

## PRIOR PROVISIONS

A prior subchapter XXV (§300aaa et seq.), comprised of title XXVII of the Public Health Service Act, act July 1, 1944, ch. 373, §§2701 to 2714, was renumbered title II, part B, §§231 to 244, of the Public Health Service Act, and transferred to part B (§238 et seq.) of subchapter I of this chapter.

## PART A—INDIVIDUAL AND GROUP MARKET REFORMS

## Editorial Notes

## CODIFICATION

Pub. L. 111-148, title I, §1001(1), Mar. 23, 2010, 124 Stat. 130, substituted “Individual and Group Market Reforms” for “Group Market Reforms” in part heading.

## SUBPART I—GENERAL REFORM

## Editorial Notes

## CODIFICATION

Pub. L. 111-148, title I, §§1201(1), 1255, formerly §1253, title X, §10103(e), (f)(1), Mar. 23, 2010, 124 Stat. 154, 162, 895, substituted “SUBPART I—GENERAL REFORM” for “SUBPART 1—PORTABILITY, ACCESS, AND RENEWABILITY REQUIREMENTS” in subpart heading, effective for plan years beginning on or after Jan. 1, 2014.

## § 300gg. Fair health insurance premiums

(a)<sup>1</sup> Prohibiting discriminatory premium rates

## (1) In general

With respect to the premium rate charged by a health insurance issuer for health insurance coverage offered in the individual or small group market—

(A) such rate shall vary with respect to the particular plan or coverage involved only by—

(i) whether such plan or coverage covers an individual or family;

(ii) rating area, as established in accordance with paragraph (2);

(iii) age, except that such rate shall not vary by more than 3 to 1 for adults (consistent with section 300gg-6(c) of this title); and

(iv) tobacco use, except that such rate shall not vary by more than 1.5 to 1; and

(B) such rate shall not vary with respect to the particular plan or coverage involved by any other factor not described in subparagraph (A).

## (2) Rating area

## (A) In general

Each State shall establish 1 or more rating areas within that State for purposes of applying the requirements of this subchapter.

## (B) Secretarial review

The Secretary shall review the rating areas established by each State under subparagraph (A) to ensure the adequacy of such areas for purposes of carrying out the requirements of this subchapter. If the Secretary determines a State’s rating areas are not adequate, or that a State does not establish such areas, the Secretary may establish rating areas for that State.

<sup>1</sup> So in original. No subsec. (b) has been enacted.

## (3) Permissible age bands

The Secretary, in consultation with the National Association of Insurance Commissioners, shall define the permissible age bands for rating purposes under paragraph (1)(A)(iii).

## (4) Application of variations based on age or tobacco use

With respect to family coverage under a group health plan or health insurance coverage, the rating variations permitted under clauses (iii) and (iv) of paragraph (1)(A) shall be applied based on the portion of the premium that is attributable to each family member covered under the plan or coverage.

## (5) Special rule for large group market

If a State permits health insurance issuers that offer coverage in the large group market in the State to offer such coverage through the State Exchange (as provided for under section 18032(f)(2)(B) of this title), the provisions of this subsection shall apply to all coverage offered in such market (other than self-insured group health plans offered in such market) in the State.

(July 1, 1944, ch. 373, title XXVII, §2701, as added and amended Pub. L. 111-148, title I, §1201(4), title X, §10103(a), Mar. 23, 2010, 124 Stat. 155, 892.)

## Editorial Notes

## PRIOR PROVISIONS

A prior section 300gg, act July 1, 1944, ch. 373, title XXVII, §2701, as added Pub. L. 104-191, title I, §102(a), Aug. 21, 1996, 110 Stat. 1955; amended Pub. L. 111-3, title III, §311(b)(2), Feb. 4, 2009, 123 Stat. 70; Pub. L. 111-5, div. B, title I, §1899D(c), Feb. 17, 2009, 123 Stat. 426; Pub. L. 111-344, title I, §114(c), Dec. 29, 2010, 124 Stat. 3615; Pub. L. 112-40, title II, §242(a)(3), Oct. 21, 2011, 125 Stat. 419, which related to increased portability through limitation on preexisting condition exclusions, was renumbered section 2704 of act July 1, 1944, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended, by Pub. L. 111-148, title I, §§1201(2), 1563(c)(1), formerly §1562(c)(1), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and was transferred to section 300gg-3 of this title.

