1976—Subsec. (a). Pub. L. 94–460 substituted ''$40,000,000 for the fiscal year ending June 30, 1976, $45,000,000 for the fiscal year ending September 30, 1977, and $45,000,000 for the fiscal year ending September 30, 1978;'' for ''and $85,000,000 for the fiscal year ending June 30, 1976;'' and ''for the fiscal year ending September 30, 1977, there is authorized to be appropriated $50,000,000'' for ''for the fiscal year ending June 30, 1977, there is authorized to be appropriated $85,000,000''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 803(b)(3) of Pub. L. 99–660 not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99–660, set out as a note under section 300e–5 of this title.

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 7(b) of Pub. L. 95–559 effective only for fiscal years beginning on or after Oct. 1, 1978, see section 7(c) of Pub. L. 95–559, set out as an Effective Date note under section 300e–16 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–9. Employees' health benefits plans

(a) Regulations; membership option

In accordance with regulations which the Secretary shall prescribe—

(1) each employer—

(A) which is required during any calendar quarter to pay its employees the minimum wage prescribed by section 206 of title 29 (or would be required to pay its employees such wage but for section 213(a) of title 29), and

(B) which during such calendar quarter employed an average number of employees of not less than 25, and

(2) any State and each political subdivision thereof which during any calendar quarter employed an average number of employees of not less than 25, as a condition of payment to the State of funds under section 247b, 247c, or 300a of this title,

which offers to its employees in the calendar year beginning after such calendar quarter the option of membership in a qualified health maintenance organization which is engaged in the provision of basic health services in a health maintenance organization service area in which at least 25 of such employees reside shall meet the requirements of subsection (b) with respect to any qualified health maintenance organization offered by the employer or State or political subdivision.

(b) Nondiscriminatory contributions for services; payroll deductions; effect on costs

(1) If a health benefits plan offered by an employer or a State or political subdivision includes contributions for services offered under the plan, the employer or State or political subdivision shall make a contribution under the plan for services offered by a qualified health maintenance organization in an amount which does not financially discriminate against an employee who enrolls in such organization. For purposes of the preceding sentence, an employer's or a State's or political subdivision's contribution does not financially discriminate if the employer's or State's or political subdivision's method of determining the contributions on behalf of all employees is reasonable and is designed to assure employees a fair choice among health benefits plans.

(2) Each employer or State or political subdivision which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefits plan to which an employee contribution is not required shall, with the consent of an employee who exercises option of membership in a qualified health maintenance organization, arrange for the employee's contribution for membership in the organization to be paid through payroll deductions.

(3) No employer or State or political subdivision shall be required to pay more for health benefits as a result of the application of this subsection than would otherwise be required by any prevailing collective bargaining agreement or other legally enforceable contract for the provision of health benefits between the employer or State or political subdivision and its employees.

(c) "Qualified health maintenance organization" defined

For purposes of this section, the term ''qualified health maintenance organization'' means (1) a health maintenance organization which has provided assurances satisfactory to the Secretary that it provides basic and supplemental health services to its members in the manner prescribed by section 300e(b) of this title and that it is organized and operated in the manner prescribed by section 300e(c) of this title, and (2) an entity which proposes to become a health maintenance organization and which the Secretary determines will when it becomes operational provide basic and supplemental health services to its members in the manner prescribed by section 300e(b) of this title and will be organized and operated in the manner prescribed by section 300e(c) of this title.

(d) Civil penalty; notice and presentation of views; review

(1) Any employer who knowingly does not comply with one or more of the requirements of paragraph (1) or (2) of subsection (b) shall be subject to a civil penalty of not more than $10,000. If such noncompliance continues, a civil penalty may be assessed and collected under this subsection for each thirty-day period such noncompliance continues. Such penalty may be assessed by the Secretary and collected in a civil action brought by the United States in a United States district court.

(2) In any proceeding by the Secretary to assess a civil penalty under this subsection, no penalty shall be assessed until the employer charged shall have been given notice and an opportunity to present its views on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the Sec-

retary shall consider the gravity of the noncompliance and the demonstrated good faith of the employer charged in attempting to achieve rapid compliance after notification by the Secretary of a noncompliance.

(3) In any civil action brought to review the assessment of a civil penalty assessed under this subsection, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty and in any civil action to collect such a civil penalty, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty unless in a prior civil action to review the assessment of such penalty the court held a trial de novo on such assessment.

(e) "Employer" defined

For purposes of this section, the term ''employer'' does not include (1) the Government of the United States, the government of the District of Columbia or any territory or possession of the United States, a State or any political subdivision thereof, or any agency or instrumentality (including the United States Postal Service and Postal Regulatory Commission) of any of the foregoing, except that such term includes nonappropriated fund instrumentalities of the Government of the United States; or (2) a church, convention or association of churches, or any organization operated, supervised or controlled by a church, convention or association of churches which organization (A) is an organization described in section 501(c)(3) of title 26, and (B) does not discriminate (i) in the employment, compensation, promotion, or termination of employment of any personnel, or (ii) in the extension of staff or other privileges to any physician or other health personnel, because such persons seek to obtain or obtained health care, or participate in providing health care, through a health maintenance organization.

