

otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

(ii) Penalty not to apply to failures corrected within certain periods

No penalty shall be imposed by subparagraph (A) on any failure if—

(I) such failure was due to reasonable cause and not to willful neglect; and

(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

(iii) Overall limitation for unintentional failures

In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

(II) \$500,000.

(E) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.

(July 1, 1944, ch. 373, title XXVII, §2723, formerly §2722, as added Pub. L. 104-191, title I, §102(a), Aug. 21, 1996, 110 Stat. 1968; amended Pub. L. 110-233, title I, §102(a)(5), May 21, 2008, 122 Stat. 891; renumbered §2736, renumbered §2723, and amended Pub. L. 111-148, title I, §§1001(4), 1563(c)(13), formerly §1562(c)(13), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 130, 269, 911.)

REFERENCES IN TEXT

Section 300gg-23 of this title, referred to in subsec. (a)(1), was in the original section “2723”, and was translated as meaning section 2724 of act July 1, 1944, to reflect the probable intent of Congress and the renumbering of section 2723 as 2724 by Pub. L. 111-148, title I, §§1001(4), 1563(c)(14)(B), formerly §1562(c)(14)(B), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 130, 269, 911.

Section 2702, referred to in subsec. (b)(3)(A), is a reference to section 2702 of act July 1, 1944. Section 2702, which was classified to section 300gg-1 of this title, was amended by Pub. L. 111-148, title I, §1201(3), Mar. 23, 2010, 124 Stat. 154, and was transferred to subsecs. (b) to (f) of section 300gg-4 of this title, effective for plan years beginning on or after Jan. 1, 2014. A new section 2702, related to guaranteed availability of coverage, was added by Pub. L. 111-148, title I, §1201(4), Mar. 23, 2010, 124 Stat. 156, effective for plan years beginning on or after Jan. 1, 2014, and is classified to section 300gg-1 of this title.

Section 2701, referred to in subsec. (b)(3)(A), is a reference to section 2701 of act July 1, 1944. Section 2701, which was classified to section 300gg of this title, was renumbered section 2704, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended, by Pub. L. 111-148, title I, §§1201(2),

1563(c)(1), formerly §1562(c)(1), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and was transferred to section 300gg-3 of this title. A new section 2701 of act July 1, 1944, related to fair health insurance premiums, was added, effective for plan years beginning on or after Jan. 1, 2014, and amended, by Pub. L. 111-148, title I, §1201(4), title X, §10103(a), Mar. 23, 2010, 124 Stat. 155, 892, and is classified to section 300gg of this title.

PRIOR PROVISIONS

A prior section 2723 of act July 1, 1944, was renumbered section 2724 and is classified to section 300gg-23 of this title.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-148, §1563(c)(13)(A)(i), formerly §1562(c)(13)(A)(i), as renumbered by Pub. L. 111-148, §10107(b)(1), substituted “individual or group market” for “small or large group markets”.

Subsec. (a)(2). Pub. L. 111-148, §1563(c)(13)(a)(ii), formerly §1562(c)(13)(A)(ii), as renumbered by Pub. L. 111-148, §10107(b)(1), inserted “or individual health insurance coverage” after “group health plans”.

Subsec. (b)(1)(B). Pub. L. 111-148, §1563(c)(13)(B), formerly §1562(c)(13)(B), as renumbered by Pub. L. 111-148, §10107(b)(1), inserted “individual health insurance coverage or” after “with respect to”.

2008—Subsec. (b)(3). Pub. L. 110-233 added par. (3).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-233 applicable, with respect to group health plans and health insurance coverage offered in connection with group health plans, for plan years beginning after the date that is one year after May 21, 2008, and, with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market, after the date that is one year after May 21, 2008, see section 102(d)(2) of Pub. L. 110-233, set out as a note under section 300gg-21 of this title.

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104-191, set out as a note under section 300gg of this title.

§ 300gg-23. Preemption; State flexibility; construction

(a) Continued applicability of State law with respect to health insurance issuers

(1) In general

Subject to paragraph (2) and except as provided in subsection (b) of this section, this part and part C of this subchapter insofar as it relates to this part shall not be construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with individual or group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement of this part.

(2) Continued preemption with respect to group health plans

Nothing in this part shall be construed to affect or modify the provisions of section 1144 of title 29 with respect to group health plans.

(b) Special rules in case of portability requirements

(1) In general

Subject to paragraph (2), the provisions of this part relating to health insurance coverage

offered by a health insurance issuer supersede any provision of State law which establishes, implements, or continues in effect a standard or requirement applicable to imposition of a preexisting condition exclusion specifically governed by section 701¹ which differs from the standards or requirements specified in such section.

