.S.C. 9902(2)), including any revi-  
11          sion required by such section) for a family of the  
12          size involved.

13          “(2) AMOUNT OF SUBSIDY.—Such subsidies  
14          shall be in an amount equal to the excess of the por-  
15          tion of the total premium for coverage otherwise  
16          payable by the employee under this part for any pe-  
17          riod, over 5 percent of the family income (as deter-  
18          mined under paragraph (1)(A)) of the employee for  
19          such period.

20          “(3) COORDINATION OF SUBSIDIES.—Notwith-  
21          standing paragraph (1), under regulations of the  
22          Secretary, an employee may be entitled to subsidies  
23          under this subsection for any period only if such em-  
24          ployee is not eligible for subsidies for such period  
25          under any Federal or State health insurance subsidy



1 program (including a program under title V, XIX, or  
2 XXI of the Social Security Act). For purposes of  
3 this paragraph, an employee is 'eligible' for a sub-  
4 sidy under a program if such employee is entitled to  
5 such subsidy or would, upon filing application there-  
6 fore, be entitled to such subsidy.

7 “(4) AUTHORITY TO EXPAND ELIGIBILITY.—  
8 The Secretary may, to the extent of available fund-  
9 ing, provide for expansion of the subsidy program  
10 under this subsection to employees whose family in-  
11 come (as defined by the Secretary) is at or below  
12 300 percent of the poverty line (as determined under  
13 paragraph (1)).

14 “(c) LIMITATIONS.—For purposes of this section—

15 “(1) RESTRICTIONS ON TREATMENT OF EM-  
16 PLOYMENT RELATIONSHIP.—Section 801(e) shall  
17 not apply.

18 “(2) REQUIREMENT OF MULTIPLE EMPLOY-  
19 EES.—A small employer shall not be treated as a  
20 qualifying small employer with respect to an applica-  
21 ble year unless the employer employs at least 2 em-  
22 ployees on the first day of such year.

23 “(d) PROCEDURES.—The Secretary shall establish by  
24 regulation applications, methods, and procedures for car-



1 rying out this section, including measures to ascertain or  
2 confirm levels of income.

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

4 “There are authorized to be appropriated, for the pe-  
5 riod beginning with fiscal year 2005 and ending with fiscal  
6 year 2014, \$50,000,000,000 to carry out this part, includ-  
7 ing the establishment of subsidies under section 805.”.

8 (b) REPORT ON OFFERING NATIONAL HEALTH  
9 PLANS.—Not later than 18 months after the date of the  
10 enactment of this Act, the Secretary of Labor shall report  
11 to Congress the Secretary’s recommendations regarding  
12 the feasibility of offering national health plans under part  
13 8 of subtitle B of title I of the Employee Retirement In-  
14 come Security Act of 1974, as added by subsection (a).

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

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

- “Sec. 801. Establishment of program.
- “Sec. 802. Contracts with qualifying insurers.
- “Sec. 803. Additional conditions.
- “Sec. 804. Dissemination of information.
- “Sec. 805. Subsidies.
- “Sec. 806. Authorization of appropriations.”.

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