(f) Termination of payment for failure to comply

If the Secretary, after reasonable notice and opportunity for a hearing to a State, finds that it or any of its political subdivisions has failed to comply with paragraph (1) or (2) of subsection (b), the Secretary shall terminate payments to such State under sections 247b, 247c, and 300a of this title and notify the Governor of such State that further payments under such sections will not be made to the State until the Secretary is satisfied that there will no longer be any such failure to comply.

(July 1, 1944, ch. 373, title XIII, §1310, as added Pub. L. 93–222, §2, Dec. 29, 1973, 87 Stat. 930; amended Pub. L. 94–460, title I, §110(a), Oct. 8, 1976, 90 Stat. 1950; Pub. L. 95–559, §§8, 12(a)(1), Nov. 1, 1978, 92 Stat. 2135, 2140; Pub. L. 96–32, §2(f), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title IX, §§942(a)(3), (4), 946, Aug. 13, 1981, 95 Stat. 573, 577; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–660, title VIII, §808, Nov. 14, 1986, 100 Stat. 3801; Pub. L. 100–517, §§4(b), 7(a)(1), (2), (b), Oct. 24, 1988, 102 Stat. 2578, 2580; Pub. L. 109–435, title VI, §604(f), Dec. 20, 2006, 120 Stat. 3242.)

Editorial Notes

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

1988—Pub. L. 100–517, §7(b), amended section generally, substituting subsecs. (a) to (f) for former subsecs. (a) to (g).

Subsec. (b). Pub. L. 100–517, §§4(b), 7(a)(1)(A), in introductory provisions, substituted ''or a State or political subdivision'' for ''subject to subsection (a) of this section'', in par. (1), inserted ''and provides at least 90 percent of such services through physicians described in section 300e(b)(3)(A) of this title'', in par. (2), inserted ''and provides no more than 10 percent of such services through physicians who are not described in section 300e(b)(3)(A) of this title'', and in concluding provisions, substituted ''employer or State or political subdivision pursuant'' for ''employer pursuant''.

Subsec. (c). Pub. L. 100–517, §7(a)(1)(B), (2), substituted ''No employer or State or political subdivision'' for ''No employer'', ''between the employer or State or political subdivision'' for ''between the employer'', and ''Each employer or State or political subdivision'' for ''Each employer'', and inserted at end ''If a health benefits plan offered by an employer or a State or political subdivision under subsection (a) of this section includes contributions for services offered under the plan, the employer or State or political subdivision shall make a contribution under the plan for services offered by a qualified health maintenance organization in an amount which does not financially discriminate against an employee who enrolls in such organization. For purposes of the preceding sentence, an employer's or a State's or political subdivision's contribution does not financially discriminate if the employer's or State's or political subdivision's method of determining the contributions on behalf of all employees is reasonable and is designed to assure employees a fair choice among health benefits plans.''

1986—Subsec. (d). Pub. L. 99–660 struck out last sentence which read as follows: ''Every two years (or such longer period as the Secretary may by regulation prescribe) after the date a health maintenance organization becomes a qualified health maintenance organization under this subsection, the health maintenance organization must demonstrate to the Secretary that it is qualified within the meaning of this subsection.''

Subsec. (f). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1981—Subsec. (b)(1). Pub. L. 97–35, §942(a)(3)(A), substituted provisions respecting provision of more than one-half of the basic services provided by physicians, for provisions respecting provision of basic services.

Subsec. (b)(2). Pub. L. 97–35, §942(a)(3)(B), (4), inserted reference to provision by physicians, added cl. (B), and redesignated former cl. (B) as (C).

Subsec. (d). Pub. L. 97–35, §946(a), inserted provisions relating to demonstration of continued qualification of organization.

Subsec. (f)(1). Pub. L. 97–35, §946(b), inserted reference to United States nonappropriated fund instrumentalities.

1979—Subsec. (e)(1). Pub. L. 96–32 substituted ''subsection (a), (b), or (c)'' for ''subsection (a)''.

1978—Subsec. (b). Pub. L. 95–559, §8(b), substituted in par. (1) ''through physicians or other health professionals who are members of the staff of the organization or a medical group (or groups)'' for ''(A) without the use of an individual practice association and (B) without the use of contracts (except for contracts for unusual or infrequently used services) with health professionals'' and in par. (2) ''(B) a combination of such association (or associations), medical group (or groups), staff, and individual physicians and other health professionals under contract with the organization'' for ''(B) health professionals who have contracted

with the health maintenance organization for the provision of such services, or (C) a combination of such association (or associations) or health professionals under contract with the organization''.

