limit the number of such practices so that the number of applicable beneficiaries that may participate in the demonstration program does not exceed 10,000.

(6) Waiver
The Secretary may waive such provisions of this subchapter and subchapter XI as the Secretary determines necessary in order to implement the demonstration program.

(7) Administration
Chapter 35 of title 44 shall not apply to this section.

(f) Evaluation and monitoring
(1) In general
The Secretary shall evaluate each independence at home medical practice under the demonstration program to assess whether the practice achieved the results described in subsection (a).

(2) Monitoring applicable beneficiaries
The Secretary may monitor data on expenditures and quality of services under this subchapter after an applicable beneficiary discontinues receiving services under this subchapter through a qualifying independence at home medical practice.

(g) Reports to Congress
The Secretary shall conduct an independent evaluation of the demonstration program and submit to Congress a final report, including best practices under the demonstration program. Such report shall include an analysis of the demonstration program on coordination of care, expenditures under this subchapter, applicable beneficiary access to services, and the quality of health care services provided to applicable beneficiaries.

(h) Funding
For purposes of administering and carrying out the demonstration program, other than for payments for items and services furnished under this subchapter and incentive payments under subsection (c), in addition to funds otherwise appropriated, there shall be transferred to the Secretary for the Center for Medicare & Medicaid Services Program Management Account from the Federal Hospital Insurance Trust Fund under section 1395l of this title and the Federal Supplementary Medical Insurance Trust Fund under section 1395l of this title (in proportions determined appropriate by the Secretary) $5,000,000 for each of fiscal years 2010 through 2015. Amounts transferred under this subsection for a fiscal year shall be available until expended.

(i) Termination
(1) Mandatory termination
The Secretary shall terminate an agreement with an independence at home medical practice if—
(A) the Secretary estimates or determines that such practice will not receive an incentive payment for the second of 2 consecutive years under the demonstration program; or
(B) such practice fails to meet quality standards during any year of the demonstration program.

(2) Permissive termination
The Secretary may terminate an agreement with an independence at home medical practice for such other reasons determined appropriate by the Secretary.

(3) Refusal to consent to treatment
If any individual (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1) of this section) exists.

(b) Necessary stabilizing treatment for emergency medical conditions and labor
(1) In general
If any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—
(A) within the staff and facilities available at the hospital, for such further medical examination and treatment as may be required to stabilize the medical condition, or
(B) for transfer of the individual to another medical facility in accordance with subsection (c) of this section.

(2) Refusal to consent to transfer
A hospital is deemed to meet the requirement of paragraph (1)(A) with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such examination and treatment, but the individual (or a person acting on the individual's behalf) refuses to consent to the examination and treatment. The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such examination and treatment.
individual to another medical facility in accordance with subsection (c) of this section and informs the individual (or a person acting on the individual’s behalf) of the risks and benefits to the individual of such transfer, but the individual (or a person acting on the individual’s behalf) refuses to consent to the transfer. The hospital shall take all reasonable steps to secure the individual’s (or person’s) written informed consent to refuse such transfer.

(c) Restricting transfers until individual stabilized

(1) Rule

If an individual has an emergency medical condition which has not been stabilized (within the meaning of subsection (e)(3)(B) of this section), the hospital may not transfer the individual unless—

(A)(i) the hospital has consented to the transfer and the hospital (or a person acting on the individual’s behalf) has been informed of the hospital’s obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility,

(ii) a physician (within the meaning of section 1395x(r)(1) of this title) has signed a certification described in paragraph (2) after a physician (as defined in section 1320a–7a(a) of this title) has signed a certification described in subparagraph (C) after a physician (as defined in section 1395x(r)(1) of this title) has signed a certification described in subsection (d)(1)(C) of this section who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment;

(B) in which the transfer is effected through qualified personnel and transportation equipment, as required including the use of necessary and medically appropriate life support measures during the transfer; and

(E) which meets such other requirements as the Secretary may find necessary in the interest of the health and safety of individuals transferred.

