

providers, and the potential impact of providing such access on the cost and quality of health insurance coverage, and to report to the appropriate committees of Congress on each of such studies not later than Jan. 1, 2000.

### **§ 300gg-1. Guaranteed availability of coverage**

#### **(a) Guaranteed issuance of coverage in the individual and group market**

Subject to subsections (b) through (e),<sup>1</sup> each health insurance issuer that offers health insurance coverage in the individual or group market in a State must accept every employer and individual in the State that applies for such coverage.

#### **(b) Enrollment**

##### **(1) Restriction**

A health insurance issuer described in subsection (a) may restrict enrollment in coverage described in such subsection to open or special enrollment periods.

##### **(2) Establishment**

A health insurance issuer described in subsection (a) shall, in accordance with the regulations promulgated under paragraph (3), establish special enrollment periods for qualifying events (under section 1163 of title 29).

##### **(3) Regulations**

The Secretary shall promulgate regulations with respect to enrollment periods under paragraphs (1) and (2).

#### **(c) Special rules for network plans**

##### **(1) In general**

In the case of a health insurance issuer that offers health insurance coverage in the group and individual market through a network plan, the issuer may—

(A) limit the employers that may apply for such coverage to those with eligible individuals who live, work, or reside in the service area for such network plan; and

(B) within the service area of such plan, deny such coverage to such employers and individuals if the issuer has demonstrated, if required, to the applicable State authority that—

(i) it will not have the capacity to deliver services adequately to enrollees of any additional groups or any additional individuals because of its obligations to existing group contract holders and enrollees, and

(ii) it is applying this paragraph uniformly to all employers and individuals without regard to the claims experience of those individuals, employers and their employees (and their dependents) or any health status-related factor relating to such individuals<sup>1</sup> employees and dependents.

##### **(2) 180-day suspension upon denial of coverage**

An issuer, upon denying health insurance coverage in any service area in accordance with paragraph (1)(B), may not offer coverage in the group or individual market within such

service area for a period of 180 days after the date such coverage is denied.

#### **(d) Application of financial capacity limits**

##### **(1) In general**

A health insurance issuer may deny health insurance coverage in the group or individual market if the issuer has demonstrated, if required, to the applicable State authority that—

(A) it does not have the financial reserves necessary to underwrite additional coverage; and

(B) it is applying this paragraph uniformly to all employers and individuals in the group or individual market in the State consistent with applicable State law and without regard to the claims experience of those individuals, employers and their employees (and their dependents) or any health status-related factor relating to such individuals, employees and dependents.

##### **(2) 180-day suspension upon denial of coverage**

A health insurance issuer upon denying health insurance coverage in connection with group health plans in accordance with paragraph (1) in a State may not offer coverage in connection with group health plans in the group or individual market in the State for a period of 180 days after the date such coverage is denied or until the issuer has demonstrated to the applicable State authority, if required under applicable State law, that the issuer has sufficient financial reserves to underwrite additional coverage, whichever is later. An applicable State authority may provide for the application of this subsection on a service-area-specific basis.

(July 1, 1944, ch. 373, title XXVII, § 2702, as added and amended Pub. L. 111-148, title I, §§ 1201(4), 1563(c)(8), formerly § 1562(c)(8), title X, § 10107(b)(1), Mar. 23, 2010, 124 Stat. 156, 266, 911.)

#### **Editorial Notes**

##### **CODIFICATION**

The text of section 300gg-11 of this title, which was amended and transferred to subsecs. (c) and (d) of this section by Pub. L. 111-148, § 1563(c)(8), formerly § 1562(c)(8), as renumbered by Pub. L. 111-148, § 10107(b)(1), was based on act July 1, 1944, ch. 373, title XXVII, § 2731, formerly § 2711, as added Pub. L. 104-191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1962; renumbered § 2731, Pub. L. 111-148, title I, § 1001(3), Mar. 23, 2010, 124 Stat. 130.

##### **PRIOR PROVISIONS**

A prior section 300gg-1, act July 1, 1944, ch. 373, title XXVII, § 2702, as added Pub. L. 104-191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1961; Pub. L. 110-233, title I, § 102(a)(1)-(3), May 21, 2008, 122 Stat. 888, 890, which related to prohibition on discrimination against individual participants and beneficiaries based on health status, was amended by Pub. L. 111-148, title I, § 1201(3), Mar. 23, 2010, 124 Stat. 154, effective for plan years beginning on or after Jan. 1, 2014, and was transferred to subsecs. (b) to (f) of section 300gg-4 of this title.

