



## Center for Policy Analysis

*Equitable Quality Universal Affordable Health Care (EQUAL)*

### **Pre-Empting ERISA: The Kucinich Amendment for a State Single Payer Option**

#### **Summary**

Some state and local governments that have attempted to expand health care coverage have been successfully challenged in court under the terms of the Employee Retirement Income Security Act of 1974 (ERISA). ERISA pre-empts states from enacting legislation if it is “related to” employee benefit plans. It reserves that right to the federal government. Section 514 of ERISA states that Title V (Administration and Enforcement) and Title IV (Fiduciary Responsibility) of ERISA “shall supercede any and all State laws insofar as they may... relate to any employee benefit plan.” There is no provision for an administrative waiver of these rules.

The Kucinich amendment to HR 3200, approved by a recorded vote of the House Education and Labor Committee, would remove this barrier for states that have enacted and signed into law a single payer system.

#### **What the Amendment Does**

The Secretary of Labor, in consultation with the Secretary of Health and Human Services, would be authorized and required to waive the ERISA pre-emption (Sec. 514) for states that have enacted a state single payer system. In this case, the Secretary could decline to grant the waiver only under extraordinary circumstances. The system would have to meet requirements, and the Secretary could revoke the waiver if it fails to do so.

The state single payer system is defined as a non-profit program of the state for providing health care to all residents. A single state agency would finance and administer the provision of comprehensive benefits that meet or exceed the standards for coverage and quality described in HR 3200, and assure free choice of health care providers. Private insurance that duplicates this coverage would be prohibited. Health maintenance organizations could operate on a non-profit basis if they also own their facilities and provide services directly. The system would not result in greater costs to the federal government. At the same time, the federal government would maintain the equivalent level of support as provided to other states, accounting for variations such as population and demographics. States could seek planning and start-up funds.

#### **What the Amendment Does Not Do**

A state single payer amendment was proposed by Senator Sanders. It is more detailed than the Kucinich amendment because it would cover matters beyond the jurisdiction of the House Education and Labor Committee. These include: Dedicated funding for planning and implementation grants; Specific allocations of funds from existing federal health programs, and waivers to permit coordination with those programs; Quality assurance and health professional training programs associated with other federal programs.

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