

include in any health benefits plan the option of membership in qualified health maintenance organizations as a condition of payment to the State of funds under section 246(d), 247b, 247c, 300a, 300m-4, or 300p-3 of this title, and that the offer of membership in such an organization be first made to the employees' representative, if any, and then be made to each employee if the offer is accepted by the representative.

Subsec. (b)(1). Pub. L. 94-460, §110(a)(2), substituted "(A) without the use of an individual practice association and (B) without the use of contracts (except for contracts for unusual or infrequently used services) with health professionals" for "through professionals who are members of the staff of the organization or a medical group (or groups)".

Subsec. (b)(2). Pub. L. 94-460, §110(a)(2), substituted "basic health services through (A) an individual practice association (or associations), (B) health professionals who have contracted with the health maintenance organization for the provision of such services, or (C) a combination of such association (or associations) or health professionals under contract with the organization" for "such services through an individual practice association (or associations)".

Subsec. (c). Pub. L. 94-460, §110(a)(3), struck out provision that failure of any employer to comply with the requirements of subsection (a) of this section be considered a willful violation of section 215 of title 29.

Subsecs. (e) to (h). Pub. L. 94-460, §110(a)(4), added subsecs. (e) to (h).

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 7(b) of Pub. L. 100-517 provided that the amendment made by section 7(b) is effective 7 years after Oct. 24, 1988.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99-660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e-1 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Section 942(a)(5) of Pub. L. 97-35 provided that: "The amendment made by paragraph (3)(A) [amending this section] shall apply with respect to the offering of a health maintenance organization in accordance with section 1310(b)(1) of the Public Health Service Act [subsection (b)(1) of this section] after four years after the date the organization becomes a qualified health maintenance organization for purposes of section 1310 of such Act [this section] if the health maintenance organization provides assurances satisfactory to the Secretary that upon the expiration of such four years it will provide more than one half of its basic health services which are provided by physicians through physicians or other health professionals who are members of the staff of the organization or a medical group (or groups)."

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 110(a)(1), (2) of Pub. L. 94-460 applicable with respect to calendar quarters which began after Oct. 8, 1976, and amendment by section 110(a)(3), (4) of Pub. L. 94-460 applicable with respect to failures of employers to comply with section 300e-9 of this title after Oct. 8, 1976, see section 118 of Pub. L. 94-460, set out as a note under section 300e of this title.

#### COLLECTIVE BARGAINING AGREEMENTS IN EFFECT ON OCTOBER 24, 1988, UNAFFECTED

Section 7(a)(3) of Pub. L. 100-517 provided that: "Nothing in section 1310 of the Public Health Service Act (42 U.S.C. 300e-9), as amended by this Act, shall be construed to supersede any provision of a collective bargaining agreement in effect on the date of enactment of this Act [Oct. 24, 1988]."

### § 300e-10. Restrictive State laws and practices

#### (a) Entities operating as health maintenance organizations

In the case of any entity—

(1) which cannot do business as a health maintenance organization in a State in which it proposes to furnish basic and supplemental health services because that State by law, regulation, or otherwise—

(A) requires as a condition to doing business in that State that a medical society approve the furnishing of services by the entity,

(B) requires that physicians constitute all or a percentage of its governing body,

(C) requires that all physicians or a percentage of physicians in the locale participate or be permitted to participate in the provision of services for the entity,

(D) requires that the entity meet requirements for insurers of health care services doing business in that State respecting initial capitalization and establishment of financial reserves against insolvency, or

(E) imposes requirements which would prohibit the entity from complying with the requirements of this subchapter, and

(2) for which a grant, contract, loan, or loan guarantee was made under this subchapter or which is a qualified health maintenance organization for purposes of section 300e-9 of this title (relating to employees' health benefits plans),

such requirements shall not apply to that entity so as to prevent it from operating as a health maintenance organization in accordance with section 300e of this title.

#### (b) Advertising

No State may establish or enforce any law which prevents a health maintenance organization for which a grant, contract, loan, or loan guarantee was made under this subchapter or which is a qualified health maintenance organization for purposes of section 300e-9 of this title (relating to employees' health benefits plans), from soliciting members through advertising its services, charges, or other nonprofessional aspects of its operation. This subsection does not authorize any advertising which identifies, refers to, or makes any qualitative judgement concerning, any health professional who provides services for a health maintenance organization.

#### (c) Digest of State laws, regulations, and practices; legal consultative assistance

The Secretary shall, within 6 months after October 8, 1976, develop a digest of State laws, regulations, and practices pertaining to development, establishment, and operation of health maintenance organizations which shall be updated at least annually and relevant sections of which shall be provided to the Governor of each State annually. Such digest shall indicate which State laws, regulations, and practices appear to be inconsistent with the operation of this section. The Secretary shall also insure that appropriate legal consultative assistance is available to the States for the purpose of complying with the provisions of this section.

