

Calendar No. 184

111TH CONGRESS

1ST SESSION **S. 1796**

[Report No. 111-89]

To provide affordable, quality health care for all Americans and reduce the growth in health care spending, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 19, 2009

Mr. BAUCUS, from the Committee on Finance reported the following original bill; which was read twice and placed on the calendar.

A BILL

To provide affordable, quality health care for all Americans and reduce the growth in health care spending, and for other purposes.

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Subpart 4—Continued Role of States

SEC. 2225. CONTINUED STATE ENFORCEMENT OF INSURANCE REGULATIONS.

(a) IN GENERAL. —

(1) MODEL REGULATION. —

(A) IN GENERAL.—The Secretary shall request the National Association of Insurance Commissioners (in this section referred to as the ‘ NAIC’) to, not later than 12 months after the date of enactment of this title, develop and promulgate a Model Regulation that implements the requirements set forth in this title for health benefit plans offered within a State. In developing and promulgating the Model Regulation, the NAIC shall consult with its members, health insurance issuers, consumer organizations, and such other individuals as the NAIC selects in a manner designed to ensure balanced representation among interested parties.

(B) SECRETARIAL ACTION.—The Secretary shall include the Model Regulation established under paragraph (1) in the regulations prescribed by the Secretary to implement the requirements described in subparagraph (A). If the NAIC does not promulgate the Model

Regulation within the 12-month period under subparagraph (A), the Secretary shall establish a Federal standard implementing such requirements.

(2) STATE ACTION. —Each State that elects to apply the requirements set forth in this title to health benefit plans offered within the State shall, not later than July 1, 2013, adopt and have in effect—

(A) the Model Regulation or Federal standard established under paragraph (1), whichever is applicable; or

(B) a State law or regulation that the Secretary determines implements the requirements for health benefit plans offered within the State.

(3) FAILURE TO IMPLEMENT PROVISIONS. —

(A) IN GENERAL. —If—

(i) a State does not elect to apply the requirements set forth in this title to health benefit plans offered within the State; or
(ii) the Secretary determines that an electing State has failed to adopt or substantially enforce the Model Regulation, Federal standard, or State law or regulations described in paragraph (2), whichever is applicable, with respect to health benefits plan offerors in the State,
the Secretary shall implement and enforce such requirements insofar as they relate to the issuance, sale, renewal, and offering of health benefits plans in such State until such time as the Secretary determines the State has adopted and is substantially enforcing the requirements.

(B) ENFORCEMENT AUTHORITY. —The provisions of section 2722(b) of the Public Health Services Act shall apply to the enforcement under subparagraph (A) of the provisions of this part (without regard to any limitation on the application of those provisions to group health plans).

(4) RATINGS REFORMS MUST APPLY UNFORMLY TO ALL OFFERORS. —The Model Regulation, Federal standard, or State law and regulation implemented by a State under this subsection shall require that any standard or requirement adopted pursuant to this title (including any standard

or requirement described in subsection (c) that offers more protection to consumers than the protection offered by any standard or requirement set forth in this title) shall be applied uniformly to all offerors of all health benefits plans in the individual or small group market, whichever is applicable.

(b) STATE EXCHANGES. —

(1) EXCHANGES FOR QUALIFIED PLANS. —

(A) IN GENERAL. —Subject to paragraph (2), not later than July 1, 2013, an electing State under subsection (a) (2) shall establish and have in operation 1 or more exchanges (including SHOP exchanges) meeting the requirements of part B with respect to the offering of qualified health benefits plans through the exchange.

(B) FAILURE TO ESTABLISH. —If—

(i) a State is not an electing State under subsection (a) (2); or

(ii) an electing State does not establish the exchanges described in subparagraph (A) within 24 months after the date of enactment of this title (or the Secretary determines at the end of the 24-month period that the exchanges will not be operational by July 1, 2013),

the Secretary shall enter into a contract with a nongovernmental entity to establish and operate the exchanges within the State.

(2) INTERIM EXCHANGES. —Each electing State under subsection (a) (2) shall as soon as practicable establish the exchanges described in section 2235(e) for use by residents of the State during the period beginning January 1, 2010, and ending June 30, 2013. In the case of a State that is not an electing State under subsection (a) (2), or if the Secretary determines that the exchanges in an electing State will not be operational within a reasonable period of time after the date of enactment of this title, the Secretary shall enter into a contract with a nongovernmental entity to establish and operate the exchanges within the State during such period.

(c) CONTINUED APPLICABILITY OF STATE LAW WITH RESPECT TO HEALTH BENEFITS PLANS. —

(1) IN GENERAL. —Subject to paragraphs (2) and (3), this title shall not be construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or

requirement relating to health benefits plan offerors in connection with a health benefits plan that offers more protection to consumers than the protection offered by any standard or requirement set forth in this title. The standards or requirements referred to in the preceding sentence shall include standards or requirements relating to—

(A) consumer protections, including claims grievance procedures, external review of claims determinations, oversight of insurance agent practices and training, and insurance market conduct;

(B) premium rating reviews;

(C) solvency and reserve requirements relating to the licensure of health insurance issuers operating in the State; and

(D) the assessment of State-based premium taxes on health insurance issuers.

(2) SPECIAL RULE FOR RATING REQUIREMENTS.—For purposes of paragraph (1), in the case of the ratings requirements under section 2204, a State law shall not be treated as offering more protection to consumers than the protection offered by such requirements if the State law imposes ratios that are greater than the ratios specified in section 2204(b).

(3) CONTINUED PREEMPTION WITH RESPECT TO GROUP HEALTH PLANS.—Nothing in this part shall be construed to affect or modify the provisions of section 514 of the Employee Retirement Income Security Act of 1974 with respect to group health plans.

(d) AUTOMATIC ENROLLMENT.—A State may institute a program to provide that offerors of qualified health benefit plans, small employers, and exchanges offering qualified health benefits plans in the individual and small group market within the State may automatically enroll individuals and employees in, or continue enrollment of individuals in, qualified health benefit plans where appropriate to ensure coverage of the individuals. Any automatic enrollment program shall include adequate notice and the opportunity for an individual or employee to opt out of any coverage the individual or employee were automatically enrolled in.

(e) CLAIMS REVIEW PROCESS.—Each State shall—

(1) require each offeror of a qualified health benefits plans offered through an exchange—

(A) to provide an internal claims appeal process;

(B) to provide notice in clear language and in the enrollee’s primary language of available internal and external appeals processes and the availability of the ombudsman established under section 2229(a) to assist them with the appeals processes; and

(C) to allow an enrollee to review their file, to present evidence and testimony as part of the appeals process, and to receive continued coverage pending the outcome of the appeals process;

(2) provide an external review process for such plans that, at a minimum, includes the consumer protections set forth in the Uniform External Review Model Act promulgated by the National Association of Insurance Commissioners and is binding on such plans; and

(3) ensure enrollees can seek judicial review through available Federal or State procedures.

(f) APPLICABLE STATE AUTHORITY.—In this title, the term ‘applicable State authority’ means the State insurance commissioner or official or officials designated by the State to enforce the requirements of this title for the State involved.