§ 1320b–7  TITLE 42—THE PUBLIC HEALTH AND WELFARE

In order to meet the requirements of this section, a State must have in effect an income and eligibility verification system which meets the requirements of subsection (d) of this section and under which—

(1) the State shall require, as a condition of eligibility for benefits under any program listed in subsection (b) of this section, that each applicant for or recipient of benefits under that program furnish to the State his social security account number (or numbers, if he has more than one such number), and the State shall utilize such account numbers in the administration of that program so as to enable the association of the records pertaining to the applicant or recipient with his account number;

(2) wage information from agencies administering State unemployment compensation laws available pursuant to section 3304(a)(16) of the Internal Revenue Code of 1986, wage information reported pursuant to paragraph (3) of this subsection, and wage, income, and other information from the Social Security Administration and the Internal Revenue Service available pursuant to section 6103(l)(7) of such Code, shall be requested and utilized to the extent that such information may be useful in verifying eligibility for, and the amount of, benefits available under any program listed in subsection (b) of this section, as determined by the Secretary of Health and Human Services (or, in the case of the unemployment compensation program, by the Secretary of Labor, or, in the case of the supplemental nutrition assistance program, by the Secretary of Agriculture);

(3) employers (as defined in section 653(a)(2)(B) of this title) (including State and local governmental entities and labor organizations) in such State are required, effective September 30, 1986, to make quarterly wage reports to a State agency (which may be the agency administering the State's unemployment compensation law) except that the Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provisions of this paragraph if he determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in paragraph (2), and except that no report shall be filed with respect to an employee of a State or local agency performing intelligence or counterintelligence functions, if the head of such agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission, and except that in the case of wage reports with respect to domestic service employment, a State may permit employers (as so defined) that make returns with respect to such employment on a calendar year basis pursuant to section 3510 of the Internal Revenue Code of 1986 to make such reports on an annual basis;

(4) the State agencies administering the programs listed in subsection (b) of this section adhere to standardized formats and procedures established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) under which—

(A) the agencies will exchange with each other information in their possession which may be of use in establishing or verifying eligibility or benefit amounts under any other such program;

(B) such information shall be made available to assist in the child support program under part D of subchapter IV of this chapter, and to assist the Secretary of Health and Human Services in establishing or verifying eligibility or benefit amounts under subchapters II and XVI of this chapter, but subject to the safeguards and restrictions established by the Secretary of the Treasury with respect to information released pursuant to section 6103(l) of the Internal Revenue Code of 1986; and

(C) the use of such information shall be targeted to those uses which are most likely to be productive in identifying and preventing ineligibility and incorrect payments, and no State shall be required to use such information to verify the eligibility of all recipients;
(5) adequate safeguards are in effect so as to assure that—
(A) the information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving such information, and the information released pursuant to section 6103(l) of the Internal Revenue Code of 1986 is only exchanged with agencies authorized to receive such information under such section 6103(l); and
(B) the information is adequately protected against unauthorized disclosure for other purposes, as provided in regulations established by the Secretary of Health and Human Services, or, in the case of the unemployment compensation program, the Secretary of Labor, or, in the case of the supplemental nutrition assistance program, the Secretary of Agriculture, or 1 in the case of information released pursuant to section 6103(l) of the Internal Revenue Code of 1986, the Secretary of the Treasury;

(6) all applicants for and recipients of benefits under any such program shall be notified at the time of application, and periodically thereafter, that information available through the system will be requested and utilized; and

(7) accounting systems are utilized which assure that programs providing data receive appropriate reimbursement from the programs utilizing the data for the costs incurred in providing the data.

(b) Applicable programs

The programs which must participate in the income and eligibility verification system are—

(1) any State program funded under part A of subchapter IV of this chapter;

(2) the medicaid program under subchapter XIX of this chapter;

(3) the unemployment compensation program under section 3304 of the Internal Revenue Code of 1986;

(4) the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.]; and

(5) any State program under a plan approved under subchapter I, X, XIV, or XVI of this chapter.

