

other than the basis that a mechanism is not an acceptable alternative mechanism or is not being implemented.

(5) Future adoption of mechanisms

If a State, after January 1, 1997, submits the notice and information described in paragraph (1), unless the Secretary makes a finding described in paragraph (3) within the 90-day period beginning on the date of submission of the notice and information, the mechanism shall be considered to be an acceptable alternative mechanism for purposes of this section, effective 90 days after the end of such period, subject to the second sentence of paragraph (1).

(c) Provision related to risk

(1) Adoption of NAIC models

The model act referred to in subsection (a)(1)(D)(i) is the Small Employer and Individual Health Insurance Availability Model Act (adopted by the National Association of Insurance Commissioners on June 3, 1996) insofar as it applies to individual health insurance coverage or the Individual Health Insurance Portability Model Act (also adopted by such Association on such date).

(2) Qualified high risk pool

For purposes of subsection (a)(1)(D)(ii), a “qualified high risk pool” described in this paragraph is a high risk pool that—

(A) provides to all eligible individuals health insurance coverage (or comparable coverage) that does not impose any preexisting condition exclusion with respect to such coverage for all eligible individuals, and

(B) provides for premium rates and covered benefits for such coverage consistent with standards included in the NAIC Model Health Plan for Uninsurable Individuals Act (as in effect as of August 21, 1996).

(3) Other mechanisms

For purposes of subsection (a)(1)(D)(iii), a mechanism described in this paragraph—

(A) provides for risk adjustment, risk spreading, or a risk spreading mechanism (among issuers or policies of an issuer) or otherwise provides for some financial subsidization for eligible individuals, including through assistance to participating issuers; or

(B) is a mechanism under which each eligible individual is provided a choice of all individual health insurance coverage otherwise available.

(July 1, 1944, ch. 373, title XXVII, § 2744, as added Pub. L. 104-191, title I, § 111(a), Aug. 21, 1996, 110 Stat. 1984; amended Pub. L. 104-204, title VI, § 605(b)(1), Sept. 26, 1996, 110 Stat. 2942.)

CODIFICATION

August 21, 1996, referred to in subsec. (b)(1)(B)(ii), was in the original “the date of enactment of this Act”, which was translated as meaning the date of enactment of Pub. L. 104-191, which enacted this subchapter, to reflect the probable intent of Congress.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-204 made technical amendment to reference in original act which appears in text as reference to section 300gg-62(b) of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-204, title VI, § 605(c), Sept. 26, 1996, 110 Stat. 2942, provided that: “The amendments made by this section [enacting section 300gg-51 of this title and amending this section and sections 300gg-61 and 300gg-62 of this title] shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after January 1, 1998.”

EFFECTIVE DATE

Section applicable with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs, see section 111(b) of Pub. L. 104-191, set out as a note under section 300gg-41 of this title.

§ 300gg-45. Relief for high risk pools

(a) Seed grants to States

The Secretary shall provide from the funds appropriated under subsection (d)(1)(A) a grant of up to \$1,000,000 to each State that has not created a qualified high risk pool as of February 10, 2006, for the State’s costs of creation and initial operation of such a pool.

(b) Grants for operational losses

(1) In general

In the case of a State that has established a qualified high risk pool that—

(A) restricts premiums charged under the pool to no more than 200 percent of the premium for applicable standard risk rates;

(B) offers a choice of two or more coverage options through the pool; and

(C) has in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State in connection with operation of the pool after the end of the last fiscal year for which a grant is provided under this paragraph;

the Secretary shall provide, from the funds appropriated under paragraphs (1)(B)(i) and (2)(A) of subsection (d) and allotted to the State under paragraph (2), a grant for the losses incurred by the State in connection with the operation of the pool.

