

SUBCHAPTER XIX—GRANTS TO STATES  
FOR MEDICAL ASSISTANCE PROGRAMS

**§ 1396. Medicaid and CHIP Payment and Access  
Commission**

**(a) Establishment**

There is hereby established the Medicaid and CHIP Payment and Access Commission (in this section referred to as “MACPAC”).

**(b) Duties**

**(1) Review of access policies and annual reports**

MACPAC shall—

(A) review policies of the Medicaid program established under this subchapter (in this section referred to as “Medicaid”) and the State Children’s Health Insurance Program established under subchapter XXI (in this section referred to as “CHIP”) affecting children’s access to covered items and services, including topics described in paragraph (2);

(B) make recommendations to Congress concerning such access policies;

(C) by not later than March 1 of each year (beginning with 2010), submit a report to Congress containing the results of such reviews and MACPAC’s recommendations concerning such policies; and

(D) by not later than June 1 of each year (beginning with 2010), submit a report to Congress containing an examination of issues affecting Medicaid and CHIP, including the implications of changes in health care delivery in the United States and in the market for health care services on such programs.

**(2) Specific topics to be reviewed**

Specifically, MACPAC shall review and assess the following:

**(A) Medicaid and CHIP payment policies**

Payment policies under Medicaid and CHIP, including—

(i) the factors affecting expenditures for items and services in different sectors, including the process for updating hospital, skilled nursing facility, physician, Federally-qualified health center, rural health center, and other fees;

(ii) payment methodologies; and

(iii) the relationship of such factors and methodologies to access and quality of care for Medicaid and CHIP beneficiaries.

**(B) Interaction of Medicaid and CHIP payment policies with health care delivery generally**

The effect of Medicaid and CHIP payment policies on access to items and services for children and other Medicaid and CHIP populations other than under this subchapter or subchapter XXI and the implications of changes in health care delivery in the United States and in the general market for health care items and services on Medicaid and CHIP.

**(C) Other access policies**

The effect of other Medicaid and CHIP policies on access to covered items and serv-

ices, including policies relating to transportation and language barriers.

**(3) Creation of early-warning system**

MACPAC shall create an early-warning system to identify provider shortage areas or any other problems that threaten access to care or the health care status of Medicaid and CHIP beneficiaries.

**(4) Comments on certain secretarial reports**

If the Secretary submits to Congress (or a committee of Congress) a report that is required by law and that relates to access policies, including with respect to payment policies, under Medicaid or CHIP, the Secretary shall transmit a copy of the report to MACPAC. MACPAC shall review the report and, not later than 6 months after the date of submittal of the Secretary’s report to Congress, shall submit to the appropriate committees of Congress written comments on such report. Such comments may include such recommendations as MACPAC deems appropriate.

**(5) Agenda and additional reviews**

MACPAC shall consult periodically with the chairmen and ranking minority members of the appropriate committees of Congress regarding MACPAC’s agenda and progress towards achieving the agenda. MACPAC may conduct additional reviews, and submit additional reports to the appropriate committees of Congress, from time to time on such topics relating to the program under this subchapter or subchapter XXI as may be requested by such chairmen and members and as MACPAC deems appropriate.

**(6) Availability of reports**

MACPAC shall transmit to the Secretary a copy of each report submitted under this subsection and shall make such reports available to the public.

**(7) Appropriate committee of Congress**

For purposes of this section, the term “appropriate committees of Congress” means the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate.

**(8) Voting and reporting requirements**

With respect to each recommendation contained in a report submitted under paragraph (1), each member of MACPAC shall vote on the recommendation, and MACPAC shall include, by member, the results of that vote in the report containing the recommendation.

**(9) Examination of budget consequences**

Before making any recommendations, MACPAC shall examine the budget consequences of such recommendations, directly or through consultation with appropriate expert entities.

**(c) Membership**

**(1) Number and appointment**

MACPAC shall be composed of 17 members appointed by the Comptroller General of the United States.

**(2) Qualifications****(A) In general**

The membership of MACPAC shall include individuals who have had direct experience as enrollees or parents of enrollees in Medicaid or CHIP and individuals with national recognition for their expertise in Federal safety net health programs, health finance and economics, actuarial science, health facility management, health plans and integrated delivery systems, reimbursement of health facilities, health information technology, pediatric physicians, dentists, and other providers of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

**(B) Inclusion**

The membership of MACPAC shall include (but not be limited to) physicians and other health professionals, employers, third-party payers, and individuals with expertise in the delivery of health services. Such membership shall also include consumers representing children, pregnant women, the elderly, and individuals with disabilities, current or former representatives of State agencies responsible for administering Medicaid, and current or former representatives of State agencies responsible for administering CHIP.