(c) Protection of applicants from improper use of information

(1) In order to protect applicants for and recipients of benefits under the programs identified in subsection (b) of this section, or under the supplemental security income program under subchapter XVI of this chapter, from the improper use of information obtained from the Secretary of the Treasury under section 6103(l)(7)(B) of the Internal Revenue Code of 1986, no Federal, State, or local agency receiving such information may terminate, deny, suspend, or reduce any benefits of an individual until such agency has taken appropriate steps to independently verify information relating to—

(A) the amount of the asset or income involved,

(B) whether such individual actually has (or had) access to such asset or income for his own use, and

(C) the period or periods when the individual actually had such asset or income.

(2) Such individual shall be informed by the agency of the findings made by the agency on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(d) Citizenship or immigration status requirements; documentation; verification by Immigration and Naturalization Service; denial of benefits; hearing

The requirements of this subsection, with respect to an income and eligibility verification system of a State, are as follows:

(1)(A) The State shall require, as a condition of an individual’s eligibility for benefits under a program listed in subsection (b) of this section, a declaration in writing, under penalty of perjury—

(i) by the individual,

(ii) in the case in which eligibility for program benefits is determined on a family or household basis, by any adult member of such individual’s family or household (as applicable), or

(iii) in the case of an individual born into a family or household receiving benefits under such program, by any adult member of such family or household no later than the next redetermination of eligibility of such family or household following the birth of such individual,

stating whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

(B) In this subsection, in the case of the program described in subsection (b)(4) of this section—

(i) any reference to the State shall be considered a reference to the State agency, and

(ii) any reference to an individual’s eligibility for benefits under the program shall be considered a reference to the individual’s eligibility to participate in the program as a member of a household, and

(iii) the term “satisfactory immigration status” means an immigration status which does not make the individual ineligible for benefits under the applicable program.

(2) If such an individual is not a citizen or national of the United States, there must be presented either—

(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual’s alien admission number or alien file number (or numbers if the individual has more than one number), or

(B) such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.

1So in original. Probably should be followed by a comma.
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Each Federal agency responsible for administration of a program described in subsection (b) of this section shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to any error in the State’s determination to make an individual eligible for benefits based on citizenship or immigration status—

(1) if the State has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the State, under subsection (d)(4)(A)(ii) of this section, was required to provide a reasonable opportunity to submit documentation,

(3) because the State, under subsection (d)(4)(B)(ii) of this section, was required to wait for the response of the Immigration and Naturalization Service to the State’s request for official verification of the immigration status of the individual, or

(4) because of a fair hearing process described in subsection (d)(5)(B) of this section.

(f) Medical assistance to aliens for treatment of emergency conditions

Subsections (a)(1) and (d) of this section shall not apply with respect to aliens seeking medical assistance for the treatment of an emergency medical condition under section 1396b(v)(2) of this title.


REFERENCES IN TEXT

Parts A and D of subchapter IV of this chapter, referred to in subsecs. (a)(4)(B) and (b)(1), are classified to sections 601 et seq. and 651 et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsec. (a)(2), (3), (4)(B), (5), (b)(3), and (c)(1), is classified generally to Title 26, Internal Revenue Code.


Codification


Amendments

References to the food stamp program established under the Food and Nutrition Act of 2008 [see Effective Date of 1999 Amendment note and Effective Date note below] considered to refer to the supplemental nutrition assistance program established under that Act, see section 4002(c) of Pub. L. 110–246, set out as a note under section 1161 of Title 7, Agriculture.

Effective Date of 2008 Amendment


Effective Date of 1999 Amendments
Amendment by section 108(g)(2) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Assistance, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 654 of this title.

Effective Date of 1996 Amendment
Amendment by section 108(g)(8) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Assistance, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 654 of this title.

Effective Date of 1988 Amendment
Section 411(k)(15)(B) of Pub. L. 100–360 provided that: “The amendment made by paragraph (A) [amending this section] shall apply as if it were included in the enactment of section 4006 of the Omnibus Budget Reconciliation Act of 1986 [see section 4006(c) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 1396a of this title].”