(2) Allotment

Subject to paragraph (4), the amounts appropriated under paragraphs (1)(B)(i) and (2)(A) of subsection (d) for a fiscal year shall be allotted and made available to the States (or the entities that operate the high risk pool under applicable State law) that qualify for a grant under paragraph (1) as follows:

(A) An amount equal to 40 percent of such appropriated amount for the fiscal year shall be allotted in equal amounts to each qualifying State that is one of the 50 States or the District of Columbia and that applies for a grant under this subsection.

(B) An amount equal to 30 percent of such appropriated amount for the fiscal year shall be allotted among qualifying States that apply for such a grant so that the amount allotted to such a State bears the same ratio to such appropriated amount as the number of uninsured individuals in the State bears to the total number of uninsured individuals

(as determined by the Secretary) in all qualifying States that so apply.

(C) An amount equal to 30 percent of such appropriated amount for the fiscal year shall be allotted among qualifying States that apply for such a grant so that the amount allotted to a State bears the same ratio to such appropriated amount as the number of individuals enrolled in health care coverage through the qualified high risk pool of the State bears to the total number of individuals so enrolled through qualified high risk pools (as determined by the Secretary) in all qualifying States that so apply.

(3) Special rule for pools charging higher premiums

In the case of a qualified high risk pool of a State which charges premiums that exceed 150 percent of the premium for applicable standard risks, the State shall use at least 50 percent of the amount of the grant provided to the State to carry out this subsection to reduce premiums for enrollees.

(4) Limitation for territories

In no case shall the aggregate amount allotted and made available under paragraph (2) for a fiscal year to States that are not the 50 States or the District of Columbia exceed \$1,000,000.

(c) Bonus grants for supplemental consumer benefits

(1) In general

In the case of a State that is one of the 50 States or the District of Columbia, that has established a qualified high risk pool, and that is receiving a grant under subsection (b)(1), the Secretary shall provide, from the funds appropriated under paragraphs (1)(B)(ii) and (2)(B) of subsection (d) and allotted to the State under paragraph (3), a grant to be used to provide supplemental consumer benefits to enrollees or potential enrollees (or defined subsets of such enrollees or potential enrollees) in qualified high risk pools.

(2) Benefits

A State shall use amounts received under a grant under this subsection to provide one or more of the following benefits:

- (A) Low-income premium subsidies.
- (B) A reduction in premium trends, actual premiums, or other cost-sharing requirements.
- (C) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment rules.
- (D) Less stringent rules, or additional waiver authority, with respect to coverage of pre-existing conditions.
- (E) Increased benefits.
- (F) The establishment of disease management programs.

(3) Allotment; limitation

The Secretary shall allot funds appropriated under paragraphs (1)(B)(ii) and (2)(B) of subsection (d) among States qualifying for a

grant under paragraph (1) in a manner specified by the Secretary, but in no case shall the amount so allotted to a State for a fiscal year exceed 10 percent of the funds so appropriated for the fiscal year.

(4) Rule of construction

Nothing in this subsection shall be construed to prohibit a State that, on February 10, 2006, is in the process of implementing a program to provide benefits of the type described in paragraph (2), from being eligible for a grant under this subsection.

(d) Funding

(1) Appropriation for fiscal year 2006

There are authorized to be appropriated for fiscal year 2006—

- (A) \$15,000,000 to carry out subsection (a); and
- (B) \$75,000,000, of which, subject to paragraph (4)—

- (i) two-thirds of the amount appropriated shall be made available for allotments under subsection (b)(2); and
- (ii) one-third of the amount appropriated shall be made available for allotments under subsection (c)(3).

(2) Authorization of appropriations for fiscal years 2007 through 2010

There are authorized to be appropriated \$75,000,000 for each of fiscal years 2007 through 2010, of which, subject to paragraph (4)—

- (A) two-thirds of the amount appropriated for a fiscal year shall be made available for allotments under subsection (b)(2); and
- (B) one-third of the amount appropriated for a fiscal year shall be made available for allotments under subsection (c)(3).

(3) Availability

Funds appropriated for purposes of carrying out this section for a fiscal year shall remain available for obligation through the end of the following fiscal year.

