### § 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

Comptroller General of the United States from among individuals with qualifications described in section 1395b–6(c)(2) of this title.

**(B) Rules relating to appointments**

**(i) Standards**

Any individual appointed under subparagraph (A) shall meet ethics and conflict of interest standards protecting against insurance industry involvement and interference.

**(ii) Original appointments**

The original appointment of board members under subparagraph (A)(ii) shall be made no later than 3 months after March 23, 2010.

**(C) Vacancy**

Any vacancy on the advisory board shall be filled in the same manner as the original appointment.

**(D) Pay and reimbursement**

**(i) No compensation for members of advisory board**

Except as provided in clause (ii), a member of the advisory board may not receive pay, allowances, or benefits by reason of their service on the board.

**(ii) Travel expenses**

Each member shall receive travel expenses, including per diem in lieu of subsistence under subchapter I of chapter 57 of title 5.

**(E) Application of FACA**

The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the advisory board, except that section 14 of such Act shall not apply.

**(F) Termination**

The advisory board shall terminate on the earlier of the date that it completes its duties under this section or December 31, 2015.

**(c) Qualified nonprofit health insurance issuer**

For purposes of this section—

**(1) In general**

The term ''qualified nonprofit health insurance issuer'' means a health insurance issuer that is an organization—

(A) that is organized under State law as a nonprofit, member corporation;

(B) substantially all of the activities of which consist of the issuance of qualified health plans in the individual and small group markets in each State in which it is licensed to issue such plans; and

(C) that meets the other requirements of this subsection.

**(2) Certain organizations prohibited**

An organization shall not be treated as a qualified nonprofit health insurance issuer if—

(A) the organization or a related entity (or any predecessor of either) was a health insurance issuer on July 16, 2009; or

(B) the organization is sponsored by a State or local government, any political subdivision thereof, or any instrumentality of such government or political subdivision.

**(3) Governance requirements**

An organization shall not be treated as a qualified nonprofit health insurance issuer unless—

(A) the governance of the organization is subject to a majority vote of its members;

(B) its governing documents incorporate ethics and conflict of interest standards protecting against insurance industry involvement and interference; and

(C) as provided in regulations promulgated by the Secretary, the organization is required to operate with a strong consumer focus, including timeliness, responsiveness, and accountability to members.

**(4) Profits inure to benefit of members**

An organization shall not be treated as a qualified nonprofit health insurance issuer unless any profits made by the organization are required to be used to lower premiums, to improve benefits, or for other programs intended to improve the quality of health care delivered to its members.

**(5) Compliance with State insurance laws**

An organization shall not be treated as a qualified nonprofit health insurance issuer unless the organization meets all the requirements that other issuers of qualified health plans are required to meet in any State where the issuer offers a qualified health plan, including solvency and licensure requirements, rules on payments to providers, and compliance with network adequacy rules, rate and form filing rules, any applicable State premium assessments and any other State law described in section 18044(b) of this title.

**(6) Coordination with State insurance reforms**

An organization shall not be treated as a qualified nonprofit health insurance issuer unless the organization does not offer a health plan in a State until that State has in effect (or the Secretary has implemented for the State) the market reforms required by part A of title XXVII of the Public Health Service Act [42 U.S.C. 300gg et seq.] (as amended by subtitles A and C of this Act).

**(d) Establishment of private purchasing council**

**(1) In general**

Qualified nonprofit health insurance issuers participating in the CO–OP program under this section may establish a private purchasing council to enter into collective purchasing arrangements for items and services that increase administrative and other cost efficiencies, including claims administration, administrative services, health information technology, and actuarial services.

**(2) Council may not set payment rates**

The private purchasing council established under paragraph (1) shall not set payment rates for health care facilities or providers participating in health insurance coverage provided by qualified nonprofit health insurance issuers.

**(3) Continued application of antitrust laws**

**(A) In general**

Nothing in this section shall be construed to limit the application of the antitrust laws

to any private purchasing council (whether or not established under this subsection) or to any qualified nonprofit health insurance issuer participating in such a council.

