

Sec.

**Editorial Notes**

## AMENDMENTS

1989—Pub. L. 101-239, title VI, §6202(b)(4)(A), Dec. 19, 1989, 103 Stat. 2233, struck out “LARGE” after “CERTAIN” in chapter heading and “large” after “Certain” in item 5000.

**§ 5000. Certain group health plans****(a) Imposition of tax**

There is hereby imposed on any employer (including a self-employed person) or employee organization that contributes to a nonconforming group health plan a tax equal to 25 percent of the employer's or employee organization's expenses incurred during the calendar year for each group health plan to which the employer or employee organization contributes.

**(b) Group health plan and large group health plan**

For purposes of this section—

**(1) Group health plan**

The term “group health plan” means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families.

**(2) Large group health plan**

The term “large group health plan” means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year. For purposes of the preceding sentence—

(A) all employers treated as a single employer under subsection (a) or (b) of section 52 shall be treated as a single employer,

(B) all employees of the members of an affiliated service group (as defined in section 414(m)) shall be treated as employed by a single employer, and

(C) leased employees (as defined in section 414(n)(2)) shall be treated as employees of the person for whom they perform services to the extent they are so treated under section 414(n).

**(c) Nonconforming group health plan**

For purposes of this section, the term “nonconforming group health plan” means a group health plan or large group health plan that at any time during a calendar year does not comply with the requirements of subparagraphs (A) and (C) or subparagraph (B), respectively, of paragraph (1), or with the requirements of paragraph (2), of section 1862(b) of the Social Security Act.

**(d) Government entities**

For purposes of this section, the term “employer” does not include a Federal or other governmental entity.

(Added Pub. L. 99-509, title IX, §9319(d)(1), Oct. 21, 1986, 100 Stat. 2012; amended Pub. L. 101-239, title VI, §6202(b)(2), Dec. 19, 1989, 103 Stat. 2233; Pub. L. 103-66, title XIII, §13561(d)(2), (e)(2)(A), Aug. 10, 1993, 107 Stat. 594, 595.)

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## REFERENCES IN TEXT

Section 1862(b) of the Social Security Act, referred to in subsec. (c), is classified to section 1395y(b) of Title 42, The Public Health and Welfare.

## AMENDMENTS

1993—Subsec. (a). Pub. L. 103-66, §13561(e)(2)(A)(i), which directed insertion of “(including a self-employed person)” after “employer”, was executed by making the insertion after “employer” the first time it appeared, to reflect the probable intent of Congress.

Subsec. (b)(1). Pub. L. 103-66, §13561(e)(2)(A)(ii), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “The term ‘group health plan’ means any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer's employees, former employees, or the families of such employees or former employees.”

Subsec. (b)(2). Pub. L. 103-66, §13561(d)(2), inserted at end “For purposes of the preceding sentence—” and added subpars. (A) to (C).

Subsec. (c). Pub. L. 103-66, §13561(e)(2)(A)(iii), substituted “of paragraph (1), or with the requirements of paragraph (2), of section 1862(b)” for “of section 1862(b)(1)”.

1989—Pub. L. 101-239, §6202(b)(2)(A), struck out “large” after “Certain” in section catchline.

Subsec. (a). Pub. L. 101-239, §6202(b)(2)(B), substituted “group health plan” for “large group health plan” in two places.

Subsec. (b). Pub. L. 101-239, §6202(b)(2)(C), substituted “Group health plan and large” for “Large” in heading and amended text generally. Prior to amendment, text read as follows: “For purposes of this section, the term ‘large group health plan’ means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year.”

Subsec. (c). Pub. L. 101-239, §6202(b)(2)(C), substituted “group” for “large group” in heading and amended text generally. Prior to amendment, text read as follows: “For purposes of this section, the term ‘nonconforming large group health plan’ means a large group health plan that at any time during a calendar year does not comply with the requirements of section 1862(b)(4)(A)(i) of the Social Security Act.”

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, §13561(d)(3), Aug. 10, 1993, 107 Stat. 594, provided that: “The amendments made by this subsection [amending this section and section 1395y of Title 42, The Public Health and Welfare] shall take effect 90 days after the date of the enactment of this Act [Aug. 10, 1993].”

## EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to items and services furnished after Dec. 19, 1989, see section

6202(b)(5) of Pub. L. 101-239, set out as a note under section 162 of this title.

EFFECTIVE DATE

Section applicable to items and services furnished on or after Jan. 1, 1987, see section 9319(f) of Pub. L. 99-509, set out as an Effective Date of 1986 Amendment note under section 1395y of Title 42, The Public Health and Welfare.

**CHAPTER 48—MAINTENANCE OF MINIMUM ESSENTIAL COVERAGE**

Sec.

5000A. Requirement to maintain minimum essential coverage.

**§ 5000A. Requirement to maintain minimum essential coverage**

**(a) Requirement to maintain minimum essential coverage**

An applicable individual shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is an applicable individual, is covered under minimum essential coverage for such month.

**(b) Shared responsibility payment**

**(1) In general**

If a taxpayer who is an applicable individual, or an applicable individual for whom the taxpayer is liable under paragraph (3), fails to meet the requirement of subsection (a) for 1 or more months, then, except as provided in subsection (e), there is hereby imposed on the taxpayer a penalty with respect to such failures in the amount determined under subsection (c).

**(2) Inclusion with return**

Any penalty imposed by this section with respect to any month shall be included with a taxpayer's return under chapter 1 for the taxable year which includes such month.

**(3) Payment of penalty**

If an individual with respect to whom a penalty is imposed by this section for any month—

(A) is a dependent (as defined in section 152) of another taxpayer for the other taxpayer's taxable year including such month, such other taxpayer shall be liable for such penalty, or

(B) files a joint return for the taxable year including such month, such individual and the spouse of such individual shall be jointly liable for such penalty.

**(c) Amount of penalty**

**(1) In general**

The amount of the penalty imposed by this section on any taxpayer for any taxable year with respect to failures described in subsection (b)(1) shall be equal to the lesser of—

(A) the sum of the monthly penalty amounts determined under paragraph (2) for months in the taxable year during which 1 or more such failures occurred, or

(B) an amount equal to the national average premium for qualified health plans which have a bronze level of coverage, provide coverage for the applicable family size

involved, and are offered through Exchanges for plan years beginning in the calendar year with or within which the taxable year ends.

**(2) Monthly penalty amounts**

For purposes of paragraph (1)(A), the monthly penalty amount with respect to any taxpayer for any month during which any failure described in subsection (b)(1) occurred is an amount equal to  $\frac{1}{12}$  of the greater of the following amounts:

**(A) Flat dollar amount**

An amount equal to the lesser of—

(i) the sum of the applicable dollar amounts for all individuals with respect to whom such failure occurred during such month, or

(ii) 300 percent of the applicable dollar amount (determined without regard to paragraph (3)(C)) for the calendar year with or within which the taxable year ends.

**(B) Percentage of income**

An amount equal to the following percentage of the excess of the taxpayer's household income for the taxable year over the amount of gross income specified in section 6012(a)(1) with respect to the taxpayer for the taxable year:

(i) 1.0 percent for taxable years beginning in 2014.

(ii) 2.0 percent for taxable years beginning in 2015.

(iii) Zero percent for taxable years beginning after 2015.

**(3) Applicable dollar amount**

For purposes of paragraph (1)—

**(A) In general**

Except as provided in subparagraphs (B) and (C), the applicable dollar amount is \$0.

**(B) Phase in**

The applicable dollar amount is \$95 for 2014 and \$325 for 2015.

**(C) Special rule for individuals under age 18**

If an applicable individual has not attained the age of 18 as of the beginning of a month, the applicable dollar amount with respect to such individual for the month shall be equal to one-half of the applicable dollar amount for the calendar year in which the month occurs.

**(4) Terms relating to income and families**

For purposes of this section—

**(A) Family size**

The family size involved with respect to any taxpayer shall be equal to the number of individuals for whom the taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year.

**(B) Household income**

The term "household income" means, with respect to any taxpayer for any taxable year, an amount equal to the sum of—

(i) the modified adjusted gross income of the taxpayer, plus