**(C) Majority nonproviders**

Individuals who are directly involved in the provision, or management of the delivery, of items and services covered under Medicaid or CHIP shall not constitute a majority of the membership of MACPAC.

**(D) Ethical disclosure**

The Comptroller General of the United States shall establish a system for public disclosure by members of MACPAC of financial and other potential conflicts of interest relating to such members. Members of MACPAC shall be treated as employees of Congress for purposes of applying title I of the Ethics in Government Act of 1978 (Public Law 95-521) [5 U.S.C. App.].

**(3) Terms****(A) In general**

The terms of members of MACPAC shall be for 3 years except that the Comptroller General of the United States shall designate staggered terms for the members first appointed.

**(B) Vacancies**

Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in MACPAC shall be filled in the manner in which the original appointment was made.

**(4) Compensation**

While serving on the business of MACPAC (including travel time), a member of MACPAC

shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5; and while so serving away from home and the member's regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of MACPAC. Physicians serving as personnel of MACPAC may be provided a physician comparability allowance by MACPAC in the same manner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, and for such purpose subsection (i) of such section shall apply to MACPAC in the same manner as it applies to the Tennessee Valley Authority. For purposes of pay (other than pay of members of MACPAC) and employment benefits, rights, and privileges, all personnel of MACPAC shall be treated as if they were employees of the United States Senate.

**(5) Chairman; Vice Chairman**

The Comptroller General of the United States shall designate a member of MACPAC, at the time of appointment of the member<sup>1</sup> as Chairman and a member as Vice Chairman for that term of appointment, except that in the case of vacancy of the Chairmanship or Vice Chairmanship, the Comptroller General of the United States may designate another member for the remainder of that member's term.

**(6) Meetings**

MACPAC shall meet at the call of the Chairman.

**(d) Director and staff; experts and consultants**

Subject to such review as the Comptroller General of the United States deems necessary to assure the efficient administration of MACPAC, MACPAC may—

(1) employ and fix the compensation of an Executive Director (subject to the approval of the Comptroller General of the United States) and such other personnel as may be necessary to carry out its duties (without regard to the provisions of title 5 governing appointments in the competitive service);

(2) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(3) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of MACPAC (without regard to section 5 of title 41);

(4) make advance, progress, and other payments which relate to the work of MACPAC;

(5) provide transportation and subsistence for persons serving without compensation; and

(6) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of MACPAC.

**(e) Powers****(1) Obtaining official data**

MACPAC may secure directly from any department or agency of the United States information necessary to enable it to carry out this

<sup>1</sup> So in original. Probably should be followed by a comma.

section. Upon request of the Chairman, the head of that department or agency shall furnish that information to MACPAC on an agreed upon schedule.

**(2) Data collection**

In order to carry out its functions, MACPAC shall—

(A) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this section;

(B) carry out, or award grants or contracts for, original research and experimentation, where existing information is inadequate; and

(C) adopt procedures allowing any interested party to submit information for MACPAC's use in making reports and recommendations.

**(3) Access of GAO to information**

The Comptroller General of the United States shall have unrestricted access to all deliberations, records, and nonproprietary data of MACPAC, immediately upon request.

**(4) Periodic audit**

MACPAC shall be subject to periodic audit by the Comptroller General of the United States.

**(f) Authorization of appropriations**

**(1) Request for appropriations**

MACPAC shall submit requests for appropriations in the same manner as the Comptroller General of the United States submits requests for appropriations, but amounts appropriated for MACPAC shall be separate from amounts appropriated for the Comptroller General of the United States.

**(2) Authorization**

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Aug. 14, 1935, ch. 531, title XIX, §1900, as added Pub. L. 111-3, title V, §506(a), Feb. 4, 2009, 123 Stat. 91.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in subsec. (c)(2)(D), is Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824. Title I of the Act is set out in the Appendix to Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95-521 in the Appendix to Title 5 and Tables.

PRIOR PROVISIONS

A prior section 1396, act Aug. 14, 1935, ch. 531, title XIX, §1901, as added Pub. L. 89-97, title I, §121(a), July 30, 1965, 79 Stat. 343; amended Pub. L. 93-233, §13(a)(1), Dec. 31, 1973, 87 Stat. 960; Pub. L. 98-369, div. B, title VI, §2663(j)(3)(C), July 18, 1984, 98 Stat. 1171, which related to appropriations, was transferred to section 1396-1 of this title.