Another prior section 2701 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

## AMENDMENTS

2010—Subsec. (a)(5). Pub. L. 111-148, §10103(a), inserted “(other than self-insured group health plans offered in such market)” after “such market”.

## Statutory Notes and Related Subsidiaries

## EFFECTIVE DATE

Pub. L. 111-148, title I, §1255, formerly §1253, title X, §10103(e), (f)(1), Mar. 23, 2010, 124 Stat. 162, 895, provided that: “This subtitle [subtitle C (§§1201-1255) of title I of Pub. L. 111-148, enacting subchapter II of chapter 157 of this title and sections 300gg to 300gg-2 and 300gg-4 to 300gg-7 of this title, and amending sections 300gg-1 and 300gg-4 of this title and transferring former section 300gg of this title to section 300gg-3 of this title] (and the amendments made by this subtitle) shall become effective for plan years beginning on or after January 1, 2014, except that—

“(1) section 1251 [enacting section 18011 of this title] shall take effect on the date of enactment of this Act [Mar. 23, 2010]; and

“(2) the provisions of section 2704 of the Public Health Service Act [42 U.S.C. 300gg-3] (as amended by

section 1201), as they apply to enrollees who are under 19 years of age, shall become effective for plan years beginning on or after the date that is 6 months after the date of enactment of this Act [Mar. 23, 2010]. [sic]"

Pub. L. 104-191, title I, §102(c), Aug. 21, 1996, 110 Stat. 1976, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, part A of title XXVII of the Public Health Service Act [42 U.S.C. 300gg et seq.] (as added by subsection (a)) shall apply with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997.

"(2) DETERMINATION OF CREDITABLE COVERAGE.—

"(A) PERIOD OF COVERAGE.—

"(i) IN GENERAL.—Subject to clause (ii), no period before July 1, 1996, shall be taken into account under part A of title XXVII of the Public Health Service Act [42 U.S.C. 300gg et seq.] (as added by this section) in determining creditable coverage.

"(ii) SPECIAL RULE FOR CERTAIN PERIODS.—The Secretary of Health and Human Services, consistent with section 104 [42 U.S.C. 300gg-92 note], shall provide for a process whereby individuals who need to establish creditable coverage for periods before July 1, 1996, and who would have such coverage credited but for clause (i) may be given credit for creditable coverage for such periods through the presentation of documents or other means.

"(B) CERTIFICATIONS, ETC.—

"(i) IN GENERAL.—Subject to clauses (ii) and (iii), subsection (e) of section 2701 [now 2704] of the Public Health Service Act [42 U.S.C. 300gg-3(e)] (as added by this section) shall apply to events occurring after June 30, 1996.

"(ii) NO CERTIFICATION REQUIRED TO BE PROVIDED BEFORE JUNE 1, 1997.—In no case is a certification required to be provided under such subsection before June 1, 1997.

"(iii) CERTIFICATION ONLY ON WRITTEN REQUEST FOR EVENTS OCCURRING BEFORE OCTOBER 1, 1996.—In the case of an event occurring after June 30, 1996, and before October 1, 1996, a certification is not required to be provided under such subsection unless an individual (with respect to whom the certification is otherwise required to be made) requests such certification in writing.