Effective Date of 1986 Amendment; Use of Verification System
Pub. L. 99–509, title I, §121(c)(3), (4), Nov. 6, 1986, 100 Stat. 3391, 3392, provided that:
“(3) USE OF VERIFICATION SYSTEM REQUIRED IN FISCAL YEAR 1987.—Except as provided in paragraph (4), the amendments made by subsection (a) [amending this section, subsection 1396a of this title, and section 1091 of
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Title 20, Education] take effect on October 1, 1988. States have until that date to begin complying with the requirements imposed by those amendments.

(1) USE OF VERIFICATION SYSTEM NOT REQUIRED FOR A PROGRAM IN CERTAIN CASES.—

(A) REPORT TO RESPECTIVE CONGRESSIONAL COMMITTEES.—With respect to each covered program (as defined in subparagraph (D)(i)), each appropriate Secretary shall examine and report to the appropriate Committees of the House of Representatives and of the Senate, by not later than April 1, 1988, concerning whether (and the extent to which)—

(i) the application of the amendments made by subsection (a) to the program is cost-effective and otherwise appropriate, and

(ii) there should be a waiver of the application of such amendments under subparagraph (B).

The amendments made by subsection (a) shall not apply with respect to the program until after the date of receipt of such report with respect to the program.

(B) WAIVER IN CERTAIN CASES.—If, with respect to a covered program, the appropriate Secretary determines, on the Secretary's own initiative or upon an application by an administering entity and based on such information as the Secretary deems relevant (which may include the results of the report required under subsection (d)(1) [set out as a note below] and information contained in such an application), that—

(i) the appropriate Secretary or the administering entity has in effect an alternative system of immigration status verification which—

(I) is as effective and timely as the system otherwise required under the amendments made by subsection (a) with respect to the program, and

(II) provides for at least the hearing and appeals rights for beneficiaries that would be provided under the amendments made by subsection (a), or

(i) the costs of administration of the system otherwise required under such amendments exceed the estimated savings, such Secretary may waive the application of such amendments to the covered program to the extent (by State or other geographic area or otherwise) that such determinations apply.

(C) BASIS FOR DETERMINATION.—A determination under subparagraph (B)(ii) shall be based upon the appropriate Secretary's estimate of—

(i) the number of aliens claiming benefits under the covered program in relation to the total number of claimants seeking benefits under the program,

(ii) any savings in benefit expenditures reasonably expected to result from implementation of the verification program,

(iii) the labor and nonlabor costs of administration of the verification system, the degree to which the Immigration and Naturalization Service is capable of providing timely and accurate information to the administering entity in order to permit a reliable determination of immigration status, and such other factors as such Secretary deems relevant.

(D) DEFINITIONS.—In this paragraph:

(i) The term ‘covered program’ means each of the following programs:

(I) The aid to families with dependent children program under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter].

(II) The medicaid program under title XIX of the Social Security Act [subchapter XIX of this chapter].

(III) Any State program under a plan approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter].


(V) The food stamp program under the Food Stamp Act of 1977 [now the Food and Nutrition Act of 2008, 7 U.S.C. 2001 et seq.].

(VI) The programs of financial assistance for housing subject to section 214 of the Housing and Community Development Act of 1980 [42 U.S.C. 1436a].


(ii) The term ‘appropriate Secretary’ means, with respect to the covered program described in—

(A) each subsection (I) through (III) of clause (i), the Secretary of Health and Human Services;

(B) each clause (IV), the Secretary of Labor;

(C) clause (i)(V), the Secretary of Agriculture;

(D) clause (i)(VI), the Secretary of Housing and Urban Development; and

(E) clause (i)(VII), the Secretary of Education.

(iii) The term ‘State’ means a State agency responsible for the administration of the program in a State.

(iv) The term ‘covered program’ means each of the following programs:

(1) The aid to families with dependent children program under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter].