Another prior section 2702 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

##### **AMENDMENTS**

2010—Pub. L. 111-148, § 1563(c)(8), formerly § 1562(c)(8), as renumbered by Pub. L. 111-148, § 10107(b)(1), trans-

<sup>1</sup> So in original.

ferred section 300gg-11 of this title to the end of this section after amending it by striking out the section catchline “Guaranteed availability of coverage for employers in group market”, by striking out subsec. (a) which related to issuance of coverage in small group market, subsec. (b) which related to assurance of access in large group market, subsec. (e) which related to exception to requirement for failure to meet certain minimum participation or contribution rules, and subsec. (f) which related to exception for coverage offered only to bona fide association members, by amending subsec. (c) by substituting “group and individual” for “small group” in introductory provisions of par. (1), inserting “and individuals” after “employers” in introductory provisions of par. (1)(B), inserting “or any additional individuals” after “additional groups” in par. (1)(B)(i), substituting “and individuals without regard to the claims experience of those individuals, employers and their employees (and their dependents) or any health status-related factor relating to such individuals” for “without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factor relating to such” in par. (1)(B)(ii), and substituting “group or individual” for “small group” in par. (2), and by amending subsec. (d) by substituting “group or individual” for “small group” wherever appearing and substituting “all employers and individuals” for “all employers”, “those individuals, employers” for “those employers”, and “such individuals, employees” for “such employees” in par. (1)(B).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective for plan years beginning on or after Jan. 1, 2014, see section 1255 of Pub. L. 111-148, set out as a note under section 300gg of this title.

### § 300gg-2. Guaranteed renewability of coverage

#### (a) In general

Except as provided in this section, if a health insurance issuer offers health insurance coverage in the individual or group market, the issuer must renew or continue in force such coverage at the option of the plan sponsor or the individual, as applicable.

#### (b) General exceptions

A health insurance issuer may nonrenew or discontinue health insurance coverage offered in connection with a health insurance coverage offered in the group or individual market based only on one or more of the following:

##### (1) Nonpayment of premiums

The plan sponsor, or individual, as applicable, has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or the issuer has not received timely premium payments.

##### (2) Fraud

The plan sponsor, or individual, as applicable, has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage.

##### (3) Violation of participation or contribution rates

In the case of a group health plan, the plan sponsor has failed to comply with a material plan provision relating to employer contribution or group participation rules, pursuant to applicable State law.

#### (4) Termination of coverage

The issuer is ceasing to offer coverage in such market in accordance with subsection (c) and applicable State law.

#### (5) Movement outside service area

In the case of a health insurance issuer that offers health insurance coverage in the market through a network plan, there is no longer any enrollee in connection with such plan who lives, resides, or works in the service area of the issuer (or in the area for which the issuer is authorized to do business) and, in the case of the small group market, the issuer would deny enrollment with respect to such plan under section 2711(c)(1)(A).<sup>1</sup>

#### (6) Association membership ceases

In the case of health insurance coverage that is made available in the small or large group market (as the case may be) only through one or more bona fide associations, the membership of an employer in the association (on the basis of which the coverage is provided) ceases but only if such coverage is terminated under this paragraph uniformly without regard to any health status-related factor relating to any covered individual.

### (c) Requirements for uniform termination of coverage

#### (1) Particular type of coverage not offered

In any case in which an issuer decides to discontinue offering a particular type of group or individual health insurance coverage, coverage of such type may be discontinued by the issuer in accordance with applicable State law in such market only if—

(A) the issuer provides notice to each plan sponsor or individual, as applicable, provided coverage of this type in such market (and participants and beneficiaries covered under such coverage) of such discontinuation at least 90 days prior to the date of the discontinuation of such coverage;

(B) the issuer offers to each plan sponsor or individual, as applicable, provided coverage of this type in such market, the option to purchase all (or, in the case of the large group market, any) other health insurance coverage currently being offered by the issuer to a group health plan or individual health insurance coverage in such market; and

(C) in exercising the option to discontinue coverage of this type and in offering the option of coverage under subparagraph (B), the issuer acts uniformly without regard to the claims experience of those sponsors or individuals, as applicable, or any health status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for such coverage.

#### (2) Discontinuance of all coverage

##### (A) In general

In any case in which a health insurance issuer elects to discontinue offering all

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