"(C) TRANSITIONAL RULE.—In the case of an individual who seeks to establish creditable coverage for any period for which certification is not required because it relates to an event occurring before June 30, 1996—

"(i) the individual may present other credible evidence of such coverage in order to establish the period of creditable coverage; and

"(ii) a group health plan and a health insurance issuer shall not be subject to any penalty or enforcement action with respect to the plan's or issuer's crediting (or not crediting) such coverage if the plan or issuer has sought to comply in good faith with the applicable requirements under the amendments made by this section [enacting this section and sections 300gg-1, 300gg-11 to 300gg-13, 300gg-21 to 300gg-23, 300gg-91, and 300gg-92 of this title and amending sections 300e and 300bb-8 of this title].

"(3) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—Except as provided in paragraph (2)(B), in the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Aug. 21, 1996], part A of title XXVII of the Public Health Service Act [42 U.S.C. 300gg et seq.] (other than section 2701(e) [now 2704(e)] thereof [42 U.S.C. 300gg-3(e)]) shall not apply to plan years beginning before the later of—

"(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension

thereof agreed to after the date of the enactment of this Act), or

"(B) July 1, 1997.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement of such part shall not be treated as a termination of such collective bargaining agreement.

"(4) TIMELY REGULATIONS.—The Secretary of Health and Human Services, consistent with section 104 [42 U.S.C. 300gg-92 note], shall first issue by not later than April 1, 1997, such regulations as may be necessary to carry out the amendments made by this section [enacting this section and sections 300gg-1, 300gg-11 to 300gg-13, 300gg-21 to 300gg-23, 300gg-91, and 300gg-92 of this title and amending sections 300e and 300bb-8 of this title] and section 111 [enacting sections 300gg-41 to 300gg-44 and 300gg-61 to 300gg-63 of this title].

"(5) LIMITATION ON ACTIONS.—No enforcement action shall be taken, pursuant to the amendments made by this section, against a group health plan or health insurance issuer with respect to a violation of a requirement imposed by such amendments before January 1, 1998, or, if later, the date of issuance of regulations referred to in paragraph (4), if the plan or issuer has sought to comply in good faith with such requirements."

CONGRESSIONAL FINDINGS RELATING TO EXERCISE OF COMMERCE CLAUSE AUTHORITY; SEVERABILITY

Pub. L. 104-191, title I, §195, Aug. 21, 1996, 110 Stat. 1991, provided that:

"(a) FINDINGS RELATING TO EXERCISE OF COMMERCE CLAUSE AUTHORITY.—Congress finds the following in relation to the provisions of this title [enacting this subchapter and sections 1181 to 1183 and 1191 to 1191c of Title 29, Labor, amending sections 233, 300e, and 300bb-8 of this title and sections 1003, 1021, 1022, 1024, 1132, 1136, and 1144 of Title 29, and enacting provisions set out as notes under this section, section 300gg-92 of this title, and section 1181 of Title 29]:

"(1) Provisions in group health plans and health insurance coverage that impose certain preexisting condition exclusions impact the ability of employees to seek employment in interstate commerce, thereby impeding such commerce.

"(2) Health insurance coverage is commercial in nature and is in and affects interstate commerce.

"(3) It is a necessary and proper exercise of Congressional authority to impose requirements under this title on group health plans and health insurance coverage (including coverage offered to individuals previously covered under group health plans) in order to promote commerce among the States.

"(4) Congress, however, intends to defer to States, to the maximum extent practicable, in carrying out such requirements with respect to insurers and health maintenance organizations that are subject to State regulation, consistent with the provisions of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.].

"(b) SEVERABILITY.—If any provision of this title or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this title and the application of the provisions of such to any person or circumstance shall not be affected thereby."

HEALTH COVERAGE AVAILABILITY STUDIES

Pub. L. 104-191, title I, §191, Aug. 21, 1996, 110 Stat. 1987, directed the Secretary of Health and Human Services to provide for a study on the effectiveness of the provisions of title I of Pub. L. 104-191 and the various State laws, in ensuring the availability of reasonably priced health coverage to employers and individuals and a study on access to, and choice of, health care providers and the cost and cost-effectiveness to health insurance issuers of providing access to out-of-network

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.