EFFECTIVE DATE

Pub. L. 111-3, §3, Feb. 4, 2009, 123 Stat. 10, provided that:

“(a) GENERAL EFFECTIVE DATE.—Unless otherwise provided in this Act [enacting this section and sections

247d-9, 1320b-9a, 1396e-1, 1396w-2, and 1397kk to 1397mm of this title and section 657p of Title 15, Commerce and Trade, transferring former section 1396 of this title to section 1396-1 of this title, amending sections 300gg, 1308, 1320b-9, 1320b-9a, 1396a, 1396b, 1396r-1, 1396r-4, 1396u-7, 1397bb to 1397ee, and 1397gg to 1397jj of this title, section 1514 of Title 19, Customs Duties, sections 5701 to 5703, 5712, 5713, 5721 to 5723, 5741, 6103, and 9801 of Title 26, Internal Revenue Code, and sections 1022, 1132, and 1181 of Title 29, Labor, enacting provisions set out as notes under this section and sections 1305, 1396a, 1396b, 1396d, 1396u-7, 1396u-8, 1396w-2, 1397bb to 1397ee, 1397gg, and 1397hh of this title, section 1514 of Title 19, sections 5701 to 5703, 5711, 5712, 6103, and 6655 of Title 26, and section 1181 of Title 29, amending provisions set out as a note under section 1397gg of this title, and repealing provisions set out as notes under sections 1397aa and 1397ee of this title], subject to subsections (b) through (d), this Act (and the amendments made by this Act) shall take effect on April 1, 2009, and shall apply to child health assistance and medical assistance provided on or after that date.

“(b) EXCEPTION FOR STATE LEGISLATION.—In the case of a State plan under title XIX [this subchapter] or State child health plan under [title] XXI [subchapter XXI of this chapter] of the Social Security Act, which the Secretary of Health and Human Services determines requires State legislation in order for the respective plan to meet one or more additional requirements imposed by amendments made by this Act, the respective plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such an additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Feb. 4, 2009]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

“(c) COORDINATION OF CHIP FUNDING FOR FISCAL YEAR 2009.—Notwithstanding any other provision of law, insofar as funds have been appropriated under section 2104(a)(11), 2104(k), or 2104(l) of the Social Security Act [section 1397dd(a)(11), (k), (l) of this title], as amended by section 201 of Public Law 110-173, to provide allotments to States under CHIP for fiscal year 2009—

“(1) any amounts that are so appropriated that are not so allotted and obligated before April 1, 2009 are rescinded; and

“(2) any amount provided for CHIP allotments to a State under this Act (and the amendments made by this Act) for such fiscal year shall be reduced by the amount of such appropriations so allotted and obligated before such date.

“(d) RELIANCE ON LAW.—With respect to amendments made by this Act (other than title VII) [enacting this section and sections 1320b-9a, 1396e-1, 1396w-2, and 1397kk to 1397mm of this title, amending sections 300gg, 1308, 1320b-9, 1320b-9a, 1396a, 1396b, 1396r-1, 1396r-4, 1396u-7, 1397bb to 1397ee, and 1397gg to 1397jj of this title, section 9801 of Title 26, Internal Revenue Code, and sections 1022, 1132, and 1181 of Title 29, Labor, amending provisions set out as a note under section 1397gg of this title, and repealing provisions set out as notes under sections 1397aa and 1397ee of this title] that become effective as of a date—

“(1) such amendments are effective as of such date whether or not regulations implementing such amendments have been issued; and

“(2) Federal financial participation for medical assistance or child health assistance furnished under title XIX or XXI, respectively, of the Social Security Act [this subchapter and subchapter XXI of this chapter] on or after such date by a State in good faith reliance on such amendments before the date of promulgation of final regulations, if any, to carry out such amendments (or before the date of guidance, if any, regarding the implementation of such amend-

ments) shall not be denied on the basis of the State's failure to comply with such regulations or guidance.”

#### PURPOSE

Pub. L. 111-3, §2, Feb. 4, 2009, 123 Stat. 10, provided that: “It is the purpose of this Act [see Effective Date note above] to provide dependable and stable funding for children's health insurance under titles XXI and XIX of the Social Security Act [subchapter XXI and this subchapter, respectively] in order to enroll all six million uninsured children who are eligible, but not enrolled, for coverage today through such titles.”

