

# 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 2—Establishment of Exchanges**

#### **SEC. 2235. ESTABLISHMENT OF EXCHANGES BY STATES.**

(a) IN GENERAL.—Each State shall, not later than July 1, 2013, establish —

(1) an exchange for the State that is designed to facilitate the enrollment of qualified individuals in qualified health benefits plans offered in the individual market in the State; and

(2) a Small Business Health Options Program (in this title referred to as a ‘SHOP exchange’) that is designed to assist qualified small employers in facilitating the enrollment of their employees in qualified health benefits plans offered in either the individual or the small group market in the State.

(b) STATE FLEXIBILITY.—

(1) MERGER OF INDIVIDUAL AND SHOP EXCHANGES.—A State may elect to provide only one exchange in the State for providing both exchange and SHOP exchange services to both qualified individuals and qualified small employers, but only if the exchange has separate resources to assist individuals and employers.

(2) REGIONAL EXCHANGES.—An exchange or SHOP exchange may operate in more than 1 State if—

(A) each of the States agrees to the operation of the exchange in that State; and

(B) the Secretary approves of the operation of the exchange in all such States.

(3) AUTHORITY TO CONTRACT FOR EXCHANGE SERVICES.—

(A) CONTRACT WITH SUB-EXCHANGE.—

Subject to such conditions and restrictions as the Secretary, in consultation with the Secretary of the Treasury, may prescribe under sections 2238 and 2248—

(i) IN GENERAL.—A State may elect to authorize an exchange established by the State under this title to contract with an eligible entity to carry out 1 or more responsibilities of the exchange, including marketing and sale of qualified health benefits plans offered by the exchange, enrollment activities, broker relations, customer service, customer education, premium billing and collection, member advocacy with qualified health benefits plans, maintaining call center support, and performing the duties of the exchange under section 2238 in determining eligibility to participate in the exchange and to receive any credit or subsidy. An eligible entity may charge an additional fee to be used to pay the administrative and operational expenses of the entity.

(ii) ELIGIBLE ENTITY.—In this subparagraph, the term ‘eligible entity’ means a person—

(I) incorporated under, and subject to the laws of, 1 or more States;

(II) that has demonstrated experience on a State or regional basis in the individual and small group health insurance and benefits coverage; and

(III) that is not a health insurance issuer or that is treated under subsection (a) or (b) of section 52 as a member of the same controlled group of corporations (or under common control with) a health insurance issuer.

(B) DELEGATION TO STATE MEDICAID AGENCY. —A State may elect to authorize an exchange established by the State under this title to enter into an agreement with the State medicaid agency under title XIX to carry out the responsibilities of the exchange under this section in establishing the eligibility of individuals to participate in the exchange and to receive the premium credit under section 36B of the Internal Revenue Code of 1986 and the cost-sharing subsidy under section 2247. An exchange may enter into an agreement under this subparagraph only if the agreement meets requirements promulgated by the Secretary (after consultation with the Secretary of the Treasury) ensuring that the agreement lowers overall administrative costs and reduces the likelihood of eligibility errors and disruptions in coverage.

(c) ESTABLISHMENT OF BROKER RATE SCHEDULES. —Each State shall provide for the establishment of rate schedules for broker commissions paid by health benefits plans offered through an exchange.

(d) OFFERING OF PLANS IN LARGE GROUP MARKET. —Beginning in 2017, each State may allow offerors of health benefits plans in the large group market in the State to offer the plans through an exchange. Nothing in this subsection shall be construed as requiring an offeror to offer such plans through an exchange.

(e) INTERIM EXCHANGES BEFORE QUALIFIED PLANS. —

(1) IN GENERAL. —Each State shall, as soon as practicable after the date of enactment of this Act, establish an exchange through which enrollment in eligible health insurance coverage is offered for coverage during the period beginning January 1, 2010, and ending June 30, 2013. Each State may use the database established under paragraph (2) (C) (ii) in the operation of the exchange.

(2) ELIGIBLE HEALTH INSURANCE COVERAGE. —In this subsection:

(A) IN GENERAL. —The term ‘eligible health insurance coverage’ means, with respect to any State, any health insurance coverage meeting the requirements of section 2244 which is offered—

(i) by an issuer who is licensed to offer such coverage in that State; and

(ii) in the individual or small group markets within the State.

(B) EXCEPTION FOR MINI-MEDICAL PLANS.—Such term shall not include any health insurance coverage which, as determined under regulations prescribed by the Secretary, offers limited benefits or has a low annual limitation on the amount of benefits provided.

(C) ADMINISTRATION.—

(i) IN GENERAL.—The Secretary shall provide technical assistance to each State in establishing exchanges under this subsection.

(ii) DATABASE OF PLAN OFFERINGS.—The Secretary, either directly or by grant or contract with a private entity, shall establish and maintain a database of health insurance coverage in the individual and small group markets. The Secretary shall ensure that individuals and small employers are able to access the information in the database that is specific to the State in which the individuals and employees reside.