(d) Enforcement

(1) Civil money penalties

(A) A participating hospital that negligently violates a requirement of this section is subject to a civil money penalty of not more than $50,000 (or not more than $25,000 in the case of a hospital with less than 100 beds) for each such violation. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply with respect to a penalty or proceeding under section 1320a–7a(a) of this title.

(B) Subject to subparagraph (C), any physician who is responsible for the examination, treatment, or transfer of an individual in a participating hospital, including a physician on-call for the care of such an individual, and who negligently violates a requirement of this section, including a physician who—

(i) signs a certification under subsection (c)(1)(A) of this section that the medical benefits reasonably to be expected from a transfer to another facility outweigh the risks associated with the transfer, if the physician knew or should have known that the benefits did not outweigh the risks, or

(ii) misrepresents an individual’s condition or other information, including a hospital’s obligations under this section, is subject to a civil money penalty of not more than $50,000 for each such violation and, if the violation is gross and flagrant or is repeated, to exclusion from participation in this subchapter and State health care programs. The provisions of section 1320a–7a of this title (other than the first and second sentences of subsection (a) and subsection (b)) shall apply to a civil money penalty and exclusion under this subparagraph in the same manner as such provisions apply with respect to a penalty, exclusion, or proceeding under section 1320a–7a(a) of this title.

(C) If, after an initial examination, a physician determines that the individual requires

1 So in original. Probably should be followed by a comma.
the services of a physician listed by the hospital on its list of on-call physicians (required to be maintained under section 1395cc(a)(1)(I) of this title) and notifies the on-call physician and the on-call physician fails or refuses to appear within a reasonable period of time, and the physician orders the transfer of the individual because the physician determines that without the services of the on-call physician the benefits of transfer outweigh the risks of transfer, the physician authorizing the transfer shall not be subject to a penalty under subparagraph (B). However, the previous sentence shall not apply to the hospital or to the on-call physician who failed or refused to appear.

(2) Civil enforcement

(A) Personal harm

Any individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

(B) Financial loss to other medical facility

Any medical facility that suffers a financial loss as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for financial loss, under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

(C) Limitations on actions

No action may be brought under this paragraph more than two years after the date of the violation with respect to which the action is brought.

(3) Consultation with quality improvement organizations

In considering allegations of violations of the requirements of this section in imposing sanctions under paragraph (1) or in terminating a hospital's participation under this subchapter, the Secretary shall request the appropriate quality improvement organization (with a contract under part B of subchapter XI of this chapter) to assess whether the individual involved had an emergency medical condition which had not been stabilized, and provide a report on its findings. Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall request such a review before effecting a sanction under paragraph (1) and shall provide a period of at least 60 days for such review. Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall also request such a review before making a compliance determination as part of the process of terminating a hospital's participation under this subchapter for violations related to the appropriateness of a medical screening examination, stabilizing treatment, or an appropriate transfer as required by this section, and shall provide a period of 5 days for such review. The Secretary shall provide a copy of the organization's report to the hospital or physician consistent with confidentiality requirements imposed on the organization under such part B.

(4) Notice upon closing an investigation

The Secretary shall establish a procedure to notify hospitals and physicians when an investigation under this section is closed.

(e) Definitions

In this section:

(1) The term “emergency medical condition” means—

(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

(ii) serious impairment to bodily functions, or

(iii) serious dysfunction of any bodily organ or part; or

(B) with respect to a pregnant woman who is having contractions—

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(2) The term “participating hospital” means a hospital that has entered into a provider agreement under section 1395cc of this title.

(3)(A) The term “to stabilize” means, with respect to an emergency medical condition described in paragraph (1)(A), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta).

(B) The term “stabilized” means, with respect to an emergency medical condition described in paragraph (1)(A), that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta).

(4) The term “transfer” means the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who (A) has been declared dead, or (B) leaves the facility without the permission of any such person.

(5) The term “hospital” includes a critical access hospital (as defined in section 1395(mm)(1) of this title).
(f) Preemption

The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section.

