ment, the individual is incarcerated, other than incarceration pending the disposition of charges.

(2) Qualified employer

In this title:[1]

(A) In general

The term ''qualified employer'' means a small employer that elects to make all full-time employees of such employer eligible for 1 or more qualified health plans offered in the small group market through an Exchange that offers qualified health plans.

(B) Extension to large groups

(i) In general

Beginning in 2017, each State may allow issuers of health insurance coverage in the large group market in the State to offer qualified health plans in such market through an Exchange. Nothing in this subparagraph shall be construed as requiring the issuer to offer such plans through an Exchange.

(ii) Large employers eligible

If a State under clause (i) allows issuers to offer qualified health plans in the large group market through an Exchange, the term ''qualified employer'' shall include a large employer that elects to make all full-time employees of such employer eligible for 1 or more qualified health plans offered in the large group market through the Exchange.

(3) Access limited to lawful residents

If an individual is not, or is not reasonably expected to be for the entire period for which enrollment is sought, a citizen or national of the United States or an alien lawfully present in the United States, the individual shall not be treated as a qualified individual and may not be covered under a qualified health plan in the individual market that is offered through an Exchange.

(Pub. L. 111–148, title I, §1312, title X, §10104(i), Mar. 23, 2010, 124 Stat. 182, 901.)

REFERENCES IN TEXT

This title, referred to in subsecs. (d)(1), (2), (3)(A), (B) and (f)(1), (2), is title I of Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 130, which enacted this chapter and enacted, amended, and transferred numerous other sections and notes in the Code. For complete classification of title I to the Code, see Tables.

The effective date of this subtitle, referred to in subsec. (d)(3)(D)(i), is the effective date of subtitle D of title I of Pub. L. 111–148, which is Mar. 23, 2010.

This Act, referred to in subsec. (d)(3)(D)(i), 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.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–148, §10104(i)(1), inserted ''and for which such individual is eligible'' before period at end.

Subsec. (e). Pub. L. 111–148, §10104(i)(2)(B), struck out concluding provisions which read as follows: ''Such procedures may include the establishment of rate schedules for broker commissions paid by health benefits plans offered through an exchange.''

Subsec. (e)(1). Pub. L. 111–148, §10104(i)(2)(A), inserted ''and employers'' after ''enroll individuals''.

Subsec. (f)(1)(A)(ii). Pub. L. 111–148, §10104(i)(3), struck out ''(except with respect to territorial agreements under this subsection)'' before period at end.

§ 18033. Financial integrity

(a) Accounting for expenditures

(1) In general

An Exchange shall keep an accurate accounting of all activities, receipts, and expenditures and shall annually submit to the Secretary a report concerning such accountings.

(2) Investigations

The Secretary, in coordination with the Inspector General of the Department of Health and Human Services, may investigate the affairs of an Exchange, may examine the properties and records of an Exchange, and may require periodic reports in relation to activities undertaken by an Exchange. An Exchange shall fully cooperate in any investigation conducted under this paragraph.

(3) Audits

An Exchange shall be subject to annual audits by the Secretary.

(4) Pattern of abuse

If the Secretary determines that an Exchange or a State has engaged in serious misconduct with respect to compliance with the requirements of, or carrying out of activities required under, this title,[1] the Secretary may rescind from payments otherwise due to such State involved under this or any other Act administered by the Secretary an amount not to exceed 1 percent of such payments per year until corrective actions are taken by the State that are determined to be adequate by the Secretary.

(5) Protections against fraud and abuse

With respect to activities carried out under this title,[1] the Secretary shall provide for the efficient and non-discriminatory administration of Exchange activities and implement any measure or procedure that—

(A) the Secretary determines is appropriate to reduce fraud and abuse in the administration of this title;[1] and

(B) the Secretary has authority to implement under this title[1] or any other Act.

(6) Application of the False Claims Act

(A) In general

Payments made by, through, or in connection with an Exchange are subject to the False Claims Act (31 U.S.C. 3729 et seq.) if those payments include any Federal funds. Compliance with the requirements of this Act concerning eligibility for a health insurance issuer to participate in the Exchange shall be a material condition of an issuer's entitlement to receive payments, including payments of premium tax credits and cost-sharing reductions, through the Exchange.

[1] See References in Text note below.