(4) Reallotment

If, on June 30 of each fiscal year for which funds are appropriated under paragraph (1)(B) or (2), the Secretary determines that all the amounts so appropriated are not allotted or otherwise made available to States, such remaining amounts shall be allotted and made available under subsection (b) among States receiving grants under subsection (b) for the fiscal year based upon the allotment formula specified in such subsection.

(5) No entitlement

Nothing in this section shall be construed as providing a State with an entitlement to a grant under this section.

(e) Applications

To be eligible for a grant under this section, a State shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(f) Annual report

The Secretary shall submit to Congress an annual report on grants provided under this sec-

tion. Each such report shall include information on the distribution of such grants among States and the use of grant funds by States.

(g) Definitions

In this section:

(1) Qualified high risk pool

(A)¹ In general

The term “qualified high risk pool” has the meaning given such term in section 300gg-44(c)(2) of this title, except that a State may elect to meet the requirement of subparagraph (A) of such section (insofar as it requires the provision of coverage to all eligible individuals) through providing for the enrollment of eligible individuals through an acceptable alternative mechanism (as defined for purposes of section 300gg-44 of this title) that includes a high risk pool as a component.

(2) Standard risk rate

The term “standard risk rate” means a rate—

(A) determined under the State high risk pool by considering the premium rates charged by other health insurers offering health insurance coverage to individuals in the insurance market served;

(B) that is established using reasonable actuarial techniques; and

(C) that reflects anticipated claims experience and expenses for the coverage involved.

(3) State

The term “State” means any of the 50 States and the District of Columbia and includes Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(July 1, 1944, ch. 373, title XXVII, § 2745, as added Pub. L. 107-210, div. A, title II, § 201(b), Aug. 6, 2002, 116 Stat. 959; amended Pub. L. 109-172, § 2, Feb. 10, 2006, 120 Stat. 185.)

AMENDMENTS

2006—Pub. L. 109-172 amended section generally, substituting provisions relating to relief for high risk pools for provisions relating to promotion of qualified high risk pools.

CONSTRUCTION

Nothing in the amendments made by title II of Pub. L. 107-210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating a new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107-210, set out as a note under section 35 of Title 26, Internal Revenue Code.

SUBPART 2—OTHER REQUIREMENTS

CODIFICATION

Pub. L. 110-233, title I, § 102(b)(1)(A), May 21, 2008, 122 Stat. 892, redesignated this subpart, which was originally enacted as subpart 3 of part B of title XXVII of act July 1, 1944, as subpart 2.

¹ So in original. No subpar. (B) has been enacted.

§ 300gg-51. Standards relating to benefits for mothers and newborns

(a) In general

The provisions of section 2704¹ (other than subsections (d) and (f)) shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

(b) Notice requirement

A health insurance issuer under this part shall comply with the notice requirement under section 1185(d) of title 29 with respect to the requirements referred to in subsection (a) as if such section applied to such issuer and such issuer were a group health plan.

(c) Preemption; exception for health insurance coverage in certain States

(1) In general

The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 300gg-23(d)(1)¹ of this title) for a State that regulates such coverage that is described in any of the following subparagraphs:

(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a normal vaginal delivery and at least a 96-hour hospital length of stay following a cesarean section.

(B) Such State law requires such coverage to provide for maternity and pediatric care in accordance with guidelines established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, or other established professional medical associations.

(C) Such State law requires, in connection with such coverage for maternity care, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the mother.

(2) Construction

Section 300gg-62(a) of this title shall not be construed as superseding a State law described in paragraph (1).

(July 1, 1944, ch. 373, title XXVII, § 2751, as added Pub. L. 104-204, title VI, § 605(a)(4), Sept. 26, 1996, 110 Stat. 2941.)

REFERENCES IN TEXT

Section 2704, referred to in subsec. (a), 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,

¹ See References in Text note below.