

uals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer.

(6) Application of certain rules in determination of employer size

For purposes of this subsection—

(A) Application of aggregation rule for employers

all⁴ persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of title 26 shall be treated as 1 employer.

(B) Employers not in existence in preceding year

In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small or large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(C) Predecessors

Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

(July 1, 1944, ch. 373, title XXVII, § 2791, as added Pub. L. 104-191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1972; amended Pub. L. 110-233, title I, § 102(a)(4), May 21, 2008, 122 Stat. 890; Pub. L. 111-148, title I, § 1563(b), (c)(16), formerly § 1562(b), (c)(16), title X, § 10107(b)(1), Mar. 23, 2010, 124 Stat. 264, 269, 911.)

REFERENCES IN TEXT

Section 2701, referred to in subsecs. (a)(3) and (d)(15)(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.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(4)(B), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 6 of subtitle B of title I of the Act is classified generally to part 6 (§ 1161 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 2702, referred to in subsec. (d)(9), 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.

AMENDMENTS

2010—Subsec. (d)(20), (21). Pub. L. 111-148, § 1563(b), formerly § 1562(b), as renumbered by Pub. L. 111-148, § 10107(b)(1), added pars. (20) and (21).

Subsec. (e)(2). Pub. L. 111-148, § 1563(c)(16)(A), formerly § 1562(c)(16)(A), as renumbered by Pub. L. 111-148, § 10107(b)(1), substituted “101” for “51”.

Subsec. (e)(4). Pub. L. 111-148, § 1563(c)(16)(B), formerly § 1562(c)(16)(B), as renumbered by Pub. L. 111-148, § 10107(b)(1), substituted “100” for “50” and “at least 1” for “at least 2” in two places.

2008—Subsec. (d)(15) to (19). Pub. L. 110-233 added pars. (15) to (19).

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.

§ 300gg-92. Regulations

The Secretary, consistent with section 104 of the Health Care Portability and Accountability Act of 1996, may promulgate such regulations as may be necessary or appropriate to carry out the provisions of this subchapter. The Secretary may promulgate any interim final rules as the Secretary determines are appropriate to carry out this subchapter.

(July 1, 1944, ch. 373, title XXVII, § 2792, as added Pub. L. 104-191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1976.)

REFERENCES IN TEXT

Section 104 of the Health Care Portability and Accountability Act of 1996, referred to in text, probably means section 104 of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, set out below.

ASSURING COORDINATION AMONG DEPARTMENTS OF TREASURY, HEALTH AND HUMAN SERVICES, AND LABOR

Pub. L. 104-191, title I, § 104, Aug. 21, 1996, 110 Stat. 1978, provided that: “The Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

“(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which two or more such Secretaries have responsibility under this subtitle [subtitle A (§§ 101-104) of title I of Pub. L. 104-191, enacting this section, sections 300gg, 300gg-1, 300gg-11 to 300gg-13, 300gg-21 to 300gg-23, and 300gg-91 of this title, and sections 1181 to 1183 and 1191 to 1191c of Title 29, Labor, amending sections 300e and 300bb-8 of this title and sections 1003, 1021, 1022, 1024, 1132, 1136, and 1144 of Title 29, and enacting provisions set out as notes under section 300gg of this title and section 1181 of Title 29] (and the amendments made by this subtitle and section 401 [enacting sections 9801 to 9806 of Title 26, Internal Revenue Code]) are administered so as to have the same effect at all times; and

“(2) coordination of policies relating to enforcing the same requirements through such Secretaries in

⁴ So in original. Probably should be capitalized.

order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.”

§ 300gg-93. Health insurance consumer information

(a) In general

The Secretary shall award grants to States to enable such States (or the Exchanges operating in such States) to establish, expand, or provide support for—

- (1) offices of health insurance consumer assistance; or
- (2) health insurance ombudsman programs.

(b) Eligibility

(1) In general

To be eligible to receive a grant, a State shall designate an independent office of health insurance consumer assistance, or an ombudsman, that, directly or in coordination with State health insurance regulators and consumer assistance organizations, receives and responds to inquiries and complaints concerning health insurance coverage with respect to Federal health insurance requirements and under State law.

(2) Criteria

A State that receives a grant under this section shall comply with criteria established by the Secretary for carrying out activities under such grant.

(c) Duties

The office of health insurance consumer assistance or health insurance ombudsman shall—

- (1) assist with the filing of complaints and appeals, including filing appeals with the internal appeal or grievance process of the group health plan or health insurance issuer involved and providing information about the external appeal process;
- (2) collect, track, and quantify problems and inquiries encountered by consumers;
- (3) educate consumers on their rights and responsibilities with respect to group health plans and health insurance coverage;
- (4) assist consumers with enrollment in a group health plan or health insurance coverage by providing information, referral, and assistance; and
- (5) resolve problems with obtaining premium tax credits under section 36B of title 26.

(d) Data collection

As a condition of receiving a grant under subsection (a), an office of health insurance consumer assistance or ombudsman program shall be required to collect and report data to the Secretary on the types of problems and inquiries encountered by consumers. The Secretary shall utilize such data to identify areas where more enforcement action is necessary and shall share such information with State insurance regulators, the Secretary of Labor, and the Secretary of the Treasury for use in the enforcement activities of such agencies.

(e) Funding

(1) Initial funding

There is hereby appropriated to the Secretary, out of any funds in the Treasury not

otherwise appropriated, \$30,000,000 for the first fiscal year for which this section applies to carry out this section. Such amount shall remain available without fiscal year limitation.

(2) Authorization for subsequent years

There is authorized to be appropriated to the Secretary for each fiscal year following the fiscal year described in paragraph (1), such sums as may be necessary to carry out this section.

(July 1, 1944, ch. 373, title XXVII, §2793, as added Pub. L. 111-148, title I, §1002, Mar. 23, 2010, 124 Stat. 138.)

EFFECTIVE DATE

Section effective for fiscal years beginning with fiscal year 2010, see section 1004(a) of Pub. L. 111-148, set out as a note under section 300gg-11 of this title.

Section effective Mar. 23, 2010, see section 1004(b) of Pub. L. 111-148, set out as a note under section 300gg-11 of this title.

§ 300gg-94. Ensuring that consumers get value for their dollars

(a) Initial premium review process

(1) In general

The Secretary, in conjunction with States, shall establish a process for the annual review, beginning with the 2010 plan year and subject to subsection (b)(2)(A), of unreasonable increases in premiums for health insurance coverage.

(2) Justification and disclosure

The process established under paragraph (1) shall require health insurance issuers to submit to the Secretary and the relevant State a justification for an unreasonable premium increase prior to the implementation of the increase. Such issuers shall prominently post such information on their Internet websites. The Secretary shall ensure the public disclosure of information on such increases and justifications for all health insurance issuers.

(b) Continuing premium review process

(1) Informing Secretary of premium increase patterns

As a condition of receiving a grant under subsection (c)(1), a State, through its Commissioner of Insurance, shall—

(A) provide the Secretary with information about trends in premium increases in health insurance coverage in premium rating areas in the State; and

(B) make recommendations, as appropriate, to the State Exchange about whether particular health insurance issuers should be excluded from participation in the Exchange based on a pattern or practice of excessive or unjustified premium increases.

(2) Monitoring by Secretary of premium increases

(A) In general

Beginning with plan years beginning in 2014, the Secretary, in conjunction with the States and consistent with the provisions of subsection (a)(2), shall monitor premium increases of health insurance coverage offered