(g) Nondiscrimination

A participating hospital that has specialized capabilities or facilities (such as burn units, shock-trauma units, neonatal intensive care units, or (with respect to rural areas) regional referral centers as identified by the Secretary in regulation) shall not refuse to accept an appropriate transfer of an individual who requires such specialized capabilities or facilities if the hospital has the capacity to treat the individual.

(h) No delay in examination or treatment

A participating hospital may not delay provision of an appropriate medical screening examination required under subsection (a) of this section or further medical examination and treatment required under subsection (b) of this section in order to inquire about the individual's method of payment or insurance status.

(i) Whistleblower protections

A participating hospital may not penalize or take adverse action against a qualified medical person described in subsection (c)(1)(A)(iii) of this section or a physician because the person or physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized or against any hospital employee because the employee reports a violation of a requirement of this section.


Prior Provisions


Amendments


Subsec. (d)(3). Pub. L. 108–173, § 944(c)(1), inserted “or in terminating a hospital’s participation under this subchapter” after “in imposing sanctions under paragraph (1)” and inserted at end “Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall also request such a review before making a compliance determination as part of the process of terminating a hospital’s participation under this subchapter for violations related to the appropriateness of a medical screening examination, stabilizing treatment, or an appropriate transfer as required by this section, and shall provide a period of 5 days for such review. The Secretary shall provide a copy of the organization’s report to the hospital or physician consistent with confidentiality requirements imposed on the organization under such part B.”


Subsec. (d)(1). Pub. L. 101–508, § 4008(b)(3)(A)(i), (ii), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: “If a hospital knowingly and willfully, or negligently, fails to meet a requirement under this subchapter for violations related to the appropriateness of a medical screening examination, stabilizing treatment, or an appropriate transfer as required by this section, such hospital is subject to—

“(A) termination of its provider agreement under this subchapter in accordance with section 1395cc(b) of this title, or

“(B) at the option of the Secretary, suspension of such agreement for such period of time as the Secretary determines to be appropriate, upon reasonable notice to the hospital and to the public.”

Subsec. (d)(1)(B). Pub. L. 101–508, § 4207(a)(2), (3), formerly § 4027(a)(2), (3), as renumbered by Pub. L. 103–432, § 160(d)(4), which directed amendment of par. (2)(B) by substituting “negligently” for “knowingly” and “is gross and flagrant or is repeated” for “knowing and willful or negligent”, was executed by making the substitutions in par. (1)(B) to reflect the probable intent of Congress and the intervening redesignation of par. (2) as (1) by Pub. L. 101–508, § 4008(b)(3)(A)(i). See above.


Subsec. (d)(2)(A). Pub. L. 101–508, § 4008(b)(1)(A), (2), substituted “negligently” for “knowingly” and inserted “(or not more than $25,000 in the case of a hospital with less than 100 beds)” after “$50,000”.


Subsec. (i). Pub. L. 101–508, § 4207(k)(3), formerly § 4027(k)(3), as renumbered by Pub. L. 103–432, § 160(d)(4), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: “A participating hospital may not penalize or take adverse action against a physician because the physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized.”

Subsec. (a). Pub. L. 101–239, §6211(h)(2)(B), which directed the amendment of subsec. (a) by striking out “or to determine if the individual is in active labor (within the meaning of subsection (e)(2) of this section)” after “exists”. Subsec. (b). Pub. L. 101–239, §6211(h)(2)(C), struck out “active” before “labor” in heading.


Subsec. (b)(1)(A). Pub. L. 101–239, §6211(h)(2)(D)(II), struck out “or to provide for treatment of the labor” after “stabilize the medical condition”.


Subsec. (b)(3). Pub. L. 101–239, §6211(h)(2)(E), in introductory provisions, substituted “an individual” for “a patient”, “subsection (e)(3)(B) of this section” for “subsection (e)(4)(B) of this section” or is in active labor”, and “the individual” for “the patient”, and inserted at end “The hospital shall take all reasonable steps to secure the individual’s (or person’s) written informed consent to refuse such examination and treatment.”