Subsec. (c). Pub. L. 95–559, §8(a), inserted provision that each employer which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefits plan to which an employee contribution is not required and which is required by subsection (a) of this section to offer his employees the option of membership in a qualified health maintenance organization shall, with the consent of an employee who exercises such option, arrange for the employee's contribution for such membership to be paid through payroll deductions.

Subsec. (h). Pub. L. 95–559, §12(a)(1), struck out subsec. (h) which provided that the duties and functions of the Secretary, insofar as they involve determinations as to whether an organization is a qualified health maintenance organization within the meaning of subsection (d) of this section, be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions be integrated with the administration of section 300e–11(a) of this title.

1976—Subsec. (a). Pub. L. 94–460, §110(a)(1), substituted reference to each employer which is now or hereafter required for reference to each employer which is required, reference to basic health services in health maintenance organization service areas in which at least 25 of such employees reside for reference to basic and supplemental health services in the areas in which such employees reside, and inserted provisions requiring certain States and political subdivisions thereof to include in any health benefits plan the option of membership in qualified health maintenance organizations as a condition of payment to the State of funds under section 246(d), 247b, 247c, 300a, 300m–4, or 300p–3 of this title, and that the offer of membership in such an organization be first made to the employees' representative, if any, and then be made to each employee if the offer is accepted by the representative.

Subsec. (b)(1). Pub. L. 94–460, §110(a)(2), substituted ''(A) without the use of an individual practice association and (B) without the use of contracts (except for contracts for unusual or infrequently used services) with health professionals'' for ''through professionals who are members of the staff of the organization or a medical group (or groups)''.

Subsec. (b)(2). Pub. L. 94–460, §110(a)(2), substituted ''basic health services through (A) an individual practice association (or associations), (B) health professionals who have contracted with the health maintenance organization for the provision of such services, or (C) a combination of such association (or associations) or health professionals under contract with the organization'' for ''such services through an individual practice association (or associations)''.

Subsec. (c). Pub. L. 94–460, §110(a)(3), struck out provision that failure of any employer to comply with the requirements of subsection (a) of this section be considered a willful violation of section 215 of title 29.

Subsecs. (e) to (h). Pub. L. 94–460, §110(a)(4), added subsecs. (e) to (h).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–517, §7(b), Oct. 24, 1988, 102 Stat. 2580, provided that the amendment made by section 7(b) is effective 7 years after Oct. 24, 1988.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–35, title IX, §942(a)(5), Aug. 13, 1981, 95 Stat. 573, provided that: ''The amendment made by paragraph (3)(A) [amending this section] shall apply with respect to the offering of a health maintenance organization in accordance with section 1310(b)(1) of the Public Health Service Act [42 U.S.C. 300e–9(b)(1)] after four years after the date the organization becomes a qualified health maintenance organization for purposes of section 1310 of such Act [42 U.S.C. 300e–9] if the health maintenance organization provides assurances satisfactory to the Secretary that upon the expiration of such four years it will provide more than one half of its basic health services which are provided by physicians through physicians or other health professionals who are members of the staff of the organization or a medical group (or groups).''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 110(a)(1), (2) of Pub. L. 94–460 applicable with respect to calendar quarters which began after Oct. 8, 1976, and amendment by section 110(a)(3), (4) of Pub. L. 94–460 applicable with respect to failures of employers to comply with section 300e–9 of this title after Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

COLLECTIVE BARGAINING AGREEMENTS IN EFFECT ON OCTOBER 24, 1988, UNAFFECTED

Pub. L. 100–517, §7(a)(3), Oct. 24, 1988, 102 Stat. 2580, provided that: ''Nothing in section 1310 of the Public Health Service Act (42 U.S.C. 300e–9), as amended by this Act, shall be construed to supersede any provision of a collective bargaining agreement in effect on the date of enactment of this Act [Oct. 24, 1988].''

§ 300e–10. Restrictive State laws and practices

(a) Entities operating as health maintenance organizations

In the case of any entity—

(1) which cannot do business as a health maintenance organization in a State in which it proposes to furnish basic and supplemental health services because that State by law, regulation, or otherwise—

(A) requires as a condition to doing business in that State that a medical society approve the furnishing of services by the entity,

(B) requires that physicians constitute all or a percentage of its governing body,

(C) requires that all physicians or a percentage of physicians in the locale participate or be permitted to participate in the provision of services for the entity,

(D) requires that the entity meet requirements for insurers of health care services doing business in that State respecting initial capitalization and establishment of financial reserves against insolvency, or

(E) imposes requirements which would prohibit the entity from complying with the requirements of this subchapter, and

(2) for which a grant, contract, loan, or loan guarantee was made under this subchapter or which is a qualified health maintenance organization for purposes of section 300e–9 of this title (relating to employees' health benefits plans),

such requirements shall not apply to that entity so as to prevent it from operating as a health maintenance organization in accordance with section 300e of this title.

(b) Advertising

No State may establish or enforce any law which prevents a health maintenance organiza-