#### MODEL OF INTERSTATE COORDINATED ENROLLMENT AND COVERAGE PROCESS

Pub. L. 111-3, title II, §213, Feb. 4, 2009, 123 Stat. 56, provided that:

“(a) IN GENERAL.—In order to assure continuity of coverage of low-income children under the Medicaid program and the State Children's Health Insurance Program (CHIP), not later than 18 months after the date of the enactment of this Act [Feb. 4, 2009], the Secretary of Health and Human Services, in consultation with State Medicaid and CHIP directors and organizations representing program beneficiaries, shall develop a model process for the coordination of the enrollment, retention, and coverage under such programs of children who, because of migration of families, emergency evacuations, natural or other disasters, public health emergencies, educational needs, or otherwise, frequently change their State of residency or otherwise are temporarily located outside of the State of their residency.

“(b) REPORT TO CONGRESS.—After development of such model process, the Secretary of Health and Human Services shall submit to Congress a report describing additional steps or authority needed to make further improvements to coordinate the enrollment, retention, and coverage under CHIP and Medicaid of children described in subsection (a).”

#### IMPROVED ACCESSIBILITY OF DENTAL PROVIDER INFORMATION TO ENROLLEES UNDER MEDICAID AND CHIP

Pub. L. 111-3, title V, §501(f), Feb. 4, 2009, 123 Stat. 88, provided that: “The Secretary [of Health and Human Services] shall—

“(1) work with States, pediatric dentists, and other dental providers (including providers that are, or are affiliated with, a school of dentistry) to include, not later than 6 months after the date of the enactment of this Act [Feb. 4, 2009], on the Insure Kids Now website (<http://www.insurekidsnow.gov/>) and hotline (1-877-KIDS-NOW) (or on any successor websites or hotlines) a current and accurate list of all such dentists and providers within each State that provide dental services to children enrolled in the State plan (or waiver) under Medicaid or the State child health plan (or waiver) under CHIP, and shall ensure that such list is updated at least quarterly; and

“(2) work with States to include, not later than 6 months after the date of the enactment of this Act, a description of the dental services provided under each State plan (or waiver) under Medicaid and each State child health plan (or waiver) under CHIP on such Insure Kids Now website, and shall ensure that such list is updated at least annually.”

#### DEADLINE FOR INITIAL APPOINTMENTS

Pub. L. 111-3, title V, §506(b), Feb. 4, 2009, 123 Stat. 95, provided that: “Not later than January 1, 2010, the Comptroller General of the United States shall appoint the initial members of the Medicaid and CHIP Payment and Access Commission established under section 1900 of the Social Security Act [this section] (as added by subsection (a)).”

#### ANNUAL REPORT

Pub. L. 111-3, title V, §506(c), Feb. 4, 2009, 123 Stat. 95, provided that: “Not later than January 1, 2010, and an-

nually thereafter, the Secretary [of Health and Human Services], in consultation with the Secretary of the Treasury, the Secretary of Labor, and the States (as defined for purposes of Medicaid), shall submit an annual report to Congress on the financial status of, enrollment in, and spending trends for, Medicaid for the fiscal year ending on September 30 of the preceding year.”

#### NO FEDERAL FUNDING FOR ILLEGAL ALIENS; DISALLOWANCE FOR UNAUTHORIZED EXPENDITURES

Pub. L. 111-3, title VI, §605, Feb. 4, 2009, 123 Stat. 100, provided that: “Nothing in this Act [see Effective Date note above] allows Federal payment for individuals who are not legal residents. Titles XI, XIX, and XXI of the Social Security Act [subchapters XI, XIX, and XXI of this chapter] provide for the disallowance of Federal financial participation for erroneous expenditures under Medicaid and under CHIP, respectively.”

#### DEFINITIONS

Pub. L. 111-3, §1(c), Feb. 4, 2009, 123 Stat. 8, provided that: “In this Act [see Effective Date note above]:

“(1) CHIP.—The term ‘CHIP’ means the State Children's Health Insurance Program established under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

“(2) MEDICAID.—The term ‘Medicaid’ means the program for medical assistance established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of Health and Human Services.”

#### § 1396-1. Appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for medical assistance.

(Aug. 14, 1935, ch. 531, title XIX, §1901, as added Pub. L. 89-97, title I, §121(a), July 30, 1965, 79 Stat. 343; amended Pub. L. 93-233, §13(a)(1), Dec. 31, 1973, 87 Stat. 960; Pub. L. 98-369, div. B, title VI, §2663(j)(3)(C), July 18, 1984, 98 Stat. 1171.)

#### CODIFICATION

Section was formerly classified to section 1396 of this title.

#### AMENDMENTS

1984—Pub. L. 98-369 struck out “of Health, Education, and Welfare” after “Secretary”.

1973—Pub. L. 93-233 substituted “disabled individuals” for “permanently and totally disabled individuals”.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.