Subsec. (b)(3). Pub. L. 101–239, §6211(h)(2), inserted “and informs the individual (or a person acting on the individual’s behalf) of the risks and benefits to the individual of such transfer,” after “in that paragraph”, substituted “and treatment,” for “or treatment.”, and inserted at end “The hospital shall take all reasonable steps to secure the individual’s (or person’s) written informed consent to refuse such transfer.”


Subsec. (c)(1). Pub. L. 101–239, §6211(c)(4), (g)(1)(B), (h)(2)(E), in introductory provisions, substituted “an individual” for “a patient”, “subsection (e)(3)(B) of this section” for “subsection (e)(4)(B) of this section” or is in active labor”, and “the individual” for “the patient”, and inserted at end “A certification described in clause (ii) or (iii) of subparagraph (A) shall include a summary of the risks and benefits upon which the certification is based.”

Subsec. (c)(1)(A)(i). Pub. L. 101–239, §6211(c)(1), (g)(1)(B), substituted “the individual” for “the patient”, “the individual’s behalf” for “the patient’s behalf”, and “and after being informed of the hospital’s obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility” for “requests that the transfer be effected”.

Subsec. (c)(1)(A)(ii). Pub. L. 101–239, §6211(c)(2)(B), (3), (g)(1)(B), substituted “has signed a certification that based upon the information available at the time of transfer for “”, or other qualified medical personnel when a physician is not readily available in the emergency department, has signed a certification that, based upon the reasonable risks and benefits to the patient, and based upon the information available at the time” and “individual and, in the case of labor, to the unborn child” for “individual’s medical condition”.


Subsec. (c)(2)(B). Pub. L. 101–239, §6211(c)(5)(A), (g)(1)(B), redesignated subpar. (A) as (B) and substituted “the individual” for “the patient” in cls. (i) and (ii). Former subpar. (B) redesignated (C).

Subsec. (c)(2)(C). Pub. L. 101–239, §6211(c)(5)(A), (d), redesignated subpar. (B) as (C) and substituted “seeks to” for “provides” and “all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual’s emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under paragraph (1)(A), and the name and address of any on-call physician (described in subsection (d)(2)(C) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment” for “with appropriate medical records (or copies thereof) of the examination or treatment effectuated at the transferring hospital”. Former subpar. (C) redesignated (D).

Subsec. (c)(2)(D). Pub. L. 101–239, §6211(c)(5)(A), (g)(1)(B), redesignated subpar. (D) as (E) and substituted “individuals” for “patients”.

Subsec. (d)(2)(B). Pub. L. 101–239, §6211(e)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ‘’The responsible physician in a participating hospital with respect to the hospital’s violation of a requirement of this subsection is subject to the sanctions described in section 1395u(b)(2) of this title, except that, for purposes of this subparagraph, the civil money penalty with respect to each violation may not exceed $50,000, rather than $2,000.’’

Subsec. (d)(2)(C). Pub. L. 101–239, §6211(e)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ‘’As used in this paragraph, the term ‘responsible physician’ means, with respect to a hospital’s violation of a requirement of this section, a physician who—

(i) is employed by, or under contract with, the participating hospital, and

(ii) acting as such an employee or under such a contract, has professional responsibility for the provision of examinations or treatments for the individual, or transfers of the individual, with respect to which the violation occurred.’’

Subsec. (e)(1). Pub. L. 101–239, §6211(h)(1)(A), substituted “means—” and subpars. (A) and (B) for “means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(A) placing the patient’s health in serious jeopardy,

(B) serious impairment to bodily functions, or

(C) serious dysfunction of any bodily organ or part.’’

Subsec. (e)(2). Pub. L. 101–239, §6211(h)(1)(B), (E), redesignated par. (3) as (2) and struck out former par. (2) which defined “active labor”.


Subsec. (e)(5). Pub. L. 101–239, §6211(h)(1)(C), substituted “emergency medical condition described in paragraph (1)(A)” for “emergency medical condition”, “likely to result from or occur during” for “likely to result from”, and “from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta)” for “from a facility”.

