

**(4) Pattern of abuse**

If the Secretary determines that an Exchange or a State has engaged in serious misconduct with respect to compliance with the requirements of, or carrying out of activities required under, this title,<sup>1</sup> the Secretary may rescind from payments otherwise due to such State involved under this or any other Act administered by the Secretary an amount not to exceed 1 percent of such payments per year until corrective actions are taken by the State that are determined to be adequate by the Secretary.

**(5) Protections against fraud and abuse**

With respect to activities carried out under this title,<sup>1</sup> the Secretary shall provide for the efficient and non-discriminatory administration of Exchange activities and implement any measure or procedure that—

(A) the Secretary determines is appropriate to reduce fraud and abuse in the administration of this title;<sup>1</sup> and

(B) the Secretary has authority to implement under this title<sup>1</sup> or any other Act.

**(6) Application of the False Claims Act****(A) In general**

Payments made by, through, or in connection with an Exchange are subject to the False Claims Act (31 U.S.C. 3729 et seq.) if those payments include any Federal funds. Compliance with the requirements of this Act concerning eligibility for a health insurance issuer to participate in the Exchange shall be a material condition of an issuer's entitlement to receive payments, including payments of premium tax credits and cost-sharing reductions, through the Exchange.

**(B)<sup>2</sup> Damages**

Notwithstanding paragraph (1) of section 3729(a) of title 31, and subject to paragraph (2) of such section, the civil penalty assessed under the False Claims Act on any person found liable under such Act as described in subparagraph (A) shall be increased by not less than 3 times and not more than 6 times the amount of damages which the Government sustains because of the act of that person.

**(b) GAO oversight**

Not later than 5 years after the first date on which Exchanges are required to be operational under this title,<sup>1</sup> the Comptroller General shall conduct an ongoing study of Exchange activities and the enrollees in qualified health plans offered through Exchanges. Such study shall review—

(1) the operations and administration of Exchanges, including surveys and reports of qualified health plans offered through Exchanges and on the experience of such plans (including data on enrollees in Exchanges and individuals purchasing health insurance coverage outside of Exchanges), the expenses of Exchanges, claims statistics relating to qualified health plans, complaints data relating to

such plans, and the manner in which Exchanges meet their goals;

(2) any significant observations regarding the utilization and adoption of Exchanges;

(3) where appropriate, recommendations for improvements in the operations or policies of Exchanges;

(4) a survey of the cost and affordability of health care insurance provided under the Exchanges for owners and employees of small business concerns (as defined under section 632 of title 15), including data on enrollees in Exchanges and individuals purchasing health insurance coverage outside of Exchanges; and

(5) how many physicians, by area and specialty, are not taking or accepting new patients enrolled in Federal Government health care programs, and the adequacy of provider networks of Federal Government health care programs.

(Pub. L. 111-148, title I, § 1313, title X, § 10104(k), Mar. 23, 2010, 124 Stat. 184, 902.)

## REFERENCES IN TEXT

This title, referred to in subsecs. (a)(4), (5) and (b), is title I of Pub. L. 111-148, Mar. 23, 2010, 124 Stat. 130, which enacted this chapter and enacted, amended, and transferred numerous other sections and notes in the Code. For complete classification of title I to the Code, see Tables.

This Act, referred to in subsec. (a)(4), (6)(A), is Pub. L. 111-148, Mar. 23, 2010, 124 Stat. 119, known as the Patient Protection and Affordable Care Act. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of this title and Tables.

The False Claims Act, referred to in subsec. (a)(6), was the popular name for sections 231, 232, 233, and 235 of former Title 31, Money and Finance. Sections 231, 232, 233, and 235 were repealed by Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1084, and reenacted by the first section thereof as sections 3729 to 3731 of Title 31, Money and Finance.

## AMENDMENTS

2010—Subsec. (b)(4), (5). Pub. L. 111-148, § 10104(k), added par. (4) and redesignated former par. (4) as (5).

## TERMINATION OF PROVISION

Pub. L. 111-148, title X, § 10104(j)(1), Mar. 23, 2010, 124 Stat. 901, provided that: "Subparagraph (B) of section 1313(a)(6) of this Act [42 U.S.C. 18033(a)(6)(B)] is hereby deemed null, void, and of no effect."

## PART C—STATE FLEXIBILITY RELATING TO EXCHANGES

**§ 18041. State flexibility in operation and enforcement of Exchanges and related requirements****(a) Establishment of standards****(1) In general**

The Secretary shall, as soon as practicable after March 23, 2010, issue regulations setting standards for meeting the requirements under this title,<sup>1</sup> and the amendments made by this title,<sup>1</sup> with respect to—

(A) the establishment and operation of Exchanges (including SHOP Exchanges);

(B) the offering of qualified health plans through such Exchanges;

<sup>1</sup> See References in Text note below.