(2) Except as otherwise specifically provided, the amendments made by subsections (a) through (i) [enacting this section, amending sections 302, 503, 602, 1202, 1352, and 1366a of this title and section 2020 of Title 1, Agriculture, repealing section 611 of this title, and amending provisions set out as a note under section 1382 of this title] shall become effective on April 1, 1985. In the case of any State which submits a plan describing a good faith effort by such State to come into compliance with the requirements of such subsections, the Secretary of Health and Human Services (or, in the case of the State unemployment compensation program, the Secretary of Labor; or, in the case of the food stamp program, the Secretary of Agriculture) may by waiver grant a delay in the effective date of such subsections, except that no such waiver may delay the effective date of section 1357(c) of the Social Security Act [subsec. (c) of this section] (as added by subsection (a) of this section), or delay the effective date of any other provision of or added by this section beyond September 30, 1986.

CONSTRUCTION OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 to be executed as if Pub. L. 106–170 had been enacted after the enactment of Pub. L. 106–170, see section 212(c)(1) of Pub. L. 106–170, set out as a note under section 1386a of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

IMMIGRATION AND NATURALIZATION SERVICE TO ESTABLISH VERIFICATION SYSTEM BY OCTOBER 1, 1987

Section 121(c)(1) of Pub. L. 99–603 provided that: ‘‘The Commissioner of Immigration and Naturalization shall
implement a system for the verification of immigration status under paragraphs (3) and (4)(B)(i) of section 1373(d) of the Social Security Act [subsec. (d)(3) and (4)(B)(i) of this section] so that the system is available to all the States by not later than October 1, 1987. Such system shall not be used by the Immigration and Naturalization Service for administrative (non-criminal) immigration enforcement purposes and shall be implemented in a manner that provides for verification of immigration status without regard to the sex, color, race, religion, or nationality of the individual involved.''

GENERAL ACCOUNTING OFFICE REPORTS

Section 121(d) of Pub. L. 99–603 directed Comptroller General to examine current pilot projects relating to the System for Alien Verification of Eligibility (SAVE) operated by, or through cooperative agreements with, the Immigration and Naturalization Service, and report, not later than Oct. 1, 1987, to Congress and to the Commissioner of Immigration and Naturalization Service concerning the effectiveness of such projects and any problems with the implementation of such projects, particularly as they may apply to implementation of the system, with Comptroller General to monitor and analyze the implementation of such system, report to Congress and to the appropriate Secretaries, by not later than Apr. 1, 1989, on such implementation, and include in such report recommendations for appropriate changes in the system.

§ 1320b–8. Hospital protocols for organ procurement agencies

(a)(1) The Secretary shall provide that a hospital or critical access hospital meeting the requirements of subchapter XVIII or XIX of this chapter may participate in the program established under such subchapter only if—

(i) cost effectiveness;

(ii) improvements in quality;

(iii) whether there has been any change in a hospital’s designated organ procurement agency due to a change made on or after December 28, 1992, in the definitions for metropolitan statistical areas (as established by the Office of Management and Budget); and

(iv) the length and continuity of a hospital’s relationship with an organ procurement agency other than the hospital’s designated organ procurement agency;

except that nothing in this subparagraph shall be construed to permit the Secretary to grant a waiver that does not meet the requirements of subparagraph (A).

(3) For purposes of this subsection—

(A) the term “agreement” means an agreement described in section 273(b)(3)(A) of this title;

(B) the term “designated organ procurement agency” means, with respect to a hospital or critical access hospital, the organ procurement agency designated pursuant to subsection (b) of this section for the service area in which such hospital is located; and

(C) the term “organ” means a human kidney, liver, heart, lung, pancreas, and any other human organ or tissue specified by the Secretary for purposes of this subsection.

(b)(1) The Secretary shall provide that payment may be made under subchapter XVIII or XIX of this chapter with respect to organ procurement costs attributable to payments made to an organ procurement agency only if the agency—

(A) is a qualified organ procurement organization (as described in section 273(b) of this title) that is operating under a grant made under section 273(a) of this title, or (ii) has been certified or recertified by the Secretary within the previous 2 years (4 years if the Sec-