Subsec. (e)(6). Pub. L. 101–239, §6211(h)(1)(D), inserted “described in paragraph (1)(A)” after “emergency medical condition”, “or occur during” after “to result from”; and “or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta) after from a facility”.


Pub. L. 101–239, §6211(g)(2), substituted “an individual” for “a patient” in two places.


Subsecs. (g) to (i). Pub. L. 101–239, §6211(f), added subsecs. (g) to (i).


1987—Subsec. (d)(1). Pub. L. 100–203, §4009(a)(2), which directed insertion of a provision related to imposing the sanction described in section 1395u(j)(2) of this title, was amended generally by Pub. L. 100–360, §411(b)(8)(A)(i), so that it does not amend par. (1).

Subsec. (d)(2). Pub. L. 100–203, §4009(a)(1), as amended by Pub. L. 100–360, §411(b)(8)(A)(i), as amended by Pub. L. 100–485, §608(d)(18)(E), substituted subpars. (A) and (B) for “In addition to the other grounds for imposition of a civil money penalty of not more than $25,000 for each such violation,” designated second sentence as subpar. (C), and redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (C).

1986—Subsec. (b)(2). Pub. L. 99–509 struck out “legally responsible” after “individual (or a”.

Subsec. (c)(3). Pub. L. 99–514 struck out “and has, under the agreement, obligated itself to comply with the requirements of this section” after “section 1385cc of this title”.

Effective Date of 2011 Amendment
Amendment by Pub. L. 112–24 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–24, set out as a note under section 1320c of this title.

Effective Date of 2003 Amendment
Pub. L. 108–173, title IX, §94(c)(2), Dec. 8, 2003, 117 Stat. 2423, provided that: “The amendments made by paragraph (1) [amending this section] shall apply to terminations of participation initiated on or after the date of the enactment of this Act [Dec. 8, 2003].”

Effective Date of 1997 Amendment
Amendment by Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Effective Date of 1990 Amendment
Amendment by section 4008(b)(1)–(3)(A) of Pub. L. 101–508 applicable to actions occurring on or after the first day of the sixth month beginning after Nov. 5, 1990, see section 4008(b)(4) of Pub. L. 101–508, set out as a note under section 1395cc of this title.

Amendment by section 4207(a)(1)(A) of Pub. L. 101–508 effective on the first day of the first month beginning more than 60 days after Nov. 5, 1990, see section 4207(a)(1)(C) of Pub. L. 101–508, as amended, set out as a note under section 1320c–3 of this title.

Pub. L. 101–508, title IV, §4207(a), former §4227(a)(4), Nov. 5, 1990, 104 Stat. 1330–57, as redesignated by Pub. L. 103–432, title I, §160(d)(4), (5)(B), Oct. 31, 1994, 108 Stat. 4444, provided that: “The amendments made by paragraphs (2) and (3) [amending this section] shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act [Nov. 5, 1990].”

Effective Date of 1989 Amendment
Pub. L. 101–239, title VI, §6211(i), Dec. 19, 1989, 103 Stat. 2249, provided that: “The amendments made by this section [amending this section] shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act [Dec. 19, 1989], without regard to whether regulations to carry out such amendments have been promulgated by such date.”

Effective Date of 1988 Amendment
Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA: Effective Date note under section 106 of Title I, General Provisions.

Effective Date of 1987 Amendment

Effective Date of 1986 Amendment

Effective Date
Pub. L. 99–272, title IX, §921(b)(2), Apr. 7, 1986, 100 Stat. 167, provided that: “The amendments made by this section [enacting this section and amending section 1395cc of this title] shall take effect on the first day of the first month that begins at least 90 days after the date of the enactment of this Act [Apr. 7, 1986].”

Short Title
This section is popularly known as the Emergency Medical Treatment and Labor Act (EMTALA).