<sup>2</sup> See Termination of Provision note below.

<sup>1</sup> See References in Text note below.

(C) the establishment of the reinsurance and risk adjustment programs under part E; and

(D) such other requirements as the Secretary determines appropriate.

The preceding sentence shall not apply to standards for requirements under subtitles A and C (and the amendments made by such subtitles) for which the Secretary issues regulations under the Public Health Service Act [42 U.S.C. 201 et seq.].

**(2) Consultation**

In issuing the regulations under paragraph (1), the Secretary shall consult with the National Association of Insurance Commissioners and its members and with health insurance issuers, consumer organizations, and such other individuals as the Secretary selects in a manner designed to ensure balanced representation among interested parties.

**(b) State action**

Each State that elects, at such time and in such manner as the Secretary may prescribe, to apply the requirements described in subsection (a) shall, not later than January 1, 2014, adopt and have in effect—

(1) the Federal standards established under subsection (a); or

(2) a State law or regulation that the Secretary determines implements the standards within the State.

**(c) Failure to establish Exchange or implement requirements**

**(1) In general**

If—

(A) a State is not an electing State under subsection (b); or

(B) the Secretary determines, on or before January 1, 2013, that an electing State—

(i) will not have any required Exchange operational by January 1, 2014; or

(ii) has not taken the actions the Secretary determines necessary to implement—

(I) the other requirements set forth in the standards under subsection (a); or

(II) the requirements set forth in subtitles A and C and the amendments made by such subtitles;

the Secretary shall (directly or through agreement with a not-for-profit entity) establish and operate such Exchange within the State and the Secretary shall take such actions as are necessary to implement such other requirements.

**(2) Enforcement authority**

The provisions of section 2736(b)<sup>1</sup> of the Public Health Services<sup>2</sup> Act [42 U.S.C. 300gg-22(b)] shall apply to the enforcement under paragraph (1) of requirements of subsection (a)(1) (without regard to any limitation on the application of those provisions to group health plans).

<sup>2</sup>So in original. Probably should be "Service".

**(d) No interference with State regulatory authority**

Nothing in this title<sup>1</sup> shall be construed to preempt any State law that does not prevent the application of the provisions of this title.<sup>1</sup>

**(e) Presumption for certain State-operated Exchanges**

**(1) In general**

In the case of a State operating an Exchange before January 1, 2010, and which has insured a percentage of its population not less than the percentage of the population projected to be covered nationally after the implementation of this Act, that seeks to operate an Exchange under this section, the Secretary shall presume that such Exchange meets the standards under this section unless the Secretary determines, after completion of the process established under paragraph (2), that the Exchange does not comply with such standards.

**(2) Process**

The Secretary shall establish a process to work with a State described in paragraph (1) to provide assistance necessary to assist the State's Exchange in coming into compliance with the standards for approval under this section.

(Pub. L. 111-148, title I, §1321, Mar. 23, 2010, 124 Stat. 186.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(1) and (d), is title I of Pub. L. 111-148, Mar. 23, 2010, 124 Stat. 130, which enacted this chapter and enacted, amended, and transferred numerous other sections and notes in the Code. For complete classification of title I to the Code, see Tables.

Subtitles A and C, referred to in subsecs. (a)(1) and (c)(1)(B)(ii)(II), are subtitles A (§§1001-1004) and C (§§1201-1255), respectively, of title I of Pub. L. 111-148, Mar. 23, 2010, 124 Stat. 130, 154. Subtitle A enacted sections 300gg-11 to 300gg-19, 300gg-93, and 300gg-94 of this title, transferred sections 300gg-4 to 300gg-7 and 300gg-13 of this title to sections 300gg-25 to 300gg-28 and 300gg-9 of this title, respectively, amended sections 300gg-11, 300gg-12, and 300gg-21 to 300gg-23 of this title, and enacted provisions set out as a note under section 300gg-11 of this title. Subtitle C enacted subchapter II of this chapter and sections 300gg-2 to 300gg-4 and 300gg-7 of this title, transferred section 300gg of this title to section 300gg-3 of this title, amended sections 300gg-1 and 300gg-4 of this title, and enacted provisions set out as a note under section 300gg of this title. For complete classification of subtitles A and C to the Code, see Tables.