(B)[2] Damages

Notwithstanding paragraph (1) of section 3729(a) of title 31, and subject to paragraph (2) of such section, the civil penalty assessed under the False Claims Act on any person found liable under such Act as described in subparagraph (A) shall be increased by not less than 3 times and not more than 6 times the amount of damages which the Government sustains because of the act of that person.

(b) GAO oversight

Not later than 5 years after the first date on which Exchanges are required to be operational under this title,[1] the Comptroller General shall conduct an ongoing study of Exchange activities and the enrollees in qualified health plans offered through Exchanges. Such study shall review—

(1) the operations and administration of Exchanges, including surveys and reports of qualified health plans offered through Exchanges and on the experience of such plans (including data on enrollees in Exchanges and individuals purchasing health insurance coverage outside of Exchanges), the expenses of Exchanges, claims statistics relating to qualified health plans, complaints data relating to such plans, and the manner in which Exchanges meet their goals;

(2) any significant observations regarding the utilization and adoption of Exchanges;

(3) where appropriate, recommendations for improvements in the operations or policies of Exchanges;

(4) a survey of the cost and affordability of health care insurance provided under the Exchanges for owners and employees of small business concerns (as defined under section 632 of title 15), including data on enrollees in Exchanges and individuals purchasing health insurance coverage outside of Exchanges; and

(5) how many physicians, by area and specialty, are not taking or accepting new patients enrolled in Federal Government health care programs, and the adequacy of provider networks of Federal Government health care programs.

(Pub. L. 111–148, title I, § 1313, title X, § 10104(k), Mar. 23, 2010, 124 Stat. 184, 902.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(4), (5) and (b), is title I of Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 130, which enacted this chapter and enacted, amended, and transferred numerous other sections and notes in the Code. For complete classification of title I to the Code, see Tables.

This Act, referred to in subsec. (a)(4), (6)(A), 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.

The False Claims Act, referred to in subsec. (a)(6), was the popular name for sections 231, 232, 233, and 235 of former Title 31, Money and Finance. Sections 231, 232, 233, and 235 were repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1084, and reenacted by the first section thereof as sections 3729 to 3731 of Title 31, Money and Finance.

[2] See Termination of Provision note below.

AMENDMENTS

2010—Subsec. (b)(4), (5). Pub. L. 111–148, § 10104(k), added par. (4) and redesignated former par. (4) as (5).

TERMINATION OF PROVISION

Pub. L. 111–148, title X, § 10104(j)(1), Mar. 23, 2010, 124 Stat. 901, provided that: ''Subparagraph (B) of section 1313(a)(6) of this Act [42 U.S.C. 18033(a)(6)(B)] is hereby deemed null, void, and of no effect.''

PART C—STATE FLEXIBILITY RELATING TO EXCHANGES

§ 18041. State flexibility in operation and enforcement of Exchanges and related requirements

(a) Establishment of standards

(1) In general

The Secretary shall, as soon as practicable after March 23, 2010, issue regulations setting standards for meeting the requirements under this title,[1] and the amendments made by this title,[1] with respect to—

(A) the establishment and operation of Exchanges (including SHOP Exchanges);

(B) the offering of qualified health plans through such Exchanges;

(C) the establishment of the reinsurance and risk adjustment programs under part E; and

(D) such other requirements as the Secretary determines appropriate.

The preceding sentence shall not apply to standards for requirements under subtitles A and C (and the amendments made by such subtitles) for which the Secretary issues regulations under the Public Health Service Act [42 U.S.C. 201 et seq.].

(2) Consultation

In issuing the regulations under paragraph (1), the Secretary shall consult with the National Association of Insurance Commissioners and its members and with health insurance issuers, consumer organizations, and such other individuals as the Secretary selects in a manner designed to ensure balanced representation among interested parties.

(b) State action

Each State that elects, at such time and in such manner as the Secretary may prescribe, to apply the requirements described in subsection (a) shall, not later than January 1, 2014, adopt and have in effect—

(1) the Federal standards established under subsection (a); or

(2) a State law or regulation that the Secretary determines implements the standards within the State.

(c) Failure to establish Exchange or implement requirements

(1) In general

If—

(A) a State is not an electing State under subsection (b); or

(B) the Secretary determines, on or before January 1, 2013, that an electing State—

[1] See References in Text note below.