Emergency Medical Treatment and Labor Act (EMTALA)
TECHNICAL ADVISORY GROUP

“(a) Establishment.—The Secretary of Health and Human Services shall establish a Technical Advisory Group (in this section referred to as the ‘Advisory Group’) to review issues related to the Emergency Medical Treatment and Labor Act (EMTALA) and its implementation. In this section, the term ‘EMTALA’ refers to the provisions of section 1387 of the Social Security Act (42 U.S.C. 1395dd).

“(b) Membership.—The Advisory Group shall be composed of 19 members, including the Administrator of the Centers for Medicare & Medicaid Services and the Inspector General of the Department of Health and Human Services and of which—

“(1) 4 shall be representatives of hospitals, including at least one public hospital, that have experience with the application of EMTALA and at least 2 of which have not been cited for EMTALA violations;

“(2) 7 shall be practicing physicians drawn from the fields of emergency medicine, cardiology or cardiovascular surgery, orthopedic surgery, neurosurgery, pediatrics or a pediatric subspecialty, obstetrics-gynecology, and psychiatry, with not more than one physician from any particular field;

“(3) 2 shall represent patients;

“(4) 2 shall be staff of the EMTALA investigations from different regional offices of the Centers for Medicare & Medicaid Services; and
"(5) I shall be from a State survey office involved in EMTALA investigations and I shall be from a peer review organization, both of whom shall be from areas other than the regions represented under paragraph (4).

In selecting members described in paragraphs (1) through (3), the Secretary shall consider qualified individuals nominated by organizations representing providers and patients.

"(c) General Responsibilities.—The Advisory Group—

"(1) shall review EMTALA regulations;

"(2) may provide advice and recommendations to the Secretary with respect to those regulations and their application to hospitals and physicians;

"(3) shall solicit comments and recommendations from hospitals, physicians, and the public regarding the implementation of such regulations; and

"(4) may disseminate information about such regulations to hospitals, physicians, and the public.

"(d) Administrative Matters.—

"(1) Chairperson.—The members of the Advisory Group shall elect a member to serve as chairperson of the Advisory Group for the life of the Advisory Group.

"(2) Meetings.—The Advisory Group shall meet at the direction of the Secretary. The Advisory Group shall then meet twice per year and at such other times as the Advisory Group may provide.

"(e) Termination.—The Advisory Group shall terminate 30 months after the date of its first meeting.

"(f) Authority to Make Payments.—From the allotments made for a State under subsection (b) for a fiscal year, the Secretary shall pay the amount (subject to the total amount available from such allotments) determined under paragraph (2) directly to eligible providers located in the State for the provision of eligible services to aliens described in paragraph (5) to the extent that the eligible provider was not otherwise reimbursed (through insurance or otherwise) for such services during that fiscal year.

"(2) Determination of Payment Amounts.—

"(A) In General.—Subject to subparagraph (B), the payment amount determined under this paragraph shall be an amount determined by the Secretary that is equal to the lesser of—

"(i) the amount that the provider demonstrates was incurred for the provision of such services; or

"(ii) amounts determined under a methodology established by the Secretary for purposes of this subsection.

"(B) Pro-rata Reduction.—If the amount of funds allotted to a State under subsection (b) for a fiscal year is insufficient to ensure that each eligible provider in that State receives the amount of payment calculated under subparagraph (A), the Secretary shall reduce that amount of payment with respect to each eligible provider to ensure that the entire amount allotted to the State for that fiscal year is paid to such eligible providers.

"(C) Methodology.—In establishing a methodology under paragraph (2)(A)(i), the Secretary—

"(I) may establish different methodologies for types of eligible providers;

"(II) may base payments for hospital services on estimated hospital charges, adjusted to estimated cost, through the application of hospital-specific cost-to-charge ratios;

"(III) may provide for the election by a hospital to receive either payments to the hospital for—

"(i) hospital and physician services; or

"(ii) hospital services and for a portion of the on-call payments made by the hospital to physicians; and

"(IV) shall make quarterly payments under this section to eligible providers.

If a hospital makes the election under subparagraph (C)(i), the hospital shall pass on payments for services of a physician to the physician and may not charge any administrative or other fee with respect to such payments.