**(B) Antitrust laws**

For purposes of this subparagraph, the term ''antitrust laws'' has the meaning given the term in subsection (a) of section 12 of title 15. Such term also includes section 45 of title 15 to the extent that such section 45 applies to unfair methods of competition.

**(e) Limitation on participation**

No representative of any Federal, State, or local government (or of any political subdivision or instrumentality thereof), and no representative of a person described in subsection (c)(2)(A), may serve on the board of directors of a qualified nonprofit health insurance issuer or with a private purchasing council established under subsection (d).

**(f) Limitations on Secretary**

**(1) In general**

The Secretary shall not—

(A) participate in any negotiations between 1 or more qualified nonprofit health insurance issuers (or a private purchasing council established under subsection (d)) and any health care facilities or providers, including any drug manufacturer, pharmacy, or hospital; and

(B) establish or maintain a price structure for reimbursement of any health benefits covered by such issuers.

**(2) Competition**

Nothing in this section shall be construed as authorizing the Secretary to interfere with the competitive nature of providing health benefits through qualified nonprofit health insurance issuers.

**(g) Appropriations**

There are hereby appropriated, out of any funds in the Treasury not otherwise appropriated, $6,000,000,000 to carry out this section.

**(h) Omitted**

**(i) GAO study and report**

**(1) Study**

The Comptroller General of the General Accountability Office shall conduct an ongoing study on competition and market concentration in the health insurance market in the United States after the implementation of the reforms in such market under the provisions of, and the amendments made by, this Act. Such study shall include an analysis of new issuers of health insurance in such market.

**(2) Report**

The Comptroller General shall, not later than December 31 of each even-numbered year (beginning with 2014), report to the appropriate committees of the Congress the results of the study conducted under paragraph (1), including any recommendations for administrative or legislative changes the Comptroller General determines necessary or appropriate to increase competition in the health insurance market.

(Pub. L. 111–148, title I, §1322, title X, §10104(*l*), Mar. 23, 2010, 124 Stat. 187, 902.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b)(4)(E), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Public Health Service Act, referred to in subsec. (c)(6), is act July 1, 1944, ch. 373, 58 Stat. 682. Part A of title XXVII of the Act is classified generally to part A (§300gg et seq.) of subchapter XXV of chapter 6A 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.

Subtitles A and C of this Act, referred to in subsec. (c)(6), 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 to 300gg–2 and 300gg–4 to 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.

This Act, referred to in subsec. (i)(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.

CODIFICATION

Section is comprised of section 1322 of Pub. L. 111–148. Subsec. (h) of section 1322 of Pub. L. 111–148 amended sections 501, 4958, and 6033 of Title 26, Internal Revenue Code.

AMENDMENTS

2010—Subsec. (b)(3), (4). Pub. L. 111–148, §10104(*l*), added par. (3) and redesignated former par. (3) as (4).

CONSUMER OPERATED AND ORIENTED PLAN PROGRAM CONTINGENCY FUND

Pub. L. 112–240, title VI, §644, Jan. 2, 2013, 126 Stat. 2362, provided that:

''(a) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a fund to be used to provide assistance and oversight to qualified nonprofit health insurance issuers that have been awarded loans or grants under section 1322 of the Patient Protection and Affordable Care Act (42 U.S.C. 18042) prior to the date of enactment of this Act [Jan. 2, 2013].

''(b) TRANSFER AND RESCISSION.—

''(1) TRANSFER.—From the unobligated balance of funds appropriated under section 1322(g) of the Patient Protection and Affordable Care Act (42 U.S.C. 18042(g)), 10 percent of such sums are hereby transferred to the fund established under subsection (a) to remain available until expended.

''(2) RESCISSION.—Except as provided for in paragraph (1), amounts appropriated under section 1322(g) of the Patient Protection and Affordable Care Act (42 U.S.C. 18042(g)) that are unobligated as of the date of enactment of this Act [Jan. 2, 2013] are rescinded.''

## § 18043. Funding for the territories

**(a) In general**

A territory that—

(1) elects consistent with subsection (b) to establish an Exchange in accordance with part