(July 1, 1944, ch. 373, title XIII, §1311, as added Pub. L. 93-222, §2, Dec. 29, 1973, 87 Stat. 931; amended Pub. L. 94-460, title I, §114, Oct. 8, 1976, 90 Stat. 1954; Pub. L. 99-660, title VIII, §809, Nov. 14, 1986, 100 Stat. 3801; Pub. L. 100-517, §8, Oct. 24, 1988, 102 Stat. 2583.)

#### PRIOR PROVISIONS

A prior section 1311 of act July 1, 1944, was classified to section 211a of this title prior to repeal by Pub. L. 93-222, §7(b).

#### AMENDMENTS

1988—Subsec. (a)(1)(E). Pub. L. 100-517 added subpar. (E).

1986—Subsec. (c). Pub. L. 99-660 substituted “annually” for “quarterly” after “at least”.

1976—Subsec. (c). Pub. L. 94-460 added subsec. (c).

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99-660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e-1 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-460 effective Oct. 8, 1976, see section 118 of Pub. L. 94-460, set out as a note under section 300e of this title.

### § 300e-11. Continued regulation of health maintenance organizations

#### (a) Determination of deficiency

If the Secretary determines that an entity which received a grant, contract, loan, or loan guarantee under this subchapter as a health maintenance organization or which was included in a health benefits plan offered to employees pursuant to section 300e-9 of this title—

- (1) fails to provide basic and supplemental services to its members,
- (2) fails to provide such services in the manner prescribed by section 300e(b) of this title, or
- (3) is not organized or operated in the manner prescribed by section 300e(c) of this title,

the Secretary may take the action authorized by subsection (b) of this section.

#### (b) Action by Secretary upon determination

(1) If the Secretary makes, with respect to any entity which provided assurances to the Secretary under section 300e-9(d)(1)<sup>1</sup> of this title, a determination described in subsection (a) of this section, the Secretary shall notify the entity in writing of the determination. Such notice shall specify the manner in which the entity has not complied with such assurances and direct that the entity initiate (within 30 days of the date the notice is issued by the Secretary or within such longer period as the Secretary determines is reasonable) such action as may be necessary to bring (within such period as the Secretary shall prescribe) the entity into compliance with the assurances. If the entity fails to initiate corrective action within the period prescribed by the notice or fails to comply with the assurances within such period as the Secretary prescribes, then after the Secretary provides the entity a reasonable opportunity for reconsider-

ation of his determination, including, at the entity's election, a fair hearing (A) the entity shall not be a qualified health maintenance organization for purposes of section 300e-9 of this title until such date as the Secretary determines that it is in compliance with the assurances, and (B) each employer which has offered membership in the entity in compliance with section 300e-9 of this title, each lawfully recognized collective bargaining representative or other employee representative which represents the employees of each such employer, and the members of such entity shall be notified by the entity that the entity is not a qualified health maintenance organization for purposes of such section. The notice required by clause (B) of the preceding sentence shall contain, in readily understandable language, the reasons for the determination that the entity is not a qualified health maintenance organization. The Secretary shall publish in the Federal Register each determination referred to in this paragraph.

(2) If the Secretary makes, with respect to an entity which has received a grant, contract, loan, or loan guarantee under this subchapter, a determination described in subsection (a) of this section, the Secretary may, in addition to any other remedies available to him, bring a civil action in the United States district court for the district in which such entity is located to enforce its compliance with the assurances it furnished respecting the provision of basic and supplemental health services or its organization or operation, as the case may be, which assurances were made in connection with its application under this subchapter for the grant, contract, loan, or loan guarantee.

(July 1, 1944, ch. 373, title XIII, §1312, as added Pub. L. 93-222, §2, Dec. 29, 1973, 87 Stat. 931; amended Pub. L. 94-460, title I, §111, Oct. 8, 1976, 90 Stat. 1952; Pub. L. 95-559, §12(a)(2), Nov. 1, 1978, 92 Stat. 2140; Pub. L. 97-35, title IX, §949(a), Aug. 13, 1981, 95 Stat. 578.)

#### REFERENCES IN TEXT

Section 300e-9(d)(1) of this title, referred to in subsec. (b)(1), was redesignated section 300e-9(c)(1) of this title by Pub. L. 100-517, §7(b), Oct. 24, 1988, 102 Stat. 2580.

#### PRIOR PROVISIONS

A prior section 1312 of act July 1, 1944, was classified to section 212a of this title prior to repeal by Pub. L. 93-222, §7(b).

#### AMENDMENTS

1981—Subsec. (b)(1). Pub. L. 97-35 inserted provisions relating to opportunity for reconsideration of determination of Secretary.

1978—Subsec. (c). Pub. L. 95-559 struck out subsec. (c) which provided that the Secretary, acting through the Assistant Secretary for Health, administer subsections (a) and (b) of this section in the Office of the Assistant Secretary for Health.

1976—Subsec. (a). Pub. L. 94-460, §111(a), substituted “the Secretary may take the action authorized by subsection (b) of this section” for “the Secretary may, in addition to any other remedies available to him, bring a civil action in the United States district court for the district in which such entity is located to enforce its compliance with any assurances it furnished him respecting the provision of basic and supplemental health services or its organization or operation, as the case may be, which assurances were made under section

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