"(d) Limitation on Use of Funds.—Payments made to eligible providers in a State from allotments made under subsection (b) for a fiscal year may only be used for costs incurred in providing eligible services to aliens described in paragraph (5).

"(A) Aliens Described.—For purposes of paragraphs (1) and (2), aliens described in this paragraph are any of the following:

"(A) Undocumented aliens.

"(B) Aliens who have been paroled into the United States at a United States port of entry for the purpose of receiving eligible services.

"(B) Determination of Allotments.—The amount of the allotment for each State described in subparagraph (A) for a fiscal year shall be equal to the product of—

"(i) the total amount available for allotments under this paragraph for the fiscal year; and

"(ii) the percentage of undocumented alien apprehensions in the State in that fiscal year as compared to the total of such apprehensions for all such States for the preceding fiscal year.

"(C) Data.—For purposes of this paragraph, the highest number of undocumented alien apprehensions for a fiscal year shall be based on the apprehension rates for the 4-consecutive-quarter period ending before the beginning of the fiscal year for which information is available for undocumented aliens in such States, as reported by the Department of Homeland Security.

"(C) Use of Funds.—

"(1) Authority to Make Payments.—From the allotments made for a State under subsection (b) for a fiscal year, the Secretary shall pay the amount (subject to the total amount available from such allotments) determined under paragraph (2) directly to eligible providers located in the State for the provision of eligible services to aliens described in paragraph (5) to the extent that the eligible provider was not otherwise reimbursed (through insurance or otherwise) for such services during that fiscal year.

"(2) Determination of Payment Amounts.—

"(A) In General.—Subject to subparagraph (B), the payment amount determined under this paragraph shall be an amount determined by the Secretary that is equal to the lesser of—

"(i) the amount that the provider demonstrates was incurred for the provision of such services; or

"(ii) amounts determined under a methodology established by the Secretary for purposes of this subsection.

"(B) Pro-rata Reduction.—If the amount of funds allotted to a State under subsection (b) for a fiscal year is insufficient to ensure that each eligible provider in that State receives the amount of payment calculated under subparagraph (A), the Secretary shall reduce that amount of payment with respect to each eligible provider to ensure that the entire amount allotted to the State for that fiscal year is paid to such eligible providers.

"(C) Methodology.—In establishing a methodology under paragraph (2)(A)(i), the Secretary—

"(I) may establish different methodologies for types of eligible providers;

"(II) may base payments for hospital services on estimated hospital charges, adjusted to estimated cost, through the application of hospital-specific cost-to-charge ratios;

"(III) may provide for the election by a hospital to receive either payments to the hospital for—

"(i) hospital and physician services; or

"(ii) hospital services and for a portion of the on-call payments made by the hospital to physicians; and

"(IV) shall make quarterly payments under this section to eligible providers.

If a hospital makes the election under subparagraph (C)(i), the hospital shall pass on payments for services of a physician to the physician and may not charge any administrative or other fee with respect to such payments.

"(D) Limitation on Use of Funds.—Payments made to eligible providers in a State from allotments made under subsection (b) for a fiscal year may only be used for costs incurred in providing eligible services to aliens described in paragraph (5).

"(A) Aliens Described.—For purposes of paragraphs (1) and (2), aliens described in this paragraph are any of the following:

"(A) Undocumented aliens.

"(B) Aliens who have been paroled into the United States at a United States port of entry for the purpose of receiving eligible services.
“(C) Mexican citizens permitted to enter the United States for not more than 72 hours under the authority of a biometric machine readable border crossing identification card (also referred to as a ‘laser visa’) issued in accordance with the requirements of regulations prescribed under section 101(a)(6) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(6)).

“(d) APPLICATIONS; ADVANCE PAYMENTS.—

“(1) DEADLINE FOR ESTABLISHMENT OF APPLICATION PROCESS.—

“(A) IN GENERAL.—Not later than September 1, 2004, the Secretary shall establish a process under which eligible providers located in a State may request payments under subsection (c).