(2) Exceptions

Only in relation to health insurance coverage offered by a health insurance issuer, the provisions of this part do not supersede any provision of State law to the extent that such provision—

- (i) substitutes for the reference to “6-month period” in section 2701(a)(1)¹ a reference to any shorter period of time;
- (ii) substitutes for the reference to “12 months” and “18 months” in section 2701(a)(2)¹ a reference to any shorter period of time;
- (iii) substitutes for the references to “63” days in sections 2701(c)(2)(A)¹ and 2701(d)(4)(A)¹ a reference to any greater number of days;
- (iv) substitutes for the reference to “30-day period” in sections 2701(b)(2)¹ and 2701(d)(1)¹ a reference to any greater period;
- (v) prohibits the imposition of any preexisting condition exclusion in cases not described in section 2701(d)¹ or expands the exceptions described in such section;
- (vi) requires special enrollment periods in addition to those required under section 2701(f)¹; or
- (vii) reduces the maximum period permitted in an affiliation period under section 2701(g)(1)(B)¹.

(c) Rules of construction

Nothing in this part (other than section 2704)¹ shall be construed as requiring a group health plan or health insurance coverage to provide specific benefits under the terms of such plan or coverage.

(d) Definitions

For purposes of this section—

(1) State law

The term “State law” includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) State

The term “State” includes a State (including the Northern Mariana Islands), any political subdivisions of a State or such Islands, or any agency or instrumentality of either.

(July 1, 1944, ch. 373, title XXVII, §2724, formerly §2723, as added Pub. L. 104-191, title I, §102(a), Aug. 21, 1996, 110 Stat. 1971; amended Pub. L. 104-204, title VI, §604(b)(2), Sept. 26, 1996, 110 Stat. 2941; renumbered §2737, renumbered §2724, and amended Pub. L. 111-148, title I, §§1001(4),

1563(c)(14), formerly §1562(c)(14), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 130, 269, 911.)

REFERENCES IN TEXT

Section 2701, referred to in subsec. (b), is a reference to section 2701 of act July 1, 1944. Section 2701, which was classified to section 300gg of this title, was renumbered section 2704, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended, by Pub. L. 111-148, title I, §§1201(2), 1563(c)(1), formerly §1562(c)(1), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and was transferred to section 300gg-3 of this title. A new section 2701 of act July 1, 1944, related to fair health insurance premiums, was added, effective for plan years beginning on or after Jan. 1, 2014, and amended, by Pub. L. 111-148, title I, §1201(4), title X, §10103(a), Mar. 23, 2010, 124 Stat. 155, 892, and is classified to section 300gg of this title.

Section 701, referred to in subsec. (b)(1), probably means “section 2701” of act July 1, 1944. See note above.

Section 2704, referred to in subsec. (c), is a reference to section 2704 of act July 1, 1944. Section 2704, which was classified to section 300gg-4 of this title, was renumbered section 2725, and amended by Pub. L. 111-148, title I, §§1001(2), 1563(c)(3), formerly §1562(c)(3), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 130, 265, 911, and was transferred to section 300gg-25 of this title. A new section 2704 of act July 1, 1944, related to prohibition of preexisting condition exclusions or other discrimination based on health status, was added, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended, by Pub. L. 111-148, title I, §§1201(2), 1563(c)(1), formerly §1562(c)(1), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and is classified to section 300gg-3 of this title.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-148, §1563(c)(14)(A), formerly §1562(c)(14)(A), as renumbered by Pub. L. 111-148, §10107(b)(1), inserted “individual or” before “group health insurance”.

1996—Subsec. (c). Pub. L. 104-204 inserted “(other than section 2704)” after “part”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-204 applicable with respect to group health plans for plan years beginning on or after Jan. 1, 1998, see section 604(c) of Pub. L. 104-204 set out as an Effective Date note under section 300gg-25 of this title.

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104-191, set out as a note under section 300gg of this title.

§ 300gg-25. Standards relating to benefits for mothers and newborns

(a) Requirements for minimum hospital stay following birth

(1) In general

A group health plan, and a health insurance issuer offering group or individual health insurance coverage, may not—

(A) except as provided in paragraph (2)—

- (i) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a normal vaginal delivery, to less than 48 hours, or
- (ii) restrict benefits for any hospital length of stay in connection with child-

¹ See References in Text note below.