The Public Health Service Act, referred to in subsec. (a)(1), is act July 1, 1944, ch. 373, 58 Stat. 682, which is classified generally to chapter 6A (§201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Section 2736 of the Public Health Service Act, referred to in subsec. (c)(2), was renumbered section 2723 of that Act by Pub. L. 111-148, §1563(c)(13)(C) (formerly §1562(c)(13)(C)), Mar. 23, 2010, 124 Stat. 269, and is classified to section 300gg-22 of this title.

This Act, referred to in subsec. (e)(1), is Pub. L. 111-148, Mar. 23, 2010, 124 Stat. 119, known as the Patient Protection and Affordable Care Act. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of this title and Tables.

**§ 18042. Federal program to assist establishment and operation of nonprofit, member-run health insurance issuers**

**(a) Establishment of program**

**(1) In general**

The Secretary shall establish a program to carry out the purposes of this section to be known as the Consumer Operated and Oriented Plan (CO-OP) program.

**(2) Purpose**

It is the purpose of the CO-OP program to foster the creation of qualified nonprofit health insurance issuers to offer qualified health plans in the individual and small group markets in the States in which the issuers are licensed to offer such plans.

**(b) Loans and grants under the CO-OP program**

**(1) In general**

The Secretary shall provide through the CO-OP program for the awarding to persons applying to become qualified nonprofit health insurance issuers of—

(A) loans to provide assistance to such person in meeting its start-up costs; and

(B) grants to provide assistance to such person in meeting any solvency requirements of States in which the person seeks to be licensed to issue qualified health plans.

**(2) Requirements for awarding loans and grants**

**(A) In general**

In awarding loans and grants under the CO-OP program, the Secretary shall—

(i) take into account the recommendations of the advisory board established under paragraph (3);

(ii) give priority to applicants that will offer qualified health plans on a Statewide basis, will utilize integrated care models, and have significant private support; and

(iii) ensure that there is sufficient funding to establish at least 1 qualified nonprofit health insurance issuer in each State, except that nothing in this clause shall prohibit the Secretary from funding the establishment of multiple qualified nonprofit health insurance issuers in any State if the funding is sufficient to do so.

**(B) States without issuers in program**

If no health insurance issuer applies to be a qualified nonprofit health insurance issuer within a State, the Secretary may use amounts appropriated under this section for the awarding of grants to encourage the establishment of a qualified nonprofit health insurance issuer within the State or the expansion of a qualified nonprofit health insurance issuer from another State to the State.

**(C) Agreement**

**(i) In general**

The Secretary shall require any person receiving a loan or grant under the CO-OP program to enter into an agreement with the Secretary which requires such person to meet (and to continue to meet)—

(I) any requirement under this section for such person to be treated as a qualified nonprofit health insurance issuer; and

(II) any requirements contained in the agreement for such person to receive such loan or grant.

**(ii) Restrictions on use of Federal funds**

The agreement shall include a requirement that no portion of the funds made available by any loan or grant under this section may be used—

(I) for carrying on propaganda, or otherwise attempting, to influence legislation; or

(II) for marketing.

Nothing in this clause shall be construed to allow a person to take any action prohibited by section 501(c)(29) of title 26.

**(iii) Failure to meet requirements**

If the Secretary determines that a person has failed to meet any requirement described in clause (i) or (ii) and has failed to correct such failure within a reasonable period of time of when the person first knows (or reasonably should have known) of such failure, such person shall repay to the Secretary an amount equal to the sum of—

(I) 110 percent of the aggregate amount of loans and grants received under this section; plus

(II) interest on the aggregate amount of loans and grants received under this section for the period the loans or grants were outstanding.

The Secretary shall notify the Secretary of the Treasury of any determination under this section of a failure that results in the termination of an issuer's tax-exempt status under section 501(c)(29) of such title.

**(D) Time for awarding loans and grants**

The Secretary shall not later than July 1, 2013, award the loans and grants under the CO-OP program and begin the distribution of amounts awarded under such loans and grants.

**(3) Repayment of loans and grants**

Not later than July 1, 2013, and prior to awarding loans and grants under the CO-OP program, the Secretary shall promulgate regulations with respect to the repayment of such loans and grants in a manner that is consistent with State solvency regulations and other similar State laws that may apply. In promulgating such regulations, the Secretary shall provide that such loans shall be repaid within 5 years and such grants shall be repaid within 15 years, taking into consideration any appropriate State reserve requirements, solvency regulations, and requisite surplus note arrangements that must be constructed in a State to provide for such repayment prior to awarding such loans and grants.

**(4) Advisory board**

**(A) In general**

The advisory board under this paragraph shall consist of 15 members appointed by the