“(B) INCLUSION OF MEASURES TO COMBAT FRAUD AND ABUSE.—The Secretary shall include in the process established under subparagraph (A) measures to ensure that inappropriate, excessive, or fraudulent payments are not made from the allotments determined under subsection (b), including certification by the eligible provider of the veracity of the payment request.

“(2) ADVANCE PAYMENT; RETROSPECTIVE ADJUSTMENT.—The process established under paragraph (1) may provide for making payments under this section for each quarter of a fiscal year on the basis of advance estimates of expenditures submitted by applicants for such payments and such other investigation as the Secretary may find necessary, and for making reductions or increases in the payments as necessary to adjust for any overpayment or underpayment for prior quarters of such fiscal year.

“(e) DEFINITIONS.—In this section:

“(1) ELIGIBLE PROVIDER.—The term ‘eligible provider’ means a hospital, physician, or provider of ambulance services (including an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization).

“(2) ELIGIBLE SERVICES.—The term ‘eligible services’ means health care services required by the application of section 1867 of the Social Security Act (42 U.S.C. 1395dd), and related hospital inpatient and outpatient services and ambulance services (as defined by the Secretary).

“(3) HOSPITAL.—The term ‘hospital’ has the meaning given such term in section 1861(e) of the Social Security Act (42 U.S.C. 1395x(e)), except that such term shall include a critical access hospital (as defined in section 1861(mm)(1) of such Act (42 U.S.C. 1395x(mm)(1)).

“(4) PHYSICIAN.—The term ‘physician’ has the meaning given that term in section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

“(5) INDIAN TRIBE; TRIBAL ORGANIZATION.—The terms ‘Indian tribe’ and ‘tribal organization’ have the meanings given such terms in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

“(6) STATE.—The term ‘State’ means the 50 States and the District of Columbia.”

INSPECTOR GENERAL STUDY OF PROHIBITION ON HOSPITAL EMPLOYMENT OF PHYSICIANS
Pub. L. 101-508, title IV, § 4008(c), Nov. 5, 1990, 104 Stat. 1388-44, directed Secretary of Health and Human Services (acting through Inspector General of Department of Health and Human Services) to conduct a study of the effect of State laws prohibiting the employment of physicians by hospitals on the availability and accessibility of trauma and emergency care services, and include in such study an analysis of the effect of such laws on the ability of hospitals to meet the requirements of section 1867 of the Social Security Act (this section) relating to the examination and treatment of individuals with an emergency medical condition and women in labor, with Secretary to submit a report to Congress on the study not later than 1 year after Nov. 5, 1990.

§ 1395ee. Practicing Physicians Advisory Council; Council for Technology and Innovation
(b) Council for Technology and Innovation
(1) Establishment
The Secretary shall establish a Council for Technology and Innovation within the Centers for Medicare & Medicaid Services (in this section referred to as “CMS”).

(2) Composition
The Council shall be composed of senior CMS staff and clinicians and shall be chaired by the Executive Coordinator for Technology and Innovation (appointed or designated under paragraph (4)).

(3) Duties
The Council shall coordinate the activities of coverage, coding, and payment processes under this subchapter with respect to new technologies and procedures, including new drug therapies, and shall coordinate the exchange of information on new technologies between CMS and other entities that make similar decisions.

(4) Executive Coordinator for Technology and Innovation
The Secretary shall appoint (or designate) a noncareer appointee (as defined in section 3132(a)(7) of title 5) who shall serve as the Executive Coordinator for Technology and Innovation. Such executive coordinator shall report to the Administrator of CMS, shall chair the Council, shall oversee the execution of its duties, and shall serve as a single point of contact for outside groups and entities regarding the coverage, coding, and payment processes under this subchapter.


PRIOR PROVISIONS

AMENDMENTS


Subsec. (a). Pub. L. 108-173, § 942(a)(2)-(4), inserted subsec. heading, redesignated existing provisions as par. (1), substituted “in this subsection” for “in this section”, and redesignated former subsecs. (b) and (c) as pars. (2) and (3), respectively.