

Subsec. (g)(1)(E). Pub. L. 111-148, § 10104(g), added subpar. (E).

Subsec. (i)(2)(B). Pub. L. 111-148, § 10104(h), substituted “resource partners of the Small Business Administration” for “small business development centers”.

### **Statutory Notes and Related Subsidiaries**

#### **ESTABLISHING A GRANT PROGRAM FOR EXCHANGE MODERNIZATION**

Pub. L. 117-2, title II, § 2801, Mar. 11, 2021, 135 Stat. 49, provided that:

“(a) **IN GENERAL.**—Out of funds appropriated under subsection (b), the Secretary of Health and Human Services (in this subtitle [subtitle I (§ 2801) of title II of Pub. L. 117-2] referred to as the ‘Secretary’) shall award grants to each American Health Benefits Exchange established under section 1311(b) of the Patient Protection and Affordable Care Act (42 U.S.C. 18031(b)) (other than an Exchange established by the Secretary under section 1321(c) of such Act (42 U.S.C. 18041(c))) that submits to the Secretary an application at such time and in such manner, and containing such information, as specified by the Secretary, for purposes of enabling such Exchange to modernize or update any system, program, or technology utilized by such Exchange to ensure such Exchange is compliant with all applicable requirements.

“(b) **FUNDING.**—In addition to amounts otherwise available, there is appropriated, for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$20,000,000, to remain available until September 30, 2022, for carrying out this section.”

### **§ 18032. Consumer choice**

#### **(a) Choice**

##### **(1) Qualified individuals**

A qualified individual may enroll in any qualified health plan available to such individual and for which such individual is eligible.

##### **(2) Qualified employers**

###### **(A) Employer may specify level**

A qualified employer may provide support for coverage of employees under a qualified health plan by selecting any level of coverage under section 18022(d) of this title to be made available to employees through an Exchange.

###### **(B) Employee may choose plans within a level**

Each employee of a qualified employer that elects a level of coverage under subparagraph (A) may choose to enroll in a qualified health plan that offers coverage at that level.

#### **(b) Payment of premiums by qualified individuals**

A qualified individual enrolled in any qualified health plan may pay any applicable premium owed by such individual to the health insurance issuer issuing such qualified health plan.

#### **(c) Single risk pool**

##### **(1) Individual market**

A health insurance issuer shall consider all enrollees in all health plans (other than grandfathered health plans) offered by such issuer in the individual market, including those enrollees who do not enroll in such plans through

the Exchange, to be members of a single risk pool.

##### **(2) Small group market**

A health insurance issuer shall consider all enrollees in all health plans (other than grandfathered health plans) offered by such issuer in the small group market, including those enrollees who do not enroll in such plans through the Exchange, to be members of a single risk pool.

##### **(3) Merger of markets**

A State may require the individual and small group insurance markets within a State to be merged if the State determines appropriate.

##### **(4) State law**

A State law requiring grandfathered health plans to be included in a pool described in paragraph (1) or (2) shall not apply.

#### **(d) Empowering consumer choice**

##### **(1) Continued operation of market outside Exchanges**

Nothing in this title<sup>1</sup> shall be construed to prohibit—

(A) a health insurance issuer from offering outside of an Exchange a health plan to a qualified individual or qualified employer; and

(B) a qualified individual from enrolling in, or a qualified employer from selecting for its employees, a health plan offered outside of an Exchange.

##### **(2) Continued operation of State benefit requirements**

Nothing in this title<sup>1</sup> shall be construed to terminate, abridge, or limit the operation of any requirement under State law with respect to any policy or plan that is offered outside of an Exchange to offer benefits.

##### **(3) Voluntary nature of an Exchange**

###### **(A) Choice to enroll or not to enroll**

Nothing in this title<sup>1</sup> shall be construed to restrict the choice of a qualified individual to enroll or not to enroll in a qualified health plan or to participate in an Exchange.

###### **(B) Prohibition against compelled enrollment**

Nothing in this title<sup>1</sup> shall be construed to compel an individual to enroll in a qualified health plan or to participate in an Exchange.

###### **(C) Individuals allowed to enroll in any plan**

A qualified individual may enroll in any qualified health plan, except that in the case of a catastrophic plan described in section 18022(e) of this title, a qualified individual may enroll in the plan only if the individual is eligible to enroll in the plan under section 18022(e)(2) of this title.

###### **(D) Members of Congress in the Exchange**

###### **(i) Requirement**

Notwithstanding any other provision of law, after the effective date of this sub-

<sup>1</sup> See References in Text note below.

title, the only health plans that the Federal Government may make available to Members of Congress and congressional staff with respect to their service as a Member of Congress or congressional staff shall be health plans that are—

(I) created under this Act (or an amendment made by this Act); or

(II) offered through an Exchange established under this Act (or an amendment made by this Act).

**(ii) Definitions**

In this section:

**(I) Member of Congress**

The term “Member of Congress” means any member of the House of Representatives or the Senate.

**(II) Congressional staff**

The term “congressional staff” means all full-time and part-time employees employed by the official office of a Member of Congress, whether in Washington, DC or outside of Washington, DC.

**(4) No penalty for transferring to minimum essential coverage outside Exchange**

An Exchange, or a qualified health plan offered through an Exchange, shall not impose any penalty or other fee on an individual who cancels enrollment in a plan because the individual becomes eligible for minimum essential coverage (as defined in section 5000A(f) of title 26 without regard to paragraph (1)(C) or (D) thereof) or such coverage becomes affordable (within the meaning of section 36B(c)(2)(C) of such title).

**(e) Enrollment through agents or brokers**

The Secretary shall establish procedures under which a State may allow agents or brokers—

(1) to enroll individuals and employers in any qualified health plans in the individual or small group market as soon as the plan is offered through an Exchange in the State; and

(2) to assist individuals in applying for premium tax credits and cost-sharing reductions for plans sold through an Exchange.

**(f) Qualified individuals and employers; access limited to citizens and lawful residents**

**(1) Qualified individuals**

In this title:<sup>1</sup>

**(A) In general**

The term “qualified individual” means, with respect to an Exchange, an individual who—

(i) is seeking to enroll in a qualified health plan in the individual market offered through the Exchange; and

(ii) resides in the State that established the Exchange.

**(B) Incarcerated individuals excluded**

An individual shall not be treated as a qualified individual if, at the time of enrollment, the individual is incarcerated, other than incarceration pending the disposition of charges.

**(2) Qualified employer**

In this title:<sup>1</sup>

**(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.)

**Editorial Notes**

**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,<sup>1</sup> 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,<sup>1</sup> 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;<sup>1</sup> and

(B) the Secretary has authority to implement under this title<sup>1</sup> 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.

##### (B)<sup>2</sup> 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,<sup>1</sup> 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.)

#### Editorial Notes

##### 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.

##### AMENDMENTS

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

<sup>1</sup> See References in Text note below.

<sup>2</sup> See Termination of Provision note below.